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INTRODUCTION

Plaintiffs' *Shaw v. Reno* claim fails at the threshold because Plaintiffs *admit* that the General Assembly had dispositive reasons for creating the alleged deficiencies in Enacted District 3 wholly apart from any racial considerations. Specifically, Plaintiffs' expert, Dr. Michael McDonald—who is the *only* substantive witness Plaintiffs intend to call at trial—has conceded that it would have made “perfect sense” for the General Assembly to adopt Enacted District 3 for *political* reasons even if every affected voter “was *white*.” McDonald Dep. at 139 (emphasis added) (Ex. A). Thus, Plaintiffs cannot prove that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without” District 3. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). In fact, before he was retained as Plaintiffs' expert, Dr. McDonald described the Enacted Plan *not* as a racial gerrymander, but instead as “a 8-3 partisan division of the state” in favor of Republicans “that also protected all incumbents.” Micah Altman & Michael McDonald, *A Half Century of Virginia Redistricting*, 47 U. Rich. L. Rev. 771, 816 (Mar. 2013). These concessions foreclose Plaintiffs from showing that “race *rather than* politics” explains the shape and composition of District 3, and their *Shaw* claim fails. *Easley v. Cromartie*, 532 U.S. 234, 242 (2001) (emphasis in original).

Plaintiffs' failure of proof does not end there. Incredibly, unlike plaintiffs in every other *Shaw* case, Plaintiffs have not even *attempted* to propose a *race-neutral* alternative that does *not* subordinate traditional redistricting principles to race (and thereby illustrates how racial considerations infected Enacted District 3). Rather, Plaintiffs *concede* that race “predominates” in *their* Alternative Plan because that Plan was intentionally drawn with a “50% quota” for District 3’s black voting-age population (“BVAP”). McDonald Dep. at 104, 118, 151. Thus, fully accepting *all* of Plaintiffs' allegations and characterizations, they are asking this Court to require, in order to fulfill the Fourteenth Amendment’s *racial neutrality* mandate, a district that

concededly subordinates traditional principles to race for the avowed purpose of achieving a “50% quota” (to replace an Enacted District 3 that allegedly does so to achieve a “55% quota”). *See id.* at 150–51. But, of course, one cannot *expose* the Legislature’s purportedly illegitimate use of race by proposing an alternative that illegitimately uses race, and the Court cannot *remedy* an illegitimately racial district by replacing it with *another* such district.

As this reflects, Plaintiffs’ “racial gerrymander” claim has nothing to do with eliminating race from Virginia’s congressional redistricting, but is simply an obvious effort to *use* race to advance Democratic *political* interests, by redeploing heavily Democratic black voters. The *only* difference between the Enacted Plan and the Alternative Plan is the placement of the boundary between Districts 2 and 3, and Plaintiffs’ political purpose for moving that boundary is obvious. By consciously reducing District 3’s BVAP to a razor-thin majority, the Alternative Plan shifts a large number of (predominately black) Democratic voters to District 2. This shift would transform evenly-divided District 2, which is currently represented by Republican Scott Rigell, into a heavily Democratic district, in direct violation of the General Assembly’s legitimate political, incumbency-protection, and core-preservation goals.

Plaintiffs thus advocate a 6% reduction in District 3’s BVAP not to cure an alleged predominant use of race in District 3—indeed, they *concede* that “race still predominates” in the Alternative Plan and its 50% quota, *see id.* at 104, 118, 151—but instead to swing District 2 nearly 6% in the Democratic Party’s political favor. Plaintiffs’ own allegations and evidence thus demonstrate that they have not *attempted* to prove what *Shaw* plaintiffs must “at least” show: that “the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles” and that bring about “significantly greater racial balance.” *Easley*, 532 U.S. at 258. The Alternative Plan does not

attempt to significantly alter the racial balance, but seeks to trade one majority-black district for another, and is indisputably at odds with both the General Assembly's political objectives and the traditional districting principles of core preservation and incumbency protection.

Because compliance with Section 5 of the Voting Rights Act is an affirmative defense under *Shaw*, Plaintiffs' failure to prove a predominant use of race dooms their claim without any need to inquire whether the use of race was justified by Section 5. *See Shaw v. Hunt*, 517 U.S. 899, 918 (1996) (*Shaw II*). In any event, Plaintiffs' claim concerning a Section 5 defense also fails. Plaintiffs concede that the Legislature had a compelling government interest to comply with Section 5. Thus, the only question is whether the Alternative Plan is more "narrowly tailored" to achieve Section 5 compliance than the Enacted Plan. *See id.*¹

Yet contrary to Plaintiffs' apparent belief, the narrow tailoring inquiry does not open the door to "endless 'beauty contests'" among competing districting plans with slightly different BVAPs. *Bush v. Vera*, 517 U.S. 952, 977 (1996) (plurality op.). Rather, narrow tailoring is shown here because the General Assembly had a "strong basis in evidence" to believe that the Enacted Plan "substantially addresses" Section 5, *id.*: (i) Congress amended Section 5 in 2006 to prohibit *any* "dimin[ution]" in minority voters' "ability to elect" their candidates of choice, including by making a safe black district any less safe, 42 U.S.C. § 1973c(b); (ii) independent proposals from a bipartisan commission to which Dr. McDonald served as an advisor called for at least maintaining District 3's BVAP; and (iii) in 2011, black delegates in areas covered by

¹ Intervenor-Defendants and Defendants understand Plaintiffs to have abandoned the central premise of their Complaint: that the Supreme Court's 2013 decision in *Shelby County v. Holder* retroactively invalidated the Enacted Plan that the General Assembly constitutionally adopted in 2012. *See* Compl. ¶¶ 1–6 (DE 1). Plaintiffs have conceded that *Shelby County* did not "change[] or even inform[] the General Assembly's actual motivation . . . in 2012," Pls.' Opp. to Summ. J. at 19 (DE 42), so that post hoc judicial decision inherently sheds no light on whether the General Assembly intentionally discriminated on the basis of race, as Plaintiffs' *Shaw* claim requires them to show, *Shaw v. Reno*, 509 U.S. 630, 639–44 (1993) (*Shaw I*).

District 3 advocated 55% BVAP for majority-black districts in the House of Delegates.

In any event, even if a Section 5 beauty contest were the standard for narrow tailoring, Plaintiffs' Alternative Plan would plainly lose because it complies neither with Section 5 nor with Plaintiffs' conception of Section 5. Plaintiffs apparently believe that a plan is not narrowly tailored if the majority-black district has a BVAP *any* greater (even 1%) than the minimum required to obtain preclearance. *See, e.g.*, Compl. ¶ 45. Plaintiffs thus believe that, in the absence of a racial bloc voting analysis, a redistricting plan should preserve the benchmark BVAP. *See* McDonald Dep. at 230. Plaintiffs further believe that where a racial bloc voting analysis has been conducted, a redistricting plan must calibrate the district's BVAP to the lowest level at which minority voters can elect their candidate of choice. *See id.* at 207–11. According to Dr. McDonald's own racial bloc voting analysis, that level is 25% BVAP in District 3. Yet the Alternative Plan *neither* preserves District 3's benchmark BVAP *nor* reduces it to the lowest permissible level—so it does not comply even with Plaintiffs' (erroneous) construction of Section 5.²

STATEMENT OF FACTS

Virginia was a covered jurisdiction under Section 5 from 1965 until the Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (June 25, 2013). Section 5 required Virginia to submit any changes to its election or voting laws to federal preclearance. *See* 42

² Fact discovery has now closed, all expert reports have been completed, and Dr. McDonald is Plaintiffs' only substantive witness, *see* Pls.' Witness List (Ex. B)—yet there is no dispute as to any material fact. The Court therefore can grant summary judgment to Defendants without any fact-finding or a trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also Miller*, 515 U.S. at 916–17 (federal courts “exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race,” and courts must “recognize these principles, and the intrusive potential of judicial intervention into the legislative realm, when assessing under the Federal Rules of Civil Procedure the adequacy of a plaintiff's showing at the various stages of litigation and determining whether to permit discovery or trial to proceed”).

U.S.C. § 1973c. Congress amended Section 5 in 2006 to prohibit any covered jurisdiction from enacting any change to such laws with “any discriminatory purpose” or the effect of “diminishing the ability” of minorities to elect their “candidates of choice.” *Id.* §§ 1973c(b), (c).

District 3 is currently the only congressional district in Virginia where black voters have the ability to elect their candidate of choice. *See* Statement Of Anticipated Minority Impact (Ex. C). District 3 is represented by Democrat Bobby Scott and is surrounded by Districts 1, 2, 4, and 7, all of which are represented by Republicans. *See* Enacted Plan Map (Ex. D).

District 3 was created as a majority-black district in 1991. In 1997, a three-judge court invalidated the 1991 version of District 3 as a racial gerrymander. *Moon v. Meadows*, 952 F. Supp. 1141, 1144 (E.D. Va. 1997) (three-judge court), *summ. aff'd*, 521 U.S. 1113 (1997). In 1998, the General Assembly enacted a new districting plan with 50.5% BVAP in District 3. *See* Va. Stat. § 24-302 (1998 Version) (Ex. E). The General Assembly enacted the Benchmark Plan in 2001, and that plan received Section 5 preclearance. *See* Va. Stat. § 24-302.1 (2001 Version) (Ex. F). The BVAP in Benchmark District 3 was 53.2% at the time of enactment and 53.1% in 2010. *See* Statement Of Anticipated Minority Impact at 5. Neither Plaintiffs nor any other party challenged the 1998 or Benchmark versions of District 3 as a racial gerrymander.

Following the release of the 2010 Census data in 2011, the Virginia Senate approved a set of criteria for drawing the new congressional districting plan. Sen. Comm. On Privileges & Elections Res. No. 2 (Mar. 25, 2011) (Ex. G) (“Sen. Criteria”). The Senate Criteria “identify the standards applied” by the General Assembly “in drawing new congressional districts” in 2012. Statement Of Change at 8 (Ex. H).

The Enacted Plan adopted in 2012 preserves 83.1% of the core of Benchmark District 3. *See* Morgan Rep. at 24 (Ex. I). The Enacted Plan moved the City of Petersburg from District 4

to District 3; New Kent County from District 3 to District 7; precincts in Richmond from District 7 to District 3; and precincts in Henrico from District 3 to District 7. *See id.* The net effect of these and other shifts was to increase District 3's BVAP to 56.3%. *See* Statement of Anticipated Minority Impact at 5. The Justice Department granted preclearance of the Enacted Plan. *See* Mar. 14, 2012 Preclearance Letter (Ex. J).

The Enacted Plan made 2 of the 3 Democratic districts—including District 3—more Democratic, and 7 of the 8 Republican districts—including the four districts surrounding District 3—more Republican. *See* Morgan Rep. at 12. Dr. McDonald agrees that the Enacted Plan's changes to District 3 were politically beneficial to the Republican incumbents surrounding District 3, and that a politically-motivated General Assembly would have made those changes even if every affected voter "was white." McDonald Dep. at 137.

Plaintiffs did not produce their Alternative Plan until February 4, 2014 (DE 53), after the Court directed Plaintiffs to produce it (DE 50) and four months after filing suit. Plaintiffs admit that race "predominates" in the Alternative Plan because it was drawn with a "50% quota" for District 3's BVAP. *See* McDonald Dep. at 104, 118, 151. Dr. McDonald also admits that the Alternative Plan replicates the Enacted Plan's moves between Districts 3, 4, and 7 and, thus, that his criticisms of those moves in the Enacted Plan "apply equally" to the Alternative Plan. *Id.* at 87–88. And even though the only difference between the Alternative Plan and the Enacted Plan is the boundary between Districts 2 and 3, the Alternative Plan preserves only 69.2% of the core of District 3. *See id.* at 81; Morgan Rep. at 24.

The net effect of the Alternative Plan is to reduce District 3's BVAP from 53.1% in the Benchmark Plan to 50.2%. *See* McDonald Analysis at 8 (Ex. K). The Alternative Plan also makes District 2 heavily Democratic, increasing the Democratic vote share from 49.5% (2008

Presidential election) and 50.3% (2012 Presidential election) to 54.9% (2008 Presidential election) and 55.1% (2012 Presidential election). *See* Morgan Rep. at 10–13.

ARGUMENT

I. PLAINTIFFS HAVE CONCEDED THAT THEY CANNOT SHOW THAT RACE RATHER THAN POLITICS PREDOMINATED IN THE ENACTED PLAN

A. Dr. McDonald’s Concessions End This Case

Dr. McDonald—Plaintiffs’ *only* substantive witness—has conceded that it would have made “perfect sense” for the Republican-controlled General Assembly to adopt the Enacted Plan even if every affected voter in and around District 3 “was white.” McDonald Dep. at 139. In fact, before he was retained in this case, Dr. McDonald described the Enacted Plan *not* as a racial gerrymander, but instead as “a 8-3 partisan division of the state” in favor of Republicans “that also protected all incumbents.” Altman & McDonald, 47 U. Rich. L. Rev. at 816.

These concessions end this case. Because “race and political affiliation” are often “highly correlated,” Plaintiffs must decouple the two and show that “race *rather than* politics” predominates in Enacted District 3. *Easley*, 532 U.S. at 242. Indeed, because a political purpose does not violate *Shaw*, a legislature may subordinate traditional principles to gerrymander (or support) Democrats “even if it so happens that the most loyal Democrats happen to be African-American Democrats and even if the State were conscious of that fact.” *Hunt v. Cromartie*, 526 U.S. 541, 551 (1991). Thus, in *Easley*, the Supreme Court overturned as *clearly erroneous* a three-judge court’s finding of a *Shaw* violation because the evidence was equally consistent with a political and a racial purpose, and therefore failed to prove that “race *rather than* politics *predominantly* explain[ed]” the plan. 532 U.S. at 243, 257–58 (emphases in original).

Another three-judge court in the Fourth Circuit recently applied this rule to grant summary judgment to the defendants in a *Shaw* case. *See Fletcher v. Lamone*, 831 F. Supp. 2d

887 (D. Md. 2011) (three-judge court), *summ. aff'd* 133 S. Ct. 29 (2012). The *Fletcher* court rejected a racial gerrymander claim against Maryland's 2011 congressional redistricting plan because "[m]oving Democrats for partisan purposes does not . . . violat[e] the Fourteenth Amendment," and "the plaintiffs have not shown that the State moved African-American voters from one district to another because they were African-American and not simply because they were Democrats." *Id.* at 901. The Supreme Court summarily affirmed. *See* 133 S. Ct. 29.

Plaintiffs cannot meet that high burden. Plaintiffs' concession that the General Assembly would have adopted Enacted District 3 for political reasons even if every affected voter "was white," McDonald Dep. at 139, forecloses any showing that it "moved African-American voters from one district to another because they were African-American and not simply because they were Democrats," *Fletcher*, 831 F. Supp. 2d at 901. In other words, that the General Assembly implemented "a 8-3 partisan division of the state" in favor of Republicans "that also protected all incumbents," Altman & McDonald, 47 U. Rich. L. Rev. at 816, *irrespective* of race, means that it did not adopt a *racial* gerrymander, *Easley*, 532 U.S. at 242.

Plaintiffs' concessions are unsurprising: as Dr. McDonald acknowledges, the Enacted Plan's changes to Benchmark District 3 were politically beneficial to the Republican incumbents in the four surrounding districts. *See* McDonald Dep. at 125–40. As measured by the 2008 and 2012 Presidential election results, the Enacted Plan made 2 of the 3 Democratic districts more Democratic, and 7 of the 8 Republican Districts more Republican. *See* Morgan Rep. at 10–13. This effect extended to District 2, which is represented by Republican Scott Rigell. *See id.* District 2 "was the most closely divided of all the districts, with Democrat Barack Obama and Republican John McCain each capturing 49.5% of the vote" in 2008. *Id.* at 12. That District voted out a Republican incumbent Member of Congress in 2008 and a Democratic incumbent in

2010, when Congressman Rigell first won election. *Id.* at 12–13. District 2’s “evenly divided political composition and election history would have provided the Republican-controlled General Assembly with a reason to strengthen one-term Republican incumbent Congressman Scott Rigell,” which it did by moving more heavily Republican areas into District 2 and more heavily Democratic areas out of District 2. *See id.* at 13.

The same pattern adhered in District 1 represented by Republican Robert Wittman; District 4 represented by Republican Randy Forbes; and District 7 represented by Republican Eric Cantor. *See id.* at 10–13. All of these districts became more Republican under the Enacted Plan than they were under the Benchmark Plan. *See id.*; *see also* McDonald Dep. at 125–38.

In short, “the trades that Dr. McDonald concludes are racially-motivated are just as readily, and perhaps more readily, explained by politics than by race.” Morgan Rep. at 13–14. Most relevant here, Dr. McDonald states that the Enacted Plan moved an 18.3% BVAP area from District 3 to District 2 and a 36.7% BVAP area from District 2 to District 3. *See* McDonald Analysis at 9. But the 18.3% BVAP area moved into Republican District 2 was also only 47% (2008 election) and 48% (2012 election) Democratic, while the 36.7% BVAP area moved into Democratic District 3 was 64% (2008 election) or 69% (2012 election) Democratic. *See* Morgan Report at 13. This is true of *all* of moves between District 3 and surrounding districts that Dr. McDonald criticizes as predominantly racial in the Enacted Plan: as even he concedes, they *all* strengthened the Republican incumbents in the surrounding districts. *See id.* at 125–39. This fact only underscores that it made “perfect sense,” wholly apart from race, for the General Assembly to make these moves. McDonald Dep. at 139.

B. Dr. McDonald’s Cursory VTD Analysis Is Less Supportable Than A Similar Analysis Rejected In *Easley*

Notwithstanding his concessions, Dr. McDonald suggests that he has conducted an

analysis to show that race rather than politics predominates in the Enacted Plan—but the Supreme Court rejected, as a matter of law, a more defensible analysis in *Easley*. At issue in *Easley* was whether race had predominated in the North Carolina General Assembly’s creation of a 47% black district. *See* 532 U.S. at 246. To support that claim, the plaintiffs’ expert reviewed all precincts in the six counties whose portions made up the challenged district. *See id.* at 247. The expert observed that the challenged district contained “between 39% and 56% of the precincts (depending on the county) that are more-than-40% reliably Democratic,” but “almost every precinct with more-than-40% African-American voters.” *Id.* He then inferred that race must have predominated because precincts that were Democratic and black were included in the challenged district, but precincts that were Democratic and white were excluded. *See id.*

The Supreme Court concluded that this analysis “offer[ed] little insight into the legislature’s true motive” and overturned as clearly erroneous the three-judge court’s judgment that relied upon it. *Id.* at 248. In the first place, the expert had not shown whether “the excluded white-reliably-Democratic precincts were located near enough to [the challenged district’s] boundaries or each other for the legislature as a practical matter to have included them, without sacrificing other political goals.” *Id.* Moreover, while all of the examined precincts “were at least 40% reliably Democratic[,] . . . virtually all of the African-American precincts included in [the district] were more than 40% reliably Democratic.” *Id.* Because the legislature’s objective was to make the challenged district “as safe as possible” politically, it “sought precincts that were reliably Democratic, not precincts that were 40% reliably Democratic, for obvious political reasons.” *Id.* a 246–47. Indeed, given the correlation between race and political affiliation, “a legislature may, by placing reliable Democratic precincts within a district without regard to race, end up with a district containing more heavily African-American precincts, but the reasons

would be political rather than racial.” *Id.* at 245.³

Dr. McDonald’s cursory analysis of the Enacted Plan suffers the same flaws. Dr. McDonald purports to identify the voting tabulation districts (VTDs) in “the localities that comprise or are adjacent to the [Enacted] Third District” that have a “Democratic performance greater than 55%,” which he describes as “heavily Democratic.” 1/20/14 McDonald Reply at 7 (Ex. L). He points out that the average BVAP in the 189 such VTDs in District 3 is 59.5% and in the 116 such VTDs in adjacent localities is 43.5%, and then leaps to the conclusion “that race trumped politics” in the decision to include or exclude these VTDs from District 3. *See id.* at 8.

Dr. McDonald, however, has defined the excluded VTDs broadly to encompass any VTDs in “localities that . . . are adjacent to” Enacted District 3, regardless of whether the VTDs are adjacent to District 3. *Id.* at 7 (emphasis added). He therefore has not shown whether any of the 116 “excluded white-reliably-Democratic precincts were located near enough to [District 3’s] boundaries or each other for the legislature as a practical matter to have included them, without sacrificing other political goals.” *Easley*, 532 U.S. at 246. At the same time, he includes in his analysis VTDs that are located in the *center* of District 3, *see* McDonald Dep. at 154, and therefore *could not* have been moved to another district.

Moreover, Dr. McDonald treats all 55%-Democratic VTDs as equal, even though some are more Democratic than others—so he has not shown that “the excluded white precincts were as reliably Democratic as the African-American precincts that were included in” District 3. *Easley*, 532 U.S. at 246. In fact, when the *actual* Democratic vote share is considered, the 55%-Democratic VTDs *in* District 3 are both more black *and* more Democratic than the VTDs in

³ Here, of course, the Republican-controlled General Assembly’s political goal would not have been to make the already safe Democratic District 3 more Democratic, but to make the surrounding Republican districts more Republican by *removing* heavily Democratic areas.

localities *adjacent* to District 3: the VTDs in District 3 are on average 59.5% black and 80.9% Democratic, while the VTDs in adjacent localities are on average 43.5% black and 65.4% Democratic. *See* VTD Chart (Ex. M). Thus, while Dr. McDonald inferred racial predominance from the 16% difference in average BVAP among the two groups of VTDs, he says absolutely nothing about the virtually identical 15.5% difference in their average Democratic vote share. *See* 1/20/14 McDonald Reply at 7–8. He therefore has done nothing to rebut the possibility that the General Assembly, “by placing reliable Democratic precincts within a district without regard to race, end[ed] up with a district containing more heavily African-American precincts, but the reasons w[ere] political rather than racial.” *Easley*, 532 U.S. at 245.

In fact, Dr. McDonald’s analysis is significantly *weaker* than the analysis rejected in *Easley*. In the first place, Dr. McDonald ignores the baseline racial composition of District 3 and the surrounding districts. Because District 3 is a majority-black district but the surrounding districts are not, the average BVAP in VTDs within District 3 necessarily would be higher than the average BVAP in VTDs outside of District 3.

Moreover, unlike in *Easley*, the General Assembly was *preserving* an existing majority-black district in order to comply with Section 5, not creating an identifiable black district in the first instance. *See id.* at 237–41. Thus, 166 of the Dr. McDonald’s 189 55%-Democratic VTDs in District 3 *already* were included in *Benchmark* District 3—and their 81.6% average Democratic vote share and 60.7% average BVAP are slightly *higher* than the averages in the 189 VTDs Dr. Morgan observes. *See* VTD Chart. As discussed below, *see infra* at 13–14, the General Assembly had ample non-racial reasons to leave these VTDs in District 3, such as preserving the cores of existing districts and protecting incumbents. At the same time, the *new* 55% Democratic VTDs that the General Assembly added to District 3 are *less* black (and less

Democratic) than the preexisting VTDs, meaning that the General Assembly made District 3 *whiter* through its addition of 55%-Democratic VTDs. *See* VTD Chart.

Finally, while the alternative plan in *Easley* purported to fix the alleged racial pattern, *see Easley*, 532 U.S. at 248, the Alternative Plan here *perpetuates* the pattern. Dr. McDonald admits that he has not bothered to conduct his VTD analysis on the Alternative Plan, and would be “surprise[d]” if it showed a pattern similar to what he described in the Enacted Plan. *See* McDonald Dep. at 170. According to Dr. McDonald’s own data, however, there are 160 55%-Democratic precincts in Alternative District 3, with an average BVAP of 59.8% and an average Democratic vote share of 80.6%. *See* VTD Chart. The Alternative Plan also has 145 55%-Democratic VTDs in adjacent localities, with an average BVAP of 46.4% and an average Democratic vote share of 68.8%. *See id.* In other words, the difference in average BVAP between the two sets of VTDs is 13.5%, and the difference in average Democratic vote share is 11.8%. *See id.* The disparity of 1.7% between these averages is *larger* than the 0.5% disparity between the average BVAP and Democratic vote share observed in the Enacted Plan. *See id.*

II. PLAINTIFFS HAVE ADDUCED NO PROOF THAT RACE PREDOMINATED IN THE ENACTED PLAN

Even if Plaintiffs could survive their lack of evidence that race rather than politics explains Enacted District 3, they still must show more than that race was “a motivation for the drawing of” District 3, *Easley*, 532 U.S. at 241 (emphasis in original), but rather that race was the “predominant factor” for why the General Assembly “subordinated traditional race-neutral districting principles.” *Miller*, 515 U.S. at 916. That burden is particularly daunting here: unlike in the ordinary *Shaw* case, the General Assembly *preserved* an existing majority-black district rather than creating a new one. *See Shaw I*, 509 U.S. at 635–37. In fact, no case has ever found a *Shaw* violation where a legislature has preserved an existing majority-minority district. This is

because there are ample non-racial reasons for maintaining the status quo in such districts, such as the traditional principles of “preserving cores” and protecting incumbents. *Karcher v. Daggett*, 462 U.S. 725, 740 (1983); *Wilkins v. West*, 264 Va. 447, 463–64 (2002).

Shaw obviously does not discourage—much less *prohibit*—the General Assembly from applying the *same* continuity criteria to District 3 that it applied to other districts. *See Bush*, 517 U.S. at 977 (plurality op.) (*Shaw* does not “limit a State’s discretion to apply traditional districting principles in majority-minority, as in other, districts”). Such a rule would *discriminate* on the basis of race by subjecting majority-black districts to separate criteria. Thus, *Shaw* is triggered only when a legislature treats majority-minority districts *differently* because of their racial composition. *Shaw I*, 509 U.S. at 639–49. And since it is undisputed that the General Assembly preserved district cores and protected incumbents across the state, its *similar* treatment of District 3 was not *differential* treatment, much less *race-based* differential treatment. In fact, Plaintiffs’ concession that race “predominates” in the Alternative Plan and their failure to propose a viable alternative independently suffice to defeat Plaintiffs’ claim.

A. Plaintiffs’ Admission That Race Predominates In The Alternative Plan Dooms Their Claim

To prove that race predominated in the Enacted Plan, Plaintiffs were required to offer an alternative under which race did *not* predominate. *Miller*, 515 U.S. at 916. This requirement makes perfect sense: a federal court must “exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race,” and cannot determine whether a redistricting plan “subordinate[s] traditional race-neutral districting principles” to racial considerations—much less *remedy* the predominant use of race—unless it knows what a plan that does *not* so subordinate traditional redistricting principles would look like. *Id.* at 916. This is precisely why *Easley* requires *Shaw* plaintiffs to come forward with an alternative plan that

brings about a “significantly greater racial balance” than the enacted plan. 532 U.S. at 258.

Plaintiffs, however, cannot meet this threshold burden because they *admit* that race “predominates” in the Alternative Plan, which was drawn to preserve District 3’s BVAP above a “50% quota.” McDonald Dep. at 104, 118, 151. Because Plaintiffs have not contended, through submission of the Alternative Plan or elsewhere, that there was a race-neutral alternative that better complies with traditional principles, they have provided no basis to infer that the Enacted Plan subordinates traditional principles to race. *See Miller*, 515 U.S. at 916.

Indeed, the Alternative Plan is identical to the Enacted Plan except for the boundary between Districts 2 and 3. *See McDonald Dep.* at 81. The Alternative Plan thus contains all of the same flaws in District 3 that Plaintiffs allege the Enacted Plan contains, except those along the boundary with District 2. *See id.* at 87–88. And, in the District 2 boundary area, the Alternative Plan “corrects” the Enacted Plan’s alleged predominant use of race to *increase* District 3’s BVAP with a conceded predominant use of race to *decrease* District 3’s BVAP to a “50% quota.” *Id.* at 151.

First, Dr. McDonald asserts that both the 1998 and Benchmark versions of District 3 are “constitutionally suspect” because, in his view, “[t]here is no reason to believe race was not also the predominant factor in the[ir] creation.” 1/20/14 McDonald Reply at 6. The Alternative Plan is equally “constitutionally suspect,” *id.*, because it “retains most of Benchmark District 3, including its population, shape and geography,” Morgan Rep. at 5–6; McDonald Dep. at 72–73.

Second, Dr. McDonald criticized the Enacted Plan because it moved the “African-American community of Petersburg” to District 3 (which he opined made District 3 “similar to the unconstitutional district at issue in *Moon*”), and white voters from District 3 to District 4. 12/6/13 McDonald Rep. at 22–23 (Ex. N). Dr. McDonald also took issue with the Enacted

Plan’s “shift[ing] lower Black VAP” New Kent County from District 3 to District 7 “in exchange for much higher Black VAP VTDs” in Henrico and Richmond, asserting that these moves showed that “Virginia chose to further racially segregate localities” and to “racially divide” Richmond. *Id.* at 6, 24, 26. Yet, by Dr. McDonald’s own admission, the Alternative Plan *replicates* all of these moves, so these criticisms “apply equally” to the Alternative Plan. McDonald Dep. at 87.

Third, the Alternative Plan moves a staggering number of people—287,015, or 39.6% of an ideal district—between Districts 1, 2, and 3 in order to calibrate District 3’s BVAP to Plaintiffs’ “50% quota.” *Id.* at 60, 85, 151. By retaining much of Benchmark District 3 and replicating moves made in the Enacted Plan, the Alternative Plan increases District 3’s BVAP well above 50%. *See* Morgan Rep. at 8–11. To offset this increase, the Alternative Plan moves massive numbers of white voters into, and black voters out of, District 3 through its District 1, 2, and 3 swaps. *See id.* Thus, while the Enacted Plan’s trades between Districts 1, 2, and 3 were largely race-neutral, the Alternative Plan moves a net of more than 23,000 voting-age blacks *out* of District 3. *See id.* As even Dr. McDonald recognizes, such a movement of voters to consciously *decrease* a district’s BVAP is a racial gerrymander. McDonald Dep. at 51. The Alternative Plan thus exacerbates the alleged racial predominance in District 3.

B. The Alternative Plan Fails To Prove A Racial Gerrymander

Plaintiffs’ claim also fails because the Alternative Plan does not prove “at least that the [General Assembly] could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles,” and does not bring about “significantly greater racial balance” than the Enacted Plan. *Easley*, 532 U.S. at 258.

1. The Alternative Plan Does Not Achieve The General Assembly’s Political Objectives

The Alternative Plan undermines, rather than achieves, the General Assembly’s “legitimate political objectives.” *Easley*, 532 U.S. at 258. Instead of maintaining the Enacted Plan’s “8-3 partisan division of the state that also protected all incumbents,” Altman & McDonald, 47 U. Rich. L. Rev. at 816, the Alternative Plan proposes a 7-4 partisan division that seriously weakens Congressman Rigell. It “would swing the closely-divided District 2 approximately 5.3% more Democratic than Benchmark District 2 and 5.5% more Democratic than Enacted District 2.” Morgan Rep. at 14–15. Alternative District 2 would be 54.9% (2008 election) or 55.1% (2012 election) Democratic, *see id.* at 15—right at the 55% level that Dr. McDonald considers to be “highly Democratic,” McDonald Dep. at 153.

2. The Alternative Plan Is Not As Consistent With Traditional Redistricting Principles As The Enacted Plan

As noted, Plaintiffs agree that the Alternative Plan subordinates traditional principles to race—but contend that it *better* complies with traditional principles than the Enacted Plan. *See* McDonald Dep. at 104, 203–04. Thus, Plaintiffs’ claim is that the Alternative Plan somehow subordinates traditional principles *less* than the Enacted Plan, which is not a cognizable basis for finding a *Shaw* violation. *See supra* at 13–16. Anyway, the claim is false. The Alternative Plan concededly performs *worse* than the Enacted Plan on the traditional principles of core preservation and incumbency protection, splits only one fewer locality, and achieves only miniscule differences in *some* compactness measures. Plaintiffs thus are asking the Court to override the General Assembly’s judgment that the Enacted Plan’s incumbency protection and core preservation benefits outweigh one extra locality split. But it is a bedrock rule that “the General Assembly must balance these competing” principles “when designing electoral districts.” *Wilkins*, 264 Va. at 463–64; *see Miller*, 515 U.S. at 915 (legislatures “must have

discretion to exercise the political judgment necessary to balance competing interests”).

The Virginia Constitution identifies only two traditional principles, compactness and contiguity. Va. Const. art. II, § 6. The Virginia Supreme Court has recognized other “traditional redistricting elements,” including “preservation of existing districts, incumbency, voting behavior, and communities of interest.” *Wilkins*, 264 Va. at 464. The Senate Criteria adopted by the Democratic Senate in 2011 are the most recent iteration of Virginia’s traditional principles, and recognize “incumbency considerations” and preserving “communities of interest” defined by “governmental jurisdictions,” “political beliefs, [and] voting trends.” Sen. Criteria V.

Even Dr. McDonald agrees that the Senate Criteria “look very much like traditional redistricting criteria.” McDonald Dep. at 47. Moreover, the fact that the Senate Criteria were adopted by a Democratically-controlled Senate in 2011 *enhances* their utility and credibility for assessing the Enacted Plan adopted by a Republican-controlled General Assembly in 2012. It is simple enough for a legislature to promulgate a set of criteria to *justify* a plan it already intends to enact—but that is not the case with the Senate Criteria, which provide a preexisting “framework” against which to judge the Enacted Plan. *See id.* at 46.

Compactness. Dr. McDonald concedes that Alternative District 3 “is not compact,” McDonald Dep. at 89, so, under his own theory, it *violates* the Virginia Constitution. *See* Va. Const. art. II, § 6. Dr. McDonald also agrees that there are “30-plus measures of compactness”—all of which are “inherently manipulable”—and that he is not aware of any objective standard for determining compactness. McDonald Dep. at 89–92. Nonetheless, he suggests that Alternative District 3 is “more compact” than Enacted District 3 because of minor differences in their scores on the Reock, Polsby-Popper, and Schwartzberg tests. 12/6/13 McDonald Rep. at 7. Yet Dr. McDonald concedes that Alternative District 3 is *less* compact

than Enacted District 3 on the Ehrenburg and Population Polygon tests, which are no less reliable than the three measures he favors. McDonald Dep. at 91–92. This case thus confirms Dr. McDonald’s prior view that “I could provide a compactness measure that would look really great for our side, and you can produce a compactness measure that would look really great for your side.” 2/10/12 McDonald *Backus* Dep. at 150 (Ex. O).⁴

Contiguity. Virginia’s contiguity requirement may be met over water without a connecting bridge. *Wilkins*, 264 Va. at 463–66; Sen. Criteria III. Dr. McDonald admits that Alternative District 3, like Enacted District 3, achieves contiguity in this way. 3/24/14 McDonald Reply at 8 (Ex. P). He contends, however, that the Enacted Plan uses water contiguity “with the express purpose of . . . bypass[ing] White communities”—but he nowhere identifies *who* “express[ed]” this purpose or where. *Id.* Moreover, he makes no mention of the *political* composition of the “bypass[ed]” areas, and thus cannot infer that race rather than politics predominated. *See id.* Finally, in all events, since water contiguity is not contrary to any Virginia redistricting principle, use of this option for racial purposes would not *subordinate* traditional principles to race. *See Miller*, 515 U.S. at 916. *Shaw* does not prohibit considering race, only subordinating traditional districting principles to those racial considerations. *See id.*

Locality Splits. Even though Dr. McDonald agrees that there is no “established principle” for elevating reduction of locality splits over other traditional principles, McDonald Dep. at 192, he seeks to do precisely that and to attach dispositive weight to the fact that the Alternative Plan has *one* fewer split locality than the Enacted Plan. But while locality splits are

⁴ Dr. McDonald stated earlier that the “General Assembly” endorsed his three preferred compactness measures by using them “in determining how well districts met” the compactness requirement. 3/24/14 McDonald Reply at 8. Dr. McDonald provides no citation for this statement, and, in any event, it is irreconcilable with his repeated assertions that the General Assembly failed to adopt *any* “formally operative” criteria for the Enacted Plan. *See id.* at 9–10.

not insignificant, they have not been an important traditional principle—much less more important than other principles—for four decades.

In fact, the Virginia Constitution was amended in 1970 to eliminate respect for “political subdivisions” as a traditional principle. *See Altman & McDonald*, 47 U. Rich. L. Rev. at 782. In 2000, the General Assembly identified by statute certain important traditional principles, but respecting political subdivisions was not one of them. *See Va. Stat. § 24.2-305. Wilkins* does not mention preserving political boundaries as a traditional districting principle. *See Wilkins*, 264 Va. at 464. Reflecting this consensus view, the Senate Criteria noted that local government lines “may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than any other identifiable communities of interest.” Sen. Criteria V. The Criteria thus emphasized that the “discernment, weighting, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people.” *Id.*

In any event, even focusing exclusively on split localities, “[t]here is no reason to conclude that this marginal difference” of one split locality between the Alternative and Enacted Plans “is significant.” Morgan Rep. at 20. The Enacted Plan splits five fewer localities than the Benchmark Plan, *see id.* at 19–20, but Dr. McDonald previously brushed aside this larger improvement because “the fact remains that like the *Moon v. Meadows* Unconstitutional District, the [Enacted] Third District has more splits than any other district,” 1/20/14 McDonald Reply at 9. By that logic, the Alternative Plan’s smaller improvement over the Enacted Plan is also irrelevant because Alternative District 3 also has more splits than any other district in the Alternative Plan. *See Morgan Rep.* at 20–21.

After these facts were noted, Dr. McDonald suggested that the Alternative Plan’s locality

splits are superior to the Enacted Plan’s splits because they affect a smaller population. 3/24/14 McDonald Reply at 7. Yet Enacted District 3 *maintained* splits in localities that were split in the Benchmark Plan and, therefore, preserved existing communities of interest along the “governmental jurisdictions” of the Benchmark Districts. Sen. Criteria V; *see also* Morgan Rep. at 23. The Alternative Plan, by contrast, creates a new split dividing 1,016 residents of Portsmouth—which was not split in the Benchmark or Enacted Plans—away from the rest of Portsmouth and Benchmark District 3. Even Dr. McDonald recognizes that it is “very unlikely” that this small number of Portsmouth voters moved to District 2 would “have any influence over [their] congressional representation.” McDonald Dep. at 184.⁵

Preservation of Cores. “[P]reserving the cores of prior districts” is a traditional principle. *Karcher*, 462 U.S. at 740; *see also Wilkins*, 264 Va. at 463–64; Sen. Criteria V. The General Assembly faithfully applied this principle across the Enacted Plan and preserved at least 71.2% of the core of each Benchmark District. *See* Morgan Rep. at 24. Dr. McDonald concedes that the Alternative Plan performs worse than the Enacted Plan on this principle, and that Alternative District 3 preserves *only* 69.2% of the core of Benchmark District 3, far less than the 83.1% preserved in Enacted District 3. McDonald Dep. at 55–56.

Protection Of Incumbents. Incumbency protection is a traditional districting principle. *Karcher*, 462 U.S. at 740; *Wilkins*, 264 Va. at 463–64; Sen. Criteria V. Dr. McDonald agrees that the Enacted Plan better protects incumbents than the Alternative Plan, as he must since the

⁵ Dr. McDonald also previously attempted to manufacture a disparity in the number of split VTDs in the Alternative Plan and the Enacted Plan, but he now concedes that the number of split VTDs *affecting population*—the only relevant number—is the *same* in both plans. *See* McDonald Dep. at 109. He contends, however, that while the Enacted Plan’s split VTDs are not “independently significant,” they have a “racial component.” *Id.* at 113. But, as with Dr. McDonald’s contiguity argument, he ignores the political component to the VTD splits and the fact that even racially motivated VTD splits do not subordinate any traditional principle to race.

Alternative Plan harms Congressman Rigell. *See* McDonald Dep. at 179–81.

At his deposition, but nowhere in his *four* expert reports, Dr. McDonald contended that Delegate Janis—the sponsor of the bill in 2011 that eventually became the Enacted Plan—stated that the drafter did *not* consider incumbency protection in the Enacted Plan. *See, e.g., id.* at 119, 179–81. This suggestion is simply baffling and demonstrably false: Plaintiffs themselves have acknowledged that Delegate Janis stated that the drafter considered the “preferences of Members of Congress.” Pls.’ Opp. to Mot. for Summ. J. at 17 (DE 42). Indeed, it is hard to envision a more forthright acknowledgement of incumbency protection: Delegate Janis repeatedly stated on the floor of the General Assembly that the Enacted Plan was drawn to “preserv[e] the will of the electorate by maintaining current incumbents” and to reflect incumbent preferences. *See, e.g.,* 4/12/11 Floor Hearing at 0:59-5:41, 18:52-21:17, 26:00-30:56, 41-42:30 (Ex. Q).

3. Plaintiffs Have Not Shown That The Alternative Plan Would Bring About Significantly Greater Racial Balance Than The Enacted Plan

Finally, the Alternative Plan’s 6% BVAP reduction would not bring about “significantly greater racial balance” than the Enacted Plan. *Easley*, 532 U.S. at 258. The evil in *Shaw* was a state’s creation of a majority-black district that was racially identifiable and segregated voters on the basis of their race. *See Shaw I*, 509 U.S. at 639–44. The Alternative Plan does *nothing* to undo this alleged evil here because “race still predominates” in Alternative District 3, which was avowedly drawn to precisely achieve a 50% racial quota. McDonald Dep. at 104, 118.⁶

⁶ Dr. McDonald asserts that “the Alternative Third District has a greater racial balance than the [Enacted] Third District” because the Alternative District’s BVAP is “substantially similar to” the 1998 version’s BVAP, while the Enacted District’s has a BVAP “closer to” the 1997 version struck down in *Moon*. 3/24/14 McDonald Reply at 1. But *constitutional* majority-black districts do not have a different *racial balance* than unconstitutional majority-black districts and, anyway, McDonald himself asserts that “[t]here is no reason to believe that race was not also a predominant factor in the creation of the” 1998 version of District 3. 1/20/14 McDonald Reply at 6.

C. Plaintiffs Have No Other Evidence To Support Their *Shaw* Claim

Even if Plaintiffs could overcome their lack of a viable, race-neutral alternative plan, they have no other evidence to support their claim. Before producing the Alternative Plan, Plaintiffs offered two reports in which Dr. McDonald opined that “race” was the General Assembly’s “predominant purpose” in shifting areas in and out of District 3. Dr. McDonald, however, did not consider the Senate Criteria or analyze whether race-neutral criteria explain those shifts. *See* 12/6/13 McDonald Rep. at 12–26; 1/20/14 McDonald Reply at 8–10.

This analysis is indistinguishable from Dr. McDonald’s analysis that another three-judge court recently rejected as “incomplete and unconvincing.” *Backus v. State*, 857 F. Supp. 2d 553, 562 (D.S.C. 2012) (three-judge court), *summ. aff’d*, 133 S. Ct. 156 (2012). There, as here, Dr. McDonald “identified districts that exchanged population in a manner that resulted in a district experiencing a net [BVAP] increase.” *Id.* at 561. He then “examined whether traditional districting principles were subordinated” in those districts and, “[i]f they were[,] concluded that race was the predominant factor.” *Id.* at 561–62. As that court pointed out, Dr. McDonald “relied on incomplete information” because he did not examine preservation of “communities of interest” or “incumbency protection.” *Id.* at 562. As noted, Dr. McDonald’s opinion in this case suffers from similar flaws—so it is likewise “incomplete and unconvincing.” *Id.*⁷

III. THE ALTERNATIVE PLAN IS NOT MORE NARROWLY TAILORED TO ACHIEVE SECTION 5 COMPLIANCE THAN THE ENACTED PLAN

The affirmative defense of narrow tailoring is not even triggered in this case because

⁷ A lack of diligence and reliability appears to be a hallmark of Dr. McDonald’s work as an expert: in yet another redistricting case this cycle, the Ohio Supreme Court noted that his “affidavits are replete with conclusory statements that lack specific factual support” and left it “to wonder about [his] analytical choices and the concomitant viability of his conclusions.” *Wilson v. Kasich*, 981 N.E.2d 814, 827 (2012). The court deemed it “unclear whether Professor McDonald even considered all the applicable criteria,” noted that the *Backus* court had found his opinion “unreliable,” and rejected his opinion before it as “similarly defective.” *Id.*

Plaintiffs have failed to carry their *prima facie Shaw* burden. *See Shaw II*, 517 U.S. at 908. Even where narrow tailoring is triggered, the enacted district need not “defeat rival compact districts designed by plaintiffs’ experts in endless ‘beauty contests.’” *Bush*, 517 U.S. at 977 (plurality op.). Indeed, in this context, the Supreme Court “adhere[s] to [its] longstanding recognition of the importance in our federal system of each State’s sovereign interest in implementing its redistricting plan.” *Id.* States thus retain “flexibility” in how they “respect” traditional principles and undertake “reasonable efforts to avoid” Voting Rights Act liability. *Id.*

Thus, narrow tailoring does not turn on whether the enacted plan achieves the most minimal possible compliance with the VRA, or whether Plaintiffs’ alternative more minimally complies. Rather, narrow tailoring is shown “if the State has a ‘strong basis in evidence’ for concluding that creation of a majority-minority district is reasonably necessary to comply with the [Voting Rights Act], and the districting that is based on race ‘substantially addresses the [Voting Rights Act] violation.’” *Id.* (quoting *Shaw I*, 509 U.S. at 656; *Shaw II*, 517 U.S. at 918); *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, 639 (D.S.C. 2002) (three-judge court); *Backus*, 857 F. Supp. 2d at 599 (same); *Moon*, 952 F. Supp. at 1149 (same).

Indisputably, the Enacted District 3 “substantially addresses” the conceded need to not retrogress under Section 5—in fact, the General Assembly’s redistricting effort was indistinguishable from the effort of the independent bipartisan commission to which Dr. McDonald served as an advisor. Plaintiffs’ Alternative Plan is therefore irrelevant.

A. The Enacted Plan Is Narrowly Tailored To Achieve Section 5 Compliance

In 2003, the Supreme Court construed Section 5 to permit conversion of majority-minority districts into minority-minority districts in certain cases. *Georgia v. Ashcroft*, 539 U.S. 461, 479–80 (2003). Congress amended Section 5 three years later to overturn *Ashcroft*, which “misconstrued and narrowed the protections afforded by Section 5.” 42 U.S.C. § 1973c note,

Findings (b)(6). Thus, the 2006 version of Section 5 prohibited any change that would “diminish[]” minority voters’ ability to elect their “candidates of choice.” 42 U.S.C. § 1973c(b).

This new “ability to elect” standard afforded the General Assembly more than sufficient reason to conclude that Section 5 prohibited *any* reduction in District 3’s BVAP, which could diminish minority voters’ ability to elect their “candidates of choice” by making a safe black district less safe. *Id.* Moreover, the General Assembly opted not to conduct a costly racial bloc voting analysis. As even Dr. McDonald agrees, maintaining the benchmark BVAP is the “best way to proceed” toward preclearance in the absence of such an analysis. McDonald Dep. at 230.

The Independent Bipartisan Advisory Commission On Redistricting formed by Governor McDonnell—to which Dr. McDonald served as an advisor—took a similar view. Because that Commission lacked “the resources to conduct . . . racial voting analyses,” it included in its proposed majority-minority districts “a percentage of minority voting-age population within the range accepted by the Department of Justice in 2001.” Comm. Rep. at 18 (Ex. R). Thus, when it issued its final report in April 2011, the Commission proposed three congressional districting options, all of which had a BVAP in District 3 between 52.5% and 55.1%. *See id.* at 22–27.

The General Assembly also had evidence that 55% BVAP was a reasonable threshold for obtaining Section 5 preclearance. *See Morgan Rep.* at 26. In 2011, the General Assembly considered proposed redistricting plans for the House of Delegates and its 12 majority-black districts. *See id.* at 25–27. *See id.* Some of these proposals, including the Independent Commission’s two proposals, had majority-black districts with BVAPs below 55%. *See id.*

At least one black Delegate from an area covered by District 3—Delegate Dance of Petersburg—advocated a 55% minimum BVAP for majority-black districts in the House plan. *See 4/4/11 Privileges And Elections Hearing* at 13–14 (Ex. S). Delegate Dance explained the

view that “*at least 55 percent performing*” was necessary to preserve black voters’ ability to elect in House districts:

So I know Delegate McClellan was at 50 percent, currently she’s at a 50 percent district, as far as an African American district. For Delegate McClellan, that’s not an issue. Even though she’s an African American, she can win that district. But if Delegate McClellan leaves that and goes on to become . . . a state-wide representative, Congress or whatever, could another African American minority person, if you will, still be able to keep that as one of the 12 minority districts? Not so.

Id. at 13–14 (emphasis added).⁸

The General Assembly thus enacted a House plan with a BVAP of 55% or higher in all 12 majority-black districts, including districts within the geography covered by District 3, even though this “required increasing” the BVAP in some districts. *See* Morgan Rep. at 26. Eight of the 12 members of the House Black Caucus voted in favor of the plan. *See id.*

On this record, the General Assembly had “a strong basis in evidence” to believe that Section 5 prohibited reducing District 3’s BVAP below the benchmark level, and that 55% BVAP was a reasonable level for preserving the ability to elect. *Bush*, 517 U.S. at 977 (plurality op.). The General Assembly acted accordingly when it adopted the Enacted Plan with 56.3% BVAP in District 3. *See id.* The Justice Department precleared the Enacted Plan, meaning that Virginia carried its burden to prove that the Plan was enacted without “any discriminatory purpose,” 42 U.S.C. § 1973c(c), even though one of the key factors the Department considers is “whether minorities are overconcentrated in one or more districts,” Dep’t of Justice Guidance

⁸ Black community leaders made similar pleas. *See, e.g.*, 4/4/11 Privileges And Elections Public Hearing at 20 (Petersburg Mayor Moore: “As our community, even though we have a strong voting strength of at least 55 percent, our statistics show that, with the voting percentages of 40 to 42 percent, it is important that we maintain the minority districts.”); *id.* at 28 (Rev. Pollard, Chesterfield NAACP: “We’re hoping that you will keep us with at least 55 percent of the democratic voting in the district, so we may maintain our minority status.”) (Ex. T).

Concerning Redistricting Under Section 5, 76 Fed. Reg. 7470, 7472 (2011).

Plaintiffs offer three arguments in an attempt to defeat this showing, all of which fail. *First*, Plaintiffs suggest that a plan cannot be narrowly tailored if it increases the district's BVAP above the benchmark level. *See, e.g.*, Compl. ¶ 45. As noted, that is irreconcilable with Supreme Court precedent. *See also Ala. Leg. Black Caucus v. State of Ala.*, No. 2:12-cv-691, at 162–72 (N.D. Ala. Dec. 20, 2013) (three-judge court) (rejecting identical argument) (Ex. U). Moreover, Plaintiffs' argument would lead to even *more* race-consciousness in redistricting: *precisely replicating* the benchmark BVAP is a more rigid racial strait-jacket, requiring more precise and offsetting race-conscious adjustments than one granting reasonable flexibility. The Alternative Plan proves this obvious truism because Plaintiffs significantly departed from traditional principles in order to calibrate Alternative District 3's BVAP to their 50% quota. *See supra* Part II.B. In all events, Plaintiffs' notion that narrowly tailoring equals precise benchmark BVAP replication is irrelevant because they have proposed no such alternative—the Alternative Plan is 3% off the Benchmark BVAP (lower).

Second, Dr. McDonald points out that the General Assembly received preclearance of a redistricting plan for the Virginia Senate in 2011 that had 5 majority-black districts below 55% BVAP. *See* 3/24/14 McDonald Reply at 2. Dr. McDonald, however, fails to note that the BVAP in each of these districts was *higher* than the BVAP in Alternative District 3. *See, e.g.*, Senate Statement of Anticipated Minority Impact at 6 (Ex. V).

Finally, Dr. McDonald makes much of his assertion that District 3's incumbent representative, Bobby Scott, could be reelected with a lower BVAP than is present in Enacted District 3. *See* 3/24/14 McDonald Reply at 3–4. But the question under Section 5 is not whether a long-serving incumbent could be reelected, but whether the plan effects *any* “dimin[ution] of

the ability” of minority voters “to elect” *any* “candidates of their choice,” 42 U.S.C. § 1973c(b), even first-time minority candidates.

B. Plaintiffs Have Not Shown That The Alternative Plan Could Have Received Preclearance

Plaintiffs’ claim also fails because they have not proven that the Alternative Plan could have received Section 5 preclearance, much less that it is narrowly tailored to that purpose. The Alternative Plan reduces District 3’s BVAP to a razor-thin majority level from 53.1%. Therefore, all agree that this diminished BVAP had to be justified by a sophisticated racial bloc voting analysis, to prove to DOJ that the reduced *BVAP* did not reduce black voters’ *ability to elect*. See *supra* at 25; 42 U.S.C. § 1973c(b). But such analyses, particularly for the new “ability to elect” standard, are complicated, expensive, and quite debatable. Therefore, the Legislature, like the Independent Commission, had a powerful reason to adopt the far safer, simpler, and less expensive course of not diminishing BVAP.

Moreover, Dr. McDonald’s racial bloc voting analysis, designed to *support* Plaintiffs’ Alternative Plan BVAP and *justify* reducing the Benchmark BVAP, does nothing of the sort, and *confirms* the dangers of relying on racial bloc voting analysis to justify reducing the BVAP below the Benchmark. Analyzing the results in the Obama-McCain 2008 election⁹ and the 2009 gubernatorial race, McDonald concludes that the black “candidate of choice would be elected from Alternative District Three.” 3/24/14 McDonald Reply at 5–6. But this fails to prove non-retrogression for two fundamental reasons. First, it asks the wrong question. Under Section 5, the question is not whether the black-preferred candidates “would be elected,” but whether such candidate’s ability to be elected has been “*diminished*” from the Benchmark—which Dr.

⁹ Dr. McDonald states that the Obama-McCain race is “more probative” than the only other election he examines, the 2009 gubernatorial election, because it is a “black-while contest.” McDonald Dep. at 211.

McDonald's analysis does not even attempt to address. 42 U.S.C. §1973c(b).

Second, this analysis would not prove to any sensible person, much less the 2012 Justice Department, that reduced BVAP in District 3 would not reduce the ability to elect, because it proves *far too much*. That is, it not only “shows” that blacks would be able to elect their preferred candidate at 51% BVAP, but at 25% BVAP. But, of course, no Section 5 jurisdiction would engage in the doomed-to-failure effort to reduce a 53.1% BVAP district to 25% BVAP and argue that this did not retrogress blacks' ability to elect. Specifically, Dr. McDonald finds that black voters' candidate of choice receives 100% of the black vote in Alternative District 3 and “in the mid to high 30's crossover vote from non-blacks” (38.6% in the “more probative” Obama race). See 3/24/14 McDonald Reply at 6; McDonald Dep. at 208–18. Thus, in a 25% BVAP District 3, a black candidate would start with 25% of the total vote (because black voters vote 100% for their preferred candidate). And because 38.6% of non-black voters vote for black voters' preferred candidate, a 75% non-black voting-age population equals another 28.95% of the total vote (38.6% of the 75% non-black voting-age population). Thus, at 25% BVAP, the preferred black candidate would receive 53.95% of the vote in Alternative District 3 under Dr. McDonald's analysis.

Notwithstanding these “results,” no one seriously believes that a reduction from 53.1% to 25% BVAP is non-retrogressive (which is why Plaintiffs did not propose such an alternative) and no sensible Legislature would produce a plan that is so obviously D.O.A. at the Justice Department's Section 5 unit. Rather, it reflects only that the votes received by *Barack Obama* (who twice won Virginia—a state with 19.4% BVAP) and the *white* Democratic 2009 gubernatorial candidate say nothing about what a first-time black congressional candidate could expect in District 3—which is the only relevant question.

Thus, Dr. McDonald’s racial bloc voting analysis does not come close to showing that Alternative District 3 is non-retrogressive and, indeed, confirms the Legislature’s wisdom in not reducing the Benchmark BVAP. Conversely, if Dr. McDonald’s analysis *is* accepted, it confirms that the Alternative District 3 is *not* “narrowly tailored” because its BVAP is more than 25% higher than the BVAP that satisfies Section 5—*i.e.*, a 25% BVAP. Either way, Dr. McDonald’s analysis confirms the invalidity of the Alternative Plan as a more “narrowly tailored” means of satisfying Section 5.

Finally, Dr. McDonald suggests that because “the Department of Justice approved [the 1998] version of the Third District with a Black VAP of 50.5%,” Alternative District 3 “would have been precleared.” 3/24/14 McDonald Reply at 1. This is plainly untrue. The question under Section 5 is whether the new plan diminishes minority voters’ ability to elect their candidate of choice as compared to the *benchmark* plan, which is the “last legally enforceable” plan. 28 C.F.R. § 51.54(c)(1). For the Enacted Plan and the Alternative Plan, that plan is the 53.1% Benchmark Plan. *See id.* In contrast, because a redistricting plan held unconstitutional under *Shaw* cannot serve as a Section 5 benchmark, *see id.*; *Abrams v. Johnson*, 521 U.S. 74, 95–97 (1997), the benchmark for the 1998 Plan was *not* the 1991 plan struck down in *Moon*, but instead the *prior* 1980’s plan that did not have a *majority-black* district. Since 50.5% BVAP was significantly *higher* than the 1980’s benchmark, the 1998 Plan was, of course, precleared. But that fact has no bearing on whether, when compared to the Benchmark Plan with a 53.1% BVAP, the Alternative Plan’s 50.2% BVAP diminished minority voters’ ability to elect.

CONCLUSION

The Court should grant judgment to Defendants and Intervenor-Defendants.

Dated: April 16, 2014

Respectfully submitted,

/s/ Mike F. Melis
Mark R. Herring,
Attorney General of Virginia

Cynthia E. Hudson,
Chief Deputy Attorney General

Rhodes B. Ritenour
Deputy Attorney General

*Trevor S. Cox (VSB No. 78396)
Deputy Solicitor General

*Mike F. Melis (VSB No. 43021)
Assistant Attorney General

Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-2071
Fax: (804) 786-1991
tcox@oag.state.va.us
mmelis@oag.state.va.us
**Counsel of Record*

*Attorneys for Defendants Charlie Judd,
Kimberly Bowers, and Don Palmer in their
official capacities*

/s/ Jonathan A. Berry
Michael A. Carvin (*pro hac vice*)
John M. Gore (*pro hac vice*)
Jonathan A. Berry (VSB #81864)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
Tel: (202) 879-3939
Fax: (202) 626-1700
Email: macarvin@jonesday.com
Email: jmgore@jonesday.com
Email: jberry@jonesday.com

*Counsel for Intervenor-Defendants
Virginia Representatives*

CERTIFICATE OF SERVICE

I certify that on April 16, 2014, a copy of the TRIAL BRIEF OF INTERVENOR-DEFENDANTS AND DEFENDANTS was filed electronically with the Clerk of Court using the ECF system, which will send notification to the following ECF participants:

John K. Roche, Esq.
Mark Erik Elias, Esq.
John Devaney, Esq.
PERKINS COIE, LLP
700 13th Street, N.W., Suite 600
Washington, D.C. 20005-3960
Tel. (202) 434-1627
Fax (202) 654-9106
JRoche@perkinscoie.com
MElias@perkinscoie.com
JDevaney@perkinscoie.com

Mike F. Melis
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
Telephone: (804) 786-2071
Fax: (804) 371-2087
mmelis@oag.state.va.us

Counsel for Defendants

Kevin J. Hamilton, Esq.
PERKINS COIE, LLP
1201 Third Avenue, Ste. 4800
Seattle, WA 98101-3099
Tel. (202) 359-8000
Fax (202) 359-9000
KHamilton@perkinscoie.com

Counsel for Plaintiffs

Dated: April 16, 2014

/s/ Jonathan A. Berry
Jonathan A. Berry

*Counsel for Intervenor-Defendants Virginia
Representatives*

EXHIBIT A

Capital Reporting Company
McDonald, Michael P. 04-11-2014

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

-----	:	
DAWN CURRY PAGE, ET AL.,	:	
	:	
Plaintiffs,	:	
	:	CASE NO.
vs.	:	3:13-cv678
	:	
VIRGINIA STATE BOARD OF	:	
ELECTIONS, ET AL.,	:	
	:	
Defendants.	:	
-----	:	

Washington, D.C.

Friday, April 11, 2014

Deposition of:

MICHAEL P. MCDONALD

called for oral examination by counsel for
Plaintiff, pursuant to notice, at the offices of
Jones Day, 51 Louisiana Avenue, Northwest,
Washington, D.C., before Constance H. Rhodes, of
Capital Reporting Company, a Notary Public in and
for the District of Columbia, commencing at 9:28
a.m., when were present on behalf of the
respective parties:

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<p style="text-align: right;">6</p> <p>1 Let me just start first. Can you just 2 take a quick look at that CV and tell me if 3 there's anything you've done since that, or is 4 that a current CV at this point? 5 A Yeah, there's one additional 6 peer-reviewed article. It's on "Calculating 7 Presidential Vote within State Legislative 8 Districts" in State Politics and Policy Quarterly. 9 That's forthcoming. 10 Q Anything else? 11 A I'll just look through here. I think 12 we're all current. 13 Yes, I believe we're all current on all 14 of this. 15 Q Okay. 16 A I'd say that I've also been offered a 17 job at the University of Florida, so I may be 18 moving down there, but that is still in progress. 19 Q Is that right? 20 A Yeah. 21 Q Gainesville? 22 A Yeah. Yes.</p>	<p style="text-align: right;">8</p> <p>1 Q So the law firm itself is paying you. 2 A Yes. I do not know who is -- other than 3 Perkins Coie. 4 Q You don't know -- the plaintiffs, the 5 individual plaintiffs are not responsible for 6 paying you? 7 A I do not know. 8 Q Do you know if it's an entity affiliated 9 with the Democratic party? 10 A I do not know. 11 Q Have you worked with Perkins Coie 12 before? 13 A Yes, I have. 14 Q In what context? 15 A Involved in litigation against the State 16 Legislative District, I should say, in Ohio. And 17 I believe that's all. I mean, I -- I'm just 18 scrubbing my memory on this. 19 I think that's the only time I've worked 20 with Perkins Coie. I might have -- there might 21 have been other cases, but that's the only one 22 that comes to mind.</p>
<p style="text-align: right;">7</p> <p>1 Q When were you first retained for this 2 matter? 3 A I was first retained I believe in 4 December. I can't recall exactly, but I believe 5 it was either late November or early December. 6 Q Okay. And who retained you? 7 A Abha Khanna was the one who contacted 8 me. 9 Q Who? 10 A Abha Khanna. 11 Q What's Abha? Who's Abha Khanna? 12 MR. DEVANEY: She's an associate at 13 Perkins Coie. 14 BY MR. CARVIN: 15 Q And what were you asked to offer an 16 opinion on at that point? 17 A On whether or not the Third 18 Congressional District was a racial gerrymander. 19 Q And who's paying you? 20 A Perkins Coie -- yeah, Perkins Coie. Was 21 going to say Jones Day almost for a second there. 22 Perkins Coie.</p>	<p style="text-align: right;">9</p> <p>1 Q And what's the name of that case? 2 A That's the one against Kasich. So that 3 would be Wilson versus Kasich. 4 Q And just for the record, where is that 5 on your CV? 6 A It's under Redistricting/Elections 7 Consultant, the -- one, two, three, four, five -- 8 sixth bullet point. 9 Q Did you give live testimony in that 10 case? 11 A I did not. 12 Q You just filed an expert report? 13 A I filed an expert report, correct. 14 Q And all the plaintiffs here are 15 Democrats. 16 Do you know that? 17 A I do not know their party affiliation. 18 Q You're a Democrat. 19 A I am not -- I haven't been affiliated 20 with the party in many years. 21 Q But you're a registered Democrat. 22 A There is no party registration in the</p>

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<p style="text-align: right;">10</p> <p>1 State of Virginia.</p> <p>2 Q Have you ever voted for a Republican?</p> <p>3 A Yes, I have.</p> <p>4 Q In Virginia?</p> <p>5 A Yes, I have.</p> <p>6 Q Have you ever testified for a</p> <p>7 Republican-affiliated group?</p> <p>8 A Yes, I have.</p> <p>9 Q Which one?</p> <p>10 A Actually, the very first consulting I</p> <p>11 did as an expert was United States versus Upper</p> <p>12 San Gabriel Valley Municipal Water District. I</p> <p>13 worked with Marguerite Leone.</p> <p>14 Q I'm sorry. Which one are you looking</p> <p>15 at?</p> <p>16 A This is on page 12, under -- again,</p> <p>17 right above that Campaign/Political Consultant,</p> <p>18 the third up.</p> <p>19 Q And you were -- sorry, just so the</p> <p>20 record is clear, you're referencing United States</p> <p>21 versus Upper San Gabriel Valley Municipal Water</p> <p>22 District?</p>	<p style="text-align: right;">12</p> <p>1 or in favor of a party?</p> <p>2 A Yes.</p> <p>3 Q When was that?</p> <p>4 A So we have a couple of cases. Let's go</p> <p>5 down the list.</p> <p>6 We would have the second from the bottom</p> <p>7 on page 11, Healey versus State. That's a ballot</p> <p>8 case I was working for the State of Rhode Island</p> <p>9 as an expert witness, and we won a bench ruling on</p> <p>10 that case.</p> <p>11 Q And what was your testimony about?</p> <p>12 A It was about the straight ticket ballot</p> <p>13 option that Rhode Island has.</p> <p>14 Q And what was the issue about the</p> <p>15 straight ticket?</p> <p>16 A Whether or not it was disfavoring the</p> <p>17 election of nonpartisan offices, candidates in</p> <p>18 nonpartisan offices.</p> <p>19 Q Okay. Any others?</p> <p>20 A Then we won -- in fact, you were</p> <p>21 involved in that litigation as well -- the Fair</p> <p>22 Redistricting versus Arizona Independent</p>
<p style="text-align: right;">11</p> <p>1 A Right. I worked with Marguerite Leone,</p> <p>2 who is a lawyer who also worked with -- was</p> <p>3 election lawyer with Governor Schwarzenegger.</p> <p>4 Q Okay. But the party was just a</p> <p>5 municipal water district. It had no political</p> <p>6 affiliation.</p> <p>7 A Correct, I guess. I -- I'm just giving</p> <p>8 you an example of where I worked with Republicans.</p> <p>9 Q Okay. But what was the issue in that</p> <p>10 case?</p> <p>11 A It was a voting rights claim against the</p> <p>12 municipal water district.</p> <p>13 Q Have you ever worked for a party that's</p> <p>14 affiliated with the Republican party?</p> <p>15 A Have I ever worked with -- I have not.</p> <p>16 Q And you've worked for a number of groups</p> <p>17 affiliated with the Democratic party, right?</p> <p>18 A I have.</p> <p>19 Q Has any court ever -- I understand,</p> <p>20 obviously, courts have accepted your expert</p> <p>21 testimony into evidence. Has any court ever</p> <p>22 relied on your testimony in ruling against a party</p>	<p style="text-align: right;">13</p> <p>1 Redistricting Commission. I was working as a</p> <p>2 consultant for that commission and testified on</p> <p>3 their behalf.</p> <p>4 Q Yeah, I was involved in that. There was</p> <p>5 a number of stages of the litigation, it went up</p> <p>6 and then came back. You testified in the initial</p> <p>7 trial on behalf of the commission?</p> <p>8 A Right.</p> <p>9 Q And what was the gist of your testimony</p> <p>10 in that case?</p> <p>11 A Well, it was more than just testimony.</p> <p>12 I have to -- you're asking something that happened</p> <p>13 a decade ago, so I'm just trying to remember</p> <p>14 everything.</p> <p>15 Q Yeah.</p> <p>16 A But I was -- we were involved in -- I</p> <p>17 was testifying to defend the actions of the</p> <p>18 commission, and expert reports I had filed on</p> <p>19 behalf to inform the work of the commission. And</p> <p>20 later, the court asked me to do mapping for a</p> <p>21 remedial map.</p> <p>22 Q So there was a remedy entered against</p>

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14	<p>1 the commission. 2 A Against the commission, but then the 3 State Supreme Court overturned that. 4 Q Right. 5 A Right. 6 Q Okay. 7 A There's one other one on here -- 8 actually, yeah, there's two others and -- 9 Q Just one -- 10 A -- whether or not -- you know. So one 11 of them was -- 12 Q I'm sorry, but -- 13 A Yeah, I'm sorry. 14 Q -- just one quick follow-up on Arizona. 15 There was a big issue as to political 16 competitiveness in that case? 17 A Correct. That was the issue at stake. 18 Q And did you testify directly on that? 19 A Yes, I did. 20 Q You were about to say something else. 21 A I said there's two others further up. 22 My apologies for the oversight.</p>	16
15	<p>1 So second from the top is League of 2 Women Voters of Florida versus Browning. I 3 testified on behalf of the League of Women Voters. 4 I would say it's a partial victory because the 5 league was seeking to overturn a rule that would 6 fine them for each improperly submitted voter 7 registration form. And the judge did uphold the 8 requirement that they pay a fee, but only one -- 9 once. 10 So sort of a half full -- glass half 11 full litigation. I was involved with examining 12 patterns of when registration forms were submitted 13 to Board of Supervisors in the State of Florida. 14 And then further down the Washington 15 Association of Churches versus Reed -- 16 Q I'm sorry. 17 A Yeah, sorry. 18 Q I don't want to keep interrupting. 19 A Sorry. 20 Q What was the precise testimony about 21 registration forms? 22 A It was the flow of registration forms.</p>	17

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<p style="text-align: right;">18</p> <p>1 A Is was a partisan gerrymander. 2 Q And what offices were involved? State 3 legislative? Congress? 4 A Both state legislative and Congress. 5 Q And so this was challenging the Texas 6 legislature's redistricting -- 7 A Correct. 8 Q -- of this current cycle? 9 A That's correct. That's correct, yeah. 10 Q I'm sorry. Go ahead. 11 A I had thought that that portion of the 12 case had been dismissed on the grounds that 13 there's no standard for partisan gerrymandering, 14 but apparently the court has entertained to 15 revisit that issue, so I had to file yet another 16 expert report just about a month ago. I'm 17 expecting deposition in that one as well. 18 Q I think I know the -- oh, I don't know. 19 What's the Delgado v. Galvin about? 20 A That's a case that involves the State of 21 Massachusetts and their -- the administration of 22 NVRA requirements to register low-income</p>	<p style="text-align: right;">20</p> <p>1 A No. We're still in the stage of 2 discovery. So what we've asked for is a -- we -- 3 the State of Massachusetts provided us with 4 reports from their internal system. We want to 5 actually see the data that's in their internal 6 system. And they -- that's the point of 7 contention right now, whether or not they are 8 going to give up that data. 9 Q To switch back to this case, if I could. 10 So you were retained in -- now, I think 11 your first expert report is executed on 12 December 6, 2013, if you look at the last page of 13 Exhibit Number 1. 14 A Yes. 15 Q Does that refresh your recollection on 16 when you were retained -- 17 A Again, when I -- I just happened to look 18 recently at the invoicing, and I wish I could 19 remember it, but I seem to recall my first invoice 20 was at the end of December, beginning of December. 21 So it's -- it was work that was done very quickly 22 and was, again, towards the end of November when I</p>
<p style="text-align: right;">19</p> <p>1 individuals at public assistance offices. 2 Q And what's the precise issue? 3 A Well, just their failure to do so. So 4 they're -- they're not -- the -- I've been asked 5 by the plaintiffs there to -- or plaintiffs' 6 counsel to provide analyses of the data that they 7 have made -- the Massachusetts -- State of 8 Massachusetts has made available regarding the 9 registration of individuals through that public 10 assistance. 11 Q What's the gist of your testimony? 12 A Well, they are implausibly high 13 registration rates. They claim that 99 -- over 14 99 percent of the low-income people seeking 15 assistance are registered to vote. And that 16 beyond that, when they reinstated new policies 17 there's still patterns that look suspicious in 18 terms of the way in which they are -- these case 19 workers are administering voter registration or 20 offering voter registration to their clients. 21 Q Okay. And that hasn't gone to trial 22 yet?</p>	<p style="text-align: right;">21</p> <p>1 was retained. 2 Q And then, obviously, you filed a reply 3 to Dr. Brunell, and then at some point the 4 plaintiffs introduced their alternative 5 congressional plan, right? 6 A Correct. 7 Q And just to refresh, your first report 8 or that alternative plan was filed February 21, 9 2014. If you want to look at the last page? 10 A Which one? 11 Q Exhibit 3, please. 12 A Oh, Exhibit 3. Thank you, yeah. 13 Q I'm just trying to orient you on dates. 14 A February 21st, correct. 15 Q Do you know, when were you asked to 16 comment on the alternative plan? Do you recall? 17 A Again, this happened very quickly. So 18 this would have been one to two weeks prior to the 19 filing of this report. 20 Q Did you participate in any way in 21 drafting the alternative plan? 22 A I did not.</p>

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22	<p>1 Q Do you know who did draft it?</p> <p>2 MR. DEVANEY: Mike, I'm going to</p> <p>3 interpose an objection here.</p> <p>4 It was drafted by a non-testifying</p> <p>5 consulting expert. And I have no problem if you</p> <p>6 want to ask him, and I'll allow him to answer who</p> <p>7 the non-testifying expert was and also</p> <p>8 communications he had with him. What I don't want</p> <p>9 to do, though, is waive any right to protect</p> <p>10 communications that counsel had with a</p> <p>11 non-testifying expert.</p> <p>12 So if we can have that understanding of</p> <p>13 why that --</p> <p>14 MR. CARVIN: That's fair enough.</p> <p>15 BY MR. CARVIN:</p> <p>16 Q Did you hear all that, Dr. McDonald?</p> <p>17 A Yes.</p> <p>18 Q So without getting into, to the extent</p> <p>19 you know, of any communications between Perkins</p> <p>20 Coie and the non-testifying expert, can you tell</p> <p>21 me who it was?</p> <p>22 A Yes. It's Eric, and his last name --</p>	24
23	<p>1 Q Was this after the map had been</p> <p>2 completed?</p> <p>3 A Yes, it was.</p> <p>4 Q What did you say and what did he say?</p> <p>5 A Well, the map had been provided to me</p> <p>6 before the conversation, so I had already done</p> <p>7 statistical work on it and had viewed the map in</p> <p>8 terms of its geography.</p> <p>9 And what he did was confirm what I</p> <p>10 already suspected about the map, which was that it</p> <p>11 was a map that was designed to create a bare</p> <p>12 majority African American black voting-age</p> <p>13 population district, that did minimal changes to</p> <p>14 existing districts.</p> <p>15 And to accomplish that, no district</p> <p>16 other than the border between the Second and Third</p> <p>17 District was touched in the drafting of -- the</p> <p>18 existing, I should say, adopted Second and Third</p> <p>19 District and the -- what we'll call the -- what I</p> <p>20 will call the alternative, plaintiffs' alternative</p> <p>21 Second and Third District. So it did not touch</p> <p>22 any other adopted districts border -- districts</p>	25
23	<p>1 Q Eric Hawkins.</p> <p>2 A Hawkins. Thank you. Eric Hawkins.</p> <p>3 He's at NCEC.</p> <p>4 Q What's NCEC?</p> <p>5 A It's National Committee for an Effective</p> <p>6 Congress.</p> <p>7 Q Okay. Where are they based?</p> <p>8 A You know, I do not know where they are</p> <p>9 based. I believe they are in the DC area, but I</p> <p>10 do not know for certain.</p> <p>11 Q Are they affiliated with the Democratic</p> <p>12 party?</p> <p>13 A I don't know all their list of clients.</p> <p>14 I do know that they have Democrats on their list,</p> <p>15 but I also know that they work for Republican</p> <p>16 clients as well.</p> <p>17 Q And, I apologize, what was his name?</p> <p>18 A Eric Hawkins.</p> <p>19 Q And did you ever discuss -- have any</p> <p>20 conversations with Mr. Hawkins?</p> <p>21 A I did have a telephone conversation with</p> <p>22 Mr. Hawkins about the map that he had drawn.</p>	25

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<p style="text-align: right;">26</p> <p>1 sort of thing. 2 Did you have any specific -- 3 MR. DEVANEY: Just referring to the 4 conversation with Hawkins? 5 MR. CARVIN: Yes. 6 THE WITNESS: I'm not sure what you're 7 really talking about. He -- he told me things, 8 and I just listened to him about what he said, so 9 I -- 10 BY MR. CARVIN: 11 Q Well, what did he say? Let me ask it 12 that way. 13 A I was describing what -- what he -- 14 Q So he gave you a general description of 15 what he'd probably already seen more in terms 16 of -- 17 A Exactly. Yes. Yes. 18 Q Did you ask him, for example, why he 19 split Portsmouth? 20 A My -- yes, I did. And the -- again, 21 it's to balance that population. It was pretty 22 obvious that when you split that small amount of</p>	<p style="text-align: right;">28</p> <p>1 draft map. I know -- 2 Q Well, forget the word "draft." The map 3 that he sent you and had this conversation with 4 you, is that identical to the one that's been 5 submitted? 6 A That is my understanding, yes. 7 Q Okay. Just generally, in terms of -- as 8 you know, the issue here is whether or not 9 traditional districting principles have been 10 subordinated to race. 11 In that context, what would you -- what 12 sources would you look to to determine what 13 traditional districting principles are in a 14 particular jurisdiction? 15 A We have a number that the courts have 16 recognized. Some of those are issues that the 17 Moon v. Meadows court also indicated when they 18 overturned the Third District back in the late 19 1990s. So it seemed like that was a good starting 20 point, is to look at the Moon v. Meadows decision, 21 look at some of the factors that they cited as far 22 as the creation of the district. And --</p>
<p style="text-align: right;">27</p> <p>1 population, that -- usually, that's an indicator. 2 That was my suspicion and that's what he 3 confirmed. 4 Q So was it given, when you went into this 5 conversation, that only the border between the 6 second and the third was going to be affected by 7 this alternative map? 8 A Correct. 9 Q Within the confines of that limitation, 10 did you discuss any other potential alternative 11 map-drawing options with Mr. Hawkins? 12 A Just to give you a sense, it was a short 13 conversation that lasted 10, 15 minutes, and so we 14 did not get into depth about any other 15 alternatives or anything else. We focused just on 16 the map that he had presented to me and what -- 17 what he was trying to accomplish with that map. 18 Q And this draft map that he had sent to 19 you, was that identical to the map that was 20 ultimately submitted to the court and that you 21 commented on in your expert report? 22 A I -- if there were -- I don't know about</p>	<p style="text-align: right;">29</p> <p>1 Q Well, I'm less interested -- again, I 2 don't want to interrupt you. I'm less interested 3 in what you did in this case. I'm just trying to 4 think generically, you would look at court cases 5 to figure out the relevant traditions? 6 A Right. We look at court cases. We'd 7 look at the legislative record to see what the 8 legislature intended -- claimed, although there is 9 ample evidence in courts of legislative bodies 10 adopting criteria that have -- are neutral on 11 face, but have been overturned on racial grounds. 12 So although that's indicative, it's not 13 necessarily definitive in terms of the intent 14 behind the creation of a map. 15 Q So you look at -- let's start with the 16 court cases. You would look at court cases from, 17 say, the relevant jurisdiction, in this case the 18 Virginia Supreme Court, Virginia district courts, 19 that sort of thing? 20 A Right. I looked at the federal court, 21 the court that -- the same Eastern District Court 22 of Virginia.</p>

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<p style="text-align: right;">30</p> <p>1 Q Did you look -- sorry. 2 A Yes. 3 Q Did you look at any other cases besides 4 Moon to figure out traditional districting 5 principles in Virginia? 6 A Not specifically within Virginia, no. I 7 mean -- no, not specifically in Virginia. 8 Q And then -- then I think you were making 9 a point about how the legislature articulates 10 certain criteria, but nonetheless, the plans are 11 struck down. 12 A Correct. 13 Q But let me -- would you look at what the 14 legislature's articulated criteria are in terms of 15 what the traditional districting principles would 16 be for that map or plan? 17 A It gives some indication as to what the 18 legislature was considering when they drew the 19 plan, yes. 20 Q But you say they've been struck down. 21 A Do you mind if I get some water? I'm 22 sorry.</p>	<p style="text-align: right;">32</p> <p>1 Hinds County, Mississippi, where the Board of 2 Supervisors adopted equalization of road mileage 3 for the supervisorial districts, and that happened 4 to split the City of Jackson into five districts, 5 and that happened to split the African American 6 population into five districts. 7 So you can have instances like that 8 where you adopt an advanced criteria that have a 9 racially suspect effect on the ability for 10 minorities to select a candidate of choice. 11 Q And Hinds County, when you said 12 "happened," it wasn't by coincidence. They 13 deliberately -- 14 A They -- 15 Q -- created that criteria because of the 16 predictable racial effect. 17 Is that what you're saying? 18 A That's what I'm saying. Yes, correct. 19 Q And is that one of the reasons that 20 courts view with suspicion, sometimes, when 21 legislatures articulate a criteria at the same 22 time they're drafting a map or shortly before?</p>
<p style="text-align: right;">31</p> <p>1 Q Sure. 2 Well, I'm going to give you an 3 open-ended question just so we're on the same 4 page. It seems to me there's two ways that 5 legislature criteria could be viewed with 6 suspicion by the courts. 7 Alternative Number 1 would be they've 8 already drawn the plan and then they gear their 9 criteria as sort of a post hoc justification for 10 what they've done, or the second alternative would 11 be they articulate neutral criteria and then 12 depart from it in the plan. Let me focus in on 13 the first scenario. 14 Would that be a concern, that the 15 legislature basically knows what it wants to do 16 and then manipulates what it considers important 17 in order to justify what the map looks like? 18 A I would add a third, which is that you 19 know in advance what the effect of the criteria is 20 going to be, and you -- even though it has a prima 21 facie neutral reasoning. 22 The -- the example that I have is from</p>	<p style="text-align: right;">33</p> <p>1 A I don't know what courts -- what judges 2 have looked with suspicion. I -- for me as an 3 expert I would -- that would be a reason for me to 4 judge -- base my opinion upon. 5 Q You would be sceptical. 6 A I would be sceptical, yes. 7 Q And you mentioned Moon. Did you look at 8 any other cases involving Shaw challenges besides 9 Moon to see what kind of traditional districting 10 principles have come up in those cases? 11 A I have read these cases in the past, but 12 I would need to refresh my memory to exactly what 13 each of those cases says. 14 Q Have you ever heard of a case called 15 Easley versus Cromartie? It was the fourth North 16 Carolina Shaw iteration -- 17 A I've heard of that -- 18 Q -- that went to the Supreme Court. 19 A I have heard of that one, yes. 20 Q Did you read it in connection with this 21 case? 22 A Not in connection with this case.</p>

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<p style="text-align: right;">34</p> <p>1 Q And in terms of just generally, let me 2 ask you, can you list generally what you would 3 consider traditional districting principles? 4 And I'll limit it to Congress. I don't 5 know if they diverge, but... 6 A You know, so we have Equal Population -- 7 we start with the federal criteria, Equal 8 Population and the Voting Rights Act. Those 9 predominate over any other criteria at the state 10 level. 11 Then you move into state criteria. And 12 they can be varied, so there is some -- in some 13 states we would look at additional factors, but 14 that would not be present in Virginia. For 15 example, we talked earlier about Arizona with a 16 competitiveness requirement. That's not a 17 requirement in the State of Virginia, so we would 18 not evaluate something like a competitiveness 19 criteria like competitiveness in Virginia? 20 So we would look -- next look at the 21 Virginia Constitution. Virginia's Constitution 22 requires compactness and contiguity. And then</p>	<p style="text-align: right;">36</p> <p>1 that criteria, respect for those local political 2 boundaries and what we might consider to be 3 communities of interest. 4 Q So communities of interest would 5 encompass municipal and county lines, but they 6 could also encompass other kinds of communities; 7 is that correct? 8 A Correct. 9 Q And other than municipal and county 10 boundaries, is it traditional to preserve 11 precincts, lines? 12 A It's not a traditional redistricting 13 principle. However, I see a reasonable election 14 administrative goal to preserve those boundaries. 15 Some states don't do it at all, some states do. 16 So it's more of an issue for an 17 individual state, whether or not they are going to 18 respect local precinct boundaries. Some states 19 are very explicit about having to draw those 20 precincts -- the districts out of those precincts. 21 It's in either state code or state constitution. 22 Q Do you know what a census place is?</p>
<p style="text-align: right;">35</p> <p>1 beyond that, we start getting into what are 2 generally considered the traditional redistricting 3 principles. 4 So then we would look at issues like 5 respect for existing political boundaries, the -- 6 and -- I'm trying to think of other ones that -- 7 beyond contiguity and compactness, respect for 8 political boundaries. 9 Those are the ones that are typically 10 associated. Maybe I'm missing one or two, so if 11 there are more, I'm sure you'll ask me about them, 12 so... 13 Q Right. Well, let's start with political 14 boundaries. By that, you mean county and city 15 boundaries? 16 A Right. Yeah. And this is what I -- I'm 17 leaving off communities of interest as well. And 18 often these boundaries that you're describing, the 19 municipal county, local governance boundaries, 20 those are often described as being communities of 21 interest. 22 So sometimes there's overlap between</p>	<p style="text-align: right;">37</p> <p>1 A Yes, I do. 2 Q And would there be a traditional 3 districting principle in preserving census places? 4 A Not necessarily. It depends really upon 5 what the state wishes to do with that. I mean, 6 I -- I have not seen a state explicitly say census 7 places, although some states have used census 8 places to guide their redistricting. 9 So it's -- but, you know, we'll have to 10 go back to what census places are. They are areas 11 that the state has worked with the Census Bureau, 12 that they define to be significant in some way 13 as -- usually, they're typically like municipal 14 boundaries, but they don't necessarily need to be 15 municipal boundaries, they can be as small as 16 villages in some cases. 17 But I -- you could use them, and on 18 occasion people have looked at census places, but 19 they don't necessarily correspond with communities 20 of interest in and of themselves. I'd say if a 21 state wanted to adopt that, that would be 22 interesting, it would be in their discretion to do</p>

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<p style="text-align: right;">38</p> <p>1 that, but I don't know of anyone who has 2 explicitly said census places are communities of 3 interest. 4 Q How about preserving cores of existing 5 districts sometimes called constituent's 6 consistency? Is that a traditional districting 7 principle? 8 A I think then we're starting to get into 9 the political permissible criteria. And so 10 existing cores are wrapped up with incumbency, 11 and -- so that it could be partially a traditional 12 redistricting principle, but there also could be 13 political goals behind that as well. 14 Q Well, let's segregate out whether or not 15 there is political goals. 16 Would preserving constituent consistency 17 and preserving existing districts be a traditional 18 districting principle? 19 A Well, Delegate Janus, when he made 20 his -- presented the plan on the floor, he 21 explicitly discussed this in terms of politics, 22 that he was reflecting the will of the Virginia</p>	<p style="text-align: right;">40</p> <p>1 aren't valid. I tend to think of them differently 2 in terms of lumping the political goals in with 3 traditional redistricting principles. 4 Q I'm a little confused. What if the 5 voters have expressed to the legislature their 6 desire to preserve municipal boundaries, would 7 that make preserving municipal boundaries a 8 political goal? 9 A Potentially, I suppose the way in which 10 I'm defining this, it's not something I really 11 thought deeply on. I suppose it could have an 12 element of -- you know, there -- there are always 13 multiple boundaries here, so I -- 14 Q Well, I'm just -- 15 A -- I suppose you're correct. 16 Q There's partisan politics, and then 17 there's representatives responding to their 18 constituent desires. Would you consider 19 representatives responding to constituent desires 20 to be somehow illegitimate or suspicious? 21 A No. Not necessarily, no. 22 Q So why don't you segregate out what</p>
<p style="text-align: right;">39</p> <p>1 voters by preserving cores of existing districts. 2 So I would say that, again, when we look 3 specifically within the State of Virginia, that 4 appeared to be a political goal, not a traditional 5 redistricting principle. 6 Q Accommodating the wishes of existing 7 constituents is a political goal? 8 A Correct. He described it in terms of 9 the will of the voters. 10 Q And if redistricting plans respond to 11 the will of the voters, that is not legitimate 12 because it's a political -- 13 A Oh, I'm not saying that it's not 14 legitimate, I'm just saying -- you've been asking 15 me about what traditional redistricting principles 16 are. 17 Q Right. 18 A And I -- the way that I view these 19 redistricting principles are that some are within 20 a realm of what we consider traditional 21 redistricting principles, some are political 22 goals. Not to say that those political goals</p>	<p style="text-align: right;">41</p> <p>1 Mr. Janus said and all of that. I'm just asking 2 you generically. Don't worry about Virginia. 3 Generically, is preserving the cores of 4 existing districts or ensuring constituent 5 consistency a traditional districting principle? 6 A Again, I believe that in some cases it 7 can be and in other cases it could be more of a 8 political goal of protecting incumbents. 9 Q Well, let's leave that aside, let's 10 leave incumbency protection aside. 11 Just assume with me the role -- the 12 representatives are term limited and no incumbents 13 running again, I'm just wondering if in those 14 circumstances preserving the cores of existing 15 districts would be a traditional districting 16 principle. 17 A Leaving aside all incumbency. It's 18 difficult to leave aside all incumbency in these 19 cases, so it's a real hypothetical. 20 So I don't know of any redistricting 21 plan that has ever been drawn that didn't have 22 incumbents that were involved in it.</p>

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<p style="text-align: right;">42</p> <p>1 So in your hypothetical, if we were not 2 going to consider incumbency and we were trying to 3 preserve cores, then yes, I would say that would 4 be a traditional redistricting principle. 5 Q Okay. Then back to the real world where 6 there are incumbents. Just generally, you have 7 Shaw cases or other cases which assess traditional 8 districting principles listed preserving cores of 9 existing districts as a traditional districting 10 principle, to your knowledge? 11 A I have not reviewed those cases that 12 closely to know an answer to that question. 13 Q What about the political science 14 literature? 15 A It's -- actually, it's typically not 16 even evaluated for in the political science 17 literature either. 18 Q And now let me switch directly to 19 incumbency protection. Is that a traditional 20 districting principle? 21 A Well, the courts have acknowledged that 22 it's a legitimate goal. But I -- again, I'd say</p>	<p style="text-align: right;">44</p> <p>1 exactly the same ones that people previously 2 devised, so they keep becoming rediscovered. 3 And they all measure different things, 4 and they all measure different things within the 5 context of whatever jurisdiction that you are 6 drawing the districts in. So if you have a 7 perimeter boundary where you have lots of jagged 8 coastline, you're going to get lower compactness 9 cores, and in a place like North Dakota, where you 10 have got nice squares that you can draw districts 11 out of. 12 So the courts have not adopted, to my 13 knowledge, bright lines. However, redistricting 14 authorities can, at their discretion, adopt bright 15 lines. That's what the Arizona Independent 16 Redistricting Commission did, they adopted a 17 bright line. I believe, if I recall correctly, it 18 was a .17 threshold for the -- on the 19 Polsby-Popper score. Iowa has a length-width 20 measure that they apply to the compactness of 21 their districts. 22 So there are some states that have</p>
<p style="text-align: right;">43</p> <p>1 that's a political goal, not a traditional 2 redistricting principle, the way in which I view 3 these things. 4 Q And I guess I'm struggling with the 5 distinction. It's not traditional, but it's a 6 legitimate districting principle? 7 A It's a legitimate goal that a 8 legislature can have when they draw a 9 redistricting plan. 10 Q Okay. And with respect to compactness, 11 is there any minimal level of compactness that's 12 required? 13 A Compactness is a very difficult concept. 14 We have -- in the 1990s, we have Tom Hofeller and 15 many others writing an influential paper on this 16 saying -- 17 Q Niemi was the lead? 18 A Niemi, yes, Dick Niemi. Kim Brace was 19 on that paper as well. 20 -- saying, look there are 30, at least 21 30. I'm aware of more that have been devised 22 since the early '90s, in fact, some of them are</p>	<p style="text-align: right;">45</p> <p>1 chosen to bind themselves on compactness criteria. 2 But, again, unless the jurisdiction chooses to 3 bind itself with a bright line criteria, there -- 4 the courts have not forced states to adopt a 5 minimal threshold for compactness. 6 Q Okay. And in this case, in 2012, 7 neither the House nor the Senate promulgated any 8 criteria for congressional redistricting; is that 9 correct? 10 A Please restate that again. 11 Q In 2012 -- 12 A 2012, yes. 13 Q -- neither the House nor the Senate of 14 the General Assembly propounded any criteria 15 governing the principles that would dictate 16 congressional redistricting; is that correct? 17 A That's correct. 18 Q Now, there was a Senate criteria in 2011 19 when the Senate was controlled by Democrats; is 20 that correct? 21 A That is correct. 22 Q But you don't think that's what -- you</p>

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<p style="text-align: right;">46</p> <p>1 don't think that's relevant here; is that correct? 2 A That's correct. 3 Q Okay. So the absence of a 2012 4 legislature enactment and the irrelevance of the 5 2011 Senate enactment, what effect does that have 6 in terms of assessing traditional districting 7 principles in this case, in your view? 8 A Well, we -- the purpose behind examining 9 the traditional redistricting principles is to 10 look for violations of them when race may be a 11 factor in the violation of those traditional 12 redistricting principles. 13 And so that's what I -- my expert 14 reports review these traditional redistricting 15 principles. They are consistent with what the 16 legislature adopt -- the State Senate adopted in 17 2011, so I have assessed those criteria within 18 that framework. But the purpose was not to assess 19 how well the districts that were drawn adhered to 20 those criteria, rather it was to examine how 21 violations of those criteria may have a racial 22 purpose behind them.</p>	<p style="text-align: right;">48</p> <p>1 A As a byproduct of what I was doing in 2 terms of evaluating whether or not race 3 predominated in the violation of traditional 4 redistricting principles. I evaluated at the same 5 time how similar criteria as to -- that were 6 adopted in the 2011 Senate criteria. 7 Q You looked at how well the plan 8 conformed with the Senate criteria to determine 9 whether or not race had subordinated those 10 articulated principles. 11 A I looked at traditional redistricting 12 principles and how those may have been 13 subordinated to race. 14 Q And what I'm trying to figure out is, 15 when you were determining what traditional 16 districting principles applied in this case, did 17 you look at the 2011 Senate criteria as a guide? 18 A I did not, because I do not believe that 19 those Senate criteria are governing over the 20 drawing of these district boundaries. 21 Q So what did you look at to ascertain 22 what traditional districting principles governed?</p>
<p style="text-align: right;">47</p> <p>1 Q I'm confused. 2 You looked at the 2011 Senate criteria 3 to see if the enacted plan complied with those 4 Senate criteria? 5 A I looked for where the -- those 6 criteria -- they happened to look very much like 7 traditional redistricting criteria. 8 Q Just clarify the record. "They" meaning 9 the 2010 -- 10 A 2011 -- correct. Sorry. I'm talking 11 over you. 12 Q Let's try to clarify the record. 13 The 2011 Senate criteria looked very 14 much like traditional districting principles 15 you've seen in other context; is that correct? 16 A Yes. It had numerous criteria that were 17 consistent with traditional redistricting 18 principles in other context. 19 Q So when you analyzed the adopted plan's 20 compliance with traditional districting 21 principles, you looked at how well it complied 22 with the Senate criteria.</p>	<p style="text-align: right;">49</p> <p>1 A We looked at -- I look back at the Moon 2 v. Meadows decision, I looked in my general 3 experience of doing redistricting litigation, 4 other cases that I'm aware of, the academic 5 literature, and applied those criteria to my 6 expert report. 7 Q So you looked at general principles from 8 all of these various sources to figure out whether 9 or not the adopted plan complied. 10 A Correct. 11 Q And you knew because of the Virginia 12 Constitution that compactness and contiguity were 13 two traditional districting principles that had to 14 be complied with. 15 A Correct. 16 Q There was no legislative pronouncement, 17 however, to clearly articulate what the other 18 traditional districting principles were. As a 19 consequence, you looked at general traditional 20 districting principles? 21 A Correct. 22 MR. DEVANEY: Can we take at some point</p>

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<p style="text-align: right;">50</p> <p>1 three or four minutes? 2 MR. CARVIN: Yeah. 3 MR. DEVANEY: Is this -- 4 MR. CARVIN: Sure. Yeah. 5 (Whereupon, a brief recess was taken.) 6 BY MR. CARVIN: 7 Q Just to finish up on this, and I'm not 8 trying to put words in your mouth, but I just want 9 to make sure I understood your prior testimony. 10 You were looking at the Senate 2011 11 criteria, not because they were an official 12 legislated pronouncement, but because they were a 13 fairly typical example of these general 14 traditional districting principles that you were 15 analyzing; is that correct? 16 A Yes. 17 Q How about trade-offs between competing 18 districting principles? Is there any -- 19 obviously, the federal are the most important, the 20 Voting Rights Act and the Equal Population. 21 Among state traditional districting 22 principles that are not embodied in the</p>	<p style="text-align: right;">52</p> <p>1 THE WITNESS: I know he had left, so I 2 just wanted to make sure he was back. 3 BY MR. CARVIN: 4 Q If you could turn to Exhibit 2, please. 5 I'd like to turn your attention to page one. 6 For the record, this is your reply 7 report to Dr. Brunell. And I'd like to direct 8 your attention to the last sentence in the third 9 full paragraph under "Summary." 10 Do you see that? 11 A Is it -- yes, I see. Yes. 12 Q Okay. And this sentence is referring to 13 the adopted, the enacted plan, correct? 14 A Say that again for me, please. I'm 15 sorry. 16 Q This last sentence that begins, 17 "Dr. Brunell further suggests," just the context 18 of this sentence, you're discussing the enacted 19 plan. 20 A Correct. The adopted plan, yes. 21 Q And you write, "Dr. Brunell further 22 suggests that certain traditional criteria could</p>
<p style="text-align: right;">51</p> <p>1 Constitution, is there any guide to which has 2 precedence over another? 3 A No, there are not, to my knowledge, 4 unless the state again explicitly binds itself 5 to a certain rank order. And there are some 6 states that do that, like Arizona does have a rank 7 ordering of criteria where they put 8 competitiveness at the bottom of the rank 9 ordering. 10 Q Okay. And we're talking about race, the 11 use of race predominating over traditional 12 redistricting principles, so that would constitute 13 a racial gerrymander; is that correct? 14 A Yes. 15 Q And that would be true if race 16 predominated in an effort to reduce black 17 voting-age population as well as an effort to 18 enhance black voting-age population, correct? 19 A Yes. 20 Q So let's look at -- 21 THE WITNESS: Mike -- 22 MR. MELIS: Yes, I'm here.</p>	<p style="text-align: right;">53</p> <p>1 have predominated, but all the evidence indicates 2 that the General Assembly compromised the 3 principles of preservation of cores, locality 4 splits, compactness, and contiguity in favor of 5 race." Is that correct? 6 A Yes. 7 Q And that's an accurate summary of your 8 opinion here? 9 A Yes. 10 Q And I take it you also think that race 11 also predominated over the traditional districting 12 principle of VTD splits? 13 A The locality splits is -- part of 14 locality splits, yes. VTD splits are part of 15 locality splits, yes. 16 Q Okay. And then if you turn to page nine 17 of that report, please. And if you could, the 18 first full paragraph on that page reads, does it 19 not -- and, again, we're discussing the General 20 Assembly's adopted plan: "Most importantly, if 21 preservation of district cores was a value the 22 legislature held in high regard, the legislature</p>

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<p style="text-align: right;">54</p> <p>1 would not have removed population from the 2 underpopulated Benchmark Third District as that 3 only made the redistricting task more complicated. 4 Removal of population is only to the detriment" -- 5 italicized -- "to the detriment of preservation of 6 cores." 7 That's true, is it not? 8 A That's correct. 9 Q And the Third District was 10 underpopulated by about 64,000 in 2010? 11 It's in the record. 12 A Yeah, it says it's a little under 13 64,000, but that's -- 14 Q Okay. And that's roughly 8.8 percent, 15 the ideal size? 16 A I would have to do a calculation. But 17 if it's in the record, I assume that you represent 18 the record accurately. 19 Q So it would be particularly violative of 20 the traditional districting principle of 21 preserving cores to move people out of a district 22 that needed the pick-up population.</p>	<p style="text-align: right;">56</p> <p>1 enacted plan preserved 83.1 percent of the old 2 district core and the alternative District 3 3 preserved 69.2 percent, correct? 4 A Correct. I believe that these numbers 5 are correct, although I have not validated the 6 numbers. But I believe them to be correct. 7 Q All right. Well, let's turn to 8 Exhibit 3, if we can. This is your analysis of 9 the alternative plan. 10 A Okay. Yes. 11 Q So if you look at page nine of that, 12 you've set forth a table, have you not, that tells 13 you where the various populations from the old 14 District 2 and the new District 3 went in the 15 plaintiffs' alternative plan, correct? 16 A Correct. 17 Q And so the plaintiffs' alternative moves 18 126,980 people out of District 3 to District 2, 19 correct? 20 A Say that again. Sorry. I coughed right 21 when you were asking that. 22 Q Fair enough. I'm looking at your</p>
<p style="text-align: right;">55</p> <p>1 That's your point here, right? 2 A Correct. 3 Q And the alternative plan preserves less 4 of District 3's core than the adopted plan, right? 5 A Correct. 6 Q And it preserves less of the core of 7 District 2 than the adopted plan, right? 8 A I do not believe, if I recall, doing 9 that analysis, but Mr. Morgan may have done that 10 analysis. 11 Q Yeah. If you want to check it, it's on 12 page 24 of Exhibit 5, Mr. Morgan's report. 13 A Which page again? 14 Q Twenty-four. 15 A Twenty-four. 16 Q And if you're looking at it, in terms of 17 the enacted plan, that preserved 85 percent of the 18 population from the old District 2 into the new 19 District 2 while the alternative plan preserved 20 82.5 percent; is that correct? 21 A Correct. 22 Q And then in terms of District 3, the</p>	<p style="text-align: right;">57</p> <p>1 chart -- 2 A Yeah. 3 Q -- on top of page nine. 4 A Yes. 5 Q From the old benchmark 3 under 6 plaintiffs' alternative plan, they moved 126,980 7 people to plaintiffs' alternative 2, correct? 8 A Correct. 9 Q So they moved almost 127,000 -- over -- 10 almost 127,000 people out of an underpopulated 11 district. 12 A Correct. 13 Q And they moved roughly 45,798 people 14 from the old 2 back into 3? 15 A Correct. 16 Q Okay. So the net outflow from the old 17 3, you can do the math, is 81,182 people in terms 18 of net loss. 19 A Okay. I trust that you're correct on 20 that. 21 Q Okay. So that obviously also violates 22 the traditional districting principle of</p>

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<p style="text-align: right;">58</p> <p>1 preserving cores even more than the adopted plan, 2 correct? 3 A Correct. 4 Q And then a similar point on the same 5 table on page nine of Exhibit 3, I'm now going to 6 direct your attention to the changes from 1 to 3 7 and 3 to 1. Okay? 8 That moves 106,886 people out of the old 9 District 1 to the new District 3, correct? 10 A Correct. 11 Q And it moves only 700 -- excuse me. It 12 moves only 7,351 people from the old 3 to the new 13 1, correct? 14 A Correct. 15 Q So, again, a net infusion into 3 of 16 99,535 people, right? 17 A Correct. 18 Q And those are all new people to 19 District 3, they were not in the old District 3. 20 A Correct. They were formally in 21 District 1 and were assigned to District 2. 22 Q And you wouldn't have needed to move all</p>	<p style="text-align: right;">60</p> <p>1 population without these enhanced moves that are 2 found in the alternative plan, correct? 3 A Say that again. 4 Q The additional movement of population 5 that the plaintiffs' alternative plan does, 6 relative to the adopted plan, is in no way needed 7 to equalize population and serves some other 8 purpose, correct? 9 A Yes. It is serving another purpose. 10 Yes. 11 Q And in South Carolina you had testified 12 that any shifts that weren't -- between districts 13 that were not necessary to equalize population 14 violated the traditional districting principle of 15 constituent consistency or cores, did you not? 16 A Yes. 17 Q And the effect of these moves between 1 18 and 3 and 2 and 3 in the plaintiffs' alternative 19 plan had a clear direct racial effect on 20 District 3's black voting-age population, correct? 21 A Correct. 22 Q It reduced the BVAP from 56.3 in the</p>
<p style="text-align: right;">59</p> <p>1 of those people from 1 to 3 if you hadn't moved 2 81,000 people out to District 2, correct? 3 A Right. Because the -- that population 4 is -- that 106,000 is population that's located in 5 Hampton and Newport News that was formally in 6 District 1 and then was given to District 2. 7 Q Right. 8 A Yes. 9 Q So just generically, in terms of 1 and 2 10 and 3, you're not contending that any of these 11 shifts made in the plaintiffs' alternative plan 12 were designed to or needed to equalize population, 13 right? 14 A I think they were. That was one of the 15 motives for the drawing of it, yes. 16 Q Well, let me try again. 17 The adopted plan equalized the 18 population in all the districts while moving a 19 whole lot less people out of 3, 2, and 1 than the 20 alternative plan. 21 A Correct. 22 Q So you could have accomplished equal</p>	<p style="text-align: right;">61</p> <p>1 adopted plan to 50.2, depending on how you count 2 it, in the plaintiffs' alternative plan. 3 A Well, I -- the -- I believe it went from 4 57.2 down to 51 percent, 51.0, using this 5 inclusive method which is consistent with OMB and 6 DOJ directives on when we are evaluating these 7 sorts of racial gerrymandering claims. 8 Q Okay. I'm happy to pause there. 9 Just so the record is clear, in terms of 10 the way that the Virginia legislature counted 11 black voting-age population in their submission to 12 the Justice Department, if you apply them 13 consistently to the adopted plan and the 14 alternative plan, the reduction would be 56.3 15 percent BVAP to 50.2 percent BVAP; is that 16 correct? What you call the exclusive? 17 A The exclusive. So the Department of 18 Justice says -- 19 Q At this point, I just want to -- 20 A Yes. 21 Q -- clarify the record. I'll get back 22 into what the difference is.</p>

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<p style="text-align: right;">62</p> <p>1 A Well, I want to make sure that I have 2 the chance to talk about this so I don't want to 3 lose that opportunity -- 4 MR. DEVANEY: Let him finish his -- 5 THE WITNESS: -- here, so... 6 BY MR. CARVIN: 7 Q I'm really going to let you do it. I 8 just want to get the numbers out because I want to 9 keep using consistent numbers for the rest of the 10 deposition so I don't ever have to have this 11 conversation again. 12 A Well, then let's have that conversation 13 now then. I think that would be the best time to 14 have it. 15 Q True. 16 And then under the inclusive method, 17 just to get the numbers out, the BVAP in the 18 adopted plan was 57.2 to 51 percent. 19 That was the point we made earlier, 20 correct? 21 A Correct. 22 Q And you think the inclusive method is a</p>	<p style="text-align: right;">64</p> <p>1 categories as they wished. 2 And if I recall correctly, this would be 3 white, African American, Asian, Native American, 4 and Asian Pacific Islander. 5 So there are some people who check off 6 only one race, there are others who check off 7 multiple races, two or more. And so faced with 8 the situation, the Office of Management and 9 Budget -- it's in my original report -- 10 Q That's fine. 11 A -- we can go through it -- said that for 12 instances where there are challenges on race, the 13 appropriate way to calculate race is to calculate 14 any of the affected minority racial category, in 15 this case we would be looking at African 16 Americans, in any combination with any other race. 17 So we would be talking about African American 18 Asian, yes, or any other combination thereof. 19 Q Right. 20 A So the Department of Justice, when they 21 request a Section 5 submission, first requests 22 that the jurisdiction provide an African American.</p>
<p style="text-align: right;">63</p> <p>1 better measure. 2 A It's not that I think it's the better 3 measure, I think that it's the legally correct 4 measure to use in this case. 5 Q Okay. And it does not reflect, does it, 6 the Justice Department -- the inclusive method 7 does not reflect the Justice Department's method 8 for counting black voting-age population? 9 A That is incorrect. 10 Q So the Justice Department counts anybody 11 who checks black and Asian is black 12 automatically -- 13 A What they -- 14 Q -- is that true? 15 A What they require in a Section 5 16 submission is that the jurisdiction provide black 17 alone, plus the black, plus anyone who has 18 checked -- well, let me back up even further. 19 In 2000, the census created a new way 20 for individuals to identify their race. They 21 allowed individuals to check off one of five 22 categories and as many categories of those five</p>	<p style="text-align: right;">65</p> <p>1 And when African Americans are the minority at 2 issue, require the jurisdiction to supply African 3 American and African American plus white. 4 Q Right. 5 A And if they believe there is further 6 justification to look -- continue, they will look 7 at all of the racial categories. So there's -- 8 Q Just to be clear, as to somebody who 9 checks white and Asian after they've done further 10 analysis, they may count -- I'm sorry. 11 As to somebody who checks African 12 American and Asian, after they've done further 13 analysis they may or may not count that person as 14 African American, correct? 15 A Correct. 16 Q Under your analysis, everybody who 17 checked African American and any group except 18 white is automatically counted as African 19 American, correct? 20 A No. African American and white, and 21 African American alone, and African American 22 Asian, and any of the African American plus the</p>

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<p style="text-align: right;">66</p> <p>1 other four categories and either two or -- 2 Q Right. 3 A -- additional, yeah. 4 So you had said African American and 5 white would not be counted, so I just wanted to 6 clarify that. 7 Q Let's try again. 8 The Justice Department will 9 automatically count as African American somebody 10 who checks African American only or somebody who 11 checks African American and white, correct? 12 A That's the initial check, correct. 13 Q And sometimes they will also count as 14 African American people who check African American 15 and, say, Asian, correct? 16 A That's my understanding, yes. 17 Q Okay. Under your inclusive method you 18 would automatically count as African American 19 anybody who checks African American plus Asian, 20 correct? 21 A And, again, I'm following the Office of 22 Management and Budget directive --</p>	<p style="text-align: right;">68</p> <p>1 voting age from the old 3 to their new 1, correct? 2 A Correct. 3 Q And of those, under the inclusive 4 method, 2,286 of them are black -- 5 A Correct. 6 Q -- correct? 7 So if you minus -- let's just do first 8 the black VAP. Okay? 9 In terms of 1 and 3, there's a net 10 movement of 23,063 people of voting age from 1 to 11 3, 25,349 minus 2,286. 12 A Okay. Yes. 13 Q And then if you look at the total VAP, 14 so that's 23,063. 15 And then if you look at the total VAP 16 moved from 1 to 3, it comes out to 78,417, which 17 is 83,523 minus 5,106? 18 A You have lost me here. 19 This is the total VAP? 20 Q I'm trying to figure out after you 21 counted all the trades, how many people net get 22 moved into District 3 from District 1 under</p>
<p style="text-align: right;">67</p> <p>1 Q Yeah, I got it. 2 A -- which says that this is the proper 3 way to count multiple racial categories. 4 Q So if we go back to this chart on page 5 nine of Exhibit 3. 6 A Yes, I have that in front of me. 7 Q The one we were just looking at, the 8 table. 9 A Yes. 10 Q Okay. So now I'd like to focus on 11 moving the people from 1 to 3 in terms of VAP. 12 Plaintiffs' alternative plan moves 83,523 people 13 of voting age from benchmark District 1 to their 14 new District 3, correct? 15 A Correct. 16 Q And of those, I'll just look at the 17 inclusive method, 25,349 of them are black. 18 A Correct. 19 Q So if you do the math, and I'm again -- 20 oh, but let's finish it up. Because then we need 21 to go 3 to 1, okay, now I'm looking at the trades 22 back from 3 to 1, they move only 5,106 people of</p>	<p style="text-align: right;">69</p> <p>1 plaintiffs' alternative? 2 A Okay. 3 Q Okay. And since there's movement back 4 and forth, the black VAP that's moved into 5 District 3 constitutes 23,063, the total VAP net 6 from 1 to 3 is 78,417, correct? 7 A Correct. Yeah. I believe you've done 8 the math correctly. 9 Q Okay. So 29.4 percent of the people 10 moved from District 1 to District 3 in plaintiffs' 11 alternative are black voting-age population. 12 A I assume you've done the calculation 13 correctly. 14 Q So the base point is almost -- over 70 15 percent of the VAP moved from 1 to 3 is what -- 16 A Correct. 17 Q And that obviously decreases the BVAP in 18 District 3 relative to the adopted plan. 19 A Yes. 20 Q And then I just want to do the same 21 thing for the swaps between 3 and 2 in plaintiffs' 22 alternative plan. Okay?</p>

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<p style="text-align: right;">70</p> <p>1 And, again, they move from 2 to 3, they 2 move roughly -- well, let's start with 3 to 2, 3 they move roughly 97,432 people of voting-age 4 population, correct? 5 A Yes. 6 Q And of those, under the inclusive 7 method, 56,161 are black. 8 A Correct. 9 Q And then now I'm going to go back to 10 what they moved from 2 to 3, they moved 35,556 11 people of voting age of whom 9,866 were black 12 under the inclusive method, right? 13 A Yes. 14 Q So if you net all that out, 46,295 of 15 the people moved into -- of the 61,876 voting-age 16 population moved into District 2 from District 3, 17 are black. 18 A Again, I assume that your math is 19 correct. 20 Q Okay. And if you'd also trust me, that 21 means that 74.8 percent of the net movement from 3 22 to 2 in plaintiffs' alternative is black.</p>	<p style="text-align: right;">72</p> <p>1 gerrymander. 2 A Correct. 3 Q And in terms of the -- just for 4 classification, in your reports you refer to the 5 plan that existed in 2010 as the benchmark plan, 6 correct? 7 A Correct. 8 Q And then there's another plan out there 9 which you refer to as the remedial plan, which was 10 the plan that was enacted in the wake of the 11 invalidation of the district in Moon v. Meadows, 12 correct? 13 A Correct. 14 Q I just want to make sure we're on the 15 same page in terms of terminology. Okay? 16 A Correct. Yes. 17 Q And you say there's no reason to believe 18 that race was not the predominant factor in the 19 creation of the remedial and benchmark Third 20 Districts, correct? 21 A Correct. 22 Q So preserving the shape of the benchmark</p>
<p style="text-align: right;">71</p> <p>1 A Yes. 2 Q And that would obviously decrease the 3 BVAP in 3 -- 4 A Yes. 5 Q -- and increase the BVAP in 2. 6 A Correct. 7 Q And so they both had a clear racial 8 effect. 9 A Correct. 10 Q And in the adopted plan, you say that 11 when the trades have the effect of increasing 12 BVAP, you infer a racial purpose, correct? 13 A Correct. 14 Q And that's true here as well. 15 A Correct. 16 Q Now, in terms of compactness, we can go 17 through this, but I don't know that you're going 18 to disagree. 19 You think that the adopted District 3 is 20 bizarrely shaped and not compact, right? 21 A Correct. 22 Q You think it's an unlawful racial</p>	<p style="text-align: right;">73</p> <p>1 and remedial District 3 would simply perpetuate 2 the constitutional defects in those districts. 3 A Correct. 4 Q And you think the adopted plan is 5 strikingly similar to the unconstitutional 6 District 3, the District 3 that was struck down in 7 Moon v. Meadows, correct? 8 A Correct. 9 Q Also, in both the adopted and the 10 unconstitutional plan, BVAP is a substantial 11 factor indicating that race was the driving 12 factor, correct? 13 The movement -- 14 A Please restate that. 15 Q Yeah. Start again. 16 In both the adopted and the 17 unconstitutional plan, the BVAP is substantial, 18 meaning, I believe, in the neighborhood of 57, 19 61 percent. And you said that that indicates race 20 was a driving factor in the creation of those 21 districts. 22 A Correct.</p>

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<p style="text-align: right;">74</p> <p>1 Q And you think that the adopted plan is 2 even more similar to the benchmark District 3 than 3 it is to the unconstitutional District 3, right? 4 A I believe that -- please say that again 5 for me. I just want to follow the logic. 6 Q The plan adopted in 2012 is even more 7 similar to the benchmark District 3 than it is to 8 the unconstitutional District 3 struck down in 9 Moon. 10 A I've never provided an opinion on that, 11 so that's why I'm -- I've never made that 12 comparison. 13 Q Oh, okay. 14 A Maybe I did, but I just don't recall 15 making that in my reports. 16 Q I can walk you through it. But do you 17 disagree that the adopted plan is more similar to 18 the benchmark 3 than it is to the District 3 19 struck down in Moon v. Meadows? 20 MR. DEVANEY: Objection. Vague. 21 Go ahead. 22 THE WITNESS: I haven't done that</p>	<p style="text-align: right;">76</p> <p>1 the adopted District 3 is more similar to the 2 benchmark District 3 than it is to the 3 unconstitutional District 3? 4 MR. DEVANEY: Objection. Asked and 5 answered. 6 Go ahead. 7 THE WITNESS: Yes, there is doubt in my 8 mind. 9 BY MR. CARVIN: 10 Q All right. Well, maybe we can do 11 something that makes it simple in terms of BVAP, 12 right? 13 A Right. 14 Q Let's turn to page 14 of Exhibit 1, I 15 guess. 16 A Okay. 17 Q The BVAP difference between the adopted 18 and the benchmark is 3.1, percent, correct, an 19 exclusive 53.1 to 56.2? 20 A It's 3.3 percent change. 21 Q Okay. If you want to -- 22 A Yes.</p>
<p style="text-align: right;">75</p> <p>1 analysis, so I can't -- 2 BY MR. CARVIN: 3 Q Well, if it was vague, in terms of 4 geography, surely the adopted plan is more similar 5 to the benchmark District 3 than to the 6 unconstitutional District 3, right? 7 A Again, I haven't done that analysis so I 8 can't -- I mean, I've looked at them, but I 9 wouldn't -- you know, you have to look at the 10 population that's involved and everything else, so 11 I can't -- I can't tell you without doing the 12 analysis whether that's correct or not. 13 And I'm really not -- I'm trying to 14 answer your question here. So I'm just thinking, 15 I truthfully can't answer that question for you, 16 so I don't know what else to say to you without 17 doing any further analysis. 18 Q We can spend some time on this if you 19 want. 20 A If we need to, I mean, yes. 21 Q But just -- if you want to be here all 22 day -- is there really any doubt in your mind that</p>	<p style="text-align: right;">77</p> <p>1 Q -- use inclusive. 2 A Well, both of them have. It doesn't 3 matter which metric you use. 4 Q Yeah. So let's just be consistent. 5 53.9 to 57.2 is 3.3 percent difference? 6 A Correct. 7 Q And then do you recall the BVAP of the 8 adopted unconstitutional plan? 9 A It's in a report, so -- 10 Q I can tell you, it's 61.6. It's on 11 page five of your second report -- 12 A Okay. 13 Q -- Exhibit 2. 14 A I'm looking at Exhibit 3. I put them 15 out of order. My apologies. 16 MR. DEVANEY: What page on Exhibit 2? 17 MR. CARVIN: Page five. 18 THE WITNESS: So 61.6, correct. Yes. 19 BY MR. CARVIN: 20 Q Right. So there's a 5.3 percent 21 percentage point difference between the adopted 22 district and the unconstitutional district using</p>

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<p style="text-align: right;">78</p> <p>1 the -- 2 A Correct. 3 Q -- exclusive method, right? 4 A Correct. 5 Q And just to be clear, there was no way 6 of calculating the inclusive method for the 7 unconstitutional district because that was not an 8 option on the census form that governed during 9 that time. 10 A Correct. 11 Q Okay. Now alternative 3 BVAP is 12 50.2 percent or 51 percent in District 3, right? 13 A Let's get that number just to be sure. 14 I think it's on the same page. 15 So it's, yeah, 56.3. And then the 16 adopted -- no, the benchmark is -- 17 Q No, I'm now switching to the alternative 18 3 BVAP is 51 -- 19 A Oh, the alternative -- 20 Q Yes. 21 A -- is 51 percent. 22 Q Inclusive, and 50.2 percent exclusive,</p>	<p style="text-align: right;">80</p> <p>1 BY MR. CARVIN: 2 Q Well, you said -- 3 A You're talking about geography, and I 4 have to -- I'd have to do an overlay of the 5 districts, look at how the geography overlays with 6 one other, so I haven't -- I haven't done that. 7 Q Well, you did say that the differences 8 were minimal, right? 9 A Minimal between what? 10 Q The adopted and the alternative. The 11 whole point of this was to minimize the 12 differences between adopted 3 and alternative 3, 13 right? And it only affected the border between 2 14 and 3, right? 15 A Correct. 16 Q So by definition they're pretty similar, 17 aren't they? 18 MR. DEVANEY: Objection. Vague. 19 Go ahead. 20 THE WITNESS: So which two are similar 21 to each other? 22</p>
<p style="text-align: right;">79</p> <p>1 right? 2 A Correct. 3 Q And just to belabor the obvious, that's 4 2.9 percent less BVAP than the benchmark. 5 Exclusive is 53.1 to 50.2, inclusive is 53.9 to 6 51, correct? 7 A I believe I'm following you, but yes, I 8 believe you're correct. 9 Q Okay. Now alternative District 3 is 10 quite similar in shape and geography to the 11 adopted plan, correct? 12 A Yes. 13 Q It's similar? 14 A It is similar. 15 Q The alternative is more similar to the 16 adopted than the adopted is to the 17 unconstitutional District 3, correct? 18 MR. DEVANEY: I'm just going to object. 19 Vague. 20 You can go ahead. 21 THE WITNESS: Oh, boy, yeah. I haven't 22 done that analysis.</p>	<p style="text-align: right;">81</p> <p>1 BY MR. CARVIN: 2 Q The alternative is similar to the 3 adopted except for the minimal differences that 4 you outlined. 5 MR. DEVANEY: Same objection. Go ahead. 6 THE WITNESS: Yeah. They're similar 7 except for the shared boundary between the Second 8 and Third Congressional Districts. That's 9 correct. 10 BY MR. CARVIN: 11 Q And we could spend a lot of time, I just 12 want to know, under oath, do you really think that 13 the differences between the alternative and the 14 adopted are equal to the differences between the 15 adopted and the unconstitutional? 16 MR. DEVANEY: Objection. Lack of 17 foundation. And vague. 18 Go ahead. 19 THE WITNESS: Yeah, please, I'm trying 20 to understand the question. So please state that 21 again. 22</p>

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<p style="text-align: right;">82</p> <p>1 BY MR. CARVIN: 2 Q Isn't it blazingly obvious that the -- 3 A Yes. 4 Q -- alternative district by plaintiffs is 5 more similar to the adopted plan than the adopted 6 plan is to the unconstitutional plan struck down 7 in Moon v. Meadows? 8 MR. DEVANEY: Same objection. 9 You can answer. 10 THE WITNESS: Again, I haven't done the 11 analysis so I can't tell you -- 12 BY MR. CARVIN: 13 Q So you have no idea. 14 A I would need to do the analysis. 15 Q Uh-huh. 16 You found that the adopted plan was 17 strikingly similar to the unconstitutional 3, 18 correct? 19 A Correct. 20 Q Okay. Do you think that the alternative 21 plan is strikingly similar to the adopted plan? 22 A I think it has some important</p>	<p style="text-align: right;">84</p> <p>1 Q There's an important difference between 2 the plaintiffs' alternative and the adopted? 3 A Yes. 4 Q And that's the municipal splits? 5 A No. 6 Q No. 7 What's the important difference? 8 A The important difference is that the 9 adopted -- plaintiffs' alternative is a plan that 10 is narrowly tailored to produce a black voting-age 11 population majority district. 12 Q Okay. When they did that, didn't they 13 preserve as much as -- 14 A Yes. 15 Q -- they could of adopted 3 except for 16 the expressed desire to have as narrow a majority 17 in District 3 as possible? 18 A Correct. They are trying to make 19 changes, minimal changes to all the existing -- 20 surrounding districts. So the decision, as I 21 understand was made, was that in order to prevent 22 disruption in elections to the Seventh, to the</p>
<p style="text-align: right;">83</p> <p>1 differences. 2 Q And there were no important differences 3 between the adopted plan and the unconstitutional 4 District 3? 5 Is that your testimony? 6 A No. But, again, I'm trying to 7 understand what your -- your question is here. 8 Q My question for the forth time is -- 9 A Yes. 10 Q -- is it not true that the alternative 11 plan is strikingly similar to the adopted plan? 12 A Except for the shared boundaries between 13 the Second and Third Congressional Districts, 14 correct. 15 Q Right. And in light of that difference 16 they're still strikingly similar, aren't they? 17 Just like adopted plan 3 is strikingly similar to 18 the unconstitutional District 3, correct? 19 A There's an important difference between 20 those two, the plaintiffs' alternative and the 21 adopted and the unconstitutional districts, so I 22 would disagree with you on this.</p>	<p style="text-align: right;">85</p> <p>1 Second and -- excuse me -- to the Seventh, the 2 First, and the Fourth Congressional Districts, the 3 boundary line only between the Second and Third 4 Congressional District would be altered. 5 Q And the purpose of that alterization was 6 to preserve the majority-minority district. 7 A Preserve a majority-minority district. 8 Q But no more than a bare majority 9 district. 10 A Correct. 11 Q All right. And then in terms of -- if 12 you could go back to your first report, Exhibit 1. 13 A Yes. 14 Q If you turn to page 15. 15 A Yes. 16 Q Okay. You say: A sophisticated 17 strategy to increase the black VAP of the adopted 18 Third District further involves removing lower 19 density black VAP communities from the benchmark 20 Third District and replacing them with higher 21 density black VAP communities from the surrounding 22 benchmark districts.</p>

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<p style="text-align: right;">86</p> <p>1 Right? 2 A Correct. 3 Q And that was the sophisticated strategy 4 that was pursued by the General Assembly to 5 further their racial purpose, correct? 6 A Yes. 7 Q And in terms of the trades between 4 and 8 7, the alternative district pursues exactly the 9 same strategy, correct? 10 A I have not done an analysis in the 11 trades between the 4 and 7. 12 Q In the alternative plan. 13 A In the alternative plan -- 14 Q Let me make it as simple s I can. 15 A -- 4 and 7 -- 16 Q The trades between 4 and 7 in the 17 alternative plan are identical to the trades 18 between 4 and 7 in the adopted plan, correct? 19 A All right. So yes. 20 Q So the criticism you had of the trades 21 between 4 and 7 for the adopted plan applies 22 equally to the alternative plan, correct, since</p>	<p style="text-align: right;">88</p> <p>1 trades between 3 and 7 in the alternative plan. 2 A Correct. 3 Q And as we said, the District -- adopted 4 District 3, as you said, is bizarrely shaped and 5 not compact, right? 6 A Correct. 7 Q And then if you could look at Exhibit 3, 8 page nine, you also agree that the alternative 9 District 3 is not compact, correct? 10 A Can you point me to -- 11 Q Yeah, page nine. 12 A Page nine, Exhibit 3? 13 Q Yeah. 14 A But is there a particular sentence that 15 you want me to look at? 16 Q Oh, I'm sorry. Sure. 17 You see where it says, "Narrowly 18 Tailored Use of Race," the general heading? 19 A Yes. 20 Q The second paragraph under that, the 21 second sentence, it says -- and you're discussing 22 the alternative District 3 -- it is not compact.</p>
<p style="text-align: right;">87</p> <p>1 they're identical? 2 A Do you mean 3 and 7? 3 Q I apologize. I'm probably talking too 4 fast, so let me break it down. 5 The trades between 3 and 4 in the 6 adopted plan -- 7 A Yes. 8 Q -- are identical to the trades between 3 9 and 4 in the alternative plan, correct? 10 A Correct. 11 Q And the trades between 3 and 7 in the 12 adopted plan are identical to the trades between 3 13 and 7 in the alternative plan. 14 A Yes. 15 Q Okay. So all the criticisms you had of 16 the adopted plan trades between 3 and 4 would 17 apply equally to the alternative plan, correct? 18 A Yes. 19 Q And all of the trades between 3 and 7 in 20 the adopted plan -- similarly, all the trades 21 between 3 and 7 that you criticized in the adopted 22 plan, that criticism would apply equally to the</p>	<p style="text-align: right;">89</p> <p>1 A Correct. 2 Q So you agree that the alternative 3 District 3 -- 4 MR. DEVANEY: Do you want to finish the 5 sentence though? Might as well have the full 6 sentence. 7 THE WITNESS: "But it is no longer the 8 least compact district." 9 BY MR. CARVIN: 10 Q Right. So you agree that alternative 11 District 3 is not compact. 12 A Correct. 13 Q And in the same sentence, you agree that 14 race continues to be a factor in how the 15 alternative District 3 was shaped, correct? 16 A Correct. 17 Q Okay. 18 A And it may help us in all of this just 19 to state the next -- the first sentence of the 20 bottom of page nine, the paragraph at the bottom 21 of page nine. "While in my opinion race continues 22 to be a factor in the creation of the alternative</p>

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<p style="text-align: right;">90</p> <p>1 Third District, the district is narrowly tailored 2 to produce the goal of the majority minority 3 district without unnecessarily compromising 4 traditional redistricting criteria." 5 Q Yeah. 6 A Yeah. 7 Q We'll talk about that. 8 In terms of compactness, you agree that 9 there's no minimum score of acceptable 10 compactness, right? 11 A Correct. It's an expert judgment. 12 Q And among these 30-plus measures of 13 compactness, you agree that they're all inherently 14 manipulable, right. 15 A Correct. 16 Q And in South Carolina you didn't use any 17 of these measures because they are so subjective 18 and manipulable, right? 19 A I don't remember which compactness 20 measures, but I believe there was some compactness 21 measures, if I recall. There were none? 22 Q Well, the record will speak for itself.</p>	<p style="text-align: right;">92</p> <p>1 less compact than adopted District 3, correct? 2 A Yes. 3 Q Okay. 4 A I don't dispute his compactness scores. 5 Q Now, we can go into the differences on 6 the three scores you use between the alternative 7 and the adopted, but just let me ask it generally. 8 Are you arguing that those slight 9 differences provide a professionally acceptable 10 basis for deeming one compact and the other not 11 compact? 12 A The measures themselves are not -- 13 there's no accepted standard on what makes a 14 district compact or not compact. Again, it's 15 the -- it's an expert opinion. 16 Q Right. And is there any professionally 17 accepted standard that says these differences on 18 three tests are of significance? 19 A There is no professional standard that 20 exists, no. 21 Q But you find that it's significant, or 22 do you, that -- as you just read, that at least</p>
<p style="text-align: right;">91</p> <p>1 You are not opining that the three 2 measures that you used are more reliable or 3 professionally acceptable measures of compactness 4 than the Ehrenberg Test or the Population Polygon 5 Test referenced in Mr. Morgan's report, are you? 6 A Well, actually, they're -- they're more 7 predominantly used. Reock and Polsby-Popper are, 8 if you look at sort of popularity of compactness 9 measures, yeah, they do tend to get used quite a 10 bit. 11 Q Okay. But does the popularity -- is 12 that co-extensive with reliable and professionally 13 acceptable measures of compactness? 14 A No, not unless a jurisdiction wishes to 15 bind itself to one of these compactness measures. 16 They all, as I stated previously, have 17 characteristics that are associated with them that 18 interact with the jurisdiction that you're drawing 19 districts for. 20 Q And we can look at Mr. Morgan's report, 21 if you'd like. But under the Ehrenberg and the 22 Population Polygon Test, alternative District 3 is</p>	<p style="text-align: right;">93</p> <p>1 under three of these tests, the alternative 2 District 3 is not the least compact district. 3 A I do find that among those three 4 measures, it is no longer the least compact 5 district, yes. 6 Q And if it had stayed the least compact, 7 would that be of any significance to you? 8 A It's an improvement of the district in 9 terms of traditional redistricting principles. 10 Q Right. But if it had been the least 11 compact on any of those measures, would it affect 12 your view as to whether or not there was a 13 relative difference between the alternative and 14 the adopted plan? 15 A Well, what I'm trying to get at again is 16 that you have to apply the compactness measures 17 within the context of the jurisdiction that you 18 are redistricting. So since we have the State of 19 Virginia, the fact that it is no longer the least 20 compact on these three measures is informative as 21 to how well it is -- the district is conforming to 22 traditional redistricting principles.</p>

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<p style="text-align: right;">94</p> <p>1 Q So if the alternative District 3 2 improves over the adopted District 3, but 3 nonetheless remained the worst district in the 4 state, that would indicate that the improvement is 5 of no consequence, correct? 6 A I would not -- 7 MR. DEVANEY: Object to form. 8 Go ahead. 9 THE WITNESS: Yeah, I would not 10 necessarily say so. If you had an extreme example 11 of a district that was really stringy and barred 12 together but still was not the least compact in 13 the state, then you would still say there was 14 something meaningful about the way in which the 15 district had become more compact, even if it 16 wasn't the most -- no longer the least compact 17 district in the state. 18 BY MR. CARVIN: 19 Q So there's two alternatives: The 20 alternative plan improves over the adopted plan, 21 and the second alternative is the alternative plan 22 improves over the adopted plan but remains the</p>	<p style="text-align: right;">96</p> <p>1 the compactness measures help inform a decision, a 2 judgment about the compactness of the districts. 3 So does just looking at the shape of the district, 4 too. And that's what the courts rely upon 5 primarily. 6 Q Yeah. I was just trying to focus -- go 7 ahead. 8 A So, gain, I'm -- would an increase in 9 compactness factor into my evaluation? Yes, it 10 would factor into the evaluation. 11 Is it that it is -- is there something 12 extra that is inherent about the district 13 becoming -- changing the rank ordering? There's 14 something there that is factored into the 15 decision, but you have to look at the -- again, 16 the context of the redistricting. 17 So there may be just this highly 18 non-compact district that you're never going to be 19 able to improve its compactness because it's an 20 island or something, Hawaii or something like that 21 and you're just stuck with what you've got. 22 So I -- again, I just don't -- I try --</p>
<p style="text-align: right;">95</p> <p>1 worst district in the state on the basis of that 2 traditional districting principle. 3 In the latter category, do you consider 4 the improvement in any way significant? 5 A It would factor into my evaluation of 6 the compactness of the district, yes. 7 Q Right. And so if it had remained the 8 least -- the worst performing district on a 9 measure of traditional districting principles, 10 that would suggest that the improvement is not as 11 consequential as it is that improved over other 12 districts in the state. 13 A Again, I would have to look at the 14 context of everything else here -- 15 Q Well, I'm just trying -- 16 MR. DEVANEY: Let him finish. 17 MR. CARVIN: Sure. 18 THE WITNESS: Well, again, you're asking 19 me that these -- there are no standards applied -- 20 BY MR. CARVIN: 21 Q Right. 22 A -- to these compactness measures. So</p>	<p style="text-align: right;">97</p> <p>1 it all boils into an expert judgment about what 2 the meaning of those compactness scores are within 3 the context of the state in which you are 4 redistricting. 5 Q Okay. If you could turn to page nine of 6 Exhibit 1, please. 7 A Yes. Yes. 8 Q And you can read the last paragraph. 9 But the gist of it is that, under Moon, 10 a key indicia of the racial gerrymander was that 11 District 3 in that case split more localities than 12 any other district, 11 of 21, in that context, 13 right? 14 A Correct. 15 Q And you say that another key factor -- 16 if you want to turn to page ten, again at the 17 bottom of page ten -- was that the District 3 18 there split more VTDs than any other district. 19 A Correct. 20 Q Now, the locality splits in the adopted 21 plan were reduced relative to the benchmark plan, 22 right?</p>

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<p style="text-align: right;">98</p> <p>1 A I would have to see those statistics 2 again. 3 Q All right. 4 A I will -- if you represent that that's 5 true, I will -- yeah, it's a statement of fact. 6 Q It's actually at the bottom of page 7 nine, what we were just talking about. 8 If you read that whole sentence, the 9 Moon court noted that the plaintiffs split some 21 10 independent cities and the adopted Third District 11 split 17 -- 12 A Correct. 13 Q -- independent cities and counties. 14 And I'll represent to you that the 15 benchmark plan had 19 splits in it as well. Okay? 16 And I'll also represent to you that the 17 number of VTD splits were much fewer in the 18 adopted plan than in the Moon unconstitutional 19 plan, which you can also check by looking at 20 page ten of Exhibit 1. 21 MR. DEVANEY: You're asking him to 22 verify that?</p>	<p style="text-align: right;">100</p> <p>1 A Yes. 2 Q Okay. And this -- 3 A Which page? 4 Q Yes. Page nine, please. 5 A Okay. Yes. 6 Q And here you're responding to -- see the 7 heading that says, "VTD or Locality Splits"? 8 A Yes. 9 Q Okay. Why don't you just read the 10 paragraph -- the second paragraph beginning with 11 "Dr. Brunell..." 12 Do you see that? 13 A Yeah. "Dr. Brunell" -- 14 Q No. I'm sorry. I want you to read it 15 quickly to yourself. 16 A Okay. Sorry. I thought you wanted me 17 to do it out loud. 18 Yes. 19 Q Okay. So you say that even though 20 there's improvement over the benchmark plan and 21 even more of an improvement over the 22 unconstitutional plan, you state, "Even if it</p>
<p style="text-align: right;">99</p> <p>1 MR. CARVIN: More than happy to look at 2 it. 3 BY MR. CARVIN: 4 Q If you look at the bottom of 10, it says 5 there was 54 split precincts in the Moon district 6 and the 37 of them were in the Third District. 7 Do you see where you wrote that? 8 A Correct. Yes. 9 Q And then if you go to the top of page 10 11, the adopted Congressional District has only 20 11 VTD splits, but 14 of them are within the Third 12 District. 13 A Correct. 14 Q And you're also aware, are you not, that 15 the number of splits in VTD decreased from 26 to 16 ten from the benchmark plan. 17 Are you aware that there was fewer VTD 18 splits in the adopted plan that was -- 19 A If you represent it to be true, I 20 will -- we don't need to quibble over it. 21 Q Okay. Then if you could turn to 22 Exhibit 2, please.</p>	<p style="text-align: right;">101</p> <p>1 improves to some degree upon aspects of the 2 benchmark district, the fact remains that, like 3 the Moon v. Meadows unconstitutional district, the 4 adopted Third District has more splits than any 5 other district." 6 A Correct. 7 Q So relative improvement in splits is not 8 important as long as the district has more splits 9 than any other district, correct? 10 A That's one indicator that I used to 11 determine that race was the predominant factor, 12 yes. 13 Q Okay. If you could turn to Exhibit 5, 14 please. 15 A Yes. 16 Q Page 20. 17 A Yes. 18 Q If you look at -- we can do this at 19 length if you want. 20 You would agree with me that District 3 21 still has more locality splits than any other 22 district under plaintiffs' alternative plan than</p>

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<p style="text-align: right;">102</p> <p>1 any other district in the state, right? 2 A I believe that's true, yes. 3 Q Then if you turn to -- I think it's 4 page four -- well, actually, I've got to take you 5 back do Exhibit 3. Sorry. This information is 6 scattered all over the place. 7 Okay. This is your own analysis of 8 locality splits and VTD splits. Okay? 9 A Which page are we on? 10 Q I'm sorry. Page four. 11 A Yes. 12 Q Okay. So let's start with locality 13 splits in the top table. 14 A Yes. 15 Q The adopted plan District 3 has nine 16 locality splits, correct? 17 A Yes. 18 Q And the alternative plan has eight? 19 A Yes. 20 Q So that's an improvement of one split, 21 correct? 22 A Correct.</p>	<p style="text-align: right;">104</p> <p>1 state, correct? 2 A Right. The important thing here, again, 3 is that race still predominates in the creation of 4 the Third District in plaintiffs' alternative 5 plan, but the use of race is narrowly tailored to 6 achieve a black voting -- bare majority black 7 voting-age population district. 8 Q Right. I'm just going through this 9 slowly before we get -- you understand that 10 narrowly tailored is a defense to a plan where 11 race predominates over traditional districting 12 principles, correct? 13 A Correct. 14 Q And you agree with me that plaintiffs' 15 alternative race does predominate over traditional 16 districting principles. 17 A I do agree with that. 18 Q And your argument is that it nonetheless 19 is more narrowly tailored to comply with 20 Section 5? 21 A Yes. Correct. Or Section 2 challenge, 22 yes.</p>
<p style="text-align: right;">103</p> <p>1 Q But it's still more splits than any 2 other district in the state -- 3 A Yes. 4 Q -- by a substantial margin. 5 A Yes. 6 Q Same thing with VTD splits. I know 7 there's different ways to count all these things, 8 but you say that there's 14 VTD splits by 9 District 3, correct? 10 A Correct. 11 Q And the alternative plan has 11 VTD 12 splits, right? 13 A Correct. 14 Q And it still has more -- District 3 15 still splits more VTDs than any other district in 16 the state. 17 A Correct. 18 Q So just like the adopted plan's 19 improvement over the benchmark and the 20 unconstitutional, it's not really significant that 21 it slightly improves over the adopted because it 22 still has the most locality VTD splits in the</p>	<p style="text-align: right;">105</p> <p>1 Q All right. 2 A Actually, let me take that back. Let me 3 correct myself. It's narrowly tailored in the 4 sense that this is for a 14th Amendment claim, 5 that race was used -- was the predominant factor. 6 Q Well, we'll get back into this in some 7 detail, but I'll -- 8 A Right. Because you could have a 9 district that's under 50 percent black voting-age 10 population or minority population. That will pass 11 muster with the Department of Justice. 12 Q Under Section 5. 13 A Under Section 5, yes. 14 Q So you understand that the test under 15 the 14th Amendment is you narrowly tailor it to a 16 compelling government interest, right? 17 A Correct. 18 Q Is the compelling government interest 19 here compliance with Section 5? 20 A Correct. But there are alternatives 21 like the Senate -- adopted Senate plan back in 22 2011 that has a 44 percent black voting-age</p>

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<p style="text-align: right;">106</p> <p>1 population district. 2 So it's possible to even further 3 narrowly tailor this if you wish to go below a 50 4 percent black voting-age population district. 5 Q And so by "narrowly tailored," you mean 6 reduce the BVAP to the extent that it doesn't 7 cause retrogression in the eyes of the Justice 8 Department. 9 A Correct. So the standard that we're 10 working with here with Section 5 is a 11 non-retrogression standard. It's not a narrowly 12 tailored standard. 13 Q And retrogression doesn't mean 14 preserving the same number of majority-minority 15 districts, it means preserving the same number of 16 effective minority districts. 17 A Correct. 18 Q Right. And by "effective," you mean, in 19 this case, black voters have an opportunity to 20 elect a candidate of choice. 21 A Correct. 22 Q Right. And that often doesn't require</p>	<p style="text-align: right;">108</p> <p>1 A Correct, yes. 2 (Whereupon, a brief recess was taken.) 3 BY MR. CARVIN: 4 Q Let's see if we're arguing about 5 anything. If you could turn to Exhibit 4, 6 page seven, please. 7 A Page seven. Yes. 8 Q If you could read the last full 9 paragraph to yourself, and I'm going to ask you a 10 couple of questions on it. It begins, "On the 11 issue of the VTD splits..." 12 A Yes. 13 Q Just go ahead and read it, then I'll ask 14 you a question. 15 A Yes. 16 Q The simplest way to answer this, do you 17 disagree with Mr. Morgan that the only difference 18 in terms of split VTDs between the alternative and 19 adopted plan involves VTD splits that don't affect 20 any population? 21 A That's what he calls technically split 22 VTDs.</p>
<p style="text-align: right;">107</p> <p>1 50 percent BVAP to provide them with that 2 opportunity. 3 A Correct. It may require much more, it 4 may require less. 5 Q And in this case, you've done a racial 6 black voting analysis, which indicates you could 7 go well below 50 percent and still provide 8 minority voters with an opportunity to elect their 9 candidate of choice, correct? 10 A Yes. I have done analysis of that sort, 11 yes. 12 Q And you point out that the Senate came 13 in with one six points below 50 percent and that 14 nonetheless was not retrogressive? 15 A I have not done an analysis of that 16 district to know if it is retrogressive. I just 17 know that the Senate adopted that plan and that 18 Representative Scott said publicly that he would 19 have supported that plan, so -- 20 Q Which is a pretty strong indication that 21 the district was not retrogressive even at 44 22 percent.</p>	<p style="text-align: right;">109</p> <p>1 Q And these technically split VTDs are the 2 only difference between the alternative and the 3 adopted plan. 4 A Yes. These are VTDs that exist. They 5 are part of jurisdictions that extend into the 6 James River, and the -- they are split when the 7 benchmark plan -- excuse me -- the adopted plan 8 takes in the localities -- portions of the 9 localities of Hampton and goes into the James 10 River and comes up and takes -- and to Newport 11 News. And in order -- these splits are occurring 12 in order to bypass white communities so that they 13 aren't put into the Third Congressional District. 14 Q Okay. So let's just start from the 15 beginning. 16 The second-to-last sentence on 17 page seven, you say, quoting Mr. Morgan, "Where 18 population is concerned, the numbers of split VTDs 19 and split" -- "VTD splits in the enacted plan are 20 the same as the number of split VTDs and VTD 21 splits in the alternative plan," you agree with 22 that characterization, don't you?</p>

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<p style="text-align: right;">110</p> <p>1 A But there's an -- I agree with that, but 2 let my read the entire -- 3 Q I'm going to ask. Do you agree with 4 that characterization? 5 A Well, let me read the full sentence in 6 response just in case it doesn't get into the 7 record. 8 So I -- in the next sentence I say, "I 9 agree with this characterization, but there is an 10 important racial component to these technically 11 split VTDs that is entwined with contiguity." 12 Q Okay. Great. 13 So I'm just going to ask you again. 14 Do you agree that the number of split 15 VTDs in the enacted plan are the same as that in 16 the alternative plan when you're talking about 17 VTDs that affect population? Correct? 18 A I answered that question. 19 Q And the answer is "yes"? 20 A I will refer you back to my previous 21 answer. 22 Q Okay. You agree with it, but you think</p>	<p style="text-align: right;">112</p> <p>1 A "I agree with this characterization that 2 there's an important racial component to these 3 technically split VTDs that is entwined with 4 contiguity." 5 Q Now, normally splitting the -- VTDs are 6 Voting Tabulation Districts, right? 7 A Correct. 8 Q So normally, if you split a VTD and it 9 doesn't affect any voters, it's of no consequence 10 normally, right? 11 A I would disagree with that in this case. 12 Q I know you disagree with that in this 13 case, which is why I asked you, normally, it 14 doesn't matter except for the racial component, 15 which we're going to discuss in a second. 16 Normally, it doesn't matter, right? 17 A Normally, it does not matter. 18 Q Thank you. 19 And the reason you think it matters here 20 is because they were using these VTD splits to 21 bypass white population. 22 A White and, in another case, water</p>
<p style="text-align: right;">111</p> <p>1 there's an important racial component, right? 2 A Correct. 3 Q But before we get to the racial 4 component, do you agree that the numbers are the 5 same in both the enacted and the alternative plan? 6 Correct? 7 A I would refer you back to my previous 8 answer. 9 MR. CARVIN: Read the question. 10 (Whereupon, the Reporter read the record 11 as requested.) 12 THE WITNESS: And to preserve what I 13 think is an important characteristic of these 14 VTDs, I will read the entire sentence that's in my 15 report. 16 "I agree with this characterization, but 17 there's an important racial component to these 18 technically split VTDs that is entwined with 19 contiguity." 20 BY MR. CARVIN: 21 Q When you say you agree with this 22 characterization, you agree with his math, right?</p>	<p style="text-align: right;">113</p> <p>1 contiguity was used to bypass black populations as 2 well. 3 Q So it's the bypassing of the racial 4 concentrations that is significant. There's no 5 independent significance to the fact that there 6 was split VTDs, correct? 7 A Yes, there is, because it has this 8 racial component to it. 9 Q If they had done the same thing without 10 splitting VTDs that affected no population, you 11 would be making the argument, wouldn't you, that 12 they did it deliberately to bypass the white and 13 black populations, right? 14 A Please restate that question for me. 15 Q It's the racial component that bothers 16 you. The reason they split these VTDs with no 17 population in them is what bothers you. 18 There's no significance independently to 19 the fact that a VTD was split that affected no 20 population, correct? 21 MR. DEVANEY: Object to the form. 22 Go ahead.</p>

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<p style="text-align: right;">114</p> <p>1 THE WITNESS: In a situation -- I'm 2 trying to answer your question in a way that 3 preserves what I think is the important 4 characteristic here. 5 If there had been no racial component, 6 then a split of a VTD would not provide evidence 7 that there was -- race was a predominant factor in 8 the splitting of that VTD. 9 BY MR. CARVIN: 10 Q Now, in terms of these VTD splits 11 generally, you do not contend that there was any 12 circumstance where they split a VTD, took the 13 black part of the VTD and put it into District 3, 14 and left a predominantly white part of a VTD out 15 of District 3, do you? 16 A No, I do not. That is not in my report. 17 Q So contiguity over water satisfies the 18 Virginia constitution contiguity requirement, 19 right, regardless of whether there's a bridge or 20 road connector over the water? 21 A Yes. There are islands in Virginia, 22 so -- without a connecting bridge. So yes.</p>	<p style="text-align: right;">116</p> <p>1 respect locality boundaries in the alternative 2 plan." 3 What does that mean? 4 A The alternative plan as we described 5 previously, compared with the adopted District 3, 6 gives the entirety of the jurisdictions of Hampton 7 and Newport News to the Third District that were 8 formally in the Second District, thus rectifying 9 one of the defects here that I believe, which is 10 by -- using water contiguity and splitting of 11 these VTDs in order to bypass white communities 12 that are within Hampton and Newport News. 13 It also gives the entirety of Portsmouth 14 to the Third Congressional District, and it gives 15 all the entirety of the -- Norfolk to the Second 16 Congressional District. 17 Q Right. Is it your testimony that there 18 was no way to restore those various municipalities 19 and still have a connection over water through a 20 bridge or some connector? 21 A Oh, there's always ways. I mean, there 22 are lots of different redistricting plans that can</p>
<p style="text-align: right;">115</p> <p>1 Q Okay. But even without an island, isn't 2 there a connection over water that doesn't go over 3 a bridge in the alternative plan as well? 4 A There is in the -- that does -- is not 5 within the shared boundary between the Second and 6 Third Congressional Districts. 7 Q All right. I want to turn to Exhibit 3, 8 please. 9 A Yes. 10 Q Turn to page seven, please. 11 Okay. Plaintiffs' alternative district 12 is contiguous across the James River without a 13 connection in two places between the localities of 14 Portsmouth and Hampton and between Newport News 15 and Surry. 16 Is that a correct reading of what you 17 wrote? 18 A Yes. 19 Q And that doesn't violate the contiguity 20 requirement of the Virginia Constitution, does it? 21 A It does not. 22 Q You say here that, "This was done to</p>	<p style="text-align: right;">117</p> <p>1 be drawn. 2 Q Right. And so there's nothing wrong 3 with a water connection without a bridge unless 4 it's for a nonracial reason, right? 5 A Right. That was what the Moon v. 6 Meadows court found as evidence as race is a 7 predominant factor in the unconstitutional 8 district. 9 Q I understand that. I'm going to ask you 10 again. 11 You don't think that the water 12 connections without a bridge in the plaintiffs' 13 alternative plan reflect a racial purpose for the 14 reasons you just articulated, right? 15 A I have not done that analysis when I 16 looked at the -- there are some rectifications of 17 using water contiguity to bypass racial 18 populations, but that -- for example, that 19 connection between Newport News and Surrey is 20 potentially designed to bypass some communities. 21 And so race may still be -- well, I'm 22 getting into my reports and I've testified. I</p>

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<p style="text-align: right;">118</p> <p>1 believe that race is still the predominant factor 2 in the adoption of that second -- plaintiffs' 3 alternative district. 4 And so any similarities between the 5 Second -- the Third District and any other 6 district other than the Second District, that 7 since they are substantially the same except for 8 those shared boundaries, any complaints that I 9 have about -- any indication that I raised 10 previously in a previous report about the race as 11 a predominant factor that applied to other 12 connections between the Second and -- other than 13 the Second and Third District, they still remain, 14 in my judgment, as indicating that race is a 15 predominant factor in the plaintiffs' alternative 16 Third. 17 Q In terms of the political impact, do you 18 dispute that the effect of the adopted plan was to 19 benefit Republican incumbents, particularly those 20 surrounding District 3? 21 A I do. 22 Q You do?</p>	<p style="text-align: right;">120</p> <p>1 reasons for all purposes? Did he say that 2 traditional districting principles were 3 subordinate to race? 4 MR. DEVANEY: Is the question whether 5 Delegate Janus was lying? 6 BY MR. CARVIN: 7 Q The question is, I'm asking your 8 opinion. And the only answer you've given me is 9 Mr. Janus'. 10 Have you not done an independent 11 analysis? 12 A An independent analysis of what? 13 Q The political effect of the changes from 14 the benchmark plan on the Republican incumbent 15 district surrounding District 3. 16 A I have not done an analysis of the 17 political effect of the benchmark plan on -- no. 18 I have not done that analysis. 19 Q And have you read Mr. Morgan's report 20 that you replied to? 21 A Yes, I have. 22 Q Do you disagree with any of his</p>
<p style="text-align: right;">119</p> <p>1 A That's -- Delegate Janus says on the 2 floor of the House of Delegates that incumbency 3 was not a factor in the creation of his plan. 4 Q Was he telling the truth? 5 A I don't know. 6 Q Really? You didn't check this out? 7 A I didn't check out whether or not a 8 member of the House of Delegates was lying on the 9 floor of the House of Delegates. 10 Q Well, you read Mr. Morgan's report, 11 right? And he -- 12 A It's very illuminating, yes. 13 Q And the clear import of that is it did 14 benefit the Republican incumbents surrounding 15 District 3, right? 16 A Well, on the floor of the House of 17 Delegates, Delegate Janus was specifically asked 18 about incumbent protection, and he specifically 19 denied that incumbent protection was one of the 20 motivating factors for the creation of his 21 redistricting plan. 22 Q Do you believe Mr. Janus's articulated</p>	<p style="text-align: right;">121</p> <p>1 political numbers? 2 MR. DEVANEY: Objection. Vague. 3 THE WITNESS: Well, I haven't had an 4 opportunity to check them over, and I'd have to 5 look at his data that he used to construct, say, 6 the 2012 presidential election. We haven't had 7 that disclosure, so I don't know without doing 8 further analysis. 9 But if you want to represent that his 10 numbers are true and upon further investigation 11 that I would be satisfied that they're true, then 12 I have read his report and I've seen the numbers. 13 BY MR. CARVIN: 14 Q Right. And wholly apart from Mr. Morgan 15 or Mr. Janus, you think that the clear intent of 16 this plan was to create a partisan division of 8-3 17 Republicans with -- protecting incumbents of all 18 parties; isn't that true? 19 A That I believe that? 20 Q Yeah. 21 A That was how it was presented in the 22 popular press.</p>

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<p style="text-align: right;">122</p> <p>1 Q And you accepted that. And you reviewed 2 a whole lot of congressional districting plans, 3 right? 4 A Yes. 5 Q And you wrote an article after reviewing 6 the adopted plan. And in that article you 7 independently concluded that this was clearly an 8 8-3 partisan division that protected incumbents of 9 both parties, didn't you? 10 A We did not do an incumbency protection 11 analysis. 12 Q Did you write those words? 13 MR. DEVANEY: Is there an article you 14 want to show him? 15 MR. CARVIN: I want to ask if he 16 remembers. 17 THE WITNESS: I don't remember writing 18 those specific words, that this was an incumbency 19 protection. 20 BY MR. CARVIN: 21 Q I'm going to ask you again, and then 22 we'll go through it at great length if you want,</p>	<p style="text-align: right;">124</p> <p>1 about incumbency protection. 2 Q Now I'm switching to partisan division. 3 A Okay. 4 Q And when you looked at partisan 5 division, how many districts were likely to 6 reelect Republicans of the 11 districts in the 7 Virginia delegation? 8 A Eight. 9 Q Thank you. 10 And among those eight, did they include 11 the districts that bordered District 3? 12 A Yes. 13 Q Okay. So you do agree that the plan -- 14 MR. DEVANEY: Can you tone it down a 15 little bit. 16 BY MR. CARVIN: 17 Q -- that the plan improved the electoral 18 prospects of the GOP incumbents in the districts 19 surrounding District 3? 20 MR. DEVANEY: I'm just going to ask that 21 the yelling at the witness stop. 22 MR. CARVIN: I'm not yelling at the</p>
<p style="text-align: right;">123</p> <p>1 but I just want to know what you really believe. 2 Do you think, based on everything you've 3 reviewed, that this was an 8-3 plan designed to 4 protect Republican incumbents and the three 5 democratic incumbents? Do you believe it? 6 A What gives me some doubt in my belief is 7 that Delegate Janus, when questioned specifically 8 on this issue, said that incumbency protection was 9 not factored into the creation of the 10 redistricting plan. 11 Q Other than the Janus statement, do you 12 have any reason to doubt that? 13 What is your conclusion? 14 A Other than the Janus statement, other 15 than the author of the plan stating that 16 incumbency was not a factor, all we looked at was 17 a partisan division. We didn't look at incumbency 18 protection. 19 Q Okay. And, oh, you did look at partisan 20 division. 21 A We looked at partisan division, yes. 22 What you're asking me is a different question</p>	<p style="text-align: right;">125</p> <p>1 witness. I'm seeking to have the witness testify 2 somewhat truthfully under oath. 3 MR. DEVANEY: Come on. Move to strike 4 that. It's outrageous. No, it really is. 5 THE WITNESS: Do you want to point me to 6 some evidence to that effect? 7 BY MR. CARVIN: 8 Q Sure. 9 Turn to page 12 in Exhibit 5. 10 A Right. 11 Q And you read Brunell's report that also 12 went through the similar stuff, didn't you? 13 A Brunell did actually -- well, did not 14 raise this in the same way that Mr. Morgan did. 15 Q Is District 1 adjacent to District 3? 16 A Yes. 17 Q And there was a slight improvement in 18 its GOP representation in the enacted from the 19 benchmark, correct? 20 A Yes. 21 Q Do you have any reason to dispute that 22 characterization?</p>

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<p style="text-align: right;">126</p> <p>1 A No. 2 Q District 2, that's held by a Republican 3 incumbent? 4 A Correct. 5 Q And there was a slight improvement in 6 its GOP representation from the enacted to the 7 benchmark, correct? 8 A Point 2 percent or .3 percent if you use 9 2012, which would not have been available to the 10 districts at the time. 11 Q So slight improvement. 12 A Slight improvement. 13 Q And do you know that Incumbent Rigell 14 had just won for the first time in 2010? 15 A Yes. 16 Q He beat a Democratic incumbent? 17 A Yes. 18 Q And this is very much a toss-up 19 district, right? 20 A Yes. 21 Q Is District 4 adjacent to District 3? 22 A Yes, it is.</p>	<p style="text-align: right;">128</p> <p>1 A Oh, boy, I didn't follow you on that. 2 Say that again. 3 Q If you look at 2 to 3 -- 4 A Two to 3. 5 Q -- on Table 8 -- 6 A Yeah. 7 Q -- the number of people moved from 8 Incumbent Rigell, Republican Incumbent Rigell's 9 district to District 3 were between 64 and 10 69 percent Democrat, right? 11 A Sixty-four by the '08 number. 12 Q And 69 by '12. 13 A Yeah. 14 Q And the people moved from 3 to 2 were 15 roughly 47 percent or 48 percent Democrat, right? 16 A Correct. 17 Q So those swaps benefited District 2's 18 Republican composition, correct? 19 A Yes. The swaps between 2 and 3 improved 20 that. There were also swaps between 2 and 21 District 1 as well. 22 Q Yes.</p>
<p style="text-align: right;">127</p> <p>1 Q And do you know who the Republican 2 incumbent is there? 3 A Randy Forbes. 4 Q And was there a slight improvement in 5 the GOP representation in Mr. Forbes' district? 6 A Yes. 7 Q And District 7 has a Republican 8 incumbent? 9 A Correct. 10 Q And there was a slight improvement in 11 its Republican numbers between the enacted and the 12 benchmark. 13 A Interestingly, it's the largest 14 increase. 2.4 percentage points. 15 Q All right. Let's turn to page 13 of the 16 next. 17 A Okay. 18 Q Let's focus first on District 2 to 3, 19 okay. The people moved under the enacted plan 20 from 2 to 3 were roughly 64 percent Democratic 21 under the 2008 elections and 69 percent Democratic 22 in the 2012 elections, correct?</p>	<p style="text-align: right;">129</p> <p>1 A They're not presented here, and I 2 believe that those actually had a negative effect. 3 Q On? 4 A On Rigell's -- by your argument, 5 Rigell's reelection. 6 Q Do you know what party the incumbent is 7 in District 1? 8 A Republican. 9 Q So if it hurt Rigell, then it helped the 10 Republican incumbent in District 1. 11 A Just that -- that switch. But if we go 12 back to the chart, District 1 improved by 13 0.8 percent. So what happened there was a ripple 14 population through to offset that. 15 Q And if you had taken Republicans out of 16 Rigell's District 2 and moved them to District 1, 17 that would make it all the more important that you 18 get some Republicans from District 3 to compensate 19 for the loss to 1, wouldn't it? 20 A Or you could have given all of Newport 21 News and Hampton to District 3 and prevented some 22 racial issues.</p>

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<p style="text-align: right;">130</p> <p>1 Q Just assume with me, in trying to 2 maximize the political interest of Republican 3 incumbents, if you had lost Republicans from 4 District 2 to District 1, it would make perfect 5 political sense, wouldn't it, to have Republicans 6 come from District 3 into District 2 and send 7 Democrats from District 2 to District 3, correct? 8 A Well, this is, again, where I raise that 9 interesting point about District 7, which starts 10 out by -- as a much less competitive district than 11 District 2, and yet there were trades that were 12 made between District 3 and District 7 to increase 13 the Republican performance of District 7. 14 So it looks as though it wasn't really 15 the intent necessarily to protect Rigell here. If 16 you wanted to protect Rigell, you would have given 17 some more population, some more Republican voters 18 to Rigell by rippling through these other 19 districts. Instead, it looks as though the intent 20 was to protect Eric Cantor. 21 Q Okay. And he's a Republican incumbent. 22 A Right.</p>	<p style="text-align: right;">132</p> <p>1 approached to -- had the effect, although, again, 2 Delegate Janus did not state this as one of the 3 reasons why this was done, but had the effect of 4 improving the electoral performance of that 5 district. 6 BY MR. CARVIN: 7 Q Are you arguing that the plan sponsored 8 by the Senate Democrats was better for the 9 Republican delegation than the plan ultimately 10 enacted? 11 A It was better for the incumbent in the 12 Second Congressional District. 13 Q I understand that. 14 I'm going to ask you again. Are you 15 arguing that the plan passed by the Senate 16 Democrats was better for the Republican delegation 17 than the plan passed by the General Assembly in 18 2012? 19 MR. DEVANEY: Asked and answered. 20 Go ahead. 21 THE WITNESS: No, I'm not. I'm merely 22 arguing that if you cared about protecting Rigell,</p>
<p style="text-align: right;">131</p> <p>1 Q So you're not arguing that the changes 2 they made between District 3 and District 2 3 benefited Rigell, right? You're not disagreeing 4 with that, right? 5 You're arguing that they could have done 6 other things to benefit Rigell, correct? 7 A Correct. 8 Q But what they did do did benefit Rigell, 9 served the political interests of the Virginia 10 GOP, correct? 11 A Correct. If you wanted to protect 12 Rigell, there were other ways to do it. The 13 Senate map -- he actually did it to a much greater 14 extent than what -- the Democrats actually gave 15 him more -- 16 Q And -- yeah. Okay. 17 A -- more Republicans. 18 MR. DEVANEY: Finish your answer. 19 BY MR. CARVIN: 20 Q Please -- 21 A I'm just saying that there are other 22 alternatives. I mean, this was one way that was</p>	<p style="text-align: right;">133</p> <p>1 there were other ways to do it, and there was a 2 demonstratively better way of protecting Rigell 3 that was offered in the legislative process. 4 BY MR. CARVIN: 5 Q But obviously Incumbent Rigell is not 6 the only Republican incumbent adjacent to 7 District 3, is he? 8 A No. 9 Q There's Randy Forbes, isn't there -- 10 A Correct. 11 Q -- in District 4? 12 A Correct. 13 Q And what was the BVAP of the Senate 14 alternative's District 4? 15 A I don't recall what the number is. 16 Q The number is 45 percent. 17 Do you think that would have 18 substantially jeopardized Congressman Forbes' 19 chances for reelection? 20 A I haven't seen the numbers on that so I 21 can't tell you. 22 Q If people who are seeking to maximize</p>

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<p style="text-align: right;">134</p> <p>1 Republican influence in Congress are faced with an 2 alternative which preserves eight people and one 3 which preserves seven, wouldn't they opt for the 4 one that preserves eight? 5 A In your hypothetical? 6 Q Yeah. 7 A Yes. 8 Q Okay. So you wouldn't look exclusively 9 at District 2, would you? You would look at eight 10 districts in toto, wouldn't you? 11 A Eleven districts, but yes, or -- yes. 12 You would look at all of the districts, yes. 13 Q Okay. Right. And it's quite clear that 14 the Senate Democratic alternative was not 15 beneficial on an overall perspective for 16 Republicans relevant to the plan that was enacted 17 in 2012; isn't that true? 18 MR. DEVANEY: Asked and answered. 19 You can go ahead. 20 THE WITNESS: I do not know if Randy 21 Forbes would have won reelection in that district 22 or how -- to what extent his -- his chances would</p>	<p style="text-align: right;">136</p> <p>1 A Well, I think you -- I think you got the 2 wrong number. It was 53 percent, but yes. 3 Q It was. Okay. That's fair enough. 4 Fifty-three percent. 5 So it was politically beneficial, the 6 swaps between 4 and 3. 7 A Yes. We've already seen that in other 8 statistics. 9 Q And you've already said the 7 to 3 swaps 10 were the most beneficial for any incumbent. So 11 those were clearly beneficial for the Republican 12 incumbent in District 7, right? 13 A Yes. 14 Q Okay. 15 A Though, again, I -- when we're talking 16 about swaps, we're probably talking about things 17 that are rippling through other districts, right, 18 so it's -- that's just my copy on this, is that 19 there -- you can ripple through the population to 20 improve somebody else's chances elsewhere if 21 you -- 22 Q You didn't look at any of those</p>
<p style="text-align: right;">135</p> <p>1 have been affected by the change of that district. 2 BY MR. CARVIN: 3 Q You wouldn't characterize the Senate 4 Democratic plan as the 7-4 plan? 5 A Again, I have not done that analysis. 6 Q You haven't. 7 A I have done analyses, but I have not 8 looked at those analyses or aggregate numbers, and 9 have not looked at the effect of changes to 10 specific districts. 11 Q Oh, really? Okay. 12 So let's go back to the swaps, okay, the 13 4 to 3. This is the 4 -- 14 MR. DEVANEY: What exhibit are we on? 15 MR. CARVIN: Same page. Page 13, 16 Exhibit 5. 17 BY MR. CARVIN: 18 Q All right. The people that were shipped 19 from 4 to 3 were 86 percent Democratic or 20 88 percent Democratic, and the 5,000 or so people 21 shipped from 3 to 4 were 46 percent Democrat. 22 Was that politically beneficial?</p>	<p style="text-align: right;">137</p> <p>1 rippings. 2 A No. Well, neither does Mr. Morgan 3 either. 4 Q No, right. But you filed an expert 5 report here talking about these swaps. And we've 6 just agreed that all of those swaps between 7 District 3 and District 4, between District 3 and 8 District 7, between District 3 and District 1, and 9 between District 3 and District 2 were politically 10 beneficial for Republicans, correct? 11 A Correct. 12 Q So if someone was motivated purely by 13 incumbency protection and enhancing GOP 14 congressional electoral prospects, it would have 15 made perfect sense for them to make these swaps, 16 right? 17 MR. DEVANEY: Objection. Vague. 18 Go ahead. 19 THE WITNESS: If someone was motivated 20 solely, if that was the only consideration that 21 you had and that you did not have to conform to 22 the U.S. Constitution regarding race, yes, these</p>

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<p style="text-align: right;">138</p> <p>1 swaps do have the effect of improving the fortunes 2 of Republicans, yes. 3 BY MR. CARVIN: 4 Q And since that's the predictable effect, 5 it's fair to infer that that was at least one of 6 the purposes behind the swap -- of moves by a 7 Republican-controlled legislature, right? 8 A That's your inference. I have not done 9 that analysis. 10 Q Well, you've looked at the racial effect 11 and you've ascribed a racial purpose. 12 A Right. 13 Q Now, I'm outlining a clear and 14 politically beneficial effect. By parallel 15 reason, it would also be fair to infer a political 16 purpose, wouldn't it? 17 A You would have to look at the -- the 18 opportunities -- let me put it this way: If we 19 were excluding everything else and we did not look 20 at race, we did not look at anything else other 21 than equal population of districts, then yes. 22 Q So assume with me that everybody</p>	<p style="text-align: right;">140</p> <p>1 district is predominantly the same political 2 party. 3 So I don't know -- I'm sure that he 4 would tell you that he could be reelected out of 5 that district. And the incumbent is going to tell 6 you that they love the district that they are 7 given. 8 So I would imagine that he would say, if 9 he was forced to run in that district, he would 10 say that he could be reelected in that district. 11 Q But he would also say it would be much 12 more difficult to be reelected in plaintiffs' 13 alternative 2 than in adopted District 2, right, 14 if he's a rationally -- 15 A He probably would not say it. I've 16 never known an incumbent to ever say that they 17 didn't like their district. 18 Q Why don't we quit speculating about -- 19 your speculation about what Congressman Rigell 20 would say, and you can answer in your own mind. 21 Isn't it substantially more likely that 22 a one-term incumbent will be defeated in</p>
<p style="text-align: right;">139</p> <p>1 involved was white. Wouldn't it have made perfect 2 sense for them to do exactly what they did in this 3 plan? 4 MR. DEVANEY: Objection. Vague. 5 Go ahead. 6 BY MR. CARVIN: 7 Q In terms of politics and incumbency 8 protection. 9 A If there was no racial component -- 10 Q Yes. 11 A -- yes. 12 Q All right. Would you say that the 13 alternative plan is beneficial to Congressman 14 Rigell's reelection prospects? 15 A If we're going to use the metric of the 16 presidential vote within the district as the 17 indicator, then we would say no. 18 Q Is that a illegitimate metric? 19 A It's a metric. I mean, I've known 20 incumbents who have been successfully reelected 21 safely out of districts that they don't 22 necessarily have the same party, that their</p>	<p style="text-align: right;">141</p> <p>1 District 2 under plaintiffs' alternative than 2 under the adopted plan? 3 A I would say that his reelection chances 4 may be impacted by plaintiffs' alternative. 5 Q May be impacted. 6 A May be. He did actually really well in 7 that district in 2012. It's got a substantial 8 military population in it. He may -- he may be 9 able to do well among military. You know, it's -- 10 there are other factors here that could be applied 11 that would -- that benefit him. 12 Seriously, there's other things that are 13 there that he may actually do well in that 14 district. 15 Q All of those factors can be in play 16 without the plan 2, right? So in relative terms, 17 it would be substantially more difficult for him 18 to be reelected in plaintiffs' alternative 2 than 19 in the adopted 2, correct. 20 MR. DEVANEY: Objection. 21 THE WITNESS: I just don't know about 22 the substantially. That's --</p>

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<p style="text-align: right;">142</p> <p>1 BY MR. CARVIN: 2 Q What's a competitive district? 3 A Competitive district? 4 Q Yeah. 5 A It depends on whether or not you're 6 looking at election results or presidential vote 7 shares. And I have not done a competitive 8 analysis or -- 9 Q What's the range typically? 10 A You'd have to do a range based on -- you 11 look at the election results to the districts, and 12 then -- and you compare that to the underlying 13 partisan balance of the districts. And you look 14 at the correspondence between those, and then you 15 come up with a number. That's what I did in 16 Arizona. 17 Q Yeah. And here you also said that 18 typically a competitive district is between 45 and 19 55 and a safe district would be 55 and above, 20 correct? 21 A Again, I haven't done an analysis here, 22 so I can't -- I can't speak to that in this</p>	<p style="text-align: right;">144</p> <p>1 a range because I haven't done the analysis. 2 Q I'm just asking you: Have you ever said 3 anywhere that a competitive district is between 45 4 and 55? 5 A It's used generally in the literature. 6 But, again, to say what a competitive district is, 7 I would need to do an analysis. 8 Q And you haven't done an analysis here, 9 have you? 10 A No. 11 Q No. So you have no basis for rebutting 12 or disputing Mr. Morgan's analysis that District 2 13 is substantially more Democratic under plaintiffs' 14 alternative plan than under the adopted plan, do 15 you? 16 A We have that evidence, that the numbers 17 have changed. But what we don't know is whether 18 or not Rigell would be adversely -- how adversely 19 affected he may be in that change of those 20 numbers. That's what I'm trying to get at is, 21 I -- there are a number of other factors that 22 could play into his benefit.</p>
<p style="text-align: right;">143</p> <p>1 instance here. 2 Q I'm not asking you -- I'm asking you 3 generally: What would you characterize as a 4 competitive district versus a relatively safe 5 district? 6 A I have -- actually, in my academic 7 writings on this, this is exactly what I say, is 8 that you need to do this analysis in order to 9 determine. 10 So look back at the piece I wrote in PS 11 on this. It's in my CV. That's what I do. I do 12 an analysis to determine what is the range of what 13 constitutes a competitive district. 14 Q It's generally 45 to 55. 15 A No, it's not. You have to do an 16 analysis to determine what that range is. 17 Q And you never said otherwise? 18 A I have -- again, look back at that 19 article. I explicitly say you need to do this 20 analysis to determine what it -- that's what I 21 also did in Arizona as well. So I -- I'm not 22 going to say 45 to 55. I'm not going to give you</p>	<p style="text-align: right;">145</p> <p>1 So we haven't done the full range of 2 analyses to know how he may be affected by 3 plaintiffs' alternative district. We're just 4 looking at one metric. 5 Q So you don't know. You don't know. 6 A We would need to do more analyses, yes. 7 Q And you haven't done any analysis. 8 A I have not done those analyses. 9 Q All else being equal, would a Republican 10 rather be in a 50 percent Republican district or a 11 45 percent Republican district, all else being 12 equal? 13 A All else being equal. It's, again, a 14 hypothetical. All else being equal, yes, you 15 would rather be in a more Democratic or Republican 16 district if you were a Democrat or a Republican 17 respectively. 18 Q Are black voters in Virginia very 19 staunch Democratic voters? 20 A Yes. That racial block voting analysis 21 indicated that the -- in the two races that I 22 looked at, the African American candidate of</p>

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<p style="text-align: right;">146</p> <p>1 choice was the Democratic member -- the Democratic 2 candidate and that African Americans supported 3 that candidate over 90 percent. 4 Q Over 90 percent? 5 A Yes. 6 Q A hundred percent. There wasn't one 7 black in your analysis who didn't vote for the 8 Democrat, right? You came up with a 104 percent. 9 A Correct. 10 Q And you adjusted it down to 100 percent? 11 A There actually were two analyses. 12 There's also the homogeneous precinct analysis 13 which -- 14 Q And both of them -- okay. 15 A Yeah, yeah. So it's -- I would, again, 16 quibble with that. It's not 100 percent. 17 Q It's extraordinarily high. 18 A It's a very high level, yes. 19 Q It's virtually full extent 20 A Yes, which is consistent with what we 21 see in other -- 22 Q And it's -- go ahead.</p>	<p style="text-align: right;">148</p> <p>1 negatively affect the reelection prospects of a 2 Republican in District 2, correct? 3 A Correct. 4 Q Okay. And since that has that clear 5 negative political effect, again, it's reasonable 6 to infer that that was the purpose of the drafter 7 of the alternative plan, right? 8 A When asked on the floor, he denied it 9 explicitly. 10 Q The drafter of the alternative. 11 A Oh, the drafter of the alternative plan. 12 Say that again for me then so I can 13 understand the question. 14 Q You've consistently said that a clear 15 racial effect shows a racial purpose. 16 I'm asking you now if the clear negative 17 political effect gives rise to an inference of a 18 negative political purpose by the drafter of the 19 alternative plan. 20 A No, I don't believe that to be true. 21 Q Why is that? 22 A Well, as I stated in the report, the</p>
<p style="text-align: right;">147</p> <p>1 A -- in other places, yes. 2 Q Yes. In many places. 3 A Yes. 4 Q It's well known. So it's very well 5 known to the drafter of this plan that if he moved 6 a substantial black population from District 3 to 7 District 2, that that would have a negative 8 political effect on any Republican in District 2. 9 MR. DEVANEY: Objection. Lack of 10 foundation. 11 You can answer. 12 THE WITNESS: If you were just looking 13 at race and not looking at politics, and you infer 14 that -- that African Americans vote for Democratic 15 candidates, then you would reach that conclusion, 16 yes. 17 BY MR. CARVIN: 18 Q Well, you keep saying "if," but it's not 19 an if. You agree that blacks vote overwhelming 20 for Democratic candidates. So by definition, if 21 you move a substantial black population from 22 District 3 to District 2, you are going to</p>	<p style="text-align: right;">149</p> <p>1 intent there is to create a district that has -- 2 is narrowly tailored to create a bare African 3 American majority district while respecting 4 traditional redistricting principles. 5 So I think that -- that was the intent 6 that was expressed to me. 7 Q Though -- 8 A And that's the intent that I can infer 9 from the map. 10 Q And you take the alternative plan 11 drafter's word. 12 A Correct. And it's also my opinion 13 evaluating -- looking at the map itself. 14 Q Right. But when you're analyzing it 15 without the plan, you look at the racial effect 16 and ascribe a purpose, which no one ever said they 17 were doing, correct? 18 A Correct. 19 Q All right. Now, you also did this 20 political analysis -- 21 A You know what, I have to -- I have to 22 correct myself on that "correct."</p>

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<p style="text-align: right;">150</p> <p>1 Mr. Morgan provided us a 55 percent 2 quota that was used as guiding the creation of the 3 redistricting plan. So that gives us a pretty 4 clear racial intent. I'm sorry, I have to do it. 5 Q That's good. 6 Mr. Morgan told you -- 7 A In his report. Not told me, he told the 8 court. 9 Q He told the court in the report that 10 when they drew the House of Delegates plans they 11 had a 55 percent quota in mind. 12 He used the word "55 percent quota"? 13 A He used "55 percent threshold." 14 Q Threshold. 15 A So yes, I'm using -- I'm changing -- 16 Q Those are synonymous -- 17 A Yes. Right. 18 Q -- right? 19 And the drafter of this plan told you he 20 had a 50 or 51 percent threshold, right? 21 A Correct. 22 Q So he had a 50 percent quota in his mind</p>	<p style="text-align: right;">152</p> <p>1 Q So the 50 percent threshold used by the 2 drafter of the alternative plan is a 50 percent 3 quota, correct? 4 A Correct. 5 Q If you could turn to Exhibit 1 -- 6 Exhibit 2. I'm sorry. 7 A Exhibit 1 or Exhibit 2? 8 Q Two. 9 A Two. I got it. 10 Q If you turn to page seven. 11 Now, you were trying to figure out if 12 there was a political or racial pattern between 13 the swaps between 3 and the adjacent districts, 14 right? 15 A Correct. 16 Q Okay. And you did this analysis from 17 which you concluded that in 55 percent plus 18 districts -- how did you characterize the 19 55 percent plus districts? 20 A It's VTDs. 21 Q VTDs. How did the characterize that 22 politically?</p>
<p style="text-align: right;">151</p> <p>1 when he was drawing it, right? 2 A He had a 50 -- yes. He had a 50 percent 3 quota, yes. He -- 4 Q And 55 percent is not necessary to avoid 5 retrogression, correct? 6 A Fifty-five is not necessary -- say that 7 again. 8 Q To avoid retrogression. It's above the 9 point at which you need to avoid retrogression. 10 A Right. The retrogression standard is 11 that you would not regress the opportunity for a 12 minority candidate to elect a candidate of choice. 13 However, the allegations that are being made in 14 this by plaintiffs have nothing to do about 15 retrogression. 16 Q No, I understand. But 50 percent is not 17 necessary to avoid retrogression either. 18 A Can you please say that again because I 19 don't -- the form of the question is such that -- 20 Q You can avoid retrogression in 21 District 3 even if the BVAP was below 50, correct? 22 A I believe that to be the case, yes.</p>	<p style="text-align: right;">153</p> <p>1 A Heavily Democrat. 2 Q Yeah, highly Democratic, right? 3 A It's highly. 4 Q Yeah. So 55 percent is a highly 5 Democratic percentage, right? 6 A Correct. 7 Q And among the highly Democratic VTDs 8 that you selected, you found that in District 3 9 the BVAP was roughly 59.5 percent, and for those 10 over 55 outside of District 3, the BVAP was 11 roughly 43.5 percent district? 12 A Correct. 13 Q Now, you are not looking at -- you're 14 not alleging, as they did in Easley, that there 15 was precincts that were swapped between these 16 various districts in District 3, where they didn't 17 put in white Democratic districts of similar 18 composition to District 3, right? 19 A Well, that's essentially what this 20 analysis is doing, is it's -- 21 Q Did you look -- 22 MR. DEVANEY: Let him finish.</p>

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<p style="text-align: right;">154</p> <p>1 THE WITNESS: Yes. That's essentially 2 what this analysis is trying to get at, yes. 3 BY MR. CARVIN: 4 Q Let's focus on the word "essential." 5 Did you look at the VTDs that were swapped between 6 3 and the adjacent districts or -- 7 A Yes, I did. 8 Q Just those? 9 A Yes. 10 Q You didn't look at the VTDs within the 11 district? 12 A I didn't look at the VTDs within the 13 district. 14 Q If -- 15 A Please, yeah, say that more 16 specifically. 17 Q If there was a precinct in the middle of 18 District 3 that no way could have been swapped 19 with another district, did you count that VTD in 20 your analysis? 21 A Yes, I did. 22 Q So you didn't look at the VTDs that --</p>	<p style="text-align: right;">156</p> <p>1 VTDs at the borders of District 3 that were 2 predominantly white and Democratic that didn't go 3 into District 3, but similarly situated black VTDs 4 did go, are you? 5 A This analysis does get to that, yes. 6 Q It gets to it, but you didn't look at 7 that subset, did you? 8 A I have looked at that. 9 Q You have? 10 A Yes. 11 Q And you didn't put it in your report? 12 A I did not. 13 Q Okay. Well, what result did you come up 14 with there? 15 A Well, if you want to go through it, 16 there are two examples where race predominated 17 over politics. They involve a total of six 18 precincts. 19 I'll describe -- you have to look at 20 page -- 21 Q What exhibit are you on? 22 A Exhibit 1. This is on page four.</p>
<p style="text-align: right;">155</p> <p>1 A But -- 2 Q Excuse me. 3 A Please let me answer the question. 4 MR. DEVANEY: Let him finish. 5 THE WITNESS: Let me answer the full 6 question. 7 There are instances, however, where 8 there are districts that are interior to 9 District 3 that extraordinary measures were gone 10 through to incorporate them into District 2. So I 11 wouldn't say -- I don't know about the 12 impossibility of -- of your statement. 13 BY MR. CARVIN: 14 Q Yeah, I know. I'm going to ask you 15 again. 16 You didn't look at the VTDs that were 17 swapped between three of the adjacent districts, 18 you looked at any VTD within District 3, correct? 19 A Or in the localities that constitute 20 District 3, yes. So it's much broader than that, 21 yes. 22 Q So you're not arguing that there was</p>	<p style="text-align: right;">157</p> <p>1 Q Yeah. 2 A If you look at the diagram on page 3 four -- 4 Q Yeah. 5 A -- the top one. You see that there's 6 these three precincts that are in green. 7 Q Yeah. 8 A And there's one large precinct that is 9 in red that's part of the Norfolk Naval Base. 10 Q Yeah. 11 A Okay. So those three that are on the 12 interior that you are following this inlet up. 13 Q Yeah. 14 A I describe them in my report. I can 15 tell you what their names are if I look them up. 16 It's in Norfolk. 17 All right. So these are the precincts 18 of -- 19 Q What page are you on? 20 A It's on page 21, the second paragraph -- 21 full second paragraph down. I believe these are 22 the correct ones that we're talking about.</p>

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<p style="text-align: right;">158</p> <p>1 So this is the Suburban Park, Willard, 2 and Lafayette precincts. 3 Q Where are you? What paragraph? 4 A The second full paragraph down from the 5 top. So Suburban Park, Willard, and Lafayette 6 precincts, VTDs. And I describe their racial 7 composition. 8 Q Yeah. 9 A As it turns out, that -- the combined 10 population of those three districts, those three 11 precincts, I should say, sorry, were -- have 12 almost exactly the same population as the large 13 precinct that is at the -- sorry to flip back and 14 forth. And I don't recall the name of that 15 precinct, but it's the large precinct -- I can 16 point it to you -- that is here. 17 This was formerly in the Second 18 District. These were formerly in the -- in -- 19 excuse me. Yes, this was formerly in the Second 20 District, these were formerly in the Third 21 District. The population of this -- 22 Q I'm just telling you, the record is</p>	<p style="text-align: right;">160</p> <p>1 Q -- and those districts used to be in 2 District 3? 3 A Precincts, yes. 4 Q I'm sorry. Those precincts. Those 5 precincts used to be in District 3. 6 A Yes. They used to be in -- 7 Q And they were sent to District 2. 8 A Yes. 9 Q And there was another district directly 10 to the north of roughly equal population -- 11 A Correct. 12 Q -- that was kept in District 3 or moved 13 to District 3? 14 A From District -- it was formerly in 15 District 2 and moved into District 3. 16 Q And the racial composition of the three 17 districts that were moved into District 2 is 18 roughly 16.6 percent black. 19 A Correct. Correct. 20 Q And do you know the political 21 composition? 22 A They are actually heavily Democratic.</p>
<p style="text-align: right;">159</p> <p>1 never going to get this. So -- 2 A Yeah, I know. 3 MR. DEVANEY: He's referring to Exhibit 4 1 page four. 5 THE WITNESS: To Exhibit 1, page four. 6 There is a precinct that contains the -- 7 BY MR. CARVIN: 8 Q I'm sorry. I'm not trying to interrupt. 9 The orange district is what district, please? 10 A That is District -- that's adopted 11 District 3. 12 Q Okay. And the green is which district? 13 A Adopted District 2. 14 Q Okay. And the three precincts that wrap 15 around the orange precinct are the ones referenced 16 on page 21? 17 A Correct. 18 Q And they -- 19 A I describe how -- 20 Q I'm sorry. Just to clarify the 21 record -- 22 A Go ahead, yes.</p>	<p style="text-align: right;">161</p> <p>1 And what -- 2 Q Where is that in your report? 3 A It's not in my report. 4 So you're asking me if I looked at the 5 individual level data that was provided in the 6 disclosure to you? Yes, I did. 7 Q Okay. And then what was the composition 8 of the district that was left or switched to 9 District 3, the political composition? 10 A Of the precinct that was moved out, it's 11 predominantly African American. I don't have the 12 number handy available. But it's -- if you look 13 at the shape of this precinct, much of it 14 encompasses base housing. 15 And the lower part of -- there's this 16 little tail end of it that just hooks around. 17 That's what appears to be a low-income housing 18 unit, and so it looks to be highly African 19 American, it looks to be highly Democratic 20 performing. 21 But if you actually look at the number 22 of people who voted, which is what Mr. Morgan does</p>

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<p style="text-align: right;">162</p> <p>1 in his report, to look at the actual numbers, and 2 we just went through all of that, about trades 3 between districts and numbers of people, this 4 precinct has very low turnout because it's a 5 base -- a military base, and the base housing 6 there, those people are not voting in Virginia 7 elections. 8 And so if you actually look at the three 9 precincts combined and compare their Democratic 10 performance to the -- and look at total numbers 11 rather than -- and count for turnout, you actually 12 find that these -- these three white precincts, 13 predominantly white precincts, you probably should 14 not -- if you really cared about protecting 15 Rigell, you should not have put those three 16 precincts into the district. 17 Q And -- 18 A And by doing so, not only did you have 19 to go out of your way to wrap the Second District 20 around the Third District, you had to do it in a 21 way that crosses water -- again, to bypass racial 22 communities -- twice, once across Willoughby Bay</p>	<p style="text-align: right;">164</p> <p>1 correct? 2 A I did. They are aggregated in 3 statistics in that racial politics section we were 4 just -- 5 Q They -- 6 A Yes. 7 Q Okay. But you've never focused on those 8 three precincts in any report you've done. You've 9 lumped them in with a bunch of other precincts, 10 right? Correct? 11 A I provide aggregate statistics, correct. 12 Q These three precincts and many others. 13 A Correct. 14 Q Correct. 15 So you've never ever provided this to 16 either us or the court. 17 A I provided the -- 18 Q In aggregate. They're not -- 19 A -- data in disclosure to you. 20 Q Yes. Okay. 21 You've never made a representation in 22 any of the four reports to this effect.</p>
<p style="text-align: right;">163</p> <p>1 and once across this inlet that's a part of the 2 Chesapeake Bay, in order to get into these three 3 precincts. 4 So not only are you using water 5 contiguity to bypass racial populations, you're 6 also doing it in a non-compact way. 7 Q Right. And in a politically harmful 8 way, you're arguing. 9 A Yes. 10 Q And the population of the precinct that 11 was left and that you can't remember is the same 12 as the population of these three adjacent 13 precincts? 14 A Correct. 15 Q Okay. And -- 16 A It's a turnout issue. 17 Q And you've done four reports in this 18 case, correct? 19 A Correct. 20 Q And you've never once provided to us or 21 the court any analysis of the political leanings 22 or voting patterns of those three precincts,</p>	<p style="text-align: right;">165</p> <p>1 What's your second example? 2 A Well, you were asking me -- 3 Q Well, to be clear -- 4 A You were asking me a question. I -- I 5 think my analysis stands by itself, but you were 6 asking a more pointed question. So I'm being 7 responsive to your question of saying have I 8 looked at the borders, and I'm saying, yes, I did. 9 So did I put it in my report -- 10 Q Just so the record is clear, as to the 11 study you did and reported on in the exhibit, you 12 didn't look at the borders. And when I asked you 13 that question the answer was "no," correct? 14 A Well, the answer as I -- 15 MR. DEVANEY: Please let him finish his 16 answer. 17 THE WITNESS: Not in my report, but I -- 18 you asked me generally have I looked at the 19 borders. Yes, I have looked at the borders. 20 BY MR. CARVIN: 21 Q I'll try it again. Turn to Exhibit 2. 22 A Right.</p>

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<p style="text-align: right;">166</p> <p>1 Q The report you study on page seven 2 doesn't look at the border VTDs, does it? 3 A It does not. 4 Q It does not. 5 And you have never provided any analysis 6 of the border VTDs in terms of their political 7 composition, correct? 8 A Some of these VTDs that are concluded in 9 these aggregate statistics are on the border. And 10 I have -- 11 Q Therefore, you've never provided a study 12 focusing exclusively on the border VTDs, have you? 13 A Exclusively, no, I have not. 14 Q Okay. You've lumped them in with a 15 bunch of other VTDs. 16 You had one other example? 17 A Right. 18 Q What's the other example? 19 A The other example involves, again, two 20 precincts. These are in Hampton and, 21 unfortunately, I can't identify them offhand. 22 So there's one that's --</p>	<p style="text-align: right;">168</p> <p>1 American. But because of turnout issues -- and 2 they have roughly about the same population. 3 So because of turnout issues between the 4 two of them, if you -- if you were solely 5 interested in improving Rigell's performance, you 6 would have put the high turnout white precinct 7 into the Third Congressional District and not put 8 the lower turnout African American precinct into 9 the Third District. 10 Q Have you examined relative turnout 11 between blacks and whites in these districts? 12 A We're looking at -- again, this is -- 13 when we talk about relative turnout, we're looking 14 at the same statistics that Mr. Morgan is using 15 here, which is to look at the -- the number of 16 votes, right, that -- so we're looking at votes 17 rather than the total population. 18 But when we're drawing districts, we're 19 drawing districts with total population. So what 20 I'm saying is that if you solely had politics in 21 mind, if you solely wanted to improve Rigell's 22 performance, the map drawer here actually didn't</p>
<p style="text-align: right;">167</p> <p>1 Q What are you looking at? 2 A This is on page four of Exhibit 1. 3 And there, again, it comes down to a 4 turnout issue. There's a VTD that is -- I believe 5 it's this VTD that's on -- in the northwest 6 portion of Newport News. 7 Q Where are you? 8 A Do you see that? The precinct that's in 9 the most upper northwest corner of -- of 10 Congressional District 3. 11 Q For the record, what's the color of it? 12 A It's green. 13 This is a district that is predominantly 14 white, but has a high Democratic performance. 15 And there's a VTD here. It's the -- 16 it's this one that's -- I believe it's the one 17 that's jutting out into -- but I would have to 18 verify -- jutting out into -- it's part of 19 District 3 that's the part that's going into 20 Newport News. 21 That's also a highly performing 22 Democratic district, but it's also highly African</p>	<p style="text-align: right;">169</p> <p>1 have that, because you would have -- as their 2 goal, because they would have put these precincts 3 in that had higher Democratic performance, but 4 larger populations that were predominantly white 5 compared to those that had similar populations, 6 total population, but had lower numbers of votes 7 in these elections that Mr. Morgan is looking at. 8 Q You were looking at exclusive. For 9 example, in your first example, if you didn't know 10 that Bobby Scott wanted that base in his district, 11 you might infer it was left out. Not to help 12 Rigell, but could have been put into Scott's 13 district because he'd always wanted that in his 14 district, right? 15 A I don't know any of the reasoning -- I 16 don't know any of the reasoning behind why these 17 swaps were made. 18 Q And just so we're clear then -- 19 A Excuse me. I was drinking. I'm really 20 sorry. Other than that had a racial effect. And 21 politics seemed to be subsumed to race in those 22 instances.</p>

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<p style="text-align: right;">170</p> <p>1 Q Okay. And that last thing you 2 described, you didn't even describe that anywhere 3 in Exhibit 1. 4 A I did not. 5 Q You didn't even mention the precincts. 6 A I did not. This is, again, part of -- 7 they are components in this overall aggregate 8 analysis. 9 Q Okay. And did you do the same aggregate 10 analysis on plaintiff's alternative plan? 11 A I have not. 12 Q Why not? 13 A The sequencing of the reports was, I was 14 replying to Dr. Brunell saying that race 15 predominated over politics, so I responded to his 16 criticism. 17 Q Would it surprise you to know that if 18 you did the same analysis on plaintiffs' 19 Alternative, you would produce precisely the same 20 or close to the same disparate racial composition 21 between District 3 VTDs and non-District 3 VTDs? 22 A Actually that would surprise me because</p>	<p style="text-align: right;">172</p> <p>1 black than any of the adjacent districts, right? 2 A Correct. 3 Q So if you did any kind of sample of the 4 VTDs in District 3, it's quite probable they would 5 be more black than the VTDs in the adjacent 6 district, right? 7 A Please state it again. I'm just trying 8 to follow it, the question. Just do it again. 9 Q I have one district that's 54 percent 10 black and another district that's 15 percent 11 black. If I analyze the precincts with even 12 numbers in both districts, it's mathematically 13 almost certain that the districts -- the precincts 14 I selected in the first district will be more 15 black than the precincts I select in the Second 16 District. 17 A But the cutoff here we're looking at is 18 the predominantly heavily Democratic precincts. 19 Q Right. 20 A So that's where the -- we're trying to 21 look at -- what I try to do is look at 22 substantially similar precincts in terms of their</p>
<p style="text-align: right;">171</p> <p>1 of the way in which some of these white precincts 2 in Newport News were bypassed. 3 Q The ones you just mentioned? 4 A And the ones that I just mentioned. If 5 there was a substantially similar result but it's 6 not exactly similar, I would suspect it has 7 something to do with those precincts that I just 8 described to you. 9 Q Right. But you expect a gap, right? 10 A Yeah. I would expect a gap based on 11 what we just discussed. 12 Q And it might be you would expect at 13 least a 50 percent gap in the racial composition 14 of heavily Democratic VTD? 15 A I don't know. I haven't -- I would have 16 to do the analysis. So I don't know. 17 Q Well, let's try again. VTDs build 18 districts, right? 19 A Usually it's census blocs, because we do 20 split some VTDs, but yes, predominantly in this 21 plan we are using VTDs. 22 Q And District 3 is substantially more</p>	<p style="text-align: right;">173</p> <p>1 partisan character, but would they have -- did 2 they have similar racial character. So that's 3 what I was trying to get at with this analysis. 4 Q But obviously the heavily Democratic 5 precincts in District 3 are going to be more black 6 than the heavily Democratic precincts in the 7 adjacent districts because there are more black 8 precincts in District 3. 9 A There would be more heavily -- well, 10 let's take a look at the numbers. Sorry I have to 11 look back at my report to see how many numbers of 12 VTDs there were in both of them to answer that 13 question. So I think with some analysis I could 14 answer that question. 15 Q When you said you looked at the adjacent 16 districts, did you just look at the districts 17 directly adjacent to District 3 or did you look at 18 all districts throughout the State of Virginia? 19 A No. We -- it was adjacent -- not 20 adjacent districts. It's localities. So we 21 looked at the localities that were in and around 22 District 3.</p>

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<p style="text-align: right;">174</p> <p>1 Q Which localities? 2 A They're in the report. I describe them. 3 Q They're not. 4 A Yeah. 5 Q Please tell me. 6 A Okay. Let's get to this. Could you go 7 point to me because I've been trying to go back 8 and forth in my reports. 9 Q Page seven, Exhibit 2. 10 A Page seven, Exhibit 2. So there are 189 11 VTDs that are assigned District 3. So you're 12 asking this other question, which is how do these 13 break -- when I look at the white population and 14 they have a 116 with their average black VAP is 15 43.5 that are above 55 percent. So yes. Just on 16 the numbers alone, we know that there are 189 VTDs 17 that are in District 3 and that -- that are -- 18 have -- those that are highly Democratic 19 performing have a black, average black BVAP of 20 59.5 percent. And there are 116 that are highly 21 Democratic that have an average black VAP 22 43.5 percent.</p>	<p style="text-align: right;">176</p> <p>1 District 3. That's all I'm trying to figure out. 2 A The General Assembly -- the House of 3 Delegates showed that you could bypass large 4 populations without picking up any population by 5 using the James River. So 80 miles isn't 6 necessarily informative. You would have to know 7 about the intervening population between those 8 VTDs. Absolutely. 9 Q It's a factual question. Did you get 10 localities that were adjacent to District 3 or old 11 localities in districts that were adjacent to 12 District 3. It's a factual question. 13 A No, no, no. It says -- again, it's all 14 that comprise or adjacent to adopted Third 15 District. So that's -- that tells you what the 16 scope of the analysis is. It's not the districts. 17 So I know we're using districts. Sometimes we use 18 VTDs. That's why I'm trying to be precise here. 19 Q I think I understand your answer. If a 20 locality is not adjacent to District 3 but in a 21 district that was adjacent to District 3, you 22 wouldn't count it?</p>
<p style="text-align: right;">175</p> <p>1 Q My question is where did you get 116 2 VTDs from? 3 A Again, they are -- it's right here. I 4 examined the racial -- excuse me -- page 7, second 5 paragraph from the bottom. It begins the second 6 line there. 7 To test Dr. Brunell's theory I examined 8 the racial composition of highly Democratic VTDs 9 in the localities that comprise or are adjacent to 10 the adoptive Third District. And then there's a 11 footnote, I did not have data for these 12 localities, described below. 13 Q Right. So those. And any other -- I'm 14 just trying to figure out. You mean localities 15 that are on the border of District 3? 16 A No. That were in -- we -- we -- yeah, 17 we had that discussion before. 18 Q So let's say -- just to make it clear, 19 let's say they were District Four. But 80 miles 20 from District 3, you would count those because 21 some part of District Four is adjacent to District 22 3, or is it only if the localities are adjacent to</p>	<p style="text-align: right;">177</p> <p>1 A Right. That's correct. 2 Q And you listed somewhere the localities 3 you counted? Not in this report but -- 4 A Well, I -- I describe what they are, and 5 then I list some exceptions that weren't included. 6 Yes. 7 Q And you told us what you didn't include. 8 Where can I find out what you did include? 9 A We have all sort of the locality reports 10 from the -- and I've given it as part of 11 disclosure as well. So you have those -- those 12 data. 13 Q And the VTDs identified on your report 14 will also tell me which locality they came from? 15 A I believe so. I believe they are 16 identified. 17 Q Did you identify the VTDs, or did 18 somebody else do that for you? 19 A Actually, if you look at footnote eight 20 -- nine -- excuse me -- nine, these data were 21 provided to me by plaintiffs' counsel. It is my 22 understanding they were compiled by the National</p>

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<p style="text-align: right;">178</p> <p>1 Committee for Effective Congress. 2 Q So they were selected by plaintiffs' 3 counsel and the drafter of the alternative plan? 4 A I don't know who at NCEC -- 5 Q But the group. The group that drafted 6 the alternative plan? 7 A Correct. 8 MR. CARVIN: All right. Why don't we 9 take a lunch break. 10 (Whereupon, at 12:35 p.m. a luncheon 11 recess was taken.) 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">180</p> <p>1 Districts. 2 Q Is it more narrowly tailored than the 3 adopted plan? 4 A Yes. 5 Q Is that because it better complies with 6 traditional districting principles? 7 A Well, I'm basing it on the black 8 voting-age population in part and in part by the 9 traditional districting principles as well. 10 Q Okay. It doesn't comply as well with 11 the legitimate districting principle preserving 12 core as the adoptive plan; is that right? 13 A With that one criteria, correct. We 14 went over that previously. Yes. 15 Q And it doesn't comply as well with the 16 legitimate districting principle of incumbency 17 protection as the adoptive plan. 18 MR. DEVANEY: Objection to the 19 characterization. Go ahead. 20 THE WITNESS: Inasmuch as that may have 21 been a goal, but since Delegate Janus specifically 22 said it wasn't, yes.</p>
<p style="text-align: right;">179</p> <p>1 AFTERNOON SESSION 2 (1:17 p.m.) 3 WHEREUPON, 4 MICHAEL P. MCDONALD 5 was called for continued examination, and having 6 been previously duly sworn, was examined and 7 testified further as follows: 8 EXAMINATION BY COUNSEL FOR DEFENDANT 9 INTERVENORS CONTINUED 10 BY MR. CARVIN: 11 Q Now, your view is that the alternative 12 plan is narrowly tailored to comply with some 13 compelling government interest; is that correct? 14 A Narrowly tailored to comply with what? 15 Q Some compelling government interest? 16 A Yes. 17 Q And that compelling government interest 18 is what? 19 A To create a black majority district 20 while at the same time doing minimal changes to 21 other surrounding districts. So it only does 22 changes between the Second and Third Congressional</p>	<p style="text-align: right;">181</p> <p>1 BY MR. CARVIN: 2 Q Okay. If incumbency protection is part 3 of this plan, it better complies with that 4 legitimate districting principle than the 5 alternative plan, correct? 6 MR. DEVANEY: Objection to the 7 characterization. 8 THE WITNESS: We had this long 9 discussion. I haven't done a full analysis. 10 Rigell may be able to be elected out of that 11 alternative -- plaintiffs' alternative plan. So I 12 would tentatively say -- without doing a full 13 analysis, I would say yes. 14 BY MR. CARVIN: 15 Q Okay. And what traditional districting 16 principles does the alternative plan do better 17 than the adopted plan? 18 A It does better in terms of locality 19 splits and not just in terms of counting, which is 20 what Mr. Morgan would prefer us to do, but in 21 terms of the actual effective populations that are 22 split between those urban areas. So, you know, it</p>

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<p style="text-align: right;">182</p> <p>1 may be inconsequential that we would split a rural 2 county that had a thousand people in it. But the 3 splits that are involved here in the Second and 4 Third Districts are affecting hundreds of 5 thousands of people. So it's -- aligning those 6 district boundaries with the existing locality 7 boundaries improves the representation in terms of 8 communities of interest for -- as expressed in 9 terms as the locality boundaries for a large 10 number of people. It's not just a mathematical 11 counting of one as expressed in my expert report. 12 The other thing that it does -- if you have a 13 question on that, I can answer. 14 I believe that it improves the 15 compactness. I believe -- that's my expert 16 opinion on it, but I also believe simply a visual 17 inspection of the districts will reveal that the 18 compactness has been improved. And then finally, 19 the number -- the instances where water is being 20 used to bypass racial communities, those instances 21 have been rectified in places like the connection 22 between Hampton and Newport News or those three</p>	<p style="text-align: right;">184</p> <p>1 that I hope the court will consider it, that's a 2 thousand people -- thousand and a few change, I 3 think it's a thousand sixteen. They are put into 4 the Second District in order to equalize the 5 population exactly equal. But there have been 6 times where redistricting authorities and the 7 courts have allowed small deviations to promote 8 other legitimate goals. 9 And so I would -- if -- my 10 recommendation to the court would be if the court 11 believes that this alternative plan is a plan that 12 was -- would be one that they would adopt -- and 13 there's no guarantee on this, this is just a 14 demonstration plan at this point -- that I would 15 say that they would need to rectify that small 16 split there and put that affected population into 17 the Third Congressional District. 18 Q But in the plan as written the small 19 group that's separated from Portsmouth won't have 20 any influence over the congressional 21 representation given the -- 22 A Very unlikely that they're going to have</p>
<p style="text-align: right;">183</p> <p>1 precincts that we were discussing earlier within 2 Norfolk. 3 Q Now, you agree that there is one more 4 locality split in the adopted plan than in the 5 alternative plan, right? 6 A Correct. There's a numerical issue, 7 yes. But knowing the affected populations, I 8 think it's a more proper way to view this. 9 Q And you have a view that if you separate 10 a small group of people from the rest of their 11 municipality, that is not problematical; whereas, 12 if you evenly divide a locality and have 13 substantial percentages in both districts, that's 14 bad. Is that your view? 15 A It can be bad. There are instances 16 where you are forced, without any other 17 alternative, to separate those localities. 18 Q Now, the small group of people that are 19 left out of Portsmouth in the alternative plan 20 will have virtually no ability to influence their 21 representative given their small numbers, right? 22 A Right. As I explained in a footnote so</p>	<p style="text-align: right;">185</p> <p>1 much representation at all. That's correct. 2 Q Whereas, the large number of people that 3 are split between districts in the adopted plan 4 might well have significant influence over both 5 representatives, right? 6 A Well, we'll go back to the public 7 hearings that were conducted in the area. And 8 every single person who made a statement in that 9 public hearing -- Democrat, Republican, Tea Party, 10 doesn't matter who it was -- they all wanted their 11 localities to be kept whole. 12 So your hypothetical is that, yes, they 13 may be able to, but the expressed will of those 14 people within those localities is that they don't 15 want their locality split. 16 Q The express views of five. 17 A I believe I had eight, but, you know, 18 its -- there were -- every speaker who spoke on 19 that topic. And they were prominent people. 20 There were people who were leaders of their 21 organizations. 22 Q That public hearing aside, there's no</p>

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<p style="text-align: right;">186</p> <p>1 reason to think that a split that gives 2 substantial representation to two districts is 3 worse than a split that -- where only a few people 4 are put in one district, right? 5 A There's academic literature that says 6 that this does harm to representation. So that 7 when you have these locality splits people are not 8 as well aware of who the name of their incumbent 9 member is. It affects the cost of campaigns by 10 raising the areas that you have to -- the media 11 markets you have to be involved in, especially 12 when they get down to very noncompact shapes that 13 can also raise the cost of campaigns as well. So 14 there is some academic support for the notion that 15 you should keep these localities together to 16 improve representation. 17 Q What's the best -- that's academic 18 support on why you don't want to split any 19 municipalities in any circumstances, right? 20 A Right. 21 Q Is there any academic support for the 22 notion that splits that effect a fewer amount of</p>	<p style="text-align: right;">188</p> <p>1 the public record, I don't see it. It wasn't 2 discussed by the members of the public in the 3 public hearings. It wasn't discussed by Delegate 4 Janus when he made -- described the restricting 5 plan. So you're asking me to infer, basically. 6 All of the public record suggests that communities 7 of interest would be best served if those 8 localities were kept intact. 9 BY MR. CARVIN: 10 Q I'm asking your expert opinion. Isn't 11 it well recognized in the literature and the case 12 law that you can form communities of interest 13 around preexisting legislative boundaries? 14 A Around preexisting legislative 15 boundaries. Not in the academic literature that 16 I'm aware of. And I'm not aware of court cases 17 that hold that. 18 Q Are you aware of anyone that says the 19 opposite? 20 A Again, I told you there's some academic 21 literature that looks at splits and infers that 22 representation is improved when there are fewer</p>
<p style="text-align: right;">187</p> <p>1 people is less problematical than splits that 2 affect a large amount of people? 3 A There's very little academic literature 4 on splits. 5 Q Is there any cases that support your 6 hypothesis? 7 A Cases that support my hypothesis? Not 8 that I'm aware of. 9 Q And another traditional districting 10 principle is communities of interest, right? 11 A Correct. 12 Q And all these localities were split in 13 the benchmark plan, weren't they? They were split 14 in the adopted plan? 15 A Yes, they were. 16 Q So there's certainly a strong argument 17 that those people, having been split for the last 18 two redistricting cycles, formed a community of 19 interest around the geography where it was split, 20 correct? 21 MR. DEVANEY: Object to form. 22 THE WITNESS: If it's anywhere within</p>	<p style="text-align: right;">189</p> <p>1 splits. 2 Q Right. And the principal reason you 3 articulated was they don't know who their 4 representative is. But if you continue split from 5 prior representation, then they would be 6 conversant with their representation, and you 7 would have constituent consistency, which is an 8 important redistricting principle, right? 9 A I don't know what outreach the 10 incumbents have made to these affected 11 communities, but the community in question here, 12 at least one of them, is Hampton and Newport News. 13 And so what was that district -- we're not keeping 14 Hampton and Newport News, the splits that were in 15 this -- that were now in the second adopted 16 district. They used to be in the First District. 17 So there's no continuity for representation for 18 the citizens that are located within Hampton or 19 Newport News. So to make this argument sort of 20 neglects the fact that these people have already 21 been shifted from one district on another. 22 Q But they would still be the same members</p>

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<p style="text-align: right;">190</p> <p>1 of the community of interest that they had formed 2 in the prior districts regardless of whether they 3 were in one district or another. 4 A So why not put them in the -- 5 Q I'm sorry. 6 A Excuse me -- 7 Q They'd still have unified interest, 8 wouldn't they? 9 A So why not put them in the Third 10 District? If it was splitting their community 11 already, if the public already stated that they 12 wanted their communities intact, they didn't like 13 the current district boundary lines, the solution 14 there would seem to be if you're going to have to 15 move the First District out of Hampton and Newport 16 News, you would give that population to the Third 17 Diction, not to the Second Congressional District. 18 Q Again, my question was, wouldn't they 19 have formed a community of interest because they 20 had been placed previously in the same 21 congressional district. You haven't examined that 22 issue.</p>	<p style="text-align: right;">192</p> <p>1 there's voter confusion in there -- 2 Q Is there any evidence that they haven't 3 formed a community of interest being placed 4 together for over two decades. 5 A There's nothing in the public record 6 which says that they have formed a community of 7 interest. 8 Q Right. Other than public record, you 9 have no reason to refute that assertion, correct? 10 A Which assertion? Can you be more 11 specific? 12 Q They have formed a community of 13 interest. 14 A Right. 15 Q Now, is there any well established 16 principle in the case law or the peer-reviewed 17 literature that reducing municipal splits is more 18 important than preserving cores of existing 19 districts? 20 A No. There's nothing in the -- about 21 that sort of tradeoff, no. That I'm aware of. 22 Q If the legislature thought that</p>
<p style="text-align: right;">191</p> <p>1 A They -- they -- again, the public record 2 says that they did not. 3 Q And what evidence of voter -- 4 MR. DEVANEY: Let him finish. 5 MR. CARVIN: He said it at least six 6 times. 7 BY MR. CARVIN: 8 Q Do you want to say it again? 9 A Go ahead. Go ahead. 10 MR. DEVANEY: Finish your answer. 11 THE WITNESS: Answer the question -- ask 12 the question. It's fine. 13 BY MR. CARVIN: 14 Q If you want to get it on the record six 15 times, feel free. 16 A That's fine. 17 Q Okay. Is there any evidence of voter 18 confusion? These people are still staying in the 19 same general groups together. Is there any 20 evidence that they don't know who their candidates 21 are? 22 A I have not done analysis to see if</p>	<p style="text-align: right;">193</p> <p>1 preserving cores of incumbency protection were 2 more important than this one municipality split, 3 then it would have been quite reasonable for them 4 to adopt the adopted plan over the alternative 5 plan, correct? 6 A If they thought that preserving cores 7 and incumbency protection, which is not one of 8 their stated goals, was more important, then one 9 solution would be the adopted plan. 10 Q Okay. If they valued political 11 representation of Republicans in Congress over one 12 municipality split, then they would have adopted 13 the adopted plan over the alternative plan, 14 correct? 15 A Again, assuming the previous caveats 16 that we've made about could Rigell be elected out 17 of the Second District reconfigured, yes, it 18 serves that purpose. 19 (MCDONALD Exhibit Number 7 was marked 20 for identification.) 21 BY MR. CARVIN: 22 Q Do you see that in front of you?</p>

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<p style="text-align: right;">194</p> <p>1 A Yes. 2 Q You were a consultant to Governor 3 McDonnell's commission on redistricting in the 4 2010 redistricting cycle? 5 A Yes. 6 Q And you wrote an article about that 7 experience? 8 A In part, yes. 9 Q And that is Exhibit 7? 10 A Correct. 11 Q And as part of your responsibilities 12 there, you were responsible for drawing district 13 plans? 14 A And overseeing the drawing of other 15 people who were involved in drawing district 16 plans, yes. 17 Q And if you could turn to page ten of 18 your article. All right. If you look at the 19 third paragraph, please read it to yourself. Then 20 I'm going to have you answer a couple of 21 questions. The second full paragraph. 22 A Yes.</p>	<p style="text-align: right;">196</p> <p>1 A I'm citing n202. So this is Bob Lewis, 2 very respected person who unfortunately was 3 released from his job in Virginia politics, an AP 4 reporter. This is his description. It's a 5 description by -- yes, I think that's the only 6 citation that we have there, so I'm characterizing 7 what was in the popular press. The discussion -- 8 I had not done -- we had not done a full-blown 9 incumbency protection, as I described to you 10 earlier, analysis of any plan. What I'm 11 describing is the process as it was presented in 12 the popular press. 13 Q Where in this paragraph does it say 14 according to the popular press? 15 A That's a footnote there that goes to -- 16 Q No. Where in the paragraph does it say 17 according to the popular press? 18 A When you footnote something in academia, 19 you are using that as the authority for the 20 sentence that you are citing there. 21 Q Right. You gave one cite, but it was 22 the consensus view. Everybody knew what was going</p>
<p style="text-align: right;">195</p> <p>1 Q And you are describing here what the 2 General Assembly did in 2011 with respect to the 3 congressional redistricting, right? 4 A Correct. 5 Q And you point out that the 6 Republican-controlled General Assembly was unable 7 to reach agreement on a congressional plan with 8 the Democratic controlled Virginia Senate, right? 9 A Correct. 10 Q The sticking point, you state, was 11 whether to protect all incumbents, giving 12 Republicans an 8-3 edge among the state's 11 13 districts, or to restore the African American 14 population to the Fourth Congressional District 15 that had been shifted to the Third Congressional 16 District during the last redistricting, yielding a 17 Democratic-leaning Fourth Congressional District 18 with 45 percent African American voting population 19 and reducing the Republicans' edge to 7/4. 20 Did you write that? 21 A Yes. 22 Q Do you believe that?</p>	<p style="text-align: right;">197</p> <p>1 on. There was a fight between a 7-4 plan that 2 created two African American dominated 3 congressional districts versus the Republicans' 4 incumbency protection plan, correct? 5 MR. DEVANEY: Object to form. 6 THE WITNESS: Apparently everybody 7 except the author of the plan. 8 BY MR. CARVIN: 9 Q Yes. Except -- 10 A Except the author of the plan that says 11 that that was not his goal. 12 BY MR. CARVIN: 13 Q Okay. But what do you believe? 14 A I'm going to go with the -- what the 15 author of the plan -- you're asking me to say that 16 a member of the House of Delegates was lying? I'm 17 not willing to say that. 18 Q So other than this Janus statement you 19 continue to focus on, you have no reason to 20 believe or to disagree with what you wrote in this 21 article? 22 A I'm -- here we are describing what was</p>

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<p style="text-align: right;">198</p> <p>1 being bandied about in the popular press. 2 Q Where in the article did you cite the 3 Janus' legislative history, which is obviously 4 more informative than the popular press? 5 A Anywhere in my -- in the article? I 6 don't cite it. 7 Q Okay. Then you go on to say: After the 8 November 2011 elections when Republicans gained a 9 working majority of the Senate, the General 10 Assembly passed the congressional plan that 11 protected all incumbents, including the eight 12 Republicans. 13 Correct? 14 A Correct. And another footnote. 15 Q You believed that then? 16 A Again, just providing the account of 17 what was in the popular press. 18 Q Do you pass along gossip that you don't 19 believe or have no reason to believe when you 20 write articles for law reviews? 21 A Again, I -- 22 Q When you assert a fact --</p>	<p style="text-align: right;">200</p> <p>1 it's not what Delegate Janus said that was -- as 2 part of his criteria when he was drawing the plan. 3 Q And you've produced no studies or 4 evidence to rebut Morgan's assertion that it was 5 an incumbency plan, correct? 6 A Correct. I have not done a rebuttal 7 analysis; however, I have pointed these issues 8 out. 9 Q Okay. If you could turn to page 19. 10 Okay. And then now we're talking about what 11 happened after the legislature switched hands. 12 And you say: In the legislature two competing 13 plans emerge: One from the Republican, who 14 favored an 8-3 partisan division of the state that 15 protected all incumbents, and one by the 16 Democrats, with a 7-4 partisan division. 17 Were you passing along gossip, or did 18 you actually believe that when you wrote it in the 19 law review article? 20 A At that point we had a 8-3 and 7-4. 21 Now, again, without the incumbency protection part 22 of it, the partisan analysis is in the paper.</p>
<p style="text-align: right;">199</p> <p>1 MR. DEVANEY: Let him answer the 2 question. 3 BY MR. CARVIN: 4 Q -- do you believe it or -- 5 A Again, I'm relaying what is being 6 described in the popular press here. And so I had 7 -- at this point we had not done any analysis of 8 incumbency protection. I never did any analysis 9 of incumbency protection. You're asking me a 10 question of an analysis that I did not perform. 11 Q Again. I'm going to ask you again. Did 12 you believe it when you wrote it? Or did you pass 13 it along because you saw some newspaper article 14 and had no idea if it was true or not? 15 A It was my impression at the time, 16 without doing any analyses of incumbency 17 protection, that this was what was being bandied 18 about in the popular press. 19 Q And since then you haven't done any 20 analysis of incumbency protection, have you? 21 A Correct. Because it's not necessary 22 because it's not in the 2011 Senate criteria, and</p>	<p style="text-align: right;">201</p> <p>1 Q You agree with the partisan analysis? 2 A I agree with the partisan analysis. 3 Q That the Republicans was an 8-3 4 Republican plan, and the Democratic alternative 5 was a 7-4 plan, correct? 6 A Correct. That's what we had from the 7 statistics that were being produced. Yes. 8 Q So if the Republicans did, as you 9 report, favor a partisan division of eight to 10 three, that would provide a reason for rejecting 11 the plaintiffs' alternative notwithstanding the 12 elimination of a municipal split, correct? 13 MR. DEVANEY: Objection. 14 THE WITNESS: Excuse me. Say that again 15 for me so I can get the whole question? 16 BY MR. CARVIN: 17 Q If, as you report here, the Republicans 18 favored an eight-to-three partisan division of the 19 state, that would provide a reason, wholly apart 20 from race, for adopting the enacted plan and 21 rejecting the alternative plan, correct? 22 MR. DEVANEY: Objection. Vague and</p>

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<p style="text-align: right;">202</p> <p>1 calls for a legal conclusion. 2 THE WITNESS: Wholly apart from race. 3 So if the State of Virginia did not have to comply 4 with the Federal Constitution and the Voting 5 Rights Act, yes, then it would provide a 6 motivation. Yes. 7 BY MR. CARVIN: 8 Q Okay. On your Exhibit 3, if you 9 could -- well, I think you actually say it twice, 10 but if you could turn to page nine? 11 A It's not stopping us from me saying lots 12 of things more than once. 13 Q Right. 14 A Page nine. 15 Q Okay. You say the district is narrowly 16 tailored to produce the goal of a 17 majority-minority district without unnecessarily 18 compromising traditional redistricting criteria. 19 And in that sense you are referring to the 20 alternative plan, correct? 21 A Correct. 22 Q Okay. What do you mean by</p>	<p style="text-align: right;">204</p> <p>1 goal here was only to, as I understand it, was to 2 change the boundaries between the Second and Third 3 District. So my complaints about the benchmark 4 Third District and other areas that are not 5 involved with the boundary between the Second and 6 Third District. They still stand. So that -- 7 that is not the best-worded sentence because there 8 are still issues that I would have with violations 9 of traditional redistricting criteria as expressed 10 in my report. 11 Q But they -- they only -- one way to read 12 this is they only violated or compromised 13 traditional redistricting criteria when it was 14 necessary to do something, right? 15 A Right. That -- yes. 16 Q And what was necessary to do that led 17 them to to compromise traditional redistricting 18 criteria? 19 A The goal of creating a majority-minority 20 district. 21 Q So they compromised traditional 22 redistricting criteria for the goal of creating a</p>
<p style="text-align: right;">203</p> <p>1 unnecessarily? 2 A So we've gone through this before, but 3 this -- do you want me to restate it again, or do 4 you want me to -- 5 Q Well, let me break it down. Did they 6 compromise traditional redistricting criteria? 7 A Yes. We described the splitting of the 8 boundaries and the compactness of the plan and the 9 use of water to bypass racial communities. 10 Q I'm talking about the alternative plan. 11 A Oh, the alternative plan. Compared to 12 the alternative plan -- the benchmark plan, the 13 alternative plan does less of those. 14 Q Yes. We have had that conversation, but 15 I'm asking you a different question. I'm asking 16 you whether or not -- you say it doesn't -- the 17 alternative plan doesn't unnecessarily compromise 18 traditional redistricting criteria -- doesn't 19 compromise traditional redistricting criteria. 20 A That's a good point. I mean it is 21 violating traditional redistricting criteria in 22 other portions of the district. But again, the</p>	<p style="text-align: right;">205</p> <p>1 majority-minority district? 2 A Yes. They're narrowly tailored to 3 produce a majority-minority district, yes. 4 Q So they -- and I guess we've had this 5 conversation before. Why would creating a 6 majority district be a compelling government 7 interest? 8 MR. DEVANEY: Again, asked and answered. 9 THE WITNESS: Compliance with the Voting 10 Rights Act and the U.S. Constitution. 11 BY MR. CARVIN: 12 Q The U.S. Constitution requires you to 13 create majority-minority districts? 14 A Not to creat one. It's what level of 15 black voting-age population should you put into 16 the district. 17 Q And did they need to have 50 percent to 18 comply with Section 5? 19 A Did they -- again, describe "they" for 20 me. 21 Q Well, the drafters of the alternative 22 plan?</p>

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<p style="text-align: right;">206</p> <p>1 MR. DEVANEY: Is the question does 2 Section 5 require 50 percent? 3 MR. CARVIN: Yeah. 4 THE WITNESS: No. Section 5 does not 5 require 50 percent black voting-age population. 6 BY MR. CARVIN: 7 Q Since Section 5 doesn't require 50 8 percent BVAP, and the plan was drawn to slightly 9 over 50 percent BVAP, what compelling government 10 interest motivated their desire to get the 50 11 percent BVAP? 12 A From what I understand, they are 13 anticipating -- it's not even -- this is just my 14 impression of looking at the current case law on 15 this, which is that they're anticipating that a 16 50 percent district is going to be required under, 17 potentially, Section 2. But this is a 18 demonstration district, so the Cromartie 19 decision -- which says that you have to 20 demonstrate that you have a 50 percent -- there's 21 an open question in the legal realm as to whether 22 or not you just have to demonstrate the 50 percent</p>	<p style="text-align: right;">208</p> <p>1 compelling government interest to create this 2 majority-minority district, right? 3 A Right. Based on the evidence that I've 4 seen, I believe that the Senate version of the 5 congressional district would have passed 6 preclearance, which had a 44 percent black 7 voting-age population. 8 Q And you did racial bloc voting analysis, 9 right? 10 A Yes. 11 Q In Exhibit 4, I think? 12 A Yes. Exhibit 4. It's on page four. 13 Q Okay. You did a racial bloc voting 14 analysis, the results of which are outlined on 15 page five of Exhibit 4? 16 A Correct. 17 Q And you found that in the presidential 18 race between Obama and McCain, Obama would have 19 gotten almost 70 percent of the vote in a 20 51 percent BVAP district? 21 A Correct. 22 Q And that indicates to you that that</p>
<p style="text-align: right;">207</p> <p>1 or if you're actually required, as a remedial 2 district, to go under 50 percent. So I gather 3 from what's here that the 50 percent is satisfying 4 that demonstration, that it's possible to draw a 5 50 percent district, but a remedy could go under 6 50 percent. 7 Q So now we've switched from Section 5 to 8 Section 2. Why do you think they were trying to 9 comply to Section 2? 10 MR. DEVANEY: When you say "they," are 11 you referring to the drawer of the alternative 12 map? 13 THE WITNESS: Again, I don't know. I do 14 not know the motivations were to create the 15 50 percent other than that there was some belief 16 that 50 percent was going to be required in this 17 instance in order to comply with the Voting Rights 18 Act. 19 BY MR. CARVIN: 20 Q All right. So outside the context of 21 this litigation, you can't -- if someone -- if you 22 were advising someone, you couldn't articulate any</p>	<p style="text-align: right;">209</p> <p>1 would enable minorities to elect their candidate 2 of choice? 3 A Correct. 4 Q Okay. Indeed he had non-black 5 crossover. He got 38.6 percent of the vote in 6 this hypothesized district, of the white vote. 7 A According to the Goodman's double 8 regression analysis. Using the homogeneous 9 precinct analysis, it's 43.6 percent. So the 10 truth is somewhere in the middle between the two 11 of those numbers. 12 Q Okay. With that kind of white crossover 13 you could take this down to the low 30s and it 14 would still provide blacks an opportunity to elect 15 a candidate of choice. Do you want me to do the 16 math for you? 17 A If you want to do the math, you can do 18 that; but if you represent the math to be true, 19 then I would agree with you. 20 Q Okay. 21 A This is consistent with what I've seen 22 in other jurisdictions in the south.</p>

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<p style="text-align: right;">210</p> <p>1 Q Like what? 2 A In South Carolina. In work that I did 3 in Georgia. That what you're getting in urban 4 areas is that there's sufficient white crossover 5 voting. We're also, in the discussion that we had 6 earlier, they are heavily white precincts that are 7 also supporting Democratic candidates, so -- which 8 by inference are the African American candidate of 9 choice, although that doesn't necessarily need to 10 be true. 11 So the -- so yes. Everything is 12 pointing in the same direction, that you don't 13 need a 50 percent black district in order to elect 14 an African American candidate of choice. 15 Q And you are aware of cases that have 16 been precleared where they reduced the BVAP from 17 roughly 53 percent to, say, 33 percent. And it's 18 precleared by the Justice Department? 19 A Not off hand. If it was in South 20 Carolina, it could have been there. But I -- I've 21 known instances where you've had 30 percent 22 districts, even 20 percent districts -- in the</p>	<p style="text-align: right;">212</p> <p>1 A Right. The numbers were very similar, 2 the turnout numbers that were coming out of the 3 estimates were very similar. 4 Q Did you report those turnout numbers? 5 A I did not. 6 Q Why not? 7 A Typically, when you do these analyses 8 you don't usually report the turnout numbers. 9 Q Really? Okay. Now, Goodman reports 10 110.7 percent black support for Creigh Deeds, the 11 white Democrat in the governor's race? 12 A Yeah. Creigh, yeah. 13 Q That's obviously impossible, right? 14 A Right. 15 Q And people don't rely on statistical 16 estimates that produce impossible results. 17 A In the voting rights realm, we do 18 sometimes. And so what's happening here -- I 19 could see it in the data -- is that we plot the 20 black voting-age population of the precincts 21 versus the white -- or excuse me -- the votes for 22 the different candidates. And what I could see is</p>
<p style="text-align: right;">211</p> <p>1 high 20 percent range that would elect a minority 2 candidate of choice. 3 Q And the more probative race here is the 4 Obama-McCain race because the more probative are 5 the black-white contests, right? 6 A Correct. 7 Q What did you do with turnout when you 8 ran this analysis? 9 A The Goodman's double regression is a 10 technique to control for turnout. So you run two 11 estimates. One's essentially an estimate that 12 allows for differential turnout rates between the 13 two groups and one that's estimating support. And 14 then you do some additional, really division, of 15 two estimates to get a percent voting for the 16 black or the African America candidate of choice. 17 Q All right. You did an estimated vote 18 for a candidate of choice in a 51 percent BVAP 19 district, right? So you weren't estimating the 20 vote in either the alternative plan or the adopted 21 plan. You were just plugging in the number 51 22 percent; is that correct?</p>	<p style="text-align: right;">213</p> <p>1 that, while there's a consistent relationship, 2 positive relationship, it just starts, when you 3 get up towards 100 percent because there's some 4 very strong African American, very homogeneous 5 African American precincts here, it starts to bend 6 over a bit. And so if you draw a regression line 7 through it, the line is fitting to this sort of 8 steeper part of the number that's within the bulk 9 of the data between zero and about 90 percent or 10 so. But -- so it estimates out further beyond 11 that to say that you should have this implausible 12 number of 110 percent. So the true number looks 13 to be more of what you get with a homogeneous 14 precinct analysis. 15 But also because of what's going on 16 here, you can -- again, this is an expert judgment 17 based on looking at the data, but what's happening 18 here is that you get the higher white support or 19 the nonblack, I should say, support for the black 20 candidate of choice using the homogeneous precinct 21 analysis, because again, in the sort of midrange 22 of the data that's available to us, you're getting</p>

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<p style="text-align: right;">214</p> <p>1 more white crossover voting than you get when you 2 get to the very tail end of the distribution. 3 Q And you relied on that homogeneous 4 precinct prediction then? 5 A You know, usually, the 110 -- a number 6 like 110 is an indication that there may be 7 something called the ecological fallacy that's at 8 play, that maybe one group has a different 9 behavior at one level than another level. I 10 didn't -- when I looked at that, I took that to 11 be -- you know, a potentially diagnostic check 12 that these numbers were incorrect. So I looked -- 13 actually plotted out the data that -- which I just 14 described to you and came to the conclusion, no, 15 there's nothing -- the shape of the curve is all 16 that's really happening here. You can't get up to 17 -- once you get up near a hundred percent the 18 numbers are sort of tailing off to get to that a 19 hundred percent -- hundred percent point within 20 the graph. And so it -- but it looks -- it looks 21 like very linear throughout the range of the data. 22 So these numbers, the homogeneous is</p>	<p style="text-align: right;">216</p> <p>1 But then when I looked at the data, I wasn't 2 thinking that this was necessary to go the extra 3 mile of doing what his procedures called EI. I 4 didn't see any necessary need to go do that in 5 this case because my belief is that if we apply 6 the EI analysis we get a very similar estimate of 7 a high level of black support for the African 8 American candidate of choice and a white crossover 9 vote somewhere within the 30 percent range. 10 Q You know how to do EI, right? 11 A Yes, I do. 12 Q There's standard computer programs that 13 assist you in doing that, right 14 A Right. 15 Q And King doesn't think that the Goodman 16 double regression is reliable. He certainly 17 thinks EI is much more reliable, correct? 18 A Actually, no. He will say that in 19 certain circum -- you know if EI is giving a good 20 estimate and if it's consistent with what you are 21 seeing in other diagnostics -- 22 MR. DEVANEY: You mean double</p>
<p style="text-align: right;">215</p> <p>1 probably, you know, more correct, but the correct 2 number is probably somewhere between the 3 homogeneous precinct analysis and the Goodman's 4 double regression estimates. And so I don't see 5 anything here that's leading me to believe that 6 we're getting false estimates. It's a just 7 relative sort of level of what we might think 8 would be the white -- the black support and the 9 white support, but nothing that's telling me that 10 they flipped around or they're dramatically higher 11 or lower than what we're seeing here. 12 Q Now, a lot of people used that analysis 13 in the '90s, but since then you are aware of Gary 14 King's ecological inference to avoid these absurd 15 over a 110 results that he purports to say solves 16 the ecological fallacy? 17 A Even Gary will say -- because Gary -- I 18 worked for him as a research assistant as a post 19 doc -- Gary says these are diagnostic tests for 20 the Goodman's double regression. He's giving us 21 diagnostic tests. And so, again, as I described 22 to you, when you sort of -- it's a warning flag.</p>	<p style="text-align: right;">217</p> <p>1 regression, don't you? 2 THE WITNESS: Excuse me. Double 3 regression. So then you're probably -- all three 4 of the methods are going to give you the same 5 result. So I didn't -- I looked at it. I didn't 6 see any additional analysis. I literally had only 7 a week to produce a report here, which required me 8 to do additional statistical analyses getting this 9 into a program called R and doing analyses in 10 there. And so when I looked at this I didn't see 11 any necessary need to go that extra step to do an 12 EI analysis. 13 BY MR. CARVIN: 14 Q Which is more reliable and 15 professionally accepted, EI or the Goodman double 16 regression? 17 A People have used double regression. I 18 still see it being used today. I don't see any -- 19 there's no indicator here that the Goodman's 20 double regression is providing a false signal. 21 Q What would the professional literature 22 tell you about the preferred analysis, EI or</p>

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<p style="text-align: right;">218</p> <p>1 double regression? 2 A Well, as I just described to you, I mean 3 would it -- did I -- would you do EI? EI's got 4 some flaws to it itself, and I've actually 5 published on this as well. It's a pretty 6 complicated procedure. It's using a lot of 7 regressional assumption -- statistical assumptions 8 as part of it, and it can have some instability 9 issues when you do -- when you run the EI. So 10 they all have their strengths and weaknesses. And 11 when I look at the the double regression analysis 12 and I look at the homogeneous precinct analysis, 13 we're getting the same signal. I looked at the 14 actual plot of the data -- the plot of the data 15 are telling me the same thing. And so there was 16 no need to go the extra route to do the EI 17 analysis here. 18 Q Okay. Previously we talked about your 19 consultant role with Governor McDonnell's 20 commission. And you said you were responsible for 21 drawing district plans as well as reviewing the 22 other proposed districting plan?</p>	<p style="text-align: right;">220</p> <p>1 constituted in a very short amount of time. Yes. 2 Q And no one obviously deliberately 3 attempted or endorsed a plan that violated the 4 14th Amendment on the commission? 5 A Intentionally, no. I don't believe that 6 there was a commission that would intentionally do 7 something of that sort. 8 Q So everyone, including you, strenuously 9 sought to avoid violating the 14th Amendment, 10 given the fiscal constraints that you've just 11 described? 12 A Correct. 13 Q And the main relevance of the fiscal 14 constraint was you weren't able to run a racial 15 bloc voting analysis? 16 A Correct. 17 Q And as a consequence you tried to have 18 the BVAP in the new districts equal or exceed the 19 BVAP in the benchmark district, correct? 20 A We had -- yeah. At one point we did 21 that. Looking back through the emails, I also saw 22 that there was a point we looked at 50.5 percent</p>
<p style="text-align: right;">219</p> <p>1 A I was -- yes -- charged with at the 2 commission's direction to draw redistricting 3 plans. I was primarily responsible for the House 4 of Delegates. I oversaw the congressional 5 redistricting. There was a group of students from 6 William and Mary Law School that were -- who were 7 doing that mapping for the commission, and a 8 research associate at the Cooper Center at UVA was 9 responsible for doing the Senate districts. And 10 he eventually also created a congressional plan as 11 well. 12 Q And you were supervising these students 13 at William & Mary in the preparation of the 14 congressional districting plan? 15 A Remotely supervising them, yes. They 16 were in William & Mary, and I was at George Mason. 17 Q And certainly you and the commission 18 were trying to come up with the best possible 19 plans to comply with the Federal Constitution and 20 the Voting Rights Act, correct? 21 A Within the very limited constraints that 22 this commission had no budget to work from and was</p>	<p style="text-align: right;">221</p> <p>1 black voting-age population as a benchmark. 2 Q But you never proposed that 50.5 percent 3 district publicly, right? The commission never 4 revealed that to anybody outside? 5 A This was actually the criteria, initial 6 criteria. It was in the -- it's an an email that 7 I -- should have been disclosed to you. 8 Q The criteria was to come to a 50.5, not 9 a 53.2 BVAP? That's your testimony? 10 A It's -- it's -- no. I'm describing to 11 you -- one of the emails that I disclosed to you, 12 I believe, has a first 50.5 percent as the 13 threshold that they were applying. I think they 14 later -- again, my memory is very hazy on this 15 because I wasn't -- the assistance I was providing 16 these students was more here's helping you get the 17 map drawn. It wasn't me actually drawing any 18 districts. And so I -- at some point the 19 commission did, I believe, say let's use the 20 benchmark BVAP. But if you look back at the 21 record on the initial criteria that the commission 22 had adopted set a 50.5 percent. And again, I'm</p>

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<p style="text-align: right;">222</p> <p>1 trying to describe to you to my best of knowledge 2 of what the commission criteria were. 3 Q Okay. Then you obviously reviewed the 4 plans that the commission publicly came out with 5 and recommended as an option to the legislature? 6 A I -- you know, I did not review these 7 plans in terms of any sort of voting rights 8 concerns. These were plans that these students 9 created. And -- I did -- again, this was a very 10 hurried process, and so they produced maps and we 11 presented them to the commission. But there was a 12 very limited amount of review. Yeah, it was a -- 13 this was a commission that was designed to fail. 14 So when the Washington Post called it a toothless 15 commission, I think they were correct. And it was 16 created at the spur of the moment without any 17 resources to conduct its work, and the 18 legislature -- and, again, Delegate Janus on the 19 floor said he didn't consider the maps that were 20 produced by the commission. So -- 21 Q I know you -- 22 A -- Governor McDonnell later disavowed</p>	<p style="text-align: right;">224</p> <p>1 that the commission did within. I was -- 2 Q Did you offer? 3 A I was doing work at their direction. I 4 was not a consultant to give them -- to tell them 5 what to do. 6 Q Really? You were a redistricting 7 expert, but you relied on people who knew nothing 8 about restricting to give you direction on what to 9 do? Is that your testimony? 10 MR. DEVANEY: Objection. Argumentative. 11 THE WITNESS: In the work that I have 12 done for commissions, that's what I see my role as 13 is providing assistance to them but not directing 14 them as to what they should do with mapping. 15 BY MR. CARVIN: 16 Q Surely you would never endorse a 17 district that violates the 14th Amendment? 18 A I would not. 19 Q No. So surely if you saw something 20 coming out of the commission, you would have 21 brought it to their attention and advised them 22 about it, right?</p>
<p style="text-align: right;">223</p> <p>1 his own commission. So it's kind of -- you know, 2 it was there to demonstrate that there was an 3 alternative way of doing redistricting, but it 4 wasn't -- it wasn't a commission that necessarily 5 was producing legal redistricting plans because 6 the commission didn't have the resources to do the 7 essential voting rights analysis. 8 Q Okay. They couldn't do the racial bloc 9 voting. I'm asking you, is it your testimony that 10 you did not review the commission's proposal on 11 congressional redistricting plans when you are 12 listed publicly as a consultant? You didn't 13 review them? 14 A Did I review them? I looked at them, 15 but I don't know -- in terms of -- yes, I looked 16 at those plans. 17 Q Yes. And did you voice any objections 18 to them? 19 A I did not voice any objections. It 20 wasn't my role within that commission committee. 21 Q So you worked -- 22 A I never -- I never objected to anything</p>	<p style="text-align: right;">225</p> <p>1 MR. DEVANEY: Asked and answered. 2 THE WITNESS: Again, we had not done any 3 sort of analysis to substantiate whether or not 4 the commission's plans were in violation of the 5 14th Amendment. So I couldn't -- I couldn't even 6 raise any objection -- hypothetical objection that 7 you're saying that I might have raised because I 8 hadn't done the analysis in the first place. 9 BY MR. CARVIN: 10 Q Right. Well, is there any analysis 11 where increasing the BVAP makes sense? 12 A There has been no analysis to say -- to, 13 say, increasing the BVAP. That was -- I -- my 14 advice, because I did provide some advice at a 15 very early hearing to the commission was that we 16 needed to do a racial bloc voting analysis to 17 determine what the proper level of black 18 voting-age population was to elect a candidate of 19 choice. 20 Q Right. 21 A And in lieu of being able to do that, we 22 were going to have to look at some other metric.</p>

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<p style="text-align: right;">226</p> <p>1 Q Correct.</p> <p>2 A And so I believe if you look again back</p> <p>3 at that original criteria email, that should have</p> <p>4 been disclosed to you because I did give it to</p> <p>5 counsel, they had 50.5 percent. I think they were</p> <p>6 looking at that point because my memory is hazy on</p> <p>7 this. It was advice of counsel. This was -- Bill</p> <p>8 Hurd was the lawyer who has been working with</p> <p>9 Governor McDonnell. He recommended that we use</p> <p>10 that remedial district black voting-age population</p> <p>11 as the number, and then the commission, I believe,</p> <p>12 adopted that. Again, my memory is very hazy on</p> <p>13 this, so I hope I'm speaking as accurately as I</p> <p>14 can. And then later on -- because there's another</p> <p>15 email and I don't know where this enters in.</p> <p>16 There's a subsequent email where I direct the</p> <p>17 students to say we need the benchmark black</p> <p>18 voting-age population.</p> <p>19 Q Right.</p> <p>20 A And so at some point between here and</p> <p>21 there -- and I don't recall exactly what -- the</p> <p>22 commission directed a different number. And I --</p>	<p style="text-align: right;">228</p> <p>1 A Any other reason?</p> <p>2 Q That's not purely gratuitously racial?</p> <p>3 A Again, if there was -- hypothetically</p> <p>4 speaking, if the patterns of population were such</p> <p>5 that you were respecting traditional restricting</p> <p>6 principles and that was the only district that you</p> <p>7 could produce, then yes, in that case you could</p> <p>8 see instances where that could happen.</p> <p>9 Q So sometimes it's okay to increase the</p> <p>10 black --</p> <p>11 A It's unavoidable.</p> <p>12 (MCDONALD Exhibit Number 8 was marked</p> <p>13 for identification.)</p> <p>14 BY MR. CARVIN:</p> <p>15 Q This is the report issued by Governor</p> <p>16 McDonnell's commission upon which you were the --</p> <p>17 A Correct.</p> <p>18 Q -- advisor.</p> <p>19 A Correct.</p> <p>20 Q If you could turn to page 18, it says</p> <p>21 that -- well, we can go over this. But basically,</p> <p>22 it confirms your point that they sought to</p>
<p style="text-align: right;">227</p> <p>1 scouring my memory, I can't remember what happened</p> <p>2 between those two points in time as to why the</p> <p>3 commission -- it changed to the 53 -- to the</p> <p>4 benchmark district number.</p> <p>5 Q So I understand, it makes sense that you</p> <p>6 wouldn't want to decrease BVAP below the benchmark</p> <p>7 if you haven't done racial black voting analysis</p> <p>8 because you couldn't prove to the justice</p> <p>9 department that it didn't diminish the ability to</p> <p>10 elect, correct?</p> <p>11 A Correct.</p> <p>12 Q Okay. Is there any reason that you</p> <p>13 would increase the BVAP? If you hit 53.1 or 50.2</p> <p>14 there would be no argument, would there be, if you</p> <p>15 diminished the ability to elect?</p> <p>16 A In terms of a Section 5 -- that's</p> <p>17 absolutely correct. Section 5 is looking very</p> <p>18 narrowly at whether or not a candidate of choice</p> <p>19 can be elected out of the district. That's not a</p> <p>20 14th Amendment analysis.</p> <p>21 Q Right. Is there any other reason that</p> <p>22 you would increase the BVAP above the benchmark?</p>	<p style="text-align: right;">229</p> <p>1 include -- if you want -- go to the fourth</p> <p>2 paragraph, please.</p> <p>3 A Yes.</p> <p>4 Q Okay. After you've read that -- and the</p> <p>5 commission says, "Without the resources to conduct</p> <p>6 such racial voting analyses" -- and that refers to</p> <p>7 the kind of racial bloc voting analyses that you</p> <p>8 did in this case and you were discussing</p> <p>9 previously?</p> <p>10 A Yes.</p> <p>11 Q Okay. "-- the Commission sought to</p> <p>12 include in its majority-minority districts a</p> <p>13 percentage of minority voting population within</p> <p>14 the range accepted by the Department of Justice in</p> <p>15 2001."</p> <p>16 Correct?</p> <p>17 A Correct.</p> <p>18 Q And you never voiced any objections to</p> <p>19 that approach?</p> <p>20 A Well, again, with the caveat with the</p> <p>21 preceding sentence which was "without the</p> <p>22 resources to conduct such racial voting analyses."</p>

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<p style="text-align: right;">230</p> <p>1 We were constrained by time and resources. And so 2 this was -- this was the best way to proceed 3 within the constraints that we were given. Would 4 it be the way that I would recommend a client of 5 mine to proceed? Absolutely not. I would want to 6 do the racial bloc voting analyses. 7 Q Right. But if your client didn't do the 8 racial bloc voting analyses, this is the best way 9 to proceed, right? 10 A In order to seek preclearance, yes, this 11 would be the best way to proceed. 12 Q Okay. And -- 13 A Though, again, it's even -- you know -- 14 well, yes. It's the best way to proceed. 15 Q Okay. Third District option one, 16 recommended by the commission to the legislature 17 and the governor, proposes a district with a 50.3 18 percent BVAP, 0.4 percent more than the benchmark, 19 correct? 20 A Yes. This is using the exclusive method 21 as well. 22 Q So it would actually be higher if you</p>	<p style="text-align: right;">232</p> <p>1 contained in the alternative plan, correct? 2 A Correct. 3 Q And the commission viewed it as 4 important to preserve District Three's BVAP at 5 least to the benchmark level, correct, given the 6 absence of racial bloc voting? 7 A Yeah. I think we're actually talking 8 about the benchmark level that was approved by the 9 Department of Justice in 2001 not at -- or was 10 added the end of the decade. 11 Q Okay. And that was -- so they actually 12 looked back to 2001? 13 A Yeah. I believe so. 14 (Whereupon, a brief recess was taken.) 15 BY MR. CARVIN: 16 Q I just want to look at the two options 17 they proposed for redistricting the Virginia 18 Senate and the five majority black -- they 19 recommended five majority black Senate districts, 20 correct? 21 A Correct. 22 Q Okay. And if you look between 27 and 34</p>
<p style="text-align: right;">231</p> <p>1 used the inclusive method? 2 A Correct. 3 Q And district option two on page 25, the 4 commission that you were advising proposed 5 district three with 55.1 percent BVAP, correct? 6 A Correct. 7 Q Roughly 2 percent higher than the 8 benchmark, correct? 9 A Correct. 10 Q And then the third plan goes down 11 slightly. That's on page 27 that goes from 53.2 12 to 52.5? 13 A I'm looking for it. Can you point out 14 where it is? 15 Q Yeah. At the top of 27 where it says 16 model shape, old shape, district one. Lower 17 left-hand corner. 18 A Oh, I see. Yeah, yeah. 19 Q So two of these options increased the 20 BVAP over the benchmark, right? 21 A Correct. 22 Q All three options had a higher BVAP than</p>	<p style="text-align: right;">233</p> <p>1 the BVAP in those five districts ranged from 53.5 2 to 57.8 percent, correct? 3 A Correct. I had nothing to do with this 4 map. 5 Q Yeah -- 6 A With the Senate. 7 Q You didn't have anything to do with the 8 Senate. 9 A No. 10 Q And you said took a more active role in 11 the -- 12 A House of Delegates. 13 Q -- House of Delegates, right? And then 14 in the report of 38 there was two proposals. One 15 was to preserve 12 majority black House of 16 Delegate seats. One was to add a 13th, right? 17 A Correct. 18 Q And each of those, for either one range 19 from 53.5 to 58 percent BVAP? 20 A If you represent that to be true, yes. 21 Q Okay. 22 A And that's using the exclusive.</p>

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<p style="text-align: right;">234</p> <p>1 Q Now, you are familiar with this 2 Schwartzberg measure of compactness, right? 3 A Correct. 4 Q Okay. 5 A Though I'd have to reread my report 6 to -- 7 Q Actually, you know what? Let's do the 8 splits first because those are easier. Okay? 9 A All right. 10 Q So let's go back to the first option for 11 the congressional district on page 24. And this 12 district option has 41 municipality splits -- 13 county and city splits, correct? 14 A Correct. That's what's reported here, 15 yes. 16 Q And it's a decrease from the benchmark 17 of 47? 18 A Correct. 19 Q And the adopted plan has 37 county 20 splits, right? 21 A I assume we're using the same metric 22 here, so we'll just assume that those are the same</p>	<p style="text-align: right;">236</p> <p>1 Q Okay. Did you tell the commission that 2 this increase of BVAP and 41-county-split plan was 3 a racial gerrymander? 4 A I did not. 5 Q Now, option two has, again, 38 county 6 splits, right? One more than the adopted? So you 7 see that? 8 A Correct. 38. 9 Q And then District 3 in this plan has 10 nine splits, right? 11 A Correct. 12 Q And that's more than any other district 13 as well? 14 A Correct. 15 Q And you didn't tell or suggest to anyone 16 on the commission that this was a racial 17 gerrymander? 18 A I had not done the analysis that I had 19 performed for this litigation on any of the 20 districts that were drawn by the commission. So 21 the answer to that is, no, I did not. 22 Q And option three that had 37 county or</p>
<p style="text-align: right;">235</p> <p>1 numbers. 2 Q Yeah. 3 A This wasn't -- these were not statistics 4 that were -- well, yes. Go ahead. 5 Q Okay. And there's 11 splits in district 6 three, right? 7 A 11 splits in district three? If you 8 represent that to be true -- 9 Q No. It's right there on page 24. See 10 in the far-right-hand corner? 11 A Yes. I see that. Yes. 12 Q And that's, again, two more than the 13 adopted plan which has nine splits? 14 A If -- again, I believe so. 15 Q I'm going off your own numbers. 16 A Well, I know. I'm just saying in the 17 interest of time not to -- 18 Q That's fine. If I'm misrepresenting the 19 record, it doesn't do me any good. So okay. And 20 that has significantly more splits than any other 21 district in the state? 22 A Correct.</p>	<p style="text-align: right;">237</p> <p>1 city splits, which is the same as the adopted, and 2 nine in District 3, which is same as adopted and 3 more than any other district in the state, right? 4 A Yes. 5 Q And again, you didn't tell them that 6 they had to reduce splits or be accused of 7 supporting any traditional districting principals 8 to race, right? You never said anything like 9 that. 10 A Lacking any analysis that I had done, 11 yes. That's correct. 12 Q Okay. And then -- now, the Schwartzberg 13 measure that you used is usually expressed as a 14 whole number, right? 15 A It could be scaled, so sometimes yes, 16 sometimes no. 17 Q Right. It's a way -- 18 A Some people do percents and -- yeah, 19 yeah, yeah. 20 Q That's why I'm asking you, because the 21 commission did a percent. Okay? 22 A Yeah. It's actually a wrong way of</p>

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<p style="text-align: right;">238</p> <p>1 doing it, but yeah, okay. 2 Q All right. But the way you do it, 3 right, is you divide the score by one, right? 4 A If I recall correctly how to do the 5 Schwartzberg measure. 6 Q Okay. And enacted District Three's 7 score, I'll tell you again, is two point -- 8 A Divide by hundred if you want to get the 9 decimal. 10 Q Sure. 11 A Yeah, yeah. I think you said one. 12 Q Well, it depends where you put the 13 decimal? 14 A Right. It doesn't really matter. 15 Q Okay. But will you trust me that a 16 hundred divided by 2.61 is either 3.83 or .383? 17 A Yeah. 18 Q And if the commission numbers are lower 19 than, that means that they're less compact than 20 the adopted plan, right? Once you've done this 21 inverse calculation? 22 A Yeah. It's -- oh wait. See -- let's</p>	<p style="text-align: right;">240</p> <p>1 Q All right. Let me ask you this before 2 we get into a complicated argument. You express 3 in the commission -- you see the compactness 4 range? Go to page 24. 5 A 24. 6 Q Okay. You see where we are? 7 Compactness range, Schwartzberg measure? 8 A Yes. 9 Q Okay. And the minimum is 35.68 or 10 62.58. And you can see that District 3 is the 11 lowest compactness score. 12 A Yeah. 13 Q So it means the lower the score the less 14 compact it is, right? 15 A See, I think it's been -- yeah this has 16 been scaled back so that it's a hundred percent. 17 So I think we've done some rescaling on this if I 18 recall correctly, so that a higher number would be 19 a more compact district. But in the report here a 20 higher number is a less compact district. 21 Q Look at page 25. 22 A Yeah.</p>
<p style="text-align: right;">239</p> <p>1 look back. Do you mind giving me a minute? 2 Q Sure. 3 A So it will be in my -- Exhibit 1. Yeah. 4 Yeah. It says -- so I think you're doing it the 5 wrong way. It says: Schwartzberg test also 6 compares a district to a circle. The test 7 involves calculating a ratio of the perimeter of 8 the district to the perimeter of a circle with the 9 same area. Unlike the other compactness measures, 10 higher values, higher numbers, indicate less 11 compact districts. 12 So I don't think you can just subtract 13 one and get a comparable number. 14 Q Wait. You say in that, the higher 15 number are less compact? 16 A Right. 17 Q So by parallel reasoning, when you do 18 the inverse -- 19 A It's not an inverse because it can go -- 20 it can get actually very high. It can get way 21 above one. So I don't think they're done on the 22 same metric.</p>	<p style="text-align: right;">241</p> <p>1 Q That can't be right. I mean look at 2 District 3. And that's got the lowest score. 3 A Should be the least compact district 4 under this -- in this report, yes. 5 Q So the lower the score the less compact. 6 A It's probably been rescaled so that you 7 have -- or who knows exactly what the rescaling 8 is. 9 Q Okay. And nowhere in this report do 10 they even mention or discuss the number of VTDs 11 split by the various districts, right? 12 A That's correct. 13 (MCDONALD Exhibit Number 9 was marked 14 for identification.) 15 BY MR. CARVIN: 16 Q Dr. McDonald, I'm handing you what's 17 been marked as Exhibit 9. 18 A Right. 19 Q This is an email from you to various 20 people, correct? 21 A Correct. 22 Q Dated March 23rd, 2011?</p>

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<p style="text-align: right;">242</p> <p>1 A Correct. 2 Q And it's at 4:45 a.m.? 3 A Yeah. 4 Q Do you know why you were doing this at 5 4:45 a.m? 6 A I was up very late sometimes. It's 7 redistricting year. You know, you're always busy. 8 Q So this is somewhat advanced of the 9 commission coming out with its proposed 10 congressional districts, right? That came out in 11 April. 12 A Yes. This is describing one of the -- 13 and I don't even -- looking back at the records I 14 don't know which plan is being discussed here. I 15 just know that I -- what the contents of this 16 email is. 17 Q Okay. It says -- well, let me ask 18 first. Who are the recipients of this email? 19 A These are these William & Mary Law 20 School students, Brian Cannon and Brian Rothenberg 21 and Nicholas Mueller. 22 Q All three of them are at what college?</p>	<p style="text-align: right;">244</p> <p>1 were set as low as 55.5 percent. I -- honestly I 2 cannot remember the discussion that led to me 3 writing this email between myself and the 4 commission. 5 Q You didn't say anything about how you 6 can't come up with 53.2 percent threshold or 7 quota, right? 8 A I cannot say that. I'm -- I'm relaying 9 what the commission has directed me to relay to 10 these students. 11 Q All right. So -- 12 A The meetings were public meetings and I 13 believe there are still transcripts of them on the 14 web. So that may be a place to look to find out 15 why -- where the origin of this email came from. 16 Q And the commission had no partisan 17 intent, right? 18 MR. DEVANEY: Objection. Lack of 19 foundation. 20 THE WITNESS: That's a difficult 21 question to answer because the third plan that you 22 mentioned from the commission, the one that</p>
<p style="text-align: right;">243</p> <p>1 I'm sorry. 2 A They were law school -- they were law 3 students -- I believe they've -- you know, they've 4 since graduated -- at William and Mary Law School. 5 Q Okay. And you tell them: I've shared a 6 congressional plan called "Dr. McDonald 3rd 7 District Variant," which demonstrates how to 8 create a plan that has a third congressional 9 district more than 53.2 percent black BVAP and 10 connects the eastern shore with a bridge to the 11 Newport News area. 12 You then say there are two absolutely 13 must requires for the plan to be considered by the 14 commission -- a 53.2 percent BVAP district is the 15 first one. 16 A Right. 17 Q Okay. So the commission had an absolute 18 firm threshold of 53.2 percent? 19 A In this email I think it -- we had 20 directed at this point to create one of these 21 districts; but again, if you look back at the 22 original criteria they were -- originally they</p>	<p style="text-align: right;">245</p> <p>1 actually dropped the black voting-age population 2 in the district, that was a plan that was drawn by 3 Mr. Cable with the -- from what I understood to be 4 the intent to protect Bobby Scott and to protect 5 Eric Cantor. So there was some political intent 6 there behind that third plan. 7 BY MR. CARVIN: 8 Q Who is Mr. Cable? 9 A He's this Cooper Center research 10 associate who had been brought in by the 11 commission to draw -- 12 Q I apologize -- 13 A -- the Senate plans. 14 Q You may have told me. I'm blanking. 15 What's the Cooper Center, again, please? 16 A Oh, it's -- it's a demographic center 17 that's at the University of Virginia. 18 Q And they were the principal line drawers 19 under your supervision in addition to these 20 William & Mary law students? 21 A Right. I had absolutely nothing to do 22 with that congressional plan at all. I was</p>

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<p style="text-align: right;">246</p> <p>1 informed at 11:00 a.m. prior to the final meeting 2 of the commission the existence of this additional 3 redistrict -- congressional redistricting plan. 4 Q Okay. And as to the first two, you were 5 more involved and you are not aware of any 6 partisan intent for those two options? 7 A I was not aware of any partisan intent 8 on that one. 9 Q And was there any effort to subordinate 10 traditional districting principles for racial 11 purpose by you or anybody else involved with the 12 commission? 13 A Well, again, what we were doing here was 14 drawing districts that were reaching certain 15 thresholds that we set absent any other knowledge 16 about racial voting patterns within the 17 Commonwealth of Virginia. 18 Q And just to be clear -- 19 A So -- 20 MR. DEVANEY: Can he finish? 21 BY MR. CARVIN: 22 Q You are saying you needed to do the</p>	<p style="text-align: right;">248</p> <p>1 if Dr. McDonald needs a break, I'm happy to break 2 for a few minutes or I'm happy to forge ahead, 3 whichever you prefer. 4 MR. DEVANEY: Mike, this is John. How 5 long do you expect to take. 6 MR. MELIS: I'd say an hour on the upper 7 end. 8 THE WITNESS: Okay. Let's just continue 9 on and see how far we can go. 10 EXAMINATION BY COUNSEL FOR VIRGINIA 11 BOARD OF ELECTIONS 12 BY MR. MELIS: 13 Q Dr. McDonald, again, my name is Mike 14 Melis. I represent the State Board of Elections 15 defendants in this case. And I have two questions 16 for you following up on the questions you answered 17 for Mr. Carvin. 18 A Okay. 19 Q Can you hear me okay? 20 A Yes, I can. 21 Q If I'm correct, you testified that the 22 alternative plan was drawn up by an individual</p>
<p style="text-align: right;">247</p> <p>1 racial analysis to figure out how much you could 2 drop the benchmark and still retain the ability to 3 elect an African American candidate of choice; is 4 that right? 5 MR. DEVANEY: Be sure you finish your 6 last answer if you would like to. 7 THE WITNESS: Yes. That's where I was 8 going with that. That statement was that we 9 needed to do that analysis in order to determine 10 the correct number. So what was being done here 11 was operating within the constraint of not doing 12 those analyses to determining if indeed there was 13 some improper racial purpose behind the drawing of 14 the district lines at a higher black voting-age 15 population number. This was the numbers that we 16 were going after. 17 MR. CARVIN: Want to hold on one minute? 18 I have no further questions. Mike Melis is on the 19 phone. I'm sure you want to extend your Friday if 20 at all possible, so Mike, do you have any 21 questions? 22 MR. MELIS: I do. I'm happy to give --</p>	<p style="text-align: right;">249</p> <p>1 named -- Derrick Hawkins; is that correct? 2 A Correct. 3 Q And Mr. Hawkins, do you understand that 4 he is with the National Committee for an Effective 5 Congress? 6 A Correct. 7 Q Okay. Do you know anything about that 8 organization? 9 A As I told Mr. Carvin, I know they have 10 Democratic clients and Republican clients. 11 Q How is it that you know that they have 12 both Democratic and Republican clients? 13 A I know from interactions with them and 14 from interactions with people who have been 15 involved in litigation in other states. 16 Q Okay. There was some discussion with 17 Mr. Carvin about the purpose and intent of the 18 alternative plan that was drawn up by Mr. Hawkins 19 in the NCEC, correct? 20 A Correct. 21 Q And you testified as to what you thought 22 the purpose of the alternative plan was; is that</p>

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<p style="text-align: right;">250</p> <p>1 correct? 2 A Correct. 3 Q I'm going to -- if you could just humor 4 me for a second, I'm going to read to you from the 5 home page for the NCEC. 6 A The what? The home page? 7 Q The home page off the Internet from the 8 National Committee for an Effective Congress. 9 A Okay. 10 Q It states: Welcome. In 1948 Eleanor 11 Roosevelt and her friends had an idea for an 12 organization that would pool the resources of 13 small contributors from across the country and 14 spend those funds in the most efficient way to 15 elect progressive candidates to the U.S. Senate 16 and House. They called it National Committee for 17 an Effective Congress. 18 A Okay. 19 Q Today NCEC is one of the most 20 influential political organizations, having helped 21 elect hundreds of progressive candidates to 22 Congress. Please join NCEC in that effort.</p>	<p style="text-align: right;">252</p> <p>1 the avowed purpose of the organization that drew 2 up the alternative plan is to elect progressive 3 candidates to Congress, you don't believe that 4 that had any effect on the plan that they drew up? 5 MR. DEVANEY: Asked and answered. Go 6 ahead. 7 THE WITNESS: Well, I do not know -- I 8 believe they are currently engaged in Florida to 9 defend the redistricting plan in Florida. I 10 believe so from my conversations with people 11 involved in that litigation. So there's an 12 example there of where they were engaged in a 13 redistricting consulting on behalf of republicans. 14 BY MR. MELIS: 15 Q And that's in Florida? 16 A Yes. 17 Q What is the name of the litigation in 18 Florida? 19 A Oh. Do you guys know the name of that 20 litigation? 21 MR. DEVANEY: I'm not sure which one 22 you're referring to.</p>
<p style="text-align: right;">251</p> <p>1 That's what it says on their home page. 2 Were you able to hear me? 3 A Yes, I was. 4 Q Okay. Assuming that what I'm reading to 5 you is accurate, does that change any of your 6 answers with regard to the purpose of the 7 alternative plan given that the home page 8 indicates the purpose of the NCEC is to elect 9 progressive candidates to Congress? 10 A No, it does not. I mean I thought that 11 that particular redistricting plan was an elegant 12 plan within the constraints of what was being 13 attempted -- what they were attempting to do. And 14 so you can -- you can impute motive behind a plan, 15 but I think the plan stands on its own. It looks 16 to be a plan as advertised, that it was designed 17 to only make changes between the second and third 18 congressional districts, create a district that 19 had a bare majority black voting-age population, 20 and was also trying to be more respectful for 21 traditional redistricting principles. 22 Q So to be clear, despite the fact that</p>	<p style="text-align: right;">253</p> <p>1 THE WITNESS: Sorry. I don't know it 2 off the top of my head. 3 BY MR. MELIS: 4 Q Okay. It's currently ongoing? 5 A I believe so. I believe it's current 6 ongoing litigation. 7 Q Do you know which court it's in? 8 A It's in state court. 9 Q State court in Florida? 10 A State Supreme Court. 11 Q I want to direct your attention to your 12 rely to Mr. Morgan. 13 A Yes. 14 Q It's labeled -- 15 A It's Exhibit 4. 16 Q Exhibit 4. Thank you. Yes. Page one 17 of Exhibit 4. The last full paragraph, about 18 midway through, there's a sentence that starts "in 19 other words." Do you see that? 20 A Yes. 21 Q All right. That sentence reads: In 22 other words, the Department of Justice approved a</p>

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<p style="text-align: right;">254</p> <p>1 previous version of the Third District with a 2 black VAP of 50.5 percent, which is less than 3 plaintiffs' alternative Third District of 4 51 percent." 5 A Correct. 6 Q "Implicit in this observation is that 7 plaintiffs' alternative Third District would have 8 been precleared by the Department of Justice." 9 Do you see that? 10 A Yes. 11 Q So would you agree that the alternative 12 plan that's been presented by the NCEC is -- in 13 order for it to be a viable alternative to the 14 adopted plan, it must be one that would achieve 15 preclearance from the Department of Justice? 16 A Well, now we don't have Section 5 that's 17 applicable to the State of Virginia. So that's 18 actually a difficult legal question, and I will 19 leave it to you lawyers to figure that one out. 20 But if we're looking at the criteria that was 21 applied when the state or the Commonwealth of 22 Virginia adopted a redistricting plan, Section 5</p>	<p style="text-align: right;">256</p> <p>1 Q When was that? 2 A This was last round of redistricting. 3 So 2011, 2012 would have been -- there was a lot 4 of litigation there, so there were multiple plans 5 that were submitted to the Department of Justice. 6 Q And did they get preclearance from DOJ? 7 A They failed the first time, but they got 8 it the second time. 9 Q Were you involved both times or just the 10 first time or just the second time? 11 A I can't remember. I was a consultant to 12 the commission during the entire time that the 13 commission was doing mapping. 14 Q Okay. Are there any others other than 15 Arizona? 16 A Where I've been involved with the 17 Section 5 submission? 18 Q Yes. 19 A No. 20 Q Okay. Have you ever worked for the 21 Department of Justice reviewing plans for Section 22 5 preclearance s?</p>
<p style="text-align: right;">255</p> <p>1 was governing, and I believe that the plaintiffs' 2 alternative plan would have also complied with 3 Section 5 of the Voting Rights Act. 4 Q Let me -- just so the record is clear, 5 let me rephrase the question taking into account 6 what you just pointed out regarding the 7 applicability of Section 5. 8 Would you agree that the alternative 9 plan, to be a viable alternative in 2011 or 2012, 10 would have to be a plan that would get 11 preclearance from the Department of Justice? 12 A Yes. I do believe so. 13 Q Okay. Have you worked on other 14 redistricting plans that were submitted for 15 Section 5 preclearance? 16 A Yes, I have. 17 Q Which plans have you worked on that were 18 submitted for Section 5 preclearance? 19 A The State of Arizona. I actually 20 assisted with the Section 5 submission. 21 Q You did. Okay. 22 A Yes.</p>	<p style="text-align: right;">257</p> <p>1 A I have. 2 Q All right -- 3 A Well, excuse me. No. Not Section 5. 4 Section 2. My apologies. 5 Q Okay. So let me just ask it again. 6 Have you worked for the Department of Justice 7 reviewing plans for Section 5 preclearance? 8 A I have not. 9 Q You are aware that the Department of 10 Justice granted Virginia's request for 11 preclearance in this case, correct? 12 A I am. 13 Q And you are aware that complying with 14 federal law by obtaining preclearance was an 15 express priority of the Virginia General Assembly 16 in this case, correct? 17 A That's a difficult question to answer 18 because the Senate criteria were not controlling. 19 So if you're referring to the Senate criteria, I 20 would say no. Delegates Janus did on the floor 21 say that section -- Section 5 preclearance was a 22 priority in the drawing of his plan.</p>

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<p style="text-align: right;">258</p> <p>1 Q Have you had an opportunity to review 2 Virginia's Section 5 submission in this case? 3 A Yes, I have. 4 Q And if the way that Section 5 submission 5 was presented to the Department of Justice, one of 6 the points that were made looking at the criteria 7 adopted by the Senate in 2011, one of the points 8 that were made to the Department of Justice was 9 that Virginia was voicing the priority of 10 complying with Section 5; isn't that correct? 11 A Correct. The Senate criteria -- 2011 12 Senate criteria did state that compliance with the 13 Voting Rights Act in Section 5 was a priority. 14 Q And that was presented to the Department 15 of justice, correct? 16 A That was. 17 Q Are you familiar with the factors that 18 the Department of Justice considers in granting 19 preclearance? 20 A Yes, I am. 21 Q And does that come from your experience 22 in Arizona or your general experience as an expert</p>	<p style="text-align: right;">260</p> <p>1 BY MR. MELIS: 2 Q Okay. And this is a portion of the 3 Federal Register entitled Guidance Concerning 4 Redistricting Under Section 5 of the Voting Rights 5 Act. Do you see that? 6 A Yes. 7 Q Okay. Have you seen this before? 8 A I don't recall seeing this specific 9 document before. 10 Q Okay. If you read in the summary 11 section on the page that's numbered 7470, it's the 12 first substantive -- 13 A Yes. 14 Q -- of the document. Under summary, it 15 indicates that "it is appropriate to issue 16 guidance concerning the review of redistricting 17 plans submitted to the attorney general for review 18 pursuant to Section 5." 19 Do you see that? 20 A Yes. 21 Q So it's fair to say that this document 22 was issued by the Department of Justice for</p>
<p style="text-align: right;">259</p> <p>1 in redistricting, or where does that familiarity 2 come from? 3 A My general experience as an academic 4 who's written on this topic, but also in various 5 roles that I've had as a redistricting consultant. 6 Q Okay. Are you aware that the Department 7 of Justice in 2011 issued guidance to 8 jurisdictions regarding the preclearance process? 9 A I'm sure they did. I am not aware of 10 what you're specifically referring to. 11 Q Okay. I believe either Mr. Carvin or 12 Mr. Gore there with you have an exhibit I'd like 13 to ask you to take a look at. 14 (MCDONALD Exhibit Number 10 was marked 15 for identification.) 16 THE WITNESS: It's now in my possession. 17 BY MR. MELIS: 18 Q For the record, and so I'm clear, this 19 is Exhibit -- this will be what number exhibit? 20 THE REPORTER: 10. 21 THE WITNESS: Yes. I have that in my 22 hand.</p>	<p style="text-align: right;">261</p> <p>1 guidance to jurisdictions such as Virginia that, 2 at the time, were covered by Section 5, correct? 3 A Yes. Yes. 4 Q I heard you. I'm moving on to my next 5 question. Sorry for the pause. 6 A No. That's okay. I just didn't know -- 7 I just didn't know if you had heard me. I'm 8 sorry. 9 Q Thank you very much. On page 7471 -- 10 A Yes. 11 Q -- I'm sorry. Strike that. 12 On page 7471 under Analysis of Plans, do 13 you see that section? 14 A Yes, I do. I see that section. 15 Q It reads: "As noted above there are two 16 necessary components to the analysis of whether a 17 proposed redistricting plan meets the Section 5 18 standard. The first is a determination that the 19 jurisdiction has met its burden of establishing 20 the plan was adopted free of any discriminatory 21 purpose. The second is a determination that the 22 jurisdiction has met its burden of establishing</p>

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<p style="text-align: right;">262</p> <p>1 that the proposed plan will not have a 2 retrogressive effect." 3 Do you see that? 4 A Correct. 5 Q So would you agree if we take the DOJ 6 guidance at its word, and given that Virginia 7 obtained preclearance, DOJ determined that 8 Virginia has met its burden of establishing that 9 the enacted plan was adopted free of any 10 discriminatory purpose, correct? 11 A Well, I will -- you know, I'm reading 12 this as a whole right here. So I think I would 13 need to read it in more detail. However, I would 14 point you to 7470, which is right at the 15 paragraph -- the sentence right before the section 16 Guidance Concerning Redistricting under Section 5 17 of the Voting Rights Act. There's a sentence that 18 says, "This guidance is not legally binding; 19 rather it is intended only to provide assistance 20 to jurisdictions covered by the preclearance 21 requirements of Section 5," which is to say that 22 while the Department of Justice may have done an</p>	<p style="text-align: right;">264</p> <p>1 put before the witness that is multi pages long. 2 And my objection stands. 3 BY MR. MELIS: 4 Q I think you can still answer, 5 Dr. McDonald. 6 A Well, I'm reading through right now the 7 section entitled Discriminatory Purpose and seeing 8 what factors that the Department of Justice 9 considers for discriminatory purpose. And I do 10 not believe that they include all of the elements 11 that are at issue in this case. So I will qualify 12 and say, without doing a full analysis, it looks 13 like as though primarily they're looking for 14 evidence that someone has said something to the 15 effect that the plan is a -- it's publicly stated 16 that there is racial animosity in the creation of 17 the redistricting plan. And the Justice 18 Department did not find any evidence that someone 19 had publicly stated that there was racial 20 animosity involved with the adoption of the plan. 21 BY MR. MELIS: 22 Q And in fact, if you look further down</p>
<p style="text-align: right;">263</p> <p>1 analysis to determine if there had been a 2 discriminatory purpose, that may not necessarily 3 absolve the jurisdiction under a preclearance 4 review. And if you think back to the Moon v. 5 Meadows district, the unconstitutional district, 6 that was approved by the Department of Justice, 7 but yet a court found it unconstitutional. 8 Q I think that answers a different 9 question. I understand your explanation, but my 10 question is that, given that the Department of 11 Justice has indicated that one of the factors that 12 they look at is whether the -- in the Department 13 of Justice's opinion, whether the jurisdiction has 14 met its burden of establishing if the plan was 15 adopted free of any discriminatory purpose. Would 16 you agree that the fact that Virginia obtained 17 preclearance indicates that, at least according to 18 DOJ, Virginia met its burden that the plan was 19 free of any discriminatory purpose? 20 MR. DEVANEY: And I object to that. It 21 calls for a legal conclusion. It calls for 22 interpretation of a regulation that's just been</p>	<p style="text-align: right;">265</p> <p>1 the document, further down that column under 2 Analysis of Plans where you just pointed out 3 Discriminatory Purpose, the DOJ guidance indicates 4 that "the department will examine the 5 circumstances surrounding the submitting 6 authority's adoption of a submitted voting change, 7 such as a redistricting plan, to determine whether 8 direct or circumstantial evidence exists of any 9 discriminatory purpose of denying or abridging the 10 right to vote on account of race." 11 So in fact, the guidance according to 12 DOJ, if we take them at their word, they look for 13 both direct and circumstantial evidence of 14 discriminatory purpose, correct? 15 MR. DEVANEY: Same objection raised 16 before. Go ahead. 17 THE WITNESS: Correct. I mean that's 18 what's stated in this document. 19 BY MR. MELIS: 20 Q Right. And with regard to the second 21 factor in determination if the jurisdiction has 22 met its burden of establishing if a proposed plan</p>

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<p style="text-align: right;">266</p> <p>1 will not have a retrogressive effect, would you 2 agree that given the fact Virginia obtained DOJ's 3 preclearance that at least according to the 4 Department of Justice, there was no retrogressive 5 effect in Virginia's adopted plan? 6 MR. DEVANEY: Calls for a legal 7 conclusion. Objection. Go ahead. 8 THE WITNESS: You again, I'm -- again, 9 I'm just continuing to read your document, so I 10 apologize for not listening to your question. But 11 again, when I look at the discriminatory -- the 12 purpose in which you are talking about 13 circumstantial evidence, we have the impact of the 14 decision, the historical background of the 15 decision, the sequence of events leading up to the 16 decision, whether the challenged decision departs 17 from normal practice and contemporaneous 18 statements. 19 So there was not an analysis that the 20 Department of Justice did to determine if the 21 factors that the Moon v. Meadows court found to be 22 evidence of discriminatory purpose. The</p>	<p style="text-align: right;">268</p> <p>1 correct? 2 A That is correct. 3 Q Okay. Are you -- would it surprise you 4 if I told you that the DOJ investigation involved 5 discussing the adopted plan as well as alternative 6 plans with Virginia's legislators? 7 A I'm sorry. Something -- you broke up 8 there. So I missed your full stated question. 9 Can you say that again, please.? 10 Q Certainly. It wouldn't surprise you 11 that part of DOJ's investigation involved 12 discussing both the adopted plan and the 13 alternative plans that were considered with 14 various members of the legislature? 15 A That's correct. Usually they do -- 16 they -- the Department of Justice requests 17 information. And I was -- I was asked to provide 18 information as well. I -- I provided information 19 regarding the 13th African American majority 20 district that was potentially possible in the 21 House of Delegates plan. However, I did not 22 discuss -- this was -- my discussion with DOJ</p>
<p style="text-align: right;">267</p> <p>1 Department of Justice did not undertake reading 2 through that. I don't believe that they undertook 3 the same analysis the Moon v. Meadows court did. 4 So I just want to -- again, I'm trying 5 to answer your question in the framework of 6 answering -- providing an opinion based on a very 7 cursory reading of the statement you gave me. 8 MR. DEVANEY: And Mike, I need to 9 interrupt for a second just for the record. I 10 want to be clear that the only document in front 11 of the witness right now is the Federal Register. 12 There are no documents in front of him relating to 13 preclearance, including no document explaining 14 DOJ's rationale for granting preclearance. 15 MR. MELIS: I understand. Thank you. 16 THE WITNESS: So, I'm sorry. You had 17 another question for me. 18 BY MR. MELIS: 19 Q Actually, let me follow-up on what he 20 just said. You are not familiar with what the 21 Department of Justice did in terms of this 22 investigation of Virginia's DOJ submission,</p>	<p style="text-align: right;">269</p> <p>1 happened after the adoption of the state 2 legislative plans. I did not at any time have any 3 contact with them about the congressional plans 4 which were adopted at a later point in time. 5 Q Understood. Thank you. And you've got 6 no reason to believe that the DOJ wouldn't make a 7 full and thorough investigation of Virginia's 8 proposed adopted plan, correct? 9 A Well, like everybody else, they are 10 stressed quite a bit during times of 11 redistricting. So they may have had limited 12 resources to apply in this case. So I believe 13 that objection about knowing what process the 14 Department of Justice to make this determination 15 is relevant here because we don't know what 16 evidence, if any, the Department of Justice used 17 to reach their determination. 18 Q Okay. On pages 7471, the very last 19 paragraph in the third column that runs over to 20 the next page -- 21 A Yes. 22 Q -- it identifies factors that courts</p>

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<p style="text-align: right;">270</p> <p>1 have considered in redistricting as part of the 2 guidelines which the DOJ uses. And one of the 3 those factors, if you go over to 7472, is whether 4 minorities are over concentrated in one or more 5 districts and whether alternative plans satisfying 6 the jurisdictions legitimate governmental 7 interests exist. 8 Do you see that section? 9 A Yes, I do. 10 Q Okay. And so you have no reason to 11 believe that as part of this consideration of 12 Virginia's adopted plan that the DOJ didn't apply 13 these factors? 14 MR. DEVANEY: Objection. Lack of 15 foundation. 16 THE WITNESS: Yeah. I have no knowledge 17 of how the Department of Justice applied this 18 factor. 19 BY MR. MELIS: 20 Q Okay. And also on page 7472, pretty 21 much in the middle of the page, it's in the second 22 column at the second full paragraph, starts "at</p>	<p style="text-align: right;">272</p> <p>1 MR. DEVANEY: Object to form. Go ahead. 2 THE WITNESS: It was, as I've stated in 3 my testimony here in deposition and in my expert 4 reports, that where race was used as the 5 predominant factor how the plan was not narrowly 6 tailored to accomplish that goal of producing a 7 legal redistricting plan. 8 BY MR. MELIS: 9 Q But you would agree, given what's in 10 front of you today from the Department of Justice 11 that the Department of Justice has advised 12 jurisdictions that were subject to Section 5 that 13 they may need to depart from strict adherence in 14 their redistricting principles, correct? 15 A Yes. That they may need to do that, 16 yes. 17 Q With regard to the alternative plan, 18 obviously, that plan has never been submitted to 19 DOJ for purposes of preclearance, right? 20 A That's correct. 21 Q And it's not an alternative plan that 22 DOJ would have looked at as part of Virginia's</p>
<p style="text-align: right;">271</p> <p>1 the same time." Do you see that? 2 A Yes, I do. 3 Q "At the same time compliance with 4 Section 5 of the Voting Rights Act may require the 5 jurisdiction to depart from strict adherence to 6 certain of its redistricting criteria." 7 Do you see that? 8 A Correct. 9 Q Okay. So given that the Department of 10 Justice is advising jurisdictions that they may 11 have to depart from strict adherence to certain of 12 its redistricting criteria, you don't view 13 Virginia as following that advice and guidance as 14 being problematic, do you? 15 A I don't understand that question. I'm 16 sorry. 17 Q To the extent that Virginia departed 18 from strict adherence to any of its redistricting 19 criteria in order to comply with Section 5 of the 20 Voting Rights Act as guided by the Department of 21 Justice, do you recall that doing so was 22 problematic in any way?</p>	<p style="text-align: right;">273</p> <p>1 preclearance process, correct? 2 A That is correct. 3 Q And obviously since you are not familiar 4 with what DOJ did in terms of it's analysis of 5 Virginia's plan, you would not be able to conduct 6 the same analysis or replicate whatever DOJ's 7 analysis was with regard to the alternative 8 proposed plan, correct? 9 A That is correct. I would not be able 10 to -- I do not know how they weighted their 11 factors. Yes, that is correct. 12 Q So we don't know how those factors would 13 be applied to the alternative proposed plan, 14 correct? 15 A Right. I would need to do an analysis 16 of these factors and then come to a judgment based 17 on that analysis how well they conform with the 18 factors that are stated here. And if none of the 19 factors have done worse on those -- on the stated 20 factors, then I could come to the conclusion that 21 the plan would pass Section 5 regardless of what 22 the criteria were. And the reason why I say that</p>

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<p style="text-align: right;">274</p> <p>1 is that the -- this alternative plan is -- has 2 components of it which we've been talking -- 3 discussing here, which are -- have more respect 4 for judicial redistricting principles than on what 5 the adopted plan exhibits. 6 Q What we do know for certain is that 7 Virginia's -- 8 MR. CARVIN: Mike -- Mike Melis, I 9 apologize. This is Mike Carvin. Can we go off 10 the record for a sec? 11 (Discussion off the record. Mr. Carvin 12 left the deposition.) 13 BY MR. MELIS: 14 Q I think my last question was what we do 15 know for certain is that Virginia's adoptive plan 16 obtained preclearance. 17 A Correct. 18 Q What we don't know is whether the 19 proposed alternative plan would obtain 20 preclearance? 21 A Again, I -- if I -- without doing an 22 analysis on all of these factors expressed here, I</p>	<p style="text-align: right;">276</p> <p>1 A Well, on the entirety of the -- of the 2 criteria that DOJ applied, right? I think that's 3 what you're saying. 4 Q Yes. You would not be able to say that 5 DOJ would grant preclearance to the alternative 6 plan. 7 A Right. We would need to know something 8 about the -- if there was any -- the historical 9 background of the decision, the impact of the 10 decision. I think we can say that this would not 11 have a retrogressive effect on one. The 12 historical background, we'd need to explore more 13 fully. Does NCEC have a history of racial animus 14 that has been revealed somehow? The sequence of 15 events leading up to the decision, we would have 16 to look at those. I don't think there's anything 17 in those events, but maybe DOJ may find something. 18 It's not -- to my knowledge there's nothing. And 19 on whether the challenge decision departs from 20 normal practice, it conforms better as traditional 21 redistricting principles than the adopted plan. 22 So I think we would cover that point. And</p>
<p style="text-align: right;">275</p> <p>1 cannot answer that question. That is true. 2 However, I have done analyses of some of these 3 factors which lead me to believe that the 4 redistricting plan would have received 5 preclearance. 6 Q But you also testified that you don't 7 know what factors were important and what factors 8 DOJ investigated and looked at -- 9 A Correct. 10 Q -- and how closely they looked at it, 11 correct. 12 A Correct. So what I can say is, on the 13 factors that I have looked at in my expert 14 reports, I do know that the adopted redistrict -- 15 excuse me -- plaintiffs' alternative plan fares 16 better than the adopted plan on those metrics. 17 Q But you can't say the same thing with 18 regard to the entirety of the adopted -- of the -- 19 I'm sorry. You cannot say the same thing with 20 regard to the entirety of the alternative plan, 21 not focusing on just a few factors but the 22 entirety of the plan.</p>	<p style="text-align: right;">277</p> <p>1 contemporary statements or viewpoints held by 2 decision makers, there's just not a lot here in 3 terms of those statements. So my -- my sense is 4 that applying this analysis, but again not knowing 5 the fullness of everything, my decision is still 6 that this plan would receive Section 5 7 preclearance. 8 Q Even though you don't know what DOJ 9 weighs in its factors, what sort of investigation 10 it did on the adopted plan than it would do on the 11 proposed alternative plan? 12 A Right. My knowledge of this plan 13 suggests that they would have, but again, I have 14 not -- you are correct that I have not done a full 15 analysis, but my opinion would be that, given the 16 factors that are involved here, the plan would be 17 precleared by the Department of Justice or would 18 have been precleared. 19 Q When did you come to the conclusion that 20 the Third District was racially gerrymandered? 21 A When did I come to it? 22 Q Yes.</p>

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<p style="text-align: right;">278</p> <p>1 A It's -- I don't know exactly at the 2 point in time when that happened. However, the 3 fullness of that judgment is expressed in my 4 report that's dated December 6th. 5 Q Dr. McDonald, you would agree -- I 6 believe you testified in response to Mr. Carvin's 7 questions, that maintaining communities of 8 interest is a traditional redistricting criteria? 9 A Yes, it is. 10 Q And would communities of interest be 11 fairly defined as individuals who have certain 12 commonalities with each other, depending on the 13 criteria you're using? 14 A That is normally how it is defined 15 within state code and state constitutions, 16 although Virginia doesn't have a explicit 17 communities of interest criteria. 18 Q But generally speaking, that's what 19 people understand a community of interest to be, 20 correct? 21 A Right. Yes. 22 Q For example, would you agree that folks</p>	<p style="text-align: right;">280</p> <p>1 Janus said about the adopted plan? What did you 2 read or see that -- or hear that led you to that 3 conclusion? 4 A As part of the disclosure that the 5 plaintiffs asked for from the House of Delegates 6 and the General Assembly, they provided video of 7 the floor hearings regarding Bill 5004. 8 Q Okay. Was that video a video of 9 Delegate Janus introducing his bill? Is that what 10 was going on? 11 A I think it was the second reading where 12 they had the discussion of the restricting plan. 13 Q In introducing the bill, Delegate Janus 14 said words to the effect of one of the purposes of 15 the bill being preserving the will of the 16 electorate by maintaining current incumbents. 17 Would that change any of your answers to Mr. 18 Carvin as to whether maintaining incumbency was a 19 goal of the plan? 20 A He never said that on -- the tape that I 21 watched was -- he was very emphatic because 22 Democratic members of the legislature were pushing</p>
<p style="text-align: right;">279</p> <p>1 who live in rural areas might be considered a 2 community of interest? 3 A They may be. Yes. 4 Q And folks who live in suburban areas or 5 urban areas would be communities of interest? 6 A They may be. 7 Q Would you agree that folks that live 8 along a body of water might be considered a 9 community of interest? 10 A They may be. 11 Q I want to ask you about your responses 12 to several of Mr. Carvin's questions involving the 13 extent to which preserving incumbency was a goal 14 of the adopted plan. 15 A Correct. Yes. 16 Q I believe that in answering Mr. Carvin's 17 questions you placed a lot of weight on what 18 Delegate Janus said, or least what you recall 19 Delegate Janus said, about the adopted plan; is 20 that correct? 21 A Correct. 22 Q How is it that you know what Delegate</p>	<p style="text-align: right;">281</p> <p>1 him on this issue. And he explicitly said 2 repeatedly after withering questions on this that 3 incumbency was not a factor in his -- in the 4 formation of that redistricting plan. 5 Q So your testimony is that Delegate 6 Janus, in the materials that you saw, never said 7 anything to the effect of preserving the will of 8 the electorate by maintaining current incumbents 9 was one of the goals of his plan? 10 A Absolutely. Yes. 11 Q Okay. If Delegate Janus also said that 12 ensuring compliance with one person-one vote 13 requirements was a goal of his plan, would that 14 change your opinion to the extent to which race 15 predominated. 16 A No, it would not. 17 Q If Delegate Janus also said that 18 ensuring compliance with the non-retrogression 19 requirement of the Voting Rights Act was one of 20 the goals of the plan, would that change your 21 opinion? 22 A It would not.</p>

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<p style="text-align: right;">282</p> <p>1 Q If Delegate Janus said that maintaining 2 the core of the districts was also one of the 3 goals of his plan, would that change your opinion? 4 A No, it would not. 5 Q If Delegate Janus said that maintaining 6 and, where possible, reuniting jurisdictions was 7 one of the goals of his plan, would that change 8 your opinion? 9 A No, it would not, since those 10 jurisdictions had no bearing on the third 11 congressional district. 12 Q If Delegate Janus also said that 13 maintaining and, where possible, reuniting 14 communities of interest was one of the goals of 15 the plan, would that change your opinion? 16 A No, it would not. 17 Q And if Delegate Janus said that 18 obtaining the recommendations and approval of each 19 of Virginia's congressmen was one of the 20 purposes -- or one of the reasons he was proposing 21 that particular plan, would that change your 22 opinion?</p>	<p style="text-align: right;">284</p> <p>1 criteria. 2 And so as we go through those list of 3 criteria that you just mentioned, they may be 4 criteria that he considered in the course of 5 drawing his map, but they aren't particularly 6 constraining because they are -- there are 7 multiple ways to approach drawing the districts. 8 So then we have to look at way in which 9 those districts were drawn and how they -- what 10 effect they had on the racial composition of the 11 third congressional district. 12 And so once I move beyond just the 13 statements of those goals that he stated on the 14 floor of the House of Delegates and we move on to 15 the next -- looking at the racial effect of those, 16 that's where I draw my conclusions that race 17 predominated in the drawing of the Third 18 Congressional District. 19 Q And of course, you would agree -- 20 A I would also add to this that we have -- 21 Mr. Morgan, who has now in his expert report 22 put -- underlined that by saying he -- there was a</p>
<p style="text-align: right;">283</p> <p>1 A It would not. 2 Q Why is it -- are you not giving any 3 weight to Delegate Janus's statements with regard 4 to those purposes of the plan? 5 A I am not. And we can go through them 6 one at a time if you wish. 7 Q No. I'm just curious as to why you 8 place so much weight on hearing Delegate Janus say 9 that incumbency was not one of the purposes of his 10 plan and yet you disregard giving any weight to 11 Delegate Janus's statements with regard to the 12 other purposes of his plan? 13 A Well, where I have disagreement -- and 14 that's within my report -- is how race factored 15 into the decisions of these other criteria. 16 Q So you don't give any weight to any of 17 those stated purposes according to Delegate Janus? 18 A I'm sure that the districts were drawn 19 for equal population. They have equal population. 20 But there are nearly an infinite number of ways in 21 which you can draw equal population districts. 22 And so it's not a particularly constraining</p>	<p style="text-align: right;">285</p> <p>1 55 percent black voting-age quota was that applied 2 to the drawing of the Third Congressional 3 District. And so, you know, notwithstanding 4 my -- my analysis, I find that highly compelling 5 that there was a target threshold above what was 6 required in order to elect a candidate of choice 7 or to meet any Section 2, potential Section 2 8 litigation. That was a threshold that Mr. Morgan 9 has stated there without any justification. So I 10 -- not only is it my -- you know, based on the 11 opinions of my report, but also looking at 12 Mr. Morgan's report, further bolsters my opinion 13 that race was a predominant factor in the creation 14 of the Third Congressional District. 15 Q Thank you. I think you and Mr. Carvin 16 had an extensive discussion about that, and I'll 17 let that testimony speak for itself. 18 Of course, you would agree that the 19 statements of individual delegates, even the 20 sponsor of the bill, does not speak for the entire 21 General Assembly? 22 MR. DEVANEY: Objection. Calls for a</p>

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286	<p>1 legal conclusion. Go ahead. 2 THE WITNESS: Yes. That is the one 3 person who drew the plan. Yes. 4 BY MR. MELIS: 5 Q Right. But you would agree that no one 6 delegate can speak for the entire General 7 Assembly, correct? 8 A I agree with that notion, yes. 9 MR. MELIS: That's all the questions I 10 have. Thank you, Dr. McDonald. 11 THE WITNESS: Thank you. 12 (Whereupon, at 3:21 p.m., the deposition 13 of MICHAEL P. MCDONALD was concluded.) 14 15 * * * * * 16 17 18 19 20 21 22</p>
287	<p>1 CERTIFICATE OF NOTARY PUBLIC 2 I, CONSTANCE HUNT RHODES, the officer 3 before whom the foregoing deposition was taken, do 4 hereby certify that the witness whose testimony 5 appears in the foregoing deposition was duly sworn 6 by me; that the testimony of said witness was 7 taken by me in stenotypy and thereafter reduced to 8 typewriting under my direction; that said 9 deposition is a true record of the testimony given 10 by said witness; that I am neither counsel for, 11 related to, nor employed by any of the parties to 12 the action in which this deposition was taken; and 13 further, that I am not a relative or employee of 14 any attorney or counsel employed by the parties 15 thereto, nor financially or otherwise interested 16 in the outcome of the action. 17 18 19 _____ 20 CONSTANCE HUNT RHODES 21 Notary Public in and for 22 the District of Columbia My commission expires: 21 January 1, 2018 22</p>
288	<p>1 ACKNOWLEDGEMENT 2 OF DEPONENT 3 4 I, MICHAEL P. MCDONALD, do hereby acknowledge I 5 have read and examined the foregoing pages of 6 testimony, and the same is a true, correct and 7 complete transcription of the testimony given by 8 me, and any changes or corrections, if any, appear 9 in the attached errata sheet signed by me. 10 11 12 13 14 _____ 15 Date MICHAEL P. MCDONALD 16 17 18 19 20 21 22</p>
289	<p>1 John M. Devaney 2 Perkins Coie, LLP 3 700 13th Street, Northwest 4 Suite 600 5 Washington, D.C. 20005 6 IN RE: Page, et al. v. Virginia Board of 7 Elections, et al. 8 9 Dear Mr. Devaney: 10 Enclosed please find your copy of the 11 deposition of MICHAEL P. MCDONALD, along with the 12 original signature page. As agreed, you will be 13 responsible for contacting the witness regarding 14 signature. 15 Within 30 days of April 23, 2014, please 16 forward the errata sheet and original signed 17 signature page to counsel for intervenor 18 defendants, Michael Carvin. 19 If you have any questions, please do not 20 hesitate to call. Thank you. 21 Yours, 22 Constance H. Rhodes 21 Reporter/Notary 22 cc: Michael Carvin, Esq.</p>

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<p style="text-align: right;">290</p> <p>1 Capital Reporting Company 1821 Jefferson Place, NW 2 3rd Floor Washington, D.C. 20036 3 (202) 857-3376 4 E R R A T A S H E E T 5 Case Name: Page, et al. v. Virginia Board of Elections, et al. 6 Witness Name: MICHAEL P. MCDONALD 7 Deposition Date: April 11, 2014 8 PAGE LINE CHANGE/REASON FOR CHANGE 9 10 11 12 13 14 15 16 17 18 19 20 21 22 Signature _____ Date _____</p>	

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EXHIBIT B

4. **G. Paul Nardo:** Mr. Nardo is the Clerk of the House of Delegates and would be called to testify about the manner in which certain documents and other materials were created, maintained, and produced.

Dated: April 11, 2014

By: 

Marc Erik Elias, *pro hac vice*

Bar No. 442007

John M. Devaney, *pro hac vice*

Bar No. 375465

JDevaney@perkinscoie.com

PERKINS COIE LLP

700 Thirteenth Street, N.W., Suite 600

Washington, D.C. 20005-3960

Telephone: 202.654.6200

Facsimile: 202.654-6211

Kevin J. Hamilton, *pro hac vice*

Bar No. 15648

PERKINS COIE LLP

1201 Third Avenue, Suite 4900

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Attorneys for Plaintiffs

PLAINTIFFS' WITNESS LIST
(3:13-CV-678-) – 2

70916-0020/LEGAL120469154.1

Perkins Coie LLP
700 Thirteenth St. N.W., Suite 600
Washington, D.C. 20005-3960
Phone: 202.654.6200
Fax: 202.654.6211

CERTIFICATE OF SERVICE

On April 11, 2014, I caused to be served, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

PLAINTIFFS' WITNESS LIST

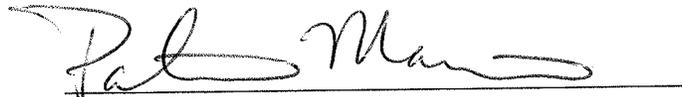
VIA EMAIL

Mike Melis
Office of the Attorney General (Richmond)
900 E Main St
Richmond, VA 23219
Email: mmelis@oag.state.va.us
Counsel for Defendants

Michael Anthony Carvin
John Matthew Gore
Jonathan Andrew Berry
Jones Day
51 Louisiana Ave NW
Washington, DC 20001
Email: macarvin@jonesday.com
Email: jmgore@jonesday.com
Email: jberry@jonesday.com
Attorneys for Intervener-Defendants

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 11th day of April, 2014.



Patricia Marino

EXHIBIT C

CONGRESSIONAL REDISTRICTING PLAN

STATEMENT OF ANTICIPATED MINORITY IMPACT

The current congressional district plan includes the Third District in which African-Americans constitute a 56.8 percent majority of the total population and a 53.2 percent majority of the voting age population. The Fourth District includes the second highest percentage of African-Americans, who constitute 33.6 percent of the total population and 32.3 percent of the voting age population of that District.

Table 5.1 presents information relating to demographic changes in these two districts between 2000 and 2010 and the effect of Chapter 1 on the minority total and voting age percentages in these districts. Chapter 1 complies with the requirements of Section 5 of the United States Voting Rights Act by retaining minority strength in the redrawn Third District comparable to the minority strength of the current Third District under the 2010 Census.

Minority Population Trends

Virginia's African-American population increased from 1,390,293 to 1,551,399 between 2000 and 2010, a growth rate of 11.6 percent and a percentage change from 19.6 percent to 19.4 percent of the total population. Under the 2010 Census option of identifying oneself by more than one race, the total number who identified as African-American only or as African-American and some other combination was 1,653,563 or 20.7 percent of the total population. (The data used by the General Assembly in redistricting allocated those who included White as part of their multiple race identity to the minority race group. The data used in the following analysis are based on this allocation.)

The African-American population grew at a slower rate than the overall state average (11.6 percent compared to 13 percent). The attached analysis by the Weldon Cooper Center for Public Service of the University of Virginia succinctly summarizes the patterns of growth of the African-American population throughout the decade. Briefly, the distribution of African-Americans in Virginia has been relatively constant during the last decade, with the African-American population being concentrated in the eastern half of the state.

These patterns are reflected in the statistics for the current Congressional districts and had implications for drawing the new districts. As Table 5.1 demonstrates, below average growth left the Third District significantly below ideal district size. The Third District gained less than 20,000 persons and was short of the ideal district size by 63,976 persons.

As in 2000, the most dramatic change in Virginia's demographic base, mirroring national patterns, was the increase in Hispanic population. The Hispanic population increased from 4.7 percent of the state population in 2000 to 7.9 percent in 2010,

representing a gain of over 302,285 people and a growth rate of 91.7 percent. While virtually every locality showed some growth in Hispanic population, the majority of that population is concentrated in Northern Virginia. Over one-quarter of the total Hispanic population is in Fairfax County, with the adjoining localities also showing significant percentages of Hispanic population. Two current congressional districts (Districts 8 and 11) contain more than 15 percent Hispanic population, both of which are located in Northern Virginia. No current congressional district contains more than 20 percent Hispanic population. In Chapter 1, Districts 8 and 11 both still contain more than 15 percent Hispanic population, with the Hispanic population increasing in both districts. No congressional district in Chapter 1 contains more than 20 percent Hispanic population.

Asians make up 5.5 percent of Virginia's population, up from 3.7 percent, and increasing from 261,025 to 439,890 between 2000 and 2010 at a growth rate of 68.5 percent. The Asian population is most heavily concentrated in Northern Virginia and tends to be fairly evenly distributed throughout the region rather than concentrated. Two current congressional districts (Districts 8, and 10) contain more than 10 percent Asian population and one district (District 11) contains more than 15 percent, all of which are located in Northern Virginia. No current congressional district contains more than 20 percent Asian population. In Chapter 1, Districts 8 and 10 both still contain more than 10 percent Asian population, with the population decreasing slightly in District 10 and increasing slightly in District 8. In Chapter 1, District 11 still contains more than 15 percent Asian population, with the Asian population increasing. No current congressional district contains more than 20 percent Asian population.

The Majority African-American District

Chapter 1 maintains one majority minority district in Virginia. The shortfall in population in the Third District is offset by shifting the whole City of Petersburg from the Fourth to the Third district. Additional population from the Cities of Hampton, Norfolk, and Richmond and the County of Henrico also shift to the Third. New Kent County is shifted from the Third District to the Seventh and fewer people from the City of Newport News and the Counties of New Kent and Prince George are assigned to the Third District.

The Fourth District gains population primarily in Chesterfield and Prince George Counties to offset the loss of Petersburg, and it retains a significant African American population and a majority of its present component parts.

The resulting population statistics shown in Table 5.1 reflect the need to add territory so as to meet equal population requirements and the non-retrogression requirements of Section 5. Other factors came into play in the shaping of these districts, including communities of interest, incumbency, and political considerations. As Table 5.1 shows, Chapter 1 adjustments to the Third and Fourth Districts to add territory to the Third District result in an increase in the total and voting age African-American populations by 3.3 percent and 3.2 percent, respectively, and both total and voting age populations are increased to over 55 percent each. The same adjustments result in slight

reductions from the total and voting age population figures in the Fourth District of 2 percent and 2.2 percent, respectively. However, both figures remain over 30 percent and retain significant influence for African Americans in the Fourth District.

Alternative Plans

In addition to Chapter 1, four plans were presented to the General Assembly during its Special Session on redistricting held during 2011. The first plan, House Bill 5004, was introduced by William R. Janis. This plan is identical to the plan contained in Chapter 1.

There were also three alternative plans presented during the Special Session on redistricting.

The first alternative plan, Senate Bill 5003 was introduced by Senator John C. Miller. The districts in Senate Bill 5003 were drawn by students at the College of William and Mary and this plan was one of the winning plans in the Virginia College and University Redistricting Competition. Table 5.1 includes the relevant information with regard to the anticipated impact of this plan. Briefly, in Senate Bill 5003, like Chapter 1, the Third District retained a majority African-American total population; however, the configuration of the districts is different. The total and voting age African-American populations in the majority minority district are 7.1 percent and 6.2 percent less, respectively, than in Chapter 1, and the total and voting age African-American populations are both below 55 percent. In the district with the second highest percentage of African-American population, the total and voting age African-American populations are 2.5 percent and 1.5 percent higher, respectively, than in Chapter 1.

The second alternative plan, Senate Bill 5004, was introduced by Senator Mamie E. Locke. Table 5.1 includes the relevant information with regard to the anticipated impact of this plan. Briefly, this plan, like Chapter 1, contained one majority African-American district, though this district shifted from the Third District to the Fourth. The Third District, under this plan, included the second highest percentage of African-American population. The configurations of the Third and Fourth Districts in this plan are essentially a reconfiguration of the current Third and Fourth Districts. The total and voting age African-American populations in the majority minority district are 6.0 percent and 5.2 percent less, respectively, than in Chapter 1, and the total and voting age African-American populations are both below 55 percent. In the district with the second highest percentage of African-American population, the total and voting age African-American populations are 12.2 percent and 10.3 percent higher, respectively, than in Chapter 1.

The third alternative plan consists of substitute bills for Senate Bill 5004 and House Bill 5004 adopted in the Senate, which were identical. Table 5.1 includes the relevant information with regard to the anticipated impact of this plan. Briefly, this plan, like Chapter 1, contained one majority African-American district, though this district shifted from the Third District to the Fourth. The Third District, under this plan, included the second highest percentage of African-American population. The configurations of

the Third and Fourth Districts in this plan are essentially a reconfiguration of the current Third and Fourth Districts. The total and voting age African-American populations in the majority minority district are 6.5 percent and 5.5 percent less, respectively, than in Chapter 1, and the total and voting age African-American populations are both below 55 percent. In the district with the second highest percentage of African-American population, the total and voting age African-American populations are 12.6 percent and 10.8 percent higher, respectively, than in Chapter 1.

Chapter 1 was introduced as House Bill 251 by Delegate Robert B. Bell during the 2012 Regular Session of the General Assembly after the General Assembly was unable to pass a plan during the 2011 Special Session on redistricting. An identical Senate bill, Senate Bill 455, introduced by Senator Jill Holtzman Vogel, was reported out of the Senate Privileges and Elections Committee. Chapter 1 passed both houses primarily with Republican support. Six of the 13 Democratic African-American Delegates voted for Chapter 1, with the remaining seven voting against it. None of the five Democratic African-American Senators voted for Chapter 1.

Attachment 5-C -- Table 5.1

Comparison Table: Virginia Congressional Districts--Majority Minority and Influence Districts

Current District	Current District 2000 TPOP	Current District 2000 TPOP Black Percent	Current District 2000 VAP Black Percent	Current District 2010 TPOP	Current District 2010 Actual Deviation	Current District 2010 Percent Deviation	Current District 2010 TPOP Black Percent	Current District 2010 VAP Black Percent	CH.1/ HB 5004 District TPOP Black Percent	CH. 1/ HB 5004 District VAP Black Percent	SB 5003 TPOP Black Percent	SB 5003 VAP Black Percent	SB 5004 TPOP Black Percent	SB 5004 VAP Black Percent	HB 5004 Sub./ SB 5004 Sub. TPOP Black Percent	HB 5004 Sub./ SB 5004 Sub. VAP Black Percent
3	643,476	56.8	53.2	663,390	- 63,976	- 8.8	56.2	53.1	59.5	56.3	52.4	50.1	44.6	41.6	45.0	42.1
4	643,477	33.6	32.3	738,639	+ 11,273	1.5	34.4	33.5	32.4	31.3	***	***	53.5	51.1	53.0	50.8
5											34.9	32.8				

Attachment 5-C -- Table 5.2

Senate of Virginia Majority Minority District Changes

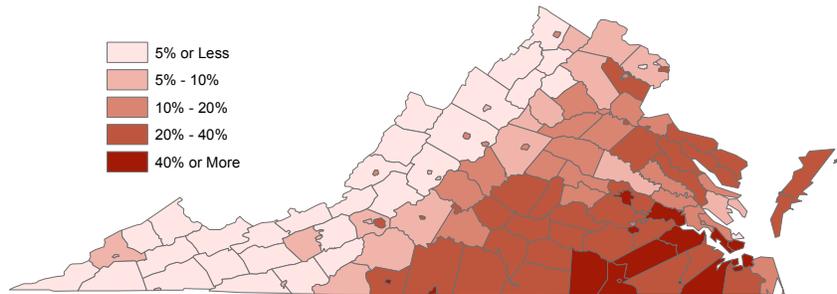
District 3 -- Additions:	more of Hampton	+ 32,941
	more of Henrico County	+ 14,550
	more of Isle of Wight County (additional split precincts with 0 population added)	+ 0
	more of Norfolk	+ 5,765
	Petersburg	+ 32,420
	more of Richmond City	+ 19,768
	part of Suffolk (split precincts with 0 population added)	+ 0
Subtractions:	New Kent County	- 18,429
	part of Newport News	- 20,090
	part of Prince George County	- 2,686
	remainder of York County	- <u>263</u>
		727,366
District 4 -- Additions:	more of Chesterfield County	+ 21,704
	more of Prince George County	+ 2,686
Subtractions:	remainder of Brunswick County	- 3,243
	part of Isle of Wight County (split precincts with 0 population moved to District 3)	- 0
	part of Suffolk (split precincts with 0 population moved to District 3)	- 0
	Petersburg	- <u>32,420</u>
		727,366

2010 Census Brief: Spotlight on Virginia's African American Population

February 22 – The United States Census Bureau recently released local level 2010 Census population counts, including data on race. This brief provides a snapshot of Virginia's black and African American population on April 1, 2010:

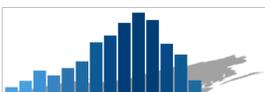
- Black/African American remains the largest minority group in Virginia. More than 1.5 million Virginia residents reported themselves to be black or African American, accounting for nearly 20 percent of the total population.
- The distribution of the black population across the commonwealth has been relatively stable over the past three decades. Blacks are concentrated in the Eastern half of the state while the Valley and Southwest regions have much smaller black populations.
- Norfolk and Richmond have the largest black populations (exceeding 100,000), while Petersburg city has the largest percentage of blacks (79 percent). Richmond lost nearly 10,000 (or 8.6 percent) of its black population between 2000 and 2010, the largest decrease in the commonwealth.

Percent of Population That Is Black or African American, April 1, 2010



Top Five Localities with the Largest Number of Black Residents		Top Five Localities with the Largest Percentage of Black Residents	
Norfolk City	104,672	Petersburg City	79.1%
Richmond City	103,342	Emporia City	62.5%
Fairfax County	99,218	Greensville County	59.8%
Henrico	90,669	Sussex County	58.1%
Virginia Beach City	85,935	Brunswick County	57.3%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the University of Virginia's Weldon Cooper Center for Public Service. For more information and related data tables, visit our website at www.coopercenter.org/demographics.



Contact: Meredith Gunter
434-982-5585
msg4g@virginia.edu

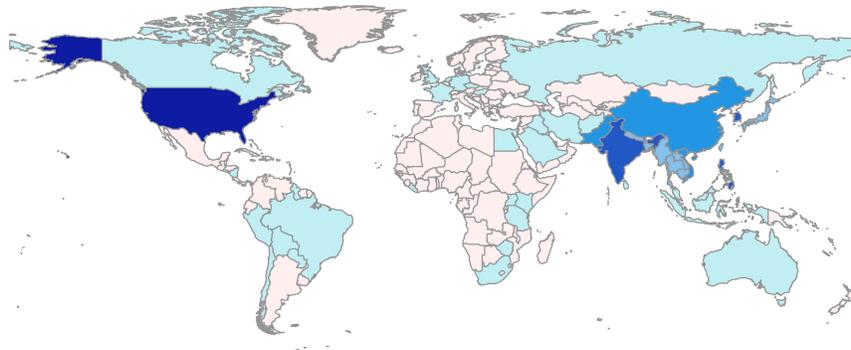
U.Va. Assesses 2010 Census Data on Virginia's Asian Population

March 2, 2011 — The latest census brief from the University of Virginia's Weldon Cooper Center for Public Service highlights census data on people of Asian origin living in Virginia.

The center continues its efforts to make 2010 U.S. Census results, released last month, more accessible and user-friendly.

- As of April 1, 2010, almost 440,000 Virginia residents were Asian, accounting for 5.5 percent of the total population. This constitutes a 69 percent increase since 2000.
- Nine out of every 10 Asians lived in Virginia's three major metropolitan areas: Northern Virginia (71 percent), Hampton Roads (13 percent) and Richmond (9 percent). High concentrations of Asians were also found in college and university communities such as Charlottesville, Williamsburg, Harrisonburg and Lynchburg cities and York, Montgomery, Albemarle and Roanoke counties.
- More than two-thirds of Virginia's Asians were U.S. citizens: 28 percent were native citizens; 40 percent were born outside of the U.S. and naturalized; and 32 percent were foreign-born non-citizens.
- The top five birth countries of Virginia's foreign-born Asians were India, Korea, Philippines, Vietnam and China.

Birthplaces of Virginia's Asian Population, April 1, 2010



Localities with the Largest Number of Asian Residents		Localities with the Largest Percentage of Asian Residents	
Fairfax Co.	189,661	Fairfax Co.	17.5%
Loudoun	46,033	Fairfax city	15.2%
Prince William	30,317	Loudoun	14.7%
Virginia Beach	26,769	Arlington	9.6%
Henrico	20,052	Falls Church	9.4%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at www.coopercenter.org/demographics.

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434-982-5585
msg4g@virginia.edu

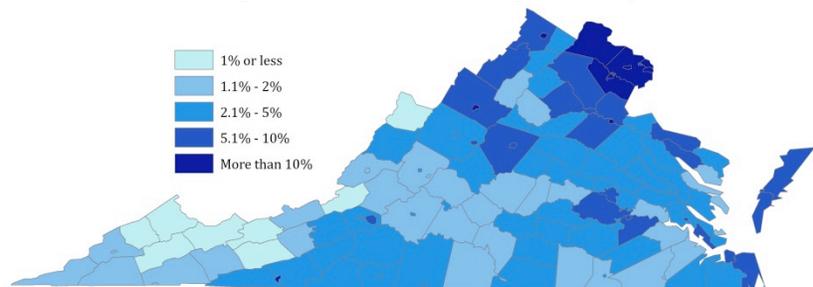
U.Va. Assesses 2010 Census Data on Virginia's Hispanic Population

February 16, 2011 — Continuing efforts to make 2010 U.S. Census data more accessible and user-friendly, demographers at the University of Virginia's Weldon Cooper Center for Public Service have assessed the data on recently released local-level 2010 population counts, including data on people of Hispanic origin living in Virginia.

Here are highlights of Virginia's Hispanic population as of April 1, 2010:

- More than 630,000 Virginia residents were of Hispanic origin, accounting for nearly 8 percent of the total population. This constitutes a 92 percent increase since 2000.
- Sixty-two percent of the commonwealth's Hispanics live in Northern Virginia. At the same time, areas such as Culpeper, James City and Orange counties and Suffolk city, which had few Hispanics in 2000, now have sizable Hispanic populations.
- Fifty-three percent of Hispanics in Virginia are native citizens. Thirteen percent of Hispanics were born abroad and became naturalized citizens of the U.S.; and 34 percent of Hispanics are foreign-born non-citizens.
- Most of Virginia's foreign-born Hispanics were born in El Salvador, Mexico, Peru, Bolivia and Guatemala.

Percent of Population That Is Hispanic, April 1, 2010



Localities with the Largest Number of Hispanic Residents		Localities with the Largest Percentage of Hispanic Residents	
Fairfax Co.	168,482	Manassas Park city	32.5%
Prince William Co.	81,460	Manassas city	31.4%
Loudoun Co.	38,576	Prince William Co.	20.3%
Arlington Co.	31,382	Alexandria city	16.1%
Virginia Beach city	28,987	Fairfax city	15.8%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at www.coopercenter.org/demographics.

Contact: Meredith Gunter
434-982-5585
msg4g@virginia.edu

U.Va. Assesses 2010 Census Data on Virginia's Multi-Racial Population

March 9, 2011 — Continuing their efforts to make 2010 U.S. Census data more accessible and user-friendly, demographers at the University of Virginia's Weldon Cooper Center for Public Service have assessed the data on recently released local-level 2010 population counts, including data on people of two or more races living in Virginia.

"The 2010 Census data reflects increasing diversity in the country, and in Virginia," said Qian Cai, director of the Cooper Center's Demographics & Workforce group. "This year, with redistricting under way in Virginia, current information on racial and ethnic heritage is of particular importance for insuring fairness in defining districts."

Here are highlights of Virginia's multi-race population as of April 1, 2010:

- More than 233,000 Virginia residents, or 2.9 percent of the population, reported that they belong to two or more of the six race categories counted in the federal census: white; black or African-American; American Indian and Alaska native; Asian; Native Hawaiian and other Pacific Islander; or some other race. (Note: People of Hispanic origin may be of any race. Hispanic ethnicity is reported in response to a different census question.)
- This is an increase from the 2000 census – the first year in which people could identify themselves as multi-racial – when 2 percent of the population reported that they belonged to two or more races.
- Most multi-racial Virginians reported belonging to just two races; only about 19,000 people reported belonging to three or more. Of the biracial Virginians, 29 percent reported being white and black; 28 percent white and Asian; and the remainder other combinations of the six race categories.
- Multi-racial Virginians tend to live in metropolitan areas, particularly Northern Virginia and Hampton Roads. Manassas Park has the highest percentage of multi-racial residents at 5.4 percent.

Localities with the Largest Number of Multi-Race Residents		Localities with the Largest Percentage of Multi-Race Residents	
Fairfax County	43,915	Manassas Park city	5.4%
Prince William	20,500	Prince William County	5.1%
Virginia Beach	17,656	Manassas City	4.3%
Loudoun County	12,575	Newport News	4.3%
Norfolk	8,825	Fairfax County	4.1%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at www.coopercenter.org/demographics.

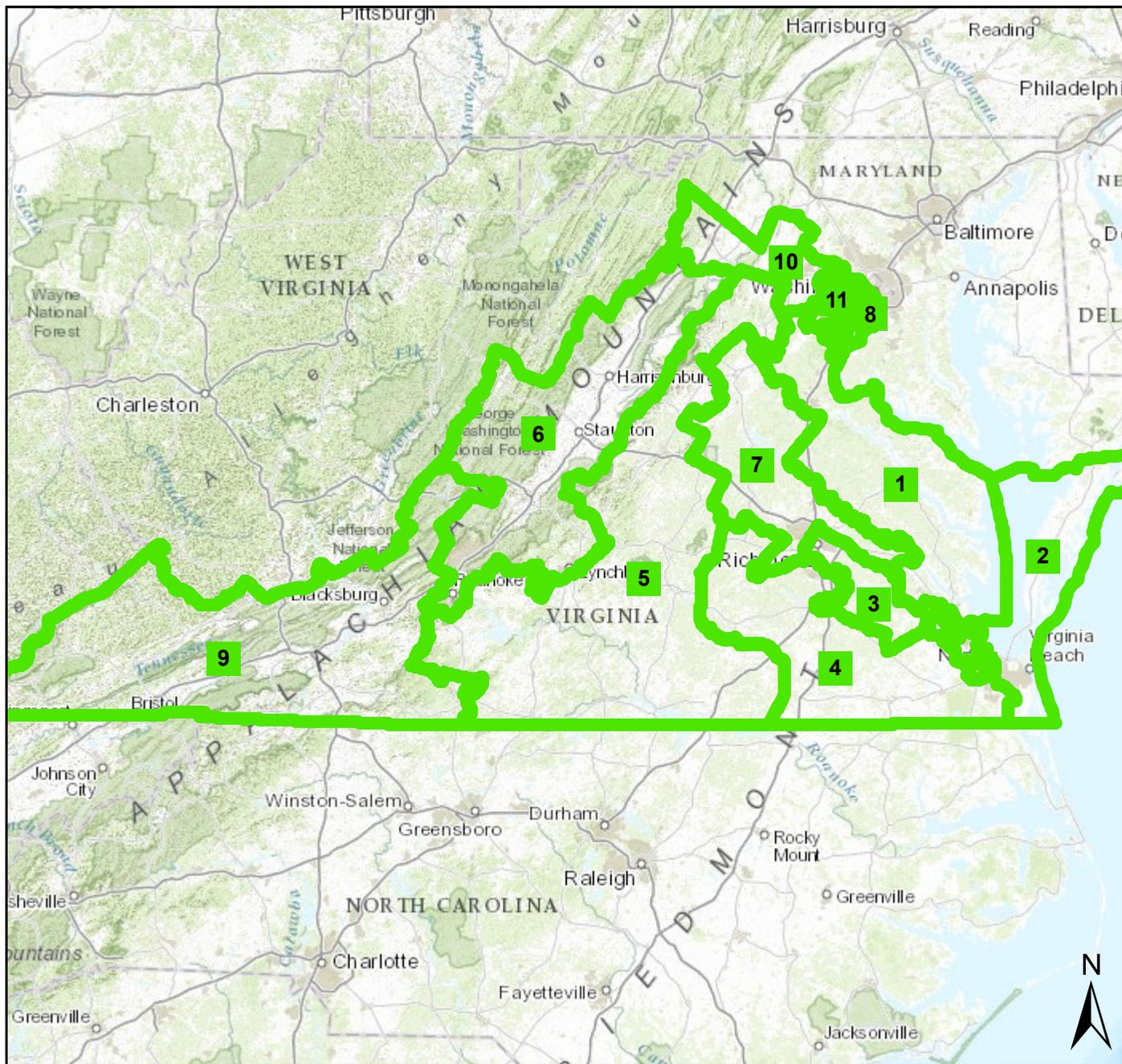
EXHIBIT D



COMMONWEALTH OF VIRGINIA
DIVISION OF LEGISLATIVE SERVICES • REDISTRICTING 2010

Legend

 Current Congressional (2012 HB251)



1 inch = 385,237 feet

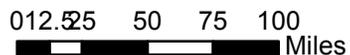


EXHIBIT E

Code 1950, § 24.2-302

CODE OF VIRGINIA
TITLE 24.2. ELECTIONS.

CHAPTER 3. ELECTION DISTRICTS, PRECINCTS, AND POLLING PLACES.

ARTICLE 2. CONGRESSIONAL, SENATORIAL, AND HOUSE OF DELEGATES DISTRICTS.

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§ 24.2-302 Congressional districts.

A. There shall be eleven Virginia members of the United States House of Representatives elected from eleven congressional districts and each district is entitled to representation by one representative.

B. The eleven congressional districts are:

First. All of Accomack, Caroline, Essex, Gloucester, James City, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, Spotsylvania, Stafford, Westmoreland, and York Counties; all of the Cities of Fredericksburg, Poquoson, and Williamsburg; and part of the Cities of Hampton and Newport News.

Second. All of the City of Virginia Beach; and part of the City of Norfolk.

Third. All of Charles City, New Kent, and Surry Counties; part of Henrico and Isle of Wight Counties; and part of the Cities of Hampton, Newport News, Norfolk, and Richmond.

Fourth. All of Amelia, Brunswick, Dinwiddie, Greensville, Nottoway, Prince George, Southampton, and Sussex Counties; all of the Cities of Chesapeake, Colonial Heights, Emporia, Franklin, Hopewell, Petersburg, Portsmouth, and Suffolk; and part of Chesterfield and Isle of Wight Counties.

Fifth. All of Appomattox, Buckingham, Campbell, Charlotte, Cumberland, Fluvanna, Franklin, Halifax, Henry, Lunenburg, Mecklenburg, Nelson, Patrick, Pittsylvania, and Prince Edward Counties; all of the Cities of Bedford, Charlottesville, Danville, Martinsville, and South Boston; and part of Albemarle and Bedford Counties.

Sixth. All of Alleghany, Amherst, Augusta, Bath, Botetourt, Highland, and Rockbridge Counties; all of the Cities of Buena Vista, Clifton Forge, Covington, Harrisonburg, Lexington, Lynchburg, Roanoke, Salem, Staunton, and Waynesboro; and part of Bedford, Roanoke, and Rockingham Counties.

Seventh. All of Culpeper, Goochland, Greene, Hanover, Louisa, Madison, Orange, and Powhatan Counties; part of Albemarle, Chesterfield, and Henrico Counties; and part of the City of Richmond.

Eighth. All of Arlington County; all of the Cities of Alexandria and Falls Church; and part of Fairfax County.

Ninth. All of Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties; all of the Cities of Bristol, Galax, Norton, and Radford; and part of Roanoke County.

Tenth. All of Clarke, Fauquier, Frederick, Loudoun, Page, Rappahannock, Shenandoah, and Warren Counties; all of the Cities of Manassas, Manassas Park, and Winchester; and part of Fairfax, Prince William, and Rockingham Counties.

Eleventh. All of the City of Fairfax; and part of Fairfax and Prince William Counties.

C. All references to boundaries of counties and cities shall be interpreted to refer to those in existence on April 1, 1991, and as reported by the United States Bureau of the Census in the 1990 census reports provided pursuant to United States Public Law 94-171, notwithstanding subsequent boundary changes by law, annexation, merger,

consolidation, or the voiding of boundary changes therefore made final.

D. Parts of counties and cities listed in subsection B for the Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Congressional Districts are defined by reference to the United States 1990 Census precincts, parts of precincts, and blocks listed for each congressional district in the Statistical Report (C0830452) on file with the Clerk of the Senate of Virginia pursuant to Chapter 983 of the 1993 Acts of Assembly. Notwithstanding the Statistical Report (C0830452), that part of Timberville Precinct of Rockingham County included in the Sixth District shall be only that part of the 1990 census precinct situated within the corporate limits of the Town of Broadway as of January 1, 1992. That part of Timberville Precinct not within such 1992 corporate limits shall be included in the Tenth District.

E. Parts of counties and cities listed in subsection B for the First, Second, Third, Fourth, and Seventh Congressional Districts are defined by reference to the precincts and to the United States 1990 Census blocks listed for each congressional district in the Statistical Report (C0926750 — Dominion File) on file with the Clerk of the Senate of Virginia pursuant to this act.

(1991, 2nd Sp. Sess., c. 6, §§ 24.1-17.300 through 24.1-17.313; 1992, c. 874; 1993, cc. 641, 983; 1998, c. 1.)

NOTES, REFERENCES, AND ANNOTATIONS

Cross references. — For constitutional provisions as to apportionment of State into congressional districts, see [Va. Const., Art. II, § 6](#).

Editor's note. — Acts 1993, c. 983, amended former § 24.1-17.313, from which this section is derived. Pursuant to § 9-77.11 and Acts 1993, c. 641, cl. 6, effect has been given in this section, as set out above. In accordance with c. 983, “(C0830452)” was substituted for “(C0786555)” in the first and second sentences of subsection D.

Acts 1998, c. 1, cl. 2 provides: “That the parts of the counties and cities listed in subsection B for the First, Second, Third, Fourth, and Seventh Congressional Districts shall be defined by reference to precincts listed in Statistical Report C0926750 — Dominion File. That report incorporates, to the extent practical, locally enacted precincts in effect November 1, 1997. Congressional district lines conform to United States 1990 Census block boundaries. If a locally enacted precinct boundary divides a United States 1990 Census block, the congressional district boundary shall follow the 1990 Census block boundary as shown in the data files and maps supporting Statistical Report C0926750.

“The counties and cities divided in the First, Second, Third, Fourth, and Seventh Congressional Districts are divided as follows:

“Albemarle County: The line dividing Albemarle County between the Fifth and Seventh Congressional Districts is not changed by the provisions of this act.

“Chesterfield County: The Beach, Branches, Dutch Gap, Enon, Ettrick, Harrowgate, Matoaca, Point of Rocks, Walthall, Wells, and Winfrees Store Precincts are in the Fourth Congressional District. The balance of Chesterfield County is in the Seventh Congressional District.

“Henrico County: The Byrd, Cardinal, Causeway, Cedarfield, Coalpit, Crestview, Derbyshire, Dumbarton, Freeman, Gayton, Glen Allen, Glenside, Godwin, Greendale, Hermitage, Hilliard, Innsbrook, Jackson Davis, Johnson, Lakeside, Lakewood, Lauderdale, Longan, Maude Trevvett, Maybeury, Monument Hills, Mooreland, Pemberton, Pinchbeck, Ridge, Ridgefield, Rollingwood, Sadler, Skipwith, Spottswood, Staples Mill, Stoney Run, Summit Court, Three Chopt, Tuckahoe, Tucker, West End, and Westwood Precincts are in the Seventh Congressional District. The balance of Henrico County is in the Third Congressional District.

“Isle of Wight County: The Camps Mill, Carrsville, Orbit, Walters, and Windsor Precincts are in the Fourth

Congressional District. The balance of Isle of Wight County is in the Third Congressional District.

“City of Hampton: The Booker, Burbank, Forrest, Fox Hill, Kecoughtan, Kraft, Langley, Northampton, Phillips, Syms, and Tucker Capps Precincts are in the First Congressional District. The balance of the City of Hampton is in the Third Congressional District.

“City of Newport News: The Beaconsdale, Bland, Boulevard, Charles, Christopher Newport, Deep Creek, Hidenwood, Hilton, Jenkins, Oyster Point, Palmer, Richneck, Riverside, Riverview, Sanford, Saunders, Sedgefield, South Morrison, Warwick, Watkins, and Yates Precincts are in the First Congressional District. The balance of the City of Newport News is in the Third Congressional District.

“City of Norfolk: The Ballentine, Bowling Park, Brambleton, Coleman Place School, Crossroads, Hunton Y, Immanuel, Lafayette Library, Lafayette Presbyterian, Lafayette-Winona, Lindenwood, Maury, Monroe, Northside, Norview Methodist, Norview Recreation Center, Ocean View School, Park Place, Rosemont, Sherwood School, Stuart, Therapeutic Center, Union Chapel, and Young Park Precincts are in the Third Congressional District. The balance of the City of Norfolk is in the Second Congressional District.

“City of Richmond: Precincts 101, 102, 103, 104, 105, 106, 111, 112, 404, 409, 410, 411, 412, and 413 are in the Seventh Congressional District. The balance of the City of Richmond is in the Third Congressional District.”

Acts 1998, c. 1, cl. 3 provides: “That this act implements the General Assembly’s responsibilities for decennial redistricting and is in force from its passage [February 11, 1998] pursuant to [Article II, Section 6, of the Constitution of Virginia](#).”

The 1998 amendments. — The 1998 amendment by c. 1, in subsection B, in the First Congressional District, inserted the counties of Essex, King and Queen, King William, and Spotsylvania, and deleted “part of Hanover, and Spotsylvania Counties” following “Williamsburg,” and rewrote the Second, Third, Fourth, and Seventh Congressional Districts; in subsection D, in the first sentence inserted “for the Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Congressional Districts”; and added subsection E.

Law Review. — For article, “The Virginia Legislative Reapportionment Case: Reapportionment Issues Of The 1980’s,” see [5 Geo. Mason L. Rev. 1](#) (1982).

Editor’s note. — The cases cited below were decided under a former law corresponding to this section.

It is the duty of the General Assembly to reapportion the congressional districts of Virginia so that each district shall be composed of contiguous and compact territory, containing as nearly as practicable an equal number of inhabitants, and, so far as can be done without impairing the essential requirement of substantial equality in the number of inhabitants among the districts, give effect to the community of interest within the districts. [Wilkins v. Davis, 205 Va. 803, 139 S.E.2d 849](#) (1965).

Any plan of districting which is not based upon approximate equality of inhabitants will work inequality in right of suffrage and of power in elections of the representatives in Congress. [Wilkins v. Davis, 205 Va. 803, 139 S.E.2d 849](#) (1965).

Certification of congressional candidates only for election at large from State. — Because [2 U.S.C. § 2c](#) requires that each state establish a number of districts equal to the number of congressional representatives to which such state is entitled, and that “Representatives shall be elected only from districts so established ...,” the Supreme Court cannot legally issue a peremptory writ of mandamus requiring the State Board of Elections to certify congressional candidates only for election at large from the State. [Simpson v. Mahan, 212 Va. 416, 185 S.E.2d 47](#) (1971).

Applied in Moon v. Meadows, [952 F. Supp. 1141](#) (E.D. Va. 1997).
Code 1950, § 24.2-302
VA ST § 24.2-302

END OF DOCUMENT

EXHIBIT F

Va. Code Ann. § 24.2-302.1

WEST'S ANNOTATED CODE OF VIRGINIA
TITLE 24.2. ELECTIONS
CHAPTER 3. ELECTION DISTRICTS, PRECINCTS, AND POLLING PLACES
ARTICLE 2. CONGRESSIONAL, SENATORIAL, AND HOUSE OF DELEGATES DISTRICTS
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§ 24.2-302.1. Congressional districts

A. There shall be eleven Virginia members of the United States House of Representatives elected from eleven congressional districts and each district is entitled to representation by one representative.

B. All references in this section to counties and cities shall be interpreted to refer to those in existence on April 1, 2001, and as reported by the United States Bureau of the Census in the 2000 Census reports provided pursuant to United States Public Law § 94-171, notwithstanding subsequent boundary changes by law, annexation, merger, consolidation, or the voiding of boundary changes theretofore made final.

C. Parts of counties and cities listed in subsection D are defined by reference to the 2000 Census reports for the precincts, parts of precincts, and blocks listed for each congressional district in the Statistical Report on file with the Clerk of the Senate for the Act of Assembly containing the final enactment of this section.

D. The eleven congressional districts are:

First. All of Essex, Gloucester, King and Queen, King George, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Stafford, Westmoreland, and York Counties; all of the Cities of Fredericksburg, Poquoson, and Williamsburg; part of Caroline County comprised of the Bowling Green, Port Royal, Woodford, and Mattaponi Precincts; part of Fauquier County comprised of the Kettle Run, Catlett, Casanova, Lois, Morrisville, Remington, Opal, and Waterloo Precincts and part of the Baldwin Ridge Precinct; part of James City County comprised of the Berkeley A, Berkeley B, Jamestown A, Jamestown B, Jamestown C, Powhatan A, Powhatan B, Stonehouse A, Stonehouse B, Roberts A Part 1, and Roberts A Part 2 Precincts and part of the Roberts B Precinct; part of Prince William County comprised of the Dumfries, Potomac, Graham Park, Quantico, Washington-Reid, and Rippon Precincts; part of Spotsylvania County comprised of the Travelers Rest, Grange Hall, Plank Road, Summit, Frazers Gate, Salem, Battlefield, and Brent's Mill Precincts and part of the Maury Precinct; part of the City of Hampton comprised of the Kraft, Magruder, Northampton, and Tucker Capps Precincts and part of the Burbank Precinct; and part of the City of Newport News comprised of the Richneck, Windsor, Boulevard, Christopher Newport, Watkins, Hidenwood, Palmer, Saunders, Yates, Kiln Creek, Beaconsdale, Sedgfield, and South Morrison Precincts and parts of the Deep Creek, Hilton, Riverside, and Warwick Precincts.

Second. All of Accomack and Northampton Counties; all of the City of Virginia Beach; part of the City of Hampton comprised of the Lasalle, Phoebus, River, Syms, Wythe, Booker, Buckroe, Fox Hill, Kecoughtan, Langley, and Phillips Precincts and part of the Burbank Precinct; and part of the City of Norfolk comprised of the Northside, Titustown Center, Zion Grace, Canterbury, Crossroads, Larchmont Library, Larchmont Recreation Center, Therapeutic Center, Wesley, Azalea Gardens, Barron Black, Easton, Fairlawn, Houston, Bayview School, Bayview United, East Ocean View, Larrymore, Little Creek, Ocean View School, Oceanair, Tarrallton, Third Presbyterian, Ocean View Center Part 1, and Ocean View Center Part 2 Precincts and part of the St. Andrew's Precinct.

Third. All of Charles City, New Kent, and Surry Counties; all of the City of Portsmouth; part of Henrico County comprised of the Adams, Central Gardens, East Highland Park, Fairfield, Ratcliffe, Maplewood, Cedar Fork, Chickahominy, Donahoe, Eanes, Elko, Fairmount, Glen Echo, Highland Springs, Laburnum, Masonic, Town Hall, Montrose, Pleasants, Sandston, Seven Pines, Sullivans, Mehfoud, Whitlocks, Nine Mile, Dorey, and Antioch Precincts; part of Isle of Wight County comprised of part of the Rushmere Precinct; part of James City County comprised of part of the Roberts B Precinct; part of Prince George County comprised of the Blackwater, Brandon, Courts Bldg, and Bland Precincts and part of the Jefferson Park Precinct; part of the City of Hampton comprised of the Aberdeen, Bassette, City Hall, Cooper, East Hampton, Lee, Pembroke, Phenix, Smith, Tarrant, Forrest, Jones, Mallory, and Tyler Precincts; part of the City of Newport News comprised of the Denbigh, Epes, Jenkins, McIntosh, Oyster Point, Reservoir, Lee Hall, Bland, Charles, Grissom, Nelson, Sanford, Riverview, Briarfield, Carver, Chestnut, Downtown, Dunbar, Huntington, Jefferson, Magruder, Marshall, New Market, Newsome Park, Reed, River, Washington, and Wilson Precincts and parts of the Deep Creek, Hilton, Riverside, and Warwick Precincts; part of the City of Norfolk comprised of the Granby, Tucker House, Ghent Square, Immanuel, Lafayette Library, Lafayette Presbyterian, Lambert's Point, Maury, Ohef Sholom, Park Place, Stuart, Suburban Park, Willard, Ballentine, Tanner's Creek, Bowling Park, Coleman Place School, Lafayette-Winona, Lindenwood, Monroe, Norview Methodist, Norview Recreation Center, Rosemont, Sherwood School, Union Chapel, Berkley, Brambleton, Campostella, Chesterfield, Coleman Place Presbyterian, Hunton Y, Ingleside, Poplar Halls, Young Park, Sherwood Rec Center Part 1, and Sherwood Rec Center Part 2 Precincts and part of the St. Andrew's Precinct; and part of the City of Richmond comprised of the 113, 114, 203, 204, 206, 207, 208, 211, 212, 213, 303, 304, 305, 306, 309, 402, 403, 501, 502, 503, 504, 505, 508, 509, 510, 602, 603, 604, 606, 607, 608, 609, 610, 701, 702, 703, 704, 705, 706, 707, 802, 806, 807, 810, 811, 812, 813, 902, 903, 906, and 911 Precincts and part of the 910 Precinct.

Fourth. All of Amelia, Dinwiddie, Greensville, Nottoway, Powhatan, Southampton, and Sussex Counties; all of the Cities of Chesapeake, Colonial Heights, Emporia, Franklin, Petersburg, Suffolk, and Hopewell; part of Brunswick County comprised of the Alberta, Danielstown, Elmore, and Seymour Precincts and part of the King's Store Precinct; part of Chesterfield County comprised of the Bellwood, South Chester, Enon, North Chester, Drewry's Bluff, Harrowgate, Wells, Ecoff, Point of Rocks, Dutch Gap, Iron Bridge, Gates, Beulah, Bird, Falling Creek, Meadowbrook, Salem Church, Five Forks, Ettrick, Deer Run, Matoaca, Winfrees Store, Beach, Winterpock, Walthall, Branches, Bailey Bridge, and Spring Run Precincts and parts of the Jacobs and Pocahontas 307/Crenshaw 308 Precincts; part of Isle of Wight County comprised of the Smithfield, Carrollton, Pons, Courthouse, Windsor, Orbit, Walters, Camps Mill, Carrsville, and Zuni Precincts and part of the Rushmere Precinct; and part of Prince George County comprised of the Richard Bland College, Templeton, Union Branch, and Rives Precincts and part of the Jefferson Park Precinct.

Fifth. All of Albemarle, Appomattox, Buckingham, Campbell, Charlotte, Cumberland, Fluvanna, Franklin, Greene, Halifax, Lunenburg, Mecklenburg, Nelson, Pittsylvania, and Prince Edward Counties; all of the Cities of Bedford, Charlottesville, Danville, and Martinsville; part of Bedford County comprised of the Stewartsville, Hardy, Chamblissburg, Staunton River, Moneta, Mountain View, Otter Hill, Walton's Store, White House, Huddleston, Shady Grove, Thaxton, Goode, Liberty High School, and Sign Rock Precincts; part of Brunswick County comprised of the Brodnax, Rock Store, Tillman, Dromgoole, Edgerton, Fitzhugh, Sturgeon, and Lawrenceville Precincts and part of the King's Store Precinct; and part of Henry County comprised of the Axton, Irisburg, Mount Olivet, Mountain Valley, Collinsville 1, Daniels Creek, Collinsville 2, Mountain View, Figsboro, Stanleytown, Oak Level, Dyers Store, and Ridgeway Precincts and part of the Fontaine Precinct.

Sixth. All of Amherst, Augusta, Bath, Botetourt, Highland, Rockbridge, Rockingham, and Shenandoah Counties; all of the Cities of Buena Vista, Harrisonburg, Lexington, Lynchburg, Roanoke, Salem, Staunton, and Waynesboro; part of Alleghany County comprised of the Humpback Bridge, Dolly Ann, Callaghan, and Griffith

Precincts; part of Bedford County comprised of the New London, Forest, Jefferson, Cove, Big Island, Sedalia, Kelso, Boonsboro, and Montvale Precincts; and part of Roanoke County comprised of the Green Hill, Plantation, Burlington, Mountain View, Bonsack, Hollins, Poages Mill, Windsor Hills, Garst Mill, Oak Grove 304/Castle Rock 305, North Vinton, South Vinton, Lindenwood, Mount Pleasant, Cotton Hill, Penn Forest, Cave Spring, Ogden, Clearbrook, Mount Vernon, and Hunting Hills Precincts and part of the Glenvar Precinct; and part of the City of Covington, comprised of the Precinct 1-1 and parts of the 2-1 and 3-1 Precincts.

Seventh. All of Culpeper, Goochland, Hanover, Louisa, Madison, Orange, Page, and Rappahannock Counties; part of Caroline County comprised of the Madison and Reedy Church Precincts; part of Chesterfield County comprised of the Belmont, Chippenham, Skinquarter, Tomahawk, Evergreen, Woolridge, Genito, Brandermill, Providence, Lyndale, Smoketree, Monacan, Reams, Manchester, Wagstaff, Davis, Harbour Pointe 401/Swift Creek 411, Huguenot, Crestwood, Midlothian, Robious, Bon Air, Greenfield, Salisbury, Cranbeck, Sycamore, Shenandoah, Beaufont, Watkins, and Belgrade 508/Black Heath 511 Precincts and parts of the Jacobs and Pocahontas 307/Crenshaw 308 Precincts; part of Henrico County comprised of the Brookland, Dumbarton, Glen Allen, Glenside, Greendale, Hermitage, Hilliard, Hunton, Johnson, Lakeside, Longan, Maude Trevvett, Moody, Staples Mill, Stratford Hall, Summit Court, Azalea, Bloomingdale, Brook Hill, Canterbury, Chamberlayne, Glen Lea, Greenwood, Highland Gardens, Hungary, Longdale, Randolph, Upham, Wilkinson, Yellow Tavern, Chiplegate, Landmark, Cardinal, Coalpit, Crestview, Freeman, Innsbrook, Jackson Davis, Lauderdale, Monument Hills, Ridge, Sadler, Cedarfield, Skipwith, Three Chopt, Tucker, Westwood, Causeway, Stoney Run, Byrd, Lakewood, Derbyshire, Gayton, Godwin, Maybeury, Mooreland, Pemberton, Pinchbeck, Ridgefield, Rollingwood, Spottswood, Tuckahoe, and West End Precincts; part of Spotsylvania County comprised of the Partlow, Blaydes Corner, Belmont, Brokenburg, Todd's Tavern, and Holbert Precincts and part of the Maury Precinct; and part of the City of Richmond comprised of the 101, 102, 103, 104, 105, 106, 111, 112, 301, 302, 307, 308, 404, 409, 410, 411, 412, 413, 908, and 909 Precincts and part of the 910 Precinct.

Eighth. All of Arlington County; all of the Cities of Alexandria and Falls Church; part of Fairfax County comprised of the Reston #1, Reston #2, Westbriar, Dogwood, Hunters Woods, Reston #3, Glade, South Lakes, Terraset, Wolftrap, Sunrise Valley, North Point, Aldrin, Pimmit, Bush Hill, Cameron, Franconia, Groveton, Mount Eagle, Pioneer, Rose Hill, Virginia Hills, Beulah, Villages, Kingstowne, Van Dorn, Hayfield 406/Woodlawn 412/Fairfield 413, Baileys, Glen Forest, Lincolnia, Parklawn, Westlawn, Weyanoke, Willston, Skyline, Whittier, Walnut Hill #1, Bren Mar, Edsall, Belle Haven, Belleview, Bucknell, Hollin Hall, Huntington, Kirkside, Marlan, Sherwood, Belvoir, Grosvenor, Fort Buffalo, Graham, Greenway, Marshall, Pine Spring, Shreve, Timber Lane, Woodburn, Magarity, Walnut Hill #2, and Tysons Precincts and parts of the Holmes and Westhampton Precincts.

Ninth. All of Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Lee, Montgomery, Patrick, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties; all of the Cities of Bristol, Clifton Forge, Galax, Norton, and Radford; part of Alleghany County comprised of the Arritt, Dameron, Low Moor, Jackson Heights Part 1, Jackson Heights Part 2, Iron Gate, and Peters Switch Precincts; part of Henry County comprised of the Bassett 2, Gunville, Scott's Tanyard, Fieldale, Horsepasture, Spencer, Bassett 1, and Hillcrest Precincts and part of the Fontaine Precinct; part of Roanoke County comprised of the Catawba, Mason Valley, Northside, Peters Creek, Bennett Springs, Botetourt Springs, Woodlands, and Bent Mountain Precincts and part of the Glenvar Precinct; part of the City of Covington comprised of the 4-1 and 5-1 Precincts and parts of the 2-1 and 3-1 Precincts; and Montgomery A.

Tenth. All of Clarke, Frederick, Loudoun, and Warren Counties; all of the Cities of Winchester, Manassas and Manassas Park; part of Fairfax County comprised of the Colvin, Fox Mill, Floris 203/Frying Pan 235, Chain Bridge, Chesterbrook, Churchill, Cooper, El Nido, Great Falls, Haycock, Kenmore, Kirby, Langley, Longfellow, Mclean, Salona, Westmoreland, Herndon #1, Herndon #2, Clearview, Forestville, Shouse, Herndon #3, Hutchis-

on, Stuart, Sugarland, Hickory, Seneca, Centre Ridge, Chantilly, Dulles, Franklin, Greenbriar East, Greenbriar West, Kinross, London Towne, Navy, Rocky Run, Virginia Run, Lees Corner, Deer Park, and Cub Run 903/Stone 917 Precincts and part of the Westhampton Precinct; part of Fauquier County comprised of the Warrenton, Marshall, Leeds, Upperville, The Plains, New Baltimore, and Broad Run Precincts and part of the Baldwin Ridge Precinct; and part of Prince William County comprised of the Buckhall, Parkside, Jackson, Evergreen, Loch Lomond, Sinclair, Stonewall, Sudley, Westgate, Catharpin, Bull Run, Plantation, and Mullen Precincts.

Eleventh. All of the City of Fairfax; part of Fairfax County comprised of the Bristow, Chapel, Fairview, Heritage, Kings Park, Olde Creek, North Springfield #1, North Springfield #2, North Springfield #3, Oak Hill, Ravensworth, Wakefield, Lake Braddock, Laurel, Sideburn, Villa, Long Branch, Robinson, Olley, Signal Hill, Bonnie Brae, Flint Hill, Vienna #1, Vienna #2, Vienna #4, Vienna #6, Crestwood, Garfield, Lynbrook, Barcroft, Belvedere, Masonville, Ravenwood, Sleepy Hollow, Saint Albans, Columbia, Hummer, Brook Hill, Camelot, Poe, Ridgelea, Fort Hunt, Stratford, Waynewood, Westgate, Whitman, Woodley, Gunston, Lorton, Newington, Delong, Pohick Run, Blake, Freedom Hill, Mantua, Mosby, Price, Walker, Pine Ridge, Stenwood, Thoreau, Merrifield, Oakton, Nottoway, Penderbrook, Oak Marr, Burke, Cardinal, Clifton, Fairfax Station, Keene Mill, Pohick, Valley, Woodyard, Orange, Cherry Run, Irving, Saratoga, Terra Centre, White Oaks, Hunt, Burke Centre, Sangster, Silverbrook, West Springfield, Popes Head, Parkway, Leehigh, Newgate, Vale, Waples Mill, Centreville, Green Trails, Willow Springs, Woodson Part 1, and Woodson Part 2 Precincts and part of the Holmes Precinct; part of Prince William County comprised of the Brentsville, Armory, Nokesville, Linton Hall, Woodbine, Park, Saunders, Enterprise, Coles, McCoart, Springwoods, King, Lodge, Westridge, Pattie, Henderson, Montclair, Haymarket, Lake Ridge, Occoquan, Old Bridge, Rockledge, Mohican, Bethel, Chinn, Dale, Neabsco, Godwin, Civic Center, Minnieville, Bel Air, Kerrydale, Belmont, Library, Lynn, Featherstone, Potomac View, and Kilby Precincts; and Fairfax A.

Acts 2001, Sp.S. I, c. 7.

HISTORICAL AND STATUTORY NOTES

Prior to Acts 2001, Sp.S. I, c. 7, the subject matter of this section was contained in [§ 24. 2-302](#).

The repeal of [§ 24. 2-302](#) and enactment of [§ 24. 2-302.1](#) were precleared on October 16, 2001 pursuant to the Voting Rights Act of 1965, as amended and extended, but a suit challenging the redistricting plan has been filed in Petersburg Circuit Court.

CROSS REFERENCES

Apportionment of state into districts, see [Const. Art. 2, § 6](#).

LIBRARY REFERENCES

Key Numbers

United States 11.

Westlaw Key Number Search: 393k11.

Encyclopedias

C.J.S. United States §§ 11, 13 to 15.

UNITED STATES SUPREME COURT

*Congressional districts,**Equality of population,*

Federal constitutional requirement of population equality for congressional districts, see [Kirkpatrick V. Preisler](#), U.S.Mo.1969, 89 S.Ct. 1225, 394 U.S. 526, 22 L.Ed.2d 519.

Political gerrymandering,

Reapportionment, drawing district boundaries on partisan lines, threshold requirements, justiciability under equal protection clause, see [Davis v. Bandemer](#), U.S.Ind.1986, 106 S.Ct. 2797, 478 U.S. 109, 92 L.Ed.2d 85

Racial gerrymandering,

Congressional redistricting plans, racial gerrymandering, see [Miller v. Johnson](#), U.S.Ga.1995, 115 S.Ct. 2475, 515 U.S. 900, 132 L.Ed.2d 762, on remand 922 F.Supp. 1552, on remand 922 F.Supp. 1556.

Historically disadvantaged racial groups, equal protection, reapportionment, racial gerrymandering, see [Shaw v. Reno](#), U.S.N.C.1993, 113 S.Ct. 2816, 509 U.S. 630, 125 L.Ed.2d 511 on remand 861 F.Supp. 408.

Narrowly tailored to serve compelling state interest, redistricting, racial gerrymandering, see [Shaw v. Hunt](#), U.S.N.C.1996, 116 S.Ct. 1894, 517 U.S. 899, 135 L.Ed.2d 207.

Noncompact and bizarrely shaped majority-minority districts, compelling state interest, voting rights Act, redistricting, racial gerrymandering, see [Bush v. Vera](#), U.S.Tex.1996, 116 S.Ct. 1941, 517 U.S. 952, 135 L.Ed.2d 248.

Traditional districting plans, percentage of minority voters compared to minority residents in the county, redistricting, racial gerrymandering, see [Lawyer v. Department of Justice](#), U.S.Fla.1997, 117 S.Ct. 2186.

NOTES OF DECISIONS

Mandamus 3

Standing 2

Validity 1

1. Validity

Racially gerrymandered congressional district in Virginia violated equal protection, in that using race as predominate basis in drawing district lines did not serve compelling state interest, notwithstanding alleged interest in precluding exposure to liability under Voting Rights Act of 1965 (VRA), and Commonwealth failed to use narrowly tailored methods to achieve this goal; evidence did not establish that racially drawn district was necessary to avoid VRA liability, district did not meet preconditions for drawing district based on race so as to avoid such liability, and bizarre and tortured shape of district established that narrowly tailored means were not used in drawing district. [U.S.C.A. Const.Amend. 14](#); Voting Rights Act of 1965, § 2 et seq., as amended, [42 U.S.C.A. § 1973 et seq.](#); [Va.Code 1950, § 24. 2-302](#). [Moon v. Meadows](#), 1997, 952 F.Supp. 1141, affirmed 117 S.Ct. 2501, 521 U.S. 1113, 138 L.Ed.2d 1006. [Constitutional Law k 215.3](#)

Statute apportioning Commonwealth into congressional districts which had populations ranging in size from about 313,000 to 527,000 violated state constitutional provision requiring that districts contain as nearly as practicable an equal number of inhabitants and apportionment was invalid under Federal Constitution. [Code 1950, § 24-3](#); [Const. § 55](#); [U.S.C.A.Const. art. 1, § 2](#); [U.S.C.A.Const. Amend. 14](#). [Wilkins v. Davis](#), 1965, 139 S.E.2d 849, 205 Va. 803. [Constitutional Law k 225.3\(7\)](#)

2. Standing

Residents of newly created congressional district in Virginia had standing to challenge only that district as violative of Equal Protection Clause; thus, residents' challenge to state statute setting out geographical boundaries of each of Virginia's congressional districts as unconstitutional, except for that portion dealing with residents' district, failed for lack of standing. [U.S.C.A. Const.Amend. 14](#); [Va.Code 1950, § 24. 2-302](#). [Moon v. Meadows, 1997, 952 F.Supp. 1141](#), affirmed [117 S.Ct. 2501, 521 U.S. 1113, 138 L.Ed.2d 1006](#). [Constitutional Law k 42.3\(2\)](#)

3. Mandamus

Under federal Act requiring that each state establish number of districts equal to number of congressional representatives to which state is entitled and that representatives be elected only from districts so established, Supreme Court could not legally issue peremptory writ of mandamus requiring State Board of Elections to certify congressional candidates only for election at large from state. [Code 1950, § 24.1-4.1](#); [2 U.S.C.A. § 2c](#). [Simpson v. Mahan, 1971, 185 S.E.2d 47, 212 Va. 416](#). [Mandamus k 74\(1\)](#)

[Va. Code Ann. § 24.2 -302 .1](#)

[VA ST § 24.2 -302 .1](#)

END OF DOCUMENT

EXHIBIT G

Approved 3/25/11

SENATE COMMITTEE ON PRIVILEGES AND ELECTIONS

COMMITTEE RESOLUTION NO. 2 -- Congressional District Criteria

(Proposed by Senator Howell)

RESOLVED, That after consideration of legal requirements and public policy objectives, informed by public comment, the Senate Committee on Privileges and Elections adopts the following criteria for the redrawing of Virginia's Congressional districts:

I. Population Equality

The population of legislative districts shall be determined solely according to the enumeration established by the 2010 federal census. The population of each district shall be as nearly equal to the population of every other district as practicable.

II. Voting Rights Act

Districts shall be drawn in accordance with the laws of the United States and the Commonwealth of Virginia including compliance with protections against the unwarranted retrogression or dilution of racial or ethnic minority voting strength. Nothing in these guidelines shall be construed to require or permit any districting policy or action that is contrary to the United States Constitution or the Voting Rights Act of 1965.

III. Contiguity and Compactness

Districts shall be comprised of contiguous territory including adjoining insular territory. Contiguity by water is sufficient. Districts shall be contiguous and compact in accordance with the Constitution of Virginia as interpreted by the Virginia Supreme Court in the cases of *Jamerson v. Womack*, 244 Va. 506 (1992) and *Wilkins v. West*, 264 Va. 447 (2002).

IV. Single-Member Districts

All districts shall be single-member districts.

V. Communities of Interest

Districts shall be based on legislative consideration of the varied factors that can create or contribute to communities of interest. These factors may include, among others, economic factors, social factors, cultural factors, geographic features, governmental

jurisdictions and service delivery areas, political beliefs, voting trends, and incumbency considerations. Public comment has been invited, has been and continues to be received, and will be considered. It is inevitable that some interests will be advanced more than others by the choice of particular district configurations. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people. Local government jurisdiction and precinct lines may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than other identifiable communities of interest.

VI. Priority

All of the foregoing criteria shall be considered in the districting process, but population equality among districts and compliance with federal and state constitutional requirements and the Voting Rights Act of 1965 shall be given priority in the event of conflict among the criteria. Where the application of any of the foregoing criteria may cause a violation of applicable federal or state law, there may be such deviation from the criteria as is necessary, but no more than is necessary, to avoid such violation.

DLS/mrs
3/25/11

EXHIBIT H

STATEMENT OF CHANGE

Chapter 1 of the Acts of Assembly of 2012 (hereafter Chapter 1) revises Virginia's 11 congressional districts. Virginia's population grew at a rate of 13 percent, from 7,079,030 to 8,001,024, between 2000 and 2010. The pattern of growth was uneven across the Commonwealth, as illustrated in the attached map (Exhibit A) showing percent change in population by locality between 2000 and 2010.

Chapter 1 accommodates these population shifts and takes into account the variety of criteria and factors that traditionally shape the legislature's redistricting decisions. Each congressional district was altered both to bring the district itself into conformity with population criteria and to facilitate necessary changes in adjoining districts.

POPULATION CHANGE BY REGION

Virginia's population increase of 921,994 was concentrated in the outer suburban and exurban rings of Northern Virginia and, secondarily, along the Interstate 64 corridor running from the suburban Hampton Peninsula to the Charlottesville area. These areas account for an increase of 741,158, or 80 percent, of the overall state growth.

The largest increases in population are found in the suburban arc around the older Northern Virginia metropolitan core. Loudoun, Prince William, and Stafford Counties, along with the smaller Cities of Manassas and Manassas Park surrounded by Prince William, experienced an overall 52 percent growth rate. The increase of 307,085 accounts for one-third of the state's total population

growth. The older core of the Northern Virginia region (Arlington County, City of Alexandria, and Fairfax County and the small Cities of Fairfax and Falls Church that it surrounds) continued to gain population (144,866), but its rate of growth, 11 percent, lagged slightly behind the state's overall growth rate.

As population continued to push out from the Northern Virginia core, the next adjoining set of "exurban" localities likewise experienced heavy growth. An overall growth rate of almost 30 percent (28.8 percent) increased the state's population by 103,401 in, from north to south, Frederick, Clarke, Fauquier, Culpeper, Orange, Spotsylvania, Caroline, and King George Counties and including the Cities of Fredericksburg and Winchester.

The corridor along Interstate 64 from the North Hampton Roads suburbs to Charlottesville, skirting the Richmond metropolitan core, with a 21.1 percent overall growth rate, likewise added 84,838 to the state's total growth. (This corridor includes, from east to west, York, James City, New Kent, Hanover, Goochland, Louisa, Fluvanna, and Albemarle Counties and the Cities of Charlottesville and Williamsburg.) One additional area of growth to be noted consists of the two large counties encircling the City of Richmond. Chesterfield and Henrico Counties combined to add 100,968 in population, a growth rate of 19.3 percent.

The situation for the major cities of Hampton Roads is in contrast with the growth of the Northern Virginia and Richmond metropolitan regions. Chesapeake, Norfolk, Portsmouth, and Virginia Beach in South Hampton Roads and Hampton and Newport News in North Hampton Roads combined for a

growth rate of only 2.3 percent. Portsmouth and Hampton actually lost population over the last decade. Above average growth in the adjoining suburban jurisdictions (James City and York Counties and the City of Williamsburg in the North and the City of Suffolk and Isle of Wight County in the South) could not offset the overall lag for the entire metropolitan region.

As can be seen on the Exhibit A map, most rural localities and smaller metropolitan areas in the rest of the state grew at rates below the state average, or in some instances actually lost population, over the last decade. The populations of most of the state's 39 cities increased between 2000 and 2010, but only seven experienced growth exceeding the state average. In addition to the smaller cities cited above in the high growth areas, Harrisonburg and Lynchburg had moderately higher growth and the suburban Hampton Roads City of Suffolk grew at a rate of 32.8 percent.

IMPACT OF POPULATION SHIFTS ON DISTRICTS

The ideal population for a congressional district based on the 2010 Census is 727,366. The range of deviations from the ideal for the current, pre-Chapter 1 districts was extensive – from a plus 19.5 percent deviation (Tenth District) to a minus 11.2 percent deviation (Second District). No district is within one percent of ideal, and deviations in seven of the 11 districts exceed five percent. Adjustments were made to each district to eliminate the disparities in populations between the districts. A review of major regions of the Commonwealth illustrates the impact of the 2010 Census population shifts.

Northern Virginia

As used here, Northern Virginia consists of an older central core and suburban and exurban rings. Arlington County, the City of Alexandria, and Fairfax County and the Cities of Fairfax and Falls Church are the oldest, "central" part of the greater Northern Virginia region. The components of the rapidly growing grouping of suburban and exurban localities have been listed above (see page 2.) Northern Virginia is home to three congressional districts (Eighth, Tenth, and Eleventh), and the outer suburban-exurban localities also add population to districts that stretch south and southeast to Hampton Roads (First) and the Richmond (Seventh) area.

The current Eighth, Tenth, and Eleventh Districts are, in round numbers, collectively 180,000 over the total population for three districts. Chapter 1 first equalizes population among the three districts and then moves this excess population "downstate" to underpopulated districts centered in the Hampton Roads area and in rural western and southern Virginia. The current Eighth District, primarily an inside-the-Beltway district, was 26,356 below the ideal population in 2010. Population exchanges in Fairfax County, primarily with the current Eleventh District, add the population to bring the Eighth to the ideal number in Chapter 1.

Chapter 1 moves the largest part of the excess 180,000 directly from Prince William into the First District. The Prince William component of the First District increases from 55,000 to 167,000, a net shift of 112,000 population. Most of this population is destined for the Second-Third-Fourth District area

through Hampton and Newport News, primarily to make up the Second District's population deficit.

Chapter 1 completes the downstate transfer of population in the northwest part of Northern Virginia. Warren County moves to the Sixth District and the northwest part of Fauquier County moves to the Fifth District, for a total transfer of 68,000.

Hampton Roads

The urban southeastern corner of the state is the second largest of its metropolitan regions. It includes the South Hampton Roads Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach and North Hampton Roads Cities of Hampton and Newport News, bordered by several less populous counties and small cities. As noted above, this area for the second straight decade lagged dramatically behind the state's overall growth rate.

The current Second District almost exclusively is contained in this region and is the most underpopulated of the state's districts at 81,182 below the ideal size. Almost 60 percent of the Third District also is in this area. This district, the Virginia district that has an African American majority, is 63,976 below the required population. Hampton Roads also has a share of two additional districts. Almost one-half (45 percent) of the population in the Fourth District is in Hampton Roads. This district stretches west into Southside Virginia and includes African Americans as 34 percent of its population. Its 2010 population was slightly (11,273) above ideal. Finally, the First District stretches from the Northern Virginia suburban area southeast through the rural peninsulas and into North

Hampton Roads, where it picks up approximately a third of the district's population. The First covers areas of above average growth and is 58,871 over the required population. Since Chapter 1 also moves almost 112,000 from the Northern Virginia area into the First District, that district has a significant excess population to be redistributed.

Chapter 1 uses population from the First District in the Newport News-Hampton area to make up the Second District's population deficit. In round numbers, 88,000 in Newport News is shifted from the First to the Second District. Some population is exchanged between First, Second, and Third Districts to add population to the Third District, but Chapter 1 finds most of the population required to erase the Third District deficit at the western end of the district. About 35,000 in Richmond and Henrico County transfer from the Seventh District, and the City of Petersburg (39,000) moves from the Fourth to the Third District. The Fourth District is compensated primarily by the addition of 22,000 of the population of Chesterfield County from the current Seventh District.

Rural Southern and Western Virginia

The predominantly rural Fifth (southern and central Virginia), Sixth (bordering West Virginia), and Ninth (Southwest Virginia) Districts are contiguous and all are underpopulated, the total deficit being almost 136,000. The situation of the Ninth District is most immediate, since its population deficit in 2010 was 71,166 and its geographical location demands that it add population from either the Fifth or Sixth, or both.

As noted in describing Northern Virginia, the western part of that area had excess population of approximately 68,000 that could be transferred downstate. In addition, the First District, overpopulated to begin with and boosted by the initial addition of population from Northern Virginia (Prince William) had excess population available for transfer even after providing the underpopulated Hampton Roads districts the population they required.

Chapter 1 brings the three districts under discussion up to population equality initially by extending the Fifth and Sixth Districts north to the upper Piedmont and outer Northern Virginia area for additional population, contracting the Seventh District southeast in the process. The Fifth District adds 71,000 by picking up Madison and Rappahannock Counties from the Seventh District and most (50,000) of Fauquier County from the Tenth and First Districts. The Sixth District adds Page (Seventh) and Warren (Tenth) Counties for a gain of almost 62,000. The two districts then have enough combined excess population to bring the Ninth District to the required population count. The Fifth District provides almost 33,000 by transferring the City of Martinsville and a greater part of Henry County to the Ninth. The Sixth District provides almost 37,000 by transferring the City of Salem, a larger part of Roanoke County, and the part of Alleghany County now in the Sixth to the Ninth District.

A series of smaller adjustments along the First District-Seventh District boundary from Fauquier County to New Kent County result in a net shift of population to the Seventh and reduce the First to the ideal population.

Richmond Area

The City of Richmond and surrounding Chesterfield, Hanover, and Henrico Counties have a combined population of more than 900,000. Almost 60 percent of that population currently is in the Seventh District, with significant components included in the Third District (25 percent) and Fourth District (17 percent). Chapter 1 reduces the Seventh District component by 56,000, although the Richmond area retains a slim majority (52 percent) of the district. As described above, the population taken from the Richmond area Seventh District was used to help bring the Third District and Fourth District populations up to the required district total. Approximately 34,000 of the population in Richmond City and Henrico County is shifted to the Third District; almost 22,000 of the population of Chesterfield County is moved to the Fourth District.

APPLICATION OF TRADITIONAL REDISTRICTING CRITERIA

The Privileges and Elections Committee of the Senate (the Committee) on March 25, 2011, adopted criteria that identify the standards applied in drawing new congressional districts.

Population Equality

The Committee emphasized adherence to population equality among congressional districts. Its first redistricting criterion mirrors the Virginia Constitution's statement on population equality among districts and provides:

I. Population Equality

The population of legislative districts shall be determined solely according to the enumeration established by the 2010 federal census. The population of each district shall be as nearly equal to the population of every other district as practicable. (Senate Privileges and Elections Committee, Committee Resolution No. 2. Adopted March 25, 2011).

Chapter 1 congressional districts all are at 0.00 percent deviation. Nine of the 11 districts have exactly the ideal population; two districts have an absolute deviation of one (1) person.

Equal Protection Clause and Voting Rights Act Considerations

The Committee adopted the following criterion on compliance with the United States Constitution and Voting Rights Act:

II. Voting Rights Act

Districts shall be drawn in accordance with the laws of the United States and the Commonwealth of Virginia including compliance with protections against the unwarranted retrogression or dilution of racial or ethnic minority voting strength. Nothing in these guidelines shall be construed to require or permit any districting policy or action that is contrary to the United States Constitution or the Voting Rights Act of 1965. (Senate Committee on Privileges and Elections, Committee Resolution No. 2 Adopted March 25, 2011).

The impact of Chapter 1 on racial minority groups is discussed in detail in Attachment 5. There is one district with African American total and voting age majorities in the current plan and Chapter 1 likewise includes one majority-minority district, the Third District in both cases.

Contiguity and Compactness

The third criterion adopted by the Committee incorporated Virginia's constitutional requirement for contiguity and compactness with reference to the

1992 and 2002 cases in which the Virginia Supreme Court interpreted these constitutional standards.

III. Contiguity and Compactness

Districts shall be based on legislative consideration of the varied factors that can create or contribute to communities of interest. These factors may include, among others, economic factors, social factors, cultural factors, geographic features, governmental jurisdictions and service delivery areas, political beliefs, voting trends, and incumbency considerations. Public comment has been invited, has been and continues to be received, and will be considered. It is inevitable that some interests will be advanced more than others by the choice of particular district configurations. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people. Local government jurisdiction and precinct lines may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than other identifiable communities of interest. (Senate Committee on Privileges and Elections, Committee Resolution No. 2. Adopted March 25, 2011).

The Court in *Jamerson* gave "proper deference to the wide discretion accorded the General Assembly in its value judgment of the relative degree of compactness required when reconciling the multiple concerns of apportionment." (*Jamerson v. Womack*, 244 Va. 506, 517 (1992)). Statistical measures of compactness thus are not determinative in the Virginia context; Chapter 1 compactness scores by standard measures are nearly identical to those of the current set of districts.

Average Compactness Scores

<u>Measure</u>	<u>Current Plan</u>	<u>Chapter 1</u>
Roeck	0.21	0.21
Polsby-Popper	0.17	0.15

Schwartzberg

0.66

0.66

Localities, Precincts, and Communities of Interest

Chapter 1 splits 14 localities to meet the criteria adopted by the Committee, a reduction from the 19 localities split by the current congressional plan. (These totals exclude three localities in each plan that technically are split but in which the entire locality population is in one district while one or more water blocks without population are in another district.) All of the localities split by Chapter 1 are already split in the current plan, including eight large localities with populations exceeding 100,000 (Chesterfield, Henrico, Fairfax and Prince William Counties and the Cities of Hampton, Newport News, Norfolk, and Richmond). Chapter 1 reunites four smaller localities (Alleghany, Brunswick, and Caroline Counties and the City of Covington) and York County, which were split in the current plan.

Chapter 1 splits 10 precincts across the state to meet the criteria adopted by the Committee, a significant reduction` from the 26 split precincts in the current plan. (As in the case of split localities, these numbers exclude technically split precincts where all of the precinct's population is in one district and there is no population in the other district.)

The General Assembly heard, considered, and balanced many points of view on communities of interest beyond those reflected in the communities contained in localities and precincts. Testimony and debates point out the wide variety of competing communities of interest, including those defined by

geographic features such as mountain ranges and valleys, by economic character, by social and cultural attributes, and by services.

Partisan and Incumbency Considerations

As the 2011 and 2012 committee and floor transcripts reflect, respect for incumbency was taken into account in the development of Chapter 1 districts. No incumbents were placed in the same district and, with two exceptions, Chapter 1 retains 80 percent or more of the current district's core constituency population (see Tables 1 and 2). The exceptions are the Eleventh District with 29 percent new population and the First District with 24 percent new population.

The election history reports for the current plan and Chapter 1 show that the vote in Virginia's congressional districts aligns strongly with one or the other major political party (See Table 3). Chapter 1 alterations to the districts caused little or no change in the projected vote in about half the districts. Where the vote projects do change at least somewhat measurably, notable is the reduced Republican vote in the Eleventh (by five to six percent) and Third (by three percent) Districts. On the other hand, the Republican vote is projected to increase by one to two percent in Fourth, Seventh, and Tenth Districts and one percent in the Eighth District.

Chapter 1 was reported from the Privileges and Elections Committee by a 19 to 3 vote. All 14 Republicans, joined by an Independent who caucuses with the Republicans, voted to report. The votes of the seven Democratic members were split, four voting for and three against reporting HB 251. The ensuing floor

vote on passage of the bill showed the same pattern. All 64 Republicans who voted favored passage, as did the lone Independent member. Democrats were divided. Nine voted in favor of passage, while a majority (twenty-one members) of the caucus voted against the bill. Two Democrats did not vote.

Votes in the Senate followed party lines. Eight Republicans voted in favor and seven Democrats opposed the motion to report the bill from the Senate Privileges and Elections Committee. The floor vote on final passage showed all 20 Republicans in favor, all 19 Democrats who voted were opposed, and one Democrat did not vote.

The 2012 voting patterns followed those on congressional measures during the 2011 Special Session of the General Assembly. House Bill 251 in 2012 was identical to the version of House Bill 5004 that passed the House of Delegates at the 2011 Special Session. (The bill as passed by the House was identical to the introduced version except for a minor adjustment to unsplit one voting precinct.) The House Privileges and Elections Committee reported House Bill 5004 by a 17 to 2 vote, with three members not voting. All 11 Republicans who voted favored the bill; two did not vote. Five Democrats voted in the affirmative, while two were opposed and one did not vote. The floor vote on passage, 71 to 23 with six members not voting, reflected a similar pattern. All but four Republicans voted to pass the bill; two voted against passage and two did not vote. The two Independents, who caucused with the Republicans, also voted in favor of the bill. A majority (21) of Democrats opposed the bill, while 14 voted in the affirmative and four did not vote.

The Senate Privileges and Elections Committee replaced the House redistricting plan with the plan of Senate Bill 5004 (Locke) by removing the House language in House Bill 5004 and inserting the Locke bill's language in its place. The bill was reported from committee, rereferred to committee from the floor, and reported again by the committee as a substitute with some additional changes. All nine Democrats voted to report the bill on both votes. No Republicans supported either version: All six voted against on the first vote; two did not vote on the second occasion while the other four were recorded in opposition. The floor vote on the Senate version of House Bill 5004 was divided by party. All 22 Democrats voted in favor of passage, while, among Republicans, 15 opposed it and three did not vote. The House of Delegates rejected the Senate version of the bill, effectively ending 2011 consideration of redistricting. No House Republican supported the Senate version; 51 voted against and eight did not vote. One of the two Independents likewise opposed the measure and one did not vote. Among Democrats, 30 voted for the Senate version, four opposed it, and five did not vote.

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Table 1
Chapter One Districts
Components of Population Adjustments

District	2010 Total	Retained	%	Transferred	Added	Ch. 1 Total
1	786,327	556,094	76%	230,143	171,272	727,366
2	646,184	618,267	85%	27,917	109,099	727,366
3	663,390	604,608	83%	58,782	122,758	727,366
4	738,639	699,949	96%	38,690	22,417	727,366
5	685,859	652,915	90%	32,944	74,450	727,365
6	704,056	665,671	92%	38,385	61,695	727,366
7	757,917	640,903	88%	117,014	86,463	727,366
8	701,010	621,050	85%	79,960	106,316	727,366
9	656,200	656,122	90%	78	71,244	727,366
10	869,437	648,661	89%	220,776	78,704	727,366
11	792,095	518,160	71%	273,935	209,206	727,365

Table 2
Chapter One Districts
Core Constituency Report

District: 1	Total Population:	727,366	Voting Age Population:	543,139
Unchanged Area				
Population from District	1	556,094		422,033
Total Unchanged Area		556,094		422,033
From Other Districts				
Population from District	3	7,351		5,106
Population from District	7	14,481		10,797
Population from District	10	38,187		28,023
Population from District	11	111,253		77,180
Total From Other Districts		171,272		121,106
Total for District:	1	727,366		543,139

District: 2	Total Population:	727,366	Voting Age Population:	565,464
Unchanged Area				
Population from District	2	618,267		479,697
Total Unchanged Area		618,267		479,697
From Other Districts				
Population from District	1	83,598		65,718
Population from District	3	25,501		20,049
Total From Other Districts		109,099		85,767
Total for District:	2	727,366		565,464

District: 3	Total Population:	727,366	Voting Age Population:	560,158
Unchanged Area				
Population from District	3	604,608		466,232
Total Unchanged Area		604,608		466,232
From Other Districts				
Population from District	1	23,288		17,805
Population from District	2	27,917		20,543
Population from District	4	35,447		27,835
Population from District	7	36,106		27,743
Total From Other Districts		122,758		93,926
Total for District:	3	727,366		560,158

District: 4	Total Population:	727,366	Voting Age Population:	547,486
Unchanged Area				
Population from District	4	699,949		527,298
Total Unchanged Area		699,949		527,298
From Other Districts				
Population from District	3	5,713		4,176
Population from District	7	21,704		16,012
Total From Other Districts		27,417		20,188
Total for District:	4	727,366		547,486

District: 5	Total Population:	727,365	Voting Age Population:	574,341
Unchanged Area				
Population from District	5	652,915		517,503
Total Unchanged Area		652,915		517,503
From Other Districts				
Population from District	1	19,595		14,600
Population from District	4	3,243		2,609
Population from District	6	85		56
Population from District	7	20,681		16,246
Population from District	10	30,846		23,327
Total From Other Districts		74,450		56,838
Total for District:	5	727,365		574,341

District: 6	Total Population:	727,366	Voting Age Population:	572,702
Unchanged Area				
Population from District	6	665,671		525,297
Total Unchanged Area		665,671		525,297
From Other Districts				
Population from District	5	0		0
Population from District	7	24,042		18,849
Population from District	9	78		61
Population from District	10	37,575		28,495
Total From Other Districts		61,695		47,405
Total for District:	6	727,366		572,702

District: 7	Total Population:	727,366	Voting Age Population:	549,562
Unchanged Area				
Population from District	7	640,903		486,679
Total Unchanged Area		640,903		486,679
From Other Districts				
Population from District	1	66,246		46,887
Population from District	3	20,217		15,996
Total From Other Districts		86,463		62,883
Total for District:	7	727,366		549,562

District: 8	Total Population:	727,366	Voting Age Population:	580,212
Unchanged Area				
Population from District	8	621,050		502,331
Total Unchanged Area		621,050		502,331
From Other Districts				
Population from District	10	22,338		16,217
Population from District	11	83,978		61,664
Total From Other Districts		106,316		77,881
Total for District:	8	727,366		580,212

District: 9	Total Population:	727,366	Voting Age Population:	584,877
Unchanged Area				
Population from District	9	656,122		528,070
Total Unchanged Area		656,122		528,070
From Other Districts				
Population from District	5	32,944		26,093
Population from District	6	38,300		30,714
Total From Other Districts		71,244		56,807
Total for District:	9	727,366		584,877

District: 10	Total Population:	727,365	Voting Age Population:	520,811
Unchanged Area				
Population from District	10	648,661		463,505
Total Unchanged Area		648,661		463,505
From Other Districts				
Population from District	8	0		0
Population from District	11	78,704		57,306
Total From Other Districts		78,704		57,306
Total for District:	10	727,365		520,811

District: 11	Total Population:	727,366	Voting Age Population:	548,595
Unchanged Area				
Population from District	11	518,160		390,215
Total Unchanged Area		518,160		390,215
From Other Districts				
Population from District	1	37,416		25,897
Population from District	8	79,960		62,763
Population from District	10	91,830		69,720
Total From Other Districts		209,206		158,380
Total for District:	11	727,366		548,595

Table 3
Chapter One Districts
Projected Republican Vote

District	Current Districts		Chapter 1 Districts	
	2009 Governor	2008 President	2009 Governor	2008 President
1	65%	53%	66%	53%
2	62%	50%	62%	50%
3	34%	25%	31%	22%
4	61%	50%	63%	51%
5	61%	52%	62%	52%
6	67%	58%	67%	58%
7	66%	54%	68%	56%
8	39%	32%	40%	33%
9	67%	59%	66%	59%
10	61%	48%	63%	50%
11	55%	44%	50%	38%

The vote by census block first was estimated from known precinct election returns. The values for each census block in a district then were summed to produce an estimated district vote for each candidate.

EXHIBIT I

Report of John B. Morgan Regarding Plaintiffs' Alternative Plan and the Enacted Plan

Page v. State Board of Elections

Background Information

My name is John B. Morgan. I have been retained by the defendants to offer an expert opinion regarding Plaintiffs' Alternative Plan and the Enacted Plan. I hold a B.A. in History from the University of Chicago. As detailed in my CV, attached as Exhibit A, I have extensive experience in the field of redistricting, working on redistricting plans in the redistricting efforts following the 1990 Census, the 2000 Census, and the 2010 Census. I have testified as an expert witness in demographics and redistricting. I am being compensated at a rate of \$250 per hour for my services in this case.

In preparing this analysis, I considered the following: the legal briefs submitted to the court, reports by Dr. Michael McDonald and Dr. Thomas Brunell, court cases mentioned in the briefs and reports, relevant portions of the Sec. 5 preclearance submissions to the Department of Justice, various maps and datasets from the current and previous congressional districts, the Plaintiffs' Alternative Plan maps and data, the 2010 redistricting PL94-171 data and Census geography data from the Census Bureau, political and redistricting data from the Department of Legislative Services and the Virginia State Board of Elections, and the Maptitude for Redistricting geographic information system (GIS) software and manuals from Caliper Corporation.

The redistricting geographic information system (GIS) software package used for this analysis is Maptitude for Redistricting from Caliper Corporation. The redistricting software was loaded with the census PL94-171 data from the Census and the Census geography as well as available redistricting and political data from Department of Legislative Services and the Virginia State Board of Elections. The full suite of census geography was available, including Census Places, Voting Districts, water bodies, and

roads, as well as Census Blocks which are the lowest level of geography for which the Census Bureau reports population counts.

The Department of Legislative Services provided political data for 2008 and 2009 for use during the General Assembly redistricting process. I prepared reports and analysis based on this data for the Benchmark, Enacted and Alternative Plans. In addition, I was provided data for the 2012 presidential election by counsel and asked to analyze this data for the Benchmark, Enacted, and Alternative Plans.

Table 1. Benchmark 2001 Congressional Districts Election Data

CD	Current Party	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08	Rep. Pres. '12	Dem. Pres. '12	Other Pres. '12
1	R	65%	35%	62%	38%	63%	37%	53%	47%	1%	38%	61%	1%	52%	47%	1%
2	R	62%	38%	56%	44%	60%	40%	50%	50%	1%	34%	64%	1%	48%	50%	1%
3	D	34%	66%	33%	67%	35%	65%	25%	75%	1%	18%	81%	1%	23%	75%	1%
4	R	61%	39%	59%	41%	61%	39%	50%	49%	1%	37%	61%	1%	49%	50%	1%
5	R	61%	39%	60%	40%	62%	38%	52%	47%	1%	35%	64%	1%	52%	46%	2%
6	R	67%	33%	66%	34%	67%	33%	58%	41%	1%	41%	58%	1%	59%	40%	2%
7	R	66%	34%	63%	37%	65%	35%	54%	45%	1%	39%	59%	1%	54%	44%	1%
8	D	39%	61%	37%	63%	36%	64%	32%	67%	1%	25%	73%	1%	30%	68%	1%
9	R	67%	33%	66%	34%	66%	34%	59%	39%	1%	36%	63%	1%	64%	34%	2%
10	R	61%	39%	58%	42%	58%	42%	48%	51%	1%	38%	61%	1%	48%	51%	1%
11	D	55%	45%	52%	48%	52%	48%	44%	56%	1%	35%	64%	1%	42%	57%	1%

Table 2. Enacted Congressional Districts Election Data

CD	Current Party	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08	Rep. Pres. '12	Dem. Pres. '12	Other Pres. '12
1	R	66%	34%	63%	37%	64%	36%	53%	46%	1%	39%	60%	1%	53%	46%	1%
2	R	62%	38%	57%	43%	60%	40%	50%	49%	1%	35%	64%	1%	49%	50%	1%
3	D	31%	69%	29%	71%	31%	69%	22%	78%	1%	16%	83%	1%	20%	79%	1%
4	R	63%	37%	60%	40%	62%	38%	51%	48%	1%	39%	60%	1%	50%	49%	1%
5	R	62%	38%	61%	39%	62%	38%	52%	47%	1%	36%	63%	1%	53%	46%	2%
6	R	67%	33%	67%	33%	68%	32%	58%	41%	1%	42%	57%	1%	59%	39%	2%
7	R	68%	32%	65%	35%	67%	33%	56%	43%	1%	41%	58%	1%	57%	42%	1%
8	D	40%	60%	38%	62%	38%	62%	33%	66%	1%	26%	73%	1%	31%	68%	1%
9	R	66%	34%	66%	34%	66%	34%	59%	40%	1%	36%	63%	1%	63%	35%	2%
10	R	63%	37%	60%	40%	60%	40%	50%	50%	1%	39%	60%	1%	50%	49%	1%
11	D	50%	50%	47%	53%	47%	53%	38%	61%	1%	30%	68%	1%	36%	62%	1%

Table 3. Plaintiffs' Alternative Congressional Districts Election Data

C D	Current Party	Rep. Gov '09	Dem. Gov '09	Rep. Lt. Gov '09	Dem. Lt. Gov '09	Rep. Att. Gen. '09	Dem. Att. Gen. '09	Rep. Pres. '08	Dem. Pres. '08	Other Pres. '08	Rep. U.S. Sen. '08	Dem. U.S. Sen. '08	Other U.S. Sen. '08	Rep. Pres. '12	Dem. Pres. '12	Other Pres. '12
1	R	66%	34%	63%	37%	64%	36%	53%	46%	1%	39%	60%	1%	53%	46%	1%
2	R	57%	43%	52%	48%	55%	45%	44%	55%	1%	31%	68%	1%	44%	55%	1%
3	D	38%	62%	36%	64%	37%	63%	28%	71%	1%	20%	78%	1%	25%	73%	1%
4	R	63%	37%	60%	40%	62%	38%	51%	48%	1%	39%	60%	1%	50%	49%	1%
5	R	62%	38%	61%	39%	62%	38%	52%	47%	1%	36%	63%	1%	53%	46%	2%
6	R	67%	33%	67%	33%	68%	32%	58%	41%	1%	42%	57%	1%	59%	39%	2%
7	R	68%	32%	65%	35%	67%	33%	56%	43%	1%	41%	58%	1%	57%	42%	1%
8	D	40%	60%	38%	62%	38%	62%	33%	66%	1%	26%	73%	1%	31%	68%	1%
9	R	66%	34%	66%	34%	66%	34%	59%	40%	1%	36%	63%	1%	63%	35%	2%
10	R	63%	37%	60%	40%	60%	40%	50%	50%	1%	39%	60%	1%	50%	49%	1%
11	D	50%	50%	47%	53%	47%	53%	38%	61%	1%	30%	68%	1%	36%	62%	1%

Executive Summary

In his several reports, Dr. McDonald offers many criticisms of the Enacted Plan and contends that it was drawn as an unconstitutional racial gerrymander. Based on a review and analysis of the available data, I conclude that the Enacted Plan is not a racial gerrymander, that politics rather than race predominated, and that the Alternative Plan would not be an appropriate substitute for the Enacted Plan.

The Alternative Plan was not before the General Assembly at the time it adopted the Enacted plan, but was instead offered for the first time in connection with this litigation in February 2014. The Alternative Plan therefore says little, if anything, about the General Assembly's purpose in enacting the Enacted Plan.

The Alternative Plan is at least as race-conscious as, perhaps even more race-conscious than, the Enacted Plan. The Alternative Plan retains most of the Benchmark District 3 that Dr. McDonald criticized as "constitutionally suspect," and replicates many of the geographic trades between District 3 and surrounding districts that Dr. McDonald previously argued were predominantly racial, including the move of the City of Petersburg into District 3. In fact, the only difference between the Enacted Plan and the Alternative Plan is the placement of the boundary between Districts 2 and 3. The Alternative Plan moves that boundary to achieve its avowed racial goal of achieving a barely "majority-minority district." 2/21/14 McDonald, page 9.

Second, Dr. McDonald does not even attempt to suggest that race, rather than politics, was the predominant reason for the Enacted Plan's treatment of the District 2 and 3 population trades. Such political concerns readily explain the drawing of District 2, where Republican Congressman Scott Rigell was serving in his first term after defeating a Democratic incumbent in this closely-divided district. District 2 in the Enacted Plan, as enacted by the Republican-controlled General Assembly, provides an

obvious political benefit to Republicans by preserving the prospects for the re-election of now-incumbent Congressman Rigell. This refutes the notion that race was the predominant factor in the population trades in this area.

Third, the Alternative Plan and Dr. McDonald's reports fail to show that the General Assembly could have achieved its political goals through a plan that was comparably consistent with traditional redistricting principles as the Enacted Plan and that brought about "significantly greater racial balance." The Alternative Plan undermines rather than advances the presumed political goals of the General Assembly because it replaces the political strengthening of Congressman Rigell in District 2 with a plan that weakens his electoral prospects relative not only to the Enacted Plan, but even the prior district. While Dr. McDonald argues that the Alternative Plan marginally outperforms the Enacted Plan on certain traditional redistricting principles, he does not even mention other principles where the Alternative Plan performs worse than the Enacted Plan – such as preserving the cores of existing districts, protecting incumbents, and complying with the Voting Rights Act. Indeed, by lowering District 3's Black VAP to a barely majority level that would also be lower than the Benchmark level, the Alternative Plan would have presented obstacles to preclearance that the Enacted Plan did not present. Finally, since Alternative District 3 maintains a black majority that is 6% different in Black VAP than the Enacted District 3, it does not bring about a "greater racial balance."

Under Dr. McDonald's Own Analysis, the Alternative Plan is Just as Race-conscious as the Enacted Plan

Under Dr. McDonald's own approach, the Alternative Plan is at least as race conscious as the Enacted Plan. First, Dr. McDonald criticizes both the District 3 drawn after the *Moon v. Meadows* case and the Benchmark District 3 as "constitutionally suspect" under *Shaw* and the Supreme Court's racial gerrymandering cases – but the Alternative Plan retains most of the population, shape and geography of Benchmark District 3. With respect to changes to Benchmark District 3, the Alternative Plan replicates

many of the trades between District 3 and surrounding districts - such as the addition of Petersburg to District 3 - that Dr. McDonald concluded in his first report were predominantly racial. McDonald states that the Virginia General Assembly “strategically traded populations in and out of the Third Congressional District so as to *increase* the Black Voting Age Population of the District.” McDonald 12/6/13 Report, page 1, with emphasis in original. Applying Dr. McDonald’s own analysis, the Alternative Plan strategically trades populations in and out of the Third Congressional District so as to *decrease* the Black Voting Age Population of the District.

Alternative District 3 Retains Portions of Benchmark District 3 Which Dr. McDonald and Plaintiffs Allege is Unconstitutional.

In his 1/20/14 report, McDonald states that: “There is no reason to believe that race was not also the predominant factor in the creation of the Remedial and Benchmark Third Districts.” 1/20/14 McDonald, page 6. He concluded that both the Remedial version of District 3 adopted after *Moon v. Meadows* and the Benchmark District 3 adopted in 2001 are “constitutionally suspect” for this reason. McDonald further notes that “the constitutionality of the Benchmark District was never upheld by a court” 1/20/14 McDonald, page 9. Yet despite these misgivings about the constitutionality of the predecessor districts, Alternative District 3 retains most of Benchmark District 3, including its population, shape and geography. In his 12/16/13 Report, Dr. McDonald applies the geographically descriptive language of District 3 from the *Moon* case to analyze District 3 of the Enacted Plan. In that same fashion, much of this geographically descriptive language applies to Alternative District 3. Just like the Remedial and Benchmark and Enacted District 3, Alternative District 3:

- “is anchored in the tidewater” region of Virginia and encompasses “Suffolk [,] Portsmouth[,] Hampton [and] Newport News,”
- “us[es] only the open water of...the James River” to connect areas of the district,

- “crosses the James River into largely rural Surry County, recrossing the James River to take in all of the African-American majority Charles City County,”
- “to the south...runs through Prince George County,”
- “to the east...takes in part of rural southeastern Henrico county before reaching the more built up and heavily black eastern suburbs of Richmond, racially dividing the capital city... before terminating in a small black neighborhood in northern Henrico County.” McDonald 12/6/13 Report, page 6

Thus, on Dr. McDonalds own analysis, Alternative District 3 is “constitutionally suspect” because “[t]here is no reason to believe that race was not also the predominant factor in [its] creation.” 1/20/14 McDonald, page 6.

The Alternative Plan Replicates the Trades between Districts 4 and 7 and District 3 That Dr. McDonald Identified as Predominantly Racial

With respect to the 2012 changes to Benchmark District 3, Alternative District 3 makes virtually all of the major changes made by Enacted District 3 that Dr. McDonald concluded were predominantly driven by race.

First, Dr. McDonald criticized the Enacted Plan’s population trades between District 3 and District 4 because “the primary result of these trades was to move the entirety of the densely African-American community of Petersburg from the Benchmark Fourth to the adopted Third District.” 12/6/14 McDonald Report, page 22. Dr. McDonald concluded that the “assignment of Petersburg to the adopted Third District is similar to the unconstitutional district at issue in *Moon vs. Meadows*.” 12/6/13 McDonald Report, page 23. He also concluded that race explains the General Assembly’s movement of whiter populations in Prince George County from Benchmark District 3 to Enacted District 4.

The Alternative Plan precisely replicates these trades between Districts 3 and 4. The Alternative Plan moves “the entirety of the densely populated African-American community of Petersburg from the Benchmark Fourth to the [Alternative] Third District,” and it makes the same trades in Prince George County from the benchmark District 3 to District 4 that Dr. McDonald objected to in his first report. 12/6/13 McDonald Report, page 22. Thus, according to Dr. McDonald’s own analysis, the Alternative Plan’s “assignment of Petersburg to the adopted Third District is similar to the unconstitutional district at issue in *Moon vs. Meadows*.” 12/6/13 McDonald Report, page 23.

Second, Dr. McDonald criticizes the Enacted Plan because population trades between District 7 and District 3 involved “shifting lower Black VAP New Kent and one Richmond VTD from the benchmark Third District to the adopted Seventh District in exchange for much higher Black VAP VTDs moved from the benchmark Seventh District to the adopted Third District.” 12/6/13 McDonald Report, page 24. Dr. McDonald concluded that these moves showed that “Virginia chose to further racially segregate localities”, including “Richmond.” 12/6/13 McDonald Report, page 26. Dr. McDonald further stated that Enacted District 3 “takes in rural eastern Henrico County before reaching the more built up and heavily black eastern suburbs of Richmond, racially dividing the capital city nearly in half before terminating in a black neighborhood in northern Henrico County.” 12/6/13 McDonald Report, page 6.

Again, the Alternative Plan makes exactly these same trades between Districts 3 and 7. The Alternative Plan moves predominantly white New Kent County from Benchmark 3 to District 7 and the “much higher Black VAP VTDs” in Henrico and Richmond from Benchmark District 7 to District 3. 12/6/13 McDonald Report, page 24. Thus, in Dr. McDonald’s own view the choice of population moves in the Alternative Plan serves “to further racially segregate localities,” including “Richmond,” 12/6/13 McDonald Report, page 26, such that the Alternative Plan “takes in rural eastern Henrico County before reaching the more built up and heavily black eastern suburbs of Richmond, racially dividing the capital

city nearly in half before terminating in a black neighborhood in northern Henrico County.” 12/6/13
 McDonald Report, page 6.

The Alternative Plan’s Trades between Districts 1 and 2 and District 3 Strategically Decrease the Black VAP in District 3

The Enacted Plan’s trades between Districts 1, 2 and 3 involve a much smaller population and have a significantly smaller impact on District 3’s racial composition than the Alternative Plan’s trades between those districts. The Enacted Plan moves 84,057 total people back and forth between Districts 1, 2 and 3 from the Benchmark Plan. Given the ideal congressional district size of 727,366, these changes equal 11.6% of a district. The Alternative Plan moves 287,015 people back and forth between Districts 1, 2 and 3 from the Benchmark Plan, which is almost four times as many people moved as were shifted in these districts in the Enacted Plan. Given the ideal congressional district size of 727,366, these changes equal 39.5% of a district.

Table 4. Population Affected by Trades in Districts 1, 2 and 3

Benchmark to Enacted District	Population	VAP	Benchmark to Alternative District	Population	VAP
1-to-3	23,288	17,805	1-to-3	106,886	83,523
3-to-1	7,351	5,106	3-to-1	7,351	5,106
1&3 Subtotal	30,639	22,911	1&3 Subtotal	114,237	88,629
2-to-3	27,917	20,543	2-to-3	45,798	35,556
3-to-2	25,501	20,049	3-to-2	126,980	97,432
2&3 Subtotal	53,418	40,592	2&3 Subtotal	172,778	132,988
Total Affected	84,057	63,503	Total Affected	287,015	221,617
Ideal District size	727,366		Ideal District Size	727,366	
% Affected	11.6%		% Affected	39.5%	

In the Enacted Plan the net result of these trades between Districts 1, 2, and 3 add 9,399 Black VAP (exclusive) and 9,658 Black VAP (inclusive) to Enacted District 3. The Enacted Plan’s trades between Districts 1 and 3 had a minimal racial impact on District 3 because the Black VAP of the areas moved into and out of district were virtually the same – at approximately 44% Black VAP. In fact, these trades slightly decreased the overall Black VAP of District 3 as compared to the Benchmark District 3. Indeed, Dr. McDonald recognizes that “a slightly higher BVAP percentage was transferred into the First District.” 12/6/13 McDonald, page 18. Moreover, the area transferred into District 3 has a lower Black VAP, 43.4% (exclusive) or 44.6% (inclusive), than the Benchmark District 3’s Black VAP of 53.1% (exclusive) or 53.9% (inclusive).

The Enacted Plan’s trades between Districts 2 and 3 also bring an area into District 3 that has a lower Black VAP – 36.7% (exclusive) and 37.9% (inclusive) – than the rest of Benchmark District 3. The area transferred out of District 3 has a Black VAP of 18.3% (exclusive) and 18.8% (inclusive), meaning that the difference between these two areas is 18.4% (exclusive) and 19.1% (inclusive). But the net number of Black VAP moved into District 3 is only 3,887 (exclusive) or 4,011 (inclusive).

Table 5. Population Trades between Benchmark and Enacted Plan in Districts 1, 2 and 3

Benchmark to Enacted District	Population	VAP	Black VAP (exclusive method)	Black VAP (inclusive method)	% Black VAP (exclusive method)	% Black VAP (inclusive method)
1-to-3	23,288	17,805	7,736	7,933	43.4%	44.6%
3-to-1	7,351	5,106	2,224	2,286	43.6%	44.8%
Net to 3 from 1	15,937	12,699	5,512	5,647		
2-to-3	27,917	20,543	7,548	7,785	36.7%	37.9%
3-to-2	25,501	20,049	3,661	3,774	18.3%	18.8%
Net to 3 from 2	2,416	494	3,887	4,011		
Net to 3 from 1&2	18,353	13,193	9,399	9,658		

By contrast, the Alternative Plan’s trades between Districts 1, 2 and 3 are far more sweeping and have a much greater racial effect on the Black VAP of District 3. The net result of these trades between Districts 1, 2, and 3 serve to *decrease* the Black VAP of Alternative District 3 by 23,293 Black VAP

(exclusive) and 23,232 Black VAP (inclusive).

The Alternative Plan causes this overall decrease by moving higher Black VAP areas out of District 3 and moving much lower Black VAP areas into District 3. The Alternative Plan’s trades between 1 and 3 move a 43.6% (exclusive) or 44.8% (inclusive) Black VAP area out of District 3 and a 29.6% (exclusive) of (30.3%) inclusive Black VAP area into District 3 – a difference of 14.0% (exclusive) or 14.5% (inclusive) Black VAP. This populous area of more than 106,000 people moved into District 3 has a much lower Black VAP than Benchmark District 3.

The Alternative Plan’s trades between District 2 and 3 move a 56.8% (exclusive) and 57.6% (inclusive) Black VAP area out of District 3 and a 27.0% (exclusive) or 27.7% (inclusive) Black VAP area into District 3 – a difference of 29.8% (exclusive) or 29.9% (inclusive) Black VAP. The populous area of more than 126,000 people moved out of District 3 has a higher Black VAP than the Benchmark District 3.

None of the Alternative Plan’s trades between Districts 1, 2 and 3 are explained on non-racial grounds, such as politics and incumbency protection. Thus, the Alternative Plan is at least as race-conscious, and arguably even more race-conscious, than the Enacted Plan.

Table 6. Population Trades between Benchmark and Alternative Plan in Districts 1, 2 and 3

Benchmark to Alternative District	Population	VAP	Black VAP (exclusive method)	Black VAP (inclusive method)	% Black VAP (exclusive method)	% Black VAP (inclusive method)
1-to-3	106,886	83,523	24,714	25,349	29.6%	30.3%
3-to-1	7,351	5,106	2,224	2,286	43.6%	44.8%
Net to 3 from 1	99,535	78,417	22,490	23,063		
2-to-3	45,798	35,556	9,599	9,866	27.0%	27.7%
3-to-2	126,980	97,432	55,382	56,161	56.8%	57.6%
Net to 3 from 2	-81,182	-61,876	-45,783	-46,295		
Net to 3 from 1&2	18,353	16,541	-23,293	-23,232		

Looked at another way, the Alternative Plan’s trades in Districts 1, 2 and 3 would have reduced

the Black VAP of District 3 to a minority-Black VAP level below 50% from the 53.1% (exclusive) or 53.9% (inclusive) of the Benchmark District 3. This strategic decrease in Black VAP caused by the Alternative Plan's trades in Districts 1, 2 and 3, requires a strategic increase in Black VAP on the northern end of District 3 in order to achieve the avowed racial goal of preserving District 3 as a barely "majority-minority district." These necessary strategic trades to *increase* the Black VAP in the north of Alternative District 3 caused by the Alternative Plan's trades to *decrease* the Black VAP in Districts 1, 2 and 3 are exactly the trades Dr. McDonald concluded were predominantly racial: adding Petersburg into Alternative District 3 and "shifting lower Black VAP New Kent and one Richmond VTD from the benchmark Third District to the adopted Seventh District in exchange for much higher Black VAP VTDs moved from the benchmark Seventh District to the adopted Third District." 12/6/13 McDonald Report, pages 22-24.

Dr. McDonald offers No Proof That Race Rather than Politics Predominated in the Enacted Plan

In the *Easley vs. Cromartie* case, the court discusses that because "race and political affiliation" often are "highly correlated," Plaintiffs bear the "demanding burden" to show that race rather than politics predominated in the drawing of the challenged plan and district within the that plan. *Easley v. Cromartie*, 532 U.S. 234, 258 (2001). Similarly in this case, it is my understanding Plaintiffs must show that "race rather than politics" predominated in the drawing of the Enacted Plan and Enacted District 3. It is my understanding that if changes to District 3 in the Enacted Plan are equally consistent with politics as they are with race, then the Plaintiffs' efforts would be insufficient to require a change in the Virginia congressional districts enacted by the General Assembly. Dr. McDonald does not even mention the political considerations in the Enacted Plan, much less separate those considerations from race and show that race predominated in the Enacted Plan.

The Enacted Plan, when viewed as a whole, preserves the cores of the Benchmark districts while

achieving the necessary population equality and politically strengthening incumbents of both parties. This bears out especially in the key metric of the 2008 Presidential race, which was available to the Republican-controlled General Assembly at the time of the redistricting, as well as in the metric of the later 2012 race, which essentially validates the conclusion that politics explain the Enacted Plan. On these metrics, 2 of the 3 Democratic districts, including District 3, became more Democratic while 7 of the 8 Republican districts, including Districts 1, 2, 4 and 7 that surround District 3, became more Republican. (This number includes heavily Republican District 6, which becomes more Republican on the 2012 metric and no more Democratic on the 2008 metric.) The exceptions are heavily Democratic District 8 and heavily Republican District 9, but the changes there not significant in light of the overall political composition of those districts.

Table 7. Benchmark and Enacted Districts with 2008, 2012 Presidential Data

CD	Current Party	Benchmark		Enacted		Difference			Change	Benchmark	Enacted	Difference			Change
		Rep. Pres. '08	Dem. Pres. '08	Rep. Pres. '08	Dem. Pres. '08	DIFF Rep. Pres. '08	DIFF Dem. Pres. '08					Rep. Pres. '12	Dem. Pres. '12	Rep. Pres. '12	
1	R	52.5%	46.6%	53.3%	45.8%	0.8%	-0.8%	More R	52.0%	46.6%	52.9%	45.7%	1.0%	-1.0%	More R
2	R	49.5%	49.5%	49.7%	49.3%	0.2%	-0.2%	More R	48.2%	50.3%	48.6%	50.0%	0.3%	-0.3%	More R
3	D	24.7%	74.6%	21.8%	77.6%	-3.0%	3.0%	More D	23.3%	75.5%	20.0%	78.8%	-3.3%	3.3%	More D
4	R	49.9%	49.3%	51.3%	48.0%	1.4%	-1.4%	More R	48.6%	50.3%	50.1%	48.7%	1.5%	-1.6%	More R
5	R	51.8%	47.3%	52.2%	46.8%	0.4%	-0.4%	More R	52.0%	46.4%	52.5%	45.9%	0.6%	-0.5%	More R
6	R	57.8%	41.2%	57.7%	41.2%	0.0%	0.0%	Neither	58.7%	39.5%	58.8%	39.4%	0.1%	-0.1%	More R
7	R	54.0%	45.2%	56.3%	42.8%	2.4%	-2.4%	More R	54.5%	44.1%	56.9%	41.7%	2.4%	-2.5%	More R
8	D	31.9%	67.2%	32.8%	66.3%	0.9%	-0.9%	More R	30.5%	68.2%	31.0%	67.8%	0.5%	-0.5%	More R
9	R	59.3%	39.2%	58.9%	39.7%	-0.5%	0.5%	More D	63.9%	34.1%	63.0%	34.9%	-0.8%	0.8%	More D
10	R	47.7%	51.5%	49.6%	49.6%	1.9%	-1.9%	More R	48.0%	50.6%	49.9%	48.7%	1.9%	-1.8%	More R
11	D	43.6%	55.6%	38.5%	60.7%	-5.2%	5.1%	More D	41.5%	57.2%	36.4%	62.3%	-5.2%	5.1%	More D

The changes to District 3 in the Enacted Plan had the effect of not only slightly increasing the Black VAP of District 3, while increasing the Democratic strength of District 3, but also of making the surrounding districts stronger for the incumbent congressmen. This was true in District 2, where the evenly divided political composition and election history would have provided a Republican-controlled General Assembly with a reason to strengthen one-term incumbent Republican Congressman Scott Rigell. According to the 2008 Presidential results, District 2 was the most closely divided of all the

districts, with Democrat Barack Obama and Republican John McCain each capturing 49.5% of the vote.

That same year Democrat Glenn Nye defeated a two-term Republican incumbent Congresswoman

Thelma Drake to win election to Congress from Benchmark District 2. Scott Rigell first won election from

District 2 in 2010 when he defeated then incumbent Congressman Nye.

Thus, when the General Assembly considered the Enacted Plan in 2011 and 2012, Congressman Rigell was a freshman Member of Congress from a closely-divided district that had voted out the incumbents in two consecutive elections. The General Assembly made trades between adjacent Districts 1 and 3 that improved the re-election prospects of Congressman Rigell. This is clear not only from the fact that District 2 became slightly more Republican in the enacted plan, but also from the political composition of the Enacted Plan’s trades between Districts 2 and 3. The Enacted Plan trades a 64% (2008) or 69% (2012) Democratic area for a nearly identically-sized 52% (2008) or 50% (2012) Republican area, which has the effect of making District 2 more Republican. Even with the need to gain over 11% population in Benchmark District 2, the changes resulting in Enacted District 2 serve to improve the electoral prospects of incumbent Congressman Scott Rigell and result in a district that is essentially evenly divided politically on the 2008 presidential political data.

Table 8. Population Movement Between Benchmark and Enacted Districts with 2008, 2012 Presidential Data

Benchmark to Enacted District	Population	Rep. Pres. '08 %	Dem. Pres. '08 %	Oth. Pres. '08 %	Rep. Pres. '12 %	Dem. Pres. '12 %	Oth. Pres. '12 %
1-to-3	23,288	39%	60%	1%	33%	66%	1%
3-to-1	7,351	24%	75%	0%	23%	76%	1%
2-to-3	27,917	35%	64%	1%	30%	69%	1%
3-to-2	25,501	52%	47%	1%	50%	48%	1%
4-to-3	35,447	13%	86%	1%	11%	88%	1%
3-to-4	5,713	46%	53%	1%	44%	55%	1%
3-to-7	20,217	63%	36%	1%	64%	34%	1%
7-to-3	36,106	14%	85%	1%	13%	86%	1%

Indeed, the trades involving District 3 that Dr. McDonald concludes are racially-motivated are just as readily, and perhaps more readily, explained by politics than by race because they make District 3

more Democratic and surrounding Districts more Republican. Dr. McDonald, however, does not discuss the political effects of these trades, much less refute this non-racial explanation for them.

The Alternative Plan Does not Prove That The Enacted Plan Was A Racial Gerrymander

I understand that “in a case such as this one where majority-minority districts (or the approximate equivalent) are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with the traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance.” *Easley*, 532 U.S. at 258.

I have been asked to analyze whether the Alternative Plan achieves the General Assembly’s political goals in the Enacted Plan, is as consistent with traditional redistricting principles as the Enacted Plan, and brings about a “significantly greater racial balance” than the Enacted Plan. I conclude that the Alternative Plan does not achieve any of these results.

The Alternative Plan Undermines, Rather Than Achieves, The General Assembly’s Political Goals, Including the Goal to Strengthen the Incumbent in District 2.

The Alternative Plan fails rather than serves the General Assembly’s political goals, especially to strengthen Congressman Rigell in District 2. The Alternative Plan not only fails to strengthen Congressman Rigell politically, it weakens him politically, and appears to be drawn to turn District 2 into a Democratic district. While Republican presidential candidate John McCain captured 49.5% of the vote in Benchmark District 2 in 2008 and he would have captured 49.7% of the vote in the area covered by the Enacted District 2, he would have received only 44.3% of the vote in the area covered by Alternative District 2. In other words, the Alternative Plan would swing the closely-divided District 2 approximately

5.3% more Democratic than Benchmark District 2 and 5.5% more Democratic than Enacted District 2, to the obvious disadvantage of Congressman Rigell and the obvious advantage of Democrats. The Republican-controlled General Assembly would have had ample political reason not to adopt the Alternative Plan, and instead to adopt the Enacted Plan that strengthened Congressman Rigell and did not advance the electoral prospects of his next Democratic challenger.

Indeed, the change in the presidential 2008 political performance in Alternative Plan District 2 from the Benchmark District 2 stands out as the greatest change of any district in the Alternative Plan and it is *against* the political party of the incumbent. The second-most changed district is District 11, which shows a change of 5.2% in the 2008 presidential vote, and this change is *in favor of* incumbent Democrat Congressman Gerry Connolly, who had just won a close re-election in 2010.

Table 9. Benchmark and Alternative Districts with 2008, 2012 Presidential Data

CD	Current Party	Benchmark		Plaintiffs' Alt.		Difference			Change
		Rep. Pres. '08	Dem. Pres. '08	Rep. Pres. '08	Dem. Pres. '08	DIFF Rep. Pres. '08	DIFF Dem. Pres. '08		
1	R	52.5%	46.6%	53.3%	45.8%	0.8%	-0.8%	More R	
2	R	49.5%	49.5%	44.3%	54.9%	-5.3%	5.3%	More D	
3	D	24.7%	74.6%	27.8%	71.5%	3.1%	-3.2%	More R	
4	R	49.9%	49.3%	51.3%	48.0%	1.4%	-1.4%	More R	
5	R	51.8%	47.3%	52.2%	46.8%	0.4%	-0.4%	More R	
6	R	57.8%	41.2%	57.7%	41.2%	0.0%	0.0%	Neither	
7	R	54.0%	45.2%	56.3%	42.8%	2.4%	-2.4%	More R	
8	D	31.9%	67.2%	32.8%	66.3%	0.9%	-0.9%	More R	
9	R	59.3%	39.2%	58.9%	39.7%	-0.5%	0.5%	More D	
10	R	47.7%	51.5%	49.6%	49.6%	1.9%	-1.9%	More R	
11	D	43.6%	55.6%	38.5%	60.7%	-5.2%	5.1%	More D	

The Alternative Plan's trades in Districts 1, 2 and 3 undermine the political goals of the General Assembly to unify the districts politically and to strengthen incumbents of both parties. The trades that the Alternative Plan makes involving District 3 that Dr. McDonald claims are necessary to remedy an alleged racial gerrymander in fact turn closely-divided District 2 into a Democratic district. This is exactly contrary to the effect of the Enacted Plan passed by the General Assembly. The Alternative Plan caused

this result by moving an 81% (2008) or 81% (2012) Democratic area of more than 126,000 people in to District 2, and a much smaller, relatively more Republican area which is 50% (2008) or 55% (2012) Democratic out of District 2 and into District 3.

In addition, the Alternative Plan takes populous territory from Benchmark District 1 which could have strengthened Congressman Rigell in District 2 (and indeed was moved to District 2 in the Enacted Plan) and moves it to District 3. This also has the effect of undermining Congressman Rigell and making District 3 less Democratic.

Table 10. Population Movement Between Benchmark and Alternative Districts with 2008, 2012 Presidential Data

Benchmark to Alternative District	Population	Rep. Pres. '08 %	Dem. Pres. '08 %	Oth. Pres. '08 %	Rep. Pres. '12 %	Dem. Pres. '12 %	Oth. Pres. '12 %
1-to-3	106,886	45%	54%	1%	41%	57%	1%
3-to-1	7,351	24%	75%	0%	23%	76%	1%
2-to-3	45,798	49%	50%	1%	43%	55%	2%
3-to-2	126,980	19%	81%	1%	18%	81%	1%
4-to-3	35,447	13%	86%	1%	11%	88%	1%
3-to-4	5,713	46%	53%	1%	44%	55%	1%
7-to-3	36,106	14%	85%	1%	13%	86%	1%
3-to-7	20,217	63%	36%	1%	64%	34%	1%

The Alternative Plan is Not as Consistent with Traditional Redistricting Principles as the Enacted Plan

When compared to the Enacted Plan, the Alternative Plan is not as consistent with traditional redistricting principles. While the Alternative Plan may have a marginal effect on two principles, it is significantly worse with respect to a number of others including preservation of cores and communities of interest, protection of incumbents, and compliance with the Voting Rights Act.

Compactness

Dr. McDonald asserted in his 12/6/13 report that Enacted District 3 “is an extreme district” and the least compact of the Virginia congressional districts on three measures, the Reock test, the Polsby-Popper test, and the Schwartzberg test. 12/6/13 McDonald, page 7. Dr. McDonald, however, provides

no standard for determining when a district is acceptably compact or unacceptably non-compact.

McDonald identifies only marginal differences in District 3's compactness scores in the Enacted and Alternative Plans. Enacted District 3 scores a 0.19 on the Reock test, 0.08 on the Polsby-Popper test and 3.07 on the Schwartzberg test. 12/6/13 McDonald, page 7. Alternative District 3 scores 0.22 on the Reock test, only 0.03 points better than Enacted District 3; 0.11 on the Polsby-Popper test, again only 0.03 points better than the Enacted District 3; and 2.61 on the Schwartzberg test. (In the 2/21/14 McDonald Report Table 4, Dr. McDonald lists the value for District 3 as 2.04, while the compactness reports I ran for the Schwartzberg Test show it to be 2.61.) Dr. McDonald does not suggest that these small numerical differences have real-world significance, or are meaningful under some professionally accepted standard. He does not suggest that Alternative District 3 meets a professionally accepted standard for minimally acceptable compactness, which Enacted District 3 does not satisfy and Alternative District 3 does. I am not aware of any such standard.

In his reports, Dr. McDonald fails to mention at least two other compactness measures under which Enacted District 3 is *more* compact than Alternative District 3. On the Ehrenburg test – which computes the ratio of the largest inscribed circle divided by the area of the district and treats higher numbers as more compact than lower numbers – Enacted District 3 scores 0.25, or better than Alternative District 3's score of 0.23. Likewise, on the Population Polygon test – which computes the ratio of the district population to the approximate population of the convex hull of the district and treats higher numbers as more compact than lower numbers – Enacted District 3 scores 0.54, or better than Alternative District 3's score of 0.53.

Table 11. Compactness of Enacted and Alternative Congressional Districts

District	Enacted Plan		Alternative Plan	
	Population Polygon	Ehrenburg	Population Polygon	Ehrenburg
1	0.63	0.28	0.63	0.28
2	0.57	0.31	0.84	0.32
3	0.54	0.25	0.53	0.23
4	0.62	0.29	0.62	0.29
5	0.50	0.30	0.50	0.30
6	0.81	0.23	0.81	0.23
7	0.59	0.30	0.59	0.30
8	0.88	0.34	0.88	0.34
9	0.73	0.24	0.73	0.24
10	0.50	0.22	0.50	0.22
11	0.68	0.15	0.68	0.15

Dr. McDonald also suggests that whereas Enacted District 3 was the least compact under all three of his preferred measures, Alternative District 3 is the “second least compact” district on the Reock and Polsby-Popper tests and the “third least compact” district on the Schwartzberg test. 2/21/14 McDonald, pages 6-7. This means little because compactness scores are often at odds with each other. For example, District 9 is the least compact district and is slightly less compact than Alternative District 3, on the Reock test, but District 9 is more compact than Alternative District 3 on the Polsby-Popper test. Likewise, compactness scores show that District 11 is the least compact on the Polsby-Popper test, but is more compact than Alternative District 3 on the Reock test.

Locality and VTD splits

One traditional redistricting criterion is the respect for municipal boundaries. The Virginia Senate in its redistricting criteria also suggested that VTDs should be preserved, but for both boundaries, the Virginia Senate treated them on par with the criterion of preserving other communities of interest. The Senate Criteria V. Communities of Interest state that:

“Districts shall be based on legislative consideration of the varied factors that can create or contribute to communities of interest. These factors may include, among others, economic

factors, social factors, cultural factors, geographic features, *governmental jurisdictions* and service delivery areas, *political beliefs*, voting trends and *incumbency considerations*. It is inevitable that some interests will be advanced more than others by the choice of particular district configurations. Public comment has been invited, has been and continues to be received, and will be considered. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people. Local government jurisdiction and precinct lines may reflect communities of interest to be balanced, but they are entitled to no greater weight as a matter of state policy than other identifiable communities of interest.” Senate Criteria V. (emphasis added).

Dr. McDonald criticized the Enacted Plan in his first report because it splits “17 localities” into different districts across the state. 12/6/13 McDonald, page 9. But 3 of the localities are only “technically split” because all of the population “is in one district while one or more water blocks without population are in another district.” Section 5 Submission, Statement of Change, page11.

Dr. McDonald, moreover, has used two different methods for counting “splits” in localities. Whereas Dr. McDonald criticized the number of *split* localities in the Enacted Plan in his first report, his latest report does not mention that number, but instead counts the number of *times* localities are *split*. Thus, Dr. McDonald’s first report counted a locality split into two districts as one “split locality,” his latest report counts it as two “locality splits.” Dr. McDonald’s preference for “locality splits” masks the fact that the Alternative Plan splits *only one fewer locality* than the Enacted Plan.

Table 12. Split Localities in Enacted Plan and Alternative Plan

Split Localities affecting population	Enacted Plan (Districts)	Plaintiffs Alternative Plan (Districts)
Bedford	(5, 6)	(5, 6)
Chesterfield	(4, 7)	(4, 7)
Fairfax	(8,10,11)	(8,10,11)
Fauquier	(1,5)	(1,5)
Hampton	(2,3)	
Henrico	(3,7)	(3,7)
Henry	(5,9)	(5,9)
Newport News	(1,2,3)	(1,3)
Norfolk	(2,3)	
Prince George	(3,4)	(3,4)
Prince William	(1,10,11)	(1,10,11)
Richmond	(3,7)	(3,7)
Roanoke	(6,9)	(6,9)
Spotsylvania	(1,7)	(1,7)
Portsmouth		(2,3)
Total	14	13
Split Localities affecting no population	Enacted Plan (Districts)	Plaintiffs Alternative Plan (Districts)
Isle of Wight	(3,4)	(3,4)
James City	(1,3)	(1,3)
Suffolk	(3,4)	(3,4)
Total	3	3

There is no reason to conclude that this marginal difference in split localities is significant. The Enacted Plan fares much better than the Benchmark Plan on split localities because the Benchmark Plan split 19 localities affecting population as described in Section 5 Submission, Statement of Change, page 11. Dr. McDonald previously brushed aside this improvement because “the constitutionality of the Benchmark district was never upheld by a court” and in his view, “[n]or does the constitutionality of the [Enacted] Third District hinge on how it compares to the Benchmark District.” 1/20/14 McDonald, page 9. Thus, Dr. McDonald suggested that “[e]ven if it improves to some degree upon aspects of the Benchmark District, the fact remains that like the *Moon v. Meadows* Unconstitutional District, the [Enacted] Third District has more splits than any other district.” 1/20/14 McDonald, page 9. By the

same analysis, the Alternative Plan's marginal improvement over the Enacted Plan on split localities – which are smaller than the Enacted Plan's improvement over the Benchmark Plan's splits – are irrelevant because the Alternative Plan's District 3 also creates more splits than any other district.

Moreover, contrary to Dr. McDonald's report, the Alternative Plan does not improve on the number of split VTDs – or even the number of VTD splits – when only splits affecting population are considered as was done in the Section 5 Submission. Dr. McDonald criticized the Enacted Plan in his first report because it splits “20 VTDs” into different districts across the state. 12/6/13 McDonald, page 10. However, “[The Enacted Plan] splits 10 precincts across the state to meet the criteria adopted by the Committee, a significant reduction from the 26 split precincts in the current plan. (As in the case of split localities, these numbers exclude technically split precincts where all of the precinct's population is in one district and there is no population in the other district).” Section 5 Submission, Statement of Change, page 11. Once again, Dr. McDonald has used two counting methods. Dr. McDonald criticized the number of *split* VTDs in the Enacted Plan in his first report, but his latest report does not mention that number and instead counts the number of *times* VTDs are *split*. Thus, Dr. McDonald's first report counted a VTD split into two districts as one “split VTD,” his latest report counts it as two “VTD splits.”

Table 13. Split VTDs in Enacted Plan and Alternative Plan

Split VTDs affecting population [Locality]	Enacted Plan (Districts)	Plaintiffs Alternative Plan (Districts)
Remington [Fauquier]	(1, 5)	(1, 5)
Lee Hill [Spotsylvania]	(1, 7)	(1, 7)
Buckland Mills [Prince William]	(1, 10)	(1, 10)
Machen [Hampton]	(2, 3)	
Rives [Prince George]	(3, 4)	(3, 4)
404 [Richmond City]	(3, 7)	(3, 7)
New London Academy [Bedford]	(5, 6)	(5, 6)
Mount Olivet [Henry]	(5, 9)	(5, 9)
Saint Albans [Fairfax County]	(8, 11)	(8, 11)
Old Mill [Fairfax County]	(10, 11)	(10, 11)
One [Portsmouth]		(2, 3)
Total	10	10
Split VTDs affecting no population [Locality]		
Split VTDs affecting no population [Locality]	Enacted Plan (Districts)	Plaintiffs Alternative Plan (Districts)
Roberts B [James City]	(1, 3)	(1, 3)
Riverside [Newport News]	(2, 3)	
Warwick [Newport News]	(2, 3)	
Hilton [Newport News]	(2, 3)	
Deep Creek [Newport News]	(2, 3)	
Bartlett [Isle of Wight]	(3, 4)	(3, 4)
Carrollton [Isle of Wight]	(3, 4)	(3, 4)
Rushmere [Isle of Wight]	(3, 4)	(3, 4)
Ebenezer [Suffolk]	(3, 4)	(3, 4)
Bennetts Creek [Suffolk]	(3, 4)	(3, 4)
Harbour View [Suffolk]	(3, 4)	(3, 4)
Magarity [Fairfax County]	(8, 11)	(8, 11)
Five [Portsmouth]		(2, 3)
Total	12	9

Even using Dr. McDonald's preferred measure of VTD splits, the Alternative Plan does not improve on the Enacted Plan. Dr. McDonald counts 44 VTD splits in the Enacted Plan and 38 VTD splits in the Alternative Plan. He hails this purported difference of 6 such splits as a significant factor in claiming that "these Alternative Districts better conform to traditional redistricting principles." 2/21/14 McDonald, page 5. In fact, however, a net of 6 such splits that Dr. McDonald identifies as different

between the plans are in the “technically split” precincts involving no population. Where population is concerned, the numbers of split VTDs and VTD splits in the Enacted Plan *are the same as* the numbers of split VTDs and VTD splits in the Alternative Plan.

Even if the numbers supported Dr. McDonald’s conclusion that the Alternative Plan meaningfully improves on the Enacted Plan with respect to splits, Dr. McDonald elevates localities and VTDs above other communities of interest that the Senate criteria directed should be treated on par with localities and VTDs. Under the Senate Criteria, the Benchmark Districts are “governmental jurisdictions” just like the localities and VTDs and communities of interest formed around congressional districts and communities of interest are entitled to the same “weight” as localities and VTDs. Senate Criteria V.

Dr. McDonald also disregards that the vast majority of the split localities in the Enacted Plan merely preserve preexisting split localities from the Benchmark Plan. The Enacted Plan’s splits, therefore, respect communities of interest formed around the Benchmark Districts. By contrast, the Alternative Plan creates a new split dividing a portion of Portsmouth – which was not split in the Benchmark Plan – away from both the rest of Portsmouth and the rest of Benchmark District 3, where it formed part of a community of interest.

Contiguity

There is no dispute that the Enacted Plan satisfied the traditional redistricting criterion that the districts be contiguous. In drawing the Enacted Plan, the General Assembly decided that “contiguity by water” even without a connecting bridge “is sufficient” to satisfy the contiguity requirement. Senate Criteria III. Dr. McDonald indicated in his first report that contiguity by water without a connecting bridge was not sufficient, but instead indicative of a racial gerrymander. 12/6/13 McDonald, page 8. Alternative District 3 is contiguous across the James River without a connection in two places.” 2/21/14

McDonald, page 7. The Alternative Plan thus achieves contiguity in District 3 exactly the same way as the Enacted Plan.

The Alternative Plan is Less Consistent with Certain Traditional Redistricting Principles Than the Enacted Plan

Dr. McDonald does not mention several traditional redistricting criteria identified by the Virginia Senate - including preservation of cores of districts, incumbency protection and compliance with the Voting Rights Act – under which the Alternative Plan performs worse than the Enacted Plan.

Preservation of Cores and Uniting of Political Communities of Interest

Preserving the cores of benchmark districts maintains communities of interest, facilitates better communication between citizens and their elected representatives, and protects incumbent representatives. Preservation of cores can be measured as a percentage of voters in a benchmark district who remain in the enacted district.

Table 14. Preservation of Cores of the Benchmark Districts

Enacted Plan		Plaintiffs Alternative Plan	
District	Percent Retained	District	Percent Retained
1	76.5	1	76.5
2	85.0	2	82.5
3	83.1	3	69.2
4	96.2	4	96.2
5	89.8	5	89.8
6	91.5	6	91.5
7	88.1	7	88.1
8	85.4	8	85.4
9	90.2	9	90.2
10	89.2	10	89.2
11	71.2	11	71.2
Average	86.0	Average	84.5

The Enacted Plan preserves between 71% and 96% of the cores of the Benchmark districts, and preserves 83% or more of the cores of 9 of the 11 districts, including District 3. The Enacted Plan preserves 85% of the core of District 2 and 83% of the core of District 3.

The Alternative Plan performs significantly worse than the Enacted Plan on this criterion. The Alternative Plan preserves only 69.2% of the core of District 3, down from 83% in the Enacted Plan. In other words, Alternative District 3 would be the *worst performing* district in terms of preservation of cores in either the Enacted or the Alternative Plan. Dr. McDonald offers no explanation as to why the only majority-minority district in Virginia should be entitled to less continuity and respect for incumbency protection than every other district.

Protection of Incumbents

The Senate Criteria included the factor of “incumbency considerations.” Senate Criteria V. This factor encompasses not just preserving the cores of districts but also strengthening incumbents politically. As explained, the Enacted Plan respects this factor significantly, while the Alternative Plan undermines it, particularly in District 2, where Congressman Rigell would be gravely weakened in his re-election prospects.

Compliance with the Voting Rights Act

The Senate Criteria treated compliance with the Voting Rights Act, “including compliance with protections against unwarranted retrogression or dilution of racial or ethnic minority voting strength,” as the highest priority for the Enacted Plan after compliance with the Constitutional equal-population requirement. Senate Criteria II. I understand that a redistricting plan complies with Section 5 only if it does not diminish the ability of minority voters to elect their candidates of choice.

The Enacted Plan increased District 3’s Black VAP on both of Dr. McDonalds’ preferred measures

3.2% (exclusive) and 3.3% (inclusive). 2/21/14 McDonald, page 8. The Enacted Plan thus did not diminish the ability of black voters to elect their candidates of choice. The Enacted Plan received preclearance from the Department of Justice.

In 2011, Virginia was one of the first states to complete its statewide legislative redistricting and seek Section 5 preclearance from the Department of Justice. The General Assembly passed a redistricting plan for the House of Delegates which required preclearance for the 2011 elections. The benchmark House of Delegates plan had 12 districts in which African-Americans formed a majority of the total and voting age populations. Many of those districts were located in the geography covered by Congressional District 3. During the redistricting process, the House of Delegates considered a number of proposed plans that preserved the 12 majority-black districts. Some of these alternative plans had Black VAP below 55%. House of Delegates Section 5 Submission, Statement of Minority Impact, page 5.

But the House of Delegates plan that the General Assembly enacted had a Black VAP of above 55% in all 12 majority-black districts – including the districts within Congressional District 3. This required increasing the Black VAP in some of the 12 majority-black benchmark districts from the Black VAP level at the time of the 2010 census. Eight of the 12 members of the House of Delegates Black Caucus voted in favor of the Enacted House of Delegates plan. House of Delegates Section 5 Submission, Statement of Minority Impact, page 5.

Thus, the General Assembly enacted, with strong support of bipartisan and black legislators, a House of Delegates redistricting plan with a 55% Black VAP as the floor for black-majority districts subject to Justice Department preclearance under Section 5, including districts within the geography covered by Congressional District 3. The General Assembly therefore had ample reason to believe that legislators of both parties, including black legislators, viewed the 55% black VAP for the House of Delegates districts as appropriate to obtain Section 5 preclearance, even if it meant raising the Black

VAP above the levels in the benchmark plan. The General Assembly acted in accordance with that view for the congressional districts and adopted the Enacted Plan with the District 3 Black VAP at 56.3%

The Alternative Plan, by contrast, decreases District 3's Black VAP by 2.9% and drops it to a razor-thin majority of 50.2% (exclusive) and 51% (inclusive). These levels are below the 55% that the General Assembly found appropriate to comply with Section 5 for House Districts.

Dr. McDonald states that "a racial bloc voting analysis" is required to prove what Black VAP is necessary to comply the Voting Rights Act. 1/20/14 McDonald, page 11. Dr. McDonald provides no such analysis of the Alternative Plan. Thus Dr. McDonald cannot – and does not – opine that the Alternative Plan could or would have received preclearance under Section 5.

Therefore the Alternative Plan would have presented obstacles to obtaining Section 5 preclearance that the Enacted Plan did not present. The Alternative Plan drops District 3's Black VAP well below the 55% that the General Assembly believed was appropriate to obtain preclearance for House Districts and decreases District 3's Black VAP to a razor-thin majority below the Benchmark Black VAP level. Had the Alternative Plan been before it, the General Assembly had ample reason to prefer the Enacted Plan, which increased District 3's Black VAP above 55% and faced none of these hurdles to achieving Section 5 preclearance.

The Alternative Plan Does Not Bring About Significantly Greater Racial Balance Than the Enacted Plan

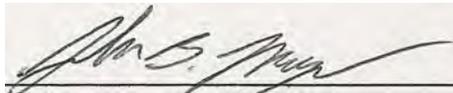
I have been asked to analyze whether the Alternative plan brings about "significantly greater racial balance" than the Enacted Plan. As I understand it, the purpose of this requirement is to cure the alleged racial gerrymander and turn the gerrymandered district into one that is not racially identifiable. The Alternative Plan fails that purpose because it preserves District 3 as a racially identifiable majority-

black district on both of Dr. McDonald's Black VAP measurements. The Alternative Plan District 3 replaces a black-majority district with a black-majority district and in doing so would not seem to cure the alleged racial predominance that Dr. McDonald criticizes in the Enacted Plan, including the changes to the Benchmark District 3 that the Alternative Plan replicates.

The Enacted Plan is not a Racial Gerrymander

Based on my review and analysis of the available data discussed throughout this report, I also conclude that the Enacted Plan is not a racial gerrymander. In my opinion, politics rather than race predominated and the Enacted Plan is consistent with traditional redistricting principles, including the criteria identified by the Virginia Senate and followed by the General Assembly.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on March 14, 2014 in Fairfax, Virginia.

A handwritten signature in black ink, appearing to read "John B. Morgan", is written over a horizontal line.

John B. Morgan

EXHIBIT J



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 14 2012

The Honorable E. Duncan Getchell, Jr.
Solicitor General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

Dear Solicitor General Getchell:

This refers to Chapter 1 (H.B. 251) (2012), which redistricts the congressional districts for the State of Virginia, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on February 2, 2012; additional information was received on February 6, 2012.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Because the Section 5 status of the redistricting plan is before the court in *Virginia v. Holder*, Civil Action No. 1:12-cv-00148 (D.D.C.), we are providing a copy of this letter to the Court and to counsel of record in that case.

Sincerely,

A handwritten signature in black ink, appearing to read "T. E. Perez", written in a cursive style.

Thomas E. Perez
Assistant Attorney General

EXHIBIT K

Analysis by Dr. Michael McDonald

of Plaintiffs' Proposed Alternative Congressional Plan

Page v. State Board of Elections

Plaintiffs in *Page v. State Board of Elections* have produced an alternative redistricting plan to address constitutional deficiencies in the Third Congressional District adopted by the Commonwealth of Virginia. Plaintiffs have produced an Alternative Third Congressional District narrowly tailored to maintain a majority-minority district and to minimize changes to the Adopted Map. The alternative plan makes changes only to two Adopted Congressional Districts, the Second and the Third. These changes have the effect of producing a Third District that, in comparison to the Adopted Third District, (1) is narrowly tailored to create a district with a Black Voting-Age Population of 50.2% (exclusive method) or 51.0% (inclusive method), (2) better respects existing locality and VTD boundaries, (3) is more compact, and (4) does not cross water without a connector with the effect of bypassing White communities. As a by-product of these changes, the Adopted Second District is also improved in terms of respecting locality boundaries, compactness, and crossing water without a connector.

Description of Plaintiffs' Alternative Third District

Plaintiffs' Alternative Districts are different from the Adopted Districts only in the shared boundary between the Adopted Second and Third Districts. Figure 1 demonstrates by overlaying the Alternative Third District on the Adopted Districts. The Adopted Districts use the same coloring scheme as in my original report (McDonald pp.2-5), with the Adopted Second District shaded green and the Adopted Third shaded pink. Plaintiffs' Alternative Districts are outlined in dark green.

Figure 2 provides a detail of the difference between Plaintiffs' Alternative Districts and the Adopted Districts in the only affected localities of Hampton, Newport News, Norfolk, and Portsmouth. Since it may not be apparent, Figure 3 provides another closer view of a small split that occurs in Portsmouth to balance the populations between the Alternative Second and Third Districts.

There are two primary differences between the Alternative and Adopted Districts. First, VTDs located in Hampton and Newport News formerly in the Benchmark First District are assigned to the Alternative Third District instead of the Second District, thereby minimizing splits of these localities, their VTDs, improving the compactness of the district, and rectifying the use of the James River to by-pass non-Black areas of Hampton and Newport News. Second, the locality of Norfolk is entirely assigned to the Alternative Second District, thereby eliminating

splits of this locality, improving the compactness of the district, and eliminating the use of water without connecting bridges to keep the Second District contiguous. A small slice of Portsmouth is split to balance the Alternative Second and Third Districts' total populations.

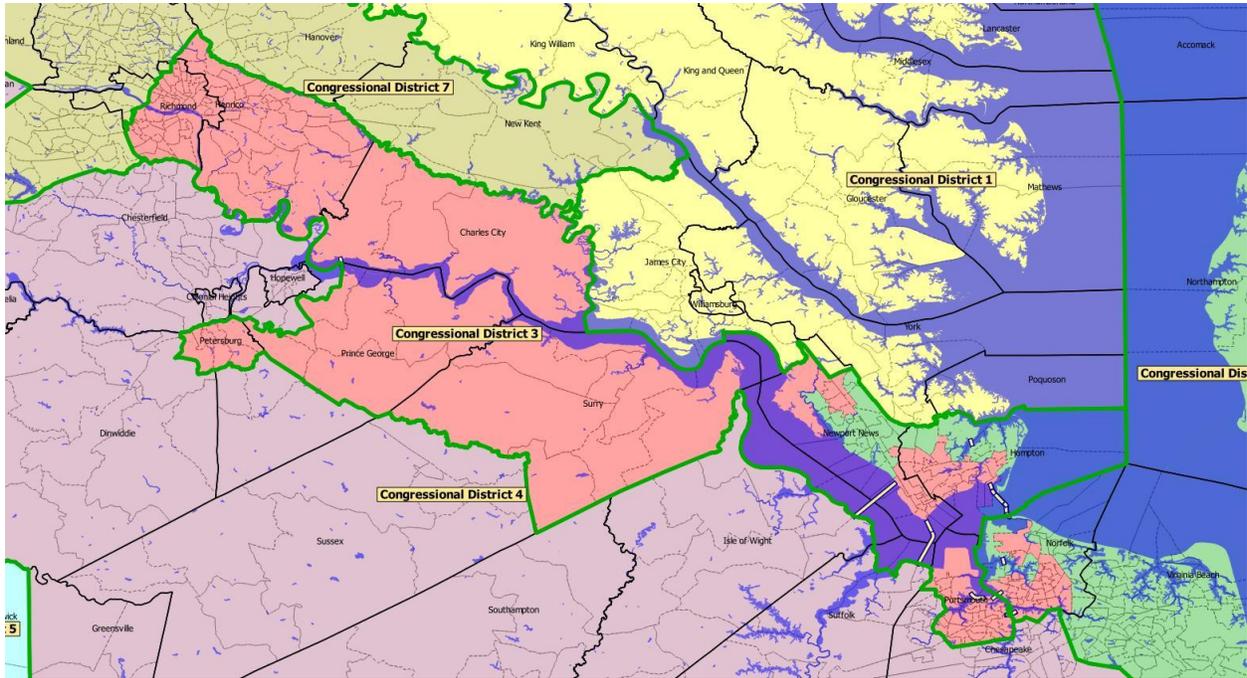


Figure 1. Plaintiffs' Alternative Districts Overlaid on Adopted Districts

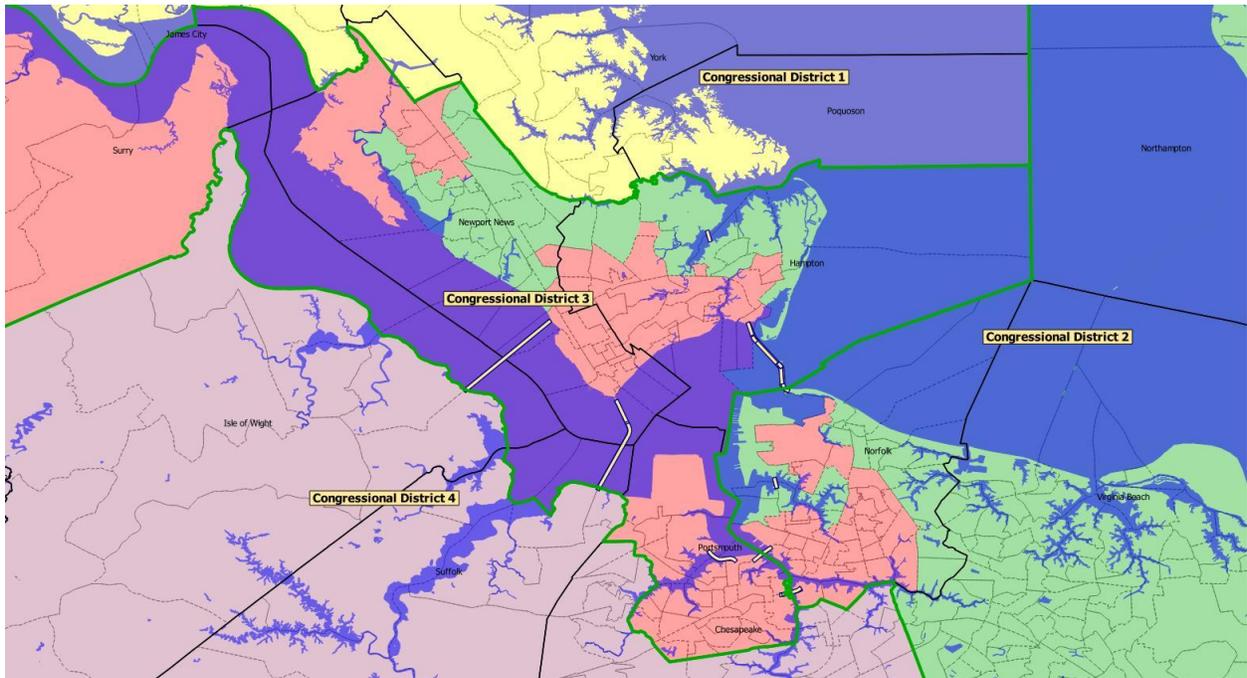


Figure 2. Plaintiffs' Alternative Districts Overlaid on Adopted Districts: Hampton, Newport News, Norfolk, and Portsmouth Detail

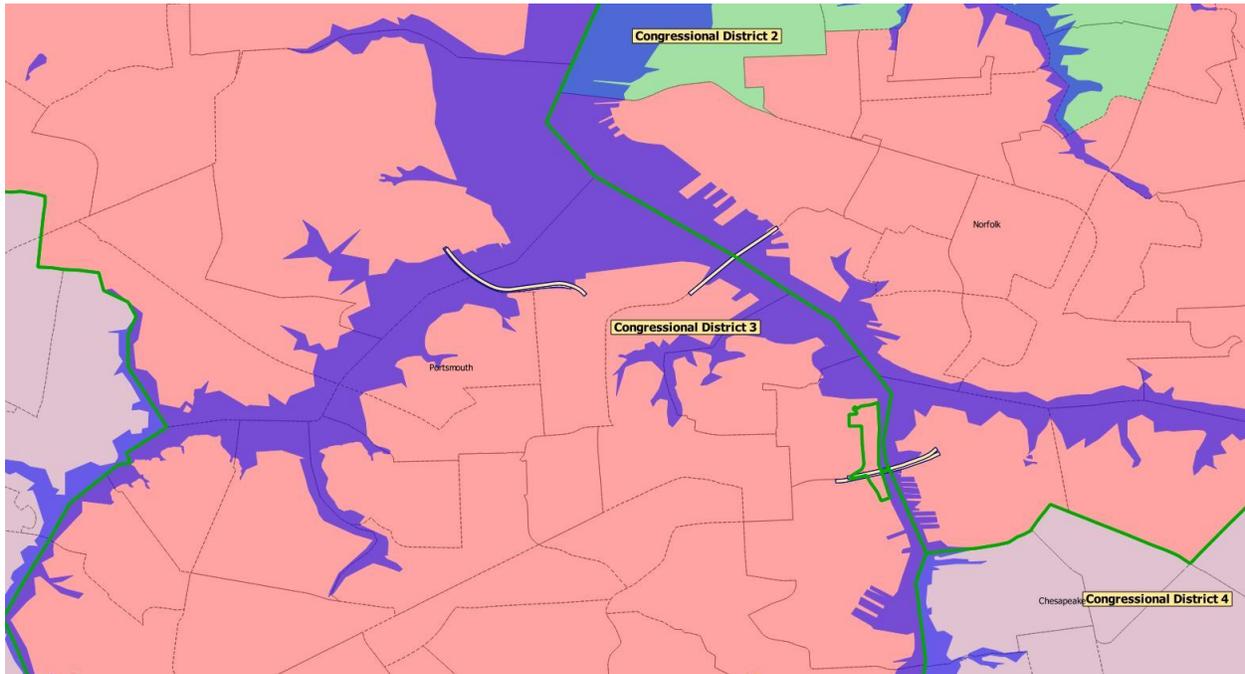


Figure 3. Plaintiffs' Alternative Districts Overlaid on Adopted Districts: Portsmouth Detail

Locality and VTD Splits

The Alternative Districts more closely adhere to locality boundaries than the Adopted Districts. While the Adopted Second and Third Districts split between them the localities of Hampton, Newport News, and Norfolk, the Alternative Districts reunite these localities. Hampton and Newport News geography formerly in the Benchmark First District that was assigned to the Adopted Second District is now assigned to the Alternative Third District. Norfolk geography assigned to the Adopted Third district is assigned to the Alternative Second District.

Table 1 reports the number of times districts in the Adopted and Alternative Plans split localities. Districts in Plaintiffs' Alternative Plan split a total of 34 localities, compared with the Adopted Plan's 37 locality splits. The Alternative District Two splits two fewer localities than the Adopted District Two. The Alternative District Three splits one fewer locality than the Adopted District Three.

Table 2 reports the number of times districts in the Adopted and Alternative Plans split VTDs. Districts in Plaintiffs' Alternative Plan split a total of 38 VTDs, 6 fewer than the 44 in the adopted plan. The Alternative Third District splits a net of 3 fewer VTDs; there are 4 fewer VTD splits in Newport News, 1 fewer split in Hampton, and 2 more splits in Portsmouth. The

Alternative Second District has a net of 2 fewer VTD splits; there are 3 fewer VTD splits in Newport News, 1 fewer split in Hampton, and 2 more splits in Portsmouth.

District	Adopted Plan		Alternative Plan	
	Number of Locality Splits by a District	Number of Locality Splits Involving CD3	Number of Locality Splits by a District	Number of Locality Splits Involving CD3
1	5	2	5	2
2	3	3	1	1
3	9	9	8	8
4	4	3	4	3
5	3		3	
6	2		2	
7	4	2	4	2
8	1		1	
9	2		2	
10	2		2	
11	2		2	
Total	37	19	34	16

Table 1. Comparison of Locality Splits in Adopted Plan and Alternative Plan

District	Adopted Plan		Alternative Plan	
	Number of VTD Splits by a District	Number of Locality Splits Involving CD3	Number of VTD Splits by a District	Number of Locality Splits Involving CD3
1	4	1	4	1
2	5	5	2	2
3	14	14	11	11
4	7	7	7	7
5	3		3	
6	1		1	
7	2	1	2	1
8	2		2	
9	1		1	
10	2		2	
11	3		3	
Total	44	28	38	22

Table 2. Comparison of VTD Splits in Adopted Plan and Alternative Plan

Plaintiffs' Alternative Plan has two locality splits among the localities of Hampton, Newport News, Norfolk, and Hampton: (1) A split of Newport News between the Adopted First and Third Districts is preserved in Plaintiffs' Alternative Plan in order to prevent any change to the Adopted First District, and (2) A split of Portsmouth shown in Figure 3 is created to balance

the population of the Alternative and Second Districts, so that both Alternative districts have the exact equal total population of 727,366 persons.

Table 3 reports that the split of Portsmouth affects 1,016 total persons, or 0.14% of the total population of these districts.¹ This contrasts with the Adopted Plan, in which a total of 241,096 persons, or 33.1% of the total population, are affected by the splits of these districts.

	Adopted Plan		Alternative Plan	
	3rd District	2nd District	3rd District	2nd District
Hampton	92,867	44,569	137,436	0
Newport News	85,453	88,176	173,629	0
Norfolk	131,729	111,074	0	242,803
Portsmouth	95,535	0	94,519	1,016
Net (Sum of smaller population split in a locality)	241,096		1,016	

Table 3. Total Population Split Between Districts Two and Three in Adopted and Alternative Plans.

Not only do these Alternative Districts better conform to traditional redistricting principles, they also conform more closely to the public's preferences expressed to the General Assembly. The Commonwealth of Virginia included in Attachment 15 of their Section 5 submission regarding the Adopted congressional districts a transcript of a redistricting forum held in Norfolk, Virginia on September 22, 2010. At the forum members of the public repeatedly appealed to representatives of the General Assembly to respect the region's localities, and no speaker expressed a preference for spitting localities. For example:

- “[T]o remain true to the values of a representative democracy, the redistricting plan should be drawn in [a] manner in which elected representation is determined on the basis of shared common interests of the localities and their citizens.” - Paul Fraim, Mayor, City of Norfolk, Public Hearing of the Redistricting Subcommittee of the Privileges and Elections Committee of the Virginia House of Delegates, Norfolk, VA, Sept. 22, 2010 (hereafter “Meeting Transcript”), p. 14.
- “[I]t would not serve the city of Norfolk of the folks in Ocean View area and the vibrant community that we have very well if you chop it up...” - Pam Brown, Chair, Republican Party of Norfolk, Meeting Transcript at p.21.

¹ It is my opinion that since the affected population is sufficiently small, if the court determines there is a rational objective of preserving the integrity of political subdivision lines the entirety of Portsmouth can be assigned to Alternative District Three. For example, in *Abrams v. Johnson* 521 U.S. 74 (1997), the U.S. Supreme Court upheld a Georgia congressional redistricting plan drawn by a court with an *overall* deviation of 0.35 percent; a modified Alternative plan here would have an overall deviation between the largest and smallest district of 0.28 percent. This small change meets the rational goals of reducing election administration costs and reducing voter confusion for the affected Portsmouth population.

- “[P]lease do it [redistricting] in a way that was intended over 200 years ago, where it was done by areas...” - Richard Fisher, private citizen, Meeting Transcript at pp. 22-23.
- “We know that the mathematics of the process may require some sharing of representation, but this should be minimized. Certainly the 4th Congressional District must contain all of Chesapeake.” - Pete Burkheimer, Chair, Chesapeake City Committee of the Republican Party of Virginia, Meeting Transcript at p.25.
- “Chesapeake wants to be together, but so does everyone else. Norfolk wants to be. So does everyone else. So please get that at the top of a priority...” Eileen Huey, private citizen, Meeting Transcript at p.31.
- “Don’t split cities and towns. Real simple. You’ve heard it. You’ve heard it echoed over and over again.” - Thom Ayres, Director of Operations for the Hampton Roads Tea Party, Meeting Transcript at p.33.
- “Hampton, to my knowledge, is the only jurisdiction in the Commonwealth of Virginia that is split into three congressional districts, and it makes it real difficult to find out which voter goes where.” - Carl Anderson, Tea Party Patriot and Chairman of the Republican Party of Hampton, Meeting Transcript at p.34.
- “We’d like to keep the integrity of each of the cities intact when redistricting. It’s difficult for the city of Norfolk -- we’re divided by both the 2nd and 3rd.” - Alexander Palmer, Second Vice-Chair Norfolk Democratic Committee, Meeting Transcript at p.45.

Compactness

In Table 4, I report the compactness of the Adopted and Alternative congressional districts. I report three commonly used compactness measures called the Reock Test, Polsby-Popper Test, and the Schwartzberg Test, the mechanics of which are described in my initial report (McDonald, p.7).

Plaintiffs’ Alternative District Three is more compact than Adopted District Three on all three compactness measures.

- By the Reock measure, where *larger* values indicate a more compact district, Adopted District Three has a score of 0.19 and Alternative District Three has a score of 0.22. Furthermore, whereas Adopted District Three ranks as the least compact district by the Reock measure, Alternative District Three ranks as the second least compact district.

- By the Polsby-Popper measure, where *larger* values indicate a more compact district, Adopted District Three has a score of 0.08 and Alternative District Three has a score of 0.11. Furthermore, whereas Adopted District Three ranks as the least compact district by the Polsby-Popper measure, Alternative District Three ranks as the second least compact district.
- By the Schwartzberg measure, where *smaller* values indicate a more compact district, Adopted District Three has a score of 3.07 and Alternative District Three has a score of 2.04. Furthermore, whereas Adopted District Three ranks as the least compact district by the Schwartzberg measure, Alternative District Three ranks as the third least compact district (tied with District Four).

District	Adopted Plan			Alternative Plan		
	Reock	Polsby-Popper	Schwartzberg	Reock	Polsby-Popper	Schwartzberg
1	0.28	0.18	2.09	0.28	0.18	2.09
2	0.27	0.20	2.09	0.26	0.33	1.65
3	0.19	0.08	3.07	0.22	0.11	2.04
4	0.32	0.20	2.04	0.32	0.20	2.04
5	0.30	0.15	2.30	0.30	0.15	2.30
6	0.26	0.16	2.17	0.26	0.16	2.17
7	0.30	0.13	2.34	0.30	0.13	2.34
8	0.37	0.26	1.76	0.37	0.26	1.76
9	0.20	0.18	2.13	0.20	0.18	2.13
10	0.29	0.12	2.60	0.29	0.12	2.60
11	0.23	0.09	3.06	0.23	0.09	3.06

Table 4. Compactness of Adopted and Alternative Congressional Districts

Contiguity

As noted in my Reply to Defendants’ Expert, “... [T]he *Moon v. Meadows* court found water contiguity without a connecting bridge to be a factor weighed in its determination that race predominated in the creation of the Unconstitutional Third District.” (McDonald, p.10).

Plaintiffs’ Alternative District is contiguous across the James River without a connection in two places, (1) between the localities of Portsmouth and Hampton and (2) between Newport News and Surry. These uses of water contiguity have the effect of respecting locality boundaries. By contrast, the Adopted Districts, as I describe in my initial expert report (McDonald p.8), use water contiguity without a connection in multiple locations, which in the cases of Hampton and Newport News (McDonald, p.17) and Norfolk (McDonald, p.21) has the effect of bypassing White communities.

Black Voting-Age Population

The Benchmark Third District had a Black VAP of 53.1% (inclusive method) or 53.9% (exclusive method). The Adopted Third District increased the number and percentage of Black voters, with a Black VAP of 56.3% (exclusive) or 57.2% (inclusive). Plaintiffs' Alternative Third District has a Black Voting-Age Population of 50.2% (exclusive) or 51.0% (inclusive). This figure is not dissimilar to the Remedial District drawn in response to *Moon v Meadows*, which had a Black VAP of 50.5%.

In my initial expert report I describe how trades among the Benchmark Third District and surrounding districts consistently had the effect of increasing the Black VAP of the Adopted Third District (McDonald, pp.13-15). This analysis is restated in Table 4.

Benchmark to Adopted District	Total Pop	VAP	Black VAP (exclusive method)	Black VAP (inclusive method)	% Black VAP (exclusive method)	% Black VAP (inclusive method)
<i>1 to 3</i>	23,288	17,805	7,736	7,933	43.4%	44.6%
<i>3 to 1</i>	7,351	5,106	2,224	2,286	43.6%	44.8%
<i>2 to 3</i>	27,917	20,543	7,548	7,785	36.7%	37.9%
<i>3 to 2</i>	25,501	20,049	3,661	3,774	18.3%	18.8%
<i>4 to 3</i>	35,447	27,835	20,917	21,089	75.1%	75.8%
<i>3 to 4</i>	5,713	4,176	1,729	1,757	41.4%	42.1%
<i>7 to 3</i>	36,106	27,743	17,853	18,035	64.4%	65.0%
<i>3 to 7</i>	20,217	15,996	2,255	2,314	14.1%	14.5%
Net Change to Third District	63,976	48,599	44,185	44,711	90.9%	92.0%

Table 4. Population Movement Between Benchmark and Adopted Congressional Districts (Table 6 in McDonald, p.15)

In Table 5, I produce a similar analysis. I have shaded rows for trades of areas of the Alternative Third District that are identical to the Adopted Third District.

Table 4 shows that the Black VAP of the net population moved into the Adopted Third District is 90.9% (exclusive) or 92.0% (inclusive). In contrast, the Black VAP of the net population moved into the Alternative Third District is 22.1% (exclusive) or 22.8% (inclusive). This is expected, as Plaintiffs' Alternative District lowers the Black VAP compared to the Benchmark district by 2.2 percentage points (either method) while the Adopted district raises it by 3.2 (exclusive) or 3.3 (exclusive) percentage points.

The trades of population between the Benchmark Third District and the surrounding Alternative Districts no longer consistently point in the direction of swapping lower Black VAP formerly in the Benchmark Third District with higher Black VAP from the surrounding Benchmark districts. Trades between the First and Third Districts and Second and Third Districts swap higher Black VAP formerly in the Benchmark Third District with lower Black VAP from the surrounding Benchmark districts.

Benchmark to Alternative District	Total Pop	VAP	Black VAP (exclusive method)	Black VAP (inclusive method)	% Black VAP (exclusive method)	% Black VAP (inclusive method)
1 to 3	106,886	83,523	24,714	25,349	29.6%	30.3%
3 to 1	7,351	5,106	2,224	2,286	43.6%	44.8%
2 to 3	45,798	35,556	9,599	9,866	27.0%	27.7%
3 to 2	126,980	97,432	55,382	56,161	56.8%	57.6%
4 to 3	35,447	27,835	20,917	21,089	75.1%	75.8%
3 to 4	5,713	4,176	1,729	1,757	41.4%	42.1%
7 to 3	36,106	27,743	17,853	18,035	64.4%	65.0%
3 to 7	20,217	15,996	2,255	2,314	14.1%	14.5%
Net Change to Third District	63,976	51,947	11,493	11,821	22.1%	22.8%

Table 5. Population Movement Between Benchmark and Alternative Congressional Districts

Narrowly Tailored Use of Race

The Alternative Third District does not cure all the problems identified in the Adopted Third District, but, in my opinion, the use of race is narrowly tailored to maintain a majority-minority district without unnecessarily compromising traditional redistricting criteria. Additionally, Plaintiffs’ attempt to minimize the changes to the Adopted Map contributes in large part to the fact that the Alternative Map does not cure all of the issues identified in my first report.

While the Alternative Third District continues to split more localities than any other district, it splits fewer localities than the Adopted Third District. Similarly, while it continues to split more VTDs than any other district, it splits fewer VTDs than the Adopted Third District. It is not compact, but it is no longer the least compact district. It crosses the James River without a connection, but the use of water contiguity no longer has the effect of bypassing White populations. It continues to be a majority Black Voting-Age Population district.

While in my opinion race continues to be a factor in the creation of the Alternative Third District, the district is narrowly tailored to produce the goal of a majority-minority district without unnecessarily compromising traditional redistricting criteria. The Alternative Third District has a Black VAP of 50.2% (exclusive) or 51.0% (inclusive) method. As I have noted previously in my expert report (McDonald, p.27) and my Reply to Defendants’ Expert (McDonald p. 5), the Remedial Third District adopted in response to *Moon v. Meadows* had a Black VAP of 50.5%. By any metric, the Alternative Third District hews much more closely to the Black VAP of the Remedial Third District than the Adopted Third District does.

Conclusion

Plaintiffs' Alternative Third District narrowly tailors the district to maintain a majority Black VAP Alternative Third District by only affecting the boundaries of the Adopted Second and Third Districts, thereby minimizing disruption to the impending 2014 congressional elections. It does so by minimizing locality splits in Hampton, Newport News, Norfolk and Portsmouth, which is also the expressed wishes of the citizens of these localities.

I declare that under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on February 21, 2014 in Fairfax, Virginia.

A handwritten signature in cursive script, appearing to read "Michael P. McDonald". The signature is written in black ink and is positioned above the printed name.

Michael P. McDonald

EXHIBIT L

Reply Report of Dr. Michael McDonald

Page v. State Board of Elections

Summary

Dr. Brunell's report is internally inconsistent, at one point concluding that "there is nothing in McDonald's report to support the claim that race was the predominant reason of changes made to the congressional lines or District 3" (Brunell, p. 9), and at other points conceding that my report includes some evidence that race predominated (Brunell, p. 1, 7). In sum, Dr. Brunell believes that it is impossible for any plaintiff to sustain a racial gerrymandering claim. Dr. Brunell merely lists an array of potential factors and throws up his hands, concluding that there is no way to discern whether race predominated. A long line of case law striking down districting maps as racial gerrymanders—along with the evidence presented in my initial report—suggests otherwise.

In fact, Dr. Brunell's analysis fails on multiple other grounds. For one, his report relies heavily on redistricting criteria that were adopted by a different body altogether and do not appear to have governed the drawing of the Adopted Third District. Moreover, his report fails to recognize that the Adopted District resembles the geographic and demographic features of the district struck down by the court in *Moon v. Meadows* in several important respects; while it is not identical, it is comparable, and should be struck down on the same grounds.

Dr. Brunell further recites a host of factors that may have been considered in the drawing of the Adopted Third District. He speculates that some population shifts "may have been motivated to comply with the VRA [i.e., race] and it may have been motivated by politics" (Brunell, p. 5). But an analysis of highly Democratic VTDs placed within and without the Adopted Third District reveals that those located within the District have a much higher Black VAP percentage. Dr. Brunell further suggests that certain traditional criteria could have predominated, but all the evidence indicates that the General Assembly compromised the principles of preservation of cores, locality splits, compactness, and contiguity in favor of race.

Finally, Dr. Brunell hints that there may have been some justification for the racial motivation behind the Adopted Third District based on the Voting Rights Act, but he provides no expert analysis to prove as much and no answer to the basic evidence provided in my report that the minority population in the area would be able to elect its candidate of choice without such a high Black VAP.

Dr. Brunell will *never* find race the predominant factor

Dr. Brunell claims that "[t]here is nothing in McDonald's report to support the claim that race was the predominant reason for changes made to congressional lines statewide or to District Three" (Brunell, p.9). I have applied a similar analysis to that used by the *Moon v. Meadows*

court to arrive at my conclusions. The U.S. Supreme Court has applied similar analyses in other contexts to determine that race was the predominant factor in the adoption of a redistricting plan.

Dr. Brunell has previously opined that *no* evidence is sufficient to conclude that race was the predominant factor in the creation of a redistricting plan. In a recent case in South Carolina, Dr. Brunell testified that the task of proving race was a predominant factor “from the outset is almost impossible,” and “there’s really no good way of knowing this.”¹ He further testified: “I don’t think any of us in this room could ever determine what the predominant factor was, whether it was race or anything else.”²

He reiterates this position in his report in this case, where he states there’s a “reasonable chance” the predominant factor was something other than race but he “cannot say definitively” (Brunell, p. 7) why redistricting decisions were made. He holds this opinion despite that the U.S. Supreme Court and lower courts have repeatedly found race to be the predominant factor in the creation of a redistricting plan.

In short, Dr. Brunell’s conclusion is preordained. In his own words, there is no evidence that he would ever agree with that shows race predominated in the creation of a redistricting plan. His expert report is therefore not credible, since he has not fairly weighed the evidence *in this case* to arrive at his opinion.

The Criteria Used for the Congressional Redistricting

Dr. Brunell opines that “[t]he submission to the DOJ was particularly helpful insofar as it strikes me as the best evidence of the motivations for the enacted map” (Brunell, p.1). He later notes that “[t]he Virginia Senate approved a set of ‘Congressional District Criteria’” (Brunell, p.2), and suggests that these criteria reflect the motivations of the General Assembly in drawing the Adopted Map.

Dr. Brunell is apparently unaware that a Democratic majority of the Virginia Senate adopted these criteria in 2011 when the chamber adopted a congressional redistricting plan introduced by Senator Locke. The Republican-controlled House of Delegates never formally adopted redistricting criteria and, in fact, adopted a different congressional redistricting plan. The two chambers were unable to reconcile their differences and no congressional plan was adopted in the 2011 legislative session.

The 2011 state legislative elections resulted in a tied Senate that gave Republicans a functional majority by virtue of Lt. Gov. Bill Bolling’s tie-breaking vote. In the new 2012 legislative session, the now unified Republican-controlled legislature adopted a congressional redistricting plan identical to the plan adopted by the Republican-controlled House of Delegates in the previous legislative session.

¹ Backus v. The State of South Carolina, No. 3:11-3120 (March 2, 2012), Trial Tr. at 29.

² Backus v. The State of South Carolina, No. 3:11-3120 (March 2, 2012), Trial Tr. at 41.

There are three important points to this legislative history.

First, the Republican controlled House of Delegates never formally adopted any redistricting criteria that guided the creation of their congressional redistricting plan. As stated on p.6 in Attachment 17, entitled “Legislative History of 2012 Virginia Congressional Plan”, of the Commonwealth’s Section 5 submission, describing the events of March 25, 2011 in the 2011 Regular Session “[t]he House Committee held extensive discussions on the criteria for redrawing House of Delegates districts and *adjourned without taking up congressional redistricting criteria*” (emphasis added). As stated in a paragraph describing the events of January 11, 2012 on p.8 of “Legislative History of 2012 Virginia Congressional Plan,” when “...the legislature convened in its 2012 Regular Session...[t]he House Committee on Privileges and Elections met and Delegate Bell explained that HB 251 [the adopted plan] was the same as HB 5004 (2011 Special Session I), as it had passed the House in 2011.”

Second, the criteria adopted by the Democratic-controlled Senate in 2011 were not binding on the Republican-controlled Senate in 2012, when the congressional plan was adopted. Between these two events state elections were held and a new legislative session began. Even if the legislature informally indicated they followed the Senate criteria, the legislature was not legally bound to follow them.

Third, the Third District, adopted by the Democratic-controlled Senate in 2011, drawn using the criteria Dr. Brunell opines are “the best evidence of the motivations for the enacted map” (Brunell, p.1), is radically different than the Third District adopted by the Republican-controlled state legislature in 2012.

I depict the 2011 Democratic Senate’s Third District in Figure 1 with a red boundary and overlay the district onto the Adopted Third District (pink). From a visual inspection, the Democratic Senate’s Third District is a visually compact district that contains the communities of Norfolk, Hampton, Newport News, and Portsmouth in their entirety.

The 2011 Democratic Senate’s Third District meets equal population requirements. At no point does it cross water without a connecting bridge. The Democratic Senate’s Third District splits fewer localities (3 v. 9) and Voting Tabulation Districts (8 v. 14) than the 2012 Adopted Third District.

It is my opinion that, regardless of any post-hoc justification provided either in the Section 5 submission or by Dr. Brunell, the Virginia Senate Congressional Redistricting Criteria were not operative in the creation of the 2012 Adopted Third District. If they were, as Dr. Brunell presumes, the Adopted Third District would look much different.

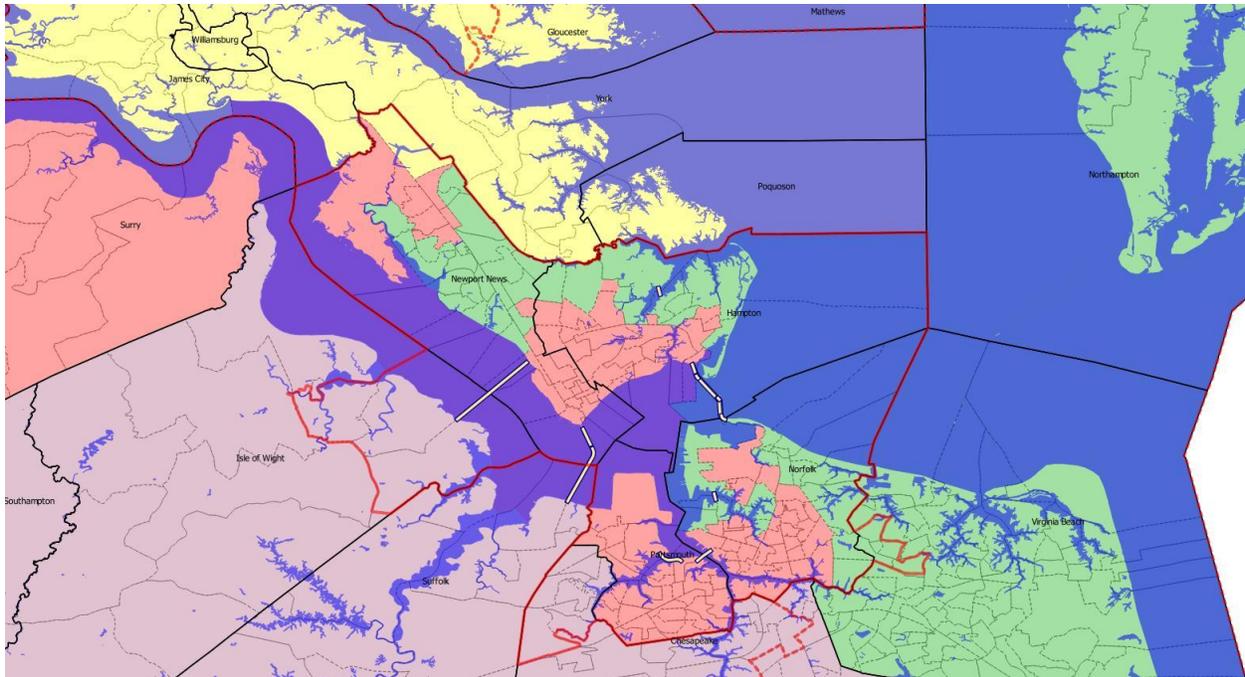


Figure 1. 2011 Democratic Senate’s Third District (Red Boundary) Overlaid on Adopted Third District.

Comparison Between Adopted and Unconstitutional Third Districts

In my initial report, I describe the Adopted Third District’s similarity to the Third District deemed an unconstitutional racial gerrymander in *Moon v. Meadows*. Dr. Brunell contends that these districts “bear little resemblance to each other” (Brunell, p.2), but he offers nothing by way of data or demographics to undermine the analysis in my initial report.

I describe in the section of my report entitled “Defining the Black Voting-Age Population” (McDonald, pp.12-13) that there are two methods of calculating minority VAP. An “exclusive method” includes only African-Americans who identify themselves as Black or White and Black, while the inclusive method includes African-Americans who identify themselves alone or in combination with all racial categories. The Adopted Third District has a Black VAP of 56.3% using the exclusive method and 57.2% using the inclusive method (McDonald, p.14).

Dr. Brunell provides no opinion which method is the correct method to apply to the voting rights claims alleged by Plaintiffs. Since Dr. Brunell cites the 56.3% figure (Brunell, p.3), presumably he prefers the exclusive method. It is my opinion, based on the relevant OMB and DOJ guidance, that the inclusive method’s 57.2% is the correct measure for the voting rights claims alleged by Plaintiffs (McDonald, p.13).

On p. 27 of my report, I note that the Black VAP of the Third District that the *Moon v. Meadows* Court found unconstitutional was 61.6%. This measure effectively uses the inclusive method since the Census Bureau did not allow individuals to identify themselves as multiple races in the

1990 census (McDonald, p.12). The 1998 Remedial Third District BVAP was 50.5% (McDonald, p.27).

By either the inclusive or the exclusive method, the Adopted Third District has a Black VAP closer to the Unconstitutional Third District than the Remedial District. Using the exclusive method, there is a 5.8 percentage point difference in the Black VAP between the Adopted Third District and the Remedial Third District ($56.3-50.5 = 5.8$) and a 5.3 percentage point difference between the Adopted District and the Unconstitutional District ($61.6-56.3 = 5.3$). Using the inclusive method, there is a 6.7 percentage point difference in the Black VAP between the Adopted Third District and the Remedial Third District ($57.2-50.5 = 6.7$) and a 4.4 percentage point difference between the Adopted District and the Unconstitutional District ($61.6-57.2 = 4.4$).

Dr. Brunell opines that a “mere 56.3 percent African American VAP” can hardly constitute “packing,” (Brunell, p.3), apparently misunderstanding both Plaintiffs’ claim and the court’s decision in *Moon v. Meadows*. Plaintiffs have not brought a claim under the Voting Rights Act, so they need not prove “packing” that rises to the level of vote dilution.³ Rather, Plaintiffs allege that the Adopted Third District is a racial gerrymander, i.e. that race was the predominant factor in drawing the District, as demonstrated by the decision to place a significant number of African-American voters within the District. Given that the Black VAP of the Adopted Third District is comparable to that of the *Moon v. Meadows* Unconstitutional District, it is hardly “absurd” (Brunell, p.3) for the Court to carefully consider the Adopted Third District to be an unconstitutional racial gerrymander by virtue of the packing of African-Americans within its boundaries.

Indeed, Dr. Brunell notes only three differences between the Adopted District and the *Moon v. Meadows* Unconstitutional District, namely the exclusion of three counties in the Unconstitutional District. I concur that these differences exist, as I list these differences in my report (McDonald, p.6).

In my analysis, I believe that the Adopted and Unconstitutional Third Districts are “strikingly similar” (McDonald, p. 6), not that they are exact duplicates, particularly in the way that they both encompass communities that bear little in common, stretching from Norfolk to Richmond, and connected in multiple locations only by the James River with no bridge crossing. As in the Unconstitutional Third District, a constituent would have to travel substantial distances outside

³ Dr. Brunell similarly makes an unprecedented legal claim regarding the minority voting-age population of a district that “[a]nything below 50 percent can be considered ‘cracked’” (Brunell, p. 3). Although he does not define what he means by the term “cracked”, presumably he is making an argument that the Third District must have greater than 50% Black VAP to meet Voting Rights Act requirements. This is not the usage of the term “cracked” as it is commonly understood in the context of voting rights. “Cracking” refers to the strategy of assigning a minority community to two or more districts so that its voting power is diluted among multiple districts. The Department of Justice routinely approved districts under Section 5 preclearance review with minority voting-age populations less than fifty percent.

the Adopted Third District, crossing other districts, to travel by land from all points within the District, be it from Richmond, Surry, or Norfolk. And, like the Unconstitutional Third District, the Black VAP is substantial, indicating that race was the driving factor.

Constitutionality of the 1998 Remedial Third District or the 2001 Benchmark District

Dr. Brunell faults me for not mentioning the “1998 or 2001 versions of District 3 at all” (Brunell, p.2). I mentions both, using the terms “Remedial” to refer to the 1998 District and “Benchmark” to refer to the 2001 adopted district.

I do not compare the geography of the Adopted Third to the Remedial or Benchmark Third Districts because these districts are also constitutionally suspect. In legislative hearings concerning the Remedial Third District Paul Hurd, the attorney representing the *Moon v. Meadows* Plaintiffs, objected to the Remedial plan, arguing in a letter (as described by Delegate Kirkland Cox) to the General Assembly that the Remedial Third District was unconstitutional.⁴ Other prominent Virginians, such as then-state Senator and Former Lt. Gov. Bill Bolling expressed similar concerns about the Remedial Third District, stating that “...in my judgment it still uses race as the predominant factor.”⁵ Delegate Wardrup stated that, “I simply do not think [the Remedial District] is going to pass muster.”⁶

There is no record of a continued legal challenge to the Remedial or Benchmark Third Districts, nor did the *Moon v. Meadows* court ever approve the Remedial District. Furthermore, the plaintiffs in *Page v. State Board of Elections* make no claims against the Remedial or Benchmark Third Districts. Plaintiffs here allege instead that race was the predominant factor in the creation of the Adopted Third District. There is no reason to believe race was not also the predominant factor in the creation of the Remedial and Benchmark Third Districts. Regardless, we know that race was the predominant factor in the creation of the Unconstitutional Third District, making it a more appropriate reference point.

Race or Politics?

Dr. Brunell asserts without any supporting evidence that “[i]n any journalistic coverage of redistricting the reader gets the feeling that the only reason maps get drawn they (sic) way that they do is because of politics” (Brunell, pp. 4-5). Perhaps Dr. Brunell selectively reads accounts of redistricting, since even in his home state of Texas, a federal court recently struck down a congressional map based on intentional discrimination toward minorities.

Dr. Brunell uses this statement to put forward an alternative theory that politics predominated over race. Dr. Brunell implies that perhaps it is simply African-American voters’ high support

⁴ In Re Proposed Redistricting for the Third Congressional District of Virginia, Committee on Privileges and Elections, January 21, 1998, p.19

⁵ In Re Proposed Redistricting for the Third Congressional District of Virginia, Committee on Privileges and Elections, January 15, 1998, p.24.

⁶ (Joint Committee House and Senate Hearings on Privileges and Elections, January 28, 1998, p.82).

for Democratic candidates that gives Republicans a reason to pack African Americans into the Third District.

Dr. Brunell offers only two examples of redistricting decisions he suggests may have been politically motivated. First, with respect to the move of Petersburg from the Benchmark Fourth District to the Adopted Third, Dr. Brunell avers that this move “may have been motivated to comply with the VRA and it may have been motivated by politics” (Brunell, p. 5). Dr. Brunell makes clear that he is himself speculating as to the motivation, and, tellingly, even he admits that race may have predominated in this move. Indeed, throughout his report he suggests that an attempt at VRA compliance drove the creation of District 3, in accord with Plaintiffs’ claim that race was the predominant purpose.

In the other of his two examples, a move of “heavily Republican” (Brunell, p.5) New Kent from the Benchmark Third District to the Adopted Seventh District, Dr. Brunell argues that incumbency protection may have motivated this move. But Dr. Brunell provides no evidence as to how heavily Republican New Kent is; he just asserts that it is so, and he presents no evidence that such a move would improve the incumbents’ reelection chances. According to the Virginia State Board of Elections,⁷ Rep. Eric Cantor, the incumbent in the Seventh District, won reelection in 2010 by a 25.10 percentage point margin, and Rep. Bobby Scott won reelection in the Third District by 42.83 percentage point margin. These margins are well above the ten percentage point margin that political scientists and election observers regard as “competitive.” Moving New Kent, even if it was “heavily Republican,” from the Benchmark Third District to the Adopted Seventh District had a negligible effect on the future reelection chances of the incumbents of these districts.

Redistricting inherently poses choices of which geography and population to assign to a district. To test Dr. Brunell’s theory that politics predominated over race, I examine the racial composition of highly Democratic VTDs in the localities that comprise or are adjacent to the Adopted Third District.⁸ If the redistricting decisions were driven primarily by politics as Dr. Brunell argues, I would expect to see no racial patterns to the VTDs assigned to the Third and surrounding Districts.

To proceed with my analysis, I develop a Democratic performance measure consistent with Dr. Brunell, who “...averaged the Democratic share of the vote in five recent statewide elections (2009 Gubernatorial, Attorney General, and Lt. Governor elections, and the 2008 Presidential and Senatorial elections)” (Brunell, p.5). Although Dr. Brunell does not adequately describe the construction of his measure, I assume that he follows the widely-accepted political science convention of calculating the “two-party vote”, or the votes for the major candidates only, excluding minor party candidates.

⁷ https://www.voterinfo.sbe.virginia.gov/election/DATA/2010/EB24720D-F5C6-4880-8DC5-12AE4D0C3772/official/6_s.shtml.

⁸ I did not have data readily available for Charles City, Surry, Colonial Heights, or Southampton.

I examine the Black VAP of all VTDs that have a Democratic performance greater than 55%, which is above the accepted level political scientists consider to be competitive, and thus are considered to be heavily Democratic.⁹

Of the 189 VTDs assigned to the Adopted Third District with a Democratic performance above 55%, the average Black VAP is 59.5%.

Of the 116 VTDs assigned to the surrounding Adopted Districts with a Democratic performance above 55%, the average Black VAP is 43.5%.

The difference in the average Black VAP in the heavily Democratic precincts assigned to the Adopted Third District compared to the surrounding Districts is 16.0 percentage points.

I conclude from this analysis that race trumped politics. In instances where the Commonwealth of Virginia had an opportunity to assign highly performing Democratic VTDs to the Third District, those with higher Black VAP were assigned to the Third District and those with lower Black VAP were assigned to the surrounding districts. Democratic districts assigned to the Third District are therefore disproportionately Black. In other words, the General Assembly was not simply assigning Democrats to the Third District; they were assigning Black Democrats to the District.

Traditional Redistricting Principles

Dr. Brunell discusses four traditional redistricting principles in sections entitled “Preservation of cores” (Brunell, p.6), “VTD splits” (Brunell, p. 7), “Compactness” (Brunell, p. 8), and “Contiguity” (Brunell, p.8), as they relate to the non-operative 2011 Democratic Senate criteria. I address the claims in these sections and related sections here.

Preservation of Cores

In Table 3 of his report (Brunell, p.6), Dr. Brunell restates information found in the Commonwealth’s Section 5 submission regarding the preservation of district cores, or the continuity of population in the Benchmark and Adopted districts.

Dr. Brunell provides no statement as to the relevance of his Table 3 statistics in forming his opinions. However, in the very next section entitled “Racial Changes to District 3” (Brunell p.7), Dr. Brunell provides a laundry list of reasons why district cores will be violated, including wanting “their grandbaby’s preschool in their district” (Brunell, p.7). Dr. Brunell provides no evidence that a boundary line was ever changed for the reasons he provides.

⁹ These data were provided to me by Plaintiff’s counsel, and it is my understanding that they were compiled by the National Committee for an Effective Congress (NCEC). NCEC’s calculates 2010 Black voting-age population using the exclusive method, but this should not greatly affect my conclusions.

Dr. Brunell appears to opine that all other criteria he presumes were used in the 2012 congressional redistricting trumped preservation of cores since he provides no opinion in support of preservation of cores, but provides numerous examples of why district cores may be violated. He thereby cherry picks evidence that supports his opinion and disregards evidence *found in his own report* that weakens it.

Most importantly, if preservation of district cores was a value the legislature held in high regard, the legislature would not have removed population from the under-populated Benchmark Third District, as that only made the redistricting task more complicated. Removal of population is only to *the detriment* of the preservation of cores. As demonstrated in my initial report, the racial composition of the populations strategically removed and added to the Third District provides strong evidence that race predominated over any purported desire to preserve the core of the District.

VTD or Locality Splits

Dr. Brunell agrees that “District 3 splits more VTDs than any other district in the state” (Brunell, p. 7), a factor the *Moon v. Meadows* court weighed in determining race was the predominant factor in the creation of the Unconstitutional District. He also admits “[t]he same is true for split localities” (Brunell, p. 7), another factor the court weighed in its decision.

Dr. Brunell discounts these splits on the theory that the numbers of locality and VTD splits were reduced from the benchmark to the adopted plans. As stated above, the constitutionality of the Benchmark district was never upheld by a court. Nor does the constitutionality of the Adopted Third District hinge on how it compares to the Benchmark District. Even if it improves to some degree upon aspects of the Benchmark District, the fact remains that, like the *Moon v. Meadows* Unconstitutional District, the Adopted Third District has more splits than any other district.

Compactness

Dr. Brunell agrees that the Adopted Third District is the least compact on multiple compactness measures (Brunell, p.8).

He attempts to minimize this fact, however, by noting that the Adopted Third District’s compactness scores are only slightly worse than those of other districts. But Dr. Brunell glosses over the significance of the variation in compactness scores. For instance, for the Reock compactness measure, the adopted districts range in value between .37 and .19, with the Adopted Third District the least compact. The next least compact district is the Adopted Ninth District with a value of .20, which makes the Adopted Third District 5.6% less compact than the Adopted Ninth District. Similarly, for the Polsby-Popper compactness measure, the adopted districts range in value between .26 and .08, with the Adopted Third District the least compact. The next least compact district is the Adopted Eleventh District with a value of .09, which makes the Adopted Third District 5.6% less compact than the Adopted Ninth District.

By any measure, qualitative or quantitative, the Adopted Third District is not compact. The fact that it is the least compact of all of Virginia's congressional districts only drives home the point.

Contiguity

Dr. Brunell notes that the non-operative Senate criteria allowed contiguity by water. Contiguity by water must occur when situations force it, such as connecting an island to the shore. However, what is questionable is when available land and the people who live on it are bypassed using water. The 2011 Democratic Senate's District Three was contiguous over water by bridge connections, so the intent of the Senate appears to be to minimize violations of contiguity that may arise when a district crosses water with no connecting bridge.

Water contiguity is a characteristic that the *Moon v. Meadows* court factored into their decision, citing on p. 1144 how the unconstitutional district used "...only the open water of the Chesapeake Bay and the James River to connect the disparate and non-contiguous portions..." of the district. The court further lists on p. 1147 of its decision "barren stretches of river" among its "dubious connectors" with the intent of this contiguity by water "...so that a concentration of non-blacks is avoided." The Commonwealth of Virginia uses water in the same way to have the Adopted Third District bypass White populations.

The use of water to connect the disparate parts of the Third District is also a reason why the Adopted Third District splits some VTDs and localities, as I concur with Dr. Brunell that some splits "only involves water in the James River" (Brunell, p.7). Keeping VTDs that border on the James River whole would have added predominantly more White voting-age population to the Adopted Third District.

Dr. Brunell's assertion that I am "mistaken" (Brunell, p.8) that water contiguity without a bridge violates contiguity fails to recognize the *Moon v. Meadows* court found water contiguity without a connecting bridge to be a factor weighed in its determination that race predominated in the creation of the Unconstitutional Third District.

Was There a Voting Rights Act Rationale to Increase the Black VAP of the Third District?

Dr. Brunell asserts that "race had to play a role because of the Voting Rights Act" (Brunell, p. 4), and opines that "[s]lightly increasing the minority population of the [Third] [D]istrict is not unconstitutional but sensible" (Brunell, p.3). But Dr. Brunell's subjective opinion of the "sensibility" of the legislature's decision, unsupported by any facts or data regarding what is required under the Voting Rights Act, is hardly sufficient to carry Defendants' burden to prove that the Voting Rights Act required a Black VAP of 56.3% in the Adopted Third District.

Dr. Brunell notes that "Section Five, which was still in effect when this map was passed, required Virginia to get the new map pre-cleared by the Department of Justice" (Brunell, p. 4). But he offers no analysis of what Section 5 required with respect to the Adopted Third District.

He notes only that the DOJ precleared the Legislature's map. He neglects to mention, however, that the Remedial 1998 Third District was also precleared under Section 5 with a Black VAP of 50.5%. Certainly, Dr. Brunell cannot offer any Section 5 basis for *increasing* the Black VAP of the District nearly three percentage points. Under Dr. Brunell's theory, it would be "sensible" for the Commonwealth of Virginia in each redistricting to slightly increase the Black VAP population of the Third District until it exceeded and continued to exceed the level that the *Moon v. Meadows* Court found to be unconstitutional.

Dr. Brunell further claims that "Section Two of the Voting Rights Act requires the creation of majority-minority districts, like District 3" (Brunell, p.4). But he performs no Section 2 analysis to demonstrate that this provision of the Voting Rights Act compelled the creation of the Adopted Third District. Specifically, he performs no racial bloc voting analysis to determine the presence and extent of racially polarized voting, a critical factor in any Section 2 analysis. This statistical technique evaluates voting patterns among racial groups to determine levels of turnout and support from the White and minority communities that are needed to elect a minority candidate of choice.

Dr. Brunell is familiar with racial bloc voting analyses, having performed them as an expert witness in other litigation. Yet, he does not provide one in his report to support his opinions that "slightly raising" (Brunell, p.3) the Black voting-age population in the Adopted Third District was "sensible" to elect the African-American candidate of choice. It is unclear, then, what the basis is for any of his opinions with regards to Section Two or Section Five as they apply to the Third District.

Similarly, the Commonwealth of Virginia did not perform a racial bloc voting analysis as part of its Section 5 submission to the Department of Justice. If the Voting Rights Act did compel the creation of the Adopted Third District, the Commonwealth of Virginia should have conducted a racial bloc voting analysis to explain why race was taken into account to raise the Black VAP of the Third District in order to elect the African-American candidate of choice.

In the section of my report entitled "Historical Performance of Candidates to the Third District" (McDonald, p.11), I describe how the African-American incumbent Rep. Bobby Scott has been reelected by overwhelming majorities with an average vote share of 85% from 2002 to 2012. Dr. Brunell claims that the elections of Rep. Scott are "not useful" (Brunell, p.4) because he is an incumbent. Yet, courts hold that the elections of most probative value are those endogenous to the district in question where are presented with the choice between candidates of different races, such as a Black candidate running against a White candidate. Since the Third District has a Black VAP substantially less than 85%, simple logic reveals that there must be substantial White crossover voting for Rep. Scott such that the Third District's Black VAP can be safely lowered

below the Adopted Third District's 56.3% (exclusive method) or 57.2% (inclusive method) and continue to elect the African-American candidate of choice.¹⁰

Dr. Brunell's summary analysis of the Voting Rights issue fails to recognize that it is Defendants' burden to prove that the Voting Rights Act compelled the significantly high Black VAP drawn into the Adopted Third District. Dr. Brunell's admission that the Voting Rights Act "played a major role in defining" (Brunell, p.4) the Adopted Third District, along with his failure to conduct any statistical analysis whatsoever to justify that use of race, only strengthens the conclusions of my initial report: race was the predominant factor in the creation of the Adopted Third District and it was likely not required to be drawn with such a high Black VAP.

¹⁰ Dr. Brunell also provides an incomplete list of factors that are analyzed in a racial bloc voting analysis. He describes the differential rates of individuals "...registered to vote" and their "turnout" (Brunell, p.3). He omits the levels of White crossover voting for the minority candidate of choice. The minority VAP may be dramatically less than fifty percent in a district capable of electing a minority candidate of choice, if the White population has a high level of support for the minority candidate of choice. I do not know why Dr. Brunell omits this important factor to a racial bloc voting analysis, although the presence of substantial crossover voting would undermine his statements that increasing the Black VAP of the Third District was "sensible" under Section Five and legally required under Section Two.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on January 20, 2014 in Fairfax, Virginia.

A handwritten signature in cursive script, appearing to read "Michael P. McDonald".

Michael P. McDonald

EXHIBIT M

55% Democratic VTDs

Enacted Plan

	In Enacted District 3	In Alternative District 3 And Benchmark District 3	In Alternative District 3 But Not Benchmark District 3	In Localities Adjacent To Alternative District 3
Number of VTDs at least 55% Democrat	189	166	23	116
Average Democrat Vote Percentage	80.9	81.6	75.6	65.4
Average NH BVAP Percentage	59.5	60.7	50.8	43.5

Alternative Plan

	In Alternative District 3	In Alternative District 3 And Benchmark District 3	In Alternative District 3 But Not Benchmark District 3	In Localities Adjacent To Alternative District 3
Number of VTDs at least 55% Democrat	160	136	24	145
Average Democrat Vote Percentage	80.6	81.9	73.0	68.8
Average NH BVAP Percentage	59.8	61.6	49.3	46.4

EXHIBIT N

Expert Report of Dr. Michael P. McDonald

Page v. State Board of Elections

1. Biographical Information

I am Associate Professor of Government and Politics at George Mason University and a non-resident Senior Fellow at the Brookings Institution.

I have been involved in redistricting since the late 1980s when I prepared racial bloc voting analyses for the Department of Justice in *Garza v Los Angeles Board of Supervisors*. Since then I have been involved as a consultant to redistricting authorities or parties in litigation in fourteen states. I have also provided court testimony at trial or by deposition in a number of redistricting cases. Finally, I have produced numerous scholarly writings on the American electoral system. Please see my attached vita for more information regarding my academic publications and professional experience.

I have a specific interest in Geographic Information System applications to enable greater public participation in redistricting. I co-led a team with Dr. Micah Altman that developed award-winning open-source redistricting software called DistrictBuilder that allows users to draw districts through web-browsers. We deployed this software to support advocacy efforts and actual redistricting efforts by government officials in several jurisdictions within the United States and Mexico.

Among the government bodies that used our software was Virginia Governor Bob McDonnell's Independent Bipartisan Advisory Redistricting Commission, to which I also served as a mapping consultant. The software was also deployed to support a Virginia college student redistricting competition that occurred concurrently with the Commission's and the General Assembly's redistricting deliberations.

I have been retained by Perkins Coie LLP on behalf of Plaintiffs in *Page v. Virginia State Board of Elections* to provide expert witness testimony regarding their challenge to Virginia's Third Congressional District as the product of an unlawful racial gerrymander. I am being compensated at a rate of \$300/hr.

2. Executive Summary

This expert report presents evidence that the adopted Third Congressional District was the product of an unlawful racial gerrymander. First, it examines the geography of the district, specifically demonstrating how the district is not compact, not contiguous, and splits multiple counties, independent cities, and precincts. Second, it demonstrates that, notwithstanding the fact that the minority candidate of choice had consistently won landslide victories, the Virginia General Assembly strategically traded populations in and out of the Third Congressional District so as to *increase* the Black Voting Age Population of the District. Finally, the analysis compares

the adopted Third District to the Third District deemed unconstitutional by a federal three-judge panel in 1997, demonstrating the striking similarities between both the goals and the results of the two districts.

In sum, the boundaries and composition of Virginia's Third Congressional District demonstrate that race predominated in the drawing of the District.

3. Background and Data Sources

A. Background

Following the 1990 census, the Commonwealth of Virginia created an African-American majority Third Congressional District that was further amended in 1993.

In 1997, this Third District became the subject of federal litigation in *Moon v. Meadows*. The Eastern District of Virginia three-judge panel found the Third District to be the product of an unlawful racial gerrymander and enjoined the conduct of any elections based on that District.

Following the 2010 redistricting, the General Assembly adopted a congressional redistricting plan in HB 251, that was approved by the Governor. The adopted Third District and surrounding Districts are the subjects of my expert report.

B. Population and Geographic Data Sources

I obtained from the Census Bureau Virginia's 2010 census population and geographic data produced in support of redistricting.¹ Virginia's congressional districts prior to the last redistricting are described in the Census Bureau's geographic data. I refer to these as "benchmark" districts.

In 2012, the General Assembly adopted new congressional districts in HB 251. I obtained the census block assignment file for HB 251, which describes the adopted districts in the census geography, from the General Assembly's redistricting website.²

4. Geographical Description

In Figure 1, I provide a map of the adopted Third Congressional District. In Figures 2 through 5, I provide detailed maps of portions of the district. Figure 2 is a detailed map of Norfolk and Portsmouth. Figure 3 is a detailed map of Newport News and Hampton. Figure 4 is a detailed map of Petersburg, Prince George, and Surry. Figure 5 is a detailed map of Henrico and Richmond.

¹ These data were modified from the original Census Bureau release due to the incorrect location of the Norfolk Naval Base in the census geography. See http://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/Virginia/VA_errata%5B1%5D.pdf.

² See: <http://redistricting.dls.virginia.gov/2010/RedistrictingPlans.aspx#31>

The adopted Third District is colored red. The adopted First District is yellow. The adopted Second District is Green. The adopted Fourth District is lavender. The adopted Seventh District is olive green.

Water is colored blue. To demonstrate where districts cross water, districts are overlaid onto the water such that the water has slightly different coloring depending on which district the water is assigned to. Water assigned to the adopted Third District appears with a purplish hue.

Virginia's counties and independent cities — what I refer to as "localities" — are labeled and outlined by a dark solid line.

Within localities are voting precincts, which I refer to as VTDs. VTD is short for "Voting Tabulation District," which is the Census Bureau's generic name for precincts, wards, and election districts. VTDs are outlined by a faint dotted line.

I identify significant connecting bridges in the Third District and adjacent districts as outlined yellow line segments.

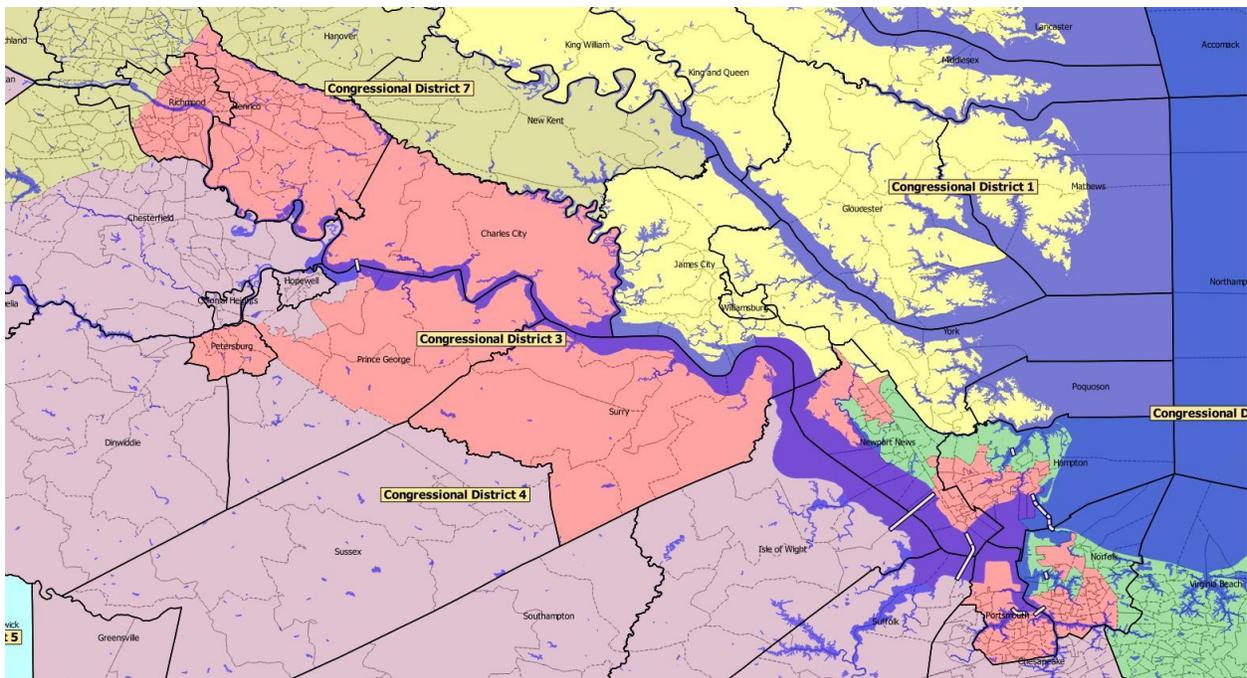


Figure 1. The Adopted Third Congressional District

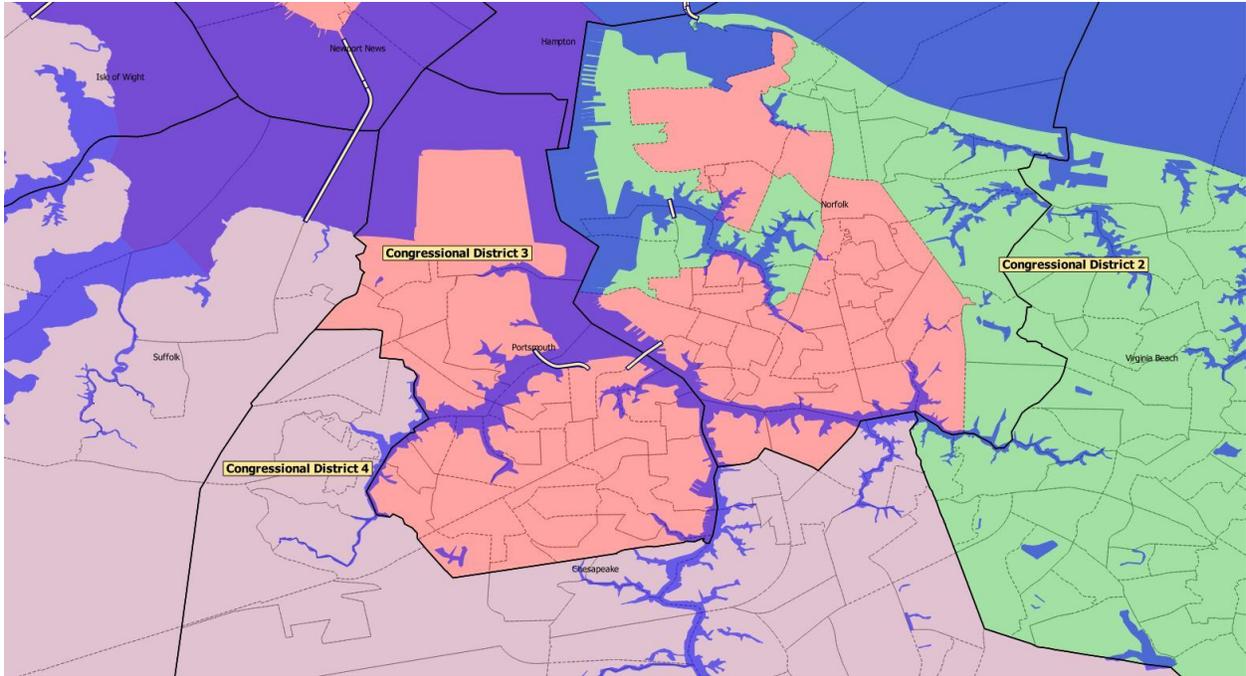


Figure 2. The Adopted Third Congressional District, Norfolk and Portsmouth Detail

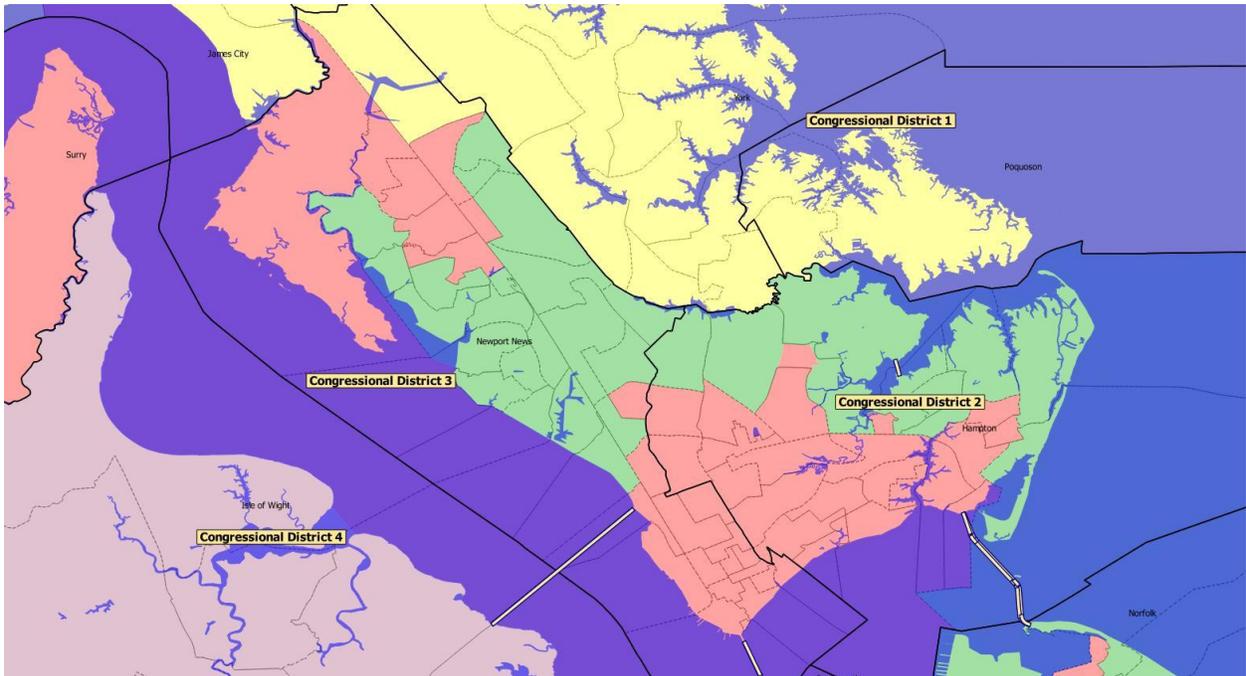


Figure 3. The Adopted Third Congressional District, Newport News and Hampton Detail

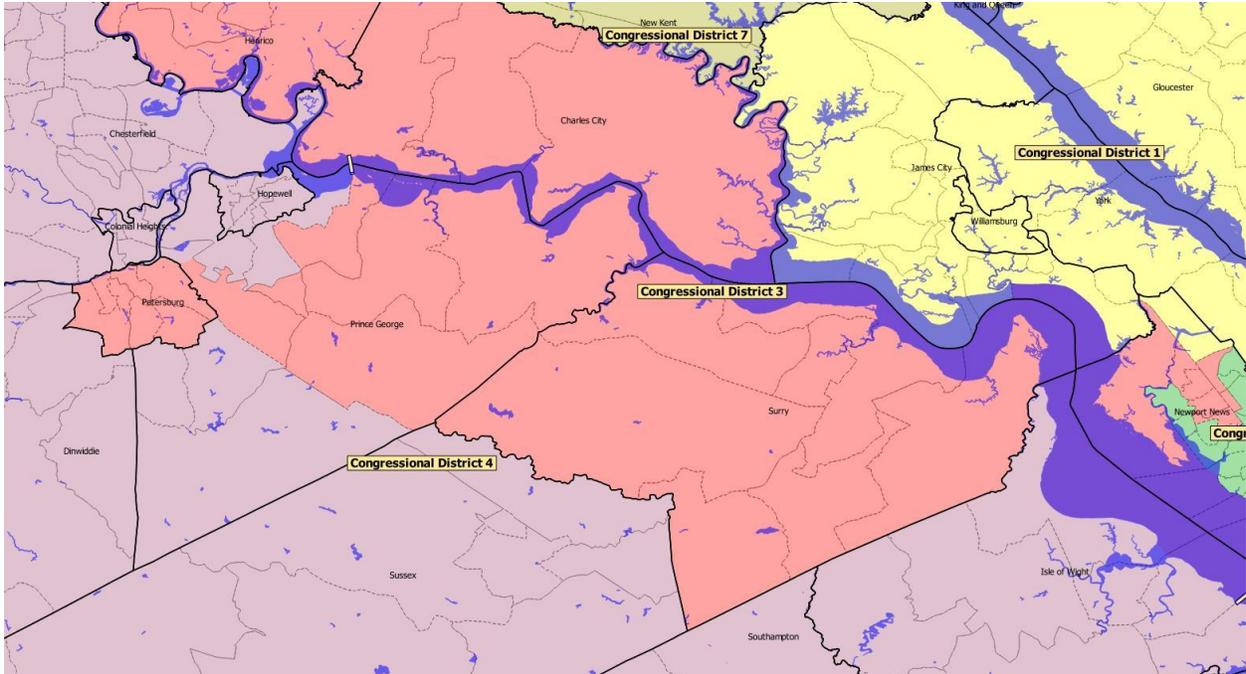


Figure 4. The Adopted Third Congressional District, Petersburg, Prince George, and Surry Detail

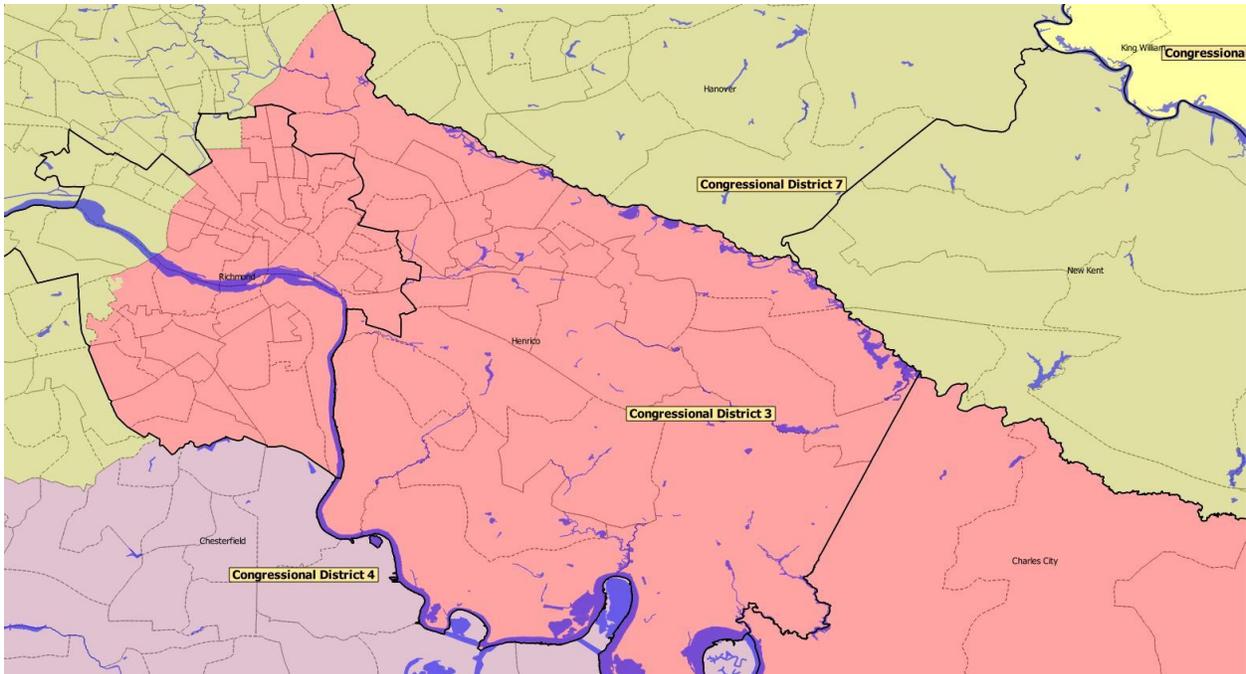


Figure 5. Adopted Third Congressional District, Henrico and Richmond Detail

The *Moon* Court described the physical geography of the unconstitutional Third District in these terms:

"The District has been aptly described as follows:

The Third Congressional District, as presently configured, is an amalgamation principally of African-American citizens contained within the legislatively determined boundaries for the obvious purpose of establishing a safe black district. The district is anchored in the tidewater cities of Norfolk, Suffolk, and Portsmouth. It crosses the Chesapeake Bay to include portions of the cities of Hampton and Newport News where the African-American population is the majority, using only the open water of the Chesapeake Bay and the James River to connect the disparate and non-contiguous portions of these two small cities. The District then crosses the James River into the largely rural Surry County, recrossing the James River to take in all of the African-American majority Charles City County. In Charles City County the district splits in three directions. To the south the District runs through Prince George County and slices through the City of Hopewell, including only those areas where blacks predominate, before terminating some 30 miles away in the City of Petersburg, which it also divides racially. To the east, the District takes in part of rural southeastern Henrico County before reaching the more built up and heavily black eastern suburbs of Richmond, racially dividing the capital city nearly in half before terminating in a small black neighborhood in northern Henrico County. To the north, the district widens out to take all of the rural and agricultural counties of New Kent, King William, King and Queen, and ends its roughly 225 mile trek in Essex County along the banks of the Rappahannock River. (Pl.'s Complaint)."

The adopted Third District can be described in strikingly similar terms to the unconstitutional Third District.

The Third Congressional District, as presently configured, is an amalgamation principally of African-American citizens contained within the legislatively determined boundaries for the obvious purpose of establishing a safe black district. The district is anchored in the tidewater cities of Norfolk, Suffolk, and Portsmouth. It crosses the Chesapeake Bay to include portions of the cities of Hampton and Newport News where the African-American population is the majority, using only the open water of the Chesapeake Bay and the James River to connect the disparate and non-contiguous portions of these two small cities. The District then crosses the James River into the largely rural Surry County and dividing Prince George County. In Prince George County, the District splits in two directions. To the south the District takes in all of the African-American majority City of Petersburg. To the north the District recrosses the James River to take in all of the African-American majority Charles City County. The District then takes in rural eastern Henrico County before reaching the more built up and heavily black eastern suburbs of Richmond, racially dividing the capital city nearly in half before terminating in a black neighborhood in northern Henrico County.

I examine below in greater detail the Third District's (1) compactness, (2) contiguity, (3) locality splits, and (4) Voting Tabulation District splits.

A. Compactness

In Table 1, I report the compactness of the adopted congressional districts. I report three commonly used compactness measures called the Reock Test, Polsby-Popper Test, and the Schwartzberg Test.

The Reock Test compares a district to a circle, considered by many to be the most compact shape. The test involves calculating the ratio of the area of a district to the area of the smallest circle that can be drawn around it. This ratio ranges between zero and one, with one being the most compact shape (in this case, the district is a circle). Thus, lower values of the Reock Test correspond with less compact districts.

The Polsby-Popper Test also compares a district to a circle. This test involves calculating the ratio of the area of a district to a circle with the same perimeter as the district. As with the Reock Test, a lower value indicate a less compact district.

The Schwartzberg Test also compares a district to a circle. This test involves calculating the ratio of the perimeter of the district to the perimeter of a circle with the same area. Unlike the two other compactness measures, higher values indicate less compact districts.

District	Reock	Polsby-Popper	Schwartzberg
1	0.28	0.18	2.09
2	0.27	0.20	2.09
3	0.19	0.08	3.07
4	0.32	0.20	2.04
5	0.30	0.15	2.30
6	0.26	0.16	2.17
7	0.30	0.13	2.34
8	0.37	0.26	1.76
9	0.20	0.18	2.13
10	0.29	0.12	2.60
11	0.23	0.09	3.06

Table 1. Compactness of Adopted Congressional Districts

Table 1 illustrates the adopted Third District is an extreme district on all three compactness measures. By any of these measures, the adopted Third Congressional District is the least compact of any adopted district, with a Reock Test score of 0.19, a Polsby-Popper Test score of .08 and a Schwartzberg Test score of 3.07.

B. Contiguity

Contiguity means that all parts of a district are connected. Specifically, a district is contiguous if any part of the district can be reached from any other part without crossing the district boundary — in other words, if the district is not divided into two or more discrete pieces.

Figure 1 demonstrates that the adopted Third District is contiguous at points only by virtue of being connected via water, particularly the James River, without a connecting bridge.

Furthermore, the adopted Second District's contiguity is affected by the shape of adopted Third District.

As Figure 2 illustrates, the adopted Second District wraps around the north end of the Norfolk portion of the adopted Third District, crossing Willoughby Bay without a connecting bridge. As the Second District continues to wrap around the Third District, it crosses the Lafayette River without a connecting bridge.

As Figure 3 illustrates, the Second District then crosses the James River to Hampton. Although there is a connecting bridge and tunnel, the northern terminus of the bridge is in the Third District. The Second Congressional District then wraps around the Third District on the northern portion of Hampton crossing the Southwest Branch Back River, this time connected by a bridge.

The Third District is connected from Portsmouth by bridges across intervening water to Norfolk and Hampton. However, further along the west of the James River, only water connects the Hampton and Newport News portions of the Third District. Likewise, only water connects the Newport News and Surry portions of the Third District.

Figure 4 shows that the Third District again crosses the James River just to the east to Hopewell. It is not clear from the Census Bureau's geographical data if the Third Congressional District is connected across the James River between Prince George and Charles City. The Third District's boundary stops at a bridge, but there is insufficient geospatial information to determine if the eastern portion of the bridge is indeed contained in the Third District.

C. Locality Splits

I refer to Virginia's Counties and Independent Cities as "localities," which are defined in the Census Bureau's geography. If a district does not entirely contain a geography, in this case a locality, within its borders, the geography is considered to be "split" by the district.

Seventeen (17) localities are split by all adopted Districts.

In Table 2, I calculate the number of times each adopted District splits a Virginia locality and the number of locality splits that involve the Third Congressional District.

District	Number of Locality Splits by District	Number of Locality Splits Involving CD3
1	5	2
2	3	3
3	9	9
4	4	3
5	3	
6	2	
7	4	2
8	1	
9	2	
10	2	
11	2	

Table 2. Localities Split by Adopted Congressional Districts

The adopted Third District splits nine localities, the most of any adopted district. The next largest number of locality splits are by the First Congressional District, with five, then the Fourth and Seventh Congressional Districts, with four apiece. The adopted Second Congressional district splits three localities.

The adopted Third District contributes to the higher number of locality splits with its surrounding districts. All three of the adopted Second District's locality splits involve the Third District. Three of four of the adopted Fourth District's locality splits involve the Third District. Two of four of the adopted Seventh District's locality splits involve the Third District. Two of five of the adopted First District's locality splits involve the Third District.

The statistics presented in Table 2 illustrate that a typical adopted Virginia Congressional District splits at most three localities. The adopted Third District is an anomaly. The Third District splits nine localities, the most of any district. Since another district must be involved in a split, the districts adjacent to the Third Congressional District have a higher number of locality splits due to the unusually large number of locality splits involving the Third Congressional District.

In determining that race was the predominant factor in the creation of the unconstitutional Third District, the *Moon* Court noted that "[a]s of 1993, the Congressional district plan splits some 21 independent cities and counties, with more than half of those county and city splits (11) in the Third District." 952 F. Supp. at 1148. Similarly here, the adopted Third District splits 17 independent cities and counties, with more than half of those locality splits in the adopted Third District.

District	Number of VTD Splits by District	Number of VTD Splits Involving CD3
1	4	1
2	5	5
3	14	14
4	7	7
5	3	
6	1	
7	2	1
8	2	
9	1	
10	2	
11	3	

Table 3. Voting Tabulation District Splits by Adopted Congressional Districts

D. Voting Tabulation District Splits

In Table 3, I calculate the number of times Virginia Voting Tabulation Districts (VTDs) are split by the adopted districts and the number of VTD splits that involve the Third District.

Twenty (20) VTDs are split by all adopted Districts.

The adopted Third District splits fourteen VTDs, the most of any adopted district. The next largest number of VTD splits are in the Fourth District, with seven, then the Second District, with five, and the First District, with four. The adopted Seventh District splits two VTDs.

The Third District contributes to the higher number of VTD splits in its surrounding districts. All seven of the Fourth District's VTD splits involve the Third Congressional District, as do all five of the VTD splits of the Second District. One of four of the First District's VTD splits involves the Third Congressional District. One of two of the Seventh District's locality splits involves the Third Congressional District.

The statistics presented in Table 3 illustrate that, without factoring in the Third District, a typical adopted Virginia Congressional District splits, at most, three VTDs. The adopted Third District is again an extreme outlier, as it is with locality splits presented in Table 2. The Third Congressional District splits 14 VTDs, twice as many as any other district. Since another district must be involved in a split, the districts adjacent to the Third District — particularly the Second and Fourth Districts — have a higher number of locality splits due to the unusually large number of locality splits involving the Third District.

In its determination that race was the predominant factor in the creation of the unconstitutional Third District, the *Moon* Court noted that "the entire State's redistricting had only 54 split precincts, but 37 of them were in the Third District." 952 F. Supp. at 1148. Similarly here, the

adopted Congressional District plan has only 20 VTD splits, but 14 of them are within the Third District.

E. Summary

The adopted Third Congressional District is bizarrely shaped. It is the least compact of all the adopted congressional districts. At least at two points, perhaps three, it is contiguous only across water without a connecting bridge. The adopted Third District is involved in a majority of the locality and VTD splits across all adopted Districts.

These are all factors that the *Moon* Court considered when determining that Virginia used race as the predominant factor when adopting the Third District in 1993.

Furthermore, the bizarrely shaped Third Congressional District negatively affects the Second Congressional District's contiguity. At three points the Second Congressional District wraps around the Third Congressional District in a manner that traverses water without a connecting bridge.

5. Historical Performance of Candidates to the Third District

Candidate	2002	2004	2006	2008	2010	2012
<i>Rep. Bobby Scott</i>	96.1%	69.3%	96.1%	97.0%	70.0%	81.3%
<i>Republican Opponent</i>		30.5%			27.2%	18.5%
<i>Other Candidates</i>	3.9%	0.1%	3.9%	3.0%	2.8%	0.3%

Table 4. Election Results for the Third Congressional District, 2002-2012

As reported in Table 4, the African-American candidate in the Third District, and presumably African-American candidate of choice, Rep. Bobby Scott was reelected to the district from 2002 to 2012 with an average vote share of 85.0%. In the 2010 election, a historically good election for Republican candidates nationwide, Rep. Scott received 70.0% of the vote. In the subsequent election, following the increase of the Black voting-age population of the Third District, Rep. Scott received 81.3% of the vote.

Rep. Scott has won overwhelmingly lopsided election victories in the benchmark and adopted Third District before the recent redistricting. The increase of the Black voting-age population of the Third District is thus at face value not needed to continue to elect the African-American candidate of choice.

The Commonwealth of Virginia did not include in its Section 5 submission to the Department of Justice an analysis to determine if the Black voting-age population of the benchmark Third District needed to be increased in order for the African-American community to continue to elect a candidate of choice. Other jurisdictions in the United States have performed such analyses. In South Carolina, for example, a "to elect" analysis of State Senate District 10 found that a Black

voting-age population of 33.3% was effective for the African-American community to have the ability to elect candidates of its choice, and the Department of Justice approved the district.³

As analyses in other states demonstrate, the Black voting-age population of the Third District needed to elect an African-American candidate of choice may be substantially lower than the adopted or even benchmark Third District's Black voting-age population.

6. The Black Voting-Age Population of the Third District Was Strategically Increased

In addition to an examination of the shape of the Third District, the Court's analysis in *Moon v. Meadows* examined how "[t]hroughout the redistricting process, the Legislature sought to protect and indeed enhance this initial ratio [of Black population]." 952 F. Supp. at 1146. The Court examined changes to the District adopted by the General Assembly through amendments by the Governor — Virginia's Governor has amendatory veto power — and through subsequent amendments to the district in 1993. The Court found these moves were further evidence of "Virginia's predominant attention to the principal goal of creating a safe black district" *Id.*

I perform a similar analysis as the *Moon v. Meadows* Court, using the benchmark Third District as the baseline for comparison. I begin by describing important aspects of the data and proceed with analyzing trades made between the Third District and surrounding Districts.

Notwithstanding the historical performance of the African-American candidate of choice in the Third District, the General Assembly increased the Black voting-age population of the District.

In my opinion, similar to the process observed by the *Moon v. Meadows* Court, Virginia traded population among the Third and surrounding Districts with the purpose of increasing the Black voting-age population of the adopted Third District.

A. Defining the Black Voting-Age Population

Prior to the 2000 census individuals could identify themselves as one – and only one – of five racial populations: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White.

Beginning with the 2000 census, individuals may identify themselves as belonging to one or more of the five racial populations. With some frequency, individuals identify themselves as belonging to more than one of these racial groups.

To address the potential non-comparability of race statistics, the Office of Management and Budget (OMB) issued Bulletin No. 00-02, which provides guidance on the allocation of multiple-race responses for use in civil rights monitoring and enforcement. The Bulletin directs

³ Exhibit 14 of South Carolina's Section 5 submission, "Retgression Analysis for the South Carolina Senate Districting Plan Adopted in 2001" by Richard L. Engstrom, July 27, 2011.

federal agencies to treat an individual who lists more than one race as belonging to the minority group that is the subject of the complaint or enforcement action under consideration.

The Department of Justice also has published a statement regarding allocation of multiple-race categories in the Federal Register Notice "Guidance Concerning Redistricting and Retrogression Under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c". The Department of Justice describes a process to evaluate Section 5 retrogression whereby a minority race population is calculated in two steps. First, the minority population is calculated as consisting of those persons who identify themselves as belonging to (1) the minority race alone and (2) the minority race and the White population. Second, other combinations of minority races will be considered if it appears there are significant numbers of responses among the other racial combinations. This Guidance was written prior to the release of the census population data in 2000. The Guidance language is couched in terms of what Department of Justice expected – that the number of responses to multiple-race categories would be small.

Plaintiffs allege racial gerrymandering with respect to Black or African-American voters. Virginia congressional districts are drawn to equalize total population. Voting rights questions involve voters, and thus minority voting rights analyses primarily examine the voting-age population (VAP) of the minority group at issue.

Consistent with the OMB Bulletin and Department of Justice Guidance, I calculate two statistics for the Black VAP. First, I calculate Black VAP as a combination of census responses identifying a person as Black or Black and White. I call this the “exclusive” method since it excludes some multi-race individuals who identified themselves to the Census Bureau as African-American. Second, I calculate Black VAP as any response where Black is chosen alone or in combination with one or more other races. I call this the “inclusive” method since it includes all individuals who identified themselves to the Census Bureau as African American.

It is my opinion that the inclusive method is the valid calculation consistent with the OMB Bulletin and DOJ Guidance for the voting rights allegations raised by Plaintiffs. I report these statistics alongside the exclusive method calculations, as the Virginia General Assembly reports only the exclusive method calculations in their redistricting statistical reports.

B. Population of Adopted and Benchmark Third District

In Table 5, I report population statistics for the benchmark and adopted Third Congressional District.

The ideal population for each Virginia congressional district following the 2010 census is 727,366 persons. Prior to the last redistricting, the benchmark Third District had 663,390 persons according to the 2010 census. The benchmark Third District needed to add 63,976 persons to achieve population equality with other Virginia congressional districts.

	Total Pop.	Ideal Pop.	Deviation	VAP	Black VAP (Exclusive Method)	Black VAP (Inclusive Method)	%Black VAP (Exclusive Method)	%Black VAP (Inclusive Method)
<i>Benchmark</i>	663,390	727,366	-63,976	511,559	271,419	275,499	53.1%	53.9%
<i>Adopted</i>	727,366	727,366	0	560,158	315,604	320,210	56.3%	57.2%
<i>Change from Benchmark to Adopted</i>	63,976			48,599	44,185	44,711	3.3%	3.3%
<i>%Black VAP of Net VAP Added to Benchmark District</i>					90.9%	92.0%		

Table 5. Selected Population Statistics for the Benchmark and Adopted Third Congressional District

Prior to the redistricting, the benchmark Third District had a total voting-age population of 511,559 persons. As calculated using the exclusive method, 271,419 of those persons were Black, or 53.1% of the VAP. As calculated using the inclusive method, 275,499 of those persons were Black, or 53.9% of the VAP. The inclusive method counts 4,080 additional voting-age persons over the exclusive method as identifying themselves as Black or African-American in the benchmark Third District.

The adopted Third District's total population is 727,366 persons, exactly equal to the ideal population for a Virginia congressional district, and represents an increase of 63,976 persons over the Benchmark Third District.

Following the redistricting, the adopted Third District had a voting-age population of 560,158 persons. This represents an increase of 48,599 persons of voting-age over the benchmark Third District. As calculated using the exclusive method, 315,604 of those persons were Black, or 56.3% of the VAP. This represents an increase 3.3 percentage points over the benchmark Third District (the apparent discrepancy is due to rounding). As calculated using the inclusive method, 320,210 of those voting-age persons were Black, or 57.2% of the VAP. This also represents an increase of 3.3 percentage points over the benchmark district. The inclusive method counts 4,606 additional voting-age persons over the exclusive method as identifying themselves as Black in the adopted Third District.

C. Detailed Changes to the Third District

For Virginia to increase the Black VAP from the Benchmark to the Adopted Third District, given that the benchmark Third District required additional population, areas with substantially higher Black VAP than the benchmark Third District were added to the benchmark district. During the redistricting process, either a net of 44,185 (exclusive method) or 44,711 (inclusive method) Blacks of voting-age were added to the district. In other words, among the net voting-age population added from the surrounding benchmark districts to the adopted Third District, 90.9% (exclusive method) or 92.0% (inclusive method) were Black.

Four congressional districts are adjacent to the benchmark Third District: the First, Second, Fourth, and Seventh. While the Black voting-age population of the adopted Third District was

increased relative to the benchmark district, all four of these adjacent districts saw a decrease in Black voting-age population percentages. The Black VAP of the First District decreased 2.6 percentage points (either method), the Second District decreased 0.2 percentage points (either method), the Fourth District decreased 2.2 percentage points (either method), and the Seventh District decreased 2.4 percentage points (either method).

Table 6 presents population statistics for the population that was removed from the benchmark Third District into the surrounding adopted congressional districts and the population that was removed from the surrounding benchmark districts into the adopted Third Congressional District.

Benchmark to Adopted District	Total Pop	VAP	Black VAP (exclusive method)	Black VAP (inclusive method)	% Black VAP (exclusive method)	% Black VAP (inclusive method)
1 → 3	23,288	17,805	7,736	7,933	43.4%	44.6%
3 → 1	7,351	5,106	2,224	2,286	43.6%	44.8%
2 → 3	27,917	20,543	7,548	7,785	36.7%	37.9%
3 → 2	25,501	20,049	3,661	3,774	18.3%	18.8%
4 → 3	35,447	27,835	20,917	21,089	75.1%	75.8%
3 → 4	5,713	4,176	1,729	1,757	41.4%	42.1%
7 → 3	36,106	27,743	17,853	18,035	64.4%	65.0%
3 → 7	20,217	15,996	2,255	2,314	14.1%	14.5%
Net Change to Third District	63,976	48,599	44,185	44,711	90.9%	92.0%

Table 6. Population Movement Between Benchmark and Adopted Congressional Districts

Although the benchmark Third District needed to gain population, population was not only added to the adopted Third District from surrounding benchmark districts, population was also moved *from* the benchmark Third Congressional District into the surrounding adopted districts. Since the Third District needed to add population to reach population equality, the population moved from the benchmark Third District made the redistricting more complex, as even more population needed to be added to the Third District to compensate for the population removed from the District.

A simple strategy to increase the Black VAP of the adopted Third District might involve moving high density African-American communities into the district from the surrounding benchmark districts. A sophisticated strategy to increase the Black VAP of the adopted Third District further involves removing lower density Black VAP communities from the benchmark Third District and replacing them with higher density Black VAP communities from surrounding benchmark districts.

The sophisticated strategy of trading lower density Black VAP communities in the benchmark Third District with higher density Black VAP communities in the surrounding benchmark districts is evident in Table 6.

In the trades between the Third District and the Second, Fourth, and Seventh Districts, lower density Black VAP communities were removed from the benchmark Third Congressional District and higher density Black VAP communities were added to the adopted Third District from these surrounding benchmark districts. The communities traded between the benchmark Third and First Districts appear to have substantially similar Black VAP, however these trades were part of a complex three-way trade that involved the Second District.

I discuss below trades of population and geography between the (1) First and Third Districts, (2) Second and Third Districts, (3) Fourth and Third Districts, and (4) Seventh and Third Districts.

Figures 6 through 10 illustrate changes to the benchmark and surrounding Districts. The adopted congressional districts are presented in the same color scheme as before. Benchmark congressional district boundaries are presented as red lines. Locality boundaries are presented as black lines and VTD boundaries are presented as gray lines. Water is colored blue and shaded according to adopted district colors. Bridges are presented as yellow.

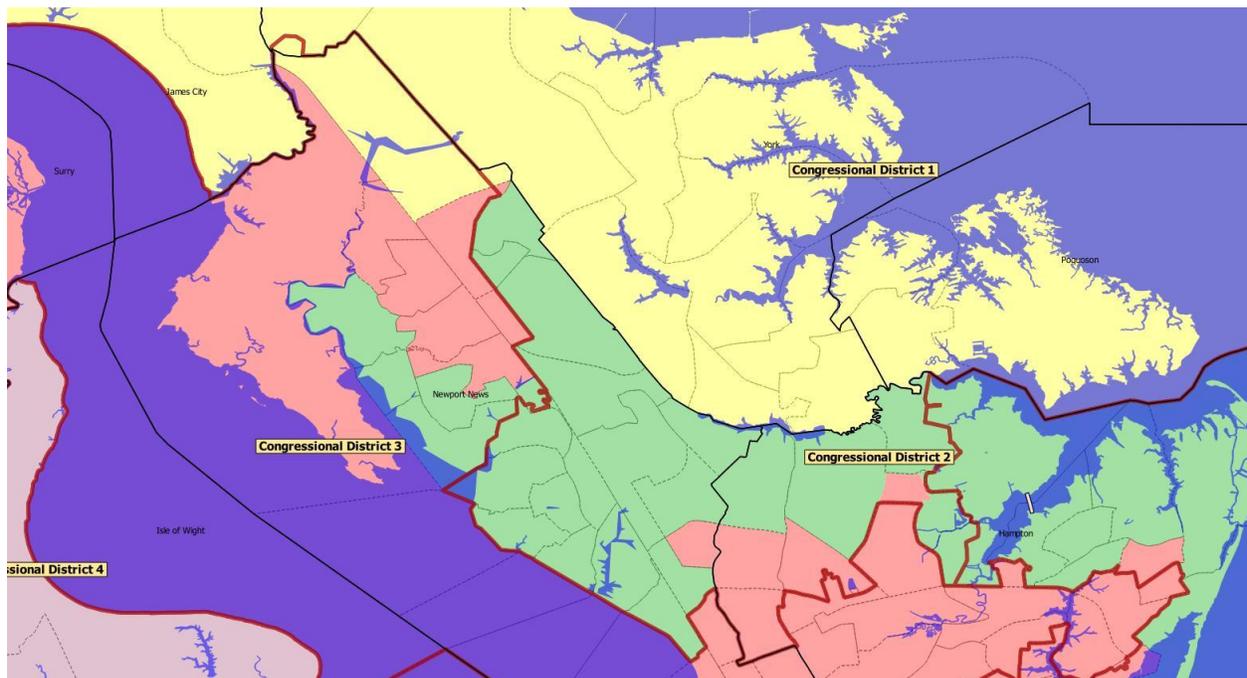


Figure 6. Geography Trades between the First and Third Districts

(1) Trades between the First and Third Districts

Trades between the First and Third Districts primarily involved a complex trade between the First and Second Districts. Race predominated in these trades in how Hampton and Newport News population formerly assigned to the benchmark First District was segregated along racial lines, with predominantly White population given to the Second District and predominantly Black population given to the Third District.

Prior to the redistricting, the benchmark First and Third Districts shared common borders in Hampton and Newport News. The adopted First District's southern border was removed entirely from Hampton and almost entirely from Newport News.

Much of the Newport News territory surrendered by the First District is predominantly White according to the 2010 census. Giving this population to the adopted Third District would have avoided the necessity of linking the Hampton and Newport News portions of the Third District via the James River with no connecting bridge. Instead, the General Assembly chose to wrap the adopted Second District around the Hampton portion of the adopted Third District, at one point creating a narrow neck less than a mile wide. This neck then enabled the General Assembly to segregate Newport News along racial lines between the Second and Third Districts.

Fifteen of sixteen whole Newport News VTDs formerly in the benchmark First District were assigned to the adopted Second District, plus parts of three more VTDs formerly split between the benchmark First and Third Districts. One whole VTD formerly in the benchmark First District was assigned to the adopted Third District.

The single Newport News VTD formerly located in the benchmark First District assigned to the adopted Third District — South Morrison — has the highest Black voting-age population of any of the whole VTDs formerly located in the benchmark First District. South Morrison has a total population of 4,473 persons, a VAP of 3,267 persons, and a Black VAP of 46.9% (exclusive method) or 48.1% (inclusive method).

The total of all other Newport News population formerly located in the benchmark First District and assigned to the Second District has a total population of 70,701 persons, a VAP of 55,944 persons, and a Black VAP of 22.6% (exclusive method) or 23.1% (inclusive method).

Three of six whole Hampton VTDs formerly in the benchmark First District were assigned to the Second District and the remaining three whole VTDs were assigned to the Third District. A part of one VTD in Hampton was split between the Second and Third.

The four Hampton VTDs formerly located in the benchmark First District and assigned to the adopted Second District (three wholly and one in part) have a total population of 12,897 persons, a VAP of 9,774 persons, and a Black VAP 44.6% (exclusive method) or 45.7% (inclusive method).

The four Hampton VTDs formerly located in the benchmark First District and assigned to the adopted Third District (three wholly and one in part) have a total population of 18,815 persons, a VAP of 14,538 persons, and a Black VAP 42.7% (exclusive method) or 43.8% (inclusive method).

The Hampton population assigned from the benchmark First District to the adopted Third District has a slightly lower Black VAP percentage than the population assigned to the adopted

Second District — 2.0 percentage points lower by either calculation method. At the same time, however, the geography assigned to the adopted Second District is less densely populated, such that although both the adopted Second and Third Districts were each assigned three VTDs formerly in the benchmark First District and one was split between them, 5,918 fewer Hampton residents formerly in the benchmark First District were assigned to the Second District compared to the Third District. The lower total population gain realized in the Second District's connection through Hampton meant a larger number of Newport News Whites could be added to the Second District, thereby more than offsetting the slightly higher Hampton Black VAP percentage formerly in the First District assigned to the Second District.

One whole Newport News VTD formerly assigned to the benchmark Third District was assigned to the First District. Additionally, a portion of Greenwood was assigned to the adopted First District (a very small portion of this VTD was formerly split between the benchmark First and Third Districts). A small portion of one York County VTD — Magruder — formerly located in the benchmark Third District was also assigned to the adopted First District. (It is appropriate to mention this York VTD here since it is contiguous to the Newport News VTDs.)

The total of these three assignments of VTD portions from the benchmark Third District to the adopted First District are reported in Table 6 and have a total population of 7,351 persons, a VAP of 5,106 persons, and a Black VAP of 43.6% (exclusive method) or 44.8% (inclusive method).

The population moved from the benchmark First District to the adopted Third District have a total population of 23,288 persons, a VAP of 17,805 persons, and a Black VAP of 43.4% (exclusive method) or 44.6% (inclusive method).

There may appear to be no racial component to the trades between the First and Third Districts from the Table 6 statistics since a slightly higher BVAP percentage was transferred into the First District. However, race played a role. Predominantly White Newport News VTDs could have been given to the adopted Third District when the benchmark First District was removed from these localities. This population was instead given to the adopted Second District. The Newport News population that was given to the adopted Third District had the highest Black VAP of any VTD in the benchmark First District.

Furthermore, the adopted Second District was made contiguous to Newport News by way of a low-population mile-wide finger wrapping around the Hampton portion of the adopted Third District. Indeed, as described in the next section, even further segregation of Newport News was enabled by this configuration since the adopted Second District was now able to take additional predominately White Newport News population from the benchmark Third District.

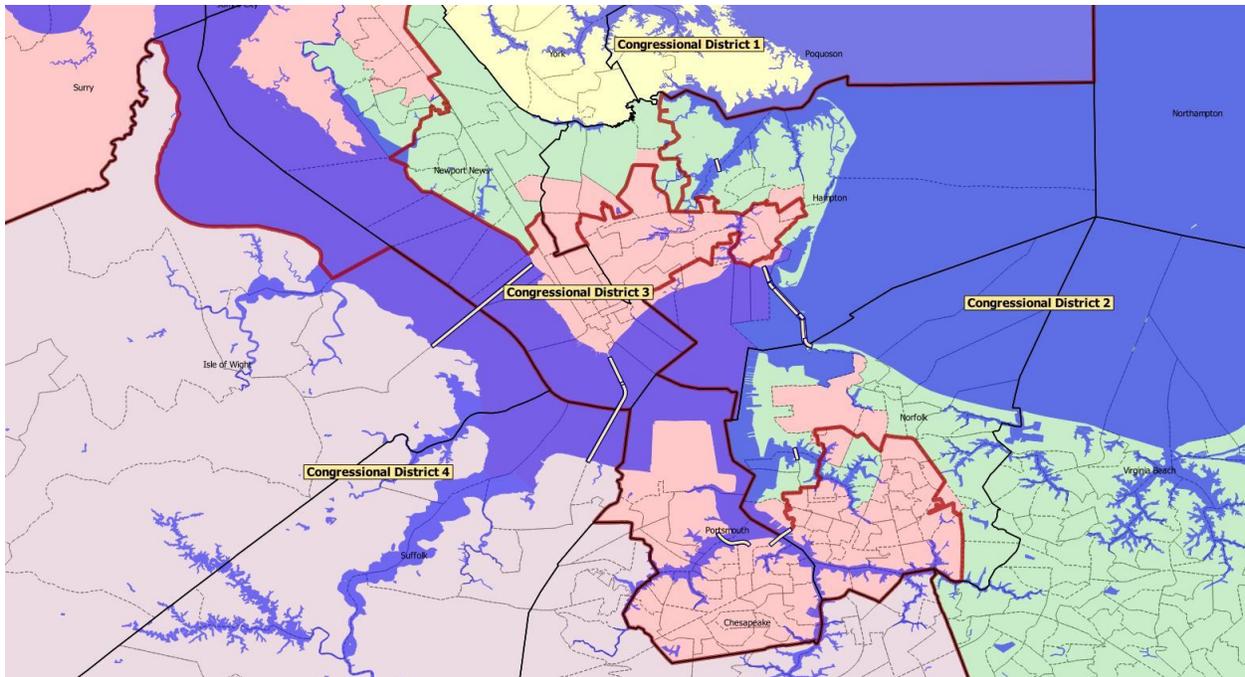


Figure 7. Geography Trades between the Second and Third Districts

(2) Trades between the Second and Third Districts

As reported in Table 6, population trades between the Second and Third Districts further segregated these districts' populations along race by moving higher Black VAP areas from the benchmark Second District into the adopted Third District in exchange for lower Black VAP territory moved from the benchmark Third District to the adopted Second District. Furthermore, these trades reduced the compactness of the Second and Third Districts and resulted in three instances where the Second District is contiguous by water with no connecting bridge.

The population moved from the benchmark Second District to the adopted Third District had a total population of 27,917 persons, a VAP of 20,543 persons, and a Black VAP of 36.7% (exclusive method) or 37.9% (inclusive method).

The population moved from the benchmark Third District to the adopted Second District had a total population of 25,501 persons, a VAP of 20,049 persons, and a Black VAP of 18.3% (exclusive method) or 18.8% (inclusive method).

I review below trades between the Second and Third Districts, which occurred in the localities of (a) Newport News, (b) Norfolk, and (c) Hampton.

a. Newport News

In Newport News, all trades between the Second and Third Districts involved moving predominantly White population from the benchmark Third District to the adopted Second

District. Four whole VTDs and parts of two others were assigned from the benchmark Third District to the adopted Second District.

Furthermore, these trades resulted in a less compact alignment of the Second and Third Districts as an arm of the adopted Second District was extended along the James River shore. While it may appear from visual inspection that a sizable VTD connects the Newport News portion of the adopted Third District to the James River, all but a small sliver on the northern end of the shore has zero-population.

These trades from the benchmark Third District to the adopted Second District resulted in moving a total population of 17,745 persons, a VAP of 13,592 persons, and a Black VAP of 19.1% (exclusive method) or 19.7% (inclusive method).

As described in the section above regarding trades between the First and Third Districts, none of these trades between the Second and Third Districts would have been possible if the Second District had not been connected to Newport News through a complex series of trades with the benchmark First District. Thus, trades between the First and Third Districts should not be viewed in isolation since they enabled the adopted Second District to take predominantly White Newport News population from the benchmark Third District.

b. Norfolk

In Norfolk, trades between the Second and Third District involved moving higher density Black VAP areas from the benchmark Second to adopted Third District in exchange for lower density Black VAP areas from the benchmark Third to the adopted Second District. Furthermore, these trades negatively affected the compactness of both districts and created three portions of the adopted Second District to be connected by water with no connecting bridge.

Three whole VTDs and a part of one were assigned from the benchmark Second District to the adopted Third District. At the same time, three whole VTDs were assigned from the benchmark Third District to the adopted Second District.

In sum, the Norfolk population shifts from the benchmark Second District to the adopted Third District resulted in moving a total population of 13,791 persons, a VAP of 9,694 persons, and a Black VAP of 35.0% (exclusive method) or 36.0% (inclusive method).

In sum, the Norfolk population shifts from the benchmark Third District to the adopted Second District resulted in moving a total population of 8,026 persons, a VAP of 64,57 persons, and a Black VAP of 16.6% (exclusive method) or 16.9% (inclusive method).

Reassignment of four Norfolk VTDs exemplify how the reconfiguration had a negative effect on the traditional redistricting principles of compactness and contiguity. One VTD, Titustown Center, was moved from the benchmark Second District to the adopted Third District. Three

VTDs with roughly similar population — Suburban Park, Willard, and Lafayette — were moved from the benchmark Third District to the adopted Second District.

Titustown Center has 7,528 persons, of whom 4,990 are of voting-age, and among the voting-age population 1,649 (exclusive method) or 1,700 (inclusive method) persons are African-American or Black. The Black percentage of the voting-age population is 33.0% (exclusive method) or 34.1% (inclusive method).

Suburban Park, Willard, and Lafayette combined have a total population of 8,026 persons, of whom 6,467 are of voting-age, and among the voting-age population 1,070 (exclusive method) or 1,093 (inclusive method) persons are African-American or Black. The Black percentage of the voting-age population is 16.6% (exclusive method) or 16.9% (inclusive method).

The reconfiguration of these four VTDs caused two portions of the adopted Second District to be connected across water, with no connecting bridge. Following the assignment of Titustown Center from the benchmark Second District to the adopted Third District, the western Norfolk portion of the adopted Second District is contiguous to the remainder of the district only across Willoughby Bay, with no connecting bridge. Following the assignment of Suburban Park, Willard, and Lafayette from the benchmark Third District to the adopted Second District, these three precincts are contiguous to the Second District only across the Lafayette River, with no connecting bridge.

A simple visual inspection reveals that the benchmark Second District divided Norfolk with the benchmark Third District in a more compact manner than the adopted districts. Following the redistricting, the adopted Second District wraps around four VTDs assigned to the adopted Third District so that Suburban Park, Willard, and Lafayette may be assigned to the adopted Second District.

In sum, traditional redistricting principles were subsumed to race to accomplish this move, which results in visually less compact districts and an adopted Second District that must twice traverse water without a bridge.

c. Hampton

In Hampton, all trades between the Second and Third Districts involved moving population from the benchmark Second District to the adopted Third District. Four whole VTDs and a portion of one VTD were assigned from the benchmark Second District to the adopted Third District.

These trades from the benchmark Second District to the adopted Third District resulted in moving a total population of 14,126 persons, a VAP of 10,849 persons, and a Black VAP 38.3% (exclusive method) or 40.0% (inclusive method).

The reassignment of these VTDs simultaneously improved and degraded the connectedness of the adopted Second and Third Districts over water. A portion of the benchmark Second District

formerly connected only via the James River was assigned to the adopted Third District. However, the assignment of the whole VTD at the northern terminus of the Hampton Roads Bridge-Tunnel — Pheobus — from the benchmark Second District to the adopted Third District resulted in all of the Hampton and Newport News portions of the adopted Second District to be connected by water without a connecting bridge to the remainder of the Second District.

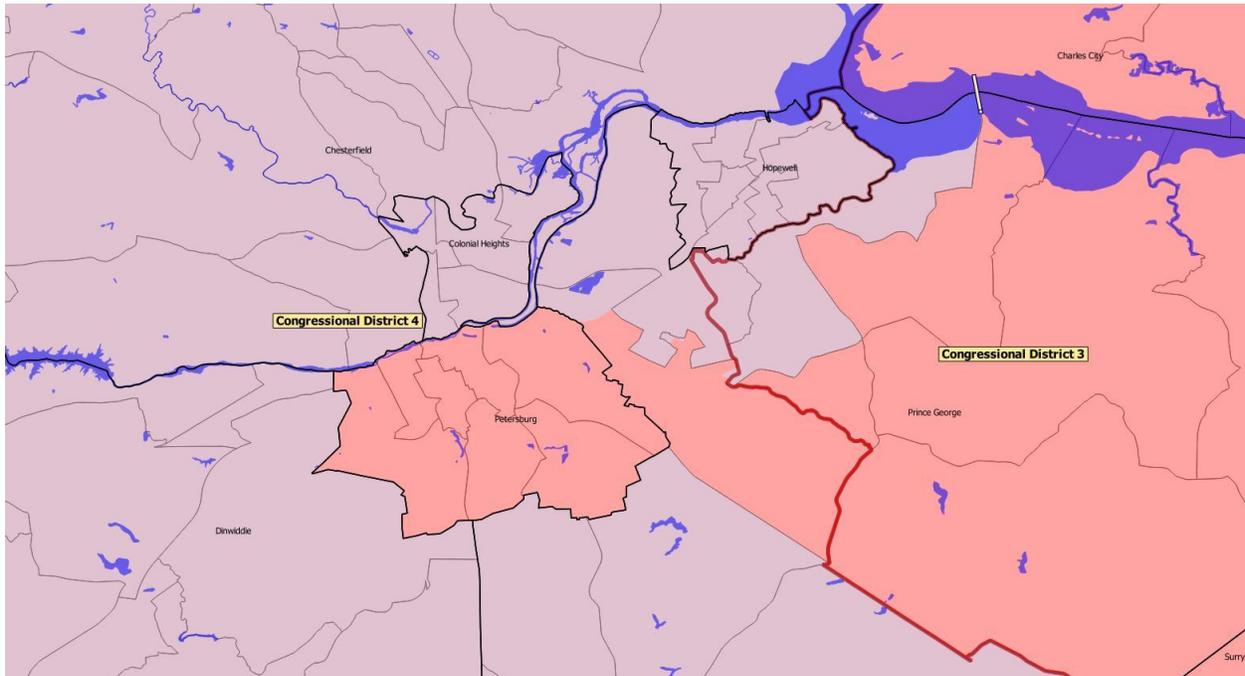


Figure 8. Geography Trades between the Third and Fourth Districts

(3) Trades between the Fourth and Third Districts

Trades between the Fourth and Third Districts are located in Prince George and Petersburg. The primary result of these trades was to move the entirety of the densely African-American community of Petersburg from the benchmark Fourth District to the adopted Third District.

The population moved from the benchmark Fourth District to the adopted Third District had a total population of 35,447 persons, a VAP of 27,835 persons, and a Black VAP of 75.1% (exclusive method) or 75.8% (inclusive method).

The population moved from the benchmark Third District to the adopted Fourth District had a total population of 5,713 persons, a VAP of 4,176 persons, and a Black VAP of 41.4% (exclusive method) or 42.1% (inclusive method).

In Prince George, the whole of one VTD and a portion of another were assigned from the benchmark Third District to the adopted Fourth District. A portion of one VTD was assigned from the benchmark Fourth District to the Third District. Although the net of the Prince George

changes alone is largely a wash,⁴ the assignment of this latter portion enabled the whole of densely-Black Petersburg to be assigned from the benchmark Fourth District to the adopted Third District.

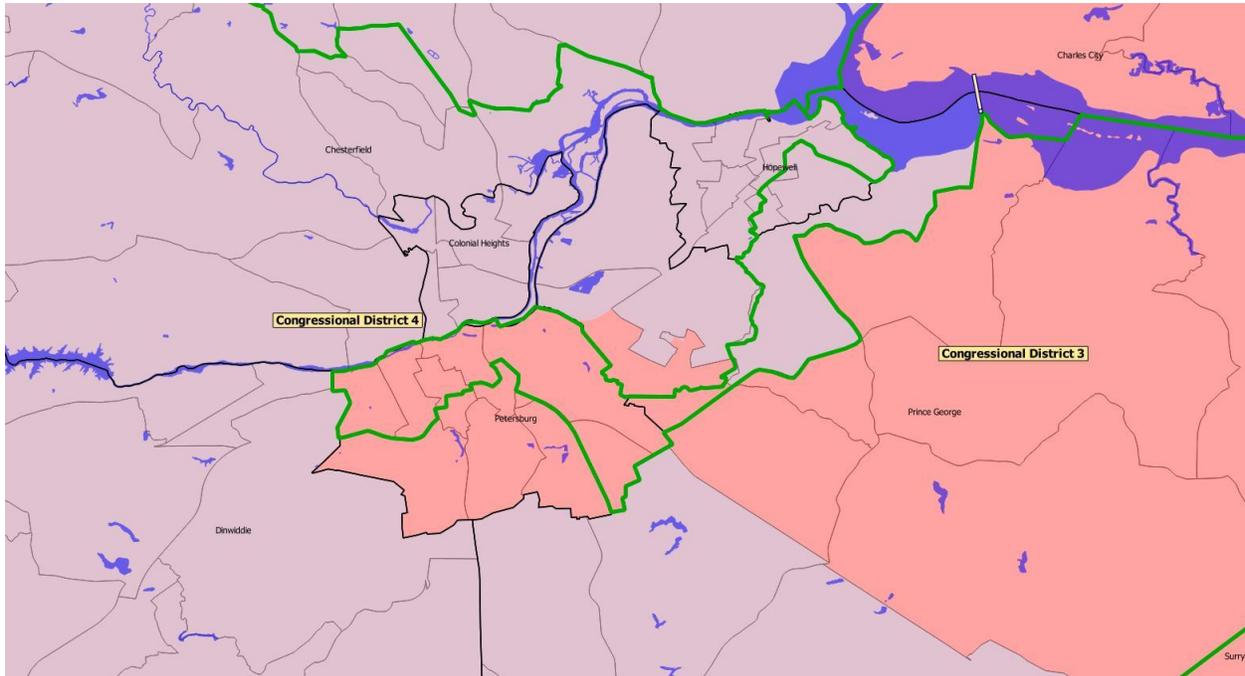


Figure 9. Geography Trades between the Third and Fourth Districts, Unconstitutional 1990s District Boundary in Green.

The Petersburg population shifts from the benchmark Fourth District to the adopted Third District resulted in moving a total population of 32,420 persons, a VAP of 25,713 persons, and a Black VAP of 78.0% (exclusive method) or 78.6% (inclusive method).

The assignment of Petersburg to the adopted Third District is similar to the unconstitutional District at issue in *Moon v. Meadows*. To demonstrate, I overlay in Figure 11 the unconstitutional Districts, identified by a dark green line, onto the adopted Districts, colored as before.

The unconstitutional Third District extended from Charles City through portions of Prince George to connect to then-predominantly Black portions of Petersburg. The adopted Third District similarly extends through portions of Prince George to connect all of Petersburg.

⁴ The Prince George population shifts from the benchmark Third District to the adopted Fourth District resulted in moving a total population of 5,713 persons, a VAP of 4,176 persons, and a Black VAP of 41.4% (exclusive method) or 42.1% (inclusive method). The Prince George population shifts from the benchmark Fourth District to the adopted Third District resulted in moving a total population of 3,027 persons, a VAP of 2,122 persons, and a Black VAP of 40.3% (exclusive method) or 41.2% (inclusive method).

The unconstitutional Third District split Petersburg, while the adopted Third District does not. Because Petersburg has become more densely Black since the 1990s census, the end result is still the same: adding densely-Black Petersburg population to the Third District.

1990 census statistics for Petersburg were provided by Plaintiffs' counsel to me in a document with the file name "1998 - Book 1.pdf," provided by the Division of Legislative Services. In 1990, the lowest Black voting-age percentage of any Petersburg VTD was Ward Three, Precinct Two, with 22.1% BVAP. Four of 14 VTDs had BVAP below fifty percent.

As of the 2010 census, the Petersburg VTD with the smallest Black voting-age population is the Third Ward, First Precinct, with a Black VAP of 67.3% (exclusive method) or 67.6% (inclusive method).

With Petersburg now so heavily African-American, there is less need to divide the locality if one has the intent to concentrate African-Americans into a district.

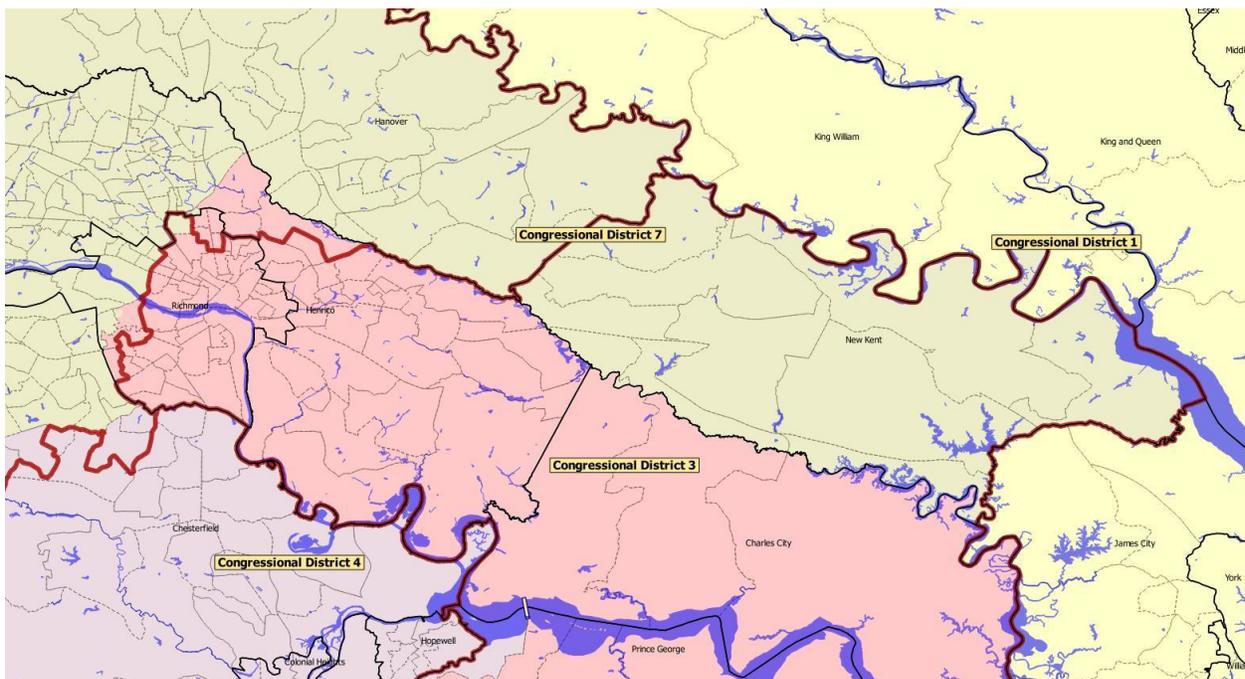


Figure 10. Geography Trades between the Third and Seventh Districts

(4) Trades between the Seventh and Third Districts

Trades between the Seventh and Third Districts primarily involved shifting lower Black VAP New Kent and one Richmond VTD from the benchmark Third District to the adopted Seventh District in exchange for much higher Black VAP VTDs moved from the benchmark Seventh District to the adopted Third District in Henrico and Richmond.

The population moved from the benchmark Seventh District to the adopted Third District had a total population of 36,101 persons, a VAP of 27,743 persons, and a Black VAP of 64.4% (exclusive method) or 65.0% (inclusive method).

The population moved from the benchmark Third District to the adopted Seventh District had a total population of 20,217 persons, a VAP of 15,996 persons, and a Black VAP of 14.1% (exclusive method) or 14.5% (inclusive method).

The whole of New Kent was moved from the benchmark Third District to the adopted Seventh District. These New Kent population shifts from the benchmark Third District to the adopted Seventh District resulted in moving a total population of 18,429 persons, a VAP of 14,328 persons, and a Black VAP of 14.0% (exclusive method) or 14.4% (inclusive method).

In Henrico, all trades between the Seventh and Third Districts involved moving population from the benchmark Seventh District to the adopted Third District. Four whole VTDs were assigned from the benchmark Seventh District to the adopted Third District.

These Henrico population shifts from the benchmark Seventh District to the adopted Third District resulted in moving a total population of 14,550 persons, a VAP of 10,526 persons, and a Black VAP of 77.0% (exclusive method) or 77.8% (inclusive method).

In Richmond, seven whole VTDs and a part of one were moved from the benchmark Seventh District to the adopted Third District. One VTD was moved from the benchmark Third District to the adopted Seventh District.

The Richmond population shifts from the benchmark Seventh District to the adopted Third District resulted in moving a total population of 21,556 persons, a VAP of 17,217 persons, and a Black VAP of 56.6% (exclusive method) or 57.2% (inclusive method).

The single Richmond VTD moved from the benchmark Third District to the adopted Seventh District resulted in moving a total population of 1,788 persons, a VAP of 1,688 persons, and a Black VAP of 14.9% (exclusive method) or 15.1% (inclusive method).

Summary

The net effect of these trades among the Third District and surrounding Districts is reported in Table 6. Predominantly greater Black VAP was moved into the adopted Third District and predominantly lesser Black VAP was moved out of the benchmark Third District. The net result is that 63,976 persons were added to the adopted Third District, 48,599 of whom were persons of voting age; 90.9% (exclusive method) or 92.0% (inclusive method) of this voting-age population is Black.

The overall racial composition of these trades are reflected in the trades made within localities as well. In Norfolk and Richmond, 45,161 persons were traded between the Third District and

surrounding Districts, and in both localities substantially higher Black VAP formerly in surrounding benchmark Districts were swapped for substantially lower Black VAP in the benchmark Third District. The Hampton and Prince George trades between districts were essentially a wash, whereby slightly lower Black VAP in surrounding benchmark districts were swapped for slightly higher Black VAP in the benchmark Third District. Importantly, however, these trades created contiguous geography that enabled one-way trades between Districts, thereby adding substantially higher Black VAP to the adopted Third District in Petersburg and Henrico, and removing substantially lower Black VAP from the benchmark Third District in Newport News.

As a result of similar changes in *Moon v. Meadows*, the Court found the direction of increasing the Black VAP of the unconstitutional District a "...deliberate and integral part of Virginia's predominant intention to the principal goal of creating a safe black district." 952 F. Supp. at 1146. In my opinion, the same holds true for the adopted Third District. Virginia chose to further racially segregate localities from Norfolk to Richmond. Virginia did so through trades that involved removing predominantly White population from the Third District — even though the Third District needed to add population to reach population balance — in exchange for predominantly Black population. This provides further evidence that race was the predominant factor in the creation of the adopted Third District.

7. Conclusions

In my opinion, race predominated in the construction of the adopted Third Congressional District. The bizarre shape of the adopted Third District serves the purpose of segregating localities along racial lines in order to create a majority Black district.

Furthermore, in my opinion changes made to the adopted Third District only intensified racial segregation among the Third and surrounding Districts. The Commonwealth's Section 5 submission to the Department of Justice confirms this. The Commonwealth describes how the changes to the benchmark Third Congressional District resulted in "...an increase in the total and voting-age African-American populations by 3.3 percent and 3.2 percent, respectively, and both total and voting-age populations are increased to over 55 percent." (These percentages are calculated using the exclusive method.)⁵

In my opinion, the fact that the African-American candidate of choice, Rep. Bobby Scott, successfully won reelection by landslide margins throughout the last decade indicates that not only was it unnecessary to increase the Black voting-age population of the Third District, the African-American community would have the ability to elect its candidate of choice with substantially less percentage of the voting-age population.

⁵ See: http://redistricting.dls.virginia.gov/2010/Data/Ref/DOJSubmission2012/Attachment_5_cong.pdf, at 2.

The Department of Justice found similarly that the Black VAP of the Third District can be safely reduced. In the wake of the *Moon v. Meadows* decision Virginia adopted a remedial Third District that reduced the Black VAP of the Third District from 61.6% to 50.5%.⁶ The Department of Justice approved the remedial Third District under the non-retrogression standard.

⁶ See page 2 of a letter from then-Virginia Attorney General Mark Early to the Chief of the Department of Justice Voting Section with the heading "Submission under Section 5 of the Voting Rights Act: Ch. 1, 1998 Va. Acts Redistricting U.S. Congressional Seats." This letter was provided to me by Plaintiff's counsel as part of a FOIA request from the General Assembly's Division of Legislative Services.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on December 6, 2013, in Fairfax, Virginia.

A handwritten signature in cursive script, appearing to read "Michael P. McDonald", written over a horizontal line.

Michael P. McDonald

EXHIBIT O

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

- - -
VANDROTH BACKUS, WILLIE : CIVIL ACTION NO.
HARRISON BROWN, CHARLESANN : 3:11-cv-03120-
BUTTONE, BOOKER MANIGAULT, : HFF-MBS-PMD
EDWARD MCKNIGHT, MOSES MIMS, :
JR., ROOSEVELT WALLACE, AND :
WILLIAM G. WILDER, ON BEHALF :
OF THEMSELVES AND ALL OTHER :
SIMILARLY SITUATED PERSONS, :
: :
Plaintiffs, :
: :
SENATOR DICK ELLIOTT, :
: :
INTERVENOR-PLAINTIFF, :
: :
vs. :
: :
THE STATE OF SOUTH CAROLINA, :
ET AL. :
: :
Defendants. :

- - -
Friday, February 10, 2012
- - -

ORAL DEPOSITION OF MICHAEL P. McDONALD,
taken at Nexsen Pruet, LLC, 1230 Main Street, Suite
700, Columbia, South Carolina, commencing at 9:08
a.m., before Cynthia First, a Federally Approved
Registered Professional Reporter, Certified
Realtime Reporter and Notary Public.

- - -
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29201
803-212-0012

1 Q What's the name of the case?

2 A I'll send -- I can provide the case
3 number to the lawyers.

4 MR. CARVIN: Counsel, will you provide
5 that to us?

6 MR. SCOTT: Sure.

7 MR. CARVIN: Thanks.

8 BY MR. CARVIN:

9 Q Let's look at the other traditional
10 districting principle that was ignored by the
11 legislature in terms of Senate District 21. The
12 next one, you say that the new district boundaries
13 decreased Senate District 21's compactness,
14 correct?

15 A Correct.

16 Q Before I get to that, let me just ask
17 you, is Senate District 21 below any threshold
18 acceptable compactness level that you're aware of?

19 A No.

20 Q Okay. Are you aware of any acceptable
21 compactness level in the literature?

22 A There are some states that actually do
23 define what compactness is for their state.

24 Q And under any of those criteria is
25 District 21 a violation?

1 A I have not evaluated District 21 in terms
2 of those other states' criteria.

3 Q You said there was approximately how many
4 measures of compactness out there?

5 A It grows every day, but somewhere around
6 50 now.

7 Q Out of any of those 50 measures of
8 compactness, is the new District 21 less compact
9 than the old District 21?

10 A In terms of statistical measures, I have
11 not calculated any compactness measures.

12 Q So you haven't done any kind of analysis
13 that could be objectively replicated or examined by
14 a court supporting your proposition that the new 21
15 is less compact than the old 21, correct?

16 MR. SCOTT: Objection.

17 THE WITNESS: What are produced -- yes, I
18 have produced something for the court to
19 consider.

20 BY MR. CARVIN:

21 Q You've given them a map?

22 A Right.

23 Q And you've told them that it's less
24 compact?

25 A Correct.

1 Q And there's no objective benchmark in
2 either peer-reviewed literature or case law which
3 supports that opinion that you've offered to the
4 court, right?

5 MR. SCOTT: Objection.

6 THE WITNESS: Correct. It's my opinion
7 that the courts have not even used objective
8 criteria when reaching these conclusions about
9 districts. So -- and they're highly
10 manipulative -- manipulatable.

11 So I could provide a compactness measure
12 that would look really great for our side, and
13 you can produce a compactness measure that
14 would look really great for your side. I
15 think it's best just to leave it up to the
16 court to form an opinion.

17 BY MR. CARVIN:

18 Q Without any objective guidance. Okay.

19 MR. SCOTT: Objection.

20 BY MR. CARVIN:

21 Q So just so I understand, let's -- I guess
22 we're using the pornography standard here? Mike
23 McDonald will know it when he sees it?

24 MR. SCOTT: Objection. It's not a
25 question.

1 THE WITNESS: I think the judges will
2 know it when they see it, as well.

3 BY MR. CARVIN:

4 Q Okay. Well, I'm looking at it. Why
5 don't you tell me -- you've got a map of it on page
6 30. Tell me why there would be a consensus view
7 that the three minor changes to 21 rendered it less
8 compact in any cognizable way that any court has
9 ever recognized in any litigation.

10 A Sure. That narrow neck that's created on
11 page 32, that actually goes through zero population
12 and picks up a highway interchange to get that
13 neighborhood that has no street exit from it other
14 than going into District 32 -- excuse me --
15 District 21, from District 20 to 21. Courts have
16 looked at these sorts of narrow necks and have
17 concluded from them that the compactness has been
18 violated.

19 Q So it's just the neck. That's the only
20 way it renders it less compact?

21 MR. SCOTT: Object to form.

22 THE WITNESS: You asked me -- so there is
23 other evidence, as well. So the more -- the
24 larger extent on page 31 shows an extension
25 that's been created that is not consistent

1 with the other boundary lines.

2 BY MR. CARVIN:

3 Q I'm sorry. I'm really not knowing what
4 you're referring to.

5 A On page 31. So the red area on page 31,
6 that extension that is going to poke now out of the
7 district.

8 Q I'm really not sure what you're talking
9 about.

10 A I'm sorry. Page 30. I think that's what
11 you're looking at. Sorry. So page 30, that
12 extension that's poking out.

13 Q The blue one?

14 A No. The blue one was removed from the
15 district.

16 Q It's the two red dots make it more -- in
17 addition to the neck, the two red dots make it less
18 compact?

19 A I wouldn't characterize them as dots.

20 Q We can't call them precincts. So
21 whatever you want to call those things, please use
22 your own phrase. It's the two red --

23 A Area, territories.

24 Q And you think there's an objectively
25 measurable standard, apart from the neck, that

1 suggest that filling out the district make it less
2 compact?

3 MR. SCOTT: Objection.

4 THE WITNESS: It's not filling out the
5 district because you've removed the blue area
6 from the district. That's no longer part of
7 the district.

8 BY MR. CARVIN:

9 Q Okay. But this is it.

10 A Right.

11 Q These three, we'll call them areas
12 because we can't call them precincts, those three
13 precinct swaps rendered it markedly less compact,
14 would you argue?

15 A I think those two together, yes.

16 Q Okay. And cases have found districts not
17 compact for reasons equivalent to the changes that
18 occurred between 21 and 20. That's your testimony?

19 MR. SCOTT: Objection.

20 THE WITNESS: Correct. I can think of
21 one in Illinois where a district as narrow as
22 we're talking about on -- in that blow-up on
23 page 32 was found to be in violation of the
24 state constitution of Illinois.

25 And then we have, of course, the Shaw

1 line of districts that we're following,
2 freeway interchanges that also was found to
3 be -- so yeah, I can think of a couple cases
4 there.

5 BY MR. CARVIN:

6 Q Okay. I actually know about the Illinois
7 case and I've seen the Shaw districts. You're
8 arguing that a visual inspection of those districts
9 suggests that this is just as uncompact as them?

10 MR. SCOTT: Objection.

11 BY MR. CARVIN:

12 Q Is that your testimony?

13 MR. SCOTT: Objection.

14 THE WITNESS: That this area of the
15 district, yes. I'm not -- the overall
16 district? No. I'm pointing to areas, choices
17 that were made to make the district less
18 compact. You're asking about the overall
19 character of the district. Those are two
20 separate things.

21 BY MR. CARVIN:

22 Q I know. Has any case anywhere looked at
23 a particular area of a district as opposed to the
24 district as a whole to judge its compactness?

25 A Well, you look at the area of the

1 district, of course, when you judge its
2 compactness.

3 Q Now, District 21, as the legislature
4 enacted this time around, does it remotely compare
5 to the lack of compactness in the cases you
6 measured?

7 MR. SCOTT: Object to the form.

8 THE WITNESS: In this particular area of
9 the map, yes.

10 BY MR. CARVIN:

11 Q The district as a whole, as enacted by
12 the legislature, does it remotely compare to the
13 noncompact districts in the cases you previously
14 referenced?

15 MR. SCOTT: Object to the form.

16 THE WITNESS: Well, if I recall
17 correctly, with the Illinois it was about a
18 narrow neck of that district. So yes, in
19 terms of the overall character of the
20 district, yes, for the Illinois case.

21 BY MR. CARVIN:

22 Q You remember this pretty clearly, right?

23 A It's been a while, so I admit that --

24 Q I actually mitigated that case. And I
25 just want to make sure --

1 A I'm sure you did.

2 Q I just want to make sure that you're
3 testifying under oath that this district, in its
4 entirety, is as noncompact as the district in
5 Illinois that you're referencing.

6 A I'm talking about the circumstances that
7 the court found objectionable about that district,
8 not the district in its entirety.

9 Q Right. So we would both agree that this
10 district is not as noncompact as the district in
11 Illinois when viewed in its entirety, correct?

12 MR. SCOTT: Object to the form of the
13 question.

14 THE WITNESS: I would have to, again,
15 refresh my memory on that district. But a
16 narrow neck was the basis for that challenge.

17 BY MR. CARVIN:

18 Q All right. And your next challenge was
19 it doesn't respect existing political boundaries.
20 What political boundaries did it violate? What
21 municipal boundaries?

22 A Right. Well, we have the census place
23 boundaries.

24 Q I'm sorry. What municipal boundaries did
25 the changes violate?

EXHIBIT P

Dr. Michael P. McDonald

Reply Report to Mr. Morgan

Overview

Defendants retained Dr. Brunell as an expert to address the Adopted Plan. Dr. Brunell had the opportunity to respond to my original report, and I responded to his analysis in my reply report. Defendants have now retained Mr. Morgan, whose report ostensibly replies to my Analysis of Plaintiffs' Proposed Alternative Congressional Plan (Feb. 21, 2014). However, Mr. Morgan also critiques my two previous reports on the Adopted Plan. In this way, Mr. Morgan attempts to bolster Dr. Brunell's analysis on topics already addressed in the previous exchange of expert reports.

More surprisingly, even while Mr. Morgan takes liberties in responding to my previous reports, he completely ignores entire portions of the analysis provided in all my reports. As discussed further below, Mr. Morgan's analysis is based on a misunderstanding of the Voting Rights Act, a misapprehension about the operating criteria guiding the redistricting process, and a misrepresentation of my previous reports.

Preclearance and "Greater Racial Balance"

Mr. Morgan suggests that the racial composition of the Adopted Third District was necessary to ensure preclearance under Section 5 of the Voting Rights Act, and further suggests that I "cannot - and [do] not - opine that the Alternative Plan could or would have received preclearance under Section 5" (Morgan p. 27). Mr. Morgan's analysis is plainly incorrect.

As an initial matter, Mr. Morgan ignores my observation that "the Alternative Third District hews much more closely to the Black VAP of the Remedial Third District [in light of *Moon v. Meadows*] than the Adopted Third District does" (McDonald Analysis of Alternative p.9), and that the Remedial Third District "was also precleared under Section 5" (McDonald Reply to Brunell p.11). In other words, the Department of Justice approved a previous version of the Third District with a Black VAP of 50.5%, which is *less* than Plaintiffs' Alternative Third District of 51.0%.¹ Implicit in this observation is that Plaintiffs' Alternative Third District would have been precleared by the Department of Justice. Indeed, the fact that the Adopted Third District contains a Black VAP closer to that of the Unconstitutional Third District (struck down by the Court in *Moon v. Meadows*) while the Alternative Third District contains a Black VAP substantially similar to that of the Remedial Third District, indicates that the Alternative Third District has a greater racial balance than the Adopted Third District.

¹ This calculation uses the inclusive method, which I opine is the correct one to apply as a comparison point to the Remedial District and with which neither Dr. Brunell nor Mr. Morgan have disagreed.

Moreover, Mr. Morgan’s Voting Rights Act “analysis” has no basis in either the Voting Rights Act or the maps approved by the Virginia General Assembly.

Mr. Morgan explains that since all of the majority-minority districts in the House of Delegates had at least a 55% Black VAP, the General Assembly “had ample reason to believe” that a 55% Black VAP was “appropriate to obtain Section 5 preclearance, even if it meant raising the Black VAP above the levels in the benchmark plan” (Morgan pp. 26-27). This explanation is problematic for several reasons.

First, if the General Assembly used the House of Delegates districts as a guide for the Third Congressional District, there is nothing in the public record indicating that is the case. This information is therefore likely private information that Mr. Morgan possesses as a participant in the map-drawing process for the General Assembly, and it is undisclosed in his report.

Second, Mr. Morgan’s statement that the General Assembly imposed a minimum racial quota of 55% Black VAP to the Third District, unsupported by any analysis of what was actually required by the Voting Rights Act, essentially concedes that the Adopted Third District is a racial gerrymander.

Third, Mr. Morgan is only telling part of the story, as the Senate’s majority-minority districts were also precleared even though they contained Black VAPs less than 55%.

The Black VAP percentage for the five majority-minority Adopted Senate districts are listed in Table 1 (in descending order of the Black VAP). Like the House of Delegates districts Mr. Morgan refers to, these Senate districts overlap with the Third Congressional District. Notably, the Department of Justice precleared these districts in the Adopted Senate plan.

Senate District	Black VAP	
	Exclusive Method	Inclusive Method
5	53.6%	54.4%
18	53.5%	54.0%
16	53.1%	53.7%
2	51.2%	52.2%
9	50.8%	51.4%

Table 1. Adopted Senate Districts, Black VAP of African-American Majority Districts

Unlike the House of Delegates majority-minority districts, which all had a Black VAP of at least 55.2% (inclusive) or 55.9% (exclusive), none of the comparable Senate districts has a Black VAP over 55%. Following Mr. Morgan's logic that the district with the lowest Black VAP provides a guide as to the minimal acceptable level for the Third District, then the 9th Senate district serves as that guide, with a Black VAP of 50.8% (exclusive) or 51.4% (inclusive).

The House of Delegates was well aware of the Adopted Senate plan, since that chamber voted in favor of the bill enacting those districts in 2011. The map-drawers of the Adopted Congressional Districts were also well aware that the Department of Justice had precleared the Senate districts under Section 5 *before* the new congressional districts were adopted in 2012. Thus, it is disingenuous for Mr. Morgan to assert that a 55% Black VAP quota was what the "General Assembly believed was appropriate to obtain preclearance" (Morgan p.27) of the Third District.

Fourth, a simple analysis of voting patterns demonstrates that the Alternative Third District does not retrogress the minority group's ability to elect its candidate of choice. In the section of my initial report entitled "Historical Performance of Candidates to the Third District" (McDonald report p. 11), I describe how the African-American incumbent, Rep. Bobby Scott, has been reelected by overwhelming majorities, with an average vote share of 85%, from 2002 to 2012. In my reply report, I further explained: "Since the Third District has a Black VAP substantially less than 85%, simple logic reveals that there must be substantial White crossover voting for Rep. Scott such that the Third District's Black VAP can be safely lowered below the Adopted Third District's 56.3% (exclusive method) or 57.2% (inclusive method) and continue to elect the African-American candidate of choice" (McDonald Reply pp. 11-12).²

Finally, Mr. Morgan ignores evidence, supplied in his report, that further indicates the minority group will elect its candidate of choice in the Alternative Third District. Mr. Morgan aggregates into congressional districts the votes for candidates of the two major political parties in the 2008 and 2012 presidential elections (Morgan p. 12, 15). His statistics show that McCain's vote share was increased from 49.5% in the Benchmark Second District to 49.7% in the Adopted Second District, and that Romney's vote share was increased from 48.2% in the Benchmark Second District to 48.6% in the Adopted Second District. According to Mr. Morgan, these changes "improved the re-election prospects of Congressman Rigell" (Morgan p. 13).

In contrast, McCain's vote share in the Alternative Third District is 27.8%, while Romney's vote share is 25.4%. This is the strongest performing district by far for any political party in the Alternative Plan, one Rep. Rigell and every other incumbent would presumably look upon with envy. Yet later Mr. Morgan claims that the Alternative Third District has "less...respect for incumbency than every other district" (Morgan p.25). To arrive at this conclusion, Mr. Morgan has to pretend that, like Rep. Rigell, Democratic incumbent Rep. Scott was somehow vulnerable

² Notably, Mr. Morgan does not proclaim to be a voting rights expert. His curriculum vita describes his redistricting background and expertise as (1) "[p]erformed redistricting work in 19 states, in the areas of map drawing, problem solving, and redistricting software operation" and (2) "[p]erformed political work in 40 states, providing analysis and strategy to both statewide and legislative races" (Morgan CV, p. 2). His voting rights expertise is summarized as having occurred in the 1990-1991 redistricting cycle; when working on statewide and congressional redistricting plans in eight states he "[f]ocused primarily on Voting Rights Act issues with Black, Hispanic, and Asian communities" (Morgan CV, p. 2). What "focus" means is unknown; he has produced no scholarly work, never provided voting rights expert testimony, nor ever been invited to speak on voting rights issues. It is one thing to draw a map at the direction of political leaders; it is something much different to provide an expert opinion on whether a map adheres to Voting Rights Act and constitutional requirements.

in the Benchmark Third District - where McCain won 24.7% and Romney won 23.3%. If not evident from these presidential elections, the history of congressional elections in the Benchmark Third District, described above, clearly shows that he is not. Mr. Morgan makes the further leap that slightly increasing the Republican performance in a strongly Democratic district such that the district is still strongly Democratic somehow weakens Rep. Scott. Mr. Morgan provides no support for this assumption, and the district's electoral patterns directly refute it.

A Racial Bloc Voting Analysis

It is my opinion that Virginia bears the burden of providing a racial bloc voting analysis to substantiate its increase of the Black VAP in the Adopted Third District (let alone its apparent 55% Black VAP quota for the Adopted Third District). However, since neither of Defendants' experts has provided any analysis whatsoever to support the race-based redistricting of the Adopted Third District, I provide a racial bloc voting analyses of the 2008 presidential and 2009 governor elections here.

Racial bloc voting analyses estimate the vote shares that the minority candidate of choice may expect to receive from the minority community and the non-minority community. Courts have held that the most probative election contests are those in which a minority candidate competes against a White candidate. Therefore, I consider the 2008 presidential election more probative than the 2009 governor election. The unit of analysis is all VTDs within the localities that are part of the Adopted Third District. I define the minorities as Black, using the inclusive method, and non-minorities as non-Black.

I employ two commonly used methods, what are known as Goodman's Double Regression and Homogeneous Precinct Analysis. The statistics estimate racial groups' vote shares, which thereby reveal the candidate of choice for the minority community.

Goodman's Double Regression is a statistical procedure whereby the vote shares for the candidate of choice are essentially correlated with the racial composition of the VTDs. Goodman's Double Regression is a two-step statistical procedure that models (1) turnout of the minority community and (2) support for the major-party candidates, to arrive at an estimate that allows for dissimilar turnout.

Homogeneous Precinct Analysis examines the performance of the minority candidate of choice in the most heavily minority and most heavily non-minority VTDs. Here, I have chosen the ten most Black VTDs and ten most non-Black VTDs to be representative of homogeneous precincts. All are composed of 90%+ of their respective racial groups.

The estimates from the racial bloc voting analyses are presented in Table 2.

		Percent Voting for Black Candidate of Choice	
		Goodman's Double Regression	Homogeneous Precincts (average of top ten)
President 2008	<i>Black</i>	104.3%	96.1%
	<i>Non-Black</i>	38.6%	43.6%
	<i>Estimated Vote for Candidate of Choice in 51% BVAP District</i>	69.9%	70.3%
Governor 2009	<i>Black</i>	110.7%	94.2%
	<i>Non-Black</i>	28.8%	33.2%
	<i>Estimated Vote for Candidate of Choice in 51% BVAP District</i>	65.1%	64.4%

Table 2. Racial Bloc Voting Analysis

In the 2008 presidential election, according to the Goodman's Double Regression method, the Black candidate of choice received 104.3% support from Blacks and 38.8% from non-Blacks. According to the Homogeneous Precinct Analysis, the Black candidate of choice received 96.1% support from Blacks and 43.6% from non-Blacks.

In the 2009 governor election, according to the Goodman's Double Regression method, the Black candidate of choice received 110.7% support from Blacks and 28.8% from non-Blacks. According to the Homogeneous Precinct Analysis, the Black candidate of choice received 94.2% support from Blacks and 33.2% from non-Blacks.

Estimates over 100% support for a candidate are, of course, impossible.³ The standard practice in this situation is to interpret values over 100% as equal to 100%. I do so to simulate the expected vote in a district composed of 51% Black VAP, the Black VAP of the Alternative Third District, by multiplying the Black support estimate from both methods by 51% and the non-Black by 49% and then adding these two values together.

There are two important points to draw from this racial bloc voting analysis.

³ My examination of the raw data leads me to believe that they arise from uneven turnout across some VTDs, likely related to sizable military populations found in the Tidewater region that vote absentee in other locations. My examination of the raw data, and the confirming estimates from the Homogeneous Precinct Analysis, do not indicate the presence of statistical issues that would greatly affect Goodman's Double Regression estimates. Both methods estimate similar support among racial groups for the minority candidate of choice.

First, the racial bloc voting analyses corroborate the evidence that the minority candidate of choice would be elected from Alternative District Three. The Black candidates of choice receive nearly unanimous support from Black voters and in the mid to high 30% crossover vote from non-Black voters. The baseline support for the minority candidates of choice in a 51% Black VAP district is in the mid to upper 60% range.

Second, these statistics provide no basis for a “sensible” (Brunell p.3) increase in the Black VAP of District Three to a level above 51% Black VAP (and certainly not above the benchmark Black VAP of the district) to comply with Section 5 of the Voting Rights Act. To be sure, they provide no basis whatsoever for a 55% Black VAP quota.

Mr. Morgan Mischaracterizes Plaintiffs’ Alternative Plan

Mr. Morgan and I agree on a key point, that “Plaintiffs’ Alternative Districts are different from the Adopted Districts only in the shared boundary between the Adopted Second and Third Districts” (McDonald Analysis of Alternative p. 1), or as Mr. Morgan states, that “the only difference between the Enacted Plan and the Alternative Plan is the placement of the boundary between Districts 2 and 3” (Morgan p.3).

We also agree that, by my own analysis, Alternative District 3 retains many geographical features I previously opined indicated where race predominated in the creation of the Adopted Third District. As I state in my analysis of Plaintiffs’ Alternative Plan:

Alternative Third District does not cure all the problems identified in the Adopted Third District, but, in my opinion, the use of race is narrowly tailored to maintain a majority-minority district without unnecessarily compromising traditional redistricting criteria. Additionally, *Plaintiffs’ attempt to minimize the changes to the Adopted Map* contributes in large part to the fact that the Alternative Map does not cure all of the issues identified in my first report (McDonald Analysis of Alternative p. 9, emphasis added).

Where we disagree is in Mr. Morgan's opinion that the “the Alternative Plan is at least as race-conscious, and arguably even more race-conscious” than the Adopted Plan (Morgan p. 10). Mr. Morgan claims that “[n]one of the Alternative Plan’s trades between Districts 1, 2 and 3 are explained on non-racial grounds” (Morgan p. 10). Mr. Morgan only mentions two non-racial grounds of “politics and incumbency protection” (Morgan p. 10). To arrive at his opinion that no trade can be described on non-racial grounds, Mr. Morgan must discount entire sections of my analysis of Plaintiffs’ Alternative Plan which describe how (1) “the Alternative Districts more closely adhere to locality boundaries” (McDonald Analysis of Alternative p. 3), are (2) “more compact” (ibid p. 6), and (3) no longer use water contiguity with the effect of “bypassing White communities” (ibid p.7).

Since the substance of our disagreement begins with these three traditional redistricting principles described in my report, I respond to these in turn.

Locality and VTD Splits

In my analysis of Plaintiffs' Alternative Third District, I provide evidence that “[t]he Alternative Districts more closely adhere to locality boundaries than the Adopted Districts” (McDonald Analysis of Alternative, p.3). Mr. Morgan agrees that the Alternative Plan splits “*one fewer locality* than the Enacted Plan” (Morgan p. 19, original emphasis).⁴

To arrive at Mr. Morgan's assertion that “[t]here is no reason to conclude that this marginal difference in split localities is significant” (Morgan p.20), Mr. Morgan ignores, as reported in Table 3 of my analysis of Plaintiffs' Alternative Plan, that in the Adopted Plan “a total of 241,096 persons, or 33.1% of the total population, are affected by the splits [at issue] of these districts” (McDonald Analysis of Alternative, p.5). In contrast, in Plaintiffs' Alternative Plan, a small split of Portsmouth with the intent to balance districts' populations affects “1,016 total persons, or 0.14% of the total population of these districts” (ibid). The aligning of district boundaries in Plaintiffs' Alternative Plan is not “marginal” (Morgan p. 20) as it greatly reduces the affected populations of those whose localities are split by district lines, by hundreds of thousands of people.

Better aligning district boundaries with locality boundaries, and thereby respecting the expressed wishes of the citizens of these localities (ibid, see pp.5-6 for citizens' statements), is clearly a non-racial goal that is better satisfied by Plaintiffs' Alternative Plan.

On the issue of VTD splits, Mr. Morgan reopens an issue previously discussed by Dr. Brunell and myself: how to count splits where zero population is involved (what Virginia refers to as “technically split” in their Section 5 submission to the Department of Justice (Section 5 Statement of Change p. 11)). Mr. Morgan favors ignoring “technically split” VTDs, as he notes a “net of 6 such splits that Dr. McDonald identifies as different between the plans are in the ‘technically split’ precincts involving no population. Where population is concerned, the numbers of split VTDs and VTD splits in the Enacted Plan are the same as the numbers of split VTDs and VTD splits in the Alternative Plan” (Morgan pp.22-23).⁵ I agree with this characterization, but there is an important racial component to these “technically split” VTDs that is intertwined with contiguity.

⁴ Mr. Morgan quibbles with my counting of locality splits (Morgan p.19), intended to illustrate how the number of times districts splitting localities is further reduced, isolating only the changes from the Adopted Plan to the Alternative Plan. Since we agree that the number of locality splits is reduced, I will proceed with my analysis on this point of agreement.

⁵ Mr. Morgan again quibbles about my method of counting VTD splits (Morgan p.21), as though the counting method is somehow significant. It is not in this instance. No VTD is split by more than two districts. Counting the number of times VTDs split districts or the number of districts split VTDs *results in the same number*. Mr. Morgan disingenuously proceeds "using Dr. McDonald's preferred measure" (ibid p.22) as though his favored counting method for VTD splits would produce a different number, when it would not.

Contiguity

Mr. Morgan disregards an important characteristic of these “technically split” VTDs. They are VTDs that extend into the James River and are split with the express purpose of using the James River to bypass White communities. Mr. Morgan never acknowledges the fact that the “*Moon v. Meadows* court found water contiguity without a connecting bridge to be a factor weighed in its determination that race predominated in the creation of the Unconstitutional Third District” (McDonald Reply to Brunell p.10). The six fewer “technically split” VTDs in Plaintiffs' Alternative Plan directly rectify VTD splits in the Adopted Plan where water was used without a connection to bypass White communities.

Furthermore, as I noted in my initial report, the Adopted Plan similarly uses water contiguity in Norfolk, in this case to bypass Black communities so that White communities can be placed in the Second District (McDonald Report p.21). By assigning the entirety of Norfolk to the Second District, the Alternative Plan rectifies this use of water to bypass racial communities.

Mr. Morgan is therefore incorrect in stating that “[t]he Alternative Plan thus achieves contiguity in District 3 exactly the same way as the Enacted Plan” (Morgan p. 24). While the Adopted Plan uses water contiguity in order to bypass racial communities, the Alternative Plan uses it to connect adjacent localities separated by water. Thus, it is my opinion, and consistent with the reasoning of the *Moon v. Meadows* Court, that Plaintiffs' Alternative Plan rectifies a constitutionally improper use of race, thereby converting the goal of water contiguity that was used for a racial purpose into a non-racial goal.

Compactness

Mr. Morgan does not dispute the fact that, based on the three compactness Virginia relied upon in its Section 5 submission (Section 5 Statement of Change, pp. 10-11) and analyzed in my reports, Adopted District Three is the least compact district. Mr. Morgan agrees that Adopted District Three is less compact on these three measures (Morgan p.17). Mr. Morgan also agrees that Alternative District Three is no longer the least compact on these measure (ibid p.18).⁶

Mr. Morgan complains that I do not evaluate at least two additional compactness measures, the Ehrenburg test and the Population Polygon Test. Mr. Morgan fails to point out, however, that the three compactness measures I used were the same ones used by the General Assembly in determining how well districts met the Virginia constitutional requirement of compactness. Mr. Morgan’s cherry-picking of additional compactness measures adds little to the analysis. There

⁶ Mr. Morgan helpfully corrects a typo where the Schwartzberg measure for the Alternative District Three is reported as 2.04 when it is in fact 2.61 (McDonald Analysis of Alternative p. 7). This error does not affect my conclusion that Alternative District Three is more compact according to the Schwartzberg measure and is no longer the least compact district.

are over thirty different compactness measures discussed by scholars in the field.⁷ I do not evaluate all these compactness measures and, significantly, neither does Mr. Morgan.

Mr. Morgan notes that I do “not suggest that Alternative District 3 meets a professionally accepted standard for minimally acceptable compactness, which Enacted District 3 does not satisfy and Alternative District 3 does” (Morgan p.17). Mr. Morgan is “not aware of any such standard” (ibid), nor am I. The scholarly consensus is that there is no one-size-fits-all standard for compactness measures; they are interpreted in the context of the jurisdiction being redistricted and the characteristics of the compactness measure.⁸

I have viewed the district boundaries, considered the three compactness measures I have previously examined, and considered Mr. Morgan's additional two compactness measures. My opinion remains unchanged: (1) the non-compact character of the Third District is indicative that improper racial considerations were present in the formation of the Adopted Third District, particularly with respect to how the Adopted Third District segregates non-compact racial communities in the Hampton, Newport News and Norfolk localities; and (2) the Alternative Third District, by not dividing non-compact racial communities within these localities along racial lines, is more compact and reduces the racial character of the non-compactness of the Third District.

The 2011 Senate Criteria and Senate Congressional Plan

Mr. Morgan continues his analysis by examining additional factors to determine “whether the Alternative Plan achieves the political goals in the Enacted Plan” (Morgan p.14). The political goals Mr. Morgan repeatedly refers to are the criteria adopted by the Democratically-controlled Virginia Senate in 2011. A section of my reply report to Dr. Brunell entitled “The Criteria Used for the Congressional Redistricting” (McDonald Reply pp. 2-4) explains that the House of Delegates “never formally adopted any redistricting criteria” and that “the criteria adopted by the Democratic-controlled Senate in 2011 were not binding on the Republican-controlled Senate in 2012” (McDonald Reply p.3).

Although Mr. Morgan claims to have read my reply report to Dr. Brunell, he never refutes these facts about the circumstances revolving around the legislative process that produced the Adopted Plan. Mr. Morgan, like Dr. Brunell, must overlook the glaring *post-hoc* rationalization implied in Virginia's Section 5 submission that the 2011 Senate Criteria guided the Adopted Plan because

⁷ Richard G. Niemi, Bernard Grofman, Carl Carlucci and Thomas Hofeller. "Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering." *The Journal of Politics* Vol. 52, No. 4 (Nov., 1990), pp. 1155-1181.

⁸ For example, the Population Polygon Test, *ceteris paribus*, tends to score districts containing within their borders a uniform population density as more compact than those that do not. Thus, District Ten fares poorly on this measure since it combines densely populated urban areas of Northern Virginia with lightly populated rural areas stretching to the West Virginia border. District Three scores better than District Ten because District Three is comparably composed of more densely-populated urban areas.

there is only one plan adopted by a Virginia legislative body that was ostensibly drawn to adhere to those criteria. It is not the Adopted Plan. It is the congressional plan the Senate adopted in 2011.

The House of Delegates, where the Adopted congressional plan originated, *debated and then failed to adopt any criteria for congressional redistricting*. As a result, the House of Delegates had no formal goals or criteria other than the requirements of federal and state law: (1) equal population, (2) adherence to the Voting Rights Act, (3) contiguity, and (4) compactness (Virginia Constitution, Article II § 6).

All other criteria that Dr. Brunell and Mr. Morgan discuss as guiding the development of the Adopted congressional plan are distractions, since they were not formally operative. While I analyze the components of the 2011 Senate Criteria in my previous reports, it is for the purpose of following the methodology applied by the *Moon v Meadows* court to analyze the degree to which race predominated, not to assess how well the Adopted or Alternative Plans adhere to the non-operative 2011 Senate Criteria.

Race or Politics?

Mr. Morgan states that I do “not even mention the political considerations in the Enacted Plan, much less separate those considerations from race and show that race predominated in the Enacted Plan” (Morgan p.11). In so doing, Mr. Morgan has ignored the section in my reply report to Dr. Brunell entitled clearly “Race or Politics?” (McDonald Reply pp. 6-8). To summarize, I examined the racial and political character of the VTDs in the localities in or adjacent to the Third District and “conclude[d] from this analysis that race trumped politics” (McDonald Reply to Brunell p.8), in that among VTDs with similar political characteristics, predominantly greater Black VAP VTDs were assigned to the Adopted Third District. Mr. Morgan does not dispute this fact.

Mr. Morgan himself notes that, according to the non-operative 2011 Senate Criteria, compliance with the Voting Rights Act was “the highest priority for the Enacted Plan after compliance with the Constitutional equal-population requirement” (Morgan p.25). By his own analysis, then, all other criteria would be therefore subsumed to compliance with the Voting Rights Act.

Mr. Morgan asserts that protecting Rep. Rigell, the Republican incumbent of the Second District, was a goal of the Adopted Plan. This goal is not specifically noted in the non-operative 2011 Senate Criteria, and Mr. Morgan does not reveal his basis for knowing this purported goal. Nor does he analyze how this goal might conflict with the Senate Criteria's higher priority of compliance with the Voting Rights Act.⁹

⁹ While it may seem self-evident that protection of Rep. Rigell would be a goal of Virginia Republicans since he is a Republican incumbent member of Congress, there are numerous examples where a party did not protect their incumbents because other considerations intervened. For instance, in 2012, Louisiana Republicans paired

For the sake of argument, however, I will proceed by entertaining Mr. Morgan's assertion (Morgan pp. 11-16) that protecting Rep. Rigell was a legitimate political goal.

It is instructive, then, that the 2011 Senate's congressional plan also protects Rep. Rigell without increasing the Black VAP of the Third District. A map showing how the Senate approached protecting Rep. Rigell is displayed in Figure 1 of my reply report to Dr. Brunell (McDonald Reply p. 4). Instead of assigning portions of Hampton and Newport News to the Second District, the Second District is given the localities to the north of Hampton and Newport News: James City, Poquoson, Williamsburg, and York.

As reported by Mr. Morgan (Morgan p. 12), in the 2008 presidential election Obama received 49.3% and McCain received 49.7% of the vote within the Adopted Second District, a difference of 0.4 percentage points favoring McCain. The Virginia legislature provides reports of the 2008 presidential vote in the 2011 Senate Second District on the redistricting website.¹⁰ In the 2011 Senate's Second Congressional District, Obama received 44.6% of the vote while McCain received 54.6%, a 10.0 percentage point difference favoring McCain. Thus, the 2011 Senate plan demonstrates how the political goal of protecting Rep. Rigell can be achieved without unnecessarily increasing the Black VAP of the Third District.

Furthermore, the map-drawers of the 2011 Senate plan apparently believed the Black VAP of the Third District could be safely lowered to 42.2% (exclusive) or 43.0% (inclusive) and still obtain preclearance from the Department of Justice. It is noteworthy that the incumbent, Rep. Scott, publicly provided support for this configuration of the Third District.¹¹

District Cores

Like Dr. Brunell (Brunell p.6), Mr. Morgan opines that the preservation of district cores, found in the non-operative 2011 Senate Criteria, was a guiding redistricting principle (Morgan pp. 24-25). Neither expert has addressed my observation that "if preservation of district cores was a value the legislature held in high regard, the legislature would not have removed population from the under-populated Benchmark Third District, as that only made the redistricting task more complicated. Removal of population is only to *the detriment* of the preservation of cores" (McDonald Reply to Brunell p. 9, original emphasis).

Mr. Morgan instead provides statistics purporting to demonstrate that Alternative District Three, which preserves 69.2% of its predecessor district, is the "*worst performing* district in terms of

Republican incumbents Rep. Boustany, Jr. and Rep. Landry. Louisiana had lost a congressional seat to apportionment, and as prominent Republican consultant Jim Ellis noted "[s]ince the New Orleans-anchored 2nd CD is a Voting Rights Act protected district, the Republicans had no other choice but to forfeit a seat." See <http://jimellisinsights.wordpress.com/2012/12/10/boustany-wins-in-la-and-why/>, accessed March 21, 2014.

¹⁰http://redistricting.dls.virginia.gov/2010/Data/congressional%20plans/SB5004_Locke_substitute/SB5004_Locke_substitute.htm.

¹¹ See, e.g., http://www.washingtonpost.com/blogs/virginia-politics/post/scott-backs-senates-influence-district-proposal/2011/04/11/AFpNs1LD_blog.html.

preservation of cores” (Morgan p.24, original emphasis). Setting aside the issue that the Benchmark District is constitutionally suspect (McDonald Reply to Brunell p.6) and therefore the preservation of district cores would simply perpetuate any constitutional defect, the 2011 Senate’s congressional plan provides perspective on how the body that adopted the Senate Criteria interpreted and applied the preservation of district cores. While 386,968 residents of Benchmark District Three were assigned to the 2011 Senate's Third District, 503,129 residents of Benchmark District Three were assigned to Alternative District Three. Thus, the Alternative Third District performs substantially better than the 2011’s Senate's Third District, which was ostensibly drawn to achieve the goal of preservation of district cores.

The Senate, in practice, did not weigh preservation of district cores highly over other criteria. I am not the only expert who comes to this assessment, as Dr. Brunell provides a laundry list of trivial reasons why he believes district cores may be violated, including "want[ing] their grandbaby's preschool in their district" (Brunell p.7).

Conclusion

Upon reviewing Mr. Morgan's report, my conclusions not only remain the same but are bolstered. Race was the predominant consideration in the formation of the Adopted Third District. Virginia and Defendants' experts have not provided compelling evidence that the Black VAP of the Benchmark Third District should be increased to comply with the Voting Rights Act. Indeed, Mr. Morgan provides glaring evidence of an unconstitutional use of race when he asserts a racial quota of 55% Black VAP was adopted for the Third District by the General Assembly.

Furthermore, all evidence indicates that a district like Plaintiffs' Alternative Third District, designed to be narrowly tailored to elect a Black candidate of choice with a Black VAP of 51.0%, would indeed elect the minority candidate of choice and present no “obstacles to preclearance” (Morgan p.4).

I declare that under the penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on March 24, 2014 in Fairfax, Virginia.

A handwritten signature in cursive script that reads "Michael P. McDonald". The signature is written in black ink and is positioned above a horizontal line.

Michael P. McDonald

EXHIBIT Q

No. 3:13-cv-678-REP-LO-AKD

Dawn Curry Page, et al.

v.

Charlie Judd, in his capacity as

Chairman of the Virginia State Board of Elections, et al.,

**JONES
DAY**

2011 HB5004 Footage

04/12/11

EXHIBIT R

The Public Interest in Redistricting

**A Report of the
Independent Bipartisan Advisory Commission on Redistricting
Commonwealth of Virginia
April 1, 2011**

**Bob Holsworth
Chair**

Commission Members

Gary H. Baise
Viola O. Baskerville
Barry E. DuVal
James W. Dyke
Jean R. Jensen
J. Samuel Johnston
Walter D. Kelley, Jr.
Sean T. O'Brien
Cameron Quinn
Ashley Taylor

Commission Advisors

Dustin A. Cable
Charles W. Dunn
Ernest C. Gates
William H. Hurd
Quentin Kidd
Michael P. McDonald
Anthony T. Troy
Judy Ford Wason

Commission Staff

Steven M. Jones

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Section 1

The Public Interest and Guiding Principles

More than 300 citizens attended and more than 70 citizens testified during Public Forums conducted by the Independent Bipartisan Advisory Commission on Redistricting in Richmond, Roanoke, Northern Virginia, and Hampton Roads, and many other citizens submitted written testimony. These Virginians included private citizens, representatives of organizations, members of the General Assembly, mayors, and members of city councils and county boards. Besides the obvious conclusion that a large cross-section of citizens has a keen interest in redistricting, four other vital conclusions stand out from their testimony.

1. **Reform.** A common current in their testimony focused on changing the existing approach to redistricting, which on the whole leaves citizens out of the process. Many members of the public believe that elected representatives enjoy a reelection insurance policy, which enables them to choose their own constituencies in the drawing of district boundaries. Time and again citizens testified that voters should choose their elected representatives, rather than have elected representatives choose their voters. They frequently said that allowing elected representatives to draw district boundaries favorable to their own political interests undermines two vital ingredients of a democracy: vigorous competition and healthy debate.
2. **Transparency.** Many citizens testified that the current redistricting process lacks transparency, openness, and ease of understanding. They find themselves far removed from a process that they do not understand. But several other factors further complicate the basic process of drawing district boundaries, namely Virginia's economic, political and social diversity, its size, and its history that places the Commonwealth under Section 5 of the Voting Rights Act. Despite these complexities, however, a transparently open redistricting process would at a minimum enable citizens to understand available alternatives.
3. **Compact Size, Contiguous Boundaries, Communities of Interest.** Many witnesses before the Commission provided examples of gerrymandering that they felt egregiously violated one of three generally recognized tenets of appropriate district composition: compact size, contiguous boundaries, and communities of interest. Because so many districts throughout the Commonwealth violate these fundamentally and historically accepted tenets, citizens often do not know either who their representatives are or how they may contact them. Likewise, some elected representatives testified that they find it difficult to effectively represent far-flung districts which lack compact size, contiguous boundaries, and communities of interest.
4. **Fairness.** Witnesses before the Commission frequently invoked the word *fairness*. Now is the time, they contend, to apply fundamental standards of fairness to the redistricting process that (1) enable constituents and their elected representatives to have easier access to one another, and (2) cause individual

communities throughout the Commonwealth to have confidence that their interests receive proper representation.

Being fully cognizant of widespread citizen interest in redistricting and the preponderant views exhibited in their testimony, the Independent Bipartisan Advisory Commission on Redistricting chose to observe the following seven guidelines and principles in the conduct of its work and in the making of its recommendations.

First, the Commission's work should comply with the "one person, one vote requirements" of the U.S. Constitution as interpreted by the U.S. Supreme Court. Regarding the U.S. House of Representatives, the Court has ruled that states "must make a good faith effort to achieve precise mathematical equality" in population. However, at the state legislative level, the Court has allowed some deviations from the standard of "precise mathematical equality" if the rationale for those deviations are clearly stated in advance, conform to considerations of the Voting Rights Act and appropriately respect the stated rationale, which should involve the traditional criteria, such as political boundaries, communities of interest and other appropriate, articulated state interests.

Second, the Commission's work should comply with the Voting Rights Act. Of particular relevance are Sections 2 and 5, which contain significant requirements for the Commonwealth of Virginia. First, Section 2 prohibits diluting minority vote through "manipulation of district lines," though it does not require maximizing minority voting strength. Second, Section 5 requires that Virginia's redistricting plan not regress from the number of majority-minority districts found in "baseline" plan. In the redistricting done pursuant to the 2000 census, Virginia had 1 majority-minority district in the U.S. House of Representatives, 5 majority-minority districts in the State Senate, and 12 majority-minority districts in the State House of Delegates. At the time of the 2010 census, the number of majority-minority districts was still 1 for the House of Representatives and 5 for the State Senate; however, population changes had reduced the number of majority-minority districts in the House of Delegates to 11. Although there may be some ambiguity as to which year furnishes the appropriate baseline – 2000 or 2010 – the Commission elected to use 2000 to maintain 12 majority-minority districts in the House of Delegates.

Third, the Commission's work, while recognizing the fundamental requirements of the Voting Rights Act, should ensure compliance with Article Two, Section Six of the Virginia Constitution, which directs that each district consist of contiguous and compact territory.

Fourth, the Commission's work should, to the maximum extent possible, maintain municipal and county boundaries and respect communities of interest, including economic communities of interest.

Fifth, the Commission's work should, to the maximum extent possible, respect Virginia's increasingly apparent regional identities in the 21st Century, such as Northern Virginia, Hampton Roads, Central Virginia, and Southwestern Virginia.

Sixth, the Commission recognizes that any redistricting plan inevitably includes tradeoffs. Some of these, such as in Congressional redistricting, may require significant "stretching" of districts to meet population requirements. Others may require judgments that balance Voting Rights Act considerations with the maintenance of municipal and county boundary lines.

The Commission contends that appropriate trade-offs can be made without violence to the principles of equal population, Voting Rights Act requirements, compact size and contiguous boundaries, maintaining municipal and county boundaries, and respecting communities of interest.

Seventh, the Commission's work should comply with the expressed desires of citizens across the Commonwealth (1) that ordinary citizens have the opportunity to understand both the process and the results of redistricting, and (2) that the composition of districts facilitate rather than inhibit political interest and engagement in the democratic process.

Section 2

History of the Commission

The work of the Independent Bipartisan Advisory Commission on Redistricting stands out as a landmark in the movement toward an open, impartial redistricting process that actively engages the people in pursuit of the public interest. For the first time in Virginia's history, the Governor and the Virginia General Assembly have for their consideration alternative redistricting plans that meet constitutional and legal standards and were developed in a manner that puts the public interest above partisan, parochial interests. But how did it all begin?

First, a cross-section of business and civic leaders identified two related problems: the lack of competition in state legislative and Congressional elections and hyper-partisanship in the legislative process. These leaders saw that the combination of these problems (1) fostered partisan gridlock in the legislative process and inhibited the achievement of practical solutions to problems, (2) eroded the accountability of elected representatives' to their constituents, and (3) undermined citizens' interest in voting or otherwise participating in their government.

Second, in 2007 these concerned citizens formed the Virginia Redistricting Coalition to advocate redistricting reform, which soon expanded to include other like-minded business and civic leaders and organizations throughout the Commonwealth, including the Virginia Chamber of Commerce, the League of Women Voters of Virginia, the Virginia Interfaith Center for Public Policy, AARP Virginia, the Virginia Business Council, Virginia 21, the Future of Hampton Roads Inc., Richmond First Club, and others. Prominent elected officials, including Governors Mark Warner and George Allen, also supported this endeavor.

Third, the Coalition proposed a "Virginia Model for Redistricting Reform," which focused on eliminating incumbency protection, controlling gerrymandering, providing for ample public comment and review, and adhering to the legal requirements of compactness, contiguity, equal population, and protection of minority voter rights.

Fourth, for several years the Coalition supported in the General Assembly a bill that would create an official bipartisan commission with the authority to devise redistricting plans subject to an up-or-down vote by the General Assembly.

Fifth, during the 2009 gubernatorial election, both the Democratic candidate, Senator Creigh Deeds, and the Republican candidate, now Governor Bob McDonnell, endorsed the creation of a bipartisan redistricting commission.

Sixth, on January 10, 2011, by Executive Order No. 31, Governor McDonnell fulfilled this campaign promise and created the Independent Bipartisan Advisory Commission on Redistricting, with instructions that it:

- Solicit broad public input;
- Function openly and independently of the executive and legislative branches; and
- Present its report and recommendations directly to the President Pro Tem of the Senate, the Speaker of the House, the chairs of the Senate and House Privileges and Elections Committees, and the Governor for consideration in advance of the reconvened session of the General Assembly.

Further, the Governor's Executive Order began with this preamble: "Legislative districts must be drawn in a way that maximizes voter participation and awareness and lines should reflect commonsense geographic boundaries and strong communities of interests."

As expressed in the Executive Order, here are the five criteria established by the Governor for the Commission to follow:

1. Consistent with Article II, Section 6 of the Constitution of Virginia, all districts shall be composed of contiguous and compact territory and shall be as equal in population as is practicable and in compliance with federal law. No district shall be composed of territories contiguous only at a point.
2. All districts shall be drawn to comply with the Virginia and United States Constitutions, applicable state and federal law, the Voting Rights Act of 1965, as amended, and relevant case law.
3. The population of legislative districts shall be determined solely according to the enumeration established by the 2010 federal census. The population of each district shall be as nearly equal to the population of every other district as practicable.
4. All districts, to the extent practicable, shall respect the boundary lines of existing political subdivisions. The number of counties and cities divided among multiple districts shall be as few as practicable.
5. To the extent possible, districts shall preserve communities of interest.

The guidelines in the Executive Order excluded political criteria, such as partisan political advantage and electoral competition. When delivering his charge orally to the Commission at its first meeting, the Governor emphatically reinforced that exclusion.

To read the full text of the Governor's Executive Order, please see:

<http://www.governor.virginia.gov/issues/executiveorders/2011/EO-31.cfm> .

Section 3

Public Forums

To respect the Governor's charge that the Commission seek public input about the redistricting process, the Commission conducted Public Forums in four regions of Virginia:

- Richmond on March 11th at the Capitol;
- Roanoke on March 14th at Western Virginia Community College;
- Fairfax on March 15th at George Mason University; and
- Norfolk on March 21st at Norfolk State University.

Following a similar format at each venue,

1. The Commission Chair made opening remarks about the purpose and aims of the Commission;
2. The Commission's Legal Counsel presented the constitutional and legal principles undergirding redistricting in the United States and how these principles apply to Virginia;
3. The Commission then heard testimony from private citizens, elected officials, and representatives of organizations;
4. Students from local colleges and universities presented their redistricting maps and described how and why they had constructed them; and
5. Commission members offered concluding remarks that expressed appreciation for the input they had received.

Critics of bipartisan redistricting contended that citizens have little interest in redistricting, but the facts belie the charge.

- More than 300 citizens attended the four Forums;
- More than 70 citizens, including 15 legislators, testified;
- Besides legislators, those testifying included representatives of organized political parties, interest groups and non-partisan associations, and elected officials at the local level;
- Others submitted written testimony; and
- During approximately two hours at each forum/hearing, hardly anyone left.

As these citizens testified eloquently and from the heart about the state of democracy in Virginia, their testimony developed several common themes of compelling interest to the Commission. One overarching conclusion, however, tied each of these themes together.

- **The redistricting process urgently needs to be reformed.**

First, many ordinary citizens neither understand the redistricting process nor do they know who represents them in the General Assembly. While technological advancements continue to make so many activities easier to understand and undertake, politics for many remains inexcusably opaque. Indeed, several members of the General Assembly testified (1) that their far-flung

districts make it difficult for them to provide proper constituent service and representation, and (2) that constituents frequently do not know who represents them.¹

Second, Citizens feel that Congressional and state legislative districts separate communities of interest for inappropriate reasons. Time and again, citizens told the Commission that their districts divide rather than unite communities of interest. Bewildered by oddly drawn and befuddling district boundary lines, they could find no other reason for them than the advantage these bizarre districts give to incumbents running for office. That is, these districts are reelection insurance policies for incumbents. Many of these same citizens as well as others testified that emerging regional and economic similarities should find their expression in the drawing of district lines.

Third, the splitting of municipal and county jurisdictions drew the ire of citizens, who gave numerous examples of how several delegates and more than one senator represented one, sometimes small, locality. Understandably some might argue that localities may gain more effective representation by having more than one legislator look after their interests, but that was not the position of most, if not all, citizens who testified on this point. Instead, they pointed out the difficulties that citizens have in knowing who to contact, who to hold accountable, and who among several legislators should coordinate or lead the representation of local city and county interests in the General Assembly. Citizens who testified feel that cities and counties receive more effective representation from unity rather than diversity or multiplicity of representation.

Illustrative of the testimony received by the Commission:

Frank Jones, the Mayor of Manassas Park, sent the Commission a unanimous recommendation from the Town Council that the jurisdiction be represented by only one delegate district and one senatorial district.

Michael Amyx, Executive Director of the Virginia Municipal League, highlighted the importance of having local governments work easily with their state delegations, which current districts discourage. He stated that “Slicing up cities, counties and towns in order to protect political interests can leave communities disconnected.” As examples, he cited the following illustrations:

- Four state senators and seven delegates represent portions of the City of Chesapeake;
- Five state senators and seven delegates represent portions of the City of Virginia Beach, which has twice the population of Chesapeake; and

¹ For a decade voters in Virginia have had electronic access to this information through the Virginia State Board of Elections. Those interested may check their information at <http://www.sbe.virginia.gov/>. In addition, the General Assembly website provides such information at http://legis.state.va.us/1_cit_guide/contacting_my.html.

- Two senators and two delegates represent portions of the 8,000 residents of the small City of Franklin.

Amyx then asked: “What are we trying to accomplish here? How are the communities of interest for Franklin and Chesapeake maintained by diluting that representation to such an extent that the community is either overwhelmed by its neighbors or too chopped-up to voice a coherent message? Common sense would seem to dictate that legislative district lines should help foster a closer relationship between local governments and state legislators. Ensuring that state elected officials and local governments share common communities of interest will better enable us to address our most pressing problems. A more effective working relationship would benefit all citizens in the Commonwealth.”

Paul Fraim, the Mayor of Norfolk, reinforced this perspective, noting that three of Norfolk’s six House districts have only a small minority of Norfolk residents in them, thus “severely reducing the ability of their voices to be heard in Richmond on issues of concern to them as Norfolk residents.” He pointed out that in at least one instance a small number of Norfolk residents find themselves in a rural district with no recognizable interests.

In addition, Fraim mentioned that the present legislative redistricting in the City of Norfolk splits precincts so that in some instances people voting at the same polling place find themselves standing next to other people voting for different candidates in a different election. To illustrate, Mayor Fraim testified that:

When Norfolk residents in precinct 106 (Zion Grace) go to the polls to vote for a member of the House of Delegates, one person in line may be handed a ballot for District 100 while the person behind may be given one for District 79. So part of the residents of that Norfolk precinct vote for someone who primarily represents Accomack and the rest get to vote for someone who primarily represents Portsmouth, even though all live in the same precinct in Norfolk. Living in the same neighborhood and even going to the same polling booth, they don’t even get to vote for the same slate much less for someone who clearly represents Norfolk’s interests.

Besides the common themes expressed at the Commission’s Forums, other matters received heightened attention at particular venues.

- In the Norfolk Forum, private citizens and members of the Legislative Black Caucus urged the creation of a second majority-minority Congressional district, and the exploration of options that would create more majority-minority state legislative districts.
- In the Northern Virginia Forum, various witnesses advocated consideration of common transportation lines, dense housing patterns, experience of immigration and/or economic disadvantage in determining communities of interest.
- In Roanoke, all but one person who testified stated that Roanoke properly belongs in a Congressional district that includes the Shenandoah Valley, not far southwest Virginia.

The Forums not only provided helpful guidance to the Commission in learning about matters of general concern regarding redistricting, but also helpful guidance regarding matters of unique concern to individual regions.

And occasionally citizens focused on matters important to redistricting, but outside the Governor's charge to the Commission.

- Perhaps the most prominent issue arose when the League of Women Voters, the Future of Hampton Roads and several private citizens advocated that the Commission propose competitive districts. To implement competitiveness as a criterion might involve trade-offs between competitiveness on one hand and the maintenance of municipal and county boundaries and/or communities of interest on the other.
- In some instances citizens addressed issues of local interest, such as how redistricting might affect the location of a jail or a local magisterial district.

These two points, though worthy, fall outside the Commission's jurisdiction. But they did not detract from the indispensable benefit of the Forums in helping the Commission develop its guiding principles and specific recommendations.

Section 4

The Virginia College and University Redistricting Competition

The Virginia College and University Redistricting Competition, organized by Professors Michael McDonald (George Mason University) and Quentin Kidd (Christopher Newport University), had two goals: (1) to teach students how to participate in redistricting; and (2) to demonstrate that interested citizens can also participate.

Moreover, the Commission believes that the winning maps in the division of the competition that utilized the criteria that the Governor provided to the Commission should be granted serious consideration during the redistricting process. We commend these maps, which can be found at the following website: <http://www.varedistrictingcompetition.org/results/>

The competition included two divisions.

- Division 1 maps addressed the criteria of contiguity, equipopulation, the federal Voting Rights Act, communities of interest that respect existing political subdivisions, and compactness, but, in keeping with the Governor's Executive Order, they could not address electoral competition and representational fairness.
- Division 2 maps addressed the criteria of contiguity, equipopulation, the federal Voting Rights Act, and communities of interest that respect existing political subdivisions, compactness, electoral competition, and representational fairness.

Some 150 students on 16 teams from 13 colleges and universities submitted 55 plans for the U.S. House of Representatives, State Senate, and House of Delegates. Two judges, Thomas Mann

(Brookings Institution) and Norman Ornstein (American Enterprise Institute), chose the winning maps.

All 55 maps appear on the following website, <http://www.varedistrictingcompetition.org/>.

The student competition provided invaluable assistance to the Commission in dealing with three important challenges:

1. How to address communities of interest;
2. How to adhere to the Voting Rights Act; and
3. How to implement the equal population requirement.

The 55 maps demonstrated the importance of (1) keeping communities of interest together, including ethnic and racial communities, (2) respecting traditional political boundaries, such as cities and counties, (3) considering significant changes in Virginia's population, and (4) being cognizant of Virginia's existing and emerging regions. And in doing so to comply with the Voting Rights Act and the equal population requirement.

Communities of Interest. Teams viewed communities of interest on several levels. First, they saw Virginia as a grouping of regions and organized their redistricting plans around these identities. Second, they saw within those regions more specific communities of interest, normally centered on an urban area or large community, and some looked for communities of interest within larger urban areas.

1. One approach considered the socio-economic landscape, such as in "the western half of Richmond, half of Henrico, and other counties that are closely tied with the economic and social landscape of the Richmond metro area. Many of these areas have significant portions of their populations who either live in or commute to Richmond often and have relatively similar socio-economic statuses."
2. Another approach, as in the case of Hampton Roads, sought to maintain the regional identity of its military, shipbuilding, and tourism interests.
3. Then in western Virginia the student maps respected its historic rural and agricultural interests.
4. Finally, while all teams attempted to minimize the divisions of cities and counties, they recognized the impossibility of uniformly accomplishing this objective, because it constrained efforts to achieve other objectives, such as the equal population criterion. Often, of course, they found that communities of interest overlapped these traditional political boundaries.

Voting Rights Act Requirements. Drawing compact majority-minority districts while maintaining communities of interest became the greatest challenge facing the student teams. So, given the requirements of the Voting Rights Act, student teams sometimes sacrificed compactness in order to achieve the appropriate number of majority-minority districts.

Equal Population Requirements. Believing that a compact district and an intact community of interest provide for better representation, the student maps placed a premium on district compactness and community of interest over the achievement of equal population. Despite this bias, however, in almost all instances their maps stayed within the plus-minus range of 5 percent

for state legislative districts and adhered to the exact population equality required for Congressional districts.

Commission members were extremely impressed by the student efforts throughout the competition. The dedication of the student groups was exemplary. The thoughtfulness and creativity of the teams helped to inform the dialogue and decisions that the Commission itself reached. And one of the teams, the students from the Law School at the College of William and Mary, actually assisted the Commission in its final weeks. The competition was ultimately a testimony to the extraordinary potential that is being developed at Virginia's colleges and universities.

Section 5

Constitutional and Legal Issues

In considering the legal principles applicable to redistricting, recognition must be given first and foremost to the constitutional provisions in the Virginia Constitution and the Constitution of the United States. Second, adherence must be given to the provisions of the Voting Rights Act, both Section 2 and Section 5 (the latter being applicable to Virginia as a "covered" state). Lastly consideration must also be given to additional redistricting principles not contained in the constitutions or statutes but allowed and approved by case law.

Constitutional Principles

1. Virginia Constitution

"Every electoral district shall be composed of *contiguous and compact* territory and shall be so constituted as to give, as nearly as is *practicable*, representation in proportion to the population of the district."

Article II, § 6 (emphasis added).

2. Contiguity

"[A] district that contained two sections completely severed by *another land mass* would not meet this constitutional requirement [for contiguity].... [L]and masses separated by *water* may nevertheless satisfy the contiguity requirement in *certain circumstances*."

Wilkins v. West, 264 Va. 447, 463-64 (2002) (emphasis added)

Wilkins rejected a trial court's requirement that there must be a bridge, road or ferry allowing full internal access to all parts of the district. As requested by the Governor, however, if districts have land masses separated by water, then to the extent feasible such land masses should be connected by bridges.

3. Compactness

In the *Wilkins* case, experts on both sides used two objective measures of compactness:

- Reoch/Geographic Dispersion Method: “measures the level of compactness by determining the ratio of the area of the district to the smallest circle that can be superimposed over the district.” *Id.* at 464, n.6.
- Polsby/Popper/Perimeter Compactness Method: “computes a ratio based on the area of the district compared to a circle that equals the length of the perimeter of the district.” *Id.*

Other quantifiable measures of compactness may also exist; however, no rules have been adopted favoring one method over another or adopting any bright lines for when a district is not sufficiently compact to pass constitutional muster.

4. U.S. Constitution

“One man, one vote” is required

Article I, § 2

(pertains to Congressional Districts)

There is “no excuse for the failure to meet the objective of equal representation for equal numbers of people in congressional districting other than the practical impossibility of drawing equal districts with mathematical precision.”

Mahan v. Howell, 410 U.S. 315, 322 (1973).

14th Amendment – Equal Protection Clause

(pertains to House of Delegates and State Senate Districts)

“[B]roader latitude has been afforded the States under the Equal Protection Clause in state legislative redistricting....”

Mahan, 410 U.S. at 322.

Complete numerical equality of districts is not required for House of Delegates and State Senate Districts. *See Daly v. Hunt*, 93 F.3d 1212, 1218 (4th Cir. 1996) (“If the maximum deviation is less than 10%, the population differential will be considered *de minimis* and will not, by itself, support a claim of vote dilution.”).

In 2001, General Assembly used plus or minus 2% (a total deviation of 4%) for House of Delegates and State Senate Districts. *See Wilkins*, 264 Va. at 468, n.7.

5. Racial gerrymandering is prohibited.

“A party asserting that a legislative redistricting plan has improperly used race as a criterion must show that the legislature subordinated traditional redistricting principles to racial considerations and that race was not merely a factor in the design of the district,

but was *the* predominant factor. The challenger must show that a facially neutral law is explainable on no other grounds but race.”

Wilkins, 264 Va. at 467 (emphasis in original) (citing *Hunt v. Cromartie*, 532 U.S. 234, 241-42 (2001)).

Voting Rights Act, 41 U.S.C. § 1983(c)

The application of the Voting Rights Act (“the Act”) to redistricting contains two major provisions – Section 2 and Section 5 – these provisions work independently of each other.

1. Section 2 of the Voting Rights Act

Section 2 is applicable nationwide and prohibits any State from imposing a “voting ... standard, practice or procedure ... in a manner which results in the denial or abridgment of the right to vote on account of race or color.” 42 U.S.C. § 1973(a). There is a violation of Section 2 if, given the “totality of circumstances,” members of a minority group “have less opportunity than other members of the electorate to elect representatives of their choice.” 42 U.S.C. § 1973(b). **This is the source of the “no dilution” principle. “Dilution” of minority vote is prohibited.**

“When the voting potential of a minority group that is large enough to form a majority in a district has been thwarted by the manipulation of district lines, minorities may justly claim that their “ability to elect” candidates has been diluted in violation of Section 2 [of the Voting Rights Act.]”

Hall v. Virginia, 385 F.3d 421, 429 (4th Cir. 2004)

The U.S. Supreme Court however, has ruled that “[f]ailure to maximize cannot be the measure of Section 2 [of the Voting Rights Act].” *Johnson v. DeGrandy*, 512 U.S. 997, 1017 (1994). In other words, failure to maximize does not constitute dilution of minority voting.

The Supreme Court has also discussed two types of districts that seem pertinent here. First, there are “minority influence” districts in which the minority can influence the outcome of an election even if its preferred candidate cannot be elected. Second, there are “crossover” or “consolidated” districts, where a large bloc of minority voters aided by sympathetic majority voters “crossing” over in sufficiently large numbers will elect the minorities’ preferred candidate.

Neither “minority influence” nor “crossover” districts are required by Section 2 of the Voting Rights Act. See *Bartlett v. Strickland*, 129 S. Ct. 1231 (2009); *LULAC v. Perry*, 548 U.S. 399 (2006). In other words, failure to create such a district does not constitute dilution of minority voting in violation of Section 2.

2. Illegal vote dilution based on race can occur through “cracking” or “packing.”

Cracking: “the splitting of a group or party among several districts to deny that group or party a majority in any of those districts.” *Id.* at n. 12 (*Thornburg v. Gingles* 478 U.S. 30, 50, n. 17).

Packing: “concentration of blacks into districts where they constitute an excessive majority.” *Id.*

“On the other hand, when minority voters, as a group, are too small or loosely distributed to form a majority in a single-member district, they... cannot claim that their voting strength... has been diluted in violation of Section 2.”

Hall, 385 F.3d at 429.

3. Section 5 of the Voting Rights Act

Section 5 is the preclearance provision and is applicable only to certain States and jurisdictions, including Virginia. Changes in voting law and procedures – including redistricting – cannot go into effect until they are cleared by the Department of Justice (“DOJ”) or by the federal district court in the District of Columbia.²

Regardless of where preclearance is sought, the Commonwealth must show that the change in the law “neither has the purpose or effect of denying or abridging the right to vote on account of race...” 42 U.S.C. § 1973(c). This standard is met if there is **no retrogression** when comparing minority voting strength under the new plan with minority voting strength under the old plan.

“Retrogression” is prohibited.

“The plan must contain no fewer majority-minority districts than the prior plan.”

Wilkins, 264 Va. at 468.

For purposes of applying the non-retrogression principle, the baseline could be determined, hypothetically, either by (a) the number of majority-minority districts existing when the last redistricting occurred in 2001 and/or (b) the number of majority-minority districts existing at the time of the 2011 census (thus, reducing or increasing the original number based on population changes). The U.S. Supreme Court has suggested that both the current and prior census should be reviewed in determining a “baseline” for measuring retrogression, *Georgia v. Ashcroft*, 539, U.S. 461 (2003), at least when the population changes lead to an increase in the number of majority-minority districts. However, the Department of Justice, under its current guidelines, seems to suggest that it will use only the most current population data to measure both the benchmark plan and the proposed redistricting plan in determining issues of retrogression of minority-majority districts. See Federal Register, Vol. 76, No.27, at 7472, Feb. 9, 2011

Traditional Redistricting Principles

Traditional redistricting principles are basically outlined by case law. These basic principles are fully acceptable for implementation by a legislative body so long as constitutional principles – one man-one vote, compactness and contiguity are met. Recognizing and applying these

² Although Virginia has typically sought pre-clearance from the Department of Justice, it should be noted that another available option is to apply to the federal district court and seek expedited review. In general, Commission members support transparency in the redistricting process, including the review procedures. The Commission recognizes that Virginia's decision about which review route to pursue necessarily requires judgments about the overall best interest of the Commonwealth.

principles – and declaring them to be important state interests – allows leeway from mathematical exactness in House of Delegate and State Senate redistricting plans (but not Congressional redistricting plans). However, if the legislature does not declare certain principles to be of importance – especially the recognition and preservation of political subdivision boundaries³ – then less leeway is allowed and more exactness regarding allowed percentage deviations becomes required.

The main criteria allowed by the courts are set out by the *Wilkins* and *Mahan* cases, excerpts of which are as follows:

“[T]he General Assembly must balance a number of competing constitutional and statutory factors when designing electoral districts. In addition, traditional redistricting elements not contained in the statute, such as **preservation of existing districts, incumbency, voting behavior, and communities of interest**, are also legitimate legislative considerations.”

Wilkins v. West, 264 Va. 447, 463-64 (2002) (emphasis added).

Population deviations may also be justified by adherence to “...advance the rational state policy of respecting the boundaries of political subdivisions” provided that disparities of the plan do not “...exceed constitutional limits.”

Mahan v. Howell, 410 U.S. 315, 328 (1973).

“[W]here majority-minority districts are at issue and where racial identification correlates highly with political affiliation, the party attacking the legislatively drawn boundaries must show at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles. That party must also show that those districting alternatives would have brought about significantly greater racial balance.”

Wilkins, 264 Va. at 467 (quoting *Cromartie*, 532 U.S. at 258).

Conclusion

Although some clear constitutional and statutory rules apply to redistricting, there are a number of factors that a legislature – or a commission – may lawfully apply in its discretion, based on its own policy choices. Moreover, even where there is agreement about which factors should be considered, placing more emphasis on one factor may inevitably require less emphasis on another. In short, while some plans may deviate so far from accepted principles as to be readily subject to legal attack, there is no single legally correct answer to how redistricting lines should be drawn.

³ In Virginia’s redistricting following the 1970 census, the General Assembly articulated that respect for political subdivision boundaries – at least for the House of Delegates – was an important and traditional state policy. In redistricting following the 2000 census, the General Assembly declared, by statute, certain criteria to be of importance; however, respect for political subdivision boundaries was not set out as an important criterion. *See* Va. Code § 24.2-305.

Section 6

The 2010 Census: Demographic Shifts

Virginia's population has grown steadily over the past 60 years. An increase of more than 900,000 between 2000 and 2010 continues a growth-rate trend of approximately 1 million per decade. Today's population, approximately 8 million, entitles Virginia to retain 11 seats in the U.S. House of Representatives.

This growth translates into increasing the populations of Congressional and state legislative districts. By dividing Virginia's total population by the number of districts, members of Virginia's Congressional delegation must now represent 727,366 people, an increase of nearly 100,000 from one decade ago. Each House of Delegates district must now contain about 80,000 people, and each Senate district, about 200,000.

But geographic unevenness marks Virginia's growth rate. Three major metropolitan areas account for 82 percent of the growth: Northern Virginia, 55 percent; Metropolitan Richmond, 17 percent; and Hampton Roads, 10 percent. While most parts of the state experienced population gains, some lost population, including Southside, Southwest, the Shenandoah Valley, the Northern Neck, and the Eastern Shore. Accomack and Buchanan counties and the cities of Danville and Martinsville lost more than 10 percent each. In Hampton Roads, both Portsmouth and Hampton lost population.

Ethnically, Virginia's Hispanic population, now at 8 percent, nearly doubled from 2000 to 2010. By location, 62 percent of Hispanics live in Northern Virginia, with Manassas Park having the highest percentage (33 percent), followed by Manassas and Prince William County. Outside of Northern Virginia, only Harrisonburg and Galax make the "Top Ten" list of Virginia localities having the largest percentages of Hispanics.

Racially, the Asian population continued to grow, from 4 percent of the state total in 2000 to 6 percent in 2010. At 19 percent, the proportion of African Americans in Virginia remains much the same as 10 years ago, both in percentage and in geographic location. People who classify themselves as of mixed racial background demonstrate some population growth.

Section 7

Metrics, Choices, and Maps

The Commission identified two fundamental problems in map making: a lack of transparency and understandable standards for determining the impact of alternative redistricting plans. Clarity generally exists with regard to equal population standards and the number of majority-minority voting districts, but not with regard to compactness and the splitting of municipal and county boundaries. To overcome this problem the Commission utilized four measures that helped to frame its choices and guide its recommendations.

Metrics

1. Voting Rights Act Considerations. Voting rights experts typically use two standard metrics for analyzing a redistricting plan's consistency with voting rights considerations: the number of minority opportunity districts and the level of minority voting-age population within them to provide a minority community the opportunity to elect a candidate of their choice.

The first metric focuses on the number of proposed majority-minority districts. In evaluating this metric, the Commission determined whether proposed plans established majority-minority voting districts in all places where required to do so in a manner that is consistent with the other essential redistricting criteria.

Section 5 of the Voting Rights Act requires that Virginia statewide redistricting plans must not reduce, or retrogress, the overall number of effective majority-minority districts. Redistricting plans are submitted to the U.S. Department of Justice or U.S. District Court for the District of Columbia for evaluation and can be rejected if they are found to be retrogressive. The baseline Section 5 requirement is the number of districts with a majority of a minority voting-age population; however, there may be some ambiguity as to which year furnishes the appropriate baseline – 2000 or 2010.

The second metric focuses on the percentage of minority population of voting age within a district. Typically, voting rights experts through careful analyses of racial voting patterns within a community determine these percentages. This percentage cannot be too low, so as to not provide a community with a chance to elect a candidate of their choice, but it cannot be too large, as to inefficiently waste minority votes in an overwhelming minority district. Without the resources to conduct such racial voting analyses, the Commission sought to include in its majority-minority districts a percentage of minority voting-age population within the range accepted by the Department of Justice in 2001.

2. Equal Population. The Commission recognized that equal population standards can be different for Congressional and state-level redistricting. The Commission adopted an equal population standard for Congressional redistricting consistent with recent federal court decisions that favor absolute population equality. That is, if it is possible to divide the Commonwealth's population evenly by the number of Congressional districts, all districts must have exactly the same population, absent the practical impossibility of drawing equal districts with mathematical precision.

The Commission recognized that the federal standard for state-level redistricting has generally been more flexible, allowing variations of as great as 10% to meet other essential redistricting goals. However, tradition in the Commonwealth has been to require a stricter population standard than allowed by the federal courts. The Commission initially used a plus or minus 2% permissible variation in population for the Senate and House plans, and then explored how relaxing this requirement further intersected with respecting county and city boundaries.

3. Compactness. Redistricting scholars have developed metrics that enable comparisons between different plans regarding the level of compactness of their districts. The Commission

used one such metric, known as the Schwartzberg measure, to assess how the plans it developed compared to the plans that were adopted in 2001.⁴

4. Splitting of Counties and Independent Cities. The Commission was consistently asked by members of the public to recommend plans that kept municipal and county boundaries intact as much as possible. The Commission developed a simple metric that counted the number of times one or more districts split a county or independent city in the plans it produced⁵ and compared this to the number of such splits in the plans adopted in 2001.

Choices

Redistricting is a balancing act. Each criterion that the Commission was directed to employ is, by itself, an expression of a value that is widely supported in the Commonwealth. Most citizens surely care about equal representation, complying with the Voting Rights Act, maintaining district lines that respect communities of interest and municipal and county boundaries, and having political districts that are compact and contiguous.

Yet striving to implement each of these criteria inevitably involves balancing a set of choices and tradeoffs. When a Congressional district requires 727,366 Virginians to be included in a single district, small rural jurisdictions may be put together with geographically distant areas where a community of interest may not have previously been perceived. As districts for the House and the Senate are drawn to approach mathematically equal populations, it becomes increasingly difficult not to split municipal and county lines in the composition of the districts. It is possible that creating majority-minority districts to give historically underrepresented populations the capacity to elect a candidate of their choice can result in a tradeoff regarding compactness and keeping municipal and county boundaries together.

Redistricting is also an evolving process. Legislatures may modify the criteria that they employ on a decennial basis, instituting small tweaks that have major effects. Definition of a community of interest may change over time and different regions of the Commonwealth may define this notion in varying ways. Voting rights considerations evolve over every redistricting cycle and new policy views are advanced once there is time to reflect upon and assess the results of litigation brought, and the prior redistricting plans. For example, the Commission heard from African-American elected officials at both the state and local levels who observed that they felt it was possible to reduce the majority percentage in existing majority-minority districts and still retain full compliance with the Voting Rights Act.

The Commission continuously grappled with the choices and tradeoffs that are inevitably present in striving to apply the criteria under which it operated. These tradeoffs were especially apparent in the Commission's discussion of reducing city and county splits and possibly creating an additional majority-minority district in the Senate.

⁴ The Schwartzberg measure is the ratio of the perimeter of a circle with the same area as a district to the perimeter of the district. The best scoring district would have a Schwartzberg measure equal to 100% and the least would have a measure equal to 0%. This measure gives a higher score to districts that have shorter perimeters, or in other words, have fewer oddly shaped extensions from the district.

⁵ For example, if a county has only one district, the number of splits is zero. If a county has two districts, it is split twice; if it has three districts, it is split three times; and so on. Some larger counties and independent cities must be split because they cannot support a single district with the ideal population within their boundaries.

While the Commission identified these tradeoffs, the Commission recognized that redistricting is an extremely complicated process and that other plans may exist that improve upon one or all of the criteria the Commission used to guide its drawing of districts.

Voting Rights Act Considerations. The principal Section 5 requirement is the number of districts with a majority of a minority voting-age population using the most recent census. Using this metric, then Section 5 of the Voting Rights Act requires the following number of majority-minority districts in Virginia: 1 Congressional district, 5 Senate districts, and 11 House of Delegates districts. However, the Commission noted that the Department of Justice approved a House of Delegates plan in 2001 that had 12 majority-minority districts using the 2000 census. In the decade between 2000 and 2010, the minority voting-age population of one district had dipped below 50 percent, and the Commission elected to restore that district to majority-minority status, thereby avoiding any dispute as to which decennial census provides the appropriate baseline.

The Commission discovered in the course of its deliberations that it is possible to draw only one majority-minority Congressional district. However, the Commission discovered there is more than one way to draw this district. The Commission decided to propose three configurations, as they represent different approaches to tying together minority communities and alter the way by which adjoining districts may be drawn.

The Commission also discovered that it is possible to draw as many as 6 Senate and 13 House of Delegates majority-minority districts. The effectiveness of these districts to elect a candidate of choice is dependent on a second Voting Rights metric employed by the Commission.

The Commission believes that the minority voting-age population within the 6th majority-minority Senate district *would not* be effective at electing a candidate of their choice using the 2001 baseline approved by the Department of Justice. The Commission decided to note this option, in case further exploratory mapping by others reveals a way to draw 6 effective majority-minority Senate districts.⁶

The Commission found that the minority voting-age population within the 12 and 13 majority-minority House districts alternatives *would* be effective at electing a candidate of choice using the minimum minority percentage approved by the Department of Justice in 2001. The Commission decided to include both options in this report, recognizing that 12 majority-minority districts would be consistent with the legal requirements in place in 2001.

The 13 majority-minority district plan was the source of a substantive disagreement among the Commission members. A number of Commission members strongly believe that the creation of

⁶ The Commission discussed a map proposal that presented a sixth majority-minority Senate District, which involved three specific tradeoffs. First, it reduced the overall compactness of the map and required splitting additional counties and independent cities. Second, it required reducing the overall minority populations in most of the other existing majority-minority districts from 55% to 52%. Third, the introduction of a sixth majority-minority Senate District necessitated districts that jumped predominant water boundaries in the Norfolk and Hampton area. In sum, it may be possible to create a sixth majority-minority district. But the tradeoff entails reducing compactness, increasing district splits, jumping water boundaries and lowering the level of minority population to slightly above 52% in many of the existing majority-minority districts.

the 13th majority-minority district is consistent with the principle of enabling African-Americans to have a candidate of their choosing, that the proposed district is more compact than the ones in the map approved by the Assembly in 2001, and that the tradeoffs with other criteria such as compactness and keeping city and county lines intact is permissible. At the same time, a number of Commission members believe equally strongly that the impact of creating a 13th majority-minority district is not consistent with the outlook on compactness and keeping city and county lines intact that has guided the Commission's work. In addition, they believe that legal counsel's caution about the viability of a potential challenge to the creation of districts where race is utilized as the predominant factor without a compelling defense is relevant here.

Population Equality. The Commonwealth's population growth over the last decade has primarily been located in the exurban areas of Northern Virginia, particularly in Loudoun and Prince William counties. Districts must have equal population to ensure equal representation for all Virginia residents across the state. As a consequence, district boundaries must follow this population growth.

Virginia did not gain or lose a Congressional seat to apportionment. Congressional district boundaries must thus shift northward to equalize district populations. The state legislature also continues to have the same number of districts, but because the 40 Senate and 100 House of Delegates districts are significantly smaller in size than the 11 Congressional districts, whole districts must be collapsed within the slower-growing areas found in the southeast and southwest corners of the Commonwealth and new districts – essentially one Senate and three House of Delegates districts – must be created in the Northern Virginia exurban areas.

Reducing the Number of Districts Where County and Independent City Boundaries Are Split. The Commission recognized in the course of its deliberations that there is a trade-off between balancing districts' populations and respecting county and independent city boundaries within the state legislative districts. At the Congressional level, there is no tradeoff between equal representation and maintaining municipal and county lines because Congressional lines must be drawn with absolute population equality, absent the practical impossibility of drawing equal districts with mathematical precision.

Little public attention has been paid to this possible tradeoff in previous redistricting processes in the Commonwealth, but it became apparent during the Public Forums held by the Commission and in the Commission's review of maps in the Virginia College and University Redistricting Competition, that the choice of what population variation to permit is an important decision point.

The Commission is providing one set of maps for the House and Senate that essentially uses the plus or minus 2% population variance that was employed by the General Assembly during the 2001 redistricting process. At this level, the Commission maps are able to make considerable improvement on the existing district lines in terms of the number of county and independent city splits in both the House and the Senate. In the House, city and county splits are reduced from the existing number of 194 to 153. In the Senate, the number of splits is reduced from 110 to 72.

The Commission further explored a plan with a plus or minus 3% or greater variation for the Senate (including two districts more than 3% but less than 5%) that is able to reduce the number of city and county splits even more dramatically. The existing Senate map has 110 splits. The 2% map" in this report has 72 splits. The "3% map" in this report reduces the number of city and

county splits to 40. In the House, such trade-offs are less severe, as the Commission identified only a single district that split a county boundary in order to stay within a 2% population variance.

In summary, it is certainly possible to make a substantial reduction in the number of city and county splits using the plus or minus 2% deviation criterion applied in 2001. This can be accomplished without any tradeoff with Voting Rights Act criteria. But it is likely that achieving even more dramatic reductions in the number of municipal and county lines that are crossed by districts would require movement toward a plus or minus 3% variation or more from the equal population standard, which deviation would be permissible.

Maps

After consideration, the Commission decided to propose a set of its own “model maps” that would represent its thinking about how the criteria under which it operated could be applied. The Commission members certainly do not believe that these are the only possible maps that could be drawn in a manner consistent with these criteria.

The Commission has recommended earlier in the report that the winning maps in the student competition that used the Governor’s criteria be considered by the Governor and the General Assembly during the redistricting process. And we believe that others could certainly use the available software to produce different yet entirely credible ways of accomplishing the tasks with which the Commission was charged.

In addition, Commission members fully recognized that they serve in an advisory capacity during the 2011 redistricting process. Political considerations such as electoral competitiveness, and the promotion of partisan advantage were not part of the charge presented to the Commission. As the Governor noted in his remarks, these are matters that are the purview of the General Assembly during the 2011 process. The Commission recognizes that the Assembly would adjust any maps that it might examine to reflect these considerations in its obligation to protect the interests of Virginia in the redistricting process.

The Congress

The Commission grappled with the “stretching” of rural districts and other areas where population growth was either negative or not at the same level as in the fast-growing regions of the Commonwealth. Ultimately, the Commission concluded that there is no “perfect choice” or sometimes even a “desirable choice,” and that localities had to be grouped with others that were geographically quite separate and where many residents might not initially see a natural community of interest. In almost every imaginable configuration, a Commission member could point to an apparently incongruous matching. The Commission ultimately went with ideas that members felt made sense, such as creating an “extended valley district” and not linking Roanoke to the Far Southwest. However, the Commission recognizes that different choices could legitimately be made.

The Commission focused on drawing three Northern Virginia districts to reflect the increased growth in some sections there. A majority of the Commission felt that the best way to reflect communities of interest, county and city boundaries, and compactness was to draw these districts

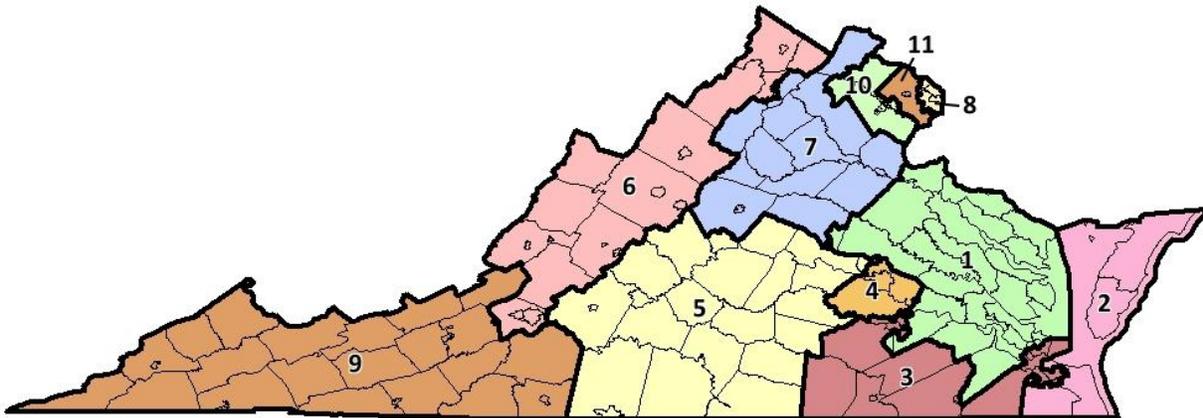
as concentric semi-circles moving away from Washington, DC, recognizing that communities closer to the capital have more in common with each other than with communities farther from it.

Finally, Commission members wrestled with the best means of drawing the Commonwealth's single majority-minority Congressional District. Under any circumstance, the existing district must be modified because its rate of population growth was lower than the Commonwealth's average over the previous decade.

The Commission explored a number of alternatives, from suggestions that came from the Commission staff and from maps submitted in the Virginia College and University Redistricting Competition. One proposed alternative involved a significant relocation of the majority-minority Congressional District in Virginia in a manner that excluded most of the population areas around the city of Richmond, expanded the district's scope in Hampton Roads and extended its boundaries considerably farther south and west toward Brunswick and Dinwiddie counties.

The Commission proposed three model Congressional maps, each focusing on aspects of the issues discussed above.

Congressional Model Map Option #1



This map makes significant changes to the current districts. First, it respects Richmond and the surrounding counties as a community of interest by keeping them together in a single “Capital area” District. It also creates the “extended valley district” and the three Northern Virginia concentric semi-circle districts. Finally, and perhaps most uniquely, it moves the majority-minority district to the south. By doing this, it creates a more compact majority-minority district in which the population is closer in geography and the other interests that bind a community.

Congress 3rd District Option 1

Average Compactness (Schwartzberg Measure)	
Model Plan	Current (2001) Plan
53.29%	41.32%

Number of County and City Jurisdictional Splits	
Model Plan	Current (2001) Plan
41	47

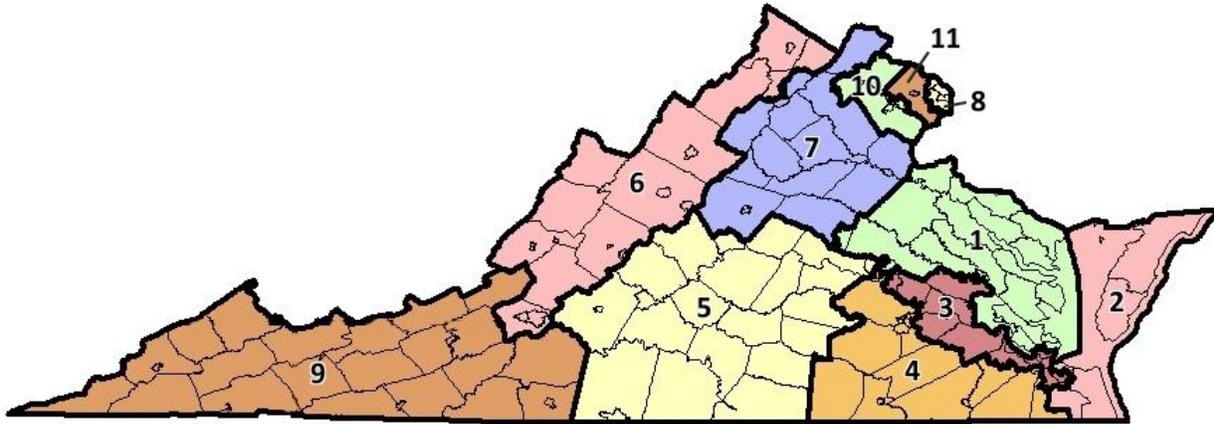
Compactness Range (Schwartzberg Measure)		
	Model Plan	Current (2001) Plan
Minimum	35.68%	30.89%
Maximum	62.58%	51.75%

Number of Majority-Minority Districts: 1 Percent of Voting Age Population that is Black		
District	2010 Census (Model Shape)	2000 Census (Old Shape)
3	53.6%	53.2%

District	Population	Percent Deviation from Ideal Size	Compactness	County/City Splits
1	727,366	0.000%	52.01%	7
2	727,366	0.000%	49.30%	4
3	727,366	0.000%	37.68%	11
4	727,366	0.000%	62.19%	3
5	727,366	0.000%	62.58%	2
6	727,366	0.000%	41.51%	2
7	727,366	0.000%	49.16%	6
8	727,365	0.000%	58.60%	1
9	727,366	0.000%	48.33%	1
10	727,366	0.000%	47.76%	3
11	727,365	0.000%	49.40%	1

This map improves upon the current (2001) plan in several significant ways. First, this map increases compactness by 22.46% over the current plan (from 41.32% for the current plan to 53.29% for the model map). The least compact district is 35.68% while the most compact district is 62.58%. Second, this map retains the black voting-age population of the majority-minority district at 53.6% (from its current 53.2%). Third, this map reduces the number of split jurisdictions by almost 13%, reducing the number of split jurisdictions from 47 in the current plan to 41 in this model map.

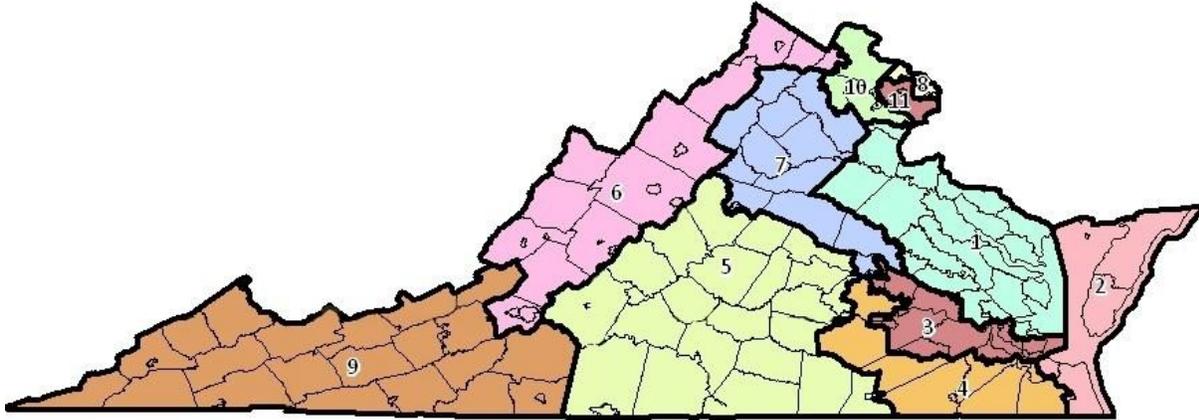
Congressional Model Map Option #2



This map makes many of the same changes as Option 1, creating an “extended valley district” and reorganizing the Northern Virginia districts into more compact geographical areas. On the other hand, it creates a majority-minority district similar to the one in the 2001 map. This design would allow most voters in the current majority-minority district to remain in such a district. This map also improves upon the current (2001) plan in several significant ways. First, this map increases compactness by 16.38% (from 41.32% for the current plan to 49.41% for the model map). The least compact district is 32.43% while the most compact district is 62.58%. Second, this map increases the black voting-age population of the majority-minority district from 53.2% to 55.1%. Third, this map reduces the number of split jurisdictions by 19%, from 47 in the current plan to 38 in this model map.

Congress 3 rd District Option 2							
Average Compactness (Schwartzberg Measure)			Number of County and City Jurisdictional Splits				
Model Plan	Current (2001) Plan		Model Plan	Current (2001) Plan			
49.41%	41.32%		38	47			
Compactness Range (Schwartzberg Measure)			District	Population	Percent Deviation from Ideal Size	Compactness	County/City Splits
	Model Plan	Current(2001) Plan					
Minimum	32.43%	30.89%					
Maximum	62.58%	51.75%					
Number of Majority-Minority Districts: 1			1	727,366	0.000%	51.83%	5
Percent of Voting Age Population that is Black			2	727,366	0.000%	53.57%	2
District	2010 Census (Model Shape)	2000 Census (Old Shape)	3	727,366	0.000%	32.43%	9
3	55.1%	53.2%	4	727,366	0.000%	48.30%	6
			5	727,366	0.000%	62.58%	2
			6	727,366	0.000%	41.51%	2
			7	727,366	0.000%	49.16%	6
			8	727,365	0.000%	58.60%	1
			9	727,366	0.000%	48.33%	1
			10	727,366	0.000%	47.76%	3
			11	727,365	0.000%	49.40%	1

Congressional Model Map Option #3



This map maintains the general shape of the two previous options but with an alternative shape for the 3rd District and an alternative reconfiguration of Northern Virginia. In this model, the 3rd District does not encompass parts of Norfolk but instead stretches from the eastern portion of Richmond through Petersburg and counties along the south side of the James River, crossing to include Newport News and Hampton. This alternative has a 52.5% African-American voting-age population percentage, which is less than the 53.2% met or exceeded in the other models in this report. It has a 5-person deviation from the ideal Congressional district population. The tradeoff is that this map respects municipal boundaries by putting Portsmouth entirely within the 4th District and Norfolk entirely within the 2nd District. The reconfigured 4th District has a 30.5% African-American voting-age population percentage.

In Northern Virginia, the 8th District is completely enclosed, with the Interstate 495 beltway along much of its southern border and extending to the Loudoun County boundary to the west.

The 11th District is contained within Fairfax County in its entirety and encompasses Fairfax City. District 10 contains most of Prince William and Loudoun counties, with additions in surrounding areas.

Compared with the current (2001) Congressional map, this model increases compactness by 17.01% (from 41.32% for the current plan to 48.35% for this model). The least compact district in this plan measures 35.60% and the most compact district measures 58.33%. Also, this map reduces the number of split jurisdictions by 21%, from 47 in the current plan to 37 in this model. Of the three model Congressional maps, this is the greatest reduction in split jurisdictions.

Congress 3rd District Option 3

Average Compactness (Schwartzberg Measure)	
Model Plan	Current (2001) Plan
48.35%	41.32%

Number of County and City Jurisdictional Splits	
Model Plan	Current (2001) Plan
37	47

Compactness Range (Schwartzberg Measure)		
	Model Plan	Current (2001) Plan
Minimum	35.60%	30.89%
Maximum	58.33%	51.75%

Number of Majority-Minority Districts: 1 Percent of Voting Age Population that is Black		
District	2010 Census (Model Shape)	2000 Census (Old Shape)
3	52.5%	53.2%

District	Population	Percent Deviation from Ideal Size	Compactness	County/City Splits
1	727,365	0.000%	53.48%	5
2	727,365	0.000%	57.33%	1
3	727,369	0.000%	35.60%	9
4	727,365	0.000%	40.61%	5
5	727,365	0.000%	58.33%	3
6	727,364	0.000%	40.17%	1
7	727,366	0.000%	43.60%	5
8	727,367	0.000%	53.21%	1
9	727,365	0.000%	48.86%	1
10	727,365	0.000%	44.69%	4
11	727,368	0.000%	55.93%	2

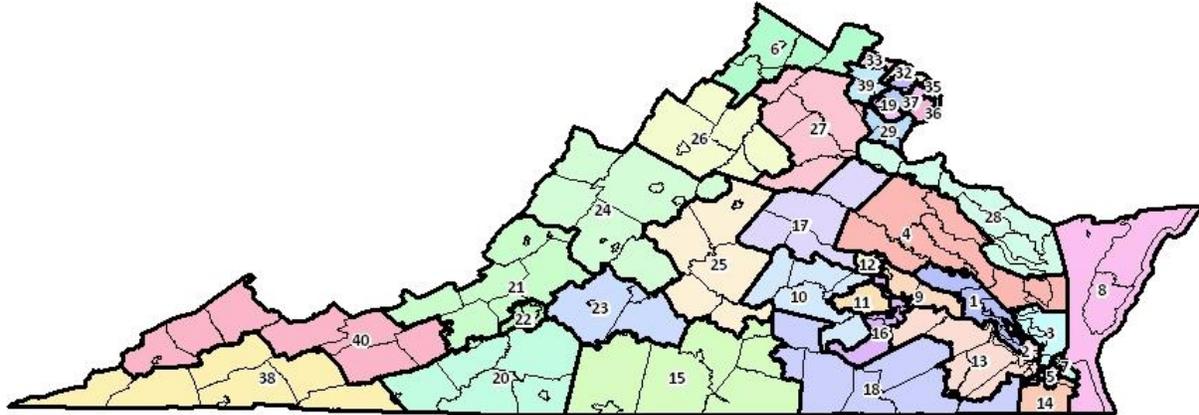
The Virginia Senate

The Commission recognized that drawing the Virginia Senate maps, like the Congressional maps, involved balancing predominant demographic trends with the requirements of the Voting Rights Act and the equal population standard. Unlike the Congressional maps, however, greater latitude in the percentage deviation in population for each district was allowed in order to better meet the Commission’s other goals of compactness and reducing the number of split jurisdictions.

The Commission recognized that drawing 5 majority-minority districts to maintain the number of districts with a majority of African-Americans of voting-age population must be balanced against the other criteria. The shape and location of these majority-minority districts have distinct effects on the shape of the surrounding districts and the overall look of the entire Senate map.

The Commission presented two model maps, one with most districts under 2% population deviation and another with most districts under 3% population deviation, to illustrate the trade-offs between population equality and respecting county and independent city boundaries.

Virginia Senate Model Map Option #1: 2% Population Deviation

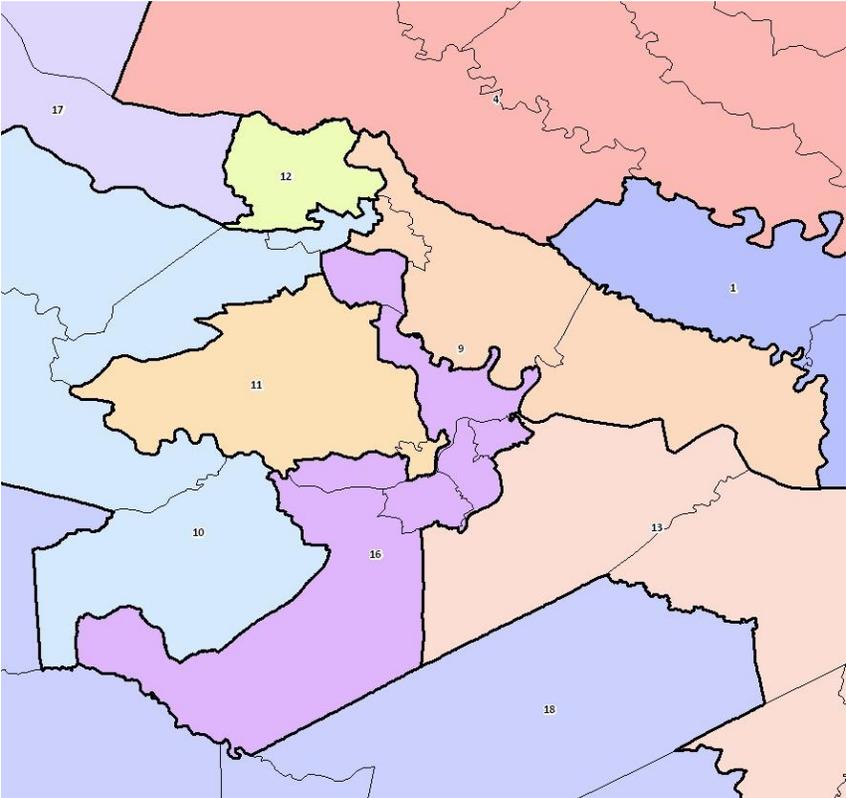


The plus or minus 2% alternative offered by the Commission presents 5 majority-minority districts that maintain majority African-American voting-age populations. Two of these districts are located around the Richmond metropolitan area with one, District 9, that stretches from the eastern part of the city to the boundaries of Charles City County, and another, District 16, that starts south of the James River in Richmond, encompasses the cities of Hopewell and Petersburg, and stretches to the southern border of Dinwiddie County. District 18, the third majority-minority district, is located along much of Virginia's southern border and extends northward around Nottoway County and eastward around a portion of the city of Portsmouth. The remaining two majority-minority districts, Districts 2 and 5, are located in the Hampton-Newport News and Norfolk areas. District 2 starts along the southern border of Newport News and Hampton and moves north along Interstate 64. District 5 encompasses many of the African-American communities in the eastern portion of the city of Norfolk.

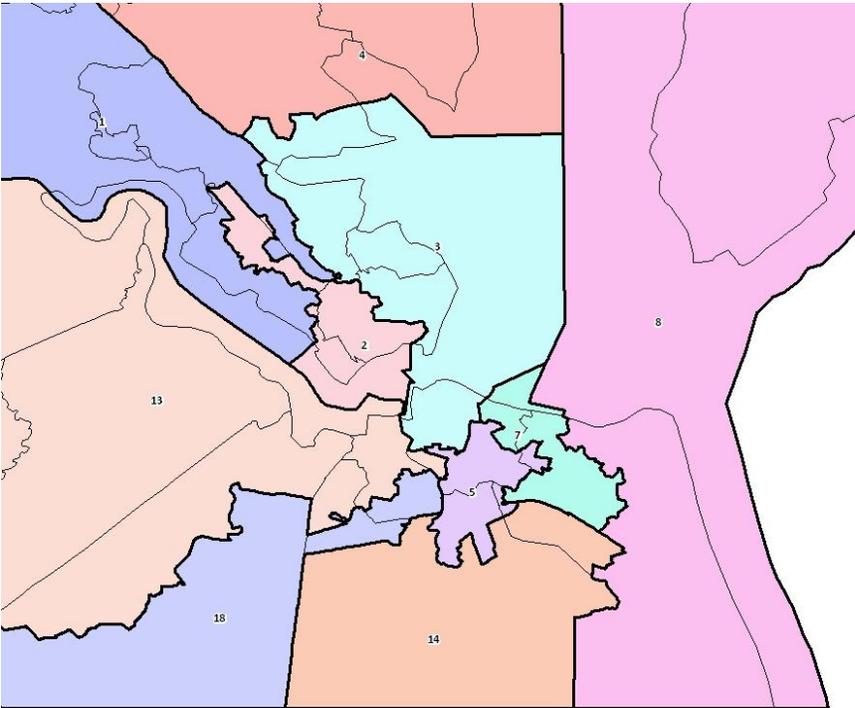
The 5 majority-minority districts are the least compact of the model Senate Districts in this plan and cut across the most jurisdictional boundaries due to the combined requirements of the equal population standard and the Voting Rights Act. Surrounding districts must accommodate the sometime awkward boundaries of these districts. Even so, the shapes of these model districts are often clear improvements upon their current shapes in terms of compactness and jurisdictional splits.

The rest of the map attempts to adhere to the criteria of achieving compactness and minimizing jurisdictional splits while also grouping communities of interest. The Southwest region of Virginia is almost entirely covered by two model Senate Districts, 40 and 38, which perfectly conform to county boundaries. Surrounding districts in Southside Virginia and the Valley are far more compact than their current shapes and attempt to conform to county and city boundaries as much as is feasible while still keeping within a 2% population deviation. For instance, the cities of Salem and Roanoke are grouped together in District 22, but must cut Roanoke County in order to maintain population equity.

Central Virginia is primarily covered by Senate Districts 25, 17, 26 and 27. Every attempt was made to reduce the number of county boundaries that are split for these districts. However, the 2% population deviation requirement for this map necessitated significant splits in Albemarle, Prince Edward and Warren Counties.



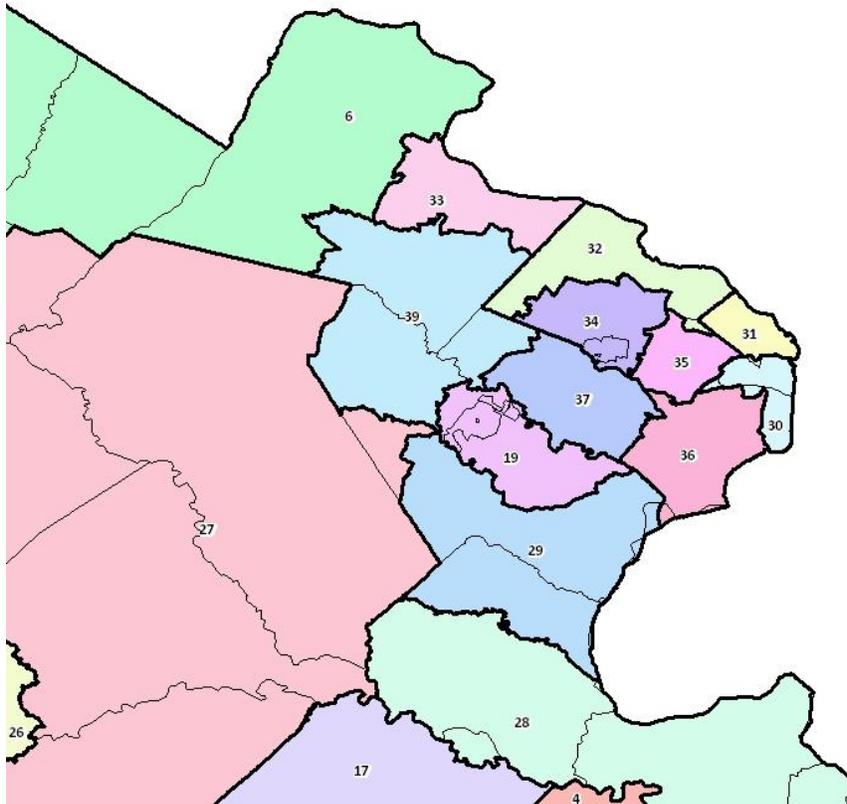
Richmond detail
Senate Model Map Option #1: 2% Population Deviation



Hampton Roads detail
Senate Model Map Option #1: 2% Population Deviation

In the Northern Neck, Middle Peninsula and Eastern Shore, Districts 28, 4, and 8 were able to be drawn almost entirely along county boundaries, with splits necessary in Stafford, Gloucester, and Virginia Beach.

In Northern Virginia, the primary goal was to minimize districts that cut county and independent city boundaries. Arlington County must be split as it has too much population to fall within a 2% deviation. However, the cities of Falls Church, Alexandria, Fairfax, Manassas and Manassas Park are entirely contained within a single Senate District. The districts also attempt to group communities of interests that may exist along common highways or in towns or ethnic enclaves.



Northern Virginia detail
Senate Model Map Option #1: 2% Population Deviation

This map includes 26 districts under 1% deviation and 14 additional districts under 2% deviation. This deviation approach allows for an improvement in the compactness of districts by 9.53% (from 48.21% in the current plan to 53.29% in the proposed map). The least compact district in this map is 35.68% while the most compact district is 70.00%. This map includes 5 majority-minority districts ranging from 57.8% black voting-age population (District 5) to 53.5% black voting-age population (District 16). Finally, this map reduces the number of city and county splits by 34.53%, from 110 splits in the current plan to 72 splits in the model map.

Senate Option 1 2% Population Deviation

	Districts Under 1% Deviation	Districts Under 2% Deviation
Number	26	40
Percent	65%	100%

Number of Majority-Minority Districts: 5 Percent of Voting Age Population that is Black		
District	2010 Census (Model Shape)	2000 Census (Old Shape)
2	56.5%	55.8%
5	57.8%	55.9%
9	57.5%	55.0%
16	53.5%	55.9%
18	57.4%	58.5%

Average Compactness (Schwartzberg Measure)	
Model Plan	Current (2001) Plan
53.29%	48.21%

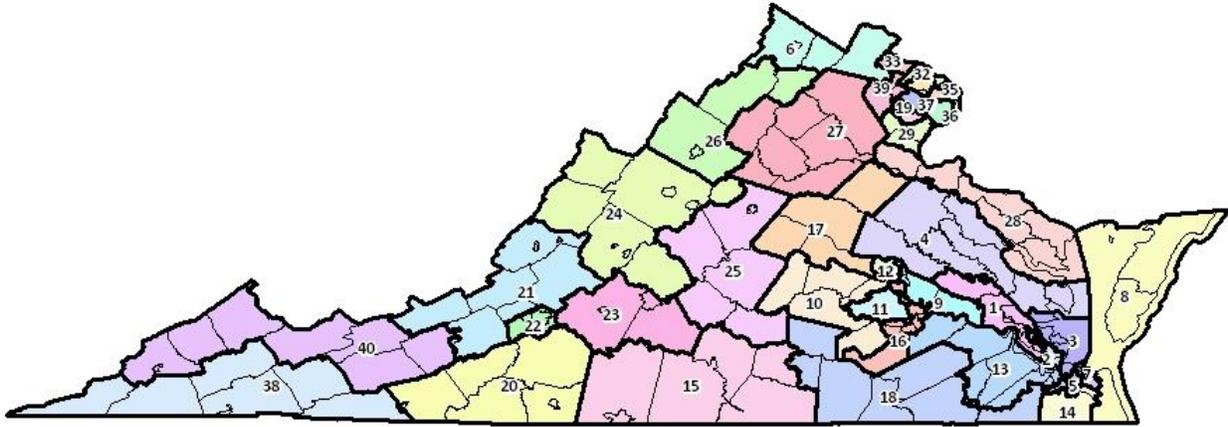
Compactness Range (Schwartzberg Measure)		
	Model Plan	Current (2001) Plan
Minimum	35.68%	35.75%
Maximum	72.00%	64.09%

Senate Option 1 2% Population Deviation

Number of County and City Jurisdictional Splits	
Model Plan	Current Plan
72	110

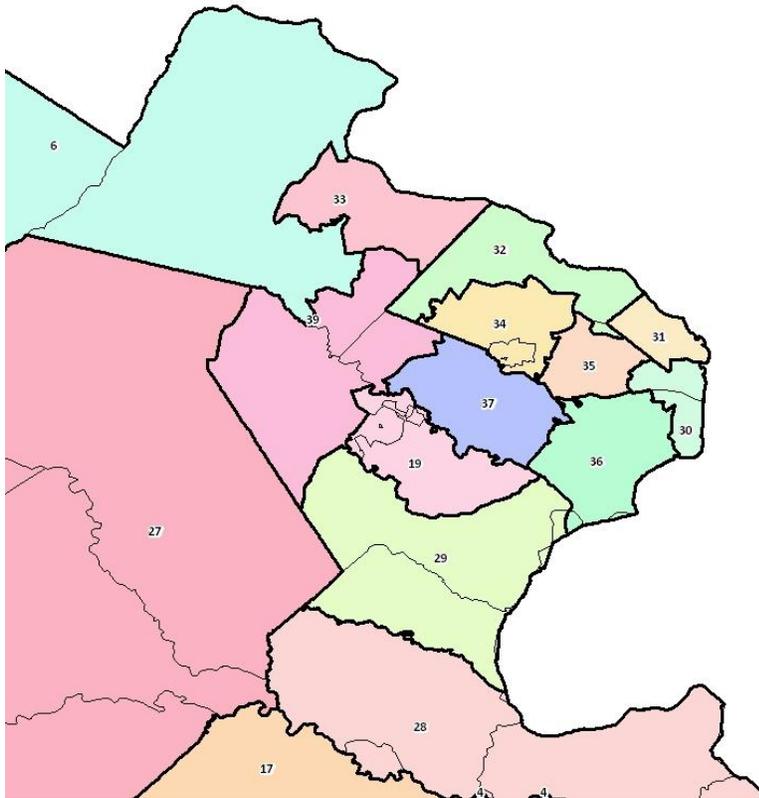
District	Population	% Deviation from Ideal Size	Compactness	County/City Splits	District	Population	% Deviation from Ideal Size	Compactness	County/City Splits
1	200,699	0.34	37.27%	2	21	200,497	0.24	45.91%	2
2	200,274	0.12	41.83%	2	22	200,786	0.38	62.00%	1
3	198,898	-0.56	63.57%	4	23	201,856	0.91	56.12%	1
4	197,941	-1.04	50.05%	1	24	201,475	0.72	52.18%	1
5	199,320	-0.35	44.52%	3	25	202,450	1.21	50.09%	2
6	197,092	-1.47	48.04%	3	26	198,622	-0.70	63.89%	1
7	198,077	-0.97	44.63%	2	27	199,368	-0.33	58.62%	2
8	203,869	1.92	56.27%	1	28	199,215	-0.41	46.13%	1
9	202,682	1.33	41.42%	2	29	202,040	1.01	55.40%	2
10	200,177	0.08	45.60%	3	30	202,260	1.12	53.52%	2
11	196,346	-1.84	56.84%	1	31	200,796	0.38	72.00%	1
12	198,644	-0.69	56.44%	1	32	202,734	1.35	49.95%	1
13	197,891	-1.07	46.37%	6	33	197,631	-1.20	54.42%	1
14	199,238	-0.39	65.57%	2	34	199,088	-0.47	63.73%	1
15	201,984	0.98	58.56%	3	35	201,159	0.57	67.56%	1
16	200,731	0.35	35.68%	4	36	200,335	0.15	63.47%	1
17	202,958	1.47	57.64%	0	37	201,234	0.60	60.48%	1
18	197,473	-1.28	41.00%	5	38	198,113	-0.96	45.37%	0
19	200,811	0.39	57.17%	1	39	198,294	-0.87	53.99%	3
20	196,546	-1.74	66.84%	1	40	201,420	0.70	41.36%	0

Virginia Senate Model Map Option #2: 3%-plus Population Deviation



The 3%-plus Senate alternative presents the same basic shape for all of the districts in the 2% alternative, but with fewer jurisdiction splits and more compact district boundaries. Most of the previous county splits in Southside and Southwest Virginia have been removed and the boundaries for District 22 were made to conform to the path of Interstate 81 around Salem and Roanoke cities.

District 31 around Arlington County was modified to fit entirely within the Arlington County boundaries and the surrounding districts were adjusted to accommodate this change.



**Northern Virginia detail
Senate Model Map Option #2: 3%-plus Population Deviation**

Perhaps the most dramatic changes in the 3%-plus alternative are the new configurations of Districts 26 and 27, which are now entirely within county boundaries and more compact. Splits in Shenandoah, Warren and Prince William counties were removed.

This map includes 17 districts under 1% deviation, 13 additional districts under 2% deviation, 8 additional districts under 3% deviation, and 1 additional district each under 4% and 5% deviation. This deviation approach allows for an improvement in the compactness of districts by 10.69% (from 48.21% in the current plan to 53.98% in the model map). The least compact district in this map is 35.68% while the most compact district is 71.80%. This map includes 5 majority-minority districts ranging from 57.8% black voting-age population (District 5) to 53.5% black voting-age population (District 16). Finally, this map reduces the number of city and county splits by 63.64%, from 110 splits in the current plan to 40 splits in the model map.

Senate Option 2 3%+ Population Deviation

	Districts Under 1% Deviation	Districts Under 2% Deviation	Districts Under 3% Deviation	Districts Under 4% Deviation	Districts Under 5% Deviation
Number	17	30	38	39	40
Percent	42.5%	75.0%	95.0%	97.5%	100.0%

Average Compactness (Schwartzberg Measure)	
Model Plan	Current (2001) Plan
53.98%	48.21%

Number of Majority-Minority Districts: 5 Percent of Voting Age Population that is Black		
District	Model Shape	2000 Data (Old Shape)
2	56.5%	55.8%
5	57.8%	55.9%
9	57.5%	55.0%
16	53.5%	55.9%
18	57.4%	58.5%

Compactness Range (Schwartzberg Measure)		
	Model Plan	Current Plan
Minimum	35.68%	35.75%
Maximum	71.80%	64.09%

Senate Option 2 3%+ Population Deviation

Number of County and City Jurisdictional Splits	
Model Plan	Current Plan
40	110

District	Population	% Deviation from Ideal Size	Compactness	County/City Splits	District	Population	% Deviation from Ideal Size	Compactness	County/ City Splits
1	200,699	0.34	37.27%	2	21	197,914	-1.06	47.85%	1
2	200,274	0.12	41.83%	2	22	204,931	2.45	70.64%	1
3	201,634	0.80	62.74%	4	23	205,308	2.64	56.27%	0
4	195,205	-2.41	50.16%	1	26	204,796	2.38	52.30%	0
5	199,320	-0.35	44.52%	3	27	208,499	4.24	71.80%	0
6	194,413	-2.81	47.32%	1	28	196,763	-1.63	46.53%	1
7	200,733	0.35	44.06%	2	29	195,857	-2.08	59.29%	2
8	201,213	0.59	55.91%	1	30	195,038	-2.49	57.27%	1
9	202,682	1.33	41.42%	2	31	207,627	3.80	71.08%	0
10	200,177	0.08	45.60%	3	32	202,734	1.35	49.95%	1
11	196,346	-1.84	56.84%	1	33	197,325	-1.35	59.87%	1
12	198,644	-0.69	56.44%	1	34	199,088	-0.47	63.73%	1
13	197,892	-1.07	46.44%	6	35	201,292	0.63	60.29%	1
14	199,238	-0.39	65.57%	2	36	200,593	0.28	64.08%	1
15	195,599	-2.21	62.03%	1	37	201,234	0.60	60.48%	1
16	200,731	0.35	35.68%	4	38	198,113	-0.96	45.37%	0
17	202,958	1.47	57.64%	0	39	197,815	-1.11	56.42%	3
18	197,472	-1.28	41.04%	5	40	201,420	0.70	41.36%	0
19	197,605	-1.21	58.27%	1					
20	194,984	-2.52	68.87%	0					

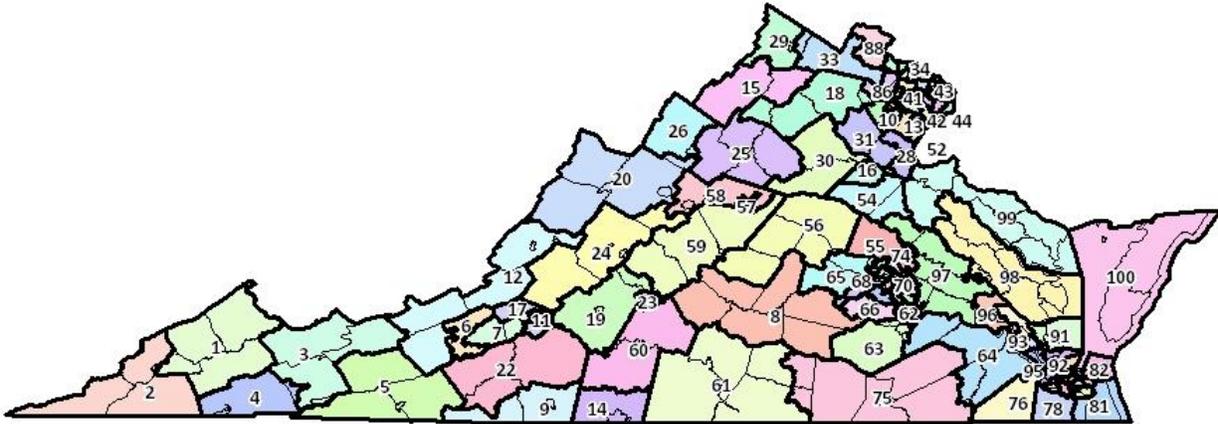
The House of Delegates

The Commission was confronted with similar trade-offs between the redistricting criteria in the House of Delegates, but discovered the population requirements are less in conflict with respecting county and independent city boundaries, perhaps because the districts are of a smaller – and fortuitous – size that facilitates respecting these boundaries. The Commission identified only one case, a district straddling Smyth and Grayson counties, where relaxing a 2% population deviation from the ideal of 80,010 would reduce the number of county splits.

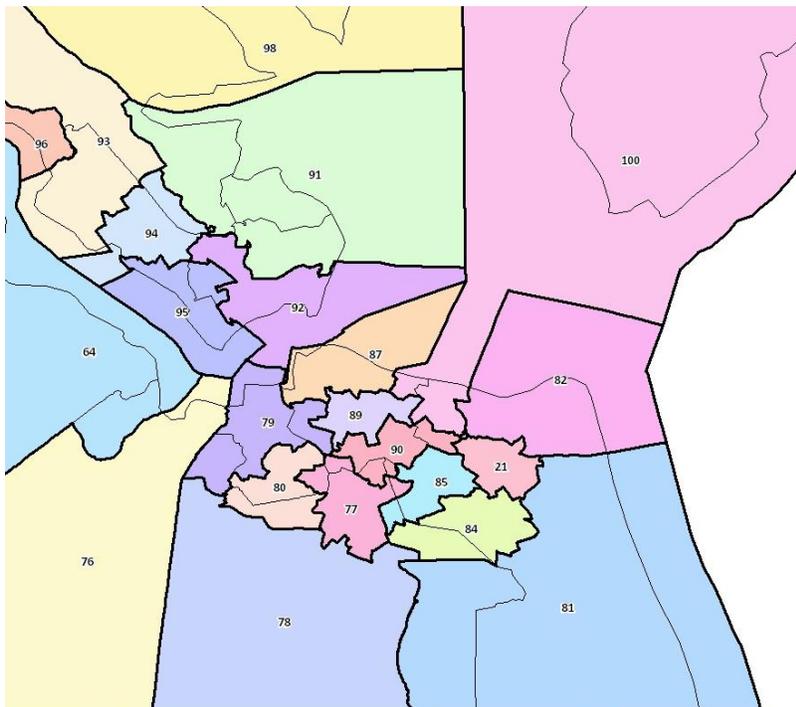
The Commission proposed two model maps, one with 12 majority-minority districts and another with 13 majority-minority districts. These plans were exactly similar except for four districts that must be altered to create a 13th majority-minority district.

Additionally, the Commission unsuccessfully explored the possibility of drawing a Hispanic-majority district. The Commission decided to maintain the current 49th district – which was significantly under-populated with a population of 68,637 – in a configuration that limited a reduction of its Hispanic population from a current 35.1% to 34.9% while bringing its population into balance.

House of Delegates Model Map Option #1: 12 Majority-Minority Districts



The first consideration was to create majority-minority districts to be in compliance with the Voting Rights Act. In 2001, the Commonwealth created 12 House of Delegates districts where African-Americans constituted a majority of the 2000 census voting-age population. According to the 2010 census, one of these districts, District 71, had fallen below 50% to 47.0% African-American voting-age population. The Commission decided to boost the population of this district to create a 12 majority-minority district option (Districts 63, 69, 70, 71, 74, 75, 77, 80, 89, 90, 92, and 95). All 12 districts are drawn within a 2% population deviation. All are more compact than in their counterparts in the current map while crossing an aggregate fewer county and independent city lines.



Hampton Roads detail

House of Delegates Model Map Option #1: 12 Majority-Minority Districts

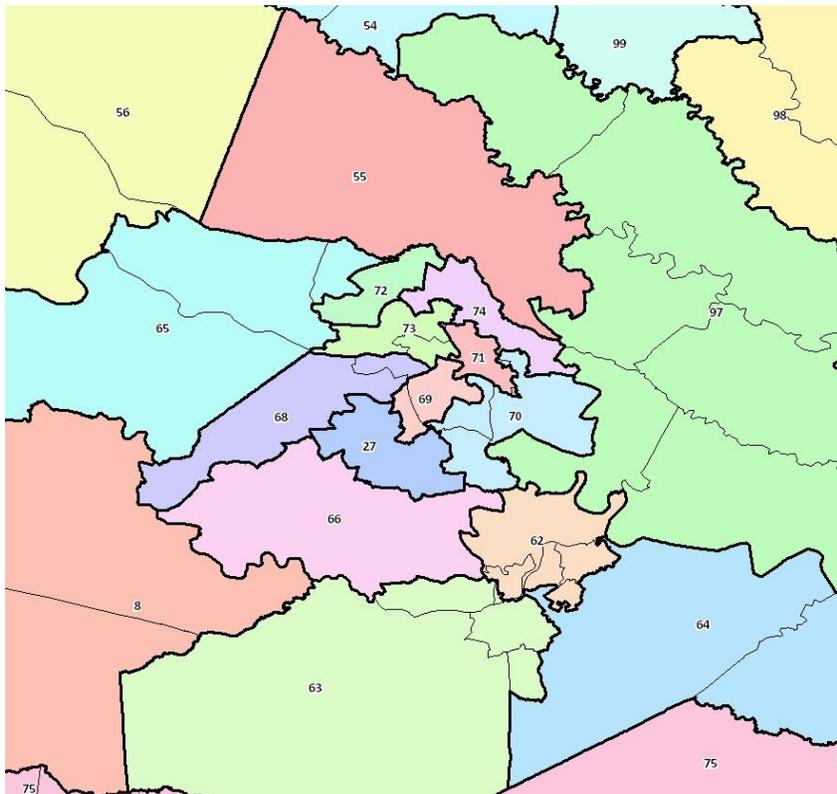
These districts have a profound effect on their neighbors. In the Norfolk area, the remaining districts generally revolve around the four majority-minority districts, following the shoreline,

while respecting existing county and independent city boundaries and maintaining a compact shape. It is impossible to draw an Eastern Shore district within the permitted population deviation, so a district must extend across the Chesapeake Bay Bridge.

Two majority-minority districts are located in Newport News and Hampton, and the adjacent districts follow the peninsula northward through Williamsburg and beyond. Two districts to the north also generally follow peninsulas.

Two majority-minority districts are located to the south of Richmond, encompassing African-American communities in Petersburg and Emporia, respectively. These districts must cross county and independent city boundaries to maintain the African-American voting-age populations.

Four majority-minority districts are located in the Richmond area. Of particular note is District 74, which the Commission reconfigured to be more compact and located entirely within Henrico County, whereas the current district extends into Charles City County. Elsewhere in the region, districts generally respect county and independent city lines where possible in a compact manner. However, the presence of the majority-minority district requires some boundaries to be crossed.



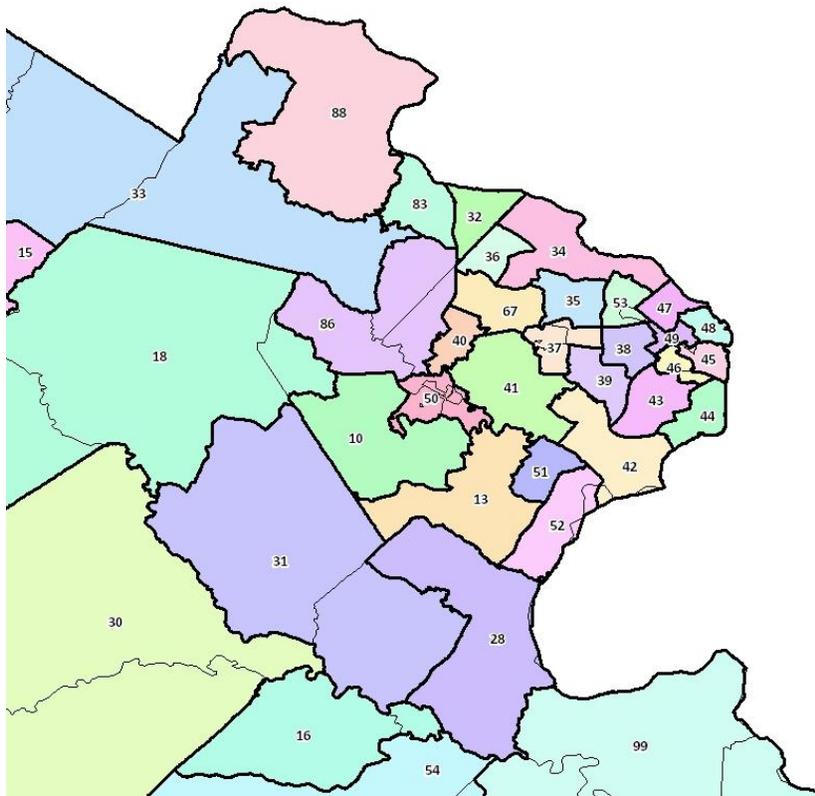
Richmond detail

House of Delegates Model Map Option #1: 12 Majority-Minority Districts

The Commission's next step following the drawing of majority-minority districts and their neighbors was to draw the remainder of the Commonwealth. Generally, if a district within the 2% population deviation could be drawn to be composed of whole counties or independent cities, such a district was created. If a county had to be split in order to achieve the proper population deviation in a district, lines were drawn to minimize the splits among adjacent counties and

independent cities and to keep districts as compact as possible. Where choices were available, districts were drawn to respect communities of interest, such as by following transportation corridors or other natural features such as water or mountains. None of the districts were drawn with the intent of crossing a body of water without a bridge.

It was not possible to balance all the competing goals in all circumstances. Some jurisdictions must be split. In Northern Virginia, Arlington County has too much population for two districts. The Commission decided to cross the Arlington County and Fairfax County lines where the current District 49 is located in order to tie together Hispanic communities in that area. To keep these communities together, another split with District 45 was formed in the southern tip of Arlington across to Alexandria. The two Arlington County districts evenly divide the county as best as possible.



Northern Virginia detail
House of Delegates Model Map Option #1: 12 Majority-Minority Districts

The Fairfax County line must be crossed because there is not the right amount of population from the county line to Washington, DC, to draw districts entirely contained within Fairfax County. Within the Fairfax County region, the independent cities of Fairfax City and Fall Church were kept together with their immediate environs. A second Alexandria split is required to achieve population balance, and was done with a district extending to the south of the city. Elsewhere, districts were drawn to respect communities of interest in Centreville, Clifton, Herndon, Vienna, Fair Lakes, Lorton and Springfield, among others.

In the exurbs, the Commission drew a Manassas/Manassas City district, districts extending along the Route 7 corridor to and beyond Leesburg, a predominantly Woodbridge district, and districts generally following the Prince William Parkway.

Districts in the western part of the state generally followed the natural valleys in a way that respects county and city boundaries in a compact manner. Some boundary splits must happen, such as in the areas of Harrisonburg, Roanoke and Winchester. The Roanoke area presented a puzzle in minimizing county and independent city splits that was best solved by combining Salem and Christiansburg in a single district extending along I-81. Another district combines Radford and Blacksburg. Roanoke itself has too much population, so it must be split once.

In the Piedmont region, Charlottesville has too little population for its own district, so it must extend into Albemarle County. Two other splits of Albemarle County are necessary to reduce splits in surrounding counties. The Commission drew one district consolidating the area to the south of Charlottesville and a second district extending to the west. Culpeper and Orange counties together form a district of the ideal population size, which the Commission decided to draw. However, this configuration then requires county splits in adjoining counties.

Further to the South, Lynchburg is too small for its own district, so the Commission decided to cross the Amherst County line to the north. Similarly, Danville must be fortified with population from Pittsylvania County. Here, the remainder of the county can be rounded with Campbell County without creating another county split, which is why the Lynchburg configuration is desirable. Elsewhere, counties and independent cities in the Southwest were generally respected because they are smaller in population size. However, some splits, such as those of Patrick and Wise counties were required to bring districts into population balance.

This map includes 68 districts under 1% deviation and 32 additional districts under 2% deviation. This deviation approach allows for an improvement in the compactness of districts by 15.08% (from 49.78% in the current plan to 58.57% in the model map). The least compact district in this map is 35.78% while the most compact district is 82.54%. This map includes 12 minority-majority districts ranging from 58.0% black voting-age population (District 92) to 53.5% black voting-age population (District 90). Finally, this map reduces the number of city and county splits by 21.13%, from 194 splits in the current plan to 153 splits in the model map.

House Option 1			
12 Majority-Minority Districts			
	Districts Under 1% Deviation	Districts Under 2% Deviation	
Number	68	100	
Percent	68%	100%	
Average Compactness (Schwartzberg Measure)			
	Model Plan	Current (2001) Plan	
	58.57%	49.78%	
Compactness Range (Schwartzberg Measure)			
	Model Plan	Current (2001) Plan	
Minimum	35.75%	30.87%	
Maximum	82.54%	76.31%	
Number of Majority-Minority Districts: 12			
Percent of Voting Age Population that is Black			
District	2010 Census (Model Shape)	2000 Census (Old Shape)	
63	56.1%	57.8%	
69	55.2%	57.6%	
70	54.4%	57.2%	
71	54.0%	55.5%	
74	56.8%	59.7%	
75	54.7%	56.2%	
77	54.6%	55.9%	
80	54.9%	55.3%	
89	54.2%	53.4%	
90	53.5%	54.0%	
92	58.0%	59.3%	
95	55.3%	58.1%	

House Option 1 12 Majority-Minority Districts

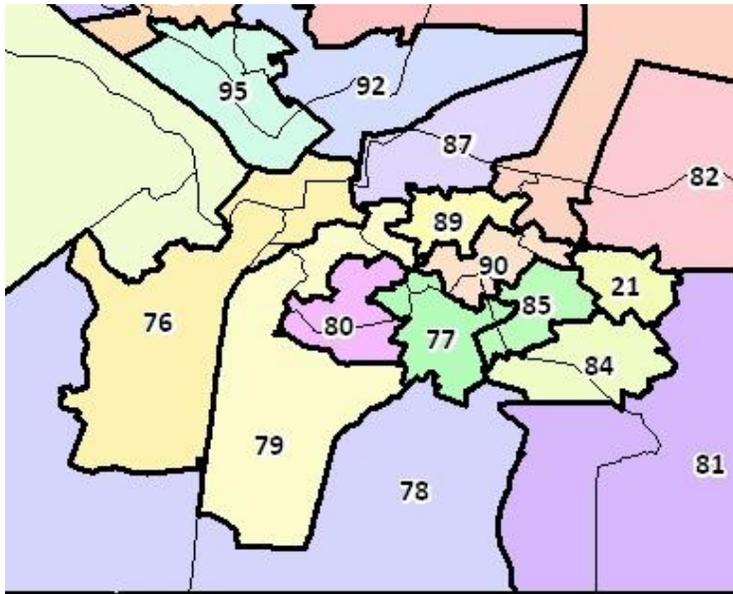
District	Population	% Deviation from Ideal Size	Compactness	County/City Splits	District	Population	% Deviation from Ideal Size	Compactness	County/City Splits
1	81,469	1.82%	61.33%	1	26	78,709	-1.63%	69.10%	1
2	81,603	1.99%	51.92%	1	27	81,315	1.63%	55.70%	1
3	78,703	-1.63%	54.60%	2	28	79,347	-0.83%	53.40%	1
4	78,412	-2.00%	68.47%	1	29	79,690	-0.40%	56.53%	1
5	81,558	1.93%	63.19%	1	30	80,170	0.20%	54.03%	0
6	80,272	0.33%	40.90%	1	31	78,477	-1.92%	63.62%	2
7	81,561	1.94%	52.82%	3	32	79,590	-0.52%	69.94%	1
8	81,277	1.58%	52.58%	1	33	78,768	-1.55%	48.73%	2
9	79,357	-0.82%	54.58%	1	34	80,951	1.18%	54.09%	1
10	78,746	-1.58%	59.07%	1	35	81,034	1.28%	71.09%	1
11	81,594	1.98%	50.55%	1	36	80,910	1.12%	74.73%	1
12	79,559	-0.56%	42.31%	0	37	80,903	1.12%	64.18%	1
13	81,589	1.97%	50.56%	1	38	80,164	0.19%	76.73%	1
14	81,060	1.31%	71.48%	1	39	80,533	0.65%	65.14%	1
15	79,568	-0.55%	58.71%	0	40	79,361	-0.81%	55.09%	1
16	80,601	0.74%	60.91%	1	41	79,878	-0.16%	57.57%	1
17	81,583	1.97%	38.68%	1	42	78,558	-1.81%	61.07%	1
18	78,465	-1.93%	56.41%	3	43	81,610	2.00%	73.77%	1
19	78,496	-1.89%	56.79%	1	44	81,110	1.37%	71.16%	1
20	78,413	-2.00%	57.49%	2	45	81,478	1.83%	67.25%	2
21	80,017	0.01%	67.23%	1	46	80,884	1.09%	57.04%	2
22	78,543	-1.83%	58.28%	1	47	79,831	-0.22%	70.98%	1
23	79,492	-0.65%	58.46%	1	48	78,864	-1.43%	70.26%	1
24	78,944	-1.33%	51.37%	1	49	79,508	-0.63%	50.07%	3
25	79,174	-1.04%	64.58%	2	50	81,102	1.36%	47.00%	1

House Option 1, continued 12 Majority-Minority Districts

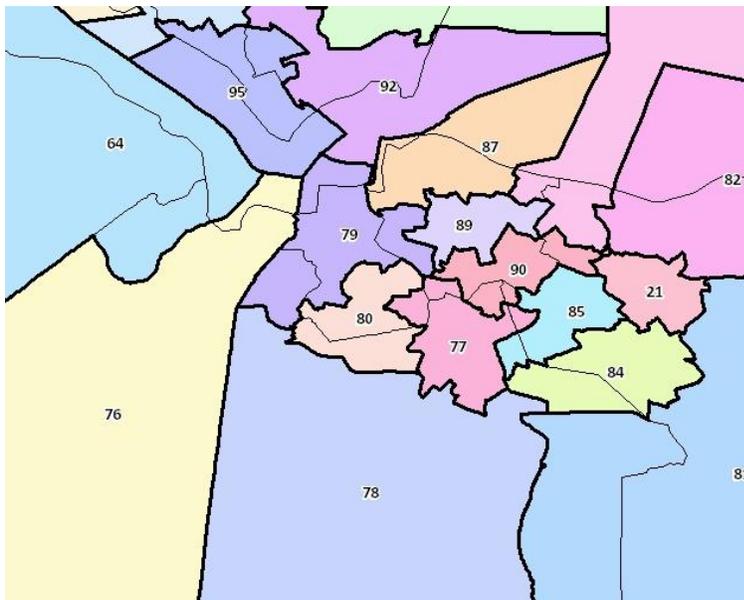
District	Population	% Deviation from Ideal Size	Compactness	County/City Splits	District	Population	% Deviation from Ideal Size	Compactness	County/City Splits
51	78,516	-1.87%	73.86%	1	76	81,568	1.95%	71.27%	1
52	80,560	0.69%	68.39%	1	77	79,445	-0.71%	56.36%	4
53	79,605	-0.51%	74.50%	1	78	79,370	-0.80%	72.05%	1
54	80,576	0.71%	56.51%	2	79	78,841	-1.46%	54.69%	3
55	81,482	1.84%	50.42%	1	80	79,382	-0.78%	59.36%	2
56	80,195	0.23%	63.20%	2	81	81,280	1.59%	75.47%	2
57	79,430	-0.72%	48.89%	1	82	81,475	1.83%	82.54%	1
58	78,552	-1.82%	43.36%	2	83	79,106	-1.13%	57.88%	1
59	78,440	-1.96%	51.29%	2	84	80,866	1.07%	65.91%	2
60	80,343	0.42%	60.53%	1	85	79,890	-0.15%	59.78%	2
61	80,181	0.21%	65.12%	2	86	79,619	-0.49%	60.31%	3
62	80,728	0.90%	46.98%	3	87	81,205	1.49%	64.14%	1
63	78,461	-1.94%	69.50%	3	88	79,297	-0.89%	57.74%	1
64	80,517	0.63%	49.22%	4	89	80,634	0.78%	52.04%	1
65	79,296	-0.89%	57.50%	2	90	80,671	0.83%	50.69%	3
66	78,557	-1.82%	55.24%	1	91	78,684	-1.66%	74.67%	2
67	78,964	-1.31%	70.64%	1	92	78,809	-1.50%	48.01%	1
68	79,272	-0.92%	53.55%	2	93	78,946	-1.33%	52.88%	2
69	81,299	1.61%	56.84%	2	94	78,628	-1.73%	53.18%	2
70	79,162	-1.06%	43.66%	3	95	80,702	0.86%	63.25%	2
71	81,076	1.33%	50.43%	2	96	81,077	1.33%	49.31%	0
72	81,502	1.86%	56.03%	1	97	79,673	-0.42%	35.75%	4
73	80,431	0.53%	52.44%	2	98	79,108	-1.13%	51.42%	1
74	81,579	1.96%	41.41%	2	99	81,144	1.42%	46.84%	1
75	79,061	-1.19%	56.73%	4	100	81,018	1.26%	63.35%	2

House of Delegates Model Map Option #2: 13 Majority-Minority Districts

In the course of devising a redistricting plan with 12 majority-minority districts, it became apparent that the current District 77, which joins minority communities in Chesapeake and Suffolk, could be reconfigured to create two districts that may provide African Americans an opportunity to elect candidates of their choice. As the comparison below shows, the only changes to the 12 majority-minority map are in Hampton Roads, where Districts 64, 76, 78 and 79 are reconfigured.



Hampton Roads, 7 majority-minority House districts (76, 77, 80, 89, 90, 92, 95)



Hampton Roads, 6 majority-minority House districts (77, 80, 89, 90, 92, 95)

The reconfigured districts split fewer jurisdictional boundaries and are more compact than the current (2001) configuration; however, they are less compact and split more jurisdictional boundaries than the model plan for 12 majority-minority districts. Here is a comparison of House Option 1 with House Option 2:

District	Compactness		City/County Split	
	12 districts	13 districts	12 districts	13 districts
64	49.22	48.41	4	4
76	71.27	52.11	1	3
78	72.05	50.32	1	2
79	54.69	49.73	3	3

Although the non-retrogression standard of Section 5 of the Voting Rights Act does not bind the Commonwealth to create a thirteenth African-American majority district, the Commission determined that it would be informative to demonstrate how to create such a district.

Statewide, the 13 majority-minority map includes 67 districts under 1% deviation and 33 additional districts under 2% deviation. This deviation approach allows for an improvement in the compactness of districts by 14.32% (from 49.78% in the current plan to 58.10% in the model map). The least compact district in this map is 35.75% while the most compact district is 82.54%. This map includes 13 majority-minority districts, ranging from 58.0% black voting-age population (District 92) to 53.5% black voting-age population (District 90). Finally, this map reduces the number of city and county splits by 19.5%, from 194 splits in the current plan to 156 splits in the model map.

House Option 2

13 Majority-Minority Districts

Districts Under 1% Deviation		Districts Under 2% Deviation	
Number	67	Number	100
Percent	67%	Percent	100%

Average Compactness (Schwartzberg Measure)		
	Model Plan	Current (2001) Plan
Average Compactness	58.10%	49.78%

Compactness Range (Schwartzberg Measure)		
	Model Plan	Current (2001) Plan
Minimum	35.75%	35.75%
Maximum	82.54%	64.09%

Number of Majority-Minority Districts: 13 Percent of Voting Age Population that is Black		
District	2010 Census (Model Shape)	2000 Census (Old Shape)
63	56.1%	57.8%
69	55.2%	57.6%
70	54.4%	57.2%
71	54.0%	55.5%
74	56.8%	59.7%
75	54.7%	56.2%
76	54.2%	55.9%*
77	54.6%	55.9%
80	54.9%	55.3%
89	54.2%	53.4%
90	53.5%	54.0%
92	58.0%	59.3%
95	55.3%	58.1%

* Proposed 76th District was part of old 77th District.

House Option 2 13 Majority-Minority Districts

District	Population	%Deviation from Ideal Size	Compactness	County/City Splits
1	81,469	1.82%	61.33%	1
2	81,603	1.99%	51.92%	1
3	78,703	-1.63%	54.60%	2
4	78,412	-2.00%	68.47%	1
5	81,558	1.93%	63.19%	1
6	80,272	0.33%	40.90%	1
7	81,561	1.94%	52.82%	3
8	81,277	1.58%	52.58%	1
9	79,357	-0.82%	54.58%	1
10	78,746	-1.58%	59.07%	1
11	81,594	1.98%	50.55%	1
12	79,559	-0.56%	42.31%	0
13	81,589	1.97%	50.56%	1
14	81,060	1.31%	71.48%	1
15	79,568	-0.55%	58.71%	0
16	80,601	0.74%	60.91%	1
17	81,583	1.97%	38.68%	1
18	78,465	-1.93%	56.41%	3
19	78,496	-1.89%	56.79%	1
20	78,413	-2.00%	57.49%	2
21	80,017	0.01%	67.23%	1
22	78,543	-1.83%	58.28%	1
23	79,492	-0.65%	58.46%	1
24	78,944	-1.33%	51.37%	1
25	79,174	-1.04%	64.58%	2

District	Population	%Deviation from Ideal Size	Compactness	County/City Splits
26	78,709	-1.63%	69.10%	1
27	81,315	1.63%	55.70%	1
28	79,347	-0.83%	53.40%	1
29	79,690	-0.40%	56.53%	1
30	80,170	0.20%	54.03%	0
31	78,477	-1.92%	63.62%	2
32	79,590	-0.52%	69.94%	1
33	78,768	-1.55%	48.73%	2
34	80,951	1.18%	54.09%	1
35	81,034	1.28%	71.09%	1
36	80,910	1.12%	74.73%	1
37	80,903	1.12%	64.18%	1
38	80,164	0.19%	76.73%	1
39	80,533	0.65%	65.14%	1
40	79,361	-0.81%	55.09%	1
41	79,878	-0.16%	57.57%	1
42	78,558	-1.81%	61.07%	1
43	81,610	2.00%	73.77%	1
44	81,110	1.37%	71.16%	1
45	81,478	1.83%	67.25%	2
46	80,884	1.09%	57.04%	2
47	79,831	-0.22%	70.98%	1
48	78,864	-1.43%	70.26%	1
49	79,508	-0.63%	50.07%	3
50	81,102	1.36%	47.00%	1

House Option 2, continued 13 Majority-Minority Districts

District	Population	% Deviation from Ideal Size	Compactness	County/City Splits
51	78,516	-1.87%	73.86%	1
52	80,560	0.69%	68.39%	1
53	79,605	-0.51%	74.50%	1
54	80,576	0.71%	56.51%	2
55	81,482	1.84%	50.42%	1
56	80,195	0.23%	63.20%	2
57	79,430	-0.72%	48.89%	1
58	78,552	-1.82%	43.36%	2
59	78,440	-1.96%	51.29%	2
60	80,343	0.42%	60.53%	1
61	80,181	0.21%	65.12%	2
62	80,728	0.90%	46.98%	3
63	78,461	-1.94%	69.50%	3
64	81,565	1.94%	48.41%	4
65	79,296	-0.89%	57.50%	2
66	78,557	-1.82%	55.24%	1
67	78,964	-1.31%	70.64%	1
68	79,272	-0.92%	53.55%	2
69	81,299	1.61%	56.84%	2
70	79,162	-1.06%	43.66%	3
71	81,076	1.33%	50.43%	2
72	81,502	1.86%	56.03%	1
73	80,431	0.53%	52.44%	2
74	81,579	1.96%	41.41%	2
75	79,061	-1.19%	56.73%	4

District	Population	%Deviation from Ideal Size	Compactness	County/City Splits
76	78,999	-1.26%	52.11%	3
77	79,445	-0.71%	56.36%	4
78	81,023	1.27%	50.32%	2
79	78,709	-1.63%	49.73%	3
80	79,382	-0.78%	59.36%	2
81	81,280	1.59%	75.47%	2
82	81,475	1.83%	82.54%	1
83	79,106	-1.13%	57.88%	1
84	80,866	1.07%	65.91%	2
85	79,890	-0.15%	59.78%	2
86	79,619	-0.49%	60.31%	3
87	81,205	1.49%	64.14%	1
88	79,297	-0.89%	57.74%	1
89	80,634	0.78%	52.04%	1
90	80,671	0.83%	50.69%	3
91	78,684	-1.66%	74.67%	2
92	78,809	-1.50%	48.01%	1
93	78,946	-1.33%	52.88%	2
94	78,628	-1.73%	53.18%	2
95	80,702	0.86%	63.25%	2
96	81,077	1.33%	49.31%	0
97	79,673	-0.42%	35.75%	4
98	79,108	-1.13%	51.42%	1
99	81,144	1.42%	46.84%	1
100	81,018	1.26%	63.35%	2

Acknowledgments

The Commission wishes to acknowledge Governor Robert F. McDonnell for establishing the first Independent Bipartisan Advisory Commission on Redistricting in the history of the Commonwealth. Commission members were privileged to be chosen to participate in this landmark activity.

The Commission's work over the past two and a half months would have been impossible without the assistance and support of an extraordinary number of individuals, groups and firms from all corners of Virginia. We wish to express the depth of our gratitude to the many people and organizations who assisted, informed, and advised us.

- The 300 citizens of Virginia who came to the Commission's four public meetings and told us what they wanted to see in redistricting. Many of those people not only shared their personal stories and experiences but also demonstrated a deep concern for their communities and for the Commonwealth.
- The 18 professors from colleges and universities across Virginia, and their 150 students who participated in the Virginia College and University Redistricting Competition. They demonstrated the best in our higher education system; their talent, energy, and commitment makes us feel comforted in the next generation of leaders. We wish to particularly acknowledge the team from the William & Mary Law School, who stepped in to work with the Commission's map-drawing at the end of the competition. Brian Cannon, Nick Mueller, and Brian Rothenberg were extraordinarily helpful.
- The advisors to the Commission, including Dustin A. Cable, Charles W. Dunn, Ernest C. Gates, William H. Hurd, Quentin Kidd, Michael P. McDonald, Anthony T. Troy, and Judy Ford Wason. The Commission could not have begun to have completed its task without the countless hours these individuals dedicated to its work.
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- Norfolk State University, Virginia Commonwealth University, George Mason University, Germanna Community College and Virginia Western Community College for making their facilities available to the Commission for its meetings and public forums.
- The League of Women Voters, the Richmond First Club and other members of the Virginia Redistricting Coalition for publicizing the Commission's meetings and forums.
- William A. Royall Jr. for his generous support of this privately funded initiative.

Finally, the Commission's work would not have been possible without the able, talented, and energetic assistance of the Commission's sole staff member, Steven Jones.

EXHIBIT S

PRIVILEGES AND ELECTIONS

REDISTRICTING

SENATE HEARING

BEFORE: DELEGATE MARK COLE, CHAIRMAN

PLACE: COMMONWEALTH OF VIRGINIA
GENERAL ASSEMBLY BUILDING
RICHMOND, VIRGINIA 23218

DATE: APRIL 4, 2011

TIME: 2:00 PM

Crane-Snead & Associates
4914 Fitzhugh Avenue, Ste 203
Henrico, Virginia 23230
804-355-4335

1 CHAIRMAN COLE: The meeting will come to order.
2 The first order of business today is we're going to take
3 up a Senate Joint Resolution confirming some of the
4 appointments that the Governor has made. It has been
5 distributed to the members, so please look at it. It's
6 Senate Joint Resolution number 5001.

7 DELEGATE COSGROVE: Motion to report.

8 CHAIRMAN COLE: There's a motion to report. Is
9 there a second? All in favor of reporting will vote yes.
10 Has everyone voted? Clerk will close the role. The
11 resolution is reported.

12 All right. We have, I think, two other bills on
13 the docket today. What I would like to do is have a
14 presentation of both of the bills first, before we do any
15 notices, and at the request of the patron, I'll ask
16 Delegate Brink if he would present House Bill 5002.

17 DELEGATE BRINK: Thank you Mr. Chairman and
18 Members of the Committee. I deeply appreciate your giving
19 me the time to bring House Bill 5002 before you, given the
20 time constraints that you're working under, and also the
21 time that you have devoted over the past couple of weeks
22 to redistricting.

23 The Bill, House Bill 5002, is a product of the
24 Virginia Redistricting Competition, which was sponsored by
25 the Watson Center for Public Policy at Christopher Newport

1 University, and the Public Mapping Project at George Mason
2 University. The goal was to educate Virginia college and
3 university students and the public about the process of
4 redistricting. And, from what I understand from many of
5 the students, they learned more than they thought they
6 were going to through this process.

7 The student teams were tasked with drawing
8 districts for Congress, the State Senate and the State
9 House of Delegates using the 2010 census criteria. There
10 were two divisions. One of them followed criteria
11 originally articulated for this competition, and the
12 second division was tasked with using the criteria in
13 Governor McDonnell's executive order, establishing his
14 Advisory Redistricting Commission.

15 I'm told 55 plans were submitted to the
16 competition. The volunteer judges for this were Thomas
17 Mann, who is the senior fellow at the Brookings
18 Institution, and Norman Ornstein, who is the resident
19 scholar at the American Enterprise Institute. The winner
20 for the competition for the House of Delegates, using the
21 Governor's advisory criteria, was the team from the
22 University of Richmond, led by Professor Dan Falsore.

23 I introduced this plan by request as House Bill
24 5002; first, because I think that this student team and
25 the other student team deserve recognition for the time

1 that they've devoted to this project; and, second, because
2 in assembling its plan, I think you'll learn that the team
3 has discovered and experienced many of the time, legal,
4 and statistical challenges that confronted this committee
5 and you, Mr. Chairman, over the past couple of weeks.

6 Caleb Routhier of the University of Richmond is
7 here representing the team to describe the plan that's
8 embodied in 5002, and, if I could, I would like to have
9 him present it to you briefly.

10 CHAIRMAN COLE: Sure.

11 MR. ROUTHIER: I've been made aware that you each
12 have a plan in front of you. I think that if you can
13 contrast them with House Bill 5001, you'll see that there
14 are a number of key differences.

15 I want to begin by saying that we developed this
16 plan from an apolitical prospective. We didn't look at
17 voter registration data, or who voted for who in the past
18 elections. We drew the precincts so that they would be
19 around communities of interest, around highways and rivers
20 and inlets, and we just let the politics fall where they
21 may. As a result, our map ended up being very fair, in
22 terms of republicans versus democrats in the House that
23 would be elected, based on the 2009 results.

24 If you look at the southwest of Virginia, you'll
25 notice under House Bill 5001, there are a number of

1 districts that are very strung out; the 5th district, 6th,
2 14th. In the session earlier today, the 17th was brought
3 up by Joe Morrissey as being shaped like the letter C.
4 Our plan does not create all of these strung-out
5 districts. It keeps the communities of interest
6 together.

7 In Richmond, especially if you contrast 5001 to
8 5002, Richmond looks much better. You have a nice little
9 diamond effect in Richmond, and then a square district,
10 and they still follow the minority/majority rules,
11 creating four minority/majority districts in the City of
12 Richmond, without sacrificing contingency and contiguity.

13 If you look at Hampton, especially the peninsula
14 from Williamsburg through Newport News, down to Hampton,
15 there are six districts on both plans. But if you look at
16 how the districts are strung out, the 5001 bill creates
17 very long, stringy districts, and the 95th looks like a
18 ladle.

19 If you look at the 5002 plan, that peninsula of
20 six districts, which you could just switch that peninsula
21 in with the six-district peninsula from the other plan
22 with no effect to the rest of the state, our districts
23 make more sense. They are all contiguous. They are
24 compact, and this is the theme throughout the rest of the
25 map, as well. If you look in the Tidewater region, the

1 district from the 5001 map looks like a jumbled mess. If
2 you look at the 80th district, it's barely touching
3 itself, the two halves of it.

4 Our map still provides the same number of
5 minority/majority districts, and they're all contiguous
6 and compact. And the lines just look much better, so that
7 people are living within the same community of interest as
8 their delegates.

9 If you go up to northern Virginia, the districts
10 there are reasonably similar, but there are a few notable
11 exceptions, like the 51st and the 39th and the 40th, where
12 the 5001 plan creates very strung-out districts, so that
13 people are not connected with other people in the
14 district, and they're not being represented by someone who
15 can actually represent all of them very well.

16 Finally, in northwest Virginia, you see around
17 the cities of Charlottesville and Harrisonburg a number of
18 districts that are strung out; like the 25th, the 20th,
19 excuse me, has a very similar situation to the 80th, and
20 then the 76th, down in the Tidewater region, where it's
21 just barely connected together.

22 Many of these districts from the 5001 map are
23 connected not even by roads. They're connected only by
24 inlets of water, so you would have to take a boat or leave
25 the district in order to be able to access all parts of

1 the district. We fixed this problem by making sure that
2 the 100th district was accessible by road. The 79th
3 district is accessible by roads within the district.

4 We just wanted to present this plan to show that
5 the district, if you approach the process from an
6 apolitical perspective, you can draw districts that still
7 present representational fairness around the state, still
8 provide the number of minority/majority districts, and
9 create shapes that people will be able to look at and say,
10 oh, the redistricting plan actually made some sense this
11 year.

12 So this is the general layout of our plan. Thank
13 you.

14 CHAIRMAN COLE: All right. Thank you very much.
15 Is that your presentation?

16 DELEGATE BRINK: That's my presentation.

17 CHAIRMAN COLE: All right. Thank you very much.

18 Are there any questions or comments? Delegate
19 Jones.

20 DELEGATE JONES: What was the deviation on the
21 plan, do you know?

22 MR. ROUTHIER: The deviation is plus or minus
23 five percent.

24 DELEGATE JONES: So if I may, I guess your
25 emphasis would be more compactness and contiguity instead

1 of One Person/One Vote?

2 MR. ROUTHIER: We were focusing more on
3 compactness and contiguity, yes.

4 DELEGATE JONES: Thank you, gentlemen.

5 CHAIRMAN COLE: All right. Any other questions
6 or comments?

7 Thank you, gentlemen.

8 Delegate Jones, are you ready to present your
9 bill?

10 DELEGATE JONES: I thought there was another bill
11 to be presented. Is there another?

12 CHAIRMAN COLE: No.

13 DELEGATE BRINK: Thank you for your time,
14 Mr. Chairman.

15 DELEGATE JONES: Mr. Chairman, I'm just going to
16 sit right here, if it's okay. The body has before it
17 House Bill 5001. I believe it's been a week and a half
18 ago, we had a meeting that dealt with criteria, and we had
19 plus or minus one percent, and we had as our second
20 criteria the compliance, the full compliance with the
21 Voting Rights Act.

22 What you have before you, in my opinion, does
23 that, Mr. Chairman, and I would say that, you know, we
24 have had a lot of amendments that have been offered to
25 this bill, and there are going to be individuals on this

1 committee that are going to be making recommendations and
2 amendments.

3 We have a substitute that was just delivered to
4 the second floor about 20 minutes ago, and in about 15
5 minutes we should have a report that looks like this, that
6 has every district with the precincts and where they're
7 cut and the districts, et cetera, as far as communities
8 and neighborhoods or jurisdictions. This bill that was
9 put in last week did cause three districts to move from
10 the southern part of Virginia. You have south side, you
11 have the great southwest, and you have Hampton Roads.

12 The population shifts over the last decade caused
13 a shift of approximately three seats from the -- if you
14 use as your latitude, I guess, Williamsburg, you go over
15 to Petersburg and you go to Lynchburg, and go over toward
16 West Virginia, everything below that had almost a three-
17 seat loss in population. So what this map reflects is
18 evenly disbursed across the bottom part of Virginia,
19 moving into the growth areas of our Commonwealth, which
20 have Loudon County, Prince William County, and Stafford
21 County.

22 You will note that the gentleman to my right, my
23 good friend Phillips, he has moved to the northern part of
24 Stafford County. Prince William, the 7th seat, has moved
25 from Norfolk to Loudon, and so has the 10th, has moved

1 from Southside to Loudon. Those are the three major
2 differences, as far as the plan that was before us, as far
3 as the seats and how they were handled. Now, what we do
4 have before you was my first best shot, after talking to
5 some of the individuals who came to see me, and many
6 members of the House of Delegates.

7 What happened after the bill was introduced, what
8 happened ten years ago, is that when they could see the
9 map and they could see various precincts and the splits
10 that occurred, there were requests that started coming in
11 almost immediately from last Tuesday. Since Tuesday,
12 until today, I've probably met with 15 to 20 members,
13 either personally or on the phone. I'm trying to deal
14 with some of the issues that they felt could be easily
15 corrected, and still adhere to the One Person/One Vote
16 criteria.

17 We had the public hearing. The last was this
18 morning. It was our eighth in the last three days. We
19 had a good turnout in Hampton Roads last Thursday night.
20 We went to Rockingham. We went to Abington, and then we
21 went to Danville on Saturday, and then we had our last
22 public hearing here this morning at 10:00.

23 So what I would like to do is bring up a couple
24 of technical amendments that were brought to my attention,
25 that will be in the substitute that you will see in a few

1 minutes. And then, other members would probably like to
2 speak from various areas of the Commonwealth.

3 It was brought to our attention Saturday morning
4 that in the Town of Timberville there was an issue that we
5 needed to fix. Delegate Landis and I can relate to that.
6 We moved population from the 15th to the 26th, and then we
7 had an issue in Ridgewater and we had to pick up a zero
8 census block. We also had some issues that were raised at
9 the Abington meeting about the Town of Abington, and I
10 think the substitute will reflect keeping all of the Town
11 of Abington within one House district.

12 We also had a couple of requests. I know that
13 York County had a request last Thursday night. We looked
14 into that, and feel like that issue has been addressed and
15 taken care of. There was also, I believe, a request from
16 the County of Frederick between the 29th and the 10th
17 districts. We had a split precinct. We had some serious
18 concerns with that, and I'm pleased to say we were able to
19 address that and make that fix after the session today.

20 I think there were technical amendments that are
21 much better included in the substitute that we will have
22 in a few minutes, as far as the listing. Also, we had an
23 issue that was between the 5th and the 6th, which is
24 Delegate Carrico and Delegate Crockett-Stark. I believe
25 we did in Smith County. We took that and we flipped out

1 Seven Mile Ford precinct for Sugar Grove and Royal Oak
2 West. That was something that was requested, and the
3 numbers worked and it made sense to do. In the last
4 requests, we had a request from Deligate Cosgrove dealing
5 with an industrial park that has zero population, so that
6 would be a zero census block.

7 There were some questions and concerns about
8 maybe having too many members in one city. The bill that
9 was introduced reduced the number of members that
10 represent the Chesapeake by one, and we reduced in the
11 79th district, which is Delegate Joannou, you went from
12 four jurisdictions to two. That's in the original
13 substitute bill that's before us. I tried to listen to
14 things along the way from the jurisdictions and from the
15 towns and the counties and cities.

16 I do believe that Delegate Spruill might have an
17 amendment he wants to make. I know that Delegate Spruill
18 came to me last week, and there was some concern as far as
19 trying to get the 92 all in Hampton; is that correct,
20 Lionell?

21 DELEGATE SPRUILL: That's correct.

22 DELEGATE JONES: And so what we were able to do
23 was to rotate two precincts from the 92nd back into the
24 95th, and that took the 92nd out of Hampton. And that
25 switch actually was done very easily by giving back a

1 whole precinct that the 92nd had lost to the 91st, and
2 picked up two split precincts that were split in the
3 introduced bill. So that is what we did in the peninsula
4 and for Delegate Spruill.

5 Then, last week, we had a meeting with some
6 gentlewomen from Richmond City and on Southside. So
7 Delegate Dance, if you would like to give some details as
8 to what we looked at and what we considered, and I'll give
9 a little more detail, if you like.

10 DELEGATE DANCE: Thank you, Delegate Jones.
11 There were some issues between Delegate McClellan's area
12 and Delegate Carr, and with some help from you and working
13 with Delegate Loupassi, they were able to make some
14 changes that would strengthen their district, minority
15 district.

16 In the twelve minority districts that we have
17 around the state, two of the districts that we're talking
18 about, two minority districts, one held by an African
19 American, one held by a Euro-American, Delegate Clark, are
20 still minority districts. Whether they serve or others
21 serve, or others have an opportunity, depends on how
22 strong it is.

23 In trying to get that straight, at least 55
24 percent performing, voting performing in districts, it
25 required some shifting between the three. So I know

1 Delegate McClellan was at 50 percent, currently she's at a
2 50 percent district, as far as African American district.
3 For Delegate McClellan, that's not an issue. Even though
4 she's an African American, she can win that district. But
5 if Delegate McClellan leaves that and goes on to become a
6 State Representative, state-wide representative, Congress
7 or whatever, could another African American minority
8 person, if you will, still be able to keep that as one of
9 the 12 minority districts? Not so.

10 So, in order to make it stronger, so that that
11 would be a position that an African American could hold,
12 then there needs to be some shifts. And the three
13 parties, the delegates, are in agreement and we've made
14 that transition.

15 DELEGATE JONES: And I would like to add that, in
16 the process of doing that, we actually took Delegate
17 Massie and Delegate O'Bannon completely out of Henrico.
18 We were able to do that, and that left Delegate McClellan
19 with just one precinct in Henrico. I think that then
20 gives the City of Richmond, they know that they don't have
21 a split representation in that regard. That move allowed
22 us to move those two individuals out of Richmond City, and
23 then make it more compact and contiguous, I believe, at the
24 end of the day.

25 DELEGATE DANCE: Yes.

1 DELEGATE JONES: There was also an issue between
2 the 61st and the 75th.

3 DELEGATE DANCE: That's so.

4 DELEGATE JONES: Nottoway was split. And so at
5 the meeting with Delegate Tyler and Delegate Wright, they
6 felt they needed to leave it how it currently exists. And
7 so we made Nottoway whole, and then we went in and took
8 the existing two precincts that are within Lunenburg, I
9 think it was Hounds Creak and Rosebud, and were able to
10 effectuate that change. And then, on the eastern border,
11 I believe Delegate Dance made a couple of trades of
12 precincts in the Sussex and South Hampton areas, between
13 the 64th and the 75th.

14 DELEGATE DANCE: Yes, you're right. I'm kind of
15 like switching my numbers around. It's 68, 69 and 71, and
16 that's Loupassi, Carr and McClellan. And then for 61, 64
17 and 75, that is Wright, Barlow and Tyler. But Delegate
18 Tyler, of course, being the minority in the Southside
19 area, like you just mentioned, and McClellan and Carr are
20 minorities in Richmond.

21 DELEGATE JONES: And I believe we also, between
22 the gentleman to my left here, Delegate Ingram, we made a
23 swap between him and Delegate McQuinn, which actually took
24 a southwestern precinct away from her, and we gave her
25 back a precinct that she currently has, which has made it

1 a little bit more compact in that regard. So that was
2 something that was approved by me with my colleagues from
3 Richmond City.

4 DELEGATE DANCE: That's correct.

5 DELEGATE JONES: Anything that you may have?

6 DELEGATE DANCE: That's what I've got.

7 DELEGATE JONES: Okay. Now we'll move north. I
8 know that Delegate Sickles and I have sat down on several
9 occasions to go over some concerns about communities of
10 interest. He knows where the Metro stops are, where the
11 communities exist, and where we might have cut something
12 in half. So I'll just yield the mic at this point to
13 Delegate Sickles.

14 DELEGATE SICKLES: Thank you, Delegate Jones.
15 First of all, I would like to say, on the Arlington part,
16 I don't know Arlington very well. This work was done
17 mostly by Delegate Brink, inside the beltway. But the
18 idea was to have a northern, central and south Arlington
19 district, to keep the communities of interest together in
20 that way.

21 And so from the introduced bill, we would suggest
22 moving from the 47th to the 48th precincts Woodlawn,
23 Cherrydale and Lyon Village. From the 48th to the 49th --
24 the 49th is an open seat right now, because Delegate Ebbin
25 is not running for re-election to the House. Moving from

1 48th to 49th is Hume, Virginia Highlands, Aurora Hills and
2 part of Oak Ridge. Moving from the 49th to the 47th will
3 be Ashlawn, Arlington Forest, Glen Carolyn, Barcroft and
4 part of Jefferson.

5 Outside of the Beltway, and down in my neck of
6 the woods, I'm the recipient of two large precincts,
7 Lorton Station and Lorton, moved from the introduced bill
8 from the 39th district to my district, the 43rd. And this
9 keeps all three Lorton precincts east of I-95 in the same
10 district. To compensate for all that large group of new
11 people, Pioneer would be moved from the 43rd to the 39th,
12 along with parts of Van Dorn.

13 This move was made to give the 39th district,
14 which was strung out pretty good, from western Annandale
15 down to Norton. The community of interest of Old
16 Springfield, basically older Springfield, would be all in
17 the 39th district. Part of the Belvoir precinct was moved
18 into the 44th in order to make a good connection to the
19 Hayfield precinct. Right now, because of the way the
20 census blocks were done in the introduced bill, there's a
21 split precinct that can be done away with if we move Fort
22 Belvoir, that has just a zero census block population,
23 into the 24th.

24 In order to get down to our very tight one man,
25 one vote, one percent, we had to make a couple of

1 changes. Part of Huntington precinct goes to the 45th
2 district. The part that goes in there is the same
3 neighbor, actually, it's just on the other side of the
4 street. And then we split from the introduced plan two
5 precincts that are currently represented by incumbents
6 that were switched. They were switched with population.
7 That's the reason we were able to switch them back.
8 That's Belle Haven and Belle View, in central Fairfax, in
9 the area where the 39th, the 41st and the 53rd all come
10 together.

11 In central Fairfax, we moved Camelot precinct
12 into the 39th district. That keeps a neighborhood
13 together. We moved some of southern Pine Ridge to the
14 39th, based on the natural boundary of a stream, and moved
15 Ridgely precinct into the 39th. That also maintains the
16 district precinct, and it has a community of interest with
17 Camelot.

18 The one thing that we heard on Saturday was the
19 fact that Mantua precinct was split in the original plan.
20 This amendment would put Mantua back together and be
21 entirely in the 41st district, and so a reunited precinct
22 there. And then, finally, the last thing is we switched a
23 precinct in the 37th district that was currently held,
24 that was taken out, back into a precinct for another
25 precinct, the 35th. And that is the sum total, I

1 believe.

2 DELEGATE JONES: Okay. Thank you, Delegate
3 Sickles.

4 And, as you can see from the plus or minus one
5 percent when the bill was put in last week, much input has
6 been received since then. I think, when you see a map,
7 that -- in about 30 to 45 minutes, you'll see a map --
8 that the Richmond area and northern Virginia looks a
9 little more compact and contiguous, I would think.

10 And that's really it, Mr. Chairman. Maybe a few
11 more little nits and nats here. We have got on the 14th
12 and 16th we took a precinct that was moved from the 14th
13 to the 16th, put it back into the 14th at Henry County.
14 We took a precinct, two precincts that were in the 16th,
15 and we put them in the 14th. We have looked at that, and
16 have both of those precincts in the 16th district. So I
17 think that puts us back more with the existing district as
18 it currently would sit.

19 There was a split between the 31st, Lingamfelter,
20 and Torian of the 52nd, and I think that pretty much
21 encompasses it. I think the balance of the changes that
22 have been made will be included in the substitute.

23 DELEGATE LANDIS: Mr. Chairman?

24 CHAIRMAN COLE: Delegate Landis.

25 DELEGATE LANDIS: Thank you, Mr. Chairman. Can I

1 ask Delegate Jones one question?

2 CHAIRMAN COLE: Sure.

3 DELEGATE LANDIS: Delegate Jones, one of the
4 things that I think was discussed at the public hearing,
5 and I didn't hear any mention, was a census block for an
6 annexation area, the town of Bridgewater. It doesn't have
7 any population in it, but it is just a geographic
8 adjustment. Is that --

9 DELEGATE JONES: Yes.

10 DELEGATE LANDIS: -- Among the ones that have
11 been considered?

12 DELEGATE JONES: That's right. It's not a square
13 shape when I do it. It kind of sticks up, but they
14 requested that, and I think it's something of an
15 annexation issue, and they asked that we would do that and
16 we did do that.

17 DELEGATE LANDIS: Thank you, Mr. Chairman.

18 CHAIRMAN COLE: All right. Delegate Spruill.

19 DELEGATE SPRUILL: On your plan I'm looking at
20 here, I'm trying to find my house.

21 DELEGATE JONES: Keep looking.

22 DELEGATE SPRUILL: Okay. The question that --
23 the 77th district, I'm appointed on the 77th district. On
24 your plan, the 77th district, I see that I'm no longer in
25 the 77th district. Okay. So I'm looking, trying to find

1 my house. And my house is in the 79th District, and it's
2 being represented by a fellow named John Joannou. And I
3 love you, but you aren't a minority, I don't think.

4 I just bought this house in June, and I can't
5 afford to move. So you took me out of the 77th district,
6 put me in the 79th district underneath Johnny Joannou.
7 That's point one. And you use this term minority. Okay.
8 Let's use the term minority.

9 Then I tried to find my friend, Delegate
10 Alexander. He was one of the minorities you were talking
11 about. He's in, his house is in Delegate Howell's
12 district. So you were saying, young man, about keeping
13 the minority districts intact.

14 And then I looked for Delegate Matthew James. So
15 you've got four of us right there, pooled together. So
16 what you have done is, there is Spruill, Matthew James,
17 Algie Howell, and Alexander. So we're in favor of what
18 you are talking about, but we're done looking at this
19 plan. Yes, sir.

20 MR. ROUTHIER: When we drew these plans, we did
21 not know where any of the delegates lived. We drew them
22 from a completely apolitical perspective. We just did not
23 have that data in front us. We drew them in what looked
24 like should be a community of interest there. The fact
25 that people are living all in the same area and

1 representing four districts almost seems to imply that
2 maybe those districts, the communities of interest have
3 nobody representing them right now.

4 I'm sorry that I drew your house out of your
5 district, but I didn't know where your house was when I
6 drew the district.

7 DELEGATE SPRUILL: Thank you. Mr. Chairman, I
8 have another question. But you did say earlier about
9 keeping the minority districts intact, I believe. Did I
10 misunderstand you when you said that point? My concern
11 was that, even though, let's say I was drawn by mistake
12 out of my district. My point was that the 12 minority
13 districts, that we were trying to keep them intact --

14 MR. ROUTHIER: We did not keep them intact as
15 much as we kept their would-be 12. They are in still
16 roughly the same location, but we tried to get closer to
17 50 percent or 51 percent minority for the
18 minority/majority districts, and keep them more contiguous
19 and compact, as a result.

20 DELEGATE SPRUILL: If you would look at, if you
21 would try to keep it compact -- I'm trying to understand.
22 South Norfolk, Georgetown, where my house was, Providence,
23 all of those, they would love John Joannou, but he's of a
24 different persuasion, if I can use that word.

25 Thank you. I'm satisfied now.

1 DELEGATE JONES: Mr. Chairman, I would just
2 reiterate that this plan was drawn with the criteria in
3 mind that we passed. And as I mentioned at the beginning
4 of the presentation of this bill, I think the young man
5 did a very good job presenting his bill and his case. I
6 commend the students for their hard work and what they've
7 done.

8 What I think I've heard is that what our number
9 one and two priorities, which is One Person/One Vote, and
10 fully compliant with the Voting Rights Act, were not their
11 top two priorities. I think I have heard testimony
12 Saturday night. We heard testimony this morning. We
13 heard testimony on the floor. And you have to have an
14 effective minority population to be able to, for the
15 minority to elect the candidate of their choice. Not to
16 reelect the incumbent, but to elect the candidate of their
17 choice.

18 And I think that many would say that if there are
19 50 or 51 percent voting-age population, that really puts
20 in play that ability, because if you look at the
21 registered voters and how it trends, you may have 60
22 percent of Delegate Joannou, of my persuasion, to use
23 Delegate Spruill's term. Is that how you said it? You
24 may be looking at, in reality, it might be 40 percent.

25 So we have a bleed off of the numbers who are

1 actually eligible to vote and who can vote. Because 18
2 just states you're eligible because of your age to be able
3 to vote. That's why they call it "voting-age
4 population." That does not indicate nor dictate that
5 there are that many that would and actually can vote.

6 I would just point out this plan, 5001, took into
7 account parties of interest, took into account the One
8 Person/One Vote, and full compliance in the Voting Rights
9 Act, and took into account something that we should and
10 have as its original intent.

11 Mr. Chairman, I heard that we do not have a
12 substitute in front of us. I think we'll have something
13 by the time the public comment is done to be able to have
14 that in front of us.

15 CHAIRMAN COLE: All right. Thank you, Delegate
16 Jones. What I would like to do is open this up for any
17 public comments for either plan, House Bill 5001 or 5002.
18 So if anyone would like to speak to the committee and
19 address about either plan or redistricting, please step to
20 the podium and identify yourself.

21 MR. JACKSON: Good afternoon, Mr. Chair and
22 Members of the Committee. I'm looking around the room. I
23 think some people have heard me speak before. My name is
24 Andrew Jackson, and I ought to know a little something
25 about politics. But it's just a little bit.

1 I have some concerns, and when I walk through
2 those doors, I have a habit. I take my labels off. I
3 come here as part of the "we the people" thing. I'm not,
4 I'm not ashamed if somebody calls me a minority, or
5 African America, or black, blue, green, yellow, polka-
6 dot.

7 What I am concerned about is that when you talk
8 about representation -- I spent a good part of my life
9 defending representation. A good third of my life was in
10 the military, 20 years plus. And I went into the
11 military, I rose and I raised my hand, it had nothing to
12 do with what anybody looks like. It had to do with what
13 creed I was going to defend, regardless of who came under
14 that umbrella.

15 And so a good part of my life was defending that,
16 even before we had these things called Voting Rights Act
17 and Civil Rights Act, and when I didn't have it, I
18 defended it. And I have ever since then. I would defend
19 your right, as well as my right. And I have attended, as
20 some of you may know, most of the committees that went
21 around the State. They saw me show up, and I spoke.

22 And my concern is that I am not sure, looking at
23 the plans, if everybody completely understood what
24 language we were talking, because most of the people in
25 those meetings were talking about the same thing; making

1 sure that everyone was represented, and being represented
2 by what their needs and their views were. And so I'm
3 concerned about that.

4 We in Virginia Beach sat down and drew up a map.
5 We drew up something, and I think it has been
6 distributed. But if it has not, I would ask permission
7 for someone to give that to the Clerk so that you all
8 would have a copy. Because something, for all of those
9 years, that drove me to keep moving, was just a few simple
10 words that say, "we hold these truths to be self-evident,"
11 and that we live by, indeed, by what we, in fact, say is
12 creed.

13 That's important to me. And I haven't laid down,
14 yet. So you'll see me again and again and again until we
15 get this right. We have too much at stake in this
16 Commonwealth, in Virginia Beach, in whatever city you're
17 talking about. This is important to the people. This is
18 not somebody looking at whether they're going to get
19 re-elected again. The people didn't send any of you here
20 to get reelected again. They sent you here to represent
21 us as a people.

22 And this is not here (tapping podium). There's
23 no piece of paper here. This is from here (tapping
24 chest). This is what I've lived my whole life for, in
25 moving forward and getting something done. And I want

1 representation. And in Virginia Beach it's nonexistent.
2 We're asking for a minority/majority district. And if you
3 look at that map and justification, we can do that in
4 Virginia Beach without a whole lot of turmoil. And it
5 stays within the city. It doesn't cross any boundaries.

6 So I'm going to ask you to consider that. And,
7 in doing so, don't consider it now. Go home, look in the
8 mirror, and remember we holds these truths to be self-
9 evident.

10 Thank you.

11 CHAIRMAN COLE: Thank you.

12 Anyone else wish to speak?

13 MR. WRIGHT: I don't know what else to say.

14 CHAIRMAN COLE: Could you identify yourself for
15 the record?

16 MR. WRIGHT: I'm sorry, Mr. Chairman. Good
17 evening, Mr. Chairperson. I apologize. I'm pretty much
18 at a loss for words. I really am. Because I really
19 see --

20 CHAIRMAN COLE: What's you're name, again?

21 MR. WRIGHT: I'm sorry. My name is Carl Wright.
22 I reside in the great city of Virginia Beach. I came up
23 here to put in place a minority/majority district that my
24 folks have been working on for the last two months. We
25 were up to 2:00 in the morning tweaking this thing. And I

1 want to say that we had over 60 folks, and that was
2 unusual. I'm really proud of them to come forward and work
3 to cross party lines to work on this district.

4 My concern is -- and I want to commend this young
5 man. I want to say thank you, because I know where you
6 were coming from. You didn't see any difference among
7 folks. He was trying to do the right thing, and I want to
8 commend you on that. Keep doing that. Keep doing that.
9 Ten years from now, keep doing that. I want to say that.

10 But I want to say to you all, this partisanship
11 thing, this power struggle thing to keep ourselves in
12 position so that we can be re-elected, be careful what you
13 hope for, because you might just get it and it might not
14 be what you want. Because when you start seeing those
15 come up like myself, that may mean that the natives are
16 restless. They're not just sitting back like they used
17 to, just being comfortable. I take notice when people
18 come out, particularly folks that I haven't seen. That
19 means that folks are listening, watching and learning.

20 I would say to you, once again, these folks that
21 have invested their time, energy and resources in drawing
22 these districts to have representation, they're not here
23 just to waste their time. They didn't do it just to waste
24 their time. And I would say, again, to our college
25 students, keep doing the right thing, regardless of what

1 folks say, because this partisanship situation right here
2 in Virginia has to cease.

3 I know I said this when I first came up, some
4 folks have already had their minds made up what they were
5 going to do. And I'm not here to tongue lash anyone, but
6 I will tell you that, in the City of Virginia Beach, there
7 is no representation for African Americans. Now, the way
8 this district is drawn now, it increases it to the south,
9 but it doesn't change the lack of representation
10 throughout the city. The district that we drew up is a
11 true minority/majority district.

12 And I'll say to you all once again, please take a
13 look at it and set partisanship aside. If there is
14 something that you all say that you can't really -- you
15 don't understand it, there's information up there, contact
16 information. Get back with my folks. But what I have
17 heard in here today is basically everybody trying to play
18 it safe, everybody trying to cover their districts.

19 So I'm just saying, I'm just going back home,
20 boots on the ground, as we say, and deal with it, talk
21 with the constituency there. We're going to try to get
22 out and get good people in office, and make sure that,
23 when we look for representation, that our representatives
24 have the voice of the folks in mind, and not just, you
25 know, here it is. We've already made our decisions.

1 And I would say to you all, take a look at that
2 again, you know, because what I heard here today basically
3 was that, when I filled my tank up this morning, leaving
4 Virginia Beach, it cost me about \$70 to come here to
5 Richmond, I could have kept that in my pocket. But I say
6 to you all, thanks for inviting us and hearing us out.
7 And please take a look at the district that we drew and
8 presented to you.

9 Thank you, again, for everything.

10 CHAIRMAN COLE: Thank you. Does anybody else
11 wish to speak?

12 All right. Thank you. I believe at least the
13 precinct list for the substitute has been distributed to
14 the committee members.

15 DELEGATE JONES: Yes, sir.

16 CHAIRMAN COLE: For 5001.

17 DELEGATE JONES: Yes. That is correct,
18 Mr. Chairman, and this will give you, in a report format,
19 what would be put into a substitute that would be probably
20 two or three pages long, front and back, when they're
21 sitting down with the precincts. I'm going to answer any
22 questions that any members may have, once we've had a
23 chance to look over this.

24 I'm not sure what the posture would be, if we
25 wanted to approve the amendment and make the substitute in

1 concept, based on this work plan which has the House
2 District listed by precinct.

3 CHAIRMAN COLE: Okay. Is there any other
4 question or discussion? Okay.

5 DELEGATE JONES: Mr. Chairman, I would move
6 that we --

7 CHAIRMAN COLE: That we adopt the substitute?

8 DELEGATE JONES: The districts, as listed, the
9 document form of Committee Substitute for 5001.

10 DELEGATE DANCE: I second.

11 CHAIRMAN COLE: There's a motion to a adopt the
12 substitute for 5001. Any other discussions?

13 DELEGATE SICKLES: Mr. Chairman.

14 CHAIRMAN COLE: Delegate Sickles.

15 DELEGATE SICKLES: I just wanted to be clear that
16 when this is a substitute on the floor, will it be
17 amendable?

18 CHAIRMAN COLE: Anything on the floor will be
19 amendable.

20 DELEGATE SICKLES: Okay. Thank you.

21 CHAIRMAN COLE: Any other questions or
22 suggestions? And all of those in favor of adopting the
23 substitute, say aye. Opposed? All right, the substitute
24 for 5001 is before us. Is there a motion on the bill?
25 Motion to report? Is there a second?

1 DELEGATE COSGROVE: Second.

2 CHAIRMAN COLE: Okay. Any other House
3 discussions on the substitute for House Bill for 5001?
4 Now, all those in favor of reporting the substitute for
5 5001 will vote yes.

6 Okay. Has everyone voted? Clerk will close the
7 role. The bill is reported. Is there any other business
8 to come before the Committee?

9 DELEGATE ALBO: I have a question.

10 CHAIRMAN COLE: All right.

11 DELEGATE ALBO: This computer program that you
12 guys have developed is phenomenal. I mean, it's really
13 good. If you go back, you can tag onto the HTML
14 attachment, and you can see all kinds of information. Is
15 the bill that we just passed, when do you think that that
16 is going to be into the computer?

17 DELEGATE JONES: It's being done now. Shortly.

18 DELEGATE ALBO: I just wanted to congratulate
19 you. It's really good.

20 DELEGATE JONES: Mr. Chairman, if I may, I would
21 ask all the Members of the Committee, the public included,
22 to please take a copy of this and go through it and look
23 at it and see that you know your districts, which all
24 members do. I know what you came to talk to me about, or
25 to talk to them about. We tried to reflect that. But

1 sometimes, when you have multiple versions of a program,
2 you might lose something in the program. But I think this
3 best represents what we have talked about before you
4 properly.

5 CHAIRMAN COLE: Okay. Is there any other
6 discussion or any other business to come before the
7 Committee? If not, the committee will rise.

8

9 NOTE: At this time the meeting was adjourned.

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CERTIFICATE OF COURT REPORTER

I, Kellie Milner, hereby certify that I was the court reporter in the Privileges and Elections Hearing for the General Assembly on the 4th day of April, 2011, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the incidents of the hearing herein, to the best of my ability.

Given under my hand this 3rd day of May, 2011.

Kellie Milner, Court Reporter

EXHIBIT T

PRIVILEGES AND ELECTIONS

REDISTRICTING

PUBLIC HEARING

BEFORE: JANET HOWELL, CHAIRWOMAN

MARK COLE, CO-CHAIR

PLACE: COMMONWEALTH OF VIRGINIA

GENERAL ASSEMBLY BUILDING

HOUSE ROOM C

RICHMOND, VIRGINIA 23218

DATE: APRIL 4, 2011

Crane-Snead & Associates
4914 Fitzhugh Avenue, Ste 203
Henrico, Virginia 23230
804-355-4335

1 SENATOR HOWELL: Good morning, everyone. I'm
2 Senator Janet Howell, and I represent the Senate
3 Privileges and Elections Committee, and with me is
4 Delegate Mark Cole, who chairs the House Privileges and
5 Elections Committee. I want to thank you all for coming
6 today and participating in our public hearing.

7 Last winter and fall, both the House and Senate
8 Privileges and Elections Committees held public hearings
9 across the state to hear from you about the redistricting
10 process that is now before us. In addition, eight public
11 hearings were held last week, this being the eighth and
12 final.

13 During these hearings, we will be in a listening
14 mode. We want to know what you are thinking. We welcome
15 public comments, and they have been and will continue to
16 be considered. In addition to these hearings, we will be
17 reading the comments that are being posted on the
18 redistricting website at the Division of Legislative
19 Services. These hearings are an opportunity for us to
20 hear from the public and receive your input.

21 We are under considerable time constraints.
22 Because of elections this year, unlike most states, which
23 won't have assembly elections until 2012, the
24 redistricting time table is short. It's only been one
25 month since Virginia received corrected census numbers.

1 Looking forward, because we are a Voting Rights Act state,
2 we must send our plans to the Department of Justice, which
3 has 60 days to review and preclear them. We must also
4 follow State and Federal laws for the timing of our
5 primary and general elections. This has resulted in a
6 very compressed time schedule.

7 This week, during our redistricting special
8 session, bills will be introduced by legislatures, and
9 those bills will go through the normal legislative
10 process. The dramatic shifts in Virginia's population
11 required changes in district lines. Some districts were
12 grossly over-populated. Others were significantly under
13 populated. Some regents will gain representation. Other
14 regents will lose representation. This is due to the One
15 Person/One Vote Federal and State requirements.

16 This past Tuesday afternoon, Senate democrats
17 presented a proposed plan to the General Assembly's
18 Division of Legislative Services. We have already made
19 numerous changes to that plan, and, based on comments
20 we've received, we expect we will make further
21 modifications. This plan can be found on the Division of
22 Legislative Services website.

23 We believe our proposed plan fully complies with
24 all applicable Federal and State legal requirements,
25 including the One Person/One Vote Requirement of the

1 Federal and State Constitutions, the Voting Rights Act,
2 and, as I said, the Virginia Constitution.

3 And now, Delegate Cole.

4 DELEGATE COLE: Thank you. I want to welcome
5 everyone here for this public hearing. And, again, as the
6 Senator said, this is our opportunity to hear from you,
7 hear from the public on the redistricting plans that have
8 been put forward. So there won't be a whole lot of
9 comments or anything from the committee. And, again, I
10 just look forward to hearing from everyone.

11 SENATOR HOWELL: Just for everyone's information,
12 we have a court reporter who is taking down all the
13 comments, and they will be posted on the website. Also,
14 we would ask that each person speak for no more than three
15 minutes. Now we begin, but I don't have the list. Thank
16 you. Kirk Jones.

17 MR. JONES: Madam Chair and Chairman Cole,
18 Members of the Joint Committee, my name is Kirk Jones.
19 I'm president of the Central Virginia chapter of the
20 Randolph Institute. I appear before you this morning to
21 encourage you to not only maintain the majority of the
22 voting districts that we have in the state, but try your
23 best to create others.

24 Based on the census from 2010, we can see the
25 drastic changes in the population of the state. We have

1 an increased minority population, not only Africa
2 Americans, but also Hispanics in our state. These
3 citizens deserve representation. They deserve to be given
4 a chance to vote for representatives of their choice.
5 This is my request to you today. Thank you.

6 DELEGATE COLE: Andrew Rivera.

7 MR. RIVERA: Thank you for the privilege of
8 talking to this distinguished body. My name is Andrew
9 Rivera. I am an attorney, and a resident of Alexandria,
10 Virginia. I also happen to be of Puerto Rican birth and
11 persuasion, and I'm here to talk about the Latino
12 community here in Virginia. The 2010 census data shows
13 that Latinos are ten percent of the Virginia population
14 now, one out of every twelve residents, yet we have yet to
15 elect a Latino to this distinguished body. And it is
16 important that, as this distinguished body reviews the
17 district lines, we know that there's yet to be an
18 opportunity to draw a majority Latino district in the
19 state, despite the best effort of the bipartisan
20 commission, and of the college competition.

21 However, we do maintain some strong polarities
22 with a voting-age population within at least twenty
23 districts of the delegates and about ten in the Senate. I
24 would also urge that we concentrate, but not dilute, the
25 Latino community in the districts. I would also urge that

1 we re-exam the assembly plan, as written.

2 In the 21 districts that we have at least ten
3 percent voting age population of Latinos, nine are
4 represented by republicans. And, of those nine districts,
5 the polarity of Latinos in those districts are reduced
6 except for one, that of Delegate Marshall, who goes from
7 ten percent Latino population, to a twenty percent
8 population in his district.

9 And those are my comments at this time. Thank
10 you very much.

11 DELEGATE COLE: Thank you. Juan Marcos Vilar.

12 MR. VILAR: Good morning. Thank you, Senator
13 Howell and Delegate Cole. My name is Juan Marcos Vilar,
14 and I live in Alexandria, Virginia. I've lived in the
15 State of Virginia for nine years now. I would like to
16 re-emphasize what the previous two speakers have talked
17 about today.

18 There's something that just stands out vividly
19 from the census figures, and that is the growth of the
20 diversity in this state. I think that the plan that you
21 currently have could add two additional African American
22 seats, if you were to spread the population around a
23 little bit better and add some more representation on that
24 line.

25 And, again, I'm concerned with the fact that so

1 many districts are being diluted of Latino population,
2 whereas the concentration of the population would give us
3 a more solid voice, even though we may not achieve to have
4 a majority Hispanic district at this time.

5 Thank you very much for your time. Those are my
6 comments.

7 DELEGATE COLE: Thank you. Sherry Blanton.

8 MS. BLANTON: Good morning. Thank you for having
9 me. I know with the pretty nice weather, it's a shame to
10 have to be inside, but it's spring, now, finally. My name
11 is Sherry Blanton. I live in Herndon, Virginia, and, like
12 the others, I just want to address some of the history of
13 Virginia.

14 DELEGATE COLE: Could you move your microphone
15 down a bit, please? Thank you.

16 MS. BLANTON: Sorry. Historically districts in
17 Virginia have been gerrymandered to decrease the votes of
18 African Americans. With the growth of the immigrant
19 population over the past decade, the Virginia legislature
20 is even less representative of our state's diversity.

21 Every Virginian has the right to a fair political
22 district. Every ten years you have the opportunity to
23 right these past wrongs. I hope you will act wisely this
24 year to draw political boundaries that will create fair
25 political districts.

1 Thank you.

2 DELEGATE COLE: Thank you. Alex Vargas.

3 MR. VARGAS: Thank you, general. I would like to
4 speak to you about the majority, as well. Especially
5 being a northern Virginia resident, born and raised, we do
6 see diversity growing, but the voice of -- being able to
7 speak to the public, going door to door, they don't feel
8 like there is representation there. They don't feel like
9 there is a purpose for them to vote, because they don't
10 see the change that is happening in their communities.

11 A lot of times, people in those communities don't
12 have the outreach to their youth. They don't have the
13 opportunity to finding further enhancements on how to
14 improve their youth. The first generation families here,
15 especially the children, are falling into other kinds of
16 incidents with gang involvement or drug use, things like
17 that. We do need to do a little bit more outreach
18 programs within our northern Virginia to help the youth
19 that we have there. Thank you very much.

20 DELEGATE COLE: Thank you. Bob Matthias.

21 MR. MATTHIAS: Senators, Delegates, Bob Matthias
22 from the City of Virginia Beach. City Council last week
23 adopted a letter that you have in front of you. We also
24 emailed it to you earlier, or last week, and some of you
25 heard presentation by Council Member Glenn Davis at your

1 public hearing last Thursday. I'm not going to read the
2 whole letter. I'll just hit some of the high points.

3 Virginia Beach is currently represented by two
4 senators who represent all of Virginia Beach, plus three
5 senators that represent smaller portions of the City.

6 We're very concerned that one of the plans put forth for
7 Senate representation would only have one senator as sole
8 representative of Virginia Beach.

9 We strongly believe that the city should be
10 represented by two senators who represent only the City of
11 Virginia Beach, plus other Senators who represent smaller
12 portions of the population. We respectfully request that
13 any redistricting plan that goes forward would, to the
14 extent possible, address our concerns.

15 One other concern, and I know this is a very
16 difficult process, but we also are concerned that the 14th
17 district, Senator Quayle, stretches all the way up into
18 Virginia Beach. I know committee assignments will change,
19 but under the current plan, Senator Quayle would be the
20 only senator representing the City of Virginia Beach on
21 the Senate Finance Committee.

22 We tried to be a community of interest, and I
23 think the only community of interest we could find was
24 that we all would take 460 to go to the Virginia Diner, as
25 far as the 14th District.

1 Again, that's the concern, above and beyond what
2 the Council expressed in their letter. Thank you very
3 much, again. I know this is a very difficult task.

4 DELEGATE COLE: Thank you. Tom Van Auken.

5 MR. VAN AUKEN: Good morning, Mr. Chairman, Madam
6 Chairman, members of the Committee. Thank you for taking
7 your time to hear our concerns. My name is Thomas Van
8 Auken. I've been a resident of Bon Air in Chesterfield
9 County since 1972, and I have survived three previous
10 redistrictings. I'm particularly concerned with the
11 Senate redistricting this year.

12 I have two major concerns regarding the Howell
13 plan, which is obviously the only one we need to pay
14 attention to. The first thing is community of interest
15 and jurisdictional integrity. This plan doesn't seem to
16 show any concern for our jurisdictional boundaries or for
17 our community of interest. The districts in this plan
18 cross county and city lines as if they weren't even
19 there. It throws suburban and rural areas together with
20 no apparent concern for the interest of the people in
21 these districts. And, finally, it even splits precincts.
22 I guess the only reason it doesn't split census tracts is
23 no one has yet figured out how to do that.

24 Chesterfield County's population justifies
25 somewhat over one and a half Senate seats, but

1 Chesterfield gets divided up among four Senate districts.
2 Two of these seats are tied to large rural areas, which
3 suburban Chesterfield has little in common with. Two are
4 tied to urban and suburban areas north of the James River,
5 areas that have long looked down on Chesterfield as "the
6 southwest pasture."

7 What this does, in effect, is to weaken the voice
8 of Chesterfield in the Senate of Virginia, since anyone
9 holding one of these seats has to pay attention to the
10 interests of the other parts of the district, as well the
11 part that lies in Chesterfield.

12 Bluntly, we in Chesterfield are a little bit
13 tired of being used as filler to complete legislative
14 districts of some other jurisdiction, or to tie two blocks
15 of population together. Surely you can treat us a little
16 better than you have. And did you really have to run a
17 new senatorial district, eight, into Chesterfield?

18 Secondly, the second major concern is the
19 population imbalance between districts. The Howell plan,
20 the current one, allows a population deviation of plus or
21 minus two percent between districts. The maximum
22 difference between district populations is almost eight
23 thousand people. That's a lot of people.

24 The proposed House plan has district deviations
25 of only plus or minus one percent, even though they're

1 working with smaller districts, which are harder to make
2 equal. It's simply not fair to allow some districts to be
3 significantly smaller than others. I guess some voters
4 have louder voices than others. Surely you can do better
5 than plus or minus two percent.

6 Finally, let me get back to the matter of
7 splitting precincts. Times are tight. In Chesterfield
8 County, we have some pretty tight county budgets out
9 there. Every time you spit a precinct in Chesterfield,
10 it costs the tax payers in Chesterfield \$25,000 to start
11 up a new precinct. Ouch. I'm paying for that, not you.
12 How about trying to minimize the number of precincts you
13 split up? That would be helpful.

14 Thank you very much for taking the time to listen
15 to me.

16 DELEGATE COLE: Thank you. Angela Kelly-Wiecek.

17 MS. WIECEK: Wiecek.

18 DELEGATE COLE: I'm sorry.

19 MS. WIECEK: That's okay. Nobody gets it right.

20 Thank you. My name is Angela Kelly-Wiecek. I'm a
21 resident of Hanover County, and a proud constituent in the
22 fourth senatorial district, and it is to the senatorial
23 redistricting plan that I come to speak to you today.

24 In Hanover we have been fortunate to always be
25 represented by one senator. One senator. We are one

1 hundred thousand citizens. We would form one half of any
2 senatorial district you plan to put us in. Unfortunately,
3 the Howell plan splits Hanover into three disparate
4 senatorial districts.

5 Now, I'm not here to comment on the particulars
6 of those senatorial districts, but we have a very specific
7 community in Hanover. We're primarily rural, interspersed
8 with certain suburban pockets, and for the little country
9 town of Ashland, with its quaint shops and allure to be
10 then paired with the urban concerns of downtown Richmond
11 and Varina doesn't seem to create a community of
12 interest. At least, not in terms of anybody I have talked
13 to.

14 Additionally, the western portion of our county,
15 with the quiet and rural farming communities of Montpelier
16 and Rockville to be combined then into the 12th district
17 with the mega-hyper suburban development of Short Pump
18 equally doesn't seem to make any sense.

19 So what you have in Hanover is a community of
20 people who attend rotary clubs and Sunday school, soccer
21 fields and roller hockey leagues. We all get together and
22 have discussions, much like neighbors and friends do.
23 Unfortunately, under this plan, we will be split as a
24 community; split, and have no equal senatorial
25 representation. It does not make any sense for the voice

1 of Hanover to be diluted and made an afterthought in three
2 different Senate districts, rather than having our
3 singular voice, as we have always enjoyed.

4 I really believe this is an egregious miscarriage
5 of just representation, and I urge you, urge you in every
6 sense, to go back to the drawing board. Look again at
7 this plan, what you are doing to the Hanover citizens.
8 Hanover citizens deserve better. The Commonwealth
9 deserves better. So, please go back, look again, and
10 allow Hanover to be represented by one senator.

11 Thank you.

12 DELEGATE COLE: Thank you. Larry Haake.

13 MR. HAAKE: Good morning, Senator Howell,
14 Delegate Cole, Members of the Committee. I'm Larry Haake,
15 the General Registrar of Chesterfield County. I'm also
16 the president of the Voter Registrars Association of
17 Virginia.

18 First off, I want to, on behalf of the
19 Registrars, to thank you for your quick work on this
20 matter. Senator Howell quite accurately portrayed the
21 short window that we all have. And, of course, I come
22 from the world that has to implement what you ultimately
23 decide. And we're ready. So we're anxious for you to
24 make your decision.

25 Secondly, I wanted to talk about implementation,

1 in terms of split precincts. You heard Mr. Van Auken
2 mention the cost to open a new precinct, and I don't think
3 it's limited to Chesterfield County. It's \$25,000. And
4 I'm looking at the current House Plan, and the two
5 dominant plans in the Senate. The cost to localities
6 across the Commonwealth to implement the plans as they are
7 would range from 6.2 million to 6.7 million, just to
8 correct the split precincts.

9 And what we try to do is eliminate a split
10 precinct, because split precincts provide another level of
11 overhead that's difficult. It increases voter confusion,
12 to the point that it can even slow down voting on election
13 day. So the best remedy for a split precinct is to
14 eliminate it. And that's where that 6.2 million to 6.7
15 million right now exists. I don't think the localities
16 are ready for that.

17 So I would ask you, in your deliberations, to
18 minimize split precincts as much as you can. I recognize
19 the difficulty of it. By minimizing them, we eliminate
20 voter confusion. We keep things moving well on election
21 day, and the whole system works better.

22 Thank you for your consideration.

23 DELEGATE COLE: I'm probably going to get this
24 name wrong, too. Phaedra Jackson?

25 MS. JACKSON: That was actually very correct.

1 Chairpersons and Members of this Committee, my name is
2 Phaedra Jackson. I'm a resident here in Richmond, and I'm
3 here on behalf of the Virginia New Majority. I'm here to
4 encourage the legislature to draw maps that truly reflect
5 the population of Virginia.

6 The current political district lines have been
7 drawn to force Virginia's communities to accept
8 powerlessness. We now have the opportunity to correct
9 centuries of political exclusion through this
10 redistricting process. We can all agree that the criteria
11 like compactness, contiguity, and the keeping together of
12 communities of interest are crucial in this process, but
13 we must also fight for competitiveness. To have a fully
14 functional electorate, we must engage residents of the
15 Commonwealth with political lines that reflect the
16 population.

17 Virginia's communities of color have contributed
18 heavily throughout history to making our state what it is
19 today. Despite this, communities of color have persevered
20 through decades of exclusion from the state's law-making
21 institutions. I urge you to draw fair and competitive
22 maps. To that effect, Virginia New Majority would
23 respectfully like to submit maps that allow for two
24 African American districts that make up parts of rural
25 Virginia.

1 DELEGATE COLE: Just give them to the secretary
2 there. Thank you very much. Robin Lind.

3 MR. LIND: Thank you, Mr. Chairman. Robin Lind
4 for the Virginia Electoral Board Association. Speaking on
5 behalf of the association, we would like to thank you all
6 for the very difficult work that you have done in
7 assembling all these districts. I would say that we are
8 somewhat stupefied by the ability to achieve the less than
9 one percent difference in your plan for the House
10 District. But we also have to second the concerns of
11 Larry Haake.

12 It is a substantial financial burden on members
13 of the Association, the 134 counties and cities, and we
14 were surprised at how many precincts were split. I
15 understand from one of the members of the House that the
16 Department of Justice told you that precinct lines are
17 arbitrary and that you should not regard them any more
18 than others.

19 And, now, stepping back from that, and
20 reintroducing myself as Secretary of the Goochland County
21 Electoral Board, I can give you a specific example in
22 Goochland County, where we have one precinct that has a
23 quarter of our border voters in it, approaching 4,000. We
24 are required to split it, so we will be creating a new
25 precinct there.

1 Under the plan for the House, between the 56th
2 and the 55th districts, one of our supervisor's districts,
3 precincts, has been split without regard to the
4 supervisor's line. We would like to very much move that
5 split, take the very same number of people, so there is no
6 change, and move it to the new precinct that we are
7 creating in the east. We will be submitting a map to the
8 Community with that proposal. And I believe that both
9 Delegate Janis and Delegate Ware would be along with that
10 proposal.

11 DELEGATE COLE: Delegate Jones.

12 DELEGATE JONES: Sir, before you sit down, if you
13 don't mind. Just so you know, since I have the House
14 Bill, we have already received at previous public hearings
15 that we've held across the Commonwealth. And we've
16 already accommodated a hand full of requests. So if you
17 could just provide it to us in writing, which I'm sure you
18 will or you have, and we'll take care of that. And the
19 admission of the substitute that we'll have before the
20 House tomorrow.

21 MR. LIND: Thank you very much. I expected to
22 meet with Delegate Ware this morning before you went into
23 session to clear it with him, and I will then submit a
24 proposal to you for the amendment to the bill.

25 DELEGATE JONES: And, as you all know, the

1 Electoral Boards tend to draw precinct lines to begin
2 with. We have a large variation from ten years ago to
3 now, so we have eight or nine thousand people, and some
4 have eleven hundred. So we realize that you're going to
5 be making cuts to those precincts. In years past, we
6 would come back in subsequent years and then we can maybe
7 make some tweaks when you do your supervisor or your next
8 district lines.

9 MR. LIND: I appreciate that very much.

10 MR. JONES: Thank you.

11 DELEGATE COLE: All right. Eddy Aliff.

12 MR. ALIFF: Eddy Aliff, director of the Virginia
13 Center of Independent Baptists. I appreciate especially
14 what I've heard from Chesterfield. I just returned from
15 two churches this weekend in the Lone Oak area, and their
16 concern was their votes being diluted, losing
17 representation there.

18 Personally, I'm from Hanover. I'm concerned
19 about the split, as well, as an individual in those
20 areas. I appreciate the difficulties that you have, but I
21 would prefer, as much as anything, nonpartisan maps to be
22 drawn, with considerations of what these other gentlemen
23 have said, the cost factors of those involved in the
24 electoral process.

25 We appreciate, again, communities of interest

1 being maintained just as much as possible. Our folks live
2 in varying communities of interest, and they're not
3 limited to one specific area. They go to one particular
4 church, but they still want their voice to be heard within
5 their communities of interest. Thank you.

6 DELEGATE COLE: Thank you. The next one is Mayor
7 Bryan Moore or Vice Mayor Horace Webb.

8 MR. MOORE: I am Bryan Moore. Vice Mayor Webb is
9 not here.

10 Madam Chair, good morning, distinguished
11 Legislators. Again, I am Brian Moore of the City of
12 Petersburg, I am our newly-elected mayor, as of 2011. We
13 are proudly represented by Rosalyn Dance in the House.
14 She's a wonderful lady.

15 What I would like to ask you today, as a part of
16 the 63rd district, we are currently a minority/majority
17 district. With more than 80 percent of our community
18 being African American, we would support and propose that
19 any plan that you have or end up passing ensure that we
20 remain intact as a community.

21 As our community, even though we have a strong
22 voting strength of at least 55 percent, our statistics
23 show that, with the voting percentages of 40 to 42
24 percent, it is important that we maintain the minority
25 districts.

1 I understand the importance of your task.
2 Tomorrow night City Council will be doing our districts.
3 We will begin that process. And we'll be working toward
4 completing that on the 19th. So, again, we would ask that
5 you support the supporting of the majority/minority
6 districts, and Petersburg say thank you today.

7 DELEGATE COLE: Thank you very much. Next, is
8 there a representative of the George Mason Redistricting
9 Team that would like to speak?

10 MR. HUTCHIN: Hi. I'm Gabriel Hutchin with the
11 George Mason Redistricting Team. Unfortunately, our
12 students wanted to testify, but they've just been called
13 out by Delegate Morrissey before he goes into caucus.
14 Could we possibly bump them down the list a few slots so
15 they can come back in?

16 DELEGATE COLE: All right. Steven C. Van
17 Voorhees.

18 MR. VAN VOORHEES: It's that Dutch name with
19 double vowels and double capitals. I'm a citizen of the
20 City of Richmond, and I'm a little amazed that I'm here
21 talking to you today.

22 Forty-some years ago, I taught high school
23 history and U.S. Government, and when we got to this
24 subject, and we talked about gerrymandering, it became a
25 joke. And it was wrong. Gerrymandering was wrong, and

1 the students thought it was a joke. They thought it was
2 all in history, and not in the current situation. That
3 was forty-some years ago. Most of those people are now in
4 their forties and fifties. Some of them are getting close
5 to sixty, my former students.

6 I'm hoping that you will just follow some
7 principles, some of which had been touched on by all the
8 speakers ahead of me, that you bear in mind cohesive,
9 continuous communities of interest, easily recognizable by
10 the voters of those areas, the people who actually vote.

11 I appreciate that your job is not a good one.
12 It's a hard one, and you've been working very, very hard
13 with each other across party lines, to reach some
14 agreement, but I urge you to make sense to voters, and not
15 create districts that are gerrymandered and basically
16 facilitate cherry picking by incumbents. I would like you
17 to make us proud of this General Assembly. I'm proud to
18 be a Virginian today, and I'm just hoping that you will
19 remember your history and use these principles in your
20 work.

21 One more thing. Some of you may have heard the
22 iceberg theory. Icebergs are visible from the surface as
23 only a fraction, some people say around ten percent, and
24 there's another ninety percent below the surface. So you
25 take all the speakers you've heard, in all eight sessions,

1 and you multiple that by ten times, and that's at least
2 the measure of the concern that people have for this. Of
3 course, a hundred percent of the people are affected by
4 your work.

5 Thank you for your best efforts.

6 DELEGATE COLE: All right. Thank you very much.
7 Is it Carl Wright? He stepped outside. All right. We'll
8 pass that by temporarily. Todd Vander Pol.

9 MR. VANDER POL: Good morning. I'm Tom Vander
10 Pol from Hanover County, and I want to thank you all for
11 your efforts. You have challenging positions. I
12 understand that.

13 I, too, was thinking back on the gerrymandering,
14 and, to me, that's from another age of political
15 discussions, smoke-filled rooms, powerful individuals
16 having their way with districts, and I really didn't
17 expect to see it. But when I look at northern Virginia,
18 Tidewater and Central Virginia, it seems silly. It seems
19 outrageous.

20 I'm not an elected official. I don't represent
21 the constituency, but I'm a small businessman in Hanover
22 County, a father of four, and for the last 21 years I've
23 seen how Hanover County works very well. The individuals
24 have bought in to a common Board of Supervisors, a common
25 Sheriff's Department. The school system does quite well,

1 and public utilities. In the past, ten years ago, we had
2 a single delegate and a single senator. So we were able
3 to very easily contact them to make our needs known, and
4 that has worked well.

5 I would like to mention, I see the five percent
6 allowance in the district, and you have attempted to go to
7 either one percent or two percent. To me, that's a very,
8 very small or unimportant difference. I would say if you
9 can get within five percent, that you would much rather
10 get a community of interest that has shared values and
11 common interest in the political sector, rather than focus
12 so on keeping the population where it's at.

13 The only other thing that I would like to comment
14 on is that I'm saddened by the individuals who come up
15 here advocating on the basis of race. My great-great-
16 grandfather left Holland and took the train as far as it
17 went in South Dakota and homesteaded. We are Americans,
18 and I think that it's sad that we continue to do that.
19 Because I can categorically show you that those
20 individuals or those groups that get the most government
21 help are the least, the individuals that take advantage of
22 the American citizens, or, excuse me, the American
23 experience, are the least advantage to that group. That's
24 just a fact. So for those individuals that are advocating
25 for those districts, I'd say you're doing a disservice to

1 those individuals.

2 Thank you very much.

3 DELEGATE COLE: Thank you. Next is Jim Smyers;
4 is that correct?

5 MR. SMYERS: That's correct. Thank you very
6 much. I also am from Hanover County. But I had to take
7 the day off of work today, because this plan of the Senate
8 Redistricting was released after the close of business on
9 Tuesday. And, here we are on Monday, and this is the last
10 opportunity to publicly comment on this plan, which I find
11 to be -- and I'm going to use the word that Charles
12 Schumer had to get from his caucus, but this plan is
13 extremist. It's dividing my county into thirds.

14 We were always historically well-served with a
15 single senator to whom we could raise our concerns and
16 issues and promote our common goals. So I don't see that
17 this plan is really promoting the idea of community of
18 interest when Ashland, which is the center of the
19 universe, is all of a sudden delegated to be a remote star
20 of a distant eastern Richmond galaxy.

21 So, basically, I'm just reiterating what the rest
22 of my Hanovarians are saying. Please don't split us into
23 thirds. We're one senatorial district.

24 DELEGATE COLE: Thank you. Arthur Burton.

25 MR. BURTON: Good morning. My name is Arthur

1 Burton. I am the second vice chair of the Richmond
2 Crusade for Voters, and I'm here on behalf of our
3 president, and our membership, Sylvia Woods, to just say
4 to this body that we appreciate all the work that you do,
5 and that we want you to be aware that the Richmond Crusade
6 for Voters is both vigilant and involved in this process.

7 It is our hope that you will continue to honor
8 the Voting Rights Act and its provisions to ensure that
9 there is equity and justice for all citizens in the City
10 of Richmond, regardless of race, creed or color; and that,
11 if you have the opportunity, that you will retain the
12 current districts as they exist; and that, if you have the
13 opportunity, that you would take a further step towards
14 justice, to create a district that allows for more, a
15 greater voice for all of the citizens. We will be
16 watching for both stacking and packing, as well the
17 unnecessary dilution of voting districts.

18 Again, on behalf of our president, Sylvia Woods,
19 I would like to thank you for the opportunity to speak to
20 you today, and continue to hope that God will bless you in
21 your important work.

22 Thank you.

23 SPEAKER 1: Thank you. Venus Marshall.

24 MS. MARSHALL: Good morning. I am so privileged
25 and glad to be here this morning to be able to speak

1 before you this morning on behalf of District 21, and I'm
2 a resident of Virginia Beach, 25 years in the making. I'm
3 here with the Virginia Beach African American Political
4 Action Council, and I'm coming here to you all today to
5 address you about the obvious situation of redistricting.
6 I know it's a tremendous challenge, and it presents just
7 many, many opportunities to create a fair and equal
8 representation in government.

9 As this Commonwealth State of Virginia
10 steadfastly forges ahead with the process of remapping
11 this state, please be mindful that blessed are the leaders
12 that seek the best for those they serve, for all of the
13 communities that they serve.

14 According to the census, we in Virginia Beach
15 represent 19.4 percent of the population, and we are in
16 agreement with creating a majority/minority district, so
17 that we are being fairly represented. And joining other
18 districts with a sizable minority population will help put
19 Virginia's plans for redistricting in a greater compliance
20 with Section II of the Voting Rights Act, which prohibits
21 discrimination in voting in an election.

22 I won't be before you long. I want to say in
23 closing, as this State, two days from now, on April 6th,
24 stands to reaffirm it's commitment to our nation's motto,
25 in God we trust, I want you all to remember and not forget

1 that the Commonwealth of Virginia means the common well
2 being of all its citizens, that all are treated fairly and
3 equally, and with a just system for redistricting this
4 State.

5 Please know that we are taking the commitment to
6 not only honor "In God we trust," but also taking that
7 commitment to honor the people that have trusted you to
8 make these decisions.

9 And the final words I want to say now is a
10 scripture: "For the Lord our God is our shield and our
11 sun. He gives us grace and glory. The Lord will withhold
12 no good thing from those who do what is right." And
13 that's Psalm 84:11.

14 Thank you, and God bless you.

15 DELEGATE COLE: Thank you very much. Reverend
16 Lawrence Pollard.

17 REV. POLLARD: General panel members of the
18 Committee. I'm Lawrence Pollard, past president of the
19 Chesterfield NAACP. I'm standing here to support the
20 City's third district. We're hoping that you will keep us
21 with at least 55 percent of democratic voting in the
22 district, so we may maintain our minority status.

23 Thank you.

24 DELEGATE COLE: Thank you. Going back to the
25 people that we missed. Carl Wright.

1 MR. WRIGHT: Good morning, Mr. Chairman,
2 members. Thank you all for the work that you all do,
3 particularly our Hampton Roads delegation. Thank you all
4 for all the work that you all do.

5 My name is Carl Wright. I reside in Virginia
6 Beach, Virginia. I come up here because I don't have
7 representation in Virginia Beach. My children don't have
8 representation, peer representation in the City of
9 Virginia Beach. I came up here because it's time for all
10 of Virginia Beach citizens to have representation.

11 Now, I know some folks have already made their
12 minds up, and really, they really don't have an interest
13 in what other folk's concerns of representation is. But
14 I'm here to tell you that times have changed.
15 Partisanship only works when it works for the people, all
16 of the people. I understand that a lot of folks believe
17 power, power, power is what makes this world run. But,
18 no, the people is what makes this world run.

19 In the City of Virginia Beach, the precedents
20 have been set for the state level from the top down, that
21 a certain segment of the community has no -- obviously, to
22 me, it says they don't have any value because they don't
23 have a voice. I'm here to say that we have a voice. We
24 will be heard, and we will continuously come and speak to
25 our leadership to let them know that we're here.

1 In the City of Virginia Beach -- if you want a
2 yard stick for gerrymandering, come to our City. I mean,
3 you'll get a class in it. It's been gerrymandered,
4 gerrymandered, re-gerrymandered, and gerrymandered again.
5 I'm asking you all, this time, for the children's sake.
6 This is a ten-year process. It goes ten years.

7 I appreciate the work that you're doing. But
8 it's so frustrating when you talk to folks and it falls on
9 deaf ears. And we have some nice folks. They're real
10 nice. You just can't get them to do anything for you when
11 you need them to do it. And I understand the position
12 that they're in, but I'm asking you all today, when you
13 look at Virginia Beach, please consider all of the
14 citizens with a fair, fair and true representation when
15 you draw these districts up. That's all I ask. And
16 that's for all of the citizens.

17 And thank you, again, for all the hard work that
18 you do. And I hope that I didn't come across as
19 disrespectful in a manner, because I do respect you all.
20 But I want you to understand that we have a passion and a
21 strong drive to do what's right in our city for all of our
22 citizens.

23 Thank you.

24 DELEGATE COLE: Thank you very much. Now is
25 there someone from that George Mason Redistricting Panel

1 available?

2 MR. O'BOYLE: Esteemed Senators and Delegates,
3 thank you for allowing us to speak with you today
4 regarding redistricting the Commonwealth. My name is
5 Nicholas O'Boyle, a junior at George Mason University, and
6 from Danville, Virginia originally. And I'm a member of
7 the winning House Delegates Map at a recent redirecting
8 competition that took place about a week ago.

9 I'm here with my other teammates, Billy Leucht
10 and Dominick Liberatore, to ask you to adopt our map,
11 presented in a bill to be introduced later today by
12 Delegate Morrisey. We feel that our map has more
13 attractive features than the one proposed in House Bill
14 5001, in respect to competitiveness, contiguity and
15 compactness.

16 MR. LEUCHT: In regards to competitiveness, our
17 map has over thirty percent competitive districts. This
18 feature better allows the voter to choose their
19 representation with greater ease. The contiguity factor
20 of our map is unmatched. We have districts that are
21 representative of the geographical areas, with having them
22 lined up and down the State.

23 MR. LIBERATORE: With respective compactness, our
24 district minimized the amount of split counties to 161,
25 versus the roughly 300 presented in HB 5001. We also did

1 not split precincts, except when necessary due to
2 population in the more urban areas.

3 MR. O'BOYLE: In conclusion, we welcome the
4 continued conversation on the redistricting process in
5 this great Commonwealth. All of these concerns voiced at
6 this hearing are addressed in our map, including the
7 reduced splits of Albemarle and Henrico Counties. We urge
8 you to scrutinize all of the maps that have been
9 presented, and choose the one that is most representative
10 of the citizens of Virginia.

11 Thank you very much.

12 DELEGATE COLE: Thank you. All right. That's
13 the end of the sign-up list. Is there anyone else who
14 would like to speak before the committee? If so, come
15 forward and identify yourself.

16 MR. BARNETTE: My name is Robert Barnette. I
17 live in Hanover County. I'm here as the president of the
18 Hanover branch of the NAACP. We are in support of
19 increased minority representation in Hanover County. Many
20 of our neighborhoods, African American neighborhoods in
21 Hanover were split ten years ago. So the Howell plan
22 offers a lot of ingenuity in helping us increase that
23 minority representation.

24 We also are in support of continued oversight by
25 the Justice Department. And, so, we in Hanover are very

1 eager to work with the senatorial version of the
2 redistricting plan.

3 Thank you.

4 DELEGATE COLE: Okay. Thank you.

5 MS. BOONE: Good morning. My name is Sarah
6 Boone, and I'm a board member of the Montgomery County
7 Chamber of Commerce. Thank you, Mr. Chairman and
8 distinguished elected officials. On behalf of the
9 Montgomery County Chamber of Commerce, we would like to
10 express our appreciation for the Governor and everyone who
11 is involved in this redistricting.

12 As the second most populated MSA in Southeastern
13 Virginia, Montgomery County serves as an economic,
14 commercial, educational, recreational and cultural hub for
15 many surrounding communities. Because of our location and
16 the resources we have, Montgomery County has a long
17 history working with its neighbors on projects of regional
18 significance.

19 For example, Virginia Tech is a land-grant
20 university, where outreach, research and instruction, not
21 only support the various rural areas, but is an economic
22 engine for our county and the Commonwealth. The opening
23 of the Virginia Tech Carilion School of Medicine and
24 Research Institute is a great example of how we partner
25 and support our surrounding communities and industries.

1 This example is among many.

2 With its history of regional collaboration, we
3 support redistricting plans that will further enhance our
4 ties with neighboring communities and strengthen our
5 collective voice, in both the halls of Congress and the
6 Virginia General Assembly.

7 The Chamber also believes that robust and
8 substantial discussion is the backbone of sound public
9 policy. Competitive electoral districts ensure that
10 citizens can engage candidates in the marketplace of
11 ideas. Reasonable steps should be taken to protect the
12 fundamental tenants of our democratic system.

13 We believe that our elected officials can rise to
14 this challenge, and the many challenges that will result
15 from it. In fact, we think that this is one of those
16 defining moments in an elected official's career, where
17 doing the right thing can bring greater results than the
18 effort that is required.

19 Montgomery County is presently divided by two
20 delegates and two Senators. The House District proposal
21 divides us up in three ways, mathematically, and you can
22 see in the proposed district in the packet that I
23 distributed. If you focus on Blacksburg and
24 Christiansburg and the immediate surrounding areas, that
25 can be one delegate district.

1 The next larger community of interest is the New
2 River Valley and Roanoke Valley. If you combine the New
3 River Valley, being Montgomery County, Giles, Polaski and
4 Floyd, and part of Roanoke County, that can be one Senate
5 district, while the remaining part of Roanoke County,
6 Roanoke City and Salem City can be another Senate
7 district.

8 Moving on to the Congressional districts, if you
9 take the New River Valley all the way up to Lynchburg,
10 including Roanoke County and the surrounding counties,
11 that can be one congressional district, while another
12 congressional district can be from far southwest through
13 Southside. That is all in the packet.

14 We want to thank you for this forum, and our
15 elected officials, again, for the opportunity to share our
16 prospective.

17 DELEGATE COLE: All right. Thank you. Next.

18 MR. McCOY: Good morning. My name is L.J. McCoy,
19 president of the Chesterfield NAACP. I think you did a
20 great job on the work that you have done. I think the
21 individuals that had information on other redistricting
22 maps were fine, also.

23 But right here in Chesterfield County, I begin to
24 see a problem, especially with the 27th district, as far
25 as the map has been drawn. It seems as though an

1 individual that would take the opportunity to begin a
2 campaign to run has been selectively drawn out of their
3 particular district, in order that they won't be able to
4 run, and I'm terribly disturbed about that. Where the
5 line was, where the individual would be --

6 DELEGATE COLE: Excuse me. Can you tell me --
7 the 27th district, there's a House 27th and a Senate 27th.

8 SPEAKER 2: I'm sorry. The House 27th.

9 DELEGATE COLE: House. Okay. Thank you.

10 MR. BARNETTE: Was selectively drawn out of that
11 particular district. And I think that's one issue, a big
12 issue, that I'm beginning to become concerned about.

13 Thank you very much. Have a nice day.

14 DELEGATE COLE: Thank you. Next.

15 MR. BEYER: I'm John Beyer from Virginia21. I'm
16 also a student at Piedmont Community College.

17 Chair people, Members of the Committee, thank you
18 very much for allowing me a time to speak. Also, thank
19 you for the hard work you have already put into creating
20 fair and balanced districts that best represent us.

21 I'd like to talk a bit about people. I've heard
22 a lot of speeches so far today about populations,
23 percentages, precincts, partisan, nonpartisan. I would
24 like to step back for a second and focus on the people.

25 When we look at making districts, I want us to

1 look at districts that create the best way to represent
2 the people of Virginia. As students, we're constantly
3 concerned about not being represented, and I think that
4 extends to the greater population of Virginia.

5 Creating districts that represent communities,
6 rather than create partisan politics, using bipartisan to
7 look at the best way to ensure the best future for
8 Virginia, is what's going to ensure the best future for our
9 state. I would encourage you to spend the time to look at
10 the best way, not to ensure the right percentages or the
11 right populations in our districts, but the best way to
12 represent the people of Virginia, both local and state-
13 wide.

14 Thank you very much.

15 DELEGATE COLE: Thank you.

16 MR. FORREST: I'm Sam Forrest, and we're part of
17 the same group. How about everybody stand up that has on
18 a snake outfit. They are rebelling against this district
19 that looks like a snake. Thank you.

20 I live about ten minutes from here at VCU. Bobby
21 Scott is my representative, and he lives in Newport News.
22 Our district looks like a centipede, not like a snake, and
23 that's the only thing we have in common. So that's my
24 major complaint.

25 I have another complaint. These are the people

1 that represent me: Jennifer McCallum, Donald McEachin,
2 Bobby Scott, Senators Webb and Warner, Mayor Jones in
3 Richmond, President Obama. And seldom to never do any of
4 them vote for me, the way I want. And that's my other
5 complaint.

6 DELEGATE JONES: We can't do anything about that.

7 MR. FORREST: You can do something. I want you
8 all to -- it's not that difficult to run a good
9 government. I want you to step up to the plate, put your
10 interests aside and treat us right. It's overdue.

11 Thank you.

12 DELEGATE COLE: All right. Thank you very much.
13 Senator Martin.

14 SENATOR MARTIN: Mr. Chairman, our responsibility
15 is to draw the lines, and we sometimes get the opportunity
16 to speak to colleagues about how they ought to vote, but
17 we can't dictate it to them.

18 DELEGATE COLE: Thank you.

19 MS. FINCH: I'm Nancy Finch. I'm president of
20 the Richmond First Club. We're members of the
21 redistricting coalition, and we have been working with the
22 coalition for some time. They have been working for
23 several years, as you know.

24 A couple of things. One, maps are submitted,
25 lines have been drawn, and we have lots of folks here this

1 morning with big problems with the maps and with the
2 lines. So I hope that things are not in concrete. I hope
3 that the people here will be heard. They certainly
4 brought up some legitimate concerns about, particularly
5 about splitting districts.

6 The other thing. In the press we've read a
7 couple of times that the plans from the students and from
8 the governor's commission just came in too late. They
9 couldn't help you all. Well, it was my understanding that
10 everybody received the census figures, and they were
11 waiting for the census figures in mid-February. So I'm
12 wondering now how their plans were too late, but other
13 people's plans were not too late.

14 And, third, in 2006, a group of senators and
15 delegates submitted Senate Joint Resolution Number 84, and
16 this is part of what it said. The senators were Senator
17 Williams, Senator Martin Williams, Senators Hanger, Potts,
18 Quayle, Stolle. The delegates were Delegates Callahan,
19 Morgan and Parrish. I'm sure those are familiar names to
20 all of you. Maybe some of you are here.

21 One of the comments in this resolution said,
22 whereas the best redistricting process followed by the
23 General Assembly in 1991 and 2001 reflects new
24 developments -- everybody is saying the same thing this
25 year -- and problems now inherent in the process,

1 including the use of sophisticated technology, more
2 frequent division of localities -- which is still one of
3 the concerns this year -- among two or more districts,
4 less attention to compactness and contiguity of districts,
5 a more intense reliance on political data, increased
6 protection for incumbents, a severe reduction in the
7 number of competitive contests for State Legislative and
8 Congressional seats -- and this, to me, is the most
9 important -- a consequent decline in voter participation.

10 This is what has interested Richmond First Club
11 and the coalition in working so hard on this effort.
12 Voters are not turning out like they should. Some years
13 ago I conducted a poll in the district that I lived in.
14 Like 15 percent knew who their delegate was, of the
15 voters.

16 We hope that this is going to change after this
17 redistricting effort, that people will vote, they will
18 know who their delegates are. And this resolution goes on
19 to give a very, very low number of people turning out to
20 vote. We're for whatever strengthens fair democracy, and
21 I'm sure you are, too.

22 DELEGATE COLE: Thank you very much. Does anyone
23 else wish to speak? All right. One more.

24 MR. UKROP: I'm Jim Ukrop, and I'm here to
25 represent my children and my grandchildren. And I think

1 you all know our Virginia history. We are the birthplace
2 of America. The leaders of this country were from right
3 here in Virginia. And I think this is a real opportunity
4 for us to take a leadership position in our nation.

5 What would the news be like? We are in a divided
6 country today. No one can agree on anything. But
7 wouldn't it be a wonderful thing for the nation to read
8 about the Virginia legislature stepped forward and did the
9 right thing. You know, you are the leaders in this
10 state. It's up to you, and I hope you do the right thing.

11 DELEGATE COLE: All right. Thank you. If no one
12 else wishes to speak, I do have an announcement. There
13 will be a House Privileges and Election Meeting this
14 afternoon, probably at 3:00 or 4:00. We'll announce the
15 time on floor. And -- is this room available? It's
16 across the hall in the other House room.

17 Do you wish to speak to the Committee?

18 DELEGATE TYLER: Yes, sir. Thank you,
19 Mr. Chairman, Members of the Committee. I'm Delegate
20 Rosalyn Tyler. One thing that I would like the Committee
21 to take into consideration as you look at the
22 redistricting lines, is -- also, as you look at the
23 population for minority districts, I would also like you
24 to look at the voting population in minority districts, as
25 well.

1 Because even though you might draw minority
2 districts that may be 55 percent or more, but we need to
3 actually look at the voting numbers in each district. And
4 I would just like to recommend that to the committee,
5 because, as a minority legislator representing the
6 district, it's not always included. And I guess I'm in
7 great concern, because my district includes five prison
8 populations. The population is there, but my voter
9 population is not. So I ask you just to take that into
10 consideration.

11 DELEGATE COLE: All right. Thank you very much.
12 If no one else wishes to speak, Senator Howell, do you
13 have any announcements?

14 SENATOR HOWELL: I would just like to say that
15 Senate P. and E. is meeting tomorrow at 10:00, and we,
16 like I said originally, we have made numerous changes
17 already, and I'm sure we will be making more before
18 tomorrow afternoon.

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20 At this time the hearing was adjourned.

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CERTIFICATE OF COURT REPORTER

I, Kellie Milner, hereby certify that I was the court reporter in the Privileges and Elections Hearing for the General Assembly on the 4th day of April, 2011, at the time of the hearing herein.

I further certify that the foregoing transcript is a true and accurate record of the incidents of the hearing herein, to the best of my ability.

Given under my hand this 20th day of March, 2011.

Kellie Milner, Court Reporter

EXHIBIT U

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ALABAMA LEGISLATIVE)
BLACK CAUCUS, et al.,)

Plaintiffs,)

v.)

THE STATE OF ALABAMA, et al.,)

Defendants.)

CASE NO. 2:12-CV-691
(Three-Judge Court)

ALABAMA DEMOCRATIC)
CONFERENCE, et al.,)

Plaintiffs,)

v.)

THE STATE OF ALABAMA, et al.,)

Defendants.)

CASE NO. 2:12-CV-1081
(Three-Judge Court)

MEMORANDUM OPINION AND ORDER

Before PRYOR, Circuit Judge, WATKINS, Chief District Judge, and THOMPSON,
District Judge.

PRYOR, Circuit Judge:

*“There’s no perfect reapportionment plan. A reapportionment plan depends on what the
drafter wants to get, and he can draw them many, many, many ways.” Dr. Joe Reed, Chairman,
Alabama Democratic Conference. (Trial Tr. vol. 2, 155, Aug. 9, 2013).*

and 26, we need not consider whether the Districts would satisfy strict scrutiny. The claims of racial gerrymandering fail.

4. Even if the Plaintiffs Had Proved that the Acts Were Primarily Motivated by a Discriminatory Purpose, the Acts Would Satisfy Strict Scrutiny.

Even if the State defendants had subordinated traditional districting principles to racial considerations when they drew the challenged Districts, the Districts would satisfy strict scrutiny. Although the Supreme Court has never decided whether compliance with the Voting Rights Act is a compelling state interest, we conclude that compliance with the Act is a compelling state interest. *See* U.S. Const. Art. VI, § 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”); *see also League of United Latin Am. Citizens*, 548 U.S. at 518, 126 S. Ct. at 2667 (Scalia, J., joined by Chief Justice Roberts and Justices Thomas and Alito, concurring in part and dissenting in part) (concluding that “compliance with § 5 of the Voting Rights Act can be [a compelling state] interest . . . [otherwise] a State could be placed in the impossible position of having to choose between compliance with § 5 and compliance with the Equal Protection Clause”). And we conclude that a plan will be narrowly tailored to achieve that interest when the race-based action taken was reasonably necessary under a constitutional reading and application of the Act. *See Miller v. Johnson*, 515 U.S. 900, 921, 115 S. Ct. 2475, 2490–

91 (1995); *see also Shaw v. Hunt*, 517 U.S. 899, 916, 116 S. Ct. 1894, 1906 (1996) (holding that where the claimed interest is avoidance of liability under section 2, “the legislative action must, at a minimum, remedy the anticipated violation or achieve compliance to be narrowly tailored”); *United Jewish Orgs. of Williamsburgh, Inc. v. Carey*, 430 U.S. 144, 161, 97 S. Ct. 996, 1007 (1977) (“Implicit in [our previous cases] is the proposition that the Constitution does not prevent a State subject to the Voting Rights Act from deliberately creating or preserving black majorities in particular districts in order to ensure that its reapportionment plan complies with § 5.”).

The Alabama Legislature maintained the number of majority-black districts and avoided significantly decreasing the percentages of black voters in those districts to comply with section 5 of the Voting Rights Act. All parties agree, and our dissenting colleague admits, that “Senator Dial and Representative McClendon believed that their obligation under the Voting Rights Act included preserving the existing number of black majority districts.” (Doc. 176, 8). We find that Senator Dial and Representative McClendon also believed that they needed to maintain approximately the same percentages of black voters in those majority-black districts to avoid retrogression of black voting strength in violation of section 5 of the Voting Rights Act. And we find that Senator Dial and Representative McClendon believed that any significant reduction of the black population in the majority-black districts would also likely cause a problem with preclearance of the plans by the Department of Justice.

The Black Caucus plaintiffs argue that, in *Shelby County, Alabama v. Holder*, --- U.S. ---, 133 S. Ct. 2612 (2013), the Supreme Court nullified the interest of the State defendants in complying with section 5 of the Voting Rights Act, but we disagree. In *Shelby County*, the Supreme Court declared the coverage formula in section 4 of the Voting Rights Act unconstitutional because it was “based on decades-old data and eradicated practices.” *Id.* at 2627. *Shelby County* expressed no opinion about the constitutionality of section 5 and, even if it had, that decision would not change our analysis. All parties agree that the State of Alabama was governed by the preclearance requirement of section 5 when the Committee drafted and the Legislature approved the new districts. We evaluate the plans in the light of the legal standard that governed the Legislature when it acted, not based on a later decision of the Supreme Court that exempted Alabama from future coverage under section 5 of the Voting Rights Act.

But we cannot uphold the districts unless the Acts are narrowly tailored to comply with section 5. “Although [the Supreme Court] ha[s] not always provided precise guidance on how closely the means (the racial classification) must serve the end (the justification or compelling interest), [the Supreme Court] ha[s] always expected that the legislative action would substantially address, if not achieve, the avowed purpose.” *Hunt*, 517 U.S. at 915, 116 S. Ct. at 1905. “[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their

effective exercise of the electoral franchise.” *Johnson*, 515 U.S. at 926, 115 S. Ct. at 2493 (quoting *Beer v. United States*, 425 U.S. 130, 141, 96 S. Ct. 1357, 1364 (1976)). “By enacting section 5, Congress aimed to guarantee that minorities’ new gains in political participation would not be undone.” *Texas v. United States*, 831 F. Supp. 2d 244, 250 (D.D.C. 2011).

When the Legislature confronted the task of redistricting after the 2010 Census, Congress had recently made the standard for preclearance under section 5 of the Voting Rights Act “more stringent.” *Shelby Cnty.*, 133 S. Ct. at 2617. In 2006, Congress extended the operation of section 5 and amended its text “to prohibit more conduct than before.” *Id.* at 2621. Congress stated in its findings that “[t]he effectiveness of the Voting Rights Act of 1965 has been significantly weakened by the United States Supreme Court decisions in [*Reno v. Bossier Parish School Board*, 528 U.S. 320, 120 S. Ct. 866 (1997), and *Georgia v. Ashcroft*, 539 U.S. 461, 123 S. Ct. 2498 (2003),] which have misconstrued Congress’ original intent in enacting the Voting Rights Act of 1965 and narrowed the protections afforded by section 5 of such Act.” Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act, Pub. L. No. 109-246, § 2, 120 Stat. 577, § 2(b)(6) (2006). *See generally* Pamela S. Karlan, *Georgia v. Ashcroft and the Retrogression of Retrogression*, 3 Election L.J. 21, 36 (2004) (describing *Georgia v. Ashcroft* as “itself a retrogression in minority voters’ effective exercise of the electoral franchise”).

In *Reno v. Bossier Parish*, the Supreme Court ruled that section 5 “does not prohibit preclearance of a redistricting plan enacted with a discriminatory but nonretrogressive purpose,” 528 U.S. at 341, 120 S. Ct. at 878, but Congress overturned that decision and amended section 5 to prohibit any change in voting practice or procedure with a racially discriminatory purpose. In *Bossier Parish*, the plaintiffs argued that the Bossier Parish School Board had a racially discriminatory purpose when it refused to create any majority-black districts, even though the black population of that jurisdiction was approximately 20 percent of the total population. *Id.* at 323-24, 120 S. Ct. at 869. The Supreme Court ruled that it was irrelevant whether the Board acted with a racially discriminatory purpose so long as its redistricting plan was not enacted with a retrogressive purpose. The Court explained that “§ 5 prevents nothing but backsliding, and preclearance under § 5 affirms nothing but backsliding.” *Id.* at 335, 120 S. Ct. at 875. Congress rejected this interpretation by adding the following language to section 5: “[t]he term ‘purpose’ . . . shall include *any* discriminatory purpose.” Voting Rights Act § 5(c), 42 U.S.C. § 1973c(c) (emphasis added).

In *Georgia v. Ashcroft*, the Supreme Court ruled that section 5 allows states to consider “the totality of the circumstances,” including “the extent of the minority group’s opportunity to participate in the political process [and] the feasibility of creating a nonretrogressive plan,” 539 U.S. at 479, 123 S. Ct. at 2511, when drawing district lines, but Congress overturned that holding and limited consideration to the

minority voters' ability to elect their preferred candidate. 42 U.S.C. § 1973c(d). In *Georgia*, the Court stated that “a court should not focus solely on the comparative ability of a minority group to elect a candidate of choice . . . [because this factor] cannot be dispositive or exclusive.” 539 U.S. at 480, 123 S. Ct. at 2511. The Court also explained that section 5 “gives States flexibility to choose,” *id.* at 482, 123 S. Ct. at 2512, between two options: a covered jurisdiction may either create “safe” majority-black districts “in which it is highly likely that minority voters will be able to elect the candidate of their choice,” *id.* at 480, 123 S. Ct. at 2511, or spread out minority voters over a greater number of districts where the voters “may have the opportunity to elect a candidate of their choice,” *id.* at 481, 123 S. Ct. at 2512. The Court stated that the “other highly relevant factor in a retrogression inquiry is the extent to which a new plan changes the minority group’s opportunity to participate in the political process,” including whether the new plan creates “‘influence districts’—where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process.” *Id.* at 482, 123 S. Ct. at 2512. The Court reversed a denial of judicial preclearance because the district court had “focused too heavily on the ability of the minority group to elect a candidate of its choice in the majority-minority districts.” *Id.* at 490, 123 S. Ct. at 2516. The Court then remanded for the district court to consider whether a districting plan that reduced the percentages of black voters in several majority-black districts and increased the number of influence districts was retrogressive. *Id.* at 491, 123 S. Ct. at 2517.

Congress rejected the interpretation in *Georgia* and “sought to make clear that it was not enough that a redistricting plan gave minority voters ‘influence’; a plan cannot diminish their ability to elect candidates.” *Texas*, 831 F. Supp. 2d at 251. “In making its Amendments, Congress sought to restore the ‘ability to elect’ standard promulgated by the Supreme Court in *Beer [v. United States]*, 425 U.S. 130, 96 S. Ct. 1357 (1976)].” *Id.* at 260.

To overturn *Bossier Parish* and *Georgia*, Congress added subsections (b) through (d) to section 5 to prohibit “[a]ny” voting change that “has the purpose of or will have the effect of diminishing the ability of any” voter “on account of race or color . . . to elect their preferred candidates of choice” and stated that the purpose of that new language was “to protect the ability of such [voters] to elect their preferred candidates of choice.” Voting Rights Act § 5, 42 U.S.C. § 1973c. “The 2006 Amendments clarified that Congress intended a Section 5 inquiry to focus on whether a proposed voting change will diminish the ‘ability of minority citizens *to elect* preferred candidates of choice.” *Texas*, 831 F. Supp. 2d at 251 (quoting H.R. Rep. No. 109-478, at 71, 2006 U.S.C.C.A.N. at 671). The relevant question now is “whether the candidate minorities voted for in the general election under the benchmark plan is equally likely to win under the new plan. If not, then minorities’ ability to elect their preferred candidate is diminished.” Nathaniel Persily, *The Promise & Pitfalls of the New Voting Rights Act*, 117 Yale L.J. 174, 223 (2007).

To comply with this “more stringent” version of section 5, *see Shelby Cnty.*, 133 S. Ct. at 2617, the Alabama Legislature correctly concluded that it could not reduce the number of majority-black districts and that it could not significantly reduce the percentages of black voters in the majority-black districts because to do so would be to diminish black voters’ ability to elect their preferred candidates. Congress eliminated the option that a state could choose, under *Georgia*, to create “opportunity” or “influence” districts instead of “safe” districts that guarantee the ability of minorities to elect their preferred candidates. The 2006 amendments created one consideration for a state: whether minority voters are *less able to elect* their preferred candidate under the new plan, not whether they have the *opportunity to elect* their preferred candidate. *See Texas*, 831 F. Supp. 2d at 261. Congress limited the redistricting options of states so that any diminishment in a minority’s ability to elect its preferred candidates violates section 5. Contrary to the plaintiffs’ arguments, the Legislature could not spread black voters out to other districts and substantially reduce the percentages of black voters within the majority-black districts because that change, by definition, would diminish black voters’ ability to elect their preferred candidates. To comply with section 5, the Alabama Legislature chose the only option available: to protect the voting strength of black voters by safeguarding the majority-black districts and not substantially reducing the percentages of black voters within those districts. The purpose of section 5 has always been to insure that minorities did not lose the political gains they have acquired, and “plans that preserve or actually

increase minority voting strength [are not retrogressive].” *Texas*, 831 F. Supp. 2d at 250.

The Legislature sought to avoid diminishing black voters’ ability to elect their preferred candidates. The Legislature preserved, where feasible, the existing majority-black districts and maintained the relative percentages of black voters in those majority-black districts. The Acts maintain 8 majority-black districts in the Senate and increase the number of majority-black districts in the House from 27 to 28 based on total population. The population levels in the existing majority-black districts had proven sufficient to provide the black voters in those districts the opportunity to elect the candidates of their choice. All of the current 27 majority-black House districts are represented by Democrats, and 26 of those 27 districts are represented by black Democrats. (Ex. NPX 350, 60–62). All of the majority-black Senate districts are represented by Democrats, and 7 of those 8 districts are represented by black Democrats. Using the 2010 Census data, the percentages of the black voting-age populations in the majority-black districts under the Acts remain relatively constant when compared to the 2001 plans. The percentages of the black voting-age populations in 21 of the 28 majority-black House districts vary less than plus or minus 5 percent. (Ex. APX 6). And 16 of the 28 majority-black House districts vary less than plus or minus 2 percent. (Ex. APX 6). The largest deviation occurs in House District 59 where the black voting-age population increased from 64.25 percent to 74.28 percent. (Ex. APX 6). But the Legislature fairly balanced the overall

percentages of the black voting-age populations in the majority-black House districts, with 13 districts decreasing and 15 districts increasing. (Ex. APX 6). The deviations in percentages of the black voting-age populations in the majority-black Senate districts are perfectly divided: 4 decreased and 4 increased. (Ex. APX 7). And 4 of the 8 majority-black Senate districts vary less than plus or minus 2 percent. (Ex. APX 7). The largest deviation occurs in Senate District 20 where the black voting-age population decreased from 74.44 percent to 59.03 percent. (Ex. APX 7).

We conclude that the Acts are narrowly tailored to comply with section 5 as amended in 2006. The Legislature correctly concluded that the more stringent version of section 5 that Congress enacted in 2006 required the Legislature to maintain, where feasible, the existing number of majority-black districts and not substantially reduce the relative percentages of black voters in those districts. And our conclusion is consistent with the decision of the Department of Justice to preclear the Acts.

Our dissenting colleague disagrees with our reading of section 5 and contends that the new districts fail strict scrutiny, but he declines to explain how the Legislature could have satisfied section 5 without maintaining the same number of majority-black districts and the same relative percentages of black voters in those districts. Our dissenting colleague never denies that section 5 prohibited the Legislature from reducing the overall number of majority-black districts in the House and Senate, and the plaintiffs also do not suggest otherwise. Our dissenting colleague instead argues that section 5 permitted, but somehow did not require, the Legislature to maintain the

same relative percentages of black voters in the majority-black districts. We are left to wonder how the Legislature could have applied our dissenting colleague’s vague standard of changes that are both required and permitted without violating the plain text of the amended section 5, which forbids “[a]ny” voting change that “has the purpose of or will have the effect of diminishing the ability of any” voter “on account of race or color . . . to elect their preferred candidates of choice.” 42 U.S.C. § 1973c(b).

Our dissenting colleague gives the Legislature no credit for relying on the best evidence available to them. The Republican-controlled Legislature followed the example of their Democratic colleagues who a decade earlier, when members of the Black Caucus were majority leaders, corrected the malapportionment of the majority-black districts by adding similar percentages of black voters to those districts. The Legislature followed that example from an era when section 5 allowed states more flexibility in redistricting, and Alabama nevertheless obtained preclearance under the stricter standard adopted by Congress in 2006. The leaders of the Reapportionment Committee also followed the advice of black legislators who stated at public hearings that the majority-black districts ordinarily needed to be at least 60 percent black in total population. And the leaders of the Committee sought the assistance of black legislators in drawing the new majority-black districts and then incorporated virtually all of their suggestions for the design of those districts.

Our dissenting colleague instead faults Hinaman for failing to review unidentified “studies of black voter participation in Alabama” and credits the least credible witness on this topic, Arrington, who testified that the new districts “are part of a strategy to put the Republican Party in the same position that the segregationist white-only Democratic Party occupied in Alabama.” (NPX 323 at 13). But our dissenting colleague ignores the credible testimony of the Chairman of the Democratic Conference, Reed, that majority-black districts in Alabama ordinarily need to be 60 percent black and sometimes 65 percent black.

Our dissenting colleague charges that “[t]here is a cruel irony” in allowing Alabama to take credit for complying with section 5 even though state leaders argued successfully in *Shelby County* that the coverage formula in section 4 was so outdated as to be unconstitutional, but we see the irony working in the opposite way. The Voting Rights Act was enacted in an era when Alabama persistently defied federal authority and could not be trusted to enact racial-neutral laws in voting. *See, e.g., Beer v. United States*, 425 U.S. 130, 140, 96 S. Ct. 1357, 1363 (1976); H.R. Rep. No. 89-439, at 5 (1965), *reprinted in* 1965 U.S.C.C.A.N. 2437, 2441. But nearly a half-century later Alabama had a record of regular compliance with section 5. The Department of Justice had not even objected to a state-wide preclearance submission in more than 16 years, and in the decade before the amendment of section 5 in 2006, the Department had not objected to any submission from any level of government—state, county, or municipal—save for one submission from the City of Calera. *See* Brief of State of

Alabama as Amicus Curiae Supporting Petitioner at 12, *Shelby Cnty., Ala. v. Holder*, --- U.S. ---, 133 S. Ct. 2612 (2013) (No. 12-96). Governor Wallace and segregation are long gone, and Alabama has virtually eliminated any racial gap in voter registration or participation. *See id.* at 11. Even though state leaders expressed the view that Alabama now deserves to be treated on equal footing with other states, for decades they nevertheless obeyed section 5 because controlling precedents of the Supreme Court held that this extraordinary measure remained operative. The real irony would come from punishing Alabama for striving in good faith to comply with section 5 even though that law was enacted to remedy a pattern of defiance and evasion.

III. CONCLUSION

Redistricting has been called a “political thicket,” *see Colegrove v. Green*, 328 U.S. 549, 556, 66 S. Ct. 1198, 1201 (1946), where judicial decrees can “cut deeply into the fabric of our federalism,” *Reynolds*, 377 U.S. at 624, 84 S. Ct. at 1414 (Harlan, J., dissenting), but our review of a redistricting plan, once adopted, is limited. We do not consider whether a redistricting plan is “bad,” as Reed described the redistricting Acts adopted by the Legislature last year. Nor do we consider whether a plan is good or one that we would have drawn. We consider only whether a plan violates the Voting Rights Act and the Constitution. These plans violate neither. We **DISMISS** the claims of racial gerrymandering filed by the Democratic Conference plaintiffs for lack of standing; in the alternative, we **GRANT** judgment in favor of the State Defendants on the claims of racial gerrymandering filed by the Democratic Conference plaintiffs.

We **DISMISS** as not justiciable the claim of vote dilution based on the local House delegation in Jefferson County; in the alternative, we **GRANT** judgment in favor of the State Defendants on the claim of vote dilution based on the local House delegation in Jefferson County. We **GRANT** judgment in favor of the State defendants on all remaining claims. A separate final judgment will follow.

EXHIBIT V

STATEMENT OF ANTICIPATED MINORITY IMPACT

The current redistricting plan includes five Senate districts in which African-Americans constitute a majority of the total and voting age populations. Table 5.1 lists these districts and presents information relating to demographic changes in the districts between 2000 and 2010 and the effect of Chapter 1 on the minority total and voting age percentages in these districts. Chapter 1 complies with the requirements of Section 5 of the United States Voting Rights Act by retaining the five districts as majority minority districts with minority total and voting age population percentages roughly comparable to those of the districts at the time they were enacted.

Minority Population Trends

Virginia's African-American population increased from 1,390,293 to 1,551,399 between 2000 and 2010, a growth rate of 11.6 percent and a percentage change from 19.6 percent to 19.4 percent of the total population. Under the 2010 Census option of identifying oneself by more than one race, the total number who identified as African-American only or as African-American and some other combination was 1,653,563 or 20.7 percent of the total population. (The data used by the General Assembly in redistricting allocated those who included White as part of their multiple race identity to the minority race group. The data used in the following analysis are based on this allocation.)

The African-American population grew at a slower rate than the overall state average (11.6 percent compared to 13 percent). The attached analysis by the Weldon Cooper Center for Public Service of the University of Virginia succinctly summarizes the patterns of growth of the African-American population throughout the decade. Briefly, the distribution of African-Americans in Virginia has been relatively constant during the last decade, with the African-American population being concentrated in the eastern half of the state. However, in the case of Virginia's five majority African-American districts, all of the districts experienced growth rates below the state average for African-American population over the decade, and in one case an actual decline in African-American population.

These patterns are reflected in the statistics for the current Senate districts and had implications for drawing the new districts. As Table 5.1 demonstrates, below average growth left four of the five majority minority districts significantly below ideal district size and well outside the judicially recognized population deviation tolerances and the tolerances adopted by the Senate Committee on Privileges and Elections. Only District 9 grew at a sufficient rate (12 percent total population; 11.2 percent African-American population) to stay within the judicially recognized population deviation tolerances and the tolerances adopted by the Senate Committee on Privileges and Elections.

Like in 2000, the most dramatic change in Virginia's demographic base, mirroring national patterns, was the increase in Hispanic population. The Hispanic population increased from 4.7 percent of the state population in 2000 to 7.9 percent in 2010,

representing a gain of over 302,285 people and a growth rate of 91.7 percent. While virtually every locality showed some growth in Hispanic population, the majority of that population is concentrated in Northern Virginia. Over one-quarter of the total Hispanic population is in Fairfax County, and the adjoining localities also show significant percentages of Hispanic people.

Four current Senate districts (Districts 29, 30, 35, and 36) contain more than 20 percent Hispanic population (including District 30 with a population of 19.7 percent), all of which are located in Northern Virginia. No current Senate districts contain more than 30 percent Hispanic population. Chapter 1 contains three Senate districts (Districts 29, 35, and 36) with more than 20 percent Hispanic population, all of which are located in Northern Virginia. The Hispanic population increased significantly in Districts 29 and 35, declined slightly in District 36, and decreased to 16.1 percent in District 30. No Senate districts in Chapter 1 contain more than 30 percent Hispanic population.

Asians make up 5.5 percent of Virginia's population, up from 3.7 percent, and increasing from 261,025 to 439,890 between 2000 and 2010 at a growth rate of 68.5 percent. The Asian population is most heavily concentrated in Northern Virginia. The population tends to be fairly evenly distributed throughout the region rather than concentrated, however. Four current Senate districts (Districts 31, 32, 35, and 39) contain more than 10 percent Asian population and three districts (Districts 33, 34, and 37) contain more than 20 percent (including District 34 with a population of 19.9 percent), all of which are located in Northern Virginia.

Chapter 1 contains five Senate districts (Districts 13, 31, 32, 35, and 39) with more than 10 percent Asian population and three districts (Districts 33, 34, and 37) with more than 20 percent Asian population, all of which are located in Northern Virginia.

Majority African-American Districts

The current Senate plan contains five districts with majority African-American total and voting age populations (see Table 5.1). Chapter 1 retains five majority minority districts in Virginia. As Table 5.1 shows, each of the five districts established in the current plan grew at a rate below the state average of 13 percent. The result is that four of the five districts are, by 2000 Census numbers, significantly outside the judicially recognized population deviation tolerances and the tolerances adopted by the Senate Privileges and Elections Committee. These four districts range from -7.8 percent to -12.6 percent below ideal. Only one district (District 9) is actually above the population deviation standards by 2000 Census numbers. The total population deficit for the five districts equaled 79,874 or 39.9 percent of an ideal Senate district.

The 2010 Census populations of the five current districts reflect the fact that the population deficits resulted in smaller African-American population percentages in Districts 5, 9, 16, and 18 than was the case under the 2000 population counts for the districts. District 2 was the exception having a 58.5 percent African-American

population under the 2000 Census a 61.1 percent African-American population under the 2010 Census.

Chapter 1 maintains a majority minority population in the districts and, with the exception of District 9, adds territory to the districts to bring the population to within the plus-or-minus two percent deviation tolerance approved by the Senate Committee on Privileges and Elections. Table 5.3 shows the additions to and subtractions from the five districts.

The resulting population statistics shown in Table 5.1 balance the need to add territory so as to meet equal population requirements and the non-retrogression requirements of Section 5 of the Voting Rights Act. Other factors came into play in the shaping of these districts including compactness, preserving whole localities, precincts, and communities of interest, incumbency, and political considerations. However, as Table 5.3 shows, adjustments to the five districts in Chapter 1 were necessary to address reductions from the total and voting age population figures in these districts.

Under the Chapter 1 plan, none of the seats are open and none of the current incumbents representing these districts have been paired with any other incumbent.

African-American Influence Districts

After Virginia received final preclearance for its redistricting plan in 2001, one Senate district (District 15) included 30 percent or more African-American total population and one (District 6) included 25 percent or more African-American total population. These districts are adjacent to majority minority districts. Table 5.2 summarizes data for these districts.

The 2010 Census data reveal that demographic trends over the decade dropped the African-American population in District 15, although it remained above the 30 percent mark. In addition, African-American population increased in District 6 and also increased in Districts 1, 11, 13, and 36, putting all five district at or above 25 percent African-American total population. All of these districts, with the exception of District 36, are adjacent to majority minority districts. In all, the 2010 Census data thus placed six current districts in the 25 percent or over African-American total population category, with one district containing more than 30 percent.

Chapter 1 likewise contains six districts with 25 percent or more African-American total population. Table 5.2 summarizes data for these districts. District 1 increases to 32.5 percent while District 15 drops to 28.7 percent. Districts 6 and 36 remain as 25 percent or more total minority population districts. District 20, a Southside district, increased from 12.5 percent to 29 percent as the district was necessarily expanded to add needed population. District 22, a new district in Central Virginia, is also at 25 percent or more total minority population.

Of the districts under the current plan, current District 13 is eliminated due to population loss in the Tidewater region and moved to Northern Virginia and current District 11 drops from 26.9 percent to 21.5 percent total minority population as portions of the district were added to District 16, a majority minority districts, to offset population loss in that district.

Alternative Plans

In addition to Chapter 1, three alternative plans were presented to the General Assembly.

The first alternative plan, Senate Bill 5001/House Bill 5001, was introduced by Senator Janet D. Howell. Senate Bill 5001 was ultimately combined with House Bill 5001 which passed the General Assembly but was vetoed by Governor Robert McDonnell on April 15, 2011. Tables 5.1 and 5.2 include the relevant information with regard to the anticipated impact of this plan. Briefly, as passed the General Assembly, this plan, like Chapter 1, retained the five districts with a majority African-American total population. Although the configurations of the districts were different, there is little difference between the total and voting age African-American populations in Senate Bill 5001/House Bill 5001 and Chapter 1. The total and voting age minority populations are identical in two districts, increase in one district, and decrease in two. Overall, the plan's district percentages for the total and voting age minority populations are on average less than 0.1 percent more than those in Chapter 1.

Senate Bill 5001/House Bill 5001 contains two districts with African-American populations of 30 percent or more and six districts with African-American populations of 25 percent or more compared with one 30-plus district and five 25-plus districts in Chapter 1. The two plans feature some similar districts with minimal differences in percentages between them. Table 5.2 shows the districts that are over 25 percent minority in Senate Bill 5001/House Bill 5001 in relation to Chapter 1.

The second alternative plan, Senate Bill 5002, was introduced by Senator John C. Miller. The districts in Senate Bill 5002 were drawn by students at the College of William and Mary and was one of the winning plans in the Virginia College and University Redistricting Competition. Tables 5.1 and 5.2 include the relevant information with regard to the anticipated impact of this plan. Briefly, Senate Bill 5002, like Chapter 1, retained the five districts with a majority African-American total population, although the configurations of the districts were different. Of the five districts, as compared to Chapter 1, the total and voting age African-American populations increased in two districts and decreased in the other three, with the voting age population in District 18 falling to below 50 percent. Overall, the plan's district percentages for the total and voting age minority populations are on average 0.4 percent less than those in Chapter 1.

Senate Bill 5002 contains three districts with African-American populations of 30 percent or more and one district with African-American populations of 25 percent or more compared with one 30-plus district and five 25-plus districts in Chapter 1. Table 5.2 shows the districts that are over 25 percent minority in Senate Bill 5002 in relation to Chapter 1.

The third alternative plan is the floor substitute for House Bill 5001 that was offered by Senator John C. Watkins. Tables 5.1 and 5.2 include the relevant information with regard to the anticipated impact of this plan. Briefly, the floor substitute, like Chapter 1, retained the five districts with a majority African-American total population, although the configurations of the districts were different. As compared to Chapter 1, this plan has the effect of concentrating African-American voters in these five districts to a much greater degree, increasing the total and voting age African-American populations in all five districts. The plan's district percentages for the total and voting age minority populations never goes lower than 55 percent and the plan's district percentages for the total and voting age minority populations are on average 3.8 percent more than those in Chapter 1.

The floor substitute contains one district with African-American populations of 30 percent or more and two districts with African-American populations of 25 percent or more compared with one 30-plus district and five 25-plus districts in Chapter 1. Table 5.2 shows the districts that are over 25 percent minority in this plan in relation to Chapter 1.

No alternative plans were proposed by the NAACP, the ACLU, or any other group purporting to represent the interests of minority voters. Four of the All five incumbent Democratic minority Senators representing the majority minority districts voted affirmatively for the passage of House Bill 5005/Chapter 1 as amended to include the Senate plan; Senator Locke did not vote on final passage. Additionally, all House members of the Legislative Black Caucus voted affirmatively for the passage of House Bill 5005/Chapter 1 after it was amended to include the Senate plan and was referred back to the House, with the exception of Delegate Jeion A. Ward, who voted against the bill; Delegate Roslyn C. Tyler, who was not present but who voted against House Bill 5005 as it left the House; and Delegates Roslyn R. Dance and Luke E. Torian, who did not vote on final passage but who voted for House Bill 5005 as it left the House.

Attachment 5-Senate -- Table 5.1

Comparison Table: Senate of Virginia Majority Minority Districts

Current District	Current District 2000 TPOP	Current District 2000 TPOP Black Percent	Current District 2000 VAP Black Percent	Current District 2010 TPOP	Current District 2010 Actual Deviation	Current District 2010 Percent Deviation	Current District 2010 TPOP Black Percent	Current District 2010 VAP Black Percent	CH.1 District TPOP Black Percent	CH. 1 District VAP Black Percent	SB/HB 5001 TPOP Black Percent	SB/HB 5001 VAP Black Percent	HB 5001 Sub. TPOP Black Percent	HB 5001 Sub. VAP Black Percent	SB 5002 TPOP Black Percent	SB 5002 VAP Black Percent
2	174,234	58.5	55.8	177,071	- 22,955	- 11.5	61.1	58.9	53.1	51.2	53.1	51.2			56.3	53.5
4	*	*	*	*	*	*	*	*					59.8	57.7		
5	176,665	59.9	55.9	182,068	- 17,958	- 9.0	59.3	56.1	56.3	53.6	56.3	53.6	58.7	55.4	54.5	51.3
7	*	*	*	*	*	*	*	*					57.9	55.2		
9	180,492	59.2	55.0	201,994	1,968	1.0	58.8	54.9	54.2	50.8	55.8	52.0			58.3	54.0
10	*	*	*	*	*	*	*	*					59.9	56.1		
11	*	*	*	*	*	*	*	*					57.7	56.1		
16	174,203	59.0	55.9	184,330	- 15,696	- 7.8	56.1	54.5	54.9	53.1	54.1	52.5			52.1	50.1
18	174,137	60.6	58.5	174,793	- 25,233	- 12.6	60.0	58.3	55.4	53.5	55.0	53.1			52.0	49.9

*Current District 2 compares most directly with District 7 in House Bill 5001 Sub.
 *Current District 9 compares most directly with District 10 in House Bill 5001 Sub.
 *Current District 16 compares most directly with District 11 in House Bill 5001 Sub.
 *Current District 18 compares most directly with District 4 in House Bill 5001 Sub.

Attachment 5-Senate -- Table 5.2

Comparison Table: Senate of Virginia Influence Districts (30+ percent African-American TPOP)

Current District	Current District 2000 TPOP	Current District 2000 TPOP Black Percent	Current District 2000 VAP Black Percent	Current District 2010 TPOP	Current District 2010 Actual Deviation	Current District 2010 Percent Deviation	Current District 2010 TPOP Black Percent	Current District 2010 VAP Black Percent	CH. 1 District TPOP Black Percent	CH. 1 District VAP Black Percent	SB/HB 5001 TPOP Black Percent	SB/HB 5001 VAP Black Percent	HB 5001 Sub. TPOP Black Percent	HB 5001 Sub. VAP Black Percent	SB 5002 TPOP Black Percent	SB 5002 VAP Black Percent
1	174,289	22.1	20.2	170,275	- 29,751	- 14.9	25.0	22.9	32.5	29.7	32.5	29.8	*	*	*	*
6	173,602	27.7	25.2	171,625	- 28,401	- 14.2	26.9	25.2	28.1	26.3	28.1	26.3	*	*	*	*
7	*	*	*	*	*	*	*	*	*	*	29.0	26.4	*	*	*	*
8	*	*	*	*	*	*	*	*	*	*	31.9	29.2	*25.6	24.0	*	*
11	173,903	21.1	19.6	209,648	9,622	4.8	26.9	25.4	*	*	*25.8	*25.1	*	*	*31.4	*30.4
13	173,500	25.7	24.4	197,229	- 2,797	- 1.4	28.4	26.7	*	*	*	*	*32.6	*31.7	*31.5	*28.8
15	179,195	33.8	32.2	191,067	- 8,959	- 4.5	31.3	30.1	28.7	28.3	*27.4	*26.1	*	*	*	*
19	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*36.8	*35.2
20	180,264	12.9	11.9	177,184	- 22,842	- 11.4	12.5	11.8	29.0	27.4	29.0	27.4	*27.5	*26.2		
22	*	*	*	*	*	*	*	*	26.7	25.4	*	*	*	*	*	*
36	179,636	22.8	20.7	219,048	19,022	9.5	25.8	24.5	25.4	24.2	25.3	24.0	*	*	27.4	25.9

*Current District 36 compares most directly with District 20 in House Bill 5001 Sub.

*Current District 15 compares most directly with District 13 in House Bill 5001 Sub.

*Current District 13 compares most directly with District 8 in House Bill 5001 Sub.

*Ch. 1 District 22 is comprised of parts of current Districts 10, 12, 15, 17, and 23.

*SB/HB 5001 District 7 is comprised of parts of current Districts 5, 6, 7, 8, and 14.

*SB/HB 5001 District 8 is comprised of parts of current Districts 9, 10, 11, 12, and 16.

*SB/HB 5001 District 11 is comprised of parts of current Districts 11, 13, 15, 16, and 18.

*SB/HB 5001 District 15 is comprised of parts of current Districts 15, 19, and 23.

*SB 5002 District 11 is comprised of parts of current Districts 11, 13, 16, and 18.

*SB 5002 District 13 is comprised of parts of current Districts 1, 2, 3, and 13.

*SB 5002 District 19 is comprised of parts of current Districts 15, 18, and 19.

Attachment 5-Senate -- Table 5.3

Senate of Virginia Majority Minority District Changes

District 2 -- Additions:	more of Hampton	+ 9,030
	York County (part)	+ 26,867
Subtractions:	part of Newport News	- 1,609
	part of Portsmouth	- 3
	remainder of Suffolk	<u>- 11,163</u>
		200,193
District 5 -- Additions:	more of Chesapeake	+ 68,123
Subtractions:	part of Norfolk	- 29,709
	remainder of Virginia Beach	<u>- 19,731</u>
		200,751
District 9 -- Additions:	Hanover County (part)	+ 11,710
	more of Henrico County	+ 8,484
Subtractions:	part of Richmond	<u>- 23,245</u>
		198,943
District 16 -- Additions:	remainder of Hopewell	+ 16,720
	more of Chesterfield County	+ 24,185
	more of Prince George County	+ 2,152
Subtractions:	part of Dinwiddie County	- 15,366
	part of Richmond	<u>- 11,180</u>
		200,841
District 18 -- Additions:	more of Isle of Wight County	+ 8,494
	more of Southampton County	+ 3,205
	Surry County (part)	+ 7,058
	more of Franklin City	+ 1,411
	more of Portsmouth	+ 24,538

	more of Suffolk	+ 25,232
Subtractions:	Nottoway County	- 15,853
	part of Brunswick County	- 7,489
	remainder of Lunenburg County	- 2,501
	part of Chesapeake	- <u>18,954</u>
		199,934

COMMONWEALTH OF VIRGINIA



SENATE

Redistricting Facts

What is redistricting?

Redistricting is the process of drawing new electoral district boundaries. After the federal government conducts the every-ten-year census to count the U.S. population, district boundaries for the state legislatures and the U.S. House of Representatives are changed to reflect population changes within the state. Redistricting also unfolds at the local level as localities redraw the political boundaries for county supervisors, city and town councils, school boards, and other elected bodies.

What is reapportionment?

Reapportionment also occurs every 10 years and it is the process by which congressional seats are reallocated among the 50 states based on population. Currently, Virginia has 11 seats in the U.S. House of Representatives. Population estimates indicate that Virginia will continue to have 11 seats after reapportionment.

Who is responsible for redistricting in Virginia?

The Constitution of Virginia gives the General Assembly responsibility for redistricting congressional and legislative districts. Any redistricting plan takes the form of a bill. Like any other piece of legislation in the General Assembly, it may be introduced by any member in either the Senate of Virginia or the House of Delegates, it must be passed by both chambers, and it must be signed by the Governor to become law. Both the Senate and House have a Committee on Privileges and Elections which has jurisdiction over redistricting and other voting-related legislation.

What factors are considered by the General Assembly when crafting a redistricting plan?

United States Constitution

The U.S. Constitution, as interpreted by federal courts, requires that congressional districts have virtually equal population to implement the "one person, one vote" principle. When they were drawn in 2001, the current congressional districts in Virginia varied by only 38 persons — a statistical deviation of 0.00% from the mathematical ideal population (the ideal population is simply the total population of Virginia divided by the number of districts).

Constitution of Virginia

The Constitution of Virginia, as well as the U.S. Constitution, requires that districts provide representation in proportion to population, although courts have not applied this rule as strictly to state legislative districts as they have to congressional districts. In 2001, legislative districts were drawn within a range of -2% to +2%, an overall range of about 4% from the mathematical ideal.

The Virginia Constitution further requires that every electoral district be "contiguous and compact."

Voting Rights Act of 1965

The federal Voting Rights Act of 1965 imposes other requirements on redistricting to prohibit the adoption of a plan that would have the effect of denying or abridging the right to vote for racial and

language minorities. Since Virginia is a covered jurisdiction, its redistricting plan must be precleared by the U.S. Department of Justice to ensure that it does not reduce the opportunity of minorities to participate in the political process and to elect representatives of their choice.

Other Criteria

The respective Committees on Privileges and Elections in the Virginia House of Delegates and the Senate of Virginia expect to adopt criteria that set forth these and additional factors for consideration. In 2001, other factors included the adoption of only single-member districts and the preservations of communities of interest.

What is the timeline for redistricting in 2011?

The precise timetable for redistricting in 2011 is unknown at this time, but the new districts must be ready in advance of the November 2011 elections for the General Assembly. In 2001, the General Assembly adjourned its Regular Session without acting on redistricting, but convened a special session on the date of adjournment and recessed until April. After receiving census data in early March and conducting public hearings during late March and April, the General Assembly passed legislative redistricting plans that were signed by the Governor in late April and submitted to the U.S. Department of Justice for preclearance, which was granted in July. Congressional redistricting plans were passed by the General Assembly in July and granted preclearance in October. After delayed primaries in August, statewide and legislative elections took place on time in November 2001.

Sample Redistricting Timeline

The 2011 timeline for redistricting is uncertain at this time. However, the following guide is based on statutory deadlines and Virginia's experience in 2001. Again, the guide below has not been approved.

April 1, 2010— Census Day

Fourth Quarter, 2010—Census Bureau releases geographic data, including the areas (Census Blocks, Tracts, Cities and Counties) by which Census data will be tabulated.

December 31, 2010—Census Bureau reports official population of each state to the President for reapportionment (how many seats each state will have in the U.S. House of Representatives)

First Quarter, 2011—Census Bureau provides Virginia with detailed population data tabulated for each Census Block.

Second Quarter, 2011—General Assembly meets to pass House of Delegates and Senate of Virginia redistricting plans.

—Plans submitted to U.S. Department of Justice for preclearance under the Voting Rights Act

Third Quarter, 2011—General Assembly meets to pass congressional redistricting plan.

—Plans receive Voting Rights Act clearance and become effective.

—Primary elections held for Virginia House of Delegates and Senate of Virginia

November 8, 2011—General Election for House of Delegates and Senate of Virginia

November 6, 2012—General Election for U.S. House of Representatives

How can I get more information on redistricting in Virginia?

For more on redistricting in Virginia, including hearing dates, information on the submission of written comments, and population data as it becomes available, please visit <http://dlsGIS.state.va.us/>.

COMMONWEALTH OF VIRGINIA



SENATE

Memorandum

To: Citizens of the Commonwealth and other interested individuals and organizations

From: The Honorable Janet D. Howell
Chairman, Committee on Privileges and Elections
Senate of Virginia

Date: October 25, 2010

Re: Redistricting--Submission of Written Comments

The Redistricting Subcommittee of the Senate of Virginia Committee on Privileges and Elections has scheduled a series of four public hearings throughout the Commonwealth to take place in October, November, and December of this year.

These hearings are designed to promote and facilitate the participation of the public in the redistricting process. Members of the public are encouraged to attend these public hearings and may register in advance to speak by contacting Hobie Lehman, Senate Committee Operations, at the address below.

Persons who are unable to attend the public hearings, but who wish to submit their written comments to the Subcommittee may send them via email, fax, or mail to:

**Hobie Lehman
Senate Committee Operations
Senate of Virginia
State Capitol
P.O. Box 396
Richmond, Virginia 23218**

**Email: hlehman@senate.virginia.gov
Fax: (804) 698-7672
Telephone: (804) 698-7450**



VIRGINIA'S REGIONS

Introduction to Virginia's Regions

8 Regional Profiles

Central Virginia
Eastern Virginia
Hampton Roads
Northern Virginia
Richmond Region
Southside Virginia
Southwest Virginia
Valley Region

List of Localities by Region

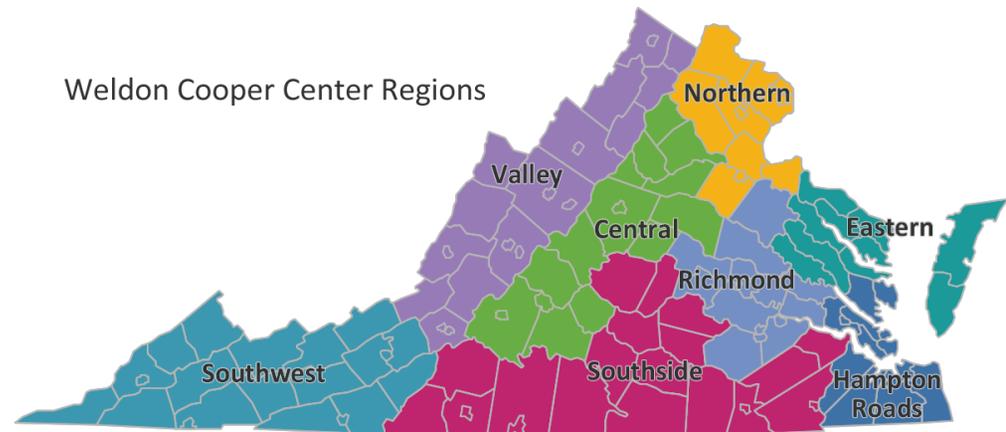


Introduction to Virginia's Regions

To provide a more accurate picture of how Virginia is changing, demographers at the University of Virginia's Weldon Cooper Center for Public Service have defined eight regional profiles based on the 2010 Census and American Community Survey data. The profiles include information on population size and change over the past 10 years; age, race, and ethnicity of the population; educational attainment; income and poverty; and labor force participation and employment.

"Understanding Virginia's regional differences is important in designing and providing programs and services to address the varying needs of Virginians across the commonwealth," said Qian Cai, director of the Cooper Center's Demographics & Workforce group. "Statewide statistics are driven by trends in Northern Virginia and obscure the realities of other parts of the state. For example, eight localities in Southside Virginia lost population in the last ten years, while Northern Virginia experienced a 24% growth rate. Five percent of households in Northern Virginia fall below the poverty line in contrast to nineteen percent in Southwest Virginia."

Nearly one-third of Virginia's population lives in Northern Virginia, while the bulk of the commonwealth's land mass is in Southside, Southwest and the Valley regions. As a result, population density ranges from a low of 56 persons per square mile in Southside to a high of 918 persons per square mile in Northern Virginia.



In addition, American Community Survey data allow annual updating of the socioeconomic characteristics of each region, which often demonstrate dramatic differences.

"For example, one of the characteristics we examined was educational attainment," said Rebecca Tippet, author of the regions study. "While Virginia has a higher percentage of adults with a bachelor's degree or more education than the national average, this is actually because of high educational attainment in the Richmond and Northern Virginia regions. The remaining six regions are below the national average."

Using data reflecting shared economic conditions, such as cost of living, and commonly accepted geographical boundaries, the Cooper Center's eight regions are the Valley, Southwest, Southside, Central, Northern, Richmond, Eastern and Hampton Roads.



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Stretching from Bedford and Campbell counties in the south to Rappahannock and Culpeper in the north, Central Virginia occupies 5,581 square miles

in the center of the state. Its three cities and thirteen counties include farms, wineries, and breweries, as well as three presidential estates. In addition to state parks and historic battlefields, Thomas Jefferson's Monticello and the University of Virginia are UNESCO World Heritage sites that regularly attract many visitors.



Population Trends, 2000-2010

2010 Census for Central Virginia

Total Population	588,197
Growth Rate	15.8%
Population Density (persons/square mile)	105

Central Virginia was one of the fastest growing regions in the state over the last decade, second only to Northern Virginia. Between 2000 and 2010, the

region gained more than 80,000 persons. This growth accounted for 9% of the state's total population growth since 2000.

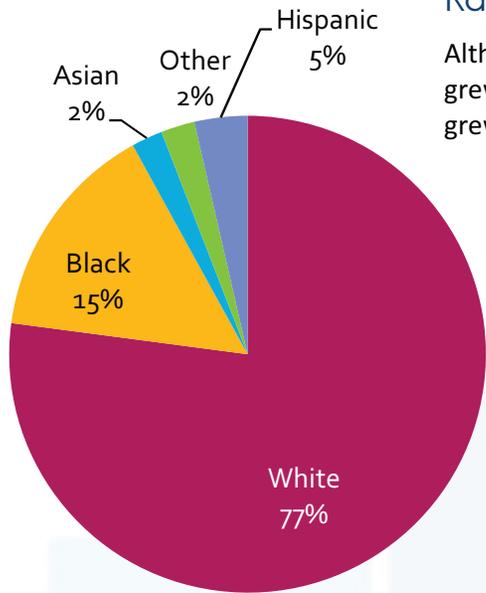
Population Growth

In Central Virginia, 15 of 16 localities saw population gains over the last decade.

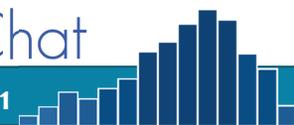
- Migration generated more than four-fifths of population growth in the region.
 - All localities had more in-migration than out-migration.
- Four localities—Albemarle, Fluvanna, Louisa, and Orange—grew by nearly 30% or more between 2000 and 2010.
- Lynchburg, Culpeper, and Albemarle each grew by more than 10,000 persons.
- One locality, Bedford City, experienced population loss, although this loss was small: 77 persons, or 1.2% of the population.

Race and Ethnicity in Central Virginia

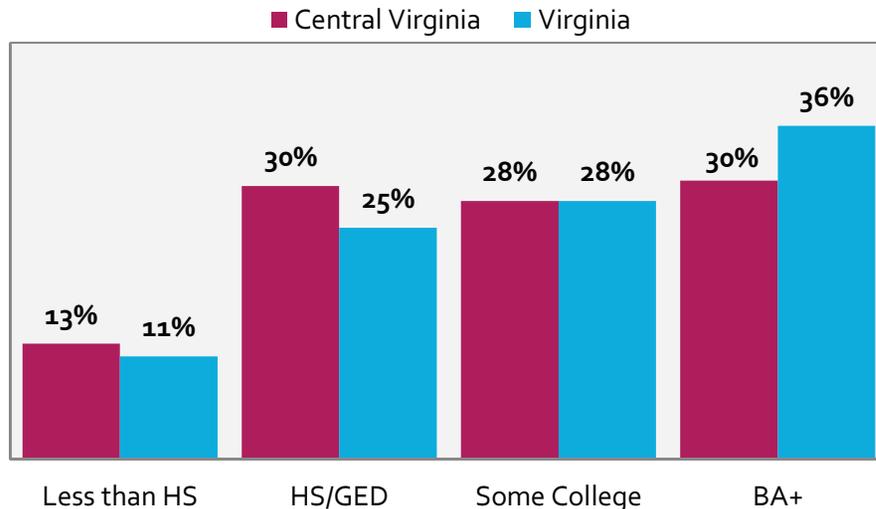
Although Central Virginia's white and black populations grew over the past decade, Asian and Hispanic populations grew faster, increasing overall regional diversity.



- Between 2000 and 2010, Hispanic and Asian populations grew in all localities.
- Culpeper has the highest concentration of Hispanics in the region (9% of its population). Its Hispanic population also grew the fastest since 2000, increasing by 3,300 persons or 385%.
- Charlottesville has the highest concentration of Asians in the region (6%), while its neighboring county, Albemarle, had a 2,300 person increase in its Asian population, the largest numerical increase in the region.



Educational Attainment, Adults 25-64



Educational attainment among Central Virginia’s working age population (adults ages 25-64) differs only slightly from educational attainment at the state level. Compared to the state, Central Virginia has

- A higher proportion of adults with only a high school diploma or GED.
- A lower proportion of adults with a bachelor’s degree or higher.

Labor Force Participation

Labor force statistics for Central Virginia show

- **Unemployment was 6.7% in 2009**, lower than the unemployment rate for Virginia (7.5%) and the national average (9.7%). This is the second lowest unemployment rate of Virginia’s eight regions.
 - **Albemarle** had the lowest unemployment rate (5.1%) while **Bedford City** had the highest (9.3%).
- Among all eight Virginia regions, **this region has the highest proportion of workers (26%) employed in social services industries.**

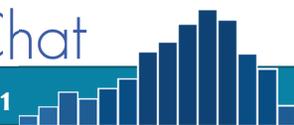
Income and Poverty

- Nearly a quarter of Central Virginia’s households earn less than \$25,000 per year.
- Twelve percent of households fall below the poverty line, more than the statewide poverty rate of 10%.
- Seven percent of households receive food stamps.

In addition, **25% of Central Virginia households do not have adequate income** to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations.

Sources: Data on population trends and race/ethnicity are from the 2000 and 2010 Census. Data on 2009 unemployment rate are from Bureau of Labor Statistics Local Area Unemployment statistics. Data on income adequacy are from a Cooper Center study. All other data are from the 2007-2009 American Community Survey from the U.S. Census Bureau.

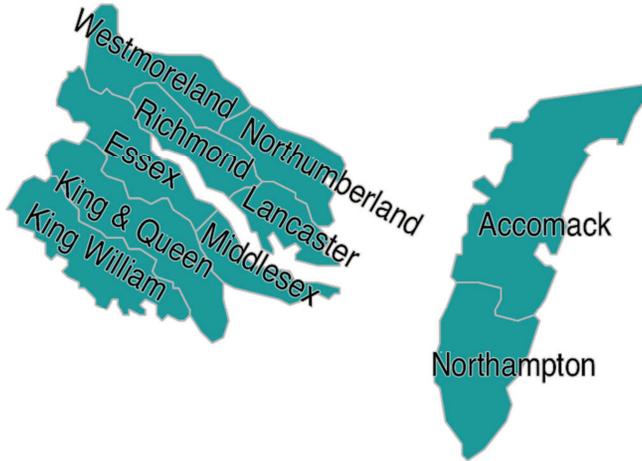
For more information, please contact
 Rebecca Tippett
rebecca.tippett@virginia.edu or (434) 982-5861



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Located in the middle of Virginia's Atlantic coast, the Eastern region's ten counties occupy 2,386 square miles and include the counties of the Northern Neck, Chesapeake Bay, and Eastern Shore. The region is rich in history and scenic attractions. With large stretches of shoreline on the Bay and the Atlantic Ocean, Eastern Virginia's many beaches and state parks attract both visitors and retirees.



Population Trends, 2000-2010

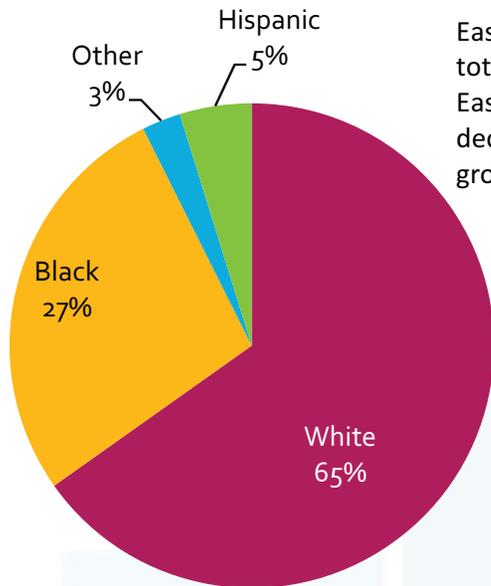
2010 Census for Eastern Virginia	
Total Population	140,972
Growth Rate	0.4%
Population Density (persons/square mile)	59

Eastern Virginia is one of the least densely populated areas in the state, second only to Southside Virginia. The Eastern region contains 6% of

Virginia's land mass and has the smallest population of any region, less than 2% of the state's total population. The region experienced negligible growth between 2000 and 2010, gaining only 500 persons.

Race and Ethnicity in Eastern Virginia

Eastern Virginia's white population comprised 65% of its total population between 2000 and 2010. While the Eastern region lost 11% of its black population in the past decade, Hispanic and Asian populations saw significant growth:

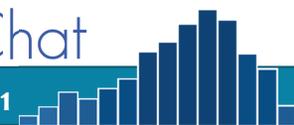


- Between 2000 and 2010, the Hispanic population grew in all localities.
- While the Asian population grew in all localities except King and Queen, Asians remain less than 1% of the population in Eastern Virginia.
- Accomack had the highest concentration of Hispanics: 9% of its population.

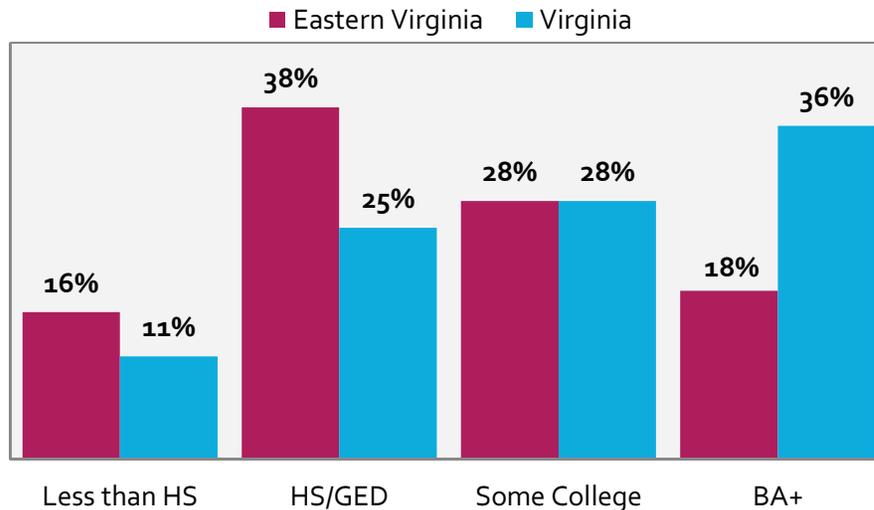
Experiencing Natural Decrease

Nationwide, 1 in 4 counties have had more deaths than births in the last decade, a phenomenon called natural decrease. **In Eastern Virginia, 7 of its 10 localities experienced natural decrease.**

- Through migration, many localities continued to grow in spite of experiencing more deaths than births.
- Three localities—Accomack, Lancaster, and Northampton—experienced population loss.
- King William was the only locality in Eastern Virginia to experience both more births than deaths and relatively high levels of migration. These fueled its 21% growth in population.



Educational Attainment, Adults 25-64



Educational attainment among Eastern Virginia’s working age population (adults ages 25-64), differs from the distribution of educational attainment at the state level. Compared to the state, Eastern Virginia has

- A higher percentage of adults who did not complete high school.
- A lower percentage of adults with a bachelor’s degree or higher. Of the eight regions, Eastern Virginia has the second lowest percentage of adults with a college degree.

Labor Force Participation

Labor force statistics for Eastern Virginia show

- **Unemployment was 7.5% in 2009**, equal to Virginia’s unemployment rate (7.5%) and less than the national average (9.7%).
 - **Accomack** had the lowest unemployment rate (6.6%) while **Lancaster** had the highest (9.5%).
- A larger proportion of persons are employed in agriculture (4%) and construction (12%) industries in Eastern Virginia than in the state and at the national level.

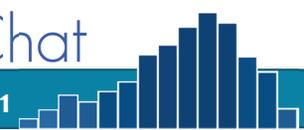
Income and Poverty

- More than a quarter of Eastern Virginia’s households earn less than \$25,000 per year.
- Twelve percent of households fall below the poverty line in Eastern Virginia, higher than the statewide poverty rate of 10%.
- Eight percent of households receive food stamps.

Twenty-six percent of Eastern Virginia households do not have adequate income to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations.

Sources: Data on population trends and race/ethnicity are from the 2000 and 2010 Census. Data on 2009 unemployment rate are from Bureau of Labor Statistics Local Area Unemployment statistics. Data on income adequacy are from a Cooper Center study. All other data are from the 2007-2009 American Community Survey from the U.S. Census Bureau.

For more information, please contact
 Rebecca Tippett
rebecca.tippett@virginia.edu or (434) 982-5861



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Hampton Roads occupies 2,089 square miles in the southeastern corner of the state. All but two of its fourteen localities have long stretches of waterfront property. With Virginia Beach to the far southeast and Gloucester and Mathews to the north, the nine cities and five counties in Hampton Roads are situated around the nation's third largest port. With the world's largest naval base, Norfolk Naval Station, and other military bases, Hampton Roads is home to a large number of military personnel.



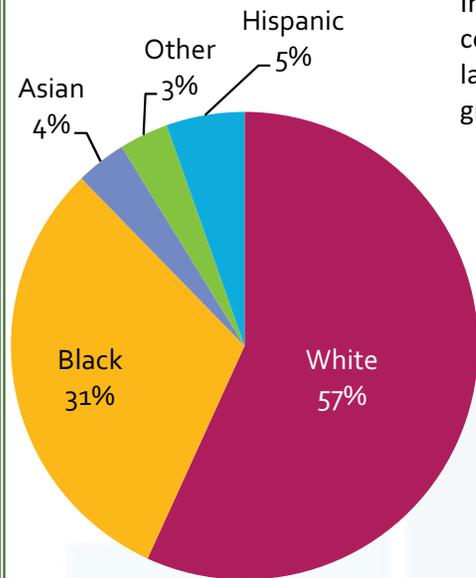
Population Trends, 2000-2010

2010 Census for Hampton Roads	
Total Population	1,641,078
Growth Rate	5.7%
Population Density (persons/square mile)	786

Hampton Roads is one of the most densely populated areas in the state, second only to Northern Virginia. Covering only 5% of the state's land mass, the smallest of any region, Hampton Roads has more than one-fifth of Virginia's population. The region experienced moderate growth between 2000 and 2010, gaining nearly 90,000 persons. This growth accounts for 10% of Virginia's total population growth since 2000.

Race and Ethnicity in Hampton Roads

In Hampton Roads, 31% of the population is black, compared to 19% statewide. While less diverse than other large urban areas, the 2010 Census data show signs of growing Hispanic and Asian communities:



- Between 2000 and 2010, the Asian and the Hispanic populations grew in all localities.
- In Virginia Beach, the Asian population grew by nearly 6,000 and the Hispanic population grew by more than 11,000.
- Newport News has the largest concentration of Hispanics in the region: 7% of its population.
- In Isle of Wight and Suffolk the Asian population increased by more than 170%.
- James City had the largest proportional increase in Hispanic population in the region (270% growth).

Net Outward Migration

Hampton Roads had nearly 115,000 more births than deaths in the last decade. The region lost 25,000 persons due to net outward migration, meaning that more people moved out of the region than into it.

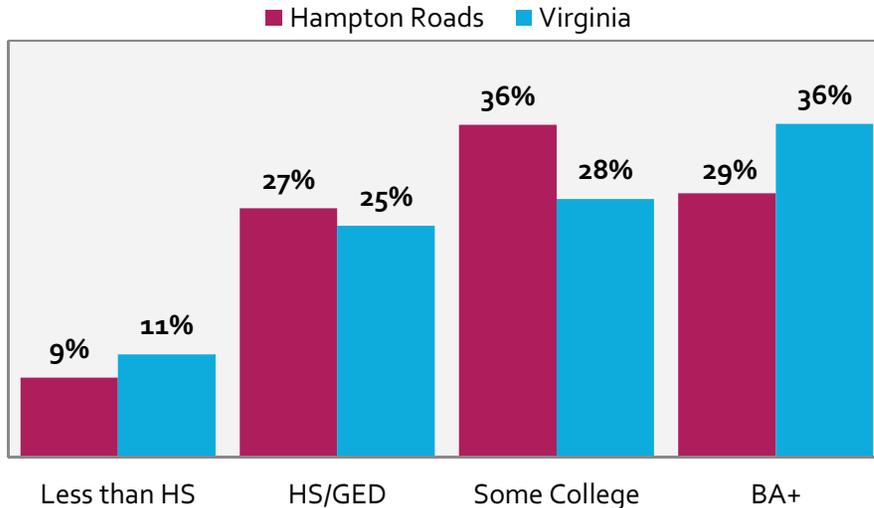
- Five localities—Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach—lost more than 10,000 persons between 2000 and 2010 due to out-migration.
 - Large numbers of births offset out-migration losses in most of these localities.
- Mathews, Hampton, and Portsmouth were the only localities to lose population since 2000.
- James City and Suffolk experienced large population growth, more than 30%, primarily driven by migration.



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Educational Attainment, Adults 25-64



Educational attainment among Hampton Roads' working age population (adults ages 25-64), is not significantly different from the distribution of educational attainment at the state level. Compared to the state, Hampton Roads has

- A higher percentage of adults who have completed some college.
- A lower percentage of adults with a bachelor's degree or higher.

Labor Force Participation

Labor force statistics for Hampton Roads show

- **Unemployment was 6.8% in 2009**, lower than both Virginia's unemployment rate (7.5%) and the national average (9.7%).
 - **Poquoson** had the lowest unemployment rate (5.1%) while **Williamsburg** had the highest (14.8%).
- **Six percent of adults 25-64 are in the Armed Forces**, a much higher proportion than statewide (2%) and nationwide (less than 1%).

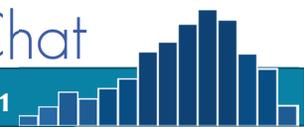
Income and Poverty

- While Hampton Roads has been identified nationally as one of the best regions for high-paying jobs, median household income varies substantially across localities.
 - Williamsburg and Norfolk have the lowest median household income: less than \$42,000.
 - Poquoson City has the highest: \$85,000.
- Ten percent of households fall below the poverty line in Hampton Roads, equal to the statewide poverty rate (10%).
- Seven percent of households receive food stamps.

In contrast, **29% of Hampton Roads households do not have adequate income** to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations. This is driven by the higher costs of living in the Hampton Roads region; its housing costs are second most expensive in the state after Northern Virginia.

Sources: Data on population trends and race/ethnicity are from the 2000 and 2010 Census. Data on 2009 unemployment rate are from Bureau of Labor Statistics Local Area Unemployment statistics. Data on income adequacy are from a Cooper Center study. All other data are from the 2007-2009 American Community Survey from the U.S. Census Bureau (median income is from 2005-2009 ACS).

For more information, please contact
 Rebecca Tippett
rebecca.tippett@virginia.edu or (434) 982-5861



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Lying southwest of the District of Columbia, and sharing borders with West Virginia and Maryland, Northern Virginia occupies 2,826 square miles at the northern point of Virginia. With Loudoun as its northernmost point and Spotsylvania and King George to the south, it is bordered on the east by the Potomac River. Northern Virginia's densely populated six cities and eight counties are home to many businesses, federal agencies, and military training facilities, in addition to a large number of historic attractions.



Population Trends, 2000-2010

2010 Census for Northern VA	
Total Population	2,595,054
Growth Rate	24.2%
Population Density (persons/square mile)	918

Northern Virginia has less than 10% of the state's land mass, but one-third of the total state population. The region continued to experience tremendous growth in the last decade, gaining a total of more than half a million people. This growth accounts for more than half of Virginia's total population growth since 2000.

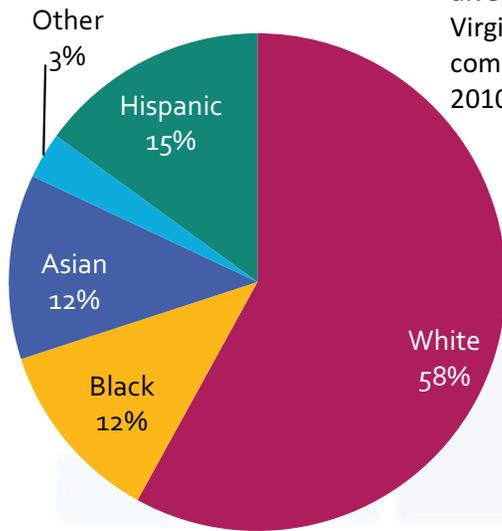
A Population Boom

Births and migration fueled population growth in Northern Virginia. **Statewide, nearly 6 in every 10 births took place in Northern Virginia.**

- Fifty-three percent of Northern Virginia's growth over the past decade came from more births than deaths, while 47% was from migration into the region.
- Three geographically small areas—Alexandria, Fairfax City, and Manassas—experienced net out-migration since 2000.
- Fairfax City was the slowest growing locality in the region, gaining 5% in population.
- Loudoun was the fastest growing locality in the region and in the state, nearly doubling its population (84% growth rate).

Race and Ethnicity in Northern Virginia

Northern Virginia has the greatest racial and ethnic diversity of all of Virginia's eight regions. In Northern Virginia, 15% of the population is Hispanic and 12% is Asian compared to 8% and 5%, respectively, statewide. The 2010 Census data show increasing diversity:

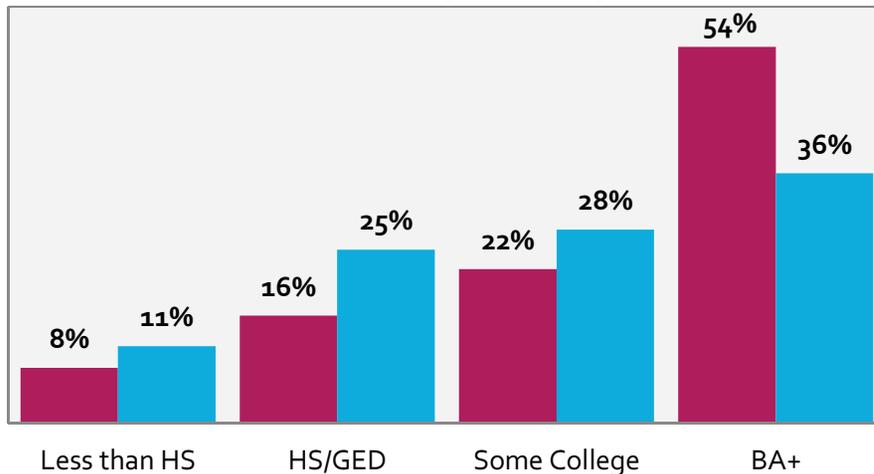


- Between 2000 and 2010, the Hispanic population grew by 80%. In many localities, such as Loudoun and Spotsylvania, the Hispanic population more than doubled.
- Northern Virginia's Asian population increased by almost 75% over the last decade.
- Fairfax County gained more than 60,000 Hispanics and more than 60,000 Asians since 2000, the largest numerical increase of both in any locality in the state.



Educational Attainment, Adults 25-64

■ Northern Virginia ■ Virginia



Educational attainment among Northern Virginia’s working age population (adults ages 25-64) is very different from the other seven regions. Compared to Virginia as a whole, Northern Virginia has

- A lower percentage of adults without a high school diploma.
- A higher percentage of adults with a bachelor’s degree or higher.

Labor Force Participation

Labor force statistics in Northern Virginia further show

- Eighty-three percent of workers are employed in high-paying management, business, financial, and professional occupations.
- **Unemployment was 4.9% in 2009**, a rate much lower than Virginia’s unemployment rate (7.5%) and the national average (9.7%).
 - **Arlington** had the lowest unemployment rate (4.2%) while **Fredericksburg** had the highest (9.1%).

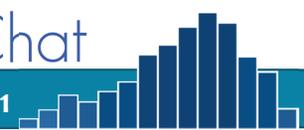
Income and Poverty

- Nearly half of Northern Virginia’s households earn more than \$100,000 per year.
- Five percent of households fall below the poverty line in Northern Virginia, compared to 10% of the state as a whole.
- Fewer than 3% of households receive food stamps.

In contrast, **24% of Northern Virginia households do not have adequate income** to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations. This is due to high costs of living in Northern Virginia, particularly for housing.

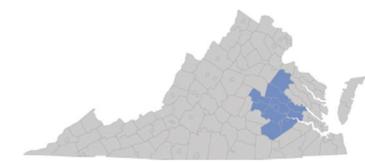
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For more information, please contact
 Rebecca Tippett
rebecca.tippett@virginia.edu or (434) 982-5861



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Stretching from Prince George and Dinwiddie counties in the south to Caroline County in the north, the Richmond region's four cities and ten counties cover 3,478 square miles in east central Virginia. With the state capital and a large stretch of the I-95 corridor, the Richmond region has several Fortune 500 corporations and many government offices. This region is home to one of Virginia's largest public universities, Virginia Commonwealth University in Richmond, as well as two historically black universities: Virginia State University in Petersburg and Virginia Union in Richmond.



Population Trends, 2000-2010

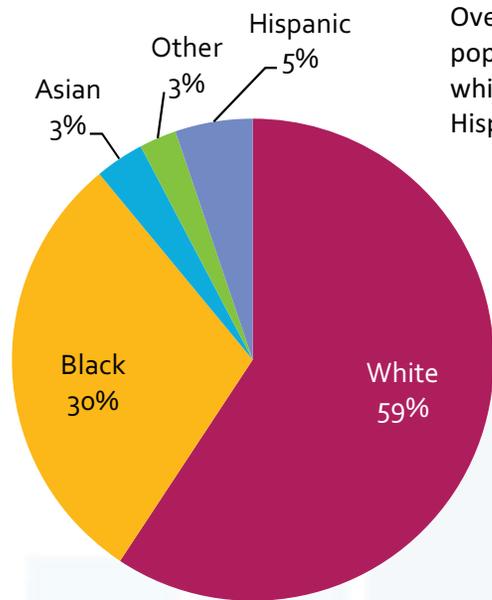
2010 Census for Richmond	
Total Population	1,167,389
Growth Rate	14.6%
Population Density (persons/square mile)	336

One of three major urban centers in the state, the Richmond region has nearly 15% of the state's total population. The region experienced

substantial growth since 2000, growing at a faster rate than all but the Central and Northern Virginia regions. Between 2000 and 2010, the Richmond region gained nearly 150,000 persons; this growth accounts for 16% of Virginia's total population growth since 2000.

Race and Ethnicity in the Richmond Region

Over the last decade, the Richmond region's white population declined from 64% of total population to 59%, while the region's Asian population nearly doubled and the Hispanic population grew by almost 160%.

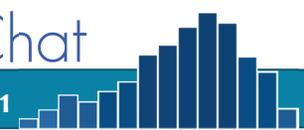


- Between 2000 and 2010, the Hispanic population more than doubled in all but two localities.
- Henrico had the largest population proportion Asian in the region: 7%.
- Chesterfield had the largest concentration of Hispanics in the region: 7%.
- Caroline had the fastest growing Hispanic population (225%), while Charles City County had the fastest growing Asian population (243%).

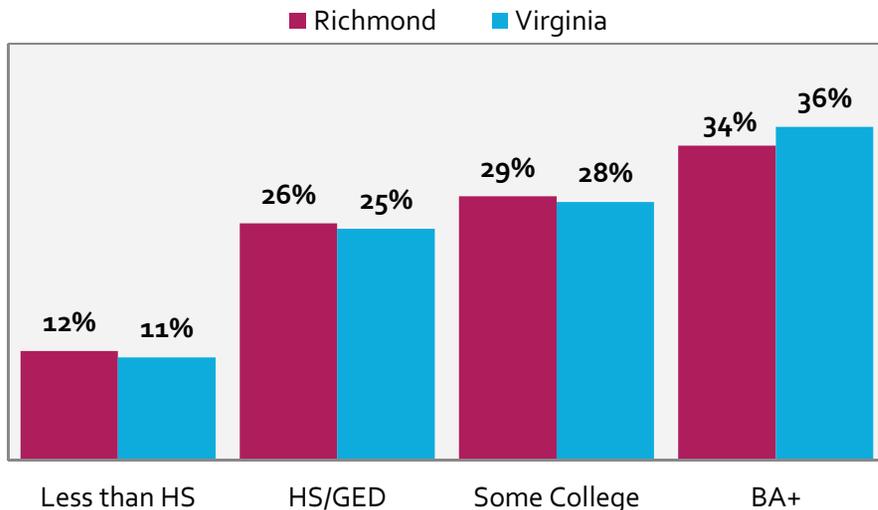
A Growing Population

All localities except Petersburg experienced population growth between 2000 and 2010.

- One-third of this growth came from births, while two-thirds was from migration.
- Henrico and Chesterfield had the largest absolute population changes since 2000, growing by 45,000 and 56,000, respectively.
- Of the region's 14 localities, New Kent had the highest growth rate: 37%. Migration generated 90% of this growth.



Educational Attainment, Adults 25-64



Educational attainment among the Richmond region’s working age population (adults ages 25-64) mirrors the distribution of educational attainment at the state level. Compared to the other seven regions, Richmond has

- The third lowest percentage of adults without a high school diploma, slightly higher than the Northern Virginia and Hampton Roads.
- The second highest percentage of adults with a bachelor’s degree or higher. Of the eight regions, only Northern Virginia has a higher proportion of adults with a college degree.

Labor Force Participation

Labor force statistics for the Richmond region show

- **Unemployment was 7.5% in 2009**, equal to Virginia’s unemployment rate (7.5%) and less than the national average (9.7%).
 - **Powhatan** had the lowest unemployment rate (6.1%) while **Petersburg** had the highest (13.2%).
- Finance, insurance, and real estate industries employ 10% of the labor force in the Richmond region, a much larger percentage than are employed in these industries at the state and national levels.

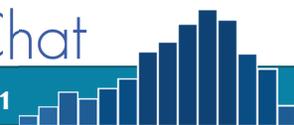
Income and Poverty

- Median household income varies substantially across localities in this region.
 - Petersburg City has the lowest median household income: less than \$36,000.
 - Hanover County has the highest household income: nearly \$77,000.
- Eleven percent of households fall below the poverty line in the Richmond region, higher than the statewide poverty rate of 10%.
- Seven percent of households receive food stamps.

In addition, **28% of households in the Richmond region do not have adequate income** to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations. While not quite as expensive as Northern Virginia, Richmond (like Hampton Roads) has significantly higher costs of living compared to other regions.

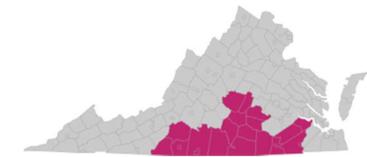
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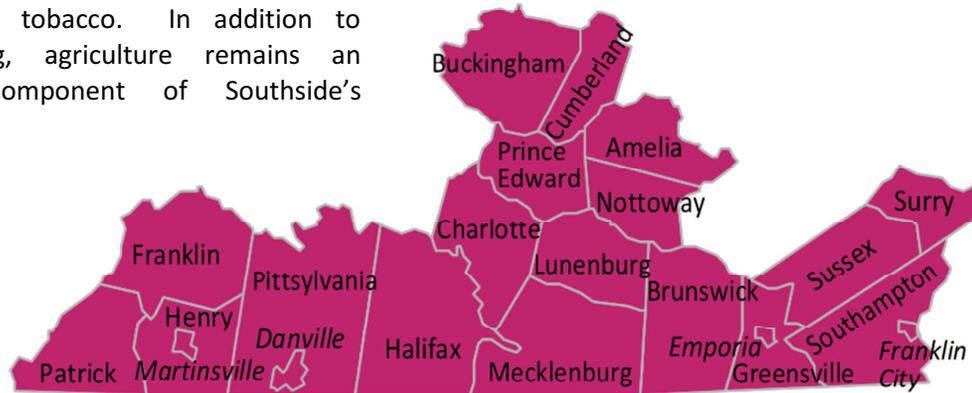
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Sharing a long border with North Carolina, Southside Virginia occupies 9,082 square miles. Patrick and Franklin counties are the westernmost points, Buckingham and Cumberland the northernmost, and Southampton and Surry the easternmost. Historically, its four cities and eighteen counties were major

producers of tobacco. In addition to manufacturing, agriculture remains an important component of Southside's economy.



Population Trends, 2000-2010

2010 Census for Southside

Total Population	504,660
Growth Rate	1.4%
Population Density (persons/square mile)	56

Southside has more than one-fifth of Virginia's land mass, but only 6% of its total population. The region barely grew between 2000 and 2010, gaining only 7,000 persons. This growth accounts for less than 1% of the state's total population growth since 2000.

Experiencing Natural Decrease

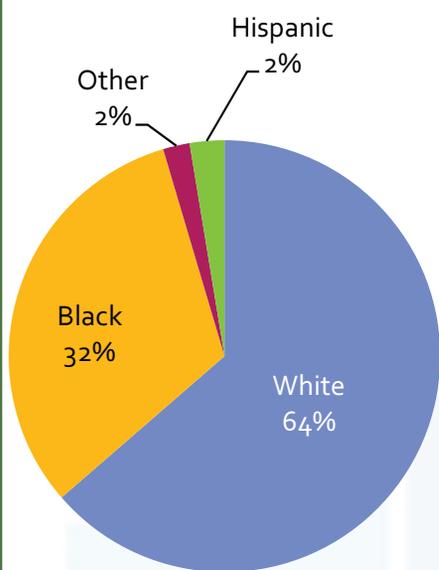
Nationwide, 1 in 4 counties have had more deaths than births in the last decade, a phenomenon called natural decrease. **In Southside Virginia, 15 of its 22 localities experienced natural decrease.**

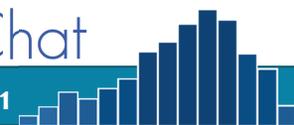
- As a region, Southside had 3,510 more deaths than births in the last decade.
- Of the eight localities that experienced population loss, Danville had the largest losses.
- Through migration, many localities continued to grow in spite of having more deaths than births.
- Fueled primarily by migration, Franklin and Prince Edward counties grew by nearly 19%.

Race and Ethnicity in Southside Virginia

In Southside, 32% of the population is black compared to 19% statewide. While the changes are numerically small, the 2010 Census data show signs of growing Hispanic and Asian communities:

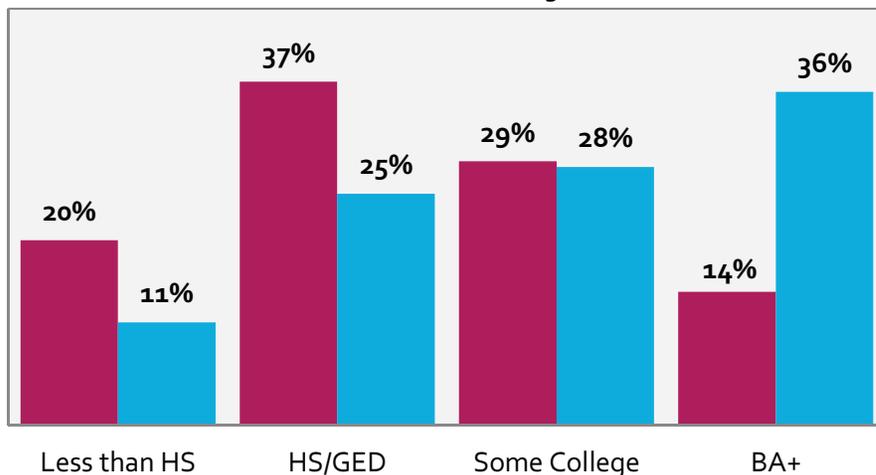
- Between 2000 and 2010, the Hispanic population grew in all localities.
- Franklin County had the largest numerical increase in Hispanic population (850 people), while Amelia had the largest percentage growth in Hispanic population (218%).
- Mecklenburg had the largest numerical increase in Asian population (120 people).





Educational Attainment, Adults 25-64

■ Southside ■ Virginia



Educational attainment among Southside’s working age population (adults ages 25-64) differs significantly from patterns at the state level. Compared to the other seven regions, Southside has

- The highest percentage of adults without a high school diploma.
- The lowest percentage of adults with a bachelor’s degree or higher.

Labor Force Participation

Labor force statistics in Southside Virginia show

- **Thirty-one percent of adults 25-64 are out of the labor force**, meaning they are not working or looking for work. This is much higher than state (20%) and national (22%) levels of out-of-labor force adults.
- **Unemployment was 10.8% in 2009**, higher than Virginia’s unemployment rate (7.5%) and the national rate (9.7%).
- **Cumberland** had the lowest unemployment rate (7.2%) while **Martinsville** had the highest (20.1%).

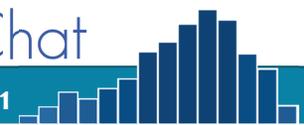
Income and Poverty

- More than 36% of Southside’s households earn less than \$25,000 per year.
- Seventeen percent of households fall below the poverty line in Southside, compared to 10% statewide.
- Thirteen percent of households receive food stamps.

Thirty-two percent of Southside households do not have adequate income to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations.

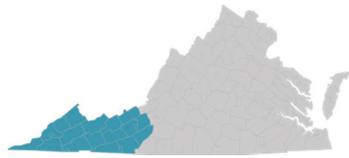
Sources: Data on population trends and race/ethnicity are from the 2000 and 2010 Census. Data on 2009 unemployment rate are from Bureau of Labor Statistics Local Area Unemployment statistics. Data on income adequacy are from a Cooper Center study. All other data are from the 2007-2009 American Community Survey from the U.S. Census Bureau.

For more information, please contact
 Rebecca Tippett
rebecca.tippett@virginia.edu or (434) 982-5861



Demographics & Workforce Group

April 2011



Sharing borders with West Virginia, Tennessee, and North Carolina, Southwest Virginia occupies 7,451 square miles at the far western edge of Virginia. With Lee as the westernmost point and Montgomery and Floyd in the east, its four cities and seventeen counties include many national forests and nearly a quarter of Virginia's state parks.



Population Trends, 2000-2010

2010 Census for Southwest	
Total Population	579,982
Growth Rate	2.7%
Population Density (persons/square mile)	78

Southwest has nearly one-fifth of Virginia's land mass but only 7% of its total population. The region grew very little between 2000 and 2010,

gaining only 16,000 persons. This growth accounts for less than 2% of Virginia's total population growth since 2000.

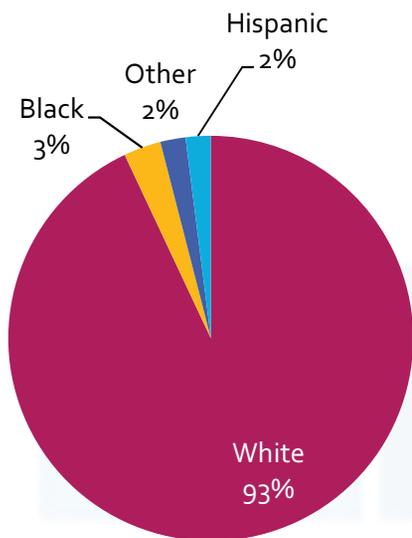
Experiencing Natural Decrease

Nationwide, 1 in 4 counties have had more deaths than births in the last decade, a phenomenon known as natural decrease. **In Southwest, 17 of its 21 localities experienced natural decrease.**

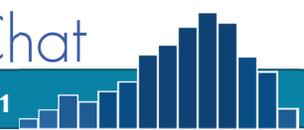
- As a region, Southwest Virginia had 3,500 more deaths than births in the last decade.
- Floyd, Montgomery, Radford, and Wise were the only localities with more births than deaths for 2000 to 2010.
- Through migration, some localities continued to grow in spite of having more deaths than births.
- Eight localities experienced population loss.

Race and Ethnicity in Southwest Virginia

Southwest Virginia has the least racial and ethnic diversity of all of Virginia's eight regions. In Southwest, 93% of the population is white compared to 65% statewide. The 2010 Census data show signs of growing diversity:

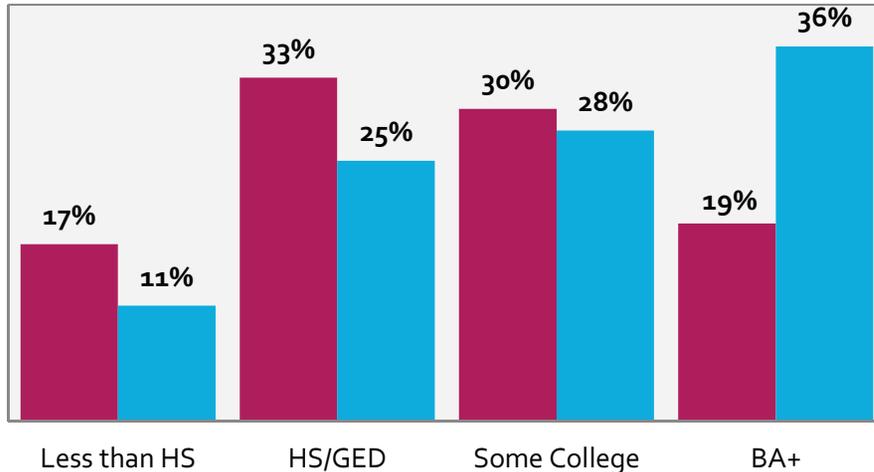


- Between 2000 and 2010, the total Hispanic population grew in all localities except Buchanan County.
- Galax City has one of the highest concentrations of Hispanics in the state: 14% of its population.
- Montgomery County's Asian population grew by nearly 1,800 people in the last decade.



Educational Attainment, Adults 25-64

■ Southwest ■ Virginia



Educational attainment among Southwest’s working age population (adults ages 25-64) is distinct from patterns at the state level. Compared to Virginia as a whole, Southwest has

- A higher percentage of adults without a high school diploma.
- A lower percentage of adults with a bachelor’s degree or higher.

Labor Force Participation

Labor force statistics in Southwest Virginia show

- **Thirty-two percent of adults 25-64 are out of the labor force**, meaning they are not working or looking for work. This is much higher than statewide (20%) and national (22%) levels of out-of-labor force adults.
- **Unemployment was 8.8% in 2009**, higher than Virginia’s unemployment rate (7.5%) but lower than the national average (9.7%).
 - **Norton** had the lowest unemployment rate (6.6%) while **Smyth** had the highest (11.4%).

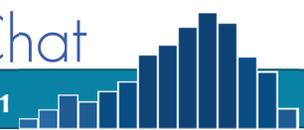
Income and Poverty

- More than one-third of Southwest Virginia’s households earn less than \$25,000 per year.
- Nineteen percent of households fall below the poverty line in Southwest Virginia, compared to 10% statewide.
- Fourteen percent of households receive food stamps.

Thirty-two percent of Southwest Virginia households do not have adequate income to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations.

Sources: Data on population trends and race/ethnicity are from the 2000 and 2010 Census. Data on 2009 unemployment rate are from Bureau of Labor Statistics Local Area Unemployment statistics. Data on income adequacy are from a Cooper Center study. All other data are from the 2007-2009 American Community Survey from the U.S. Census Bureau.

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rebecca.tippett@virginia.edu or (434) 982-5861



Demographics & Workforce Group

April 2011



Located on Virginia's western border with West Virginia, the Valley region stretches from Roanoke in the south to Frederick and Clarke counties in the north.

The region's nine cities and fourteen counties cover 6,703 square miles, much of it rural and mountainous. The region includes large portions of the Shenandoah Valley; Shenandoah National Park and the Appalachian Trail are destinations for many outdoor enthusiasts.



Population Trends, 2000-2010

2010 Census for Valley	
Total Population	783,692
Growth Rate	10.6%
Population Density (persons/square mile)	117

As a region, the Valley grew less over the past decade than the state as a whole (11% vs. 13%). The Valley region gained 75,000

persons between 2000 and 2010. This growth accounts for 8% of Virginia's total population growth.

Population Growth

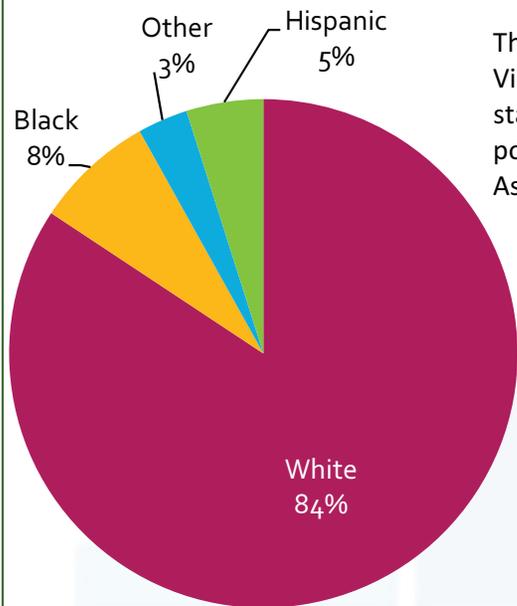
Eighteen of the Valley's 23 localities had population increases over the past decade.

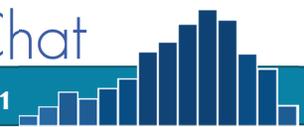
- Migration fueled the majority of this growth (80%).
- Frederick had the largest absolute growth, gaining 19,000 persons, and the highest growth rate: 32%.
 - With greater than 15% growth, Warren, Shenandoah, and Harrisonburg all grew faster than the state's total population.
- Highland, the least populous locality in the state, had the highest percent population loss in the Valley region. Since 2000, Highland County lost more than 200 persons, an 8% reduction.

Race and Ethnicity in the Valley Region

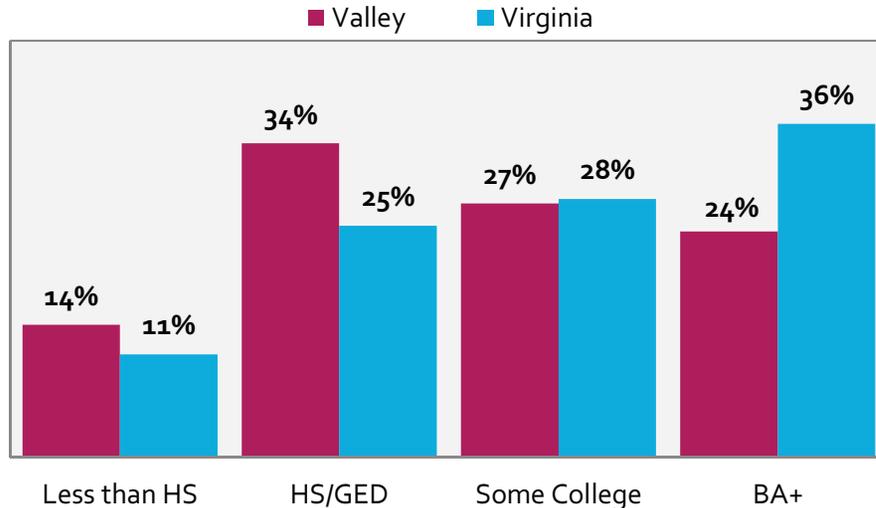
The Valley region is one of the least diverse regions in Virginia; its population is 84% white compared to 65% statewide. Like the state, the Valley's white and black populations grew very little over the past decade while Asian and Hispanic populations grew more rapidly.

- Between 2000 and 2010, the Hispanic population increased in all localities; the Asian population increased in all but three.
- Frederick, Harrisonburg, and Roanoke City each gained 4,000 Hispanics.
- Harrisonburg has one of the highest concentrations of Hispanics in the state: 16% of its population.
- Roanoke County had the largest increase in Asian population in the region, gaining more than 1,000.





Educational Attainment, Adults 25-64



Educational attainment among the Valley’s working age population (adults ages 25-64) differs from educational attainment at the state level. The Valley region has

- A higher percentage of adults who only completed high school, compared to the state.
- The second highest percentage of adults with only a high school diploma or GED among Virginia’s eight regions.
- A lower percentage of adults with a bachelor’s degree or higher, compared to the state.

Labor Force Participation

Labor force statistics for Valley show

- **Unemployment was 7.2% in 2009**, lower than Virginia’s unemployment rate (7.5%) and the national average (9.7%).
 - **Rockingham** had the lowest unemployment rate (5.8%) while **Page** had the highest (11.9%).
- **Fifty-one percent of workers commute less than 20 minutes to work** in the Valley, the highest percentage of short commute times for all eight regions.

Income and Poverty

- Nearly a quarter of the Valley’s households earn less than \$25,000 per year.
- Twelve percent of households fall below the poverty line in the Valley, higher than the statewide poverty rate of 10%.
- Seven percent of households receive food stamps.

In addition, **27% of Valley region households do not have adequate income** to meet their regular expenditures, such as housing, food, and transportation, without help from government programs, family and friends, or local organizations.

Sources: Data on population trends and race/ethnicity are from the 2000 and 2010 Census. Data on 2009 unemployment rate are from Bureau of Labor Statistics Local Area Unemployment statistics. Data on income adequacy are from a Cooper Center study. All other data are from the 2007-2009 American Community Survey from the U.S. Census Bureau.

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Cities and Counties by Region

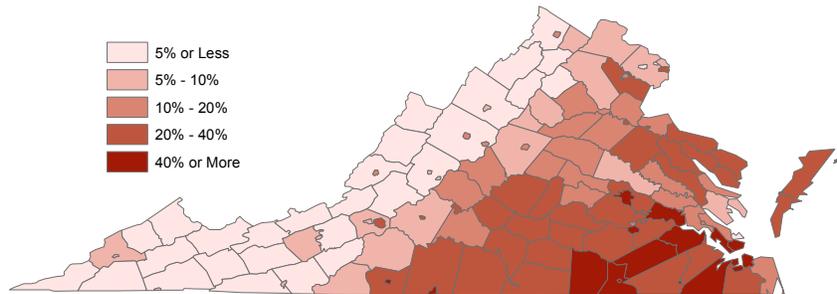
Central		Eastern		Hampton Roads		Northern	
<i>Cities</i>	<i>Counties</i>	<i>Cities</i>	<i>Counties</i>	<i>Cities</i>	<i>Counties</i>	<i>Cities</i>	<i>Counties</i>
Bedford	Albemarle	Accomack		Chesapeake	Gloucester	Alexandria	Arlington
Charlottesville	Amherst	Essex		Hampton	Isle of Wight	Fairfax	Fairfax
Lynchburg	Appomattox	King & Queen		Newport News	James City	Falls Church	Fauquier
	Bedford	King William		Norfolk	Mathews	Fredericksburg	King George
	Campbell	Lancaster		Poquoson	York	Manassas	Loudoun
	Culpeper	Middlesex		Portsmouth		Manassas Park	Prince William
	Fluvanna	Northampton		Suffolk			Spotsylvania
	Greene	Northumberland		Virginia Beach			Stafford
	Louisa	Richmond		Williamsburg			
	Madison	Westmoreland					
	Nelson						
	Orange						
	Rappahannock						
Richmond		Southside		Southwest		Valley	
<i>Cities</i>	<i>Counties</i>	<i>Cities</i>	<i>Counties</i>	<i>Cities</i>	<i>Counties</i>	<i>Cities</i>	<i>Counties</i>
Colonial Heights	Caroline	Danville	Amelia	Bristol	Bland	Buena Vista	Alleghany
Hopewell	Charles City	Emporia	Brunswick	Galax	Buchanan	Covington	Augusta
Petersburg	Chesterfield	Franklin	Buckingham	Norton	Carroll	Harrisonburg	Bath
Richmond	Dinwiddie	Martinsville	Charlotte	Radford	Dickenson	Lexington	Botetourt
	Goochland		Cumberland		Floyd	Roanoke	Clarke
	Hanover		Franklin		Giles	Salem	Craig
	Henrico		Greensville		Grayson	Staunton	Frederick
	New Kent		Halifax		Lee	Waynesboro	Highland
	Powhatan		Henry		Montgomery	Winchester	Page
	Prince George		Lunenburg		Pulaski		Roanoke
			Mecklenburg		Russell		Rockbridge
			Nottoway		Scott		Rockingham
			Patrick		Smyth		Shenandoah
			Pittsylvania		Tazewell		Warren
			Prince Edward		Washington		
			Southampton		Wise		
			Surry		Wythe		
			Sussex				

2010 Census Brief: Spotlight on Virginia’s African American Population

February 22 – The United States Census Bureau recently released local level 2010 Census population counts, including data on race. This brief provides a snapshot of Virginia’s black and African American population on April 1, 2010:

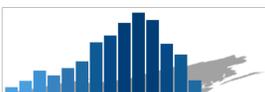
- Black/African American remains the largest minority group in Virginia. More than 1.5 million Virginia residents reported themselves to be black or African American, accounting for nearly 20 percent of the total population.
- The distribution of the black population across the commonwealth has been relatively stable over the past three decades. Blacks are concentrated in the Eastern half of the state while the Valley and Southwest regions have much smaller black populations.
- Norfolk and Richmond have the largest black populations (exceeding 100,000), while Petersburg city has the largest percentage of blacks (79 percent). Richmond lost nearly 10,000 (or 8.6 percent) of its black population between 2000 and 2010, the largest decrease in the commonwealth.

Percent of Population That Is Black or African American, April 1, 2010



Top Five Localities with the Largest Number of Black Residents		Top Five Localities with the Largest Percentage of Black Residents	
Norfolk City	104,672	Petersburg City	79.1%
Richmond City	103,342	Emporia City	62.5%
Fairfax County	99,218	Greensville County	59.8%
Henrico	90,669	Sussex County	58.1%
Virginia Beach City	85,935	Brunswick County	57.3%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the University of Virginia’s Weldon Cooper Center for Public Service. For more information and related data tables, visit our website at www.coopercenter.org/demographics.



Contact: Meredith Gunter
 434-982-5585
 msg4g@virginia.edu

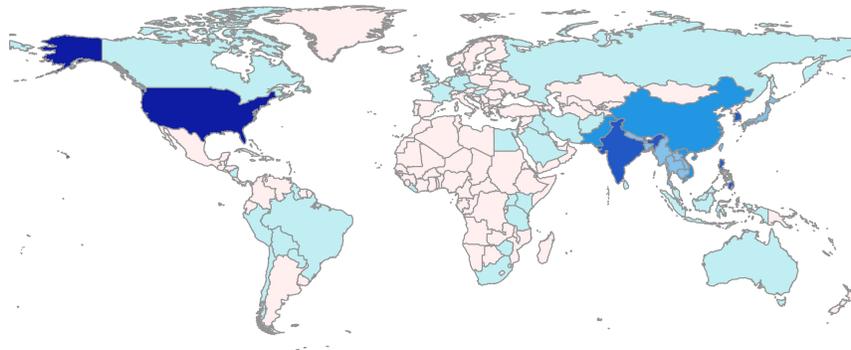
U.Va. Assesses 2010 Census Data on Virginia's Asian Population

March 2, 2011 — The latest census brief from the University of Virginia's Weldon Cooper Center for Public Service highlights census data on people of Asian origin living in Virginia.

The center continues its efforts to make 2010 U.S. Census results, released last month, more accessible and user-friendly.

- As of April 1, 2010, almost 440,000 Virginia residents were Asian, accounting for 5.5 percent of the total population. This constitutes a 69 percent increase since 2000.
- Nine out of every 10 Asians lived in Virginia's three major metropolitan areas: Northern Virginia (71 percent), Hampton Roads (13 percent) and Richmond (9 percent). High concentrations of Asians were also found in college and university communities such as Charlottesville, Williamsburg, Harrisonburg and Lynchburg cities and York, Montgomery, Albemarle and Roanoke counties.
- More than two-thirds of Virginia's Asians were U.S. citizens: 28 percent were native citizens; 40 percent were born outside of the U.S. and naturalized; and 32 percent were foreign-born non-citizens.
- The top five birth countries of Virginia's foreign-born Asians were India, Korea, Philippines, Vietnam and China.

Birthplaces of Virginia's Asian Population, April 1, 2010



Localities with the Largest Number of Asian Residents		Localities with the Largest Percentage of Asian Residents	
Fairfax Co.	189,661	Fairfax Co.	17.5%
Loudoun	46,033	Fairfax city	15.2%
Prince William	30,317	Loudoun	14.7%
Virginia Beach	26,769	Arlington	9.6%
Henrico	20,052	Falls Church	9.4%

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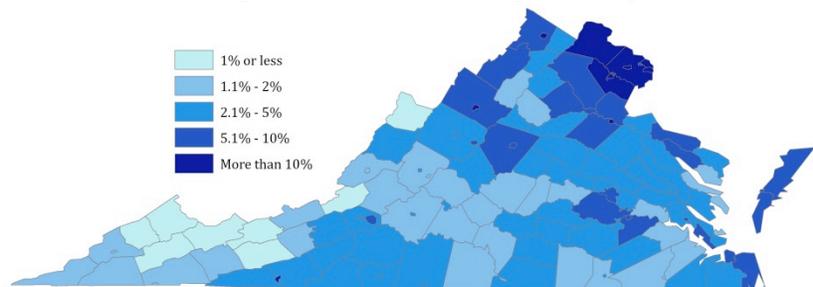
U.Va. Assesses 2010 Census Data on Virginia's Hispanic Population

February 16, 2011 — Continuing efforts to make 2010 U.S. Census data more accessible and user-friendly, demographers at the University of Virginia's Weldon Cooper Center for Public Service have assessed the data on recently released local-level 2010 population counts, including data on people of Hispanic origin living in Virginia.

Here are highlights of Virginia's Hispanic population as of April 1, 2010:

- More than 630,000 Virginia residents were of Hispanic origin, accounting for nearly 8 percent of the total population. This constitutes a 92 percent increase since 2000.
- Sixty-two percent of the commonwealth's Hispanics live in Northern Virginia. At the same time, areas such as Culpeper, James City and Orange counties and Suffolk city, which had few Hispanics in 2000, now have sizable Hispanic populations.
- Fifty-three percent of Hispanics in Virginia are native citizens. Thirteen percent of Hispanics were born abroad and became naturalized citizens of the U.S.; and 34 percent of Hispanics are foreign-born non-citizens.
- Most of Virginia's foreign-born Hispanics were born in El Salvador, Mexico, Peru, Bolivia and Guatemala.

Percent of Population That Is Hispanic, April 1, 2010



Localities with the Largest Number of Hispanic Residents		Localities with the Largest Percentage of Hispanic Residents	
Fairfax Co.	168,482	Manassas Park city	32.5%
Prince William Co.	81,460	Manassas city	31.4%
Loudoun Co.	38,576	Prince William Co.	20.3%
Arlington Co.	31,382	Alexandria city	16.1%
Virginia Beach city	28,987	Fairfax city	15.8%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at www.coopercenter.org/demographics.

Contact: Meredith Gunter
 434-982-5585
 msg4g@virginia.edu

U.Va. Assesses 2010 Census Data on Virginia's Multi-Racial Population

March 9, 2011 — Continuing their efforts to make 2010 U.S. Census data more accessible and user-friendly, demographers at the University of Virginia's Weldon Cooper Center for Public Service have assessed the data on recently released local-level 2010 population counts, including data on people of two or more races living in Virginia.

"The 2010 Census data reflects increasing diversity in the country, and in Virginia," said Qian Cai, director of the Cooper Center's Demographics & Workforce group. "This year, with redistricting under way in Virginia, current information on racial and ethnic heritage is of particular importance for insuring fairness in defining districts."

Here are highlights of Virginia's multi-race population as of April 1, 2010:

- More than 233,000 Virginia residents, or 2.9 percent of the population, reported that they belong to two or more of the six race categories counted in the federal census: white; black or African-American; American Indian and Alaska native; Asian; Native Hawaiian and other Pacific Islander; or some other race. (Note: People of Hispanic origin may be of any race. Hispanic ethnicity is reported in response to a different census question.)
- This is an increase from the 2000 census – the first year in which people could identify themselves as multi-racial – when 2 percent of the population reported that they belonged to two or more races.
- Most multi-racial Virginians reported belonging to just two races; only about 19,000 people reported belonging to three or more. Of the biracial Virginians, 29 percent reported being white and black; 28 percent white and Asian; and the remainder other combinations of the six race categories.
- Multi-racial Virginians tend to live in metropolitan areas, particularly Northern Virginia and Hampton Roads. Manassas Park has the highest percentage of multi-racial residents at 5.4 percent.

Localities with the Largest Number of Multi-Race Residents		Localities with the Largest Percentage of Multi-Race Residents	
Fairfax County	43,915	Manassas Park city	5.4%
Prince William	20,500	Prince William County	5.1%
Virginia Beach	17,656	Manassas City	4.3%
Loudoun County	12,575	Newport News	4.3%
Norfolk	8,825	Fairfax County	4.1%

This is one of a series of Census Briefs prepared by the Demographics & Workforce Group of the Cooper Center. For information and related data tables, visit its website at www.coopercenter.org/demographics.

EXHIBIT W

EXHIBIT X

EXHIBIT Y

Congressional District 3

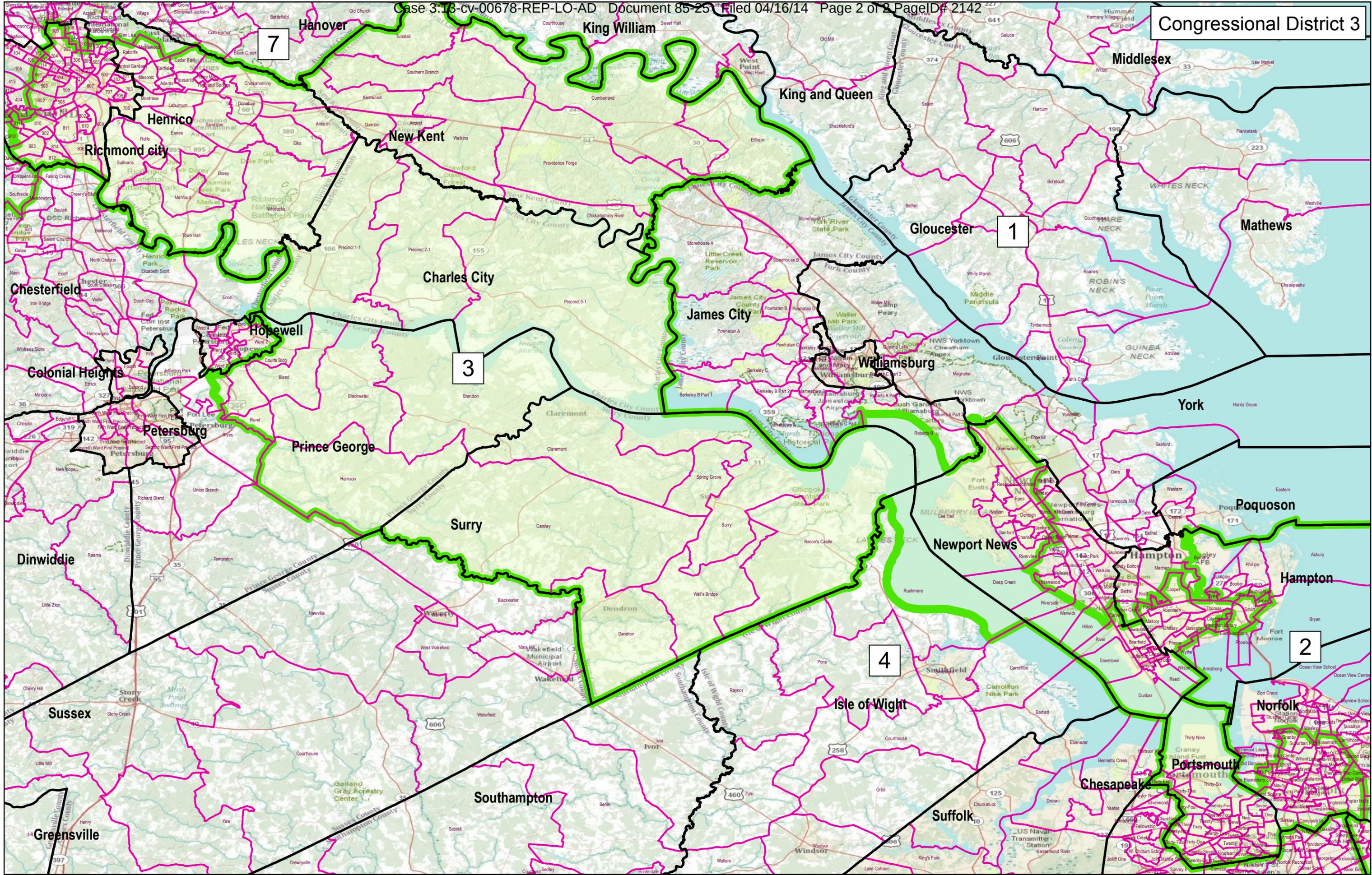
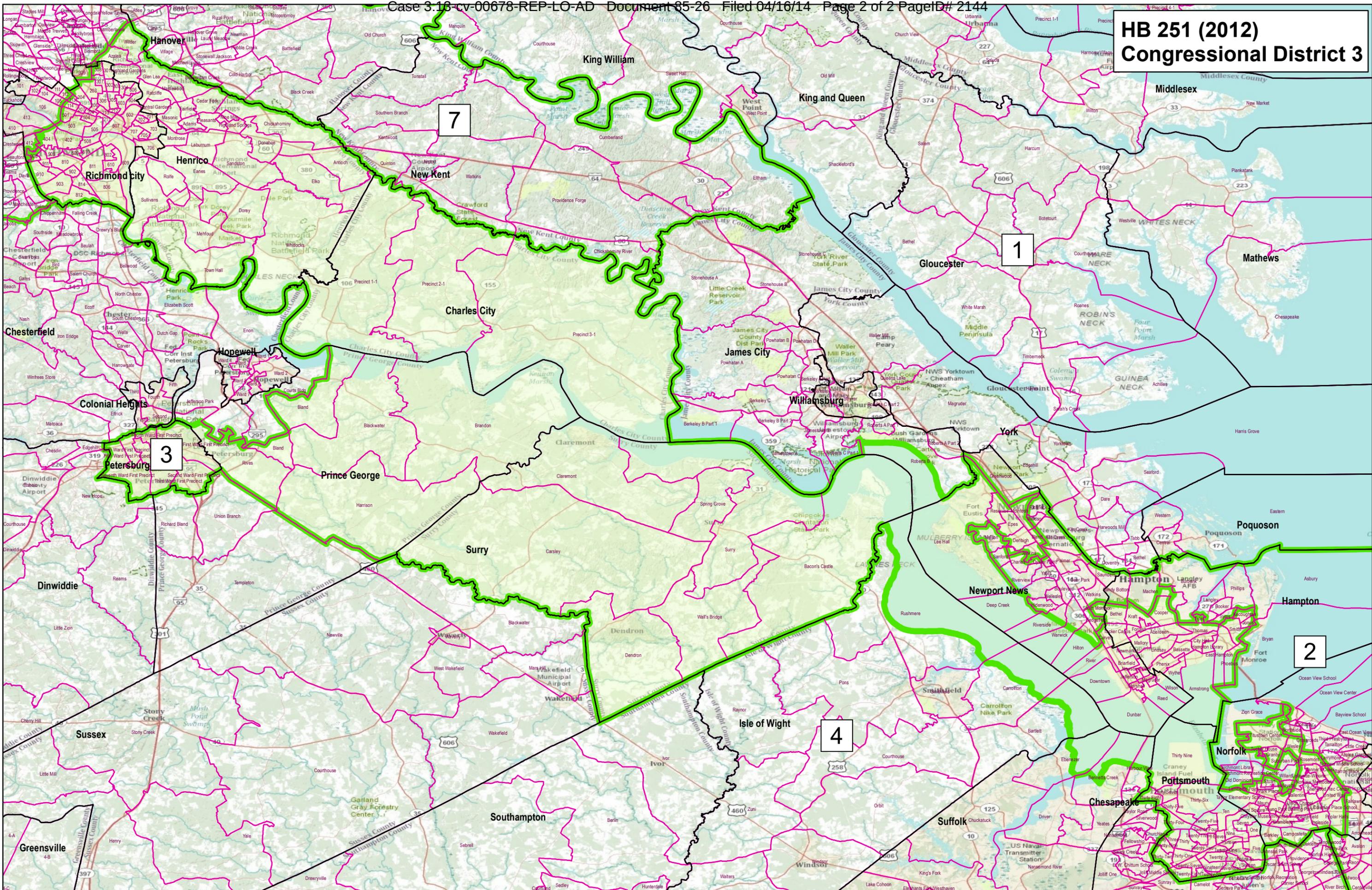


EXHIBIT Z

HB 251 (2012) Congressional District 3



7

1

3

4

2