and local races that subsume the area being analyzed and determines, by precinct within the proposed district, the racial composition of the vote and the 'winner' within the proposed district." Buchwalter, Corpus Juris Secundum Elections § 96 (Westlaw 2024). This "allows a researcher to determine how an individual candidate performed within the boundaries of the target district even though the actual election covered a different geographical area." *Id.*

Barreto analyzed precinct data from the precincts in what are now Senate Districts 1 and 2. That data covered 31 elections from 2020 and 2022. *See* Appendix A. Of those, 27 were for statewide office (*e.g.*, Governor).[4] J.A. 291–93. The remaining four elections were for State Senate and State House races in current Senate Districts 1 and 2 (two in 2020 and two in 2022). J.A. 291–93. Barreto found that in every election conducted in Demonstration District A, with a Black CVAP (BCVAP) of 53.1%, J.A. 291, the minority-preferred candidate would win.[5] J.A. 291–93. The same was true of Demonstration District B1, with a BCVAP of 50.2%. J.A. 291–93. In Demonstration District B2, where BCVAP was 12.6%, the minority-preferred candidate lost every time (as would be expected). J.A. 291–93. And had current Senate Districts 1 and 2 been in place during the 2020 and 2022 elections, the minority-preferred candidate in every single statewide race would have lost both districts. J.A. 291–93. Of the four non-statewide races, if current

[4] Though statewide elections are generally less probative of district elections, litigants "of course, can present statewide evidence in order to prove racial gerrymandering in a particular district." *Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015).

[5] The district court took issue with Appellants' use of BCVAP (as opposed to BVAP) to show that Demonstration District B-1 satisfied the first *Gingles* precondition. Dist. Ct. Op. at 31–32. But that is a separate issue from whether BCVAP can be used to demonstrate racial polarization, and the district court raised no concerns with the latter.

Senate Districts 1 and 2 had been in place, minority-preferred candidates would have lost three (SD1 in 2020 and 2022 and SD2 in 2020). J.A. 291–93.

ii.

Appellees' expert, Dr. John Alford, used the same ecological inference technique that Barreto used (Barreto's first analysis). J.A. 675. Alford attempted to replicate Barreto's ecological inference results by using the election and voter data sources that Barreto cited. J.A. 678. Alford reported that his "initial replication results [were] substantively similar to those reported by Dr. Barreto, but [did] not match as precisely as would be expected based on [his] experience in multiple similar cases." J.A. 678. However, Alford explained that these inconsistencies were not surprising because, he claimed, Barreto did not disclose "input data files or any details of the [ecological inference] analytical options used" for his report. J.A. 678.[6]

iii.

The district court took issue with Appellants' arguments about the third *Gingles* precondition for two main reasons. First, the district court said that Appellants failed to satisfy the third precondition because Barreto's analysis did not show that Black voters would be unable to elect their candidates of choice unless BVAP exceeded 50% plus one. Second, the district court said, Barreto's finding and explanation about the results of a hypothetical election in reconstituted Senate District 2 suggested that there was not racial bloc voting in that district and that all of Barreto's other findings were unreliable.

[6] The remainder of Alford's report was mostly about the cause of racial polarization. J.A. 679–85. This is not relevant to the third *Gingles* precondition.

Failure to Include District Effectiveness Analysis. The district court legally erred by assuming that, to prevail on the third *Gingles* precondition, Appellants must show that "black voters' candidates of choice cannot win elections unless BVAP in the contested districts exceeds 50% plus one vote." Dist. Ct. Op. at 40–41. The third precondition asks whether white voting patterns thwart minority voters' preferences in the contested district *as its demographics currently stand*. *See Milligan*, 599 U.S. at 17–19. The district court formulated the standard to mean that, if minority voters *could* elect candidates of their choice in a counterfactual present district, then minority voters *can't* elect candidates of their choice in the actual present district. This standard would mean that districts where minority voters are consistently unable to elect their preferred candidates could stay in place just because, if the district's demographics were different, minority voters would be able to elect their preferred candidates. But the whole point here is that the district's demographics *aren't* different. And as a result, minority voters cannot elect their candidates of choice.

The district court's belief that the third *Gingles* precondition requires showing "black voters' candidates of choice cannot win elections unless BVAP in the contested districts exceeds 50% plus one vote" rested on a misunderstanding of *Bartlett v. Strickland*, 556 U.S. 1 (2009). *Strickland* dealt with the first *Gingles* precondition, which requires that a minority group show that it is "sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 11 (quoting *Gingles*, 478 U.S. at 50–51). The first *Gingles* precondition, unlike the third, is about the demographics of a differently drawn, potentially remedial district. *Strickland* held that meeting this precondition requires showing a potential majority-minority district; a district with sufficient white crossover

voting to elect the minority-preferred candidate will not meet the first precondition. *Id.* at 12–14. *Strickland* also held that, although a legislature may implement a crossover district as a Section 2 remedy, a legislature cannot be required to do so. *Id.* at 22 ("[Section] 2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts"); *see also Cooper*, 581 U.S. at 305 (rejecting North Carolina legislature's argument that because § 2 does not *require* crossover districts (for groups insufficiently large under *Gingles*), then § 2 also cannot be *satisfied by* crossover districts (for groups in fact meeting *Gingles*' size condition)").

The district court took *Strickland* to mean that if a minority-preferred candidate could win elections in the contested district when the contested district's BVAP was less than 50% plus one vote, the contested district was a crossover district. Dist. Ct. Op. at 40–41 ("Section 2 does not require crossover districts. Thus, a proper district effectiveness analysis supporting plaintiffs' challenge must show that black voters' candidates of choice cannot win elections unless BVAP in the contested districts exceeds 50% plus one vote.") (citation omitted). But a crossover district is not a district with crossover *potential*, contingent on demographic change. It is a district that actually crosses over (at least sometimes), with its *current* demographics.

The district court's misunderstanding of the legal standard led to an insurmountable roadblock for Appellants. In sum, the district court believed that showing racial bloc voting requires showing that Black voters can elect their candidates of choice *only when* BVAP exceeds 50%. The way to show this is through a "district effectiveness analysis." Dist. Ct. Op. at 40 ("To demonstrate *legally* significant racially polarized voting, an expert must

engage in a 'district effectiveness analysis.'"). A district effectiveness analysis is a "district-specific evaluation used to determine the minority voting population level at which a district becomes effective in providing a realistic opportunity for . . . voters of that minority group to elect candidates of their choice." *Covington*, 316 F.R.D. at 148 n.46 (internal quotations omitted) (ellipses in original). So, the district court reasoned, Appellants could not demonstrate racial bloc voting unless they provided a district effectiveness analysis. Unsurprisingly, because the premise of this reasoning was legally erroneous (explained above), its conclusion was, too.

Though the majority briefly addresses the district court's erroneous conclusion that a district effectiveness analysis is required, it elides the premise of that conclusion. On the one hand, the majority describes the "district court's inaccurate implication that a district effectiveness analysis is required for proving a VRA violation in every Section 2 case," seemingly acknowledging that such a requirement is legally erroneous. Maj. Op. at 33. On the other hand, the majority claims that "[Appellants] have not shown that the district court misunderstood the requirements of the third *Gingles* precondition or its application here." Maj. Op. at 32. It is hard to reconcile these two statements. The very reason the district court erroneously thought a district effectiveness analysis was necessary is because it did not understand what the third *Gingles* precondition required.

Because of the district court's legal error—a per se rule that plaintiffs cannot show legally significant racial bloc voting, and thus cannot meet the third *Gingles* precondition, without a district effectiveness analysis—Appellants' case was doomed from the start, regardless of the quantity, strength, and probativeness of their other evidence.

The majority says Appellants "have not shown that the court's case-specific assessment—that the absence of a district effectiveness analysis affected the persuasiveness of Barreto's opinions—was erroneous." Maj. Op. at 33. But by requiring a district effectiveness analysis, the district court made Barreto's opinions (all based on data from other types of analyses) irrelevant. They weren't simply less persuasive; they had no bearing on the legal analysis.

For that reason, I cannot agree with the majority's statement that "[t]weaking the district court's statement to acknowledge that a district effectiveness analysis is probative, but not required in all cases, does not make [Appellants'] evidence more likely to succeed in proving the third *Gingles* precondition." Maj. Op. at 33. First, what the majority does is far more than tweaking; more accurately, it inverts the district court's statement. Second, inverting the district court's statement *does* make [Appellants'] evidence more likely to succeed" by making Appellants' other evidence relevant in the first place. If, as the district court believed, Appellants' other data was wholly irrelevant absent a district effectiveness analysis, the district court's thoughts on the reliability and accuracy of the data that Barreto did present is neither here nor there.

Reliability of Barreto's Analysis. Nonetheless, because the majority treats Barreto's alleged unreliability as dispositive, I explain why the district court abused its discretion in discounting Barreto's analysis. In addition to finding that Barreto could not show legally significant racial bloc voting without conducting a district effective analysis, the district court concluded that the analyses that Barreto did conduct were unreliable. It based this

finding on Barreto's predictions of how current Senate District 2 would have performed had the district been in place during the 2022 elections.

The table in Barreto's original report shows that the minority-preferred candidate would have won by a margin of 8.2 percentage points (54.1 to 45.9) in that district had it been in place in 2022. J.A. 291. This finding was not helpful for Appellants' case, and the district court asked about it at its January 10 hearing on the preliminary injunction. Dist. Ct. Op. at 38. Though Appellants' lawyer first stated that the number was likely a typo, Barreto later said in a supplemental declaration that it wasn't. *Id.* In the declaration, he explained why the 8.2 percentage points—though an accurate finding based on the data he included—were not an indication that the minority-preferred candidate could be viable in the district. *See* J.A. 853–54.

He explained that current Senate District 2 contains portions of districts from the previous State Senate map, specifically former Senate Districts 1 and 3. J.A. 853. That map was last used in 2022. That year, the Senate District 3 seat was contested, but the Senate District 1 seat was uncontested. Barreto explained that his analysis included only contested elections because the results of uncontested elections are not probative. J.A. 853. Therefore, all his Senate District 2 analysis showed, he said, "that a hypothetical district containing only [the counties in previous Senate District 3] would perform for Black-preferred candidates based on the 2022 State Senate elections." J.A. 853.

Former Senate District 3, however, had an unrepresentatively high BVAP of 48.4%. J.A. 853. Adding in the populations from the counties in former Senate District 1 (to create what is now Senate District 2) decreases the overall BVAP to 30%. J.A. 853. While

minority-preferred candidates would prevail in a 48.4% BVAP district, Barreto explained, they wouldn't prevail in a 30% BVAP district, *i.e.* in current Senate District 2. J.A. 854.

"When all 2022 State Senate elections are counted across both contested and uncontested races in the counties now within current Senate District 2, 51,019 ballots were cast for white-preferred (Republican) State Senate candidates, while only 16,877 ballots were cast for Black-preferred (Democratic) State Senate candidates," Barreto explained. J.A. 853–54. That's three-quarters of votes cast for the white-preferred (Republican) candidate and only one-quarter cast for the Black-preferred (Democratic) candidate.

The district court took issue with Barreto's explanation. Barreto's admission that his initial analysis did not use data from uncontested elections "shows that [he] is doing an unusual form of reconstituted election analysis," the court said. Dist. Ct. Op. at 38.

The purpose of a reconstituted election analysis is to show whether minority-preferred candidates could prevail in a new district. If the district court believed that excluding uncontested elections would not reliably predict minority-preferred candidates' chances (a conclusion I agree with), then it presumably believed that including uncontested elections *would* reliably predict minority-preferred candidates' chances. Yet when Barreto did what the district court would have had him do in the first place, the district court continued to be skeptical of that finding. But either skepticism was warranted for Barreto's first figure or it was warranted for Barreto's second figure—it cannot be warranted for both at the same time.

What's more, this skepticism bled into all of Barreto's remaining figures, even though every other election was contested. For instance, the district court agreed with Appellees

that Barreto's "new representation 'cannot seem to be cabined to the contests he would prefer the Court ignore.'" Dist. Ct. Op. at 38 (quoting Def's. Resp. to Supp. Dec. at 2). It reasoned that "Dr. Barreto's belated explanation undercuts all of Dr. Barreto's conclusions by demonstrating that fuller data sets could change his estimated outcomes." *Id.* at 39. But there was no relevant fuller data set to ignore—every other election in the data set was uncontested. *See* J.A. 285–90 (listing out names of candidates from each party in every 2020 and 2022 statewide election); State Board of Elections, 2020 Candidate List Grouped by Contest, at 6, https://perma.cc/P3W9-9FBR (last accessed Mar. 18, 2024) (showing that, in 2020, then-Senate District 1 and then-Senate District 3 were both contested); State Board of Elections, 2022 Candidate List Grouped by Contest, at 4, https://perma.cc/5FHS-TRS5 (last accessed Mar. 18, 2024) (showing that, in 2022, then-Senate District 1 was uncontested but then Senate District 3 was contested). So while the district court may have been justified in discounting Barreto's analysis of that one reconstituted election in current Senate District 2, it was an abuse of discretion to disregard his analysis as to *every other* election.

***

In sum, the district court misunderstood what the third *Gingles* condition requires. As a result, it imposed a standard that made all of Appellants' evidence irrelevant. The district court then went on to find that, because one piece of that evidence may have been unreliable, Appellants' entire expert analysis must have been flawed. These collective errors are enough to conclude that the district court abused its discretion in finding that Appellants were unlikely to succeed on the merits of their case.

III.

A.

After considering the *Gingles* preconditions, courts ask whether "based on the totality of circumstances," voters of color "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *See* 42 U.S.C. § 10301(b). "[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* [preconditions] but still have failed to establish a violation of § 2 under the totality of the circumstances." *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993), *aff'd*, 581 U.S. 285. In the Senate Report accompanying the 1982 amendments to the VRA, the Senate identified several factors that guide a court's totality of circumstances analysis. *Gingles*, 478 U.S. at 36–37. These Senate factors assist the court in conducting "an intensely local appraisal of the electoral mechanism at issue, as well as a searching practical evaluation of the past and present reality." *Milligan*, 599 U.S. at 19.

The most important factors in the totality of the circumstances inquiry are the "extent to which minority members have been elected to public office in the jurisdiction" and "the extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 48–49. Congress did not intend for these factors to be comprehensive or exclusive, nor did Congress require that a particular number of factors be satisfied to establish a § 2 violation. *Id*. at 45.

The district court gave the Senate factors short shrift. The law requires that courts conduct "a searching practical evaluation of the past and present reality" to assess "whether

the political process is equally open to minority voters." *Id*. at 79 (internal citation and quotation marks omitted). And the district court's analysis overlooked much of North Carolina's past and present reality.

The first Senate factor examines "the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise participate in the democratic process." *Id*. at 36–37 (quoting S. Rep. No. 97-417, at 28–29 (1982)). Appellants presented ample evidence of such history, spanning from 1900 to 2016. The district court gave little weight to Appellants' evidence, which it described as "overwhelmingly outdated." J.A. 942. But history is necessarily in the past and "[a]n eye toward past practices is part and parcel of the totality of the circumstances." *League of Women Voters*, 769 F.3d at 241.

Gingles itself, which arrived at the Supreme Court from a challenge to a North Carolina General Assembly redistricting plan, outlined the history of discriminatory voting practices within the state. To do so, it pointed to discrimination against Black citizens from "approximately 1900 to 1970 by employing at different times a poll tax, a literacy test, a prohibition against bullet (single-shot) voting and designated seat plans." *Id*. at 38–39. Between 1982 and 2006, private plaintiffs brought at least fifty-five successful cases challenging North Carolina's election related practices. *N.C. State Conference of NAACP v. McCrory*, 831 F.3d 204, 224 (4th Cir. 2016).

In 2016, this Court elaborated on the history recounted in *Gingles*, noting that the record is "replete with evidence of instances since the 1980s in which the North Carolina legislature . . . attempted to suppress and dilute the voting rights of African Americans."

McCrory, 831 F.3d at 223 (4th Cir. 2016). In fact, as observed, the Department of Justice and federal courts have determined that the legislature at times even acted with discriminatory intent, engaging in "a series of official actions taken for invidious purposes." *Id*. (quoting *Arlington Heights v. Metropolitan Housing Development Corp*, 429 U.S. 252, 267 (1977)). This includes a 2013 omnibus election law that "target[ed] African-Americans with almost surgical precision." *Id*. at 214.

Even though the district court found that events from as recently as 2016 are "overwhelmingly outdated," it was still required to grapple with them. As Appellants observe, the first Senate factor focuses on "the state's *historical* discrimination" regarding voting rights—and most history is old. Pierce Opening Br. at 44. Though this Court defers to the district court on factual determinations, this deference does not permit the district court to move the historical goalposts. And courts have concluded time and time again that this same history satisfies the first Senate factor. *See, e.g.*, *Harris*, 159 F. Supp. 3d 600, *aff'd sub nom. Cooper v. Harris*, 581 U.S. 285 (2017) (invalidating 2011 congressional district lines).

The second Senate factor considers "the extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 37. Barreto's racially polarized voting analysis showed that approximately 85% of white voters in and around the contested region voted against Black-preferred candidates. In that same region, Black voters voted together 95% of the time. The district court discounted this racial polarization for the same reasons that it found that Appellants could not meet the third *Gingles* precondition. But as discussed above, the district court abused its discretion in

evaluating the third *Gingles* precondition. It therefore erred in relying on that reasoning in assessing the second Senate factor.

The district judge likewise rejected Appellants' arguments under the third Senate factor. That factor analyzes "the extent to which the state or political subdivision has used . . . voting practices that may enhance the opportunity for discrimination." *Gingles*, 478 U.S. at 36–37. Senate factors one and three overlap significantly. Legislative Appellees claim that the third factor requires "a present tense inquiry because only existing election features can combine with the challenged feature to enhance dilution." Leg. Def. Reply Br. at 17. But courts regularly look to history to evaluate this factor. *See League of Women Voters*, 769 F.3d at 241 ("Neither the Supreme Court nor this Court has ever held that, in determining whether an abridgement has occurred, courts are categorically barred from considering past practices . . ."). The district court erred by adopting Legislative Appellees' interpretation of this factor.

The parties agree that the fourth Senate factor is not relevant to this case.

The fifth Senate factor analyzes "the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in areas such as education, employment and health, which hinder their ability to effectively participate in the political process." *Gingles*, 478 U.S. at 37. The district court found that this factor weighed against Appellants because they presented "no statistical analysis demonstrating that race discrimination by North Carolina caused the socioeconomic disparities." J.A. 943.

But this Court has never required Appellants to show that racial discrimination caused the socioeconomic disparities at issue, and requiring Appellants to show that link

was legal error. *See, e.g.League of Women Voters*, 769 F.3d at 246 (presenting evidence that Black North Carolinians lagged behind whites in several important socioeconomic indicators but not requiring proof that aforementioned disparities were the product of discrimination);*League of United Latin American Citizens v. Perry (LULAC)*, 548 U.S. 399, 440 (2006) (pointing out that "the political, social, and economic legacy of past discrimination . . . may well hinder [a minority group's] ability to effectively participate in the political process" (internal quotation omitted)).

Factor six examines "whether political campaigns have been characterized by overt or subtle racial appeals." *Gingles*, 478 U.S. at 37. The district court gave little weight to Appellants' examples, finding that they were either too old, not clear racial appeals, or not characteristic of recent campaigns within the state. J.A. 944. But in *Gingles* itself, the Supreme Court affirmed the district court's reliance on evidence of political campaigns nearly a century earlier, and Appellants' evidence here is far more recent. *See Gingles*, 478 U.S. at 40.

For instance, United States Senator Jesse Helms, who represented the state of North Carolina until 2003, famously deployed racial appeals in state-wide campaigns. In a 1990 ad for Helms's campaign, white hands crumpled a job rejection letter while a voiceover blamed that rejection on a minority applicant. Mtn. Prelim. Inj. at 426. The district court said this ad was too old. Dist. Ct. Op. at 49. More recently, now-Senator Ted Budd successfully deployed an ad against his Black opponent that was reminiscent of the infamous 1988 Willie Horton ad. *Id*. The district court said that this ad was "not a racial appeal" because it "never explicitly mention[ed] race." Dist. Ct. Op. at 49 (internal quotation omitted). But that is of no consequence; as the text of this Senate factor explains,

political campaigns can be "characterized by subtle racial appeals." *Gingles*, at 37; *see also id.* at 40 (affirming the district court when it found Senate factor six satisfied by racial appeals "ranging in style from overt and blatant to subtle and furtive"). Appellants also offer evidence from former U.S. Representative Madison Cawthorn's 2020 campaign, in which Cawthorn accused his opponent of associating with people who want to "ruin white males." Mtn. Prelim. Inj. at 427. The district court, "without deciding" whether Cawthorn's statements were "an overt or subtle racial appeal," dismissed this example because it didn't "characterize" today's North Carolina campaigns. Dist. Ct. Op. at 49. It went out of its way to minimize the racial appeal in each ad, defying common sense.

The seventh factor considers "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 37. The district court correctly observes that Black candidates have found electoral success in other parts of the state and in statewide elections. J.A. 945. But the success of a few minority candidates does not "necessarily foreclose the possibility of dilution of the black vote." S. Rep. No. 97-417, at 29 n.115.

More importantly, whether Black candidates can win in Durham, for example, has no bearing on whether Black candidates can win in the challenged districts. Dist. Ct. Op. 50. For the same reason, whether a Black candidate can win a statewide election says nothing about whether they can prevail in the challenged districts. Indeed, "the extent to which minority candidates have been elected to office *in the jurisdiction*, obviously must be measured by elections in the political jurisdiction in question." *City of Carrollton Branch of the NAACP v. Stallings*, 829 F.2d 1547, 1560 (11th Cir. 1987); *see Sanchez v.*

Colorado, 97 F.3d 1303, 1324–25 (10th Cir. 1996) (concluding that "it is probative" that no member of the minority group had been elected to the challenged office since 1940, "notwithstanding" that members of the minority group had been elected to other offices in the geographic region). The district court's failure to even consider Black candidates' performance in the challenged districts was an abuse of discretion.

The eighth Senate factor asks, "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group." *Gingles*, 478 U.S. at 37. Appellants assert that the General Assembly's enactment of discriminatory voting laws, as well as persistent socioeconomic disparities within the region, render this factor self-evident. Pierce Opening Br. at 48. The district court declined to make that inference. Yet the Supreme Court made that inference in *LULAC*. There, the appellants demonstrated a combination of circumstances, including declining incumbent popularity, a history of official discrimination within the state, and persistent sociological disparity. *LULAC*, 548 U.S. at 439–40. The Court agreed that these circumstances showed that the appellants' representative was unresponsive to their needs. *Id.* Here, as in *LULAC*, Appellants have demonstrated historical discrimination and sociological disparity. Combined with present attempts to weaken their voting power, *see* Pierce Opening Br. at 48, these circumstances evince their representatives' nonresponsiveness.

Finally, the ninth Senate factor evaluates "whether the policy underlying the state or political subdivision's use of such . practice or procedure is tenuous"—in other words, whether the government actually had a legitimate interest in enacting the challenged map. *Gingles*, 478 U.S. at 37. Legislative Appellees assert that they adopted the map to comply

with federal law, a North Carolina state redistricting principle known as the Whole County Provision, and traditional districting principles. Leg. Def. Opening Br. at 43. The district court shared this reasoning. Dist. Ct. Op. at 51. But the serpentine shape of Senate District 2 is far from compact (a traditional districting principle), requiring several hours and multiple ferry rides to span. Gov. Amici Br. 13–14. And the Whole County Provision applies only after any VRA districts are drawn. *See Stephenson v. Bartlett*, 562 S.E.2d 377, 396–97 (N.C. 2002); *see also Pender County v. Bartlett*, 649 S.E.2d 364, 367–68 (N.C. 2007) (explaining that a district required by § 2 trumps the need to comply with the Whole County Provision).

My colleagues in the majority are correct in pointing out that our review of the district court's decision requires deference. But affording deference does not mean abdicating our responsibility to ensure that district courts adhere to existing guideposts. And because there are few cases expounding on the meaning of individual Senate factors, the best guideposts remain *Gingles* and its progeny. Here, the district court strayed from the four corners of this jurisprudence throughout its totality analysis, planting additional obstacles for Appellants to surmount along the way. If the totality analysis has any meaningful role in identifying Section 2 violations, this must be error.

The district court erred throughout its analysis. The court failed to meaningfully contend with the role of history in contravention of *Gingles* and subsequent case law. It concluded that Senate factor three mandates a present-tense inquiry when no precedent supports that requirement. It mandated never-before-required statistical proof of causation between discrimination and socioeconomic disparities on Senate factor five and overlooked areas in Appellants' expert report where a connection is drawn between

discrimination and disparate outcomes. And in its evaluation of the seventh factor, it erroneously assumed that the presence of minority office holders in other parts of the state is nearly dispositive of the ability of minority candidates in the challenged area to succeed.

B.

Both the district court and the majority opinion recognize the importance of the second Senate factor ("the extent to which voting in the elections of the state or political subdivision is racially polarized," *Gingles*, 478 U.S. at 37) and dedicate significant space to its discussion. Specifically, they reason that because the racially polarized voting in the challenged districts can be explained by partisan alignment, not race, the second Senate factor cuts against Appellants.[7] *See* Maj. Op. at 43 ("Thus Alford concluded, and the district court accepted, that [the] analysis clearly demonstrates that the party affiliation of the candidates is sufficient to fully explain the divergent voting preferences of Black and White voters in the 2020 and 2022 North Carolina elections." (internal quotations omitted)). Implicitly, if not expressly, they take this point one step further, contending that because there is evidence that partisan motivation underlies the divergent voting patterns among Black and white voters, Appellants cannot establish a Section 2 violation under the totality of the circumstances. *See id.* This reasoning threatens the viability of any Section 2 claim because it permits courts to dismiss every Section 2 case in which voting patterns

[7] Though the majority treats this as a separate consideration, *see* Maj. Op. at 42, it is part of the second Senate factor. *See United States v. Charleston County*, 365 F.3d 341, 347 (4th Cir. 2004).

could be explained on partisan grounds. But a conclusion that polarization is explained by partisan affiliation is not a conclusion that polarization is not explained by race.

In support of their argument, the majority and the district court cite *United States v. Charleston County*. 365 F.3d 341 (4th Cir. 2004). But *Charleston County* does not say that evidence of partisan motivation undercuts a finding that the challenged districts violate Section 2.

In *Charleston County*, the district court considered evidence that voting patterns shifted when a candidate's race changed but their party affiliation remained the same. *Id.* at 353. We said that was evidence that racial motivation underlay the racially divergent voting patterns. And, we said, that racial motivation was relevant to (though not dispositive of[8]) a finding that the second Senate factor favored the party challenging the districts. *Id.* We did not say the inverse. That is, we did not say that if there was evidence of a *non-racial motivation* underlying voting patterns, then the second Senate factor *does not favor* the party challenging the relevant districts. The majority conflates these two distinct ideas.

The district court reasoned that the presence of partisan motivation in voting means the absence of racial motivation. *See* Dist. Ct. Op. at 53–54. But partisan motivations and racial motivations are not mutually exclusive. That is, the same voter can be motivated to vote for a particular candidate due to both partisanship and race. For that reason, evidence

[8] The district court in *Charleston County* found that changing the candidate's race changed voting patterns. *Charleston County*, 365 F.3d at 353. Based in part on this finding, this Court concluded that the district court did not clearly err by saying that race appeared to influence voting patterns. *Id.* But its holding was not contingent on that finding. *Id.* at 352. *Charleston County*'s holding primarily hinged on the district court's more robust evidence of racial polarization. *Id.*

of a partisan motivation says nothing about the existence or extent of a racial motivation. While it may be true that affirmative evidence of a racial motivation underlying voting patterns strengthens a party's showing on the second Senate factor, *see Charleston County*, 365 F.3d at 353, evidence of a partisan motivation does not *weaken* that showing.

In *Gingles* itself, a plurality ofthe Supreme Court addressed a similar argument that the second Senate factor is not satisfied when the racially divergent voting patterns can be explained by voters' socioeconomic characteristics. *See Gingles*, 478 U.S. at 64. The plurality rejected this argument, explaining that

> it ignores the fact that members of geographically insular racial and ethnic groups frequently share socioeconomic characteristics, such as income level, employment status, amount of education, housing and other living conditions, religion, language, and so forth. Where such characteristics are shared, race or ethnic group not only denotes color or place of origin, it also functions as a shorthand notation for common social and economic characteristics.

Id.

In the same way, the argument that voting is not racially motivated because it is motivated by partisanship "ignores the fact that members of geographically insular racial and ethnic groups" frequently share the same partisan affiliation. *See id.* This is because partisan motivation and racial motivation among minority voters regularly coexist. Accordingly, whether voting patterns in northeast North Carolina can be explained on partisan grounds says nothing about whether they can be explained on *non*-partisan grounds. Permitting evidence of partisan motivation to explain away racial polarization converts Black voters' motivations for voting into an impediment to Black voting power.

This cannot be squared with the purpose of Section 2: ensuring that minority voters can participate equally in the political process.

IV.

Appellants argue that the remaining factors favor imposing a preliminary injunction. They explain that failing to do so would disenfranchise thousands of Black voters in the affected districts. In contrast, Appellants proposed remedy would impact only the two challenged districts (where there are currently no contested primaries), and the State Board of Elections has confirmed that it is administratively feasible to enact a new map and hold a later primary in the new districts.[9]

Appellees disagree. First, they argue that Appellants' proposed remedy (altering only the line between the two challenged districts) is inappropriate. Second, they argue that because all other potential remedies impact districts where primaries are already underway, imposing an appropriate remedy is not administratively feasible. This is particularly true because, they contend, the *Purcell* principle prohibits federal courts from "alter[ing] the election rules on the eve of an election." *RNC v. DNC*, 140 S. Ct. 1205, 1207 (2020) (per curiam) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)).

[9] Though the Board's proposed schedule envisioned a ruling by February 15 to allow enough time for a May 14 primary, the Board's affidavit explains that it is possible to schedule a primary as late as the end of July, for which there is still time as of the date of this ruling. *See* J.A. 826–27; Pl.-Appellants' Emergency Mot. to Expedite Briefing & Decision at 5. Because the races in Senate Districts 1 and 2 were uncontested and thus no primaries were held, the fact that the March primary date has come and gone does not affect the continued viability of scheduling later primary elections.

The district court and the majority rely heavily on *Purcell*. They believe that because primaries are ongoing in North Carolina, any federal court intervention is bound to "result in voter confusion and [a] consequent incentive to remain away from the polls," and *Purcell* instructs courts to avoid such intervention. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam). That application of *Purcell* is improperly narrow.

Some background is helpful here. *Purcell* itself did not prevent federal court intervention in an election following thorough, judicious proceedings. Instead, it prevented federal court intervention based solely on a barebones, unexplained order from the court of appeals, which had granted an injunction pending appeal after the district court had denied a functionally equivalent preliminary injunction. *See Purcell*, 549 U.S. at 3; *see also League of Women Voters*, 769 F.3d at 248 n.6 (explaining that the *Purcell* Court "seemed troubled by the fact that a two-judge motions panel of the Ninth Circuit entered a factless, groundless 'bare order' enjoining a new voter identification provision in an impending election"). The *Purcell* Court said that the need for a full and thorough evaluation of the district court's decision outweighed concerns about voter confusion (which are central to the *Purcell* principle today). *See Purcell*, 549 U.S. at 5. Accordingly, the Supreme Court's admonition to the court of appeals to stay its hand is better understood as an instruction not to sacrifice the integrity of its judicial proceedings to the urgency of the moment. It is not a mandate that courts sit on their hands in the weeks before the election, when they still have time to engage in reasoned decision-making, solely because an election is impending.

Initially, lower courts incorporated *Purcell*'s considerations into their weighing of the equitable preliminary injunction factors. *See, e.g.*, *Ne. Ohio Coalition for Homeless &*

Serv. Emps. Union v. Blackwell, 467 F.3d 999, 1012 (6th Cir. 2006); *Ray v. Texas*, No. 2:06-cv-385, 2006 WL 8441630, at *5 (E.D. Tex. Oct. 31, 2006); *United States v. City of Philadelphia*, No. 2:06-cv-4592, 2006 WL 3922115, at *2 (E.D. Pa. Nov. 7, 2006); *State ex rel. Applegate v. Franklin Cnty. Bd. of Elections*, No. C2-08-092, 2008 WL 341300, at *6 (S.D. Ohio Feb. 6, 2008); *Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 244–45 (6th Cir. 2011); *Democratic-Republican Org. of N.J. v. Guadagno*, 900 F.Supp. 2d 447, 461 n.8 (D.N.J. 2012); *see also Hall v. Merrill*, 2012 F. Supp. 3d 1148, 1157 (M.D. Ala. 2016) ("[T]he *Purcell* principle should be considered along with all the other factors that courts use in determining whether to grant a temporary restraining order or a preliminary injunction."). The *Purcell* principle in its modern form did not emerge until 2014, eight years after *Purcell*. *See, e.g.*, *N.C. State Conf. of the NAACP v. McCrory*, 182 F. Supp. 3d 320, 526 (M.D.N.C. 2016); *Feldman v. Arizona*, 841 F.3d 791, 795 (Mem) (9th Cir. 2016) (O'Scannlain, J., dissenting from the grant of rehearing en banc); *Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396, 404–05 (E.D. Pa. 2016).

In 2014, the Fifth Circuit gave *Purcell* a broader scope. Dissenting from the Supreme Court's one-line, unsigned order denying a motion to vacate the Fifth Circuit's stay, Justice Ginsburg criticized the Fifth Circuit for misreading *Purcell*. *See Veasey v. Perry*, 574 U.S. 951 (2014). Joined by Justices Sotomayor and Kagan, she expressed her view that the Fifth Circuit, which had stayed a district court's permanent injunction of voter identification procedures, erred when it stayed the injunction based "exclusively on the potential disruption of Texas' electoral processes" while "[r]efusing to evaluate the defendants' likelihood of success on the merits." *Id.* at 10. As she explained, "*Purcell*

held only that courts must take careful account of considerations specific to election cases, not that election cases are exempt from traditional stay standards." *Id.*

Similarly, in *Frank v. Walker*, the petitioners asked the Supreme Court to vacate a court of appeals' stay in the lead up to an election, which would have put the challenged election procedure back in place. 574 U.S. 929 (2014). The dissenting justices argued, without referencing *Purcell*, that the fact that the election was imminent could not by itself justify vacating the stay. *Id.* (Alito, J., dissenting). Today, by contrast, *Purcell* is regularly invoked as a standalone principle.

When the Supreme Court next cited *Purcell* in 2018, the *Purcell* principle as we know it had mostly taken shape as applied to district court intervention in elections. *See Benisek v. Lamone*, 138 S. Ct. 1942, 1945 (2018); *North Carolina v. Covington*, 138 S. Ct. 2548, 2554 (2018). Around the same time, members of the Supreme Court writing separately began to cite *Purcell* in support of blocking district and appellate court rulings that the authoring justice believed came too close to an election. *See Brakebill v. Jaeger*, 139 S. Ct. 10 (Mem) (Ginsburg, J., dissenting); *RNC v. DNC*, 140 S. Ct. 1205, 1207 (2020); *id.* at 1210–11 (Ginsburg, J., dissenting); *Andino v. Middleton*, 141 S. Ct. 9 (Mem) (2020) (Kavanaugh, J., concurring); *DNC v. Wis. State Legislature*, 141 S. Ct. 28 (Mem) (2020) (Kavanaugh J., concurring).

However, no precedential Supreme Court opinion has ever addressed *Purcell*'s proper scope. Left to decipher conflicting separate writings by individual justices, inconsistent lower court applications of the doctrine come as no surprise. But in the

absence of a Supreme Court majority opinion sufficient to clarify *Purcell*'s proper application, we must make the most of these separate writings.

The most thorough explanation of the modern *Purcell* principle is Justice Kavanaugh's concurrence in *Merrill v. Milligan* in 2022 (16 years after *Purcell*). 142 S. Ct. 879 (Mem) (2022). There, the Supreme Court stayed the district court's injunction on Alabama's use of its electoral maps. *See id.* Justice Kavanaugh expressly rejected the idea that "the [*Purcell*] principle is absolute and that a district court may never enjoin a State's election laws in the period close to an election." *Id.* at 881. Instead, he explained, "the *Purcell* principle is probably best understood as a sensible refinement of ordinary stay principles for the election context—a principle that is not absolute but instead simply heightens the showing necessary for a plaintiff to overcome the State's extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures." *Id.* Justice Kavanaugh also acknowledged that "the Court has not yet had occasion to fully spell out all of [the *Purcell* principle's] contours." *Id.*

Justice Kavanaugh's concurrence thus confirms what *Purcell*'s jurisprudential history implies. *Purcell* emerged from equity balancing; it would make little sense for it to be a rigid bar against relief. Courts applying *Purcell* must balance the equities (the underlying interests of the parties and the public) in each case to determine whether federal court intervention in state election procedures is appropriate. While this balancing requires evaluation of "considerations specific to election cases," *Purcell*, 549 U.S. at 5, the analysis does not start and end with the amount of time left until the next election. *See Moore v. Harper*, 142 S. Ct. 1089, 1091 (Mem) (2022) (Alito, J., dissenting) (arguing that it would

have been appropriate for the Court to grant relief, despite the candidate filing deadline being only seven days away, because "promptly granting a stay would have been only minimally disruptive"); *DNC v. Wisc. State Legislature*, 141 S. Ct. 28, 42 (Mem) (2020) (Kagan, J., dissenting) ("At its core, *Purcell* tells courts to apply, not depart from, the usual rules of equity.").

Properly applied, the *Purcell* principle should be incorporated into a court's consideration of the equitable preliminary injunction factors. In this case, the parties dispute whether the requested injunctive relief is mandatory or prohibitory. That distinction is not meaningless. Because a prohibitory injunction preserves the status quo that existed at the time litigation was initiated, while a mandatory injunction changes the status quo, the standard to impose a mandatory injunction is much higher. But resolving the parties' dispute over whether the requested injunction is mandatory or prohibitory is unnecessary because Appellants meet the heightened standard for a mandatory injunction.

A court is justified in issuing a mandatory injunction only if such relief is necessary both (1) "to protect against irreparable harm in deteriorating circumstances created by the defendant," and (2) "to preserve the court's ability to enter ultimate relief on the merits of the same kind." *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 526 (4th Cir. 2003). Appellants have met their burden on the first prong. Absent relief, thousands of Black voters in North Carolina's Black Belt counties will be forced to vote in districts that unlawfully dilute their vote. *See id.* And the urgency in this case is of Legislative Appellees' making. Though Appellees attempt to blame Appellants for the urgency of this litigation, noting

repeatedly that Appellants waited 28 days after the map was enacted to file suit, it was Appellees' delay in enacting the map that created this condensed litigation schedule.

In April of 2023, the North Carolina Supreme Court struck down the map in place at the time and allowed the General Assembly to enact a new map. *Harper v. Hall*, 886 S.E.2d 393, 446–48 (N.C. 2023). But the General Assembly did not act immediately. Rather, the General Assembly did not enact a map until six months later. At that point, candidate filing was just six weeks away and the primary ballots were scheduled to be sent out in less than three months. Thus, the need for extraordinary relief, the urgency of this litigation, and the "deteriorating circumstances" that underlie this case have been "created by the defendant[s]." *See In re Microsoft Corp.*, 333 F.3d at 526.

Further, relying on a standalone *Purcell* principle to leave maps in place under circumstances like this permits legislatures to insulate themselves from judicial review—and subvert federal courts' role in ensuring that states comply with the Voting Rights Act—by waiting until the last minute to enact new maps. We cannot let one of our country's most important pieces of civil rights legislation be nullified by clever timing.

Appellants have also satisfied the second prong of the analysis: whether the injunction is necessary "to preserve the court's ability to enter ultimate relief on the merits of the same kind." *In re Microsoft Corp.*, 333 F.3d at 526. Because the election is imminent, the court will soon lose "its ability to enter ultimate relief on the merits" if an injunction is not entered now. *See id.* "[O]nce the election occurs, there can be no order and no redress." *League of Women Voters*, 769 F.3d at 247.

That brings us to the central reason why *Purcell* does not bar relief here: there is still time. Unlike *Purcell* this is not a case of rushed, unexplained, unreasoned decision-making. The district court conducted an evidentiary hearing and issued a detailed 69-page opinion. This Court received extensive briefing and heard oral argument. And these opinions are far more than the "four-sentence order" at issue in *Purcell*. *See Purcell*, 549 U.S. at 3. In fact, to ensure full consideration and appropriate development of the record, we did not take up Appellants' first appeal. That appeal would have required this Court to examine the issues without the benefit of fact finding by the district court. Rather than engage in the same kind of rushed decision-making for which the Supreme Court faulted the court of appeals in *Purcell*, we sent the case back to the district court to allow for an evidentiary hearing and subsequent written opinion.

Appellees make much of the fact that Appellants waited too long after the challenged map was enacted to file suit. Indeed, one of the motivating principles behind *Purcell* is that it "discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process." *DNC*, 141 S. Ct. at 31. But if there is a *Purcell* problem here, Appellants could not have brought the litigation early enough to avoid it.

Here, the district court's opinion came on January 26, one week after absentee voting began. That's two months later than the relevant date in *Merrill v. Milligan*. *See Merrill v. Milligan*, 142 S. Ct. at 879 (Kavanaugh, J., concurring) (invoking *Purcell* to stay a district court's final injunction because absentee voting in the primaries would begin seven weeks from the date of the Supreme Court's opinion). There is no reason to think that the district

court's ruling here—let alone a ruling from this Court—could have come more than seven weeks before the start of absentee voting if Appellants had filed suit 28 days earlier.

In sum, even if a 28-day delay in filing suit did amount to dilatory conduct by Appellants, that delay is not the cause of the urgency of this litigation or the fact that any federal court ruling will necessarily come on the eve of the election. The cause of the timing of this litigation is instead the General Assembly's failure to take any action on redistricting until six months after the North Carolina Supreme Court struck down the 2022 maps in *Harper v. Hall*. Appellees should not be allowed to benefit from their delay. And North Carolina's voters should not be forced to vote under illegal maps for an entire election cycle because the General Assembly delayed the enactment of the map. At the very least, the record demonstrates that the district court abused its discretion by completely ignoring how the legislature's late enactment of the map affects the equitable considerations in this case.

Appellees contend that they have only two remedial options. They say that because neither can be imposed here, the current map cannot be enjoined. But courts have a range of options when selecting an appropriate remedy. Here, those options are not limited to imposing Demonstration District A (incompatible with *Purcell*) or Demonstration Districts B1 and B2 (incompatible with *Strickland*) by judicial fiat. There is at least one more option: this Court can order the General Assembly to adopt a new map that complies with Section 2. The legislature can then choose whether to reconfigure the entire state map, adopt crossover districts, or solve the problem some other way entirely.

In deciding between these options, the legislature does not face the same constraints as the federal judiciary. Because *Purcell* only prohibits federal courts from changing election procedures too close to an election, the legislature is empowered to redraw the entire state map if it so chooses. *See Wisc. State Legislature*, 141 S. Ct. at 31 (Kavanaugh, J., concurring) ("It is one thing for state legislatures to alter their own election rules in the late innings and bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent."). And while Appellees have repeatedly argued that the General Assembly cannot possibly be required to comply with Section 2 because it could only do so by violating the state's Whole County Provision, compliance with federal law cannot be subordinated to state law requirements. *See Stephenson*, 562 S.E.2d at 389 ("[T]he State retains significant discretion when formulating legislative districts, so long as the 'effect' of districts created pursuant to a 'whole-county' criterion or other constitutional requirement does not dilute minority voting strength in violation of federal law."). The legislature still has time to remedy the illegality of the existing map.

V.

The district court erroneously construed the standard Appellants must meet under *Gingles*. And it failed to consider in its *Purcell* analysis the deleterious impact of the timeline on which Legislative Appellees chose to enact the new map. The VRA is "the Nation's signal piece of civil-rights legislation." *Shelby County v. Holder*, 570 U.S. 529,

580 (2013) (Ginsburg, J., dissenting). Section 2 is essential to ensuring the continuation of the VRA's noble purpose; it's enforcement cannot be left solely to the will or whim of state legislatures. I would reverse and therefore dissent.

Appendix A

Table A1: Performance Analysis (Reconstituted Election Analysis) of 2022 Elections (J.A. 291)

			Demonstration District A	Demonstration B District B1	Demonstration B District B2	2023 Adopted District 1	2023 Adopted District 2
	Black CVAP		53.1%	50.2%	12.6%	31.6%	31.5%
2022	Black voters		45.5%	42.1%	8.2%	23.3%	22.7%
	White voters		49.1%	52.2%	85.6%	71.2%	70.8%
	Other voters		5.3%	5.7%	6.2%	5.4%	6.5%
	U.S. Senate	Budd	44.4%	46.7%	67.6%	57.8%	59.1%
	U.S. Senate	Beasley*	55.6%	53.3%	32.4%	42.2%	40.9%
	Supreme Court #3	Dietz	44.7%	46.9%	67.9%	57.8%	59.7%
	Supreme Court #3	Inman*	55.3%	53.1%	32.1%	42.2%	40.3%
	Supreme Court #5	Allen	44.6%	46.6%	67.6%	57.6%	59.3%
	Supreme Court #5	Ervin*	55.4%	53.4%	32.4%	42.4%	40.7%
	Appeals Court #8	Flood	44.7%	46.7%	67.5%	57.5%	59.4%
	Appeals Court #8	Thompson*	55.3%	53.3%	32.5%	42.5%	40.6%
	Appeals Court #9	Stroud	45.9%	47.9%	69.2%	59.1%	60.7%
	Appeals Court #9	Salmon*	54.1%	52.1%	30.8%	40.9%	39.3%
	Appeals Court #10	Tyson	45.4%	47.4%	67.8%	57.9%	59.9%
	Appeals Court #10	Adams*	54.6%	52.6%	32.2%	42.1%	40.1%
	Appeals Court #11	Stading	45.1%	47.1%	68.1%	58.1%	59.8%
	Appeals Court #11	Jackson*	54.9%	52.9%	31.9%	41.9%	40.2%
	NC State House	Republicans	43.2%	43.8%	71.8%	50.3%	58.0%
	NC State House	Democrats*	56.8%	56.2%	28.2%	49.7%	42.0%
	NC State Senate	Republicans	44.8%	45.6%	75.3%	57.8%	45.9%
	NC State Senate	Democrats*	55.2%	54.4%	24.7%	42.2%	54.1%

Table A2: Performance Analysis (Reconstituted Election Analysis) of 2020 Elections (J.A. 3292–93)

			Demonstration	Demonstration B		2023 Adopted	
			District A	District B1	District B2	District 1	District 2
2020	Black voters		49.2%	45.6%	9.5%	26.1%	26.4%
	White voters		42.8%	46.2%	81.2%	65.6%	64.4%
	Other voters		8.1%	8.1%	9.3%	8.3%	9.3%
	President	Trump	41.1%	43.5%	65.9%	54.5%	56.7%
	President	Biden*	58.9%	56.5%	34.1%	45.5%	43.3%
	U.S. Senate	Tillis	39.7%	42.5%	65.9%	54.7%	55.5%
	U.S. Senate	Cunningham*	60.3%	57.5%	34.1%	45.3%	44.5%
	Governor	Forest	38.4%	41.3%	63.5%	52.5%	54.0%
	Governor	Cooper*	61.6%	58.7%	36.5%	47.5%	46.0%
	Lt. Governor	Robinson	41.0%	43.6%	66.6%	54.9%	57.0%
	Lt. Governor	Holley*	59.0%	56.4%	33.4%	45.1%	43.0%
	Attorney General	O'Neill	38.9%	41.8%	65.2%	53.9%	54.9%
	Attorney General	Stein*	61.1%	58.2%	34.8%	46.1%	45.1%
	Auditor	Street	37.7%	40.2%	63.4%	52.3%	53.0%
	Auditor	Wood*	62.3%	59.8%	36.6%	47.7%	47.0%
	Agriculture Commiss.	Troxler	42.4%	44.7%	67.7%	55.6%	58.6%
	Agriculture Commiss.	Wadsworth*	57.6%	55.3%	32.3%	44.4%	41.4%
	Insurance Commiss.	Causey	39.9%	42.0%	65.8%	53.9%	55.7%
	Insurance Commiss.	Goodwin*	60.1%	58.0%	34.2%	46.1%	44.3%
	Labor Commiss.	Dobson	39.9%	42.2%	65.2%	53.6%	55.6%
	Labor Commiss.	Holmes*	60.1%	57.8%	34.8%	46.4%	44.4%
	Sec. of State	Sykes	37.5%	40.3%	63.3%	52.2%	53.2%
	Sec. of State	Marshall*	62.5%	59.7%	36.7%	47.8%	46.8%
	State Superintendent	Truitt	40.3%	42.7%	65.9%	54.3%	56.1%
	State Superintendent	Mangrum*	59.7%	57.3%	34.1%	45.7%	43.9%
	Treasurer	Folwell	41.5%	43.9%	66.5%	55.5%	56.7%
	Treasurer	Chatterji*	58.5%	56.1%	33.5%	44.5%	43.3%
	Supreme Court #1	Newby	39.6%	42.2%	64.8%	53.5%	55.3%
	Supreme Court #1	Beasley*	60.4%	57.8%	35.2%	46.5%	44.7%
	Supreme Court #2	Berger	40.2%	42.6%	65.3%	53.8%	55.8%
	Supreme Court #2	Inman*	59.8%	57.4%	34.7%	46.2%	44.2%
	Supreme Court #4	Barringer	39.2%	41.9%	65.4%	53.7%	55.3%
	Supreme Court #4	Davis*	60.8%	58.1%	34.6%	46.3%	44.7%
	Appeals Court #4	Wood	40.6%	43.1%	66.3%	54.6%	56.5%
	Appeals Court #4	Shields*	59.4%	56.9%	33.7%	45.4%	43.5%
	Appeals Court #5	Gore	40.3%	42.7%	65.8%	54.1%	56.2%
	Appeals Court #5	Cubbage*	59.7%	57.3%	34.2%	45.9%	43.8%
	Appeals Court #6	Dillon	40.4%	43.0%	66.7%	54.8%	56.7%
	Appeals Court #6	Styers*	59.6%	57.0%	33.3%	45.2%	43.3%
	Appeals Court #7	Carpenter	40.3%	42.8%	66.3%	54.4%	56.4%
	Appeals Court #7	Young*	59.7%	57.2%	33.7%	45.6%	43.6%
	Appeals Court #13	Griffin	39.9%	42.4%	65.9%	54.0%	56.1%
	Appeals Court #13	Brook*	60.1%	57.6%	34.1%	46.0%	43.9%
	NC State House	Republicans	37.8%	40.0%	66.4%	53.1%	55.4%
	NC State House	Democrats*	62.2%	60.0%	33.6%	46.9%	44.6%
	NC State Senate	Republicans	41.5%	43.4%	64.9%	52.8%	57.1%
	NC State Senate	Democrats*	58.5%	56.6%	35.1%	47.2%	42.9%