

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED


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

COMMON CAUSE, et al.,
Plaintiffs,

v.

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

Defendants.

2019 JUN 21 P 2:23
WAKE CO. S.S.C.
BY 

**PLAINTIFFS' MOTION IN
LIMINE TO PRECLUDE
LEGISLATIVE
DEFENDANTS FROM
OFFERING EVIDENCE OR
ARGUMENT RELATED TO
THE VOTING RIGHTS ACT**

Barcly a year ago, Legislative Defendants repeatedly told a federal court that Section 2 of the federal Voting Rights Act (VRA) did not impose requirements for the racial composition of any district in the challenged state House or state Senate plans (the “2017 Plans”), because Legislative Defendants had concluded that there was insufficient evidence of racial bloc voting to trigger any such VRA requirements. Legislative Defendants further asserted that, because the VRA did not apply to any state House or state Senate district enacted in 2017, race was not considered when drawing any district. Under the doctrine of judicial estoppel, Legislative Defendants are conclusively bound by these prior assertions and cannot reverse course in this case. Plaintiffs therefore request an order precluding Legislative Defendants from offering evidence or argument in this case that: (1) the VRA imposes requirements for the racial composition of any state House or state Senate district; and (2) Legislative Defendants drew any state House or state Senate district in the 2017 Plans with an intent to comply with the VRA or otherwise to meet some minimum threshold for the minority population of that district.

BACKGROUND

In 2011, the Republican-controlled North Carolina General Assembly enacted redistricting plans for the state House and Senate (the “2011 Plans”). Those plans produced Republican supermajorities in both chambers in the 2012, 2014, and 2016 elections. In 2015, a group of plaintiffs filed a federal lawsuit challenging certain districts under the 2011 Plans as racially gerrymandered in violation of the U.S. Constitution. *See Covington v. North Carolina*, No. 1:15-CV-00399 (M.D.N.C.). In August 2016, the district court invalidated every challenged district, 316 F.R.D. 176, 176-78 (M.D.N.C. 2016), and in June 2017, the Supreme Court summarily affirmed, 137 S. Ct. 2211 (2017). The district court gave the General Assembly until

September 1, 2017 to enact new redistricting plans that would “cure the unconstitutional racial gerrymanders.” 267 F. Supp. 3d 664, 667 (M.D.N.C. 2017).

The General Assembly undertook a new round of redistricting for the state House and Senate in the summer of 2017. The House and Senate Redistricting Committees—led by Legislative Defendants Lewis and Hise—adopted a set of criteria explicitly directing the Republican mapmaker, Dr. Thomas Hofeller, to use “political considerations and elections results” in drawing the new plans. Joint Comm. Hr’g, Aug. 10, 2017, at 132. As another criterion, the Committees mandated that racial data not be used. *Covington*, No. 15-cv-399, ECF No. 184-37 (attached as Ex. A). Specifically, the adopted criteria provided that “[d]ata identifying the race of individuals or voters *shall not be used* in the drawing of legislative districts in the 2017 House and Senate plans.” *Id.* (emphasis added).

In floor statements that were submitted to the *Covington* court, Legislative Defendants asserted that they were ignoring racial considerations entirely because they had concluded that the “third *Gingles* factor” was not “present” anywhere in the State of North Carolina. *Covington*, No. 15-cv-399, ECF No. 184-21, at 52 (statement of Sen. Berger) (attached as Ex. B); *see also id.* (“we cannot prove the third *Gingles* factor”) (statement of Sen. Berger). The *Gingles* factors are “three threshold conditions for proving vote dilution under § 2 of the VRA,” and the third factor is that “a district’s white majority must ‘vote [] sufficiently as a bloc’ to usually ‘defeat the minority’s preferred candidate.’” *Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986)). Legislative Defendants repeatedly told the *Covington* court that they could not “justify the use of race in drawing districts” in the 2017 Plans—and thus could not seek to hit a “racial numerical quota” for any district—because they had insufficient evidence of “legally sufficient racially polarized voting.” *Covington*, No. 15-cv-

399, ECF No. 184 at 10 (attached as Ex. C); ECF No. 192 at 12 (attached as Ex. D); *see also* ECF No. 184-17 at 12 (attached as Ex. E).

The General Assembly enacted legislation adopting the 2017 Plans on August 31, 2017. In January 2018, the *Covington* court approved the 2017 Plans (as modified by a special master for certain districts) to remedy the prior racial gerrymanders. 283 F. Supp. 3d at 458.

ARGUMENT

Judicial estoppel applies where: (1) the party's position is "clearly inconsistent with its earlier position"; (2) "the party has succeeded in persuading a court to accept that party's earlier position"; and (3) "the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 30, 591 S.E.2d 870, 889 (2004) (quoting *New Hampshire v. Maine* 532 U.S. 742, 750-51 (2001)). Judicial estoppel is an equitable doctrine, and the first of these factors is the only "essential element which must be present for judicial estoppel to apply." *Wiley v. United Parcel Serv., Inc.*, 164 N.C. App. 183, 188, 594 S.E.2d 809, 812 (2004).

Given Legislative Defendants' prior assertions in *Covington* that the VRA did not impose any requirements for North Carolina's state House and state Senate districts because Legislative Defendants found insufficient evidence of racial bloc voting, each of the estoppel factors weighs decisively in favor of precluding Legislative Defendants from introducing evidence or argument that: (1) the VRA imposes requirements for the racial composition of any state House or state Senate district; or (2) any district under the 2017 Plans was drawn for the purpose of complying with the VRA or otherwise to meet a minimum threshold for the district's minority population.¹

¹ Plaintiffs take no position as to whether Legislative Defendants' assessment of the third *Gingles* factor was correct. Moreover, if Plaintiffs prevail on the merits, the Court and/or any special master it appoints can and should ensure that court-drawn remedial maps abide by all

First, to advance either of these arguments, Legislative Defendants would have to make assertions regarding racial bloc voting and the third *Gingles* factor that are plainly contrary to their assertions in *Covington*. “[E]ach of the three *Gingles* factors” is a “prerequisite[.]” to VRA liability, and thus if any *Gingles* factor is not met, “§ 2 simply does not apply.” *Cooper v. Harris*, 137 S. Ct. at 1472. Accordingly, for Legislative Defendants to assert that the VRA applies at all to North Carolina’s state House and Senate districts, they would need to establish—as a factual matter—that there *is* sufficient evidence of racial bloc voting to satisfy the third *Gingles* factor. See *Mo. State Conf. of NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 936 (8th Cir. 2018) (existence of racial bloc voting for VRA purposes is a question of fact).

Any such assertion by Legislative Defendants would be “clearly inconsistent” with the factual position they took during the *Covington* remedial phase—namely that there was insufficient evidence of racial bloc voting to trigger the VRA. *Whitacre*, 358 N.C. at 30, 591 S.E.2d at 889. Legislative Defendants asserted over and over during the *Covington* remedial process that they were ignoring racial considerations because they “cannot prove the third *Gingles* factor.” Ex. B at 52. Senator Berger stated unequivocally that Legislative Defendants “do not believe [they] can develop a strong enough basis in evidence that the third *Gingles* factor is present.” *Id.* Legislative Defendants also wrote in a September 2017 brief to the federal district court that they believed there was an “absence of evidence of legally sufficient racially polarized voting necessary to justify the use of racial quotas.” Ex. D at 12. For Legislative Defendants to turn around and now assert to a different court, barely a year later, that there *is*

legal requirements, including the VRA. The salient point here is that *Legislative Defendants* cannot reverse course from their prior assertions and themselves argue in this litigation that the VRA applies and imposes requirements for the racial composition of any district.

“legally sufficient racially polarized voting” that could trigger the VRA and mandate minimum “racial quotas” for any state legislative district would be irreconcilable with their prior assertions.

It would be just as irreconcilable for Legislative Defendants to assert that they drew any particular district in either of the 2017 Plans in the way that they did in an effort to comply with the VRA. Legislative Defendants not only asserted during the *Covington* remedial process that they did not believe the VRA applied, but they went further and said that they did not even have data on the racial composition of the new districts until after the districts were fully drawn. Senator Hise, who led the redistricting for the Senate, asserted that Legislative Defendants did not have racial data in their “database,” and that any districts with a black voting age population (“BVAP”) of around 40% were “naturally occurring.” Ex. E at 101, 103. Representative Lewis, who led the redistricting for the House, asserted that he did not “see” the statistics produced by legislative staff on the racial demographics of the new districts until “after the House plan passed” in the House. *Id.*, ECF No. 184-25 at 12 (attached as Ex. F). In light of these assertions, Legislative Defendants cannot now claim that an effort to comply with the VRA or otherwise take race into account in some way explains the contours of any district in the 2017 Plans.

Second, in allowing implementation of the 2017 Plans, the *Covington* court relied on Legislative Defendants’ statements that they had ignored racial considerations entirely in creating the Plans because they had concluded that the third *Gingles* factor was not met. *See Covington*, 283 F. Supp. 3d at 458. In allowing the 2017 Plans to take effect, the *Covington* court repeatedly referenced Legislative Defendants’ “race-blind criterion” and observed that the General Assembly had “forbid[den] the mapdrawers from considering race.” *Id.* at 435. Were this Court to accept an argument from Legislative Defendants that the VRA imposes requirements for the racial composition of any state House or state Senate district, it would

“create the perception that either the first or the second court was misled.” *Powell v. City of Newton*, 364 N.C. 562, 569, 703 S.E.2d 723, 729 (2010) (internal quotation marks omitted).

Finally, it would be unfair and an abuse of the “judicial machinery” for Legislative Defendants to rely on the VRA as a defense when they repeatedly told a federal court—just over a year ago—that the VRA did not apply because they found insufficient evidence of racial bloc voting. *New Hampshire*, 532 U.S. at 750-51. Judicial estoppel protects “the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment.” *Id.* at 750. Legislative Defendants would be doing just that in asserting any VRA defense here, and they should be estopped from doing so.

The North Carolina Supreme Court’s decision in *Old Republic National Title Insurance Company v. Hartford Fire Insurance Company*, 369 N.C. 500, 797 S.E.2d 264 (2017), is instructive. There, a party had previously “assured a federal court” that it “would not collaterally attack the federal judgment post hoc by relitigating its related claims arising from the same facts.” *Id.* at 501. After the federal court entered judgment, the party brought “substantially similar tort claims” in state court—effectively taking “the action which [the party’s] counsel stated it would not take.” *Id.* The state trial court held that the party was judicially estopped from bringing those claims based on its prior assurances to the federal court, and the North Carolina Supreme Court affirmed. As the Court explained, “[a] party is generally not ‘allowed to change his position with respect to a material matter, . . . nor should he be allowed to blow hot and cold in the same breath.’” *Id.* at 506 (quoting *Whitacre*, 358 N.C. at 12, 591 S.E.2d at 878).

Any argument by Legislative Defendants that the VRA requires minimum racial thresholds for any state House or state Senate district would be the epitome of “blow[ing] hot and cold in the same breath.” *Id.* at 506 (quoting *Whitacre*, 358 N.C. at 12, 591 S.E.2d at 878).

Legislative Defendants successfully told a federal court in 2017 that they did not and could not seek to hit racial thresholds in drawing any state House or state Senate district because the VRA's mandatory prerequisites were not met. For Legislative Defendants now to argue the exact opposite to this Court—that the VRA requires maintaining some minimum racial thresholds for particular districts—would be a clear abuse of the “judicial machinery.” *New Hampshire*, 532 U.S. at 750-51. “Permitting such a conflicting position and inconsistency would serve to undermine public confidence in the judicial process,” and should not be allowed. *Old Republic*, 369 N.C. at 508, 797 S.E.2d at 270.

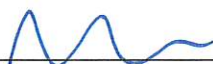
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court order that Legislative Defendants are judicially estopped from offering evidence or argument in this case that: (1) the VRA imposes requirements for the racial composition of any state House or state Senate district; and (2) Legislative Defendants drew any state House or state Senate district in the 2017 Plans with an intent to comply with the VRA or otherwise to meet some minimum threshold for the minority population of that district.

Respectfully submitted this the 21st day of June, 2019

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By: _____


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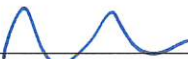
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This the 21st day of June, 2019.



Edwin M. Speas, Jr.

EXHIBIT A

2017 HOUSE AND SENATE PLANS CRITERIA

Equal Population. The Committees shall use the 2010 federal decennial census data as the sole basis of population for drawing legislative districts in the 2017 House and Senate plans. The number of persons in each legislative district shall comply with the +/- 5 percent population deviation standard established by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002).

Contiguity. Legislative districts shall be comprised of contiguous territory. Contiguity by water is sufficient.

County Groupings and Traversals. The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

Compactness. The Committees shall make reasonable efforts to draw legislative districts in the 2017 House and Senate plans that improve the compactness of the current districts. In doing so, the Committees may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).

Fewer Split Precincts. The Committees shall make reasonable efforts to draw legislative districts in the 2017 House and Senate plans that split fewer precincts than the current legislative redistricting plans.

Municipal Boundaries. The Committees may consider municipal boundaries when drawing legislative districts in the 2017 House and Senate plans.

Incumbency Protection. Reasonable efforts and political considerations may be used to avoid pairing incumbent members of the House or Senate with another incumbent in legislative districts drawn in the 2017 House and Senate plans. The Committees may make reasonable efforts to ensure voters have a reasonable opportunity to elect non-paired incumbents of either party to a district in the 2017 House and Senate plans.

Election Data. Political considerations and election results data may be used in the drawing of legislative districts in the 2017 House and Senate plans.

No Consideration of Racial Data. Data identifying the race of individuals or voters shall not be used in the drawing of legislative districts in the 2017 House and Senate plans.

EXHIBIT B

NORTH CAROLINA SENATE SESSION

NORTH CAROLINA GENERAL ASSEMBLY

TRANSCRIPT OF THE PROCEEDINGS

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

PREPARED BY: Karen Roche
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1 debate?

2 Senator Berger, for what purpose do you arise?

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

5 SEN. PATE: You have the floor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

- A map of the 2017 House Redistricting Plan. (Attached as Ex. 1).²
- The Block Assignment File for the 2017 House Redistricting Plan is available at: <http://www.ncleg.net/Sessions/2017/h927maps/h927maps.html>
- The Shapefile for the 2017 House Redistricting Plan is available at: <http://www.ncleg.net/Sessions/2017/h927maps/h927maps.html>
- The “stat pack” for the 2017 House Redistricting Plan. (Attached as Ex. 2).
- Additional statistical information requested by members of the General Assembly but not considered by the House Select Committee on Redistricting in drawing the 2017 House Redistricting Plan. (Attached as Ex. 3).

II. The 2017 Senate Redistricting Plan

The new Senate districting plan was identified as Senate Bill 691 (“S691”) during consideration by the General Assembly and is now identified as Session Law 2017-207 and titled “2017 Senate Floor Redistricting Plan -4th Ed.” (hereinafter the “2017 Senate Redistricting Plan”) after final enactment on August 31, 2017.³ The following documents requested by the Court related to this plan are attached:

- A map of the 2017 Senate Redistricting Plan. (Attached as Ex. 4).⁴

<http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2017&BillID=H927&submitButton=Go>

² Maps of previous editions of the adopted 2017 House Redistricting Plan may be found here: <http://www.ncleg.net/Sessions/2017/h927maps/h927maps.html>

³ A link to the complete history of S691, including all amendments proposed, may be found at the link below :

<http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2017&BillID=S691&submitButton=Go>

⁴ Maps of previous editions of the adopted 2017 Senate Redistricting Plan may be found here: <http://www.ncleg.net/Sessions/2017/s691maps/s691maps.html>

- The Block Assignment File for the 2017 Senate Redistricting Plan is available at: <http://www.ncleg.net/Sessions/2017/s691maps/s691maps.html>
- The Shapefile for the 2017 Senate Redistricting Plan is available at: <http://www.ncleg.net/Sessions/2017/s691maps/s691maps.html>
- The “stat pack” for the 2017 Senate Redistricting Plan. (Attached as Ex. 5).
- Additional statistical information requested by members of the General Assembly but not considered by the Senate Redistricting Committee on Redistricting in drawing the 2017 House Redistricting Plan. (Attached as Ex. 6).

III. Transcripts of Committee Hearings and Floor Debates

Transcripts of all committee hearings and floor debates related to the enactment of these plans are attached and identified as:

- Exhibit 7: 7/26/17 – Joint Redistricting Committee meeting
- Exhibit 8: 8/4/17 – Joint Redistricting Committee meeting
- Exhibit 9: 8/10/17 – Joint Redistricting Committee meeting
- Exhibit 10: 8/22/17 – Public Hearing – Raleigh site
- Exhibit 11: 8/22/17 – Public Hearing – Beaufort site
- Exhibit 12: 8/22/17 – Public Hearing - Charlotte site
- Exhibit 13: 8/22/17 - Public Hearing – Fayetteville site
- Exhibit 14: 8/22/17 – Public Hearing – Hudson site
- Exhibit 15: 8/22/17 – Public Hearing – Jamestown site
- Exhibit 16: 8/22/17 – Public Hearing – Weldon site
- Exhibit: 17: 8/24/17 – Senate Redistricting Committee meeting
- Exhibit: 18: 8/25/17 – House Select Committee on Redistricting meeting
- Exhibit: 19: 8/25/17 – Senate Floor Session
- Exhibit: 20: 8/28/17 – House Floor Session
- Exhibit: 21: 8/28/17 – Senate Floor Session
- Exhibit: 22: 8/29/17 – Senate Redistricting Committee meeting
- Exhibit: 23: 8/29/17 – House Select Committee on Redistricting meeting
- Exhibit: 24: 8/30/17 – Senate Floor Session
- Exhibit: 25: 8/30/17 – House Floor Session

IV. Description of the 2017 Redistricting Process and Identification of Participants Involved

On June 27, 2017, Senate President Pro Tempore Phil Berger and House Speaker Tim Moore approved a contract with Dr. Tom Hofeller as a mapdrawing consultant for Rep. David Lewis and Sen. Ralph Hise, the forthcoming chairs of the 2017 redistricting committees in the House and the Senate. On June 30, 2017, the Senate Redistricting Committee was appointed by Sen. Berger with the following members:

- Sen. Ralph Hise, Chairman
- Sen. Dan Bishop
- Sen. Dan Blue
- Sen. Harry Brown
- Sen. Ben Clark
- Sen. Warren Daniel
- Sen. Kathy Harrington
- Sen. Brent Jackson
- Sen. Michael V. Lee
- Sen. Paul A. Lowe, Jr.
- Sen. Paul Newton
- Sen. Bill Rabon
- Sen. Erica Smith-Ingram
- Sen. Terry Van Duyn
- Sen. Trudy Wade

On June 30, 2017, the House Select Committee on Redistricting was appointed by Rep. Moore with the following members:

- Rep. David Lewis, Senior Chairman
- Rep. Nelson Dollar, Chairman
- Rep. John Bell, Vice Chairman
- Rep. Darren Jackson, Vice Chairman
- Rep. Sarah Stevens, Vice Chairman
- Rep. John Szoka, Vice Chairman
- Rep. Jon Torbett, Vice Chairman
- Rep. Bill Brawley
- Rep. Cecil Brockman

- Rep. Justin Burr
- Rep. Ted Davis
- Rep. Jimmy Dixon
- Rep. Josh Dobson
- Rep. Andy Dulin
- Rep. Jean Farmer-Butterfield
- Rep. Elmer Floyd
- Rep. Terry Garrison
- Rep. Rosa Gill
- Rep. Holly Grange
- Rep. Destin Hall
- Rep. Ed Hanes
- Rep. Jon Hardister
- Rep. Pricey Harrison
- Rep. Kelly Hastings
- Rep. Julia Howard
- Rep. Howard Hunter
- Rep. Pat Hurley
- Rep. Linda Johnson
- Rep. Bert Jones
- Rep. Jonathan Jordan
- Rep. Chris Malone
- Rep. Mickey Michaux
- Rep. Rodney Moore
- Rep. Garland Pierce
- Rep. Robert Reives
- Rep. David Rogers
- Rep. Jason Saine
- Rep. Michael Speciale
- Rep. Shelly Willingham
- Rep. Michael Wray
- Rep. Larry Yarborough

On July 26, 2017, the Senate Redistricting Committee and the House Select Committee on Redistricting met jointly for organizational and informational purposes. At that meeting, committee chairs made available to committee members information regarding 2010 Census population by county, the method of calculating ideal House and

Senate districts for population purposes, maps submitted by Common Cause for House and Senate plans, maps that reflected the county grouping formula that Common Cause used, and the opportunities that would be available for public comment on proposed redistricting plans to be considered by the committee. No votes were taken at the meeting.

On August 4, 2017, the Senate Redistricting Committee and the House Select Committee on Redistricting met jointly to discuss potential criteria to be used by the committees in drawing new House and Senate districts. The meeting included a period of public comment. Sen. Smith-Ingram proposed a list of criteria for the committees to consider. Additionally, information regarding ideal county groupings for House and Senate maps were made available to committee members as well as comparisons of the groupings used in 2011 with those proposed in 2017 for both House and Senate plans. Finally, the committees approved a policy for sharing and posting information on the General Assembly website as well as policies for access to General Assembly staff and computer terminals for the purpose of drawing districts.

On August 10, 2017, the Senate Redistricting Committee and the House Select Committee on Redistricting met jointly to adopt criteria to be used when drawing legislative districts in their respective maps. The committees separately adopted an identical set of nine criteria that would be used to draw new districts in the 2017 House and Senate Redistricting plans. Rep. Jackson, Sen. Blue, and Sen. Clark suggested criteria to be considered by the committee.

On August 11, 2017, Rep. Lewis and Sen. Hise notified Dr. Hofeller of the criteria adopted by the redistricting committees and directed him to utilize those criteria when drawing districts in the 2017 plans.

On August 19, 2017, the proposed 2017 House Redistricting map was released on the General Assembly website. On August 20, 2017, the proposed 2017 Senate Redistricting map was released on the General Assembly website. On August 21, 2017, a series of statistical information and reports were released for the proposed House and Senate Redistricting plans.

On August 22, 2017, public hearings were held in Raleigh, Beaufort, Charlotte, Fayetteville, Hudson, Jamestown, and Weldon to discuss the proposed 2017 House and Senate Redistricting plans.

On August 24, 2017, the Senate Redistricting Committee met and approved the proposed 2017 Senate Redistricting plan. Two amendments were adopted by the committee, one offered by Sen. Clark and one offered by Sen. Blue.

On August 25, 2017, the House Select Committee on Redistricting met and approved the proposed 2017 House Redistricting plan. Four amendments were offered, two by Rep. Jackson, one by Rep. Speciale, and one Rep. Hunter. One of the two amendments from Rep. Jackson, which renumbered districts 25 and 7, was accepted. The other three amendments were defeated by a vote of the committee.

On August 25, 2017, the Senate met to consider S691, the 2017 Senate Redistricting Plan. One amendment offered by Sen. Blue was adopted by the Senate. Additional amendments offered by Sen. Jeff Jackson and Sen. Blue were defeated on the

floor. Sen. Gladys Robinson offered an amendment on the floor but it was withdrawn before a vote was taken. S691 passed second reading. Third reading was objected to by Sen. Hise and the bill was held over to the next legislative day.

On August 28, 2017, the House met to consider H927, the 2017 House Redistricting Plan. An amendment offered by Rep. Larry Pittman was defeated on the floor. An amendment offered by Rep. Lewis passed related to the House districts within Wake County. The bill passed second and third reading and was sent to the Senate.

On August 28, 2017, the Senate met to consider S691 on third reading. Amendments offered by Sen. Clark and Sen. Robinson were defeated on the floor. An amendment offered by Sen. Hise to trade the numbers of Senate District 29 and Senate District 32 passed. During debate on third reading, Sen. McKissick asked for additional statistical reports including racial demographics to be added to the General Assembly website. The bill passed third reading in the Senate and was sent to the House.

On August 29, 2017, Representative Lewis asked for additional statistical information for the House plan, which members of the Democratic Party had apparently already requested and received. The information was posted on the House Select Committee on Redistricting's website. That morning the Senate Redistricting Committee met to consider H927. The committee approved the 2017 House Redistricting Plan.

On August 29, 2017, the House Select Committee on Redistricting met to consider S691. The committee approved the 2017 Senate Redistricting Plan.

On August 30, 2017, the Senate met to consider H927. No amendments were offered to the bill. The bill passed second and third readings and was ordered enrolled.

On August 30, 2017, the House met to consider S691. No amendments were offered to the bill. The bill passed second and third readings and was ordered enrolled.

On August 31, 2017, H927 was ratified in the House and became law. The same day, S691 was ratified in the Senate and became law.

V. Alternative Districting Plans Considered

Information regarding alternative districts or districting plans considered by the House Select Committee on Redistricting or on the floor of the House are attached:

- Rep. Jackson Proposed Map and Reports Considered by House Select Committee on Redistricting (Failed) (Attached as Ex. 28).⁵
- Rep. Speciale Proposed Map and Reports Considered by House Select Committee on Redistricting (Failed) (Attached as Ex. 38).
- Rep. Hunter Proposed Map and Reports Considered by House Select Committee on Redistricting (Failed) (Attached as Ex. 39).
- Amendment 1: Representative Pittman Proposed Map and Reports (Failed) (Attached as Ex. 26).
- Amendment 2: Representative Lewis Proposed Map and Reports (Passed) (Attached as Ex. 27).

Information regarding alternative districts or districting plans considered by the Senate Redistricting Committee or on the floor of the Senate are attached:

- Sen. Clark Proposed Map and Reports Considered by Senate Redistricting Committee (Passed) (Attached as Ex. 29)
- Sen. Blue Proposed Map and Reports Considered by Senate Redistricting Committee (Passed) (Attached as Ex. 30)

⁵ In introducing this proposed map, Rep. Jackson stated it was drawn by the Plaintiffs in this matter.

- Amendment 2: Sen. Blue Proposed Map and Reports Considered on Senate Floor (Passed) (Attached as Ex. 31).
- Amendment 3: Sen. Robinson Proposed Map and Reports Considered on Senate Floor (Withdrawn) (Attached as Ex. 32).
- Amendment 4: Sen. Jeff Jackson Proposed Map and Reports Considered on Senate Floor (Failed) (Attached as Ex. 33).
- Amendment 5: Sen. Blue Proposed Map and Reports Considered on Senate Floor (Failed) (Attached as Ex. 34).⁶
- Amendment 8: Sen. Robinson Proposed Map and Reports Considered on Senate Floor (Failed) (Attached as Ex. 35).
- Amendment 9: Sen. Clark Proposed Map and Reports Considered on Senate Floor (Failed) (Attached as Ex. 36).

VI. Criteria Applied in Drawing the 2017 House and Senate Districts

The set of nine criteria for drawing the new districts in the 2017 House and Senate Redistricting plans adopted by both the Senate Redistricting Committee and the House Select Committee on Redistricting on August 10, 2017 are attached as Exhibit 37. Data regarding race was not used in the drawing of districts for the 2017 House and Senate redistricting plans. No information regarding legally sufficient racially polarized voting was provided to the redistricting committees to justify the use of race in drawing districts. To the extent that any district in the 2017 House and Senate redistricting plans exceed

⁶ In introducing this proposed map, Sen. Blue stated it was drawn by the Plaintiffs in this matter.

50% BVAP, such a result was naturally occurring and the General Assembly did not conclude that the Voting Rights Act obligated it to draw any such district.

This the 7th day of September, 2017.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Phillip J. Strach

Phillip J. Strach

N.C. State Bar No. 29456

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CERTIFICATE OF SERVICE

I hereby certify that I, Phillip J. Strach, have served the foregoing **NOTICE OF FILING** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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This the 7th day of September, 2017.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Phillip J. Strach

31102097.1

EXHIBIT D

supremists -- supremacists, excuse me.”); 37 (Chris Buczynski: “It's bullshit. I know it's bullshit. You know it's bullshit. We know what you're doing. The Supreme Court told you to fix it. So fix it. Don't hire the same asshole that drew the last racist-ass map.”); Tr. Pub. Hearings, Aug. 22, 2017 (Weldon site) at 9; Doc. 184-16 (Jennifer Smyth: “There a whole lot of white folks' tip-toe around the fact that this is racist, and I'm not having it.”). To the limited extent that public comments actually commented on the shape or locations of districts, those comments came from either plaintiffs or a few individuals aligned with the organizations now supporting plaintiffs. (Tr. Pub. Hearings, Aug. 22, 2017 (Fayetteville site) at 26-27; Doc. 184-13 (O'Linda Watkins, head of Moore County NAACP), 176 (T. Anthony Spearman, NC NAACP)); Tr. Pub. Hearings, Aug. 22, 2017 (Raleigh site) at 144-45; Doc. 184-10 (Rev. Pridgen, Covington plaintiff).

Despite the adopted criterion that race not be used in the drawing of districts, members of the Democratic party repeatedly pushed to draw districts based on race without submitting evidence justifying the use of race in that manner, contrary to this Court's ruling. (*See* Tr. H. Redist. Comm., Aug. 25, 2017 at 50-52, 95-103; Doc. 184-18). When the Senate Redistricting Committee met on August 24, 2017, Senators in the Democratic party such as Senators Blue and Van Duyn advocated for a racial numerical quota during the debate, which the Senate refused to entertain in the absence of evidence of legally sufficient racially polarized voting necessary to justify the use of racial quotas. (Tr. S. Redist. Comm., Aug. 24, 2017 at 67-77, 95-99; Doc. 184-17). Senators also emphasized prioritizing traditional redistricting principles. (*Id.* at 114-115). Thus, when

Senator Lowe advocated for the use of race in districts in Guilford County, Senator Hise explained that the district followed the city limits for Greensboro, thus adhering to a criterion to consider municipal lines in drawing districts. (*Id.* at 36). The Senate maps were approved by the Committee and no racial data was used in the development, drawing, or assignment of voters to districts by a vote of 9-4. (*Id.* at 46, 131).

The Senate met on August 25, 2017 to debate the proposed plan from the Senate Redistricting Committee. Senator Hise explained the criteria used to draw the proposed map. (Tr. S. Floor Session, Aug. 25, 2017 at 5-11; Doc. 184-19). During the debate, Senator Blue brought forth an amendment which adjusted two districts in Wake County. (*Id.* at 11). During debate over the amendment Senator Blue explicitly stated that the districts “are not racially gerrymandering” and that it “cures the gerrymander that the Court found in Wake County. (*Id.* at 13-14). Senator Blue’s amendment passed by a unanimous vote. (*Id.* at 17). Similarly, in the prior Senate Redistricting Committee meeting, Senator Clark brought forward an amendment which would change the district lines to include his residence in the district. (Tr. S. Redist. Comm., Aug. 24, 2017 at 49-52; Doc. 184-17). Like Senator Blue, Senator Clark agreed that the district as amended would not be a racial gerrymander. (*Id.*). During this debate, Senator Clark never expressed any concern that the district as a whole was a racial gerrymander or that certain precincts had been included or excluded in the district on the basis of race. (*Id.*).

The number of precinct and municipality splits in the House plan became contentious in the House Redistricting Committee meeting when Representative Jackson

This the 22nd day of September, 2017.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Phillip J. Strach

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N.C. State Bar No. 29456

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Counsel for Legislative Defendants

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This the 22nd day of September, 2017.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Phillip J. Strach

31255185.1

EXHIBIT E

NORTH CAROLINA GENERAL ASSEMBLY
SENATE COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS
AUGUST 24, 2017 SESSION

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

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

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

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

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

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

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

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

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

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

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

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

1 SEN. VAN DUYN: Here's what I would say,
2 okay? So we have -- we have a district that is
3 shaped very similarly to what it was in the
4 unconstitutional maps, and that clearly we cannot
5 demonstrate, then, that we are in compliance with
6 the Courts if we do not at least verify that those
7 are no longer racially gerrymandered districts. So
8 we used the criteria that included reducing the
9 percentage of African-American voters in the
10 district.

11 SEN. BROWN: Senator Blue?

12 SEN. BLUE: I'd like to ask Senator Hise
13 a question, and he probably has anticipated what it
14 is. But specifically in the court order, they say
15 you've got to explain to them why you went over 50
16 percent in this district. What do you plan to tell
17 them?

18 SEN. HISE: I would think as we go
19 through this entire process -- I would even say
20 that the Plaintiffs' attorneys clearly stated even
21 to the Courts that when districts are created by
22 other criteria that there may be naturally
23 occurring districts that exceed 50 percent, but
24 that the predominant criteria in drawing that map
25 was not racing and could not have been race. There

1 were no criteria in drawing the map or assigning
2 voters in which we used race in order to place
3 individuals.

4 As a result of using the criteria we
5 have, there may be -- and I still don't know what
6 the numbers -- this is the first I've been told on
7 this district -- there may be naturally occurring
8 areas that have that -- a percentage of 50 percent,
9 a percentage of 40 percent or 42 percent.
10 Individuals group themselves into communities,
11 particularly in urban areas that are compact in
12 those, and naturally occurring districts may come
13 out.

14 And I think any numbers that you find,
15 which I'm willing to look at, are a result of
16 naturally occurring districts that we did not
17 assign any voters on the basis of race or move any
18 voters to districts on the basis of race.

19 SEN. BROWN: Senator Blue?

20 SEN. BLUE: So, as I understand it, with
21 a straight face, you're going to ask the
22 legislative lawyers to stand in front of these
23 three federal judges and say the same guy who drew
24 the district in 2011 knew all of these statistics,
25 he knew what the map looked like, he redrew the

1 districts in 2017, and he does not remember what
2 the map looked like, he does not remember why he
3 put 50 percent or greater in that district, and it
4 just coincidentally happens that it looks like the
5 same district, it's got over 50 percent, which is
6 what he sought out to achieve in 2011, but we
7 didn't know that was going to happen. That just
8 naturally occurred. Is that going to be the
9 answer?

10 SEN. HISE: I think no different than you
11 would say that when you drew the maps, you used
12 Maptitude and somehow guessing it has some long-
13 term memory because it was the same software used
14 or may happen to have been the same chair
15 individuals were sitting in. Dr. Hofeller was
16 given the criteria of this Committee, which was
17 significantly different from the criteria of the
18 previous committee as a result the court rulings,
19 and from the criteria, drew maps that did not
20 include race. Race was not part of the database.
21 It could not be calculated on the system that is
22 done.

23 I wasn't drawing. It was Rucho there
24 that was drawing then versus me there now, but I
25 can tell you that there is no consideration of race

1 in the drawing of these maps, hidden or otherwise,
2 nor is there is there sorting of individuals on the
3 basis of race in the districts in the maps as they
4 exist, quite counter to the amendments that you
5 have been proposing.

6 SEN. BROWN: Senator Bishop?

7 SEN. BISHOP: Thank you, Mr. Chairman. I
8 have a couple of other questions for Senator Van
9 Duyn. Senator Van Duyn, I didn't get the -- or
10 didn't retain the last name of the consultant that
11 Senator Blue identified, but did the same
12 gentleman -- his first name was Kareem -- did he
13 draw your proposed amendment to Guilford?

14 SEN. VAN DUYN: Senator Bishop, with the
15 Chair's permission, I worked with Senator McKissick
16 on this. I can't answer that honestly because I
17 don't know who he consulted with. Can I ask
18 Senator McKissick that question?

19 SEN. BLUE: I'll allow that. You may
20 need to identify yourself for the---

21 SEN. McKISSICK: Sure. This is Senator
22 Floyd McKissick, Senator District 20. There is a
23 gentleman who was used by the name of Mr. Kareem
24 Crayton, C-r-a-y-t-o-n, who worked closely with
25 this in looking at potential alternative plans for

1 the Guilford County as well as for Mecklenburg
2 County, with the goal of trying to see what
3 alternative configurations might be put forth for
4 those particular clusters that would present an
5 alternative for this Committee and for this body to
6 consider as you move forward.

7 SEN. BROWN: Senator Bishop?

8 SEN. BISHOP: Senator Van Duyn, what does
9 Dr. Crayton have against Senator Wade?

10 SEN. VAN DUYN: I don't believe he has
11 anything against Senator Wade.

12 SEN. BISHOP: If you see on the map in
13 your amendment, the little red dot there underneath
14 the green District 28 and it's just in 27. I think
15 that's Senator Wade's home, and that's in Senator
16 Dr. Robinson's district, as I understand it. Is
17 that correct?

18 SEN. VAN DUYN: No one's been
19 double-bunked in this.

20 SEN. BISHOP: Do you know whether that
21 district is favorable to Senator Wade's prospects
22 for reelection or not?

23 SEN. VAN DUYN: I'm sorry. I honestly do
24 not know.

25 SEN. BISHOP: And did not give that

STATE OF NORTH CAROLINA

COUNTY OF ROCKINGHAM

CERTIFICATION

This is to certify that the foregoing transcript of proceedings held on August 24, 2017, is a true and accurate transcript of the proceedings as transcribed by me or under my supervision. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

Certified this 30th day of August, 2017.



Notary Public

Rebecca P. Scott
Notary Number
19940530133

Worley Reporting

EXHIBIT F

NORTH CAROLINA HOUSE OF REPRESENTATIVES SESSION

NORTH CAROLINA GENERAL ASSEMBLY

TRANSCRIPT OF THE PROCEEDINGS

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

PREPARED BY: Regina Toppins

RUFFIN CONSULTING, INC.

DIRECT DIAL: 252-243-9000

WWW.RUFFINCONSULTING.COM

1 thanks, y'all.

2 Senate Bill 691, the Clerk will read.

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

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

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

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

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

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

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

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

23 The gentlemen has the floor.

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

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

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

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

25 So that there wasn't an asymmetry of

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

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

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

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

1 committee's adopted criteria, state and federal law.
2 For those reasons, I ask for your support in voting
3 green to adopt this Senate map. Thank you, Mr.
4 Speaker.

5 SPEAKER MOORE: For what purpose does the
6 gentleman from Cumberland, Representative Richardson,
7 rise?

8 REPRESENTATIVE RICHARDSON: To debate the
9 bill.

10 SPEAKER MOORE: The gentleman is recognized
11 to debate the bill.

12 REPRESENTATIVE LEWIS: Members of the
13 General Assembly, I thought long and hard about
14 speaking on this, and I felt moved by one of our
15 colleague's comments in the last debate on the House
16 plan, and that was Judge Joe John. To me he is like
17 the E.F. Hutton of our body. When he talks, we ought
18 to listen. And there's several -- what makes this
19 place so magical and special is there are several of
20 us like that. Representative McGrady is like that.
21 And those wonderful, wise people when they get up and
22 speak, they transcend party, they transcend the ages
23 and they're a part of this body's politic that makes
24 it special.

25 And we are at our best when we get away from

1 STATE OF NORTH CAROLINA

2 COUNTY OF DURHAM

3

4 REPORTER'S CERTIFICATE

5 I, Regina Toppins, Shorthand Reporter and Notary
6 Public in and for the State of North Carolina, do hereby
7 affirm that the foregoing pages contain a verbatim
8 transcription of the above-captioned proceedings and
9 have been transcribed to the best of my ability and
10 understanding; I further affirm that I am not related to
11 any of the parties to this action; that I am not
12 interested in the outcome of this case; that I am not of
13 counsel nor in the employ of any of the parties to this
14 action.

15 IN WITNESS WHEREOF, I have hereto set my hand,
16 this the 30th day of August, 2017.

17

18

19



20

Regina Toppins, Notary Public
Notary Number: 200626300019

21

22

23

24

25