

Modification 16,” even though keeping Norfolk whole requires splitting the Isle of Wight. Norfolk is a much larger city/political subdivision than is Isle of Wight, meaning that more voters will benefit from having their city wholly represented within a congressional district. Moreover, the city of Norfolk is heavily African American, and shares more interests and commonalities with the rest of the district, so keeping the whole city in the district makes good sense. The “NAACP Plan Modification 6” version of CD 3 is also visually more compact than the version in “Current Congressional Plan Modification 16.”

Although the Virginia NAACP does believe that both illustrative plans correct the constitutional deficiencies in CD 3, the Virginia NAACP is concerned about the relative weighting of two factors that must be addressed as a consequence of drawing a constitutional version of CD 3: (1) ensuring that CD 4 actually does provide black voters with an opportunity to elect their candidate of choice and (2) protecting incumbents. Dr. Grofman was entirely correct in stating that by drawing CD 3 as a compact district that respects communities of interest, a substantial minority population in CD 4 develops “virtually automatically.” Grofman Report at 16. But despite this arising as a “residual” effect from correcting the constitutional flaws in CD 3, *id.*, care must still be taken once that district has appeared to ensure that opportunity for voters of color in that district to elect their candidate of choice is not undermined.

Dr. Grofman initially did not take incumbents’ residences into account when drawing illustrative remedial maps. *Id.* at 23. Following instructions from the Court, however, he did factor those residences in, and made adjustments to plans in order to avoid pairing CD 4 incumbent Randy Forbes with the CD 2 incumbent. When comparing the illustrative plans with the NAACP-submitted plan, it is clear that in the illustrative plans, by taking CD 4 further east to capture Congressman Forbes’ home in Chesapeake, Dr. Grofman could not draw the district as

far west to include Brunswick and Mecklenburg counties, for compactness and equal population reasons. However, as demonstrated in briefing on the NAACP-submitted plan, ECF No. 227 at 12-16, those counties have much in common with a CD 4 anchored in the Richmond/Petersburg area. Including those counties in the district would also ensure that black voters in the district have a reasonable opportunity to elect their candidate of choice. Unlike CD 3, CD 4 is a district where black voters have never been able to elect their candidate of choice, despite running a viable candidate as recently as 2012. Grofman Report at 56. While incumbency protection may not necessarily be an inappropriate consideration in and of itself, it may not be accomplished at the expense of minority voting potential. *See Garza v. Los Angeles County*, 918 F.2d 763, 771 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991); *Ketchum v. Byrne*, 740 F.2d 1398, 1408-09 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985). Ensuring that CD 4 does afford black voters the opportunity to elect their candidate of choice trumps incumbency protection as a matter of law. Should the Court decide not to depart from Dr. Grofman's approach, though, the version of CD 4 in "NAACP Plan Modification 6" sacrifices minority voting potential in CD 4 to a lesser degree, and accomplishes the same incumbency protection goal. Thus, of the two illustrative plans, "NAACP Plan Modification 6" is the superior plan because of its treatment of both CD 3 and CD 4.

Respectfully submitted this 24th day of November, 2015.

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