

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

SANDRA LITTLE COVINGTON, *et al.*,)
)
Plaintiffs,)
)
v.)
)
STATE OF NORTH CAROLINA, *et al.*)
)
Defendants.)
_____)

**DEFENDANTS’ MEMORANDUM IN
OPPOSITION TO PLAINTIFFS’
MOTION FOR ADDITIONAL
RELIEF**

INTRODUCTION

Plaintiffs’ request that this Court order the State to enact new legislative redistricting plans within two weeks of the date the 2017 North Carolina General Assembly convenes (January 11, 2017) as well as special elections in 2017 for the new legislative districts is overreaching, unreasonable, and unrealistic. The combination of the number of districts that have been declared unlawful and the operation of the requirements for grouping counties adopted by the North Carolina Supreme Court to give effect to the “Whole County Provisions” (“WCP”) of the North Carolina Constitution, N.C. CONST. art. II, §§ 3(3) and 5(3), will require substantial changes to a significant number of districts. *Dickson v. Rucho*, 367 N.C. 542, 570, 766 S.E.2d 238, 257-58 (2014) (“*Dickson I*”). In light of the number of districts that need to be revised, and the significant financial and administrative burdens resulting from a general election in 2017, the only way to guarantee an orderly redistricting process is to allow the General Assembly at least as much time in 2017 as it took to enact the original plans in 2011.

Moreover, because this Court's judgments regarding North Carolina's 2011 districting are now pending before the United States Supreme Court, special elections in 2017 are not warranted and the Court should reject plaintiffs' request for such elections.

Alternatively, should the Court order special elections, the General Assembly should have, at a minimum, until at least May 1, 2017 to enact new legislative districting plans. Allowing the legislature this bare minimum amount of time to conduct hearings and ensure passage of new plans would still give this Court time to review new plans and permit the State to conduct special elections (albeit on a very tight schedule) in November of 2017. While defendants will comply with any order of this Court, requiring the General Assembly to enact plans in two weeks will guarantee no meaningful opportunities for public input, and force upon the General Assembly an opaque and highly truncated legislative process.

BACKGROUND

1. 2011 Redistricting Process

For the 2011 session of the North Carolina General Assembly, the North Carolina House of Representatives and the North Carolina Senate convened on January 26, 2011. Both chambers elected leadership on that date. The Senate first constituted the Senate Redistricting Committee and designated Senator Bob Rucho as Chair on January 27, 2011. The House first constituted the House Redistricting Committee and designated Representative David Lewis as Chair on January 27, 2011.

Thereafter, public hearings were held on twelve different dates between April 13, 2011, and July 18, 2011. The co-chairs first published proposed "VRA districts," a term

first used by the North Carolina Supreme Court to describe districts adopted by the state to avoid liability under the Voting Rights Act. *Stephenson v. Bartlett*, 355 N.C. 354, 381, 562 S.E. 2d 377, 396-97 (2002) (“*Stephenson I*”). Subsequently, the co-chairs released proposed House and Senate districting plans for the entire State and conducted a public hearing on those plans. (Joint Exhibits [“JX”] 1005-07) While the co-chairs solicited recommendations from various sources, including Democratic members of the General Assembly, only one alternative set of legislative plans was offered during the public hearing process – House and Senate plans proposed by a group that called itself the Alliance for Fair Redistricting and Minority Voting Rights (“AFRAM”).¹

The General Assembly then convened on July 25, 2011, to consider legislative districting plans, including plans that were proposed by the two redistricting chairs. On that same date, the Democratic leadership and members of the Legislative Black Caucus, for the first time, published proposed districting plans for the Senate and the House.

The Senate plan adopted by the General Assembly was ratified on July 27, 2011. The House plan enacted by the General Assembly was also ratified on July 27, 2011. *Dickson I*, 367 N.C. at 547, 766 S.E2d at 243. Both plans were enacted largely based upon party-line votes.

2. Post 2011 Redistricting Litigation

(a) *Dickson v. Rucho*

In the fall of 2011, two different sets of plaintiffs filed two different lawsuits in the Wake County Superior Court challenging the constitutionality of numerous legislative

¹ This coalition included the North Carolina Conference of Chapters of the NAACP.

and congressional seats. These two cases were assigned to a three-judge panel of the Superior Court of Wake County pursuant to North Carolina law and then consolidated. *Dickson I*, 367 N.C. at 547, 766 S.E.2d at 243 (citing N.C. Gen. Stat. § 1-267.1). While plaintiffs alleged numerous claims, the primary focus of both complaints was their contentions that Congressional Districts 1 and 12 (“CD 1” and “CD 12”) and numerous legislative districts were racial gerrymanders. On February 6, 2012, the three-judge panel allowed in part and denied in part defendants’ motion to dismiss; on July 8, 2013, the three-judge panel entered a unanimous ruling entering summary judgment for defendants on all of plaintiffs’ remaining claims. *Dickson I*, 367 N.C. at 547-48, 766 S.E.2d at 243.

Plaintiffs then appealed to the North Carolina Supreme Court, which affirmed the decision by the superior court. *Dickson I, supra*. After that, plaintiffs filed a petition for a writ of *certiorari* with the United States Supreme Court. The Court granted the petition and remanded the case to the North Carolina Supreme Court for further consideration in light of the decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015). Upon remand, the North Carolina Supreme Court once again affirmed the decision of the Superior Court. *See Dickson v. Rucho*, 368 N.C. 481, 485-86, 781 S.E.2d 404, 410-11 (2016) (“*Dickson II*”).

On June 30, 2016, the plaintiffs in *Dickson* filed a second petition for a writ of *certiorari*. The petition was circulated for a conference of the Supreme Court on September 26, 2016. To date, the Court has not ruled upon this petition. *See* Supreme Court Docket 16-24.

(b) *Harris v. McCrory*

After the ruling by the North Carolina Supreme Court in *Dickson I*, two individual plaintiffs filed a lawsuit in the Middle District of North Carolina challenging the 2011 versions of CD 1 and CD 12 as racial gerrymanders. The matter was tried before the three-judge court in October of 2015. On February 5, 2016, the *Harris* Court entered a judgment finding that CD 1 and CD 12 constituted racial gerrymanders. *Harris v. McCrory*, 159 F. Supp. 3d 600 (2016). On February 8, 2016, defendants filed their notice of appeal (M.D.N.C. 1:13-CV-949), and on April 8, 2016, defendants filed a statement of probable jurisdiction with the Supreme Court. *See* Supreme Court Docket 15-1262. On June 27, 2016, the Court noted probable jurisdiction and ordered briefing on the merits. *Id.* The case has been scheduled for oral argument before the Supreme Court on December 5, 2016. *Id.*

(c) *Covington v. North Carolina*

The instant case involves challenges to 28 legislative districts enacted in 2011. On August 11, 2016, this court entered a judgment finding in plaintiffs' favor on all challenged districts. (D.E. 123) On September 13, 2016, defendants filed their notice of appeal to the Supreme Court. (D.E. 130) Defendants' jurisdictional statement is due to be filed and will be filed no later than November 15, 2016.

3. Impact of this Court's Judgment on 2011 Legislative Districts

This court found that 28 legislative districts enacted in 2011 constitute racial gerrymanders. These districts and any other districts impacted by changes to these districts will need to be modified.

Because of the county grouping formula, first mandated in *Stephenson I*, followed in *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (“*Stephenson II*”), and *Pender County v. Bartlett*, 361 N.C. 491, 49 S.E.2d 364 (2007), and then further clarified in *Dickson I* and *Dickson II*, addressing the 28 challenged districts will require a significant re-grouping of the county groups that must be used as a matter of state law under any new districting plans. *See Dickson II*, 368 N.C. at 530-31, 781 S.E.2d at 438-39 (explaining the WCP county group formula). This in turn will require the General Assembly to revise a majority of all legislative districts enacted in 2011. *See* Declaration of Dr. Thomas Hofeller, PH.D. (October 28, 2016) (“Hofeller Decl.”) ¶¶ 17-23 (attached as Ex. 1).

More specifically, new legislative maps, drawn strictly in compliance with the *Stephenson* county grouping formula, may result in changes in the boundaries for 35 Senate districts and 81 House districts. Stated differently, in the 2011 Senate plan, only 15 Senate districts are located in county groups that do not include a challenged 2011 VRA district and that comply with the *Stephenson* grouping requirement. Similarly, only 39 of the 2011 House districts are located in county groups that do not contain a challenged VRA district and that comply with the *Stephenson* grouping requirement. *See* Hofeller Decl. ¶¶ 17-23.²

² The re-grouping required by the *Stephenson* formula will substantially impact the districts in which incumbents have been elected, including African American incumbents elected in three Senate districts and at least six House districts located in eastern North Carolina. Hofeller Decl. ¶¶ 25-27.

4. The General Assembly's Intention to Reduce the Size of Precincts

In its opinion on the merits, the Court criticized the 2011 districting plans because of the number of divided precincts. *See Covington v. North Carolina*, 316 F.R.D. 117, 137 (M.D.N.C. 2016) (three-judge court). Over the years, precincts in North Carolina have rarely been changed. Many precinct boundaries have been in existence for more than 20 years. (D.E. 103-4 [*Dickson*, Bartlett Dep. 21-22]; D.E. 103-2 [*Colicutt* Dep. 46-47]; D.E. 103-5 [*Doss* Dep. 19-20]; D.E. 103-1 [*Poucher* Dep. 39]; Tr. Vol. I, pp.96-100) This reality has resulted in many precincts with very high numbers of registered voters. For example, 48% of registered voters are located in a precinct with 3000 or more registered voters. *See* attached Ex. 2 (Press Release and Supporting Documents by Democracy North Carolina (August 10, 2016)).

To address election administration and districting problems caused by large precincts, on July 22, 2016, the General Assembly enacted S.L. 2016-109. Under Section 7(c), the State Board of Elections (“SBE”) has been directed to provide proposed voting districts or precincts for the entire State. One of the factors to be considered by the SBE is the reduction of the number of voters assigned to large precincts. Under this statute, SBE is required to produce its recommendations for new precinct criteria by December 1, 2016. Also under this statute, each county board of elections has until November 1, 2017, to request changes in the precinct boundaries proposed by the SBE for their county. New precincts will thereafter be established to be used in elections taking place after

January 1, 2018. *Id.*, Section 7(d). As a result, new and smaller sized precincts will not be available for purposes of redistricting until on or after January 1, 2018.

ARGUMENT

- 1. The Court should not order a special election for new legislative districts, and members elected in 2016 should be allowed to serve their full two-year term.**

This Court should follow the precedent set by the three-judge court following the Supreme Court's decision in *Shaw v. Hunt*, 517 U.S. 899 (1996), and not order a special election for 2017. *See Shaw v. Hunt*, No. 92-202-Civ-BR (July 30, 1996). Allowing all representatives elected in 2016 to serve their full two-year term (as established by the North Carolina Constitution in N.C. Const. art. II, § 8) is consistent with the equitable judgment made by the North Carolina Supreme Court in *Pender County v. Bartlett*, 361 N.C. 491, 509-10, 649 S.E. 2d 364, 376 (2007). Allowing legislators elected in 2016 to serve their full two-year term is also an appropriate remedy here because of the two decisions by the North Carolina Supreme Court (on the same record evidence that was before this Court) finding that all of the challenged legislative districts are constitutional. *Dickson I, supra; Dickson II, supra*. It is highly likely that all three decisions regarding North Carolina's 2011 redistricting will be reviewed by the Supreme Court. One of these cases, *Harris v. McCrory*, is already calendared for oral argument in less than two months. Therefore, allowing legislators elected in 2016 to serve their full two-year term will provide sufficient time for the Supreme Court to clarify whether the North Carolina Supreme Court or this Court correctly applied the law on racial gerrymandering. Under

these circumstances it is neither equitable nor fair to the voters of North Carolina to compel the disruption that will flow from holding special elections in 2017.

In *Dickson II*, the North Carolina Supreme Court adopted a strict county grouping formula to ensure compliance with North Carolina's WCP, harmonized with the requirements of federal law. The General Assembly must start by identifying all single counties with enough population to support a whole number of legislative districts. For such counties, the legislative district or districts must be drawn within each county. Thereafter, the General Assembly must identify the maximum number of two-county combinations with sufficient population to support a whole number of legislative districts and these districts must be drawn within that two-county group. This process continues with the General Assembly then being required to identify the maximum number of three-county combinations, the maximum number of four-county combinations, and so forth. *Dickson II*, 368 N.C. at 532, 781 S.E.2d at 439-40.

At trial, Dr. Hofeller explained that during the 2011 legislative process, he first started with a map that maximized the county combination as required by the WCP. Dr. Hofeller then followed an iterative process where he attempted to harmonize the maximum county combination map with geographically compact African American populations so that "VRA districts" could comply with the WCP "to the maximum extent practicable." *Stephenson I*, 355 N.C. at 383-84, 562 S.E.2d at 397; D.E. 128, Defendants' Proposed Findings of Fact Nos. 86-90. This iterative process resulted in county groups that contained more counties than the number of counties that could be combined under the strictest application of the WCP. *Id.* The process followed by Dr.

Hofeller resulted in enacted county groups and districts (including majority black VRA districts) which the North Carolina Supreme Court found to be in compliance with the North Carolina Constitution. *Dickson II*, 368 N.C. at 532, 781 S.E.2d at 439-40.

While districts located in a single-county group, such as districts located in Mecklenburg or Wake Counties, are not affected by the county grouping rules, many of the challenged districts are located in multiple counties, such as House Districts 12 and 21. If majority black districts located in county groups consisting of multiple counties are not permissible, then the State must change its county grouping formula to more strictly comply with the WCP formula.

Thus, as explained by Dr. Hofeller, only 15 of the 2011 Senate Districts are located in counties that do not have a challenged district and in a county group that complies with the strictest version of the county grouping formula. Hofeller Decl. ¶¶ 17-20. Only 39 of the 2011 House Districts are located in counties that do not have a challenged district and in a county group that complies with strictest version of the county grouping formula. *Id.* at ¶¶ 17, 19, 21. As a result, any new districting in 2017 will require new county groups and new district lines for 35 Senate Districts and 81 House Districts, or a total of 116 new legislative districts. *Id.* at ¶ 17.

A decision by the Court ordering new districts and new elections in 2017 will also effectively overrule the decision by North Carolina Supreme Court that the 2011 districts fully complied with state and federal law, a significant intrusion into that court's proper authority in a federal system of government. The Court should consider whether intervention by this Court into the lawful authority of the North Carolina Supreme Court

is appropriate where the United States Supreme Court, in pending cases, might very well decide that the North Carolina Supreme Court was right and this Court was wrong. Because the decisions in the two *Dickson* cases could be upheld by the Supreme Court, and this Court's decision reversed, this Court should refrain from requiring rushed redistricting and the dislocation of 116 legislative incumbents just so that special elections can be held in 2017.

Declining to order special elections for 2017 is consistent with the precedent set by the three-judge court in *Shaw II*. There, the district court was directed to enforce a judgment by the Supreme Court holding the 1992 version of CD 12 unconstitutional. Enforcing that judgment would have only required the State to redraw one Congressional District and any surrounding districts impacted by changes made in the 1992 CD 12, as opposed to the much more extensive legislative redistricting that will be required here. Despite the relatively minimal changes required by the Supreme Court's order in *Shaw II*, the district court did not order special elections for 1997 and gave the General Assembly until April 1, 1997 to enact a revised Congressional Plan. Despite the fact that voters residing in the 1992 CD 12 were living in a district which the Supreme Court had ruled to be a racial gerrymander, the district court allowed elections to proceed in 1996 and for the eventual winner of the 1996 election to serve the full two-year term provided for Congress under the United States Constitution.³

³ In arguing for special elections in 2017, plaintiffs rely upon the decision in *Smith v. Beasley*, 846 F.Supp. 1174 (D.S.C. 1996). The facts in *Smith* are easily distinguished. In *Smith*, the federal district court found various South Carolina house and senate districts to be racial gerrymanders and ordered a special election. However, at the time of the *Smith*

The equitable arguments against a court-ordered special election are far more compelling in this case than in *Shaw II*. Unlike the circumstances in *Shaw II*, there is no Supreme Court decision affirming the unconstitutionality of the districts that must be changed based upon this Court's judgment. Nor did the *Shaw II* court have to consider the impact of two decisions by the North Carolina Supreme Court finding the 1992 version of CD 12 to be constitutional. Under these circumstances, this Court should refrain from truncating the two-year terms provided for members of the General Assembly under the North Carolina Constitution or ordering the significant disruption in legislative district lines required to comply with this Court's judgment and North Carolina's WCP formula.

Declining to order special elections in this case is consistent with federal equitable principles relied upon by the North Carolina Supreme Court, which has recognized that an immediate remedy for unconstitutional districts is often outweighed by the disruption resulting from court-ordered redistricting. On August 22, 2007, the North Carolina Supreme Court found that the 2003 version of House District 18 violated the WCP provisions of the North Carolina Constitution and that it and any impacted districts needed to be redrawn. The effect of this Court's order resulted in the General Assembly only redrawing a few House districts in southeastern North Carolina, not 35 Senate

decision, that court did not have to consider the impact of two contemporaneous decisions by the State Supreme Court upholding the same districts based upon the same evidence. Nor does the evidence in *Smith* indicate that the *Smith* court's decision on the merits was subject to pending review by the United States Supreme Court. Finally, there is no evidence that South Carolina has a State constitutional criteria related to the grouping of counties or that the order by the *Smith* court would require South Carolina to redraw over two-thirds of its legislative districts in time for a special election.

districts and 81 House districts. But despite this relatively nominal impact, the North Carolina Supreme Court did not order the State to redraw House District 18 in time for the November 2008 General Election. Instead that court ordered that new districts be enacted in time for the November 2010 General Election. In withholding immediate relief – for a general election that was a year in the future as of the time of the court’s opinion – the North Carolina Supreme Court relied upon the decision by the Supreme Court in *Reynolds v. Sims*, 377 U.S. 573, 585 (1964). See *Pender County*, 361 N.C. at 510, 649 S.E.2d at 376. More specifically, in citing *Reynolds*, the North Carolina Supreme Court noted:

In awarding or withholding immediate relief [in an appropriate case] a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a state in adjusting to the requirements of a court’s decree.

Id. (quoting *Reynolds*, 377 U.S. at 585).

Proper application of federal equitable principles, stated in *Reynolds* and relied upon by the North Carolina Supreme Court in *Pender County*, requires that this Court not order special elections for 2017 and instead give the General Assembly until July 28, 2017 (the same date on which plans were enacted in 2011) to enact plans that conform to this Court’s order, with new districts to be used in the 2018 General Election. Delaying any new required redistricting until the 2018 General Election will also give the State an opportunity to expedite its redrawing of precincts so that new districts may be better able

to follow precinct lines. *See supra* at 7. Unlike the overreaching relief requested by plaintiffs, the approach suggested by defendants accords a reasonable amount of deference to the North Carolina Supreme Court's decisions, and accounts for the reality of United States Supreme Court review of that court's decisions and this Court's order.⁴

2. Should this Court order special elections for 2017, the General Assembly should be given until at least May 1, 2017, to enact new districting plans.

Plaintiffs request this Court to force the General Assembly to redistrict nearly 75% of the State's legislative district in only two weeks so that a special election can be held in November 2017. Plaintiffs primarily rely upon a state statute that does not require the truncated legislative process they propose. Further, while defendants believe that it is inequitable for this Court to order special elections for 2017, allowing the General Assembly a bare minimum amount of time to enact new plans will still provide sufficient time for a special election to go forward in 2017.

Plaintiffs claim that N.C. Gen. Stat. § 120-2.4 requires that the General Assembly only be given two weeks to enact new districting plans for North Carolina. This statute was enacted in 2003 (*see* S.L. 2003-434, 658 Ex. Sess. Section 9), four years before the decision by the North Carolina Superior Court in *Pender County*. Clearly, as a matter of state law, the North Carolina Supreme Court did not believe it was obligated to only give the legislature two weeks to modify a few House districts because of this statute. Were

⁴ The Court should also decline to order special elections because of the significant financial and administrative burdens created for county board of election and the potential for voter confusion resulting from overlapping municipal and local elections that are already scheduled for the fall of 2017. Declaration of Kim Westbrook Strach (October 28, 2016) ("Strach Decl.") at ¶¶ 38-50 (attached as Exhibit 3).

that not the case, the decision in *Pender County*, where the equitable reasons for not requiring immediate redistricting were far less compelling than the circumstances in this case, would have been quite different. The fact is that N.C. Gen. Stat. § 120-2.4 only requires that a *state* court give the General Assembly *at least* two weeks to enact new districts before the court implements a *court-drawn* interim plan. Nothing under state law obligates a court to allow the General Assembly *only* two weeks to enact new plans. And in the only reported North Carolina decision following the enactment of N.C. Gen. Stat. § 120-2.4, the North Carolina Supreme Court gave the General Assembly three years to enact and enforce a remedial plan.

Plaintiffs cite to *Harris*, where the district court gave the state approximately two weeks to enact new congressional districts. Yet it is certainly hard to dispute that the logistics involved in modifying thirteen congressional districts, which are not subject to the WCP, involving thirteen members of Congress who were not members of the General Assembly and who do not have a vote in the ratification of a new congressional plan are far less complicated than the circumstances now facing the General Assembly. Here, the General Assembly will need to enact new plans that strictly comply with the WCP that will result in changed district lines for a supermajority of current legislative incumbents who have the right to vote on new proposed districting plans.

Moreover, during this litigation, plaintiffs complained about the redistricting process followed in 2011, but now ask this Court to impose a timeline that will all but guarantee little, if any, public input and a process that will at best be opaque. Similarly, the *Harris* plaintiffs complained about how the State rushed the legislative process when

the General Assembly ratified the 2016 Congressional Plan. *See* Pl's Objections and Memorandum of Law Regarding Remedial Redistricting Plan in *Harris v. McCrory*, Case No. 1:13-cv-949 (D.E. 157) (filed March 3, 2016). If this Court orders the General Assembly to enact plans within two weeks of convening, and enters this order even before the identity of legislative leaders and committee chairmen for the 2017 session are known, the elected leadership will be required to follow an even more expedited process for changing 116 legislative districts as compared to the legislative process adopted by the 2016 leadership to enact the 2016 Congressional Plan. Given that it took seven months for the 2011 General Assembly to discuss plans and marshal a majority of members to vote for the House and Senate plans, it is both unreasonable and unrealistic to expect the General Assembly to do so in two weeks. This is an especially inequitable where this Court's decision on the merits might be reversed. Fairness and common sense dictate that this Court not impose an unrealistic deadline for enacting new plans.

While this Court should not order special elections for 2017, if this Court nonetheless does so, a deadline of May 1, 2017, will give the General Assembly an improved opportunity to enact remedial districts. Both the *Shaw II* court and the *Smith* court gave the legislatures in those cases a deadline of April 1. Given that there are significantly more districts at issue here than in either of those cases, a May 1 deadline is much more equitable.

Plaintiffs will not be prejudiced if the court orders special elections and allows the General Assembly until May 1, 2017, to enact plans. As shown by the Strach Declaration, there will be sufficient time for this Court to review and approve any plans

enacted by May 1, 2017, and for elections to be held in November 2017. Under the possible schedules explained by Ms. Strach, primaries would be held in September 2017.

Under this scenario, defendants propose the following timeline:

May 1, 2017 – Defendants file copies of the remedial redistricting plans with the Court.

May 8, 2017 – Plaintiffs file objections, if any, to the remedial redistricting plans

May 12, 2017 – Defendants file a response to any objections filed by plaintiffs

Under the above schedule, the Court would have time to review and rule upon any objections by plaintiffs in time to allow the Board of Elections (albeit under a very tight timeline) to conduct special elections in November 2017.

CONCLUSION

For the foregoing reasons, defendants respectfully request that no special elections be ordered for 2017 and that the General Assembly be given until July 28, 2017 to adopt remedial plans to be used in the 2018 General Election, assuming this Court's decision on the merits is not reversed by the Supreme Court. In the alternative, defendants request that the General Assembly be given until at least May 1, 2017, to enact remedial plans, should this Court decide that special elections are required.

Respectfully submitted this the 28th day of October, 2016.

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

/s/ Thomas A. Farr

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NORTH CAROLINA DEPARTMENT OF
JUSTICE

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR ADDITIONAL RELIEF** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 28th day of October, 2016.

OGLETREE, DEAKINS, NASH
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/s/ Thomas A. Farr

26669274.1

EXHIBIT 1

Declaration of Dr. Thomas Hofeller

IN THE UNITED STATES DISTRICT COURT
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NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et al.*,)
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 Plaintiffs,)
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 STATE OF NORTH CAROLINA, *et al.*)
)
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DECLARATION OF THOMAS B. HOFELLER, PH.D. (October 28, 2016)

Thomas Brooks Hofeller, under penalty of perjury, declares the following:

1. I am a recognized expert in the fields of districting and reapportionment in the United States. I have been retained, as an independent consultant, through counsel by Intervenor-Defendants to provide expert testimony in this case. My hourly rate is \$300 per hour.

QUALIFICATIONS

2. I set forth here a summary of my experience that is most relevant to this testimony. The full range of my professional qualifications and experience is included in my resume, which is attached as Appendix 1.

3. I am a Partner in Geographic Strategies, LLC, located in Columbia, South Carolina. Geographic Strategies provides redistricting services including database construction, strategic political and legal planning in preparation for actual line drawing, support services and training on the use of geographic information systems (GIS) used in redistricting, analysis of

plan drafts, and actual line-drawing when requested. The corporation and its principals also provide litigation support.

4. I hold a Ph.D. from Claremont Graduate University, where my major fields of study were American political philosophy, urban studies and American politics. I hold a B.A. from Claremont McKenna College with a major in political science.

5. I have been involved in the redistricting process for over 46 years, and have played a major role in the development of computerized redistricting systems, having first supervised the construction of such a system for the California State Assembly in 1970-71.

6. I have been active in the redistricting process leading up to and following each decennial census since 1970. I have been intimately involved with the construction of databases combining demographic data received from the United States Census Bureau with election information which is used to determine the probable success of parties and minorities in proposed and newly enacted districts. Most of my experience has been related to congressional and legislative districts, but I have also had the opportunity to analyze municipal and county-level districts.

7. I served for a year and one half as Staff Director for the U. S. House Subcommittee on the Census in 1998-99.

8. I was Staff Director of the Subcommittee when the Census Bureau was proposing to substitute the American Community Survey (ACS) for the use of the decennial long form questionnaire in the 2000 and previous decennial Censuses. The long form was not used in the 2010 Decennial Census.

9. I have drafted and analyzed plans in most states including, but not limited to, California, Nevada, Arizona, New Mexico, Colorado, Texas, Oklahoma, Kansas, Missouri,

Minnesota, Wisconsin, Illinois, Indiana, Ohio, Arkansas, Mississippi, Louisiana, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, New York, New Jersey and Massachusetts.

10. In this decennial round of redistricting, I have already been intensely involved in Texas, Alabama, North Carolina, Virginia and Massachusetts. As much of my consulting activities involve work in states subject to the provisions of Section 5 of the Voting Rights Act. I am very familiar with the data used to analyze the expected performance of redrawn and newly created minority districts. Although I am not an attorney, I regularly advise clients about the characteristics of minority districts in their plans, and whether or not they are meeting the requirements of both Sections 2 and 5 of the Voting Rights Act.

11. I have given testimony as an expert witness in a number of important redistricting cases including, but not limited to, Gingles v. Edmisten, 590 F. Supp. 345 (N.D.N.C. 1984), *aff'd in part and rev'd in part* Thornburg v. Gingles 478 U.S. 30 (1986); State of Mississippi v. United States, 490 F. Supp. 569 (D.C.D.C. 1979); Shaw v. Hunt, 92-202-CIV-5-BR, U.S. District Court for the Eastern District of North Carolina, Raleigh Division (1993-4); Ketchum v. Byrne, 740 F.2d 1398, *cert. denied* City Council of Chicago v. Ketchum, 471 U.S. 1135 (1985), *on remand*, Ketchum v. City of Chicago 630 F. Supp. 551 (N.D. Ill. 1985); and Arizonans for Fair Representation v. Symington, CIV 92-0256, U.S. District Court Arizona (1992), *aff'd mem. sub nom.* Arizona Community Forum v. Symington, 506 U.S. 969 (1992), David Harris v. Patrick McCrory, Civil Action No. 1:13 CV-00949 (United States District Court, Middle District of North Carolina Durham Division 2013), North Carolina State Conference of the NAACP v. Patrick Lloyd McCrory, 1:13 CV-658 (United States District Court, Middle District of North

Carolina 2013) and *Sandra Little Covington v. State of North Carolina* 1:15-CV-00399 (United States District Court, Middle District of North Carolina 2016),

12. I have done considerable work regarding compactness as a criterion in redistricting maps, including but not limited to a work I coauthored in *The Journal of Politics*, “Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering.” *Id.*, Vol. 52, No. 4 (Nov., 1990), pp. 1155-1181 (with Richard G. Niemi, Bernard Grofman, and Carl Carlucci).

13. In that work, my co-authors and I discussed the advantages and limitations of various measures of compactness as well as differing definitions. As we stated in the article, “disputes about compactness will be numerous... there are those who would dismiss it outright as well as those who believe in it passionately.” We further noted that “whatever turns out to be its utility as a districting standard, we hope that we have sufficiently clarified the concept so as to stimulate more rational, enlightened discussion of its merits and faults as well as further study of its supposed effects.”

14. Both prior and subsequent to my co-authorship of the *Journal of Politics* article, I have regularly advised state legislatures and others regarding the concept of compactness and regarding the compactness of specific districts and districting plans.

DATA AND SOFTWARE

15. Census Data used in this report comes from the United States Bureau of the Census’ 2010 Redistricting Data File and the 2010 Decennial Census TIGER File, both released following the 2010 Decennial Census. No data containing election results or voter registration was used to prepare this report.

16. All the information I used has been incorporated into a geographic information system called “Maptitude for Redistricting”, a product which is offered by Caliper Corporation, based in Newton, Massachusetts. The maps included in this report have all been produced using Maptitude, and tables were produced using census and election data extracted from Maptitude and reformatted using Microsoft Excel. Other reports, such as compactness reports and core constituency reports were also produced using Maptitude.

OBJECTIVES OF DECLARATION

17. I have been asked by Defendants to compare the Whole County Groups (WCGs) used to draft the current legislative districts for North Carolina, known as the “Rucho Senate 2” Plan, enacted as Session Law 2011-402 on July 27th, 2011 (2011 Enacted Senate Plan), and “Lewis-Dollar-Dockham 4” Plan (Lewis-Dollar-Dockham 3, as amended), enacted as Session Law 2011-404 on July 28th, 2011 (2011 Enacted House Plan), with the Optimal¹ WCGs mandated by the North Carolina Supreme Court’s *Stephenson* decisions handed down prior to this redistricting cycle. These would be the Optimal WCGs used for any new General Assembly plans drafted subsequent to the Court’s 2016 decision in the *Covington* case. This analysis will identify the 2011 Enacted Plan’s WCGs for both the North Carolina House and Senate which will be replaced with new Optimum WCGs, along with the districts which will require redrafting as a result of such a switch. Furthermore, this analysis will also identify districts in WCGs which will remain the same but will require redrafting because these WCGs contain districts which the court has judged to be illegal. In summary, 35 out of 50, or 75 percent of the Senate

¹ The term “Optimal”, used in reference to WCGs, refers to the grouping of counties determined by strict application of the North Carolina Supreme Court’s order on how whole counties must be grouped together for purposes of legislative redistricting in conformance with the *Stephenson* decision, without modifications in order to comply with the requirements for construction of majority-minority districts in compliance with the U. S. Supreme Court’s order in *Bartlett v. Strickland*.

districts must be redrafted and 81 out of 120, or 67.5 percent, of the House districts must be redrafted.

NORTH CAROLINA'S LEGISLATIVE REDISTRICTING RULES ARE UNIQUE

18. The North Carolina Constitutional Amendment and the North Carolina Supreme Court's Stephenson decision are an anti-gerrymandering provision which severely limits the General Assembly's discretion in the construction of legislative maps. Most redistricting decisions are made by mechanical application of the formula to individual county populations from the Decennial Census. The maps provided in this report represent an application of formula result using the 2010 Decennial Census. Unlike most redistrict line-drawing decisions, where there are many ways to draft the line, there is only one correct solution to the use of the Whole County Provision.

WHOLE COUNTY GROUP NAMING CONVENTION

19. On both the tables and maps contained in this report I have assigned names to WCGs which contain three two-digit numbers separated by hyphens. The first number is the unique WCG number. The second number is the number of whole counties contained in the WCG. The third number is the number of legislative districts which must be drawn with that group.

SENATE WHOLE COUNTY GROUPS

20. Map 1 shows the location of the 29 WCGs which must be used to conform to the Optimum WCG structure. Map 2 shows the location of the 26 WCGs which were used in the 2011 Enacted Senate Plan. Map 3 divides the Senate Optimum into three classes. The first class of WCGs, colored green, will remain unchanged and also contain no districts determined to be illegal by the court. The second class of WCGs, colored yellow, will also remain unchanged but

the districts within them must be redrafted because the court has found some of the districts within the group to be illegal. The third class of WCGs, colored white, have been changed from the WCGs used in the 2011 Enacted Plan requiring that all the districts within them must be redrafted.

21. Table 1 lists all the Senate Optimum WCGs with additional information. The color coding on Table 1 is the same as the found on Map 3. The Group name, or ID, has also been parsed into 3 columns showing the group number, the number of counties in that group, and the number of districts in the group. A summary of the information contained on the table appears at the bottom.

HOUSE WHOLE COUNTY GROUPS

22. Map 4 shows the location of the 41 WCGs which must be used to conform to the Optimum WCG structure. Map 5 shows the location of the 36 WCGs which were used in the 2011 Enacted House Plan. Map 6 divides the House Optimum into three classes. The first class of WCGs, colored green, will remain unchanged and also contain no districts determined to be illegal by the court. The second class of WCGs, colored yellow, will also remain unchanged but the districts within them must be redrafted because the court has found some of the districts within the group to be illegal. The third class of WCGs, colored white, have been changed from the WCGs used in the 2011 Enacted Plan requiring that all the districts within them must be redrafted.

23. Table 2 lists all the House Optimum WCGs with additional information. The color coding on Table 2 is the same as the found on Map 6. The Group name, or ID, has also been parsed into 3 columns showing the group number, the number of counties in that group, and

the number of districts in the group. A summary of the information contained on the table appears on page 2 of the table.

NUMBER OF COUNTIES – COMPARING ENACTED TO OPTIMUM WCGs

24. Table 3 shows, for each General Assembly Chamber, the degree to which the 2011 Enacted Plans' WCGs compare to the Optimum WCGs in conformance to the dictates of the North Carolina Supreme Court's *Stephenson* decision. This table lists the number of counties per WCG from 1 to 20 for each Chamber's two grouping plans (Enacted and Optimal). For each grouping plan, the number of 1-county groups, 2-county groups, 3-county groups, and so on, are listed for each of the four WCGs discussed in this report (House Optimum, 2011 House Enacted, Senate Optimum and 2011 Senate Enacted). For example the table shows that there are 12 one-county groups, 17 two-county groups and 4 three-county groups in the new Optimum whole county grouping structure. In contrast, there were 11 one-county groups, 15 two-county groups, and 4 three-county groups in the 2011 Enacted Plan whole county grouping structure. The Optimum grouping structure is in greater conformance with the strict mandate of the *Stephenson* decision.

GENERAL CONCLUSIONS

25. While considerable complexity exists in drawing within the multi-district groupings, many of the districts in rural areas are entirely contained within single-district groupings and are self drawing. In the Senate map most of the districts in the rural eastern part of the state are in this category. All three of the Senate districts currently held by African-American incumbents are in this category. The three districts in question are the only districts within WCGs 15-03-01, 23-06-01 and 12-02-01. WCG 15-03-01 (2011 SD 4) becomes 47.46% BVAP and 46.15% NHWVAP. WCG 23-06-01 (2011 SD

3) becomes 44.36% BVAP and 51.04% NHWVAP. WCG12-02-01 (2011 SD 5) becomes 32.94% BVAP and 59.81% NHWVAP.

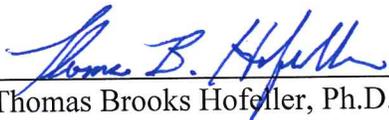
26. Similarly for the House of Representatives a number of single district groupings self draw in the rural eastern part of the state. This includes two districts which existed in their same configuration in the enacted plan, 17-02-01 and 40-02-01, both of which are majority minority districts. One of these districts, 17-02-01 (2011 HD 27) is currently represented by a NHW incumbent. Other districts currently held by African-American incumbents in the House in the rural eastern part of the state are more severely affected. Wilson County, which is adjacent to the districts mentioned above (and which is included in 2011 HD 24), also self draws as grouping 41-01-01 and has a BVAP of 38.11% and a NHWVAP 51.26%. In several other groupings in the eastern rural part of the state, application of the county line traverse rule within the groupings, the exact rule that was the subject of the *Pender County* case, reductions in the BVAP similar to those for Wilson County will occur. These groupings are 15-02-03, 14-02-02, 04-07-07, 18-02-02 and 19-03-03. The changes in these county groups will impact 2011 HDs 5, 7, 12, 21, and 48. Because the *Stephenson* case requires a drawing formula there is no way to avoid these results under the North Carolina Constitution.

27. Significant changes will have to be made in the whole county groupings to bring the new General Assembly Plans into maximum conformity with the *Stephenson* decision.

28. The two-week period which was given by the court to redraft the 2016 Congressional Plan only required redrafting of 13 districts, which also did not require the affirmative votes of the congressional incumbents affected by the new plan. In contrast, the

drafting of 36 new Senate districts and 81 new House districts, in strict conformity to the *Stephenson* whole county grouping criterion, is a far more complicated task facing the General Assembly than when it redrew the congressional map in early 2016.

Stated and signed under penalty of perjury on October 28, 2016.


Thomas Brooks Hofeller, Ph.D.

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Table 1
NORTH CAROLINA STATE SENATE
Optimum County Groups for 2016 Districts
Tabular Summary of Map 3

Group ID	Group Number	Counties In Group	Districts in Group	Group Type	Group Population	Total Group Deviation	Avg. Group Deviation	Avg. %Group Dve.
01-01-05	1	1	5	S-VRA	919,628	(33,922)	(6,784)	-3.56%
02-03-02	2	3	2	NEW	382,429	1,009	505	0.26%
03-02-01	3	2	1	SAME	191,556	846	846	0.44%
04-02-02	4	2	2	NEW	391,910	10,490	5,245	2.75%
05-03-04	5	3	4	NEW	781,289	18,449	4,612	2.42%
06-02-02	6	2	2	SAME	379,303	(2,117)	(1,059)	-0.56%
07-02-01	7	2	1	SAME	190,676	(34)	(34)	-0.02%
08-02-01	8	2	1	SAME	197,306	6,596	6,596	3.46%
09-02-02	9	2	2	S-VRA	366,383	(15,037)	(7,519)	-3.94%
10-02-01	10	2	1	SAME	192,266	1,556	1,556	0.82%
11-02-01	11	2	1	SAME	187,925	(2,785)	(2,785)	-1.46%
12-02-01	12	2	1	NEW	189,510	(1,200)	(1,200)	-0.63%
13-02-01	13	2	1	NEW	182,118	(8,592)	(8,592)	-4.51%
14-03-01	14	3	1	SAME	183,118	(7,592)	(7,592)	-3.98%
15-03-01	15	3	1	NEW	192,477	1,767	1,767	0.93%
16-02-01	16	2	1	NEW	199,013	8,303	8,303	4.35%
17-08-02	17	8	2	NEW	397,291	15,871	7,936	4.16%
18-03-02	18	3	2	SAME	378,148	(3,272)	(1,636)	-0.86%
19-04-02	19	4	2	SAME	397,505	16,085	8,043	4.22%
20-03-02	20	3	2	NEW	366,967	(14,453)	(7,227)	-3.79%
21-03-01	21	3	1	NEW	191,738	1,028	1,028	0.54%
22-06-01	22	6	1	SAME	187,477	(3,233)	(3,233)	-1.70%
23-06-01	23	6	1	NEW	182,039	(8,671)	(8,671)	-4.55%
24-06-03	24	6	3	NEW	559,198	(12,932)	(4,311)	-2.26%
25-02-05	25	2	5	S-VRA	961,612	8,062	1,612	0.85%
26-04-01	26	4	1	NEW	197,991	7,281	7,281	3.82%
27-07-01	27	7	1	SAME	194,102	3,392	3,392	1.78%
28-11-01	28	11	1	NEW	196,665	5,955	5,955	3.12%
29-02-01	29	2	1	NEW	197,843	7,133	7,133	3.74%

100 50

SUMMARY OF TABLE INFORMATION

Group Group Classification	Number of Counties	Number of Districts
County Groups Same as 2011, But With NO Court VRA Disapproved Districts	35	14
County Groups Same as 2011, But With Court VRA Disapproved Districts	5	12
2016 Enacted County Groups Different From 2011 Enacted Groups	60	24
All 2016 County Groups	100	50

Table 2
NORTH CAROLINA HOUSE OF REPRESENTATIVES
Optimum County Groups for 2016 Districts
Tabular Summary of Map 6

Group ID	Group Number	Counties In Group	Districts in Group	Group Type	Group Population	Total Group Deviation	Avg. Group Deviation	Avg. %Group Dve.
01-01-12	1	1	12	S-VRA	919,628	(33,916)	(2,826)	-3.56%
02-01-01	2	1	1	SAME	83,029	3,567	3,567	4.49%
03-01-01	3	1	1	SAME	78,265	(1,197)	(1,197)	-1.51%
04-07-07	4	7	7	NEW	584,028	27,794	3,971	5.00%
05-01-02	5	1	2	SAME	154,358	(4,566)	(2,283)	-2.87%
06-01-02	6	1	2	SAME	159,437	513	257	0.32%
07-01-02	7	1	2	SAME	162,878	3,954	1,977	2.49%
08-01-06	8	1	6	S-VRA	488,406	11,634	1,939	2.44%
09-01-02	9	1	2	SAME	151,131	(7,793)	(3,897)	-4.90%
10-01-04	10	1	4	S-VRA	319,431	1,583	396	0.50%
11-01-11	11	1	11	S-VRA	900,993	26,911	2,446	3.08%
12-02-04	12	2	4	NEW	331,092	13,244	3,311	4.17%
13-02-01	13	2	1	SAME	76,622	(2,840)	(2,840)	-3.57%
14-02-02	14	2	2	NEW	151,264	(7,660)	(3,830)	-4.82%
15-02-03	15	2	3	NEW	227,643	(10,743)	(3,581)	-4.51%
16-02-03	16	2	3	NEW	236,277	(2,109)	(703)	-0.88%
17-02-01	17	2	1	SAME	76,790	(2,672)	(2,672)	-3.36%
18-02-02	18	2	2	S-VRA	156,459	(2,465)	(1,233)	-1.55%
19-03-03	19	3	3	NEW	244,483	6,097	2,032	2.56%
21-02-01	21	2	1	NEW	83,109	3,647	3,647	4.59%
22-02-03	22	2	3	SAME	228,240	(10,146)	(3,382)	-4.26%
23-06-06	23	6	6	NEW	492,701	15,929	2,655	3.34%
24-02-05	24	2	5	NEW	389,076	(8,234)	(1,647)	-2.07%
25-02-04	25	2	4	SAME	304,164	(13,684)	(3,421)	-4.31%
26-02-02	26	2	2	SAME	158,722	(202)	(101)	-0.13%
27-02-01	27	2	1	SAME	78,360	(1,102)	(1,102)	-1.39%
28-02-02	28	2	2	NEW	157,520	(1,404)	(702)	-0.88%
29-03-01	29	3	1	SAME	78,372	(1,090)	(1,090)	-1.37%
30-03-02	30	3	2	SAME	160,340	1,416	708	0.89%
32-04-01	32	4	1	SAME	80,814	1,352	1,352	1.70%
33-04-02	33	4	2	S-VRA	165,774	6,850	3,425	4.31%
34-04-01	34	4	1	NEW	76,421	(3,041)	(3,041)	-3.83%
35-06-04	35	6	4	NEW	332,410	14,562	3,641	4.58%
36-05-02	36	5	2	SAME	151,870	(7,054)	(3,527)	-4.44%
37-01-03	37	1	3	SAME	238,318	(68)	(23)	-0.03%
38-06-01	38	6	1	NEW	77,143	(2,319)	(2,319)	-2.92%
39-02-04	39	2	4	SAME	310,098	(7,750)	(1,938)	-2.44%
40-02-01	40	2	1	SAME	81,057	1,595	1,595	2.01%
41-01-01	41	1	1	NEW	81,234	1,772	1,772	2.23%
42-02-03	42	2	3	SAME	229,999	(8,387)	(2,796)	-3.52%
43-03-01	43	3	1	NEW	77,527	(1,935)	(1,935)	-2.44%

100 120

SUMMARY OF TABLE INFORMATION

County Group Classification	Number of Counties	Number of Districts
County Groups Same as 2011, But With No Court VRA Disapproved Districts	40	39
County Groups Same as 2011, But With Court VRA Disapproved Districts	10	37
2016 Enacted County Groups Different From 2011 Enacted Groups	50	44
All 2016 County Groups	100	120

TABLE 3
STATE OF NORTH CAROLINA
North Carolina General Assembly
Analysis of 2011 Enacted and 2016 Optimum County Groups
Count of Numbers of Counties in Groups by Plan

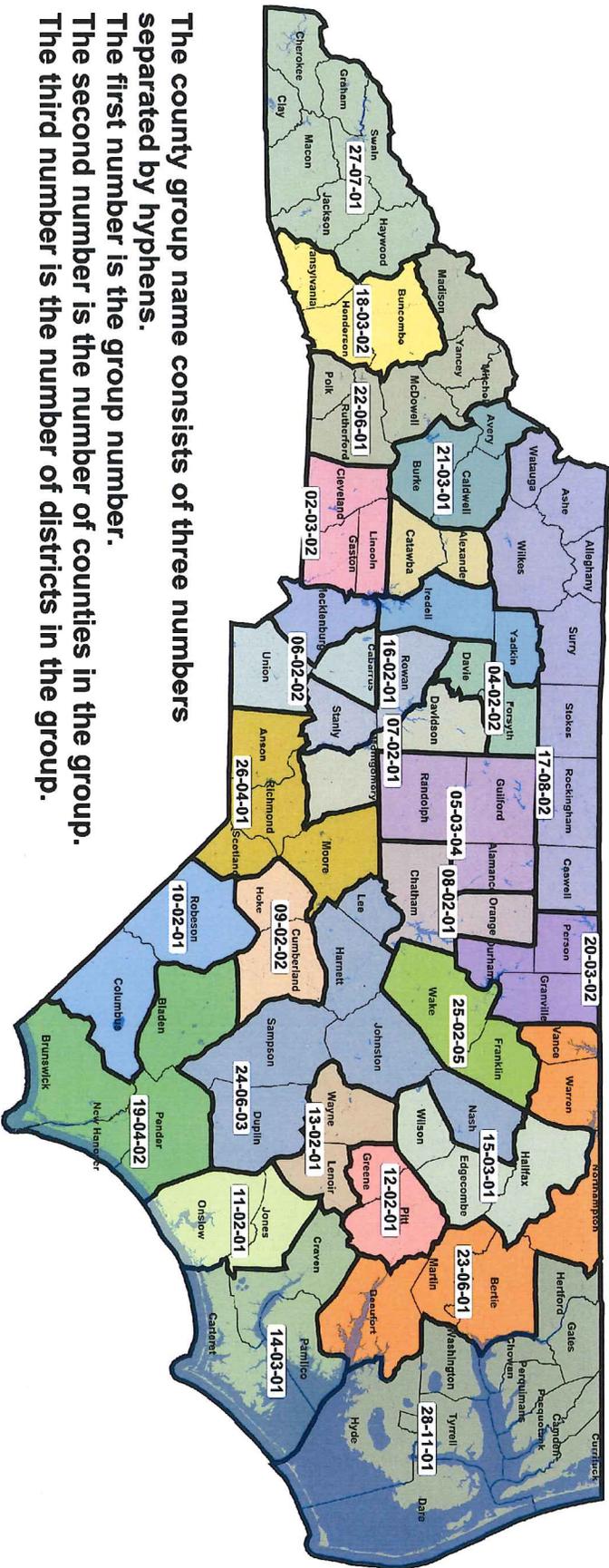
Number of Counties in Group	House Optimum Groups	House Enacted Groups	Senate Optimum Groups	Senate Enacted Groups
1	12	11	1	1
2	17	15	13	11
3	4	4	7	4
4	3	2	2	3
5	1	2		1
6	3		3	1
7	1		1	1
8			1	2
9		1		1
10				1
11			1	
12				
13				
14				
15				
16				
17				
18				
19				
20		1		
Total Groups	41	36	29	26

Note: The word "group" refers to whole county groups.

Note: The changes in the number of groups from between the 2016 Optimum and Enacted groups is due to the harmonization process between the Whole County Requirement and VRA requirements followed in the 2011 Plans.

MAP 1

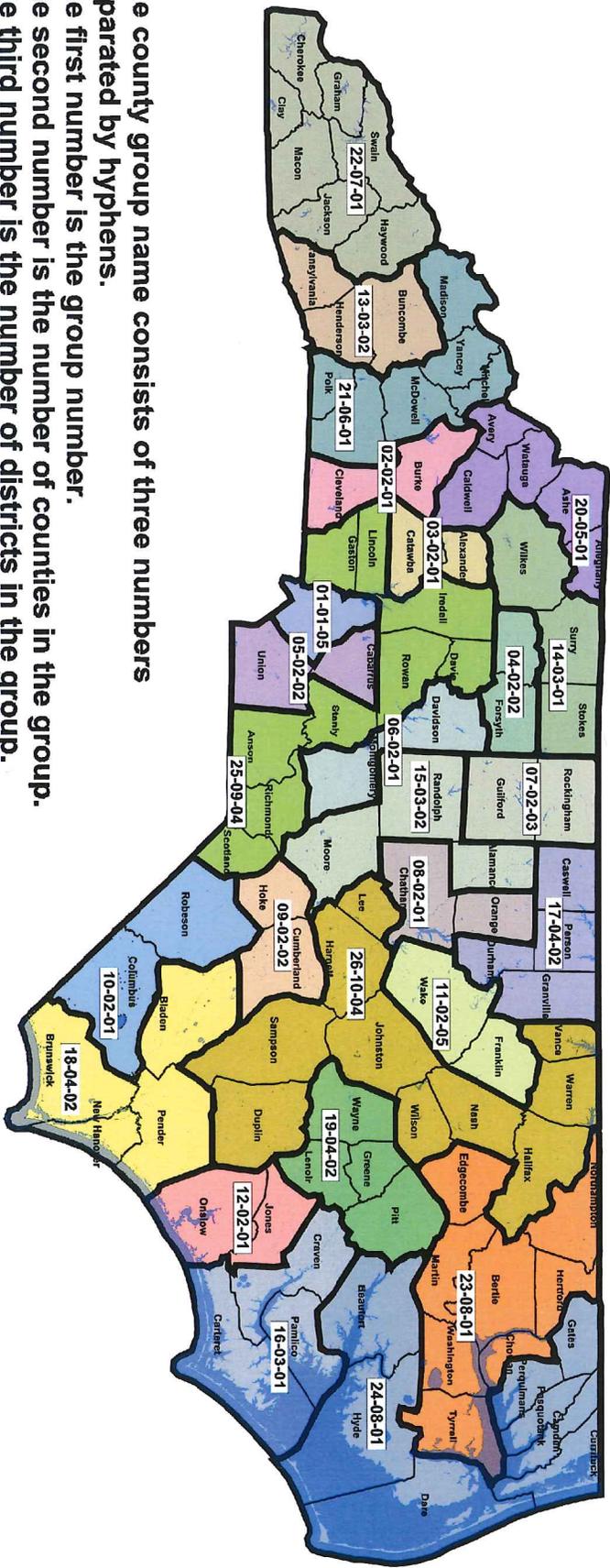
Optimum County Groups For Senate



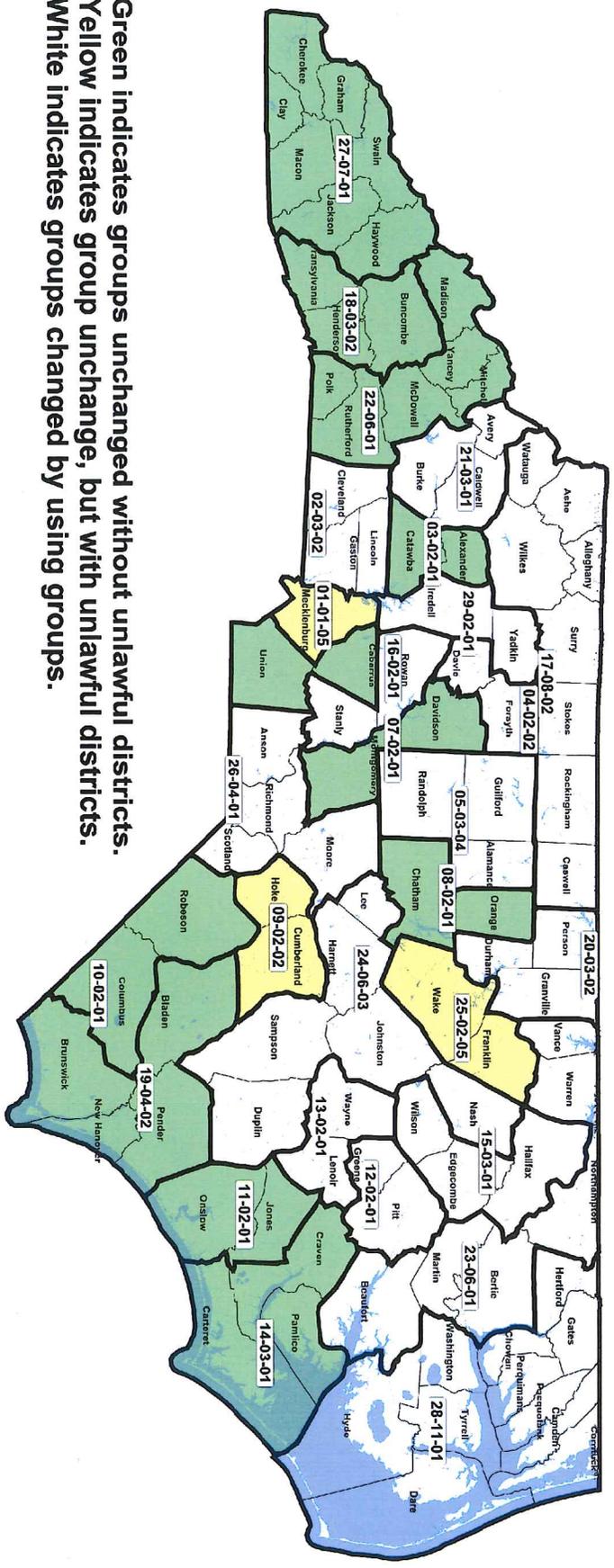
The county group name consists of three numbers separated by hyphens.
 The first number is the group number.
 The second number is the number of counties in the group.
 The third number is the number of districts in the group.

MAP 2 County Groups For 2011 Enacted Senate Plan

The county group name consists of three numbers separated by hyphens.
 The first number is the group number.
 The second number is the number of counties in the group.
 The third number is the number of districts in the group.

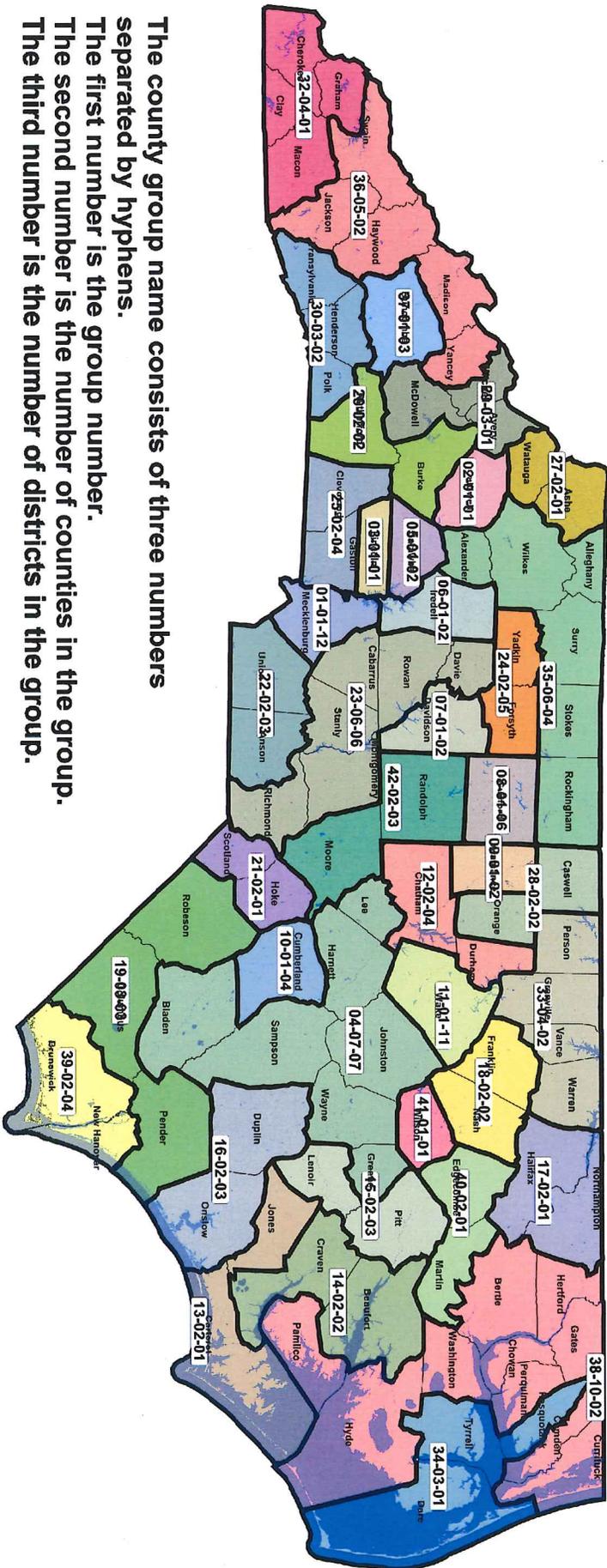


MAP 3 Comparison of 2011 Enacted to Optimum Senate County Groups



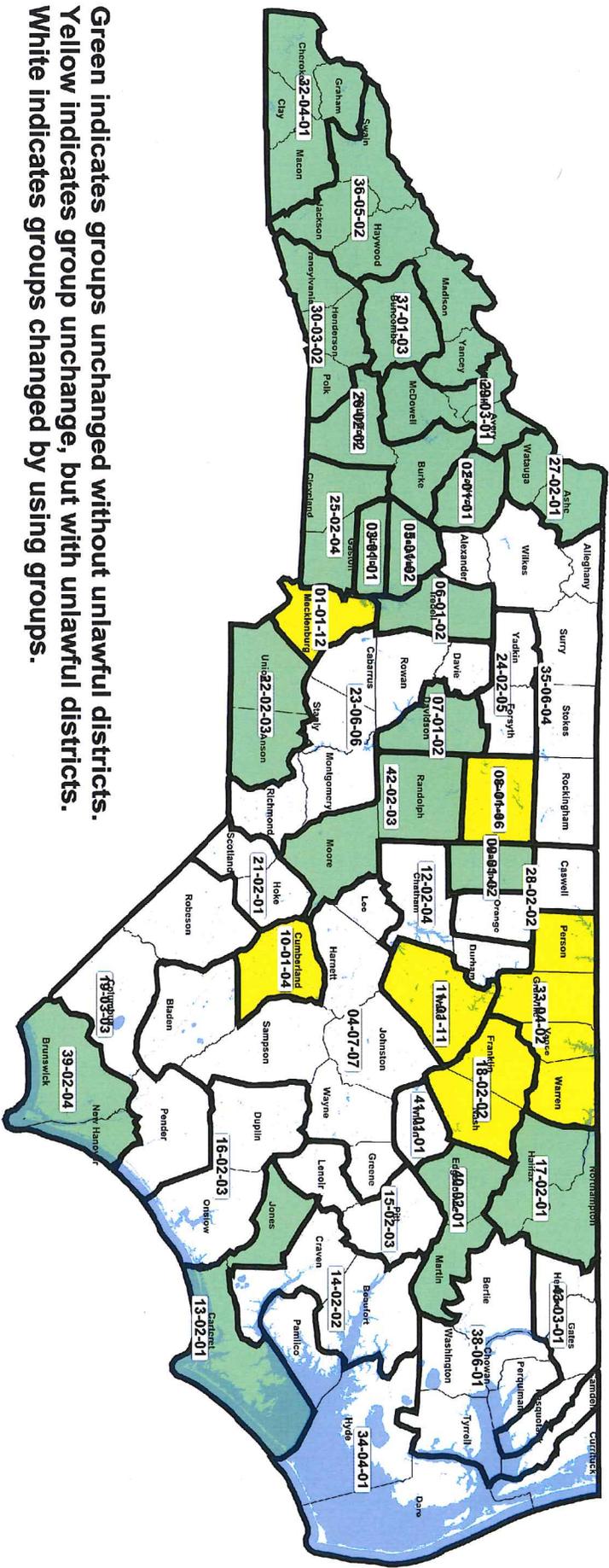
Green indicates groups unchanged without unlawful districts.
 Yellow indicates group unchanged, but with unlawful districts.
 White indicates groups changed by using groups.

MAP 4 Optimum County Groups For House



The county group name consists of three numbers separated by hyphens.
 The first number is the group number.
 The second number is the number of counties in the group.
 The third number is the number of districts in the group.

MAP 6 Comparison of 2011 Enacted to Optimum House County Groups



Green indicates groups unchanged without unlawful districts.
 Yellow indicates group unchanged, but with unlawful districts.
 White indicates groups changed by using groups.

Appendix 1

RESUME

Thomas Brooks Hofeller, Ph.D.

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Home: (984) 202-5193 – Cell: (703) 623-0764

Qualifications:

A varied career in government, business, academia and politics. Positions of significant responsibility, requiring intelligence, scholarship, communications skills, creativity and leadership include

- ◆ Successful completion of a Doctorate in Government requiring research and writing skills and the ability to communicate in an academic setting. Also includes a firm grounding in the philosophical and political roots of the American Governmental System.
- ◆ Litigation support and courtroom experience as a qualified expert witness in federal court. Clear presentation of difficult demographic and statistical concepts – making them understandable to non-technical audiences.
- ◆ Strategic and tactical analysis of political and demographic data for campaigns and political organizations. Understanding of survey design and interpretation, political resource targeting, list development and use of direct mail.
- ◆ Experience in management and information systems – including database construction, geographic information systems and creation of user interfaces that allow access by persons without extensive computer skills.
- ◆ Senior executive management of an office within a large government agency, planning and directing operations of a staff with a diverse number of missions while coordinating activities ranging across an entire agency.
- ◆ Setting up a new U. S. House subcommittee and conducting oversight, developing legislation and interacting with leadership. Experience in statistical, demographic and budgetary analysis.
- ◆ Creating and managing small businesses, including budgeting, human resources, facilities management, accounting and shareholder interface.

Areas of Expertise:

- ◆ **Redistricting:** Over 50 years of experience in the redistricting field. Development of computerized redistricting systems. Analysis of census and political data used for redistricting. Drafting of plans for congressional, legislative and local districts in multiple states. Submission of numerous expert reports and trial testimony as an expert witness.
- ◆ **Operations:** Recruiting, training and directing staffs for existing and newly instituted projects in government and national political organizations. Private sector experience as a business owner and CAO. Proven ability to organize and direct multiple projects with

effective use of delegation. Able to function as a team player in both management and support positions.

- ◆ **Communications:** Ability to develop and deliver engaging and informative presentations involving difficult concepts and issues to decision-makers, the public and press. Effective in preparation of affidavits and exhibits as well as giving depositions and delivering courtroom testimony.
- ◆ **Information Technology:** Expertise in analysis of complex technical problems involving large amounts of data – both for analysis and practical use in business, government and politics. Able to break down information and develop effective solutions. Ability to interface between highly technical personnel and management.
- ◆ **GIS:** Considerable experience in integration of mapping and data (geographic information systems).
- ◆ **Budget & Programs:** Experience in budget formulation and managing accurate accounting systems in the private and public sectors.

Education:

- ◆ **Claremont Graduate University**, Claremont, CA – Ph.D. in Government - 1980
- ◆ **Claremont McKenna College**, Claremont CA – B. A. in Political Science - 1970
- ◆ **U. S. Navy, Electronics School**, Treasure Island, CA, Graduate -1966

Publications:

- ◆ Thomas S. Engeman, Edward J. Erler and Thomas B. Hofeller (1980). **The Federalist Concordance**. Chicago: University of Chicago Press.
- ◆ Grofman, Bernard and Hofeller, Thomas B (1990). “**Comparing the Compactness of California Congressional districts Under Three Different Plans**”. In Bernard Grofman (ed) *Political Gerrymandering and the Courts*. New York: Agathon.
- ◆ Richard Niemi, Bernard Grofman, Thomas Hofeller, and Carl Carlucci (1990). **Measuring the Compactness and the Role of a Compactness Standard in a Test for Partisan Gerrymanderings**”. *Journal of Politics*.
- ◆ **Reports and affidavits prepared for, and testimony in, numerous court cases** (listed below).

References:

Current and recent employer references are available and will be furnished upon request.

Experience:

Geographic Strategies LLC
7119 Marine Drive
Alexandria, Virginia 22307

Partner

May 2011 – present

- Geographic Strategies provides redistricting services clients including database construction, strategic political and legal planning in preparation for actual line drawing, support services and training on the use of geographic information systems (GIS) used in redistricting, analysis of plan drafts, and actual line-drawing when requested. The corporation and its principals also provide litigation support.

State Government Leadership
Foundation
 1800 Diagonal Road, Suite 230

Redistricting Consultant **April 2011 – April 2012**

Alexandria, VA 22314

Contracting Officer: J. Christopher Jankowski
 Executive Director
 (571-480-4861)

- Retained as a consultant to state legislatures and statewide elected officials in all aspects of their work on the 2011-2012 redistricting process.

Areas of consultation:

- ◆ Develop strategic and tactical plans for Legislatures and statewide elected officials to develop and defend redistricting plans for legislative and congressional districts.
- ◆ Providing assistance in actual redistricting plan drafting and analysis.
- ◆ Providing a linkage between complex legal standards and their practical application to plan drafting in difficult political and technical environments.
- ◆ Provide assistance in redistricting litigation
- ◆ Identification of specialized GIS software, database and hardware systems to be used by stakeholders.
- ◆ Ongoing strategic, technical and legal support to those involved in redistricting in all states.
- ◆ Development of a clearinghouse of redistricting activities throughout the nation and analysis of the effects of the process on future elections.

**REPUBLICAN NATIONAL
COMMITTEE**

310 First Street, S.E.

Washington, DC 20003**Redistricting Consultant****May 2009 – April 2011**Contracting Officer: John Phillippe
RNC Chief Counsel
(202) 863-8638

- Retained as a consultant to recreate a new department to coordinate the redistricting activities of the National Committee and the greater GOP community in preparation and execution of the 2011 redistricting Areas of responsibility and to support the Committee's 2011 through 2012 redistricting efforts:
- ◆ Developed a strategic plan for the Committee to best position itself for maximum success in this highly competitive process.
 - ◆ Liaison and training with members of Congress, legislators, key statewide officials, state parties and other divisions within the Committee to ensure a high level of political, technical and legal preparation.
 - ◆ Recruitment and training of a technical and legal staff.
 - ◆ Providing a linkage between complex legal standards and their practical application to plan drafting in difficult political and technical environments
 - ◆ Identification of specialized GIS software, database and hardware systems to be used by the Committee and other stakeholders.
 - ◆ Ongoing strategic, technical and legal support to members of congress and those involved in redistricting in all states, including plan drafting.
 - ◆ Development of a clearinghouse of redistricting activities throughout the nation and analysis of the effects of the process on future elections.

**DEPARTMENT OF
AGRICULTURE
FARM SERVICE AGENCY**

1400 Independence Avenue

Washington, DC 20250**Associate Administrator
for Operations and
Management****June 2004 – January 2009**Supervisor: Teresa C Lasseter, Administrator
Farm Service Agency
(229) 890-9127

- Associate Administrator providing management and oversight to staff with diverse missions supporting the activities of the entire Farm Service Agency (FSA).

Areas of responsibility:

- ◆ Provides oversight and guidance to the 1,100 person staff of the Deputy Administrator for Management. These functions include management services, human resources, financial management, budgeting, and information technology.

- ◆ Directs the activities of the Office of Civil Rights which performs all of the EEO functions for the Agency, as well managing FSA's diversity programs.
- ◆ Provides oversight and guidance to the Office of Business and Program Integration. This office supports a wide range of cross-cutting activities including economic policy analysis, strategic planning, outreach, state and county office review, county service center integration, emergency planning, county office reviews and audits, e-Government, and program appeals and litigation.
- ◆ Has primary oversight of the business realignment process underway in the Agency. This realignment includes such projects as Agency-wide enterprise architecture development, field office realignment, and concurrent changes to the Agency's business processes. This realignment is necessary to allow the Agency to meet the present and future challenges involved in providing the best possible customers service and implementation the President's Management Agenda.
- ◆ Spearheads the ongoing reform of the FSA county committee election system which included the drafting of guidelines just published in the Federal Register.

**DEPARTMENT OF
AGRICULTURE
FARM SERVICE AGENCY**
1400 Independence Avenue

Washington, DC 20250

**Director, Office of
Business and Program
Integration**

Apr. 2003 – June 2004

Supervisor: Verle Lanier, Associate Administrator for
Operations and Management (retired)
(301) 424-5776

- Director of a senior level office directing the activities of subordinate staffs with diverse missions supporting the overall activities of the Farm Service Agency.

Areas of responsibility:

- ◆ Provided oversight and guidance to the 75-person staff of the Office of Business and Program Integration. This office supported a wide range of cross-cutting activities including economic policy analysis, strategic planning, outreach, state and county office review, county service center integration, emergency planning, county office reviews and audits, e-Government, and program appeals and litigation.
- ◆ Directed the development of administrative strategies essential to the successful management of e-Government initiatives. Coordinated citizen-centered eGovernment initiatives.
- ◆ Provided centralized direction for the Agency's strategic plan in compliance with the Government Performance and Results Act of 1993.
- ◆ Coordinated outreach efforts for all FSA programs to enhance participation of small or limited resource farmers and ranchers to provide equal access to programs striving to acquire and maintain economic viability for family farmers and ranchers.

- ◆ Directed the preparation of policies and dockets on national program determinations to be submitted for CCC Board consideration and Federal Register publications.

**REPUBLICAN NATIONAL
COMMITTEE**

310 First Street, S.E.

Washington, DC 20003

Redistricting Director

Jul. '99 – Mar. 2003

Supervisor: Thomas Josefiak, former RNC Chief Counsel
(703) 647-2940

- Hired to create a new department to coordinate the redistricting activities of the National Committee mandated by the release of data from the 2000 Decennial Census.

(See the description of present position.)

**U. S. HOUSE SUBCOMMITTEE
ON THE CENSUS**

Staff Director

Feb. '98 - Jul. '99

Supervisor: Hon. Dan Miller, Chairman
(202) 225-5015

- Staff Director at inception of this oversight subcommittee, created by the House in February of 1998, to monitor the preparations for and the execution of the 2000 Decennial Census. Directed all day-to day operations of the subcommittee including:
 - ◆ Recruitment and training of a staff for a new subcommittee.
 - ◆ Liaison with the Director and Senior Staff of the Census Bureau, the Department of Commerce, and U.S. Senate Staff involved in census oversight.
 - ◆ A complete examination of the preparations underway at the Census Bureau for conduct of the 2000 Decennial Census.
 - ◆ An examination of the proposed statistical methods proposed by the Bureau to improve coverage of the Census.
 - ◆ Reviewed and made recommendations to the Chairman and House Leadership regarding census policy.
 - ◆ Coordination with Government Accounting Office personnel involved in census oversight.
 - ◆ Preparation and support for oversight hearings conducted by the members of the Subcommittee.
 - ◆ Interface between the academic statistical community and the subcommittee in the development of census policy.
 - ◆ Liaison with census stakeholders in general, with particular attention to members of the Decennial Census Advisory Committees.

**U. S. HOUSE COMMITTEE
ON HOUSE OVERSIGHT**

Professional Staff

Nov. '97 - Feb. '98

Supervisor: Hon. William M. Thomas, Chairman
(202) 225-2915

- Involved in the oversight activities of the Committee that supervises the operations of the U.S. House of Representatives. Advised the Chairman and House Leadership on congressional policy with regard to all census operations prior to the establishment of the Subcommittee on the Census

PARTES CORPORATION Director of Administration Mar. '96 - Nov. '97

Kirkland, Washington

Supervisor: Mark Schnitzer, Chairman

- Chief Administrator of a software development company specializing in the creation of databases used by investment professionals to analyze information on securities.

Information was downloaded, parsed, and reformatted from the Securities and Exchange Commission's EDGAR database and other relevant sources. Was responsible for all administrative functions of the corporation including:

- ◆ Procurement, renovation and management of facilities housing the company.
- ◆ All human resource activities.
- ◆ Accounting and payroll.
- ◆ Liaison with attorneys and shareholders.

CAMPAIGN MAIL & DATA, INC Professional Staff Nov. '93 - Mar. '96

Falls Church, Virginia

Supervisor: John Simms, President
(703) 790-8676

- Supervised development and maintenance of geographic databases that were integrated with the company's various political and commercial lists. Created a new department that collected and converted voter lists from states, counties and towns.

NATIONAL REPUBLICAN Redistricting Director Mar. '89 – Nov. '93
CONGRESSIONAL COMMITTEE

320 First Street, S.E.
Washington, DC 20003

Supervisor: Maria Cino, Chief of Staff

- Created a new department to coordinate the redistricting activities of the NRCC and provide support to all GOP members of the U.S. House and their staffs.

Areas of responsibility:

- ◆ Recruitment and training of a technical staff.

- ◆ Development of specialized GIS software, databases and hardware systems to be used by the Committee and members of Congress.

**REPUBLICAN NATIONAL
COMMITTEE**

MIS Director

Jan. '82 – Mar. 89

310 First Street, S.E.
Washington, DC 20003

- Transformed the Committee's computer capabilities from a single mainframe system operated completely within a computer division into a building-wide network, utilized by all divisions and from remote locations. Supervised all the Committee's data processing activities, including database and software development. Directed research activities involving analyses of demographic and election data. Primary computer consultant to the GOP's state and county party organizations.

**ROSE INSTITUTE OF STATE
AND LOCAL GOVERNMENT**

Associate Director

1973 – 1981

Claremont McKenna College
Claremont, California

- Co-Founder of this Southern California research center specializing in the examination of current financial and political issues affecting California's state and local governments. Supervised staff and day-to-day operations, directed software and database development, managed research projects and assisted in fundraising.

**COMPASS SYSTEMS, INC.
AND LOCAL GOVERNMENT**

Vice President

1970 – 1973

San Diego, California

- Part of the management team that developed the first computerized geographic mapping and data retrieval system used by the California State Assembly for redistricting and demographic analysis. Directly supervised programming and database development staffs.

UNITED STATES NAVY

Petty Officer 2nd Class

1965 – 1969

- Electronics Technician. Served on USS Porterfield, DD682, in Tonkin Gulf operations during Vietnam War. (Honorable Discharge)

Summary of Participation in Lawsuits:

Shaw v. Hunt, 92-202-CIV-5-BR, U.S. District Court for the Eastern District of North Carolina, Raleigh Division (1993-4)

This case was the second trial phase following the U.S. Supreme Court's reversal of the lower court in Shaw v. Reno (1993). Prepared alternative plans for presentation to the court. Prepared political and demographic analyses of the state's plans, along with numerous exhibits supporting the plaintiffs' complaints. Gave a deposition and served as plaintiffs' primary expert witness at trial.

Arizonans for Fair Representation v. Symington, CIV 92-0256, U.S. District Court Arizona (1992), aff'd mem. sub nom. Arizona Community Forum v. Symington, 506 U.S. 969 (1992)

Prepared an affidavit evaluating the three major plans submitted to court for redistricting of Arizona's six congressional districts. Plans were examined with regard to all major redistricting criteria. Also examined minority voting strength in proposed new sixth district in State Senate Plan. Gave expert testimony in trial phase. Drafted a new map for presentation in court that was adopted, with minor changes, by the three-judge panel.

De Grandy v. Wetherell, No 92-40015-WS, U.S. District Court Florida (1992)

Prepared model plans and submitted affidavits evaluating alternative plans for two of the parties in the congressional phase of the case and gave testimony on the political and voting rights implications of various other plans. Presented an affidavit and gave expert testimony in the legislative phase of the case for the De Grandy plaintiffs.

Good v. Van Straten, 800 F. Supp. 557, U.S. District Court Eastern & Western Michigan (1992)

Prepared compactness analysis of plans submitted to court to redistrict Michigan's congressional districts. Gave testimony on compactness theories and other relevant redistricting criteria.

Pope v. Blue, U.S. District Court Western District of North Carolina (1992)

Prepared an affidavit containing compactness analysis and political analysis of the plan passed by North Carolina Legislature and approved by U.S. Department of Justice.

Ketchum v. Byrne, 740 F.2d 1398, cert. denied City Council of Chicago v. Ketchum, 471 U.S. 1135 (1985), on remand, Ketchum v. City of Chicago 630 F. Supp. 551 (N.D. Ill. 1985)

Consultant to African-American plaintiffs (P.A.C.I.). Assisted in building Plaintiffs' political and demographic database, performed a racial and ethnic analysis of City of Chicago, gave a deposition, and testified in court. Participated in second remedy phase of case, gave a second deposition, was prepared to give testimony (the case was settled before retrial).

Carrillo v. City of Los Angeles, No. CV-85-7739 JMI-JRX (unreported) (C.D. Cal. 1986)

Consultant to Mexican American Legal Defense Fund (MALDEF). Constructed database, performed analysis of ethnic voter registration levels, analyzed various plans submitted by all parties, submitted affidavit to the court.

McNeil v. Springfield School District, 656 F. Supp. 1200, 66 F. Supp. 1208 (C.D. Ill 1987), 851 F.2d, 937 (7th Cir. 1988)

Consultant to counsel for Springfield School Board. Constructed demographic database, performed analyses on various proposed districts, gave deposition, presented affidavit to court. Prepared an analysis determining levels of African-American voting strength in proposed districts.

State of Mississippi v. United States, 490 F. Supp. 569 (D.C.D.C. 1979)

Principle consultant to Joint Reapportionment Committee of Mississippi State Legislature. Compiled databases, drew plans, prepared analysis for the legislature, and gave general redistricting advice to Committee Chairman and Counsel. Gave an extensive deposition and testified before the District Court in DC. Assisted in the preparation of all briefs.

Badham v. Eu, 568 F. Supp. 156; 721 F.2d 1170 (1983); -- F.Supp. -- (Apr. 21 1988), appeal docketed, No. 87-1818 56 U.S.L.W. 3791 (U.S. May 4 1988)

Principle technical consultant to counsel for Badham Plaintiffs and Republican National Committee. In charge of all database construction, development of sample court plans, analyses of Burton Plans and preparation of maps, charts and other materials for trial. Submitted affidavits.

Bandemer v. Davis, 478 U.S. 109 (1986)

Consultant to counsel for amicus, Republican National Committee. Prepared a demonstration plan for brief submitted to U.S. Supreme Court.

California Legislature v. Reinecke, 6 Cal. 3d 595 99 Cal. Rptr. 481, 492 P.2d 385 (1972)

As consultant, drafted redistricting plan for California State Senate and Assembly that were subsequently accepted by California Redistricting Commission.

Jordan v. Winter, 541 F. Supp. 1135 (N.D. Miss. 1982)

Performed analyses and gave court testimony on behalf of the defendants.

Gingles v. Edmisten, 590 F. Supp. 345 (N.D.N.C. 1984), aff'd in part and rev'd in part Thornburg v. Gingles 478 U.S. 30 (1986)

Consultant to Attorney General. Performed demographic analysis of state with regard to creation of African-American districts for North Carolina General Assembly. Gave deposition and testified in court on behalf of Legislature.

City of Port Arthur v. United States, 459 U.S. 159 (1982)

Consultant to City Attorney. Performed analysis of racial content of City Council Districts. This was required for the case required because the 1980 Decennial Census data were not yet available. Analysis required extensive residential survey to determine racial characteristics of individual districts. Gave a deposition in the case.

Ryan v. Otto, 661 F.2d 1130 (7th Cir. 1981)

Consultant to Republican plaintiffs and Illinois Congressional Delegation. Drew alternative plans for presentation to Court, gave deposition and testimony.

Rybicki v. State Board of Elections, 584 F. Supp. 849 (N.D. Ill. 1984)

Principle technical consultant to State House of Representatives and the Senate Minority Caucus. Supervised construction of all political and demographic databases. Responsible for design and programming of House's computerized redistricting information system. Analyzed and drafted numerous redistricting plans. Gave depositions and testified at trial.

La Comb v. Growe, 541 F. Supp. 145 (D.Minn.), aff'd sub nom. Orwall v. La Comb, 456 U.S. 966 (1982)

Consultant to Minority members of Congressional Delegation. Drafted a plan for presentation to Court and submitted an affidavit.

Karcher v. Daggett, 462 U.S. 725 (1983), 467 U.S. 1222 (1984)

Participated in presentation of briefs on Republican side. Consultant to members of New Jersey Congressional Delegation.

Flanagan v. Gillmor, 561 F. Supp. 36 (S.D.Ohio 1982) Brown v. Brandon, (unreported), (S.D.Ohio Jan. 30, 1984), as modified (Feb. 13, 1984), aff'd 467 U.S. 1223 (1985)

Consultant to State Legislature. Modified 1981 congressional district redistricting plan to conform to "one person, one vote" standard imposed by decision of the Court.

Massachusetts Republican State Committee v. Connolly, 679 F. Supp. 109 (D. Mass. 1988)

Consultant to counsel for plaintiffs. Examined evidence submitted in regard to 1985 Massachusetts State Census (particularly for Boston), analyzed legislative redistricting plan, submitted affidavit, gave deposition.

Sinkfield v. Bennett, Civil Action CV 93-689-PR (Circuit Court of Montgomery County, Alabama)

Gave testimony supporting the replacement of the Alabama congressional plan drawn by the Federal Court with a plan drawn by the Circuit Court.

Mississippi State Conference of the NAACP v. Haley Barbour, Civil Action No. 3:11-ev-159 TSL-EGJ-LG (SD Mississippi, Jackson Division – 2011)

Prepared a declaration for the intervenors analyzing the compactness and deviations of various legislative plans submitted to the Court for consideration.

Dickson v. Rucho, Civil Action 11 CVS 16896 and North Carolina State Conference of the NAACP v. State of North Carolina, Civil Action 11CVS 16940 (General Court of Justice, Superior Court Division, Raleigh, North Carolina – 2011)

Submitted two affidavits and gave a deposition concerning my role as a consultant to the General Assembly with regard to the redistricting of North Carolina State Senate and State House of Repre-

sentative districts as well as the redistricting of that state's congressional districts. Testified at hearing before 3-judge panel.

Boone v. Nassau County Legislature, Civil Action CV 11-cv 02712 (Supreme Court of the State of New York, County of Nassau - 2011)

Prepared an affidavit evaluating the 2011 redistricting plan enacted by the Nassau County Legislature and other sample plans presented by the Plaintiffs, with particular attention to the efficacy of the use of the U.S. Census Bureau's American Community Survey for measuring compliance with the provisions of Section 2 of the Federal Voting Rights Act.

Petteway v. Henry, Civil Action CV 11-411 (SD Texas, Galveston Div. 2011)

Prepared and presented at trial an alternative redistricting plan Galveston County's commissioner districts to the court for defendant intervenors.

Pearson v. Koster, Civil Action 11AC-CC00624 (Circuit Court of Cole County, Missouri, Div. II - 2012)

Prepared an affidavit evaluating the compactness of Missouri's newly enacted congressional districts (2011) in light of the State Supreme Court's remand of this case for determination of whether or not, in light of Plaintiffs' alleged claims to the contrary, the districts reflected in H.B. 193 were sufficiently compact to meet the requirement contained in the Missouri Constitution that districts be "composed of territory as compact as may be." Served as the expert witness at trial for the defendant intervenors.

Bob Johnson v. State of Missouri, Civil Action 12AC-00056 (Circuit Court of Cole County, Missouri 2012)

Prepared an affidavit analyzing the compactness and deviations of the enacted State House of Representative districts.

Harris v. Arizona Independent Redistricting Commission, Civil Action cv-12-0894-PHX-ROS (United States District Court, District of Arizona 2012)

Prepared affidavits analyzing the state legislative districts enacted by the Arizona Independent Redistricting Commission concerning population deviations, ethnic and racial characteristics and adherence to other neutral redistricting criteria. Presented expert testimony at trial.

Cynthia Hauser v. Martin O'Malley, Civil Action September Term 2012, Misc. No 5 – 2012, (Maryland Court of Appeals)

Prepared a declaration analyzing the State Senate and State House of Maryland enacted by the Governor following the 2010 Census and comparing both plans to senate and house plans submitted by plaintiffs.. Conclusions were made concerning the integrity of county lines, and district deviations as well as adherence to the provisions of the federal Voting Rights Act.

Kermit L. Moore, Jr. v. State of Tennessee, In the Chancery Court Case No. 120402-III (2012)

Prepared an affidavit analyzing the State Senate redistricting plan enacted by the Legislature for the 2012 elections and compared it to a plan submitted as a bill by the opposition. Conclusions were made analyzing the compliance of both plans with the federal and state provisions of one-person/one vote.

David Harris v. Patrick McCrory, Civil Action No. 1:13 CV-00949 (United States District Court, Middle District of North Carolina Durham Division 2013)

Retained by Defendant's counsel to prepare a declaration in response to plaintiffs' expert report concerning the congressional redistricting plan enacted by the North Carolina General Assembly in 2011. Gave a deposition concerning the construction and characteristics of the congressional district contained in the enacted plan as well as other relevant congressional maps.

Terry Petteway v. Galveston County, Texas, Civil No. 3:-cv-00308, (United States District Court, Southern district of Texas, Galveston Division 2013)

Retained by Defendant's counsel to prepare a redistricting map for Galveston County's Justice of the Peace Precincts, prepared a declaration in response to plaintiffs' experts' reports and gave testimony at trial.

North Carolina State Conference of the NAACP v. Patrick Lloyd McCrory, 1:13 CV-658 (United States District Court, Middle District of North Carolina 2013)

Retained by Defendant's counsel to prepare an expert report summarizing a study of information from the voter files of North Carolina's State Board of elections as compared to the North Carolina Department of Motor Vehicles' (DMV) customer file as well as locations of DMV offices proximity to potential registered voters who do not appear to have drivers licenses or DMV ID,s Performed and analyses of demographics and registration information with regard to this information. Analyzed the locations and hours of one-stop voting centers. Testified as a witness at the trial of the case.

Golden Bethune-Hill v. Virginia State Board of Elections, Civil Action No. 3:14-cv-00852 (United States Court for the Eastern District of Virginia – Richmond Division 2015)

Retained by Defendant Intervenors to prepare an expert report determining whether H.B. 5005, which the Virginia General Assembly enacted to redistrict the Virginia House of Delegates, was compact and contiguous, and also to comment on other factors which are relevant to such a determination. Offered testimony at the trial in July of 2015.

Sandra Little Covington v State of North Carolina, Civil Action No. 1:15-cv-00399 (United States District Court for the Middle District of North Carolina – 2015)

Retained by Defendant Intervenors to prepare an expert report explaining the relationship between exemplar districts identifying compact areas of minority voting strength and the actual 2011 enacted redistricting plans for both chambers of the North Carolina General Assembly. Testified at trial

EXHIBIT 2

Press Release and Supporting Documents by Democracy North Carolina

Democracy North Carolina

1821 Green St., Durham, NC 27705 • 919-489-1931 or 286-6000 • democracy-nc.org

For Release Wednesday, August 10, 2016

Contact Bob Hall: 919-489-1931, 919-599-3467
or Isela Gutierrez: 919-908-7918

73,500 Extra Hours: More Voters, Needing More Time to Vote, Highlights Need for Strong Early Voting Plans

New figures released today show that North Carolina voters will need more time to cast ballots this fall, and they'll face longer lines at the polls if action is not taken in the next 10 days by county and state officials.

Democracy North Carolina, a nonpartisan voting rights group, said five indicators point to "a disastrous train wreck at the polls" if county boards of elections do not adopt more expansive early voting schedules than they used in the last presidential election.

Because of a ruling by the Fourth Circuit Court of Appeals, counties are scrambling to adopt new plans for a 17-day early voting period by an August 19 deadline set by the State Board of Elections. County boards of elections had crafted plans for a 10-day period under the old law that the court said was unconstitutional. The old law required counties to provide at least as many hours of early voting opportunity as they did in 2012, but the court's ruling eliminates that hourly minimum.

"Based on what we've seen in Guilford and Wake counties, we're worried that short-sighted or partisan local election officials will not adopt plans that serve the best interests of voters," said Bob Hall, executive director of Democracy North Carolina.

"Fortunately, many county boards have good leaders," he added. "They should all recognize the indicators and conditions that point to the need for investing in strong early voting plans with weekend and evening hours that will relieve the stress on Election Day."

The indicators include:

- **HIGH-TURNOUT SWING STATE.** North Carolina is again a swing state in the presidential race, along with hot US Senate and gubernatorial contests. Overall turnout of registered voters hit 70% and 68% in 2008 and 2012, respectively. It will likely exceed 67% again this year.
- **MORE VOTERS.** North Carolina now has 6.6 million registered voters, a gain of 275,000 over August 2012, and it will have nearly 7 million by November 2016. If just 64% of those additional 275,000 voters show up to vote, and each one takes 8 minutes to cast a ballot, that's an additional 23,500 hours of voting time elections officials need to plan for.
- **NO STRAIGHT-PARTY VOTING.** This is the first presidential election when NC voters cannot use the time-saving procedure of marking one box to choose all the candidates of one party. A surprising 2.5 million voters used straight-ticket voting in 2012, or 56% of all those who voted. Even if just 2 million voters need an extra 90 seconds to mark contests on North Carolina's

notoriously long ballot, the loss of straight-ticket voting will add at least 50,000 hours to the voting time in 2016 over 2012.

- **RELIANCE ON EARLY VOTING.** North Carolina voters love early voting – 56% of those voting in 2012 cast their ballots during the 17-day early voting period, and state election officials expect a similar percent will do the same in 2016 – if counties provide adequate locations and times for them.
- **SUPER-SIZED PRECINCTS.** Because early voting relieves the pressure on Election Day, county officials have not created new precincts with Election Day polling places. As a result, the number of precincts with more than 3,000 voters has steadily grown. Today, 48% of North Carolina’s registered voters live in precincts with more than 3,000 voters – that’s 3.2 million voters.

“We now have an election system that heavily depends on a very high use of early voting,” said Hall. “If counties don’t offer plenty of weekend and evening hours at accessible sites during early voting, we will see a disastrous train wreck at the polls.”

Isela Gutierrez, associate research director of Democracy NC, pointed out that counties need to also invest in better trained staff and more equipment. “In 2014 and in the March 2016 primary, we witnessed the serious delays and actual disenfranchisement that result from counties having too few intake stations and poorly prepared poll workers,” she said. “Polling places will need more voting booths and machines this fall because of increased registration and the loss of straight-ticket voting.”

Democracy North Carolina is calling on Governor McCrory to release at least \$2.5 million in emergency funds to help counties finance strong early voting plans, buy more voting equipment, and train and pay for more poll workers.

Gutierrez pointed out that state leaders have spent almost \$5 million of tax money on legal fees to defend the restrictive voting law passed in 2013.

“It’s time for Gov. McCrory to stop wasting money on legal fees and start helping voters,” she said. “We’re running out of time. The State Board of Elections staff is encouraging better early voting, better training, more staff, more investment for the voters. We need county and state officials to step up now and do their part.”

##

Number & Percent of Reg. Voters in Large Precincts, August 2016

COUNTY	# Reg Voters	Total # of Pre-cincts	# Prec with 4,000+ voters	# Voters in 4,000+ Pre-cincts	# Prec with 3,000+ voters	# Voters in 3,000+ Pre-cincts	% Total Voters in 3,000+
STATE	6,648,445	2,781	344	1,809,974	751	3,214,975	48%
ALAMANCE	96,798	37	3	15,669	13	49,741	51%
ALEXANDER	23,872	11	-	-	2	6,883	29%
ALLEGHANY	7,276	8	-	-	0	-	0%
ANSON	17,158	12	-	-	0	-	0%
ASHE	18,599	18	-	-	1	3,119	17%
AVERY	11,659	20	-	-	0	-	0%
BEAUFORT	32,566	21	-	-	1	3,686	11%
BERTIE	14,123	13	1	4,118	1	4,118	29%
BLADEN	22,516	18	-	-	0	-	0%
BRUNSWICK	91,813	26	10	50,502	15	67,322	73%
BUNCOMBE	191,479	81	5	21,862	17	64,430	34%
BURKE	57,361	34	-	-	2	6,526	11%
CABARRUS	126,951	47	8	40,153	14	61,409	48%
CALDWELL	54,180	21	2	10,214	6	23,949	44%
CAMDEN	7,502	4	-	-	0	-	0%
CARTERET	51,358	29	-	-	5	17,307	34%
CASWELL	15,352	10	-	-	1	3,028	20%
CATAWBA	101,652	40	3	14,956	13	49,476	49%
CHATHAM	49,444	19	5	26,574	6	30,253	61%
CHEROKEE	23,486	17	-	-	0	-	0%
CHOWAN	10,221	7	-	-	1	3,193	31%
CLAY	8,815	10	-	-	0	-	0%
CLEVELAND	61,302	21	5	25,323	7	32,776	53%
COLUMBUS	35,738	27	-	-	3	9,659	27%
CRAVEN	69,766	27	4	23,579	9	40,749	58%
CUMBERLAND	201,864	78	9	39,414	23	88,199	44%
CURRITUCK	18,415	12	1	5,126	3	12,362	67%
DARE	28,802	17	2	10,298	4	16,985	59%
DAVIDSON	102,706	43	4	18,078	11	42,067	41%
DAVIE	28,908	15	-	-	1	3,444	12%
DUPLIN	29,479	20	1	4,355	3	10,486	36%
DURHAM	216,898	58	21	125,712	34	170,558	79%
EDGECOMBE	38,035	22	1	4,573	3	10,819	28%
FORSYTH	243,653	101	9	42,222	23	90,176	37%
FRANKLIN	41,883	18	2	8,434	4	15,065	36%
GASTON	136,293	46	9	42,520	20	80,651	59%
GATES	8,450	7	-	-	0	-	0%
GRAHAM	6,348	5	-	-	0	-	0%
GRANVILLE	37,051	16	3	13,489	4	17,327	47%
GREENE	11,313	11	-	-	0	-	0%
GUILFORD	347,913	166	1	4,390	22	75,442	22%
HALIFAX	38,206	26	-	-	0	-	0%
HARNETT	70,233	14	8	53,494	11	64,950	92%
HAYWOOD	42,933	30	-	-	2	6,784	16%
HENDERSON	79,909	35	1	4,046	7	24,430	31%
HERTFORD	14,884	14	-	-	0	-	0%
HOKE	30,913	15	2	8,357	4	15,770	51%
HYDE	3,458	7	-	-	0	-	0%

COUNTY	# Reg Voters	Total # Precincts	# 4,000+ voters	Voters in 4,000+ Prec	# 3,000+ voters	Voters in 3,000+ Prec	% Voters in 3,000+
IREDELL	113,739	30	12	71,301	17	88,163	78%
JACKSON	26,867	15	1	5,113	2	8,380	31%
JOHNSTON	117,161	37	8	40,768	17	71,992	61%
JONES	7,359	8	-	-	0	-	0%
LEE	33,982	10	2	9,240	7	27,567	81%
LENOIR	38,837	23	1	4,122	3	11,061	28%
LINCOLN	53,647	23	1	4,274	5	17,258	32%
MACON	24,964	15	-	-	0	-	0%
MADISON	16,371	13	-	-	1	3,571	22%
MARTIN	17,075	13	-	-	2	6,077	36%
MCDOWELL	28,450	18	-	-	1	3,366	12%
MECKLENBURG	673,660	196	53	306,697	93	442,474	66%
MITCHELL	11,084	10	1	5,735	1	5,735	52%
MONTGOMERY	15,825	15	-	-	0	-	0%
MOORE	64,075	27	2	8,775	7	26,627	42%
NASH	65,041	24	4	20,840	7	30,693	47%
NEW HANOVER	161,129	44	18	90,752	29	128,748	80%
NORTHAMPTON	14,639	19	-	-	0	-	0%
ONslow	101,564	25	12	71,374	16	85,523	84%
ORANGE	109,895	44	2	9,729	10	36,937	34%
PAMLICO	9,545	11	-	-	0	-	0%
PASQUOTANK	27,736	9	2	8,988	5	19,397	70%
PENDER	38,256	21	-	-	5	16,838	44%
PERQUIMANS	9,962	8	-	-	0	-	0%
PERSON	26,187	11	3	12,843	3	12,843	49%
PITT	116,880	41	7	32,232	17	66,268	57%
POLK	15,672	8	-	-	1	3,171	20%
RANDOLPH	90,460	23	9	51,939	14	70,494	78%
RICHMOND	30,065	17	4	19,333	4	19,333	64%
ROBESON	74,809	40	2	8,751	8	29,372	39%
ROCKINGHAM	59,316	15	5	27,244	12	53,015	89%
ROWAN	92,144	42	1	4,132	7	25,324	27%
RUTHERFORD	44,048	18	2	9,474	5	19,612	45%
SAMPSON	36,943	23	-	-	0	-	0%
SCOTLAND	22,297	11	-	-	3	9,979	45%
STANLY	39,827	23	-	-	0	-	0%
STOKES	30,866	21	-	-	2	6,615	21%
SURRY	44,358	29	-	-	0	-	0%
SWAIN	10,312	6	-	-	1	3,196	31%
TRANSYLVANIA	24,791	15	-	-	0	-	0%
TYRRELL	2,443	7	-	-	0	-	0%
UNION	146,187	52	8	36,540	22	86,110	59%
VANCE	29,659	13	1	4,104	4	14,984	51%
WAKE	676,945	202	59	309,323	100	452,436	67%
WARREN	13,376	15	-	-	0	-	0%
WASHINGTON	8,584	7	-	-	0	-	0%
WATAUGA	43,469	20	1	4,160	7	25,461	59%
WAYNE	74,003	31	1	4,266	8	27,574	37%
WILKES	41,977	29	-	-	2	7,443	18%
WILSON	55,061	25	2	10,467	5	21,560	39%
YADKIN	23,673	13	-	-	1	3,394	14%
YANCEY	13,696	12	-	-	1	3,245	24%

EXHIBIT 3

Declaration of Kim Strach (October 28, 2016)

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

SANDRA LITTLE COVINGTON, *et al.*,
 Plaintiffs,
 v.
 THE STATE OF NORTH CAROLINA,
et al.,
 Defendants.

**DECLARATION OF
KIM WESTBROOK STRACH
(October 28, 2016)**

NOW COMES Kim Westbrook Strach, who under penalty of perjury states as follows:

1. I am over 18 years of age, legally competent to give this declaration and have personal knowledge of the facts set forth in it.
2. I am the Executive Director of the North Carolina State Board of Elections (“State Board”), a position I have held since May 2013. My statutory duties as Executive Director of the State Board include staffing, administration, and execution of the State Board’s decisions and orders. I am also the Chief Elections Officer for the State of North Carolina under the National Voter Registration Act of 1993 (“NVRA”). As Executive Director of the State Board, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director of the State Board, I provide guidance to the directors of the county boards.

3. As the Executive Director of the State Board and Chief Elections Officer for the State of North Carolina, I am familiar with the procedures for registration and voting in this State. I am also responsible for implementing the laws passed by the North Carolina General Assembly, supervising the conduct of orderly, fair, and open elections, and ensuring that elections in North Carolina are administered in such a way as to preserve the integrity of and protect the public confidence in the democratic process.

**I. OVERVIEW OF 2016 ELECTION CYCLE
FOR THE GENERAL ASSEMBLY**

4. An election cycle requires the commitment of significant administrative resources by state and county-level elections officials, who must coordinate both primary (when required) and general election contests.

5. Candidate filing for the 2016 Elections Cycle began at noon on December 1, 2015, and ended at noon on December 21, 2015. This filing period included those seeking election to the North Carolina's 120 State House districts and 50 State Senate districts, among other offices. In all, 277 candidates filed for either State House or State Senate.

6. If a primary was required in a particular contest, an election was held on March 15, 2016 (the "March Primary"), pursuant to N.C. Session Law 2015-258, which moved the statewide primaries from May to March for the 2016 election cycle. All second primaries were canceled in order to accommodate a separate congressional primary on June 7 (the "June Primary"). See N.C. Session Law 2016-2.

7. Absentee voting for the March Primary began on January 25, 2016. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), and the Military and Overseas Voter Empowerment Act (MOVE), which amended UOCAVA, requires that ballots be available no later than 45 days before an election involving a federal office.¹ N.C. GEN. STAT. § 163-227.3 requires that absentee ballots be available 60 days in advance of a general election in even-numbered years and 50 days in advance of any other statewide election.

8. More than 2.3 million voters participated in the March Primary, surpassing all previous primaries in this state. The June Primary included election for candidates in sixteen partisan primaries for nominations in eleven of North Carolina’s thirteen congressional districts. Just over 509,000 ballots were cast in that election.

9. More than 55,000 voters requested absentee ballots during the March Primary, more than 3,700 of which were requested by military and overseas voters. During the June Primary, more than 15,000 voters requested absentee ballots, including more than 600 by military and overseas voters.

10. A statewide general election for both state and federal offices, including the office of President of the United States, will be held November 8 (the “November General Election”).

¹ Absentee ballots had already been shipped when congressional elections were enjoined pending the implementation of new district boundaries. While the federal contest was no longer active, the absentee voting period in the March Primary was run under the UOCAVA deadlines.

11. Absentee voting for the November General Election began September 9. One-stop early voting began on October 20 and will end on November 5 in accord with county plans that include more than 42,000 early voting hours across 444 one-stop sites. Early voting plans during the November General Election exceeded early voting during the 2012 General Election in total hours (16% increase) and total sites (21% increase). In the 2014 General Election, a non-presidential year, counties offered approximately 25,700 cumulative early voting hours statewide.

12. Overall participation increased roughly 4.3% between the 2008 and 2012 general elections. If a similar increase occurs in 2016, participation could surpass 4.7 million voters, a record in North Carolina.

II. LOGISTICAL CONSIDERATIONS REGARDING A SPECIAL ELECTION FOR THE GENERAL ASSEMBLY IN 2017

13. Logistical considerations affecting a special election in 2017 for seats in the State House and State Senate (“Special Election”) involve a number of complex administrative processes, statutory deadlines, and significant planning. All estimates are limited by uncertainty as to the scope of any redistricting effort, enabling legislation, and the actions of this Court, though the below estimates are based on a broad redistricting effort involving numerous jurisdictions.

2017 Election Cycle

14. There are no state or federal contests scheduled for an election in 2017, though various municipalities will hold local elections in September, October and/or

November, depending on the municipality. Municipal election dates and deadlines are not uniform across the state.

15. Furthermore, as described herein, the county elections administrators will also face the additional tasks associated with changing jurisdictional lines, and additional costs of holding an election.

16. UOCAVA and MOVE would not trigger absentee requirements for a Special Election in 2017. State law, however, would establish a 50-day absentee voting period, including one-stop early voting over a 17-day period.

Geocoding Changes: 21 Days

17. Redistricting requires both state and county elections administrators to assign individual voters to their proper jurisdiction, a largely manual process that involves changes to each voter's "geocode" in the Statewide Elections Information Management System ("SEIMS"). The complexity of reassignment procedures varies, depending on the number of jurisdictions that divide a particular county and the number of voters affected. If a county is not wholly nested within a jurisdiction, elections administrators must assign voters to new jurisdictions on a street-by-street basis within SEIMS, often requiring the use of physical maps along with the time and attention of a county board's most senior staff.

18. Until elections officials complete jurisdictional changes in SEIMS, ballot preparation and voting equipment coding cannot begin in those jurisdictions; neither can potential candidates positively identify which voters reside within the revised district. Accordingly, candidate filing activity usually occurs only after changes have been entered by county elections officials. SEIMS jurisdictional data serves as the backbone to voting

processes throughout the counties, and finalizing jurisdictional changes within SEIMS is a prerequisite to vital features of elections administration in our state.

19. While the scope of any possible approved redistricting is currently unknown, staff estimates based on recent experience indicate that geocoding could take approximately three (3) weeks, after our agency receives new jurisdiction files. Changes following the recent congressional redistricting plan affecting North Carolina's 13 congressional districts took more than two (2) weeks. This task was completed within a short timeframe because 87 counties were wholly nested within single districts. Of the remaining counties that involved more than one congressional district, no county straddled more than two districts. State-level legislative districts, by contrast, encompass 120 State House districts and 50 State Senate districts. Additional subdivisions require additional time. Without additional time, the risk of mistakes becomes higher in geocoding at the county level that could negatively affect voting in a Special Election.

20. The candidate filing for State House and State Senate is ordinarily conducted over three weeks. *See* N.C. GEN. STAT. § 163-106(c). During a special filing period designated for congressional candidates ahead of the June Primary, the General Assembly directed that filing begin at noon on March 16 and closed at noon on March 25. While it is administratively preferable for all geocoding activity to be complete prior to candidate filing—and candidates may prefer to know with certainty which voters are in their district—it may be possible to check candidate eligibility on a one-off basis while geocoding is occurring. Accordingly, the most compressed schedule would have geocoding and candidate filing occurring concurrently.

Ballot Preparation and Proofing: 3 Weeks

21. Both candidate filing and geocoding processes must be final *before* ballot preparation and election coding can begin. Because county board of elections must issue unique ballots that display the appropriate combination of contests for a particular voter, information compiled by SEIMS—including jurisdictional data and candidate information—is central to the creation of specific “ballot styles” that must be prepared, printed, and coded for proper scanning in the tabulation machines. Ballot styles ensure that each voter obtains a single ballot containing only contests in which that voter is eligible to participate. In a primary, ballot styles are used to ensure affiliated voters cannot participate in a different party’s primary. Because North Carolina recognizes three political parties (Democrat, Libertarian, and Republican), there are potentially three primary contests for each partisan office on the ballot, resulting in vastly more ballot styles in an even-year primary than in a general election.

22. The process of generating and proofing ballot styles is highly complex and involves multiple technical systems and quality control checkpoints that reach well beyond printing.

23. Each ballot style is assigned a number in order to allow a poll worker to pull and issue the correct ballot to a voter. These ballot style numbers are not generated in SEIMS but in separate voting tabulation software, which are then manually entered into SEIMS and made available to the poll worker in a poll book. This is a particularly significant tool during early voting, when there could be more than 300 unique ballot styles in a single voting location, though it is uncertain whether enabling legislation or judicial

mandate would require early voting opportunities during any Special Election. Data from SEIMS is used to code voting equipment so each machine tabulator accurately reads results from the distinct ballot styles within a particular county.

24. Changes made to jurisdictions after ballots have been coded run a risk that voters receive an incorrect ballot style containing contests in which the voter is ineligible to participate. As a safeguard against such errors, ballot styles must regenerate every time a jurisdictional change is entered.

25. Once jurisdictions are properly assigned, the time required for ballot preparation and election coding depends on the type of election. Staff informs me that ballot preparation and coding could be completed in as little as three (3) weeks, leaving no margins for error. This represents the bare minimum of time necessary, depending on the number of counties affected by redistricting. Ballot preparation and election coding during the March Primary, however, occurred over five (5) weeks, including several weekends.

Burning Media: 2 weeks

26. Once ballots are prepared and voting systems are coded, county boards of elections must load data onto physical media cards that are placed in tabulation machines, a process called “burning media.” The media cards ensure that the tabulators anticipate the layout of ballots and properly attribute votes based on the ballot markings.

27. Counties that use touch-screen voting machines—including the populous Mecklenburg County—must prepare digital ballots that will display properly and interact with the machine’s software.

28. Staff informs me that burning media and preparing touch-screen ballots ordinarily takes a minimum of two (2) weeks for a Special Election.

L&A Testing: 2 days

29. After burning media, but before the first ballot is tabulated on the first day of one-stop early voting, counties must conduct logic and accuracy testing (“L&A testing”) to ensure tabulation machines accurately read ballots. This process involves running a test deck of ballots through tabulation machines within the county and auditing results. L&A testing allows counties to assess whether tabulators recognize and properly record results for the ballot styles in that county.

30. Staff informs me that conducting L&A testing can be completed over the course of roughly two (2) days.

31. On an administrative level, it is preferable to conduct L&A testing before the absentee by mail period begins in order to avoid an improper reading due to changes in the tabulation logic as a result of L&A testing.

Absentee Voting and Final Preparations: 50 Days

32. Applicable state law would require that counties begin responding to absentee ballot requests 50 days before Election Day.

33. The 50-day absentee voting period will also include a 17-day one-stop early voting period, beginning 20 days before Election Day.

34. Approximately two (2) weeks before one-stop early voting begins, the State Board hosts a mock election during which all counties upload results into SEIMS, mimicking Election Night. These mock elections test county systems and ensure SEIMS

is accurately processing and aggregating results. The State Board also relies on mock elections to test the accuracy of its web-based elections results page.

***Canvass Processes: 3 weeks
(without protests)***

35. The finalization process for a primary would include a canvass by the county boards of election—a certification process occurring 10 days after the primary—and a final canvass by the State Board to aggregate totals in multicounty jurisdictions and to certify the accuracy of the election as a whole. State law does not designate a deadline for the State Board’s canvass of a primary election. Post-election proceedings may affect the State Board’s ability to canvass, including recounts, the filing and adjudication of elections protests, and a sample audit of election returns.

36. The deadlines to initiate certain post-election proceedings fall after the date of county canvass. Accordingly, the time needed to canvass by the county or by the State Board would not necessarily be the same as the time needed to code ballots for the next election. Assuming every effort is made to audit results and compact the timeframe of post-election proceedings, the most conservative estimate for canvass would likely be the three (3) weeks set out by statute for a general election. It is also not certain that any recount or protest would occur, though it is difficult to overstate the effect of any lingering post-election proceeding on the effort to begin ballot preparation and election coding ahead of a general election.

37. The deadline for filing an election protest is no later than 5 p.m. on the second business day after county canvass. Under ordinary circumstances, county boards of

election hold a preliminary consideration meeting, followed by a properly noticed and transcribed hearing that results in a written order, which may be appealed to the State Board with subsequent recourse in Superior Court. Taking into consideration notice to parties, the production of transcripts, and windows of appeal, this process can take many weeks. A truncated, three-week canvass period would materially affect the recourse ordinarily available to aggrieved candidates and members of the public.

Special Elections Scenarios

38. Because the three-week period necessary to perform geocoding changes following redistricting (Paragraphs 18-21, *supra*) is equal to the estimated three-week period required to canvass an election, it is helpful for planning purposes to consider that any Special Election would require roughly 13 weeks between each Election Day. Accordingly, a Special Election requiring one primary and a general election would require that the primary be no earlier than 13 weeks after the State Board receives approved shapefiles, and the general election may be held no earlier than 26 weeks after the State board receives approved shapefiles. The same would be true for a Special Election requiring a second primary, though the general election would be pushed back at least 13 additional weeks, for an Election Day no earlier than 39 weeks after the State Board receives approved shapefiles.

39. Because it is administratively preferable to burn media and finalize L&A testing before absentee ballots are mailed, a 15-week buffer between each Election Day would be preferable in order to ensure that absentee ballots do not require a hand-eye count. Accordingly, it is preferable to plan for the first primary to take place no earlier than 15

weeks after the State Board receives approved shapefiles, with a general election planned no earlier than 30 weeks (for one primary) or 45 weeks (for two primaries) from that date.

Costs

40. Nearly all fixed costs associated with holding elections in North Carolina are born by the county boards of elections (CBEs), which are funded by their respective boards of commissioners. For municipal elections, however, state law allows CBEs to demand reimbursement from the municipality for which an election is held. In April 2015, my office communicated with a number of counties regarding cost sharing arrangements in the event a county was required to hold both a municipal election and a state-level election concurrently. A number of counties communicated concern that their municipalities would resist bearing costs if the municipal election was added to an election otherwise required. If a Special Election is ordered to occur on the same dates as a municipal election, it may be that those costs are born exclusively by the county boards of elections.

41. In April 2015, State Board staff surveyed counties to ascertain the amount of variable costs borne by the counties in the 2014 General Election. The State Board provided counties with the following examples of variable costs: printing and counting ballots, securing one-stop sites, mail-in absentee, Election Day operations, and canvassing. With 99 counties reporting, the variable costs borne by the counties in the 2014 General Election were as follows.

Total Variable Costs:	\$9,511,716.13
One-stop Early Voting:	\$2,651,455.54 (state average of \$103.56 per early-voting-hour with a wide range \$13.41—\$551.75 per early-voting-hour between counties)

42. The above figures represent the most current estimates of local variable costs associated with a North Carolina election, and do not include state-level costs.

43. Because the cost of opening all precinct locations on Election Day are relatively constant between a primary and a general election, county-level costs arising from one-stop early voting form the principle variables in estimating the combined cost of a Special Election. Non-one-stop expenses were roughly \$6.8M of the \$9.5M total, a figure that would likely remain constant for any statewide primary or statewide general election. Costs beyond one-stop early voting include expenses associated with critical aspects of elections administration and may range from securing precinct voting locations, printing ballots, coding electronic tabulators and voting systems, mail-in absentee operations, and the hiring and training of temporary precinct officials for Election Day, among other line-items.

44. A statewide primary for a Special Election would likely cost counties \$6.5M *plus the costs of one-stop early voting* at an average rate of \$103.56/hour. It is likely that a statewide general election would carry comparable costs to that in the 2014 general election: \$9.5M.

45. The number of one-stop sites across the state has steadily risen over past elections cycles, as seen below:

2010:	Primary (215 sites)	General (297 sites)
2012:	Primary (275 sites)	General (365 sites)
2014:	Primary (289 sites)	General (366 sites)
2016:	March Primary (358 sites)	General (444 sites)

46. North Carolina elections require that counties secure voting locations in 2,704 precincts. State Board records indicate that on Election Day in the 2014 General Election, nearly half of all precinct voting locations were housed in places of worship or in schools, with still more located in privately-owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites can require significant advance work by county board of elections staff and coordination with the State Board.

47. For the past several election cycles, poll worker recruitment has posed a significant challenge for county-level elections administrators. State statutes impose requirements regarding the partisan make-up for judges of elections in each precinct. Often county political parties find it difficult to find individuals that are willing to serve as precinct officials on Election Day. County elections officials have found it necessary to spend more and more time recruiting early voting and Election Day poll workers, especially because technological advances in many counties now require that elections workers be familiar with computers.

Unification of the Elections Calendar and Voter Expectations

48. A Special Election in 2017 would almost certainly require special legislative action to consolidate municipal elections schedules so as to unify the election calendar across the state. Such an action may disrupt municipal processes, likely requiring that certain officials hold over until replacements are seated. State law, however, requires that voter registration be closed 25 days in advance of an election (except for same-day registrations at one-stop sites). SEIMS does not possess the capability to hold open registration for participation in certain contests while keeping the rolls closed as to all

others. Accordingly, an elections calendar that is not unified could result in as many as six 25-day periods in which the registration books are closed (150 days), the great bulk of which would be loaded into the summer and fall of 2017.

49. The public must have notice of upcoming elections. State law requires that county boards of elections prepare public notice of elections at least 45 days in advance of the election. Beyond formal notice, voters rely on media outlets, social networks, and habit both to become aware of upcoming elections and to review the qualifications of participating candidates. Decreased awareness of an election can suppress the number of individuals who would have otherwise participated and may narrow the demographic of those who do ultimately vote. Each could affect electoral outcomes.

50. Historical experience suggests that special elections result in lower voter participation. For example, a court-ordered, stand-alone 1998 September Primary for congressional races resulted in turnout of roughly 8%, compared to a turnout of 18% for the regular primary held on the regularly-scheduled May date that year. In 2004, the primary was rescheduled to July 20 because preclearance of legislative plans adopted in late 2003 had not been obtained from the United States Department of Justice in time to open filing on schedule. Both the Democratic and Republican Parties chose to forego the presidential primary that year. Turnout for the delayed primary was only 16%. The June Primary held this year drew turnout under 8%, compared to 35% during the March Primary.

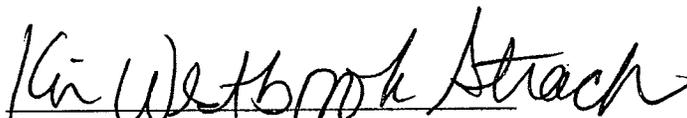
51. Second primaries were not part of the 2016 cycle pursuant to a special enactment of the General Assembly as part of legislation implementing new congressional

districts. State Board records indicate that there was no second primary held in 2002 for legislative districts, nor was a second primary held in 1998 for congressional districts.

52. Jurisdictional boundaries and election dates drive our work at the State Board. Even slight changes can trigger complex and interwoven statutory requirements and involve unpredictable logistical burdens and costs borne by North Carolina's 100 counties. Our agency takes seriously its obligation to enforce fully both legislative and judicial mandates, and to work diligently to ensure decision-makers are apprised of collateral effects that may attend those decisions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 27th day of October, 2016.



Kim Westbrook Strach
Executive Director
North Carolina State Board of Elections