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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
Civil Action No. 1:13-CV-00949

DAVID HARRIS; CHRISTINE BOWSER;)
and SAMUEL LOVE,)
Plaintiffs,)

v.)

PATRICK MCCRORY, in his capacity as)
Governor of North Carolina; NORTH)
CAROLINA STATE BOARD OF)
ELECTIONS; and JOSHUA HOWARD, in)
his capacity as Chairman of the North)
Carolina State Board of Elections,)
Defendants.)

EXPERT REPORT OF
THOMAS B. HOFELLER, Ph.D.

1 COMMONWEALTH OF VIRGINIA)
2) ss.
3 County of Fairfax)

4 Thomas Brooks Hofeller declares the following:

5 1. I am of the age of majority, am competent to make this affidavit, and, except
6 where specifically stated otherwise, have personal knowledge of the matters stated herein.

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

10 3. I am a Partner in Geographic Strategies, LLC, located in Columbia, South
11 Carolina. Geographic Strategies provides redistricting services including database
12 construction, strategic political and legal support planning in preparation for actual line
13 drawing, support services and training on the use of geographic information systems (GIS) used
14 in redistricting, analysis of plan drafts, and actual line-drawing when requested. The
15 corporation and its principals also provide litigation support.

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

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

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

6 7. I served for a year and one half as Staff Director for the U.S. House
7 Subcommittee on the Census in 1998-99. I have extensive experience on all aspects of
8 decennial census activities, including both its data tabulations and geographic hierarchy.
9

10 8. I was Staff Director of the Subcommittee when the Census Bureau was
11 proposing to substitute the American Community Survey (ACS) for the use of the decennial
12 long form questionnaire in the 2000 and previous decennial Censuses. The long form was not
13 used in the 2010 Decennial Census. The ACS program was initiated during the previous
14 decade and this is the first redistricting cycle in which it is being used.
15

16 9. I have drafted and analyzed plans in most states including, but not limited to,
17 California, Nevada, Arizona, New Mexico, Colorado, Texas, Oklahoma, Kansas, Missouri,
18 Minnesota, Wisconsin, Illinois, Indiana, Ohio, Arkansas, Mississippi, Louisiana, Alabama,
19 Georgia, Florida, South Carolina, North Carolina, Virginia, New York, New Jersey and
20 Massachusetts.

21 10. In this decennial round of redistricting, I have already been intensely involved in
22 Texas, Tennessee, Arizona, Alabama, North Carolina, Virginia and Massachusetts. As much of
23 my consulting activities involve work in states subject to the provisions of Sections 2 and 5 of
24 the Voting Rights Act (VRA), I am very familiar with the data used to analyze the expected
25 performance of redrawn and newly-created minority districts. I regularly advise clients about
26

1 the characteristics of minority districts in their plans, and whether or not they meet the
2 requirements of both Sections 2 and 5 of the Voting Rights Act. I am familiar with the *Shelby*
3 *County* decision of the United States Supreme Court and that Section 4 of the VRA has been
4 ruled unconstitutional resulting in all states having been released from compliance of Section 5
5 of the VRA.

6 11. I have given testimony as an expert witness in a number of important
7 redistricting cases including, but not limited to, Gingles v. Edmisten, 590 F. Supp. 345
8 (N.D.N.C. 1984), *aff'd in part and rev'd in part* Thornburg v. Gingles 478 U.S. 30 (1986); State
9 of Mississippi v. United States, 490 F. Supp. 569 (D.C.D.C. 1979); Shaw v. Hunt, 92-202-
10 CIV-5-BR, U.S. District Court for the Eastern District of North Carolina, Raleigh Division
11 (1993-4); Ketchum v. Byrne, 740 F.2d 1398, *cert. denied* City Council of Chicago v. Ketchum,
12 471 U.S. 1135 (1985), *on remand*, Ketchum v. City of Chicago 630 F. Supp. 551 (N.D. Ill.
13 1985); and Arizonans for Fair Representation v. Symington, CIV 92-0256, U.S. District Court
14 Arizona (1992), *aff'd mem. sub nom.* Arizona Community Forum v. Symington, 506 U.S. 969
15 (1992).
16
17

18 12. I have been extensively involved previously as an expert and redistricting plan
19 drafter in the State of North Carolina since the 1980s.

20 13. I have done considerable work regarding compactness as a criterion in
21 redistricting maps, including but not limited to a work I coauthored in *The Journal of Politics*,
22 "Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and
23 Racial Gerrymandering." *Id.*, Vol. 52, No. 4 (Nov., 1990), pp. 1155-1181 (with Richard G.
24 Niemi, Bernard Grofman, and Carl Carlucci).
25
26

1 14. I have been retained by counsel representing the State of North Carolina in
2 this litigation.

3 15. My consulting and expert witness fee is \$295 per hour plus expenses.

4 16. In constructing and analyzing 2011 Enacted North Carolina Congressional
5 Plan, along with all other congressional maps, I used a portable Toshiba laptop computer
6 running Microsoft Windows 7 system software and a Geographic Information System
7 specifically developed for redistricting by Caliper Corporation, a Newton, Massachusetts
8 firm, called Maptitude for Redistricting (See Map 1). Maptitude for Redistricting was
9 widely used throughout the United States in both the 2000 and 2010 redistricting cycles.
10 It is recognized by almost all redistricting experts as the industry standard, even though a
11 number of larger states have elected to develop their own redistricting software (Such as
12 Texas, Florida, and New York). Maptitude incorporates and merges the 2010 Decennial
13 Census data produced by the United States Bureau of the Census, a computerized
14 mapping file called TIGER (Topographic Integrated Geographic Encoding Reference), also
15 developed by the U. S. Census Bureau, and election and registration data received from
16 non Census Bureau sources. In North Carolina, the election and registration data were
17 developed by the North Carolina General Assembly's Legislative Services Office
18
19

20 17. I have been asked to evaluate the Export Report submitted by Dr. Stephan
21 Ansolabehere on behalf the Plaintiffs in which he concluded that race was the
22 predominant factor in constricting CD's 1 and 12 in Rucho-Lewis Congressional Plan 3
23 enacted by the North Carolina General Assembly on July 28, 2011. I disagree with his
24 conclusion and have determined that the evidence he presets which leads to his
25 conclusion is not sufficient to support such a conclusion.
26

1 18. The first error that Dr Ansolabehere makes is failing to evaluate the 2011
2 Rucho-Lewis Congress3 Plan (hereinafter referred to as the "New Plan" or "New District
3 xx") in its entirety. While he does present and discuss maps demonstrating the changes in
4 the boundaries of the 2001 and 2011 Districts 1 and 12. He does not consider all of the
5 other factors that influenced how both sets of Districts were drawn, substantially ignoring
6 the plans as a whole. New Districts 1 and 12 were not drawn in a policy vacuum. The
7 legitimate policy goals of the General Assembly influenced the construction of all 13
8 districts in the New Plan. The same was true for the 2001 Congress Zero Deviation Plan
9 (hereinafter referred to as the "Old Plan" or "Old District xx") which he contrasts with the
10 New Plan. The Old Plan was also drawn with its own set of policy goals driving the New
11 Plan. They just were not the exact same goals. The primary differences were political, and
12 dealing with the evolution of the legal requirements of the Voting Rights Act (VRA) over
13 the decade between the drafting of the Old and New Plans.
14

15
16 19. Dr. Ansolabehere failed to note that the 1st District and the 12th Districts are
17 markedly different in the political and demographic polices which determined their
18 construction. District 1 must be characterized as a "VRA Section 2 Minority District",
19 while District 12 is correctly characterized as a "political" district along with the
20 remaining 11 districts. This a vital distinction which is a result of a long series of federal
21 court rulings, the most recent being the *Cromartie* decisions and the *Strickland* decision.
22 One simply cannot make an evaluation of the New Plan without taking these distinctions
23 into account.
24

25 20. The 1st District has been treated as a Section 2 district in the last three
26 redistricting cycles. Even though other policy goals played an important role in the

1 location of the 1st District, obtaining U. S. Department of Justice (DOJ) preclearance was
2 always an important policy objective. But the politics governing the construction of the
3 surrounding districts, as well as the population shifts among all the districts in both plans
4 were also a major consideration for the General Assembly. This was especially the case in
5 2011 because of differences of the population growth rates of the rural and urban areas of
6 the State; which became more pronounced in the decade between the 2000 and 2010
7 Decennial Censuses than in the previous decade. The Old District 1 was almost
8 exclusively rural, and became severely under populated between 2000 and 2010. The
9 General Assembly's expectation was that this growth trend would continue through this
10 present decade. Thus, adding urban population to the New District 1 was determined to
11 be the best way to stabilize the deviations between all the districts as this decade unfolds.
12

13 21. Population growth is not homogeneous across the state. Each new map
14 needs to be drawn to take these uneven growth patterns into account. In fact this is the
15 underlying U. S. Constitution's mandate is the driving factor for both the reapportionment
16 and redistricting of United States' congressional districts. The one-person, one vote
17 mandate, coupled with other individual state redistricting criteria and policy choices,
18 including political choices, always result in shifting district boundaries, some of which can
19 be quite large.
20

21 22. One good example of an affect caused by shifting population is the
22 placement of the portion of the section of the New and Old District 12 which connects the
23 heavily Democratic sections of Mecklenburg, Guilford and Forsyth Counties together
24 through Cabarrus, Davidson and Rowan Counties. The "connector", as it was commonly
25 referred to in the drafting process, was placed further to the east in the New 12th District.
26

1 This was done to balance the populations of the surrounding districts and avoid crossing
2 unnecessary county boundaries in that area of the State. This also resulted in 60,527 less
3 people in these three connector counties being incorporated into the New 12th District,
4 thus allowing more heavily Democratic precincts in Forsyth, Guilford and Mecklenburg
5 Counties to be added to the New District 12. This, in turn, allowed Republican political
6 percentage to be higher in the new 6th, 8th, and 9th Districts. This is commonly referred to
7 as the "ripple effect" in redistricting circles. This effect influences the location of many
8 districts in any decennial redistricting.
9

10 23. Political control of the redistricting process can also become an overarching
11 factor. This is especially true when control shifts between the two political parties. This
12 was the case in North Carolina when, in 2010, the Republicans took control of both
13 chambers of the General Assembly (since the Governor has no role in North Carolina
14 redistricting). Politics was the primary policy determinant in the drafting of the New
15 Plan. The same was true of the Old Plan except that the Democrats political policy choices
16 were different. Professor Ansolabehere did not take any of these factors into account in
17 his report.
18

19 24. Dr. Ansolabehere's factual conclusion can be summarized as follows:

20 25. The General Assembly split 5 more cities in New District 1 and twice as
21 many counties (9 versus 18). Dr. Ansolabehere fails to mention that District 12 in the
22 New Plan splits the same number of counties and fewer cities than the Old Plan.
23

24 26. Dr. Ansolabehere asserts that New Plan's 1st and 12th Districts are
25 "substantially" less compact than the equivalent districts in the Old Plan. I disagree with
26

1 his evaluation of that significance, especially with regard to the New 12th District. I shall
2 discuss compactness further below.

3 27. His envelope analyses, as well, as his measurement of the characteristics of
4 the areas of the old districts moved out of the new districts, and the areas not in the old
5 districts moved into the new districts, essentially demonstrate nothing more than that the
6 new 1st and 12th Districts have higher African-American Voting Age Population
7 percentages (referred to TBVAP in North Carolina) than the corresponding districts in the
8 Old Plan. This is already obvious from the data constrained in the district reports supplied
9 by the State...

11 28. Based on these facts alone, and taking none of the other factors guiding the
12 drafting of either the old or new plans into account, he has determined that the drafting of
13 the New Plan must have primarily guided by an impermissible racial intent and effect.

15 29. I strong assert that the evidence Dr. Ansolabehere presents is insufficient
16 and inconclusive for him to arrive at his conclusion that "race was the predominant factor
17 in constricting CDs 1 and 12 in" the New Plan. There was much, much more involved in
18 drafting the New Plan. I know this because I was intensely involved in the entire process.

19 30. Both Districts 1 and 12 must be examined in the context of neighboring
20 districts and the fact that each district has its own history since the inception of the one
21 person, one vote rulings of the U. S. Supreme Court.

23 31. District 1 was and is clearly identified as a "Section 2 district" and must be
24 constructed in that context. District 12, since the U. S. Supreme Court's decision in *Easley*
25 *v. Cromartie*, has been treated as a strictly political district, although the fact that Guilford
26

1 County, into which District 12 enters, in both the Old and New Plans, made it subject to
2 the preclearance provisions of Section 5 of the VRA.

3 32. Gaining DOJ preclearance was a major concern of the General Assembly in
4 light of the State's previous preclearance experiences. Its strategy was justified when the
5 New Plan was rapidly precleared in late 2011.

6 33. While I certainly do not challenge the data he presents, I do disagree with
7 his sole dependence on registration data for political analysis. My experience in drafting
8 and evaluating plans has continued to enforce my expert opinion that the best predictor
9 of future election success is past voting behavior, not registration. This is clearly the case
10 as more and more voters are tending to register non-partisan or independent. For some
11 reason, Dr. Ansolabehere has opted to ignore past election results.

12 34. The Supreme Court, in its remand of the *Cromartie* case (*Easley v Cromartie*,
13 532 U.S. 234, 244 (2001)), agreed with this premise. Justice Breyer wrote for the Court
14 that "the primary evidence upon which the District Court relied for its 'race, not politics,'
15 conclusion is evidence of voting registration, not voting behavior; and that is precisely the
16 kind of evidence that we said was inadequate the last time this case was before us."
17

18 35. Dr. Ansolabehere also notes that District 1 and 12 in the New Plan 3 have
19 lower Reock Compactness Scores and seems to infer that this is evidence of the use of
20 race as predominant factor in constructing the New Plan. Of course the Reock
21 measurement is only one of many such compactness evaluations. Once again, by
22 neglecting the entire context of the plan, he does not examine what it is about the shapes
23 of the districts which result in these lower scores.
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1 36. In footnote 1 of page 5 of Ansolabehere's Report, he states that the Reock
2 score of a perfectly square district would be .637. I add that the Reock score for a circular
3 district would be 1.00.

4 37. The difference in Reock scores between the Old and New 12th Districts
5 (.071 in the New Plan and .116 in the Old Plan) is .055, This difference, in comparison to
6 the score of a square district (.637), is hardly significant enough to imply racial motivation
7 (see Ansolabehere Exhibit 1). The fact is that both versions of the 12th District have
8 miserable scores. The Reock compactness scores for the Old and New District 1 (.390 and
9 .294 result in a difference of .096. This difference is, as Dr. Ansolabehere states,
10 "noticeable"; but hardly significant. These are not unusually low scores. The difference
11 between these two score is not significant enough to support a conclusion of race as the
12 predominant factor in the construction of the New District 1.
13

14 38. If one compares the mean Reock compactness scores for the Old and New
15 Plans for all districts, of .37 and .30 respectively, the mean score for the New Plan is only
16 .01 lower than the mean score for the New Plan, and .07 lower than the mean score for the
17 Old Plan. In addition, 5 of the remaining 12 districts in the New Plan have lower Reock
18 scores than the New District 1. They are New District 4 (.17), New District 6 (.24), New
19 District 9, (.17), New District 11 (.26) and New District 12 (.07). All 5 of these new
20 districts were drawn without race as a factor. For these reasons, compactness is not
21 significant enough factor to support a conclusion of race as the "dominant factor" in the
22 construction of the New Plan in its entirety.
23

24 39. There are alternative policy explanations which also affected the Reock
25 compactness scores for the 1st and 12th districts in New Plan. The 12th District, which was
26

1 constructed to raise its Democratic election percentage (using President Obama's
2 percentage in 2008) while, at the same time strengthening the Republican percentages in
3 the surrounding districts (5, 6, 8, and 9), necessitating including more strong Democrat
4 VTDs into the new 12th District. One source of these new strong Democrat VTDs was
5 northeast Greensboro... The Democrats, in the Old Plan had "cracked" the African-
6 American community in Greensboro, dividing it between Old Districts 12 and 13. This
7 was done to make both the Old 12th and 13th Districts strongly Democratic, which was not
8 the political policy objective of the 2011 General Assembly. The General Assembly,
9 mindful that Guilford County was covered by Section 5 of the VRA, determined that it was
10 prudent to reunify the African-American community in Guilford County. This could avoid
11 the possibility of a charge of fracturing that community and, inhibiting preclearance by
12 DOJ under Section 5. This extension of the New 12th District further to the northeast into
13 Guilford County caused the circumscribing circle around the district to increase to
14 increase in diameter and lowered the Reock Score. The General Assembly also wanted to
15 remove strong Democratic VTDs from New District 6.

18 40. In the case of New District 1, the policy objectives were much the same in
19 terms of political choices. The General Assembly's goal was to increase Republican voting
20 strength in New Districts 2, 3, 6, 7 and 13. This could only be accomplished by placing all
21 the strong Democrat VTDs in either New Districts 1 or 4.

23 41. When the Plaintiff's in *Easley v Cromartie* asserted a safe Democratic Old
24 District 12 could have been created with a lower percentage of African-Americans, Justice
25 Breyer, writing for the majority, stated that "unless the evidence also shows that these
26 hypothetical alternative districts would have better satisfied the legislature's other

1 nonracial political goals as well as traditional nonracial districting principles, this fact
2 alone cannot show an improper legislative motive. After all, the Constitution does not
3 place an affirmative obligation upon the legislature to avoid creating districts that turn
4 out to be heavily, even majority, minority." (*Cromartie II* at 249) The same principle
5 applies to the Republican's desire to create a stronger Democratic New 12th district to
6 satisfy their own political goals.

7
8 42. What was uniquely different in the case of District 1 was that this District
9 had been determined by the Supreme Court to be a "VRA Section 2" district and was
10 vulnerable to a challenge of retrogression under VRA Section 5. Additionally because of
11 the U. S., Supreme Court's *Strickland* decision in 2009, the General Assembly determined
12 that the New District 1 had to be a majority-minority district which required an African-
13 American TBVAP in excess of 50%. The resulting TBVAP of 52.26% for New District 1 is
14 hardly excessive in terms of this majority-minority requirement, especially since the Old
15 District 1's TBVAP was 48.34% - only 3.92% lower. Nor would this difference sustain a
16 charge of using race as the predominant criterion as Plaintiffs assert.

17
18 43. Taking into account all these factors, it is my expert opinion that the
19 geographic shapes of New Districts 1 and 12 clearly do not support a conclusion that race
20 was "the predominant factor" in the construction of New Districts 1 and 12.

21
22 44. I now turn to Dr. Ansolabehere's examination of cities and counties split by
23 the borders of the New Plan's Districts 1 and 12. A listing of split cities and towns in both
24 the old and new versions of Districts 1 and 12 may be found in Tables 1 and 2.

25 45. New District 1 actually splits 19 counties (Dr. Ansolabehere missed one.),
26 while the Old District 1 splits 10 counties. Both the Old and New 12th Districts split the

1 same 6 counties (Cabarrus, Davidson, Forsyth, Guilford, Mecklenburg and Rowan) I will
2 explain the split counties and the configuration New District 1 later in this report. But
3 certainly split counties are not an issue for the New District 12, as all 6 counties are split
4 in both the Old and New Plans.

5 46. Dr. Ansolabehere is correct in counting the number of split cities in New
6 District 12. There are 13 splits. What he neglects to mention is that the Old Plan splits 11
7 of those same towns (the Old District 12 does not split Wallburg and East Spencer), but
8 splits 5 additional cities and towns (Davidson in Mecklenburg County between Districts 9
9 and 12; Midway in Davidson County between Districts 6 and 12; Spencer in Rowan
10 County between Districts 6 and 12; Walkertown in Forsyth County between Districts 5
11 and 12; and Welcome in Davidson County between Districts 6 and 12) for a total of 16
12 splits. This certainly does not support an assertion that number of split cities in New
13 District 12 should be a racial issue.
14

15
16 47. Dr. Ansolabehere incorrectly counted the split cities and towns in New
17 District 1. He counted Rocky Mount twice so the correct number of splits is 21, not 22.
18 Once again Dr. Ansolabehere did not give a count of the 16 split cities and towns in the
19 Old District 1. Of the 21 cities and towns split in the New District 1, 8 are also split in the
20 Old District 1. These are Dortches in Nash County, Goldsboro in Wayne County, Greenville
21 in Pitt County, Kingston in Lenoir County, New Bern in Craven County, Rocky Mount in
22 Edgecombe and Nash County; Washington in Beaufort County; and Wilson in Wilson
23 County. Eight additional cities and towns are split in the Old District 1 which were not
24 split in the New District 1. They are Ayden in Pitt County between Districts 1 and 3;
25 Farmville in Pitt County between Districts 1 and 3; Havelock in Craven County between
26

1 Districts 1 and 3; Henderson in Vance County between Districts 1 and 2; Nashville in Nash
2 County between Districts 1 and 2; Oxford in Granville County between Districts 1 and 13;
3 Sharpsburg in Wilson and Nash Counties between Districts 1 and 3; and Whitaker in Nash
4 and Edgecombe County between Districts 1 and 2.

5 48. New District 1 splits 21 cities and towns while Old District 1 split 16 cities
6 and towns, for a difference of 5 splits. Three of those additional 8 split cities or towns
7 split in the New District 1 were minor splits. The cities involved had extremely small
8 population splits. Edenton had zero population in the portion of the city split off.
9 Grimesland had 4 persons in the portion of the city split off. Both the Edenton and
10 Grimesland split involved non-contiguous pieces for those cities. Hertford had 8 persons
11 in the portion of the city split off, and the split was caused by a VTD boundary. In North
12 Carolina, VTDs frequently split off portions of cities or towns and combine those areas
13 with unincorporated territory. So if those three splits are discounted, it means that the
14 New District 1 only has 2 more significant city or town splits than the Old District 1. In my
15 expert opinion 2 to 5 city and town splits in a district with over 700,000 people is not a
16 sufficient difference to support a conclusion of race as the predominant factor in the
17 construction of new District 1's.

18 49. On page 8 of his report Dr. Ansolabehere correctly reports the African-
19 American Total Voting Age (TBVAP) percentages of the Old and New 1st and 12
20 Congressional Districts. Old District 1 has a TBVAP of 48.6% and New District 1 has a
21 TBVAP of 52.7% which is a 4.1% difference. Given the requirements of *Strickland* to build
22 majority-minority districts at level 50% TBVAP or more (a requirement which was not
23 imposed by the U. S. Supreme Court when the Old Plan was enacted in 2001), a 52.7%
24
25
26

1 BTVAP district is neither excessive nor unreasonable for New District 1. The General
2 Assembly could have spread a small number of Census Voting Districts (VTD) with high
3 Democrat election percentages to one or more of the surrounding districts (mostly likely
4 the New 4th District) and brought District 1's percentage a little closer to 50%, but a
5 TBVAP of 50.1% is much lower than the same percentages which were present in both
6 the old and new legislative districts in that same area of northeastern North Carolina.
7 These were districts in which African-American legislative incumbents felt that it was
8 necessary for candidates of preferred choice to be elected in that area. It was the General
9 Assembly policy choice to seek the safe harbor of creating a majority-minority district and
10 not to chance a successful challenge that the New District 1 would be challenged as having
11 a TBAVP which was too weak. Given that any plan that General Assembly enacted, which
12 also accomplished the majority party's political goals, was highly likely to be challenged in
13 court, it was foolhardy to risk being embroiled in an endless argument over which
14 percentage under 50% would be the correct number, or that the composition of the
15 African-American VAP would be drawn from a geographic area not of the minority party's
16 choice. Would the benchmark percentage of 48.6% be acceptable for the geographically
17 reconfigured 1st District? Would it have to be half a percent higher or lower? With the
18 confusion about multiple racial bloc voting analyses leading to multiple interpretations
19 leading to endless competing expert opinions. It was, and is my expert opinion that it was
20 acceptably prudent to turn to the 50%+ "safe harbor".
21
22
23

24 50. Another issue raised by the incumbent from Old District 1 was that the New
25 District 1 should have the same number of adult African-Americans drawn from counties
26 covered by Section 5 of the VRA, as were contained in the Old District 1. This was difficult

1 to accomplish and still to leave the same section of Durham County in the New District 1;
2 a choice which was necessary to accomplish the General Assembly's legitimate political
3 and demographic goals for the New Plan as a whole. Thus, New District 1 was further
4 reconfigured to satisfy a minority Congressman's request. This reconfiguration was also
5 acceptable to the Republican incumbents in the surrounding districts.

6
7 51. The other policy objective of the General Assembly guiding the construction
8 of New District 1 was the goal of decreasing the likelihood that, come 2020, District 1
9 would once again be significantly underpopulated in terms of the 2020 Decennial Census
10 numbers. The Old District 1 was underpopulated by 97,563 persons according to the
11 2010 Census. The desire to narrow the expected population deviations between all the
12 districts in the New Plan as the decade unfolds was a neutral policy criterion. The General
13 Assembly achieved that policy goal by adding a large urban population from Raleigh-
14 Durham County area into District 1.

15
16 52. Certainly, given the fact that District 1 is a Section 2 district, race plays a
17 role among the many other policy issues influencing the configuration of the New District
18 1. However, a detailed examination, taking into account all the policy choices guiding the
19 construction of all the districts in the New Plan, as well as those policy issues unique to
20 District 1, in my expert opinion simply do not support a conclusion that race was the
21 predominant factor in the construction of New District 1.

22
23 53. Dr. Ansolabehere's "envelope of counties" analysis is most puzzling of all.
24 This is the first time, in my 48 years of redistricting experience that I have ever heard of
25 this method of analysis. Several questions come immediately to mind. It is not clear what
26 Dr. Ansolabehere's explanation is for why the outer perimeter of counties either partially

1 or entirely contained in any given district has any relevance, other than a constitutionally
2 mandated whole-county criteria requirement, to an evaluation of any single district. This
3 method of analysis would produce significantly different results if a rural-based minority
4 district expanded into even a small portion of a large metropolitan county. For example,
5 Dr. Ansolabehere's envelope method would yield much different results if New District 1
6 included even one precinct from Wake County. It is not clear that this method of analysis
7 is universally helpful across all 50 states. The envelope method would yield highly
8 negative results in a state such as Illinois, where the envelope of counties containing the
9 Chicago metropolitan areas' 4 majority-minority was just expanded in 2011 to include
10 Cook, DuPage, Kankakee and Will Counties, which constitute an envelope containing
11 6,902,608 persons, which is 72% of the 2010 population of all North Carolina?
12

13
14 54. Why not just state that, in the construction of the New 1st Congressional
15 District, in which the General Assembly's policy goals included compliance with Section 2
16 and 5 of the VRA as well as politically strengthening the Republican characteristics of all
17 but 1 of the surrounding districts (New District 4), and that the Old District 1 was severely
18 underpopulated, that African-Americans had a greater chance of being moved into the
19 New District 1 than non-Hispanic Whites? In my expert opinion, this is an
20 overcomplicated way of stating the obvious and avoiding other relevant factors at work in
21 North Carolina's 2011 redistricting cycle. The analysis produces 5 tables which I
22 summarized in my Table 3. Nonetheless, this numeric presentation adds little to the
23 discussion why these changes were made.
24

25 55. Another weakness Dr. Ansolabehere's county envelope analysis is that it
26 depends on registration data, rather than election history data. Once more I must clearly

1 state that in the community of experts who actually draft plans, the industry standard is
2 election data, not registration data. This is becoming even more the case as the number of
3 voters registering independent or non-partisan continues to increase. -This is the same
4 error that was identified by the Supreme Court in *Cromartie I*

5 56. I turn last to Dr. Ansolabehere's analysis of the political and demographic
6 characteristics of the areas common to both the New and Old 12th Districts (the "core"
7 areas" in Dr. Ansolabehere's Tables 10 and 11), the areas from the Old 12th District not
8 contained in the New 12th District (referred to as "out of CD" in Dr. Ansolabehere's Tables
9 10 and 11), and the areas contained in the New District 12 not contained in the Old
10 District 12 (referred to as "'into CD" in Dr. Ansolabehere's Tables 10 and 11).

11
12 57. Dr. Ansolabehere's Tables 10 and 11 speak for themselves at far as the
13 numbers contained therein but, once again, are improperly based on a comparison of
14 census data with voter registration data. The proper comparison would be to compare
15 census data to actual election results. It is unclear whether or not Dr. Ansolabehere used
16 whole VTD's or just the portion of the split VTD's contained in the two districts in the New
17 Plan. In either case, election results are the industry standard for use both in the
18 construction and analysis of redistricting plans.

19
20
21 58. The other flaw in Dr. Ansolabehere's use of Tables 10 and 11 is that his
22 analysis is not complete with regard to even the demographic data because, once again, he
23 does not take into account the General Assembly's other legitimate policy choices which
24 influenced the construction of New Districts 1 and 12 in the context of the entire map. It
25 is obvious that both the New Districts 1 and 12 have TBVAP percentages which are higher
26 than in the corresponding old districts. It is also obvious to anyone who has actually

1 drawn redistricting plans that the only way this could happen would be that the areas
2 removed from the old districts would have to have lower African-American percentage
3 than those added into the new districts. Otherwise the percentage in the new districts
4 would not be higher. The relevant question is not that his happened, but why it was done.

5 59. I need not repeat the discussion of the reasons that New District 1 was
6 constructed as it was which may be found in paragraphs 36 through 39 above. It is
7 sufficient to say that race was not the primary criterion.
8

9 60. In the case of New District 12, some further comment is required. A better
10 way to look at the changes between the 2001 and 2011 12th Congressional Districts, is to
11 examine the actual maps and the actual aggregate demographic and election data for the
12 "core area", the "Into CD" area, and the "Out of CD" area. This can only be done using a
13 computerized redistricting system.
14

15 61. I have provided a map which shows the geographic relationship of the 2001
16 District to the 2011 District. Map 1 show the areas contained in both districts in three
17 colors. The green areas are common to both the old and new versions of District 12. The
18 blue areas are only contained in the New District 12, while the red areas were only
19 contained in the Old District 12.
20

21 62. Table 4 clearly shows that the choice of VTDs, or portions of VTD's, included
22 in the New District 12 are more consistent with the General Assembly's goal of including
23 more strong Democratic VTDs in New District 12 than was the case for the Democrats'
24 2001 redistricting scheme. The final column in the Table 4 shows the 2008 Obama vote
25 percentages in the three areas described in Paragraph 48. It also summarizes the
26 difference in the BTVAP percentages for the areas added to the New District minus the

1 areas removed. In the areas common to both the New and Old Districts, President Obama
2 received 79.92% of the vote. In the areas included in only the New District, President
3 Obama received 75.39% of the vote, which is generally consistent with the rest of the
4 district. On the other hand, the areas that were included only in the Old 12th District,
5 voted for President Obama at a rate of 53.01%. Clearly, if the principle political goal of the
6 New Plan was to place those VTDs which had the highest Obama vote percentage (the
7 measure of Democratic performance used in drafting the New Plan) into the New 12th
8 District, the New District 12 does a far better job of accomplishing this goal than the prior
9 redistricting scheme, or any of the alternative Democratic maps presented to the General
10 Assembly in 2011. The only political decision which one can perceive by the desire to
11 place lower Democratic VTDs into the New 12th District is an attempt to submerge
12 Republican voters in a safe Democrat seat and weakening the surrounding Republican
13 districts.
14
15

16 63. The other thing that Table 4 demonstrates is that, as a result of the
17 difference between the areas taken out in and out of New District 12, there was an
18 increase of 20.47% in term of TBVAP and an increase of 22.38% in terms of the 2008 vote
19 for President Obama. This clearly results in a greater political effect than a racial effect.
20

21 64. North Carolina's 12th Congressional District was perceived by all as being a
22 "political" rather than a "racially based" going into the current redistricting cycle. That
23 perception governed its construction throughout the line-drawing process. The fact that
24 highest performing Democrat VTDs have the highest percentage of African-Americans,
25 does not preclude those precincts being moved into any new district for strictly political
26 purposes.

1 65. The U. S. Supreme Court made it clear in *Cromartie II at 258*, , that just
2 because the strongest Democratic precincts, in terms of percentage of voting behavior,
3 happened to be the highest in percentage of adult African-Americans, the General
4 Assembly would not be precluded from adding them to a strong Democratic district.
5 Justice Breyer stated that "the party attacking the legislatively drawn boundaries must
6 show at the least that the legislature could have achieved its legitimate political objectives
7 in alternative ways that are comparably consistent with traditional districting principles."
8 Certainly the Republicans political objectives in 2011 were just as legitimate as the
9 Democrats' objectives in 2001. They were just governed by a desire to achieve the
10 opposite political results
11

12 66. The Democrats, in their drafting of the 2001 map, fractured the African-
13 American community in Guilford County to accomplish their political goal of creating a
14 strong Democrat District 13. The General Assembly, in 2011, reunited that community
15 and placed it in the New District 12 to accomplish its political goal of creating a more
16 Republican District 6. The General Assembly also placed more heavily Democrat VTDs in
17 Mecklenburg to accomplish its goal of creating increased Republican strength in Districts
18 9 and 8.
19

20 67. For all the reasons stated above, including the fact that Dr. Ansolabehere's
21 analysis was not a holistic analysis of the Old and New Plans as a whole, or even
22 considering all the factors influencing the construction of the New Districts 1 and 12, it is
23 my expert opinion that Dr. Ansolabehere's report does not support his assertion that race
24 was the predominant factor in the construction Congressional Districts 1 and 12 in the
25 Rucho-Lewis 3 Congressional Plan.
26

1 68. The General Assembly's overarching goal in 2011 was to create as many
2 safe and competitive districts for Republican incumbents or potential candidates as
3 possible, and to unravel what the Republicans believed to have been succession of
4 Democrat gerrymanders in previous decades.

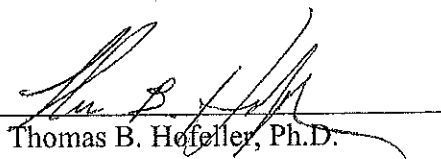
5 69. The second goal was to adhere to the one-person, one vote rule by creating
6 districts as equal in population as practicable; a point not at issue in this case.

7 70. The third goal was to ensure, to the extent possible, that the New Plan
8 would both be precleared by United States Department of Justice under the provisions of
9 Section 5 of the Voting Rights Act (VRA); and subsequently survive legal challenges under
10 the provisions of the 14th Amendment of the U. S. Constitution and Section 2 of the VRA.

11 71. A fourth goal was to create a New 1st District which would not end up with a
12 severe underpopulation at the end of this decade, as was the case for the previous 1st
13 Congressional District. In terms of 2010 Decennial Census Data, the previous District 1
14 was underpopulated by 97,563 persons, while the previous District 12 was overpopulated
15 by 2,847.

16 72. For all these reasons, it is my expert opinion that Dr. Ansolabehere's
17 analyses are not sufficient to prove that race was the predominant factor in the creation
18 of the Rucho-Lewis Congressional 3 Plan.
19
20
21

22
23 DATED on January 17, 2014.

24
25
26 
Thomas B. Hofeller, Ph.D.