

Supreme Court, U.S.
FILED
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No. 07-689

In The
Supreme Court of the United States

GARY BARTLETT, ET AL.,

Petitioners,

v.

DWIGHT STRICKLAND, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
NORTH CAROLINA SUPREME COURT

JOINT APPENDIX

CHRISTOPHER G. BROWNING, JR.*	CARL W. THURMAN, III*
NORTH CAROLINA	LAW OFFICES OF CARL W. THURMAN, III
DEPARTMENT OF JUSTICE	3169 Wrightsville
Post Office Box 629	Avenue
Raleigh, N.C. 27602	Wilmington, NC 28403
(919) 716-6900	(910) 620-3979
cbrowning@ncdoj.gov	Cwtiii@aol.com

*Counsel of Record

[Additional Counsel listed on inside front cover]
PETITION FOR CERTIORARI FILED NOVEMBER 21, 2007
CERTIORARI GRANTED MARCH 17, 2008

ROY COOPER
Attorney General
State of North Carolina

CHRISTOPHER G.
BROWNING, JR.*
GRAYSON G. KELLEY
TIARE B. SMILEY
ALEXANDER MCC. PETERS

SUSAN K. NICHOLS
NORTH CAROLINA
DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, N.C. 27602
(919) 716-6900

CARL W. THURMAN, III*
LAW OFFICES OF CARL

W. THURMAN, III
3169 Wrightsville
Avenue
Wilmington, NC 28403
(910) 620-3979

Attorney for Respondents

WALTER DELLINGER
SRI SRINIVASAN
IRVING L. GORNSTEIN
O'MELVENY & MYERS LLP
1625 Eye St., N.W.
Washington, D.C. 20006
(202) 383-5300

Attorneys for Petitioners

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NOTICE

The following opinions, decisions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages of the Appendix to the Petition for *Writ of Certiorari*:

Pender County v. Bartlett, 361 N.C. 491,
649 S.E.2d 364, North Carolina Supreme Ct.,
Aug. 24, 2007 1a

Pender County v. Bartlett, Wake County Superior
Ct., Summary Judgment Order,
Dec. 2, 2005 51a

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Pender County v. Bartlett, Wake Superior Court/
North Carolina Supreme Court,
Relevant Pleadings, Hearings and Orders

**CHRONOLOGICAL LIST OF RELEVANT
PLEADINGS, HEARINGS AND ORDERS**

**04 CVS 6966, Wake County Superior Court
Three-Judge Panel**

1. Complaint and Civil Summonses 05/19/04
2. Acceptance of Summons 05/21/04
3. Answer 06/04/04
4. Plaintiffs Motion for Preliminary Injunction
and Motion for Summary Judgment on
Permanent Injunction 06/11/04
5. Plaintiffs' Memorandum in Support of Motion
for Preliminary and Permanent
Injunction 06/11/04
6. Affidavit of Carl Thurman III 06/11/04
7. Affidavit of Frances Pinion 06/11/04
8. Notice of Hearing on Motion for Preliminary
and Motion for Summary Judgment on
Permanent Injunction 06/11/04
9. Stipulation of Maps and Statistics 06/14/04
10. Defendants' Brief in Opposition to Plaintiffs'
Motions for Preliminary Injunction and for
Summary Judgment 06/21/04

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North Carolina Supreme Court,
Relevant Pleadings, Hearings and Orders

11. Notice of Filing 06/21/04
 12. Notice of Filing of Original Affidavits
(Chesnutt & Pinion) 06/22/04
 13. Summary of Decision Denying Plaintiffs'
Motion for Preliminary Injunction 06/25/04
 14. Hearing on Motions for Preliminary
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 15. Order Denying Motion for Preliminary
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 16. Defendants' Motion for Summary
Judgment 02/25/05
 17. Second Notice of Filing 02/25/05
 18. Brief in Support of Defendants' Motion for
Summary Judgment 02/25/05
(Corrected Version served) 03/07/05
 19. Plaintiffs' Motion for Summary Judgment on
Permanent Injunction 02/25/05
 20. Plaintiffs' Memorandum in Support of Motion
for Summary Judgment and Permanent
Injunction 02/25/05
-

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North Carolina Supreme Court,
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21. Defendants' Reply Brief on Summary
Judgment 03/07/05
22. Defendants' Third Notice of Filing 03/07/05
1. Tables: Black Population, Black Voting
Age Population, Black Democratic
Registration in 2003 House Plan
2. Tables: Selected 2000/2002 Election
Results for 2003 House Plan
(Butterfield, Frye, Campbell)
3. Map & Statistics: Remedial 14 Amendment
House Plan (*Stephenson* Plaintiffs'
Alternative 2003 House Plan)
4. Map & Statistics: VRA Review 01 House
Plan (*Stephenson* Plaintiffs'
Alternative 2003 House Plan)
23. Plaintiffs' Memorandum in Opposition
to Defendants' Motion for Summary
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24. Affidavit of Stephen Holland
(03/07/05) 03/07/05
25. Plaintiffs' Memorandum of Additional
Authority 04/04/05
26. Amended Stipulations of the Parties
(signed 04/27/05) 05/02/05

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- 27. Hearing on Summary Judgment 08/30/05
- 28. Memorandum of Decision and Order re:
Summary Judgment 12/02/05
- 29. Notice of Appeal 12/30/05
- 30. Joint Stipulations of the Parties 01/09/06
- 31. Memorandum of Decision and
Judgment 01/09/06
- 32. Notice of Appeal 1/27/06

No. 103A06, NC Supreme Court

- 33. Record on Appeal 02/24/06
 - 34. Plaintiff-Appellants' Brief 04/03/06
 - 35. Defendant-Appellees' Brief 05/08/06
 - 36. Motion for Leave to File as *Amici Curiae* in
Support of Defendants Brief of Cindy Moore,
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Curiae in Support of Appellees 05/08/06
 - 37. Defendant-Appellees' Memorandum of
Additional Authority 07/14/06
 - 38. Oral Argument 09/13/06
 - 39. Opinion 08/24/07
-

STATE OF NORTH
CAROLINA

IN THE GENERAL
COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT
DIVISION
04 CVS 6966

PENDER COUNTY,)
DWIGHT STRICKLAND,)
Individually and as a Pender)
County Commissioner,)
DAVID WILLIAMS,)
Individually and as a Pender)
County Commissioner, F.D.)
RIVENBARK, Individually)
and as a Pender County)
Commissioner, STEPHEN)
HOLLAND, Individually and)
as a Pender County)
Commissioner, and EUGENE)
MEADOWS, Individually and)
as a Pender County)
Commissioner)
PLAINTIFFS,)

COMPLAINT
(REDISTRICTING)
(G.S. §§ 1/81.1,
1-267-1)
(THREE JUDGE
PANEL)

v.)

GARY BARTLETT, as)
Executive Director of the)
State Board of Elections;)

Pender County v. Bartlett, 04 CVS 6966, Complaint

LARRY LEAKE, ROBERT)
CORDLE, GENEVIEVE C.)
SIMS, LORRAINE G.)
SHINN, and CHARLES)
WINFREE in Their Official)
Capacities as Members Of)
the North Carolina Board of)
Elections; JAMES B. BLACK)
in His Official Capacity as)
Co-Speaker of the North)
Carolina House of)
Representatives; RICHARD)
T. MORGAN, in His Official)
Capacity as Co-Speaker of)
the North Carolina House of)
Representatives; MARC)
BASNIGHT, in His Official)
Capacity as President Pro)
Tempore of the North)
Carolina Senate; MICHAEL)
EASLEY, in His Official)
Capacity as Governor of the)
State of North Carolina; ROY)
COOPER, in His Official)
Capacity as Attorney General)
of the State of North)
Carolina;)
DEFENDANTS)

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COME NOW PLAINTIFFS, Complaining of Defendants, and say and allege as follows:

1. Pender County is a political subdivision of the State of North Carolina governed by a Board of Commissioners.
2. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows are duly elected members of the Pender County Board of Commissioners and are residents and registered voters of Pender County.
3. Pender County brings this action on behalf of its citizens who are being disenfranchised by the unconstitutional splitting of Pender County citizens among two North Carolina House Districts.
4. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows bring this action in their official capacities as Pender County Commissioners and in their individual capacities as citizens and registered voters in Pender County on their own behalf and on behalf of all other so situated.
5. Defendant Defendant Gary Bartlett is being sued in his official capacity as the Executive Director of the State Board of Elections, in which he is charged with administering the election laws of the State of North Carolina. The State Board of

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Elections is an agency of the State of North Carolina with its headquarters in Wake County.

6. Defendants Larry Leake, Robert Cordle, Genevieve C. Sims, Lorraine G. Shinn, and Charles Winfree are current members of the State Board of Elections and are being sued in their official capacity as members of the State Board of Elections. The State Board of Elections is charged with administering the election laws of the State of North Carolina and canvassing and determining the results of elections to the General Assembly for legislative districts, including NC House Districts 16 and 18.
 7. Defendant James B. Black is being sued in his official capacity as Representative for the 100th District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.
 8. Defendant Richard T. Morgan is being sued in his official capacity as Representative for the 52nd District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.
 9. Defendant Marc Basnight is being sued in his official capacity as Senator for the 1st District of
-

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the North Carolina Senate under the redistricting plan implemented by Judge Jenkins in 2002 and as President Pro Tempore of North Carolina Senate.

10. Defendants Roy Cooper and Michael Easley are being sued in their official capacity as the Attorney General and Governor for the State of North Carolina.
11. Prior to the 2002 session of the General Assembly, Pender County last had a representative in the General Assembly in the 1960's.
12. In the redistricting plan adopted by the North Carolina General Assembly in 1992, Pender County was split among 5 North Carolina House districts, and 2 North Carolina Senate Districts.
13. In the redistricting plan adopted by the North Carolina General Assembly in 2001, Pender County was split among 5 North Carolina House districts, and 3 North Carolina Senate Districts.
14. As a result of the opinion in Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377 (2002)(Stephenson I), another redistricting plan was drawn by the North Carolina General Assembly in 2002 ("2002 Plan") which placed Pender County in a single NC House and single NC Senate district.
15. The second plan drawn by the North Carolina General Assembly was ruled improper and an alternative plan imposed by Superior Court Judge

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Knox Jenkins on 2003. The plan drawn by Judge Jenkins also placed Pender County in a single NC House and single NC Senate district.

16. In Stephenson v. Bartlett, 357 N.C. 301, 582 S.E.2d 247 (2003) (Stephenson II), the North Carolina Supreme Court ruled the 2002 Plan invalid and directed that the North Carolina General Assembly draw new legislative districts.
 17. On November 25, 2003 the North Carolina General Assembly adopted new legislative districts (“2003 Plan”).
 18. The 2003 Plan received approval under Section 5 of the Voting Rights Act of 1965 from the United States Attorney General on March 30, 2004.
 19. On April 22, 2004, the North Carolina Supreme Court ruled that the Stephenson case was concluded and that any redistricting lawsuit challenging the 2003 Plan must be filed under a separate caption and heard before a three judge panel.
 20. The 2003 Plan places Pender County in a single Senate district, and no challenge is being made to the North Carolina Senate redistricting plan.
 21. The 2003 Plan divides Pender County among two NC House districts, the 16th and 18th.
 22. The division of Pender County into two North Carolina House Districts violates Article II, Section 5(3) of the North Carolina Constitution.
-

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23. For purposes of the current redistricting, population figures from the 2000 census must be used.
24. Pender County's population in the 2000 census is 41,082.
25. Under the holdings in Stephenson I and II, a NC House District may not deviate from the ideal population total by more than 5% in either direction.
26. Pender County's population equates to 61% of the ideal population for a NC House district.
27. In providing guidance to the North Carolina General Assembly in drawing legislative districts, the North Carolina Supreme Court in Stephenson I & II provided that County's which were not within 5%, plus or minus, should be clustered together to form multi county clusters from which legislative districts were to be drawn.
28. The 2003 Plan combines Pender County and New Hanover County into a two county cluster for creating NC House Districts.
29. The combined population of the two counties represents 300% of an ideal House district.
30. Accordingly, the two County cluster must be divided into 3 House districts.
31. Two entire House districts could be drawn within the borders of New Hanover County.
32. By drawing two House districts entirely within New Hanover County, the third district would

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- keep Pender County whole within a single House district.
33. The 2003 Plan needlessly splits Pender County between two House districts in violation of Article II, Section 5(3) of the North Carolina Constitution and the holdings in Stephenson I & II.
 34. Defendants, Black, Morgan and Basnight, as the leaders of the North Carolina General Assembly, had a duty to draw NC House districts which complied with the North Carolina Constitution and the holdings in Stephenson I & II.
 35. Despite the clear failure of the 2003 Plan to with the North Carolina Constitution and the holdings in Stephenson I & II, Defendants Bartlett, Leake, Cordle, Sims, Shinn, and Winfree have established primary, runoff and general election dates which purport to use the 2003 Plan for the 16th and 18th NC House Districts.
 36. Despite their obligation to protect and defend the North Carolina Constitution, Defendants Easley and Cooper have taken no action to stop the implementation of the unconstitutional 2003 Plan, and specifically to prevent the citizens of Pender County from having their votes diluted and their Constitutional rights denied.
 37. The rights of the citizens of Pender County under the North Carolina Constitution have been violated by the division of Pender County among two House districts in the 2003 Plan.
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38. The citizens of Pender County will be irreparably harmed if the unconstitutional 2003 Plan denying to them their rights under the North Carolina Constitution is permitted to go forward.
39. There is no adequate remedy other than injunctive relief to protect the rights of the citizens of Pender County.
40. The violation of the North Carolina Constitution, so long as the two County cluster with New Hanover County is maintained, may only be corrected by redrawing the NC House districts such that Pender County is kept within a single district.
41. The citizens of Pender County are too numerous to make joinder of all effected citizens practical.
42. The denial of the protection of Article II, Section 5(3) of the North Carolina Constitution is common to all the citizens of Pender County.
43. The named Plaintiffs will fairly and adequately represent the interests of Pender County.

WHEREFORE, Plaintiffs respectfully pray unto the Court:

1. That the Court enter an Order finding that the 16th and 18th NC House districts as drawn in the 2003 Plan violate Article II, Section 5(3) of the North Carolina Constitution;

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2. That the Court enter a mandatory and prohibitory injunction prohibiting the implementation of the current 16th and 18th NC House districts for the 2004 elections;
3. That, pursuant to N.C.G.S. §120-2.4, the Court allow the North Carolina General Assembly two weeks from the date of the entry of its Injunctive Order to draw House Districts which comply with the North Carolina Constitution;
4. That should the General Assembly fail to adopt such districts within the time allowed, that the Court enter an Order setting interim districts for use in the 2004 elections;
5. That the Court certify this matter as a class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure;
6. That all costs of this action be taxed to the Defendants, in their official capacities; and
7. That the Court grant to Plaintiffs such other and further relief as it deems just and proper.

This the 14th day of May, 2004

/s/ Carl W. Thurman, III
CARL W. THURMAN III
Pender County Attorney
3169 Wrightsville Ave.
Wilmington, North Carolina 28403
910-763-7487
Attorney for Plaintiffs

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

ANSWER

NOW COME defendants, by and through their undersigned counsel, and hereby answer the Complaint as follows:

1. Pender County is a political subdivision of the State of North Carolina governed by a Board of Commissioners.

ANSWER: Admitted.

2. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows are duly elected members of the Pender County Board of Commissioners and are residents and registered voters of Pender County.

ANSWER: Admitted.

3. Pender County brings this action on behalf of its citizens who are being disenfranchised by the unconstitutional splitting of Pender County citizens among two North Carolina House Districts.

ANSWER: Admitted that Pender County purports to bring this action on behalf of its citizens. The remaining allegations of ¶ 3 are denied, and it is specifically denied that Pender County or its Board of

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County Commissioners may properly prosecute this action, that plaintiffs may maintain this action as a class action, that any citizen of Pender County has been or is being disenfranchised, and that the placement of Pender County in two House Districts violates the North Carolina Constitution.

4. Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows bring this action in their official capacities as Pender County Commissioners and in their individual capacities as citizens and registered voters in Pender County on their own behalf and on behalf of all other so situated.

ANSWER: Admitted that plaintiffs Dwight Strickland, David Williams, F.D. Rivenbark, Stephen Holland and Eugene Meadows purport to bring this action in the capacities that they allege. Any remaining allegations of ¶ 4 are denied, and it is specifically denied that these plaintiffs may properly prosecute this action in their official capacities and that they may maintain this action as a class action.

5. Defendant Gary Bartlett is being sued in his official capacity as the Executive Director of the State Board of Elections, in which he is charged with administering the election laws of the State of North Carolina. The State Board of Elections is an agency of the State of North Carolina with its headquarters in Wake County.

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ANSWER: Admitted that Gary Bartlett is being sued in his official capacity as the Executive Director of the State Board of Elections, in which capacity he has those duties and responsibilities set forth by statute and those delegated to him by the State Board of Elections. It is further admitted that the State Board of Elections is an agency of the State of North Carolina with its headquarters in Wake County. Any remaining allegations of ¶ 5, including any inferences to be drawn therefrom, are denied.

6. Defendants Larry Leake, Robert Cordle, Genevieve C. Sims, Lorraine G. Shinn, and Charles Winfree are current members of the State Board of Elections and are being sued in their official capacity as members of the State Board of Elections. The State Board of Elections is charged with administering the election laws of the State of North Carolina and canvassing and determining the results of elections to the General Assembly for legislative districts, including NC House Districts 16 and 18.

ANSWER: Admitted that Defendants Larry Leake, Robert Cordle, Genevieve C. Sims, Lorraine G. Shinn, and Charles Winfree are current members of the State Board of Elections and are being sued as alleged. Further admitted that the State Board of Elections is charged with general supervision over primaries and elections in the State of North Carolina and canvassing and determining the results of elections to the General Assembly for legislative districts in which

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the district lies in more than one county, including North Carolina House Districts 16 and 18. Any remaining allegations of ¶ 6, including any inference to be drawn therefrom, are denied, and it is specifically denied that the State Board of Elections has primary authority for actually conducting primaries and elections, which primary authority is vested in the various county boards of elections.

7. Defendant James B. Black is being sued in his official capacity as Representative for the 100th District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.

ANSWER: Admitted that Defendant James B. Black is being sued as alleged. Any remaining allegations of ¶ 7 are denied, and it is specifically denied that Defendant James B. Black is a proper party to this action in either his official or his individual capacity.

8. Defendant Richard T. Morgan is being sued in his official capacity as Representative for the 52nd District of the North Carolina House of Representatives under the redistricting plan implemented by Judge Jenkins in 2002 and Co-Speaker of the North Carolina House of Representatives.

ANSWER: Admitted that Defendant Richard T. Morgan is being sued as alleged. Any remaining allegations of ¶ 8 are denied, and it is specifically

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denied that Defendant Richard T. Morgan is a proper party to this action in either his official or his individual capacity.

9. Defendant Marc Basnight is being sued in his official capacity as Senator for the 1st District of the North Carolina Senate under the redistricting plan implemented by Judge Jenkins in 2002 and as President Pro Tempore of North Carolina Senate.

ANSWER: Admitted that Defendant Marc Basnight is being sued as alleged. Any remaining allegations of ¶ 9 are denied, and it is specifically denied that Defendant Marc Basnight is a proper party to this action in either his official or his individual capacity.

10. Defendants Roy Cooper and Michael Easley are being sued in their official capacity as the Attorney General and Governor for the State of North Carolina.

ANSWER: Admitted that Defendants Roy Cooper and Michael Easley are being sued as alleged. Any remaining allegations of ¶ 10 are denied, and it is specifically denied that Defendants Roy Cooper and Michael Easley are proper parties to this action in either their official or their individual capacities.

11. Prior to the 2002 session of the General Assembly, Pender County last had a representative in the General Assembly in the 1960's.

ANSWER: Denied. The citizens of Pender County have been represented in the General Assembly in every session of the General Assembly since the county's formation. Upon information and belief, it is

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admitted that prior to the 2002 Session of the General Assembly, a resident of Pender County last served in the General Assembly in the 1960's, but it is specifically denied that either Pender County or its citizens have a right to be represented in the North Carolina General Assembly solely by a resident of Pender County.

12. In the redistricting plan adopted by the North Carolina General Assembly in 1992, Pender County was split among 5 North Carolina House districts, and 2 North Carolina Senate Districts.

ANSWER: Denied.

13. In the redistricting plan adopted by the North Carolina General Assembly in 2001, Pender County was split among 5 North Carolina House districts, and 3 North Carolina Senate Districts.

ANSWER: Admitted.

14. As a result of the opinion in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), another redistricting plan was drawn by the North Carolina General Assembly in 2002 ("2002 Plan") which placed Pender County in a single NC House and single NC Senate district.

ANSWER: Admitted.

15. The second plan drawn by the North Carolina General Assembly was ruled improper and an alternative plan imposed by Superior Court Judge Knox Jenkins on 2003. The plan drawn by Judge

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Jenkins also placed Pender County in a single NC House and single NC Senate district.

ANSWER: Admitted that the House and Senate districting plans drawn by the General Assembly in 2002 in response to the Supreme Court's decision in *Stephenson I* were found to be unconstitutional. It is further admitted that the Interim Plans imposed by Senior Resident Superior Court Judge Knox V. Jenkins, Jr., for the 2002 legislative elections placed Pender County in one House district and one Senate district. Any remaining allegations of ¶ 15 are denied.

16. In *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), the North Carolina Supreme Court ruled the 2002 Plan invalid and directed that the North Carolina General Assembly draw new legislative districts.

ANSWER: Admitted that the decision in *Stephenson II* speaks for itself regarding the plan enacted by the General Assembly in 2002. Any remaining allegations of ¶ 16 are denied.

17. On November 25, 2003 the North Carolina General Assembly adopted new legislative districts ("2003 Plan").

ANSWER: Admitted.

18. The 2003 Plan received approval under Section 5 of the Voting Rights Act of 1965 from the United States Attorney General on March 30, 2004.

ANSWER: Admitted that the United States Attorney General, pursuant to Section 5 of the Voting

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Rights Act of 1965, as amended, 42 U.S.C. § 1973c (hereinafter “the Voting Rights Act”), gave administrative preclearance to the 2003 Plan on March 30, 2004. Any remaining allegations of ¶ 18 are denied.

19. On April 22, 2004, the North Carolina Supreme Court ruled that the *Stephenson* case was concluded and that any redistricting lawsuit challenging the 2003 Plan must be filed under a separate caption and heard before a three judge panel. **ANSWER:** Admitted that the decision in *Stephenson v. Bartlett and Morgan v. Stephenson*, 358 N.C. 219, 595 S.E.2d 112 (2004), speaks for itself. Any remaining allegations of ¶ 19 are denied.

20. The 2003 Plan places Pender County in a single Senate district, and no challenge is being made to the North Carolina Senate redistricting plan. **ANSWER:** Admitted.

21. The 2003 Plan divides Pender County among two NC House districts, the 16th and 18th. **ANSWER:** Admitted.

22. The division of Pender County into two North Carolina House Districts violates Article II, Section 5(3) of the North Carolina Constitution. **ANSWER:** Denied.

23. For purposes of the current redistricting, population figures from the 2000 census must be used. **ANSWER:** Admitted that the Public Law 97-171 2000 Decennial Census data, which is included in the

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General Assembly's DistrictBuilder redistricting system, is the correct population data base for drafting redistricting plans until the next decennial census.

24. Pender County's population in the 2000 census is 41,082.

ANSWER: Admitted that according to the 2000 Decennial Census and the data used in the General Assembly's DistrictBuilder system, the total population of Pender County is 41,082.

25. Under the holdings in *Stephenson I* and *II*, a NC House District may not deviate from the ideal population total by more than 5% in either direction.

ANSWER: Admitted that under the federal and North Carolina constitutions, as interpreted by the North Carolina Supreme Court in *Stephenson I* and *II*, any deviation from the ideal population for a legislative district shall be at or within plus or minus five percent for purposes of compliance with federal one person, one vote requirements. Any remaining allegations of ¶ 25 are denied.

26. Pender County's population equates to 61% of the ideal population for a NC House district.

ANSWER: Admitted that Pender County's total population deviates from the ideal population for a single-member House district (67,078) by 38.75%. Any remaining allegations of ¶ 26 are denied.

27. In providing guidance to the North Carolina General Assembly in drawing legislative districts, the North Carolina Supreme Court in *Stephenson I & II*

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provided that Counties which were not within 5%, plus or minus, should be clustered together to form multi county clusters from which legislative districts were to be drawn.

ANSWER: Admitted that the decisions in *Stephenson I* and *II* speak for themselves. Any remaining allegations of ¶ 27 are denied.

28. The 2003 Plan combines Pender County and New Hanover County into a two county cluster for creating NC House Districts.

ANSWER: Admitted that the 2003 Plan combines Pender County and New Hanover County into a two-county grouping for the purpose of creating House districts.

29. The combined population of the two counties represents 300% of an ideal House district.

ANSWER: Admitted that the combined total population of Pender and New Hanover Counties is 201,389, which is sufficient to encompass three single-member House districts that are at or within plus or minus five percent of the ideal population for a single-member House district. Any remaining allegations of ¶ 29 are denied.

30. Accordingly, the two County cluster must be divided into 3 House districts.

ANSWER: Admitted that the total population of this two-county grouping is sufficient to create three single-member House districts. Any remaining allegations of ¶ 30 are denied.

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31. Two entire House districts could be drawn within the borders of New Hanover County.

ANSWER: Admitted that if the requirements of Section 2 of the Voting Rights Act and the supremacy clauses of the federal and North Carolina constitutions are ignored, the total population of New Hanover County is sufficient to create two single-member House districts wholly within the borders of the county. Any remaining allegations of ¶ 31, including any inferences to be drawn therefrom, are denied.

32. By drawing two House districts entirely within New Hanover County, the third district would keep Pender County whole within a single House district.

ANSWER: Admitted that if the requirements of Section 2 of the Voting Rights Act and the supremacy clauses of the federal and North Carolina constitutions are ignored such that two entire single-member House districts were drawn entirely within the borders of New Hanover County, a third single-member district could be drawn that includes all of Pender County and a portion of New Hanover County. Any remaining allegations of ¶ 32, including any inferences to be drawn therefrom, are denied.

33. The 2003 Plan needlessly splits Pender County between two House districts in violation of Article II, Section 5(3) of the North Carolina Constitution and the holdings in *Stephenson I & II*.

ANSWER: Denied.

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34. Defendants, Black, Morgan and Basnight, as the leaders of the North Carolina General Assembly, had a duty to draw NC House districts which complied with the North Carolina Constitution and the holdings in *Stephenson I & II*.

ANSWER: Admitted that any legislative redistricting plan enacted by the North Carolina General Assembly must comply with the North Carolina Constitution and with the decisions in *Stephenson I and II*. Any remaining allegations of ¶ 34, including any inferences to be drawn therefrom, are denied, and it is specifically denied that defendants Black, Morgan and Basnight are proper defendants in this action in either their official or their individual capacities or that they did not comply with any duty they owed as legislators.

35. Despite the clear failure of the 2003 Plan to with the North Carolina Constitution and the holdings in *Stephenson I & II*, Defendants Bartlett, Leake, Cordle, Sims, Shinn, and Winfree have established primary, runoff and general election dates which purport to use the 2003 Plan for the 16th and 18th NC House Districts.

ANSWER: Admitted that the State Board of Elections has established dates for primary, second primary and general legislative elections, all of which are to be conducted using the 2003 House Plan and are to be conducted by the various county boards of elections, including the Pender County Board of

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Elections and the New Hanover County Board of Elections. Any remaining allegations of ¶ 35, including any inferences to be drawn therefrom, are denied, and it is specifically denied that the 2003 House Plan is unconstitutional or fails to comply with *Stephenson I or II* or that the State Board of Elections or any of its employees or members has any authority to refuse to execute State election laws duly enacted by the General Assembly, which are presumed to be constitutional.

36. Despite their obligation to protect and defend the North Carolina Constitution, Defendants Easley and Cooper have taken no action to stop the implementation of the unconstitutional 2003 Plan, and specifically to prevent the citizens of Pender County from having their votes diluted and their Constitutional rights denied.

ANSWER: Denied, and it is specifically denied that the constitutional and statutory duties of the Governor or the Attorney General, including the duty to support, maintain and defend the Constitution of North Carolina, not inconsistent with the Constitution of the United States, confers upon them any authority to stop the implementation of the duly enacted 2003 House Plan, which enactment is presumed by law to be constitutional. It is further specifically denied that defendants Easley and Cooper are proper parties to this action in either their official or their individual capacities, that the vote of any citizen of Pender

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County has been or will be diluted, and that the 2003 House Plan denies any citizen of Pender County his or her constitutional rights.

37. The rights of the citizens of Pender County under the North Carolina Constitution have been violated by the division of Pender County among two House districts in the 2003 Plan.

ANSWER: Denied.

38. The citizens of Pender County will be irreparably harmed if the unconstitutional 2003 Plan denying to them their rights under the North Carolina Constitution is permitted to go forward.

ANSWER: Denied.

39. There is no adequate remedy other than injunctive relief to protect the rights of the citizens of Pender County.

ANSWER: Denied, and it is specifically denied that plaintiffs have stated any claim for relief that would entitle to them to a remedy of any sort.

40. The violation of the North Carolina Constitution, so long as the two County cluster with New Hanover County is maintained, may only be corrected by redrawing the NC House districts such that Pender County is kept within a single district.

ANSWER: Denied, and it is specifically denied that the division of Pender County between two House districts in the 2003 House Plan violates the North Carolina Constitution.

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41. The citizens of Pender County are too numerous to make joinder of all effected citizens practical.

ANSWER: Admitted that, if this were a proper class action, the citizens of Pender County would be too numerous to make joinder of all citizens practical. Any remaining allegations of ¶ 41, including any inferences to be drawn therefrom, are denied, and it is specifically denied that all of the citizens of Pender County have a common or aligned interest in this litigation or that this action can properly be maintained as a class action.

42. The denial of the protection of Article II, Section 5(3) of the North Carolina Constitution is common to all the citizens of Pender County.

ANSWER: Denied, and it is specifically denied that Article II, Section 5(3), of the North Carolina Constitution creates any protections or rights for individual citizens, that any citizen of Pender County has been denied any alleged protection under Article II, Section 5(3), of the North Carolina Constitution, and that all of the citizens of Pender County have a common or aligned interest in this litigation.

43. The named Plaintiffs will fairly and adequately represent the interests of Pender County.

ANSWER: Denied.

FURTHER DEFENSES

1. Neither Pender County, as a part of State government created by and subject to the full control of the General Assembly, nor its commissioners acting in their official capacity have the authority to maintain this action challenging the constitutionality of an act of the General Assembly.

2. Defendants Black, Morgan, Basnight, Easley and Cooper are not proper parties to this action, either in their official or their individual capacities.

3. To the extent that plaintiffs may seek injunctive relief in this action, then New Hanover County, in which portions of House Districts 16 and 18 are located, and which would be required to bear the costs associated with the delay of the 2004 elections sought by plaintiffs, or its board of commissioners may be necessary parties to this action, and plaintiffs have failed to join these potentially necessary parties.

4. To the extent that plaintiffs seek injunctive relief with regard to the 2004 primaries and election, plaintiffs' claims are barred by laches.

5. To the extent that plaintiffs seek injunctive relief with regard to the 2004 primaries and election, plaintiffs' are estopped from seeking such relief.

6. Plaintiffs have failed to state a claim for which relief can be granted because the division of Pender County between two House districts was required by federal law – *i.e.*, Section 2 of the Voting Rights Act –

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the supremacy of which under the federal and State constitutions was specifically recognized by the North Carolina Supreme Court in *Stephenson I* and *II*.

WHEREFORE, defendants respectfully pray that the Court:

1. Deny plaintiffs all relief sought by them;
2. Enter judgment for defendants; and
3. Award such other relief to defendants as the Court may deem just and proper.

Respectfully submitted, this the 4th day of June, 2004.

ROY COOPER
ATTORNEY GENERAL

By: /s/Tiare B. Smiley
Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119

Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654

Susan K. Nichols
Special Deputy Attorney General
N.C. State Bar No. 9904

Pender County v. Bartlett, No. 04 CVS 6966, Answer

N.C. Department of Justice

P.O. Box 629

Raleigh, N.C. 27602

Telephone: (919) 716-6900

Facsimile: (919) 716-6763

Counsel for the Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

AFFIDAVIT OF CARL THURMAN III

CARL W. THURMAN III, being first duly sworn, deposes and says as follows:

1. I am above the age of 18 years, and am competent to testify as to the matters set forth herein, which are based upon my personal knowledge and belief. I am the County Attorney for Pender County and have served in that capacity for over six years.

2. In March 2002, I filed an amicus brief in the Stephenson v. Bartlett, 355 N.C. 354, 562 S.E.2d 377(2002) (Stephenson I) case. The North Carolina Supreme Court recognized Pender County's plight in the opinion in Stephenson I and even quoted from the amicus brief in its opinion.

3. In both the 2002 House plan adopted by the North Carolina General Assembly and the Interim plan adopted by Judge Knox Jenkins, Pender County was placed into a single House district.

4. In the 2002 election, a Pender County resident was elected to the North Carolina House for the first time since the 1960's.

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Affidavit of Carl W. Thurman III

5. On July 16, 2003, the North Carolina Supreme Court ruled in Stephenson v. Bartlett, 357 N.C. 301, 582 S.E.2d 247(2003) (Stephenson II) that the 2002 redistricting plan adopted by the General Assembly was invalid.

6. In November of 2003, the Pender County Board of Commissioners learned that legislative leaders were considering enacting a plan which would split Pender County among two House districts. Accordingly, they directed that I appear to speak before the chairmen of the respective House and Senate committees on redistricting.

7. On November 20, 2003, I spoke before the chairmen of the committees. Because the proposed new plans had not been released to the public, my comments necessarily had to be somewhat general in nature. The committees on redistricting never held public hearings on the proposed plans, nor for that matter did the full committees meet on the plan prior to presentation of the plans to the General Assembly.

8. Attached hereto are possible legislative districts which have been drawn using the "DistrictBuilder" software system. The data used was, according to Rachel Suelflow of the Legislative Staff, the same as that available for use by the General Assembly.

9. The "DistrictBuilder" contains partial election results for the 2000 and 2002 elections. Included in

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those partial results are the election results for Justice Henry Frye's race for the North Carolina Supreme Court in 2000, Auditor Ralph Campbell's race for auditor in 2000, and Justice G.K. Butterfield's race for the Supreme Court in 2002. Justice Frye, Mr. Campbell and Justice Butterfield are African-American, or in the terms of the census racial classification, Black.

10. Attached hereto are true and correct copies of pages from the North Carolina General Assembly's "Legislator's Guide to North Carolina Legislative and Congressional Redistricting" (Fourth Edition) which show data on the population changes between the 1990 and 2000 census.

FURTHER AFFIANT SAYETH NOT

This the 11th day of June, 2004.

/s/Carl W. Thurman III
Carl W. Thurman III

[notarial attestation omitted in printing]

[Pertinent data in omitted attachments is set out at pages 56, 58, 60, 62 and 80-83 of the Joint Appendix.]

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

NOTICE OF FILING

Defendants' respectfully file the following affidavits, attached hereto, in support of DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND FOR SUMMARY JUDGMENT:

- A. Affidavit of Representative Martha B. Alexander
- B. Affidavit of Representative Thomas E. Wright
- C. Affidavit of William R. Gilkeson, Jr.
- D. Affidavit of Gary O. Bartlett
- E. Affidavit of Frances Pinion
- F. Affidavit of Renee Lane Chesnut
- G. Affidavit of Milford Farrior
- H. Affidavit of Cindy Moore

Respectfully submitted, this the 21st day of June, 2004.

ROY COOPER
Attorney General

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Notice of Filing

/s/Tiare B. Smiley

Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119

Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654

Susan K. Nichols
Special Deputy Attorney General
N.C. State Bar No. 9904

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763

Counsel for the Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
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[full caption omitted in printing]

**AFFIDAVIT OF REPRESENTATIVE
MARTHA B. ALEXANDER**

Representative Martha B. Alexander, being first sworn, deposes and says:

1. I am the duly elected Representative from House District 106 in Mecklenburg County and am serving my sixth term in the North Carolina House of Representatives. I was first elected in November, 1992 and began serving in 1993. I am a registered Democrat.

2. I was appointed by the Co-Speakers of the North Carolina House to serve as Co-Chair of the House Legislative Redistricting Committee on February 25, 2003. The Republican Co-Chair appointed at that same time was Representative Rick L. Eddins from Wake County.

3. Prior to the Special Session in November, 2003, when the 2003 House Plan was enacted, all black Representatives were consulted about the effect of the *Stephenson I* and *II* opinions and the redrawing of their legislative districts. This consultation was part of my effort to assure that the plan complied with the

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Voting Rights Act (“VRA”). Because all of the House minority members are Democrats, they each met separately with Speaker James B. Black and/or me to discuss their districts. Although the boundaries of some minority districts were established with a single redistricting meeting in which we looked at a proposed map of each district and the proposed district’s demographics and election history, typically several meetings were held as the boundaries of the districts were discussed and modified in a back-and-forth process. This process continued until most Representatives were reasonably satisfied and it was felt the individual districts and map as a whole met the requirements of state and federal law. I worked closely with the Legislative Black Caucus leadership and members to draw districts that reasonably maintain the opportunity of racial minorities to effectively exercise their right to vote and to elect representatives of their choice.

4. In drawing minority districts, compromises had to be struck in order to comply with §§ 2 and 5 of the Voting Rights Act and also the Whole County Provisions (“WCP”) of the North Carolina Constitution as interpreted by the Supreme Court of North Carolina in the *Stephenson* opinions. The Court’s opinions require a redistricting plan to comply with the VRA and that the VRA districts comply with the whole

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county provisions “to the maximum extent practicable.”

5. The 2003 House Plan includes ten majority - black total population (“BPOP”) districts and one majority-Native American total population (“NAPOP”) districts in counties covered by § 5 of the VRA. There are also two House districts with over 40% BPOP in § 5 counties. This plan received § 5 preclearance by the United States Department of Justice on March 30, 2004.

6. The 2003 House Plan also includes four majority-black (BPOP) and four over 40% BPOP House districts in areas of the state not covered by § 5, but subject to § 2 of the VRA. Among these districts is House District 18, which was drawn in Pender and New Hanover Counties in order to maintain the district as an effective black VRA district.

7. Past election results in North Carolina demonstrate that House districts with a BPOP of 41.54% and above or a black voting age population (“BVAP”) of 38.37% and above can provide an effective opportunity for the election of black candidates. See Attachment A. An important indicator of effective black voting strength we considered when drawing districts was the percentage of registered Democrats who are black. In past elections, districts with black Democratic registration as low as 52.58% in District 18

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and as high as 78.87% in District 60 have elected black Representatives. See Attachment B.

8. The ability of black voters to elect black candidates has also been shown to exist in congressional districts with less than a 50% BVAP. In 1998, under a plan drawn to satisfy the ruling of the three-judge federal court in *Cromartie* - - a judgment subsequently reversed by the United States Supreme Court - - the black population in District 1 was reduced to 50.27% BPOP and 43.54% BVAP, and in District 12 was reduced to 35.58% BPOP and 32.56% BVAP. Both black incumbents were re-elected. In the 2000 election, held under the legislature's 1997 Congressional Plan, black incumbents were again re-elected in District 1 (50.27% BPOP, 46.54% BVAP) and District 12 (46.67% BPOP, and 43.36% BVAP). In the new districts drawn after the 2000 Census, black incumbents continued to run successfully in the 2002 elections in District 1 (50.71% BPOP, 47.82% BVAP) and District 12 (45.02% BPOP, 45.56% BVAP).

9. In the trial court's 2002 Interim Plan, House District 18 was maintained as an effective black district with a BPOP of 47.52%, BVAP of 43.52% and 52.58% black Democratic registration. Representative Thomas E. Wright was re-elected under the Interim Plan. He has served six terms in the House of Representatives and was first elected to the House in the 1992 election, the same year I won my first

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election. However, the district as drawn by the court divided the three counties of New Hanover, Brunswick and Columbus and required a four-county group consisting of Pender, New Hanover, Brunswick and Columbus Counties. The state courts considered a similar configuration in the legislatively drawn 2002 Plan to be non-compact.

10. In drawing the 2003 House Plan, it was possible to maintain an effective black district by keeping District 18 in a two-county group consisting of New Hanover and Pender Counties. This also allowed grouping Columbus and Brunswick Counties, thereby creating two additional two-county groups in place of a four-county group. The number of county splits and county line traverses was also reduced in the 2003 Plan as the district now divides only two counties and has one traverse. The black population, though somewhat reduced, remains at 42.89% BPOP, 39.36% BVAP, and 53.72% black registered Democrats, which past experience has shown is sufficient in North Carolina to provide an effective black voting district.

11. We found it was not possible to draw District 18 wholly within New Hanover County and to maintain an effective black voting district. If the district is drawn wholly within New Hanover, the BPOP drops below 36%, the BVAP below 32%, and black Democratic registration below 49%. To illustrate, see the two attached maps created drawing

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Affidavit of Representative Martha B. Alexander

District 18 wholly within New Hanover County. One plan (Attachment C) splits no precincts, while the other plan (Attachment D) splits precincts to raise the black population percentages as high as possible. These percentages are below the levels that have in the past successfully provided black citizens in North Carolina an opportunity to elect their candidates of choice.

12. All of the statistics mentioned in this affidavit are available on the General Assembly's DistrictBuilder computer redistricting system.

13. In my discussions with the Legislative Black Caucus leadership and Representative Wright, it was clear that there were very strong feelings about the importance of maintaining District 18 as an effective black voting district. There was a serious concern about the possibility of a § 2 VRA challenge to the plan. Representative Wright, like every other legislator, would have preferred to keep the configuration of his district at that time unchanged. He was concerned about the black voters in Brunswick and Columbus Counties who had supported him in all of his elections since 1992. Although no portion of Pender County was included in the court-drawn Interim Plan under which the 2002 elections were held, Representative Wright had represented a portion of Pender County (former District 98) from his first

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election in 1992 until the 2002 election. Representative Wright did vote for the 2003 Plan.

14. Based on the information available to me and other legislators, it was felt that we had an obligation to find a way to maintain an effective black voting district in the area in order to comply with the Voting Rights Act, but we also needed to adjust the district as much as possible to comply with the WCP requirements set out by the Court. As Co-Chair of the House Legislative Redistricting Committee, I think the 2003 Plan constitutes the best possible compromise between the requirements of the Voting Rights Act and the Court's instructions regarding the WCP in its *Stephenson* opinions.

This the 9 day of June, 2004.

/s/Martha B. Alexander
Representative Martha B. Alexander

[notarial attestation omitted in printing]

Pender County v. Bartlett, No. 04 CVS 6966,
 Affidavit of Representative Martha B. Alexander,
 Attachment A

BLACK POPULATION PERCENTAGES

* Shading indicates Districts with a history of electing Black Representatives

** Population percentages based on 2000 Decennial Census

1992 HOUSE PLAN				INTERIM HOUSE PLAN			
TOTAL BLACK POP		BLACK VOTING AGE POP		TOTAL BLACK POP		BLACK VOTING AGE POP	
Dist	%Black	Dist	%Black	Dist	% Black	Dist	% Black
8	58.56%	8	55.61%	8	55.16%	8	52.03%
				27	53.44%	27	51.15%
78	55.40%	78	52.94%				
				102	50.29%		
						102	46.05%
58	43.60%						
		58	38.98%				
6	40.55%	6	36.75%				

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1992 HOUSE PLAN				INTERIM HOUSE PLAN			
TOTAL BLACK POP		BLACK VOTING AGE POP		TOTAL BLACK POP		BLACK VOTING AGE POP	
Dist	%Black	Dist	%Black	Dist	% Black	Dist	% Black
71	33.78%	71	31.76%	38	45.61%		
56	33.76%	18	30.71%			38	41.16%
36	33.65%	36	30.51%	6	33.81%	6	31.20%
18	33.65%	56	30.12%	100	33.35%	100	30.18%
33	31.73%	33	29.70%	23	31.96%	23	29.84%
22	31.08%	22	29.68%	106	29.53%	65	28.06%
32	30.97%	32	28.41%	22	29.39%	32	27.84%
2	29.12%	2	27.24%	99	29.36%	22	27.70%
11	28.78%	11	26.80%	11	29.23%	99	27.42%
89	28.72%	1	26.45%	4	29.15%	4	27.26%
1	27.62%	89	26.40%	32	29.06%	11	27.18%
72	27.54%	12	26.02%	44	28.88%	63	27.18%
12	27.48%	54	25.70%	65	28.64%	1	26.99%
35	27.45%	35	25.05%	63	28.59%	49	26.75%
54	27.32%	72	24.74%	69	28.20%	44	26.74%
64	27.09%	16	23.95%	49	28.07%	69	26.64%
16	25.83%	64	23.73%	1	28.00%	106	26.16%
9	25.49%	9	23.06%	30	27.98%	30	25.47%
96	23.45%	77	21.96%	41	27.10%	41	25.28%
77	23.31%	96	21.75%	25	26.26%	25	25.05%
25	23.31%	25	21.66%	77	26.16%	77	24.10%
65	22.91%	65	21.09%	46	25.52%	46	23.95%
75	22.75%	75	20.90%	55	24.17%	55	23.20%
44	22.58%	19	20.05%	45	24.06%	45	22.34%
19	21.85%	44	19.72%	68	23.75%	68	21.94%
86	21.40%	86	19.52%	111	23.50%	14	21.57%

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Affidavit of Representative Martha B. Alexander,
Attachment A

1992 HOUSE PLAN				INTERIM HOUSE PLAN			
TOTAL BLACK POP		BLACK VOTING AGE POP		TOTAL BLACK POP		BLACK VOTING AGE POP	
Dist	% Black	Dist	% Black	Dist	% Black	Dist	% Black
42	19.91%	10	17.76%	14	23.48%	10	21.21%
80	19.06%	80	17.66%	9	22.61%	111	21.19%
10	18.90%	42	17.04%	10	22.59%	9	20.43%
34	18.68%	34	16.69%	109	22.30%	109	19.54%
20	17.89%	20	16.42%	2	20.58%	2	19.08%
15	17.63%	15	16.28%	70	19.87%	51	17.74%
90	17.62%	90	16.02%	20	19.61%	59	17.66%
3	17.49%	3	15.94%	53	19.21%	70	17.61%
37	17.23%	37	15.71%	51	18.86%	16	17.46%
48	16.37%	85	14.64%	59	18.83%	20	17.43%
31	15.97%	48	14.64%	96	18.83%	40	17.38%
95	15.33%	95	14.32%	39	18.81%	53	17.34%
73	15.32%	73	14.29%	16	18.59%	96	17.22%
85	15.25%	31	14.12%	40	18.47%	39	17.17%
4	15.14%	63	13.91%	62	17.24%	62	16.39%
63	14.78%	24	13.67%	81	16.54%	81	15.32%
24	14.47%	4	13.64%	52	15.95%	54	14.92%
76	14.00%	76	12.61%	3	15.60%	15	14.58%
14	13.89%	14	12.14%	15	15.59%	3	14.29%
61	11.92%	61	10.87%	54	15.35%	28	14.22%
92	11.42%	92	10.64%	28	15.01%	52	14.11%
30	11.36%	30	10.58%	26	14.72%	47	14.05%
39	11.20%	29	10.41%	47	14.55%	26	13.38%
93	11.06%	62	10.22%	61	13.69%	37	13.34%
29	11.02%	93	10.06%	66	13.69%	66	12.89%
62	10.45%	39	9.66%	37	13.68%	61	12.50%

Pender County v. Bartlett, No. 04 CVS 6966,
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Attachment A

1992 HOUSE PLAN				INTERIM HOUSE PLAN			
TOTAL BLACK POP		BLACK VOTING AGE POP		TOTAL BLACK POP		BLACK VOTING AGE POP	
Dist	%Black	Dist	%Black	Dist	% Black	Dist	% Black
55	10.11%	47	9.04%	112	13.04%	112	11.91%
27	9.83%	69	8.95%	75	12.32%	34	11.41%
69	9.80%	55	8.81%	34	12.17%	75	11.40%
82	9.56%	82	8.78%	74	12.04%	74	11.24%
47	9.40%	84	8.69%	114	11.92%	56	10.86%
84	9.34%	27	8.69%	110	11.66%	110	10.71%
57	8.87%	88	8.17%	56	11.57%	114	10.43%
88	8.80%	57	8.09%	93	10.63%	93	9.33%
43	8.12%	43	7.53%	88	10.38%	88	9.23%
51	8.11%	51	7.18%	98	9.66%	98	9.02%
13	7.76%	13	6.60%	64	8.63%	86	8.38%
45	6.80%	45	6.11%	17	8.58%	64	8.20%
46	6.33%	46	5.53%	35	8.57%	35	8.06%
68	6.28%	83	5.47%	86	8.54%	57	8.02%
83	5.88%	38	5.35%	94	8.52%	94	7.84%
38	5.80%	68	5.31%	67	8.43%	115	7.78%
81	5.56%	74	5.23%	57	8.38%	67	7.77%
74	5.45%	81	5.16%	115	8.34%	103	7.72%
91	5.38%	91	4.85%	103	8.29%	17	7.54%
94	4.41%	41	4.09%	95	7.72%	95	7.18%
41	4.33%	94	4.04%	89	7.36%	50	7.04%
49	3.32%	49	3.30%	50	7.07%	89	6.83%
40	3.27%	40	3.05%	13	6.63%	13	6.03%
50	1.74%	50	1.44%	97	6.44%	97	5.91%
52	1.42%	52	1.41%	108	6.23%	108	5.89%
53	1.38%	53	1.14%	73	5.73%	73	5.43%

Pender County v. Bartlett, No. 04 CVS 6966,
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1992 HOUSE PLAN		INTERIM HOUSE PLAN			
TOTAL BLACK POP	BLACK VOTING AGE POP	TOTAL BLACK POP	BLACK VOTING AGE POP	TOTAL BLACK POP	BLACK VOTING AGE POP
Dist	%Black	Dist	% Black	Dist	% Black
		105	5.66%	76	5.21%
		104	5.66%	105	5.17%
		76	5.51%	104	5.09%
		19	5.49%	19	5.07%
		79	5.09%	79	5.00%
		84	4.88%	36	4.80%
		91	4.85%	91	4.74%
		36	4.81%	84	4.70%
		92	4.61%	92	4.50%
		87	4.20%	83	4.02%
		83	4.16%	87	3.91%
		117	3.85%	80	3.55%
		80	3.78%	117	3.44%
		113	3.50%	90	3.15%
		90	3.33%	85	3.11%
		85	2.99%	113	3.07%
		78	2.90%	78	2.91%
		116	1.97%	116	1.77%
		82	1.26%	119	1.32%
		119	1.25%	82	1.28%
		118	1.23%	118	1.23%
		120	1.19%	120	1.05%

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BLACK DEMOCRATIC VOTER REGISTRATION

* Shading indicates Districts with a history of electing Black Representatives

** Population percentages based on 2003 registration data

1992 HOUSE PLAN	
Dist.	% Black
8	66.22%
78	61.28%
58	57.20%
54	53.25%
56	49.89%

INTERIM HOUSE PLAN	
Dist.	% Black
102	67.77%
38	63.97%
8	61.20%
27	60.03%
99	58.48%



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1992 HOUSE PLAN	
Dist.	% Black
36	49.89%
6	47.90%
18	47.17%
12	45.06%
35	43.75%
89	43.75%
11	41.59%
71	40.79%
33	40.44%
2	38.15%
22	38.05%
1	37.55%
65	37.47%
32	37.32%
25	35.78%
72	35.25%
64	35.18%
9	35.12%
75	34.53%
90	33.63%
96	33.41%
15	32.95%
31	32.43%
34	32.24%
10	31.51%
77	31.34%
44	31.01%

INTERIM HOUSE PLAN	
Dist.	% Black
100	50.59%
44	47.69%
14	45.11%
106	44.83%
11	44.54%
63	43.56%
77	42.97%
6	42.61%
23	42.33%
65	41.90%
22	41.34%
69	38.57%
1	38.26%
4	37.60%
49	37.47%
41	36.87%
45	36.29%
32	36.11%
25	36.07%
9	35.05%
62	34.87%
16	34.30%
39	33.89%
10	33.32%
30	33.25%

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1992 HOUSE PLAN	
Dist.	% Black
19	30.87%
42	30.59%
16	30.49%
37	28.50%
80	28.45%
3	28.00%
20	27.43%
86	27.27%
76	26.42%
63	26.03%
95	25.27%
30	25.14%
73	24.02%
69	23.51%
14	23.46%
48	23.36%
92	23.20%
4	22.93%
29	20.90%
62	20.63%
84	19.93%
24	19.41%
27	19.38%
88	19.38%
93	19.36%
55	18.24%
38	17.93%

INTERIM HOUSE PLAN	
Dist.	% Black
52	33.18%
111	32.73%
70	32.64%
68	32.37%
55	32.08%
109	32.06%
40	31.88%
96	30.87%
53	29.88%
46	29.83%
81	28.87%
59	28.34%
3	28.22%
51	28.13%
37	27.07%
20	27.02%
2	26.49%
74	26.31%
28	25.83%
61	25.38%
98	25.26%
26	25.26%
75	24.31%
15	23.77%
66	22.77%
54	22.63%
103	21.93%

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1992 HOUSE PLAN	
Dist.	% Black
57	17.46%
43	16.33%
82	16.22%
39	16.02%
61	15.22%
74	14.34%
47	13.99%
85	13.49%
45	13.40%
46	13.36%
81	12.93%
13	12.76%
83	11.54%
91	11.45%
51	10.84%
94	10.77%
41	9.49%
68	9.29%
40	5.43%
49	4.41%
50	3.66%
52	1.55%
53	1.48%

INTERIM HOUSE PLAN	
Dist.	% Black
110	21.63%
88	21.18%
67	20.21%
93	19.08%
94	18.76%
112	18.74%
34	18.18%
57	17.53%
56	16.11%
50	15.89%
95	15.82%
64	15.55%
114	15.23%
89	15.21%
17	14.70%
73	14.55%
105	13.80%
79	13.72%
47	13.49%
35	13.41%
86	13.34%
92	12.11%
115	12.08%
108	12.06%
84	11.74%
97	11.59%
104	11.41%

Pender County v. Bartlett, No. 04 CVS 6966,
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1992 HOUSE PLAN	
Dist.	% Black

INTERIM HOUSE PLAN	
Dist.	% Black
76	10.85%
36	10.65%
91	10.48%
13	10.47%
19	9.63%
83	9.58%
80	9.31%
87	8.84%
113	7.69%
117	7.64%
78	7.31%
85	5.04%
90	4.94%
116	2.47%
82	2.16%
118	1.54%
119	1.49%
120	1.40%

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 Attachment C

District Statistics		
Plan: Whole Precincts - District 18		
Ideal Population :	67,078	
Actual Population :	64,379	
Difference :	-2,699	
% Difference	-4.02%	
Total Population	64,379	100.00%
White (single race)	39,647	61.58%
Black (single race)	22,393	34.78%
Black (total)	22,763	35.36%
Native American (single race)	301	0.47%
Asian/Pacific Islander (single race)	459	0.71%
Other (single race)	750	1.16%
Multi Race	829	1.29%
Hispanic	1,769	2.75%
Non-Hispanic	62,610	97.25%
Voting Age Total Population	49,860	100.00%
White (single race)	32,782	65.75%
Black (single race)	15,478	31.04%
Black (total)	15,612	31.31%
Native American (single race)	239	0.48%
Voter Registration Total	41,831	100.00%
White	29,134	69.65%
Black	11,946	28.56%
Native American	92	0.22%
Other Race/Undesignated	659	1.58%
Race		
All Democrats	21,222	50.73%

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District Statistics		
Plan: Whole Precincts - District 18		
All Republicans	12,102	28.93%
All Libertarians	223	0.53%
All Unaffiliated	8,284	19.80%
Black Democrats	10,214	48.13%
00 Governor Dem - Easley	13,025	66.88%
00 Governor Rep - Vinroot	5,925	30.43%
00 Chief Justice Dem - Frye	11,089	59.40%
00 Chief Justice Rep - Lake	7,578	40.60%
00 State Auditor Dem - Campbell	11,237	61.69%
00 State Auditor Rep - Merritt	6,978	38.31%
02 NC Supreme Court Dem - Butterfield	8,268	59.32%
02 NC Supreme Court Rep - Brady	5,671	40.68%
02 US Senate Dem - Bowles	8,600	57.06%
02 US Senate Rep - Dole	6,199	41.13%

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District Statistics		
Plan: Whole Precincts - District 16		
Ideal Population :	67,078	
Actual Population :	67,443	
Difference :	365	
% Difference	0.54%	
Total Population	67,443	100.00%
White (single race)	54,550	80.88%
Black (single race)	10,798	16.01%
Black (total)	10,985	16.29%
Native American (single race)	287	0.43%
Asian/Pacific Islander (single race)	288	0.43%
Other (single race)	929	1.38%
Multi Race	591	0.88%
Hispanic	1,837	2.72%
Non-Hispanic	65,606	97.28%
Voting Age Total Population	52,909	100.00%
White (single race)	43,595	82.40%
Black (single race)	7,930	14.99%
Black (total)	7,905	14.94%
Native American (single race)	205	0.39%
Voter Registration Total	46,131	100.00%
White	39,307	85.21%
Black	6,235	13.52%
Native American	58	0.13%
Other Race/Undesignated Race	531	1.15%
All Democrats	20,106	43.58%
All Republicans	17,930	38.87%

Whole Precincts / 2003 Database / 06/08/04/12:26 PM

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District Statistics		
Plan: Whole Precincts - District 16		
All Libertarians	143	0.31%
All Unaffiliated	7,952	17.24%
Black Democrats	5,621	27.96%
00 Governor Dem - Easley	13,095	53.04%
00 Governor Rep - Vinroot	11,162	45.21%
00 Chief Justice Dem - Frye	10,201	43.47%
00 Chief Justice Rep - Lake	13,264	56.53%
00 State Auditor Dem - Campbell	10,733	47.01%
00 State Auditor Rep - Merritt	12,096	52.99%
02 NC Supreme Court Dem - Butterfield	8,310	43.70%
02 NC Supreme Court Rep - Brady	10,706	56.30%
02 US Senate Dem - Bowles	8,632	41.58%
02 US Senate Rep - Dole	11,815	56.92%

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Attachment C

District Statistics		
Plan: Whole Precincts - District 19		
Ideal Population :	67,078	
Actual Population :	69,567	
Difference :	2,489	
% Difference	3.71%	
Total Population	69,567	100.00%
White (single race)	63,783	91.69%
Black (single race)	3,701	5.32%
Black (total)	3,882	5.58%
Native American (single race)	240	0.34%
Asian/Pacific Islander (single race)	770	1.11%
Other (single race)	421	0.61%
Multi Race	652	0.94%
Hispanic	1,166	1.68%
Non-Hispanic	68,401	98.32%
Voting Age Total Population	55,501	100.00%
White (single race)	51,394	92.60%
Black (single race)	2,659	4.79%
Black (total)	2,731	4.92%
Native American (single race)	194	0.35%
Voter Registration Total	51,819	100.00%
White	48,912	94.39%
Black	2,016	3.89%
Native American	99	0.19%
Other Race/ Undesignated Race	792	1.53%
All Democrats	18,165	35.05%

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Attachment C

District Statistics		
Plan: Whole Precincts - District 19		
All Republicans	22,308	43.05%
All Libertarians	204	0.39%
All Unaffiliated	11,142	21.50%
Black Democrats	1,655	9.11%
00 Governor Dem - Easley	14,057	52.49%
00 Governor Rep - Vinroot	12,118	45.25%
00 Chief Justice Dem - Frye	10,042	39.77%
00 Chief Justice Rep - Lake	15,207	60.23%
00 State Auditor Dem - Campbell	10,643	43.43%
00 State Auditor Rep - Merritt	13,862	56.57%
02 NC Supreme Court Dem - Butterfield	8,041	39.96%
02 NC Supreme Court Rep - Brady	12,080	60.04%
02 US Senate Dem - Bowles	8,607	38.43%
02 US Senate Rep - Dole	13,428	59.96%

[map in original Attachment C omitted in printing]

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 Attachment D

DISTRICT STATISTICS		
PLAN: SPLIT PRECINCTS - DISTRICT 18		
Ideal Population :	67,078	
Actual Population :	63,744	
Difference :	-3,334	
% Difference	-4.97%	
Total Population	63,744	100.00%
White (single race)	38,799	60.87%
Black (single race)	22,597	35.45%
Black (total)	22,968	36.03%
Native American (single race)	295	0.46%
Asian/Pacific Islander (single race)	451	0.71%
Other (single race)	759	1.19%
Multi Race	843	1.32%
Hispanic	1,795	2.82%
Non-Hispanic	61,949	97.18%
Voting Age Total Population	49,345	100.00%
White (single race)	32,108	65.07%
Black (single race)	15,624	31.66%
Black (total)	15,762	31.94%
Native American (single race)	239	0.48%
Voter Registration Total	41,440	100.00%
White	28,871	69.67%
Black	11,845	28.58%
Native American	86	0.21%
Other Race/Undesignated Race	638	1.54%
All Democrats	21,036	50.76%
All Republicans	11,993	28.94%

Split Precincts / 2003 Database / 06/08/04/ 12:34 PM

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DISTRICT STATISTICS		
PLAN: SPLIT PRECINCTS - DISTRICT 18		
All Libertarians	215	0.52%
All Unaffiliated	8,196	19.78%
Black Democrats	10,133	48.17%
00 Governor Dem - Easley	12,903	66.79%
00 Governor Rep - Vinroot	5,899	30.54%
00 Chief Justice Dem - Frye	10,992	59.36%
00 Chief Justice Rep - Lake	7,525	40.64%
00 State Auditor Dem - Campbell	11,138	61.62%
00 State Auditor Rep - Merritt	6,936	38.38%
02 NC Supreme Court Dem - Butterfield	8,199	59.27%
02 NC Supreme Court Rep - Brady	5,634	40.73%
02 US Senate Dem - Bowles	8,527	57.01%
02 US Senate Rep - Dole	6,162	41.20%

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DISTRICT STATISTICS		
PLAN: SPLIT PRECINCTS - DISTRICT 16		
Ideal Population :	67,078	
Actual Population :	67,886	
Difference :	808	
% Difference	1.20%	
Total Population	67,886	100.00%
White (single race)	55,066	81.12%
Black (single race)	10,708	15.77%
Black (total)	10,896	16.05%
Native American (single race)	291	0.43%
Asian/Pacific Islander (single race)	294	0.43%
Other (single race)	934	1.38%
Multi Race	593	0.87%
Hispanic	1,842	2.71%
Non-Hispanic	66,044	97.29%
Voting Age Total Population	53,224	100.00%
White (single race)	43,964	82.60%
Black (single race)	7,867	14.78%
Black (total)	7,942	14.92%
Native American (single race)	206	0.39%
Voter Registration Total	46,392	100.00%
White	39,493	85.13%
Black	6,302	13.58%
Native American	58	0.13%
Other Race/ Undesignated Race	539	1.16%
All Democrats	20,211	43.57%

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DISTRICT STATISTICS		
PLAN: SPLIT PRECINCTS - DISTRICT 16		
All Republicans	18,028	38.86%
All Libertarians	144	0.31%
All Unaffiliated	8,009	17.26%
Black Democrats	5,677	28.09%
00 Governor Dem - Easley	13,162	53.10%
00 Governor Rep - Vinroot	11,188	45.14%
00 Chief Justice Dem - Frye	10,255	43.53%
00 Chief Justice Rep - Lake	13,303	56.47%
00 State Auditor Dem - Campbell	10,787	47.07%
00 State Auditor Rep - Merritt	12,130	52.93%
02 NC Supreme Court Dem - Butterfield	8,352	43.74%
02 NC Supreme Court Rep - Brady	10,741	56.26%
02 US Senate Dem - Bowles	8,678	41.64%
02 US Senate Rep - Dole	11,849	56.86%

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DISTRICT STATISTICS		
PLAN: SPLIT PRECINCTS - DISTRICT 19		
Ideal Population :	67,078	
Actual Population :	69,759	
Difference :	2,681	
% Difference	4.00%	
Total Population	69,759	100.00%
White (single race)	64,115	91.91%
Black (single race)	3,587	5.14%
Black (total)	3,766	5.40%
Native American (single race)	242	0.35%
Asian/Pacific Islander (single race)	772	1.11%
Other (single race)	407	0.58%
Multi Race	636	0.91%
Hispanic	1,135	1.63%
Non-Hispanic	68,624	98.37%
Voting Age Total Population	55,701	100.00%
White (single race)	51,699	92.82%
Black (single race)	2,576	4.62%
Black (total)	2,644	4.75%
Native American (single race)	193	0.35%
Voter Registration Total	51,949	100.00%
White	48,989	94.30%
Black	2,050	3.95%
Native American	105	0.20%
Other Race/ Undesignated Race	805	1.54%
All Democrats	18,246	35.12%

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DISTRICT STATISTICS		
PLAN: SPLIT PRECINCTS - DISTRICT 19		
All Republicans	22,319	42.96%
All Libertarians	211	0.41%
All Unaffiliated	11,173	21.51%
Black Democrats	1,680	9.21%
00 Governor Dem - Easley	14,112	52.58%
00 Governor Rep - Vinroot	12,118	45.15%
00 Chief Justice Dem - Frye	10,085	39.85%
00 Chief Justice Rep - Lake	15,221	60.15%
00 State Auditor Dem - Campbell	10,688	43.52%
00 State Auditor Rep - Merritt	13,870	56.48%
02 NC Supreme Court Dem - Butterfield	8,068	40.04%
02 NC Supreme Court Rep - Brady	12,082	59.96%
02 US Senate Dem - Bowles	8,634	38.49%
02 US Senate Rep - Dole	13,431	59.88%

[map in original Attachment D omitted in printing]

Split Precincts / 2003 Database / 06/08/04/ 12:34 PM

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

AFFIDAVIT OF THOMAS E. WRIGHT

Representative Thomas E. Wright, being first sworn, deposes and says:

1. I am the duly elected Representative from House District 18 in New Hanover and Pender Counties. I am a registered Democrat. I was born, raised and educated in Wilmington and am serving my sixth term in the North Carolina House of Representatives. At the current time I am a Chairman of the House Appropriations Committee and a member of the House Health, Insurance, Public Utilities and Transportation Committees.

2. As I have gained seniority in my years in the legislature, I have served in leadership roles of increasing significance in the House. In 1999, I was Chairman of the House Appropriations Subcommittee on Capital and several other House Committees. I was also Chairman of the Legislative Black Caucus for the 1999-2000 term. A list of my committee assignments from 1993 to the present is attached as Attachment A. I have also served on numerous boards, committees and commissions, including the Joint Legislative

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Commission on Governmental Operations on which I have served continuously since 1999. Other committees of particular note on which I serve are the Cancer Coordination and Control Advisory Committee (since 1994); the Committee on Employee Hospital and Medical Benefits (since 1999); and the Minority Health Advisory Council (since 1993). A list of my appointments from 1993 to the present is attached as Attachment B.

3. I was first elected to the North Carolina House in 1992 from House District 98, which was drawn by the legislature in the 1992 Plan to create a majority-minority district in the southeastern corner of the State. District 98 was created after the United States Department of Justice raised objections during their § 5 Voting Rights Act review of the 1991 House Plan based on the legislature's failure to draw single-member districts with minority populations sufficient to enable minority voters in the southeastern counties to elect candidates of their choice despite requests made at hearings and committees meetings for additional minority districts in this area. District 98 in the 1992 Plan included portions of Columbus, Brunswick, New Hanover and Pender Counties.

4. I am now serving my sixth term in the North Carolina House, having won elections in District 98 in 1992, 1994, 1996, 1998 and 2000. I was also re-elected in 2002 after the district was redrawn by the trial

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court as District 18 in the Interim Plan. The Interim Plan drew District 18 along the northern portions of Columbus, Brunswick and New Hanover Counties, but did not extend the district into Pender County. My personal experience with politics in the southeastern counties and New Hanover area has convinced me that it is necessary to maintain an effective minority district if black voters are to have the opportunity to elect their candidate of choice. I would never have had the opportunity in the first place to serve as a member of the North Carolina General Assembly and to demonstrate to the voters my ability to serve all the citizens in the area if the United States Department of Justice had not required that District 98 be created after the 1990 Decennial Census.

5. In the 1992 Plan based on the 1990 Decennial Census, District 98 was majority-black with a total black population ("BPOP") of 59.26% and a black voting age population ("BVAP") of 55.72%. Based on the 2000 Decennial Census, the district's BPOP was 50.70%, the BVAP was 47.07%, and the black Democratic voter registration ("BDR") was 53.37%. That district was drawn so that it stretched across four counties. I am aware that with recent federal and state court decisions the General Assembly has been required to draw districts to include fewer counties and to make the boundaries more regular in shape. The 2002 Sutton 5 House Plan drew the new District

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18 so it included portions of Columbus, Brunswick and New Hanover counties. It had a BPOP of 44.59%, BVAP of 40.73% and BDR of 51.35%. The Interim Plan drawn by the court was similar in shape and geography, although it raised the black population percentages slightly to a BPOP of 47.52%, BVAP of 43.72%, and BDR of 52.58%. I understand the courts considered the configuration of District 18 in the 2002 Plan, which crossed three counties, to be non-compact. In the 2003 Plan, District 18 has a BPOP of 42.89%, BVAP of 39.36% and BDR of 53.72%.

6. When the General Assembly was required to redraw its legislative districts in 2003, I had several discussions with Speaker James Black and Representative Martha Alexander, the Democratic Co-Chair of the House Legislative Redistricting Committee, about preserving an effective minority district for the black voters in and around the New Hanover County area. I was concerned that the percentage of minorities in the district would drop to a point where the black voters in the area would no longer be able to elect their candidate of choice. I am especially concerned that minorities in Columbus and Brunswick Counties feel disenfranchised by the 2003 Plan in which the effectiveness of their vote and their influence has been diminished. As an incumbent, I have always worked hard to cultivate multi-racial and bi-partisan relationships and to serve all the citizens

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Affidavit of Thomas E. Wright

in the area regardless of their race, so my concern is not so much for my own election chances but for whoever will come after me. It is important for the black citizens in the southeastern corner of the State around my home county of New Hanover to have a fair opportunity to elect a candidate of their choice to serve them in the General Assembly.

7. Because I was re-elected by the voters of Columbus and Brunswick Counties to serve six terms in the House, it is difficult for me to see District 18 drawn so it no longer includes portions of these counties in the 2003 Plan. I am of course delighted to have the opportunity to again represent voters from Pender County which is included in District 18 in the 2003 Plan. The reasons expressed to me for drawing District 18 solely within Pender and New Hanover Counties were to achieve greater compliance with the requirements of the *Stephenson* opinion, while at the same time attempting to maintain an effective minority district for black voters.

8. The demographic trends I see in the southeastern area of the State where I have run all my campaigns include a decreasing minority population and an increasing Republican and unaffiliated voter registration. For this reason Democratic and Republican races are very competitive. These trends make it increasingly important for me to continue my

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efforts to seek multi-racial and bi-partisan support from the voters.

9. I have never considered statewide election data in analyzing my district. Re-aggregations of statewide general election data - - such as the 2000 Justice Henry Frye and State Auditor Ralph Campbell elections, and the 2002 Justice G. K. Butterfield election - - are not good predictors of elections at the local level, such as a House district. That data comes from low profile races and tends to reflect partisan trends based on straight ticket voting. The total black population, black voting age population and black democratic voter registration of a legislative district must all be at levels that allow minorities to have an equal opportunity to elect minority candidates of choice.

10. Because of demographic trends and voting patterns, there is currently no minority serving on the current New Hanover Board of County Commissioners (which is elected at large) or the Pender Board of County Commissioners (in which members reside in districts but are elected at large). In the past, one minority, Jonathan Barfield, Sr., a black Democrat, won election to the New Hanover Board. He served three terms and left office in 1992. In Pender County several black Democrats served on the Board at different times until 2000, when Cleveland Simpson resigned to take a job in the Department of Commerce

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and his appointed successor, James Faison, Jr., lost in the 2000 election.

11. Based on my knowledge of New Hanover County and various maps I have seen, it is not possible to draw a House district that keeps Pender County whole or that is wholly within New Hanover County which will have a minority population sufficient to allow minority voters to elect their candidate of choice. The best map for minorities offered by Carl Thurman, III, which keeps Pender County whole and reaches into New Hanover County and Wilmington, joins the heart of my district with Representative Carolyn Justice's district and is significantly lower than the 2003 Plan in BPOP (38.77 vs. 42.89) and BVAP (35.33 vs. 39.36). It is slightly lower in BDR (52.76 vs. 53.72). That plan also would pit the incumbent white Republican against the incumbent black Democrat. The black population numbers in District 18 as now drawn show that the black democratic registration numbers for the district in the 2003 Plan can be meaningfully improved before the election with voter registration efforts. For this reason District 18 in the 2003 Plan provides an equal opportunity for black voters to elect their candidate of choice in the primary and general election, while Thurman's proposal would appear to significantly reduce my chances for re-election even as an incumbent and clearly creates a barrier for any other black candidate to compete

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successfully. Because an effective minority district can be drawn by dividing one or more counties in the area, I believe that the legislature is required by the Voting Rights Act to continue to draw a district which contains a black population sufficient to provide an equal opportunity for black voters to elect a Representative of their choice.

12. During the 2003 redistricting process, the Legislative Black Caucus consulted independently with experienced voting rights attorneys regarding the proposed 2003 plan. The Caucus wanted to assure that the plan fully complied with §§ 2 and 5 of the Voting Rights Act in order to provide an equal opportunity to black voters to effectively exercise their right to vote. Although there were concerns about several of the minority districts in the plan, including District 18, the Caucus did decide to support the 2003 Plan, primarily because it appeared to satisfy all technical legal requirements and overall appeared to be in the best interests of minority voters statewide. With two or three exceptions, all of the black Representatives voted for the 2003 Plan when it came up for vote on the House floor. I also voted for the plan.

13. Based on my political experience, I do not think that Pender County and its citizens will be harmed by being included in Districts 16 and 18 under the 2003 Plan. The county will have the advantage of

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two Representatives working on their behalf in the General Assembly. Assuming the current incumbents are re-elected, Pender County also would have bipartisan representation. Although I have resided in New Hanover County throughout my years as an elected Representative, I have always represented the interests of all the voters in my district, regardless of their county of residence. This is true of all legislators who are elected from districts which include all or portions of counties where they do not personally reside. I particularly remember the aftermath of Hurricane Floyd in September, 1999, when Pender County suffered terrible flooding. I received numerous calls from Pender County seeking assistance, even from areas not in my district. Because of my 20-year background in Emergency Medical Services, I was reviewing the situation reports which were being faxed daily by the Office of Emergency Management and which did not list Pender County or corroborate all the telephone calls I was receiving expressing a need for assistance. When I went to Pender County, I found the water still rising and many areas impassible. People in northeastern Pender County along the Cape Fear River were packing their possessions in john-boats and small row boats to escape the flooding. Highways 53 and 210 were impassable. I talked with the County Commissioners and worked to get this information to the Governor and his administration so

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that Pender County was added to the list of declared disaster areas and the Office of Emergency Management added the County to its situation reports so that much needed aid could reach the County.

14. The delay of the primary from May to July has already adversely affected the 2004 elections. As an incumbent, the primary is usually over before the General Assembly convenes for the short session. I cannot raise money and campaign effectively in my district while the legislature is working on the budget. The threatened disruption of the 2004 election process which began in earnest in April with candidate filing, makes it difficult to cultivate relationships with voters in my new district. It also negatively impacts voter registration efforts and candidates' ability to educate the voters on issues, especially when there is a threat that election districts could change again at this late date. It is difficult to make decisions about spending campaign funds to get my message out to the voters when it is uncertain when the election will be held and in what district. There is a lot of time, hard work and organizational effort that goes into running an effective campaign, none of which can be accomplished overnight. Candidates and voters alike lose out when the election process is disrupted. Voter turnout is reduced when there is confusion about election dates. If the Court should require new districts to be drawn in the Pender, New Hanover, Columbus and

Pender County v. Bartlett, No. 04 CVS 6966,
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Brunswick areas so that legislative primary elections are held separate from the other primaries, voter turnout would be drastically reduced and voter confusion would be dramatically increased. These are not good conditions for something as important as the election of Representatives to the North Carolina General Assembly.

This the 17th day of June, 2004.

/s/Thomas E. Wright
Representative Thomas E. Wright

[notarial attestation omitted in printing]

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

AFFIDAVIT OF WILLIAM R. GILKESON, JR.

William R. Gilkeson, Jr., being first sworn, deposes and says:

1. I reside at 2714 Wayland Drive in Raleigh, North Carolina. I received a B.A. in political science in 1969 from Southwestern at Memphis, now renamed Rhodes College, in Memphis Tennessee. I moved to North Carolina in 1970. I received a J.D. degree from the University of North Carolina School of Law in 1985. I was admitted to the State Bar that same year and immediately began work as a Staff Attorney in the Research Division of the North Carolina General Assembly, where I have worked ever since.

2. My chief specialty at the General Assembly has been election law. As a result of that specialty, I have been involved in redistricting since 1989 or 1990. I participated in the 1991-92 redistricting and in all the redistricting activities since that time. I received training and have developed expertise working on DistrictBuilder, the General Assembly's redistricting computer system.

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Affidavit William R. Gilkeson, Jr.

3. Plaintiffs' proposed maps JLL07A and JLL08A were created using DistrictBuilder on the public access computer at the General Assembly. At the request of the Attorney General's Office, I used DistrictBuilder to prepare statistical profiles for plaintiffs' proposed maps JLL07A and JLL08A in the same format as the statistical profiles for the two illustrative maps included as attachments to the affidavit of Representative Martha B. Alexander. The statistical profile that I prepared for JLL07A is included as "Attachment A," and the statistical profile that I prepared for JLL08A is included as "Attachment B."

4. The legislative record shows that during the 1997 congressional redistricting process, an updated report on racially polarized voting was provided to the Senate Committee on Redistricting by counsel for minority defendant-intervenors in the *Shaw v. Hunt* litigation. A copy of the cover letter to the chair of the Senate Redistricting Committee, together with the memorandum report itself, is included as "Attachment C."

This the 21st day of June, 2004.

/s/William R. Gilkeson, Jr.
William R. Gilkeson, Jr.

[notarial attestation omitted in printing]

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of William R. Gilkeson, Jr., Attachment A

District Statistics		
Plan: JLL07A - District 1		
Ideal Population :	67,078	
Actual Population :	63,963	
Difference :	-3,115	
% Difference	-4.64%	
Total Population	63,963	100.00%
White (single-race)	37,250	58.24%
Black (single-race)	24,523	38.34%
Black (total)	24,801	38.77%
Native American (single-race)	270	0.42%
Asian/Pacific Islander (single-race)	170	0.27%
Other (single-race)	1,104	1.73%
Multi Race	646	1.01%
Hispanic	2,073	3.24%
Non-Hispanic	61,890	96.76%
Voting Age Total Population	48,834	100.00%
White (single-race)	30,119	61.68%
Black (single-race)	17,240	35.30%
Black (total)	17,360	35.55%
Native American (single-race)	203	0.42%
Voter Registration Total	38,439	100.00%
White	24,606	64.01%
Black	13,247	34.46%
Native American	66	0.17%
Other Race/Undesignated Race	299	0.78%
All Democrats	22,119	57.54%
All Republicans	9,981	25.97%
All Libertarians	124	0.32%

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of William R. Gilkeson, Jr., Attachment A

District Statistics		
Plan: JLL07A - District 1		
All Unaffiliated	6,215	16.17%
Black Democrats	11,671	52.76%
00 Governor Dem - Easley	12,615	65.48%
00 Governor Rep - Vinroot	6,302	32.71%
00 Chief Justice Dem - Frye	11,018	59.33%
00 Chief Justice Rep - Lake	7,553	40.67%
00 State Auditor Dem - Campbell	11,322	62.55%
00 State Auditor Rep - Merritt	6,780	37.45%
02 NC Supreme Court Dem - Butterfield	8,745	59.25%
02 NC Supreme Court Rep - Brady	6,014	40.75%
02 US Senate Dem - Bowles	8,966	56.82%
02 US Senate Rep - Dole	6,570	41.64%

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of William R. Gilkeson, Jr., Attachment B

District Statistics		
Plan: JLL08A - District 1		
Ideal Population :	67,078	
Actual Population :	64,006	
Difference :	-3,072	
% Difference	-4.58%	
Total Population	64,006	100.00%
White (single-race)	39,256	61.33%
Black (single-race)	22,444	35.07%
Black (total)	22,815	35.65%
Native American (single-race)	289	0.45%
Asian/Pacific Islander (single-race)	473	0.74%
Other (single-race)	729	1.14%
Multi Race	815	1.27%
Hispanic	1,657	2.59%
Non-Hispanic	62,349	97.41%
Voting Age Total Population	49,625	100.00%
White (single-race)	32,554	65.60%
Black (single-race)	15,516	31.27%
Black (total)	15,650	31.54%
Native American (single-race)	230	0.46%
Voter Registration Total	41,464	100.00%
White	28,669	69.14%
Black	12,045	29.05%
Native American	84	0.20%
Other Race/ Undesignated Race	666	1.61%
All Democrats	21,014	50.68%
All Republicans	12,127	29.25%

JLL08A / 2003 Database / 06/16/04 / 09:30 AM

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of William R. Gilkeson, Jr., Attachment B

District Statistics		
Plan: JLL08A - District 1		
All Libertarians	209	0.50%
All Unaffiliated	8,114	19.57%
Black Democrats	10,327	49.14%
00 Governor Dem - Easley	12,956	66.52%
00 Governor Rep - Vinroot	6,012	30.87%
00 Chief Justice Dem - Frye	11,029	59.05%
00 Chief Justice Rep - Lake	7,649	40.95%
00 State Auditor Dem - Campbell	11,181	61.33%
00 State Auditor Rep - Merritt	7,049	38.67%
02 NC Supreme Court Dem - Butterfield	8,205	58.82%
02 NC Supreme Court Rep - Brady	5,744	41.18%
02 US Senate Dem - Bowles	8,525	56.55%
02 US Senate Rep - Dole	6,292	41.74%

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of William R. Gilkeson, Jr., Attachment C

FERGUSON, STEIN, WALLACE, ADKINS,
GRESHAM, & SUMTER, P.A.

ATTORNEYS AT LAW

SUITE 300

741 KENILWORTH AVENUE

CHARLOTTE, NORTH CAROLINA 28204

TELEPHONE (704) 375-8461

TELECOPIER (704) 334-5654

March 11, 1997

Senator Roy Cooper
Chair, Senate Congressional Redistricting
Committee
16 West Jones Street
Raleigh, NC 27601

RE: Congressional Redistricting

Dear Senator Cooper:

As you may recall, this firm represents defendant-intervenors in the Shaw v. Hunt litigation. Included in the materials we submitted at the Joint Congressional Redistricting public hearing on February 26, 1997, was an analysis of racially polarized voting by Professor Richard Engstrom. Professor Engstrom's report was based on various

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Affidavit of William R. Gilkeson, Jr., Attachment C

elections he analyzed prior to the trial in the Shaw v. Hunt case in 1994. We asked Professor Engstrom to update his study by looking at the most recent Gantt versus Helms election. In particular, we asked him to look at the level of racially polarized voting statewide as well as the level of racially polarized voting in the northeastern region of the state, which we defined as the eighteen counties that are included in the proposed First Congressional District in the Senate plan, 1997 Congressional Plan A.

There are two important findings in Professor Engstrom's updated analysis. First, he found that there is greater polarized voting in the northeast than in the state generally. Second, he found that turnout for African-American voters is significantly lower than turnout among non-African-American voters. Both of these findings support the proposition that there is a strong basis in fact for concluding that the legislature's failure to create a majority black district in the northeastern region of the state would violate Section 2 of the Voting Rights Act.

I am enclosing for your consideration a copy of the Professor Engstrom's report of his findings. Please feel free to give me a call if you have any questions. Thank you very much for your work on this important issue.

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Affidavit of William R. Gilkeson, Jr., Attachment C

Sincerely yours,
/s/Anita Hodgkiss
Anita S. Hodgkiss

ASH/rer

cc: Members, Senate Redistricting Committee

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Affidavit of William R. Gilkeson, Jr., Attachment C

Dep't of Political Science University of New Orleans
New Orleans, LA 70148

February 7, 1997

Ms. Anita S. Hodgkiss
Ferguson, Stein, Wallace, Adkins, Gresham, and
Sumter
Suite 300
741 Kenilworth Ave.
Charlotte, NC 28204

Dear Ms. Hodgkiss:

I have performed, at your request, an analysis of the vote for Mr. Harvey B. Gantt in the November 1996 general election for a United States Senate seat in North Carolina. This work supplements the analysis of North Carolina elections that I performed previously for the State of North Carolina in the Shaw v. Hunt litigation. The methodologies employed in the analysis of this election, regression and homogeneous precinct analyses, are identical to those employed in my previous reports for the state. The voter registration data utilized to analyze this elections are for October 11, 1996, and therefore reflect the registered electorate at the time of this election.

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Affidavit of William R. Gilkeson, Jr., Attachment C

The homogeneous precinct analysis concerns the votes cast in precincts in which over 90% of the registered voters was African American and in which less than 10% was African American. Mr. Gantt received 97.9% of the votes cast in the homogeneous African American precincts across the state, but only 38.1% in the homogeneous non-African American precincts. The voter participation rate in this election in the homogeneous African American precincts, expressed as a percent of the registered voters, was 49.6%, while the participation rate within the non-African American precincts was 59.0%.

The estimated support for Mr. Gantt among the African American voters in this election produced by the regression analysis, which is based on the votes cast in all of the precincts in the state, is 100%. His support among the no-African American voters is estimated by regression to have been 35.7%. The correlation coefficient for the relationship between the racial composition of the precincts and the vote for Gantt is a statistically significant .777. The regression estimate of the participation rate in this elections among state's African American registered voters is 46.8%, while that for non-African American is 58.9%.

You also requested the results of these analyses for the northeast region of the state, an area that you informed me is comprised of the following 18 counties; Beaufort, Bertie, Craven, Edgcomb, Gates, Granville,

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Affidavit of William R. Gilkeson, Jr., Attachment C

Greene, Halifax, Hertford, Lenoir, Martin, Northampton, Pitt, Vance, Warren, Washington, Wayne, and Wilson. The vote in these areas is more racially divided than in the state as a whole. Mr. Gantt received 96.6% of the votes cast in homogeneous non-African American precincts. Voter participation in these African American precincts, again expressed as a percentage of registered voters, was 50.2%, compared to 61.9% in the non-African American precincts.

The regression analysis of the votes cast in all of the precincts in these 18 counties places Mr. Gantt's support among the African American voters at 100% and his support among the non-African American voters at 24.9%. The correlation coefficient for the relationship between the racial composition of the precincts and the vote for Gantt is .930, higher than that for the state as a whole. This is also a statistically significant correlation. The regression estimates of the voter participation rates in the northeast region are 47.0% for African Americans and 61.6% for non-African Americans.

I hope you find this information useful. If you require any additional analysis, please let me know.

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of William R. Gilkeson, Jr., Attachment C

Sincerely,
/s/Richard L. Engstrom

Richard L. Engstrom
Research Professor of
Political Science

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

AFFIDAVIT OF MILFORD FARRIOR

Milford Farrior, being first sworn, deposes and says:

1. I am above the age of 18 years, and I am competent to testify as to the matters set forth herein, which are based upon my personal knowledge and belief.

2. I am a life-long resident of Pender County and am active in community affairs. I am an African-American and I reside in Maple Hill.

3. Based on my experience, it is important for the African-American community in Pender and New Hanover counties to keep a North Carolina House district that can continue to elect a minority candidate.

4. It is important to the minority community to have people like Representative Thomas Wright serving in the General Assembly. Wright represents not only the African-American interests but also looks out for the interests of everyone in his district and for all of Pender County.

5. There is no problem having Pender County divided or combined with New Hanover County to

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of Milford Farrior

create a district. I do not think that a minority candidate from this area can be elected to the North Carolina House of Representatives if Pender County is kept whole in the formation of a House district.

6. I do not believe that the Board of County Commissioners of Pender County represents my interests or the interests of the minority community in Pender County with respect to their challenge to the House Plan enacted by the General Assembly in 2003.

7. I would like the opportunity to intervene in this lawsuit because I want to see that there continues to be a district in this area that gives minority candidates a chance to be elected. I need more time to talk with others in the community and to find legal representation. The North Carolina Attorney General's Office has agreed to file this affidavit on my behalf so that the Court will be aware of my concern that the interests of the minority community in Pender County be represented and heard in this lawsuit.

This the 17 day of June, 2004.

/s/Milford Farrior
Milford Farrior

[notarial attestation omitted in printing]

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

AFFIDAVIT OF CINDY MOORE

Cindy Moore, being first sworn, deposes and says:

1. I am above the age of 18 years, and I am competent to testify as to the matters set forth herein, which are based upon my personal knowledge and belief.

2. I was born in Pender County and have been a resident of Pender County for the last 10 years. I am currently the chairperson of Pender County Fair Share, which is the local chapter of North Carolina Fair Share, a statewide non-partisan, non-profit membership, advocacy and leadership development organization comprised almost entirely of non-wealthy citizens. I am an activist in the community on local issues, particularly issues affecting the African-American community.

3. I am familiar with House District 18 as enacted by the North Carolina General Assembly in 2003, and I feel very strongly that this district should remain as it is. It is important when working on local issues to have a representative in the General Assembly who is familiar with the needs of the African-American community and is responsive to African-American

Pender County v. Bartlett, No. 04 CVS 6966,
Affidavit of Cindy Moore

voters.

4. It is my view that if the district does not remain an effective African-American district, then I and other minority citizens in the area would not have someone in the General Assembly who would listen to us and there would not be a voice for our community in State government.

5. I do not believe that the Board of County Commissioners of Pender County represents my interests or the interests of the minority community in Pender County with respect to their challenge to the House Plan enacted by the General Assembly in 2003.

6. I am very interested in intervening in this lawsuit because I want to see that there continues to be a district in this area that gives minority candidates a chance to be elected. I need more time to talk with others in the community and to find legal representation. North Carolina Fair Share has previously been a plaintiff in an at least one election-related lawsuit. The North Carolina Attorney General's Office has agreed to file this affidavit on my behalf so that the Court will be aware of my concern that the interests of the minority community in Pender County be represented and heard in this lawsuit.

This the 18th day of June, 2004.

/s/Cindy Moore

Cindy Moore

[notarial attestation omitted in printing]

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

SECOND NOTICE OF FILING

Defendants' respectfully file the following documents, attached hereto, in support of Defendant's Motion for Summary Judgment:

1. Second Affidavit of Representative Thomas E. Wright
2. Report and Deposition Transcript of Kerry L. Haynie, Ph.D.
3. Report and Deposition Transcript of Richard L. Engstrom, Ph.D.
4. USDOJ Preclearance Letter of Stephenson Opinion
5. Deposition Transcript of Rep. Donald Bonner in *N.C. v. Ashcroft*, No. 1:03CV2477 (D. D.C.)
6. Deposition Transcript of Rep. Marvin Lucas in *N.C. v. Ashcroft*, No. 1:03CV2477 (D. D.C.)
7. Stipulations of the Parties:
 - Ex. A. 1992 House Plan – map & statistics
 - Ex. B. 2001 House Plan (Sutton House 3) – map & statistics

Pender County v. Bartlett, No. 04 CVS 6966,
Second Notice of Filing

- Ex. C. 2002 House Plan (Sutton House 5) –
map & statistics
 - Ex. D. Jenkins House Plan (Interim House)
– map & statistics
 - Ex. E. 2003 House Plan – map & statistics
 - Ex. F. List of 1980s Black House
Representatives
 - Ex. G. 1991-1992 House of Representatives
Demographics List
 - Ex. H. 1993-1994 House of Representatives
Demographics List
 - Ex. I. 1995-1996 House of Representatives
Demographics List
 - Ex. J. 1997-1998 House of Representatives
Demographics List
 - Ex. K. 1999-2000 House of Representatives
Demographics List
 - Ex. L. 2001-2002 House of Representatives
Demographics List
 - Ex. M. 2003-2004 House of Representatives
Demographics List
 - Ex. N. 2005-2006 House of Representatives
Demographics List
-

Pender County v. Bartlett, No. 04 CVS 6966,
Second Notice of Filing

- Ex. O. Relevant portions of 2001 House Plan § 5 Submission materials
- Ex. P. Relevant portions of 2002 House Plan § 5 Submission materials
- Ex. Q. Relevant portions of 2003 House Plan Initial Disclosure of § 5 Submission materials
- Ex. R. 1898 Headlines (WILMINGTON MORNING STAR, NEW YORK HERALD, RALEIGH NEWS & OBSERVER)
- Ex. S. New Hanover and Pender County Representatives since 1981
- Ex. T. Pender Census Reports: DP-1 – DP-4
- Ex. U. New Hanover Census Reports: DP-1 – DP-4
- Ex. V. Pender Census Profiles
- Ex. W. New Hanover Census Profiles
- Ex. X. North Carolina DHHS Health Statistics, statewide and Pender and New Hanover Counties
- Ex. Y. ABC Report Cards of Pender and New Hanover Counties
- Ex. Z. New Hanover Education LINC

Pender County v. Bartlett, No. 04 CVS 6966,
Second Notice of Filing

Ex. AA. Pender Education LINC

Ex. BB. AYP – New Hanover

Ex. CC. AYP – Pender

Ex. DD. Public Record Compendium

- Richard L. Engstrom, *Racial Differences in Candidate Preferences in North Carolina Elections*
 - Declaration of State Senator Frank W. Ballance, Jr. in *Shaw v. Hunt*, No. 92-202-CIV-5-BR (E.D.N.C.)
 - Statement of Alice Ballance, in *Shaw v. Hunt*
 - U.S. Department of Justice Post Card Mailing Investigation
 - Compendium of North Carolina segregation laws
 - Racial Attitudes of North Carolina: Summary of Focus Group and Survey Research Results (Dec. 1993)
 - J. Morgan Kousser, *After 120 Years: Redistricting and Racial Discrimination in North Carolina* (March 1994)
 - Statement of Harry L. Watson, Ph.D., in *Shaw v. Hunt*
 - Statement of Alex W. Willingham, Ph.D., in *Shaw v. Hunt*
-

Pender County v. Bartlett, No. 04 CVS 6966,
Second Notice of Filing

Respectfully submitted, this the 25th day of
February, 2005.

ROY COOPER
Attorney General

/s/Tiare B. Smiley
Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119

Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763

Counsel for the Defendants

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

**SECOND AFFIDAVIT OF
REPRESENTATIVE THOMAS E. WRIGHT**

Representative Thomas E. Wright, being first sworn, deposes and says:

1. I am the duly elected Representative from House District 18. Elections in 2004 were held under the 2003 House Plan, in which District 18 includes portions of Pender and New Hanover Counties. In the 2004 election, I did not face a white opponent in the primary or general election.

2. As the Representative for District 18, I was involved in making decisions about redrawing legislative districts in 2003. In my earlier affidavit (signed 17 June 2004), I described that process and this affidavit supplements my earlier testimony. For purposes of maintaining a district which would provide black voters in the Pender/New Hanover area an equal opportunity to elect their candidate of choice in a legislative district, we first looked at data relating to primary elections and then for general elections. It has been demonstrated in North Carolina that black voters can elect their candidate of choice, which in most cases

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means an African-American, in districts which are less than 50% in black total population or black voting age population. Because of the still overwhelming registration of blacks as Democrats, the first consideration in drawing an effective black district is the black Democratic registration - - *i.e.*, do the black voters have some likelihood of controlling the primary. If the black Democratic registration is over 50%, the black voters should control the Democratic primary. Winning the primary, however, is not the only consideration, the minority candidate must also have an opportunity to win in the general election. In North Carolina, for a black Democratic candidate to win the general election it is necessary to look at the overall Democratic strength of the district. In drawing the 2003 House Plan, this was accomplished by looking at other partisan election results, such as the relative success of Democratic candidates Bowles, Easley, Butterfield, Frye and Campbell. A Democratic performance index, which provided a weighted average of election data from several elections, was used as a predictor of the likely Democratic vote in various configurations of legislative districts under consideration. As a rule of thumb, if a black candidate wins the primary election, then a strongly Democratic district, even if not over 50% black in total population, will produce enough white votes to elect the black candidate of choice in a general election. It is this

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political reality which allowed the House 2003 Plan to obtain § 5 pre-clearance as non-retrogressive, even though the black percentages in most districts drawn to maintain existing Voting Rights Act districts under § 2 and § 5, were reduced from earlier redistricting plans. Although the United States Department of Justice only pre-clears districts in § 5 counties, in its review the Department also looks at other districts in the State where there are significant minority populations and considers the totality of a plan's statewide effect on black voters in its retrogression analysis.

3. In the 2004 elections, District 18 performed as expected. Even though the District is less than 50% in total black population and black voting age population, no white candidates filed in the primary; in addition, the Democratic nature of the District also resulted in no white Republicans filing to run in the District. Of course, my incumbency, and I hope my past performance in representing the area (despite the different permutations of the district from the 1992 and 2002 plans) would have played a part in my success in 2004 in this newly configured District. The election results certainly demonstrate that black voters in the area can continue to elect a black candidate of choice as District 18 is now drawn. I know of no other plan that can be drawn within the two counties of Pender and New Hanover that would

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maintain this opportunity for the black voters in the counties. The pattern of success by African-Americans in the 2004 House elections under the 2003 House Plan, comparing total black population, black voting age population and black Democratic registration, is remarkably similar to the success achieved under the 1992 House Plan and the Interim House Plan drawn by the court. See Attachment A, which is comparable to similar arrays of data attached to the Affidavit of Representative Martha Alexander (signed 9 June 2004) as Attachments A & B.

4. In creating District 18 and other Voting Rights Act districts, black legislators bring their own personal histories to the drawing board. As legislators, we have available to us the economic and social data collected by the Census Bureau and various State agencies. I am fully aware, just as are other black legislators, of the continuing disparities that exist for African-Americans and other minority citizens, as compared to white citizens, in income, health, housing and education. I take a particular interest in health and education issues because, among other committee assignments with leadership positions, I am serving as Chair of the House Committee on Health, as a Vice-Chair on the Appropriations Committee and as a member of the Subcommittee on Health and Human Services for the 2005-07 session of the General Assembly. In addition, I will continue in the current

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session to be the Chair of the Appropriations Subcommittee on Capital, a member of both the Public Utilities Committee and the Insurance Committee and Vice-Chair of the Transportation Committee. Of particular interest to me currently is the scarcity of business and contracts going to minority businesses from all of the millions of dollars of bonds being spent on construction projects at the State's universities and community colleges. Because of the importance of education to all citizens, and especially black children, I also take a particular interest in the available information which continues to show a significant gap in the achievements of black students compared to white and other students statewide and in Pender and New Hanover Counties. As a legislator, I am concerned that people keep talking about the existing gap but are taking no action. As a legislator from a district with a diverse population, I represent all of my constituents regardless of race. However, as an African-American I also have a responsibility to see that issues of special concern to the minority community are raised and heard in the legislative chambers. I am the only African -American in the State House or Senate in the southeastern area of the state encompassing Bladen, Columbus, Brunswick, Duplin, Jones, Onslow, Carteret, Pender and New Hanover Counties.

5. As a citizen of North Carolina, who was born and raised in the City of Wilmington, I also bring to

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the redistricting table my personal history and knowledge of racial division and discrimination in the State, which at one time was enforced as a matter of State policy and law. This is a history shared by other members of the Legislative Black Caucus. Public schools, restaurants and movies were all segregated when I was growing up. I personally did not attend a segregated public elementary school because my parents sent me to a Catholic school which was itself segregated until I reached fourth or fifth grade. However, I can remember the discussions around the dinner table when my sister was supposed to attend high school in 1969 in the first integrated class in New Hanover County. Because of my parents concerns about the volatility of the situation, she was sent to Philadelphia, although she returned to graduate with her class at New Hanover High School in 1969. I began attending public school in the ninth grade in 1970, at Williston Junior High. Williston had formerly been the black high school; Williston High School had played a central role in the black community of New Hanover and had its own traditions and history. My parents were graduates of Williston High School and often talked fondly about their whole high school experience. I started high school at Hoggard High School in 1971. I can still recall the volatile situation that existed in attending integrated schools in the early years. I vividly remember the atmosphere of tension, anxiety

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and stress that existed; you could sense it, feel it and even smell it. Much of the stress for black and white students was having to adjust to so many other students they had never been to school with before; during breaks and at lunch there frequently were fights between black and white students.

6. My older brother attended Hoggard High School one year before I did, beginning in 1970. The experience in high school was much worse than in the junior high school. Black students did not feel included: there were no black cheerleaders; the best athletes or band members were able to participate, but for the average kids, they were left out of sports, band, and other extra curricular activities. Black students were having to assimilate into a new world and environment where they felt they were not included and many feared losing their identify. The black students were not having the social experiences in high school that their parents had talked about from their high school days. The feelings of exclusion escalated in 1971, when the black students of both Hoggard and New Hanover High Schools began to boycott classes. My brother, William Joe Wright, was outspoken and was a leader in the boycotts. Black students were requesting inclusion and ownership, to feel as if they were a part of the study body. About twelve weeks into the school year when there was no response to the concerns of the black students,

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tensions escalated and the black students walked out. At first the students assembled at a park near the Williston Junior High School, but were removed by the county sheriff. Students boycotting were then provided sanctuary at the Gregory Congregational United Church of Christ where they assembled. The school's response was to expel students from school; this included my brother who was labeled as a troublemaker because he was willing to speak out. When the Wilmington Ten indictments for firebombing came down in 1971, my family felt it was no coincidence that my brother, and seven or eight other students involved in the school boycotts, were among the targets of that prosecution. The injustice of these indictments and convictions were not overturned until ten long years later when the Fourth Circuit Court of Appeals overturned the convictions. These are the kinds of personal life experiences that black legislators share with other black citizens of the State. The continuing effects of North Carolina's racial history can be seen in the economic, health and education disparities that exist today.

7. Senator Luther Henry Jordan, Jr., was the first black senator from the New Hanover area in modern times. His district, which was created in the 1990's, no longer exists because it is not possible to draw a Senate district in this area that is sufficiently compact to meet legal standards and in which the black

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population is large enough to allow minorities to elect a candidate of their choice. Senator Jordan was the moving force behind the 1898 Wilmington Race Riot Commission established by the General Assembly in 2000. Since his passing, I have served in his place supporting the Commission's work. Although the violent race riots which overthrew the City's duly elected black government officials occurred long ago in Wilmington's history, it has been interesting to see people come forward today to talk about the riots and their aftermath. An oral history is being preserved as well as a report being written. In 1998, the University of North Carolina at Wilmington put on a program commemorating the 1898 Race Riot. People born and raised in the area, white and black, have family histories and stories that the community seems almost relieved to talk about as the Commission does its work. It is this history beginning as early as 1898 and continuing to today that provides the basis for North Carolina to continue to at least maintain a viable representative district in this area in which black voters have an equal opportunity to elect their candidate of choice.

This the 24 day of February, 2005.

/s/Thomas E. Wright

Representative Thomas E. Wright

[notarial attestation omitted in printing]

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Black Population, Black Voting Age Population, Black Democratic Registration in 2003 House Plan

TOTAL BLACK POP.		BLACK VOTING AGE POP		BLACK DEM. REGISTRATIO N	
Dist.	% Black Pop	Dist.	% Black VAP	Dist.	% Black Dems
27	55.98%	27	52.93%		
8	53.97%	8	50.36%	102	65.14%
102	51.04%	102	46.11%	27	60.40%
				8	58.61%
				99	57.65%
32	37.36%	32	36.22%		
23	36.54%	23	34.12%	100	50.34%

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Black Population, Black Voting Age Population,
Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop	Dist.	% Black VAP	Dist.	% Black Dems
38	35.11%	55	31.99%	38	47.46%
55	34.77%	38	31.63%		
100	34.11%	100	30.97%	106	46.21%
69	33.41%	69	30.73%	23	46.21%
99	31.01%	49	28.49%	32	45.35%
20	30.87%	99	28.29%	69	45.02%
44	30.71%	20	28.29%	63	44.14%
49	29.90%	63	27.86%	77	42.74%
63	29.73%	1	27.49%	44	42.06%
		44	27.45%	55	41.82%
66	28.84%			4	40.76%
106	28.75%	22	26.78%	49	40.09%
1	28.69%	66	26.61%	22	39.02%
22	28.31%	10	26.01%	45	38.91%
10	27.73%	25	25.87%	14	38.55%
25	27.26%	106	25.50%	1	37.77%
6	27.03%	4	24.86%	25	37.72%
45	26.69%	50	24.69%	6	36.89%
77	26.50%	77	24.38%	9	36.63%
4	26.02%	6	24.27%	10	36.61%
46	25.74%	45	24.19%	66	36.44%
59	25.73%	46	23.94%	59	36.39%
50	24.98%	59	23.52%	57	36.34%
111	24.16%	65	22.18%	20	36.01%
14	24.06%	53	21.75%	109	35.98%
53	23.92%	14	21.75%	50	34.65%

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Black Population, Black Voting Age Population,
Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop	Dist.	% Black VAP	Dist.	% Black Dems
2	23.74%	111	21.71%	65	34.20%
65	23.58%	30	21.70%	111	34.10%
30	23.35%	2	21.46%	11	33.20%
9	23.12%	57	21.38%	53	32.70%
57	22.84%	9	21.18%	52	32.69%
109	22.29%	11	20.58%	103	30.40%
11	21.93%	109	19.62%	26	30.04%
51	20.71%	51	19.18%	46	29.98%
26	20.26%	26	18.83%	3	29.57%
81	17.15%	47	15.66%	51	29.45%
47	16.46%	81	15.64%	37	29.34%
15	16.42%	54	15.49%	2	29.04%
54	16.02%	37	14.96%	82	28.88%
52	15.91%	15	14.91%	81	28.86%
3	15.81%	3	14.77%	30	27.73%
37	15.45%	52	13.98%	61	27.15%
95	14.87%	95	13.39%	79	26.17%
103	14.47%	34	13.19%	95	26.07%
34	14.30%	103	13.03%	98	26.01%
82	14.09%	82	13.00%	54	23.77%
61	13.40%	79	11.96%	15	22.18%
79	12.94%	61	11.76%	83	21.75%
17	12.85%	56	11.72%	28	21.21%
56	12.70%	17	11.18%	34	19.67%
112	12.08%	112	10.78%	17	19.36%
13	11.62%	13	10.47%	75	19.22%

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Black Population, Black Voting Age Population,
Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop	Dist.	% Black VAP	Dist.	% Black Dems
35	11.49%	35	10.39%	41	18.89%
115	11.14%	110	10.05%	13	18.86%
110	11.12%	115	9.96%	62	18.73%
83	10.91%	83	9.91%	40	18.19%
28	10.82%	28	9.80%	16	18.14%
98	10.31%	98	9.64%	70	18.01%
67	10.15%	67	9.24%	88	17.90%
88	10.00%	88	8.89%	110	17.61%
75	9.33%	62	8.63%	35	17.12%
114	9.22%	41	8.54%	112	16.95%
108	8.88%	40	8.49%	67	16.65%
40	8.86%	75	8.35%	74	16.62%
62	8.81%	64	8.24%	56	16.60%
64	8.77%	108	8.19%	73	16.16%
74	8.74%	114	8.07%	47	15.76%
41	8.70%	74	7.99%	68	15.68%
16	8.63%	86	7.64%	64	15.29%
86	8.29%	16	7.59%	108	15.29%
70	7.83%	70	7.06%	115	15.11%
89	6.88%	91	6.52%	96	14.45%
96	6.77%	89	6.39%	89	14.35%
91	6.74%	97	5.98%	105	13.61%
97	6.69%	96	5.93%	86	13.57%
68	6.43%	68	5.92%	91	12.91%
19	6.33%	73	5.70%	76	12.64%
73	6.14%	36	5.60%	97	11.59%

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Black Population, Black Voting Age Population,
Black Democratic Registration in 2003 House Plan

Dist.	% Black Pop	Dist.	% Black VAP	Dist.	% Black Dems
76	5.98%	19	5.51%	114	11.56%
36	5.80%	76	5.38%	36	11.55%
87	4.93%	105	4.48%	19	10.39%
104	4.84%	85	4.35%	87	10.05%
105	4.77%	87	4.32%	104	9.92%
94	4.40%	104	4.22%	94	9.58%
90	4.27%	94	4.12%	78	9.33%
113	4.17%	90	3.89%	80	9.15%
85	4.12%	78	3.84%	113	8.13%
78	4.01%	113	3.50%	92	7.61%
117	3.83%	80	3.37%	117	7.13%
80	3.63%	92	3.31%	90	6.15%
92	3.45%	117	3.26%	84	5.43%
116	3.24%	84	3.14%	85	5.39%
84	3.20%	116	2.65%	116	3.81%
119	1.44%	119	1.45%	93	2.16%
93	1.39%	118	1.34%	119	1.72%
118	1.38%	93	1.34%	118	1.43%
120	1.38%	120	1.15%	120	1.42%

Shading indicates an African-American was elected
to district in 2004 Election

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Engstrom Report

Pender County v. Bartlett
by
Richard L. Engstrom, Ph.D.

1. My name is Richard L. Engstrom and I am a resident of New Orleans, Louisiana. I am a Research Professor of Political Science and Coordinator of Graduate Studies in the Department of Political Science at the University of New Orleans (UNO), and the Endowed Professor of African Studies at UNO. I have served two terms as the Chairperson of the Representation and Electoral Systems Section of the American Political Science Association (1993-1995, 1995-1997) and continue to serve as a member of the Executive Council for that section. A copy of my curriculum vitae is attached as an Appendix to this report.

2. I have done extensive research in the relationship between election systems and the ability of minority voters to participate fully in the political process and to elect representatives of their choice. The results of my research have been published in the *American Political Science Review*, *Journal of Politics*, *Western Political Quarterly*, *Legislative Studies Quarterly*, *Social Science Quarterly*, *Journal of Law and Politics*, *Electoral Studies*, *Representation*, *Publius*, and other journals and books. Three articles authored or co-authored by me were cited with

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approval in Thornburg v. Gingles, 478 U.S. 30, 46 n.11, 49 n.15, 53 n.20, 55, and 71 (1986), the Supreme Court decision interpreting amended section 2 of the Voting Rights Act. I am a co-author, with Mark A. Rush, of *Fair and Effective Representation? Debating Electoral Reform and Minority Rights* (Lanham, MD: Rowman and Littlefield Publishers, Inc. 2001).

3. I have also testified as an expert witness in a number of voting rights cases in federal and state courts across the United States. Since 2001 I have testified at trial and/or been deposed in the following cases: *Johnson v. Hamrick* (N.D. Ga. 2001), *Del Rio v. Perry* (200th Dist. Ct. Tx. 2001), *Balderas v. State of Texas* (E.D. Tx 2001), *Johnson v. Bush* (S.D. Flda 2001), *Jepsen v. Vigil-Giron* (1st Judicial District Court, County of Santa Fe, NM 2001, 2002), *Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission* (Superior Court, County of Maricopa, AZ, 2002), *Curry v. Glendening*, Court of Appeals of Maryland (2002), *Levy v. Miami-Dade Co.* (S.D. Flda. 2002), *Dillard v. Baldwin Co.* (M.D. Ala. 2002), *Prejean v. Foster* (M.D. La. 2002), *Georgia v. Ashcroft* (D.C. DC, 2002), *Louisiana House of Representatives v. Ashcroft* (D.C. DC 2002), *United States v. Alamosa County* (D. Co. 2003), *Comacho v. Galvin and Black Political Task Force v. Galvin*, (D.C. Mass. 2003), *Stewart v. Blackwell* (N.D. Oh. 2004), and *Cottier v. City of Martin*, S.D., (D.C. SD 2004).

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4. Attorneys with the North Carolina Justice Department have asked me to examine recent elections (from 1998 through 2002) presenting voters with a choice between or among African American and non-African American candidates in Pender and New Hanover Counties in North Carolina. The purpose of this examination is to determine the extent to which voting has been racially polarized in these elections. I did a previous analysis of this type for the state in the case of Shaw v. Hunt, 861 F. Supp. 408, 465 (E.D.N.C. 1994) that served as the basis for a finding of racially polarized voting in that case, a finding that was not disturbed on appeal. I also provided a supplemental analysis of the vote for Mr. Harvey B. Gantt in the November 1996 general election for the United States Senate using the same methodologies employed in my racially polarized voting analysis in Shaw.

5. I am being compensated at a rate of \$225 an hour for my work in this case.

METHODOLOGY

6. The data utilized in the analyses of these elections consist of information on the race of the registered voters in each of the voting precincts in these counties at the time of the elections, and election returns by precinct for these elections. These data were provided to me by legislative and Board of Elections staff who maintain such data for the State of North Carolina.

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7. In assessing the extent to which the candidate preferences of the African American voters differed from those of the non-African American voters in these elections, I have derived estimates of group support for candidates through three analytic procedures. These include the two methods approved for this purpose by the United States Supreme Court in Thornburg v. Gingles [478 U.S. 30, 52-53 (1986)], which are ecological regression analysis and homogeneous precinct (or extreme case) analysis. Homogeneous precinct analyses simply report the relative levels of support a candidate or set of candidates received within the precincts in which less than 10 percent of the registered voters was African American and within those in which over 90 percent was African American.¹ Regression analyses provide estimates of the support for the various candidates among both African American and non-African American voters based on the votes cast in all of the precincts in an election.²

¹ There are no homogeneous African American precincts in the Pender County elections analyzed for this report.

² Correlation coefficients reflecting how consistently the vote for a candidate varies with the relative presence of African Americans in the precincts are reported along with the results of the regression analyses. The correlation coefficient can achieve values ranging from 1.0 to -1.0. A value of 1.0 indicates that as the African American

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The third methodology I employ is called Ecological Inference (or EI). This is an estimation procedure that also takes into account the votes cast in all of the precincts that was developed for this purpose subsequent to Thornburg v. Gingles by Gary King.³ It is now common for expert witnesses to rely upon EI estimates of racial divisions in candidate preferences in providing evidence in cases involving the federal Voting Right Act.

RESULTS

8. The results of my analyses of these recent elections reveal, in both counties, pronounced and persistent patterns of racially polarized voting. Reported in Tables 1 and 2 are the results of elections

percentage increases across precincts, there is a perfectly consistent increase in the support received by a designated candidate. A value of -1.0 indicates a perfectly consistent decrease in the support received. When the statistical probability of a coefficient is less than .05, that coefficient is identified as statistically significant. The correlation coefficients in the tables below that are statistically significant are identified with an “*” following the value of the coefficient.

³ This procedure is the subject of Gary King, A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data (Princeton University Press, 1997).

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in which voters had a single vote to cast. These include elections in which all of the voters in a county, or in the City of Wilmington in New Hanover County, could participate, and Democratic primaries in which only the voters registered as Democrats or as unaffiliated with a political party may participate.⁴ Reported in Table 3 are the results for elections in which voters had more than one vote to cast. These are the 2000 general election for the Hanover County Board of Education and the nonpartisan election for the Wilmington City Council in October 1999.⁵

⁴ The analyses of the Democratic primary elections employed the data for Democratic and unaffiliated registered voters, rather than the data for all voters. The racial breakdowns of voters in these elections are not provided by party. These analyses treat all registered African Americans as eligible to vote in the Democratic primary, given that relatively few of them are likely to be registered as Republicans. When a primary election is between more than two candidates, the number of opponents an African American candidate has is identified in the table.

⁵ Given the multiple vote nature of these elections, the results reported for them are not the percentages of those voting in the particular election contest that voted for a particular candidate, as in Tables 1 and 2, but rather the percentage of those receiving ballots for the election that voted for a particular candidate. Partisan primary elections

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9. The results for six single vote elections in Pender County are contained in Table 1. The analyses for five of these elections are consistent across the estimation procedures – the African American candidate was the choice, usually overwhelmingly, of the African American voters, but not the choice of non-African American voters. The exception was the May 5, 1998 election for the District 1 seat on the Board of Education, in which the EI analysis indicates that Ms. Wallace was clearly the choice of the African American voters, while the regression analysis indicates that she was not their choice. In neither analysis was she the choice of the non-African American voters.

10. The results of the six single vote elections in New Hanover County are reported in Table 2. All of the estimation procedures show the African American candidates to be the choice of non-African American voters, again usually overwhelmingly, in every election. Non-African Americans did not share this preference in five of the six cases, the exception being

in which voters cast more than one vote are not included because the data necessary to perform these analyses have not been retained. Two multiple vote elections, those for four seats on the New Hanover Board of Education and for two nonpartisan Soil and Water Conservation District Supervisors in New Hanover County in the November 2002, have not been analyzed because the necessary data have not been provided.

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their support for Mr. McQueen in the November 3, 1998 general election for sheriff.

11. The results of the two multiple vote elections in which all registered voters in the particular jurisdiction could have voted are contained in Table 3. The African American candidates in these elections ranked at the top of the vote cast by African American voters, and when there were two, they finished first and second. They were not so favored by the non-African American voters. In the 2000 general election for the New Hanover County Board of Education, in which each voter had 3 votes to cast, Ms. Hankins was the candidate receiving the most votes from the African Americans receiving ballots, over 90 percent, but finished last among the six candidates in the votes cast by non-African Americans. In the nonpartisan Wilmington City Council election in 2000, in which voters also had three votes apiece, Ms. Hughes received a vote from over 90 percent of the African Americans receiving ballots, but finished sixth out of the 15 candidates in the EI analysis, and seventh in the regression analysis, in the non-African American vote with about 17 percent. Mr. McDuffie finished second in the votes cast by African Americans, receiving a vote from about 46 percent of them receiving ballots, but was ninth in the vote cast by non-African Americans, with a corresponding percentage of around 6.0.

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12. The analyses of recent elections in both Pender and New Hanover Counties in which voters have been faced with a biracial choice of candidates reveal racially polarized voting. These results are similar to those I reported for elections across the state in my previous report for the Shaw case.

Richard L. Engstrom
February 9, 2005

TABLE 1

**Racial Differences in Support for
African American Candidates
Single Vote Elections**

PENDER COUNTY

Reported in the following order:

Ecological Inference

Regression Analysis

Homogeneous Precincts

[CC[◊] = Correlation Coefficient]

Candidate	% of Afr. Am.	% of Non-AA	CC [◊]
<u>November 5, 2002</u>			
<i>County Commission, D.2</i>			
Arthur (Monk)	90.3	23.3	
Smith	115.0	25.5	.947*
	-----	31.4	
<i>Sheriff</i>			
Bennie L. Corbett	90.2	23.4	
	128.0	17.7	.943
	----	26.1	

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Candidate	% of Afr. Am.	% of Non-AA	CC ^o
<i>District Court</i>			
<i>Judge</i>			
James Henry	97.2	31.1	
Faison	96.3	48.0	.884*
	----	48.8	
<u>September 10, 2002 (Dem. Primary)</u>			
<i>Sheriff</i>			
Bennie L. Corbett	60.4	3.4	
(v. four others)	74.6	4.7	.870*
	----	3.9	
<u>November 7, 2002</u>			
<i>County Commissioner D. 3</i>			
James H. Faison,	92.9	23.6	
Jr.	110.4	28.7	.962*
	----	34.2	
<u>May 5, 1998</u>			
<i>Board of Education, D.1</i>			
Irene C. Wallace	77.2	19.0	
	45.0	32.5	.216
	----	33.0	

TABLE 2

**Racial Differences in Support for
African American Candidates
Single Vote Elections**

NEW HANOVER COUNTY

Reported in the following order:

Ecological Inference

Regression Analysis

Homogeneous Precincts

[CC[◊] = Correlation Coefficient]

Candidate	% of Afr. Am.	% of Non-AA	CC [◊]
<u>September 10, 2002 (Dem. Primary)</u>			
<i>Sheriff</i>			
James H. Smyre, Jr	82.2	10.2	.948*
(v. two others)	91.2	9.1	
	78.6	13.0	
<u>May 2, 2000 (Dem. Primary)</u>			
<i>Register of Deeds</i>			
Sandra B. Randolph	88.6	25.2	.928*
	95.2	22.6	
	89.7	26.1	

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Candidate	% of Afr. Am.	% of Non-AA	CC ^o
<u>November 2, 1999</u>			
<i>Wilmington City Council, Runoff</i>			
Sandra Spaulding	93.1	33.4	
Hughes	114.4	27.4	.910*
	98.6	30.3	
<u>November 3, 1998</u>			
<i>Sheriff</i>			
Joseph McQueen,	96.5	62.0	
Jr.	111.1	61.3	.872*
	93.4	62.8	
<i>Clerk of Court</i>			
Harold A. Hicks	90.9	21.2	
	115.2	20.5	.963*
	93.4	23.0	
<u>May 5, 1998</u>			
<i>Wilmington City Council (Special Election)</i>			
Herb McDuffie	67.5	3.6	
(v. 5 others)	108.5	2.5	.922*
	80.2	4.1	

Table 3

**Estimated Racial Differences in
Candidate Support Elections
with More than One Vote**

NEW HANOVER COUNTY*

In the following order:

Ecological Inference

Regression Analysis

Homogeneous Precincts

[CC[◊] = Correlation Coefficient]

Candidates	Afr. Am. <u>Voters</u>	Non-AA <u>Voters</u>	CC [◊] <u> </u>
<u>November 7, 2000</u>			
New Hanover Board of Education, 3 votes			
Lethia S. Hankins	98.6	33.4	
	104.1	32.6	.943*
	93.6	34.6	
Mark A. Lewis	80.9	37.7	
	80.7	37.8	.901*
	74.9	39.2	

*** African American candidates are identified
in bold type.**

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Candidates	Afr. Am. <u>Voters</u>	Non-AA <u>Voters</u>	CC ^o <u>_____</u>
Maryann Nunnally	80.6	45.1	.844*
	80.1	45.2	
	74.0	46.3	
Debbie Keck	.09	46.5	-.902*
	-6.0	47.5	
	3.6	46.2	
Nancy Wigley	0.7	48.2	-.901
	-7.3	49.4	
	3.5	48.2	
Jeanette S. Nichols	0.6	47.6	-.901
	-7.6	48.7	
	2.4	47.4	

October 5, 1999

Wilmington City Council
3 votes

Sandra S. Hughes	93.0	17.7	.960*
	98.6	16.4	
	88.2	17.6	

*** African American candidates are identified
in bold type.**

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Candidates	Afr. Am. <u>Voters</u>	Non-AA <u>Voters</u>	CC [◊] <u></u>
Herb McDuffie	46.1	6.1	
	46.4	6.1	.905*
	49.8	7.0	
Ron Shackelford	27.4	26.4	
	23.4	27.2	-.071
	22.8	28.5	
Denny Best	22.8	4.9	
	21.9	5.1	.721*
	15.3	5.0	
Laura Padgett	13.2	54.2	
	16.3	53.5	-.770*
	14.1	51.4	
Berry A. Williams	6.4	17.4	
	6.2	17.4	-.424*
	7.0	16.9	
Frank Conlon	5.2	52.5	
	2.3	53.1	-.728
	8.0	52.2	
Jim Quinn	4.0	51.0	
	-4.5	52.9	-.852*
	6.8	53.1	

* African American candidates are identified
in bold type.

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Candidates	Afr. Am. <u>Voters</u>	Non-AA <u>Voters</u>	CC [◇] <u>_____</u>
Rod Rodriguez	2.7 2.9 1.9	2.3 2.2 2.0	.166
Brett M. Silvermann	2.5 1.2 0.2	1.5 1.7 1.5	-.115*
Dana E. Page	1.7 2.0 2.1	3.2 3.1 3.0	-.216
Braxton D. Honeycutt	1.7 2.2 1.7	2.7 2.6 2.5	-.083
Jack Watkins	1.2 -0.8 2.4	23.3 23.8 23.5	-.840*
Lee Weathers	0.9 0.6 0.9	1.0 1.1 1.0	-.187
Michael Plesch	.07 -0.6 0.5	6.7 7.0 7.0	-.555*

*** African American candidates are identified
in bold type.**

STATE OF NORTH CAROLINA
COUNTY OF WAKE
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
04 CVS 6966
[full caption omitted in printing]

AMENDED STIPULATIONS OF THE PARTIES

I. HOUSE REDISTRICTING PLANS

1. The 1992 Plan: the 1992 House redistricting plan enacted by the General Assembly (1991 N.C. Sess. Laws 5 (Extra Session)). A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit A.

2. The 2001 Plan: the first House redistricting plan enacted by the General Assembly after the 2000 Census (2001 N.C. Sess. Laws 459, also known as "Sutton House Plan 3"), invalidated by the Honorable Knox V. Jenkins, whose decision was affirmed by the North Carolina Supreme Court at *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) ("*Stephenson I*"). A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit B.

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3. The 2002 Plan: the second House redistricting plan (“Sutton House Plan 5”) enacted by the General Assembly after the decision of the North Carolina Supreme Court in *Stephenson I*, invalidated by the Honorable Knox V. Jenkins, whose decision was affirmed by the North Carolina Supreme Court at *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (“*Stephenson II*”). A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly’s DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit C.

4. Jenkins Plan: the House redistricting plan (also known as “Interim House Plan”) adopted by the Honorable Knox V. Jenkins and affirmed by the North Carolina Supreme Court, which was used for the 2002 legislative elections. A map and statistical data pack of this plan, which was taken from the North Carolina General Assembly’s DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit D.

5. The 2003 Plan: the third House districting plan enacted by the General Assembly after the 2000 Census (2003 N.C. Sess. Laws 434 (1st Extra Sess.)), which was used for the 2004 legislative elections and which is the legislative districting plan currently in place. A map and statistical data pack of this plan, which was taken from the North Carolina General

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Assembly's DistrictBuilder System and the accuracy and authenticity of which are stipulated to by the parties, are attached as Exhibit E.

6. A district identified in the five House plans in ¶¶ 1-5 as a VRA District is a district either (1) identified by the General Assembly as a district drawn in order to comply with § 2 or § 5 of the Voting Rights Act, 28 U.S.C. § 1973(a) and § 1973c; or (2) identified by the Honorable Knox V. Jenkins or by the North Carolina Supreme Court in *Stephenson I* or *Stephenson II* as a district drawn in order to comply with § 2 or § 5 of the Voting Rights Act. By stipulating that any given district was identified by the General Assembly or the courts as a "VRA district," plaintiffs specifically do not stipulate that such district was in fact required by the Voting Rights Act.

II. THE GENERAL ASSEMBLY

7. The North Carolina General Assembly consists of the Senate and the House of Representatives. N.C. CONST. art. II, § 1. Members of both the Senate and the House of Representatives are elected for two-year terms. N.C. CONST. art. II, §§ 2 and 4.

8. The North Carolina House of Representatives has 120 members.

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9. Pursuant to the decisions of the North Carolina Supreme Court in *Stephenson I* and *Stephenson II*, in 2002 and 2004 these 120 members were elected from 120 single-member districts. The terms of the members elected in 2002 commenced on January 1, 2003, and the terms of the members elected in 2004 commenced on January 1, 2005.

10. At the time of redistricting in 1981 and 1982, there were 3 African-Americans serving in the House. After the 1982 redistricting, 11 African-Americans served in the House in 1983. After the *Gingles* litigation and redistricting, 13 African-Americans served in the House in 1985 and in 1987; and 14 served in 1989. The names of the African-American Representatives and the districts they represented are contained in Exhibit F. Of the 120 members of the 1991 House, 81 were Democrats and 39 were Republicans; 105 were white, 14 were African-American, and 1 was a Native American. The demographic list for 1991 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit G.

11. After the 1991 redistricting, of the 120 members of the 1993 House, 78 were Democrats and 42 were Republicans; 101 were white, 18 were African-American, and 1 was a Native American. The demographic list for 1993 issued by the Principle Clerk

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of the House, which lists freshman, female and minority member of the House, is attached as Exhibit H.

12. Of the 120 members of the 1995 House, 52 were Democrats and 68 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American. The demographic list for 1995 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit I.

13. Of the 120 members of the 1997 House, 59 were Democrats and 61 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American. The demographic list for 1997 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit J.

14. Of the 120 members of the 1999 House, 66 were Democrats and 55 were Republicans; 102 were white, 17 were African-American, and 1 was a Native American. The demographic list for 1999 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit K.

15. Of the 120 members of the 2001 House, 62 were Democrats and 58 were Republicans; 101 were white, 18 were African-American, and 1 was a Native American. The demographic list for 2001 issued by the

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Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit L.

16. After the 2001 and 2002 redistricting and elections under the Jenkins Plan, of the 120 members of the 2003 House, 60 or 61 were Democrats and 59 or 60 were Republicans (the fluctuation in numbers being due to a representative who changed party affiliation twice during the 2003 session); 101 were white, 18 were African-American, and 1 was a Native American. The demographic list for 2003 issued by the Principle Clerk of the House, which lists freshman, female and minority member of the House, is attached as Exhibit M.

17. After election under the legislature's 2003 Plan, of the 120 members of the current 2005 House, 63 are Democrats and 57 are Republicans; 100 are white, 19 are African-American, and 1 is a Native American. A listing of all 2005 representatives by political party and race is attached as Exhibit N.

**III. REDISTRICTING SINCE 1982 AS IT HAS
EFFECTED PENDER COUNTY**

18. In the House redistricting plan enacted in 1982 and modified in response to *Gingles*, which remained in effect until the 1992 elections, Pender County was divided between two districts: District 12,

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which also included Sampson and Bladen counties, and District 14, which also included Brunswick County and a portion of New Hanover County.

19. In the 1992 Plan, which remained in effect until the 2002 elections, Pender County was divided between three districts: District 12, which included portions of Pender, and Sampson counties; District 96, which included portions of Pender, Bladen, Cumberland and Sampson counties; and District 98, which included portions of Pender, Brunswick, Columbus and New Hanover counties. District 98 was identified by the General Assembly as a VRA district; it had a total black population of 59.26% and a black voting age population of 55.72%, based on the 1990 Census. Based on the 2000 Census, District 98 had a total black population of 50.70% and a black voting age population of 47.07. *See Exhibit A.*

20. In the 2001 Plan, Pender County was divided between five districts: District 13, which included portions of Pender, Carteret, Craven and Onslow counties; District 15, which included portions of Pender, New Hanover and Onslow counties; District 18, which included portions of Pender, Brunswick, Columbus and New Hanover Counties; District 19, which included portions of Pender, Bladen, Cumberland, New Hanover and Sampson counties; and District 20, which included portions of Pender, Johnston and Sampson counties. District 18 was

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identified by the General Assembly and the courts as a VRA district; it had a total black population of 44.00%, a black voting age population of 40.38%. *See* Exhibit B. The State's § 5 preclearance submission materials to the United States Department of Justice regarding District 18 are attached as Exhibit O (without attachments).

21. In the 2002 Plan, Pender County was in a single district – District 16 – which also included a portion of New Hanover County. District 16 was not identified by the General Assembly as a VRA district. However, District 18, which included portions of three counties (Brunswick, Columbus and New Hanover), was identified by the General Assembly and the courts as a VRA district. District 18 had a total black population of 44.00% and a black voting age population of 40.41%. *See* Exhibit C. The State's § 5 preclearance submission materials to the United States Department of Justice regarding District 18 are attached as Exhibit P (without attachments).

22. In the Jenkins Plan, Pender County was in a single district – District 16 – which also included a portion of New Hanover County. District 16 was not identified by Judge Jenkins as a VRA district. However, District 18, which included portions of three counties (Brunswick, Columbus and New Hanover), was identified by Judge Jenkins as a VRA district; it

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had a total black population of 46.99% and a black voting age population of 43.44%. *See* Exhibit D.

23. In the 2003 Plan, Pender County was divided between two districts – Districts 16 and 18 – both of which also contained portions of New Hanover County. District 18 was identified by the General Assembly as a VRA district, drawn to comply with the provisions of § 2 of the Voting Rights Act; it has a total black population of 42.89%, a black voting age population of 39.36% and black Democratic registration of 53.72%. *See* Exhibit E. That State’s § 5 preclearance materials regarding District 18 are attached as Exhibit Q (without attachments).

IV. NEW HANOVER COUNTY

24. New Hanover County, bounded by Pender and Brunswick counties, the Cape Fear River and the Atlantic Ocean, covers 198 square miles, making it the second smallest county in North Carolina. It is also one of North Carolina’s most densely populated counties. The first federal census in 1790, showed New Hanover County’s population at 7,000. The population in 2000, according to the 2000 Census, of 160,307 was a 33.3 percent increase from 1990. The United States Census Bureau projects that, by 2010, the population of New Hanover County will be nearly 195,000.

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25. Originally including the present-day Pender County, New Hanover County was formed in 1729 from Craven County and was named for the House of Hanover, the ruling family of Britain at that time. New Hanover County includes the historically-significant port city of Wilmington, the county seat and the home of the University of North Carolina at Wilmington, as well as the resort towns of Carolina Beach, Kure Beach and Wrightsville Beach. Tourism and film production as well as service and retail businesses are central to the economy of the county.

26. In the late nineteenth century, the port city of Wilmington was the largest city in North Carolina. A majority of the city's population was African American. By 1897, blacks owned 13.6% of the 918 businesses listed in the Wilmington city directory. There were 40 African American justices of the peace in New Hanover County, along with the county treasurer, recorder of deeds, coroner, and assistant sheriff. Wilmington had three African American aldermen, two all-black fire companies, and numerous black policemen, mail carriers, and health inspectors.

27. On November 10, 1898, an incident occurred in Wilmington that is commonly known as "the Wilmington Race Riot." According to many historical accounts, there is evidence to support a finding that a white mob took control of the reins of government in the city and, in so doing forced the resignation of the

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existing government, including the three African American aldermen, from office by threatening their safety, destroyed the local black-owned newspaper office and terrorized the African American community. *See, e.g.*, H. LEON PRATHER, SR., WE HAVE TAKEN A CITY: WILMINGTON RACIAL MASSACRE AND COUP OF 1898 (1984). In the months thereafter, many African Americans fled Wilmington, and political upheaval resulted across the state and legal restrictions were placed on the right of African Americans to vote. *See* Section VII *infra*. Copies of headlines from the November 11, 1898, editions of the Wilmington Morning Star, the New York Herald and the Raleigh News & Observer are attached as Exhibit R.

28. In 2000, the North Carolina General Assembly created the 1898 Wilmington Race Riot Commission. 2000 N.C. Sess. Laws 138, § 17.1. Pursuant to § 17.1(b) of that Act,

The purpose of the Commission shall be to develop a historical record of the 1898 Wilmington Race Riot. In developing such a record, the Commission shall gather information, including oral testimony from descendants of those affected by the riot or others, examine documents and writings, and otherwise take such actions as

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may be necessary or proper in accurately identifying information having historical significance to the 1898 Wilmington Race Riot, including the economic impact of the riot on African-Americans in this State.

The Commission is chaired by North Carolina Representative Thomas E. Wright of New Hanover County. Rep. Wright represents District 18, which includes a portion of Pender County and a portion of New Hanover County. Professor Irving Joyner of North Carolina Central University is the vice-chair. The full board is composed of thirteen members who are appointed by the legislature, the governor, mayor and city council of Wilmington, and New Hanover County Commission. The Department of Cultural Resources provides research and administrative assistance. A final report from the Commission is expected to be completed by December 31, 2005.

29. New Hanover County is governed by a Board of County Commissioners comprised of five members, who are elected at large through partisan elections in even-numbered years. Members are elected to serve staggered terms of 4 years, with elections held every two years. All five of the current members of the New Hanover Board of County Commissioners are Republicans. Since 1980, one minority, Jonathan

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Barfield, Sr., a black Democrat, won election to the New Hanover Board of County Commissioners. He served three terms and left office in 1992. There are currently no African Americans serving on the New Hanover County Board of County Commissioners.

30. Since 1981, New Hanover County has been represented by eleven white representatives and one African American representative, Thomas Wright, who was first elected to represent a district that included a portion of New Hanover County in 1992. A listing of the names, district, race and years elected for these representatives is attached as Exhibit S.

V. PENDER COUNTY

31. Pender County is located in southeastern North Carolina and encompasses approximately 875 square miles. The county is a combination of primarily rural inland areas and resort-vacation areas along the coast and on the Atlantic barrier islands.

32. According to the 2000 Census, Pender County had a population of 41,082 people.

33. Pender County was created in 1875 as a result of Reconstruction politics. Prior to 1875, the area now comprising Pender County was part of New Hanover County. During Reconstruction, Republicans, who allied themselves with the local African American population, exerted increasing influence in Wilmington

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and New Hanover County. Conservatives, who controlled the General Assembly, sought to isolate and limit the influence of Republicans and African Americans in New Hanover County by taking the northern two-thirds of the county, which included almost all of New Hanover's agricultural population, and formed that area into Pender County, named for Confederate General William D. Pender. This reduced New Hanover County to an area comprised of little more than the City of Wilmington and, at that time, an almost uninhabited peninsula.

34. Since its inception, Pender County has been governed by a Board of County Commissioners comprised of five members. At least since 1982, the county has been divided into five districts for purposes of electing the five commissioners. Currently, and at least since 1996, while each commissioner resides in and has been elected through partisan races from individual districts, all elections for county commissioners have been county-wide elections. Commissioners are currently elected for four year terms; terms for the five members are staggered. Three of the current five members of the Board of County Commissioners elected in the 2004 elections are Democrats, while two are Republicans.

35. Since 1954, three African Americans have been elected to serve as county commissioners in Pender County. They are: Willie Nixon (District 1,

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1980-1992); Bonnie Parker (District 3, 1982-1986/1990-1994); and Cleveland Simpson (District 3, 1994-2000). One additional African American, James Faison, Jr., was appointed to serve in Mr. Simpson's position from February 2000 until December 2000 following Mr. Simpson's resignation from office. Mr. Faison ran for the seat himself in the 2000 election but was defeated. There are currently no African Americans serving on the Pender County Board of County Commissioners.

36. Since 1981, Pender County has been represented by seven white representatives and one African American representative, Thomas Wright, who was first elected to represent a district that included a portion of Pender County in 1992. A listing of the names, district, race and years elected for these representatives is attached as Exhibit S.

VI. ECONOMIC, HEALTH AND EDUCATION DISPARITIES

37. The United States Census Bureau publishes a Profile of General Demographic Characteristics (Table DP-1), a Profile of Selected Social Characteristics (Table DP-2), a Profile of Selected Economic Characteristics (Table DP-3) and a Profile of Selected Housing Characteristics (Table DP-4) for various geographic regions using data from the 2000

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Census. These profiles describe the disparities between majority and minority populations in various categories. Tables DP-1, DP-2, DP-3 and DP-4 for Pender County are attached as Exhibit T. Tables DP-1, DP-2, DP-3 and DP-4 for New Hanover County are attached as Exhibit U.

38. The North Carolina State Data Center, a consortium of state and local agencies established in cooperation with the US Bureau of the Census to provide the public with data about North Carolina and its component geographic areas publishes various profiles regarding economic, health and education data for various geographic regions using data derived from the 2000 Census and provided by the United States Census Bureau. These profiles describe the disparities between majority and minority populations in various categories. Primary Profiles 4, 6, 10, and 11; Housing Profiles 3 and 4; Income Profile 4; Employment Profile; Disability Profiles 4-6 and Poverty Profiles 1-6 for Pender County are attached as Exhibit V. Primary Profiles 4, 6, 10, and 11; Housing Profiles 3 and 4; Income Profile 4; Employment Profile; Disability Profiles 4-6 and Poverty Profiles 1-6 for New Hanover County are attached as Exhibit W.

39. The North Carolina Department of Health and Human Services State Center for Health Statistics has published various summaries of pregnancy healthcare and neonatal healthcare, neonatal and

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infant mortality and related statistics for North Carolina's 100 counties, as well as a summary of 1999-2002 North Carolina Race-Specific and Sex-Specific Age-Adjusted Death Rates for each county. These reports and summaries describe the disparities between majority and minority populations in various categories. Copies of these reports and summaries are attached as Exhibit X.

40. The North Carolina Governor's Office, in conjunction with the North Carolina State Board of Education, using data obtained from school, district, and state levels compile a NC School Report Card each year. The report card includes the results of the End-of-Grade testing across school, district, and state levels. The report card for New Hanover County indicates that 70.6 percent of African-American students passed both the reading and math components of the ABC's End-of-Grade Tests; 74.0 percent of African-American students passed both components in Pender County. The ABC Report Cards for New Hanover and Pender counties are attached as Exhibit Y.

41. The Accountability Services Division of the N.C. Department of Public Instruction also keeps track of SAT scores of North Carolina students. Statistics are reported in The North Carolina SAT Report. Upon contacting the department, individual system statistics are available. In New Hanover County, the

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mean SAT scores for Black students in 2004 was 856. The mean SAT score for Black students in Pender County in 2004 was 853.

42. The North Carolina State Data Center maintains a web-based database called LINC (“Log into North Carolina”) at <http://linc.state.nc.us/>, which contains data derived from the 2000 Census. “LINC Topic Report: Decennial Census – Education” for New Hanover County, taken from the LINC website, is attached as Exhibit Z. “LINC Topic Report: Decennial Census – Education” for Pender County, taken from the LINC website, is attached as Exhibit AA.

43. The North Carolina Department of Public Instruction monitors and maintains reports on Adequate Yearly Progress (“AYP”) for schools and school systems throughout North Carolina. These reports are available at <http://ayp.ncpublicschools.org/>, and they contain data concerning grade level proficiencies in mathematics and writing for grades 3 through 8 and grade 10. The 2004 AYP Report for New Hanover County is attached as Exhibit BB. The 2004 AYP Report for Pender County is attached as Exhibit CC.

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**VII. PUBLIC RECORD MATERIALS ON
DISENFRANCHISEMENT, DISCRIMINATION
AND RACIALLY POLARIZED VOTING**

44. Attached as Exhibit DD is a compendium of documents from the public record that were submitted to and considered by the General Assembly when it undertook Congressional redistricting in 1997 and the United States Department of Justice when it precleared the 1997 Congressional Redistricting Plan. These materials were also presented to and considered by the three-judge court in the *Shaw* litigation in support of Congressional District 1, which was drawn to comply with § 2 of the Voting Rights Act. These documents, which include laws and practices designed to discourage or prevent minority citizens from voting as well other racially discriminatory laws in North Carolina's history, concern the lingering effects of racially discriminatory laws, racially polarized voting and racial attitudes in North Carolina.

VIII. EVIDENTIARY STIPULATIONS

45. The parties stipulate to the authenticity of all exhibits attached hereto.

46. The parties stipulate that defendants' expert, Dr. Kerry L. Haynie, whose testimony is offered in deposition form, is an expert in political science in the

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area of substantive and descriptive representation by minority representatives.

47. The parties stipulate that defendants' expert, Dr. Richard L. Engstrom, whose testimony is offered in deposition form, is an expert on racially polarized voting, including the methodology and evaluation by statistical analysis to determine whether racially polarized voting exists.

This, the 27th day of April, 2005.

/s/Carl W. Thurman

Carl W. Thurman, III

Pender County Attorney

N.C. State Bar No. 17106

3169 Wrightsville Ave.

Wilmington, North Carolina 28403

Telephone: 910.763.7487

Facsimile: 910.763.7476

Cwtiii@aol.com

Counsel for the Plaintiffs

Pender County v. Bartlett, No. 04 CVS 6966,
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ROY COOPER
Attorney General

By: /s/Alexander McC. Peters
Tiare B. Smiley
Special Deputy Attorney General
N. C. State Bar No. 7119
tsmiley@ncdoj.com

Alexander McC. Peters
Special Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.com

N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Telephone: 919.716.6900
Facsimile: 919.716.6763

Counsel for the Defendants

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