

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:13-CV-00949**

**DAVID HARRIS and CHRISTINE
BOWSER,**

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS'
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Plaintiffs in the above-captioned action hereby respectfully submit to the Court the following proposed Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT

I. CD 1 AND CD 12 PRIOR TO 2011

A. CD 1

1. On January 24, 1992, the North Carolina General Assembly (“the NCGA”) adopted a congressional redistricting plan, 1991 N.C. Extra Sess. Laws, ch. 7 (“the 1992 Congressional Plan”) that was used for elections held in 1992, 1994, and 1996. *See* Pltf. Tr. Ex. 72, at 4. The black voting-age population (“BVAP”) in the 1992 version of North Carolina Congressional District 1 (“CD 1”) was 53.40%.¹ Def. Tr. Ex. 4.1, at 4 (Exhibit 1 to Fourth Affidavit of Dan Frey).

2. During that timeframe, the constitutionality of the 1992 Congressional Plan was challenged in federal court, and on June 13, 1996, the United States Supreme Court invalidated the 1992 Congressional Plan. *Shaw v. Hunt* (“*Shaw II*”), 517 U.S. 899 (1996).

3. On March 31, 1997, in response to *Shaw II*, the NCGA enacted a new congressional plan, 1997 N.C. Sess. Laws, ch. 11 (“the 1997 Congressional Plan”) and submitted it to the United States Department of Justice for preclearance on April 9, 1997.

¹ For purposes of measuring BVAP, the relevant data is provided by the United States Census Bureau based upon the most recent decennial census. Specifically, the relevant census category is called “Any Part Black” and is the sum of (1) persons who describe themselves as “black” only (or more formally, “Single Race Black”); plus (2) persons who describe themselves as “black” in combination with one or more other races. Tr. 282:6-24 (Ansolabehere). It is important to note that the NCGA sometimes uses its own idiosyncratic phrase “Total Black Voting Age Population” (“TBVAP”) when referring to the census category “Any Part Black.” *See, e.g.*, Def. Tr. Ex. 5.11, at 2 (6/17/11 Public Statement) (TBVAP as used by Sen. Rucho is “any person 18 or older who identifies as “any part black” and recognizing that this is the data preferred by the Department of Justice). Unless expressly stated otherwise herein, “BVAP” is equivalent to “TBVAP.” Prior to the 2000 Census, the Census Bureau did not collect “Any Part Black” data and thus the BVAP numbers reported prior to that Census included only the “Single Race Black” data.

See generally Pltf. Tr. Ex. 73. In relevant part, the NCGA's preclearance submission stated:

The General Assembly's primary goal in redrawing the plan was to remedy the constitutional defects in the former plan. These defects were the predominance of race in the location and shape of District 12 *and perhaps in the location and shape of District 1*, and a failure of narrow tailoring.

Id. at 10 (emphasis added).

4. The NCGA concluded that the 1997 version of CD 1 could be drawn at 46.5% BVAP—*nearly seven percentage points lower* than the 1992 version—while continuing to provide African-American citizens with a reasonable opportunity to elect their candidates of choice. Pltf. Tr. Ex. 73, at 10. Relying upon “[d]ata and expert reports,” the NCGA explained its decision as follows:

[P]opulation projections indicate that the percentage of African-Americans and the percentage of African-Americans registered to vote are slightly higher in District 1 today than in 1990. These percentages plus the “cross-over” voters within the District (20 to 25%) provide African-American citizens in District 1 a reasonable opportunity to elect a candidate of their choice. This opportunity is almost certainly enhanced for the life of this plan (the 1998 and 2000 elections) by the incumbency of Eva Clayton. Congresswoman Clayton was elected from old District 1 in 1992, 1994, and 1996 with percentages of 67.0%, 61.0% and 65.9%, respectively, even though African-Americans constituted only 53% of the District's voting age population and 50.5% of the District's registered voters.

Id.

5. The 1997 Congressional Plan was precleared by the United States Department of Justice and was used for the 2000 election. Tr. 45:13-15 (Sen. Dan Blue).

6. No lawsuit was ever filed to challenge the 1997 version of CD 1 on VRA grounds. *Id.* at 45:16-19. In *Cromartie v. Hunt*, the constitutionality of CD 1 as enacted in 1997 was challenged. 133 F. Supp. 2d 407, 421 (E.D.N.C. 2000), *rev'd sub nom. Easley v. Cromartie*, 532 U.S. 234 (2001). By order dated March 7, 2000, a three-judge court found that “race predominated in the construction of the First District,” but that it “was narrowly tailored to meet the Section 2 requirements.” *Id.* at 423, *rev'd on other grounds by Easley*, 532 U.S. 234. The BVAP in this “narrowly tailored” district was 46.5%. *Id.* at 415 n.6.

7. On December 5, 2001, following the 2000 decennial census, North Carolina enacted a new congressional plan, 2001 N.C. Sess. Laws, ch. 479 (“the 2001 Congressional Plan”). The 2001 version of CD 1 had a BVAP of 47.76%. Pltf. Tr. Exs. 69, 80, and 111. The Department of Justice precleared the 2001 Congressional Plan, Tr. 46:2-4, 47:4-7 (Blue), which was subsequently used for the 2002, 2004, 2006, 2008, and 2010 elections.

8. No lawsuit was ever filed to challenge the 2001 version of CD 1 as a violation of the Voting Rights Act (or, indeed, on any other ground). Tr. 47:4-7 (Blue).

9. In *every* election held in CD 1 between 1992 and 2010, without exception, the African-American candidate of choice prevailed with no less than 59.3% of the vote, *regardless* of whether the BVAP in CD 1 exceeded 50%, *regardless* of incumbency, and *regardless* of any other characteristic of any specific election. The relevant election results are set forth in the following table:

First Congressional District Election Results and Black Voting Age Population			
Year	BVAP	Percent of Vote	Candidate
1992	53.40%	66.99%	Eva Clayton
1994	53.40%	61.06%	Eva Clayton
1996	53.40%	65.90%	Eva Clayton
1998	46.54%	62.24%	Eva Clayton
2000	46.54%	66.00%	Eva Clayton
2002	47.76%	63.73%	Frank Ballance
2004	47.76%	63.97%	G.K. Butterfield
2006	47.76%	100.00%	G.K. Butterfield
2008	47.76%	70.28%	G.K. Butterfield
2010	47.76%	59.31%	G.K. Butterfield

Pltf. Tr. Ex. 69 (“Congressional Races 1992-2010,” Exhibit 81 to Deposition of Erika Churchill).

B. CD 12

10. On January 24, 1992, in response to the United States Department of Justice’s refusal to preclear any North Carolina congressional plan not containing two majority-minority districts, Tr. 46:5-22 (Blue), the NCGA enacted the 1992 Congressional Plan, in which CD 12 was drawn with a BVAP of 53.34%. Def. Tr. Ex. 4.1, at 4 (Exhibit 1 to Fourth Affidavit of Dan Frey).

11. The constitutionality of the 1992 Congressional Plan was challenged in federal court, and on June 13, 1996, the United States Supreme Court held that CD 12 was an unconstitutional racial gerrymander. *Shaw II*, 517 U.S. 899.

12. In response to *Shaw II*, the NCGA enacted the 1997 Congressional Plan. The NCGA concluded that the 1997 version of CD 12 could legally be drawn with a BVAP of 43.4%—*nearly ten percentage points lower* than the 1992 version of CD 12—because, among other things, the NCGA “did not have sufficient evidence to conclude, and believes that sufficient evidence does not exist to conclude, that *Gingles*² factors exist” in the area of central North Carolina in which CD 12 was located. *Id.* The NCGA further stated that although the 1997 version of CD 12 was not a majority-minority district, the NCGA had concluded that “the candidate of choice of the minority community within the District will have a fair and reasonable opportunity to win election based on a combination of majority and non-minority votes.” *Id.*

13. The 1997 Congressional Plan was precleared by the Department of Justice and was used for the 2000 election. Tr. 45:16-19 (Blue).

14. Following the 2000 decennial census, North Carolina enacted the 2001 Congressional Plan, in which CD 12 had a BVAP of 42.31%. The United States Department of Justice precleared the 2001 Congressional Plan, which was subsequently used for the 2002, 2004, 2006, 2008, and 2010 elections. No lawsuit was ever filed to challenge the 2001 version of CD 12 on VRA grounds (or, indeed, on any other ground). Tr. 46:2-4, 47:4-7 (Blue); Pltf. Tr. Ex. 69; Def. Tr. Ex. 111.

² The *Gingles* factors are the preconditions required for a finding of liability under Section 2 of the Voting Rights Act established in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), as discussed *infra*.

15. In *every* election held in CD 12 between 1992 and 2010, without exception, the African-American candidate of choice prevailed with no less than 55.95% of the vote, *regardless* of whether the BVAP in CD 12 exceeded 50%, *regardless* of incumbency, and *regardless* of any other characteristic of any specific election. The relevant election results are set forth in the following table:

Twelfth Congressional District Election Results and Black Voting Age Population			
Year	BVAP	Percent of Vote	Candidate
1992	53.34%	70.37%	Mel Watt
1994	53.34%	65.80%	Mel Watt
1996	53.34%	71.48%	Mel Watt
1998	32.56%	55.95%	Mel Watt
2000	43.36%	65.00%	Mel Watt
2002	42.31%	65.34%	Mel Watt
2004	42.31%	66.82%	Mel Watt
2006	42.31%	67.00%	Mel Watt
2008	42.31%	71.55%	Mel Watt
2010	42.31%	63.88%	Mel Watt

Pltf. Tr. Ex. 69 and 111 (“Congressional Races 1992-2010,” Exhibit 81 to Deposition of Erika Churchill).

II. SEN. RUCHO AND REP. LEWIS WERE THE DECISIONMAKERS FOR THE 2011 CONGRESSIONAL PLAN AND THE SOLE SOURCE OF INSTRUCTIONS TO THE MAPDRAWER, DR. THOMAS HOFELLER

16. Sen. Rucho and Rep. Lewis were appointed Chairs of the Senate and House Redistricting Committees, respectively, on January 27 and February 15, 2011. Dkt. #125, ¶ 3 (Parties’ 10/12/15 Joint Factual Stipulation).

17. Jointly, Sen. Rucho and Rep. Lewis were responsible for developing a proposed congressional map. Pltf. Tr. Ex. 121 (Rucho Dep. 24:2-11). In Rep. Lewis' words, he and Sen. Rucho were "intimately involved" in the crafting of these maps. Pltf. Tr. Ex. 136, at 17:21-24 (Transcript of 7/21/11 Joint Meeting of Redistricting Committees).

18. Sen. Rucho and Rep. Lewis also relied upon the advice and assistance of private redistricting counsel and a political consultant, all of whom were engaged with public funds. Specifically, Sen. Rucho and Rep. Lewis engaged the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. as their private redistricting counsel, which in turn engaged a political consultant, Dr. Thomas Hofeller, to design and draw the 2011 Congressional Redistricting Plan (as well as the state senate and house plans) under the direction of Sen. Rucho and Rep. Lewis. Tr. 587:14-25; 588:1-2 (Hofeller). Dr. Hofeller was the "principal architect" of the plans. *Id.* 586:13-15.

19. Dr. Hofeller served as Redistricting Coordinator for the Republican National Committee for the 1990, 2000, and 2010 redistricting cycles. Tr. 577:1-23 (Hofeller). He began working under the direction of Sen. Rucho and Rep. Lewis in December 2010.

20. Sen. Rucho and Rep. Lewis were the sole source of instructions for Dr. Hofeller regarding the design and construction of congressional maps. All such instructions were provided to Dr. Hofeller orally—there is no written record of the precise instructions Sen. Rucho and Rep. Lewis gave to Dr. Hofeller. Tr. 589:14-590:10.

Dr. Hofeller never received instructions from any legislator other than Sen. Rucho and Rep. Lewis, never conferred with Congressmen G.K. Butterfield or Mel Watt, and never conferred with the Legislative Black Caucus (or any of its individual members) with respect to the preparation of the congressional maps. Tr. 48:23-25; 49:1-5 (Blue); Tr. 588:3-589:13 (Hofeller). Rep. Lewis refused to make Dr. Hofeller available to answer questions for the members of the North Carolina Senate and House Redistricting Committees. Pltf. Tr. Ex. 136, at 23:3-26:3 (7/21/11 Joint Committee Meeting transcript).

21. Throughout June and July 2011, Sen. Rucho and Rep. Lewis released a series of public statements describing, among other things, the criteria that they had instructed Dr. Hofeller to follow in drawing the proposed congressional plan. As Sen. Rucho explained at the July 21, 2011 joint meeting of the Senate and House Redistricting Committees, those statements “clearly delineated” the “entire criteria” that were established and “what areas we were looking at that were going to be in compliance with what the Justice Department expected us to do as part of our submission.” Pltf. Tr. Ex. 136, at 29:2-9 (7/21/11 Joint Committee Meeting transcript).

22. The most important criterion that Sen. Rucho and Rep. Lewis instructed Dr. Hofeller to follow—other than one-person, one-vote—was described as follows:

In creating new majority African American districts, we are obligated to follow . . . the decisions by the North Carolina Supreme Court and the United States Supreme Court in *Strickland v. Bartlett*, 361 N.C. 491 (2007), *affirmed*, *Bartlett v. Strickland*, 129 S. Ct. 1231 (2009). Under the *Strickland* decisions, districts created to comply with section 2 of the

Voting Rights Act, must be created with a “Black Voting Age Population” (“BVAP”), as reported by the Census, at the level of at least 50% plus one. Thus, in constructing VRA majority black districts, the Chairs recommend that, where possible, these districts be drawn at a level equal to at least 50% plus one “BVAP.”

Def. Tr. Ex. 5.11, at 2 (6/17/11 Public Statement) (describing criteria used to draw both legislative and congressional “VRA” districts).

23. On July 1, 2011, Sen. Rucho and Rep. Lewis made public their first proposed congressional plan, entitled “Rucho-Lewis Congress.” The plan was drawn by Dr. Hofeller and contained two majority-BVAP districts, namely CD 1 and CD 12. With regard to proposed CD 1, Sen. Rucho and Rep. Lewis stated that they had included a piece of Wake County (an urban county in which the state capital, Raleigh, is located) because the benchmark CD 1 was underpopulated by 97,500 people. Sen. Rucho and Rep. Lewis then added:

Because African Americans represent a high percentage of the population added to the First District from Wake County, we have *also* been able to re-establish Congressman Butterfield's district as a true majority black district under the *Strickland* case.

Pltf. Tr. Ex. 67, at 4 (7/1/11 Statement) (emphasis added).

24. With regard to CD 12, Sen. Rucho and Rep. Lewis noted that although the 2001 benchmark district was “not a Section 2 majority black district,” there “is one county in the Twelfth District that is covered by Section 5 of the Voting Rights Act (Guilford).” *Id.* at 5. Therefore, “[b]ecause of the presence of Guilford County in CD 12, we have drawn our proposed Twelfth District at a black voting age level that is above

the percentage of black voting age population found in the current Twelfth District.” *Id.* (emphasis added).

25. On July 21, 2011, Congressman Watt sent a letter to Sen. Rucho and Rep. Lewis, criticizing their proposal to increase the BVAP in CD 12. That letter, which was read into the record of the July 25, 2011 session of the N.C. Senate, Pltf. Tr. Ex. 10 at 4-6 (37:5-39:22), stated as follows:

I have repeatedly expressed to Senator Rucho my belief that increasing the African-American population in the 12th District is not required, justified or sanctioned by the Voting Rights Act. The Voting Rights Act, which I was instrumental as a member of the House Judiciary Committee and as a chairman of the Congressional Black Caucus to get Congress to reauthorize and extend, was designed to counteract the ethnic and racially polarized voting and level the playing field for African-American candidates and voters. It was not, as several court decisions have indicated, designed to create racial ghettos in which African-American candidates are given inordinate and unreasonable election advantages.

Id. (38:6-23) (emphasis added).

26. On July 22, 2011, Congressman Butterfield wrote to Sen. Rucho and Rep. Lewis and expressed concerns similar to those expressed by Congressman Watt. Pltf. Tr. Ex. 7. That letter was also read into the record of the July 25, 2011 session of the N.C. Senate. Congressman Butterfield advised the members of the state senate that among other things, the proposed congressional plan “unnecessarily ‘packs’ new African American voters from counties not covered by Section 5 of the Voting Rights Act into District 1.” Pltf. Tr. Ex. 7, at 2.

27. On July 27 and 28, 2011, the congressional and legislative plans—which Dr. Hofeller had drawn at the direction of Sen. Rucho and Rep. Lewis—were enacted. Dkt. #125, ¶ 5 (Parties’ 10/12/15 Joint Factual Stipulation). The number of majority-BVAP districts in the 2011 Enacted Plans (compared to the benchmark plans) increased from 0 to 2 in the congressional plan; from 0 to 9 in the state senate plan; and from 10 to 23 in the state house plan. Tr. 59:25-60:6 (Blue).

28. Every African-American member of the NCGA voted against all three redistricting plans (congressional, house, and senate). Tr. 60:18-61:9 (Blue).

29. At trial in this case, Defendants did not call Senator Rucho or Representative Lewis to testify in support of their plans, although both had been listed as potential witnesses.

III. RACE WAS THE PREDOMINANT FACTOR USED TO DRAW CD 1

A. Direct Evidence as to CD 1

30. In the benchmark 2001 Congressional Plan, the BVAP in CD 1 when enacted was 47.76%, compared to 52.65% in the 2011 Congressional Plan—an increase of nearly five percentage points. Pltf. Tr. Ex. 69, at 111.

31. Sen. Rucho and Rep. Lewis instructed Dr. Hofeller to treat CD 1 as a “VRA District,” Tr. 478:25-479:11 (Hofeller), meaning that he was to draw the district to exceed 50% BVAP. *Id.* 480:21-481:1 (“My understanding was I was to draw that 1st

District with a black voting-age population in excess of 50 percent because of the *Strickland* case”).³

32. Dr. Hofeller was instructed that he could take other considerations into account in drawing CD 1 only if the “net result” was a majority-BVAP district. Tr. 621:13-622:19 (Hofeller).

33. Dr. Hofeller used race as a factor in drawing CD 1, to “make sure that in the end it all adds up correctly”—*i.e.*, that the district was over 50% BVAP. Tr. 620:21-621:15 (Hofeller). To accomplish that end, Dr. Hofeller purposefully included high concentrations of African-American voters in CD 1 and excluded less heavily African-American areas from the district.⁴

34. In April 2011, Sen. Rucho told Congressman Butterfield, in reference to CD 1, that “majority minority districts, under the law, under *Strickland*, had to exceed 50 percent.” Tr. 169:9-11 (Butterfield).

³ See also *id.* 573:1-5 (Dr. Hofeller’s instructions were to draw CD 1 at “50 percent [BVAP] plus one person”); *id.* 610:3-8 (“[T]he instruction was to draw District 1 with a black VAP level of 50 percent or more.”); *id.* 615:15-21 (“I received an instruction that said . . . that District 1 was a voting rights district.”); *id.* 572:6-17 (“the 1st District was drawn to be a majority minority district . . . because of the Voting Rights Act, it was to be drawn at 50 percent plus.”); *id.* 620:5-11 (“Once again, my instructions from the chairman of the two committees was because of the Voting Rights Act and because of the *Strickland* decision that the district had to be drawn at above 50 percent.”); *id.* 620:17-20 (agreeing that his “express instruction” was to “draw CD 1 as 50 percent black voting-age population plus one”).

⁴ See *id.* 570:24-571:7 (explaining that “[w]ith the exception of Greene County, the percentage of the African-American population outside [CD 1] was lower than the percentage inside the district, which is exactly what you would think would be the case since the district we’re talking about is an African-American majority district.”); *id.* 640:7-10 (when asked whether Dr. Hofeller moved into a CD 1 a part of Durham County that was “the heavily African-American part” of the county, he responded “Well, it had to be.”).

35. On June 21, 2011, Congressman Butterfield met with Sen. Rucho, who again stated that “the law mandated that 50 percent of the district must be greater than 50 percent in African-American voter age population.” Sen. Rucho presented Congressman Butterfield with a map that drew CD 1 into Durham County in order to reach that BVAP threshold. Tr. 170:15-17 (Butterfield).

36. On July 1, 2011, Sen. Rucho and Rep. Lewis issued a joint public statement accompanying the release of Rucho-Lewis Congress 1. Purporting to construe the United States Supreme Court’s holding in *Strickland*, the statement read:

The State’s First Congressional District was originally drawn in 1992 as a majority black district. It was established by the State to comply with Section 2 of the Voting Rights Act. Under the decision by the United States Supreme Court in *Strickland v. Bartlett*, 129 U.S. 1231 (2009), the State is now obligated to draw majority black districts with true majority black voting age population. Under the 2010 Census, the current version of the First District does not contain a majority black voting age population.

[. . .]

Because African-Americans represent a high percentage of the population added to the First District . . . we have . . . been able to re-establish Congressman Butterfield’s district as a true majority black district under the *Strickland* case.

Pltf. Tr. Ex. 67, at 3-4.

37. Following complaints about CD 1 as first proposed on July 1, 2011, Sen. Rucho and Rep. Lewis decided to redraw the district. As they explained to North Carolinians in their July 19, 2011, public statement: “We received only one other proposal that would bring the First District back to a majority black level. This sole

proposed alternative drew the First District into Durham County, instead of Wake.” Pltf. Tr. Ex. 68, at 3. This is the version of CD 1 enacted five days later by the NCGA at the urging of Sen. Rucho and Rep. Lewis.

38. The July 19 statement emphasized the purported importance of increasing the BVAP in CD 1:

While our initial version of [CD 1] was fully compliant with Section 2 and Section 5 of the [VRA], our second version includes population from all of the Section 5 counties found in the 2001 version of [CD 1]. Moreover, the total BVAP located in Section 5 counties in Rucho-Lewis 2 exceeds the total BVAP currently found in the 2001 version.

Id. at 4.

39. On numerous other occasions in legislative meetings and debates, Sen. Rucho and Rep. Lewis explained to citizens and their legislative colleagues that the 2001 version of CD 1 was redrawn to ensure that the BVAP in the district exceeded 50%. *See* Pltf. Tr. Ex. 139, at 8:19-9:6 (July 25, 2011 Senate Testimony) (CD 1 was “required by Section 2” of the VRA to contain a majority BVAP, and “must include a sufficient number of African-Americans so that [CD 1] can re-establish as a majority black district.”); *id.* 17:23-25 (CD 1 “has Section 2 requirements, and we fulfill those requirements”); *see also* Pltf. Tr. Ex. 140, at 30:2-4 (July 27, 2011 House Testimony) (Rep. Lewis stating that CD 1 “was drawn with race as a consideration, as is required by the [VRA]”); Tr. 57:24-58:6 (Senator Blue, describing conversation with Sen. Rucho in which Sen. Rucho explained “his understanding and his belief that he had to take [districts of less than 50% BVAP] all beyond 50 percent because *Strickland* informed

him that that's what he's supposed to do"); Def. Tr. Ex. 100, at 29 (July 22, 2011 House Comm. Trans.) (Rep. Lewis: "In order to foreclose the opportunity for any Section 2 lawsuits, and also for the simplicity of the conversation, we elected to draw the VRA district at 50% plus one."); Pltf. Tr. Ex. 136, at 2-10 (July 27, 2011 Joint Comm. Trans.) ("We were tasked with keeping the African-American percentage over 50 percent").

40. The State's preclearance submission recites that the State purposefully set out to add "a sufficient number of African-American voters in order to" draw CD 1 "at a majority African-American level." Pltf. Tr. Ex. 74, at 12; *see also id.* at 13 ("Under the enacted version of District 1, the . . . majority African-American status of the District is corrected by drawing the District into Durham County").

B. Other Traditional Redistricting Criteria Were Subordinated to Race or Simply Ignored

41. In order to achieve Sen. Rucho's and Rep. Lewis's stated goal of drawing CD 1 as a majority-BVAP district, Dr. Hofeller treated traditional redistricting criteria as of secondary importance. Tr. 626:19-627:1 (Hofeller) ("Sometimes it wasn't possible to adhere to some of the traditional redistricting criteria in the creation of [CD 1], and *the more important thing* was to make a district which would achieve preclearance and follow the instructions that I had been given by the two chairmen to draw the district as majority-BVAP") (emphasis added).

1. CD 1 Splits More Counties Than the Benchmark, and Does So Along Racial Lines

42. Defendants constructed CD 1 from five whole counties (Bertie, Halifax, Hertford, Northampton, and Warren Counties) and pieces of an additional nineteen counties (Beaufort, Chowan, Craven, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Lenoir, Martin, Nash, Pasquotank, Perquimans, Pitt, Vance, Washington, Wayne, and Wilson Counties). CD 1 also splits a total of 21 cities and towns. *See* Def. Tr. Ex. 82, at 15-16 ¶¶ 45, 47 (Hofeller Report); Tr. 278:5-14 (Ansolabehere). By contrast, the benchmark version of CD 1 split only 10 counties and 16 cities and towns. Def. Tr. Ex. 82, at 15-16 ¶¶ 45, 47.

43. When it was necessary for Dr. Hofeller to split counties to achieve a BVAP majority in CD 1, he did so. *See* Tr. 629:17-630:1 (Hofeller).

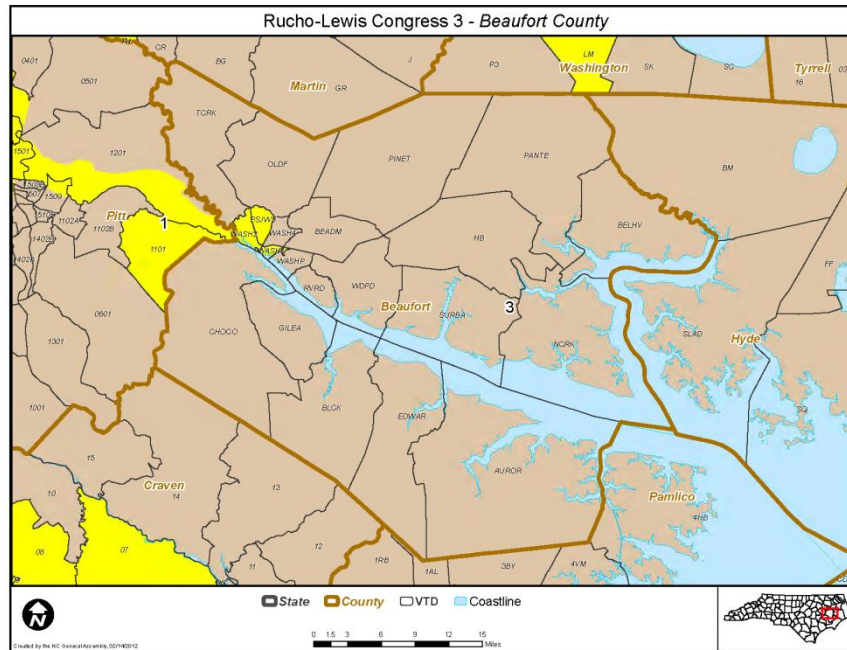
44. In the pieces of 19 split counties that are included in CD 1, Defendants assigned citizens to congressional districts on the basis of race and ignored traditional redistricting criteria, as is illustrated below on a county-by-county basis.

Beaufort County

45. Beaufort County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (52.19%) is two-and-a-half times greater than the BVAP in the portion in CD 3 (20.56%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

46. The line separating Beaufort County citizens into multiple congressional districts—which was drawn by the NCGA in pursuit of its goal of creating CD 1 as a

majority-BVAP district—is bizarrely shaped and visually non-compact. A map of CD 1 in Beaufort County (with CD 1 being colored yellow) is set forth below:

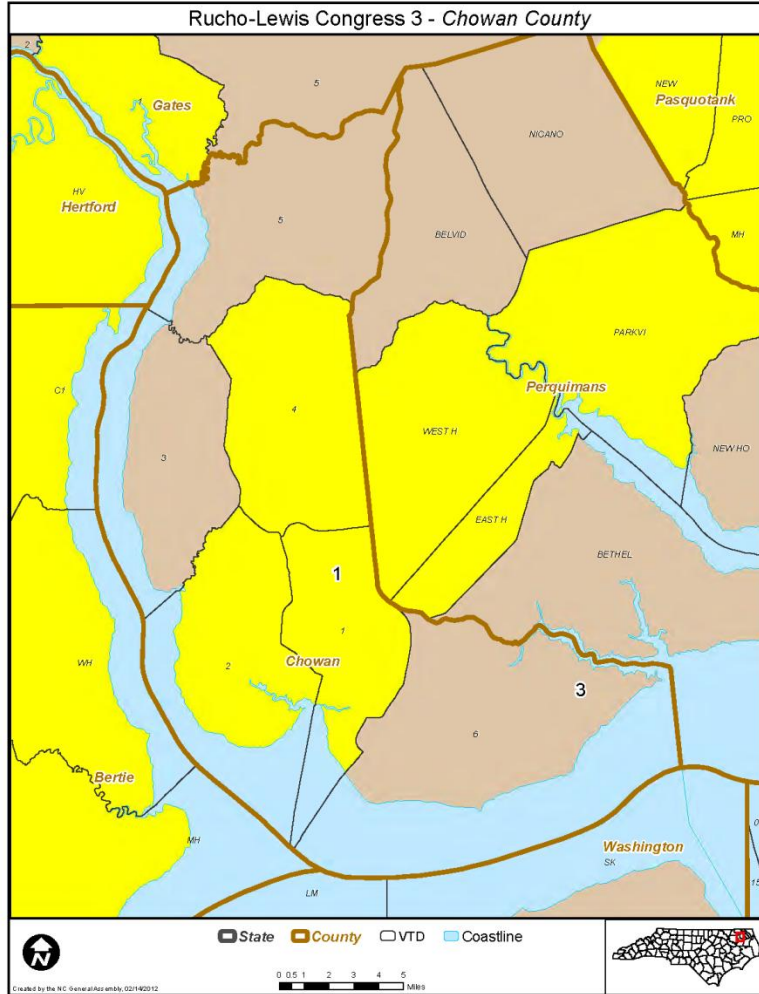


Pltf. Tr. Ex. 19 (Map of CD 1 in Beaufort County).

Chowan County

47. Chowan County is divided between CD 1 and CD 3. The BVAP in the piece of Beaufort County in CD 1 (44.72%) is three times the BVAP in CD 3 (15.04%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

48. The boundary the NCGA drew to separate Chowan County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

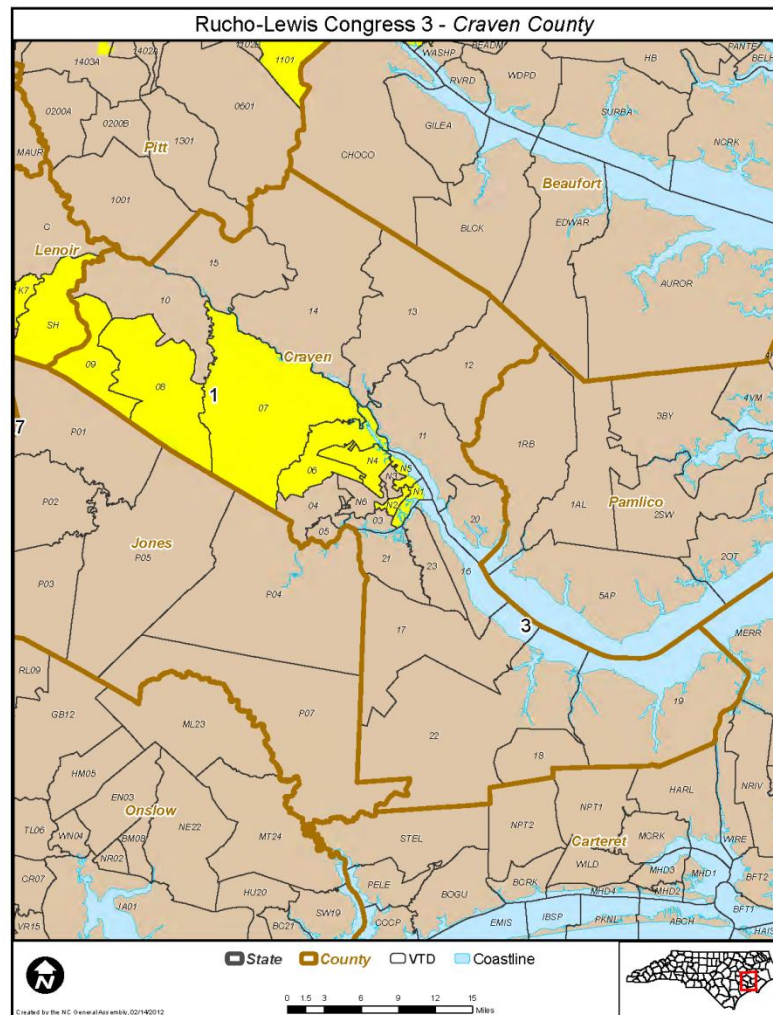


Pltf. Tr. Ex. 22 (Map of CD 1 in Chowan County).

Craven County

49. Craven County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (41.03%) is 2.6 times the BVAP in the portion of the county in CD 3 (16.03%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

50. The boundary the NCGA drew to separate Craven County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.



Pltf. Tr. Ex. 23 (Map of CD 1 in Craven County).

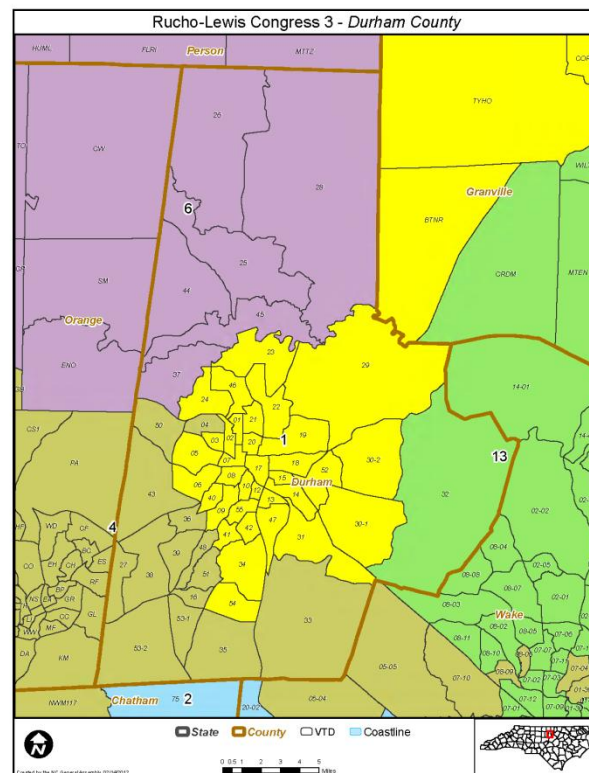
Durham County

51. Durham County is divided among CD 1, CD 4, CD 6, and CD 13. The BVAP in the piece of Durham County in CD 1 (49.02%) is significantly higher than in the pieces of other congressional districts contained in Durham County—specifically, 2.2

times the BVAP in CD 4 (22.48%); 2.9 times the BVAP in CD 6 (16.81%); and 5.1 times the BVAP in CD 13 (9.59%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

52. Durham County was not covered by Section 5 in 2011. Pltf. Tr. Ex. 78 (2011 Section 5 Submission for Congressional Plan, Attachment NC11-C-27C-1).

53. The boundary the NCGA drew to separate Durham County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

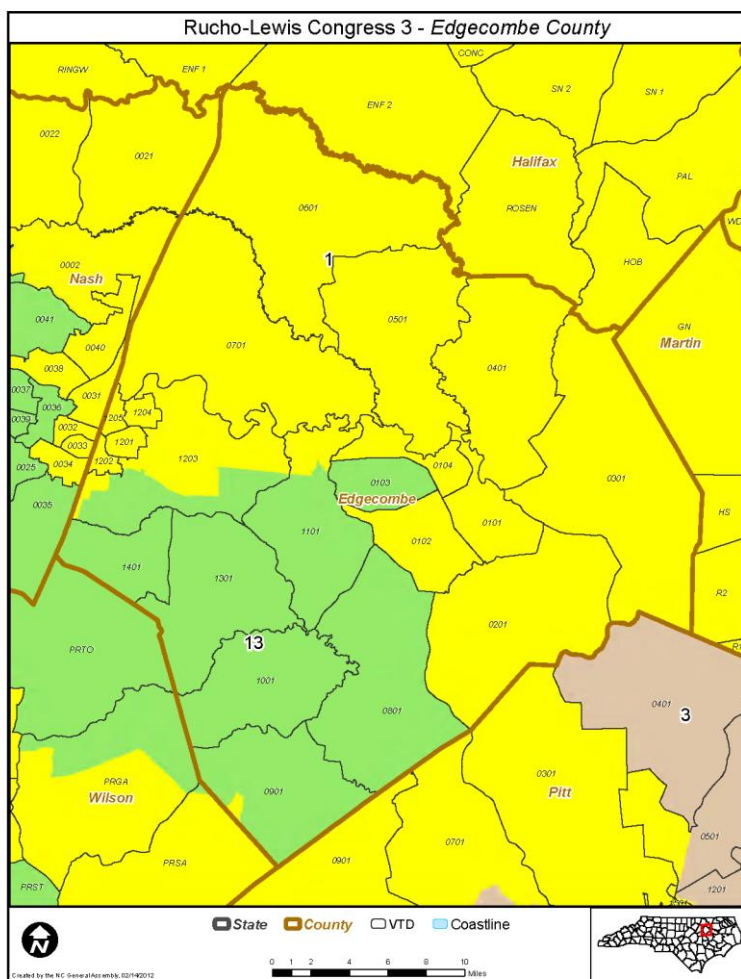


Pltf. Tr. Ex. 30 (Map of CD 1 in Durham County).

Edgecombe County

54. Edgecombe County is divided between CD 1 and CD 13. The BVAP in the portion of the county in CD 1 (68.20%) is 2.2 times the BVAP in the portion of the county in CD 13 (30.51%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

55. The boundary the NCGA drew to separate Edgecombe County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

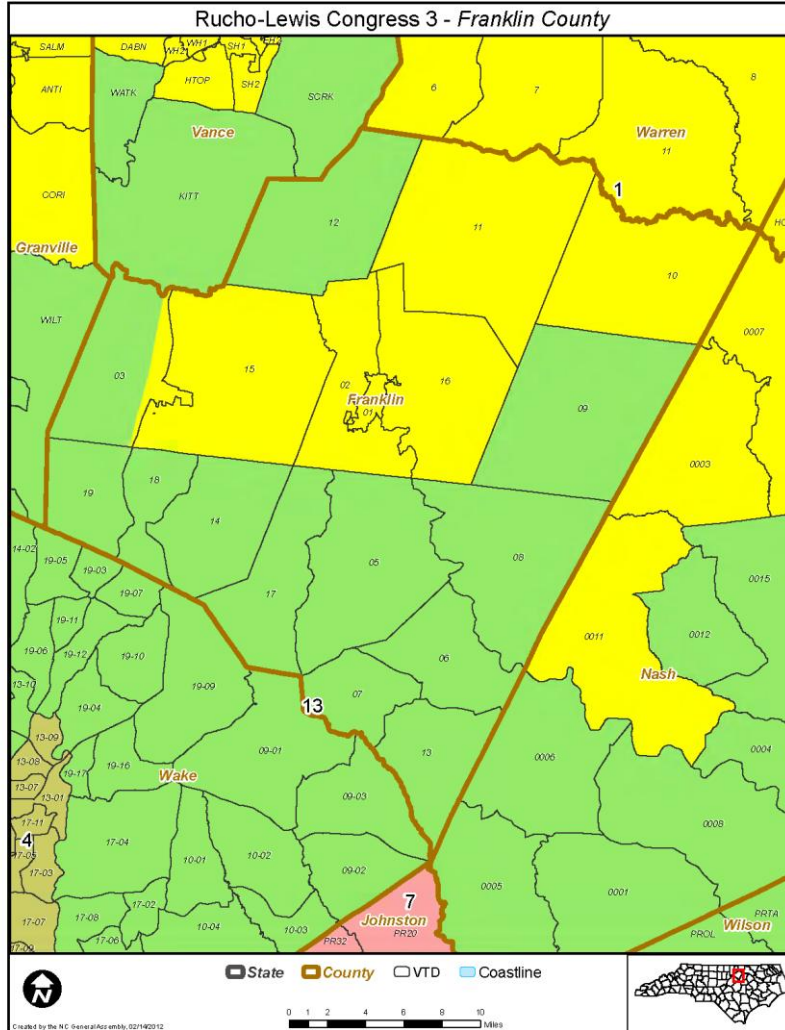


Pltf. Tr. Ex. 28 (Map of CD 1 in Edgecombe County).

Franklin County

56. Franklin County is divided between CD 1 and CD 13. The BVAP in the portion of the county in CD 1 (44.68%) is 2.3 times the BVAP in the portion of the county in CD 13 (19.16%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

57. The boundary the NCGA drew to separate Franklin County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

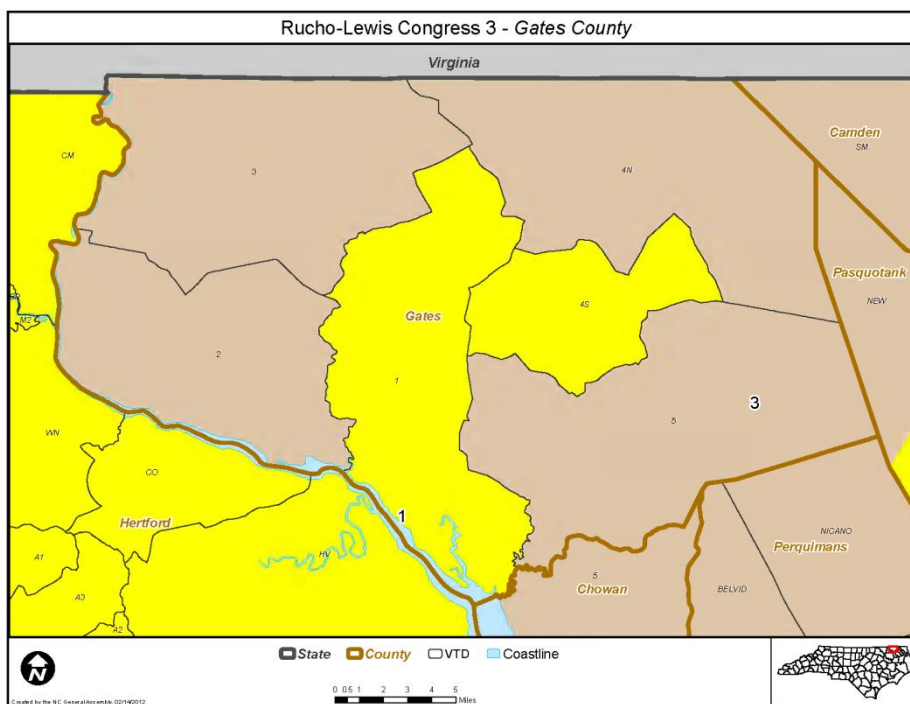


Pltf. Tr. Ex. 26 (Map of CD 1 in Franklin County).

Gates County

58. Gates County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (49.95%) is 1.8 times the BVAP in the portion of the county in CD 3 (27.23%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

59. The boundary the NCGA drew to separate Gates County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

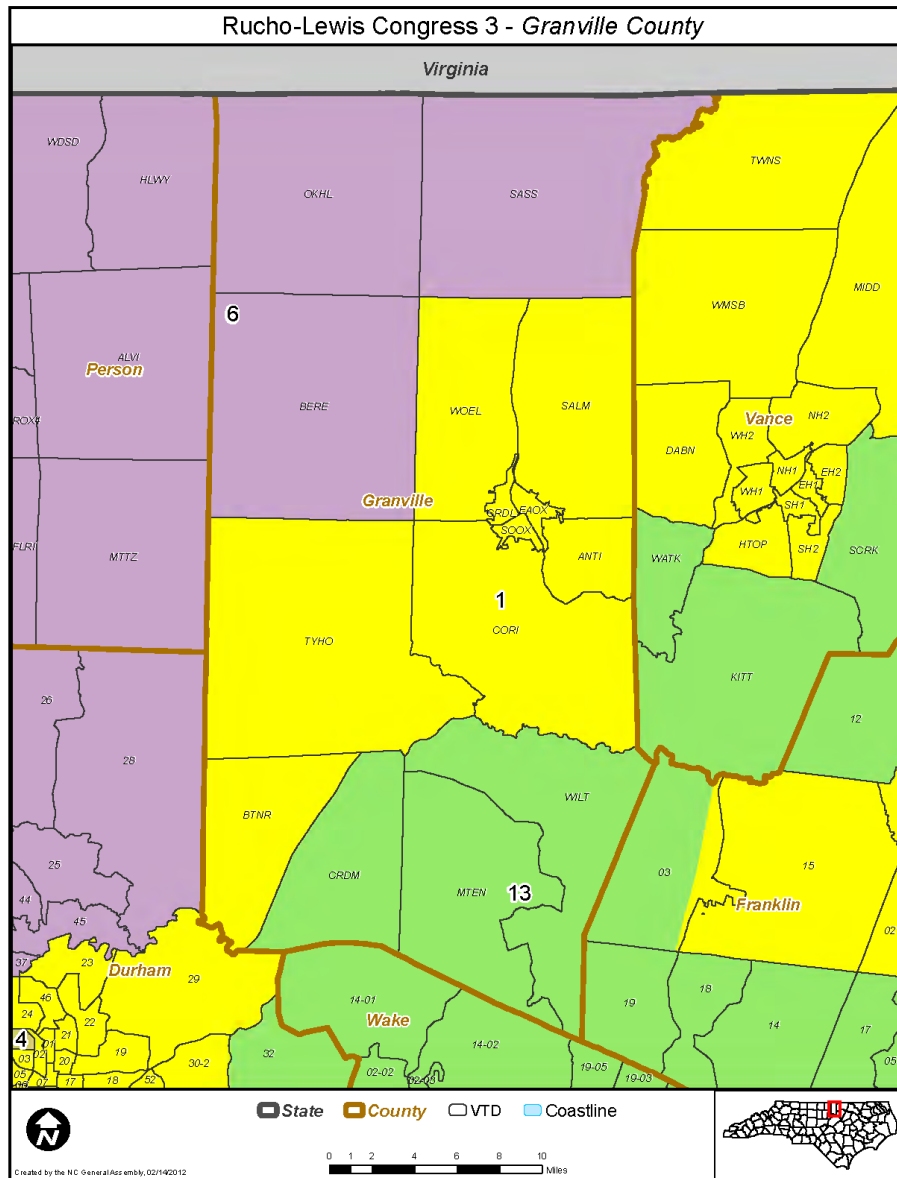


Pltf. Tr. Ex. 25 (Map of CD 1 in Gates County).

Granville County

60. Granville County is divided among CD 1, CD 6, and CD 13. The BVAP in the portion of the county in CD 1 (41.04%) is 1.2 times the BVAP in CD 6 (34.59%) and is 2.1 times that in CD 13 (19.53%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

61. The boundary the NCGA drew to separate Granville County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

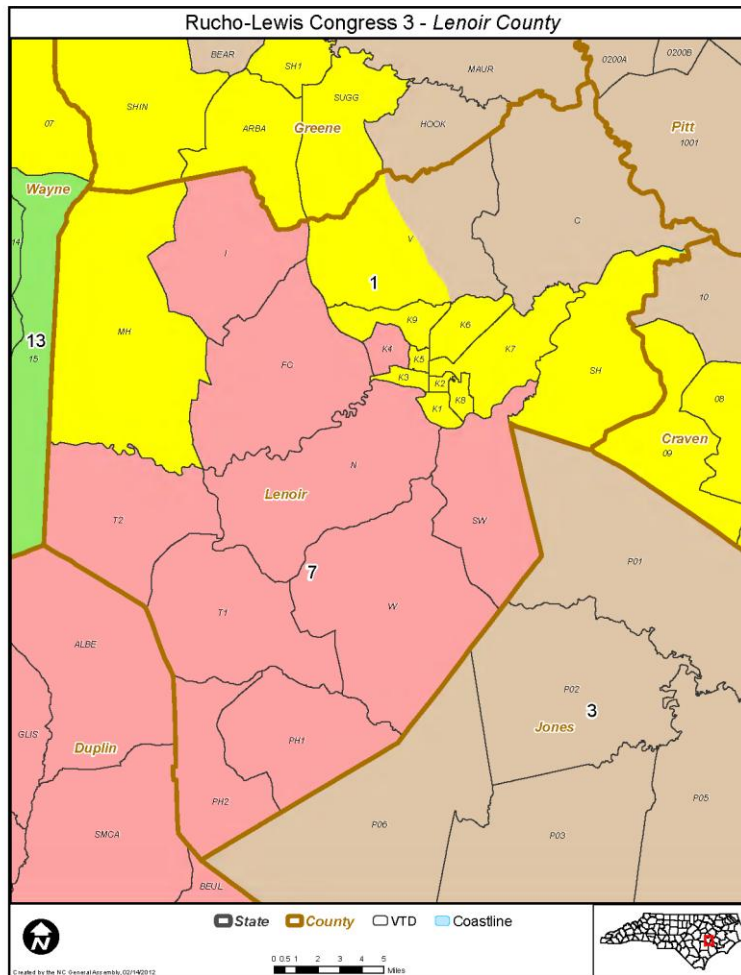


Pltf. Tr. Ex. 27 (Map of CD 1 in Granville County).

Lenoir County

62. Lenoir County is divided among CD 1, CD 3, and CD 7. The BVAP in the portion of the county in CD 1 (62.78%) is 1.8 times the BVAP in CD 3 (35.02%); and is 3.7 times that in CD 7 (17.08%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

63. The boundary the NCGA drew to separate Lenoir County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.



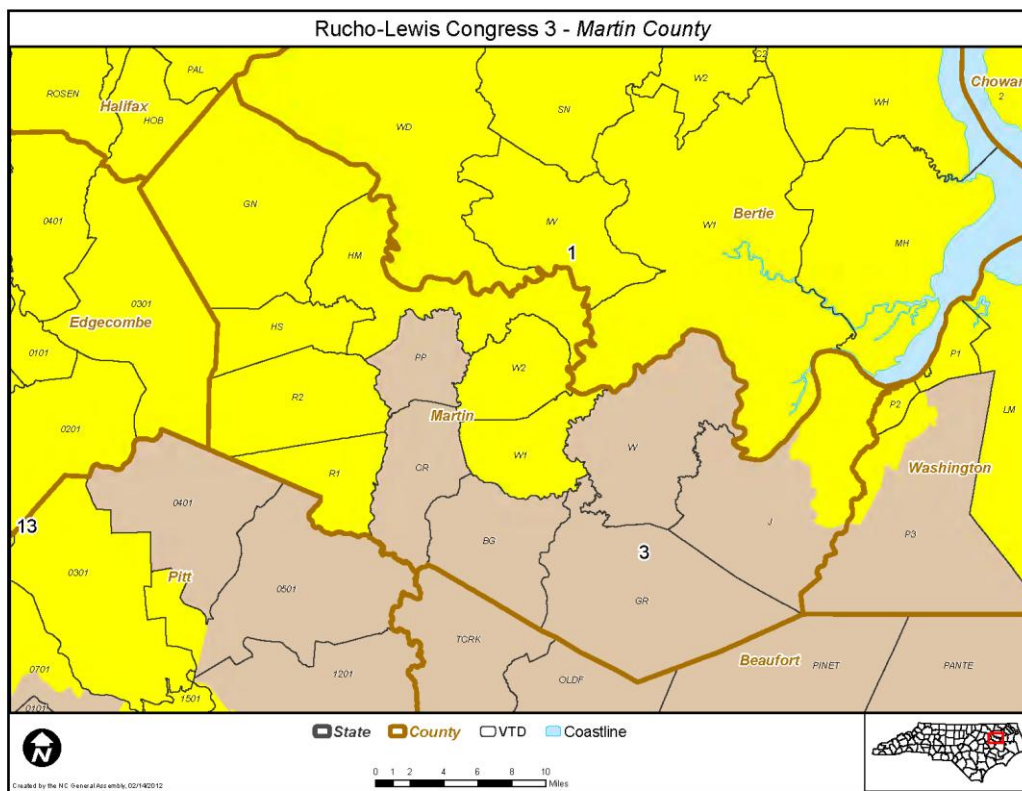
Pltf. Tr. Ex. 35 (Map of CD 1 in Lenoir County).

Martin County

64. Martin County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (54.01%) is 2.7 times the BVAP in CD 3 (20.31%). Pltf.

Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

65. The boundary the NCGA drew to separate Martin County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.



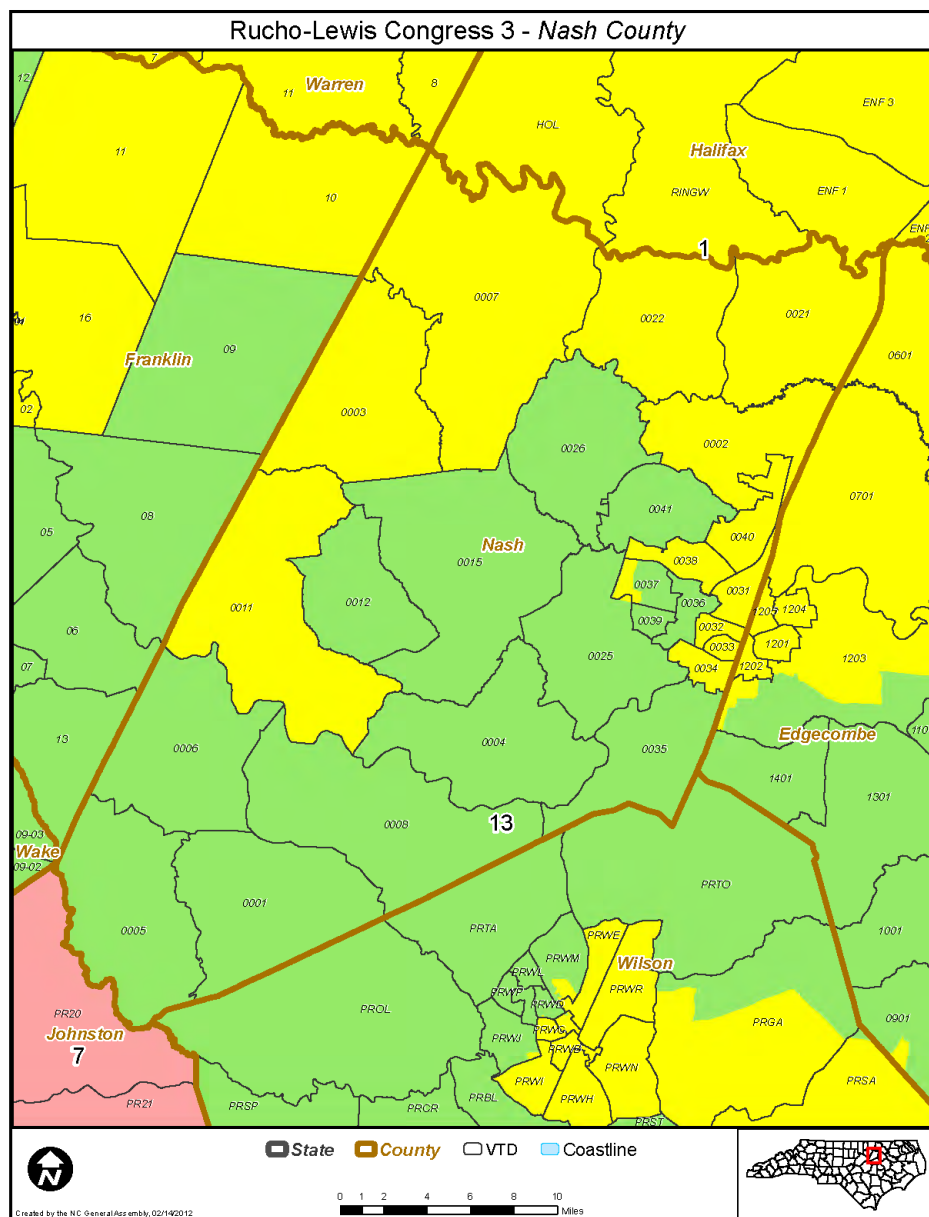
Pltf. Tr. Ex. 36 (Map of CD 1 in Martin County).

Nash County

66. Nash County is divided between CD 1 and CD 13. The BVAP in the portion of the county in CD 1 (54.26%) is 2.3 times the BVAP in CD 13 (23.54%). Pltf.

Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

67. The boundary the NCGA drew to separate Nash County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

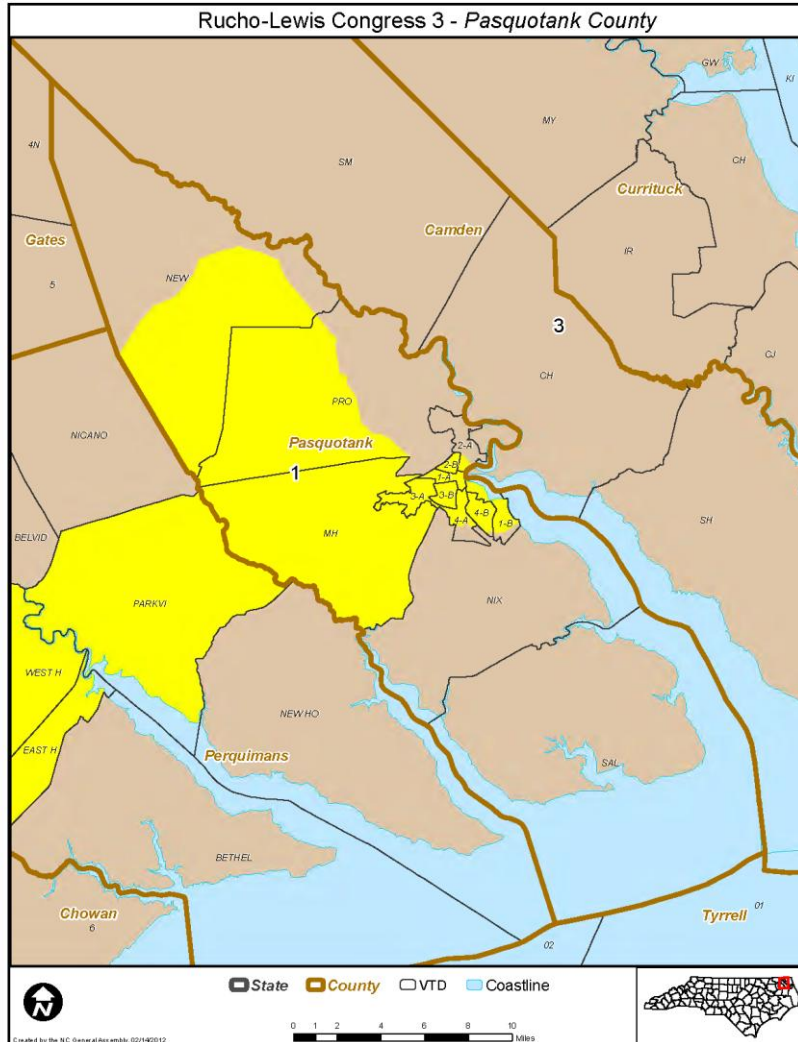


Pltf. Tr. Ex. 38 (Map of CD 1 in Nash County).

Pasquotank County

68. Pasquotank County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (51.17%) is 2.7 times the BVAP in the portion of the county in CD 3 (19.03%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

69. The boundary the NCGA drew to separate Pasquotank County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

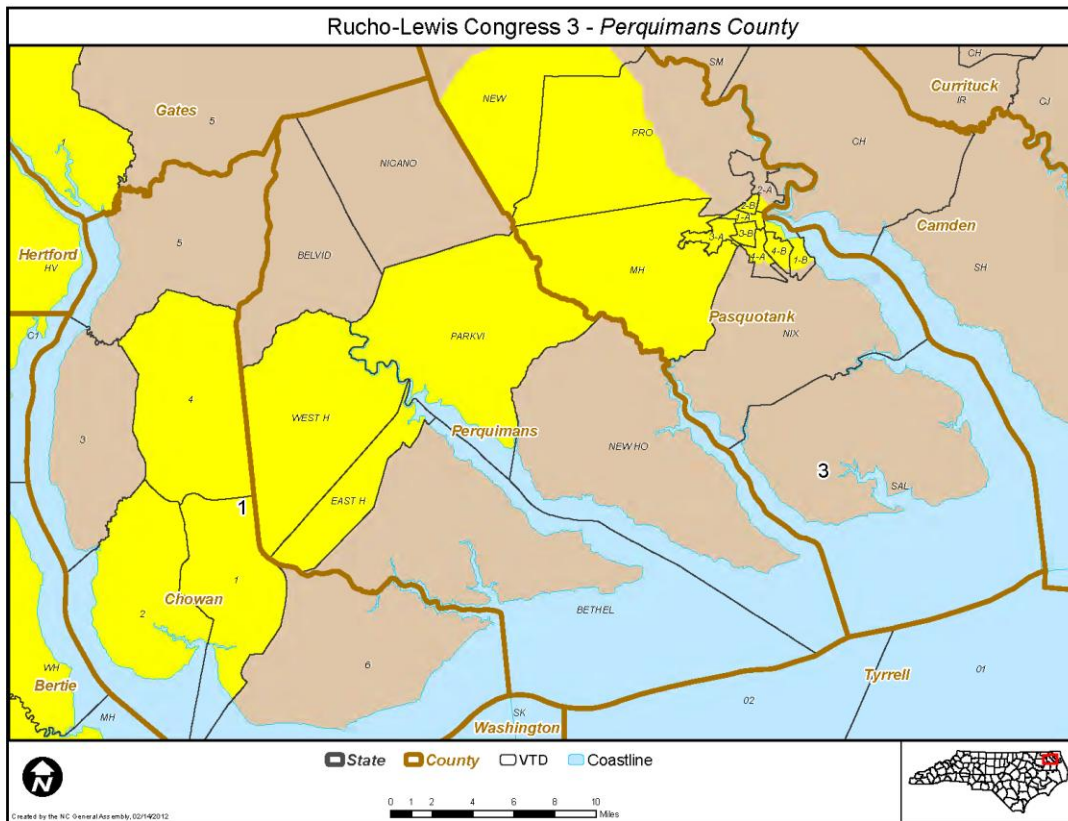


Pltf. Tr. Ex. 40 (Map of CD 1 in Pasquotank County).

Perquimans County

70. Perquimans County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (35.38%) is 2.2 times the BVAP in the portion of the county in CD 3 (15.75%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

71. The boundary the NCGA drew to separate Perquimans County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

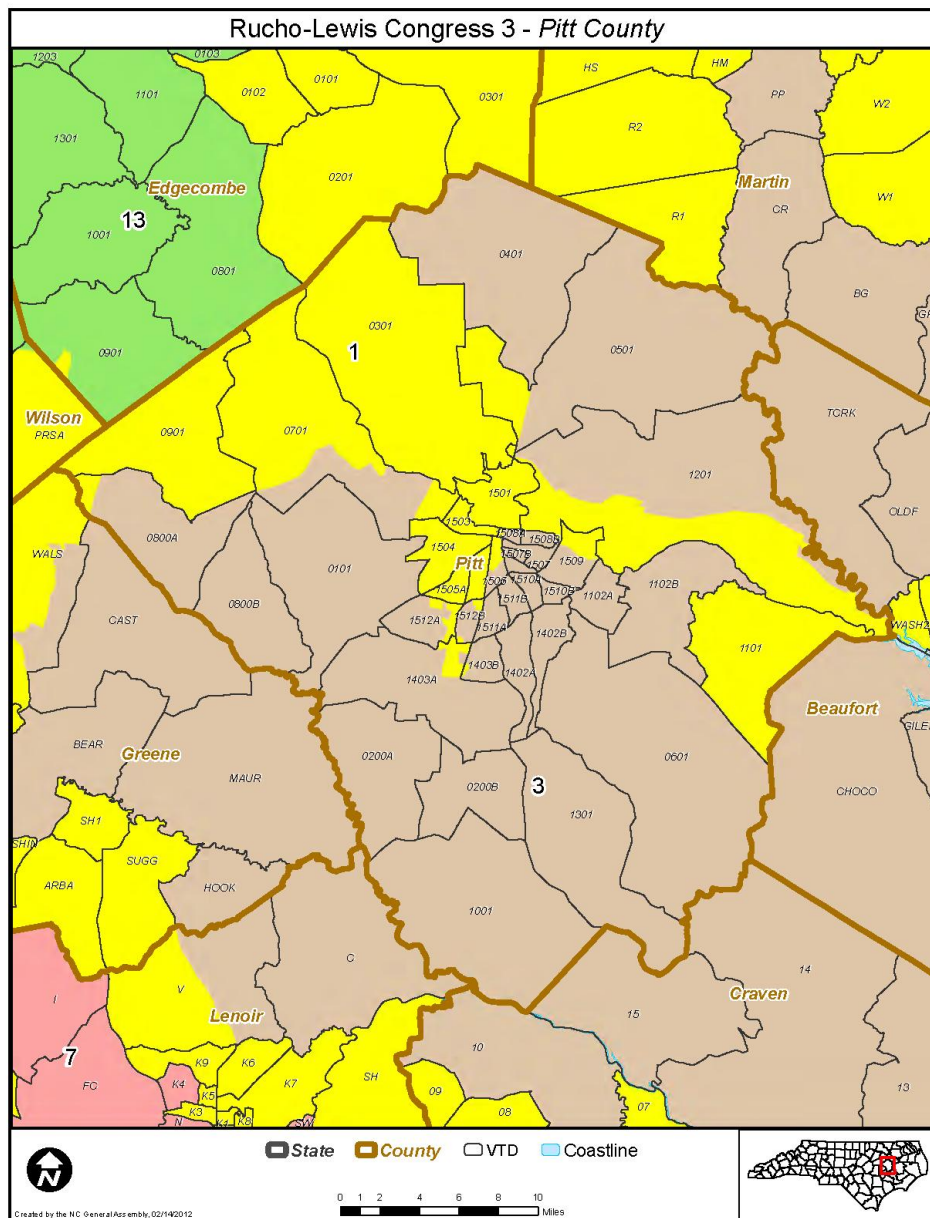


Pltf. Tr. Ex. 41 (Map of CD 1 in Perquimans County).

Pitt County

72. Pitt County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (56.45%) is 2.5 times the BVAP in the portion of the county in CD 3 (22.72%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

73. The boundary the NCGA drew to separate Pitt County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

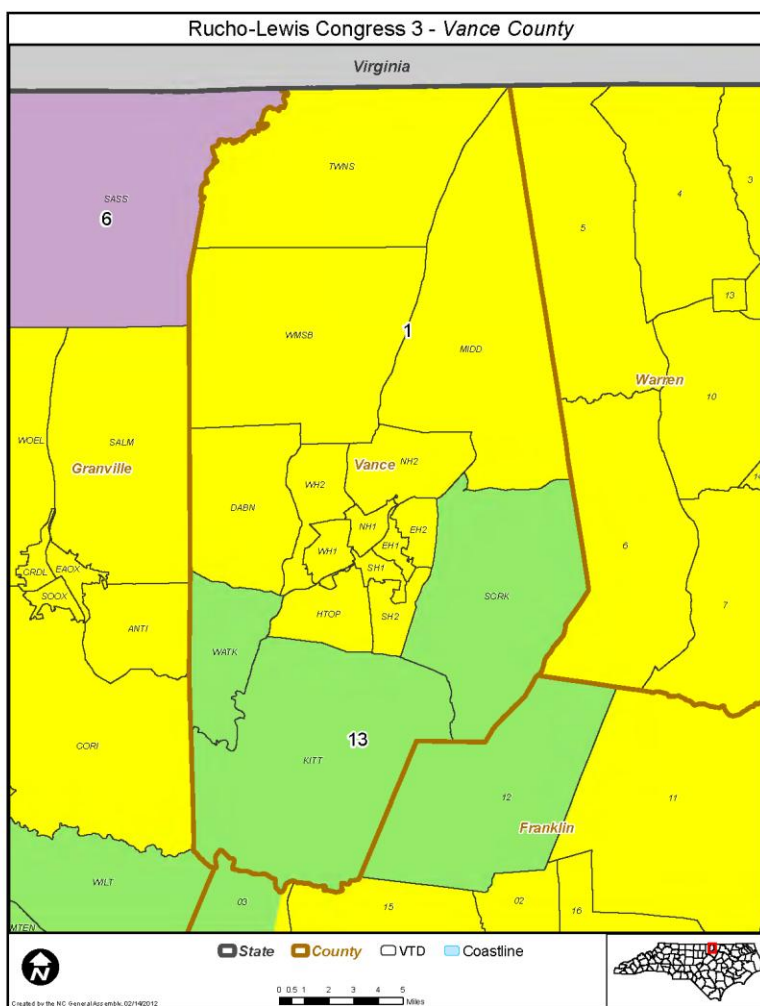


Pltf. Tr. Ex. 42 (Map of CD 1 in Pitt County).

Vance County

74. Vance County is divided between CD 1 and CD 13. The BVAP in the portion of the county in CD 1 (53.73%) is 1.5 times the BVAP in the portion of the county in CD 13 (35.45%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

75. The boundary the NCGA drew to separate Vance County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

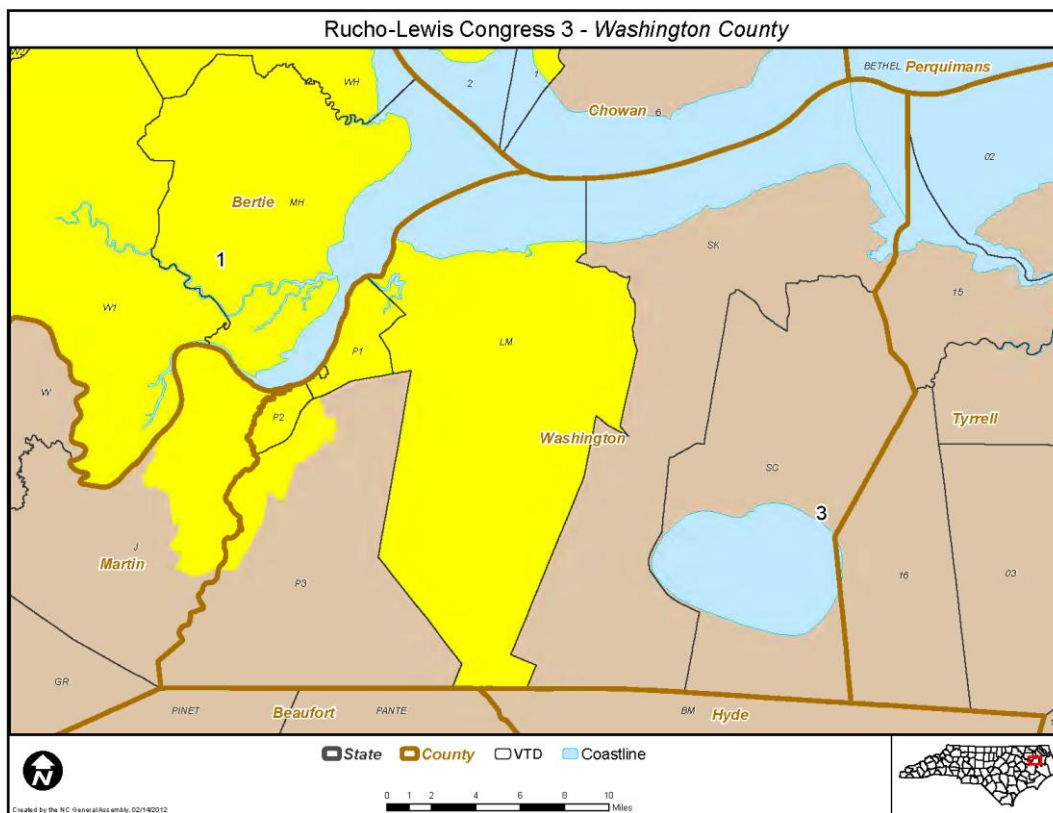


Pltf. Tr. Ex. 44 (Map of CD 1 in Vance County).

Washington County

76. Washington County is divided between CD 1 and CD 3. The BVAP in the portion of the county in CD 1 (59.50%) is 2.2 times the BVAP in the portion of the county in CD 3 (27.11%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

77. The boundary the NCGA drew to separate Washington County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

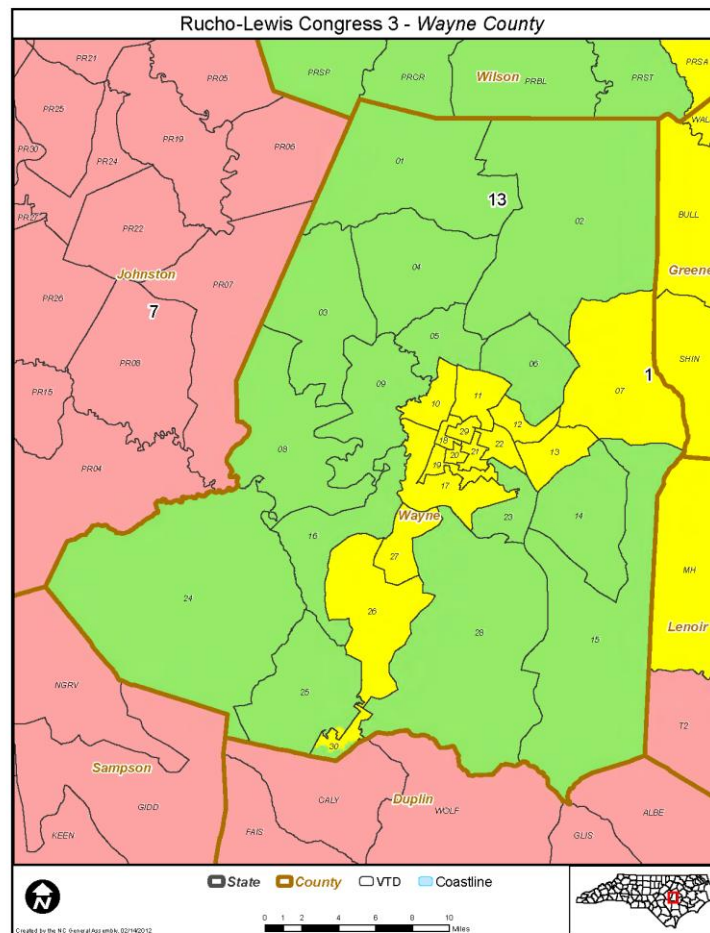


Pltf. Tr. Ex. 46 (Map of CD 1 in Washington County).

Wayne County

78. Wayne County is divided between CD 1 and CD 13. The BVAP in the portion of the county in CD 1 (49.71%) is 2.7 times the BVAP in the portion of the county in CD 13 (18.46%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

79. The boundary the NCGA drew to separate Wayne County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.

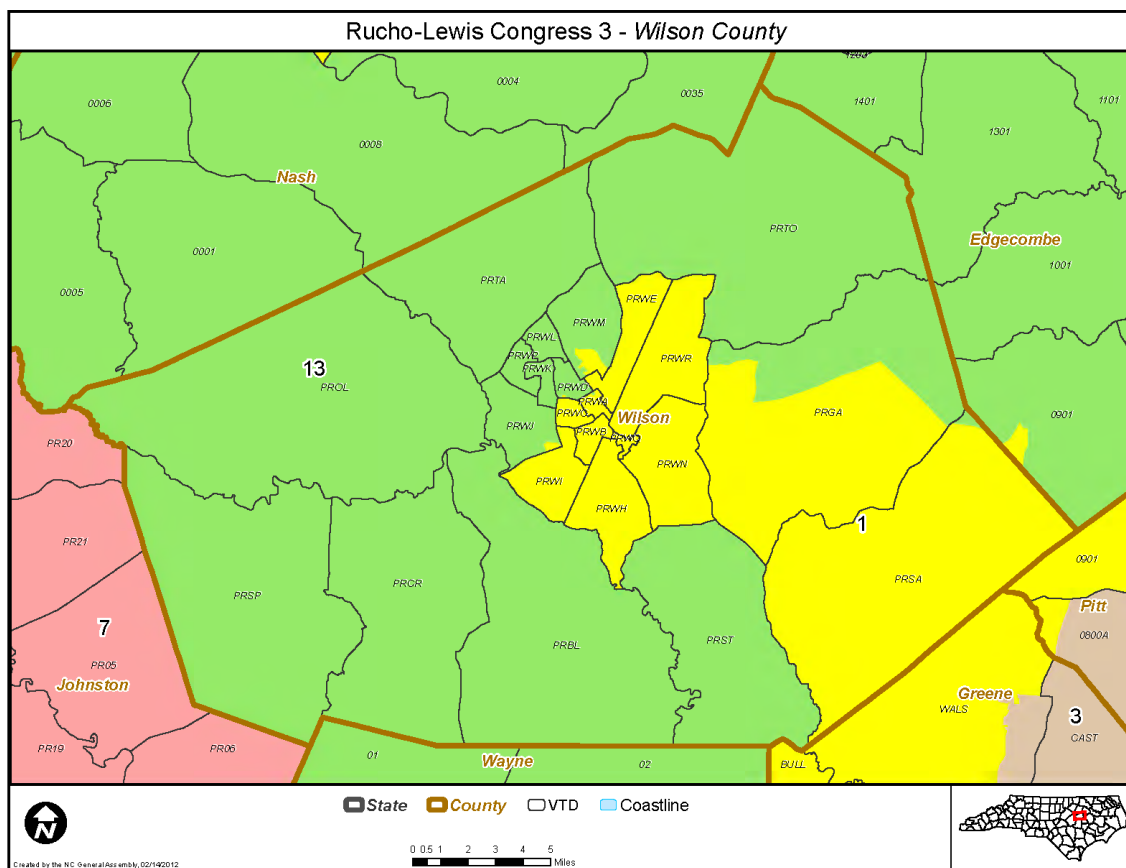


Pltf. Tr. Ex. 47 (Map of CD 1 in Wayne County).

Wilson County

80. Wilson County is divided between CD 1 and CD 13. The BVAP in the portion of the county in CD 1 (65.63%) is 2.7 times the BVAP in the portion of the county in CD 13 (23.78%). Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

81. The boundary the NCGA drew to separate Wilson County citizens in pursuit of its goal of creating CD 1 as a majority-BVAP district is depicted below. It is bizarrely shaped and visually not compact.



Pltf. Tr. Ex. 48 (Map of CD 1 in Wilson County).

2. Precincts Were Split Along Racial Lines

82. When it was necessary for Dr. Hofeller to split precincts to achieve a BVAP majority in CD 1, he did so. *See* Tr. 629:17-630:1 (Hofeller).

83. Preserving the integrity of the boundary of precincts is a redistricting criterion established by the NCGA. N.C. Gen. Stat. § 163-132.1B provides:

The State of North Carolina shall participate in the 2010 Census Redistricting Data Program, conducted pursuant to P.L. 94-171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

84. Defendants acknowledge that they had to divide precincts in order to meet the mandatory 50% BVAP floor. Sen. Rucho and Rep. Lewis informed North Carolinians that “most of our precinct divisions were prompted by the creation of Congressman Butterfield’s majority-black First Congressional District.” Pltf. Tr. Ex. 67, at 7 (7/1/11 Statement).

85. The racial composition of the parts of precincts assigned to CD 1 and the parts of precincts assigned to an adjoining district is set forth in Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

86. These precincts were split along racial lines with far more black citizens assigned to CD 1 than to the adjoining predominantly white districts.

87. In Pasquotank County, the boundary between CD 1 and CD 3 was formed using six split precincts. Those precincts were split on racial lines, as the following table illustrates:

Precinct	BVAP Assigned to CD 1	BVAP Assigned to CD 3
2-A	45.82%	26.41%
4-A	80.20%	32.28%
4-B	67.25%	4.55%
NEW	69.61%	26.69%
PRO	54.58%	15.49%
1-B	29.17%	43.07%

88. In Pitt County, the boundary between CD 1 and CD 3 was formed using split precincts. Those precincts are split on racial lines as the following table illustrates:

Precinct	BVAP Assigned to CD 1	BVAP Assigned to CD 3
0501	67.48%	23.85%
0701	36.14%	8.29%
0800A	0%	40.07%
1201	37.53%	24.12%
1403A	79.75%	21.27%
1403B	98.60%	22.76%
1506	64.41%	28.26%
1508A	11.11%	12.18%
1509	47.43%	20.68%
1512A	64.36%	25.31%
1512B	51.89%	20.33%

89. In Wilson County, the boundary between CD 1 and CD 3 was formed using split precincts. Those precincts were split on racial lines as the following table illustrates:

Precinct	BVAP Assigned to CD 1	BVAP Assigned to CD 3
PRGA	49.41%	17.06%
PRSA	42.75%	14.81%
PRWA	51.69%	43.48%
PRWD	40.00%	11.92%
PRWJ	60.40%	30.83%
PRWM	66.15%	24.55%

3. Compactness Was Not a Factor Used to Draw Enacted CD 1, Which Is Substantially Less Compact Than the Benchmark

90. Dr. Hofeller testified that he did not use mathematical measures of compactness in drawing CD 1. Pltf. Tr. Ex. 129 (Hofeller Dep. 44:19-45:12).

91. Before the 2010 Census, CD 1 had a Reock score of 0.390. Pltf. Tr. Ex. 17, Table 1. The 2011 Congressional Plan reduced CD 1's score to 0.294. *Id.* The ratio of CD 1's area to its perimeter also declined substantially, from 11,098 square meters per kilometer to 6,896 square meters per kilometer. *Id.*; *see also* Tr. 689:22-690:1-11 (Ansolabehere). The Enacted Plan thus reduced the compactness of CD 1, which is now less compact than the original "Gerrymandered" congressional district drawn by Eldridge Gerry in Massachusetts in 1812. *See* Pltf. Tr. Ex. 17, at ¶¶ 7-11, Table 1; Tr. 272:15-25, 274:15-23, 275:24- 277:15 (Ansolabehere).

C. Race, Better Than Politics, Explains the Voters and Voting Tabulation Districts Placed In CD 1

92. North Carolina is one of only very few states that collects and reports both race and party registration data from registered voters. Tr. 419:8-421:10 Ansolabehere). Thus, in analyzing racial voting behavior in elections, using party registration data can

provide much more accurate results than simply looking at election results and the racial composition of VTDs. *Id.* 339:18-341:25; 348:25-349:3; 401:3-402:2; 406:3-407:7. Although it is possible to evaluate election results and the racial composition of VTDs in order to analyze racial voting patterns, doing so necessarily involves additional assumptions. *Id.* 401:8-402:2. The Court finds the testimony of Plaintiff's expert witness, Dr. Stephen Ansolabehere, credible and his methodology reliable.

93. Party registration is highly correlated with actual election results in the areas of the state included in CD 1 and CD 12. Tr. 348:24-349:3 (Ansolabehere). The correlation between Democratic share of party registration and the Democratic vote share for Governor in 2008 is .90, and the correlation between Democratic share of party registration and the Democratic share of vote for United States Senate in 2008 is .83. Pltf. Tr. Ex. 18, ¶ 31. The correlation between Democratic share of party registration and the 2008 vote share for President Obama is .78. Pltf. Tr. Ex. 18, ¶ 31. Thus, because party registration in fact correlates to actual election results and provides voter-specific information, using registration data for purposes of analysis is more accurate than using raw election results.⁵

⁵ The Supreme Court in *Easley*, 532 U.S. 234, rejected the use of registration data where the evidence in the record suggested that “party registration and party preference do not always correspond,” *id.* at 245 (quoting *Hunt v. Cromartie*, 526 U.S. 541, 550-51 (1999)), and where expert testimony had established that “registration data were the least reliable information upon which to predict voter behavior.” *Id.* The record here establishes the contrary: Registration data in these two electoral districts is, in fact, very closely correlated with actual voting behavior, provides voter-specific data, and is thus reliable and preferable to using election results and then attempting to infer individualized voting behavior based on a series of additional assumptions. Pltf. Tr. Ex. 18, ¶ 31; Tr. 400:22-403:18 (Ansolabehere).

94. The 2008 vote share for President Obama correlates much more closely to *black* registered voters, than to political affiliation. Pltf. Tr. Ex. 18, ¶ 33. In other words, the 2008 Obama vote is a better indicator of a given voter's race than it is of his or her party. *Id.* The following table provides the correlations between percent Black VAP or percent White VAP and vote percentage for President Obama in 2008:

Correlation Between Obama Share of Two Party Vote and Racial Composition of VAP and Registered Voters in VTDs (Registered Voters)				
	Entire State	CD 1	CD 12	Districts Other than CD 1 and CD 12
Black VAP	+.60	+.47	+.65	+.46
White VAP	-.64	-.54	-.69	-.50
Black R.V.	+.80	+.82	+.92	+.69
White R.V.	-.81	-.87	-.93	-.69

Id., Table 1.

95. Race is a much stronger predictor than party registration of which voters and VTDs were placed in CD 1 and which were not. Pltf. Tr. Ex. 17, ¶¶ 41-43, 48, 51, Tables 9-10; *see also* Tr. 309:17-312:11; 316:3-317:25 (Ansolabehere).

96. The following table compares the likelihood that a person of a given race *and* party was placed in CD 1:

Likelihood that a Person of a Given Race and Party was put in CD 1 (Registered Voters)				
Party of Registration	Population Group	Population in Counties Comprising CD 1	Population in CD 1	Percent of Group in CD 1
Democrat	White	212,500	88,173	41.5%
	Black	312,190	224,950	72.1%

Republican	White	192,278	57,553	29.9%
	Black	9,373	6,486	69.2%
Undeclared	White	126,562	43,962	34.7%
	Black	32,464	22,136	68.2%

Pltf. Tr. Ex. 17, ¶ 41, Table 5.

97. The following table compares the percentages of Democratic registered, Republican registered, and Undeclared voters within racial groups retained in, moved into, and moved out of CD 1 from the benchmark district:

Partisan Composition Within Racial Groups of Populations of VTDs Kept in, Moved Into, and Moved Out of CD 1 (Registered Voters)						
	Among Whites			Among Blacks		
	Dem.	Rep.	Unreg.	Dem.	Rep.	Unreg.
Remained in CD 1	47.3%	30.7%	21.8%	89.1%	2.7%	8.1%
Moved Into CD 1	44.6%	29.4%	25.8%	87.7%	2.1%	10.2%
Moved Out Of CD 1	40.9%	34.7%	24.3%	88.6%	2.9%	8.5%

Pltf. Tr. Ex. 17, ¶ 50, Table 11.

98. Enacted CD 1 includes more than 78% of all African-American registered voters in Durham County, compared to only 39% of white voters. *See* Pltf. Tr. Ex. 18, ¶ 49. This is clear evidence of racial sorting by the NCGA, moving higher BVAP populations into CD 1 and lower BVAP populations out of CD 1.

99. The likelihood that a person of a given race, who lives within the 24 counties that comprise CD 1, was included within CD 1 is as follows:

Likelihood that a Person of a Given Race was Put in CD 1 (Registered Voters)				
Population Group	Population in Counties Comprising CD 1		Population in CD 1	
White	532,188	57.5%	190,011	35.7%
Black	354,151	38.2%	253,661	71.6%

100. Thus, black registered voters were twice as likely to be put into CD 1 as white registered voters. Pltf. Tr. Ex. 17, ¶¶ 22-26, Table 3; Tr. 291:1-13 (Ansolabehere).

101. The following table illustrates the racial composition of the voting tabulation districts that were retained in enacted CD 1 from the benchmark district, and which were moved into or out of the enacted CD 1:

Racial Composition of VTDs in former vs. new CD 1 (Registered Voters)		
	Black	White
Remained in CD 1	56.4%	37.4%
Moved into CD 1	48.1%	37.7%
Moved out of CD 1	27.4%	66.7%

See Pltf. Tr. Ex. 17, ¶¶ 27-29, Table 4; Tr. 293:8-294:15 (Ansolabehere). The net difference in percent black registration between VTDs moved into CD 1 and VTDs removed from CD 1 is 20.7%. Pltf. Tr. Ex. 17, ¶ 29.

102. A complimentary analysis for CD 1 performed by Dr. David Peterson, an expert in applied mathematics, confirms Dr. Ansolabehere's conclusion. Pltf. Tr. Ex. 16. Using a boundary-segment analysis that was methodologically identical to the analysis that he performed for the State of North Carolina in the *Cromartie* litigation, Dr. Peterson found that "racial considerations better account for the boundary definition of CD 1 than

do party-affiliation considerations. Pltf. Tr. Ex. 16, at 6. Dr. Peterson's methodology is further explained *infra* at paragraphs 124-125.

IV. RACE WAS THE PREDOMINANT FACTOR USED TO DRAW CD 12

A. Direct Evidence as to CD 12

103. In the benchmark 2001 Congressional Plan, the BVAP in CD 12 when enacted was 42.31%, as compared to 50.66% in the 2011 Congressional Plan—an increase of *more than eight percentage points*. Pltf. Tr. Exs. 69, 111.

104. At trial, Congressman Mel Watt testified that he met with Sen. Rucho in June 2011 for the purpose of discussing CD 12. The meeting took place at Sen. Rucho's home in Charlotte. Sen. Rucho explained that "his leadership had told him that he had to ramp the minority percentage in [the Twelfth] Congressional District up to over 50 percent to comply with the Voting Rights Law" and that Sen. Rucho "was going to have to go out and justify that to the African-American community." Tr. 108:4-109:12 (Watt); *see also id.* 136:13-137:18 ("[H]e told me that his leadership had told him that they were going to ramp -- or he must ramp up these districts to over 50 percent African-American, both the 1st and the 12th, and that it was going to be his job to go and convince the African-American community that that made sense."). The Court finds Rep. Watt's testimony credible, especially in light of the fact that Defendants were able to call Sen. Rucho and Rep. Lewis to testify before the Court (to allow the Court a better opportunity to make credibility determinations) but chose not to do so. Moreover, the statement Congressman Watt testified that Sen. Rucho made in June 2011 is essentially

identical to a public statement released by Sen Rucho on July 1, 2011. Pltf. Tr. Ex. 67, at 5 (“Because Guilford County is a Section 5 County, we have drawn our proposed 12th District at a black voting age population that is above the percentage of black voting age population found in the current 12th District.”).

105. Sen. Rucho and Lewis instructed Dr. Hofeller to place the African-American population in Guilford County into CD 12 because Guilford County was a covered jurisdiction under Section 5 of the Voting Rights Act. *See* Tr. 608:19-24 (Dr. Hofeller “was instructed not to use race in any form [in drawing CD 12] *except perhaps with regard to Guilford County*”) (emphasis added); *see also id.* 645:4-20 (Dr. Hofeller: “[M]y understanding of the issue was because Guilford was a Section 5 county and because there was a substantial African-American population in Guilford County, . . . that it could endanger the plan” unless Guilford County was moved into CD 12); Pltf. Tr. Ex. 129 (Hofeller Dep. 75:13-16) (“So in order to be cautious and draw a plan that would pass muster under the VRA *it was decided to reunite the black community in Guilford County into the 12th*”) (emphasis added).

106. Sen. Rucho and Rep. Lewis discussed CD 12 in their July 1, 2011, public statement in a section of the statement entitled “Compliance with the Voting Rights Act,” stating:

Because of the presence of Guilford County in the Twelfth District, *we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District.* We believe that this measure will ensure preclearance of the plan.

Pltf. Tr. Ex. 67, at 2, 5 (emphasis added). Notably, the statement does *not* say that CD 12 was drawn as a political district and *coincidentally* turned out to have a BVAP “above the percentage” in the benchmark plan. Instead, the statement says that the district was “drawn . . . *at*” that level. *Id.* at 5 (emphasis added).

107. When asked whether CD 12 was a “voting rights district,” Sen. Andrew Brock, Vice Chair of the Redistricting Committee, replied “I think you do have voting rights in District 12, through Guilford County,” and Sen. Rucho stated that “[t]here is a significant Section 5 population in Guilford County.” Pltf. Tr. Ex. 137, at 26:5-6 (July 22, 2011 Senate Testimony); *see also* Pltf. Tr. Ex. 136, at 12:19-13:8 (July 21, 2011 Joint Redistricting Committee Testimony (Rep. Lewis describing, in addition to CD 12, how “[m]inority population was also considered in other districts as well”).

108. In its 2011 preclearance submission to the Department of Justice, the NCGA stated that it drew “District 12 as an African-American and very strong Democratic district that has continually elected a Democratic African American since 1992” and noted specifically that CD 12 had been drawn to protect “African-American voters in Guilford and Forsyth.” Pltf. Tr. Ex. 68, at 15. The explanation that the NCGA provided to the United States Department of Justice for drawing CD 12 at more than 50% BVAP was “the concerns of the Redistricting Chairs . . . that in 1992 the Justice Department had objected to the 1991 Congressional Plan because of a failure by the State to create a second majority-minority district.” *Id.* at 14. The preclearance submission

further stated that “the 2011 version [of CD 12] maintains and in fact increases the African American community’s ability to elect their candidate of choice.” *Id.* at 15.

B. Other Traditional Redistricting Criteria Were Subordinated to Race or Outright Ignored

109. Dr. Hofeller did not consider mathematical measures of compactness in drawing CD 12. Pltf. Tr. Ex. 129 (Hofeller Dep. 44:19-45:12).

110. Before the 2010 Census, CD 12 had a Reock score of 0.116. Pltf. Tr. Ex. 17, Table 1. The 2011 Congressional Plan reduced CD 12’s score to 0.071. *Id.* The median Reock score for districts in the 2011 Congressional Plan is 0.377. *Id.* ¶ 15. The ratio of CD 12’s area to its perimeter also declined substantially, from 2,404 square meters per kilometer to 1,839 square meters per kilometer. *Id.*, Table 1.

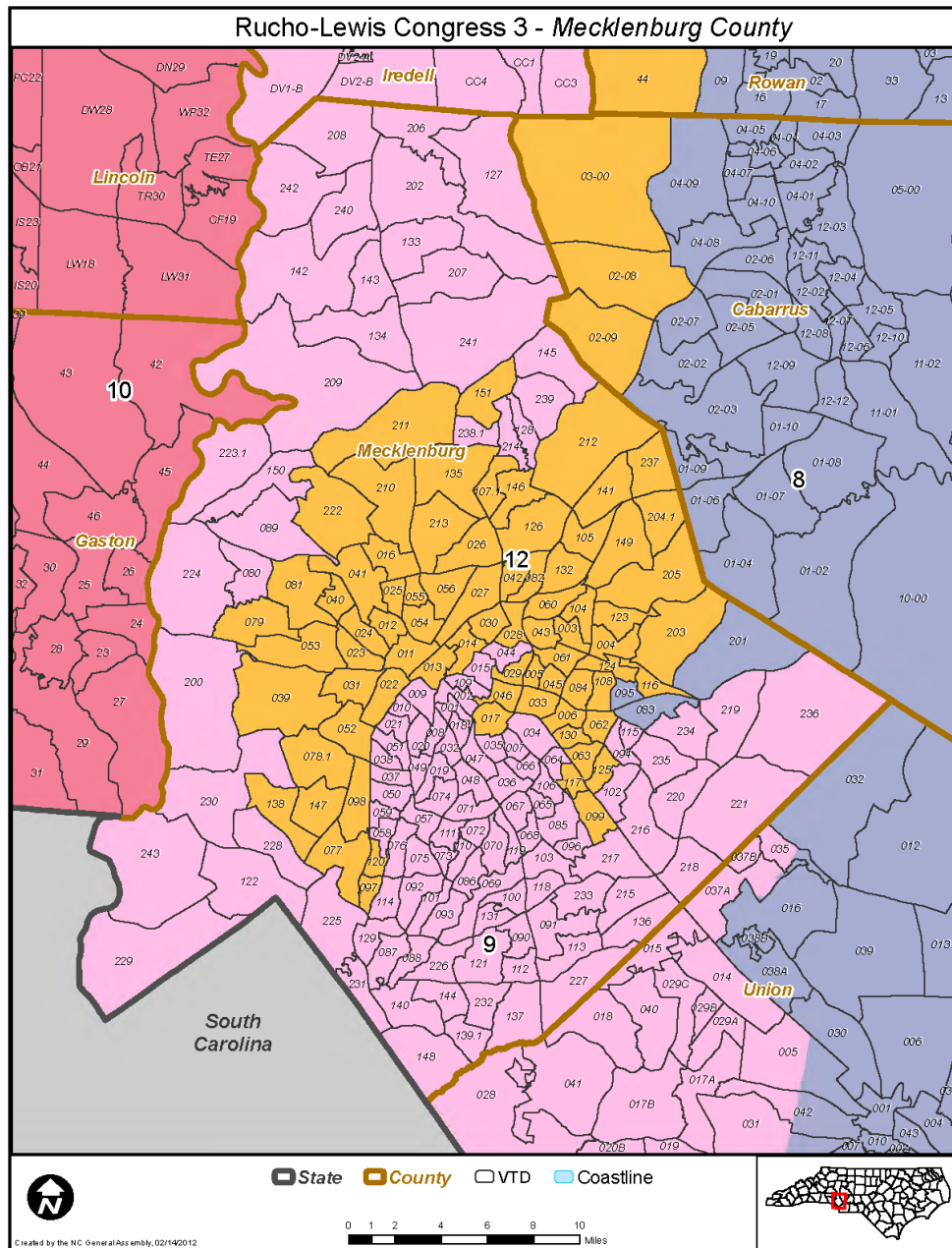
111. CD 12 entirely from pieces of six counties: Mecklenburg, Cabarrus, Rowan, Davidson, Forsyth, and Guilford. A thin line of precincts running through Cabarrus, Rowan and Davidson counties to connect black population centers in Mecklenburg (Charlotte), Forsyth (Winston Salem), and Guilford (Greensboro). CD 12 splits 13 cities and towns. Pltf. Tr. Ex. 17, ¶ 17.

112. The voting age citizens in Mecklenburg, Forsyth, and Guilford counties have been separated into racially identifiable districts, as is discussed below on a county-by-county basis.

Mecklenburg County

113. Mecklenburg County is principally divided between CD 9 and CD 12. The BVAP in the portion of the county in CD 12 (51.76%) is more than three times the BVAP

in the portion of the county in CD 9 (14.22%). Three Mecklenburg County precincts are also assigned to CD 8. The BVAP in those three precincts is 38.13%. Pltf. Tr. Ex. 107 (“Voting Age Population by Race and Ethnicity – District 12”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii). The boundary the NCGA drew to separate Mecklenburg County citizens into racially identifiable districts is depicted below. It is bizarrely shaped and visually not compact.

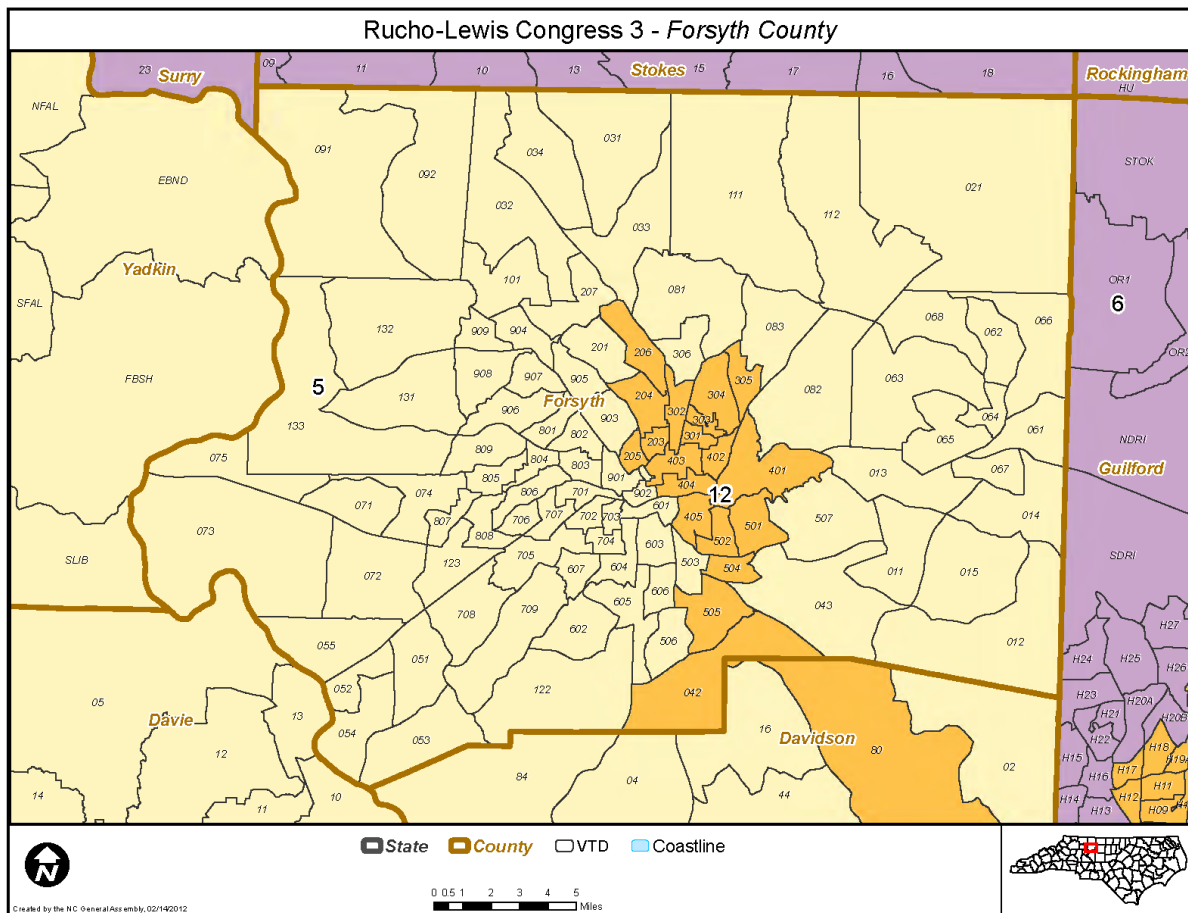


Pltf. Tr. Ex. 37 (Map of CD 12 in Mecklenburg County).

Forsyth County

114. Forsyth County is divided between CD 12 and CD 5. The BVAP in the portion of the county in CD 12 in Forsyth County (70.58%) is almost four times the BVAP in the portion of the county in CD 5 (18.44%). Pltf. Tr. Ex. 107 (“Voting Age

Population by Race and Ethnicity – District 12”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii). The boundary the NCGA drew to separate Forsyth County citizens into racially identifiable districts is depicted below. It is bizarrely shaped and visually not compact.



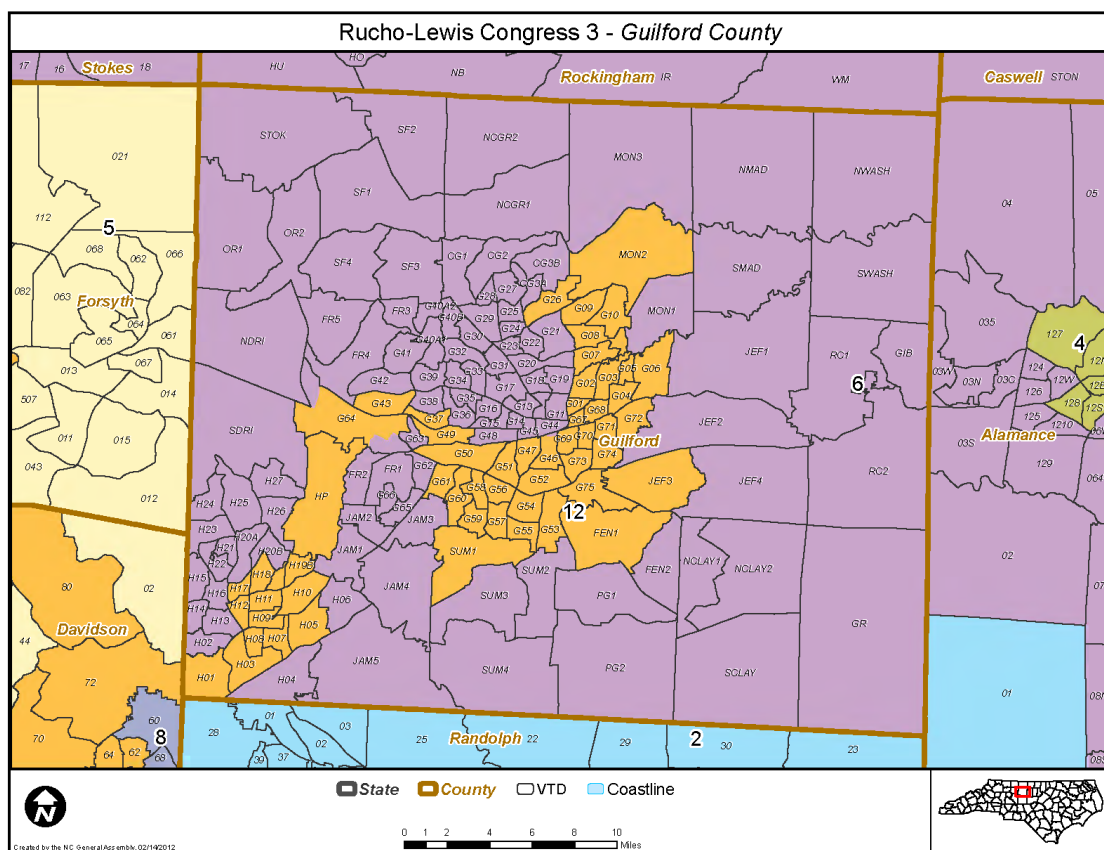
Pltf. Tr. Ex. 29 (Map of CD 12 in Forsyth County).

Guilford County

115. Guilford County is divided between CD 6 and CD 12. The BVAP in the portion of the county in CD 12 (58.18%) is almost four times the BVAP in the portion of

the county in CD 6 (15.21%). Pltf. Tr. Ex. 107 (“Voting Age Population by Race and Ethnicity – District 12”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

116. The boundary the NCGA drew to separate Guilford County citizens into racially identifiable districts is depicted below. It is bizarrely shaped and visually not compact.



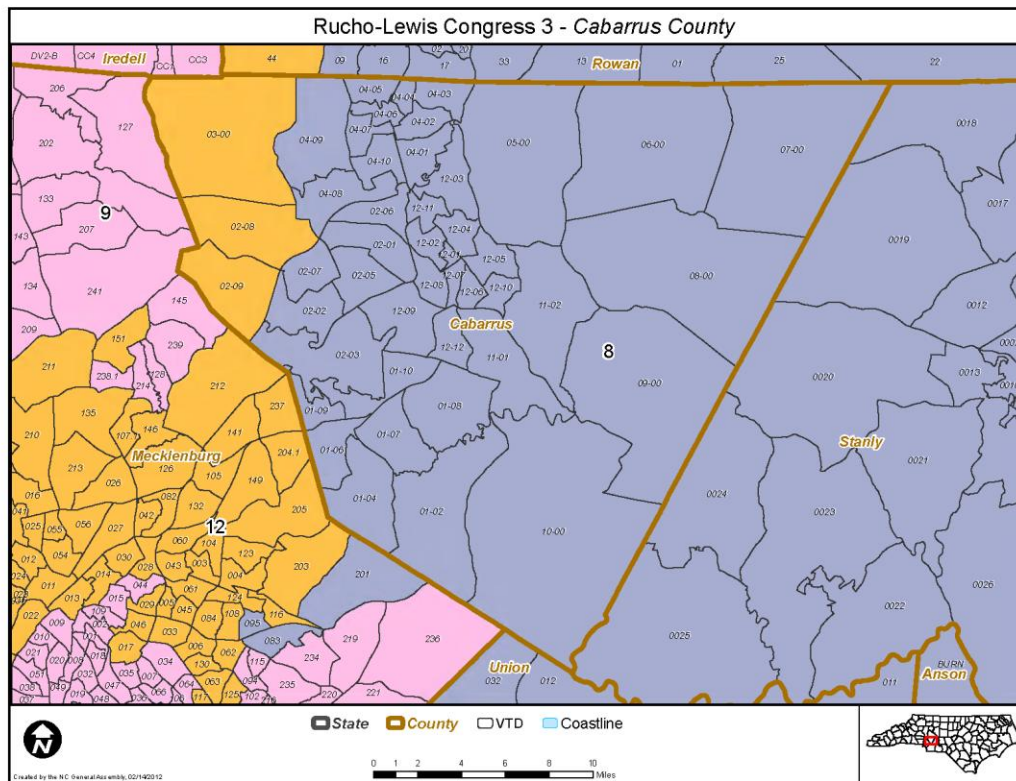
Pltf. Tr. Ex. 32 (Map of CD 12 in Guilford County).

117. The pattern of including larger percentages of black voting age citizens in CD 12 holds true even in the connector counties.

Cabarrus County

118. Cabarrus County is divided between CD 8 and CD 12. The BVAP in the portion of the county in CD 12 is 15.14% and the BVAP in the portion of the county in CD 8 in Cabarrus County is 14.71%. Pltf. Tr. Ex. 107 (“Voting Age Population by Race and Ethnicity – District 12”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

119. The boundary the NCGA drew to separate Cabarrus County citizens into districts is depicted below. It is bizarrely shaped and visually not compact.



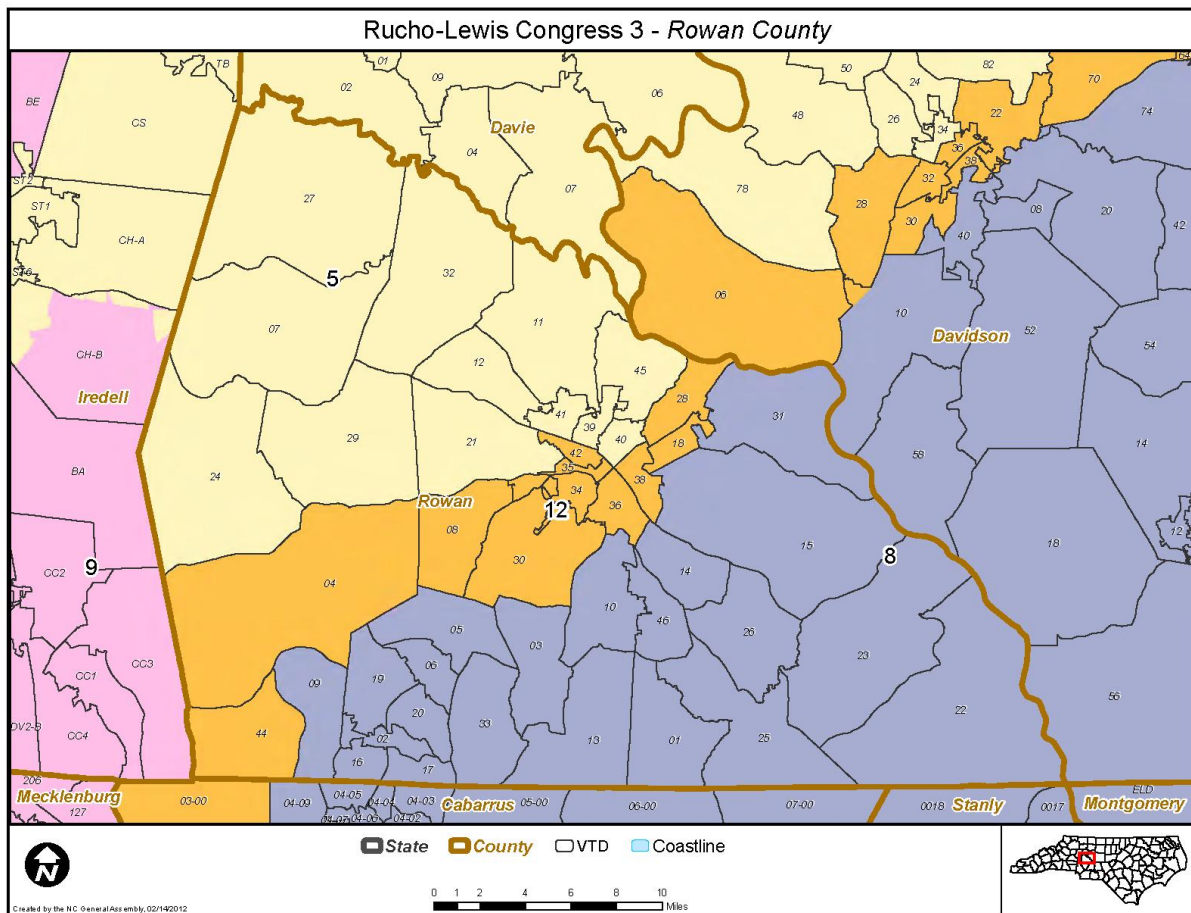
Pltf. Tr. Ex. 21 (Map of CD 12 in Cabarrus County).

Rowan County

120. Rowan County is divided between CD 12 and CD 5. The BVAP in the portion of the county in CD 12 is 27.92% and the BVAP in the portion of the county in

CD 5 is 19.83%. Pltf. Tr. Ex. 107 (“Voting Age Population by Race and Ethnicity – District 12”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

121. The boundary the NCGA drew to separate Rowan County citizens into districts is depicted below. It is bizarrely shaped and visually not compact.



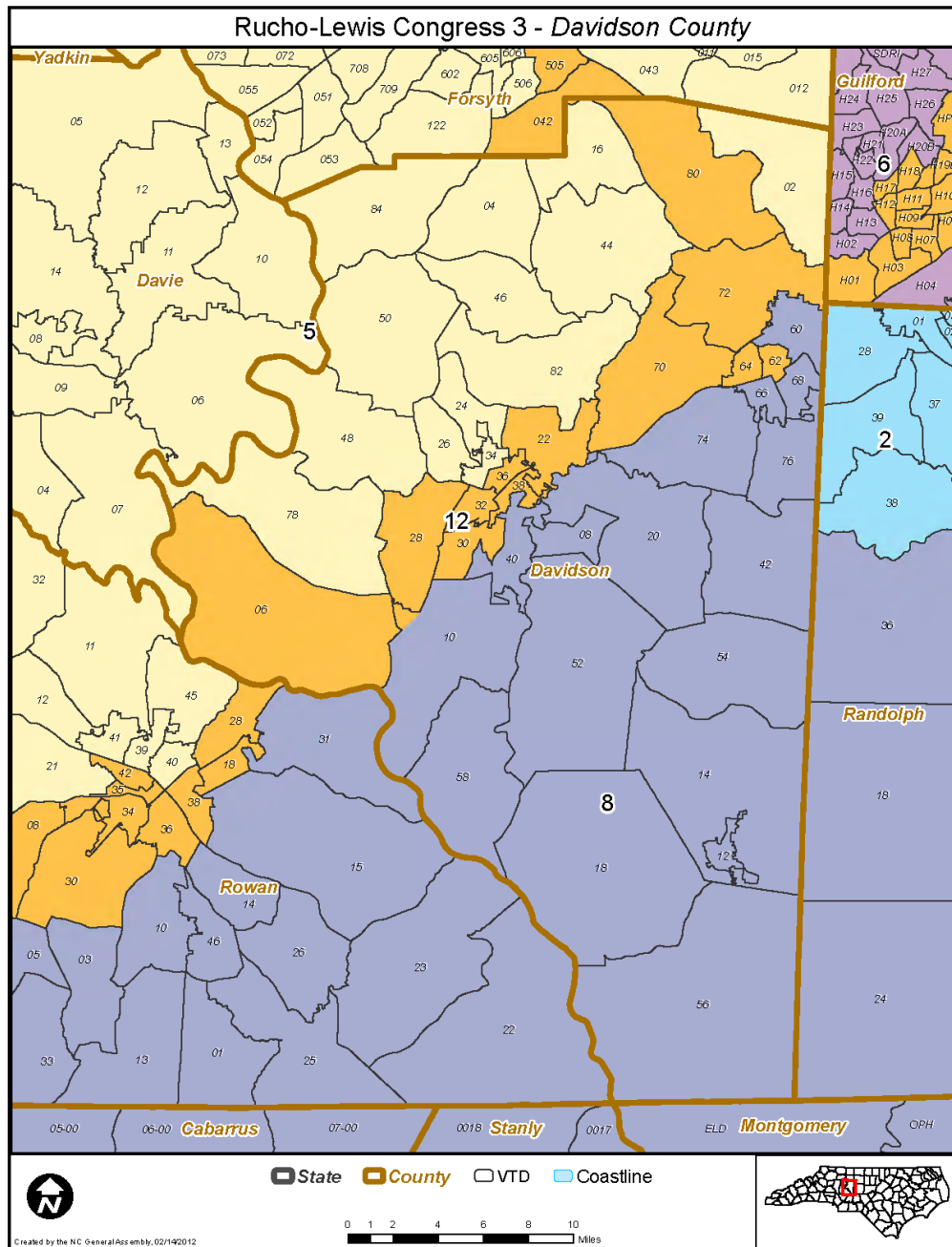
Pltf. Tr. Ex. 43 (Map of CD 12 in Rowan County).

Davidson County

122. Davidson County is divided among CD 12, CD 5 and CD 8. The BVAP in the portion of the county in CD 12 is 18.57%; is 5.53% in CD 5, and is 5.67% in CD 8.

Pltf. Tr. Ex. 107 (“Voting Age Population by Race and Ethnicity – District 12”); *see also* Pltf. Tr. Ex. 71, ¶ (1)(a)(xiv) and (xviii).

123. The boundary the NCGA drew to separate Davidson County citizens districts is depicted below. It is bizarrely shaped and visually not compact.



Pltf. Tr. Ex. 24 (Map of CD 12 in Davidson County).

C. Race, Better Than Politics, Explains the Voters and Voting Tabulation Districts Placed In CD 12

124. Plaintiffs' expert Dr. David Peterson reviewed a segment boundary analysis of CD 12. Pltf. Tr. Ex. 15, ¶ 2. The segment boundary analysis was developed by

Dr. Peterson in the *Shaw* litigation as a method of examining whether race or partisanship motivated the drawing of electoral district lines. Pltf. Tr. Ex. 15, at 2 n.1. Dr. Peterson conducted the same analysis after the 2000 Census, which was cited with approval and relied on by the United States Supreme Court in assessing whether racial or political considerations predominate. *See Hunt*, 526 U.S. at 550. The Court finds that Dr. Peterson's testimony is credible and his methodology reliable.

125. A segment analysis produces data upon which a determination can be made whether the evidence suggests that the reason a boundary line was drawn was in order to gather African-Americans or, alternatively, Democrats into a district. Pltf. Tr. Ex. 15, at 3-4 (Second Peterson Affidavit); *see also* Pltf. Tr. Ex. 122 (Peterson Dep. 37:1-25).

126. Dr. Peterson's segment boundary analysis determined that racial considerations provided a better explanation for the lines of CD 12 than did partisan considerations. Pltf. Tr. Ex. 15, ¶¶ 3, 18; *see also* Tr. 211:11-220:25 (Peterson).

127. The population of CD 12 comprises 30.3% of the population of the six counties that comprise it. Pltf. Tr. Ex. 17, ¶ 34. The likelihood that a person of a given race, who lives within these six counties, was included within CD 12 is as follows:

Likelihood That a Person of a Given Race Was Put in CD 12 (Registered Voters)				
Population Group	Population in Six-County Area		Population in CD 12	
White	993,642	67.4%	158,959	16.0%
Black	396,078	26.9%	254,119	64.2%

Id. ¶¶ 34-36. Accordingly, an African-American who lives in this six-county area is more than four times as likely than a white person to reside in the enacted CD 12. *Id.*

128. The following table illustrates the racial composition of the voting tabulation districts that were retained in enacted CD 12 from the benchmark district, and which were moved into or out of the enacted CD 12:

Racial Composition of VTDs in Former vs. New CD 12 (Registered Voters)		
	Black	White
Remained in CD 12	54.0%	31.9%
Moved into CD 12	44.0%	37.1%
Moved out of CD 12	23.2%	64.0%

Id. ¶ 38.

129. Race is a much strong predictor than party registration of which voters and VTDs were placed in CD 12 and which were not. Pltf. Tr. Ex. 17, ¶¶ 44-46, 49-53; *see also* Tr. 312:12-314-21, 318:13-319:9 (Ansolabehere).

130. The following table compares the likelihood that a person of a given race *and* party was placed in CD 12:

Likelihood that a Person of a Given Race and Party was put in CD 12 (Registered Voters)				
Party of Registration	Population Group	Population In Envelope	Population in CD 12	Percent of Group in CD 12
Democrat	White	280,915	51,367	18.3%
	Black	334,427	217,266	65.0%
Republican	White	448,914	61,740	13.8%
	Black	10,341	6,199	59.9%
Undeclared	White	262,024	45,496	17.4%
	Black	51,061	30,505	59.7%

Pltf. Tr. Ex. 17, ¶ 44, Table 7. If an individual within the envelope is African-American, the odds that she was included within CD 12 were approximately four times higher than if she were white—irrespective of party. *Id.*

131. These disparities are significantly greater under new CD 12 than they were under the prior map. For instance, under the old map, 40.4% of white Democrats were included within CD 12. *Id.* ¶ 45.

132. The following table compares the percentages of Democratic registered, Republican registered, and Undeclared voters within racial groups retained in, moved into, and moved out of CD 1 from the benchmark district:

Partisan Composition Within Racial Groups of Populations of VTDs Kept In, Moved Into, and Moved Out of CD 12 (Registered Voters)						
	Among Whites			Among Blacks		
	Dem.	Rep.	Unreg.	Dem.	Rep.	Unreg.
Remained in CD 12	31.1%	40.4%	28.4%	85.7%	2.4%	11.3%
Moved Into CD 12	34.3%	36.2%	29.2%	87.0%	2.5%	14.0%
Moved Out Of CD 12	29.3%	45.1%	24.5%	95.6%	2.5%	12.9%

Id., Table 11.

V. EVIDENCE ESTABLISHING THAT CD 1 IS NOT NARROWLY TAILORED

A. Race Was Used More Than Necessary to Comply with the VRA in CD 1

133. In every election in CD 1 since 1992, the African-American candidate of choice won decisively, regardless of whether the district was majority-BVAP. Tr. 284:3-285:6, 287:2-19 (Ansolabehere); *see also* Tr. 565:18-566:22, 636:5-15 (Hofeller).

134. The Department of Justice precleared the 1997 and 2001 iteration of CD 1 when the BVAP of the district was, respectively, 46.54% and 47.76%. *See* Pltf. Tr. Ex. 69 (“Congressional Races 1992-2010,” Exhibit 81 to Deposition of Erika Churchill).

135. A BVAP in excess of 50% is not necessary for African Americans to elect candidates of choice to Congress in the area served by CD 1. Tr. 172:10-173:12, 186:4-14 (Butterfield); *see also* Tr. 287:2-19 (Ansolabehere). African-American candidates of choice can be competitive in a congressional district east of I-95 that contains as little as 45% BVAP. *See, e.g.*, Tr. 200:7-202:7 (Butterfield).

136. At the time the 2011 Congressional Plan was adopted, the NCGA did not have before it any functional analysis of voting history suggesting that African-American candidates’ of choice cannot prevail in a congressional district in the area in which CD 1 is located unless the district is majority-BVAP. In fact, the evidence before the General Assembly was to the contrary: The African-American candidate of choice had prevailed in *every* election since 1992 without exception. *See* Pltf. Tr. Ex. 69 (“Congressional

Races 1992-2010,” Exhibit 81 to Deposition of Erika Churchill); *see also* Tr. 284:3-285:6, 287:2-19 (Ansolabehere); Tr. 565:18-566:22, 636:5-15 (Hofeller).

B. CD 1 Is Not Narrowly Tailored to Remedy Any Potential Section 2 or Section 5 Violation Because It Incorporates Substantial Areas Where No Section 2 or 5 Remedy Is Required

137. The final configuration of CD 1 extends from rural parts of eastern North Carolina into urban areas of Durham County. The extension of CD 1 into Durham County destroyed the rural and agricultural community of interest that had existed in CD 1 since it was first formed in 1992. *See Shaw v. Hunt*, 861 F. Supp. 408, 470 (E.D.N.C. 1994).

138. As reconfigured, more than 20% of the voting age population in CD 1 resides in Durham County. CD 1 contains 295,606 black citizens of voting age of whom 59,755 reside in Durham County. Pltf. Tr. Ex. 106 (“Voting Age Population by Race and Ethnicity – District 1”)

139. Extending CD 1 into Durham County did not remedy any potential Section 5 violation. Durham County was not covered by Section 5 at the time CD 1 was enacted. Pltf. Tr. Ex. 78 (2011 Section 5 Submission for Congressional Plan, Attachment NC11-C-27C-1). Extending CD 1 into Durham County was not designed to remedy, and did not remedy, any potential Section 2 violation for the black citizens of Durham County.

140. In 1986, the United States Supreme Court held that no Section 2 violation existed in Durham County because of the “sustained success black voters have

experienced” over the past six elections in electing their preferred candidate to House District 23. *Gingles*, 478 U.S. 30 at 71.

141. The “sustained success” of black voters in Durham County in electing their candidates of choice noted by the Supreme Court in 1986 continued for the intervening 25 years. Since 1986, the preferred candidates of black voters in Durham County have repeatedly been elected to the State Senate, the State House, the Board of County Commissioners, the City Council, the School Board and other elected offices. Pltf. Tr. Ex. 143, at 99-103.

C. Defendants Concede that CD 12 was Not Narrowly Tailored to Comply with the Voting Rights Act

142. Defendants have advanced no argument or evidence that the predominant use of race in drawing CD 12 was narrowly tailored to serve a compelling government interest.

CONCLUSIONS OF LAW

VI. RACE PREDOMINATED IN THE DRAWING OF CD 1 AND CD 12

A. Governing Principles

143. Equal protection principles deriving from the Fourteenth Amendment govern a State’s drawing of electoral districts. *Miller v. Johnson*, 515 U.S. 900, 905 (1995). “Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters[.]” *Shaw v. Reno* (“*Shaw I*”), 509 U.S. 630, 657

(1993). Thus, “race-based districting by our state legislatures,” regardless of motive, “demands close judicial scrutiny.” *Id.*

144. To prove a racial gerrymandering claim, Plaintiffs must first prove that race was the dominant factor in drawing CD 1 and/or CD 12. *Shaw I*, 509 U.S. at 643; *see also Page v. Va. St. Bd. of Elections*, No. 3:13cv678, 2015 WL 3604029, at *6 (E.D. Va. June 5, 2015).

145. Plaintiffs may meet their burden “either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose, [of showing] that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller*, 515 U.S. at 916; *see also Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1267 (2015).

146. Direct evidence may include statements by legislative officials involved in drawing the redistricting plan and preclearance submissions submitted by the State to the Department of Justice. *Shaw I*, 509 U.S. at 645; *Page*, 2015 WL 3604029, at *9; *Clark v. Putnam Cnty.*, 293 F.3d 1261, 1267-68, 1272 (11th Cir. 2002).

147. The fact that a legislature considers other factors when drawing a district does not preclude a finding that race predominated. *Bush v. Vera*, 517 U.S. 952, 963 (1996). Race predominates when it is the most important criterion—“the criterion that, in the State’s view, could not be compromised.” *Shaw II*, 517 U.S. at 907.

148. The goal of drawing districts of equal population is a “background” redistricting principle and “is not one factor among others to be weighed against the use of race to determine whether race ‘predominates.’” *Alabama*, 135 S. Ct. at 1270.

149. Where Plaintiffs submit sufficient direct evidence of racial predominance, they need not submit an illustrative remedial plan demonstrating that race better explains the boundaries of a challenged district than other non-racial factors. *See, e.g., Page*, 2015 WL 3604029, at *7 n.12; *see also Bush*, 517 U.S. at 969-70 (concluding that race predominated over political motives without considering an alternative plan); *Clark*, 293 F.3d at 1271 (same); *Miller*, 515 U.S. at 919 (same, as to other proffered justifications for challenged district);

150. A State’s use of race as a proxy for advancing political goals constitutes evidence of racial predominance. *See Clark*, 293 F.3d at 1271-72.

B. Race Predominated in CD 1 and CD 12

151. Race predominated in the construction of CD 1. Race was the most significant factor used by Dr. Hofeller in drawing the district, and other redistricting criteria and goals were subordinated to the use of race. The NCGA’s goal of ensuring that the BVAP in CD 1 exceeded 50% drove the intentional placement of a significant number of black voters within CD 1 and non-Black voters outside CD 1. The record unambiguously and clearly reflects that race was “the criterion that, in the State’s view, could not be compromised” when drawing CD 1. *Shaw II*, 517 U.S. at 907.

152. Race also predominated in the construction of CD 12. The NCGA purposefully drew CD 12 “at” a BVAP level that was above the BVAP found in the benchmark CD 12, in an avowed effort to ensure preclearance pursuant to Section 5. Regardless of the NCGA’s purpose, using the BVAP level of the benchmark CD 12 as a racial floor establishes racial predominance.

153. In addition, the NCGA purposefully included a substantial number of African-American residents of Guilford County in CD 12 because Sen. Rucho and Rep. Lewis apparently believed doing so was necessary to avoid “retrogression” for Section 5 purposes. The intentional placement of a significant number of black voters within CD 12 establishes racial predominance.

154. Dr. Hofeller’s use of a racially charged presidential election in 2008, involving the first time in American history that an African-American candidate was running for election, and that was only loosely correlated with political performance, when two other statewide elections occurred in the same election involving white Gubernatorial and Senate candidates that were much more closely correlated with political performance, belies the suggestion that politics, not race, was the predominant purpose in drawing CD 12. The selection and use of that election to draw CD 12, which had the *effect* of sorting voters by race, provides further evidence of racial predominance in the drawing of CD 12.

155. For the reasons stated above, the Court finds that the NCGA in effect used race as a proxy for political affiliation in constructing CD 12, and that race was the

predominant factor used in drawing the district, with other redistricting criteria and goals subordinated to the use of race.

VII. THE NCGA'S USE OF RACE WAS NOT NARROWLY TAILORED TO SERVE A COMPELLING GOVERNMENT INTEREST

A. Governing Principles

156. Because Plaintiffs have carried their initial burden of establishing that race predominated the construction of both CD 1 and CD 12, Defendants must satisfy strict scrutiny by proving that the district lines were (i) narrowly tailored (ii) to meet a compelling governmental interest. *See Shaw I*, 509 U.S. at 643.

157. A race-based redistricting plan is narrowly tailored only if the legislature has a “strong basis in evidence” supporting its use of race to construct a district. *Alabama*, 135 S. Ct. at 1274.

158. The Court may assume that compliance with the Voting Rights Act is a compelling government interest. *See Shaw II*, 517 U.S. at 915; *Bush*, 517 U.S. at 977; *Page*, 2015 WL 3604029, at *16.

159. A redistricting plan is not narrowly tailored and fails strict scrutiny if a state goes “beyond what was reasonably necessary” to comply with the Voting Rights Act. *See, e.g., Shaw I*, 509 U.S. at 655. A state has no compelling interest “in avoiding meritless [Voting Rights Act] lawsuits,” *Shaw II*, 517 U.S. at 908 n.4.

160. Prior to the Supreme Court’s decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), Section 5 of the Voting Rights Act barred covered jurisdictions from implementing any voting change that has a discriminatory purpose or would have the

effect of reducing the ability of minority voters to elect a candidate of their choice. 42 U.S.C. §§1973c(b), (c) (2006). A district is narrowly tailored under Section 5 when a legislature has “a ‘strong basis in evidence’ to believe race-based measures are necessary to preserve the minority community’s ability to elect its candidate of choice.” *Alabama*, 135 S. Ct. at 1274.

161. Section 5 cannot be used to “justify not maintenance, but substantial augmentation, of the African-American population percentage” in the challenged district. *Bush*, 517 U.S. at 983; *see also Page*, 2015 WL 3604029, at *17.

162. Section 2 requires legislatures to create majority-minority districts only where three preconditions are met: (1) the minority group is “sufficiently large and geographically compact to constitute a majority” in a single-member district; (2) the minority group is “politically cohesive”; and (3) a white majority votes “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). If these preconditions are met, the court must then apply a totality of circumstances analysis to determine whether there has been a violation of Section 2. *Lewis v. Alamance Cnty.*, 99 F.3d 600, 604 (4th Cir. 1996).

163. To satisfy the third of these preconditions, Defendants must present strong evidence that there is legally significant racial bloc voting, which exists where the white voting bloc usually defeats the minority bloc’s candidate of choice. *Gingles*, 478 U.S. at 51. Moreover, in order to prove that there is legally significant racially polarized voting, Defendants must show that it exists in individual districts rather than larger areas that

include the contested district. *See id.* at 59 n.28; *cf. Alabama*, 135 S. Ct. at 1265 (“A racial gerrymandering claim . . . applies to the boundaries of individual districts” and “does not apply to a State considered as an undifferentiated ‘whole.’”).⁶

B. In Drawing CD 1 and CD 12, The NCGA Did Not Narrowly Tailor Its Use of Race to a Compelling Government Interest

164. Although Defendants did not concede that race was the predominant factor in CD 1, they nonetheless argued in the alternative that the State’s admitted use of race in drawing the district was narrowly tailored to serve a compelling government interest in complying with Section 2 and Section 5 of the Voting Rights Act. Defendants have offered no justification for the State’s use of race in drawing CD 12. Accordingly, because Defendants bear the burden of proof with respect to the narrow tailoring analysis under strict scrutiny, *see Shaw II*, 517 U.S. at 908, and have failed to carry that burden, the Court concludes that CD 12 is an unconstitutional racial gerrymander in violation of the Fourteenth Amendment.

165. Section 5 does not provide a compelling government interest as to CD 1.

166. Prior to *Shelby County*, the following counties were covered under Section 5: Anson County, Beaufort County, Bertie County, Bladen County, Camden County, Caswell County, Chowan County, Cleveland County, Craven County, Cumberland County, Edgecombe County, Franklin County, Gaston County, Gates County, Granville

⁶ Thus, evidence of racially polarized voting in North Carolina generally, or in other parts of the state, is irrelevant to the question at hand in a *Gingles* analysis: Whether racially polarized voting exists *within the specific district at issue* sufficient to usually defeat the African-American candidate of choice. *Gingles*, 478 U.S. at 51. Here, Defendants have failed such a showing. The evidence, indeed, strongly suggests the contrary in these two districts.

County, Greene County, Guilford County, Halifax County, Harnett County, Hertford County, Hoke County, Jackson County, Lee County, Lenoir County, Martin County, Nash County, Northampton County, Onslow County, Pasquotank County, Perquimans County, Person County, Pitt County, Robeson County, Rockingham County, Scotland County, Union County, Vance County, Washington County, Wayne County; Wilson County. None of these jurisdictions are currently covered under Section 5.

167. Section 5 no longer can serve as a compelling state interest justifying the use of race in drawing CD 1 because *Shelby County* invalidated the coverage formula and rendered Section 5 inapplicable to North Carolina and its political subdivisions. *See Shelby Cnty.*, 133 S. Ct. at 2631 (declaring Section 4(b) of the Voting Rights Act unconstitutional and holding that “[t]he formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance”).

168. Even assuming Section 5 remains a compelling interest, the General Assembly did not narrowly tailor its use of race in drawing CD 1.

169. The record does not contain any analysis of the specific or approximate BVAP level necessary to preserve African-Americans’ ability to elect their candidate of choice in CD 1. Defendants thus failed to establish that in increasing the BVAP in CD 1, the State “went no further than was reasonably necessary” to comply with the Voting Rights Act. *See, e.g., Shaw I*, 509 U.S. at 655.

170. Moreover, the record reflects that African-American’ candidates of choice had prevailed in every election held in CD 1 under the benchmark plan in a district with

47.66% BVAP. Because Section 5 merely prevented North Carolina from creating districts that retrogressed and weakened (in covered jurisdictions) African-Americans' ability to elect their candidates of choice, the State cannot use Section 5 to justify its decision to substantially augment the BVAP in CD 1 to 52.65%, as it was already a "safe" seat for African-Americans' candidates of choice, and had been for nearly two decades. *See Alabama*, 135 S. Ct. at 1273 (Section 5 cannot justify use of mechanical thresholds to maintain elevated BVAP levels in districts that have "long elected to office black voters' preferred candidate" and could continue to do so at lower BVAP levels); *Page*, 2015 WL 3604029, at *17 ("[T]he legislature here—by increasing the BVAP of a safe majority-minority district and using a BVAP threshold—relied heavily on a mechanically numerical view as to what counts as forbidden retrogression without a 'strong basis in evidence' for doing so."); *Smith v. Beasley*, 946 F. Supp. 1174, 1210 (D.S.C. 1996) (race predominated because legislature "insist[ed] that all majority-minority districts have at least 55% BVAP").

171. Section 2 does not provide a compelling government interest justifying the NGCA's predominant use of race in drawing CD 1.

172. On this record, Defendants have not met their burden of establishing that African-Americans currently comprise a sufficiently large and geographically compact minority community in the area comprising CD 1 such that African-Americans can form a majority of the voting age population of a congressional district in such area. *See Vera*, 517 U.S. at 979 (finding that the first *Gingles* factor was not established with respect to a

district that “reache[d] out to grab small and apparently isolated minority communities which, based on the evidence presented, could not possibly form part of a compact majority-minority district”).

173. On this record, Defendants have not met their burden of establishing that legally significant racial bloc voting exists such that a white majority has usually voted cohesively to defeat African-Americans’ preferred candidate in the area comprising CD 1. *Shaw I*, 509 U.S. at 653 (“[W]e unanimously reaffirmed that racial bloc voting and minority-group political cohesion never can be assumed, but specifically must be proved”); *Strickland*, 556 U.S. at 24 (plurality op.) (“In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters” and thus “[i]n those areas majority-minority districts would not be required in the first place”).

174. CD 1 fails narrow tailoring requirements for another reason as well. A district is not narrowly tailored to remedy a Section 2 violation unless it is drawn to encompass *the areas of a State in which a Section 2 remedy is required*. A remedial district may not be drawn into areas of the State where no Section 2 remedy is required. *See Shaw II*, 517 U.S. 899. In *Shaw*, the Court held that CD 12 was not narrowly tailored because it was not drawn in areas of North Carolina where a Section 2 remedy was required. “The vote dilution injuries suffered by [persons for whom a Section 2 remedy is required] are not remedied by creating a safe majority black district somewhere else in the State.” 517 U.S. at 915. Durham County was one of the parts of North Carolina

encompassed by the 1992 version of CD 12 before the Court in *Shaw* where a Section 2 remedy was not required.

175. Because Defendants have failed to establish a strong basis in evidence for concluding that the three *Gingles* preconditions are met, Section 2 does not serve as a compelling interest justifying the NCGA's purposeful recreation of CD 1 as a majority-BVAP district. *See Vera*, 517 U.S. at 978 (strict scrutiny not met unless a state has "a 'strong basis in evidence' for finding that the threshold conditions for § 2 liability are present"); *Shaw II*, 517 U.S. at 916 (same); *Abrams v. Johnson*, 521 U.S. 74, 91 (1997) (rejecting claim that court-ordered redistricting plan violated Section 2 because "none of the three *Gingles* factors, the threshold findings for a vote dilution claim, were established here."); *Clark v. Calhoun Cnty.*, 88 F.3d 1393, 1405-06 (5th Cir. 1996) ("[T]he State must have a strong basis in evidence for concluding that the three *Gingles* preconditions exist in order to claim that its redistricting plan is reasonably necessary to comply with § 2.").

176. Accordingly, the Court concludes that CD 1 is an unconstitutional racial gerrymander in violation of the Fourteenth Amendment.

[PROPOSED] ORDER FOR JUDGMENT

Based on the above findings of fact and conclusions of law, the Court DECIDES, DECLARES, AND ADJUDGES that the North Carolina General Assembly's predominant use of race in drawing CD 1 and CD 12 was not narrowly tailored to serve a

compelling government interest and therefore violates the Fourteenth Amendment to the United States Constitution.

Accordingly, IT IS ORDERED that:

1. The State of North Carolina is hereby enjoined from conducting any elections for the office of United States Representative until a new redistricting plan is adopted; and

2. The matter of providing a redistricting plan for the 2016 elections to remedy the constitutional violations found in this case is referred to the North Carolina General Assembly for exercise of its primary jurisdiction. The North Carolina General Assembly should exercise this jurisdiction as expeditiously as possible, but no later than two weeks from entry of this order. *See* N.C. Gen. Stat. § 120-2.4.

3. The Court retains jurisdiction to conduct such further proceedings as are necessary to adopt a remedial redistricting plan.

4. Plaintiffs are the prevailing parties in this matter and are entitled to recover reasonable attorneys' fees, expenses, and costs. 42 U.S.C. § 1983; 42 U.S.C. § 1973l(e). *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). Upon the Court's final entry of judgment in this matter, Plaintiffs shall file a motion to request such fees, expert fees, and costs.

There being no just reason for delay,

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November __, 2015.

BY THE COURT.

Hon. William L. Osteen,
Jr.

Hon. Max O. Cogburn,
Jr.

Hon. Roger L. Gregory

Respectfully submitted, this the 26th day of October, 2015.

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*Local Rule 83.1
Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing **PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** by electronically filing a copy thereof with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action.
This the 26th day of October, 2015.

/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.