

**IN THE UNITED STATES DISTRICT COURT  
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 the Chairman and of the  
North Carolina State Board of Elections,

Defendants,

**PLAINTIFFS' MOTION TO  
EXCLUDE IN PART TESTIMONY  
OF DR. THOMAS HOFELLER**

Plaintiffs David Harris and Christine Bowser ("Plaintiffs") through their counsel and pursuant to Federal Rule of Evidence 702 respectfully move this court for an order precluding Dr. Thomas Hofeller from offering legal conclusions through his testimony at trial, and excluding certain passages of the Expert Report of Thomas B. Hofeller, Ph.D ("First Report") and the Second Expert Report of Thomas B. Hofeller ("Second Report"). Highlighted excerpts the First Report and Second Report are attached as exhibits to the Declaration of Kevin J. Hamilton, which is being filed contemporaneously herewith.

In support of this motion, Plaintiffs rely upon the Complaint, Plaintiff's Memorandum In Support Of Motion to Exclude in Part Testimony of Dr. Thomas Hofeller, and the Declaration of Kevin J. Hamilton and exhibits thereto.

For the reasons set forth in the accompanying Memorandum, Plaintiffs respectfully request that the Court enter an Order precluding Dr. Thomas Hofeller from offering legal conclusions through his testimony at trial, and excluding the following passages of the First Report and Second Report:

- First Report:
  - ¶ 10, lns. 2-5;
  - ¶ 19, lns. 19-24;
  - ¶ 34;
  - ¶ 41;
  - ¶ 42, lns. 8-10;
  - ¶ 49, p. 16, lns. 24-26 through p. 17, ln. 1;
  - ¶ 55, p. 19, ln. 4; and
  - ¶ 65, lns. 1-8.
- Second Report:
  - ¶ 25, lns. 12-15; and
  - ¶ 32, lns. 22-23.

Respectfully submitted, this the 25<sup>th</sup> day of September, 2015.

**PERKINS COIE LLP**

/s/ Kevin J. Hamilton

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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' MOTION TO EXCLUDE IN PART TESTIMONY OF DR. THOMAS HOFELLER** to be made by electronic filing 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 25th day of September, 2015.

/s/ Edwin M. Speas, Jr.

Edwin M. Speas, Jr.



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

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

Defendants,

**DECLARATION OF KEVIN J.  
HAMILTON IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
EXCLUDE IN PART TESTIMONY  
OF DR. THOMAS HOFELLER**

I, Kevin J. Hamilton, being duly sworn according to law, upon my oath, declare and say as follows:

1. I am an attorney representing the plaintiffs in this case. I am over the age of 21 years and competent to testify herein. I have personal knowledge of the matters stated herein and would so testify if called to do so.
2. Attached as Exhibit A is a true and correct copy of excerpts of the Expert Report of Thomas B. Hofeller, Ph.D, dated January 17, 2014.
3. Attached as Exhibit B is a true and correct copy of excerpts of the Second Expert Report of Thomas B. Hofeller, dated June 4, 2015.
4. As set out in Plaintiff's Motion to Exclude in Part Testimony of Dr. Thomas Hofeller, Plaintiffs seek an Order from the Court excluding specific passages

of Dr. Hofeller's two reports. For the Court's convenience, in the excerpts of these reports attached as Exhibits A and B, I have highlighted the specific passages to which Plaintiffs object.

**I declare under penalty of perjury that the foregoing is true and correct.**

EXECUTED at Seattle, Washington, on September 25, 2015.

/s/ Kevin J. Hamilton

Kevin J. Hamilton

### **CERTIFICATE OF SERVICE**

I hereby certify that on this date I served a copy of the foregoing **DECLARATION OF KEVIN J. HAMILTON IN SUPPORT OF PLAINTIFFS' MOTION TO EXCLUDE IN PART TESTIMONY OF DR. THOMAS HOFELLER**, with service to be made by electronic filing 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 25th day of September, 2015.

/s/ Edwin M. Speas, Jr.

Edwin M. Speas, Jr.

Exhibit A

To Declaration of Kevin J. Hamilton

First Expert Report  
of Thomas B. Hofeller, Ph.D.  
(With Highlighted Excerpts)

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
3 DURHAM DIVISION

4 Civil Action No. 1:13-CV-00949

5  
6 DAVID HARRIS; CHRISTINE BOWSER; )  
7 and SAMUEL LOVE, )  
8 )  
9 Plaintiffs, )

10 )  
11 v. )

12 )  
13 PATRICK MCCRORY, in his capacity as )  
14 Governor of North Carolina; NORTH )  
15 CAROLINA STATE BOARD OF )  
16 ELECTIONS; and JOSHUA HOWARD, in )  
17 his capacity as Chairman of the North )  
18 Carolina State Board of Elections, )  
19 )  
20 Defendants. )

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

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

4 Thomas Brooks Hofeller declares the following:

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

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

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

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

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

25 6. I have been active in the redistricting process leading up to and following each  
26 decennial census since 1970. I have been intimately involved with the construction of

1 databases combining demographic data received from the United States Census Bureau with  
2 election results which is used to determine the probable success of parties and minorities in  
3 proposed and newly-enacted districts. Most of my experience has been related to congressional  
4 and legislative districts, but I have also had the opportunity to analyze municipal and county-  
5 level districts.

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

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

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

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

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

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

17  
18 12. I have been extensively involved previously as an expert and redistricting plan  
19 drafter in the State of North Carolina since the 1980s.

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



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

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

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

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

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

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

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

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

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

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

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

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

19 24. Dr. Ansolabehere's factual conclusion can be summarized as follows:  
20

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

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

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

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

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

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

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

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

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

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

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

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

17 35. Dr. Ansolabehere also notes that District 1 and 12 in the New Plan 3 have  
18 lower Reock Compactness Scores and seems to infer that this is evidence of the use of  
19 race as predominant factor in constructing the New Plan. Of course the Reock  
20 measurement is only one of many such compactness evaluations. Once again, by  
21 neglecting the entire context of the plan, he does not examine what it is about the shapes  
22 of the districts which result in these lower scores.

1           36. In footnote 1 of page 5 of Ansolabehere's Report, he states that the Reock  
2 score of a perfectly square district would be .637. I add that the Reock score for a circular  
3 district would be 1.00.

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

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

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



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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

9 Certainly the Republicans political objectives in 2011 were just as legitimate as the  
10 Democrats' objectives in 2001. They were just governed by a desire to achieve the  
11 opposite political results

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

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

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

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

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

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

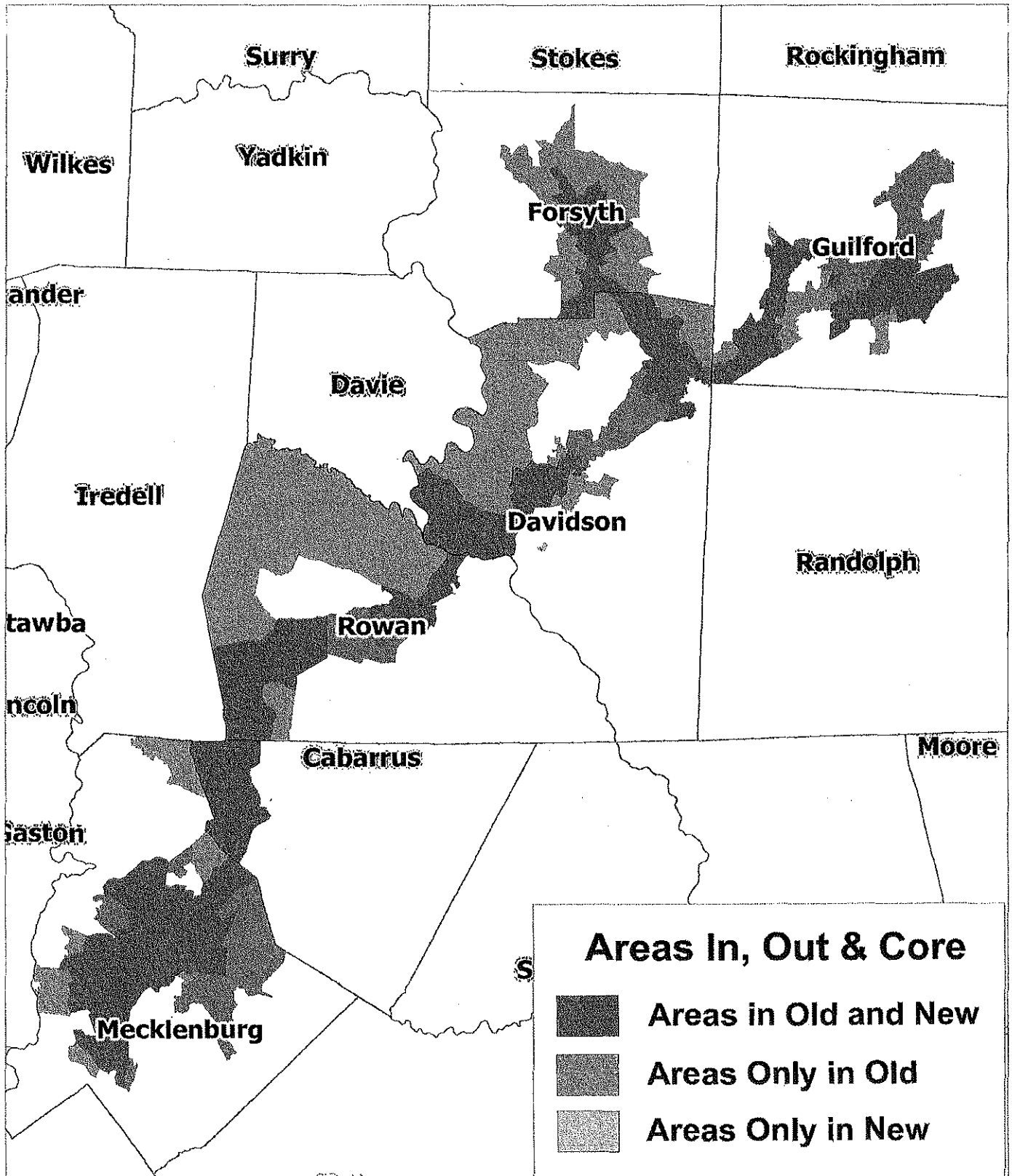
17  
18           72.     For all these reasons, it is my expert opinion that Dr. Ansolabehere's  
19 analyses are not sufficient to prove that race was the predominant factor in the creation  
20 of the Rucho-Lewis Congressional 3 Plan.  
21

22  
23           DATED on January 17, 2014.

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

# MAP 1

## Comparison of 2001 and 2011 - 12th Congressional District



**TABLE 1**

**COMPARISON OF CITY AND TOWN SPLITS IN DISTRICT 1 - 2001 PLAN VERSUS 2011 PLAN**

| CITY OR TOWN SPLITS IN 2011 PLAN |                |              |                                     |
|----------------------------------|----------------|--------------|-------------------------------------|
| City or Town                     | County         | Districts    | Note                                |
| Walstonburg                      | Greene         | 1, 3         |                                     |
| Butner                           | Greenville     | 1, 13        |                                     |
| Dorchers                         | Nash           | 1, 13        |                                     |
| Durham                           | Durham         | 1, 4, 6 & 13 |                                     |
| Edenton                          | Chowan         | 1, 3         | Zero Persons in non-contiguous part |
| Elizabeth City                   | Pasquotank     | 1, 3         |                                     |
| Goldsboro                        | Wayne          | 1, 13        |                                     |
| Greenville                       | Pitt           | 1, 3         |                                     |
| Grimesland                       | Pitt           | 1, 3         | 4 Persons in non-contiguous part    |
| Hertford                         | Perquimans     | 1, 3         | 8 Person located in another VTD     |
| Kinston                          | Lenior         | 1, 7         |                                     |
| Mount Olive                      | Wayne          | 1, 13        |                                     |
| New Bern                         | Craven         | 1, 3         |                                     |
| Plymouth                         | Washington     | 1, 3         |                                     |
| Red Oak                          | Nash           | 1, 13        |                                     |
| Rocky Mount                      | Edgecombe Nash | 1, 13        |                                     |
| Snow Hill                        | Greene         | 1, 3         |                                     |
| Tarboro                          | Edgecombe      | 1, 13        |                                     |
| Washington                       | Beaufort       | 1, 3         |                                     |
| Wilson                           | Wilson         | 1, 13        |                                     |
| Winterville                      | Pitt           | 1, 3         |                                     |

| CITY OR TOWN SPLITS IN 2001 PLAN |                 |           |
|----------------------------------|-----------------|-----------|
| City or Town                     | County          | Districts |
| Ayden                            | Pitt            | 1, 3      |
| Dorchers                         | Nash            | 1,13      |
| Farmville                        | Pitt            | 1, 3      |
| Goldsboro                        | Wayne           | 1, 3      |
| Greenville                       | Pitt            | 1, 3      |
| Havelock                         | Craven          | 1,3       |
| Henderson                        | Vance           | 1, 2      |
| Kinston                          | Lenior          | 1, 7      |
| Nashville                        | Nash            | 1, 2      |
| New Bern                         | Craven          | 1, 3      |
| Oxford                           | Granville       | 1, 13     |
| Rocky Mount                      | Edgecombe Nash  | 1, 13     |
| Sharpsburg                       | Wilson, Nash    | 1, 3      |
| Washington                       | Beaufort        | 1, 3      |
| Whitaker                         | Nash, Edgecombe | 1, 2      |
| Wilson                           | Wilson          | 1, 3      |

**TABLE 2**  
**COMPARISON OF CITY AND TOWN SPLITS IN DISTRICT 12 - 2001 PLAN VERSUS 2011 PLAN**

| CITY OR TOWN SPLITS IN 2011 PLAN |                     |             |      | CITY OR TOWN SPLITS IN 2001 PLAN |                     |           |
|----------------------------------|---------------------|-------------|------|----------------------------------|---------------------|-----------|
| City or Town                     | County              | Districts   | Note | City or Town                     | County              | Districts |
| Charlotte                        | Mecklenburg         | 8, 9, 12    |      | Charlotte                        | Mecklenburg         | 8, 9, 12  |
| Concord                          | Cabarrus            | 8, 12       |      | Concord                          | Cabarrus            | 8, 12     |
|                                  |                     |             |      | Davidson                         | Mecklenburg         | 9, 12     |
| East Spencer                     | Rowan               | 1, 13       |      |                                  |                     | 1, 13     |
| Greensboro                       | Guilford            | 6, 12       |      | Greensboro                       | Guilford            | 6, 12, 13 |
| High Point                       | Guilford, Davidson, | 2, 5, 6, 12 |      | High Point                       | Guilford, Davidson, | 6, 12     |
| Jamestown                        | Guildord            | 6, 12       |      | Jamestown                        | Guildord            | 6, 12     |
| Kannapolis                       | Cabarrus            | 8, 12       |      | Kannapolis                       | Cabarrus            | 8, 12     |
| Landis                           | Davidson            | 8, 12       |      | Landis                           | Davidson            | 8, 12     |
| Lexington                        | Davidson            | 8, 12       |      | Lexington                        | Davidson            | 8, 12     |
|                                  |                     |             |      | Midway                           | Davidson            | 6, 12     |
| Salisbury                        | Rowan               | 5, 8, 12    |      | Salisbury                        | Rowan               | 6, 12     |
|                                  |                     |             |      | Spencer                          | Rowan               | 6, 12     |
| Thomasville                      | Davidson            | 8, 12       |      | Thomasville                      | Davidson            | 6, 12     |
|                                  |                     |             |      | Walkertown                       | Forsyth             | 5, 12     |
|                                  |                     |             |      | Welcome                          | Davidson            | 6, 12     |
| Wallburg                         | Davicson            | 5, 12       |      |                                  |                     |           |
| Winston-Salem                    | Forsyth             | 5, 12       |      | Winston-Salem                    | Forsyth             | 5, 12     |



**TABLE 3**  
**SUMMARY OF PLAINTIFFS EXPERTS' TABLES 5 THROUGH 8**  
**Old and New Congressional Districts 1 and 12**  
**For County Envelopes Containing Both the Old and New Versions of Each District**

| Congressional District 1 |       |                        |               |                       |       |                        |               |
|--------------------------|-------|------------------------|---------------|-----------------------|-------|------------------------|---------------|
| Old Map                  |       |                        |               | New Map               |       |                        |               |
| Party of Registration    | Group | % of Group in Old CD 1 | % Blk - % Wht | Party of Registration | Group | % of Group in New CD 1 | % Blk - % Wht |
| Democrat                 | White | 39.6                   | 18.7          | Democrat              | White | 41.5                   | 30.6          |
|                          | Black | 58.3                   |               |                       | Black | 72.1                   |               |
| Republican               | White | 31.0                   | 34.5          | Republican            | White | 29.9                   | 39.3          |
|                          | Black | 65.5                   |               |                       | Black | 69.2                   |               |
| Undeclared               | White | 33.2                   | 18.2          | Undeclared            | White | 34.7                   | 33.5          |
|                          | Black | 51.4                   |               |                       | Black | 68.2                   |               |

| Congressional District 12 |       |                         |               |                       |       |                         |               |
|---------------------------|-------|-------------------------|---------------|-----------------------|-------|-------------------------|---------------|
| Old Map                   |       |                         |               | New Map               |       |                         |               |
| Party of Registration     | Group | % of Group in Old CD 12 | % Blk - % Wht | Party of Registration | Group | % of Group in New CD 12 | % Blk - % Wht |
| Democrat                  | White | 40.4                    | 16.8          | Democrat              | White | 18.3                    | 46.7          |
|                           | Black | 57.2                    |               |                       | Black | 65.0                    |               |
| Republican                | White | 19.8                    | 32.7          | Republican            | White | 13.8                    | 46.1          |
|                           | Black | 52.5                    |               |                       | Black | 59.9                    |               |
| Undeclared                | White | 21.2                    | 29.2          | Undeclared            | White | 17.4                    | 42.3          |
|                           | Black | 50.4                    |               |                       | Black | 59.7                    |               |

Source: Ansolarbehere Expert Report - December 23, 2013 - Charts 5 through 8

**TABLE 4**  
**STATE OF NORTH CAROLINA**  
**RACIAL COMPARISON OF 12TH CONGRESSIONAL DISTRICT**  
**2011 ENACTED 12TH DISTRICT COMPARED TO 2001 ENACTED 12TH DISTRICT**  
**SHOWING AREAS COMMON TO BOTH, REMOVED FROM 2011 DISTRICT AND PORTIONS ADDED TO 2011 DISTRICT**

| Area Examined                                | 2010 Census Data |          |          |            | 2008 General Election Data |             |              |         |
|--|------------------|----------|----------|------------|----------------------------|-------------|--------------|---------|
|  | TPOP             | 18+ TPOP | 18+ TBLK | % 18+ TBLK | Total Obama plus McCain    | Total Obama | Total McCain | % Obama |
| Area in New and Old 12th                     | 494,530          | 368,016  | 199,534  | 54.22%     | 200,925                    | 160,587     | 40,338       | 79.92%  |
| Area Only in Old 12th                        | 241,909          | 183,019  | 41,671   | 22.77%     | 103,956                    | 55,112      | 48,844       | 53.01%  |
| Area Only in New 12th                        | 238,988          | 176,434  | 76,282   | 43.24%     | 90,279                     | 68,063      | 22,216       | 75.39%  |
| Percent Added Areas Minus Pct. Removed Areas |                  |          |          |            | 20.47%                     |             |              | 22.38%  |

**Population Shift between Old and New 12th Congressional District by County**

| County         | New     | Old     | New-Old |
|----------------|---------|---------|---------|
| Guilford       | 196,003 | 146,329 | 49,674  |
| Forsyth        | 52,262  | 143,216 | -90,954 |
| Davidson       | 40,869  | 82,795  | -41,926 |
| Rowan          | 42,641  | 61,242  | -18,601 |
| Cararrus       | 19,345  | 19,345  | 0       |
| Mecklenburg    | 382,379 | 283,419 | 98,960  |
| Total          | 733,499 | 736,346 | -2,847  |
| Corridor Total | 102,855 | 163,382 | -60,527 |



Exhibit B

To Declaration of Kevin J. Hamilton

Second Expert Report  
of Thomas B. Hofeller, Ph.D.  
(With Highlighted Excerpts)

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
3 DURHAM DIVISION

4 Civil Action No. 1:13-CV-00949

5  
6 DAVID HARRIS; CHRISTINE BOWSER; )  
7 and SAMUEL LOVE, )  
8 )  
9 Plaintiffs, )

10 )  
11 v. )

12 ) SECOND EXPERT REPORT OF  
13 PATRICK MCCRORY, in his capacity as ) THOMAS B. HOFELLER, Ph.D.  
14 Governor of North Carolina; NORTH )  
15 CAROLINA STATE BOARD OF )  
16 ELECTIONS; and JOSHUA HOWARD, in )  
17 his capacity as Chairman of the North )  
18 Carolina State Board of Elections, )  
19 )  
20 Defendants. )

1 STATE OF NORTH CAROLINA )  
2 ) ss.  
3 County of Wake )

4 Thomas Brooks Hofeller declares the following:

5  
6 1. I have previously provided one expert report in this case, which was signed by  
7 me on February 17, 2014. I hereby incorporate my First Expert Report by reference.

8 2. The full range of my professional qualifications and experience is included in  
9 my recently updated resume, which is attached as Appendix 1.

10 3. In my previous report, I evaluated the Expert Report submitted by Dr. Stephen  
11 Ansolabehere on behalf of the Plaintiffs in this case. I have been asked by Defendants to  
12 further analyze the genesis of the current congressional districts for North Carolina, known as  
13 the "Rucho-Lewis Congress 3" plan, enacted as Sessions Law 2011-403 on July 28<sup>th</sup>, 2011  
14 (2011 Plan) with particular emphasis on the 2011 12<sup>th</sup> District. This set of congressional  
15 districts has been used in the 2012 and 2014 Primary and General elections. In making my  
16 analysis, I have also examined the two previous congressional district plans know as "97  
17 House-Senate Plan A", enacted in 1997, used for 2000 election only (1997 Plan) and the  
18 "Congress Zero Deviation" plan, enacted in 2001, used for the 2002 through 2010 Primary  
19 and General elections (2001 Plan).  
20  
21

22 4. Information about these plans, including census block assignment files and  
23 geographic shape files, may be found on the North Carolina General Assembly website at  
24 <http://www.ncleg.net/representation/redistricting.aspx> . Census Data used comes from  
25 the United States Bureau of the Census' 2010 Redistricting Data File and the 2010  
26

1 Decennial Census TIGER File, both released following the 2010 Decennial Census. The  
2 data I used for political election analysis was also obtained from the North Carolina  
3 General Assembly's Information Systems Division.

4 5. This information has been incorporated into a geographic information  
5 system called "Maptitude for Redistricting", a product which is offered by Caliper  
6 Corporation, based in Newton, Massachusetts. The maps included in this report have all  
7 been produced using Mapitude, and tables were produced using census and election data  
8 extracted from Mapitude and reformatted using Microsoft Excel.

10 6. Dr Ansolabehere's analysis of 2011 Congressional Districts 1 and 12 is  
11 insufficient because he analyzes these two districts as if the other 11 districts were drawn  
12 almost as an afterthought. Drafting every district in the plan required a series of  
13 decisions necessary to balance population requirements, partisan political goals,  
14 incumbent issues, and Voting Rights Act requirements. Each district was not constructed  
15 in a vacuum, and the plan cannot be comprehensively analyzed without determining the  
16 interplay of all these factors. This is particularly true in the case of District 12, which is  
17 the primary focus of this report.

19 7. As a result of population growth between the 2000 and 2010 Decennial  
20 Censuses, North Carolina's 13 congressional districts were significantly malapportioned  
21 in terms of 2010 Decennial Census populations. Districts ranged in population from a  
22 deficiency of 97,583 persons (District 1) to a surplus of 118,878 persons (District 9). The  
23 three most western districts in the State (Districts 5, 10 and 11) had a combined  
24 population deficiency of 114,009 persons, which was difficult to resolve because of the  
25  
26

1 location of the 12<sup>th</sup> District. It was also notable that District 4 had a population surplus of  
2 93,379 (See Map 1 showing the 2010 population deviations for the 2001 districts).

3 8. These shifts in relative population between North Carolina's 2001 districts,  
4 even in the absence of all other considerations, would require significant changes in the  
5 2011 Plan district boundaries. As a result of the 2010 General Elections, majorities in  
6 both chambers of the General Assembly switched from Democrat to Republican control.  
7 The majority party had different political goals than the Democrats, which is clearly  
8 evident from an thorough examination of the 2001 and 2011 Plans and the results of the  
9 2012 and 2014 General Congressional Elections.  
10

11 9. The Republicans' primary goal was to create as many districts as possible in  
12 which GOP candidates would be able to successfully compete for office. As a result of the  
13 2010 General Elections, Democrats were elected in 7 districts (1, 4, 7, 8, 11, 12 and 13),  
14 while Republicans were elected in 6 districts (2, 3, 5, 6, 9 and 10). Following the 2014  
15 General Election, Democrats were elected in only 3 districts (1, 4 and 12). Republicans  
16 were elected in the 10 remaining districts.  
17

18 10. The Republican strategy was to weaken Democratic strength in Districts 7,  
19 8, and 11; and to completely revamp District 13, converting it into a competitive GOP  
20 district. At the same time, 2 GOP-held districts (Districts 2 and 9) needed marginal  
21 improvement in GOP voting strength (See Map 2 showing the 2008 General Election vote  
22 percentage for President Obama for all 13 **2001** districts). This policy goal was attained  
23 by concentrating Democratic voting strength in Districts 1, 4 and 12 (See Map 3 showing  
24 the 2008 General Election vote percentage for President Obama for all 13 **2011** districts).  
25  
26

1           11.     Maps 4, 5 and 6 show the 1997, 2001 and 2011 congressional districts  
2 consecutively for the central portion of the State. When the 1997 map was drawn, North  
3 Carolina was entitled to only 12 congressional districts. As a result of the 2000 General  
4 Election (the only election in which the 1997 Plan was used), the newly drawn 12<sup>th</sup>  
5 District was completely surrounded by GOP-held Districts 5, 6, 8, 9 and 10 (See Map 4).

6           12.     The Democrats, who controlled the line-drawing process in 2001, rotated  
7 District 5, 6 9 and 10 counter-clockwise around District 12 to create room for the new  
8 13<sup>th</sup> District, which was drawn as a strong Democrat district for Brad Miller, who served  
9 as Chairman of the State Senate Redistricting Committee in 2001 (Miller was elected in  
10 the new 2001 13<sup>th</sup> District from 2002 through 2010). The 2001 13<sup>th</sup> District ran from the  
11 strong Democratic portions of Wake County (Raleigh), through Granville, Person, Caswell,  
12 and Rockingham Counties ending up in the strong Democratic areas of Guilford County  
13 (Greensboro), which were removed from the northern end of District 12. On the way, the  
14 new District 13 dipped down into Alamance County to incorporate strong Democratic  
15 areas in Burlington. In essence, District 13 was constructed in similar manner to District  
16 12, connecting strong Democratic sections of three metropolitan areas (Raleigh,  
17 Burlington and Greensboro) through a less populous corridor along the northern border  
18 of the State with Virginia (See Map 7).

19           13.     Map 8 shows how 2001 District 13 was divided among the new  
20 congressional districts in the 2011 Plan. In 2011 many of the strong Democrat VTDs in  
21 Greensboro were returned back to the new 2011 12<sup>th</sup> District, in which they were located  
22 in the 1997 Plan (the red-colored area). Also, the strong Democrat VTDs in both  
23 Burlington and Raleigh were incorporated into the new District 4 (the green-colored  
24  
25  
26

1 area). The remaining VTDs of Raleigh, along with southern Granville County were made  
2 part of a new District 13 (the yellow-colored area). A portion of Granville County was  
3 placed in new District 1 to connect the eastern portion of 2011 District 1 to Durham (the  
4 orange-colored area).

5 14. In essence, to create the new 2011 Plan, the 2001 13<sup>th</sup> District was rotated  
6 clockwise around Raleigh, the 2001 2<sup>nd</sup> District was rotated the same direction into  
7 Moore and Randolph Counties (See Maps 4 and 5 to follow this discussion.). Then the  
8 2001 6<sup>th</sup> District was moved north into Rockingham, Caswell and Person Counties along  
9 with the northern portions of Granville, Durham and Orange Counties, thus occupying the  
10 area vacated by the eastward movement of the old 2001 13<sup>th</sup> District. Once again, this is  
11 why a thorough examination of the entire new 2011 Plan, in relation to the old 2001 Plan,  
12 is essential to gain a true understanding of the placement of the three new Democrat  
13 districts (1, 4 and 12).  
14  
15

16 15. The history of the configuration of the 13<sup>th</sup> District is important because a  
17 major portion of 1997 District 12 in Guilford County (Greensboro) was moved to District  
18 13 as it was being constructed for the first time in 2001. Much of that same area was  
19 returned back to District 12 as it was redrawn in 2011. This will be discussed in some  
20 detail below.  
21

22 16. After the *Shaw* and *Cromartie* litigation, North Carolina was finally able to  
23 gain federal court approval of 12<sup>th</sup> District configuration (the 1997 Plan which was only  
24 used in 2000 elections). Since passage of the 1997 Plan, the 12<sup>th</sup> District has generally  
25 remained in the same location in the State. The 12th District has been anchored in  
26 Mecklenburg County (Charlotte) and connected to Guilford (Greensboro) and Forsyth

1 (Winston-Salem) Counties through a narrow corridor of VTDs (precincts) running  
2 through Davidson, Rowan and either Iredell (1997) or Cabarrus (2001 and 2011)  
3 Counties.

4 17. The 12<sup>th</sup> District has also presented a geographic challenge to plan drafters  
5 in 2001 and 2011 because it almost bisects the State from north to south. In constructing  
6 the 2011 Plan the four congressional districts generally to the west of District 12 had to  
7 balance their populations by having some of them traverse through the gap between the  
8 northern end of District 12 and the northern border of North Carolina (using northern  
9 Forsyth County and Stokes County) or a 2-mile-or-less gap between the southern end of  
10 District 12 and the southern border of North Carolina in Mecklenburg County (See Maps 5  
11 and 6).  
12

13 18. The corridor connecting portions of the 12<sup>th</sup> District in Forsyth and Guilford  
14 Counties with Mecklenburg County, running through Cabarrus, Davidson and Rowan  
15 Counties was also shifted to the southeast, in the 2011 Plan adding 87,386 persons to  
16 2011 District 5.  
17

18 19. The placement of the borders of Districts 5, 8, 9 and 10 determined the  
19 configuration of District 12 in both the 2001 and 2011 Plans, just as the need to construct  
20 a Democrat 12<sup>th</sup> District running from Guilford/Forsyth to Mecklenburg shaped Districts  
21 5, 8, 9 and 10.  
22

23 20. Table 1 contains the populations of the 12<sup>th</sup> Congressional District located  
24 in each county in the last three enacted versions of the District. The populations are given  
25 in terms of 2010 Decennial Census total population.  
26



1           21.     The need to increase GOP voting strength in the 9<sup>th</sup> Congressional District in  
2 the 2011 Plan required the 9<sup>th</sup> to gain additional population in both Union and Iredell  
3 Counties, and be withdrawn entirely from Gaston County. At the same time, District 9  
4 needed to be somewhat reconfigured in Mecklenburg County. Congressional District 8  
5 was also substantially withdrawn from Mecklenburg County, dropping its population in  
6 Mecklenburg County from 122,764 in the 2001 Plan to 17,572 in the 2011 Plan. This  
7 resulted, along with other substantial changes in the configuration of the 2011 8<sup>th</sup> District,  
8 in an increase in GOP voting strength in the 2011 8<sup>th</sup> District in comparison to the 2001  
9 version of the District. The extra population available from reconfiguration of the 8<sup>th</sup>  
10 District in Mecklenburg County was then placed in the only other available district, which  
11 was the 2011 12<sup>th</sup> District. These changes can be seen on Maps 5 and 6.  
12

13           22.     In order to create the reconfigured 2011 6<sup>th</sup> District, Surrey and Stokes  
14 Counties, along with the portion of Rockingham County contained in the 2001 5<sup>th</sup> District,  
15 were moved into the 2011 6<sup>th</sup> District. But in order to create sufficient GOP strength in  
16 the 2011 6<sup>th</sup> District, the highly Democrat VTDs in Guilford County from the 2001 13<sup>th</sup>  
17 District were moved into the 2011 12<sup>th</sup> District adding an additional 49,674 persons to  
18 the portion of the 2011 12<sup>th</sup> District located in Guilford County (See Table 1).  
19

20           23.     To balance the 49,674 persons added to the 2011 District 12 in Guilford  
21 County, and the 98,960 persons added to 2011 12<sup>th</sup> District in Mecklenburg County (to  
22 improve the GOP voting strength in 2011 Districts 8 and 9), 90,954 persons were  
23 removed from the 2001 12<sup>th</sup> District in Forsyth County and placed in the 2011 5<sup>th</sup> District.  
24 Then 18,601 persons were removed from the 2001 12<sup>th</sup> District in Cabarrus, Davidson  
25 and Rowan Counties and also moved into the 2011 5<sup>th</sup> District. Only very heavily  
26

1 Democrat VTDs in Forsyth County were left in the 2011 12<sup>th</sup> District (See Table 1 for the  
2 population shifts).

3 24. The reason that a review of the shifts between districts in the 2001 Plan  
4 and the 2011 Plan is essential to an analysis of the 2011 12<sup>th</sup> District is that the  
5 boundaries of the present 12<sup>th</sup> Congressional District were determined by the  
6 requirements of one-person, one vote and political policy decisions. These shifts were not  
7 determined by race. Map 9 contains maps of the 1997, 2001, and 2011 versions of the  
8 12<sup>th</sup> District. Map 10 shows the shifts in territory between the 2001 and 2011 12<sup>th</sup>  
9 Congressional Districts. Table 4 accompanies Map 10 and shows the populations of the  
10 areas shifted between the 2001 and 2011 versions of the 12<sup>th</sup> Congressional District.  
11

12 25. In line with the *Cromartie* decisions of the United States Supreme Court, the  
13 GOP majority in the General Assembly treated the 12<sup>th</sup> Congressional District as a political  
14 district and not as a Voting Rights Act district. What has upset Plaintiffs is that the GOP's  
15 2011 political goals vis-à-vis the redistricting of the 12<sup>th</sup> District, and the districts  
16 surrounding it, were diametrically opposite from those the Democrats would have acted  
17 upon if they were drafting the new congressional map in 2011.  
18

19 26. Another factor that dispels Plaintiffs' contention that the 2011 12<sup>th</sup>  
20 District's configuration was primarily motivated by race is demonstrated by Table 3. This  
21 table indicates that, when compared to the 2001 12<sup>th</sup> District, the gain in Democrat  
22 election strength is greater than the gain in the percentage of adult total African-American  
23 population. The 2001 demographic makeup of the 12<sup>th</sup> District, measured in terms of the  
24 2010 Decennial Census, is 43.77% 18+ Total Black Population, while the comparable  
25 figure for the 2011 12<sup>th</sup> District is 50.66%, an increase of 6.89%. The 2001 12<sup>th</sup> District,  
26

1 measured in terms of the two-party vote in 2008 Presidential General Election was  
2 70.75% for Obama, while the comparable figure for the 2011 12<sup>th</sup> District was 78.52%, an  
3 increase of 7.77%. This increase in the political vote was 0.88% higher than the gain in  
4 Adult Total Black population.

5 27. The political goal of the Republican-controlled General Assembly in drafting  
6 the 2011 Plan was to place as many areas of Democrat voting strength in the 2011 12<sup>th</sup>  
7 District as possible to increase the GOP voting strength in all the surrounding GOP-held  
8 districts. To the GOP majority, the configuration of the new 12<sup>th</sup> District was all about  
9 politics, not race.  
10

11 28. Another issue covered by Plaintiffs' attorneys in my trial testimony in  
12 *Dickson, et al. v. Rucho, et al* on June 5, 2013 and also in my deposition in this case on May  
13 6, 2014, was the configuration of the 2011 12<sup>th</sup> District in Guilford County. Map 11  
14 contains outline maps of the 1997, 2001 and 2011 versions of the 12<sup>th</sup> District in Guilford  
15 County. Maps 12, 13, and 14 are detailed maps of the Guilford County Portion of the 12<sup>th</sup>  
16 District for each of these individual plans (1997, 2001 and 2011). Map 15 is a detailed  
17 map of 2001 District 13 in Guilford County. The configuration of the 2001 13<sup>th</sup> District is  
18 important because, as discussed in paragraph 13 above, the strong Democrat VTDs in the  
19 2001 13<sup>th</sup> District were moved to the 12<sup>th</sup> District in the 2011 Plan.  
20  
21

22 29. The 2011 12<sup>th</sup> Congressional District in Guilford County was constructed  
23 using portions of the 1997 12<sup>th</sup> District as well of portions of the 2001 12<sup>th</sup> and 2001 13<sup>th</sup>  
24 Districts. These three districts were all heavily Democratic. The 2001 13<sup>th</sup> District, in  
25 particular, gained a key portion of its Democrat strength by incorporating highly  
26 Democrat VTDs from the 1997 12<sup>th</sup> District. Map 16 indicates the portions of these three

1 districts which were incorporated into the new 2011 12<sup>th</sup> District in Guilford County. To  
2 repeat, the GOP policy goal behind the location of the 2011 12<sup>th</sup> District in Guilford County  
3 was to remove as many strong Democrat VTDs from the remainder of the county. This  
4 was necessary because the remainder of the county was being placed in the new 2011 6<sup>th</sup>  
5 District. The new 2011 6<sup>th</sup> District was intended to be a GOP-leaning district. It would not  
6 have sufficient GOP voting strength if the portion of Guilford County placed in it was too  
7 Democratic. It would have been preferable to move additional Democrat VTDs from  
8 Guilford into the new 12<sup>th</sup> District to further increase the GOP strength of the 2011 6<sup>th</sup>  
9 District. However, this adjustment was not politically advantageous to the Republicans'  
10 other political goals vis-à-vis the new 2011 5<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Districts.

12 30. I have included three more maps which show the relationship between the  
13 1997 and 2001 12<sup>th</sup> Congressional Districts and the 2011 12<sup>th</sup> Congressional District.  
14 Map 17 shows the portions of the 6<sup>th</sup> and 12<sup>th</sup> Districts from the 1997 Plan which are  
15 contained in the new 2011 12<sup>th</sup> Congressional District. Map 18 shows the configuration of  
16 both the 1997 and 2011 12<sup>th</sup> Congressional Districts in Guilford County. Map 19 shows  
17 the portions of the 6<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Districts from the 2001 Plan which are contained in  
18 the new 2011 12<sup>th</sup> Congressional District in Guilford County. These three maps all relate  
19 to Map 16.  
20

21 31. Plaintiffs contend that the increase in the adult total African-American  
22 percentage by 6.89% from 43.77% in the baseline 2001 12<sup>th</sup> Congressional District to  
23 50.66% in the newly enacted 2011 12<sup>th</sup> Congressional District proves that the map-  
24 drafters were primarily motivated by racial considerations. They imply that because the  
25 Democrat, African-American incumbent continued to get reelected in the 43.77% adult  
26

1 total -American 2001 12th District through the preceding decade of elections (2002  
2 through 2010), it was impermissible to increase the adult total African-American  
3 percentage in the new 12<sup>th</sup> District to 50.66%. They ignore the fact that the Democratic  
4 presidential voting strength increased by 7.77% from 70.75% to 78.52%, in comparison  
5 to the 6.89% increase in the adult total African-American voting age population.

6  
7 32. After the 2011 Plan had been drawn using political data to construct the  
8 12<sup>th</sup> District, it would have been possible for the map to have given a final adjustment to  
9 reduce the adult total African-American percentage in the new 12<sup>th</sup> District back down to  
10 43.77% baseline level (the 2010 Decennial Census population of the 2001 12<sup>th</sup> District) by  
11 increasing the adult total African-American percentage by an average of 1.38% in each of  
12 the 5 surrounding GOP-leaning districts (Districts 2, 5, 6, 8, and 9). This, of course, would  
13 have been setting a racial quota, a process which the drafters of the new map were  
14 instructed to avoid by the Chairmen of the General Assembly's Redistricting Committees.  
15 The fact remains that the goal of increasing the Democratic voting strength in the 12<sup>th</sup>  
16 District to as high a level as possible, was employed to maximize GOP advantage in the  
17 surrounding districts. Nonetheless, the use of only election information resulted in a  
18 similar, but somewhat lower increase in the adult total African-American percentage in  
19 the new 12<sup>th</sup> District. This is because the highest areas of Democrat voting strength  
20 happen to be in the stronger minority VTDs in this area of the State. The Supreme Court  
21 has noted this fact in the *Cromartie* decisions.

22  
23  
24 33. Just to underscore this point, I constructed a new 12<sup>th</sup> District Plan, using  
25 the same incumbent residences with a different set of political priorities. Instead of being  
26 concerned about the optimum Republican configuration of the four surrounding districts



1 (5, 6, 8 and 9), I simply maximized the 2008 Obama vote by selecting the VTDs with the  
2 highest 2008 Obama vote percentages to include in the sample 12<sup>th</sup> District. This plan  
3 was crafted with a full set of 13 districts with equal population. District 12 in this plan  
4 includes a few VTDs that were split to reach out to VTDs with high Obama percentages  
5 and to avoid placing incumbents in the same district. Several precincts were also split to  
6 improve compactness, and some were split to equalize populations. I called this the  
7 "Maximum Obama Vote Plan".  
8

9 34. When the data for the Maximum Obama Vote Plan 12<sup>th</sup> District was  
10 compared to the 2011 Enacted Plan 12<sup>th</sup> District, both the adult total African-American  
11 Percentage and Obama Vote Percentage increased. There was a 0.07% increase in the  
12 adult total African-American Voting Age percentage and a concurrent 1.03% increase in  
13 the Obama vote percentage. Once again this indicates that these two percentages are  
14 closely linked together and that any significant increase in the Democrat strength in the  
15 12<sup>th</sup> district resulted in a concurrent increase in the minority percentage (See Table 5).  
16

17 35. I have included Map 20 which contains outline maps comparing both the  
18 2011 and Maximum Obama Vote Plans as well as Maps 21 through 26 which are detailed  
19 county-by-county maps of the Maximum Obama Vote Plan. On the last six detailed maps  
20 the precincts are colored by the McCain percentage, which was actually used when  
21 drafting the plan. It is the inverse of the Obama Percentage. The "hotter" the color, the  
22 more strongly the VTD voted for President Obama in the 2008 General Election.  
23

24 36. For all these reasons, Dr. Ansolabehere's analyses are not sufficient to prove  
25 that race was the predominant factor in the creation of the Rucho-Lewis Congressional 3  
26 Plan because of his lack of a thorough analysis of the new 2011 Plan in its entirety and

1 determination of how the districts in the 2001 Plan were redrawn to create the new 2011  
2 Plan.

3 37. It is also my conclusion that all the relevant evidence can only result in the  
4 conclusion that politics was the overriding factor and motivation in the creation of the  
5 2011 Congressional Plan.  
6

7  
8 Stated and signed under penalty of perjury on June 4, 2015.

9  
10   
11 Thomas Brooks Hofeller, Ph.D.  
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**TABLE 1**  
**North Carolina 12th Congressional District**  
**Distribution Among Constituent Counties**  
Using 2010 Decennial Census Data

| County             | 1997 Plan |         | 2001 Plan |         | 2011 Plan |         | Obama Max Vote |         |
|--------------------|-----------|---------|-----------|---------|-----------|---------|----------------|---------|
| Guilford           | 155,056   | 19.83%  | 146,329   | 19.87%  | 196,003   | 26.72%  | 192,554        | 26.25%  |
| Forsyth            | 59,278    | 7.58%   | 143,216   | 19.45%  | 52,262    | 7.13%   | 86,989         | 11.86%  |
| Mecklenburg        | 377,530   | 48.29%  | 283,419   | 38.49%  | 382,379   | 52.13%  | 356,807        | 48.64%  |
| Larger Counties    | 591,864   | 75.70%  | 572,964   | 77.81%  | 630,644   | 85.98%  | 636,350        | 86.76%  |
|                    |           |         |           |         |           |         |                |         |
| Cabarrus           | -         | 0.00%   | 19,345    | 2.63%   | 19,345    | 2.64%   | 19,345         | 2.64%   |
| Davidson           | 91,241    | 11.67%  | 82,795    | 11.24%  | 40,869    | 5.57%   | 40,869         | 5.57%   |
| Iredell            | 62,284    | 7.97%   | -         | 0.00%   | -         | 0.00%   | -              | 0.00%   |
| Rowan              | 36,466    | 4.66%   | 61,242    | 8.32%   | 42,641    | 5.81%   | 36,935         | 5.04%   |
|                    |           |         |           |         |           |         |                |         |
| Connector Counties | 189,991   | 24.30%  | 163,382   | 22.19%  | 102,855   | 14.02%  | 97,149         | 13.24%  |
| Total District     | 781,855   | 100.00% | 736,346   | 100.00% | 733,499   | 100.00% | 733,499        | 100.00% |

Source: United States Census Bureau - 2010 Redistricting Data File



**TABLE 2**  
**COUNTY OF MECKLENBURG**  
**POPULATION OF COUNTY IN CONGRESSIONAL DISTRICTS**  
 In Terms of 2010 Decennial Census Total Population

| Year of Enactment | 12th CD |        | 9th CD  |        | 8th CD  |        | Total   |
|-------------------|---------|--------|---------|--------|---------|--------|---------|
| 1997              | 377,530 | 41.05% | 542,098 | 58.95% | -       | 0.00%  | 919,628 |
| 2001              | 283,419 | 30.82% | 513,445 | 55.83% | 122,764 | 13.35% | 919,628 |
| 2011              | 382,379 | 41.58% | 519,677 | 56.51% | 17,572  | 1.91%  | 919,628 |

Source: 2010 Redistricting Data File - U. S. Bureau of the Census

**TABLE 3**  
**COMPARISON OF 2010 CENSUS DATA AND 2008 ELECTION DATA**  
**North Carolina 2001 and 2011 12th Congressional Districts**

| Year of Plan | 18+ Total<br>Population | 18+ Total<br>Blk<br>Population | Pct. 18+<br>Total Blk<br>Population | Total Two-<br>Party Vote<br>2008 Pres. | 2008<br>Obama Vote | Pct. 2008<br>Obama Vote |
|--------------|-------------------------|--------------------------------|-------------------------------------|--|--------------------|-------------------------|
| 2011 12th CD | 544,436                 | 275,812                        | 50.66%                              | 291,196                                | 228,644            | 78.52%                  |
| 2001 12th CD | 550,970                 | 241,158                        | 43.77%                              | 304,843                                | 215,664            | 70.75%                  |
| 2011 - 2001  |                         |                                | 6.89%                               |  |                    | 7.77%                   |

Source: U.S. Census Bureau 2010 Redistricting Data File and N.C. General Assembly Information Systems Division

# TABLE 4

## STATE OF NORTH CAROLINA

### RACIAL COMPARISON OF 12TH CONGRESSIONAL DISTRICT

2011 ENACTED 12TH DISTRICT COMPARED TO 2001 ENACTED 12TH DISTRICT

SHOWING AREAS COMMON TO BOTH, REMOVED FROM 2011 DISTRICT AND PORTIONS ADDED TO 2011 DISTRICT

| Area Examined                              | 2010 Census Data |          |          | 2008 General Election Data |                         |             |         |
|--|------------------|----------|----------|----------------------------|-------------------------|-------------|---------|
|  | TPOP             | 18+ TPOP | 18+ TBLK | % 18+ TBLK                 | Total Obama plus McCain | Total Obama | % Obama |
| Area in New and Old 12th                   | 494,530          | 368,016  | 199,534  | 54.22%                     | 200,925                 | 160,587     | 79.92%  |
| Area Only in Old 12th                      | 241,909          | 183,019  | 41,671   | 22.77%                     | 103,956                 | 55,112      | 53.01%  |
| Area Only in New 12th                      | 238,988          | 176,434  | 76,282   | 43.24%                     | 90,279                  | 68,063      | 75.39%  |
| Percent Added Area Minus Pct. Removed Area |                  |          |          | 20.47%                     |                         |             | 22.38%  |

### Population Shift between Old and New 12th Congressional District by County

| County         | New     | Old     | New-Old |
|----------------|---------|---------|---------|
| Guilford       | 196,003 | 146,329 | 49,674  |
| Forsyth        | 52,262  | 143,216 | -90,954 |
| Davidson       | 40,869  | 82,795  | -41,926 |
| Rowan          | 42,641  | 61,242  | -18,601 |
| Cararrus       | 19,345  | 19,345  | 0       |
| Mecklenburg    | 382,379 | 283,419 | 98,960  |
| Total          | 733,499 | 736,346 | -2,847  |
| Corridor Total | 102,855 | 163,382 | -60,527 |

**TABLE 5**  
**2011 Enacted Congressional Plan**

| District | 18+ __Pop | 18+ Non-Hisp White |         | 18+ AP Blk |         | President 2008  |         |               |         | 18+ Hispanic   |        |         |
|----------|-----------|--------------------|---------|------------|---------|-----------------|---------|---------------|---------|----------------|--------|---------|
|          |           | Number             | Percent | Number     | Percent | Total Two-Party | Obama   | Percent Obama | McCain  | Percent McCain | Number | Percent |
| 1        | 561,408   | 216,272            | 38.52%  | 295,606    | 52.65%  | 331,045         | 234,808 | 70.93%        | 96,237  | 29.07%         | 36,866 | 6.57%   |
| 2        | 537,940   | 378,349            | 70.33%  | 89,021     | 16.55%  | 301,403         | 131,886 | 43.76%        | 169,517 | 56.24%         | 46,407 | 8.63%   |
| 3        | 571,220   | 422,725            | 74.00%  | 105,182    | 18.41%  | 306,308         | 132,741 | 43.34%        | 173,567 | 56.66%         | 30,148 | 5.28%   |
| 4        | 564,911   | 298,294            | 52.80%  | 179,106    | 31.71%  | 338,983         | 246,527 | 72.73%        | 92,456  | 27.27%         | 54,491 | 9.65%   |
| 5        | 567,591   | 451,660            | 79.57%  | 69,013     | 12.16%  | 343,158         | 145,811 | 42.49%        | 197,347 | 57.51%         | 36,050 | 6.35%   |
| 6        | 569,577   | 446,177            | 78.33%  | 84,302     | 14.80%  | 357,806         | 156,417 | 43.72%        | 201,389 | 56.28%         | 24,945 | 4.38%   |
| 7        | 559,822   | 405,992            | 72.52%  | 97,290     | 17.38%  | 322,458         | 135,112 | 41.90%        | 187,346 | 58.10%         | 40,868 | 7.30%   |
| 8        | 547,085   | 365,369            | 66.78%  | 100,017    | 18.28%  | 293,720         | 123,473 | 42.04%        | 170,247 | 57.96%         | 35,989 | 6.58%   |
| 9        | 540,876   | 414,162            | 76.57%  | 66,878     | 12.36%  | 347,104         | 157,700 | 45.43%        | 189,404 | 54.57%         | 35,768 | 6.61%   |
| 10       | 566,474   | 466,711            | 82.39%  | 63,207     | 11.16%  | 330,124         | 140,050 | 42.42%        | 190,074 | 57.58%         | 25,410 | 4.49%   |
| 11       | 581,827   | 522,312            | 89.77%  | 18,791     | 3.23%   | 333,713         | 136,841 | 41.01%        | 196,872 | 58.99%         | 24,310 | 4.18%   |
| 12       | 544,436   | 179,228            | 32.92%  | 275,812    | 50.66%  | 291,196         | 228,644 | 78.52%        | 62,552  | 21.48%         | 65,748 | 12.08%  |
| 13       | 540,681   | 397,074            | 73.44%  | 92,008     | 17.02%  | 361,455         | 164,056 | 45.39%        | 197,399 | 54.61%         | 35,330 | 6.53%   |

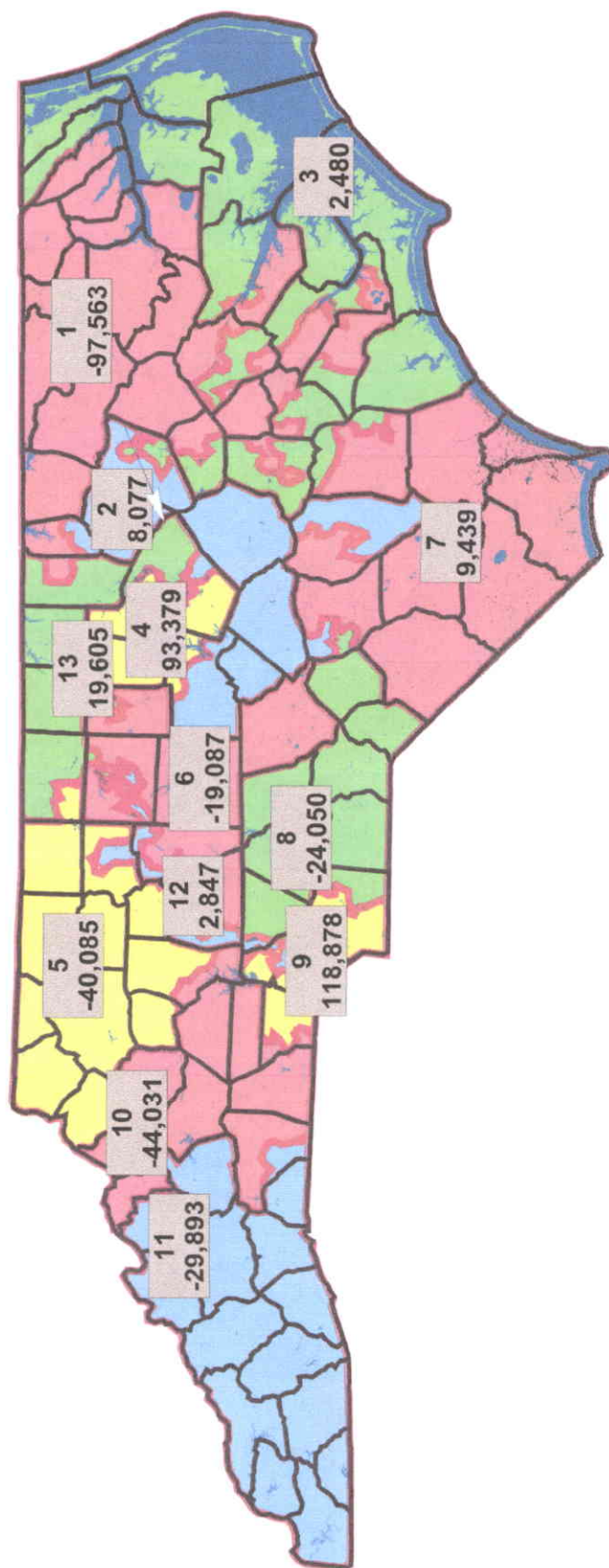
**2011 Congress Maximum Obama Vote**

| District | 18+_Pop | 18+ Non-Hisp White |         | 18+ AP Blk |         | President 2008  |         |               | 18+ Hispanic |                |        |         |
|----------|---------|--------------------|---------|------------|---------|-----------------|---------|---------------|--------------|----------------|--------|---------|
|          |         | Number             | Percent | Number     | Percent | Total Two-Party | Obama   | Percent Obama | McCain       | Percent McCain | Number | Percent |
| 1        | 561,408 | 216,272            | 38.52%  | 295,606    | 52.65%  | 331,045         | 234,808 | 70.93%        | 96,237       | 29.07%         | 36,866 | 6.57%   |
| 2        | 538,141 | 378,966            | 70.42%  | 89,071     | 16.55%  | 301,583         | 132,080 | 43.80%        | 169,503      | 56.20%         | 45,922 | 8.53%   |
| 3        | 571,220 | 422,725            | 74.00%  | 105,182    | 18.41%  | 306,308         | 132,741 | 43.34%        | 173,567      | 56.66%         | 30,148 | 5.28%   |
| 4        | 564,911 | 298,294            | 52.80%  | 179,106    | 31.71%  | 338,983         | 246,527 | 72.73%        | 92,456       | 27.27%         | 54,491 | 9.65%   |
| 5        | 567,924 | 464,165            | 81.73%  | 60,903     | 10.72%  | 346,763         | 140,821 | 40.61%        | 205,942      | 59.39%         | 31,926 | 5.62%   |
| 6        | 566,517 | 439,989            | 77.67%  | 86,730     | 15.31%  | 356,368         | 155,036 | 43.50%        | 201,332      | 56.50%         | 25,326 | 4.47%   |
| 7        | 559,822 | 405,992            | 72.52%  | 97,290     | 17.38%  | 322,458         | 135,112 | 41.90%        | 187,346      | 58.10%         | 40,868 | 7.30%   |
| 8        | 547,716 | 364,187            | 66.49%  | 100,541    | 18.36%  | 292,780         | 123,267 | 42.10%        | 169,513      | 57.90%         | 37,289 | 6.81%   |
| 9        | 540,690 | 407,473            | 75.36%  | 70,525     | 13.04%  | 344,882         | 160,418 | 46.51%        | 184,464      | 53.49%         | 37,733 | 6.98%   |
| 10       | 566,474 | 466,711            | 82.39%  | 63,207     | 11.16%  | 330,124         | 140,050 | 42.42%        | 190,074      | 57.58%         | 25,410 | 4.49%   |
| 11       | 581,827 | 522,312            | 89.77%  | 18,791     | 3.23%   | 333,713         | 136,841 | 41.01%        | 196,872      | 58.99%         | 24,310 | 4.18%   |
| 12       | 546,517 | 180,165            | 32.97%  | 277,273    | 50.73%  | 292,011         | 232,309 | 79.55%        | 59,702       | 20.45%         | 66,711 | 12.21%  |
| 13       | 540,681 | 397,074            | 73.44%  | 92,008     | 17.02%  | 361,455         | 164,056 | 45.39%        | 197,399      | 54.61%         | 35,330 | 6.53%   |

Source: U. S. Census Bureau 2010 Decennial Census and N. C. Legislative Services Department Election Results from State Board of Elections

# MAP 1

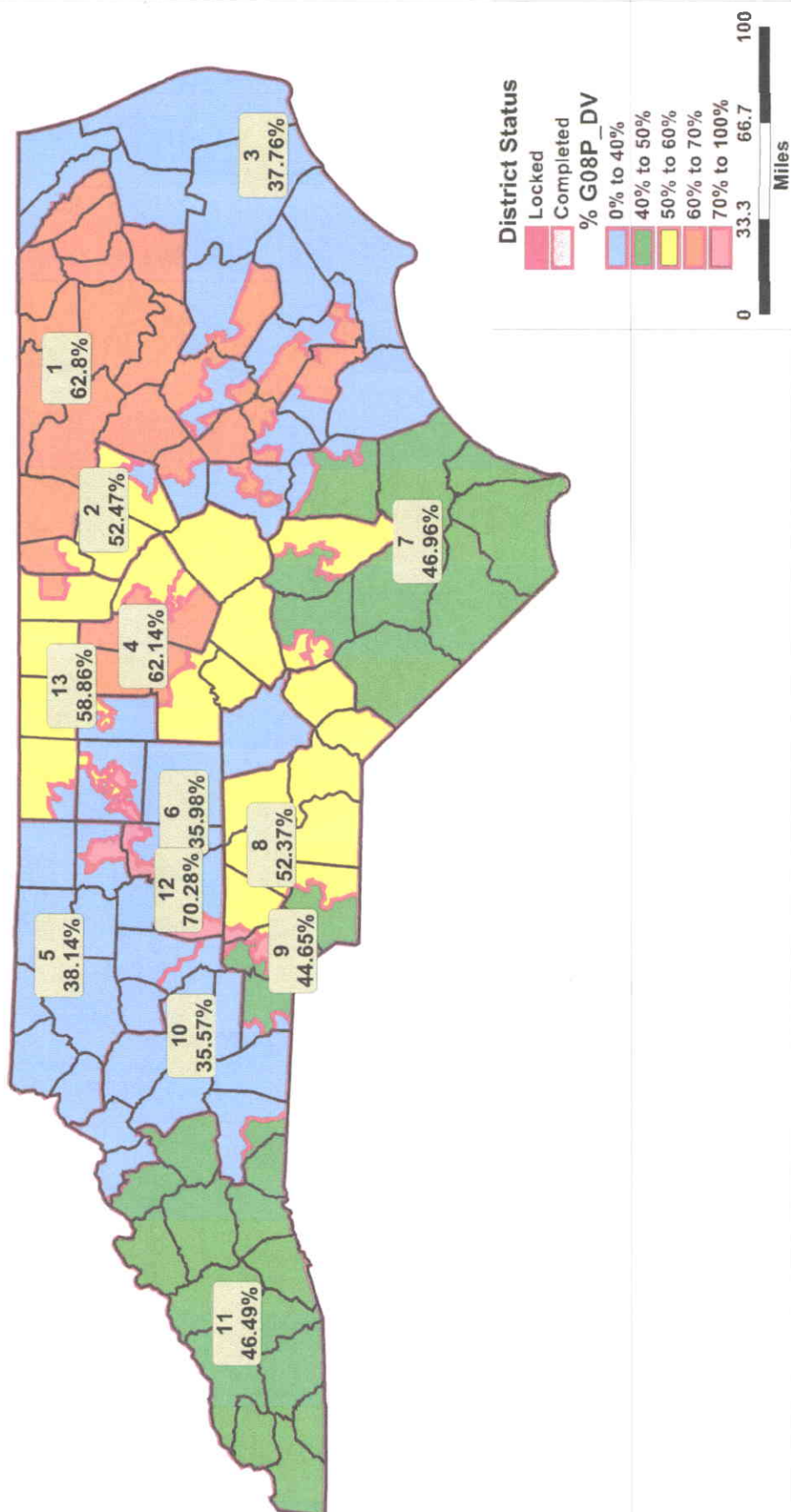
## 2001 CDs Showing 2010 Population Deviations





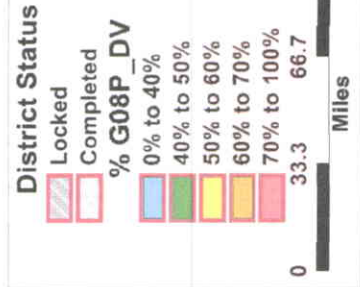
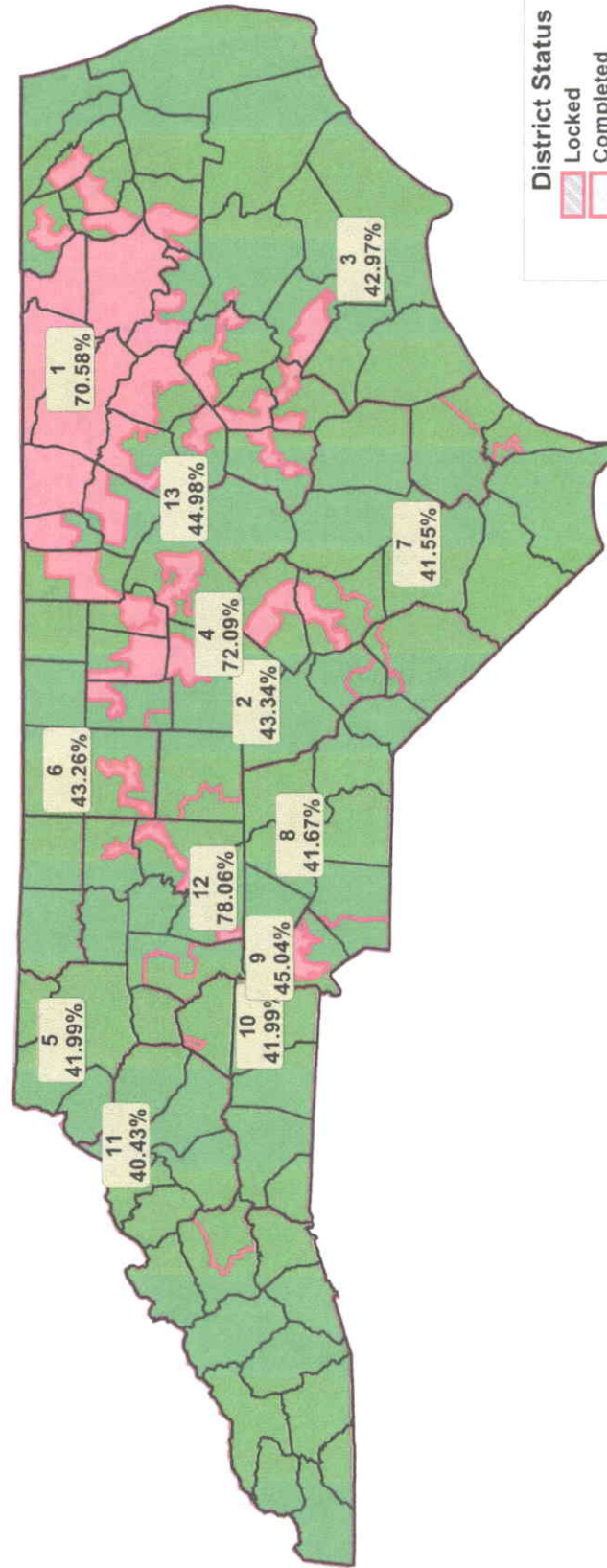
# MAP 2

## 2001 CDs Showing 2008G Obama Percentage



# MAP 3

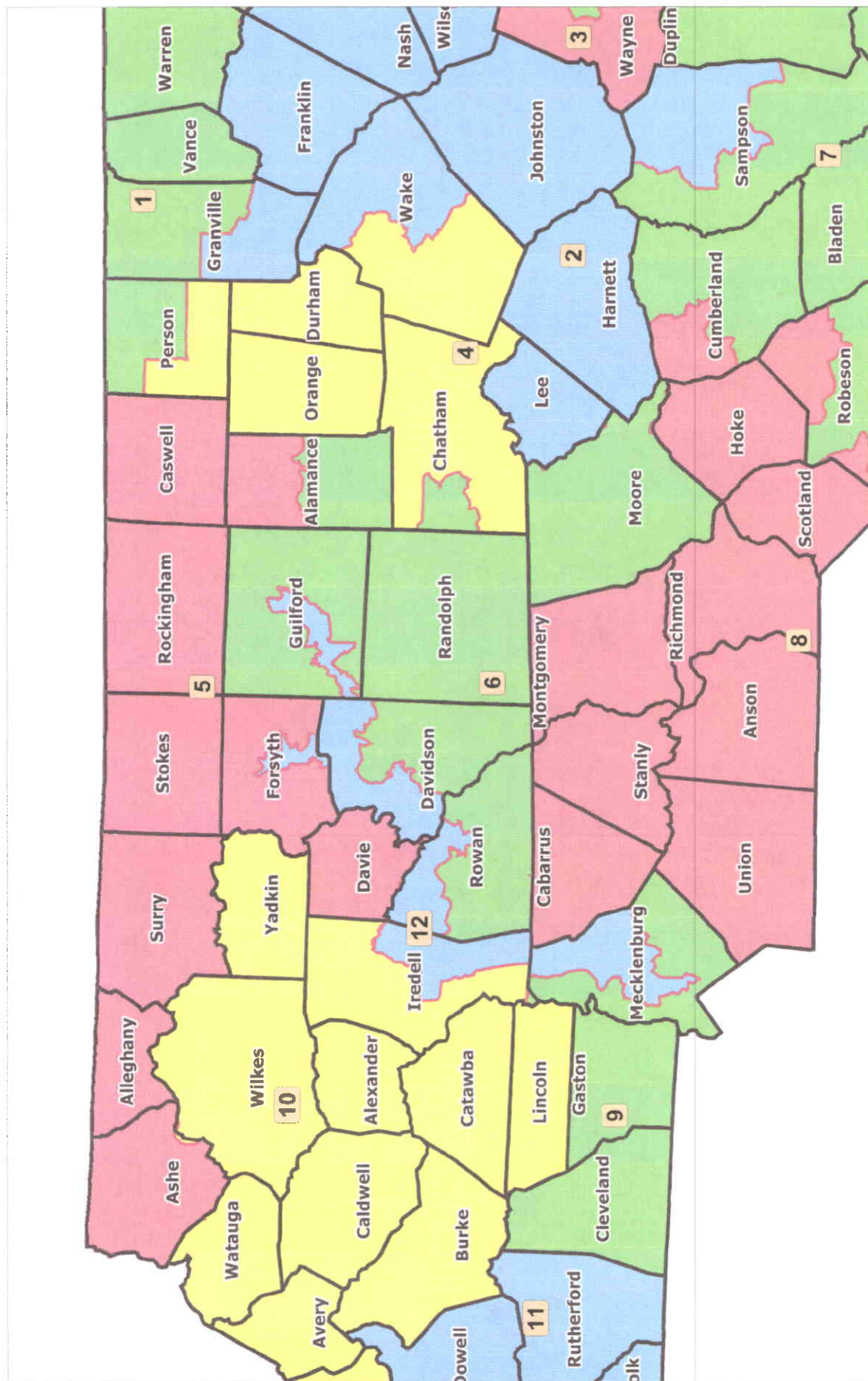
## 2011 CDs Showing 2008G Obama Percentage



# MAP 4

## 1997 North Carolina Congressional Districts

### Central Portion of State

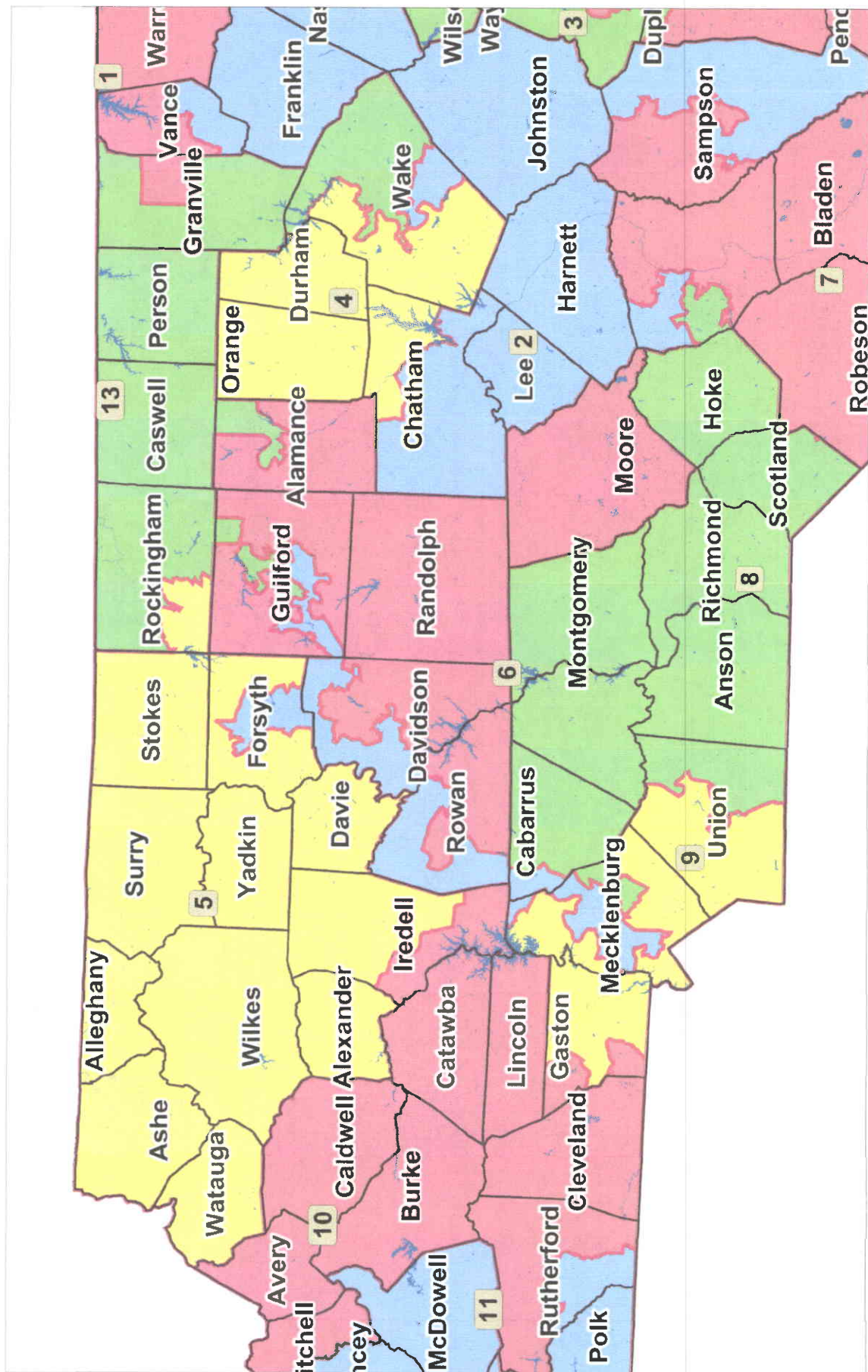




# MAP 5

## 2001 North Carolina Congressional Districts

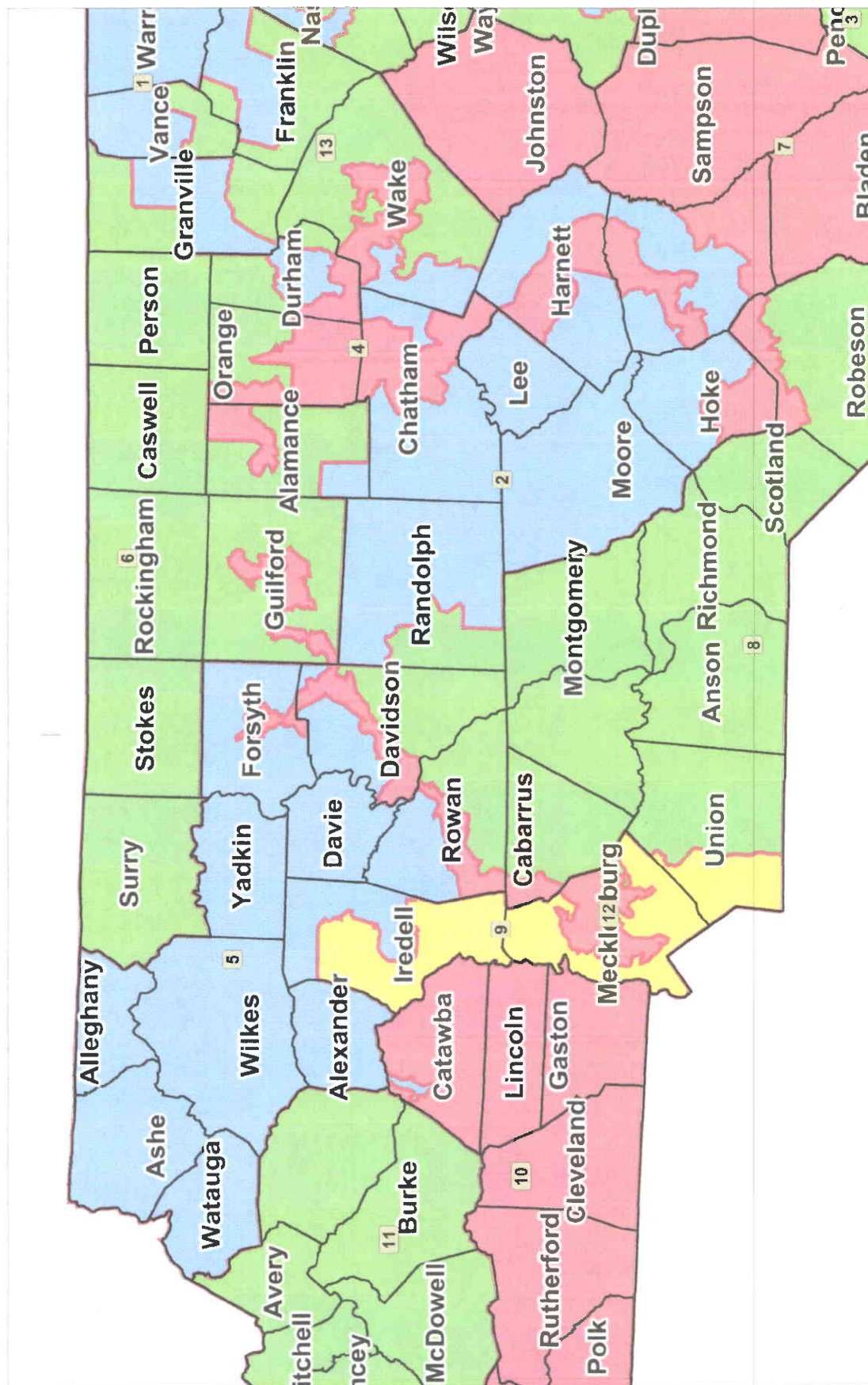
### Central Portion of State



# MAP 6

## 2011 North Carolina Congressional Districts

### Central Portion of State

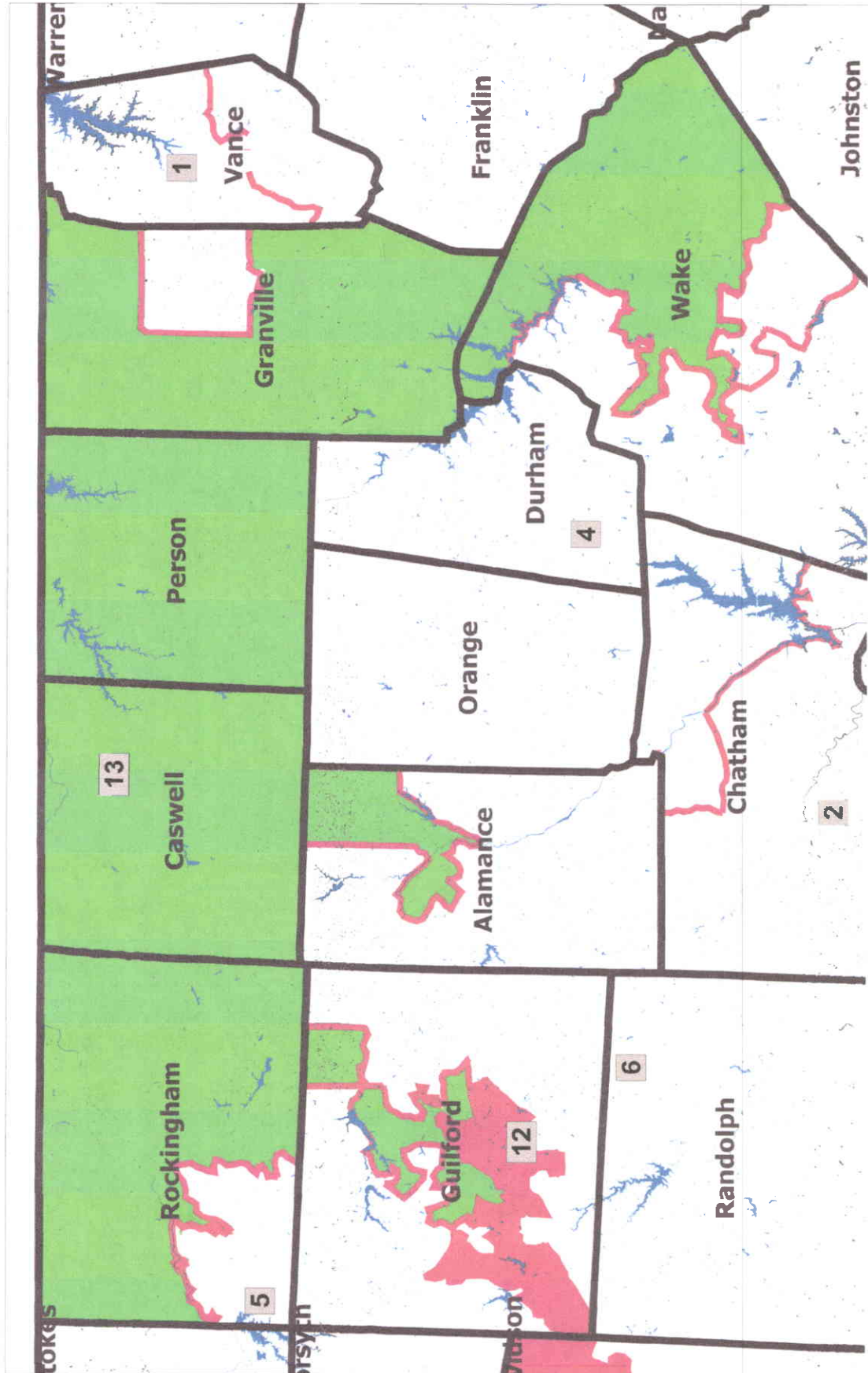




# MAP 7

## 2001 North Carolina Congressional Districts

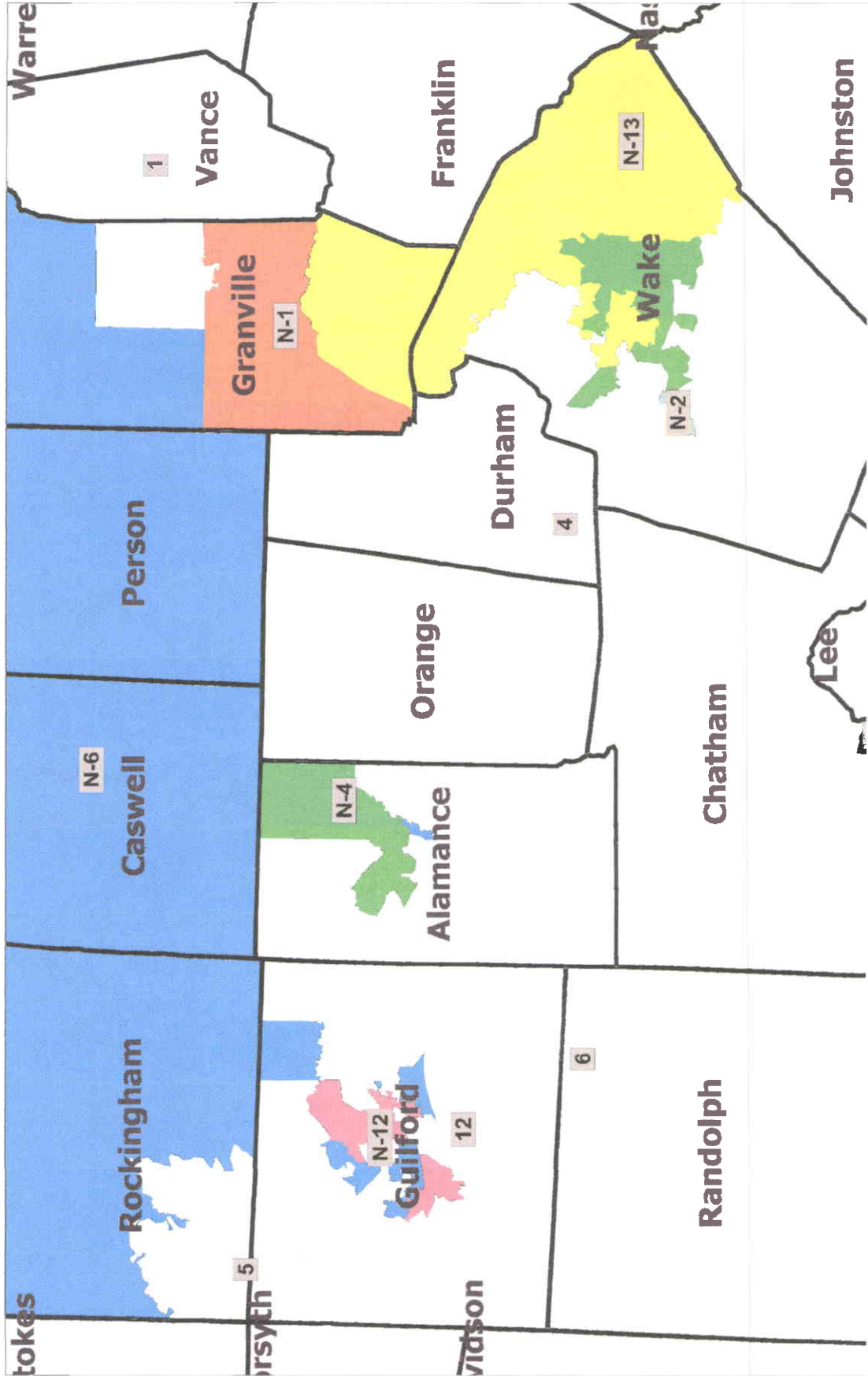
### 13th Congressional District



# MAP 8

## 2001 North Carolina 13th Congressional District

### Showing Portions Placed in 2011 Districts

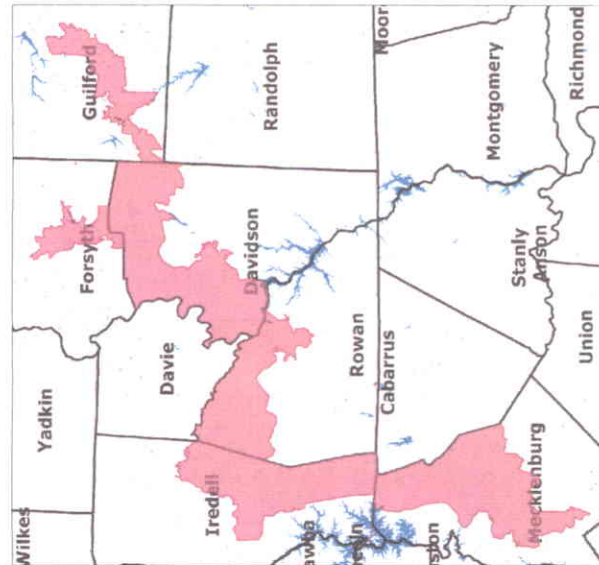


Red to New 12, Blue to New 6, Green to New 4, Yellow to New 13, Orange to New 1, remainder to New 2.

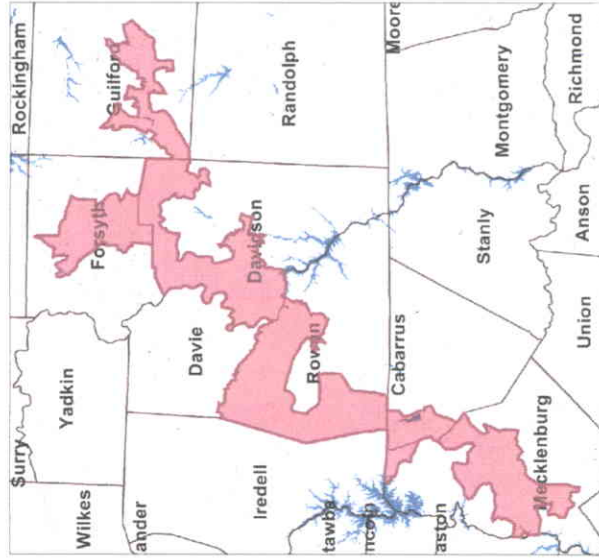
## MAP 9

### Versions of 12th Congressional District Enacted in 1997, 2001 and 2011

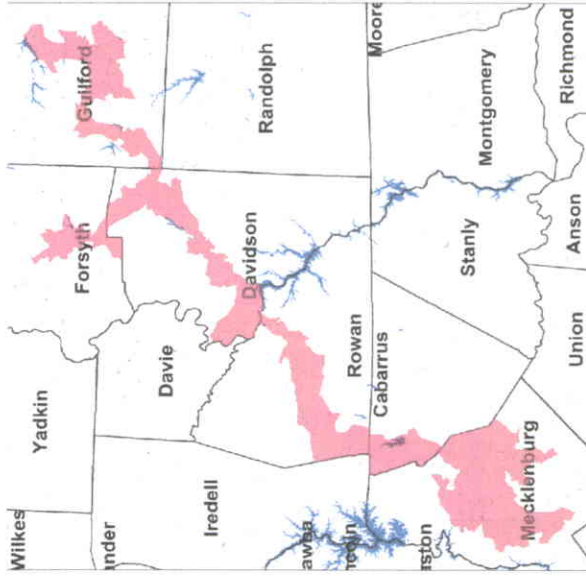
Showing the Entire District



1997 Enacted



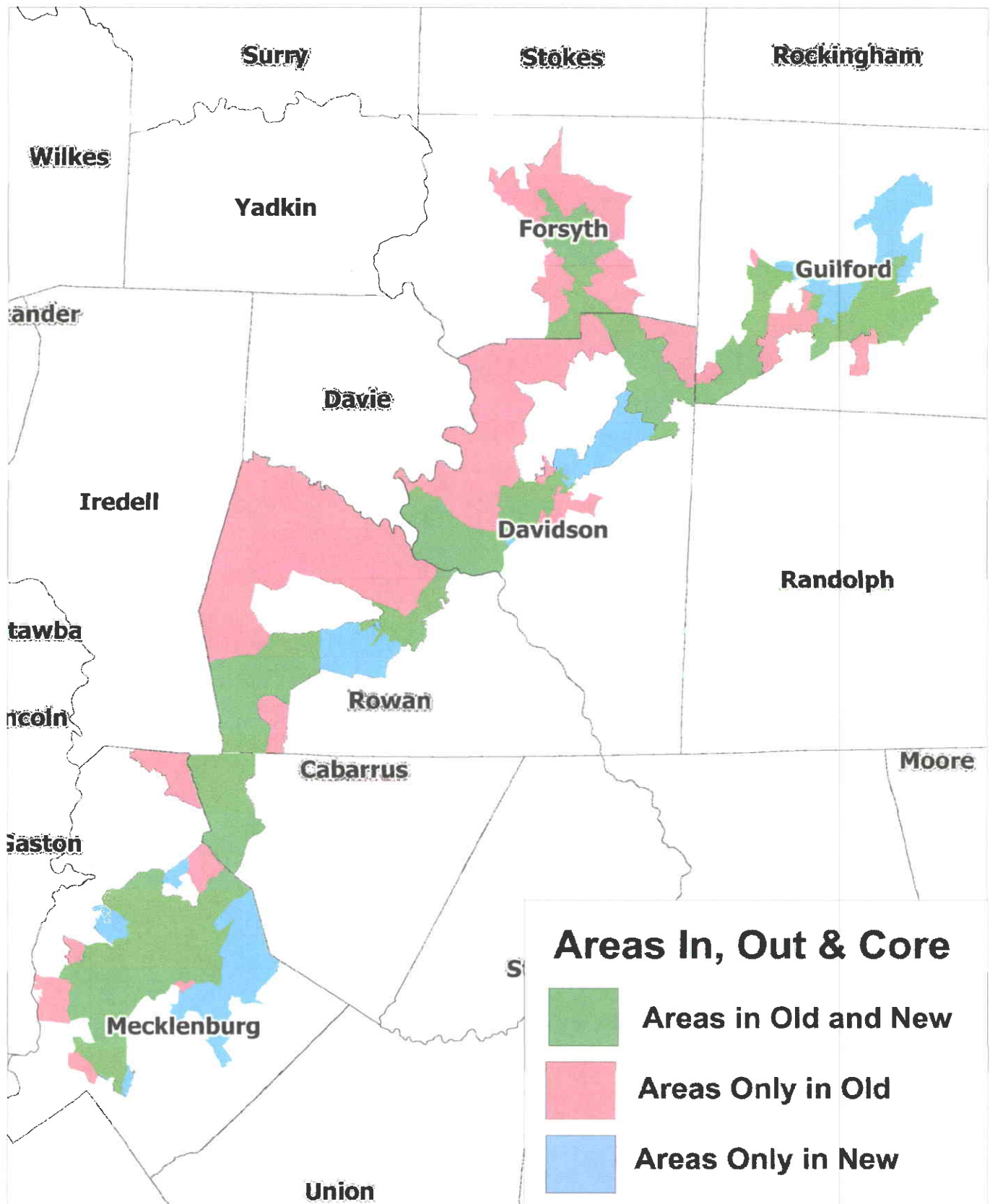
2001 Enacted



2011 Enacted

# MAP 10

## Comparison of 2001 and 2011 12th Congressional District

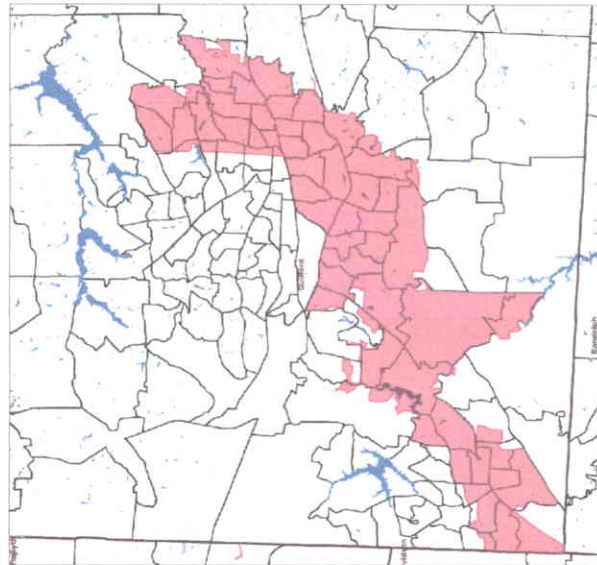




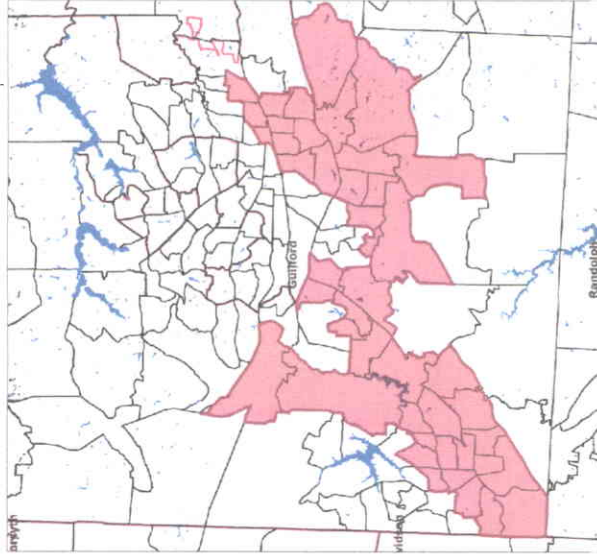
# MAP 11

## Versions of 12th Congressional District Enacted in 1997, 2001 and 2011

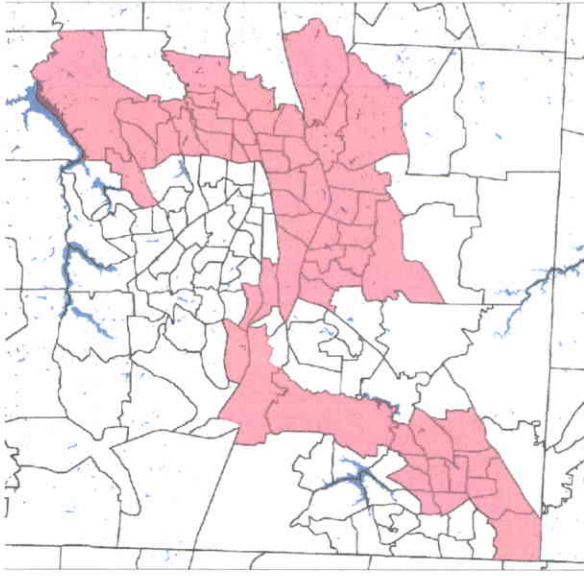
Showing the Guilford County Portion of the District



1997 Enacted

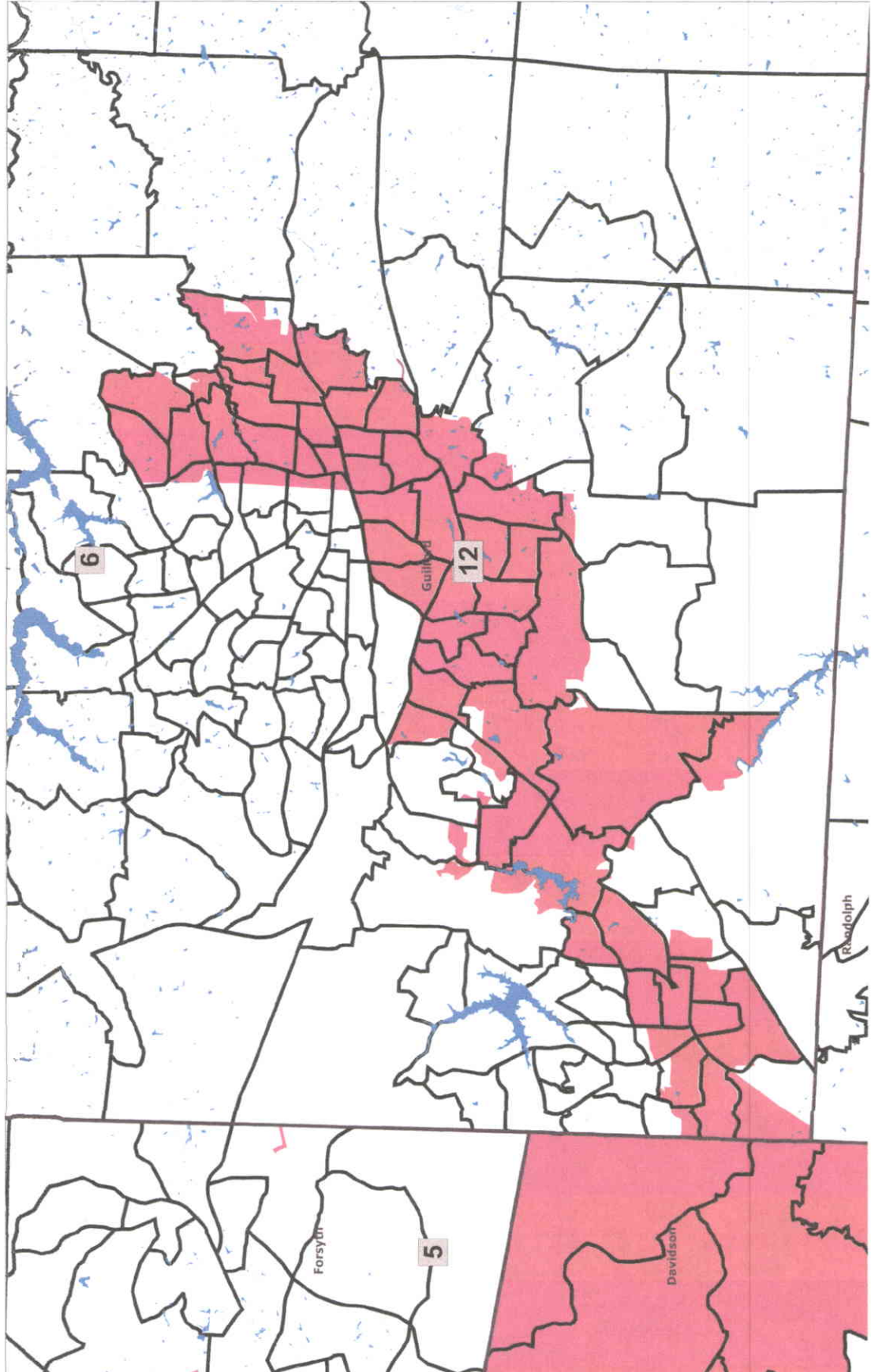


2001 Enacted



2011 Enacted

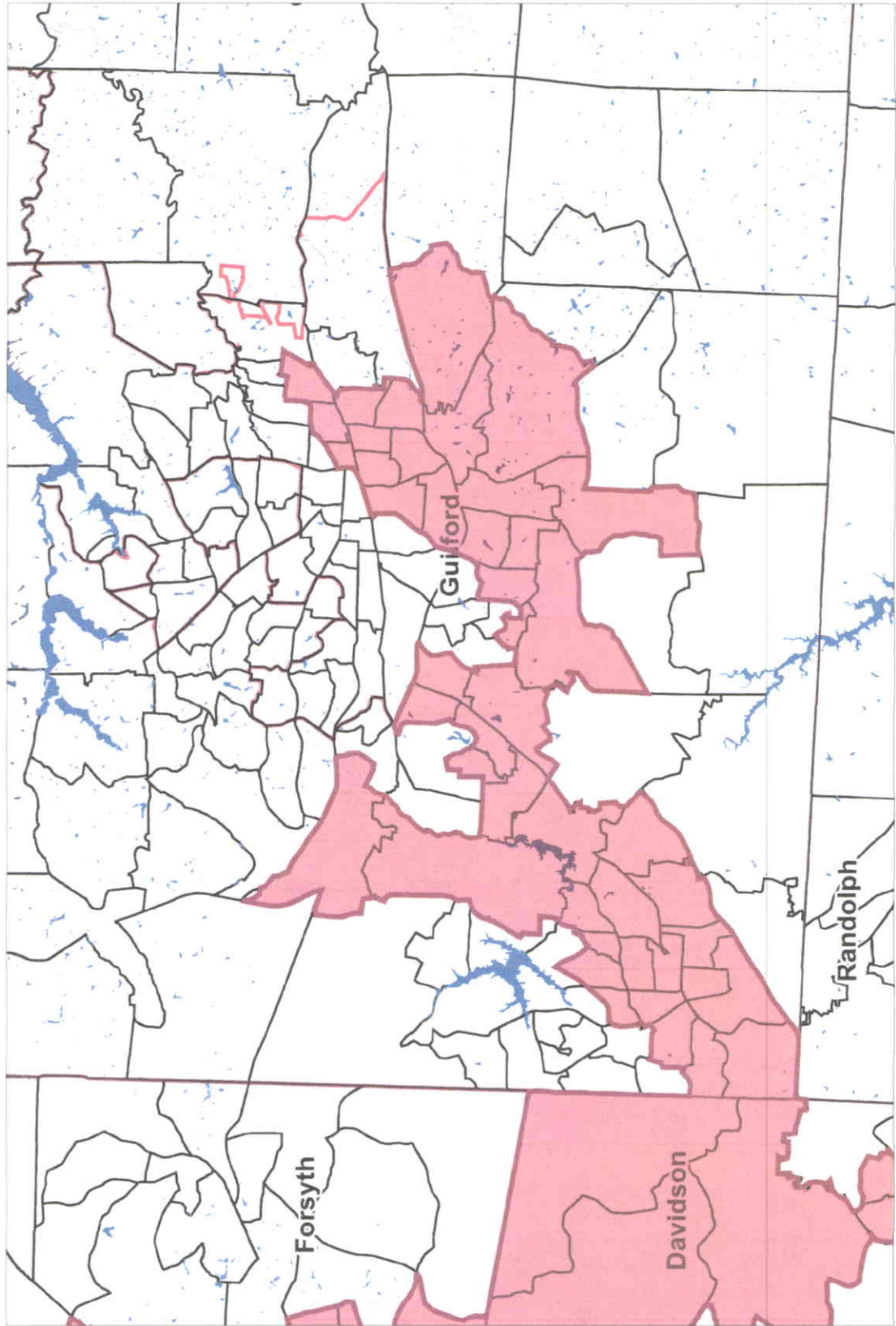
**MAP 12**  
**1997 North Carolina Congressional Districts**  
**CD 12 in Guilford County**





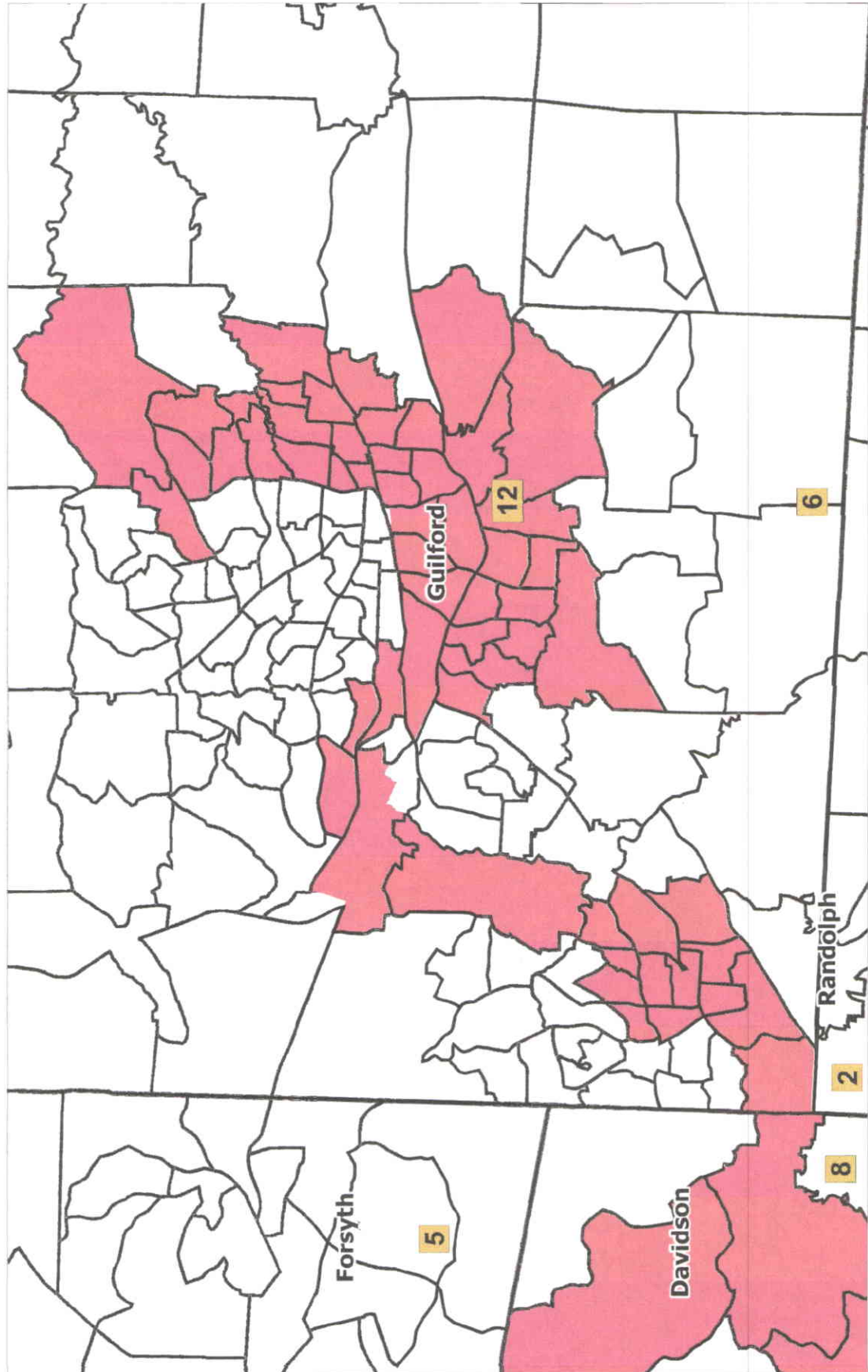
# MAP 13

## 2001 North Carolina Congressional Districts CD 12 in Guilford County



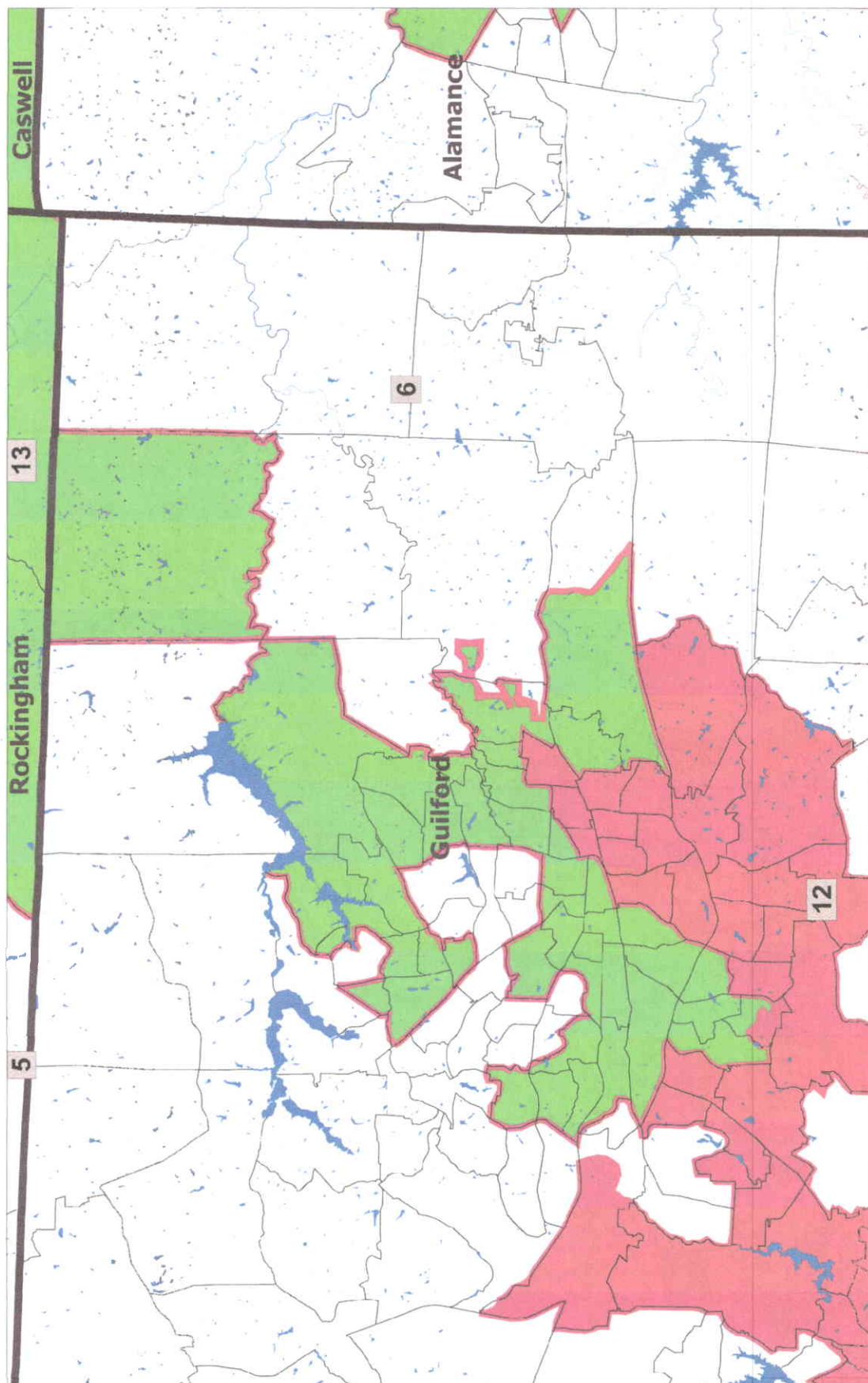
# MAP 14

## 2011 North Carolina Congressional Districts CD 12 in Guilford County



# MAP 15

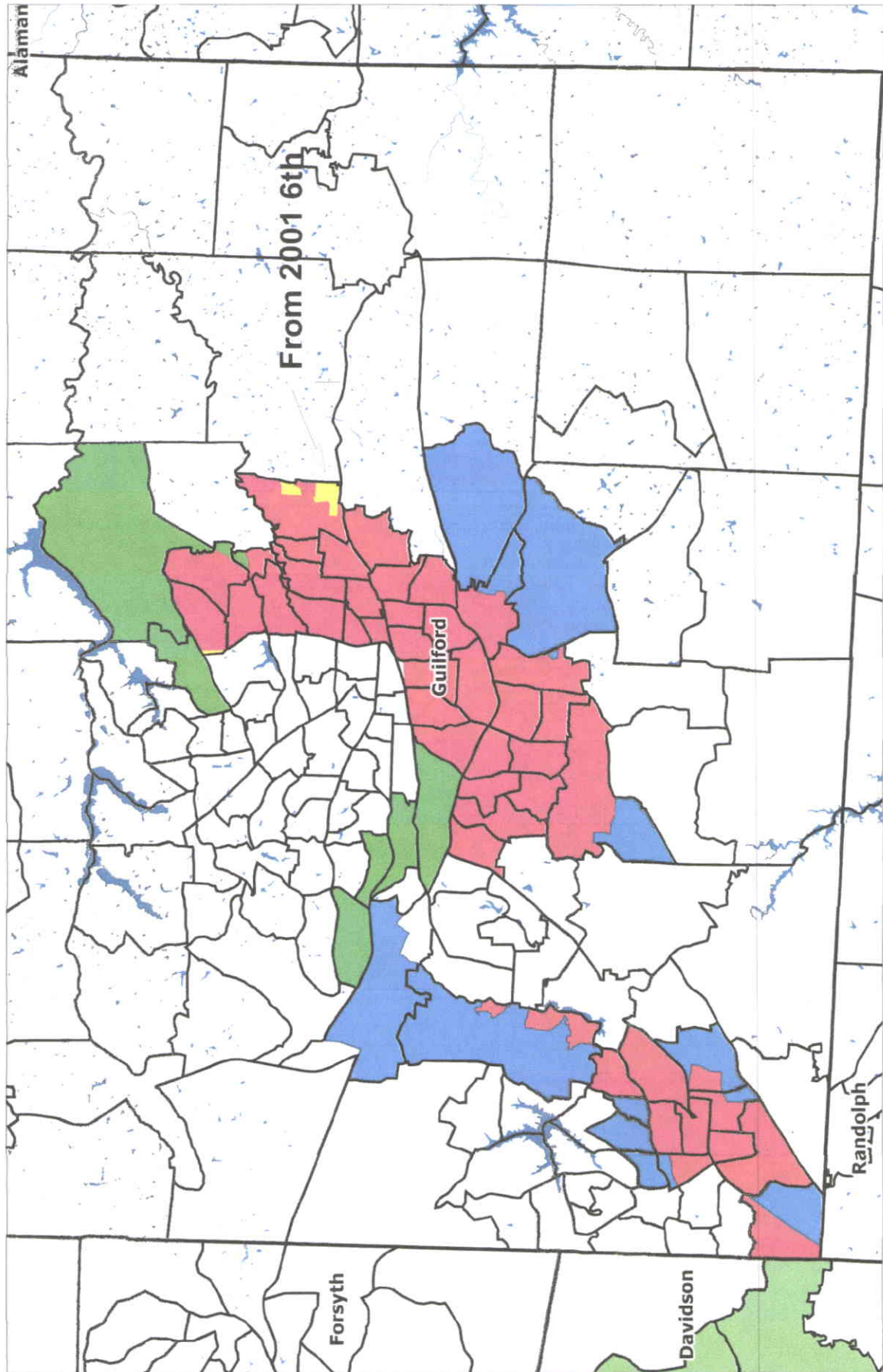
## 2001 North Carolina Congressional Districts CD 13 in Guilford County





## MAP 16

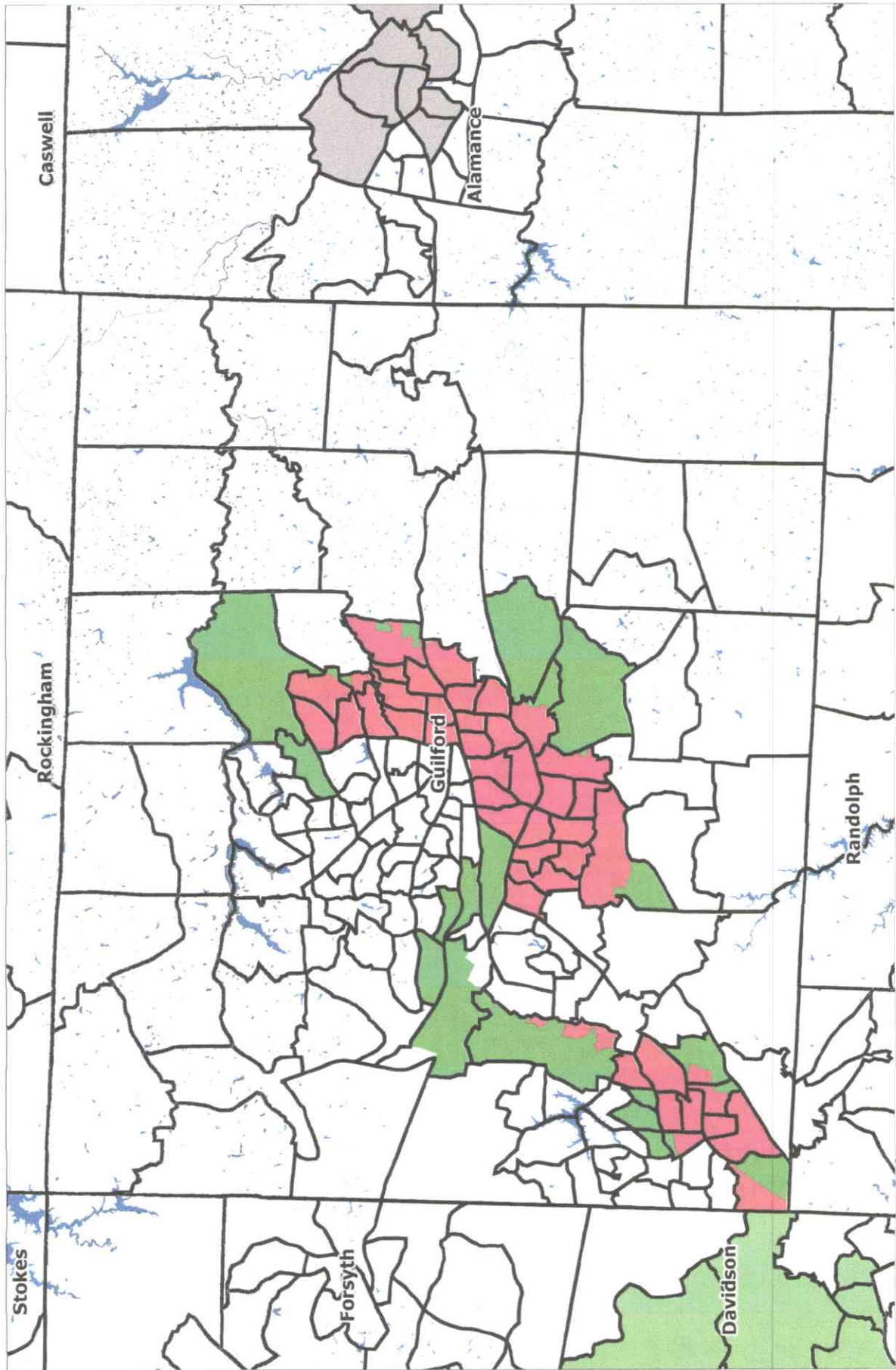
Origins of Enacted 12th from Either 1997 12th or 2001 12th and 13th



Red = 1997 12th in 2011 12th; Green = 2001 13th in 2011 12th; Blue = 2001 12th in 2011 12th

## MAP 17

### Portions of 1997 CDs in Guilford County Contained in 2011 12th CD

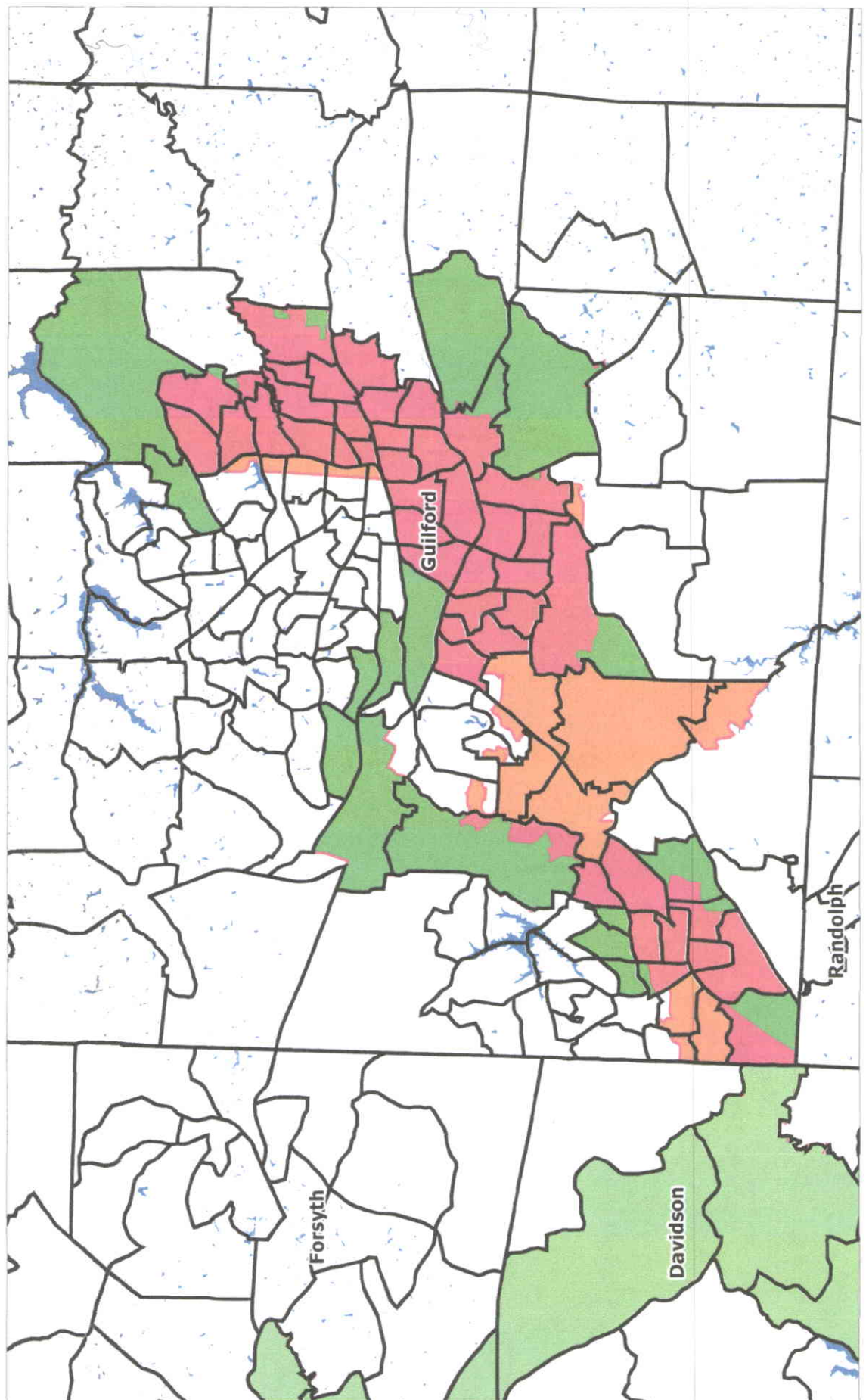


Red is portion of 2011 12th from 1997 12th -- Green is portion of 2011 12th from 1997 6th



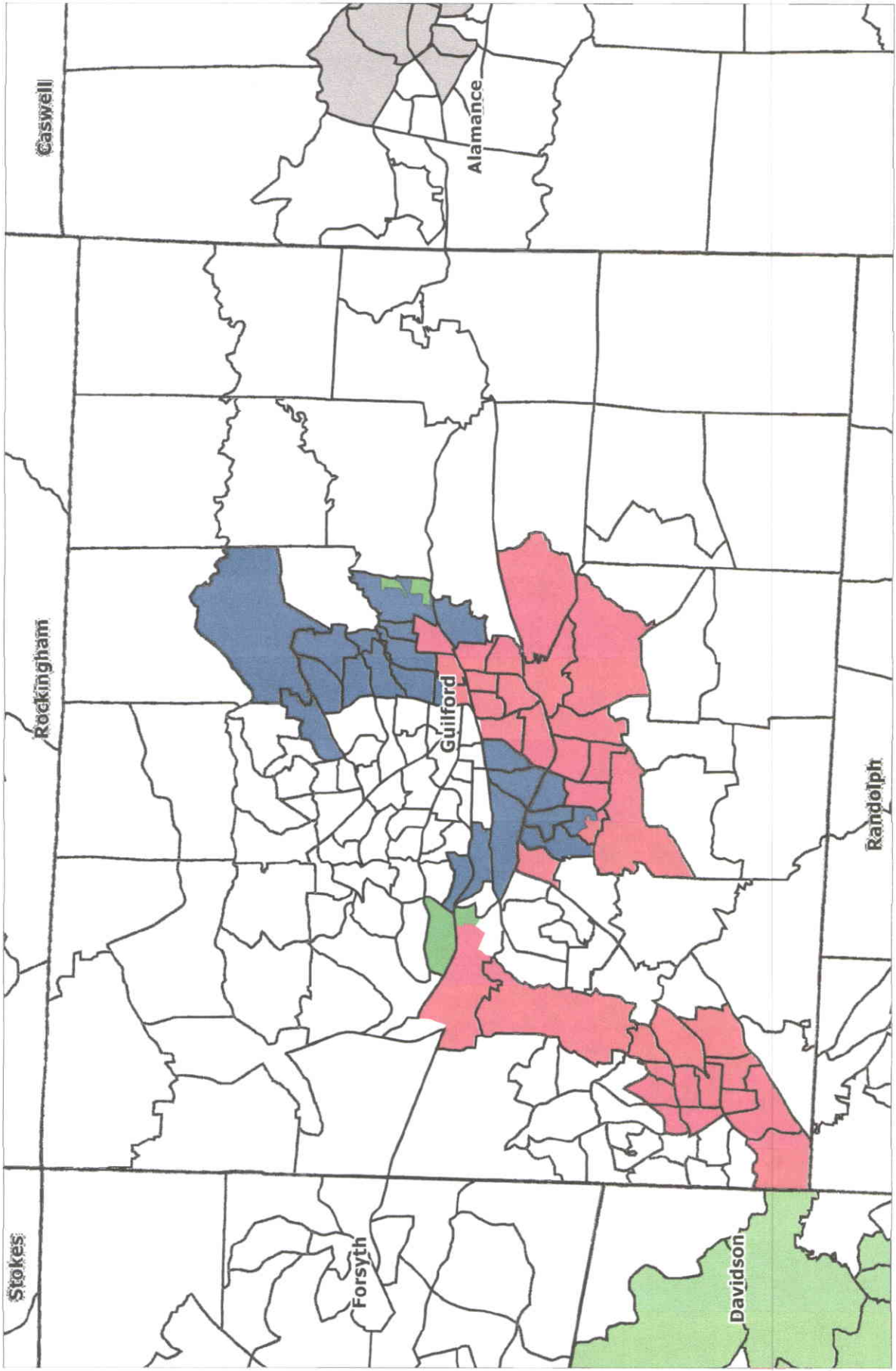
## MAP 18

Comparison of Areas in 1997 and 2011 12th CDs  
Red and Green are 2011 and Red and Orange are 1997



# MAP 19

## Portions of 2001 CDs in Guilford County Contained in 2011 12th CD



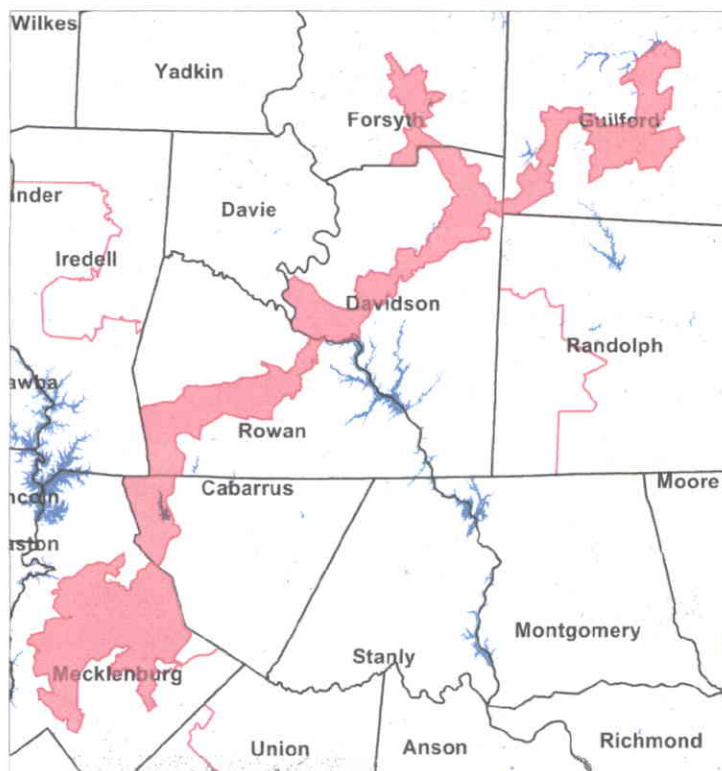
Red is portion of 2001 12th from 2001 12th -- Blue is portion of 2001 12th from 2001 13th -- Green is portion of 2001 12th from 2001 6th



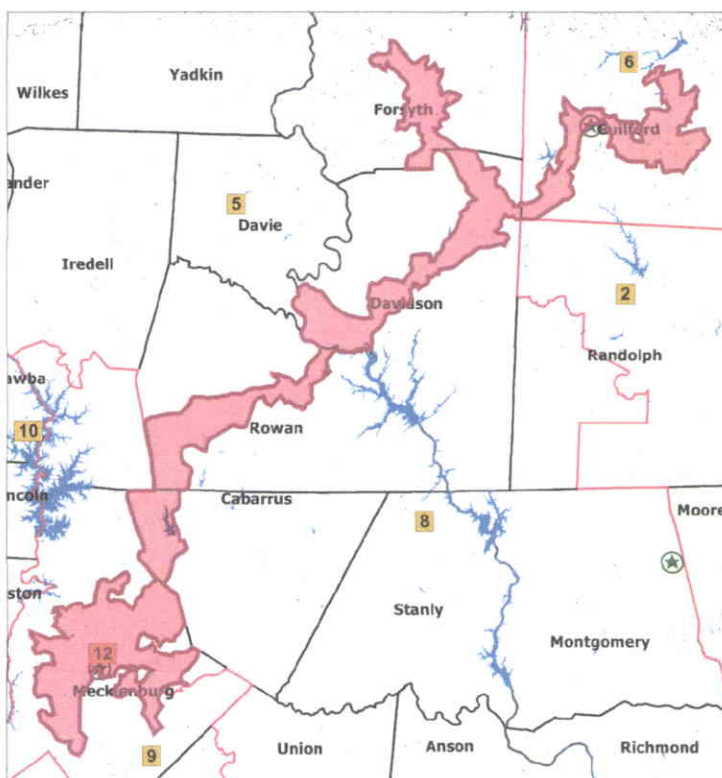
# MAP 20

## Comparison of 12th Congressional Districts

### District 2011 Enacted Plan



### District 12 With Max Obama Vote



# Portion of District in Guilford County Showing Percent McCain

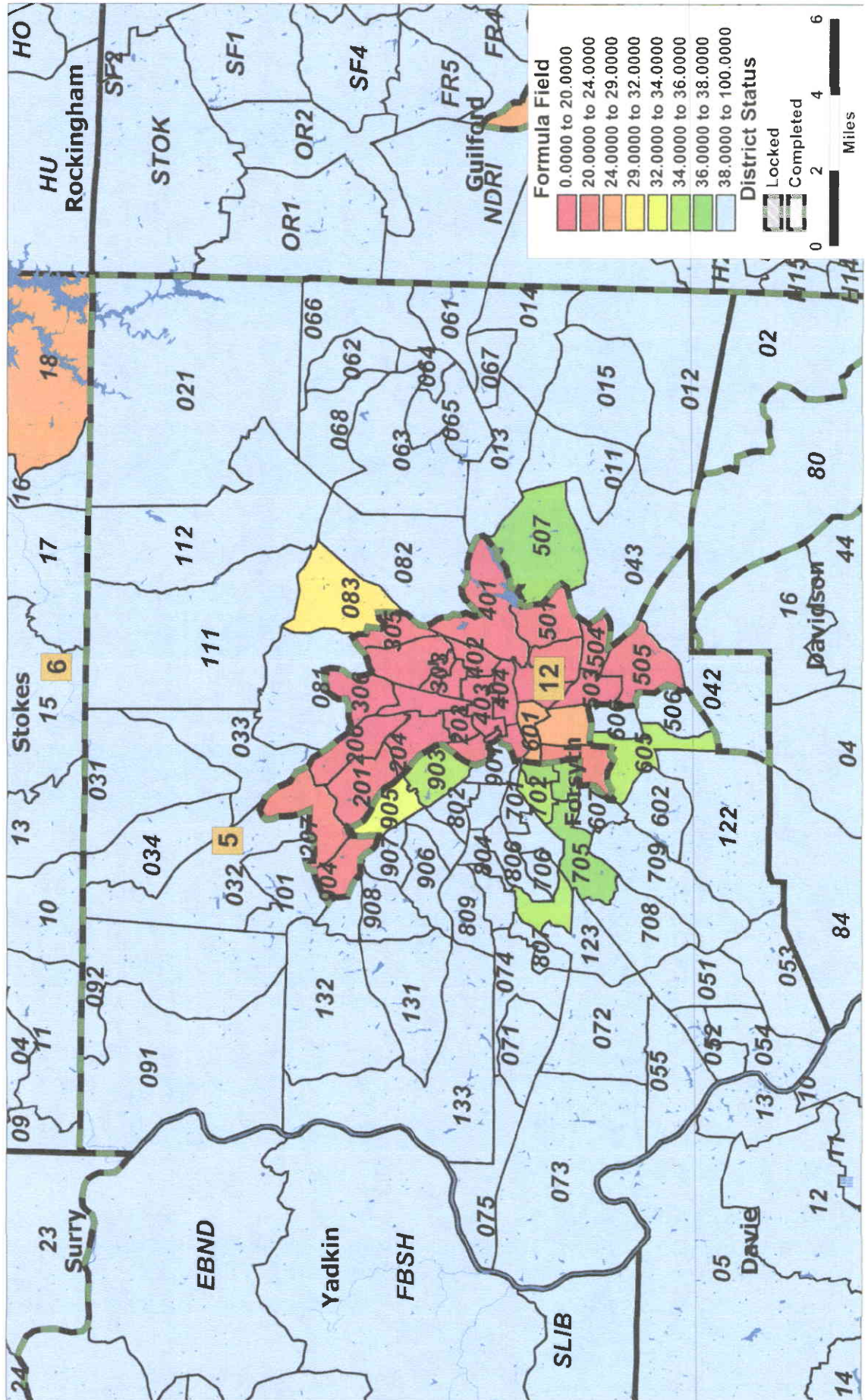




# MAP 22

## 12th CD Maximum Obama Vote Plan by VTD

Portion of District in Forsyth County Showing McCain Percentage

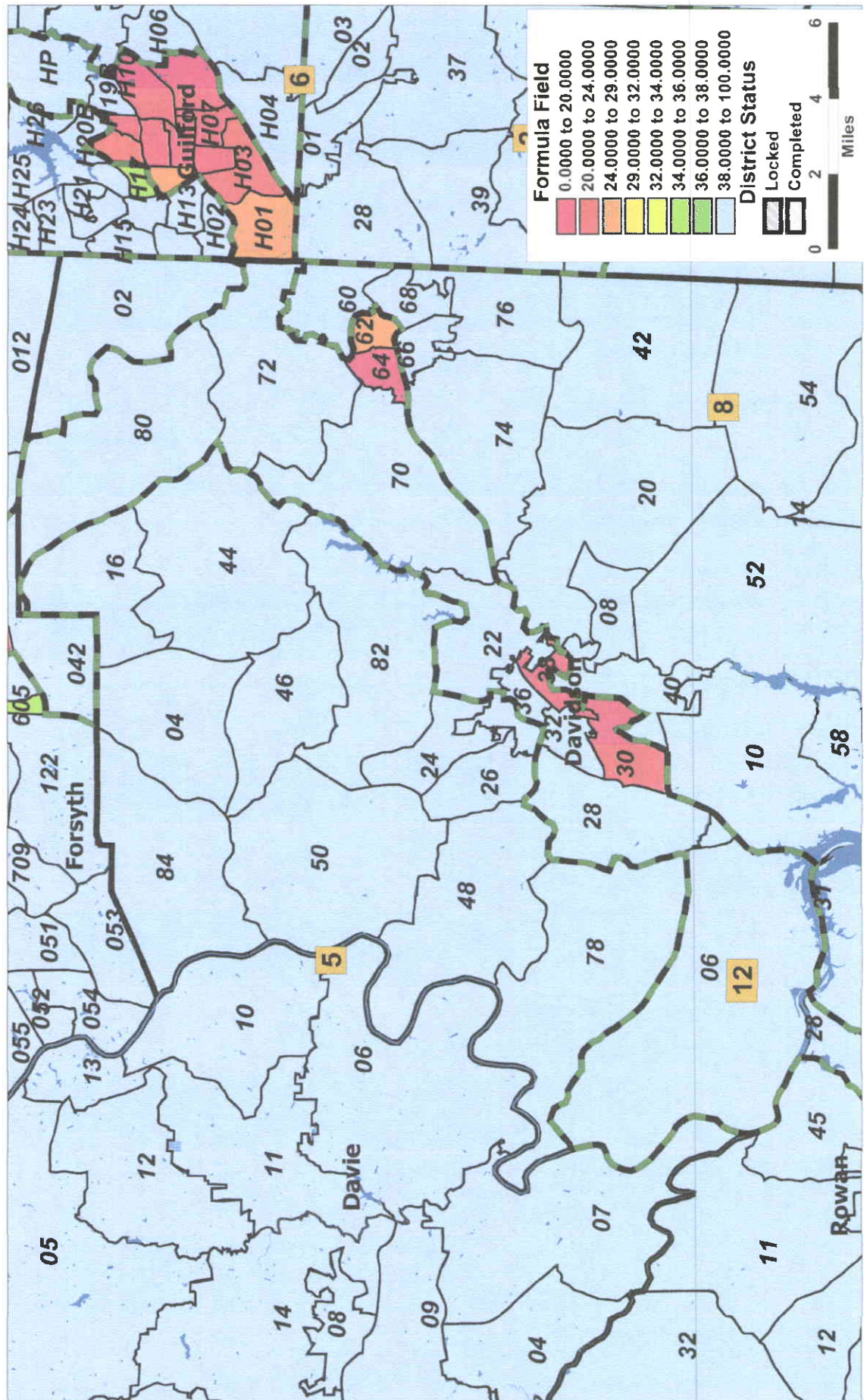




# MAP 23

## 12th CD Maximum Obama Vote Plan by VTD

### Portion of District in Davidson County Showing McCain Percentage



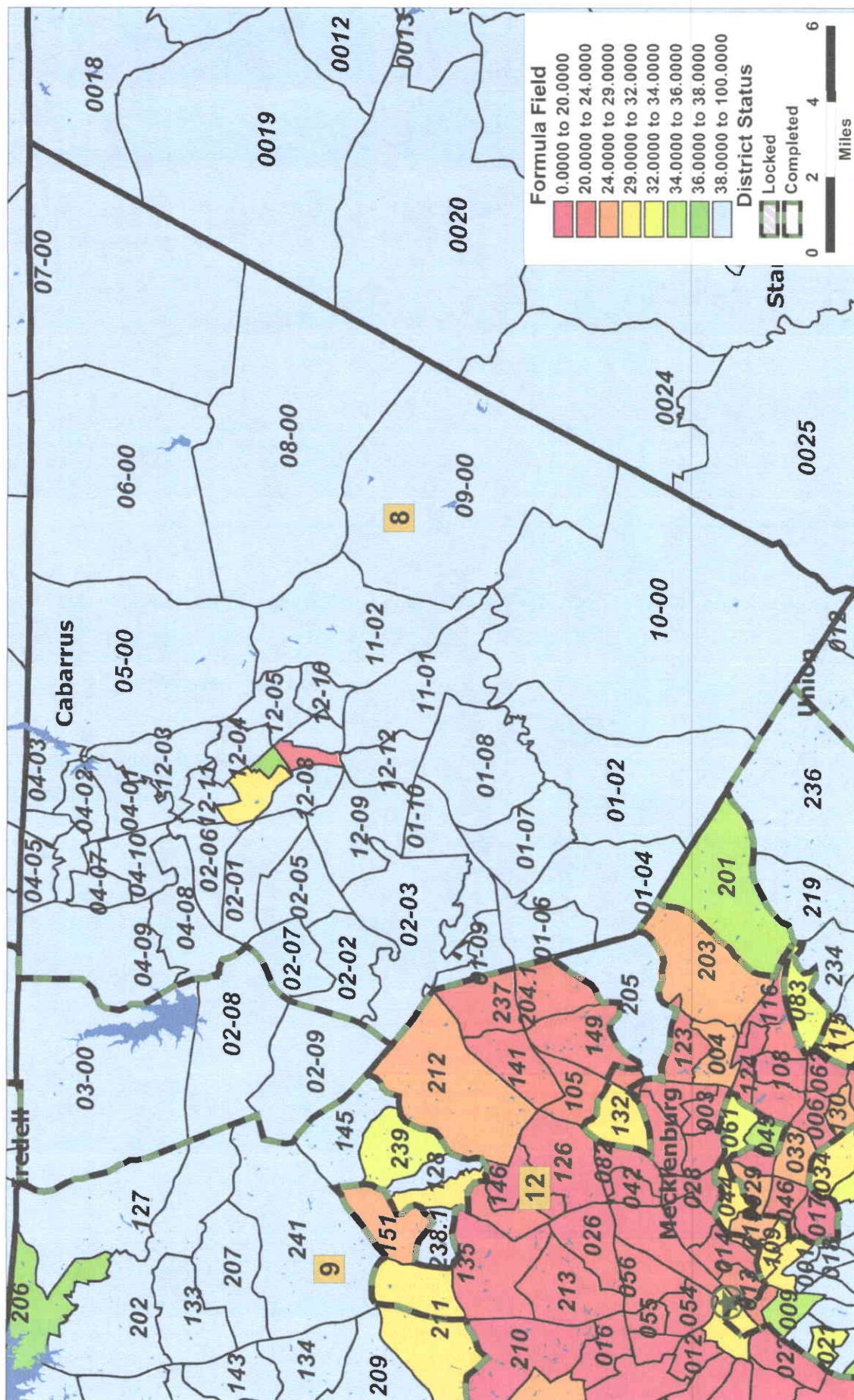


## 12th CD Maximum Obama Vote Plan by VTD





# 12th CD Maximum Obama Vote Plan by VTD





# 12th CD Maximum Obama Vote Plan by VTD





# RESUME

## **Thomas Brooks Hofeller, Ph.D.**

6701 Pointe Vista Circle, Raleigh, North Carolina 27615

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

### ***Qualifications:***

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

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

### ***Areas of Expertise:***

- ◆ **Operations:** Recruiting, training and directing staffs for existing and newly instituted projects in government and national political organizations. Private sector experience as a business owner and CAO. Proven ability to organize and direct multiple projects with effective use of delegation. Able to function as a team player in both management and support positions.
- ◆ **Communications:** Ability to develop and deliver engaging and informative presentations involving difficult concepts and issues to decision-makers, the public and press. Effective in preparation of affidavits and exhibits as well as giving depositions and delivering courtroom testimony.
- ◆ **Information Technology:** Expertise in analysis of complex technical problems involving large amounts of data – both for analysis and practical use in business, government and politics. Able to break down information and develop effective solutions. Ability to interface between highly technical personnel and management.

- ◆ Considerable experience in integration of mapping and data (geographic information systems).
- ◆ **Budget & Programs:** Experience in budget formulation and managing accurate accounting systems in the private and public sectors.

### ***Education:***

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

### ***Publications:***

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

### ***References:***

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

***Experience:***

**Geographic Strategies LLC**  
7119 Marine Drive  
Alexandria, Virginia 22307

**Partner**

**May 2011 – present**

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

**State Government Leadership  
Foundation**  
1800 Diagonal Road, Suite 230

**Redistricting Consultant      April 2011 – April 2012**

**Alexandria, VA 22314**

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

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

**Areas of consultation:**

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

**REPUBLICAN NATIONAL  
COMMITTEE**

310 First Street, S.E.

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

- ☐ Retained as a consultant to recreate a new department to coordinate the redistricting activities of the National Committee and the greater GOP community in preparation and execution of the 2011 redistricting Areas of responsibility and to support the Committee's 2011 through 2012 redistricting efforts:

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

**DEPARTMENT OF  
AGRICULTURE  
FARM SERVICE AGENCY**

1400 Independence Avenue

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

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

## Areas of responsibility:

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

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

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

**Washington, DC 20250**

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

**Apr. 2003 – June 2004**

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

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

**Areas of responsibility:**

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

**REPUBLICAN NATIONAL  
COMMITTEE**

310 First Street, S.E.

**Washington, DC 20003****Redistricting Director****Jul. '99 – Mar. 2003**Supervisor: Thomas Josefiak, former RNC Chief Counsel  
(703) 647-2940

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

(See the description of present position.)

**U. S. HOUSE SUBCOMMITTEE  
ON THE CENSUS****Staff Director****Feb. '98 - Jul. '99**Supervisor: Hon. Dan Miller, Chairman  
(202) 225-5015

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

**U. S. HOUSE COMMITTEE  
ON HOUSE OVERSIGHT****Professional Staff****Nov. '97 - Feb. '98**Supervisor: Hon. William M. Thomas, Chairman  
(202) 225-2915



**IN THE UNITED STATES DISTRICT COURT  
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 the Chairman and of the  
North Carolina State Board of Elections,

Defendants,

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION TO  
EXCLUDE IN PART TESTIMONY  
OF DR. THOMAS HOFELLER**

This matter comes before the Court upon Plaintiffs' Motion to Exclude in Part Testimony of Dr. Thomas Hofeller. The Court considered the motion, the Memorandum in Support Of Motion to Exclude in Part Testimony of Dr. Thomas Hofeller, the Declaration of Kevin J. Hamilton and exhibits thereto, the response, if any, and the reply, if any.

Being fully advised, the Court hereby GRANTS the Motion. The following passages of Dr. Hofeller's expert reports are inadmissible and shall be excluded:

- Expert Report of Thomas B. Hofeller, Ph.D, ¶ 10, lns. 2-5; ¶ 19, lns. 19-24; ¶ 34; ¶ 41; ¶ 42, lns. 8-10; ¶ 49, p. 16, lns. 24-26 through p. 17, ln. 1; ¶ 55, p. 19, ln. 4; ¶ 65, lns. 1-8.
- Second Expert Report of Thomas B. Hofeller, Ph.D, ¶ 25, lns. 12-15; ¶ 32, lns. 22-23.



IT IS SO ORDERED, this the \_\_\_\_ day of October, 2015.

By: \_\_\_\_\_  
William L. Osteen, Jr.  
United States Chief District Court Judge  
Middle District of North Carolina