

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

SANDRA LITTLE COVINGTON, *et al.*,

PLAINTIFFS,

V.

THE STATE OF NORTH CAROLINA, *et al.*,

DEFENDANTS.

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

NOW COME Plaintiffs, by and through their undersigned counsel, and pursuant to LR 40.1(c) and this Court's February 3, 2016 order (D.E. # 51), submit the following proposed findings of fact and conclusions of law.¹

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¹ The proposed findings and conclusions contain citations to documents of record in this case, however, because the parties have not yet entered into an agreement on joint exhibits and because the numbering of exhibits has not been completed, the exhibit numbers for the documents and materials are not included.

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I. FINDINGS OF FACT PART I: THE 2011 REDISTRICTING PROCESS

A. THE CONTEXT OF THE 2011 REDISTRICTING IN NORTH CAROLINA.

1. Following *Thornburg v. Gingles*, 478 U.S. 30 (1986), the General Assembly enacted a redistricting plan creating ten majority-black single-member districts and one majority-black two-member district for the state house, and three majority-black senate districts. Research Division, N.C. General Assembly, Legislator's Guide to North Carolina Legislative and Congressional Redistricting 28 (March 2011), available at http://www.ncleg.net/GIS/Download/Maps_Reports/2011RedistrictingGuide.pdf.
2. Between 1990 and 2010, the number of majority-black districts for each body decreased by three, while the number of African-American legislators in the General Assembly steadily increased from 18 to 25 in that same period. *See infra* ¶¶ 219-220.
3. The plans enacted by the General assembly in 1992, 2003, and 2009, and by the courts in 2002, were precleared by the U.S. Department of Justice under Section 5 of the Voting Rights Act. No lawsuit was filed challenging any of those plans on Section 2 grounds and no court found those plans in violation of Section 2 of the Voting Rights Act.
4. Even as the number of majority-black districts was decreasing prior to 2011, the number of black legislators in the General Assembly steadily increased. Fifty-six times between 2006 and 2011, black candidates won election contests in state house and senate districts that were not majority-black, and twenty-two times those candidates were running in majority-white districts. Churchill Dep. Exs. 82 and 83.
5. Most of these elections involved candidates of different races in which the black candidate defeated the white candidate, some of whom were incumbents. *Id.*
6. While the legislative record did include studies showing that racially polarized voting is still present in some areas of North Carolina, no study examined whether the level of racially polarized voting in a particular area means that the white bloc vote usually defeats the candidate of choice of black voters.
7. The 2010 Census Redistricting Data as mandated by P.L. 97-141 was released for North Carolina in March, 2011. Hofeller Dep. p. 78:1-10

8. The 2010 Census showed an increase in North Carolina's total population, such that the ideal district size for a House District went from 67,078 in 2000 to 79,462 in 2010. Similarly, the ideal district size for a Senate District went from 160,968 in 2000 to 190,710 in 2010.
9. While the total population rose significantly, the total black voting age population percentage in the state grew only slightly, from 20.29% in 2000 to 21.18% in 2010.
10. Population growth was not equally distributed across the state. House and Senate Districts in Wake, Mecklenburg, and Union Counties were larger than the ideal district size and districts in the west and northeastern regions were smaller than the ideal district size.

B. AN OVERVIEW OF THE CHALLENGED DISTRICTS AND THE ROLES PLAYED BY SENATOR RUCHO, REPRESENTATIVE LEWIS, AND THOMAS HOFELLER IN THE DRAWING OF THOSE DISTRICTS.

11. Plaintiffs challenge Senate Districts (SD) 4, 5, 14, 20, 21, 28, 32, 38, and 40 on the grounds that they are racial gerrymanders not justified by the Voting Rights Act. One or more plaintiffs reside in each of these districts and therefore have standing to challenge them. Second Stip. ¶¶ 35-65.
12. These Senate districts were enacted by the General Assembly on July 27, 2011. They were drawn by Thomas Hofeller under the direction of Senator Robert Rucho, Chair of the Senate Redistricting Committee. Second Stip. ¶¶ 3, 16.
13. Plaintiffs also challenge House Districts (HD) 5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 42, 43, 48, 57, 58, 60, 99, 102, and 107 on the grounds that they are racial gerrymanders not justified by the Voting Rights Act. One or more plaintiffs reside in each of these districts and therefore have standing to challenge them. Second Stip. ¶¶ 35-65.
14. These House districts were enacted by the General Assembly on July 28, 2011. They were drawn by Dr. Hofeller under the direction of Rep. David Lewis, Chair of the House Redistricting Committee. Second Stip. ¶¶ 3, 22.
15. Sen. Rucho, Rep. Lewis, and Dr. Hofeller all agree that Dr. Hofeller was the chief architect of the challenged Senate and House districts. He was assisted by Dale Oldham, a South Carolina lawyer, and John Morgan, a Virginia demographer. Rucho Dep. p. 31:1-16

16. Dr. Hofeller, Mr. Oldham, and Mr. Morgan were not employees of the General Assembly. Rather, they were retained in early 2011 by Ogletree Deakins and assigned by that law firm to draw Senate districts for Sen. Rucho and to draw House districts for Rep. Lewis. 7/22 House Comm. 33:9-17; Rucho Dep. p. 31; Hofeller Dep. p. 30.
17. Sen. Rucho and Rep. Lewis were the only members of the General Assembly who gave instructions to Hofeller. Rucho Dep. pp. 41-42 and 147-48; Lewis Dep. p. 71, 107.
18. The instructions Sen. Rucho and Rep. Lewis gave Dr. Hofeller were not written or electronic. They were oral. Rucho Dep. p. 148:2-7; Lewis Dep. pp. 71:16-20 and 72:9-11.
19. Those oral instructions are reflected in three public statements issued by Rucho and Lewis on June 17, June 22, and July 12, 2011. Rucho Dep. p. 33:4-11. These public statements “clearly delineated” the “entire criteria” used to draw the challenged districts. 7/21 Joint Comm. 9:2-7. Sen. Rucho and Rep. Lewis echoed these instructions in Senate and House Committee meetings on July 21 and 22 and in debates on the floor of the Senate and House on July 25.
20. The Senate and House Redistricting Committees did not themselves have any substantive role in the drawing of the challenged districts. Neither committee ever met with Dr. Hofeller, or adopted any criteria or issued any direction to him to use in drawing the challenged districts. Second Lewis Dep. pp. 44:1-2; 47:3-12. As Rep. Lewis has testified, Dr. Hofeller never interacted with the redistricting committees. Second Lewis Dep. p. 14:8-10
21. As Rep. Joe Hackney observed at a joint meeting of the redistricting committees on June 15, 2011: “We have been here since January. We don’t have any maps. We haven’t had any meaningful committee meetings. We have no criteria. It’s perfectly apparent that the maps are going to be drawn in secret by the majority.” 6/15 Joint Comm. 37:5-10

C. SEN. RUCHO’S AND REP. LEWIS’ INSTRUCTIONS TO DR. HOFELLER FOR DRAWING THE CHALLENGED DISTRICTS AND THEIR REASONS FOR ISSUING THOSE INSTRUCTIONS.

22. Sen. Rucho and Rep. Lewis gave Dr. Hofeller three instructions for drawing the challenged districts:

- i. First, the VRA districts should “be created before other legislative districts.” June 17 public statement p. 1.
 - ii. Second, the challenged districts “must be created with a ‘Black Voting Age Population’ (BVAP), as reported by the Census, at the level of at least 50% plus one.” June 17 public statement p. 2.²
 - iii. Third, the Senate and House plans should “include a sufficient number of majority African American districts to provide North Carolina’s African American citizens with a substantially proportional and equal opportunity to elect their preferred candidate of choice.” June 17 public statement p. 3. *See also* Lewis Dep. pp. 126:2-25; 127:1-25.
23. The “primary goal” Sen. Rucho and Rep. Lewis sought to achieve by these instructions was to draw “maps that will survive any possible legal challenge.” July 12 public statement p. 1. *See also* 7/21 House Comm. 5:14-16; 7/21 Senate Comm. 7:9-13 and 8:2-6. As Rep. Lewis explained at the July 21 House Redistricting Committee meeting: “Now that it is apparent that these majority black districts can be drawn, any decision to draw a few selected districts at less than majority level could be used as evidence of purposeful discrimination or in support of claims against the state under Section 2. Thus, in order to best protect the state from costly and unnecessary litigation, we have a legal obligation to draw these districts at true majority levels.” 7/21 House Comm. 10:4-12. *See also* 27:7-19 and 57:1-4.
24. Sen. Rucho likewise explained at the July 22 Senate Committee meeting: “the Section 2 situation when a Voting Rights Act district is produced at a level of 50... forecloses any opportunity for a lawsuit filed under Section 2 and therefore protects the interests of the state.” 7/22 Senate Comm. 34:23 to 35:4.
25. Other legislators repeated Sen. Rucho’s and Rep. Lewis’ views. At the July 22 Senate Redistricting Committee meeting Sen. Brown said: “a majority minority district is 50 percent or more, and I think our districts will show that, and I think that’s what the court rulings will show, as well, that we needed to do...I think that was the first thing we had to do to take care of as far as the Voting Rights Act is concerned. And that’s what we did.” 7/22 Senate Comm. 31:21 to 32:2

² Except as otherwise stated, the terms “BVAP,” “black voting age population,” and “TBVAP” as used in this document refer to the percentage of persons who identify themselves as “wholly or any part black.” June 17 public statement, p. 2.

26. In Sen. Rucho's and Rep. Lewis' view there was "no principled reason not to draw all VRA districts at 50% or above when it is possible to do so." 7/21 House Comm. 9:23 to 10:3; 7/21 Senate Comm. 20:3-6.
27. Similarly Rep. Lewis has said that the "guiding principle" used to draw the challenged districts was "the creation of districts more than 50% in numbers proportional to the State's African American population." Second Lewis Dep. 49:17-24.
28. Political considerations were secondary to these "guiding principles." In their June 22, 2011 public statement Sen. Rucho and Rep. Lewis said: "While districts that adjoin majority black districts may become more competitive for Republican candidates because of compliance with the VRA, such competitiveness results from compliance with the VRA." June 22 public statement, p 4. Thus, Sen. Rucho's and Rep. Lewis' contemporaneous statements make clear that partisan advantage was only a result of their focus on race in drawing the challenged districts, not their predominant objective in drawing those districts.

D. THE PROCESS DR. HOFELLER USED TO IMPLEMENT SEN. RUCHO'S AND REP. LEWIS' RACE BASED INSTRUCTIONS FOR DRAWING THE CHALLENGED DISTRICTS

29. Dr. Hofeller began work in early 2011. The process Dr. Hofeller used to draw the challenged Senate and House districts was identical. Hofeller Dep. pp. 78:1-5; 128:23-25; 129:1-5. *See also* 7/27 House Comm. 5:21-24
30. Consistent with his instructions from Sen. Rucho and Rep. Lewis, Dr. Hofeller's first tasks included (1) calculating the number of seats in the House and Senate that would provide African American voters representation proportional to the African American percentage of the State's voting age population and (2) identifying all areas in the state in which African American voters constituted 50% or more of the voting age population. Hofeller Dep. pp. 79:5-10; 86:18-23; Oldham Dep. p. 63:11-17
31. Indeed, the first thing that Hofeller did was create a proportionality chart, determining the number of majority black districts in both the House and Senate that would be proportional to the black population in the state. Hofeller Dep. p. 80:4-25
32. The software Dr. Hofeller used to draw the challenged districts ("Maptitude") contained a program that enabled him to identify the level of black voting age

population in each census block in the state. There are 288,987 such census blocks in the State.

33. Using Maptitude, Dr. Hofeller grouped together voter tabulation districts (“VTD” is essentially synonymous with “precinct”) that in the aggregate hypothetically contained enough black voting age citizens to construct a Senate or House district with a black voting age population greater than 50%. Race was the sole factor used to draw the boundaries of these prototypical districts. They were drawn without regard for any traditional redistricting criteria. First Hofeller Decl. ¶¶17-23; Second Hofeller Decl. ¶¶ 10-25.
34. Dr. Hofeller then examined these areas in relation to clusters of counties he separately formed to comply with the Whole County Provision (WCP) as explained by the NC Supreme Court in *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002). He then drew the boundaries of the challenged districts with a black voting age population greater than 50% within these county clusters. Dr. Hofeller has testified the boundaries of these districts were “substantially based” on the “exemplar districts” that he drew based on race without regard for traditional redistricting principles. First Hofeller Decl.¶ 31. Rep. Lewis agrees. Second Lewis Dep.p. 38:8-19
35. The boundaries of these 50% plus districts were drawn within these clusters without regard for internal county boundaries within a cluster and without regard for precinct, town and city boundaries. For example, in the Senate plan, in drawing SD 5 Dr. Hofeller divided 3 counties, 3 towns and 40 precincts along racial lines in order to include a sufficient number of black voting age citizens to meet Sen. Rucho’s 50% plus instruction. *Infra* ¶¶ 63, 65, 66. Similarly, for example, in the House plan, in drawing HD 48 Dr. Hofeller divided 4 counties, 5 towns and 31 precincts along racial lines in order to include a sufficient number of black voting age citizens to meet Rep. Lewis’ 50% plus instruction. *Infra* ¶¶ 190, 192, 193.
36. Under the North Carolina Constitution, the General Assembly may only traverse the boundaries of a county in order to draw a district required by the Voting Rights Act. Second Lewis Dep. pp. 32:4 to 33:9
37. As Rep. Lewis said at the July 22 House Redistricting Committee meeting, keeping precincts and VTDs whole “was not a consideration in the drafting of the plan.” 7/22 House Comm. 6: 2-7. Thus, Dr. Hofeller divided precincts along racial lines as needed in order to meet Sen. Rucho’s and Rep. Lewis’ directions to draw “true” majority black districts in numbers proportional to the state black voting age population. Rucho Dep. 53:11-20; Lewis dep 87:15-18. For example,

Dr Hofeller used more pieces of precincts than whole precincts in drawing SD 32. *Infra* ¶ 101 .

38. In failing to require Dr. Hofeller to keep precincts whole, Senator Rucho and Rep. Lewis acted contrary to established public policy and ignored state law. N.C.G.S. § 163-132.1B(a) provides: “The State of North Carolina shall participate in the 2010 Census Redistricting Data Program... so that the State will... be able to revise district at all levels without splitting precincts.” Further, on the same day that Sen. Rucho and Rep. Lewis released their first Senate and House maps containing hundreds of split precincts, the General Assembly enacted legislation requiring Guilford county to “minimize the dividing of precincts” in redrawing county commission lines. S.L. 2011-172, Sec 2.1 (June 17, 2011).
39. Compactness was not a criterion Sen. Rucho and Rep. Lewis required Dr. Hofeller to apply in drawing the challenged districts, and Dr. Hofeller did not evaluate the compactness of the challenged district as he was drawing them. The software that Dr. Hofeller used contained a program that could have been used to calculate the mathematical compactness of each district by seven different mathematical measures, but Dr. Hofeller did not use that while he was drawing the districts. Rucho Dep. p. 53:2-9; Lewis Dep. pp. 92:24 to 93:3

E. THE GENERAL ASSEMBLY ENACTED THE CHALLENGED DISTRICTS AS DRAWN BY DR. HOFELLER WITHOUT SUBSTANTIAL MODIFICATION.

40. On June 17, Senator Rucho and Representative Lewis made public Senate and House maps drawn by Dr. Hofeller. These maps were drawn using the process described above. They met the three oral directions Sen. Rucho and Rep. Lewis had given Dr. Hofeller earlier. First, the maps were partial maps containing only VRA districts. Second, Dr. Hofeller assigned voters to these VRA districts so that more than 50% of the voting age population in each district was African American. Third, the plans provided “substantial proportionality for North Carolina’s African American citizens.”
41. As illustrated by the maps included in Appendix A , SD 4, 5, 14, 20, 28, 38 and 40 as drawn by Dr. Hofeller and as first presented by Sen. Rucho on June 17, were enacted by the General Assembly on July 27 without any substantial modification to their location, shape or level of black voting age population. *See* Appendix A.
42. Two challenged Senate districts were modified after June 17 and before enactment. *See* 7/21 Senate Comm. 16: 3 to 17:6.

43. SD 21 was modified by increasing the black voting age population from 51.05% to 51.53%, incorporating Hoke County into the district, and making the part of the district in Cumberland County more irregular. *See* Appendix B.
44. SD 32 was modified between June 17 and July 27 to increase the black voting age population from 39.32% to 42.53%. This change required splitting an additional 42 precincts and made the district's shape more irregular. *See* Appendix B.
45. As illustrated by the maps included in Appendix C, HD 5, 12, 21, 29, 31, 32, 33, 38, 42, 43, 48, 57, 58, 60, 99, 102 and 107, as drawn by Dr. Hofeller and as first presented by Rep. Lewis on June 17, were enacted by the General Assembly on July 28 without any material modification to their location, shape or black voting age population. *See* Appendix C.
46. Two challenged House district were modified after June 17 and before enactment. *See* 7/21 House Comm. 6:19 to 7:9.
47. HD 21 was moved out of part of Pender County into part of Duplin County and HD 24 was moved out of part of Beaufort County into part of Wilson County. These changes did not, however, reduce the black voting age population in these districts below 50%, reduce the number of split precincts, or make the boundaries of the districts more regular.³ *See* Appendix D.

F. WHEN SEN. RUCHO AND REP LEWIS RELEASED THEIR MAPS OF THE CHALLENGED DISTRICTS ON JUNE 17 THEY TOLD THE PUBLIC AND OTHER LEGISLATORS THAT THE RACE-BASED CRITERIA USED TO DRAW THE CHALLENGED DISTRICTS WOULD NOT BE COMPROMISED.

48. Five days after Sen. Rucho and Rep. Lewis released their maps of "VRA districts" and issued their first public statement, they released another public statement. In their June 22 public statement, they told other legislators and the public: "We would entertain any specific suggestions...to form the core of alternative majority black districts, provided the districts proposed provide black voters with a

³ A majority minority district in the southeast was eliminated because of opposition from local citizens but that did not keep Rep. Lewis from meeting his proportionality goal. As he explained at the July 21 meeting of the House redistricting Committee, the remaining districts "continue to provide black voters with substantially proportional and equal opportunity to elect their candidates of choice." 7/21 House Comm. P. 7:1-9. Also, HD 23 was modified between June 17 and July 28 to create a district composed entirely of whole counties (Martin and Edgecombe). As a result, HD 23 is not challenged as a racial gerrymander in this litigation.

substantially proportional state-wide opportunity to elect candidates of their choice. Moreover, any such districts must comply with *Strickland v Bartlett*, and be drawn at a level that constitutes a true majority of black voting age population.” June 22 public statement p. 7 (emphasis added).

49. Similarly, at the July 21 meeting of the House Redistricting Committee, Rep. Lewis told his colleagues: “As we have defined before...we do indeed consider the construction of VRA districts to have a higher precedent than the Stephenson formula for county combinations.” 7/21 House Comm. 36:25 to 37:5.
50. Consistent with their no-compromise position, Sen. Rucho and Rep. Lewis categorically rejected any plan that did not contain “true” majority black districts in numbers proportional to the State’s Black population. *See* 7/21 Senate Comm. 19:3 to 21:11 and 7/21 House Comm. 8:15 to 9:22.

G. THE STATE’S SECTION 5 SUBMISSIONS TO THE U.S. DEPARTMENT OF JUSTICE CONFIRM THAT THE ENACTED SENATE AND HOUSE PLANS MET SEN. RUCHO’S AND REP. LEWIS’ RACE-BASED GOALS.

51. As then required by Section 5 of the Voting Rights Act, the State submitted the enacted Senate and House plans to the U.S. Department of Justice for preclearance. Confirming that the enacted Senate plan met Sen. Rucho’s 50% plus and proportionality directions, to Dr. Hofeller, the State informed the Department of Justice of the following:
 - a. The 2011 Senate Plan increases minority voting strength as compared to the 2003 Senate Plan. Under the 2010 Census, the 2003 Senate Plan contained no districts with a TBVAP in excess of 50% and eight districts in which African-Americans constituted a TBVAP of over 40%.
 - b. The 2011 Senate Plan, in contrast, includes nine districts in which African-Americans constitute a majority of the voting age population, and a tenth district with a TBVAP of 42.53%. Indeed, the 2011 Plan increases the TBVAP in all eight of the benchmark districts that had a TBVAP above 40%, and increases the TBVAP in seven of these districts to over 50%, while also adding two additional majority black districts where the comparable districts in the benchmark plans had TBVAP percentages below 40%. Thus, in each of the eight previous districts with TBVAP over 40%, plus the two new majority black districts, the 2011 Plan not only preserves, but actually increases, the black population’s ability to elect its candidate of choice. Submission, S27N, page 10.

52. Similarly confirming that the House plan met Rep. Lewis' 50% plus and proportionality directions to Dr. Hofeller, the State informed the Department of Justice:
- a. The 2011 House Plan increases minority voting strength as compared to the 2009 House Plan. Under the 2010 Census, the 2009 House Plan contains ten House districts that have a majority TVBAP and eleven districts with a TVBAP of 39.99% to 50%.
 - b. The 2011 Plan, in contrast, includes twenty-three districts in which African Americans constitute a majority of the voting age population and two additional districts with a TBVAP of 40% to 50%. As a result, the number of districts above 50% TBVAP in the 2011 Plan is two higher than the number of districts above 39.99% TBVAP in the 2009 Plan. (And because the 2011 Plan also includes two districts between 40% and 50%, there are four more districts above 40% in the 2011 Plan compared to the benchmark plan.) Thus, the 2011 Plan not only preserves, but significantly increases, the minority population's ability to elect their candidates of choice. Submission H27N, page 10
53. To cement these points, the State included the following declaration from Dr. Hofeller as a part of its Section 5 submission:
- a. "the newly enacted 2011 redistricting plans for the N.C. General Assembly place African Americans of voting age in a far superior position to elect candidates of their choice than in the 2003 Senate and 2009 House plans." Senate submission S27N(o) (emphasis added)

**II. FINDINGS OF FACT PART II: RACE WAS THE
PREDOMINANT FACTOR USED TO DRAW THE CHALLENGED
SENATE DISTRICTS**

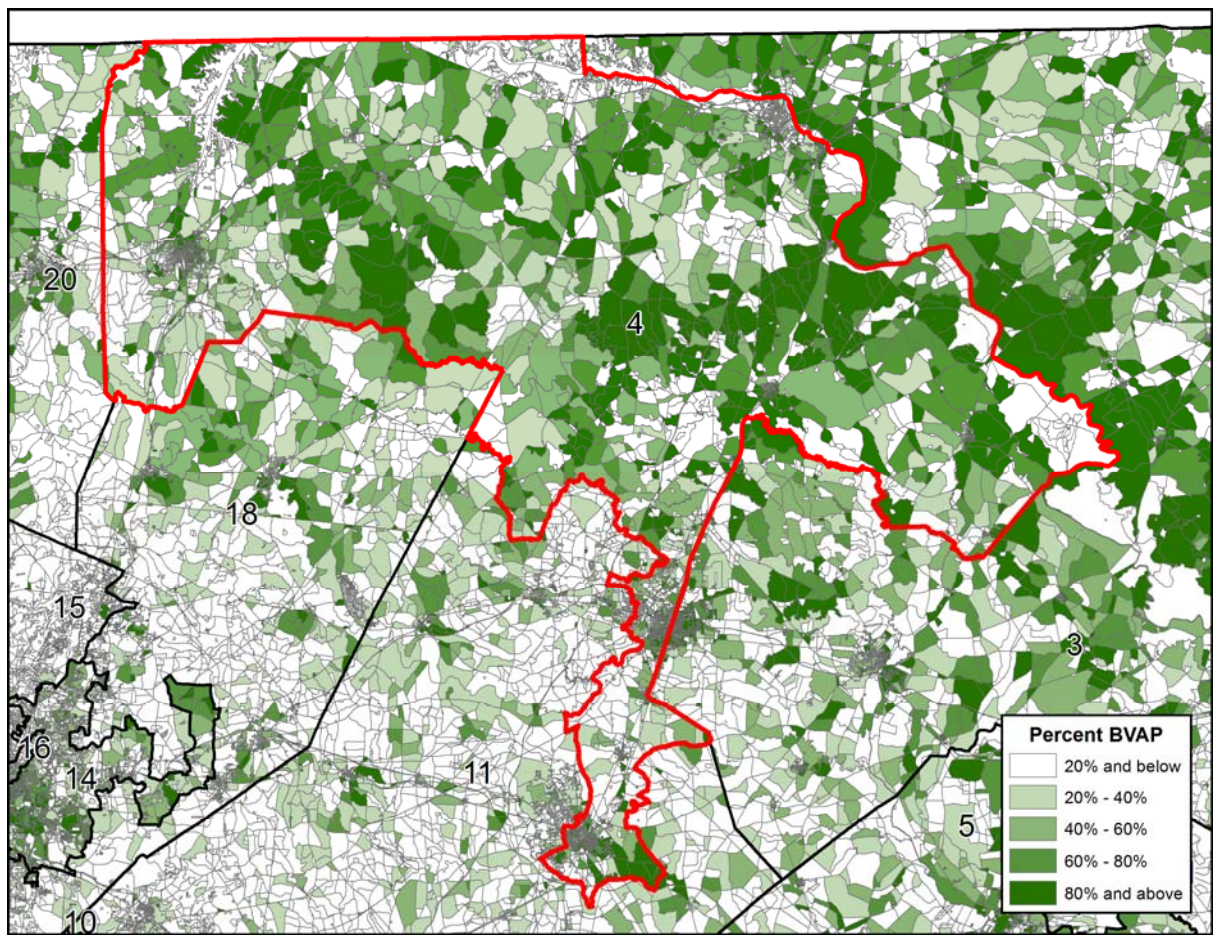
A. THE CHARACTERISTICS OF THE CHALLENGED SENATE DISTRICTS CONFIRM THAT RACE, NOT TRADITIONAL REDISTRICTING CRITERIA, EXPLAINS THE BOUNDARY OF EACH CHALLENGED SENATE DISTRICT

Senate District 4

- 54. The black voting age population (any part black) in the 2003 version of SD 4, based on the 2000 census, was 49.14% and the black voting age population (any part black) in the 2003 version of SD 4, based on the 2010 census, was 49.70%. Requests for Admissions (hereinafter “RFA”) 2.
- 55. In accordance with Sen. Rucho’s directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 4 to 52.75%. RFA 3.
- 56. Based on the 2010 census, the 2003 version of SD 4 was under populated by 27,256 persons. Dr. Hofeller used race to correct this population deviation for SD 4 and meet Sen. Rucho’s 50% plus instruction. As redrawn in 2011, SD 4 contains 20,577 more black persons than the 2003 version and 916 more white persons than the 2003 version. RFA 4.
- 57. Dr. Hofeller divided both Nash County and Wilson County along racial lines in order to reach Sen. Rucho’s 50% plus directions for SD 4. The black voting age population in the part of Nash County in SD 4 is 51.03% and the black voting age population in the part of Nash in SD 11 is 25.78%. Defendants’ Answer to Amended Complaint (hereinafter “Answer”) ¶ 75. The black voting age population in the part of Wilson County in SD 4 is 63.62% and the black voting age population in the part of Wilson in SD 11 is 24.10%. Answer ¶ 77.
- 58. The 2011 version of SD 4 divides 2 precincts. Dr. Hofeller divided those precincts along racial lines in order to reach Sen. Rucho’s 50% plus directions for SD 4. Of the 2,686 black voting age persons who reside in the 2 divided precincts in the 2011 version of SD 4, 2,207 (82.2%) were assigned to SD 4. RFA 5 and 6.
- 59. Dr. Hofeller divided both the City of Wilson and the City of Rocky Mount along racial lines in order to meet Sen. Rucho’s 50% plus directions for SD 4. 11,401 of the 17,137 black voting age persons in the City of Wilson (66.53%) are assigned

to SD 4 and the remaining 5,735 black voting age persons to SD 11. 12,364 of the 14,673 black voting age persons residing in the part of the City of Rocky Mount in Nash County (84.26%) are assigned to SD 4 and the remaining 2,309 black voting age persons are assigned to SD 11. RFA 7 and 8.

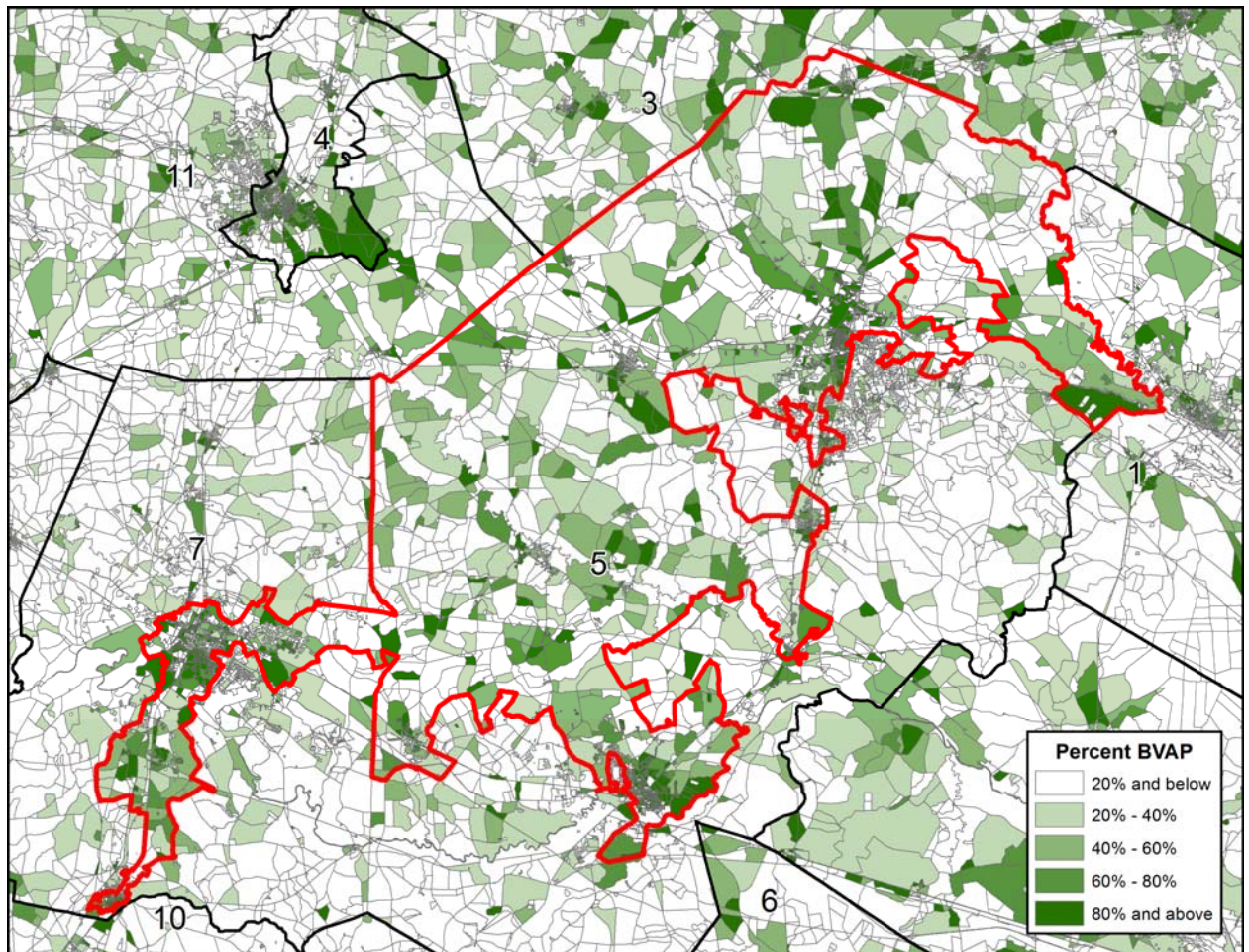
60. The map below shows a screenshot of SD 4 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 4. RFA 18.



Senate District 5

61. The black voting age population (any part black) in the 2003 version of SD 5, based on the 2000 census, was 30.14%, and the black voting age population (any part black) in the 2003 version of SD 5, based on the 2010 census, was 30.99. RFA 20.

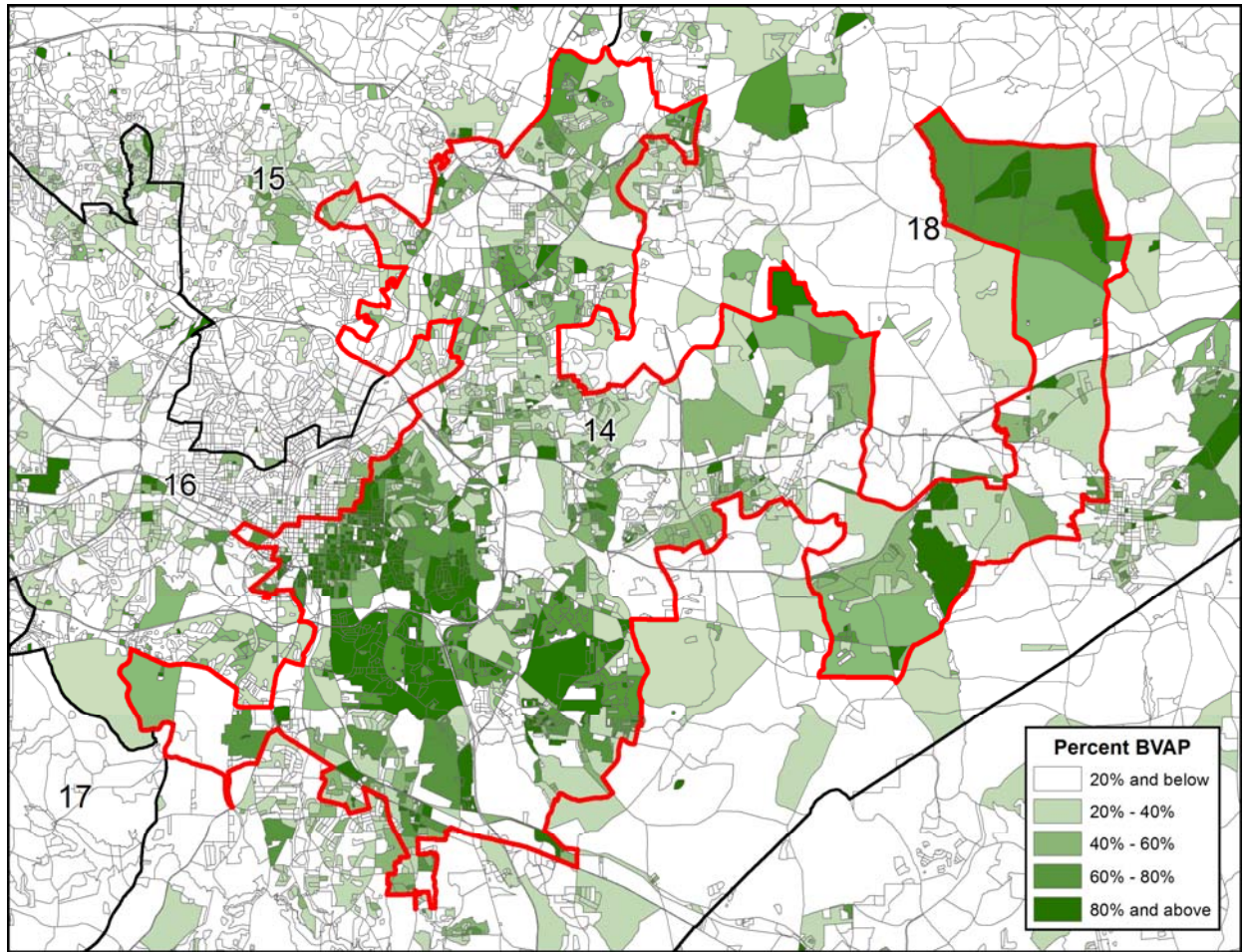
62. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 5 to 51.97%. RFA 21.
63. Dr. Hofeller divided Lenoir County, Pitt County and Wayne County along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 5. The black voting age population in the part of Lenoir County in SD 5 is 64.59% and the black voting age population in the part of Lenoir in SD 7 is 25.78%. Answer ¶ 83. The black voting age population in the part of Pitt County in SD 5 is 64.59% and the black voting age population in the part of Pitt in SD 11 is 16.16%. Answer ¶ 85. The black voting age population in the part of Wayne County in SD 5 is 55.95% and the black voting age population in the part of Wayne in SD 11 is 16.17%. Answer ¶ 87.
64. Based on the 2010 census, the 2003 version of SD 5 was under populated by 6,811 persons. Dr. Hofeller used race to correct this population deviation for SD 5 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 5 contains 38,181 more black persons than the 2003 version and 38,250 fewer white persons than the 2003 version. RFA 22.
65. SD 5 as drawn in 2011 divided 40 precincts. Dr. Hofeller divided these 40 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 5. Of the 43,084 black voting age persons who reside in the 40 divided precincts in the 2011 version of SD 5, 30,418 (70.6%) were assigned to SD 5. RFA 23 and 24.
66. Dr. Hofeller divided the Cities of Goldsboro, Kinston, and Greenville along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 5. 13,565 of the 14,784 black voting age persons in the City of Goldsboro (91.75%) are assigned to SD 5 and the remaining 1,219 black voting age persons are assigned to SD 7; 10,200 of the 10,868 black voting age persons in the City of Kinston (93.85%) are assigned to SD 5 and the remaining 668 black voting age persons are assigned to SD 7; 17,510 of the 23,409 black voting age persons in the City of Greenville (74.80%) are assigned to SD 5 and the remainder to SD 7. RFA 25-27.
67. The map below depicts a screenshot of SD 5 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 5. RFA 33.



Senate District 14

68. The black voting age population (any part black) in the 2003 version of SD 14, based on the 2000 census, was 41.01%, and the black voting age population (any part black) in the 2003 version of SD 14, based on the 2010 census, was 42.62%. RFA 35.
69. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 14 to 51.28%. RFA 36.
70. Based on the 2010 census, the 2003 version of SD 14 was overpopulated by 41,804 persons. Dr. Hofeller used race to correct this population deviation for SD 14 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011, SD 14 contains 2,145 fewer black persons than the 2003 version and 38,040 fewer white persons than the 2003 version. RFA 37.

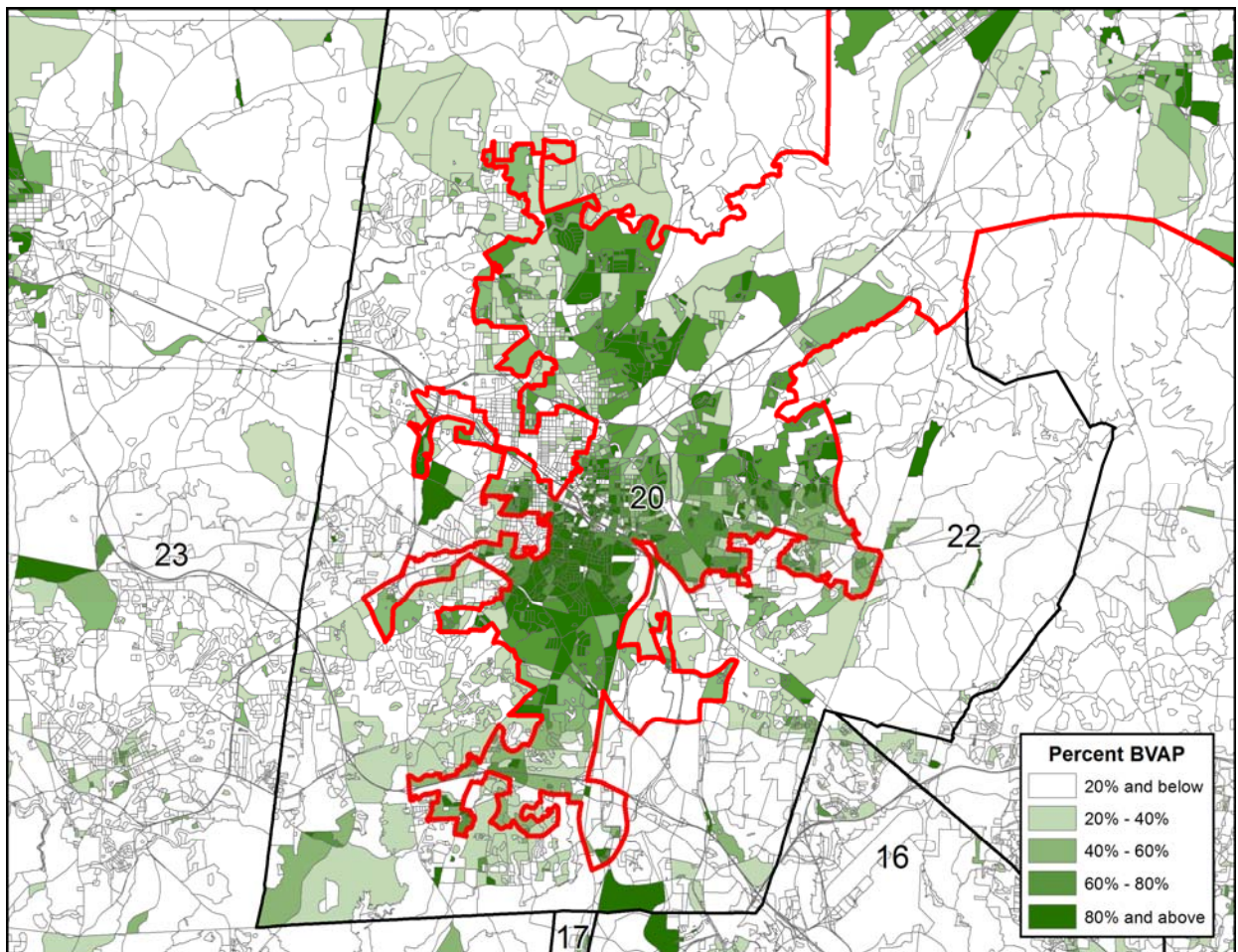
71. Five Senate districts are located in Wake County. Dr Hofeller assigned more black voting age citizens to SD 14 (69,779) than to the other four districts combined (67,592). Answer ¶ 93.
72. The 2011 version of SD 14 divided 29 precincts. Dr. Hofeller divided those 29 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 14. Of the 36,179 black voting age persons who reside in the 29 divided precincts in the 2011 version of SD 14, 23,197 (64.1%) were assigned to SD 14. RFA 38 and 39.
73. Dr. Hofeller divided the City of Raleigh and the Town of Knightdale along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 14. 57,376 of the 87,669 black voting age persons in the part of the City of Raleigh in Wake County (65.44%) are assigned to SD 14 and the remaining 30,293 black voting age persons are divided among SD 15, 16 and 18; 2,931 of the 3,043 black voting age persons in the Town of Knightdale (96.31%) are assigned to SD 14 and the remaining 112 black voting age persons are assigned to SD 18. RFA 40 and 41.
74. The map below depicts a screenshot of SD 14 from Maptitude, the program used by Dr. Hofeller, that displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 14. RFA 51.



Senate District 20

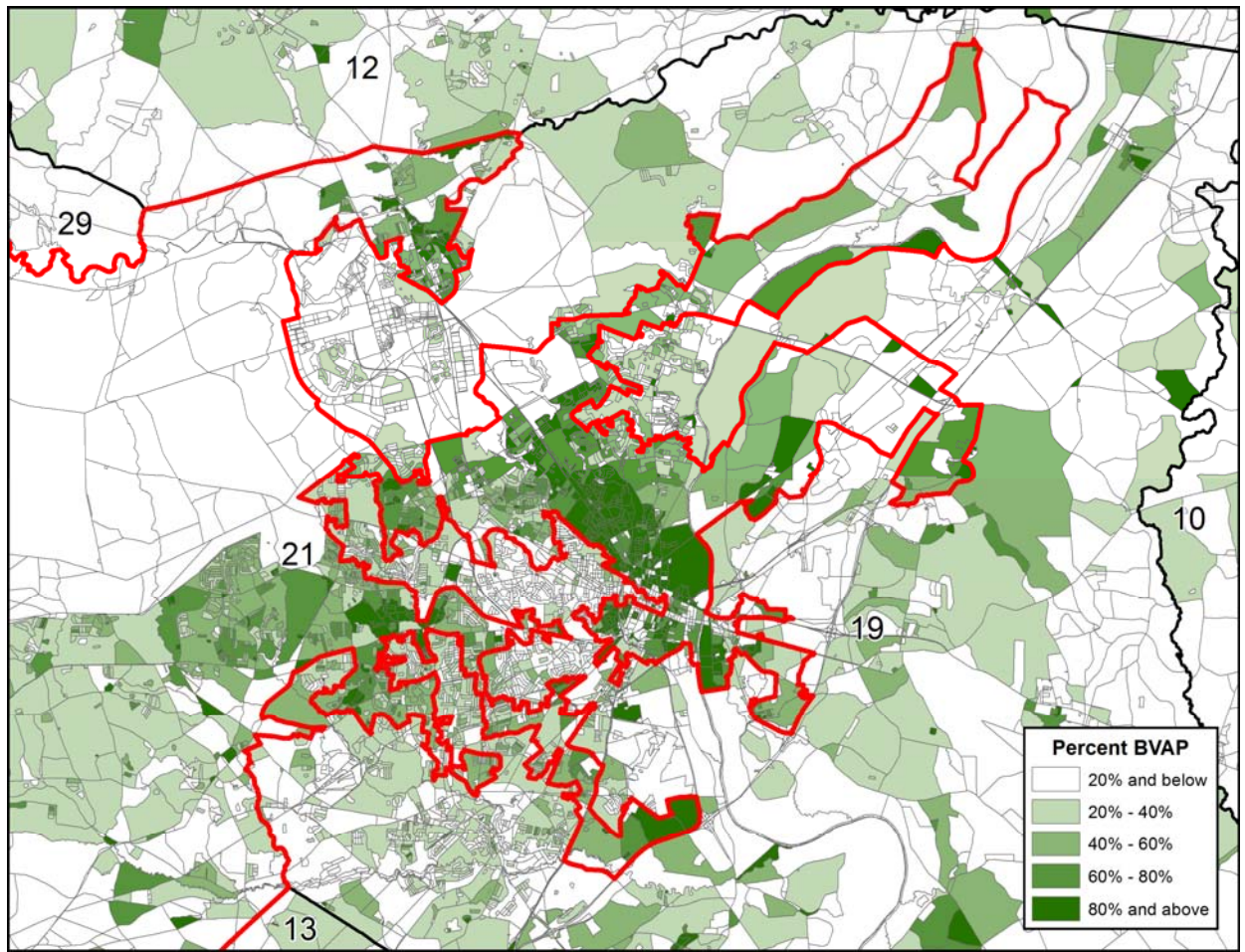
75. The black voting age population (any part black) in the 2003 version of SD 20, based on the 2000 census, was 44.5, and the black voting age population (any part black) in the 2003 version of SD 20, based on the 2010 census, was 44.64%. RFA 53.
76. In accordance with Sen. Rucho's instructions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 20 to 51.04%. RFA 54.
77. Based on the 2010 census, the 2003 version of SD 20 was under populated by 9,086 persons. Dr. Hofeller used race to correct this population deviation for SD 20 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 20 contains 15,008 more black persons than the 2003 version and 3,576 fewer white persons than the 2003 version. RFA 55.

78. Two Senate districts are located in Durham county. Dr. Hofeller assigned 62.29% of the Black voting age citizens in Durham county to SD 20. Answer ¶ 100.
79. As reported on the NCGA redistricting website, SD 20 as drawn in 2011 divided 35 precincts. Dr. Hofeller divided those 35 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 20. Of the 46,744 black voting age persons who reside in the 35 divided precincts in the 2011 version of SD 20, 29,837 (63.8%) were assigned to SD 20. RFA 56 and 57.
80. Dr. Hofeller also divided the City of Durham along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 20. 54,690 of the 71,081 black voting age persons in the part of the City of Durham in Durham County (76.94%) are assigned to SD 20 and the remaining 16,391 black voting age persons are assigned to SD 22. RFA 58.
81. The map below depicts a screenshot of SD 20 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 20. RFA 67.



Senate District 21

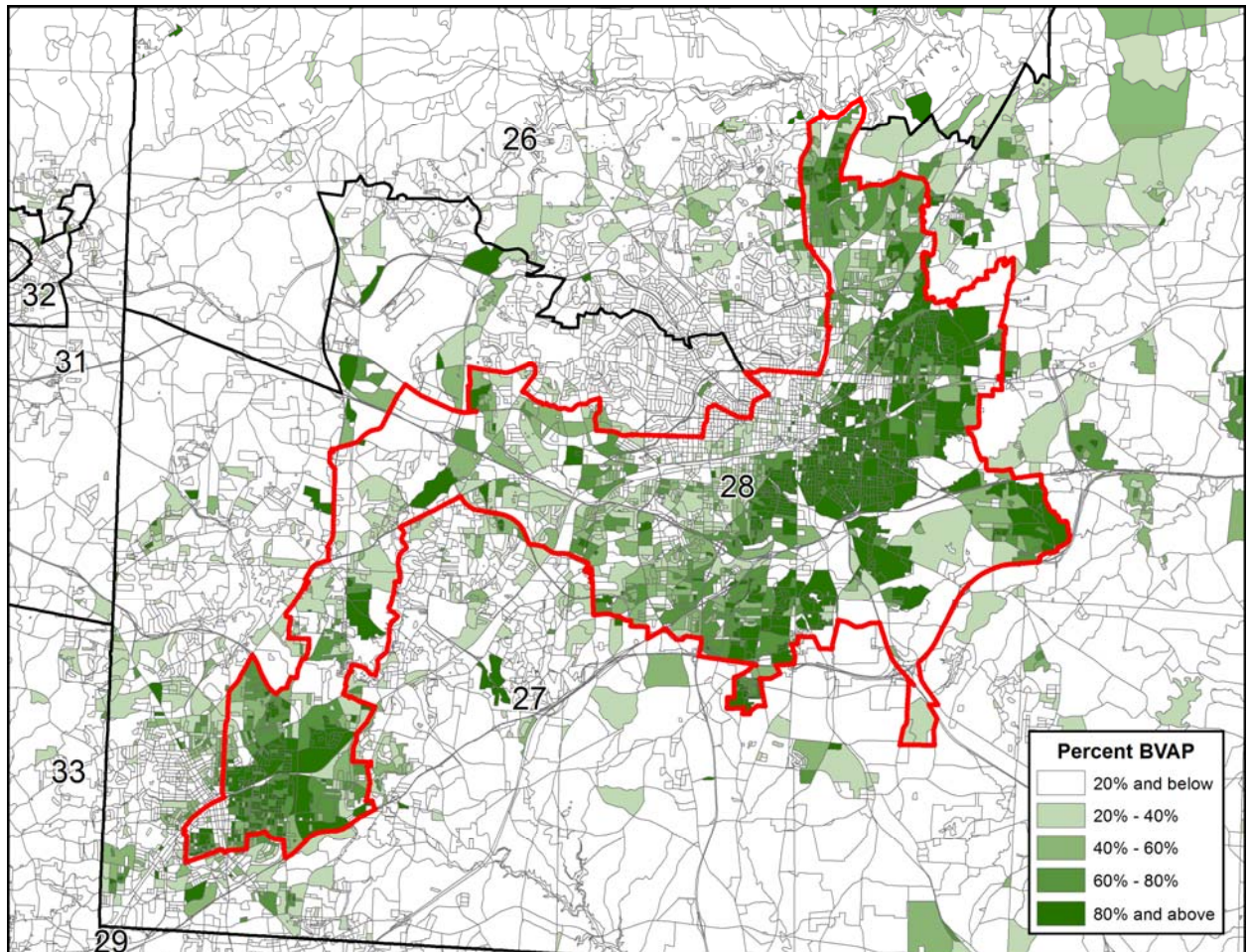
82. The black voting age population (any part black) in the 2003 version of SD 21, based on the 2000 census, was 41.00%, and the black voting age population (any part black) in the 2003 version of SD 21, based on the 2010 census, was 44.93%. RFA 70.
83. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 21, based on the 2010 census to 51.53%. RFA 71.
84. Based on the 2010 census, the 2003 version of SD 21 was under populated by 25,593 persons. Dr. Hofeller used race to correct this population deviation for SD 21 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 21 contains 20,286 more black persons than the 2003 version and 6,297 fewer white persons than the 2003 version. RFA 72.
85. Two Senate districts are located in Cumberland county. Dr. Hofeller assigned 65.07% of the black voting age citizens in Cumberland to SD 21. Answer ¶ 111.
86. As reported on the NCGA redistricting website, SD 21 as drawn in 2011 divided 33 precincts. Dr. Hofeller divided those 33 precincts along racial lines in order to meet Sen. Rucho's 50% directions for SD 21. Of the 66,640 black voting age persons who reside in the 33 divided precincts in the 2011 version of SD 21, 40,213 (60.3%) were assigned to SD 21. RFA 73 and 74.
87. Dr. Hofeller divided the City of Fayetteville and the Town of Spring Lake on racial grounds in order to meet Sen. Rucho's 50% plus directions for SD 21. 47,670 of the 63,138 black voting age persons in the City of Fayetteville (75.70%) are assigned to SD 21 and the remaining 15,468 black voting age persons are assigned to SD 19; 2,280 of the 3,267 black voting age persons in the Town of Spring Lake (69.87%) are assigned to SD 21; and the remaining 987 black voting age persons to SD 19. RFA 75 and 76.
88. The map below depicts a screenshot of SD 21 from Maptitude, the program used by Dr. Hofeller, that displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 21. RFA 86.



Senate District 28

89. The black voting age population (any part black) in the 2003 version of SD 28, based on the 2000 census, was 44.18%, and the black voting age population (any part black) in the 2003 version of SD 28, based on the 2010 census, was 47.20%. RFA 88.
90. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 28 to 56.49%. RFA 89
91. Based on the 2010 census, the 2003 version of SD 28 was under populated by 13,673 persons. Dr. Hofeller used race to correct this population deviation for SD 28 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 28 contains 30,773 more black persons than the 2003 version and 12,508 fewer white persons than the 2003 version. RFA 90.

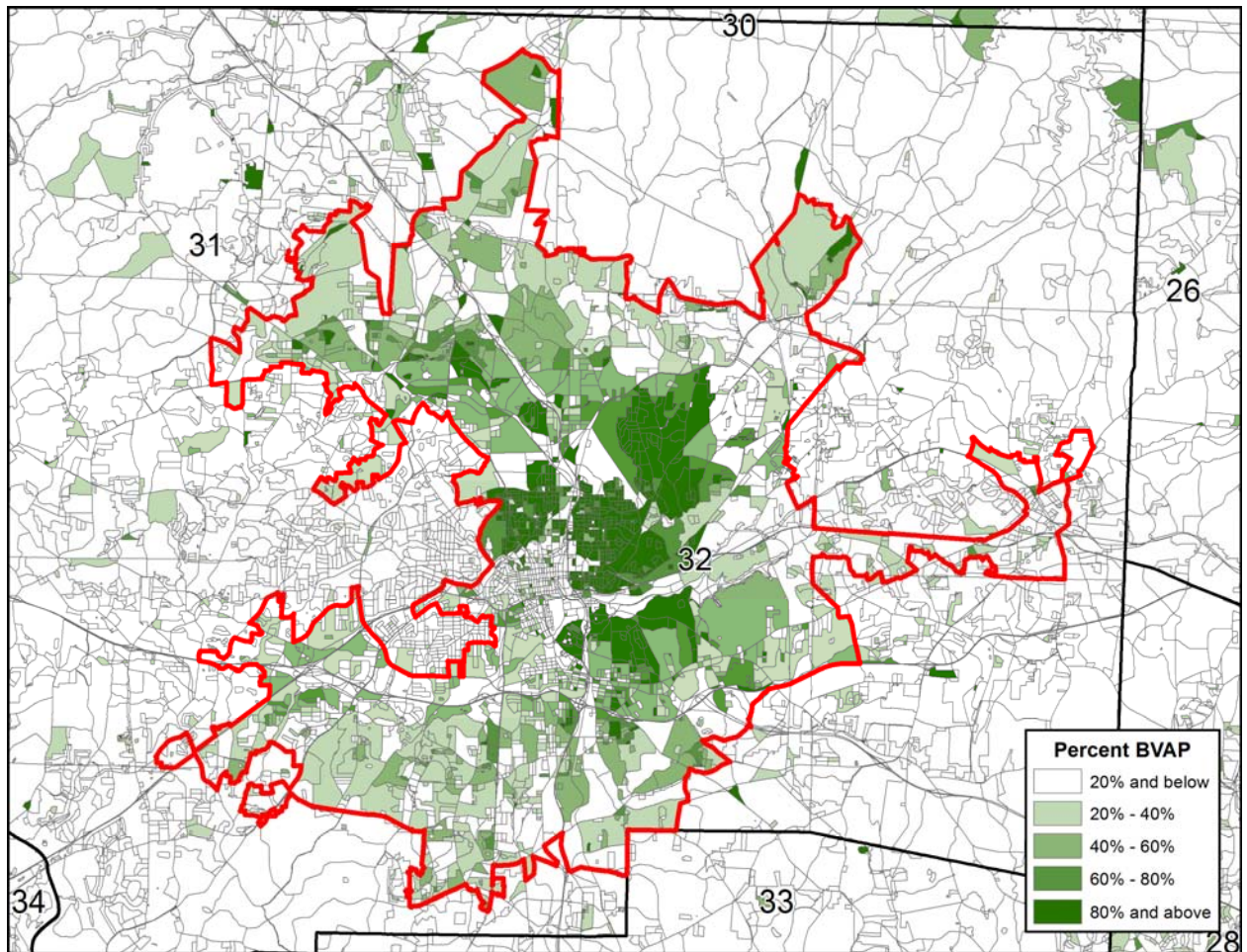
92. Three Senate districts are located in Guilford County. Dr. Hofeller assigned 82.45% of the black voting age citizens in Guilford to SD 28. RFA 93.
93. As reported on the NCGA redistricting website, SD 28 as drawn in 2011 divided 15 precincts. Dr. Hofeller divided those 15 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 28. Of the 17,966 black voting age persons who reside in the 15 divided precincts in the 2011 version of SD 28, 12,625 (70.4%) were assigned to SD 28. RFA 91 and 92.
94. Dr. Hofeller also divided the City of Greensboro and the City of High Point along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 28. 68,967 of the 83,647 black voting age persons in the City of Greensboro (82.45%) are assigned to SD 28 and the remaining 14,680 black voting age persons are divided between SD 26 and SD 27; 14,573 of the 24,173 black voting age persons in the part of the City of High Point in Guilford County (60.28%) are assigned to SD 28. RFA 93 and 94.
95. The map below depicts a screenshot of SD 28 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 28. RFA 103.



Senate District 32

96. As first drawn by Dr. Hofeller, the black voting age population in SD 32 was 39.32%. Sen. Rucho, however, later directed Dr. Hofeller to increase the black voting age population in that district in order that the black voting age population in the district would exceed the black voting age population in a district proposed by AFRAM on June 23, 2011. Dr. Hofeller complied with that direction and increased the black voting age population to 42.53%. RFA 107.
97. On the floor of the Senate on July 25, 2011, Sen. Rucho publicly acknowledged that the mapdrawers purposefully drew Senator Linda Garrou, a white senator, out of her district. Sen. Rucho stated, “we have also removed the white incumbent from the district who had previously defeated African American primary challengers, and we think this will provide the minority community within the district with a better opportunity to elect a candidate of their choice.” July 25, 2011 Transcript of Proceedings in the State Senate, 91:19.

98. The precinct that Sen. Garrou lived in was split in order to remove her from the district. Dickson Tr. T. Vol. I, 164:4-16512; Tr. Ex. 31 A, 31 B.
99. Sen. Linda Garrou was removed from Senate District 32 because of the color of her skin.
100. There are two Senate districts in Forsyth County. Dr. Hofeller assigned 86.92% of the Black voting age citizens in Forsyth to SD 32. Answer ¶ 114.
101. In order to comply with Sen. Rucho's direction to increase the BVAP in SD 32, Dr. Hofeller had to divide a large number of precincts. As reported on the NCGA redistricting website, SD 32 as drawn in the first version of SD 32 only divided one precinct. The enacted version of SD 32, however, divided 43 precincts. Dr. Hofeller divided these 43 precincts along racial lines in order to meet Sen. Rucho's direction. Of the 23,780 black voting age persons who reside in the 43 divided precincts in the 2011 version of SD 32, 18,903 (79.5%) were assigned to SD 32. RFA 109 and 110.
102. Dr. Hofeller also had to divide the City of Winston Salem along racial lines in order to comply with Sen. Rucho's directions. According to the NCGA redistricting website, 56,528 of the 59,560 black voting age persons in the City of Winston Salem (94.27%) are assigned to SD 32 and the remaining 3,432 black voting age persons to SD 31. RFA 111.
103. The map below depicts a screenshot of SD 32 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 32. RFA 119.

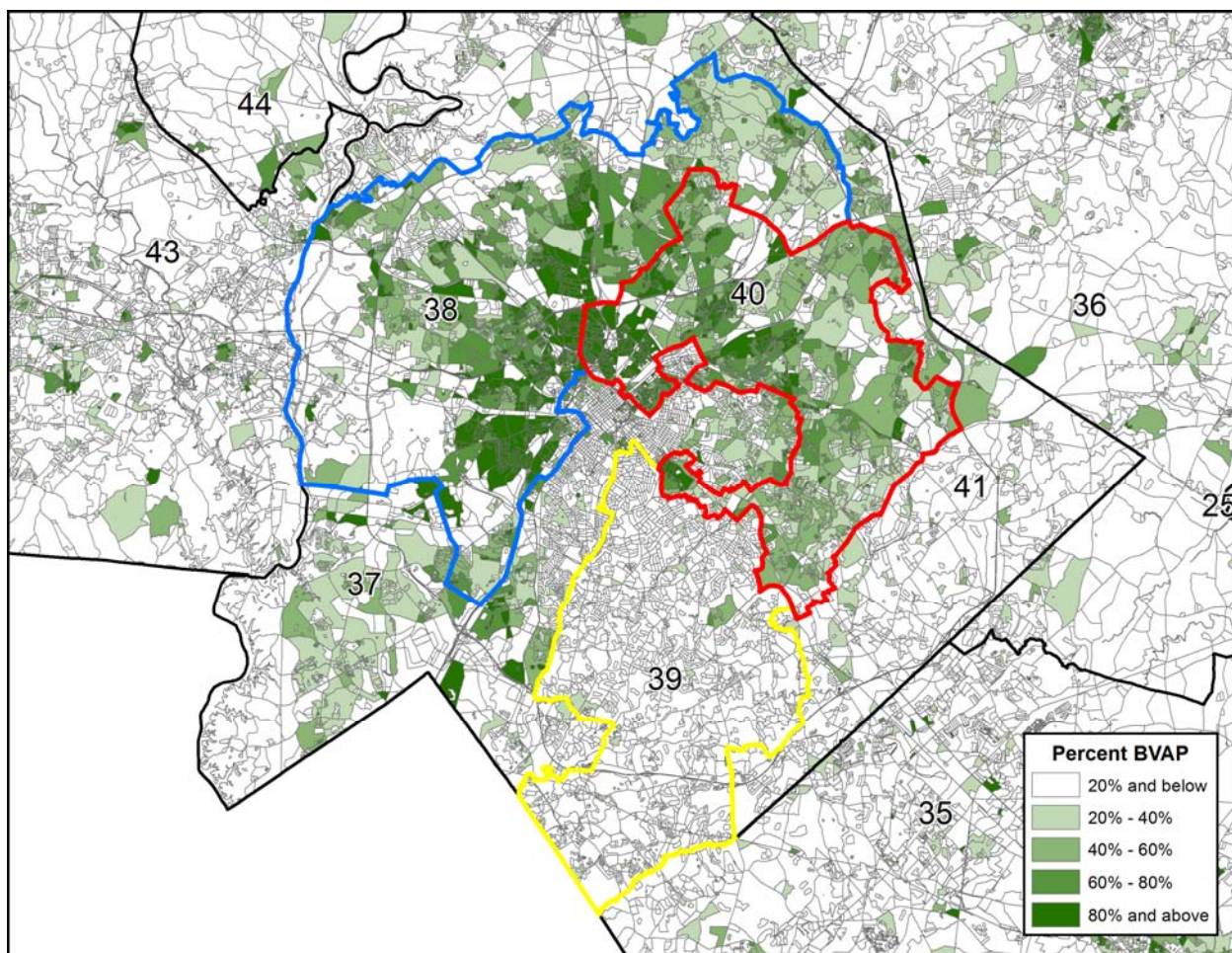


Senate Districts 38 and 40 in Mecklenburg County

104. Under the 2003 Senate plan, only one district located in Mecklenburg County had more than 40% black voting age population and no district had 50% black voting age population. In accordance with Sen. Rucho's 50% plus goal and his proportionality goal, Dr. Hofeller drew two districts in Mecklenburg County in 2011 that had more than 50% black voting age population. RFA 443 and 444.
105. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 version of SD 38, based on the 2000 census, was 47.69%, and the black voting age population (any part black) in the 2003 version of SD 38, based on the 2010 census, was 46.97%. RFA 121.
106. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 38, based on the 2010 census, to 52.51%. RFA 122.

107. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 version of SD 40, based on the 2000 census, was 31.11%, and the black voting age population (any part black) in the 2003 version of SD 40, based on the 2010 census, was 35.43%. RFA 138.
108. In accordance with Sen. Rucho's directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of SD 40, based on the 2010 census to 51.84%. RFA 139.
109. There are five Senate districts in Mecklenburg County. Dr. Hofeller assigned 142,499 black voting age citizens to SD 38 and 40 and 64,852 black voting age citizens to the other three districts. Answer ¶ 135; RFA 123.
110. Based on the 2010 census, the 2003 version of SD 38 was overpopulated by 47,572 persons. Dr. Hofeller used race to correct this population deviation for SD 38 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 38 contains 15,477 fewer black persons than the 2003 version and 31,521 fewer white persons than the 2003 version. RFA 140.
111. Based on the 2010 census, the 2003 version of SD 40 was overpopulated by 54,523 persons. Dr. Hofeller used race to correct this population deviation for SD 40 and meet Sen. Rucho's 50% plus instruction. As redrawn in 2011 SD 40 contains 10,592 more black persons than the 2003 version and 67,858 fewer white persons than the 2003 version. RFA 123.
112. As reported on the NCGA redistricting website, SD 38 as drawn in 2011 divided 8 precincts. Dr. Hofeller divided those 8 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 38. Of the 16,114 black voting age persons who reside in the 8 divided precincts in the 2011 version of SD 38, 14,400 (89.6%) were assigned to SD 38. RFA 124 and 125.
113. As reported on the NCGA redistricting website, SD 40 as drawn in 2011 divided 16 precincts. Dr. Hofeller divided those 16 precincts along racial lines in order to meet Sen. Rucho's 50% plus directions for SD 40. Of the 22,317 black voting age persons who reside in the 16 divided precincts in the 2011 version of SD 40, 16,116 (72.2%) were assigned to SD 40. RFA 141 and 142.
114. Dr. Hofeller also divided the City of Charlotte on racial grounds in order to meet Sen. Rucho's 50% plus and proportionality directions. According to the NCGA redistricting website, 137,082 of the 188,349 black voting age persons in the City of Charlotte (72.78%) are assigned to SD 38 and 40 and the remaining 51,267 black voting age persons are divided among SD 37, 39 and 41. RFA 126.

115. The map below depicts a screenshot of SD 38 and SD 40 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of SD 38 and SD 40. RFA 136.



III. FINDINGS OF FACT PART III: RACE WAS THE PREDOMINANT FACTOR USED TO DRAW THE CHALLENGED HOUSE DISTRICTS

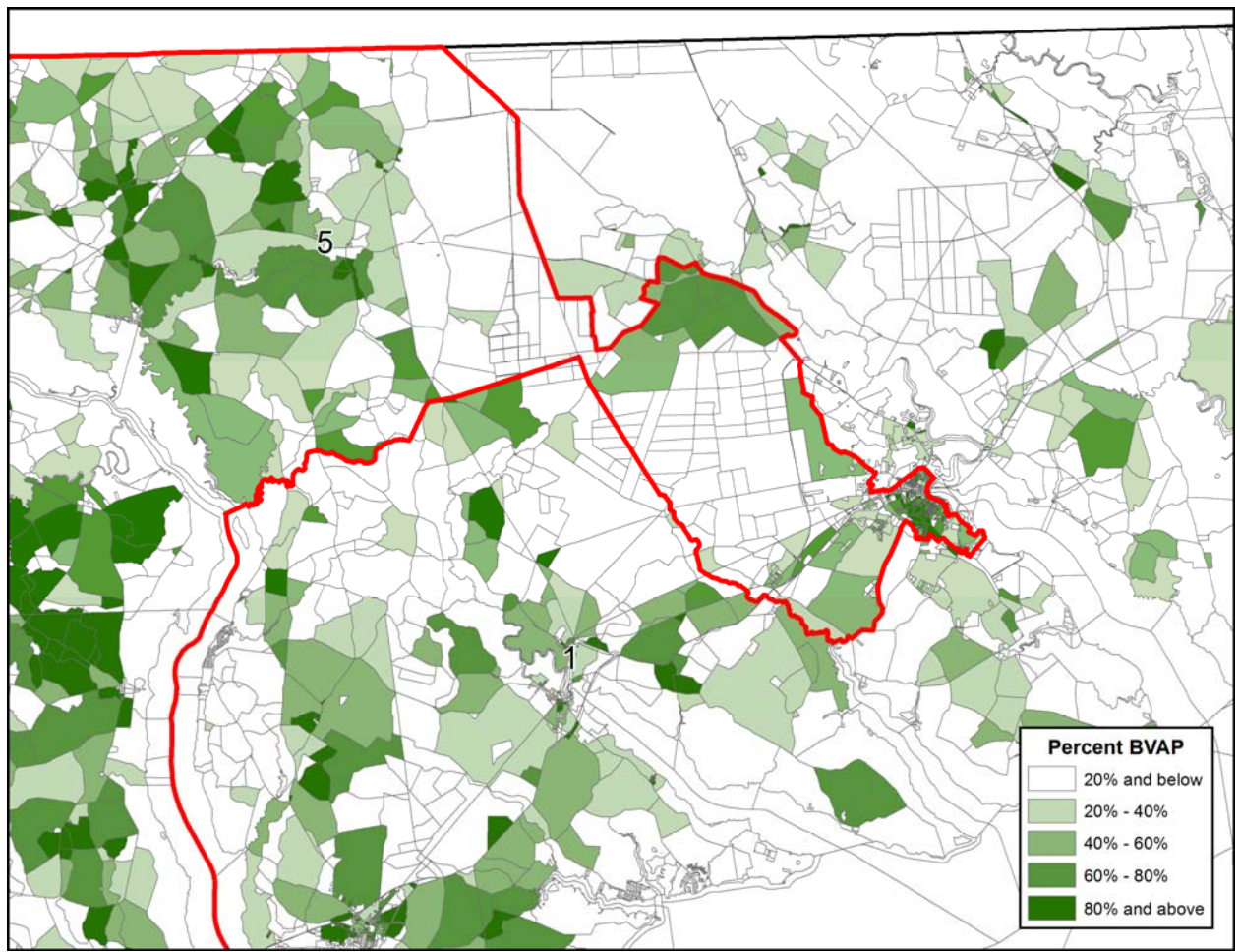
A. THE CHARACTERISTICS OF THE CHALLENGED HOUSE DISTRICTS CONFIRM THAT RACE, NOT TRADITIONAL REDISTRICTING CRITERIA, EXPLAINS THE BOUNDARY OF EACH CHALLENGED HOUSE DISTRICT

House District 5

116. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 5, based on the 2000 census, was 49.02%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 5, based on the 2010 census, was 48.87%. RFA 153.
117. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 5, based on the 2010 census to 54.17%. RFA 154.
118. In order to draw HD 5 as a 50% plus district, Dr. Hofeller had to divide Pasquotank County between HD 5 and HD 1 along racial lines. The black voting age population in the part of Pasquotank County in HD 5 is 52.64% and the black voting age population in the part of Pasquotank in HD 1 is 17.30%. Answer ¶ 145.
119. Based on the 2010 census, the 2003 and 2009 version of HD 5 was under populated by 7,861 persons. Dr. Hofeller used race to correct this population deviation and meet Rep. Lewis' 50% plus instruction. The 2011 version of HD 5 contains 9,362 more black persons than the 2003 and 2009 versions and 383 more white persons than the 2003 and 2009 versions. RFA 155.
120. As reported on the NCGA redistricting website, HD 5 as drawn in 2002 divided no precincts, as drawn in 2003 and 2009 divided no precincts, and as drawn in 2011 divided 6 precincts. Dr. Hofeller divided these 6 precincts were divided along racial lines in order to meet Rep. Lewis' race based goals. Of the 5,378 black voting age persons who reside in the 6 divided precincts in the 2011 version of HD 5, 4,004 (74.5%) were assigned to HD 5. RFA 156 and 157.
121. Dr. Hofeller also divided the City of Elizabeth City in Pasquotank County along racial lines in order to meet Rep. Lewis' race based goals. As reported on the NCGA redistricting website, 7,370 (94.74%) of the 7,779 black voting-age

persons in the City of Elizabeth City are assigned to HD 5, and the remainder of 409 black voting-age persons are assigned to one other House district (HD 1). RFA 158.

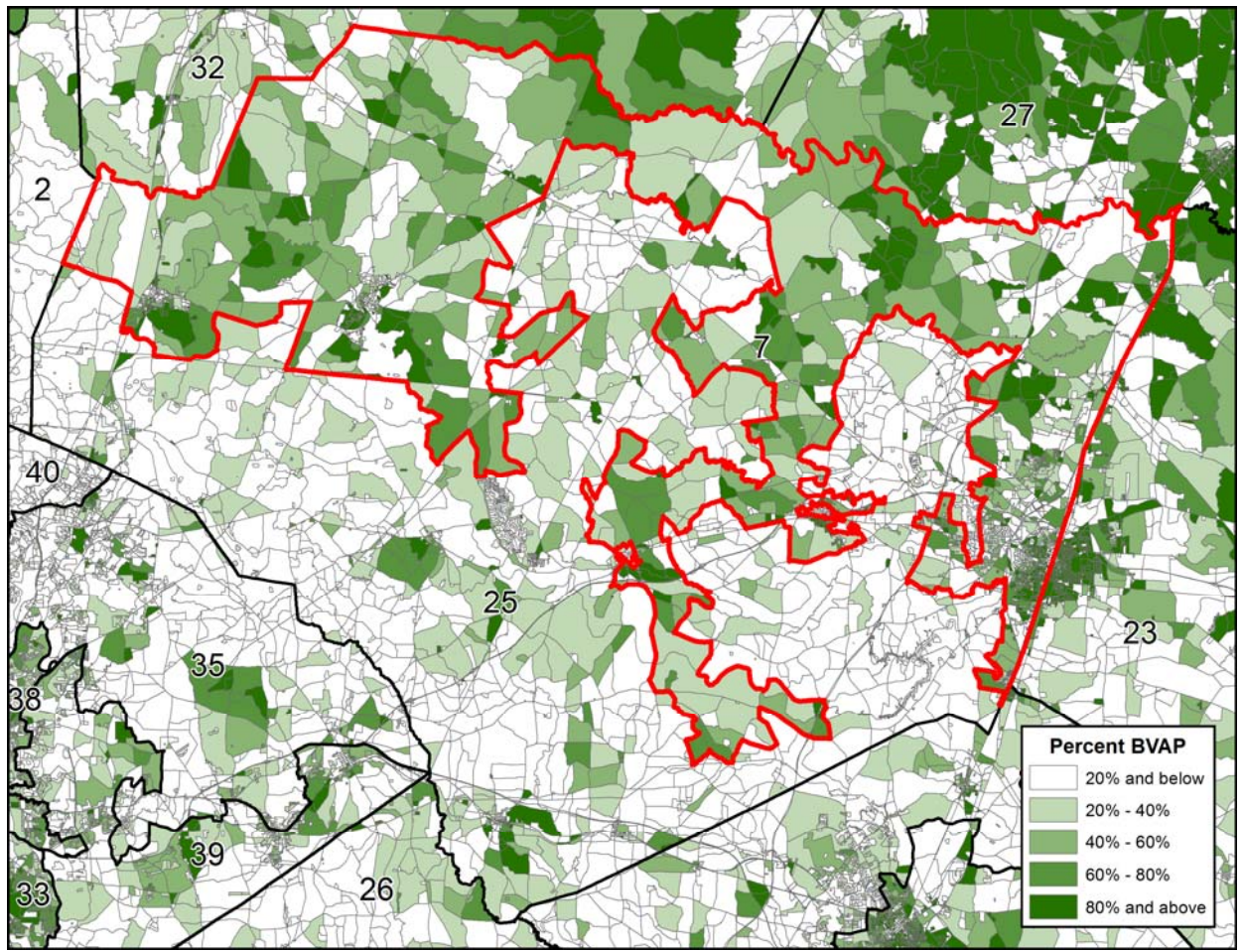
122. The map below depicts a screenshot of HD 5 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 5. RFA 168.



House District 7

123. Dr. Hofeller drew HD 7 in accordance with Rep. Lewis' direction to draw all districts drawn to comply with the VRA as majority Black district. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2011 version of HD 7, based on the 2010 census, is 50.67%. RFA 169.

124. To comply with Rep. Lewis' 50% plus direction, Dr. Hofeller divided Nash County and Franklin County along racial lines. The black voting age population in the part of Nash County in HD 7 is 52.92% and the black voting age population in the part of Nash in HD 15 is 15.02%. Answer ¶ 151. The black voting age population in the part of Franklin County in HD 7 is 45.07% and the black voting age population in the part of Franklin in HD 25 is 17.17%. Answer ¶ 153.
125. As reported on the NCGA redistricting website, HD 7 as drawn in 2011 divided 22 precincts. To meet Rep. Lewis' 50% plus directions, Dr. Hofeller divided those 22 precincts along racial lines. Of the 21,538 black voting age persons who reside in the 22 divided precincts in the 2011 version of HD 7, 17,898 (83.1%) were assigned to HD 7. RFA 170-171.
126. Dr. Hofeller also had to divide the Towns of Castalia, Dortches, and Spring Hope and the City of Rocky Mount along racial lines in order to comply with Rep. Lewis 50% plus directions. As reported on the NCGA redistricting website, 70 (87.5%) of the 80 black voting-age persons in the Town of Castalia are assigned to HD 7, and the remainder of 10 black voting-age persons are assigned to one other House district (HD 25). As reported on the NCGA redistricting website, 130 (70.65%) of the 184 black voting-age persons in the city of Dortches are assigned to HD 7, and the remainder of 54 black voting-age persons are assigned to one other House district (HD 25). As reported on the NCGA redistricting website, 377 (76.63%) of the 492 black voting-age persons in the Town of Spring Hope are assigned to HD 7, and the remainder of 115 black voting-age persons are assigned to one other House district (HD 25). As reported on the NCGA redistricting website, 14,110 (96.16%) of the 14,673 black voting-age persons in the city of Rocky Mount in Nash County are assigned to HD 7, and the remainder of 563 black voting-age persons are assigned to one other House district (HD 25). RFA 172-175.
127. The map below depicts a screenshot of HD 7 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 7. RFA 185.

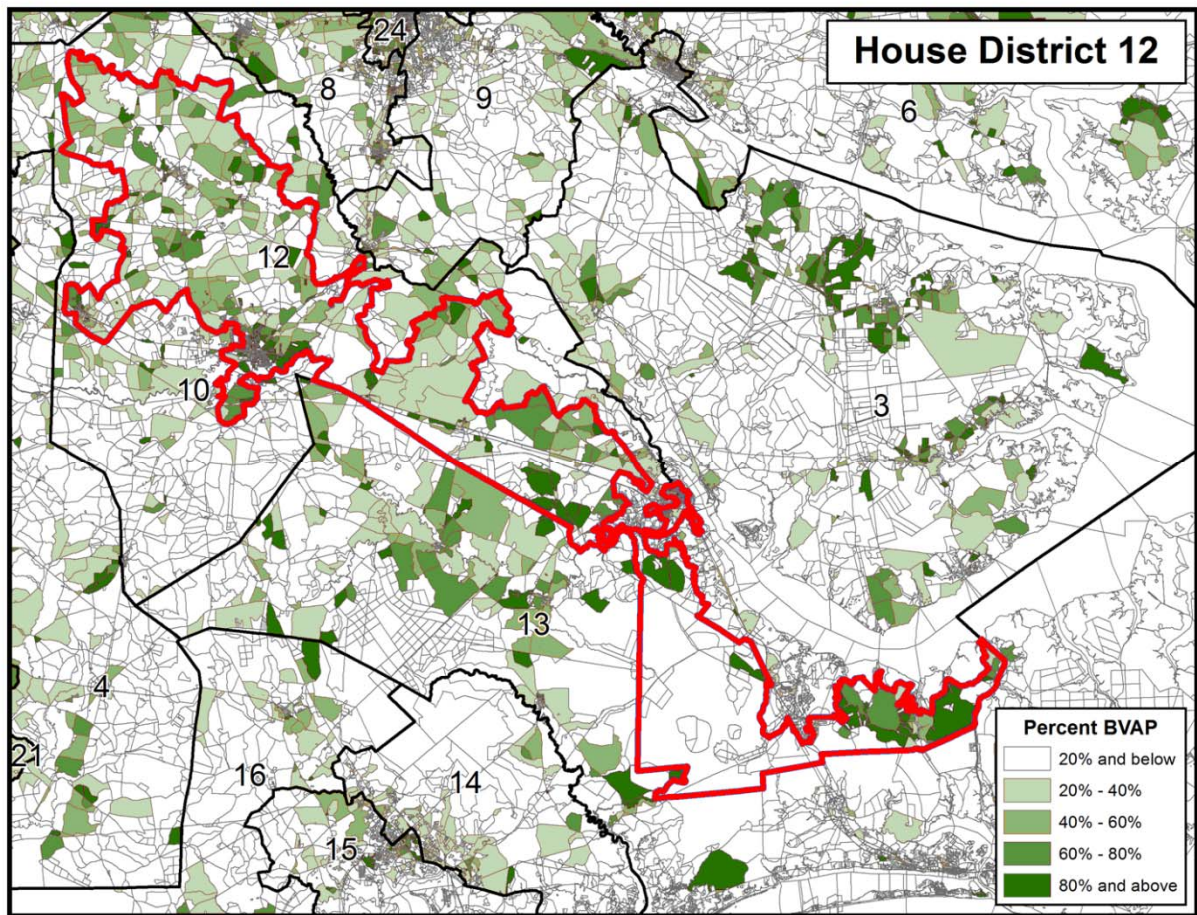


House District 12

128. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 12, based on the 2000 census, was 47.51% , and the black voting age population (any part black) in the 2003 and 2009 version of HD 12, based on the 2010 census, was 46.45%. RFA 187.
129. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 12, based on the 2010 census to 50.6%. RFA 188.
130. Dr. Hofeller had to divide Craven County, Lenoir County and Greene County along racial lines in order to meet Rep. Lewis' 50% plus direction for HD 12. The black voting age population in the part of Craven County in HD 12 is 44.70%; the black voting age population in the part of Craven in HD 10 is 13.66%; and the part of Craven in HD 3 is 12.93%. Answer ¶ 159. The black voting age population in the part of Lenoir County in HD 12 is 59.84% and the black voting age population

in the part of Lenoir in HD 10 is 15.74%. Answer ¶ 161. The black voting age population in the part of Greene County in HD 12 is 42.52% and the black voting age population in the part of Greene in HD 10 is 24.29%. Answer ¶ 163.

131. Based on the 2010 census, the 2003 version of HD 12 was under populated by 15,862 persons. Dr. Hofeller used race to correct this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 12 contains 8,784 more black persons than the 2003 and 2009 version and 2,994 more white persons than the 2003 and 2009 version. RFA 189.
132. As reported on the NCGA redistricting website, HD 12 as drawn in 2011 divided 34 precincts. Dr. Hofeller had to divide these 34 precincts along racial lines in order to meet Rep. Lewis 50% plus directions. Of the 25,174 black voting age persons who reside in the 34 divided precincts in the 2011 version of HD 12, 16,612 (65.99%) were assigned to HD 12. RFA 190-191.
133. Dr. Hofeller also had to divide the City of Kinston and the City of New Bern along racial lines in order to meet Rep. Lewis' 50% plus direction. 10,077 (92.72%) of the 10,868 black voting-age persons in the city of Kinston are assigned to HD 12, and the remainder of 791 black voting-age persons are assigned to one other House district (HD 10); 5,199 (72.70%) of the 7,151 black voting-age persons in the city of New Bern are assigned to HD 12, and the remainder of 1,952 black voting age persons. RFA 192-193.
134. The map below depicts a screenshot of HD 12 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 12. RFA 203.

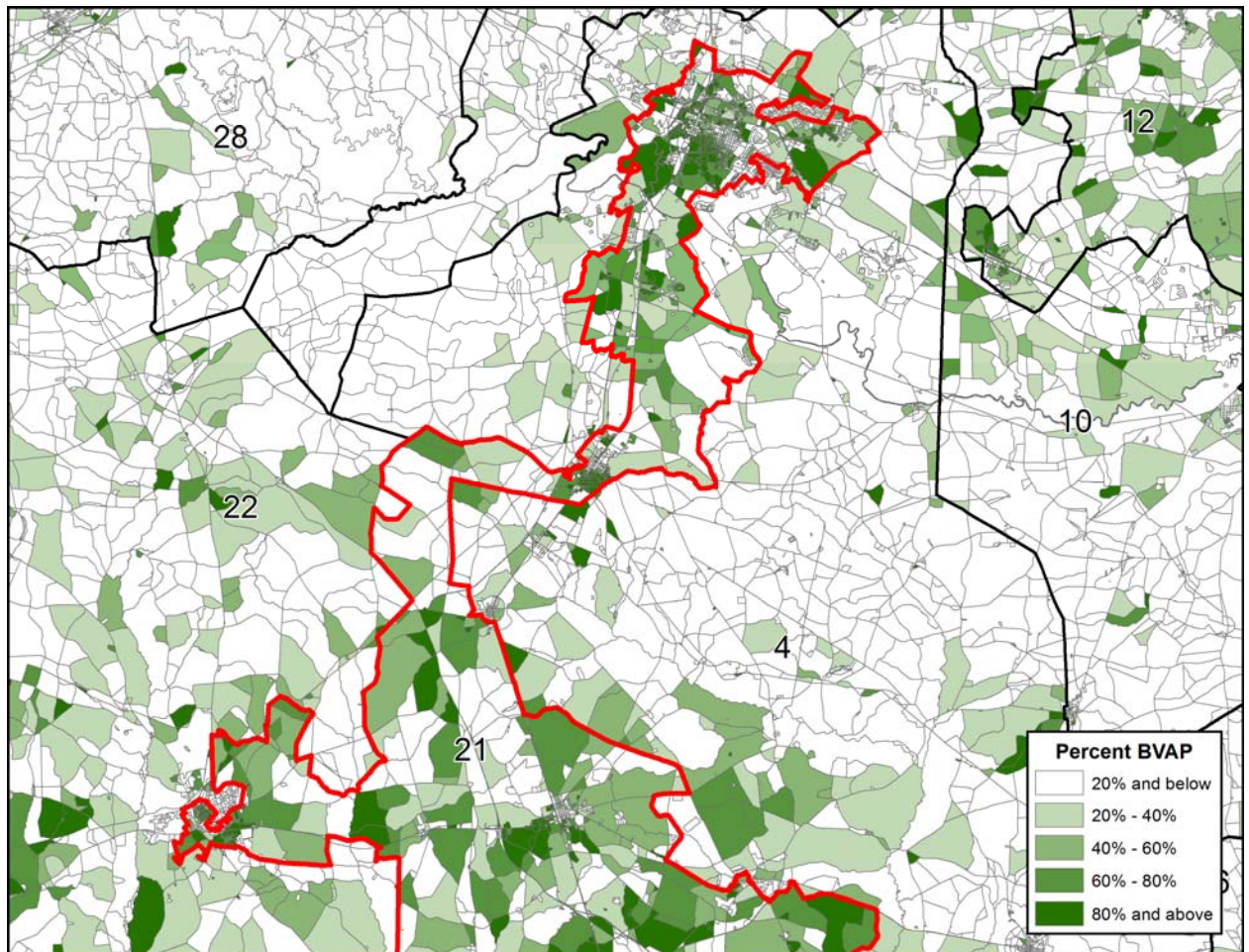


House District 21

135. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 21, based on the 2000 census, was 48.35%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 21, based on the 2010 census, was 46.25%. RFA 205.
136. In accordance with Rep. Lewis directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 21, based on the 2010 census to 51.9%. RFA 206.
137. In order to met Rep. Lewis 50% plus direction, Dr. Hofeller had to divide Duplin County, Sampson County and Wayne County along racial lines. The black voting age population in the part of Duplin County in HD 21 is 45.75% and the black voting age population in the part of Duplin in HD 4 is 15.13%. Answer ¶ 170. The black voting age population in the part of Sampson County in HD 21 is 53.71% and the black voting age population in the part of Sampson in HD 22 is 21.28%. Answer ¶ 173. The black voting age population in the part of Wayne

County in HD 21 is 54.08% and the black voting age population in the part of Wayne in HD 4 is 16.91%. Answer ¶ 176.

138. Based on the 2010 census, the 2003 and 2009 version of HD 21 was under populated by 9,837 persons. Dr. Hofeller used race to correct this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 21 contains 11,217 more black persons than the 2003 and 2009 version and 1,848 more white persons than the 2003 and 2009 version. RFA 207.
139. As reported on the NCGA redistricting website, HD 21 as drawn in 2011 divided 25 precincts. Dr. Hofeller divided these precincts along racial lines in order to meet Rep. Lewis 50% plus directions. Of the 24,195 black voting age persons who reside in the 25 divided precincts in the 2011 version of HD 21, 14,652 (60.6%) were assigned to SD 4. RFA 208-209.
140. Dr. Hofeller also had to divide Clinton, Goldsboro and Warsaw along racial lines in order to meet Rep. Lewis 50% plus directions. As reported on the NCGA redistricting website, 1,920 (72.67%) of the 2,642 black voting-age persons in the city of Clinton are assigned to HD 21, and the remainder of 722 black voting-age persons are assigned to one other House district (HD 22). As reported on the NCGA redistricting website, 13,616 (92.10%) of the 14,784 black voting-age persons in the city of Goldsboro are assigned to HD 21, and the remainder of 1,168 black voting-age persons are assigned to one other House district (HD 21). As reported on the NCGA redistricting website, all of the 1,207 black voting-age persons in the Town of Warsaw are assigned to HD 21, and none are assigned to the other House district in Warsaw (HD 4). RFA 210-212.
141. The map below depicts a screenshot of HD 21 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 21. RFA 222.

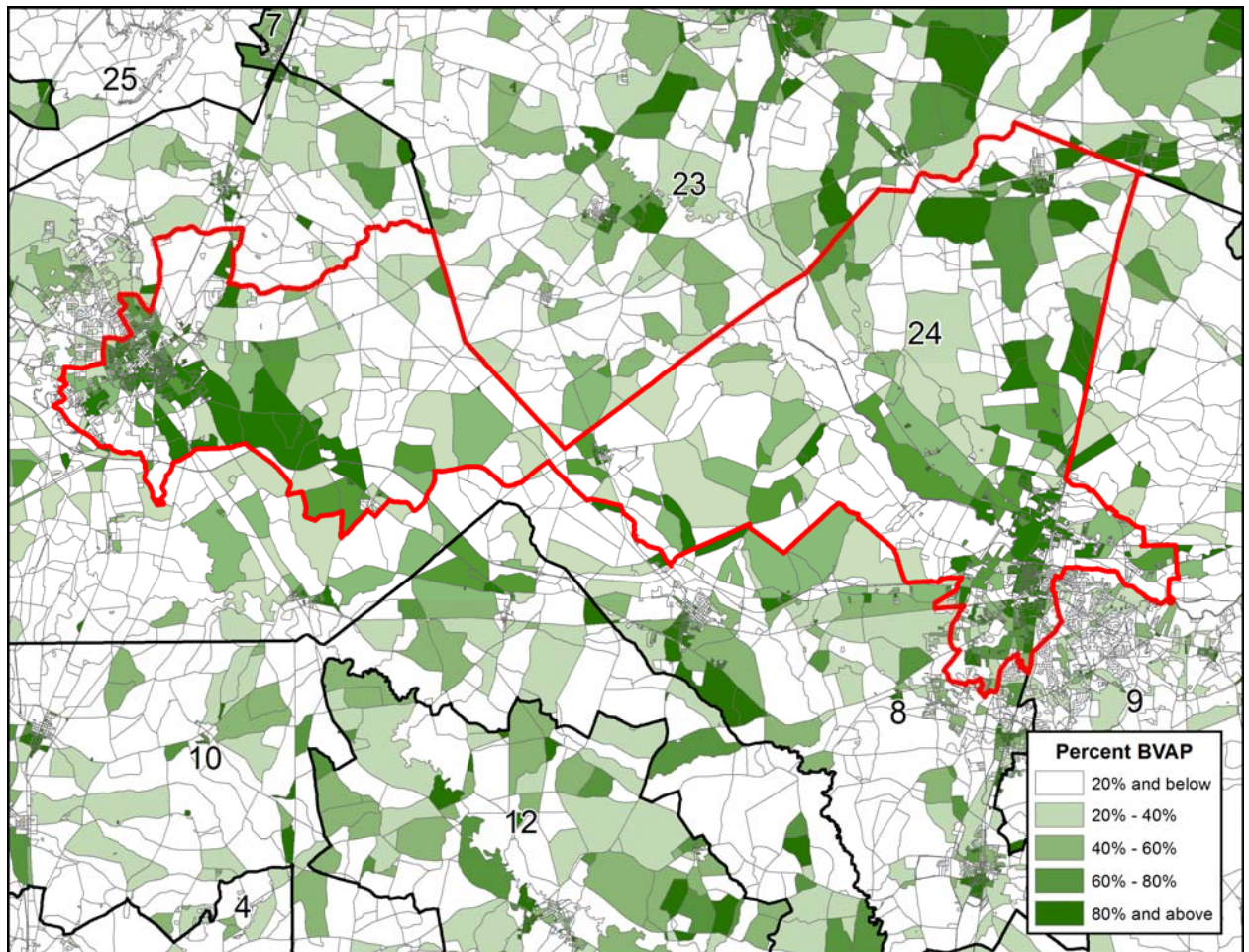


House District 24

142. As reported on the NCGA redistricting website, the black voting age population (single race) in the 2003 and 2009 version of HD 24, based on the 2000 census, was 54.76%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 24, based on the 2010 census, was 56.07%. RFA 224.
143. In accordance with Rep. Lewis' instructions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 24, based on the 2010 census, to 57.33%. RFA 225.
144. Dr. Hofeller had to divide Pitt County and Wilson County along racial lines in order to meet Rep. Lewis' 50% plus directions. The black voting age population in the part of Pitt County in HD 24 is 54.74% and the black voting age population in the part of Pitt in HD 8 is 34.13%. Answer ¶ 183. The black voting age

population in the part of Wilson County in HD 24 is 61.58% and the black voting age population in the part of Wilson in HD 8 is 23.42%. Answer ¶ 185.

145. Based on the 2010 census, the 2003 and 2009 version of HD 24 was under populated by 17,333 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 24 contains 13,586 more black persons than the 2003 and 2009 versions and 3,487 more white persons than the 2003 and 2009 versions. RFA 226.
146. As reported on the NCGA redistricting website, HD 24 as drawn in 2011 divided 12 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 11,510 black voting age persons who reside in the 12 divided precincts in the 2011 version of HD 24, 6,026 (52.35%) were assigned to HD 24. RFA 227-228.
147. Dr. Hofeller also had to divide the Cities of Greenville and Wilson along racial lines in order to meet Rep. Lewis' 50% plus directions. As reported on the NCGA redistricting website, 15,618 (58.28%) of the 23,409 black voting-age persons in the city of Greenville are assigned to HD 24, and the remainder of 7,791 black voting-age persons are assigned to two other House districts (HDs 8 and 9). As reported on the NCGA redistricting website, 12,755 (74.43%) of the 17,137 black voting-age persons in the city of Wilson are assigned to HD 24, and the remainder of 4,382 black voting-age persons are assigned to one other House district (HD 8). RFA 229-230.
148. The map below depicts a screenshot of HD 24 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 24. RFA 240.

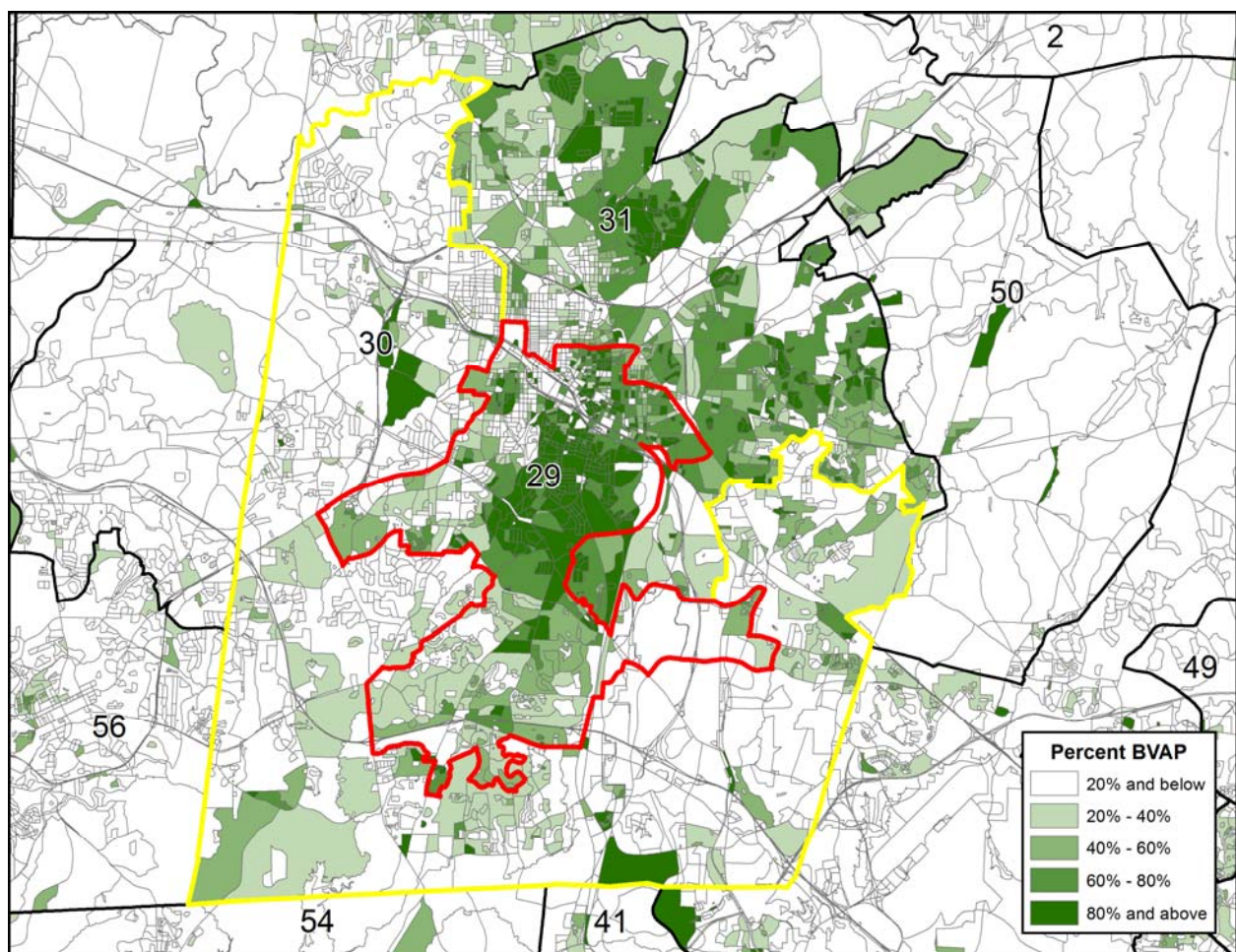


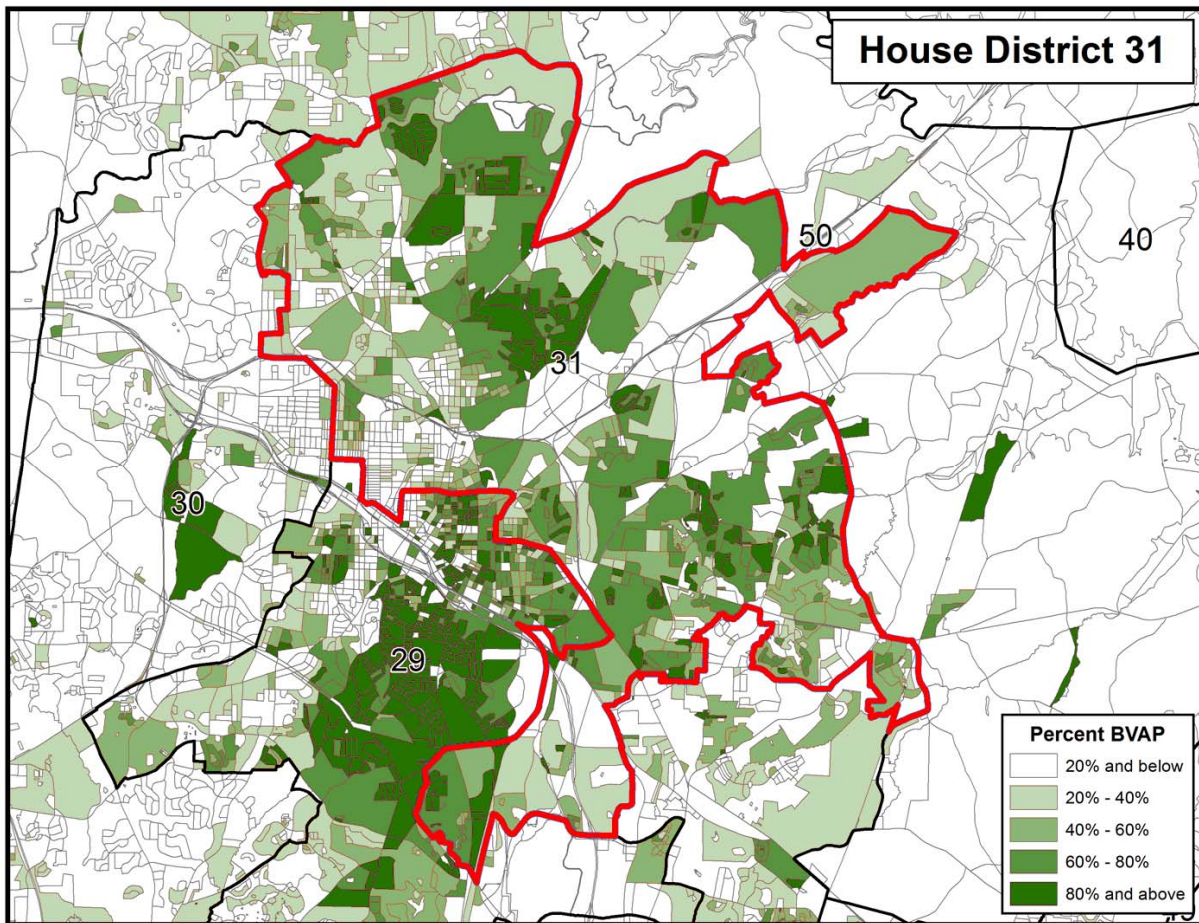
House Districts 29 and 31 in Durham County

149. As reported on the NCGA redistricting website, under the 2003 and 2009 House plans, only one district located in Durham County had more than 40% black voting age population and no district had 50% plus black voting age population. In accordance with Rep. Lewis 50% plus and proportionality directions, Dr. Hofeller drew two districts in Durham County with more than 50% black voting age population. RFA 449-450.
150. The black voting age population (any part black) in the 2003 and 2009 version of HD 29, based on the 2000 census, was 44.71%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 29, based on the 2010 census, was 39.99%. RFA 242.
151. In accordance with Rep. Lewis directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 29, based on the 2010 census, to 51.34%. RFA 243.

152. The black voting age population (any part black) in the 2003 and 2009 version of HD 31, based on the 2000 census, was 44.71%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 31, based on the 2010 census, was 47.23%. RFA 260.
153. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 31, based on the 2010 census, to 51.81%. RFA 261.
154. Four House districts are located in Durham County in the 2011 plan.. The Black voting age population in HD 29 (51.34%) and HD 31 (51.81%) is more than twice the Black voting age population in HD 30 (18.43%) and HD 50 (15.34%). Answer ¶ 192.
155. Based on the 2010 census, the 2003 and 2009 version of HD 29 was under populated by 9,416 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 29 contains 13,286 more black persons than the 2003 and 2009 versions and 6,502 fewer white persons than the 2003 and 2009 versions. RFA 244.
156. Based on the 2010 census, the 2003 and 2009 version of HD 31 was over populated by 11,812 persons. Dr. Hofeller used race to fix this population deviation. As redrawn in 2011, HD 31 contains 2,596 fewer black persons than the 2003 and 2009 version and 9,097 fewer white persons than the 2003 and 2009 version. RFA 262.
157. As reported on the NCGA redistricting website, HD 29 as drawn in 2011 divided 14 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 21,292 black voting age persons who reside in the 14 divided precincts in the 2011 version of HD 29, 11,580 (54.39%) were assigned to HD 29. RFA 246-247.
158. As reported on the NCGA redistricting website, HD 31 as drawn in 2011 divided 13 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 24,483 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 31, 13,735 (56.1%) were assigned to HD 31. RFA 264-265.
159. Of the 33,761 black voting age persons who reside in the 21 divided precincts in Durham County, 25,315 (75%) were assigned to HD 29 or HD 31. RFA 265.

160. Dr. Hofeller also divided the City of Durham along racial lines in order to meet Rep. Lewis' 50% plus direction. According to the NCGA redistricting website, 58,868 (82.81%) of the 71,081 black voting age persons in the City of Durham are assigned to HD 29 and 31, and the remainder of Durham's black voting age persons are assigned to three other districts. RFA 248.
161. The maps below depict screenshots of HD 29 and HD 31 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 29 and HD 31. RFA 258 and 275.

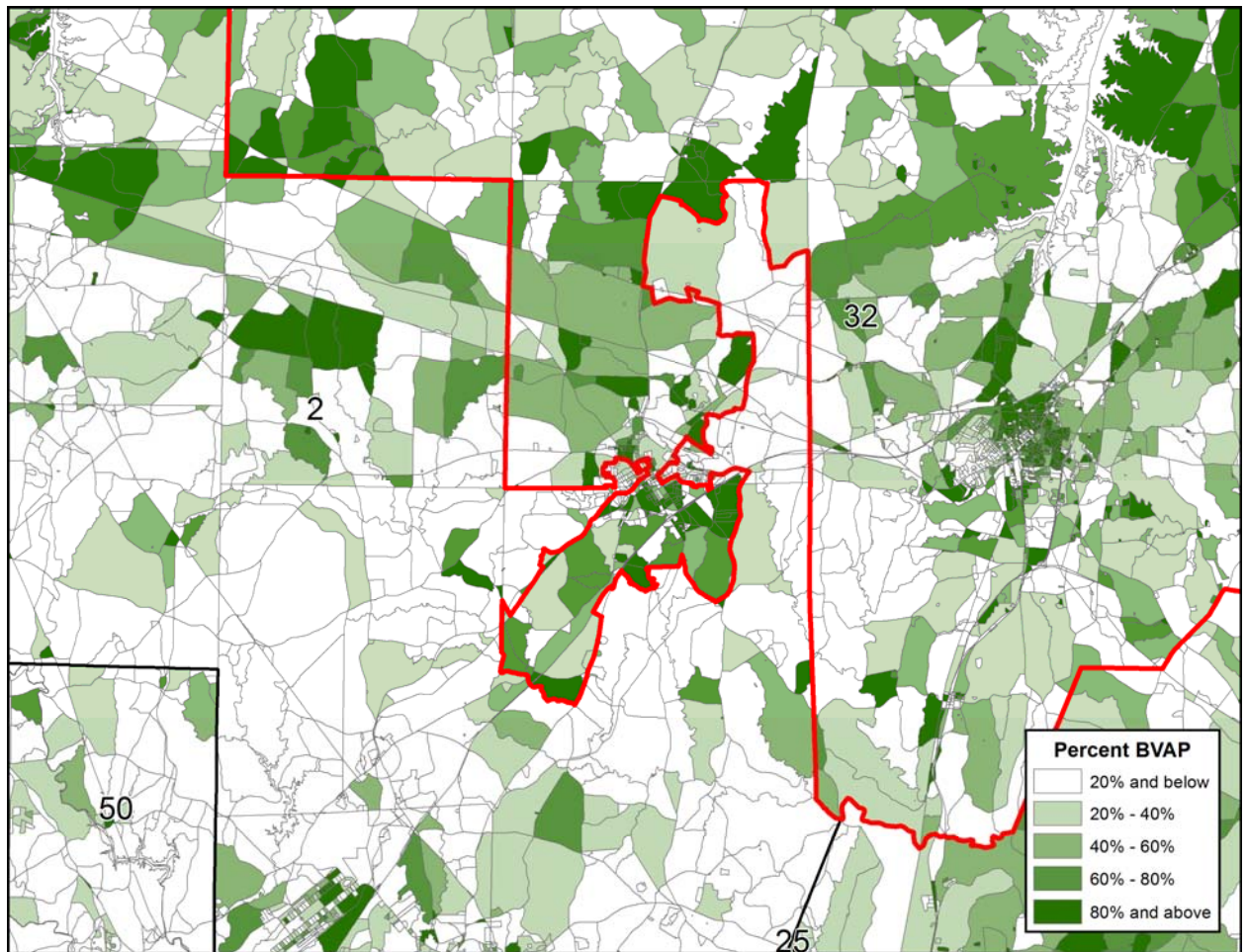




House District 32

162. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 32, based on the 2000 census, was 36.22%, the black voting age population (any part black) in the 2003 and 2009 version of HD 32, based on the 2010 census, was 35.88%. RFA 277.
163. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 32, based on the 2010 census, was 50.45%. RFA 278.
164. Dr. Hofeller had to divide Granville County along racial lines in order to meet Rep. Lewis' 50% plus directions. The black voting age population in the part of Granville County in HD 32 is 54.26% and the black voting age population in the part of Granville in HD 2 is 26.57%. Answer ¶ 202.

165. Based on the 2010 census, the 2003 and 2009 version of HD 32 was over populated by 78 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction.. As redrawn in 2011, HD 32 contains 14,346 more black persons than the 2003 and 2009 version and 11,147 fewer white persons than the 2003 and 2009 version. RFA 158.
166. As reported on the NCGA redistricting website, HD 32 as drawn in 2011 divided 5 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 4,299 black voting age persons who reside in the 5 divided precincts in the 2011 version of HD 32, 3,525 (82%) were assigned to HD 32. RFA 280-281.
167. Dr. Hofeller also had to divide the Town of Oxford along racial lines in order to meet Rep. Lewis' 50% plus directions.. As reported on the NCGA redistricting website, 3,296 (92.92%) of the 3,547 black voting-age persons in the city of Oxford are assigned to HD 32. RFA 282.
168. The map below depicts a screenshot of HD 32 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 32. RFA 287.

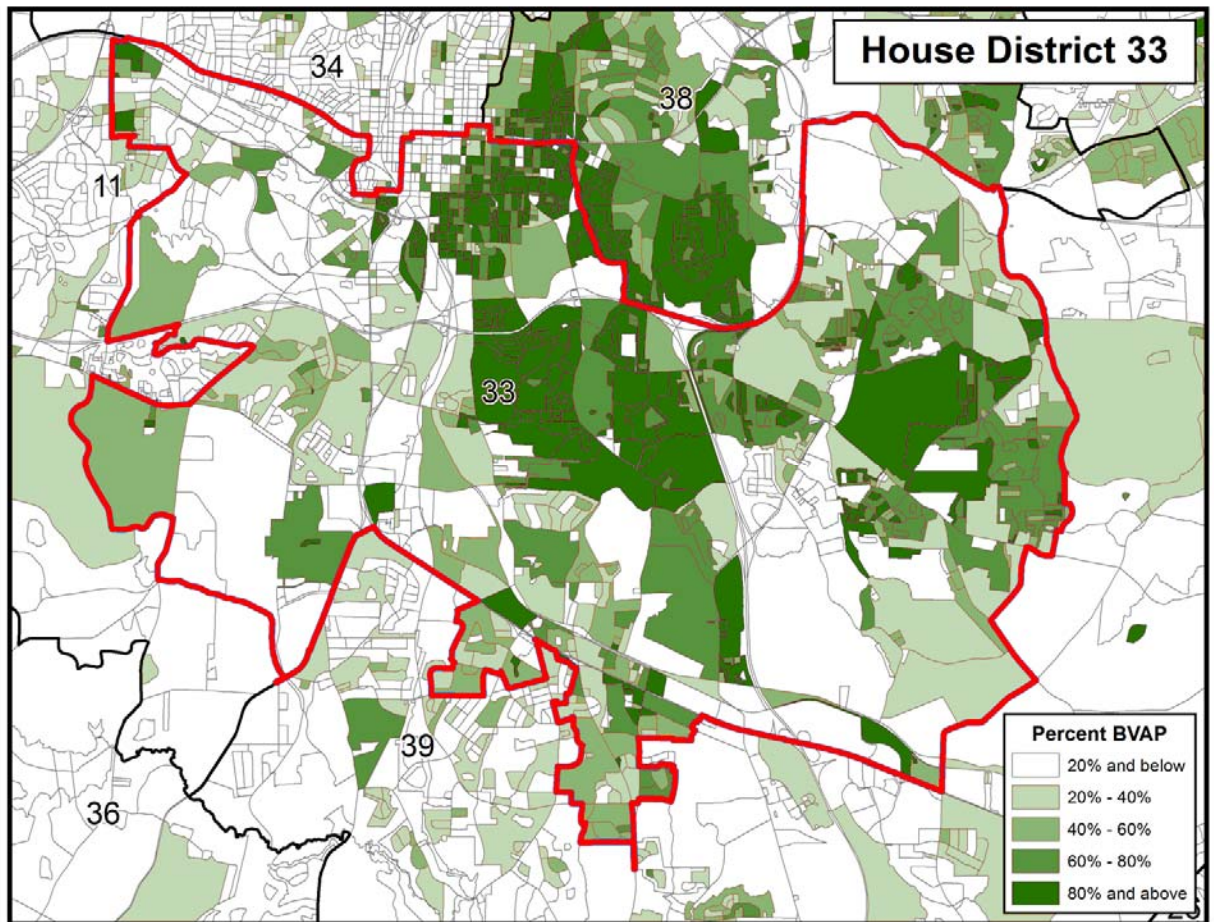


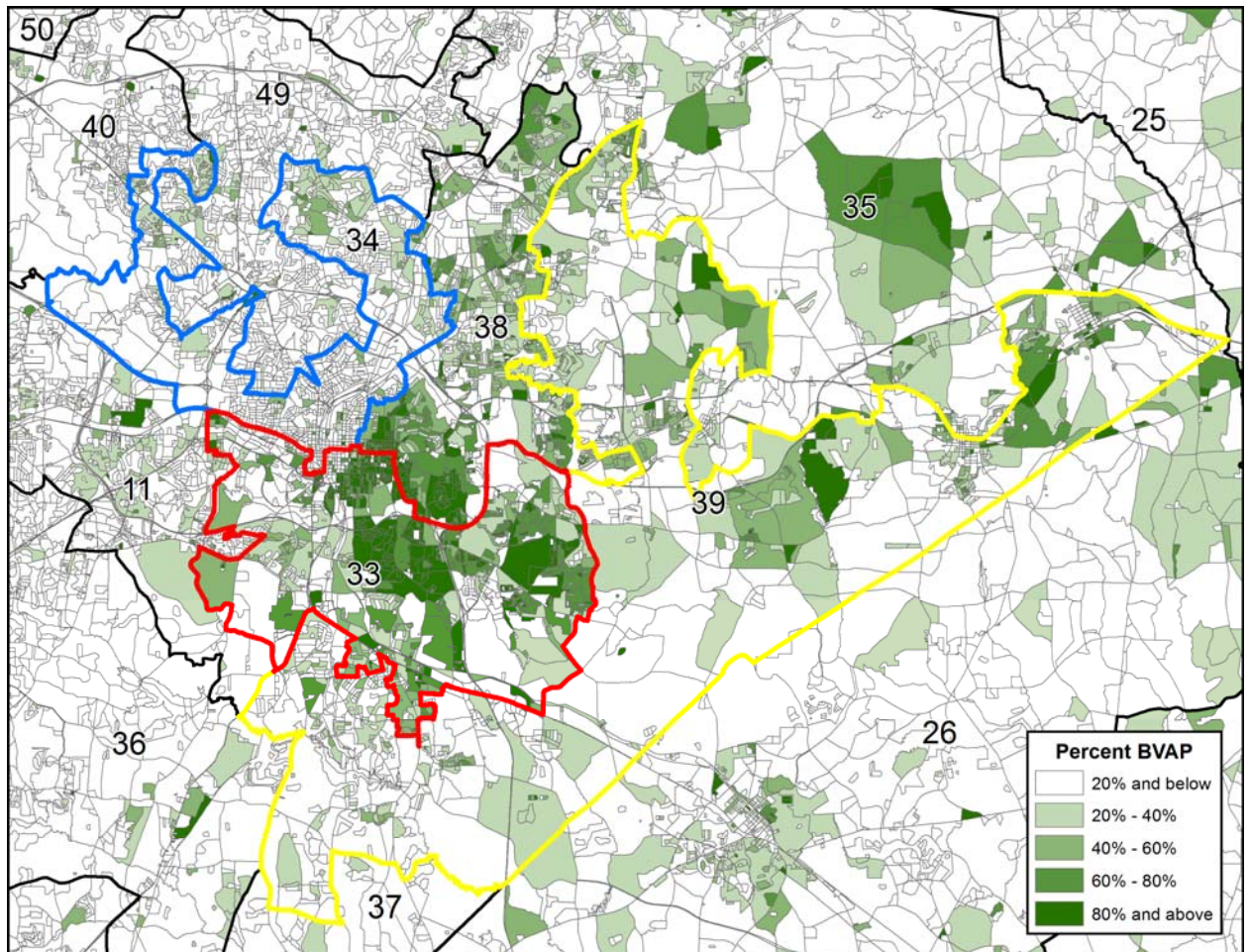
House Districts 33 and 38 in Wake County

169. As reported on the NCGA redistricting website, under the 2003 and 2009 House plans, only one district located in Wake County had more than 40% black voting age population and no district had 50% plus black voting age population. In accordance with Rep. Lewis' directions, Dr. Hofeller drew two districts in the 2011 plan with more than 50% black voting age population. RFA 447-448.
170. There are 11 House districts in Wake county in the 2011 plan. The black voting age population in HD 33 (51.42%) and HD 38 (51.37%) is three times larger than the black voting age population in the remaining eight districts. The black voting age population in HD 11 is 14.84%; in HD 34 is 17.03%; in HD 35 is 17.41%; in HD 36 is 7.74%; in HD 37 is 13.83%; in HD 40 is 9.76%; in HD 41 is 7.40%; and in HD 49 is 8.87%. Answer ¶ 207.

171. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2000 census, was 49.19%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2010 census, was 51.74%. RFA 302.
172. In accordance with Rep. Lewis' directions, Dr. Hofeller drew the 2011 version of HD 33, based on the 2010 census, at 51.42% black voting age population (any part black). RFA 288.
173. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2000 census, was 31.63%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 38, based on the 2010 census, was 27.96%. RFA 302.
174. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 38, based on the 2010 census to 51.37%. RFA 303.
175. As reported on the NCGA redistricting website, HD 33 as drawn in 2011 divided 13 precincts. Dr. Hofeller had to divide these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 14,311 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 33, 9,179 (64.14%) were assigned to HD 33. RFA 289-290.
176. HD 38 as drawn in 2011 divided 13 precincts. Dr. Hofeller had to divide those precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 23,297 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 38, 15,208 (65.28%) were assigned to HD 38. RFA 305-306.
177. Dr. Hofeller also had to divide the City of Raleigh along racial lines in order to meet Rep. Lewis 50% plus directions for HD 33 and 38. According to the NCGA redistricting website, 56,800 (66.81%) of the 87,699, black voting age persons in the City of Raleigh are assigned to HD 33 and 38, and the remainder of Raleigh's black voting age persons are assigned to 7 other districts. RFA 307.
178. Based on the 2010 census, the 2003 and 2009 version of HD 38 was over populated by 4,813 persons. Dr. Hofeller used race to fix this population deviation and to meet Rep. Lewis' 50% plus direction. As redrawn in 2011, HD 38 contains 19,027 more black persons than the 2003 and 2009 version and 24,294 fewer white persons than the 2003 and 2009 version. RFA 304.

179. The maps below depict screenshots of HD 33 and 38 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 33 and HD 38. RFA 300, 312.

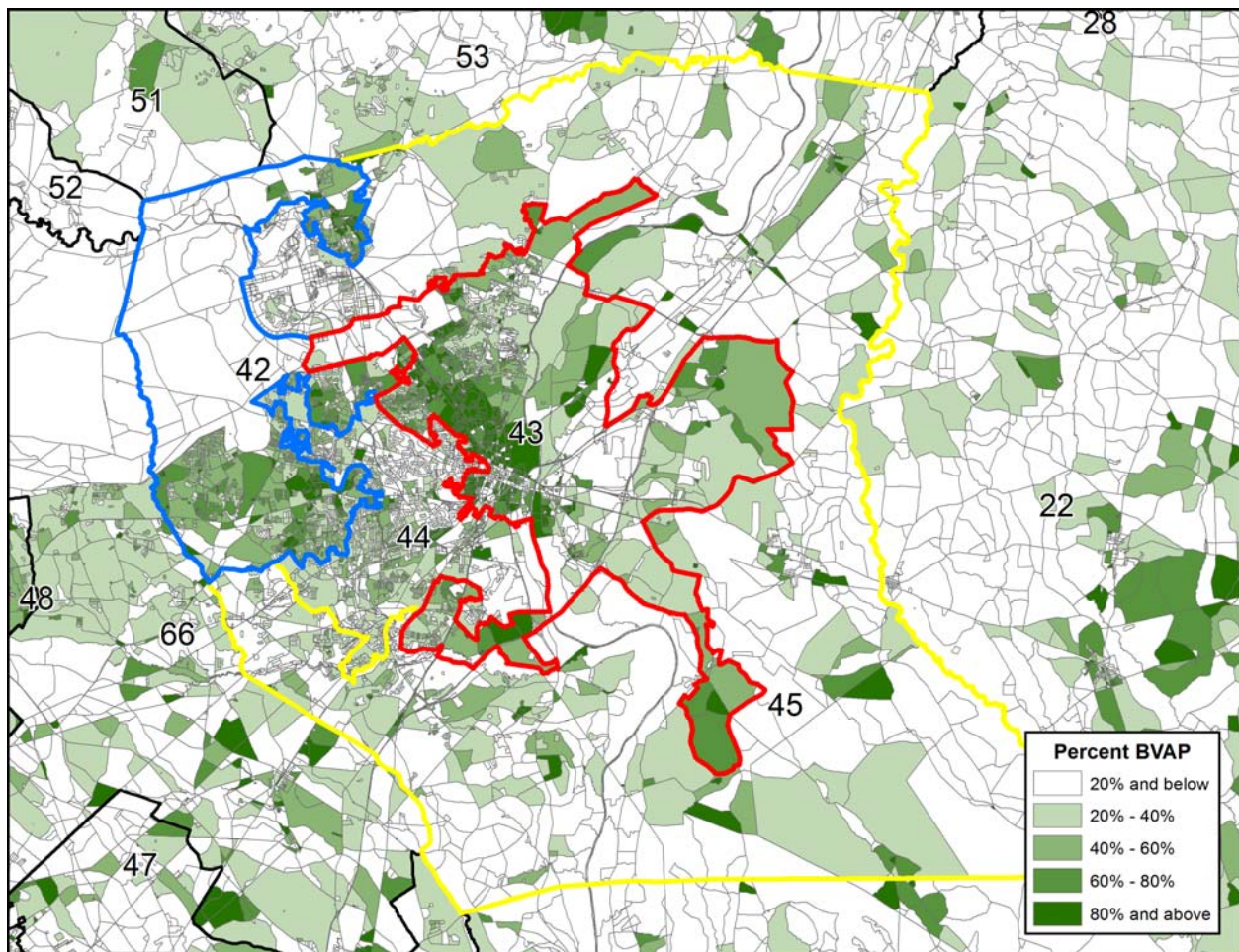


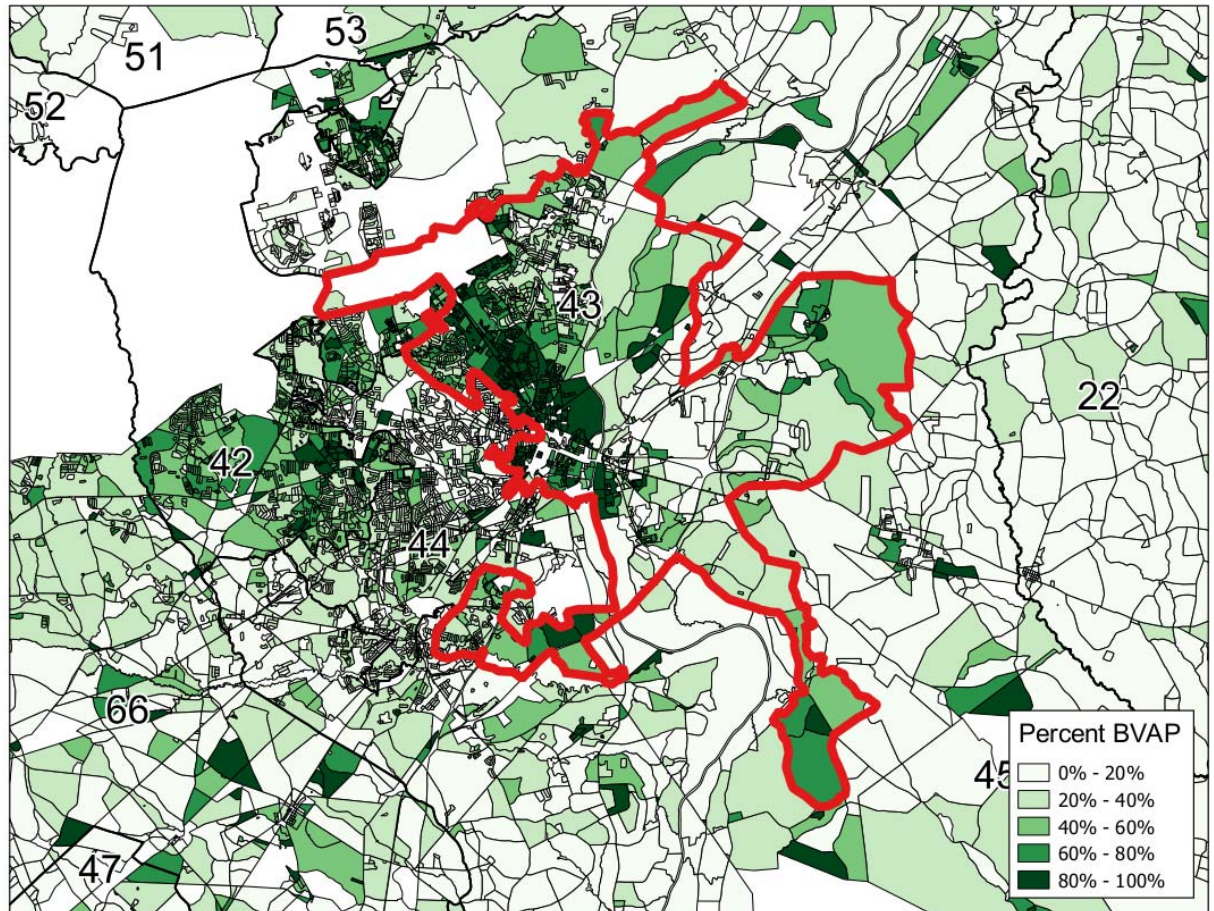


House Districts 42 and 43 in Cumberland County

180. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 42, based on the 2000 census, was 45.11%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 42, based on the 2010 census, was 47.94%. RFA 314.
181. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 42, based on the 2010 census, to 52.56%. RFA 315.
182. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 43, based on the 2000 census, was 48.69%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 43, based on the 2010 census, was 54.69%. RFA 331.

183. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 43, based on the 2010 census, to 51.45%. RFA 332.
184. Based on the 2010 census, the 2003 and 2009 version of HD 42 was under populated by 11,017 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 42 contains 9,681 more black persons than the 2003 and 2009 version and 137 fewer white persons than the 2003 and 2009 version. RFA 316.
185. There are 27 divided precincts in the 2011 House plan in Cumberland County. Dr. Hofeller divided these precincts along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 60,868 black voting age persons who reside in the 27 divided precincts in Cumberland County, 40,998 (67.4%) were assigned to HD 42 or HD 43. RFA 318.
186. Dr. Hofeller also had to divide the City of Fayetteville along racial lines in order to meet Rep. Lewis' 50% plus directions for HD 42 and 43. According to the NCGA redistricting website, 50,745 (80.37%) of the 63,138 black voting age persons in the City of Fayetteville are assigned to HD 42 and 43, and the remainder are assigned to two other districts. RFA 319.
187. The maps below depict screenshots of HD 42 and 43 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 42 and 43. RFA 329, 345.



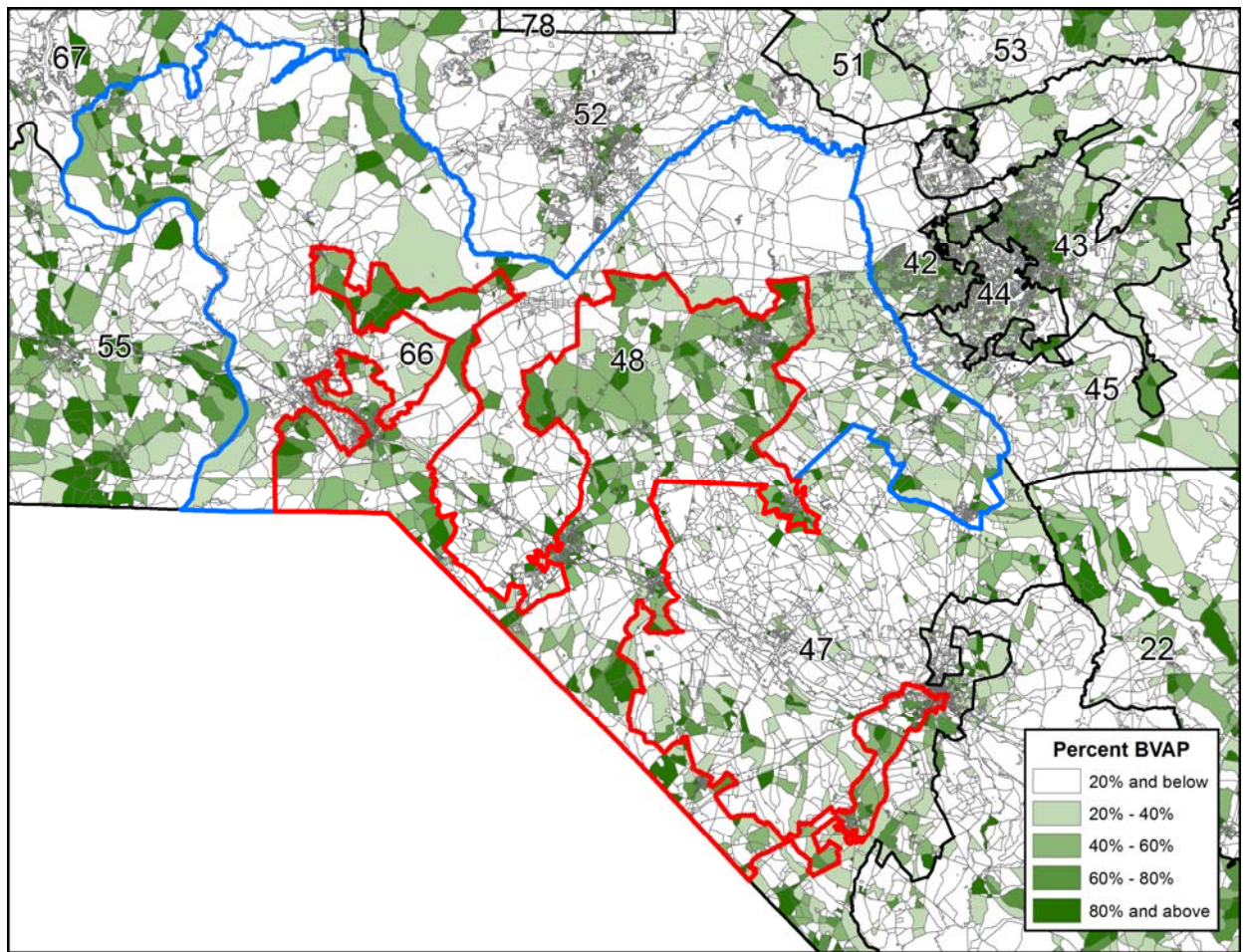


House District 48

188. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 48, based on the 2000 census, was 45.46%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 48, based on the 2010 census, was 45.56%. RFA 347.
189. In accordance with Rep. Lewis' directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 48, based on the 2010 census to 51.27%. RFA 348.
190. In order to meet Rep. Lewis' 50% plus directions for HD 48, Dr. Hofeller had to divide Hoke, Richmond, Robeson and Scotland Counties along racial lines. The black voting age population in the part of Hoke County in HD 48 is 45.51% and the black voting age population in the part of Hoke in HD 66 is 27.51%. Answer ¶ 225 The black voting age population in the part of Richmond County in HD 48 is 50.91% and the black voting age population in the part of Richmond in HD 66 is

15.16 %. Answer ¶ 227. The black voting age population in the part of Robeson County in HD 48 57.79%; the black voting age population in the part of Robeson in HD 47 is 17.36%; and the black voting age population in the part of Robeson in HD 66 is 29.53%. Answer ¶ 229. The black voting age population in the part of Scotland County in HD 48 is 49.84% and the black voting age population in the part of Scotland in HD 66 is 16.62%. Answer ¶ 231.

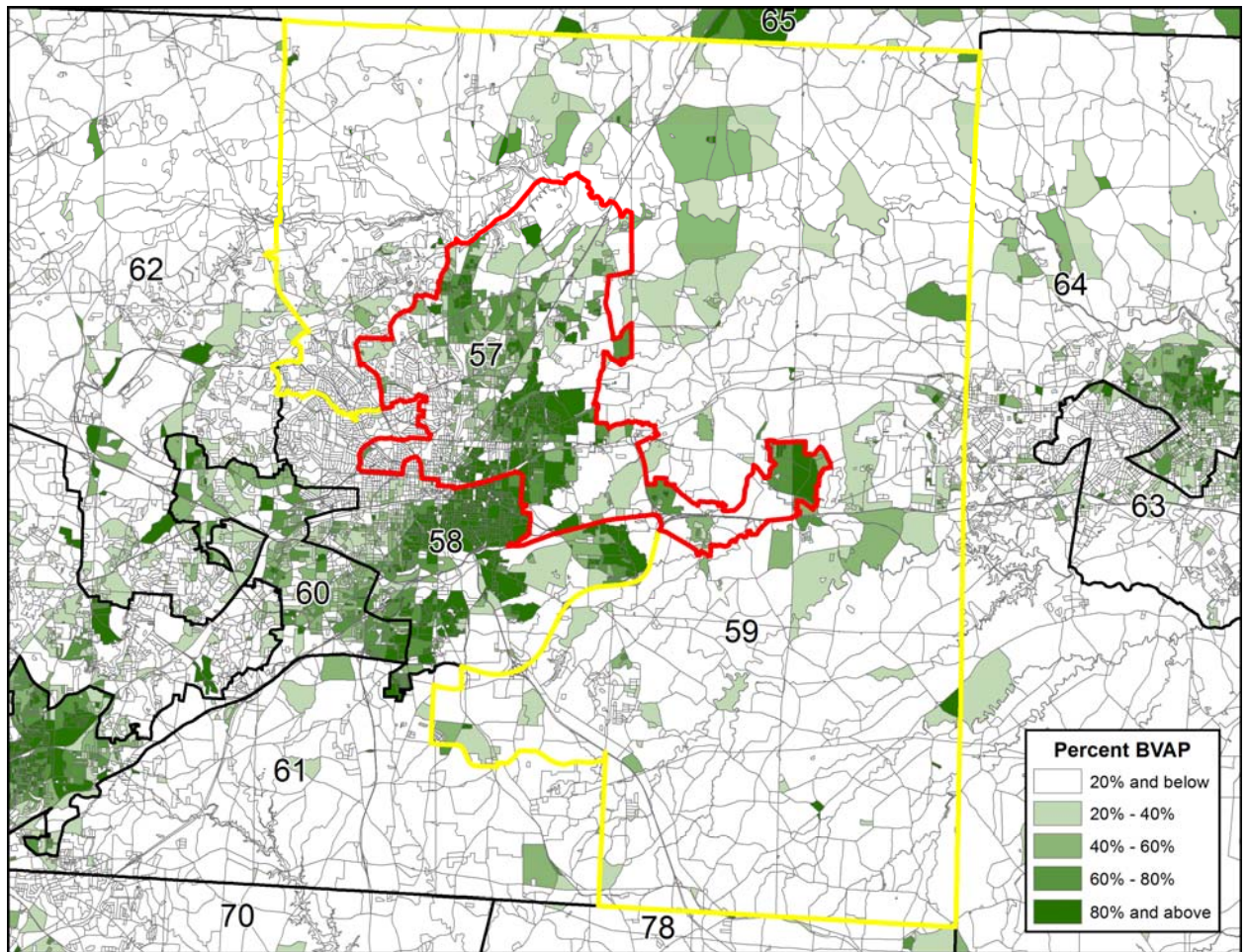
191. Based on the 2010 census, the 2003 and 2009 version of HD 48 was under populated by 13,018 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus instruction. As redrawn in 2011, HD 48 contains 12,908 more black persons than the 2003 and 2009 version and 6,751 more white persons than the 2003 and 2009 version. RFA 349.
192. As reported on the NCGA redistricting website, HD 48 as drawn in 2011 divided 31 precincts. Dr. Hofeller divided these 31 precincts divided along racial lines in order to meet Rep. Lewis' 50% plus directions. Of the 28,686 black voting age persons who reside in the 31 divided precincts in the 2011 version of HD 48, 22,352 (77.9%) were assigned to HD 48. RFA 350-351.
193. Dr. Hofeller also had to divide the Towns of Ellerbe, Fairmont, Hamlet, Laurinburg, and Rockingham along racial lines in order to meet Rep. Lewis' 50% plus directions. As reported on the NCGA redistricting website, 280 (95.24%) of the 294 black voting-age persons in the Town of Ellerbe are assigned to HD 48, and the remainder of 14 black voting-age persons are assigned to one other House district (HD 66); 1,095 (99.91%) of the 1,096 black voting-age persons in the Town of Fairmont are assigned to HD 48, and the remaining (one) black voting-age person is assigned to HD 47; 1,292 (78.88%) of the 1,638 black voting-age persons in the Town of Hamlet are assigned to HD 48, and the remainder of 346 black voting-age persons are assigned to one other House district (HD 66); 4,455 (85.87%) of the 5,188 black voting-age persons in the Town of Laurinburg are assigned to HD 48, and the remainder of 733 black voting-age persons are assigned to one other House district (HD 66); 1,592 (72.30%) of the 2,202 black voting-age persons in the Town of Rockingham are assigned to HD 48, and the remainder of 610 black voting-age persons are assigned to one other House district (HD 66). RFA 352-356.
194. The map below depicts a screenshot of HD 48 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. This map accurately depicts the predominance of race in the drawing of the 2011 version of HD 48. RFA 368.

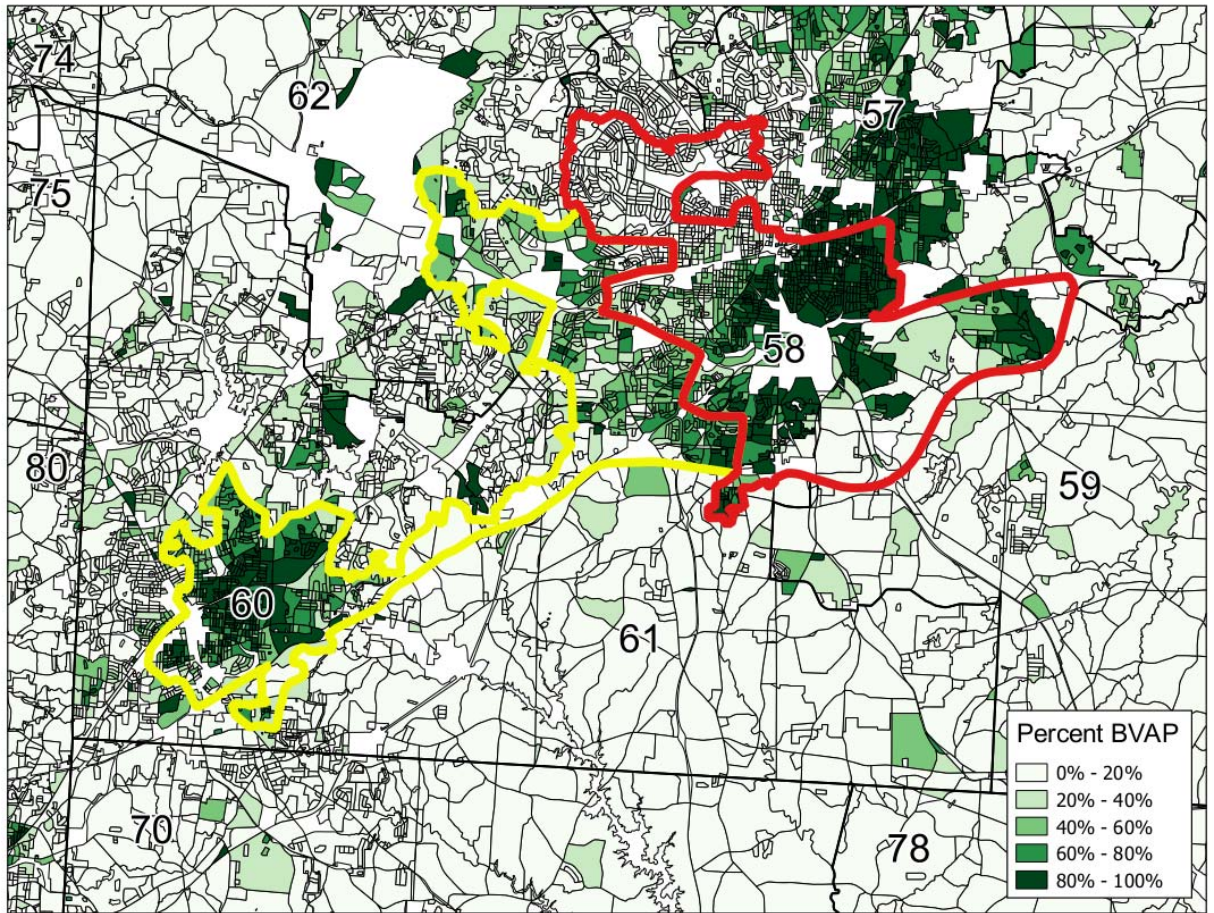


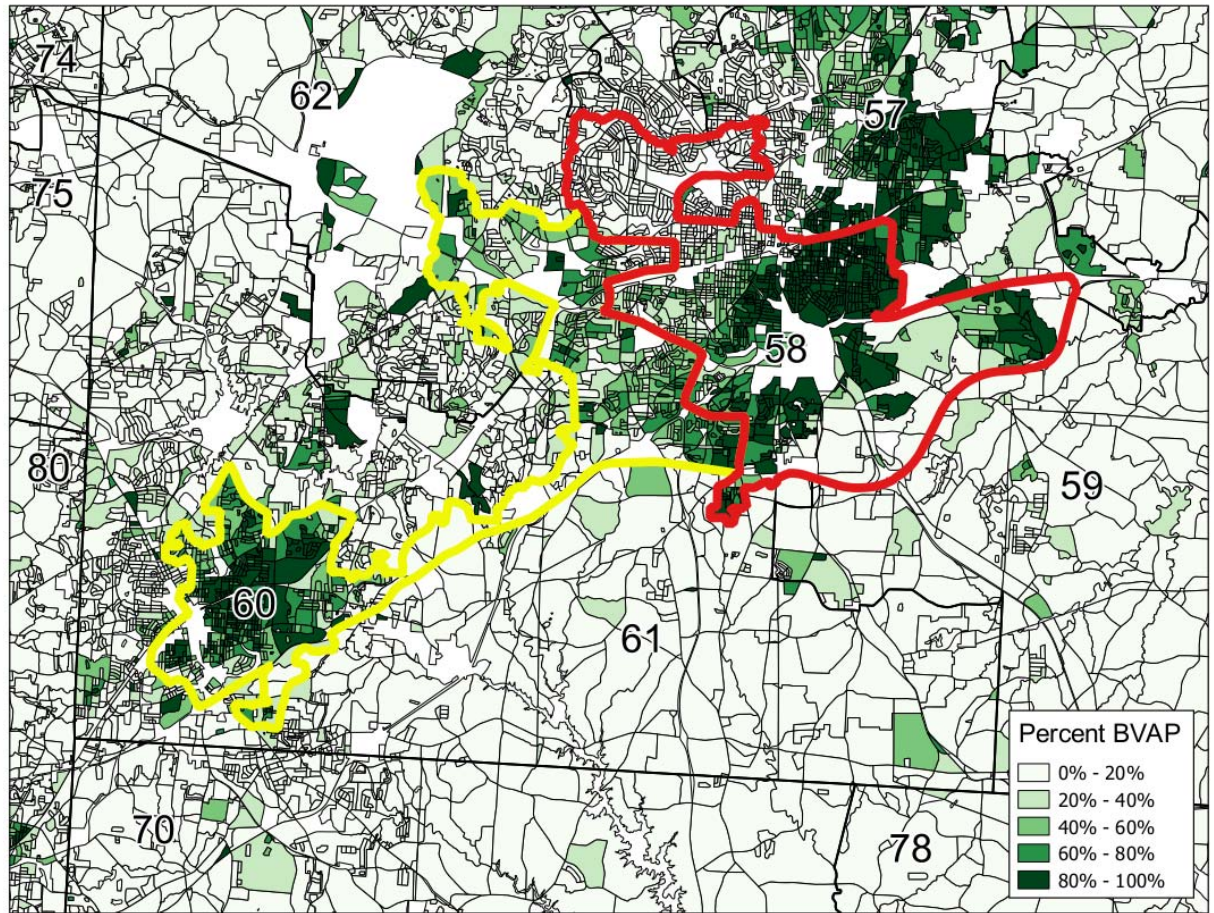
HD 57, 58, and 60 in Guilford County

195. As reported on the NCGA redistricting website, under the 2003 and 2009 House plans, only two districts located in Guilford County had more than 40% black voting age population. In accordance with Rep. Lewis' 50% plus and proportionality directions, Dr. Hofeller drew three districts in Guilford County in 2011 with more than 50% black voting age population. RFA 451-452.
196. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 57, based on the 2000 census, was 21.38%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 57, based on the 2010 census, was 29.93%. RFA 367.
197. To meet Rep. Lewis' 50% plus and proportionality directions, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 57, based on the 2010 census, was 50.69%. RFA 368.

198. There are six House districts in Guilford County in the 2011 plan. The Black voting age population in HD 57 (50.69%), HD 58 (51.11%), and HD 60 (51.36%), is three times larger than the black voting age population in the other Guilford House districts. The black voting age population in HD 59 is 13.58%; in HD 61 is 15.33%; and in HD 62 is 13.30%. . Answer ¶ 236.
199. Based on the 2010 census, the 2003 and 2009 version of HD 57 was under populated by 3,547 persons. Dr. Hofeller used race to fix this population deviation and meet Rep. Lewis' 50% plus and proportionality instructions. As redrawn in 2011, HD 57 contains 17,508 more black persons than the 2003 and 2009 version and 11,624 fewer white persons than the 2003 and 2009 version. RFA 370.
200. There are 37 divided precincts in Guilford County in the 2011 House plan. Dr. Hofeller divided these precincts along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 33,673 black voting age persons who reside in the 37 divided precincts in Guilford County, 26,148 (77.7%) were assigned to HD 57, HD 58, or HD 60. RFA 371-372.
201. Dr. Hofeller also had to divide the City of Greensboro along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. According to the NCGA redistricting website, 73,941 (88.39%) of the 83,647 black voting age persons in the City of Greensboro are assigned to HD 57, 58 and 60, and the remainder of Greensboro's black voting age persons are assigned to three other districts. RFA 373.
202. The maps below depict screenshots of HD 57, 58, and 60 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 57, 58, and 60. RFA 376, 388, 399.







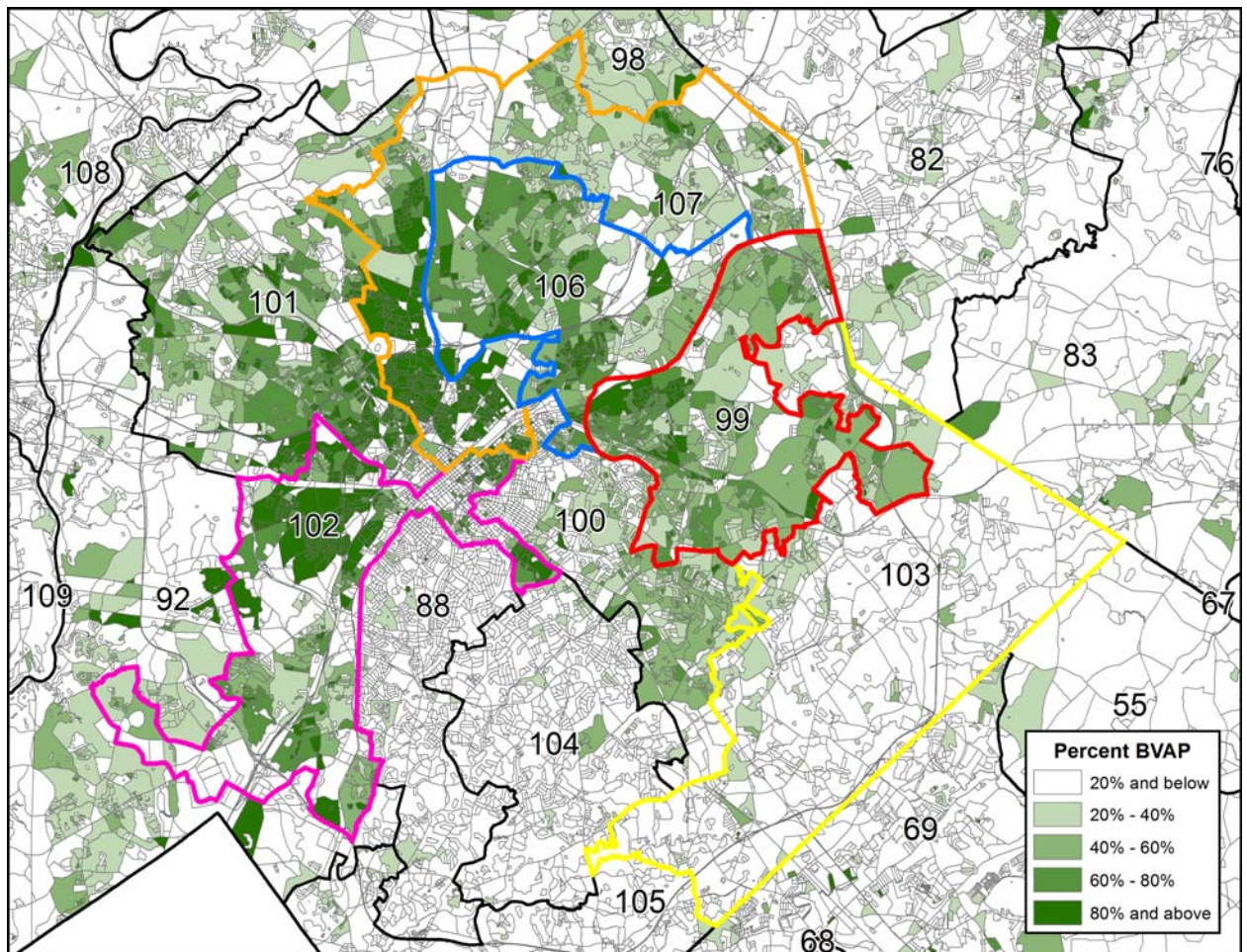
House Districts 99, 102, and 107 in Mecklenburg County

203. Prior to the 2011 redistricting process, Mecklenburg County had ten House districts wholly contained within the county. Of those ten districts, only one was a majority black district and only one was in the 40-50% black voting age population range. Three districts were in the 20-30% black voting age population range. After the 2010 census, Mecklenburg County had grown enough to warrant twelve House districts wholly contained within the county. The 2010 Census indicated that Mecklenburg County was 30.21% in black voting age population. In accordance with Rep. Lewis' 50% plus and proportionality directions, Dr. Hofeller drew five districts in Mecklenburg County in 2011 with more than 50% black voting age population. RFA 453-454.
204. There are 11 House districts in Mecklenburg County in the 2011 plan. The black voting age population in HD 99 (54.65%), HD 101 (51.31%), HD 102 (53.53%), HD 106 (51.12%) and HD 107 (52.52%) is significantly larger than in the remaining six districts. The black voting age population in HD 92 is 18.18%; in

HD 100 is 32.01%, in HD 103 is 13.07%, in HD 104 is 8.17%, in HD 105 is 9.54%. Answer ¶ 244.

205. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 99, based on the 2000 census, was 28.29%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 99, based on the 2010 census, to 41.26%. RFA 401.
206. As directed by Rep. Lewis, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 99, based on the 2010 census, to 54.65%. RFA 402.
207. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 102, based on the 2000 census, was 46.11%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 102, based on the 2010 census, was 42.74%. RFA 415.
208. As directed by Rep. Lewis, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 102, based on the 2010 census, to 53.53%. RFA 416.
209. As reported on the NCGA redistricting website, the black voting age population (any part black) in the 2003 and 2009 version of HD 107, based on the 2000 census, was 50.48%, and the black voting age population (any part black) in the 2003 and 2009 version of HD 107, based on the 2010 census, was 47.14%. RFA 428.
210. As directed by Rep. Lewis, Dr. Hofeller increased the black voting age population (any part black) in the 2011 version of HD 107, based on the 2010 census, to 52.52%. RFA 429.
211. Based on the 2010 census, the 2003 and 2009 version of HD 99 was over populated by 32,850 persons. Dr. Hofeller used race to fix that population deviation and meet Rep. Lewis' 50% plus and proportionality instructions.. As redrawn in 2011, HD 99 contains 6,237 fewer black persons than the 2003 and 2009 version and 24,425 fewer white persons than the 2003 and 2009 version. RFA 403.
212. Based on the 2010 census, the 2003 and 2009 version of HD 102 was under populated by 10,148 persons. Dr. Hofeller used race to fix that population deviation and meet Rep. Lewis' 50% plus and proportionality instructions. As

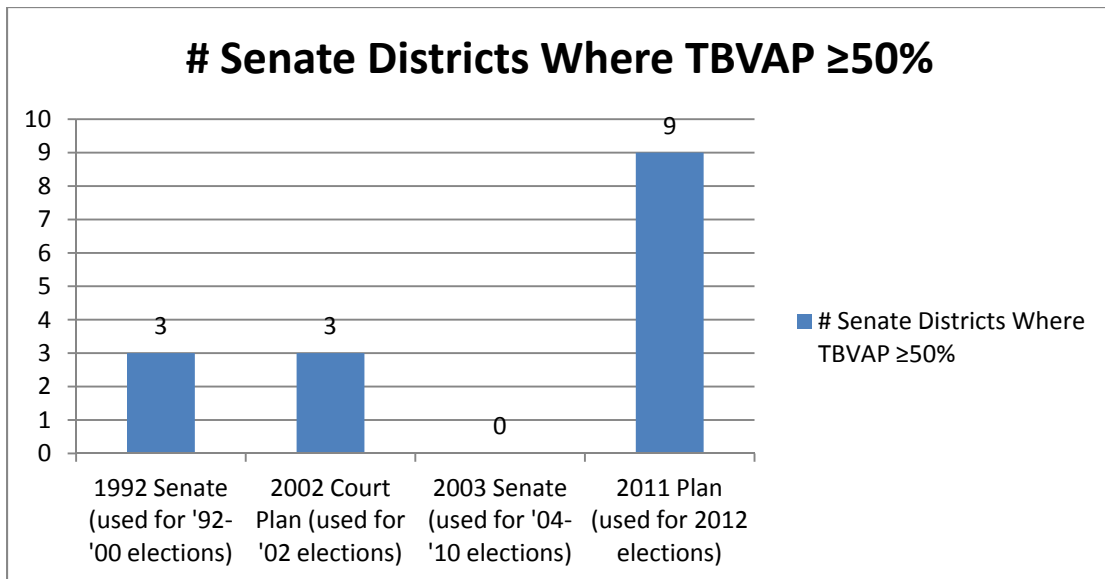
- redrawn in 2011, HD 102 contains 11,556 more black persons than the 2003 and 2009 version and 6,041 fewer white persons than the 2003 and 2009 version. RFA 418.
213. Based on the 2010 census, the 2003 and 2009 version of HD 107 was over populated by 13,998 persons. Dr. Hofeller used race to fix that population deviation and meet Rep. Lewis' 50% plus and proportionality instructions. As redrawn in 2011, HD 107 contains 4,480 fewer black persons than the 2003 and 2009 version and 9,931 fewer white persons than the 2003 and 2009 version. RFA 430.
214. As reported on the NCGA redistricting website, HD 99 as drawn in 2011 divided 7 precincts. Dr. Hofeller divided these 7 precincts along racial grounds in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 11,271 black voting age persons who reside in the 7 divided precincts in the 2011 version of HD 99, 7,386 (65.5%) were assigned to HD 99. RFA 404-405.
215. As reported on the NCGA redistricting website, HD 102 as drawn in 2011 divided 13 precincts. Dr. Hofeller divided these 13 precincts along racial grounds in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 18,612 black voting age persons who reside in the 13 divided precincts in the 2011 version of HD 102, 11,622 (62.4%) were assigned to HD 102. RFA 419-420.
216. As reported on the NCGA redistricting website, HD 107 as drawn in 2011 divided 9 precincts. Dr. Hofeller divided those precincts along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. Of the 18,772 black voting age persons who reside in the 9 divided precincts in the 2011 version of HD 107, 10,488 (55.7%) were assigned to HD 107. RFA 431-432.
217. Dr. Hofeller also divided the City of Charlotte along racial lines in order to meet Rep. Lewis' 50% plus and proportionality directions. According to the NCGA redistricting website, 145,040 (76.93%) of the 188,529 black voting age persons in the City of Charlotte are assigned to HD 99, 101, 102, 106, and 107, and the remainder of Charlotte's black voting age persons are assigned to seven other districts. RFA 406.
218. The map below depicts a screenshot of HD 99, 102, and 107 from Maptitude, the program used by Dr. Hofeller, which displays racial density by census block, shading which Dr. Hofeller acknowledged he had displayed when drawing districts. These maps accurately depict the predominance of race in the drawing of the 2011 version of HD 99, 102, and 107. RFA 414, 426, 442.



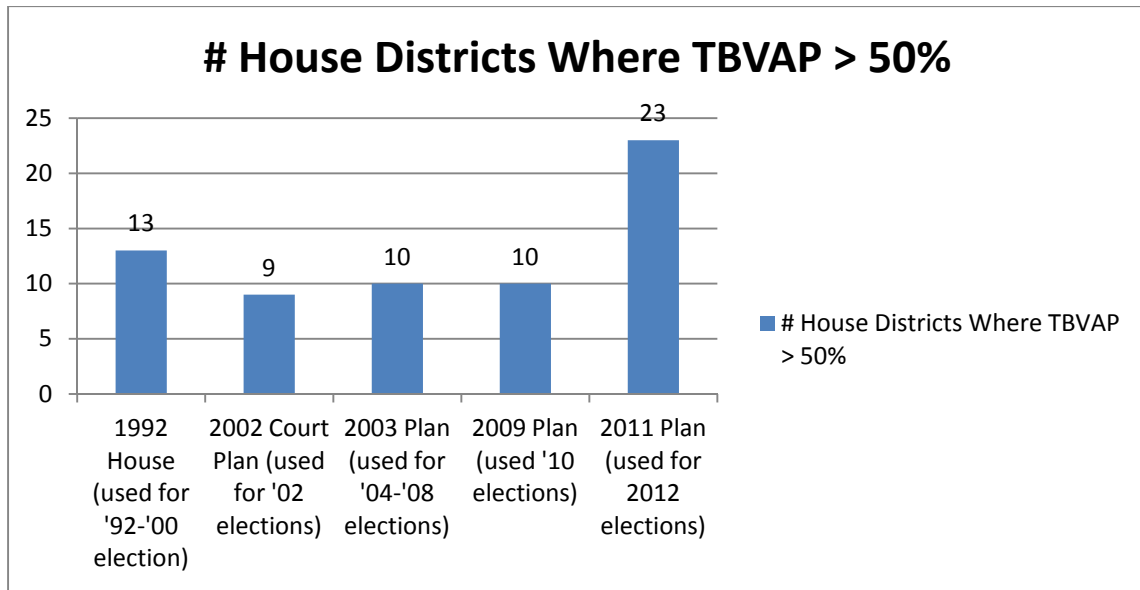
IV. FINDINGS OF FACT PART IV: THE CHALLENGED DISTRICTS DO NOT SURVIVE STRICT SCRUTINY

A. **THE NUMBER OF MAJORITY BLACK SENATE AND HOUSE DISTRICTS IN THE 2011 REDISTRICTING PLANS FAR EXCEEDS THE NUMBER OF SUCH DISTRICTS IN ANY OTHER REDISTRICTING PLAN EVER ENACTED BY THE GENERAL ASSEMBLY OR DRAWN BY THE COURTS.**

219. The following chart compares the number of majority black Senate districts judged necessary by the General Assembly in 1992 and 2003, and the courts in 2002, to meet the State's obligations under Sections 2 and 5 of the Voting Rights Act to the number of such districts judged necessary by Senator Rucho and Rep. Lewis to meet those obligations in 2011.



220. The following chart compares the number of majority black House districts judged necessary by the General Assembly in 1992, 2003 and 2009, and the courts in 2002, to meet the State's obligations under Sections 2 and 5 of the Voting Rights Act compared to the number of such districts judged necessary by Senator Rucho and Rep. Lewis to meet those obligations in 2011.



221. The following chart lists each county in which a Senate district containing > 50% TBVAP was located (a) under the legislative plan used for the 1992-2000 election; (b) under the Court drawn plan used for the 2002 election; (c) under the legislative plan used for the 2004-2010 elections; and (d) under the challenged 2011 plan.

| <u>County</u> | <u>1992</u> | <u>2002</u> | <u>2003</u> | <u>2011</u> |
|---------------|-------------|-------------|-------------|-------------|
| Bertie | 1 | 1 | 0 | 1 |
| Gates | 1 | 1 | 0 | 0 |
| Halifax | 1 | 1 | 0 | 1 |
| Hertford | 1 | 1 | 0 | 1 |
| Northampton | 1 | 1 | 0 | 1 |
| Vance | 1 | 1 | 0 | 1 |
| Warren | 1 | 1 | 0 | 1 |
| Edgecombe | 1 | 1 | 0 | 1 |
| Martin | 1 | 1 | 0 | 1 |
| Pitt | 1 | 1 | 0 | 1 |
| Washington | 1 | 1 | 0 | 1 |
| Wilson | 1 | 0 | 0 | 1 |
| Mecklenburg | 1 | 1 | 0 | 2 |
| Tyrell | 0 | 1 | 0 | 1 |
| Chowan | 0 | 0 | 0 | 1 |
| Nash | 0 | 0 | 0 | 1 |
| Greene | 0 | 0 | 0 | 1 |
| Lenoir | 0 | 0 | 0 | 1 |

| | | | | |
|------------|---|---|---|---|
| Wayne | 0 | 0 | 0 | 1 |
| Wake | 0 | 0 | 0 | 1 |
| Durham | 0 | 0 | 0 | 1 |
| Granville | 0 | 0 | 0 | 1 |
| Cumberland | 0 | 0 | 0 | 1 |
| Hoke | 0 | 0 | 0 | 1 |
| Guilford | 0 | 0 | 0 | 1 |

222. Notably, the 2011 plan doubles the number of > 50% BVAP Senate districts in Mecklenburg County and adds a > 50% BVAP district in 11 counties for the first time, including Wake, Durham, Guilford and Cumberland counties.
223. The following chart lists each county in which a House district containing > 50% BVAP was located (a) under the legislative plans used for the 1992-2000 elections; (b) under the Court drawn plan used for the 2002 election; (c) under the legislative plan used for the 2004-2008 elections; (d) under the legislative plan used for the 2010 election; and (e) under the challenged 2011 plan.

| <u>County</u> | <u>1992</u> | <u>2002</u> | <u>2003</u> | <u>2009</u> | <u>2011</u> |
|---------------|-------------|-------------|-------------|-------------|-------------|
| Bertie | 1 | 1 | 0 | 0 | 1 |
| Gates | 1 | 0 | 0 | 0 | 1 |
| Hertford | 1 | 1 | 0 | 0 | 1 |
| Northampton | 1 | 1 | 1 | 1 | 1 |
| Edgecombe | 3 | 1 | 1 | 1 | 1 |
| Greene | 1 | 1 | 0 | 0 | 1 |
| Martin | 2 | 1 | 1 | 1 | 1 |
| Pitt | 1 | 1 | 1 | 1 | 1 |
| Halifax | 1 | 1 | 1 | 1 | 1 |
| Nash | 2 | 1 | 1 | 1 | 1 |
| Guilford | 2 | 2 | 2 | 2 | 3 |
| Forsyth | 1 | 1 | 1 | 1 | 0 |
| Mecklenburg | 2 | 1 | 2 | 2 | 5 |
| Wake | 1 | 0 | 0 | 0 | 2 |
| Cumberland | 0 | 0 | 0 | 0 | 2 |
| Granville | 1 | 1 | 0 | 0 | 1 |
| Vance | 1 | 1 | 1 | 1 | 1 |
| Warren | 1 | 1 | 1 | 1 | 1 |
| Craven | 1 | 0 | 0 | 0 | 1 |
| Jones | 1 | 0 | 0 | 0 | 0 |
| Lenoir | 1 | 0 | 0 | 0 | 1 |
| Pamlico | 1 | 0 | 0 | 0 | 0 |

| | | | | | |
|-------------|---|---|---|---|---|
| Brunswick | 1 | 0 | 0 | 0 | 0 |
| Columbus | 1 | 0 | 0 | 0 | 0 |
| New Hanover | 1 | 0 | 0 | 0 | 0 |
| Pender | 1 | 0 | 0 | 0 | 0 |
| Wilson | 1 | 1 | 1 | 1 | 1 |
| Pasquotank | 0 | 0 | 0 | 0 | 1 |
| Franklin | 0 | 0 | 0 | 0 | 1 |
| Duplin | 0 | 0 | 0 | 0 | 1 |
| Sampson | 0 | 0 | 0 | 0 | 1 |
| Wayne | 0 | 0 | 0 | 0 | 1 |
| Durham | 0 | 0 | 0 | 0 | 2 |
| Hoke | 0 | 0 | 0 | 0 | 1 |
| Richmond | 0 | 0 | 0 | 0 | 1 |
| Robeson | 0 | 0 | 0 | 0 | 1 |
| Scotland | 0 | 0 | 0 | 0 | 1 |

224. Notably, the 2011 plan increases the number of > 50% BVAP districts in Mecklenburg from 2 to 5, in Guilford from 2 to 3, in Wake from 1 to 2, in Cumberland from 0 to 2, and in Durham from 0 to 2. It also creates a > 50% BVAP House district for the first time in 9 counties.
225. The following chart compares the number of Senate districts pre-cleared by the U.S. Department of Justice that contained BVAP 50% or greater and the number of pre-cleared districts that contained BVAP between 40 and 50% under the plans used for the 1992-2000 elections, the 2002 election, the 2006-2010 elections and under the 2011 challenged plan.

| State Senate Plan | # Senate Districts Where TBVAP $\geq 50\%$ | # Senate Districts Where TBVAP $\geq 40\%$ but $< 50\%$ |
|--------------------------|--|---|
| 1992 Senate ('92-'00) | 3 | 2 |
| 2002 Court Plan ('02) | 3 | 6 |
| 2003 Senate ('04-'10) | 0 | 8 |
| 2011 Plan (Current) | 9 | 1 |

226. The following chart compares the number of House districts pre-cleared by the U.S. Department of Justice that contained BVAP 50% or greater and the number of pre-cleared districts that contained BVAP from 40-50% under the plans used for the 1992-2000 elections, the 2002 election, the 2004-2008 election, the 2010 election and under the 2011 challenged plan.

| State House Plan | # House Districts Where TBVAP \geq 50% | # House Districts Where TBVAP \geq 40% but <50% |
|-----------------------|---|---|
| 1992 House ('92-'00) | 13 | 4 |
| 2002 Court Plan ('02) | 9 | 13 |
| 2003 Plan ('04-'08) | 10 | 11 |
| 2009 Plan ('10) | 10 | 11 |
| 2011 Plan (Current) | 23 | 2 |

B. SEN. RUCHO'S AND REP. LEWIS' 50% PLUS RULE WAS MECHANICALLY APPLIED ACROSS THE STATE TO DRAW THE CHALLENGED SENATE AND HOUSE DISTRICTS WITHOUT REGARD FOR PAST ELECTION RESULTS OR DIFFERENCES IN VOTING PATTERNS.

227. Early in the redistricting process, at the request of Senator Rucho, legislative staff at the General Assembly, led by Erika Churchill, compiled a list of general elections for legislative districts involving candidates of two races in the state of North Carolina from the years 2006 through 2010. Churchill Dep. Tr. 130: 1-121; Churchill Dep. Exs. 80-84.
228. The data compiled by legislative staff included the race of all candidates, the district number, the winner and loser of the election, the margin of victory by percentage and not gross vote totals, and the racial demographics of the district in which the election was conducted under the 2000 Census. Churchill Dep. Exs. 81-83.
229. Ms. Churchill completed this project and submitted to Senator Rucho the data she collected on roughly June 13 and 14 of 2011. Churchill Dep. pp. 166:16-167:3; Churchill Dep. Exs. 92-94.
230. In some of these elections black candidates or the candidates of choice of black voters were unopposed. The fact that no white candidate chose to run against these African-American candidates in a district, particularly in districts below 50% TBVAP, demonstrates that those districts provided African-American voters the opportunity and ability to elect candidates of their choice. Lichtman Dep. pp. 80:6-81:13.
231. On Tuesday, June 14, just three days before they publicly released their first map of the challenged districts, Sen. Rucho and Rep. Lewis received in the mail a racially polarized voting analysis from Thomas Brunell, a professor at a Texas

University. Dr. Brunell did not come to Raleigh to explain his report and no member of the General Assembly had any discussion with Dr. Brunell to discuss his report.

232. This report addressed a single question: whether “a majority of white voters prefer a different candidate that (sic) the majority of voters from the protected minority.” Brunell Dep. Ex. 310, p. 1.
233. The report addressed this question for 43 counties. The metric Dr. Brunell used to answer this question was “the percentage of the vote President Obama received [in a county] when the percentage of voters in that county that are African American is zero.” Brunell Dep. Ex. 310, p. 3. He also used the percentage of the vote the African American candidate for state Auditor received in a county in 2004 when the percentage of voters in that county is zero.
234. Dr. Brunell has acknowledged that his studies of racially polarized voting patterns do not take into consideration whether that racially polarized voting is legally significant—that is, whether it causes the candidate favored by black voters to be usually defeated. Brunell Dep. Dec. 31, 2015, 10:17-11:2.
235. Dr. Brunell concluded that there was “a considerable amount of white cross-over voting” in several counties. The score Dr. Brunell used to define a county as having “a considerable amount of white cross over voting” was 40.
236. Four points are obvious on the face of Dr. Brunell’s report:
 - a. There is a wide range of racially polarized voting across the state. As measured by the results of the presidential election the range of white cross over voting varies from 59.4 in Durham to 10.4 in Bertie. As measured by the auditor’s election the range of white cross-over voting varies from 54.3 in Gates to 20.1 in Cleveland.
 - b. By Dr. Brunell’s measure there are 8 counties in which there is “a considerable amount of white cross over voting” as measured by either the 2008 presidential election or the 2004 state auditor election. They are Durham, Wake, Mecklenburg, Scotland, Pasquotank, Gates, Vance and Northampton.
 - c. There are several counties with scores just short of Dr. Brunell’s measure for counties with “a considerable amount of white cross-over voting”. These include Guilford, Forsyth, and Cumberland.

- d. Dr. Brunell did not study 4 counties in which Sen. Rucho and Rep. Lewis applied their 50% plus or proportionality rules. They are Duplin, Scotland, Richmond, and Warren.
237. Equally obvious are several flaws in the manner in which Sen. Rucho and Rep. Lewis used the Brunell report.
- a. They applied their 50% plus rule across the state on a one size fits all basis without any regard for wide differences in racially polarized voting across the state.
 - b. They drew 50% plus districts in several counties in which there is a considerable amount of white cross-over voting. These districts include SD 38 and 40 and HD 99, 102 and 107 in Mecklenburg; SD 20 and HD 29 and 31 in Durham; and SD 14 and HD 33 and 38 in Wake.
 - c. They used Dr. Brunell's report to justify 50% plus districts located, at least in part, in counties not studied by Dr. Brunell. They are HD 21 in Sampson and Duplin, HD 48 in Richmond, and SD 4 in Warren.
 - d. They used Dr. Brunell's findings of statically significant racially polarized voting instead of the proper inquiry under the second and third prongs of Gingles: that is, whether racially polarized voting leads to the "usual defeat" of minority-preferred candidates.
238. Dr. Brunell subsequently acknowledged in an affidavit that the methodology he used in his June 14th report was flawed and his estimates were incorrect.
239. In Dr. Brunell's more recent analyses, not available to the General Assembly, he acknowledges that while he assumes that the presence of Hispanic voters, in coalition districts with black voters, enabled black voters to have the opportunity to elect their candidate of choice, he has done no studies on Hispanic citizenship or turnout rates in North Carolina. 12:9-13:24. He made the assumption that "Hispanics tend to vote for Democrats," without any actual study of Hispanic voting patterns in specific counties in North Carolina, and then assumed that Hispanic population in certain North Carolina counties had some positive effect on the ability of black voters to elect their candidates of choice. *Id.* at 58:23-59:19. Even if this information were available to the General Assembly in 2011, which it was not, it is not substantial evidence that Section 2 required all coalition districts to be drawn as majority-black districts.

C. A REVIEW OF PAST ELECTION RESULTS IN EACH CHALLENGED DISTRICT DEMONSTRATES THAT DEFENDANTS DID NOT HAVE ANY BASIS IN FACT FOR INCREASING THE BLACK VOTING AGE POPULATION IN THOSE DISTRICTS.

240. Election results in the challenged districts from 2002 to 2010 are reviewed below. These results demonstrate that Defendants did not have any reasonable basis for increasing the black voting age population in the challenged districts.

SD 4

241. The chart below lists election results in SD 4 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner (race) |
|-------------|-------------|---------------|----------------------|
| 2002 | 52.52 | 77.44 | Robert Holman (B) |
| 2004 | 49.14 | 100 | Robert Holman (B) |
| 2006 | 49.14 | 69.67 | Robert Holman (B) |
| 2008 | 49.14 | 100 | Edward Jones (B) |
| 2010 | 49.14 | 82.41 | Edward Jones (B) |

RFA 1, 2, 3, 9-15

242. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
243. These two candidates of choice of African American voters have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
244. Moreover, 69.3% of the SD 4 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 49.70%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 16.

245. In the 2008 election for president, 65.96% of the SD 4 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 17.

SD 5

246. The chart below lists election results in SD 5 for the 2008 election.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------|
| 2008 | 30.14 | 52.90 | Don Davis (B) |

RFA 19, 20, 21, 28-30

247. While SD 5, with a TBVAP in the 30% range, did not guarantee the election of an African-American candidate, an African American candidate did succeed in a contested election, indicating that black voters in the district had an opportunity to elect the candidate of their choice. RFA 28.
248. Moreover, 63.71% of the SD 5 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 30.14%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 31.
249. In the 2008 election for president, 62.15% of the SD 5 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 30.14% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 32.

SD 14

250. The chart below lists election results in SD 14 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|----------------------|
| 2002 | 43.16 | 64.95 | Vernon Malone (B) |
| 2004 | 41.01 | 64.11 | Vernon Malone (B) |

| | | | |
|------|-------|-------|----------------------|
| 2006 | 41.01 | 65.93 | Vernon Malone (B) |
| 2008 | 41.01 | 69.45 | Vernon Malone (B) |
| 2010 | 41.01 | 65.92 | Dan Blue (B) |

RFA 34, 36, 37, 42-48

251. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
252. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African-American candidate.
253. Moreover, 69.91% of the SD 14 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 41.01%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 49.
254. In the 2008 election for president, 78.07% of the SD 14 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 50.

SD 20

255. The chart below lists election results in SD 20 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|------------------------|
| 2002 | 46.87 | 89.30 | Jeanne Lucas (B) |
| 2004 | 44.58 | 91.62 | Jeanne Lucas (B) |
| 2006 | 44.58 | 100 | Jeanne Lucas (B) |
| 2008 | 44.58 | 73.58 | Floyd McKissick (B) |
| 2010 | 44.58 | 73.11 | Floyd McKissick (B) |

RFA 52, 53, 54, 59-65

256. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
257. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
258. Moreover, 74.98% of the SD 20 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.58%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 66.
259. In the 2008 election for president, 75.58% of the SD 20 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 67.

SD 21

260. The chart below lists election results in SD 21 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|-----------------------|
| 2002 | 43.19 | 66.66 | Larry Shaw (B) |
| 2004 | 41.00 | 62.90 | Larry Shaw (B) |
| 2006 | 41.00 | 61.65 | Larry Shaw (B) |
| 2008 | 41.00 | 100 | Larry Shaw (B) |
| 2010 | 41.00 | 67.61 | Eric Mansfield (B) |

RFA 52, 53, 54, 59-65

261. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
262. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.

263. Moreover, 64.60% of the SD 21 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 41.0%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 84.
264. In the 2008 election for president, 67.82% of the SD 21 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 85.

SD 28

265. The chart below lists election results in SD 28 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|-------------------------|
| 2002 | 47.80 | 65.11 | Katie Dorsett (B) |
| 2004 | 44.18 | 100 | Katie Dorsett (B) |
| 2006 | 44.18 | 100 | Katie Dorsett (B) |
| 2008 | 44.18 | 100 | Katie Dorsett (B) |
| *2010 | 44.18 | 47.38 | Gladys Robinson (B)* |

RFA 87-89, 95-101

**Three way election: two black candidates received 60.85% of vote

266. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
267. These two candidates of choice have almost always been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
268. Moreover, 76.99% of the SD 28 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.18%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 102.

269. In the 2008 election for president, 67.82% of the SD 28 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 103.

SD 32

270. The chart below lists election results in SD 32 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------|
| 2002* | 40.47 | 100 | Garrou (W) |
| 2004 | 41.42 | 69.69 | Garrou (W) |
| 2006 | 41.42 | 100 | Garrou (W) |
| 2008 | 41.42 | 100 | Garrou (W) |
| 2010** | 41.42 | 65.37 | Garrou (W) |

RFA 105-107, 114-116; NC SBOE website – election results

*Sen. Linda Garrou received 80.36% of the vote in a primary against a black opponent

**Sen. Linda Garrou received 81.43% of vote in a primary against black opponent

271. Linda Garrou, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting.
272. In the 2010 primary election, Linda Garrou had a black opponent and received 81.34% of the votes cast. RFA 114. This is evidence that she was the candidate preferred by black voters.
273. Moreover, 62.52% of the SD 32 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 41.42%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 117.
274. In the 2008 election for president, 69.35% of the SD 32 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 118.

SD 38

275. The chart below lists election results in SD 38 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|-------------------------|
| 2002 | 50.67 | 100 | Charlie Dannelly (B) |
| 2004 | 47.69 | 100 | Charlie Dannelly (B) |
| 2006 | 47.69 | 100 | Charlie Dannelly (B) |
| 2008 | 47.69 | 73.73 | Charlie Dannelly (B) |
| 2010 | 47.69 | 68.67 | Charlie Dannelly (B) |

RFA 120-122, 127-133

276. An African-American candidate, the candidate of choice of black voters, has been elected to office from this district when it was less than 50% TBVAP.
277. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
278. Moreover, 67.14% of the SD 38 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 47.69%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 134.
279. In the 2008 election for president, 77.94% of the SD 38 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 135.

SD 40

280. The chart below lists election results in SD 40 for the five elections in that district preceding the enactment of the 2011 Senate redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|--------------------|
| 2004 | 31.11 | 84.11 | Malcolm Graham (B) |
| 2006 | 31.11 | 61.48 | Malcolm Graham (B) |
| 2008 | 31.11 | 66.96 | Malcolm Graham (B) |
| 2010 | 31.11 | 74.40 | Malcolm Graham (B) |

RFA 137-139, 143-148

281. In the years prior to the 2011 redistricting process, an African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district when it was only 31.11% TBVAP.
282. This candidate of choice has always been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
283. Moreover, 71.66 % of the SD 40 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 31.11%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 149.
284. In the 2008 election for president, 80.11% of the SD 40 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 150.

HD 5

285. The chart below lists election results in HD 5 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------|
|-------------|-------------|---------------|---------------|

| | | | |
|------|-------|-------|----------------------|
| 2002 | 57.28 | 85.98 | Howard Hunter (B) |
| 2004 | 49.02 | 87.88 | Howard Hunter (B) |
| 2006 | 49.02 | 64.27 | Howard Hunter (B) |
| 2008 | 49.02 | 100 | Annie Mobley (B) |
| 2010 | 49.02 | 58.99 | Annie Mobley (B) |

RFA 153-155, 159-165

286. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
287. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
288. Moreover, 70.15% of the HD 5 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 49.02%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 166.
289. In the 2008 election for president, 65.06% of the HD 5 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 167.

HD 7

290. The chart below lists election results in HD 7 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------|
| 2002 | 55.68 | 100 | John Hall (B) |
| 2004 | 56.03 | 100 | John Hall (B) |

| | | | |
|------|-------|-----|----------------------|
| 2006 | 56.03 | 100 | Edward Jones (B) |
| 2008 | 56.03 | 100 | Angela Bryant (B) |
| 2010 | 56.03 | 100 | Angela Bryant (B) |

RFA 169, 176-182

291. Three different African-American candidates have been elected to office from this district.

HD 12

292. The chart below lists election results in HD 12 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------------------|
| 2002 | 47.48 | 85.72 | William Wainwright (B) |
| 2004 | 47.51 | 58.78 | William Wainwright (B) |
| 2006 | 47.51 | 66.28 | William Wainwright (B) |
| 2008 | 47.51 | 69.14 | William Wainwright (B) |
| 2010 | 47.51 | 60.21 | William Wainwright (B) |

RFA 186-188, 194-200

293. An African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district when it was less than 50% TBVAP.
294. That candidate has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.

295. Moreover, 61.21% of the HD 12 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 47.51%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 201.
296. In the 2008 election for president, 57.48% of the HD 12 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 202.

HD 21

297. The chart below lists election results in HD 21 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|----------------|
| 2002 | 48.72 | 100 | Larry Bell (B) |
| 2004 | 48.35 | 100 | Larry Bell (B) |
| 2006 | 48.35 | 100 | Larry Bell (B) |
| 2008 | 48.35 | 100 | Larry Bell (B) |
| 2010 | 48.35 | 65.69 | Larry Bell (B) |

RFA 204-206, 213-219

298. An African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district when it was less than 50% TBVAP.
299. That candidate has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
300. Moreover, 68.35% of the HD 21 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 48.35%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 220.
301. In the 2008 election for president, 63.71% of the HD 21 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the

time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 221.

HD 24

302. The chart below lists election results in HD 24 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation..

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|-------------------------------|
| 2002 | 58.87 | 100 | Jean Farmer – Butterfield (B) |
| 2004 | 54.76 | 100 | Jean Farmer – Butterfield (B) |
| 2006 | 54.76 | 100 | Jean Farmer – Butterfield (B) |
| 2008 | 54.76 | 100 | Jean Farmer – Butterfield (B) |
| 2010 | 54.76 | 64.84 | Jean Farmer – Butterfield (B) |

RFA 223-224, 231-237

303. An African-American candidate, the candidate of choice of black voters, consistently has been elected to office from this district.
304. That candidate has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
305. Moreover, 71.98% of the HD 24 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 54.76%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 220.
306. In the 2008 election for president, 72.94% of the HD 24 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 54.76% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 221.

HD 29

307. The chart below lists election results in HD 29 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|-----------------|
| 2002 | 44.44 | 100 | Paul Miller (B) |
| 2004 | 44.71 | 100 | Paul Miller (B) |
| 2006 | 44.71 | 100 | Larry Hall (B) |
| 2008 | 44.71 | 90.73 | Larry Hall (B) |
| 2010 | 44.71 | 100 | Larry Hall (B) |

RFA 241-243, 249-255

308. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
309. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
310. Moreover, 82.93% of the HD 29 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.71%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 256.
311. In the 2008 election for president, 86.45% of the SD 4 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 257.

HD 31

312. The chart below lists election results in HD 31 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|-----------------------|
| 2002 | 44.72 | 81.03 | Mickey Michaux (B) |

| | | | |
|------|-------|-------|-----------------------|
| 2004 | 44.71 | 85.97 | Mickey Michaux (B) |
| 2006 | 44.71 | 100 | Mickey Michaux (B) |
| 2008 | 44.71 | 75.50 | Mickey Michaux (B) |
| 2010 | 44.71 | 100 | Mickey Michaux (B) |

RFA 259-261, 266-272

313. An African-American candidate consistently has been elected to office from this district when it was less than 50% TBVAP.
314. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
315. Moreover, 77.12% of the HD 31 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 44.71%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 273.
316. In the 2008 election for president, 80.68% of the HD 31 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 274.

HD 33

317. The chart below lists election results in HD 31 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|----------------------|
| 2002 | 49.19 | 65.88 | Bernard Allen (B) |
| 2004 | 49.97 | 92.21 | Bernard Allen (B) |
| 2006 | 49.97 | 100 | Bernard Allen |

| | | | |
|------|-------|-----|---------------|
| | | | (B) |
| 2008 | 49.97 | 100 | Dan Blue (B) |
| 2010 | 49.97 | 100 | Rosa Gill (B) |

RFA 288, 291, 297

318. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP. A third was elected when the district was just above 50% TBVAP.
319. These candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
320. Moreover, 76.23% of the HD 33 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 49.19%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 298.
321. In the 2008 election for president, 82.20% of the HD 33 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 299.

HD 38

322. The chart below lists election results in HD 38 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| HD 38 | | | |
|-------|-------|---------|------------------|
| Year | BVAP | % Vote | Winner |
| 2002 | 41.16 | FILL IN | Deborah Ross (W) |
| 2004 | 31.63 | FILL IN | Deborah Ross (W) |
| 2006 | 31.63 | 63.05 | Deborah Ross (W) |
| 2008 | 31.63 | 100 | Deborah Ross |

| | | | |
|------|-------|-------|---------------------|
| | | | (W) |
| 2010 | 31.63 | 55.69 | Deborah Ross (W) |

RFA 301-303, 308-309

323. Deborah Ross, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting.
324. In the 2006 Democratic primary, Rep. Ross had a black opponent. The black candidate received 105 votes to Rep. Ross' 2197 votes. This is evidence that she was the candidate preferred by black voters.
325. Moreover, 71.4% of the HD 38 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 31.09%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 310.
326. In the 2008 election for president, 77.86% of the HD 38 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 311.

HD 42

327. The chart below lists election results in HD 42 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|------|-------|--------|---------------------|
| 2002 | 43.69 | 100 | Marvin Lucas (B) |
| 2004 | 45.11 | 66.24 | Marvin Lucas (B) |
| 2006 | 45.11 | 100 | Marvin Lucas (B) |
| 2008 | 45.11 | 100 | Marvin Lucas (B) |
| 2010 | 45.11 | 100 | Marvin Lucas (B) |

328. An African-American candidate consistently has been elected to office from this district when it was less than 50% TBVAP.
329. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
330. Moreover, 63.24% of the HD 42 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 45.11%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 327.
331. In the 2008 election for president, 71.51% of the HD 42 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 328.

HD 43

332. The chart below lists election results in HD 43 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------------|
| 2002 | 47.75 | 100 | Mary McAllister (B) |
| 2004 | 48.69 | 100 | Mary McAllister (B) |
| 2006 | 48.69 | 100 | Mary McAllister (B) |
| 2008 | 48.69 | 99.31 | Elmer Floyd (B) |
| 2010 | 48.69 | 100 | Elmer Floyd (B) |

RFA 330-332, 337-342

333. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.

334. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
335. Moreover, 65.12% of the HD 43 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 48.69%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 343.
336. In the 2008 election for president, 66.24% of the HD 43 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 344.

HD 48

337. The chart below lists election results in HD 48 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|--------------------|
| 2002 | 46.31 | 100 | D.A. Bonner (B) |
| 2004 | 45.46 | 100 | Garland Pierce (B) |
| 2006 | 45.46 | 100 | Garland Pierce (B) |
| 2008 | 45.46 | 100 | Garland Pierce (B) |
| 2010 | 45.46 | 74.80 | Garland Pierce (B) |

RFA 346-348, 357-363

338. Two different African-American candidates have been elected to office from this district when it was less than 50% TBVAP.
339. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.

340. Moreover, 75.31% of the HD 48 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 45.46%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 364.
341. In the 2008 election for president, 66.29% of the HD 48 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 365.

HD 57

342. The chart below lists election results in HD 57 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------------|
| 2002 | 8.02 | 84.40 | Bowie (W) |
| 2004 | 21.38 | 56.65 | Pricey Harrison (W) |
| 2006 | 21.38 | 63.05 | Pricey Harrison (W) |
| 2008 | 21.38 | 100 | Pricey Harrison (W) |
| 2010 | 21.38 | 55.69 | Pricey Harrison (W) |

RFA 368-370

343. Pricey Harrison, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting.
344. Moreover, 70.04% of the HD 57 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 21.38%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 374.
345. In the 2008 election for president, 73.34% of the HD 57 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the

time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 375.

HD 58

346. The chart below lists election results in HD 58 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|----------------|
| 2002 | 56.10 | 85.83 | Alma Adams (B) |
| 2004 | 53.35 | 65.73 | Alma Adams (B) |
| 2006 | 53.35 | 65.63 | Alma Adams (B) |
| 2008 | 53.35 | 72.63 | Alma Adams (B) |
| 2010 | 53.35 | 63.14 | Alma Adams (B) |

RFA 377, 379-385

347. An African-American candidate consistently has been elected to office from this district.
348. This candidate of choice has been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
349. Moreover, 74.66% of the HD 58 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 53.35%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 386.
350. In the 2008 election for president, 77.97% of the HD 58 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 53.35%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 387.

HD 60

351. The chart below lists election results in HD 60 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|-----------------------|
| 2002 | 56.94 | 83.80 | Jones (B) |
| 2004 | 50.59 | 100 | Jones (B) |
| 2006 | 50.59 | 60.52 | Jones (B) |
| 2008 | 50.59 | 100 | Marcus Brandon (B) |
| 2010 | 50.59 | 69.65 | Marcus Brandon (B) |

RFA 389-396

352. Two different African-American candidates have been elected to office from this district.
353. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
354. Moreover, 71.60% of the HD 60 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 50.59%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 397.
355. In the 2008 election for president, 77.24% of the HD 60 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 50.59% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 398.

HD 99

356. The chart below lists election results in HD 99 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------------|
| 2002 | 27.42 | 100 | Drew Sanders (W) |
| 2004 | 28.29 | 100 | Drew Sanders (W) |

| | | | |
|------|-------|-------|---------------------|
| 2006 | 28.29 | 100 | Drew Sanders (W) |
| 2008 | 28.29 | 65.32 | Nick Mackey (B) |
| 2010 | 28.29 | 100 | Rodney Moore (B) |

RFA 400-402, 407-411

357. Two different African-American candidates have been elected to office from this district that was substantially less than 50% BVAP.
358. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
359. Moreover, 72.07% of the HD 99 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 28.29%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 412.
360. In the 2008 election for president, 80.25% of the HD 99 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was only 28.29% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 413.

HD 102

361. The chart below lists election results in HD 102 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|---------------------|
| 2002 | 46.05 | 100 | Becky Carney (W) |
| 2004 | 46.11 | 100 | Becky Carney (W) |
| 2006 | 46.11 | 100 | Becky Carney (W) |

| | | | |
|------|-------|-----|---------------------|
| 2008 | 46.11 | 100 | Becky Carney (W) |
| 2010 | 46.11 | 100 | Becky Carney (W) |

RFA 415-417, 421-422

362. Becky Carney, a white candidate, was the candidate of choice of black voters in this district prior to the 2011 redistricting.
363. Moreover, 77.68% of the HD 102 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was only 46.11%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 424.
364. In the 2008 election for president, 83.80% of the HD 102 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was less than 50% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 425.

HD 107

365. The chart below lists election results in HD 107 for the five elections in that district preceding the enactment of the 2011 House redistricting legislation.

| Year | BVAP | % Vote | Winner |
|-------------|-------------|---------------|------------------------|
| 2002 | 54.36 | 100 | Pete Cunningham (B) |
| 2004 | 50.48 | 100 | Pete Cunningham (B) |
| 2006 | 50.48 | 100 | Pete Cunningham (B) |
| 2008 | 50.48 | 75.62 | Kelly Alexander (B) |
| 2010 | 50.48 | 100 | Kelly Alexander (B) |

RFA 427-429, 433-439

366. Two different African-American candidates have been elected to office from this district.
367. These two candidates of choice have been elected by significant margins, indicating that a substantial number of white voters crossed over to support the African American candidate.
368. Moreover, 69.17% of the HD 107 voters in the 2004 election for State Auditor between Ralph Campbell and Leslie Merritt cast their vote for the black candidate, Campbell, even though the BVAP in the district at that time was 56.48%. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 440.
369. In the 2008 election for president, 65.96% of the HD 107 voters cast their ballot for the black candidate, Barack Obama, even though the BVAP in the district at the time was 56.48% TBVAP. This indicates a substantial percentage of white voters crossing over to support the black candidate. RFA 441.

D. ELECTION RESULTS UNDER THE 2011 SENATE AND HOUSE PLANS FURTHER CONFIRM THAT DEFENDANTS PACKED AFRICAN AMERICAN CITIZENS IN DISTRICTS FAR IN EXCESS OF THE LEVELS SUFFICIENT TO ALLOW THEM A REASONABLE OPPORTUNITY TO ELECT THEIR CANDIDATES OF CHOICE.

370. The chart below lists the percentage of the vote received by African American candidates elected in 2012 and 2014 from Senate districts in which the black voting age population was greater than 50%.

| <u>District</u> | <u>BVAP</u> | <u>Candidate</u> | <u>2012 % of Vote</u> | <u>2014 % of Vote</u> |
|-----------------|-------------|------------------|---------------------------|---------------------------|
| SD 3 | 52.43 | Smith-Ingram | * | 100 |
| SD 4 | 52.75 | Bryant | 72.32 | 65.5 |
| SD 5 | 51.97 | Davis | 100 | 100 |
| SD 14 | 51.28 | Blue | 100 | 100 |
| SD 20 | 51.04 | McKissick | 100 | 100 |
| SD 21 | 51.53 | Clark | 100 | 100 |
| SD 28 | 56.49 | Robinson | 100 | 100 |
| SD 38 | 52.51 | Ford | 80.21 | 79.71 |
| SD 40 | 51.84 | Waddell | 84.11 | 100 |

* White candidate won

371. Notably, five of the eight black candidates in 2012 did not have an opponent and the other three received 72%, 80%, and 84% of the votes cast. In 2014, seven of

the nine black candidates did not have an opponent and the other two black candidates received 65% and 80% of the votes cast.

372. The chart below lists the percentage of the vote received by African American candidates elected in 2012 and 2014 from House districts in which the black voting age population was greater than 50%.

| <u>District</u> | <u>BVAP</u> | <u>Candidate</u> | <u>2012 % of Vote</u> | <u>2014 % of Vote</u> |
|-----------------|-------------|--------------------|---------------------------|---------------------------|
| HD 5 | 54.17 | Mobley/Hunter | 100 | 68.55 |
| HD 7 | 50.67 | Bryant/Richardson | 100 | 100 |
| HD 12 | 50.60 | Graham | 100 | 100 |
| HD 21 | 51.90 | Bell | 100 | 100 |
| HD 23 | 51.83 | Willingham | * | 100 |
| HD 24 | 57.33 | Farmer-Butterfield | 100 | 100 |
| HD 29 | 51.34 | Hall | 100 | 100 |
| HD 31 | 51.81 | Michaux | 100 | 88.18 |
| HD 32 | 50.45 | Baskerville | 100 | 100 |
| HD 33 | 51.42 | Gill | 100 | 87.27 |
| HD 38 | 51.37 | Holley | 87.68 | 79.90 |
| HD 42 | 52.56 | Lucas | 77.45 | 100 |
| HD 43 | 51.45 | Floyd | 69.58 | 100 |
| HD 48 | 51.27 | Pierce | 100 | 100 |
| HD 58 | 51.11 | Adams/Johnson | 79.86 | 100 |
| HD 60 | 51.36 | Brockman | 100 | 100 |
| HD 99 | 54.65 | Moore | 100 | 100 |
| HD 101 | 51.31 | Earle | 100 | 100 |
| HD 106 | 51.12 | Cunningham | 100 | 86.64 |
| HD 107 | 52.52 | Alexander | 100 | 100 |

* White candidate won

373. Notably, 15 of the 19 black candidates in 2012 did not have an opponent and the other four received 69%, 77%, 79%, and 87% of the votes cast. In 2014, 15 of the 20 black candidates did not have an opponent and the other four black candidates received 68%, 79%, 86%, 87%, and 88% of the votes cast
374. African American candidates also continued to be elected by wide margins in 2012 and 2014 from both Senate and House districts in which the black voting age population was well under 50%. Those districts and the results of the 2012 and 2014 elections in those districts are listed below.

Black Candidates Elected From Districts Less Than 50% in 2012 and 2014

| <u>District</u> | <u>BVAP</u> | <u>Candidate</u> | <u>2012 % of Vote</u> | <u>2014 % of Vote</u> |
|-----------------|-------------|------------------|---------------------------|---------------------------|
| SD 23 | 12.81 | Foushee | -- | 68.20 |
| SD 32 | 42.53 | Parmon | 72.90 | 100 |
| HD 54 | 17.98 | Reives | -- | 56.19 |
| HD 71 | 45.02 | Terry | 77.94 | 76.63 |
| HD 72 | 45.44 | Hanes | 74.36 | 100 |

375. Notably, two of these black candidates were elected in districts where the black voting age population was 18% and less.

E. BROAD OPPOSITION TO THE CHALLENGED DISTRICTS FROM CITIZENS, ESPECIALLY AFRICAN-AMERICAN CITIZENS, WAS IGNORED BY THE GENERAL ASSEMBLY IN ENACTING THE CHALLENGED DISTRICTS.

376. Sen. Rucho and Rep Lewis convened public hearings on June 23 to receive comments from citizens about their proposed VRA districts that had been released to the public on June 17.⁴ NAACP representatives from New Hanover County, Guilford County, Hertford County, Wake County and Mecklenburg County told Sen. Rucho and Rep. Lewis:

“The limited maps presented pack minority voters in a district at percentages higher than necessary to achieve fair representation. They also disregard traditional redistricting principles such as compactness and communities of interest.

“We support fair redistricting for all, not a return to segregation and racial isolation.”

“The proposed districts go far beyond what is required by the Voting Rights act.” June 23 public hearing 12:19 to 13:23; 27:17 to 28:7; 49:12 to 50: 14; 88:3 to 89:7; 121:14 to 122:18

377. Another citizen from Charlotte said:

“In Mecklenburg county precincts are split. Entire neighborhoods are divided. Whole communities are disrupted. The premise that

⁴ There is no evidence that information citizens shared with Sen. Rucho and Rep. Lewis at numerous public hearings held prior to June 17 was used by Dr. Hofeller to draw the challenged districts.

Republicans are using is an outdated one that whose voters won't vote for an African American candidate." 23:10-20

F. BROAD OPPOSITION TO THE CHALLENGED DISTRICTS FROM LEGISLATORS, ESPECIALLY AFRICAN AMERICAN LEGISLATORS, WAS IGNORED BY THE GENERAL ASSEMBLY IN ENACTING THE CHALLENGED DISTRICTS.

378. On July 12, 2011, Sen. Rucho and Rep. Lewis released full Senate and House maps to the public. The full Senate plan was debated in the Senate Redistricting Committee and on the floor of the full Senate on July 21, 22, and 25, and the full House plan was debated in the House Redistricting Committee and on the floor of the full House on those same dates.

379. Members of the General Assembly, especially African-American members, forcefully reiterated the concerns about the challenged districts that citizens had expressed at the June 23 public hearing.

380. Senator Dan Blue, an African-American legislator from Wake County said:

"I attended the public hearings as well, and I heard what the people of North Carolina said they desired in redistricting. Almost uniformly the black residents of North Carolina said, 'We don't want to be treated differently so that you gather all of us up and put us in these ghettoized districts so that we're set apart for the rest of the State.'" July 25 Senate debate, 95:14-25

381. Senator Floyd McKissick, an African-American legislator from Durham County, said:

"...when it comes to all of the African-American districts that have been crafted, it's a one-size-fits-all solution: 50 percent plus one. It doesn't make a difference whether you came from an area that was racially polarized voting or whether you didn't come from one of those areas. So in my mind, that one size fits all just doesn't work. Furthermore, under Section 2 of the Voting Rights Act, you don't have to get there. It's not required as a matter of law."

“...if you look at the district I'm in right now, over in Durham, I have about 44 percent in terms of the African-American voting age population.”

“And I might add, whenever I run for elected office, I end up with about 74, 75 percent of the vote. So I'm getting an awful lot of votes from people who are non-African-Americans, and that going back two decades, almost, to '93, when I first ran for City Council in Durham on an at-large basis against other white opponents that were in the race.” July 25 Senate debate - 139:24 - 140:9; 138:10 – 13; 138:17 -24

382. Senator Eric Mansfield, an African-American legislator from Cumberland County, said:

“...in my own private practice of medicine, over 60 percent of the people who walk in my office are not black, and yet they come in my office to get operated on and to bring their children to get operated on not because I'm black but because they believe I'm a competent physician. Yet here in this body, we're doing things and you're saying you're helping me because you're putting more people in my district who are black as if to say that I can only represent black people. And to me, that is the most offensive thing, that I was not elected because I was competent, I was not elected because I have great character, I was elected by black people only because I was black. Which then says that those people who voted for me only voted for me just because I was black, not because they thought I was actually a good representative. And what it says to the other members of my district who are not black, that they shouldn't have voted for me because obviously I cannot represent them, which I know is not true.” July 25 Senate debate - 164:9 – 165:5

383. Senator Martin Nesbitt from Buncombe County said:

“I've heard the NAACP, I've heard voters from all over this state, I have heard all of the minority members of this Senate, speaking with one voice about the Rucho map, and it is falling on deaf ears. For the life of me, I can't understand why that's happening.”

“We have Senator Dannelly. We have Senator Blue. We have other members here, Senator McKissick, Senator Graham, who come from districts that aren't 50 percent, that aren't Section 5, and they're doing just fine, and their population's doing just fine, and you have gone in and messed with every single one of them, as if their voters didn't elect the person of their choice. Well, of course they did.” July 25 Senate debate 171:13-18; 177:8-16

384. Senator Dan Clodfelter from Mecklenburg County said:

“The notion that Section 2 of the Voting Rights Act would require the creation of majority-minority districts in Mecklenburg County hangs entirely on the finding some 30 years ago in *Gingles v. Thornburg*. That case was decided 25 years ago. It was based on the 1981 redistricting. It was based on a set of facts from 30 years back in which there had been racial gerrymandering of Senate District 22 in Mecklenburg County. And upon that premise, and that premise alone, hangs the assumption in *Rucho* 2 that Section 2 of the Voting Rights Act requires the creation of majority- minority districts in Mecklenburg County. A lot, as you've heard other speakers say, has changed in the last 30 years.

In Charlotte, not the least of those changes have been that we've elected on two different occasions two different African-American mayors of the city of Charlotte, a city that has an African-American population of less than 30 percent, over that time period. We've been able to elect with very substantial crossover white voting, and in one case a majority of the white community voting for the African-American candidate who was elected.”

“It's very hard to make a case of polarized racial voting in a county that exhibits those kinds of election contests.” July 25 Senate debate 180:20 – 181:19; 182:13-1

385. Senator Charlie Dannelly, an African-American legislator from Mecklenburg County, said:

“There's an old saying that says, when it ain't broke, don't fix it. Of course, the last Census indicated that we have to do some fixing. And then, when we do fixing, we ought to take the simplest and fairest way to fix what needs fixing.”

“There are seven African-Americans in this body, except for one, who was in a three-way race in the last election but still won by 45 percent, and all of our districts presently, are under 50 percent. The rest of us won from 65 to 70-some-odd percent, by that margin. To me, that does not need fixing.” July 25, Senate debate 189:20 – 190:7

386. Representative Marvin Lucas, an African-American legislator from Cumberland County said:

“Consider my current district, for example. It has traditionally been drawn with minority voting age population of less than 50 percent. I have run in that district six times. I won that district six times and never has the race even been close. Why would I need more minority age voters?

On that issue, I would say that this is analogous to giving unsolicited Medicaid to an upper income or middle class or a poor family. It appears not to be needed.” July 25 House debate 54:19 – 55:03

387. Representative Grier Martin from Wake County said:

“Artificially packing African-Americans is certainly not required by federal law, and it is inconsistent with what the real people of North Carolina told us in hearings.” July 25 House debate 70:1-4

388. Representative Joe Hackney from Orange County said:

“...the African-American community came out through the NAACP, through local African-American political leaders and said, we do not want this packing. Whether it's a legal definition or whether it's not a legal definition, you did not listen to what they had to say. Because your plan packs as many African-Americans as possible into majority-minority districts, thereby, lessening the influence of voters who are African-American in the adjoining districts.” July 25 House debate 93:7-16

389. Representative Larry Womble, an African-American legislator from Forsyth County said:

“It seems as though that you're trying to speak for the African-American community without consulting the African-American community. Let me say to you, thank you, but no thanks. Let me also say that you have not paid very much attention, if any, to what the African-American community, along with other organizations that try to speak for fairness and quality, not just in other areas of our life, but in -- also in the political life.” July 25 House debate 96:6-15

390. Representative Kelly Alexander, an African-American legislator from Mecklenburg County said:

“In the vast majority of the minority districts we currently have in North Carolina, the black voting age population has been less than 50 percent, sometimes significantly below 50 percent. And yet, black candidates have been able to win. So 50 percent is not usually necessary. Higher percentages were necessary during the '80s when Gingles was litigated and decided, but not today.” July 25 House debate 105:9-16

391. The views expressed by the African-American members of the General Assembly in committee and floor debates are reflected in their votes. They unanimously voted against both the Senate and House plans.

G. SEN. RUCHO’S 50% PLUS RULE WAS MECHANICALLY APPLIED ACROSS THE STATE TO INCREASE THE BLACK VOTING AGE POPULATION TO 50% AND MORE IN THE CHALLENGED SENATE DISTRICTS WITHOUT ANY ANALYSIS

392. Challenged SD 4, 14, 20, 21, 28, 38 and 40 share four characteristics.

(a) They are all located in the same general area in which they were located for the 2003-2010 elections.

(b) The black voting age population in those districts between 2003 and 2011 ranged from 31% to 49 %.

(c) An African-American candidate was elected at each of the 28 elections in those 7 districts between 2003 and 2011.

(d) Each African American candidate in each contested election in those districts over those years won by wide margins, ranging from a low of 61% of the total vote to a high of 91% of the total vote .

393. As Sen. Rucho explained in legislative meetings, his 50% rule was mechanically applied on an across-the-board basis without any factual analysis of past election results or voting patterns, without any regard for the views and experiences of African American citizens and legislators, and without the exercise of any judgment.

At the July 21 Senate Redistricting Committee meeting, Sen. Mansfield asked Sen. Rucho if he had any “proof” of the need for the increase in the voting age population in SD 21. Sen. Rucho responded, “we’re just following the law.” 41:5-19

At that same meeting, Sen. Robinson asked Sen. Rucho to provide some “rationale” for the increase in the black voting age population in SD 28. Sen. Rucho responded, “Guilford is a Section 5 county.” 46:13-21

At the July 22 Senate Redistricting Committee meeting Sen. McKissick asked “what precisely can you point to” to support increasing the black voting age population in SD 20. 37:9-13. Sen. Rucho responded, the black voting age population was increased to “foreclose any Section 2 lawsuits.” 38:1-3.

At the July 21 meeting, Sen. Stein asked what evidence Sen. Rucho relied on in making SD 14 “such an odd looking district.” Sen. Rucho responded, we were following “50% plus” and that’s the process we went through “in Wake County and in all the other counties on the map.” 72: 2-13.

H. REP. LEWIS’ 50% PLUS RULE LIKEWISE WAS MECHANICALLY APPLIED ACROSS THE STATE TO INCREASE THE BLACK VOTING AGE POPULATION TO 50% AND MORE WITHOUT ANY ANALYSIS IN THE CHALLENGED HOUSE DISTRICTS

394. Challenged HD 5, 12, 21, 29, 31, 33, 42, 43, 48, and 102 share four characteristics.
- a. They are all located in the same general area in which they were located for the 2003-2010 elections.
 - b. The black voting age population in these districts between 2003 and 2011 was less than 50%, ranging from 44% to 49 %.

- c. An African-American candidate was elected at each of the 36 elections in those 9 districts between 2003 and 2011.
 - d. Each African-American candidate in each contested election in those districts over those years won by a wide margin, ranging from a low of 59% of the total vote to a high of 90%.
395. As Rep. Lewis explained in legislative meetings, his 50% rule was mechanically applied on an across-the-board basis without any factual analysis of past election results or voting patterns, without any regard for the views and experiences of African-American citizens and legislators, and without the exercise of any judgment.

At the July 21 House Redistricting Committee meeting, Rep. Lewis said, “now that it is apparent that these majority black district can be drawn, any decision to draw a few selected districts at less than a majority level could be used as evidence of claims against the state under Section 2. Thus in order to best protect the State from costly and unnecessary litigation we have a legal obligation to draw these districts at true majority levels.” 10:4-12

At the July 22 House Redistricting Committee meeting, Rep. Lucas said, “I have a little bit of problem trying to understand the need to increase” the black voting age population in HD 42. 7:14-22. Rep Lewis responded, the VRA districts that appear [in the House plan] were all drawn at the 50% plus level to “foreclose the possibility of any Section 2 lawsuit.” 8:13-17

At the July 25 House floor debate, Rep Lewis said, “the state is now obligated to draw majority black districts with true majority black voting age population. We have done so in all areas of the state because we believe it was necessary to do so to foreclose the possibility of litigation against the state under Section 2.” 52:8-13.

At the July 27 House floor debate, Rep. Moore asked Rep Lewis whether the 50% plus “requirement exists regardless of the presence of racially polarized voting.” 25:22-24. Rep Lewis responded, “We drew the majority minority districts to be true majority minority districts to forestall the possibility of legal challenge to them. So I suppose the short answer to your question is we drew all of them in compliance with the law as we understood it to be.” 26: 1-6.

I. SENATOR RUCHO MECHANICALLY APPLIED HIS PROPORTIONALITY RULE IN DRAWING THE CHALLENGED SENATE DISTRICTS

396. SD 5 is a product of Sen. Rucho's proportionality goal. The districts in the 2003 plan in the area in which the 2011 version of SD 5 is located had black voting age populations from 20-30%.
397. At Sen. Rucho's direction Dr. Hofeller carved a highly irregular district from this area to create a district in which 52% of the voting age citizens are black.

J. REP. LEWIS MECHANICALLY APPLIED HIS PROPORTIONALITY RULE IN DRAWING THE CHALLENGED HOUSE DISTRICTS

398. HD 32, 57, and 99 are products of Rep. Lewis' proportionality goal. The 2003 counterparts to these districts had black voting age populations of 36%, 21%, and 28%, respectively.
399. At Rep. Lewis' direction Dr. Hofeller carved highly irregular districts from these areas to create districts in all of which more than 50% of the voting age citizens are black.

K. REP. LEWIS MECHANICALLY INCREASED THE BLACK VOTING AGE POPULATION IN CHALLENGED DISTRICTS THAT HAD BEEN MORE THAN 50% BVAP WITHOUT REGARD FOR ACTUAL ELECTION RESULTS.

400. Under the 2003 House plan, the black voting age population in HD 24 was 54.76% and in HD 60 was 50.59%. An African-American candidate was elected from HD 24 without opposition in at the 2004, 2006, and 2008 elections and received 65% of the vote at the 2010 election. An African American candidate was elected from HD 60 without opposition at the 2004 and 2008 elections and received 60% and 70% of the vote at the 2006 and 2010 elections.
401. Despite these election results, Rep. Lewis increased the black voting age population in HD 24 to 57.33% and in HD 60 to 51.36%.
402. Representative Marcus Brandon, the African-American legislator from HD 60, explained his opposition to Rep. Lewis' action on the floor of the House. He said:

“...these folks voted for me and they're Republican conservatives, most of them, and voted for me not because I was black and not

because I was a Democrat or a Republican, they voted for me because they knew me. They knew that I was a drum major. They knew that I was the president of the school. They knew that I umpired their baseball teams. They knew that I drove their school buses. And that trumped all of that.” July 25 House debate 145:9-17.

L. SEN. RUCHO AND REP. LEWIS MECHANICALLY APPLIED THEIR 50% PLUS RULE WITHOUT REGARD FOR WHETHER THE COUNTIES ENCOMPASSED BY THE CHALLENGED SENATE AND HOUSE DISTRICTS WERE COVERED BY SECTION 5 OF THE VOTING RIGHTS ACT OR NOT.

403. Some of the challenged Senate districts do not contain any counties covered by Section 5 of the Voting Rights Act (SD 14, 20, 32, 38, and 40), some contain only Section 5 counties (SD 5, 20, and 28) and one (SD 4) contains both covered and not covered counties.
404. Sen. Rucho applied the 50% plus rule to all the challenged Senate districts regardless of whether they contained or did not contain Section 5 covered counties. As he explained on the floor of the Senate on July 25, both covered and uncovered counties “make up the core of many of our VRA districts.” 52:18-24
405. The same pattern exists for the challenged House districts. Some do not contain any Section 5 covered counties (HD 29, 31, 33, 38, 99, 102, 107), some contain only covered counties (HD 42, 43, 57, 58, 60), and some (HD 21 and 32) contain both covered and not covered counties.
406. Rep. Lewis likewise applied the 50% plus rule to all the challenged House districts regardless of whether they contained or did not contain Section 5 covered counties. As he explained to the House redistricting committee on July 21, it was their “belief that when drawing...majority-minority districts...that those districts should be at least 50 percent plus one” and that it “was a prudent course of action” to draw all of the VRA districts at 50% plus one. 7/21 House Comm. 27-28.

M. DEFENDANTS' MECHANICAL APPLICATION OF ITS 50% PLUS AND PROPORTIONALITY RULES AND THE ABSENCE OF ANY TAILORING OF THE DISTRICTS TO MEET THE REQUIREMENTS OF EITHER SECTION 2 OR SECTION 5 OF THE VOTING RIGHTS ACT IS DOCUMENTED IN STATE'S SECTION 5 SUBMISSION TO THE US DEPARTMENT OF JUSTICE.

407. In its Section 5 submission to the US Department of Justice, the State described the General Assembly's reasons for enacting each of the challenged districts, whether located in a Section 5 county or not. Those descriptions document Defendants' mechanical application of their race-based goals to draw the challenged districts and the absence of any effort to tailor the challenged districts to meet the requirements of the Voting Rights Act.
408. The State's submission without exception states that the General Assembly's goal for each challenged district that includes one or more counties covered by Section 5 was to provide black voters an increased opportunity to elect their preferred candidate (either through increasing the black voting age population or creating new districts). At no point in the submission does the State describe any effort to tailor the district to comply with the State's Section 5 obligation simply to avoid diminution in the ability of black citizens to elect their candidate of choice.
- a. For SD 4 the State simply informed USDOJ: "By changing the composition of the district and increasing the TBVAP" SD 4 "gives African American voters increased ability to elect their preferred candidate of choice." Senate Submission, p. 13
 - b. For SD 5 the State simply informed USDOJ: "The 2011 version of SD 5 gives African American voters in Greene, Lenoir, Pitt and Wayne counties the increased ability to elect their preferred Senator of choice." Senate Submission, p. 14.
 - c. For SD 20 the State simply informed USDOJ: "The 2011 version of SD20 provides African American voters in Granville County the ability to elect their preferred candidate of choice" for the first time. Senate Submission, p. 15.
 - d. For SD 21 the State simply informed USDOJ: "African American voters in Hoke County will, for the first time, now have the ability to elect their preferred candidate of choice. Senate Submission, p. 16.

- e. For HD 5 the State simply informed USDOJ: “By increasing the Districts’ TBVAP over 50% the 2011 plan preserves the African American community’s ability to elect its candidate of choice in the district.” House Submission, p. 12.
 - f. For HD 12 the State simply informed USDOJ: “the 2011 version of District 12 has been restored to majority black status.” House Submission, p. 15.
 - g. For HD 21 the State simply informed USDOJ: “significant portions of Duplin County have been added to this district to restore its majority black status.” House Submission, p. 16.
 - h. For HD 32 the State simply informed USDOJ: “The 2011 version of HD 32 is a new majority black district which replaces an influence district. For the first time the 2011 version of District 32 will give African American voters the ability to elect their preferred candidate of choice.” House submission, p. 14.
 - i. For HD 42 and 43 the State simply informed USDOJ: “The 2011 General Assembly re-established both District 42 and District 43 as majority TBVAP districts.” House Submission, p. 16.
 - j. For HD 48 the State simply informed USDOJ: The 2003 version of HD 48 “has a TBVAP of 45.56%. The 2011 version of District 48 has a TBVAP of 51.27%.” House Submission, p. 17.
 - k. For HD 57, 58, and 60 the State simply informed USDOJ: “The General Assembly did not see the logic for providing a majority black district for two reasonably compact African American populations in Guilford County, but denying the same right to a third reasonably compact African American community. Therefore, the 2011 plan includes three majority black district within the county.” House Submission, p. 18.
409. Similarly, for districts containing counties not covered by Section 5, the State’s Section 5 submission without exception explains that increasing the black voting age population in those districts was justified on the grounds that those counties were included in the *Gingles* litigation resolved in 1986.
- a. For SD 14 the State said: “Wake County is one of the locations in which the state was found liable under Section 2 of the VRA in the drawing of House and Senate districts. See *Gingles*, supra.” Senate Submission, p. 17.

- b. For SD 32 the State said: “Forsyth County is one of the locations in which the state was found liable under Section 2 of the VRA in the drawing of House and Senate districts. See *Gingles*, supra.” Senate Submission, p. 17.
 - c. For SD 38 and 40 the State said: “Mecklenburg county is one of the counties in which the State has been found liable under Section 2 of the VRA in the drawing of House and Senate districts.” Senate Submission, p. 18.
 - d. For HD 33 and 38 the State said: “Wake County, which is not covered by Section 5, was one of the counties in which the US Supreme Court found the state liable under Section 2 of the Voting Rights Act with regard to legislative districts.” House Submission, p. 18.
 - e. HD 29 and 31 are located in Durham County. Durham was neither covered by Section 5 nor found liable in the *Gingles* litigation. Thus, the State offers no explanation to USDOJ for increasing the black voting age population in those districts. See House Submission, p. 19.
 - f. For HD 99, 102, and 107 the State said: “Mecklenburg County is not covered by Section 5 but is a county in which the State has been found liable under Section 2 of the Voting Rights Act with regard to legislative districts. See *Gingles*, supra.” House Submission, p. 20.
410. Significantly, there is no mention at any point in the State’s lengthy Section 5 submissions of any analysis that would justify increasing the black voting age population in districts, like the challenged districts, where black citizens were already electing their candidates of choice by wide margins in districts less than 50%. The Brunell report on which Defendants now attempt to defend the challenged districts is not mentioned by the State at any point in its Section 5 submission.

V. CONCLUSIONS OF LAW

A. PLAINTIFFS HAVE STANDING TO SEEK RELIEF FOR THE CONSTITUTIONAL INJURIES DEFENDANTS HAVE INFLICTED ON THEM.

1. The Plaintiffs have established that they have standing to challenge the state legislative redistricting plan as a racial gerrymander that violates the Fourteenth Amendment to the United States Constitution. “Where a plaintiff resides in a racially gerrymandered district, the plaintiff has been denied equal treatment because of the legislature’s reliance on racial criteria and, therefore, has standing to challenge the legislature’s action.” *United States v. Hays*, 515 U.S. 737, 744-45 (1995). In the instant case, at least one Plaintiff resides in each of the districts challenged in this litigation.
2. The “legislative power of the State”, N.C. Const. Art II, Sec 1, is exercised by the General Assembly on behalf of citizens through their representatives elected from districts drawn by the General Assembly. In 2011, the General Assembly assigned citizens to Senate and House based predominantly on the color of their skin. This legislative action reflected “the offensive and demeaning assumption that voters of a particular race, because of their race, ‘think alike, share the same political interests and will prefer the same candidates at the polls’” and thereby injured the plaintiffs. *Miller v. Johnson*, 515 U.S. 900, 911-12 (1995) (quoting *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (*Shaw I*)).
3. Laws that classify citizens based on race “are antithetical to the 14th Amendment whose central purpose was to eliminate racial discrimination emanating from official sources in the States.” *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*); *Harris v. McCrory*, No. 13-949, 2016 U.S. Dist. LEXIS 14581, *1 (M.D.N.C. Feb. 5, 2016). “Racial gerrymandered districting schemes are no different, even when adopted for benign purposes” or when adopted based on a mistaken understanding of the law. *Harris*, 2016 U.S. Dist. LEXIS 14581,*2.
4. Legislative efforts to “to classify and separate voters by race” through redistricting plans injure voters by “reinforc[ing] racial stereotypes and threaten[ing] to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole.” *Shaw I*, 509 U.S. at 650. Indeed, “[r]acial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further

from the goal of a political system in which race no longer matters.” *Id.* at 657. Plaintiffs in this case demonstrated they suffered precisely this kind of harm, thereby giving them standing to bring these claims.

B. THIS COURT SHOULD NOT ABSTAIN FROM RULING.

5. Federal courts have a duty to decide cases over which they have jurisdiction, regardless of whether parallel state proceedings exist: “Federal Courts, it was early and famously said, have ‘no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.’ Jurisdiction existing, this Court has cautioned, a federal court’s ‘obligation’ to hear and decide a case is ‘virtually unflagging.’ Parallel state-court proceedings do not detract from that obligation.” *Spring Commc’ns, Inc. v. Jacobs*, 134 S. Ct. 584, 590-91 (2013) (citations omitted).
6. Defendants’ reliance on *Scott v. Germano*, 381 U.S. 407 (1965) (per curiam) and *Grove v. Emison*, 507 U.S. 25 (1993), is misplaced because in those cases, the states were actively working to remedy what had been determined to be unlawful redistricting plans. *Germano*, 381 U.S. at 408; *Grove*, 507 U.S. at 29-31.
7. Those cases make clear that deferral to state court proceedings is not appropriate to the extent that it appears that “the[] state branches will fail timely to perform [their] duty” to “adopt a constitutional plan.” In the instant situation, the state court has not even determined that any remedial action is required. The North Carolina Supreme Court has upheld the redistricting plans at issue in *Dickson*. While plaintiffs in that case may still file a petition for writ of certiorari with the U.S. Supreme Court, there is no expected action by a state court upon which we are waiting. As such, nothing in *Germano* or *Grove* suggests or demands that this Court should not satisfy its duty to decide this case.

C. RES JUDICATA DOES NOT APPLY HERE.

8. Under res judicata (claim preclusion), “a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies.” 47 Am. Jur. 2d Judgments § 464.
9. It is beyond dispute that none of the parties in the *Dickson* case are parties in this case, and the facts presented by Defendants do not support a

conclusion that any of the plaintiffs in this action are in privity with any of the plaintiffs in *Dickson*. Thus, the ruling in *Dickson* does not have a preclusive effect on any of the plaintiffs in the instant case.

10. Specifically, Defendants' theories of *res judicata* and privity are inconsistent with state law standards on these issues. *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (holding that a federal court must look first to state preclusion law in determining the preclusive effects of a state court judgment).
11. Under state law, *res judicata* and collateral estoppel only apply if the prior action involved the same parties or those in privity with the parties and the same issues. *King v. Grindstaff*, 284 N.C. 348, 356, 200 S.E. 2d 799, 805 (1973).
12. In the context of collateral estoppel and *res judicata*, the term privity indicates a mutual or successive relationship to the same property rights. *Moore v. Young*, 260 N.C. 654, 133 S.E. 2d 510 (1963). In the instant case, the parties in the two prior state court cases (*Dickson v. Rucho* and *NC NAACP v. North Carolina*) are not the same parties as Plaintiffs in the instant case, nor do the plaintiffs in both cases have a mutual or successive relationship to the same property rights. There is no evidence of privity as understood under North Carolina law in this case.
13. The state law exception to the general rule requiring shared identity or privity of parties, known as the *Lassiter* exception, also is not met here. *Lassiter* holds that "a person who is not a party but who controls an action, individually or in cooperation with others, is bound by the adjudications of litigated matters as if he were a party **if** he has a proprietary interest or financial interest in the judgment or in the determination of a question of fact or a question of law with reference to the same subject matter, or transactions; if the other party has notice of his participation, the other party is equally bound." *Thompson v. Lassiter*, 246 N.C. 34, 39, 97 S.E.2d 492, 496 (1957) (emphasis added); *see also Workman v. Rutherford Elec. Membership Corp.*, 170 N.C. App. 481, 491-92 (N.C. App. 2005); *Smoky Mountain Enterprises, Inc. v. Rose*, 283 N.C. 373, 196 S.E.2d 189 (1973); *Williams v. Peabody*, 217 N.C. App. 1, 719 S.E.2d 88 (N.C. App. 2011).
14. In determining whether the exception to privity exists, courts employ a three part test: (1) does a non-party to the original action, against whom *res judicata* is being asserted, exercise "control" of the original lawsuit and the present lawsuit; (2) does the non-party to the original action have "a

proprietary interest or financial interest in the judgment;" and (3) does the non-party to the original action have an interest "in the determination of a question of fact or a question of law with reference to the same subject matter, or transactions?" *Lassiter*, 246 N.C. at 39, 97 S.E.2d at 496; *see also, Peabody*, 217 N.C. App. at 10; 719 S.E.2d at 95. All three elements must be satisfied in order to establish the applicability of the *Lassiter* exception and therefore bar a second suit. *Peabody*, 217 N.C. App. at 14, 719 S.E.2d at 97-98. Here, Defendants cannot show all of the elements of this test.

15. Defendants have failed to demonstrate that anyone other than the named plaintiffs in this case control the litigation as that term is interpreted in state law. *See Carolina Power & Light Co. v. Merrimack Mut. Fire Ins. Co. et al.* 238 N.C. 679, 693, 79 S.E.2d 167 (1953). Therefore, the *Lassiter* exception does not apply.

D. THE CHALLENGED DISTRICTS ARE SUBJECT TO STRICT SCRUTINY.

16. Equal protection principles deriving from the Fourteenth Amendment govern a State's drawing of electoral districts. *Miller v. Johnson*, 515 U.S. 900, 905 (1995). "Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters[.]" *Shaw I*, 509 U.S. at 657.
17. Thus, "race-based districting by our state legislatures," regardless of motive, "demands close judicial scrutiny." *Id.*
18. An electoral district is subject to strict scrutiny when a plaintiff residing in the district proves that race was "the dominant and controlling" consideration in drawing the boundaries of the challenged district. "To make this showing, a plaintiff must prove that the legislature subordinated traditional race neutral redistricting principles... to racial considerations." *Miller*, 515 U.S. at 916; *Harris*, 2016 U.S. Dist. LEXIS 14581, *18; *Shaw I*, 509 U.S. at 643; *see also Page v. Va. St. Bd. of Elections*, No. 3:13cv678, 2015 WL 3604029, at *6 (E.D. Va. June 5, 2015).
19. This burden may be carried "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose that race was the predominate factor motivating the legislature's decision to place a significant number of voters within or

without a particular district.” *Miller*, 515 U.S. at 916; *Page*, 2015 WL 3604029 at *17; *see also Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1267 (2015).

20. Racial predominance must be proven on a district-by-district basis, *Alabama*, 135 S. Ct. at 1265, but “voters, of course, can present statewide evidence to prove racial gerrymandering in a particular district.” *Id.* at 1265; *see also Bethune-Hill v. Va. State Bd. of Elec.*, 2015 U.S. Dist. LEXIS 144511, *118 (evidence that applies “across all districts” may be considered in evaluating a racial gerrymander claim).
21. Direct evidence may include statements by legislative officials involved in drawing the redistricting plan and preclearance submissions submitted by the State to the Department of Justice. *Shaw I*, 509 U.S. at 645; *Page*, 2015 WL 3604029, at *9; *Clark v. Putnam Cnty.*, 293 F.3d 1261, 1267-68, 1272 (11th Cir. 2002). Likewise, statements by legislators or their map drawers regarding the use and importance of race in drawing challenged district boundaries “are not only relevant but also often highly probative.” *Harris* at 18.
22. Importantly for this case, the use of a fixed, numerical racial threshold for drawing a challenged district is “highly suspicious,” *Harris*, 2016 U.S. Dist. LEXIS 14581, *28, because it operates “as a filter through which all line drawing decisions” must pass and renders “all traditional criteria ... tainted by and subordinated to race.” *Id.* at *32; *see also Bethune Hill*, 2015 U.S. Dist. LEXIS 144511, *35-36 (use of “racial floor” constitutes “significant evidence” of racial preponderance because of “its impact on the creation of the district”).
23. Where Plaintiffs submit sufficient direct evidence of racial predominance, they need not submit an illustrative remedial plan demonstrating that race better explains the boundaries of a challenged district than other non-racial factors. *See, e.g., Page*, 2015 WL 3604029, at *7 n.12; *see also Bush*, 517 U.S. at 969-70 (concluding that race predominated over political motives without considering an alternative plan); *Clark*, 293 F.3d at 1271 (same); *Miller*, 515 U.S. at 919 (same, as to other proffered justifications for challenged district);
24. A State’s use of race as a proxy for advancing political goals constitutes evidence of racial predominance. *Clark*, 293 F.3d at 1271-72.

25. Other forms of evidence of evidence sufficient to establish that race predominated in the drawing of the district include maps demonstrating that oddly shaped districts are not explained by geographic features or county or city lines, charts showing that black citizens in a community are disproportionately assigned to a challenged district and white citizens are disproportionally assigned to an adjoining district, the use of land bridges and other appendages to draw black citizens into a challenged district or to draw white citizens outside the district, and the division of precincts or voter tabulation districts (VTDs) along racial lines. *Page*, 2015 WL 3604029, at *17-18; *Harris*, 2016 U.S. Dist. LEXIS 14581, *18-20.
26. The fact that a legislature considers other factors when drawing a district does not preclude a finding that race predominated. *Bush v. Vera*, 517 U.S. 952, 963 (1996). Race predominates when it is the most important criterion—“the criterion that, in the State’s view, could not be compromised.” *Shaw II*, 517 U.S. at 907.
27. The goal of drawing districts of equal population is a “background” redistricting principle and “is not one factor among others to be weighed against the use of race to determine whether race ‘predominates.’” *Alabama*, 135 S. Ct. at 1270.
28. Traditional redistricting criteria “observe and advance neutral democratic values,” and therefore “are important to evaluate in a racial gerrymander claim because they are *objective* factors that may serve to defeat a claim that a district has been gerrymandered on racial lines. *Bethune Hill*, 2015 U.S. Dist. LEXIS 144511, *at 61 (quoting *Shaw I*, 509 U.S. at 647).
29. In creating North Carolina’s legislative districts in 2011, Defendants expressly employed “mechanical racial targets” in direct contradiction of the Supreme Court’s direction in *Alabama Legislative Black Caucus*, ordering creation of a majority-minority district wherever BVAP was present to do so.
30. In so doing, Defendants failed to take into account “the minority’s present ability to elect the candidate of its choice,” as reflected in the challenged districts, all of which had consistently elected black voters’ candidate of choice before the 2011 redistricting.
31. These two “mechanical racial targets” are even more egregious than the one used by the legislature in *Alabama Legislative Black Caucus*—requiring

maintenance of the BVAP in each already-existing majority-minority district. 135 S. Ct. at 1263.

32. In cases where, as here, the legislature has prioritized the use of mechanical racial targets over traditional redistricting criteria, that decision “provides evidence that race motivated the drawing of particular lines.” *Id.* at 1267.
33. Racial distinctions are “by their very nature odious to a free people[,] . . . contrary to our traditions,” and must be “subjected to the most rigid scrutiny.” *Fisher v. Univ. of Tex. at Austin*, 570 U.S. ___, 133 S. Ct. 2411 (2013).
34. The Supreme Court recently instructed that “judicial review must begin from the position that any official action that treats a person differently on account of his race or ethnic origin is inherently suspect. Strict scrutiny is a searching examination, and it is the government that bears the burden to prove ‘that the reasons for any [racial] classification [are] clearly identified and unquestionably legitimate.’” *Id.* at 2418-19 (internal citations omitted).
35. Where strict scrutiny is applied, the government bears the burden of showing that the use of race was motivated by a compelling governmental interest, and that the use of race was narrowly tailored to advancing that interest. Defendants cannot meet their burden in this case—their blunt use of mechanical racial targets was not, in any way, designed to be minimal, and they did not advance compliance with the VRA, properly interpreted.
36. Race predominated in the construction of each of the Senate and House districts challenged here. Race was the most significant factor used by Dr. Hofeller in drawing the VRA districts, and other redistricting criteria and goals were subordinated to the use of race. The NCGA’s goal of ensuring that the TBVAP in the districts exceeded 50% drove the intentional placement of a significant number of black voters within the districts and non-Black voters outside the districts. The record unambiguously and clearly reflects that race was “the criterion that, in the State’s view, could not be compromised” when drawing these districts. *Shaw II*, 517 U.S. at 907.
37. The fact that race predominated in the drawing of these districts is established by direct evidence of the legislators’ intent as evidenced by their contemporaneous statements during the legislative process. It is not simply that the map drawers were aware of race, but that race was the single most important factor determining which voters were moved in and

out of the challenged districts. *See ALBC; Harris*, 2016 U.S. Dist. LEXIS 14581, *23-24.

38. Race was also the predominant consideration in moving voters into and out of Senate District 32, including the sole reason for drawing the incumbent, Senator Linda Garrou, out of that district. The district was drawn to purposefully include a substantial number of African-American residents of Forsyth County because Sen. Rucho apparently believed doing so was necessary to comply with the Voting Rights Act. The intentional placement of a significant number of black voters within Senate District 32 and to move Senator Garrou out of that district because of her race establishes racial predominance.

E. THE INTERESTS ON WHICH DEFENDANTS SEEK TO JUSTIFY THE CHALLENGED DISTRICTS DO NOT RISE TO THE LEVEL OF COMPELLING INTERESTS THAT SURVIVE STRICT SCRUTINY.

39. An electoral district drawn by a legislative body predominately on the basis of race is unconstitutional unless the legislative body can establish (1) that the district serves some compelling interest for the legislative body and (2) that the district is narrowly tailored to meet that compelling interest. The districts challenged here fail both measures.
40. A district drawn to comply with the Voting Rights Act, properly interpreted, is a compelling governmental interest but that is not the grounds on which the challenged districts were drawn or on which defendants seek to justify them. First, defendants drew the districts based on a misinterpretation of both Section 2 and Section 5 of the VRA. Second, defendants did not draw the challenged districts simply to comply with their VRA obligations; they drew them *to insulate* the state from Section 2 liability and *to guarantee* Section 5 preclearance.
41. It is axiomatic that a state action taken and justified based on a misinterpretation of law cannot survive strict scrutiny. “Compliance with federal antidiscrimination laws cannot justify race based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws.” *Miller*, 515 U.S. at 921; *see also Bethune Hill*, 2015 U.S. Dist. LEXIS 144511, *90 (a state’s compelling interest “must be in *actual* compliance with the standards articulated in federal antidiscrimination laws as interpreted by the federal courts”) (emphasis in original).

42. “If the state’s goal is actual compliance with a proper reading of a constitutional federal standard, then the interest is compelling.” *Id.* at *92. However, the challenged districts here were constructed based on three separate misreadings of the state’s Voting Rights Act obligations.
- i. Defendants repeatedly interpreted Section 5 to permit the state to enhance the black voting age population in covered counties in order to ensure preclearance. Section 5 opens no such door. “It prohibits only those diminutions of a minority group’s proportionate strength that strip the group within a district of its existing ability to elect its candidates of choice.” *Alabama*, 135 S. Ct. 1372-73.
 - ii. Defendants repeatedly justified the challenged districts on the grounds that Section 2 as interpreted in *Strickland* requires all districts drawn to comply with Section 2 to be drawn with a black voting age population greater than 50%. This is a gross misinterpretation of *Strickland*. 2016 U.S. Dist. LEXIS 14581, *61, fn. 10.
 - iii. Defendants also understood that proportionality provided the state a safe harbor from Section 2 liability, thus justifying their decision to increase the number of districts majority minority districts to match the State’s black voting age population. That position turns Section 2 on its head.
43. The defendants did not draw the challenged districts simply to comply with their obligations under the Voting Rights Act. As Sen. Rucho and Rep. Lewis repeatedly stated, the challenged districts were drawn to insulate the State from Section 2 liability and to ensure preclearance under Section 5. “Defensive compliance” without the Voting Rights Act is not a compelling interest. This is because defensive compliance could often entail a violation of constitutional law itself: subordinating traditional neutral criteria and other districting criteria to racial considerations. *Bethune Hill* at 91. A state has no compelling interest “in avoiding meritless [Voting Rights Act] lawsuits,” *Shaw II*, 517 U.S. at 908 n.4.
44. The Defendants’ interpretation of the VRA, as requiring that racial considerations predetermine the number, shape, and demographics of each of the dozens of districts at stake here, is untenable. The Supreme Court has been long been clear that “outright racial balancing . . . is patently unconstitutional.” *Fisher*, 133 S. Ct. at 2419.

45. Citing *Regents of the University of California v. Bakke*, *Grutter v. Bollinger*, and *Parents Involved in Community Schools v. Seattle School District No. 1*, the *Fisher* court explained that using “some specified percentage of a particular group merely because of its race or ethnic origin” as a definition of diversity would amount to outright racial balancing and that “[r]acial balancing is not transformed from patently unconstitutional to a compelling state interest simply by relabeling it ‘racial diversity’” *Id.* (citing *Bakke*, 438 U.S. 265 (1978); *Grutter*, 539 U.S. 306 (2003); *Parents Involved*, 551 U.S. 701 (2007)).
46. Section 5 cannot be used to “justify not maintenance, but substantial augmentation, of the African-American population percentage” in the challenged district. *Bush*, 517 U.S. at 983; *see also Page*, 2015 WL 3604029, at *17; *Harris*, 2016 U.S. Dist. LEXIS 14581, *65.
47. Neither Section 2 nor Section 5 of the VRA requires the excessive focus on race or racial balancing employed by Defendants.
48. Section 5 no longer can serve as a compelling state interest justifying the use of race in drawing CD 1 because *Shelby County* invalidated the coverage formula and rendered Section 5 inapplicable to North Carolina and its political subdivisions. *See Shelby Cnty.*, 133 S. Ct. at 2631 (declaring Section 4(b) of the Voting Rights Act unconstitutional and holding that “[t]he formula in that section can no longer be used as a basis for subjecting jurisdictions to preclearance”).
49. Defendants’ claim that VRA-related decisions by the United States Supreme Court after the 2000 round of redistricting changed the rules of the game and justified their use of race in redistricting completely misreads those precedents.
50. First, Defendants’ argument that *Georgia v. Ashcroft*, 539 U.S. 461 (2003), and the 2006 reauthorization of Section 5 of the VRA changed the requirements for states in complying with Section 5 are wrong. *Georgia v. Ashcroft*, decided in 2003, held that minority influence districts could be substituted for districts in which minority voters had the ability to elect their candidates of choice. *Id.* at 483-84. This was a change to the practices of the states and the interpretation of the Department of Justice in the 2000 round of redistricting. In 2006, when Congress reauthorized Section 5, they explicitly overruled the Supreme Court’s decision, restoring Section 5 to its pre-2003 standard (that is, the standard employed in the 2000 round of redistricting). 42 U.S.C. 1973c(b) and (d). And beyond that,

the 2006 reauthorization, in its plain language, certainly did not require any districts protected under Section 5 have their minority voting populations increased to over 50%. *Id.* As such, it is not logical, then, to say that a change in Section 5 standards warranted Defendants' excessive focus on race.

51. Second, Defendants' argument that *Bartlett v. Strickland* in 2009 changed how a legislature must redistrict is also wrong. Defendants argue that *Bartlett* required them to draw all Section 2 districts as majority-black districts. In fact, *Bartlett* explicitly rejected that position, making clear that the Court was not, with that decision, entrenching majority minority districts. *Bartlett v. Strickland*, 556 U.S. 1, 23-24 (2009); *see also, Harris*, 2016 U.S. Dist. LEXIS 14581 at fn. 10. This argument thus also fails as a matter of law.

F. DEFENDANTS CANNOT ESTABLISH THAT ANY THE CHALLENGED DISTRICTS ARE NARROWLY TAILORED TO MEET A COMPELLING INTEREST IN THE VOTING RIGHTS ACT, PROPERLY INTERPRETED.

52. The burden is on Defendants to establish that that the challenged districts are narrowly tailored to meet their compelling interest in complying with the Voting Rights act, properly interpreted. To meet this burden, "the state must establish the 'most exact connection between justification and classification.'" *Page*, 2015 WL 3604029, at *41 (quoting *Parents v Seattle Sch. Dist.*, 551 US 701,720 (2007)).
53. Moreover, the state must establish this "exact connection" for each gerrymandered district separately. *Alabama*, 135 S. Ct. at 1265 (A racial gerrymander claim "applies district-by-district").
54. Section 2 of the Voting Rights Act does not require a legislature to draw a number of majority-black districts proportional to the BVAP in the state. The text of the VRA itself states that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973(b).
55. Furthermore, the Supreme Court has stated that neither Section 2 nor Section 5 of the Voting Rights Act requires proportionality between the percentage of African-Americans in the jurisdiction and the percentage of districts in which African-Americans are a majority of the voting age

population. *Johnson v. DeGrandy*, 512 U.S. 997, 1013-14 (1994); *Miller v. Johnson*, 515 U.S. 900, 910 (1995).

56. The *DeGrandy* court explicitly held that proportionality of the sort Defendants assert as a compelling governmental interest is not a safe harbor: “[n]or does the presence of proportionality prove the absence of dilution. Proportionality is not a safe harbor for States; it does not immunize their election schemes from § 2 challenge,” *id.* at 1026 (O’Connor, J., concurring); “the presence of proportionality is not a safe harbor for States [and] does not immunize their election schemes from § 2 challenge,” *id.* at 1028 (Kennedy, J., concurring).
57. To prove that Section 2 required each of the VRA districts in their plans, Defendants must prove they had a substantial basis in evidence that minority voters “have less opportunity than other members of the electorate to . . . elect representatives of their choice,” 42 U.S.C. § 1973(b), in the area of the state where each district is located. *Shaw v. Hunt*, 517 U.S. 899, 917 (1996).
58. To establish a Section 2 violation, a plaintiff must prove three threshold factors: (1) that the minority group in question is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) that the minority group is “politically cohesive”; and (3) that the majority votes “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. at 50-51. These are necessary preconditions, and the absence of any one element is fatal to a Section 2 claim, even if other conditions have been met. *Pender County v. Bartlett*, 361 N.C. 491, 499 (2007), *aff’d sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009).
59. When race is the predominant factor in drawing a district, the burden of proving these preconditions falls on the defendants. *Id.* at 496.
60. To satisfy *Gingles*’ third prong, Defendants must show that they had a strong basis in the evidence to conclude that legally significant racially polarized voting existed in the relevant geographic area. Legally significant racially polarized voting exists only if the white voting bloc usually defeats minority voters’ candidate of choice. *Gingles*, 478 U.S. at 51.
61. If the candidates of choice of minority voters consistently win elections, then the third prong of *Gingles* is not satisfied, and districts do not need to be crafted to increase the minority population in them. *Id.* at 77 (finding

that the District Court erred in ignoring the significance of the sustained success black voters had experienced in Durham County).

62. Further, in order to prove that there is legally significant racially polarized voting (hereinafter “RPV”), Defendants must show that it exists in individual districts rather than larger areas that may include the contested district. *See id.* at 59 n.28 (requiring that the RPV inquiry be “district-specific”).
63. Contrary to Defendants’ assertions during the 2011 redistricting process, statistically significant RPV is different from legally significant RPV—the former only means that there is a statistically meaningful correlation between a person’s race and how that person votes. The latter, required by *Gingles*, requires a showing that the candidate of choice of minority voters is usually defeated. *Gingles*, 478 U.S. at 56.
64. A mere showing of statistically significant RPV is insufficient to demonstrate a strong basis in evidence for the third prong of *Gingles*. *Abrams v. Johnson*, 521 U.S. 74, 92-93 (1997).
65. Finally, *Gingles* requires that each Section 2 district be drawn in the particular geographic location where Section 2 liability occurred. *Gingles*, 478 U.S. at 56.
66. Therefore, a statewide proportionality goal or defense, based on statewide evidence, is antithetical to a showing that Defendants had a strong basis in evidence that, based on local voting patterns, a Section 2 district is necessary to protect the State from liability. *See id.*
67. Neither did Section 5 compel the challenged districts, for two reasons. First, Defendants conflated the standards for Section 2 and Section 5, asserting in public statements that Section 5 required the legislature to increase to over 50% the BVAP in any district where it was possible to do so. Ex. H, Public Statement 543, June 17, 2011. Section 5 prohibits retrogression; it does not require increasing the BVAP in a district. *Page v. Va. State Bd. of Elections*, 58 F. Supp. 3d 533, 552-53, *vacated and remanded for reconsideration in light of Alabama Legislative Black Caucus by Cantor v. Personhuballah*, 135 S. Ct. 1699 (2015).
68. Second, because Section 5 is no longer constitutionally applied to North Carolina, it can no longer function as a compelling governmental interest in a strict scrutiny analysis. Citing the enormous gains in participation rates

by African-American voters in states throughout the South in the decades since the VRA was passed in 1965, on June 25, 2013 the Supreme Court issued an opinion in *Shelby County v. Holder*, holding that the formula that determines which jurisdictions are covered under Section 5 of the VRA, as reauthorized by Congress in 2006, is unconstitutional. *See* 133 S. Ct. 2612. Because the coverage formula contained in Section 4(b) of the VRA was not updated in 2006 when the “extraordinary measures,” which are a “drastic departure from basic principles of federalism,” were extended for an additional twenty-five years, the Court ruled that the formula cannot be a basis for subjecting certain jurisdictions and not others to the preclearance requirement. *Shelby County*, 133 S. Ct. at 2618, 2631.

69. Because Section 5’s protections are no longer validly applied to North Carolina, the use of racially gerrymandered districts cannot be justified by an interest in complying with Section 5 of the VRA.
70. Decades of Supreme Court precedent, as well as the plain language of the VRA itself, belies Defendants’ interpretation of the Act. Because Defendants employed such critically-flawed interpretations of both Section 5 and Section 2 of the VRA, they can have no compelling government interest in the race-based actions they took.
71. Just as racial balancing is never a compelling governmental interest, drawing districts to meet a proportionality goal cannot be narrow tailoring. *Bakke*, 438 U.S. at 315-16. Defendants have employed precisely the kind of blunt, non-narrowly-tailored use of racial quotas that the Supreme Court has rejected in the educational setting. In *Grutter*, the Court held that the state must avoid falling into a “quota” trap, 539 U.S. at 334, by only using race in a “flexible” and “nonmechanical” way because equal protection requires “individualized assessments.” *Id.*
72. In the redistricting context, this same constitutional rejection of quotas in the narrow-tailoring analysis applies. In *Miller v. Johnson*, because the Department of Justice had determined that it was possible to draw three majority-black congressional districts in Georgia following the 1990 Census, the Department set that number as essentially a quota for the number of majority-black districts the state’s enacted plan must contain in order to obtain preclearance under Section 5 of the VRA. *Miller*, 515 U.S. at 918. However, because the VRA “did not require three majority-black districts . . . Georgia’s plan for that reason was not narrowly tailored to the goal of complying with the Act.” *Id.* at 910 (internal citations omitted).

73. In *Miller*, the Supreme Court stated that the non-retrogression standard under Section 5 does not require ostensibly ameliorative goals such as increasing the number of majority-minority districts without regard to local communities' different needs and interests. *See* 515 U.S. at 924-25. Thus, because Defendants admittedly focused on statewide proportionality, Defendants failed to tailor the location of majority-black districts to areas where they had a strong basis in the evidence for the necessity of majority-black districts.
74. In drafting its redistricting plans, the General Assembly failed to consider the extent to which black voters were currently able to elect the candidates of their choice, almost uniformly increasing BVAP in the challenged districts despite decades of increased participation by black voters and the repeated success of candidates of choice of black voters, even in election districts that were majority-white in voting age population. *See Alabama Legislative Black Caucus*, 135 S. Ct. at 1274; *Shelby County*, 133 S. Ct. at 2627 (“[A] statute’s current burdens must be justified by current needs, and . . . must be sufficiently related to the problem it targets.”) (internal quotations omitted).
75. The General Assembly’s two race-based criteria were not based on current conditions; the decision to rely on race-based criteria was made at the outset of the redistricting process without any information about the extent to which black voters were able to elect their candidates of choice. PI Ex. G, Dickson Trial Tr. Vol. II 328-29, 331 (testimony of Hofeller).
76. The alleged fear of litigation that led the state to create its so-called “VRA districts” was not based on any recent Section 2 claims involving state legislative districts, since none had been brought since *Thornburg v. Gingles*, 478 U.S. 30 (1986).
77. The Supreme Court has held that a district that is intentionally created as a majority-black district is not narrowly tailored if it is not compact. *Shaw v. Hunt*, 517 U.S. at 916; *Bush v. Vera*, 517 U.S. 952, 957 (1996).
78. The individual districts challenged here are not geographically compact and therefore they are not narrowly tailored to a compelling governmental interest.
79. At the trial level, the State “bear[s] the burden of producing evidence demonstrating there is a **strong basis in evidence** that the...court’s predominant use of race-conscious districting satisfies strict scrutiny.”

Johnson v. Mortham, 915 F. Supp. 1574, 1580 (N.D. Fla. 1996) (citations omitted) (trial on whether the use of race in Florida's Third Congressional District was narrowly tailored). If Defendants meet this burden of producing evidence, Plaintiffs then bear the burden of "rebutting the evidence put forward by Defendants and Defendant-Intervenors on the strict scrutiny issue, and persuading the Court that Defendants have not made a sufficient showing to satisfy strict scrutiny review." *Id.*

80. The narrow tailoring inquiry is far more rigorous than a mere evaluation of "reasonableness" and includes no deference to the State. As the Supreme Court observed, "the history of racial classifications in this country suggests that blind judicial deference to legislative or executive pronouncements of necessity has no place in equal protection analysis." *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 501 (1989).
81. Having reached the level of strict scrutiny, the Defendants must meet a demanding burden to show that the narrow tailoring for a racial classification was precise. In *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973), the Court held:

Strict scrutiny means that the State's system is not entitled to the usual presumption of validity, that the State rather than the complainants must carry a 'heavy burden of justification,' that the State must demonstrate that its [racial classification] **has been structured with precision, and is tailored narrowly to serve legitimate objectives and that it has selected the 'less drastic means' for effectuating its objectives.**"

82. When the Court evaluates what was "reasonably necessary" to avoid liability under the Voting Rights Act, it is not an inquiry into whether the districts were a reasonable option for the State to ward off liability but rather when the districts were necessary to preclude liability under the Act. *Shaw v. Reno*, 509 U.S. at 654-655. The State must demonstrate that it tailored the use of race in the redistricting plans based on a rigorous application of evidence to determine the extent to which race must define the lines of each district to comply with the Act. *Id.*
83. Based upon the evidence herein including testimony at trial, the Court concludes that Defendants did not have sufficient evidence before it prior to the enactment of the plans, to justify the State's unprecedented use of race, and did not produce sufficient evidence to prove that each of the districts was narrowly tailored.

G. NARROW TAILORING REQUIRED FOR A SECTION 5 DEFENSE

84. Even assuming Section 5 is still a compelling interest, Section 5 bars covered jurisdictions from implementing any voting change that has a discriminatory purpose or would have the effect of reducing the ability of minority voters to elect a candidate of their choice. 42 U.S.C. 1973 §§ b, c. In *Shaw v. Reno*, the Court emphasized that strict scrutiny applied to districts designed to comply with the Voting Rights Act, stating, “A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression.” *Shaw v. Reno*, 509 U.S. at 654-655. Thus, Section 5 can justify the State’s use of race only to the extent necessary to avoid retrogression.
85. Section 5 does not require a State to create proportionality in the number of majority minority districts. Nor does it justify substantially increasing either the number of majority-black districts or the black voting age population in Section 5 covered districts. *Miller v. Johnson*, 515 U.S. 900, 926-927 (1995). A state must show a strong basis in evidence for using race in the name of Section 5 compliance. *Id.* at 922.

H. NARROW TAILORING REQUIRED FOR A SECTION 2 DEFENSE

86. The United States Supreme Court requires that the State must also have a ‘strong basis in evidence’ for finding that the threshold conditions for § 2 liability are present.” *Bush v. Vera*, 517 U.S. 952, 978 (1996). Thus to prove that the districts were narrowly tailored to avoid Section 2 liability, Defendants must show a strong, local basis in evidence for each of the three *Gingles* factors: 1) that the minority group in question is “sufficiently large and geographically compact to constitute a majority in a single-member district;” 2) that the minority group is “politically cohesive;” and 3) that the majority votes “sufficiently as a bloc to enable it...usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986); *Bush v. Vera*, 517 U.S. at 978.
87. The *Gingles*’ prongs require an “intensely local appraisal” of the historical, social, and political climate of the geographical area where each district is drawn. *White v. Regester*, 412 U.S. 755, 769 (1973). Thus, these prongs guide the Court’s inquiry into whether each challenged district was drawn in a geographic location where Section 2 liability exists.

I. NARROW TAILORING REQUIRES A COMPACT MINORITY POPULATION IN THE DISTRICT'S GEOGRAPHIC AREA.

88. The first *Gingles*' prong requires the Court to evaluate compactness in determining if a race-based district was drawn in a proper location. Defendants must show that the minority population and the resulting district are reasonably compact. If the remedial district is not compact, the party seeking to invoke Section 2 liability has not established its burden under the first prong of *Gingles*. *Gingles*, 478 U.S. at 51, fn. 17. The Supreme Court has held that "[noncompact] characteristics defeat any claim that the districts are narrowly tailored to serve the State's interest in avoiding liability under § 2, because § 2 does not require a State to create, on predominantly racial lines, a district that is not 'reasonably compact.'" *Bush v. Vera* 517 U.S. 952, 982; *see also, Shaw v. Reno* 517 U.S. at 916, 918 (rejecting Section 2 defense for CD 12 on non-compactness grounds). If the minority population does not form a compact population in the target geographic area, no Section 2 liability exists. *Vera*, 517 U.S. at 982. The Court will therefore evaluate the compactness of each of the challenged districts.

J. GINGLES' THIRD PRONG IS SATISFIED ONLY WHEN THE WHITE VOTING BLOC ROUTINELY DEFEATS THE MINORITY CANDIDATE OF CHOICE

89. To show a strong basis in evidence for *Gingles*' third prong, Defendants must show that legally significant racially polarized voting exists by demonstrating that the white voting bloc usually defeats the minority bloc's candidate of choice. *Gingles*, 478 U.S. at 48-49. A pattern of success among minority-preferred candidates defeats the third prong of *Gingles*. *Id.* at 77 (finding that the District Court erred in ignoring the significance of the sustained success black voters had experienced in Durham County). The existence of legally significant racially polarized voting must be precision-focused on the geographic area of the district. *See, Gingles*, 478 U.S. at 59 n.28 (inquiry into "racially polarized voting" must be "district-specific").

90. Under the third prong of *Gingles*, statistically significant racially polarized voting is different from legally significant racially polarized voting. A finding of statistically significant racially polarized voting only means that voting patterns correlate statistically to race. PI Ex. G, Dickson Trial Tr. Vol. II 377-79 (testimony of Lichtman). In contrast, legally significant racially polarized voting under *Gingles* occurs only when the white voting

bloc usually defeats the minority bloc's candidate of choice. *Gingles*, 478 U.S. at 56. Thus, a mere showing of statistically significant racially polarized voting is insufficient to demonstrate a strong basis in evidence to satisfy the third prong of *Gingles*. *Abrams v. Johnson*, 521 U.S. 74, 92-93 (1997). Statistically significant racially polarized voting can exist in areas where there is no Section 2 liability. *Johnson v. Mortham*, 926 F. Supp. 1460, 1476 (N.D. Fla. 1996) (“Even if racially polarized voting existed in northeast Florida specifically, or more generally throughout Florida, the ability of African-American voters to elect the candidate of their choice in congressional elections would vitiate any claim of Section 2 vote dilution.”); *Vecinos de Barrio Uno v. City of Holyoke*, 960 F. Supp. 515, 526 (D. Mass. 1997) (*Valladolid v. National City*, 976 F.2d 1293 (9th Cir. 1992) (“With respect to the third requirement for the successful maintenance of a [Section 2] challenge ... it is obvious that unless minority group members experience **substantial difficulty** electing representatives of their choice, they cannot prove that a challenged electoral mechanism impairs their ability ‘to elect.’”)).

91. Defendants’ evidence on the amount of campaign spending by minority candidates and their challengers is irrelevant to the question that must be asked to determine potential VRA liability—whether the candidate of choice of minority voters is usually defeated. Defendants have cited no authority for their proposition that the ability of minority candidates to raise funds for their campaigns is in any way a “special circumstance” that might explain how Section 2 liability would exist in the face of the sustained success of minority voters electing their candidates of choice in the challenged districts.
92. Likewise, Defendants’ evidence relating to the number of times minority candidates won in the challenged districts in unopposed elections is not supportive of their claims. If anything, the fact that the white majority bloc did not even bother to challenge the candidate of choice of black voters indicates that the BVAP in the districts certainly did not need to be increased. But regardless, it still does not create a situation in which the minority-preferred candidate is “usually” defeated. The “special circumstances,” contemplated by the Court in *Gingles*, that might explain how a minority-preferred candidate could occasionally win in a district where minority voters do not really enjoy the opportunity to elect the candidate of choice, is not the situation in which North Carolina found itself in 2011. Instead, across the challenged districts, the candidates of choice usually won, not were usually defeated.

K. RELEVANCE OF EXPERT REPORTS ON RACIALLY POLARIZED VOTING

93. Defendants rely on the reports of Dr. Thomas Brunell and Dr. Block which found racially polarized voting in North Carolina wherever the white crossover vote fell under 50%. Based on consistent precedent, the Court concludes that Defendants cannot demonstrate a strong basis in evidence for the third prong of *Gingles* by merely showing the presence of statistically significant racially polarized voting in a particular geographic area. *Gingles*, 478 U.S. at 56; *Abrams v. Johnson*, 521 U.S. 74, 92-93 (1997).
94. Rather, the Court concludes that racially polarized voting is only legally significant when data shows that the white voting bloc usually defeats the African-American candidate of choice. 478 U.S. at 56.
95. Dr. Block's report does not provide a strong basis in evidence for third prong of *Gingles* because it does not show legally significant racially polarized voting in any of the challenged districts. *Id.*
96. Dr. Brunell's report also does not provide a strong basis in evidence for meeting the third prong of *Gingles* because the report shows no legally significant racially polarized voting in any of the challenged districts. *Id.* In fact, Dr. Brunell found white crossover voting sufficient to elect the candidate of choice in each of the challenged districts at BVAP levels of 40%. PI Ex. G, Dickson Trial Tr. Vol. II 386 (testimony of Lichtman).
97. The Court concludes that Dr. Block's and Dr. Brunell's reports cannot form a strong basis in evidence for a compelling state interest to draw majority-black districts, based on the sustained success of candidates of choice of black voters in legislative and countywide election in each of the geographic areas where the challenged majority-black districts were drawn. *Gingles*, 478 U.S. at 77; *Miller v. Johnson*, 515 U.S. at 921 ("Compliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws.").
98. The Court concludes that Dr. Block's and Dr. Brunell's reports cannot form a strong basis in evidence for demonstrating narrow tailoring because they do not support a finding that the white voting bloc usually defeats the candidate of choice of black voters in each of the geographic areas where

the challenged majority-black districts were drawn. *Gingles*, 478 U.S. at 77.

99. Further this Court finds the testimony of Plaintiffs' expert Dr. Allan Lichtman demonstrates the report of Dr. Brunell shows the "general willingness of white voters to vote for black candidates" in each of the geographic areas where the challenged majority-black districts were drawn. *Abrams v. Johnson*, 521 U.S. 74, 93 (1997). Thus the Court concludes that there is no Section 2 liability in any of the geographic areas where the challenged districts were drawn. *Id.*

L. RELEVANCE OF DEFENDANTS' PROPORTIONALITY POLICY

100. *Gingles* requires that each Section 2 district be drawn in the particular geographic location where Section 2 liability occurred. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973). Therefore, a statewide proportionality defense, based on statewide evidence, is antithetical to a showing that Defendants had a strong basis in evidence that, based on local voting patterns, a Section 2 district is necessary to protect the State from liability. *Id.*
101. Likewise, the Supreme Court has clearly held that the non-retrogression standard under Section 5 does not mandate proportional representation. In *Miller*, the Court noted that the plan "overstepped the requirements for section 5 compliance because it was designed to secure proportional representation for black voters in Georgia, not adhere to the VRA." *Miller v. Johnson*, 515 U.S. 900, 910 (1995).
102. The Court concludes that, based on Defendants' admitted focus on statewide proportionality, Defendants did not tailor the location of majority-black districts to areas where there was a strong basis in evidence for the necessity of majority-black districts.

House Districts

House District 5

103. HD 5 covers Gates, Hertford, Bertie and a piece of Pasquotank County. In choosing to draw HD 5 as majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV necessary to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).

104. In fact, Dr. Block and Dr. Brunell's reports show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Gates, Hertford, Bertie, and Pasquotank Counties. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299,, p. 10, Table 2, p. 12-13, Table 3; Motion for Judicial Notice, #1.
105. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. The Court concludes that the state did not have a strong basis in evidence for redrawing the district as majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
106. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Thornburg v. Gingles*, 478 U.S. 30, 56 (1986). The sustained success of African-American preferred candidates in the counties that make up HD 5 defeat *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
107. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 5 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 5 is unconstitutional.

House District 7

108. HD 7 covers parts of Halifax and Nash Counties. In choosing to draw HD 7 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
109. In fact, Dr. Block and Dr. Brunell's report show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Halifax and Nash counties. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 10, Table 2, pp. 12-13, Table 3; Motion for Judicial Notice, #1.
110. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous district. Additionally, the black candidate of

choice was winning county-wide elections. The Court concludes that the state did not have a strong basis in evidence for drawing the district the way it did to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.

111. Likewise, there is no Section 2 liability when the white majority bloc is not usually defeating the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the counties that make up HD 7 defeat *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
112. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 7 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 7 is unconstitutional.

House District 12

113. HD 12 covers Greene, Lenoir, and Craven counties. In choosing to draw HD 12 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
114. In fact, Dr. Block and Dr. Brunell's report show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Greene, Lenoir, and Craven counties. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
115. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous district below that was below 50% BVAP. Additionally, the black candidate of choice was winning county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
116. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the counties that make up HD 12 defeat *Gingles*' third prong.

Gingles, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.

117. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 12 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 12 is unconstitutional.

House District 21

118. HD 21 is located in Greene, Lenoir, and Craven Counties, which were covered jurisdictions under Section 5. In choosing to draw HD 21 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
119. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Greene, Lenoir, and Craven counties. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
120. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
121. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 21 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
122. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 21 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*,

515 U.S. at 921. The Court concludes that House District 21 is unconstitutional.

House District 24

123. HD 24 covers Wilson and Pitt counties, which were jurisdictions covered by Section 5. In choosing to increase the BVAP in HD 24, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
124. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Wilson and Pitt counties. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
125. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
126. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 24 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
127. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 12 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 24 is unconstitutional.

House Districts 29 and 31

128. HD 29 and HD 31 are located wholly within Durham County. In choosing to draw HD 29 and 31 as majority-BVAP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
129. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Durham County. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
130. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in a district below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the Durham County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.
131. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 29 and HD 31 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House Districts 29 and 31 are unconstitutional.

House District 32

132. HD 32 covers Warren, Vance, and Granville Counties. Vance and Granville were Section 5 covered jurisdictions. In choosing to draw HD 32 majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
133. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Warren, Vance, and Granville Counties. Brunell Dep.

Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.

134. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
135. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
136. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 32 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 32 is unconstitutional.

House Districts 33 and 38

137. HD 33 and HD 38 are located wholly within Wake County. In choosing to draw HD 33 and HD 38 as majority-BVAP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
138. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Wake County. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
139. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous district, that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American and African-American-preferred candidates in the Wake County show Defendants lacked a strong basis in evidence for liability under *Gingles*'

third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.

140. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 33 and HD 38 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House Districts 33 and 38 are unconstitutional.

House District 42 and 43

141. HDs 42 and 43 are located wholly within Cumberland County, a Section 5 covered jurisdiction. In choosing to draw HDs 42 and 43 as majority-BVAP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
142. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Cumberland County. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
143. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidates of choice of black voters were winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing these districts at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
144. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 42 and HD 43 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw these majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
145. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 42 and HD 43 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509

U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 42 and House District 43 are unconstitutional.

House District 48

146. HD 48 is covers parts of Richmond, Scotland, Hoke, and Robeson counties. Scotland, Hoke, and Robeson counties were Section 5 covered jurisdictions. In choosing to draw HD 48 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
147. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Richmond, Scotland, Hoke, and Robeson counties. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
148. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
149. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up HD 48 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
150. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, HD 48 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 42 is unconstitutional.

House Districts 57, 58, and 60

151. HD 57, HD 58, and HD 60 are located wholly within Guilford County, a county formerly covered under Section 5. In choosing to draw HD 57 as a majority-BVAP district, in addition to HD 58 and HD 60, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
152. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting in Guilford County. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
153. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous versions of HD 57 that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the districts at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
154. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates Guilford County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
155. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 57, HD 58, and HD 60 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House District 57, House District 58, and House District 60 unconstitutional.

House Districts 99, 102, and 107

156. HD 99, HD 102, and HD 107 are located wholly within Mecklenburg County. In choosing to draw House Districts 99, and 102 as majority-BVAP districts, and in choosing increase the BVAP in HD 107, Defendants had no district-specific evidence of legally significant RPV sufficient to

satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).

157. Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in districts with 40% BVAP in Mecklenburg County. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 10, Table 2, p. 12-13, Table 3; Motion for Judicial Notice, #1.
158. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous districts that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in Mecklenburg County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.
159. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, HD 99, HD 102, and HD 107 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that House Districts 99, 102, and 107 are unconstitutional.

Senate Districts

Senate District 4

160. SD 4 is comprised of Vance, Warren and Halifax counties, and pieces of Nash and Wilson counties. Rucho Dep. Ex. 199. Vance, Halifax, Nash, and Wilson counties were jurisdictions covered under Section 5.
161. In choosing to draw SD 4 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
162. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred

candidate in a district with 40% BVAP in Vance, Warren and Halifax, Nash, and Wilson counties. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.

163. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
164. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up SD 4 show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
165. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 4 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 4 is unconstitutional.

Senate District 5

166. SD 5 is comprised of Greene County and pieces of Wayne, Lenoir and Pitt counties. Rucho Dep. Ex. 199. These counties were jurisdictions covered under Section 5.
167. In choosing to draw SD 5 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles*, 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
168. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Greene, Wayne, Lenoir and Pitt counties. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.

169. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
170. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The success of the African-American-preferred candidate in the counties that make up SD 5 show that black voters had the opportunity to elect the candidate of their choice and Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
171. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 5 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 5 is unconstitutional.

Senate District 14

172. SD 14 is located wholly within Wake County. Rucho Dep. Ex. 199.
173. In choosing to draw SD 14 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
174. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Wake County. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
175. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections.

176. There is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in Wake County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
177. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 14 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 14 is unconstitutional.

Senate District 20

178. SD 20 is comprised of Granville County and a piece of Durham County. Rucho Dep. Ex. 199. Granville County was a jurisdiction covered by Section 5.
179. In choosing to draw SD 20 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
180. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Granville and Durham counties. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
181. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters had, for decades, consistently won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
182. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the minority candidate. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the counties that make up SD 20 show Defendants lacked a strong basis in evidence for

liability under Gingles' third prong. *Gingles*, 478 U.S. at 77. In fact, the Court in *Gingles* found that in 1986, voting in Durham County was not sufficiently racially polarized in order to warrant a Section 2 remedy. *Id.* Based on all this evidence, there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.

183. As the State used race in great excess of what was necessary to comply with federal law and the district is grossly non-compact, SD 5 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 20 is unconstitutional.

Senate District 21

184. SD 21 is comprised of Hoke County and pieces of Cumberland County. Rucho Dep. Ex. 199. These counties were jurisdictions covered under Section 5.
185. In choosing to draw SD 21 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
186. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Hoke and Cumberland counties. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 12-13, Table 3; Motion for Judicial Notice, #1.
187. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
188. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in the counties that make up SD 21 show Defendants lacked a strong basis in evidence for liability under Gingles' third prong. *Gingles*,

478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.

189. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 21 is not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 21 is unconstitutional.

Senate District 28

190. SD 28 is located wholly within Guilford County. Rucho Dep. Ex. 199. Guilford County was a jurisdiction covered under Section 5.
191. In choosing to draw SD 5 as a majority-BVAP district, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
192. In fact, Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Guilford County. Brunell Dep. Ex. 299, p. 2; Brunell Dep. Ex. 299, p. 10, Table 2, p. 12-13, Table 3; Motion for Judicial Notice, #1.
193. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in previous legislative districts that had below 50% BVAP. Additionally, candidates of choice of black voters won in county-wide elections. The Court concludes that the state did not have a strong basis in evidence for redrawing the district at majority-black to avoid retrogression. *Miller v. Johnson*, 515 U.S. at 922.
194. Likewise, there is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American-preferred candidates in Guilford County shows Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw a majority-black district to comply with federal law. *Shaw*, 509 U.S. at 655.
195. As the State used race in excess of what was necessary to comply with federal law and the district is non-compact, SD 28 is not narrowly tailored

to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that SD 28 is unconstitutional.

Senate Districts 38 and 40

196. SD 38 and SD 40 are located wholly within Mecklenburg County. In choosing to draw SD 38 and SD 40 as majority-BVAP districts, Defendants had no district-specific evidence of legally significant RPV sufficient to satisfy the intensely local inquiry required by *Gingles*. *Gingles* 478 U.S. at 56; *White v. Regester*, 412 U.S. 755, 769 (1973).
197. Dr. Block and Dr. Brunell's reports do show significant white crossover voting more than sufficient to elect the minority-preferred candidate in a district with 40% BVAP in Mecklenburg County. Brunell Dep. Ex. 299, p. 2. Brunell Dep. Ex. 299, p. 10, Table 2, p. 12-13, Table 3; Motion for Judicial Notice, #1.
198. Thus evidence before the General Assembly at the time of enactment demonstrated that the candidate of choice of black voters was winning by large margins in the previous districts that had below 50% BVAP. Additionally, the candidates of choice of black voters consistently won county-wide races. There is no Section 2 liability when the white majority bloc does not usually defeat the candidate of choice of minority voters. *Gingles*, 478 U.S. 30, 56. The sustained success of African-American preferred candidates in the Mecklenburg County show Defendants lacked a strong basis in evidence for liability under *Gingles*' third prong. *Gingles*, 478 U.S. at 77. Thus there was no need to draw majority-black districts to comply with federal law.
199. As the State used race in excess of what was necessary to comply with federal law and the districts are non-compact, Senate Districts 38 and 40 are not narrowly tailored to comply with a compelling state interest. *Shaw*, 509 U.S. at 655; *Miller*, 515 U.S. at 921. The Court concludes that Senate Districts 38 and 40 are unconstitutional.

Senate District 32

200. SD 32 is located wholly within Forsyth County, and drawn to be 42.53% TBVAP. Stip. 1(a)(xii); Rucho Dep. Ex. 199. Forsyth County was not a covered jurisdiction under Section 5. The first version of SD 32 released by the Senate Redistricting Committee split one precinct. Stat Pack, Rucho Senate VRA Districts. The second released version split 43 precincts. Stat

Pack, Rucho Senate 2. Reliable partisan data is unavailable below the precinct level. *Bush v. Vera*, 517 U.S. at 961. The availability and use of very detailed racial data by the map drawers when drawing the districts supports the conclusion that race was an overriding consideration. *Vera*, 517 U.S. at 962.

201. Dr. Hofeller testified that he redrew SD 32 because he was instructed to attempt to increase the black population to match districts proposed by AFRAM and the previous plan. June 5, 2013 Testimony, p. 46, lines 13-24.
202. Based on Dr. Hofeller's testimony the Court concludes that race was the predominant factor motivating the General Assembly to split 42 additional precincts.
203. SD 32 also has a contorted shape, appearing as a Rorschach blot in the middle of Forsyth County that shoots a small appendage to the east. The Court finds that the district shape so contorted that it can only be explained by race or by a disregard for traditional redistricting criteria. *Johnson v. Miller*, 864 F. Supp. 1354, 1374 (S.D. Ga. 1994).
204. In Joint Statements released by the redistricting Chairs, and statements made on the floor of the Senate, Sen. Rucho stated that Sen. Linda Garrou, the white incumbent, was removed from her district in order to allow African-Americans an opportunity to elect the candidate of their choice. Sen. Rucho confirmed this reasoning in his deposition. PI Ex. B, 190:13-194:3.
205. The Court may use contemporaneous statements by decision makers to determine issues of legislative intent. *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977); *Bossier Parish I*, 520 U.S. at 489 (applying *Arlington Height* to the legislative purpose in redistricting inquiry).
206. Based on the unequivocal evidence before us, the Court concludes that race was the predominant factor in the decision to exclude Senator Linda Garrou from her district.
207. Case law warns against assuming that white candidates cannot be the candidate of choice for black voters. *Askew v. City of Rome*, 127 F.3d 1355, 1378 (11th Cir. Ga. 1997) (noting that "the court will not automatically assume that the black community can only be satisfied by

black candidates.”).⁵ Analysis by Dr. Lichtman found Sen. Garrou to be the candidate of choice of black voters in District 32. PI Ex. G, Dickson Trial Tr. Vol. II 407-08 (testimony of Lichtman).

208. Based on the splitting of 43 precincts, the contorted shape of the district, and the purposeful removal of the incumbent based on race, the Court finds that race predominated over traditional redistricting principles in drawing SD 32. *Shaw v. Hunt*, 517 U.S. 899, 905 (1996).
209. Under the Section 2 liability defense taken by Defendants, SD 32 is not a district designed to avoid Section 2 liability. Def. Tr. Br. at 9. Thus the use of race was not justified by the Voting Rights Act.
210. Defendants have not produced any evidence that the use of race in SD 32 was motivated by a compelling state interest, or that the non-compact district was narrowly tailored. *Shaw v. Reno*, 509 U.S. at 643. The Court finds SD 32 to be unconstitutional.

⁵ See *Johnson v. DeGrandy*, 512 U.S. 997, 1027, 114 S. Ct. 2647, 2665, 129 L. Ed. 2d 775, 801 (1994) (Kennedy, J., concurring) ("The assumption that majority-minority districts elect only minority representatives, or that majority-white districts elect only white representatives, is false as an empirical matter. And on a more fundamental level, the assumptions reflect "the demeaning notion that members of the defined racial groups ascribe to certain "minority views" that must be different from those of other citizens.");

Based on the foregoing Findings of Fact and Conclusions of Law, Plaintiffs respectfully request the Court to (a) Declare that Senate Districts 4, 5, 14, 20, 21, 28, 32, 38, and 40 and House Districts 5, 7, 12, 21, 24, 29, 31, 32, 33, 38, 48, 57, 58, 60, 99, 102, and 107 violate Plaintiffs' rights secured by the Fourteenth Amendment to the United States Constitution because each of those districts is a racial gerrymander not justified by any compelling governmental interest nor narrowly tailored to serve a compelling interest; (b) Enjoin Defendants from using those Districts to elect Plaintiffs' representatives to the North Carolina General Assembly at the 2016 general election and all subsequent elections; and (c) Award Plaintiffs such other relief as may be appropriate including fees and costs.

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

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing **PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 28th day of March, 2016.

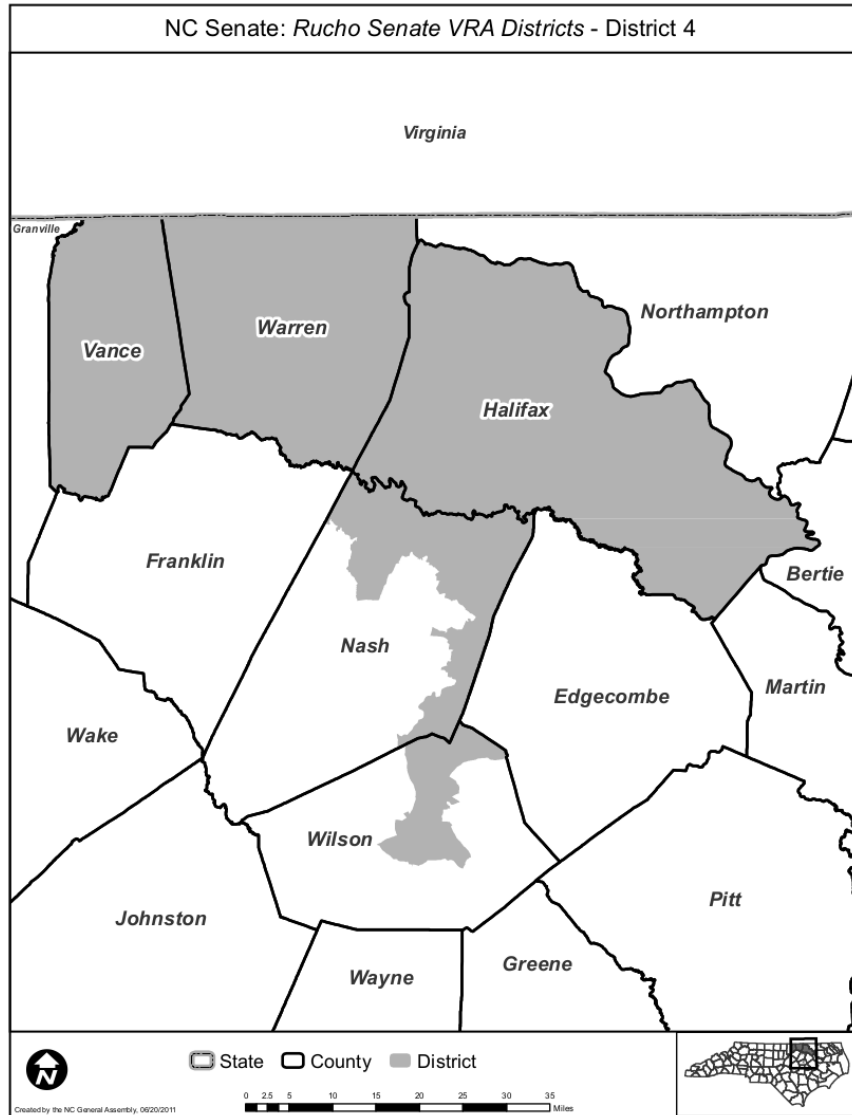
/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.

Counsel for Plaintiffs

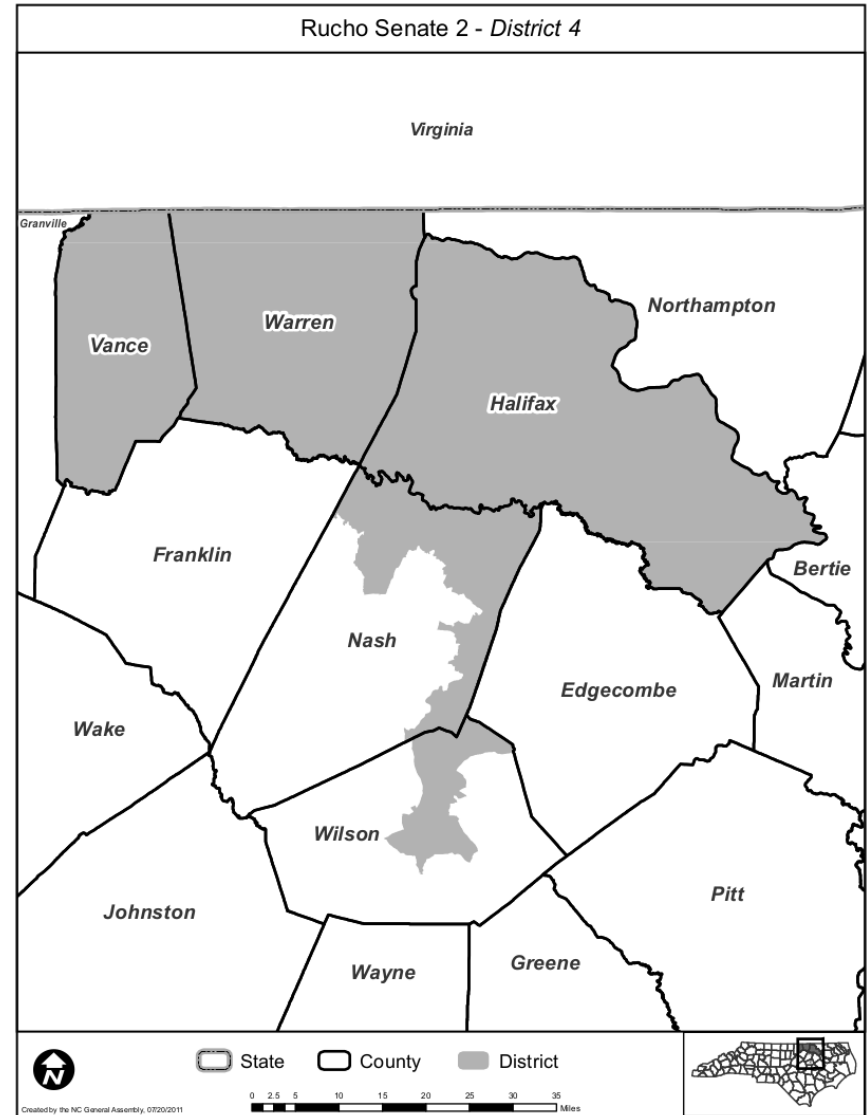
Appendix A

Senate District 4

“Rucho Senate VRA Districts” (Introduced 6/17/11)

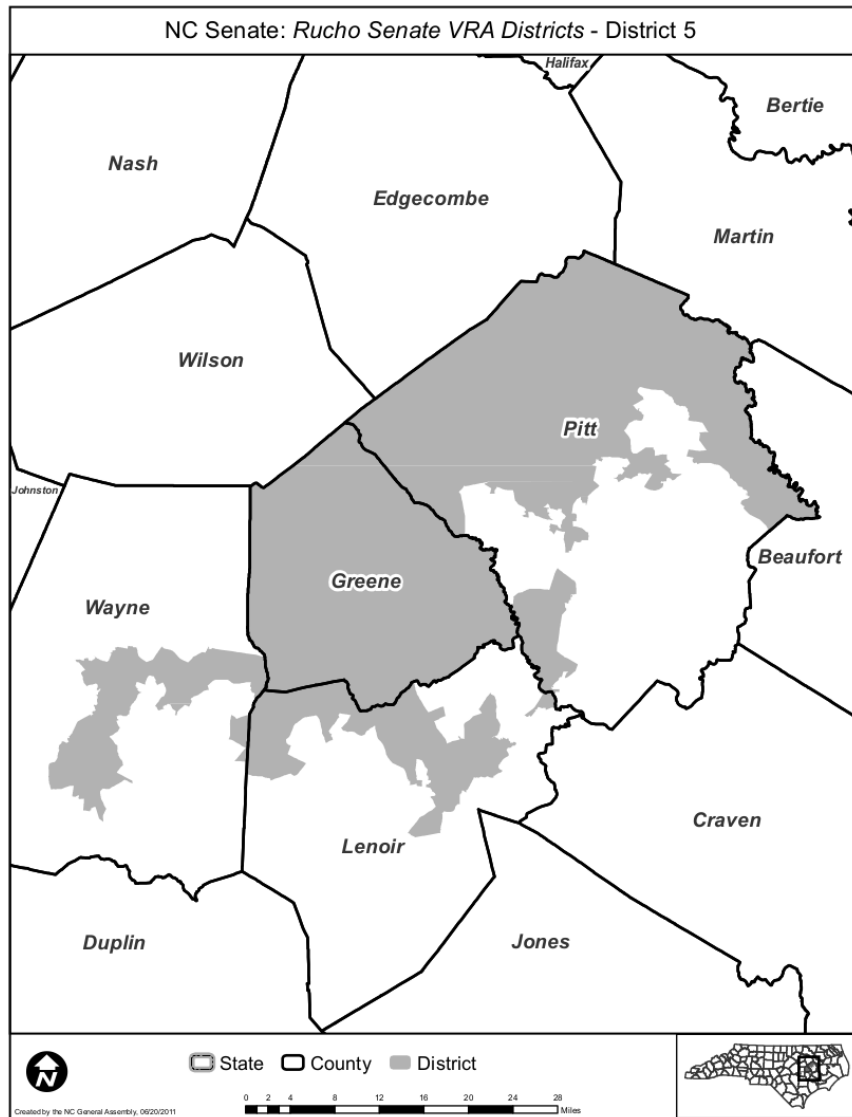


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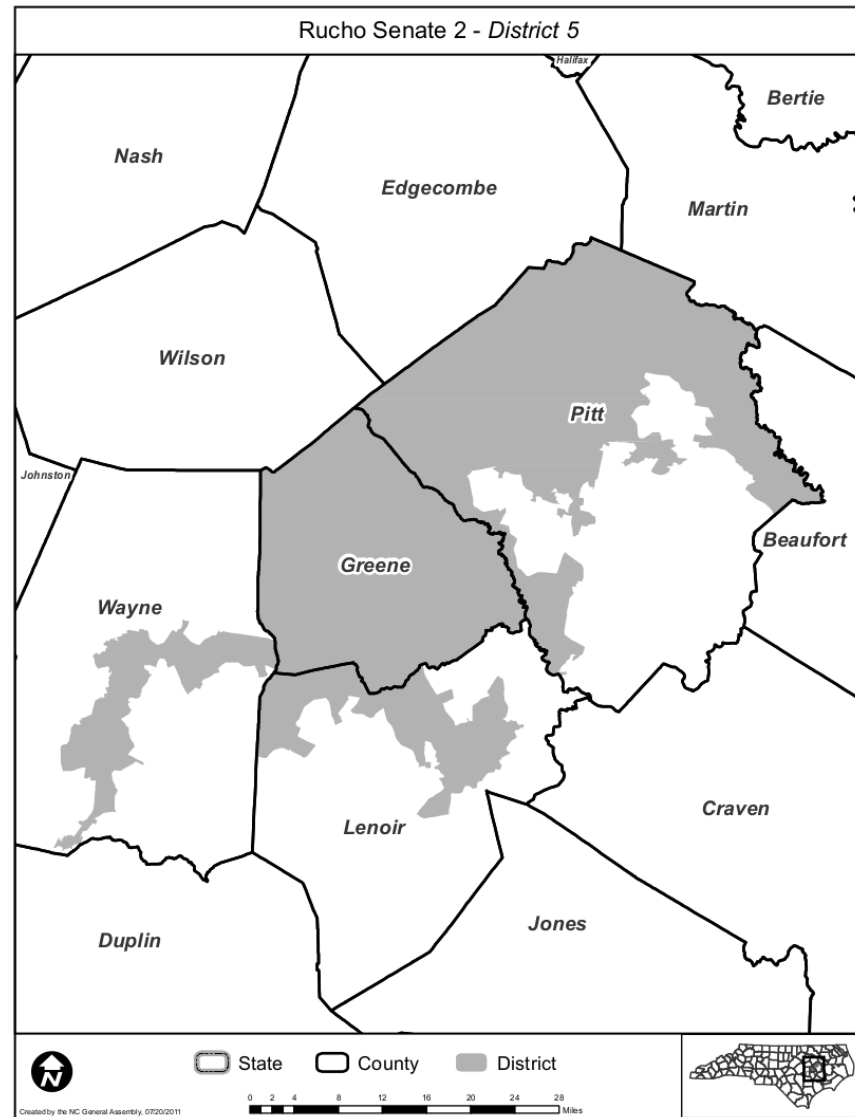


Senate District 5

“Rucho Senate VRA Districts” (Introduced 6/17/11)

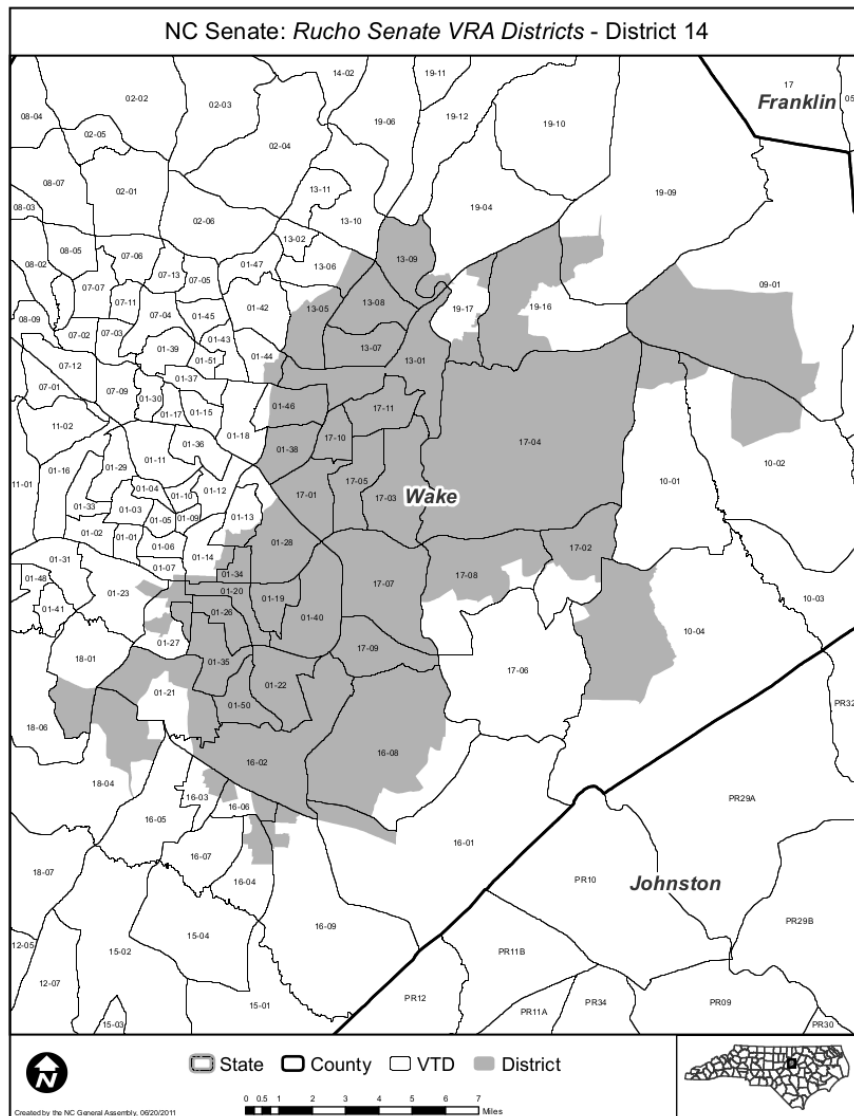


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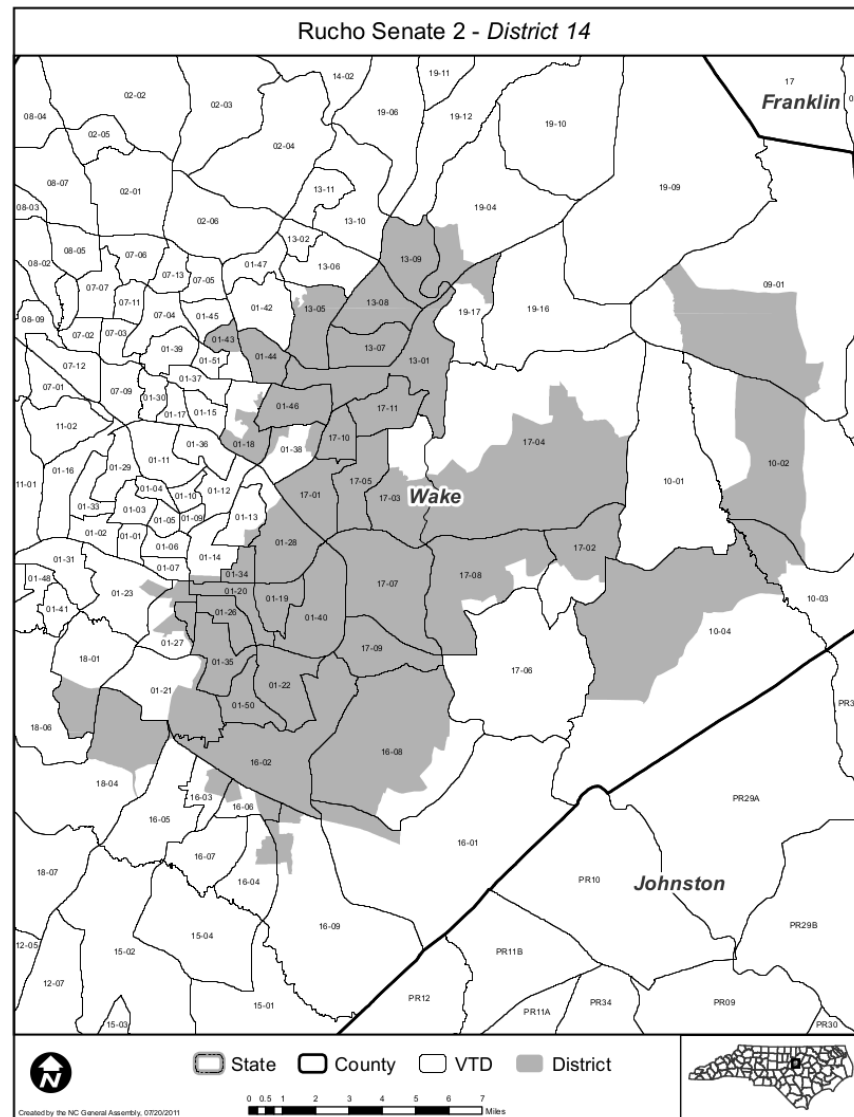


Senate District 14

“Rucho Senate VRA Districts” (Introduced 6/17/11)



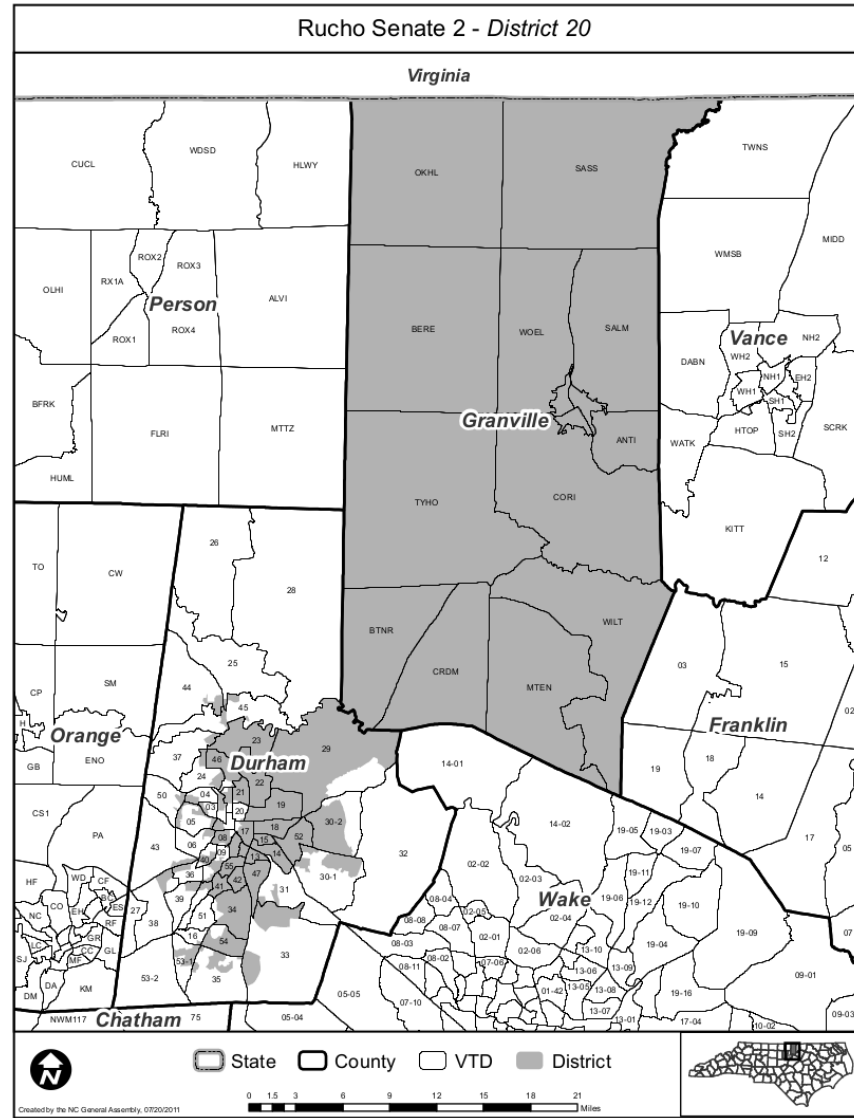
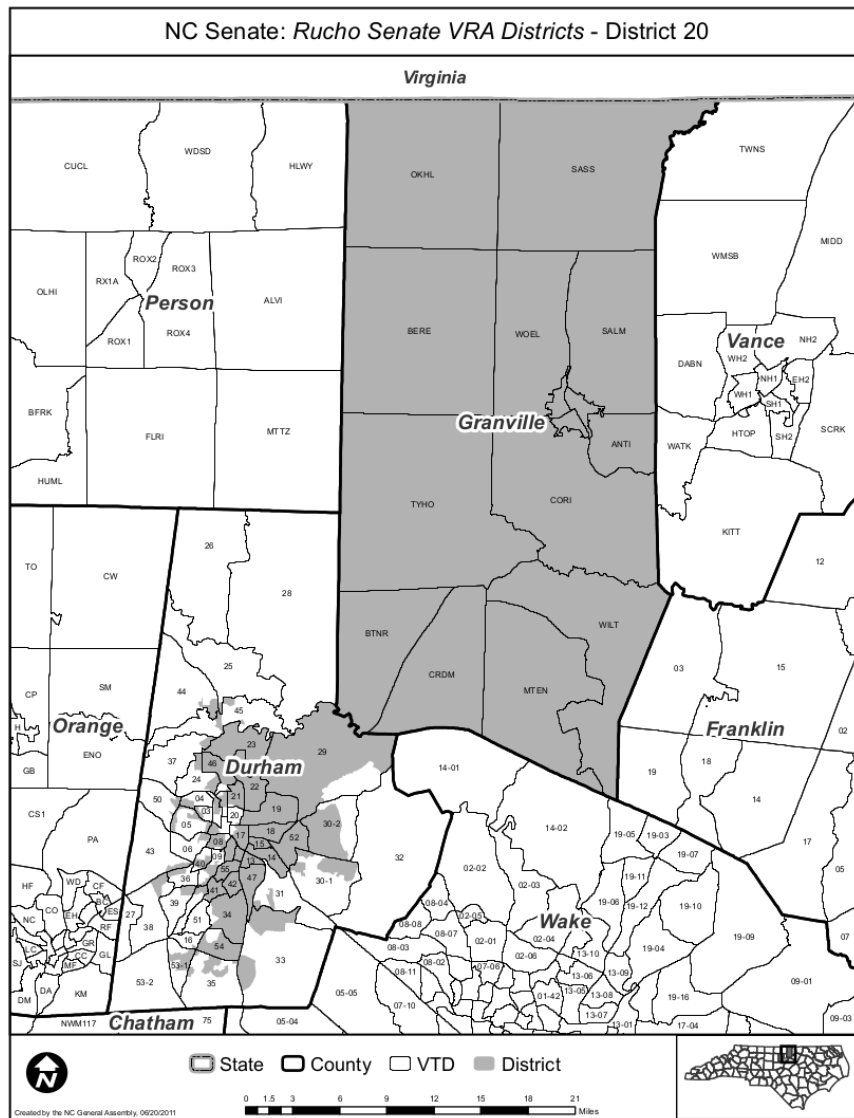
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Senate District 20

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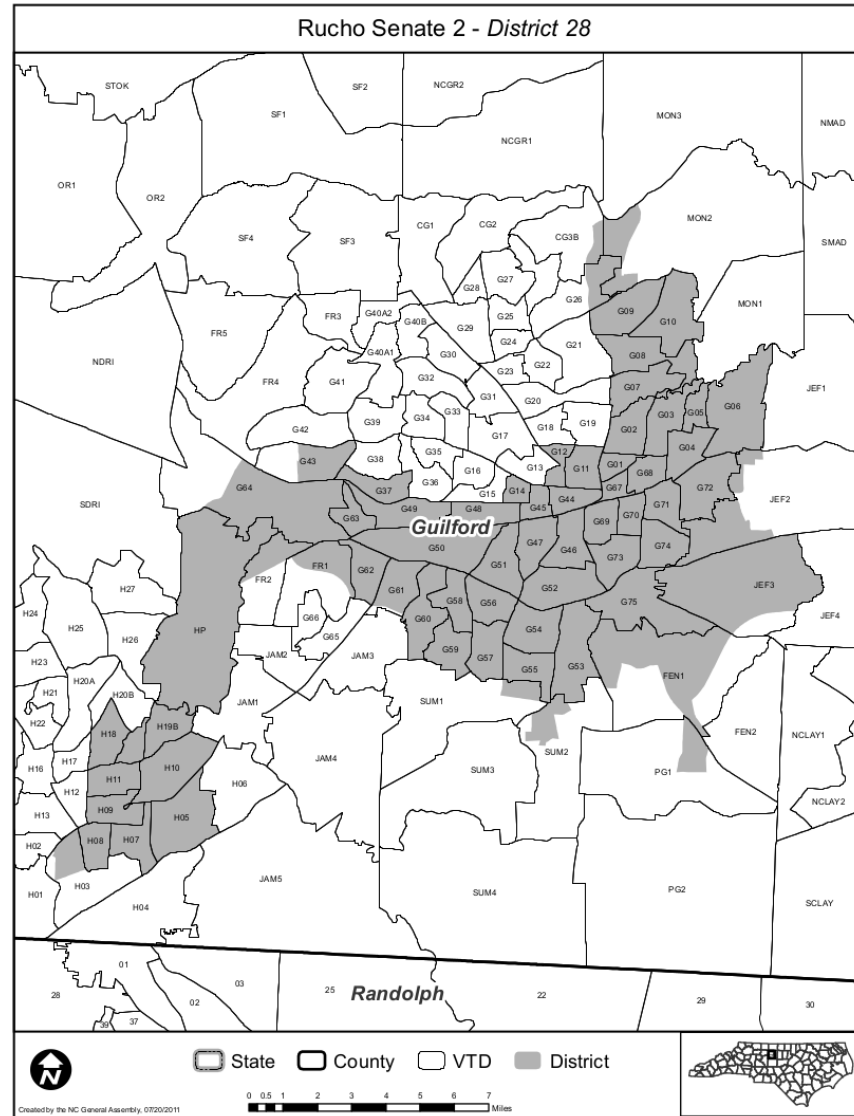
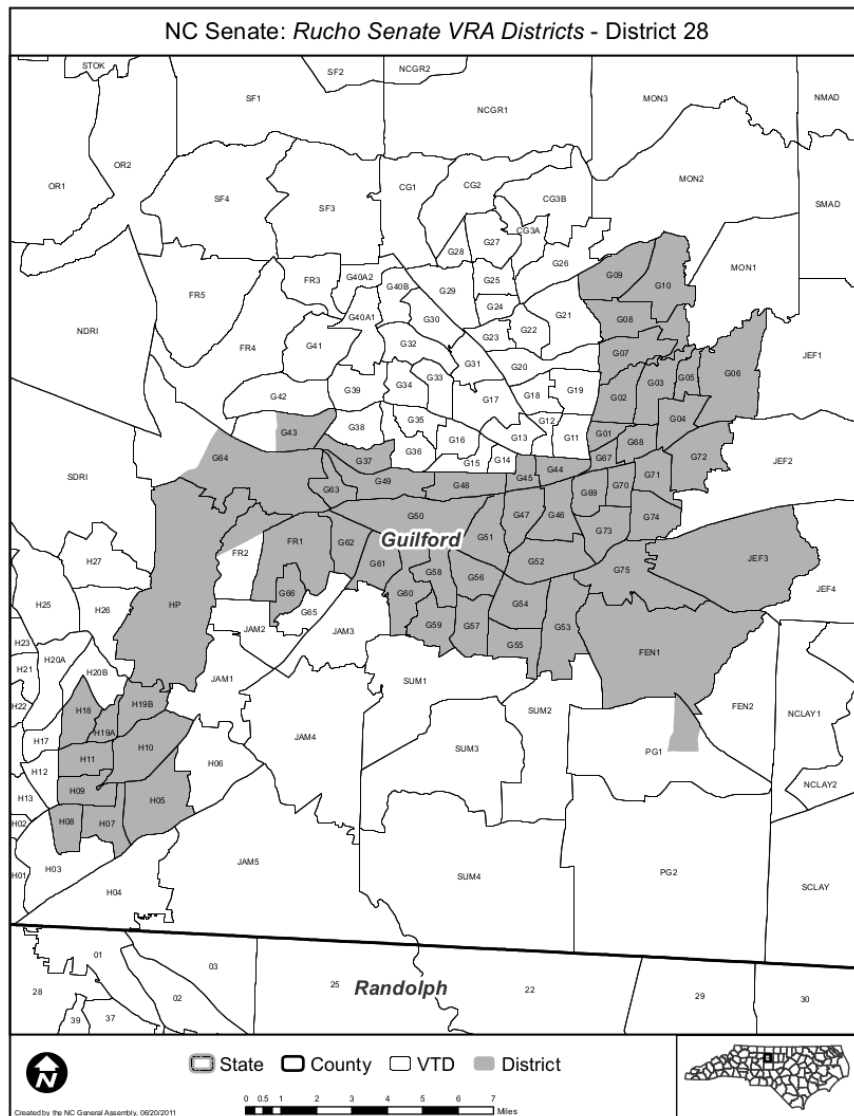
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Senate District 28

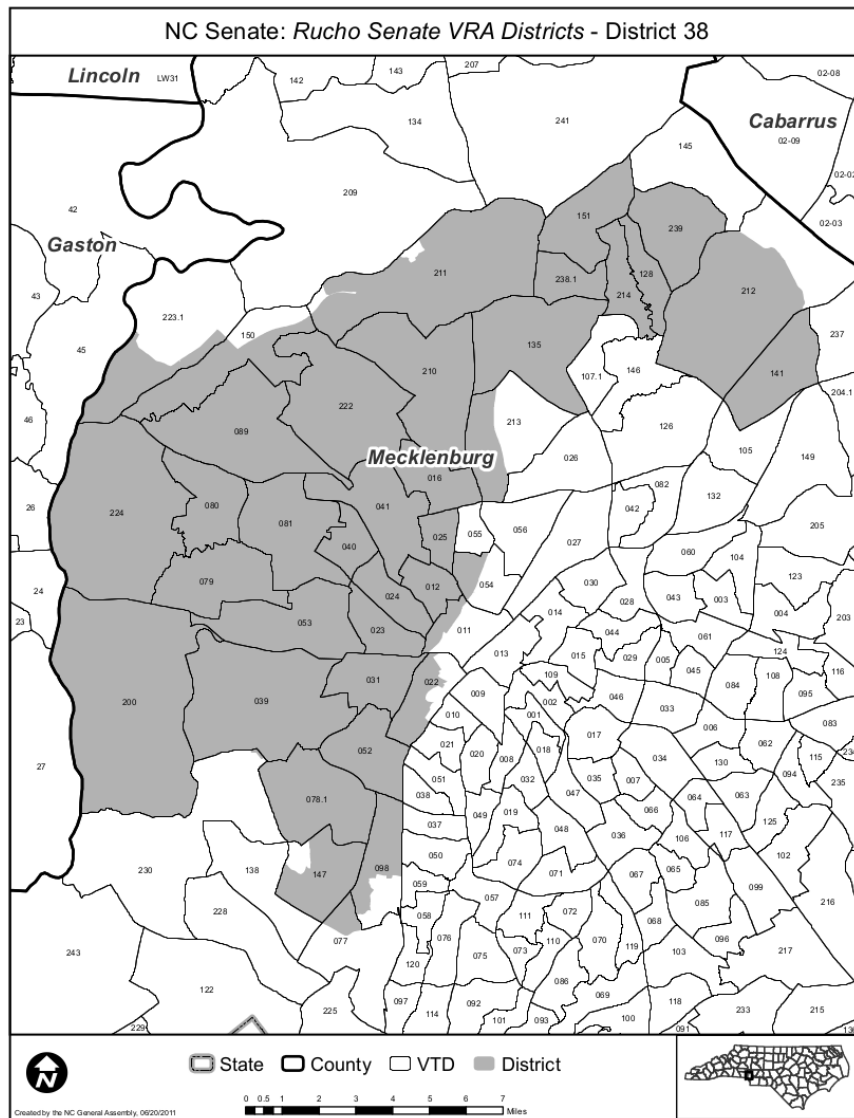
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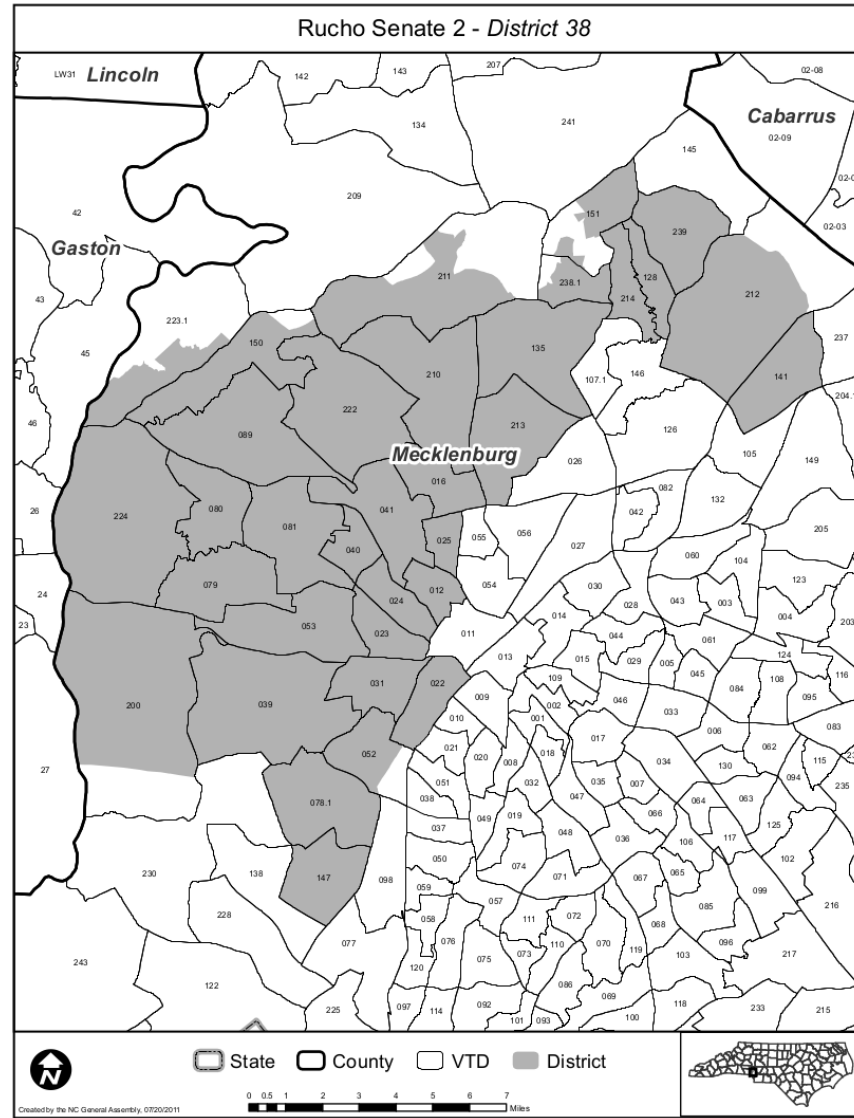


Senate District 38

“Rucho Senate VRA Districts” (Introduced 6/17/11)

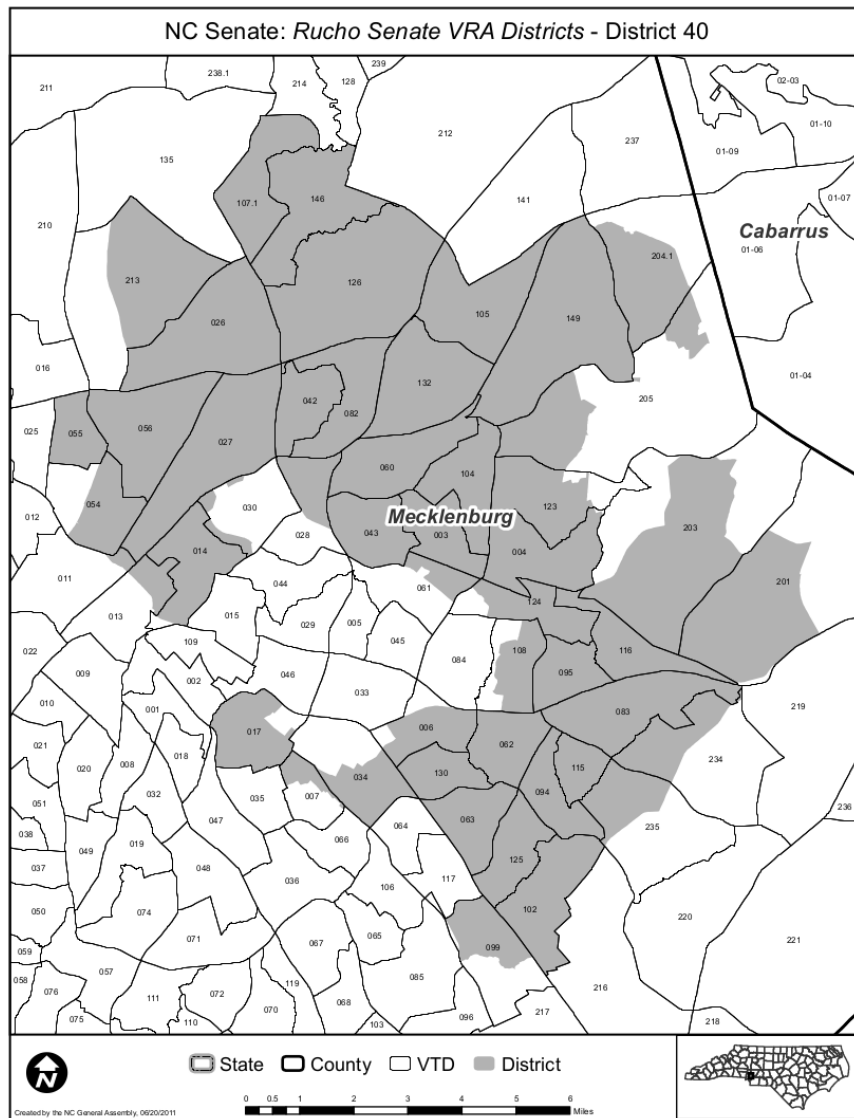


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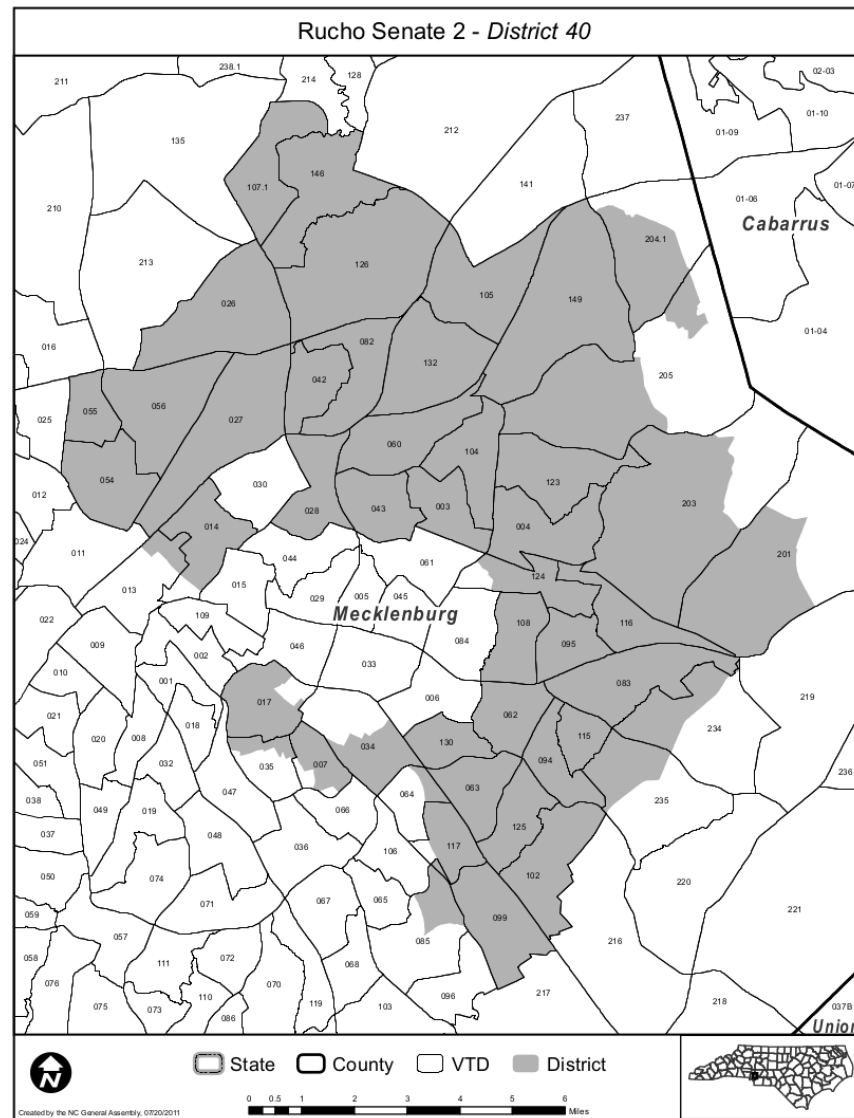


Senate District 40

“Rucho Senate VRA Districts” (Introduced 6/17/11)



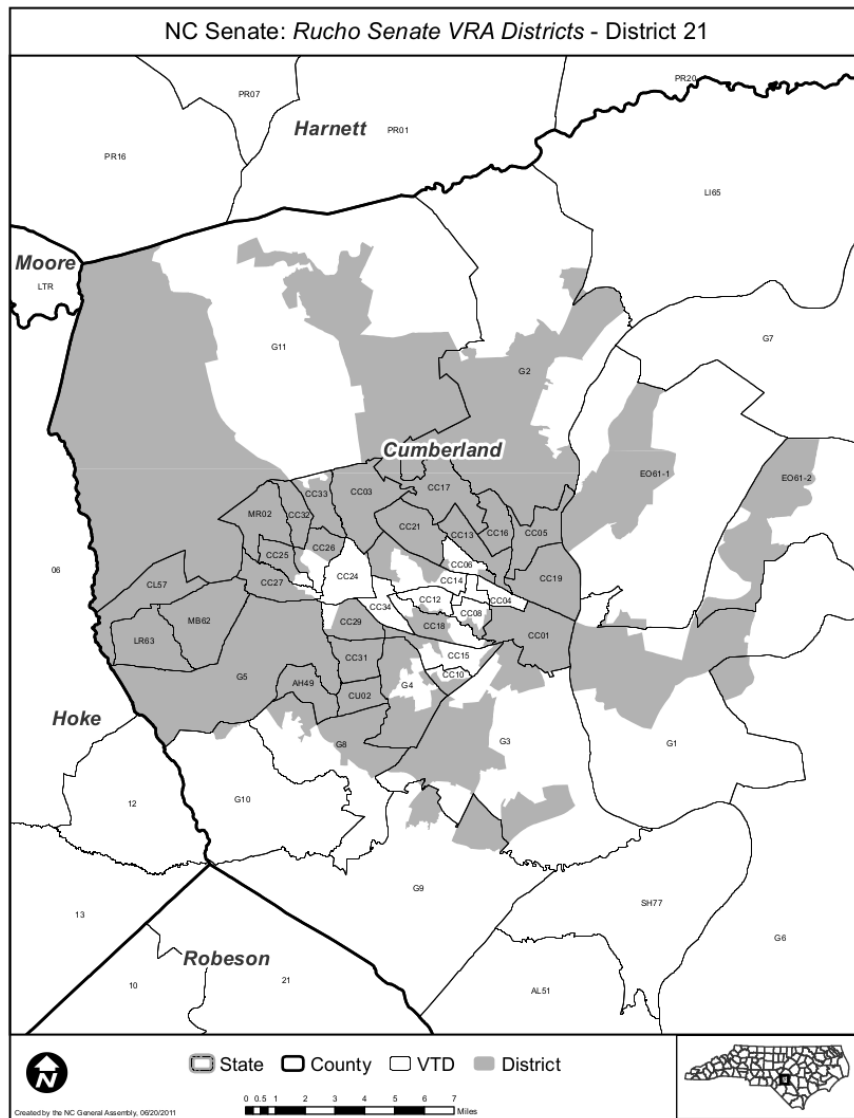
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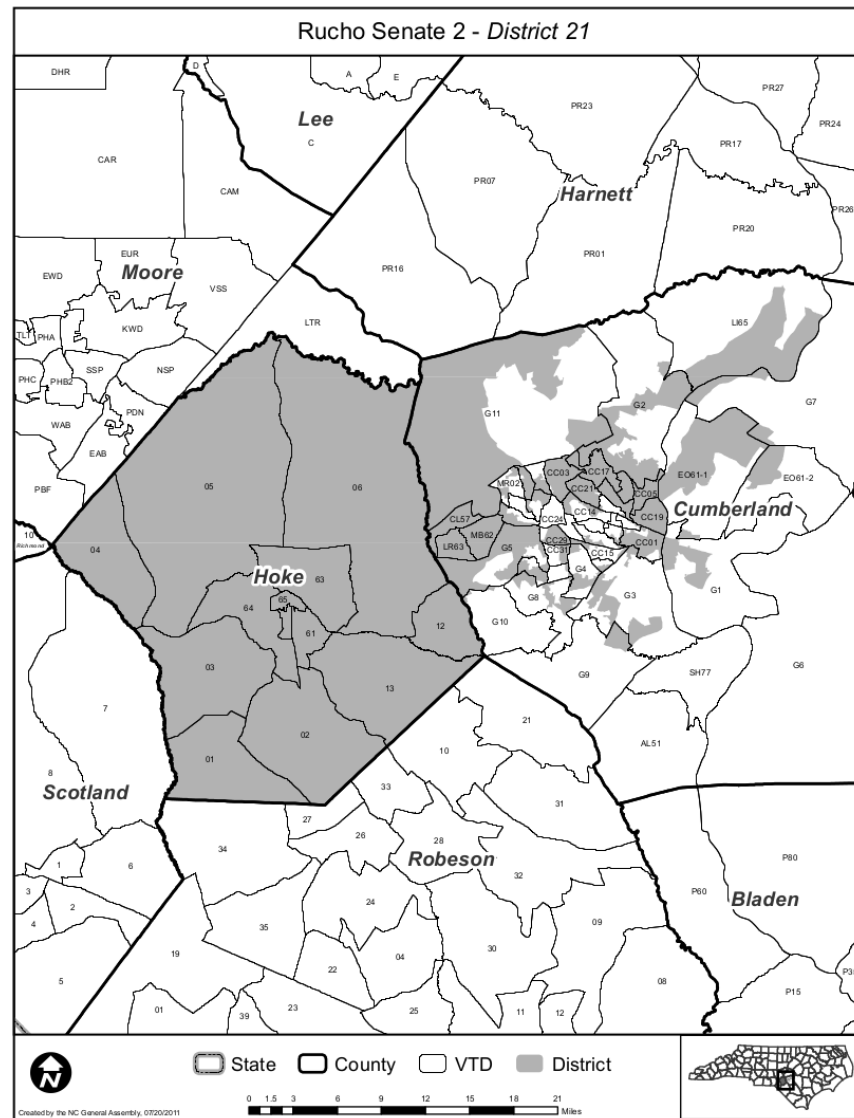
Appendix B

Senate District 21

“Rucho Senate VRA Districts” (Introduced 6/17/11)

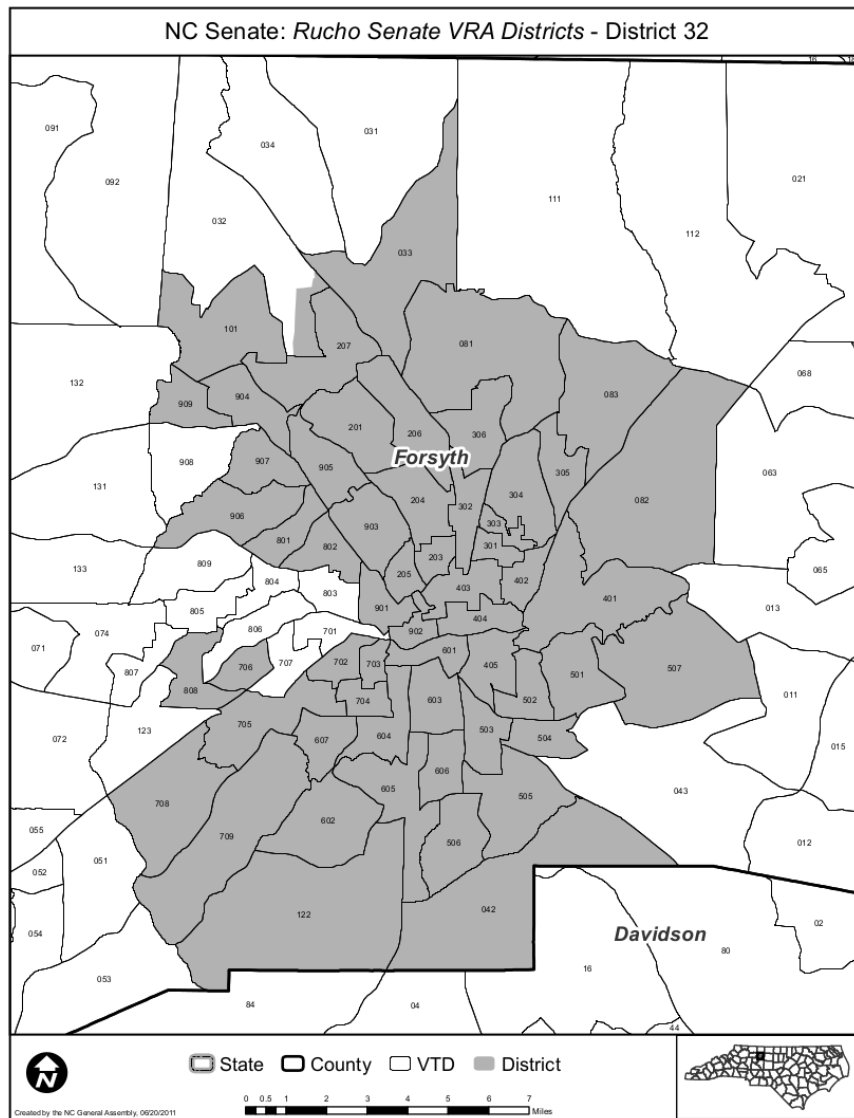


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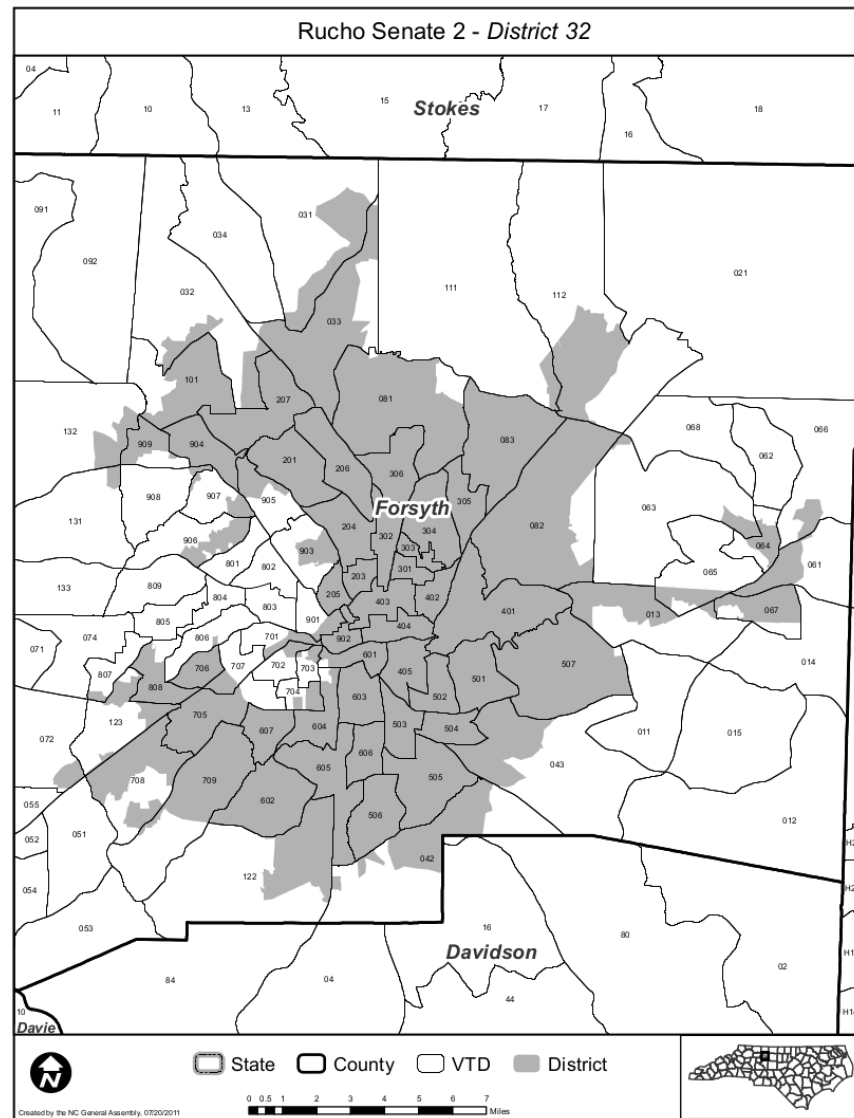


Senate District 32

“Rucho Senate VRA Districts” (Introduced 6/17/11)



“Rucho Senate 2” (Enacted July 2011)



Appendix C

House District 5

“Lewis House VRA - Corrected” (Introduced 6/21/11)

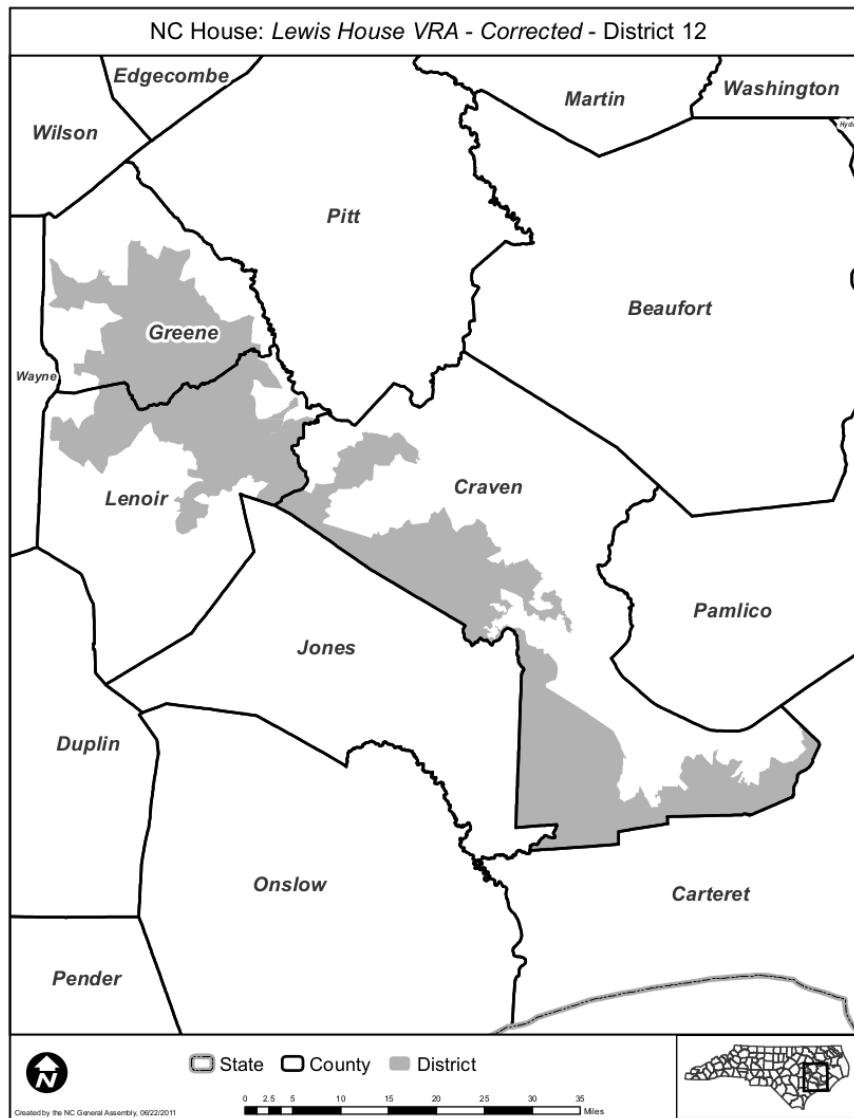


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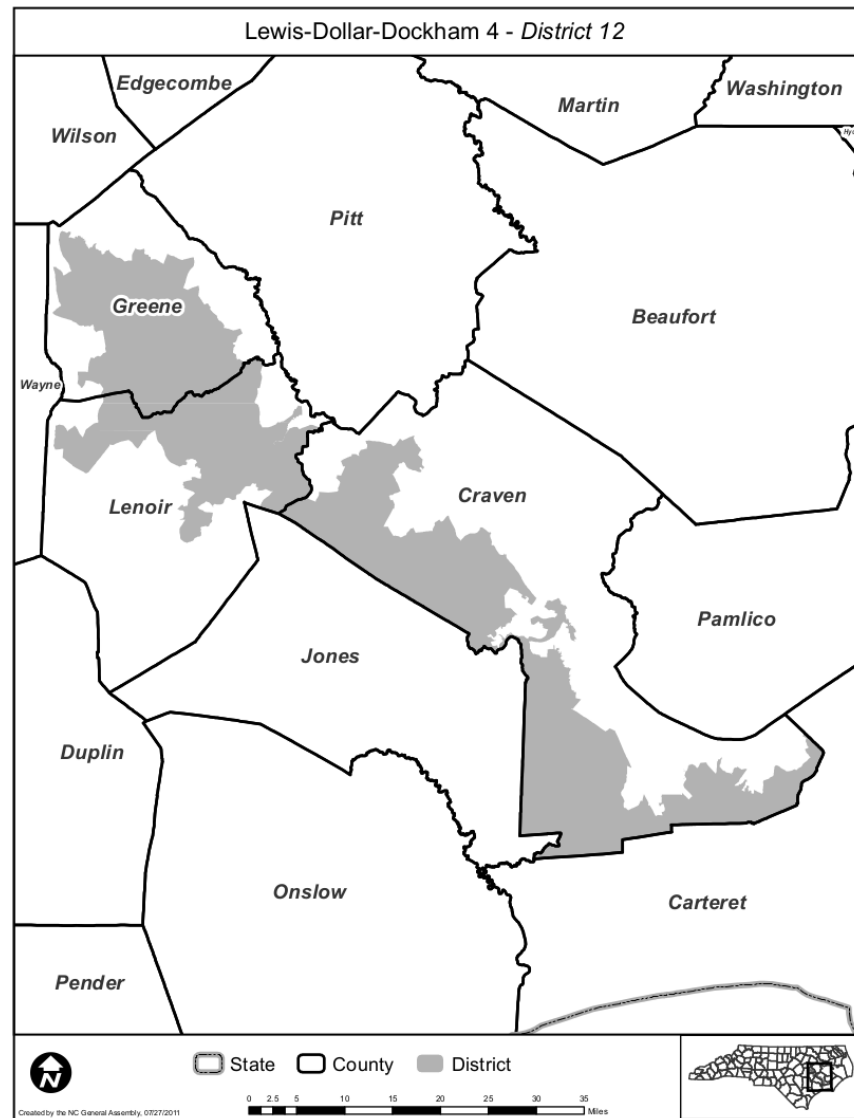


House District 12

“Lewis House VRA - Corrected” (Introduced 6/21/11)

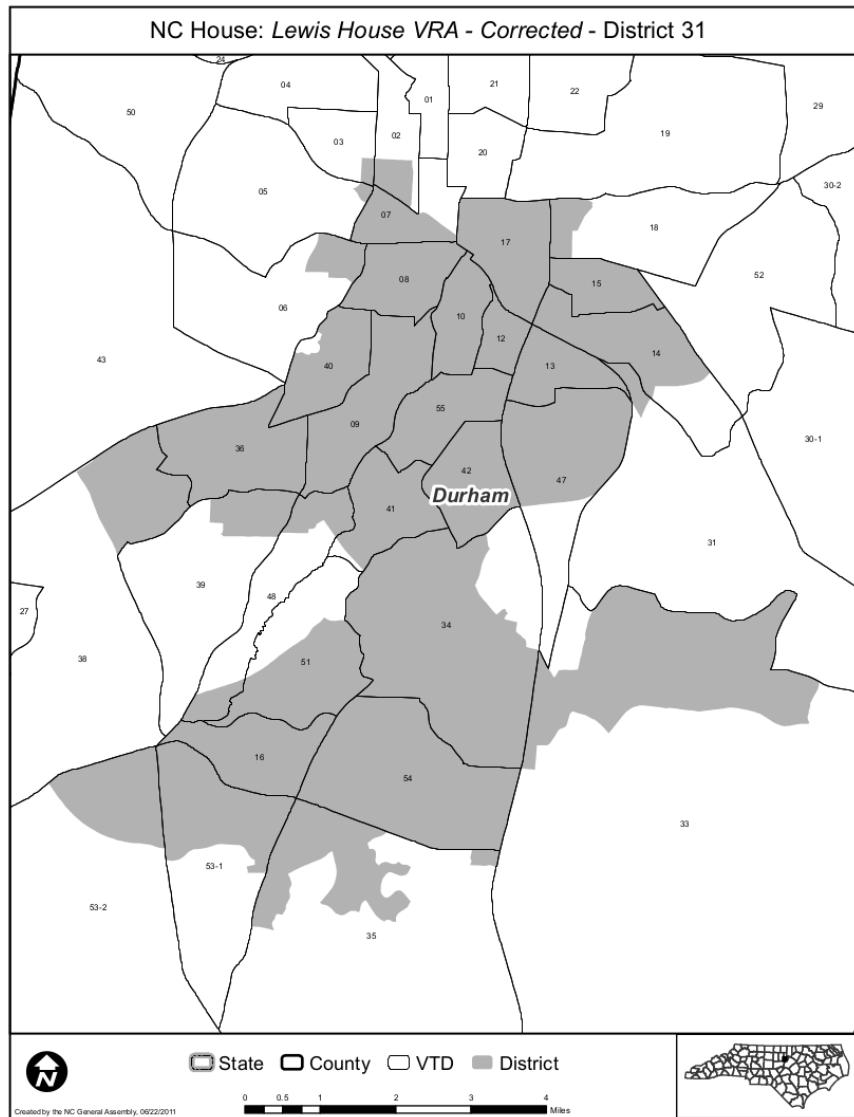


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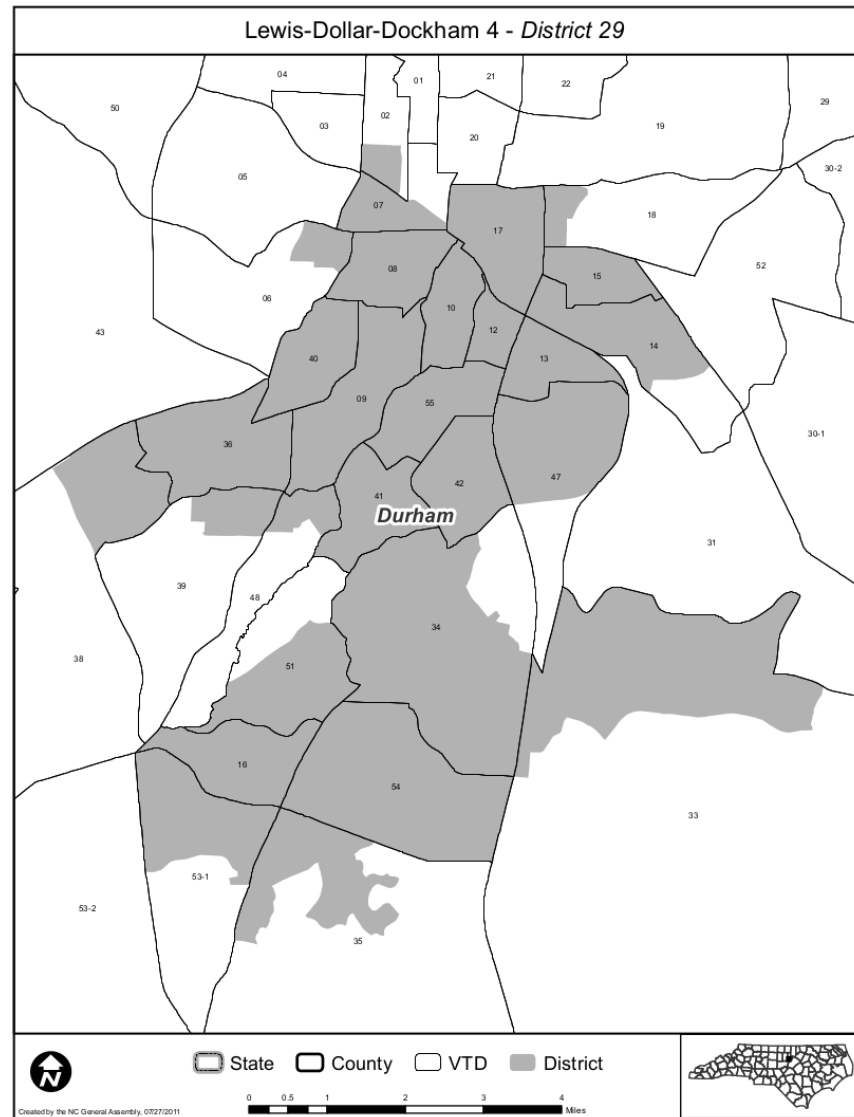


House District 29

“Lewis House VRA - Corrected” (Introduced 6/21/11)

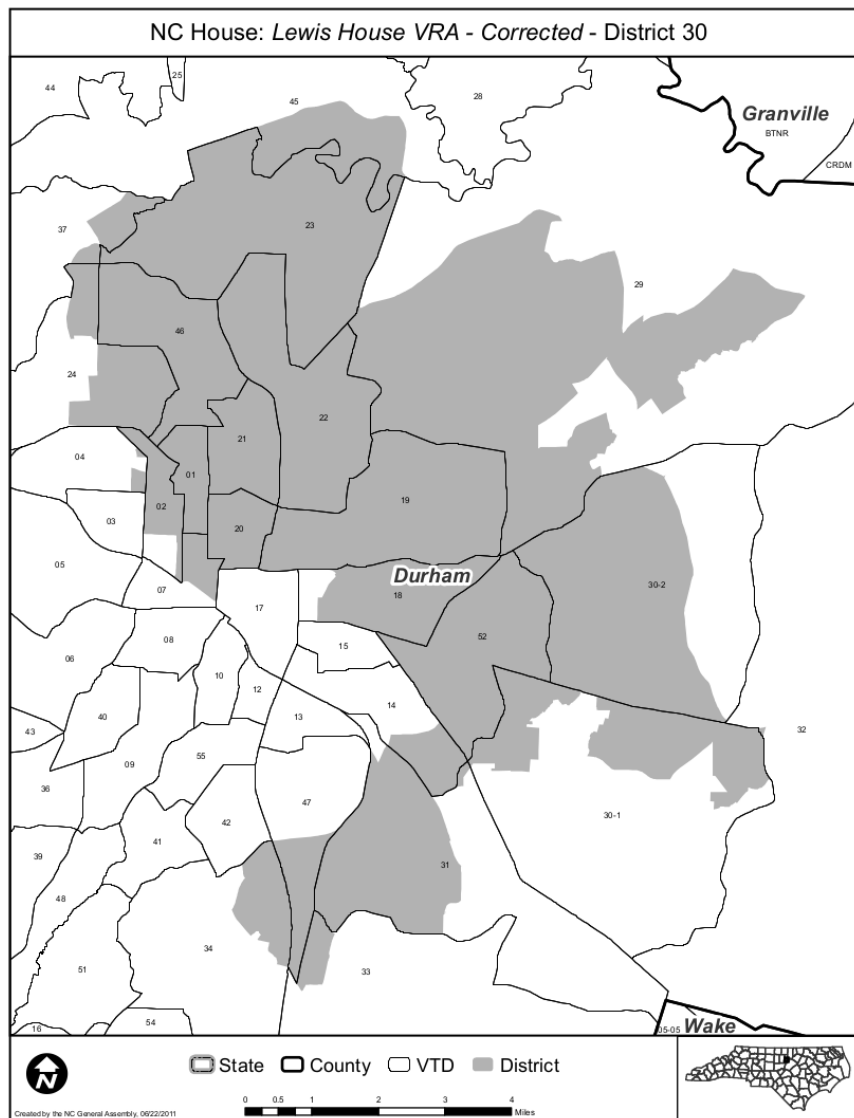


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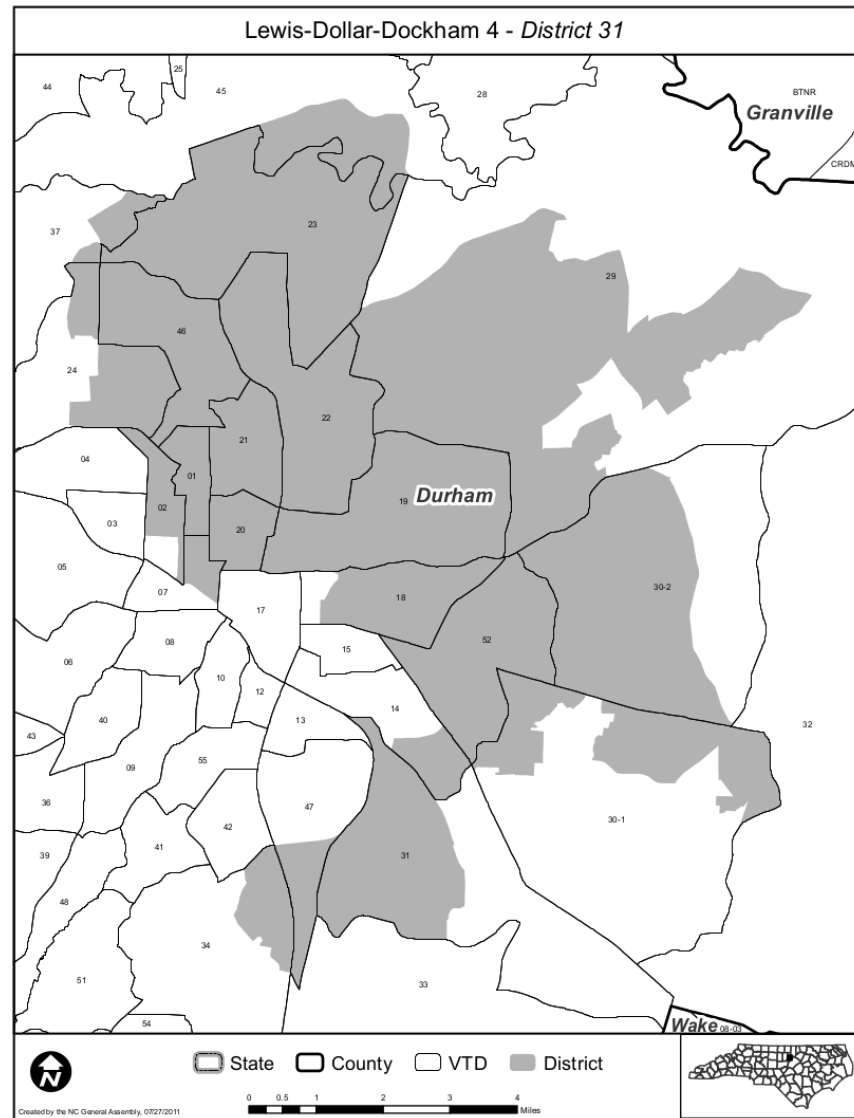


House District 31

“Lewis House VRA - Corrected” (Introduced 6/21/11)

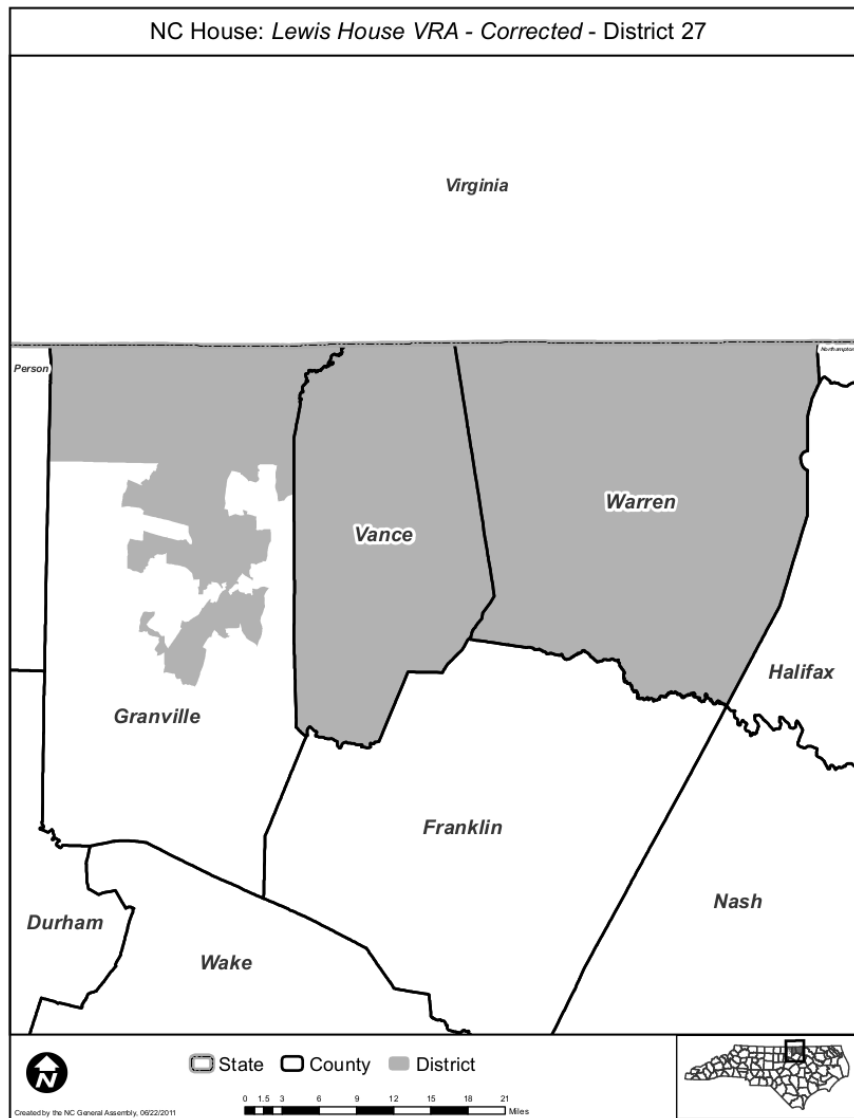


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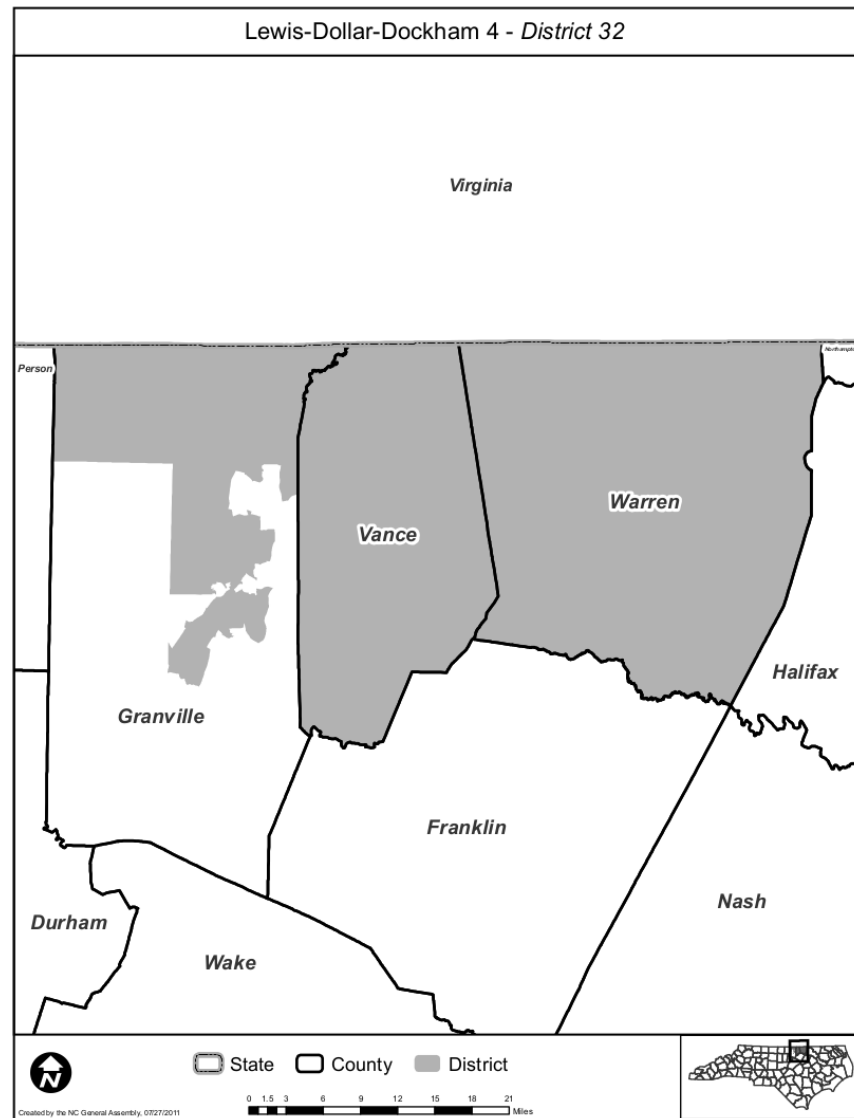


House District 32

“Lewis House VRA - Corrected” (Introduced 6/21/11)



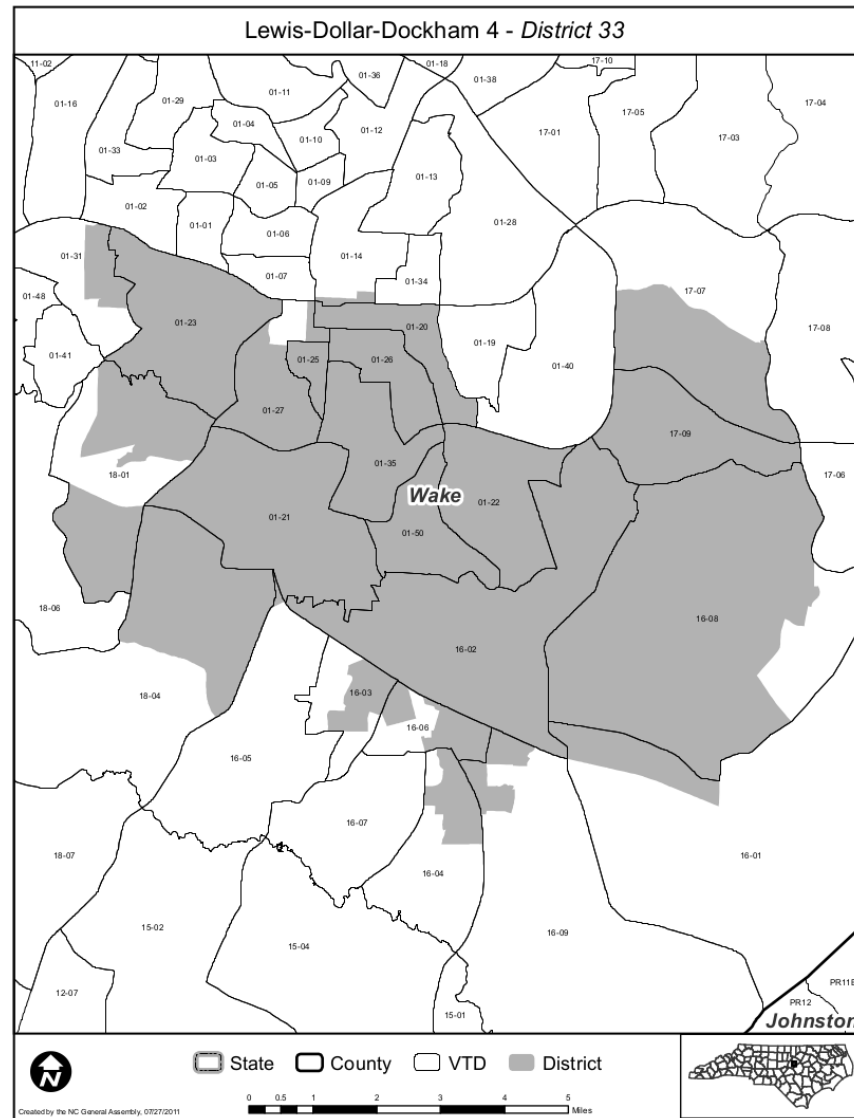
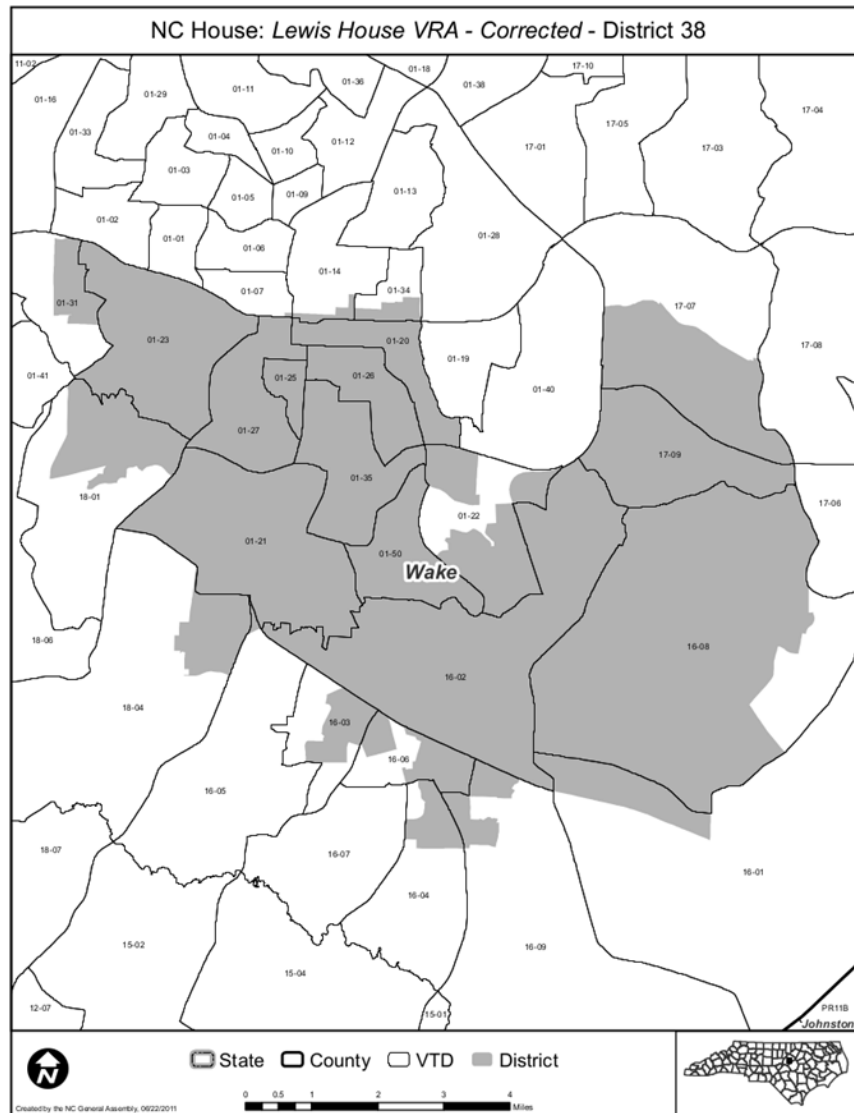
“Lewis-Dollar-Dockham 4” (Enacted July 2011)



House District 33

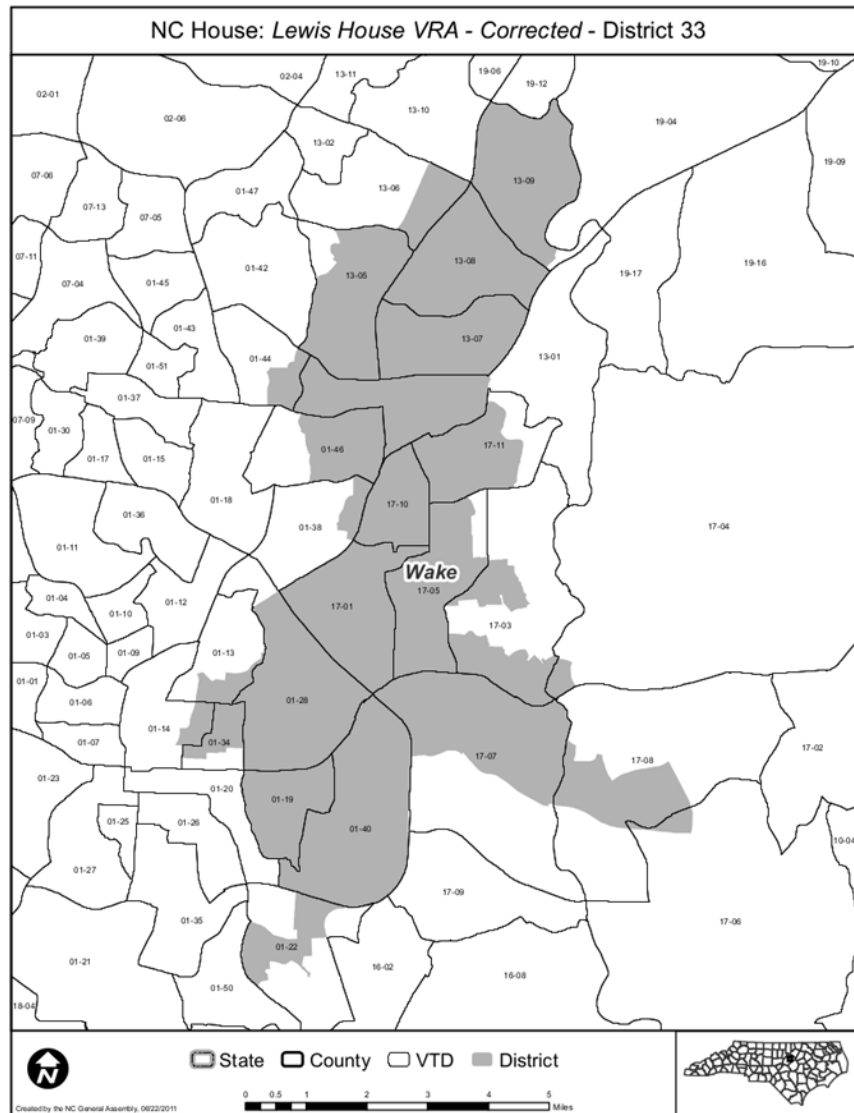
“Lewis House VRA - Corrected” (Introduced 6/21/11)

“Lewis-Dollar-Dockham 4” (Enacted July 2011)

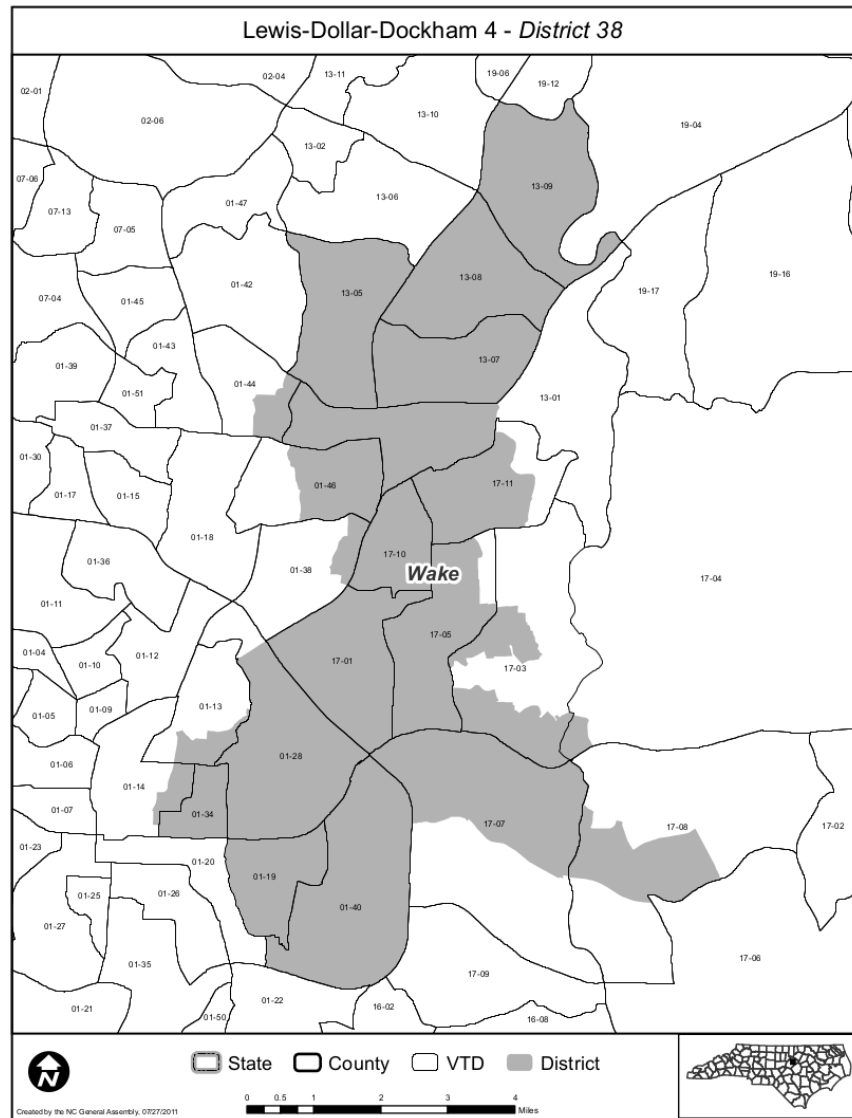


House District 38

“Lewis House VRA - Corrected” (Introduced 6/21/11)

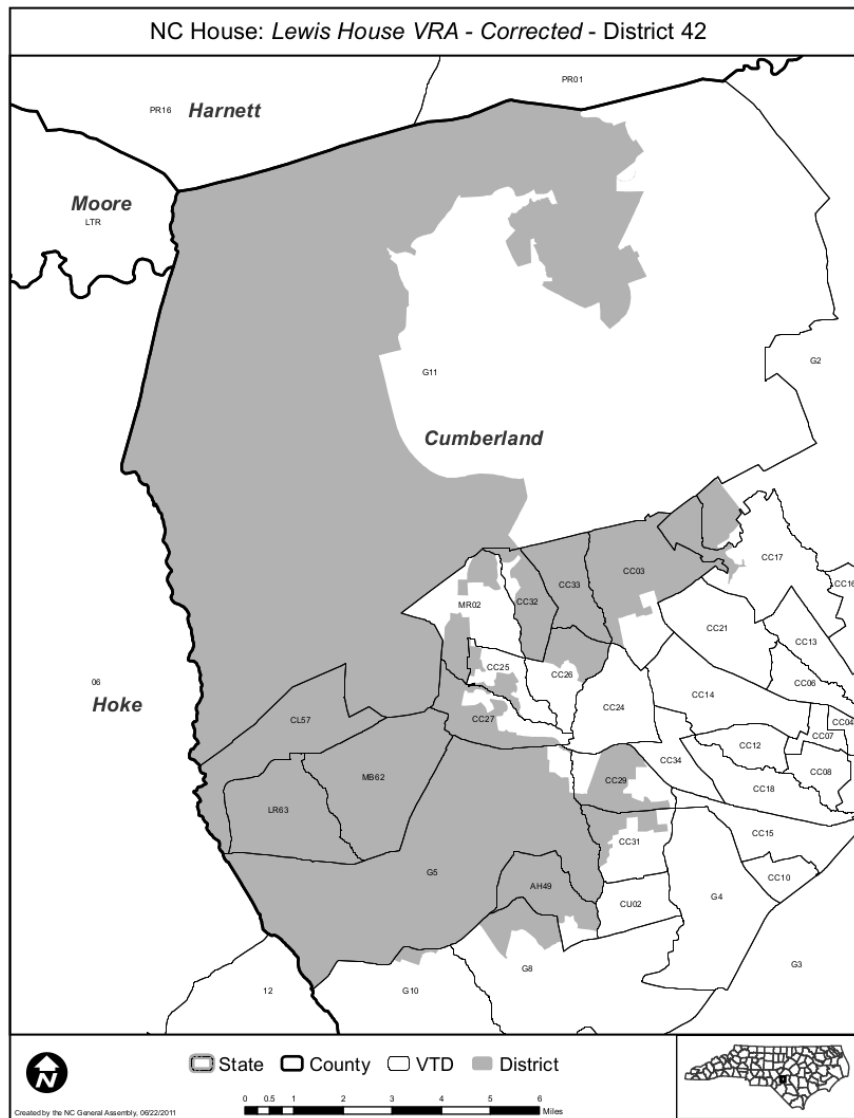


“Lewis-Dollar-Dockham 4” (Enacted July 2011)

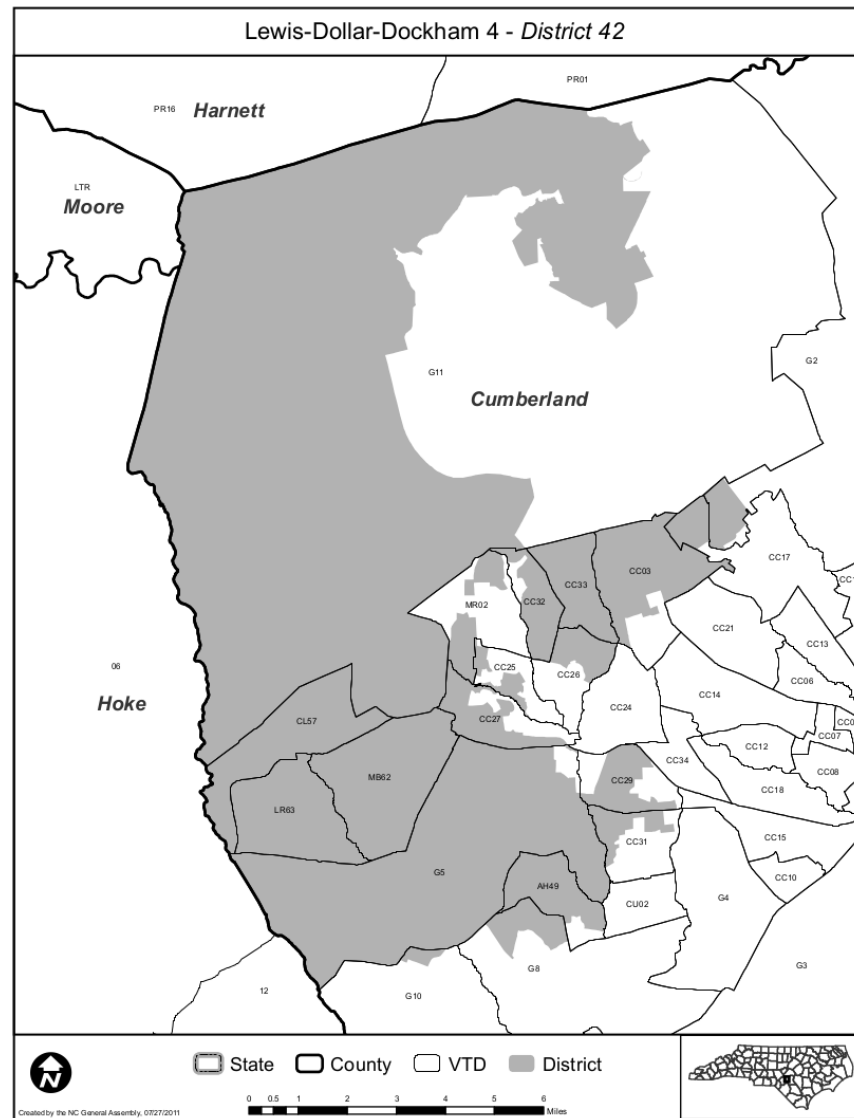


House District 42

“Lewis House VRA - Corrected” (Introduced 6/21/11)

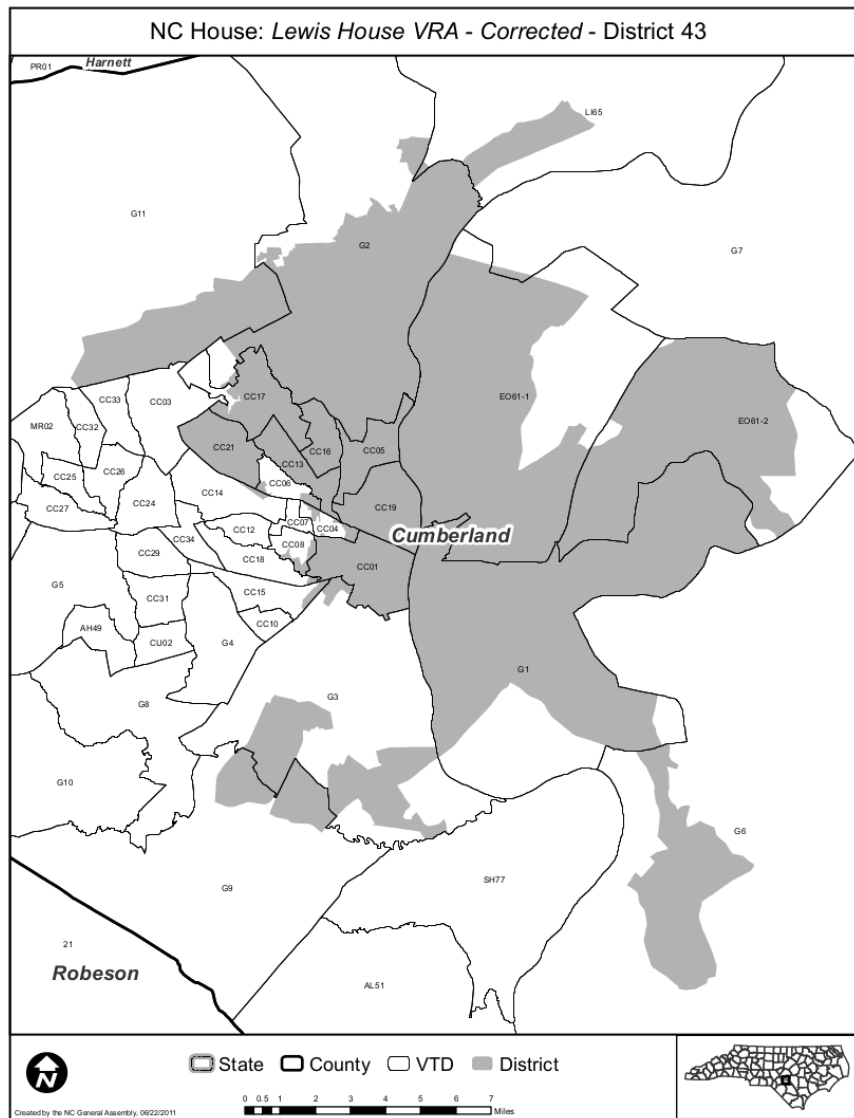


“Lewis-Dollar-Dockham 4” (Enacted July 2011)

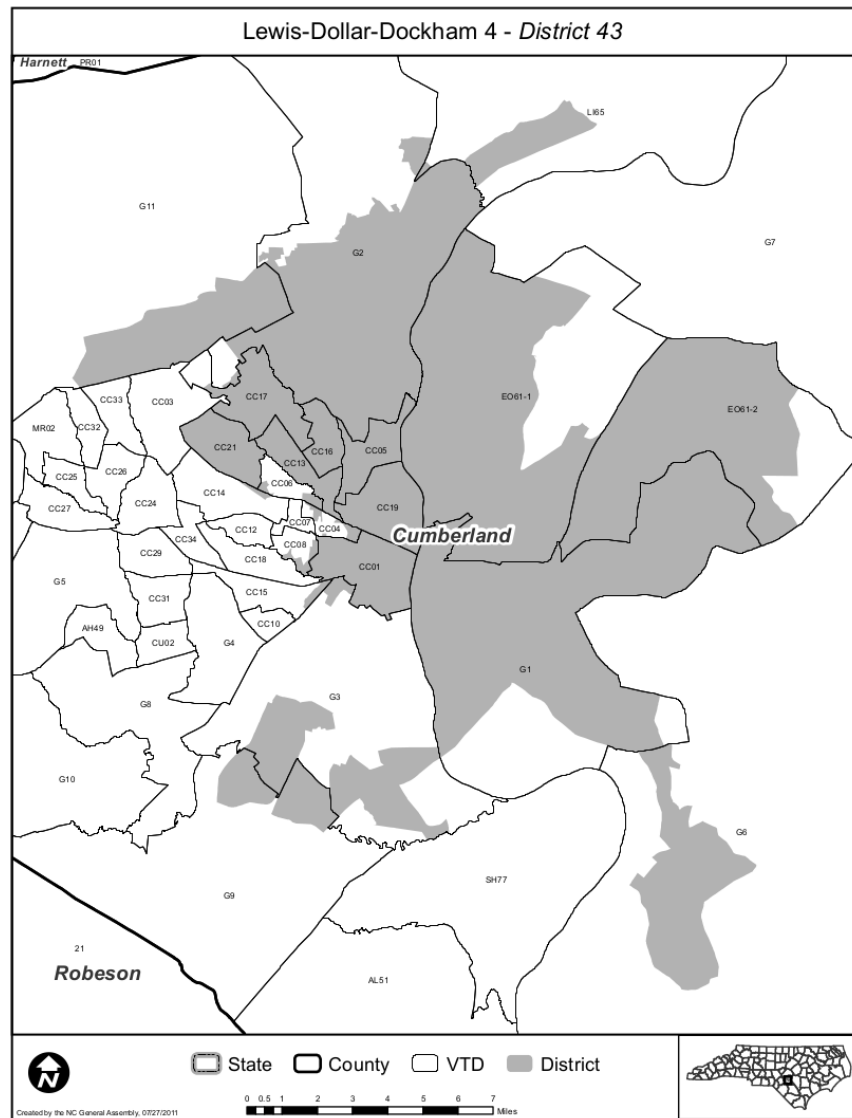


House District 43

“Lewis House VRA - Corrected” (Introduced 6/21/11)

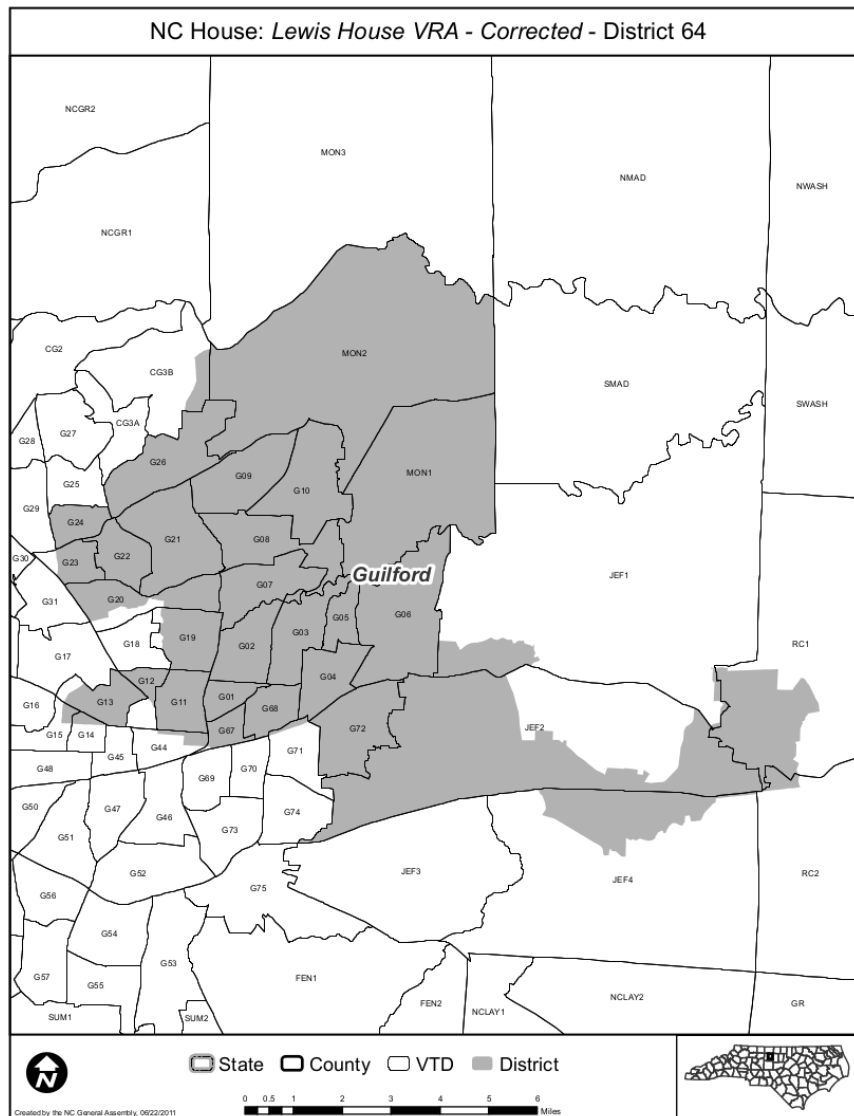


“Lewis-Dollar-Dockham 4” (Enacted July 2011)

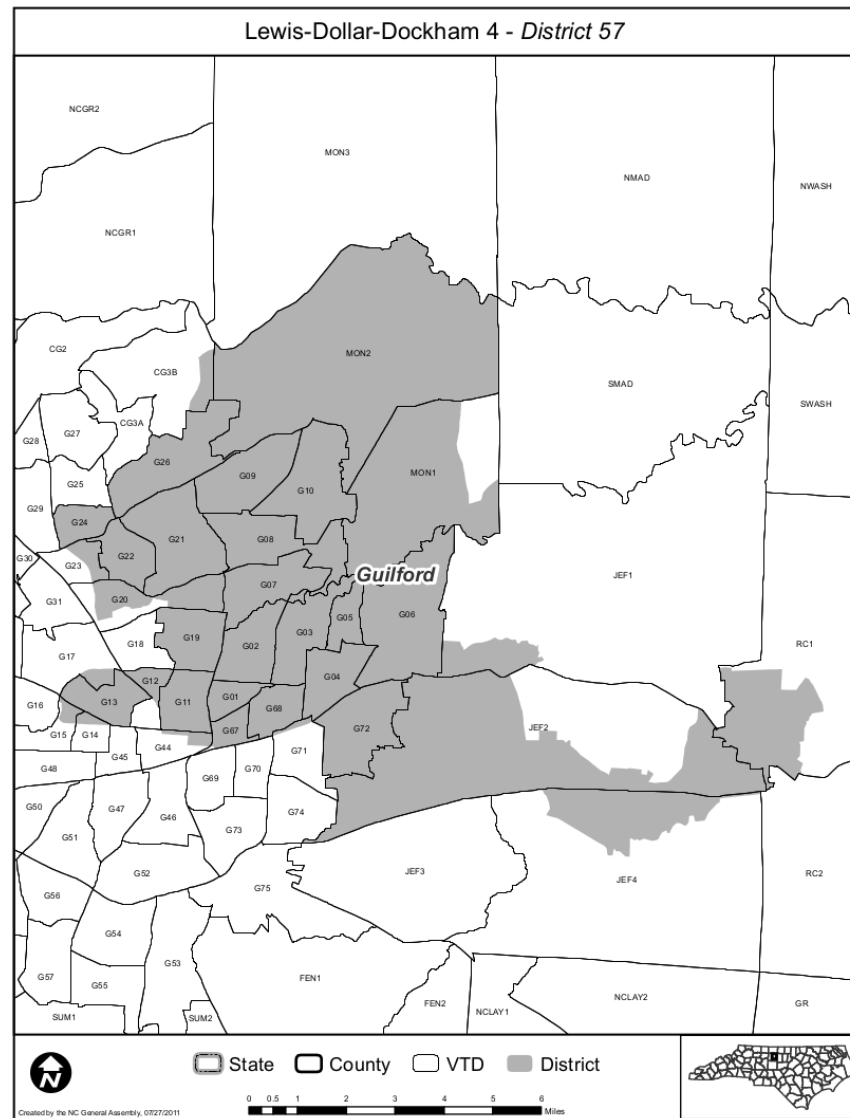


House District 57

“Lewis House VRA - Corrected” (Introduced 6/21/11)



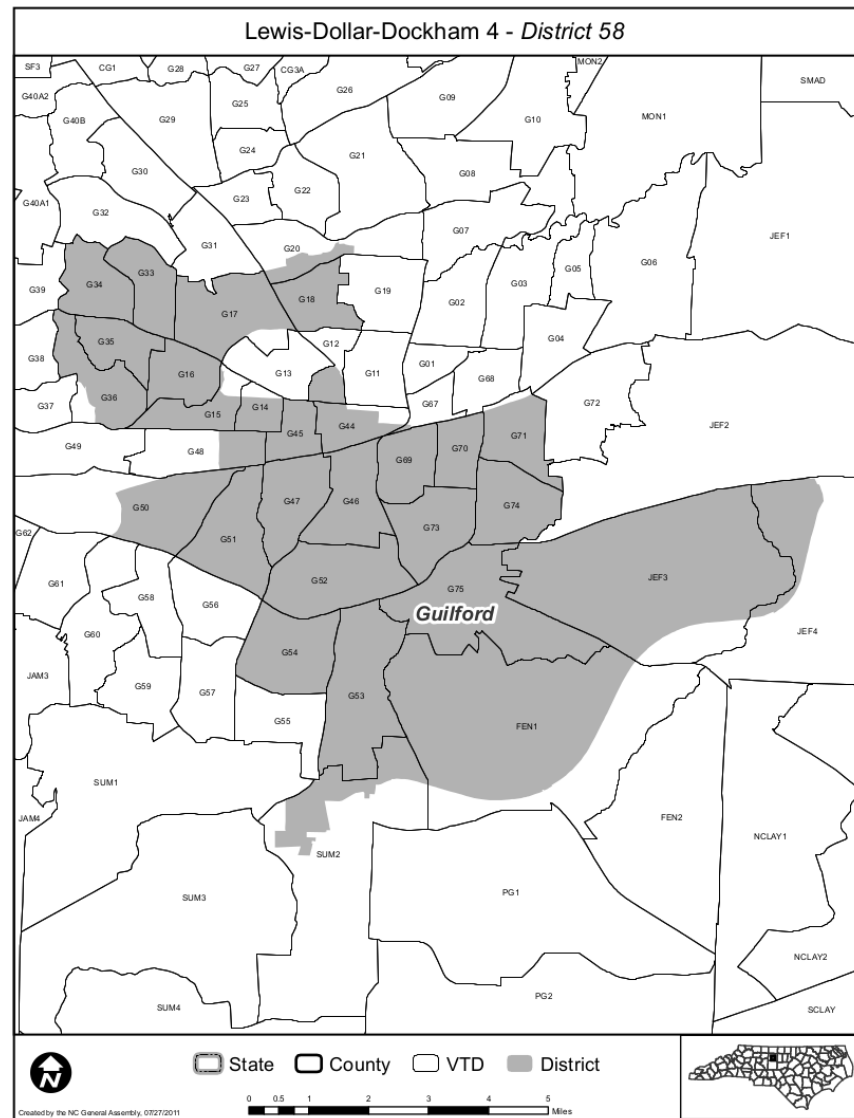
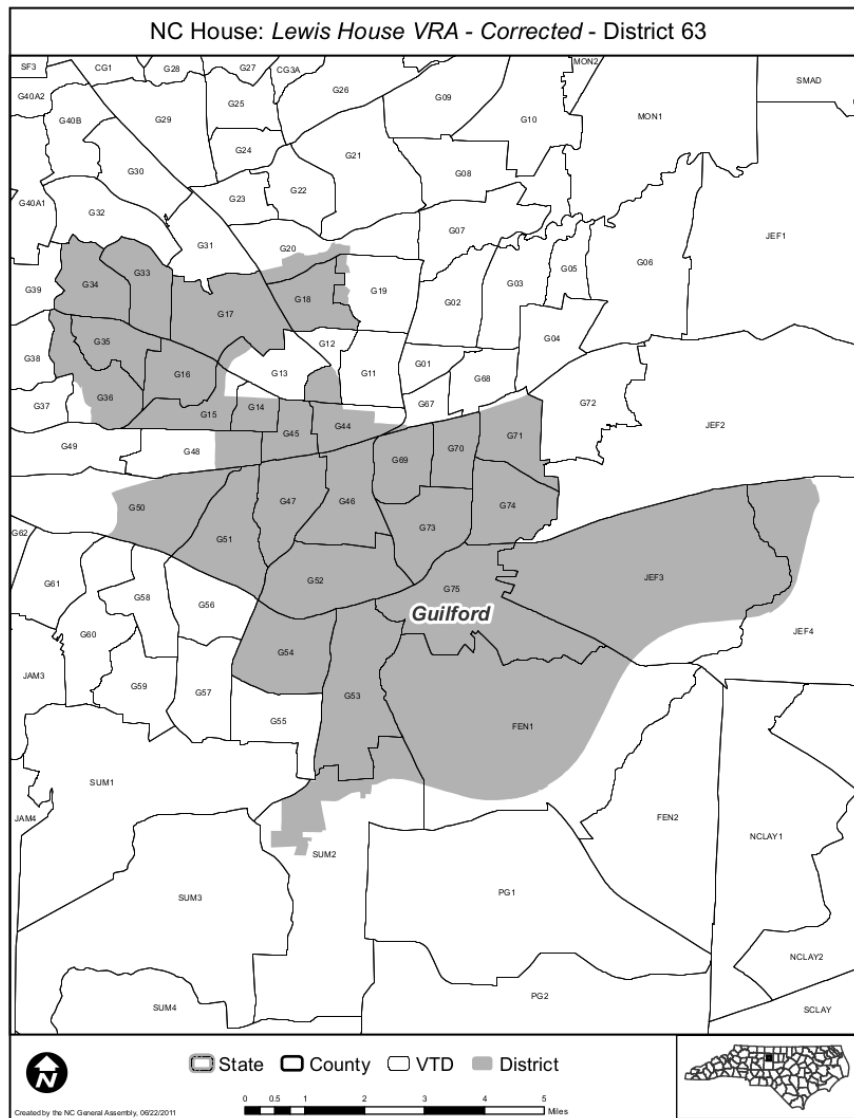
“Lewis-Dollar-Dockham 4” (Enacted July 2011)



House District 58

“Lewis House VRA - Corrected” (Introduced 6/21/11)

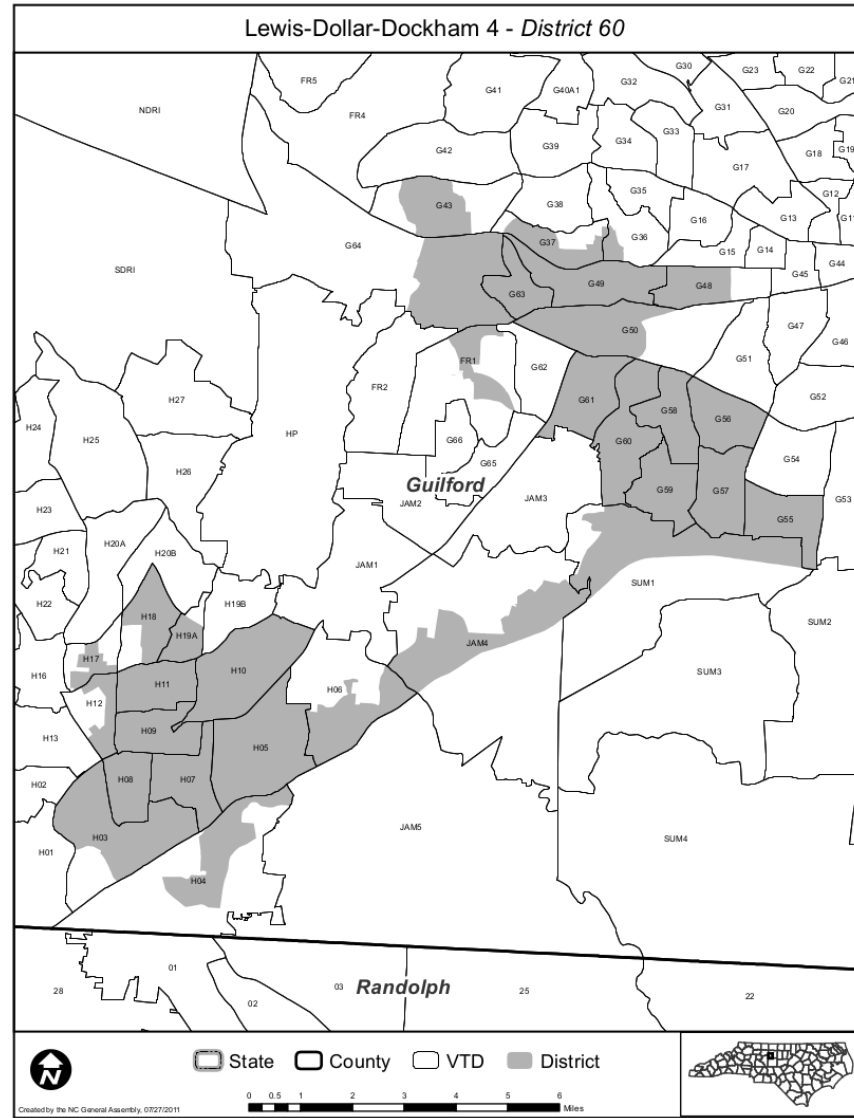
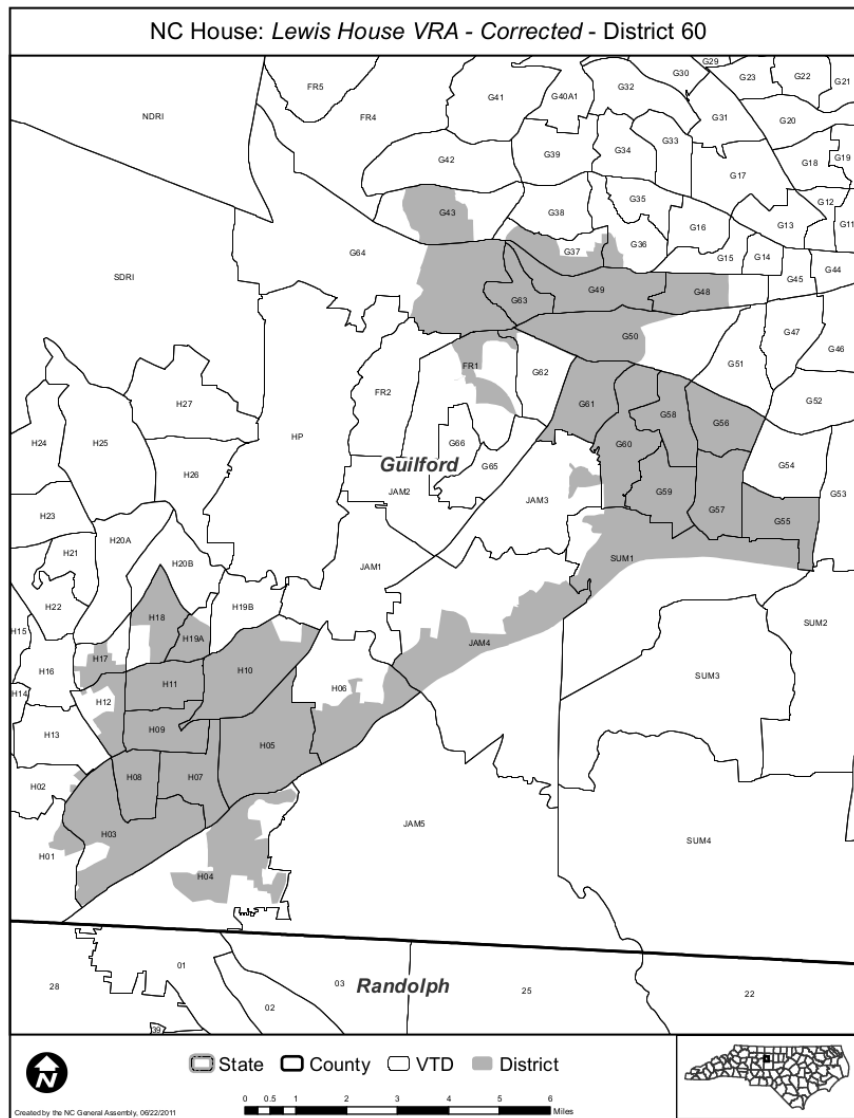
“Lewis-Dollar-Dockham 4” (Enacted July 2011)



House District 60

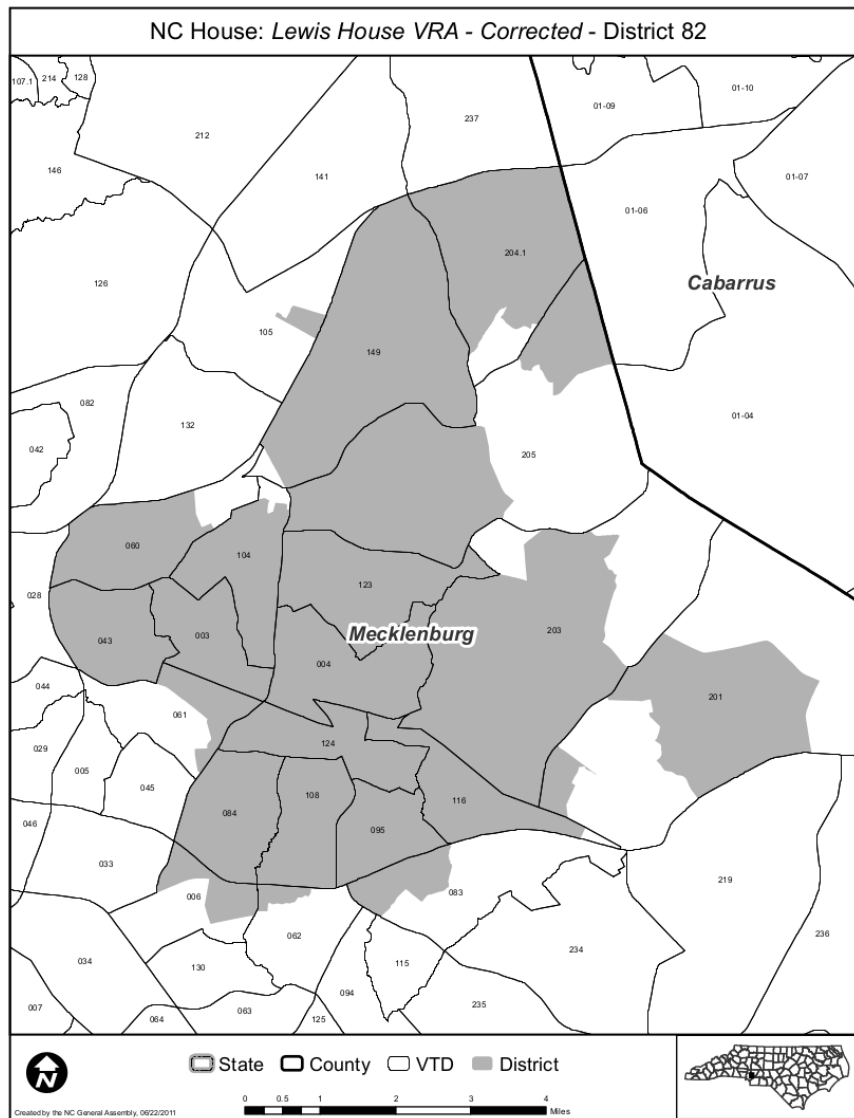
“Lewis House VRA - Corrected” (Introduced 6/21/11)

“Lewis-Dollar-Dockham 4” (Enacted July 2011)

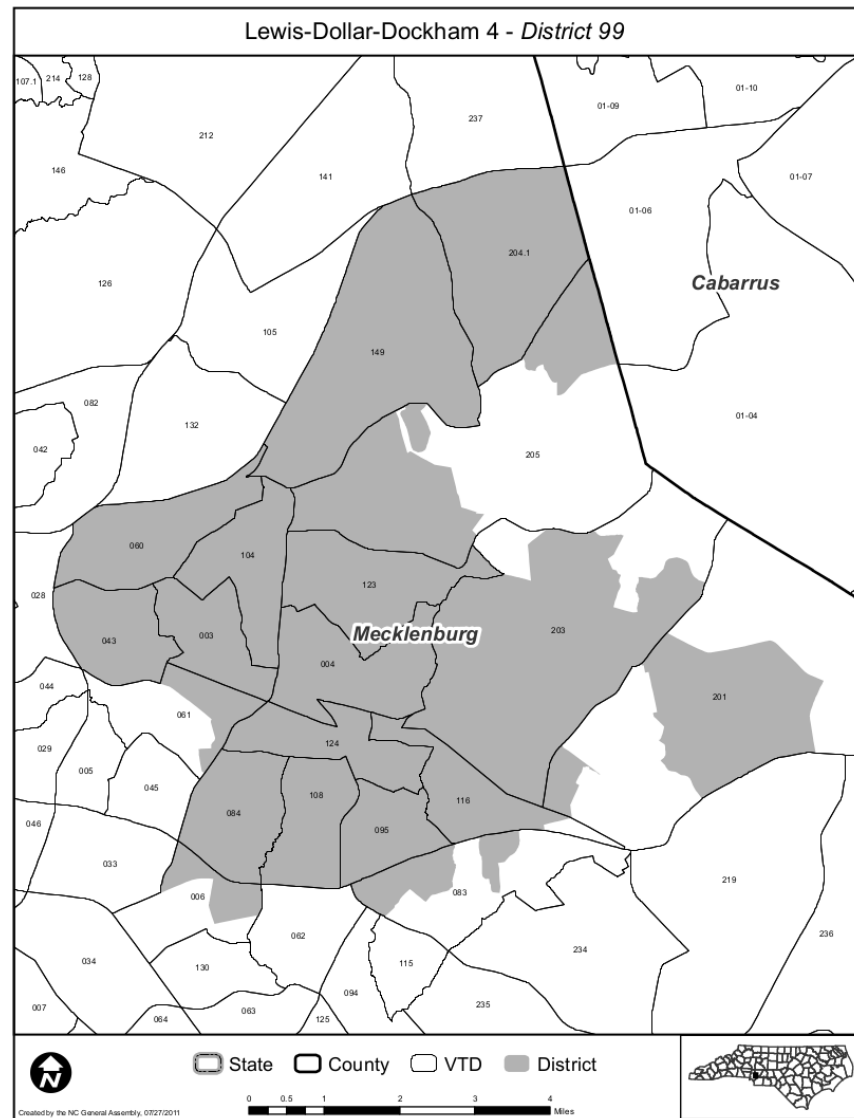


House District 99

“Lewis House VRA - Corrected” (Introduced 6/21/11)

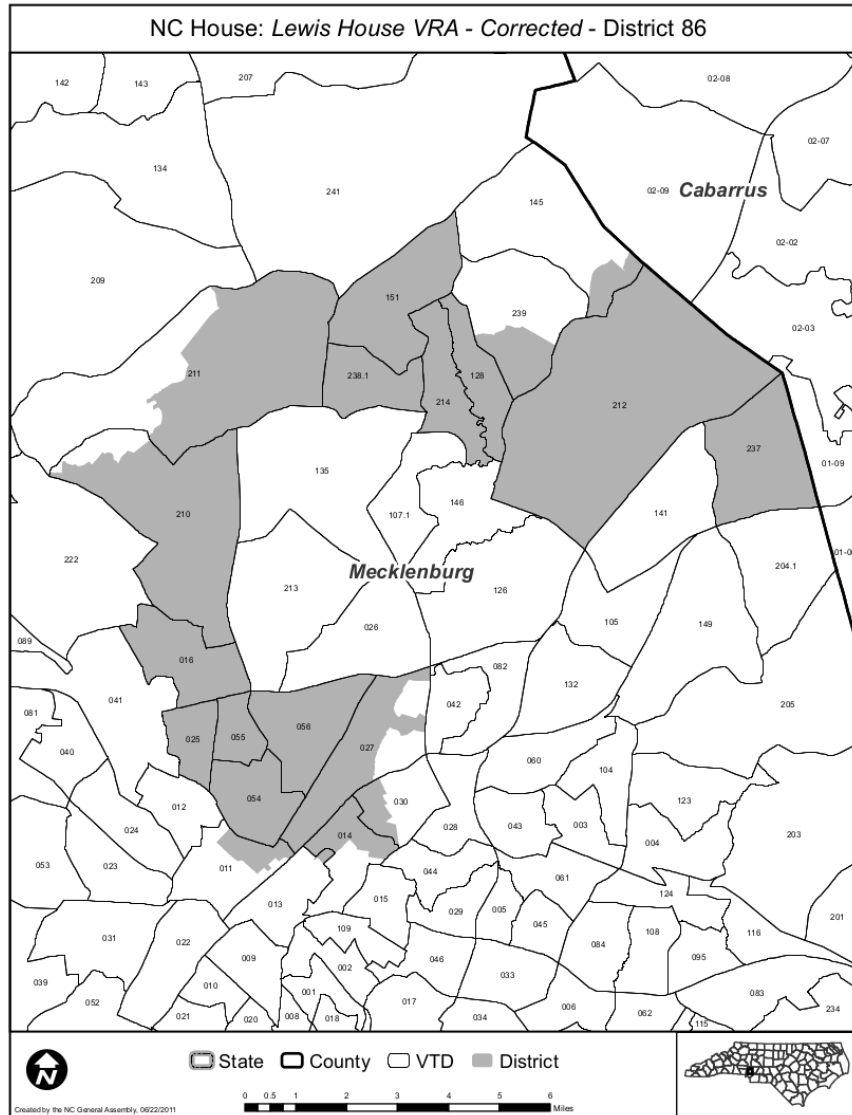


“Lewis-Dollar-Dockham 4” (Enacted July 2011)

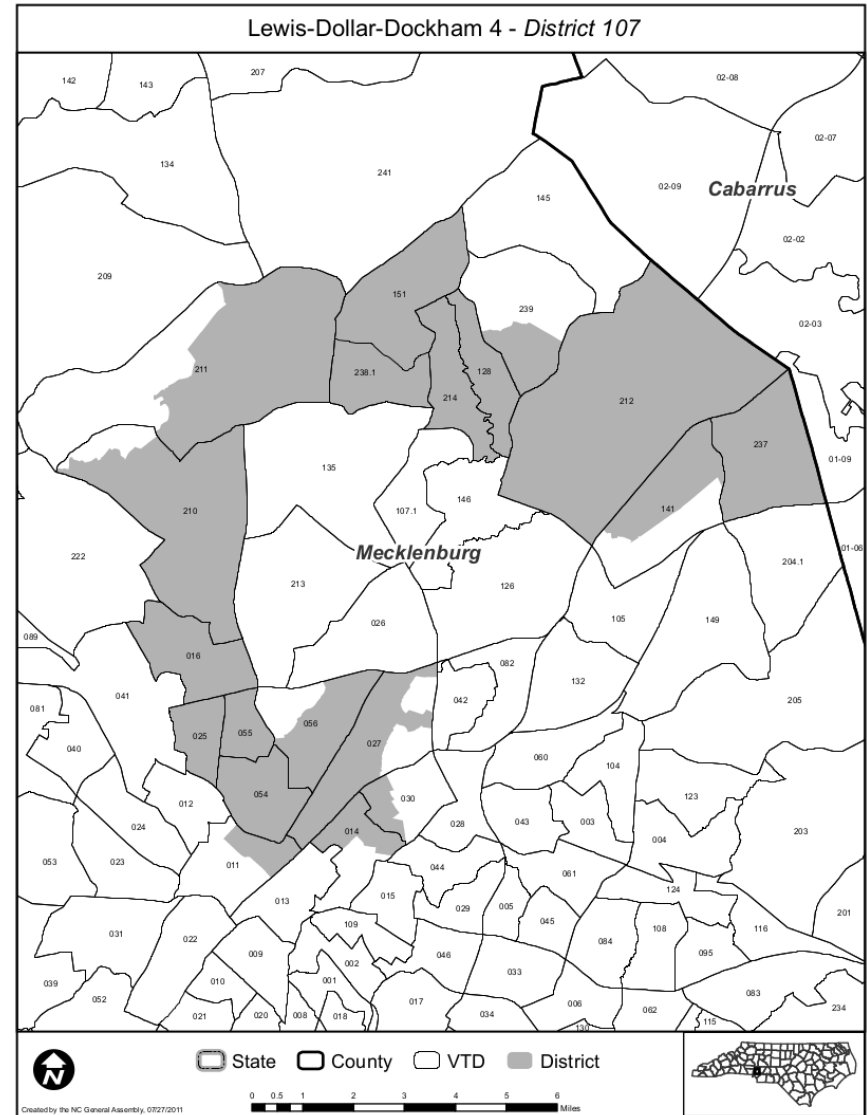


House District 107

“Lewis House VRA - Corrected” (Introduced 6/21/11)



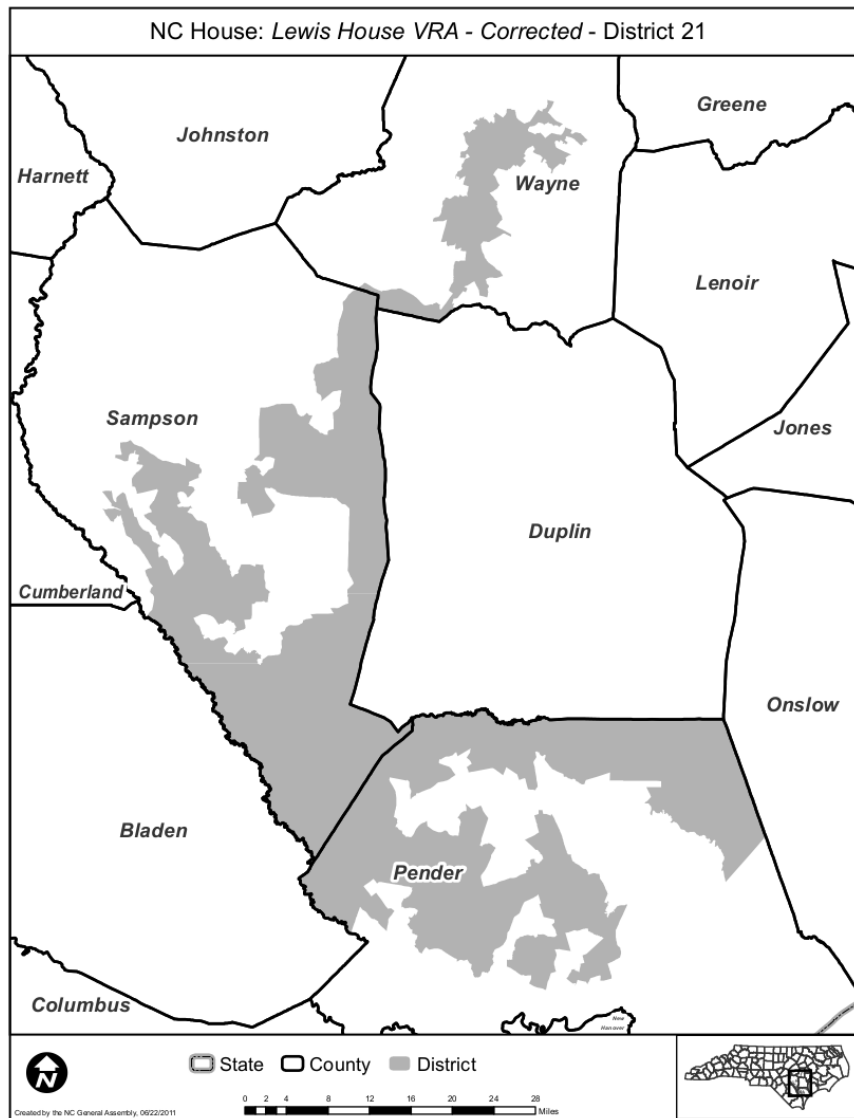
“Lewis-Dollar-Dockham 4” (Enacted July 2011)



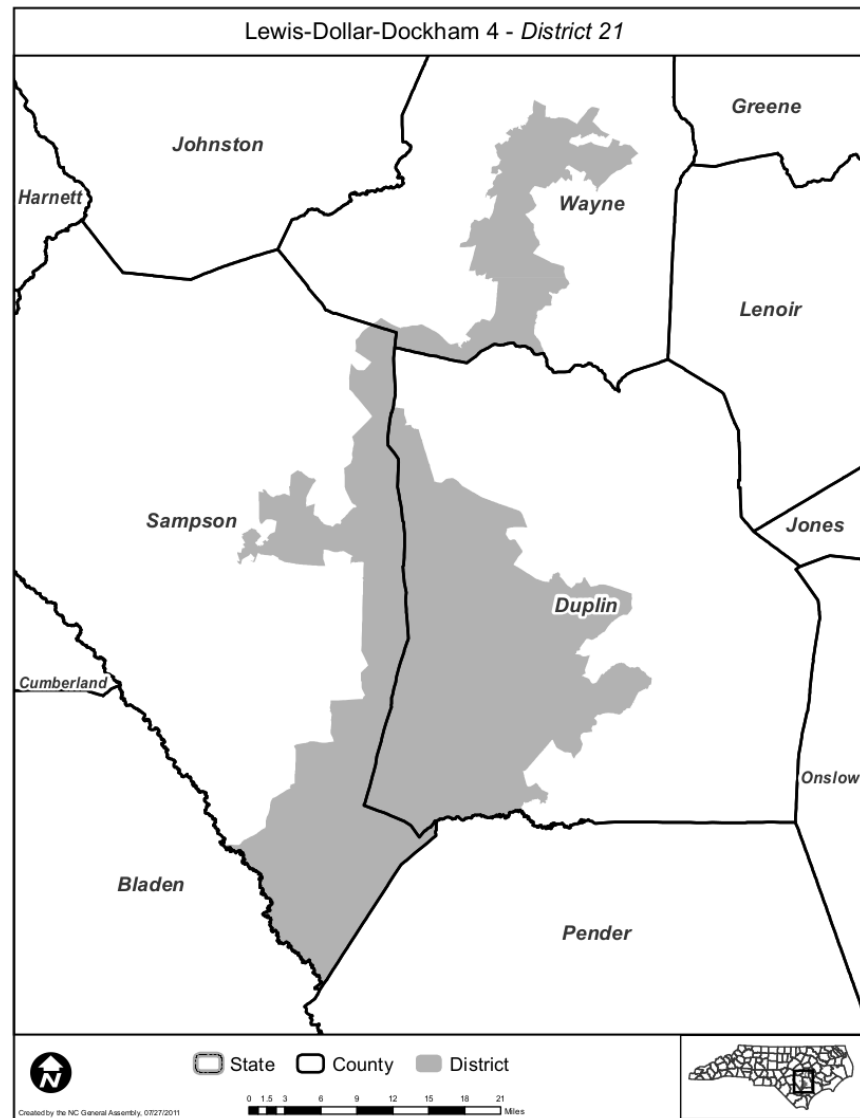
Appendix D

House District 21

“Lewis House VRA - Corrected” (Introduced 6/21/11)

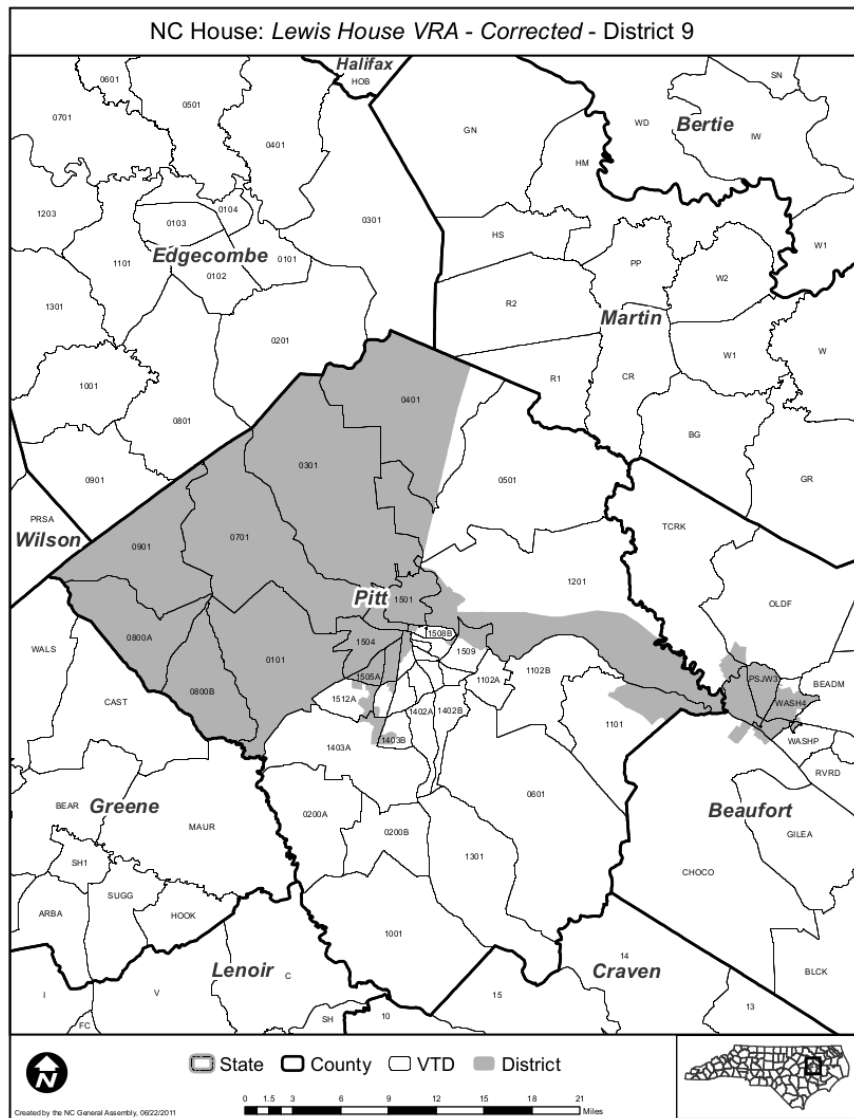


“Lewis-Dollar-Dockham 4” (Enacted July 2011)



House District 24

“Lewis House VRA - Corrected” (Introduced 6/21/11)



“Lewis-Dollar-Dockham 4” (Enacted July 2011)

