NO. _____

In The
Supreme Court of the United States

PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and A. GRANT WHITNEY, JR., in his capacity as Chairman of the North Carolina State Board of Elections,

***Petitioners*,**

v.

DAVID HARRIS and CHRISTINE BOWSER,

Respondents.

ON APPLICATION FOR STAY FROM THE MIDDLE DISTRICT OF NORTH CAROLINA

EMERGENCY APPLICATION TO STAY THE FINAL JUDGMENT OF THE THREE-JUDGE DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA PENDING RESOLUTION OF DIRECT APPEAL

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the Fourth Circuit:

Petitioners Patrick McCrory, North Carolina State Board of Elections, and A. Grant Whitney, Jr. (collectively "Defendants") respectfully apply for a stay of the final judgment entered by the three-judge court in the above-captioned case on February 5, 2016, pending Defendants' direct appeal of the judgment. Additionally, given the short two-week deadline the three-judge court imposed on the State to draw remedial districts, the fact that absentee ballots have already been sent out, the swiftly approaching March primary date, and the impending election chaos that the three-judge court's directives are likely to unleash, the Court should expedite any response to this application and enter an interim stay pending receipt of a response.

On February 8, 2016, Defendants filed a request that the three-judge court stay its judgment. (ECF Docket No. 145, Case No. 13-cv-949)[1] Defendants also filed their Notice of Appeal from the judgment. (D.E. 144) In their stay request, Defendants requested that the three-judge court act immediately in light of the exigencies created by the fact that the 2016 primary election is already underway, and the North Carolina General Assembly, which will have to approve any redrawn congressional districts, is not currently in session. Because the North Carolina General Assembly is not in session, the Governor of North Carolina will be required to call a special session recalling all members of the General Assembly to Raleigh,

[1] ECF Docket numbers will be referred to as "D.E." and in Case No. 13-cv-949 unless otherwise indicated.

North Carolina to enact a new congressional redistricting plan by the February 19, 2016 deadline imposed by the three-judge court. N.C. Const. art. III, § 5(11). By order entered February 8, 2016, the three-judge court provided an opportunity for Plaintiffs to file a response by February 9, 2016 at 12:00 p.m. As of the printing of the instant stay application, the stay request had not been acted upon by the three-judge court but Defendants believe that the emergency circumstances presented by the three-judge court's action warrant the filing of this application with this Court. Accordingly, Defendants respectfully request this Court to act on the instant stay request as soon as practicable.

INTRODUCTION

On February 5, 2016, a three-judge court of the United States District Court for the Middle District of North Carolina issued a Memorandum Opinion and Final Judgment declaring North Carolina Congressional District 1 ("CD 1") and Congressional District 12 ("CD 12") unconstitutional and directing the State to draw new congressional districts by February 19, 2016. The decision as to CD 1 was unanimous while the decision as to CD 12 was a 2-to-1 vote, with one judge dissenting. A copy of the Memorandum Opinion is attached as Exhibit 1. A copy of the Final Judgment is attached as Exhibit 2. (D.E. 142 and 143)

The three-judge court's opinion found that race predominated in the drawing of CD 1 and 12 and that neither district survived strict scrutiny. The three-judge court further enjoined congressional elections and directed the State to draw new congressional districts within a two-week period. But in enjoining elections and

providing only two weeks to draw new plans, the three-judge court provided no guidance to the State as to criteria it should follow for new congressional districts and sought no input from the parties regarding the massive electoral chaos and confusion to which such an order would subject North Carolina's voters. Moreover, in ordering the re-drawing of districts within a two-week period,[2] the court has all but removed the ability of the State to hold public hearings and seek the same level of robust public input that was received in enacting the challenged congressional districts.

This Court should stay enforcement of the judgment immediately. North Carolina's election process started months ago. *Thousands of absentee ballots have been distributed to voters who are filling them out and returning them*.[3] *Hundreds of those ballots have already been voted and returned.* The primary election day for hundreds of offices and thousands of candidates is less than 40 days away and, if the judgment is not stayed, it may have to be disrupted or delayed. Early voting for

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[2] In setting a two-week deadline the three-judge court cited N.C. Gen. Stat. § 120-2.4, which requires the North Carolina state courts to give the legislature at least two weeks to draw remedial districts. However, the three-judge court failed to cite N.C. Gen. Stat. § 120-2.3, which directs that the court "find with specificity all facts supporting [a] declaration [of unconstitutionality], shall state separately and with specificity the court's conclusions of law on that declaration, and shall, with specific reference to those findings of fact and conclusions of law, identify every defect found by the court, both as to the plan as a whole and as to individual districts." The three-judge court in this case provided no such specificity and leaves the legislature very little time to enact remedial districts.

[3] This Court has previously taken action to prevent disruption to an ongoing election where "absentee ballots have been sent out" already. *Frank v. Walker*, No. 14A352, 135 S. Ct. 7 (U.S. Oct. 9, 2014), *vacating stay* 766 F.3d 755, 756 (7th Cir. 2014) (2014) (order vacating Seventh Circuit stay of district court injunction enjoining implementation of Wisconsin photo identification law). Here, ballots have not only already been sent out, hundreds have been voted and returned.

the primary starts in less than 30 days.[4] Candidates for Congress have relied on the existing districts for two election cycles (2012 and 2014) and filed for the current seats over two months ago.

Given that North Carolina's 2016 elections are already underway, the appropriateness of a stay of the three-judge court's judgment is quite clear. The three-judge court's failure to stay its own judgment *sua sponte* or at least seek input from the parties regarding the impact of immediate implementation of its judgment is reckless and will cause irreparable harm. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). This case was filed on October 24, 2013 and the trial was held in October 2015, yet the order of the three-judge court was not issued until the State was in the middle of the 2016 primary elections. The court's action is all the more baffling in light of the fact that a three-judge panel of the North Carolina Superior Court rejected identical claims *on nearly identical evidence* after a trial (*Dickson v. Rucho*, Nos. 11 CVS 16896 and 11 CVS 16940 (consolidated) (July 8, 2013) ("*Dickson*") (D.E. 100-4, p. 39 through 100-5, p. 142), and that decision was affirmed *twice* by the North Carolina Supreme Court. If the state courts of North Carolina were so obviously wrong in their assessment of these claims and this evidence, one would think the federal three-judge court could have said so before North Carolina became enmeshed in the 2016 election cycle.

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[4] North Carolina moved its primary from May to March for this Presidential election year. The move was made to ensure North Carolina voters had a relevant voice in the Presidential primary process and to save the millions of dollars it would cost to hold a Presidential primary separately from the primary for all other offices. See http://www.newsobserver.com/news/politics-government/state-politics/article35667780.html The change in primary date was enacted on September 24, 2015 – three weeks prior to the trial in this matter. See North Carolina S.L. 2015-258.

Aside from the electoral chaos the three-judge court's order will inevitably cause, the opinion is in direct conflict with, indeed it flouts, this Court's redistricting precedents in *Easley v. Cromartie*, 532 U.S. 234 (2001) ("*Cromartie II*") and *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009), among others. Instead, the opinion ignores significant portions of the record, and mischaracterizes other key parts of it. That the court had policy preferences is no secret, as the primary concurring opinion candidly describes them at length.

Unless stayed, and ultimately reversed, the three-judge court's opinion makes redistricting in North Carolina an impossible task. The court has effectively held that attempting to comply with the Voting Rights Act ("VRA") and *Strickland* amounts to racial gerrymandering. This reasoning guts the VRA and threatens to eliminate many if not all majority black districts going forward. Only this Court can halt the immediate and long-term damage to North Carolina's electoral processes wrought by this erroneous decision.

JURISDICTION

This Court has jurisdiction to enter a stay of the three-judge court's judgment pending Defendants' direct appeal of the judgment. *See* 28 U.S.C. § 2101(f); Sup. Ct. R. 23(2). The Court may stay the judgment in any case where the judgment would be subject to review. *See* 28 U.S.C. § 2101(f). The three-judge court had jurisdiction pursuant to 28 U.S.C. § 2284 and Defendants' appeal of the three-judge court's judgment is authorized by 28 U.S.C. § 1253.

BACKGROUND

The history of the 2011 redistricting which produced the enacted CD 1 and CD 12, as well as the lengthy and thorough state court proceedings finding those districts constitutional, is recounted in the detailed Judgment and Memorandum Opinion issued by the *Dickson* state court three-judge panel. (D.E. 100-4, pp. 43 - 45)

The *Dickson* plaintiffs[5] challenged CD 1 and CD 12 on all of the grounds asserted by the *Harris* plaintiffs in this case. After a two-day trial, an extensive discovery process, and a voluminous record, the *Dickson* trial court issued its Opinion. Regarding CD 1, the state court made specific findings of fact and found as a matter of law that the General Assembly had a strong basis in evidence to conclude that the district was reasonably necessary to protect the State from liability under the VRA and that the district was narrowly tailored. (D.E. 100-4, pp. 47-61, 66-67; D.E. 100-5, pp. 1, 15, 48-66, 126-28)

Regarding CD 12, the state court made detailed findings of fact that the General Assembly's predominant motive for the location of that district's lines was to re-create the 2011 CD 12 as a strong Democratic-performing district, not race. (D.E. 100-5, pp. 17-20, 216-28, 132-34)[6]

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[5] Two separate actions were brought at approximately the same time, both challenging North Carolina's 2011 congressional districts. The lead plaintiff in one of those cases was Margaret Dickson. The lead plaintiff in the other action was the North Carolina Conference of Branches of the NAACP ("NC NAACP"). The cases were consolidated by the three-judge panel of the North Carolina Superior Court, and the two sets of plaintiffs are referred to collectively as "the *Dickson* plaintiffs."

[6] As noted by the North Carolina Supreme Court, the state court three-judge panel's decision was unanimous. In addition, the panel was appointed by then-Chief Justice Sarah Parker of the North Carolina Supreme Court, and in their order , the three judges describe themselves as each being

On July 22, 2013, the *Dickson* plaintiffs filed their notice of appeal from the three-judge panel's Judgment. The *Harris* Plaintiffs filed their complaint on October 24, 2013. On December 19, 2014, the North Carolina Supreme Court affirmed the judgment of the three-judge panel in *Dickson v. Rucho*, 367 N.C. 542, 761 S.E.2d 228 (2014). On January 16, 2015, the *Dickson* plaintiffs petitioned this Court for a writ of *certiorari* and on April 20, 2015, the Court granted plaintiffs' petition for a writ of *certiorari*, vacated the decision by the North Carolina Supreme Court, and remanded the case to the North Carolina Supreme Court "for further consideration in light of *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. ___ (2015)." The North Carolina Supreme Court, after further briefing and oral argument, reaffirmed its original decision on December 18, 2015. *Dickson*, 2015 WL 9261836, at *38.

The Plaintiffs in this case are members of organizations that lost the *Dickson* case. Plaintiff David Harris was recruited to serve as a plaintiff in this action by T.E. Austin, the immediate past chair of the North Carolina Democratic Party's Fourth Congressional District. (D.E. 104-2 at 14-15) Mr. Harris had not seen the Complaint in this lawsuit before it was filed and didn't know what districts were involved when he agreed to serve as a plaintiff. (*Id.* at 4, 19-20; D.E. 68-6 at 21) He has no responsibility for paying any attorneys' fees or costs associated with his participation in this action. (D.E. 68-6 at 17; D.E. 104-2 at 22)

"from different geographic regions and each with differing ideological and political outlooks" and state that they "independently and collectively arrived at the conclusions that are set out [in their order]." *Dickson v. Rucho*, ___ S.E.2d ___, 2015 WL 9261836, at *1 n.1 (N.C. Dec. 18, 2015).

Mr. Harris joined the NAACP in 2009 or 2010 and has been a member every year since. (D.E. 68-6 at 9-11, 14-15, Ex. 6) Mr. Harris completed a membership form and sent the form and his membership dues to an address in Baltimore, Maryland. (*Id.* at 10-12, Ex. 7) Mr. Harris is also a member of the North Carolina State Conference of the NAACP. At his deposition in this action, Rev. William Barber, President of the NC NAACP confirmed that an individual who is a member of a local branch or the national NAACP is also a member of the NC NAACP. (D.E. 68-8 at 2-4) Rev. Barber also confirmed that the membership form Mr. Harris acknowledged completing is the same membership form that is available on the NC NAACP's website. (D.E. 68-8 at 5-7, 12)

Plaintiff Christine Bowser resides in CD 12 and has lived in the district since it was first drawn by the General Assembly in 1992. (D.E. 104-1 at 6-7) Ms. Bowser was recruited to serve as a plaintiff in this action by Dr. Robbie Akhere, who is the chair of the Twelfth Congressional District for the North Carolina Democratic Party. (*Id.* at 9; D.E. 68-7 at 14) She, like Mr. Harris, has no responsibility for paying her attorneys' fees or related costs in this case. (D.E. 68-7 at 20) Ms. Bowser testified that she did not think that she had seen a copy of the Complaint filed in this action before her deposition. (*Id.* at 6-7, 9)

Ms. Bowser has been involved with several organizations that are plaintiffs in *Dickson*. Specifically, Ms. Bowser testified that she has made contributions to the League of Women Voters of North Carolina "on and off" since 2004. (*Id.* at 18, Ex. 4, p. 4) Ms. Bowser also testified that she has been a member of Democracy

North Carolina for the past five years and made "periodic donations" to the organization during that time. (*Id.* at 19, Ex. 4, p. 5) Finally, Ms. Bowser has been a member of Mecklenburg County Branch of the NAACP "on and off since the 1960s" and has paid dues or made contributions to both the Mecklenburg County Branch and the national NAACP, most recently in 2013. (*Id.* at 16, 17, Ex. 4, p.4)

In the proceedings below, Plaintiffs moved for a preliminary injunction to enjoin the enacted congressional redistricting plans. That motion was denied by order dated May 22, 2014. (D.E. 65) In addition, Defendants requested that the three-judge court stay, abstain, or defer ruling in the case in light of the state trial court final judgment in *Dickson* and the fact that both Mr. Harris and Ms. Bowser were precluded by that judgment from pursuing these claims. Defendants' original motion was denied in the same order denying Plaintiffs' motion for a preliminary injunction. (D.E. 65) Defendants subsequently raised this issue in their motion for summary judgment which was denied by order dated July 29, 2014. (D.E. 85)

The federal three-judge court held a three-day trial beginning October 13, 2015.[7] On February 5, 2016, the three-judge court entered its Memorandum Opinion and Final Judgment.

By a unanimous vote, the three-judge court held that CD 1 is an unconstitutional racial gerrymander. In particular, the court stated that race predominated in the drawing of the district and that the district could not survive strict scrutiny. The court's holding on racial predominance relied primarily on the

[7] The vast majority of the evidence heard and reviewed by the federal three-judge court during the trial was evidence heard and reviewed by the state three-judge panel in *Dickson*. In fact, the parties stipulated to the introduction into evidence in this case the entire record from the *Dickson* case.

fact that Defendants drew CD 1 at the 50% BVAP level to foreclose vote dilution claims under Section 2. The court repeatedly referred to this as a "racial quota" notwithstanding *Strickland's* holding that the first precondition from *Thornburg v. Gingles*, 478 U.S. 30 (1984) requires a numerical majority to constitute a valid VRA district. While acknowledging the numerous other goals motivating the legislature in creating CD 1 – incumbency protection, partisan advantage, remedying extreme under-population, among others – the court filtered its predominance analysis through the lens of the legislature's *Strickland* standard, yet ignored the decisions of this Court requiring the legislature's use of that standard.

After finding that race predominated, the three-judge court then found that CD 1 could not survive strict scrutiny as Defendants did not have a strong basis in evidence for drawing CD 1 as a VRA district. The court characterized Defendants' evidence of racial polarization as "generalized" and ignored reams of record evidence and testimony on racial polarization in all of the specific counties in CD 1 that was before the legislature when it enacted CD 1 and which the *Dickson* court had found more than adequate to establish a strong basis in evidence. (D.E. 142 at 55) The court also incorrectly described CD 1 as being "majority white," which caused it to conclude that black candidates were regularly winning in CD 1 with support from white voters. On this point, there can be no doubt: CD 1 is not and never has been a "majority white" district. It has always been a majority black or majority minority coalition district (between African Americans and Hispanics). *See infra* at II.B.

The three-judge court simply ignored the undisputed demographic data accompanying the enacted redistricting plans.

By a 2-1 vote, the three-judge court held that race predominated in the drawing of CD 12 and the district could not survive strict scrutiny. In finding racial predominance, the court relied primarily on two statements. In the first, a June 17, 2011 joint statement by the legislative redistricting chairmen, the court found some significance in the fact that the word "districts" was plural. (D.E. 142 at 33-34) Apparently the court believed this was evidence that the legislature intended to draw two congressional VRA districts instead of just one (CD 1). In reality, however, the June 17, 2011 joint statement *never even mentions congressional districts*; it deals strictly with *legislative* districts, and it is undisputed that there were a plural number of VRA districts in the legislative plans. The second statement the court relied upon is the use of the preposition "at" in one sentence of an eight-page joint statement released by the redistricting chairmen on July 1, 2011. (D.E. 142 at 34) Based on these statements, the three-judge court did not affirmatively find that race was the predominant motive in drawing CD 12; instead, the court held that it would "decline to conclude" that it was "coincidental" that CD 12 ultimately ended up being slightly above 50% BVAP. Thus, rather than affirmatively finding that the evidence showed that race predominated in the drawing of CD 12, the court instead "declined to conclude" that it was not race that predominated in the drawing of the district. While the court acknowledged that Defendants stated that CD 12 was motivated by politics, not race, the court ignored

the direct evidence of statements made by the redistricting chairs prior to enactment of the plans that were consistent with that explanation. The court instead credited the circumstantial evidence presented by Plaintiffs' expert Dr. David Peterson, even though Dr. Peterson's analysis was consistent with Defendants' explanation, and had not been relied upon by the state three-judge panel in *Dickson*. The court also credited the circumstantial evidence presented by Plaintiffs' expert Dr. Ansolabehere, who used registration statistics instead of voting results to conclude that race and not politics explained the drawing of CD 12.

In a concurring opinion, one judge of the three-judge court lamented the alleged negative effect of gerrymandering on the "republican form of government" and that "representatives choose their voters."[8] (D.E. 142 at 64) The concurrence advocated for "independent" congressional redistricting commissions[9] and wondered aloud how voters can possibly know who their representatives are. (D.E. 142 at 65-67) In addition, even though the concurrence agreed with the majority opinion that the current legislature drew CD 12 as a racial gerrymander, the concurrence acknowledged that "CD 12 runs its circuitous route from Charlotte to Greensboro and beyond – thanks in great part to *a state legislature then controlled by Democrats*." (D.E. 142 at 66-67) The CD 12 drawn by the "state legislature then

[8] Of course, by definition, any time a legislature draws legislative districts, its members are "choosing their voters."

[9] Independent redistricting commissions do not, of course, insulate a State from gerrymandering claims. *Harris v. Independent Redistricting Comm'n*, 993 F. Supp. 2d 1042 (D. Ariz. 2014).

controlled by Democrats" was *upheld as legal* nearly two decades ago.[10] *Cromartie II*.

The majority opinion devoted approximately only two pages out of a 62-page opinion to the remedy it is imposing on the State. Rather than provide any guidance or criteria by which the State should draw a "remedial plan" the three-judge court simply noted that "the Court will require that new districts be drawn within two weeks of the entry of this opinion to remedy the unconstitutional districts." (D.E. 142 at 63) In its Final Judgment, the three-judge court enjoined the State from "conducting any elections for the office of U.S. Representative until a new redistricting plan is in place." (D.E. 143) No other guidance was provided.

REASONS FOR GRANTING THE STAY

To obtain a stay pending this Court's review, an applicant must show "a likelihood that irreparable harm will result from the denial of a stay"; that the "equities" and "weigh[ing] [of] relative harms" favor a stay; and a "fair prospect that a majority of the Court will vote to reverse the judgment below." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). These standards are readily satisfied in this case.

I. IRREPARABLE INJURY WILL RESULT IF THE STAY IS DENIED.

The three-judge court clearly erred in failing to give proper deference to the State's enacted redistricting plans, especially this close to impending state elections. *Purcell*, 549 U.S. at 4-5. *Voting has already begun in the North Carolina March*

[10] Of course, in drawing the 2011 CD 12, the North Carolina General Assembly was not operating on a clean slate. The 2011 legislature essentially inherited CD 12 and its long litigation history from prior General Assemblies. The concurrence appears to acknowledge this fact.

primary.[11] The eleventh-hour action by the three-judge court will trigger electoral turmoil, and irreparable injury to the State of North Carolina and its voters will result if the court's last-minute injunction is not stayed. Anytime a court preliminarily enjoins a state from enforcing its duly enacted statutes, that state suffers "a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers). Moreover, the court's order changing the rules of North Carolina's elections *after voting has already begun* ignores this Court's admonition that lower courts should be mindful of the "considerations specific to election cases" and avoid the very real risks that conflicting court orders changing election rules close to an election may "result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5.

The citizens of North Carolina have a right to orderly elections. Voters in North Carolina have a right to understand which districts they live in and what candidates they may vote for without enduring wholesale rearrangement of those districts only days and weeks before they vote.[12] The three-judge court's decision impinges directly on this right.

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[11] For this reason, *Personhuballah v. Alcorn*, ___ F. Supp. 3d ___, 2016 WL 93849 (E.D. Va. Jan. 7, 2016) is inapposite here. There, voting had not already begun and candidates were still in the process of being qualified. *Personhuballah*, 2016 WL 93849, at *2. Moreover, the three-judge court adopted a remedial plan in that order which was well prior to the date the Virginia Board of Elections stated a new plan would have to be in place before having to postpone the congressional primary. *Personhuballah*, 2016 WL 93849, at *2 n.6. According to publicly available information, the primary in Virginia is not until June 14, 2016. *See* http://elections.virginia.gov/media/calendars-schedules/index.html.

[12] While the three-judge court's decision only specifically addresses CD 1 and CD 12, one person, one vote requirements applicable to the redrawing of congressional districts mean that those two districts cannot be redrawn without the districts that surround them, and possibly all of North Carolina's congressional districts, being redrawn as well.

Thousands of candidates in hundreds of offices on the ballot for the impending March 15, 2016 primary are relying on an orderly process. Dozens of candidates for congressional seats are relying on the existing districts in the enacted plan. (Declaration of Kim Westbrook Strach ¶¶ 4-5) (attached as Exhibit 3) All candidates are relying on the March 15 date currently set for the primary.

Significantly, the primary election process is already well underway. On January 18, 2016, county elections officials began issuing mail-in absentee ballots to civilian voters and those qualifying under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), which requires transmittal of ballots no later than 45 days before an election for a federal office. State elections data indicates that county elections officials have already mailed *8,621 ballots* to voters, *903 of whom are located outside the United States*. Of those ballots mailed, 7,845 include a congressional contest on the voter's ballot, and *counties have already received 431 voted ballots*. And more than 3.7 million ballots have already been printed for the March primary. (*Id*. ¶¶ 14-16) Moreover, because of ballot coding issues, ballots cannot be reprinted to remove the names of congressional candidates without threatening the integrity of the entire election. (*Id*. ¶¶ 17-19) If the three-judge court's order is not stayed, there will be no way to avoid extreme voter confusion.

The three-judge court's order threatens to disrupt or delay the March primary. If the State is forced to draw and implement new congressional districts, then, at a minimum, a bifurcated primary for congressional seats will be required. A bifurcated primary would cost significant sums of taxpayer resources, a reality

that the three-judge court's decision does not address at all. A standalone primary could cost state taxpayers over $9,000,000 in taxpayer funds.[13] (*Id.* ¶¶ 28-31) Beyond hard dollar costs, a bifurcated primary would impose substantial administrative challenges. North Carolina elections require that counties secure voting locations in nearly 2,800 precincts. State elections records indicate that on election day in the 2014 general election, nearly half of all precinct voting locations were housed in places of worship or in schools, with still more located in privately-owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites can require significant advance work by county board of elections staff and coordination with the State Board of Elections. Moreover, bifurcating the March primary so as to provide for a separate congressional primary would impose significant and unanticipated challenges and costs for county elections administrators and for the State Board of Elections as they develop and approve new one stop implementation plans, secure necessary voting sites, hire adequate staff, and hold public meetings to take necessary action associated with the foregoing. (*Id.* ¶¶ 32-33)

Most importantly, however, the three-judge court's order is likely to lead to the disenfranchisement of the voters it is supposedly protecting. Redistricting would require that county and state elections administrators reassign voters to new jurisdictions, a process that involves changes to each voter's geocode in the state election database called "SEIMS". Information contained within SEIMS is used to generate ballots. Additionally, candidates and other civic organizations rely on

[13] Much of these costs would be borne by North Carolina's 100 counties.

SEIMS-generated data to identify voters and engage in outreach to them. Voters must then be sent mailings notifying them of their new districts.

The public must have notice of upcoming elections. State law requires that county boards of elections prepare public notice of elections involving federal contests for local publication and for distribution to United States military personnel in conjunction with the federal write-in absentee ballot. Such notice must be issued 100 days before regularly-scheduled elections and must contain a list of all ballot measures known as of that date. On December 4, 2016, county elections officials published the above-described notice for all then-existing 2016 primary contests, including congressional races.

Beyond formal notice, voters rely on media outlets, social networks, and habit both to become aware of upcoming elections and to review the qualifications of participating candidates. Bifurcating the March primary may reduce public awareness of a subsequent, stand-alone primary. Decreased awareness of an election can suppress the number of individuals who would have otherwise participated and may narrow the number of those who do ultimately vote. (*Id.* ¶¶ 41-43)

Historical experience suggests that delayed primaries result in lower voter participation and that when primaries are bifurcated, the delayed primary will have a lower turnout rate than the primary held on the regular date. For example, a court-ordered, stand-alone 1998 September primary for congressional races resulted in turnout of roughly 8%, compared to a turnout of 18% for the regular primary held

on the regularly-scheduled May date that year. The 2002 primary was also postponed until September; that delayed primary had a turnout of only 21%. In 2004, the primary was rescheduled to July 20 because preclearance of legislative plans adopted in late 2003 had not been obtained from the United States Department of Justice in time to open filing on schedule. Both the Democratic and Republican Parties chose to forego the presidential primary that year. Turnout for the delayed primary was only 16%.

By contrast, turnout during the last comparable primary involving a presidential race with no incumbent running, held in 2008, was roughly 37%. The 2016 Presidential Preference primary falls earlier in the presidential nomination cycle, which could result in even greater turnout among certain communities because of the increased chance of influencing party nominations. Bifurcating the March primary could affect participation patterns and electoral outcomes by permitting unaffiliated voters to choose one political party's legislative primary and a different political party's primary for all other contests. State law prohibits voters from participating in one party's primary contests and a different party's second, or "runoff," primary because the latter is considered a continuation of the first primary. No such restriction would apply to limit participation in a stand-alone congressional primary. The regular registration deadline for the March primary is February 19, 2016. The second primary is set by statute: May 3, 2016, if no runoff involves a federal contest, or May 24, 2016 if any runoff does involve a federal contest. State law directs that "there shall be no registration of voters between the

dates of the first and second primaries." N.C. Gen. Stat. § 163-111(e); *see also* North Carolina S.L. 2015-258, § 2(d).

A separate congressional primary held after March 15, 2016, but before or on the above noted dates in May could reduce registration levels normally expected in the lead-up to a primary election involving federal contests. Unregistered individuals may become aware of a legislative primary but fail to understand that they must have registered months earlier—far in excess of the usual deadline 25 days before the election. In the event of a runoff involving the United States Senate, regular registration would remain closed for a period of 95 days (February 19, 2016 through May 24, 2016). Thus, requiring a separate congressional primary could result in persons eligible to vote being unable to do so because of registration restrictions. (*Id.* ¶¶ 44-47)

Finally, a delayed primary could require delaying the November 2016 general election for congressional districts. (*Id.* ¶ 25) A second general election after November 2016 would be extraordinarily chaotic and burdensome for North Carolina and its taxpayers and voters, and it would invariably depress turnout as noted above.[14] It would also create uncertainty concerning the composition of the United States Congress. It is not apparent that the three-judge court considered or weighed any of these concerns in the two-page remedial section of its decision.

[14] It would also put North Carolina in the untenable position of being in violation of the federal election day statute. 2 U.S.C.A. § 7.

II. THE BALANCE OF EQUITIES FAVORS A STAY.

This Court has consistently stayed mandatory injunctions of statewide election laws, including redistricting plans, issued by lower courts at the later stages of an election cycle. *See*, *e.g.*, *Hunt v. Cromartie*, 529 U.S. 1014 (2000)[15]; *Voinovich v. Quilter*, 503 U.S. 979 (1992); *Wetherell v. DeGrandy*, 505 U.S. 1232 (1992); *Louisiana v. Hays*, 512 U.S. 1273 (1994); *Miller v. Johnson*, 512 U.S. 1283 (1994). This Court has also affirmed decisions by lower courts to permit elections under plans declared unlawful because they were not invalidated until late in the election cycle. *Watkins v. Mabus*, 502 U.S. 952 (1991) (summarily affirming in relevant part *Watkins v. Mabus*, 771 F. Supp. 789, 801, 802-805 (S.D. Miss. 1991) (three judge court)); *Republican Party of Shelby County v. Dixon*, 429 U.S. 934 (1976) (summarily affirming *Dixon v. Hassler*, 412 F. Supp. 1036, 1038 (W.D. Tenn. 1976) (three-judge court)); *Growe v. Emison*, 507 U.S. 25, 35 (1993) (noting that elections must often be held under a legislatively enacted plan prior to any appellate review of that plan).

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[15] Plaintiffs may cite to one aspect of the procedural history in *Cromartie* that is inapposite here. In 1998, this Court initially declined to stay a decision by the three-judge court granting summary judgment for the plaintiffs finding that the 1997 version of CD 12 was an illegal racial gerrymander. The facts there were distinguishable in that there the legislature had enacted the 1997 version of CD 12 to replace the 1992 version that had been previously declared unlawful. Thus the 1997 plan was a remedial plan enacted to remedy constitutional violations found by this Court. In contrast, the three-judge court's decision here strikes down two districts previously found to be *constitutional* by the North Carolina Supreme Court and there has been no prior ruling of illegality by a federal court. It is also worth noting that in 2000 this Court did in fact stay a judgment entered by the district court following a trial and eventually upheld the 1997 version of CD 12. The 2011 CD 12 is based upon the same criteria used to draw the 1997 version and the three-judge court below invalidated the 2011 version using the same evidence rejected previously by this Court—registration statistics and not actual election results. This warrants even more heavily in favor of this Court entering a stay.

This Court's decision in *Whitcomb v. Chavis*, 396 U.S. 1064 (1970), is instructive. The three-judge court in that case invalidated an Indiana apportionment statute and gave the State until October 1, 1969 to enact a legislative remedy. *See* 396 U.S. at 1064 (Black, J., dissenting). The State did not adopt a legislative remedy by that date, and the three-judge court entered a judicial remedy on December 15, 1969. *Id.* This Court thereafter noted probable jurisdiction and granted a stay of the three-judge court's remedial order, even though the stay "forced" the plaintiffs "to go through" the 1970 election cycle under the enacted plan that had been "held unconstitutional by the District Court." *Id.* at 1064-65. This Court deemed that outcome preferable to conducting the 1970 election "under the reapportionment plan of the District Court" where this Court's review of liability remained pending. *Id.* at 1064. The Court further denied the plaintiffs' later motion to modify or vacate the stay to require the 1970 election to be conducted under the judicial remedy. *Id.*

The three-judge court below did not cite or mention *Whitcomb* or any of the other decisions from this Court that have repeatedly emphasized this balance of the equities. Instead, the three-judge court simply stated that individuals in CD 1 and CD 12 have had their constitutional rights "injured" and therefore "the Court will require that new districts be drawn within two weeks of the entry of this opinion to remedy the unconstitutional districts." Of course, the "injured" constitutional rights of individuals in allegedly unconstitutional districts are interests that are present in *all* the prior cases in which this Court has granted a stay—and yet it has been

emphasized that neither being "forced . . . to go through" an election cycle under an enacted plan that has been "held unconstitutional by the District Court," nor the general public interest in constitutional elections, is sufficient to rebalance the equities against entry of a stay. *Whitcomb*, 396 U.S. at 1064-65 (Black, J., dissenting); *see also Karcher v. Daggett*, 455 U.S. 1303, 1306-07 (1982) (Brennan, J.).

III. THERE IS A FAIR PROSPECT THAT A MAJORITY OF THE COURT WILL VOTE TO REVERSE THE JUDGMENT BELOW.

There is more than a "fair prospect that a majority of the Court will vote to reverse" the three-judge court's erroneous opinion. *Hollingsworth*, 558 U.S. at 190. The three-judge court ignored and mischaracterized the record evidence consistent with its preference, as reflected in the concurring opinion, for redistricting by an independent commission rather than legislators. In doing so, the three-judge court paid lip service to the "demanding" burden this Court has said plaintiffs must bear in redistricting cases, especially where, as here, the evidence shows that race correlates highly with party affiliation. *Cromartie II*, 532 U.S. at 241. It completely ignored this Court's admonition that "deference is due to [states'] reasonable fears of, and to their reasonable efforts to avoid, Section 2 liability." *Bush v. Vera*, 517 U.S. 952, 978 (1996) ("*Vera*").

A. The three-judge court's racial predominance analysis fails to conform to this Court's redistricting precedents.

In finding racial predominance in CD 1 and 12, the three-judge court relied on evidence that has been specifically discredited by this Court as not probative of

racial predominance. Notably, this Court's prior rulings have come out of North Carolina, so this Court is familiar with redistricting in this State.

First, the three-judge court *presumed* racial predominance from the type of statements this Court has previously held do *not* show racial predominance. For instance, the three-judge court relied on the fact that in the June 17, 2011 joint statement by the legislative redistricting chairmen, the word "districts" was plural. (D.E. 142 at 33-34) While it was already a speculative leap to conclude that the plural form of one word in an eight-page statement constitutes evidence of racial predominance, the reality is that the June 17, 2011 joint statement *never even mentions congressional districts*; it deals strictly with *legislative* districts and it is undisputed that there were a plural number of VRA districts in the legislative plans. The three-judge court also relied on a second statement in which the redistricting chairmen use the preposition "at" in one sentence of an eight-page joint statement. (D.E. 142 at 34) Based on these statements, the three-judge court did not affirmatively find that race was the predominant motive in drawing CD 12; instead, the court expressed skepticism that it was "coincidental" that CD 12 ultimately ended up being slightly above 50% BVAP. (D.E. 142 at 35)

The three-judge court's reliance on these statements is in direct conflict with this Court's decision in *Cromartie II*. There, in reversing the district court, this Court rejected as evidence of racial predominance an email from a staff member to the legislative leadership that "refer[ed] specifically to categorizing a section of Greensboro as 'Black'" and the fact that the referenced section would be included in

then-CD 12. 532 U.S. at 420. This Court also rejected as evidence of racial predominance the district court's skepticism about the state's explanation of the percentage of black population in the 1997 CD 12 being "sheer happenstance." *Id.* at 420, n. 8.

Second, the three-judge court credited testimony of Dr. Ansolabehere, who used registration statistics instead of voting results to conclude that race and not politics explained the drawing of CD 12. Again, this runs afoul of this Court's decision in *Hunt v. Cromartie*, 526 U.S. 541 (1999) ("*Cromartie I*") and *Cromartie II*. In *Cromartie II*, this Court repeatedly criticized the district court for relying on registration statistics instead of election results. This Court noted that "registration figures do not accurately predict preference at the polls." 532 U.S. at 245. The Court had previously criticized the district court for relying on registration statistics in *Cromartie I* explaining that:

> party registration and party preference do not always correspond. (citing *Cromartie I*, 526 U.S. at 550-51). In part this is because white voters registered as Democrats "crossover" to vote for a Republican candidate more often than do African Americans who register and vote Democratic between 95% and 97% of the time . . . . A legislature trying to secure a safe Democratic seat is interested in Democratic voting behavior. Hence, a legislature may, by placing reliable Democratic precincts within a district without regard to race, end up with a district containing more heavily African American precincts, but the reasons would be political rather than racial.

532 U.S. at 245. In this case, the three-judge court cited the following testimony from Dr. Ansolabehere as why it would rely on registration statistics: "registration data was a good indicator of voting data and it 'allowed [him] to get down to [a deeper] level of analysis.'" (D.E. 142 at 44-45) (quoting testimony of Dr.

Ansolabehere) Dr. Ansolabehere's "explanation," however, is a non sequitur that *directly contradicts* this Court's admonition about using registration data to predict voting behavior *in North Carolina*.[16]

Third, the three-judge court ignored evidence that politics completely explained CD 12 and partially explained CD 1, even though the evidence of political motivation here greatly exceeded the evidence this Court found sufficient in *Cromartie II*. The legislature repeatedly emphasized the political changes it was making as a result of making CD 1 and, especially, CD 12 stronger Democratic districts. The 1997 and 2001 versions of CD 12 were drawn by a Democratic-controlled General Assembly while the 2011 version was drawn by a Republican-controlled General Assembly. The 2011 General Assembly accomplished its political goals by moving voters who supported Republican presidential candidate, John McCain, in 2008 out of the district and replacing them with voters in other 2001 congressional districts who supported President Obama in 2008. The State used this criterion because the 2011 General Assembly intended to create districts that adjoined the 2011 CD 12 that were better for Republicans than the adjoining versions enacted by Democratic-controlled General Assembly in 1997 and 2001. While the 1997 and the 2001 General Assemblies intended to make CD 12 a strong Democratic district, they also intended to make the districts adjoining CD 12 more favorable for Democrats. Politics was the prime motivation for this district in 1997, 2001, and 2011, but the political interests of the 1997 and 2001 Democratic-

[16] The court compounded this error by excluding testimony from the State's expert, Dr. Hofeller, refuting a correlation analysis by Dr. Ansolabehere that had not been revealed previously in the discovery phase of the case.

controlled General Assemblies were different than the Republican-controlled General Assembly in 2011. (Tr. pp. 477-93)[17] The three-judge court simply ignored these facts, as well as the fact that in the last two election cycles, the election results in the congressional districts surrounding CD 12 (and CD 1) bear out the legislature's political motives and demonstrates that politics was indeed the prime factor.

Fourth, the three-judge court simply assumed that race and not politics predominated in CD 12 because the percentage of BVAP increased in the enacted CD 12. This assumption, however, once again defies *Cromartie II*. The fact that the percentage of BVAP for this district increased in 2011, as compared to the 2001 version, is strictly a result of making the 2011 version an even stronger Democratic-performing district. Nothing has changed since *Cromartie II*. It remains undisputed that there is a very high correlation between African American voters and voters who regularly vote a straight Democratic ticket and support national Democratic candidates.

Significantly, the three-judge court completely relieved Plaintiffs in this case of this Court's requirement in *Cromartie* that plaintiffs propose alternative plans which would have achieved the legislature's goal of making the districts surrounding CD 12 (or CD 1) more competitive for Republicans while making CD 12 (or CD 1) allegedly more racially balanced. Where politics and race are highly correlated, this Court has never allowed the lower courts to simply presume racial predominance without a showing that the plan could have been drawn another way.

[17] "Tr." refers to the transcript of the trial held in this matter from October 13-15, 2015.

Rather than putting Plaintiffs to the kind of proof this Court has required, the three-judge court allowed Plaintiffs to substitute circumstantial evidence from their experts, Dr. Peterson and Dr. Ansolabehere. Dr. Peterson admitted that he *did not and could not* conclude that race was the predominant motive in drawing the districts. (Tr. 233) Rather, Dr. Peterson rendered the limited opinion that race "better accounts for" the boundaries of those districts than the political party of voters. (*Id.*) Dr. Peterson's statement that race better explains CD 12 than politics is contradicted by his own analysis. Out of twelve studies conducted by Dr. Peterson of CD 12, six favored the race hypothesis and six did not favor it. (Tr. 242-43) Thus, Dr. Peterson's own data demonstrates that as between race and party, his study was inconclusive. Moreover, in those instances in which Dr. Peterson's data was unequivocal, the race-versus-party explanation was at best a tie. (Tr. 243-44) Dr. Peterson even conceded that the race and political hypotheses have *equal* support under his segment analysis and that one could therefore not better account for the boundary than the other. (*Id.*) More importantly, when limited to the information that the legislature's mapdrawing consultant, Dr. Hofeller, actually used during the mapdrawing process (voting age population and election results for President Obama in 2008), Dr. Peterson's own data shows that the *party* hypothesis is a *better* explanation for the boundaries of CD 12. Notably, in the district Defendants admittedly drew to protect the State against a vote dilution claim (CD 1), Dr. Peterson's data show that the race hypothesis and the party hypothesis are tied. (Tr. 247-48)

Similarly, despite Dr. Ansolabehere's expert testimony in another case (where he analyzed actual election results instead of registration data), and his review of the percentage of McCain voters in VTDs moved into and out of North Carolina's CD 12, he did not review or explain in his expert reports any election results – either as the 2001 version of CD 1 and CD 12 compared to the 2011 versions or in the VTDs moved out of or into either district. (Tr. 347, 348, 389, 407)[18] Instead, Dr. Ansolabehere attempted to prove racial predominance by evaluating racial and registration statistics. (Tr. 341, 348) Dr. Ansolabehere admitted that African Americans who vote for Democratic candidates tend to be in the 90 percent range (Tr. 379), but white Democrats vote for Democratic candidates at a "much lower rate" than African American voters. (Tr. 380) He also agreed that all African American voters vote for the Democratic candidate at a much higher rate than all white voters. (Tr. 381) Despite these admissions, Dr. Ansolabehere testified (which the three-judge court apparently and incredibly credited) that an equal number of white and black voters should be moved into or out of CD 1 and CD 12 if the motive of the map drawer was to make a stronger Democratic district. (D.E. 18-1, p. 9, ¶¶ 20, 21; Tr. 382-83). The three-judge court also credited Dr. Ansolabehere's testimony despite his failure to examine the political policy goals of

[18] Nor did Dr. Ansolabehere compare how election results were different in the 2001 versus the 2011 versions of the districts that adjoined CD 12. In those districts, following the re-draw of CD 12 in 2011, Republican challengers replaced Democratic incumbents in the 2012 general election.

the 2011 General Assembly or prepare a map less reliant on race that would still achieve the policy goals of the 2011 General Assembly. (Tr. 358-59, 363)[19]

Finally, and perhaps most significantly, as to CD 1 at least, the three-judge court again *presumed* racial predominance based solely on the fact that Defendants drew CD 1 at the 50% BVAP level to foreclose vote dilution claims under Section 2. The court repeatedly referred to this as a "racial quota," notwithstanding *Strickland's* holding that the first precondition from *Thornburg v. Gingles*, 478 U.S. 30 (1984) requires a numerical majority to constitute a valid VRA district.[20] While acknowledging the numerous other goals motivating the legislature in creating CD 1 – incumbency protection, partisan advantage, remedying extreme under-population, among others – the court filtered its predominance analysis through the lens of the legislature's *Strickland* standard without recognizing that standard's place in the precedent of this Court.

This presumption flouts this Court's precedent as recently clarified in *Alabama*: general legislative goals for VRA districts do not prove that race was the predominant motive for a specific district. *Alabama*, 135 S. Ct. at 1270-71. This is because predominant motive cannot be established because a legislature enacted a

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[19] A different three-judge court in *Bethune-Hill* thoroughly rejected Dr. Ansolabehere's testimony in that case. See *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14cv852, ___ F. Supp. 3d ___, 2015 WL 644032, at *41-42, 45 (Oct. 22, 2015).

[20] The three-judge court does not explain what it would not consider to be a "racial quota." If the General Assembly had drawn CD 1 in 2011 to be the same BVAP as in 2001, would that be a "racial quota"? If African American members of the General Assembly had advised the legislature to draw CD 1 at a specific numeric BVAP percentage just shy of 50%, and the legislature complied, would that have been a "racial quota"? It is difficult to understand how following *Strickland* and drawing a district to protect the State against a vote dilution claim can constitute an unconstitutional "racial quota."

district with a "consciousness of race" or created a majority black district to comply with federal law. *Vera*, *supra.* Moreover, unlike the 70%+ black VAP district at issue in *Alabama*, the North Carolina General Assembly used other criteria besides equal population and race to construct CD 1. CD 1 is based upon several legitimate districting principles which were not subordinated to race. The record amply demonstrates that the district is not unexplainable but for race, a conclusion which the three-judge court ignored in favor of its erroneous "racial quota" construct.

B. The three-judge court's strict scrutiny analysis defies this Court's redistricting precedents.

The three-judge court's strict scrutiny analysis is directly contrary to this Court's holding in *Alabama*. There, this Court clearly held that a state has a compelling reason for using race to create districts that are reasonably necessary to protect the state from liability under the VRA. *Alabama*, 135 S. Ct. at 1272-73. However, the Court ruled that the district court had erred in approving the only district evaluated by the Supreme Court (Alabama's Senate District 26) under Section 5 because Alabama did not provide a strong basis in evidence to support the creation of a super-majority black district with black VAP in excess of 70%. Section 5 does not mandate super-majority districts but instead only requires that states adopt racial percentages for each VRA district needed to "maintain a minority's ability to elect a preferred candidate of choice." *Id.* The Alabama legislature's policy of maintaining super-majority black districts had no support in applicable case law and represented an improper "mechanically numerical view as to what constitutes forbidden retrogression." *Id.* at 1272. Alabama cited no evidence in the

legislative record to support the need for super-majority districts. Therefore, the Court found it unlikely that the ability of African-American voters to elect their preferred candidate of choice could have been diminished in this district if the percentage of BVAP had been reduced from a super-majority of over 70% to a lower super-majority of 65%. *Id.* at 1272-74.

The Court qualified its ruling by stating that it was not "insist[ing] that a legislature guess precisely what percentage reduction a court or the Justice Department might eventually find to be retrogressive." *Id.* at 1273. This is because "[t]he law cannot insist that a state legislature, when redistricting, determine precisely what percent minority population § 5 demands." *Id.* Federal law cannot "lay a trap for an unwary legislature, condemning its redistricting plan as either (1) unconstitutional racial gerrymandering should the legislature place a few too many minority voters in a districts or (2) retrogressive under § 5 should the legislature place a few too few." *Id.* at 1274 (citing *Vera*, 517 U.S. at 977).

Based upon these concerns, the Court held that majority black districts would survive strict scrutiny, including any narrow tailoring analysis, when a legislature has "a strong basis in evidence in support of the race-based choice it has made." *Id.* at 1274 (citations omitted). This standard of review "does not demand that a State's action actually is necessary to achieve a compelling state interest in order to be constitutionally valid." *Id.* Instead, a legislature "may have a strong basis in evidence to use racial classifications in order to comply with a statute when they have good reasons to believe such a use is required, even if a court does not find

that the actions were necessary for statutory compliance." *Id.* Nothing in the legislative record explained why Senate District 26 needed to be maintained with a BVAP in excess of 70% as opposed to a lower super-majority-minority percentage. Therefore the Court could not accept the district court's conclusion that District 26 served a compelling governmental interest or was narrowly tailored. *Id.* at 1273-74.

Here, North Carolina followed specific guidance for Section 2 districts *set by this Court*. In *Strickland*, this Court held that establishing a bright-line majority benchmark for a Section 2 district provides a judicially manageable standard for courts and legislatures alike. It also relieves the State from hiring an expert to provide opinions on the minimum BVAP needed to create a district that could be controlled by African American voters. *Strickland*, 556 U.S. at 17. Any such expert would have to predict the type of white voters that would need to be added to or subtracted from a district (to comply with one person, one vote) who would support the minority group's candidate of choice, the impact of incumbency, whether white voters retained in the district would continue to support the minority group's candidate of choice after new voters were added, and other "speculative" factors. *Id.* The holding in *Strickland* is consistent with the holding in *Alabama* that legislatures are not obligated to create majority black districts with the exact correct percentage of BVAP. *Alabama*, 135 S. Ct. at 1272-74.

Despite this Court's clear holding in *Strickland*, the three-judge court passed over the overwhelming evidence in the record (in this case and in *Dickson*) of significant racially polarized voting in the specific counties covered by CD 1. In

Dickson, the state court made extensive findings that the legislative record provided a strong basis for the General Assembly to conclude that racially polarized voting continues to exist in the area of the State encompassed by the 2011 CD 1. (D.E. 100-5, pp. 47-63, F.F. No. 1-35; D.E. 100-5, pp. 63-66, F.F. No. 36a-h; D.E. 100-5, pp. 126-28, F.F. No. 165-71)

The three-judge court, however, misread statistical data in contending that racially polarized voting could not be present in CD 1 because it had a "white majority." (D.E. 142 at 55) From 1991 through 2001, no prior version of CD 1 was a majority white district. All prior versions were majority black in total population and majority minority coalition districts in VAP. Significantly, and completely ignored by the court, by the time of the 2010 Census, the 2001 CD 1 was a functional majority black district because African Americans constituted a majority of all registered voters. (Tr. 373) Further, the three-judge court ignored that non-Hispanic whites have *never* been in the majority in past versions and none of the past versions were majority white crossover districts. Even without equal turnout rates by black and white voters, contrary to Plaintiffs' argument, whites have never been able to vote as a bloc to defeat the African American candidate of choice because non-Hispanic whites have never enjoyed majority status in CD 1.

Nor does the fact that African American incumbents have won in the district since 1992 prove the absence of racially polarized voting. The three-judge court ignored evidence of the *two experts* who submitted reports to the General Assembly *finding the existence of racially polarized voting in all of the counties encompassed*

by CD 1. (D.E. 100-5, pp. 52-56, 63-65, F.F. No. 10-21, 36 f and g) Their findings were consistent with the *twenty-year history* of CD 1 being established as a Section 2 VRA district. Further, it was undisputed that the incumbent for CD 1 has won elections by margins that were less than the amount by which CD 1 was underpopulated in 2010. The State court in *Dickson* made specific factual findings regarding CD 1 related to all of these points and this evidence is in the record of the instant case. (D.E. 100-5, pp. 50-51, 126-28, F.F. Nos. 6, 7, 165, 166-67, 169, 170)

Indeed, after submitting their evidence on racially polarized voting during the 2011 legislative redistricting process, the three *NC NAACP* organizational plaintiffs and their counsel submitted a congressional map with two majority minority congressional districts and legislative plans that included majority black or majority minority coalition districts in every area of the State in which the General Assembly enacted majority black districts, including almost all of the counties encompassed by the enacted CD 1. The NAACP legislative plans, as well as all of the other alternative legislative plans, even proposed majority black or majority minority coalition senate and house districts for Durham County, a portion of which is included in CD 1. (D.E. 31-3, pp. 4-5, 7-8, ¶¶ 9, 18; D.E. 31-4, pp. 81; D.E. 44-1, p. 22, ¶¶ 98, 99; D.E. 44-2, p. 10, ¶¶ 282, 283)

Plaintiffs' own witness in this case, Congressman Butterfield, explained that based on his decades of political experience in the areas covered by CD 1, racially polarized voting exists at high levels. In fact, he testified that, in his opinion, only one out of three white voters in eastern North Carolina will ever vote for a black

candidate. (Tr. 199) There can be no doubt that the General Assembly had good reasons to believe that racially polarized voting continues to exist in the counties included in CD 1. If this is not sufficient evidence of racially polarized voting to justify drawing a district just barely over 50% BVAP, then the three-judge court has eviscerated the State's ability to ever draw majority black districts and attempt to foreclose future Section 2 vote dilution claims.[21]

C. The three-judge court's opinion effectively makes redistricting impossible in North Carolina for any entity, including an independent redistricting commission.

Unless stayed, and ultimately reversed, the three-judge court's opinion makes redistricting in North Carolina an impossible task. The three-judge court has effectively held that attempting to comply with the VRA and *Strickland* amounts to racial gerrymandering. This reasoning guts the VRA and threatens to eliminate all majority black districts going forward. It also subjects the State to future liability for vote dilution which it cannot foreclose through the adoption of districts that have been authorized by this Court's precedents. If the evidence before the General Assembly about racially polarized voting in this case results in racial gerrymanders, then there is no amount of evidence of polarized voting that

[21] Regarding compactness as it relates to CD 1, Dr. Ansolabehere conceded that a Reock score of over .20 is not considered "non-compact." (Tr. 354, 358) Dr. Ansolabehere confirmed that the Reock score for the 2011 CD 1 (.29) was higher than the Reock score for the 1992 CD 1 (0.25). (Tr. 352) He could provide no legal authority that the 2011 CD 1 is "substantially" less compact than the 2001 CD 1 which had a Reock score of .39. (Tr. 352-53) In *Cromartie II*, the Reock score for the 1997 version of CD 1 was .317. *Cromartie II*, 133 F. Supp. 2d at 416. In *Cromartie II*, the district court found that the 1997 CD 1 satisfied all of the *Thornburg* conditions, including the Court's opinion that it was based upon a compact minority population. *Id.* at 423. Dr. Ansolabehere agreed that he would not consider a decline in a Reock score from .319 to .29 to be "substantial." (Tr. 356) Thus, compactness was certainly no reason for the three-judge court to conclude that CD 1 would fail strict scrutiny.

would ever justify any majority black districts. The three-judge court has trapped North Carolina in the "competing hazards of liability" that this Court has expressly held is not permissible. *Vera*, 517 U.S. at 977 (quoting *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 291 (1986) (O'Connor, concurring in part and concurring in judgment)).

D. The remedy Plaintiffs seek has no support in Supreme Court decisions.

The three-judge court should have rejected Plaintiffs' claims because they essentially amount to claims of loss of political influence. This Court has yet to find any legislative or congressional redistricting plan unconstitutional because it deprived any group, political or racial, of "influence." Indeed, such claims may even be non-justiciable. *See League of United Latin American Citizens v. Perry*, 548 U.S. 399, 413-23 (2006) ("*LULAC*") (plurality opinion) (plaintiffs failed to identify a judicially manageable standard to adjudicate claim of political gerrymandering); *Vieth v. Jubelirer*, 541 U.S. 267, 281 (2004) (plurality opinion holding that political gerrymandering claims are non-justiciable because no judicially discernable standards for adjudicating such claims exist); *Cromartie I*, 526 U.S. at 551 n.7. (Court has not agreed on standards to govern claims of political gerrymandering). Despite this history, Plaintiffs have asked the federal courts essentially to recognize an "influence" claim on behalf of African American Democrats by requiring the State retain a very high percentage of minority population in the congressional districts, but only at an elevated level that Plaintiffs believe is "sufficient." There is no basis whatsoever for any such claim under the Constitution.

This Court has warned against the constitutional dangers underlying Plaintiffs' influence theories. In *LULAC*, the Court rejected an argument that the Section 2 "effects" test might be violated because of the failure to create a minority "influence" district. The Court held that "if Section 2 were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *LULAC*, 548 U.S. at 445-46 (citing *Georgia v. Ashcroft*, 539 U.S. 461, 491 (2003) (Kennedy, J., concurring)). Recognizing a claim on behalf of African American Democrats for influence or crossover districts "would grant minority voters 'a right to preserve their strength for the purposes of forging an advantageous political alliance,'" a right that is not available to any other group of voters. *Strickland*, 556 U.S. at 15 (citing *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir. 2004), *cert. denied*, 544 U.S. 961 (2005)). This argument also raises the question of whether such a claim would itself run afoul of the equal protection guarantees of the Fourteenth Amendment. Nothing in federal law "grants special protection to a minority group's right to form political coalitions." *Strickland*, 556 U.S. at 15. Nor does federal law grant minority groups any right to the maximum possible voting strength. *Id.* at 15-16.[22]

[22] The claims of both Plaintiffs are barred by the doctrines of *res judicata* and collateral estoppel because the same claims and issues have already been litigated and decided by the three-judge panel in *Dickson*. The ruling in *Dickson* is a "final judgment on the merits" for purposes of claim and issue preclusion. *See Pharmacia & Upjohn Co. v. Mylan Pharms., Inc.*, 170 F.3d 1373, 1381 (Fed. Cir. 1999) (suggesting that the "Fourth Circuit follows '[t]he established rule in the federal courts . . . that a final judgment retains all of its res judicata consequences pending decision of the appeal.'"); *C.F. Trust, Inc. v. First Flight Ltd. P'ship*, 140 F. Supp. 2d 628, 641 (E.D. Va. 2001) ("The established rule in the federal courts is that a final judgment retains all of its preclusive effect pending appeal."), *aff'd*, 338 F.3d 316 (4th Cir. 2003). Where an association is a party to litigation, federal courts have held that members of the association are precluded under the doctrines of *res judicata* and collateral estoppel from re-litigating claims or issues raised in previous actions by an association in which they

CONCLUSION

The Court should stay execution of the judgment below pending the resolution of Defendants' direct appeal. Additionally, given the short two-week deadline the three-judge court imposed on the State to draw remedial districts, the fact that absentee ballots have already been sent out, the swiftly approaching March primary date, and the impending election chaos that the three-judge court's directives are likely to create, the Court should require an expedited response and enter an interim stay pending receipt of a response.

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are a member. *See*, *e.g.*, *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1081-84 (9th Cir. 2003) (holding that individual members of an unincorporated association were bound by prior litigation involving the association and other members and finding that "if there is no conflict between the organization and its members, and if the organization provides adequate representation on its members' behalf, individual members not named in a lawsuit may be bound by the judgment won or lost by their organization."); *Murdock v. Ute Indian Tribe of Uintah and Ouray Reservation*, 975 F.2d 683, 688-89 (10th Cir. 1992). As members of the NC NAACP, Mr. Harris and Ms. Bowser are bound by the judgment of the trial court in *Dickson*. *See*, *e.g.*, *Murdock*, 975 F.2d at 688. Allowing Plaintiffs to avoid being bound by the state court's judgment when they are both members of at least one of the plaintiff organizations in *Dickson* is contrary to law and opens the door for endless legal challenges to the districts at issue here. *See Tahoe-Sierra Preservation Council*, 322 F.3d at 1084 (internal citations and quotations omitted) ("If the individual members of the Association were not bound by the result of the former litigation, the organization would be free to attack the judgment *ad infinitum* by arranging for successive actions by different sets of individual member plaintiffs, leaving the Agency's capacity to regulate the Tahoe properties perpetually in flux. The Association may not avoid the effect of a final judgment in this fashion.").

Respectfully submitted,

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EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID HARRIS, CHRISTINE BOWSER, and SAMUEL LOVE, Plaintiffs, v. PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and JOSHUA HOWARD, in his capacity as Chairman of the North Carolina State Board of Elections, Defendants.	)	Case No. 1:13-cv-949

MEMORANDUM OPINION

Circuit Judge Roger L. Gregory wrote the majority opinion, in which District Judge Max O. Cogburn, Jr., joined and filed a separate concurrence. District Judge William L. Osteen, Jr., joined in part and filed a dissent as to Part II.A.2:

"[T]he Framers of the Fourteenth Amendment . . . desired to place clear limits on the States' use of race as a criterion for legislative action, and to have the federal courts enforce those limitations." Richmond v. J.A. Croson Co., 488 U.S. 469, 491 (1989). For good reason. Racial classifications are, after all, "antithetical to the Fourteenth 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) (quoting McLaughlin v. Florida, 379 U.S. 184, 192 (1964)).

The "disregard of individual rights" is the "fatal flaw" in such race-based classifications. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 320 (1978); see also J.A. Croson Co., 488 U.S. at 493 (explaining that the "'rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights'" (quoting Shelley v. Kraemer, 334 U.S. 1, 22 (1948))). By assigning voters to certain districts based on the color of their skin, states risk "engag[ing] in 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.'" Miller v. Johnson, 515 U.S. 900, 911–12 (1995) (quoting Shaw v. Reno, 509 U.S. 630, 647 (1993) (Shaw I)). Quotas are especially pernicious embodiments of racial stereotypes because they threaten citizens' "'personal rights' to be treated with equal dignity and respect." J.A. Croson Co., 488 U.S. at 493.

Laws that classify citizens based on race are constitutionally suspect and therefore subject to strict scrutiny; racially gerrymandered districting schemes are no different, even when adopted for benign purposes. Shaw II, 517

U.S. at 904–05. This does not mean that race can never play a role in redistricting. Miller, 515 U.S. at 916. Legislatures are almost always cognizant of race when drawing district lines, and simply being aware of race poses no constitutional violation. See Shaw II, 517 U.S. at 905. Only when race is the "dominant and controlling" consideration in drawing district lines does strict scrutiny apply. Id.; see also Easley v. Cromartie, 532 U.S. 234, 241 (2001) (Cromartie II).

This case challenges the constitutionality of two North Carolina congressional districts as racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment. Specifically, this case concerns North Carolina's Congressional District 1 ("CD 1") and Congressional District 12 ("CD 12") as they stood after the 2011 redistricting. The plaintiffs contend that the congressional map adopted by the North Carolina General Assembly in 2011 violates the Fourteenth Amendment: race was the predominant consideration with respect to both districts, and the General Assembly did not narrowly tailor the districts to serve a compelling interest. The Court agrees.

After careful consideration of all evidence presented during a three-day bench trial, the parties' findings of fact and conclusions of law, the parties' arguments, and the applicable law, the Court finds that the plaintiffs have shown

that race predominated in both CD 1 and CD 12 and that the defendants have failed to establish that its race-based redistricting satisfies strict scrutiny. Accordingly, the Court holds that the general assembly's 2011 Congressional Redistricting Plan is unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment.

Having found that the 2011 Congressional Redistricting Plan violates the Equal Protection Clause, the Court will require that new congressional districts be drawn forthwith to remedy the unconstitutional districts. See Wise v. Lipscomb, 437 U.S. 535, 539-40 (1978).

Before turning to a description of the history of the litigation and an analysis of the issues it presents, the Court notes that it makes no finding as to whether individual legislators acted in good faith in the redistricting process, as no such finding is required. See Page v. Va. Bd. of Elections, No. 3:13-cv-678, 2015 WL 3604029, at *7 (E.D. Va. June 5, 2015) ("[T]he good faith of the legislature does not excuse or cure the constitutional violation of separating voters according to race."). Nevertheless, the resulting legislative enactment has affected North Carolina citizens' fundamental right to vote, in violation of the Equal Protection Clause.

I.

A.

The North Carolina Constitution requires decennial redistricting of the North Carolina Senate and North Carolina House of Representatives, subject to several specific requirements. The general assembly is directed to revise the districts and apportion representatives and senators among those districts. N.C. Const. art. II, §§ 3, 5. Similarly, consistent with the requirements of the Constitution of the United States, the general assembly establishes North Carolina's districts for the U.S. House of Representatives after every decennial census. See U.S. Const. art. I, §§ 2, 4; N.C. Const. art. II, §§ 3, 5; 2 U.S.C. §§ 2a, 2c.

Redistricting legislation must comply with the Voting Rights Act of 1965 ("VRA"). "The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting . . . ." South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966), abrogated by Shelby Cnty., Ala. v. Holder, 133 S. Ct. 2612 (2013). Enacted pursuant to Congress's enforcement powers under the Fifteenth Amendment, see Shelby Cnty., 133 S. Ct. at 2619–21, the VRA prohibits states from adopting plans that would result in vote dilution under section 2, 52 U.S.C. § 10301, or in covered jurisdictions, retrogression under section 5, 52 U.S.C. § 10304.

Section 2(a) of the VRA prohibits the imposition of any electoral practice or procedure that "results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color." 52 U.S.C. § 10301(a). A section 2 violation occurs when, based on the totality of circumstances, the political process results in minority "members hav[ing] less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Id. § 10301(b).

Section 5 of the VRA prohibits a state or political subdivision subject to section 4 of the VRA from enforcing "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," unless it has obtained a declaratory judgment from the District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" or has submitted the proposed change to the U.S. attorney general and the attorney general has not objected to it. Beer v. United States, 425 U.S. 130, 131-32 (1976). By requiring that proposed changes be approved in advance, Congress sought "'to shift the advantage of time and inertia from the perpetrators of the evil to its victim,' by 'freezing election procedures in the covered areas

unless the changes can be shown to be nondiscriminatory.'" Id. at 140 (quoting H.R. Rep. No. 94–196, pp. 57–58 (1970)). The purpose of this approach was to ensure that "no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Holder v. Hall, 512 U.S. 874, 883 (1994). Section 5, therefore, prohibits a covered jurisdiction from adopting any change that "has the purpose of or will have the effect of diminishing the ability of [the minority group] . . . to elect their preferred candidates of choice." 52 U.S.C. § 10304(b).

In November 1964, several counties in North Carolina met the criteria to be classified as a "covered jurisdiction" under section 5. See id. §§ 10303–10304. As such, North Carolina was required to submit any changes to its election or voting laws to the U.S. Department of Justice ("DOJ") for federal preapproval, a process called "preclearance." See id. § 10304(a). To obtain preclearance, North Carolina had to demonstrate that a proposed change had neither the purpose nor effect "of denying or abridging the right to vote on account of race or color." Id.

The legal landscape changed dramatically in 2012, when the Supreme Court held unconstitutional the coverage formula used to determine which states are subject to the section 5 preclearance requirement. See Shelby Cnty., 133 S. Ct. at 2612. As a result

of the invalidation of the coverage formula under section 4, North Carolina is no longer obligated to comply with the preclearance requirements of section 5.[1] See id. at 2631.

B.

For decades, African-Americans enjoyed tremendous success in electing their preferred candidates in former versions of CD 1 and CD 12 regardless of whether those districts contained a majority black voting age population ("BVAP")—that is the percentage of persons of voting age who identify as African–American.

The general assembly first drew CD 1 in an iteration of its present form in 1992. Pls.' Ex. 64. Between 1997 and 2011, the BVAP fell below 50 percent. The BVAP stood at 46.54 percent, for example, for the plan in place from 1997 to 2001. Pls.' Ex. 110. After the 2000 census, the general assembly enacted the 2001 Congressional Redistricting Plan (now referred to as the "benchmark" or "benchmark plan") that redrew CD 1, modestly increasing the BVAP to 47.76 percent. Pls.' Ex. 111.

The BVAP of former CD 12 mirrored that of former CD 1. Initially in 1991, to comply with the DOJ's then-existing "maximization" policy — requiring majority-minority districts

[1] Nothing in Shelby County affects the continued validity or applicability of section 2 to North Carolina. 133 S. Ct. at 2619. And both sections 2 and 5 were still in full effect when the legislation in this case was enacted.

wherever possible — CD 12 was drawn with a BVAP greater than 50 percent. Pls.' Ex. 72. After years of litigation and the U.S. Supreme Court's repudiation of the maximization policy, see Miller, 515 U.S. at 921–24, the general assembly redrew the district in 1997 with a BVAP of 32.56 percent. Pls.' Ex. 110. The general assembly thus determined that the VRA did not require drawing CD 12 as a majority African-American district. See Cromartie v. Hunt, 133 F. Supp. 2d 407, 413 (E.D.N.C. 2000) ("District 12 [was] not a majority-minority district"). The 2001 benchmark version of CD 12 reflected a BVAP of 42.31 percent. Pls.' Ex. 111.

Despite the fact that African-Americans did not make up a majority of the voting-age population in these earlier versions of CD 1 or CD 12, African-American preferred candidates easily and repeatedly won reelection under those plans. Representative Eva Clayton prevailed in CD 1 in 1998 and 2000, for instance, winning 62 percent and 66 percent of the vote, respectively. Pls.' Ex. 112. Indeed, African-American preferred candidates prevailed with remarkable consistency, winning at least 59 percent of the vote in each of the five general elections under the version of CD 1 created in 2001. Id. Representative G.K. Butterfield has represented that district since 2004. Id. Meanwhile, in CD 12, Congressman Mel Watt won every general election in CD 12 between 1992 and 2012. Id. He never received

less than 55.95 percent of the vote, gathering at least 64 percent in each election under the version of CD 12 in effect during the 2000s. Id.

No lawsuit was ever filed to challenge the benchmark 2001 version of CD 1 or CD 12 on VRA grounds. Trial Tr. 46:2-7, 47:4-7 (Blue).

C.

Following the census conducted April 1, 2010, leaders of the North Carolina House of Representatives and Senate independently appointed redistricting committees. Each committee was responsible for recommending a plan applicable to its own chamber, while the two committees jointly were charged with preparing a redistricting plan for the U.S. House of Representatives North Carolina districts. Senator Rucho and Representative Lewis were appointed chairs of the Senate and House Redistricting Committees, respectively, on January 27 and February 15, 2011. Parties' Joint Actual Stipulation, ECF No. 125 ¶ 3.

Senator Rucho and Representative Lewis were responsible for developing a proposed congressional map. Id. In Representative Lewis's words, he and Senator Rucho were "intimately involved" in the crafting of these maps. Pls.' Ex. 136 at 17:21–24 (Joint Committee Meeting July 21, 2011).

Senator Rucho and Representative Lewis engaged private redistricting counsel and a political consultant. Specifically, Senator Rucho and Representative Lewis engaged the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. ("Ogletree") as their private redistricting counsel. In December 2010, Ogletree engaged Dr. Thomas Hofeller, who served as redistricting coordinator for the Republican National Committee for the 1990, 2000, and 2010 redistricting cycles, to design and draw the 2011 Congressional Redistricting Plan under the direction of Senator Rucho and Representative Lewis. Trial Tr. 577:1-23; 587:14-25; 588:1-2 (Hofeller). Dr. Hofeller was the "principal architect" of the 2011 Congressional Redistricting Plan (as well as the state senate and house plans). Id. 586:13-15.

Senator Rucho and Representative Lewis were the sole sources of instruction for Dr. Hofeller regarding the design and construction of congressional maps. See Trial Tr. 589:3-19 (Hofeller). All such instructions were provided to Dr. Hofeller orally – there is no written record of the precise instructions Senator Rucho and Representative Lewis gave to Dr. Hofeller. Id. at 589:14-590:10. Dr. Hofeller never received instructions from any legislator other than Senator Rucho and Representative Lewis, never conferred with Congressmen Butterfield or Watt, and never conferred with the Legislative Black Caucus (or any of its individual members) with respect to the preparation of the

congressional maps. Trial Tr. 48:23-25; 49:1-5 (Blue); 588:3-589:13 (Hofeller). Representative Lewis did not make Dr. Hofeller available to answer questions for the members of the North Carolina Senate and House Redistricting Committees. Pls.' Ex. 136 at 23:3-26:3 (Joint Committee Meeting July 21, 2011).

Throughout June and July 2011, Senator Rucho and Representative Lewis released a series of public statements describing, among other things, the criteria that they had instructed Dr. Hofeller to follow in drawing the proposed congressional map. As Senator Rucho explained at the July 21, 2011, joint meeting of the Senate and House Redistricting Committees, those statements "clearly delineated" the "entire criteria" that were established and "what areas we were looking at that were going to be in compliance with what the Justice Department expected us to do as part of our submission." Id. at 29:2–9.

In their June 17, 2011, public statement, Senator Rucho and Representative Lewis highlighted one criterion in their redistricting plan:

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

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

Defs. Ex. 5.11 at 2 (emphasis added).

On July 1, 2011, Senator Rucho and Representative Lewis made public their first proposed congressional plan, entitled "Rucho-Lewis Congress," and issued a public statement. Pls.' Ex. 67. The plan was drawn by Dr. Hofeller and contained two majority-BVAP districts, namely CD 1 and CD 12. With regard to proposed CD 1, Senator Rucho and Representative Lewis stated that they had included a piece of Wake County (an urban county in which the state capital, Raleigh, is located) because the benchmark CD 1 was underpopulated by 97,500 people. Senator Rucho and Representative then added:

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

Pls.' Ex. 67 at 4.

With regard to CD 12, Senator Rucho and Representative Lewis noted that although the 2001 benchmark district was "not a Section 2 majority black district," there "is one county in the Twelfth District that is covered by Section 5 of the Voting

Rights Act (Guilford)." Pls.' Ex. 67 at 5. Therefore, "[b]ecause of the presence of Guilford County in the Twelfth District, we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District." Id.

On July 28, 2011, the general assembly enacted the congressional and legislative plans, which Dr. Hofeller had drawn at the direction of Senator Rucho and Representative Lewis. ECF No. 125 ¶ 5; see Session Law 2011-403 (July 28, 2011) (amended by curative legislation, Session Law 2011-414 (Nov. 7, 2011)). The number of majority-BVAP districts in the 2011 Congressional Redistricting Plan increased from zero to two when compared to the benchmark 2001 Congressional Redistricting Plan. The BVAP in CD 1 increased from 47.76 percent to 52.65 percent, and in CD 12 the BVAP increased from 43.77 percent to 50.66 percent. Pls.' Exs. 106-107.

Following the passage of the 2011 Congressional Redistricting Plan, the general assembly, on September 2, 2011, submitted the plan to the DOJ for preclearance under section 5 of the VRA. See Pls.' Ex. 74 at 10-11. On November 1, 2011, the DOJ precleared the 2011 Congressional Redistricting Plan.

D.

1.

Two sets of plaintiffs challenged the 2011 Congressional Redistricting Plan in state court for illegal racial gerrymandering. See N.C. Conference of Branches of the NAACP v. State of North Carolina, Amended Complaint (12/9/11), ECF No. 44 at Exs. 1-2; Dickson v. Rucho, Amended Complaint (12/12/11), ECF No. 4 at Exs. 3-4. A three-judge panel consolidated the two cases.

The state court held a two-day bench trial on June 5 and 6, 2013. See Dickson v. Rucho, J. and Mem. of Op. [hereinafter "State Court Opinion"], ECF No. 30 at Exs. 1-2. On July 8, 2013, the court issued a decision denying the plaintiffs' pending motion for summary judgment and entering judgment for the defendants. Id. The court acknowledged that the general assembly used race as the predominant factor in drawing CD 1. Nonetheless, applying strict scrutiny, the court concluded that North Carolina had a compelling interest in avoiding liability under the VRA, and that the districts had been narrowly tailored to avoid that liability. With regard to CD 12, the court held that race was not the driving factor in its creation, and therefore examined and upheld it under rational-basis review.

The state court plaintiffs appealed, and the North Carolina Supreme Court affirmed the trial court's judgment. Dickson v.

Rucho, 766 S.E.2d 238 (N.C. 2014). The U.S. Supreme Court, however, granted certiorari, vacated the decision, and remanded the case to the North Carolina Supreme Court for further consideration in light of Alabama Legislative Black Caucus v. Alabama, 135 S. Ct. 1257 (2015). On December 18, 2015, the North Carolina Supreme Court reaffirmed the trial court's judgment.

2.

Plaintiffs David Harris and Christine Bowser are U.S. citizens registered to vote in CD 1 or CD 12, respectively. Neither was a plaintiff in the state-court litigation.

Plaintiffs brought this action on October 24, 2013, alleging, among other things, that North Carolina used the VRA's section 5 preclearance requirements as a pretext to pack African–American voters into North Carolina's Congressional Districts 1 and 12 and reduce those voters' influence in other districts. Compl. ¶ 3, ECF No. 1.

Plaintiffs sought a declaratory judgment that North Carolina's Congressional Districts 1 and 12, as drawn in the 2011 Congressional Redistricting Plan, was a racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment. Id. ¶¶ 1, 6. Plaintiffs also sought to permanently enjoin the defendants from giving effect to the boundaries of the First and Twelfth Congressional Districts, including barring

the defendants from conducting elections for the U.S. House of Representatives based on the 2011-enacted First and Twelfth Congressional Districts. Id. at 19.

Because the plaintiffs' action "challeng[ed] the constitutionality of the apportionment of congressional districts" in North Carolina, 28 U.S.C. § 2284(a), the chief judge of the U.S. Court of Appeals for the Fourth Circuit granted the plaintiffs' request for a hearing by a three-judge court on October 18, 2013. ECF No. 16

A three-day bench trial began on October 13, 2015. After the bench trial, this Court ordered the parties to file post-trial briefs. The case is now ripe for consideration.

II.

"[A] State may not, absent extraordinary justification, . . . separate its citizens into different voting districts on the basis of race." Miller, 515 U.S. at 911-12 (internal quotations and citations omitted). A voting district is an unconstitutional racial gerrymander when a redistricting plan "cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification." Shaw I, 509 U.S. at 649.

In a racial gerrymander case, the "plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." Miller, 515 U.S. at 916. "To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." Id. Public statements, submissions, and sworn testimony by the individuals involved in the redistricting process are not only relevant but often highly probative. See, e.g., Bush v. Vera, 517 U.S. 952, 960-61 (1996) (examining the state's preclearance submission to the DOJ and the testimony of state officials).

Once plaintiffs establish race as the predominant factor, the Court applies strict scrutiny, and "the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." Miller, 515 U.S. at 920. If race did not predominate, then only rational-basis review applies.

For the reasons that follow, the Court finds that the plaintiffs have presented dispositive direct and circumstantial evidence that the legislature assigned race a priority over all other districting factors in both CD 1 and CD 12. There is strong evidence that race was the only nonnegotiable criterion and that traditional redistricting principles were subordinated to race. In fact, the overwhelming evidence in this case shows that a BVAP-percentage floor, or a racial quota, was established in both CD 1 and CD 12. And, that floor could not be compromised. See Shaw II, 517 U.S. at 907 ("Race was the criterion that, in the State's view, could not be compromised; respecting communities of interest and protecting Democratic incumbents came into play only after the race-based decision had been made."). A congressional district necessarily is crafted because of race when a racial quota is the single filter through which all line-drawing decisions are made, and traditional redistricting principles are considered, if at all, solely insofar as they did not interfere with this quota. Id. Accordingly, the Court holds that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." Miller, 515 U.S. at 916.

Because race predominated, the state must demonstrate that its districting decision is narrowly tailored to achieve a

compelling interest. Even if the Court assumes that compliance with the VRA is a compelling state interest, attempts at such compliance "cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application" of federal law. Id. at 921; see also Bush, 517 U.S. at 977. Thus, narrow tailoring requires that the legislature have a "strong basis in evidence" for its race-based decision, that is, "good reasons to believe" that the chosen racial classification was required to comply with the VRA. Alabama, 135 S. Ct. at 1274. Evidence of narrow tailoring in this case is practically nonexistent; the state does not even proffer any evidence with respect to CD 12. Based on this record, as explained below, the Court concludes that North Carolina's 2011 Congressional Redistricting Plan was not narrowly tailored to achieve compliance with the VRA, and therefore fails strict scrutiny.

A.

As with any law that distinguishes among individuals on the basis of race, "equal protection principles govern a State's drawing of congressional districts." Miller, 515 U.S. at 905. "Racial classifications with respect to voting carry particular dangers. 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. As such, "race-based districting by our state legislatures demands close judicial scrutiny." Id.

To trigger strict scrutiny, the plaintiffs first bear the burden of proving that race was not only one of several factors that the legislature considered in drawing CD 1 and CD 12, but that race "predominated." Bush, 517 U.S. at 963. Under this predominance test, a plaintiff must show that "the legislature subordinated traditional race-neutral districting principles . . . to racial considerations." Miller, 515 U.S. at 916; see also Alabama, 135 S. Ct. at 1271 ("[T]he 'predominance' question concerns which voters the legislature decides to choose, and specifically whether the legislature predominantly uses race as opposed to other, 'traditional' factors when doing so."). When a legislature has "relied on race in substantial disregard of customary and traditional districting principles," such traditional principles have been subordinated to race. Miller, 515 U.S. at 928 (O'Connor, J., concurring).

When analyzing the legislative intent underlying a redistricting decision, there is a "presumption of good faith that must be accorded legislative enactments." Id. at 916. This presumption "requires courts to exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." Id. Such restraint is

particularly warranted given the "complex interplay of forces that enter a legislature's redistricting calculus," id. at 915–16, making redistricting possibly "the most difficult task a legislative body ever undertakes," Smith v. Beasley, 946 F. Supp. 1174, 1207 (D.S.C. 1996). This presumption must yield, however, when the evidence shows that citizens have been assigned to legislative districts primarily based on their race. See Miller, 515 U.S. at 915–16.

1.

CD 1 presents a textbook example of racial predominance. There is an extraordinary amount of direct evidence – legislative records, public statements, instructions to Dr. Hofeller, the "principal architect" of the 2011 Congressional Redistricting Plan, and testimony – that shows a racial quota, or floor, of 50-percent-plus-one-person was established for CD 1. Because traditional districting criteria were considered, if at all, solely insofar as they did not interfere with this 50-percent-plus-one-person minimum floor, see Shaw II, 517 U.S. at 907, the quota operated as a filter through which all line-drawing decisions had to pass. As Dr. Hofeller stated, "[S]ometimes it wasn't possible to adhere to some of the traditional redistricting criteria in the creation of [CD 1]" because "the more important thing was to . . . follow the instructions that I ha[d] been given by the two chairmen [to

draw the district as majority-BVAP]." Trial Tr. 626:19-627:1 (Hofeller) (emphasis added). Indeed. The Court therefore finds that race necessarily predominates when, as here, "the legislature has subordinated traditional districting criteria to racial goals, such as when race is the single immutable criterion and other factors are considered only when consistent with the racial objective." Bethune-Hill v. Va. State Bd. of Elections, 14-cv-852, 2015 WL 6440332, at *63 (Oct. 22, 2015) (Keenan, J., dissenting) (citing Shaw II, 517 U.S. at 907).

a.

The legislative record is replete with statements indicating that race was the legislature's paramount concern in drawing CD 1. During legislative sessions, Senator Rucho and Representative Lewis made clear that CD 1 "[w]as required by Section 2" of the VRA to have a BVAP of at least 50 percent plus one person. See Pls.' Ex. 139 at 8:19-9:6 (July 25, 2011 Senate Testimony of Rucho) (CD 1 was "required by Section 2" of the VRA to contain a majority BVAP, and "must include a sufficient number of African-Americans so that [CD 1] can re-establish as a majority black district"); id. 17:23-25 (CD 1 "has Section 2 requirements, and we fulfill those requirements"); see also Pls.' Ex. 140, at 30:2-4 (July 27, 2011 House Testimony of Lewis) (Representative Lewis stating that CD 1 "was drawn with race as a consideration, as is required by the [VRA]"); Trial

Tr. 57:24-58:6 (Blue) (Senator Blue, describing conversation with Senator Rucho in which Senator Rucho explained "his understanding and his belief that he had to take [districts of less than 50 percent BVAP] all beyond 50 percent because Strickland informed him that that's what he's supposed to do"); Defs.' Ex. 100 at 29:2-7 (July 22, 2011, House Committee Tr. Lewis) ("In order to foreclose the opportunity for any Section 2 lawsuits, and also for the simplicity of this conversation, we elected to draw the VRA district at 50 percent plus one . . . .").

b.

The public statements released by Senator Rucho and Representative Lewis also reflect their legislative goal, stating that, to comply with section 2 of the VRA, CD 1 must be established with a BVAP of 50 percent plus one person. See, e.g., Defs.' Ex. 5.11 at 2 (June 17, 2011 Joint Public Statement); Pls.' Ex. 67 at 3-4 (July 1, 2011 Joint Public Statement); Pls.' Ex. 68 at 3 (July 19, 2011 Joint Public Statement). Further, in its preclearance submission to the DOJ, North Carolina makes clear that it purposefully set out to add "a sufficient number of African-American voters in order to" draw CD 1 "at a majority African-American level." Pls.' Ex. 74 at 12; see also id. at 13 ("Under the enacted version of District 1, the . . . majority African-American status of the

District is corrected by drawing the District into Durham County.").

c.

In light of this singular legislative goal, Senator Rucho and Representative Lewis, unsurprisingly, instructed Dr. Hofeller to treat CD 1 as a "voting rights district," Trial Tr. 478:25-479:11 (Hofeller), meaning that he was to draw CD 1 to exceed 50-percent BVAP. Id. 480:21-481:1 ("My understanding was I was to draw that 1st District with a black voting-age population in excess of 50 percent because of the Strickland case."); see also id. 573:1-6 (Dr. Hofeller's instructions were to draw CD 1 at "50 percent [BVAP] plus one person"); id. 610:3-8 ("[T]he instruction was to draw District 1 with a black VAP level of 50 percent or more."); id. 615:15-21 ("I received an instruction that said . . . that District 1 was a voting rights district."); id. 572:6-17 ("[T]he 1st District was drawn to be a majority minority district."); id. at 615:20–21 ("[B]ecause of the Voting Rights Act, [CD 1] was to be drawn at 50 percent plus."); id. 620:5-11 ("Once again, my instructions from the chairman of the two committees was because of the Voting Rights Act and because of the Strickland decision that the district had to be drawn at above 50 percent."); id. 620:17-20 (agreeing that his "express instruction" was to "draw CD 1 as 50 percent black voting-age population plus one").

The Court is sensitive to the fact that CD 1 was underpopulated; it is not in dispute that CD 1 was underpopulated by 97,500 people and that there were efforts to create districts with approximately equal population. While equal population objectives "may often prove 'predominant' in the ordinary sense of that word," the question of whether race predominated over traditional raced-neutral redistricting principles is a "special" inquiry: "It is not about whether a legislature believes that the need for equal population takes ultimate priority," but rather whether the legislature placed race above nonracial considerations in determining which voters to allocate to certain districts in order to achieve an equal population goal. Alabama, 135 S. Ct. at 1270-71.

To accomplish equal population, Dr. Hofeller intentionally included high concentrations of African-American voters in CD 1 and excluded less heavily African-American areas from the district. During cross-examination, Dr. Hofeller, in response to why he moved into CD 1 a part of Durham County that was "the heavily African-American part" of the county, stated, "Well, it had to be." Trial Tr. 621:3-622:19 (Hofeller); see id. 620:21-621:15; id. 640:7-10; see also Bush, 517 U.S. at 962 ("These findings – that the State substantially neglected traditional districting criteria such as compactness, that it was committed from the outset to creating majority-minority districts, and

that it manipulated district lines to exploit unprecedentedly detailed racial data – together weigh in favor of the application of strict scrutiny." (emphasis added)). Dr. Hofeller, after all, had to "make sure that in the end it all adds up correctly" – that is, that the "net result" was a majority-BVAP district. See Trial Tr. 621:3-622:19 (Hofeller); see also id. 620:21-621:15; id. 640:7-10.

Dr. Hofeller certainly "ma[de] sure that in the end it add[ed] up correctly." Id. 621:7. The BVAP substantially increased from 47.76 percent, the BVAP in CD 1 when the benchmark plan was enacted, to 52.65 percent, the BVAP under the 2011 Congressional Plan – an increase of nearly five percentage points. Pls.' Ex. 69 at 111. And, while Dr. Hofeller had discretion, conceivably, to increase the BVAP to as high as he wanted, he had no discretion to go below 50-percent-plus-one-person BVAP. See Trial Tr. 621:13-622:19 (Hofeller). This is the very definition of a racial quota.

d.

The Supreme Court's skepticism of racial quotas is longstanding. See generally J.A. Croson Co., 488 U.S. at 469 (minority set-aside program for construction contracts); Bakke, 438 U.S. at 265 (higher education admissions). The Court, however, has yet to decide whether use of a racial quota in a legislative redistricting plan or, in particular, use of such a

quota exceeding 50 percent, establishes predominance as a matter of law under Miller.[2] See Bush, 517 U.S. at 998 (Kennedy, J., concurring) (reserving the question). But see League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 517 (2006) (Scalia, J., concurring in the judgment in part and dissenting in part) ("[W]hen a legislature intentionally creates a majority-minority district, race is necessarily its predominant motivation and strict scrutiny is therefore triggered.").[3] The Court recently has cautioned against "prioritizing mechanical racial targets above all other districting criteria" in redistricting. Alabama, 135 S. Ct. at 1267, 1272–73. Although the Court in Alabama did not decide whether the use of a racial quota exceeding 50 percent, standing alone, can establish predominance as a matter of law, the Court made clear that such "mechanical racial targets" are highly suspicious. Id. at 1267.

There is "strong, perhaps overwhelming" direct evidence in this case that the general assembly "prioritize[ed] [a] mechanical racial target[] above all other districting criteria" in redistricting. See id. at 1267, 1272–73. In order to

[2] This Court need not reach this question because there is substantial direct evidence that traditional districting criteria were considered, if at all, solely insofar as they did not interfere with this 50-percent-plus-one-person quota.

[3] Chief Justice Roberts, Justice Thomas, and Justice Alito appear to agree with Justice Scalia's statement. Id.

achieve the goal of drawing CD 1 as a majority-BVAP district, Dr. Hofeller not only subordinated traditional race-neutral principles but disregarded certain principles such as respect for political subdivisions and compactness. See Stephenson v. Bartlett, 562 S.E. 2d 377, 385-89 (N.C. 2002) (recognizing "the importance of counties as political subdivisions of the State of North Carolina" and "observ[ing] that the State Constitution's limitations upon redistricting and apportionment uphold what the United States Supreme Court has termed 'traditional districting principles' . . . such as 'compactness, contiguity, and respect for political subdivisions'" (quoting Shaw I, 509 U.S. at 647)).

Dr. Hofeller testified that he would split counties and precincts when necessary to achieve a 50-percent-plus-one-person BVAP in CD 1. Trial Tr. 629:17-629:24 (Hofeller); see also Pls.' Ex. 67 at 7 (July 1, 2011 Joint Public Statement) ("Most of our precinct divisions were prompted by the creation of Congressman Butterfield's majority black First Congressional District."). Dr. Hofeller further testified that he did not use mathematical measures of compactness in drawing CD 1. Pls.' Ex. 129 (Hofeller Dep. 44:19-45:12). Had he done so, Dr. Hofeller would have seen that the 2011 Congressional Redistricting Plan reduced the compactness of CD 1 significantly. Pls.' Ex. 17, Table 1; see also Trial Tr. 689:22-690:1-11 (Ansolabehere).

Apparently seeing the writing on the wall, the defendants make the passing argument that the legislature configured CD 1 to protect the incumbent and for partisan advantage.[4] Defs.' Findings of Fact, ECF No. 138 at 74. The defendants, however, proffer no evidence to support such a contention. Id. There is nothing in the record that remotely suggests CD 1 was a political gerrymander, or that CD 1 was drawn based on political data. Compare Trial Tr. 479:4-479:22 (Hofeller) ("Congressional District 1 was considered by the chairs to be a voting rights district . . . so it had to be drawn in accordance with the fact that it needed to be passed through . . . Section 2 and also Section 5."); with id. ("[M]y instructions from the two chairmen were to treat the 12th District as . . . a political [district]."). It cannot seriously be disputed that the predominant focus of virtually every statement made, instruction given, and action taken in connection with the redistricting effort was to draw CD 1 with a BVAP of 50 percent plus one person to comply with the VRA. See, e.g., Trial Tr. 479:4-479:22 (Hofeller).

[4] The defendants have suggested that CD 1's configuration was necessary to add voters to the district to equalize population. Defs.' Findings of Fact, ECF No. 138 at 74. As discussed earlier, Alabama squarely forecloses this argument as a matter of law, holding that "an equal population goal is not one factor among others to be weighed against the use of race to determine whether race predominates." 135 S. Ct. at 1270.

e.

Even if the Court assumes, arguendo, that this is a "mixed-motive suit" - in which a state's conceded goal of "produc[ing] majority-minority districts" is accompanied by "other goals, particularly incumbency protection" - race can be the predominant factor in the drawing of a district without the districting revisions being "purely race-based." Bush, 517 U.S. at 959 (emphasis omitted). Indeed, the Supreme Court has observed that "partisan politicking" may often play a role in a state's redistricting process, but the fact "[t]hat the legislature addressed these interests [need] not in any way refute the fact that race was the legislature's predominant consideration." Shaw II, 517 U.S. at 907; see also Alabama, 135 S. Ct. at 1271 (remanding to trial court to determine whether race predominated even though "preserving the core of the existing district, following county lines, and following highway lines played an important boundary-drawing role"); Bush, 517 U.S. at 962 (finding predominant racial purpose where state neglected traditional districting criteria such as compactness, committed itself to creating majority-minority districts, and manipulated district lines based on racial data); Clark v. Putnam Cnty., 293 F.3d 1261, 1270 (11th Cir. 2002) ("[The] fact that other considerations may have played a role in . . . redistricting does not mean that race did not predominate.").

As the Supreme Court has explained, traditional factors have been subordinated to race when "[r]ace was the criterion that, in the State's view, could not be compromised," and when traditional, race-neutral criteria were considered "only after the race-based decision had been made." Shaw II, 517 U.S. at 907. When a legislature has "relied on race in substantial disregard of customary and traditional districting practices," such traditional principles have been subordinated to race. Miller, 515 U.S. at 928 (O'Connor, J., concurring). Here, the record is unequivocally clear: the general assembly relied on race – the only criterion that could not be compromised – in substantial disregard of traditional districting principles. See, e.g., Trial Tr. 626:19-627:1 (Hofeller).

Moreover, because traditional districting criteria were considered, if at all, solely insofar as they did not interfere with this 50-percent-plus-one-person minimum floor, see Shaw II, 517 U.S. at 907, the quota operated as a filter through which all line-drawing decisions had to pass. Such a racial filter had a discriminatory effect on the configuration of CD 1 because it rendered all traditional criteria that otherwise would have been "race-neutral" tainted by and subordinated to race. Id. For these reasons, the Court holds that the plaintiffs have established that race predominated in the legislative drawing of

CD 1, and the Court will apply strict scrutiny in examining the constitutionality of CD 1.

2.

CD 12 presents a slightly more complex analysis than CD 1 as to whether race predominated in redistricting. Defendants contend that CD 12 is a purely political district and that race was not a factor even considered in redistricting. Nevertheless, direct evidence indicating racial predominance combined with the traditional redistricting factors' complete inability to explain the composition of the new district rebut this contention and leads the Court to conclude that race did indeed predominate in CD 12.

a.

While not as robust as in CD 1, there is nevertheless direct evidence supporting the conclusion that race was the predominant factor in drawing CD 12. Public statements released by Senator Rucho and Representative Lewis reflect this legislative goal. In their June 17, 2011, statement, for example, Senator Rucho and Representative Lewis provide,

> In creating new majority African American districts, we are obligated to follow . . . the decisions by the North Carolina Supreme Court and the United States Supreme Court . . . . Under the[se] decisions, districts created to comply with section 2 of the Voting Rights Act, must be created with a "Black Voting Age Population" ("BVAP"), as reported by the Census, at the level of at

> least 50% plus one. Thus, in constructing VRA majority black districts, the Chairs recommend that, where possible, these districts be drawn at a level equal to at least 50% plus one "BVAP."

Defs.' Ex. 5.11 at 2 (emphasis added). This statement describes not only the new CD 1, as explained above, but clearly refers to multiple districts that are now majority minority. This is consistent with the changes to the congressional map following redistricting: the number of majority-BVAP districts in the 2011 plan, compared to the benchmark 2001 plan, increased from zero to two, namely CD 1 and CD 12. Tr. 59:25-60:6 (Blue). The Court cannot conclude that this statement was the result of happenstance, a mere slip of the pen. Instead, this statement supports the contention that race predominated.

The public statement issued July 1, 2011, further supports this objective. There, Senator Rucho and Representative Lewis stated, "Because of the presence of Guilford County in the Twelfth District [which is covered by section 5 of the VRA], we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District." Pls.' Tr. Ex. 67 at 5 (emphasis added). As explained, section 5 was intended to prevent retrogression; to ensure that such result was achieved, any change was to be precleared so that it did "not have the purpose and [would] not have the effect of denying

or abridging the right to vote on account of race or color." Beer, 425 U.S. at 131-33. Despite the fact that nothing in section 5 required the creation of a majority-minority district in CD 12,[5] this statement indicates that it was the intention in redistricting to create such a district—it was drawn at a higher BVAP than the previous version. This statement does not simply "show[] that the legislature considered race, along with other partisan and geographic considerations," Cromartie II, 532 U.S. at 253; instead, reading the text in its ordinary meaning, the statement evinces a level of intentionality in the decisions regarding race. The Court will again decline to conclude that it was purely coincidental that the district was now majority BVAP after it was drawn.

Following the ratification of the revised redistricting plan, the North Carolina General Assembly and attorney general submitted the plan to the DOJ for preclearance under section 5. Pls.' Ex. 74. The submission explains,

> One of the concerns of the Redistricting Chairs was that in 1992, the Justice Department had objected to the 1991 Congressional Plan because of a failure by the state to create a second majority minority district combining the African-American community in Mecklenburg County with African-American and Native American voters residing in south central and southeastern North Carolina.

[5] See infra Part II.B.

Id. at 14. The submission further explains that Congressman Watt did not believe that African-American voters in Mecklenburg County were politically cohesive with Native American voters in southeastern North Carolina. Id. The redistricting committee accordingly drew the new CD 12 based on these considerations, id. at 15, including DOJ's 1992 concern that a new majority-minority district be created—a concern that the U.S. Supreme Court handily rejected in Miller, when it repudiated the maximization policy, see 515 U.S. at 921–24. The discussion of CD 12 in the DOJ submission concludes, "Thus, the 2011 version maintains, and in fact increases, the African-American community's ability to elect their candidate of choice in District 12." Pls.' Ex. 74 at 15. Given the express concerns of the redistricting committee, the Court will not ascribe the result to mere coincidence and instead finds that the submission supports race predominance in the creation of CD 12.

b.

In addition to the public statements issued, Congressman Watt testified at trial that Senator Rucho himself told Congressman Watt that the goal was to increase the BVAP in CD 12 to over 50 percent. Congressman Watt testified that Senator Rucho said "his leadership had told him that he had to ramp up the minority percentage in [the Twelfth] Congressional District up to over 50 percent to comply with the Voting Rights Law."

Trial Tr. 108:23-109:1 (Watt). Congressman Watt sensed that Senator Rucho seemed uncomfortable discussing the subject "because his leadership had told him that he was going to have to go out and justify that [redistricting goal] to the African-American community." Id. at 109:2-3; see also id. at 136:5-9 ("[H]e told me that his leadership had told him that they were going to ramp -- or he must ramp up these districts to over 50 percent African-American, both the 1st and the 12th, and that it was going to be his job to go and convince the African-American community that that made sense.").

Defendants argue that Senator Rucho never made such statements to Congressman Watt, citing Senator Rucho and Congresswoman Ruth Samuelson's testimony in the Dickson trial. Defs.' Proposed Findings of Fact, ECF No. 138, at 40 (citing Dickson Tr. 358, 364). Nevertheless, after submitting Congressman Watt to thorough and probing cross-examination about the specifics of the content and location of this conversation, the defendants declined to call Senator Rucho or Congresswoman Samuelson to testify, despite both being listed as defense witnesses and being present throughout the trial. The Court is thus somewhat crippled in its ability to assess either Senator Rucho or Congresswoman's Samuelson's credibility as to their claim that Senator Rucho never made such statements. Based on its ability to observe firsthand Congressman Watt and his

consistent recollection of the conversation between him and Senator Rucho, the Court credits his testimony and finds that Senator Rucho did indeed explain to Congressman Watt that the legislature's goal was to "ramp up" CD 12's BVAP.

And, make no mistake, the BVAP in CD 12 was ramped up: the BVAP increased from 43.77 percent to 50.66 percent. Pls.' Exs. 106-107. This correlates closely to the increase in CD 1. Such a consistent and whopping increase makes it clear that the general assembly's predominant intent regarding district 12 was also race.

c.

The shape of a district is also relevant to the inquiry, as it "may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." Miller, 515 U.S. at 913. CD 12 is a "serpentine district [that] has been dubbed the least geographically compact district in the Nation." Shaw II, 517 U.S. at 906.

Under the benchmark 2001 plan, CD 12 had a Reock score[6] of .116, the lowest in the state by far. Pls.' Ex. 17, Expert

[6] The Reock score is "a commonly used measure of compactness that is calculated as the ratio of the area of a district to the area of the smallest inscribing circle of a district." Pls.'

Report of Stephen Ansolabehere, at 22. Under the new plan, the Reock score of CD 12 decreased to .071, remaining the lowest in the state by a good margin. Id. A score of .071 is low by any measure. At trial, Dr. Ansolabehere testified that a score of .2 "is one of the thresholds that [is] commonly use[d] . . . one of the rules of thumb" to say that a district is noncompact. Trial Tr. 354:8-13.

Defendants do not disagree. At trial, Dr. Hofeller testified that in redrawing CD 12, he made the district even less compact. Id. 658:3-5; see also id. at 528:1 (Hofeller) ("I have no quarrel whatsoever with [Ansolabehere's] Reock scores."); id. at 656:20-21 (Hofeller) ("When I calculated the Reock scores, I got the same scores he did. So, obviously, we're in agreement."). And importantly, Dr. Hofeller did not "apply the mathematical measures of compactness to see how the districts were holding up" as he was drawing them. Pls.' Ex. 129 (Hofeller Dep. 45:3-7). Nevertheless, Dr. Hofeller opined that "District 12's compactness was in line with former versions of District 12 and in line with compactness as one would understand it in the context of North Carolina redistricting . . . ." Id. (Hofeller Dep. 45:20-23). While he did not recall

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Ex. 17, Expert Report of Stephen Ansolabehere, at 5. As "[t]he circle is the most compact geometric shape," the Reock score of a perfect square "would be the ratio of the area of a square to the area of its inscribing circle, or .637." Id. n.1.

any specific instructions as to compactness, he was generally "to make plans as compact as possible with the goals and policies of the entire plan," id. (Hofeller Dep. 44:25-45:2)—that is, as the defendants claim, to make the state more favorable to Republican interests, a contention to which the Court now turns.

d.

Defendants claim that politics, not race, was the driving factor behind the redistricting in CD 12. The goal, as the defendants portray it, was to make CD 12 an even more heavily Democratic district and make the surrounding counties better for Republican interests. This goal would not only enable Republican control but also insulate the plan from challenges such as the instant one. See Cromartie II, 532 U.S. at 258; Cromartie I, 526 U.S. at 551-52 ("Evidence that blacks constitute even a supermajority in one congressional district while amounting to less than a plurality in a neighboring district will not, by itself, suffice to prove that a jurisdiction was motivated by race in drawing its district lines when the evidence also shows a high correlation between race and party preference.").

Dr. Hofeller testified to this singular aim time and again at trial: "My instructions from the two chairman [Senator Rucho and Congressman Lewis] were to treat District 12 as a political

district and to draw it using political data and to draw it in such a manner that it favorably adjusted all of the surrounding districts." Trial Tr. 495:12-15 (Hofeller); see also, e.g., id. 479:20-22 ("So my instructions from the two chairmen were to treat the 12th District exactly as it has been treated by the Democrats in 1997 and 2001 as a political draw."); id. 496:10-13, 15-22 ("It really wasn't about -- totally about the 12th District. It was about what effect it was having on the surrounding districts. . . . [T]he 6th District needed to be made better for Republican interests by having more Democratic votes removed from it, whereas the 5th District had a little more strength in it and could take on some additional Democratic areas in -- into it in Forsyth County.").

Dr. Hofeller testified that he complied with Senator Rucho and Representative Lewis's instructions and did not look at race at all when creating the new districts. Using Maptitude,[7] Dr. Hofeller provided, "On the screen when I was drawing the map was the Obama/McCain race shaded in accordance with the two-party vote, which excluded the minor party candidates, and that was the sole thematic display or numeric display on the screen except for one other thing, and that was the population of the precinct because of one person, one vote," id. 526:3-8

[7] Software commonly used in redistricting. Trial Tr. 343:14 (Ansolabehere).

(Hofeller); see also id. at 496:4-5 ("[T]he thematic was based on the two-party presidential vote in 2008 Obama versus McCain."); id. at 662:1-17 (stating that only one set of election results can be on the screen at a time and that the only results Dr. Hofeller had on his screen were the 2008 Obama election results). Hofeller testified that it was only after the fact that he considered race and what impact it may or may not have had. Id. at 644:24–45:1 ("[W]hen we checked it, we found out that we did not have an issue in Guilford County with fracturing the black community.").

Despite the defendants' protestations, the Court is not persuaded that the redistricting was purely a politically driven affair. Parts of Dr. Hofeller's own testimony belie his assertions that he did not consider race until everything was said and done. At trial, he testified that he was "aware of the fact that Guilford County was a Section 5 county" and that he "was instructed [not] to use race in any form except perhaps with regard to Guilford County." Id. at 608:23–24, 644:12-13 (emphasis added). Dr. Hofeller also testified in his deposition that race was a more active consideration: "[I]n order to be cautious and draw a plan that would pass muster under the Voting Rights Act, it was decided to reunite the black community in Guilford County into the Twelfth." Pls.' Ex. 129 (Hofeller Dep. 75:13-16); see id. (Hofeller Dep. 37:7-16) ("[M]y understanding

of the issue was because Guilford was a Section 5 county and because there was a substantial African-American population in Guilford County, that if the portion of the African-American community was in the former District 13 . . . which was a strong Democratic district was not attached to another strong Democratic district [and] that it could endanger the plan and make a challenge to the plan.").[8]

Moreover, Senator Rucho and Representative Lewis themselves attempted to downplay the "claim[] that [they] have engaged in extreme political gerrymandering." Pls.' Ex. 68 at 1. In their joint statement published July 19, 2011, they assert that these claims are "overblown and inconsistent with the facts." Id. The press release continues to explain how Democrats maintain a majority advantage in three districts and a plurality advantage in the ten remaining districts. Id. at 2. This publication serves to discredit their assertions that their sole focus was to create a stronger field for Republicans statewide.

That politics not race was more of a post-hoc rationalization than an initial aim is also supported by a series of emails presented at trial. Written by counsel for

[8] Moreover, Dr. Hofeller's assertion that he, the "principal architect," considered no racial data when drawing the maps rings a somewhat hollow when he previously served as the staff director to the U.S. House Subcommittee on the Census leading up to the 2000 census. See Defs.' Ex. 129, Hofeller Resume, at 6.

Senator Rucho and Representative Lewis during the redistricting, the first email, dated June 30, 2011, was sent to Senator Rucho, Representative Lewis, Dr. Hofeller, and others involved in the redistricting effort, providing counsel's thoughts on a draft public statement "by Rucho and Lewis in support of proposed 2011 Congressional Plan." See Pls.' Ex. 13. "Here is my best efforts to reflect what I have been told about legislative intent for the congressional plans. Please send me your suggestions and I will circulate a revised version for final approval by [Senator Rucho] and [Representative Lewis] as soon as possible tomorrow morning," counsel wrote. Id. In response, Brent Woodcox, redistricting counsel for the general assembly, wrote, "I do think the registration advantage is the best aspect to focus on to emphasize competitiveness. It provides the best evidence of pure partisan comparison and serves in my estimation as a strong legal argument and easily comprehensible political talking point." Id. Unlike the email at issue in Cromartie II, which did not discuss "the point of the reference" to race, Cromartie II, 532 U.S. at 254, this language intimates that the politics rationale on which the defendants so heavily rely was more of an afterthought than a clear objective.

This conclusion is further supported circumstantially by the findings of the plaintiffs' experts, Drs. Peterson and Ansolabehere. At trial, Dr. Peterson opined that race "better

accord[ed] with" the boundary of CD 12 than did politics, based on his "segment analysis." Trial Tr. 211:21-24 (Peterson); see id. 220:16-18, 25. This analysis looked at three different measures of African-American racial representation inside and outside of the boundary of CD 12, and four different measures of representations of Democrats for a total of twelve segment analyses. Id. at 213:24-214:2, 219:5, 9-11. Four of the twelve studies supported the political hypothesis; two support both hypotheses equally; while six support the race hypothesis—"and in each of these six, the imbalance is more pronounced than in any of the four studies favoring the Political Hypothesis." Pls.' Ex. 15, Second Aff. of David W. Peterson Ph.D., at 6; see also Trial Tr. 219-20 (Peterson).

Using different methods of analysis, Dr. Ansolabehere similarly concluded that the new districts had the effect of sorting along racial lines and that the changes to CD 12 from the benchmark plan to the Rucho-Lewis plan "can be only explained by race and not party." Trial Tr. 314, 330:10-11.

Defendants argue that these findings are based on a theory the Supreme Court has rejected—that is, Dr. Ansolabehere used only party registration in his analysis, and the Supreme Court has found that election results are better predictors of future voting behavior. Defs.' Findings of Fact, ECF No. 128, at 79 (citing Cromartie I and II). But Dr. Ansolabehere stated that

he understood the Supreme Court's finding and explained why in this situation he believed that using registration data was nonetheless preferable: registration data was a good indicator of voting data and it "allowed [him] to get down to [a deeper] level of analysis." Trial Tr. 309:7-8, 349:2-3 (Ansolabehere). Moreover, Defendants themselves appear to have considered registration data at some point in the redistricting process: in their July 19, 2011, statement, Senator Rucho and Representative Lewis consider the numbers of registered Democrats, Republicans, and unaffiliated voters across all districts. Pls.' Ex. 68 at 2.

While both studies produce only circumstantial support for the conclusion that race predominated, the plaintiffs were not limited to direct evidence and were entitled to use "direct or circumstantial evidence, or a combination of both." Cromartie I, 526 U.S. at 547; see also id. at 546 ("The task of assessing a jurisdiction's motivation, however, is not a simple matter; on the contrary, it is an inherently complex endeavor, one requiring the trial court to perform a 'sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'" (quoting Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266 (1977))). The defendants' argument that Dr. Peterson's analysis is "of little to no use" to the Court, as he "did not and could not conclude" that race

predominated, Defs.' Proposed Findings of Fact, ECF No. 138, at 77 (emphasis omitted), is unavailing in this regard.

The defendants contend that, to show that race predominated, the plaintiffs must show "alternative ways" in which "the legislature could have achieved its legitimate political objectives" that were more consistent with traditional districting principles and that resulted in a greater racial balance. Cromartie II, 532 U.S. at 258; see Defs.' Proposed Findings of Fact, ECF No. 138, at 62. The Supreme Court, however, limited this requirement to "a case such as [the one at issue in Cromartie II]," id.—that is, a case in which "[t]he evidence taken together . . . [did] not show that racial considerations predominated," id. Here, the evidence makes abundantly clear that race, although generally highly correlative with politics, did indeed predominate in the redistricting process: "the legislature drew District 12's boundaries because of race rather than because of political behavior." Id. Redistricting is inherently a political process; there will always be tangential references to politics in any redistricting—that is, after all, the nature of the beast. Where, like here, at the outset district lines were admittedly drawn to reach a racial quota, even as political concerns may have been noted at the end of the process, no "alternative" plans are required.

e.

In light of all of the evidence, both direct and circumstantial, the Court finds that race predominated in the redistricting of CD 12. Traditional redistricting principles such as compactness and contiguity were subordinated to this goal. Moreover, the Court does not find credible the defendants' purported rationale that politics was the ultimate goal. To find that otherwise would create a "magic words" test that would put an end to these types of challenges. See Dickson v. Rucho, No. 201PA12, 2015 WL 9261836, at *53 (N.C. Dec. 18, 2015) (Beasley, J., dissenting) ("To justify this serpentine district, which follows the I–85 corridor between Mecklenburg and Guilford Counties, on partisan grounds allows political affiliation to serve as a proxy for race and effectively creates a "magic words" test for use in evaluating the lawfulness of this district.") To accept the defendants' explanation would "create[] an incentive for legislators to stay "on script" and avoid mentioning race on the record." Id. The Court's conclusion finds support in light of the defendants' stated goal with respect to CD 1 to increase the BVAP of the district to 50 percent plus one person, the result of which is consistent with the changes to CD 12.

B.

The fact that race predominated when the legislature devised CD 1 an CD 12, however, does not automatically render the districts constitutionally infirm. Rather, if race predominates, strict scrutiny applies, but the districting plan can still pass constitutional muster if narrowly tailored to serve a compelling governmental interest. Miller, 515 U.S. at 920. While such scrutiny is not necessarily "strict in theory, but fatal in fact," Johnson v. California, 543 U.S. 499, 514 (2005), the state must establish the "most exact connection between justification and classification." Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 720 (2007).

The Court's strict-scrutiny analysis for CD 12 is straightforward. The defendants completely fail to provide this Court with a compelling state interest for the general assembly's use of race in drawing CD 12. Accordingly, because the defendants bear the burden of proof to show that CD 12 was narrowly tailored to further a compelling interest, and the defendants failed to carry that burden, the Court concludes that

CD 12 is an unconstitutional racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment.[9]

The defendants do, however, point to two compelling interests for CD 1: the interest in avoiding liability under the "results" test of VRA section 2(b) and the "nonretrogression" principle of VRA section 5. Although the Supreme Court has yet to decide whether VRA compliance is a compelling state interest, it has assumed as much for the purposes of subsequent analyses. See, e.g., Shaw II, 517 U.S. at 915 ("We assume, arguendo, for the purpose of resolving this suit, that compliance with § 2 [of the VRA] could be a compelling interest. . . ."); Bush, 517 U.S. at 977 ("[W]e assume without deciding that compliance with the results test [of the VRA] . . . can be a compelling state interest."). The Court, therefore, will assume, arguendo, that compliance with the VRA is a compelling state interest. Even with the benefit of that assumption, the 2011 Congressional Redistricting Plan does not survive strict scrutiny because the defendants did not have a "strong basis in evidence" for concluding that creation

[9] Even assuming, arguendo, that there was a compelling interest under the VRA, the Court finds, for principally the same reasons discussed in its analysis of CD 1, that the defendants did not have a "strong basis in evidence" for concluding that creation of a majority-minority district – CD 12 - was reasonably necessary to comply with the VRA. Alabama, 135 S. Ct. at 1274.

of a majority-minority district – CD 1 - was reasonably necessary to comply with the VRA. Alabama, 135 S. Ct. at 1274. Accordingly, the Court holds that CD 1 was not narrowly tailored to achieve compliance with the VRA, and therefore fails strict scrutiny.

1.

a.

"The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." Thornburg v. Gingles, 478 U.S. 30, 47 (1986). Section 2 of the VRA forbids state and local voting procedures that "result[ ] in a denial or abridgement of the right of any citizen of the United States to vote on account of race[.]" 52 U.S.C. § 10301(a). "Vote dilution claims involve challenges to methods of electing representatives - like redistricting or at-large districts - as having the effect of diminishing minorities' voting strength." League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 239 (4th Cir. 2014); see also Shaw II, 517 U.S. at 914 ("Our precedent establishes that a plaintiff may allege a § 2 violation . . . if the manipulation of districting lines fragments politically cohesive minority voters among several districts or packs them into one district or a

small number of districts, and thereby dilutes the voting strength of members of the minority population.").

The question of voting discrimination vel non, including vote dilution, is determined by the totality of the circumstances. Gingles, 478 U.S. at 43-46. Under Gingles, however, the Court does not reach the totality-of-the-circumstances test unless the challenging party is able to establish three preconditions. Id. at 50-51; see also Bartlett v. Strickland, 556 U.S. 1, 21 (2009) ("[T]he Gingles requirements are preconditions, consistent with the text and purpose of § 2, to help courts determine which claims could meet the totality-of-the-circumstances standard for a § 2 violation."); Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ., 4 F.3d 1103, 1135 (3d Cir. 1993) ("[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three Gingles factors but still have failed to establish a violation of § 2 under the totality of circumstances.").

Unlike cases such as Gingles, in which minority groups use section 2 as a sword to challenge districting legislation, here the Court is considering the general assembly's use of section 2 as a shield. The general assembly, therefore, must have a "strong basis in evidence" for finding that the threshold conditions for section 2 liability are present: "first, 'that

[the minority group] is sufficiently large and geographically compact to constitute a majority in a single member district'; second, 'that [the minority group] is politically cohesive'; and third, 'that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.'" Growe v. Emison, 507 U.S. 25, 40 (1993) (quoting Gingles, 478 U.S. at 50–51). A failure to establish any one of the Gingles factors is fatal to the defendants' claim. Gingles, 478 U.S. at 50–51; see also Overton v. City of Austin, 871 F.2d 529, 538 (5th Cir. 1989). For the reasons stated below, the Court finds that the defendants fail to show the third Gingles factor, that the legislature had a "strong basis in evidence" of racially polarized voting in CD 1 significant enough that the white majority routinely votes as a bloc to defeat the minority candidate of choice.

b.

"[R]acial bloc voting . . . never can be assumed, but specifically must be proved." Shaw I, 509 U.S. at 653. Generalized assumptions about the "prevalence of racial bloc voting" do not qualify as a "strong basis in evidence." Bush, 517 U.S. at 994 (O'Connor, J., concurring). Moreover, the analysis must be specific to CD 1. See Alabama, 135 S. Ct. at 1265. Thus, evidence that racially polarized voting occurs in pockets of other congressional districts in North Carolina does

not suffice. The rationale behind this principle is clear: simply because "a legislature has strong basis in evidence for concluding that a § 2 violation exists [somewhere] in the State" does not permit it to "draw a majority-minority district anywhere [in the state]." Shaw II, 517 U.S. at 916–17 ("[The argument] that the State may draw the district anywhere derives from a misconception of the vote-dilution claim. To accept that the district may be placed anywhere implies that the claim, and hence the coordinate right to an undiluted vote (to cast a ballot equal among voters), belongs to the minority as a group and not to its individual members. It does not.").

Strikingly, there is no evidence that the general assembly conducted or considered any sort of a particularized polarized-voting analysis during the 2011 redistricting process for CD 1. Dr. Hofeller testified that he did not do a polarized voting analysis for CD 1 at the time he prepared the map. Trial Tr. 639:21-25 (Hofeller). Further, there is no evidence "'that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate.'" Growe, 507 U.S. at 40 (quoting Gingles, 478 U.S. at 51). In fact, based on the defendants' own admission, "African American voters have been able to elect their candidates of choice in the First District since the district was established in 1992." Defs.' Memo. of Law in Opp. to Pls.' Mot. for Sum. J. (June 23, 2014),

ECF No. 76, at 2, 8. This admission, in the Court's view, ends the inquiry. In the interest of completeness, the Court will comment on an argument the defendants' counsel made at trial and in their posttrial brief.

The defendants contend that there is some evidence that the general assembly considered "two expert reports" that "found the existence of racially polarized voting in" North Carolina. Defs.' Findings of Fact, ECF No. 138 at 93. These generalized reports, standing alone, do not constitute a "strong basis in evidence" that the white majority votes as a bloc to defeat the minority's preferred candidate of choice in CD 1. Moreover, it is not enough for the general assembly to simply nod to the desired conclusion by claiming racially polarized voting showed that African-Americans needed the ability to elect candidates of their choice without asserting the existence of a necessary premise: that the white majority was actually voting as a bloc to defeat the minority's preferred candidates. See, e.g., Rodriguez v. Pataki, 308 F. Supp. 2d 346, 438-39 (S.D.N.Y. 2004) (rejecting an "analysis [that] examines racially polarized voting without addressing the specifics of the third Gingles factor, which requires white majority bloc voting that usually defeats the [minority]-preferred candidate" and noting that "[e]ven if there were racially polarized voting, the report does not speak—one way or the other—to the effects of the polarized

voting"), aff'd, 543 U.S. 997 (2004); Moon v. Meadows, 952 F. Supp. 1141, 1149-50 (E.D. Va. 1997) (state could not justify redistricting plan under section 2 where "white bloc voting does not prevent blacks from electing their candidates of choice" as "black candidates . . . were elected despite the absence of a black majority district"). "Unless [this] point[] [is] established, there neither has been a wrong nor can be a remedy." Growe, 507 U.S. at 40.

Contrary to the defendants' unfounded contentions, the composition and election results under earlier versions of CD 1 vividly demonstrate that, though not previously a majority-BVAP district, the white majority did not vote as a bloc to defeat African-Americans' candidate of choice. In fact, precisely the opposite occurred in these two districts: significant crossover voting by white voters supported the African-American candidate. See Strickland, 556 U.S. at 24 ("In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third Gingles precondition – bloc voting by majority voters" and thus "[i]n those areas majority-minority districts would not be required in the first place").[10] The

[10] The defendants' reliance on Strickland is misplaced. A plurality in Strickland held that section 2 did not require states to draw election-district lines to allow a racial minority that would make up less than 50 percent of the voting age population in the new district to join with crossover voters

suggestion that the VRA would somehow require racial balkanization where, as here, citizens have not voted as racial blocs, where crossover voting has naturally occurred, and where a majority-minority district is created in blatant disregard for fundamental redistricting principles is absurd and stands the VRA on its head. As the defendants fail to meet the third Gingles factor, the Court concludes that section 2 did not require the defendants to create a majority-minority district in CD 1.

2.

Turning to consider the defendants' section 5 defense, the Supreme Court has repeatedly struck down redistricting plans that were not narrowly tailored to the goal of avoiding "'a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.'" Bush, 517 U.S. at 983 (quoting Miller, 515 U.S. at 926); see also Shaw II, 517 U.S. at 915–18 (concluding that districts were not

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to elect the minority's candidate of choice. 556 U.S. at 25 (plurality). That is, section 2 does not compel the creation of crossover districts wherever possible. This is a far cry from saying that states must create majority-BVAP districts wherever possible - in fact, the case stands for the opposite proposition: "Majority-minority districts are only required if all three Gingles factors are met and if § 2 applies based on a totality of the circumstances." Id. at 24 (emphasis added). As extensively discussed, the general assembly did not have a "strong basis in evidence" to conclude that the threshold conditions for section 2 liability were present.

narrowly tailored to comply with the VRA). Indeed, "the [VRA] and our case law make clear that a reapportionment plan that satisfies § 5 still may be enjoined as unconstitutional," as section 5 does not "give covered jurisdictions carte blanche to engage in racial gerrymandering in the name of nonretrogression." Shaw I, 509 U.S. at 654–55. "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." Id. Applying that principle below, it is clear that CD 1 is not narrowly tailored to the avoidance of section 5 liability.

a.

In Alabama, the Supreme Court made clear that section 5 "does not require a covered jurisdiction to maintain a particular numerical minority percentage." 135 S. Ct. at 1272. Rather, section 5 requires legislatures to ask the following question: "To what extent must we preserve existing minority percentages in order to maintain the minority's present ability to elect its candidate of choice?" Id. at 1274. There is no evidence that the general assembly asked this question. Instead, the general assembly directed Dr. Hofeller to create CD 1 as a majority-BVAP district; there was no consideration of why the general assembly should create such a district.

While the Court "do[es] not insist that a legislature guess precisely what percentage reduction a court or the Justice Department might eventually find to be retrogressive," the legislature must have a "strong basis in evidence" for its use of racial classifications. Id. at 1273–74. Specifically, the Supreme Court noted that it would be inappropriate for a legislature to "rel[y] heavily upon a mechanically numerical view as to what counts as forbidden retrogression." Id. at 1273. That is precisely what occurred here: the general assembly established a mechanical BVAP target for CD 1 of 50 percent plus one person, as opposed to conducting a more sophisticated analysis of racial voting patterns in CD 1 to determine to what extent it must preserve existing minority percentages to maintain the minority's present ability to elect its candidate of choice. See id. at 1274.

b.

Although CD 1 has been an extraordinarily safe district for African-American preferred candidates of choice for over twenty years, the 2011 Congressional Redistricting Plan increased CD 1's BVAP from 47.76 percent to 52.65 percent. Despite the fact that African-Americans did not make up a majority of the voting-age population in CD 1, African-American preferred candidates easily and repeatedly won reelection under earlier congressional plans, including the 2001 benchmark plan. Representative Eva

Clayton prevailed in CD 1 in 1998 and 2000, for instance, winning 62 percent and 66 percent of the vote, respectively. Pls.' Ex. 112. Indeed, African-American preferred candidates prevailed with remarkable consistency, winning at least 59 percent of the vote under each of the five general elections under the benchmark version of CD 1. Id. In 2010, Congressman Butterfield won 59 percent of the vote, while in 2012 – under the redistricting plan at issue here – he won by an even larger margin, receiving 75 percent of the vote. Id.

In this respect, the legislature's decision to increase the BVAP of CD 1 is similar to the redistricting plan invalidated by the Supreme Court in Bush. See 517 U.S. at 983. In Bush, a plurality of the Supreme Court held that increasing the BVAP from 35.1 percent to 50.9 percent was not narrowly tailored because the state's interest in avoiding retrogression in a district where African–American voters had successfully elected their representatives of choice for two decades did not justify "substantial augmentation" of the BVAP. Id. Such an augmentation could not be narrowly tailored to the goal of complying with section 5 because there was "no basis for concluding that the increase to a 50.9% African–American population . . . was necessary to ensure nonretrogression." Id. "Nonretrogression is not a license for the State to do whatever it deems necessary to ensure continued electoral success; it

merely mandates that the minority's opportunity to elect representatives of its choice not be diminished, directly or indirectly, by the State's actions." Id. While the BVAP increase here is smaller than that in Bush, the principle is the same. Defendants show no basis for concluding that an augmentation of CD 1's BVAP to 52.65 percent was narrowly tailored when the district had been a safe district for African-American preferred candidates of choice for over two decades.

In sum, the legislators had no basis - let alone a strong basis - to believe that an inflexible racial floor of 50 percent plus one person was necessary in CD 1. This quota was used to assign voters to CD 1 based on the color of their skin. "Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin." Shaw I, 509 U.S. at 657.

For these reasons, the Court finds that CD 1 cannot survive strict scrutiny. Accordingly, the Court is compelled to hold that CD 1 violates the Equal Protection Clause of the Fourteenth Amendment.

III.

Having found that the 2011 Congressional Redistricting Plan violates the Equal Protection Clause, the Court now addresses

the appropriate remedy. Plaintiffs have requested that we "determine and order a valid plan for new congressional districts." Compl., ECF No. 1 at 19. Nevertheless, the Court is conscious of the powerful concerns for comity involved in interfering with the state's legislative responsibilities. As the Supreme Court has repeatedly recognized, "redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt." Wise, 437 U.S. at 539. As such, it is "appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise . . . its own plan." Id. at 540. Under North Carolina law, courts must give legislatures at least two weeks to remedy defects identified in a redistricting plan. See N.C. Gen. Stat. § 120-2.4.

The Court also recognizes that individuals in CD 1 and CD 12 whose constitutional rights have been injured by improper racial gerrymandering have suffered significant harm. "Those citizens 'are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan.'" Page, 2015 WL 3604029, at *18 (quoting Cosner v. Dalton, 522 F. Supp. 350, 364 (E.D. Va. 1981)). Therefore, the Court will require that new districts be drawn within two weeks of the

entry of this opinion to remedy the unconstitutional districts. In accordance with well-established precedent that a state should have the first opportunity to create a constitutional redistricting plan, see, e.g., Wise, 437 U.S. at 539-40, the Court allows the legislature until February 19, 2016, to enact a remedial districting plan.

IV.

Because the plaintiffs have shown that race predominated in CD 1 and CD 12 of North Carolina's 2011 Congressional Redistricting Plan, and because the defendants have failed to establish that this race-based redistricting satisfies strict scrutiny, the Court finds that the 2011 Congressional Redistricting Plan is unconstitutional, and will require the North Carolina General Assembly to draw a new congressional district plan. A final judgment accompanies this opinion.

SO ORDERED.

2/5/16

Roger L. Gregory
United States Circuit Judge

COGBURN, District Judge, concurring:

I fully concur with Judge Gregory's majority opinion. Since the issue before the court was created by gerrymandering, and based on the evidence received at trial, I write only to express my concerns about how unfettered gerrymandering is negatively impacting our republican form of government.

Voters should choose their representatives. Mitchell N. Berman, Managing Gerrymandering, 83 Tex. L. Rev. 781 (2005). This is the "core principle of republican government." Id. To that end, the operative clause of Article I, § 4 of the United States Constitution, the Elections Clause, gives to the states the power of determining how congressional representatives are chosen:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

U.S. Const. art. I, § 4, cl. 1. As redistricting through political gerrymander rather than reliance on natural boundaries and communities has become the tool of choice for state legislatures in drawing congressional boundaries, the fundamental principle of the voters choosing their representative has nearly vanished. Instead, representatives choose their voters.

Indeed, we heard compelling testimony from Congressman G. K. Butterfield (CD 1) and former Congressman Mel Watt (CD 12) that the configuration of CD 1 and CD 12 made it nearly impossible for them to travel to all the communities comprising their districts. Not only has political gerrymandering interfered with voters selecting their representatives, it has interfered with the representatives meeting with those voters. In at least one state, Arizona, legislative overuse of political gerrymandering in redistricting has caused the people to take congressional redistricting away from the legislature and place such power in an independent congressional redistricting commission, an action that recently passed constitutional muster. See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n, ___ U.S. ___, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015).

Redistricting through political gerrymandering is nothing new. Starting in the year the Constitution was ratified, 1788, state legislatures have used the authority under the Elections Clause to redraw congressional boundaries in a manner that favored the majority party. For example, in 1788, Patrick Henry persuaded the Virginia legislature to remake its Fifth Congressional District to force Henry's political foe James Madison to run against James Monroe. Madison won in spite of

this, but the game playing had begun. In 1812, Governor Elbridge Gerry signed a bill redistricting Massachusetts to benefit his party with one district so contorted that it was said to resemble a salamander, forever giving such type of redistricting the name gerrymander. Thus, for more than 200 years, gerrymandering has been the default in congressional redistricting.

Elections should be decided through a contest of issues, not skillful mapmaking. Today, modern computer mapping allows for gerrymandering on steroids as political mapmakers can easily identify individual registrations on a house-by-house basis, mapping their way to victory. As was seen in Arizona State Legislature, supra, however, gerrymandering may well have an expiration date as the Supreme Court has found that the term "legislature" in the Elections Clause is broad enough to include independent congressional redistricting commissions. 135 S. Ct. at 2673.

To be certain, gerrymandering is not employed by just one of the major political parties. Historically, the North Carolina Legislature has been dominated by Democrats who wielded the gerrymander exceptionally well. Indeed, CD 12 runs its circuitous route from Charlotte to Greensboro and beyond -- thanks in great part to a state legislature then controlled by

Democrats. It is a district so contorted and contrived that the United States Courthouse in Charlotte, where this concurrence was written, is five blocks within its boundary, and the United States Courthouse in Greensboro, where the trial was held, is five blocks outside the same district, despite being more than 90 miles apart and located in separate federal judicial districts. How a voter can know who their representative is or how a representative can meet with those pocketed voters is beyond comprehension.

While redistricting to protect the party that controls the state legislature is constitutionally permitted and lawful, it is in disharmony with fundamental values upon which this country was founded. "[T]he true principle of a republic is, that the people should choose whom they please to govern them." Powell v. McCormack, 395 U.S. 486, 540–41, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969) (quoting Alexander Hamilton, 2 Debates on the Federal Constitution 257 (J. Elliot ed. 1876)). Beyond taking offense at the affront to democracy caused by gerrymandering, courts will not, however, interfere with gerrymandering that is philosophically rather than legally wrong. As has been seen in Arizona, it is left to the people of the state to decide whether they wish to select their representatives or have their representatives select them.

OSTEEN, JR., District Judge, concurring in part and dissenting in part:

I concur with the majority in finding that Plaintiffs have met their burden of proving that race predominated in the drawing of North Carolina's First Congressional District ("CD 1") and that Defendants have failed to show that the legislature's use of race in the drawing of that district was narrowly tailored to serve a compelling governmental interest. I also concur with the majority with respect to North Carolina's Twelfth Congressional District ("CD 12") in that, if race was a predominant factor, Defendants did not meet their burden to prove that CD 12 was narrowly tailored to serve a compelling state interest. However, I respectfully dissent from the majority in that I find that Plaintiffs have not met their burden of proving that race predominated in the drawing of CD 12. As a result, I conclude that the district is subject to and passes the rational basis test and is constitutional. I differ with the well-reasoned opinion of my colleagues only as to the degree to which race was a factor in the drawing of CD 12.

I. CONGRESSIONAL DISTRICT I

With respect to my concurring opinion, I only add that I do not find, as Plaintiffs have contended, that this legislative effort constitutes a "flagrant" violation of the Fourteenth Amendment. The majority opinion makes clear that bad faith is

not necessary in order to find a violation. (Maj. Op. at 4.) Although Plaintiffs argued that the actions of the legislature stand in "flagrant" violation of Fourteenth Amendment principles (See Pls.' Trial Br. (Doc. 109) at 7.), Plaintiffs also conceded at trial they did not seek to prove any ill-intent. (Trial Tr. at 16:20-25.) Nevertheless, I wish to emphasize that the evidence does not suggest a flagrant violation. Instead, the legislature's redistricting efforts reflect the difficult exercise in judgment necessary to comply with section 5 of the Voting Rights Act ("VRA") in 2010, prior to the Supreme Court's decision in Shelby County v. Holder, ____ U.S. ____, 133 S. Ct. 2612 (2013). Shelby struck down as unconstitutional the formula created under section 4 of the VRA and, resultingly, removed those covered jurisdictions from section 5. Id.

In Shelby, the Supreme Court recognized the success of the VRA. Id. at 2626 ("The [Voting Rights] Act has proved immensely successful at redressing racial discrimination and integrating the voting process."). However, the Court also described its concern with an outdated section 4 formula and the restrictions of section 5:

> Yet the Act has not eased the restrictions in § 5 or narrowed the scope of the coverage formula in § 4(b) along the way. Those extraordinary and unprecedented features were reauthorized — as if nothing had changed. In fact, the Act's unusual remedies have grown even stronger. When Congress reauthorized the

> Act in 2006, it did so for another 25 years on top of the previous 40 — a far cry from the initial five-year period. Congress also expanded the prohibitions in § 5. We had previously interpreted § 5 to prohibit only those redistricting plans that would have the purpose or effect of worsening the position of minority groups. In 2006, Congress amended § 5 to prohibit laws that could have favored such groups but did not do so because of a discriminatory purpose, even though we had stated that such broadening of § 5 coverage would "exacerbate the substantial federalism costs that the preclearance procedure already exacts, perhaps to the extent of raising concerns about § 5's constitutionality." In addition, Congress expanded § 5 to prohibit any voting law "that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States," on account of race, color, or language minority status, "to elect their preferred candidates of choice." In light of those two amendments, the bar that covered jurisdictions must clear has been raised even as the conditions justifying that requirement have dramatically improved.

Shelby Cnty., 133 S. Ct. at 2626-27 (internal citations omitted).

Although no court has held that compliance with section 5 is a compelling state interest, the Supreme Court has generally assumed without deciding that is the case. See Bush v. Vera, 517 U.S. 952, 977 (1996); Shaw v. Hunt, 517 U.S. 899, 915 (1996) ("Shaw II"). Compliance with section 5 was, in my opinion, at least a substantial concern to the North Carolina legislature in 2011, a concern made difficult by the fact that, at least by 2013 and likely by 2010, see Nw. Austin Mun. Util. Dist. No. 1 v. Holder, 557 U.S. 193 (2009), coverage was "based on decades-

old data and eradicated practices" yet had expanded prohibitions. Shelby, 133 S. Ct. at 2617.

As a result, while I agree with my colleagues that CD 1, as drawn, violates the Fourteenth Amendment, I do not find that violation to be flagrant, as argued by Plaintiffs. (See Pls.' Trial Brief (Doc. 109) at 7.) Instead, I simply find the violation as to CD 1 to be the result of an ultimately failed attempt at the very difficult task of achieving constitutionally compliant redistricting while at the same time complying with section 5 and receiving preclearance from the Department of Justice. In drawing legislative districts, the Department of Justice and other legislatures have historically made similar mistakes in their attempts to apply the VRA. See generally, e.g., Ala. Legislative Black Caucus v. Alabama, ____ U.S. ____, 135 S. Ct. 1257 (2015); Miller v. Johnson, 515 U.S. 900 (1995); Shaw v. Reno, 509 U.S. 630 (1993) ("Shaw I"); Page v. Va. State Bd. of Elections, Civil Action No. 3:13cv678, 2015 WL 3604029 (E.D. Va. June 5, 2015). Further, the difficult exercise of judgment involved in the legislature's efforts to draw these districts is reflected in the differing conclusions reached by this court and the North Carolina Supreme Court. See generally Dickson v. Rucho, No. 201PA12-3, 2015 WL 9261836 (N.C. Dec. 18, 2015). Contrary to Plaintiffs' suggestion, I find nothing

flagrant or nefarious as to the legislature's efforts here, even though I agree that CD 1 was improperly drawn using race as a predominant factor without sufficient justification.

II. CONGRESSIONAL DISTRICT 12

Turning to my dissent regarding whether Plaintiffs have carried their burden of showing that race was the dominant and controlling consideration in drawing CD 12, a brief history of redistricting efforts in the state will provide helpful context to the current situation. In 1991, North Carolina enacted a Congressional Districting Plan with a single majority-black district — the 1991 version of CD 1. The 1991 version of CD 1 was a majority single-race-black district in both total population and voting age population ("VAP"). The State filed for preclearance from the Department of Justice for the 1991 plan under section 5 of the VRA, and there was no objection to the 1991 version of CD 1 specifically. See Shaw II, 517 U.S. at 902, 912; (Defs.' Ex. 126, Tab 1, "Section 5 Submission for 1991 Congressional Redistricting Plan".) There was, however, a preclearance objection to the 1991 Congressional Plan overall because of the State's failure to create a second majority-minority district running from the southcentral to southeastern region of the State. Shaw II, 517 U.S. at 902, 912.

As a result of this objection, the General Assembly drew a new Congressional Plan in 1992. The 1992 plan included a different version of CD 1 that was majority minority but did not include any portion of Durham County. The General Assembly also created a second majority-minority district (CD 12) that stretched from Mecklenburg County to Forsyth and Guilford Counties and then all the way into Durham County. The Attorney General did not interpose an objection to the 1992 Congressional Plan.

Under the 1992 Congressional Plan, CD 12 was drawn with a single-race total black population of 56.63% and a single-race black VAP ("BVAP") of 53.34%. (Defs.' Ex. 126, Tab 2, "1992 Congressional Base Plan #10"; Defs.' Ex. 4.1A; Defs.' Ex. 4.) Under a mathematical test for measuring the compactness of districts called the "Reock" test (also known as the dispersion test), the 1992 CD 12 had a compactness score of 0.05. (Trial Tr. at 351:24-352:16.)

The 1992 districts were subsequently challenged under the VRA, and in Shaw I, the Supreme Court found that the 1992 versions of CD 1 and 12 were racial gerrymanders in violation of the Fourteenth Amendment. 509 U.S. 630 (1993). The case was remanded for further proceedings. Id. On appeal again after remand, in Shaw II, the Supreme Court again found that the 1992

version of CD 12 constituted a racial gerrymander. 517 U.S. at 906.

Following the decision in Shaw II, in 1997 the North Carolina General Assembly enacted new versions of CD 1 and CD 12. The 1997 version of CD 12 was drawn with a black total population of 46.67% and a black VAP of 43.36%. (Defs.' Ex. 126, Tab 3, "97 House/Senate Plan A".)

The plan was yet again challenged in court, and in Cromartie v. Hunt, 34 F. Supp. 2d 1029 (E.D.N.C. 1998) (three-judge court), rev'd, 526 U.S. 541 (1999) ("Cromartie I"), a three-judge panel held on summary judgment that the 1997 version of CD 12 also constituted a racial gerrymander in violation of the Fourteenth Amendment, although the decision was reversed by the Supreme Court on appeal.

On remand, the district court again found the 1997 version of CD 12 to be an unconstitutional racial gerrymander in violation of the Fourteenth Amendment, Cromartie v. Hunt, 133 F. Supp. 2d 407 (E.D.N.C. 2000) (three-judge court), a ruling that the State again appealed, Hunt v. Cromartie, 529 U.S. 1014 (2000). The Supreme Court reversed the district court, finding that politics, not race, was the predominant motive for the

district. Easley v. Cromartie, 532 U.S. 234 (2001) ("Cromartie II").[1]

In 2001, the North Carolina General Assembly enacted the Congress Zero Deviation Plan for redistricting based upon the 2000 Census ("2001 Congressional Plan"). (Defs.' Ex. 126, Tab 5, "Congress Zero Deviation 2000 Census"; Defs.' Ex. 4.4A; Defs.' Ex. 4.4.)

Under the 2000 Census, the 2001 version of CD 12 was drawn with a single-race black total population of 45.02% and an any-part black total population of 45.75%. (Pls.' Ex. 80.) Single-race black VAP was 42.31% and any-part black VAP was 42.81%. (Id.)

In every election held in CD 12 between 1992 and 2010, without exception, the African-American candidate of choice, Congressman Mel Watt, prevailed with no less than 55.95% of the vote, regardless of whether the black VAP in CD 12 exceeded 50%, and regardless of any other characteristic of any specific

[1] They reversed the trial court despite evidence such as: (1) the legislature's statement in its 1997 DOJ preclearance submission that it drew the 1997 CD 12 with a high enough African-American population to "provide a fair opportunity for incumbent Congressman Watt to win election"; (2) the admission at trial that the General Assembly had considered race in drawing CD 12; and (3) the district court's rejection of evidence that the high level of black population in CD 12 was sheer happenstance.

election, demonstrating clearly that African-Americans did not require a majority of the VAP to elect their chosen candidate. The relevant election results are set forth in the following table:

Twelfth Congressional District Election Results and Black Voting

Year	BVAP	Percent of Vote	Candidate
1992	53.34%	70.37%	Mel Watt
1994	53.34%	65.80%	Mel Watt
1996	53.34%	71.48%	Mel Watt
1998	32.56%	55.95%	Mel Watt
2000	43.36%	65.00%	Mel Watt
2002	42.31%	65.34%	Mel Watt
2004	42.31%	66.82%	Mel Watt
2006	42.31%	67.00%	Mel Watt
2008	42.31%	71.55%	Mel Watt
2010	42.31%	63.88%	Mel Watt

A. The 2011 Redistricting Process

Following the 2010 Census, Senator Robert Rucho and Representative David Lewis were appointed chairs of the Senate and House Redistricting Committees, respectively, on January 27, 2011, and February 15, 2011. (See Parties' Joint Factual Stipulation (Doc. 125) ¶ 3.)

Jointly, Senator Rucho and Representative Lewis were responsible for developing a proposed congressional map based upon the 2010 Census. (Id.) Under the 2010 Census, the 2001

version of CD 12 was overpopulated by 2,847 people, or 0.39%. (Defs.' Ex. 4.5 at 3.)

They hired Dr. Thomas Hofeller to be the architect of the 2011 plan, and he began working under the direction of Senator Rucho and Representative Lewis in December 2010.[2] Senator Rucho and Representative Lewis were the sole source of instructions for Dr. Hofeller regarding the criteria for the design and construction of the 2011 congressional maps.

Throughout June and July of 2011, Senator Rucho and Representative Lewis released a series of public statements describing, among other things, the criteria that they had used to draw the proposed congressional plan. As Senator Rucho explained at the July 21, 2011 joint meeting of the Senate and House Redistricting Committees, those public statements "clearly delineated" the "entire criteria" that were established and "what areas [they] were looking at that were going to be in compliance with what the Justice Department expected [them] to do as part of [their] submission." (Pls.' Ex. 136 at 29:2-9 (7/21/11 Joint Committee Meeting transcript).)

[2] Dr. Hofeller had served as Redistricting Coordinator for the Republican National Committee for the 1990, 2000, and 2010 redistricting cycles. (See Trial Tr. at 577:1-23 (Testimony of Dr. Thomas Hofeller).)

B. The Factors Used to Draw CD 12[3]

On July 1, 2011, Senator Rucho and Representative Lewis made public the first version of their proposed congressional plan, Rucho-Lewis Congress 1, along with a statement explaining the rationale for the map. Specifically with regard to CD 12, Senator Rucho and Representative Lewis noted that although the 2001 benchmark version of CD 12 was "not a Section 2 majority black district," there "is one county in the Twelfth District that is covered by Section 5 of the Voting Rights Act (Guilford)." (Pls.' Ex. 67 at 5.) Therefore, "[b]ecause of the presence of Guilford County in CD 12, we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District." (Id.) Although the proposed map went through several iterations, CD 12 remained largely unchanged from Rucho-Lewis 1 throughout the redistricting process. (Compare Defs.' Ex. 4.7 (Rucho Lewis 1), with Defs.' Ex. 4.11 (Rucho Lewis 3).)

[3] CD 12 contains pieces of six counties: Mecklenburg, Cabarrus, Rowan, Davidson, Forsyth, and Guilford. A line of precincts running through Cabarrus, Rowan, and Davidson counties connects population centers in Mecklenburg (Charlotte), Forsyth (Winston Salem), and Guilford (Greensboro). CD 12 splits thirteen cities and towns. (Pls.' Ex. 17 ¶ 17.)

It is clear from both this statement and the record that race was, at the very least, one consideration in how CD 12 was drawn. These instructions apparently came, at least in part, from concerns about obtaining preclearance from the DOJ. (See Trial Tr. at 645:4-20 (Dr. Hofeller: "[M]y understanding of the issue was because Guilford was a Section 5 county and because there was a substantial African-American population in Guilford County, . . . that it could endanger the plan" unless Guilford County was moved into CD 12.); see also Pls.' Ex. 129 (Hofeller Dep. 75:13-16) ("So in order to be cautious and draw a plan that would pass muster under the VRA it was decided to reunite the black community in Guilford County into the 12th.").) Testimony was elicited at trial that Dr. Hofeller was in fact told to consider placing the African-American population of Guilford County into CD 12 because Guilford County was a covered jurisdiction under section 5 of the VRA. (See Trial Tr. at 608:19-24 (Dr. Hofeller "was instructed [not] to use race in any form [in drawing CD 12] except perhaps with regard to Guilford County" (emphasis added)).)[4]

[4] I share the majority's concern over the fact that much of the communication regarding the redistricting instructions given to Dr. Hofeller were provided orally rather than in writing or by email. (Maj. Op. at 11.) As a result, the process used to draw CD 12 is not particularly transparent in several critical areas.

That race was at least present as a concern in the General Assembly's mind is further confirmed when looking to the General Assembly's 2011 preclearance submission to the Department of Justice. There it explained that it drew "District 12 as an African-American and very strong Democratic district that has continually elected a Democratic African American since 1992," and also noted that CD 12 had been drawn to protect "African-American voters in Guilford and Forsyth." (Pls.' Ex. 74 at 15 (emphasis added).)

The DOJ preclearance submission also explained that the General Assembly had drawn CD 12 in such a way to mitigate concerns over the fact that "in 1992 the Justice Department had objected to the 1991 Congressional Plan because of a failure by the State to create a second majority-minority district combining the African-American community in Mecklenburg County with African American and Native American voters residing in south central and southeastern North Carolina." (Id. at 14.) The preclearance submission further stated that "the 2011 version [of CD 12] maintains and in fact increases the African American community's ability to elect their candidate of choice." (Id. at 15.) I note that I interpret this statement slightly differently from the majority. (See Maj. Op. at 36). I conclude that this statement describes one result of how the

new district was drawn, rather than the weight a particular factor was given in how to draw the district in the first place. Essentially, I would find this statement is an explanation by legislature that because they chose to add Guilford County back into CD 12, the district ended up with an increased ability to elect African- American candidates, rather than the legislature explaining that they chose to add Guilford County back into CD 12 because of the results that addition created.

However, while it is clear that race was a concern, it is also clear that race was not the only concern with CD 12. In their July 19, 2011 Joint Statement, Senator Rucho and Representative Lewis stated that the version of CD 12 in Rucho-Lewis Congress 2, the second map that they put forward, was based upon the 1997 and 2001 versions of that district and that the 2011 version was again drawn by the legislative leaders based upon political considerations. According to them, CD 12 was drawn to maintain that district as a "very strong Democratic district . . . based upon whole precincts that voted heavily for President Obama in the 2008 General Election." (Defs.' Ex. 72 at 40-44 "19 July Joint Statement" (noting that the co-chairs also "[understood] that districts adjoining the Twelfth District [would] be more competitive for Republican candidates"); Trial

Tr. at 491:2-493:13; Defs.' Ex. 26.1 at 21-22, Maps 2 and 3.)[5] The co-chairs stated that by making CD 12 a very strong Democratic district, adjoining districts would be more competitive for Republicans. (Id.)

Further, Dr. Hofeller testified that he constructed the 2011 version of CD 12 based upon whole Voting Tabulation Districts ("VTDs") in which President Obama received the highest vote totals during the 2008 Presidential Election, indicating that political lean was a primary factor. (Trial Tr. at 495:20-496:5, 662:12-17.) The only information on the computer screen used by Dr. Hofeller in selecting VTDs for inclusion in the CD 12 was the percentage by which President Obama won or lost a particular VTD. (Trial Tr. at 495:20-496:5, 662:12-17.) Dr. Hofeller has also stated that there was no racial data on the screen when he constructed the district, providing some support for the conclusion that racial concerns did not predominate over politics. (Trial Tr. at 526:3-11.)

Although Plaintiffs argue that the primary difference between the 2001 and 2011 versions of CD 12 is the increase in

[5] The use of election results from the 2008 presidential election was the subject of some dispute at trial. However, regardless of the merits of either position, I find nothing to suggest those election results should not be properly considered in political issues or political leanings as described hereinafter.

black VAP, allegedly due to the predominance of race as a factor, Defendants contend that by increasing the number of Democratic voters in the 2011 version of CD 12 located in Mecklenburg and Guilford Counties, the 2011 Congressional Plan created districts that were more competitive for Republican candidates as compared to the 2001 versions of these districts, including Congressional Districts 6, 8, 9, and 13, a stated goal of the redistricting chairs. (See Trial Tr. at 491:2-495:19; Defs.' Ex. 26.1 at 22-23, maps 2 and 3; Defs.' Ex. 126, Tab 6, Tab 12.)[6] Defendants argue that the principal differences between the 2001 and 2011 versions of CD 12 are that the 2011 version: (1) adds more strong Democratic voters located in Mecklenburg and Guilford Counties; (2) adds more Democratic voters to the 2011 version of CD 5 because it was able to accept additional Democrats while remaining a strong Republican district; (3) removes Democratic voters from the 2011 CD 6 in Guilford County and places them in the 2001 CD 12; and (4) removes Republican voters who had formerly been assigned to the 2001 CD 12 from the corridor counties of Cabarrus, Rowan,

[6] Plaintiffs did not dispute persuasively that CD 5, CD 6, CD 8, and CD 13 became more competitive for Republican candidates. Dr. Stephen Ansolabehere's analysis was limited to movement into and out of CD 12, without regard to the effects in surrounding districts.

Davidson and other locations. (Trial Tr. at 491:6-493:13, 495:9-19, 561:5-562:14; Defs.' Ex. 31 at 220, 247-49.)

Defendants also contend, or at least intimate, that the final black VAP of the 2011 version of CD 12 resulted in part from the high percentage of African-Americans who vote strongly Democrat. They note that, both in previous versions of CD 12 and in alternative proposals that were before the General Assembly in 2010, African-Americans constituted a super-majority of registered Democrats in the district, citing the 2001 Twelfth Congressional Plan (71.44%); the Southern Coalition for Social Justice Twelfth Congressional Plan (71.53%); and the "Fair and Legal" Twelfth Congressional Plan (69.14%). (Defs.' Ex. 2 ¶ 27; Defs.' Ex. 2.64; Defs.' Ex. 2.66; Defs.' Ex. 2.67.)[7] Defendants are apparently making the same argument the State has made several times previously: the percentage of African-Americans added to the district is coincidental and the result of moving Democrats who happen to be African-American into the district.

C. Racial Concerns did not Predominate

Equal protection principles deriving from the Fourteenth Amendment govern a state's drawing of electoral districts.

[7] In comparison, the statewide percentage of Democrats who are African-American is 41.38%. (Defs.' Ex. 62 at 83-84, F.F. No. 173.)

Miller, 515 U.S. at 905. The use of race in drawing a district is a concern because "[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." Shaw I, 509 U.S. at 657. To prove a claim of racial gerrymandering, Plaintiffs first have the burden to prove that race was the predominant factor in the drawing of the allegedly gerrymandered districts. Id. at 643; see also Page, 2015 WL 3604029, at *6. Predominance can be shown by proving that a district "is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles," (i.e., proving predominance circumstantially), Shaw I, 509 U.S. at 642, or by proving that "race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines. . . . [and] that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations" (i.e., proving predominance directly), Miller, 515 U.S. at 913, 916.

Plaintiffs can meet this burden through direct evidence of legislative purpose, showing that race was the predominant factor in the decision on how to draw a district. Such evidence

can 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; Clark v. Putnam Cty., 293 F.3d 1261, 1267-68, 1272 (11th Cir. 2002); Page, 2015 WL 3604029, at *9. Plaintiffs can also meet this burden through circumstantial evidence such as the district's shape, compactness, or demographic statistics. See, e.g., Shaw II, 517 U.S. at 905. Circumstantial evidence can show that traditional redistricting criteria were subordinated and that a challenged district is unexplainable on grounds other than race. Plaintiffs do not need to show that race was the only factor that the legislature considered, just that it predominated over other factors. Clark, 293 F.3d at 1270 ("The fact that other considerations may have played a role in . . . redistricting does not mean that race did not predominate.").

If race is established as the predominant motive for CD 12, then the district will be subject to strict scrutiny, necessitating an inquiry into whether the use of race to draw the district was narrowly tailored to meet a compelling state interest. See Bush, 517 U.S. at 976. The Supreme Court has assumed without deciding that compliance with sections 2 and 5 of the VRA is a compelling state interest. Shaw II, 517 U.S. at

915; Bush, 517 U.S. at 977. Defendants in this case contend that, if the court finds that either district was drawn predominantly based on race, their maps are narrowly tailored to avoid liability under these sections in satisfaction of strict scrutiny.

Just as with CD 1, the first hurdle Plaintiffs must overcome is to show that racial concerns predominated over traditional criteria in the drawing of CD 12. As stated above, it is in this finding that I dissent from the majority.

Most importantly, as compared to CD 1, I find that Plaintiffs have put forth less, and weaker, direct evidence showing that race was the primary motivating factor in the creation of CD 12, and none that shows that it predominated over other factors.[8] Plaintiffs first point to several public statements that they argue demonstrate the State's intent to

[8] In their Proposed Findings of Fact and Conclusions of Law, Plaintiffs point to the increase in black VAP from 42.31% to 50.66% as direct evidence of racial intent. (See Pls.' Proposed Findings of Fact and Conclusions of Law, supp. pt. 3 (Doc. 137-2) ¶ 103.) I disagree, and would find that on these facts, the black VAP increase is a result, not an explanation, and thus is at most circumstantial evidence of a legislature's intent in drawing the district. While CD 12 certainly experienced a large increase in black VAP, it is still Plaintiffs' burden (especially given the high correlation between the Democratic vote and the African-American vote) to prove that race, not politics, predominated and that the increase is not coincidental and subordinate to traditional political considerations.

draw CD 12 at a majority black level and argue that this stated goal demonstrates that race predominated. However, I find that the statements issued by the redistricting chairs show only a "consciousness" of race, rather than a predominance, and by themselves do not show an improperly predominant racial motive. See Bush, 517 U.S. at 958.

First, Plaintiffs cite to the July 1, 2011 press release where the redistricting chairs explained that:

> Because of the presence of Guilford County [a section 5 jurisdiction under the VRA] in the Twelfth District, we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District. We believe this measure will ensure preclearance of the plan.

(Pls.' Ex. 67 at 5.) This statement seems similar to, and perhaps slightly more persuasive than, the statements that the Supreme Court found unpersuasive in Cromartie II. In Cromartie II, the Supreme Court considered a statement by the mapmaker that he had "moved [the] Greensboro Black Community into the 12th, and now need to take about 60,000 out of the 12th." See 532 U.S. at 254. The Court in that case noted that while the statement did reference race, it did not discuss the political consequences or motivation for placing the population of Guilford County in the 12th district. Id. Here, while the statement by the co-chairs does reference political consequences

(ensuring preclearance), it still does not rise to the level of evidence that the Supreme Court has found significant in other redistricting cases. See Bush, 517 U.S. at 959 (O'Connor, J., principal opinion) (Texas conceded that one of its goals was to create a majority-minority district); Shaw II, 517 U.S. at 906 (recounting testimony that creating a majority-minority district was the "principal reason" for the 1992 version of District 12); Miller, 515 U.S. at 907 (State set out to create majority-minority district). While this statement, like the statement in Cromartie II, provides some support for Plaintiffs' contention, it does not rise to the level of showing predominance. It does not indicate that other concerns were subordinated to this goal, merely, that it was a factor.[9]

The co-chairs' later statement that this result would help to ensure preclearance under the VRA similarly falls short of explaining that such actions were taken in order to ensure preclearance, or that a majority BVAP (or even an increase in BVAP) was a non-negotiable requirement.[10] In fact, the co-chairs

[9] The statement by Dr. Hofeller, set out below, furthers this finding in that he testified that Guilford County was placed in CD 12 as a result of an effort to re-create the 1997 CD 12.

[10] The State's DOJ submission is in a similar stance, in that while it explains that the BVAP of CD 12 increased, it does

explicitly state in the same release that CD 12 was created with "the intention of making it a very strong Democratic district" and that that it was not a majority black district that was required by section two (insinuating that it became so as a result of the addition of Guilford County, rather than Guilford being added in order to achieve that goal), belying that there was any mechanical racial threshold of the sort that would lend itself to a finding of predominance. (Pls.' Ex. 67 at 5.)

Further, regarding the placement of Guilford County into CD 12, Dr. Hofeller testified as follows:

> My instructions in drawing the 12th District were to draw it as it were a political district, as a whole. We were aware of the fact that Guilford County was a Section 5 county. We were also aware of the fact that the black community in Greensboro had been fractured by the Democrats in the 2001 map to add Democratic strengths to two Democratic districts. During the process, it was my understanding that we had had a comment made that we might have a liability for fracturing the African-American community in Guilford County between a Democratic district and a Republican district. When the plan was drawn, I knew where the old 97th, 12th District had been drawn, and I used that as a guide because one of the things we needed to do politically was to reconstruct generally the 97th district; and when we checked it, we found out that we did not have an issue in Guilford County with fracturing the black community.

(Trial Tr. at 644:11-645:1 (emphasis added).)

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not show that the State had any improper threshold or racial goal. (See Pls.' Ex. 74 at 15.)

Dr. Hofeller's testimony shows that, while the map drawers were aware that Guilford County was a VRA county and that there were possibly some VRA concerns surrounding it, the choice to place Guilford County in CD 12 was at least in part also based on a desire to reconstruct the 1997 version of CD 12 for political reasons and doing so also happened to eliminate any possible fracturing complaint. This is furthered by Dr. Hofeller's deposition testimony, in which he explained that while the redistricting chairs were certainly concerned about a fracturing complaint over Guilford County, "[his] instruction was not to increase [the black] population. [His] instruction was to try and take care of [the VRA] problem, but the primary instructions and overriding instruction in District 12 was to accomplish the political goal." (Pls.' Ex. 129 at 71:19-24.)[11]

[11] It should be noted that Guilford County had been placed in District 12 before but had been moved into the newly-created District 13 during the 2001 redistricting process. This occurred as a result of North Carolina gaining a thirteenth congressional seat and needing to create an entirely new district. As Dr. Hofeller testified, in 2011, CD 13, which in 2001 had been strongly Democratic, was being moved for political reasons, and thus the districts surrounding District 13 would necessarily be different than they had been in 2001. As the legislature wished for these districts to be strongly Republican, moving Guilford County, which is strongly Democratic, into the already Democratic CD 12 only made sense. (Pls.' Ex. 129 at 71:6-18.) Given that as a result of CD 13's move, Guilford County was going to end up being moved anyways, the decision to re-create the 1997 version of CD 12 as a way to avoid a VRA claim does not persuade me that the choice to move

Compare these statements with those made about CD 1, where Dr. Hofeller repeatedly testified that he was told "to draw that 1st District with a black voting-age population in excess of 50 percent because of the Strickland case." (See Trial Tr. at 480:21-481:1.) He also testified that this goal for CD 1 could not be compromised, explaining that while he had some leeway in how high he could take the BVAP of the district, he could not go lower than 50% plus 1. (Trial Tr. at 621:13-622:19.) These are the sorts of statements that show predominance, rather than consciousness, of race and are clearly distinguishable from those made about CD 12, where there is only evidence that race was one among several factors.

Based upon this direct evidence, I conclude that race was a factor in how CD 12 was drawn, although not a predominant one. A comparison of the legislative statements as to CD 12 with those made with respect to CD 1 is illustrative, given that the legislature clearly stated its intention to create a majority-minority district within CD 1.

Compared with such open expressions of intent, the statements made with respect to CD 12 seem to be more a description of the resulting characteristics of CD 12 rather

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Guilford County to CD 12 was in and of itself predominantly racial.

than evidence about the weight that the legislature gave various factors used to draw CD 12. For example, as the majority points out, in the public statement issued July 1, 2011, Senator Rucho and Representative Lewis stated, "[b]ecause of the presence of Guilford County in the Twelfth District [which is covered by section 5 of the VRA], we have drawn our proposed Twelfth District at a black voting age level that is above the percentage of black voting age population found in the current Twelfth District." (Pls.' Tr. Ex. 67 at 5; (Maj. Op. at 35).) While the majority reaches an imminently reasonable conclusion that this is evidence of an intention to create a majority-minority district, I, on the other hand, conclude that the statement reflects a recognition of the fact the black VAP voting age was higher in the new district because of the inclusion of a section 5 county, not necessarily that race was the predominant factor or that Guilford County was included in order to bring about that result. It seems clear to me that some recognition of the character of the completed CD 12 to the Department of Justice addressing the preclearance issue was necessary. However, that recognition does not necessarily reflect predominant, as opposed to merely significant, factors in drawing the district.

Plaintiffs also point to circumstantial evidence, including the shape of the district, the low compactness scores, and testimony from two experts who contend that race, and not politics, better explains the choices made in drawing CD 12.

As regards the district's shape and compactness, as Defendants point out, the redistricting co-chairs were not working from a blank slate when they drew the 2011 version of CD 12. CD 12 has been subject to litigation almost every single time it has been redrawn since 1991, and, although Plaintiffs are correct that it has a bizarre shape and low compactness scores, it has always had a bizarre shape and low compactness scores. As such, pointing out that these traditional criteria were not observed by the co-chairs in drawing CD 12 is less persuasive evidence of racial predominance than it might otherwise be, given that to create a district with a more natural shape and compactness score, the surrounding districts (and likely the entire map) would have to be redrawn. It is hard to conclude that a district that is as non-compact as CD 12 was in 2010 was revised with some specific motivation when it retains a similar shape as before and becomes slightly less compact than the geographic oddity it already was.

As for Plaintiffs' expert testimony, I first note that Dr. David Peterson's testimony neither establishes that race was

the predominant motive for the drawing of CD 12 nor does it even purport to. As Dr. Peterson himself stated, his opinion was simply that race "better accounts for" the boundaries of CD 12 than does politics, but he did not have an opinion on the legislature's actual motivation, on whether political concerns predominated over other criteria, or if the planners had non-negotiable racial goals. (Trial Tr. at 233:17-234:3.)

Further, when controlling for the results of the 2008 presidential election, the only data used by the map's architect in drawing CD 12, Dr. Peterson's analysis actually finds that politics is a better explanation for CD 12 than race. (Defs.' Ex. 122 at 113-15.) As such, even crediting his analysis, Dr. Peterson's report and testimony are of little use in examining the intent behind CD 12 in that they, much like Plaintiffs' direct evidence, show at most that race may have been one among several concerns and that politics was an equal, if not more significant, factor.

As for Dr. Ansolabehere, his testimony may provide some insight into the demographics that resulted from how CD 12 was drawn. However, even assuming that his testimony is to be

credited in its entirety, I do not find that it establishes that race predominated as a factor in how CD 12 was drawn.[12]

First, as Defendants point out, Dr. Ansolabehere relied on voter registration data, rather than actual election results, in his analysis. (Trial Tr. at 307:4-308:9.) Even without assuming the Supreme Court's admonishment about the use of registration data as less correlative of voting behavior than actual election results remains accurate, Dr. Ansolabehere's analysis suffers from a separate flaw. Dr. Ansolabehere's analysis says that race better explains the way CD 12 was drawn than does political party registration. However, this is a criterion that the state did not actually use when drawing the map. Dr. Hofeller testified that when drawing the districts, he examined only the 2008 presidential election results when deciding which precincts to move in and out of a district.[13] (See

[12] I note that Dr. Ansolabehere testified that he performed the same analysis in Bethune-Hill v. Virginia State Board of Elections, Civil Action No. 3:14CV852, 2015 WL 6440332 (E.D. Va. Oct. 22, 2015), and that the three-judge panel in that case rejected the use of his analysis. Id. at *41-42.

[13] While Plaintiffs criticize this use of an admittedly unique electoral situation, the fact that the 2008 presidential election was the only election used to draw CD 12 does not, in and of itself, establish that politics were merely a pretext for racial gerrymandering. In my opinion, the evidence does not necessarily establish the correlation between the specific racial identity of voters and voting results; instead, a number of different factors may have affected the voting results.

Trial Tr. at 495:20-502:14.) This fact is critical to the usefulness of Dr. Ansolabehere's analysis because, absent some further analysis stating that race better explains the boundaries of CD 12 than the election results from the 2008 presidential election, his testimony simply does not address the criteria that Dr. Hofeller actually used. Plaintiffs contend that the legislature's explanation of political motivation is not persuasive because, if it were the actual motivation, Dr. Ansolabehere's analysis would show that the boundaries were better explained by voter registration than by race. However, because Defendants have explained that they based their political goals on the results of the 2008 presidential election, rather than voter registration, Dr. Ansolabehere's analysis is simply not enough to prove a predominant racial motive.

This is particularly true when the other evidence that might confirm Dr. Ansolabehere's analysis is less than clear,

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(Compare, e.g., Trial Tr. at 325:7-9 ("There's huge academic literature on this topic that goes into different patterns of voting and how Obama changed it . . .") with Trial Tr. at 403:17-18 ("you can't tell at the individual level how individuals of different races voted"); id. at 503:7-10 ("we're looking for districts that will hold their political characteristics, to the extent that any districts hold them, over a decade rather than a one or two year cycle.").) As a result, I do not find the use of the 2008 presidential election to be pretext for racial gerrymandering.

and in fact provides some hesitation as to the analysis, rather than corroborating it. Specifically, Dr. Ansolabehere applied his envelope analysis to CD 12, a district that was originally drawn in order to create a majority-minority district, has retained a substantial minority population in the twenty years since its creation, and was extremely non-compact when originally drawn. Therefore, absent some consideration of other factors - the competitiveness of surrounding, contiguous districts and the compactness of those districts - it is difficult to place great weight on Dr. Ansolabehere's analysis. In other words, if a district starts out as an extremely gerrymandered district, drawn with race as a predominant factor, I do not find compelling a subsequent study concluding that race, and not politics, may be a better predictor of the likelihood of voter inclusion in a modification of the original district. See Bethune-Hill, 2015 WL 6440332 at *42 ("If a district is intentionally designed as a performing district for Section 5 purposes, there should be little surprise that the movement of VTDs into or out of the district is correlated - even to a statistically significant degree - with the racial composition of the population.").

As the Supreme Court has explained, Plaintiffs' burden of proving that racial considerations were "dominant and

controlling" is a demanding one. See Miller, 515 U.S. at 913, 929. In my opinion, Plaintiffs have not met that burden here as to CD 12. Plaintiffs' direct evidence shows only that race was a factor in how CD 12 was drawn, not the "dominant and controlling" factor. As for their circumstantial evidence, Plaintiffs must show that the district is unexplainable on grounds other than race. Id. at 905. Here, Defendants explain CD 12 based on the use of political data that Plaintiffs' experts do not even specifically address. As the Court in Cromartie II explained, in cases where racial identification correlates highly with political affiliation, Plaintiffs attacking a district must show "at the least that the legislature could have achieved its legitimate political objectives in alternative ways that are comparably consistent with traditional districting principles [and] that those districting alternatives would have brought about significantly greater racial balance." Cromartie II, 532 U.S. at 234, 258. Plaintiffs have not done so here. In essentially alleging that political goals were pretext, they have put forth no alternative plan that would have made CD 12 a strong Democratic district while simultaneously strengthening the surrounding Republican districts and not increasing the black VAP. As such, they have not proven that politics was mere pretext in this case.

Finally, mindful of the fact that the burden is on Plaintiffs to prove "that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations" (i.e., proving predominance directly), Miller, 515 U.S. at 913, 916, it is not clear whether compliance with section 5, although it necessarily involved consideration of race, should be considered a "neutral" redistricting principle or a purely racial consideration. Although I reach the same decision regardless, I conclude that actions taken in compliance with section 5 and preclearance should not be a factor that elevates race to a "predominant factor" when other traditional districting principles exist, as here, supporting a finding otherwise. As a result, the fact that certain voters in Guilford County were included in CD 12 in an effort to comply with section 5, avoid retrogression, and receive preclearance does not persuade me that race was a predominant factor in light of the other facts of this case.

As Plaintiffs have failed to show that race was the predominant factor in the drawing of CD 12, it is subject to a rational basis test rather than strict scrutiny. Because I find that CD 12 passes the rational basis test, I would uphold that district as constitutional.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID HARRIS, CHRISTINE BOWSER, and SAMUEL LOVE, Plaintiffs, v. PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and JOSHUA HOWARD, in his capacity as Chairman of the North Carolina State Board of Elections, Defendants.	)	Case No. 1:13-cv-949

FINAL JUDGMENT

For the reasons given in the accompanying memorandum opinion, this Court finds that Congressional Districts 1 and 12 as drawn in the 2011 Congressional Redistricting Plan are unconstitutional. Therefore, North Carolina is ordered to redraw a new congressional district plan by February 19, 2016. North Carolina is further enjoined from conducting any elections for the office of U.S. Representative until a new redistricting plan is in place.

Pursuant to Federal Rule of Civil Procedure 58, the Court enters final judgment in favor of Plaintiffs.

It is so ordered.

2/5/16

Roger L. Gregory
United States Circuit Judge

EXHIBIT 3

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

DAVID HARRIS; CHRISTINE BOWSER; and SAMUEL LOVE, Plaintiffs, v. PATRICK MCCRORY, in his capacity as Governor of North Carolina; NORTH CAROLINA STATE BOARD OF ELECTIONS; and JOSHUA HOWARD, in his capacity as Chairman of the North Carolina State Board of Elections, Defendants.	)	**DECLARATION OF KIM WESTBROOK STRACH**

NOW COMES Kim Westbrook Strach, who under penalty of perjury states as follows:

1. I am over 18 years of age, legally competent to give this declaration and have personal knowledge of the facts set forth in it.

2. I am the Executive Director of the North Carolina State Board of Elections ("State Board"), a position I have held since May 2013. My statutory duties as Executive Director of the State Board include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief Elections Officer for the State of North Carolina under the National Voter Registration Act of 1993 ("NVRA"). As Executive Director of the State Board, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county

boards of elections, and as Executive Director of the State Board, I provide guidance to the directors of the county boards.

3. As the Executive Director of the State Board and Chief Elections Officer for the State of North Carolina, I am familiar with the procedures for registration and voting in this State. I am also responsible for implementing the laws passed by the North Carolina General Assembly, supervising the conduct of orderly, fair, and open elections, and ensuring that elections in North Carolina are administered in such a way as to preserve the integrity of and protect the public confidence in the democratic process.

I. OVERVIEW OF 2016 ELECTION CYCLE

4. The 2016 Elections Cycle requires the commitment of significant administrative resources by state- and county-level elections officials, who must coordinate primary (if required) and general election contests for the following:

Federal: (15 races)	President and Vice-President of the United States United States Senate (1 seat) United States Congress (13 seats)
Statewide: (184 races)	Governor of North Carolina Council of State (9 seats) State Senate (50 seats) State House of Representatives (120 seats) Supreme Court (1 seat) Court of Appeals (3 seats)
County/Local: (~770 races)	Superior Court (13 seats) District Court of North Carolina (152 seats) District Attorney (5 Seats) County/local officials (approx. 600 seats)

5. The 2016 Election Cycle involves 1,942 candidates, including 46 congressional candidates, distributed as follows:

Congressional District	Candidates
1	C. L. Cooke; G. K. Butterfield
2	Adam Coker; Frank Roche; Jim Duncan; Kay Daly; Renee Ellmers; Tim D'Annunzio
3	David Hurst; Phil Law; Taylor Griffin; Walter B. Jones
4	David Price; Sue Googe; Teiji Kimball
5	Josh Brannon; Pattie Curran; Virginia Foxx
6	B. Mark Walker; Bruce Davis; Chris Hardin; Jim Roberts; Pete Glidewell
7	David Rouzer; J. Wesley Casteen; Mark D. Otto;
8	Richard Hudson; Thomas Mills
9	Christian Cano; George Rouco; Robert Pittenger
10	Albert L. Wiley, Jr.; Andy Millard; Jeffrey D. Gregory; Patrick McHenry
11	Mark Meadows; Rick Bryson; Tom Hill
12	Alma Adams; Gardenia Henley; Juan Antonio Marin, Jr.; Leon Threatt; Ryan Duffie
13	George Holding; John P. McNeil; and Ron Sanyal.

6. On September 30, 2015, the North Carolina General Assembly designated March 15, 2016 as the date for the 2016 primary election, including the presidential preference primary (herein, collectively, the "March Primary"). *See* S.L. 2015-258.

7. On October 1, 2015, my office issued Numbered Memo 2015-05 outlining recent legislative changes and providing guidance for counties regarding necessary preparations in advance of the March Primary and providing a link to the Master Election Calendar. True and accurate copies of Numbered Memo 2015-05 and an updated Master Election Calendar are attached as Exhibit A and Exhibit B, respectively.

8. Numbered Memo 2015-05 also included technical instructions regarding the Statewide Elections Information Management System (herein "SEIMS"); the candidate

filing period and procedures; ballot coding, proofing, and printing; education and training of election officials; and deadlines for one-stop early voting implementation plans.

9. On December 6, 2015, county elections administrators were required to publish notice of the March Primary pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). That notice included information indicating that congressional primaries would be held on March 15, 2016.

10. Candidate filing for the 2016 Elections Cycle ran from noon on December 1, 2015, to noon on December 21, 2015.

11. At the close of the filing period on December 21, 2015, the State Board Office established the order by which candidates' names will appear on the ballot during the March Primary.

12. State officials, county-level elections administrators, and certified voting system vendors began work in earnest on December 21, 2015 to load all candidates and contests into SEIMS, produce and proof ballots, and code ballot tabulation and touch-screen voting machines for use throughout the state's 100 counties.

13. North Carolina allows voters to cast their ballots in-person at early voting locations beginning March 3, 2016. During the 2012 May Primary—the most recent comparable election cycle—more than 492,000 voters made use of this early voting opportunity. Utilization may be higher in March due to the open presidential race and a perceived opportunity to influence the presidential nomination process earlier in the cycle.

II. BALLOTS PRINTED, ISSUED, AND VOTED

14. On January 25, 2016, county elections officials began issuing mail-in absentee ballots to civilian voters and those qualifying under UOCAVA, which requires transmittal of ballots no later than 45 days before an election for a federal office. North Carolina law requires mail-in absentee ballots to be transmitted no later than 50 days prior to a primary election.

15. SEIMS data indicates that county elections officials have mailed 8,621 ballots to voters, 903 of whom are located outside the United States. Of those absentee ballots mailed, 7,845 include a congressional contest on the voter's ballot. County boards of elections have already received back 431 voted ballots. Figures are current as of February 7, 2016.

16. Upon information and belief, more than 3.7 million ballots have already been printed for the March Primary.

17. Every county board of elections must issue unique ballots printed to display the appropriate combination of statewide and district contests for each political party and electoral districts within the county. These "ballot styles" ensure every voter obtains a single ballot that includes all contests in which that voter is eligible to participate. Because North Carolina recognizes three political parties (Democrat, Libertarian, and Republican), there are potentially three primary contests for each partisan office on the ballot, resulting in vastly more ballot styles in an even-year primary than in a general elections. There are more than 4,500 unique ballot styles slated for use during the March Primary. The process

of generating and proofing ballot styles is highly complex and involves multiple technical systems and quality control checkpoints that go far beyond mere printing.

18. Ballot specifications must be exact in order to ensure accurate reading by vote tabulating machines, which contain digital media cards that must be individually coded to detect the placement of each contest on every ballot style within the county. Results are written onto those cards and fed into our agency's SEIMS network. Because ballot coding for the March Primary has been finalized, results in congressional primary races will appear in the SEIMS system and are a matter of public record. Additionally, The State Board's system for displaying election results to the public is built around SEIMS and would include results in congressional primary races. Reprograming the public reporting tool at this late juncture would not allow for the testing time we believe is important to ensure the tool fully and accurately reports results.

19. Based on my experience at this agency for more than 15 years, I believe there is no scenario under which ballots for the March Primary can be reprinted to remove the names of congressional candidates without compromising safeguards needed to ensure the administrative integrity of the election. Accordingly, congressional candidates will remain on ballots issued to voters via mail-in absentee, at early voting locations, and on Election Day on March 15, 2016.

III. COUNTY-LEVEL CHALLENGES

Implementing New Congressional Districts

20. In order for county boards of elections to implement newly drawn congressional districts, each board's staff must reassign jurisdictional boundaries in

SEIMS. This is predominately a manual process that requires county elections officials to review physical maps and determine how particular address ranges are affected by changed jurisdictional boundaries. The State Board has implemented jurisdictional audit protocols, but these audits can be performed only *after* counties have completed jurisdictional reassignments and updated voter records within SEIMS.

21. Numbered Memo 2015-05, issued on October 1, 2015, provided a directive to county boards of elections regarding jurisdictional changes. It stated that all jurisdictions should be confirmed and no changes should be made to jurisdictions after December 18, 2015. The purpose of the deadline was to ensure ballots were accurately assigned to voters. Coding for ballots and voting equipment is based on information contained in SEIMS, and changes made to jurisdictions after ballots have been coded runs a risk that voters receive an incorrect ballot style containing contests in which the voter is ineligible to participate. As a safeguard against such errors, ballot styles must regenerate every time a jurisdictional change is entered. With ballot styles now set, we do not have the option to regenerate based on new lines.

22. Every ballot style is assigned a number in order for poll workers to pull and issue the correct ballot to a voter. These ballot style numbers are not generated in SEIMS but in separate voting tabulation software, which are then manually entered into SEIMS and made available to the poll worker in an electronic poll book. This is a particularly significant tool during early voting, when there could be more than 300 unique ballot styles in a single voting location. It is critical that poll workers are able to correctly identify the

ballot style to provide the voter. Regenerating ballot styles at this point could compromise the processes our state has put in place to ensure voters receive the correct ballot.

23. Bifurcating the primary for the purpose of implementing new congressional districts will likely require changes to jurisdictions for many voters. The timing of these changes is significant for several reasons. If the General Assembly has created newly drawn congressional districts by February 19, it would not only be unadvisable to make those changes during a current election due to the potential for voters to receive incorrect ballots, but it would otherwise be nearly impossible for county boards of elections to have the time to make these changes at a time they are preparing for the March primary. February 19 is the voter registration deadline. Historically, county boards of elections receive an influx of voter registration applications on or around that deadline. All timely received applications must be processed in order for newly registered voters to appear on the March Primary poll books, beginning with early voting (March 3-12). Staffing levels at county boards of elections vary widely across the state, but even amply staffed offices are stretched during the months and weeks leading up to the election.

24. State Board technical staff have provided me with the following time estimates for critical aspects of a new congressional election process, depending on the number of counties affected by redistricting: Jurisdictional updates (2 weeks); audit election modules in voter registration database (3 to 5 days); ballot coding and proofing (1 to 3 weeks); ballot tabulation logic and accuracy testing (1 to 2 weeks); mock election and results publication audit (held at least 2 weeks before early voting begins to resolve any

failures identified). Presumably, the legislature would provide also for a new candidate filing period, which must be completed before ballot coding and proofing may begin.

25. Putting aside election notice requirements, the UOCAVA requires the transmittal of absentee ballots no later than 45 days before an election to facilitate participation by U.S. service members, their families, and other U.S. citizens residing abroad. If a second primary in the congressional races is required, it is possible those contests would not appear on the general election ballot for November, which must be mailed no later than September 9.

26. Election professionals are accustomed to working on nonnegotiable deadlines. However, it is my belief that important safeguards meant to ensure the integrity of elections process require time that we would not have if asked to reassign many voters to new congressional jurisdictions and hold a first primary for congressional candidates on May 24, the statutory date for a *second primary* involving federal contests.

27. If the legislature designates a date after May 24—a necessity in my view—affected counties would be required to fund an unanticipated, stand-alone first primary for congress, with the possibility of a second primary in certain contests, resulting in a possible total of five separate elections within nine months.

Early Voting Locations & Hours-matching

28. In April 2015, State Board staff surveyed counties to ascertain the amount of variable costs borne by the counties in the 2014 General Election. The State Board provided counties with the following examples of variable costs: printing and counting ballots, securing one-stop sites, mail-in absentee, Election Day operations, and canvassing.

With 99 counties reporting, the variable costs borne by the counties in the 2014 General Election were as follows:

Total Variable Costs:	$9,511,716.13
One-stop Early Voting:	$2,651,455.54 (state average of $103.56 per early-voting-hour with a wide range $13.41—$551.75 per early-voting-hour between counties)

The above figures represent the most current estimates of local variable costs associated with a North Carolina election, and do not include state-level costs.

29. Elections administration within a county are funded pursuant to budgets passed by county boards of commissioners earlier this year. It is my understanding that the statutory deadline for county governing boards to adopt budget ordinances was July 1, 2015.

30. In 2013, the General Assembly enacted the Voter Information Verification Act, 2013 Session Laws 381 ("VIVA"), which introduced new requirements for one-stop early voting. S.L. 2013-381, § 25.2. At a minimum, counties are now required to offer one-stop early voting consistent with the following, unless hours reductions are approved unanimously by the county board of elections and by the State Board: One-stop early voting hours for the Presidential Preference Primary and all March Primaries must meet or exceed cumulative early voting hours for the 2012 Presidential Preference Primary (24,591.5 hours statewide).

During the 2012 May Primary, counties offered 24,591.5 hours of one-stop early voting. Applying reported cost estimates from the 2014 General Election, State Board staff

estimates that one-stop early voting in the March Primary will cost counties approximately $2,546,695.74 ($103.56 x 24,591.5 hours). *See* Paragraph 28, *supra*.

31. Bifurcating the 2016 primary would trigger a statutory requirement that counties offer additional one-stop early voting opportunities according to the following formula, unless hours reductions are approved unanimously by the county board of elections and by the State Board: One-stop early voting hours must meet or exceed cumulative early voting hours for the 2010 primary election (19,901 hours statewide).

Accordingly, county-level costs arising from one-stop early voting for an additional, congressional primary are estimated to reach $2,060,947.56 ($103.56 x 19,901 hours), based on available estimates. *See* Paragraph 28, *supra*. The number of one-stop sites across the state has steadily risen over past elections cycles, as seen below:

2010: Primary (215 sites) General (297 sites)
2012: Primary (275 sites) General (365 sites)
2014: Primary (289 sites) General (367 sites)

32. Costs beyond one-stop early voting include expenses associated with critical aspects of elections administration and may range from securing precinct voting locations, printing ballots, coding electronic tabulators and voting systems, mail-in absentee operations, and the hiring and training temporary precinct officials for Election Day, among other line-items. The staff-estimate for county-level costs involving an unanticipated primary is roughly $9.5 million, though actual costs may rise depending on the amount of notice counties are given to secure sites for an election on a date certain.

33. North Carolina elections require that counties secure voting locations in nearly 2,800 precincts. State Board records indicate that on Election Day in the

2014 General Election, nearly half of all precinct voting locations were housed in places of worship or in schools, with still more located in privately-owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites can require significant advance work by county board of elections staff and coordination with the State Board.

34. Bifurcating the March Primary so as to provide for a separate congressional primary would impose significant and unanticipated challenges and costs for county elections administrators and for the State Board as they develop and approve new one-stop implementation plans, secure necessary voting sites, hire adequate staff, and hold public meetings to take necessary action associated with the foregoing.

Training

35. Training of election officials is most effective when conducted in close proximity to the election the election official is administering. The vast majority of Election Day poll workers only serve on Election Day and, therefore, knowledge of election processes and protocol may not play a major role in their daily lives. North Carolina voters will have the opportunity to vote in-person at early voting locations on March 3, 2016. With this date only weeks away, the 100 county boards of elections and their staff are aggressively training poll workers.

36. The 2016 primary elections will be the first elections in North Carolina to include a photo ID requirement. For the better part of the last three years, the State Board of Elections has been preparing for the rollout of photo ID during the 2016 primary elections. In order to train poll workers effectively and to ensure uniform implementation

of photo ID requirements across the state, the State Board has produced and mandated the use of standardized training tools in every voting site in North Carolina.

37. Timing has played a major role in the agency's preparations for the rollout of photo ID requirements. Our agency's training approach is rooted in the understanding that training should occur far enough in advance to provide the best opportunity for thoroughness and appropriate repetition, but not so far removed from the election itself that memories fade. North Carolina conducted municipal primaries in September, October and November of 2015—all elections without photo ID requirements. Our agency began training in January 2016 as part of a concerted effort to avoid confusion for poll workers ahead of the March Primary. More than 1,400 election officials in January attended regional training sessions and webinars hosted by State Board staff regarding proper poll worker training.

38. State law requires our agency to hold a statewide training conference in advance of every primary or general election. Attendance by all counties is mandatory. The most recent mandatory training conference was recently held on February 1-2, 2016, and was attended by more than 500 supervisory election officials. The principal focus was on procedures for the March Primary. The next mandatory statewide conference is scheduled for August 8-9, 2016. If primary elections were to be held at a time later than March 15, 2016, it would not likely be feasible for the State or county boards of elections to hold an additional statewide conference prior to that time.

39. The State Board of Elections has dedicated staff to engage in meaningful voter outreach. This includes assisting voters with obtaining acceptable photo

identification, educating voters on current election laws and ensuring voters know when they can cast a ballot and make their voices heard in North Carolina. The voter outreach team has conducted voter education presentations statewide that provide voters information on the election schedule for the March Primary.

Poll Worker Recruitment

40. For the past several election cycles, poll worker recruitment has posed a significant challenge for county-level elections administrators. State statutes impose requirements regarding the partisan make-up for judges of elections in each precinct. Often county political parties find it difficult to find individuals that are willing to serve as precinct officials on Election Day. County elections officials have found it necessary to spend more and more time recruiting early voting and Election Day poll workers, especially because technological advances in many counties now require that elections workers be familiar with computers.

III. AFFECT ON VOTER EXPECTATIONS & PARTICIPATION

41. Redistricting would require that county and state elections administrators reassign voters to new jurisdictions, a process that involves changes to each voter's geocode in SEIMS. Information contained within SEIMS is used to generate ballots. Additionally, candidates and other civic organizations rely on SEIMS-generated data to identify and outreach to voters. Voters must them be sent mailings notifying them of their new districts.

42. The public must have notice of upcoming elections. State law requires that county boards of elections prepare public notice of elections involving federal contests for

local publication and for distribution to United States military personnel in conjunction with the federal write-in absentee ballot. Such notice must be issued 100 days before regularly-scheduled elections and must contain a list of all ballot measures known as of that date. On December 4, 2016, county elections officials published the above-described notice for all then-existing 2016 primary contests, including congressional races.

43. Beyond formal notice, voters rely on media outlets, social networks, and habit both to become aware of upcoming elections and to review the qualifications of participating candidates. Bifurcating the March Primary may reduce public awareness of a subsequent, stand-alone primary. Decreased awareness of an election can suppress the number of individuals who would have otherwise participated and may narrow the demographic of those who do ultimately vote. Each could affect electoral outcomes.

44. Historical experience suggests that delayed primaries result in lower voter participation and that when primaries are bifurcated, the delayed primary will have a lower turnout rate than the primary held on the regular date. For example, a court-ordered, stand-alone 1998 September Primary for congressional races resulted in turnout of roughly 8%, compared to a turnout of 18% for the regular primary held on the regularly-scheduled May date that year. The 2002 primary was also postponed until September; that delayed primary had a turnout of only 21%. In 2004, the primary was rescheduled to July 20 because preclearance of legislative plans adopted in late 2003 had not been obtained from the United States Department of Justice in time to open filing on schedule. Both the Democratic and Republican Parties chose to forego the presidential primary that year. *See* Exhibit D. Turnout for the delayed primary was only 16%.

45. By contrast, turnout during the last comparable primary involving a presidential race with no incumbent running, held in 2008, was roughly 37%. The 2016 Presidential Preference Primary falls earlier in the presidential nomination cycle, which could result in even greater turnout because of the increased chance of influencing party nominations.

46. Bifurcating the March Primary could affect participation patterns and electoral outcomes by permitting unaffiliated voters to choose one political party's congressional primary and a different political party's primary for all other contests. State law prohibits voters from participating in one party's primary contests and a different party's second, or "runoff," primary because the latter is considered a continuation of the first primary. No such restriction would apply to limit participation in a stand-alone congressional primary.

47. The regular registration deadline for the March Primary is February 19, 2016. The Second Primary is set by statute: May 3, 2016, if no runoff involves a federal contest, or May 24, 2016 if any runoff does involve a federal contest. State law directs that "there shall be no registration of voters between the dates of the first and second primaries." G.S. § 163-111(e), *see also* S.L. 2015-258, § 2(d). Bifurcating the regular and congressional primary dates—with second primaries possible—could create voter confusion over whether registration is open or closed.

IV. VOTER INFORMATION & EXPECTATIONS

48. The State Board has printed more than 4.3 million copies of the *2016 Primary Election Voter Guide*, which is sent by mail to every residential address across the state.

Upon information and belief, the guides have already been delivered in certain areas. The *Guide* identifies key election dates to ensure voters are properly informed of deadlines. I believe the risk of voter confusion over alternative voting procedures or a stand-alone congressional primary is significant, especially given our agency's efforts to inform voters of then-accurate deadlines.

49. The now-occurring congressional contest is the third held under present district boundaries. Widespread redistricting ahead of a stand-alone primary election presents a significant public education challenge, as voters have grown accustomed to current district boundaries, incumbents and candidates, and the relative importance or unimportance of a primary within their existing district.

50. Notice regarding electoral boundaries and constituent makeup typically inform an individual's decision to pursue office. It is common for legislative primary candidates to organize their voter outreach strategies and even to plan advertising well in advance of the primary election date. Often, those interested in pursuing congressional office will proactively work to raise their profile within a particular electoral district long before declaring candidacy. This exposure can, in turn, allow voters and the press early opportunities to interact with the individual and assess his or her fitness for a position of public trust. Last-minute changes to congressional districts can result in the pool of participating candidates changing from those who have cautiously worked to build credibility or name-recognition within their district communities.

51. In order to campaign effectively, a candidate must know the parameters of the district he or she is seeking to represent. Knowing the constituency is essential to

evaluating the prospects of a candidacy, and factors such as political and grassroots support, fund-raising potential, and ability to communicate with the voters. Without adequate time to prepare, raise money and campaign, potential candidates may forego seeking election.

52. Jurisdictional boundaries and election dates drive our work at the State Board. Even slight changes can trigger complex and interwoven statutory requirements and involve nonobvious logistical burdens and costs borne by North Carolina's 100 counties. Our agency takes seriously its obligation to enforce fully both legislative and judicial mandates, and to work diligently to ensure decision-makers are apprised of collateral effects that may attend those decisions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8th day of February, 2016.

Kim Westbrook Strach
Executive Director
North Carolina State Board of Elections

NORTH CAROLINA
State Board of Elections

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KIM WESTBROOK STRACH
Executive Director

Numbered Memo 2015-05

TO: County Boards of Elections

FROM: Kim Strach, Executive Director

RE: **2016 Primary Election**

DATE: October 1, 2015

Yesterday evening, Governor Pat McCrory signed House Bill 373 ("HB 373"). We can now move forward with preparations for holding all 2016 Primary Election contests on a single date: Tuesday, March 15, 2016. The purpose of this Numbered Memo is to provide information about many of the processes required in preparation for the 2016 Primary Election.

Background on HB 373

HB 373 reunites the Presidential Preference Primary and the general Primary for 2016 only. Under the revised calendar, the 2016 Primary Election will be held March 15. If a second primary is required for any federal contest, all second primaries will be held May 24 (in the absence of any federal runoffs, the second primary date will be May 3). Candidate filing and campaign finance deadlines are adjusted, with temporary power given to the State Board to suspend, change or add requirements where necessary to facilitate implementation of the new timeline.

SEIMS Preparations

The State Board of Elections will enter an "election event" date for March 15, 2016, which should be available tomorrow. Our staff will setup the following contests:

- Presidential Preference Primary
- U.S. Senate
- U.S. House of Representatives
- Governor
- Lieutenant Governor
- Secretary of State
- Auditor
- Treasurer
- Superintendent of Public Instruction
- Attorney General

- Commissioner of Agriculture
- Commissioner of Labor
- Commissioner of Insurance
- NC Senate
- NC House
- NC Supreme Court
- NC Court of Appeals
- District Attorney
- Clerk of Superior Court (county jurisdictional contest) (new)
- Register of Deeds (county jurisdictional contest) (new)
- Sheriff (county jurisdictional contest) (new)
- Coroner (county jurisdictional contest) (new)

This will be the first time State Board staff will enter certain county-level contests into SEIMS. Affected contests are noted above. We will not enter county commissioners, soil & water conservation district supervisors or any other local contests. Your office must be aware of all contests within your county; please contact local governing bodies to confirm your information regarding any seat that has become vacant or that has been filled by appointment pending an election to fill that vacancy. These seats may be subject to an unexpired term contest.

All contests entered in SEIMS under the 2016 General Election event will be set up as being subject to a primary. This arrangement will permit SEIMS to create both General Election and Primary contests. Contests that are not in fact subject to a primary will be deleted from Election Setup at the appropriate time after the close of the candidate filing period. Please enter all of your contests into SEIMS no later than October 16. State Board staff will begin entering the above-listed contests after the canvass of November municipal elections.

Additional updates regarding SEIMS applications will be forthcoming.

Candidate Filing Period

The candidate filing period will begin at noon on Tuesday, December 1, 2015 and end at noon on Monday, December 21, 2015. Counties conducting November municipal elections should note that the candidate filing period will begin three weeks after the November canvass.

December is customarily a time in elections when we catch our breath, but we will not have that opportunity this year. You must begin preparation now – if you have not already – to ensure full coverage of the office throughout the entire candidate filing period. We will provide all counties with candidate filing packets that include voter outreach materials. These materials are on order and will be made available to you as soon as they are delivered to the State Board of Elections Office.

Candidate filing forms and information regarding current filing fees for state offices are updated and available online: www.ncsbe.gov/ncsbe/candidate-filing. Please ensure your website includes the *current filing forms* with *current filing fee* information. Refer to G.S. § 163-107 to determine

the filing fee amount to set for local offices (usually 1% of the actual salary of the elected position). You should confirm the current salary of any county or local office that will be on your county's ballot in 2016.

HB 373 provides that a candidate is eligible to file a Notice of Candidacy for a partisan primary only if that individual has affiliated with that political party for 75 days. A candidate who changed party affiliation on or before September 17 will be able to file at any time during the candidate filing period. Otherwise, you should refer to the following schedule to determine the earliest date a candidate may file for a partisan contest after changing party affiliation. Note that if an eligibility date falls on a weekend, the candidate must wait until the upcoming Monday or later to file for a partisan primary contest.

Filing Schedule

Change of Party Date	Eligible to File as of:
9/17/2015	Tuesday, December 1, 2015
9/18/2015	Wednesday, December 2, 2015
9/19/2015	Thursday, December 3, 2015
9/20/2015	Friday, December 4, 2015
9/21/2015	Saturday, December 5, 2015 (file as of 12/7/15)
9/22/2015	Sunday, December 6, 2015 (file as of 12/7/15)
9/23/2015	Monday, December 7, 2015
9/24/2015	Tuesday, December 8, 2015
9/25/2015	Wednesday, December 9, 2015
9/26/2015	Thursday, December 10, 2015
9/27/2015	Friday, December 11, 2015
9/28/2015	Saturday, December 12, 2015 (file as of 12/14/15)
9/29/2015	Sunday, December 13, 2015 (file as of 12/14/15)
9/30/2015	Monday, December 14, 2015
10/1/2015	Tuesday, December 15, 2015
10/2/2015	Wednesday, December 16, 2015
10/3/2015	Thursday, December 17, 2015
10/4/2015	Friday, December 18, 2015
10/5/2015	Saturday, December 19, 2015 (file as of 12/21/15)
10/6/2015	Sunday, December 20, 2015 (file as of 12/21/15)
10/7/2015	Monday, December 21, 2015

Ballot Coding, Proofing and Printing

Accurate ballot coding is critical to ensuring successful primary elections. We all have important roles in this process. In order for State Board staff to ensure the accuracy of all data within SEIMS, it is necessary that you complete all relevant geocode changes no later than Friday, December 18. You must verify that all of your jurisdictional assignments are correct. Following the November municipal elections, you will receive a new DRR report from our voting systems staff. You will be required to review the report and either confirm that your geocode is accurate or notify State Board staff that you will be making changes, which must be completed no later than December 18.

If you have questions about any of your jurisdictional boundaries, please contact us immediately. Once all changes have been made in SEIMS, State Board staff will provide the jurisdictional database to Print Elect for use in ballot coding.

The State Board of Elections will determine a method of random selection for the order of candidate names on the ballot after the close of the candidate filing period. You will then be able to arrange the order of your candidates on the ballot. Counties must have all contests and candidates properly arranged by Monday, January 4.

As required under HB 373, the State Board of Elections will meet on Tuesday, January 5 to nominate presidential candidates for the 2016 Primary Election. Following that meeting, State Board staff will provide election imports to Print Elect. It is critical that all ballot preparations be completed on time so that ballots are thoroughly proofed, printed, and available for absentee voting on Monday, January 25. This deadline requires that everyone involved works accurately and timely. Please expect additional information on this very important process as the candidate filing period approaches.

Education and Training of Election Officials

Comprehensive and uniform training of our precinct officials and early voting workers is essential and is required of every county board of elections. Every voter should expect to be treated the same way by one-stop early voting workers and by Election Day precinct officials, regardless of where and when they vote throughout our state. To accomplish this goal, we are producing training videos and additional training materials. We understand your need to have these materials well in advance of training sessions. All training materials should be in your possession at the beginning of the candidate filing period.

Master Election Calendar

In an effort to provide a single access-point for all critical dates, we have developed a Master Election Calendar that contains dates related to election administration and campaign finance: ftp://alt.ncsbe.gov/sboe/MasterElectionSchedule.xlsx. We have made every effort to verify the information contained in the calendar on short order. The document is meant as a guide and is subject to further revision. Please bear in mind that HB 373 gave the State Board special authority to issue orders and alter requirements as necessary to implement the new primary date. Please let us know whether you have any questions or spot any issues.

One-Stop/Early Voting Implementation Plans

The one-stop early voting hours matching requirements in place last year will again apply in 2016 pursuant to G.S. § 163-227.2(g2). For the 2016 Primary, each county must offer at least as many cumulative early voting hours as provided in the 2012 May Primary. Therefore, each county must offer as many cumulative early voting hours for the 2016 General Election as were provided in the 2012 General Election. Hour totals for 2012 elections are posted online for your reference: ftp://alt.ncsbe.gov/One-Stop_Early_Voting/OS_sites_2010_2012.xlsx. One-stop Implementation Plans are due to the State Board of Elections no later than Friday, January 15.

Counties that would seek a reduction in the number of required hours under G.S. § 163-227.2(g3) must understand that a request by a county board of elections must be unanimous. State Board approval must also be unanimous. Counties seeking such a reduction must submit the request no later than Thursday, December 31, 2015.

Further details about One-Stop Implementation Plans for the 2016 Primary will be communicated in a separate Numbered Memo. Counties that have not already begun planning early voting schedules for the 2016 Primary Election should do so soon.

Mock Election

We will conduct a Mock Election on Thursday, February 18. Please mark this date on your calendar and stay tuned for preparation details.

Campaign Finance Reporting Schedule

HB 373 includes a change to the campaign finance reporting schedule that is made necessary by the primary date change:

- For 2016, the First Quarter Plus Report has been replaced by a report that will be due on Monday, March 7, and will cover the time period from January 1 through February 29.
- The Second Quarter report will cover the time period from March 1, 2016 through June 30.
- The 48-Hour reporting period will begin on March 1, 2016 and will end on March 15.

The candidate filing packets will include these changes to the schedule and an explanation of required reports. All dates relevant to campaign finance responsibilities will be included in the Master Election Calendar.

State Board Training

We have very few windows for training prior to March 15. Due to these scheduling constraints, we are working hard to find an appropriate venue on dates that will not conflict with other required election events. We will inform you of the date and location as soon as we have that information.

Given new election procedures that take effect in 2016, pending court decisions that could affect those changes, and the adjournment of the General Assembly this week, our best efforts are being dedicated to provide you clear, complete, accurate information and guidance as soon as possible.

From Murphy to Manteo, county election directors face challenging deadlines, and we face them here in Raleigh. Success depends upon our working together, so please know that we are working with your concerns in mind.

EXHIBIT B

DATE	DATE2	TIME	EVENT	ELECTION EVENT TYPE	EVENT SUBTYPE	REFERENCE	RULE
09/27/15	Sunday, September 27, 2015		District Relations Report distributed to counties	Statewide Primary	VOTING SYSTEMS	Best Practice	120 days before start of absentee voting by
09/28/15	Monday, September 28, 2015		Pre-Election Report Due Date (if in 2nd primary)	October Municipal	CF REPORTING		
09/28/15	Monday, September 28, 2015		Pre-Election Report Due Date	October Municipal	CF REPORTING		
09/28/15	Monday, September 28, 2015		Pre-Primary Report Due Date (if applicable)	October Municipal	CF REPORTING		
09/28/15	Monday, September 28, 2015		Pre-Referendum Report Due Date	October Municipal	CF REFERENDUM REPORTING		
09/28/15	Monday, September 28, 2015		CBE issues certificates of nomination or election if no	September Municipal Primary	CANVASS	163-182.15(a); 163-301	Six days after the county canvass (In a
09/29/15	Tuesday, September 29, 2015		35-Day Report Due Date	November Municipal	CF REPORTING		
09/29/15	Tuesday, September 29, 2015	5:00 PM	Absentee Board Meeting 3	October Municipal	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
09/29/15	Tuesday, September 29, 2015	5:00 PM	Last day to request an absentee ballot by mail.	October Municipal	ABSENTEE	163-230.1(a)	Not later than 5:00 p.m. on the Tuesday
09/29/15	Tuesday, September 29, 2015	5:00 PM	Late absentee requests allowed due to sickness or	October Municipal	ABSENTEE	163-230.1(a1)	After 5:00 p.m. on the Tuesday before the
09/29/15	Tuesday, September 29, 2015		35-Day Report Due Date (if not in primary)	October Municipal	CF REPORTING		
09/29/15	Tuesday, September 29, 2015		Finalize Voter History	September Municipal Primary	POST-ELECTION	Best Practice	7 days after county canvass
09/29/15	Tuesday, September 29, 2015		Confirm with polling place contacts use of facility	Statewide Primary	PRECINCTS	Best Practice	24 weeks prior to election day
10/01/15	Thursday, October 01, 2015	10:00 AM	Election Day Observer/Runner List Due	October Municipal	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to Election
10/02/15	Friday, October 02, 2015		Publish Election Notice 3	November Municipal	LEGAL NOTICE	163-33(8)	Publish weekly during the 20 day period
10/02/15	Friday, October 02, 2015		Absentee Voting - Date By Which Absentee Ballots Must	November Municipal	ABSENTEE	163-227.3(a); 163-302	No later than 30 days before a municipal
10/03/15	Saturday, October 03, 2015	1:00 PM	Absentee One Stop Voting Ends	October Municipal	ABSENTEE ONESTOP	163-227.2(b)	Not later than 1:00 p.m. on the last Saturday
10/04/15	Sunday, October 04, 2015		CBE gives public notice of buffer zone information	November Municipal	PRECINCTS	163-166.4(c)	No later than 30 days before each election
10/04/15	Sunday, October 04, 2015		Deadline for UOCAVA Absentee Ballots to be Available	November Municipal	ABSENTEE	163-258.9; 163-302	No later than 30 days before a municipal election, if absentee voting is permitted.
10/04/15	Sunday, October 04, 2015		Last day to mail notice of polling place changes.	November Municipal	PRECINCTS	163-128	No later than 30 days prior to the primary or
10/04/15	Sunday, October 04, 2015		Notification to Voters of Precinct/Voting Place Change	November Municipal	PRECINCTS	163-128(a)	30 days prior to the primary or election
10/05/15	Monday, October 05, 2015		Receive voter registration totals and add them to vote	October Municipal	VOTING SYSTEMS		1 day before election day
10/05/15	Monday, October 05, 2015	5:00 PM	UOCAVA Absentee Ballot Request Deadline	October Municipal	ABSENTEE	163-258.7	No later than 5:00 p.m. on the day before
10/05/15	Monday, October 05, 2015	5:00 PM	UOCAVA Voter Registration Deadline	October Municipal	VOTER REGISTRATION	163-258.6	No later than 5:00 p.m. on the day before
10/05/15	Monday, October 05, 2015	5:00 PM	Absentee Board Meeting Pre-Election Day	October Municipal	ABSENTEE		After 5:00 p.m. on the Monday before
10/06/15	Tuesday, October 06, 2015	12:00 PM	Absentee Ballot Challenge - Time for filing a challenge to	October Municipal	CHALLENGES	163-89	No earlier than 12:00 noon on election day.
10/06/15	Tuesday, October 06, 2015	5:00 PM	Begin Counting Absentee Ballots (Cannot announce	October Municipal	ABSENTEE	163-234	5:00 p.m. on election day unless an earlier
10/06/15	Tuesday, October 06, 2015	5:00 PM	Civilian Absentee Return Deadline	October Municipal	ABSENTEE	163-231(b)(1)	Not later than 5:00 p.m. on day of the primary
10/06/15	Tuesday, October 06, 2015	10:00 AM	Distribute Certified Executed Absentee List	October Municipal	ABSENTEE	163-232	No later than 10:00 a.m. on election day
10/06/15	Tuesday, October 06, 2015		Distribute Election Day Absentee Abstract to SBOE	October Municipal	ABSENTEE	163-234(6)	Election Day
10/06/15	Tuesday, October 06, 2015	6:30 AM	ELECTION DAY	October Municipal	ELECTION DAY	163-279	Fourth Tuesday before the Tuesday after the
10/06/15	Tuesday, October 06, 2015	10:00 AM	Election Day Tracking (10 am, 2 pm, 4 pm)	October Municipal	ADMINISTRATION		Election Day at 10 am, 2 pm and 4 pm
10/06/15	Tuesday, October 06, 2015	8:30 PM	Election Night Finalize Activities	October Municipal	VOTING SYSTEMS		Election Night
10/06/15	Tuesday, October 06, 2015	7:30 PM	UOCAVA Absentee Ballot Return Deadline - Electronic	October Municipal	ABSENTEE	163-258.10	Close of polls on Election Day
10/07/15	Wednesday, October 07, 2015		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
10/07/15	Wednesday, October 07, 2015		Sample Audit Count - Precincts Selection	October Municipal	CANVASS	163-182.1(b)(1)	Within 24 hours of polls closing on Election
10/07/15	Wednesday, October 07, 2015		Latest date that prospective candidate may change party	Statewide Primary	CANDIDATE FILING	HB 373	75 days before last day of candidate filing
10/08/15	Thursday, October 08, 2015		Mock Election	November Municipal	VOTING SYSTEMS	Best Practice	14 days before absentee one-stop begins in a
10/09/15	Friday, October 09, 2015		Voter Challenge Deadline - last day to challenge before	November Municipal	CHALLENGES	163-85	No later than 25 days before an election.
10/09/15	Friday, October 09, 2015	5:00 PM	Voter Registration Deadline	November Municipal	VOTER REGISTRATION	163-82.6(c)	25 days before the primary or election day
10/09/15	Friday, October 09, 2015	5:00 PM	Civilian Absentee Return Deadline - Mail Exception	October Municipal	ABSENTEE	163-231(b)(2)	If postmarked on or before election day and
10/09/15	Friday, October 09, 2015	5:00 PM	UOCAVA Absentee Ballot Return Deadline - Mailed	October Municipal	ABSENTEE	163-258.12	By end of business on the business day before
10/09/15	Friday, October 09, 2015		Final Referendum Report End Date	October Municipal	CF REFERENDUM REPORTING		
10/10/15	Saturday, October 10, 2015		Send Late Registration Notices until Election Day	November Municipal	VOTER REGISTRATION	Best Practice	Starting day after voter registration deadline
10/12/15	Monday, October 12, 2015	5:00 PM	Deadline for provisional voters subject to HAVA ID to	October Municipal	CANVASS	163-166.12(c); 163-82.4(e)	By 5:00 p.m. on the day before the county
10/12/15	Monday, October 12, 2015		FEDERAL HOLIDAY - COLUMBUS DAY (NO MAIL)				
10/13/15	Tuesday, October 13, 2015	5:00 PM	Absentee Board Meeting 1	November Municipal	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
10/13/15	Tuesday, October 13, 2015	11:00 AM	County Canvass	October Municipal	CANVASS	163-182.5(b)	Seven days after each election (except a
10/13/15	Tuesday, October 13, 2015		Deadline for election protest concerning votes counted	October Municipal	CANVASS	163-182.9(b)(4)a	Before the beginnning of the county canvass
10/13/15	Tuesday, October 13, 2015	10:00 AM	Distribute Supplemental Certified Executed Absentee List	October Municipal	ABSENTEE	163-232.1; 163-234 (10)	No later than 10:00 a.m. of the next business
10/13/15	Tuesday, October 13, 2015		Acknowledgement of No Photo ID	September Municipal Primary	POST-ELECTION	HB589	4 weeks after Election Day
10/14/15	Wednesday, October 14, 2015		Voter Registration Deadline - Exception for missing or	November Municipal	VOTER REGISTRATION	163-82.6(c) ; 163-82.6(c1)	No later than 20 days before the election
10/14/15	Wednesday, October 14, 2015	5:00 PM	Deadline for candidates in CBE jurisdictional contests to	October Municipal	CANVASS	163-182.7(b)	5:00 p.m. on the first business day after the
10/15/15	Thursday, October 15, 2015		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
10/15/15	Thursday, October 15, 2015		Complete Logic & Accuracy Testing	November Municipal	VOTING SYSTEMS	Best Practice	7 days before the start of one-stop voting
10/15/15	Thursday, October 15, 2015	5:00 PM	Deadline for candidates in SBOE jurisdictional contests to	October Municipal	CANVASS	163-182.7(c); 163-182.4(b)(5)	5:00 p.m. on the second business day after
10/15/15	Thursday, October 15, 2015	5:00 PM	Deadline to file election protest concerning any other	October Municipal	CANVASS	163-182.9(b)(4)c	5:00 p.m. on the second business day after

10/15/15	Thursday, October 15, 2015	5:00 PM	Deadline to file election protest concerning manner in	October Municipal	CANVASS	163-182.9(b)(4)b	5:00 p.m. on the second business day after
10/15/15	Thursday, October 15, 2015		Mail Abstract to State Board of Elections	October Municipal	CANVASS	163-300	Within 9 days after a municipal primary or
10/16/15	Friday, October 16, 2015		Final Referendum Report Due Date	October Municipal	CF REFERENDUM REPORTING		
10/17/15	Saturday, October 17, 2015	10:00 AM	One-stop Observer List Due	November Municipal	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to start of
10/19/15	Monday, October 19, 2015		Pre-Election Report End Date	November Municipal	CF REPORTING		
10/19/15	Monday, October 19, 2015		Pre-Runoff Report End Date (if in runoff)	November Municipal	CF REPORTING		
10/19/15	Monday, October 19, 2015		Pre-Referendum Report End Date	November Municipal	CF REFERENDUM REPORTING		
10/19/15	Monday, October 19, 2015		CBE issues certificates of nomination or election if no	October Municipal	CANVASS	163-182.15(a); 163-301	Six days after the county canvass (In a
10/19/15	Monday, October 19, 2015		Pre-Election Report End Date (if not in 2nd primary)	October Municipal	CF REPORTING		
10/20/15	Tuesday, October 20, 2015	5:00 PM	Absentee Board Meeting 2	November Municipal	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
10/20/15	Tuesday, October 20, 2015		Publish Absentee Resolution	November Municipal	ABSENTEE	163-234	Once a week for two weeks prior to the
10/20/15	Tuesday, October 20, 2015		Finalize Voter History	October Municipal	POST-ELECTION	Best Practice	7 days after county canvass
10/22/15	Thursday, October 22, 2015		Absentee One Stop Voting Begins	November Municipal	ABSENTEE ONESTOP	163-227.2(b)	Not earlier than the second Thursday before
10/26/15	Monday, October 26, 2015		Pre-Election Report Due Date	November Municipal	CF REPORTING		
10/26/15	Monday, October 26, 2015		Pre-Runoff Report Due Date (if in runoff)	November Municipal	CF REPORTING		
10/26/15	Monday, October 26, 2015		Pre-Referendum Report Due Date	November Municipal	CF REFERENDUM REPORTING		
10/26/15	Monday, October 26, 2015		Pre-Election Report Due Date (if not in 2nd primary)	October Municipal	CF REPORTING		
10/27/15	Tuesday, October 27, 2015	5:00 PM	Absentee Board Meeting 3	November Municipal	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
10/27/15	Tuesday, October 27, 2015	5:00 PM	Last day to request an absentee ballot by mail.	November Municipal	ABSENTEE	163-230.1(a)	Not later than 5:00 p.m. on the Tuesday
10/27/15	Tuesday, October 27, 2015	5:00 PM	Late absentee requests allowed due to sickness or	November Municipal	ABSENTEE	163-230.1(a1)	After 5:00 p.m. on the Tuesday before the
10/29/15	Thursday, October 29, 2015	10:00 AM	Election Day Observer/Runner List Due	November Municipal	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to Election
10/31/15	Saturday, October 31, 2015	1:00 PM	Absentee One Stop Voting Ends	November Municipal	ABSENTEE ONESTOP	163-227.2(b)	Not later than 1:00 p.m. on the last Saturday
11/01/15	Sunday, November 01, 2015		Complete election setup tasks	Statewide General Election	VOTING SYSTEMS	Best Practice	30 days before start of candidate filing
11/01/15	Sunday, November 01, 2015		Confirm local office salaries for candidate filing	Statewide General Election	CANDIDATE FILING	Best Practice	30 days before candidate filing begins
11/01/15	Sunday, November 01, 2015		Prepare candidate filing materials	Statewide General Election	CANDIDATE FILING	Best Practice	30 days before candidate filing begins
11/02/15	Monday, November 02, 2015		Receive voter registration totals and add them to vote	November Municipal	VOTING SYSTEMS		1 day before election day
11/02/15	Monday, November 02, 2015	5:00 PM	UOCAVA Absentee Ballot Request Deadline	November Municipal	ABSENTEE	163-258.7	No later than 5:00 p.m. on the day before
11/02/15	Monday, November 02, 2015	5:00 PM	UOCAVA Voter Registration Deadline	November Municipal	VOTER REGISTRATION	163-258.6	No later than 5:00 p.m. on the day before
11/02/15	Monday, November 02, 2015	5:00 PM	Absentee Board Meeting Pre-Election Day	November Municipal	ABSENTEE		After 5:00 p.m. on the Monday before
11/03/15	Tuesday, November 03, 2015	12:00 PM	Absentee Ballot Challenge - Time for filing a challenge to	November Municipal	CHALLENGES	163-89	No earlier than 12:00 noon on election day.
11/03/15	Tuesday, November 03, 2015	5:00 PM	Begin Counting Absentee Ballots (Cannot announce	November Municipal	ABSENTEE	163-234	5:00 p.m. on election day unless an earlier
11/03/15	Tuesday, November 03, 2015	5:00 PM	Civilian Absentee Return Deadline	November Municipal	ABSENTEE	163-231(b)(1)	Not later than 5:00 p.m. on day of the primary
11/03/15	Tuesday, November 03, 2015	10:00 AM	Distribute Certified Executed Absentee List	November Municipal	ABSENTEE	163-232	No later than 10:00 a.m. on election day
11/03/15	Tuesday, November 03, 2015		Distribute Election Day Absentee Abstract to SBOE	November Municipal	ABSENTEE	163-234(6)	Election Day
11/03/15	Tuesday, November 03, 2015	6:30 AM	ELECTION DAY	November Municipal	ELECTION DAY	163-279	Tuesday after the first Monday in November
11/03/15	Tuesday, November 03, 2015	10:00 AM	Election Day Tracking (10 am, 2 pm, 4 pm)	November Municipal	ADMINISTRATION		Election Day at 10 am, 2 pm and 4 pm
11/03/15	Tuesday, November 03, 2015	8:30 PM	Election Night Finalize Activities	November Municipal	VOTING SYSTEMS		Election Night
11/03/15	Tuesday, November 03, 2015	7:30 PM	UOCAVA Absentee Ballot Return Deadline - Electronic	November Municipal	ABSENTEE	163-258.10	Close of polls on Election Day
11/03/15	Tuesday, November 03, 2015		Acknowledgement of No Photo ID	October Municipal	POST-ELECTION	HB589	4 weeks after Election Day
11/04/15	Wednesday, November 04, 2015		Sample Audit Count - Precincts Selection	November Municipal	CANVASS	163-182.1(b)(1)	Within 24 hours of polls closing on Election
11/04/15	Wednesday, November 04, 2015		Schedule precinct official training schedule	Statewide Primary	PRECINCT OFFICIALS	Best Practice	120 days prior to start of one-stop voting
11/06/15	Friday, November 06, 2015	5:00 PM	Civilian Absentee Return Deadline - Mail Exception	November Municipal	ABSENTEE	163-231(b)(2)	If postmarked on or before election day and
11/06/15	Friday, November 06, 2015		Final Referendum Report End Date	November Municipal	CF REFERENDUM REPORTING		
11/07/15	Saturday, November 07, 2015		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
11/09/15	Monday, November 09, 2015	5:00 PM	Deadline for provisional voters subject to HAVA ID to	November Municipal	CANVASS	163-166.12(c); 163-82.4(e)	By 5:00 p.m. on the day before the county
11/09/15	Monday, November 09, 2015	5:00 PM	UOCAVA Absentee Ballot Return Deadline - Mailed	November Municipal	ABSENTEE	163-258.12	By end of business on the business day before
11/10/15	Tuesday, November 10, 2015		Deadline for election protest concerning votes counted	November Municipal	CANVASS	163-182.9(b)(4)a	Before the beginning of the county canvass
11/10/15	Tuesday, November 10, 2015	10:00 AM	Distribute Supplemental Certified Executed Absentee List	November Municipal	ABSENTEE	163-232.1; 163-234 (10)	No later than 10:00 a.m. of the next business
11/10/15	Tuesday, November 10, 2015	11:00 AM	County Canvass	November Municipal	CANVASS	163-182.5(b)	Seven days after each election (except a
11/11/15	Wednesday, November 11, 2015		STATE HOLIDAY - VETERANS DAY				
11/12/15	Thursday, November 12, 2015	5:00 PM	Deadline for candidates in CBE jurisdictional contests to	November Municipal	CANVASS	163-182.7(b)	5:00 p.m. on the first business day after the
11/12/15	Thursday, November 12, 2015		Mail Abstract to State Board of Elections	November Municipal	CANVASS	163-300	Within 9 days after a municipal primary or
11/13/15	Friday, November 13, 2015	5:00 PM	Deadline for candidates in SBOE jurisdictional contests to	November Municipal	CANVASS	163-182.7(c); 163-182.4(b)(5)	5:00 p.m. on the second business day after
11/13/15	Friday, November 13, 2015	5:00 PM	Deadline to file election protest concerning any other	November Municipal	CANVASS	163-182.9(b)(4)c	5:00 p.m. on the second business day after
11/13/15	Friday, November 13, 2015	5:00 PM	Deadline to file election protest concerning manner in	November Municipal	CANVASS	163-182.9(b)(4)b	5:00 p.m. on the second business day after
11/13/15	Friday, November 13, 2015		Final Referendum Report Due Date	November Municipal	CF REFERENDUM REPORTING		
11/14/15	Saturday, November 14, 2015		Report Results by Voting Tabulation Districts (VTD)	September Municipal Primary	VOTING SYSTEMS	163-132.5G	No later than 60 days after Election Day
11/15/15	Sunday, November 15, 2015		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
11/16/15	Monday, November 16, 2015		Publish Notice of Candidate Filing	Administration	CANDIDATE FILING	Best Practice	14 days before the start of candidate filing

11/16/15	Monday, November 16, 2015		CBE issues certificates of nomination or election if no	November Municipal	CANVASS	163-182.15(a); 163-301	Six days after the county canvass (In a
11/17/15	Tuesday, November 17, 2015		Finalize Voter History	November Municipal	POST-ELECTION	Best Practice	7 days after county canvass
11/17/15	Tuesday, November 17, 2015		Confirm with polling place contacts use of facility	Second Primary - No Federal	PRECINCTS	Best Practice	24 weeks prior to election day
11/21/15	Saturday, November 21, 2015		Presentation to CBE of petitions for nomination of	Presidential Preference Primary	VOTING SYSTEMS	HB 373	No later than 10 days before start of
11/26/15	Thursday, November 26, 2015		STATE HOLIDAY - THANKSGIVING				
11/27/15	Friday, November 27, 2015		STATE HOLIDAY - THANKSGIVING				
11/29/15	Sunday, November 29, 2015		Petition in lieu of filing fee deadline - Submission to CBE	Statewide General Election	CANDIDATE FILING	163-107.1(b), (c)	15 days prior to Monday preceding the filing
12/01/15	Tuesday, December 01, 2015		Acknowledgement of No Photo ID	November Municipal	POST-ELECTION	HB589	4 weeks after Election Day
12/01/15	Tuesday, December 01, 2015	12:00 PM	Candidate filing period begins	Statewide General Election	CANDIDATE FILING	HB 373	No earlier than 12:00 noon on the second
12/01/15	Tuesday, December 01, 2015		Deadline to submit precinct change proposal	Statewide Primary	PRECINCTS	163-132.3	105 days prior to the next election that the
12/01/15	Tuesday, December 01, 2015		District Relations Report approval needed from counties	Statewide Primary	VOTING SYSTEMS	Best Practice	Start of candidate filing
12/05/15	Saturday, December 05, 2015		Report Results by Voting Tabulation Districts (VTD)	October Municipal	VOTING SYSTEMS	163-132.5G	No later than 60 days after Election Day
12/06/15	Sunday, December 06, 2015		Publication of UOCAVA election notice	Statewide Primary	ABSENTEE	163-258.16	Not later than 100 days before election day
12/07/15	Monday, December 07, 2015		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
12/08/15	Tuesday, December 08, 2015		Confirm with polling place contacts use of facility	Second Primary - Federal Contest	PRECINCTS	Best Practice	24 weeks prior to election day
12/14/15	Monday, December 14, 2015	12:00 PM	Petition in lieu of filing fee deadline	Statewide General Election	CANDIDATE FILING	163-107.1(b), (c)	Not later than 12:00 noon on Monday
12/15/15	Tuesday, December 15, 2015		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
12/16/15	Wednesday, December 16, 2015		Chair of political party must submit list of presidential	Presidential Preference Primary	VOTING SYSTEMS	HB 373	No later than 12/16/2015
12/16/15	Wednesday, December 16, 2015	5:00 PM	Deadline to withdraw Notice of Candidacy	Statewide General Election	CANDIDATE FILING	163-294.2(d); 163-106(e)	No later than prior to the close of business on
12/21/15	Monday, December 21, 2015	12:00 PM	Candidate filing period ends	Statewide General Election	CANDIDATE FILING	HB 373	No later than 12:00 noon on the last business
12/22/15	Tuesday, December 22, 2015		Complete contest and candidate ordering	Statewide General Election	VOTING SYSTEMS	Best Practice	By the first business day after the end of
12/23/15	Wednesday, December 23, 2015		STATE HOLIDAY - CHRISTMAS				
12/24/15	Thursday, December 24, 2015		STATE HOLIDAY - CHRISTMAS				
12/25/15	Friday, December 25, 2015		STATE HOLIDAY - CHRISTMAS				
12/26/15	Saturday, December 26, 2015		District Relations Report approval needed from counties	Statewide Primary	VOTING SYSTEMS	Best Practice	30 days before start of absentee voting by
12/29/15	Tuesday, December 29, 2015		CBE sends certification to the State Board of Elections of	Statewide General Election	CANDIDATE FILING	163-108	Within three days after the close of candidate
12/29/15	Tuesday, December 29, 2015		SBE certification of notices of candidacy filed with SBE to	Statewide General Election	CANDIDATE FILING	163-108	Within three days after the close of candidate
12/31/15	Thursday, December 31, 2015		Year End Semi Annual Report End Date	November Municipal	CF REPORTING		
12/31/15	Thursday, December 31, 2015		Final Supplemental Referendum Report End Date	November Municipal	CF REFERENDUM REPORTING		
12/31/15	Thursday, December 31, 2015		Year End Semi Annual Report End Date	October Municipal	CF REPORTING		
12/31/15	Thursday, December 31, 2015		Final Supplemental Referendum Report End Date	October Municipal	CF REFERENDUM REPORTING		
12/31/15	Thursday, December 31, 2015		Year End Semi Annual Report End Date	September Municipal Primary	CF REPORTING		
12/31/15	Thursday, December 31, 2015		Final Supplemental Referendum Report End Date	September Municipal Primary	CF REFERENDUM REPORTING		
12/31/15	Thursday, December 31, 2015		Candidate challenge deadline	Statewide General Election	CHALLENGES	163-127.2	No later than 10 days after the time for filing
12/31/15	Thursday, December 31, 2015		SBE certifies to CBE chairman in each county the names	Statewide General Election	CANDIDATE FILING	163-108	No later than 10 days after the close of
12/31/15	Thursday, December 31, 2015		One-stop hours reduction requests due	Statewide Primary	ABSENTEE ONESTOP	163-227.2	Numbered Memo 2015-05
01/01/16	Friday, January 01, 2016		STATE HOLIDAY - NEW YEARS DAY				
01/02/16	Friday, January 02, 2015		Counties List Maintenance Mailings	Administration	LIST MAINTENANCE	163-82.14	1st business day after New Year's Day
01/02/16	Saturday, January 02, 2016		Report Results by Voting Tabulation Districts (VTD)	November Municipal	VOTING SYSTEMS	163-132.5G	No later than 60 days after Election Day
01/04/16	Monday, January 04, 2016		Send NCOA Mailings	Administration	LIST MAINTENANCE	163-82.14	January 1 and July 1 of each calendar year.
01/04/16	Monday, January 04, 2016		Remove Inactive Voters; Remove Temporary Voters	Administration	LIST MAINTENANCE	163-82.14	1st business day after New Year's Day
01/04/16	Monday, January 04, 2016	5:00 PM	Presidential nomination by petition due to be filed with	Presidential Preference Primary	CANDIDATE FILING	HB 373	No later than 5:00 pm on 1/4/2016
01/05/16	Tuesday, January 05, 2016		Nomination of Presidential candidates by SBE	Presidential Preference Primary	CANDIDATE FILING	HB 373	SBE must convene in Raleigh on January 5,
01/07/16	Thursday, January 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
01/07/16	Thursday, January 07, 2016		Final Supplemental Referendum Report	November Municipal	CF REFERENDUM REPORTING		
01/07/16	Thursday, January 07, 2016		Final Supplemental Referendum Report Due Date	October Municipal	CF REFERENDUM REPORTING		
01/07/16	Thursday, January 07, 2016		Final Supplemental Referendum Report Due Date	September Municipal Primary	CF REFERENDUM REPORTING		
01/11/16	Monday, January 11, 2016		Begin Budget Preparations; Prepare Training Schedule	Administration	ADMINISTRATION	Best Practice	Second Monday in January
01/14/16	Thursday, January 14, 2016		Notices of Report Due mailed for Year End Semi Annual Report	Administration	CAMPAIGN FINANCE	163-278.23; 163-278.40H	Must be sent no later than 5 days before report is due. County candidate notices can be sent as early as 30 days before due date; municipal candidate notices can be sent as early as 15 days before due date.
01/15/16	Friday, January 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
01/15/16	Friday, January 15, 2016		17-year olds who will be 18 by date of general election	Statewide General Election	VOTER REGISTRATION	163-59	No earlier than 60 days prior to the partisan
01/15/16	Friday, January 15, 2016		One-stop Implementation Plans due	Statewide Primary	ABSENTEE ONESTOP	163-227.2	Numbered Memo 2015-05
01/18/16	Monday, January 18, 2016		STATE HOLIDAY - MLK DAY				
01/25/16	Monday, January 25, 2016		Absentee ballots must be available	Statewide Primary	ABSENTEE	163-227.3(a), 163-258.9	50 days prior to election day

01/26/16	Tuesday, January 26, 2016		Update county board website of election schedule and	Statewide Primary	PRECINCTS	Best Practice	7 weeks prior to election day
01/29/16	Friday, January 29, 2016		Year End Semi Annual Report Due Date	November Municipal	CF REPORTING		
01/29/16	Friday, January 29, 2016		Year End Semi Annual Report Due Date	October Municipal	CF REPORTING		
01/29/16	Friday, January 29, 2016		Year End Semi Annual Report Due Date	September Municipal Primary	CF REPORTING		
01/29/16	Saturday, January 30, 2016		Begin period to publish weekly election notices	Statewide Primary	LEGAL NOTICE	163-33(8)	Publish weekly during the 20 day period
01/29/16	Friday, January 29, 2016		2015 Year End Semi Annual Reports Due	Administration	CAMPAIGN FINANCE	163-278.9(a)(6)	
01/30/16	Saturday, January 30, 2016		Notice of Precinct/Voting Place Change	Statewide Primary	PRECINCTS	163-128(a)	45 days prior to next primary or election
01/30/16	Saturday, January 30, 2016		Publish legal notice of any special election	Statewide Primary	LEGAL NOTICE	163-287	45 days prior to the special election date
02/04/16	Thursday, February 04, 2016		Receive election coding from VS vendor target date	Statewide Primary	VOTING SYSTEMS	Best Practice	28 days before one-stop begins
02/07/16	Sunday, February 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
02/12/16	Friday, February 12, 2016		Notification to voters of precinct/polling place change	Statewide Primary	PRECINCTS	163-128(a)	30 days prior to election
02/12/16	Friday, February 12, 2016		End period to publish weekly election notices	Statewide Primary	LEGAL NOTICE	163-33(8)	Publish weekly during the 20 day period
02/12/16	Friday, February 12, 2016		Deadline for public notice of buffer zone information	Statewide Primary	PRECINCTS	163-166.4(c)	No later than 30 days before each election
02/15/16	Monday, February 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
02/15/16	Monday, February 15, 2016		FEDERAL HOLIDAY - WASHINGTON'S BIRTHDAY (NO MAIL)				
02/16/16	Tuesday, February 16, 2016		Prepare machine delivery schedule/chain of custody plan	Statewide Primary	PRECINCTS	Best Practice	4 weeks before Election Day
02/18/16	Thursday, February 18, 2016		Mock Election	Statewide Primary	VOTING SYSTEMS	Best Practice	14 days before absentee one-stop begins in a
02/18/16	Thursday, February 18, 2016		Send SBOE Certification of Late or Delinquent Campaign	Administration	CAMPAIGN FINANCE	163-278.22(11)	Certification forms available in County
	Friday, February 19, 2016		Voter Registration deadline	Statewide Primary	VOTER REGISTRATION	163-82.6(c), (c1)	No later than 25 days before the election
02/19/16	Friday, February 19, 2016		Last day to challenge voter's registration	Statewide Primary	CHALLENGES	163-85	No later than 25 days before an election
02/20/16	Saturday, February 20, 2016		Begin sending late registration notices (until Election	Statewide Primary	VOTER REGISTRATION	Best Practice	Starting day after voter registration deadline
02/21/16	Sunday, February 21, 2016		Notices of Report Due mailed for 2016 First Quarter	Administration	CAMPAIGN FINANCE	163-278.23; 163-278.40H	Must be sent no later than 5 days before
02/23/16	Tuesday, February 23, 2016	5:00 PM	Absentee Board Meeting 1	Statewide Primary	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
02/24/16	Wednesday, February 24, 2016		Voter Registration deadline - Exception for missing or	Statewide Primary	VOTER REGISTRATION	163-82.6(c), (c1)	No later than 20 days before the election
02/25/16	Thursday, February 25, 2016		Complete Logic & Accuracy testing	Statewide Primary	VOTING SYSTEMS	Best Practice	7 days before the start of one-stop voting
02/27/16	Saturday, February 27, 2016	10:00 AM	One-stop observer list due	Statewide Primary	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to start of
02/29/16	Monday, February 29, 2016		Deadline to Setup a Referenda Contest	Administration	VOTING SYSTEMS	Best Practice	No later than the end of candidate filing for a
03/01/16	Tuesday, March 01, 2016	5:00 PM	Absentee Board Meeting 2	Statewide Primary	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
03/01/16	Tuesday, March 01, 2016		Begin publishing Absentee Resolution	Statewide Primary	ABSENTEE	163-234	Once a week for two weeks prior to the
03/03/16	Thursday, March 03, 2016		One-stop voting begins	Statewide Primary	ABSENTEE ONESTOP	163-227.2(b)	Second Thursday before election
03/07/16	Monday, March 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
03/07/16	Monday, March 07, 2016		2016 Pre-Primary Campaign Finance Report due (covers	Statewide Primary	CF REPORTING	HB 373	
03/07/16	Monday, March 07, 2016		2016 First Quarter Reports Due	Administration	CAMPAIGN FINANCE	163-278.9(a)(5a); H373 Sec 2(g)	
03/08/16	Tuesday, March 08, 2016	5:00 PM	Absentee Board Meeting 3	Statewide Primary	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
03/08/16	Tuesday, March 08, 2016	5:00 PM	Last day to request an absentee ballot by mail	Statewide Primary	ABSENTEE	163-230.1(a)	Not later than 5:00 p.m. on the Tuesday
03/08/16	Tuesday, March 08, 2016	5:00 PM	Late absentee requests allowed due to sickness or	Statewide Primary	ABSENTEE	163-230.1(a1)	After 5:00 p.m. on the Tuesday before the
03/10/16	Thursday, March 10, 2016	10:00 AM	Election Day Observer/Runner list due	Statewide Primary	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to Election
03/12/16	Saturday, March 12, 2016	1:00 PM	One-stop voting ends	Statewide Primary	ABSENTEE ONESTOP	163-227.2(b)	Not later than 1:00 p.m. on the last Saturday
03/14/16	Monday, March 14, 2016		Absentee Voting - Date By Which Absentee Ballots Must	Second Primary - No Federal	ABSENTEE	163-227.3(a); Best Practice	As soon as possible or at least 30 days before
03/14/16	Monday, March 14, 2016		Receive voter registration totals and add them to vote	Statewide Primary	VOTING SYSTEMS		1 day before election day
03/14/16	Monday, March 14, 2016	5:00 PM	UOCAVA Absentee Ballot Request Deadline	Statewide Primary	ABSENTEE	163-258.7	No later than 5:00 p.m. on the day before
03/14/16	Monday, March 14, 2016	5:00 PM	UOCAVA Voter Registration Deadline	Statewide Primary	VOTER REGISTRATION	163-258.6	No later than 5:00 p.m. on the day before
03/14/16	Monday, March 14, 2016	5:00 PM	Absentee Board Meeting Pre-Election Day	Statewide Primary	ABSENTEE	163-232	After 5:00 p.m. on the Monday before
03/15/16	Tuesday, March 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
03/15/16	Tuesday, March 15, 2016		Update county board website of election schedule and	Second Primary - No Federal	PRECINCTS	Best Practice	7 weeks prior to election day
03/15/16	Tuesday, March 15, 2016	6:30 AM	ELECTION DAY	Statewide Primary	ELECTION DAY	163-1	Tuesday after the first Monday in May
03/15/16	Tuesday, March 15, 2016	12:00 PM	Period to challenge an absentee ballot	Statewide Primary	CHALLENGES	163-89	No earlier than noon or later than 5:00 p.m.
03/15/16	Tuesday, March 15, 2016	5:00 PM	Begin counting absentee ballots (Cannot announce	Statewide Primary	ABSENTEE	163-234	5:00 p.m. on election day unless an earlier
03/15/16	Tuesday, March 15, 2016	5:00 PM	Civilian Absentee return deadline	Statewide Primary	ABSENTEE	163-231(b)(1)	Not later than 5:00 p.m. on day of the primary
03/15/16	Tuesday, March 15, 2016	10:00 AM	Distribute certified executed absentee list	Statewide Primary	ABSENTEE	163-232	No later than 10:00 a.m. on election day
03/15/16	Tuesday, March 15, 2016		Distribute Election Day Absentee Abstract to SBE	Statewide Primary	ABSENTEE	163-234(6)	Election Day
03/15/16	Tuesday, March 15, 2016	10:00 AM	Election Day tracking (10 am, 2 pm, 4 pm)	Statewide Primary	ADMINISTRATION		Election Day at 10 am, 2 pm and 4 pm
03/15/16	Tuesday, March 15, 2016	8:30 PM	Election Night finalize activities	Statewide Primary	VOTING SYSTEMS		Election Night
03/15/16	Tuesday, March 15, 2016	7:30 PM	UOCAVA absentee ballot return deadline - electronic	Statewide Primary	ABSENTEE	163-258.10	Close of polls on Election Day
03/16/16	Wednesday, March 16, 2016		Sample Audit Count - Precincts Selection	Statewide Primary	CANVASS	163-182.1(b)(1)	Within 24 hours of polls closing on Election
03/18/16	Friday, March 18, 2016	5:00 PM	Civilian Absentee Return Deadline - Mail Exception	Statewide Primary	ABSENTEE	163-231(b)(2)	If postmarked on or before election day and
03/19/16	Saturday, March 19, 2016		Notice of Precinct/Voting Place Change	Second Primary - No Federal	PRECINCTS	163-128(a)	45 days prior to next primary or election
03/21/16	Monday, March 21, 2016	12:00 PM	Deadline for provisional voters subject to VIVA ID to	Statewide Primary	CANVASS	163-166.13; 163-182.1A(c)	Not later than 12:00 noon the day prior to the

03/21/16	Monday, March 21, 2016	5:00 PM	UOCAVA Absentee Ballot Return Deadline - Mailed	Statewide Primary	ABSENTEE	163-258.12	By end of business on the business day before
03/22/16	Tuesday, March 22, 2016	11:00 AM	County Canvass	Statewide Primary	CANVASS	163-182.5(b)	Seven days after each election (except a
03/22/16	Tuesday, March 22, 2016		Deadline for election protest concerning votes counted	Statewide Primary	CANVASS	163-182.9(b)(4)a	Before the beginning of the county canvass
03/22/16	Tuesday, March 22, 2016	10:00 AM	Distribute Supplemental Certified Executed Absentee List	Statewide Primary	ABSENTEE	163-232.1; 163-234 (10)	No later than 10:00 a.m. of the next business
03/22/16	Tuesday, March 22, 2016		Mail Abstract to SBE	Statewide Primary	CANVASS	163-182.6	Seven days after each election (except a
03/23/16	Wednesday, March 23, 2016	5:00 PM	Deadline for candidates in CBE jurisdictional contests to	Statewide Primary	CANVASS	163-182.7(b)	5:00 p.m. on the first business day after the
03/24/16	Thursday, March 24, 2016		Receive Election Coding from VS vendor target date	Second Primary - No Federal	VOTING SYSTEMS	Best Practice	28 days before absentee one-stop
03/24/16	Thursday, March 24, 2016	5:00 PM	Deadline for candidates in SBOE jurisdictional contests to	Statewide Primary	CANVASS	163-182.7(c); 163-182.4(b)(5)	5:00 p.m. on the second business day after
03/24/16	Thursday, March 24, 2016	12:00 PM	Deadline for candidates to request Second Primary	Statewide Primary	CANVASS	163-111(c2)	No later than 12:00 noon on the ninth day
03/24/16	Thursday, March 24, 2016	5:00 PM	Deadline to file election protest concerning any other	Statewide Primary	CANVASS	163-182.9(b)(4)c	5:00 p.m. on the second business day after
03/24/16	Thursday, March 24, 2016	5:00 PM	Deadline to file election protest concerning manner in	Statewide Primary	CANVASS	163-182.9(b)(4)b	5:00 p.m. on the second business day after
03/25/16	Friday, March 25, 2016		STATE HOLIDAY - GOOD FRIDAY				
03/28/16	Monday, March 28, 2016		CBE issues certificates of nomination or election if no	Statewide Primary	CANVASS	163-182.15(a); 163-301	Six days after the county canvass (In a
03/28/16	Monday, March 28, 2016		Send SBOE Certification of Late or Delinquent Campaign	Administration	CAMPAIGN FINANCE	163-278.22(11)	Certification forms available in County
04/01/16	Friday, April 01, 2016		Order Election Supplies	Administration	ADMINISTRATION	Best Practice	90 days before end of fiscal year or before
04/03/16	Sunday, April 03, 2016		Notification to Voters of Precinct/Voting Place Change	Second Primary - No Federal	PRECINCTS	163-128(a)	30 days prior to the primary or election
04/03/16	Sunday, April 03, 2016		Last day to mail notice of polling place changes.	Second Primary - No Federal	PRECINCTS	163-128	No later than 30 days prior to the primary or
04/05/16	Tuesday, April 05, 2016		Update county board website of election schedule and	Second Primary - Federal Contest	PRECINCTS	Best Practice	7 weeks prior to election day
04/05/16	Tuesday, April 05, 2016		Prepare machine delivery schedule/chain of custody plan	Second Primary - No Federal	PRECINCTS	Best Practice	4 weeks before Election Day
04/07/16	Thursday, April 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
04/07/16	Thursday, April 07, 2016		Mock Election	Second Primary - No Federal	VOTING SYSTEMS	Best Practice	14 days before absentee one-stop begins in a
04/09/16	Saturday, April 09, 2016		Absentee Voting - Date By Which Absentee Ballots Must	Second Primary - Federal Contest	ABSENTEE	163-227.3(a)	For a second primary that includes a federal
04/09/16	Saturday, April 09, 2016		Deadline for UOCAVA Absentee Ballots to be Available	Second Primary - Federal Contest	ABSENTEE	163-258.9	No later than 45 days before an election with
04/09/16	Saturday, April 09, 2016		Notice of Precinct/Voting Place Change	Second Primary - Federal Contest	PRECINCTS	163-128(a)	45 days prior to next primary or election
04/12/16	Tuesday, April 12, 2016	5:00 PM	Absentee Board Meeting 1	Second Primary - No Federal	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
04/14/16	Thursday, April 14, 2016		Complete Logic & Accuracy testing	Second Primary - No Federal	VOTING SYSTEMS	Best Practice	7 days before the start of one-stop voting
04/15/16	Friday, April 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
04/15/16	Friday, April 15, 2016		One-stop Implementation Plans Due	Second Primary - Federal Contest	ABSENTEE ONESTOP	163-227.2	Deadline set by SBOE staff
04/15/16	Friday, April 15, 2016		One-stop Implementation Plans Due	Second Primary - No Federal	ABSENTEE ONESTOP	163-227.2	Deadline set by SBOE staff
04/16/16	Saturday, April 16, 2016	10:00 AM	One-stop Observer List Due	Second Primary - No Federal	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to start of
04/19/16	Tuesday, April 19, 2016	5:00 PM	Absentee Board Meeting 2	Second Primary - No Federal	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
04/19/16	Tuesday, April 19, 2016		Publish Absentee Resolution	Second Primary - No Federal	ABSENTEE	163-234	Once a week for two weeks prior to the
04/21/16	Thursday, April 21, 2016		Receive Election Coding from VS vendor target date	Second Primary - Federal Contest	VOTING SYSTEMS	Best Practice	21 days before absentee one-stop begins in a
04/21/16	Thursday, April 21, 2016		One-stop voting begins	Second Primary - No Federal	ABSENTEE ONESTOP	163-227.2(b)	Not earlier than the second Thursday before
04/24/16	Sunday, April 24, 2016		CBE gives public notice of buffer zone information	Second Primary - Federal Contest	PRECINCTS	163-166.4(c)	No later than 30 days before each election
04/24/16	Sunday, April 24, 2016		Last day to mail notice of polling place changes.	Second Primary - Federal Contest	PRECINCTS	163-128	No later than 30 days prior to the primary or
04/24/16	Sunday, April 24, 2016		Notification to Voters of Precinct/Voting Place Change	Second Primary - Federal Contest	PRECINCTS	163-128(a)	30 days prior to the primary or election
04/26/16	Tuesday, April 26, 2016		Prepare machine delivery schedule/chain of custody plan	Second Primary - Federal Contest	PRECINCTS	Best Practice	4 weeks before Election Day
04/26/16	Tuesday, April 26, 2016	5:00 PM	Absentee Board Meeting 3	Second Primary - No Federal	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
04/26/16	Tuesday, April 26, 2016	5:00 PM	Last day to request an absentee ballot by mail.	Second Primary - No Federal	ABSENTEE	163-230.1(a)	Not later than 5:00 p.m. on the Tuesday
04/26/16	Tuesday, April 26, 2016	5:00 PM	Late absentee requests allowed due to sickness or	Second Primary - No Federal	ABSENTEE	163-230.1(a1)	After 5:00 p.m. on the Tuesday before the
04/28/16	Thursday, April 28, 2016		Mock Election	Second Primary - Federal Contest	VOTING SYSTEMS	Best Practice	14 days before absentee one-stop begins in a
04/28/16	Thursday, April 28, 2016	10:00 AM	Election Day Observer/Runner List Due	Second Primary - No Federal	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to Election
04/30/16	Saturday, April 30, 2016	1:00 PM	One-stop voting ends	Second Primary - No Federal	ABSENTEE ONESTOP	163-227.2(b)	Not later than 1:00 p.m. on the last Saturday
05/02/16	Monday, May 02, 2016		Receive voter registration totals and add them to vote tabulation software	Second Primary - No Federal Contest	VOTING SYSTEMS		1 day before election day
05/02/16	Monday, May 02, 2016	5:00 PM	UOCAVA Absentee Ballot Request Deadline	Second Primary - No Federal	ABSENTEE	163-258.7	No later than 5:00 p.m. on the day before
05/02/16	Monday, May 02, 2016	5:00 PM	Absentee Board Meeting Pre-Election Day	Second Primary - No Federal	ABSENTEE	163-232	After 5:00 p.m. on the Monday before
05/03/16	Tuesday, May 03, 2016	5:00 PM	Absentee Board Meeting 1	Second Primary - Federal Contest	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
05/03/16	Tuesday, May 03, 2016	12:00 PM	Period to challenge an absentee ballot	Second Primary - No Federal	CHALLENGES	163-89	No earlier than noon or later than 5:00 p.m.
05/03/16	Tuesday, May 03, 2016	5:00 PM	Civilian Absentee Return Deadline	Second Primary - No Federal	ABSENTEE	163-231(b)(1)	Not later than 5:00 p.m. on day of the primary
	Tuesday, May 03, 2016	5:00 PM	Begin counting absentee ballots (Cannot announce	Second Primary - No Federal	ABSENTEE	163-234	5:00 p.m. on election day unless an earlier
05/03/16	Tuesday, May 03, 2016	10:00 AM	Distribute Certified Executed Absentee List	Second Primary - No Federal	ABSENTEE	163-232	No later than 10:00 a.m. on election day
05/03/16	Tuesday, May 03, 2016		Distribute Election Day Absentee Abstract to SBOE	Second Primary - No Federal	ABSENTEE	163-234(6)	Election Day
05/03/16	Tuesday, May 03, 2016	6:30 AM	ELECTION DAY	Second Primary - No Federal	ELECTION DAY	163-1; 163-111	7 weeks after the first primary if there is not a
05/03/16	Tuesday, May 03, 2016	10:00 AM	Election Day Tracking (10 am, 2 pm, 4 pm)	Second Primary - No Federal	ADMINISTRATION		Election Day at 10 am, 2 pm and 4 pm
05/03/16	Tuesday, May 03, 2016	8:30 PM	Election Night finalize activities	Second Primary - No Federal	VOTING SYSTEMS		Election Night
05/03/16	Tuesday, May 03, 2016	7:30 PM	UOCAVA absentee ballot return deadline - electronic	Second Primary - No Federal	ABSENTEE	163-258.10	Close of polls on Election Day

05/04/16	Wednesday, May 04, 2016		Sample Audit Count - Precincts Selection	Second Primary - No Federal	CANVASS	163-182.1(b)(1)	Within 24 hours of polls closing on Election
05/05/16	Thursday, May 05, 2016		Complete Logic & Accuracy Testing	Second Primary - Federal Contest	VOTING SYSTEMS	Best Practice	7 days before the start of one-stop voting
05/06/16	Friday, May 06, 2016	5:00 PM	Civilian Absentee Return Deadline - Mail Exception	Second Primary - No Federal	ABSENTEE	163-231(b)(2)	If postmarked on or before election day and
05/07/16	Saturday, May 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
05/07/16	Saturday, May 07, 2016	10:00 AM	One-stop Observer List Due	Second Primary - Federal Contest	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to start of
05/09/16	Monday, May 09, 2016	12:00 PM	Deadline for provisional voters subject to VIVA ID to	Second Primary - No Federal	CANVASS	163-166.13; 163-182.1A(c)	Not later than 12:00 noon the day prior to the
05/09/16	Monday, May 09, 2016	5:00 PM	UOCAVA Absentee Ballot Return Deadline - Mailed	Second Primary - No Federal	ABSENTEE	163-258.12	By end of business on the business day before
05/10/16	Tuesday, May 10, 2016	5:00 PM	Absentee Board Meeting 2	Second Primary - Federal Contest	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
05/10/16	Tuesday, May 10, 2016		Publish Absentee Resolution	Second Primary - Federal Contest	ABSENTEE	163-234	Once a week for two weeks prior to the
05/10/16	Tuesday, May 10, 2016	11:00 AM	County Canvass	Second Primary - No Federal	CANVASS	163-182.5(b)	Seven days after each election (except a
05/10/16	Tuesday, May 10, 2016		Deadline for election protest concerning votes counted	Second Primary - No Federal	CANVASS	163-182.9(b)(4)a	Before the beginning of the county canvass
05/11/16	Wednesday, May 11, 2016	10:00 AM	Distribute Supplemental Certified Executed Absentee List	Second Primary - No Federal	ABSENTEE	163-232.1; 163-234 (10)	No later than 10:00 a.m. of the next business
05/11/16	Wednesday, May 11, 2016	5:00 PM	Deadline for candidates in CBE jurisdictional contests to	Second Primary - No Federal	CANVASS	163-182.7(b)	5:00 p.m. on the first business day after the
05/12/16	Thursday, May 12, 2016		One-stop voting begins	Second Primary - Federal Contest	ABSENTEE ONESTOP	163-227.2(b)	Not earlier than the second Thursday before
05/12/16	Thursday, May 12, 2016	5:00 PM	Deadline for candidates in SBOE jurisdictional contests to	Second Primary - No Federal	CANVASS	163-182.7(c); 163-182.4(b)(5)	5:00 p.m. on the second business day after
05/12/16	Thursday, May 12, 2016	5:00 PM	Deadline to file election protest concerning any other	Second Primary - No Federal	CANVASS	163-182.9(b)(4)c	5:00 p.m. on the second business day after
05/12/16	Thursday, May 12, 2016	5:00 PM	Deadline to file election protest concerning manner in	Second Primary - No Federal	CANVASS	163-182.9(b)(4)b	5:00 p.m. on the second business day after
05/12/16	Thursday, May 12, 2016		District Relations Report distributed to counties	Statewide General Election	VOTING SYSTEMS	Best Practice	120 days before start of absentee voting by
05/14/16	Saturday, May 14, 2016		Report Results by Voting Tabulation Districts (VTD)	Statewide Primary	VOTING SYSTEMS	163-132.5G	No later than 60 days after Election Day
05/15/16	Sunday, May 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
05/17/16	Tuesday, May 17, 2016	5:00 PM	Petition for Formulation of New Political Party -	Administration	PETITIONS	163-96(b1)	No later than 5:00 p.m. on the 15th day
05/17/16	Tuesday, May 17, 2016	5:00 PM	Absentee Board Meeting 3	Second Primary - Federal Contest	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
05/17/16	Tuesday, May 17, 2016	5:00 PM	Last day to request an absentee ballot by mail.	Second Primary - Federal Contest	ABSENTEE	163-230.1(a)	Not later than 5:00 p.m. on the Tuesday
05/17/16	Tuesday, May 17, 2016	5:00 PM	Late absentee requests allowed due to sickness or	Second Primary - Federal Contest	ABSENTEE	163-230.1(a1)	After 5:00 p.m. on the Tuesday before the
05/18/16	Wednesday, May 18, 2016		CBE issues certificates of nomination or election if no	Second Primary - No Federal	CANVASS	163-182.15(a); 163-301	Six days after the county canvass (In a
05/19/16	Thursday, May 19, 2016	10:00 AM	Election Day Observer/Runner List Due	Second Primary - Federal Contest	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to Election
05/21/16	Saturday, May 21, 2016	1:00 PM	One-stop voting ends	Second Primary - Federal Contest	ABSENTEE ONESTOP	163-227.2(b)	Not later than 1:00 p.m. on the last Saturday
05/23/16	Monday, May 23, 2016		Receive voter registration totals and add them to vote	Second Primary - Federal Contest	VOTING SYSTEMS		1 day before election day
05/23/16	Monday, May 23, 2016	5:00 PM	UOCAVA Absentee Ballot Request Deadline	Second Primary - Federal Contest	ABSENTEE	163-258.7	No later than 5:00 p.m. on the day before
05/23/16	Monday, May 23, 2016	5:00 PM	Absentee Board Meeting Pre-Election Day	Second Primary - Federal Contest	ABSENTEE	163-232	After 5:00 p.m. on the Monday before
05/24/16	Tuesday, May 24, 2016	12:00 PM	Period to challenge an absentee ballot	Second Primary - Federal Contest	CHALLENGES	163-89	No earlier than noon or later than 5:00 p.m. on Election Day
05/24/16	Tuesday, May 24, 2016	5:00 PM	Begin counting absentee ballots (Cannot announce	Second Primary - Federal Contest	ABSENTEE	163-234	5:00 p.m. on election day unless an earlier
05/24/16	Tuesday, May 24, 2016	5:00 PM	Civilian absentee return deadline	Second Primary - Federal Contest	ABSENTEE	163-231(b)(1)	Not later than 5:00 p.m. on day of the primary
05/24/16	Tuesday, May 24, 2016	10:00 AM	Distribute Certified Executed Absentee List	Second Primary - Federal Contest	ABSENTEE	163-232	No later than 10:00 a.m. on election day
05/24/16	Tuesday, May 24, 2016		Distribute Election Day Absentee Abstract to SBOE	Second Primary - Federal Contest	ABSENTEE	163-234(6)	Election Day
05/24/16	Tuesday, May 24, 2016	6:30 AM	ELECTION DAY	Second Primary - Federal Contest	ELECTION DAY	163-1; 163-111	10 weeks after the first primary if there is a
05/24/16	Tuesday, May 24, 2016	10:00 AM	Election Day Tracking (10 am, 2 pm, 4 pm)	Second Primary - Federal Contest	ADMINISTRATION		Election Day at 10 am, 2 pm and 4 pm
05/24/16	Tuesday, May 24, 2016	8:30 PM	Election Night finalize activities	Second Primary - Federal Contest	VOTING SYSTEMS		Election Night
05/24/16	Tuesday, May 24, 2016	7:30 PM	UOCAVA absentee ballot return deadline - electronic	Second Primary - Federal Contest	ABSENTEE	163-258.10	Close of polls on Election Day
05/24/16	Tuesday, May 24, 2016		Confirm with polling place contacts use of facility	Statewide General Election	PRECINCTS	Best Practice	24 weeks prior to election day
05/25/16	Wednesday, May 25, 2016		Sample Audit Count - Precincts Selection	Second Primary - Federal Contest	CANVASS	163-182.1(b)(1)	Within 24 hours of polls closing on Election
05/27/16	Friday, May 27, 2016	5:00 PM	Civilian Absentee Return Deadline - Mail Exception	Second Primary - Federal Contest	ABSENTEE	163-231(b)(2)	If postmarked on or before election day and
05/27/16	Friday, May 27, 2016	12:00 PM	Deadline for provisional voters subject to VIVA ID to	Second Primary - Federal Contest	CANVASS	163-166.13; 163-182.1A(c)	Not later than 12:00 noon the day prior to the
05/27/16	Friday, May 27, 2016	5:00 PM	UOCAVA Absentee Ballot Return Deadline - Mailed	Second Primary - Federal Contest	ABSENTEE	163-258.12	By end of business on the business day before
05/30/16	Monday, May 30, 2016		STATE HOLIDAY - MEMORIAL DAY				
05/31/16	Tuesday, May 31, 2016	11:00 AM	County Canvass	Second Primary - Federal Contest	CANVASS	163-182.5(b)	Seven days after each election (except a
05/31/16	Tuesday, May 31, 2016		Deadline for election protest concerning votes counted	Second Primary - Federal Contest	CANVASS	163-182.9(b)(4)a	Before the beginnning of the county canvass
05/31/16	Tuesday, May 31, 2016	10:00 AM	Distribute Supplemental Certified Executed Absentee List	Second Primary - Federal Contest	ABSENTEE	163-232.1; 163-234 (10)	No later than 10:00 a.m. of the next business
06/01/16	Wednesday, June 01, 2016	12:00 PM	Petition for Formulation of New Political Party	Administration	PETITIONS	163-96(a)(2)	Before 12:00 noon on the first day of June
06/01/16	Wednesday, June 01, 2016	5:00 PM	Deadline for candidates in CBE jurisdictional contests to	Second Primary - Federal Contest	CANVASS	163-182.7(b)	5:00 p.m. on the first business day after the
06/02/16	Thursday, June 02, 2016	5:00 PM	Deadline for candidates in SBOE jurisdictional contests to	Second Primary - Federal Contest	CANVASS	163-182.7(c); 163-182.4(b)(5)	5:00 p.m. on the second business day after
06/02/16	Thursday, June 02, 2016	5:00 PM	Deadline to file election protest concerning any other	Second Primary - Federal Contest	CANVASS	163-182.9(b)(4)c	5:00 p.m. on the second business day after
06/02/16	Thursday, June 02, 2016	5:00 PM	Deadline to file election protest concerning manner in	Second Primary - Federal Contest	CANVASS	163-182.9(b)(4)b	5:00 p.m. on the second business day after
06/06/16	Monday, June 06, 2016		CBE issues certificates of nomination or election if no	Second Primary - Federal Contest	CANVASS	163-182.15(a); 163-301	Six days after the county canvass (In a
06/07/16	Tuesday, June 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
06/09/16	Thursday, June 09, 2016	5:00 PM	Unaffiliated Candidacy Petition Deadline - deadline to	Statewide General Election	PETITIONS	163-122	15 days preceding the date petitions are due
06/13/16	Monday, June 13, 2016	12:00 PM	Soil & Water Candidate filing begins	Soil & Water	CANDIDATE FILING	139-6	No earlier than noon on the second Monday
06/15/16	Wednesday, June 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month

06/24/16	Friday, June 24, 2016	12:00 PM	Unaffiliated Candidacy Petition Deadline - County Board	Statewide General Election	PETITIONS	163-122	Last Friday in June of even-numbered years
06/24/16	Friday, June 24, 2016	12:00 PM	Verified Unaffiliated Candidacy Petition Deadline - State	Statewide General Election	PETITIONS	163-122	Last Friday in June of even-numbered years
06/27/16	Monday, June 27, 2016		Notices of Report Due mailed for 2016 Second Quarter	Administration	CAMPAIGN FINANCE	163-278.23; 163-278.40H	Must be sent no later than 5 days before
06/29/16	Wednesday, June 29, 2016		Schedule precinct official training schedule	Statewide General Election	PRECINCT OFFICIALS	Best Practice	120 days prior to start of one-stop voting
07/01/16	Friday, July 01, 2016		Send NCOA Mailings	Administration	LIST MAINTENANCE	163-82.14	January 1 and July 1 of each calendar year.
07/01/16	Friday, July 01, 2016	12:00 PM	Soil & Water Candidate filing ends	Soil & Water	CANDIDATE FILING	139-6	No later than noon on the first Friday in July
07/01/16	Friday, July 01, 2016		One-stop Hours Reduction Requests Due	Statewide General Election	ABSENTEE ONESTOP	163-227.2	Deadline set by SBOE staff
07/02/16	Saturday, July 02, 2016		Report Results by Voting Tabulation Districts (VTD)	Second Primary - No Federal	VOTING SYSTEMS	163-132.5G	No later than 60 days after Election Day
07/04/16	Monday, July 04, 2016		STATE HOLIDAY - 4TH OF JULY				
07/07/16	Thursday, July 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
07/12/16	Tuesday, July 12, 2016		2016 Second Quarter Reports Due	Administration	CAMPAIGN FINANCE	163-278.9(a)(5a); H373 Sec 2(g)	
07/14/16	Thursday, July 14, 2016		Notices of Report Due mailed for 2016 Mid Year Semi-	Administration	CAMPAIGN FINANCE	163-278.9(a)(6)	Must be sent no later than 5 days before
07/15/16	Friday, July 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
07/23/16	Saturday, July 23, 2016		Report Results by Voting Tabulation Districts (VTD)	Second Primary - Federal Contest	VOTING SYSTEMS	163-132.5G	No later than 60 days after Election Day
07/26/16	Tuesday, July 26, 2016		Deadline to Submit Precinct Change Proposal	Statewide General Election	PRECINCTS	163-132.3	105 days prior to the next election that the
07/26/16	Tuesday, July 26, 2016	5:00 PM	Write-in Candidacy Petition Deadline - deadline to have	Statewide General Election	PETITIONS	163-123	15 days before the date petition is due to be
07/29/16	Friday, July 29, 2016		One-stop Implementation Plans Due	Statewide General Election	ABSENTEE ONESTOP	163-227.2	Deadline set by SBOE staff
07/29/16	Friday, July 29, 2016		2016 Mid Year Semi-annual Report Due	Administration	CAMPAIGN FINANCE	163-278.9(a)(6)	Filed by committees not participating in 2016
07/31/16	Sunday, July 31, 2016		Publication of UOCAVA Election Notice	Statewide General Election	ABSENTEE	163-258.16	Not later than 100 days before election day
08/01/16	Monday, August 01, 2016		Send SBOE Certification of Late or Delinquent Campaign	Administration	CAMPAIGN FINANCE	163-278.22(11)	Certification forms available in County
08/05/16	Friday, August 05, 2016	12:00 PM	Deadline for Unaffiliated Presidential Candidate to	Statewide General Election	PETITIONS	163-209	No later than 12:00 noon on the first Friday in
08/07/16	Sunday, August 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
08/10/16	Wednesday, August 10, 2016	12:00 PM	Verified Write-in Candidacy Petition Deadline - State	Statewide General Election	PETITIONS	163-123	90 days before the general election date in
08/10/16	Wednesday, August 10, 2016	12:00 PM	Write-in Candidacy Petition Deadline - County Board	Statewide General Election	PETITIONS	163-123	90 days before the general election date in
08/12/16	Friday, August 12, 2016		District Relations Report approval needed from counties	Statewide General Election	VOTING SYSTEMS	Best Practice	
08/15/16	Monday, August 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
08/25/16	Thursday, August 25, 2016		Deadline to Setup a Referenda Contest	Administration	VOTING SYSTEMS	Best Practice	No later than the end of candidate filing for a
09/05/16	Monday, September 05, 2016		STATE HOLIDAY - LABOR DAY				
09/07/16	Wednesday, September 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
09/09/16	Friday, September 09, 2016		Absentee Voting - Date By Which Absentee Ballots Must	Statewide General Election	ABSENTEE	163-227.3(a)	60 days prior to a statewide general election
09/09/16	Friday, September 09, 2016		Party Nominee's right to withdraw as candidate	Statewide General Election	CANDIDATE FILING	163-113	No later than the date absente ballots
09/15/16	Thursday, September 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
09/20/16	Tuesday, September 20, 2016		Update county board website of election schedule and	Statewide General Election	PRECINCTS	Best Practice	7 weeks prior to election day
09/23/16	Saturday, September 24, 2016		Publish Election Notice 1	Statewide General Election	LEGAL NOTICE	163-33(8)	Publish weekly during the 20 day period
09/24/16	Saturday, September 24, 2016		Deadline for UOCAVA Absentee Ballots to be Available	Statewide General Election	ABSENTEE	163-258.9	No later than 45 days before an election with
09/24/16	Saturday, September 24, 2016		Mail No ID Letters	Statewide General Election	VOTER REGISTRATION	163-166.12	Within 45 days of the date of a general
09/24/16	Saturday, September 24, 2016		Mail Second Incomplete Notice	Statewide General Election	VOTER REGISTRATION	163-82.4(e)	Within 45 days of the date of a general
09/24/16	Saturday, September 24, 2016		Notice of Precinct/Voting Place Change	Statewide General Election	PRECINCTS	163-128(a)	45 days prior to next primary or election
09/24/16	Saturday, September 24, 2016		Publish legal notice of any special election	Statewide General Election	LEGAL NOTICE	163-287	45 days prior to the special election date
09/29/16	Thursday, September 29, 2016		Prepare machine delivery schedule/chain of custody plan	Statewide General Election	PRECINCTS	Best Practice	4 weeks before Election Day
09/29/16	Thursday, September 29, 2016		Receive Election Coding from VS vendor target date	Statewide General Election	VOTING SYSTEMS	Best Practice	28 days before absentee one-stop
09/30/16	Friday, September 30, 2016		Publish Election Notice 2	Statewide General Election	LEGAL NOTICE	163-33(8)	Publish weekly during the 20 day period
10/07/16	Friday, October 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
10/07/16	Friday, October 07, 2016		Publish Election Notice 3	Statewide General Election	LEGAL NOTICE	163-33(8)	Publish weekly during the 20 day period
10/09/16	Sunday, October 09, 2016		CBE gives public notice of buffer zone information	Statewide General Election	PRECINCTS	163-166.4(c)	No later than 30 days before each election
10/09/16	Sunday, October 09, 2016		Last day to mail notice of polling place changes.	Statewide General Election	PRECINCTS	163-128	No later than 30 days prior to the primary or
10/09/16	Sunday, October 09, 2016		Notification to Voters of Precinct/Voting Place Change	Statewide General Election	PRECINCTS	163-128(a)	30 days prior to the primary or election
10/10/16	Monday, October 10, 2016		FEDERAL HOLIDAY - COLUMBUS DAY (NO MAIL)				
10/13/16	Thursday, October 13, 2016		Mock Election	Statewide General Election	VOTING SYSTEMS	Best Practice	14 days before absentee one-stop begins in a statewide primary or general election
10/14/16	Friday, October 14, 2016		Voter Challenge Deadline - last day to challenge before Election Day	Statewide General Election	CHALLENGES	163-85	No later than 25 days before an election.
10/14/16	Friday, October 14, 2016	5:00 PM	Voter Registration Deadline	Statewide General Election	VOTER REGISTRATION	163-82.6(c)	25 days before the primary or election day
10/15/16	Saturday, October 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
10/15/16	Saturday, October 15, 2016		Send Late Registration Notices until Election Day	Statewide General Election	VOTER REGISTRATION	Best Practice	Starting day after voter registration deadline
10/16/16	Sunday, October 16, 2016		Notices of Report Due mailed for 2016 Third Quarter Plus	Administration	CAMPAIGN FINANCE	163-278.23; 163-278.40H	Must be sent no later than 5 days before
10/18/16	Tuesday, October 18, 2016	5:00 PM	Absentee Board Meeting 1	Statewide General Election	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on

10/19/16	Wednesday, October 19, 2016		Voter Registration Deadline - Exception for missing or unclear postmarked forms or forms submitted electronically by deadline	Statewide General Election	VOTER REGISTRATION	163-82.6(c) ; 163-82.6(c1)	No later than 20 days before the election
10/20/16	Thursday, October 20, 2016		Complete Logic & Accuracy Testing	Statewide General Election	VOTING SYSTEMS	Best Practice	7 days before the start of one-stop voting
10/22/16	Saturday, October 22, 2016	10:00 AM	One-stop Observer List Due	Statewide General Election	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to start of
10/25/16	Tuesday, October 25, 2016	5:00 PM	Absentee Board Meeting 2	Statewide General Election	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
10/25/16	Tuesday, October 25, 2016		Publish Absentee Resolution	Statewide General Election	ABSENTEE	163-234	Once a week for two weeks prior to the
10/27/16	Thursday, October 27, 2016		Absentee One Stop Voting Begins	Statewide General Election	ABSENTEE ONESTOP	163-227.2(b)	Not earlier than the second Thursday before
10/31/16	Monday, October 31, 2016		Third Quarter Plus Report Due	Administration	CAMPAIGN FINANCE	163-278.9(a)(5a)	
11/01/16	Tuesday, November 01, 2016	5:00 PM	Absentee Board Meeting 3	Statewide General Election	ABSENTEE	163-230.1(c1)	Each Tuesday at 5:00 p.m., commencing on
11/01/16	Tuesday, November 01, 2016	5:00 PM	Last day to request an absentee ballot by mail.	Statewide General Election	ABSENTEE	163-230.1(a)	Not later than 5:00 p.m. on the Tuesday
11/02/16	Tuesday, November 01, 2016	5:00 PM	Late absentee requests allowed due to sickness or	Statewide General Election	ABSENTEE	163-230.1(a1)	After 5:00 p.m. on the Tuesday before the
11/03/16	Thursday, November 03, 2016	10:00 AM	Election Day Observer/Runner List Due	Statewide General Election	OBSERVERS	163-45(b)	By 10:00 a.m. on the 5th day prior to Election
11/05/16	Saturday, November 05, 2016	1:00 PM	Absentee One Stop Voting Ends	Statewide General Election	ABSENTEE ONESTOP	163-227.2(b)	Not later than 1:00 p.m. on the last Saturday
11/07/16	Monday, November 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
11/07/16	Monday, November 07, 2016		Receive voter registration totals and add them to vote	Statewide General Election	VOTING SYSTEMS		1 day before election day
11/07/16	Monday, November 07, 2016	5:00 PM	UOCAVA Absentee Ballot Request Deadline	Statewide General Election	ABSENTEE	163-258.7	No later than 5:00 p.m. on the day before
11/07/16	Monday, November 07, 2016	5:00 PM	UOCAVA Voter Registration Deadline	Statewide General Election	VOTER REGISTRATION	163-258.6	No later than 5:00 p.m. on the day before
11/07/16	Monday, November 07, 2016	5:00 PM	Absentee Board Meeting Pre-Election Day	Statewide General Election	ABSENTEE	163-232	After 5:00 p.m. on the Monday before
11/08/16	Tuesday, November 08, 2016	12:00 PM	Period to challenge an absentee ballot	Statewide General Election	CHALLENGES	163-89	No earlier than noon or later than 5:00 p.m.
11/08/16	Tuesday, November 08, 2016	5:00 PM	Begin Counting Absentee Ballots (Cannot announce	Statewide General Election	ABSENTEE	163-234	5:00 p.m. on election day unless an earlier
11/08/16	Tuesday, November 08, 2016	5:00 PM	Civilian Absentee Return Deadline	Statewide General Election	ABSENTEE	163-231(b)(1)	Not later than 5:00 p.m. on day of the primary
11/08/16	Tuesday, November 08, 2016	10:00 AM	Distribute Certified Executed Absentee List	Statewide General Election	ABSENTEE	163-232	No later than 10:00 a.m. on election day
11/08/16	Tuesday, November 08, 2016		Distribute Election Day Absentee Abstract to SBOE	Statewide General Election	ABSENTEE	163-234(6)	Election Day
11/08/16	Tuesday, November 08, 2016	6:30 AM	ELECTION DAY	Statewide General Election	ELECTION DAY	163-1	Tuesday after the first Monday in November
11/08/16	Tuesday, November 08, 2016	10:00 AM	Election Day Tracking (10 am, 2 pm, 4 pm)	Statewide General Election	ADMINISTRATION		Election Day at 10 am, 2 pm and 4 pm
11/08/16	Tuesday, November 08, 2016	8:30 PM	Election Night finalize activities	Statewide General Election	VOTING SYSTEMS		Election Night
11/08/16	Tuesday, November 08, 2016	7:30 PM	UOCAVA absentee ballot return deadline - electronic	Statewide General Election	ABSENTEE	163-258.10	Close of polls on Election Day
11/09/16	Wednesday, November 09, 2016		Sample Audit Count - Precincts Selection	Statewide General Election	CANVASS	163-182.1(b)(1)	Within 24 hours of polls closing on Election
11/11/16	Friday, November 11, 2016		STATE HOLIDAY - VETERANS DAY				
11/14/16	Monday, November 14, 2016	5:00 PM	Civilian Absentee Return Deadline - Mail Exception	Statewide General Election	ABSENTEE	163-231(b)(2)	If postmarked on or before election day and
11/15/16	Tuesday, November 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
11/17/16	Thursday, November 17, 2016	12:00 PM	Deadline for provisional voters subject to VIVA ID to	Statewide General Election	CANVASS	163-166.13; 163-182.1A(c)	Not later than 12:00 noon the day prior to the
11/17/16	Thursday, November 17, 2016	5:00 PM	UOCAVA Absentee Ballot Return Deadline - Mailed	Statewide General Election	ABSENTEE	163-258.12	By end of business on the business day before
11/18/16	Friday, November 18, 2016	11:00 AM	County Canvass	Statewide General Election	CANVASS	163-182.5(b)	10 days after statewide general election
11/18/16	Friday, November 18, 2016		Deadline for election protest concerning votes counted	Statewide General Election	CANVASS	163-182.9(b)(4)a	Before the beginnning of the county canvass
11/18/16	Friday, November 18, 2016	10:00 AM	Distribute Supplemental Certified Executed Absentee List	Statewide General Election	ABSENTEE	163-232.1; 163-234 (10)	No later than 10:00 a.m. of the next business
11/18/16	Friday, November 18, 2016		Mail Abstract to State Board of Elections	Statewide General Election	CANVASS	163-182.6	10 days after statewide general election
11/21/16	Monday, November 21, 2016	5:00 PM	Deadline for candidates in CBE jurisdictional contests to	Statewide General Election	CANVASS	163-182.7(b)	5:00 p.m. on the first business day after the
11/21/16	Monday, November 21, 2016		Send SBOE Certification of Late or Delinquent Campaign	Administration	CAMPAIGN FINANCE	163-278.22(11)	Certification forms available in County
11/22/16	Tuesday, November 22, 2016	5:00 PM	Deadline for candidates in SBOE jurisdictional contests to	Statewide General Election	CANVASS	163-182.7(c); 163-182.4(b)(5)	5:00 p.m. on the second business day after
11/22/16	Tuesday, November 22, 2016	5:00 PM	Deadline to file election protest concerning any other	Statewide General Election	CANVASS	163-182.9(b)(4)c	5:00 p.m. on the second business day after
11/22/16	Tuesday, November 22, 2016	5:00 PM	Deadline to file election protest concerning manner in	Statewide General Election	CANVASS	163-182.9(b)(4)b	5:00 p.m. on the second business day after
11/24/16	Thursday, November 24, 2016		STATE HOLIDAY - THANKSGIVING				
11/25/16	Friday, November 25, 2016		STATE HOLIDAY - THANKSGIVING				
11/28/16	Monday, November 28, 2016		CBE issues certificates of nomination or election if no	Statewide General Election	CANVASS	163-182.15(a); 163-301	Six days after the county canvass (In a
11/28/16	Monday, November 28, 2016		Finalize Voter History	Statewide General Election	POST-ELECTION	Best Practice	7 days after county canvass
11/29/16	Tuesday, November 29, 2016		State Canvass	Statewide General Election	CANVASS	163-182.5(c)	11:00 a.m. on the Tuesday three weeks after
12/05/16	Monday, December 05, 2016		SBOE Issues Certification of Nomination or Election			163-182.15	6 days after the State Canvass
12/07/16	Wednesday, December 07, 2016		Update NVRA Survey Report	Administration	NVRA	163-82.20	By the 7th of each month
12/15/16	Thursday, December 15, 2016		Remove Ineligible Voters	Administration	LIST MAINTENANCE	163-82.14	15th of each month
12/23/16	Friday, December 23, 2016		STATE HOLIDAY - CHRISTMAS				
12/26/16	Monday, December 26, 2016		STATE HOLIDAY - CHRISTMAS				
12/27/16	Tuesday, December 27, 2016		STATE HOLIDAY - CHRISTMAS				
12/27/16	Tuesday, December 27, 2016		Notices of Report Due mailed for 2016 Fourth Quarter	Administration	CAMPAIGN FINANCE	163-278.23; 163-278.40H	Must be sent no later than 5 days before
01/02/17	Monday, January 02, 2017		STATE HOLIDAY - NEW YEARS DAY OBSERVATION				
01/03/17	Tuesday, January 03, 2017		Remove Inactive Voters; Remove Temporary Voters	Administration	LIST MAINTENANCE	163-82.14	1st business day after New Year's Day
01/07/17	Saturday, January 07, 2017		Report Results by Voting Tabulation Districts (VTD)	Statewide General Election	VOTING SYSTEMS	163-132.5G	No later than 60 days after Election Day
01/11/17	Wednesday, January 11, 2017		2016 Fourth Quarter Report Due	Administration	CAMPAIGN FINANCE	163-278.9(A)(5a)	

01/12/17	Thursday, January 12, 2017		Notices of Report Due mailed for 2016 Year End Semi-	Administration	CAMPAIGN FINANCE	163-278.23; 163-278.40H	Must be sent no later than 5 days before
01/27/17	Friday, January 27, 2017		2016 Year End Semi-annual Report Due	Administration	CAMPAIGN FINANCE	163-278.9(a)(6)	Filed by committees not participating in 2016
01/31/17	Tuesday, January 31, 2017		Send SBOE Certification of Late or Delinquent Campaign	Administration	CAMPAIGN FINANCE	163-278.22(11)	Certification forms available in County
02/16/17	Thursday, February 16, 2017		Send SBOE Certification of Late or Delinquent Campaign	Administration	CAMPAIGN FINANCE	163-278.22(11)	Certification forms available in County
09/12/17	Tuesday, September 12, 2017	6:30 AM	ELECTION DAY	September Municipal Primary	ELECTION DAY	163-279	Second Tuesday after Labor Day
09/19/17	Tuesday, September 19, 2017	11:00 AM	County Canvass	September Municipal Primary	CANVASS	163-182.5(b)	Seven days after each election (except a
10/10/17	Tuesday, October 10, 2017	6:30 AM	ELECTION DAY	October Municipal	ELECTION DAY	163-279	Fourth Tuesday before the Tuesday after the
10/17/17	Tuesday, October 17, 2017	11:00 AM	County Canvass	October Municipal	CANVASS	163-182.5(b)	Seven days after each election (except a
11/07/17	Tuesday, November 07, 2017	6:30 AM	ELECTION DAY	November Municipal	ELECTION DAY	163-279	Tuesday after the first Monday in November
11/14/17	Tuesday, November 14, 2017	11:00 AM	County Canvass	November Municipal	CANVASS	163-182.5(b)	Seven days after each election (except a
11/06/18	Tuesday, November 06, 2018	6:30 AM	ELECTION DAY	Statewide General Election	ELECTION DAY	163-1	Tuesday after the first Monday in November
11/16/18	Friday, November 16, 2018	11:00 AM	County Canvass	Statewide General Election	CANVASS	163-182.5(B)	10 days after statewide general election
Total							**408**