

January 29, 2016

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

STATE OF NORTH CAROLINA, *et al.*,

Defendants.

Civil Action No. 1:15-cv-00399

Sur-Rebuttal Report of Dr. Allan J. Lichtman to Reports Submitted by Expert for
Defendants

Distinguished Professor of History
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Washington, DC



Allan J. Lichtman

I. SUMMARY OF OPINIONS

In this report I respond to the report submitted by the expert for defendants, M. V. Hood (henceforth Hood Report) that addresses my prior two affidavits. After examining the Hood report I conclude that his report does not refute my quantitative empirical findings regarding the ability of African-American voters in North Carolina to elect African-American candidates or in rare instances white candidates of their choice in districts that are 40 percent or more African American but less than 50 percent African American in their voting age population. I also find that the Hood report contains no new original analysis and is marked by consequential omissions and errors in its efforts to reanalyze my findings regarding African-American opportunity districts in North Carolina.

II. 40%-49.9% OPPORTUNITY DISTRICTS FOR AFRICAN AMERICAN VOTERS IN NORTH CAROLINA

Contrary to what Dr. Hood indicates in his report there is nothing talismanic about 50%+ African-American voting age population (BVAP) districts in North Carolina.¹ To the contrary, my analysis of the actual results of elections demonstrated that not only do black candidates or in the rare instance a white candidate of choice of African-American voters usually prevail in North Carolina legislative districts that are 40 percent or more BVAP, they almost invariably prevail in such districts. As indicated by Tables 1 to 3 in my first affidavit, for the primary and general elections of 2008 and 2010 in such 40%+ BVAP districts African-American candidates or white candidates of choice of African-American voters prevailed in all elections (both primary and general) in 19 of 21 State House districts for a win rate of 90 percent, in all elections in 7 of 8 State Senate districts for win rate of 88 percent, and in all elections in 2 of 2 Congressional districts for a win rate of 100 percent. Combining results for all three types of districts, African-American candidates or candidates of choice of African-American voters prevailed in all elections in 28 of 31 40%+ black voting age population districts studied for a win rate of 90 percent.²

In response to Dr. Hood's report that African-American opportunity districts must be drawn at 50%+ BVAP, the following analysis distinguishes between elections held in 40% to 49.9% BVAP legislative districts and elections held in 50%+ BVAP legislative districts. State House districts, which are also the focus of Dr. Hood's report, provide a test of the effectiveness of legislative districts for African-American voters, given that there are about an equal number 40% to 49.9% BVAP House districts and 50%+ BVAP House districts in

¹ Dr. Bernard Grofman, the expert witness for prevailing plaintiffs in the landmark U. S. Supreme Court case, *Thornburg v. Gingles*, states that, "there is no "magic percentage" in terms of minority population to determine when a district offers minorities a realistic opportunity to elect candidates of choice." Bernard Grofman, "Operationalizing the Section 5 Retrogression Standard of the Voting Rights Act in the Light of *Georgia v. Ashcroft*: Social Science Perspectives on Minority Influence, Opportunity and Control," March 13, 2006, p. 14, <https://www.princeton.edu/csdp/events/Grofman040606/Grofman040606.pdf>.

² First affidavit of Professor Allan J. Lichtman. *Dickson v. Rucho* (11 CVS 16896), Tables 1-3. Contrary to Dr. Hood's criticism that I did not analyze so-called exogenous elections (elections for offices other than state legislature) in my affidavits I did include in my affidavits the most relevant and comparable exogenous elections: that is, elections for Congress in legislative districts. I do so in this report as well. These results take into account all elements of the elections in these districts including black cohesion – the black vote for candidates of their choice, the white bloc vote against the candidates and the racial composition of the turnout in primary and general elections.

the benchmark plan. The results of the analysis reported in Table 1 and Summary Table 2 confirm the finding that 50%+ districts *are not necessary* to provide African-American voters the opportunity to elect candidates of their choice to state legislative positions in North Carolina.³

As indicated in Summary Table 2 the actual outcomes of legislative elections in North Carolina State House districts are on balance slightly more favorable for African-American candidates and white candidates of choice of African-American voters in 40%-49.9% BVAP districts than in 50%+ BVAP districts. As indicated in Table 2, African-American candidates or candidates of choice of African American voters prevailed in all elections in 90 percent of 40%-49.9% BVAP districts, 1 percentage point less than the comparable 91 percent tally for 50%+ BVAP districts.

For individual election results within the State House districts (there are two primary and two general elections in each district). Table 2 indicates that African-American candidates or candidates of choice of African-American voters prevailed in 98 percent of elections held in 40%-49.9% BVAP House districts, 3 percentage points higher than the comparable win rate of 95 percent win rate for 50%+ BVAP House districts. African-American candidates were also more successful in gaining election in 40%-49.9% BVAP House districts than in 50%+ BVAP districts. As indicated in Table 2, African-American candidates prevailed in 90 percent of all elections in 40%-49.9% BVAP House districts, which is 8 percentage points higher than the comparable 82 percent win rate for African-American candidates in 50%+ BVAP House districts.

In addition to the election of candidates of choice who in rare instances have been white, the election of African-American candidates is also relevant to assessing voting rights issues. A report that accompanied the 1982 renewal of the Voting Rights Act by the Senate Committee on the Judiciary, listed the so-called "Senate Factors" which are part of to a "totality of the circumstances" analysis under Section 2 of the Voting Rights Act. Factor 7 is "the extent to which members of the minority group have been elected to public office in the jurisdiction."⁴

³ In the interest of caution, I have included House District 43 among the 50%+ districts. It was initially crafted as a district in the 40% to 49.9% BVAP range but later became a 50%+ BVAP district under the 2010 Census. This district elected an African-American candidate in all elections. Its omission or inclusion as a 40%-49.9% BVAP district would add to the finding of the relative effectiveness of such districts. All of the information on State House districts presented in this report and my initial affidavit as well as information on State Senate and Congressional districts in my affidavit was readily available to members of the State Legislature and their staffs well before the post-2010 redistricting. The analyses of these districts require no advanced statistical techniques, but only simple sorting, counting, and the computation of percentages.

⁴ *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986) (quoting S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07).

Table 1
**Electoral Analysis of 2008 and 2010 Elections State House Districts With 40%-49.9%
 BVAP Compared to Districts with 50%+ BVAP**

STATE HOUSE DISTRICTS 40%-49.9% BVAP						
District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary	2008 General Election	2010 Democratic Primary	2010 General Election
HD 5:	49.0%	48.9%	BLACK	BLACK	NONE: BLACK	BLACK
HD 12	47.5%	46.5%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 21	48.4%	46.3%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 29	44.7%	40.0%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 31	44.7%	47.2%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 42	45.1%	47.9%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 48	45.5%	45.6%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 72	43.4%	45.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 99	28.3%	41.3%	BLACK	BLACK	BLACK	BLACK
HD 102	46.1%	42.7%	NONE: WHITE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE CHOICE
STATE HOUSE DISTRICTS 50%+ BVAP						
District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
HD 7	56.0%	60.8%	BLACK	BLACK	NONE: BLACK	BLACK
HD 8	50.4%	50.2%	WHITE: NOT CHOICE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
HD 24	54.8%	56.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 27 *	52.9%	54.0%	NONE: WHITE	NONE: WHITE	NONE: WHITE	NONE: WHITE
HD 33	50.0%	51.7%	NONE: BLACK	BLACK	BLACK	BLACK
HD 43	48.7%	54.7%	BLACK	BLACK	BLACK	BLACK
HD 60	50.6%	54.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 58	53.4%	53.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 71	51.6%	51.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 101	50.6%	55.7%	NONE: BLACK	BLACK	BLACK	BLACK
HD 107	50.5%	47.1%	BLACK	BLACK	NONE: BLACK	BLACK
<p>* This analysis presumes that white candidate Michael Wray was the candidate of choice of black voters in 2008 and 2010. He was elected without primary or general election opposition in HD 27 in 2008 and 2010. In 2006, he was the candidate of choice of black voters in a primary election victory against black opponents. Without this presumption the comparison would be more favorable for 40% to 49.9% BVAP House districts as compared to 50%+ BVAP House districts.</p>						

Table 2
Summary of Results From Table 1, State House Districts With 40%-49.9% BVAP
Compared to Districts with 50%+ BVAP

PRIMARY AND GENERAL ELECTIONS						
# OF 40%-49.9% BVAP HOUSE DISTRICTS	# OF DISTRICTS WON BY BLACK CANDIDATES OR WHITE CANDIDATES OF CHOICE IN ALL ELECTIONS	WIN RATE	# OF 50%+ BVAP HOUSE DISTRICTS	# OF DISTRICTS WON BY BLACK CANDIDATES OR WHITE CANDIDATES OF CHOICE IN ALL ELECTIONS	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
10	9	90%	11	10	91%	-1%
# OF ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	# OF ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
40	39	98%	44	42	95%	+3%
# OF ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	# OF ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
40	36	90%	44	36	82%	+8%
PRIMARY ELECTIONS ONLY						
# OF PRIMARY ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF PRIMARY ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	# OF PRIMARY ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF PRIMARY ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
20	19	95%	220	20	91%	+4%
# OF PRIMARY ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	# OF PRIMARY ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
20	18	90%	22	18	82%	+8%

With respect to Democratic primary elections, highlighted in the Hood report, Table 2 indicates that African-American candidates or candidates of choice of African-American voters prevailed in 95 percent of primary elections held in 40%-49.9% House districts, 4 percentage points higher than the comparable 91 percent win rate for African-American candidates in 50%+ BVAP House districts. African-American candidates were also successful in winning primary elections in 40%-49.9% BVAP House districts than in 50%+ BVAP House districts. African-American candidates prevailed in 90 percent of primary elections in 40%-49.9% BVAP House districts, 8 percentage points higher than the comparable 82 percent win rate for African-American primary candidates in 50%+ BVAP House districts.

In his report Dr. Hood provides only a single analytic table referencing actual electoral results in North Carolina legislative elections (Hood Report, Table 3). This Table, which is reproduced below examines only State House elections and does not consider elections in State Senate or Congressional Districts, which are analyzed in my first and second affidavits (and additionally analyzed below) and which include districts that are only in the 40%-49.9% BVAP range, with none at 50%+ BVAP. Nonetheless, an appropriate unpacking of this complex table demonstrates that it confirms rather than contradicts the conclusion that legislative districts in the range of 40% to 49.9% BVAP provide African-American voters a realistic opportunity to elect African-American candidates or in the rare instance a white candidate of choice of African-American voters.

First, Dr. Hood, in this table and in his commentary, incorrectly discounts uncontested elections. Although these elections do not provide information on polarized voting between blacks and whites, they provide important information on the effectiveness of legislative districts for African-American voters, the central point of controversy in this litigation. The occurrence of uncontested elections in a district is a powerful indicator that a district is effective in providing minority voters the opportunity to elect African-American candidates or in the rare instance white candidates of their choice, to office. General elections in legislative districts are typically contested and Democratic candidates prevailed in all general elections held in State House as well as State Senate and Congressional districts in the range of 40% to 49.9% BVAP. All but one uncontested Democratic primary elections in these 40%-49.9% BVAP districts produced an African-American nominee. Two uncontested elections produced white nominees in the 2008 and 2010 Democratic primaries in a 50%+ BVAP House district: HD 27, which is 52.9% BVAP under the 2000 Census and 54.0% BVAP under the 2010 Census.

The absence of any challenger to African-American Democratic primary candidates in a district typically demonstrates that the district is sufficiently effective for African-American voters that white candidates declined to complete, even though as indicated above (see also, Section IV of this report) the Democratic Party nomination was a virtually sure route to victory in general election in districts with 40%-49.9% BVAP. An uncontested primary election involving a black nominee would hardly be expected in districts that did not provide African-American voters the ability to elect candidates of their choice in primary elections.

Hood Report, p. 8

Table 3. State House Races Analyzed by Professor Lichtman, 2008-2010

	All	Primary	General
Contested	41.7% [35]	35.7% [15]	47.6% [20]
Uncontested	58.3% [49]	64.3% [27]	52.4% [22]
<i>N</i>	84	42	42
Contested Races Only:			
Black Candidate of Choice Defeated ¹⁶	8.6% [3]	20.0% [3]	0.0% [0]
Black Candidate of Choice Wins	91.4% [32]	80.0% [12]	100.0% [20]
District ≥ 50% Black VAP	45.7% [16]	46.7% [7]	45.0% [9]
District 40.0-49.9% Black VAP	45.7% [16]	33.3% [5]	55.0% [11]
<i>N</i>	35	15	20

When uncontested and contested elections in Dr. Hood's Table 3 are both considered, there are 42 Democratic primary elections in total. These include elections in 40%-49.9% BVAP House districts and elections in 50%+ BVAP House districts, which are co-mingled indistinguishably in Dr. Hood's Table. In only 3 of these 42 primary elections according to Dr. Hood's Table 3 was the African-American candidate of choice defeated, for a win rate of 93 percent (39 of 42). In addition, Dr. Hood provides summary statistics only with no information on elections in specific House Districts. Yet an examination of my Table 1 above discloses that *two of these three losses* by candidates of choice of African American voters occurred in the 2008 and 2010 primary elections *in a 50%+ BVAP House district*: HD 8, which was 50.4 BVAP under the 2000 Census and 50.2 percent BVAP under the 2010 Census. Only one of the three losses occurred in a 40% to 49.9% BVAP State House district, in the 2010 primary in HD 102.

Even considering only contested Democratic primary elections in State House elections, African-American candidates and candidates of choice fare well in 40%-49.9% BVAP districts. As indicated in my Table 3 below there were 5 contested Democratic primary elections in 40%-49.9% BVAP House districts. African-American candidates or candidates of choice of African American voters prevailed in 4 of 5 elections, for a win rate of 80 percent. There were 10 contested Democratic primary elections in 50%+ BVAP House districts. African-American candidates or candidates of choice prevailed in 8 of 10 elections, for the same win rate of 80 percent African-American candidates had a win rate of 80 percent in contested Democratic State House primaries in 40%-49.9% BVAP districts, again equal to the win rate for African-American candidates in 50%+ BVAP districts.

With respect to general elections, Dr. Hood's Table 3 reports a 100 percent win rate for African-American candidates or African-American candidates of choice. Thus, as indicated above, victory in the Democratic primary in these districts is tantamount to victory in the general election for every State House district (and every State Senate or Congressional district) at or above 40 percent BVAP. Dr. Hood does not challenge my finding that the candidates emerging from the primaries in these districts and winning the general election were the candidates of choice of African-American voters.

Dr. Hood does criticize my report for allegedly failing to report in most cases the degrees of polarized voting between blacks and whites in district elections. The critical point, however, is that regardless of polarized voting patterns in North Carolina, African-American candidates of choice almost invariably prevailed in Democratic primaries and invariably prevailed in general elections in districts greater than or equal to 40 percent BVAP but less than 50 percent BVAP. What follows below is an examination of polarized voting and of the electoral mechanisms that explain the overwhelming success of African American candidate of choice in North Carolina legislative districts in the range of 40% to 49.9% BVAP.⁵

⁵ Dr. Hood also criticizes my report for not examining elections earlier in the cycle than 2008 and 2010. However, not only are these the most recent elections under the prior redistricting plan, but they include a general election and a midterm election year and a good Democratic year (2008) and a good Republican year (2010). Moreover, Dr. Hood does not independently analyze any elections that would cast doubt on the 2008 and 2010 results.

Table 3
State House Districts With 40%-49.9% BVAP Compared to Districts with
50%+ BVAP: Contested Democratic Primary Elections Only

PRIMARY AND GENERAL ELECTIONS						
# OF CONTESTED DEMOCRATIC PRIMARIES IN 40%-49.9% BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	# OF CONTESTED DEMOCRATIC PRIMARIES IN 50%+ BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
5	4	80%	10	8	80%	0%
# OF CONTESTED DEMOCRATIC PRIMARIES IN 40%-49.9% BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES	WIN RATE	# OF CONTESTED DEMOCRATIC PRIMARIES IN 50%+ BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
5	4	80%	10	8	80%	0%

III. Polarized Voting in North Carolina

Dr. Hood correctly indicates that voting is polarized between African-Americans and whites in both primary and general elections in North Carolina. However, he fails to note that such polarization is essentially universal across the United States and that the existence of polarized voting does not imply that majority-African-American districts are necessary for African-American voters to have the ability to elect candidates of their choice to legislative office.

Dr. Hood chose to highlight for his analysis of polarized voting in North Carolina, exit polls for the 2008 Democratic primary between Barack Obama and Hillary Clinton and the 2008 general election between Obama and John McCain, both black versus white contests. Considering first the primary election, exit poll results reported in Table 4 demonstrate that racial polarization in North Carolina is similar to polarization nationwide in the in 2008 primaries and to racial polarization in other primaries held within a month of North Carolina's May 6, 2008 contest.

Although North Carolina's racial polarization in the 2008 Democratic primary slightly exceeds the national average, this distinction does not work to the detriment of African-American Democratic primary candidates in the state. Dr. Hood's report fails to analyze the two distinct components of racial polarization and their implications for black candidate success in Democratic primary elections. Both analyses by social scientists and the guidelines of the U. S. Supreme Court in its three-prong "*Gingles Test*," recognize that racial polarization consists of both minority (in this case African American) cohesion behind candidates of their choice (*Gingles* prong 2) and white bloc voting against these candidates (*Gingles* prong 3). For African-Americans, vote dilution in a jurisdiction or district occurs when white bloc voting is usually sufficient to defeat the candidates of choice of a cohesive African-American electorate. In mathematically equivalent terms, this means that the combination of African American cohesion and white crossover voting is not sufficient to elect African-American candidates of choice.⁶

Thus, the higher the level of African-American cohesion and the higher the level of white crossover voting, the better the prospects for African-American candidates. In North Carolina, the Democratic primary exit poll cited by Dr. Hood shows that the African-American cohesion level of 91 percent behind candidate Obama is much higher than the white bloc vote of 63 percent against Obama, which is equivalent to a white crossover level of 37 percent. To illustrate the implications of these results for African-American electoral success, consider hypothetically a district in which African-Americans comprised 40 percent of Democratic primary voters. Based on the exit poll cohesion and crossover results for North Carolina the African American candidate would garner 91% of the vote from the 40 percent of voters that are African American and 37 percent from the 60 percent of voters that are white. Based on these results, the expected Democratic primary vote for the African

⁶ *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986). See also, Mary J. Kosterlitz, "Thornburg v. Gingles: The Supreme Court's New Test for Analyzing Minority Vote Dilution," *Catholic University Law Review* 36(2) (1987), <http://scholarship.law.edu/cgi/viewcontent.cgi?article=1961&context=lawreview>.

Table 4
Exit Poll Results for Blacks and Whites 2008 Democratic Presidential Primary
Nation, North Carolina, Proximate Primaries

JURISDICTION	% BLACK VOTERS FOR OBAMA	% WHITE VOTERS FOR OBAMA
NATION*	82%	39%
NORTH CAROLINA	91%	37%
PENNSYLVANIA	90%	37%
INDIANA	89%	40%
KENTUCKY	90%	23%

Source: ABC News 2008 Democratic Primary Exit Poll Results - Key Groups,
<http://abcnews.go.com/images/PollingUnit/08DemPrimaryKeyGroups.pdf>. * Did not include states without exit
polls in 2008.

-American candidate in this district is 58.6%.⁷ As will be demonstrated below, however, the expected African-American component of the Democratic primary vote in North Carolina legislative districts in the range of 40%-49.9% BVAP is almost always far higher than 50 percent.

Exit poll results for the 2008 general election reported in Table 5 also demonstrates similar racial polarization in North Carolina and the nation overall. The exit poll results for the state additionally indicate that in a district in which African Americans comprised 40 percent of all general election voters, the African-American candidate would garner 95% of the vote from the 40 percent of voters that are African-American and 35 percent from the 60 percent of voters that are white. Based on these results, the expected general election vote for the African-American candidate in this district is 59.0%.⁸

IV. The Dynamics of Partisan Legislative Elections for African-American Voters.

Dr. Hood's focus on polarized voting overlooks the actual racial dynamics of partisan legislative elections in North Carolina. For a district to perform effectively for African-American voters in North Carolina, it need not be majority African American. If African-Americans also have a majority in Democratic primary elections, such districts will provide African-American voters a realistic opportunity to elect candidates of their choice. This dynamic for African-American voters in North Carolina, analyzed below, explains why African-American candidates or in the rare instance a white candidate of choice of African American voters have almost invariably prevailed in North Carolina legislative districts with a 40% to 49.9% BVAP.⁹

The analysis first examines African-American turnout in Democratic primary elections. This analysis begins with findings of the 2008 Democratic primary exit poll between Obama and Clinton cited by Dr. Hood. It then provides a district-specific analysis of the actual African-American percentage of both Democratic registrants and Democratic primary voters in 2008 and 2010 in all 40%-49.9% BVAP State House, State Senate, and Congressional Districts in North Carolina.

In focusing on polarized voting results in the 2008 Democratic presidential primary exit polls for North Carolina, Dr. Hood passes over an important finding of this poll: the white and black percentages of the Democratic primary electorate. This Democratic primary exit poll indicates that the percentage of African Americans in the voting age population of a

⁷ (.4*91% + .6*37% = 58.6%). For an explication of minority cohesion and white bloc voting and how these voting patterns affect the prospects for minority candidates in a district, see Allan J. Lichtman and J. Gerald Hebert, "A General Theory of Vote Dilution," *Berkeley La Raza Law Journal*, 6(1) (1993), 1-25.

⁸ (.4*95% + .6*35% = 58.6%).

⁹ Professor Grofman states in his 2006 article, "On the other hand, districts where minorities are less than a majority of the overall electorate may nonetheless afford minorities a realistic opportunity to elect candidates of choice if the minority constitutes a majority of the electorate in the primary of the party most closely associated with the interests of that minority, and if there is also sufficient reliable white cross-over voting in the general election for the victor in that primary to win the general election with near certainty." Grofman, "Operationalizing the Section 5 Regression Standard," p. 15.

district will not be a reliable guide to the African-American percentage of voters in a Democratic primary. Rather the African-American primary percentage is likely to be substantially higher than the voting age population.

Data from the 2008 Democratic primary exit poll, reported in Table 5, indicates that African Americans comprised 34 percent of the state's Democratic primary electorate in 2008, 63 percent higher than the 20.9 African-American percentage of the state's voting age population. In turn, the white and the Hispanic and other component of the Democratic primary electorate is substantially lower than each group's percentage of the state's the voting age population.

It is also feasible to directly measure the racial component of the 2008 Democratic primary electorate because the state maintains registration and turnout data by race. These results, reported in Table 6 indicate that the exit poll slightly underestimates the African-American percentage of the 2008 Democratic primary electorate. According to results reported in Table 6, African Americans comprised 37 percent of the state's Democratic primary electorate in 2008, 77 percent higher than the 20.9 African-American percentage of the state's voting age population. In turn, the white, Hispanic and other component of the Democratic primary electorate is again substantially lower than each group's percentage of the state's the voting age population.¹⁰

These two sets of results for the 2008 Democratic primary indicate that a state legislative district in North Carolina with a BVAP in the range of 40% to 49.9% will have a much higher African-American percentage of the Democratic primary electorate, likely well in excess of a 50 percent majority.

Analysis of the 2010 statewide primary in North Carolina confirms these findings, even for a midterm year when African-American turnout is especially reduced relative to presidential years and also a good year for Republicans in North Carolina. The data reported in Table 6, indicates that African Americans comprised 33 percent of the state's Democratic primary electorate in 2010, 58 percent higher than the 20.9 African American percentage of the state's voting age population. In turn, the white, Hispanic and other component of the Democratic primary electorate is substantially lower than each group's percentage of the state's the voting age population.

Thus multiple analyses from the 2008 and 2010 Democratic primaries statewide indicate the legislative districts in the 40% to 49.9% BVAP range should typically have African-American majorities in Democratic primary elections that are well in excess of 50

¹⁰ Compilations of turnout by race statewide and in legislative districts as well as compilations of statewide general election results in legislative were prepared under my instruction by David Ely of Compass Demographics, who also prepared data under my instruction for the North Carolina litigation of the state's VIVA legislation.

Table 5
Exit Poll Results for Blacks and Whites 2008 General Election
Nation, North Carolina,

JURISDICTION	% BLACK VOTERS FOR OBAMA	% WHITE VOTERS FOR OBAMA
NATIONAL	95%	43%
NORTH CAROLINA	95%	35%
Source: http://www.cnn.com/ELECTION/2008/primaries/results/epolls/#NCDEM .		

Table 6
Turnout by Blacks, Whites and Others 2008 and 2010 Democratic Primary Election,
North Carolina,

2008 EXIT POLL BY RACE				
RACE	PERCENTAGE OF DEMOCRATIC PRIMARY VOTERS	PERCENTAGE OF VOTING AGE POPULATION (VAP)	PERCENTAGE POINT DIFFERENCE: PRIMARY VOTERS AND VAP	PERCENT DIFFERENCE: PRIMARY VOTERS AND VAP
WHITE	62%	68.4%	-6.4 POINTS	-9%
BLACK	34%	20.9%	+13.1 POINTS	+63%
HISPANIC & OTHERS	4%	10.7%	-6.7 POINTS	-63%
2008 STATE TURNOUT DATA BY RACE				
RACE	PERCENTAGE OF DEMOCRATIC PRIMARY VOTERS	PERCENTAGE OF VOTING AGE POPULATION (VAP)	PERCENTAGE POINT DIFFERENCE: PRIMARY VOTERS AND VAP	PERCENT DIFFERENCE: PRIMARY VOTERS AND VAP
WHITE	60%	68.4%	-8.4 POINTS	-12%
BLACK	37%	20.9%	+16.1 POINTS	+77%
HISPANIC & OTHERS	4%	10.7%	-6.7 POINTS	-63%
2010 STATE TURNOUT DATA BY RACE				
RACE	PERCENTAGE OF DEMOCRATIC PRIMARY VOTERS	PERCENTAGE OF VOTING AGE POPULATION (VAP)	PERCENTAGE POINT DIFFERENCE: PRIMARY VOTERS AND VAP	PERCENT DIFFERENCE: PRIMARY VOTERS AND VAP
WHITE	64%	68.4%	-4.4 POINTS	-6%
BLACK	33%	20.9%	+12.1 POINTS	+58%
HISPANIC & OTHERS	3%	10.7%	-7.7 POINTS	-72%
Source: http://www.cnn.com/ELECTION/2008/primaries/results/epolls/#NCDEM ; 2010 Census of Population; voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.				

percent. This expectation is borne out by a district-specific analysis that looks at the actual African-American percentages of both the Democratic registration and the Democratic electorate in the 2008 and 2010 Democratic primaries in all State House, State Senate and Congressional districts in the 40% to 49.9% BVAP range.

Tables 7 to 9 report the actual African-American and white percentages of the Democratic registration and the Democratic turnout in the 2008 and 2010 primaries for State House, State Senate, and Congressional districts respectively in the 40% to 49.9% BVAP range. To be clear, these statistics are not the turnout rates of African Americans and whites, but the percentages of African Americans and whites among the registered Democrats and among the actual primary voters in each district. Table 10 summarizes the detailed results for Tables 7 to 9.

The results reported in Tables 7-9 and summarized in Table 10 for Democratic registration and turnout in the 2008 and 2010 primaries in 40%-49.9% BVAP legislative districts in North Carolina discloses that for Democratic primaries these districts are neither coalition nor crossover districts. Rather they are what Dr. Grofman terms African-American “control districts,” which are districts “where minorities, themselves alone, can constitute a majority of the actual electorate.”¹¹ In these districts African Americans almost invariably comprise a substantial majority of Democratic registrants and Democratic primary voters. In both the 2008 and 2010 primaries Table 10 discloses that with but a single exception (Democratic primary turnout in HD 29 in the 2010 election) African Americans comprise at least a rounded 54 percent of both Democratic registrants and Democratic primary voters.

In most instances these African-American Democratic registrants and primary voters comprise well more than a 55 percent majority. For Democratic registrants in the 2008 primary African Americans comprised more than a 60 percent majority in 85 percent of all 40%-49.9% BVAP legislative districts in North Carolina. In 2008, African Americans also comprised more than a 60 percent majority of Democratic primary voters in 90 percent of all 40%-49.9% BVAP legislative districts. For Democratic registrants in the 2010 primary African Americans comprised more than a 60 percent majority in 95 percent of all 40%-49.9% BVAP legislative districts. In 2010, African Americans also comprised more than a 60 percent majority of Democratic primary voters in 55 percent of all 40%-49.9% BVAP legislative districts.

Dr. Hood in his report does not provide a systematic analysis of the African-American component of Democratic registration and Democratic primary turnout in 40%-49.9% BVAP legislative districts in North Carolina. Instead, citing the work of Dr. Brunell Dr. Hood focuses on the African-American share of the Democratic primary turnout on only

¹¹ Grofman, “Operationalizing the Section 5 Retrogression Standard,” p. 11.

Table 7
African-American & Non-Hispanic White Percentage of Democratic Party Registration and Turnout, State House Districts With 40%-49.9% BVAP, 2008 & 2010 Democratic Primary Elections

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary		2010 Democratic Primary	
			Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout	Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout
HD 5:	49.0	48.9%	60.6%	60.6%	62.7%	56.1%
HD 12	47.5	46.5%	72.6%	73.7%	73.7%	65.3%
HD 21	48.4	46.3%	70.1%	71.0%	71.8%	55.2%
HD 29	44.7	40.0%	55.0%	54.0%	57.0%	47.8%
HD 31	44.7	47.2%	68.6%	72.6%	69.5%	71.5%
HD 42	45.1	47.9%	76.6%	83.7%	77.4%	85.2%
HD 48	45.5	45.6%	59.5%	64.1%	60.6%	57.9%
HD 72	43.4	45.4%	71.9%	75.9%	72.6%	72.5%
HD 99	28.3	41.3%	66.6%	75.7%	67.1%	72.7%
HD 102	46.1	42.7%	65.1%	64.2%	65.4%	56.5%

Source: voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.

Table 8
African-American & Non-Hispanic White Percentages of Democratic Party Registration and Turnout, State Senate Districts With 40%-49.9% BVAP, 2008 Democratic Primary

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary		2010 Democratic Primary	
			Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout	Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout
SD 3:	47.0	46.9	63.8%	63.3%	66.4%	55.3%
SD 4	49.1	49.7	59.7%	59.8%	62.4%	56.1%
SD 14	41.0	42.6	67.0%	70.5%	68.0%	69.7%
SD 20	44.6	44.6	62.5%	64.1%	64.1%	56.1%
SD 21	41.0	44.9	70.9%	75.1%	73.1%	73.7%
SD 28	44.2	47.2	71.7%	75.0%	73.3%	76.0%
SD 32	41.4	42.5	68.1%	71.8%	69.4%	68.1%
SD 38	47.7	47.0	73.3%	78.5%	73.3%	74.8%

Source: voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.

Table 9
African-American & Non-Hispanic White Percentage of Democratic Party Registration and Turnout, U. S. Congress Districts With 40%-49.9% BVAP, 2008 Democratic Primary

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary		2010 Democratic Primary	
			Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout	Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout
CD 1:	48.1	48.6	63.7%	63.7%	66.2%	57.3%
CD 12	42.8	43.8	70.1%	74.1%	71.1%	67.8%
Source: voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.						

Table 10
Summary of Democratic Registration and Primary Turnout 2008 & 2010 In 20 40%-
49.9% BVAP Legislative Districts, From Tables 6-8

	BLACK PERCENTAGE OF DEMOCRATIC REGISTERED VOTERS 2008 PRIMARY	BLACK PERCENTAGE OF DEMOCRATIC ELECTORATE 2008 PRIMARY	BLACK PERCENTAGE OF DEMOCRATIC REGISTERED VOTERS 2010 PRIMARY	BLACK PERCENTAGE OF DEMOCRATIC ELECTORATE 2010 PRIMARY
LESS THAN 55%	0	1 (5%) (HD 29 54.0%)	0	1 (5%) (HD 29: 47.8% BVAP)
55% - 60%	3 (15%)	1 (5%)	1 (5%)	8 (40%)
60% - 65%	4 (20%)	6 (30%)	4(20%)	0
65%-70%	5 (25%)	0	7 (35%)	4 (20%)
MORE THAN 70%	8 (40%)	12 (60%)	8 (40%)	7 (35%)
SUMMARY: MORE THAN 60%	17 (85%)	18 (90%)	19 (95%)	11 (55%)

two elections in two districts: the 2010 primary elections in SD 3 and HD 102. These primary elections are the only contests out of 40 primary elections held in 40%-49.9% BVAP legislative districts in which African Americans failed to elect candidates of their choice. Dr. Hood's analyses of turnout in these two districts is critical to Dr. Hood's report, because they constitute the only specific analyses that purport to show that the defeat of black candidates can be attributed to the failure to draw districts at or above the 50% BVAP level. Yet even for these two exceptional cases, Dr. Hood's analysis fails to withstand scrutiny.

For SD 3 Dr. Hood claims that African Americans comprised only 46.4 percent of the 2010 primary turnout. He does not cite a specific source for this finding, but only generally refers in his footnote to the North Carolina State Board of Elections. Dr. Hood makes this alleged less-than-majority black turnout a central point of his report saying that it accounted for his additional finding that the two black candidates in the 2010 SD 3 primary taken together received only a minority of the vote that "equated to 46.2%." (Hood Report, p. 10). The critical bottom line for Dr. Hood is that for these black candidates to have gained even a mere combined majority of the vote it would have required a majority black turnout in SD 3 for which he says "the creation of a majority-black [VAP] district would most likely be required." (Hood Report, p. 11)

These claims by Dr. Hood, including his assertion that a black majority turnout in SD 3 would have required the creation of a majority-black VAP district cannot withstand scrutiny. In fact, although SD 3 had a BVAP 46.9 percent under the 2010 Census, based on actual registration and turnout by race as indicated in Table 8, African Americans actually comprised 66.4 percent of 2010 Democratic registrants and 55.3 percent of Democratic voters in the SD 3 2010 primary election. The inaccuracy of Dr. Hood's turnout estimates for the 2010 Democratic primary is additionally demonstrated by his erroneous reporting of the vote share received by the two African-American candidates competing in SD 3 in that primary. The official election results for the 2010 Democratic primary in SD 3 as reported by the North Carolina State Board of Elections and reproduced from the Board's website in Table 11, demonstrate that the two black candidates Bordeaux and Armstrong garnered 9,414 votes or *50.26 percent of the vote (not 46.2 percent)* to 9,313 or 49.73 percent of the vote for white incumbent candidate Jenkins. Thus, against a white incumbent, the African-American candidates actually garnered a slight majority of the Democratic primary vote. As I previously noted in my analysis of this election in my Second Affidavit, "Jenkins prevailed because of a split in the African-American vote."¹²




With respect to House District 102, Dr. Hood reports that "In 2010 House District 102 was 42.7% black VAP." (Hood Report, p. 10) He fails to note, however, that as in SD 3, African Americans in HD 102 comprised a much higher 56.5 percent of the 2010 Democratic primary turnout, thus establishing effective control over the primary election. As in SD 3 the white candidate prevailed not because of any defect in the district but because in a very low turnout election African Americans were barely cohesive, providing only 53.6 percent of their vote for

¹² Second affidavit of Professor Allan J. Lichtman. *Dickson v. Rucho* (11 CVS 16896). Page 17.

Table 11
Official Results of the 2010 Democratic Primary Election in Senate District 3

NC STATE SENATE DISTRICT 3 - DEM (Vote For 1)

3 of 3 Counties Reporting

		Perc ent	Votes
Clark Jenkins		49.7 3%	9,313
Frankie L. Bordeaux		38.0 1%	7,119
Florence Arnold Armstrong		12.2 6%	2,295

Source: <http://results.enr.clarityelections.com/NC/15705/29325/en/summary.html>.

the African-American candidate. I also previously presented this analysis in my Second Affidavit.¹³

Thus Democrats controlled the primary elections in the virtually every instance in the 20 legislative districts that are 40% to 49.9% black in voting age population legislative districts in North Carolina in the benchmark plan. In turn, the Democratic nominees in these 20 districts have without exception prevailed in general elections, creating a clear two-step path for African-American voters to nominate and then elect candidates of their choice. The overwhelming Democratic composition of these districts that makes party nomination tantamount to election is confirmed by examining the results of four 2008 and 2010 statewide general elections within the precincts of each district.

Results of these statewide general elections for 40%-49.9% legislative districts in North Carolina are presented in Tables 12-14 and summarized in Table 15. These results demonstrate overwhelming support for general election Democratic candidates in all 20 state legislative districts with a BVAP in the range of 40% to 49.9%. Table 12 for State House Districts indicates that the mean vote for Democratic candidates in the four general elections exceeded 60 percent in every district and exceeded 70 percent in 7 of 10 districts. Table 13 for State Senate Districts indicates that the mean vote for Democratic candidates in the four general elections exceeded 60 percent in every district and exceeded two-thirds (67 percent) percent in 6 of 8 districts. Table 14 for Congressional districts indicates that the mean vote for Democratic candidates in the four general elections was a rounded 65 percent or more in both districts. Summary Table 14 indicates that for all 80 general elections with the boundaries of 40%-49.9% North Carolina legislative districts the win rate for Democratic candidates was 100%. Summary Table 15 additionally indicates that the two-party vote for Democratic candidates exceeded 60 percent in 93 percent of these elections and exceeded 65 percent in 76 percent of these elections.

¹³ *Ibid.*, pp. 17-18.

Table 12
2008 and 2010 General Election Results for 40%-49.9% State House Districts,
Democratic Percentage of Two Party Vote

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Governor	2008 US President	2008 US Senate	2010 US Senate	Mean Four Elections
HD 5:	49.0%	48.9%	70.4%	60.5%	62.6%	55.9%	62.3%
HD 12	47.5%	46.5%	70.3%	60.5%	62.2%	54.3%	61.8%
HD 21	48.4%	46.3%	67.9%	63.1%	66.6%	58.6%	64.1%
HD 29	44.7%	40.0%	78.1%	82.4%	81.2%	78.2%	80.0%
HD 31	44.7%	47.2%	76.7%	78.7%	78.6%	76.5%	77.6%
HD 42	45.1%	47.9%	75.2%	74.0%	74.8%	71.7%	73.9%
HD 48	45.5%	45.6%	78.1%	70.4%	72.5%	67.4%	72.1%
HD 72	43.4%	45.4%	75.8%	75.3%	76.7%	67.1%	73.7%
HD 99	28.3%	41.3%	66.4%	75.5%	76.1%	72.7%	72.7%
HD 102	46.1%	42.7%	67.9%	80.3%	80.2%	74.3%	75.7%

Source:

http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2003.asp?Plan=House_Redistricting_Plan&Body=House;

<http://www.ncleg.net/representation/Content/BaseData/BD2011.aspx>

Table 13
2008 and 2010 General Election Results for 40%-49.9% State Senate Districts,
Democratic Percentage of Two Party Vote

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Governor	2008 US President	2008 US Senate	2010 US Senate	Mean Four Elections
SD 3:	47.0	46.9	69.2%	60.6%	64.4%	57.2%	62.9%
SD 4	49.1	49.7	70.6%	61.3%	64.6%	57.4%	63.5%
SD 14	41.0	42.6	67.5%	69.3%	70.0%	64.3%	67.8%
SD 20	44.6	44.6	75.2%	76.7%	76.9%	73.3%	75.5%
SD 21	41.0	44.9	71.5%	69.7%	71.1%	65.5%	69.5%
SD 28	44.2	47.2	69.3%	69.5%	72.1%	61.2%	68.0%
SD 32	41.4	42.5	72.6%	72.0%	73.7%	62.5%	70.2%
SD 38	47.7	47.0	66.5%	74.4%	75.4%	69.1%	71.4%

Source: ;
http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2003.asp?Plan=2003_Senate_Redistricting_Plan&Body=Senate;
<http://www.ncleg.net/representation/Content/BaseData/BD2011.aspx>

Table 14
2008 and 2010 General Election Results for 40%-49.9% Congressional Districts,
Democratic Percentage of Two Party Vote

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Governor	2008 US President	2008 US Senate	2010 US Senate	Mean Four Elections
CD 1:	48.1	48.6	71.0%	63.0%	66.1%	59.2%	64.8%
CD 12	42.8	43.8	67.9%	70.7%	72.6%	63.6%	68.7%
Source:							
http://www.ncleg.net/Representation/Content/Plans/PlanPage_DB_2003.asp?Plan=Congress_ZeroDeviation&Body=Congress;							
http://www.ncleg.net/representation/Content/BaseData/BD2011.aspx							

Table 15
Summary of General Election Results 2008 & 2010 In 20 40%-49.9% BVAP Legislative
Districts, From Tables 11-13

	# OF ELECTIONS IN WHICH VOTE FOR DEMOCRATIC CANDIDATE EXCEEDED 50%	# OF ELECTIONS IN WHICH VOTE FOR DEMOCRATIC CANDIDATE EXCEEDED 60%	# OF ELECTIONS IN WHICH VOTE FOR DEMOCRATIC CANDIDATE EXCEEDED 65%
80 ELECTIONS IN ALL DISTRICTS	80 (100%)	74 (93%)	61 (76%)

V. Dr. Hood's Interpretation of *Bartlett v. Strickland*.

Dr. Hood states in his report that the Supreme Court has also stipulated in *Bartlett v. Strickland* that the appropriate remedy for vote dilution, when conditions dictate, involves the creation of single-member majority-minority districts. He additionally states that, "majority-minority districts to be the proper remedy in avoiding a potential Section 2 vote dilution claim." (Hood Report, p. 8). It is unclear what Dr. Hood means by "remedy" in this sentence. Absent a finding of a voting rights violation, there is no need for a state or locality to fashion a "remedy." It is this slippage between the latitude according states in deciding how to provide minority electoral opportunities in a redistricting plan and the requirements for a successful voting rights challenge that in my view leads Dr. Hood to misinterpret the guidance *Bartlett* provides to state and local jurisdictions and their expert advisers.

As a redistricting advisor to governmental bodies and independent groups, I am aware of the guidance provided by Supreme Court decisions including *Gingles*, *Johnson v. De Grandy* (in which I was an expert witness for the U. S. Department of Justice), *Bartlett v. Strickland*, *LULAC v. Perry* (in which I was an expert witness for plaintiffs), and *Alabama Legislative Black Caucus v. Alabama* (in which I was an expert witness for plaintiffs).¹⁴ As construed in *Bartlett* the satisfaction of "prong one" of the *Gingles* test requires a showing that the minority group at issue constitutes at least 50 percent of the voting age population in an additional district. However, the *Bartlett* opinion does not impose 50 percent single race VAP requirement upon jurisdictions. Rather in the words of the majority opinion, "*§2 allows States to choose their own method of complying with the Voting Rights Act.*" (emphasis added). In detail the opinion states:

"Our holding that §2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion. Assuming a majority-minority district with a substantial minority population, a legislative determination, based on proper factors, to create two crossover districts may serve to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal. The option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more. And as the Court has noted in the context of §5 of the Voting Rights Act, "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or [crossover] districts." *Ashcroft*, 539 U. S., at 482. Much like §5, §2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts."

Following Supreme Court guidance and my own decades of experience as a social scientist analyzing hundreds of redistricting plans, my advice has been that a voting rights district need not conform to any pre-conceived or mechanical minority voting age population. Rather, the district should provide minority voters a realistic opportunity to elect candidates of

¹⁴ *Johnson v. De Grandy* 512 U.S. 997 (1994); *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009); *League Of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 475 (2006), *Alabama Legislative Black Caucus v. Alabama* (Slip Opinion), No. 13–895 (March 2015).

their choice. For African-American districts, depending on location, given their different turnout and voting behavior such districts may often be drawn at well below 50 percent of the African-American voting age population. African-American opportunity districts drawn at well below 50 percent BVAP at my recommendation have withstood judicial scrutiny or not been subject to litigation challenge. See, for example, *Campuzano v. Illinois State Board of Elections*, 200 F. Supp. 2d 905 (N. D. Ill, 2002) and *League of Women Voters v. Detzner*, The Second Judicial Circuit in and for Leon County Florida, CASE No.:2012-CA-2842, 30 December 2015.

In testimony before the Illinois State Senate by a staunch advocate of voting rights for African Americans, Kristen Clarke, former Co-Director of the Political Participation Group of the NAACP Legal Defense and Education Fund, commonly known as LDF explained why both legally and substantively states need not draw African-American opportunity districts at or above the 50% BVAP level:

“Moreover, state legislatures throughout the country remain free to create affirmative opportunities for minorities to elect a candidate of choice even if a substantial minority population does not meet the 50 percent threshold. This is particularly true in those areas of the country that have experienced a significant increase in their minority population over recent time. In fact, *Bartlett* acknowledges that legislatures have the option of creating minority opportunity districts (when other redistricting factors are considered) even if a substantial minority population does not meet the 50 percent threshold. In that way, *Bartlett* does not bar the voluntary creation of a district where a minority group less than the 50 percent threshold can have the opportunity to elect a representative of choice.”¹⁵

VI. Conclusions

None of the analyses in Dr. Hood’s report or in Dr. Brunell’s earlier report contradict the finding in my first two affidavits that North Carolina state legislative districts in the range of 40% to 49.9% BVAP provide African-American voters a realistic opportunity to elect candidates of their choice. Additional analyses presented in this report strengthen that finding.

The comparison of State House districts in the range of 40% to 49.9% BVAP with 50%+ BVAP State House districts demonstrates that districts in the former category at least as effective or even more effective for African-American voters than districts in the majority black category. This finding holds for the analysis of all State House elections held in these districts, as well as in the analysis of primary elections only. For primary elections, analysis of the racial composition of the electorate from the 2008 statewide exit poll demonstrates that black cohesion well exceeds white bloc voting against the black candidate of choice, creating favorable circumstances for the nomination of a black candidate. Turnout estimates from the exit polls as well as actual primary turnout in the 2008 and 2010 primaries indicate that the black percentage

¹⁵ Testimony of Kristen Clarke Before the Illinois Senate Redistricting Committee, “Hearing on The Voting Rights Act and Other Legal Requirements in Redistricting,” December 8, 2009, p. 3, <http://ilga.gov/senate/Committees/Redistricting/Testimony%20of%20Kristen%20Clarke%20-%20NAACP%20Legal%20Defense%20and%20Educational%20Fund.pdf>.

of the primary electorate should far exceed the black percentage of the voting age population.

This expectation is confirmed by a district specific analysis of the actual black percentage of registered voters and the primary electorate in the 2008 and 2010 Democratic primaries. The results of this analysis demonstrates that in North Carolina in the 2008 and 2010 primaries African Americans almost invariably comprise very substantial majorities of Democratic registrants and Democratic primary voters in 40% to 49.9% BVAP State House, State Senate, and Congressional districts. Thus in the critical Democratic primaries these are not “coalition districts” as Dr. Hood claims. Rather African Americans control the primaries in these districts and are not dependent on votes from other racial groups. Analysis also demonstrates that for these 40% to 49.9% BVAP legislative districts, nomination in the Democratic primary is tantamount to victory in the general election.

Scrutiny of Dr. Hood’s analyses of exit polls (Hood Report, Tables 1 and 2), and election results in State House districts (Hood Report, Table 3) only confirms these findings. In addition, Dr. Hood misanalyses the exceptional elections in SD 3 and HD 102 and misinterprets the guidance provided to state jurisdictions in *Bartlett v. Strickland*.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

MARGARET DICKSON, *et al.*,

Plaintiffs,

v.

ROBERT RUCHO, in his official capacity
only as the Chairman of the North
Carolina Senate Redistricting
Committee, *et al.*,

Defendants.

NORTH CAROLINA STATE CONFERENCE
OF BRANCHES OF THE NAACP *et
al.*,

Plaintiffs,

v.

STATE OF NORTH CAROLINA *et al.*,

Defendants.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

11 CVS 16896

11 CVS 16940

Consolidated Cases

AFFIDAVIT OF ALLAN J. LICHTMAN, Ph.D.

I, Allan J. Lichtman, being first duly sworn, depose and say:

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

2. I am a Distinguished Professor of History at American University in Washington, DC and formerly Associate Dean of the College of Arts and Sciences and Chair of the Department of

History. I received my BA in History from Brandeis University in 1967 and my Ph.D. in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data. My areas of expertise include political history, electoral analysis, and historical and quantitative methodology. I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as Political Methodology, Journal of Interdisciplinary History, International Journal of Forecasting, and Social Science History. In addition, I have coauthored Ecological Inference with Dr. Laura Langbein, a standard text on the analysis of social science data, including political information. I have published articles on the application of social science analysis to civil rights issues. This work includes articles in such journals as Journal of Law and Politics, La Raza Law Journal, Evaluation Review, Journal of Legal Studies, and National Law Journal. My scholarship also includes the use of quantitative and qualitative techniques to conduct contemporary and historical studies, published in such academic journals as The Proceedings of the National Academy of Sciences, The American Historical Review, Forecast, and The Journal of Social History. Quantitative and historical analyses also ground my books, Prejudice and the Old Politics: The Presidential Election of 1928, The Thirteen Keys to the Presidency (co-authored with Ken DeCell), The Keys to the White House, and White Protestant Nation: The Rise of the American Conservative Movement. My most recent book, White Protestant Nation, was one of five finalists for the National Book Critics Circle Award for the best general nonfiction book published in America.

3. I have worked as a consultant or expert witness for both plaintiffs and defendants in some eighty voting and civil rights cases. These include several cases in the state of North Carolina. In late 2011, I was the expert witness in Illinois for the prevailing state parties in

separate litigation challenging both the adopted state plan for the State House and for Congress.¹ My work includes more than a dozen cases for the United States Department of Justice and cases for many civil rights organizations. I have also worked as a consultant or expert witness in defending enacted plans from voting rights challenges. A copy of my resume and a table of cases are attached as Appendix I of this report.

4. I have been asked to consider the African-American voting age population needed for State House, State Senate, and Congressional Districts in North Carolina that provide African Americans the ability to elect candidates of their choice. In particular I have been asked to consider whether it is necessary to create such districts that are 50 percent or more African American in their voting age population.

5. My expected fee in this matter is \$400 per hour. I have enclosed an updated CV and a table of cases in which I have provided written or oral testimony.

Data and Methods

6. The voting analysis in this report relies on standard data utilized in social science: precinct by precinct election returns for each candidate in election studied, with candidates identified by race and precinct by precinct breakdowns of voting age African Americans and whites, which includes a small number of Asians and members of other races. The election and demographic data and the racial identification of candidates were obtained from the NC State Board of Elections via counsel. To estimate the voting of African Americans and whites, the analysis utilizes the standard methodology of ecological regression that I have employed in some

¹ The State House litigation in Illinois was *Radogno v. Illinois State Bd. of Elections*, 2011 WL 5025251, *8 (N.D. Ill. Oct. 21, 2011) and the Congressional litigation was *Committee For A Fair and Balanced Map, et al., v. Illinois State Board of Elections* 2011 U.S. Dist. LEXIS 144302, (N. D. Ill. December 15, 2011).

80 previous cases and applied to the analysis of many thousands of elections and the study of numerous redistricting plans. The ecological regression procedure estimates the voting behavior of demographic groups such as African Americans and whites by comparing the racial composition of voting precincts to the division of the vote among competing candidates in each precinct. It produces an equation that estimates both the turnout and voting for each candidate by each voter group. The procedure was accepted by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and applied by the Court to single-member districts plans in *Quilter v. Voinovich*, 113 S. Ct 1149 (1993). My analysis based on these methods was cited authoritatively several times by the United States Supreme Court in the Congressional redistricting case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006).²

7. This report also follows standard practice in the field by using the results of past elections and voting patterns by minority and white voters to assess prospects for minority voters in newly crafted districts. This method is utilized on a standard basis when there is population growth and shifts in population that require the redrawing of districts in which the electorate will not be precisely the same as in previous districts. In this case, moreover, the analysis is highly reliable in that it covers a large number of districts that will include most of the electorate included in newly drawn districts. The electoral analysis is also specific to State House, State Senate, and Congressional elections.

Results of Analysis

² For a scholarly analysis of ecological regression and why it works well in the context of analyzing the voting of racial groups, see, Allan J. Lichtman, "Passing the Test: Ecological Regression in the *Garza* Case and Beyond," *Evaluation Review* 15 (1991). Bernard Grofman, the expert witness in the *Gingles* case, and myself were co-originators of the specific statistical methodology used here, see, Bernard Grofman, Lisa Handley, Richard G. Niemi, *Minority Representation and the Quest for Voting Equality* (New York: Cambridge University Press, 1992), pp. 102, 146.

8. The results of analysis apply to the two most recent elections years of 2008 and 2010 and cover all existing State House, State Senate, and Congressional Districts that are 40 percent or more African-American in their voting age populations, either as created under the 2000 Census or as currently constituted under the 2010 Census. The study examined Democratic primary elections, given that African Americans are overwhelmingly Democratic in North Carolina and general elections.

9. With respect first to State House Districts, the results of analysis demonstrate that of twenty-one 40%+ black voting age population districts studied, African-American candidates prevailed in all elections in 18 districts and a white candidate of choice of African-American voters prevailed in one election in another district (HD 27). There were only two exceptions to this near universal pattern. In House District 8 a white candidate who was not the primary election candidate of choice of African-American voters was elected in 2008 and 2010. However, House District 8 is a 50%+ black voting age population district and the white candidate won with more than 60 percent of the vote. The white candidate would have won even if this district were 60 percent black in voting age population. The only other 40%+ black voting age population State House district in which a white candidate who was not the candidate of choice of African-American voters prevailed was in House District 102. In one election, the 2010 Democratic primary contest, the white incumbent Becky Carney, who was not the candidate of choice of African-American voters prevailed. This was also a very low turnout election in which less than 5 percent of whites or blacks of voting age participated. Thus, in 40%+ black voting age population State House Districts relevant to this litigation, black candidates or a white candidate of choice of black voters prevailed in all elections in 19 out of 21 districts, for a win rate of 90 percent.

10. With respect to State Senate Districts, the results of analyzing 40%+ black voting age population districts demonstrate that of eight districts studied, African-American candidates prevailed in all elections in six districts and a white candidate of choice of African-American voters prevailed in all elections in another district. The lone exception to this pattern is Senate District 3 in which a white candidate who was not the candidate of choice of African-American voters was elected in 2008 and 2010. Thus, in 40%+ black voting age population districts relevant to this litigation, African-American candidates or the candidates of choice of African-American voters prevailed in all elections in 7 of 8 districts, for a win rate of 88 percent.

11. With respect to Congressional Districts, the results of analysis demonstrate that of two districts studied, African-American candidates prevailed in all elections in both districts. Thus, in 40%+ congressional districts, candidates or the candidates of choice of African-American voters prevailed in all elections in 2 of 2 districts, for a win rate of 100 percent.

12. The results of combining the analysis of elections for State House, State Senate, and Congress in relevant parts of the state demonstrate that either African-American candidates or candidates of choice of African-American voters prevailed in all elections in 28 of 31 40%+ black voting age population districts studied for a win rate of 90 percent. Thus, it is not necessary in North Carolina to create effective African-American opportunity districts with African-American voting age populations of 50 percent or more. The result of creating such districts is to waste African-American votes that could expand the ability of African Americans to influence the political process in other districts.

13. Tables 4 to 5, show the results of creating 50%+ African-American districts for State House and State Senate districts. As compared to the benchmark existing plan, the state-passed

proposed plan for State House needlessly packs African Americans into Districts greater than 50 percent black in their voting age population. The result is to diminish substantially the influence of African-American voters in other House districts. As indicated in Table 4, the existing benchmark State House plan has 32 districts that are 30% or more black in their voting age population, compared to 26 in the state-passed proposed State House plan. As indicated in Table 5, the existing benchmark State Senate plan has 15 districts that are 30% or more black in their voting age population, compared to 10 in the state-passed proposed State Senate plan.

14. In sum, Analysis of recent elections in North Carolina demonstrates that it is not necessary to create African-American opportunity districts with African-American voting age populations greater than 50 percent. Rather the result of creating such districts is to unnecessarily pack African Americans in districts with the result that in other districts the influence of African Americans in North Carolina elections is diminished. These opinions are consistent with the findings of Dr. Theodore Arrington who wrote the following in his affidavit:

These statistics indicate that a primary purpose of precinct splitting was to segregate the races into separate districts. Black voters were placed in packed districts with far higher concentrations than are necessary to give them a reasonable opportunity to elect representatives of their choice or their ability to elect such representatives. I know that these concentrations are excessive based on my extensive study of voting in North Carolina including work on Section 5 preclearance for the Department of Justice and various voting rights cases beginning with my work on the Gingles case.³

³ Affidavit of Theodore S. Arrington, p. 11-12.

Table 1
Electoral Analysis of Current State House Districts With 40%+ Black Voting Age Population *

District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
HD 5:	49.0%	48.9%	BLACK	BLACK	NONE: BLACK	BLACK
HD 7	56.0%	60.8%	BLACK	BLACK	NONE: BLACK	BLACK
HD 8	50.4%	50.2%	WHITE: NOT CHOICE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
HD 12	47.5%	46.5%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 21	48.4%	46.3%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 24	54.8%	56.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 27**	52.9%	54.0%	NONE: WHITE	NONE: WHITE	NONE: WHITE	NONE: WHITE
HD 29	44.7%	40.0%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 31	44.7%	47.2%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 33	50.0%	51.7%	NONE: BLACK	BLACK	BLACK	BLACK
HD 42	45.1%	47.9%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 43	48.7%	54.7%	BLACK	BLACK	BLACK	BLACK
HD 48	45.5%	45.6%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 58	53.4%	53.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 60	50.6%	54.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 71	51.6%	51.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 72	43.4%	45.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 99	28.3%	41.3%	BLACK	BLACK	BLACK	BLACK
HD 101	50.6%	55.7%	NONE: BLACK	BLACK	BLACK	BLACK
HD 102	46.1%	42.7%	NONE: WHITE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
HD 107	50.5%	47.1%	BLACK	BLACK	NONE: BLACK	BLACK

* Analysis of contested elections conducted through ecological regression analysis of precinct-level data.

** White candidate Michael Wray was elected without primary or general election opposition in HD 27 in 2008 and 2010. In 2006, he was the candidate of choice of black voters in a primary election victory against black opponents.

Table 2
Electoral Analysis of Current State Senate Districts With 40%+ Black Voting Age Population *

District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
SD 3:	47.0%	46.9%	WHITE: NOT CHOICE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
SD 4	49.1%	49.7%	NONE: BLACK	BLACK	BLACK	BLACK
SD 14	41.0%	42.6%	BLACK	BLACK	NONE: BLACK	BLACK
SD 20	44.6%	44.6%	BLACK	BLACK	NONE: BLACK	BLACK
SD 21	41.0%	44.9%	BLACK	BLACK	BLACK	BLACK
SD 28	44.2%	47.2%	BLACK	BLACK	BLACK	BLACK
SD 32	41.4%	42.5%	NONE: WHITE	WHITE: CHOICE	WHITE: CHOICE	WHITE: CHOICE
SD 38	47.7%	47.0%	NONE: BLACK	BLACK	NONE: BLACK	BLACK

* Analysis of contested elections conducted through ecological regression analysis of precinct-level data.

Table 3
Electoral Analysis of Current Congressional Districts With 40%+ Black Voting Age Population *

District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
CD 1:	48.1%	48.6%	NONE: BLACK	BLACK	BLACK	BLACK
CD 12	42.8%	43.8%	NONE: BLACK	BLACK	NONE: BLACK	BLACK

* Analysis of contested elections conducted through ecological regression analysis of precinct-level data.

Table 4
Comparison of State House Districts 30%+ Black Voting Age Population, Existing Districts
and State Proposed Districts

Count	Existing District	% Black VAP 2010 Census	State Proposed District	% Black VAP 2010 Census
1	7	60.77%	24	57.33%
2	24	56.07%	99	54.65%
3	101	55.73%	5	54.17%
4	43	54.69%	27	53.71%
5	60	54.36%	102	53.53%
6	27	53.95%	42	52.56%
7	58	53.43%	107	52.52%
8	33	51.74%	21	51.90%
9	71	51.09%	23	51.83%
10	8	50.23%	31	51.81%
11	5	48.87%	43	51.45%
12	42	47.94%	33	51.42%
13	31	47.23%	38	51.37%
14	107	47.14%	60	51.36%
15	12	46.45%	29	51.34%
16	21	46.25%	101	51.31%
17	48	45.56%	48	51.27%
18	72	45.40%	106	51.12%
19	102	42.74%	58	51.11%
20	99	41.26%	57	50.69%
21	29	39.99%	7	50.67%
22	100	37.39%	12	50.60%
23	23	36.90%	32	50.45%
24	32	35.88%	71	45.49%
25	39	34.91%	72	45.02%
26	55	32.98%	100	32.01%
27	44	32.57%		
28	69	31.74%		
29	63	30.66%		
30	45	30.40%		
31	25	30.30%		
32	59	30.15%		

Table 5
Comparison of State Senate Districts 30%+ Black Voting Age Population, Existing Districts and State Proposed Districts

Count	Existing District	% Black VAP 2010 Census	State Proposed District	% Black VAP 2010 Census
1	4	49.70%	28	56.49%
2	28	47.20%	4	52.75%
3	38	46.97%	38	52.51%
4	3	46.93%	3	52.43%
5	21	44.93%	5	51.97%
6	20	44.64%	40	51.84%
7	14	42.62%	21	51.53%
8	32	42.52%	14	51.28%
9	7	37.36%	20	51.04%
10	11	37.27%	32	42.53%
11	40	35.43%		
12	27	31.11%		
13	10	31.09%		
14	5	30.99%		
15	37	30.18%		

Allan J. Lichtman Allan J. Lichtman

[name of AFFIANT]

STATE OF District of Columbia

COUNTY OF _____

DISTRICT OF COLUMBIA: ss
Subscribed and sworn to before me,
this 18 day of January, 2012
Lindsay B. Michaud Notary Public, D.C.
My commission expires 5/14/16

I, Lindsay B. Michaud, a Notary Public of the County and State aforesaid, hereby certify that Allan J. Lichtman personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 18th day of January, 2012.



Lindsay B. Michaud
Notary Public

Commission expires:
5/14/2016

LINDSAY B. MICHAUD
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 14, 2016

CV and Table of Cases

Curriculum Vitae

Allan J. Lichtman
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Bethesda, MD 20817

(301) 530-8262 h
(202) 885-2411 o

Jan. 2012

EDUCATION

BA, Brandeis University, Phi Beta Kappa, Magna Cum Laude, 1967

PhD, Harvard University, Graduate Prize Fellow, 1973

PROFESSIONAL EXPERIENCE

Teaching Fellow, American History, Harvard University, 1969-73

Instructor, Brandeis University, 1970, quantitative history.

Assistant Professor of History, American University, 1973-1977

Associate Professor of History, American University, 1977-1978

Professor of History, American University, 1979 –

Distinguished Professor of History, American University, 2011 -

Expert witness in more than 75 redistricting, voting rights and civil rights cases (see Table of Cases attached)

Associate Dean for Faculty and Curricular Development, College of Arts & Sciences, The American University 1985-1987

Chair, Department of History, American University, 1997- 2001

Regular political analyst for CNN Headline News, 2003-2006

HONORS AND AWARDS

Outstanding Teacher, College of Arts and Sciences, 1975-76

Outstanding Scholar, College of Arts and Sciences, 1978-79

Outstanding Scholar, The American University, 1982-83

Outstanding Scholar/Teacher, The American University, 1992-93 (Highest University faculty award)

Sherman Fairchild Distinguished Visiting Scholar, California Institute of Technology, 1980-81

American University summer research grant, 1978 & 1982

Chamber of Commerce, Outstanding Young Men of America 1979-80

Graduate Student Council, American University, Faculty Award, 1982

Top Speaker Award, National Convention of the International Platform Association, 1983, 1984, 1987

National Age Group Champion (30-34) 3000 meter steeplechase 1979

Eastern Region Age Group Champion (30-34) 1500 meter run 1979

Defeated twenty opponents on nationally syndicated quiz show, TIC TAC DOUGH, 1981

Listing in Marquis, WHO'S WHO IN THE AMERICA AND WHO'S WHO IN THE WORLD

McDonnell Foundation, Prediction of Complex Systems (\$50,000, three years), 2003-2005

Organization of American Historians, Distinguished Lecturer, 2004 -

Selected by the Teaching Company as one of America's Super Star Teachers."

Associate Editor, International Journal of Operations Research and Information Systems, 2008 -

Keynote Speaker, International Forecasting Summit, 2007 and 2008

Cited authoritatively by United States Supreme Court in statewide Texas Congressional redistricting case *LULAC v. Perry* (2006)

Finalist for the 2008 National Book Critics Circle Award in general nonfiction for *WHITE PROTESTANT NATION: THE RISE OF THE AMERICAN CONSERVATIVE MOVEMENT*. Interviews nominated by the Associated Press for the Edward R. Murrow Award for broadcasting excellence.

Elected Member, PEN American Center, 2009

SCHOLARSHIP

A. Books

PREJUDICE AND THE OLD POLITICS: THE PRESIDENTIAL ELECTION OF 1928 (Chapel Hill: University of North Carolina Press, 1979)

PREJUDICE AND THE OLD POLITICS: THE PRESIDENTIAL ELECTION OF 1928 (Lanham, MD: Lexington Books, 2000), reprint of 1979 edition with new introduction.

HISTORIANS AND THE LIVING PAST: THE THEORY AND PRACTICE OF HISTORICAL STUDY (Arlington Heights, Ill.: Harlan Davidson, Inc., 1978, with Valerie French)

ECOLOGICAL INFERENCE (Sage Series in Quantitative Applications in the Social Sciences, 1978, with Laura Irwin Langbein)

YOUR FAMILY HISTORY: HOW TO USE ORAL HISTORY, PERSONAL FAMILY ARCHIVES, AND PUBLIC DOCUMENTS TO DISCOVER YOUR HERITAGE (New York: Random House, 1978)

KIN AND COMMUNITIES: FAMILIES IN AMERICA (edited, Washington, D. C.: Smithsonian Press, 1979, , with Joan Challinor)

THE THIRTEEN KEYS TO THE PRESIDENCY (Lanham: Madison Books, 1990, with Ken DeCell)

THE KEYS TO THE WHITE HOUSE, 1996 EDITION (Lanham: Madison Books, 1996)

THE KEYS TO THE WHITE HOUSE, (Lanham: Lexington Books Edition, 2000)

THE KEYS TO THE WHITE HOUSE, POST-2004 EDITION (Lanham: Lexington Books Edition, 2005)

THE KEYS TO THE WHITE HOUSE, 2008 EDITION (Lanham: Rowman & Littlefield, 2008)

THE KEYS TO THE WHITE HOUSE, 2012 EDITION (Lanham: Rowman & Littlefield, 2012)

WHITE PROTESTANT NATION: THE RISE OF THE AMERICAN CONSERVATIVE MOVEMENT (New York: Grove/Atlantic Press, 2008)

FDR AND THE JEWS, Accepted for publication, Harvard University Press, with Richard Breitman.

THE KEYS TO THE WHITE HOUSE, 2012 EDITION (Forthcoming, in press, Lanham:

Rowman & Littlefield)

Monograph:

"Report on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida," and "Supplemental Report," in VOTING IRREGULARITIES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION, United States Commission on Civil Rights, June 2001

B. Scholarly Articles

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"Executive Enforcement of Voting Rights, 1957-60," in Terrence Goggin and John Seidel, eds., POLITICS AMERICAN STYLE (1971)

"Correlation, Regression, and the Ecological Fallacy: A Critique," JOURNAL OF INTERDISCIPLINARY HISTORY (Winter 1974) REF

"Critical Election Theory and the Reality of American Presidential Politics, 1916-1940," AMERICAN HISTORICAL REVIEW (April 1976) REF

"Across the Great Divide: Inferring Individual Behavior From Aggregate Data," POLITICAL METHODOLOGY (with Laura Irwin, Fall 1976) REF

"Regression vs. Homogeneous Units: A Specification Analysis," SOCIAL SCIENCE HISTORY (Winter 1978) REF

"Language Games, Social Science, and Public Policy: The Case of the Family," in Harold Wallach, ed., APPROACHES TO CHILD AND FAMILY POLICY (Washington, D. C.: American Association for the Advancement of Science, 1981)

"Pattern Recognition Applied to Presidential Elections in the United States, 1860-1980: The Role of Integral Social, Economic, and Political Traits," PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCE (with V. I. Keilis-Borok, November 1981) REF

"The End of Realignment Theory? Toward a New Research Program for American Political History," HISTORICAL METHODS (Fall 1982)

"Kinship and Family in American History," in National Council for Social Studies Bulletin, UNITED STATES HISTORY IN THE 1980s (1982)

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"Political Realignment and 'Ethnocultural' Voting in Late Nineteenth Century America,"
JOURNAL OF SOCIAL HISTORY (March 1983) REF

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"A General Theory of the Counterplan;" "The Role of Empirical Evidence in Debate;" and "Policy Systems Analysis in Debate," in David Thomas, ed., ADVANCED DEBATE (revised edition, with Daniel Rohrer and Jerome Corsi, 1979)

C. Selected Popular Articles

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LOS ANGELES TIMES

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Op Ed (July 18, 1980)

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MONITOR Opinion Page (December 2, 1980)

"Do Americans Really Want 'Coolidge Prosperity' Again?" CHRISTIAN SCIENCE MONITOR
Opinion Page (August 19, 1981)

"Chipping Away at Civil Rights," CHRISTIAN SCIENCE MONITOR Opinion Page (February
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1982)

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"A Strong Rights Unit," NEW YORK TIMES Op Ed Page (June 19, 1983)

"Abusing the Public Till," LOS ANGELES TIMES Opinion Page (July 26, 1983)

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(May 25, 1985)

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"Democrats Take Over the Senate" THE WASHINGTONIAN (November 1986; article by Ken
DeCell on Lichtman's advance predictions that the Democrats would recapture the Senate in
1986)

"Welcome War?" THE BALTIMORE EVENING SUN, Opinion Page, (July 15, 1987)

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1988 victory)

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victory)

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"The Theory of Counting Heads vs. One, Two, Three," CHRISTIAN SCIENCE MONITOR Op
Ed (June 22, 1999)

"Race Was Big Factor in Ballot Rejection, BALTIMORE SUN Op Ed (March 5, 2002)

"Why is George Bush President?" NATIONAL CATHOLIC REPORTER (Dec. 19, 2003)

"In Plain Sight: With the Public Distracted, George W. Bush is Building a Big Government of
the Right," NEWSDAY, (August 7, 2005)

"Why Obama is Colorblind and McCain is Ageless," JEWISH DAILY FORWARD (June 26,

2008)

“Splintered Conservatives McCain,” POLITICO (June 24, 2008)

“Will Obama be a Smith or a Kennedy,” NATIONAL CATHOLIC REPOTER (October 17, 2008)

“What Obama Should Do Now,” POLITICO (Jan. 22, 2010)

Bi-weekly column, THE MONTGOMERY JOURNAL, GAZETTE 1990 - present

Election-year column, REUTERS NEWS SERVICE 1996 & 2000

D. Video Publication

“Great American Presidents,” The Teaching Company, 2000.

TEACHING

Ongoing Courses

The History of the U. S. I & II, The Emergence of Modern America, The U. S. in the Twentieth Century, United States Economic History, Historiography, Major Seminar in History, Graduate Research Seminar, Colloquium in U. S. History Since 1865, The American Dream, The Urban-Technological Era, Senior Seminar in American Studies, Seminar in Human Communication.

New Courses: Taught for the first time at The American University

Quantification in History, Women in Twentieth Century American Politics, Women in Twentieth Century America, Historians and the Living Past (a course designed to introduce students to the excitement and relevance of historical study), **Historians and the Living Past for Honors Students**, How to Think: Critical Analysis in the Social Sciences, Pivotal Years of American Politics, **Government and the Citizen (Honors Program)**, Introduction to Historical Quantification, Public Policy in U. S. History, **Honors Seminar in U.S. Presidential Elections**, America’s Presidential Elections, What Is America?, **Honors Seminar on FDR, Jews, and the Holocaust.**

TELEVISION APPEARANCES

More than 1,000 instances of political commentary on NBC, CBS, ABC, CNN, C-SPAN, FOX,

MSNBC, BBC, CBC, CTV, NPR, VOA, and numerous other broadcasting outlets internationally, including Japanese, Russian, Chinese, German, French, Irish, Austrian, Australian, Russian, Swedish, Danish, Dutch, and Middle Eastern television.

Regular political commentary for NBC News Nightside.

Regular political commentary for Voice of America and USIA.

Regular political commentary for America's Talking Cable Network.

Regular political commentary for the Canadian Broadcasting System.

Regular political commentary for CNN, Headline News

Consultant and on-air commentator for NBC special productions video project on the history of the American presidency.

CBS New Consultant, 1998 and 1999

Featured appearances on several History Channel specials including *The Nuclear Football* and *The President's Book of Secrets*.

RADIO SHOWS

I have participated in more than 2000 radio interview and talk shows broadcast nationwide, in foreign nations, and in cities such as Washington, D. C., New York, Atlanta, Chicago, Los Angeles and Detroit. My appearances include the Voice of America, National Public Radio, and well as all major commercial radio networks.

PRESS CITATIONS

I have been cited many hundreds of times on public affairs in the leading newspapers and magazines worldwide. These include, among many others,

New York Times, Washington Post, USA Today, Los Angeles Times, Wall Street Journal, Miami Herald, Washington Times, St. Louis Post Dispatch, Christian Science Monitor, Philadelphia Inquirer, Time, Newsweek, Business Week, Le Monde, Globe and Mail, Yomuiiri Shimbun, Die Welt, El Mundo, and South China Post, among others.

SELECTED CONFERENCES, PRESENTATIONS, & LECTURES: UNITED STATES

Invited participant and speaker, Bostick Conference on Fogel and Engerman's TIME ON THE CROSS, University of South Carolina, November 1-2, 1974

"Critical Election Theory and the Presidential Election of 1928," Annual Meeting of the American Historical Association, December 1974

"A Psychological Model of American Nativism," Bloomsberg State Historical Conference, April 1975

"Methodology for Aggregating Data in Education Research," National Institute of Education, Symposium on Methodology, July 1975, with Laura Irwin

Featured Speaker, The Joint Washington State Bicentennial Conference on Family History, October 1975

Featured Speaker, The Santa Barbara Conference on Family History, May 1976

Chair, The Smithsonian Institution and the American University Conference on Techniques for Studying Historical and Contemporary Families, June 1976

Panel Chair, Sixth International Smithsonian Symposium on Kin and Communities in America, June 1977

"The uses of History for Policy Analysis," invited lecture, Federal Interagency Panel on Early Childhood Research, October 1977

Invited participant, Conference on "Child Development within the Family - Evolving New Research Approaches," Interagency Panel of the Federal Government for Research and Development on Adolescence, June 1978

Commentator on papers in argumentation, Annual Meeting of the Speech Communication Association, November 1978

Commentator on papers on family policy, Annual Meeting of the American Association for the Advancement of Science, Jan. 1979

"Phenomenology, History, and Social Science," Graduate Colloquium of the Department of Philosophy, The American University, March 1979

"Comparing Tests for Aggregation Bias: Party Realignment of the 1930's," Annual Meeting of the Midwest Political Science Association March 1979, with Laura Irwin Langbein

"Party Loyalty and Progressive Politics: Quantitative Analysis of the Vote for President in 1912," Annual Meeting of the Organization of American Historians, April 1979, with Jack Lord II

"Policy Systems Debate: A Reaffirmation," Annual Meeting of the Speech Communication

Association, November 1979

"Personal Family History: Toward a Unified Approach," Invited Paper, World Conference on Records, Salt Lake City, August 1980

"Crisis at the Archives: The Acquisition, Preservation, and Dissemination of Public Documents," Annual Meeting of the Speech Communication Association, November 1980

"Recruitment, Conversion, and Political Realignment in America: 1888- 1940," Social Science Seminar, California Institute of Technology, April 1980

"Toward a Situational Logic of American Presidential Elections," Annual Meeting of the Speech Communication Association, November 1981

"Political Realignment in American History," Annual Meeting of the Social Science History Association, October 1981

"Critical Elections in Historical Perspective: the 1890s and the 1930s," Annual Meeting of the Social Science History Association, November 1982

Commentator for Papers on the use of Census data for historical research, Annual Meeting of the Organization of American Historians, April 1983

"Thirteen Keys to the Presidency: How to Predict the Next Election," Featured Presentation, Annual Conference of the International Platform Association, August 1983, Received a Top Speaker Award

"Paradigms for Academic Debate," Annual Meeting of the Speech Communication Association, November 1983

Local Arrangements Chair, Annual Convention of the Social Science History Association, October 1983

"Forecasting the Next Election," Featured Speaker, Annual Convention of the American Feed Manufacturers Association, May 1984

Featured Speaker, "The Ferraro Nomination," Annual Convention of The International Platform Association, August 1984, Top Speaker Award

"Forecasting the 1984 Election," Annual Convention of the Social Science History Association Oct. 1984,

Featured Speaker, "The Keys to the Presidency," Meeting of Women in Government Relations October 1984

Featured Speaker, "The Presidential Election of 1988," Convention of the American Association of Political Consultants, December 1986

Featured Speaker, "The Presidential Election of 1988," Convention of the Senior Executive Service of the United States, July 1987

Commentary on Papers on Voting Rights, Annual Meeting of the American Political Science Association, September 1987.

Commentary on Papers on Ecological Inference, Annual Meeting of the Social Science History Association, November 1987.

Featured Speaker: "Expert Witnesses in Federal Voting Rights Cases," National Conference on Voting Rights, November 1987.

Featured Speaker: "The Quantitative Analysis of Electoral Data," NAACP National Conference on Voting Rights and School Desegregation, July 1988.

Panel Chair, "Quantitative Analysis of the New Deal Realignment," Annual Meeting of the Social Science History Association, Nov. 1989.

Keynote Speaker, Convocation of Lake Forest College, Nov. 1989.

Featured Speaker, The American University-Smithsonian Institution Conference on the Voting Rights Act, April 1990

Panel Speaker, Voting Rights Conference of the Lawyer's Committee for Civil Rights Under Law, April 1990

Panel Speaker, Voting Rights Conference of the NAACP, July 1990

Panel Speaker, Voting Rights Conference of Stetson University, April 1991

Panel Chair, Annual Meeting of the Organization of American Historians, April, 1992

Panel Speaker, Symposium on "Lessons from 200 Years of Democratic Party History, Center for National Policy, May 1992

Olin Memorial Lecture, U.S. Naval Academy, October 1992

Commentator, Annual Meeting of the Organization of American Historians, April, 1993

Panel presentation, Conference on Indian Law, National Bar Association, April 1993

Feature Presentation, Black Political Science Association, Norfolk State University, June 1993

Feature Presentation, Southern Regional Council Conference, Atlanta Georgia, November, 1994

Master of Ceremonies and Speaker, State of the County Brunch, Montgomery County, February, 1996

Feature Presentation, Predicting The Next Presidential Election, Freedom's Foundation Seminar on the American Presidency, August 1996

Feature Presentation, Predicting The Next Presidential Election, Salisbury State College, October 1996

Feature Presentation on the Keys to the White House, Dirksen Center, Peoria, Illinois, August, 2000

Feature Presentation on American Political History, Regional Conference of the Organization of American Historians, August 2000

Testimony Presented Before the United States Commission on Civil Rights Regarding Voting Systems and Voting Rights, January 2001

Testimony Presented Before the United States House of Representatives, Judiciary Committee, Subcommittee on the Constitution, February 2001

Testimony Presented Before the United States Senate, Government Operations Committee, Regarding Racial Differentials in Ballot Rejection Rates in the Florida Presidential Election, June 2001

Testimony Presented Before the Texas State Senate Redistricting Committee, Congressional Redistricting, July 2003

Testimony Presented Before the Texas State House Redistricting Committee, Congressional Redistricting, July 2003

American University Honors Program Tea Talk on the Election, September 2004

Feature Presentation, The Keys to the White House, International Symposium on Forecasting, June 2006.

Feature Presentation, The Keys to the White House, International Symposium on Forecasting, New York, June 2007.

Keynote Speaker, Hubert Humphrey Fellows, Arlington, Virginia, 2007-2008

Feature Presentation, Forecasting 2008, Annual Meeting of the American Political Science Association, Chicago, August 2007

Keynote Speaker, International Forecasting Summit, Orlando, Florida, February 2008.

Feature Presentation on the Keys to the White House, Senior Executive's Service, Washington, DC, June 2008

Feature Presentation, American Political History, Rockford Illinois School District, July 2008

American University Honors Program Tea Talk on the Election, September 2008

Featured Lecture, Keys to the White House, American Association for the Advancement of Science, Washington, DC, September 2008

Keynote Speaker, International Forecasting Summit, Boston, September 2008

Keynote Lecture, Hubert Humphrey Fellows, Arlington, Virginia October 2008

Featured Lectures, Keys to the White, Oklahoma Central and East Central Universities, October 2008

Bishop C. C. McCabe Lecture, "Seven Days until Tomorrow" American University, October 28, 2008

Featured Lecture, WHITE PROTESTANT NATION, Eisenhower Institute, December 2008

American University Faculty on the Road Lecture, "Election 2008: What Happened and Why?" Boston, February 2009

Critic Meets Author Session on WHITE PROTESTANT NATION, Social Science History Association, November 2009

American University Faculty on the Road Lecture, "The Keys for 2012" Chicago, April 2010

Keynote Speaker, Hubert Humphrey Fellows, Arlington, Virginia October, 2010

Panel Participant, Search for Common Ground, Washington, DC, April 2011

SELECTED CONFERENCES, PRESENTATIONS, & LECTURES: INTERNATIONAL

Featured Speaker, World Conference on Disarmament, Moscow, Russia, November 1986

Delegation Head, Delegation of Washington Area Scholars to Taiwan, Presented Paper on the

promotion of democracy based on the American experience, July 1993

Lecture Series, American History, Doshisha University, Kyoto, Japan, December 2000

Lectures and Political Consultation, Nairobi, Kenya, for RFK Memorial Institute, October 2002

Featured Lectures, US Department of State, Scotland and England, including Oxford University, University of Edinburgh, and Chatham House, June 2004

Keynote Speech, American University in Cairo, October 2004

Feature Presentation on the Keys to the White House, University of Munich, June 2008

Featured Lectures, US Department of State, Russia, Ukraine, Slovenia, Austria, and Romania, 2008-2010

Paper Presentation, Fourth International Conference on Interdisciplinary Social Science, Athens, Greece, July 2009

DEPARTMENTAL AND UNIVERSITY SERVICE

Department of History Council 1973 -

Undergraduate Committee, Department of History 1973-1977

Chair Undergraduate Committee, Department of History 1984-1985

Graduate Committee, Department of History, 1978-1984

Freshman Advisor, 1973-1979

First Year Module in Human Communications, 1977-1979

University Committee on Fellowships and Awards 1976-1978

University Senate 1978-1979, 1984-1985

University Senate Parliamentarian and Executive Board 1978-1979

Founding Director, American University Honors Program, 1977-1979

Chair, College of Arts and Sciences Budget Committee 1977-1978, 1982-1984

University Grievance Committee, 1984-1985

Member, University Honors Committee 1981-1982

College of Arts and Sciences Curriculum Committee 1981-1982

Jewish Studies Advisory Board, 1982-1984

Mellon Grant Executive Board, College of Arts & Sciences, 1982-1983

Chair, College of Arts and Sciences Faculty Colloquium, 1983

Chair, College of Arts and Sciences Task Force on the Department of Performing Arts, 1984-1985

Local Arrangements Chair, National Convention of the Social Science History Association, 1983

Chair, Rank & Tenure Committee of the Department of History, 1981-1982, 1984-1985

Board Member, Center for Congressional and Presidential Studies, The American University, 1988-1989

Chair, Graduate Committee, Department of History, 1989 - 1991

Chair, Distinguished Professor Search Committee 1991

Member, College of Arts & Sciences Associate Dean Search Committee, 1991

Board Member, The American University Press, 1991-1995

Chair, Subcommittee on Demographic Change, The American University Committee on Middle States Accreditation Review 1992-1994

Member, Dean's Committee on Curriculum Change, College of Arts and Sciences 1992-1993

Member, Dean's Committee on Teaching, College of Arts and Sciences 1992

Co-Chair, Department of History Graduate Committee, 1994-1995

Vice-Chair, College of Arts & Sciences Educational Policy Committee, 1994-1995

Elected Member, University Provost Search Committee, 1995-1996

Chair, Search Committee for British and European Historian, Department of History, 1996

Department Chair, 1999-2001

CAS Research Committee, 2006-2007

University Budget and Benefits Committee, 2008

Chair, Personnel Committee, Department of History, 2010-

Chair, Term Faculty Search Committee, Department of History, 2011-

OTHER POSITIONS

Director of Forensics, Brandeis University, 1968-71

Director of Forensics, Harvard University, 1971-72

Chair, New York-New England Debate Committee, 1970-71

Historical consultant to the Kin and Communities Program of the Smithsonian Institution
1974-1979

Along with general advisory duties, this position has involved the following activities:

1. directing a national conference on techniques for studying historical and contemporary families held at the Smithsonian in June 1976.
2. chairing a public session at the Smithsonian on how to do the history of one's own family.
3. helping to direct the Sixth International Smithsonian Symposium on Kin and Communities in America (June 1977).
4. editing the volume of essays from the symposium.

Consultant to John Anderson campaign for president, 1980.

I researched and wrote a study on "Restrictive Ballot Laws and Third-Force Presidential Candidates." This document was a major component of Anderson's legal arguments against restrictive ballot laws that ultimately prevailed in the Supreme Court (Anderson v. Celebreeze 1983). According to Anderson's attorney: "the basis for the majority's decision echoes the themes you incorporated in your original historical piece we filed in the District Court."

Statistical Consultant to the George Washington University Program of Policy Studies in Science and Technology, 1983

I advised researchers at the Policy Studies Program on the application of pattern recognition techniques to their work on the recovery of communities from the effects of such natural disasters as earthquakes and floods.

Consultant to the New York City Charter Revision Commission, 2000-2006

I analyzed the implications of non-partisan elections for voting rights issues for the Charter Revision Commissions appointed by mayors Rudy Giuliani and Michael Bloomberg.

**ALLAN J. LICHTMAN, CASES (DATES APPROXIMATE)
DEPOSITION, AFFIDAVIT, OR ORAL TESTIMONY**

Committee for a Fair and Balanced Map v. Illinois State Bd. (U. S. District Court, Illinois) 2011

Radogno v. Illinois State Bd. of Elections (U. S. District Court, Illinois) 2011

Perez, et al. v. Perry, et al. (U. S. District Court, Texas) 2011

United States vs. Demario James Atwater (U. S. District Court, North Carolina) 2010

Boddie v. Cleveland School Board, Mississippi (U.S. District Court, Mississippi) 2010

Esther V. Madera Unified School District (Superior Court, California) 2008

Negron v. Bethlehem Area School District (U.S. District Court, Pennsylvania) 2008

Farley v. City of Hattiesburg (U.S. District Court, Mississippi) 2008

Jamison v. City of Tupelo (U.S. District Court, Mississippi) 2005

Session v. Perry (U.S. District Court, Texas) 2003

Rodriguez v. Pataki (U.S. District Court, New York) 2003

Boddie v. Cleveland, Mississippi (U.S. District Court, Mississippi) 2003

Levy v. Miami-Dade County (U.S. District Court, Florida) 2002

Martinez v. Bush (U.S. District Court, Florida) 2002

Curry v. Glendening (Maryland, State Court) 2002

O'Lear v. Miller (U.S. District Court, Michigan) 2002

Campuzano v. Illinois Board of Election (U.S. District Court, Illinois) 2002

Vieth v. Commonwealth of Pennsylvania (U.S. District Court, Pennsylvania) 2002

Leroux v. Miller (Michigan, State Supreme Court) 2002

Balderas v. State of Texas (U.S. District Court, Texas) 2001

Del Rio v. Perry (Texas, State Court) 2001

Page V. Bartels (U.S. District Court, New Jersey) 2001

West v. Gilmore (Virginia, State Court), 2001

U.S. v. City of Santa Paula (California, U.S. District Court) 2001

NAACP v. Fordice (Mississippi, U.S. District Court) 2000

Voting Integrity Project v. Marc Fleisher (Arizona, U.S. District Court) 2000

Packingham v. Metropolitan Dade County (U.S. District Court, Florida) 1999

Houston v. Lafayette County (U.S. District Court, Northern District of Mississippi, Western District) 1991, 1998

Citizens to Establish a Reform Party in Arkansas v. Sharon Priest (U.S. District Court, Eastern District of Arkansas) 1996

National Coalition v. Glendening (U.S. District Court, Maryland) 1996

Vecinos de Barrio Uno v. Holyoke (U.S. District Court, Massachusetts), 1996

Scott v. Florida Senate (U.S. District Court, Middle District of Florida) 1995

King v. Board of Elections (U.S. District Court, Northern District of Illinois) 1995

Vera v. Richards (U.S. District Court, Southern District of Texas) 1994

United States v. Jones (U.S. District Court, Southern District of Alabama) 1994

Johnson v. Miller (U.S. District Court, Southern District of Georgia, Augusta Division) 1994

Hays v. Louisiana (U.S. District Court, Western District of Louisiana, Shreveport Division) 1993

People Who Care v. Rockford Board of Education (U.S. District Court, Northern District of Illinois, Eastern Division) 1993

Republican Party of North Carolina v. Hunt (U.S. District Court, Eastern District of North Carolina, Raleigh District) 1993

Shaw v. Hunt (U.S. District Court, Eastern District of North Carolina, Raleigh District) 1993

Neff v. Austin (State of Michigan, Supreme Court) 1992

Terrazas v. Slagle (U.S. District Court, Western District of Texas, Austin Division) 1992

Gonzalez v. Monterey County (U.S. District Court, Northern District of California) 1992

DeGrandy v. Wetherell (U.S. District Court, Northern District of Florida, Tallahassee Division) 1992

NAACP v. Austin (U.S. District Court, Eastern District of Michigan, Eastern Division) 1992

Good v. Austin (U.S. District Court, Eastern District of Michigan, Southern Division) 1992

Ortiz v. City of Philadelphia (U.S. District Court, Eastern District of Pennsylvania) 1991-1993

FAIR v. Weprin (U.S. District Court, Northern District, of New York) 1992

Davis v. Chiles (U.S. District Court, Northern District of Florida) 1991

McDaniels v. Mehfoad (U.S. District Court, Eastern District of Virginia) 1991

Rollins v. Dallas County Commission (U.S. District Court, Southern District of Alabama) 1991-1992

Ward v. Columbus County (U.S. District Court, Eastern District of North Carolina) 1991

Republican Party State Committee v. Michael J. Connolly (U.S. District Court, Massachusetts) 1991

Jenkins v. Red Clay Consolidated School District (U.S. District Court, District of Delaware) 1991

Watkins v. Mabus (U.S. District Court, Southern District of Mississippi) 1991

Mena v. Richards (Hidalgo County Texas District Court) 1991

Republican Party of Virginia v. Wilder (U.S. District Court, Western District of Virginia) 1991

Nipper v. Chiles (U.S. District Court, Middle District of Florida) 1991-1994

Smith v. Board of Superivisors of Brunswick County (U.S. District Court, Eastern District of Virginia) 1991-1992

New Alliance Party v. Hand (U.S. District Court, Alabama) 1990

Concerned Citizens v. Hardee County (U.S. District Court, Florida) 1990

United Parents Association v. NYC Board of Elections (U.S. District Court, New York) 1990

Garza v. County of Los Angeles (U.S. District Court, California) 1990

Person v. Moore County (U.S. District Court, Middle District of North Carolina, Rockingham Division) 1989

Ewing v. Monroe County (U.S. District Court, Northern District of Mississippi) 1989

White v. Daniel (U.S. District Court, Eastern District of Virginia) 1989

Gunn v. Chickasaw County (U.S. District Court, Mississippi) 1989

SCLC v. State of Alabama (U.S. District Court, Middle District of Alabama, Northern Division) 1989-1995

Bradford County NAACP v. City of Starke (U.S. District Court, Middle District of Florida) 1988

PUSH v. Allain (U.S. District Court, Mississippi) 1988

Baltimore Neighborhoods, Inc. v. C.F. Sauers (U.S. District Court, Maryland) 1988

United States v. Wicomico County (U.S. District Court, Maryland) 1988

Metropolitan Pittsburgh Crusade v. City of Pittsburgh (U.S. District Court, Western District of Pennsylvania) 1987

McNeil v. City of Springfield (U.S. District Court, Central District of Illinois) 1987

Harper v. City of Chicago Heights (U.S. District Court, Northern District of Illinois) 1987-1993

Robinson v. City of Cleveland (U.S. District Court, Delta District of Mississippi) 1987

Martin v. Allain (U.S. District Court, Southern District of Mississippi) 1987

Smith v. Clinton (U.S. District Court, Eastern District of Arkansas) 1987

Burrell v. Allain (U.S. District Court, Southern District, of Mississippi) 1986

United States v. Dallas County (U.S. District Court, Southern District of Alabama) 1986

United States v. Marengo County (U.S. District Court, Southern District of Alabama) 1986

Jordan v. City of Greenwood (U.S. District Court, Mississippi) 1984

Johnson v. Halifax County (U.S. District Court, Eastern District of North Carolina) 1984

Anderson v. Celebreeze (U.S. District Court, Ohio) 1980

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

11 CVS 16896

11 CVS 16940

MARGARET DICKSON, *et al.*,

Plaintiffs,

v.

ROBERT RUCHO, in his official capacity
only as the Chairman of the North
Carolina Senate Redistricting
Committee, *et al.*,

Defendants.

Consolidated Cases

NORTH CAROLINA STATE CONFERENCE
OF BRANCHES OF THE NAACP *et
al.*,

Plaintiffs,

v.

STATE OF NORTH CAROLINA *et al.*,

Defendants.

SECOND AFFIDAVIT OF ALLAN J. LICHTMAN

I, Allan J. Lichtman, being first duly sworn, depose and say:

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

2. I am a Distinguished Professor of History at American University in Washington, DC and formerly Associate Dean of the College of Arts and Sciences and Chair of the Department of

History. I received my BA in History from Brandeis University in 1967 and my Ph.D. in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data. My areas of expertise include political history, electoral analysis, and historical and quantitative methodology. I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as Political Methodology, Journal of Interdisciplinary History, International Journal of Forecasting, and Social Science History. In addition, I have coauthored Ecological Inference with Dr. Laura Langbein, a standard text on the analysis of social science data, including political information. I have published articles on the application of social science analysis to civil rights issues. This work includes articles in such journals as Journal of Law and Politics, La Raza Law Journal, Evaluation Review, Journal of Legal Studies, and National Law Journal. My scholarship also includes the use of quantitative and qualitative techniques to conduct contemporary and historical studies, published in such academic journals as The Proceedings of the National Academy of Sciences, The American Historical Review, Forecast, and The Journal of Social History. Quantitative and historical analyses also ground my books, Prejudice and the Old Politics: The Presidential Election of 1928, The Thirteen Keys to the Presidency (co-authored with Ken DeCell), The Keys to the White House, and White Protestant Nation: The Rise of the American Conservative Movement. My most recent book, White Protestant Nation, was one of five finalists for the National Book Critics Circle Award for the best general nonfiction book published in America.

3. I have worked as a consultant or expert witness for both plaintiffs and defendants in some eighty voting and civil rights cases. These include several cases in the state of North Carolina. In late 2011, I was the expert witness in Illinois for the prevailing state parties in

separate litigation challenging both the adopted state plan for the State House and for Congress.¹ My work includes more than a dozen cases for the United States Department of Justice and cases for many civil rights organizations. I have also worked as a consultant or expert witness in defending enacted plans from voting rights challenges. A copy of my resume and a table of cases are attached as Appendix I of this report.

4. I have been asked to consider the African-American voting age population (VAP) needed for State House, State Senate, and Congressional Districts in North Carolina that provide African Americans the ability to elect candidates of their choice. In particular I have been asked to consider whether it is necessary to create such districts that are 50 percent or more African-American in their voting age population.

5. My expected fee in this matter is \$400 per hour. I have enclosed an updated CV and a table of cases in which I have provided written or oral testimony.

Summary of Opinions

- **Districts that are between 40% and 49%+ African-American in their voting age populations provide African-American voters an excellent ability to elect candidates of their choice to legislative positions.**
- **The win rate for African-American candidates and white candidates of choice of African-American voters in such districts is 90 percent.**

¹ The State House litigation in Illinois was *Radogno v. Illinois State Bd. of Elections*, 2011 WL 5025251, *8 (N.D. Ill. Oct. 21, 2011) and the Congressional litigation was *Committee For A Fair and Balanced Map, et al., v. Illinois State Board of Elections* 2011 U.S. Dist. LEXIS 144302, (N. D. Ill. December 15, 2011).

- **This win rate is no different than the win rate for African-American candidates and white candidates of choice of African-American voters in districts that are more than 50% African-American in their voting age populations.**
- **The insistence on creating African-American ability districts that are 50 percent or more African-American in their voting age population needlessly wastes African-American votes and diminishes the opportunity for African-American voters to influence the political process across the state of North Carolina.**
- **Such diminished opportunities are demonstrated by a comparison of previous state legislative districts with current legislative districts enacted by the North Carolina General Assembly.**
- **The report of state's expert Dr. Thomas L. Brunell exhibits numerous serious problems and cannot by itself be relied upon to assess the African-American percentage needed to create African-American ability districts for state legislature in North Carolina.**
- **Notwithstanding these problems, a close reanalysis of Dr. Brunell's findings demonstrates that they sustain the opinions numerated above.**

Data and Methods

6. The voting analysis in this report relies on standard data utilized in social science: VTD by VTD (Voter Tabulation District) election returns for each candidate per election studied, with candidates identified by race and VTD by VTD breakdowns of voting age African Americans and whites, which includes a small number of Asians and members of other races. The election and demographic data and the racial identification of candidates were obtained from the NC State Board of Elections via counsel. To estimate the voting of African Americans and

whites, the analysis utilizes the standard methodology of ecological regression that I have employed in some 80 previous cases and applied to the analysis of many thousands of elections and the study of numerous redistricting plans. The ecological regression procedure estimates the voting behavior of demographic groups such as African Americans and whites by comparing the racial composition of VTDS to the division of the vote among competing candidates in each VTD. It produces an equation that estimates both the turnout and voting for each candidate by each voter group. The procedure was accepted by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and applied by the Court to single-member districts plans in *Quilter v. Voinovich*, 113 S. Ct 1149 (1993). My analysis based on these methods was cited authoritatively several times by the United States Supreme Court in the Congressional redistricting case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006).²

7. This report also follows standard practice in the field by using the results of past elections and voting patterns by minority and white voters to assess prospects for minority voters in newly crafted districts. This method is utilized on a standard basis when there is population growth and shifts in population that require the redrawing of districts in which the electorate will not be precisely the same as in previous districts. In this case, moreover, the analysis is highly reliable in that it covers a large number of districts that will include most of the electorate included in newly drawn districts. The electoral analysis is also specific to State House, State Senate, and Congressional elections.

Results of Analysis: 40%+ African-American Voting Age Population Districts

² For a scholarly analysis of ecological regression and why it works well in the context of analyzing the voting of racial groups, see, Allan J. Lichtman, "Passing the Test: Ecological Regression in the *Garza* Case and Beyond," *Evaluation Review* 15 (1991). Bernard Grofman, the expert witness in the *Gingles* case, and myself were co-originators of the specific statistical methodology used here, see, Bernard Grofman, Lisa Handley, Richard G. Niemi, *Minority Representation and the Quest for Voting Equality* (New York: Cambridge University Press, 1992), pp. 102, 146.

8. The results of analysis apply to the two most recent elections years of 2008 and 2010 and cover all previous State House, State Senate, and Congressional Districts. It focuses on districts with African-American candidates (contested and uncontested) that are 40 percent or more African-American in their voting age populations, either as created under the 2000 Census or as previously constituted under the 2010 Census. It also considers some districts that are less than 40 percent African-American in their voting age populations, but in which African-American candidates prevailed. The study examined Democratic primary elections, given that African Americans are overwhelmingly Democratic in North Carolina and general elections. It covers not only the two most recent years, but also provides balance by including one good Democratic year in North Carolina – 2008 – and one good Republican year in North Carolina – 2010.

9. Previous State House Districts offer an excellent opportunity to test scientifically, the proposition that the provision of districts with the ability of African-American voters to elect candidates of their choice requires the creation of districts that are 50 percent or greater in their African-American voting age population. This is because there are 11 previous State House districts that are between 40% and 49%+ African-American VAP according to the 2010 census and 10 previous State House districts that are 50 percent or more African-American VAP. The results of analyzing these two sets of districts, presented below, clearly **reject the need to create 50%+ African-American VAP districts. These results show that African-American voters in districts between 40 percent and 49%+ African-American VAP have at least an equal**

ability to elect candidates of their choice as African-American voters in districts that are 50 percent or more African-American VAP.³

10. Table 1 reports the results of analyzing the 11 State House districts that are between 40% and 49%+ African-American VAP. These results indicate that of the 11 districts studied, African-American candidates prevailed in all elections in 10 districts, and a white candidate who was not the candidate of choice of African-American voters prevailed in one election. **Thus the win rate for African-American candidates in districts that are 40%+ African-American VAP, but also below 50% African-American VAP is 91 percent, demonstrating that African-American voters in these districts have a powerful ability to elect an African American to the state legislature.** The only exception to this near universal pattern was House District 102, where the white incumbent, Becky Carney, was not the candidate of choice of African-American voters in the 2010 Democratic primary contest and went on to win in the general election that year. Ecological regression analysis also discloses that this was also a very low turnout election in which less than 5 percent of whites or blacks of voting age participated.

11. Table 2 reports the results of analyzing the 10 State House districts that are 50%+ African-American VAP. African-American candidates prevailed in 8 of these 10 districts. Thus the win rate for African-American candidates in these districts is 80 percent, below that of the districts between 40% and 49%+ African-American VAP. In another district, House District 27, a white candidate of choice of African-American voters prevailed. Thus the win rate for African-American candidates and candidates of choice of African-American voters was 90

³ HD 43 is 54.7% African-American VAP according to the 2010 census and 48.7 percent African-American VAP according to the 2000 census. HD 107 is 47.1% African-American VAP according to the 2010 census and 50.5 percent African-American VAP according to the 2000 census. The classification of these two districts into separate categories according to the 2010 data does not affect the results of analysis given that both districts elected black candidates in 2008 and 2010.

percent in these districts, about equal to that of the districts between 40% and 49%+ African-American VAP. The only exception to this near universal pattern occurred in House District 8. According to ecological regression analysis, the white incumbent for House District 8, Edith Warren, was not the candidate of choice of African-American voters in either the 2008 or 2010 Democratic primary contest and prevailed in both general elections. However, the white candidate won with more than 60 percent of the vote and would have won even if this district were 60 percent African-American VAP.

12. With respect to State Senate Districts, the results of analysis sustain the finding that districts that are between 40% and 49%+ African American VAP provide African-American voters the clear ability to elect candidates of their choice to the state legislature. The State Senate does not include any previous districts that are 50%+ African-American VAP. Table 3 reports the results of analyzing the eight State House districts that are between 40% and 49%+ African-American VAP. These results indicate that of the eight districts studied, African-American candidates prevailed in all elections in six districts, and according to ecological regression analysis, a white candidate of choice of African-American voters prevailed in all elections in another district. The lone exception to this pattern, according to ecological regression analysis, is in Senate District 3, where a white candidate who was not the Democratic primary candidate of choice of African-American voters was elected in 2008 and 2010. Thus, in 40%+ black voting age population districts, African-American candidates or the candidates of choice of African-American voters prevailed in all elections in 7 of 8 districts, for a win rate of 88 percent.

13. With respect to Congressional Districts, there are two districts that are above 40% African American VAP, but below 50% African American VAP. There are no districts that are 50%+ African American VAP. The results of analysis reported in Table 4 demonstrate that of

two districts studied, African-American candidates prevailed in all elections in both districts. Thus, in 40%+ congressional districts, candidates or the candidates of choice of African-American voters prevailed in all elections in 2 of 2 districts, for a win rate of 100 percent.

14. The results of combining the analyses of elections for State House, State Senate, and Congress demonstrate that either African-American candidates or candidates of choice of African-American voters prevailed in all elections in 19 of 21 districts that are 40%+ African-American VAP, but below 50% African-American, for a win rate of win rate of 90 percent. This win rate is the same as the win rate of 90 percent in 50%+ African-American districts. Thus, the results of analysis clearly demonstrate it is not necessary in North Carolina to create effective African-American ability districts with African-American voting age populations of 50 percent or more. To the contrary, the result of creating such districts is to waste African-American votes that could expand the ability of African Americans to influence the political process in other districts.

15. Tables 5 and 6 show the results of creating unnecessary 50%+ African-American districts for State House and State Senate. As compared to the previous benchmark plans, the enacted plans needlessly pack African Americans into districts greater than 50 percent African-American voting age population, which substantially diminishes the influence of African-American voters in other House and Senate districts. As indicated in Table 5, the previous benchmark State House plan has 32 districts that are 30% or more African American voting age population, compared to only 26 in the enacted State House plan. As indicated in Table 6, the previous benchmark State Senate plan has 15 districts that are 30% or more African American voting age population, compared to only 10 in the enacted State Senate plan.

African-American Voter Opportunity in Districts Less Than 40 Percent African American Voting Age Population

16. The results of past elections also demonstrate that African-American voters have an opportunity to elect candidates of their choice in legislative districts that are substantially below 40 percent African-American voting age population. The analysis will consider first Senate Districts and then House Districts that are below 40 percent African-American voting age population in which African Americans have won elections to the state legislature.

17. Senate District 5 is only 31 percent African-American VAP, however African-American voters were able to elect an African-American candidate of choice in this district in the 2008 general election. As indicated in Table 7, ecological regression analysis demonstrates that 97 percent of African-American voters voted for Don Davis, the African-American Democratic candidate. In turn, 30 percent of white voters crossed over to vote for Davis. This combination of near unanimous African-American support for Davis combined with the white crossover vote was sufficient for Davis to prevail in the election. As also indicated in Table 7, in 2010, African-American cohesion remained constant with 97 percent of African-American voters backing Davis. However, white crossover voting declined to 21 percent, with the result that Davis's white Republican opponent Louis Pate won the election. Thus in SD 5, the African-American candidate prevailed in the good Democratic year of 2008, but lost in the good Republican year of 2010. These results demonstrate that depending on political circumstance, African-American voters have an opportunity to elect a candidate of their choice even in a district that is only about 31 percent African-American VAP.

18. Similar results prevail in Senate District 24, which is only 21.1 percent African-American VAP. As in SD 5, African-American voters were able to elect an African-American

candidate of their choice in this district in the 2008 general election. As indicated in Table 8, ecological regression analysis demonstrates that 99 percent of African-American voters voted for Tony Foriest, the African-American Democratic candidate. In turn, 38 percent of white voters crossed over to vote for Foriest. This combination of near unanimous African-American support for Foriest combined with the white crossover vote was sufficient for Foriest to prevail in the election. As also indicated in Table 8, in 2010, African-American cohesion remained roughly constant with 97 percent of African-American voters backing Foriest in a three-way contest against white Republican Gunn and white Libertarian Coe. However, white crossover voting declined to 27 percent, with the result that Foriest's white Republican opponent Gunn won the election. Thus in SD 24, the African-American candidate prevailed in the good Democratic year of 2008, but lost in the good Republican year of 2010. These results demonstrate that depending on political circumstance, African-American voters have an opportunity to elect a candidate of their choice even in a district that is only about 21 percent African-American VAP.⁴

19. House District 39 is only 34.9 percent African-American VAP population. However, African-American voters were able to nominate and elect an African-American candidate of their choice, Linda Coleman, in this district in the 2004, 2006, and 2008 elections. In 2009, Coleman resigned her seat and a white Democrat defeated a white Republican in the 2010 general election. The elections from 2004 through 2008 demonstrate that African-American voters have an opportunity to elect a candidate of their choice even in a district that is only about 35 percent African-American VAP.

20. House District 41 is only 12.1 African American VAP. However, African-American voters were able to nominate and elect an African-American candidate of their choice, Ty

⁴ It is also worth noting that according to sign-in results, African-American turnout in both SD 5 and SD 24 was higher than white turnout in 2008. African-American turnout declined relative to white turnout in 2010, but was still very slighter higher in both districts.

Harrell, in this district in both the 2006 and the 2008 general elections. In 2009, Harrell resigned his seat and a white Democrat lost to a white Republican in the general election. The elections from 2006 and 2008 demonstrate that African-American voters have an opportunity to elect a candidate of their choice even in a district that is only about 12 percent African-American VAP.

Analysis of the Report of State's Expert Thomas L. Brunell

21. The Brunell report exhibits five significant problems. First, it is highly selective in its choice of elections. Second, it is also highly selective in that it sometimes reports the results of its ecological regression analysis and sometime reports only the results of its homogeneous VTD analysis. Third, it relies only on an analysis of racially polarized voting. As the analysis above indicates, the presence of racially polarized voting by itself does not mean that it is necessary to create 50% African-American VAP districts to provide African-American candidates the ability to elect candidates of their choice. Fourth, Dr. Brunell does not report the actual results of the elections he analyzes, an essential element in analyzing the effectiveness of districts for African-American voters. Fifth, Dr. Brunell does not report turnout in any of his electoral analyses, another important element of an effectiveness analysis. In fact, close analysis of the Brunell report demonstrates why African-American candidates have been overwhelmingly successful in winning elections in State House and Senate districts that are greater than 40 percent but less than 50 percent African-American VAP.

22. The Brunell results, presuming their accuracy, demonstrate that African Americans vote overwhelmingly for African-American Democratic candidates (the African-American candidates in such districts are Democrats), whereas there is considerable white crossover voting for African-American Democratic candidates. It is the combination of such high levels of African-American cohesion, combined with sufficient white crossover voting that enables

African Americans to nearly always prevail in districts that are 40% African-American VAP, but less than African-American majority VAP in general elections. Likewise, as will be additionally demonstrated below, African Americans typically dominate the primary elections in such districts given their overwhelmingly Democratic proclivities, compared to the predominantly Republican proclivities of whites in North Carolina.⁵

23. These favorable circumstances for African-American candidates are demonstrated first in Dr. Brunell's statewide analysis of the 2008 general election for president in which the African-American Democratic candidate Barack Obama competed against the white Republican candidate John McCain. Dr. Brunell conducted a homogeneous VTD analysis and an ecological regression analysis for 51 of what he calls "counties of interest" in this election. He does not report his ecological regression results for the 51 counties statewide that he studied, but does report his homogeneous VTD results for numerous VTDs across the 51 counties. His homogeneous VTD analysis demonstrates that Obama averaged 97.8 percent of the vote in 64 VTDs that are 90%+ African-American in their voters and 39.7 percent of the vote in 358 VTDs with less than 10% African-American voters (Brunell Report, p. 8). Given the large numbers of homogeneous VTDs, these results should be consistent with ecological regression results. If we apply these homogeneous VTD results to a VTD that is 40 percent African-American voting age population, the expected vote for an African-American Democrat under the presumption of equal turnout is 62.94 percent ($.4 * .978 + .6 * .397 = .6294$). Thus, even if white turnout was much higher than African-American turnout (which is not generally the case in North Carolina general elections), African-American candidates would still be presumptive winners in a 40% African-American voting age population district.

⁵ As indicated above, Dr. Brunell does not report turnout in any of his electoral analyses.

24. Similar results are obtained from Dr. Brunell's only other statewide analysis of a general election. This is the 2004 general election for State Auditor in which the African-American Democratic candidate Ralph Campbell competed against the white Republican candidate Leslie Merritt. Dr. Brunell again conducted a homogeneous VTD analysis and an ecological regression analysis his 51 "counties of interest" in this election. Again, he does not report his ecological regression results for all counties, but does report his homogeneous VTD results for numerous VTDs across the 51 counties. His homogeneous VTD analysis includes a larger number of VTDs than for the presidential contests. These results demonstrate that Campbell averaged 96.3 percent of the vote in 70 VTDs that are 90%+ African-American in their voters and 39.3 percent of the vote in 407 VTDs with less than 10% African-American voters. (p. 11). If we apply these homogeneous VTD results to a VTD that is 40 percent African-American voting age population, the expected vote for an African-American Democrat under the presumption of equal turnout is 62.1 percent ($.4 * .963 + .6 * .393 = .6210$). These results are nearly identical to those for the 2008 presidential general election. Once again, even if white turnout was much higher than African-American turnout, African-American candidates would still be presumptive winners in a 40% African-American voting age population district.

25. The results for these two statewide elections also demonstrate why African-American candidates have been able to prevail overwhelmingly in Democratic primaries in districts that are greater than 40 percent but less than 50 percent African-American VAP. Dr. Brunell's results indicate that African Americans are near unanimous in their Democratic loyalties, whereas about 60 percent of whites are loyal to Republicans in general elections. The average African-American vote for the Democratic candidate in the two statewide general elections studied by Dr. Brunell is 97.1 percent, whereas the average white vote for the Democratic candidate is 39.5

percent. If we apply these results to the potential African-American and white vote in a Democratic primary, the results show that the potential African-American percentage of voters in a 40 percent black voting age population district is 62.1 percent ($.4 * .971 / (.4 * .971 + .6 * .395) = .621$). Thus, even if white Democrats turned out at higher rates than African-American Democrats, which is not generally the case in North Carolina, African Americans would still dominate the Democratic primary.

26. These findings for primary elections are validated by the statewide results of the 2008 Democratic primary for president, which Dr. Brunell analyzes. Although Dr. Brunell found racially polarized voting in this primary, the African-American candidate Barack Obama still easily prevailed statewide against white opponents with 56.1 percent of the vote, even though the statewide African-American voting age population is only 21 percent according to the 2010 Census. An application of Dr. Brunell's results to a 40 percent African-American district would demonstrate a substantially higher percentage vote for the African-American candidate. According to Dr. Brunell's homogeneous VTD analysis across his 51 "counties of interest," Obama averaged 92.0 percent of the vote in 97 VTDs that are 90%+ African-American in their voters and 43.8 percent of the vote in 161 VTDs with less than 10% African-American voters. (p. 5). If we apply these homogeneous VTD results to a VTD that is 40 percent African-American voting age population, the expected vote for an African-American Democrat under the presumption of equal turnout is 63.1 percent ($.4 * .92 + .6 * .438 = .631$).

27. Dr. Brunell also provides some highly selected analyses of African-American versus white elections in State House and Senate districts. Dr. Brunell's results, supplemented by additional analyses of the districts he examines, again show why African-American candidates overwhelmingly prevail in districts that are greater than 40 percent but less than 50 percent

African-American VAP. The State House and State Senate districts that Dr. Brunell considers are analyzed below. Dr. Brunell does not analyze any of the African-American vs. white contests that took place in U. S. Congressional Districts (see Table 4 below).

28. State Senate District 20 (Durham County). This district is 44.6 percent African-American voting age population according to the 2010 Census. Dr. Brunell analyzes only the 2010 general election in this district in which the African-American Democrat Floyd McKissick, Jr. competed against the white Republican John Tarantino. Although Dr. Brunell finds racially polarized voting in this election, (p. 15) he fails to note that the African-American candidate McKissick, Jr. overwhelmingly prevailed in 2010 with 73.1 percent of the vote. Dr. Brunell also fails to consider the 2008 general election in Senate District 20, in which the African-American Democrat McKissick, Jr. prevailed with 73.6 percent of the vote.

29. State Senate District 5 (Greene, Pitt, and Wayne Counties). This district is 31 percent African-American voting age population according to the 2010 Census. Once again, Dr. Brunell analyzes only the 2010 general election in this district in which the African-American Democrat Don Davis lost to the white Republican Louis Pate (p. 18). He fails to analyze the 2008 general election in Senate District 5, in which Davis prevailed over Pate, despite racially polarized voting. Thus, as indicated in the analysis of Senate District 5 presented above, African-American candidates have the ability to prevail in districts that are well below 40 percent African-American voting age population.

30. State Senate District 13 (Hoke and Robeson Counties). This district is 27.2 percent African-American voting age population according to the 2010 Census. For this district, Dr. Brunell analyzes the 2008 Democratic primary election in which the African-American

candidate Benjamin Clark lost to the white candidate David Weinstein. Dr. Brunell reports that he found racially polarized voting in this contest, but fails to note the low percentage of African-American voting age population in this district (p. 22).

31. State Senate District 3 (Edgecombe, Martin, and Pitt Counties). This district is 46.9 percent African-American voting age population according to the 2010 Census. For this district, Dr. Brunell analyzes the 2010 Democratic primary election in this district in which white candidate Clark Jenkins prevailed against two African-American candidates: Florence Armstrong and Frankie Bourdeaux. Dr. Brunell reports that he found racially polarized voting in this contest and that white candidate Jenkins prevailed (p. 23). However, he fails to note Jenkins prevailed because of a split in the African-American vote. Taken together, the two African-American candidates received a majority of 50.3 percent of the votes cast in this election.

32. State House District 60 (Guilford County). This district is 54.4 percent African-American voting age population according to the 2010 Census. For this district, Dr. Brunell analyzes the 2006 general election in which the African-American Democrat Earl Jones competed against the white Republican Bill Wright. Dr. Brunell reports that he found racially polarized voting in this contest (p. 20). However, he fails to note that the African-American candidate overwhelmingly prevailed in this district with 60 percent of the vote. He also fails to note that African-American candidates continued to prevail in the district in the subsequent general elections of 2008, which was uncontested, and 2010, where the African-American Democrat won 70 percent of the vote.

33. State House District 102 (Mecklenburg County). This district is 42.7 percent African-American voting age population according to the 2010 Census. For this district, Dr. Brunell

analyzes the 2010 general election in which the African-American candidate competed against the white candidates Becky Carney and Ken Davies. Carney prevailed in this election and Dr. Brunell reports that he found racially polarized voting. However, he fails to note that this was an extremely low turnout election as previously indicated. Moreover, Dr. Brunell's results also show that this was a barely polarized election with very low African-American cohesion. According to Dr. Brunell's ecological regression results, only 53.6 percent of African-American voters voted for the African American candidate ($4.1\% + 49.5\% = 53.6\%$, p. 21).

34. In addition to omitting considerable information, including the results of additional African-American vs. white elections in those districts, Dr. Brunell also omits from his analyses numerous other State House, State Senate, and Congressional districts in which African-American candidates prevailed with African-American voting age populations of less than 50 percent. These districts are enumerated in Tables 1 to 4 below.

35. In sum, the results of both the independent analysis presented above and the reanalysis of Dr. Brunell's report demonstrate that the only result of an insistence on creating 50%+ African-American state legislative districts is to waste African-American votes and diminish the ability of African-American voters to influence the political process across the state of North Carolina. As demonstrated by the comparative analysis of 40%+ to 49%+ African-American districts with 50%+ African-American districts, it is not necessary to create African-American ability districts with African-American voting age populations greater than 50 percent. For both sets of districts, the win rate for electing African Americans and candidates of choice of African-American voters is an overwhelming 90 percent. Examination of the Brunell report shows that despite its many problems, the report's results sustain these

findings. The findings of this report are also consistent with the findings of Dr. Theodore Arrington who wrote the following in his affidavit:

These statistics indicate that a primary purpose of precinct splitting was to segregate the races into separate districts. Black voters were placed in packed districts with far higher concentrations than are necessary to give them a reasonable opportunity to elect representatives of their choice or their ability to elect such representatives. I know that these concentrations are excessive based on my extensive study of voting in North Carolina including work on Section 5 preclearance for the Department of Justice and various voting rights cases beginning with my work on the Gingles case.⁶

In addition, the results of analyzing elections in Senate District 5, Senate District 24, House District 39, and House District 41 also demonstrate that African Americans in North Carolina have opportunities to elect African-American candidates of their choice in legislative districts that are considerably below 40 percent in African-American voting age population.

⁶ First Affidavit of Theodore S. Arrington, p. 11-12.

Table 1
Electoral Analysis of Previous State House Districts With Black Voting Age Population Greater Than or Equal to 40% & Below 50%,*

District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
HD 5	49.0%	48.9%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 12	47.5%	46.5%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 21	48.4%	46.3%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 29	44.7%	40.0%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 31	44.7%	47.2%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 42	45.1%	47.9%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 48	45.5%	45.6%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 72	43.4%	45.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 99	28.3%	41.3%	BLACK	BLACK	BLACK	BLACK
HD 102	46.1%	42.7%	NONE: WHITE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
HD 107	50.5%	47.1%	BLACK	BLACK	NONE: BLACK	BLACK

* Analysis of contested elections conducted through ecological regression analysis of VTD-level data.

Table 2
Electoral Analysis of Previous State House Districts With 50%+ Black Voting Age Population*

District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
HD 7	56.0%	60.8%	BLACK	BLACK	NONE: BLACK	BLACK
HD 8	50.4%	50.2%	WHITE: NOT CHOICE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
HD 24	54.8%	56.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 27**	52.9%	54.0%	NONE: WHITE	NONE: WHITE	NONE: WHITE	NONE: WHITE
HD 33	50.0%	51.7%	NONE: BLACK	BLACK	BLACK	BLACK
HD 43	48.7%	54.7%	BLACK	BLACK	BLACK	BLACK
HD 58	53.4%	53.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 60	50.6%	54.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 71	51.6%	51.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 101	50.6%	55.7%	NONE: BLACK	BLACK	BLACK	BLACK

* Analysis of contested elections conducted through ecological regression analysis of VTD-level data.

** White candidate Michael Wray was elected without primary or general election opposition in HD 27 in 2008 and 2010. In 2006, he was the candidate of choice of black voters in a primary election victory against black opponents.

Table 3
Electoral Analysis of Previous State Senate Districts With 40%+ Black Voting Age Population*

District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
SD 3	47.0%	46.9%	WHITE: NOT CHOICE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
SD 4	49.1%	49.7%	NONE: BLACK	BLACK	BLACK	BLACK
SD 14	41.0%	42.6%	BLACK	BLACK	NONE: BLACK	BLACK
SD 20	44.6%	44.6%	BLACK	BLACK	NONE: BLACK	BLACK
SD 21	41.0%	44.9%	BLACK	BLACK	BLACK	BLACK
SD 28	44.2%	47.2%	BLACK	BLACK	BLACK	BLACK
SD 32	41.4%	42.5%	NONE: WHITE	WHITE: CHOICE	WHITE: CHOICE	WHITE: CHOICE
SD 38	47.7%	47.0%	NONE: BLACK	BLACK	NONE: BLACK	BLACK

* Analysis of contested elections conducted through ecological regression analysis of VTD-level data.

Table 4
Electoral Analysis of Previous Congressional Districts With 40%+ Black Voting Age Population*

District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result: 2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
CD 1:	48.1%	48.6%	NONE: BLACK	BLACK	BLACK	BLACK
CD 12	42.8%	43.8%	NONE: BLACK	BLACK	NONE: BLACK	BLACK

* Analysis of contested elections conducted through ecological regression analysis of VTD-level data.

Table 5
Comparison of State House Districts 30%+ Black Voting Age Population, Previous
Districts and Enacted Districts

Count	Previous District	% Black VAP 2010 Census	Enacted District	% Black VAP 2010 Census
1	7	60.77%	24	57.33%
2	24	56.07%	99	54.65%
3	101	55.73%	5	54.17%
4	43	54.69%	27	53.71%
5	60	54.36%	102	53.53%
6	27	53.95%	42	52.56%
7	58	53.43%	107	52.52%
8	33	51.74%	21	51.90%
9	71	51.09%	23	51.83%
10	8	50.23%	31	51.81%
11	5	48.87%	43	51.45%
12	42	47.94%	33	51.42%
13	31	47.23%	38	51.37%
14	107	47.14%	60	51.36%
15	12	46.45%	29	51.34%
16	21	46.25%	101	51.31%
17	48	45.56%	48	51.27%
18	72	45.40%	106	51.12%
19	102	42.74%	58	51.11%
20	99	41.26%	57	50.69%
21	29	39.99%	7	50.67%
22	100	37.39%	12	50.60%
23	23	36.90%	32	50.45%
24	32	35.88%	71	45.49%
25	39	34.91%	72	45.02%
26	55	32.98%	100	32.01%
27	44	32.57%		
28	69	31.74%		
29	63	30.66%		
30	45	30.40%		
31	25	30.30%		
32	59	30.15%		

Table 6
Comparison of State Senate Districts 30%+ Black Voting Age Population, Previous Districts and Enacted Districts

Count	Previous District	% Black VAP 2010 Census	Enacted District	% Black VAP 2010 Census
1	4	49.70%	28	56.49%
2	28	47.20%	4	52.75%
3	38	46.97%	38	52.51%
4	3	46.93%	3	52.43%
5	21	44.93%	5	51.97%
6	20	44.64%	40	51.84%
7	14	42.62%	21	51.53%
8	32	42.52%	14	51.28%
9	7	37.36%	20	51.04%
10	11	37.27%	32	42.53%
11	40	35.43%		
12	27	31.11%		
13	10	31.09%		
14	5	30.99%		
15	37	30.18%		

Table 7
Ecological Regression Results for Previous Senate District 5, 2008 and 2010 General Elections

ELECTION	% OF BLACK VOTERS VOTING FOR BLACK DEMOCRAT	% OF WHITE VOTERS VOTING FOR BLACK DEMOCRAT
2008 GENERAL	97%	30%
2010 GENERAL	97%	21%

Table 8
Ecological Regression Results for Previous Senate District 24, 2008 and 2010 General Elections

ELECTION	% OF BLACK VOTERS VOTING FOR BLACK DEMOCRAT	% OF WHITE VOTERS VOTING FOR BLACK DEMOCRAT
2008 GENERAL	99%	38%
2010 GENERAL	97%	27%