

Exhibit 22

Affidavit of David R. Lewis

4. The House Redistricting Committee was first constituted on February 15, 2011. Its first meeting was on April 7, 2011.

5. I have read paragraphs 5 through 18 of an Affidavit to be submitted to the Court by Senator Bob Rucho. I agree with the affidavit by Senator Rucho and incorporate this portion of his affidavit, and the attached exhibits, into my affidavit. The purpose of the remaining portion of my affidavit is to explain the slight differences in terms of majority-minority districts between the enacted House Plan and the AFRAM House Plan.

6. I first note that the AFRAM House Plan has only eight single counties and only eight two-county groups. The enacted plan has 11 single counties and 15 two-county groups. The AFRAM House Plan therefore fails to draw one or more districts wholly within a single county when possible and fails to combine counties in the smallest numbers possible. (Frey Exhibit 2).

7. The AFRAM plans were the only legislative plans received by the General Assembly from any person or organization until plans were introduced by Representative Grier Martin (House Fair & Legal) and Representative Kelly Alexander, on behalf of the Legislative Black Caucus ("LBC" Possible House Districts) on July 25, 2011. Like the AFRAM plan, both the Martin and the Alexander Plan do not combine counties in the smallest numbers possible. While Representative Martin's Plan has 11 single counties, it has only nine two-county combinations. Representative Alexander's Plan has only ten single counties and only eight two-county combinations. (Frey Exhibit 2).

8. The enacted House Plan has 23 districts with a TBVAP of 50% plus one, and two districts with a TBVAP of 40% plus. Thus, the enacted House Plan has 25 districts with a TBVAP in excess of 40%. The AFRAM Plan has 11 majority black districts, ten districts with a

TBVAP in excess of 40%, for a total of 21 districts with a TBVAP in excess of 40%. The LBC Plan, introduced by Representative Alexander, has ten majority-minority districts, 13 districts with a TBVAP in excess of 40%, for a total of 23 districts with a TBVAP above 40%. Representative Martin's plan has nine districts with a majority TBVAP and eleven districts with a TBVAP in excess of 40%. Thus, in comparing the number of districts with TBVAP in excess of 40%, the enacted House Plan has two additional districts as compared to the LBC Plan, four additional districts as compared to the AFRAM Plan, and five additional districts as compared to the Martin Plan. (Frey Exhibit 11).

9. The AFRAM Plan recommends the creation of majority black districts in all areas of the state where such districts are found in the enacted House Plan, except for House Districts 12, 21, and 48. These three districts are all located in multiple counties in south-central to southeastern North Carolina. All three of these districts were substantially under populated for one person, one vote purposes under the 2003-2009 Plan and therefore needed additional population when recreated in the 2011 House Plan. The percentage TBVAP for these districts in the enacted House Districts are only slightly higher than the percentages recommended by AFRAM or the LBC. Enacted District 12 has a TBVAP of 50.60% as compared to 46.35% in the AFRAM Plan and 47.26% in the LBC Plan. Enacted District 21 has a TBVAP of 51.90% in the enacted version as compared to 46.26% in the AFRAM Plan and 48.68% in the LBC Plan. Finally, enacted District 48 has a TBVAP of 51.27% in the enacted House Plan as compared to 45.90% in the AFRAM Plan and 47.49% in the LBC Plan. (Frey Exhibit 11).

10. There is no suggestion in the AFRAM Plan, the Martin Plan or the Alexander Plan that creating enacted Districts 12, 21, and 48 with TBVAP in excess of 50% prevented the State from creating any additional districts that would allow African Americans to elect their

preferred candidates of choice. The shape and amount of population in the enacted versions of Districts 12, 21, and 48, were driven by the county combination formula and the need to combine counties in the smallest possible numbers. For example, the AFRAM versions of these three districts are located in a 46-county combination while the enacted versions are in a 20-county combination.

11. All versions of Districts 12, 21, and 48, including the 2003-2009 versions, have an appearance that is less than picturesque. All versions also locate these districts in portions of multiple counties. By drawing the enacted districts slightly above the TBVAP percentages found in the alternative versions, the State was able to comply with the rule established in *Strickland*, which precludes the division of counties into different districts unless the divisions are needed to create a VRA district with a TBVAP in excess of 50%.

12. In northeastern North Carolina, the AFRAM Plan recommended five house districts with a TBVAP between 49.63% and 58.69% (AFRAM Districts 5, 7, 8, 24, and 27). Two of these districts, House Districts 8 and 27, have white incumbents (Representatives Edith Warren and Michael Wray, respectively). These five districts largely correspond with enacted House Districts 5, 7, 23, 24, and 27. All five of these enacted districts have a TBVAP between 50.67% and 57.33%. There are a few differences between the AFRAM House Plan and the enacted House Plan. For example, enacted District 23 is now a majority TBVAP district with a white incumbent (Joe Tolson). The 2003-2009 version of this district had a TBVAP of only 36.90%. The TBVAP in Representative Warren's enacted District 8 has been reduced to 27.70%. Finally, the TBVAP in Representative Wray's enacted District 27 was established at 54.40% as compared to 53.71% in the AFRAM version of District 27. (Frey Exhibit 11). It should be noted that all of the AFRAM House districts are located in a 46-county group. In

contrast, enacted Districts 7, 23, 24, and 27 are all located in two-county combinations while enacted District 5 is located in a nine-county combination. Thus, the enacted districts comply with the *Stephenson* decisions.

13. The enacted House Plan creates a sixth majority black House district in northeastern North Carolina that is not found in the AFRAM Plan. Enacted District 32 is located in a four-county combination of Warren, Vance, Granville, and Person Counties. All of these counties, other than Warren, are covered by Section 5. New District 32 has a TBVAP of 50.45%. It replaced the 2003-2009 version of District 32 which elected a white incumbent with a TBVAP of 35.88%. District 32 in the AFRAM Plan is located in a 46-county group and has a TBVAP of 35.85%. The LBC Plan recommended a version of District 32 located in Granville and Vance Counties with a TBVAP of 40.51%. (Frey Exhibit 11).

14. The comparisons stated above demonstrate how the shape and location of House Districts 12, 21, 48, 5, 7, 23, 24, 27 and 32, all of which are located in multiple counties, were driven by the requirement set forth in the *Stephenson* cases to create the smallest county groupings possible.

15. I will now turn to the majority-minority districts in the enacted House Plan found within single counties and the two 40% plus TBVAP districts located in Forsyth County.

16. In both the enacted House Plan and the AFRAM Plan, all districts in Cumberland County are drawn within Cumberland County. This represents a change from the 2003-2009 House Plan in which Cumberland was combined with Bladen County. Under the 2003-2009 House Plan, Districts 42 and 43 have been represented by African-American incumbents (Representative Marvin Lucas and Elmer Floyd). The TBVAP for these districts under the 2003-2009 House Plan are 47.94% (District 42) and 54.69% (District 43). Both of these districts are

substantially under-populated (-13.86% and -36.04%, respectively). (Frey Exhibit 11). Because of non-voting population located at Ft. Bragg, African Americans represented a majority of registered voters in both of these districts in the 2003-2009 Plans. Under the AFRAM Plan, District 42 is established with a TBVAP of 48.00% and District 43 with a TBVAP of 54.70%. We saw no principled reason for creating District 43 with a majority TBVAP and District 42 with a TBVAP slightly below majority status. Consistent with our understanding of *Strickland*, we therefore established both of these districts with a TBVAP of 51.45% (District 42) and 51.47% (District 43).

17. In Wake County, the AFRAM Plan recommended a Senate District at nearly majority TBVAP status (48.05%) and a majority House District (District 33) with a TBVAP of 56.45%. Both of these recommendations indicated that AFRAM believed that majority-minority districts were needed in Wake County, even though both Senate District 14 and House District 33 had elected African-American incumbents. Further, the ideal population for a Senate district is 190,710 while the ideal population for a House District is 79,462. Thus, one majority TBVAP Senate District in Wake County should equate to 2.4 majority TBVAP House Districts (190,710 divided by 79,462). Given that AFRAM supported a 48% TBVAP Senate district, and one 50% TBVAP House district, we did not see any principled reason not to create a second majority TBVAP district in Wake County. New District 38 was therefore established with a TBVAP of 51.37%. It replaces the 2003-2009 version of District 38, which elected a white incumbent (Representative Deborah Ross) with a TBVAP of 27.69%. (Frey Exhibits 10 and 11).

18. In Durham County, under the 2003-2009 House Plans, African-American incumbents were elected in District 29 (Representative Larry Hall) and District 31 (Representative Mickey Michaux). Under the 2010 Census, District 29 was under-populated by

-11.85% while District 31 was over-populated by + 14.86%. AFRAM indicated that a majority-minority district was needed in Durham County when it recommended that District 31 be established with a TBVAP of 51.81%. AFRAM recommended that the TBVAP of District 29 be dropped from 39.99% TBVAP under the 2003-2009 Plan to 38.88%, Representative Martin recommended that this district be established with a TBVAP of 42.51%. The LBC Plan recommended that this district be created with a TBVAP of 44.48%. We did not see any principled reason for treating these two districts differently given AFRAM's recommendation that majority-minority districts are needed in Durham. We therefore elected to make both districts compliant with the safe harbor set forth in *Strickland* and established District 29 with a TBVAP of 51.34% and District 31 with a TBVAP of 51.81%. (Frey Exhibit 11).

19. It is also important to note that under the enacted House Plan, Durham is combined with Orange County to form a two-county combination. Under the AFRAM House Plan, Durham is combined with Orange, Alamance, Chatham and Lee Counties. The Martin Plan combines Durham with three other counties (Person, Granville, and Vance) while the Alexander Plan combines Durham with Person County. As discussed above, none of the alternative plans combine counties in the smallest numbers possible. (Frey Exhibit 2).

20. In Guilford County, under the 2003-2009 House Plan, there were two majority black districts: District 58 (53.43% TBVAP) and District 60 (54.36% TBVAP). Both of these districts elected African-American incumbents (District 58: Representative Alma Adams; and District 60: Representative Marcus Brandon). AFRAM proposed that both of these districts be established with slightly higher majority TBVAP levels (AFRAM District 58: 53.47% TBVAP; AFRAM District 60: 54.41%). We elected to re-establish Districts 58 and 60 as majority TBVAP districts, but at lower percentages than recommended by AFRAM. Enacted District 58

has a TBVAP of 51.11% and enacted District 60 has a TBVAP of 51.36%. By slightly reducing the TBVAP in District 58 and 60, we were able to create a third majority TBVAP district in Guilford – District 57 - with a TBVAP of 50.69%. Enacted District 57 replaces the 2003-2009 version which had a TBVAP of 29.33% and which elected a white incumbent (Representative Pricy Harrison). (Frey Exhibit 11).

21. Under the enacted House Plan and all alternatives, Guilford County is not paired with another county because six districts may be drawn entirely within Guilford County consistent with the population levels necessary under the one person, one vote standard.

22. Drawing House Districts in Forsyth County presented a special problem. Under the 2003-2009 Plan, two African-American incumbents were elected in District 71 (Representative Larry Womble) and District 72 (Representative Earline Parmon). Under the 2003-2009 House Plan, District 71 had a TBVAP of 51.09% and District 72 had a TBVAP of 45.40%. However, both of these districts were also substantially under-populated (District 71: -14.71%; District 71: -15.00%). Because of the population levels in Forsyth County, it is not possible to draw both of these districts with a majority TBVAP. AFRAM recommended that District 71 be drawn with a TBVAP of 46.59% while the LBC Plan recommended a TBVAP for this district of 48.62%. AFRAM recommended that District 72 be given a TBVAP of 43.71% while the LBC Plan suggested a TBVAP for this district of 42.40%. The enacted plan creates both districts within the ranges suggested by AFRAM and the LBC with District 71 at 45.49% and District 72 at 45.02%. (Frey Exhibit 11).

23. Under the enacted House Plan, Mecklenburg County is not combined with any other county as twelve districts can be drawn wholly within that county. The AFRAM Plan and

the Martin Plan also do not combine Mecklenburg with another county while the LBC Plan incorrectly combines Mecklenburg with Gaston and Cleveland Counties.

24. The AFRAM Plan suggested two majority TBVAP House Districts in Mecklenburg (Districts 101 and 107). These two districts elected African-American incumbents in the 2010 General Election (Representative Beverly Earle and Representative Kelly Alexander). Under the 2010 Census, both of these districts are overpopulated by +18.35% (District 101) and +17.62% (District 107). AFRAM recommended that the TBVAP in both of these districts be increased as compared to the 2003-2009 House Plan. Thus, AFRAM recommended that District 101 be raised from 55.73% to 57.28% and that District 107 be raised from 47.14% to 56.54%. (Frey Exhibit 11).

25. AFRAM also recommended the creation of three districts in Mecklenburg with a TBVAP in excess of 40% but below 50%. AFRAM recommended that District 99 (which is overpopulated by 41.34%) be increased from a TBVAP of 41.34% to 42.17%. District 99 elected an African-American incumbent in the 2010 General Elections (Representative Rodney Moore). AFRAM also recommended that the TBVAP for District 100 be increased from 37.97% to 41.74%; and that the TBVAP for District 102 be increased from 42.74% to 44.98%. District 100 and 102 both elected white incumbents in the 2010 General Elections, Representative Tricia Cotham and Representative Becky Carney. (Frey Exhibit 11).

26. AFRAM's recommendation of only two majority TBVAP House districts in Mecklenburg was inconsistent with its recommendation that two majority Senate Districts be created in Mecklenburg. The ideal population for a Senate District is 190,710, while the ideal population for a House District is 79,462. Thus, the population found in two ideal Senate districts ($190,710 \times 2 = 381,420$) equals the amount of population needed to draw 4.8 House

Districts (381,420 divided by 79,462 = 4.8). If two majority black Senate districts are needed in Mecklenburg, that fact alone supports the creation of roughly five majority black House Districts. (Frey Exhibits 10 and 11).

27. In fact, the enacted House Plan includes five majority black House Districts in Mecklenburg County: Districts 99, 101, 102, 106 and 107. All five of these districts are drawn with a lower TBVAP percentage (51.12% to 54.65%) than the percentage TBVAP found in the two majority black House districts proposed by the AFRAM (56.43% and 57.28%). Three of the enacted House Districts (99, 101 and 107) correspond to districts in the 2003-2009 House Plan in which African Americans were elected in the 2010 General Elections. All three of these 2003-2009 districts are substantially overpopulated and could not be re-established under the one person, one vote standard. The other two enacted majority black districts (Districts 102 and 106) correspond to 2003-2009 districts that elected white incumbents (Representative Becky Carney and Representative Martha Alexander). (Frey Exhibit 11).

28. As stated by Senator Rucho, we had to consider race in drawing legislative and congressional redistricting plans because of the requirements of the Voting Rights Act. However, it is a complete misrepresentation to state that race dominated over all other factors. In fact, the opposite is true. Our primary standards for drawing legislative districts came from the *Stephenson I* and *II* and the *Strickland* decisions, as we stated several times during the redistricting process. I have already explained how the enacted House Plan combines counties in the smallest number possible and how enacted majority TBVAP Districts 12, 21, 48, 5, 7, 23, 24, 27, and 32 more closely comply with the *Stephenson* county combination formula than all other alternative plans. All other majority TBVAP Districts in the enacted House Plan (29, 31, 33, 38,

42, 43, 57, 58, 59, 99, 101, 102, 106 and 107) and two 40% plus TBVAP districts in Forsyth County, were all drawn within a single county consistent with the *Stephenson* requirements.

This the 19th day of January, 2012.

David R. Lewis

David R. Lewis, Senior Chairman
House Redistricting Committee

Sworn and subscribed before me
this the 19th day of January, 2012.

Catherine Lucie Locher
Notary Public

My commission expires: 09-16-2016

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