No. 14-839

In The
# Supreme Court of the United States

**MARGARET DICKSON, *et al.*,**
***Petitioners*,**

**v.**

**ROBERT RUCHO, *et al.*,**
***Respondents*.**

**ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA**

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## INTRODUCTION

Petitioners ask this Court to grant *certiorari* because North Carolina allegedly engaged in illegal "racial balancing" when it enacted the 2011 legislative plans and Congressional Districts 1 and 12. Petitioners ignore, however, that they proposed and supported plans that created presumably VRA-remedial majority-black, majority-minority coalition, or "influence" districts in the same counties or areas of the State where North Carolina enacted majority-black districts.[1] Petitioners' alternative plans also raised the Total Black Voting Age ("TBVAP") in some districts as compared to the prior plans despite past electoral success by black incumbents.[2] The difference between North Carolina's plans and Petitioners' alternative plans is that North Carolina

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[1] Majority-black districts are majority-minority districts in which blacks constitute a numerical majority of the voting age population ("VAP"). Majority-minority coalition districts are districts in which two minority groups combine to constitute a majority. Crossover districts are majority-white districts in which a sufficient number of whites crossover to support and elect the minority group's candidate of choice. Influence districts are districts in which a minority group allegedly has influence in determining election outcomes but cannot control the outcome. *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

[2] North Carolina reported both black voting age population ("BVAP") and TBVAP. BVAP is based on persons who reported to the Census as single-race black while TBVAP included that group and persons who reported themselves as any part black. (Pet. App. 190a-191a; Resp. App. 94a-95a) North Carolina considered TBVAP in the construction of its districts as that category is favored by the United States Justice Department and this Court. *Georgia v. Ashcroft*, 539 U.S. 461, n. 1 (2003).

followed this Court's guidance while Petitioners engaged in the "racial balancing" they now condemn.

Petitioners have never explained how they determined the percentage of TBVAP to be included in the alternative plans' majority black, majority-minority coalition, or influence districts. Moreover, Petitioners have never explained how the alternative plans arrived at the number of majority-black, coalition, or influence districts included in each plan. Further, while the 2011 enacted plans comply with state redistricting criteria, the plans supported by Petitioners do not. Additionally, the detailed findings of fact by the trial court show more than a strong basis in evidence for the use of race in the construction of the enacted majority-black districts (*Shaw v. Hunt*, 517 U.S. 899, 910 (1996) ("*Shaw II*")) and have not been addressed by Petitioners. *See Hernandez v. New York*, 500 U.S. 352 (1991). For these reasons, and as explained below, the Court should not grant Petitioners' petition for a writ of *certiorari*. *See* SUP. CT. R. 10.

## STATEMENT OF THE CASE

### A. Background To The 2011 Redistricting Process[3]

In 2011 forty North Carolina counties were covered by Section 5 of the Voting Rights Act. *Shaw v. Reno*, 509 U.S. 630, 634 (1993). North Carolina was therefore required to seek preclearance of any new redistricting plans. *Ashcroft*, 539 U.S. at 472.

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[3] Respondents submit this statement of the case pursuant to Supreme Court Rule 15.2.

To obtain preclearance, North Carolina bore the burden of demonstrating that any new redistricting plans "neither [had] the purpose and [would] not have the effect of denying or abridging the right to vote on account of race…." 52 U.S.C. § 10304(a); *Pleasant Grove v. United States*, 479 U.S. 462 (1987). To make this determination, the United States Department of Justice ("USDOJ"), or the District Court for the District of Columbia, would have compared any newly enacted 2011 plans against the most recent lawful plan ("benchmark plan") used in prior elections. *Reno v. Bossier Parrish Sch. Bd.*, 520 U.S. 471, 478 (1997) ("*Bossier I*"). In considering new redistricting plans, the 2011 General Assembly was obligated to consider legislative and congressional plans used in the 2010 North Carolina General Election, and all relevant legal and factual developments that had occurred following the most recent redistricting.

The Congressional Plan used in the 2010 General Elections was enacted in 2001. This plan was used in all elections from 2002 through 2010. (Resp. App. 1a) Under the 2010 Census, Congressional Districts 1 and 12 were majority-minority coalition districts. District 1 was 48.43% TBVAP while District 12 was 43.77% TBVAP.[4] Hispanics constituted 4.51% of the voting age

[4] USDOJ regulations require that the most current population data be used to measure both the benchmark plan and the proposed redistricting plan. 28 C.F.R. § 51.54(b)(2). Consistent with their past practice, for redistricting occurring after 2010 USDOJ evaluated plans using the 2010 Census, not the 2000 Census. Federal Register, Vol. 76, No. 27, Part III, p. 7472 (February 9, 2011).

population ("VAP") in District 1 and 10.11% of the VAP in District 12. (Pet. App. 208a-214a; Resp. App. 140a)

In contrast, the legislative plans used in the 2010 General Elections were not enacted until November 25, 2003. (Resp. App. 5a, 10a) *Stephenson v. Bartlett*, 358 N.C. 219, 222, 595 S.E.2d 112, 114 (2004) ("*Stephenson III*"). Legislative plans enacted in 2001 were declared unlawful under provisions of the North Carolina Constitution that prohibit the division of counties into separate legislative districts (known as the "Whole County Provisions" or "WCP"). *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) ("*Stephenson I*"); N.C. CONST. art. II, §§ 3(3) and 5(3). In 2003, a second set of enacted legislative plans was found to be in violation of the WCP. Interim plans created by a superior court were used for legislative races in the 2002 General Elections. *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) ("*Stephenson II*"). Thereafter, the only district from the 2003 plans that was ever subject to constitutional review (House District 18) was found to be in violation of the WCP. *Pender Cnty. v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007) ("*Pender County*"), *aff'd, Bartlett v. Strickland*, 556 U.S. 1 (2009).[5]

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[5] In 2009, to comply with *Strickland*, the General Assembly changed the district lines only for the 2003 version of House District 18 and its adjoining districts. References to the "2009 House Plan" in some of the supporting affidavits (such as Affidavits from Dan Frey) refer to the 2003 House Plan as amended by the General Assembly in 2009. (Resp. App. 100a-102a)

On June 26, 2003, this Court issued its decision in *Ashcroft*. The Court agreed that states had the option of creating "a certain number of 'safe districts' in which it is highly likely that minority voters will be able to elect their candidates of choice." *Ashcroft,* 539 U.S. at 480. The Court also endorsed an alternative strategy under which states could make a political decision to substitute a combination of districts, including majority-minority districts, coalition districts, and influence districts, in the place of a plan based strictly on safe majority-minority districts. *Id*. at 480-83.

Consistent with *Ashcroft*, in its 2003 legislative plans, North Carolina made the political decision to comply with Section 5 through a combination of majority-black, coalition, and influence districts. By the time of the 2010 census, the 2003 Senate Plan included 8 districts that were majority-minority coalition districts. (Pet. App. 119a, 220a, 224a, 226a-227a, 228a-229a, 231a, 262a-263a, 266a, 268a-269a, 271a, 273a; Resp. App. 94a)[6]

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[6] Petitioners repeatedly describe certain districts that elected black candidates as "majority-white." None of the findings of fact by the three-judge court are cited to support this characterization. Petitioners do not disclose that the statistics they rely upon to describe districts as "majority-white" are from the 2000 Census. Petitioners also fail to disclose that the exhibits they rely upon (Churchill Dep., Exs. 81, 82, 83, accessible at http://www.ncleg.net/GIS/Download/ReferenceDocs/2011/CommitteeDocs/Congressional%20Races%201992-2010%20Handouts.pdf, http://www.ncleg.net/GIS/Download/ReferenceDocs/2011/CommitteeDocs/Senate%20Races%202006-2010%20handouts.pdf, and

The TBVAP in a ninth district (Senate District 40) was only 35.43% but blacks and Hispanics constituted a majority-minority coalition. (Resp. App. 94a) The 2003 Senate plan also included six other "influence" districts with a TBVAP between 30.18% and 37.27%. (Resp. App. 132a)[7]

North Carolina followed the same preclearance strategy when it created its 2003 House Plan. That Plan included 10 districts that were majority black and 10 districts with TBVAP between 40% and 50% which were also majority-minority coalition districts. (Pet. App. 119a, 233a-234a, 236a, 238a, 240a, 242a, 244a-245a, 249a, 251a-252a, 253a-254a, 278a, 281a, 283a-284a, 285a-286a, 287a-288a, 290a-291a, 293a-294a; Resp. App. 100a-102a) The 2003 plan also contained four other districts in which blacks were less than 40% TBVAP but in which blacks and Hispanics constituted a VAP majority. (Resp. App. 100a-102a) The 2003 House Plan also created 10 other influence districts with TBVAP between 30.15% and 36.90%. (Resp. App.

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http://www.ncleg.net/GIS/Download/ReferenceDocs/2011/CommitteeDocs/House%20Races%202006-2010%20handouts.pdf) list percentages from a "white" category reported by North Carolina that includes both Hispanics and non-Hispanic whites. Even under the 2000 Census, almost all of these districts were majority-black or majority-minority coalition districts in which blacks combined with Hispanics to form a majority. (*See* Pet. App. 191a, n.35; Resp. App. 233a-240a)

[7] Senate District 40 was not an "influence" district but instead was a majority-minority coalition district. A black candidate was elected in this district in 2006 through 2010. (Resp. App. 94a, 132a)

138a-139a)[8] One of these districts (House District 39) operated as a crossover district in the 2006 and 2008 General Elections because a black Democrat was elected in each of these elections. *Id.*

The legal landscape, however, changed after 2003. In *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006) ("*LULAC*"), the Court rejected the argument that Section 2, 52 U.S.C. § 10301 requires influence districts because "the opportunity 'to elect representatives of their choice . . . requires more than the ability to influence the outcome between some candidates, none of whom is [the minority group's] candidate of choice." 548 U.S. at 445-46. This Court subsequently confirmed this holding. *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

In 2006, another significant legal development occurred when Congress reauthorized Section 5. *See* P.L. 109-246. Section 5 was amended to prohibit "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose or will have the *effect* of diminishing the ability of citizens of the United States on account of race or color . . . *to elect their preferred candidates of choice*." *Id.* (emphasis added). One of the purposes of these amendments was to reverse any portion of *Ashcroft* which gave states the option of selecting coalition or influence

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[8] House Districts 29 and 100 were not influence districts but instead majority-minority coalition districts. A black Democrat was elected in District 29 from 2006 through 2010. A white Democrat was elected in District 100 from 2006 through 2010. (Resp. App. 100a-102a, 138a-139a)

districts over districts that allow the minority group to elect their preferred candidates of choice. *See* Report of the Senate Committee on the Judiciary, 109th Cong. Report 295, pp. 18-21 ("Preferred Candidate of Choice"); Report of the House Committee on the Judiciary, 109th Cong. Report 478, pp. 65-72.

The final significant legal development occurred in *Pender Cnty. v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007) ("*Pender County*"), *aff'd*, *Strickland*, supra. Under the 2003 House redistricting plan, North Carolina divided Pender County into different districts to create a majority-white crossover district (House District 18). The plaintiffs contended that dividing Pender County into different districts violated the WCP. North Carolina defended the division of Pender County on the grounds that majority-white crossover districts served as a defense to vote dilution claims under Section 2. *Pender County*, 361 N.C. at 493-98, 649 S.E.2d at 366-68. The North Carolina Supreme Court held that Section 2 did not authorize the creation of coalition districts, crossover districts, or influence districts, and that any district enacted to protect the State from Section 2 liability would need to be established with a true majority-minority population. *Id.* at 503-07, 649 S.E.2d at 372-74.

On appeal, this Court affirmed that crossover districts could not be required under Section 2 because districts designed to protect a state from Section 2 liability must be numerically majority-minority. *Strickland*, 556 U.S. at 12-20. While the Court did not squarely address whether coalition

districts could be required by Section 2, it did observe that such districts had never been ordered as a remedy for a Section 2 violation by any of the circuit courts. *Id.* at 13, 19.

As would be expected, changes were required in the 2001 Congressional Plan and the 2003 legislative plans because of the amount of population found in those districts under the 2010 Census. The State constitutional standards governing one person, one vote, require that legislative districts be drawn with a population deviation of no more than plus or minus 5% from the ideal population. *Stephenson I*, 355 N.C. at 383, 562 S.E.2d at 397. Following the 2010 Census, almost all of the majority-black legislative districts or districts in which a majority-minority coalition were present were underpopulated or overpopulated. (Resp. App. 71a-72a) The First Congressional District was substantially underpopulated while the Twelfth Congressional District was slightly overpopulated. (Resp. App. 73a)[9]

Finally, the General Assembly in 2011 was obligated to consider the results of recent elections. In 2010, eighteen African-American candidates were elected to the State House and seven African-American candidates were elected to the State Senate. Two African-American candidates were elected to Congress in 2010. All African-American candidates elected to the General Assembly or Congress in 2010 were elected in majority-black or

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[9] Of course, for congressional districts the applicable one person, one vote standard is governed by federal law. *Westberry v. Sanders*, 376 U.S. 1 (1964).

majority-minority coalition districts. No African-American candidate elected in 2010 was elected from a majority-white crossover district. Two African-American incumbent senators were defeated in the 2010 General Election running in majority-white districts. (Pet. App. 190a, 191a)

From 2006 through 2010, no African-American candidate was elected to more than two consecutive legislative terms in a majority-white district. (Pet. App. 191a) From 2004 through 2010, no African-American candidate was elected to State office in North Carolina in a partisan election. In 2000, an African-American candidate, Ralph Campbell, was elected State auditor in a partisan election. However, in 2004, Campbell was defeated by a white Republican in a partisan election. (Pet. App. 191a-192a)

### B. The 2011 Redistricting Process in North Carolina

Early in the 2011 redistricting process, the co-chairs of the Joint Senate and House Redistricting Committee released a Legislator's Guide to Redistricting (Resp. App. 178a-179a, accessible at http://www.ncleg.net/GIS/Download/Maps_Reports/2011RedistrictingGuide.pdf) ("Legislator's Guide"). The Legislator's Guide explained numerous cases that would govern redistricting in 2011, including *Stephenson I* and *II*; *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Ashcroft*; *Pender County*; *Strickland; Shaw v. Reno*, 509 U.S. 630 (1993) ("*Shaw I*"); *Shaw II*; *Hunt v. Cromartie*, 526 U.S. 541 (1999) ("*Cromartie I*"); *Easley v. Cromartie*, 532 U.S. 234

(2001) ("*Cromartie II*"), and other cases. The Guide also reported the decision by Congress to revise Section 5 because of the decision in *Ashcroft*.

The Joint Redistricting Committee conducted thirteen public hearings from April 13, 2011 through July 18, 2011. Hearings were conducted in 24 of the 40 counties covered by Section 5. Proposed VRA districts were published by the Committee Chairs and a hearing conducted on these districts on June 23, 2011.[10] A public hearing was held on a proposed Congressional plan on July 7, 2011, and a hearing on proposed legislative plans was held on July 18, 2011. (Pet. App. 193a)

The Redistricting Chairs ("Chairs") published five different statements outlining the criteria they would follow in the construction of legislative and Congressional districts. (Resp. App. 188a-232a) On June 17, 2011, the Chairs stated that legislative plans must comply with the State Constitutional criteria established in *Stephenson I* and *II,* and *Pender County* and *Strickland* to determine the appropriate "VRA districts." The Chairs had also sought advice during the redistricting process on the number of Section 2 districts to create, citing *Johnson v. De Grandy*, 512 U.S. 997 (1994). The Chairs stated that they would "consider, where possible" plans that included "a sufficient number of majority African-American districts to provide North Carolina's African-American citizens with a substantially proportional and equal opportunity to

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[10] Under the WCP requirements, VRA districts must be created first. *Dickson v. Rucho*, 766 S.E.2d 238, 259 (N.C. 2014).

elect their preferred candidates of choice." The Chairs also explained that based upon statewide demographic figures, proportionality for African-American citizens "would roughly equal" 24 majority African-American House Districts and 10 majority African-American Senate Districts. (Resp. App. 188a-198a)

The Chairs made it clear that proportionality was not a rigid requirement and that majority-black districts would only be created "where possible." The Senate Co-Chair noted that he was proposing only nine majority-black districts (instead of the proportional number of ten) because he had been "unable to identify a reasonably compact majority African-American population to create a tenth majority African-American District." (Resp. App. 190a, 191a, 192a) Moreover, while the House Plan published on June 23, 2011, had 24 majority-black house districts, based upon public opposition expressed during a public hearing, a majority-black district proposed for southeastern North Carolina (House District 18) was eliminated in the final House Plan. (Resp. App. 191a, 193a, 222a)[11]

The Chairs also acknowledged that creating majority-black districts would make adjoining districts more competitive for Republicans. Political considerations played a significant role in the enacted plans and all alternatives. (Resp. App. 15a,

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[11] Petitioners do not cite evidence or testimony offered during the public hearing process challenging the location or percentage of TBVAP in any of the other specific proposed legislative districts.

15b, 33a-39a, 42a, 43a, 204a, 214a, 218a, 219a, 231a, 232a)

The proposed Congressional Plan was released on July 1, 2011. The Chairs noted that the First Congressional District had been established in 1992 as a majority-black district designed to protect the State from liability under Section 2, that this district was still needed to protect the State from Section 2 liability, and that the 2001 version was underpopulated by 97,500 people. The Chairs also explained that the Twelfth Congressional District would be retained as a very strong Democratic district. (Resp. App. 209a-219a) On July 19, 2011, the Chairs explained that several changes had been made to their original First Congressional District in response to criticism received during the redistricting process. (Resp. App. 228a-232a)

Three groups submitted alternative maps during the 2011 redistricting process. First, Petitioners' counsel appeared at public hearings on May 9, 2011, and June 23, 2011, on behalf of a group called the Alliance for Fair Redistricting and Minority Voting Rights ("AFRAM").[12] Petitioners' counsel submitted a proposed Congressional Plan on May 9, 2011, and proposed legislative plans for Senate and House on June 23, 2011. Both plans submitted by AFRAM were designated as the Southern Coalition for Social Justice ("SCSJ") Plans. (Pet. App. 193a-199a, 206a) Next, on Monday, July 25, 2011, the Democratic legislative leadership published a series of redistricting plans designated

[12] This coalition included Petitioners North Carolina NAACP ("NC NAACP") and North Carolina League of Women Voters. (Pet. App. 193a-194a)

as the "Fair and Legal" Congressional, Senate, and House Plans. On that same date, the Legislative Black Caucus ("LBC") published its "Possible Senate Plan" and "Possible House Plan." (Pet. App. 206a-207a)

The General Assembly enacted redistricting plans for the Senate and Congress on July 27, 2011. A House Plan was enacted on July 28, 2011. (Pet. App. 207a-208a) The 2011 Senate Plan included nine majority-TBVAP districts and one majority-minority coalition district. (Pet. App. 119a; Resp. App. 71a, 96a) The 2011 House Plan included twenty-three majority-black districts and two majority-minority coalition districts. (Pet. App. 120a; Resp. App. 72a, 103a)[13]

All of the 2011 alternative legislative plans adopted the same formula for VRA districts followed by the 2003 Democratic-controlled General Assembly. All of the alternative 2011 house plans proposed a combination of majority-black, majority-minority coalition, and influence districts. (Pet. App. 119a-120a) The SCSJ House Plan proposed eleven majority-TBVAP districts, thirteen majority-minority coalition districts, and at least three influence districts. (*Id.*; Resp. App. 122a-123a, 138a-139a.)[14] The Democratic leadership's House Fair

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[13] All three plans were precleared by USDOJ on November 1, 2011. *Dickson v. Rucho*, 737 S.E.2d 362, 365 (N.C. 2013).

[14] While the amount of TBVAP needed to create an "influence" district is not certain, Respondents are referring to districts in the alternative plans that were not majority-minority coalition districts but included TBVAP of at least 30%.

and Legal Plan proposed nine majority-TBVAP districts, fifteen majority-minority coalition districts, and at least four influence districts. (Resp. App. 124a-125a, 138a-139a) The LBC's Possible House District Plan proposed ten majority-TBVAP districts, fourteen majority-minority coalition districts, and at least four influence districts. (Resp. App. 126a-127a, 138a-139a)

The alternative 2011 senate plans followed a similar pattern. The 2011 SCSJ Senate Plan proposed five majority-black districts, four majority-minority coalition districts, and at least two influence districts. (Pet. App. 119a; Resp. App. 97a, 132a-133a) The 2011 Democratic leadership Senate Plan proposed zero majority-black districts, nine majority-minority coalition districts, and two to three influence districts. (Pet. App. 119a; Resp. App. 98a, 132a-133a) The 2011 LBC's senate plan proposed zero majority-black districts, nine majority-minority coalition districts, and at least two to three influence districts. (Pet. App. 119a; Resp. App. 99a, 132a-133a)

All three sets of alternative legislative plans proposed districts with higher black TBVAP than the percentage of TBVAP in corresponding 2003 districts. (Resp. App. 71a, 72a) For example, the SCSJ Senate Plan increased the TBVAP in all seven senate districts that were won by a black incumbent in 2010. (Resp. App. 71a, 94a-95a, 97a) For two districts, the SCSJ Plan proposed increases of TBVAP that were higher than the percentage of TBVAP included in the 2011 enacted Senate districts, including Senate District 40. (Resp. App.

71a)[15] The 2011 SCSJ House Plan proposed seven house districts with a higher TBVAP than the percentage found in both the 2003 House Plan and the 2011 enacted House Districts despite prior success by black incumbents in these districts. (Resp. App. 72a, 101a, 102a)

Supporters of the alternative plans never explained why they increased the percentage of TBVAP in some of the districts that elected black incumbents in the past but not in other districts; how they arrived at the percentage TBVAP to include in any of their majority-black, majority-minority coalition, or influence districts; or how they determined their proposed numbers of majority-TBVAP, majority-minority coalition, or influence districts.

**Petitioners' Examples of Legislative Districts Enacted in 2011**

In their Petition, Petitioners cite "[a] few examples" of districts from the 2011 redistricting plans as evidence of the "impact" of Respondents' compliance with this Court's precedents. Respondents address these examples below and provide a more complete context as recognized by and adopted in the trial court's findings of fact.

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[15] Under the 2003 Senate Plan, District 40 was a coalition district with a TBVAP of 35.42%. Despite the past success of the black candidate in this district, the 2011 SCSJ Plan proposed that the TBVAP for this district be increased to 52.06%. (Pet. App. 273a-274a, 276a; Resp. App. 97a)

**Senate District 14**

In 2003 and 2011, Senate District 14 was located in Wake County. The TBVAP for this 2003 district under the 2010 Census was 42.62%. This was increased to 51.28% in the enacted 2011 District 14. (Resp. App. 71a)

During the redistricting process, two expert witnesses provided testimony concerning racially polarized voting. The NC NAACP Petitioners presented one of these experts. (Pet. App. 194a-200a) Both experts opined that statistically significant racially polarized voting was present in Wake County. (Pet. App. 220a-221a)

Despite past electoral success by black incumbents in this district, the SCSJ Senate Plan recommended that District 14 be increased from 42.62% to 48.05% TBVAP and that blacks constitute a majority of the registered voters. (Resp. App. 71a) Both the Democratic leadership and LBC Plans recommended that this district be drawn as a majority-minority coalition district, as it had been established under the 2003 Senate Plan. (Pet. App. 220a, 262a-264a)

Petitioners fail to note that the 2003 House Plan and all three alternative House Plans proposed that a majority-black House District (House District 33), be located in a portion of the same general area in which Senate District 14 was located in 2003 and all 2011 versions. (Pet. App. 220a, 221a, 264a; Resp. App. 5a-14a) Nor do Petitioners disclose that blacks constituted supermajorities of all registered

Democrats in both the 2003 version of Senate District 14 and all three of the 2011 alternative versions. (Pet. App. 263a-264a)[16]

Petitioners correctly state that a black candidate was elected in the 2003 version of Senate District 14 in 2004, 2006, 2008, and 2010. However, Petitioners fail to reveal that under the 2010 Census, the 2003 version of Senate District 14 was overpopulated by 41,804 persons, and that the margin of victory for the black candidates from 2004 through 2010 was less than the number of persons by which the district was overpopulated. Petitioners also do not mention that in each of the past elections, the black candidate raised and expended substantially more campaign funds than the losing Republican challenger. (Pet. App. 264a-265a)

**Senate District 21**

Under the decisions in *Stephenson I* and *II*, North Carolina's WCP creates a formula for the creation of legislative districts. The State's first requirement is to create districts reasonably needed to protect the State from liability under the Voting Rights Act or "VRA" districts. *Dickson*, 766 S.E.2d. 238, 258 (N.C. 2014) (*citing Stephenson I*, 562 S.E.2d

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[16] Prior to *Strickland*, at least one Justice had opined that a state could create "effective" majority-minority districts by creating supermajorities of registered black Democrats in districts that were controlled by the Democratic Party. *LULAC*, 548 U.S. at 485-86 (Souter, J., concurring in part and dissenting in part). The 2003 legislative plans and all of the 2011 alternative proposals appear to follow this theory of compliance with Section 2. (Resp. App. 111a-112a, 114a, 115a, 116a, 117a-118a, 122a-123a, 124a-125a, 126a-127a)

at 396-97).[17] Next, in forming non-VRA districts, when a county has a sufficient population for one or more districts, all of those districts must be drawn within that county. *Id.* at 258. Thereafter, population pools for one or more districts must be created "by minimizing the number of counties contained within each multi-county grouping." *Id.* at 259. Thus, under the WCP, a "proper plan maximizes the number of possible two-county groupings before going on to create three-county groupings, maximizes the number of possible three-county groupings before creating four-county groupings, and so forth." *Id.*

Because of the *Stephenson* county-grouping formula, a comparison of the 2003 version of District 21 to the 2011 enacted version is irrelevant and misleading. The 2003 version of District 21 was in a two-county group of Cumberland and Bladen Counties. In contrast, the 2011 enacted version is in a two-county group of Cumberland and Hoke Counties. (Resp. App. 5a, 6a)

The experts who testified during the redistricting process found statistically significant racially polarized voting in Cumberland County. One expert found the existence of statistically significant racially polarized voting in Hoke County. (Pet. App. 227a)[18]

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[17] In *Stephenson I*, the Court stated that VRA districts should also comply with the other elements of the WCP formula "to the maximum extent practicable." 562 S.E.2d at 396.

[18] The expert provided by the NC NAACP only studied legislative or congressional races involving black candidates. His report did not provide any information on counties in eastern North Carolina, most of which were covered by Section

The 2003 version of Senate District 21 was a majority-minority coalition district. (Pet. App. 226a-227a) All 2011 versions of Senate District 21 were majority-black (2011 enacted version) or majority-minority coalition districts. (Pet. App. 227a-228a, 268a-269a) Petitioner NC NAACP proposed that the TBVAP in this district be increased from 44.93% (2003 Senate District 21) to 46.17% (SCSJ Senate District 21) despite the success of black candidates in past elections. (Resp. App. 71a, 94a-95a, 97a) Non-Hispanic whites constituted a minority of the population in the 2003 version and all of the 2011 alternatives. Blacks constituted a majority of the registered voters in the 2003 version and all of the 2011 alternatives. (Pet. App. 268a, 269a)

The 2003 House Plan established a majority-black house district in Cumberland County (House District 43) and all three alternative 2011 House Plans recommended that this district be reestablished as a majority-black district. The 2003 House Plan also established a second majority-minority coalition district in Cumberland County and all three alternative 2011 House plans also proposed a second majority-minority coalition district for Cumberland County. (Pet. App. 227a, 269a, 270a; Resp. App. 10a-14a)

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5, that had never before been included in a majority-black or majority-minority coalition districts, such as Hoke and Granville Counties (*See infra.* p. 26). The General Assembly engaged a second expert to evaluate racially polarized voting in these counties as well as counties encompassed by the NC NAACP's experts' report. (Pet. App. 199a-200a)

Under the 2010 Census, the 2003 version of Senate District 21 was underpopulated by 26,593. (Pet. App. 270a) From 2006 through 2010, the margin of victory by the black candidate was less than the population deviation. (*Id.*) From 2004 through 2010, the black candidate raised and spent more campaign funds than the white challenger. (Pet. App. 270a-271a)

**Senate District 20**

In 2003, Senate District 20 was located in a three-county group consisting of Durham, Chatham, and Lee Counties. Because of the *Stephenson* county combination formula, under the 2010 Census the 2011 enacted version of Senate District 20 was located in a two-county combination consisting of Durham and Granville Counties. (Resp. App. 5a, 6a)

The experts who testified during the redistricting process found statistically significant racially polarized voting in Durham County. One expert also found statistically significant racially polarized voting in Granville County. (Pet. App. 225a)[19]

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[19] Petitioners rely upon the finding in *Gingles* that the plaintiffs in that case had failed to prove that racially polarized voting was present in a multimember house district located in Durham County (House District 23). The trial court made findings of fact to address this Court's ruling regarding Durham County. (Pet. App. 222a-224a) The trial court found that this same multimember district (House District 23) had been cited by the North Carolina Supreme Court in *Pender County* as the example of a district where a black candidate had been elected in a district with a black VAP of only 38.57%. However, the trial court also found that patterns of racially polarized voting in a

All versions of Senate District 20 (2003, 2011, SCSJ, Fair and Legal, and LBC) were either majority-black (2011 enacted version) or majority-minority coalition districts. (Pet. App. 224a, 225a, 266a) Whites constituted a minority of both the VAP and registered voters under the 2003 version and in all three 2011 alternative versions. (Pet. App. 266a-267a) The 2011 SCSJ House Plan proposed the creation of a majority-black House district (House District 31), located in portions of the same area encompassed by the enacted 2011 Senate District 20. (Pet. App. 267a; Resp. App. 12a) All three 2011 alternative House plans, as well as the 2003 House plan, included two House Districts in Durham County that were either majority black or majority-minority coalition districts. (Pet. App. 225a; Resp. App. 10a-14a) From 2004 through 2010, the black candidate for Senate District 20 was opposed by white candidates who did not raise enough money to be required to file campaign disclosure reports. (Pet. App. 267a-268a)

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multimember district such as the 1980s and 1992 versions of House District 23 are different than single-member districts. As found by the trial court, blacks can be elected in a multimember district because of single shot voting (a practice where black voters vote only for their candidate of choice as opposed to multiple candidates in a multimember district). *See also Gingles*, 478 U.S. at 38 n. 5, 57. Because of this distinction, the trial court found that a finding in *Gingles* that the facts there did not show legally significant polarized voting in a 1980s multimember district "does not preclude a strong basis in evidence of racially polarized voting in Durham County as related to single-member districts."

**Trial Court Opinion**

The trial court panel consisted of three Superior Court Judges appointed to hear the case by the Chief Justice of North Carolina.[20] The unanimous decision was rendered by judges from "different geographic regions and with differing ideological and political outlooks." (Pet. App. 93a)

During the week of February 25, 2013, the trial court conducted hearings on cross-motions for summary judgment. Prior to ruling on these motions, on May 13, 2013, the trial court ordered that a trial be held on only two issues:

(A) Assuming application of a strict scrutiny standard and, in considering whether the Enacted Plans were narrowly tailored, was each challenged Voting Rights Act ("VRA") district drawn in a place where a remedy or potential remedy for racially polarized voting was reasonable for purposes of preclearance or protection of the State from vote dilution claims under the Constitution or under § 2 of the VRA" and;

(B) For six specific districts (Senate Districts 31 and 32, House

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[20] By statute, the Chief Justice is required to appoint a three-judge panel to hear any state court redistricting lawsuits. N.C. Gen. Stat. § 1-267.1.

> Districts 51 and 54 and Congressional Districts 4 and 12 – none of which is identified as a VRA district), what was the predominant factor in the drawing of these districts.

(Pet. App. 95a n. 6)

The trial court found that Petitioners had challenged a total of 30 districts (9 Senate, 18 House, and 3 Congressional) on the grounds of racial gerrymandering. (Pet. App. 104a n. 9) Twenty-six of these districts were created by North Carolina for the purpose of avoiding VRA claims. The trial court found that four other districts challenged by Petitioners were not created by North Carolina for that purpose. (Pet. App. 104a n. 10)

Without holding a trial on whether race was the predominant motive for the location of the challenged VRA district lines, the trial court summarily found that North Carolina's 2011 VRA districts were subject to strict scrutiny. The sole basis for this ruling was the statement by the Chairs of the Joint Redistricting Committee that substantial proportionality was one of the factors they would consider in legislative redistricting. (Pet. App. 104a) The trial court gave no reasoning in support of its decision to subject the 2011 First Congressional District to strict scrutiny.[21] The

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[21] The trial court admitted that "a persuasive argument can be made that compliance with the VRA [was] but one of several competing redistricting criteria balanced by the General Assembly and that a lesser standard of review might

three-judge court then upheld all of the challenged VRA districts as having a strong basis in the legislative record for their creation as VRA districts. (Pet. App. 107a-146a)

The trial court entered extensive findings of fact supporting this conclusion. These included general findings applicable to all of the challenged districts (Pet. App. 189a-207a) as well as detailed findings related to each challenged VRA district (Pet. App. 208a-300a). The trial court also held that petitioners had failed to prove that districts they supported were any more "geographically compact" than any of the enacted districts and that Petitioners had therefore failed to prove that the enacted districts violated any "compactness" requirement under federal or state law. (Pet. App. 164a-179a)

The trial court concluded that race was not the predominant motive for the location of district lines established for Senate District 32, House District 54, and Congressional Districts 4 and 12 (Pet. App. 147a-151a) and entered extensive findings of fact in support of this conclusion. (Pet. App. 302a-315a) The trial court rejected all of Petitioners' other claims including their contention that the 2011

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be appropriate." (Pet. App. 106a) (citing *Vera v. Bush*, 517 U.S. 952, 958 (1996); *Wilkins v. West*, 264 Va. 447 (2002)). Despite these arguments, the trial court elected to apply strict scrutiny to the challenged VRA districts because "if the Enacted Plans are found to be lawful under a strict scrutiny standard of review, and the evidence considered in a light most favorable to the Plaintiffs, then, *a fortiori*, the Enacted Plans would necessarily withstand review, and therefore be lawful, if a lesser standard of review is indeed warranted . . . ." (Pet. App. 106a)

Senate and House Plans failed to comply with the State's WCP. (Pet. App. 152a-163a)

**Opinion by the North Carolina Supreme Court**

On appeal, the North Carolina Supreme Court affirmed the decision by the trial court. The North Carolina Supreme Court affirmed the trial court's ruling that the enacted Senate and House Plans complied with the *Stephenson* county-grouping formula and that Petitioners' alternative Senate and House plans did not. *Dickson v. Rucho*, 766 S.E.2d 238, 254-55 (N.C. 2014). The North Carolina Supreme Court held that the trial court erred by applying strict scrutiny to the challenged VRA districts because the issue of racial motivation is not appropriate for summary resolution. *Id.* at 246-47. However, the Court found this error to be harmless based upon its decision to affirm the trial court's findings that the challenged VRA districts survived strict scrutiny. *Id.* The North Carolina Supreme Court also affirmed the trial court's conclusion that race was not the predominant motive for the location of the district lines of Senate District 32, House District 54, and Congressional Districts 4 and 12. *Id.* at 256-57.

## ARGUMENT

### 1. Petitioners have not shown how the North Carolina courts failed to follow precedent set by this Court in cases involving Section 2 or alleged racial gerrymandering.

During the redistricting process, the Redistricting Chairs explained that redistricting plans must follow the criteria established in *Stephenson I* and *II* (legislative plans) and all applicable federal criteria established in *Gingles*, *Shaw I* and *II*, *Cromartie I* and *II*, *De Grandy*, *Pender County, Strickland*, and many other decisions which were cited in the Legislator's Guide or in statements by the Chairs. The trial court and the North Carolina Supreme Court found that the legislative and congressional plans complied with the criteria established by these decisions. Petitioners have failed to show that the legal standards adopted by the General Assembly and the North Carolina courts fail to follow any of the relevant decisions by this Court or how the decisions below conflict with any other decision by another federal circuit or state supreme court.[22]

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[22] Petitioners cite only one reported case to support their argument that the decisions below create a split of authority that would warrant a writ of *certiorari*. *Page v. Virginia State Bd. of Elections*, No. 3:13cv678, 2014 U.S. Dist. Lexis 142971 (E.D. Va. Oct. 7, 2014) (Three Judge Court). This decision is distinguishable on several grounds. Unlike the record in this case, in *Page* there was no evidence in the legislative record that Virginia had relied upon any expert testimony on the issue of racially polarized voting. Second, the issue of racial predominance was only determined following a trial on the

Petitioners argue erroneously that the North Carolina Supreme Court held that the "explicit" use of race might not trigger strict scrutiny and it is therefore in conflict with other non-redistricting decisions by this Court. In truth, the North Carolina Supreme Court merely held that the trial court had erred in applying strict scrutiny without having a trial on the issue of whether race was the predominant motive for the location of any of the specific district lines. In so holding, the North Carolina Supreme Court was following this Court's decision in *Cromartie I*, that the issue of racial motivation can rarely, if ever, be decided against the state by way of summary judgment. *Cromartie I*, 526 U.S. at 553 n. 9.

Moreover, contrary to Petitioners' assertions, North Carolina has never conceded that race was the predominant motive for any of the challenged VRA districts. The trial court's holding that race predominated in the creation of all VRA districts was based solely on the statement by the Redistricting Chairs that they would consider plans that provided rough proportionality to North Carolina's black voters. The trial court's ruling must be considered in the context of the decisions by this Court that "proportionality" is one of the factors to be considered in the totality of circumstances test under Section 2. 52 U.S.C. § 10303; *LULAC*, 548 U.S. at 426; *De Grandy*, 512 U.S. at 1000, 1014 n. 11; *Strickland*, 556 U.S. at 28-30 (Souter, J., *concurring*

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merits and not summarily resolved as was the case here. Finally, there was no evidence that the congressional district in *Page* was drawn pursuant to neutral state criteria similar to North Carolina's WCP.

*in part and dissenting in part*).[23] The fact that the General Assembly considered proportionality cannot possibly be evidence of racial predominance given this Court's endorsement of proportionality as a legitimate redistricting criteria. *Id.*

Regardless, North Carolina argued below that compliance with its state constitutional requirements was the predominant motive for all of the districts established by its legislative plans. Neutral state redistricting criteria can defeat a claim of racial gerrymandering. *Shaw I*, 509 U.S. at 647. North Carolina also argued that politics played a significant role in the creation of legislative VRA districts, one Congressional VRA district (District 1), and one Congressional district that was not established to protect the State from Section 2 liability (District 12). *Cromartie II*, *supra.* North Carolina further argued that Congressional Districts 1 and 12 were based upon their prior versions. The Redistricting Chairs also explained that a portion of North Carolina's Research Triangle area (Durham County) was included in the First Congressional District with the hope that this district would not be as substantially underpopulated in 2021 as it was in 2011. All of these factors are legitimate and traditional redistricting criteria. *Shaw I*, 509 U.S. at 647. Thus, in finding that the trial court erred in

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[23] Proportionality, as defined by this Court, answers "whether the number of districts in which a minority group forms an effective majority is roughly proportional to its share of the population in the relevant area." *LULAC*, 548 U.S. at 426. It does not mean that North Carolina attempted to ensure proportional representation to black voters as incorrectly argued by Petitioners.

summarily finding racial predominance, the North Carolina Supreme Court followed the precedent by this Court that the State was entitled to a trial on racial predominance as applied to each challenged VRA district. The North Carolina Supreme Court never held that the "explicit" use of race might not trigger strict scrutiny.

Petitioners also do not explain how North Carolina failed to follow criteria established by Congress in the 2006 reauthorized version of Section 5 or any decisions by this Court concerning the percentage of TBVAP that should be included in a district designed to protect the State from Section 2 liability. Nor have Petitioners explained how the number of VRA districts created by North Carolina violated any precedent set by this Court. In *Strickland*, the Court cautioned that states should not draw "district lines in order to destroy effective crossover districts," but there is no evidence that North Carolina engaged in this conduct. There is scant evidence of black candidates regularly being elected from crossover districts in North Carolina and the findings by the trial court show that the two black legislative incumbents who were defeated in 2010 stood for election in districts that were majority-white.

Petitioners' arguments also suffer from a failure of proof. In redistricting cases, plaintiffs are typically required to prove the illegality of a challenged plan by reference to evidence of a lawful redistricting plan. *De Grandy*, 512 U.S. at 1008; *Cromartie II*, 532 U.S. at 258. Petitioners have failed to carry this burden because none of their

proposed plans comply with North Carolina's neutral state redistricting criteria established by the WCP. *Dickson*, 766 S.E.2d at 257-60.

Nor have Petitioners provided any information during the redistricting process or this litigation that explains how their alternative plans arrived at the percentage of TBVAP included in their proposed VRA districts, why they increased the percentage of TBVAP in some of their VRA districts and not others without regard to past electoral success of black candidates, or how they arrived at the number of their proposed majority-black, majority-minority coalition, or influence districts. Petitioners have not explained how North Carolina failed to comply with criteria established by the Congress or this Court. Nor have they identified a case from this Court that supports their ambiguous and judicially unmanageable formulas for protecting the State from liability under the Voting Rights Act.

**2. North Carolina had a strong basis in evidence to support the creation of Section 2 districts.**

While proportionality may provide a defense to claims of vote dilution, North Carolina has never argued that proportionality provides a defense to a claim that a specific district constitutes an illegal racial gerrymander. However, even assuming that race was the predominant motive for any of North Carolina's VRA districts, the trial court's extensive findings of fact more than show a strong basis in evidence in support of all of them. (Pet. App. 193a) The trial court's findings related to the First

Congressional District are illustrative of the factual findings related to other challenged VRA districts.

In its general findings of fact, the trial court noted that in *Gingles* this Court imposed majority-black districts as a remedy for Section 2 violations in numerous North Carolina counties. During the legislative process, the Redistricting Chairs were advised by North Carolina's School of Government that North Carolina remained obligated to maintain effective voting majorities for African-Americans in these counties. (Pet. App. 189a-190a) Similarly, the trial court found that under the decision by the district court in *Cromartie II*, legally significant racially polarized voting had been found present in all of the counties that were included in the 1997 version of the First Congressional District and that the 1997 First Congressional District was reasonably necessary to protect the State from vote dilution claims. (Pet. App. 192a-193a)

During the legislative process, the NC NAACP's expert witness provided testimony that statistically significant levels of racially polarized voting could be found in 54 elections between black and white candidates for North Carolina legislative or congressional elections from 2006 through 2010. This report was supplemented by an expert retained by the State who found statistically significant levels of racially polarized voting in other black-white elections in 51 counties in North Carolina. (Pet. App. 194a-200a) At no time during the legislative process did any legislator, witness, or expert witness question the findings by these two experts. (Pet. App. 200a) This expert testimony was supplemented

by a law review article authored by Petitioners' counsel. The law review article demonstrated evidence of racially polarized voting as alleged or established in voting rights lawsuits filed in many of the counties in which 2011 VRA districts were enacted. (Pet. App. 200a-201a)

During the public hearing process, many witnesses testified about the continuing presence of racially polarized voting, the continuing need for majority-minority districts and the continued existence of the *Gingles* factors used to judge the totality of the circumstances. Not a single witness testified that racial polarization had vanished statewide or in any of the areas where the General Assembly had enacted past VRA districts. (Pet. App. 200a-206a) A prominent leader of the African-American community in Durham, North Carolina, urged that the State provide proportionality to African-Americans in the number of districts that would give them an equal opportunity to elect their candidates of choice. (Pet. App. 203a) Other witnesses urged the creation of new majority-minority districts and that districts designed to elect candidates of choice should be created with true majorities of African-Americans. (Pet. App. 203a-205a)

The trial court then made specific findings of fact related to all of the challenged VRA districts including the First Congressional District. The trial court identified all of the counties included in the 2011 enacted district that were also included in the VRA districts affirmed in *Gingles* and *Cromartie*. (Pet. App. 208a-209a) The trial court then found

those counties in the 2011 First Congressional District that were included in majority-black or majority-minority coalition districts under the 2001 Congressional and 2003 Legislative Plans, as well as those counties covered by Section 5. (Pet. App. 209a-210a)

The trial court also made a finding on the number of counties in the 2011 enacted First Congressional District in which one or both experts found statistically significant levels of racially polarized voting. (Pet. App. 210a-211a) Finally, the trial court found that all three 2011 alternative legislative plans and the two alternative Congressional Plans proposed the creation of majority-black or majority-minority coalition districts in all of the counties encompassed by the 2011 enacted First Congressional District. (Pet. App. 211a-212a)

The trial court also made findings of fact related to this Court's holding in *Strickland* explaining the practical considerations served by the majority-minority standard for Section 2 districts. This Court found "support for the majority-minority requirement in the need for workable standards and sound judicial and legislative administration." *Strickland*, 556 U.S. at 17. The bright line established by a majority-minority rule also addresses difficult questions about the type of white voters who would need to be added or subtracted during the redistricting of underpopulated or overpopulated districts. Moreover, a majority-minority rule alleviates questions regarding the power of incumbency in past elections. *Id.* at 17.

The trial court followed these principles in making several findings of fact that have not been challenged or deemed clearly erroneous. For example, the trial court found that the 2001 First Congressional District was underpopulated by 97,563 people. In two prior elections, the margin of victory for the black candidate was well below the number of people by which the districts were underpopulated. (Pet. App. 297a) In all contested elections in these districts from 2004 through 2010, the black incumbent substantially outraised and spent more campaign funds than his white opponent. (Pet. App. 297a-298a) Thus, the majority-minority rule relieved North Carolina of making difficult, if not impossible, judgments concerning the type of white voters that needed to be added back into the 2011 First District, as well as the impact of incumbency on prior elections. *Strickland*, *supra.*

Similar specific findings of fact were made by the trial court for all of the other challenged VRA districts. (Pet. App. 208a-300a; *supra* at pp. 20-27) Petitioners have failed to challenge these findings or explain how they are clearly erroneous.

**3. In finding that race was not the predominant motive for the creation of Congressional District 12, Senate District 32, and House District 54, the lower courts followed precedent set by this Court.**

The trial court conducted a trial to consider evidence related to Petitioners' claim that race was

the predominant motive for the district lines of Congressional Districts 4 and 12, Senate District 32, and House District 54.[24] The trial court made extensive findings of fact regarding all four of these districts. (Pet. App. 302a-315a). These findings were affirmed by the North Carolina Supreme Court. Petitioners have failed to explain how the state courts below failed to follow this Court's applicable precedent, or how the findings of fact related to each of these districts are clearly erroneous.

The trial court's factual findings regarding the Twelfth Congressional District are illustrative and demonstrate that race was not the predominant factor for any of these districts. The 2011 version of the Twelfth District is located in the same area as the 1997 version which was upheld by the court in *Cromartie II*. (Pet. App. 303a) In 2011, North Carolina's Congressional map drawer was instructed to follow the legal standard approved in *Cromartie II* and that the Twelfth District be retained as a safe Democratic district. (Pet. App. 303a) The Redistricting Chairs instructed the map drawer to increase the number of Democratic voters in the 2011 version as compared to the 2001 version, so that congressional districts that adjoin the 2011 version would be more competitive for Republican candidates as compared to congressional districts that adjoined the 2001 versions. (Pet. App. 303a)

The 2011 version of the Twelfth District is located in the same six counties as the 2001 version.

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[24] Petitioners do not appear to have sought *certiorari* on the findings by the lower courts that the 2011 enacted Fourth Congressional District was not an illegal racial gerrymander.

The 1997, 2001, and 2011 versions are all based upon urban populations located in Mecklenburg, Guilford, and Forsyth Counties. These urban areas are connected by more narrow corridors located in Cabarrus, Rowan, and Davison counties. The principal differences between the 2001 version and the 2011 version is that the 2011 version adds strong Democratic voters located in Mecklenburg and Guilford counties and removes Republican voters formerly assigned to the 2001 version located in the corridor counties and other locations. (Pet. App. 304a)

The 2011 Twelfth Congressional District is based upon whole vote tabulation districts ("VTD") in which President Obama received the highest totals during the 2008 Presidential Election.[25] The only information relied upon by the map drawer was the percentage by which President Obama won or lost a particular VTD. There was no racial data used by the map drawer to construct this district. (Pet. App. 304a-305a)

The 2011 Twelfth Congressional District includes 179 VTDs. Only six were divided in forming this district. All divisions were made to equalize population or for political reasons, such as dividing a VTD so that an incumbent could continue to reside in the 2011 version. None of the divisions considered the racial composition of these VTDs. (Pet. App. 305a)

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[25] For purposes of this case, a VTD is essentially equivalent to a precinct. (Pet. App. 179a)

By increasing the number of Democratic voters in the 2011 Twelfth Congressional District, the 2011 Congressional Plan created at least four other districts that were more competitive for Republicans under the 2011 plan as compared to the 2001 plan. (Pet. App. 305a; see also Resp. App. 42a-43a)

## CONCLUSION

For the foregoing reasons, Petitioners' petition for a writ of *certiorari* should be denied.

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