

EX. 17

NORTH CAROLINA GENERAL ASSEMBLY
SENATE COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS
AUGUST 24, 2017 SESSION

In Raleigh, North Carolina
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Reported by Rebecca P. Scott

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1 SEN. HISE: The Committee will come to
2 order. Thank you, members of the Committee and
3 members of the public that are here today. Very
4 briefly, I'll begin by going through the Sergeant
5 at Arms for the Senate for this meeting of the
6 Senate Redistricting Committee. Terry Barnhardt,
7 Terry Edmondson, Frances Patterson, and Hal Roach.
8 Thank you.

9 And we do have one page with us today,
10 Tanner Minton. Right here. Thank you very much
11 for coming here and being part of this today.

12 Members, we will have one bill before us
13 today. That is Senate Bill 691, the 2017 Senate
14 Districts. I will be presenting that in just a
15 moment and will hand the gavel over to Senator
16 Brown to conduct the meeting while I present.

17 But just a few rules. I am going to ask,
18 kind of particularly regarding the complex nature
19 of amendments and others to this particular bill,
20 if members are wishing to amend the particular
21 bill, if you would send forth your amendments so
22 that we can begin to get those in order and in
23 place before we begin this process or while we're
24 in the presentation.

25 So that being said, I will turn the gavel

1 over for 691, and I do believe we have a PCS.

2 To let you-all know, while this is a
3 pretty standard procedure, I do want everyone to
4 note that we do have a court reporter here, so it
5 will be important that anytime you are recognized,
6 you would state your name for the record so that we
7 may adequately transcribe this for the proceedings.

8 SEN. BROWN: Thank you, Senator Hi se.
9 So, Senator Hi se, I'm going to turn it over to you
10 to present the bill.

11 SEN. HI SE: Thank you, Senator Brown.
12 And I guess I would begin by offering a PCS for
13 consideration.

14 SEN. BROWN: Okay. I need a motion for
15 the PCS. Senator Tillman makes that motion. All
16 in favor say aye.

17 (Voice vote.)

18 SEN. BROWN: Any opposed? The ayes have
19 it. Senator Hi se?

20 SEN. HI SE: Thank you, members of the
21 committee---

22 SEN. TILLMAN: Senator Brown, I'll take
23 that motion back. Let one of the official members
24 make that.

25 SEN. BROWN: Senator Tillman, are you

1 throwing us a curve? Since you're not on the
2 Committee, I should have caught that. I think
3 Senator Harrington made the same motion at the same
4 time.

5 SEN. TILLMAN: I heard her.

6 SEN. BROWN: So Senator Harrington makes
7 that motion. All in favor?

8 (Voice vote.)

9 SEN. BROWN: Any opposed? All right.
10 The motion carries. Senator Hise?

11 SEN. HISE: Thank you. I think all
12 members should have in front of them an overall
13 copy of the map as well as the stat-pack from the
14 Committee available for the map of the
15 redistricting. I'm going to take a few minutes and
16 go over the criteria of the Committee and a bit on
17 how the maps that are presented meet the criteria
18 that the committees for both the House and the
19 Senate established for drawing maps.

20 To begin with, I will begin with equal
21 population. The committees were required to use
22 the 2010 federal decennial Census data as the sole
23 basis of population for drawing legislative
24 districts in these plans. The number of persons in
25 each legislative district shall comply with the

1 plus or minus five percent population deviation
2 standard established in Stephenson versus Bartlett.

3 You'll see from the first page of the
4 stat-pack the total population for all 50 Senate
5 Districts under the 2010 Census. The most
6 overpopulated district is by 4.94 percent, Senate
7 District 8, which is composed of Bladen, Brunswick,
8 and Pender Counties in whole and a part of New
9 Hanover County. This district was not redrawn in
10 this process and was not affected by the court
11 order.

12 The most underpopulated district --
13 underpopulated district is Senate District 3. It
14 is underpopulated at negative 4.55 percent. It is
15 a district in the northeast which is composed of
16 whole counties including Vance, Warren,
17 Northampton, Bertie, Martin, and Beaufort Counties.
18 That is a six-county pod that under the Stephenson
19 decision would meet that criteria.

20 Contiguity, the second standard.
21 Legislative districts shall be comprised of
22 contiguous territory. Contiguity by water would be
23 sufficient. You will find that the legislative
24 districts -- you will find that the legislative
25 districts are meeting that legal criteria, and all

1 the districts are contiguous within the process.

2 Next county groupings and traverses. The
3 Committee shall draw legislative districts within
4 county groupings as required by Stephenson v.
5 Bartlett. Within county groupings shall not be --
6 within county groupings shall not be traversed
7 except as authorized by Stephenson I, Stephenson
8 II, Dickson I, and Dickson II. The rules for
9 county groupings were established in Stephenson I
10 and have been affirmed in later cases. The map
11 follows the county grouping formula listed several
12 weeks ago.

13 We have not received as a committee any
14 more optimal or alternative group plans. The map
15 does not traverse any county. More than once is
16 prohibited by Stephenson I, and though it requires
17 the formula announced -- does not require the
18 maximizing of keeping counties whole, you will see
19 that the map presented keeps 88 counties whole of
20 the 100 counties in North Carolina.

21 Just to briefly clarify on that, as the
22 hierarchy determined in the Stephenson's decision,
23 we must create all one-county groupings. There
24 existed only one, and that would have been in
25 Mecklenburg that was coming to the Senate. Then we

1 must create all possible two-county groupings, then
2 all possible three-county groupings. You cannot
3 sacrifice creating a three-county grouping for
4 later sacrificing having more four-county
5 groupings. So it is required for the smallest
6 number of counties to be formed within a district.

7 Standard number 4, compactness. The
8 Committee shall make reasonable efforts to draw
9 legislative districts in the 2017 House and Senate
10 plans that improve the compactness of current
11 districts. We established two guides for use for
12 determining that. The Reock dispersion and
13 Polsby-Popper scores which dealt with the
14 parameter. And so coming in, we set -- the
15 committee adopted as a guide for compactness
16 minimal score drawings for those.

17 For the Reock score, it was -- we have no
18 district lower than the .15 minimum threshold, and
19 then the---

20 SEN. BROWN: A lot of P's.

21 SEN. HISE: ---Pol sby-Popper score, the
22 minimum threshold adopted by the Committee of .05.
23 None of the districts you will find adopting this
24 were below those minimum standards. And this plan
25 improves on the compactness of the 2011 Senate plan

1 and fares historically well against any Senate
2 plans adopted by the legislature over the last few
3 decades.

4 Criteria number 5, fewer split precincts.
5 The Committee shall make reasonable efforts to draw
6 legislative district plans that split fewer
7 precincts than the current legislative
8 redistricting plans. Following public input urging
9 this Committee to split fewer precincts in the
10 drawing of these plans, the Committee chose to
11 adopt this as criteria.

12 The 2011 Senate plan split 257 precincts.
13 The plan you have before you now splits only nine
14 precincts. Two of those splits were retained in
15 New Hanover County because those districts were not
16 redrawn. Two splits are made to avoid the double-
17 bunking of incumbents. The other splits were
18 either made in a place that does not divide a
19 population so that while the precinct may be split
20 for compactness, there is no population in one side
21 or other of that division, or to follow a new
22 precinct line that has been established since 2011.

23 Criteria number 6, municipal boundaries.
24 The Committee may consider municipal boundaries
25 when drawing legislative districts in these plans.

1 Multiple members of the public asked the committee
2 to consider not dividing municipalities where
3 possible, and the Committee adopted that criteria.
4 This plan splits just 25 municipalities in North
5 Carolina in populations -- in places where there is
6 population or the city does not cross a county
7 line.

8 By any measure, the plan splits far fewer
9 counties than the one adopted in 2011. It fares
10 historically well against all Senate plans adopted
11 by the General Assembly over the last two decades,
12 especially in light of the annexation done by
13 municipalities over that time frame and does not
14 always follow -- that does not always follow county
15 boundaries.

16 Number 7, incumbency protection.
17 Reasonable efforts and political considerations may
18 be used to avoid pairing incumbent members of the
19 House or Senate with another incumbent in the
20 legislative districts in the 2017 House and Senate
21 plans. The Committee may make reasonable efforts
22 to ensure voters have a reasonable opportunity to
23 select -- to elect nonpaired incumbents of each
24 party to a district in the 2017 Senate plans. The
25 Committee adopted criteria pledging to make

1 reasonable efforts not to double-bunk incumbents.

2 The map does double-bunk eight members.
3 Three pairs of Republicans and one cross-party
4 pair. Senator Randleman and Senator Ballard
5 were -- were double-bunked by necessity within
6 their county grouping. Senator Krawiec and
7 incoming Senator Barrett were potentially
8 double-bunked by the necessity with their county
9 groups.

10 Senator Alexander and Senator Barefoot
11 were double-bunked in Wake County, but Senator
12 Barefoot has already announced that he does not
13 intend to seek reelection. And Senator Smith-
14 Ingram and Senator Cook were double-bunked by
15 necessity as well within their county groups.

16 Criteria number 8, election data.
17 Political considerations and election data may be
18 used in the drawing of legislative districts in the
19 2017 House and Senate plans. For this purpose, we
20 selected ten races from 2010 to 2016. The 2010 US
21 Senate race, 2012 Presidential, Governor, and
22 Lieutenant Governor race, the 2014 Senate race, and
23 the 2016 President, US Senate, Governor, Lieutenant
24 Governor, and Attorney General races. So you
25 should have information on each of those in your

1 stat-pack.

2 Criteria number 9, no consideration of
3 racial data. Data identifying the race of
4 individuals or voters shall not be used in the
5 drawing of legislative districts in the 2017 House
6 and Senate maps. In the drawing of these maps in
7 the Senate, we did not consider race of individuals
8 in the drawing of the maps or the assignment of
9 voters to a particular district.

10 In 2011, 40 counties in the state were
11 under the preclearance standards under Section 5 of
12 the Voting Rights Act. In the intervening time,
13 that preclearance from the Justice Department has
14 been lifted by a Supreme Court decision. It will
15 not be incumbent upon this General Assembly to seek
16 preclearance for these plans.

17 In the drawing of the current legislative
18 districts, the General Assembly conducted an
19 unprecedented effort to reach out to interested
20 parties, receive public input, receive expert
21 testimony, and hear from members of the body about
22 legally relevant evidence regarding the drawing of
23 districts under the Voting Rights Act.

24 Despite a voluminous record that was
25 established by the General Assembly during the 2011

1 redistricting process, the three-judge panel in the
2 Covington case said that this did not constitute
3 substantial evidence that would justify using race
4 to draw districts in compliance with the
5 requirements of the Voting Rights Act. Therefore,
6 we do not believe it is appropriate, given this
7 Court's order in this case, for the Committee to
8 consider race when drawing districts.

9 We have asked on multiple occasions and
10 will continue to ask this Committee for any legal
11 significant evidence of racially polarized voting
12 that this Committee should consider in this
13 process. We have received none to date, but we
14 remain open to receiving that information from any
15 members who wish to submit such.

16 Members have in front of us now -- that
17 is the picture of the maps as they currently exist.
18 Obviously, you have a larger version sitting in
19 front of you. With that being said, I will open up
20 for any discussions. I would reiterate that if we
21 could please receive any amendments that you would
22 have to expedite this process.

23 SEN. BROWN: All right. Questions for
24 Senator Hise? Senator Clark?

25 SEN. CLARK: Thank you, Mr. Chairman.

1 Senator Hi se, you brief the various compactness
2 measures in terms of the limitations. Could you
3 bring that back up for us?

4 SEN. HI SE: I can try. That's a
5 technology request.

6 SEN. CLARK: Those. Go back. Yeah. I
7 don't recall having seen those before. Were they
8 presented at a previous committee meeting? I must
9 have missed that.

10 SEN. HI SE: These are the standards, and
11 I think we have some of that literature, if we
12 can -- if you need copies of it, that have
13 established these as the minimum standards for
14 using these criteria.

15 SEN. CLARK: Were they approved by the
16 Committee?

17 SEN. HI SE: They were presented to the
18 Committee in that process as the use of those
19 scores, and as in many other things, the score has
20 a .05 value. These are the standards for using
21 those criteria.

22 SEN. CLARK: Could I receive a copy of
23 those? I don't recall going over that or even
24 having been provided a copy.

25 SEN. BROWN: We'll get you a copy of

1 that, Senator Clark. Other questions? Senator
2 Blue?

3 SEN. BLUE: So a question, yes, Senator
4 Hi se. The criteria said you may use, so it is your
5 statement that you used this compactness standard
6 on all the districts?

7 SEN. HI SE: All of the districts meet the
8 .05 and .15 levels of the two tests.

9 SEN. BLUE: I'm sorry. I didn't
10 understand that.

11 SEN. HI SE: All of the districts in the
12 Senate are above the standards of .05 or .15
13 established by the test.

14 SEN. BROWN: Follow-up, Senator Blue?

15 SEN. BLUE: Yeah. Did you at any point
16 in drawing these districts, or the map drawer,
17 determine what the Court was looking for when it
18 said that certain districts were racially
19 discriminatory and how you would cure that remedy?

20 SEN. HI SE: What we have received, and I
21 would state it in this manner, is that we received
22 from the Courts that race was overutilized in the
23 drawing of districts, standards that we had
24 previously presented, as well as having a target
25 race. So we have in this case, given the changes

1 in the Voting Rights Act or others, we have not
2 drawn this with any consideration of race. So,
3 therefore, we did not overutilized race in the
4 drawing of the maps.

5 SEN. BROWN: Follow-up?

6 SEN. BLUE: Follow-up. So it's your
7 considered opinion that the Court did not want you
8 to look at race in order to cure what it had
9 determined to be a racially discriminatory scheme?

10 SEN. HISE: In my determination, the
11 Court said that we had overutilized race
12 previously. In this version of the maps, we did
13 not utilize race at all.

14 SEN. BLUE: Follow-up?

15 SEN. BROWN: Follow-up.

16 SEN. BLUE: I just want to make sure.
17 It's your interpretation of the Court's opinion
18 that you don't need to use race in order to
19 determine that you've remedied a violation that
20 they said was based on race?

21 SEN. HISE: I would again say that the
22 Court had determined previously that we
23 overutilized race. That was the finding of the
24 Court, and their remedy in redrawing it to us is
25 that at this point, we have not utilized race at

1 all.

2 SEN. BROWN: Senator Blue?

3 SEN. BLUE: Since my district in Wake
4 County was one of those that the Court determined
5 you used race to too great of a degree, did you
6 look any way at all in simply reducing the racial
7 percentage of the existing districts as a cure for
8 the gerrymander rather than radically changing
9 districts?

10 SEN. HISE: We did not -- we did look at
11 any statistics regarding race in the development of
12 these maps.

13 SEN. BROWN: Follow-up?

14 SEN. BLUE: In formulating the plan to
15 draw new districts to cure the gerrymanders, what
16 made you determine to totally reconstitute several
17 of the existing districts?

18 SEN. HISE: We were given by the Courts,
19 I believe, nine districts in the Senate in which we
20 had overutilized race. We were also given
21 directive by the Courts as a whole that -- against
22 setting a particular target for race in that
23 process, and so the remedy that the Committee
24 adopted to deal with that was to not consider race
25 at all. Therefore, it would not be claimed that we

1 somehow overutilized race when we did not use race
2 at all.

3 SEN. BROWN: Senator Clark?

4 SEN. CLARK: Thank you, Mr. Chairman.
5 Senator Hise, in our criteria regarding
6 compactness, we did state very clearly here that
7 one of our objectives was to make sure that the
8 compactness values were improved as we moved from
9 the enacted plan as we moved to the proposal. Why
10 is it that some of the compactness scores of some
11 of the existing districts -- why did they not
12 improve?

13 SEN. HISE: I believe you'll find that
14 the compactness scores as a whole improved and that
15 each individual district meets the standards of
16 compactness.

17 SEN. BROWN: Follow-up?

18 SEN. CLARK: We were not provided those
19 individual standards of compactness of all of the
20 districts. Although as a whole, some of the values
21 may have improved, but some of the districts
22 themselves, the compactness values did not improve,
23 and I want to understand why that was the case.

24 May I make a comment?

25 SEN. BROWN: Senator Clark, go ahead.

1 SEN. CLARK: The criteria, as put here
2 before us in the paper and was approved by the
3 Committee, says the plan should be there to improve
4 the compactness the current districts. We did not
5 improve the compactness all the current districts.

6 SEN. HISE: We did improve the
7 compactness of the districts as a whole.

8 SEN. CLARK: That may have been the case,
9 but that's not what our criteria says. It does not
10 say "the districts as a whole."

11 SEN. HISE: No. The criteria does not
12 say each individual district shall have a lower
13 compactness score. You are correct. It does not
14 say that. It says we will improve compactness as a
15 whole in all the districts.

16 SEN. BROWN: Senator Clark?

17 SEN. CLARK: I have the criteria before
18 me, and what you just said is not correct. It does
19 not say improve the compactness as a whole. It
20 says "improve the compactness of the districts."
21 And if we go to Mecklenburg County, more
22 specifically, we see there are three districts,
23 which happen to be Democratic districts, that have
24 improved compactness scores. The two Republican
25 ones do not. And I was wondering what brought

1 about that disparity.

2 SEN. HISE: As you will find, the
3 compactness of the state is a fixed manner in the
4 manner in which you divide it. Improving the
5 compactness score will be improving the average of
6 all the compactness across the district, and that's
7 what will meet that standard.

8 SEN. BROWN: Senator Clark?

9 SEN. CLARK: Mr. Chairman, with all the
10 compactness scores out there, there's only one
11 suitable for comparing the compactness of one plan
12 versus another, and that's the perimeter score.
13 The Polsby-Popper and Reock scores are not designed
14 to determine the relevant performance in regards to
15 compactness of one plan versus another.

16 SEN. BROWN: Senator Blue?

17 SEN. BLUE: A question, again,
18 Mr. Chairman. If I could go back to the incumbency
19 protection provision of the criteria. Did you
20 ascertain how many current members were seeking
21 reelection?

22 SEN. HISE: We did not other than
23 information went out for individuals who were --
24 where their address was located. We went with that
25 file as we had it at the time. When individuals

1 announced or told us directly that they were not
2 running, we considered that information.

3 SEN. BROWN: And that was about a week or
4 two ago, wasn't it, Senator Hise?

5 SEN. HISE: Yes, it was.

6 SEN. BLUE: So in Wake County
7 double-bunked where you had an option -- because I
8 think in the other three, it was because of the
9 groupings -- why did you choose to double-bunk and
10 leave an open district right next door to one of
11 the members that you moved into a district that
12 already had a member in it?

13 SEN. HISE: We do not double-bunk in Wake
14 County. Senator Barefoot announced to me and then
15 publicly that he was not seeking reelection.

16 SEN. BROWN: Senator Blue?

17 SEN. BLUE: Did you inquire of any other
18 Senators -- did you inquire of any of the African-
19 American Senators whether they were seeking
20 reelection?

21 SEN. HISE: No one else provided us
22 information that they were not intending to run,
23 except Senator Tucker did, I mean, but in Wake, no
24 one else provided us that information.

25 SEN. BROWN: Senator Blue?

1 SEN. BLUE: Then if, in fact, a major
2 portion of a Senator who you double-bunked in Wake
3 County -- a major portion of his district was right
4 next door without an incumbent in it, what were the
5 factors in the decision to not put him in the
6 district that was already part of his district but
7 to double-bunk in another district?

8 SEN. HISE: I would say, once again, that
9 we did not double-bunk any members in Wake County.

10 SEN. BLUE: Follow-up?

11 SEN. BROWN: Follow-up.

12 SEN. BLUE: But the reason I ask that is
13 that you made a big deal out of compactness and
14 those things, and yet, there are several examples
15 where you squiggled and reached down through areas
16 that could be much more compact to accommodate
17 specific members when there's no compelling reason
18 to do that if the sole reason is to keep from
19 double-bunking.

20 Let me ask this question a different way,
21 if I could.

22 SEN. BROWN: Okay.

23 SEN. BLUE: Do you read incumbent
24 protection in the criteria to mean that you take
25 care of an incumbent in a district that he or she

1 can get reelected in or simply not to double-bunk
2 him with another person in the same district?

3 SEN. HISE: I think if you look at Wake
4 County specifically, I'm sure that individuals may
5 find other ways in which they -- they could have
6 chosen to double-bunk anyone, but I would say that
7 it is also noted that those two homes are close
8 together by any standard. I believe on this map
9 many people would find it hard to distinguish, as
10 in the circles don't continue, but we were able to
11 take what was Senator Barefoot's district as it was
12 drawn and to draw Senator Alexander into that
13 district to avoid double-bunking with Senator
14 Chaudhuri.

15 SEN. BLUE: Further follow-up?

16 SEN. BROWN: Senator Blue, go ahead.

17 SEN. BLUE: Then, knowing that Senator
18 Barefoot was not running for reelection, did you
19 consider making the district that he was serving in
20 as well as the adjoining districts more compact by
21 having him double-bunked with another Senator in
22 Wake County?

23 SEN. HISE: This -- this district as it
24 is met the -- both of the compactness scores that
25 we have established, and therefore, this is the

1 district we have chosen to avoid the double-
2 bunking.

3 SEN. BROWN: All right. Any other
4 questions for Senator Hise? Senator Van Duyn?

5 SEN. VAN DUYN: Thank you. Several of my
6 constituents traveled significant distances to make
7 public comment. Was it yesterday or the day
8 before?

9 SEN. HISE: I believe it was Tuesday.

10 SEN. VAN DUYN: Are we going to get some
11 analysis of that public comment so that we can see
12 what it is that -- what their opinions were?

13 SEN. HISE: The court reporters--- Let
14 me check and see the status on that.

15 (Pause in proceedings.)

16 SEN. HISE: The court reporters are
17 developing the transcription of those. The
18 comments submitted online are available to the
19 members through a particular point, and I think we
20 can update those each day. We've been taking
21 online submissions since we began this process from
22 individuals. As soon as the court reporters have
23 finished the transcribing of those comments, those
24 will be available as well as I believe there are
25 audio and, in some respects here in Wake County,

1 potentially video of those comments, as they would
2 go forward, that is available to members upon
3 request.

4 SEN. VAN DUYN: Follow-up?

5 SEN. BROWN: Follow-up, uh-huh.

6 SEN. VAN DUYN: Are we going to do any
7 analysis on those comments?

8 SEN. HISE: Members are free to do any
9 analysis they wish on those.

10 SEN. VAN DUYN: Okay. Well, now I
11 haven't read them, but I listened for a couple of
12 hours, and I also, of course, was here for the
13 public comment that we did on the criteria, and one
14 of the things I heard over and over and over and
15 over and over again, in fact, all but one comment
16 on our public comment on criteria, was the need for
17 independent nonpolitical districts.

18 Did you make any effort to draw more
19 politically balanced districts?

20 SEN. HISE: I'm trying -- that question
21 is very different from the comments leading up to
22 it. What we did -- the independent districting
23 issue that has continually come up is inconsistent,
24 one, with the court order that we have received as
25 well as the duties and obligations of the General

1 Assembly. The court order was directed to the
2 General Assembly to redraw districts. I don't
3 think there's much doubt about that.

4 I would also say that the US Constitution
5 as well as the North Carolina Constitution assigns
6 to the General Assembly to draw districts, and so
7 much so that the North Carolina Constitution
8 establishes that even for the veto of the
9 Governor -- nothing regarding redistricting is
10 subject to the veto of the Governor. It's solely
11 within the purview of the Legislature.

12 I believe strongly that it is our role to
13 draw these districts and our job and responsibility
14 to draw these districts. I don't -- I have told
15 many people I don't believe in unicorns, fairies,
16 or the mythical nonpartisan commission. There are
17 several studies that are out there that also
18 show -- and we have one of those that the results I
19 can show -- that show you have no changes in
20 partisan makeups for districts drawn by nonpartisan
21 redistricting committees versus those drawn by
22 general assemblies.

23 SEN. BROWN: Follow-up?

24 SEN. VAN DUYN: One more. So -- but part
25 of the criteria was that you were able to look at

1 political information?

2 SEN. HISE: We selected ten election
3 results, and you have all that information.

4 SEN. VAN DUYN: That's correct. So did
5 you use -- how did you use that data? Did you use
6 it to balance districts or to unbalance districts?

7 SEN. HISE: We have used it to report on
8 all the districts and how they fall in the
9 political makeup. We did make partisan
10 considerations when drawing particular districts.
11 We did not, however, as has also been suggested
12 from members and others in the comments -- we did
13 not try to go with some parliamentary version that
14 we see in Europe and other places in which a
15 certain percentage of the votes should equate to a
16 certain percentage of the seats or assign them in
17 that manner. The results of each election in a
18 district should result in one representative for
19 that district.

20 SEN. BROWN: Okay. Other questions for
21 Senator Hise? Senator Clark?

22 SEN. CLARK: Thank you, Mr. Chairman. I
23 think the recent comment just made by Mr. Hise
24 there -- excuse me -- Senator Hise referred to the
25 use of the efficiency gap because during our

1 previous committee hearing, I did mention that it
2 would be preferable, I thought, for the Committee
3 to adopt a standard, in other words, how high of an
4 efficiency gap would be acceptable.

5 And the comment was made during that time
6 that it was some kind measure for parliamentary
7 systems and that it could not be used prospectively
8 for determining the extent of partisan advantage or
9 lack thereof within a single member district
10 program.

11 So with that said, if you don't mind, I
12 have a statement that I would like to read that
13 sort of clarifies that or clears that up.

14 SEN. BROWN: That would be fine, Senator
15 Clark. Also, I think the statement, if I remember
16 right, was that that was the two criteria that was
17 used by the Courts or mentioned in the court
18 proceedings. But go ahead.

19 SEN. CLARK: So let's see. And this is
20 about an e-mail that I sent to Dr. Stephanopoulos,
21 who happens to be the individual who developed
22 efficiency gap analysis process, and it says,
23 "Dr. Stephanopoulos: I argued in a committee
24 hearing today that the efficiency gap method could
25 be used prospectively to determine the efficiency

1 gap of a plan being considered for adoption by
2 using recent election results of statewide
3 candidates. My counterpart across the aisle argued
4 that it could not. Do you have a position on the
5 prospective use of the efficiency gap?" Excuse me.

6 "I have created a tool using Microsoft
7 Excel for that purpose. I am not asking you to
8 make a political judgment in this matter, just the
9 suitability of your method for voluntary adoption
10 by a legislative body for the use of establishing
11 district plans that exhibit partisan symmetry, in
12 other words, does not exhibit partisan advantage,
13 on a prospective basis."

14 And in response, Dr. Stephanopoulos, the
15 author of the efficiency gap method, "The
16 efficiency gap absolutely can be used prospectively
17 to evaluate a district plan as can any other
18 measure of partisan gerrymandering. Since seats
19 and votes can be forecast, it follows that metrics
20 that are based on seats and votes can be forecast
21 as well. In fact, in our original complaint in the
22 North Carolina congressional litigation which was
23 filed before the November 2016 election, we did use
24 the efficiency gap prospectively. See paragraph 66
25 through 69 of the attached.

1 "That being said, election predictions
2 are never perfect. That's why the best prospective
3 approach is to calculate efficiency gap using other
4 methods for a range of plausible election outcomes.
5 That gives you a sense of how the map could perform
6 over the spectrum of reasonable possibilities. "

7 And that's exactly what you-all did when
8 you decided to use political data and you decided
9 to use past election results of -- I think you
10 indicated about eight or nine different elections.
11 You just, for whatever reason, do not want to
12 acknowledge the efficacy of the efficiency gap.
13 And, also, Mr. Chairman, I would like to submit
14 this document for the record that was provided with
15 that e-mail.

16 SEN. BROWN: That will be fine, Senator
17 Clark.

18 SEN. HISE: To comment briefly, first, I
19 would state that the request to use efficiency gap
20 as a criteria was considered by the Committee and
21 rejected. I will say that. Secondly, I will say
22 that there seems to be a little bit -- and I know
23 this will get into the technical nature, but
24 whether or not something can be used prospective is
25 a different question than whether something can be

1 taken from separate districts concurring in a
2 different election in districts that did not exist
3 prior to an election can be combined in such a
4 manner that would then be used prospectively.

5 If the districts were consistent in the
6 past elections and future elections, then there is
7 the potential that it could be used prospectively.
8 That is not the case in redistricting. These
9 districts are significantly different, and there is
10 no account for the variance between races that
11 exists in the model provided.

12 SEN. CLARK: Mr. Chairman?

13 SEN. BROWN: Senator Clark.

14 SEN. CLARK: It's hard for me to
15 understand for what purpose are you going to use
16 political data if you're not using it prospectively
17 for your own uses?

18 SEN. HISE: You have -- you have received
19 in your stat-pack the summation of political data
20 for which it has been used.

21 SEN. CLARK: Mr. Chairman?

22 SEN. BROWN: Senator Clark.

23 SEN. CLARK: I have indeed received that
24 stat-pack with the political data, but I'm
25 wondering for what purpose did you-all use that

1 data.

2 SEN. HISE: For the purpose of
3 consideration of this Committee.

4 SEN. BROWN: Senator Clark?

5 SEN. CLARK: And for the purposes of
6 consideration for this Committee, does that mean
7 prospectively?

8 SEN. HISE: We have provided the results
9 of ten elections that will be used in the drawing
10 of maps. We have made no attempts to combine those
11 in such a manner that would forecast future
12 elections or provided any data as to the variance
13 that would exist in those forecasts.

14 SEN. BROWN: Other questions for Senator
15 Hise? Senator Blue?

16 SEN. BLUE: So that I fully understood, I
17 thought I heard Senator Van Duyn's question about
18 the public hearings. Are you changing the original
19 map that was sent out Sunday night in any manner at
20 all based on the comments from the 200 plus people,
21 or however many signed up, for the public hearing
22 that commented on Tuesday?

23 SEN. HISE: There is no change to the PCS
24 that was proposed between now and then. Members of
25 this Committee are free to make proposed amendments

1 to the maps. I have had conversations on at least
2 one of those amendments that may be considered
3 going forward that would change the maps, but
4 between the committee hearing and what is the
5 proposed PCS, you'll find, as normal in
6 legislation, at least for this session, we've made
7 no changes.

8 SEN. BROWN: Senator Blue, I will tell
9 you in both our Washington and Beaufort Community
10 College, there was a lot of concern about Beaufort
11 County. I tried to figure out a new configuration
12 based on those comments, but it would affect the
13 groupings and the order of the groupings. So it
14 just made it impossible to address the issues that
15 were brought up that night.

16 SEN. HISE: I think it's also fair to
17 point out that almost none of the comments in
18 public comment were in any manner directly related
19 to the shape of a district, to the pairings of
20 districts, or to the communities covered within a
21 particular district, and no alternatives were
22 submitted in any public comment.

23 SEN. BROWN: Senator Blue?

24 SEN. BLUE: Just one follow-up. On
25 several occasions, Mr. Chairman, I suggested that

1 40 plus years of litigation has taught me that when
2 parties of different opinions and different ideas
3 sit down and work through things, you can usually
4 fix a lot of problems that people identify, even
5 the problem -- I heard the problems in Beaufort
6 County and tend to know that there are ways to fix
7 it, but you can't fix something if the parties who
8 are interested don't talk it through and figure out
9 how to fix it.

10 SEN. HISE: I will comment specifically
11 on the Beaufort County issue. I have met with
12 several groups from Beaufort County, in addition,
13 have received multiple options that they have
14 presented for how the counties could be podded
15 together. I do not believe a solution exists that
16 does not break a smaller county podding that
17 existed.

18 I can assure you that if we found that,
19 we are ready to move and make the adjustments
20 necessary for doing so. But one had broken a
21 three-county pod to make a four-county pod.
22 Several of them had broken the six-county pod to
23 create seven- and nine-county pods. We have
24 considered each of those, but they fail to meet the
25 criteria of establishing the smallest number of

1 counties in a grouping that Stephenson requires.

2 SEN. BROWN: Senator Blue?

3 SEN. BLUE: If you wanted to, I can still
4 help you fix it.

5 SEN. BROWN: Senator Blue, if you'd like
6 to set that up, we surely would take a look.
7 Senator Lowe?

8 SEN. LOWE: Going back to the public
9 comments because I heard just as much as all of the
10 rest of you, and one of my things that I've been
11 interested in knowing is, there are criteria by
12 which you will actually consider the public
13 comments, number one, and to follow up to that,
14 because it seems like when you say anybody can
15 consider or look at anything, that's kind of a
16 serendipity way of looking at these issues, and I'm
17 think that what we heard in public comment are some
18 very, very serious issues about this whole process.

19 So how do you look at the public comments
20 in a real way?

21 SEN. HISE: I will also say that Common
22 Cause submitted and that Representative Lewis put
23 into the record of the Committee their two-page
24 talking points which summarized almost all the
25 speakers that were there that night, and in fact,

1 many read different parts of it or reread the same
2 parts of it when giving their comments.

3 But we are taking the committee
4 evaluation as a whole, and we're looking at that
5 process of public comment for anyone that was
6 submitting information of county poddings, of
7 communities of interest, what were determined by
8 those of the particular districts and what they are
9 and what they should be.

10 I will tell you that I am saddened by the
11 fact that we did not receive much of that
12 information within the public comment section.
13 There were a lot of comments about process or how
14 long this map was had before this was there or how
15 long those and types of things, but not necessarily
16 things---

17 We are under a timeline. The Court gave
18 us till September 1st and some potential of maybe a
19 two-week extension if we danced a certain way,
20 coming in, but for all practical purposes, we have
21 a deadline of Friday of next week.

22 We have a legislative process that
23 requires five voting days in that. We are under
24 that gun. We received the order at the first of
25 August. We had one month to comply with the order

1 that was received, and it has been a compressed
2 time line, and we made clear to the Courts that we
3 felt like we could extend a full time line into
4 November 15th -- would be the deadline necessary.
5 We gave the compressed time line, and it has
6 compressed some considerations of public comment
7 and others, but particularly in what we were
8 looking for in those public comments, specifics
9 about districts, or when we did the criteria,
10 specifics about the criteria and others considered.

11 Those were both used to develop how
12 members chose to vote on that criteria and are
13 available for all the committee members to review
14 and will be part of the court record.

15 SEN. BROWN: Senator Lowe?

16 SEN. LOWE: Follow-up. There was also
17 some concern about the shape of District 28 that
18 came up on more than one occasion.

19 SEN. HISE: That is the district designed
20 for the city limits, predominantly following the
21 city limits of the town of Greensboro, but it was a
22 criteria of the Committee, I would say, to keep the
23 municipality boundaries within the districts, and
24 we feel that's what we've done with that district.

25 SEN. BROWN: Any other follow-up?

1 Senator Clark?

2 SEN. CLARK: Thank you, Mr. Chairman.
3 You talked about VTDs earlier, and I must commend
4 you-all for splitting very few this time around
5 compared to the last time around. But a couple of
6 those that were split -- at least one in particular
7 happened to be in my district, Senate District 21,
8 between I and Senator Meredith.

9 Could you provide some explanation as to
10 why Dr. Hofeller decided to split that particular
11 VTD. I believe it was G11.

12 SEN. HISE: I'm assuming that's the
13 number in which I'll reference. The one that is in
14 that district is a zero population split. There is
15 no residential population on one side of that
16 split. So it improved compactness, but no -- all
17 voting individuals are within the same precinct
18 that they would have been otherwise. But it
19 does -- by dividing the district in such a way that
20 there is no population living on the other side, it
21 does improve the compactness scores of the
22 districts.

23 SEN. BROWN: Senator Clark?

24 SEN. CLARK: Thank you. That's what I
25 assumed was done, but I was somewhat surprised by

1 that because I know, generally speaking, people
2 associate compactness with lack of gerrymandering,
3 if you will, but in this particular case, that was
4 a substantial landmass that was essentially added
5 to my district for the sake of improving a
6 compactness score.

7 And I just think we need to understand
8 that essentially you can manipulate VTDs for what I
9 call an audit form, although they have no impact on
10 the performance of the district whatsoever.

11 SEN. HISE: Yes, compactness is generally
12 in some manner a ratio of the perimeter to the area
13 or of the area inside a district to a circle that
14 encompass the entire district.

15 SEN. CLARK: Comment?

16 SEN. BROWN: Senator Clark.

17 SEN. CLARK: That is incorrect for Reock
18 and Polsby-Popper, which you-all chose to use, but
19 if you used the perimeter, that would not be
20 correct. As a matter of fact, as I indicated
21 earlier, the perimeter method for measuring
22 compactness is one that's used across plans to
23 determine the compactness of one plan versus
24 another.

25 SEN. BROWN: Other questions for Senator

1 Hi se? I f not, I 'm looking for a moti on.

2 SEN. BISHOP: Mr. Chair man, I ---

3 SEN. BROWN: Senator Bi shop?

4 SEN. BISHOP: I do have one comment,
5 al though not a questi on, for Senator Hi se, and
6 maybe a comment and then a questi on for someone
7 el se.

8 Thank you, Mr. Chair man. I did say I
9 don' t have a questi on for Senator Hi se, but I have
10 a comment and then perhaps a questi on for Blue.

11 Senator Blue, I was struck by the comment
12 about working together and how sometimes if you
13 don' t do that, you don' t get to the best soluti on,
14 wi th whi ch I wholeheartedly agree. I also have had
15 some experiences, and I suspect you have too over
16 the course of time, that when you' re in an
17 envi ronment where somebody might be devoted to
18 usi ng every word as an excuse to commence -- pursue
19 li tigation, sometimes that freezes up that process.

20 And so I would ask whether Senator Blue
21 would yi el d to a questi on?

22 SEN. BROWN: Senator Blue?

23 SEN. BLUE: I wou ld i nvoke Rul e 408, but
24 I wou ld yi el d.

25 SEN. BISHOP: You' ll yi el d provi si onal ly,

1 is that it, Senator? So, Senator, what I heard you
2 say at the end of the exchange with Senator Hi se is
3 that you have a fix for the podding situati on
4 i nvolvi ng Beaufort County, and I would urge you, if
5 you do, to say what it is, what the solution is.

6 SEN. BLUE: I suggested, Senator Bi shop,
7 several weeks ago--- How long has it been since we
8 were in regul ar sessi on? ---anyhow, at the end of
9 regul ar sessi on---

10 SEN. BISHOP: Not long enough.

11 SEN. BLUE: Not long enough, you're right
12 there. ---at the end of regul ar sessi on that I
13 thought that this is the kind of issue that would
14 offer itsel f---

15 SEN. BROWN: Hold on, Senator Blue.

16 SEN. BLUE: ---that would offer itsel f---
17 (Interruption by technical malfunction.)

18 SEN. BLUE: Is that it?

19 SEN. BROWN: There you go.

20 SEN. BLUE: ---that this was the kind of
21 issue that would offer itsel f for resolution if, in
22 fact, those who were directly impacted -- in this
23 case in the Senate, the nine districts that the
24 Court ruled were racial gerrymanders. If the
25 people who represented those districts, which means

1 they represent the people who brought the lawsuit
2 against the State from those districts, were to sit
3 down with the leaders in the redistricting process
4 in this body, that there could probably be a
5 resolution of this issue without just throwing the
6 balls up in the air and seeing what might happen.

7 If you're working in that environment --
8 if you're working in that environment, a careful
9 reading of Stephenson allows you to do things. I
10 mean you mechanically and methodically go one pod,
11 two pods with two counties, three pods, and all of
12 that. But there are other alternatives even
13 through Stephenson, and if you look at the 2003
14 redistricting plan, there were exceptions from the
15 kind of grouping that you're talking about
16 primarily because there was an agreement to do it
17 under the gun of the lawsuit that was pending at
18 the time.

19 SEN. BISHOP: Follow-up?

20 SEN. BROWN: Follow-up.

21 SEN. BISHOP: Senator Blue, then, do I
22 understand that what you're saying is that there
23 would have to be some consensual process involving
24 some use of race so that you wouldn't be using the
25 strict podding, and therefore, you would resolve

1 that issue in Beaufort County?

2 SEN. BLUE: That among other issues.

3 SEN. BISHOP: And I don't know if there
4 are other issues--- Follow-up?

5 SEN. BROWN: Follow-up.

6 SEN. BISHOP: If that would be so, then,
7 assume that you had sort of a consensual workout.
8 You came to an agreement among whatever parties are
9 participating. How could you assure, then, that
10 some other person wouldn't commence and pursue
11 litigation saying that whatever consideration was
12 given to race was not too much? Consequently, we'd
13 have another unexhausting, unending string of
14 litigation about how much consideration of race is
15 permissible without being then accused of engaging
16 in a racial gerrymander?

17 SEN. BLUE: Because if the Plaintiffs
18 agreed to the resolution that you had, then that
19 case is resolved and it's over with, and quite
20 frankly, Senator Bishop, by the time this thing
21 goes through the process again, you're in another
22 round of redistricting anyhow.

23 SEN. BISHOP: That's not very comforting.

24 SEN. BLUE: But the point is -- the point
25 is, I think that you can just eyeball the map, and

1 Stephenson isn't so rigid that it would say you'd
2 go from the coast to the middle of North Carolina
3 the way that pod does. I can understand the
4 frustration of the people in Beaufort County.

5 SEN. BISHOP: If I could follow up one
6 more time, Mr. Chairman?

7 SEN. BROWN: Senator Bishop.

8 SEN. BISHOP: So you made reference just
9 then to the Plaintiffs, that maybe the Plaintiffs
10 would agree. But the state has ten million people
11 in it, and as soon as one group of Plaintiffs
12 agrees -- I mean the example that we have here
13 where there was a completed set of litigation in
14 one court system, and then people who were even
15 acquainted perhaps with the Plaintiffs in the first
16 set of lawsuits but different brought other
17 litigation.

18 Can you imagine a situation in which you
19 could be assured that whatever group was involved
20 in a consensual arrangement like you've described
21 could exhaust the possibility of yet another
22 plaintiff and yet more litigation?

23 SEN. BLUE: What you said basically makes
24 the point. Even with the resolution of this by
25 Court action, which is how the other would be

1 resolved, one of the ten million people in North
2 Carolina could still start a new lawsuit. So you
3 settle cases one at a time, and you might
4 anticipate others coming, but until they're
5 brought, you don't have them.

6 Even -- even when you go back to court
7 sometime in September to determine whether this is
8 a satisfactory resolution of this, there is a
9 possibility that somebody else could still bring
10 another lawsuit. They could bring other lawsuits
11 because of new violations in this redistricting
12 plan, different from the ones that the Court said
13 constituted the racial gerrymander.

14 So you always have the possibility of
15 litigation, and this doesn't preclude it any more
16 than having a resolution among the parties would
17 conclude it.

18 SEN. BISHOP: Thank you, Mr. Chairman.

19 SEN. BROWN: Senator Hise, do you want to
20 respond to that?

21 SEN. HISE: I just want to comment on it
22 briefly, and I will tell you -- probably am
23 saddened -- I had a lot of hope that someone had
24 found a new podding for that area that was coming
25 in, although that doesn't seem to be the case.

1 Having whole county provisions is our state
2 constitution. That was reestablished -- you can
3 see the history of the chaos that happened before
4 the Courts reestablished and reminded the General
5 Assembly we have a provision of whole counties and
6 how it's interpreted under Stephenson.

7 I would fail to agree that a group of
8 individuals, even individuals that were party to a
9 lawsuit, could come together and establish
10 constitutional matters for the State of North
11 Carolina, coming in. Again, I would say I am
12 disheartened that we have not found a county pod
13 that would do better in that process without
14 creating larger county pods.

15 SEN. BROWN: Senator Clark?

16 SEN. CLARK: Thank you, Mr. Chairman. I
17 guess this discussion we're having now goes back to
18 the notion of the BVAP. Under the [inaudible] my
19 district has, I believe, a black voting age
20 population of about 52 percent, and the Court
21 ordered to us -- the reason we're here today -- it
22 said that we'd have to justify any district with a
23 BVAP in excess of 50 percent. Under the proposed
24 map, is my BVAP now under 50 percent?

25 SEN. BROWN: Senator Hi se?

1 SEN. HISE: Senator Clark, I will
2 reiterate. I have not seen any racial data for
3 these districts and none was used in the
4 development or drawing or assignment of voters
5 within these districts. Perhaps you have made a
6 request to staff to receive that information and
7 are asking for that.

8 If there is something you would like to
9 submit to the Committee, you are full within your
10 rights to do, and we would take the time to
11 consider that, coming in, but I obviously cannot --
12 can't answer a question about something that I do
13 not have and have not received.

14 SEN. BROWN: Senator Clark?

15 SEN. CLARK: Thank you, Mr. Chair. Then,
16 given that you have not looked at it and have not
17 received it, you don't know whether or not these
18 maps or proposals would actually comply with the
19 court order; is that what I'm understanding you to
20 say?

21 SEN. HISE: I think that is -- no, I
22 would not say that -- I would not equate the two.
23 I think the Courts were actually quite clear that a
24 target was not allowed under any circumstances so
25 asking whether or not I have information about

1 whether something met a particular target, I could
2 not comply to what the Court has ordered us to do.
3 I have simply asked the question as if you have
4 received that information about what the voting
5 percentages are in the district and if you're
6 asking to submit that to this Committee.

7 SEN. BROWN: Senator Clark?

8 SEN. CLARK: Actually, what I wanted to
9 know is whether or not you have made a
10 determination as to whether or not the maps you're
11 proposing comply with the court order in that the
12 BVAPs for any district be 50 percent or less, and
13 apparently not.

14 SEN. HISE: The Courts clearly did not
15 give us any targets and clearly laid out that we
16 cannot use targets, and I do believe strongly that
17 these maps comply with the order of the Court.

18 SEN. BROWN: Any other questions?
19 Senator Blue?

20 SEN. BLUE: Yeah. And I'm going to be
21 honest with Senator Bishop. I gave him a candid
22 answer, but I think he suspects that there is a
23 more specific answer. And that answer, Senator
24 Bishop, is that if you discussed with some of the
25 members, there may be some reasons and the Court

1 anticipated -- I heard the argument, I read their
2 opinions -- that there may be reasons that you
3 could still determine that some districts needed a
4 special push and you had to consider race.

5 That's what the court order said. It did
6 not say you can't use it. The Voting Rights Act
7 and the Fourteenth Amendment are the ones that
8 circumscribe how we use it. But I'm just saying,
9 as talking points and in a full analysis, when
10 parties who are fully informed about the issues sit
11 down and talk about it, there are ways that you can
12 fix most of the problems, and you wouldn't have
13 been violating the North Carolina Constitution,
14 Senator Hi se.

15 SEN. BROWN: Here's what I'm going to do,
16 if it's okay. I'm going -- let's take about a
17 five-minute recess. If anybody's got any
18 amendments -- five or ten minutes -- we'll take
19 however long it takes -- please get them up here.
20 I'm going to give you about five minutes, maybe ten
21 minutes to get them up here so we can look at them.
22 So let's do that. Let's come back in order at
23 about quarter after. That will give us ten
24 minutes.

25 (Recess, 3:03 - 3:46 p.m.)

1 SEN. BROWN: Members of the Committee, I
2 hate to do this to you, but I'm going to have to.
3 We've got session at four o'clock, and we've got a
4 new member that's going to be sworn in at four
5 o'clock. So we're going to recess and go to
6 session, do that, and then try to get back here
7 right after session, if that works for everyone.

8 SEN. RABON: The session may have been
9 moved to four-thirty. We better check.

10 SEN. BROWN: Senator Rabon, can you check
11 on that real quick? Senator Rabon, I bet you can
12 move it back to four.

13 (Recess, 3:48 - 4:35 p.m.)

14 SEN. BROWN: We'll call the meeting back
15 to order. I have five amendments that have been
16 sent forth. I want to be sure. Are there any
17 other amendments that someone would like to send
18 forth? If not, I'll recognize Senator Clark for an
19 amendment.

20 SEN. CLARK: Thank you, Mr. Chair. The
21 amendment that I've sent forth as to 691
22 essentially what it does is move the Vander
23 community into Senate District 21. Currently, it's
24 in Senate District 19, and I believe it does more
25 appropriately -- a more appropriate fit to be with

1 Senate District 21.

2 SEN. BROWN: Senator Hise?

3 SEN. HISE: I had to modify it a little
4 bit to make sure we did not split another precinct
5 for the community and do believe that this takes in
6 Senator Clark's home as is now on the map versus
7 previous iterations. So given those two
8 considerations of doing this for incumbency
9 protection, I would ask that members would support
10 the amendment.

11 SEN. BLUE: Okay. Any questions on the
12 amendment? Senator Bishop?

13 SEN. BISHOP: Thank you, Mr. Chairman.
14 This is a question for Senator Clark. Do you
15 believe that the district as amended is legal under
16 all legal theories?

17 SEN. CLARK: Actually, I believe a more
18 appropriate view of what the district should look
19 like is represented here. You see the orange bar
20 which would be an addition to Senate District 21
21 and a subtraction from District 19, and the hash
22 marks there would be subtractions from District 21,
23 and I believe it would provide a better compactness
24 for Senate District 21 as well as provide more
25 competitiveness between the two districts. That's

1 all.

2 SEN. BISHOP: Follow-up, Mr. Chairman?

3 SEN. BROWN: Senator Bishop.

4 SEN. BISHOP: I'm not sure if I followed
5 that. You were showing some detail, and really, I
6 was asking maybe a more general question, which is
7 you've proposed an amendment to that particular
8 district, and so -- and I'm glad to get whatever
9 detailed explanation you want to give, but maybe
10 before you gave a detailed explanation, if you'd
11 just say, do you believe that the district as
12 you're amending it is legal under all applicable
13 legal theories?

14 SEN. BROWN: Senator Clark?

15 SEN. CLARK: I believe the amendment I'm
16 providing is legal under all legal theories. It
17 just changes the distribution of the population by
18 approximately 300.

19 SEN. BISHOP: So it's roughly 300 people?
20 Is that what it is?

21 SEN. BROWN: Senator Hise, any comments
22 on the amendment?

23 SEN. HISE: No. We're glad that it meets
24 Senator Clark's legal standards for the districts
25 as well, coming in, so we appreciate that and would

1 ask that you support the amendment.

2 SEN. BROWN: All right. Any more
3 questions on the amendment? If not, I'm going to
4 ask you to raise your hand so that we can get a
5 count on the vote. So all those in favor of the
6 amendment, please raise their hand.

7 (Show of hands vote.)

8 SEN. BROWN: All right. I have 13 in
9 favor and none against, so the amendment passes.

10 Next, Senator Blue, I think you have one
11 for Wake County -- an amendment?

12 SEN. BLUE: I do.

13 SEN. BROWN: Okay. You're recognized,
14 Senator Blue. Let's get it passed out first,
15 Senator Blue.

16 (Pause.)

17 SEN. BROWN: Okay. I think everybody's
18 got a copy. Senator Blue, you're recognized.

19 SEN. BLUE: Thank you, Mr. Chairman.
20 What this amendment does -- I was trying to find --
21 yeah, AMT30 does, it switches precincts, and all of
22 these, by the way, are whole precincts. That's one
23 of the reasons -- or entire VTDs -- that's one of
24 the reasons you get some of the jagged edges.
25 There are no split precincts in it.

1 But what it does, it simply switches
2 precincts between the proposed District 15 for
3 Senator Chaudhuri and 14, which is my current
4 district, and it basically restores most of my
5 current district to its current form. And since
6 Senator Chaudhuri's district is new -- his old
7 district would have gone south and west, but now
8 that's occupied by 16. It does not affect any of
9 the other three districts in Wake County. It is
10 just those two.

11 And part of the reason is it's aimed at
12 fixing the gerrymander, I think, as it was defined
13 in Wake County, but it keeps the historic areas of
14 the African-American community together in the same
15 district. It unites the communities of interest.
16 It does not substantially change the performance,
17 as you have calculated it, in either of these
18 districts and has no effect on the remaining
19 districts.

20 SEN. BROWN: All right. Questions for
21 Senator Blue? Senator Bishop?

22 SEN. BISHOP: Thank you, Mr. Chairman.
23 Senator Blue, in the course of -- you know, all
24 this is new to me, but in the course of hearing the
25 majority's proposals, I've heard a lot about

1 Dr. Hofeller being the consultant. Who helped you
2 draw this?

3 SEN. BLUE: Staff.

4 SEN. BISHOP: Staff and you?

5 SEN. BLUE: Staff and me. I happen to
6 know the precincts and the nature of them, which is
7 usually a pretty helpful exercise. What the
8 version of Senate Bill 691 does, it uses the
9 artificial separator of the Raleigh beltline, and
10 consequently, it caused everything inside the
11 beltline out of the district, and there's no real
12 reason to do that.

13 It doesn't change any -- significantly
14 the percentages or what have you. I think it --
15 you're not considering it, but still the African-
16 American percentage in this district, because it's
17 exchanging with 15, is still below 40 percent, and
18 the performance, I think, if you run it through the
19 performance metrics that you've used to determine
20 the party favorites, since it's between two heavily
21 Democratic districts, it does not change that,
22 either.

23 But what it does do, it unites the inside
24 the beltline communities with the outside the
25 beltline communities up to the Neuse River.

1 SEN. HISE: A follow-up or two,
2 Mr. Chairman?

3 SEN. BROWN: Follow-up, Senator Bishop.

4 SEN. BISHOP: So I take it from a couple
5 of comments you made that you used race in drawing
6 the map?

7 SEN. BLUE: Not really. Not really. I
8 just know the precincts. Some of them -- the
9 inside of the beltline precincts in Wake County in
10 southeast Raleigh are heavily black precincts, but
11 as I've explained to you several times before, the
12 rapid growth in Raleigh has probably integrated
13 this town much more so than some of those big
14 cities in the state that haven't grown as rapidly.
15 So you're going to still get comparable race
16 percentages even when you go outside the beltline.

17 But what this map does, it reunites the
18 Raleigh communities, incorporates Knightdale as
19 your original map did in its entirety, but it has
20 more Raleigh downtown in it rather than Raleigh
21 north of the beltline.

22 SEN. BISHOP: Follow-up?

23 SEN. BROWN: Follow-up.

24 SEN. BISHOP: If I could explore that
25 just a little bit more.

1 SEN. BLUE: Sure.

2 SEN. BISHOP: So you made reference to
3 historically black areas, and -- but you said
4 you're not really using race. It's hard for me --
5 and as you know, some of that is current discussion
6 we've had in here so far and what the criteria have
7 been. Could you reconcile those for me?

8 SEN. BLUE: In what regard?

9 SEN. BISHOP: I got the last comment, but
10 the fact that you've made comments about in looking
11 at this, you were interested in historically black
12 areas, but you haven't -- when I said "Did you use
13 race," you said, "Not really," and I just wanted to
14 see if I can get clarity on that.

15 SEN. BLUE: I used it to the extent that
16 I know the characteristics of the precincts. I can
17 pretty call them up, but I know the characteristics
18 of the ones in the proposed 16 as well because I've
19 worked extensively in these areas. And inside the
20 beltline in southeast Raleigh historically is an
21 African-American area. It's going through
22 tremendous justification now, not just
23 justification, but the housing patterns in it are
24 changing and it's becoming much more integrated.

25 But historically these communities are

1 related to those that I've added it back to just
2 outside the beltline. For example, probably one of
3 the biggest churches in the county is outside the
4 beltline but most of their parishioners come from
5 inside the beltline. And so it's things like that.
6 But, yeah, I'm very familiar with the racial makeup
7 of this district. I'm familiar with the racial
8 makeup of all of the districts in this map.

9 And I think that when we go to the reason
10 that we're here is to correct the racial
11 gerrymander, and when we draw that district like
12 this, it basically brings the percentage down, but
13 it still unites communities of interest and it
14 abides by pretty much, as best I can tell, all the
15 other criteria that we were using.

16 Yeah, I mean I know what the racial
17 component is, and I know that it does not exceed 40
18 percent and it does not exceed 50 percent, and
19 that's how I put it together.

20 SEN. BISHOP: Follow-up?

21 SEN. BROWN: Follow-up.

22 SEN. BISHOP: So are you able to say that
23 you don't consider this -- the districts in this
24 map to be a racial gerrymander?

25 SEN. BLUE: Oh, absolutely, this is not a

1 racial gerrymander, and I don't -- I don't see any
2 Court that would rule this to be a racial
3 gerrymander because the way they define
4 gerrymanders is without any good reason. You can
5 look at race and you're supposed to look at it when
6 you're districting, but you can't allow it to
7 become the predominant factor in the way -- in your
8 decision-making process when assign people to
9 districts. But you're supposed to look at it. I
10 mean that's one of the requirements if you're going
11 to redistrict and comply with the Voting Rights Act
12 and the Fourteenth Amendment.

13 And so being cognizant of the racial
14 composition and desiring to preserve the
15 communities of interest, those kinds of things --
16 and what this district -- what this district
17 does -- in 2003 when they settled on it -- and I
18 was not in the legislature that year -- when they
19 settled on it, it had a low African-American
20 percentage. I say low. It was about 40 percent,
21 and the map that was passed back in 2011, the
22 percentage in that district was taken north of 50
23 percent. And the Court basically decided that
24 there was no reason, no justification using race to
25 increase that district from 40 percent African-

1 American primarily to 50 percent, and that was an
2 impermissible use of race, and so race became the
3 predominating factor in drawing the district.

4 And so where I take it is back close to
5 where its historical origins were when it was first
6 created. I'm not using race as the predominant
7 reason to design it this way. I'm just fixing the
8 gerrymander. This fixes the gerrymander that was
9 in Wake County. I mean, this is not necessarily
10 the only way to fix it, but it fixes it.

11 SEN. BISHOP: Follow-up?

12 SEN. BROWN: Follow-up.

13 SEN. BISHOP: So you're confident that
14 none of the districts in this map amendment are
15 racial gerrymanders?

16 SEN. BLUE: 14 is not a racial
17 gerrymander. The only way the others would become
18 racial gerrymanders -- quite frankly, the only way
19 they would become racial gerrymanders is if, in
20 fact, you were using race to gain an intentional
21 partisan advantage. That is a racial gerrymander,
22 the same as if you're taking districts far north of
23 where that have got to be to perform as the Voting
24 Rights Act contemplated.

25 Senator Hi se mentioned Section 5 of the

1 Voting Rights Act. Actually, it was Section 4 of
2 the Voting Rights Act that was struck down so you
3 don't have to have Section 5 clearance. But the
4 Section 2 of the Voting Rights Act is still very
5 alive, and so you still have, in looking at the
6 history, a Gingles analysis that you've got to do
7 since the major Supreme Court case in this area
8 came from North Carolina. And so if you did a
9 Gingles analysis, you couldn't justify taking this
10 district north of 30 percent -- I mean north of 50
11 percent, probably not north of the 40 percent if
12 race was the primary reason that you were drawing
13 it.

14 So this is not a racial gerrymander. I
15 don't see any direct racial gerrymanders in this
16 cluster, that is, Wake County. But if it is
17 determined that race was used, people were put in
18 these districts in order to create a political
19 gerrymander, then the racial gerrymander would
20 apply, and it would be violative of the
21 Constitution and of the Voting Rights Act.

22 SEN. BISHOP: Follow-up?

23 SEN. BROWN: Follow-up.

24 SEN. BISHOP: And I want to make sure
25 I've got the full feel for your sense about the

1 amendment. Are you confident, then, that all the
2 districts in Wake County, as you propose to amend
3 them, are legal under, you know, whatever
4 applicable legal theories are?

5 SEN. BLUE: I have not put the race test
6 on all of these districts. I simply haven't had
7 time. I know that this one would not be illegal.
8 I don't know whether -- an argument would be made
9 that 15 is a political gerrymander, so you'd have
10 to determine whether you were assigning people to
11 it based on race in order to effectuate the
12 political gerrymander. I have not done that
13 analysis on 15. It is not a racial gerrymander
14 when I amend it the way I did because you don't
15 have -- I think the percentage goes down south of
16 30 percent.

17 Indeed, the way that we've drawn these
18 districts, as you've draw them here, District 15
19 has a higher percentage of African-American voters
20 than District 14, but if someone were to make the
21 argument -- and I don't know that it will be me --
22 that that's a political gerrymander, you would have
23 to analyze it from that angle. What this would do,
24 from a racial standpoint, is make it less of one
25 because it's not packing an incredible number of

1 African-Americans in another district.

2 But, again, the analysis of whether there
3 are political gerrymanders in Wake County is a
4 separate analysis. I think -- I think that -- from
5 what I gleaned initially from this, that there
6 is -- 16 probably has the makings of a Democratic
7 district in Wake County, and I guess if I were
8 analyzing it, I would look at all five districts
9 and figure out whether this is where your racial
10 gerrymander occurred in Wake County as opposed to,
11 say, the other urban counties.

12 But this does not extinguish the claim of
13 racial gerrymanders based on political
14 gerrymanders, but it does with respect to these
15 districts.

16 SEN. BROWN: Follow-up?

17 SEN. BISHOP: Thank you. One more, I
18 think. So that also applies to 15; that's not --
19 as you've drawn it, not a racial gerrymander?

20 SEN. BLUE: No, 15 is not a racial
21 gerrymander, and again, in trying to put this
22 together, I said that 15, based on your criteria,
23 is a very high-performing Democratic district,
24 somewhere in -- even after reconfigured, it's still
25 a high-performing Democratic district in the

1 northern part of the sixties, and 14 is as well.

2 So I don't say that that extinguishes all
3 claims of racial -- gerrymanders based on them
4 being political gerrymanders. I'm pretty sure it
5 does with the configuration of 14. I just don't
6 know about 15 because I haven't done the deep drive
7 in it, and it takes about five percent of the
8 African-American votes out of 15 and returns them
9 to 14, but it doesn't take 14 unreasonably high and
10 it doesn't leave 15 unreasonably high.

11 So in a traditional analysis, you can't
12 say that it's a racial gerrymander based on where
13 you put people because of race if that were the
14 reason you were doing it, but you've still got to
15 go through with this entire map, and an analysis of
16 whether the way it's designed, you've used race in
17 any way at all to gain political advantage. And if
18 you've done that in various sections of the map,
19 then a political gerrymander becomes a racial
20 gerrymander, and it will be struck down.

21 SEN. BISHOP: Mr. Chairman, I promised
22 that was my last question, but I've got one more if
23 you'll let me.

24 SEN. BROWN: One more. One more.

25 SEN. BISHOP: Because something you just

1 said sort of troubled me a little more so. What I
2 heard you say -- and I think you said it a couple
3 of times -- is that it doesn't -- your amendment
4 doesn't extinguish the claim of a potential
5 political gerrymander, and to make it a little more
6 complex, that a political gerrymander might be a
7 hidden racial gerrymander.

8 And when we were talking actually before
9 we recessed, you and I over here, we were talking
10 about how the specter of ever present litigation
11 hanging over your shoulder sort of make it hard if
12 you had people try to settle a controversy or
13 something and they had -- and you said well, we're
14 going to reach this settlement, but I'm going to
15 keep these claims over here. I might want to
16 litigate.

17 So when you say your -- your amendment
18 would leave a potential political gerrymander claim
19 in this -- if we adopted it, it would still be
20 present, is that correct?

21 SEN. BLUE: Not totally so. I'm going to
22 move away from being a lawyer and just give you a
23 straight answer. It is my opinion -- since that's
24 what you're seeking -- it is my opinion that this
25 eliminates the gerrymander in Wake County. There

1 are districts that remain excessively high because
2 you've got two districts that do these very high
3 Democratic performances. If race were the reason
4 that people were placed in these districts so that
5 you could affect political gerrymanders in other
6 places, this would be a political gerrymander.

7 But let me assure you this is not the
8 angle from which a political gerrymander on the
9 entire state map would be leveled. I'm convinced
10 that, given the configuration -- and, again, I
11 haven't fully analyzed it. I don't know the
12 subnumbers look like -- the subsets, but if 15 --
13 if 16 is a Democratic leaning or Democratic
14 district, within Wake County, you don't have the
15 use of race to create political gerrymanders.

16 But, again, you've got, what, six or
17 eight more counties where that might be the case,
18 but it wouldn't be predicated on what's happening
19 in Wake County.

20 SEN. BROWN: Senator Hise?

21 SEN. HISE: Thank you, Mr. Chairman. Let
22 me see if I can kind of clear this up. As you
23 might understand, math departments don't give out
24 law degrees. So I struggle to -- I can get a
25 binary better than I can come up with those

1 answers. This amendment deals with Districts 14
2 and 15 exclusively, and as -- so let me try to
3 simplify this as much as I can.

4 In changing these two districts that
5 exist here, you do not believe that a racial
6 gerrymander exists in those two districts as you
7 have changed them?

8 SEN. BLUE: That's right.

9 SEN. HI SE: So I appreciate--- For
10 comment?

11 SEN. BROWN: Comment, Senator Hi se.

12 SEN. HI SE: I would reiterate to the
13 Committee that we have not had and do not have
14 racial data on any of these districts and,
15 therefore, have not sorted any individuals into
16 districts on the basis of race that is coming in.
17 I would reiterate that. I would take it under
18 advisement from our colleague Senator Blue that it
19 is his claim that Wake County is not a racial
20 gerrymander, that it is -- Districts 14 and 15, as
21 they're amended and changed, eliminate whatever
22 concern there was and that these are not based on
23 race but on historical communities. As he claims,
24 it doesn't change the racial data.

25 I think I would be kind of inclined at

1 this point to accept that, that the cases coming
2 out. Other members may have discussion, but I
3 think, as I clearly got an answer, there is not a
4 gerrymander in Wake County as a result of the
5 changes that exist here in these districts.

6 SEN. BROWN: Any other questions for
7 Senator Blue? Senator Hise, anything else to add?

8 SEN. HISE: No. I think that -- I think
9 that covers it. I think it would be the concept
10 that these do not change the political
11 considerations nor would they violate any of the
12 rules of the Committee to make these changes.

13 SEN. BROWN: All right. Hearing no more
14 discussion, again, I'm going to ask that you raise
15 your hands. All in favor of Senator Blue's
16 amendment, please raise your hand.

17 (Show of hands vote.)

18 SEN. BROWN: I have 13 in favor and zero
19 against. So the amendment passes.

20 Senator Blue, the next one?

21 SEN. BLUE: Thank you, Mr. Chairman. The
22 next one is the -- it should be denominated -- it's
23 the statewide map.

24 SEN. BROWN: This is the Mecklenburg one.
25 I'm sorry. Mecklenburg first.

1 SEN. BLUE: Oh, Mecklenburg is the next
2 one. Okay.

3 Thank you, Mr. Chairman. This is just a
4 rendering of Mecklenburg County using the criteria
5 that we've adopted and just looking to see how you
6 could comply with all of the criteria, have
7 compactness, contiguity, and all of those things,
8 and so this map ended up being a district that does
9 that. They've got much smoother precinct lines in
10 Mecklenburg County than they do in Wake County. I
11 guess we follow more streams and creeks for the
12 edges of precincts, but neither does this map break
13 any precinct lines.

14 And it -- historically, Precincts 38 and
15 40, I believe, are the ones that have been earlier
16 dominated African-American precincts -- are the two
17 that got us in trouble. This fixes the problem
18 with District 38 and 40 on being racial
19 gerrymanders because it does not take either one of
20 them over 50. They are compact. They basically
21 stick strictly with the compliance in every other
22 regards of the Stephenson decision. It's got
23 partisan balance, as I understand it, in just
24 looking at the numbers that way, and it complies
25 with all the state and federal law that I'm aware

1 of in this area, and it has all of the traditional
2 redistricting criteria observed.

3 That's what it does, and so it gives us a
4 look at other maps that don't do some of the things
5 that Senator Clark was addressing earlier in
6 getting them out of -- out of shape because I think
7 in the committee plan there's a district that goes
8 from east to north to western Mecklenburg County
9 that -- that seems to violate some of the
10 redistricting rules.

11 SEN. BROWN: Questions for Senator Blue?
12 Senator Bishop?

13 SEN. BISHOP: Mr. Chairman, I may be
14 wearing out my welcome. I apologize, but I happen
15 to be from Mecklenburg County. So I wanted to ask
16 Senator Blue a couple questions about this one
17 because I think I see five Democratic districts
18 here.

19 Senator Blue, did you draw this map
20 also -- you personally?

21 SEN. BLUE: I did not -- I did not use
22 the cursor to pick out every place in it, and I
23 have staff who worked with us once we got the basic
24 makings of it. But like Dr. Hofeller, the Speaker
25 and the President of the Senate gave us leeway to

1 get somebody who knew more about this than I did.
2 And this one I didn't draw, as I did the Wake
3 County maps, because I defer to you. I don't know
4 Mecklenburg County as well as I do Wake County.

5 SEN. BISHOP: Could you---

6 SEN. BROWN: Senator Bishop, follow-up?

7 SEN. BISHOP: Thank you, Mr. Chairman. I
8 beg your pardon. Who was your hired hand, then?

9 SEN. BLUE: Hired hand is not a
10 complimentary term, I don't think.

11 SEN. BISHOP: Forgive me. Consultant.

12 SEN. BLUE: The consultant is a fellow
13 named Dr. Kareem Crayton. He has a distinguished
14 career. He was a professor at UNC Chapel Hill Law
15 School. He's got a PhD in political science. He
16 has spent time doing this stuff, and at the late
17 moment that we were able to get somebody, he
18 happened to be available, so we asked him to come
19 help us with some ideas.

20 SEN. BROWN: Follow-up, Senator Bishop?

21 SEN. BISHOP: Thank you, Mr. Chairman.
22 Did you and Dr. Crayton, did you say, consider
23 political -- take political considerations into
24 account in drawing this map?

25 SEN. BLUE: No. No. And that's one of

1 the criteria that wasn't the most compelling
2 criteria. What we did -- we did look at race to
3 make sure that we weren't violating the Court's
4 order, we were breaking up the racial gerrymander,
5 because these districts too -- one of them, Senator
6 Bishop, I think Number 40, had been a district in
7 Mecklenburg County where an African-American beat
8 one of the most powerful senators in the General
9 Assembly, Senator Odom, back the middle of the last
10 decade, I think, and Malcolm Graham.

11 And it was less than 30 percent African-
12 American, and it remained that through the end of
13 the cycle. In 2011 when you redistricted it, you
14 took it from about 29 to 30 percent to north of 50
15 percent. That's why the Supreme Court said it was
16 a racial gerrymander because it's already proven,
17 using all the Gingles criteria, that it could elect
18 the candidate of choice of the minority community
19 without you taking it up to this extreme level.
20 And so this does not take it back down to the 29 or
21 30 percent, but it fixes the racial gerrymander
22 consistent with what the Court said.

23 The other district in there was 38. When
24 you took that one in 2011 from probably a 45, 46
25 percent majority African-American district to north

1 of 50, again, you couldn't justify it using the
2 Gingles criteria, and the Court said that was a
3 racial gerrymander. So when you took these two
4 districts back down so that they wouldn't be
5 gerrymanders, you then freed up all of the rest of
6 it, and so it's just getting small compact
7 districts in the rest of Mecklenburg County.

8 There may be some specific attributes of
9 Mecklenburg County communities of interest and all
10 of those that you're more familiar with, and
11 perhaps the public hearings would have told us more
12 about those kinds of things, but this is just our
13 effort using the racial stuff that the Court said
14 was not permissible and getting it down below those
15 level and fixing the gerrymander, and then taking
16 the rest of it and adjusting it.

17 SEN. BROWN: Follow-up?

18 SEN. BISHOP: Thank you, Mr. Chairman.
19 So taking Malcolm Graham's old district, for
20 example, you said that it had been taken up over 50
21 percent and that was an impermissible racial
22 gerrymander. So you said you took it back down and
23 not to the number that it had been before you, I
24 think you said, but to some other number?

25 SEN. BLUE: I think it's probably

1 somewhere in the high thirties.

2 SEN. BISHOP: How did you -- how did you
3 pick that numerical target?

4 SEN. BLUE: There's nothing magical about
5 it. It's just that when you wanted to get a
6 concise, compact district and you know that you
7 can't leave it in the high forties or fifties and
8 be in compliance with the Court's ruling, not only
9 the three-judge panel but the Supreme Court's
10 ruling, then you try to get it back down -- because
11 they're going to look at race. They've got to look
12 at race to determine that you're no longer in
13 violation of the constitutional provision. They're
14 going to look at it whether we decide to play an
15 ostrich and say we're not -- we say we're not
16 looking at it. We can't use it as a predominant
17 factor.

18 So you look at it to get it back where
19 you're satisfying the requirements of the Court and
20 eliminating the racial gerrymander. And so when
21 you do that, I think you could take it down to 38,
22 to 39 percent, and it will be totally acceptable
23 because it meets all of the other criteria for
24 redistricting, that that you have adopted as well
25 as the traditional criteria.

1 SEN. BROWN: Follow-up?

2 SEN. BISHOP: How do you know that you
3 can target any particular number?

4 SEN. BLUE: If, in fact -- and this is
5 akin to the first question that you asked me. If,
6 in fact, you get the Plaintiffs and the residents
7 in that district and they're satisfied with it,
8 you're not going to get a lawsuit. You can't speak
9 for a hundred percent of the people a hundred
10 percent of the time, but what creates conflicts, at
11 least in the Courts, is when somebody brings a
12 lawsuit.

13 I'm convinced that based on the
14 performance of this district prior to 2012 that
15 somebody who brought a suit saying that you're in
16 violation of Gingles principles on this district
17 would be wasting their money and their time. And
18 so if I bring it down there and have pretty good
19 confidence that it could withstand any kind of
20 assault or any kind of attack that anybody brought
21 against it, that's what I'm going to rely on, and
22 that's why I say that if we bring it -- you could
23 take it lower if you wanted to, but then you don't
24 make it as compact and you don't make it as
25 compliant with the other principles that you've

1 adopted on compactness using either of the tests
2 that we talked about that you determine compactness
3 by.

4 SEN. BROWN: Follow-up?

5 SEN. BISHOP: Are you saying that it
6 might be unconstitutional because it targets a
7 specific number without having additional evidence
8 of racially polarized voting, but you believe
9 nobody would sue about it?

10 SEN. BLUE: No. There's no doubt in my
11 mind this district is not unconstitutional.

12 SEN. BISHOP: So you think as long as you
13 set it down at 38, or whatever the number is you
14 pick, that you can set a numerical target for
15 racial balance without having any more evidence of
16 racially polarized voting than we had?

17 SEN. BLUE: Frankly -- and this is my
18 opinion. I don't write opinions for the Courts,
19 but I share my opinions. Frankly, I think, Senator
20 Bishop, that you could take the districts back to
21 their pre-2011 levels based on the racial
22 composition of them at that time, and all of them
23 would have been racially compliant. I don't think
24 you would have had any racial gerrymanders at all
25 in this map if you had left these districts at the

1 same percentages that the Courts had approved
2 earlier.

3 Now what you run the risk of -- what you
4 run the risk of when you're not in this litigation
5 stance -- what you run the risk of that a lot of
6 people worry about is whether or not you're
7 retrogressing with district; that is, where you can
8 satisfy some of these Gingles principles, the law
9 is you can't take it below certain levels that
10 would perform as predicted when you do a Voting
11 Rights Act analysis.

12 Since you've chosen not to do that
13 analysis on this map, that was part of the reason
14 that the Court kicked out the maps last year and --
15 well, as it went up through the court system --
16 because you had not done the analysis on these
17 districts to see how they performed and see whether
18 you could justify increasing the minority voting
19 age population in these districts. Had you had the
20 kinds of studies that would justify it, then you
21 would have had to prescribe a remedy that took it
22 up to a given level but didn't necessarily load
23 additional African-Americans in that district.

24 That's what the law is. It fits a
25 typical Fourteenth Amendment analysis compelling

1 state interest, and then if you find that that
2 compelling state interest has been met, you then
3 have to use the race in the analysis but only in a
4 strictly limited way. You just can't use race to
5 fix it all. You have to narrowly prescribe the
6 remedy anytime you use race.

7 That's what the Fourteenth Amendment is
8 about, and the narrowly prescribed remedy would be
9 to put as few additional African-Americans in that
10 district as you have to in order to still make it
11 so that minorities can elect the candidate of their
12 choice. It doesn't have to be a black candidate.
13 It could be anybody, but you have to show those --
14 the Gingles factors, polarized voting, compactness,
15 sufficient group within the area that you're
16 looking at to draw a district, and you'll have to
17 show that minorities can elect the candidate of
18 choice. And that's because of the history that led
19 to the enactment of the Voting Rights Act.

20 SEN. BROWN: Follow-up?

21 SEN. BISHOP: But isn't it true that the
22 reason the Court told us that we had engaged in --
23 well, we -- I wasn't here, but that the General
24 Assembly had engaged in an unconstitutional racial
25 gerrymander is that one of the Gingles factors

1 wasn't met. You didn't have district by district
2 evidence of racially polarized data of the quality
3 and quantity sufficient to justify doing that.
4 That's what it was, right? It wasn't that you
5 can't put 50 percent plus one in a district; it was
6 that you didn't have the predicate to do it.

7 SEN. BLUE: That's correct.

8 SEN. BISHOP: And do you have new
9 evidence district by district that you haven't
10 shared with us about racially polarized voting in
11 the districts that you're proposing here?

12 SEN. BLUE: No, but what I do have is the
13 performance over a decade at those low percentages.
14 That is direct evidence that the districts are
15 working the way that Voting Rights Act
16 contemplated. You have got this that you're
17 dealing with here, Senator Bishop. If you were
18 creating districts that are going to stay that way
19 in perpetuity, then America wouldn't have an
20 opportunity to grow, and we wouldn't have an
21 opportunity to migrate to the point that race does
22 not matter.

23 And so -- so what the Court has done --
24 and I think you'll find this in most of the
25 opinions -- whether it's a conservative Court or a

1 liberal Court -- what the Court has done is
2 basically say if you can still meet the Gingles
3 criteria, you will draw districts that have certain
4 percentages.

5 If you will notice, once you leave North
6 Carolina, not only in this last round of
7 redistricting but historically, you've had
8 districts that were represented with African-
9 Americans that were much higher in their African-
10 American black -- their black voting age population
11 than the North Carolina districts because they
12 could clearly demonstrate that race had been the
13 motivating in voting in those states. North
14 Carolina was substantially different, and so you
15 didn't have these high percentages.

16 You read the cases and you follow this
17 too. In Alabama, it was 67 percent. There were
18 very few instances, one or two, in all of North
19 Carolina where the numbers had to go that far in
20 order to create an opportunity for minorities to
21 elect a candidate of choice.

22 And so what the 31 percent says, if you
23 can draw a district down there and you can show
24 that minorities can elect the candidate of their
25 choice with only a 29, 30 percent black voting age

1 population in that district -- or Hispanic or
2 whatever the group is you're focusing on -- then if
3 you use race as a predominant factor to go beyond
4 that level, then you've violated the Voting Rights
5 Act and probably violated the Fourteenth Amendment
6 to the United States Constitution and several
7 amendments to the North Carolina Constitution or
8 several articles.

9 SEN. BROWN: Follow-up?

10 SEN. BISHOP: Let me ask another angle,
11 then. Was that the main thing driving how these
12 districts are formed, is setting the targets that
13 you described, that they're lower but, nonetheless,
14 looking at race and setting the numbers -- keeping
15 the numbers where you think they should be?

16 SEN. BLUE: I put the numbers at a level
17 that I feel pretty confident, and most of the
18 lawyers who would work in this area, whether
19 they're plaintiffs' lawyers or defendants' lawyers,
20 would feel confident that you could not sustain a
21 race discrimination claim based on the racial
22 percentages in these districts.

23 SEN. BISHOP: What I'm trying to get at
24 is, was that the predominant factor driving the
25 design of these districts is setting the racial

1 balance at the numbers that you believe to be
2 acceptable?

3 SEN. BLUE: The first consideration was
4 to fix the racial gerrymander, and in order to fix
5 the racial gerrymander, I knew that you had to take
6 these districts far lower than they were with black
7 population because these districts had already
8 demonstrated that they could elect minorities
9 without -- first, you don't want to use race. I
10 mean, frankly, that's what we're all trying to get
11 away from.

12 You don't want to use race, and so what
13 you're trying to do is use it the least amount
14 possible, and that's why I say it's got to be in
15 narrowly tailored remedy, and in election laws, the
16 narrowly tailored remedy is to use the smallest
17 percentage based on race that you can use so that
18 you keep coming down and you don't have to have
19 racial discussions when you do redistricting.

20 So you can say that you're not
21 considering race, but you haven't done the analysis
22 that you've got to do, you haven't addressed the
23 issue that the Court told us we've got to deal with
24 in redrawing these districts because you can't say
25 that you have fixed the racial gerrymander if you

1 can't say that you looked at what the racial makeup
2 of these districts are.

3 SEN. BROWN: Senator Bishop?

4 SEN. BISHOP: So are the statistics here
5 that reflect your analysis of what those racial
6 targets are for the districts so that we can -- the
7 Committee can have whatever information it needs in
8 order to pass this amendment?

9 SEN. BLUE: All of the backup is
10 available. I don't know if it's been passed out.
11 But there are no targets, Senator Bishop, in the
12 sense that, yeah, you go to X percent and Y
13 percent. My target was to draw districts and our
14 consultant was instructed to draw districts that
15 would be compliant with the Court's ruling, one
16 that does not have a racial gerrymander and you
17 can't argue that the percentages of the black vote
18 in these districts are put there solely because --
19 that's not the predominant reason that they're in
20 these districts.

21 It went back, for the most part, to
22 districts the way they existed in 2009 and took
23 away from them because all of these districts have
24 increased in population. The reason that my
25 district in Wake County was so big in 2011, it was

1 the second most overpopulated district in the state
2 because of all the new growth that's happening in
3 these two urban areas, Wake County and in
4 Mecklenburg County.

5 And so what this does, it sort of trims
6 off the edges of those districts with all of the
7 extra population. If you look at these districts
8 now, you can rest assured that they have a much
9 higher population now than they had in 2010, but to
10 sort of peel off some of the extra growth that had
11 occurred in them and get them back down to the
12 levels that they looked like in 2010 just before
13 the census.

14 SEN. BISHOP: Mr. Chairman?

15 SEN. BROWN: Follow-up.

16 SEN. BISHOP: I want to just shift out of
17 this discussion of race. If you would, forgive me.
18 It looks like this map sort of shatters Mecklenburg
19 County like a mirror. Take, for example, your
20 proposed 37, you've got -- I think Matthews is in
21 there.

22 Actually, let me ask you this question:
23 How many municipalities does this map split?

24 SEN. BLUE: Of course, it splits
25 Charlotte, and I don't -- again, I don't think it

1 should split any other. It did observe the
2 criteria. You know it better than I do. But, as
3 you see, Charlotte is split because it's right in
4 the middle of the map, and so you get at least -- I
5 think at least three, maybe four big districts
6 might border on Charlotte -- in fact, I'm sure that
7 at least three of them do. I think four of them
8 border on Charlotte.

9 SEN. BROWN: Follow-up?

10 SEN. BISHOP: We've got -- down on the
11 eastern side, you've got Mint Hill and you've got
12 Matthews. It looks to me like 40 and 37 would
13 split Matthews. You've got 39 down here. I don't
14 know if 39 and 38 split Pineville or not, but it
15 looks like you do. You don't know whether you took
16 that into consideration -- any of that?

17 SEN. BLUE: No, no. They're whole
18 precincts, and it's my understanding that they
19 comply with the other redistricting criteria and
20 don't split -- I don't think they split towns down
21 there any more than they're currently split,
22 probably less. I know that was the case in Wake
23 County where we -- we've got many more towns.
24 We've got 12 towns in this county, and so we were
25 basically trying to put them back together.

1 I don't think they're split, but again,
2 you know the geography down there far better than I
3 do. If they're split, they ought not be, but
4 they're whole precincts and sometimes you'll split
5 a town because you take the whole precinct, and
6 some of it will be in town and some of it will not
7 be in town. So that's going on, especially in
8 these towns that don't have but 30- or 40,000
9 people population.

10 SEN. BROWN: One more follow-up?

11 SEN. BISHOP: It might be more than one.
12 Have you measured--- Senator Clark has talked a
13 lot about this efficiency gap. The professor
14 named---

15 SEN. CLARK: Stephanopoulos.

16 SEN. BISHOP: Yes. ---Nick
17 Stephanopoulos. I think he's George
18 Stephanopoulos's brother, but I'm not positive
19 about that. In 2008, I think he was with Obama for
20 America before he came up with this. But have you
21 measured his efficiency gap on this map?

22 SEN. BLUE: All the stats related to it
23 should have been passed out. I gave the whole
24 stat-pack on it. I understand a little bit.
25 Believe it or not, I have a degree in mathematics,

1 and I understand some about this efficiency gap
2 analysis, but I have not consumed myself with it
3 the way our Chairman has and the way Senator Clark
4 has.

5 But we performed the same analysis -- the
6 staff did -- whatever we've got here -- they should
7 have performed the same analysis as they did the
8 other -- the other maps that they looked at.

9 SEN. BROWN: Follow-up?

10 SEN. BISHOP: Well, I'm just looking at
11 the collection of materials, and it does look like
12 what we've done in the other maps that have been
13 provided by the majority. It does not include an
14 efficiency gap analysis. I just wondered
15 whether -- whether Dr. -- what's his name? No, no,
16 no, no. The gentleman who drew these for
17 you -- Kareem -- whether he computed an efficiency
18 gap?

19 SEN. BLUE: I don't have an efficiency
20 gap. That's not one they requested of me because
21 the Committee didn't adopt it as a criteria. But
22 if you were to do an efficiency gap on this thing,
23 it would probably be as close to neutral as you
24 would get.

25 SEN. BROWN: Senator Hi se, do you want to

1 pick up and give Senator Bishop a break?

2 SEN. HISE: Well, I would just comment on
3 that briefly in consideration, regardless of my
4 issues with how you would calculate an efficiency
5 gap, but when you can run -- I would simply state
6 in very simple less mathematically complex terms
7 that in Mecklenburg County, if you look at the
8 races, roughly 30 to 42 percent of the vote goes
9 for Republican candidates in Mecklenburg County.
10 The end result of this would be no representatives
11 in the Senate who were of the Republican Party.
12 Some might call that an infinite efficiency gap,
13 coming in -- coming in, but I'm sure that would --
14 whether or not I like the calculations, I'm sure,
15 if you looked at the county, that would score quite
16 horribly.

17 SEN. BROWN: Senator Clark?

18 SEN. CLARK: I'm just wondering how you
19 used political data to determine that a certain
20 party would obtain a certain number of seats. I
21 thought you-all didn't do that. That's what I was
22 told earlier.

23 SEN. HISE: I used the calculations you
24 had used previously.

25 SEN. BROWN: Senator Clark, do you want

1 to follow up on that?

2 SEN. CLARK: Yes. So I was correct that
3 means you do use political data prospectively to
4 determine the outcomes of elections based upon
5 these districts that we have drawn?

6 SEN. HISE: I do not.

7 SEN. BROWN: Senator Bishop?

8 SEN. BISHOP: I think just two more, I
9 promise, Mr. Chairman. You know, to that point, as
10 I said, I don't have great confidence in the
11 efficiency gap. I think it sort of tends to give
12 some sort of certain sense to something that's very
13 certain, but that doesn't mean you can't use common
14 sense. And so Senator Blue has spoken to that a
15 good bit.

16 Senator Blue, I was just looking at the
17 back -- if you flip over to the next-to-the-last of
18 the long pages, it's got the President 2016 stats,
19 and if I look at all those districts, 37, 38, 39,
20 40, and 41 in Mecklenburg County that have been
21 drawn, the closest the Republican candidate for
22 President would have gotten would have been 43
23 percent of the vote. You've got -- all five
24 districts would have beat the Republican candidate.

25 And so, Senator Blue, you didn't

1 gerrymander this district?

2 SEN. BLUE: No. But it is a map drawn
3 strictly to the criteria that you adopted that
4 ought to govern mapmaking. That's what this map
5 does.

6 SEN. BISHOP: It doesn't have any
7 political consideration?

8 SEN. BLUE: No. No. It has political
9 implications, but what it did, if you can configure
10 these two minority districts -- not majority
11 minority -- substantial plurality minority
12 districts in other forms but come down to those
13 percentages, you will probably fix the racial
14 gerrymander in Mecklenburg County, but if you don't
15 do that, you will neither fix the racial
16 gerrymander---

17 And I'm not saying this is the only way
18 to do it. What I said when I started out is, I
19 wanted to look at alternative ways that you could
20 draw maps based on your criteria that would fix the
21 gerrymander, but you can approach it in a different
22 way. I think that you still leave the gerrymander
23 in the plans in Mecklenburg County in the map
24 that's before us.

25 There are other ways to fix it, but this

1 is one observing all of the criteria that you
2 adopted. They are more compact. They satisfy all
3 the other tests that you set. There was just a
4 little dialogue between Senator Clark and Senator
5 Hi se on whatever the guy's name was that you do
6 these studies by.

7 This surpasses all the stuff that we've
8 done in every other county when you draw it
9 specifically like this because they're more
10 compact, you're protecting incumbents. You'll see
11 in some instances, they're just hanging on in the
12 corners, but each one of them has a separate
13 incumbent in it, so you haven't double-bunked any
14 of them, and you observe all the criteria that you
15 set forth.

16 SEN. BISHOP: If I could ask one more
17 question and then maybe one quick comment, and I'll
18 get out of the way. Sorry. So, you know, this
19 thing about what constitutes fairness in drawing
20 these maps, if I look at 37 again, Senator Blue,
21 I'm sure that at least part of Matthews down at the
22 southeastern end of the county in that district and
23 the urban core of Charlotte.

24 And you talk about -- whether you call it
25 communities of interest or what makes sense, do you

1 think that the people in Matthews have some
2 interests that they need attended to that are in
3 the nature of ring city, ring town interests that
4 they don't have in common with the people who live
5 in the core of Charlotte, and what would be fair
6 about cramming them together in one district?

7 SEN. BLUE: Senator Bishop, have you
8 looked at the Republican map for Mecklenburg
9 County?

10 SEN. BISHOP: I have, sir.

11 SEN. BLUE: You remember one of the
12 things that those who attended these public
13 hearings is from Charlotte -- the biggest issue
14 that folks raised is why would I want to go all the
15 way around the county. There's nothing in common
16 with the way these districts connect us -- one of
17 the districts that you've drawn, and I suggest that
18 I don't know where the similarity is at the bottom
19 at the extreme left-hand corner in this map in
20 Mecklenburg County and right in middle of where
21 this district ends, but it's certainly compact.
22 It's as compact as you probably could make that
23 district, and it's a district that now complies
24 with the Voting Rights Act and Fourteenth
25 Amendment. It is a district that the Court said

1 you've got to redraw and you've got to change your
2 percentage.

3 The same thing on 40. It is compact. It
4 gets the percentages below where they have to be,
5 and it meets all of the other criteria that you set
6 forth, but it meets it in a better way than the map
7 that's before us. When I say "before us," I mean
8 the Committee's map.

9 And just in closing, let me simply say
10 this. Is there a district in Mecklenburg County
11 under the current mapping system that Trump won?

12 SEN. BISHOP: Mr. Chairman, my just
13 closing comment. And Senator Blue is very
14 skillful, but didn't answer the question whether
15 Matthews would have interests -- they're concerned
16 about being adequately represented with a district
17 they elect -- with a representative they elect in
18 common with somebody from Charlotte's core. I
19 assure you that the Matthews people say that they
20 wouldn't want it done that way, and it does -- for
21 me it has sort of a galvanizing effect.

22 You know, I know people who are -- who
23 are not in control, you know, can get very upset
24 about the way things are done, but the notion that
25 there's not politics in this, the notion that

1 there's not targeted of racial information in this,
2 whatever number you're trying to set, you haven't
3 cured evidentiary shortfalls that the Court said
4 existed. I cannot conceive of that being the map
5 for Mecklenburg County, and I hope the Committee
6 won't support it.

7 SEN. BROWN: Senator Hise?

8 SEN. HISE: Thank you, Mr. Chairman.

9 Despite -- I guess this is where we start breaking
10 apart in this agreement. Despite claims that this
11 meets all the criteria of the Committee, I think
12 that it is clear that this map used race as a
13 manner in which to divide individuals into
14 districts. In fact, here you've set targets at 39
15 or 40 percent as to what those numbers should be
16 and then placed individuals to meet those criteria
17 that are coming in.

18 Also, it clearly fails on the concept of
19 incumbency protection. My summary of this map is
20 it is drawn solely for the purpose of making sure
21 that no Republican incumbents in Mecklenburg County
22 could ever be elected. Quite frankly, it's
23 designed to make sure that no Republicans would
24 ever be elected to the Senate from Mecklenburg
25 County.

1 That's what's coming in despite those
2 percentages within those counties. I think there
3 is also a significant question about the
4 municipalities that are divided. I would tell you
5 that I feel this is inconsistent with the
6 Committee's criteria and ask that you reject this
7 amendment.

8 SEN. BROWN: Senator Clark?

9 SEN. CLARK: I would like to speak a
10 moment on the criteria regarding compactness.
11 Despite what was said earlier, our written criteria
12 indicates that we should meet reasonable efforts to
13 develop plans that improve the compactness of the
14 current districts. With regard to District 39, it
15 is worse with respect to the Reock and it's worse
16 with respect to the Polsby-Popper, which we
17 specifically identified as measures that we wanted
18 improvement in.

19 In addition to that, we know that there
20 are nine measures of compactness provided by the
21 Maptitude software. It is also deficient in terms
22 of the perimeter compactness measure, deficient in
23 terms of polygon measure -- population polygon
24 measure, it is worse off in the population circle
25 method it's worse off in the Ehrenberg method, and

1 it is worse off in the minimum convex polygon
2 method. So of the nine methods of measuring
3 compactness, District 39, as proposed in the Senate
4 plan, is worse in seven categories.

5 And with regard to efficiency gap, we
6 don't use the efficiency gap to measure performance
7 of an individual district within the state plan.
8 The efficiency gap is used to measure the
9 performance of the plan in its entirety.

10 SEN. BROWN: Senator Hise, any response?

11 SEN. HISE: I think the efficiency gap is
12 apparently used how you want to use it. They're
13 coming in to make a point. But I would say that I
14 do say that, again, I would the Committee to reject
15 the amendment.

16 SEN. BROWN: Any more questions on this
17 amendment? If not, again, I'm going to ask by
18 raising your hand, all those in favor of the
19 amendment raise your hand, please.

20 (Show of hands vote.)

21 SEN. BROWN: Those opposed?

22 (Show of hands vote.)

23 SEN. BROWN: Nine to four. The amendment
24 fails.

25 All right. Next, I have Senator Van

1 Duyn.

2 SEN. VAN DUYN: Thank you, Mr. Chair.
3 This amendment deals with District 28 in Guilford
4 County. Has it been distributed?

5 SEN. BROWN: Has everybody got this
6 amendment for Guilford County? Let's get that.
7 Let's make sure everybody's got it.

8 (Pause in proceedings.)

9 SEN. BROWN: All right. It looks like
10 we're good. Senator Van Duyn?

11 SEN. VAN DUYN: Thank you, Mr. Chair.
12 The objective of this amendment is to -- primarily
13 to correct the defects that were previously caused
14 by racial gerrymandering in District 28. It
15 affects the surrounding districts as well, of
16 course, but it also complies with state and federal
17 laws. It respects the whole county -- excuse me --
18 the whole county provision as well as the need for
19 compactness.

20 And with all due respect to Senator
21 Bishop, I think we just fundamentally disagree
22 about the need to review race in the process of
23 correcting the previous maps. I mean, if you look
24 at the 2011 District 28, one might suggest that if
25 you start with that general outline, you don't have

1 to use race to create a racially gerrymandered
2 district if you start out with an outline of a
3 racially gerrymandered district. So for that
4 reason, you have to consider race to make sure, in
5 fact, that you have corrected the problems with the
6 previous maps.

7 And this scheme does, in fact, do that by
8 returning us -- not quite but to -- to the
9 percentage of African-Americans that we had in
10 2003.

11 SEN. BROWN: Questions for Senator Van
12 Duyn? Senator Bishop?

13 SEN. BISHOP: Thank you, Mr. Chair. What
14 numerical target of African-Americans do you say is
15 constitutional, Senator Van Duyn?

16 SEN. VAN DUYN: I'm sorry. Could you
17 please repeat your question?

18 SEN. BISHOP: What numerical target for
19 African-Americans do you say is constitutional?

20 SEN. VAN DUYN: I am saying that closer
21 to the 2003 numbers is constitutional because those
22 were constitutional maps.

23 SEN. BISHOP: What do you mean closer to;
24 the same number or some number within what range?

25 SEN. VAN DUYN: No. Closer to than the

1 maps that were deemed unconstitutional.

2 SEN. BROWN: Follow-up?

3 SEN. BISHOP: Thank you, Mr. Chair.
4 Could you say what number that is?

5 SEN. VAN DUYN: Well, the number I
6 believe in the 2017 maps was 50.52 and that was
7 significantly higher than where it was in 2003.
8 Ours is at 45.3.

9 SEN. BISHOP: So you targeted 45.3?

10 SEN. VAN DUYN: No. No. We just
11 targeted less than 50.5.

12 SEN. BROWN: Senator Hise, do you want to
13 respond?

14 SEN. HISE: Senator Van Duyn, you
15 specifically said what the percentage was of the
16 minority in the district we had drawn, the 2017
17 maps. Could you repeat that?

18 SEN. VAN DUYN: I believe it was 50.52
19 which makes it a majority minority district.

20 SEN. HISE: And your intent was to get it
21 below 50.3?

22 SEN. VAN DUYN: No. 50.52. In other
23 words, to get it -- to get it closer to where it
24 was in 2003.

25 SEN. BROWN: Follow-up, Senator Hise?

1 SEN. HI SE: But no qualifications on
2 "closer," just as long as it went under 50.5, you
3 felt like it was a good number?

4 SEN. BROWN: Is that what Senator
5 McKissick thinks?

6 SEN. VAN DUYN: I did work with Senator
7 McKissick on these maps. So thank you for allowing
8 me to discuss this with him. I was in Asheville
9 and didn't have access to computers.

10 But -- so, as we said before, our real
11 intent was not any particular number. Our real
12 intent was to honor the wishes of the Court in that
13 we demonstrate that these were no longer racially
14 gerrymandered districts and majority minority
15 districts. And so we needed to get them below 50
16 percent, but we didn't have a target so much as we
17 wanted to demonstrate that these were not racially
18 gerrymandered districts.

19 SEN. BROWN: Senator Hi se, follow-up on
20 that?

21 SEN. HI SE: So, as I would state this,
22 for your and McKissick's work on this, the concept
23 here was that we will assign voters based on race,
24 but we will not be using race excessively if we get
25 below the 50 percent threshold?

1 SEN. VAN DUYN: Here's what I would say,
2 okay? So we have -- we have a district that is
3 shaped very similarly to what it was in the
4 unconstitutional maps, and that clearly we cannot
5 demonstrate, then, that we are in compliance with
6 the Courts if we do not at least verify that those
7 are no longer racially gerrymandered districts. So
8 we used the criteria that included reducing the
9 percentage of African-American voters in the
10 district.

11 SEN. BROWN: Senator Blue?

12 SEN. BLUE: I'd like to ask Senator Hise
13 a question, and he probably has anticipated what it
14 is. But specifically in the court order, they say
15 you've got to explain to them why you went over 50
16 percent in this district. What do you plan to tell
17 them?

18 SEN. HISE: I would think as we go
19 through this entire process -- I would even say
20 that the Plaintiffs' attorneys clearly stated even
21 to the Courts that when districts are created by
22 other criteria that there may be naturally
23 occurring districts that exceed 50 percent, but
24 that the predominant criteria in drawing that map
25 was not racing and could not have been race. There

1 were no criteria in drawing the map or assigning
2 voters in which we used race in order to place
3 individuals.

4 As a result of using the criteria we
5 have, there may be -- and I still don't know what
6 the numbers -- this is the first I've been told on
7 this district -- there may be naturally occurring
8 areas that have that -- a percentage of 50 percent,
9 a percentage of 40 percent or 42 percent.
10 Individuals group themselves into communities,
11 particularly in urban areas that are compact in
12 those, and naturally occurring districts may come
13 out.

14 And I think any numbers that you find,
15 which I'm willing to look at, are a result of
16 naturally occurring districts that we did not
17 assign any voters on the basis of race or move any
18 voters to districts on the basis of race.

19 SEN. BROWN: Senator Blue?

20 SEN. BLUE: So, as I understand it, with
21 a straight face, you're going to ask the
22 legislative lawyers to stand in front of these
23 three federal judges and say the same guy who drew
24 the district in 2011 knew all of these statistics,
25 he knew what the map looked like, he redrew the

1 districts in 2017, and he does not remember what
2 the map looked like, he does not remember why he
3 put 50 percent or greater in that district, and it
4 just coincidentally happens that it looks like the
5 same district, it's got over 50 percent, which is
6 what he sought out to achieve in 2011, but we
7 didn't know that was going to happen. That just
8 naturally occurred. Is that going to be the
9 answer?

10 SEN. HISE: I think no different than you
11 would say that when you drew the maps, you used
12 Maptitude and somehow guessing it has some long-
13 term memory because it was the same software used
14 or may happen to have been the same chair
15 individuals were sitting in. Dr. Hofeller was
16 given the criteria of this Committee, which was
17 significantly different from the criteria of the
18 previous committee as a result the court rulings,
19 and from the criteria, drew maps that did not
20 include race. Race was not part of the database.
21 It could not be calculated on the system that is
22 done.

23 I wasn't drawing. It was Rucho there
24 that was drawing then versus me there now, but I
25 can tell you that there is no consideration of race

1 in the drawing of these maps, hidden or otherwise,
2 nor is there is there sorting of individuals on the
3 basis of race in the districts in the maps as they
4 exist, quite counter to the amendments that you
5 have been proposing.

6 SEN. BROWN: Senator Bishop?

7 SEN. BISHOP: Thank you, Mr. Chairman. I
8 have a couple of other questions for Senator Van
9 Duyn. Senator Van Duyn, I didn't get the -- or
10 didn't retain the last name of the consultant that
11 Senator Blue identified, but did the same
12 gentleman -- his first name was Kareem -- did he
13 draw your proposed amendment to Guilford?

14 SEN. VAN DUYN: Senator Bishop, with the
15 Chair's permission, I worked with Senator McKissick
16 on this. I can't answer that honestly because I
17 don't know who he consulted with. Can I ask
18 Senator McKissick that question?

19 SEN. BLUE: I'll allow that. You may
20 need to identify yourself for the---

21 SEN. MCKISSICK: Sure. This is Senator
22 Floyd McKissick, Senator District 20. There is a
23 gentleman who was used by the name of Mr. Kareem
24 Crayton, C-r-a-y-t-o-n, who worked closely with
25 this in looking at potential alternative plans for

1 the Guilford County as well as for Mecklenburg
2 County, with the goal of trying to see what
3 alternative configurations might be put forth for
4 those particular clusters that would present an
5 alternative for this Committee and for this body to
6 consider as you move forward.

7 SEN. BROWN: Senator Bishop?

8 SEN. BISHOP: Senator Van Duyn, what does
9 Dr. Crayton have against Senator Wade?

10 SEN. VAN DUYN: I don't believe he has
11 anything against Senator Wade.

12 SEN. BISHOP: If you see on the map in
13 your amendment, the little red dot there underneath
14 the green District 28 and it's just in 27. I think
15 that's Senator Wade's home, and that's in Senator
16 Dr. Robinson's district, as I understand it. Is
17 that correct?

18 SEN. VAN DUYN: No one's been
19 double-bunked in this.

20 SEN. BISHOP: Do you know whether that
21 district is favorable to Senator Wade's prospects
22 for reelection or not?

23 SEN. VAN DUYN: I'm sorry. I honestly do
24 not know.

25 SEN. BISHOP: And did not give that

1 any -- do you know whether Dr. Crayton gave any
2 consideration to that in drawing the map?

3 SEN. VAN DUYN: We believe it would be
4 favorable to Senator Wade. I think, if you look at
5 the statistics that are attached, you can see that
6 that, in fact, is the case.

7 SEN. BROWN: Senator Clark, I'm going to
8 let you take off, and I'm going to let Senator
9 Bishop think about that for just a second. I think
10 he's got another question, but go ahead.

11 SEN. CLARK: Thank you, Mr. Chairman. I
12 think, Mr. Hise, when you were addressing Senator
13 Blue regarding what you would tell the Courts, you
14 would tell them that maybe we had exceeded the 50
15 percent mark as the result of a naturally occurring
16 district. I find that sort of puzzling because one
17 of our members Senator Erica Smith-Ingram did
18 submit criteria to this particular Committee which
19 said that we would recognize naturally occurring
20 districts. However, that was voted down. So are
21 we saying that is now an acceptable criteria?

22 SEN. HISE: That is the statement of your
23 Plaintiffs -- I'm sorry -- of the Plaintiffs in the
24 case.

25 SEN. CLARK: Follow-up.

1 SEN. BROWN: Follow-up.

2 SEN. CLARK: Since you did mention the
3 idea of a naturally occurring district, I even
4 admitted at the time when one the members -- fellow
5 members set it forth, I really didn't what the heck
6 that meant anyway. So since you've considered that
7 as appropriate, what is a naturally occurring
8 district anyhow?

9 SEN. HISE: I simply stated with what you
10 have with the reference. You can refer to their
11 counsel as to what they meant when they referenced
12 that, but districts come in at various percentages
13 based on the way individuals group together and the
14 way those are followed in without an intent or
15 without a specific purpose of the General Assembly
16 in drawing those maps.

17 SEN. BROWN: Senator Bishop, are you
18 ready now?

19 SEN. BISHOP: I think so. Thank you,
20 Mr. Chairman. Senator Van Duyn, do you know how
21 many municipalities you split in your proposed
22 amendment?

23 SEN. VAN DUYN: I believe we have
24 minimized the splitting of municipalities with this
25 map.

1 SEN. BISHOP: My understanding is that
2 the amendment splits eight municipalities, whereas
3 the leadership's plan only splits four. Do you
4 know that not to be correct?

5 SEN. VAN DUYN: I'm sorry. I am not sure
6 of the exact number.

7 SEN. BROWN: Follow-up, Senator Bishop?

8 SEN. BISHOP: Kareem Crayton who helped
9 you, I've been given some information that he's a
10 widely cited expert on the intersection of law,
11 politics, and race, and that his work -- formal
12 training in law and political science whose primary
13 work explores the relationship between race and
14 politics and representative institutions. Is that
15 Dr. Crayton that helped you?

16 SEN. VAN DUYN: Yes.

17 SEN. BLUE: I'll say -- if I---

18 SEN. BROWN: Senator Blue, go ahead.

19 SEN. BLUE: I'll add something to that
20 since I know Dr. Crayton and I knew him well when
21 he was a professor at Chapel Hill. He is
22 nationally acclaimed, has written in this area, and
23 all of the traditional, I think maybe Yale and
24 Stanford or some different combination, and has
25 spent his career in studying race and its

1 intersection with politics and critical race
2 theory.

3 And, consequently, he would have some
4 opinions that would be respected as to what -- what
5 a gerrymandered district would look like because
6 he's written about them and studied them. And so
7 that was one of the reasons that he was attractive
8 to us because the Court said these are
9 gerrymandered districts. So rather than just
10 eyeball on a computer terminal in trying to put
11 stuff together, we figured we ought to talk to
12 somebody who understood what gerrymandered
13 districts look like. So you get the benefit of his
14 couple of decades in writing and researching and
15 teaching in this field.

16 SEN. BROWN: I'm just curious how he
17 would know that.

18 SEN. BLUE: By studying them, doing
19 extensive research. As I said, he is a lawyer and
20 a political scientist, and his whole career has
21 been in that field. It's like a neurosurgeon
22 knowing that there are certain things that you
23 touch in the brain and it causes a certain
24 reaction. Inasmuch as a political science theory
25 can be agreed to or confirmed upon folks with

1 di fferent opi ni ons, but that's hi s area of
2 experti se.

3 SEN. BROWN: So that's his opinion, I
4 guess. Senator Bi shop?

5 SEN. BISHOP: If I can just offer a
6 comment, Mr. Chair man. You know, first of all,
7 I'll say put in mind when you described
8 Dr. Crayton. So he's a political science and
9 lawyer. Nick Stephanopoulos -- he's not a
10 statistician. He's a political -- poli sci
11 undergrad. Then he went to Obama for America and
12 then he went -- and he's a lawyer. We've got a lot
13 of political scientists and lawyers in this thing
14 trying to tell us how statistics and things can get
15 worked out with great certainty, and they just
16 don't make common sense to me.

17 In this instance, you have Senator Van
18 Duyn not even aware of how many municipalities are
19 being split. It's a classic example of
20 subordinating traditional districting principles to
21 an absolute fixation on race, and I would hope the
22 Committee doesn't accept this amendment.

23 SEN. BROWN: Senator Hi se?

24 SEN. HI SE: Thank you, Mr. Chair man.

25 Just to summarize again, it is clear counter to the

1 criteria established by this Committee that members
2 are assigned to districts on the basis of race,
3 race was used for drawing maps, it increases the
4 number of municipalities that have been divided,
5 also counter to the criteria of the Committee, and
6 I would ask that members reject the amendment.

7 SEN. BROWN: Any other questions?
8 Senator Van Duyn?

9 SEN. VAN DUYN: I'd like to make a couple
10 of clarifying remarks. One is that both the 2017
11 maps that were presented by Senator Hise and this
12 map do split municipalities, and I apologize for
13 not having the comparison in terms of numbers, but
14 this map was also drawn to accommodate incumbents,
15 and I just wanted to point that out.

16 And then, finally, I just think it's
17 important to say that one does not have to use race
18 if you're drawing racially gerrymandered districts
19 if you start out with district that was racially
20 gerrymandered, and when we look at the 2017 maps
21 that were presented by Senator Hise, we see a map
22 that looks like it was based on the map that the
23 Courts found to be racially gerrymandered. So with
24 all due respect, the only way to make sure that it
25 is not, in fact, the case is to consider race.

1 SEN. BROWN: Any other questions?

2 Senator Hise?

3 SEN. HISE: Just a real quick comment.

4 You know, I'm sorry that you look at a map that
5 tends to outline the city limits of Greensboro and
6 tend to think that that is now a racially motivated
7 line that's coming in. Race was not considered.
8 These maps are significantly different in size,
9 shape, and population from what the previous maps
10 that existed and the population, and any sort of
11 eyeball comparison that "we think that kind of
12 looks like the last one so you're in violation
13 again" really misses the entire spirit of what is
14 required for identifying racially polarized voting
15 and making sure that it is occurring or not
16 occurring and how you address that under the Voting
17 Rights Act.

18 SEN. BROWN: Any other questions or
19 comments on this amendment? If not, again, I'm
20 going to ask you to raise your hands. All those in
21 favor of the amendment, please raise your hand.

22 (Show of hands vote.)

23 SEN. BROWN: Those opposed?

24 (Show of hands vote.)

25 SEN. BROWN: I have nine against and four

1 for the amendment. So the amendment fails.

2 Next, I have Senator Blue. I think this
3 is a statewide map.

4 SEN. BLUE: It is. Yes, it's got---

5 SEN. BROWN: Senator Blue, I don't know
6 if they've passed it out. Let me make sure.

7 (Pause in proceedings.)

8 SEN. BROWN: Okay. Senator Blue?

9 SEN. BLUE: Thank you, Mr. Chair. This
10 map is denominated Covington Senate 27P remedy map,
11 and it pretty much affects the same counties that
12 we've talked about, the four urban counties
13 primarily, of Mecklenburg, Guilford, Wake, and
14 Cumberland. It's somewhat different than the two
15 maps -- the three maps that we talked about
16 earlier, especially the two with Guilford and
17 Mecklenburg.

18 Yesterday the attorneys for the
19 Plaintiffs in this case sent a letter to -- I think
20 to the Committee Chairs saying that they had some
21 ideas as to how to fix this since they represented
22 the Plaintiffs, and they wanted to talk about some
23 of their suggestions. I then authorized staff to
24 draw legislation and let's see what the remedy map
25 by the Plaintiffs would look like. This is it.

1 So to relieve any of Senator Bishop's
2 angst, Dr. Crayton didn't help draw this map.

3 SEN. BISHOP: He did not?

4 SEN. BLUE: No. This is the map that the
5 Plaintiffs -- this is the remedy that the
6 Plaintiffs have offered and suggests that would
7 basically resolve this case. And all the
8 statistics relating to it are attached. We had
9 staff run it through the same statistical analysis
10 that the earlier maps were run through, and you'll
11 see those are in the back of the map.

12 So it only affects the areas that were
13 ruled unconstitutional and the areas around the
14 nine districts where we had the controversy that's
15 brought us back here. And so I'll answer any
16 questions about it, but it -- just briefly, it
17 strictly complies with the whole county provision.
18 It just deals within clusters. It avoids pairing
19 incumbents. It's kept all the incumbents
20 separated. It cures the defects in all of the
21 racial gerrymanders in these -- primarily in these
22 four counties.

23 It does not -- it is not designed to give
24 any particular party a particular advantage, and
25 you'll look at the statistics and you will see. I

1 mean, to be perfectly frank with you, folks, it's
2 hard for you to preserve 35 seats as an advantage
3 without doing strange stuff. But this map does not
4 set out to give any particular advantage to
5 Democrats or Republicans, and I think if you
6 analyze it, it still shows substantial advantages
7 for Republicans if you analyze on the map based on
8 the presidential election data and the other
9 elections that you've used. But it does -- it
10 makes it a fairer contest. It doesn't guarantee
11 anybody's specific election, but at least it gives
12 people a shot -- citizens a shot to choose their
13 representative.

14 Again, it complies with all state and
15 federal law including the law that was raised in
16 the letter, I think, to Chairman Hise about
17 redistricting districts that were not affected by
18 the Court's decision. They pointed out in that
19 letter -- and I take it you got the letter -- they
20 pointed out in the letter that there were some
21 additional issues raised by these maps in violation
22 of the state constitution. It's a pretty
23 thoughtful letter, a two-page letter.

24 And so once I saw that and saw that maps
25 that they had finalized on, I thought it was

1 appropriate to put the third map before you so that
2 you can debate it, analyze it, and figure out
3 whether -- if you wanted to incorporate it into
4 your maps or at least certain aspects of it.

5 Because, again, it adopts all the traditional
6 criteria, and it uses most of the criteria that we
7 adopted as a committee, and here it is before you.

8 SEN. BROWN: Senator Blue, one real quick
9 question before I let Senator Hise speak. You ran
10 the amendment on Wake County. It looks to me like
11 this is different than that amendment for Wake
12 County. I'm just curious of that particular piece.

13 SEN. BLUE: It is. It's different from
14 the amendment in Wake County.

15 SEN. BROWN: Senator Hise?

16 SEN. HISE: Thank you, Mr. Chair. You
17 know, I think that perhaps the ridiculous nature of
18 this probably -- of this map speaks for itself, but
19 that somehow the remedy is to try to draw Guilford,
20 Wake, and Mecklenburg County in such a manner that
21 no Republican would be represented in any of those
22 areas that would be coming through. So some sort
23 of rectification for the fact that urban areas tend
24 to -- what, 15 counties vote Democrat in this state
25 and 85 vote Republican -- is that we should take

1 those areas and make sure that they're all
2 Democratic representatives that were coming in.

3 It, for no good reason whatsoever, goes
4 after Senator Barringer and Senator Chaudhuri to
5 place them double-bunked together. It takes
6 Senator Robinson and Senator Wade, once again, for
7 no good reason. Also, Senator Bishop and Senator
8 Jeff Jackson in Mecklenburg, that it just wants to
9 throw those in and see what it could change out.

10 I think that speaks much more to the
11 motive of the Plaintiffs than anything that has to
12 do with racial issues or others that have occurred
13 in the state. For what they have done, I think
14 this is not even a serious proposal that's coming
15 in, and I would ask the Committee to reject it.

16 SEN. BROWN: Senator Blue?

17 SEN. BLUE: Thank you, Mr. Chairman. And
18 I apologize to the Committee. I misspoke. I have
19 looked at it. It does double-bunk in several
20 districts. I was under the impression that it
21 didn't. I present it to you because it is the
22 proposal that the Plaintiffs have offered as their
23 potential remedy that solves the issues that
24 they've raised.

25 So I present it to you in that light and

1 acknowledge that Senator Hi se is right. There are
2 some places -- at least two or three places where
3 it double-bunks in addition to the double-bunki ng
4 in the Republican map. I think that that's
5 accurate.

6 SEN. BROWN: Any other questions on thi s
7 map? Senator Bi shop?

8 SEN. BI SHOP: As one doubl e-bunked, may I
9 ask this question? There's a case I have in mi nd.
10 It's called Cox versus Larios, and in that one
11 party purposefully double-bunked a bunch of people
12 of the other party. Now, in the maps that I
13 understand are proposed by Senator Hi se -- or the
14 map -- the double-bunki ng there is all -- I think
15 basically all hurts Republicans and it's all driven
16 by the pods.

17 And I'm just a freshman, but would you
18 think maybe taking not only me but Senator Wade and
19 Senator Barringer out by doubl e-bunki ng woul d be
20 for a partisan advantage?

21 SEN. BROWN: Senator Bl ue?

22 SEN. BLUE: I'll say thi s much. I think
23 that when they drew the map, they're not as
24 politi cally sensitive as those who serve, and so I
25 look at the Wake portion of the map where they

1 double-bunked -- who is this? In 15, is that---

2 SEN. HISE: Chaudhuri.

3 SEN. BLUE: ---Chaudhuri and---

4 SEN. HISE: Barringer.

5 SEN. BLUE: ---Johnny Mac Alexander?

6 SEN. HISE: Chaudhuri and Barringer, I
7 think.

8 SEN. BISHOP: It's Chaudhuri and
9 Barringer, as I understand it.

10 SEN. BLUE: It's not Barringer unless
11 Chaudhuri is in the blue portion. I can't see.
12 Somebody's on the line. Something that could be
13 easily fixed if you wanted to follow the concept.
14 I can't tell who it is because it's small, but it
15 looks like it's Chaudhuri and Barefoot that have
16 been -- I mean Chaudhuri and Alexander and
17 Barefoot.

18 SEN. BISHOP: Mr. Chairman?

19 SEN. BLUE: Okay. But, anyhow, it might
20 have some similarity to the Common Cause map, but
21 this is what they submitted. And as a double-
22 bunkee, I don't know how you kick your bed mate
23 out, but -- in Mecklenburg because you're double-
24 bunked, you're right.

25 And I think lastly -- I can't tell

1 whether Senator Lee is double-bunked, but all of
2 these districts are drawn so close to the line that
3 if you are interested in pursuing this concept, you
4 could easily fix it because it looks like the
5 districts next to them are empty districts.

6 SEN. BROWN: Senator Bishop?

7 SEN. BISHOP: I would just observe that
8 in double-bunking me with Jeff Jackson, they did it
9 in Plaza, Midwood, and East Charlotte, not down in
10 Ballantine and Matthews. I'm sure that's
11 coincidental. But do you know who -- who was the
12 "they" who prepared this?

13 SEN. BLUE: This is what the --
14 Plaintiffs' counsel asked could we take a look at
15 what they proposed, and so, consequently, I had
16 staff reduce to the form that we understand, that
17 is, maps and legislation, that would accomplish
18 what they proposed as their remedy.

19 SEN. BISHOP: Do you have any knowledge
20 who helped them, who their consultant was, who the
21 map drawer was?

22 SEN. BLUE: I don't know specifically who
23 did it.

24 SEN. BROWN: Senator Bishop?

25 SEN. BLUE: I had no role in choosing who

1 they used. I don't know. I can't say specifically
2 who they hired or paid for.

3 SEN. BROWN: Senator Bishop?

4 SEN. BISHOP: Who's the counsel you're
5 referring to?

6 SEN. BLUE: Counsel for the Plaintiffs.

7 SEN. BISHOP: Is that Anita Earls?

8 SEN. BLUE: Yes. And so Anita then -- I
9 had it sent it to staff. She sent it. There is
10 communication with her.

11 SEN. BROWN: Follow-up, Senator Bishop?

12 SEN. BISHOP: If we were to adopt this
13 amendment, it would undo -- I think you already
14 said in response to the Chairman -- what you have
15 already done by another amendment to Wake. It
16 would also undo what we did for Senator Clark's
17 district in Cumberland, right? Sir?

18 SEN. BLUE: Yes, that's correct.

19 SEN. BISHOP: I don't understand the
20 purpose of this, then. Is it a litigation tactic
21 to propose this?

22 SEN. BLUE: No. I offer you what the
23 Plaintiffs have suggested their thoughts are about
24 this remedy for the gerrymanders.

25 SEN. BISHOP: If I may, but you're

1 proposi ng---

2 SEN. BROWN: Senator Bi shop.

3 SEN. BISHOP: You're proposing it as an
4 amendment for this Commi ttee to adopt, aren't you?

5 SEN. BLUE: For the Commi ttee to adopt,
6 yes, but I know that before commi ttees adopt stuff,
7 they look at it, and if you see something good in
8 it that you like, the Commi ttee could do a
9 commi ttee substitute and fix some of the obvi ous
10 problems that you see in it.

11 SEN. BROWN: Senator Bi shop?

12 SEN. BISHOP: Do you and Senator Clark
13 support the adoption of this amendment?

14 SEN. BLUE: Yeah. But I probably would
15 support a commi ttee substitute if you want to fix
16 some of the problems that you're suggesting because
17 I'm a realist and a practical guy, and I know what
18 the chances are that you'll adopt the amendment.

19 SEN. CLARK: And I'd like to add
20 something also to that.

21 SEN. BROWN: Senator Clark?

22 SEN. CLARK: During the public hearings,
23 many of our citizens indicated that they wanted us
24 to pass maps that took into considerati on their
25 interests and their needs, not the needs of the

1 politicians. They want to be able to elect those
2 who represent them.

3 If adopting this map -- which I can see
4 the one that has partisan neutrality -- all this
5 has a slight Republican edge to it. It's far less
6 than what it is today, but if that means putting me
7 out of office, I would gladly accept this map if it
8 would provide for partisan stability or partisan
9 balance throughout the state of North Carolina so
10 that the individuals whom are elected to come here
11 and to serve them are elected based on fair and
12 nonpartisan maps.

13 SEN. BROWN: Senator Bishop?

14 SEN. BISHOP: My good friend, Senator
15 Clark, and I hope to be a much better friends, but
16 I will say that comes with poor grace given that
17 your amendment was designed, in part, to fix an
18 incumbency issue. And let me say this. Incumbency
19 can be a problem, but what the Supreme Court of the
20 United States recognized in Cox versus Larios is
21 that you also can use double-bunking as a means of
22 ripping down your partisan opponents.

23 The maps that are proposed by the
24 majority don't do anything of the kind. This map
25 has a pattern that is -- it cannot be imagined to

1 be a coincidence. It takes out two of the most
2 senior members of the Republican majority and
3 little old me. And I don't -- I mean to then
4 profess that incumbency is all about protecting
5 selfish officeholders is really a little bit too
6 much. And I hope -- I trust that the Committee
7 will not adopt this amendment.

8 SEN. BROWN: Senator Hise?

9 SEN. HISE: Thank you, Mr. Chairman. You
10 know, perhaps the veils start to come off at this
11 late hour, and we start to see that what the real
12 motives behind all this is, an attempt to lessen
13 the number of Republicans that represent in the
14 Senate. That is the motive I think you see in
15 these districts behind what they've proposed as a
16 remedy. Senator Clark said even if it meant giving
17 up his own seat, if he could just reduce the number
18 and bring it to more balanced, he would do so.

19 I think we're seeing what the purpose is
20 of why this is a court case in general, why we are
21 here and others, and really the motives behind it.
22 I think this map is their attempt to exemplify that
23 and to see what manner in which they can hope to
24 get additional seats regardless of how it affects
25 minorities, incumbents, or others within this

1 state.

2 So I, again, would ask the Committee that
3 we would reject this map, not even really from a
4 committee member but submitted on their behalf and
5 counter to previous amendments and to most of the
6 criteria this Committee adopted.

7 SEN. BROWN: Senator Clark?

8 SEN. CLARK: Thank you, Mr. Chairman.
9 Senator Hise, you did represent my intent very
10 well. As a matter of fact, I did submit criteria
11 for recommendation that said that one of the
12 objectives of the Committee should be to obtain
13 partisan balance and partisan neutrality, whichever
14 term you want to indicate. And, yes, that might
15 end up meaning a reduction in the number of
16 Republicans in the North Carolina Senate. But,
17 like I said, I believe that we should have fair
18 maps that provide for representation with respect
19 to the way the people need it. Thank you.

20 SEN. BROWN: Senator Clark, they wouldn't
21 be gerrymandered maps, would they?

22 SEN. CLARK: Oh, absolutely not. As a
23 matter of fact, the efficiency gaps on those maps,
24 you'll see that pretty much they still -- even
25 these as well as the Common Cause map has about a 4

1 percent positive lean towards Republicans. As a
2 matter of fact, if we're talking about what's
3 gerrymandered, you can clearly see what's going on
4 in Senate District 21, my particular district,
5 which remains gerrymandered.

6 I mean, like I said, it's going to set up
7 a situation where essentially I don't have general
8 election opponent, and I'll pretty much walk back
9 into the office here because of the way it's
10 gerrymandered. If it was a balanced cluster, the
11 Cumberland/Hoke cluster, what we would have is we'd
12 have a more competitive district where I would
13 actually have to run hard in the general election
14 as well as my opponent across the aisle, which I
15 think would serve the people of Cumberland and Hoke
16 Counties better to actually have more competitive
17 races as opposed to cakewalks during the general
18 election.

19 SEN. BROWN: Senator Clark, I've got to
20 respond to that. Would you say, then, this map
21 that was just introduced as an amendment doesn't
22 gerrymander in any way?

23 SEN. CLARK: It certainly does not. As a
24 matter of fact -- or at least -- let me clarify
25 that. With regard to the Hoke/Cumberland cluster,

1 I can explain that, if you want, with a little bit
2 time.

3 SEN. BROWN: But you say it doesn't -- in
4 your mind, it doesn't gerrymander, is what you're
5 saying?

6 SEN. CLARK: Oh, absolutely not. If you
7 look at the Cumberland/Hoke cluster, which is
8 Senate District 21 and 19, which is this block up
9 at the top there. And what it does is, it's
10 like -- the intent of the Committee was to not
11 split cities so it does not split Spring Lake, it
12 does split Wade, does not split Falcon, does not
13 split Eastover, does not split Hope Mills. In
14 Senate District 19, no municipalities split except
15 Fayetteville, which is split anyway, it's so large
16 you're going to have to split it. And what it does
17 is it keeps Fort Bragg -- Fort Bragg and Spring
18 Lake with Senate District 21 and pretty much the
19 southern border, it runs down slightly north of --
20 or should I say south of the Fort Bragg area.

21 Now, if this thing was -- like I said,
22 it's not gerrymandered because it doesn't provide
23 anyone any significant political advantage over
24 where we're at right now. As a matter of fact,
25 like I said, it would my task of becoming reelected

1 more difficult, and it might provide a little bit
2 more of a challenge for Senator Meredith as well.
3 But the people indicated time and time again during
4 the public hearings that what they wanted is more
5 fair and competitive elections.

6 This map is not something that would
7 necessarily be in my best interest, as I say, if
8 you're trying to win a general election. It is the
9 furthest thing away from a gerrymander as you can
10 get.

11 SEN. BROWN: I would disagree. When you
12 look a few of these counties, I think it's pretty
13 clear what this map is. Senator Hise, any other
14 comments?

15 SEN. HISE: No.

16 SEN. BLUE: Just one clarifying -- if I
17 could?

18 SEN. BROWN: Senator Blue?

19 SEN. BLUE: Because in listening to the
20 discussion, I think that the point that needs to be
21 made is that, again, we did some amendments, and I
22 think appropriately so, but in looking at the
23 statistics on this map -- and, again, I didn't draw
24 it, but I'm just looking at it. I heard all the
25 public comment. I've been following the Common

1 Cause's arguments over the last several years and
2 as they've gotten more intense over the last year.

3 But when I look at this map and the Wake
4 County districts, it's got two outright wins by
5 Richard Burr and two that were at the 49 percent
6 level, but two outright wins of over 50 percent,
7 and I think it's got only one -- only one of the
8 districts in Wake County voted Democratic in that
9 election. There are also people who really want to
10 move away from partisanship when it comes to making
11 districts because that's how you get, I think, the
12 debate going on so that the best ideas emerge, and
13 we don't sort of resort to our tribal instincts
14 within our respective caucuses and you get to
15 discuss things in a much deeper and richer way in
16 an election because you've got to debate and you've
17 got to tell people what you stand for and that
18 you'll be responsive to them, and there are some
19 people very interested in that.

20 And winning 52, 53 percent in an election
21 is not that bad. It basically recreates a riddle
22 and you start addressing issues that need to be
23 addressed. That's what these maps seem to do at
24 least in Wake County, and again, I can't speak for
25 the others because in Wake County in that Marshall

1 race, she was a resident of Wake County and lost
2 four districts -- or lost three districts -- lost
3 one -- two of them by one percentage point. That's
4 a competitive district.

5 And I haven't had a chance to analyze it
6 by the other seven or eight races that you used,
7 but I would venture, if you put those races on this
8 map, you will find those to be pretty competitive.
9 You know, are there other configurations that -- if
10 I were doing it myself individually that I'd have
11 probably tried to come up with in Wake County, I
12 probably would have. Would partisanship have gone
13 into to a greater degree? Probably would have, but
14 I think that we just can't cast a stone at
15 everybody who has a different idea as to what
16 competition is in these races.

17 And I bet you, if you go through that map
18 and you look at these districts, you will find many
19 more 48-52 districts, and they roll with the tide,
20 depending on what the issues are and what people
21 are thinking, and I happen to think that districts
22 like that are more helpful too because it makes all
23 of us gravitate toward the middle a whole lot more.

24 SEN. BROWN: Senator Clark?

25 SEN. CLARK: Thank you, Mr. Chairman.

1 And one more note regarding partisan advantage. I
2 would like to remind the Committee that I was the
3 one that submitted criteria that said partisan
4 advantage would not be a criteria of this
5 particular Committee, and that criteria was voted
6 down.

7 SEN. BROWN: Senator Hise?

8 SEN. HISE: And just to follow up, I
9 would say regardless of what was proposed and
10 rejected, that is not the criteria of this
11 committee that's coming in. And so, finally, I
12 would ask that members would reject the amendment
13 as proposed.

14 SEN. BROWN: Senator McKissick, you're
15 not on this Committee. I'm sorry.

16 Any other comments or discussion on this
17 amendment?

18 SEN. BROWN: If not, again, I'm going to
19 ask you to raise your hands. All those in favor of
20 the amendment, raise your hand.

21 (Show of hands vote.)

22 SEN. BROWN: Those opposed?

23 (Show of hands vote.)

24 SEN. BROWN: The amendment fails nine to
25 four.

1 All right. That should bring the bill
2 before us. So any discussions on the bill?

3 SEN. BISHOP: Mr. Chair?

4 SEN. BROWN: Senator Bishop.

5 SEN. BISHOP: If it's the appropriate
6 time, I make a motion for a favor report to the PCS
7 as amended rolled into a new PCS and changing the
8 short title to read 2017 Senate Redistricting
9 Committee Plan.

10 SEN. BROWN: Any discussion? Any more
11 discussion? If not, again, I will ask you to raise
12 your hand. All those in favor of Senate Bill --
13 the PCS rolled into a PCS -- into a new PCS and
14 changing the short title to 2017 Senate
15 Redistricting Committee Plan. All those in favor,
16 raise your hand.

17 (Show of hands vote.)

18 SEN. BROWN: Those opposed?

19 (Show of hands vote.)

20 SEN. BROWN: It passes nine to four. I
21 think that's right. Nine to four, so the bill
22 passes. Anything else before the Committee? If
23 not, we're adjourned.

24 (The proceedings were concluded at 6:25
25 p. m.)

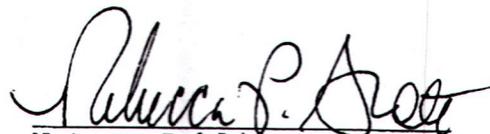
STATE OF NORTH CAROLINA

COUNTY OF ROCKINGHAM

CERTIFICATION

This is to certify that the foregoing transcript of proceedings held on August 24, 2017, is a true and accurate transcript of the proceedings as transcribed by me or under my supervision. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

Certified this 30th day of August, 2017.



Notary Public

Rebecca P. Scott
Notary Number
19940530133