

# Exhibit 8

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:15-cv-00399**

SANDRA LITTLE COVINGTON, et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

**DECLARATION OF  
SENATOR ROBERT  
BENJAMIN CLARK III**

1. My name is Robert Benjamin Clark, III. I was born in Fort Bragg, North Carolina on December 1, 1959 and spent most of my youth growing up in Fayetteville, North Carolina. While growing up I attended the public schools in Cumberland County and graduated from 71<sup>st</sup> Senior High School in 1977.

2. In 1981 I graduated with honors from North Carolina Agricultural and Technical State University with a B. S. degree in Industrial Technology and received a commission as an officer in the United States Air Force. At the time I was also designated as a distinguished graduate from the University's Air Force ROTC program.

3. I served a 20 year career in the Air Force (1981-2001) during which time I earned an MBA from Southern Illinois University at Edwardsville (1986). Over the course of my Air Force Career I served in several assignments throughout the United States and Europe. Some of my duty titles include Operations Branch Chief – Defense Intelligence Agency; Assistant Professor of Aerospace Studies (AFROTC), North Carolina A&T State University; Communications Staff Officer – HQ Allied Air Forces Central Europe, Radio Spectrum Engineer – Air Force Frequency Management Agency; Satellite Communications Branch Chief – HQ European Communications Division; Systems Engineer – 1842nd Electronics Engineering Group; and Systems Manager – Detachment 12, 1945<sup>th</sup> Communications Group.

4. I returned permanently to North Carolina in 2002 to my current residence in Hoke County. I am currently employed by a defense contractor to serve as a program operations manager in support of the XVIII Airborne Corps Mission Training Complex (MTC) at Fort Bragg, North Carolina. I have worked at the MTC in various capacities since 2003.

5. In 2012, 2014 and 2016 I was elected to the North Carolina Senate from SD 21. During the 2017 session of the General Assembly I served on, and attended most of the meetings of, the Senate Redistricting Committee and the Joint House and Senate Redistricting Committee, as well as all meetings of the full Senate at which redistricting was considered.

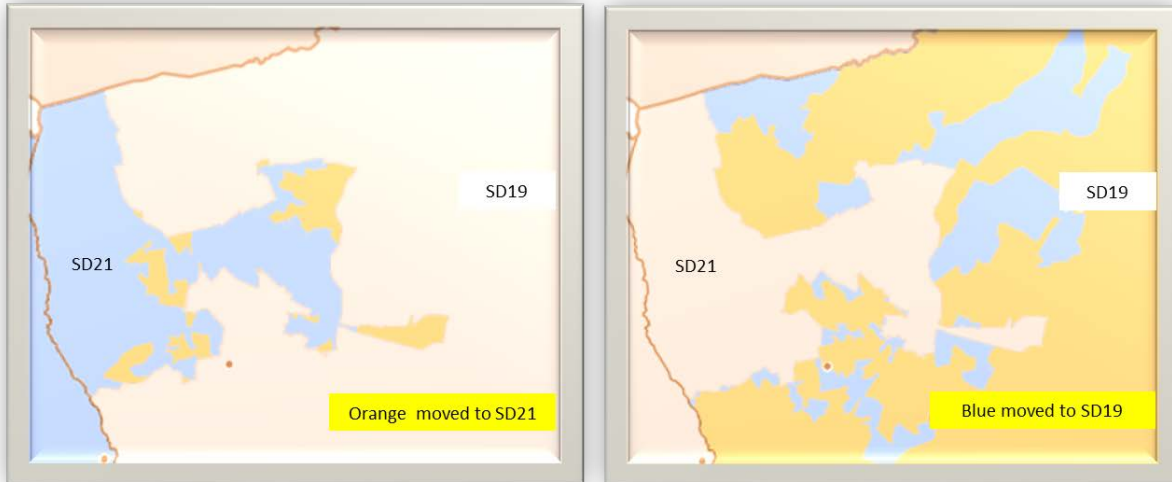
6. By virtue of that experience, and my study of demographic, geographic and political data related to redistricting, I am knowledgeable about the 2017 Senate redistricting process and maps. Likewise, in the course of campaigning for office and serving my constituents I have acquired detailed knowledge about the communities in Hoke and Cumberland and the people who live there.

7. At the August 10, 2017 meeting of the Redistricting Committee I submitted proposed criteria for redrawing the 2011 Senate and House maps. Among the criteria I proposed were that the BVAP in the 28 districts invalidated by this Court should not exceed the BVAP for those districts under the 2003 maps and that political data should not be used to maintain a partisan advantage unrelated to electoral strength. A complete copy of the criteria I proposed is attached as Exhibit 1. My proposed criteria were rejected on a party line vote.

8. SD 21 is one of two districts located within a two county cluster containing Hoke and Cumberland counties. SD 21 includes all of Hoke County and part of Cumberland County. The other district in the cluster, SD 19, is located entirely within Cumberland County.

9. The 2011 versions of SD 19 and 21 were drawn by Thomas Hofeller. His 2011 version of SD 21 packed Black citizens within Cumberland into an oddly shaped district in order to achieve their stated criterion of meeting a pre-determined racial proportionality goal for the number of districts in the state with a majority black voting age population. Packing black voters into SD 21 also had the partisan effect of creating a disproportionately white adjoining district, SD 19, which would elect a Republican candidate. At the 2012, 2014 and 2016 elections a Republican candidate won election from SD 19.

10. The 2017 versions of SD 19 and 21 were also drawn by Mr. Hofeller and he repeated the same pattern as the 2011 versions of SD 19 and 21 (with a little trimming around the edges – see figure 1 below).



*Figure 1. SD21 and SD19 District Area Exchange*

**Left:** Areas in orange were part of SD19 in the 2011 Senate Plan and were moved to SD21 in the 2017 Senate Plan. Areas in blue were part SD21 in the 2011 Senate Plan and remain so in the 2017 Plan.

**Right:** Areas in blue were part of SD21 in the 2011 Senate Plan and were moved to SD19 in the 2017 Senate Plan. Areas in orange were part of SD19 in the 2011 Senate Plan and remain so in the 2017 Plan.

11. In the 2011 Senate Plan, Black citizens in Cumberland County were packed into an oddly shaped SD 21 in order to facilitate the election of a Republican candidate in SD 19. In the 2017 Senate Plan, black citizens are still packed. Mr. Hofeller's 2017 versions of SD19 and 21 have the following characteristics:

- (a) The BVAP in the Cumberland county part of SD 21 exceeds 50% (51.46%). The BVAP in SD 19 is only 25.99%.
- (b) Almost twice as many Black voting age citizens were assigned to SD 21 (63,976) as were assigned to SD 19 (34,306).
- (c) Of the 36 VTDs that wholly or predominantly contain Fayetteville municipal populations, 15 were assigned to SD 19 and 21 were assigned to SD21. Of those 21 VTDs assigned to SD 21, more than half of them had BVAPs greater than 50% and only 4 had BVAPs less than 40%. Conversely, of the 15 assigned to SD 19, none had a BVAP greater than 50% and only

1 had a BVAP greater than 40% while the remaining 14 had BVAPs less than 40%.

- (d) The graphic in Figure 2 below provides for analysis of the overall effect of distribution of VTDs of varying BVAP values between SD 21 and SD 19 BVAP in the 2017 enacted map. The SD 21 BVAP is 47.51% and is 10 points higher than the cluster BVAP of 36.86%. Likewise, there is a 20 point difference between the SD 21 and SD 19 BVAP values. This is a clear indication of continued packing of African American voters into SD 21 with the effect of creating a partisan advantage in favor of Republicans in SD 19.

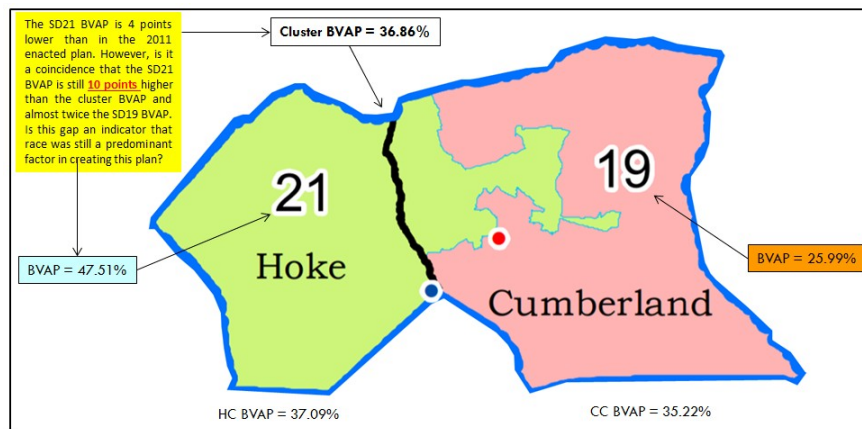


Figure 2: (SD21& SD19 in 2017 Enacted Plan – Republican Proposed Remedy for Racial Gerrymander)

- (e) Figure 2 above depicts a notched intersection between SD 21 and SD 19 on their southern boundary, which begs the question, “why the notch.” To discuss the possibilities I would like to focus your attention to the detail cutout in Figure 3 below.

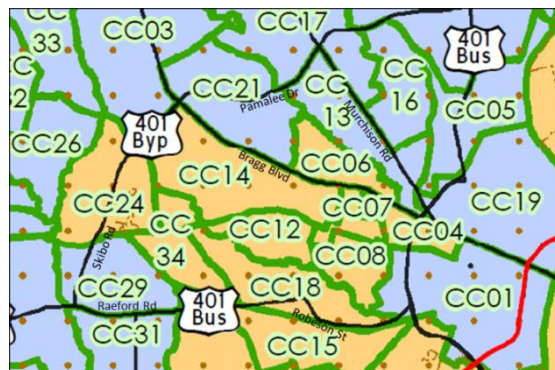


Figure 3: Notch Detail

The image reveals that the entry point into the notch's southern boundary via SD 19 is CC15. It is interesting to note that none of the SD 19 VTDs within this notch (VTDs: CC15, CC18, CC34, CC24, CC12, CC08, CC04, CC07, CC06 and CC14) have a BVAP higher than 25%. In sharp contrast, most of the VTD/s that border this notch (VTDs: CC29, CC26, CC03, CC21, CC13, CC19, CC01) have BVAPs in excess of 50%.

Three glaring and inexplicable choices (unless race is the predominant factor) within Section C are the exclusion of CC04, CC06, and CC24 from SD 21. The entire downtown area of Fayetteville except the most central portion, CC04, has been assigned to SD 21. What is the rationale for its surgical removal from the enclosing VTDs (CC13, CC19, and CC01) and its inclusion into SD 19? Likewise, what is the rationale for the surgical removal of CCO6 from the triangle formed by Pamalee Drive, Bragg Boulevard and Murchison Road? Is there a sound rationale for not including CC24 in SD 21 given that all other VTDs along the 401 Bypass are assigned to SD 21?

The answer to each of these questions is no. Sorting voters on the basis of race is the only possible explanation for the decisions about which VTDs are included in the district and which are excluded. In this particular case the lines are drawn up into the notch to eliminate the need to balance the SD 19 populations with more logical VTD choices along the SD 19/SD 21 boundary (such as AH49 and G5) that have much larger BVAP populations.

12. The partisan impact of maintaining the BVAP in the Cumberland part of SD 21 above 50% is illustrated by an examination of the elections data Mr. Hofeller used to draw enacted SD 19 and 21. According to that data at the 2016 elections for President, US Senator, Governor, Lt. Governor and Attorney General the Republican candidate in enacted SD 19 received, respectively, 51.71%, 52.49%, 52.63%, 52.31% and 51.51% of the vote and the Democratic candidate in enacted SD 21 would have received, respectively, 67.07%, 66.21%, 66.14%, 66.83% and 70.04% of the vote.

13. The fact that Black voters are still packed in SD 21 on the basis of their race is also demonstrated by the General Assembly's disposition of two amendments to SD 19 and 21 in the enacted 2017 Senate map. One of these proposed amendments was adopted; the other was not.

14. On August 24, 2017, the Redistricting Committee amended the original Committee version of SD 19 and 21 to move my new residence within SD 21. This amendment was adopted and included in the enacted map. These changes made both SD 19 and 21 even more irregular and left the BVAP in SD 21 in Cumberland essentially unchanged. (.20 % reduction from 51.66% to 51.46%).

15. On August 28, 2017, I presented an amendment to the line between SD 19 and 21 to reduce the BVAP in SD 21 in Cumberland from 51.66% to 45.36%, to make both districts more compact and to better reflect the Fayetteville corporate limits. A map of my proposed amendment which would have reduced the BVAP below 50% and would have made the district more compact is set out in Figure 4 below.

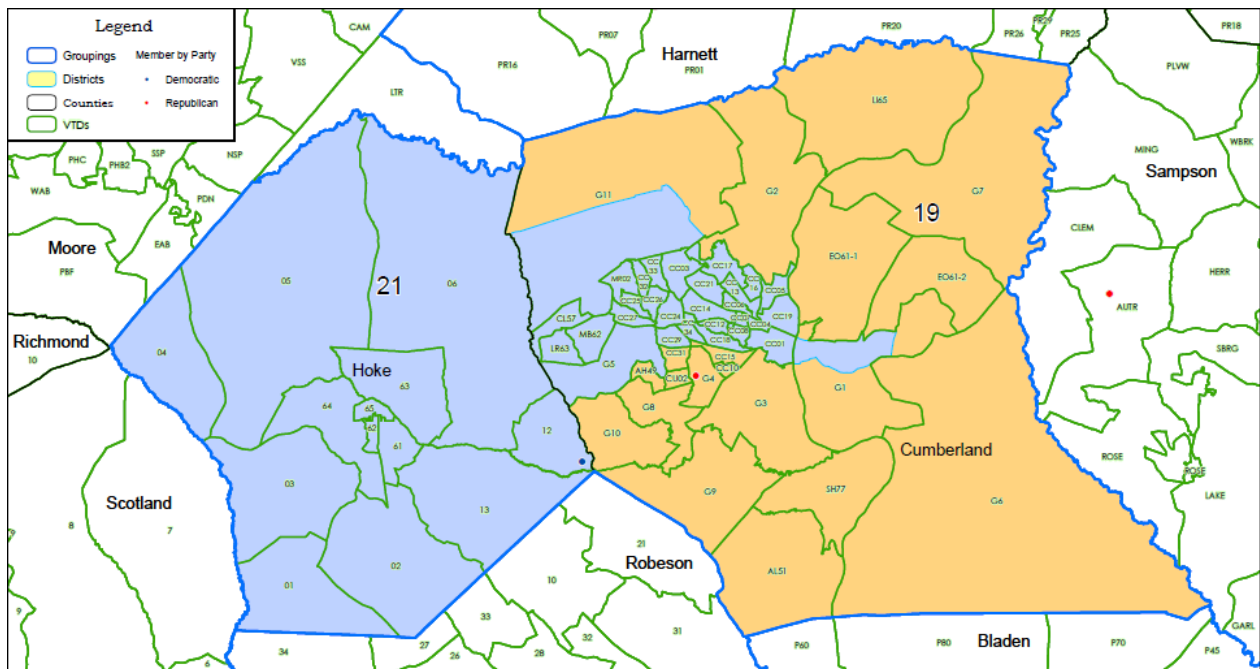


Figure 4: Map of Proposed Amendment for SD21/SD19 Senate Districts

16. The amendment that preserved the greater than 50% BVAP in Cumberland was accepted, but the amendment that made the district more in line with traditional redistricting principles while also decreasing the BVAP below 50% was defeated.

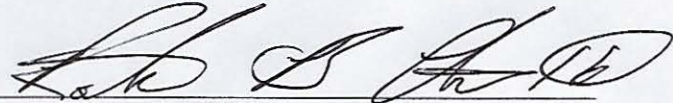
17. During the debate on my amendment on August 28, the Republican Majority Leader argued against my amendment on the pretextual grounds that area of Fort Bragg containing the post population should be included entirely with SD 19



because most of Fort Bragg, like SD 19, is located in Cumberland County. It is true that SD 19 is located entirely in Cumberland County. It is not true that most of Fort Bragg is in Cumberland County. In fact 139.3 square miles of Fort Bragg are located in Hoke County and only 68 square miles are in Cumberland County.

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

Executed on September 13, 2017.

A handwritten signature in black ink, appearing to read 'R. B. Clark, III', written over a horizontal line.

Robert Benjamin Clark, III



EXHIBIT 1



North Carolina General Assembly  
Senate Chamber  
State Legislative Building  
Raleigh, NC 27601-2808

SENATOR BEN CLARK  
21ST DISTRICT

OFFICE: (919) 733-9349  
BEN.CLARK@NCLEG.NET

August 10, 2017

**Recommended Criteria for Construction of NC Legislative Districts**

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1. **Equal Population:** The 2010 federal decennial census data shall be used as the basis of population for the establishment of districts in the plan. Within the limits of the law, efforts shall be made to account for population growth.
2. **Contiguity:** Legislative districts shall be comprised of contiguous territory which may consist of both landmass and bodies of water. To the extent practicable, areas within a legislative district shall be easily accessible for commerce, from other areas of the same district, without requiring members to transit through an adjacent legislative district to gain such access.
3. **Total Black Voting Age Population:** None of the nine Senate districts and 19 House districts deemed as unconstitutional by the US Supreme Court in the Covington case shall have a total black voting age population higher than that which existed in those enacted NC legislative districts that were in effect in 2010.
4. **Voting Districts:** Voting districts ("VTDs") should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.
5. **Partisan Symmetry:** Partisan symmetry posits that a district plan should treat the major parties symmetrically in terms of the conversion of votes to seats. The Committee shall make reasonable efforts to achieve this ideal by constructing plans that provide for the equally efficient conversion of partisan proxy votes from selected statewide elections, in such a way, as to prospectively achieve a distribution of seats commensurate with the partisan makeup of the state.





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6. **Efficiency Gap:** The efficiency gap of plans considered for enactment shall not exceed five percent. The efficiency gap shall be determined by using the simplified efficiency gap calculation. Such calculations shall use the 2016 US President and US Senate election results as proxy votes for assessing prospectively, the likely partisan performance of districts as constructed within the maps being considered for enactment.
7. **Compactness:** The Committee shall make reasonable efforts to construct districts in the Senate and House district plan that improve the compactness of the current districts and keep more counties and VTDs whole as compared with the current enacted plan.
8. **Whole-County Provision:** Pursuant to complying with the whole-county provision as mandated by the North Carolina Constitution, to the greatest extent practical, the Committee shall not divide counties in creating legislative districts except wherein compliance with the whole-county provision has been preempted or otherwise superseded by federal law or court rulings. When division of counties is required, reasonable efforts shall be made not to divide a county into more than two districts.
9. **Partisan Advantage:** Maintaining or establishing a partisan advantage for any party shall NOT be a criterion for the construction or approval of House and Senate district plans.
10. **Voter Preference Assignment:** Voters may be assigned to redistricts based on the policy preferences expressed by the votes they have cast in past elections in order to produce partisan symmetry in the House and Senate, but voters may not be assigned to redistricts to produce a partisan political advantage unrelated to the statewide electoral strength of the political parties.





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11. **Incumbency:** Incumbency may not be considered in redrawing districts for the purpose of maintaining, in whole or in part, the partisan advantage gained by the illegal 2011 House and Senate plans.
12. **Race:** Race shall not be the predominant factor used to re draw the boundary of any House or Senate district unless that decision is supported by legislative findings based on substantial evidence that the district's boundaries are necessary to avoid a violation of the Voting Rights Act, properly interpreted.
13. **Interactive District Maps:** Currently citizens can access the "Who Represents Me" tool on NCGA website and easily determine the legislative district they reside in and who represents them. A similar tool shall be made available that will allow citizens to easily determine which legislative district they would reside in under a proposed legislative map.
14. **Plan Completion Date:** The North Carolina General Assembly shall complete and submit new House and Senate district plans to the United States District Court for the Middle District of North Carolina no later than August 21, 2017.

Respectfully,

Senator Robert B. Clark, III

