

No.

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF)
THE NAACP, COMMON CAUSE, MARILYN)
HARRIS, GARY GRANT, JOYAH BULLUCK, and)
THOMASINA WILLIAMS,)

Plaintiffs-Petitioners,)

v.)

PHILIP E. BERGER *in his official capacity as*)
President Pro Tempore of the North Carolina Senate;)
TIMOTHY K. MOORE *in his official capacity as*)
Speaker of the North Carolina House of)
Representatives; RALPH E. HISE, JR., WARREN)
DANIEL, PAUL NEWTON, *in their official*)
capacities as Co-Chairmen of the Senate Committee)
on Redistricting and Elections; DESTIN HALL, *in*)
his official capacity as Chairman of the House)
Standing Committee on Redistricting; THE STATE)
OF NORTH CAROLINA; THE NORTH CAROLINA)
STATE BOARD OF ELECTIONS; DAMON)
CIRCOSTA, *in his official capacity as Chair of the*)
State Board of Elections; STELLA ANDERSON, *in*)
her official capacity as Secretary of the State Board)
of Elections; STACY EGGERS IV, *in his official*)
capacity as Member of the State Board of Elections;)
JEFF CARMON III, *in his official capacity as*)
Member of the State Board of Elections; TOMMY)
TUCKER, *in his official capacity as Member of the*)
State Board of Elections; KAREN BRINSON BELL,)
in her official capacity as Executive Director of the)
State Board of Elections,)

From Wake County
No. 21 CVS 014476

Defendants-Respondents.

PETITION FOR DISCRETIONARY REVIEW PRIOR
TO DETERMINATION BY THE COURT OF APPEALS

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to N.C.G.S. § 7A-31 and North Carolina Rule of Appellate Procedure 15(a), Petitioners North Carolina State Conference of the NAACP, Common Cause, Marilyn Harris, Gary Grant, Joyah Bulluck, and Thomasina Williams (“Petitioners”), respectfully petition the Supreme Court of North Carolina to certify for discretionary review the judgment of the Superior Court, entered on 3 December 2021, (1) granting Legislative Respondents’ Motion to Dismiss Petitioners’ action for Declaratory and Injunctive Relief, and (2) denying Petitioners’ Motion for a Preliminary Injunction seeking to postpone the currently-scheduled March 2022 primary elections and related deadlines. Urgent review is necessary to provide an opportunity for fundamental constitutional issues arising as a result of the unlawful decennial redistricting process—orchestrated by Legislative Respondents in contravention of direction provided by this Court in prior decisions—to be timely adjudicated. Time is of the essence with the primary elections scheduled for March 8, 2022, and the associated elections deadlines fast-approaching.

Because the Superior Court’s decision involves matters of significant public interest and legal principles of major significance to the jurisprudence of the State, and because delay will cause substantial and irreparable harm, Petitioners respectfully request that the North Carolina Supreme Court certify Petitioners’ appeal for review prior to a determination by the Court of Appeals.

INTRODUCTION

In the last decade, one thing has been obvious: the courts have been the only way to force the Legislature to comply with state and federal law. Time and time again, the Legislature has cynically misinterpreted their duties in redistricting, often to the detriment of voters of color.¹ This decennial redistricting cycle is no exception. Long-established precedent of this Court is clear: state legislative districts “required by the VRA shall be formed prior to” all others to ensure compliance with the Supremacy Clauses in Article I, Sections 3 and 5 of our state Constitution. *Stephenson v. Bartlett*, 355 N.C. 354, 360, 562 S.E.2d 377, 383 (2002) (“*Stephenson I*”); *Stephenson v. Bartlett*, 357 N.C. 301, 305, 582 S.E.2d 247, 249-50 (2003) (“*Stephenson II*”). This Court has more recently reiterated that “the process established by this Court in *Stephenson I* and its progeny requires that, in establishing legislative districts, the General Assembly first must create all necessary VRA districts, single-county districts, and single counties containing multiple districts.” *Dickson v. Rucho*, 368 N.C. 481, 532, 781 S.E.2d 404, 439 (2015), *vacated on other grounds*, 137 S. Ct. 2186 (2017). The General Assembly, however, has blatantly ignored these constitutional mandates.

In undertaking their constitutional duty to draw state Legislative districts, Defendants Respondents Berger, Moore, Hise, Daniel, Newton, and Hall’s

¹ See, e.g., *Cooper v. Harris*, 137 S. Ct. 1455 (2017); *NAACP v. Lewis*, No. 18 CVS 2322, 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Nov. 2, 2018); *Harper v. Lewis*, No. 5:19-CV-452-FL, 2019 U.S. Dist. LEXIS 182412 (E.D.N.C., Oct. 22, 2019); *Common Cause v. Lewis*, 956 F.3d 246 (4th Cir. 2020).

(“Legislative Respondents”) admit they did not allow the use of any racial data in drawing maps because, they erroneously contend, there is “no affirmative duty on the legislature to engage in any particular process to get a complaint VRA map.” App. 51 (T p 51, lines 15-17); *see also* App. 49 (T p 49, lines 18-19) (“There’s no requirement that we [the Legislature] inform ourselves of that data to comply with the VRA.”); App. 49 (T p 50, lines 11-13) (“There’s been no formal [analysis to determine whether the maps are VRA complaint] . . . the legislature hasn’t had a hearing or done anything like that. They’re not required to.”). The record further reflects that Legislative Respondents intentionally and deliberately orchestrated a process that prohibited *any member* of the General Assembly from fulfilling the constitutional duty to ascertain what districts are “required by the VRA.” Likewise, the Legislative Respondents’ adopted criterion prohibiting *any* consideration of racial data precludes the ability of public to submit constructive comments concerning racial analysis because such information cannot be meaningfully considered by the members of the Senate Committee on Redistricting and Elections and the House Redistricting Committee (“Redistricting Committees”). In pursuing this process, the Legislative Respondents have harmed North Carolina voters, violated the North Carolina Constitution, and contravened the clear and direct precedent of this Court.

The Wake County Superior Court dismissed Petitioners’ claims for declaratory relief and denied the preliminary injunction to delay the primary election and related deadlines, holding these claims moot because final state legislative maps were enacted after the filing of this action and holding that allowing Petitioners’ claims to

proceed would violate the principle of separation of powers and was therefore outside of the subject matter jurisdiction of the trial court. The Superior Court's Order directly contravenes the directive of this Court in *Stephenson I* and *II* and has permitted an unprecedented and unwarranted narrowing of this Judiciary's sole duty to answer with finality "issues concerning the proper construction and application of . . . the Constitution of North Carolina . . ." *Stephenson I*, 355 N.C. at 362, 562 S.E.2d at 384. The General Assembly's admitted and unprecedented disregard of this Court's express direction as to the requirements of the state Constitution in drawing state legislative maps, and the Superior Court's refusal to reach the merits of Petitioners' claim for declaratory judgment or take the minimum, reasonable steps necessary to protect constitutional rights guaranteed to the state's voters to allow for judicial review and remediation, require urgent review of this matter while there is still time to prevent irreparable harm in the upcoming primary elections. "[O]nce the election occurs, there can be no do-over and no redress." *Holmes v. Moore*, 270 N.C. App. 7, 35, 840 S.E.2d 244, 266 (2020) (internal citations omitted).

The Supreme Court took similar action after the trial court's decision in *Stephenson* twenty years ago, and the same considerations merit certifying Petitioners' appeal for review prior to a determination by the Court of Appeals here. *See Stephenson v. Bartlett*, 355 N.C. 279, 279-80, 560 S.E.2d 550 (2002) (26 February 2002 order of the Supreme Court of North Carolina suspending the Rules of Appellate Procedure and setting forth a briefing schedule for its direct review of the trial court's 20 February 2002 order "given the extraordinary nature of this civil action, in the

exercise of this Court's supervisory authority under Article IV of the Constitution of North Carolina and to expedite decision in the public interest and in the interest of the orderly administration of justice.”).

Since the beginning of the redistricting process, Legislative Respondents have used unjustified procedural tactics to ensure their unconstitutional maps determine the state Legislative districts for the upcoming elections, including delaying convening the Redistricting Committees until August, implementing a confusing and uncertain public comment process, and delaying identifying final redistricting maps. All of this delay demonstrates Legislative Respondents’ intent to avoid meaningful judicial review of their disregard of the redistricting process required by this Court. The candidate filing period—originally scheduled to open on 6 December 2021—was temporarily enjoined by the Court of Appeals in *North Carolina League of Conservation Voters v. Hall*, No. P21-525 (from Wake County, No. 21CVS015426) in a now-vacated order, causing uncertainty as to when filing will take place. Without this Court’s immediate discretionary review, potential candidates will be forced to announce their intent to run for an election in districts drawn using an unconstitutional process implemented by Legislative Respondents.

The preliminary injunction delaying the elections will mitigate this harm by allowing candidates until February 2022 to file to run for office and enjoin primaries from proceeding until May 2022. Postponing these primary deadlines will allow time for adequate judicial review of Petitioners’ claims and ensure a lawful redistricting process. Similar postponements and extensions to the primary schedule in North

Carolina have occurred in numerous past redistricting cycles, App. 67 (Affidavit of Gary Bartlett (“Bartlett Aff.”) ¶ 11), and have never threatened to irreparably disrupt election administration, App. 87-88 (Kristen Brinson Bell Affidavit (“Bell Aff.”) ¶ 22-23). Moreover, given the gross and obvious violations of *Stephenson* in the legislative process for redistricting, the fact that other redistricting cases are currently in front of the Court, and the pressing timeline due to the upcoming elections, this Court could, under its equitable authority, instruct the trial court to enter the preliminary injunction delaying the primaries and instruct the court to set an expedited schedule for an evidentiary hearing and review by this Court so as to fully resolve the matter before the 2022 elections (if the Court felt it could not do so on the record before it in the three cases in front of it).

STATEMENT OF FACTS AND PROCEDURAL HISTORY

From the onset of this year’s redistricting process, Legislative Respondents used unjustified procedural tactics to limit the time for judicial review of their actions. They chose not to delay the 2022 primaries and related deadlines even after, in February 2021, the Executive Director of the State Board of Elections recommended such a step given the anticipated delay in release of the 2020 decennial census data. *See* App. 98 (Klein Aff., Ex. C). Legislative Respondents further chose not to convene the Redistricting Committees or otherwise plan the redistricting process until shortly before the release of decennial census data in August 2021, and thereafter orchestrated a chaotic and unpredictable process for soliciting public comment and drawing and proposing draft maps. App. 224-235 (Compl. ¶¶ 47-72). All of this delay

has caused the limited time for judicial review of a redistricting process that, as set forth below, directly contravenes express direction from the Supreme Court of North Carolina in *Stephenson*.

When the Redistricting Committees first convened on 5 August 2021, Legislative Respondents proposed (and the Redistricting Committees later adopted) criteria for North Carolina State and House districts that *prohibits all use* of racial data in redistricting. App. 225, 228 (Compl. ¶¶ 49, 58); App. 120, 123 (Klein Aff., Exs. F, I). They continued to pursue this course following warnings from Petitioners' counsel and fellow legislators that such criteria would run afoul of the law. *See* App. 225-227 (Compl. ¶¶ 50-55); App. 256 (Affidavit of Christopher Shenton ("Shenton Aff.") ¶ 2 (public commentary by Allison J. Riggs that "there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria."); ¶¶ 4-5 (questions by Sen. Blue as to how Voting Rights Act ("VRA") compliance would be accomplished without consideration of racial data); ¶ 6 (statements by Sen. Clark regarding concerns criteria would not comply with the VRA)). In addressing these questions, Legislative Respondents failed to explain how their adopted criteria could ensure compliance with the VRA, and indeed, erroneously represented that prior case law in North Carolina does not require the use of racial data, App. 226 (Compl. ¶¶ 51, 53, 55), App. 258 (Shenton Aff. ¶ 6), a legal position they have maintained in this action. App. 48 (T p 48, lines 4-5) ("We don't believe that [first considering racial data to know how to create a VRA district is] . . . what *Stephenson* requires."); App. 49 (T p 49, lines 18-19 ("There's no requirement that we

[the Legislature] inform ourselves of that data to comply with the VRA.”); App. 51 (T p 51, lines 15-17) (“There’s no affirmative duty on the legislature to engage in any particular process to get a complaint VRA map.”).

After the Redistricting Committees adopted these redistricting criteria, Respondents Hise, Daniel, Newton, and Hall (“the Redistricting Chairs”) further compounded the flaws in the process by announcing, on 5 October 2021, to both Redistricting Committees, that they would restrict consideration of Senate and House maps to those drawn using county clusters described in the academic paper *N.C. General Assembly County Clusterings from the 2020 Census* (the “Duke Academic Paper”), published on the Duke University website “Quantifying Gerrymandering.” App. 229-230 (Compl. ¶¶ 61-63); App. 258-261 (Shenton Aff. ¶¶ 8-10, 12-13); App. 104, 126, 145 (Klein Aff., Exs. D (Duke Academic Paper), K (Duke Senate Cluster), L (Duke House Clusters)). However, the authors of the Duke Academic Paper explicitly stated their county clusters did not take into account the first step required under *Stephenson*, stating that “[t]he one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act.” App. 229 (Compl. ¶ 62); App. 259, 261 (Shenton Aff. ¶¶ 9, 13); App. 104 (Klein Aff. Ex. D). When asked how use of the mandated cluster maps could ensure compliance with the VRA, the Redistricting Chairs erroneously insisted that no further analysis or consideration of demographic data is legally required. App. 230, 231 (Compl. ¶¶ 64, 66); App. 259, 261, 262 (Shenton Aff. ¶¶ 10-11, 14, 16); *see also* App. 48 (T p 48, lines 4-5); App. 49 (T p 49, lines 18-19); App. 50 (T p 50, lines 11-13); App. 51 (T p 51, lines 15-17).

Three days after the proposed County Cluster Maps were publicly released, on 8 October 2021, counsel for Petitioners sent a letter to Legislative Respondents informing them that the criteria adopted and requirement members only use the Duke Academic Paper cluster options meant they were “Already Violating the *Stephenson* Instructions.” App. 156 (Klein Aff., Ex. M (the “October 8 Letter”)). The October 8 Letter also directed Legislative Respondents’ attention to specific areas in North Carolina Senate and House cluster maps that required examination for VRA Compliance, and putting them “on notice for the need to perform [Racially Polarized Voting] analysis in certain regions of the state and the need to examine racial data to ensure VRA compliance.” App. 156 (Klein Aff., Ex. M); App. 231 (Compl. ¶ 67). It further warned the Legislative Respondents of districts where Black voters were able to elect their candidate of choice with help of non-Black voters, and that a deliberate choice to destroy these districts would risk liability under the Fourteenth and Fifteenth Amendments of the U.S. Constitution due to the intentional destruction of effective crossover districts. App. 156 (Klein Aff., Ex. M at 5 (citing *Bartlett v. Strickland*, 556 U.S. 1, 24, 129 S. Ct. 1231, 1248-49, 173 L. Ed. 2d 173 (2009))).

Legislative Respondents refused to address any of these issues, and did not perform any Racially Polarized Voting or other analysis of racial data to ensure VRA compliance. App. 231 (Compl. ¶ 68). Petitioners sent a second letter on October 25, after a draft state Senate map was published on the General Assembly’s website, noting the choice of clusters in this map raised serious legal concerns because, if adopted, it was likely to dilute voting power for Black voters in the Northeast region

of the state. App. 232 (Compl. ¶ 69); App. 164 (Klein Aff., Ex. N). The next day, Petitioner Common Cause provided data to Legislative Respondents indicating legally significant racially polarized voting in two proposed Senate Districts under this draft map, such that voters of color in these districts would not be able to elect their candidates of choice, demonstrating that effective crossover districts would be dismantled and that the compelling evidence presented proved the need for the Legislature to comply with the first step of *Stephenson*. App. 232 (Compl. ¶ 69); App. 167 (Klein Aff., Ex. O). Legislative Respondents refused to deviate from their plan to adopt maps using their legally deficient criteria.

With no schedule for completing the redistricting process made publicly available, and with the filing period for the primary elections rapidly approaching, Petitioners filed a Complaint for Declaratory Judgment and Injunctive Relief, and a Motion for Preliminary Injunction, on 29 October 2021. Although the Legislative Respondents had not set a deadline for the submission or enactment of district maps prior to Petitioners' filing, they hastily adopted and enacted state Senate and House maps four business days later, on 4 November 2021. App. 171, 187 (Klein Aff., Exs. P, S). In doing so, the Legislative Respondents rejected or tabled multiple amendments offered by other Senate and House legislators that were intended to require assessment and, as appropriate, to ameliorate the harm that would result to voters of color from the Legislative Respondents' improper redistricting process. App. 177-80, 192-204 (Klein Aff., Exs. P, S). During this process, Legislative Respondents continued to defend their actions by mischaracterizing the binding precedent set by

this Court. For example, in the meeting of the Senate Committee on Redistricting and Elections on November 2, Defendant Newton stated that “some have asked whether the *Stephenson* cases require that race be used in redistricting,” and then sought to justify the Legislative Respondents’ decision to prohibit use of racial data by asserting that subsequent case law held that use of racial data or analysis was not required and that *Stephenson* did not apply because Section 5 of the VRA is no longer enforceable. App. 263 (Shenton Aff. ¶ 17); *see also* App. 50 (T p 50, line 6 – p 51, line 22).

On November 5, Petitioners filed a Notice of Filing in support of their Motion for Preliminary Injunction with accompanying affidavits, including affidavits of Gary Bartlett, Chris Shenton, and Hilary Harris Klein. App. 63, 90, 255. On November 9, Legislative Respondents filed a Motion for Expedited Relief and a Motion to Transfer. And on November 10, Legislative Respondents filed a Motion to Dismiss. App. 279. Thereafter, the parties exchanged briefing on their motions in anticipation of a hearing before the trial court.

On November 30, Judge A. Graham Shirley held a hearing at Wake County Superior Court and heard oral arguments by the parties on Legislative Respondents’ Motion to Dismiss and Petitioners’ Motion for Preliminary Injunction, and entered an order in open court. On Friday, 3 December 2021, Judge Shirley issued a written Order granting Legislative Respondents’ Motion to Dismiss and denying Petitioners’ Motion for Preliminary Injunction. This Order made several erroneous conclusions of law:

First, Judge Shirley dismissed the action as moot, due to the adoption of final maps after the complaint was filed, and for lack of subject matter jurisdiction because he found that “judicial intervention in the legislative process in the manner contemplated and requested by plaintiffs in this case would violate the principle of separation of powers pursuant to . . . the North Carolina Constitution, and as such a violation necessarily divests this Court of jurisdiction over the subject matter of Plaintiffs’ complaint.” App. 269 (Order at 3). Oddly, the Order fails to cite or analyze, in any manner, the Declaratory Judgment Act at the foundation of Petitions’ claims. Further, Judge Shirley’s holding disregards this Court’s holding in *Hoke County Board of Education v. State*, which directed courts to “adopt and apply the broadened parameters of a declaratory judgment action that is premised on issues of great public interest” because where “inordinate numbers” of citizens are “wrongfully being denied their constitutional right,” then “our states cannot risk further and continued damage,” even if “the perfect civil action has proven elusive.” *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 616, 599 S.E.2d 365, 377 (2004); *see also* N.C.G.S. § 1-253 (the court has the “power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed”); N.C.G.S. § 1-259 (“Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.”); *Augur v. Augur*, 356 N.C. 582, 589, 573 S.E.2d 125, 131 (2002) (The Declaratory Judgment Act is “to be liberally construed and administered,” N.C.G.S. § 1-264, and courts have “no discretion to decline” a request for declaratory relief where “fundamental human rights are denied in violation of constitutional guarantees” and

legislative action is specifically challenged by persons directly affected by it.) (internal citation omitted).

It is within the Court's inherent power to provide the relief sought by Petitioners, including a declaration that Legislative Respondents have failed in their constitutional duties in redistricting, an order requiring them to do so, and injunctive relief delaying the primaries to protect Petitioners from irreparable harm. But Judge Shirley erroneously found such relief was not within his right to grant, ignoring this Court's direction and heeding to Legislative Respondents' deliberate efforts to avoid judicial review of their unlawful and discriminatory redistricting process by hastily enacting maps just four days after Petitioners filed their Complaint.

Contrary to Judge Shirley's holding that the court can only review "the end result" of the redistricting process, Order at 3, Petitioners have a right to declaratory and injunctive relief now based on Legislative Respondents' intentional and blatant refusal to adhere to this Court's instructions for drawing constitutional districts as set forth in *Stephenson*. Far from being moot, Petitioners' requested relief will still have a "practical effect" of affirming and protecting Petitioners' rights by lending certainty to Legislative Respondents' duties in adhering to the directives set forth in *Stephenson* and its progeny during the redistricting process, and permitting time for such duties to be fulfilled (or Petitioners' to further pursue protection of their constitutional rights) before irreparable harm to voters in the 2022 primary elections. See *Anderson v. N.C. State Bd. of Elections*, 248 N.C. App. 1, 8, 788 S.E.2d 179, 185 (2016). Such relief can benefit all residents of North Carolina by ensuring the General

Assembly's adherence to North Carolina Constitutional process requirements now and in future redistricting cycles.

Second, Judge Shirley erroneously denied Petitioners' request to enjoin Defendants the North Carolina State Board of Elections, Circosta, Anderson, Eggers, Carmon, Tucker, and Brinson Bell ("State Respondents") from administering the scheduled March primaries and the corresponding period of candidate filing before February. App. 286 (Order at 2). In denying the requested preliminary injunction, Judge Shirley improperly reasoned that as long as the redistricting maps have not been declared "unconstitutional or violative of Federal law," there is no harm to Petitioners to address in this action and no basis for the requested relief. App. 268-69 (Order at 2-3). In reaching this conclusion, Judge Shirley outright ignored the relevance of the Legislative Respondents' admission, during oral argument on 30 November 2021, that they had not followed the clear mandates in *Stephenson* on how to draw constitutional redistricting maps. App. 48 (T p 48, lines 4-5) ("We don't believe that [first considering racial data to know how to create a VRA district is] . . . what *Stephenson* requires."); App. 47 (T p 47, lines 14-16) ("So, the legislature, in drawing the districts, did not use the racial demographic data provided by the census"); App. 50 (T p 50, lines 11-13) ("There's been no formal [analysis to determine whether they are VRA complaint] . . . the legislature hasn't had a hearing or done anything like that. They're not required to.").

Judge Shirley also failed to acknowledge the irreparable harm that Petitioners properly pleaded they will suffer as a result of Legislative Respondents' actions if

their relief is not granted, including vote dilution and the infringement of Petitioners' fundamental right to vote on equal terms and to associate with candidates of their choice. Petitioners' Complaint described how the Senate and House clusters required by the Committee Charis result in a significant decrease in the percent of the Black Voting Age Population ("BVAP") in the new districts. *See* App. 231-235 (Compl. ¶¶ 67-71). For example, a cluster option in the Senate comprised of Warren, Halifax, Martin, Bertie, Northampton, Hertford, Gates, Camden, Currituck, and Tyrell counties has a BVAP of 42.33%; but the cluster selected by Legislative Respondents for inclusion in the Senate is comprised of Northampton, Hertford, Bertie, Gates, Perquimans, Pasquotank, Camden, Curritck, Tyrell, and Dare counties, which has a BVAP of only 29.49%. App. 232-235 (Compl. ¶ 71). Under the allegedly "race-blind" criteria adopted by the Legislative Respondents, this type of deleterious consequence on BVAP—and Black voters' ability to elect their candidate of choice—was prohibited from being considered by the Redistricting Committees.

Third, Judge Shirley's Order also erroneously denied Petitioners' request to enjoin Legislative Respondents from undertaking a redistricting process that violates the procedures set forth in *Stephenson I*. He reasoned that there is no basis for such relief because Petitioners "essentially ask[] this Court to reverse actions which have already been taken by Legislative Respondents rather than prohibit Legislative Respondents from performing some action in the future." App. 268 (Order at 2). However, this ignores decades of jurisprudence supporting the authority conferred to courts by the Declaratory Judgment Act and that Legislative Respondents have

provided no reason (other than their own unwillingness) they would be unable to undertake the first step of *Stephenson* to cure their unconstitutional redistricting process and revise the enacted maps accordingly to prevent harm to voters in the upcoming primary elections. In fact, they have taken steps to make technical corrections as necessary following initial enactment and preclearance in years past. *See, e.g.*, 2011 N.C. Sess. Laws 2011-413 (S.B. 283), 2011-414 (S.B. 689), 2011-416 (H.B. 777) (technical corrections bills passed by the Legislature on November 7, 2011 during the 2010 redistricting cycle).

In seeking a Preliminary Injunction, Petitioners requested measures that would maintain the status quo and allow for the parties to act upon a declaration of the trial court to prevent irreparable harm to voters. The requested declaratory relief asking the trial court to require that the Legislative Respondents adhere to the process requirements in *Stephenson* does not require challenging the maps themselves. As the Legislative Respondents were warned during the public comment process, the redistricting process itself is unconstitutional; the Declaratory Judgment Act provides the court with the authority to declare so, separate and apart from ruling on the constitutionality of the maps. N.C.G.S. § 1-253 (the court has the “power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed”); N.C.G.S. § 1-259 (“Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper). Accordingly, although Petitioners did not pursue this aspect of relief that was denied on the preliminary

injunction, Petitioners ask this Court for the opportunity to have this matter adjudicated via the case-in-chief outside the context of the preliminary injunction.

On, 5 December 2021, the following business day after the Order was issued, Petitioners filed a Notice of Appeal to the North Carolina Court of Appeals. App. 271. On December 6, counsel for Petitioners met and conferred with counsel for Respondents. No resolution was reached at the meet and confer concerning this Petition.

REASONS WHY CERTIFICATION SHOULD ISSUE

Given the above discussion demonstrating how Legislative Respondents' violated the North Carolina Constitution by prohibiting the consideration of racial data via the redistricting criteria and requiring use of only those county cluster maps specified in the Duke Academic Paper, discretionary review is warranted and should be granted by this Court.

I. Legislative Respondents' Infringement on Petitioners' Constitutional Rights Is a Matter of Significant Public Interest.

The Court may grant discretionary review in cases where, as here, "[t]he subject matter of the appeal has significant public interest." N.C.G.S. § 7A-31(b)(1). The right to vote on equal terms and free from intentional discrimination is a "fundamental right." *Stephenson I*, 355 N.C. at 382, 562 S.E.2d at 396; *see also Common Cause v. Lewis*, No. 18 CVS 14001, 2019 N.C. Super. LEXIS 56, at *347 (N.C. Super. Ct. Sept. 3, 2019) ("It is well settled in this State that 'the right to vote on equal terms is a fundamental right.' These principles apply with full force in the redistricting context[.]") (internal citations and emphasis omitted); *Holmes*, 270 N.C.

App. at 14-15, 34, 840 S.E.2d at 253, 265 (2020) (overturning denial of preliminary injunction against voter ID law which likely impacted Black voters “right to participate in elections on an equal basis.”). This right also extends to Petitioners’ ability to elect their candidates of choice in electorally effective districts. *Common Cause*, 2019 N.C. Super. LEXIS 56, at *347. In North Carolina, the right of association is protected by the right “to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” N.C. Const. art. I, § 12; *Feltman v. City of Wilson*, 238 N.C. App. 246, 253, 767 S.E.2d 615, 620 (N.C. Ct. App. 2014) (holding that in North Carolina the right to assembly encompasses the right of association). Legislative Respondents’ unlawful redistricting process, including their adoption of criteria that prohibited all use of racial data in redistricting, threatens the rights of Petitioners and other North Carolina voters of color. As such, Petitioners’ constitutional challenge to Legislative Respondents’ unlawful redistricting process, is of significant public interest.

This Court has previously certified cases for discretionary review prior to a determination by the Court of Appeals where, as here, the matters involved redistricting or election laws of significant public interest. *See, e.g., Stephenson I*, 355 N.C. 354, 562 S.E.2d 377 (involving constitutionality of state legislative redistricting plan); *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005) (involving question of out-of-precinct provisional ballots). The question here mirrors the questions in *Stephenson I* and *Stephenson II*, where Legislative Respondents undertook a

redistricting process that violated the North Carolina Constitution and would almost certainly violate the VRA. As discussed above, in Plaintiffs’ Memorandum in Support of Plaintiffs’ Motion for Preliminary Injunction, and in the Complaint, Legislative Respondents’ refusal to adhere to this Court’s express directions in *Stephenson I* and *II* as to the requirements of a constitutional redistricting process will dilute the strength of Petitioners Harris, Grant, Bulluck, and Williams’ votes, as well as the votes of members and voters served by Petitioners North Carolina State Conference of the NAACP and Common Cause. The clusters required by the Legislative Respondents result in a significant decrease in the percent of Black Voting Age Population “BVAP” in each new district. *See* App. 232 (Compl. ¶ 71) (alleging that many of the cluster choices convert districts to below 40% BVAP). These decreases will prevent Black voters the opportunity to elect candidates of their choice. *See* App. 232-235 (Compl. ¶¶ 71-72). Under the unlawful “race-blind” criteria adopted by the Legislative Respondents, however, the deleterious consequences on BVAP could not be directly considered by the Redistricting Committees.

This matter also implicates serious issues of separation of powers, and the deliberate actions of legislators to orchestrate a redistricting process that ignores express requirements of the North Carolina Constitution as stated by this Court. This issue is a matter of significant public interest as well and, as described below, a legal principle of major significance as well. This Court is in the best position to immediately evaluate Legislative Respondents’—and the Superior Court’s—refusal to acknowledge that their dereliction of duties required by our state’s Constitution in

the redistricting *process*, separate and apart from unlawful enacted maps, is in and of itself a constitutional violation warranting the preliminary injunction that Petitioners seek where it will cause harm to voters, as shown here. This redistricting cycle, and the future of North Carolina's democracy, depend upon this Court's discretionary review of this matter of significant public interest.

II. The Cause Involves Legal Principles of Major Significance to the Jurisprudence of the State.

Where the Legislature has flagrantly ignored the explicit instructions from this Court on how the redistricting process is supposed to be conducted in order to comply with the state Constitution, it is necessary that the judiciary act to resolve the dispute. Here, contrary to what the Superior Court indicated, separation of powers actually requires the Judiciary to act in a manner that preserves the important role it serves in enforcing constitutional rights. When Petitioners filed this suit, the Declaratory Judgment Act was a viable and appropriate tool for enforcement of those rights and it remains so today.

Without judicial intervention, the Legislature's actions and the decision below render this Court's dictate in *Stephenson* nothing more than dicta. That cannot be tolerated. The North Carolina Constitution requires the General Assembly to revise state legislative districts at the first regular session convened following the federal decennial census. N.C. Const. art. II, §§ 3, 5. The Constitution also enumerates additional redistricting terms, including requiring members of each chamber to represent, as nearly as possible, an equal number of inhabitants, that districts include contiguous territory, and that "no county shall be divided" (the "Whole County

Provision.”). *Id.* These requirements had to be reconciled with federal law pursuant to the Supremacy Clauses of North Carolina’s Constitution, which provide that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States,” N.C. Const. art. I, § 3, and prohibit any law in North Carolina from contravening the Federal Constitution. N.C. Const. art. I, § 5. Among the federal terms thereby incorporated into North Carolina redistricting is a need to comply with the one-person one-vote requirements under the Fourteenth Amendment and the Voting Rights Act, as amended and as proscribed under the Fifteenth Amendment. *Stephenson I*, 355 N.C. at 363-64, 562 S.E.2d at 384-85 (2002).

In *Stephenson v. Bartlett*, this Court harmonized the various North Carolina Constitutional requirements imposed on the redistricting process by developing a methodology for grouping counties together into “clusters” that it held would minimize the splitting of counties, in recognition of the Whole County Provision, while satisfying one-person one-vote requirements. *Stephenson I*, 355 N.C. 354, 562 S.E.2d 377 (2002); *Stephenson II*, 357 N.C. 301, 582 S.E.2d 247 (2003). In doing so, this Court expressly mandated that, “to ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to creation of non-VRA districts.” *Stephenson I*, 355 N.C. at 383, 562 S.E.2d at 396-97. As a result, any and all districts that are required under the VRA—which requires that districts be drawn without the intent or effect of depriving protected voters of an equal opportunity to elect their candidates of choice—must be drawn first. Only after an analysis is

performed to ascertain what districts are compelled by the VRA, and those districts are drawn, may any work be done to draw clustered districts that harmonize and maximize compliance with North Carolina's Whole County Provision and equal protection guarantees of population equality.

The trial court in *Stephenson* subsequently instructed that VRA districts should be formed where, "due to demographic changes in population there exists the required [*Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S. Ct. 2752, 2766 (1986)] preconditions"—a process that was also affirmed by this Court. *Stephenson II*, 357 N.C. at 307, 314, 582 S.E.2d at 251, 254. Accordingly, to comply with *Stephenson*, the Legislature needed to evaluate demographic changes to determine whether there exists the required *Gingles* preconditions. This determination includes, at the least, considering racial data and, where legislators and members of the public have indicated that there may be VRA concerns, conducting a regionally-focused Racially Polarized Voting study to determine if there is legally significant racially polarized voting. *See, e.g., Thornburg*, 478 U.S. at 55-58, 106 S. Ct. at 2768-70 (1986). However, Legislative Respondents intentionally rejected this Court's direction as set out in *Stephenson I* and *II*, and the result is an unconstitutional redistricting process that violates Petitioners and Black voters' fundamental rights guaranteed by the North Carolina Constitution.

Further, the Legislative Respondents leveraged the Census Bureau's delay in releasing data to limit opportunities for public comment or judicial review over the inherently illegal approach to redistricting. Following the Census Bureau's February

2021 warning that the release of redistricting data would be delayed by the COVID-19 pandemic, North Carolina State Board of Elections Executive Director Karen Brinson Bell advised the House Elections Law and Campaign Finance Reform Committee that the delay would require an election schedule change due to the time required to prepare for candidate filing and ballot styles. App. 235 (Compl. ¶ 74). Director Brinson Bell advised the Committee to move the March 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election. *Id.*; App. 98 (Klein Aff., Ex. C). In recognition of the consequences of the Census delay would have on redistricting, the General Assembly voted to extend the schedule for impacted municipal elections. App. 236 (Compl. ¶ 75); *see* S.B. 722, S.L. 2021-56 (2021). Yet, the General Assembly failed to follow Director Brinson Bell's recommendation to reschedule the state-wide March 2022 primaries to May 3. App. 236 (Compl. ¶ 75).

Instead of heeding Director Brinson Bell's advice, the Legislative Respondents orchestrated a rushed and chaotic redistricting process and the March 2022 primary date has remained in place. At the onset, the Legislative Respondents failed to convene any meetings of the Redistricting Committees to plan for the 2021 redistricting until the eve of Census data's release in August 2021. App. 237 (Compl. ¶ 78). In doing so, they failed to take any of the many available steps over the summer and before the release of census data to minimize the risk of consequences of delay, such as setting a schedule for the redistricting process, planning and noticing opportunities for public comment, and adopting lawful redistricting criteria. *Id.*

These tactics left legislators and the public in the dark, causing confusion and obstructing opportunity for meaningful public comment. App. 237 (Compl. ¶ 77). As a result, the deadlines associated with the March 2022 primaries are fast approaching.²

Denial of the express request from Director Brinson Bell to push back the primaries to May, App. 235 (Compl. ¶ 74); App. 98 (Klein Aff. Ex. C), and the Legislative Respondents' failure to plan a timely redistricting process, indicates an intentional strategy of delay by running out the clock despite the fast-approaching 2022 election deadlines. Without this Court's immediate certification, Legislative Respondents will continue to escape judicial review of the allegedly "race-blind" criteria they have adopted. The risk of allowing Legislative Respondents' unlawful strategy to continue would set the dangerous precedent that process does not matter provided that the outcome, here the maps themselves, might be later demonstrated to be constitutional. This in turn would allow Legislative Respondents to force elections under any maps they choose, without consideration for the case law in this state or constitutional mandates, if they time enactment of new districts to occur immediately before candidate filing. Petitioners, however, filed their Complaint to *prevent* the enactment of illegal maps based upon Legislative Respondents' unconstitutional process based on the Court's authority under the Declaratory

² Just today, on 6 December 2021, the Court of Appeals granted a motion for temporary stay enjoining the opening of the candidate-filing period for the 2022 primary elections for Congress, the North Carolina Senate, and the North Carolina House of Representative pending the Court of Appeal's ruling on the plaintiffs' petition for writ of supersedeas or prohibition filed in that matter. *N.C. League of Conservation Voters, Inc. v. Hall*, No. P21-525 (N.C. App. Dec. 6, 2021). The Court of Appeals then vacated that order hours later.

Judgment Act and its duty to state what the Constitution requires. The redistricting *process* and its Constitutional requirements, as set forth by this Court in *Stephenson*, are of major significance, therefore, to the jurisprudence of North Carolina, and accordingly, certification should issue.

III. Absent Certification, Delay Will Cause Substantial and Irreparable Harm to Voters.

The Court may also grant review where, as here, “[d]elay in final adjudication is likely to result from failure to certify and thereby cause substantial harm.” N.C.G.S. § 7A-31(b)(3). Petitioners have alleged that Legislative Respondents’ unlawful redistricting process flagrantly violates the North Carolina Constitution, sets a historical precedent that endorses the gross disrespect for the mandates issued by this Court, a co-equal branch, and threatens to cause irreparable harm to their fundamental rights to vote and associate. Certifying this appeal for immediate review is necessary to prevent irreparable harm to the fundamental rights of Petitioners and other voters of color across the state. Given the uncertainty associated with the opening of candidate filing, the scheduled March 2022 primaries and the related deadlines, an immediate appeal is the only way that Petitioners can ensure, with minimal disruption to election administration, that their claims receive judicial consideration before candidates must announce their intent to run for an election in districts drawn using an unconstitutional process implemented by Legislative Respondents.

In cases like this, North Carolina courts have found a preliminary injunction warranted to ensure the smooth administration of elections. *Holmes*, 270 N.C. App.

at 15, 34, 840 S.E.2d at 253-54, 265 (overturning denial of preliminary injunction against voter ID law which likely impacted Black citizens’ “right to participate in elections on an equal basis” and was likely to increase “voter confusion”); *Crookston v. Johnson*, 841 F.3d 396, 399 (6th Cir. 2016) (considering the importance of “holding orderly elections” in determining whether to grant a preliminary injunction, and explaining that such injunctions should be requested early, before the training of poll workers has occurred). Certifying this appeal for immediate review is necessary to prevent harm to voters which is irreversible once the election occurs. *See Holmes*, 270 N.C. App. at 35, 840 S.E.2d at 266 (“The need for immediate relief is especially important . . . given the fact that once the election occurs, there can be no do-over and no redress.”) (internal citations omitted).

Director Brinson Bell notified the General Assembly in February 2020 that there is a “2-month process for geocode changes for filing and ballot styles.” App. 98 (Klein Aff., Ex. C); *see also* Affidavit of Karen Brinson Bell ¶ 17, *Common Cause v. Lewis* (Notice of Filing, Bell Aff., Oct. 4, 2019)³ (stating that the State Board of Elections requires 63-71 days for administrative processing before in-person voting for primaries can begin). More recently, Director Brinson Bell indicated that 38-42 days are required to geocode and prepare ballots, and under the circumstances that Petitioners seek here, the first primary would need to occur by May 12 to avoid disrupting the elections. App. 87-88 (Bell Aff. ¶ 22-23). Former Executive Director of

³ Available at <https://www.documentcloud.org/documents/6458305-2019-10-04-Notice-of-Filing-Affidavit-of-Bell.html> (last accessed Dec. 6, 2021).

the State Board of Elections Gary Bartlett further attests to the many time-sensitive administrative tasks required to prepare for primary elections, including district assignment, preparing and mailing of absentee ballots, and voter education. *See generally* App. 63 (Bartlett Aff.). In particular, Mr. Bartlett describes the importance of educating voters in a redistricting cycle because voters are often subject to new districts, where one's candidate of choice is no longer located. *Id.* ¶ 27). Providing adequate information about election changes, new district assignments, and candidates running for office in those new districts is an arduous, yet imperative, task for the Board of Elections. *Id.* Legislative Respondents deliberately chose to oversee a chaotic and delayed redistricting process that has already significantly shortened the time to administer the upcoming elections. To avoid the harm that is certain to result from this process, and ensure elections are administered as smoothly as possible under the circumstances, immediate review of Judge Shirley's Order by this Court is necessary.

Immediate review is necessary to ensure time for Legislative Respondents to undertake the required analysis of racial data this redistricting cycle before the 2022 primaries, and without significant disruption to election administration next year. Absent review now, voters will be consigned to participating in 2022 primary elections using flawed maps resulting from an unlawful process without the chance for judicial review of either, and future redistricting cycles required under North Carolina's Constitution will be haunted by this uncertainty. *See* N.C. Const. art. II, §§ 3, 5. The preliminary injunction that Petitioners seek would avoid this irreparable

harm that would follow from administering elections before judicial review of this process is possible. The requested two-month delay in primaries—similar to the delays in the 1990s, 2002, and 2004 to account for preclearance and litigation delays, *see* App. 67 (Bartlett Aff. ¶ 11)—will allow for protection of Petitioners’ rights, and a fulsome judicial review of Legislative Respondents’ unconstitutional process.

ISSUES TO BE BRIEFED

In the event the Court allows this petition for discretionary review, Petitioners intends to present the following issues in its brief for review:

1. Whether the Superior Court erred in dismissing Petitioners’ Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure.
2. Whether the Superior Court erred in denying Petitioners’ Motion for Preliminary Injunction and refusing to preliminarily enjoin the March 2022 state legislative primaries and related deadlines, including the candidate filing period beginning on 6 December 2021.

In the alternative, should this Court conclude that the violations of the state Constitution that defense counsel admitted in open court, among the other points made in this Petition, are sufficient grounds for delaying the primary, it could equitably do so and remand to the trial court with instructions to enter the injunction delaying the primary and to conduct an expedited evidentiary hearing that would allow to hear this matter slightly later without causing irreparable harm to Petitioners or disrupting the administration of the election next year.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant this Petition and certify Petitioners' appeal for discretionary review prior to a determination by the Court of Appeals.

Respectfully submitted, this the 6th day of December, 2021.

SOUTHERN COALITION FOR SOCIAL
JUSTICE

By: 

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N.C.R. App. P. 33(b) Certification:
I certify that all of the attorneys listed
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for Petitioners certifies that the foregoing brief, which is prepared using a 12-point proportionally spaced font with serifs, is less than 8,750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendices) as reported by the word-processing software.

By: s/ Hilary H. Klein
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed to the electronic-filing site at <https://www.ncappellatecourt.org> and served upon all parties by electronic mail and, if requested, by United States Mail, addressed to the following:

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Appendix

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IN THE NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NORTH CAROLINA STATE CONFERENCE OF)
NAACP, COMMON CAUSE, MARILYN)
HARRIS, GARY GRANT, JOYAH BULLUCK,)
and THOMASINA WILLIAMS,)

Plaintiffs,)

v.)

Wake County
21-CVS-14476

PHILLIP E. BERGER, in his official)
capacity as President Pro Tempore)
of the North Carolina Senate;)
TIMOTHY K. MOORE, in his official)
capacity as Speaker of the North)
Carolina House of Representatives;)
RALPH E. HISE, JR., WARREN DANIEL,)
PAUL NEWTON, in their official)
capacities as Co-Chairmen of the)
Senate Committee on Redistricting)
and Elections; DESTIN HALL, in his)
official capacity as Chairman of)
the House Standing Committee on)
Redistricting; THE STATE OF NORTH)
CAROLINA; THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS; DAMON CIRCOSTA,)
in his official capacity as Chair)
of the State Board of Elections;)
STELLA ANDERSON, in her official)
capacity as Secretary of the State)
Board of Elections; STACY EGGERS)
IV, in his official capacity as)
Member of the State Board of)
Elections; JEFF CARMON III, in his)
official capacity as Member of the)
State Board of Elections; TOMMY)
TUCKER, in his official capacity as)
Member of the State Board of)
Elections; KAREN BRINSON BELL, in)
her official capacity as Executive)
Director of the State Board of)
Elections,)

Defendants.)

TRANSCRIPT, Volume 1 of 1

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Tuesday, November 30, 2021

November 30, 2021, Civil Session

The Honorable A. Graham Shirley, II, Judge Presiding

Plaintiffs' Motion for Preliminary Injunction

Legislative Defendants' Motion to Dismiss

Reported by: Dawn M. Dantschisch, RMR, CRR, CRC
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Elections

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1 (Superior Court of Wake County convened civil
2 court session November 30, 2021, before the
3 Honorable A. Graham Shirley, II. The case of
4 NC State Conference of NAACP, et al. v.
5 Berger, et al., was called for hearing at
6 10:31 a.m.)

7 THE COURT: Good morning, everyone. All right.
8 We are here in North Carolina State Conference of the NAACP,
9 et al., v. Phillip E. Berger, et al., in 21-CVS-14476. If
10:31AM 10 counsel for the parties, starting with the plaintiff, would
11 introduce themselves for the record.

12 MS. KLEIN: Thank you, Your Honor, and good
13 morning. My name is Hilary Harris Klein of the Southern
14 Coalition For Social Justice on behalf of Plaintiffs. I'm
10:31AM 15 joined by my co-counsel, Allison Riggs, also of the Southern
16 Coalition For Social Justice, as well as Mitchell Brown and
17 Katelin Kaiser.

18 I'm also joined by co-counsel from the firm Hogan
19 Lovells -- they're sitting behind me -- Tom Boer and Olivia
10:31AM 20 Molodanof.

21 THE COURT: Thank you.

22 MS. KLEIN: I would also introduce the Court to
23 our client, Bob Phillips of Common Cause, who is the
24 executive director, who is also here today, Your Honor.

10:31AM 25 THE COURT: All right. Thank you.

1 MR. STRACH: Good morning, Your Honor.

2 Phil Strach with Nelson Mullins here for the Legislative
3 Defendants.

4 MS. MCKNIGHT: Good morning, Your Honor.

10:32AM 5 Kate McKnight here on behalf of the Legislative Defendants.

6 THE COURT: All right.

7 MR. STEED: Good morning, Your Honor.

8 Terence Steed on behalf of the State Defendants.

9 MR. BRANCH: Good morning, Your Honor.

10:32AM 10 John Branch here on behalf of Legislative Defendants.

11 THE COURT: All right. As a housekeeping matter,
12 I have one motion for pro hac vice that has been submitted
13 to me. That is for Ms. McKnight.

14 Is there any objection from the plaintiffs to her
10:32AM 15 admission?

16 MS. KLEIN: Plaintiffs do not object, Your Honor.

17 THE COURT: All right. I noticed that there were
18 a number of individuals on the complaint that said -- that
19 stated pro hac vice motions to be filed. Have those been
10:33AM 20 filed, and do they need to be acted upon?

21 MS. KLEIN: No, Your Honor, they have not yet
22 been filed, but they will be imminently. Thank you.

23 THE COURT: All right. So, what -- I see you
24 have the "backslash S backslash." What is that?

10:33AM 25 MS. KLEIN: Your Honor, that is to indicate the

1 signature of attorneys that have appeared in this case, but
2 we're happy to not do that going forward, if necessary.

3 THE COURT: Well, only -- under North Carolina
4 General Statute Rule 84.4, or Section 84.4, only attorneys
10:33AM 5 licensed to practice law in the state, or otherwise admitted
6 to practice, may sign pleadings; otherwise, it constitutes
7 the unauthorized practice of law. So, in the future, no one
8 is to sign a pleading unless they have been admitted pro hac
9 vice or been admitted to the State Bar of North Carolina,
10:33AM 10 just as a point of clarification.

11 That breach is observed -- that rule is observed more
12 in its breach than its rule, but it's something that the
13 Court places emphasis on, because, of course, when you put a
14 signature on, you're certifying certain things pursuant to
10:34AM 15 Rule 11 of the North Carolina Rules of Civil Procedure.

16 All right. Any other administrative matters before we
17 proceed?

18 MS. KLEIN: No, Your Honor.

19 THE COURT: All right. When counsel is actively
10:34AM 20 speaking, they will be permitted to take their mask off.
21 Otherwise, I request that you keep your mask on. Since this
22 is Plaintiffs' -- we'll proceed with Plaintiffs' motion
23 first.

24 MS. KLEIN: Thank you, Your Honor, and may it
10:34AM 25 please the Court. Your Honor, if it's amenable to the

1 Court, because of the overlapping issues and the many
2 motions, I plan to address our motion, as well as just a few
3 of the points raised by Legislative Defendants in theirs.

4 THE COURT: That's fine.

10:34AM

5 MS. KLEIN: Your Honor, Plaintiffs are here
6 before you today with a fairly straightforward request, and
7 that is to declare their rights and the Legislative
8 Defendants' duties to adhere to the North Carolina
9 Constitution when undertaking their mandate to redistrict
10 state legislative maps.

10:35AM

11 Plaintiffs have further requested injunctive relief,
12 including a preliminary injunction, that would enjoin and
13 delay the March 2022 primaries and their related deadlines
14 to protect Plaintiffs from irreparable harm.

10:35AM

15 THE COURT: All right. Just a minute. So you're
16 not seeking to have the maps invalidated in this action; is
17 that correct?

18 MS. KLEIN: That's correct, Your Honor.

10:35AM

19 THE COURT: So what we're going to end up with is
20 a set of maps that have been approved by the legislature,
21 and as a matter of operation by law, until a court
22 determines otherwise, they are presumed to be
23 constitutional, and at the same time telling -- asking me to
24 say you can't proceed on the maps that are presumed to be
25 constitutional, because we don't want you to invalidate

10:35AM

1 them, and we're going to delay the election; is that
2 essentially what you're asking this Court to do?

3 MS. KLEIN: Not exactly, Your Honor.

4 THE COURT: Well, would you agree with me that
10:36AM 5 until those maps are declared invalid they are presumed to
6 be constitutional? Until a court declares those maps
7 invalid, that they are presumed as a matter of law to be
8 constitutional?

9 MS. KLEIN: I would agree with that. And the key
10:36AM 10 language is until a court declares them invalid. And here,
11 Plaintiffs' action is under the Declaratory Judgment Act
12 specifically, which was designed to give the type of
13 anticipatory relief we have asked for here.

14 THE COURT: But you are not asking me to declare
10:36AM 15 the maps invalid, are you?

16 MS. KLEIN: We have not yet requested that.

17 THE COURT: Okay. In fact, had you done that,
18 you would have been required to serve a copy of your
19 complaint on the senior resident judge of Wake County, who
10:36AM 20 would then be required to send it to the Chief Justice of
21 the North Carolina Supreme Court to appoint a three-judge
22 panel; is that correct?

23 MS. KLEIN: That's my understanding.

24 THE COURT: All right. So, sitting here today, I
10:36AM 25 cannot, I have no -- absolutely no authority under the

1 general statutes to declare these maps unconstitutional or
2 invalid, because that power is solely vested in the
3 three-judge panel constituted under North Carolina General
4 Statute 1-267; is that correct?

10:37AM

5 MS. KLEIN: Yes. And Plaintiffs have not asked
6 for that relief.

7 THE COURT: Okay.

10:37AM

8 MS. KLEIN: Plaintiffs have asked for relief
9 under the Declaratory Judgment Act to resolve an ongoing
10 controversy as to what the state constitution requires of
11 Legislative Defendants. And Plaintiffs have separately
12 alleged harm arising out of that.

10:37AM

13 THE COURT: Well, you're asking me to give an
14 advisory opinion, aren't you, before an actual act is
15 passed?

10:37AM

16 MS. KLEIN: We are asking for relief that is
17 specifically afforded under the Declaratory Judgment Act.
18 So, the Declaratory Judgment Act was passed in 1931,
19 Your Honor. And it was -- it was passed, and I can refer
20 the Court to a Law Review article written by the dean of UNC
21 at the time talking about that act soon after it had been
22 passed.

10:38AM

23 And it was passed to give parties the opportunity, when
24 there is uncertainty and an imminent breach arising out of
25 that uncertainty, when there is an uncertainty as to duties,

1 as to legal status, as to rights, as there is here, the
2 parties can ask for judicial review earlier to prevent that
3 harm. And what that judicial review allows for here,
4 Your Honor, is for the Court to provide certainty.

10:38AM

5 The parties can go back and do with that what they
6 wanted, but the argument that we have to also act to enjoin
7 the maps, which, by the way, were not passed when we filed
8 this suit, so the argument that we have to enjoin the
9 maps --

10:38AM

10 THE COURT: But you could have waited. You could
11 have waited.

12 MS. KLEIN: Your Honor, we could have waited.
13 And at that time, we had no idea how long the process for
14 enacting maps was going to extend. It could have gone until
15 Thanksgiving.

10:38AM

16 THE COURT: So --

10:38AM

17 MS. KLEIN: And the declaratory judgment allows
18 the Court to provide that anticipatory review now, and the
19 parties get to do what they want. Their position and what
20 the Court has mentioned about needing to enjoin the final
21 maps, that's like asking -- in the classic contract
22 situation, that's like asking for parties to not only bring
23 a Declaratory Judgment Act, but also bring breach of
24 contract before that has even happened.

10:39AM

25 And the declaratory judgment does not require that,

1 Your Honor. Everything is possible until the primaries
2 happen, until voters vote --

3 THE COURT: And just --

4 MS. KLEIN: -- under these new maps.

10:39AM 5 THE COURT: -- as anything was possible until the
6 maps were enacted, wasn't it?

7 MS. KLEIN: It remains possible, and, in fact --

8 THE COURT: No, everything was possible in terms
9 of compliance with Stephenson or compliance with the
10:39AM 10 VHA (sic) up until the time the maps were enacted?

11 MS. KLEIN: And it remains possible, Your Honor.

12 THE COURT: Okay.

13 MS. KLEIN: Legislative Defendants have provided
14 no reason other than their own unwillingness to comply with
10:39AM 15 the law.

16 THE COURT: But you could have waited until the
17 maps were enacted to determine whether there was a violation
18 of the Whole County Provision or violation of the VRA.

19 MS. KLEIN: We didn't have to, Your Honor,
10:39AM 20 because at the time --

21 THE COURT: Wait a minute.

22 MS. KLEIN: -- that we filed this suit -- -

23 THE COURT: I didn't ask whether you had to. I
24 said you could have.

10:40AM 25 MS. KLEIN: We could have, Your Honor.

1 THE COURT: Let me ask you this. Let's say our
2 legislature -- let's imagine a legislature that is -- either
3 has a governor who will sign this legislation or they have a
4 veto-proof majority. And this fictitious legislature in
10:40AM 5 North Carolina is going to -- is poised to pass legislation
6 that states no citizen of North Carolina or anyone within
7 the geographical boundaries of North Carolina can use the
8 word "north" in the spoken or written word. Now, I hope we
9 could all agree that that proposed legislation is a
10:40AM 10 violation of the First Amendment.

11 Could you -- could a court enjoin the legislature from
12 voting on such an act, or does the act have to pass before
13 we declare it unconstitutional?

14 MS. KLEIN: To answer your question, Your Honor,
10:40AM 15 the judicial branch could not enjoin the General Assembly
16 from voting on that. And that's not what Plaintiffs have
17 asked for here.

18 But it is the sole responsibility of the judicial
19 branch, Your Honor, to state what the state constitution
10:41AM 20 requires and how it's applied in certain situations. And
21 courts have done this time and time again, to state this is
22 what the constitution requires --

23 THE COURT: Well --

24 MS. KLEIN: -- and it has to be followed.

10:41AM 25 THE COURT: -- hasn't the Stephenson court

1 already said what the constitution requires?

2 MS. KLEIN: Yes, Your Honor.

3 THE COURT: I mean, this is not -- this is --
4 what Stephenson says is a well settled matter of law. Why
10:41AM 5 do you need to come to me to say what the law is? Why
6 didn't you wait, once they enacted it, and say, you violated
7 Stephenson and you violated the VRA?

8 MS. KLEIN: We came here because it was very
9 clear they skipped the first step of Stephenson. They
10:41AM 10 decided to skip entirely the first step of Stephenson, and
11 that was apparent when the criteria were passed and
12 Plaintiffs and Plaintiffs' counsel --

13 THE COURT: When were the criteria passed?

14 MS. KLEIN: The criteria were passed on August --
10:41AM 15 on August 5th. No, on August 12th, Your Honor. They were
16 first proposed, I think, around the 5th. They were passed,
17 and Plaintiffs pointed this out. Plaintiffs wrote a
18 letter --

19 THE COURT: Why did you wait until October 29th
10:42AM 20 to file the motion for preliminary -- or motion for
21 declaratory relief and preliminary injunction?

22 MS. KLEIN: To understand whether this would
23 actually cause harm, Your Honor --

24 THE COURT: Okay.

10:42AM 25 MS. KLEIN: -- and --

1 THE COURT: So, when did the harm occur? Does
2 the harm occur when the maps are passed? Or what harm
3 occurs before the maps are passed?

4 MS. KLEIN: The irreparable harm, Your Honor,
10:42AM 5 occurs when voters are going to vote under these maps. It
6 was very clear --

7 THE COURT: Okay. So, when voters -- voters can
8 only vote under those maps once they're enacted. So, the
9 harm doesn't occur until the maps are enacted.

10:42AM 10 MS. KLEIN: Your Honor, hypothetically, right
11 now, this legislature, as it has done in the past, could
12 still comply with Stephenson. There is still time. The
13 primaries have not taken place, and --

14 THE COURT: Does Stephenson -- does compliance
10:42AM 15 with Stephenson necessarily mean compliance with the VRA?

16 MS. KLEIN: Yes, Your Honor.

17 THE COURT: It does. So, you can comply with
18 Stephenson, and if you comply with Stephenson, there will
19 never be a violation of the VRA?

10:43AM 20 MS. KLEIN: As Stephenson is written.

21 THE COURT: No, it says all you do is create VRA
22 districts first. But sometimes people create VRA districts
23 that pack more African-Americans into the district than is
24 necessary, don't they? And that's not in compliance with
10:43AM 25 the VRA.

1 MS. KLEIN: So, Legislative Defendants attempted
2 to do what you're saying last cycle in the Covington matter,
3 and the court explicitly found not only is this first step
4 of Stephenson crucial, but it has to be followed properly.
10:43AM 5 And the court found specifically they had not followed the
6 requirements of the VRA, specifically.

7 By skipping this step, they're saying, okay, we got
8 called afoul, we got called afoul in the game last cycle,
9 but --

10:43AM 10 THE COURT: So, what you're saying is that the
11 process is wrong, because not only did they create VRA
12 districts, they failed to create VRA districts that complied
13 with the constitution and the VRA?

14 MS. KLEIN: The court in the last cycle --

10:44AM 15 THE COURT: No, I'm talking about in this case.

16 MS. KLEIN: In this case?

17 THE COURT: In this case.

18 MS. KLEIN: In this case, Your Honor, they never
19 made any meaningful attempt --

10:44AM 20 THE COURT: Okay. So --

21 MS. KLEIN: -- to determine what the VRA requires
22 at all. They never made any meaningful attempt --

23 THE COURT: So, if they --

24 MS. KLEIN: -- no analysis.

10:44AM 25 THE COURT: -- if they made an analysis, but it

1 was wrong, does that violate Stephenson?

2 MS. KLEIN: That would -- that is not this case.
3 That's not what happened.

4 THE COURT: That's not what I'm asking you. You
10:44AM 5 need to please answer the questions I ask.

6 MS. KLEIN: Yes, Your Honor.

7 THE COURT: If they misconstrued the VRA or if
8 they misconstrued Stephenson but make an honest attempt to
9 comply with the VRA, is Stephenson satisfied?

10:44AM 10 MS. KLEIN: Unless -- no, unless they have
11 properly -- unless they have properly determined what the
12 VRA requires.

13 THE COURT: Okay. So, under that analysis, you
14 would be able to bring a declaratory judgment before any map
10:44AM 15 is passed anytime you believe they've made a mistake in the
16 application of the VRA and the Whole County Provision?

17 MS. KLEIN: I'm not sure that's correct,
18 Your Honor, and this is because in that hypothetical case,
19 which is very different from this one, that would be a
10:45AM 20 disagreement between the parties as to whose analysis is
21 correct. That is not what happened here. In their brief,
22 Legislative Defendants admit they are not aware of any such
23 analysis.

24 THE COURT: Why are we sitting here 30 days after
10:45AM 25 the complaint was filed on a preliminary injunction motion

1 when the harm of the process, you claim, was irreparable?

2 MS. KLEIN: Plaintiffs filed -- I don't know the
3 answer to that question. Plaintiffs filed a motion for
4 preliminary injunction the same day the complaint was filed,
10:45AM 5 Your Honor, and we have acted --

6 THE COURT: Why didn't you request a TRO?
7 Because a TRO gets you into court quick. TROs have a
8 tendency to bring the defendants to the table much more
9 quickly, and TROs are typically brought when there is
10:46AM 10 irreparable harm, when the parties are screaming that there
11 is irreparable harm. But here we sit 30 days later.

12 MS. KLEIN: Well, first of all, Your Honor, the
13 triggering -- the first deadline for the upcoming primaries
14 is December 6th, and we filed this on October 29th. So, as
10:46AM 15 far as the TRO, you know, crying imminent harm at that
16 point, within days, we did not -- we thought that -- we made
17 the reasoned judgment, Your Honor, that a preliminary
18 injunction was the more appropriate standard, because --

19 THE COURT: But I thought it was the process that
10:46AM 20 was causing the harm. And you -- your complaint had not
21 only originally asked for the Court to enjoin the elections,
22 you asked this Court to enjoin the process the legislature
23 was using. So, if -- because that process was causing
24 imminent harm to the plaintiffs.

10:46AM 25 If that is the case, why was a TRO not requested to

1 stop the process and stop the imminent harm that you claim
2 here?

3 MS. KLEIN: The ship has not sailed -- because
4 the ship has not sailed until the primaries take place. And
10:47AM 5 the first -- and the first deadline related to that,
6 Your Honor, is December 6th. Plaintiffs seek for the
7 orderly administration of elections. Unlike last cycle
8 where several elections were undertaken under unlawful
9 maps --

10:47AM 10 THE COURT: If you're seeking --

11 MS. KLEIN: -- here --

12 THE COURT: -- for the orderly process of
13 elections, I still don't understand why the TRO was -- why a
14 TRO was not sought prior to a preliminary injunction and why
10:47AM 15 you waited until October 29th, when, in August, you knew the
16 criteria -- did you doubt that they were going to use the
17 criteria that they said would be used to create the maps?

18 MS. KLEIN: We did not doubt that, but at that --
19 perhaps could I go briefly through the --

10:47AM 20 THE COURT: Sure.

21 MS. KLEIN: -- procedural history and how things
22 played out in this case, Your Honor? Thank you.

23 So, in this matter, that first step, Your Honor, as
24 we've talked about, happened in August when they proposed
10:48AM 25 race blind -- what are called race-blind criteria. And at

1 that point, Plaintiffs' counsel provided public comment,
2 indicating the first step of Stephenson, this is not
3 required under law, and, in fact, the law requires the
4 consideration of racial data in order to comply with
10:48AM 5 Stephenson's requirement that the VRA be -- the requirements
6 under the VRA be ascertained.

7 After that point, it was not clear. There was plenty
8 of opportunity for Legislative Defendants to still comply
9 with Stephenson. They could have performed an analysis.
10:48AM 10 They could have done several different things at that time.
11 And, Your Honor, Plaintiffs do not seek judicial
12 intervention lightly. This is not the first -- this is not
13 the first option for Plaintiffs. This is a last resort, to
14 be before Your Honor.

10:49AM 15 So, when --

16 THE COURT: Can you -- can you use a process
17 other than that set out by Stephenson and come up with a map
18 that satisfies the VRA and the Whole County Provision of the
19 constitution?

10:49AM 20 MS. KLEIN: Absolutely.

21 THE COURT: Okay.

22 MS. KLEIN: And court processes -- court
23 processes have outlined in past cases, in Covington and
24 Common Cause. The courts ordered briefing, extensive --
10:49AM 25 there's extensive briefing on what the VRA requires, and

1 that after, the courts ordered remedial processes that
2 followed -- that followed the other Stephenson requirements.

3 THE COURT: In fact, the VRA doesn't command the
4 state to adopt any particular map, does it?

10:49AM

5 MS. KLEIN: That's correct, Your Honor. And
6 Plaintiffs --

7 THE COURT: Rather, it prevents the enforcement
8 of plans, the enforcement of plans, the purpose or effect of
9 which is to dilute the voting strength of legally protected
10 minorities. The plan.

10:49AM

11 MS. KLEIN: But the state constitution
12 requires -- as interpreted by the court in Stephenson, the
13 state constitution requires a process that requires
14 consideration of federal law first. Federal law is an
15 express, not an implied requirement of the state's
16 constitution. And the court in Stephenson issued a process
17 requirement. The language in Stephenson, which I'm happy to
18 walk the Court through --

10:50AM

19 THE COURT: I've read Stephenson numerous times.

10:50AM

20 MS. KLEIN: -- does that. Wonderful, Your Honor.

21 And Dickson v. Rucho, a recent 2015 decision, when they
22 talk about Stephenson, they even said, again, this is a
23 process requirement. And it imparts a process --

24 THE COURT: If you don't follow the process, if
25 you don't follow the process, but the end results are plans

10:50AM

1 that are compliant with the VHA and the Whole County
2 Provision of the constitution, what is the harm?

3 MS. KLEIN: So, first of all, the harm there
4 would be the maps. But that is not this case.

10:50AM 5 THE COURT: No, we're assuming that they didn't
6 follow Stephenson, but we're assuming that the maps comply
7 with the VHA -- pardon me, the VRA and the Whole County
8 Provision, and throw in the one-person-one-vote requirement.

9 Because you can create a map that complies with those
10:51AM 10 three requirements without following Stephenson. It may
11 take you longer to do it, and it's not what the Supreme
12 Court has said you should do, but you can create a map that
13 satisfies all three of those legislative and constitutional
14 requirements. So, if you do create that map without
10:51AM 15 following Stephenson, what is the harm?

16 MS. KLEIN: So, the harm there, Your Honor --
17 first of all, I would say that -- I would start by saying,
18 Your Honor, that that is a hypothetical that is not this
19 case here. Plaintiffs have alleged --

10:51AM 20 THE COURT: I know it's a hypothetical.

21 MS. KLEIN: Okay.

22 THE COURT: But we're talking about when you
23 filed the suit, what was hypothetically going to happen with
24 these maps. It was hypothetical that the maps would be
10:52AM 25 enacted. I don't even think it's hypothetical that they

1 violate the VRA or the whole county requirement. All you've
2 alleged is they violate the procedural requirements of
3 Stephenson.

4 MS. KLEIN: So, in that case, Your Honor, the
10:52AM 5 declaratory judgment, I believe, would still allow, still
6 allow for judicial intervention, and here's why. It's
7 because the declaratory judgment squarely provides that
8 plaintiffs and parties can come to the court for
9 anticipatory relief, whether or not further -- they have --
10:52AM 10 whether or not further relief could be claimed.

11 THE COURT: So, what do I do -- what do I do if I
12 grant your preliminary injunction, what do I do with this
13 plan that is -- these plans that have been passed that are
14 presumed to be constitutional under our law because no court
10:52AM 15 has struck them down? What do I do with those plans?

16 MS. KLEIN: Plaintiffs have not asked for the
17 Court to do anything with them.

18 THE COURT: No, but I've got to deal with them,
19 because they're plans passed by the legislature that are
10:53AM 20 presumed to be constitutional. And since they're presumed
21 to be constitutional, I mean, do I just let them -- it's
22 almost a pocket veto, is what you're asking me to do with
23 the plans. Just let them remain there, don't -- we're not
24 going to attack the constitutionality or the legality of the
10:53AM 25 plans, don't do anything, but at the same time make them go

1 back and do new plans.

2 MS. KLEIN: Respectfully, Your Honor, I think it
3 would be helpful to draw an analogy to this case to a
4 classic contract dispute where the Declaratory Judgment Act
10:53AM 5 also would apply. So, what we're saying in that dispute,
6 where parties have a disagreement as to what is required on
7 an instrument, they come to the court to resolve that
8 disagreement. After that declaratory judgment ruling, the
9 parties can go and act accordingly, and one would hope the
10:54AM 10 parties go and act accordingly to follow what the judge has
11 declared. And that transforms into this case precisely.

12 Legislative Defendants can take a declaration from this
13 Court, and they can decide to act accordingly. They have
14 not pointed to any reason they couldn't do that. And until
10:54AM 15 the primaries have been elected, that's possible. What
16 they're saying, by presuming we have to also challenge the
17 map, that's like saying you have to bring declaratory
18 judgment and breach of contract at the same time.

19 And the Declaratory Judgment Act was specifically
10:54AM 20 designed so that parties didn't have to wait for that step.
21 You don't have to bring declaratory judgment and breach of
22 contract at the same time. You can ask for the declaratory
23 judgment, and the parties go back and they act accordingly.

24 Now, Plaintiffs can also, as other parties have already
10:54AM 25 done, they can also seek further, you know, intervention

1 from a three-judge panel on the maps. I think we know these
2 maps are problematic, but that's not what Plaintiffs are
3 doing here. They are asking for this Court to provide badly
4 and urgently needed certainty as to what the court required
10:55AM 5 in Stephenson, as to what the state constitution requires.

6 THE COURT: Again, when we start talking about
7 badly and urgently and we're sitting here almost four months
8 since the criteria was announced, when I hear badly and
9 urgently and see that four-month lapse in time, it makes me
10:55AM 10 wonder how urgent it's needed, if we're going to address in
11 a three-judge panel whether the maps actually comply with
12 the -- or whether that there's proof that they comply or
13 don't comply with the VHA or whether there's permissible or
14 impermissible political gerrymandering.

10:55AM 15 MS. KLEIN: So here, Your Honor, I think
16 principles of equity really come in, because Plaintiffs
17 relied upon specific statements by the Legislative
18 Defendants that they would consider evidence. They said in
19 committee -- several times, the committee chair said, hey,
10:56AM 20 if anybody has evidence of, you know, VRA requirements,
21 racially polarized voting, if anybody has evidence, you
22 know, we will consider that. And Plaintiffs did that.

23 Plaintiffs' counsel wrote two letters, one on
24 October 8th, one again on the 25th when proposed maps were
10:56AM 25 coming out, saying, this is going to harm votes of color.

1 There are serious VRA issues with these maps. You have to
2 take a look. And after -- and they repeatedly disregarded
3 those.

4 And it was only until it became absolutely clear, after
10:56AM 5 Plaintiff Common Cause had provided racially polarized
6 voting analyses, saying this is what's going to happen in
7 these districts that you proposed, when they ignored that,
8 it was, I believe, days after that that we filed the
9 complaint and sought judicial intervention.

10:56AM 10 THE COURT: So, they've come out with --

11 MS. KLEIN: It was a last resort.

12 THE COURT: They've come out with proposed maps,
13 they had come out with the proposed maps, and letters were
14 written saying you've got problems with these maps. Well,
10:57AM 15 wasn't there a violation of Stephenson before they even sent
16 the letters?

17 MS. KLEIN: Stephenson requires them before
18 setting districts that they do federally -- it says,
19 districts required by the VRA shall be drawn before.

10:57AM 20 THE COURT: And what --

21 MS. KLEIN: And during the criteria, during the
22 process, no districts had been drawn yet. And when I say
23 they had proposed maps, this was on the website. They were
24 posting what are called member-proposed maps to a specific
10:57AM 25 place on the website. And those maps were the first

1 indication that they had failed to take the step. They had
2 drawn all of the other districts --

3 THE COURT: When's the district actually set?

4 MS. KLEIN: -- before --

10:57AM 5 A district would actually be set when the map is
6 enacted.

7 THE COURT: Okay.

8 MS. KLEIN: And it became very clear when they
9 started proposing these maps that they had skipped and they
10:57AM 10 were not going to do the first step of Stephenson. They
11 actually stated affirmatively in committee during this
12 process, this was after -- after, you know, the criteria --
13 this was in October. They stated affirmatively that they
14 had no intention, the committees had no intention of
10:58AM 15 commissioning any needed, you know, racial analysis that
16 would be needed to comply with the VRA.

17 And it was after that process and it was after it was
18 clear that they had skipped the first step of Stephenson
19 that -- and after many efforts to ask them to undertake that
10:58AM 20 step.

21 THE COURT: How soon after you filed your lawsuit
22 did they enact the maps?

23 MS. KLEIN: It was four days after. But prior to
24 that, Your Honor, there was no announced schedule, there was
10:58AM 25 no indication of when those maps would be passed. It could

1 have extended through Thanksgiving. There was no indication
2 to anyone of how long these maps would take to make their
3 way through. Or, you know, the House map, for example,
4 Your Honor, that was filed on the 28th, was a placeholder.
10:58AM 5 You know, we have that in the binder of exhibits we provided
6 to the Court.

7 THE COURT: Let me ask you --

8 MS. KLEIN: It didn't even have specific lines,
9 it was just a blank placeholder. So, it was not clear how
10:59AM 10 long these maps would take to make their way through the
11 process. If we had to wait until Thanksgiving, Your Honor,
12 it would have been -- you know, if that's when this whole
13 thing had happened and then we had sought to get in front of
14 a court -- you know, it took five weeks for us to get in
10:59AM 15 front of the court. There are natural administrative things
16 that have to happen before getting --

17 THE COURT: You could have gotten in front of the
18 court within a week on a temporary restraining order.

19 MS. KLEIN: And there, Your Honor, we would have
10:59AM 20 faced an argument like this one, the other side of this
21 coin. They would have said there's no deadline until
22 December 6th. The primary -- you know, the
23 primaries candidate -- the candidate deadline for the
24 2020 (sic) election isn't until December 6th, and Plaintiffs
10:59AM 25 have filed this too early, and the legislature can still

1 decide to do this analysis. If we had -- that's what would
2 have happened if we had filed.

3 Instead, Your Honor, Plaintiffs came here as a last
4 resort, after many efforts, after many efforts to convince
10:59AM 5 the Legislative Defendants to follow the law. And we asked
6 here to seek minimal -- the minimum relief here that we have
7 requested is just a declaration of what the state
8 constitution requires and time. And the schedule that we've
9 requested, an injunction until May, is the schedule that was
11:00AM 10 followed in the last cycle when the, you know, primaries
11 were classically scheduled in May.

12 So, Plaintiffs have really made extreme efforts, first
13 of all, to resolve this without the need for court
14 intervention and also to only seek court intervention,
11:00AM 15 again, with time before those deadlines start happening.

16 But it should be clear that anything is possible until
17 the primary elections happen. Legislative Defendants can --
18 upon a declaration of this Court that they violated their
19 duties, Legislative Defendants can decide to comply. They
11:00AM 20 have forecasted unwillingness to do so, but that doesn't
21 change the fact that Plaintiffs are entitled to relief.

22 THE COURT: All right. And you've submitted a
23 number of affidavits in support of your motion; is that
24 correct?

11:00AM 25 MS. KLEIN: That's correct, Your Honor.

1 THE COURT: All right. Your motion was filed and
2 served on October 29th, the day the complaint was filed?

3 MS. KLEIN: That's correct.

4 THE COURT: And the affidavits were served on
11:01AM 5 November 5th; is that correct?

6 MS. KLEIN: Shortly after. And they were served
7 with a copy of the motion. They were served with a copy of
8 the motion.

9 THE COURT: All right. But the initial motion
11:01AM 10 was served on October 29th?

11 MS. KLEIN: That's correct.

12 THE COURT: Is that in compliance with Rule 6(d)?

13 MS. KLEIN: So, I understand it to be, and this
14 is why, Your Honor. So, that rule provides -- the North
11:01AM 15 Carolina rules provide that Legislative Defendants have to
16 have notice of a motion five days -- more than five days
17 before that hearing. And here, there was much more. There
18 was many, many weeks of notice.

19 And that rule, Your Honor, I believe, only requires
11:01AM 20 that the affidavits be served with a copy of the motion.
21 And I'm not aware that Legislative Defendants have objected
22 to that.

23 THE COURT: And Mr. Bartlett's affidavit, even
24 though he signed it on November 3 of 2021, it appears that
11:02AM 25 he swore to it on January 20th of 2021. I'm not sure how

1 that happens. Is that a typo?

2 MS. KLEIN: Oh, Your Honor, that is a typo. I'm
3 sorry.

4 THE COURT: So, when was he sworn to that?

11:02AM 5 MS. KLEIN: He swore to that on the 3rd or the
6 4th. I'm happy to have us submit --

7 THE COURT: That's all right.

8 MS. KLEIN: Very, very promptly we can submit a
9 corrected --

11:02AM 10 THE COURT: I will consider the affidavit,
11 understanding that it's a typo. And on your --

12 MS. KLEIN: Oh, Your Honor, I'm sorry. It says
13 executed November 3rd at the top of that page. So that
14 is -- that is just the notary public. And the notary
11:02AM 15 public -- that's just for the notary public's affirmation.

16 THE COURT: Well, you can't swear someone to
17 something in January of 2021 when I don't think the census
18 data was out then.

19 MS. KLEIN: Yeah. I'm sorry for that --

11:03AM 20 THE COURT: So that would be November 3rd?

21 MS. KLEIN: -- but it is November 3rd, and it
22 says that. I apologize, Your Honor.

23 THE COURT: All right. Go ahead.

24 MS. KLEIN: So, would it be helpful for the Court
11:03AM 25 if I walked through more of the exhibits here, including the

1 affidavits? I'd like to actually direct the Court's
2 attention to the letters --

3 THE COURT: Okay.

4 MS. KLEIN: -- that I had. That's in the index
11:03AM 5 of exhibits, Your Honor, starting with Exhibit M, Tab M.
6 These are the letters that were written by Plaintiffs'
7 counsel first. And N and then O is the racially polarized
8 voting study that was submitted to Legislative Defendants.
9 That was submitted to Legislative Defendants as a final plea
11:03AM 10 to get them to comply with Stephenson.

11 And as we've discussed, Your Honor, Stephenson
12 requires -- it requires that legislators follow a particular
13 process. And it does this in language that said that
14 districts required by the VRA shall be formed prior to all
11:04AM 15 others. That temporal language, Your Honor, mandates a
16 specific process. As we've described, the Legislative
17 Defendants not only failed to do this, but the criteria that
18 they imposed prevented other members from complying with
19 this.

11:04AM 20 In addition to the race-blind criteria that we've
21 discussed, Your Honor, the Legislative Defendants also
22 required other legislators to use specific templates for
23 their maps. These templates are called county clusters or
24 county groupings, and they were devised by a set of Duke
11:04AM 25 professors doing a -- following a mathematical algorithm,

1 and that was reflected in a paper that Legislative
2 Defendants referred to.

3 But, importantly, Your Honor, that paper -- those
4 professors admitted, clearly on the first page of that
11:04AM 5 paper, this paper does not consider the first step of
6 Stephenson. This paper does not. So, by requiring all
7 members to use these template maps, Your Honor, the
8 Legislative Defendants effectively prevented anyone from
9 drawing districts required by the VRA first. They required
11:05AM 10 everyone to skip that first step of Stephenson.

11 Each of these steps was done intentionally and
12 knowingly by the Legislative Defendants. They were warned
13 several times not just by Plaintiffs and Plaintiffs'
14 counsel, they were also warned by their fellow legislators
11:05AM 15 who, in committee, time after time, asked them, how are we
16 going to comply with Stephenson if we are prohibited from
17 using racial data?

18 And what did they do after all of this, Your Honor? As
19 we have seen and as we've discussed, they didn't take heed
11:05AM 20 of any of those warnings, and after the filing of this
21 complaint, they rushed to enact the final maps. And all of
22 the harm -- importantly, all of the harm that Plaintiffs
23 forecast are included in those final maps. In other words,
24 this case is not mooted by the final maps, because the harm
11:06AM 25 that Plaintiffs have alleged still remains.

1 THE COURT: Well, there was no harm until the
2 final maps were enacted.

3 MS. KLEIN: The harm that Plaintiffs have
4 forecasted, Your Honor, that will occur when the elections
11:06AM 5 occur is still -- is still possible with the -- they have
6 not resolved that issue. They have not mooted this case by
7 resolving the issues and making the controversy go away.

8 In other words, a declaration of this Court would have
9 a very practical effect. A declaration of this Court would
11:06AM 10 provide the certainty to the parties as to what Stephenson
11 requires, there's an act of controversy of that, and the
12 additional relief, which the declaratory judgment
13 specifically provides for. It says, any additional relief
14 as necessary and proper. And Plaintiffs have asked here for
11:06AM 15 time. They have asked for a two-month delay in the
16 primaries set to a schedule they have historically taken,
17 set to a schedule that the state board actually requested
18 back in February, a two-month delay in primaries to allow
19 the parties to act upon that declaration of the Court.

11:07AM 20 That means Legislative Defendants can decide what
21 they're going to do, and it means that, if needed,
22 Plaintiffs can further pursue their rights. Plaintiffs --
23 in addition to the Declaratory Judgment Act, Your Honor,
24 Plaintiffs have also brought claims that Legislative
11:07AM 25 Defendants have violated their rights under equal protection

1 and freedom of assembly, and that Legislative Defendants
2 have done this by intentionally acting. They made this
3 intentional decision to act and skip the first step of
4 Stephenson in a way that will dilute the votes of individual
11:07AM 5 plaintiffs.

6 THE COURT: But to the extent that there is the
7 violation of those rights, that violation does not occur
8 until the maps are actually enacted. We can talk all we
9 want about what we're going to do, we can tell everybody
11:07AM 10 what our plan is going to do, but nothing really matters
11 until the plan is executed.

12 MS. KLEIN: When the -- yes, when the --

13 THE COURT: Okay.

14 MS. KLEIN: -- people have to vote under these
11:08AM 15 maps, there will be irreparable harm. There's no take-back
16 of votes, can't do over.

17 But the harm I would say to the -- the declaratory
18 judgment is here to provide certainty. That act of
19 controversy remains. Legislative Defendants haven't said
11:08AM 20 they agree with Plaintiffs, and they haven't otherwise acted
21 in a way that would resolve that uncertainty at all. In
22 fact, that certainty risks to haunt not just this cycle,
23 but, you know, it risks to haunt future cycles if it's not
24 clear that mandates from the state supreme court need be
11:08AM 25 followed.

1 THE COURT: The purpose of Stephenson was what,
2 to harmonize the provisions of the North Carolina
3 Constitution regarding the whole county requirement and the
4 VHA?

11:08AM

5 MS. KLEIN: That's correct, Your Honor.

6 THE COURT: VRA. The plaintiffs in that case
7 contended -- one party contended you could do it, and one
8 party said that the Whole County Provisions of the
9 constitution were violated. It basically violated the
10 constitution because the constitution incorporates the U.S.
11 Constitution and federal law, and Chief Justice Lake said
12 the constitution cannot violate the constitution. And so
13 they harmonized.

11:09AM

14 MS. KLEIN: That's correct, Your Honor.

11:09AM

15 THE COURT: And the whole purpose was to
16 determine how you can -- I mean, the focus of Stephenson was
17 not necessarily the VRA, the focus of Stephenson was how do
18 you implement the Whole County Provision requirements of the
19 constitution in light of the mandate of the VRA.

11:09AM

20 MS. KLEIN: That's correct, Your Honor. And
21 that's why it's important that the Court specify that the
22 first step is federal law. And that's when counties are to
23 be drawn. First, you must draw districts. Sorry, when
24 districts are to be drawn, Your Honor, you must first take
25 steps to ascertain what is required by the VRA. It did not

11:10AM

1 say, you know, districts that legislators assume were or
2 want to draw because of the VRA, it said required by the
3 VRA, which requires them to ascertain --

4 THE COURT: But federal law doesn't require you
11:10AM 5 to draft them first. All federal law requires is that you
6 comply with the VRA. You could draw your maps, and after
7 the maps are initially drawn, you can go back and do a VRA
8 analysis to ensure that the maps comply with the VRA, and
9 then massage them to comply with the VRA, so long as you
11:10AM 10 still -- or comply with the whole county requirement, but
11 making sure they comply with the VRA.

12 MS. KLEIN: That might be true under federal law,
13 but state legislative redistricting is commanded by our
14 state's constitution. It incorporates federal laws and
11:10AM 15 express provisions, but the mandate that they had is under
16 this state's constitution, and the issue before the Court is
17 a matter of state constitutional law.

18 THE COURT: Well, what Chief Justice Lake was
19 doing was giving a procedure whereby that the courts -- it
11:11AM 20 basically provided a safe harbor. Here's how you make sure
21 you comply with the Whole County Provision. If you follow
22 this procedure, you're going to be fine. I don't know, I
23 guess they didn't do it, and that's why we have
24 Stephenson II.

11:11AM 25 MS. KLEIN: That's correct, Your Honor. And the

1 court further confirmed this reading of Stephenson as
2 requiring -- saying the state constitution requires certain
3 procedures in Dickson v. Rucho, where it said, you know,
4 specifically, this is the procedure that we outlined. This
5 is the procedure that must be followed.

6 And the record reflects, the evidence shows that not
7 only did Legislative Defendants fail to do that, but they
8 effectively prevented any member from -- any member from
9 doing this, and they -- as a result, they completely were
10 derelict in their duty to follow the first step of
11 Stephenson.

12 THE COURT: Let's say I grant your relief. When
13 do you plan on attacking the validity of the maps that have
14 been passed?

15 MS. KLEIN: I don't know that that has been
16 determined yet.

17 THE COURT: Well, you've had -- you've had 30
18 days to figure that out. I mean, because that's -- that's a
19 key issue, because those maps are presumed constitutional at
20 this point.

21 MS. KLEIN: Honestly, Your Honor, that's going to
22 depend on whether the Legislative Defendants indicate
23 they're going to follow a declaration of this Court. They
24 went so far in their brief as to call a declaration of this
25 Court an advisory, a lobbyist's opinion. And we strongly

1 disagree with that. The judiciary has the sole
2 responsibility of declaring what the state constitution
3 requires and how it should be applied. And we would hope,
4 Your Honor, that a declaration of this Court, a declaration
5 of this Court would cause Legislative Defendants to change
6 their course of action.

7 Now, as other -- as others have observed, there may and
8 probably are additional issues with these maps. And I don't
9 want to come here before you to say that Plaintiffs aren't
10 also concerned with those issues, but as it pertains to the
11 case as it's been filed, Your Honor, as it's been filed
12 here, Plaintiffs would hope that Legislative Defendants
13 would follow a declaration of this Court.

14 THE COURT: In the case of Parker v. Raleigh
15 Savings Bank, that was a case where the parties came before
16 the Supreme Court asking the court to determine whether said
17 bonds -- whether certain bonds and coupons were subject to
18 taxation when they constituted part of the surplus at the
19 bank. And the Supreme Court noted that decision ultimately
20 rests with the state Corporation Commission. And only until
21 the body authorized by statute, the sole body authorized by
22 statute, makes that decision can the court actually give a
23 declaratory judgment of whether -- whether the bonds can be,
24 because the decision is first up to that legislatively
25 created body to make a decision.

1 So, our constitution gives first crack at redistricting
2 maps to the legislature. And the undisputed juris prudence,
3 not only in this state, in this country, is that after that,
4 they are going to be subject to judicial review.

11:14AM

5 Are you aware of any case in the United States where
6 something like we're in the procedural posture -- that was
7 in the procedural posture where we are here, where the
8 process was attacked and not the maps and the court entered
9 an injunction?

11:15AM

10 MS. KLEIN: So, Your Honor, first, I would say
11 I'm not specifically aware of a specific case, but I am
12 aware of several instances in which this -- the Supreme
13 Court of this state has explicitly required certain
14 procedures of the legislature in order to follow

11:15AM

15 requirements of the state constitutional law. That is very
16 well established, and we cite to several of those cases,
17 such as Hoke. And, actually, Legislative Defendants cite to
18 two other cases in which the courts did that.

11:15AM

19 THE COURT: Here's the Court's concern. Anytime
20 anyone wants to raise an issue that the legislature is not
21 following proper procedure, which is -- this Court will see
22 an onslaught of suits asking us to determine what is the
23 proper procedure for the legislature to follow in order to
24 carry out their constitutional and statutory mandate.

11:16AM

25 MS. KLEIN: Thank you, Your Honor. Thanks for

1 that clarification. I understand the Court's concern. I
2 think that's -- that concern is not -- would -- that concern
3 would not be implicated here for a couple reasons. First of
4 all, the procedural requirement in Stephenson is very clear
11:16AM 5 as to what's required. So, this isn't --

6 THE COURT: Then why do you need a declaration
7 from this Court if it's so clear?

8 MS. KLEIN: Because they have failed to follow
9 it. They've taken a contrary view of that.

11:16AM 10 THE COURT: Then what you do -- I mean, the law
11 is clear as to what they're supposed to follow under
12 Stephenson. When they enact the maps, you file a lawsuit
13 and say they didn't comply with what this Court has already
14 declared is the proper procedure.

11:16AM 15 MS. KLEIN: And the declaratory judgment -- and
16 if we had done that, if this had taken until Thanksgiving,
17 they would have been here in court arguing that it's too
18 late, that the candidate filing's on December 6th and that
19 there's no chance. If Plaintiffs had waited -- and this
11:17AM 20 creates -- that would create a loophole, an incredible
21 loophole to the -- and narrowing of the state's --

22 THE COURT: I couldn't --

23 MS. KLEIN: -- important role --

24 THE COURT: -- guarantee you a court sitting in
11:17AM 25 equity is not going to consider a loophole like that. I

1 mean, these are extremely important questions that affect
2 all members of this state. And the fact -- I mean, we're
3 having a hearing on Friday in a three-judge panel, and we
4 have to make a decision before Monday.

11:17AM

5 I mean, this Court -- courts are asked all the time to
6 make decisions in a very quick manner. Sometimes it doesn't
7 look like we do, but we are faced with that very task. A
8 three-judge panel is on Friday, and we will not shirk our
9 duties. And we won't -- you know, the fact that -- I mean,

11:18AM

10 there are so many factors that have led this to be where we
11 are now, as opposed to other years that, you know, it's --
12 it can't be -- once the maps were passed, Plaintiffs have to
13 examine those maps to determine whether they meet Gingles
14 first, at least the three -- you know, whether they meet
15 Stephenson, whether they meet the first three criteria of
16 Gingles, and that takes time, and the courts understand
17 that.

11:18AM

18 And so, the fact that we are here today less than a
19 week before the primary, or the filing period, and the fact
20 that on Friday we will be less than a business day away from
21 the filing period, I do not believe is determinative of the
22 legal issue. The legal issue is whether the plaintiffs in
23 that case can prove or can prove a substantial likelihood of
24 success on the merits, and then whether, at that point,
25 injunctive relief is required to protect the status quo.

11:19AM

1 And I don't think the Court's going to say, well, since this
2 is going Monday, we're just going to automatically go and
3 let it go. That's not the analysis the Court goes through
4 or will go through, I can assure you of that.

11:19AM

5 MS. KLEIN: And I feel very assured and thankful
6 for that fact and very thankful for the Court's time today
7 as well.

11:19AM

8 And I would say two things. If the Court -- as the
9 Court rightly observed, it takes time to consider those
10 enacted maps. And, here, if the Court were to take the
11 position that the process -- and this would be contrary to
12 Stephenson v. Bartlett's express language, but if the Court
13 were to take the position that in redistricting, it cannot
14 look to process, then that would be an unprecedented
15 narrowing of the Court's important role in redistricting to
16 protect voters' rights.

11:20AM

17 In other words, this whole -- this whole issue that
18 you've just raised, Your Honor, begs the question of why
19 Legislative Defendants didn't do as the state board
20 requested in February, knowing about the census delay and
21 moving the primaries back to where they have been in prior
22 years. That was a specific request by the executive
23 director that was not followed, and, instead, they drew out
24 the process and only rushed to enact the maps, quite
25 frankly, after this case was filed.

11:20AM

11:20AM

1 Stephenson specifically addresses what Your Honor
2 raised in your initial question, saying that although the
3 respective state legislators maintain primary responsibility
4 for redistricting and reapportionment of legislative
11:20AM 5 districts, such procedures must comport with federal law.
6 Stephenson said such procedures must comport with federal
7 law, and then it provided the procedure that must be
8 followed.

9 And in that procedure, going back this case, back to
11:21AM 10 that language, it said VRA -- districts required by the VRA
11 must be formed prior to it. It used temporal language. And
12 the "required by the VRA" is important, Your Honor, because
13 that requires them to ascertain what the VRA requires.
14 That's exactly what they failed and adamantly refused to do
11:21AM 15 in this case. They skipped that entire step entirely.

16 THE COURT: Process is important. The ultimate
17 result is more important, because that's ultimately what the
18 process is designed, and here you're not attacking the
19 ultimate result, at least yet.

11:21AM 20 Anything further?

21 MS. KLEIN: If Your Honor will give me indulgence
22 of just one minute.

23 (Pause in proceedings.)

24 MS. KLEIN: Your Honor, I have nothing further at
11:22AM 25 this moment. Thank you so much.

1 THE COURT: We're going to take -- we're going to
2 be in recess until 11:30.

3 THE BAILIFF: Court's in recess until 11:30.

4 (A recess was taken from 11:22 a.m. to
11:33AM 5 11:33 a.m.)

6 THE COURT: All right. I'll hear from the
7 plaintiffs. Pardon me, defendants. I'll hear from the
8 Legislative Defendants first.

9 MR. STRACH: Thank you, Your Honor. Phil Strach
11:33AM 10 for the Legislative Defendants. I just want to make a few
11 points, Your Honor.

12 I think when we're talking about what Stephenson did or
13 didn't do, the Plaintiffs, I think, are conflating two
14 issues. Stephenson set up a set of rules, the Court
11:33AM 15 referenced them as a safe harbor, which I think is correct,
16 for complying with the Whole County Provision. Those rules
17 go to how you actually construct districts, how do you
18 actually go in and construct the districts. Those are
19 not -- those are different, distinguishable from the
11:34AM 20 legislative process itself.

21 The constitution doesn't speak to that, except by
22 saying bills have to be read in each house three times
23 before they can be enacted. But constructing districts,
24 having rules and following rules for constructing districts
11:34AM 25 is one thing; the legislative process is another. I think

1 the Plaintiffs were conflating those two issues and thinking
2 that Stephenson said that there's some part of the
3 legislative process that's impacted by Stephenson.

4 And I think particularly when it comes to the VRA,
11:34AM 5 Stephenson itself says, "Interpretation of the federal
6 limitations upon the redistricting process is unnecessary to
7 the resolution of the instant case." So the court made it
8 pretty clear, we're not speaking to that. They also
9 acknowledge that the VRA does not command a state to adopt
11:34AM 10 any particular legislative reapportionment.

11 THE COURT: But does it command a legislature
12 that's redistricting to assess whether the new districts it
13 contemplates are in compliance with the VRA?

14 MR. STRACH: Section 2 of the VRA does not.

11:35AM 15 THE COURT: But Cooper v. Harris, the United
16 States Supreme Court case, does, doesn't it?

17 MR. STRACH: No.

18 THE COURT: "True enough, a legislature
19 undertaking a redistricting case must assess whether the new
11:35AM 20 districts it contemplates, not the old one it sheds, conform
21 to the VRA requirements." That's coming right out of
22 Cooper v. Harris. So, tell me why -- why -- well, let me
23 ask this.

24 The VRA is not a safe harbor for using -- it was not
11:35AM 25 enacted as a safe harbor for using racial criteria in

1 redistricting, was it?

2 MR. STRACH: No. Because if you use it in the
3 wrong way, and that line is not clear, you might violate the
4 equal protection clause of the U.S. Constitution.

11:35AM 5 THE COURT: And, in fact, it was enacted to
6 protect the dilution of the minority vote.

7 MR. STRACH: Correct.

8 THE COURT: And is there not a duty on the
9 legislative body to comply with the VRA?

11:35AM 10 MR. STRACH: They have to comply with it because
11 it's federal law. They don't have to undertake some sort of
12 analysis to assess whether they're complying with it.
13 That's not an affirmative command. The court is simply
14 saying, look, if you don't want your map struck down because
11:36AM 15 of VRA issues, then you might want to look at this. And it
16 does not say you have to undertake any particular kind of
17 analysis to do that.

18 Now, under Section 5 of the VRA, which was in effect
19 when -- in the 2011 round of redistricting, the burden was
11:36AM 20 on the legislature to demonstrate that the plan did not
21 cause any retrogression of minority rights. So, in that
22 case, the legislature certainly did have to examine racial
23 issues on the front end to be able to meet their burden of
24 proof, but that's not the case under VRA Section 2.

11:36AM 25 THE COURT: So, there's an obligation on the

1 legislature to comply with Section 2?

2 MR. STRACH: There is.

3 THE COURT: All right.

4 MR. STRACH: And we believe they have.

11:36AM 5 THE COURT: And, so, how do you do that without
6 looking at race?

7 MR. STRACH: Well, Your Honor, once the districts
8 are drawn, then the legislators can look at those districts
9 and racial data, obviously, becomes known. People post it
11:37AM 10 out there. And one can look at that and say, huh, do we
11 have any issues here? No, don't think we do.

12 THE COURT: Does the census data not inform you
13 of race in districts?

14 MR. STRACH: So, the legislature, in drawing the
11:37AM 15 districts, did not use the racial demographic data provided
16 by the census.

17 THE COURT: I understand that. But you don't
18 have to wait for people to post it, do you? Can't you get
19 racial data after you draw your districts from the census?

11:37AM 20 MR. STRACH: How the legislature chooses to do
21 any sort of back-end analysis is not dictated by anything.
22 You could certainly get the census data if you wanted to.
23 You could wait for it to get posted on Dave's Redistricting
24 App. There's lots of ways you could do it.

11:37AM 25 THE COURT: Well, why is it doing a back-end

1 analysis when Stephenson seems to state that you need to
2 create -- I don't know how you create a VRA district first
3 without considering racial data.

4 MR. STRACH: Right. We don't believe that that's
11:37AM 5 what Stephenson requires. Even the Covington court dropped
6 a footnote acknowledging that it was unclear whether what
7 Stephenson required was to draw VRA districts first in time,
8 like literally chronologically, or just first in priority in
9 the sense that federal law supersedes the state law.

11:38AM 10 And, so, we believe that the map that was enacted by
11 the legislature does comply with Section 2 of the VRA, and I
12 think it's notable that no one -- of all the lawsuits that
13 have been filed, no one has said that the map violates the
14 Voting Rights Act. So, no one's come forward with any
11:38AM 15 evidence whatsoever that says we're wrong that our maps
16 comply with the Voting Rights Act.

17 So, we did comply with Stephenson. What the
18 legislature did conclude was there were no, quote, required
19 VRA districts. Even if you -- even if you say that
11:38AM 20 Stephenson requires VRA districts to be drawn first
21 chronologically, it only speaks to districts that are
22 required by the VRA. And we've taken the position in this
23 litigation and in the legislative process that VRA districts
24 were not required because of the long litigation history
11:39AM 25 that preceded this redistricting.

1 THE COURT: And that long litigation history
2 dealt with data from the 2010 census, not the 2020 census,
3 correct?

4 MR. STRACH: It did. But there's an order as
11:39AM 5 recent as 2020 that examined districts drawn in 2019, using
6 the 2010 data, of course.

7 THE COURT: Okay. But there's been -- the 2020
8 census takes into account immigration and migration to and
9 from North Carolina, correct?

11:39AM 10 MR. STRACH: Correct.

11 THE COURT: And logic would tell me that because
12 we had -- we have one new congressional district, we have
13 more people coming to this state than leaving the state.

14 MR. STRACH: Correct.

11:39AM 15 THE COURT: And, so, shouldn't we know where
16 those people are going and what their racial makeup is in
17 order to be VHA compliant?

18 MR. STRACH: There's no requirement that we
19 inform ourselves of that data to comply with the VRA. And
11:39AM 20 we believe the maps do comply with the VRA, and no one has
21 said otherwise to date.

22 THE COURT: So, what you're telling me is you
23 all threw -- someone threw a dart and it hit the intended
24 target even though they had a blindfold on, and it just --
11:40AM 25 and because of that, it complies?

1 MR. STRACH: Well, Your Honor, in 2019, we drew
2 legislative maps, in part, using a lottery machine. So,
3 yeah, I mean, that happens. And what I --

11:40AM

4 THE COURT: You know, a blind squirrel finds a
5 nut every now and then.

6 MR. STRACH: Exactly. Exactly. So, yes, we
7 believe that the maps are VRA compliant. And if the Court
8 tells us otherwise, we'll modify them.

11:40AM

9 THE COURT: And what analysis has been done to
10 determine whether they're VRA compliant?

11 MR. STRACH: There's been no formal -- there's
12 been no -- the legislature hasn't had a hearing or done
13 anything like that. They're not required to.

11:40AM

14 THE COURT: Explain to me the relationship
15 between Section 2 and Section 5 of the VRA.

11:41AM

16 MR. STRACH: So, they're really two sides of the
17 same coin, because VRA Section 5 put the burden of proof on
18 the legislature to show that their redistricting plan did
19 not retrogress the voting rights of minority voters. So, in
20 order to comply with that, the legislature had to go to DOJ
21 and say, hey, we've looked at the racial data, here's why we
22 did not retrogress, engage in retrogression.

11:41AM

23 Under VRA Section 2, the burden of proof is on any
24 plaintiff who believes that the map dilutes the votes of
25 minority voters or intentionally violates the VRA to go to

1 court, and the burden of proof is on them to examine the
2 racial data themselves and make a claim and prove a claim
3 that the maps violate the VRA. And that's where the Gingles
4 preconditions come into play and all that.

11:41AM

5 So, they're actually very different. And, of course,
6 Section 5 is not operative right now. And, so, the burden
7 of proof would be on any group of plaintiffs that say the
8 current maps violate the VRA, dilute the votes of minority
9 voters. They would need to get the census demographic data,
10 they would have to prove the three Gingles preconditions and
11 make their case in court.

11:42AM

12 THE COURT: So, there's no burden or duty of any
13 kind of the state legislature to comply with the VRA?

11:42AM

14 MR. STRACH: Well, the map has to be compliant,
15 otherwise it could be enjoined. There's no affirmative duty
16 on the legislature to engage in any particular process to
17 get to a compliant VRA map.

18 THE COURT: But is there an affirmative duty to
19 have a VRA compliant map?

11:42AM

20 MR. STRACH: I don't know if I would describe it
21 that way. The map has to comply with the VRA or it could be
22 enjoined, is the way I would describe it.

11:43AM

23 Your Honor, I have another topic to go to, but I'll
24 wait if the Court has any other questions on this particular
25 topic.

1 THE COURT: All right. Under Stephenson v.
2 Bartlett, the court stated, "Section 2 of the VRA generally
3 provides that states or their political subdivisions may not
4 impose any voting qualification or prerequisite that impairs
11:43AM 5 or dilutes, on account of race or color, a citizen's
6 opportunity to participate in the political process and to
7 elect representatives of his or her choice"; is that
8 correct?

9 MR. STRACH: That's what the VRA says, correct.

11:43AM 10 THE COURT: So, it places the prohibition on the
11 state. It prohibits the state from doing certain things
12 that cause certain harms to -- well, on account of someone's
13 race or color.

14 MR. STRACH: On pain of being enjoined. It
11:44AM 15 doesn't require an affirmative process, but it's correct
16 that if the map -- if it dilutes the votes of minority
17 voters, then it could be enjoined under the VRA.

18 THE COURT: All right. Go on to your next topic.

19 MR. STRACH: All right, Your Honor. I just
11:44AM 20 wanted to briefly address the Declaratory Judgment Act that
21 points -- that counsel was raising an analogy about a breach
22 of contract case. And I just wanted to point out that if
23 you thought the contract was going to be breached and you
24 file a dec action to have the court address that, if the
11:44AM 25 contract was then breached, obviously, what you would do is

1 amend the complaint and allege a breach of the contract and
2 have the court address the breach of contract.

3 Effectively, that's the posture of this case. The maps
4 have been passed. They've been enacted. And, frankly,
11:45AM 5 surprisingly to me, the Plaintiffs have made no move to
6 amend their complaint and actually attack the maps, which
7 would then flesh out all these issues, these VRA issues,
8 because there would actually be evidence and data to look
9 at.

11:45AM 10 So, without an amended complaint -- and it's -- to me,
11 it's just seems to be a strange procedure to say a single
12 judge should make a declaration, but then nothing could be
13 done with the map unless it's actually enjoined, and that
14 would have to be done later by a three-judge panel. So, it
11:45AM 15 would seem to -- it would seem to just further delay things
16 and create a very unusual posture for a case like this.

17 So, to the extent that the theory is it's an
18 anticipatory breach, then there's already been an alleged
19 breach, and so, a request should have been made of the Court
11:46AM 20 to amend the complaint actually seeking injunction.

21 THE COURT: All right. Anything else?

22 MR. STRACH: No, Your Honor. We are -- we think
23 for the reasons we've briefed and the reasons that have been
24 discussed here today, the motion should be denied.

11:46AM 25 THE COURT: Go ahead.

1 MS. KLEIN: Your Honor, I didn't know if the
2 Court wanted to hear from the State Defendants first --

3 THE COURT: Sure.

4 MS. KLEIN: -- or Plaintiffs. If I may, just a
11:46AM 5 few points in rebuttal, Your Honor. And the first is that
6 the interpretation that my colleague has put forward is
7 contravened by the Supreme Court of North Carolina itself.

8 In Dickson v. Rucho -- I have that decision, I can hand
9 it to the parties and to the Court -- the court specifically
11:47AM 10 said the process established by this court in Stephenson and
11 its progeny requires that, in establishing legislative
12 districts, the General Assembly first must create all
13 necessary VRA districts.

14 There's nothing in there about safe harbor, doing the
11:47AM 15 analysis later. There's nothing. And I don't think -- they
16 have not cited any case, from the Supreme Court or
17 otherwise, that adopts that interpretation. Adopting their
18 view of Stephenson, Your Honor, would render Stephenson
19 advisory and dicta. That's not what was intended, and that
11:47AM 20 would have disastrous results. It would be a narrowing of
21 this -- the court's, the judiciary's role in stating what
22 the state constitution requires.

23 And I'm happy to hand that opinion up to the Court and
24 the other parties with the highlighted section if that would
11:48AM 25 be helpful --

1 THE COURT: That would be fine.

2 MS. KLEIN: -- for the Court. May I approach?

3 THE COURT: Yes.

4 MS. KLEIN: Thank you, Your Honor.

11:48AM 5 Second, Your Honor, I'd like to -- my colleague,
6 Ms. Riggs, rightly reminded me that the Court asked about
7 the unique procedural posture of this and a concern that
8 this would create ripple effects of allowing people to
9 inject themselves in the legislative process, and I was
11:48AM 10 rightly reminded that in all prior redistricting cycles,
11 there was preclearance. And, in fact, in preclearance,
12 while parties were seeking preclearance, before the maps
13 could be finalized, while they were seeking preclearance,
14 litigants did, courts did consider VRA requirements.

11:49AM 15 In other words, just like this case, courts did peer
16 into what the VRA would require. And I can give a specific
17 citation. For example, in the Perez v. Perry case, this is
18 out of the Western District of Texas, that's 891 F.Supp. 2d,
19 2012, in that matter -- in that matter -- thank you. In
11:49AM 20 that matter, Your Honor, the court did, while also
21 considering issues of preclearance, took evidence on
22 Section 2 compliance. Now, we no longer have preclearance,
23 but the courts weighing in at this stage is not
24 unprecedented, and I wanted to make sure the Court
11:49AM 25 understood that.

1 THE COURT: But you're asking -- your lawsuit was
2 essentially asking for preclearance or seeking
3 pre-non-clearance. Instead of the defendant seeking
4 preclearance, you're seeking pre-denial of something that --

11:50AM

5 MS. KLEIN: No, Your Honor.

6 THE COURT: -- has not been enacted. In
7 preclearance, do they enact the maps and then go get
8 clearance?

9 MS. KLEIN: That was how it worked.

11:50AM

10 THE COURT: Okay. So, even preclearance required
11 maps to be enacted before the Department of Justice would
12 look at it. And then if no one -- if someone was displeased
13 with how the Department of Justice saw it, it would go to
14 court?

11:50AM

15 MS. KLEIN: Your Honor, it would -- the
16 preclearance required them to get an affirmative approval,
17 either from a district court or a declaratory -- from the
18 district court or from the DOJ. And further issues could
19 still be litigated after that, and certainly were.

11:50AM

20 But that actually leads into the third point I wanted
21 to make, Your Honor, which is this is not a Section 2 case.
22 It is not incumbent upon Plaintiffs as an element of any of
23 their claims to plead the Gingles requirements, these
24 preconditions. This is not a Section 2 case. This is about
11:51AM 25 their obligations to follow our state constitution's law, as

1 stated in Stephenson by the highest court of this land, to
2 ascertain what the VRA requires first. And this case is
3 rooted in state constitutional law.

11:51AM 4 And as the Court just heard, Legislative Defendants
5 can't affirmatively say -- they can't affirmatively say no
6 VRA districts are required. They can't affirmatively say
7 they did that step. They made a legal assumption. They
8 have made a legal assumption based on past cases. They've
9 made a legal assumption on their erroneous reading of
11:51AM 10 Stephenson. And I think that exchange highlights why the
11 declaratory relief in this case is so needed to relieve that
12 uncertainty.

13 THE COURT: All right. So, if a legislature
14 departs from Stephenson, the process set forth in
11:52AM 15 Stephenson, and draws maps that are compliant with the VHA,
16 the Whole County Provision of the constitution, does someone
17 have a right to come and challenge the process and then ask
18 the legislature to go back and follow that process and draw
19 maps?

11:52AM 20 MS. KLEIN: Not necessarily. And that's
21 different from this, because Plaintiffs have alleged harm.
22 Plaintiffs not only in those letters told all -- told the
23 Legislative Defendants of the harm, but they've alleged harm
24 in the claim. And for the purpose of the motion to dismiss
11:52AM 25 and the complaint, Your Honor, those allegations are assumed

1 true.

2 The Plaintiffs have alleged vote dilution. They
3 actually provided proof in Exhibit O, that's the letter sent
4 by Common Cause, of racially polarized voting. They sent
11:52AM 5 proof that voters of color were going to be denied their
6 ability to elect candidates of choice, and the Legislative
7 Defendants ignored it despite --

8 THE COURT: If the maps were passed.

9 MS. KLEIN: Yeah. And the Legislative
11:53AM 10 Defendants -- so, here, this case, the process matters. And
11 this case shows why. The process in Stephenson matters.
12 And courts in other matters have looked in and -- looked in
13 and said, during the legislative process, did the
14 legislature comply with notice requirements? Did the
11:53AM 15 legislature comply with notice requirements for public
16 hearings? There are a host of procedural requirements from
17 the state constitution.

18 The right to instruct has these requirements. That's
19 the Common Cause v. Forest case that they have cited to. In
11:53AM 20 that case, the court explicitly said, we're going to look at
21 what process the state constitution requires, that includes
22 notice, that includes ability of the public to actually
23 instruct their members while in session. And they stated
24 affirmatively that's what the constitution requires. They
11:53AM 25 didn't decline -- they didn't step back and decline

1 entirely. That's what Legislative Defendants are asking you
2 to do here.

3 THE COURT: All right. Anything more from the
4 Legislative Defendants?

11:54AM 5 MR. STRACH: No, Your Honor.

6 MR. STEED: Your Honor, from the State
7 Defendants, I would only add that we've briefed the reasons
8 why we agree that the point is moot at this point. We've
9 also laid out the administrative concerns in our briefing.
10 And if Your Honor would like to hear about them, I'm
11 prepared to answer any questions.

12 THE COURT: That's all right. I have read your
13 brief.

14 MR. STEED: Thank you, Your Honor.

11:54AM 15 THE COURT: And I have a motion for permission to
16 file an amicus brief, which I will grant. Although, it
17 doesn't really address the issues before the Court. It's
18 probably more suited for the North Carolina League of
19 Conservation Voters case, but I will -- at least for
20 purposes of this hearing, I've read it, I'll grant the
21 motion and accept the brief.

22 UNIDENTIFIED MALE AUDIENCE MEMBER: Thank you,
23 Your Honor. I'm glad to provide a copy if you care for one.

24 THE COURT: I've got a copy already.

11:54AM 25 All right. We're going to take a 15-minute recess.

1 THE BAILIFF: Court's in recess 15 minutes.

2 (A recess was taken from 11:55 a.m. to
3 12:15 p.m.)

4 THE COURT: All right. As to the preliminary
12:15PM 5 injunction requiring Plaintiffs to go back and follow the
6 process set out in Stephenson I, the Court finds that's
7 essentially asking this Court to undo what has already been
8 done without attacking the validity of the maps. And under
9 the longstanding case law of this state, asking the Court to
12:16PM 10 undo what has already been done does not form the basis for
11 preliminary injunction, because the issue is moot, and the
12 Court denies a preliminary injunction as to that issue.

13 As to a preliminary injunction delaying the filing
14 period and the primary, as long as the maps have not been
12:16PM 15 declared unconstitutional or violative of federal law,
16 there's no harm to address in this case, and, therefore, the
17 motion for preliminary injunction as it relates to delaying
18 the filing period or primary is denied in this case.

19 The Court is going to dismiss the action as moot and
12:16PM 20 for lack of subject matter jurisdiction as it essentially
21 asks the Court to interfere with the process of the General
22 Assembly prior to the completion of that process, which
23 would violate the principle of separation of power.
24 Certainly, once the process is complete, the Court can pass
12:17PM 25 upon the end result of that process.

1 Nothing I have said, nor should this order be construed
2 as any opinion of the Court on the constitutionality or
3 validity of the maps that have been passed. This is a very
4 narrow issue, and it is not in any way reflective of
5 whatever opinion I may hold or I may form as to what will be
6 presented to the Court on the three-judge panel that will
7 occur this Friday.

8 We will draft an order, and once the order is drafted,
9 we will have it filed. Court will be in recess.

10 THE BAILIFF: Court's in recess.

11 (Proceedings concluded at 12:18 p.m.)
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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken the November 30, 2021, Session of Wake County Superior Court is a true and accurate transcript of the proceedings as reported by me and 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.

This, the 2nd day of December, 2021.



Dawn M. Dantschisch, RMR, CRR, CRC
Official Court Reporter
Tenth Judicial District
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2021 NOV -5 P 4:50

21 CVS 014476

NORTH CAROLINA STATE CONFERENCE
OF THE NAACP, COMMON CAUSE,
MARILYN HARRIS, GARY GRANT, JOYAH
BULLUCK, and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILIP E. BERGER *in his official capacity as
President Pro Tempore of the North Carolina
Senate*; TIMOTHY K. MOORE *in his official
capacity as Speaker of the North Carolina House
of Representatives*; RALPH E. HISE, JR.,
WARREN DANIEL, PAUL NEWTON, *in their
official capacities as Co-Chairmen of the Senate
Committee on Redistricting and Elections*;
DESTIN HALL, *in his official capacity as
Chairman of the House Standing Committee on
Redistricting*; THE STATE OF NORTH
CAROLINA; THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; DAMON CIRCOSTA,
*in his official capacity as Chair of the State Board
of Elections*; STELLA ANDERSON, *in her
official capacity as Secretary of the State Board of
Elections*; STACY EGGERS IV, *in his official
capacity as Member of the State Board of
Elections*; JEFF CARMON III, *in his official
capacity as Member of the State Board of
Elections*; TOMMY TUCKER, *in his official
capacity as Member of the State Board of
Elections*; KAREN BRINSON BELL, *in her
official capacity as Executive Director of the State
Board of Elections*

Defendants.

AFFIDAVIT OF GARY BARTLETT

I, Gary Bartlett, hereby declare as follows:

1. I am a United States citizen and a resident of Wayne County, North Carolina. I am currently an independent consultant based out of Goldsboro, North Carolina. I am President and Executive Director of the Elections Administration Resource Center 501(c)(3) d/b/a Ranked Choice Voting Resource Center. I am a 1976 graduate of University of North Carolina at Chapel Hill, having earned a B.A. in history.

2. I have prepared this affidavit in support of Plaintiffs' Motion for a Preliminary Injunction.

3. From 1993 to May 15, 2013, I served as the Executive Director of the North Carolina State Board of Elections (hereinafter "State Board of Elections" or "State Board"). Before serving as Executive Director, I served as a legislative assistant to North Carolina Congressman H. Martin Lancaster. I have appended my full curriculum vitae as Exhibit 1 to this Declaration.

4. My responsibilities as Executive Director of the State Board were designated in Chapter 163 of the North Carolina General Statutes. In this role, I was responsible for staffing, administering, and executing the State Board's decisions and orders, as well as other responsibilities assigned to me by the State Board, and was the chief state elections official in North Carolina. My responsibilities also included overseeing North Carolina's 100 county election boards to ensure that they correctly managed all primary and general elections at the state, county, and local levels. All officials involved in election procedure in North Carolina either directly or indirectly reported to me.

5. There is tremendous variation between the budgets, tax bases, and resources of the 100 North Carolina counties. County elections officials likewise bring a range of experience to their role in overseeing local and county elections. The North Carolina State Board of Elections

provides a second pair of eyes for county officials with respect to administering elections. For example, State Board staff help county staff ensure that ballots are laid out correctly and that voting equipment is properly tested in advance of an election. Sufficient time before a general or primary election day is necessary to allow state and county officials to work together to cure any potential errors and maintain election integrity.

6. During my tenure as Executive Director, I oversaw dramatic changes in North Carolina's voting practices. These included: (i) bringing North Carolina into compliance with the National Voter Registration Act of 1993 by implementing agency voter registration and management systems; (ii) the 2000 initiation of early voting options; (iii) the 2001 expansion of absentee ballots to all voters without requiring a qualifying excuse; (iv) offering a system for voters to check their registration status online prior to an election; and (v) allowing for same-day registration during early voting starting in 2007. I was also personally involved with ensuring that voters with disabilities had the means to cast their ballots, both with absentee voting procedures and ensuring that polling places would be handicap-accessible to the extent possible. Also, with the assistance of staff, I developed and implemented an election certification program to train and educate election officials. I implemented innovations including a procedure and policy manual covering every part of election duties and responsibilities, an online elections library, and a self-audit program for counties to ensure that they are compliant and up-to-date.

7. North Carolina's voter turnout increased dramatically under my leadership. Shortly after the beginning of my tenure, in 1996, North Carolina ranked almost last (fortieth) of all states.¹ By the end of my tenure, in 2012, North Carolina ranked twelfth nationally in voter turnout.²

8. During my tenure as Executive Director of the State Board of Elections, I was an active member in the National Association of State Election Directors (better known as NASED). I am a former board member of the Election Center, which is an association of election officials from across the United States and some areas of Canada that work together to help resolve election issues, expand educational opportunities, and explore new or better ways to administer elections. I have also been involved with the National Task Force on Election Reform, and served as the national co-chair of the National Task Force on Elections Accessibility for four years. I also served on the Federal Elections Commission Advisory Panel and the Standards Board of the United States Election Assistance Commission.

9. I have served as an expert witness in *Gilbert v. Guilford County*, Case No. 13 CVS 3227 (Guilford Cty. Super. Ct), *Third Sector Development, Inc. v. Kemp*, Civil Action No. 2014CV252546 (GA Super. Ct), and *Ga. State Conf. of the NAACP v. Georgia*, No. 1:17-cv-1427 (N.D. Ga.). I also provided testimony relevant to my position as former Executive Director of the State Board of Elections in *Democracy N.C. v. N.C. State Board of Elections*, No. 1:20-cv-00457 (M.D.N.C. 2020). I will be paid a fee of \$2,500 for preparing reports in this case, with additional compensation should my testimony be required in this case.

¹ See Voter Registration and Turnout – 1996, United States Election Assistance Commission, https://www.eac.gov/sites/default/files/eac_assets/1/6/1996%20Voter%20Registration%20and%20Turnout%20by%20State.pdf.

² See The 2012 Election Administration and Voting Survey at p. 9, United States Election Assistance Commission, https://www.eac.gov/sites/default/files/eac_assets/1/6/2012ElectionAdministrationandVoterSurvey.pdf.

Concerns About the Legislature's Delayed Redistricting Process in 2021

10. Even-numbered years are major election years in North Carolina because of the number of federal, state, and county offices on the ballot. In 2022, all state legislative races will be on the ballot. The primary is currently scheduled for Tuesday March 8, 2022, with an early voting period set from February 17, 2022 to March 5, 2022. The current candidate filing period is set to begin on December 6, 2021 and close on December 17, 2021. Sections 6 and 7 of Article II of the North Carolina Constitution require Senators and Representatives to have lived in their districts for one year immediately preceding their election, and North Carolina Senate candidates must also have been residents of the state for at least two years. This would require candidates to be residents of their districts no later than November 8, 2021, one year prior to the scheduled general election day on November 8, 2022.

11. Since the 1990s, North Carolina has required additional time before administering primary elections due to redistricting litigation and preclearance requirements. As the Executive Director of the State Board of Elections, I experienced multiple delayed primaries due to redistricting lawsuits. I oversaw delayed primaries in the 1990s, in 2002, and in 2004. In the 2002 election cycle, following the 2000 Census, the North Carolina Legislature passed a State Senate and House district plan on November, 13, 2001. In that instance, the federal Voting Rights Act of 1965 required preclearance of the districting plan. To provide adequate time for preclearance to be granted and for litigation to be resolved, the primary date was scheduled for May 7, 2002. Although preclearance was granted on February 11, 2002, the Supreme Court of North Carolina enjoined the primary elections for the State Senate and House on March 7, 2002 after a trial court concluded the legislative redistricting plans violated the North Carolina Constitution. *See Stephenson v. Bartlett*, 355 N.C. 281 (2002). On March 12, 2002, the State Board, under my direction, voluntarily

postponed primaries for all other offices. It was a necessary step because, historically, standalone elections have had very low voter turnout. I believe the North Carolina Supreme Court's decision to enjoin the primaries was important to ensure that the litigation was resolved with enough time remaining to then provide notice of district assignments to voters and potential candidates. Those same considerations are at issue again now, as fully described below.

12. The United States Census Bureau released block-level 2020 Census Data on August 12, 2021.³ This release was five months later than the data was released last cycle, and I understand that delay was due to the COVID-19 pandemic. I also understand that the first joint meeting of the Senate Committee on Redistricting and Elections and the House Committee on Redistricting was not until August 5, 2021, and that these committees thereafter adopted redistricting criteria (on August 12) and a public hearing schedule (on September 1).

13. Although I cannot comment on the reasons for the committees' timing on these matters, based on my experience, I believe that an earlier start to this process would have benefited all participants in the election process, including voters, candidates, political parties, and elections officials. Having adequate time to prepare for and conduct an election, following redistricting, helps elections officials ensure that the election runs smoothly and it gives other participants the time they need to learn about the newly redrawn districts.

14. Finally, I understand that leadership of the Senate and House redistricting committees initiated the map-drawing process on October 5, 2021, without setting any deadlines for the Legislature to finish drawing the maps or setting a deadline for a vote on proposed maps. As of the date of this Declaration, I understand the Senate and House redistricting committees

³ See August 12, 2021 Joint Meeting of Committees, <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

jointly heard public comment on Congressional maps on Monday, August 25, and on Senate maps on Tuesday, August 26.

15. At this time, I foresee many likely disruptions to the upcoming primary elections that could result from failing to delay the December 2021 candidate filing period and the March 8, 2022 primary date at this time. Such disruptions could harm the ability of voters and candidates to participate in the primaries. These harms include a shortened absentee voting period, having to rush ballot preparation and machine programming, shortening the time to canvass for elections, dissuading potential candidates from running, and creating uncertainty for all campaigns, potential candidates, and their supporters. Additional challenges are likely if judicial intervention is necessary to ensure any enacted maps comport with applicable law.

Ensuring Accurate District Assignments

16. For state legislative seats, redistricting requires state and county elections staff to assign voters to new districts and to inform voters of their new districts. Officials in all 100 counties must assure that every voter is properly assigned to the correct districts.

17. Reassignment because of redistricting requires the work of information technology personnel from both state and county elections staff. For example, someone from the state information technology staff has to reassign voters to new districts. Staff must change all address geocode ranges in their databases to reflect district changes. Geocoding is the process by which block-level census data for every district, precinct, and other boundary, such as for local school boards, is entered into the districting software being used by state and county elections officials. After voters are assigned to districts via the software, an auditing process is necessary to ensure accuracy. This is a critical step to ensure that voters are assigned to their correct districts.

18. The reassignment process is more complicated, and takes additional time and resources, when districts have split precincts. For example, if a county's precincts are split, then it takes additional time by one of the State Board's staff members for each county, in addition to the normal course of work that county staff must perform, to reassign voters in split precincts. Issues arise during this process. Such issues primarily arise in districts where there is a higher population of African American or other minority voters. But such issues can be addressed when elections officials have adequate time to review and audit district assignments.

19. If a potential candidate for the state legislature brings a challenge based on their district assignment, this also would then require additional time for the State Board or a county board to hold a hearing. Candidate challenges must be filed within ten days of the close of the candidate filing period. There are two types of challenges that can occur: (i) those before a county board of elections, and (ii) those before the State Board. If the elected office sits within one county, that county's board of elections will hold the hearing. However, if the elected office covers multiple counties, the State Board will oversee the hearing. Because challenges before the State Board often take more time than those before county boards, timing issues arise. For example, although other elections can move forward while candidate challenges are pursued, such challenges can be disrupted, and may even be disputed following election day. Also, if candidate challenges are not timely filed, then they have to be filed as an election protest after the election date.

20. Thus, the time for state and county elections officials to process the new districts and to ensure their accuracy is already extremely limited between now and the December 6, 2021 opening of the candidate filing period, even assuming maps were enacted immediately and did not require any judicial review.

Ballot and Equipment Preparation

21. Following the close of the candidate filing period, state and county elections officials must prepare and print ballots, review the ballots for any errors, and then prepare and test the voting equipment. In some populous counties, there can be several different ballot styles. For example, there can be multiple ballots styles used by voters in one precinct to ensure a voter votes the ballot for the offices that they are eligible to cast. Elections officials need time to ensure that the correct ballots are going to the correct voters. Typically, state and county officials require at least 21 days to prepare and review ballots.

Mailing Absentee Ballots

22. North Carolina must have adequate time for absentee ballots to be mailed to members of the armed services, their dependents living overseas, and other overseas citizens, and those voters must have adequate time to return their completed ballots. Foreign mail services can delay the delivery and return of absentee ballots. To overcome these potential challenges, and to comply with the Federal Voting Assistance Program, North Carolina has enacted particular requirements for the timing of the absentee voter period. State law requires absentee ballots for armed services members and other overseas voters to be ready 60 days before a general election and 50 days before a primary. N.C. Gen. Stat. § 163-258.9(a). However, the State Board may be authorized to reduce this time for primary elections to 45 days. N.C. Gen. Stat. § 163-22(k). Thus, in calculating an election schedule, at least 45 days for absentee voting must be allowed before the primary. Even so, the United States Department of Defense recommends 60 days for absentee balloting in order to reach defense personnel in remote locations.

Candidate Residency Requirement

23. As noted above, candidates for State Senate and House must have resided in their district for one year prior to the general election, which is currently scheduled to be held on November 8, 2022 for this election cycle. If the new districts are finalized after November 8, 2021, candidates who have been drawn into a new district will not have the opportunity to meet the one-year residency requirement prior to the November 8 deadline, absent an order from the court modifying that requirement.

24. These potential candidates for the state legislature, who are not eligible because they cannot meet the residency requirement as a result of circumstances out of their control, i.e., the delayed finalization of districts, may bring a legal challenge. Such legal intervention would further delay the process.

Districts of Potential Candidates

25. Creating districts so close to the candidate filing period creates a number of other problems for individuals considering running for an office in the North Carolina state legislature. Registered voters interested in running for a public office need to know the configuration of new legislative districts to determine their potential for success. A potential candidate must confirm whether they are a resident of a newly drawn district as part of determining whether to file for a given seat. In order to campaign effectively, a candidate must know the parameters of the district they are seeking to represent. Knowing the constituency is essential to evaluating the prospects of a candidacy, as are factors such as political or grassroots support, fundraising potential, and the ability to communicate with voters.

26. Any delays in establishing district boundaries creates an unfair and uneven playing field with a decisive advantage to wealthy candidates and incumbents. The creation of districts

shortly before the candidate filing period can have a chilling effect on potential new candidates, or can result in litigation, as discussed above. Without adequate time to prepare, raise money, and campaign, potential candidates may forego seeking election. And if the current primary schedule remains, delays caused by litigation may result in an abbreviated candidate filing period. In my tenure as Executive Director of the State Board of Elections, my office received calls from such candidates who expressed their frustration with issues like these.

Voter Education

27. Redistricting that is close in time to candidate filing deadlines can also impact voters who support a particular candidate. Their candidate's district may be carved up such that their preferred candidate has no chance to win. And voters must be educated early and often by candidates and elections officials about the districts to which they have been assigned and the candidates for office in those districts. North Carolina has approximately 7 million registered voters,⁴ and providing adequate public information about election changes such as redistricting is an arduous task. As a result of the 2020 Census, districts will have been redrawn not just for state legislative offices and the United States Congress, but for school boards, county commissions, and municipal offices as well. Because of this necessary, widespread redistricting, education about reassignments is most important in the first election following the census. An abbreviated primary cycle can also shorten the time for voters to familiarize themselves with new candidates if they find themselves in a new district.

28. In summary, significantly shortening the time period for completion of elections tasks undermines the ability of elections officials to address the challenges posed by the first

⁴ See N.C. Voter Turnout Statistics 2020 General Election, https://s3.amazonaws.com/dl.ncsbe.gov/Press/NC%20Voter%20Turnout%20Statistics/voter_turnout_stats_20201103.pdf.

election following redistricting. And this in turn can negatively impact voters, candidates, and political parties.

Timing of Candidate Filing Periods and Primary Days

29. Recent past election cycles in North Carolina have been successfully conducted with candidate filing periods in February and primary days in May. The 2018 election cycle had a candidate filing period from February 12 to February 28, 2018, and a primary day on May 8, 2018. The 2014 election cycle had a candidate filing period from February 10 to February 28, 2014, and a primary day on May 6, 2014. The 2012 election cycle had a candidate filing period from February 13 to February 29, 2012, and a primary day on May 8, 2012. Likewise, North Carolina had its primary day in May for the 2010, 2008, 2006, and 2000 election years. These are first round primaries, with second round primaries taking place in the case of runoffs when no candidate meets the vote threshold. Typically, about seven weeks are required to ensure that there is sufficient time to hold second-round primary elections. Holding the first-round primary in May leaves plenty of time for second-round primaries, if needed, and for the general election in November.

30. Of particular relevance here, for the past two post-Census election cycles, which I oversaw as Executive Director of the State Board, the primary dates were originally set in May. Most recently, the 2012 primary date, following the 2010 Census results, occurred in May. And, as discussed above, the 2002 primary day was also originally set for May, but was then delayed due to ongoing litigation. A May primary date is normal practice for an election year following a decennial census, and does not have a concerning impact on the general election in November.

31. Due to the delayed release of the 2020 Census results, the current March 8 primary date poses a challenge for the State Board and county elections officials. In light of this situation, it is critical to delay the primary dates and candidate filing period as soon as possible to establish

certainty and stability in the process, and to ensure that the 2022 elections run as smoothly as possible.

32. The more time every participant in the election process has to prepare for the election, the better the process will be for election board staff, voters, and potential candidates. Voters need time to learn about what district they are voting in, just as elections officials, candidates, and political parties need time to conduct outreach and voter education regarding new districts. Potential candidates need to know what district they are in with enough time to assess their chances of winning in that district. And elections officials need time to implement the safeguards required to minimize errors in the election process and ensure that whoever gets the most eligible votes wins. Elections officials and the public alike benefit when elections officials have time to correct errors and ensure smooth elections. This allows elections officials to serve as good and faithful public servants in the democratic process.

33. In light of the above precedents, there is no question that a primary date in May 2022 is feasible. An abbreviated time period can be managed, if necessary, but it invites more room for errors at every step of the process. Additional time following the delayed 2020 Census results would ensure fewer errors. And it would allow all participants in the election process to have sufficient notice of, and time to prepare for, the election under newly redrawn district maps, whether they be voters, activists, candidates, political parties, or elections officials.

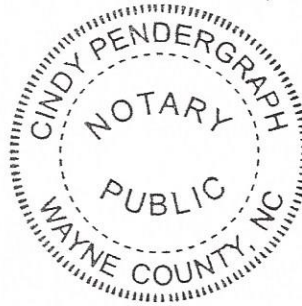
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed November 3, 2021

Gary Bartlett
Gary Bartlett

Subscribed and sworn to before me this the 20th day of January, 2021.

Cindy Pendergraph
exp. 2-14-2026



STATE OF NORTH CAROLINA

FILED

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 014476

NORTH CAROLINA STATE CONFERENCE
OF NAACP, et al.

Plaintiffs,

v.

PHILLIP E. BERGER in his official capacity as
President Pro Tempore of the North Carolina
Senate, et al.

Defendants.

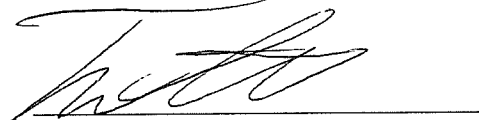
NOTICE OF FILING:

**AFFIDAVIT OF
KAREN BRINSON BELL**

NOW COMES Defendants the North Carolina State Board of Elections, its members, and the State of North Carolina (collectively, the "State Defendants"), by and through the undersigned counsel, and hereby submit the attached Affidavit of Karen Brinson Bell in support of State Defendants' Memorandum in Response to Plaintiffs' Motion for Preliminary Injunction. A copy of that Memorandum is being delivered to the Court via email to the Trial Court Administrator.

Respectfully submitted this 23rd day of November, 2021.

N.C. DEPARTMENT OF JUSTICE



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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by via email and addressed as follows:

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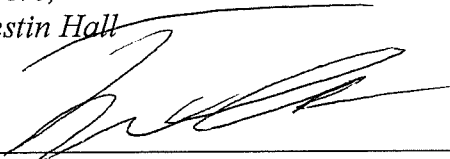
*Counsel for Defendants Philip E. Berger, Timothy K. Moore,
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This the 23rd day of November, 2021.

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STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 14476

NORTH CAROLINA STATE
CONFERENCE OF NAACP, et al.,

Plaintiffs,

v.

PHILLIP E. BERGER, et al.,

Defendants.

**AFFIDAVIT OF
KAREN BRINSON BELL**

I, Karen Brinson Bell, swear under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old, I am competent to give this affidavit, and have personal knowledge of the facts set forth in this affidavit. I have consulted with senior staff at the State Board in the preparation of this affidavit.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections (the "State Board"). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board's decisions and orders. I am also the Chief State Elections Official for the State of North Carolina under the National Voter Registration Act of 1993 and N.C.G.S. § 163-27. As Executive Director, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director, I provide guidance to the directors of the county boards.

3. On March 8, 2022, North Carolina is scheduled to hold its 2022 statewide primary election. Contests on the ballot include the U.S. Senate and House of Representatives, the N.C.

General Assembly, state judicial contests at all levels, district attorneys, and county offices. Additionally, voters in roughly a third of North Carolina's counties will have municipal contests on their ballot, due to special legislation delaying certain municipal contests due to delays in receiving U.S. Census data. *See* N.C. Sess. Law 2021-56. For the non-municipal contests, if no candidate reaches the vote share necessary to become the party nominee after the first primary (at least 30% of the vote plus one), a second primary may be held on April 26, or May 17 if a federal office is involved. *See* N.C.G.S. § 163-111. For municipal contests that use the primary-and-election or election-and-runoff methods of voting, the second municipal election will be held on April 26, unless a second primary is being held in a federal contest, in which case the municipal second election will also be held on May 17.¹

4. In our state, the county boards of elections administer elections in each county, including, among other things, providing for the distribution of voting systems, ballots, and pollbooks, training elections officials, conducting absentee and in-person voting, and tabulation and canvassing of results. The State Board is responsible for development and enhancement of our Statewide Elections Information Management System ("SEIMS"), which includes managing functions that assign voters to their relevant voting districts, a process known as "geocoding." The State Board also supports the county boards and their vendors in the preparation and proofing of ballots.

5. For North Carolina electoral districts, the geocoding process starts when the State Board receives district shapefiles from the legislature, which include geographic data setting the boundaries for legislative districts. The State Board's staff then works with county board staff to

¹ North Carolina municipalities conduct elections using one of four election methods: nonpartisan plurality, nonpartisan election and runoff, nonpartisan primary and election, and partisan primary and election. *See* N.C.G.S. §§ 163-291, -292, -293, -294.

use the shapefiles to update the voting jurisdictions that are assigned to particular addresses in SEIMS. This process then allows the State Board to work with county board staff and ballot-preparation vendors to prepare ballots. The State Board must perform an audit of the geocoding to ensure its accuracy before ballot preparation.

6. The amount of time required for geocoding generally corresponds with the number of district boundaries that are redrawn within the counties. In this case, most counties will experience changes to their districts following decennial redistricting—including state legislative, congressional, and local jurisdiction districts—and a significant number of those counties are likely to have newly drawn district boundaries within the counties' borders. Staff estimates that, given what we currently know, geocoding would likely take at least 21 days (including holidays and weekends) for the 2022 primary.

7. Ballot preparation and proofing can begin after geocoding is complete and candidate filing closes. For the 2022 primary elections, candidate filing occurs between noon on December 6, 2021, and noon on December 17, 2021. *See* N.C.G.S. § 163-106.2(a). The process of generating and proofing ballots is complex and involves multiple technical systems and quality-control checkpoints that precede ballot printing and the coding of voting machines. This includes proofing each ballot style for content and accuracy, ballot printing, and delivery of all ballot materials to county boards. Staff estimates that, given what we currently know, ballot preparation and proofing would likely take between 17 and 21 days (including holidays and weekends) for the 2022 primary, depending on the number of ballot styles to prepare, which largely depends on the degree of change to intracounty district lines, and the number of contested nominations.

8. Geocoding and candidate filing may occur concurrently, although that is not ideal

because the completion of geocoding permits candidates and county boards to verify if a candidate desiring to file for election lives in a particular district. It is possible, however, to check candidate eligibility while geocoding is still taking place.

9. In contrast, geocoding and ballot preparation must occur consecutively. Ballots cannot be prepared until the proper geographical boundaries for voting districts are set in SEIMS and the candidates are known after the candidate-filing period closes. Additionally, the end-of-year holidays could pose difficulties for available staff time for the State Board, county boards, and vendors. Therefore, the total time required for geocoding and ballot preparation is likely between 38 and 42 days (including holidays and weekends).

10. Under N.C.G.S. § 163-227.10(a), the State Board must begin mailing absentee ballots 50 days prior to the primary election day, unless the State Board authorizes a reduction to 45 days or there is “an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal.” The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires that absentee ballots that include elections for federal office be made available by 45 days before a primary election, *see* 52 U.S.C. § 20302(a)(8)(A), unless I request a waiver of this requirement based on a legal contest delaying the preparation of ballots (or another enumerated hardship), and that waiver is granted by the federal official designated to administer UOCAVA, *see id.* § 20302(g). The state requesting a waiver must present a comprehensive plan that provides absentee UOCAVA voters sufficient time to receive and submit absentee ballots they have requested in time to be counted in the federal election.² Based on the current primary date of March 8, 2022, 50 days before the primary election falls on January 17, 2022; but because that

² https://www.fvap.gov/uploads/FVAP/EO/2012_waiver_guidance.pdf.

day is a holiday, the county boards must be prepared to begin distributing absentee ballots on the prior business day, which is January 14, 2022. The 45-day federal deadline falls on January 22, 2022 for the primary election; but because that day is a Saturday, in practice, the federal ballot distribution deadline is Friday, January 21, 2022.

11. In sum, the State Board would need to receive the shapefiles for geocoding and ballot preparation between now and 38 to 42 days before the deadline for distributing absentee ballots. Currently, that deadline is January 14, 2022, which means any new shapefiles must arrive between now and December 3–7, 2021. If that deadline were moved to January 21, 2022, new shapefiles would need to arrive between now and December 10–14, 2021.

12. If the deadlines for distributing absentee ballots were extended beyond what is required by UOCAVA, the State Board would also have to factor in additional administrative steps that must be prepared before in-person voting occurs. Currently, in-person early voting is set to begin on February 17, 2022 for the 2022 primary.

13. Before in-person voting occurs, the State Board must work with county boards to load data onto physical media cards that are placed in voting tabulation machines, a process called “burning media.” The media cards ensure that the tabulators anticipate the layout of ballots and properly attribute votes based on the ballot markings. The county boards must also conduct logic and accuracy testing to ensure that tabulation machines accurately read ballots and to correct any errors in coding. Staff estimates that burning media, preparing ballot marking devices and tabulators, and logic and accuracy testing would likely take the counties 14 days. After that process, the State Board works with the county boards to conduct a mock election, which takes one day, and generally affords two weeks thereafter to remedy any technical problems identified during the mock election. That two-week period could be reduced, but the

State Board generally believes that the two-week period fully insures against risks associated with technical problems that may be identified in the mock election.

14. Accordingly, regardless of when the absentee ballot distribution deadline falls, allowing 29 days after ballots have been prepared to prepare for in-person election voting is preferable. Under the current deadlines for distributing absentee ballots, which falls roughly a month before early voting begins, these processes can be accommodated. The time requirements for these processes would only become relevant if the absentee distribution deadline is shortened to less than what is currently required by statute.

15. If the Court were to order a separate primary for the challenged contests, a different set of administrative requirements would be triggered that could ultimately lead to disruption of the general election in the fall.

16. First, it is not technically possible to perform geocoding while in-person voting is occurring, and it is difficult to perform geocoding during the canvass period after the election. This is because making changes in SEIMS related to geocoding inhibits the actual voting process. County canvass takes place 10 days following an election. Generally, at that point, geocoding may begin, assuming no recount has been ordered. Accordingly, we recommend that geocoding for any delayed primary not begin any earlier than March 19, 2022. Relying on the aforementioned estimates, it would take between 38 and 42 days to geocode and prepare ballots for a separate primary. Candidate filing could occur before or simultaneous with geocoding.

17. However, if this Court chose to delay only the contests challenged by this action and allowed the other races to proceed on March 8, 2022 (judicial, prosecutorial, county, and municipal races), in order to accommodate a second primary or second municipal election for those races (see paragraph three above) on April 26 or May 17, the geocoding time period would

be interrupted as there will be a second blackout period for geocoding from April 7 to May 6 (if the election is April 26), or April 28 to May 27 (if the election is May 17). This represents an interruption in geocoding of 30 days, resulting in the work of geocoding and ballot preparation not being completed until approximately May 26-30, 2022, at the earliest. At that point, absentee ballots could be distributed pursuant to N.C.G.S. § 163-227.10(a).

18. Second, state law regarding the deadline for distributing absentee ballots would again require 50 days' time prior to the primary election day, unless the State Board reduced that time to 45 days or there is "an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal." N.C.G.S. § 163-227.10(a). The federal UOCAVA deadline would not apply if the primary did not involve federal offices. Therefore, accounting for absentee ballot distribution deadlines, the earliest that a separate primary could occur is 45 days later, which would result in a primary election day of Tuesday, July 12, 2022.

19. Third, one-stop early voting would have to begin 20 days before the primary election day under N.C.G.S. § 163-227.2(b). Accordingly, all of the administrative processes that must occur before in-person voting begins (geocoding, ballot preparation, burning media, preparing touch-screen ballots, logic and accuracy testing, mock election, and technical fix period, among other things), which are estimated to take between 67 and 71 days total, would need to occur between March 19, 2022, and 20 days before the date of the separate primary, with an additional 30 day delay caused by the blackout period around the second primary as described in paragraph 17 above. Therefore, even putting aside absentee ballot distribution deadlines and then accounting for in-person voting timelines, the earliest that separate primary could occur is, again, Tuesday, July 12, 2022.

20. Such a late date for a primary would make any second primary, if triggered and requested under N.C.G.S. § 163-111, infeasible. A second primary under this scenario would occur on either August 30, 2022 or September 20, 2022 (*i.e.*, 7 or 10 weeks after the initial primary, depending on whether there was a federal contest involved). This would interfere with the August 19 to August 23 deadline to begin preparing ballots for the general election. Absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots ahead of that date as described in paragraph 7 above.

21. Fourth, there are additional administrative challenges that counties would face if a separate primary were held. Among these challenges would be recruiting poll workers and securing voting locations, along with the associated costs. Increasingly, county elections officials have found it necessary to spend more time recruiting early voting and election day poll workers, especially because of statutorily mandated early voting hours and technological advances in many counties that require elections workers to be familiar with computers. Additionally, a large portion of precinct voting locations in the state are housed in places of worship or in schools, with still others located in privately owned facilities. Identifying and securing appropriate precinct voting locations and one-stop early voting sites requires advance work by county board staff and coordination with the State Board.

22. In sum, enjoining and delaying only the challenged primary contests would result in significantly greater administrative burden on the boards of elections, could result in significant voter confusion, and could potentially lead to an administratively infeasible timeline in late summer. In contrast, if all currently scheduled contests set for March 8, 2022 were moved to a later date, this would still raise significant administrative burdens, but it would be possible to

implement as geocoding of any new shapefiles can begin immediately upon receipt by the State Board, without blackout interruptions, and voters would not need to keep track of multiple primary dates for the 2022 elections.

23. Under those circumstances, and backtracking from the earliest relevant deadline for the general election—the ballot preparation deadline of August 19 to August 23³—the second primary can occur no later than Tuesday, July 26, 2022,⁴ and the first primary can occur no later than Tuesday, May 17, 2022,⁵ which in turn requires that the State Board be provided with any new shapefiles no later than February 14 to 18, 2022.⁶

³ Absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots ahead of that date as described in paragraph 7 above.

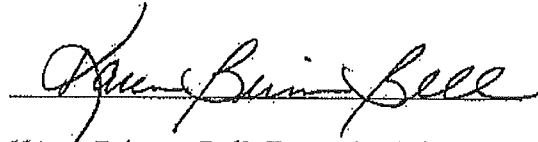
⁴ 21 days are required by the State Board to complete statewide canvass and certify the election results, which must be completed prior to preparing ballots. This results in a date range of Friday, July 29 to Sunday, August 2, with Tuesday, July 26 being the nearest feasible day to hold the election.

⁵ The allowance of 10 weeks is required between the first and second primaries, pursuant to N.C.G.S. § 163-111(e).

⁶ 38 to 42 days to geocode and prepare ballots plus the 50 days before the election when absentee ballots must be mailed.

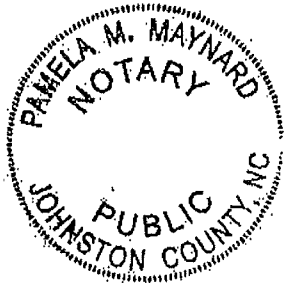
This concludes my affidavit.

This the 23rd day of November, 2021.



Karen Brinson Bell, Executive Director
N.C. State Board of Elections

Sworn to and subscribed before me this 23rd day of November, 2021.



(Notary Public)

My commission expires: 11-2-23

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 014476

COUNTY OF WAKE

2021 NOV -5 P 4: 50

WAKE CO., C.S.C.

BY

NORTH CAROLINA STATE CONFERENCE
OF NAACP, COMMON CAUSE, MARILYN
HARRIS, GARY GRANT, JOYAH BULLUCK,
and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, *in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections*; DESTIN HALL, *in his official capacity as Chairman of the House Standing Committee on Redistricting*; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chair of the State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the State Board of Elections*; STACY EGGERS IV, *in his official capacity as Member of the State Board of Elections*; JEFF CARMON III, *in his official capacity as Member of the State Board of Elections*; TOMMY TUCKER, *in his official capacity as Member of the State Board of Elections*; KAREN BRINSON BELL, *in her official capacity as Executive Director of the State Board of Elections*

Defendants.

**AFFIDAVIT OF
HILARY HARRIS KLEIN**

1. I, Hilary Harris Klein, am an attorney at the Southern Coalition for Social Justice (“SCSJ”), counsel for Plaintiffs in this matter. I submit this affidavit to attest to the authenticity of the exhibits, attached hereto, in support of Plaintiffs’ Motion for Preliminary Injunction.

2. Exhibit A consists of the “2019 Senate Consensus Nonpartisan Map,” Session Law 2019-219 (Senate Bill 692), used for the 2020 primary and general elections to comply with the court order in *Common Cause v. Lewis* 2019 N.C. Super. LEXIS 56 (Sept. 3, 2019).

3. Exhibit B consists of “2019 House Remedial Map,” Session Law 2019-220 (House Bill 1020), used for the 2020 primary and general elections to comply with the court order in *Common Cause v. Lewis* 2019 N.C. Super. LEXIS 56 (Sept. 3, 2019).

4. Exhibit C consists of an excerpt of *A Look Back at North Carolina’s Historic 2020 Election & Looking Ahead at 2021* at pages 1, 12-15, Presentation to House Election Law & Campaign Finance Reform Committee by Executive Director Karen Brinson Bell of the North Carolina State Board of Elections, Feb. 24, 2021, 2021-2022 Session (N.C. 2021).

5. Exhibit D consists of Christopher Cooper et al., *NC General Assembly County Clusterings from the 2020 Census*, Quantifying Gerrymandering (Aug. 17, 2021) (the “Duke Academic Paper”).

6. Exhibit E consists of Meeting Notices, *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee* for Discussion of Redistricting Criteria and Public Comment, Aug. 9-12, 2021, 2021-2022 Session (N.C. 2021).

7. Exhibit F consists of *2021 Joint Redistricting Committee Proposed*

Criteria, North Carolina General Assembly Joint Redistricting Committee, Aug. 9, 2021, 2021-2022 Session (N.C. 2021).

8. Exhibit G consists of *Amendment to Proposed Criteria #4 (Racial Data)* Offered by Senator Daniel, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021-2022 Session (N.C. 2021).

9. Exhibit H consists of *Amendment to Proposed Criteria – Voting Rights Act* Offered by Senator Blue, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021-2022 Session (N.C. 2021).

10. Exhibit I consists of *Adopted Redistricting Criteria*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021-2022 Session (N.C. 2021).

11. Exhibit J consists of Meeting Notices issued for the Senate and House Redistricting Meetings for Public Hearings for Public Comment from Sept. 8 to Sept. 29, 2021, 2021-2022 Session (N.C. 2021).

12. Exhibit K consists of *Duke Senate Groupings Maps 11x17*, North Carolina Senate Redistricting and Elections Committee, Oct. 5, 2021, 2021-2022 Session (N.C. 2021).

13. Exhibit L consists of *Duke House Groupings Maps 11x17*, North Carolina House Redistricting Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021).

14. Exhibit M consists of Letter from SCSJ Attorneys to Legislative Defendants, Oct. 8, 2021.

15. Exhibit N consists of Letter from SCSJ Attorneys to Legislative Defendants, Oct. 25, 2021.

16. Exhibit O consists of Email from Bob Phillips, Common Cause to Legislative Defendants, Oct. 26, 2021.

17. Exhibit P consists of North Carolina General Assembly Bill Summary webpage for House Bill 976. It includes sub-exhibits as follows:

- a. Exhibit P1 consists of *Version DRH40668-ST-51* of House Bill 976 filed on Oct. 28, 2021, 2021-2022 Session (N.C. 2021).
- b. Exhibit P2 consists of an excerpt of the *Proposed Committee Substitute Version H976-PCS30485-ST-37* of House Bill 976 at page 1, filed on Nov. 1, 2021, 2021-2022 Session (N.C. 2021).
- c. Exhibit P3 consists of 19 x 36 Map with Incumbents for House Bill 976, Second Edition filed on Nov. 1, 2021, 2021-2022 Session (N.C. 2021).
- d. Exhibit P4 consists of the failed *Amendment Number A1: ABW-23-V-2* to House Bill 976 offered by Representative Graham, North Carolina House of Representatives, filed on Nov. 2, 2021, 2021-2022 Session (N.C. 2021), and the accompanying map excerpted from the “Scanned Document” to this amendment.
- e. Exhibit P5 consists of *Amendment Number A2: ABW-24-V-3* to House Bill 976 offered by Representative Reives, North Carolina House of Representatives, filed on Nov. 2, 2021, 2021-2022 Session (N.C. 2021), and the accompanying map excerpted from the “Scanned Document” to this amendment.
- f. Exhibit P6 consists of an excerpt of the adopted *Amendment Number A3: AST-72-V-2* at page 1 to House Bill 976 offered by Representative Hall, North Carolina House of Representatives,

filed on Nov. 2, 2021, 2021-2022 Session (N.C. 2021), and the accompanying map excerpted from the “Scanned Document” to this amendment.

- g. Exhibit P7 consists of 19 x 36 Map with Incumbents for House Bill 976, Third Edition filed on Nov. 2, 2021, 2021-2022 Session (N.C. 2021).
- h. Exhibit P8 consists of House Roll Call Vote Transcript for The Third Reading (Roll Call #557) for House Bill 976 taken on Nov. 2, 2021, 2021-2022 Session (N.C. 2021).
- i. Exhibit P9 consists of consist of Senate Roll Call Vote Transcript for The Third Reading (Roll Call #502) for House Bill 976 taken on Nov. 4, 2021, 2021-2022 Session (N.C. 2021).
- j. Exhibit P10 consists of 19 x 36 Map with Incumbents for Session Law 2021-175 (House Bill 976) enacted on Nov. 4, 2021, 2021-2022 Session (N.C. 2021).

18. Exhibit Q consists of Meeting Notices issued for the *Senate and House Redistricting Meetings Public Comment Hearings* on October 25-26, 2021, 2021-2022 Session (N.C. 2021).

19. Exhibit R consists of Meeting Notices and Updates for the *House Committee on Redistricting* for Monday, Nov. 1, 2021 at 2:00PM, 3:00PM, 4:00PM, and 5:00PM to consider House Bill 976, 2021-2022 Session (N.C. 2021).

20. Exhibit S consists of North Carolina General Assembly bill summary webpage for Senate Bill 739. It includes sub-exhibits as follows:

- k. Exhibit S1 consists of an excerpt of *Version DRS15344-CH-11* at page 1 of Senate Bill 739 filed on Oct. 29, 2021, 2021-2022 Session (N.C. 2021).
- l. Exhibit S2 consists of an excerpt of the *Proposed Committee Substitute Version S739-PCS15347-ST-38* at page 1 of Senate Bill 739 filed on Nov. 2, 2021, 2021-2022 Session (N.C. 2021).
- m. Exhibit S3 consists of Amendment Number *A1: S739-A-NBC-9240* to Senate Bill 739 offered by Senator Blue, North Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- n. Exhibit S4 consists of Amendment Number *A2: S739-A-NBC-9242* to Senate Bill 739 offered by Senator Blue, North Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- o. Exhibit S5 consists of Amendment Number *A3: S739-A-NBC-9248* to Senate Bill 739 offered by Senator Chaudhuri, North Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- p. Exhibit S6 consists of Amendment Number *A4: S739-A-NBC-9243* to Senate Bill 739 offered by Senator Blue, North Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- q. Exhibit S7 consists of Amendment Number *A5: S739-A-NBC-9246* to Senate Bill 739 offered by Senator Blue, North


Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).

- r. Exhibit S8 consists of Amendment Number *A6: S739-A-NBC-9239* to Senate Bill 739 offered by Senator Chaudhuri, North Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- s. Exhibit S9 consists of Amendment Number *A7: S739-A-NBC-9247* to Senate Bill 739 offered by Senator Chaudhuri, North Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- t. Exhibit S10 consists of Amendment Number *A8: S739-A-NBC-9241* to Senate Bill 739 offered by Senator Blue, North Carolina Senate, tabled on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- u. Exhibit S11 consists of Senate Roll Call Vote Transcript for the Third Reading (Roll Call #499) for Senate Bill 976 taken on Nov. 3, 2021, 2021-2022 Session (N.C. 2021).
- v. Exhibit S12 consists of 19 x 36 Map with Incumbents for Senate Bill 739, First Edition filed on Nov. 1, 2021, 2021-2022 Session (N.C. 2021).
- w. Exhibit S13 consists of 19 x 36 Map with Incumbents for Senate Bill 739, Second Edition filed on Nov. 2, 2021, 2021-2022 Session (N.C. 2021).
- x. Exhibit S14 consists of consist of House Roll Call Vote

Transcript for the Third Reading (Roll Call #564) for Senate Bill 739 taken on Nov. 4, 2021, 2021-2022 Session (N.C. 2021).

- y. Exhibit S15 consists of 19 x 36 Map with Incumbents for Session Law 2021-173 (Senate Bill 739) enacted on Nov.4, 2021, 2021-2022 Session (N.C. 2021).

Signed this the 5th day of November.



Hilary Harris Klein

EXHIBIT C
to
Presentation by
Karen Brinson Bell,
Executive Director
NCSBE on
Feb. 24, 2021

A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021

Presentation to House Election Law & Campaign Finance Reform Committee
February 24, 2021
Karen Brinson Bell, Executive Director



Key Agency Initiatives in 2021

App. 100 -

- IT/Voting Systems
 - Reconciliation audit tools for counties
 - Migration of legacy SEIMS to new system; complete several phases of SEIMS modernization
 - Risk-limiting audits
 - Vulnerability scanning
 - Voting Systems Certification (new systems & modifications)
 - Help Desk software to build knowledge base, provide consistent guidance to counties (currently receive 10,000-14,000 Help Desk tickets annually)
- Election Administration
 - County board wellness checks to ensure compliance
 - Pollworker e-pollbook training
 - County board member orientation and training (new appointments in June 2021)
 - Preparing for redistricting and upcoming elections
- Operations
 - County physical security (HAVA grants)
- Communications
 - SEIMS/Voter Tools working changes/updates to make more voter friendly
- Campaign Finance
 - Modernizing campaign finance reporting software

66 initiatives or projects identified to begin or complete in the next 6 months



Legislative Priorities

- App. 101

- Budget requests
 - Secure physical building
 - Authorization to use HAVA funds:
 - SEIMS modernization development
 - SSTs and voting systems admins
 - Security and infrastructure improvement
 - Consultant to create ePollbook standards
 - ERIC membership to improve list maintenance and cross check efforts
 - Campaign finance modernization
 - Historical data project
- Review of IT consolidation with DIT
- Conform state law to ADA for blind voters, add compliance attorney
- Require disclaimer for mailers sent by third parties
- Campaign finance:
 - Waiver requests considered by State Board prior to filing a contested case with OAH
 - Remove reference to April for reporting schedule for odd-numbered year filing
 - Clarify that 48-hour reports in even-numbered years are only required for candidates on the ballot in even-numbered years
 - Create (judicial) and adjust (non-statewide) campaign finance threshold to \$3,000



Legislative Priorities

- App. 102

Election schedule changes due to census delay (eta September) and redistricting:

- Municipal Elections
- 2022 Primary
- 2-month process for geocode changes for filing and ballot styles
- Municipal filing currently set for July
 - Census data needed to address municipal district & ward elections (62 municipalities)
 - Other municipalities may require districts or wards
- Recommendations:
 - Move all 2021 municipal elections to 2022
 - Address redistricting
 - Reduce voter confusion
 - Reduce municipal expenses
 - Move 2022 elections to May 3 primary, July 12 second primary, and November 8 general



Thank You!



NORTH CAROLINA
STATE BOARD OF ELECTIONS

EXHIBIT D

to

NC General Assembly

County Clustering

**(“the Duke Academic
Paper”)**

NC General Assembly County Clusterings from the 2020 Census

Christopher Cooper¹, Blake Esselstyn², Gregory Herschlag³,
Jonathan Mattingly³, Rebecca Tippet⁴

In the North Carolina General Assembly districting process, county clusters are used to minimize the overall number of county splits while maintaining population balance in the redistricting process. Determining the county clusters for the NC House and for the NC Senate is the first step in the redistricting process for the NC General Assembly. The county clusters are largely algorithmically determined through an optimization procedure outlined by the NC Supreme Court in [Stephenson v. Bartlett](#). However there are often multiple optimal county clusterings that minimize county splitting (see [the Quantifying Gerrymandering blog](#) and [the Districks.com explainer](#) for more details). The release of the 2020 census data allows us to determine the possible county clusterings for both the North Carolina State House and State Senate redistricting processes. The one part of Stephenson v. Bartlett which this analysis does not reflect is compliance with the Voting Rights Act. To determine the county clusters, we used the implementation of the court order procedure described in Cater et al.⁵

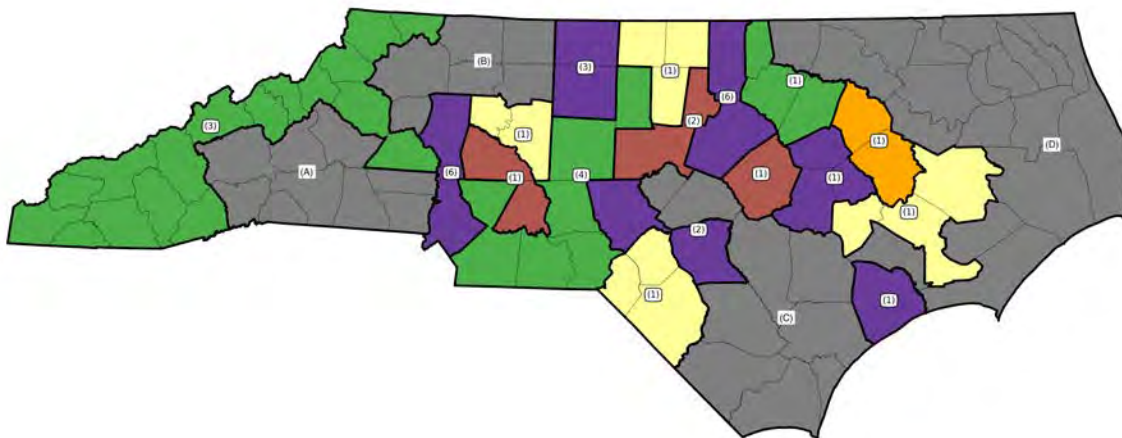


Figure 1: The NC Senate clusters that are fixed shown as colored regions annotated with a number in parentheses giving the number of districts the cluster contains. The four grayed-out regions (labeled A-D) each contain two alternative clusterings. The different options of the grayed-out regions are given in Figure 2. One may mix and match different choices from each of the two options which yields a total of 16 different county clustering maps.

¹ Political Science and Public Affairs, Western Carolina University

² FrontWater, LLC and Mapfigure Consulting

³ Duke Mathematics Department and the Quantifying Gerrymandering Project, Duke University. We thank Alexis Sparko for help with map visualization.

⁴ Carolina Demography, UNC at Chapel Hill

⁵ *Optimal Legislative County Clustering in North Carolina*. Daniel Carter, Zach Hunter, Dan Teague, Gregory Herschlag, and Jonathan Mattingly. Statistics and Public Policy, Volume 7, 2020

NC State Senate County Clusterings

In the state Senate, there are 17 clusters containing 36 of the 50 districts that are fixed based on determining optimal county clusters. These are represented by the colored county groupings in Figure 1. The white numbers annotating each county clustering give the number of districts that county cluster should contain. Ten of these clusters contain one district, meaning that ten of the 50 senate districts are fixed (i.e. these will be the official districts in the coming cycle). The remaining county clusters must be further subdivided into legislative districts in the coming redistricting process in the General Assembly.

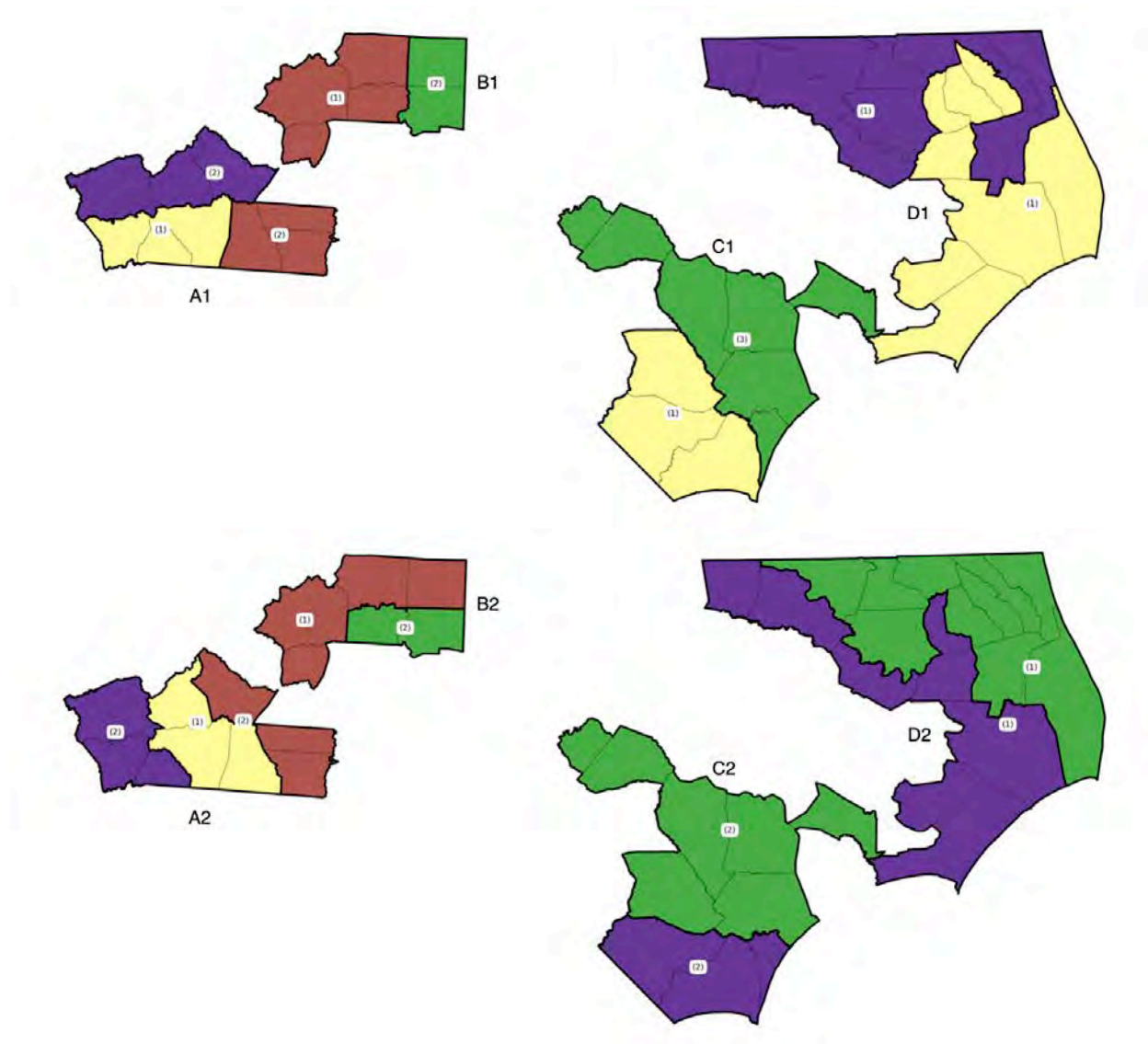


Figure 2: The two possible options in regions A, B, C and D of the NC Senate County Clusterings (top and bottom). The options from the two figures may be mixed. For example, a Senate clustering may be comprised of the fixed clusters from Figure 1, along with options A1, B2, C2, and D1. Again, the numbers in parentheses give the number of districts contained in each cluster.

The remaining clusters (shown in gray) are separated into four groups. Each group has two possible clusterings that minimize county splitting. In combination, there are 16 total possible statewide county clusterings. For simplicity of discussion, we have labeled the different regions where a choice exists as A, B, C, or D and denoted the two choices for each region as 1 or 2. Hence A1 and A2 are the two choices for the A region. No preference is intended by the 1 versus 2 labeling.

The two options in each of the four regions are shown in Figure 2.

In region A to the southwest, Buncombe County may be paired either with McDowell and Burke Counties (A1), or with Henderson and Polk Counties (A2). In both cases, the cluster would be comprised of two districts, however, A2 necessitates that Burke County is paired with Gaston and Lincoln Counties through a very narrow connection which may impede compactness considerations. Furthermore, the Lincoln-Cleveland-Gaston cluster in A1 also exists in the current map. This may mean that the A1 southwestern cluster may be perceived as the more favorable option over A2 since it (i) provides an opportunity to create more compact districts and (ii) may provide an opportunity to draw districts that are nearly identical to the ones that exist in the Lincoln-Cleveland-Gaston cluster (conditioned on fluctuations in the population).

In region B to the northwest, Forsyth County may either be paired with Stokes (B1) or Yadkin (B2); the remaining county (either Yadkin or Stokes) would then be paired with Surry, Wilkes, and Alexander Counties. In region C to the south, Brunswick and Columbus may be paired either with Bladen to create a one-district cluster (C1) or with New Hanover to create a two-district cluster (C2). Finally, in region D to the east, Carteret, Pamlico, Washington, Chowan, and Hyde Counties may either be paired with Dare, Perquimans and Pasquotank Counties (D1), or with Martin, Halifax and Warren Counties (D2).

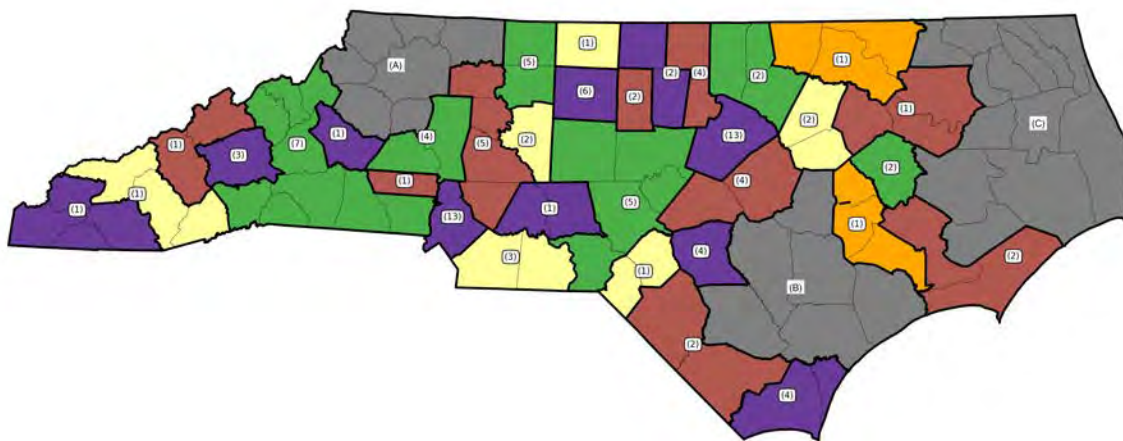


Figure 3: The NC House clusters that are fixed; there are three grayed-out regions (labeled A-C) that each contain two alternative clusterings. The different options of the grayed-out regions are given in Figure 4. One is free to mix and match different choices from the two options which yields a total of eight different county clustering maps.

NC State House County Clusterings

In the state House, there are 33 clusters containing 107 of the 120 districts that are fixed based on determining optimal county clusters. These are represented by the colored county groupings in Figure 2. Again, the white numbers annotating each county clustering give the number of districts that county cluster should contain. Eleven of these clusters contain one district, meaning that eleven of the 120 house districts are fixed (i.e., these will be the official districts in the coming cycle).

The remaining clusters (shown in gray) are separated into three groups. Each group has two possible clusterings that minimize county splitting. In combination, there are eight total possible statewide county clusterings in the house. The two options in each of the three regions are shown in Figure 4.

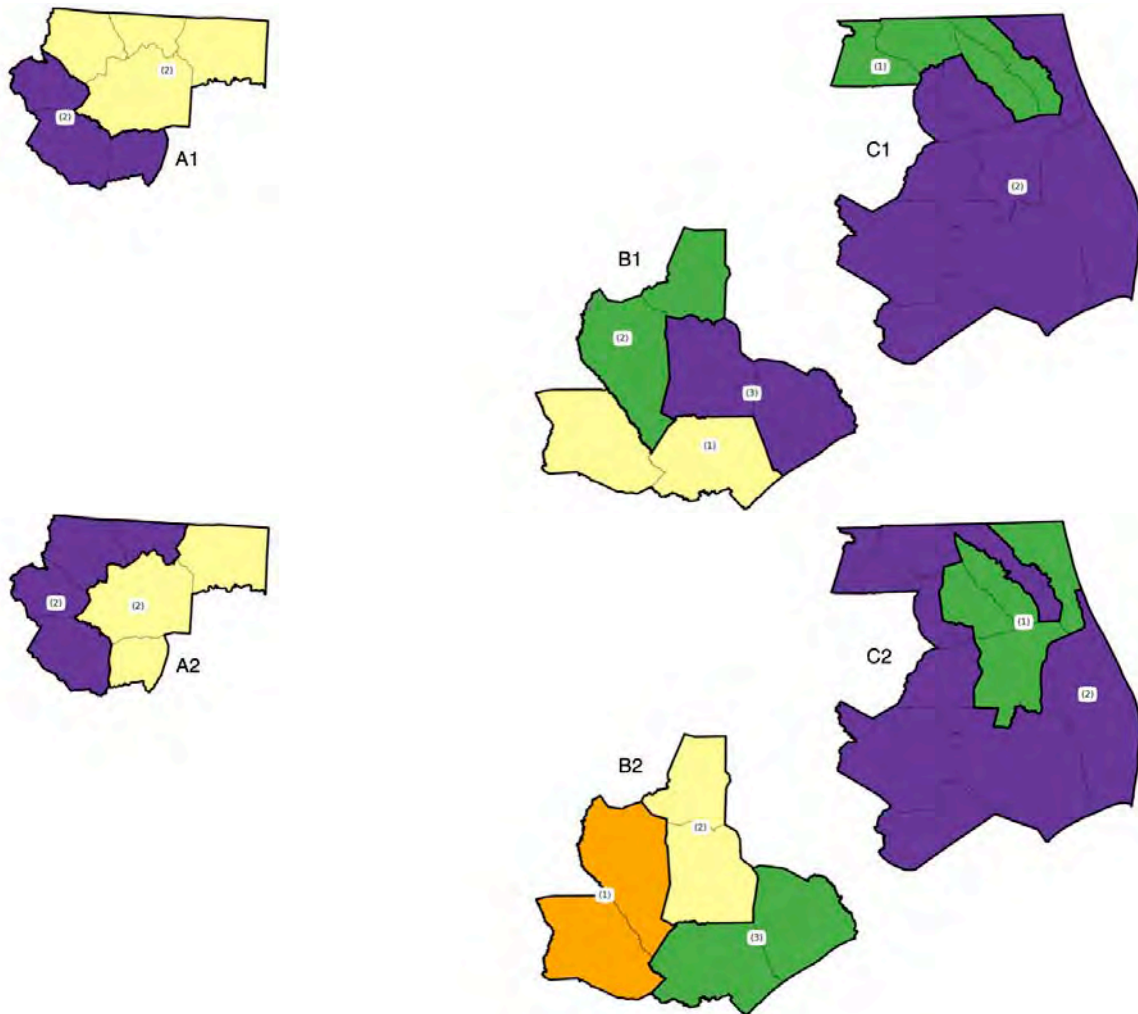


Figure 4: The two possible options in regions A, B, and C of the NC House County Clusterings (top and bottom). The options from the two figures may be mixed. For example, a House clustering may be comprised of the fixed clusters from Figure 3, along with options A2, B1, C2.

In region A to the northwest, Watauga and Caldwell may either be paired with Alexander (A1; purple) or with Ashe and Alleghany (A2; purple).

In region B to the south, Onslow may either be paired with Duplin (B1; purple) or with Pender (B2; green). The Duplin-Onslow cluster currently forms a three-district cluster and thus there may be an opportunity to minimally alter the three existing districts in this cluster (perhaps needing to adjust district boundaries based on population fluctuations). Because of this, B2 may end up as the selected clustering.

Finally, in region C to the east, either Currituck, Tyrell, Perquimans and Pasquotank will form a single district (C1), or Hertford, Gates, Camden and Pasquotank will form a single district (C2). In both cases, the remaining counties will form a cluster of two districts.

Population Deviations

All the county clusterings are required to have populations such that the resulting districts are within 5% of the ideal district population, hence all the possible county clusters we have listed have population deviations less than 5%. In the Senate clusters, all possible choices of clusterings contain at least one district with a population deviation of more than 4.9%. In the House clusters, all possible choices of clusterings contain at least one district with a population deviation of 4.71%. Averaged across all the districts, all of the county clusterings have a mean deviation between 3.1% and 3.5% in the NC Senate and 1.2% and 1.5% in the NC House.

Tables 1 through Table 4 list each of the different county clusters contained in the different county clusterings. For each cluster, the relative average population deviation per district is given. Negative values indicate that the average district may be less populated than the ideal population size while positive values indicate that the average district will be more populated than the ideal population size.

The ideal population size is calculated by first taking the population of each cluster and dividing it by the number of districts in the cluster to obtain the average population per district for the cluster. The ideal district population is obtained by dividing the state population by the total number of districts (120 districts in the House and 50 districts in the Senate). The ideal population is then subtracted from the average population of a district in a cluster to obtain the deviation of the average cluster population from the ideal cluster population. This is then converted to a relative population deviation by dividing by the ideal population. It is this relative error, expressed as a percentage, which is reported in the table.

Tables 1 and 2 give the data for the different options for the NC Senate and NC House respectively. The clusters are grouped by the region label (A, B, C or D in the Senate and A, B, or C in the House). The labeling corresponds to that in the Figures in the preceding sections. Tables 3 and 4 give the data for the clusterings which are fixed in the Senate and House, respectively.

NC Senate Clusters Which Vary Across Clusterings	Number of Districts	Option	2020 Census Population	Average Population Deviation
Buncombe-Burke-McDowell	2	A1	401,600	-3.83%
Cleveland-Gaston-Lincoln	2	A1	414,272	-0.79%
Henderson-Polk-Rutherford	1	A1	200,053	-4.18%
Buncombe-Henderson-Polk	2	A2	405,061	-3.00%
Cleveland-McDowell-Rutherford	1	A2	208,541	-0.12%
Burke-Gaston-Lincoln	2	A2	402,323	-3.65%
Forsyth-Stokes	2	B1	427,110	2.28%
Alexander-Surry-Wilkes-Yadkin	1	B1	210,986	1.05%
Forsyth-Yadkin	2	B2	419,804	0.53%
Alexander-Stokes-Surry-Wilkes	1	B2	218,292	4.55%
Bladen-Brunswick-Columbus	1	C1	216,922	3.90%
Duplin-Harnett-Jones-Lee-New Hanover-Pender-Sampson	3	C1	599,681	-4.26%
Bladen-Duplin-Harnett-Jones-Lee-Pender-Sampson	2	C2	403,585	-3.35%
Brunswick-Columbus-New Hanover	2	C2	413,018	-1.09%
Carteret-Chowan-Dare-Hyde-Pamlico-Pasquotank-Perquimans-Washington	1	D1	199,750	-4.33%
Bertie-Camden-Currituck-Gates-Halifax-Hertford-Martin-Northampton-Tyrrell-Warren	1	D1	198,430	-4.96%
Carteret-Chowan-Halifax-Hyde-Martin-Pamlico-Warren-Washington	1	D2	198,557	-4.90%
Bertie-Camden-Currituck-Dare-Gates-Hertford-Northampton-Pasquotank-Perquimans-Tyrrell	1	D2	199,623	-4.39%

Table 1: This table gives the NC Senate Clusters which vary across the 16 different possible clusterings of the entire state. The different clusterings are formed by choosing either option 1 or 2 from the four different regions (A, B, C, and D).

NC House Clusters Which Vary Across Clusterings	Number of Districts	Option	2020 Census Population	Average Population Deviation
Alexander-Surry-Wilkes	2	A1	173,772	-0.13%
Alleghany-Ashe-Caldwell-Watauga	2	A1	172,203	-1.03%
Alexander-Caldwell-Watauga	2	A2	171,182	-1.61%
Alleghany-Ashe-Surry-Wilkes	2	A2	174,793	0.46%
Bladen-Pender	1	B1	89,809	3.23%
Duplin-Onslow	3	B1	253,291	-2.95%
Sampson-Wayne	2	B1	176,369	1.37%
Bladen-Sampson	1	B2	88,642	1.89%
Duplin-Wayne	2	B2	166,048	-4.56%
Onslow-Pender	3	B2	264,779	1.45%
Beaufort-Chowan-Currituck-Dare-Hyde- Pamlico-Perquimans-Tyrrell-Washington	2	C1	167,493	-3.73%
Camden-Gates-Hertford-Pasquotank	1	C1	82,953	-4.65%
Beaufort-Camden-Chowan-Dare-Gates- Hertford-Hyde-Pamlico-Washington	2	C2	165,528	-4.86%
Currituck-Pasquotank-Perquimans-Tyrrell	1	C2	84,918	-2.39%

Table 2: This table gives the NC House Clusters which vary across the eight different possible clusterings of the entire state. The different clusterings are formed by choosing option 1 or 2 from the 3 different regions (A, B, or C).

NC Senate Clusters Which Are Fixed Across Clusterings	Number of Districts	2020 Census Population	Average Population Deviation
Iredell-Mecklenburg	6	1,302,175	3.95%
Granville-Wake	6	1,190,402	-4.98%
Alamance-Anson-Cabarrus-Montgomery-Randolph- Richmond-Union	4	870,409	4.22%
Guilford-Rockingham	3	632,395	0.96%
Alleghany-Ashe-Avery-Caldwell-Catawba- Cherokee-Clay-Graham-Haywood-Jackson-Macon- Madison-Mitchell-Swain-Transylvania-Watauga- Yancey	3	642,393	2.56%
Chatham-Durham	2	401,118	-3.94%
Cumberland-Moore	2	434,455	4.04%
Caswell-Orange-Person	1	210,529	0.83%
Franklin-Nash-Vance	1	206,121	-1.28%
Johnston	1	215,999	3.45%
Rowan-Stanly	1	209,379	0.28%
Beaufort-Craven-Lenoir	1	200,494	-3.97%
Hoke-Robeson-Scotland	1	202,786	-2.87%
Edgecombe-Pitt	1	219,143	4.96%
Davidson-Davie	1	211,642	1.37%
Onslow	1	204,576	-2.02%
Greene-Wayne-Wilson	1	216,568	3.73%

Table 3: This table gives the NC Senate clusters which are fixed across all 16 of the possible clustering maps.

NC House Cluster Which Are Fixed Across Clusterings	Number of Districts	2020 Census Population	Average Population Deviation
Mecklenburg	13	1,115,482	-1.37%
Wake	13	1,129,410	-0.13%
Avery-Cleveland-Gaston-Henderson-McDowell- Mitchell-Polk-Rutherford-Yancey	7	623,272	2.35%
Guilford	6	541,299	3.70%
Forsyth-Stokes	5	427,110	-1.81%
Chatham-Lee-Moore-Randolph-Richmond	5	426,414	-1.97%
Cabarrus-Davie-Rowan-Yadkin	5	452,605	4.05%
Brunswick-New Hanover	4	362,395	4.14%
Cumberland	4	334,728	-3.81%
Harnett-Johnston	4	349,567	0.46%
Catawba-Iredell	4	347,303	-0.19%
Durham-Person	4	363,930	4.58%
Anson-Union	3	260,322	-0.25%
Buncombe	3	269,452	3.24%
Columbus-Robeson	2	167,153	-3.93%
Nash-Wilson	2	173,754	-0.14%
Carteret-Craven	2	168,406	-3.21%
Davidson	2	168,930	-2.91%
Franklin-Granville-Vance	2	172,143	-1.06%
Pitt	2	170,243	-2.15%
Alamance	2	171,415	-1.48%
Caswell-Orange	2	171,432	-1.47%
Rockingham	1	91,096	4.71%
Bertie-Edgecombe-Martin	1	88,865	2.15%
Lincoln	1	86,810	-0.21%
Hoke-Scotland	1	86,256	-0.85%

NC House Cluster Which Are Fixed Across Clusterings	Number of Districts	2020 Census Population	Average Population Deviation
Haywood-Madison	1	83,282	-4.27%
Greene-Jones-Lenoir	1	84,745	-2.59%
Jackson-Swain-Transylvania	1	90,212	3.70%
Halifax-Northampton-Warren	1	84,735	-2.60%
Burke	1	87,570	0.66%
Montgomery-Stanly	1	88,255	1.45%
Cherokee-Clay-Graham-Macon	1	84,907	-2.40%

Table 4: This table gives the NC House clusters which are fixed across all 8 of the possible clustering maps.

Incumbents

We now perform a simple analysis of the effect of the new county clustering on the ability to preserve incumbencies. We do this, not to endorse or critique incumbency preservation, but because the NC General Assembly has identified it as one of its [redistricting criteria](#). The new county clustering is only one way in which the new 2020 Census data influences the incumbency protection efforts. A more complete understanding of the effect on incumbency protection will require an analysis how geopolitical geography of the new Census data interacts with the redistricting process. We hope to investigate this more completely in the coming months.

For the moment, we simply note the number of incumbents in each county cluster (based on their official county of residence as obtained from the [Redistricting Data Hub](#)) and compare it to the number of districts each county clustering dictates. The following figures are repeats of the previous figures with an additional number added to the annotating white circles. The first number still gives the number of districts for each county cluster and the second number gives the number of incumbents currently residing in county cluster. When the first number is larger than the second, we outline the label in green to denote there is an opportunity to elect a new representative, assuming a current incumbent from another cluster does not relocate, even if all of the incumbents are re-elected.⁶ When the second number is larger than the first, we outline the label in red to denote that at least one of the incumbents cannot be re-elected from this county cluster.

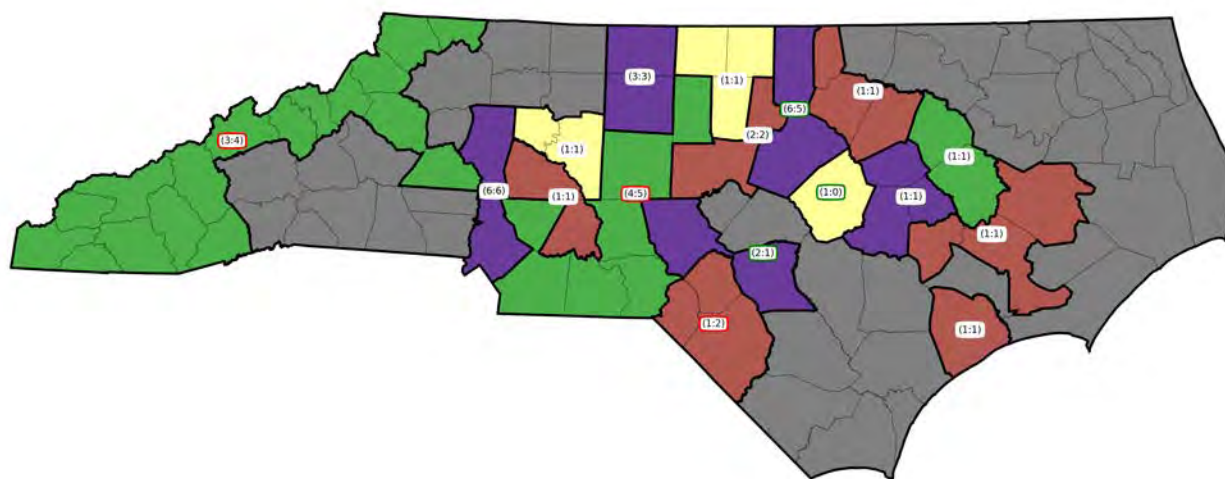


Figure 5: For the fixed clusters in the NC Senate, we display the number of districts followed by the number of incumbents within the cluster. Cluster labels highlighted in red must double bunk at least two incumbents. Cluster labels highlighted in green will elect at least one representative who is not currently serving in office.

⁶ Candidates for the General Assembly must reside in their district at least once year prior to the general election.

Figure 5 highlights impacts in the NC Senate. The fixed clusterings in Johnston County, Wake-Granville, and Moore-Hoke will each elect at least one representative not currently serving in office. The following three fixed clusters will double bunk at least two incumbents:

- Alamance-Anson-Cabarrus-Montgomery-Randolph-Richmond-Union
- Alleghany-Ashe-Avery-Caldwell-Catawba-Cherokee-Clay-Graham-Haywood-Jackson-Macon-Madison-Mitchell-Swain-Transylvania-Watauga-Yancey
- Hoke-Robeson-Scotland

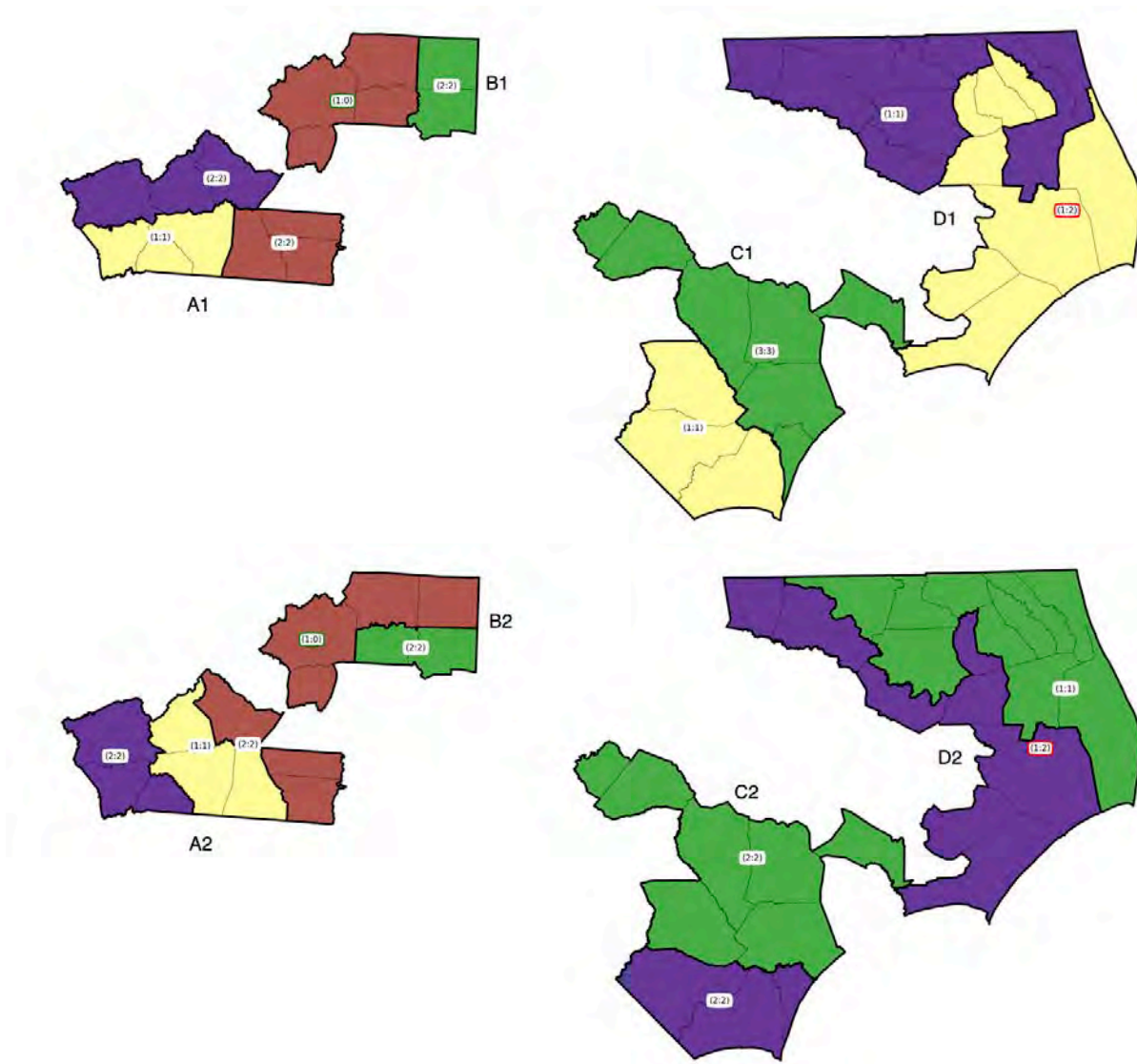


Figure 6: For the optional clusters in the NC Senate, we display the number of districts followed by the number of incumbents within the cluster. Cluster labels highlighted in red must double bunk at least two incumbents. Cluster labels highlighted in green will elect at least one representative who is not currently serving in office.

Figure 6 indicates that the clusters in region D produce a cluster that will double bunk two incumbents.

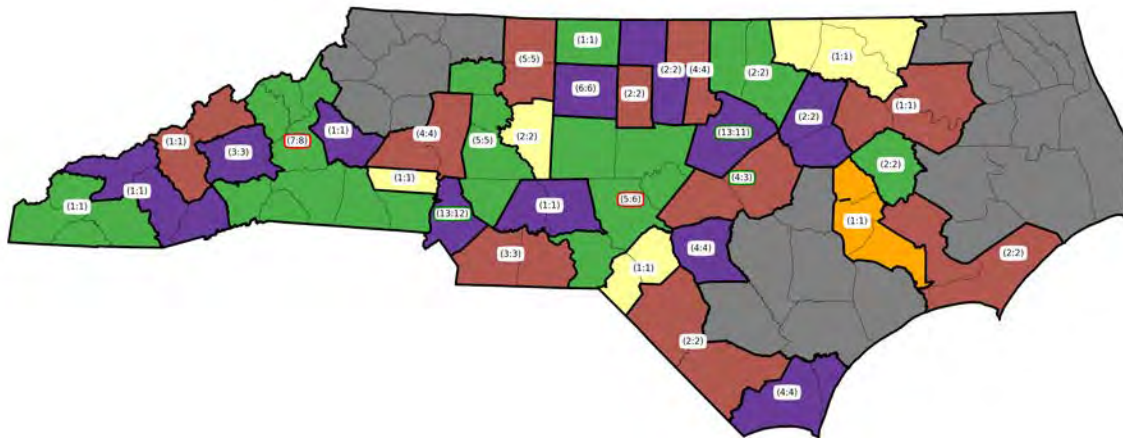


Figure 7: For the fixed clusters in the NC House, we display the number of districts followed by the number of incumbents within the cluster. Cluster labels highlighted in red must double bunk at least two incumbents. Cluster labels highlighted in green will elect at least one representative who is not currently serving in office.

Figure 7 highlights impacts of redistricting in the NC House. The fixed clusterings of Mecklenburg, Wake, and Harnett-Johnston will each elect at least one representative not currently serving in office. The following two fixed clusters will double bunk at least two incumbents:

- Avery-Cleveland-Gaston-Henderson-McDowell-Mitchell-Polk-Rutherford-Yancey
- Chatham-Lee-Moore-Randolph-Richmond

Figure 8 indicates that all options of potential clusters (A, B, and C) for the NC House will cause double bunking of at least two incumbents in two districts.

In addition to the above analysis, we also analyze the clusters with respect to minimizing county traversals. A county traversal occurs when a district extends over the boundary of two counties. Even though the number of incumbents may match the number of districts, it could still be impossible to draw districts that minimize county splitting and county traversals.

We have only discovered one cluster in which it is not possible to draw district boundaries while simultaneously minimizing traversals and preventing two incumbents being placed in the same newly formed district. This instance is in Cabarrus-Davie-Rowan-Yadkin House cluster in which Davie and Yadkin each hold an incumbent, however, the two counties do not have enough joint population to make up a single house district. Because of the geometry of the cluster, these two

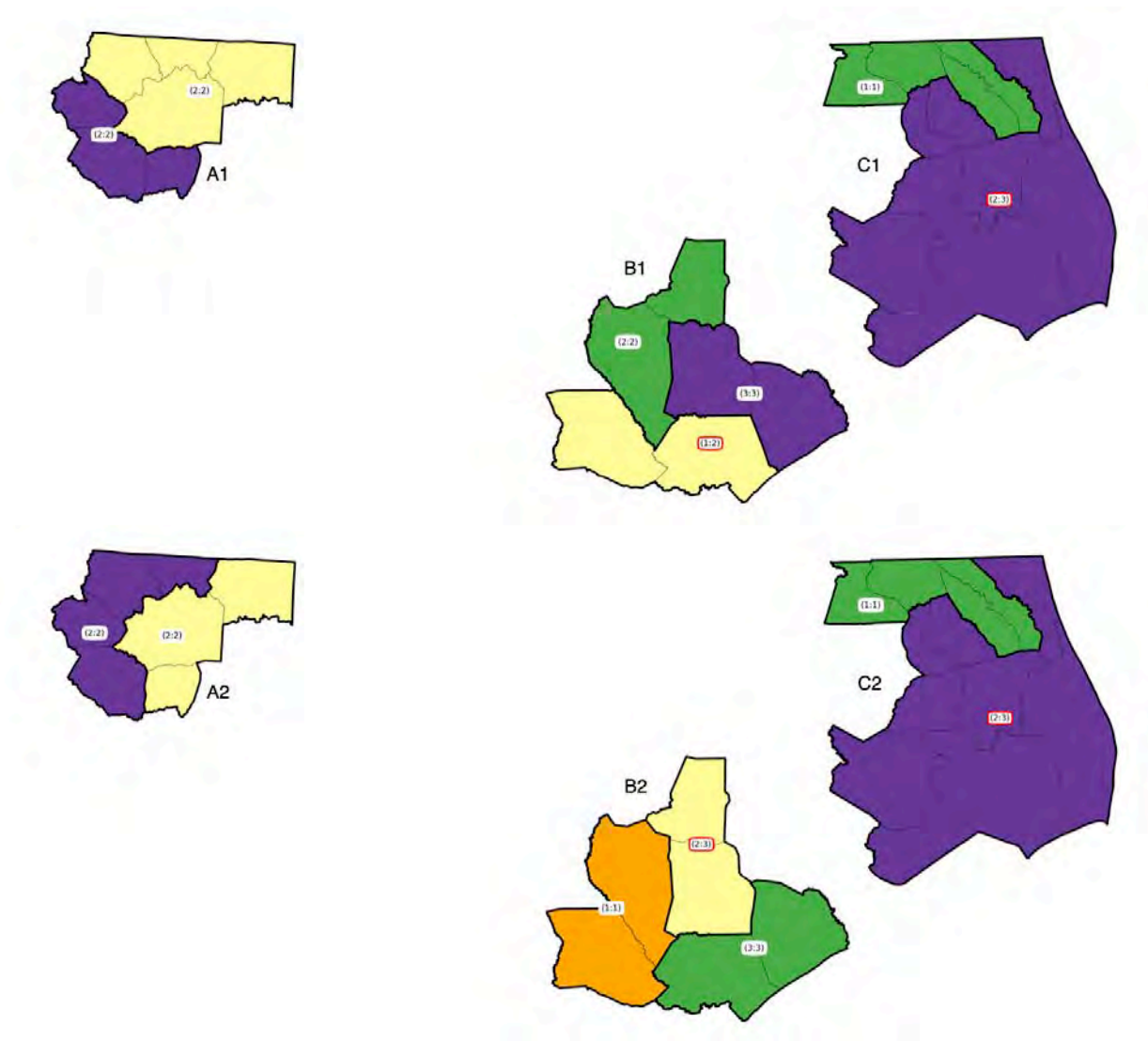


Figure 8: For the optional clusters in the NC House, we display the number of districts followed by the number of incumbents within the cluster. Cluster labels highlighted in red must double bunk at least two incumbents. Cluster labels highlighted in green will elect at least one representative who is not currently serving in office.

counties must then be combined as part of a single district ensuring the one of the two incumbents is not re-elected (see Figure 8 and the northern two counties within the 4-county 5:5 green cluster in the center of the state).

In aggregate, the NC Senate will contain four double bunked districts (regardless of the clustering options used), and the NC House will contain five double bunked districts (regardless of the clustering options used).

Conclusion

Based on the 2020 Census, we have provided all of the possible county clusterings for the NC House and Senate obtain by the procedure outlined in *Stephenson v. Bartlett*. The consultants

associated with The Differentiators have announced that they have obtained the same groupings we have found using the software we released.

Although many of the clusters are now fixed, the General Assembly will be left to choose between various clustering options in some parts of the state. Certainly, compliance with the Voting Rights Act will be a key consideration in choosing between potential clusters. Preservation of communities of interest might also drive the decision to select one option over another. One could also consider choosing clusters to reduce the population deviations. For example, the B2 options in both the House and Senate clusterings have one district with a relative population deviation above 4.5%. As this necessitates that at least one of the districts in this cluster has a similarly large population deviation, it provides a reasonable rationale (if all other considerations are equal) to select the other clustering. There are clusterings with equally large deviations which might suggest choosing the alternative clustering option. One might also consider compactness, though a less compact clustering, does not necessitate that the resulting districts are not compact. Hence this would need to be considered in each case.

We intend to follow this initial analysis with more in-depth looks at the clusterings and their implications.

EXHIBIT F
to
2021 Joint
Redistricting
Committee Proposed
Criteria, Aug. 9, 2021

2021 JOINT REDISTRICTING COMMITTEE PROPOSED CRITERIA

- Equal Population. The Committees will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2021 Congressional, House and Senate plans. The number of persons in each legislative district shall be within plus or minus 5 percent of the ideal district population, as determined under the most recent federal decennial census. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.
- Contiguity. Legislative and congressional districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
- Counties, Groupings and Traversals. The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E. 2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

Division of counties in the 2021 Congressional plan shall only be made for reasons of equalizing population and consideration of double bunking. If a county is of sufficient population size to contain an entire congressional district within the county's boundaries, the Committees shall construct a district entirely within that county.

- Racial Data. Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House and Senate plans.
- VTDs. Voting districts ("VTDs") should be split only when necessary.
- Compactness. The Committees shall make reasonable efforts to draw legislative districts in the 2021 Congressional, House and Senate plans that are compact. In doing so, the Committee may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).
- Municipal Boundaries. The Committees may consider municipal boundaries when drawing districts in the 2021 Congressional, House and Senate plans.
- Election Data. Partisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House and Senate plans.

- Member Residence. Member residence may be considered in the formation of legislative and congressional districts.
- Community Consideration. So long as a plan complies with the foregoing criteria, local knowledge of the character of communities and connections between communities may be considered in the formation of legislative and congressional districts.

EXHIBIT I

to

***Adopted Redistricting
Criteria, Aug. 12, 2021***

Joint Meeting of Committees

August 12, 2021

House Committee on Redistricting
Senate Committee on Redistricting and Elections

Criteria Adopted by the Committees

- **Equal Population.** The Committees will use the 2020 federal decennial census data as the sole basis of population for the establishment of districts in the 2021 Congressional, House, and Senate plans. The number of persons in each legislative district shall be within plus or minus 5% of the ideal district population, as determined under the most recent federal decennial census. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.
- **Contiguity.** No point contiguity shall be permitted in any 2021 Congressional, House, and Senate plan. Congressional, House, and Senate districts shall be comprised of contiguous territory. Contiguity by water is sufficient.
- **Counties, Groupings, and Traversals.** The Committees shall draw legislative districts within county groupings as required by *Stephenson v. Bartlett*, 355 N.C. 354, 562 S.E.2d 377 (2002) (*Stephenson I*), *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (*Stephenson II*), *Dickson v. Rucho*, 367 N.C. 542, 766 S.E.2d 238 (2014) (*Dickson I*) and *Dickson v. Rucho*, 368 N.C. 481, 781 S.E. 2d 460 (2015) (*Dickson II*). Within county groupings, county lines shall not be traversed except as authorized by *Stephenson I*, *Stephenson II*, *Dickson I*, and *Dickson II*.

Division of counties in the 2021 Congressional plan shall only be made for reasons of equalizing population and consideration of double bunking. If a county is of sufficient population size to contain an entire congressional district within the county's boundaries, the Committees shall construct a district entirely within that county.

- **Racial Data.** Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House, and Senate plans. The Committees will draw districts that comply with the Voting Rights Act.
- **VTDs.** Voting districts ("VTDs") should be split only when necessary.
- **Compactness.** The Committees shall make reasonable efforts to draw legislative districts in the 2021 Congressional, House and Senate plans that are compact. In doing so, the Committee may use as a guide the minimum Reock ("dispersion") and Polsby-Popper ("perimeter") scores identified by Richard H. Pildes and Richard G. Neimi in *Expressive Harms, "Bizarre Districts," and Voting Rights: Evaluating Election-District Appearances After Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993).
- **Municipal Boundaries.** The Committees may consider municipal boundaries when drawing districts in the 2021 Congressional, House, and Senate plans.

Joint Meeting of Committees

August 12, 2021

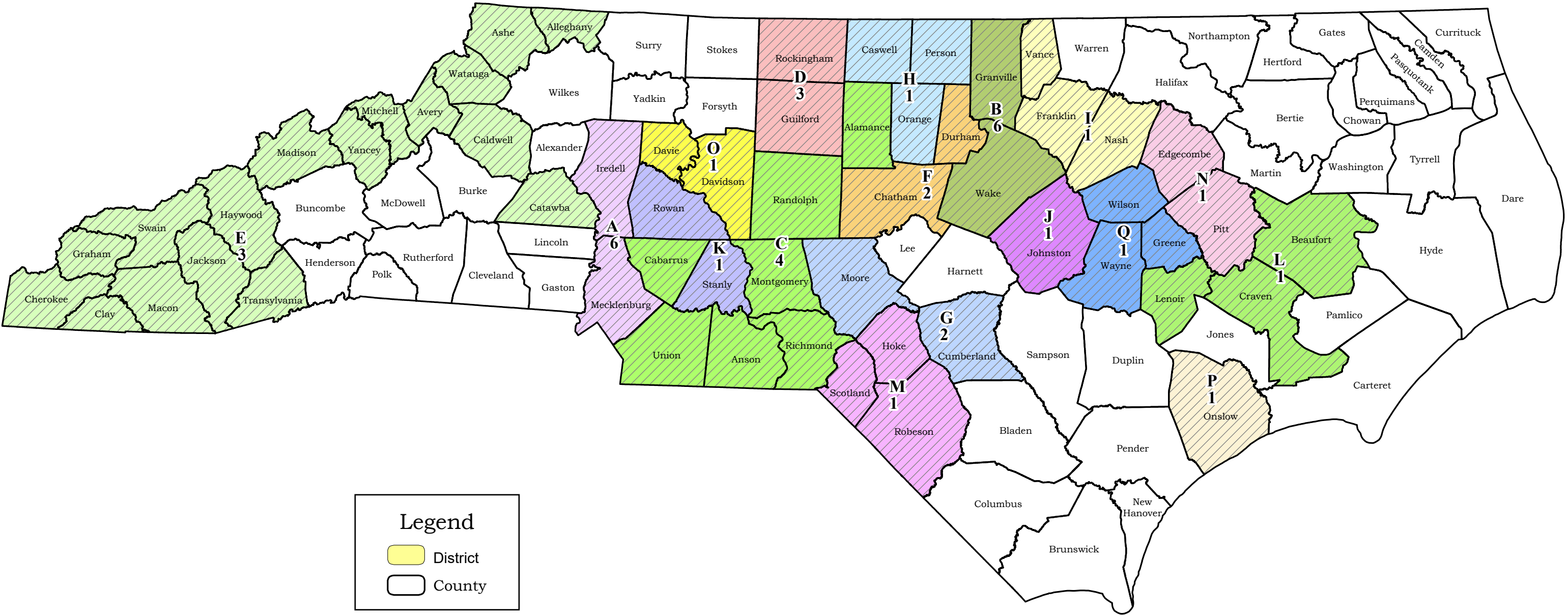
House Committee on Redistricting

Senate Committee on Redistricting and Elections

- **Election Data.** Partisan considerations and election results data *shall not* be used in the drawing of districts in the 2021 Congressional, House, and Senate plans.
- **Member Residence.** Member residence may be considered in the formation of legislative and congressional districts.
- **Community Consideration.** So long as a plan complies with the foregoing criteria, local knowledge of the character of communities and connections between communities may be considered in the formation of legislative and congressional districts.

EXHIBIT K
to
Duke Senate
Groupings Map 11x17,
Oct. 5, 2021

Duke_Senate_Fixed

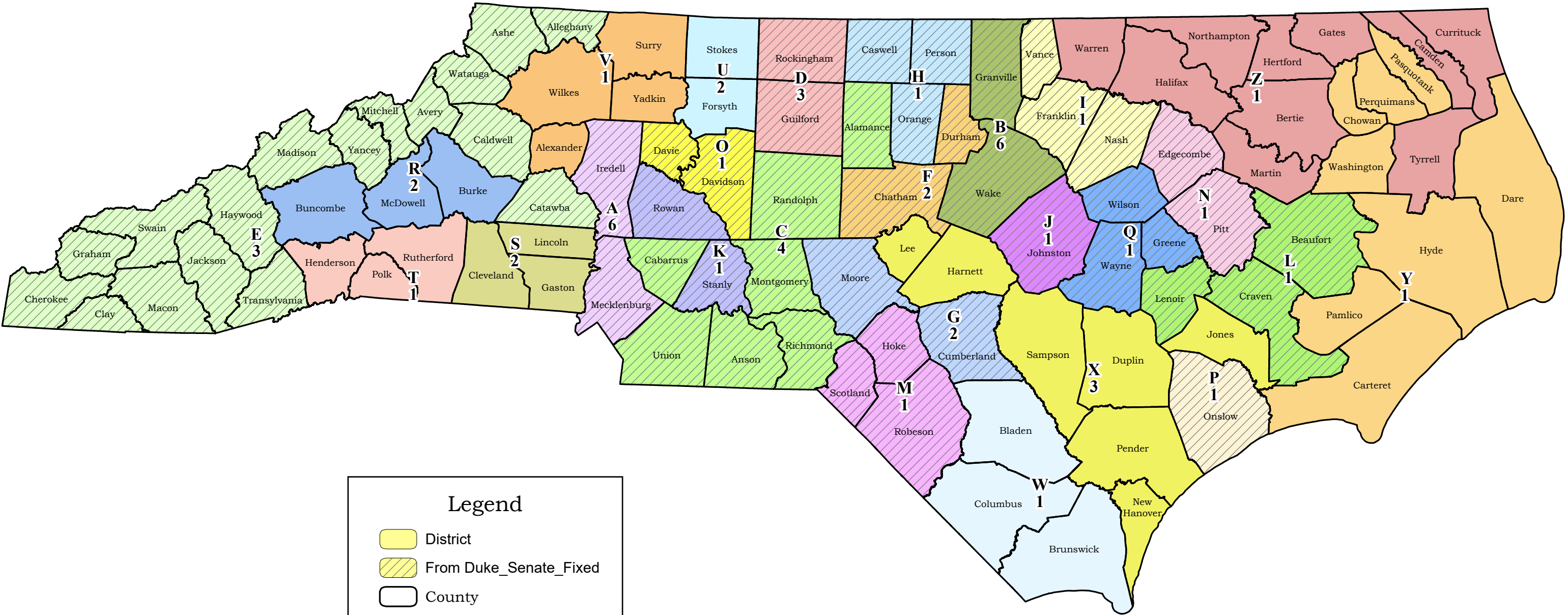


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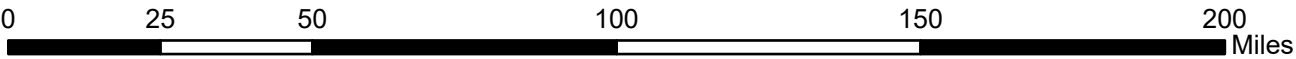
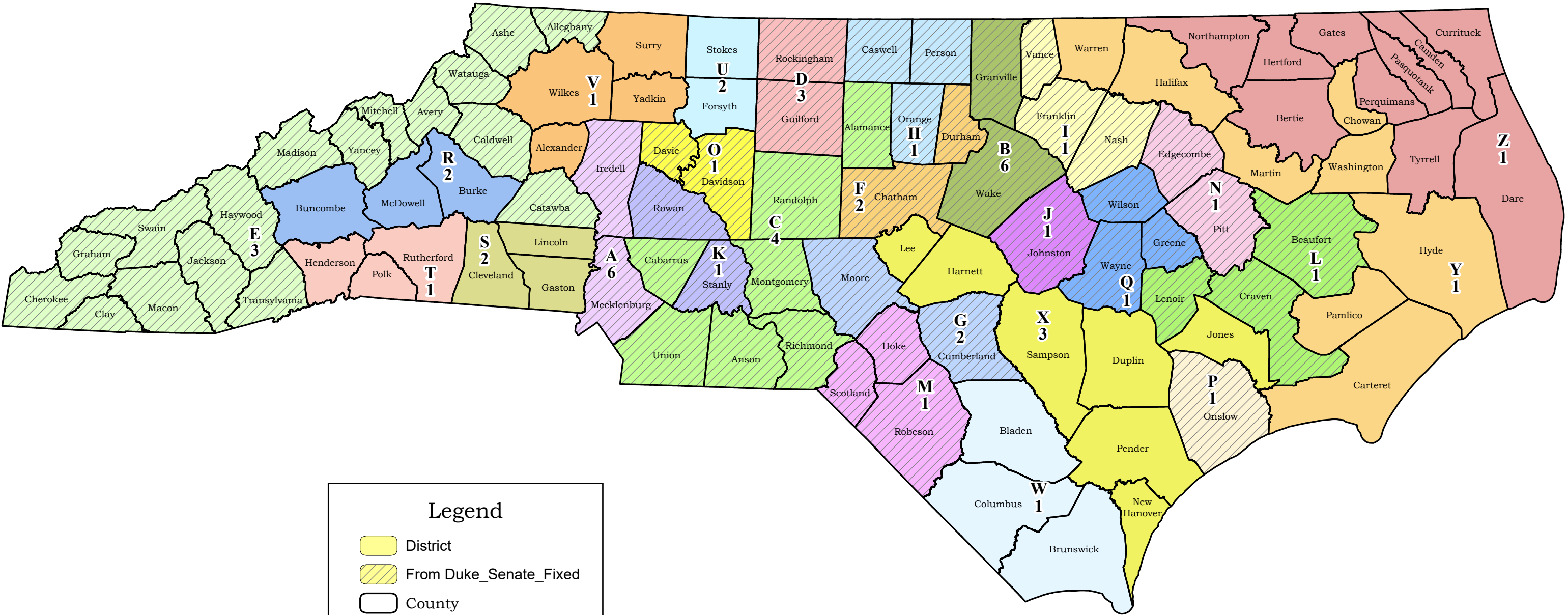
DUKE SENATE GROUPINGS

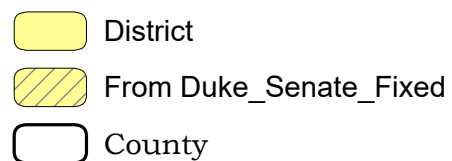
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Duke_Senate 03	A1	B1	C2	D1
Duke_Senate 04	A1	B1	C2	D2
Duke_Senate 05	A1	B2	C1	D1
Duke_Senate 06	A1	B2	C1	D2
Duke_Senate 07	A1	B2	C2	D1
Duke_Senate 08	A1	B2	C2	D2
Duke_Senate 09	A2	B1	C1	D1
Duke_Senate 10	A2	B1	C1	D2
Duke_Senate 11	A2	B1	C2	D1
Duke_Senate 12	A2	B1	C2	D2
Duke_Senate 13	A2	B2	C1	D1
Duke_Senate 14	A2	B2	C1	D2
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Duke_Senate 16	A2	B2	C2	D2

Duke_Senate 01

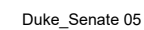


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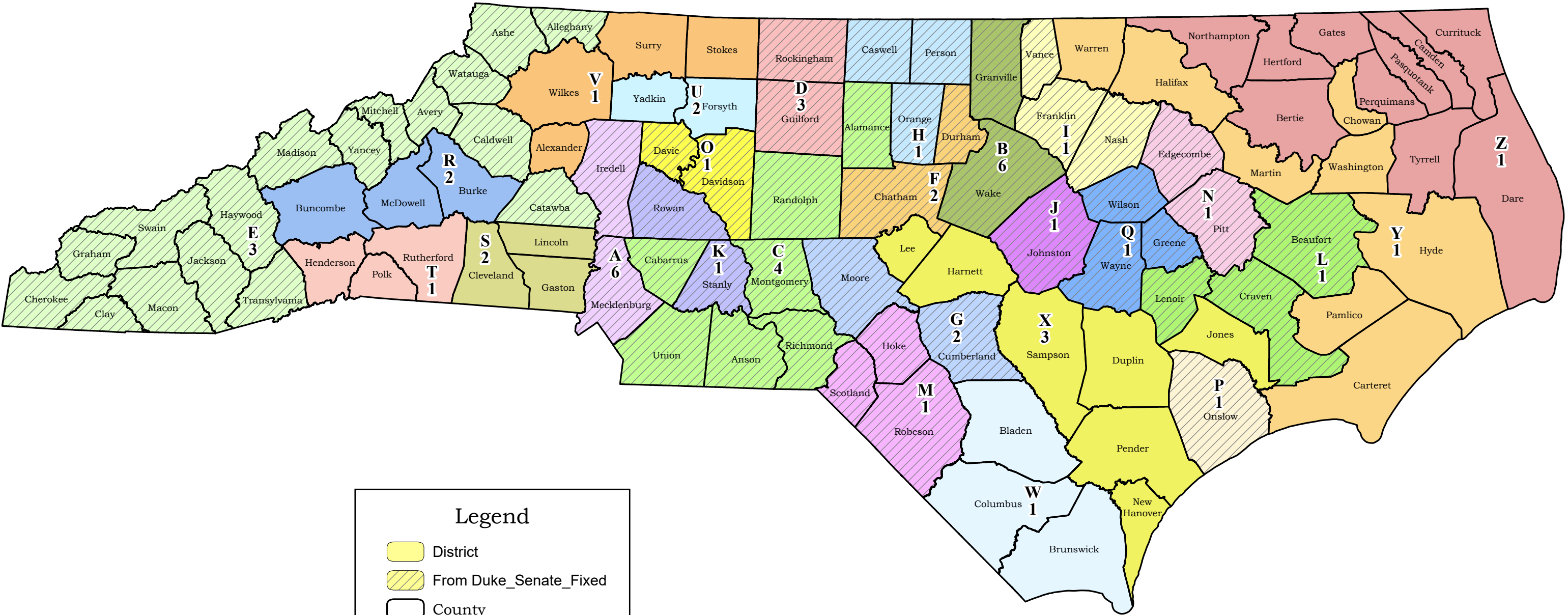








Duke_Senate 06

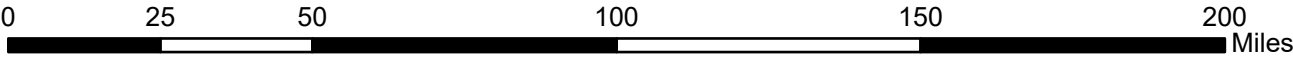
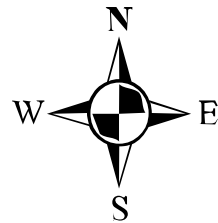


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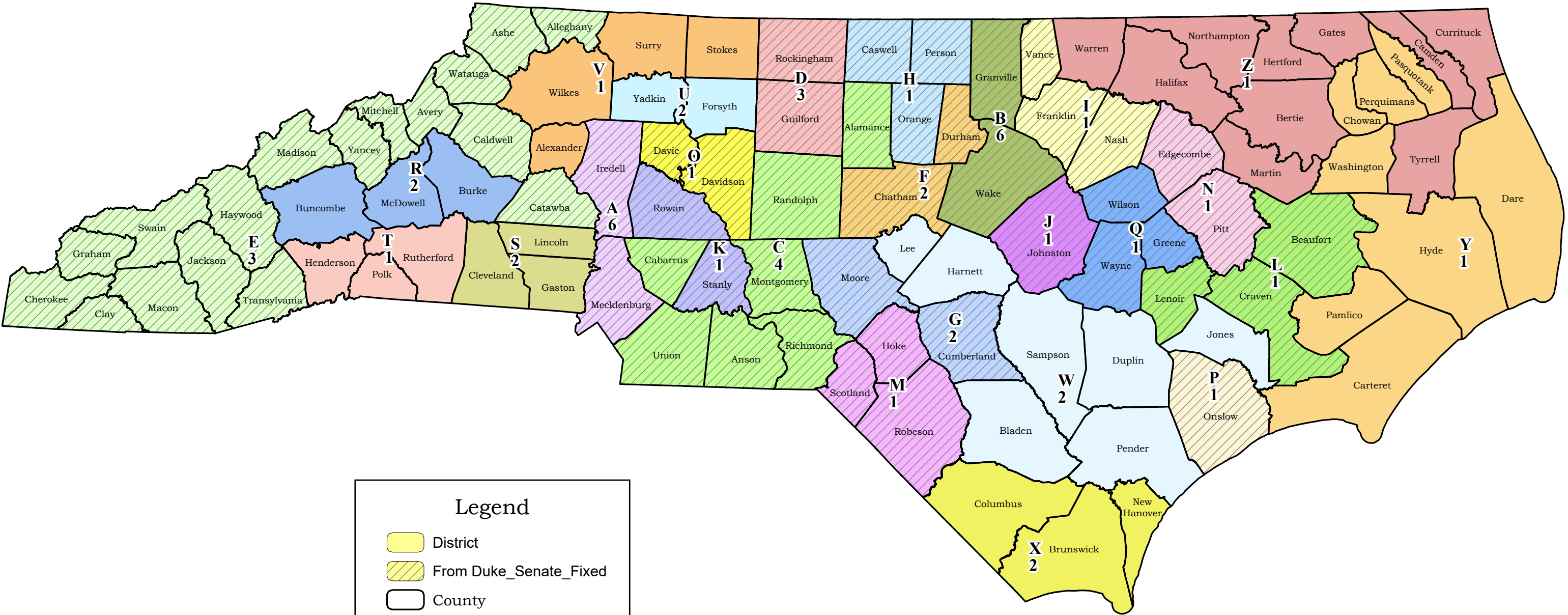
District

From Duke_Senate_Fixed

County

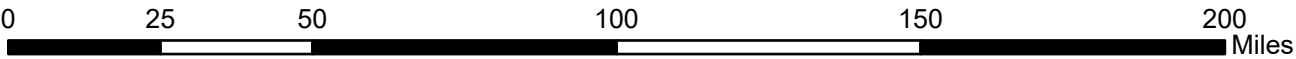
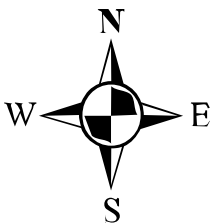


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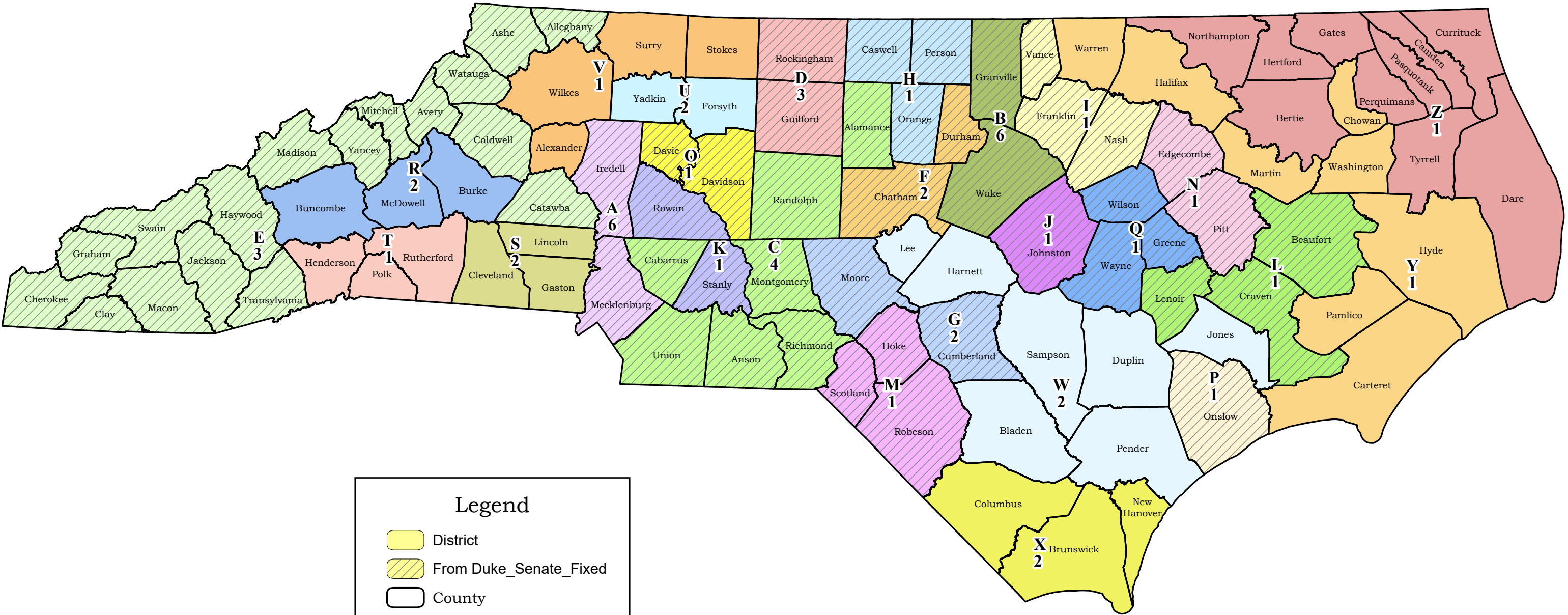


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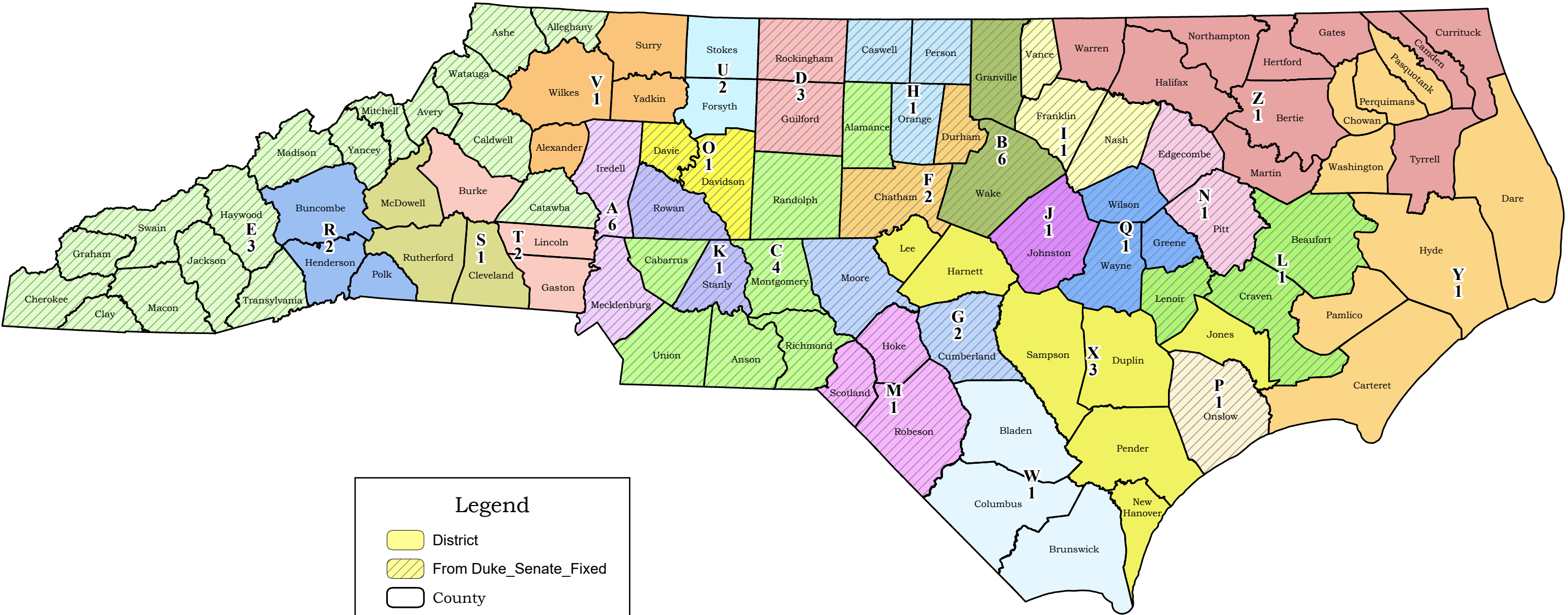
- District
- From Duke_Senate_Fixed
- County



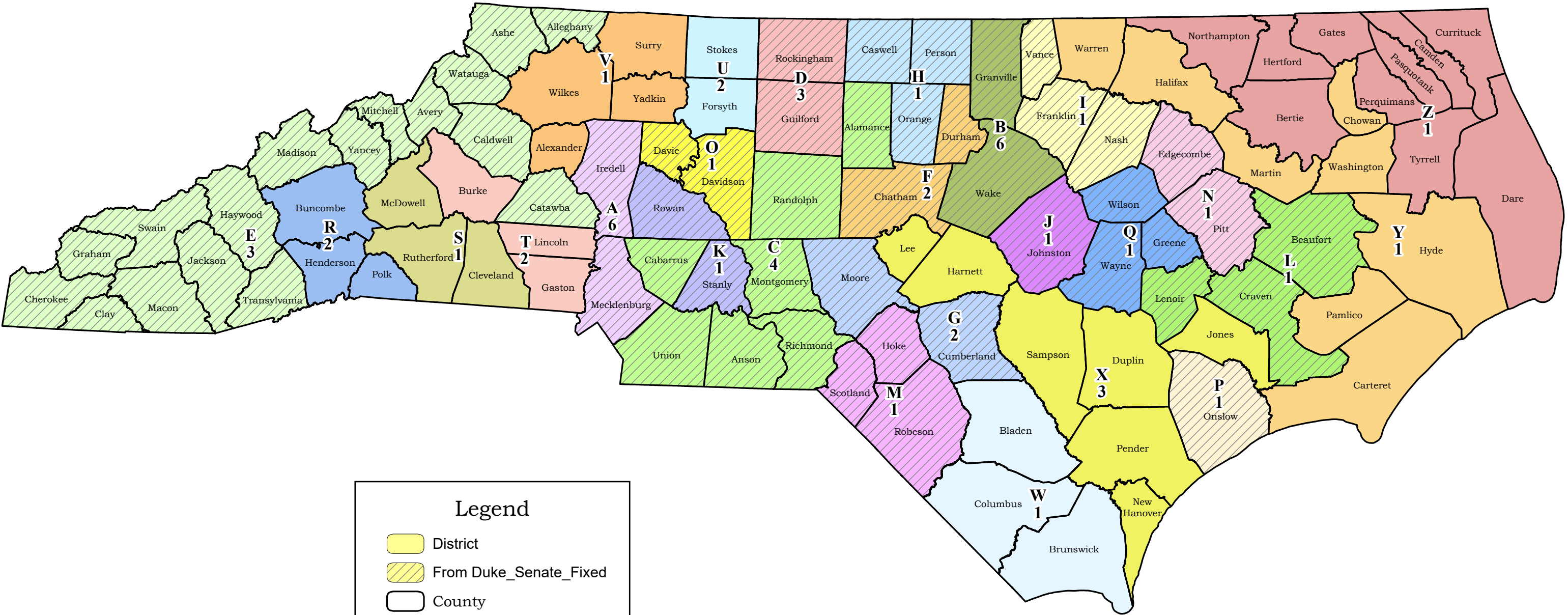
Duke_Senate 08



Duke_Senate 09

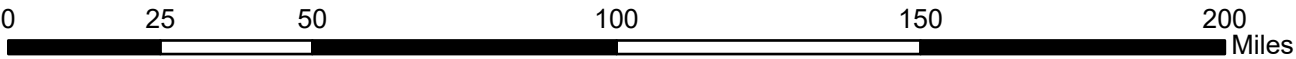
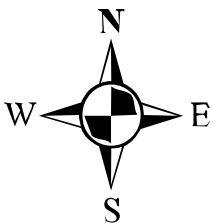


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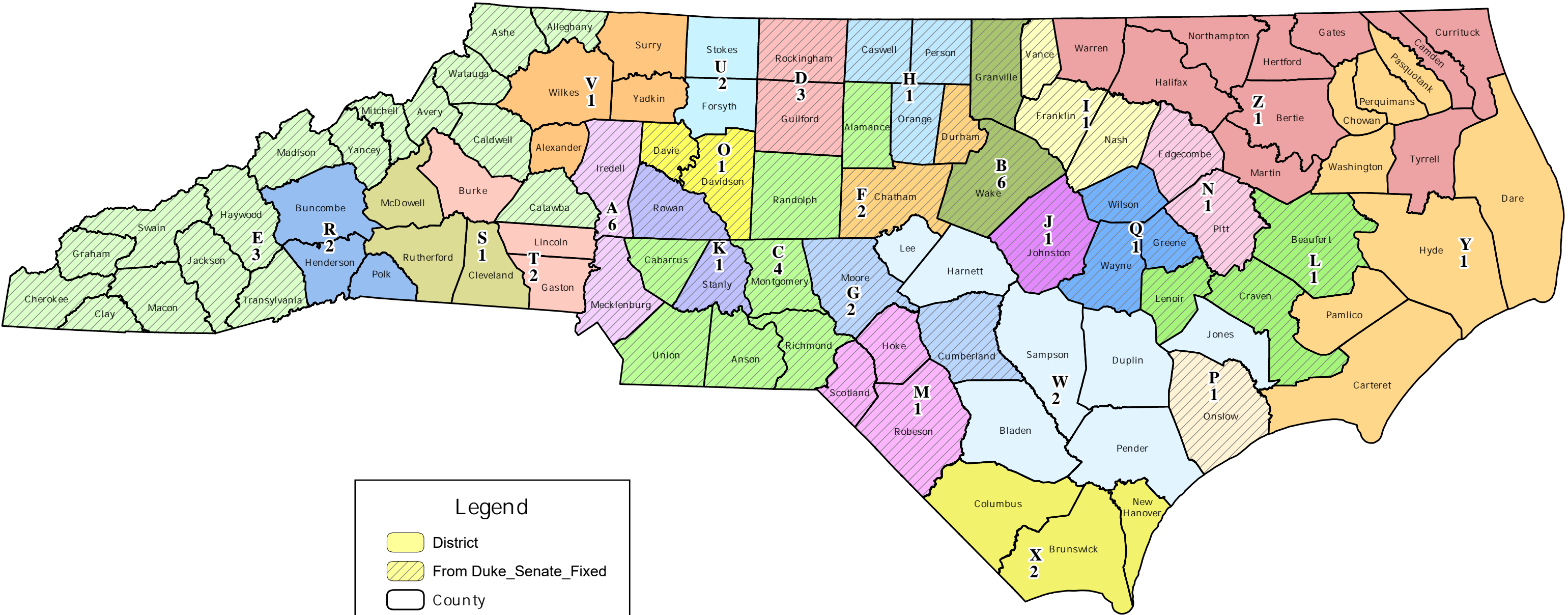


Legend

- District
- From Duke_Senate_Fixed
- County

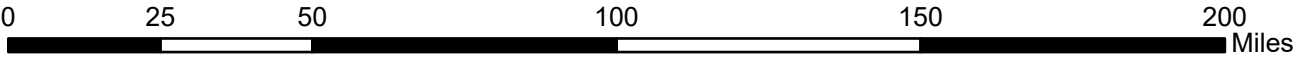
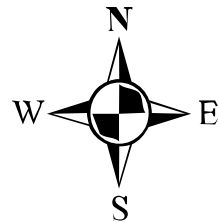


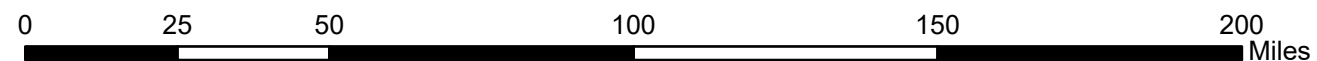
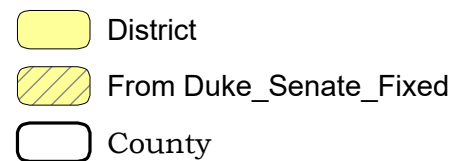
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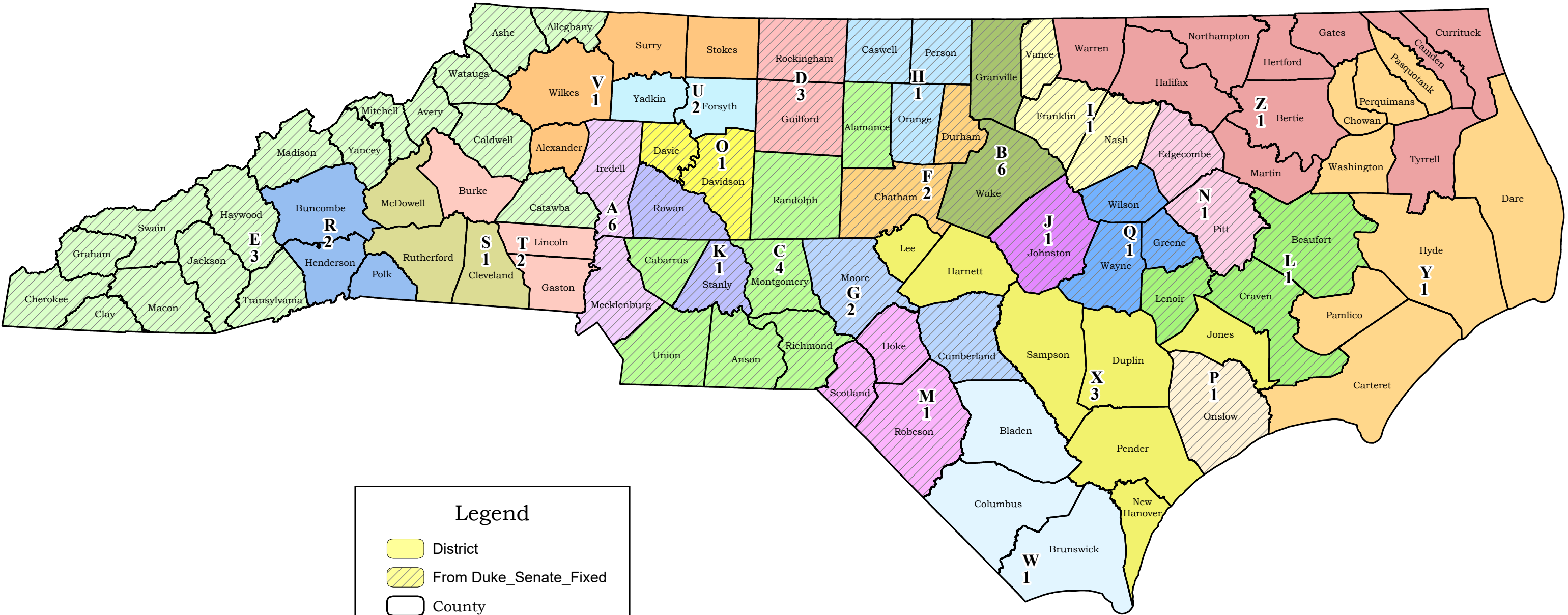
Legend

- District
- From Duke_Senate_Fixed
- County





Duke_Senate 13

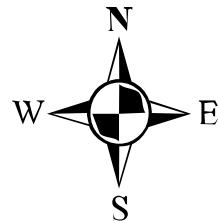


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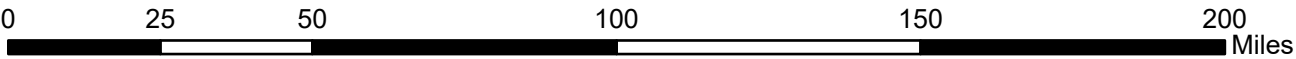
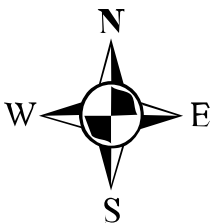
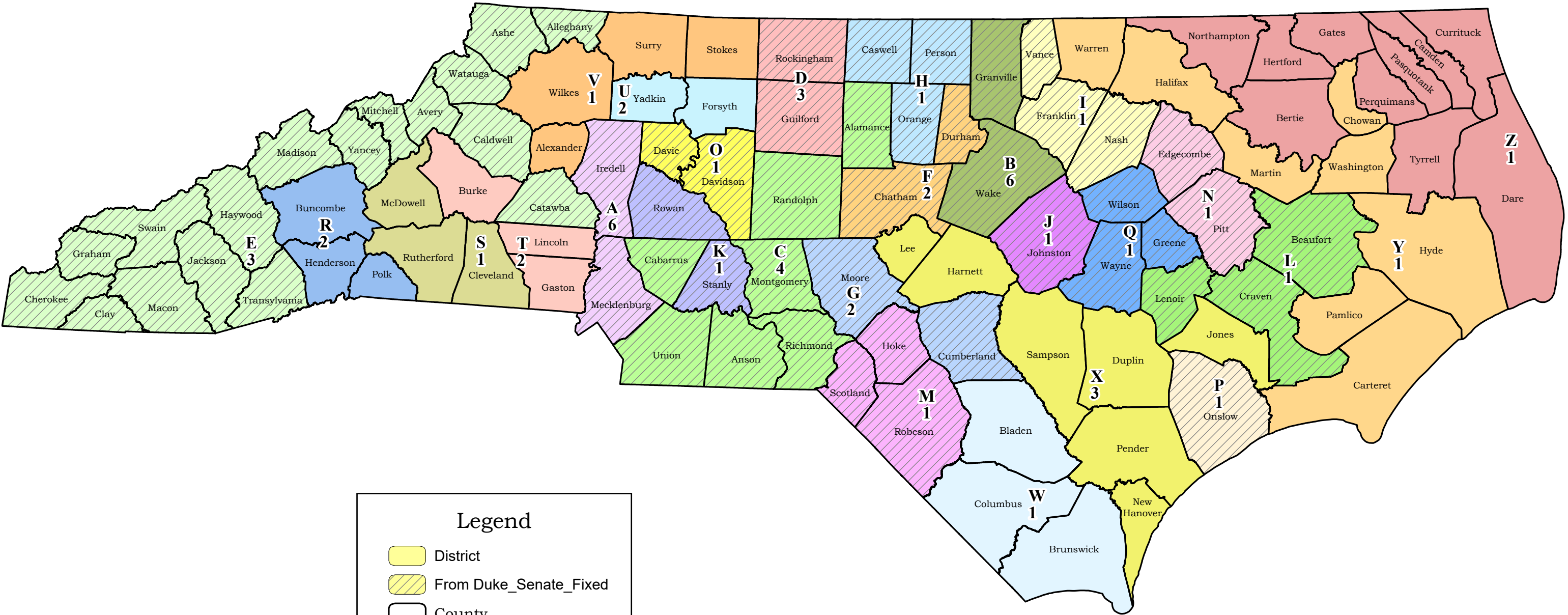
District

From Duke_Senate_Fixed

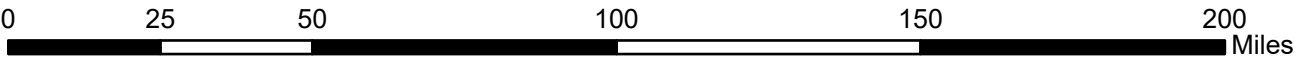
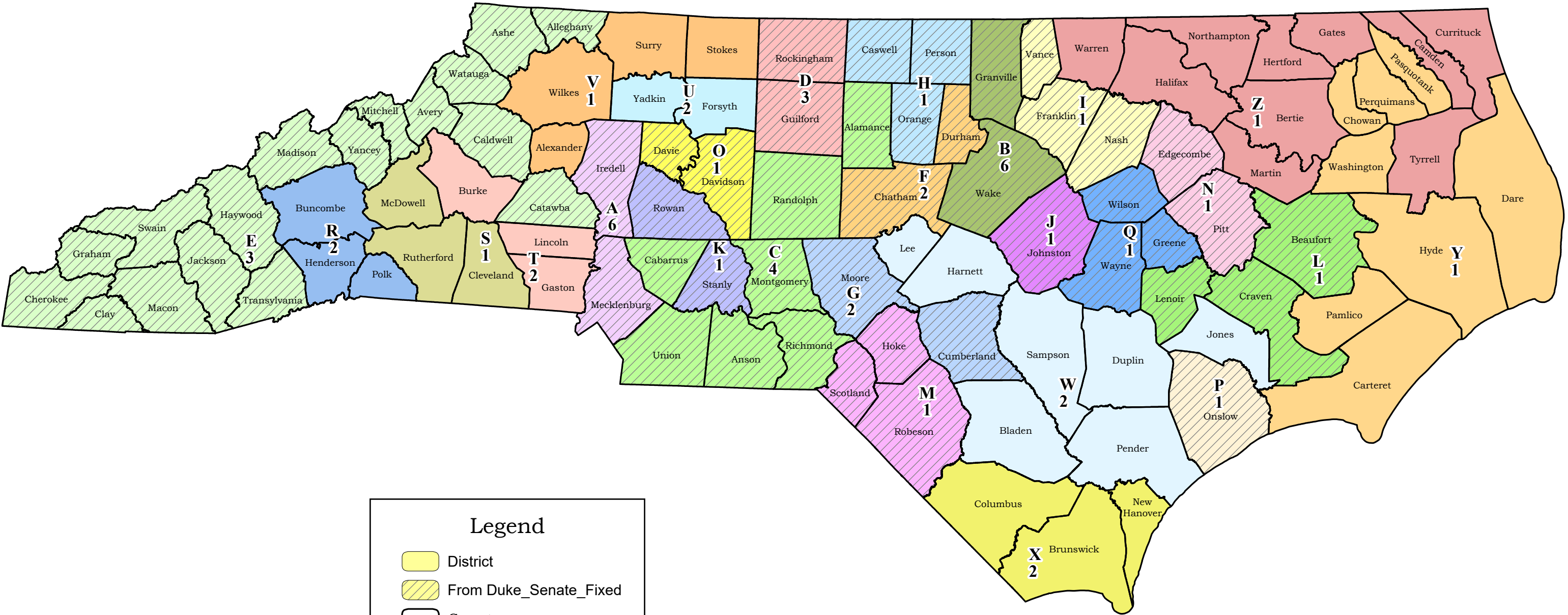
County



Duke_Senate 14



Duke_Senate 15



Duke_Senate 16

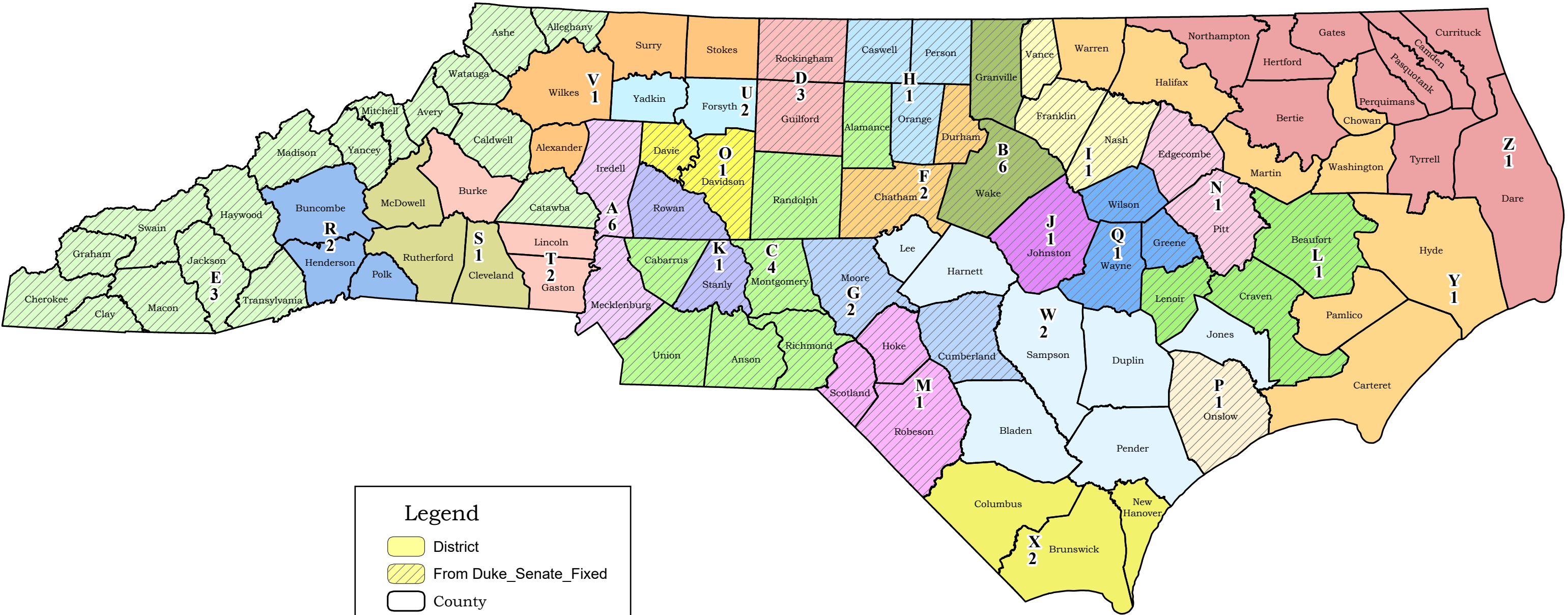
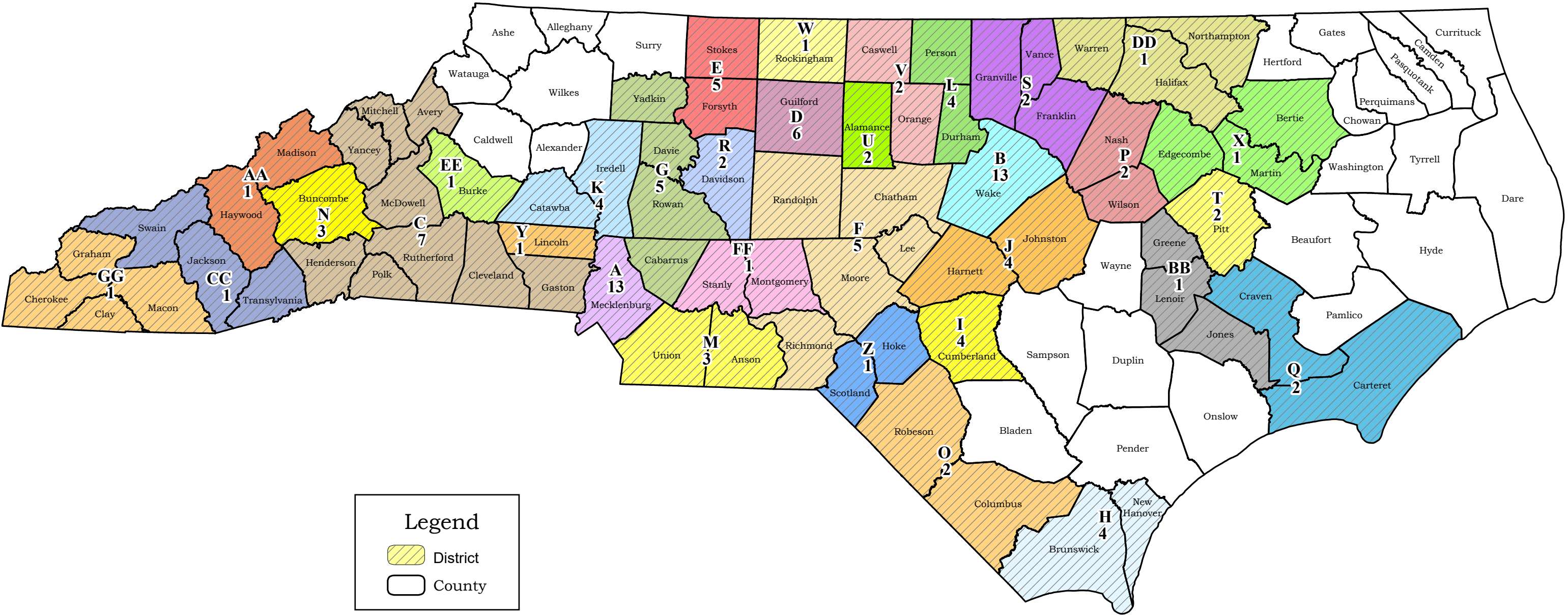




EXHIBIT L
to
Duke House
Groupings Maps
11x17, Oct. 5, 2021

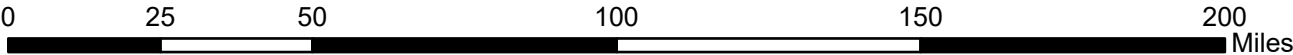
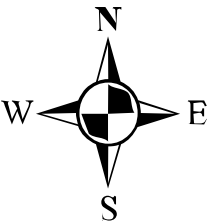
Duke_House_fixed



Legend

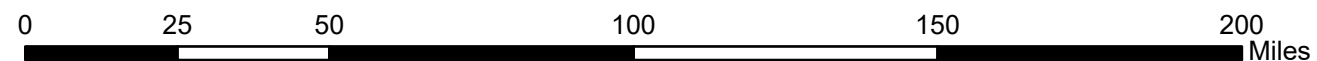
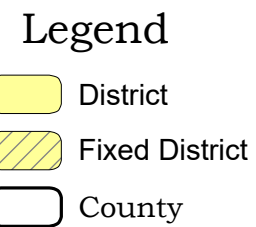
 District

 County

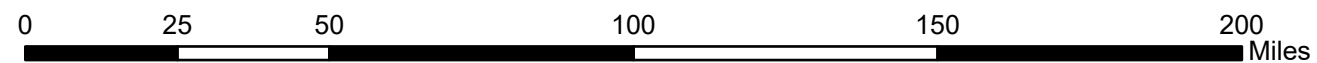
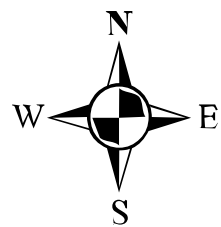
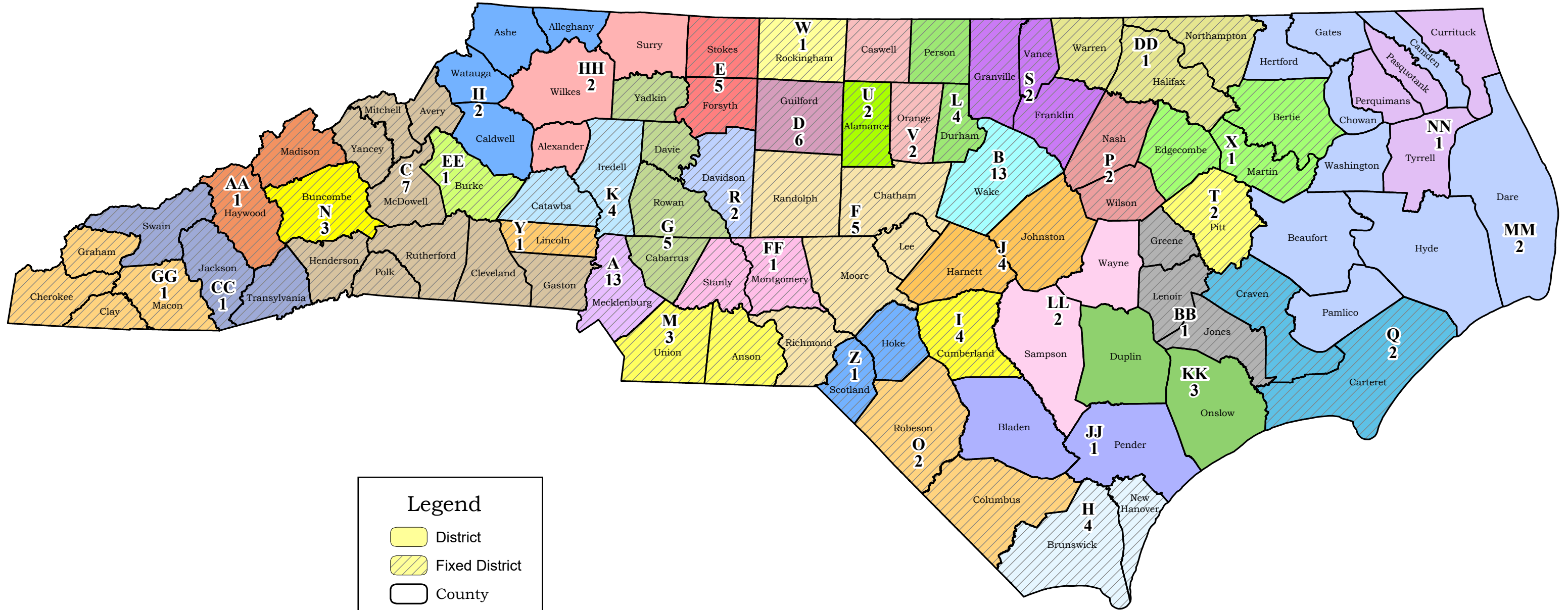


DUKE HOUSE GROUPINGS

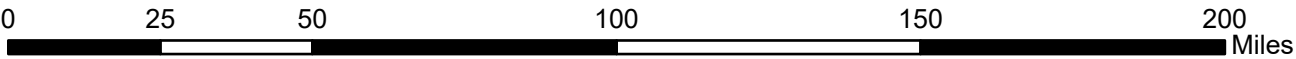
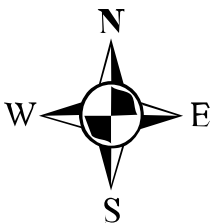
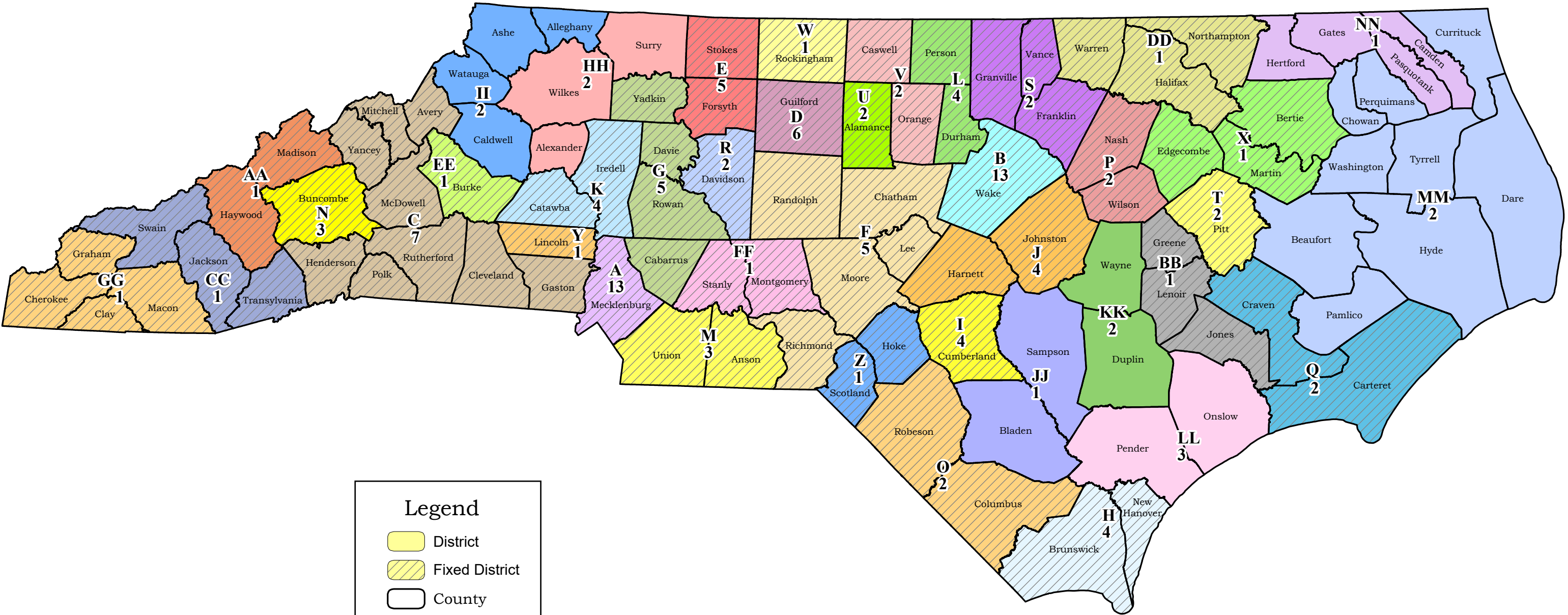
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Duke_House 03	A1	B2	C1
Duke_House 04	A1	B2	C2
Duke_House 05	A2	B1	C1
Duke_House 06	A2	B1	C2
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Duke_House 08	A2	B2	C2



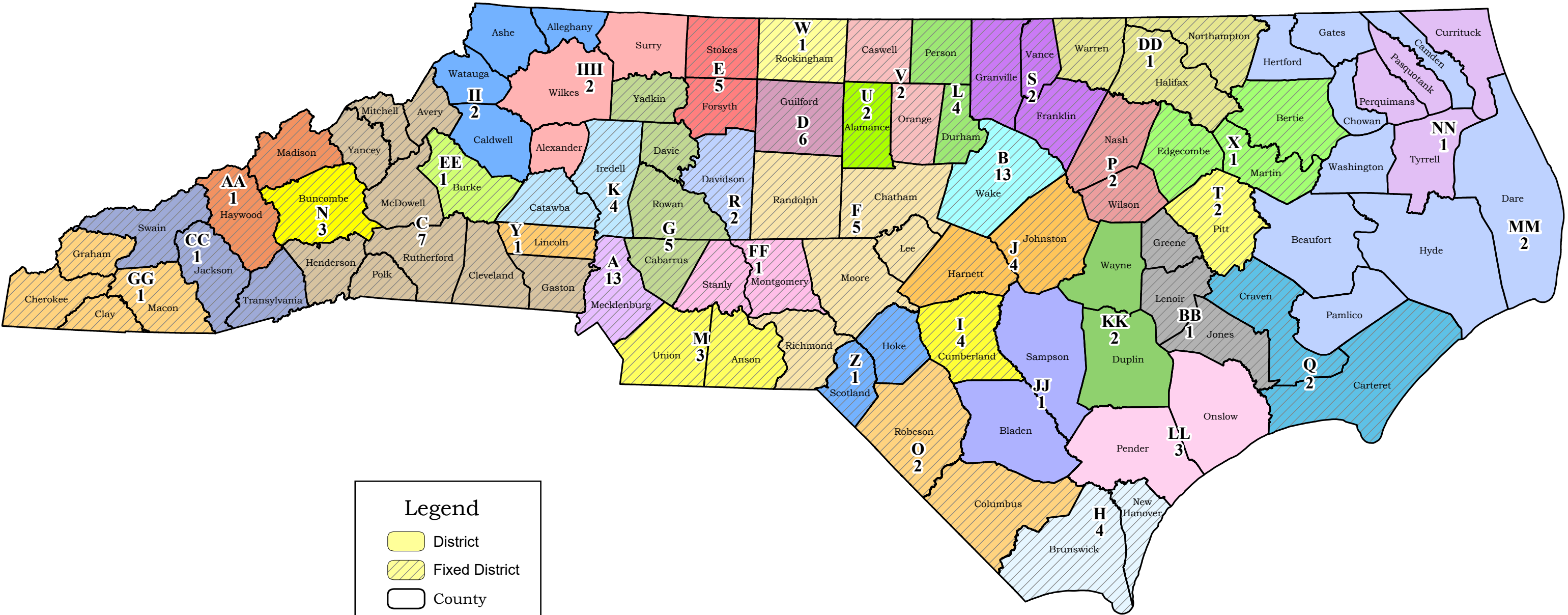
Duke_House 02



Duke_House 03

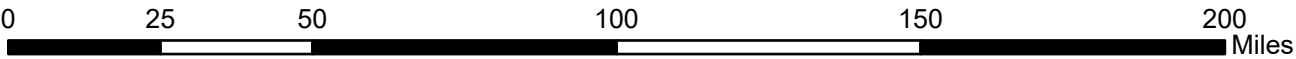
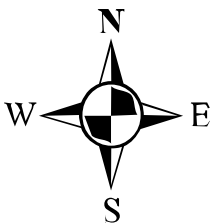


Duke_House 04

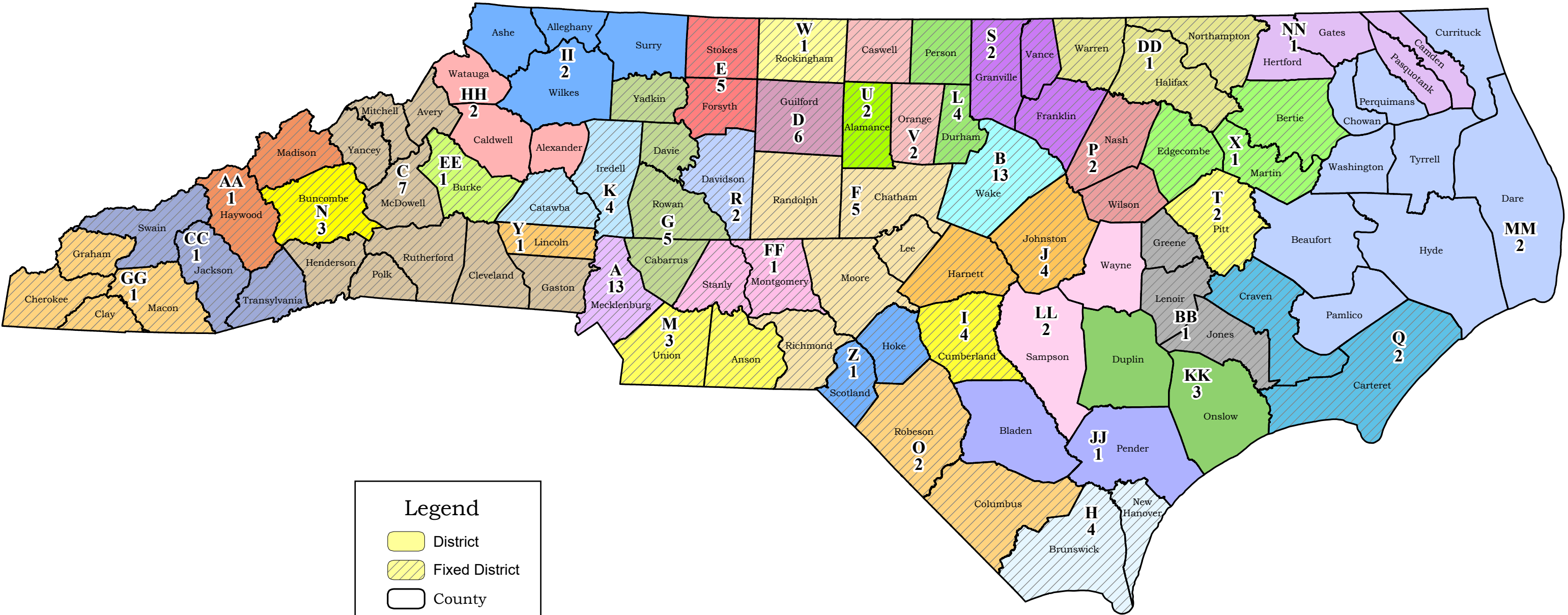


Legend

- District
- Fixed District
- County

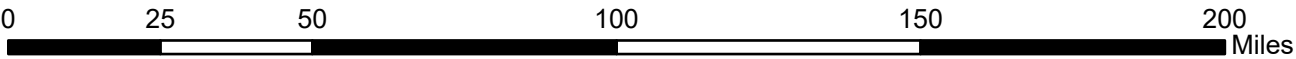
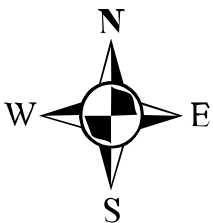


Duke_House 05

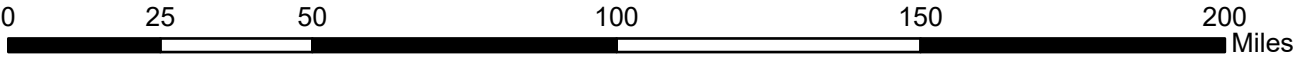
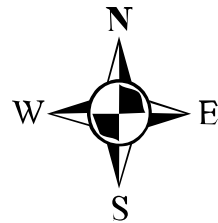
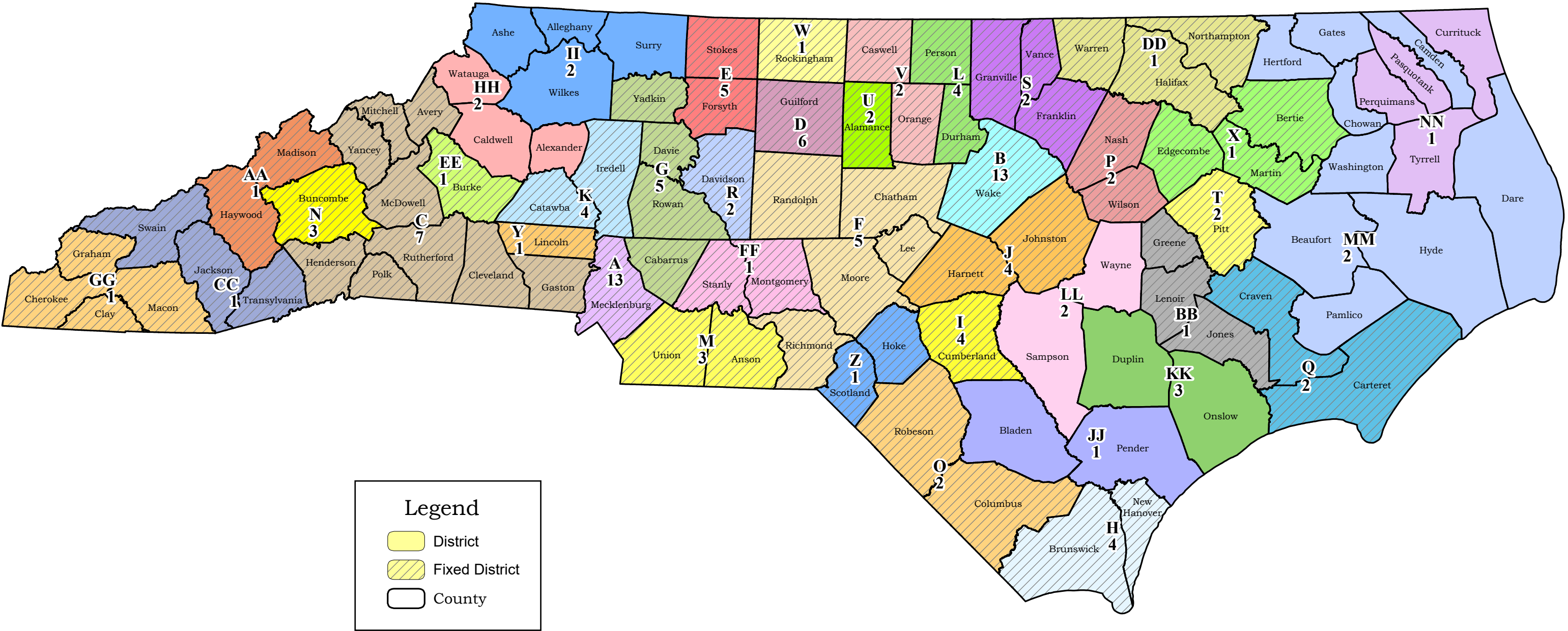


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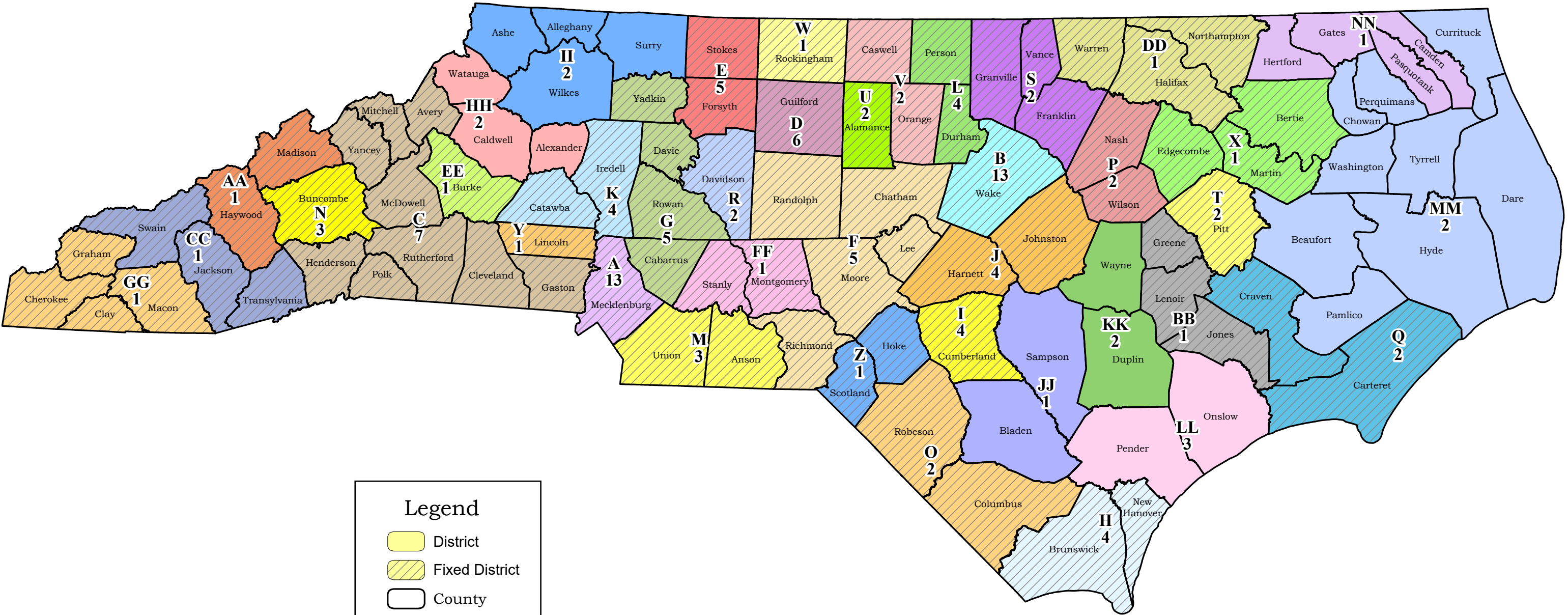
- District
- Fixed District
- County



Duke_House 06



Duke_House 07



Duke_House 08

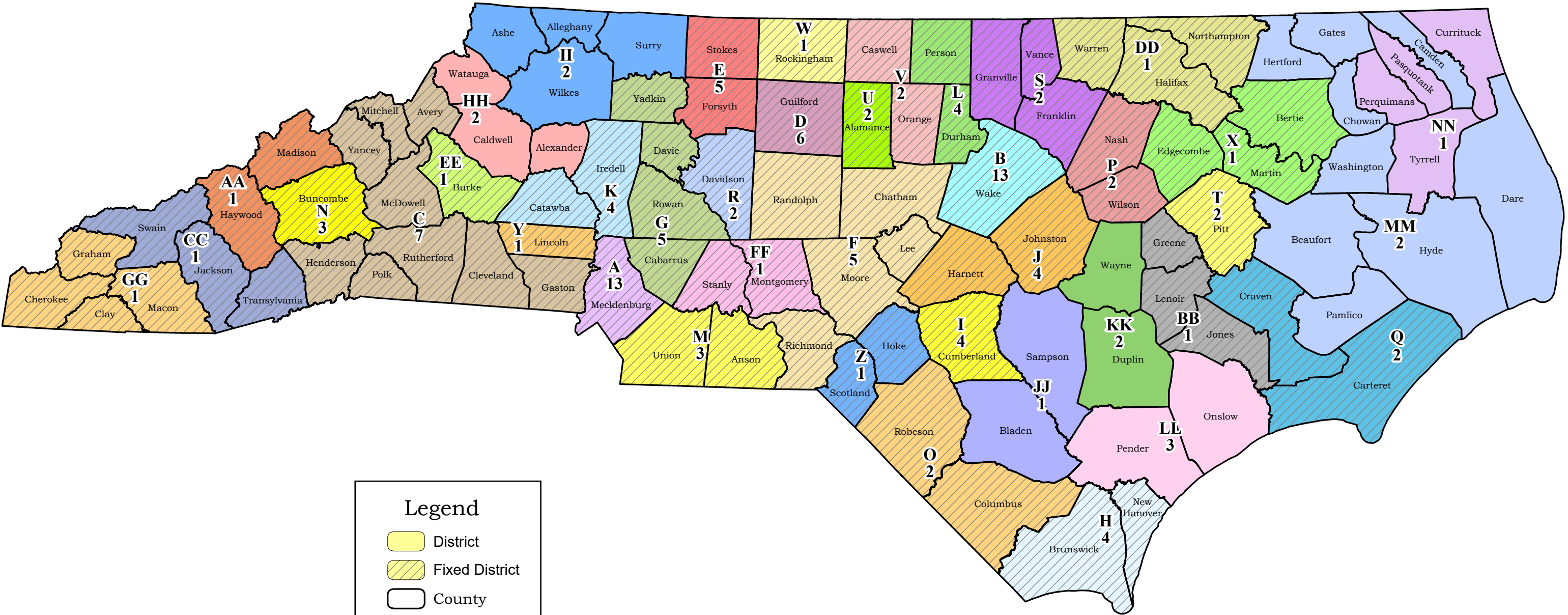


EXHIBIT M
to
Letter from SCSJ
Attorneys to
Legislative
Defendants, Oct. 8,
2021

October 8, 2021

VIA EMAIL

To: Sen. Phil Berger
President Pro Tempore, North Carolina Senate
Rep. Tim Moore
Speaker, North Carolina House of Representatives
Sen. Daniel, Sen. Hise, and Sen. Newton
Co-Chairs, Senate Standing Committee on Redistricting and Elections
Rep. D. Hall, Chair
House Standing Committee on Redistricting

CC: Sen. Dan Blue, Senate Democratic Leader
Rep. Robert T. Reives, II, House Democratic Leader
Members, Senate Standing Committee on Redistricting and Elections
Members, House Standing Committee on Redistricting

Senators and Representatives,

The undersigned respectfully submit this letter to bring to the attention of the legislative leadership, Members of the Senate Standing Committee on Redistricting and Elections, Members of the House Standing Committee on Redistricting, and, indeed, the entire legislative body, certain areas of concern within the county clustering option maps you introduced on Tuesday, October 5, 2021. The Committee Chairs stated that these maps represent the only legally compliant county clustering options in which ultimate district lines will be drawn. We disagree.

In *Stephenson v. Bartlett*, the North Carolina Supreme Court developed a methodology for how counties should be grouped together to form county clusters.¹ Under *Stephenson*, first, districts must be drawn to satisfy Section 2 of the Voting Rights Act (“VRA”) to ensure voters of color have an equal opportunity to participate in the political process and elect their candidates of choice. Only after that analysis is performed and those districts are drawn may any work be done to harmonize and maximize compliance with North Carolina’s Whole County Provision (“WCP”).²

¹ *Stephenson v. Bartlett*, 355 N.C. 354 (2002); *Stephenson v. Bartlett*, 357 N.C. 301 (2003).

² We do not concede that your interpretation of the *Stephenson* criteria after the first step—drawing VRA-required districts—is correct.



Although the *Stephenson* criteria outlines a process for how counties are grouped together to create districts, there is still discretion regarding the choices about how and where to group counties. Consequently, these individual choices can result in different county grouping options that directly affect political opportunities and voting power for voters of color. We will be monitoring your choices with respect to county clusters closely, as well as the impact of those choices. But even now, we can identify serious problems with your judgment being used in this redistricting process, including but not limited to gross mischaracterizations of applicable law.

I. The North Carolina General Assembly Continues to Flout Well-Established Redistricting Law

At this point, we have only seen draft district lines for the aforementioned clusters presented by your Committees, which create some (but not all) districts and thus do not constitute full maps. As a result, this letter does not and cannot address all potential violations of the North Carolina Constitution, the federal Voting Rights Act, or the North Carolina Supreme Court's instructions in the *Stephenson* cases. Our intent here is to bring to your attention the potential problems in the county clustering maps from which you have indicated you intend to choose. We also seek to highlight, once again, the erroneous legal interpretation under which you appear to be operating, just as in last decade's redistricting cycle. Absent a material change in direction, we may have further critiques or concerns. However, it is not too late to remedy these issues and embark on a redistricting process that will comply with applicable law.

1. The North Carolina Legislature Is Already Violating the *Stephenson* Instructions

Because this body is erroneously avoiding the use of all racial data, you per se cannot comply with *Stephenson*. Without that data, you cannot assess what districts are required under the VRA and draw those districts first as required. The failure to consider racial data is deeply problematic for other legal and policy grounds, but in this letter, we focus on the potential county clusters where it is unlikely that a district that will provide voters of color an equal opportunity to elect their preferred candidates can be produced by the county cluster.

The North Carolina Supreme Court has been unequivocal: *Stephenson* mandates that "districts required by the VRA be drawn first."³ Indeed, the Supremacy Clause of the United States Constitution requires federal law compliance be prioritized. In order to determine whether it is necessary to draw VRA districts, the Legislature must determine the level of racially polarized voting in the relevant geographical area.⁴ Without any analysis of racial voting data, you are making it impossible to assess whether VRA districts are required and violating the plain rule in *Stephenson*. Thus, to comply with *Stephenson* and the VRA, we believe the Legislature must conduct a regionally-focused racially polarized voting ("RPV") study to determine if there is legally significant racially polarized voting. If there is that level of racially polarized voting,

³ *Stephenson v. Bartlett*, 355 N.C. 354, 383 (2002).

⁴ *Thornburg v. Gingles*, 478 U.S. 30, 55 (1986).



and if any cluster which you claim is required under strict compliance with *Stephenson* produces a district in which voters of color would not be able to elect their preferred candidate, then you must draw a VRA district first and only then engage in developing clusters around that district.⁵ As discussed below, your claims that RPV studies done in 2011 and the *Covington* court's ruling in 2016⁶ somehow negate the possibility that any VRA districts may be necessary today, in 2021, is plainly wrong.

2. The North Carolina General Assembly Is Grossly Misinterpreting *Covington v. North Carolina* and Other Precedent from Last Cycle

Sen. Hise and Rep. Hall are factually incorrect in representing that courts last decade ruled that racially polarized voting in North Carolina does not exist. In the most relevant case, *Covington v. North Carolina*, the federal court that invalidated 28 North Carolina legislative districts as unconstitutional racial gerrymanders in fact stated the opposite.⁷ The court acknowledged that there were two reports before the Legislature indicating there was statistically significant racially polarized voting in the state⁸, but the bipartisan panel of federal judges excoriated the Legislature for “failing to evaluate whether there was a strong basis of evidence for the third *Gingles* factor in any potential VRA district.”⁹ That is, the court acknowledged the “general finding regarding the existence of [] racially polarized voting,” but said the Legislature had to do a deeper inquiry, which “is exactly what Defendants did not do.”¹⁰ This body seems bound and determined to make the same legal mistake again this redistricting cycle by once again abdicating its responsibility to do the analysis it is required by law to do. If this Legislature declines to meet its obligations under *Stephenson* to determine and draw districts required by the VRA first, it should be prepared for a court to ultimately draw the maps needed for elections next year.

Second, no case from the last redistricting cycle overturns or otherwise renders null *Stephenson*'s requirement that the Legislature draw VRA districts first. In a meeting of the Joint Redistricting and Elections Committee on August 12, 2021, the Committee Chairs, in response to Senator Clark's question about complying with the VRA, stated that RPV analysis was not necessary due to “the 2019 decisions.”¹¹ The 2019 Superior Court decision *Common Cause v. Lewis* found that compliance with the VRA was not a plausible excuse to a charge of partisan

⁵ *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (holding legislative districts required by the VRA be formed prior to the creation of non-VRA districts to ensure redistricting plans “ha[ve] no retrogressive effect upon minority voters.”).

⁶ *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016).

⁷ *Id.* at 169-170 (finding that Defendants’ “reports conclude that there is evidence of racially polarized voting in North Carolina [.]”).

⁸ *Id.*

⁹ *Id.* at 167.

¹⁰ *Id.* at 167-68.

¹¹ NCGA Redistricting, 2021-08-12 Committee (Joint), YOUTUBE (Aug. 13, 2021), <https://www.youtube.com/watch?v=gSm2OhE7Slk&t=718s>.



gerrymandering.¹² It did *not* hold that the General Assembly may completely ignore racial voting data when drawing districts following the release of U.S. Census data. As a result, *Lewis* in no way alters *Stephenson*'s mandate that the Legislature first draw VRA districts with the assistance of racial voting data analysis.

Lastly, no other federal law or Supreme Court decision compels or even allows this body to ignore racial data in drawing district lines. The Supreme Court decision *Cooper v. Harris* explains that states *can* use racial data in redistricting to comply with the VRA.¹³ In 2017, the Supreme Court found that the creation of two North Carolina congressional districts violated the federal Constitution because map drawers had used racial data in ways *not required* by the VRA.¹⁴ *Cooper* found that map drawers were using the VRA as an excuse to pack far more Black voters into a district than was necessary for VRA compliance; it did not state that the use of racial data is unconstitutional in every circumstance.¹⁵ In fact, *Cooper* demonstrates the very necessity of using racial voting data. It is impossible to determine what demographic configuration is sufficient for VRA compliance without analyzing racial voting data.

With these legal deficiencies in your approach explained, we now turn to areas of concern in the county cluster maps introduced on Tuesday. We note at the outset that the authors of the paper presenting possible county clusters explicitly did not look at the first step in *Stephenson* – drawing VRA districts.¹⁶ Thus, while this paper and methodology may be informative, they cannot substitute for the legislative analysis required by North Carolina and federal law. Indeed, it would not be algorithmically possible to do the kind of “intensely local appraisal”¹⁷ necessary to determine whether a district was required under Section 2 of the VRA.

II. Certain Areas in the North Carolina Senate Cluster Maps Require Examination for VRA Compliance

a. Cluster in Greene/Wayne/Wilson

One of the Senate county clusters that you designate as required under an “optimal” county grouping map for the Senate districts appears to violate the VRA. Cluster “Q1” is a district comprised of three counties that would likely deprive voters of color of the opportunity to elect their candidate of choice. In the current Senate map, Senate District 4 is comprised of Halifax, Edgecombe and Wilson Counties, and the Black voting age population (“BVAP”) in

¹² *Common Cause v. Lewis*, No. 18 CVS 014001, at *345 (N.C. Sup. Ct. Sept. 3, 2019).

¹³ *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017).

¹⁴ *Id.* at 1472.

¹⁵ *Id.* at 1470-71.

¹⁶ Christopher Cooper, et al., *NC General Assembly County Clusterings from the 2020 Census*, QUANTIFYING GERRYMANDERING (Aug. 17, 2021), <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf> (last visited Oct. 7, 2021).

¹⁷ *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986).



that district is 47.46% using benchmark data. Black voters have the ability to elect their candidate of choice in this district.

In a county group analysis where race is not considered at all, we are concerned that you will propose that Senate District 4 be comprised going forward of Green, Wayne, and Wilson Counties. A district comprised of those 3 counties would be only 35.02% BVAP. If Section 5 were still in place, we are certain that such a change to that district would constitute impermissible retrogression and not be approved. We have done some initial analysis of racially polarized voting in those 3 new counties that would comprise Senate District 4. Examining racially contested statewide elections¹⁸ in these counties shows two things: using a number of different analytic approaches, the Black candidate is overwhelmingly supported by Black voters and white voters offer very little support for Black candidates. That is, voting is racially polarized. And most importantly, in those counties, were the electoral outcomes to be determined just by voting there, the Black candidates would have been defeated. Thus, the racially polarized voting is legally significant. We urge you to perform a formal RPV analysis in these counties before dictating that the Senate district must be comprised of these 3 counties.

Moreover, knowing as you do (or certainly do now) that there is a concentration of Black voters who, in concert with a small number of non-Black voters in the original configuration of the district (Wilson, Edgecombe and Halifax) are able to elect their candidate of choice, “if there were a showing that a State intentionally drew district lines in order to destroy otherwise effective crossover district[],” you would likely be subjecting the State to liability under the Fourteenth and Fifteenth Amendments.¹⁹

b. Cluster in Hoke/Robeson/Scotland

We are also concerned that in the absence of racial data analysis, the proposed Senate district comprised of Hoke, Robeson, and Scotland Counties may not be in compliance with the Voting Rights Act. This county cluster would create a new District 21 out of what were previously sections of Senate Districts 13, 21, and 25. In North Carolina’s current map, District 21 is 42.15% BVAP using benchmark data, and Black voters in that district have the ability to elect their candidate of choice.

A district composed of Hoke, Robeson, and Scotland counties would be only 29.63% BVAP. Our initial review of recent racially-contested elections suggests that voting in these counties is highly racially polarized. Drawing a district with such a low BVAP might deprive

¹⁸ We examined the 2020 race for Chief Justice of the North Carolina Supreme Court involving a Black candidate, Cheri Beasley, and a white candidate, Paul Newby. We examined the 2020 race for Commissioner of Labor involving a Black candidate, Jessica Holmes, and a white candidate, Joshua Dobson. We examined the 2016 race for Treasurer involving a Black candidate, Dan Blue III, and a white candidate, Dale Folwell. And we examined the 2016 race for Lieutenant Governor, involving a Black candidate, Linda Coleman, and two white candidates, Dan Forest and Jacki Cole.

¹⁹ *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009).



Black voters the opportunity to elect a candidate of their choice. We urge you to perform a formal RPV analysis for these three counties to determine if a VRA-compliant district is required for the new district in this area.

III. Certain Areas in the North Carolina House Cluster Maps Require Examination for VRA Compliance

a. Cluster in Sampson/Wayne

Our preliminary data analysis shows that a new House District 21 may be created out of a cluster composed of either Sampson and Wayne counties (“LL2”) or Duplin and Wayne counties (“KK2”). Our initial analysis indicates that the LL2 configuration is particularly problematic. Neither Sampson nor Wayne Counties individually have a high enough population to compose a single district under one person, one vote jurisprudence. However, the North Carolina General Assembly could create two House districts from a Wayne and Sampson County cluster.

Current House District 21 is composed of only portions of both Wayne and Sampson Counties. It is 39.00% BVAP using benchmark data and provides Black voters the opportunity to elect their candidate of choice. Our preliminary analysis was fairly conclusive – based on the statewide elections examined, voting in Sampson and Wayne Counties, together, is highly racially polarized and the Black candidates in statewide elections would not have won had the elections been determined in those counties alone. Thus, we believe this presents substantial evidence that there is legally significant racially polarized voting, and there may be a VRA district required to be drawn in this cluster; or if that is not possible under one-person, one-vote principles, this cluster cannot be used – it would not be compliant with Section 2 of the Voting Rights Act or *Stephenson*.

b. Cluster in Camden/Gates/Hertford/Pasquotank

One of the proposed multi-county single House districts in your proposed clusters is composed of Camden, Gates, Hertford, and Pasquotank Counties (Cluster “NN1” in “Duke_House_01,” “Duke_House_03,” “Duke_House_05” and “Duke_House_07”). The current district for this area, House District 5, is 44.32% BVAP using benchmark data, and Black voters have the opportunity to elect a candidate of their choice. A House district composed of Camden, Gates, Hertford, and Pasquotank Counties would be only 38.59% BVAP. Our analysis indicates that white voters are voting in bloc there and may be doing so in a way that would prevent a Black-preferred candidate from winning (and, thus, legally significant). More analysis must be done on this cluster to determine whether there is legally significant racially polarized voting, and, if so, a district composed of this county cluster might eliminate the ability of Black voters to elect a candidate of their choice and thus violate federal and state law.



IV. Conclusion

To be clear, in this letter, we are raising issues with the clusters you released on Tuesday, October 5, 2021. We can identify potential VRA issues where districts are dictated by groupings of whole counties or where, in a small 2-district cluster, we can observe voting patterns with sufficient certainty to identify a potential problem. However, we do not yet know how district lines will be drawn within counties or within multi-county, multi-district clusters. For example, we suspect that the way district lines are drawn in a Nash/Wilson House county grouping or Granville/Vance/Franklin House county grouping could be problematic. In short, this is a non-exhaustive list of concerns, particularly given the lack of draft maps at this moment. But this body should consider itself on notice for the need to perform RPV analysis in certain regions of the state and the need to examine racial data to ensure VRA compliance.

Importantly, we are not saying conclusively that VRA districts are required in the above county groupings; however, it cannot be ascertained without conducting an intensely local appraisal of voting conditions and a targeted RPV analysis, which you are required by law to undertake.²⁰ Without conducting any RPV analysis prior to grouping counties, the Legislature is departing from the requirements of the *Stephenson* criteria and may ultimately deny voters of color an equal opportunity to participate in North Carolina's elections. Therefore, by allegedly engaging in race-blind drawing, you violate not only the VRA but also *Stephenson* and our State's case precedent. It is neither appropriate nor required to draw districts race-blind. Rather, your current path ensures redistricting will once again be a tool used to harm voters of color, and we implore you to reconsider this path immediately.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Allison J. Riggs

Co-Executive Director for Programs and Chief Counsel for Voting Rights

Hilary Harris Klein

Senior Counsel, Voting Rights

Mitchell Brown

Counsel, Voting Rights

Katelin Kaiser

Counsel, Voting Rights

²⁰ *Id.*



EXHIBIT N
to
Letter from SCSJ
Attorneys to
Legislative
Defendants, Oct. 25,
2021

October 25, 2021

VIA EMAIL

To: Sen. Phil Berger
President Pro Tempore, North Carolina Senate
Rep. Tim Moore
Speaker, North Carolina House of Representatives
Sen. Daniel, Sen. Hise, and Sen. Newton
Co-Chairs, Senate Standing Committee on Redistricting and Elections
Rep. D. Hall, Chair
House Standing Committee on Redistricting
CC: Sen. Dan Blue, Senate Democratic Leader
Rep. Robert T. Reives, II, House Democratic Leader
Members, Senate Standing Committee on Redistricting and Elections
Members, House Standing Committee on Redistricting

Senators and Representatives,

It is disappointing that the State Senate map, “SST-4,” that has been drafted, and apparently will be offered to the committees, has completely ignored important racial considerations. As we raised in our October 8, 2021 letter, the rejection of all racial data in drafting these maps raises serious legal concerns that are illustrated by SST-4.

The selections from clusters that you offered on October 5, 2021 as legal options for county clustering appear to raise further concerns. There were two cluster options for the Senate district in northeastern North Carolina, both of which you asserted were legal clusters. This body appears to be poised to select the map within SST-4 that is obviously worse for Black voters, the “Z1” cluster “Duke_Senate 02.”

Even without considering racial data, it would have been painfully obvious to anyone with a passing familiarity with North Carolina’s political geography that excluding Warren, Halifax, and Martin from a cluster where the incumbent is the candidate of choice of Black voters – and herself Black – will be fatal to the ability of Black voters to continue electing their candidate of choice. We will provide you the data to confirm that.

The cluster that obviously does not interfere with the ability of Black voters to elect their candidate of choice is comprised of Warren, Halifax, Martin, Bertie, Northampton, Hertford, Gates, Camden, Currituck, and Tyrell. The Black Voting Age Population (“BVAP”) in that

About Us: The Southern Coalition for Social Justice partners with communities of color and economically disadvantaged communities in the South to defend and advance their political, social, and economic rights through the combination of legal advocacy, research, organizing, and communications.



district is 42.33%. It is a district where the Democratic candidate, in the last two presidential elections and last two gubernatorial elections, would have won. While there is racially polarized voting in these counties, collectively, using reconstituted election results, this one-district cluster would have elected the Black-preferred candidate in each of the statewide, racially contested elections we mentioned in our October 5 letter. That is, racially polarized voting is not legally significant in this cluster, and therefore, it is the obvious choice unless one wanted to undermine Black voting strength.

The cluster that the committee chair and presumably legislative leadership selected in SST-4 is comprised of Northampton, Hertford, Bertie, Gates, Perquimans, Pasquotank, Camden, Currituck, Tyrell, and Dare, and most certainly destroys the ability of Black voters to elect their candidate of choice. While Senate District 3 is not majority-Black in its current form, it is an effective crossover district that is electing the candidate of choice of Black Voters. The BVAP in District 1 (the analog to SD 3 in the current map) with the cluster you have chosen is only 29.49%. It is a district where the Republican candidate won in the last two presidential elections, the last two gubernatorial elections, and the 2020 state supreme court election. Not only is there racially polarized voting in the counties comprising this district, collectively, using reconstituted election results, this one-district cluster would not have elected the Black-preferred candidate in any of the statewide, racially contested elections we mentioned in our October 5 letter. That is, racially polarized voting is legally significant. The selection of this cluster, therefore, is inexplicable absent discriminatory intent.

This letter is being submitted as an addendum to our October 5 letter. To our understanding, none of the concerns raised in our October 5 letter have been addressed in any capacity. If the North Carolina General Assembly proceeds with the SST-4 proposed map, this body will ensure that two of the three representatives of choice of Black voters in northeastern North Carolina will not be re-elected, nor any candidate of choice of Black voters within those two districts. This extremely discriminatory result—especially in the face of the information being provided to this body—strongly suggests that such a result is intentional. Once again, we urge you to reconsider your actions and to enact a redistricting plan that is legal and fair to all voters of North Carolina.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Allison J. Riggs

Co-Executive Director for Programs and Chief Counsel for
Voting Rights

Hilary Harris Klein

Senior Counsel, Voting Rights

Mitchell Brown

Counsel, Voting Rights

Katelin Kaiser

Counsel, Voting Rights



EXHIBIT O
to
Email from Bob
Phillips, Common
Cause, to Legislative
Defendants, Oct. 26,
2021

From: Bob Phillips <bphillips@commoncause.org>
Subject: RPV Analysis for proposed SD9 and SD1 in member submitted map “SST-4”
Date: October 26, 2021 at 11:54:06 AM EDT
To: "Tim.Moore@ncleg.gov" <Tim.Moore@ncleg.gov>, "Grace.Irvin@ncleg.gov" <Grace.Irvin@ncleg.gov>, "Phil.Berger@ncleg.gov" <Phil.Berger@ncleg.gov>, "Robin.Braswell@ncleg.gov" <Robin.Braswell@ncleg.gov>, "Warren.Daniel@ncleg.gov" <Warren.Daniel@ncleg.gov>, "Andy.Perrigo@ncleg.gov" <Andy.Perrigo@ncleg.gov>, "Ralph.Hise@ncleg.gov" <Ralph.Hise@ncleg.gov>, "Susan.Fanning@ncleg.gov" <Susan.Fanning@ncleg.gov>, "Paul.Newton@ncleg.gov" <Paul.Newton@ncleg.gov>, "Andrew.Stiffel@ncleg.gov" <Andrew.Stiffel@ncleg.gov>, "Destin.Hall@ncleg.gov" <Destin.Hall@ncleg.gov>, "Lucy.Harrill@ncleg.gov" <Lucy.Harrill@ncleg.gov>, "Dan.Blue@ncleg.gov" <Dan.Blue@ncleg.gov>, "Bonnie.McNeil@ncleg.gov" <Bonnie.McNeil@ncleg.gov>, "Robert.Reives@ncleg.gov" <Robert.Reives@ncleg.gov>, "Veronica.Green@ncleg.gov" <Veronica.Green@ncleg.gov>, "Ben.Clark@ncleg.gov" <Ben.Clark@ncleg.gov>, "Michael.Johnson@ncleg.gov" <Michael.Johnson@ncleg.gov>, "Don.Davis@ncleg.gov" <Don.Davis@ncleg.gov>, "Edwin.Woodard@ncleg.gov" <Edwin.Woodard@ncleg.gov>, "Chuck.Edwards@ncleg.gov" <Chuck.Edwards@ncleg.gov>, "Heather.Millett@ncleg.gov" <Heather.Millett@ncleg.gov>, "Carl.Ford@ncleg.gov" <Carl.Ford@ncleg.gov>, "Angela.Ford@ncleg.gov" <Angela.Ford@ncleg.gov>, "Kathy.Harrington@ncleg.gov" <Kathy.Harrington@ncleg.gov>, "Lorie.Byrd@ncleg.gov" <Lorie.Byrd@ncleg.gov>, "Brent.Jackson@ncleg.gov" <Brent.Jackson@ncleg.gov>, "William.Kirkley@ncleg.gov" <William.Kirkley@ncleg.gov>, "Joyce.Krawiec@ncleg.gov" <Joyce.Krawiec@ncleg.gov>, "Debbie.Lown@ncleg.gov" <Debbie.Lown@ncleg.gov>, "Paul.Lowe@ncleg.gov" <Paul.Lowe@ncleg.gov>, "Corneisha.Mitchell@ncleg.gov" <Corneisha.Mitchell@ncleg.gov>, "Natasha.Marcus@ncleg.gov" <Natasha.Marcus@ncleg.gov>, "Jessica.Bolin@ncleg.gov" <Jessica.Bolin@ncleg.gov>, "Wiley.Nickel@ncleg.gov" <Wiley.Nickel@ncleg.gov>, "Michael.Cullen@ncleg.gov" <Michael.Cullen@ncleg.gov>, "Jim.Perry@ncleg.gov" <Jim.Perry@ncleg.gov>, "LeighAnn.Biddix@ncleg.gov" <LeighAnn.Biddix@ncleg.gov>, "Bill.Rabon@ncleg.gov" <Bill.Rabon@ncleg.gov>, "Paula.Fields@ncleg.gov" <Paula.Fields@ncleg.gov>, "William.Richardson@ncleg.gov" <William.Richardson@ncleg.gov>, "Leigh.Lawrence@ncleg.gov" <Leigh.Lawrence@ncleg.gov>, "Jason.Saine@ncleg.gov" <Jason.Saine@ncleg.gov>, "MaryStuart.Sloan@ncleg.gov" <MaryStuart.Sloan@ncleg.gov>, "John.Torbett@ncleg.gov" <John.Torbett@ncleg.gov>, "Viddia.Torbett@ncleg.gov" <Viddia.Torbett@ncleg.gov>, "Cecil.Brockman@ncleg.gov" <Cecil.Brockman@ncleg.gov>, "Matthew.Barley@ncleg.gov" <Matthew.Barley@ncleg.gov>, "Becky.Carney@ncleg.gov" <Becky.Carney@ncleg.gov>, "Beth.LeGrande@ncleg.gov" <Beth.LeGrande@ncleg.gov>, "Linda.Cooper-Suggs@ncleg.gov" <Linda.Cooper-Suggs@ncleg.gov>, "Caroline.Enloe@ncleg.gov" <Caroline.Enloe@ncleg.gov>, "Jimmy.Dixon@ncleg.gov" <Jimmy.Dixon@ncleg.gov>, "Michael.Wiggins@ncleg.gov" <Michael.Wiggins@ncleg.gov>, "Jon.Hardister@ncleg.gov" <Jon.Hardister@ncleg.gov>, "Jayne.Nelson@ncleg.gov" <Jayne.Nelson@ncleg.gov>, "Pricey.Harrison@ncleg.gov" <Pricey.Harrison@ncleg.gov>, "Mary.Lee@ncleg.gov" <Mary.Lee@ncleg.gov>, "Kelly.Hastings@ncleg.gov" <Kelly.Hastings@ncleg.gov>, "Sophia.Hastings@ncleg.gov" <Sophia.Hastings@ncleg.gov>, "Zack.Hawkins@ncleg.gov" <Zack.Hawkins@ncleg.gov>, "Anita.Wilder@ncleg.gov" <Anita.Wilder@ncleg.gov>, "Brenden.Jones@ncleg.gov" <Brenden.Jones@ncleg.gov>, "Jeff.Hauser@ncleg.gov" <Jeff.Hauser@ncleg.gov>, "Grey.Mills@ncleg.gov" <Grey.Mills@ncleg.gov>, "Mason.Barefoot@ncleg.gov" <Mason.Barefoot@ncleg.gov>, "David.Rogers@ncleg.gov" <David.Rogers@ncleg.gov>, "Misty.Rogers@ncleg.gov" <Misty.Rogers@ncleg.gov>, "John.Szoka@ncleg.gov" <John.Szoka@ncleg.gov>, "Beverly.Slagle@ncleg.gov" <Beverly.Slagle@ncleg.gov>, "Harry.Warren@ncleg.gov" <Harry.Warren@ncleg.gov>, "Cristy.Yates@ncleg.gov" <Cristy.Yates@ncleg.gov>, "Lee.Zachary@ncleg.gov" <Lee.Zachary@ncleg.gov>, "Martha.Jenkins@ncleg.gov" <Martha.Jenkins@ncleg.gov>

Subject: RPV Analysis for proposed SD9 and SD1 in member submitted map “SST-4”

Dear Senators and Representatives,

Attached are analyses of recent state-wide election results in the proposed SD9 and SD1 as drawn in the member submitted map “SST-4” that we believe are indicative of racially polarized voting in these jurisdictions. We strongly urge the House and Senate Redistricting Committees to consider this information, and to take care this redistricting cycle to ensure that House and Senate maps do not dilute the voting power of voters of color, particularly for voters in Northeast North Carolina.

RPV in SD1 in SST4 Bertie-Camden-Currituck-Dare-Gates-Hertford-Northampton-Pasquotank-Perquimans-Tyrrell (Ernestine Bazemore)

Beasley vs. Newby - NC Supreme Court 2020GEN									
	Homogeneous Precinct Analysis		Bivariate Ecological Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (0)	≥ 90% White Precincts (18)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Beasley		34.58%	90.74%	27.00%	98.71%	21.02%	95.80%	23.69%	46.55%
Newby		65.42%	9.26%	73.00%	1.86%	78.94%	4.20%	76.31%	53.45%

Holmes vs. Dobson - NC Commissioner of Labor 2020GEN									
	Homogeneous Precinct Analysis		Bivariate Ecological Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (0)	≥ 90% White Precincts (18)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Holmes		33.59%	91.96%	26.15%	98.61%	20.31%	96.41%	22.50%	46.40%
Dobson		66.41%	8.04%	73.85%	0.98%	79.73%	3.59%	77.50%	53.60%

Blue vs. Folwell - NC Treasurer 2016GEN									
	Homogeneous Precinct Analysis		Bivariate Ecological Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (1)	≥ 90% White Precincts (25)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Blue	93.86%	34.11%	93.41%	26.70%	98.79%	24.05%	97.19%	25.73%	48.07%
Folwell	6.14%	65.89%	6.59%	73.31%	0.79%	75.90%	2.81%	74.27%	51.93%

Coleman vs. Forest vs. Cole - Lt. Governor 2016GEN									
	Homogeneous Precinct Analysis		Bivariate Ecological Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (1)	≥ 90% White Precincts (25)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Coleman	93.69%	33.83%	91.15%	25.49%	98.16%	22.79%	90.05%	27.98%	46.58%
Forest	5.74%	62.71%	8.85%	74.51%	1.16%	74.73%	9.13%	70.36%	50.98%
Cole	0.56%	3.47%			0.57%	3.42%	0.82%	1.66%	2.44%

RPV in SD9 in SST-4 Greene-Wayne-Wilson (Milton "Toby" Fitch Jr.)

Beasley vs. Newby - NC Supreme Court 2020GEN									
	Homogeneous Precinct Analysis		Bivariate Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (1)	≥ 90% White Precincts (0)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Beasley	94.90%		99.31%	18.74%	98.69%	8.57%	97.28%	10.60%	48.28%
Newby	5.10%		0.69%	81.26%	1.13%	91.40%	2.72%	89.40%	51.72%

Holmes vs. Dobson - NC Commissioner of Labor 2020GEN									
	Homogeneous Precinct Analysis		Bivariate Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (1)	≥ 90% White Precincts (0)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Holmes	95.87%		100.00%	16.96%	99.11%	7.29%	97.89%	8.67%	47.68%
Dobson	4.13%		0.00%	83.04%	0.02%	92.70%	2.11%	91.33%	52.32%

Blue vs. Folwell - NC Treasurer 2016GEN									
	Homogeneous Precinct Analysis		Bivariate Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (2)	≥ 90% White Precincts (1)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Blue	96.55%	15.82%	100.00%	17.62%	99.02%	13.55%	97.40%	15.83%	48.71%
Folwell	3.45%	84.18%	0.00%	82.38%	0.84%	86.28%	2.60%	84.17%	51.29%

Coleman vs. Forest vs. Cole - Lt. Governor 2016GEN									
	Homogeneous Precinct Analysis		Bivariate Regression		King's Iterative EI		RxC EI		Percent Vote
	≥ 90% Black Precincts (2)	≥ 90% White Precincts (1)	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	Support from Black Voters	Support from White Voters	
Coleman	96.76%	13.79%	99.86%	14.28%	99.19%	9.91%	83.13%	22.97%	46.32%
Forest	2.19%	84.90%	0.14%	85.72%	0.90%	87.47%	16.19%	76.55%	51.96%
Cole	1.05%	1.31%			1.68%	1.80%	0.67%	0.48%	1.72%

EXHIBIT P
to
North Carolina
General Assembly Bill
Summary webpage for
House Bill 976 and
sub-exhibits P1-P10

House Redistricting Plan 2021/HSA-9.
2021-2022 Session

VIEW BILL DIGEST	
VIEW AVAILABLE ASSOCIATED DOCUMENTS	
VIEW AVAILABLE BILL SUMMARIES	
EDITION	FISCAL NOTE
Filed	
Edition 1	
Edition 2	
Edition 3	
Ratified	
SL 2021-175	

Last Action:	Ch. SL 2021-175 on 11/4/2021
Sponsors:	D. Hall (Primary)
Attributes:	Public; Text has changed
Counties:	No counties specifically cited
Statutes:	120 (Chapters); 120-2 (Sections)
Keywords:	CENSUS, ELECTIONS, GENERAL ASSEMBLY, MEMBERSHIP, PUBLIC, RATIFIED, REDISTRICTING, CHAPTERED

ALL ASSOCIATED DOCUMENTS
SL 2021-175
11 x 17 Map
19 x 36 Map
StatPack Report
Compactness Report
Shapefile
Block Assignment File
11 x 17 Map w Incumbents
19 x 36 Map w Incumbents
Edition 3
11 x 17 Map
19 x 36 Map
StatPack Report
Compactness Report
Shapefile
Block Assignment File
11 x 17 Map w Incumbents
19 x 36 Map w Incumbents
Edition 2
11 x 17 Map
19 x 36 Map
StatPack Report
Compactness Report
Shapefile
Block Assignment File
11 x 17 Map w Incumbents
19 x 36 Map w Incumbents

ALL VOTES									
DATE	SUBJECT	RCS#	AYE	NO	N/V	EXC.ABS.	EXC.VOTE	TOTAL	RESULT
11/4/2021 10:21 a.m.	Third Reading	[S]-502	25	21	0	4	0	46	PASS
11/4/2021 10:20	Second Reading	[S]-501	25	21	0	4	0	46	PASS

11/4/21, 11:00 PM

House Bill 976 / SL 2021-175 (2021-2022 Session) - North Carolina General Assembly

- App. 173 -

a.m.									
11/2/2021 5:30 p.m.	Third Reading	[H]-557	67	49	0	4	0	116	PASS
11/2/2021 5:29 p.m.	Second Reading	[H]-556	67	49	0	4	0	116	PASS
11/2/2021 5:28 p.m.	A3 Hall, D. Second Reading	[H]-555	116	0	0	4	0	116	PASS
11/2/2021 5:26 p.m.	A2 Reives Second Reading	[H]-554	49	67	0	4	0	116	FAIL
11/2/2021 5:18 p.m.	A1 Graham Second Reading	[H]-553	49	66	1	4	0	115	FAIL



HISTORY

DATE 	CHAMBER	ACTION	DOCUMENTS	VOTES
11/4/2021		Ch. SL 2021-175		
11/4/2021		Ratified		
11/4/2021	Senate	Ordered Enrolled		
11/4/2021	Senate	Passed 3rd Reading		PASS
11/4/2021	Senate	Passed 2nd Reading		PASS
11/3/2021	Senate	Reptd Fav		
11/2/2021	Senate	Ref To Com On Redistricting and Elections		
11/2/2021	Senate	Passed 1st Reading		
11/2/2021	Senate	Special Message Received From House		
11/2/2021	House	Special Message Sent To Senate		
11/2/2021	House	Ordered Engrossed		
11/2/2021	House	Passed 3rd Reading		PASS: 67-49
11/2/2021	House	Passed 2nd Reading		PASS: 67-49
11/2/2021	House	Amend Adopted A3	A3: AST-72-V-2 BD: Scanned Document	PASS: 116-0
11/2/2021	House	Amend Failed A2	A2: ABW-24-V-3 BD: Scanned Document	FAIL: 49-67
11/2/2021	House	Amend Failed A1	A1: ABW-23-V-2 BD: Scanned Document	FAIL: 49-66
11/1/2021	House	Placed On Cal For 11/02/2021		
11/1/2021	House	Cal Pursuant Rule 36(b)		
11/1/2021	House	Reptd Fav Com Substitute	CS: PCS30485-ST-37	
11/1/2021	House	Serial Referral To Rules, Calendar, and Operations of the House Stricken		
10/28/2021	House	Serial Referral To Rules, Calendar, and Operations of the House Added		
10/28/2021	House	Ref To Com On Redistricting		
10/28/2021	House	Passed 1st Reading		
10/28/2021	House	Filed	DRAFT: DRH40668-ST-51	

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

H.B. 976
Oct 28, 2021
HOUSE PRINCIPAL CLERK

H**D**

HOUSE BILL DRH40668-ST-51

Short Title: House Redistricting Plan 2021. (Public)

Sponsors: Representative D. Hall.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO REALIGN NORTH CAROLINA HOUSE OF REPRESENTATIVES DISTRICTS
FOLLOWING THE RETURN OF THE 2020 FEDERAL DECENNIAL CENSUS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-2(a) through (c) are rewritten to read:

"(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in 2022 and periodically thereafter, the State of North Carolina shall be divided into the following districts with each district electing one Representative:

District 1:

(b) The names and boundaries of voting tabulation districts and blocks specified in this section are as shown on the Census Redistricting Data P.L. 94-171 TIGER/Line Shapefiles associated with the most recent federal decennial census.

(c) If any voting tabulation district boundary is changed, that change shall not change the boundary of a House district, which shall remain the same as it is depicted by the Census Redistricting Data P.L. 94-171 TIGER/Line Shapefiles associated with the most recent federal decennial census."

SECTION 2. This act is effective when it becomes law and applies to elections held on or after January 1, 2022.



* D R H 4 0 6 6 8 - S T - 5 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

D

HOUSE BILL 976
PROPOSED COMMITTEE SUBSTITUTE H976-PCS30485-ST-37

Short Title: House Redistricting Plan 2021/HBK-14. (Public)

Sponsors:

Referred to:

October 28, 2021

A BILL TO BE ENTITLED
AN ACT TO REALIGN NORTH CAROLINA HOUSE OF REPRESENTATIVES DISTRICTS
FOLLOWING THE RETURN OF THE 2020 FEDERAL DECENNIAL CENSUS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-2(a) through (c) are rewritten to read:

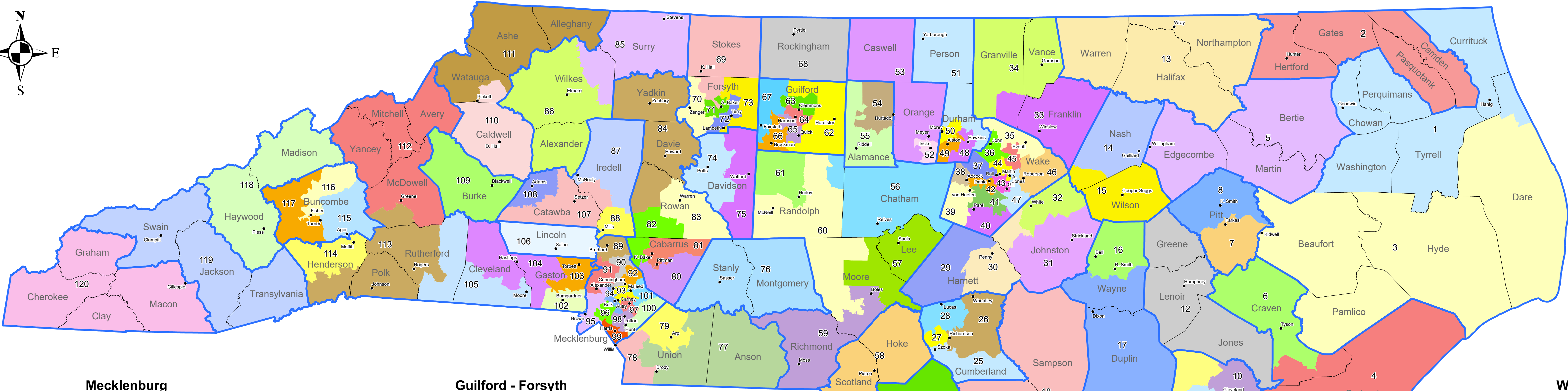
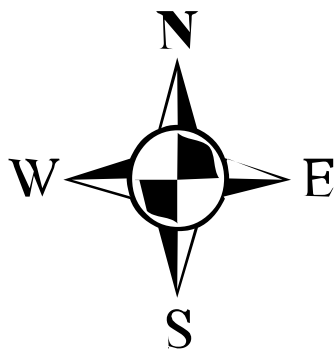
"(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in 2022 and periodically thereafter, the State of North Carolina shall be divided into the following districts with each district electing one Representative:

District 1: Chowan County, Currituck County, Dare County: VTD DUCK, VTD KDH: Block(s)
0559702001005, 0559702001006, 0559702001007, 0559702001008, 0559702001009,
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* H 9 7 6 - P C S 3 0 4 8 5 - S T - 3 7 *

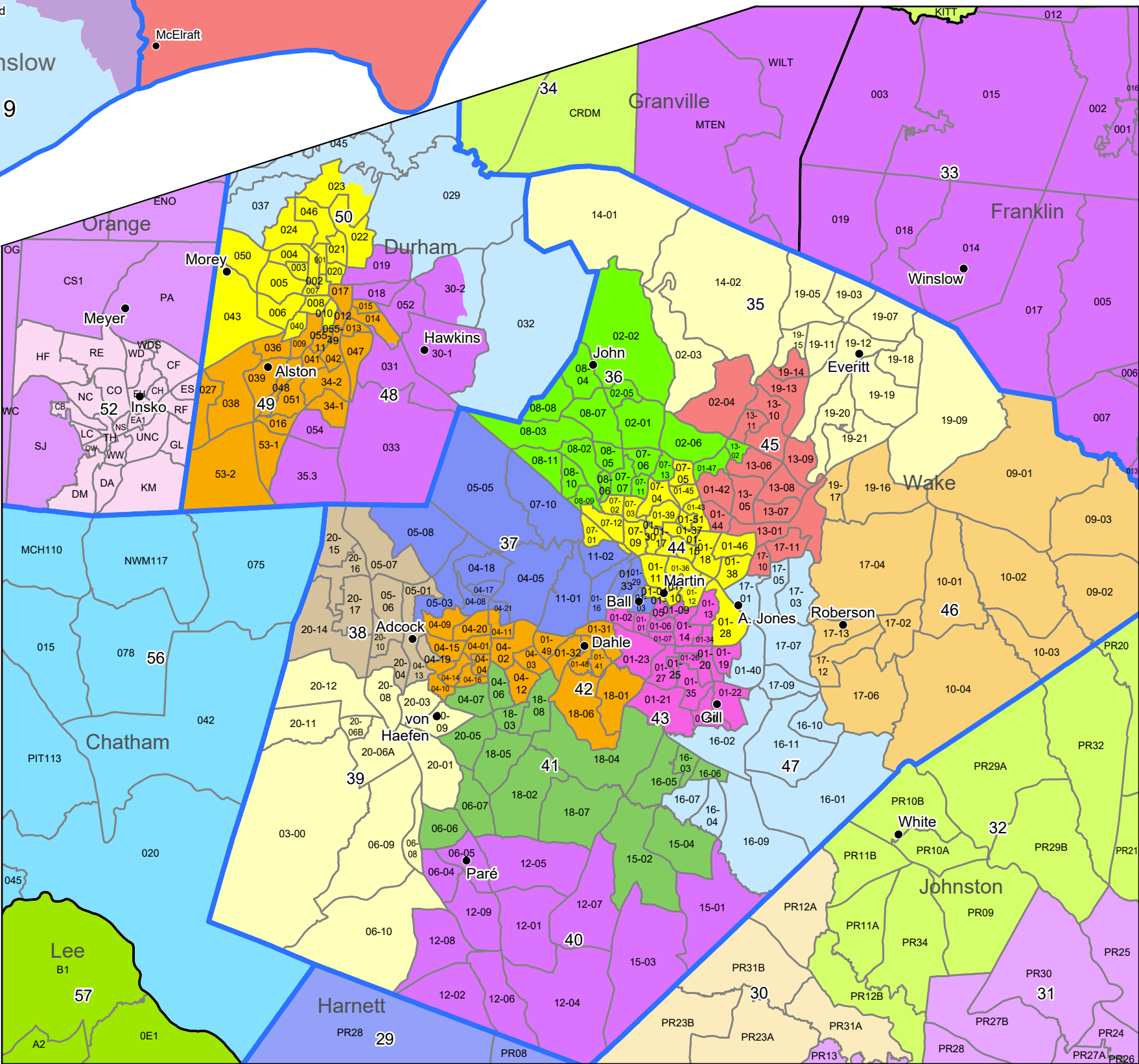
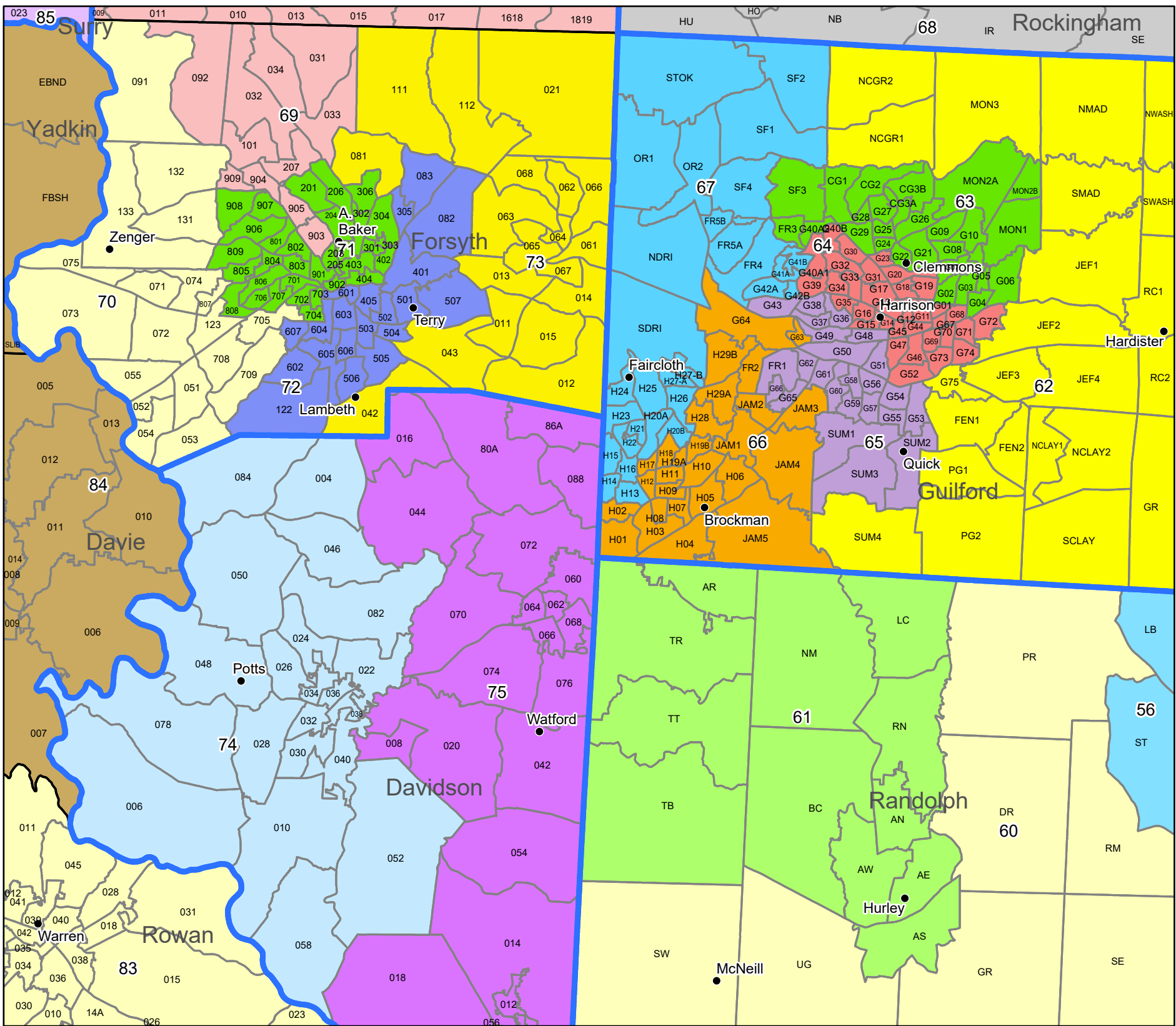
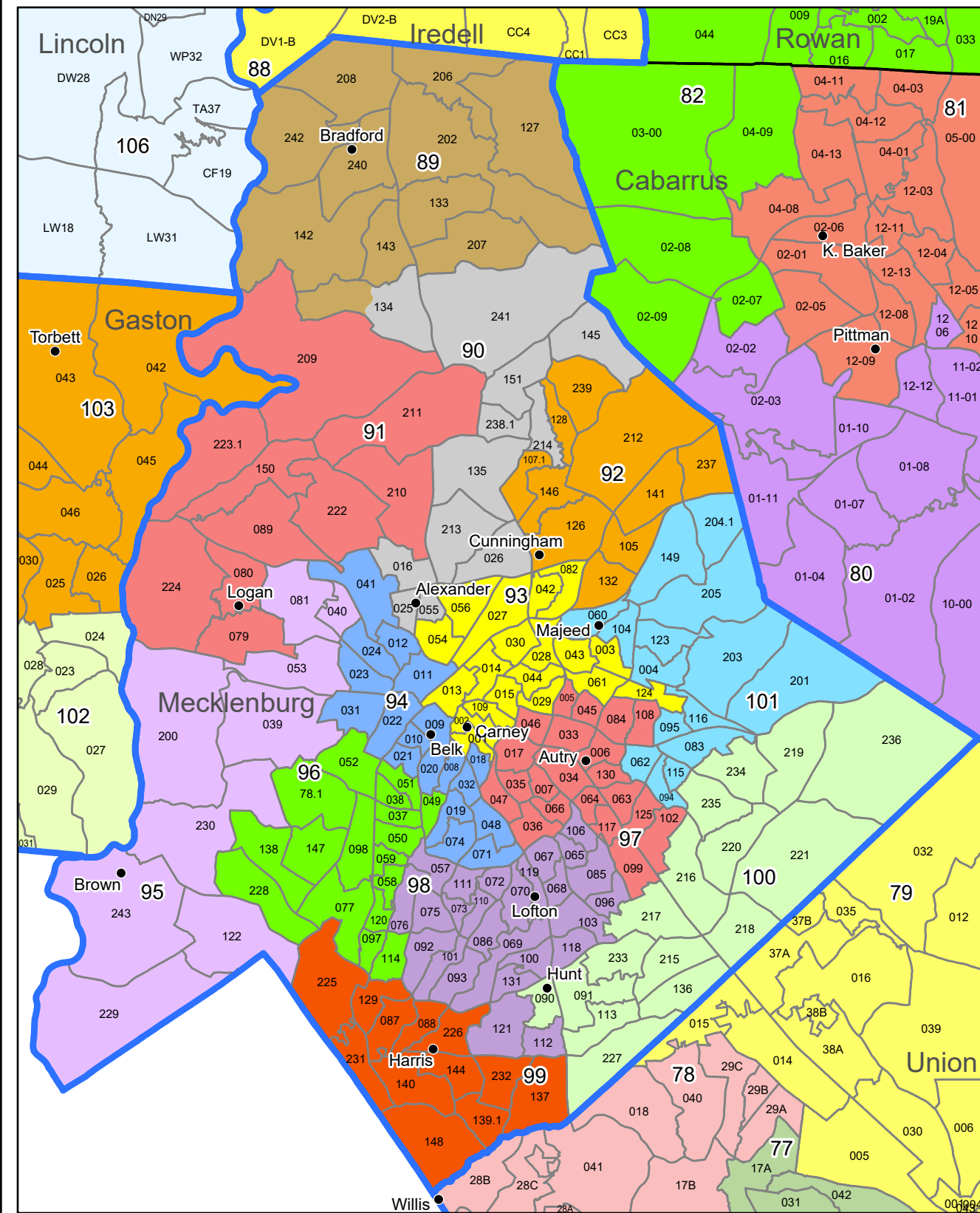
H976, 2nd Edition



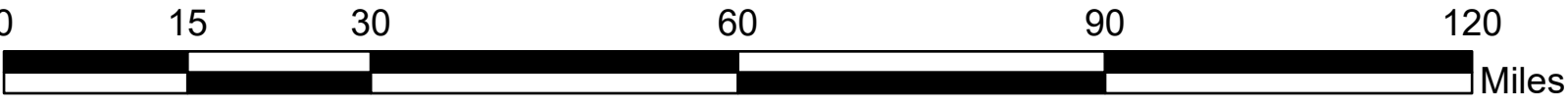
Mecklenburg

Guilford - Forsyth

Wake - Durham



- Incumbents
- ▭ Groupings
- ▭ Counties
- ▭ District



FAILED



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 976**

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

H976-ABW-23 [v.2]

Page 1 of 1

Amends Title [NO]
Second Edition

Date _____, 2021

Representative Graham

- 1 moves to amend the bill on page 5, lines 42-48, by rewriting the lines to read:
2 **"District 23:** Columbus County, Robeson County: VTD 003, VTD 008, VTD 009, VTD 010,
3 VTD 020, VTD 021, VTD 033, VTD 036, VTD 037, VTD 040, VTD 041, VTD 32A.
4 **District 24:** Robeson County: VTD 001, VTD 002, VTD 004, VTD 007, VTD 011, VTD 012,
5 VTD 013, VTD 014, VTD 015, VTD 016, VTD 017, VTD 019, VTD 022, VTD 023, VTD
6 024, VTD 025, VTD 028, VTD 029, VTD 030, VTD 034, VTD 035, VTD 038, VTD 039,
7 VTD 05A, VTD 11A, VTD 18A, VTD 26A.".

SIGNED _____
Amendment Sponsor

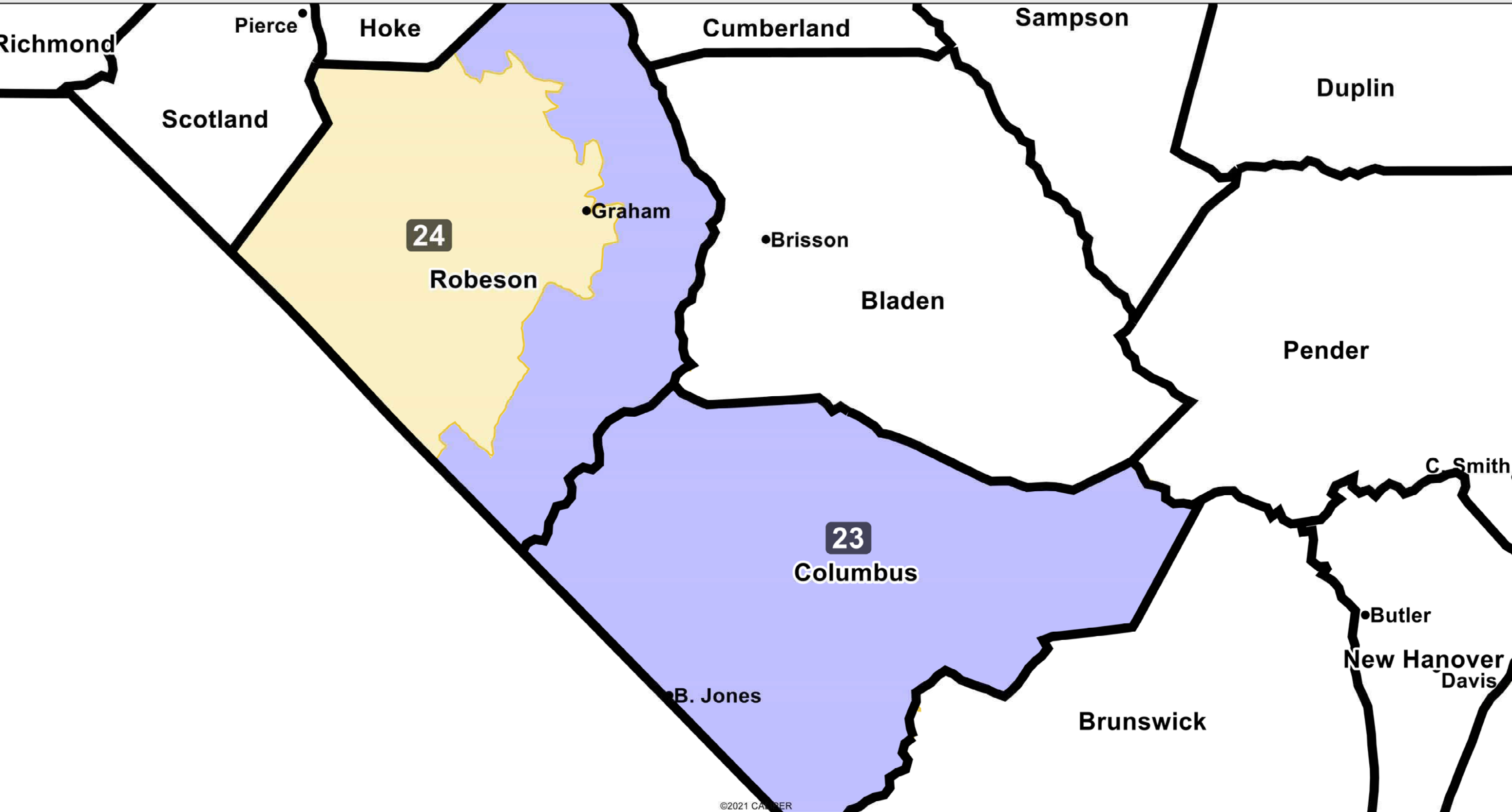
SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

**The official copy of this document, with signatures
and vote information, is available in the
House Principal Clerk's Office**



* H 9 7 6 - A B W - 2 3 - V - 2 *



Description:

FAILED



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 976**

AMENDMENT NO. **A2**

(to be filled in by
Principal Clerk)

H976-ABW-24 [v.3]

Page 1 of 1

Amends Title [NO]
Second Edition

Date _____, 2021

Representative Reives

1 moves to amend the bill on page 4, lines 43-49, by rewriting the lines to read:

2 **"District 9:** Onslow County: VTD BM08, VTD EN03, VTD JA01, VTD NE22A, VTD NR02,
3 VTD WN04.

4 **District 10:** Onslow County: VTD BC21, VTD CL10, VTD CR07, VTD GB12, VTD HM05,
5 VTD HU20, VTD ML23, VTD MT24, VTD NE22B, VTD NM13, VTD RL09, VTD SW19,
6 VTD TL06.

7 **District 11:** Onslow County: VTD FS16, VTD HN14, VTD HR17, VTD SF18, VTD VR15;
8 Pender County.

9 **District 12:** Greene County: VTD BEAR, VTD BULL, VTD CAST, VTD MAUR, VTD WALS;
10 Lenoir County: VTD C, VTD SH, VTD SW, VTD W; Wayne County: VTD 001, VTD 002,
11 VTD 003, VTD 004, VTD 005, VTD 008, VTD 009, VTD 014, VTD 015, VTD 016, VTD
12 024, VTD 028, VTD 2530.";

13
14 and on page 5, lines 6-30, by rewriting the lines to read:

15 **"District 16:** Greene County: VTD ARBA, VTD HOOK, VTD SH1, VTD SHIN, VTD SUGG;
16 Lenoir County: VTD I, VTD K1, VTD K2, VTD K3, VTD K5, VTD K6, VTD K7, VTD K8,
17 VTD K9, VTD V; Wayne County: VTD 006, VTD 007, VTD 010, VTD 011, VTD 012, VTD
18 013, VTD 017, VTD 018, VTD 021, VTD 022, VTD 023, VTD 026, VTD 027, VTD 029,
19 VTD 1920.

20 **District 17:** Duplin County, Jones County, Lenoir County: VTD FC, VTD K4, VTD MH, VTD
21 N, VTD PH1, VTD PH2, VTD T1, VTD T2.

22 **District 18:** Bladen County, Sampson County.".

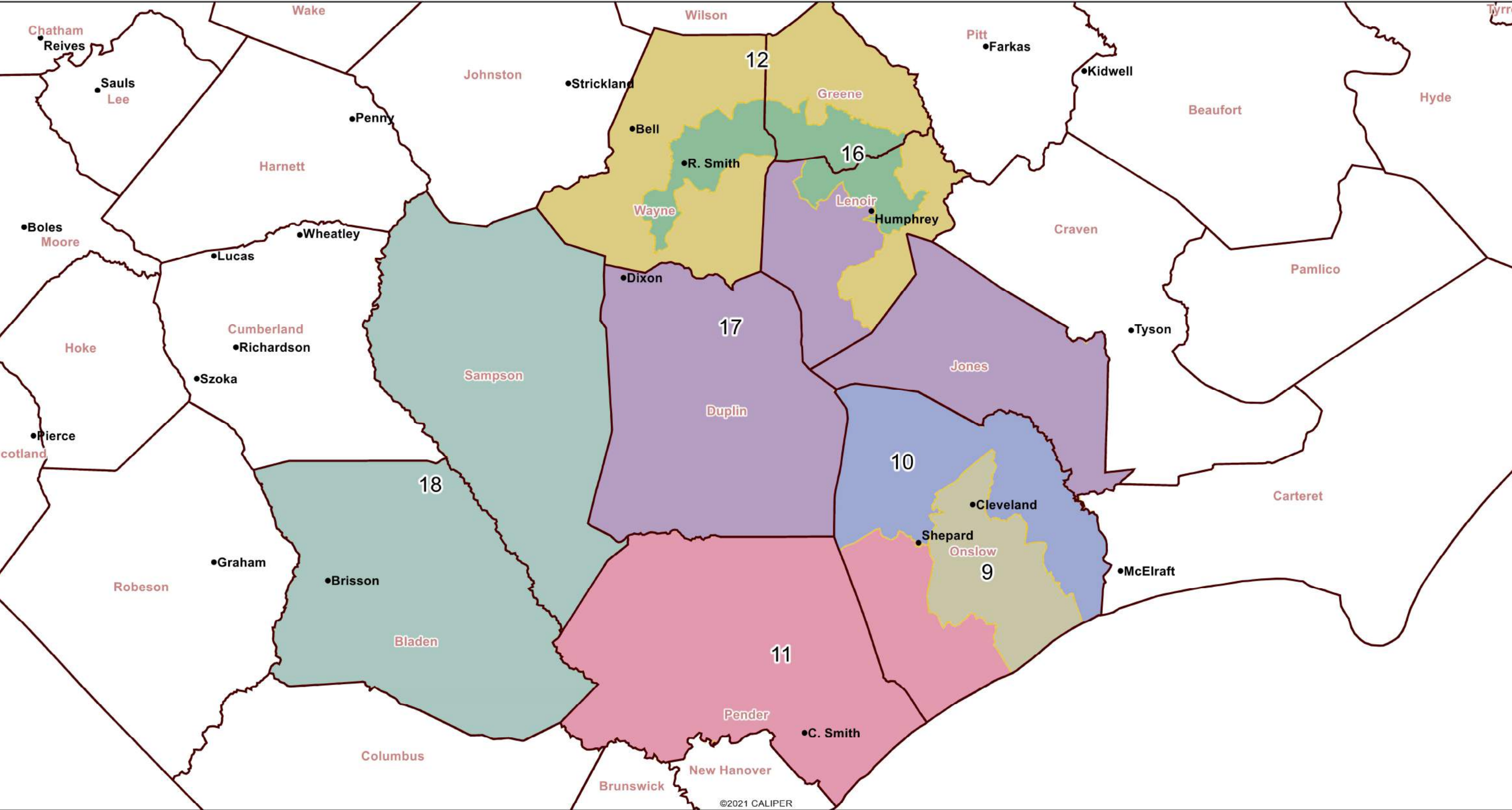
SIGNED _____

Amendment Sponsor

**The official copy of this document, with signatures
and vote information, is available in the
House Principal Clerk's Office**



* H 9 7 6 - A B W - 2 4 - V - 3 *



Description:

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 976

AMENDMENT NO. A3
(to be filled in by
Principal Clerk)

H976-AST-72 [v.2]

Page 1 of 15

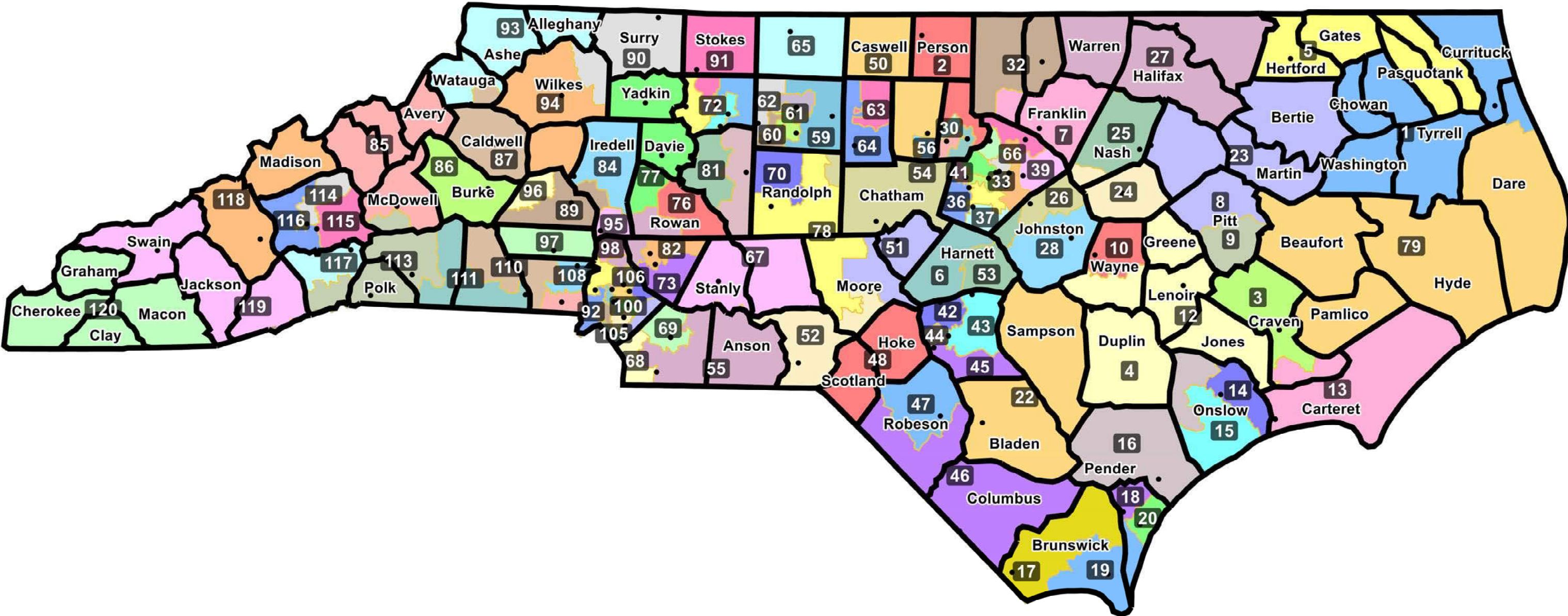
Amends Title [NO] Date _____,2021
Second Edition

Representative D. Hall

moves to amend the bill on page 1, line 9, through page 13, line 19, by rewriting those lines to read:

"District 1: Chowan County, Currituck County, Dare County: VTD DUCK, VTD KDH:
Block(s) 0559702001005, 0559702001006, 0559702001007, 0559702001008,
0559702001009, 0559702001010, 0559702001011, 0559702001012, 0559702001013,
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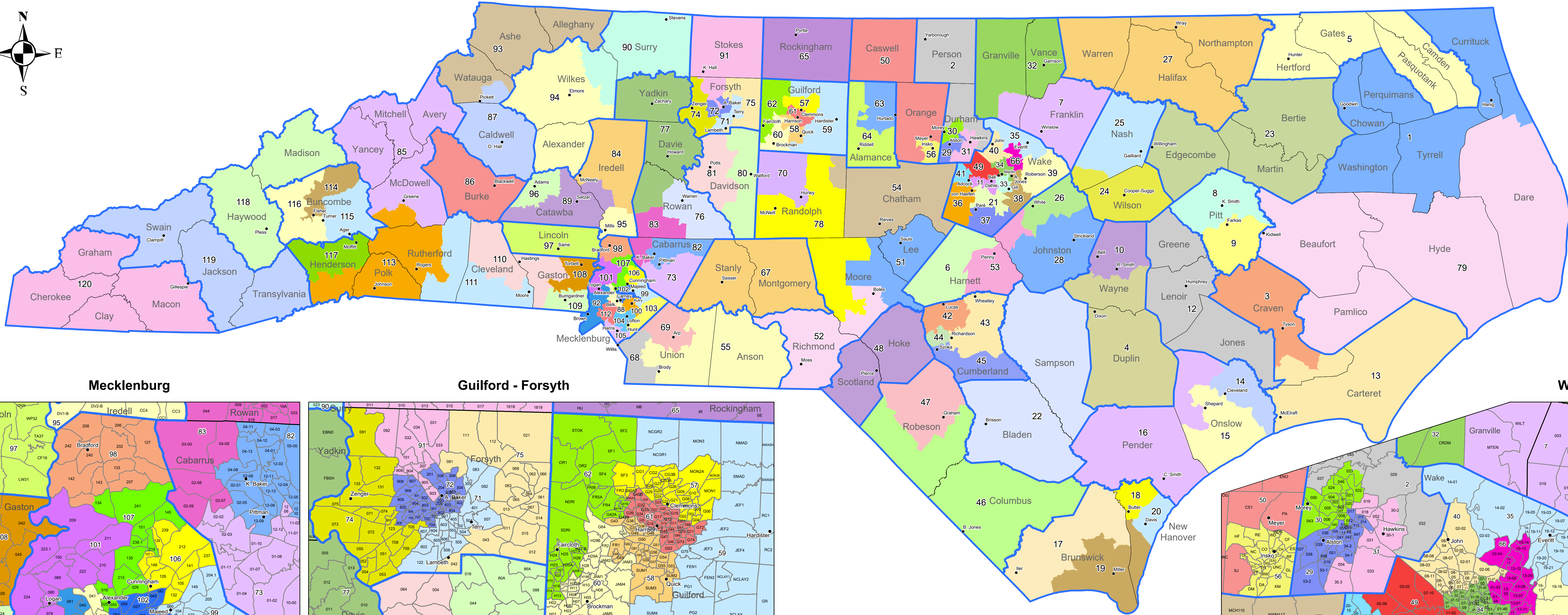
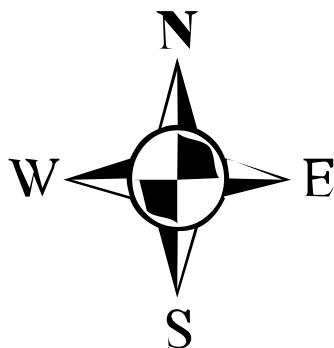




©2021 CALIPER

Description:

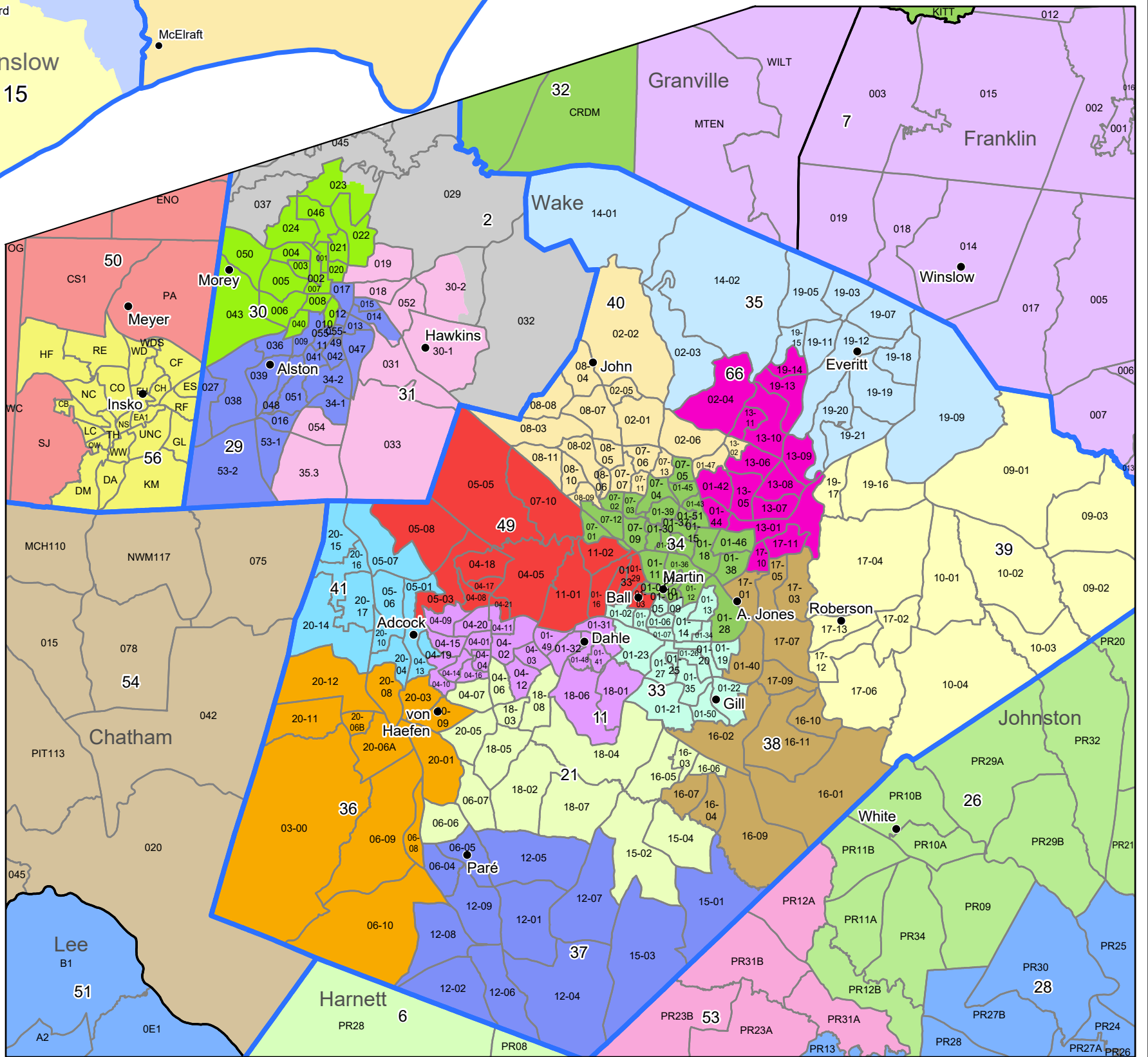
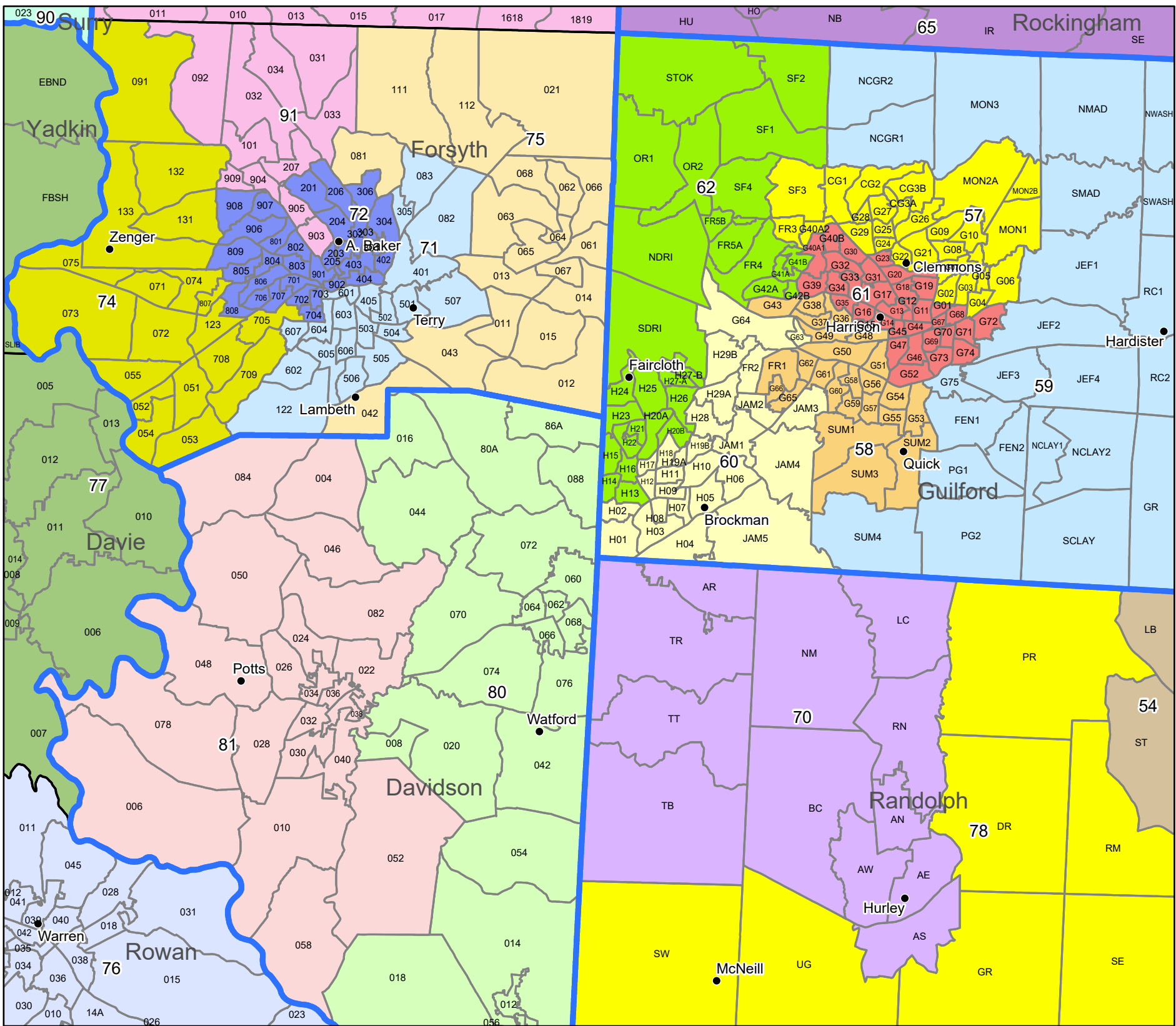
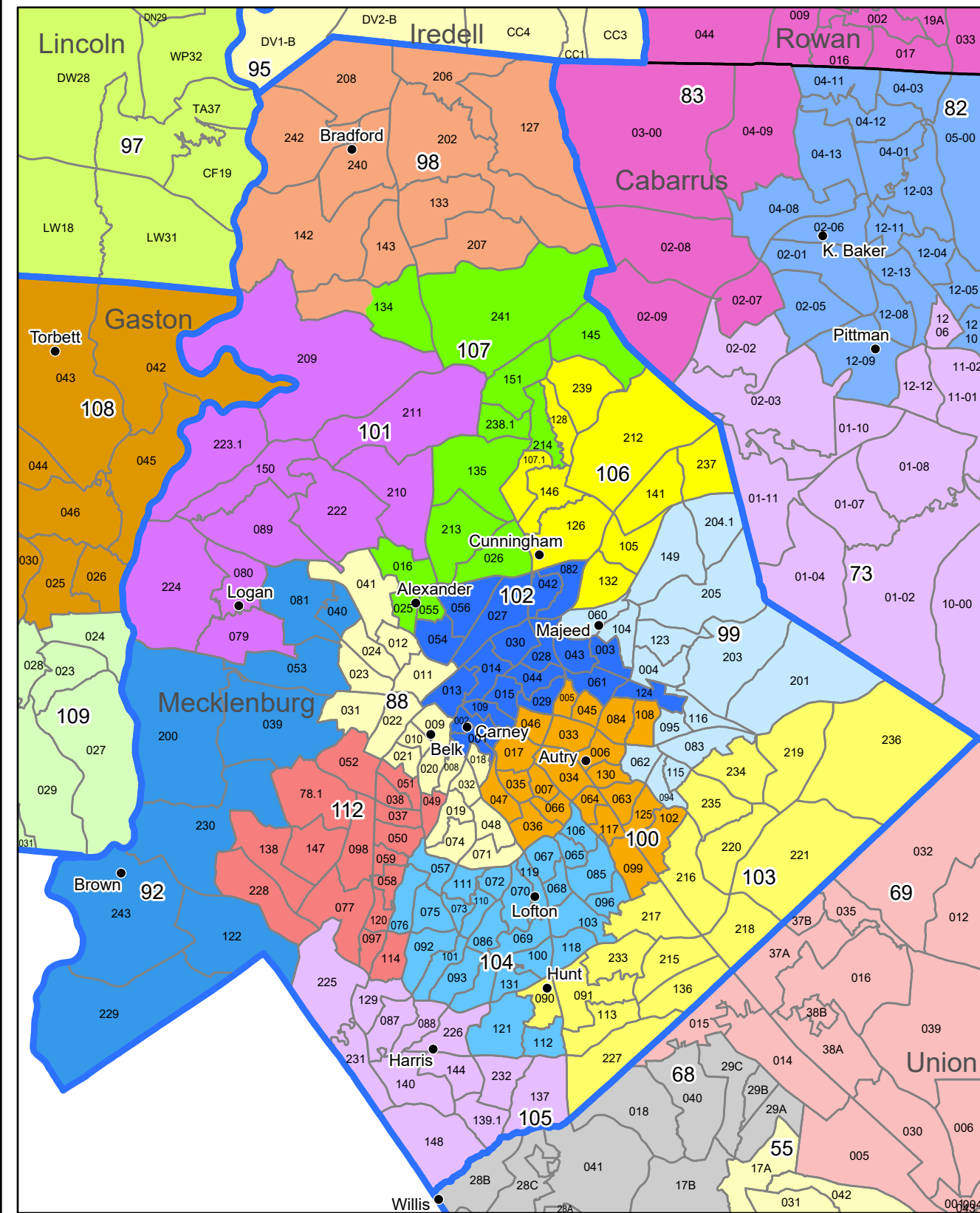
H976, 3rd Edition



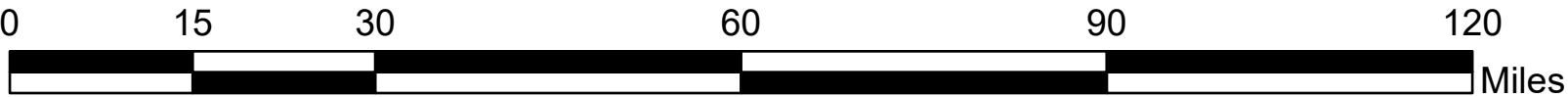
Mecklenburg

Guilford - Forsyth

Wake - Durham



- Incumbents
- ▭ Groupings
- ▭ Counties
- ▭ District



HOUSE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #557

2021-2022 Session

HB 976: House Redistricting Plan 2021/HBK-14.

Vote: Third Reading

Roll Call #557 Outcome: PASS Sponsor: D. HALL Time: 11/2/2021 5:30 p.m.	Total votes: 116 Noes: 49 Excused Absence: 4	Ayes: 67 Not Voting: 0 Excused Vote: 0
Ayes (Democrat) None	Ayes (Republican) Adams; Arp; K. Baker; Bell; Blackwell; Boles; Bradford; Brisson; Brody; Clampitt; Cleveland; Davis; Dixon; Elmore; Faircloth; Gillespie; Goodwin; Greene; D. Hall; K. Hall; Hanig; Hardister; Hastings; Howard; Humphrey; Hurley; Iler; J. Johnson; B. Jones; Kidwell; Lambeth; Loftis; McElraft; McNeely; McNeill; Miller; Mills; Moffitt; Moore (Speaker); Moss; Paré; Penny; Pickett; Pittman; Pless; Potts; Pyrtle; Riddell; Rogers; Saine; Sasser; Setzer; Shepard; C. Smith; Strickland; Szoka; Torbett; Tyson; Warren; Watford; Wheatley; White; Willis; Winslow; Yarborough; Zachary; Zenger	
Noes (Democrat) Adcock; Ager; Alexander; Alston; Autry; A. Baker; Ball; Belk; Brockman; Brown; Butler; Carney; Clemmons; Cooper-Suggs; Cunningham; Dahle; Everitt; Farkas; Fisher; Gailliard; Garrison; Gill; Graham; Harris; Harrison; Hawkins; Hunt; Hunter; Hurtado; John; A. Jones; Lofton; Logan; Lucas; Majeed; Meyer; Morey; Pierce; Quick; Reives; Richardson; Roberson; K. Smith; R. Smith; Terry; Turner; von Haefen; Willingham; Wray	Noes (Republican) None	
Excused Absence (Democrat) Insko; Martin	Excused Absence (Republican) Sauls; Stevens	

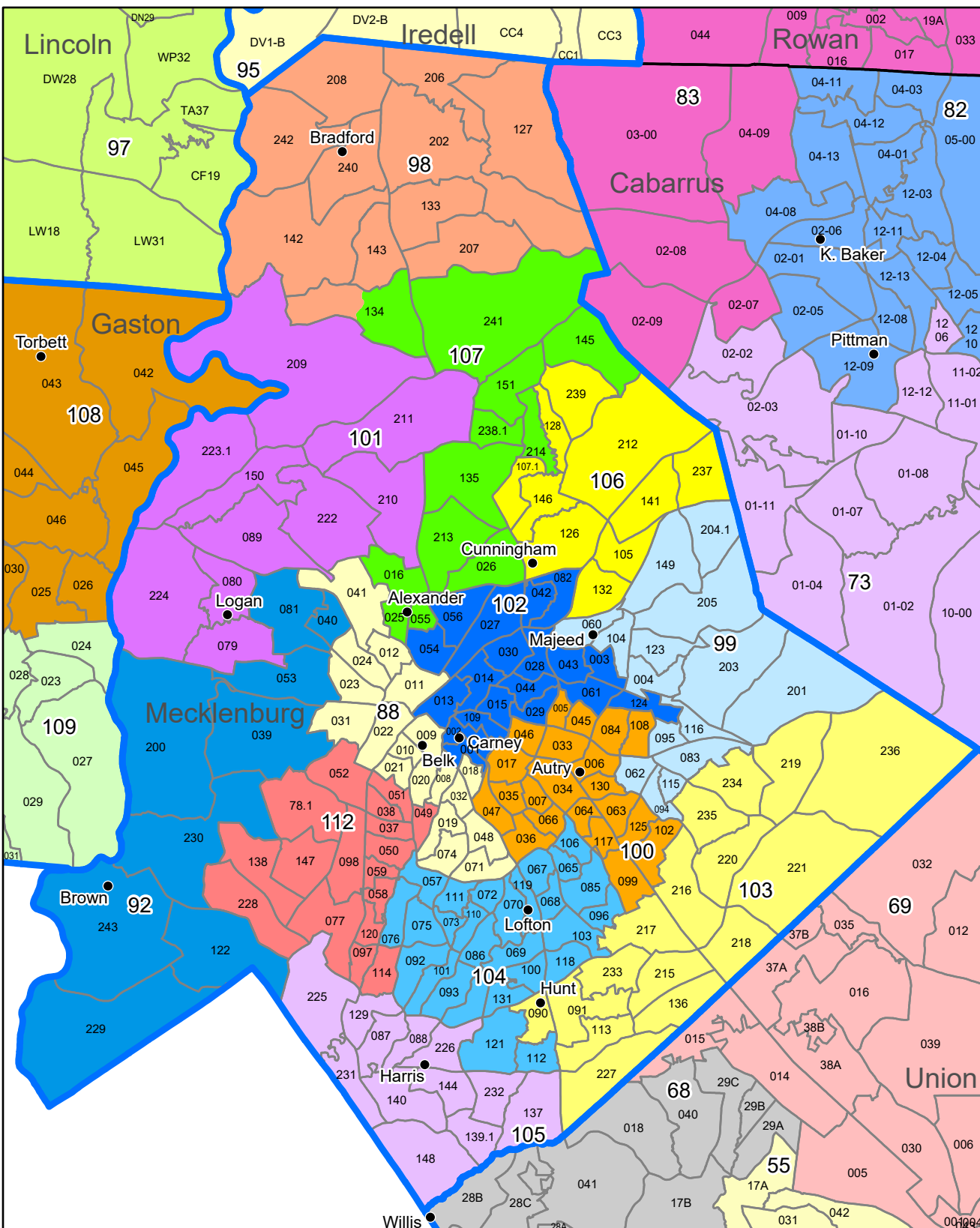
SENATE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #502

2021-2022 Session

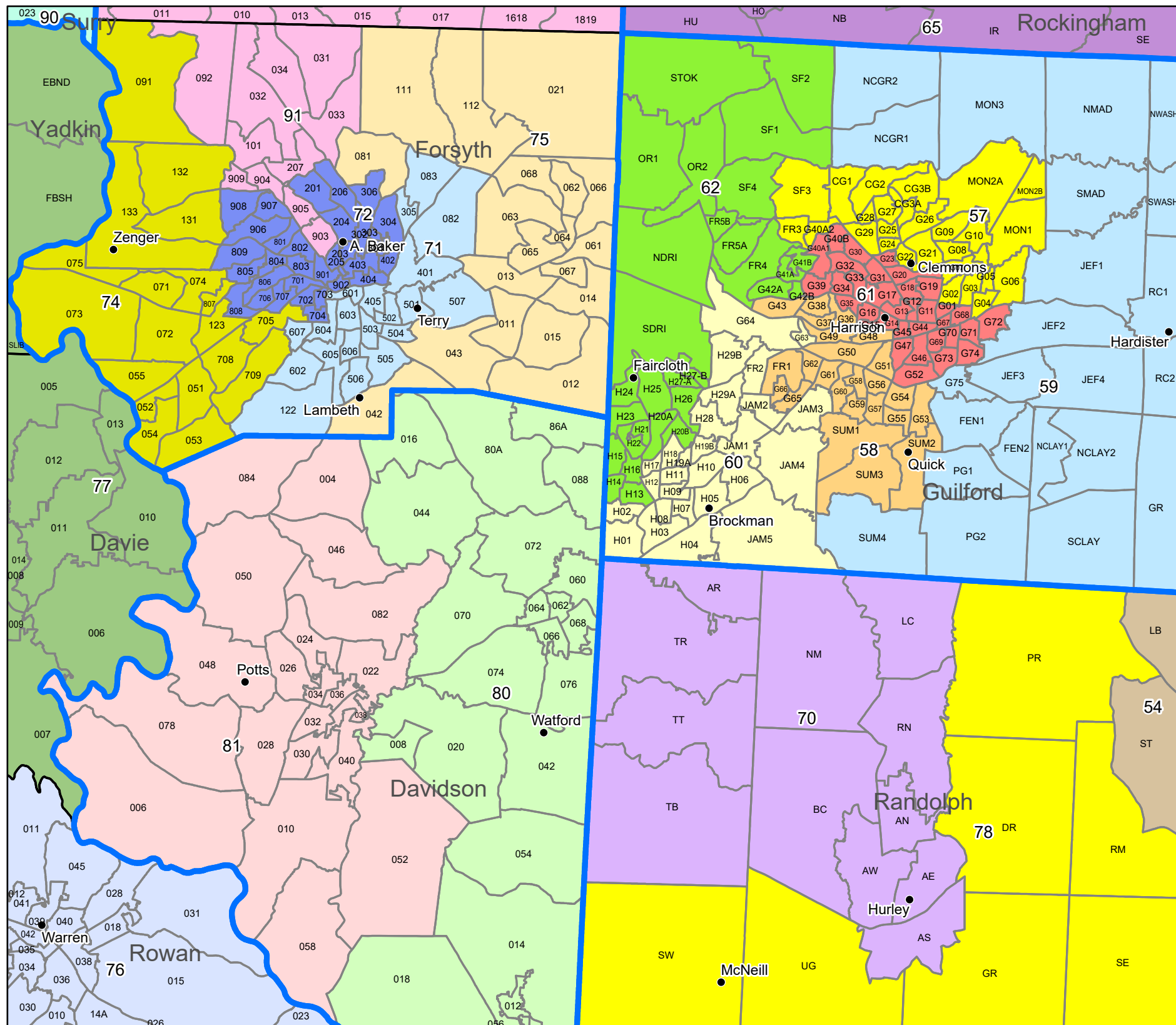
HB 976: House Redistricting Plan 2021/HSA-9.

Vote: Third Reading

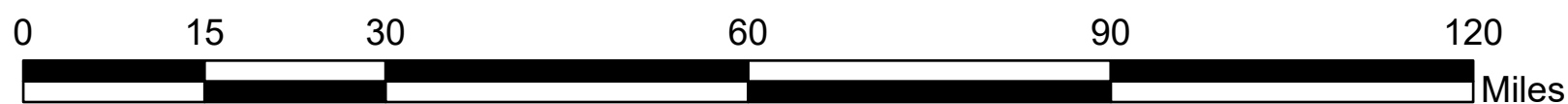
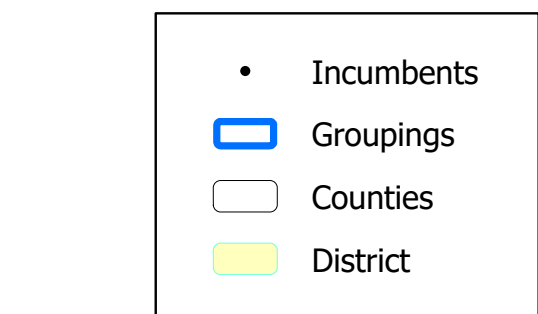
Roll Call #502 Outcome: PASS Sponsor: D. HALL Time: 11/4/2021 10:21 a.m.	Total votes: 46 Noes: 21 Excused Absence: 4	Ayes: 25 Not Voting: 0 Excused Vote: 0
Ayes (Democrat) None	Ayes (Republican) T. Alexander; Ballard; Barnes; Burgin; Corbin; Craven; Daniel; Edwards; Ford; Galey; Harrington; Hise; B. Jackson; Jarvis; Johnson; Krawiec; Lazzara; Lee; McInnis; Newton; Perry; Proctor; Sanderson; Sawyer; Steinburg	
Noes (Democrat) Batch; Bazemore; Blue; Chaudhuri; Clark; Crawford; D. Davis; deViere; Fitch; Foushee; Garrett; J. Jackson; Lowe; Marcus; Mayfield; Mohammed; Nickel; Robinson; Salvador; Waddell; Woodard	Noes (Republican) None	
Excused Absence (Democrat) Murdock	Excused Absence (Republican) Berger; Britt; Rabon	



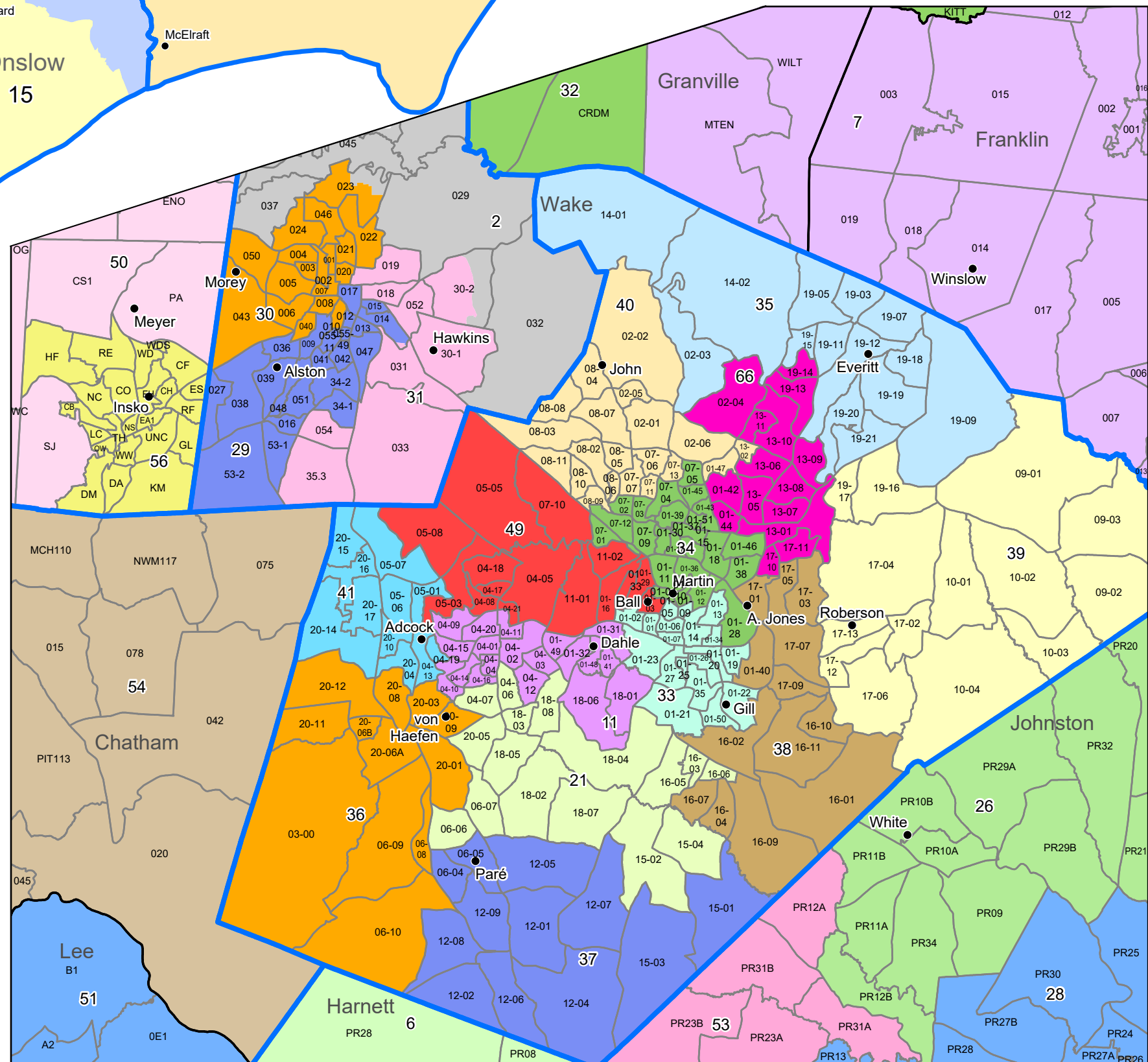
Mecklenburg



Guilford - Forsyth



NC General Assembly, November 4, 2021.



Wake - Durham

EXHIBIT S
to
North Carolina
General Assembly Bill
Summary webpage for
Senate Bill 739 and
sub-exhibits S1 to S15

S738

Senate Bill 739 / SL 2021-173

Senate Redistricting Plan 2021/SBK-7.
2021-2022 Session

VIEW BILL DIGEST	
VIEW AVAILABLE ASSOCIATED DOCUMENTS	
VIEW AVAILABLE BILL SUMMARIES	
EDITION	FISCAL NOTE
Filed	
Edition 1	
Edition 2	
Ratified	
SL 2021-173	

Last Action:	Ch. SL 2021-173 on 11/4/2021
Sponsors:	Hise; Daniel; Newton (Primary)
Attributes:	Public; Text has changed
Counties:	No counties specifically cited
Statutes:	120 (Chapters); 120-1 (Sections)
Keywords:	CENSUS, ELECTIONS, GENERAL ASSEMBLY, MEMBERSHIP, PUBLIC, RATIFIED, REDISTRICTING, CHAPTERED

ALL ASSOCIATED DOCUMENTS
SL 2021-173
11 x 17 Map
19 x 36 Map
StatPack Report
Compactness Report
Shapefile
Block Assignment File
11 x 17 Map w Incumbents
19 x 36 Map w Incumbents
Edition 2
11 x 17 Map
19 x 36 Map
StatPack Report
Compactness Report
Shapefile
Block Assignment File
11 x 17 Map w Incumbents
19 x 36 Map w Incumbents
Edition 1
11 x 17 Map
19 x 36 Map
StatPack Report
Compactness Report
Shapefile
Block Assignment File
11 x 17 Map w Incumbents
19 x 36 Map w Incumbents

ALL VOTES									
DATE	SUBJECT	RCS#	AYE	NO	N/V	EXC.ABS.	EXC.VOTE	TOTAL	RESULT
11/4/2021 11:13 a.m.	Third Reading	[H]-56 4	65	49	0	6	0	114	PASS
11/4/2021 11:12 a.m.	Second Reading	[H]-56 3	64	48	2	6	0	112	PASS

11/3/2021 10:47 a.m.	Second Reading	[S]-498	26	19	0	5	0	45	PASS
11/3/2021 10:47 a.m.	Third Reading	[S]-499	26	19	0	5	0	45	PASS
11/3/2021 10:46 a.m.	Amendment 8 Motion 1 To Table	[S]-497	26	19	0	5	0	45	PASS
11/3/2021 10:42 a.m.	Amendment 7 Motion 1 To Table	[S]-496	26	19	0	5	0	45	PASS
11/3/2021 10:39 a.m.	Amendment 6 Motion 1 To Table	[S]-495	26	19	0	5	0	45	PASS
11/3/2021 10:36 a.m.	Amendment 5 Motion 1 To Table	[S]-494	26	19	0	5	0	45	PASS
11/3/2021 10:32 a.m.	Amendment 4 Motion 1 To Table	[S]-493	26	20	0	4	0	46	PASS
11/3/2021 10:28 a.m.	Amendment 3 Motion 1 To Table	[S]-492	26	20	0	4	0	46	PASS
11/3/2021 10:24 a.m.	Amendment 2 Motion 1 To Table	[S]-491	26	20	0	4	0	46	PASS
11/3/2021 10:20 a.m.	Amendment 1 Motion 1 To Table	[S]-490	26	20	0	4	0	46	PASS

HISTORY				
DATE	CHAMBER	ACTION	DOCUMENTS	VOTES
11/4/2021		Ch. SL 2021-173		
11/4/2021		Ratified		
11/4/2021	House	Ordered Enrolled		
11/4/2021	House	Passed 3rd Reading		PASS: 65-49
11/4/2021	House	Passed 2nd Reading		PASS: 64-48
11/3/2021	House	Placed On Cal For 11/04/2021		
11/3/2021	House	Cal Pursuant Rule 36(b)		
11/3/2021	House	Reptd Fav		
11/3/2021	House	Ref To Com On Redistricting		
11/3/2021	House	Passed 1st Reading		
11/3/2021	House	Special Message Received From Senate		
11/3/2021	Senate	Special Message Sent To House		
11/3/2021	Senate	Passed 3rd Reading		PASS: 26-19
11/3/2021	Senate	Passed 2nd Reading		PASS: 26-19
11/3/2021	Senate	Amend Tabled A8	A8: Scanned Document	PASS: 26-19
11/3/2021	Senate	Amend Tabled A7	A7: Scanned Document	PASS: 26-19
11/3/2021	Senate	Amend Tabled A6	A6: Scanned Document	PASS: 26-19
11/3/2021	Senate	Amend Tabled A5	A5: Scanned Document	PASS: 26-19
11/3/2021	Senate	Amend Tabled A4	A4: Scanned Document	PASS: 26-20
11/3/2021	Senate	Amend Tabled A3	A3: Scanned Document	PASS: 26-20
11/3/2021	Senate	Amend Tabled A2	A2: Scanned Document	PASS: 26-20
11/3/2021	Senate	Amend Tabled A1	A1: Scanned Document	PASS: 26-20
11/2/2021	Senate	Com Substitute Adopted		
11/2/2021	Senate	Reptd Fav Com Substitute	CS: PCS15347-ST-38	
11/1/2021	Senate	Ref To Com On Redistricting and Elections		
11/1/2021	Senate	Passed 1st Reading		
10/29/2021	Senate	Filed	DRAFT: DRS15344-CH-11	

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**FILED SENATE
Oct 29, 2021
S.B. 739
PRINCIPAL CLERK**

S**D**

SENATE BILL DRS15344-CH-11

Short Title: Senate Redistricting Plan 2021 - SST-13.

(Public)

Sponsors: Senators Hise, Daniel, and Newton (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REALIGN THE DISTRICTS OF THE NORTH CAROLINA STATE SENATE
FOLLOWING THE RETURN OF THE 2020 FEDERAL DECENNIAL CENSUS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-1(a), (b), and (c) are rewritten to read:

"(a) For the purpose of nominating and electing members of the Senate in 2022 and periodically thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts so that each district elects one senator, and the composition of each district is as follows:

District 1: Bertie County, Camden County, Currituck County, Dare County, Gates County, Hertford County, Northampton County, Pasquotank County, Perquimans County, Tyrrell County.

District 2: Carteret County, Chowan County, Halifax County, Hyde County, Martin County, Pamlico County, Warren County, Washington County.

District 3: Beaufort County, Craven County, Lenoir County.

District 4: Greene County, Wayne County, Wilson County.

District 5: Edgecombe County, Pitt County.

District 6: Onslow County.

District 7: New Hanover County: VTD CF02, VTD CF05, VTD FP03, VTD FP04, VTD FP06, VTD FP07, VTD FP08, VTD H02, VTD H03, VTD H04, VTD H05, VTD H06, VTD H08, VTD H10, VTD H11, VTD H12, VTD H13, VTD M02, VTD M03, VTD M04, VTD M06, VTD M07, VTD W03, VTD W08, VTD W12, VTD W13, VTD W15, VTD W16, VTD W17, VTD W18, VTD W21, VTD W24, VTD W25, VTD W26, VTD W27, VTD W28, VTD W29, VTD W30, VTD W31, VTD WB.

District 8: Brunswick County, Columbus County, New Hanover County: VTD CF01, VTD CF06, VTD H01.

District 9: Bladen County, Duplin County, Jones County, Pender County, Sampson County: VTD AUTR, VTD CLCE, VTD CLEA, VTD CLEM, VTD CLNE, VTD CLSW, VTD CLWE, VTD GARL, VTD GIDD, VTD HARR, VTD HERR, VTD INGO, VTD KEEN, VTD KFRK, VTD LAKE, VTD MING: Block(s) 1639703021000, 1639703021001, 1639703021002, 1639703021003, 1639703021004, 1639703021005, 1639703021006, 1639703021007, 1639703021008, 1639703021009, 1639703021010, 1639703021011, 1639703021012, 1639703021013, 1639703021014, 1639703021015, 1639703021016, 1639703021017, 1639703021018, 1639703021019, 1639703021020, 1639703021021, 1639703021022, 1639703021023, 1639703021024, 1639703021025, 1639703021026, 1639703021027, 1639703021028, 1639703021029, 1639703021030, 1639703021031,



* D R S 1 5 3 4 4 - C H - 1 1 *

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

S

D

**SENATE BILL 739
PROPOSED COMMITTEE SUBSTITUTE S739-PCS15347-ST-38**

Short Title: Senate Redistricting Plan 2021/SBK-7.

(Public)

Sponsors:

Referred to:

November 1, 2021

A BILL TO BE ENTITLED
AN ACT TO REALIGN THE DISTRICTS OF THE NORTH CAROLINA STATE SENATE
FOLLOWING THE RETURN OF THE 2020 FEDERAL DECENNIAL CENSUS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-1(a), (b), and (c) are rewritten to read:

"(a) For the purpose of nominating and electing members of the Senate in 2022 and periodically thereafter, senatorial districts are established and seats in the Senate are apportioned among those districts so that each district elects one senator, and the composition of each district is as follows:

District 1: Bertie County, Camden County, Currituck County, Dare County, Gates County, Hertford County, Northampton County, Pasquotank County, Perquimans County, Tyrrell County.

District 2: Carteret County, Chowan County, Halifax County, Hyde County, Martin County, Pamlico County, Warren County, Washington County.

District 3: Beaufort County, Craven County, Lenoir County.

District 4: Greene County, Wayne County, Wilson County.

District 5: Edgecombe County, Pitt County.

District 6: Onslow County.

District 7: New Hanover County: VTD CF02, VTD CF05, VTD FP03, VTD FP04, VTD FP06, VTD FP07, VTD FP08, VTD H02, VTD H03, VTD H04, VTD H05, VTD H06, VTD H08, VTD H10, VTD H11, VTD H12, VTD H13, VTD M02, VTD M03, VTD M04, VTD M06, VTD M07, VTD W03, VTD W08, VTD W12, VTD W13, VTD W15, VTD W16, VTD W17, VTD W18, VTD W21, VTD W24, VTD W25, VTD W26, VTD W27, VTD W28, VTD W29, VTD W30, VTD W31, VTD WB.

District 8: Brunswick County, Columbus County, New Hanover County: VTD CF01, VTD CF06, VTD H01.

District 9: Bladen County, Duplin County, Jones County, Pender County, Sampson County: VTD AUTR, VTD CLCE, VTD CLEA, VTD CLEM, VTD CLNE, VTD CLSW, VTD CLWE, VTD GARL, VTD GIDD, VTD HARR, VTD HERR, VTD INGO, VTD KEEN, VTD KFRK, VTD LAKE, VTD MING: Block(s) 1639703021000, 1639703021001, 1639703021002, 1639703021003, 1639703021004, 1639703021005, 1639703021006, 1639703021007, 1639703021008, 1639703021009, 1639703021010, 1639703021011, 1639703021012, 1639703021013, 1639703021014, 1639703021015, 1639703021016, 1639703021017, 1639703021018, 1639703021019, 1639703021020, 1639703021021, 1639703021022, 1639703021023, 1639703021024, 1639703021025, 1639703021026, 1639703021027, 1639703021028, 1639703021029, 1639703021030, 1639703021031,



TABLED



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 739**

A2

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S739-ABW-25 [v.1]

Page 1 of 1

Amends Title [NO]
Second Edition

Date _____, 2021

Senator Blue

1 moves to amend the bill on page 1, lines 16-17, by rewriting the lines to read:

2 **"District 4:** Greene County, Nash County: VTD P01A, VTD P02A, VTD P03A, VTD P04A,
3 VTD P05A, VTD P06A, VTD P07A, VTD P08A; Wayne County, Wilson County: VTD
4 PRBL, VTD PRCR, VTD PROL, VTD PRSP, VTD PRTA, VTD PRWD, VTD PRWJ, VTD
5 PRWK, VTD PRWL, VTD PRWM, VTD PRWP.

6 **District 5:** Edgecombe County: VTD 1001, VTD 101, VTD 102, VTD 103, VTD 104, VTD
7 1101, VTD 1202, VTD 1203, VTD 1301, VTD 1401, VTD 201, VTD 301, VTD 401, VTD
8 501, VTD 601, VTD 701, VTD 801, VTD 901; Pitt County.";

10 and on page 2, line 24, by rewriting the line to read:

11 **"District 11:** Edgecombe County: VTD 1201, VTD 1204, VTD 1205; Franklin County, Nash
12 County: VTD P09A, VTD P10A, VTD P11A, VTD P12A, VTD P13A, VTD P14A, VTD
13 P15A, VTD P16A, VTD P17A, VTD P18A, VTD P19A, VTD P20A, VTD P21A, VTD
14 P22A, VTD P23A, VTD P24A; Vance County, Wilson County: VTD PRGA, VTD PRSA,
15 VTD PRST, VTD PRTO, VTD PRWA, VTD PRWB, VTD PRWC, VTD PRWE, VTD
16 PRWH, VTD PRWI, VTD PRWN, VTD PRWQ, VTD PRWR.".

SIGNED

 A large, stylized blue ink signature of the Amendment Sponsor.

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



* S 7 3 9 - A B W - 2 5 - V - 1 *

TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 739

AMENDMENT NO. **A3**
(to be filled in by
Principal Clerk)

S739-ATU-45 [v.1]

Page 1 of 2

Amends Title [NO]
Second Edition

Date _____, 2021

Senator **Chaudhuri**

moves to amend the bill on page 2, line 33 through page 6, line 43, by rewriting the lines to read:
"District 13: Granville County, Wake County: VTD 01-47, VTD 02-01, VTD 02-02, VTD 02-03, VTD 02-04, VTD 02-05, VTD 02-06, VTD 08-04, VTD 08-07, VTD 08-08, VTD 13-02, VTD 13-09, VTD 13-10, VTD 13-11, VTD 14-01, VTD 14-02, VTD 19-03, VTD 19-05, VTD 19-07, VTD 19-11, VTD 19-12, VTD 19-13, VTD 19-14, VTD 19-15, VTD 19-18, VTD 19-20, VTD 19-21.

District 14: Wake County: VTD 01-13, VTD 01-14, VTD 01-19, VTD 01-20, VTD 01-22, VTD 01-25, VTD 01-26, VTD 01-27, VTD 01-28, VTD 01-34, VTD 01-35, VTD 01-40, VTD 01-50, VTD 15-01, VTD 15-02, VTD 15-04, VTD 16-01, VTD 16-02, VTD 16-03, VTD 16-04, VTD 16-05, VTD 16-06, VTD 16-07, VTD 16-09, VTD 16-10, VTD 16-11, VTD 17-01, VTD 17-02, VTD 17-03, VTD 17-05, VTD 17-06, VTD 17-07, VTD 17-09, VTD 17-11, VTD 17-12, VTD 17-13.

District 15: Wake County: VTD 01-01, VTD 01-02, VTD 01-03, VTD 01-04, VTD 01-05, VTD 01-06, VTD 01-07, VTD 01-16, VTD 01-21, VTD 01-23, VTD 01-29, VTD 01-31, VTD 01-32, VTD 01-33, VTD 01-41, VTD 01-48, VTD 01-49, VTD 04-03, VTD 04-12, VTD 07-01, VTD 11-01, VTD 11-02, VTD 12-01, VTD 12-04, VTD 12-05, VTD 12-07, VTD 15-03, VTD 18-01, VTD 18-02, VTD 18-03, VTD 18-04, VTD 18-05, VTD 18-06, VTD 18-07, VTD 18-08.

District 16: Wake County: VTD 04-01, VTD 04-02, VTD 04-04, VTD 04-05, VTD 04-06, VTD 04-07, VTD 04-08, VTD 04-09, VTD 04-10, VTD 04-11, VTD 04-13, VTD 04-14, VTD 04-15, VTD 04-16, VTD 04-17, VTD 04-18, VTD 04-19, VTD 04-20, VTD 04-21, VTD 05-01, VTD 05-03, VTD 05-05, VTD 05-06, VTD 05-07, VTD 05-08, VTD 07-06, VTD 07-07, VTD 07-10, VTD 07-12, VTD 07-13, VTD 08-02, VTD 08-03, VTD 08-05, VTD 08-06, VTD 08-09, VTD 08-10, VTD 08-11, VTD 20-10.

District 17: Wake County: VTD 03-00, VTD 06-04, VTD 06-05, VTD 06-06, VTD 06-07, VTD 06-08, VTD 06-09, VTD 06-10, VTD 12-02, VTD 12-06, VTD 12-08, VTD 12-09, VTD 20-01, VTD 20-03, VTD 20-04, VTD 20-05, VTD 20-06A, VTD 20-06B, VTD 20-08, VTD 20-09, VTD 20-11, VTD 20-12, VTD 20-14, VTD 20-15, VTD 20-16, VTD 20-17.

District 18: Wake County: VTD 01-09, VTD 01-10, VTD 01-11, VTD 01-12, VTD 01-15, VTD 01-17, VTD 01-18, VTD 01-30, VTD 01-36, VTD 01-37, VTD 01-38, VTD 01-39, VTD 01-42, VTD 01-43, VTD 01-44, VTD 01-45, VTD 01-46, VTD 01-51, VTD 07-02, VTD 07-03, VTD 07-04, VTD 07-05, VTD 07-09, VTD 07-11, VTD 09-01, VTD 09-02, VTD 09-03,



NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 739

TABLED

AMENDMENT NO. _____

A3

(to be filled in by
Principal Clerk)

S739-ATU-45 [v.1]

Page 2 of 2

- 1 VTD 10-01, VTD 10-02, VTD 10-03, VTD 10-04, VTD 13-01, VTD 13-05, VTD 13-06,
- 2 VTD 13-07, VTD 13-08, VTD 17-04, VTD 17-10, VTD 19-09, VTD 19-16, VTD 19-17,
- 3 VTD 19-19."

SIGNED _____



Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

TABLED

- App. 1995
NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 739

A4

AMENDMENT NO. _____

(to be filled in by
Principal Clerk)

S739-ATU-46 [v.1]

Page 1 of 3

Amends Title [NO]
Second Edition

Date _____, 2021

Senator _____

1 moves to amend the bill on page 2, line 33 through page 6, line 43, by rewriting the lines to read:
 2 **"District 13:** Granville County, Wake County: VTD 01-17, VTD 01-18, VTD 01-37, VTD 01-
 3 39, VTD 01-42, VTD 01-43, VTD 01-45, VTD 01-47, VTD 01-51, VTD 02-01, VTD 02-02,
 4 VTD 02-03, VTD 02-04, VTD 02-05, VTD 02-06, VTD 07-01, VTD 07-02, VTD 07-03,
 5 VTD 07-04, VTD 07-05, VTD 07-06, VTD 07-07, VTD 07-09, VTD 07-11, VTD 07-12,
 6 VTD 07-13, VTD 08-04, VTD 08-05, VTD 08-06, VTD 08-07, VTD 08-08, VTD 08-09,
 7 VTD 11-02, VTD 13-02, VTD 13-11, VTD 14-01, VTD 14-02.

8 **District 14:** Wake County: VTD 01-22, VTD 01-40, VTD 01-50, VTD 09-02, VTD 09-03, VTD
 9 10-01, VTD 10-02, VTD 10-03, VTD 10-04, VTD 15-01, VTD 15-02, VTD 15-03, VTD 15-
 10 04, VTD 16-01, VTD 16-02, VTD 16-03, VTD 16-04, VTD 16-05, VTD 16-06, VTD 16-07,
 11 VTD 16-09, VTD 16-10, VTD 16-11, VTD 17-02, VTD 17-03, VTD 17-04, VTD 17-06,
 12 VTD 17-07, VTD 17-09, VTD 17-12, VTD 17-13, VTD 18-04: Block(s) 1830530091006,
 13 1830530091009, 1830530091010, 1830530091011, 1830530091012, 1830530091013,
 14 1830530091014, 1830530091015, 1830530091016, 1830530091017, 1830530091018,
 15 1830530091019, 1830530091020, 1830530091021, 1830530091022, 1830530091023,
 16 1830530091024, 1830530091025, 1830530091026, 1830530091027, 1830530091028,
 17 1830530091029, 1830530091030, 1830530091031, 1830530091032, 1830530091033,
 18 1830530091036, 1830530093000, 1830530093001, 1830530093012, 1830545011023.

19 **District 15:** Wake County: VTD 01-01, VTD 01-02, VTD 01-03, VTD 01-04, VTD 01-05, VTD
 20 01-06, VTD 01-07, VTD 01-09, VTD 01-10, VTD 01-11, VTD 01-14, VTD 01-15, VTD 01-
 21 16, VTD 01-19, VTD 01-20, VTD 01-21, VTD 01-23, VTD 01-25, VTD 01-26, VTD 01-27,
 22 VTD 01-29, VTD 01-30, VTD 01-31, VTD 01-32, VTD 01-33, VTD 01-34, VTD 01-35,
 23 VTD 01-36, VTD 01-41, VTD 01-48, VTD 01-49, VTD 04-02, VTD 04-03, VTD 04-06,
 24 VTD 04-11, VTD 04-12, VTD 11-01, VTD 18-01, VTD 18-02, VTD 18-03, VTD 18-04:
 25 Block(s) 1830530071000, 1830530071001, 1830530071002, 1830530071011,
 26 1830530071012, 1830530071013, 1830530072000, 1830530072001, 1830530072002,
 27 1830530072003, 1830530073000, 1830530073001, 1830530073002, 1830530091000,
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 29 1830530091007, 1830530091008, 1830530091034, 1830530091035, 1830530091037,
 30 1830530093002, 1830530093003, 1830530101012, 1830530101013, 1830530102000,
 31 1830530102001, 1830530102002, 1830530102003, 1830530102004, 1830530102005,
 32 1830530102006; VTD 18-05, VTD 18-06, VTD 18-07: Block(s) 1830530061000,



* S 7 3 9 - A T U - 4 6 - V - 1 *

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 739

TABLED

AMENDMENT NO. **A4**

(to be filled in by
Principal Clerk)

S739-ATU-46 [v.1]

Page 2 of 3

1 1830530061001, 1830530061002, 1830530061003, 1830530061004, 1830530061005,
2 1830530061006, 1830530063002, 1830530063003, 1830530103004, 1830530103005; VTD
3 18-08.
4 **District 16:** Wake County: VTD 04-01, VTD 04-04, VTD 04-05, VTD 04-07, VTD 04-08, VTD
5 04-09, VTD 04-10, VTD 04-13: Block(s) 1830534241000, 1830534241001, 1830534241002,
6 1830534241003, 1830534241004, 1830534241005, 1830534241006, 1830534241007,
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10 1830534242011, 1830534242012, 1830534242014, 1830534242015, 1830534242016,
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14 1830534251006, 1830534251007, 1830534251008, 1830534251009, 1830534251010,
15 1830534251011; VTD 04-14, VTD 04-15, VTD 04-16, VTD 04-17, VTD 04-18, VTD 04-19,
16 VTD 04-20, VTD 04-21, VTD 05-01, VTD 05-03, VTD 05-05, VTD 05-06, VTD 05-07,
17 VTD 05-08, VTD 07-10, VTD 08-02, VTD 08-03, VTD 08-10, VTD 08-11, VTD 20-10,
18 VTD 20-14: Block(s) 1830534101000, 1830534101001, 1830534101002, 1830534101003,
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33 1830534102023, 1830534102024, 1830534102025, 1830534102026, 1830534111063,
34 1830534111064, 1830534111065, 1830534111068, 1830534111069, 1830534111070,
35 1830534111071, 1830534111072, 1830534111073, 1830534111074, 1830534111075,
36 1830534111076, 1830534111077, 1830534111079, 1830534111085, 1830534111086,
37 1830534111087, 1830534111088, 1830534111089, 1830534111090, 1830534111091,
38 1830534111092, 1830534111093, 1830534111094, 1830534111095, 1830534111096,
39 1830534111097, 1830534111098, 1830534111099, 1830534111100, 1830534111101,
40 1830534111102, 1830534111103, 1830534111104, 1830534111105, 1830534111106,
41 1830534111107, 1830534111108, 1830534111109, 1830534111110, 1830534111111,
42 1830534111112, 1830534111113, 1830534111114, 1830534111115, 1830534111116,
43 1830534111118, 1830534111119, 1830534111134, 1830534111135, 1830534111136,

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 739

TABLED

AMENDMENT NO. _____

A4

(to be filled in by
Principal Clerk)

S739-ATU-46 [v.1]

Page 3 of 3

1 1830534112019, 1830534112027, 1830534112028, 1830534112030, 1830534112031,
2 1830534112032, 1830534112033, 1830534112034, 1830534112035, 1830534112036,
3 1830534112037, 1830534112038, 1830534112039, 1830534112040, 1830534113016,
4 1830534261000, 1830534261001, 1830534261002, 1830534261003, 1830534261004,
5 1830534261005, 1830534261006, 1830534261007, 1830534261008, 1830534261009,
6 1830534261010, 1830534261011, 1830534261012, 1830534261013, 1830534261014,
7 1830534261015, 1830534261016, 1830534261017, 1830534261018, 1830534261019,
8 1830534261020, 1830534261021, 1830534261030, 1830534261042, 1830534261043,
9 1830534261044, 1830534261045, 1830534261046, 1830534261047; VTD 20-15, VTD 20-
10 16, VTD 20-17.
11 **District 17:** Wake County: VTD 03-00, VTD 04-13: Block(s) 1830534242013, 1830534242025,
12 1830534242026, 1830534242027, 1830534242028, 1830534242029, 1830534242033,
13 1830534242034, 1830534242036, 1830534242039; VTD 06-04, VTD 06-05, VTD 06-06,
14 VTD 06-07, VTD 06-08, VTD 06-09, VTD 06-10, VTD 12-01, VTD 12-02, VTD 12-04,
15 VTD 12-05, VTD 12-06, VTD 12-07, VTD 12-08, VTD 12-09, VTD 18-07: Block(s)
16 1830530093004, 1830530093005, 1830530093006, 1830530093007, 1830530093008,
17 1830530093009, 1830530093010, 1830530093011, 1830530093013, 1830530103000,
18 1830530103001, 1830530103002, 1830530103003, 1830530103006, 1830530103007,
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22 1830531112014, 1830531112015, 1830531112016, 1830531112017, 1830531112018,
23 1830531112019, 1830531112020, 1830531112021, 1830531112022, 1830531112023,
24 1830531112024, 1830531112025, 1830531112026; VTD 20-01, VTD 20-03, VTD 20-04,
25 VTD 20-05, VTD 20-06A, VTD 20-06B, VTD 20-08, VTD 20-09, VTD 20-11, VTD 20-12,
26 VTD 20-14: Block(s) 1830534261048.
27 **District 18:** Wake County: VTD 01-12, VTD 01-13, VTD 01-28, VTD 01-38, VTD 01-44, VTD
28 01-46, VTD 09-01, VTD 13-01, VTD 13-05, VTD 13-06, VTD 13-07, VTD 13-08, VTD 13-
29 09, VTD 13-10, VTD 17-01, VTD 17-05, VTD 17-10, VTD 17-11, VTD 19-03, VTD 19-05,
30 VTD 19-07, VTD 19-09, VTD 19-11, VTD 19-12, VTD 19-13, VTD 19-14, VTD 19-15,
31 VTD 19-16, VTD 19-17, VTD 19-18, VTD 19-19, VTD 19-20, VTD 19-21."

SIGNED _____

Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

TABLED

**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 739**

AMENDMENT NO. **A5**
(to be filled in by
Principal Clerk)

S739-ABA-47 [v.1]

Page 1 of 1

Amends Title [NO]
Second Edition

Date _____, 2021

Senator **Blue**

moves to amend the bill on page 6, line 44, through page 7, line 2, by rewriting those lines to read:

"District 19: Cumberland County: VTD AL51, VTD CC01, VTD CC03, VTD CC04, VTD CC05, VTD CC06, VTD CC07, VTD CC08, VTD CC10, VTD CC12, VTD CC13, VTD CC14, VTD CC15, VTD CC16, VTD CC17, VTD CC18, VTD CC19, VTD CC21, VTD CC24, VTD CC26, VTD CC29, VTD CC31, VTD CC32, VTD CC33, VTD CC34, VTD CU02, VTD EO61-1, VTD EO61-2, VTD G10A, VTD G10B, VTD G10C, VTD G1A, VTD G1B, VTD G2A, VTD G2E-2, VTD G3A-1, VTD G3A-2, VTD G3B, VTD G3C, VTD G4A, VTD G4B, VTD G4C, VTD G5B-1, VTD G6A, VTD G6B, VTD G6C, VTD G7A, VTD G7B, VTD G8A, VTD G8B, VTD G8C, VTD G8D, VTD G9A, VTD G9B-1, VTD G9B-2, VTD LI65, VTD SH77.";

and on page 7, lines 7-10, by rewriting those lines to read:

"District 21: Cumberland County: VTD AH49, VTD CC25, VTD CC27, VTD CL57-1, VTD CL57-2, VTD G11B, VTD G2B, VTD G2C-1, VTD G2C-2, VTD G2D, VTD G2E-1, VTD G5A-1, VTD G5A-2, VTD G5B-2, VTD G5C, VTD LR63, VTD MB62, VTD MR02, VTD SL78-3; Moore County.".

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 739

AMENDMENT NO. **A6**

(to be filled in by
Principal Clerk)

S739-ABW-26 [v.1]

Page 1 of 2

Amends Title [NO]
Second Edition

Date _____, 2021

Senator Chaudhuri

moves to amend the bill on page 8, line 12, through page 9, line 23, by rewriting the lines to read:

"District 26: Guilford County: VTD CG1, VTD CG2, VTD CG3B, VTD GIB, VTD JEF1, VTD JEF2, VTD JEF3, VTD JEF4, VTD MON1, VTD MON2A, VTD MON2B, VTD MON3, VTD NCGR1, VTD NCGR2, VTD NMAD, VTD NWASH, VTD OR1, VTD OR2, VTD RC1, VTD RC2, VTD SF1, VTD SF2, VTD SF3, VTD SF4, VTD SMAD, VTD STOK, VTD SWASH; Rockingham County.

District 27: Guilford County: VTD FR1, VTD FR2, VTD FR3, VTD FR4, VTD FR5A, VTD FR5B, VTD G14, VTD G15, VTD G16, VTD G34, VTD G35, VTD G36, VTD G37, VTD G38, VTD G39, VTD G40A1, VTD G40A2, VTD G40B, VTD G41A, VTD G41B, VTD G42A, VTD G42B, VTD G43, VTD G48, VTD G49, VTD G62, VTD G63, VTD G64, VTD G65, VTD G66, VTD H01, VTD H02, VTD H03, VTD H04, VTD H05, VTD H06, VTD H07, VTD H08, VTD H09, VTD H10, VTD H11, VTD H12, VTD H13, VTD H14, VTD H15, VTD H16, VTD H17, VTD H18, VTD H19A, VTD H19B, VTD H20A, VTD H20B, VTD H21, VTD H22, VTD H23, VTD H24, VTD H25, VTD H26, VTD H27-A, VTD H27-B, VTD H28, VTD H29A, VTD H29B, VTD JAM1, VTD JAM2, VTD JAM3, VTD JAM4, VTD JAM5, VTD NDRI, VTD SDRI.

District 28: Guilford County: VTD CG3A, VTD FEN1, VTD FEN2, VTD G01, VTD G02, VTD G03, VTD G04, VTD G05, VTD G06, VTD G07, VTD G08, VTD G09, VTD G10, VTD G11, VTD G12, VTD G13, VTD G17, VTD G18, VTD G19, VTD G20, VTD G21, VTD G22, VTD G23, VTD G24, VTD G25, VTD G26, VTD G27, VTD G28, VTD G29, VTD G30, VTD G31, VTD G32, VTD G33, VTD G44, VTD G45, VTD G46, VTD G47, VTD G50, VTD G51, VTD G52, VTD G53, VTD G54, VTD G55, VTD G56, VTD G57, VTD G58, VTD G59, VTD G60, VTD G61, VTD G67, VTD G68, VTD G69, VTD G70, VTD



NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 739

TABLED

A6

AMENDMENT NO. _____

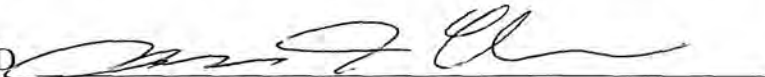
(to be filled in by
Principal Clerk)

S739-ABW-26 [v.1]

Page 2 of 2

- 1 G71, VTD G72, VTD G73, VTD G74, VTD G75, VTD GR, VTD NCLAY1, VTD NCLAY2,
2 VTD PG1, VTD PG2, VTD SCLAY, VTD SUM1, VTD SUM2, VTD SUM3, VTD SUM4.".

SIGNED



Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED

TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 739

AMENDMENT NO. **A7**
(to be filled in by
Principal Clerk)

S739-ATU-43 [v.1]

Page 1 of 2

Amends Title [NO]
Second Edition

Date _____, 2021

Senator Chaudhuri

1 moves to amend the bill on page 11, lines 25-51, by rewriting the lines to read:
2
3
4
5
6

7 **"District 37:** Iredell County, Mecklenburg County: VTD 206, VTD 208, VTD 240, VTD 242.

8 **District 38:** Mecklenburg County: VTD 012, VTD 016, VTD 023, VTD 024, VTD 040, VTD
9 041, VTD 079, VTD 080, VTD 081, VTD 089, VTD 127, VTD 133, VTD 134, VTD 142,
10 VTD 143, VTD 145, VTD 150, VTD 151, VTD 202, VTD 207, VTD 209, VTD 210, VTD
11 211, VTD 222, VTD 223.1, VTD 224, VTD 241.

12 **District 39:** Mecklenburg County: VTD 001, VTD 002, VTD 007, VTD 011, VTD 013, VTD
13 014, VTD 015, VTD 017, VTD 018, VTD 025, VTD 026, VTD 027, VTD 028, VTD 029,
14 VTD 030, VTD 032, VTD 035, VTD 042, VTD 044, VTD 046, VTD 047, VTD 054, VTD
15 055, VTD 056, VTD 082, VTD 107.1, VTD 109, VTD 126, VTD 128, VTD 135, VTD 141,
16 VTD 146, VTD 212, VTD 213, VTD 214, VTD 237, VTD 238.1, VTD 239.

17 **District 40:** Mecklenburg County: VTD 008, VTD 009, VTD 010, VTD 020, VTD 021, VTD
18 022, VTD 031, VTD 037, VTD 038, VTD 039, VTD 049, VTD 050, VTD 051, VTD 052,
19 VTD 053, VTD 058, VTD 059, VTD 077, VTD 087, VTD 092, VTD 097, VTD 098, VTD
20 101, VTD 114, VTD 120, VTD 122, VTD 129, VTD 138, VTD 147, VTD 200, VTD 225,
21 VTD 228, VTD 229, VTD 230, VTD 231, VTD 243, VTD 78.1.

22 **District 41:** Mecklenburg County: VTD 003, VTD 004, VTD 005, VTD 006, VTD 033, VTD
23 034, VTD 043, VTD 045, VTD 060, VTD 061, VTD 062, VTD 063, VTD 064, VTD 083,
24 VTD 084, VTD 094, VTD 095, VTD 099, VTD 102, VTD 104, VTD 105, VTD 108, VTD
25 115, VTD 116, VTD 117, VTD 123, VTD 124, VTD 125, VTD 130, VTD 132, VTD 149,
26 VTD 201, VTD 203, VTD 204.1, VTD 205, VTD 219, VTD 220, VTD 221, VTD 234, VTD
27 235, VTD 236.

28 **District 42:** Mecklenburg County: VTD 019, VTD 036, VTD 048, VTD 057, VTD 065, VTD
29 066, VTD 067, VTD 068, VTD 069, VTD 070, VTD 071, VTD 072, VTD 073, VTD 074,
30 VTD 075, VTD 076, VTD 085, VTD 086, VTD 088, VTD 090, VTD 091, VTD 093, VTD
31 096, VTD 100, VTD 103, VTD 106, VTD 110, VTD 111, VTD 112, VTD 113, VTD 118,



* S 7 3 9 - A T U - 4 3 - V - 1 *

TABLED

- App. 202 -

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 739

AMENDMENT NO. A7


(to be filled in by
Principal Clerk)

S739-ATU-43 [v.1]

Page 2 of 2

- 1 VTD 119, VTD 121, VTD 131, VTD 136, VTD 137, VTD 139.1, VTD 140, VTD 144, VTD
2 148, VTD 215, VTD 216, VTD 217, VTD 218, VTD 226, VTD 227, VTD 232, VTD 233.".

SIGNED



Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED

TABLED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 739

AMENDMENT NO. **A8**

(to be filled in by
Principal Clerk)

S739-ABW-27 [v.1]

Page 1 of 2

Amends Title [NO]
Second Edition

Date _____, 2021

Senator

Blue

moves to amend the bill on page 11, lines 25-51, by rewriting the lines to read:

"District 37: Iredell County, Mecklenburg County: VTD 127, VTD 206, VTD 208, VTD 242.

District 38: Mecklenburg County: VTD 016, VTD 040, VTD 041, VTD 079, VTD 080, VTD 081, VTD 089, VTD 133, VTD 134, VTD 142, VTD 143, VTD 145, VTD 150, VTD 151, VTD 202, VTD 207, VTD 209, VTD 210, VTD 211, VTD 222, VTD 223.1, VTD 224, VTD 238.1, VTD 239, VTD 240, VTD 241.

District 39: Mecklenburg County: VTD 008, VTD 009, VTD 010, VTD 020, VTD 021, VTD 022, VTD 031, VTD 037, VTD 038, VTD 039, VTD 049, VTD 050, VTD 051, VTD 052, VTD 053, VTD 058, VTD 059, VTD 077, VTD 087, VTD 092, VTD 097, VTD 098, VTD 101, VTD 114, VTD 120, VTD 122, VTD 129, VTD 138, VTD 147, VTD 200, VTD 225, VTD 228, VTD 229, VTD 230, VTD 231, VTD 243, VTD 78.1.

District 40: Mecklenburg County: VTD 001, VTD 002, VTD 007, VTD 011, VTD 012, VTD 013, VTD 014, VTD 015, VTD 017, VTD 018, VTD 023, VTD 024, VTD 025, VTD 026, VTD 027, VTD 028, VTD 029, VTD 030, VTD 032, VTD 035, VTD 042, VTD 044, VTD 046, VTD 047, VTD 054, VTD 055, VTD 056, VTD 082, VTD 107.1, VTD 109, VTD 126, VTD 128, VTD 135, VTD 141, VTD 146, VTD 212, VTD 213, VTD 214, VTD 237.

District 41: Mecklenburg County: VTD 003, VTD 004, VTD 005, VTD 006, VTD 033, VTD 034, VTD 043, VTD 045, VTD 060, VTD 061, VTD 062, VTD 063, VTD 064, VTD 083, VTD 084, VTD 094, VTD 095, VTD 099, VTD 102, VTD 104, VTD 105, VTD 108, VTD 115, VTD 116, VTD 117, VTD 123, VTD 124, VTD 125, VTD 130, VTD 132, VTD 149, VTD 201, VTD 203, VTD 204.1, VTD 205, VTD 219, VTD 220, VTD 221, VTD 234, VTD 235, VTD 236.

District 42: Mecklenburg County: VTD 019, VTD 036, VTD 048, VTD 057, VTD 065, VTD 066, VTD 067, VTD 068, VTD 069, VTD 070, VTD 071, VTD 072, VTD 073, VTD 074, VTD 075, VTD 076, VTD 085, VTD 086, VTD 088, VTD 090, VTD 091, VTD 093, VTD 096, VTD 100, VTD 103, VTD 106, VTD 110, VTD 111, VTD 112, VTD 113, VTD 118,



* S 7 3 9 - A B W - 2 7 - V - 1 *

NORTH CAROLINA GENERAL ASSEMBLY

AMENDMENT

Senate Bill 739

TABLED

A8

AMENDMENT NO. _____

(to be filled in by

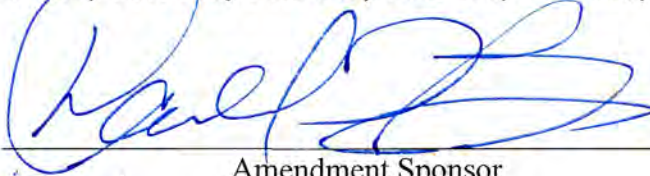
Principal Clerk)

S739-ABW-27 [v.1]

Page 2 of 2

- 1 VTD 119, VTD 121, VTD 131, VTD 136, VTD 137, VTD 139.1, VTD 140, VTD 144, VTD
2 148, VTD 215, VTD 216, VTD 217, VTD 218, VTD 226, VTD 227, VTD 232, VTD 233.".

SIGNED



Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____

SENATE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #499

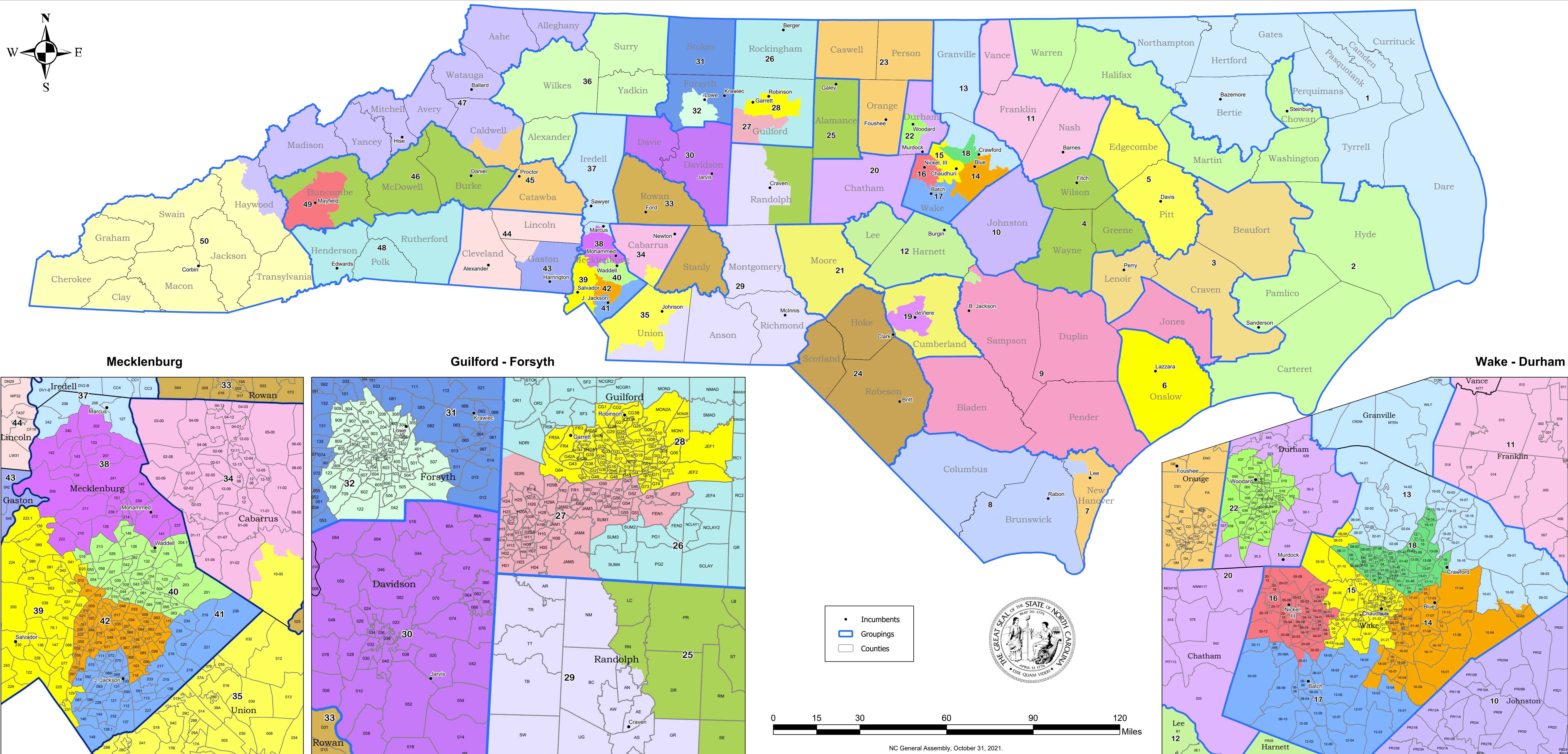
2021-2022 Session

SB 739: Senate Redistricting Plan 2021/SBK-7.

Vote: Third Reading

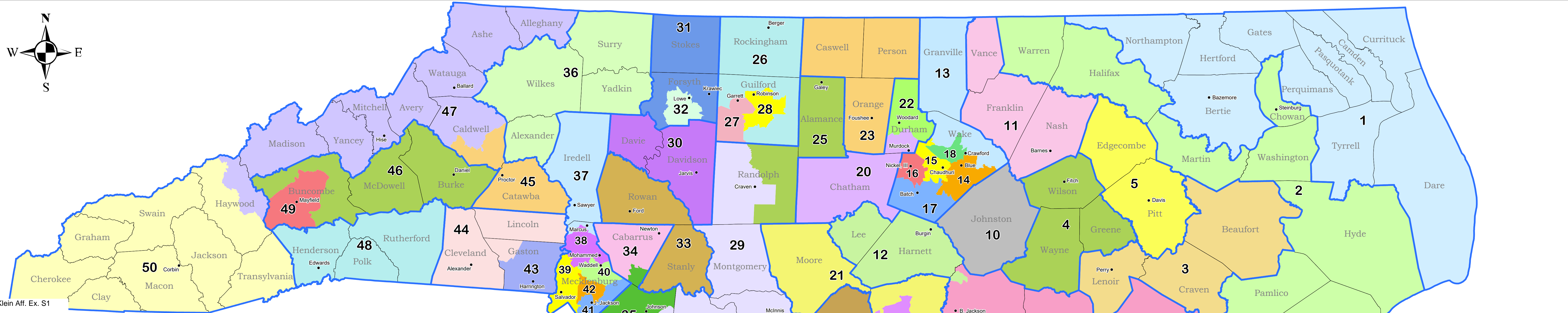
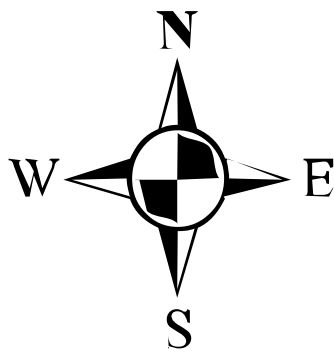
Roll Call #499 Outcome: PASS Sponsor: HISE Time: 11/3/2021 10:47 a.m.	Total votes: 45 Noes: 19 Excused Absence: 5	Ayes: 26 Not Voting: 0 Excused Vote: 0
Ayes (Democrat) None	Ayes (Republican) T. Alexander; Ballard; Barnes; Britt; Burgin; Corbin; Craven; Daniel; Edwards; Ford; Galey; Harrington; Hise; B. Jackson; Jarvis; Johnson; Krawiec; Lazzara; Lee; McInnis; Newton; Perry; Proctor; Sanderson; Sawyer; Steinburg	
Noes (Democrat) Batch; Blue; Chaudhuri; Crawford; D. Davis; deViere; Fitch; Foushee; Garrett; J. Jackson; Lowe; Marcus; Mayfield; Mohammed; Nickel; Robinson; Salvador; Waddell; Woodard	Noes (Republican) None	
Excused Absence (Democrat) Bazemore; Clark; Murdock	Excused Absence (Republican) Berger; Rabon	

S739, 1st Edition



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S739 2nd Edition

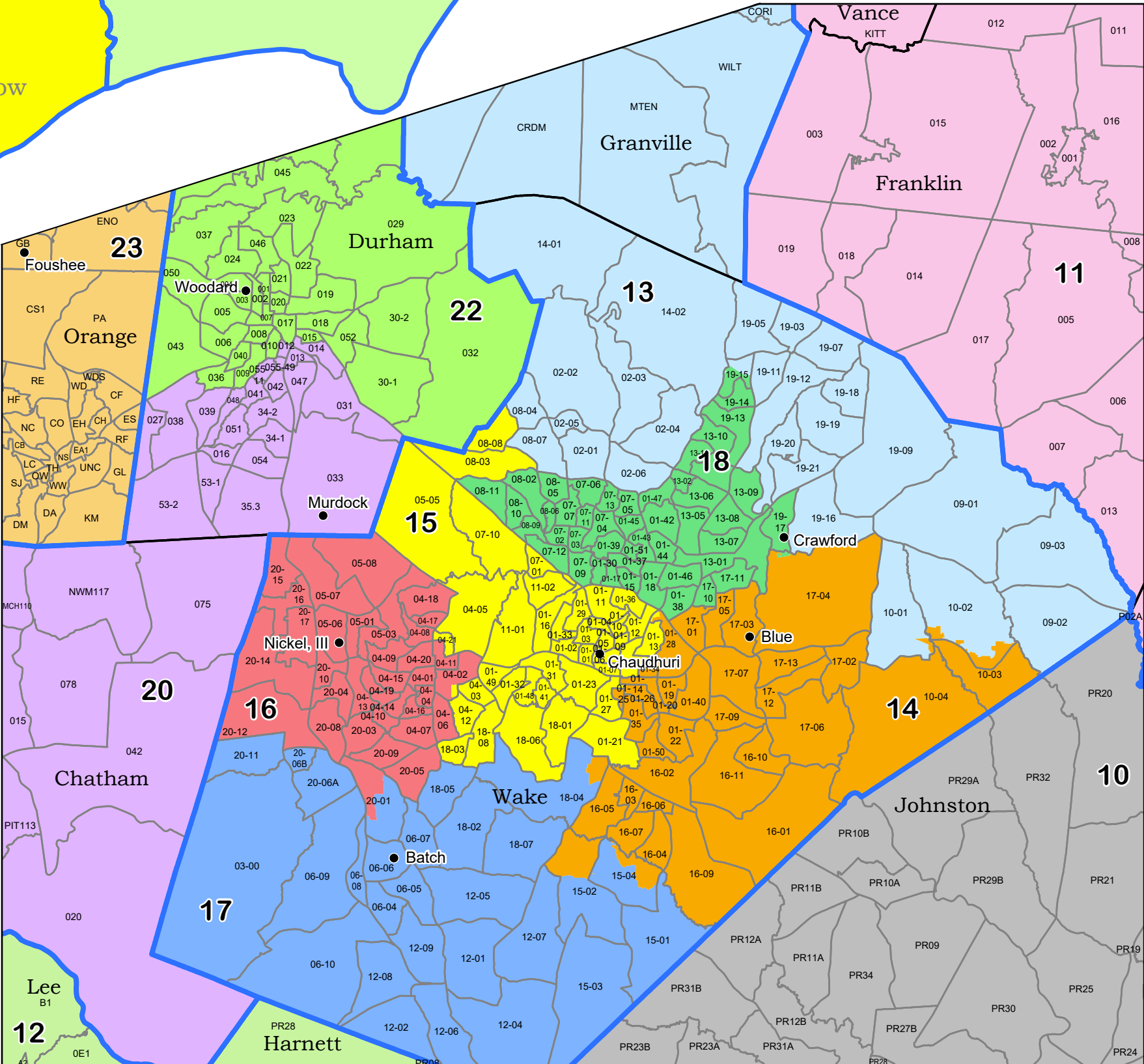
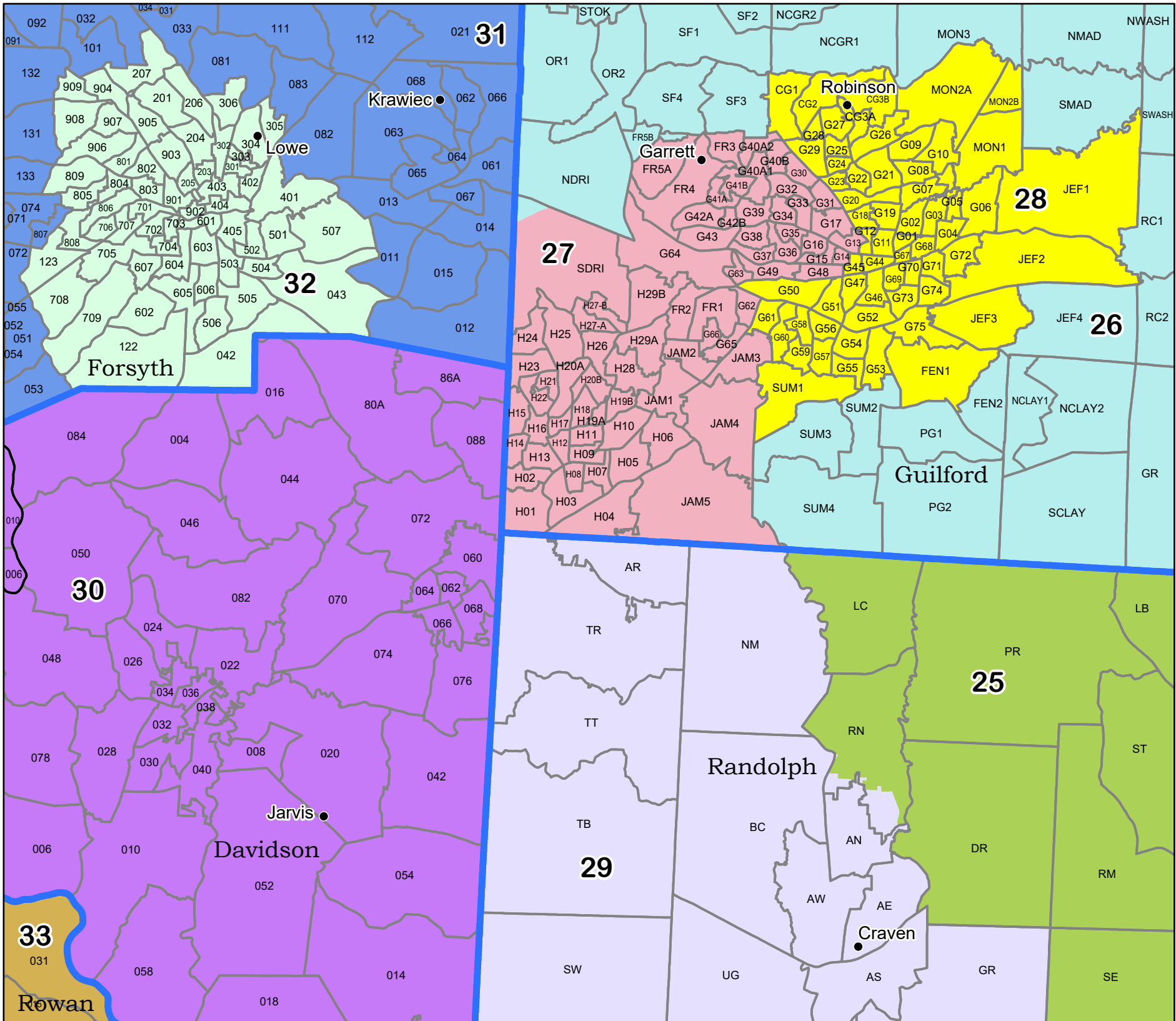
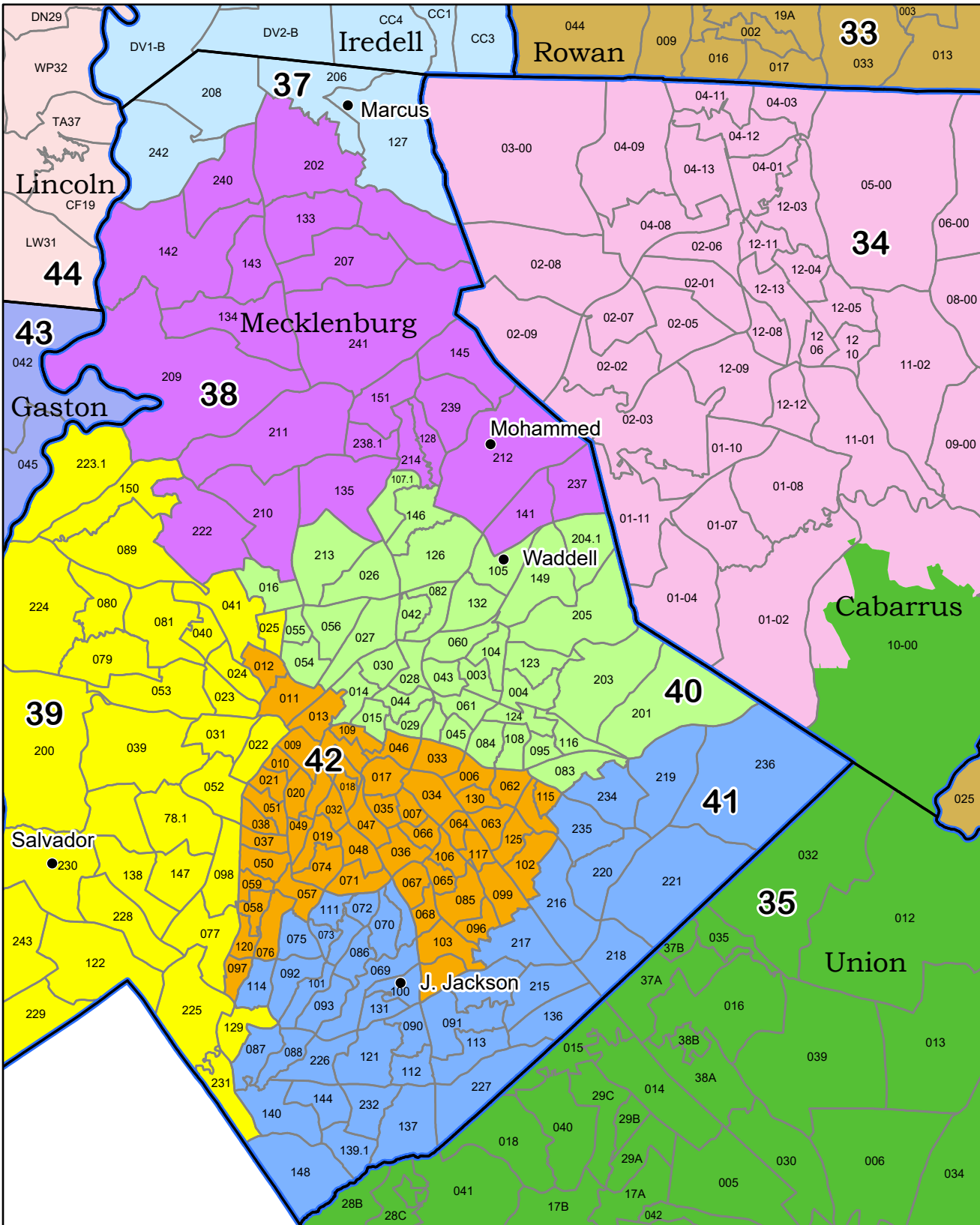


Klein Aff. Ex. S1

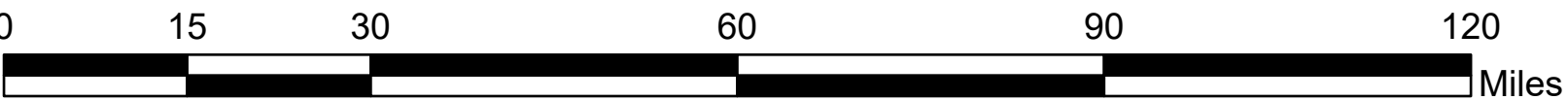
Mecklenburg

Guilford - Forsyth

Wake - Durham



- Incumbents
- ▭ Groupings
- ▭ Counties
- ▭ District



NC General Assembly, November 2, 2021.

HOUSE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #564

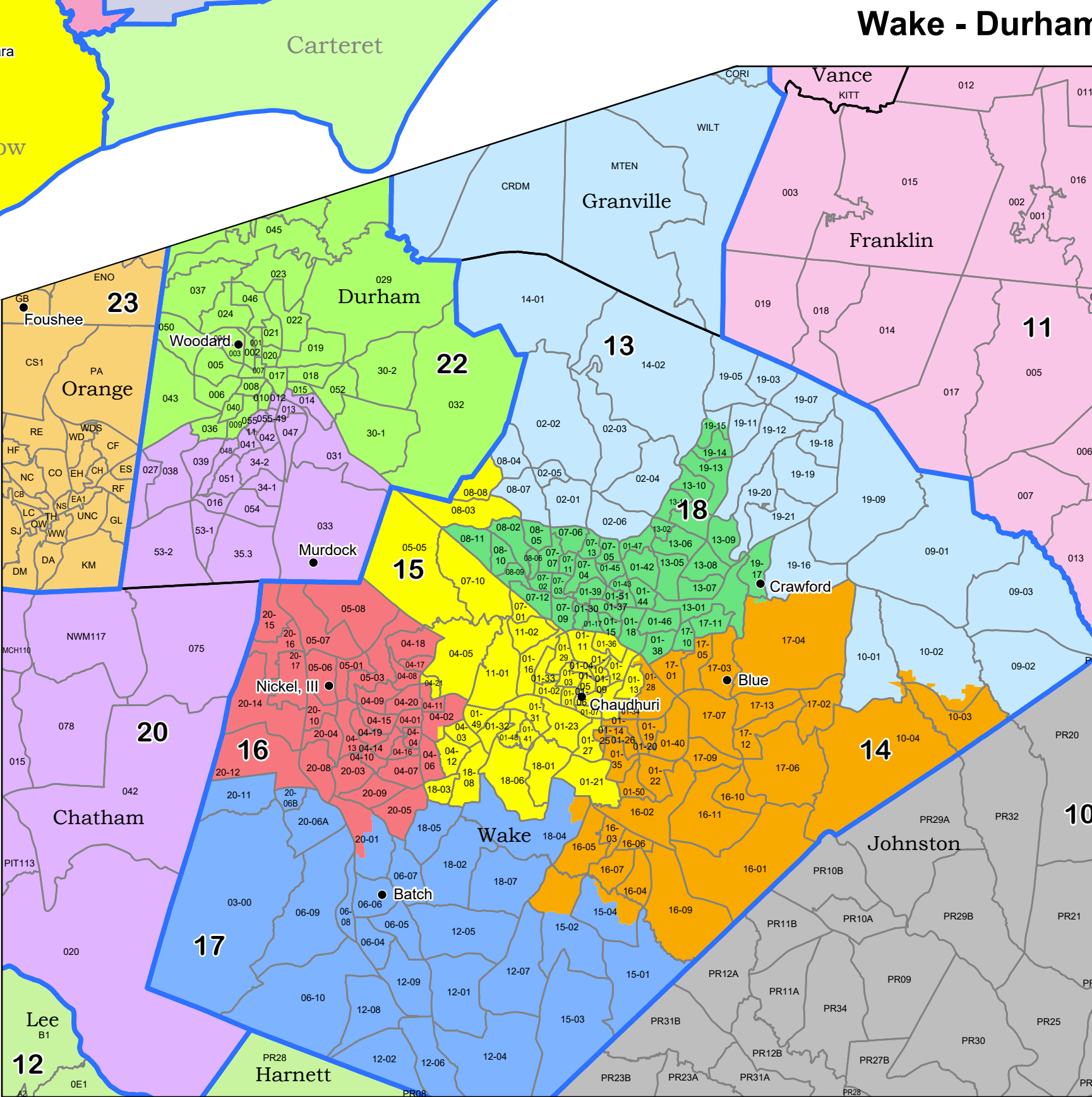
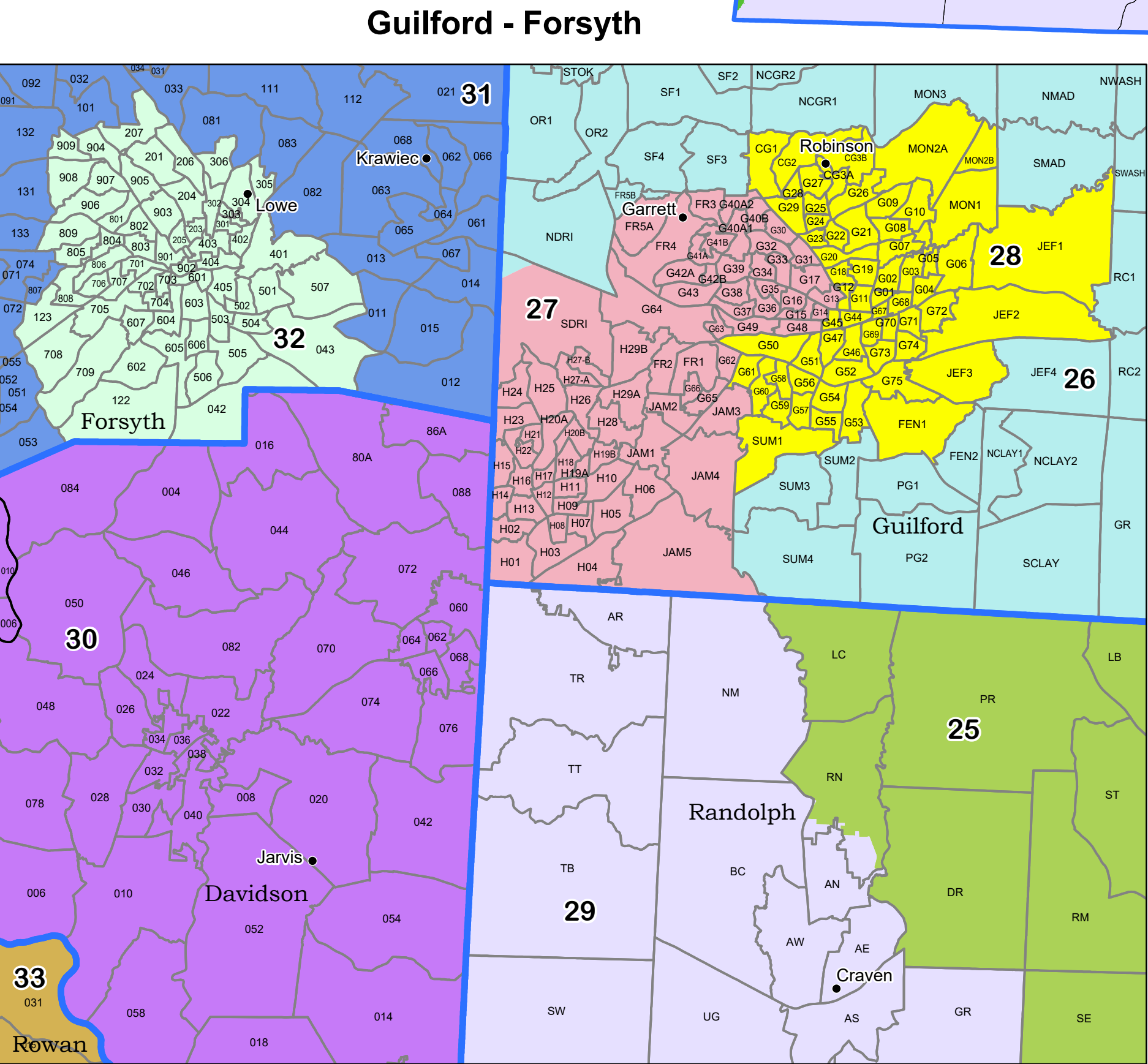
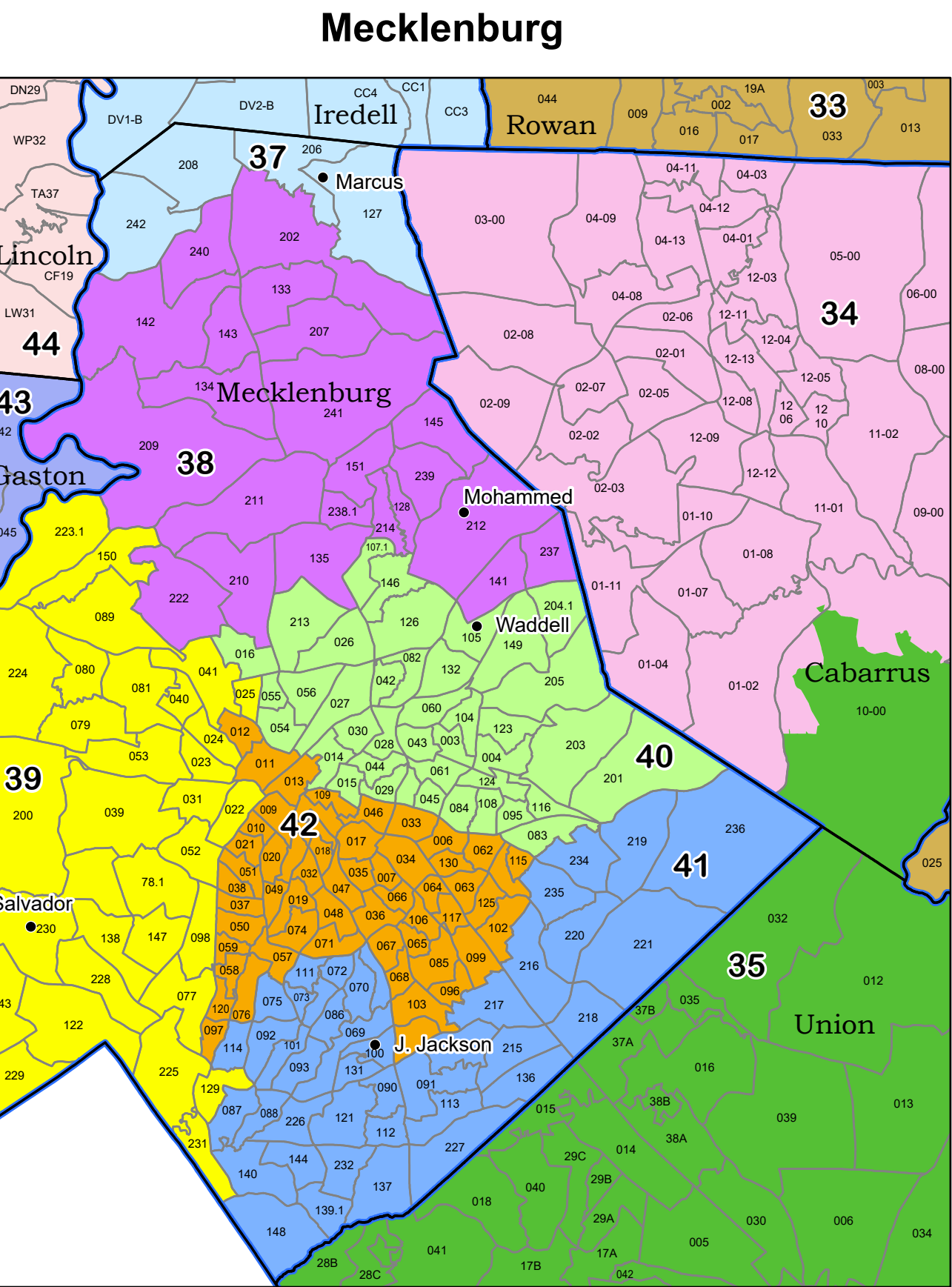
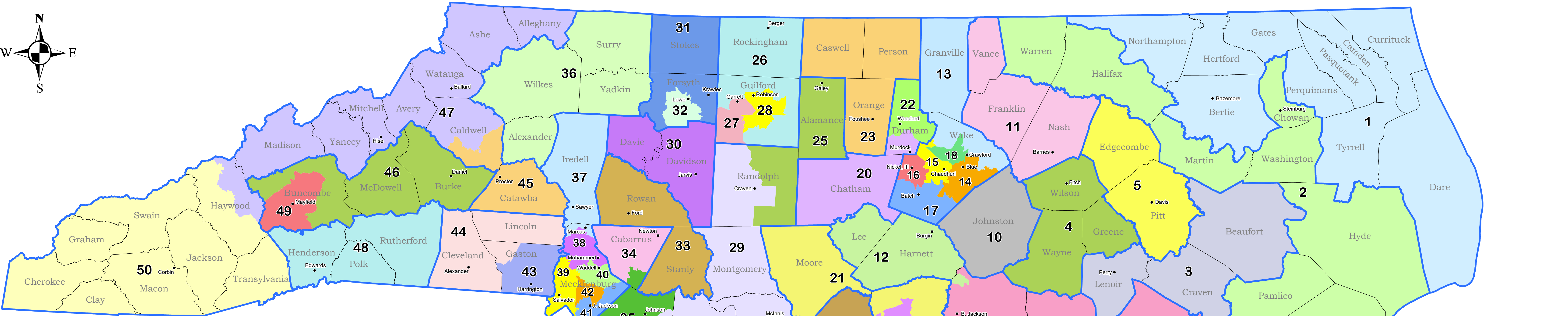
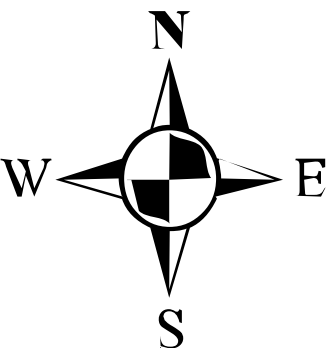
2021-2022 Session

SB 739: Senate Redistricting Plan 2021/SBK-7.

Vote: Third Reading

Roll Call #564 Outcome: PASS Sponsor: Hise Time: 11/4/2021 11:13 a.m.	Total votes: 114 Noes: 49 Excused Absence: 6	Ayes: 65 Not Voting: 0 Excused Vote: 0
Ayes (Democrat) None	Ayes (Republican) Adams; Arp; K. Baker; Bell; Blackwell; Boles; Brisson; Brody; Clampitt; Davis; Dixon; Elmore; Faircloth; Gillespie; Goodwin; Greene; D. Hall; K. Hall; Hanig; Hardister; Hastings; Howard; Humphrey; Hurley; Iler; J. Johnson; B. Jones; Kidwell; Lambeth; Loftis; McElraft; McNeely; McNeill; Miller; Mills; Moffitt; Moore (Speaker); Moss; Paré; Penny; Pickett; Pittman; Pless; Potts; Pyrtle; Riddell; Rogers; Saine; Sasser; Sauls; Setzer; Shepard; C. Smith; Strickland; Szoka; Torbett; Tyson; Warren; Watford; Wheatley; White; Willis; Winslow; Yarborough; Zenger	
Noes (Democrat) Adcock; Ager; Alexander; Alston; Autry; A. Baker; Ball; Belk; Brockman; Brown; Butler; Carney; Clemmons; Cooper-Suggs; Cunningham; Dahle; Everitt; Farkas; Fisher; Gailliard; Garrison; Gill; Graham; Harris; Harrison; Hawkins; Hunt; Hunter; Hurtado; Insko; John; A. Jones; Lofton; Logan; Lucas; Majeed; Meyer; Morey; Pierce; Quick; Reives; Richardson; Roberson; K. Smith; R. Smith; Turner; von Haefen; Willingham; Wray	Noes (Republican) None	
Excused Absence (Democrat) Martin; Terry	Excused Absence (Republican) Bradford; Cleveland; Stevens; Zachary	

S.L.2021-173 Senate



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

21 CVS _____
1771 OCT 29 P 3:25

NORTH CAROLINA STATE CONFERENCE
OF THE NAACP, COMMON CAUSE,
MARILYN HARRIS, GARY GRANT, JOYAH
BULLUCK, and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILLIP E. BERGER *in his official capacity as
President Pro Tempore of the North Carolina
Senate*; TIMOTHY K. MOORE *in his official
capacity as Speaker of the North Carolina House
of Representatives*; RALPH E. HISE, JR.,
WARREN DANIEL, PAUL NEWTON, *in their
official capacities as Co-Chairmen of the Senate
Committee on Redistricting and Elections*;
DESTIN HALL, *in his official capacity as
Chairman of the House Standing Committee on
Redistricting*; THE STATE OF NORTH
CAROLINA; THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; DAMON CIRCOSTA,
*in his official capacity as Chair of the State Board
of Elections*; STELLA ANDERSON, *in her
official capacity as Secretary of the State Board of
Elections*; STACY EGGERS IV, *in his official
capacity as Member of the State Board of
Elections*; JEFF CARMON III, *in his official
capacity as Member of the State Board of
Elections*; TOMMY TUCKER, *in his official
capacity as Member of the State Board of
Elections*; KAREN BRINSON BELL, *in her
official capacity as Executive Director of the State
Board of Elections*

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Pursuant to N.C.G.S. § 1-253 et seq., and Rules 3, 8, and 57 of the North Carolina Rules of Civil Procedure, Plaintiffs the North Carolina State Conference of the NAACP, Common Cause, and four individual voters, through counsel, hereby file this Complaint for declaratory judgment and for injunctive relief.

I. PRELIMINARY STATEMENT

1. After drawing one unconstitutional redistricting plan after another in the last decade,¹ the North Carolina General Assembly is acting now in an unlawful and unconstitutional manner by brazenly ignoring clear direction from the North Carolina Supreme Court on how to draw constitutional maps. The Defendants' violations of the North Carolina Constitution necessitate Court intervention *now*. This Court must protect Plaintiffs' constitutional rights before the legislature almost certainly argues, as it has before, that judicial review of redistricting is precluded by the opening of candidate filing. December 6, 2021 marks the beginning of the 2022 election cycle. Absent immediate intervention by this Court, the legislature will once again consign North Carolina voters to yet another decade of district uncertainty.

¹ See *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 2211 (2017) (per curiam) (finding state legislative districts as enacted in S.L. 2011-402 and S.L. 2011-404 violated the Equal Protection Clause of the Fourteenth Amendment); *Covington v. North Carolina*, 283 F. Supp. 3d 410, 434 (M.D.N.C. 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated the Equal Protection Clause of the Fourteenth Amendment); *North Carolina State Conference of NAACP Branches v. Lewis*, No. 18 CVS 002322, slip op. at 2 (N.C. Super. Ct. Nov. 2, 2018) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article II, Section 5 of the North Carolina Constitution); *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56, at *333, 346, 361–62, (N.C. Super. Ct. Sept. 3, 2019) (finding state legislative districts as enacted in S.L. 2017-207 and S.L. 2017-208 violated Article I, Section 10, Article I, Section 14, and Article 1, Section 19 of the North Carolina Constitution); *Harris v. McCrory*, 159 F. Supp. 3d 600, 622 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017) (finding Congressional districts as enacted in S.L. 2011-403 violated the Equal Protection Clause of the Fourteenth Amendment); *Harper v. Lewis*, No. 19 CVS 012667, 2019 N.C. Super. LEXIS 122, at *18 (N.C. Super. Ct. Oct. 28, 2019) (order granting preliminary injunction) (finding Congressional districts as drawn in S.L. 2016-1 violated Article I, Section 10, Article I, Section 12, Article I, Section 14, and Article I, Section 19 of the North Carolina Constitution).

2. From the beginning of this process, the Defendant Chairs of the Senate Committee on Redistricting and Elections and the House Committee on Redistricting (the “Redistricting Chairs” of the “Redistricting Committees”) have, despite warnings from citizens and legislators of color, stated their intention to consider neither racial data nor perform any kind of racially polarized voting analysis to understand how district lines would affect minority voting strength and representation. The Redistricting Committees have approved redistricting criteria prohibiting any use of racial data, and the Redistricting Chairs have stated that, despite their legal obligations to do so, they refuse to consider any maps drawn that lawfully and properly utilize racial data. This refusal directly contravenes: (1) requirements of the North Carolina Constitution, which affirms the supremacy of federal law under Sections 3 and 5 of Article I; and (2) the requirement that legislators first consider the data necessary to ensure satisfaction of the requirements of federal law in drawing state legislative districts, as explained in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003).

3. The intentional refusal by the Redistricting Chairs to act lawfully, by considering racial data or to conduct any racially polarized voting analysis, already has borne fruit. The county clusters designated by the Redistricting Chairs prescribe districts that will dilute the voting power of Black North Carolinians, including the Individual Plaintiffs, and the draft maps already proposed would diminish the ability of voters of color to elect their candidates of choice.

4. The legislature has also unduly delayed the redistricting process and obstructed public comment in an apparent effort to capitalize on the delay in 2020 Census data and to “run out the clock” to prevent judicial review of their actions before discriminatory plans are used in the 2022 general elections. The 2021 long session of the North Carolina General Assembly convened on January 13, 2021. Presumably, in furtherance of their desire to push through these

maps without challenge, Defendant Redistricting Chairs waited until August to convene the Redistricting Committees to plan this redistricting cycle, waiting until the eve of the Census data's release to consider criteria, public hearing locations, and a hearing schedule – all of which could have been decided over the summer or earlier. Instead, the Redistricting Chairs gave North Carolinians less than 24-hours' notice to attend an in-person, 8:30am weekday hearing on August 10, 2021 for comment on unlawful redistricting criteria proposed the day before. Since then, the Chairs have presided over a redistricting process marked by uncertainty, delay, and last-minute meetings that have left those wishing for transparency and an opportunity for meaningful public input scrambling. As of noon on October 29, 2021, no deadline has been announced for the submission² much less enactment of any State Legislative districts, despite fast-approaching deadlines for the 2022 primaries, and proposed Senate maps were still being edited the afternoon of October 28. The Redistricting Chairs' strategy is clear: to evade judicial review as they did last cycle, which allowed the party currently in power to obtain and maintain a veto-proof supermajority for most of the last decade due to unlawful racial gerrymanders.³ These tactics should not be tolerated again.

5. Plaintiffs bring this Declaratory Judgment action seeking a judicial determination that Plaintiffs are entitled to a redistricting process that adheres to the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution and that the use of race-blind redistricting criteria violates North Carolina law and unlawfully harms voters of color. The use of race-blind redistricting criteria, and Defendants' failure to conduct any analysis that would prevent vote

² Submission includes submission to the [ncleg.gov](https://ncleg.gov/Committees/CommitteeInfo/SenateStanding/154#2021\Member%20Submitted%20Maps) website for "Member Submitted Maps." See, e.g., <https://ncleg.gov/Committees/CommitteeInfo/SenateStanding/154#2021\Member%20Submitted%20Maps>; <https://ncleg.gov/Committees/CommitteeInfo/HouseStanding/182#2021\Member%20Submitted%20Maps>.

³ See *Covington v. North Carolina*, 316 F.R.D. 117,116 (M.D.N.C. 2018), *aff'd*, 137 S. Ct. 2211 (2017) (per curiam).

dilution for voters of color, violates the Equal Protection Clause, Article I, Section 19, of the North Carolina Constitution. Finally, unless stopped, Defendants' actions will impede Plaintiffs' ability to affiliate with and support their candidates of choice in violation of the Plaintiffs' right to assembly and association under the Freedom of Assembly Clause, Article I, Section 12 of the North Carolina Constitution.

6. Without judicial intervention, Defendants' actions will cause irreparable harm to the rights of Plaintiffs and other North Carolina voters of color. The process pursued by the Redistricting Chairs as described above cannot, as a matter of law, comply with the North Carolina Constitution. North Carolinians are entitled to have their rights enforced by the courts of this State, and they are not – and should not – be required to wait until the eve of the 2022 election cycle to assert their rights and demand constitutional districts. This Court must intervene now to vindicate these precious constitutional rights.

II. JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to N.C.G.S. § 1-253 et seq. (“Declaratory Judgment Act”) and N.C.G.S. § 7A-245(a)(4).

8. This Court has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, and such declaration shall have the force and effect of a final judgment or decree. *See* N.C.G.S. § 1-253.

9. The purpose of the Declaratory Judgment Act is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.

10. An action under the Declaratory Judgment Act may be used to declare rights of persons. N.C.G.S. § 1-253.

11. The Declaratory Judgment Act is to be liberally construed and administered. N.C.G.S. § 1-264.

12. Venue is proper in this Court pursuant to N.C.G.S. § 1-82. A case may be brought in any county in which any of the plaintiffs or the defendants reside at the commencement of the action. *Caldwell v. Smith*, 203 N.C. App. 725, 727 (N.C. Ct. App. 2010). The North Carolina NAACP and Common Cause—who are Plaintiffs in this action—have as members North Carolina voters who are residents of Wake County. The North Carolina Declaratory Judgment Act contains no provisions regarding venue, so general venue principals apply. *McCrary Stone Service v. Lyalls*, 77 N.C. App. 796, 797 (N.C. Ct. App. 1985).

13. A three-judge panel is not required for this case under N.C.G.S. § 1-81.1(b). A three-judge panel is required only when plaintiffs challenge an “act” of the Legislature. N.C.G.S. § 1-81.1(b). The North Carolina Legislature has not yet passed any act regarding the 2021 redistricting cycle, and thus Plaintiffs’ suit does not and cannot trigger application of that statute.⁴

14. Removal to federal court is not proper in this matter because all causes of action are based upon North Carolina Constitutional law and the matters in dispute do not arise under or require resolution of federal law, and there is no diversity of jurisdiction.

15. An actual, justiciable controversy exists between Plaintiffs and Defendants at present.

⁴ The term “act” refers to an official action by the Legislature that changes the existing state of the law. *See, e.g.*, N.C. Const. art. II, § 21 (stating that the style of the acts shall be “The General Assembly of North Carolina enacts”); N.C. Const. art. II, § 24 (providing limitations on local acts that the legislature may enact); N.C. Const. art. V, § 5 (referring to acts that levy taxes on state objects); N.C.G.S. 160A-1(4) (defining “General law” as “an act of the General Assembly applying to all units of local government, to all cities, or to all cities within a class defined by population or other criteria”); Glossary, North Carolina General Assembly, <https://ncleg.gov/Help/Category/Glossary> (last visited Oct. 28, 2021) (defining “Act” as “Legislation enacted into law. A bill that has passed both houses of the legislature, been enrolled, ratified, signed by the governor or passed over the governor’s office, and printed. It is a permanent measure, having the force of law until repealed.”); *Estes v. Battison*, 274 N.C. App. 1, 3 (N.C. Ct. App. 2020) (interpreting a “statute” as “a legislative act”). The term “act” should be given its plain meaning, as “[i]t is a well-settled principle of statutory construction that where a statute is intelligible without any additional words, no additional words may be supplied.” *State v. Camp*, 286 N.C. 148, 151 (1974).

III. PARTIES

Plaintiffs

16. **Plaintiff North Carolina State Conference of the NAACP (“North Carolina NAACP”)** is a nonpartisan, non-profit organization composed of more than 100 branches and 20,000 individual members throughout the state of North Carolina, including every county in North Carolina. The fundamental mission of the North Carolina NAACP is the advancement and improvement of the political, civil, educational, social, and economic status of minority groups; the elimination of racial prejudice; the publicizing of adverse effects of racial discrimination; and the initiation of lawful action to secure the elimination of racial bias. In furtherance of this mission, the North Carolina NAACP advocates to ensure that the interests of the African American community and people of color are represented in local, state, and national legislative bodies by representatives who share their community’s interests, values, and beliefs, and who will be accountable to the community. The North Carolina NAACP thus encourages and facilitates nonpartisan voter registration drives by its chapters to promote civic participation. The North Carolina NAACP relies on a fair and effective electoral process to help achieve its organization’s missions of improving civic engagement, education, criminal justice, environmental justice, economic opportunity, and healthcare. The North Carolina NAACP has been forced to divert organizational resources, including staff time, travel expenses, and other costs, to address unlawful and discriminatory gerrymandering in North Carolina. Unfair and discriminatory redistricting at the local, state, and congressional levels frustrates and impedes the North Carolina NAACP’s core missions by diluting the votes of the citizens the North Carolina NAACP works to engage in civic participation and obstructing the ability of their members to elect candidates of choice, and these practices more broadly obstruct its other core advocacy missions to bring about change in North

Carolina through the democratic process. The North Carolina NAACP brings this action in its representative capacity on behalf of its members and in its organizational capacity.

17. **Plaintiff Common Cause** is a non-profit corporation organized and existing under the laws of the District of Columbia. It is a nonpartisan democracy organization with over 1.5 million members and local organizations in 30 states, including North Carolina. Common Cause has members in every current North Carolina House and Senate district. Since its founding by John Gardner in 1970, Common Cause has been dedicated to fair elections and making government at all levels more representative, open, and responsive to the interests of ordinary people. “For the past twenty-five years, Common Cause has been one of the leading proponents of redistricting reform.”⁵ Common Cause also assists voters in navigating the elections process, provides resources for voters to determine their districts and their polling locations, and mobilizes voters to engage in political advocacy. Unfair and discriminatory redistricting directly frustrates and impedes Common Cause’s core missions of making government more responsive to the interests of communities by diminishing the voices of the voters Common Cause works to engage, and forces Common Cause to divert resources toward directly combatting the ill effects of unlawful redistricting. Common Cause brings this action on its own behalf and on behalf of its members and supporters who are registered voters in North Carolina, including registered voters in every county in North Carolina, who each have a right to representation in the State Legislature that complies with the North Carolina Constitution, a right to be free of intentional discrimination, and a right to free association.

18. Plaintiffs North Carolina NAACP and Common Cause together shall herein be referred to as the “**Organizational Plaintiffs**.”

⁵ JONATHAN WINBURN, THE REALITIES OF REDISTRICTING: FOLLOWING THE RULES AND LIMITING GERRYMANDERING IN STATE LEGISLATIVE REDISTRICTING 205 (2008).

19. **Plaintiff Marilyn Harris** resides at 4872 Highway 158, Roanoke Rapids, North Carolina in Halifax County, where she has lived for 37 years. Ms. Harris has been a registered voter since 1972, and identifies as Black. She is retired, and is actively involved with the Halifax County Black Caucus, Concerned Citizens of Tillery, and the Halifax County Democratic Women's Association, and participates in Get Out the Vote efforts in Halifax County, spearheading voter registration drives. Her current North Carolina Senate and House representatives are her candidates of choice. Ms. Harris resides in current Senate District 4, House District 27, and Congressional District 1. Under the Senate Plan "SST-4," if enacted using the "race-blind" clustering criteria, Ms. Harris will reside in Senate District 2. Under the House Plan "HBK-11", if enacted using the "race-blind" clustering criteria, Ms. Harris will reside in House District 13.

20. **Plaintiff Gary Grant** resides at 914 Roanoke Drive, Halifax, North Carolina in Halifax County, where he has lived for 74 years. He has been a registered voter for 57 years, and identifies as Black. He is active in the Halifax NAACP, leads the Concerned Citizens of Tillery, is a coordinator for the Halifax County Black Caucus, and is President of the National Black Farmers and Agricultural Association. He has participated in Get Out the Vote efforts in Halifax County. Mr. Grant resides in current NC Senate District 4, NC House District 27, and Congressional District 1. Under the Senate Plan "SST-4," if enacted using the "race-blind" clustering criteria, Mr. Grant will reside in Senate District 2. Under the House Plan "HBK-11", if enacted using the "race-blind" clustering criteria, Mr. Grant will reside in House District 13.

21. **Plaintiff Joyah Bulluck** resides at 230 Goldsboro Street SW, Wilson, North Carolina in Wilson County, where she has lived for two years. Ms. Bulluck is a community activist and advocate in Wilson. She has been a registered voter for 16 years, and she identifies as Black

and Indigenous. She is self-employed, and is a current member of the NAACP. She has participated in Get Out the Vote efforts in Halifax County. Ms. Bulluck resides in current NC Senate District 4, NC House District 24, and Congressional District 1. Under the Senate Plan “SST-4,” if enacted using the “race-blind” clustering criteria, Ms. Bulluck will reside in Senate District 9. Under the House Plan “HBK-11”, if enacted using the “race-blind” clustering criteria, Ms. Harris will reside in House District 15.

22. **Thomasina Williams** resides at 643 East North Carolina 24 Highway, Kenansville 28349, where she has lived for twelve years. Ms. Williams has been a registered voter for thirty-seven years and identifies as Black. She is self-employed and is an active member of the NAACP of Duplin County, the Duplin County Democratic Party, the Duplin County Planning Board, and she co-founded the Concerned Citizens of Duplin County. She has participated in Get Out the Vote efforts in Duplin County. Ms. Williams currently resides in current NC Senate District 10, NC House District 4, and Congressional District 3. Under the Senate Plan “SST-4,” if enacted using the “race-blind” clustering criteria, Ms. Williams will reside in Senate District 8. Under the House Plan “HBK-11”, if enacted using the “race-blind” clustering criteria, Ms. Williams will reside in House District 11.

23. Plaintiffs Harris, Grant, Bulluck and Williams together shall herein be referred to as the “**Individual Plaintiffs.**”

Defendants

24. **Defendant Philip E. Berger** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 30. Mr. Berger serves as the President Pro Tempore of the North Carolina Senate. Mr. Berger is sued in his official capacity.

25. **Defendant Timothy K. Moore** is member of the North Carolina House of Representatives, having been elected to that office by the voters residing in District 111. Mr. Moore serves as the Speaker of the North Carolina House of Representatives. Mr. Moore is sued in his official capacity.

26. **Defendant Ralph E. Hise, Jr.** is a member of the North Carolina Senate, having been elected to that office by the voters residing in Senate District 47. Mr. Hise serves as the Senate Deputy President Pro Tempore and the Chairman of the Senate Redistricting and Elections Committee. Mr. Hise is sued in his official capacity.

27. **Defendant Warren Daniel** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 46. Mr. Warren serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Warren is sued in his official capacity.

28. **Defendant Paul Newton** is a member of the North Carolina Senate, having been elected to that office by the voters residing in District 36. Mr. Newton serves as the Chairman of the Senate Redistricting and Elections Committee. Mr. Newton is sued in his official capacity.

29. **Defendant Destin Hall** is a member of the North Carolina House of Representatives, having been elected to that office by voters residing in District 87. Mr. Hall serves as the Chairman of the House Redistricting Committee. Mr. Hall is sued in his official capacity.

30. Defendants Hise, Daniel, Newton, and Hall together herein be referred to as the “**Redistricting Chairs**” and, together with Defendants Moore and Berger, the “**Legislative Defendants.**”

31. **Defendant State of North Carolina** is one of the fifty sovereign states in the United States of America. Article I of the State’s Constitution establishes, “principles of liberty

and free government,” which the General Assembly and its members must honor in enacting legislation for the State and its citizens.

32. **Defendant North Carolina State Board of Elections** is the agency responsible for the administration of North Carolina elections, including issuing rules and regulations for the conduct of all elections in the State.

33. **Defendant Damon Circosta** is the Chairman and a member of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

34. **Defendant Stella Anderson** is the Secretary and a member of the North Carolina State Board of Elections. Ms. Anderson is sued in her official capacity.

35. **Defendant Stacy Eggers IV** is a member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity.

36. **Defendant Jeff Carmon II** is a member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity.

37. **Defendant Tommy Tucker** is a member of the North Carolina State Board of Elections. Mr. Tucker is sued in his official capacity.

38. **Defendant Karen Brinson Bell** is the Executive Director of the North Carolina State Board of Elections. Ms. Brinson Bell is sued in her official capacity.

39. Defendants the North Carolina State Board of Elections, Circosta, Anderson, Eggers, Carmon, Tucker, and Brinson Bell shall together herein be referred to as the “**SBE Defendants.**”

IV. FACTUAL ALLEGATIONS

A. North Carolina Constitutional Requirements in Redistricting

40. The North Carolina Constitution provides that “the General Assembly, at the first regular session convening after the return of every decennial census of population taken by order

of Congress, shall revise the senate districts and the apportionment of Senators among those districts” and “shall revise the representative districts and the apportionment of Representatives among those districts.” N.C. Const. art. II, §§ 3, 5.

41. The State Constitution specifically enumerates four limitations upon the redistricting and reapportionment authority of the General Assembly, including that:

- a. each Senator and Representative shall represent, as nearly as possible, an equal number of inhabitants;
- b. each senate and representative district shall at all times consist of contiguous territory;
- c. no county shall be divided in the formation of senate or representative districts (the “Whole County Provision”); and
- d. once established, the senate and representative districts and the apportionment of Senators and Representatives shall remain unaltered until the next decennial census of population taken by order of Congress.

See N.C. Const. art. II, §§ 3, 5.

42. In addition to these requirements, Article I Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States,” and Article I Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Collectively, these provisions “delineate[] the interplay between federal and state law.” *Stephenson v. Bartlett*, 355 N.C. 354, 370 (2002). Finally, Article I Section 19 guarantees North Carolinians equal protections of the laws and freedom from discrimination by the State because of race, color, religion, or national origin.

43. Among the federal requirements applicable to redistricting is compliance with the federal one-person one-vote requirements under the Fourteenth Amendment and the Voting Rights Act (“VRA”), as amended and as proscribed under the Fifteenth Amendment. *Stephenson v. Bartlett*, 355 N.C. 354, 363-64 (2002). Accordingly, *North Carolina law* prohibits any voting qualification or prerequisite that impairs or dilutes, on account of race or color, a citizen’s opportunity to participate in the political process and to elect representatives of their choice. *Id.* This requirement does not command a state to adopt any particular legislative reapportionment plan, but rather prevents the enforcement of redistricting plans having the purpose or effect of diluting the voting strength of legally protected minority groups. *Stephenson v. Bartlett*, 355 N.C. 354, 364 (2002).

44. In *Stephenson v. Bartlett*, the North Carolina Supreme Court sought to harmonize the different North Carolina Constitutional requirements imposed on the redistricting process. *Stephenson v. Bartlett*, 355 N.C. 354 (2002); *Stephenson v. Bartlett*, 357 N.C. 301 (2003). The court developed a methodology for grouping counties together into “clusters” that it held would minimize the splitting of counties, in recognition of the Whole County Provision, while satisfying one-person one-vote requirements.

45. Importantly, *Stephenson* expressly mandates that “to ensure full compliance with federal law, legislative districts required by the VRA shall be formed prior to the creation of non-VRA districts.” *Stephenson v. Bartlett*, 355 N.C. 354, 383 (2002). In other words, first, any and all districts that are required under the VRA (which requires that districts be drawn without the intent or effect of depriving protected voters of an equal opportunity to elect their candidates of choice) must be drawn. Only after an analysis is performed to ascertain what districts are compelled by the VRA, and those districts are drawn, may any work be done to draw clustered districts that

harmonize and maximize compliance with North Carolina’s Whole County Provision and equal protection guarantees of population equality.

46. The trial court in *Stephenson* also instructed that VRA districts should be formed where, “due to demographic changes in population there exists the required [*Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)] preconditions,” a finding that was affirmed by the North Carolina Supreme Court. *Stephenson v. Bartlett*, 357 N.C. 301, 307 (2003). Accordingly, to comply with *Stephenson*, the Legislature must evaluate demographic changes to determine whether there exists the required *Gingles* preconditions. This includes, at the least, considering racial data and, where legislators and members of the public have indicated that there may be VRA concerns, conducting a regionally-focused Racially Polarized Voting (“RPV”) study to determine if there is legally significant racially polarized voting. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 55-58 (1986).

B. The Legislative Defendants Refuse to Follow Applicable Law, Causing an Inevitable Deprivation of Plaintiffs’ Rights.

1. The Redistricting Committees’ Adopted Criteria Contravene State Constitutional Requirements.

47. On Thursday, August 5, 2021, the Senate Committee on Redistricting and Elections convened a Joint Meeting of the Redistricting Committees to begin discussions about the redistricting process.⁶ Following this meeting, staff member Erika Churchill distributed to joint committee members the legislative redistricting criteria ordered by the North Carolina Superior Court for Wake County in its September 3, 2019 Judgment in the matter *Common Cause v. Lewis*,

⁶ *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee to Begin Discussion on the Redistricting Process*, Aug. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-05-2021/6683.pdf>.

No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Sept. 3, 2019) (the “2019 Criteria”).⁷

48. The 2019 Criteria set forth by the court specifically required that new maps comply with the VRA and other federal requirements concerning the racial composition of districts, and required within 14 days of the order for the parties to submit briefing and expert analysis on whether VRA districts were required, including consideration of whether the minimum Black Voting Age Population “BVAP” thresholds were met to implicate the VRA. *Id.* at *417.

49. On Monday, August 9, 2021 the Redistricting Chairs released the “2021 Joint Redistricting Committee Proposed Criteria.”⁸ Contrary to the requirements of Article I Sections 3 and 5 of the North Carolina Constitution, and the aforementioned court orders in *Stephenson v. Bartlett* and *Common Cause v. Lewis*, these criteria outright prohibited all use of racial data in redistricting:

Racial Data. Data identifying the race of individuals or voters *shall not* be used in the construction or consideration of districts in the 2021 Congressional, House and Senate plans.⁹

50. The Redistricting Committees received public comment on the proposed criteria on August 10, 2021. Among those providing public comment were Plaintiffs’ Counsel Allison J. Riggs, who described how the criteria prohibiting use of racial data was contrary to applicable law:

It is neither appropriate nor required to draw districts race-blind. As long as redistricting has occurred, it has been a tool used to harm voters of color. Beyond compliance with the VRA, it is entirely appropriate to advance race-equity to consider race in the drawing of districts, to ensure voters of color are not being

⁷ E-mail from Erika Churchill, Staff Attorney, Legislative Analysis Division, N.C. General Assembly, to Joint Committee Members (Aug. 5, 2021).

⁸ *2021 Joint Redistricting Committee Proposed Criteria*, North Carolina General Assembly Joint Redistricting Committee, Aug. 9, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-09-2021/2021%20Joint%20Redistricting%20Committee%20Plan%20Proposed%20Criteria.pdf>.

⁹ *Id.*

packed or cracked. Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including republican and democratic appointees, and a unanimous supreme court, rejected your race-blind remedial drawing of two senate districts and two house districts. In fact there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria.¹⁰

51. On August 12, 2021, the Redistricting Committees met to consider the proposed redistricting criteria and any amendments thereto. During debate on the proposed criteria, Senator Dan Blue stated that the court in *Stephenson* held that the first step of redistricting is determining whether districts are required to comport with the VRA, and queried how this would be accomplished without the consideration of racial data. The Redistricting Chairs reiterated the view that consideration of racial data to evaluate whether VRA districts were necessary was not required, but failed to explain how VRA compliance would be assessed absent that data.

52. Senator Newton indicated that if any members presented evidence or new studies of RPV in North Carolina, the Chairs would be willing to examine that evidence.¹¹

53. Senator Warren Daniel then proposed an amendment providing that “[t]he Committee will draw districts that comply with the Voting Rights Act,”¹² again failing to explain how this would or could be done without racial data or any analysis of racially polarized voting patterns. This amendment was adopted into the final criteria.

54. Senator Blue then proposed an amendment titled “Voting Rights Act,” adding the following criteria:

¹⁰ NCGA Redistricting, *2021-08-10 Committee (Joint)*, YOUTUBE, <https://youtu.be/QFA6QNpqWVv?t=2084>, (Aug. 10, 2021).

¹¹ NCGA Redistricting, *2021-08-12 Committee (Joint)*, YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=10321>, (Aug. 12, 2021).

¹² *Id.* at 2:58:00; *Amendment to Proposed Criteria #4 (Racial Data) Offered by Senator Daniel*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Adopted%20Amendments/Racial%20Data.Daniel.pdf>

As condemned by the United States Supreme Court in *Cooper v. Harris* and *Covington v. State of North Carolina*, African-Americans shall not be packed into any grouping or district to give partisan advantage to any political party.¹³

55. During debate on this amendment, Senator Blue again queried how it would be possible to comply with the VRA without consideration racial data. Senator Clark also repeated these concerns. In response, Senator Daniel erroneously advised that prior case law, including a 2019 decision, in North Carolina did not require the use of racial data.¹⁴ The amendment offered by Senator Blue failed.

56. Upon information and belief, Senator Daniel was referencing the September 3, 2019 Judgment of the North Carolina Superior Court for Wake County in the matter *Common Cause v. Lewis*, Case No. 18 CVS 014001, 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Sept. 3, 2019), to contend that racial data is not required to ensure compliance with the VRA this redistricting cycle. The court held no such thing. In *Common Cause v. Lewis*, the Superior Court struck down 2017 State legislative plans as unlawful partisan gerrymanders that violated the Free Elections Clause of the North Carolina Constitution, Article I, Section 10. *Id.* at *332. In its analysis, the court explicitly held that “Any Remedial Maps must comply with the VRA and other federal requirements concerning the racial composition of districts,” and afforded the parties the opportunity to “submit briefing . . . on whether the *Gingles* factors are met in particular counties and county groupings and/or the minimum BVAP needed in particular counties and county groupings for African-Americans to be able to elect candidates of their choice.” *Id.* at *407-09. In

¹³ *Amendment to Proposed Criteria – Voting Rights Act Offered by Senator Blue*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Proposed%20Amendments/Voting%20Rights%20Act.Amendment.pdf>

¹⁴ NCGA Redistricting, *2021-08-12 Committee (Joint)*, YOUTUBE, <https://youtu.be/gSm2OhE7Slk?t=13039>, (Aug. 12, 2021).

other words, the court in *Common Cause v. Lewis* explicitly required the same analysis that Legislative Defendants are unlawfully refusing to undertake this cycle.

57. Furthermore, in subsequent orders addressing the remedial maps enacted in *Common Cause v. Lewis*, the court noted that the “need for such localized [RPV] analysis is particularly acute in North Carolina because . . . the existence and extent of white bloc voting varies widely across different county groupings.” Order Supplementing Court Order of October 28, 2019 with Findings and Conclusions Regarding Compliance of Remedial Maps with Federal Voting Rights Act at p. 4, *Common Cause v. Lewis*, Case No. 18 CVS 014001, slip op. 4 (N.C. Super. Ct. Jan. 22, 2020). Accordingly, any assertions that courts have definitely held there is no racially polarized voting in North Carolina, and that no RPV analyses are therefore necessary, are both factually and legally incorrect.

58. The final criteria adopted by the Redistricting Committees prohibited the use of any racial data in the 2021 redistricting process.¹⁵

2. The Legislative Defendants Mandate the Use of County Clusters That Contravene the North Carolina Constitution

59. On August 12, 2021, the United States Census Data released block-level data showing North Carolina’s population increased from 9,535,483 residents in 2010 to 10,439,388 residents in 2020.¹⁶ This 9.5 percent increase gave North Carolina an additional Congressional

¹⁵ *Adopted Redistricting Criteria*, North Carolina Joint Redistricting Committee, Aug. 12, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/08-12-2021/Criteria.adopted.8.12.pdf>.

¹⁶ America Counts Staff, *North Carolina: 2020 Census*, U.S. CENSUS BUREAU (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/north-carolina-population-change-between-census-decade.html>.

seat, raising its delegation from 13 members of the House of Representatives to 14 members, and thereby requiring the addition of one Congressional district.¹⁷

60. The North Carolina population increase reflected in the Census data was not evenly distributed throughout the state, with the vast majority of population increase occurring in urban and suburban areas.¹⁸ Without updating the district lines during the decennial redistricting process, North Carolina's existing districts for the North Carolina House of Representatives and North Carolina Senate would be substantially unequal in population size and deviation.¹⁹

61. On October 5, 2021, the House Committee on Redistricting and the Senate Committee on Redistricting and Elections convened separately. In both meetings, the Redistricting Chairs announced that in both chambers they would be limiting the consideration of Senate and House maps to those drawn using county clusters described in the academic paper *N.C. General Assembly County Clusterings from the 2020 Census* (the "Duke Academic Paper"), published on the Duke University website "Quantifying Gerrymandering."²⁰

62. The Duke Academic Paper states that: "The one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act."²¹

¹⁷ 2020 Census: Apportionment of the U.S. House of Representatives, U.S. CENSUS BUREAU (Apr. 26, 2021), <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

¹⁸ Tyler Dukes, *How Has Your NC Neighborhood Grown Since 2010? Use This Map of Census Data to Find Out*, NEWS & OBSERVER (Aug. 14, 2021), <https://www.newsobserver.com/news/local/article253375248.html>.

¹⁹ Rebecca Tippet, *Preview: What Redistricting Means for NC's House*, CAROLINA DEMOGRAPHY (Aug. 2, 2021), <https://www.ncdemography.org/2021/08/02/preview-what-redistricting-means-for-ncs-house/>; Rebecca Tippet, *Preview: What Redistricting Means for NC'S Senate*, CAROLINA DEMOGRAPHY (Aug. 3, 2021), <https://www.ncdemography.org/2021/08/03/preview-what-redistricting-means-for-ncs-senate/>.

²⁰ Christopher Cooper et al., *NC General Assembly County Clusterings from the 2020 Census*, Quantifying Gerrymandering (Aug. 17, 2021), <https://sites.duke.edu/quantifyinggerrymandering/files/2021/08/countyClusters2020.pdf>.

²¹ *Id.* at 1.

63. In the meeting of the Senate Committee on Redistricting and Elections, Chair Hise provided the set of sixteen possible Senate cluster options, based upon the Duke Academic Paper, that would be required for any map to be considered for enactment (the “Duke Senate Clusters”). *See* “Duke Senate Groupings Maps 11x17.”²²

64. Senator Blue repeatedly asked how leadership had ensured compliance with the VRA, as required under the North Carolina Constitution, in the mandated clusters without any demographic analysis. Senator Marcus stated the committee needed to conduct an RPV study to ensure legal compliance. Chair Hise confirmed the Chairs’ views that no demographic data was legally required, and that there was no directive to staff to order any RPV analysis or provide racial data to members drawing maps.²³

65. In the meeting of the House Committee on Redistricting, Chair Hall provided the set of eight possible House cluster options, based upon the Duke Academic Paper, that constituted the set of options eligible for adoption (the “Duke House Clusters”). *See* “Duke House Groupings Maps 11x17.pdf.”²⁴ The Chair stated that no maps would be considered that used cluster options other than the Duke House Clusters.

66. Representative Harrison questioned how the committee would comply with the VRA as the Duke Academic Paper stated its analysis did not reflect compliance with the VRA as required by *Stephenson*. Representative Reives inquired about the obligations under the VRA and

²² *Duke Senate Groupings Maps 11x17*, North Carolina Senate Redistricting and Elections Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/Senate2021-154/2021/10-05-2021/Duke%20Senate%20Groupings%20Maps%2011x17.pdf>.

²³ NCGA Redistricting, *2021-10-05 Committee (Senate)*, YOUTUBE, <https://youtu.be/IphUZPhkqSY?t=2175>, (Oct. 5, 2021).

²⁴ *Duke House Groupings Maps 11x17*, North Carolina House Redistricting Committee, Oct. 5, 2021, 2021–2022 Session (N.C. 2021), <https://ncleg.gov/documents/sites/committees/House2021-182/2021/October%205,%202021/Duke%20House%20Groupings%20Maps%2011x17.pdf>.

how to comply with them. Chair Hall stated the committees made a decision not to use racial data, contrary to redistricting criteria used in the previous two sessions, which Chair Hall alleged to be “the best way” to ensure compliance with the VRA as well as other state and federal law.²⁵

3. The Legislature Is Notified that the Mandated County Clusters Violate North Carolina Law.

67. Three days after the proposed County Cluster Maps were publicly released, on October 8, 2021, counsel for Plaintiffs sent a letter to Legislative Defendants informing them that the race-blind redistricting criteria adopted and the mandated county clusters violated well-established redistricting law (the “October 8 Letter”).²⁶ The October 8 Letter also informed Legislative Defendants of specific areas in North Carolina Senate and House cluster maps that required examination for VRA Compliance, including:

- a. the Greene/Wayne/Wilson cluster “Q1” mandated by all 16 of the Senate Duke Cluster options;
- b. the Sampson/Wayne cluster “LL2” mandated in some of the House Duke Cluster options;
- c. the Camden/Gates/Herford/Pasquotank cluster “NN1” mandated in some of the House Duke Cluster options.

68. Legislative Defendants failed to take any remedial action in response to this letter, and have not performed any RPV or other analysis of racial data to ensure VRA compliance.

²⁵ NCGA Redistricting, *2021-10-05 Committee (House)*, YOUTUBE, https://youtu.be/9UsiS_6rlUA?t=7961, (Oct. 6, 2021).

²⁶ Letter from SCSJ Attorneys to Legislative Defendants, Oct. 8, 2021, https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-correspondence_NCGA-redistricting_2021.10.082.pdf.

69. After draft Senate map, “SST-4”, was made publicly available on the ncleg.gov website, counsel for Plaintiffs sent a second letter to Legislative Defendants on October 25, 2021,²⁷ expressing concern that the cluster “Z1” chosen for this map from Duke Senate Clusters map “Duke_Senate 02” would obstruct the ability of Black voters to continue electing their candidate of choice. On October 26, 2021, Plaintiff Common Cause sent a letter to Legislative Defendants on October 26, 2021 providing RPV analysis for Senate Districts 1 and 9 in map SST-4 that showed legally significant racially polarized voting in these proposed districts.

70. As of the filing of this Complaint, Legislative Defendants have failed to conduct any RPV analysis of these or any other geographic areas of North Carolina, and have failed to allow consideration of maps that do not adhere to the county clusters in the Duke Academic Paper.

71. Legislative Defendants’ failure to adhere to the requirements of the North Carolina Constitution have created uncertainty and insecurity with respect to Plaintiffs’ rights to fair representation. These violations are not merely abstract, but will in fact cause vote dilution and violations of their rights to free association for Individual Plaintiffs and the members of Plaintiffs North Carolina NAACP and Common Cause, and will frustrate the core mission of Plaintiffs North Carolina NAACP and Common Cause to ensure fair elections and make government at all levels more representative, open, and responsive to the interests of ordinary people. Plaintiffs will specifically be harmed in *at least* the following areas:

- a. “Q1” Senate cluster: Under the North Carolina Senate District Plan enacted in 2019 for the 2020 election cycle, S.L. 2019-219 (the “Senate Benchmark

²⁷ Letter from SCSJ Attorneys to Legislative Defendants, Oct. 25, 2021, <https://southerncoalition.org/wp-content/uploads/2021/10/SCSJ-Letter-Senate-Map-10-25-21-FINAL.pdf>.

Plan”),²⁸ Senate District 4 comprised of Halifax, Edgecombe, and Wilson counties has a Black voting age population (“BVAP”) of 47.46% according to 2020 Census data. Black voters have the ability to elect their candidate of choice in Senate District 4. However, a district drawn pursuant to the mandated county cluster “Q1” and comprised of Green, Wayne, and Wilson Counties would be only 35.02% BVAP. Furthermore, voting is racially polarized in these three counties such that the Black candidate of choice will likely be defeated.

- b. Choice of Senate cluster “Z1”. The Duke Senate Clusters provided two potential cluster options for the “Z1” cluster in northeast North Carolina. The proposed Senate map “SST-4” has been drafted using the Duke Senate Cluster “Duke_Senate 02,” which will dilute the voting power of Black voters in this area of North Carolina. The other option, a cluster comprised of Warren, Halifax, Martin, Bertie, Northampton, Hertford, Gates, Camden, Currituck, and Tyrell counties, has a BVAP of 42.33%. While there is racially polarized voting in these counties, collectively and using reconstituted election results, this one-district cluster would have elected the Black-preferred candidate in recent statewide racially contested elections. However, the “Z1” cluster selected for inclusion in SST-4 is comprised of Northampton, Hertford, Bertie, Gates, Perquimans, Pasquotank, Camden, Currituck, Tyrell, and Dare Counties, and dilutes the

²⁸ See An Act to Comply with Order of the Court in 18 CVS 014001, Wake County, S.L. 2019-219, <https://ncleg.gov/Sessions/2019/Bills/Senate/PDF/S692v4.pdf>.

ability of Black voters to elect their candidates of choice. The BVAP in District 1 of SST-4 using this cluster is only 29.49%. There is racially polarized voting in these counties which, collectively and using reconstituted election results, would not have elected the Black-preferred candidate in recent statewide, racially contested elections. Even without explicitly viewing racial data during drafting, any individual with passing familiarity with this area of North Carolina would understand the choice of this “Z1” cluster in SST-4 would undermine Black voters’ ability to continue electing their candidate of choice.

- c. Choice of House Cluster “LL2”. Proposed House map “HBK-11” uses the Duke House Cluster “LL2” which pairs Wayne and Sampson counties to draw two districts within these counties. Current House District 21 is composed of portions of both Wayne and Sampson Counties, is 39% BVAP, and has afforded Black voters the opportunity to elect a candidate of their choice. Voting is racially polarized in these counties such that Black candidates in statewide elections would not have won had the elections been determined in those counties alone. The proposed House Districts 16 and 17 in proposed House map “HBK-11,” as drawn, would fail to provide Black voters with the opportunity to elect their candidate of choice in either district.
- d. Choice of House Cluster “NN1”. Proposed House map “HBK-11” uses the Duke House Cluster “NN1” composed of Camden, Gates, Hertford, and Pasquotank counties. The current district for this area, House District 5, is

44.32% BVAP, and has provided Black voters the opportunity to elect a candidate of their choice. The proposed House District 2 in “HBK-11” composed of Camden, Gates, Hertford, and Pasquotank Counties would only be 38.59% BVAP. Voting is likely racially polarized in the counties in this “NN1” cluster such that white voters may vote in a bloc that would prevent a Black-preferred candidate from winning.

72. As illustrated in each of these examples of Senate and House clusters required by the Committee Chairs, the clusters would result in a significant decrease in the percent of Black Voting Age Population in each new district. These decreases would prevent Black voters the opportunity to elect candidates of their choice. Under the allegedly “race-blind” criteria adopted by the Legislative Defendants, however, the deleterious consequences on BVAP has not, and in fact cannot, be directly considered by the Redistricting Committees.

C. DEFENDANTS’ DELAY IN REDISTRICTING REQUIRES POSTPONING THE MARCH 2022 PRIMARIES AND RELATED DEADLINES

73. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs.

74. On February 12, 2021, the U.S. Census Bureau announced that its release of P.L 94-171 redistricting data would be delayed by the COVID-19 pandemic, and would not be released until the fall of 2021.²⁹ On February 24, 2021, the North Carolina State Board of Elections Executive Director Karen Brinson Bell advised the House Elections Law and Campaign Finance Reform Committee that this delay would require an election schedule change in light of the time required to prepare for candidate filing and ballot styles. Director Brinson Bell advised the

²⁹ Press Release, U.S. Census Bureau, Census Bureau Statement on Redistricting Data Timeline (Feb. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>.

Committee to move the 2022 primary to a May 3 primary, July 12 second primary, and November 8 general election.³⁰

75. The North Carolina General Assembly did not respond to Director Brinson Bell's recommendation to postpone the March 2022 primaries to May 3. The General Assembly did, however, extend the schedule for municipal elections for those municipalities similarly impacted by the Census delay. *See* S.B. 722, S.L. 2021-56 (2021).

76. As of the filing of this Complaint, the General Assembly has failed to reschedule the March 2022 primaries and related deadlines as recommended by Director Brinson Bell and as necessary to account for the Census delay. As a result, the deadlines associated with the March 2022 primaries are fast approaching, including:

- a. *Candidate filing deadline.* Pursuant to N.C.G.S. § 163-106.2, candidates seeking party primary nominations for federal Congressional, statewide offices, and State Legislative must file a notice of their candidacy in the period between December 6 through 17, 2021.
- b. *Absentee Ballots Deadlines for Civilians.* Pursuant to N.C.G.S. §163-22(k) and §163-277.10(a), the State Board of Elections has 50 days before the primary election to print and distribute absentee ballots. Prior to the printing of primary ballots, the State Board of Elections may adopt a resolution to shorten this period to 45 days. N.C.G.S. §163-22(k). The county board of elections must print a sufficient number of envelopes and instruction sheets

³⁰ *A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021, Presentation to House Election Law & Campaign Finance Reform Committee*, Feb. 24, 2021, 2021–2022 Session (N.C. 2021), <https://www.ncleg.gov/documentsites/committees/House2021-21/02-24-21/House%20Elections%20Committee%20Presentation%202-24-2021%20FINALv2.pdf> at 14.

for voters using absentee ballots by mail no later than 50 days before a statewide primary election. N.C.G.S. § 163-229(b), (c). Director Brinson Bell in her February 2021 presentation stated her position that there is a two-month process for geocode changes required for filing and ballot styles.³¹

- c. *Absentee ballots deadline for military and overseas.* Pursuant to N.C.G.S. § 163-258.9(a), the county board of elections has 50 days before the primary election to send ballots and balloting materials as requested by military-overseas voters.

77. The North Carolina General Assembly has unnecessarily delayed the redistricting process. This delay has caused avoidable confusion, has obstructed the opportunity for meaningful public comment, and will hinder the ability for voters of color to have their candidates of choice qualify and run for State Legislative office.

78. Despite having received notice in February 2021 from the U.S. Census Bureau about the delays in releasing Census data, and the resulting impact on election schedules, the Redistricting Chairs failed to convene any meetings of the Redistricting Committees to plan for the 2021 redistricting until the eve of Census data's release in August of 2021. The Redistricting Chairs and Redistricting Committees failed to propose any schedule for the redistricting process or notice of public comment related to the redistricting process, and failed to propose or consider redistricting criteria, until first meeting on August 5, 2021. Any and all of these steps could have been taken at any point after the Long Session was convened in January 2021.

³¹ *A Look Back at North Carolina's Historic 2020 Election & Looking Ahead at 2021*, *supra* note 26, at 14.

79. When the Redistricting Committees finally met on August 5, 2021, the Redistricting Chairs initiated an unnecessarily rushed and disorganized redistricting process that has stifled public comment and lent uncertainty to what could have been an organized and predictable process. For example:

- a. The Redistricting Chairs released proposed redistricting criteria on August 9, 2021, and provided the public less than 24-hours-notice to attend an 8:30am, in-person only hearing on a weekday (August 10, 2021) for public comment on the proposed redistricting criteria.³² The Redistricting Committees then voted and accepted that criteria barely three days (August 12) after it was first proposed.
- b. The Redistricting Chairs waited until September 1 to announce a schedule for public hearings, held from September 8 through September 30, 2021. These hearings were ineffectively noticed, including errors in location that caused confusion and obstructed public comment. For example, the Redistricting Chairs provided the wrong location information in the notice for the September 8, 2021 hearing in Caldwell County, telling the public it was to be held at Caldwell County Community College when it was actually being held miles away at the JE Broyhill Civic Center. There was low turnout at this hearing, and several individuals who had signed up to speak at this hearing did not appear when called.

³² *Joint Meeting of the Senate Redistricting and Elections Committee and the House Redistricting Committee for Discussion of Schedule for Public Hearings*, Aug. 18, 2021, 2021–2022 Session (N.C. 2021), https://www.ncleg.gov/documentsites/committees/Senate2021-154/2021/08-18-2021/Senate%20Committee%20on%20Redistricting%20and%20Elections%20Agenda%20for%208-18-21%209_00%20AM.pdf.

- c. As compared to prior redistricting cycles, the Redistricting Committees provided materially less opportunities for public comment and involvement by holding only 13 public hearings as compared to over 60 hearings held in the 2011 cycle.
- d. The Redistricting Chairs announced the aforementioned required county groupings from the Duke Academic Paper on October 5, 2021, without any prior discussion or opportunity for public input.
- e. The Redistricting Chairs failed to provide the public or Legislatures with any schedule for drawing maps, or even a deadline by which maps would need to be proposed, lending uncertainty and unnecessary delay in the map-drawing process. As of noon on October 29, 2021, Legislators are still drawing proposed maps and no deadline or schedule for the submission or vote on proposed maps has been announced by the Redistricting Chairs. Upon information and belief, Defendant Hise was revising a proposed Senate map on October 28 in a meeting for which there was no prior public notice. The only action taken to date was noticing a House committee meeting for Monday, November 1, but it is still unclear what the map to be considered looks like.
- f. The Redistricting Chairs provided less than three business days' notice of two public hearings on proposed maps on October 25 and 26, 2021, failing to make all the maps that would be considered available for public view when available. For example, Senate map "SST-4" was, upon information and belief, drafted by October 14, but was not publicly available until

October 19 and was published without any public announcement. House map “HBK-1” was not public until the afternoon of Friday, October 22, with no public announcement. Overall, Legislative Defendants provided the public with just three days to review and analyze a total of ten maps.

80. By designing a process that stifled public comment and caused uncertainty and unnecessary chaos to the redistricting process, the delay caused by Legislative Defendants will have severe consequences for voters’ ability to elect candidates of their choice.

81. Pursuant to Sections 6 and 7 of Article II of the North Carolina Constitution, candidates for North Carolina House and Senate must have resided in the district for one year immediately prior to the General Election. The General Election occurs on November 8, 2022, and thus candidates must reside in their district starting on November 8, 2021. Due to Legislative Defendants’ unjustified delay in convening the Redistricting Committees until August, the implementation of a confusing and uncertain public comment process, and the late adoption of final redistricting maps, potential candidates will have insufficient time to change their residency if required due to changes in the final maps. The inability of potential candidates to meet residency requirements due to late-adopted maps will impede the ability for voters of color, including the Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs to elect candidates of their choice.

82. Overall, the actions of Legislative Defendants, or lack thereof, have caused significant uncertainty for potential candidates running for legislative office. Upon information and belief, Legislative Defendants’ unnecessarily delay and chaotic process will prevent voters of color, like Individual Plaintiffs, from electing candidates of their choice due to the burden and uncertainty currently facing new candidates. Upon information and belief, Legislative Defendants’

delay will also restrain Organizational Plaintiffs from educating their members and voters on who is running for Legislative office in a timely manner.

V. CONFLICTING PRONOUNCEMENTS OF LEGAL RIGHTS

83. Plaintiffs repeat and re-allege the allegations contained in the preceding paragraphs.

84. The North Carolina Declaratory Judgment statutes, N.C.G.S. Chapter 1, Article 26, expressly allows for the determination of legal rights, and must be liberally construed and administered to afford “relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” N.C.G.S. §§ 1-254, 1-264. Where a declaratory judgment action is premised on “issues of great public interest, the court should “adopt and apply the broadened parameters of a declaratory judgment action.” *Hoke Cty Bd. of Educ. v. State*, 358 N.C. 605, 616 (2004).

85. Article I Section 3 of the North Carolina Constitution provides that the rights of the people of North Carolina “shall be exercised in pursuance of law and consistently with the Constitution of the United States.” Article I Section 5 of the North Carolina Constitution prohibits a law or ordinance in North Carolina from contravening the federal Constitution. Together, these provisions “delineate[] the interplay between federal and state law.” *Stephenson v. Bartlett*, 355 N.C. 354, 370 (2002). As applied to redistricting, “the State retains significant discretion when formulating legislative districts so long as the ‘effect’ of districts created pursuant to the ‘whole county’ criterion or other constitutional requirement does not dilute minority voting strength in violation of federal law.” *Id.*

86. Legislative Defendants have adopted redistricting criteria that prohibit the use of racial data, and have repeatedly asserted—incorrectly—that applicable law does not require the consideration of racial data to ensure compliance with the North Carolina Constitution or other applicable law.

87. Legislative Defendants have further mandated the use of designated county clusters for state Senate and House maps that cause impermissible vote dilution, without ensuring compliance with North Carolina Constitutional requirements and following the unequivocal instructions for the redistricting process articulated in *Stephenson v. Bartlett*.

88. The intentional action, and inaction, by Legislative Defendants have created insecurity and uncertainty as to Plaintiffs' rights that will result in violations of their fundamental right to fair representation, freedom from intentional discrimination, and free association.

CLAIM I

DECLARATORY JUDGMENT ACT

89. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

90. Plaintiffs seek a declaratory ruling that Plaintiffs are entitled a redistricting process that adheres the requirements of Article II, Sections 3 and 5 of the North Carolina Constitution.

91. Plaintiffs seek injunctive relief requiring the North Carolina General Assembly to adhere to the requirements of Article II, Sections 3 and 5, as set forth in *Stephenson v. Bartlett*, and specifically to perform a meaningful attempt to determine whether there are any districts compelled by the Voting Rights Act, which, at a minimum, requires the consideration of racial data to understand changing demographics and to perform a Racially Polarized Voting Analysis where the racial demographics indicate potential VRA problems before designating county clusters required in Senate and House legislative maps.

92. Plaintiffs further seek injunctive relief enjoining the SBE Defendants from administering the March 8, 2022 Statewide Primary elections no earlier than May 3, 2022, and from administering the candidate filing period no earlier than February 1 through 11, 2022. Such injunctive relief is necessary for the North Carolina General Assembly to undertake a redistricting

process that adheres to the requirements of the North Carolina Constitution, to afford candidates adequate time to prepare for filing, and to provide the North Carolina State Board of Elections and county boards of elections adequate time to prepare for the primary elections.

CLAIM II

INTENTIONAL DISCRIMINATION IN VIOLATION OF ARTICLE I SECTION 19 OF THE NORTH CAROLINA CONSTITUTION

93. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

94. The Equal Protection Clause, Article I, Section 19 of the North Carolina Constitution, states that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.” This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

95. North Carolina’s Equal Protection Clause affords broader protections to its citizens in the voting rights context than the U.S. Constitution’s equal protection provisions. *See Stephenson v. Bartlett*, 355 N.C. 354, 376–80, 381 n.6. (2002); *Blankenship v. Bartlett*, 363 N.C. 518, 523 (2009).

96. The Supreme Court of North Carolina has held that “[i]t is well settled in [North Carolina] that the right to vote on equal terms is a fundamental right.” *Stephenson v. Bartlett*, 355 N.C. 354, 378 (2002) (internal quotation marks omitted).

97. To that end, North Carolina’s Equal Protection Clause protects the right to “substantially equal voting power.” *Id.* at 379.

98. Legislative Defendants’ intentional discrimination against Plaintiffs is plain: Legislative Defendants’ prohibition on the use of racial data necessary to protect against vote dilution, and failure to conduct a Racially Polarized Voting Analysis when designating Senate and

House county clusters, deprives Plaintiffs of equal protection under the law. Defendants' refusal to consider race, in contravention of the North Carolina Constitution as described in *Stephenson v. Bartlett*, constitutes intentional and purposeful discrimination against Plaintiffs and other Black voters.

99. A motivating purpose behind Legislative Defendants' failure to consider any racial data is to draw districts that will not provide Plaintiffs and other Black voters an equal opportunity to elect their preferred candidates, will dilute the voting power of Black voters, and will make it more difficult for the candidates of choice for the Individual Plaintiffs, the members and voters served by the Organizational Plaintiffs, and of Black voters in North Carolina to be elected across the state.

100. Legislative Defendants' refusal to consider racial data when designating county clusters is certain to produce discriminatory effects, including by undermining and/or preventing the ability of Black voters, including Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs, to elect their candidates of choice as they are able to under current benchmark state Legislative districts, as specified in the above paragraphs.

101. Legislative Defendants' designated county clusters intentionally and impermissibly discriminate against Plaintiffs, and Legislative Defendants advance no compelling government interest to justify this discrimination.

CLAIM III

VIOLATION OF FREE ASSOCIATION CLAUSE OF THE NORTH CAROLINA CONSTITUTION

102. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

103. The Freedom of Assembly Clause, Article I, Section 12 of the North Carolina Constitution, protects the right of the people "to assemble together to consult for their common

good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.” In North Carolina, the right to assembly encompasses the right of association. *Feltman v. City of Wilson*, 238 N.C. App. 246, 253 (N.C. Ct. App. 2014).

104. Article I, Section 12 protects the right of voters to participate in the political process and to affiliate with or support a voter’s candidate of choice. Supporting and affiliating with a candidate of one’s choice to pursue certain policy objectives is a core association protected by the North Carolina Constitution.

105. Plaintiffs exercised their constitutional right to assemble and associate when they consulted with other Black voters and candidates for their common good. Specifically, through the Individual Plaintiffs’ efforts to register Black voters so that they may elect a candidate of choice that is accountable and responsive to their needs. However, the proposed maps will severely hinder the efficacy of the Individual Plaintiffs’ efforts.

106. Plaintiffs are unable to exercise their right to associate when they cannot support a candidate of their choice as a result of redistricting undertaken by Legislative Defendants that willfully disregards and violates the process required under the North Carolina Constitution, as set forth in *Stephenson v. Bartlett*.

107. Defendants’ failure to comply with North Carolina Constitutional requirements for redistricting, as described in *Stephenson v. Bartlett*, when designating the county clusters, violates Article I Section 12 of the North Carolina Constitution by intentionally burdening the associational rights of Plaintiffs.

108. Defendants’ designated county clusters burden the ability of Plaintiffs and other Black voters to affiliate and join together to support their candidate of choice. Specifically, the Individual Plaintiffs who are all involved in registering Black voters and work to ensure that their

candidates of choice are elected. in previous redistricting cycles, changes in Plaintiffs Harris and Grant's, electoral districts have thwarted their efforts. The delayed process to adopt maps by Legislative Defendants, as well as the unlawful process employed to prepare the proposed maps made public so far, threaten to thwart these efforts again.

109. The designated county clusters will impose difficulty and impediments for Plaintiffs to register voters, attract volunteers, raise money, campaign, and turn out the vote for their candidate of choice, thereby creating greater obstacles for Plaintiffs to advance their interests via their right to vote.

110. As a result of the county clusters designated by Defendants, Plaintiffs' associative conduct—i.e., their shared support for the candidate of their choice—is less effective. Defendants' designated county clusters raise barriers—if not making it impossible—for the candidates of choice of Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs to be elected, as specified in the above paragraphs. When Black voters are unable to influence the legislative process, their political views are unconstitutionally suppressed.

111. Defendants' intentional conduct in developing criteria for designating country clusters created these burdens by rejecting all consideration of race or conducting a Racially Polarized Voting Analysis. Defendants' designated county clusters artificially dilute the weight and impact of their associative conduct for Individual Plaintiffs and the members and voters served by the Organizational Plaintiffs.

112. Defendants have failed to provide an adequate explanation or justification for a redistricting criteria that eliminates all consideration of race and refuses to conduct a Racially Polarized Voting Analysis. Moreover, there is no compelling government interest in eliminating such consideration and thereby discriminating against Plaintiffs because of their associations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

- a. Declare Plaintiffs' legal rights to be free from redistricting that violates the North Carolina Constitution, as set forth in the paragraphs above;
- b. Declare Legislative Defendants' duty to undertake a redistricting process that complies with the requirements of Article II Sections 3 and 5 of the North Carolina Constitution, as described in *Stephenson v. Bartlett* and as set forth in the paragraphs above;
- c. Declare Legislative Defendants' criteria for redistricting unlawful, including the requirement to utilize the Duke Senate Clusters and Duke House Clusters, due to a violation of Plaintiffs' Rights under Article I, Section 19 of the North Carolina Constitution, and order Legislative Defendants to adopt a redistricting criteria that complies with the North Carolina Constitution and applicable law;
- d. Declare Legislative Defendants' criteria for redistricting unlawful, including the requirement to utilize the Duke Senate Clusters and Duke House Clusters, due to a violation of Plaintiffs' Rights to Associate under Article I, Section 12 of the North Carolina Constitution, and order Legislative Defendants to adopt a redistricting criteria that complies with the North Carolina Constitution and applicable law;
- e. A prompt hearing and/or expedited pleading schedule;
- f. An injunction prohibiting the North Carolina General Assembly from undertaking a redistricting process that fails to adhere to the requirements of the North Carolina Constitution, as set forth in *Stephenson v. Bartlett*;

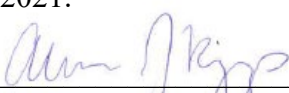
- g. An injunction prohibiting the SBE Defendants from administering the March 8, 2022 Statewide Primary elections before May 3, 2022 and from administering the candidate filing period before February 1 through 11, 2022;
- h. Award Plaintiffs' reasonable attorneys' fees, if just and proper;
- i. Make all further orders as are just, necessary, and proper; and
- j. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 29th day of October, 2021.

/s/
Janette Louard*
(OH Bar No. 66257)
Anthony P. Ashton*
(MD Bar No. 9712160021)
Anna Kathryn Barnes*
(D.C. Bar No. 1719493)
*Pro Hac Vice motion to be filed

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Counsel for Plaintiffs

VERIFICATION

I, Deborah Dicks Maxwell, serve as President of the North Carolina State Conference of the NAACP Branches ("NC NAACP"), and hereby state that my organization, NC NAACP, is a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to NC NAACP, except to those matters stated on information and belief, which I believe to be true.

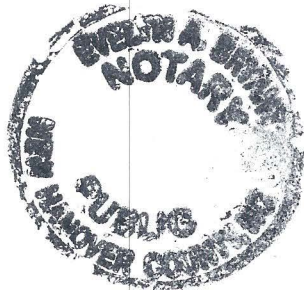
Deborah Dicks Maxwell
Deborah Dicks Maxwell

Sworn and subscribed before me this the 28th day of October, 2021.

Evelyn A Bryant
Notary Public

Name: Evelyn A Bryant

My commission expires: 3/22/2022



VERIFICATION

I, Bob Phillips, serve as Executive Director of Common Cause North Carolina, and hereby state that my organization, Common Cause, is a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to Common Cause, except to those matters stated on information and belief, which I believe to be true.

Bob Phillips
Bob Phillips

Sworn and subscribed before me this the 28 day of October, 2021.

Erin Miller
Notary Public

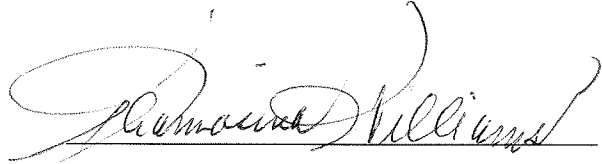
Erin Miller
NOTARY PUBLIC
Johnston County, NC
My Commission Expires February 22, 2024

Name: Erin Miller

My commission expires: 2/22/2024

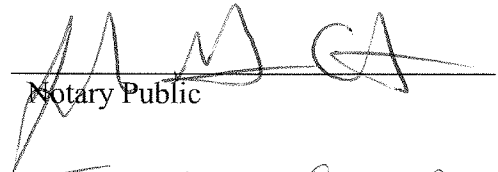
VERIFICATION

I, Thomasina Williams, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein—are true and accurate as they pertain to me



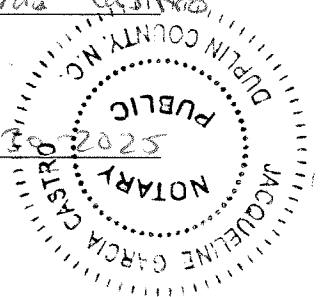
Thomasina Williams

Sworn and subscribed before me this the 28th day of October, 2021.


Notary Public

Name: Jacqueline Garcia Castro

My commission expires: 04-30-2025



VERIFICATION

I, Marilyn Harris, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein—in paragraphs 11, 76, 79—are true and accurate as they pertain to me

Marilyn H. Harris

Marilyn Harris

Sworn and subscribed before me this the 28 day of October, 2021.




Talia Ray
Notary Public

Name: Talia Ray

My commission expires: 11-6-2024

VERIFICATION

I, Gary Grant, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein—in paragraphs 12, 76, 79—are true and accurate as they pertain to me



Gary Grant

Sworn and subscribed before me this the 28th day of October, 2021.

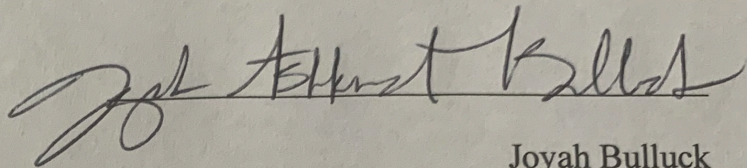

Notary Public

Name: Talia Ray

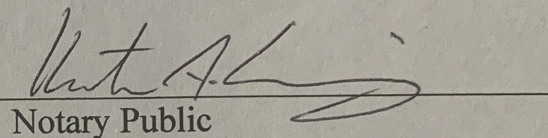
My commission expires: 11-6-2024

VERIFICATION

I, Joyah Bulluck, hereby state that I am a Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT**, and that the contents therein are true and accurate as they pertain to me

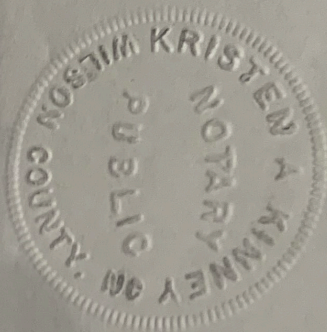

Joyah Bulluck

Sworn and subscribed before me this the 28 day of October, 2021.


Notary Public

Name: Kristen A. Kinney

My commission expires: 12-19-2023



FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

2021 NOV -5 P 4: 50

21 CVS 014476

WAKE CO., C.S.C.

NORTH CAROLINA STATE CONFERENCE
OF NAACP BRANCHES, COMMON CAUSE,
MARILYN HARRIS, GARY GRANT, JOYAH
BULLUCK, and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, *in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections*; DESTIN HALL, *in his official capacity as Chairman of the House Standing Committee on Redistricting*; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chair of the State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the State Board of Elections*; STACY EGGERS IV, *in his official capacity as Member of the State Board of Elections*; JEFF CARMON III, *in his official capacity as Member of the State Board of Elections*; TOMMY TUCKER, *in his official capacity as Member of the State Board of Elections*; KAREN BRINSON BELL, *in her official capacity as Executive Director of the State Board of Elections*

Defendants.

**AFFIDAVIT OF
CHRISTOPHER SHENTON**

I, Christopher Shenton, swear under penalty of perjury that the following information is true to the best of my knowledge and state as follows:

1. I am a Legal Fellow at the Southern Coalition for Social Justice, counsel for Plaintiffs in this matter. I watched the recordings of the public hearings conducted in the North Carolina General Assembly during the 2021 redistricting process. I submit this affidavit to attest to the authenticity of the quotes and descriptions of those hearings, referenced herein and in Plaintiffs' Verified Complaint, in support of Plaintiffs' Verified Complaint and Plaintiffs' Motion for a Preliminary Injunction.

2. On August 10, 2021, the Joint Redistricting Committee received public comment on their proposed redistricting criteria. A recording of that meeting can be found at <https://youtu.be/QFA6QNpqWVk>. In that recording, Plaintiffs' Counsel Allison J. Riggs made the following statement from 34:59 to 36:01:

"It is neither appropriate nor required to draw districts race-blind. As long as redistricting has occurred, it has been a tool used to harm voters of color. Beyond compliance with the Voting Rights Act, it is entirely appropriate to advance race-equity to consider race in the drawing of districts, to ensure that voters of color are not being packed or cracked.

Additionally, in *Covington v. North Carolina*, this legislative body tried the same thing with respect to race-blind redistricting. A three-judge panel, including Republican and Democratic appointees, and a unanimous Supreme Court, rejected your race-blind remedial drawing of two Senate districts and two house districts. In fact there is apparently not a federal judge out there who agrees with this approach and we urge you to abandon that criteria."

3. On August 12, 2021, the Joint Redistricting Committee debated amendments to their proposed redistricting criteria. A recording of that meeting can be found at <https://youtu.be/gSm2OhE7Slk>. In that recording, Senator Newton made the following statement from 2:51:28 to 2:52:15:

"The second question I want to address is the decision to exclude racial data from being used by this committee in the drawing of districts; of course we understand

that North Carolina is obligated to comply with Section 2 of the Voting Rights Act when drawing districts in the 2021 Congressional, House, and Senate plans, but during the last decade the Supreme Court told us that there is not sufficient evidence of racially polarized voting in North Carolina to justify the consideration of race when drawing districts. If you have new evidence or new studies of racially polarized voting in North Carolina, we would be willing to examine that evidence, and nothing in this criteria prevents any member from bringing forward such evidence during this process.”

4. In that same August 12, 2021 recording, the following exchange occurred between Senator Blue and the Chairs from 2:56:35 to 2:57:06:

Senator Blue: “But I think that Stephenson makes it relatively clear that before you consider clustering or groupings, you have to make that VRA determination.”

Senator Newton: “Senator Blue, thank you for your analysis on that. The chairs have considered the various options and we will comply with the law and the methodology we used in 2019 passed muster and we’re going to continue with that methodology.”

5. In that same August 12, 2021 recording, Senator Blue made the following statement from 3:34:13 to 3:35:58:

Senator Blue: “Thank you Mr. Chair. The amendment is sort of self-explanatory. I simply say that for the 4 decades since the 1980s redistricting, starting with *Gingles v. Edmisten*, and through *Shaw v. Reno*, and through the series of cases at the early part of this century, and the cases in the last redistricting cycle, North Carolina has basically been the state with the chin out before the Supreme Court to get our redistricting plans struck down. And we’ve spent tens of millions of dollars over that time period, from the 80s forward, to have the Supreme Court basically say no to all of those efforts that we’ve done. So this is an effort to make sure that we make an effort to try and save the taxpayers what now is collectively more than 50 million dollars in efforts and futility, by setting forth that related to Senator Daniel’s earlier amendment, that we know what the Voting Rights Act requires, we know what the Supreme Court has said, and this is the language that they have used with respect to, in both *Cooper v. Harris* and *Covington v. North Carolina*, that you’ve got to do to comply with the Voting Rights Act. I just offer the amendment so that it’s constantly before us, so that we don’t get tempted to sort of skirt to the edge again, and cost the taxpayers another 10 to 20 million dollars defending this thing back up through the Court of Appeals or the Supreme Court, or a three-judge panel and the Supreme Court. So I move for the adoption of the amendment.”

6. In that same August 12, 2021 recording, the following exchange occurred between Senator Clark and Senator Daniel from 3:37:07 to 3:38:26:

Senator Clark: "You may have mentioned it, but it really slipped my mind. How do we intend to comply with the Voting Rights Act if we don't use the racial data that is required to comply with it?"

Senator Daniel: "Senator Clark thank you for the question. Just as Senator Newton explained at the beginning of the meeting, in the event that evidence is presented to the committee that there's racially polarized voting in North Carolina then that might be something the committee would need to address. At this point, the courts in 2019 and even the Democrats' own expert have said that there is not racially polarized voting in North Carolina, and so that's sort of where we think we're at."

Senator Clark: "Given that the *Stephenson* requirement is there, that we do VRA districts first, is it not incumbent upon the General Assembly itself to perform racially polarized studies in order to make that determination that, as we are here today, that there is no racial polarization in North Carolina with regard to voting?"

Senator Daniel: "And I think to answer your question again, based on the 2019 decisions of the court and the Democrats' own expert, we don't feel that that is necessary at this point at the outset of the map drawing."

Senator Clark: "Follow-up. Were we considering all of the VRA districts within the 2019 court case?"

Senator Daniel: "I don't really have any further comment about this amendment."

7. In that same August 12, 2021 recording, the failure of Senator Blue's amendment can be found from 3:43:35 to 3:43:52.

8. On October 5, 2021, the Senate Committee on Redistricting and Elections met to introduce and consider the county groupings that the Chair planned to consider. A recording of that meeting can be found at <https://youtu.be/IphUZPhkqSY>. In that recording, Senator Hise made the following statement from 9:36 to 10:22:

"I want to emphasize that the Chairs believe that there are multiple options for grouping counties in a way that is legally compliant. This Committee will consider maps that use the constitutionally compliant county groupings as our adopted criteria require us to do. Maps that do not use legal county groupings will not be considered by this committee. I want to ask Erika Churchill to explain the

county grouping options for the 2021 Senate plans. And I think they have passed out the packet of 16 plus blank maps, that's coming in with some other information."

9. In that same October 5, 2021 recording of the Senate Committee on Redistricting and Elections, Erika Churchill made the following statement from 27:11 to 27:17:

"The one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act."

10. In that same October 5, 2021 recording of the Senate Committee on Redistricting and Elections, the following exchange between Senator Blue and Senator Hise occurred from 31:05 to 33:32:

Senator Blue: "And so I ask you, since staff pointed out that they made that an exception to the maps: can we do legitimate maps that are constitutional without seeing what the constitutional requirement is?"

Senator Hise: "The response I would give to the question is we believe that constitutionally compliant maps can be presented under the Voting Rights Act under these county clusters. As much as we are required with what remains of the Voting Rights Act to comply, we will comply, and believe it can be done within these existing clusters. I see them as two separate things. We must comply with federal law, we must comply with state law, and within these clusters we believe there is the option for doing both."

Senator Blue: "I want to do that, but how would you propose to comply, what would be the analysis to determine that you are complying with the Voting Rights Act? That's the ultimate question, because *Gingles* set forth the criteria that you have to use to determine whether there's a Voting Rights Act violation."

Senator Hise: "Having gone through all of these cases as much as I could, I wish it was a simple standard in which they could determine what was the demographics or the process of a district in order to comply with the Voting Rights Act, but we believe that however these districts may form or the options that are chosen for how these districts form, it is still very much possible to create districts, and intend to, that comply with the Voting Rights Act."

Senator Blue: "One last question. So it's the Chair's position that you can actually determine clusters without doing the first *Stephenson* analysis, analysis that's replicable, I mean that's what a scientific approach to it is, that folks have to understand it, you have to have specific criteria, and you can replicate it. And so is it your position that we can comply with the Voting Rights Act without doing

the analysis to determine whether the Voting Rights Act requirements, before you do the clustering, which is what Stephenson says you have to do?”

Senator Hise: “It is our position that you can comply with both laws at the same time, yes.”

11. In that same October 5, 2021 recording of the Senate Committee on Redistricting and Elections, the following exchange between Senator Marcus and Senator Hise occurred from 36:55 to 38:22:

Senator Marcus: “It seems to me that the way to answer the question is that this committee should conduct a racialized polarized voting study. I’m asking now whether you intend to do that, whether before we set these county clusters or before we set the final maps.”

Senator Hise: “I would repeat that no evidence has been presented to this committee of racially polarized voting. When we went through this 10 years ago, we put mountains of information together that the court found would be insufficient for doing so, and we have taken no additional action and am aware of no commissioned study or others from this Committee or from the General Assembly. But we will consider anything presented.”

Senator Marcus: “Just to clarify, so I hear what you’re saying is ‘nobody else has presented this committee with this information’ but it’s my belief, and I think many others’, that it is incumbent on this committee to make that determination, and to do so, you would need a racialized polarized voting study. So are you saying Mr. Chair that you are not going to order that study as Chair of this Committee, that it’s somehow up to somebody else to present it to you?”

Senator Hise: “I will say that the Committee will consider the available information we have. There is no plan or process right now for commissioning a particular study in any of the budget processes or in legislation.”

12. On October 5, 2021, the House Committee on Redistricting met to introduce and consider the county groupings that the Chair planned to consider. A recording of that meeting can be found at https://youtu.be/9UsiS_6rlUA. In that recording, Representative Hall made the following statement from 1:00:32 to 1:02:08:

Representative Hall: “The second step in today’s committee is going to be the presentation of the optimum county groupings that have been come up with by the nonpartisan staff, and so the Chair is going to turn this over to Erika Churchill in just a moment to make a presentation on the optimum county groupings that have been crafted

by the nonpartisan staff, but what the Chair will ultimately say about these groupings is in years past if you have been on this committee you know that we have adopted certain groupings. The Chair does not anticipate adopting any particular grouping this time around because there are multiple options within the county groupings and that's what you've got in front of you, and Ms. Churchill is going to explain in more detail here in just a bit.

Rather than limit any member of this committee into just certain groupings, what the Chair anticipates is that members can use whichever combination of the groupings that you see before you in drawing whichever map a member sees fit to draw. The only groupings that will be considered are those that are in the packet that's in front of you. These were initially put forth by Duke University and nonpartisan staff has also drawn their own groupings and confirmed that the Duke groupings were correct, and so we're confident that, using the algorithm as required in the law, that these are the possible optimum groupings."

13. In that same October 5, 2021 recording of the House Committee on Redistricting, Erika Churchill made the following statement from 1:03:40 to 1:03:47:

"The one part of *Stephenson v. Bartlett* which this analysis does not reflect is compliance with the Voting Rights Act."

14. In that same October 5, 2021 recording of the House Committee on Redistricting, the following exchange between Representative Harrison and Representative Hall occurred from 1:34:04 to 1:36:17:

Representative Harrison: "Looking at Drs. Cooper, Mattingly, et al.'s article, and Erika Churchill mentioned this, they say that the one part of the *Stephenson v. Bartlett* decision that this analysis does not reflect compliance with is the Voting Rights Act. So I sort of skimmed *Stephenson v. Bartlett* in anticipation of this meeting, and I'm just wondering, since it seemed to be a very important point of the *Stephenson* decision, is compliance with the Voting Rights Act. So we're starting with maps that don't take that into account at all, and I'm just wondering how we're complying with that."

Representative Hall: "Thank you for the question Representative Harrison. As the lady knows, this committee has made a decision to not use race at all in the drawing of our maps. I'll also note that, as you know, there's been a lot of litigation in this state over the redistricting process in general. We've had many, many lawsuits, going back to when Democrats were in the majority and since Republicans have been in the majority, it's really been no different, we've had many, many lawsuits. What we've seen in those lawsuits, at least in the last few lawsuits that we've seen, is that the plaintiffs in those suits that are trying to set aside those maps have said that there is no legally significant

racially polarized voting in North Carolina. That's the plaintiffs and their own experts who are saying that. We've drawn maps in both 2017 and 2019 not using racial data at all, and those maps have been approved, groupings rather, the lady's question is specifically as to groupings and I'm sort of answering the grouping and map question in one, but we used groupings in 2017 and in 2019 not taking into account any sort of racial data at all, and courts have uniformly upheld those groupings that we've used without using racial data. So we are going to stick with the criteria of the committee, and not consider any racial data at all, and based on the past precedent of doing this, we're confident that that will comply with the Voting Rights Act.

15. In that same October 5, 2021 recording of the House Committee on Redistricting, Representative Carney made the following statement from 1:55:10 to 1:56:00:

"I want to go back to the drawing of these maps in this room. And I guess I'm one that, I envisioned at first that this committee would come in here for two weeks gathered around the maps, work together in a nonpartisan way to draw these maps out in the public as you've stated. But I'm hearing now and I'm understanding member, when you said any member can come in here, from 9:00 to 5:00 Monday through Friday for two weeks, correct me if I'm wrong, but any member of the Legislature, House members in here and I guess the Senate will be doing the same. So it is going to go beyond, the map drawing will go beyond just the committee members."

16. In that same October 5, 2021 recording of the House Committee on Redistricting, the following exchange between Representative Reives and Representative Hall occurred from 2:12:51 to 2:14:23:

Representative Reives: "I think what my question would be is what do you feel like our obligations are under the Voting Rights Act at this point? Because I understand you're saying that we won't be using racial data to determine what those districts look like initially, which I think was done before. So what do you think our obligations would be, and how are we going to comply?"

Representative Hall: "Well obviously we're obligated to comply with Section 2 of the Voting Rights Act. But as I said earlier, we've seen a lot of litigation in this state, and you followed that, I have followed it, I can't say I've read every line of every single case, because that's all you would ever do if you were going to go do that, but I've read a lot of it and in my opinion what the plaintiffs have said, so those folks who have tried to set aside maps, have said, and their experts by the way, their experts that they hired to go to court for them, they've all said that there is no legally significant racially polarized voting in North Carolina. That's the evidence in the record from past cases that we have, in my opinion that's what the *Covington* court found, so Judge Wynn found that there was no legally

significant racially polarized voting in North Carolina, but certainly the plaintiffs and their experts made that claim. So without that, we believe that as we've done in the past two sessions that we've redrawn, not considering race is actually not only proper but it's the best way forward to make sure that we are complying with not only the Voting Rights Act but other state and federal laws."

17. On November 2, 2021, the Senate Committee on Redistricting and Elections met to consider redistricting plans for recommendation to the full General Assembly. A recording of that meeting can be found at <https://youtu.be/1TMJ7iYhLnQ>. In that recording, Senator Newton made the following statement from 1:34:00 to 1:40:00:

"The Chairs wanted to be direct and address an issue that's being raised by some, and that is whether the General Assembly is required to draw districts using racial data. We've also received a lawsuit already against the General Assembly filed before the plan has even passed. This interest group activity litigated against the General Assembly this past decade, and succeeded in developing some of the strict limits on permissible racial considerations it now asks us to defy. I want to explain at the outset why we cannot do that. So just to be clear, they litigated to limit our ability to use racial data, we're choosing as we did in 2019 not to use racial data, and now they're litigating saying we should use racial data.

So first, the General Assembly, the allegation is, cannot draw districts using race – well no, this is the law, apologies – first, the General Assembly cannot draw districts using race under the Voting Rights Act unless we satisfy the three *Gingles* preconditions. They are 1) a reasonably compact majority-minority VAP district, 2) a politically cohesive minority community, and 3) white bloc voting usually defeating that community's candidate of choice. To draw VRA districts according to *Covington* and other recent court cases, the General Assembly would need 'a strong basis in evidence' for each of those three factors. Specific evidence would come in the form of reliable racial bloc voting analysis by an expert in the field. Spreadsheets and argument based on inadequate data do not create the strong basis the General Assembly would need to overcome a constitutional challenge. Second, if we draw districts using race, and we do not satisfy the *Gingles* preconditions, we risk violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

In short, making one redistricting choice over another for racially predominant reasons will be subjected to strict scrutiny by the courts. Our present record and most recent litigation does not provide a yes answer to any of the *Gingles* factors. Our two most recent redistricting efforts overseen and approved by the courts in the *Covington* case and the *Lewis* case did not consider race. In fact, in *Lewis* a three judge panel analyzed all regions of the state last year, last year, and found no region where the *Gingles* factors were met. Some have asked whether the *Stephenson* cases require that race be used in redistricting. *Stephenson* says VRA

districts must be drawn first only if there are VRA districts. *Stephenson* does not require VRA districts be drawn independent of the requirements of federal law. *Stephenson* assumed there would be VRA districts because Section 5 of the VRA then applied here, which meant that VRA districts would need to be preserved independent of the *Gingles* factors I just discussed. But the U.S. Supreme Court has held that VRA Section 5 no longer applies, which means it no longer protects the General Assembly from racial gerrymandering claims.

Now I'll discuss district-specific issues several members have asked us about. In the Wilson-Wayne area, we do not have any proposed plan from any member of this body that includes a reasonably compact majority-minority district in that area. If you have one, and we mean a complete plan with a majority-minority VAP district in that area, please provide it. If no such district can be drawn, then there is no need to continue the *Gingles* analysis. Creating such a district would violate the Fourteenth Amendment's Equal Protection Clause. In addition, the General Assembly cannot justify departure from the whole county rule for expressly and predominantly racial reasons without a strong basis in evidence of the type I described earlier. Under current law, only majority-minority districts required under Section 2 of the VRA can be formed prior to other districts in a plan under *Stephenson*. Following this request would put the maps squarely in conflict with the Fourteenth Amendment.

Some members of this committee have also expressed concern about the grouping decision we made for SD-1 in the northeastern part of the state. The General Assembly is not in a position to create so-called crossover districts in this map. First, Section 2 of the VRA does not require such districts. Second, if the General Assembly were to engage in such race-predominant drawing, they would run into claims of racial gerrymandering under the Fourteenth Amendment, and they would be without the protection of the VRA to survive strict scrutiny. Finally, no one has given the General Assembly the data necessary to develop a strong basis in evidence for engaging in such drawing. That district was drawn with neutral criteria predominating, as just explained when going over the map. In short, we take our role and the legal precedents that guide it seriously. We reject the notion that we should flout binding precedent and clear guidance from the courts, even when facing a lawsuit from a litigious group that developed some of the very guidance it now asks us to ignore."

18. On November 2, 2021, the full House met on the House floor. An audio recording of that meeting can be found at <https://ncleg.gov/DocumentSites/HouseDocuments/2021-2022%20Session/Audio%20Archives/2021/11-02-2021.mp3>. In that recording, Representative Hawkins made the following statement from 1:26:13 to 1:26:57:

"And so one of the things that I have proposed, and I have said it quite a few times in our committee, is that there is nothing wrong with slowing this process

down, pushing our primary back, and making sure that we get this done right the first time. Get this right the first time. I am a child that has a May birthday, I grew up in North Carolina having May primaries, I could always look forward to that. And this move to March doesn't benefit us in any real way outside of the presidential years. And so us moving our primaries back, taking our time, ensuring that we have all the interests and the input from the people of North Carolina is not a bad thing. I think each of your constituents would really appreciate that."

Signed this the 5th day of November.



Christopher Shenton

AFFIDAVIT

North Carolina

County of Wake

Christopher Shenton, appearing before the undersigned notary and being duly
Name of principal

sworn, says that:

1. The affidavit attached hereto is true and
accurate.
2. _____

[Signature]
Principal's Signature

Sworn to (or affirmed) and subscribed before me this the 5th day of November, 2021

(Official Seal)



[Signature]
Official Signature of Notary

Stacy Hamilton, Notary Public
Notary's printed or typed name

My commission expires: 12/10/22

OPTIONAL

This certificate is attached to a _____, signed by _____
Title Type of Document *Name of Principal Signer(s)*

on _____, and includes _____ pages.
Date *# of pages*

FILED

2021 DEC -3 PM 3:35

STATE OF NORTH CAROLINA WAKE CO., C.S. IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE BY SUPERIOR COURT DIVISION
21-CVS-014476

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP,
COMMON CAUSE, MARILYN HARRIS,
GARY GRANT, JOYAH BULLUCK,
and THOMASINA WILLIAMS,

Plaintiffs,

vs.

PHILLIP E. BERGER in his official
capacity as President Pro Tempore of the
North Carolina Senate; TIMOTHY K.
MOORE in his official capacity as Speaker
of the North Carolina House of
Representatives; RALPH E. HISE, JR.,
WARREN DANIEL, PAUL NEWTON, in
their official capacities as Co-Chairmen of
the Senate Committee on Redistricting
and Elections; DESTIN HALL, in his
official capacity as Chairman of the House
Standing Committee on Redistricting;
THE STATE OF NORTH CAROLINA;
THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; DAMON
CIRCOSTA, in his official capacity as
Chair of the State Board of Elections;
STELLA ANDERSON, in her official
capacity as Secretary of the State Board of
Elections; STACY EGGERS IV, in his
official capacity as Member of the State
Board of Elections; JEFF CARMON III, in
his official capacity as Member of the State
Board of Elections; TOMMY TUCKER, in
his official capacity as Member of the State
Board of Elections; KAREN BRINSON
BELL, in her official capacity as Executive
Director of the State Board of Elections,

Defendants.

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION AND
GRANTING MOTION TO DISMISS**

THIS MATTER came on to be heard before the undersigned upon Plaintiffs' Motion for Preliminary Injunction, filed on October 29, 2021; and Defendants Phillip E. Berger, Timothy K. Moore, Ralph E. Hise, Jr., Warren Daniel, Paul Newton, and Destin Hall's (together "Legislative Defendants") Motion to Dismiss filed on November 10, 2021.

Plaintiffs' motion requests that Legislative Defendants be enjoined from undertaking a redistricting process that departs from the requirements of the North Carolina Constitution laid out in the *Stephenson v. Bartlett* line of cases. Since the filing of Plaintiffs' motion and complaint, the General Assembly has completed their redistricting process and enacted new state legislative and congressional districts. See S.L. 2021-173 (North Carolina Senate districts); S.L. 2021-174 (United States House of Representatives districts); S.L. 2021-175 (North Carolina House of Representatives districts). Accordingly, this motion is now moot. Additionally, this request essentially asks this Court to reverse actions which have already been taken by Legislative Defendants rather than prohibit Legislative Defendants from performing some action in the future. This does not form the proper basis for a preliminary injunction.

Plaintiffs' motion also requests that the State Defendants (The State of North Carolina, North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Stacy Eggers IV, Jeff Carmon II, Tommy Tucker, and Karen Brinson Bell) be enjoined from administering the scheduled 2022 elections before May 3, 2022. Plaintiffs' complaint does not challenge the enacted districts as unconstitutional or violative of federal law. The enacted maps are presumed to be constitutional. See *Jenkins v. State Bd. of Elections*, 180 N.C. 169, 170, 104 S.E. 346, 347 (1920) (holding that it is well-settled, "both upon principle and authority. . . that legislative enactments are presumed to be constitutional until the contrary is shown.") As such, Plaintiffs have argued no basis for the requested relief of

enjoining the 2022 elections that are scheduled to be conducted under the since-enacted and presumptively constitutional districts.

Legislative Defendants' Motion to Dismiss should be granted. The enactment of new legislative and congressional districts renders Plaintiffs' claims moot. Additionally, judicial intervention in the legislative process in the manner contemplated and requested by plaintiffs in this case would violate the principle of separation of powers pursuant to Article I, Section 6 of the North Carolina Constitution, and such a violation necessarily divests this Court of jurisdiction over the subject matter of Plaintiffs' complaint.

IT IS THEREFORE ORDERED that Plaintiffs' motion for preliminary injunction be DENIED as moot and Defendants' motion to dismiss be GRANTED for mootness and lack of subject matter jurisdiction.

This 3rd day of December, 2021.


A. Graham Shirley, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

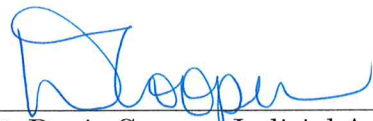
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Carmon III, Tommy Tucker, and Karen Brinson
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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 3rd day of December 2021.



B. Davis Cooper, Judicial Assistant
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED

2021 DEC -6 A 10: 38

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

21 CVS 014476

WAKE CO. C.S.C.
NORTH CAROLINA STATE CONFERENCE
OF NAACP, COMMON CAUSE, MARILYN
HARRIS, GARY GRANT, JOYAH BULLUCK,
and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, *in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections*; DESTIN HALL, *in his official capacity as Chairman of the House Standing Committee on Redistricting*; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chair of the State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the State Board of Elections*; STACY EGGERS IV, *in his official capacity as Member of the State Board of Elections*; JEFF CARMON III, *in his official capacity as Member of the State Board of Elections*; TOMMY TUCKER, *in his official capacity as Member of the State Board of Elections*; KAREN BRINSON BELL, *in her official capacity as Executive Director of the State Board of Elections*

Defendants.

PLAINTIFFS' NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiffs North Carolina NAACP, Common Cause, Marilyn Harris, Gary Grant, Joyah Bulluck, and Thomasina Williams ("Plaintiffs"), by and through counsel, pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, hereby give notice of appeal to the Court of Appeals of North Carolina from the Order Denying Motion for Preliminary Injunction and Granting Motion to Dismiss entered by the Hon. Graham Shirley in the Superior Court, Wake County on Friday, December 3, 2021.

Respectfully submitted, this the 6th day of December, 2021.

By: 

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing Notice of Appeal in the above titled action by mail and/or electronic mail, in the manner requested, to the following parties:

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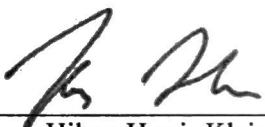
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Counsel for Legislative Defendants

This the 6th day of December, 2021



Hilary Harris Klein

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

21 CVS _____

7/1/21 P 3:25

NORTH CAROLINA STATE CONFERENCE
OF NAACP, COMMON CAUSE, MARILYN
HARRIS, GARY GRANT, JOYAH BULLUCK,
and THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILLIP E. BERGER *in his official capacity as
President Pro Tempore of the North Carolina
Senate*; TIMOTHY K. MOORE *in his official
capacity as Speaker of the North Carolina House
of Representatives*; RALPH E. HISE, JR.,
WARREN DANIEL, PAUL NEWTON, *in their
official capacities as Co-Chairmen of the Senate
Committee on Redistricting and Elections*;
DESTIN HALL, *in his official capacity as
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Redistricting*; THE STATE OF NORTH
CAROLINA; THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; DAMON CIRCOSTA,
*in his official capacity as Chair of the State Board
of Elections*; STELLA ANDERSON, *in her
official capacity as Secretary of the State Board of
Elections*; STACY EGGERS IV, *in his official
capacity as Member of the State Board of
Elections*; JEFF CARMON III, *in his official
capacity as Member of the State Board of
Elections*; TOMMY TUCKER, *in his official
capacity as Member of the State Board of
Elections*; KAREN BRINSON BELL, *in her
official capacity as Executive Director of the State
Board of Elections*

Defendants.

**MOTION FOR PRELIMINARY
INJUNCTION**

NOW COME Plaintiffs, by and through counsel, and respectfully move this Court, pursuant to Rule 7(b) and Rule 65 of the North Carolina Rules of Civil Procedure, for entry of an order granting a Preliminary Injunction. Plaintiffs show the Court as follows:

1. This is an action for declaratory and injunctive relief to prevent Defendants Berger, Moore, Hise, Daniel, Newton, and Hall (the “Legislative Defendants”) from undertaking a redistricting process that violates express provisions of the North Carolina Constitution and contravenes clear direction from the North Carolina Supreme Court on how to draw constitutional maps for the State Senate and House of Representatives, as set forth in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003). Absent such a prohibitory injunction, the process being followed by Legislative Defendants now will result in discriminatory and unlawful harm to voters of color in North Carolina, including the Individual Plaintiffs and the members and voters served by Plaintiffs North Carolina State Conference of the NAACP and Common Cause.
2. The Verified Complaint in this action has been filed contemporaneously with this Motion on this day, October 29, 2021.
3. Plaintiffs have standing to bring this action and to assert the legal claims therein.
4. Plaintiffs seek an injunction prohibiting the Legislative Defendants from undertaking a redistricting process that departs from the requirements of the North Carolina Constitution for State Senate and State House of Representatives, including an injunction prohibiting the use of redistricting criteria that violate the requirements of the North Carolina Constitution, as set forth by the North Carolina Supreme Court in the *Stephenson* cases.
5. It is further feasible and necessary, in order to prevent irreparable harm to Plaintiffs during the pendency of this litigation, for the Court to enjoin the SBE Defendants from

administering the scheduled March 8, 2022 primaries for the 2022 general elections before May, 3, 2022, and from administering the corresponding period of candidate filing before February 1 through 11, 2022, to allow for new State Legislative districts to be enacted under a constitutional process.

6. Plaintiffs are likely to succeed in demonstrating that Plaintiffs are entitled to declaratory relief under the Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 et seq., for a declaratory ruling that Legislative Defendants have administered a redistricting process in violation of Article II, Sections 3 and 5 of the North Carolina Constitution, as set forth in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) and *Stephenson v. Bartlett*, 357 N.C. 301 (2003), and that Plaintiffs are entitled to a redistricting process that adheres these requirements of the North Carolina Constitution.
7. Plaintiffs are also likely to succeed in demonstrating that Defendants' actions will impede Plaintiffs' ability to affiliate with and support their candidates of choice in violation of the Plaintiffs' right to assembly and association under the Freedom of Assembly Clause, Article I, Section 12 of the North Carolina Constitution.
8. Absent a preliminary injunction, Plaintiffs are likely to suffer irreparable harm as a result of Defendants' constitutional violations – violations that will infringe on their rights and the rights of thousands of similarly situated North Carolina voters to a redistricting process that adheres to the North Carolina Constitution and to affiliate with and support their candidates of choice.
9. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 57, Plaintiffs request a prompt hearing on this motion.

WHEREFORE Plaintiffs respectfully request that this Court grant their motion for Preliminary Injunction.

Respectfully submitted this the 29th day of October, 2021.

/s/.
Janette Louard*
(OH Bar No. 66257)
Anthony P. Ashton*
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Anna Kathryn Barnes*
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*Pro Hac Vice motion to be filed

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Counsel for Plaintiffs

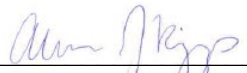
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing Motion for Preliminary Injunction in the above titled action with the Clerk of Superior Court in Wake County, and has served the document by mail and electronic mail to the following parties:

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Katelyn Love
General Counsel
North Carolina State Board of Elections
430 N. Salisbury St., Suite 3128
Raleigh, NC 27603

This the 29th day of October, 2021.



Allison J. Riggs

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP,
COMMON CAUSE, MARILYN HARRIS,
GARY GRANT, JOYAH BULLUCK, and
THOMASINA WILLIAMS,

Plaintiffs,

v.

PHILLIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; RALPH E. HISE, JR., WARREN DANIEL, PAUL NEWTON, *in their official capacities as Co-Chairmen of the Senate Committee on Redistricting and Elections*; DESTIN HALL, *in his official capacity as Chairman of the House Standing Committee on Redistricting*; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, *in his official capacity as Chair of the State Board of Elections*; STELLA ANDERSON, *in her official capacity as Secretary of the State Board of Elections*; STACY EGGERS IV, *in his official capacity as Member of the State Board of Elections*; JEFF CARMON III, *in his official capacity as Member of the State Board of Elections*; TOMMY TUCKER, *in his official capacity as Member of the State Board of Elections*; KAREN BRINSON BELL, *in her official capacity as Executive Director of the State Board of Elections*,

Defendants.

FILED

2021 NOV 10 P 3:12

WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

21 CVS 014476

**LEGISLATIVE DEFENDANTS'
MOTION TO DISMISS**

N.C. R. Civ. P. 12(b)(1) and 12(b)(6)

NOW COME Legislative Defendants, by and through the undersigned counsel, and without waiving any motions or defenses not set out herein, respectfully move the Court to dismiss Plaintiffs' Complaint in the above-captioned matter pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. Plaintiffs' Complaint should be dismissed on the grounds that the Court lacks subject matter jurisdiction to regulate proceedings of the General Assembly and because the issues raised in Plaintiffs' Complaint are now moot.

Respectfully submitted this the 10th day of November, 2021.



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* Admitted Pro Hac Vice

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It is hereby certified that the foregoing document was served upon the parties by mailing a copy thereof to the address indicated below in accordance with the North Carolina Rules of Civil Procedure and via email to:

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Elections; Damon Circosta, Stella
Anderson, Stacy Eggers IV, Jeff Carmon III,
Tommy Tucker and Karen Brinson Bell, in
their official capacities with the State Board
of Elections*

This the 10th day of November, 2021.

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