No. 25-2180

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RODNEY PIERCE and MOSES MATHEWS,
Plaintiffs-Appellants,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of North Carolina
Hon. James C. Dever III, No. 23-cv-193-D

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INTRODUCTION

For four decades following *Thornburg v. Gingles*, 478 U.S. 30 (1986), Black voters in northeastern North Carolina's Black Belt counties were able to elect candidates of their choice to the state Senate. But North Carolina's 2023 Senate map cracks this contiguous, majority-Black region across four districts, leaving Black voters in Senate Districts 1 and 2 with no realistic opportunity to elect their candidates of choice. Under well-settled law recently reaffirmed in *Allen v. Milligan*, 599 U.S. 1 (2023), this violates § 2 of the Voting Rights Act.

Plaintiffs satisfied the three *Gingles* preconditions. Multiple illustrative districts demonstrated that Black voters in the Black Belt are sufficiently numerous and geographically compact to constitute a majority in a reasonably configured district. Each proposed district is majority Black, is more compact than SD1 and SD2, and preserves the Black Belt community of interest.

Gingles Two and Three are equally clear. The district court agreed that Black voters in SD1 and SD2 are politically cohesive, supporting the same candidates at rates exceeding 97%. And white bloc voting in those districts usually defeats Black-preferred candidates. Defendants' expert admitted as much. The General Assembly's own "StatPack" confirmed that white-preferred candidates defeat Black-preferred candidates in SD1 and SD2 every time. And that is exactly what happened in 2024 in both districts.

The totality of circumstances supports Plaintiffs. North Carolina's long history of voting-related discrimination extends into the modern era. Voting remains intensely polarized along racial lines. Stark racial disparities in education, employment, and other metrics hinder Black political participation. Every recent election cycle has featured racial appeals in political campaigns, often explicit ones. Every relevant Senate factor confirms that cracking Black Belt voters across districts denies them an equal opportunity to elect representatives of their choice.

The district court denied relief only by ignoring evidence and systematically rewriting § 2. Contrary to *Milligan*, the court grafted a novel "minority-compactness" test onto *Gingles* One and treated the very act of drawing illustrative majority-Black districts as evidence of unlawful racial predominance. At *Gingles* Three, the court displaced the only relevant inquiry—whether white bloc voting usually defeats Black-preferred candidates in the challenged districts—by erroneously relying on a "district-effectiveness analysis" and the performance of Black-preferred candidates in *different* regions of the State. And at the totality stage, the court imposed novel causation and nationwide-comparison requirements.

Under the § 2 framework reaffirmed in *Milligan*, this case presents a paradigmatic example of vote dilution: a cohesive Black community cracked across districts in a racially polarized electoral environment, with no coherent justification and no opportunity to elect representatives of choice. This Court should reverse.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331. The court issued its final judgment on September 30, 2025, and Plaintiffs appealed the next day. JA1705-1706. This Court has jurisdiction under 28 U.S.C. § 1291.

Plaintiffs have standing because they are Black voters who allege that Defendants unlawfully diluted their votes by failing to draw an additional Black-opportunity district in the region where they live. JA128-129; JA1598-1600. The district court concluded that Plaintiffs have standing to challenge SD2, which is all they need to maintain this suit: A remedy to vote dilution "requires revising" the enacted plan as "necessary to reshape the voter's district," and both SD2 and SD1 must be redrawn to form such a district here. *Gill v. Whitford*, 585 U.S. 48, 67 (2018). Although the issue is academic, the court's conclusion that Plaintiffs lack standing to challenge SD1 is incorrect for the same reason: the VRA-compliant district "that was not drawn" here would necessarily include portions of both SD2 and SD1. *LULAC v. Abbott*, 604 F. Supp. 3d 463, 486 (W.D. Tex. 2022); *see Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1123 n.14 (E.D. Cal. 2018).

STATEMENT OF THE ISSUE

Whether North Carolina's 2023 Senate map violates § 2 of the VRA by diluting the votes of Black voters in northeastern North Carolina.

STATEMENT OF THE CASE

A. Northeastern North Carolina's Black Belt Counties

Northeastern North Carolina includes counties that are part of the Black Belt—a region historically stretching from Virginia to Texas, originally named for its rich black soil and later associated with the slave labor performed there. *Milligan*, 599 U.S. at 21. All eight of North Carolina's majority-Black counties are in the Black Belt, forming a single contiguous region and "a significant community of interest." JA2549; JA407-408; JA568.

Figure 1: Majority-Black North Carolina counties

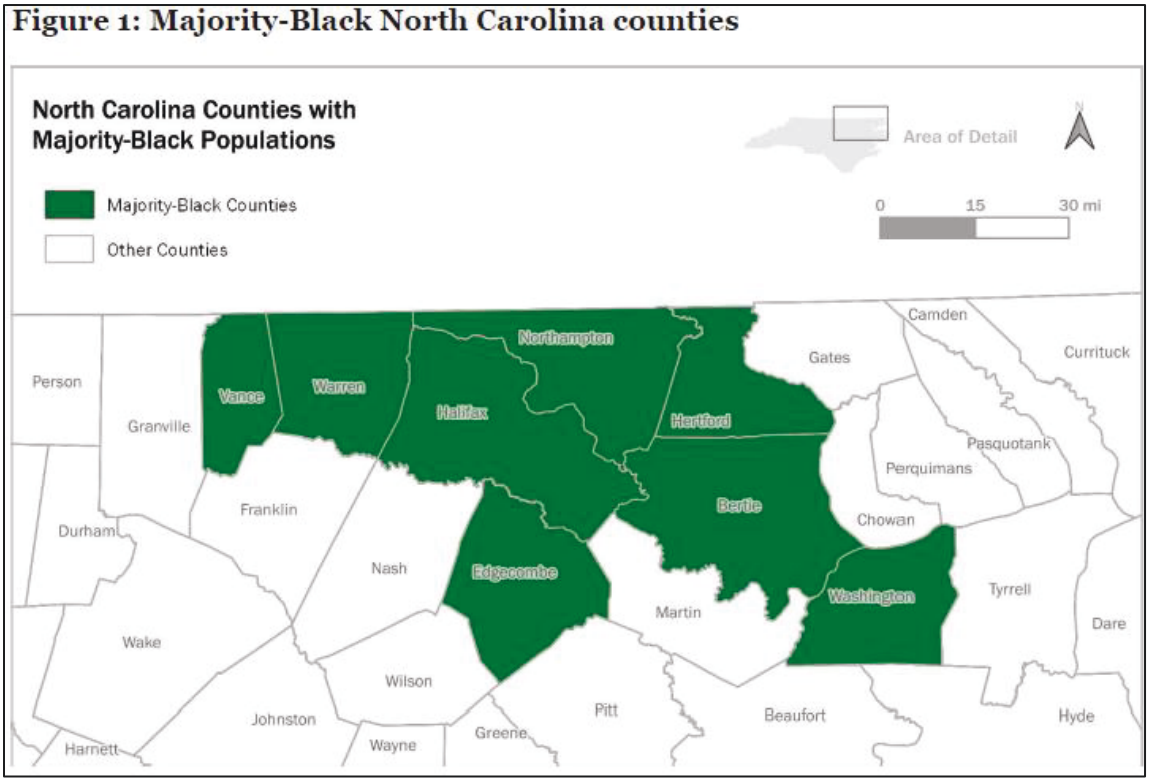
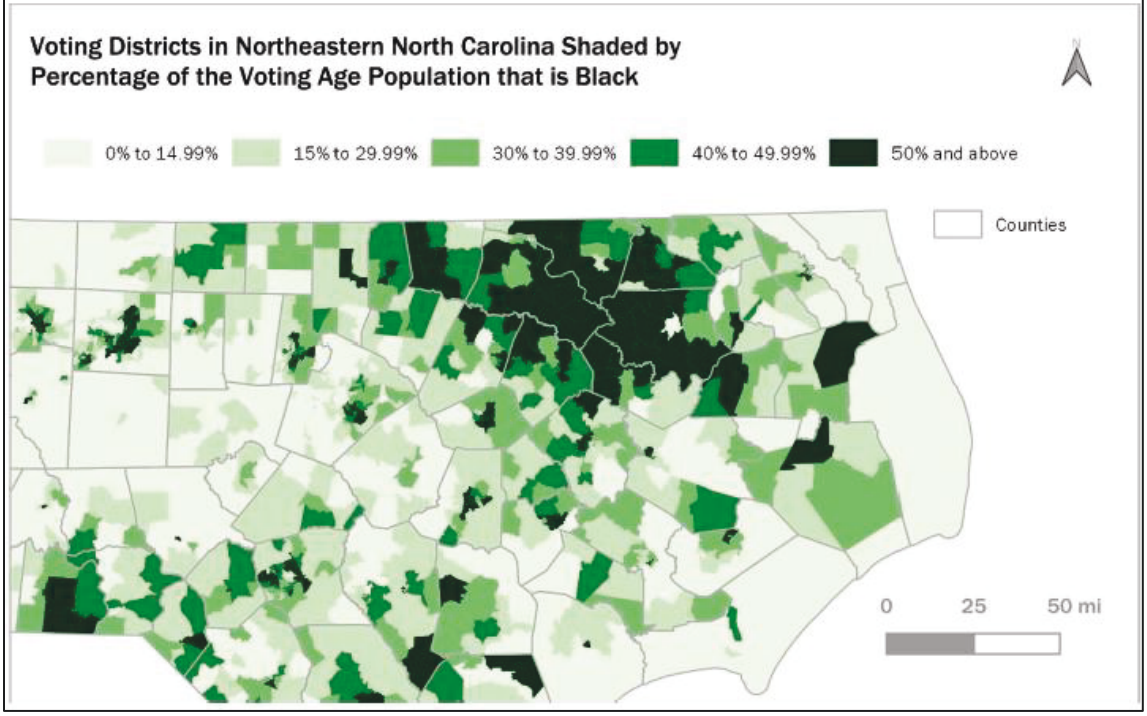


Figure 2: Voting districts classified by Black voting age population



JA2123; JA2125.

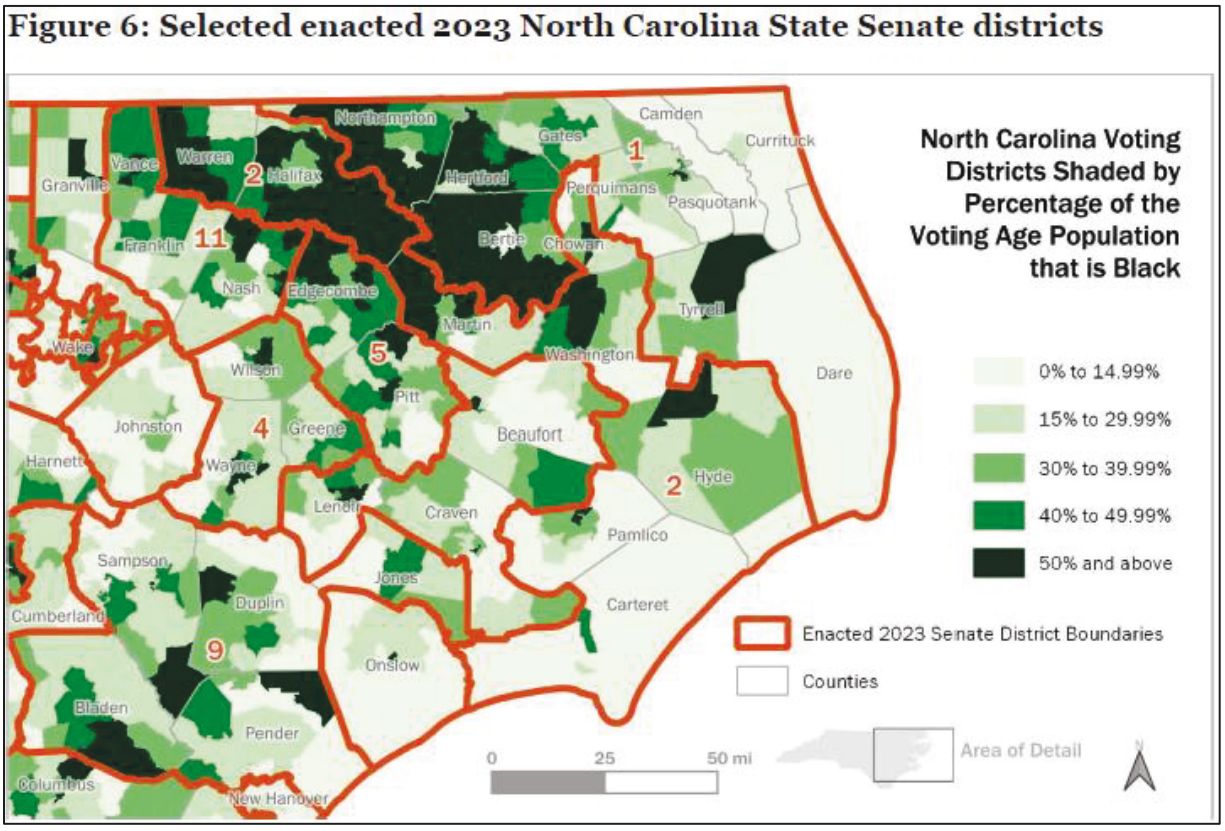
The VRA historically enabled Black voters in the Black Belt to elect their preferred candidates in state legislative races. Between 1986—when the Supreme Court addressed these same counties in *Gingles*—and 2018, all eight of North Carolina's majority-Black counties were represented by Black-preferred state senators. JA152-154; JA899. Following the 2018 and 2020 elections, Black-preferred senators represented six of those counties. JA153-154; JA1977-1978. But under the current map, only one majority-Black county—Edgecombe—is represented by a Black-preferred senator. JA154; JA1709-1710.

B. North Carolina's 2023 Senate Map

The General Assembly enacted new legislative maps in 2021 following the 2020 census. They were enjoined in state court, and the 2022 elections proceeded under remedial maps drawn in 2022. Following additional state court rulings, the General Assembly redrew the maps again in October 2023. JA1591-1593.

As depicted below, the 2023 Senate plan splinters northeastern North Carolina's majority-Black counties, for the first time since *Gingles*, across four districts (SD1, SD2, SD5, and SD11):

Figure 6: Selected enacted 2023 North Carolina State Senate districts



JA2131.

Under the 2023 plan, the Black Voting Age Populations ("BVAP") of SD1 and SD2—the districts principally comprising northeastern North Carolina—are 29.49% and 30.01%, respectively. JA2545. Their Black Citizen Voting Age Populations ("BCVAP")—meaning the "point estimates" from the Census Bureau's American Community Survey—are 30.14% and 30.71%. JA2545.

The General Assembly's statistical analysis of the plan, known as the "StatPack," analyzed how the 2023 districts would have performed across 23 prior statewide elections. JA896-898; JA907; JA1739-1784. It showed Black-preferred candidates losing in SD1 and SD2 every single time—usually by wide margins. JA1739-1784. In 2024—the only elections held under the 2023 plan—the Black-preferred candidates lost by over 14 points in both districts. JA138; JA2756-2757.

C. Procedural History

Plaintiffs filed this suit in November 2023 and sought a preliminary injunction. The district court denied the motion, and a divided panel of this Court affirmed, relying heavily on the preliminary posture and standard of review. *Pierce v. N. Carolina State Bd. of Elections*, 97 F.4th 194 (4th Cir. 2024).

At trial in February 2025, Plaintiffs introduced lay testimony of former Congressman G.K. Butterfield, Representative Rodney Pierce, Moses Matthews, Senator Dan Blue, and Representative Robert Reives, and expert testimony of Dr.

Jonathan Mattingly and Blake Esselstyn (*Gingles* One), Dr. Loren Collingwood (*Gingles* Two and Three), and Dr. Traci Burch (totality of circumstances).

Defendants introduced lay testimony of Senator Ralph Hise and expert testimony of Dr. Sean Trende (*Gingles* One), Dr. John Alford (*Gingles* Two and Three), and Drs. Andrew Taylor and Donald Critchlow (totality of circumstances). The district court held open the trial record for "supplemental" expert reports analyzing the November 2024 elections. JA123-124; JA207.

In its September 2025 decision, the court concluded that Plaintiffs failed to satisfy *Gingles* One, *Gingles* Three, and the totality of circumstances. JA1580.

In another lawsuit challenging SD1 and SD2 (and other districts) under § 2 and the U.S. Constitution, a three-judge district court concluded that all three *Gingles* preconditions were satisfied, but that, on the record in that case, the totality of circumstances did not support liability. *Williams v. Hall*, --- F. Supp. 3d ---, 2025 WL 3240456 (M.D.N.C. Nov. 20, 2025).

STANDARD OF REVIEW

The district court's legal conclusions are reviewed de novo and its factual findings for clear error. *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 340 (4th Cir. 2016). "[I]f the trial court bases its findings upon a mistaken impression of applicable legal principles, the reviewing court is not bound by the clearly erroneous standard." *Id.* (citation omitted). If a decision involves

"misreading[s] of the governing law," that alone is "reversible error." *LULAC v. Perry*, 548 U.S. 399, 427 (2006) (citation omitted).

Even under the clearly erroneous standard, in cases like this involving a "very substantial legal component," "there is a special danger that a misunderstanding of what the law requires may infect what is labeled a finding of fact," so this Court "must exercise special care in reviewing the relevant findings of fact." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 18-19 (2024). The clearly erroneous standard is always "demanding," "not a rubber stamp"—"conscientious district courts sometimes err, and appellants are entitled to meaningful appellate review." *Id.* at 18, 36. Factual findings are clearly erroneous if they were "derived under an incorrect legal standard," "not supported by substantial evidence," "made while ignoring substantial evidence supporting the opposite conclusion," or "contrary to the clear weight of the evidence." *Heyer v. Bureau of Prisons*, 984 F.3d 347, 355 (4th Cir. 2021).

SUMMARY OF ARGUMENT

Plaintiffs satisfied all three *Gingles* preconditions and the totality-of-circumstances inquiry.

I. Plaintiffs satisfied *Gingles* One through multiple illustrative districts demonstrating that Black voters in the Black Belt are sufficiently numerous and geographically compact to constitute a majority in a reasonably configured district.

Each illustrative district is majority Black and more reasonably configured than SD1 and SD2. The district court's contrary conclusion rests on multiple errors, including its imposition of a novel minority-compactness requirement that contradicts the law and the facts, and its holding that the very drawing of majority-Black demonstration districts establishes unlawful "racial predominance."

II. Plaintiffs satisfied *Gingles* Two and Three. Black voters in SD1 and SD2 support the same candidates at rates exceeding 97%, and white bloc voting usually defeats those Black-preferred candidates. Defendants' own expert conceded as much. The General Assembly's StatPack showed that Black-preferred candidates lose in SD1 and SD2 every time. And in 2024—the only elections held in these districts—the Black-preferred candidates lost decisively. Ignoring all this evidence, the court never even addressed whether white bloc voting usually defeats Black-preferred candidates in the challenged districts—the only relevant inquiry at *Gingles* Three. Instead, the court imposed a novel "district effectiveness" requirement that contradicts precedent and only bolsters Plaintiffs' *Gingles* Three showing here. And contrary to the court's conclusion, Black-preferred candidates' success elsewhere in the State says nothing about whether *Gingles* Three is satisfied in SD1 and SD2.

III. All the relevant Senate factors favor Plaintiffs: North Carolina's well-documented history of racial discrimination in voting, extreme racially polarized voting, stark socioeconomic disparities traceable to discrimination, repeated racial

appeals in modern campaigns, dependence of Black electoral success on majority-Black or majority-minority districts, and the tenuousness of the State's asserted justifications. This is not the "very unusual case" in which plaintiffs satisfy the *Gingles* preconditions yet fail the totality inquiry. In concluding otherwise, the court brushed aside historical and recent voting-related discrimination against Black North Carolinians. The court hypothesized without evidence that Black North Carolinians trail their white counterparts in every relevant metric for reasons unrelated to historical and contemporary discrimination, such as Black people's different "job interests" and "diet." JA1659. Relying on a defense expert's narrow newspaper search for "charges of racism," the court ignored explicit racial appeals in numerous recent elections. And the court found that polarization was driven by politics rather than race even though Defendants' expert admitted that Black voters cohesively support Democrats for reasons related to race. On factor after factor, the court misstated the law and disregarded the evidence.

The judgment should be reversed and the case remanded with instructions to enter judgment for Plaintiffs and promptly implement an appropriate remedial plan.

ARGUMENT

Section 2 vote-dilution claims are evaluated "using the three-part framework developed" in *Gingles*. *Milligan*, 599 U.S. at 17. "First, the minority group must be sufficiently large and geographically compact to constitute a majority in a

reasonably configured district." *Id.* at 18 (cleaned up). "Second, the minority group must be able to show that it is politically cohesive." *Id.* (citation omitted). "And third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate." *Id.* (cleaned up). If those preconditions are satisfied, the court determines whether, "under the totality of circumstances … the political process is not equally open to minority voters." *Id.* (cleaned up).

Here, the evidence overwhelmingly establishes that the *Gingles* preconditions are satisfied and that the totality of circumstances supports Plaintiffs. The district court concluded otherwise only by ignoring the evidence and settled law.

I. *Gingles* One Is Satisfied

Gingles One is straightforward: it requires proof that the minority population can comprise greater than 50% of a "reasonably configured" district. *Milligan*, 599 U.S. at 18. The point is simply to "establish that the minority has the potential to elect a representative of its own choice in some single-member district." *Id.* (citation omitted).

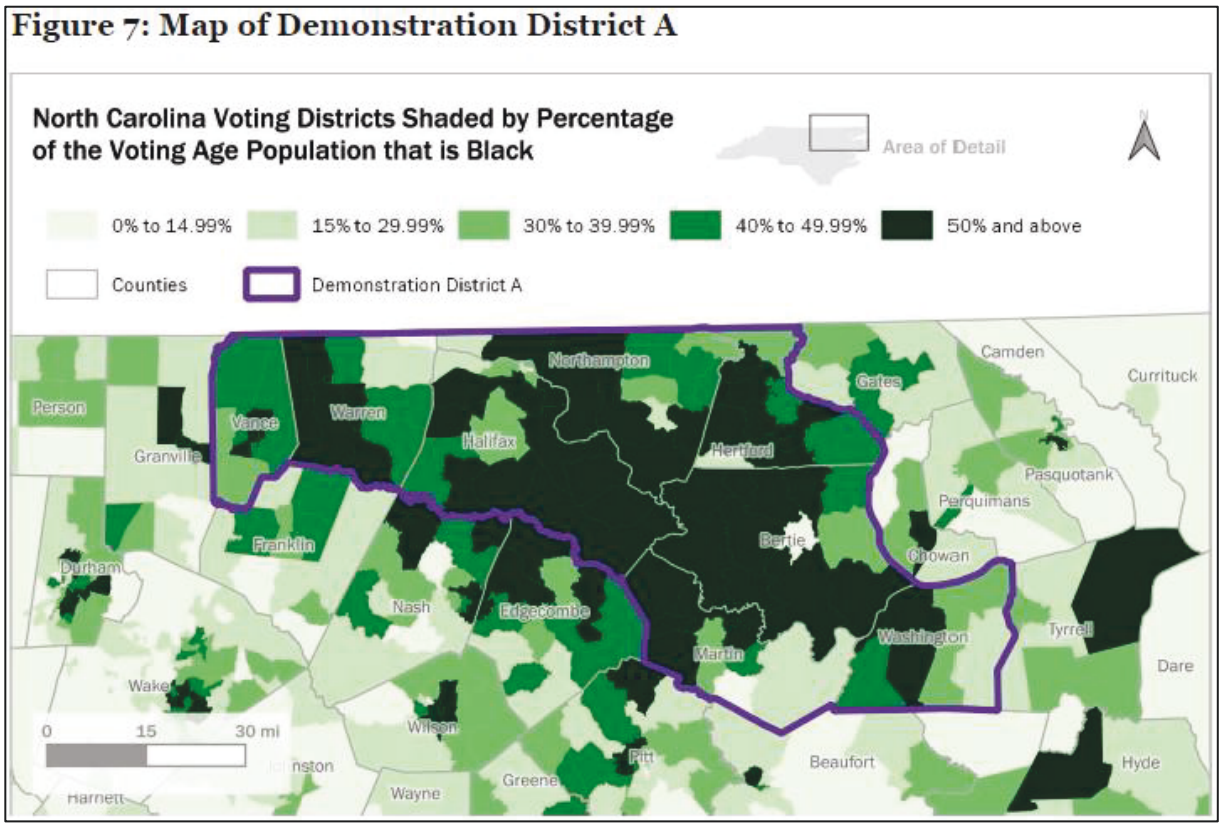
A. Plaintiffs' Illustrative Districts Satisfy *Gingles* One

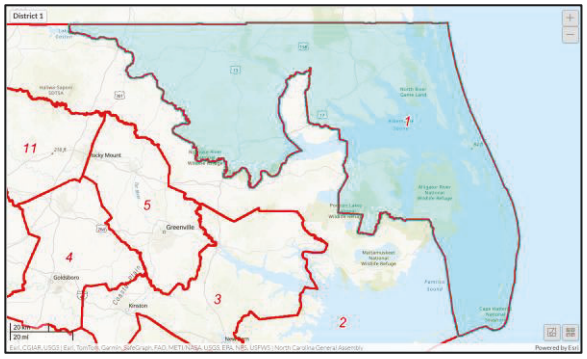
Although "one illustrative" district is sufficient "to satisfy the first step of *Gingles*," Plaintiffs introduced four. *Id.* at 33. Each district has a BCVAP exceeding

50%, and two have a BVAP exceeding 50% too. All four are reasonably configured—indeed, far *more* reasonably configured than SD1 and SD2.

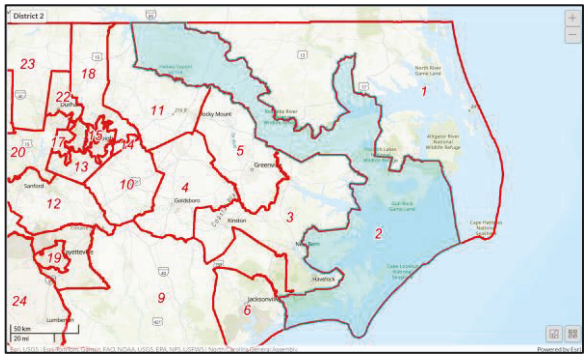
Demonstration District A. Demonstration District A is comprised entirely of whole counties. Its BVAP is 51.47% and its BCVAP is 52.71%. JA1615. It is more compact than SD1 and SD2. JA2146; *see* JA1623 (court so acknowledging); *Milligan*, 599 U.S. at 20 (focusing on compactness). It splits no precincts (also known as "VTDs"). JA2148. It contains no "tentacles, appendages, bizarre shapes, or any other obvious irregularities that would make it difficult to find" the district "sufficiently compact." *Milligan*, 599 U.S. at 20 (citation omitted). Quite the contrary, it is far more regular-looking than SD1 and SD2. As depicted below, District A is neatly assembled near the shoulder of northeastern North Carolina, while SD1 and SD2 are sprawling conglomerations of far-flung counties:

Figure 7: Map of Demonstration District A





Enacted SD1



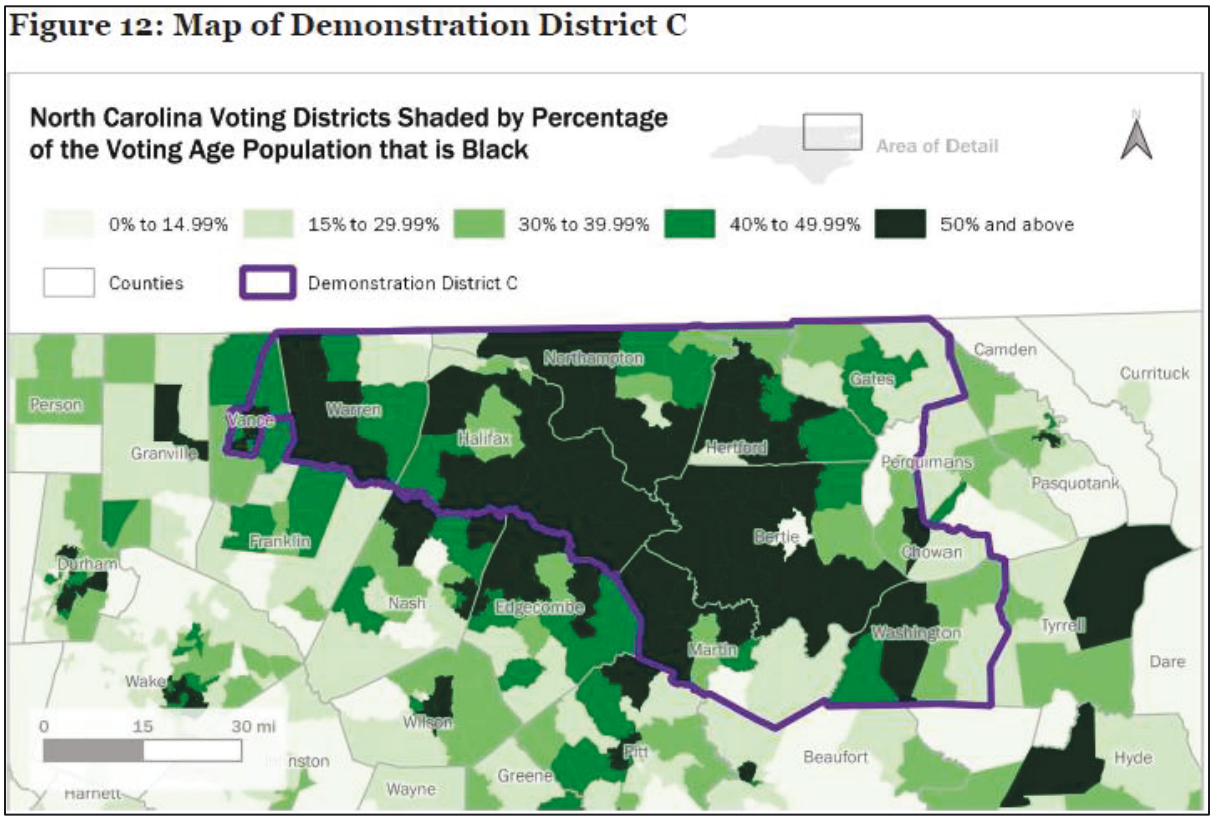
Enacted SD2

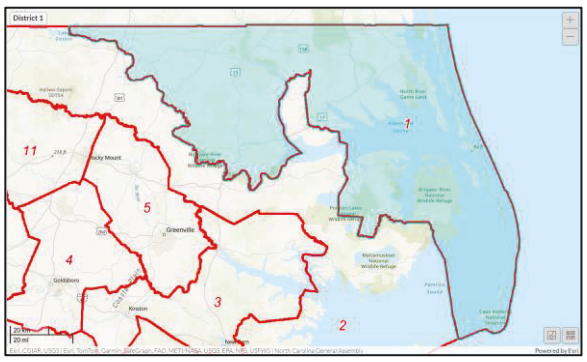
JA2133.[1] Unlike the enacted plan, District A preserves the Black Belt community of interest. JA2148; *see Milligan*, 599 U.S. at 21 (focusing on communities of interest).

[1] These and subsequent images of 2023 enacted districts come from maps on the General Assembly's redistricting website, which the parties stipulated "any party may cite, discuss, and otherwise rely on as admitted evidence." JA128; *see* https://www.ncleg.gov/Redistricting/DistrictPlanMap/S2023E.

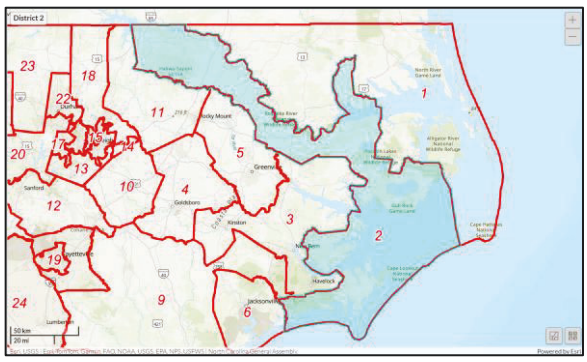
Demonstration District C. District C has a BVAP of 50.21% and a BCVAP of 51.24%. JA1615. It is also reasonably configured. It is far more compact than enacted SD1 and SD2. JA2146; *see* JA1622 (court agreeing). It contains no "tentacles" or any other indicia of non-compactness. *Milligan*, 599 U.S. at 20. Like District A, District C is far more regular-looking than the enacted districts:

Figure 12: Map of Demonstration District C





Enacted SD1



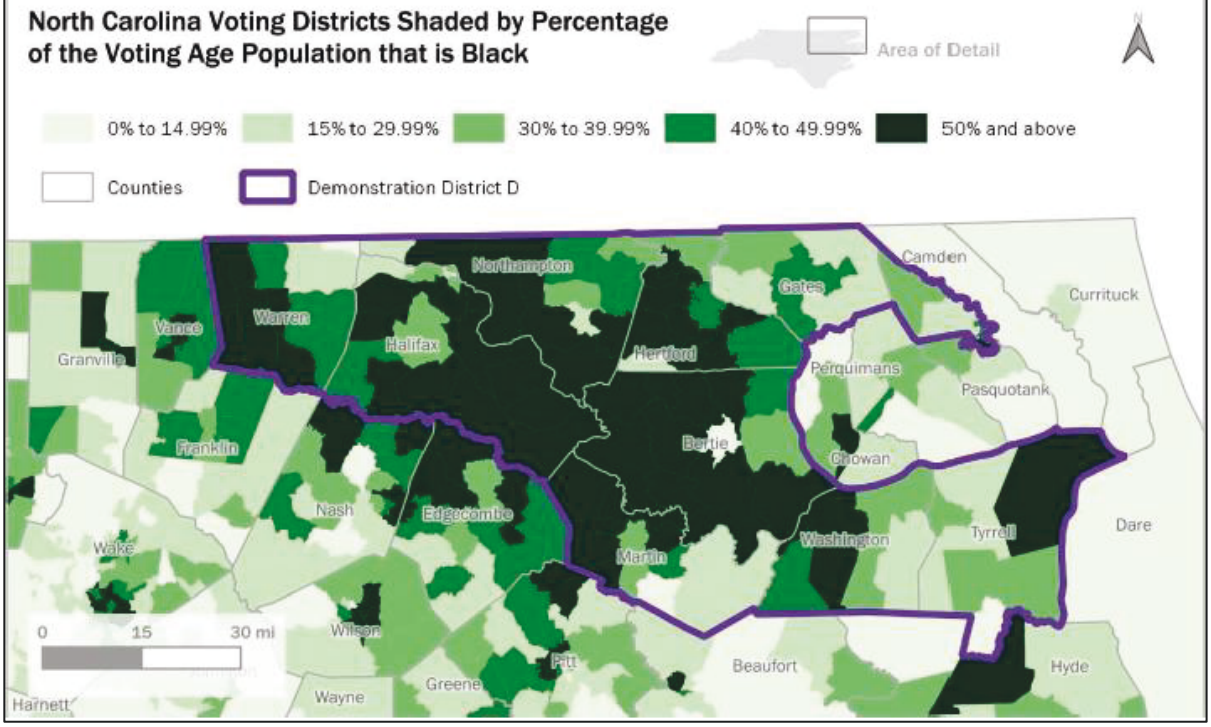
Enacted SD2

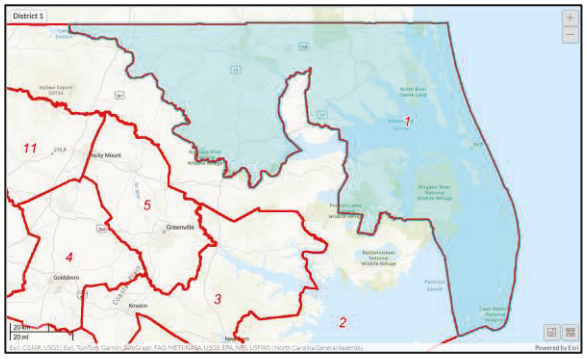
JA2139. District C splits only one county, to preserve the City of Henderson and community of South Henderson as much as possible. JA684-685. It splits no VTDs. JA2148. It preserves the Black Belt community of interest. JA2148.

Demonstration District D. District D has a BCVAP of 50.14%, exceeding the *Gingles* threshold even though the BVAP is 49.22%. JA1615. As explained *infra* pp.27-29, BCVAP is the "proper statistic" to use in North Carolina when the difference matters. *Pender Cnty. v. Bartlett*, 649 S.E.2d 364, 371 (N.C. 2007) (citation omitted), *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009). Moreover, Defendants' statistical expert Dr. Alford conceded that when a BCVAP point estimate exceeds 50%—as it does here—"it is more likely than not that the actual value is above 50 percent." JA989-990.

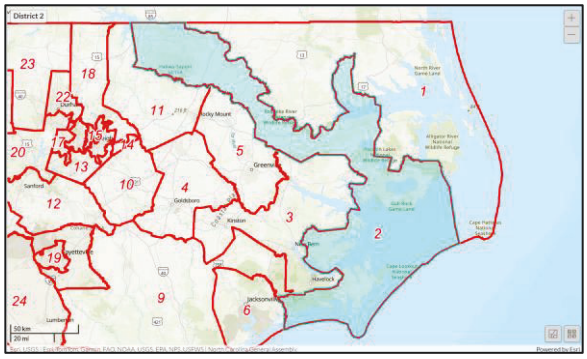
District D is reasonably configured. It is drawn entirely within the footprint of SD1 and SD2, such that the § 2 violation here could be remedied without changing *any* of the 48 other enacted districts. JA2141-2142; JA594-595. And District D is more compact than SD1 and SD2, JA2146, and more regular-looking:

Figure 15: Map of Demonstration District D





Enacted SD1



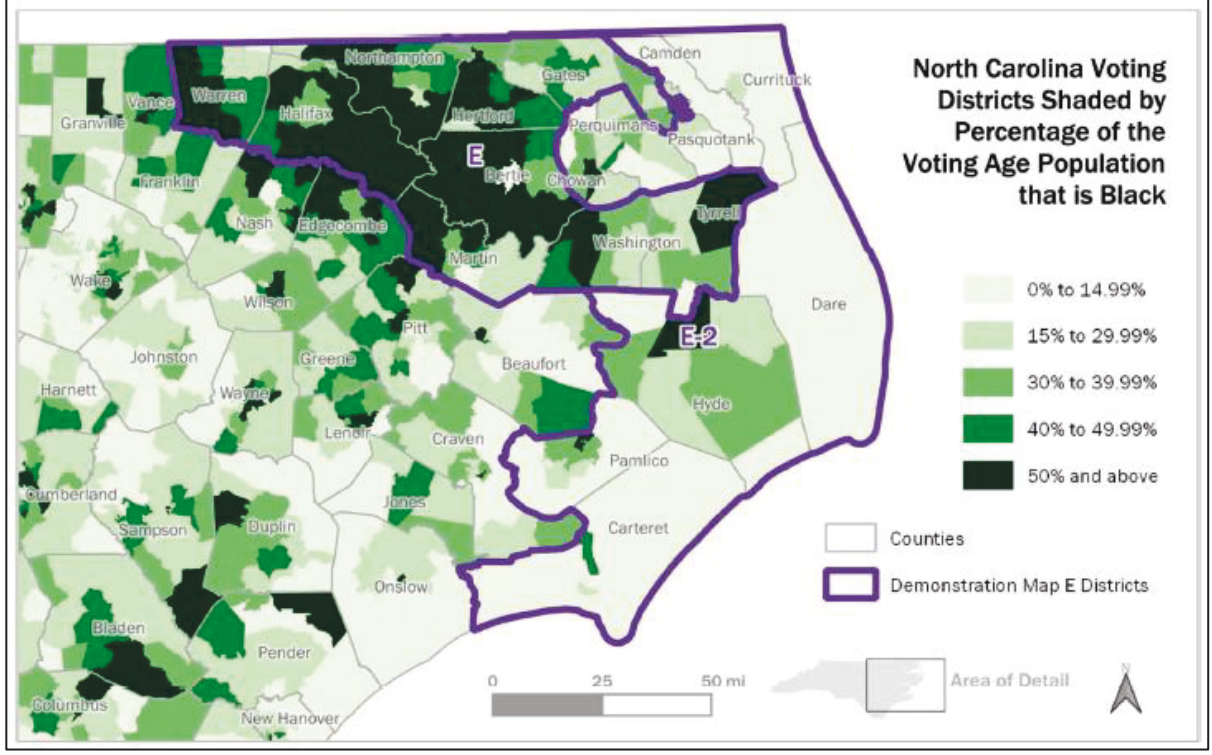
Enacted SD2

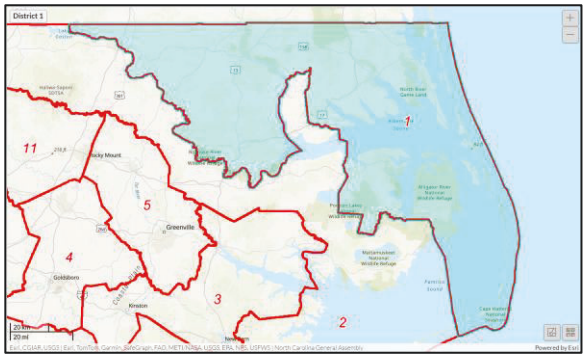
JA2142.

District D splits only one county and preserves as much of Elizabeth City as possible without splitting precincts. JA599; JA2142; JA2148-2149. It preserves the Black Belt community of interest. JA2148.

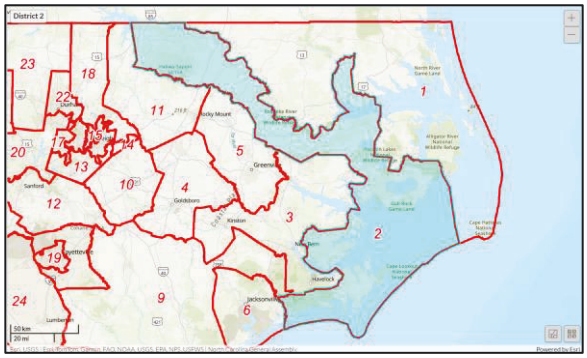
Demonstration District E. Defendants' expert Dr. Trende criticized District D on the theories that its BCVAP might not exceed 50% when accounting for margin of error, and that it split Elizabeth City to increase the district's Black population, showing impermissible racial predominance. JA3050-3051; JA3055-3061; JA3067. In response, Plaintiffs' expert Mr. Esselstyn offered District E, which tweaked only a few precincts from District D around Elizabeth City. JA2547-2549; JA2142. Its BCVAP is 50.74%, JA2547-2548, and taking into account margin of error, "one can say with 95% confidence that [its] Black CVAP is between 50.02% and 51.46%," JA2550-2551. Unlike District D, District E contains "100% of the population of Elizabeth City that is in Pasquotank County." JA2550-2551. It splits only one county and preserves the Black Belt community of interest. JA2549-2550. It is more compact than SD1 and SD2, JA2550, and more regular-looking:

Figure 1: Demonstration Map E





Enacted SD1



Enacted SD2

JA2549.

The court erroneously excluded District E on the theory that Mr. Esselstyn improperly introduced it in his rebuttal report, JA114-122, as "a new argument that seeks to prove plaintiffs' Section 2 claim," JA117. That was legal error and an abuse

of discretion. *Mountain Valley Pipeline, LLC v. 0.32 Acres of Land*, 127 F.4th 427, 432, 435 (4th Cir. 2025).

District E was quintessentially proper rebuttal evidence because it was "offered to directly contradict or rebut the opposing party's expert." JA117 (quoting *Withrow v. Spears*, 967 F. Supp. 2d 982, 1002 (D. Del. 2013)). Mr. Esselstyn created District E to rebut Dr. Trende's criticisms of District D. JA2547-2549. District E showed that it is possible to draw a district within the footprint of SD1 and SD2 with BCVAP over 50%, even accounting for margin of error. And District E directly refuted Dr. Trende's claim that District D's division of Elizabeth City showed racial predominance, because preserving Elizabeth City in District E actually *increased* its Black population. *Compare* JA2546 *with* JA2549; *see* JA2149; JA2550-2551; JA2542. It was particularly unreasonable for the court to exclude District E while rejecting District D for the precise reasons offered by Dr. Trende. JA1627.

The exclusion of District E also contradicts settled practice in § 2 cases. When a defense expert criticizes proposed illustrative districts, it is routine for the plaintiff's expert to present adjusted versions to rebut those critiques. *See, e.g.*, *Caster v. Merrill*, 2022 WL 264819, at *35 (N.D. Ala. Jan. 24, 2022), *aff'd Milligan*, 599 U.S. 1; *Ohio A. Philip Randolph Inst. v. Smith*, 2019 WL 428371, at *2-3 (S.D. Ohio Feb. 4, 2019). Indeed, the district court in *Milligan* found the plaintiffs' expert credible in part *because* he offered an additional illustrative map on rebuttal. *Caster*,

2022 WL 264819, at *59. The court's rule here forbidding rebuttal evidence anytime it helps prove a party's claims is legally erroneous.

The court then purported to find District E unreasonably configured, despite having heard no testimony about it due to the exclusion order. JA1621. That "finding" is wrong, *see infra* pp.24-26, and warrants no deference.

***

All four of Plaintiffs' demonstration districts establish that it is "possible" to draw a reasonably configured majority-Black district in northeastern North Carolina, satisfying *Gingles* One. *Milligan*, 599 U.S. at 26, 33.

B. The District Court Erred by Rewriting *Gingles* One

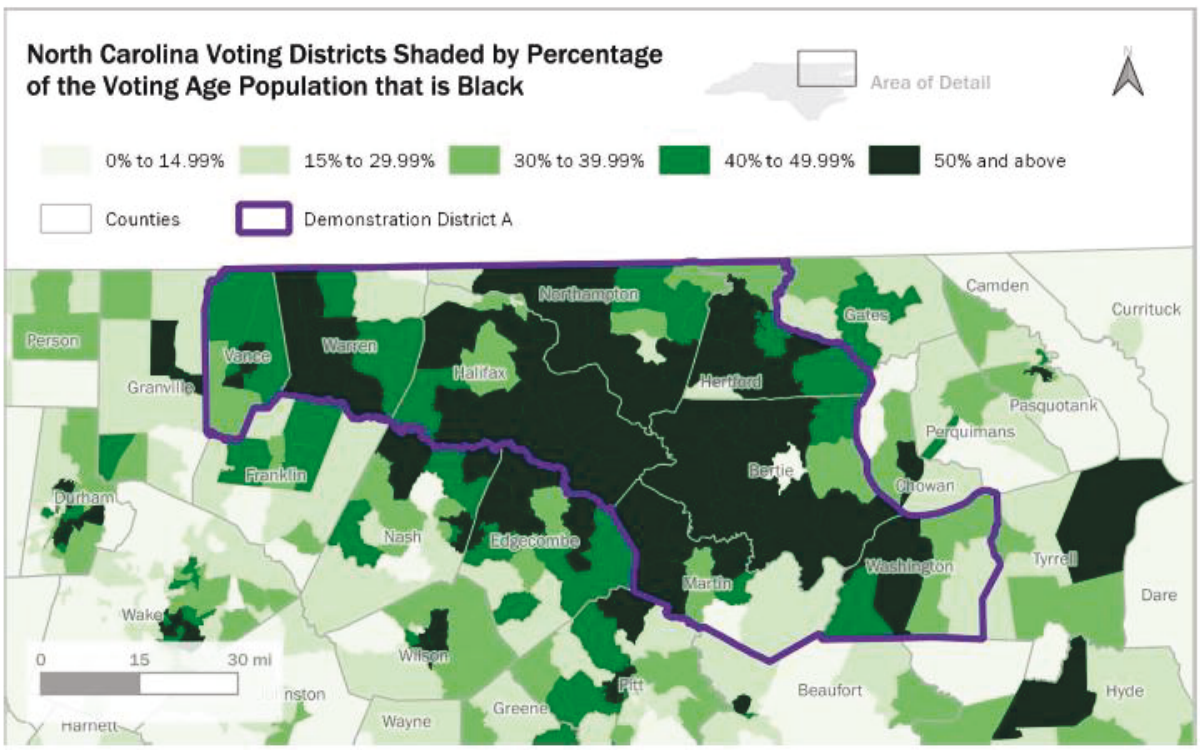
The district court's contrary conclusion rewrote *Gingles* One altogether, grafting a series of new requirements onto this "straightforward" threshold step and disregarding the evidence. *Bartlett*, 556 U.S. at 18.

First, the court invented a novel requirement that the minority population must meet some unspecified level of compactness *within* an otherwise reasonably configured district. JA1619-1620. But *Gingles* One asks only whether the minority population is "sufficiently large and geographically compact to constitute a majority in a reasonably configured *district*." *Milligan*, 599 U.S. at 18 (emphasis added) (cleaned up). The existence of a reasonably configured majority-Black demonstration district *proves* that the Black population is sufficiently compact for

Gingles One purposes. *Milligan* looked only to the configuration of plaintiffs' illustrative districts, never mentioning the freestanding inquiry the court demanded here. *Id.* at 19-22. Other courts have dismissed similar notions as "completely useless in evaluating *Gingles I* compactness." *Nairne v. Ardoin*, 715 F. Supp. 3d 808, 849 (M.D. La. 2024), *aff'd sub nom. Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025).

The court also ignored overwhelming evidence that the Black population within Plaintiffs' demonstration districts *is* compact. In each district, the vast majority of Black voters live in a central core of contiguous, majority-Black counties. Looking at any of the districts confirms as much:

Figure 7: Map of Demonstration District A

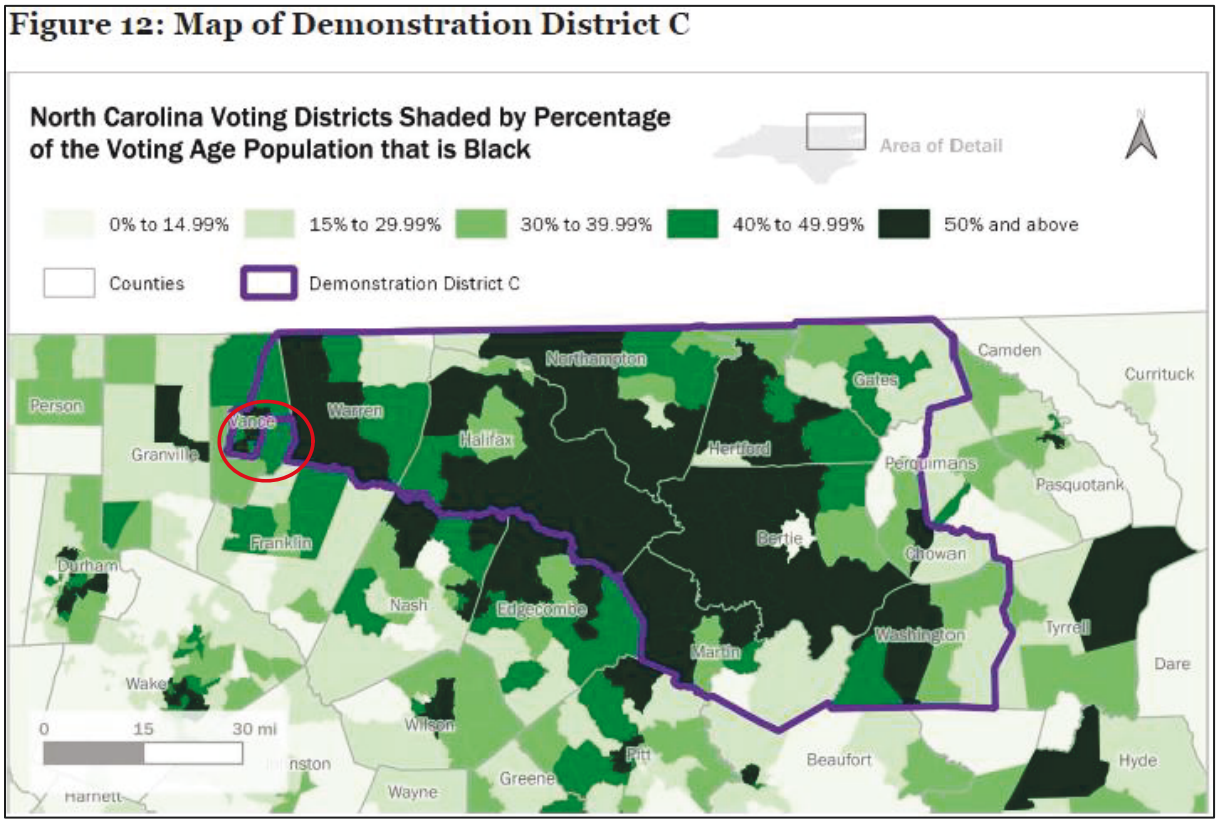


JA2133; *see* JA2133; JA2139; JA2142; JA2549; JA2148.

Second, the court rejected District C for having a purported "tail-like appendage" in Vance County, and rejected Districts D and E for a "claw-like shape" on their eastern boundary. JA1621-1622. But these districts are undisputedly more compact than SD1 and SD2, and their shapes are far more regular-looking.

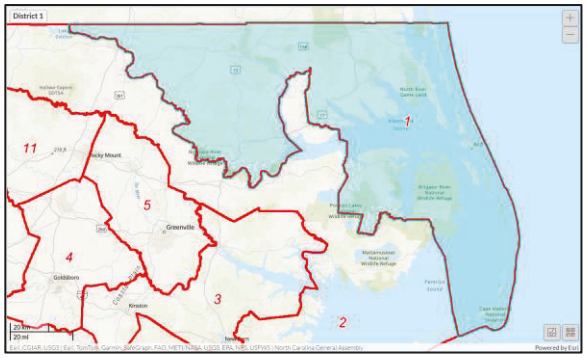
District C, when viewed as a whole, is a highly regular shape, and the purported "tail-like appendage" appeared only when the court zoomed in (JA1622) on a miniscule, cropped portion (circled in red below):

Figure 12: Map of Demonstration District C

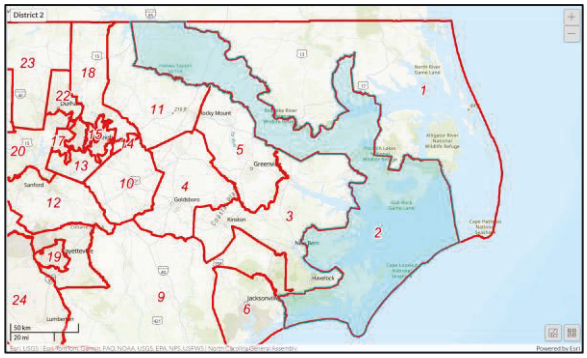


That "tail" just tracks precinct boundaries, to preserve all of South Henderson and 97.81% of the city of Henderson without over-populating the district. JA655; JA684-685; JA2569-2570.

As for Districts D and E, enacted SD1 and SD2 have at least equally prominent "claw-like" shapes (on their southern and northern borders, respectively):



Enacted SD1

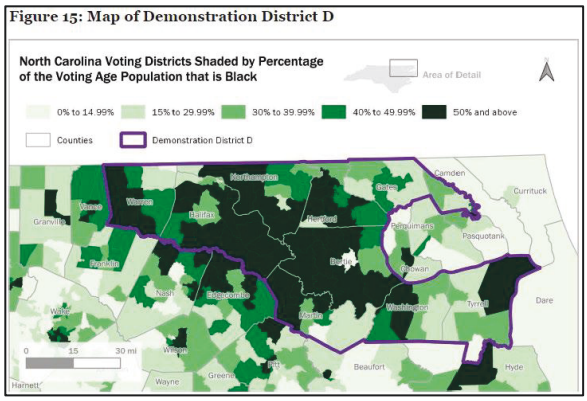


Enacted SD2

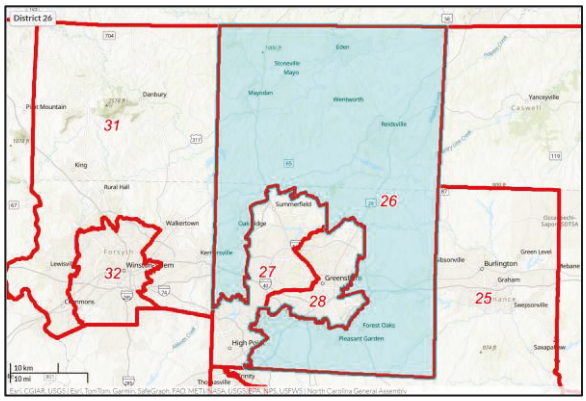
The supposed "claw-like" features in Districts D and E simply track county or precinct borders, while adhering to other traditional criteria. JA655; JA684-685; JA2569-2570; JA2142; JA2549. That does not make them unreasonable. *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1296 (N.D. Ga. 2023).

The court described these exceptionally compact districts as "bizarre" in comparison to other North Carolina districts. JA1621. But no record evidence supports that claim, and it contradicts evidence the court ignored. No Senate district in North Carolina forms a perfect square or circle. SD2 itself contains numerous divots far larger than the one in Districts D and E. So do many other districts (*e.g.*,

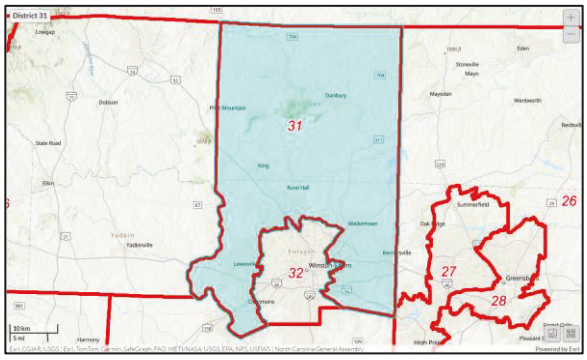
SD3, SD9, SD13, SD15, SD18, SD21, SD31, SD26, SD46), some of which are depicted below (and all are depicted at JA1709). Nothing about the shape of any of Plaintiffs' demonstration districts was out of the ordinary.[2]



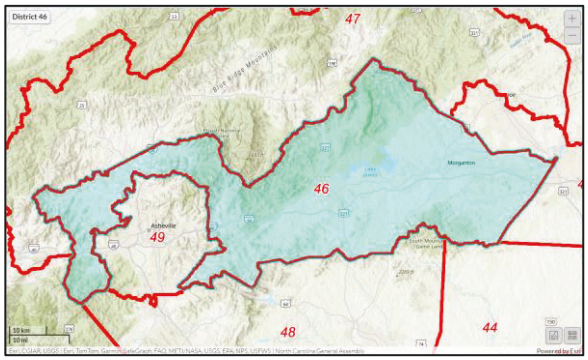
Demonstration District D



Enacted SD26



Enacted SD31



Enacted SD46

Third, the court criticized District A not for any of its own features, but for features of other districts that would surround it based on North Carolina's unique districting requirements. JA1623-1624. Those criticisms are legally irrelevant.

[2] The court also found that various demonstration districts, though more compact than SD1 and SD2, were less compact than certain "nearby" districts. JA1622; JA1624. But nothing requires a demonstration district to be more compact than other districts involving *different geographies*. And all of Plaintiffs' full Demonstration Maps were more compact overall than the full enacted map. JA2146.

Gingles One asks about a majority-Black "district," and District A itself is reasonably configured. *Milligan*, 599 U.S. at 18.

In any event, the court's critiques of surrounding districts turned on legal error. The court focused on District A's downstream effects on what are known as "county groupings." JA1624-1625. North Carolina law requires mapmakers to group counties together according to an algorithm, and then draw districts within those groupings. *Stephenson v. Bartlett*, 562 S.E.2d 377 (N.C. 2002). Plaintiffs' expert Dr. Mattingly, a Duke mathematician, has developed computer code that produces *Stephenson*-compliant county groupings, which Legislative Defendants used to draw the enacted map. JA495-498; JA1996. Under *Stephenson*, the General Assembly must create any "districts required by the VRA" *before* applying the county-grouping algorithm to the rest of the State. 562 S.E.2d at 396-97. Dr. Mattingly did that here, and the district court found that some of the county groupings produced by the *Stephenson* algorithm were "outlandish" because they had so many counties. JA1623-1624. But following a *state's* own districting principles cannot render a configuration "outlandish" for purposes of *federal* law. The court flipped the Supremacy Clause on its head by interpreting *Stephenson*'s state-law requirements as nullifying the VRA's federal requirements.

The court also found that District A would "crack[]" an "adjacent performing crossover district"—SD5. JA1625. But District A does not contain either of the

counties in SD5 (Edgecombe and Pitt counties). JA2133. Mr. Esselstyn's Demonstration Map A instead contained *both* District A *and* SD5. JA2135.

The court seemed to be saying that SD5 must be preserved under federal law (because it's a performing crossover district) but must be broken up under state law (because, unless SD5 is frozen, the *Stephenson* algorithm would break it up). JA1626. That makes no sense. If federal law requires freezing SD5, as the court ruled, then Plaintiffs had a "legal justification to 'freeze'" it when drawing a statewide map around District A. JA1626. And for purposes of federal law and § 2, it makes no difference whether SD5 would have remained intact organically under the state's county-grouping algorithm. (Regardless, SD5 *does* remain intact organically under Districts C, D, and E. JA504-505; JA2001-2003; JA2460-2462.)[3]

Fourth, the court ruled that Districts D and E are not majority Black because they exceed the 50% threshold only as a matter of BCVAP, not BVAP. That misstates the law and the record.

The court held that CVAP can only be used in places with "large noncitizen populations." JA1617. The Supreme Court has explained, however, that CVAP best matches "the language of § 2 because only eligible voters [*i.e.*, citizens] affect a

[3] The court's criticism that Dr. Mattingly hadn't described "freezing" districts in a prior peer-reviewed article, JA1626, makes little sense. He explained how to freeze districts here because the purpose of his testimony (unlike his article, JA495-497) was to apply his algorithm *after* a VRA district has been drawn. Experts aren't limited to testifying about the contents of their peer-reviewed articles.

group's opportunity to elect candidates." *LULAC*, 548 U.S. at 429. Thus, although CVAP data is not *required* when "noncitizens [are] not a significant part of the relevant population," use of CVAP is always a "proper benchmark." *Barnett v. City of Chicago*, 141 F.3d 699, 705 (7th Cir. 1998) (collecting cases). The North Carolina Supreme Court agrees that BCVAP is the "proper statistic" to use in the State when the difference matters. *Pender Cnty.*, 649 S.E.2d at 371.

The district court next deemed the Census Bureau's BCVAP data "not accurate or reliable." JA1615. The court acknowledged that "courts typically presume census data is accurate and reliable until proven otherwise," but failed to apply that presumption to data from the Bureau's American Community Survey ("ACS"). JA1615-1617. But "ACS data *is* Census data. It is produced and promulgated by the Census Bureau." *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 687 n.4 (S.D. Tex. 2017) (citation omitted). It is therefore accorded a "presumption of accuracy," rebuttable only by "concrete evidence." *Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 729 (S.D. Tex. 2013) (citation omitted), *aff'd sub nom. Gonzalez v. Harris Cnty.*, 601 F. App'x 255 (5th Cir. 2015). CVAP point estimates from the ACS are "perhaps the best measure of citizen voting age data currently available." *Id.* at 727; *see Patino*, 230 F. Supp. 3d at 687 (similar).

The court stated without explanation that it had "no way of knowing" the "margins of error for the ACS data," JA1618, but Dr. Collingwood offered

unrebutted calculations showing that those margins were negligible, JA2522; JA2534; JA2551. Regardless, Dr. Alford admitted that when a district's BCVAP point estimate falls "above 50 percent"—as it does for Districts D and E—"it is more likely than not that the actual value is above 50 percent." JA990. That admission, which the court ignored, establishes by a preponderance of the evidence that Districts D and E *are* majority Black.

Finally, the court concluded that "race predominated" in the drawing of Plaintiffs' demonstration districts because Mr. Esselstyn was "attempting to make the district[s] majority-black." JA1627-1629. That "misunderstand[s] the standard for racial predominance" and "disregard[s] both Supreme Court and [court of appeals] precedent." *Landry*, 151 F.4th at 694. As the Supreme Court explained in rejecting the same argument in *Milligan*, "*every single illustrative map ever adduced* at the first step of *Gingles*" was "created with an express [racial] target in mind—they were created to show, as [the Supreme Court's] cases require, that an additional majority-minority district could be drawn." 599 U.S. at 33. Indeed, "[t]hat is the whole point of the enterprise." *Id.* In ruling that this exercise means race predominated, the district court relied primarily on *Bethune-Hill v. Virginia State Board of Elections*, 580 U.S. 178 (2017). JA1614-1615; JA1629. But as *Milligan* explained, such "reliance on *Bethune-Hill* is mistaken." 599 U.S. at 32-33.

Milligan ultimately held that race did *not* predominate in the plaintiffs' illustrative maps because their expert "testified that while it was necessary for him to consider race, he also took several other factors into account, such as compactness, contiguity, and population equality." *Id.* at 31. Likewise here, Mr. Esselstyn testified that he considered race "by necessity," but only as "one of many considerations," and that he was "constantly evaluating how the districts complied with" other redistricting criteria. JA565; *see* JA599. He further testified that he could have drawn demonstration districts with even *greater* Black populations, but instead prioritized other criteria. JA599; JA684-685; JA2148-2149; JA2547-2552. For example, contrary to the court's citationless assertion that District C "surgically … target[s] black population centers" in Vance County, JA1623, 37% of Vance's Black population is *outside* District C and Mr. Esselstyn excluded Vance VTDs with *higher* BVAPs than ones he included, JA2569-2570.

The court's "legal conclusion" that race predominated was error. *Landry*, 151 F.4th at 693.

II. *Gingles* Two and Three Are Satisfied

Gingles Two and Three address the existence of "racially polarized voting" or "RPV"—that is, whether minority voters are "politically cohesive" (*Gingles* Two), and whether white voters vote "sufficiently as a bloc … usually to defeat the minority's preferred candidate" (*Gingles* Three). *Gingles*, 478 U.S. at 51, 53 n.21.

Gingles Two is satisfied here because, as the district court found, Black voters are "politically cohesive." JA1629-1630. Specifically, Black voters in SD1 and SD2 support the same candidates at rates of 97% or higher. JA2745; JA2748; JA2751. Contrary to the court's conclusion, *Gingles* Three is also satisfied.

A. White Bloc Voting Usually Defeats Black-Preferred Candidates in the Challenged Districts

To satisfy *Gingles* Three, racially polarized voting must be "legally significant," meaning that "white bloc voting must 'normally' or 'generally' lead to the defeat of minority-preferred candidates" in the challenged districts. *United States v. Charleston Cnty., S.C.*, 365 F.3d 341, 347-48 (4th Cir. 2004) (quoting *Gingles*, 478 U.S. at 56). In other words, *Gingles* Three asks whether "the challenged districting thwarts" minority-preferred candidates from winning the enacted districts at issue. *Milligan*, 599 U.S. at 19; *see Robinson v. Ardoin*, 86 F.4th 574, 596 (5th Cir. 2023). In *Charleston County*, this Court concluded that *Gingles* Three was satisfied because the defendant's "own expert testified that minority-preferred candidates are usually defeated by white bloc voting." 365 F.3d at 349.

So too here. Defendants' RPV expert Dr. Alford agreed, without qualification, that "White voters vote sufficiently as a bloc to enable them usually to defeat the minority's preferred candidate in Senate District 1 and Senate District 2." JA961-962. He further testified that those districts "will not elect the Black

candidate of choice." JA962. As in *Charleston County*, that alone satisfies *Gingles* Three.

But there is more. The General Assembly's own StatPack showed that, using 23 statewide elections between 2016 and 2022, white-preferred candidates defeated Black-preferred candidates in SD1 and SD2 *every single time*. JA903; JA1739-1784. Defendants' lone fact witness, Senator Hise—who chaired the Senate redistricting committee—acknowledged that Black-preferred candidates lose in SD1 or SD2 every time, JA901-903, due to white bloc voting, JA906-907. And in the actual 2024 Senate elections—the only elections held using the 2023 plan—white-preferred candidates defeated Black-preferred candidates by over 14 points in both SD1 and SD2. JA2743-2744; JA2756-2758. It is hard to imagine more decisive evidence that white bloc voting "usually" defeats Black-preferred candidates, which is all *Gingles* Three requires. *Milligan*, 599 U.S. at 22.

Plaintiffs' RPV expert Dr. Collingwood confirmed the point. He found that, using statewide elections between 2016 and 2024, white bloc voting defeated Black-preferred candidates in at least 88% of races (57 of 65) in SD1 and SD2. JA2756; JA2758. In the three most recent, and more probative, cycles—2024, 2022, and 2020—white bloc voting defeated Black-preferred candidates *100%* of the time in SD1 (43 of 43 elections) and *98%* of the time in SD2 (42 of 43 elections). JA2756; JA2758. White-preferred candidates won by 13 points on average. JA2756-2757.

These results reflect extreme racial polarization in voting. Across the 65 statewide elections since 2016, voting was racially polarized in 98.4% of elections in SD1 and 100% in SD2. JA2060; JA2064-2065; JA2744-2745. Over 97% of Black voters supported the same candidates in both districts, while only 22.36% of white voters in SD1 supported those candidates, and only 19.03% in SD2. JA2748; JA2751. In 2024, white support for Black-preferred candidates was even lower. JA2749; JA2751. As *Milligan* acknowledged, that degree of racial polarization is "intense," "very strong," and "very clear." 599 U.S. at 22 (cleaned up).

Dr. Alford did not dispute any of Dr. Collingwood's RPV analysis. JA953. On this record, *Gingles* Three was satisfied in spades.

B. The District Court's Contrary Analysis Was Clear Legal Error

The district court never decided, or even addressed, whether white bloc voting "usually" defeats Black-preferred candidates in "the challenged districts." *Milligan*, 599 U.S. at 22 (cleaned up). Across 20-plus pages discussing *Gingles* Three, the court ignored literally all the evidence about the impact of white bloc voting on Black-preferred candidates' performance in SD1 and SD2. JA1630-1651. Instead, the court conducted an irrelevant analysis of whether Black-preferred candidates could win in *different* districts with *higher* BVAPs. That was legal error.

1. The "District Effectiveness Analysis" Confirmed That Racially Polarized Voting Is Legally Significant

At the preliminary-injunction stage, the court held that Plaintiffs failed to prove *Gingles* Three because they did not analyze the precise BVAP level at which a hypothetical district in northeastern North Carolina could perform for Black voters. *Pierce v. N. Carolina State Bd. of Elections*, 713 F. Supp. 3d 195, 231 (E.D.N.C. 2024). Experts occasionally conduct such analyses to aid in drawing *initial* or *remedial* VRA-compliant districts—but not when evaluating whether an enacted district satisfies *Gingles* Three. Neither of the cases the court cited—*Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), and *Common Cause v. Lewis*, 2019 WL 4569584 (N.C. Super. Ct. Sept. 3, 2019)—relied on a so-called "district effectiveness analysis" to decide whether a challenged district violated § 2. JA1631-1632.

Nonetheless, because the court previously required a "district effectiveness analysis," Plaintiffs provided one at trial. Dr. Collingwood's "BVAP analysis" found that, across the last three election cycles, the average BVAP needed for Black-preferred candidates to win in the counties that could form a Black opportunity district was 47.7%, while the median was 47%. JA2761; *see* JA2082-2085; JA2742-2743. That confirms that SD1 and SD2 cannot elect Black-preferred candidates at their BVAP levels of 30% or less, bolstering Plaintiffs' claim of legally significant RPV.

Dr. Alford—who testified at deposition that he was "not criticizing" Dr. Collingwood's BVAP analysis or "offer[ing] any competing methodology," JA1472; JA1474—offered such an analysis for the first time after trial, concluding that a district would elect Black-preferred candidates at 41-42% BVAP. JA3198. But that analysis, which the district court credited, JA1636; JA1643-1646, is refuted by *actual* election results that Dr. Alford and the court ignored. In 2022, in then-SD3—a 42.33% BVAP district formed exclusively from counties in current SD1 and SD2—the Black-preferred candidate lost by over five points. JA143; JA2776-2777. Regardless, even Dr. Alford's BVAP-needed-to-win analysis shows that *Gingles* Three is satisfied. If a district needs 41-42% BVAP to elect Black-preferred candidates, enacted SD1 and SD2 cannot do so because their BVAPs are only 30%. *Williams*, 2025 WL 3240456, at *40-41 (finding that Dr. Alford's BVAP-needed-to-win estimate supports *Gingles* Three).

The district court concluded otherwise only by creating a new legal test. It held that racially polarized voting is not legally significant here because "black voters do not need a majority-black district to elect their candidate of choice." JA1632-1633. But that is irrelevant and contrary to decades of § 2 law. As explained, *Gingles* Three requires only that white bloc voting "usually" defeat Black-preferred candidates in the *actual* enacted districts. *Milligan*, 599 U.S. at 22; *Robinson*, 86 F.4th at 596. The analysis turns on the electoral impact of white bloc

voting "in the particular district." *Williams*, 2025 WL 3240456, at *39-41. Nothing in *Gingles* or its progeny requires proof of the precise BVAP level at which some *hypothetical* district might perform, much less a requirement that the level exceed 50%. *See, e.g.*, *Milligan*, 599 U.S. at 22.

The court's approach would nullify § 2. Under that approach, *Gingles* Three is not satisfied whenever some district could perform at exactly 50% BVAP, *i.e.*, one Black voter shy of a majority. On this theory, even *one* white crossover voter precludes plaintiffs from satisfying *Gingles* Three. That is irreconcilable with *Milligan*, where 15% of white voters crossed over. 599 U.S. at 22. It also conflicts with *Cooper*, which held that crossover districts with BVAPs *below* 50% may serve as lawful § 2 remedies. 581 U.S. at 306. If the district court were right, the ability to draw such a district would defeat § 2 liability in the first place.

2. The Court's Analysis of Crossover Districts Outside SD1 and SD2 Is Irrelevant to *Gingles* Three

The court next concluded that *Gingles* Three was not satisfied because *other* districts outside SD1 and SD2 elected Black-preferred candidates at BVAPs below 50%. JA1648-1651. As one example, the court said that House District 27 "comfortably elected a black Democrat" with a BVAP of only "39.5%." JA1649. But as the parties stipulated, this district's BVAP is *51.88%*. JA141.

Beyond that mistake, the court erred in relying on Black-preferred candidates' success in other districts with different counties, racial demographics, and voting

patterns. JA1648-1650. For instance, the court pointed to Senate districts in Wake County, such as SD14, a majority-minority district largely situated in Raleigh, and SD17, which is near majority-minority and includes parts of Raleigh, Cary, and Apex, JA1832-1833; JA1723. The court pointed to SD5, but it is majority-minority; its BVAP is 10 points higher than SD1 and SD2; and much of its population is in Greenville, a college town in Pitt County with far higher white crossover voting. JA138; JA1829; JA415; JA370. HD8 is majority-minority and has 45.34% BVAP, JA140, and it includes most of Greenville.[4] As of 2024, Congressional District 1's BVAP was over 10 points higher than SD1 and SD2, and most of its population is in counties outside SD1 and SD2. JA151-152; JA3240. Even then the Black-preferred candidate barely won with less than 50% of the vote, JA150; he did not win "comfortably," as the court wrongly stated, JA1650. And earlier iterations of CD1 from 2004 to 2020 always had far higher BVAP than SD1 and SD2, and included urban areas like Durham and Greenville with far higher white crossover voting. JA148-151; JA358-359.

Electoral outcomes in these other districts say nothing about Black-preferred candidates' prospects in SD1 and SD2. As Dr. Alford acknowledged, levels of white

[4] *See* https://www.ncleg.gov/Files/GIS/Plans_Main/House_2023/SL%202023-149%20House%20-%20StatPack2023_H.pdf#page=89, which is in evidence, JA128.

crossover voting and degrees of racially polarized voting can vary considerably from one area to another, even in neighboring counties and cities. JA960.

In 2024, white crossover voting in SD1 and SD2 "ranged from 15.7% to 26.6%," JA1633, and averaged 18-20%, JA2748-2751. The court described this as "substantial crossover voting," JA1633, but the dispositive point for *Gingles* Three purposes is that it is not nearly enough for Black-preferred candidates ever to win in either district. The court also stressed that SD1 and SD2 have higher levels of crossover voting than Dr. Collingwood's Demonstration Area, *i.e.*, the 12 counties that could form a Black opportunity district. JA1633-1635. As Dr. Collingwood showed, however, that is because the counties in SD1 and SD2 with the highest crossover voting are far-flung regions with low Black populations, like the Outer Banks counties, that would not be part of any plausible opportunity district. JA2769; JA2777-2779.

What the court did *not* analyze *anywhere* in its discussion of *Gingles* Three was whether Black-preferred candidates can win in *actual* SD1 and SD2. JA1630-1651. The court studiously avoided that question, even though it is the *only* one relevant to *Gingles* Three. *Milligan*, 599 U.S. at 19, 22. The court ignored testimony from both sides' experts that white bloc voting usually defeats Black-preferred candidates in SD1 and SD2. It ignored the General Assembly's StatPack showing the same. It ignored Senator Hise's testimony that Black-preferred candidates

cannot win in these districts. And it ignored the decisive defeats of Black-preferred candidates in these districts in 2024. JA1630-1651.

That last omission, of the only "endogenous" election results for SD1 and SD2, is remarkable. In denying a preliminary injunction, the court insisted that endogenous elections were the most important, *Pierce*, 713 F. Supp. 3d at 228-29, and it later adopted a delayed trial date that Defendants justified on the basis that it would "allow[] the Court to properly consider endogenous elections," JA103-104; JA110. But when those endogenous 2024 elections showed that white bloc voting decisively defeated the Black-preferred candidates in SD1 and SD2, the court did not even mention it. That should give this Court pause as it evaluates the entirety of the decision below.

3. The Court's Other Criticisms of Dr. Collingwood Reflect Legal and Factual Error

The court did not dispute—and, in fact, relied on—Dr. Collingwood's analyses of Black political cohesion (*Gingles* Two) as well as his analyses of white bloc voting and the performance of Black-preferred candidates (*Gingles* Three). JA1630; JA1633-1635. For good reason: Defendants' own expert, Dr. Alford, testified that those analyses were "extremely competent" and that he was "endorsing" them. JA916; JA953; JA965. The court, however, rejected Dr. Collingwood's BVAP-needed-to-win analysis. JA1636; JA1646. As explained above, that analysis is irrelevant to determining § 2 liability, so this Court need not

consider the issue. But if the Court does so, it is "the district court's own analysis [] that is materially flawed." *Raleigh Wake*, 827 F.3d at 344.

First, the court found that Dr. Collingwood's "methodology differed significantly" from similar analyses by "other voting rights experts," citing two documents not admitted in evidence: a 2019 report from a different expert in a different case, and a 2001 law review article. JA1636-1639; JA1642.

Those items should not have been considered at all. The expert report was submitted by Dr. Lisa Handley at the remedial stage of a 2019 state-court partisan gerrymandering case. JA53. Over Plaintiffs' objection, the court allowed Defendants to cross-examine Dr. Collingwood about the meaning of detailed tables in the 41-page report, which the court apparently expected Dr. Collingwood to familiarize himself with on the stand. JA248-256. The court held that these questions were permissible "impeachment" because the parties had discussed Dr. Handley's report while briefing a motion to expedite a year earlier. JA248-250. But it was *Defendants* who cited the report in opposing expedition, and Plaintiffs attached it to their reply only to show that Defendants had mischaracterized it. JA47-49. Then, in its opinion, the court inexplicably treated the hearsay report as substantive, admitted evidence.

That was clearly erroneous and an abuse of discretion. "[R]eports of other experts cannot be admitted even as impeachment evidence unless the testifying

expert based his opinion on the hearsay in the examined report or testified directly from the report," which Dr. Collingwood did not do here. *In re Hanford Nuclear Rsrv. Litig.*, 534 F.3d 986, 1012 (9th Cir. 2008). Prior statements by someone else are not impeachment. *United States v. Barile*, 286 F.3d 749, 757 (4th Cir. 2002). Regardless, there was no competent evidence that Dr. Collingwood's analysis differed materially from Dr. Handley's, or any reason to credit one over the other if it did.

Second, the court fundamentally misunderstood Dr. Collingwood's (and Dr. Handley's) analysis. JA1637. As Dr. Collingwood explained, he estimated the BVAP at which Black-preferred candidates could win in a *hypothetical* district within the same Demonstration Area containing the 12 counties in Plaintiffs' demonstration districts. JA2082-2083; JA2761-2762; JA2773-2779; JA727-730. Based on its understanding of Dr. Handley's 2019 report and 2001 law review article, the court declared that Dr. Collingwood instead should have "adjusted the BVAP of an *existing* district"—namely, SD1 and SD2—"to determine at what level that district would perform" based on its level of white crossover voting. JA1637 (emphasis added). As Dr. Collingwood explained at trial, "that wouldn't make sense" because an existing district's BVAP is "fixed" based on the actual number of Black (and non-Black) voters living in that district. JA257-259; *see* JA253-255. Nor does it make sense to use white crossover rates from SD1 or SD2 *as a whole* to

estimate crossover rates in a hypothetical opportunity district composed of *different* counties. JA2777. This is especially true here because any opportunity district would necessarily include more of the Black Belt (where crossover voting is low) and less of the Outer Banks (where it is higher). JA2769; JA2777. That is precisely why Dr. Collingwood focused on the 12 counties in Plaintiffs' demonstration districts. The court called that choice of counties "arbitrar[y]," JA1639, but ignored Dr. Collingwood's detailed explanation, JA2082-2083; JA2512-2513; JA2777-2779; JA729. Even Dr. Alford did not dispute that those are the counties relevant to the analysis. JA991.

The court failed to identify any meaningful difference between Dr. Handley's and Dr. Collingwood's analyses. Dr. Collingwood explained that, while he could not be 100% certain what Dr. Handley did, she appeared to have analyzed the BVAP needed to elect Black-preferred candidates in a hypothetical district within either a highly populous county like Wake or a *Stephenson* county grouping. JA253-255; JA261-262. As Dr. Collingwood explained, that is substantively the same analysis he performed, simply using the Demonstration Area as the broader region within which the hypothetical opportunity district would be drawn. JA254; JA261-262.

The court then offered non-sequiturs about differences between Dr. Collingwood's 12-county-region and various other groupings, along with factual inaccuracies like stating that those 12 counties are "noncontiguous." JA1640. The

court criticized Dr. Collingwood for excluding the SD5 counties (Pitt and Edgecombe), JA1639; JA1642, but the task was to draw an *additional* opportunity district.

The court then uncritically credited a competing BVAP-needed-to-win-analysis that defense expert Dr. Alford first offered in a post-trial "supplemental" rebuttal report. JA1600-1603; JA1643. That analysis should have been excluded, because it did not supplement Dr. Alford's prior reports but instead offered an entirely new analysis that he previously disclaimed. JA1260-1261; JA1472. That analysis also had facial methodological flaws that deflated the BVAP-needed-to-win estimate. For example, Dr. Alford used higher figures for Black political cohesion than he previously reported for the same elections. *Compare* JA3178 *with* JA3196 (95.8% Black cohesion for Jeff Jackson in 2024 for his RPV analysis became 96.8% for his BVAP analysis). And he did not count votes for third-party candidates at all, which had the effect of inflating both Black cohesion and white crossover voting. JA2771-JA2773. The court ignored these and other flaws. JA1631-1646; *see* ECF 127-1 at 18-19.

The court's differential treatment of Drs. Collingwood and Alford further undermines the opinion. The court rejected Dr. Collingwood's analysis "at bottom" because he only used statewide elections, and because he used more recent elections (2020, 2022, and 2024) for his BVAP-needed-to-win model but went back to 2016

for his RPV analysis. JA1640-1642. The court called this "cherry-pick[ing]" and a "result-driven analysis." JA1640-1642. But Dr. Alford likewise used only statewide elections and used different elections for his BVAP-needed-to-win and RPV analyses. JA3194; JA3198; JA3007-3012. He was not accused of cherry-picking even though he only used *one* election year—2024—for his BVAP-needed-to-win analysis. JA3198.[5] The inconsistencies between the court's treatment of the two experts on identical points establish an abuse of discretion.

Finally, the court's purported "other examples of Collingwood's lack of candor" rely on mischaracterizations. JA1647. For example, Dr. Collingwood disclosed why he combined votes for multiple Republican candidates in two 2018 judicial races, but also provided the *non-combined* figures. JA304-308; JA2065; JA2073-2074; JA2093-2094. One might disagree with Dr. Collingwood's approach (though the defense expert didn't, JA2990; JA2993; JA2996). But it didn't remotely reflect any lack of "candor." JA1647.

The court also erred in accusing Dr. Collingwood of attempting to conceal his relationship with a prior expert, Dr. Barreto, in an updated CV adding new

[5] Dr. Collingwood did not say that state legislative elections "cannot be used" for this type of analysis. *Contra* JA1640. He said it wouldn't make "sense" to use them *here* because the prior legislative elections don't geographically match the potential new districts. JA251; *see* JA3198 (defense expert likewise using statewide elections).

publications and dropping the list of dissertation committee members. JA1646-1647. This is nonsensical; the updated CV mentions Dr. Barreto *29 times*, frequently as a co-author. JA2102-2116. Dr. Collingwood's statement that "you would never do that in academia" concerned a question about removing publications, not dissertation committee membership. JA293; *contra* JA1646-1647. Three of Defendants' four experts' CVs omitted dissertation committees. JA3014-3026; JA3075-3079; JA3153-3166.

The court finally criticized Dr. Collingwood because he hadn't previously been an expert witness in North Carolina, and "other than one paper," had not "analyzed racially polarized voting in North Carolina in an academic setting." JA1648. Yet the court simultaneously credited Dr. Alford, who had never been an expert witness or published any academic work involving North Carolina, and had never conducted any academic work involving racially polarized voting *at all*. JA951-952; *compare* JA2101-2106 (Collingwood CV detailing dozens of RPV-focused papers). District courts may not "insulate [their] findings from review by denominating them credibility determinations." *Anderson v. Bessemer City*, 470 U.S. 564 (1985). That is especially so when the credibility determinations reflect inconsistent treatment of the parties' experts.

III. The Totality of Circumstances Supports Plaintiffs

After establishing the *Gingles* preconditions, the analysis turns to "the 'totality of circumstances' to determine whether members of a racial group have less opportunity than do other members of the electorate." *LULAC*, 548 U.S. at 425-26 (citation omitted). This requires "an 'intensely local appraisal' of the electoral mechanism at issue, as well as a 'searching practical evaluation of the past and present reality.'" *Milligan*, 599 U.S. at 19 (quoting *Gingles*, 478 U.S. at 79). In conducting the totality inquiry, courts consider the so-called Senate factors. *LULAC*, 548 U.S. at 426. Those factors are "neither comprehensive nor exclusive," and no particular number need point in one direction. *Gingles*, 478 U.S. at 45.

"It will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances." *Harris v. McCrory*, 159 F. Supp. 3d 600, 623 (M.D.N.C. 2016), *aff'd sub nom. Cooper v. Harris*, 581 U.S. 285 (2017) (citation omitted). This is not such an unusual case, but rather a paradigmatic case in which cracking Black voters across districts dilutes their votes.

The court concluded otherwise only by systematically misapplying the Senate factors. JA1651-1705. Across factor after factor, the court imposed legal requirements no precedent recognizes, ignored unrebutted testimony, and misstated evidence.

A. Factor One: History of Voting-Related Discrimination

Senate Factor One examines "the extent of any history of official discrimination in the state or political subdivision that touched the right" of minority citizens to register, vote, or otherwise participate in the political process. *Gingles*, 478 U.S. at 36-37. It considers "racially discriminatory actions taken by the State, past and present." *Milligan*, 599 U.S. at 26.

As this Court explained not long ago, North Carolina has a "shameful history of past discrimination" against Black people in voting, and has continued its "efforts to restrict or dilute African American voting strength … up to the present day." *N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 225 (4th Cir. 2016). After Black people gained the right to vote following the Civil War, the State used poll taxes and literacy tests to decimate Black voting. *Gingles*, 478 U.S. at 38-39, 80 & n.6. Throughout the 20th century, North Carolina used additional mechanisms—anti-single-shot laws and numbered posts for multimember districts—to dilute Black voting power. *Id.* Forty North Carolina counties were subject to preclearance under VRA § 5, and between 1980 and 2013 the Justice Department issued more than 50 objection letters blocking election-law changes found to be discriminatory in intent or effect. *McCrory*, 831 F.3d at 215, 223-24.

In 2013, "within days of North Carolina's release from the preclearance requirements," the State enacted an omnibus election-reform bill targeting Black

voters "with almost surgical precision." *Id.* at 214, 223. This Court declared the law "one of the largest restrictions of the franchise in modern North Carolina history" and "the most restrictive voting law North Carolina has seen since the era of Jim Crow." *Id.* at 229, 242. The Court concluded "that the North Carolina General Assembly enacted the challenged provisions of the law with discriminatory intent." *Id.* at 215. The General Assembly reenacted certain provisions of that law, leading to a preliminary injunction and consent decree. *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 684 (M.D.N.C. 2024); *Voto Latino v. Hirsch*, 23-cv-861 (M.D.N.C. Apr. 28, 2025), Dkt. 101. Just last year, this Court held that the State's law criminalizing voting by felons "was motivated by a desire to discriminate against Black North Carolinians on account of race and continues to this day to have that effect." *N. Carolina A. Philip Randolph Inst. v. N. Carolina State Bd. of Elections*, 155 F.4th 298, 312-13 (4th Cir. 2025) (cleaned up).

Also recently, federal courts have repeatedly found that North Carolina engaged in intentional discrimination against Black voters in redistricting. Last decade, the Supreme Court held that the General Assembly unconstitutionally packed Black voters into congressional districts "because of their race" and for "no good reason." *Cooper*, 581 U.S. at 322-23. Separately, the Court invalidated the state legislative maps as unconstitutional racial gerrymanders, only to have the State

reenact them in materially similar form, forcing the Court to strike them down again. *North Carolina v. Covington*, 585 U.S. 969, 973-74, 978 (2018).

The district court's treatment of Factor One was fundamentally flawed. The court discounted Reconstruction-era and Jim Crow discrimination as "very old," JA1655, even though the Supreme Court has repeatedly relied on that history in § 2 cases, including *Gingles* itself. It minimized recent findings of racial discrimination in *Cooper* and *Covington* because they did not find "bad faith" or "discriminatory intent," JA1655, even though this Court explained in *McCrory* that such cases "certainly provide[] relevant evidence" of racial discrimination. 831 F.3d at 225. It dismissed *Randolph* because the challenged law was enacted in the 19th century, but this Court found that its racially disparate effect "continues to this day." 155 F.4th at 312-13. And the court cited no precedent supporting a view that racial discrimination doesn't count for totality-of-circumstances purposes unless motivated by "racial hatred or animosity." JA1655.

Ultimately, the court concluded that the "General Assembly does not intentionally discriminate against black voters and has not for a long time." JA1655. That rationale misconstrues *Gingles*, which does not require a showing of discriminatory intent to satisfy Senate Factor One, contradicts the facts, and flouts a bevy of recent decisions from the Supreme Court and this Court.

B. Factor Two: Extent of Racially Polarized Voting

Factor Two—"the keystone of a dilution case," JA1655—examines "the extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 37, 48 n.15. The court concluded that this factor favored Defendants based solely on its determination that Plaintiffs failed to establish legally significant RPV for purposes of the *Gingles* preconditions. JA1655-1656. As explained *supra* § II, that was incorrect. The RPV here undisputedly shows racial gaps of 75 percentage points or more—levels *Milligan* described as "clear," "strong," and "intense." 599 U.S. at 22. Factor Two strongly supports Plaintiffs.

C. Factor Three: Other Voting Practices or Procedures

Factor Three asks "whether other voting practices or procedures amplify the discriminatory effect of the challenged voting procedure." *Gingles*, 478 U.S. at 36-38. They do. North Carolina's felony-disenfranchisement regime disenfranchises Black North Carolinians at nearly three times the rate of white citizens. *Cmty. Success Initiative v. Moore*, 886 S.E.2d 16, 35 (N.C. 2023). The State's voter-identification requirements disproportionately burden Black voters. *N. Carolina State Conf. of NAACP v. Hirsch*, 720 F. Supp. 3d 406, 418, 424 (M.D.N.C. 2024). And North Carolina conducts statewide elections using numbered posts for all seats on its appellate courts, JA2063-2065, which has resulted in the defeat of all Black-

preferred court of appeals candidates since 2020, ECF 126 at ¶ 177. These current practices enhance the discriminatory effects of vote dilution by shrinking and burdening the Black electorate. *Gingles v. Edmisten*, 590 F. Supp. 345, 363 n.24 (E.D.N.C. 1984), *aff'd in relevant part*, *Gingles*, 478 U.S. 30.

Ignoring *all* these practices, the court concluded that Factor Three favors Defendants because North Carolina's voting practices are purportedly "typical" and because the State placed polling places and early-voting locations in predominantly Black areas. JA1656-1657. That misapprehends both the law and the record. Even if North Carolina's voting restrictions were "typical" of other states, they would still have a discriminatory effect *in North Carolina*. And Defendants' evidence about polling places just reflects that the Black Belt is a rural area with dispersed populations; they did not compare polling-places-per-capita with rural white areas. JA3140. This one data point does not overcome the systemic effects of the State's present discriminatory voting practices. JA1657.

D. Factor Four: Candidate Slating

North Carolina does not employ candidate-slating, so this factor is neutral.

E. Factor Five: Socioeconomic Effects of Past Discrimination

Factor Five examines whether members of the minority group "bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process." *Gingles*,

478 U.S. at 45. Plaintiffs presented extensive, unrebutted evidence from a renowned expert, Dr. Burch, and five deeply knowledgeable fact witnesses, showing that Black North Carolinians generally, and those in Black Belt counties specifically, bear the effects of discrimination across every relevant indicator, and that this impedes Black political participation. Defendants' expert Dr. Taylor either agreed with, or did not dispute, most of this evidence. The district court nevertheless concluded that Black people in North Carolina do not bear the effects of racial discrimination, again inventing novel legal requirements and ignoring the evidence.

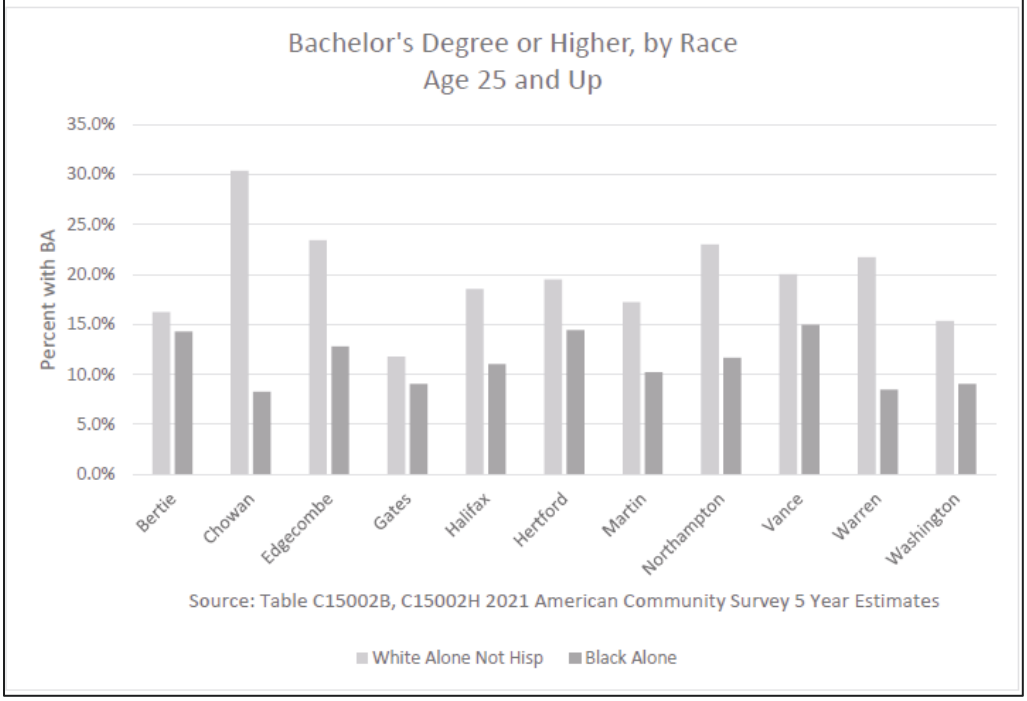
1. The Unrebutted Evidence Showed Enormous and Uniform Racial Disparities Across Every Relevant Indicator

The unrebutted evidence establishes stark racial disparities between Black and white North Carolinians in education, socioeconomic status, health, and criminal justice involvement—both statewide and in the Black Belt counties; connects those disparities to historical and contemporary racial discrimination; and establishes that those disparities impede Black political participation. JA1154-1155; JA1163-1169; JA2028-2029; JA2037-2047.

Education. Both sides' experts agreed that North Carolina has a "checkered" history of educational discrimination, including de jure racial segregation, prolonged resistance to desegregation, and the denial of equal educational opportunity to Black students well into the modern era. JA1660; JA2028-2029; JA3128.

Both sides' experts also agreed that there are enormous racial disparities in educational attainment and academic performance today. Statewide, white students outperform Black students in reading and math by factors of three or four. JA2032-2033. In the Black Belt counties, Black students likewise score well below their white peers. JA324-325; JA2034-2036; JA2464-2467. Standard measures show that "[e]lementary school segregation is considered high" in several Black Belt counties. JA2028-2030. And white students obtain at least a bachelor's degree at dramatically higher rates than Black students, as depicted below:

Figure 5: Bachelor's Degree or higher, by Race. Source: 2021 American Community Survey 5-year Estimates



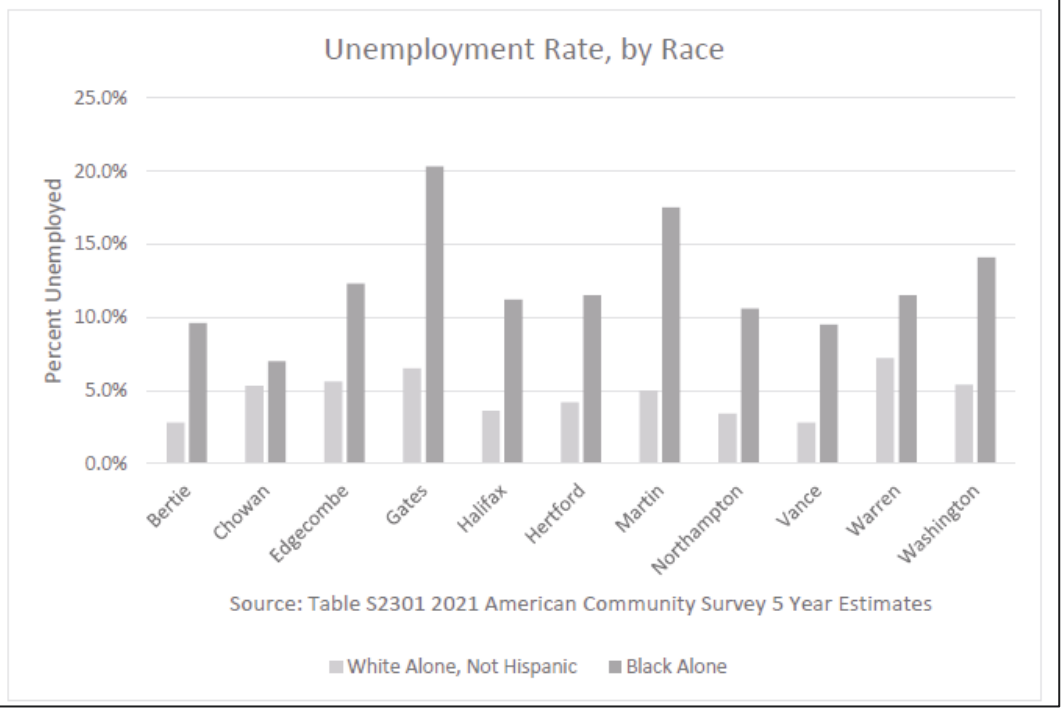
JA2037; *see* JA2035-2036. Plaintiffs' fact witnesses confirmed the "stark" disparity between "educational conditions of Black and White citizens" in the Black Belt.

JA349; *see* JA375-376; JA397. Dr. Taylor agreed that these educational disparities represent "a big, tremendous troubling racial gap." JA1153.

Socioeconomic Indicators. Dr. Burch provided unrebutted testimony that Black North Carolinians have long faced discrimination in employment and economic status, including exclusion from higher-paying jobs and discriminatory lending and housing practices. JA1154-56; JA1160; JA2037-2038; JA2042.

Dr. Burch's unrebutted testimony also establishes large racial disparities in employment and economic status today. Statewide, Black people are unemployed at a rate nearly double that of white North Carolinians. JA2038. The racial gap is even wider in many Black Belt counties, as depicted below:

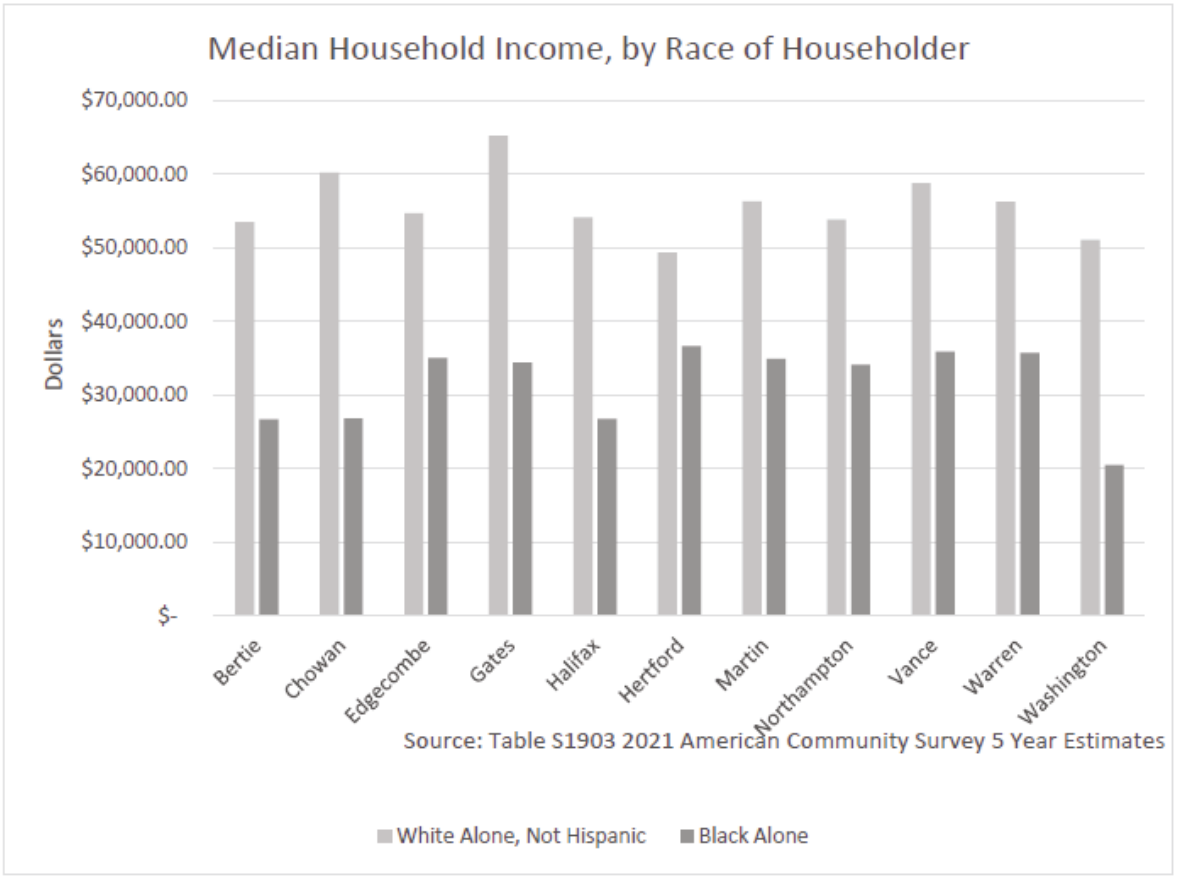
Figure 6: Unemployment, by Race. Source: U.S. Census Bureau. "Employment Status." American Community Survey, ACS 5-Year Estimates Subject Tables, Table S2301, 2021. Accessed on November 15, 2023.



JA2039; *see* JA769-770.

Statewide, median household income for Black households is less than two-thirds that of white households, a $20,000 shortfall. JA2039. Again, the racial gap is even wider in some Black Belt counties, as depicted below:

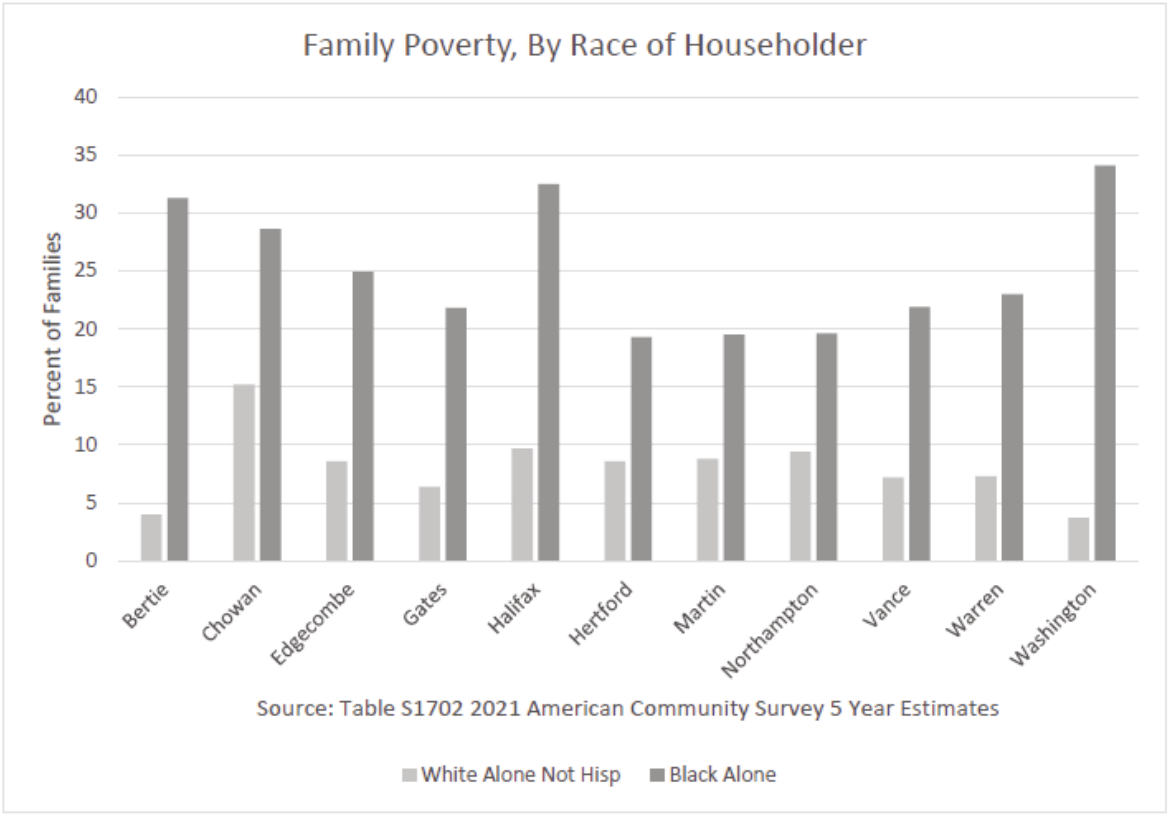
Figure 7: Median Household Income by Race. Source: U.S. Census Bureau. "Median Income in The Past 12 Months (In 2021 Inflation-Adjusted Dollars)." American Community Survey, ACS 5-Year Estimates Subject Tables, Table S1903, 2021. Accessed on November 15, 2023.



JA2040; *see* JA771-772.

Statewide, Black families experience poverty at rates nearly three times those of white families. JA2039. Yet again, the gap is even wider in some Black Belt counties:

Figure 8: Family Poverty, by Race. Source: 2021 American Community Survey 5-Year Estimates, Table S1702.



JA2041; *see* JA772-773. Black North Carolinians are also far less likely than white North Carolinians to own their homes. JA2042.

Plaintiffs' fact witnesses confirmed that across "any indicator that you would choose to look at there is a stark difference between Black and White in each one of the counties in the Black Belt." JA349; *see* JA480-481.

Dr. Taylor did not dispute any of these conclusions. JA1155-1159.

Health. Dr. Burch explained that Black North Carolinians "face structural barriers to equal health outcomes such as access to health care and environmental hazards." JA2043. And she documented significant present-day racial disparities in life expectancy, rates of chronic illness, access to health insurance, and exposure to health-related risks—with those disparities particularly acute in the Black Belt. JA2042-2045. Plaintiffs' fact witnesses confirmed that there are "tremendous health disparities in eastern North Carolina." JA400; *see* JA383-384; JA398. Dr. Taylor agreed that "in every single one of these health-related metrics there is a racial disparity with White North Carolinians being better off than Black North Carolinians." JA1162.

Criminal Justice Involvement. Dr. Burch explained, and Dr. Taylor did not dispute, that Black North Carolinians face discrimination at virtually every step of the criminal justice process, from arrests to bail and sentencing decisions. JA2045-2047. "Black people make up 20.0% of North Carolina's adult population, but are 44.1% of arrestees, 52.9% of North Carolina's prisoners, and 44.2% of people serving sentences in the community on parole, probation, or post-release supervision," and these disparities are not "explained solely by disparities in crime rates." JA2046. Dr. Taylor acknowledged "that there are racial disparities in various forms of criminal justice involvement in North Carolina including arrests,

incarceration, and people serving a sentence on post-release supervision of some form." JA1165-1166. The court ignored this evidence altogether. JA1658-1670.

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The extreme racial disparities across every relevant indicator, none of which Dr. Taylor disputed, weigh heavily in Plaintiffs' favor. JA1154-1155; JA1163-1169; JA2028-2029; JA2037-2039; JA2042-2047.

2. The District Court Erred in Discounting Plaintiffs' Evidence

The court denied that Black North Carolinians bear the effects of racial discrimination for three main reasons: (1) an invented causation requirement; (2) an invented nationwide comparison requirement; and (3) an invented critique of Dr. Burch's selection of counties. Each reason is clearly wrong.

Causation. The court principally reasoned that Plaintiffs failed to show that present-day racial disparities are *caused by* discrimination, faulting Dr. Burch for not "controll[ing] for other relevant variables" and speculating about a host of alternative reasons why Black North Carolinians might be so far behind their white counterparts today. JA1658-1660; JA1666; JA1668-1669.

To begin, Factor 5 does not require "randomized controlled trials" attempting to isolate precisely the degree to which racial disparities are attributable to discrimination as opposed to other possible factors. *Contra* JA1658-1660. To the contrary, the Supreme Court has commended district courts for rejecting similar

arguments "as too formulaic," given that Senate Factor Five asks only "whether the lasting effects of discrimination make it harder for Black" voters to participate. *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1022 (N.D. Ala. 2022); *see Milligan,* 599 U.S. at 22-23 (affirming district court's "careful" totality findings). A "scholarly consensus" (indeed, Dr. Burch's specific scholarly approach) suffices to make that showing. *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1300 (N.D. Ala. 2025).

Under the correct standard, the evidence amply establishes that today's racial disparities result from discrimination. Defendants did not even contest the point below. ECF 125-1 at 32-43. Dr. Burch provided rigorous scholarly evidence of causation, including experimental studies showing that identical resumes receive fewer callbacks when they have names associated with Black people, evidence that many *current* Black voters were educated in formally segregated North Carolina schools, evidence of ongoing racial discrimination in employment in North Carolina, and evidence of ongoing racial discrimination in mortgage lending, which explains in part the enormous gaps in Black and white homeownership in North Carolina. JA332-334; JA765; JA774-782; JA1167-1169; JA2028-2029; JA2037-2038; JA2041-2047. Dr. Taylor acknowledged that present-day racial disparities exist "in part because of the history of official discrimination," and testified that he was not offering "any opinion in this case" disputing that conclusion. JA1167-1169. In addition to being uncontested, the link between today's racial disparities and the long

history of racial discrimination should be "near-obvious." *Singleton*, 782 F. Supp. 3d at 1300.

The court ignored or mischaracterized this causation evidence. Its treatment of the testimony about "food deserts" highlights the point. The court credited an initial assertion in Dr. Taylor's expert report that lack of access to nutritious food might reflect a mere *rural-urban* divide rather than a *racial* divide, stating that "Burch failed to include her own causal analysis." JA1658-1659. As Dr. Taylor acknowledged at trial, however, Dr. Burch's rebuttal report *did* include a race-controlled analysis finding that food deserts are "significantly more prevalent in rural census tracts that have majority-Black populations than rural census tracts that have majority-White populations." JA1163. Dr. Taylor testified that he had no "reason to disagree" with Dr. Burch's finding. JA1163; *see* JA779; JA2469 (81% of predominantly Black rural North Carolina census tracts are food deserts, compared with 8.7% of predominantly white ones). In other words, the very disparity the court dismissed as a product of rurality alone was shown—without dispute—to persist within rural areas along *racial* lines.

Without any supporting evidence, the court also speculated about a series of possible alternative explanations for present-day racial disparities. According to the court, Black North Carolinians might be far behind their white counterparts in education due to "growing up in a single-parent household" or "a child's peers."

JA1659. Black people might have higher unemployment due to their "job interests" or "job skills." JA1659. They might have worse health due to their "exercise, diet, and other lifestyle choices." JA1659. The court stated that "these factors"—rather than racial discrimination—"could cause the disparities Burch identifies." JA1659. Even Defendants never made these sorts of arguments. For good reason: tropes aren't evidence.

The court next concluded that, even if Black North Carolinians "bear any effects of past discrimination in education," Plaintiffs "failed to prove" that those effects "hindered their political participation." JA1666; *see* JA1668-1669 (same for health and socioeconomic disparities). The court did not explain this conclusion, and the record refutes it. Dr. Burch explained how racial disparities in every metric—education, socioeconomic status, health, and criminal justice involvement—hinder Black political participation. JA319; JA768; JA774-776; JA779-780; JA2028; JA2037; JA2042-2043; JA2045-2046. Indeed, the "relationship between education and voter turnout is arguably the most well-documented and robust finding in American survey research." JA2028. Dr. Taylor did not dispute any of this, instead calling Dr. Burch "probably one of the top experts on this particular subject matter." JA1165; *see* JA1154-1155; JA1164-1165. The court ignored virtually all of this evidence, highlighting its clear error. *Heyer*, 984 F.3d at 355.

The court discounted the one piece of evidence it did address based on impermissible speculation. Dr. Burch testified, based on scholarly studies, that disparate homeownership rates hinder Black voting because renters are more mobile and residential mobility requires constantly updating voter registrations. JA2042; JA774. Dr. Taylor did not dispute this, yet the court discounted it because Dr. Burch hadn't studied "the ways in which North Carolinians can register to vote" or the specific "length of rental periods in northeast North Carolina." JA1667. But the court did not explain how any of that could undermine Dr. Burch's conclusion.

Comparative Analysis. The court also concluded that Factor Five favors Defendants on the theory that racial disparities in northeastern North Carolina do not exceed statewide or nationwide disparities. *E.g.*, JA1663; JA1667-1668. That is legally irrelevant and factually incorrect.

The court's comparative analysis test has no basis in § 2. To the contrary, *Gingles* requires "an intensely local appraisal" focused on conditions "in the state or political subdivision." 478 U.S. at 37, 79; *see Milligan*, 599 U.S. at 22. The question is "whether the lasting effects of discrimination make it harder" to vote for the minority group *in the region at issue*. *Singleton*, 582 F. Supp. 3d at 1022. Courts thus have rejected arguments that Factor Five's weight is diminished by the fact that "racial disparities are everywhere in the United States." *Singleton*, 782 F. Supp. 3d at 1302; *accord, e.g.*, *United States v. City of Euclid*, 580 F. Supp. 2d 584, 610 n.29

(N.D. Ohio 2008). On the court's theory, *Gingles* itself would have been wrongly decided if Alabama had greater racial disparities than North Carolina in 1986.

In any event, the court was wrong that racial disparities in northeastern North Carolina are less extreme than other areas. Dr. Taylor reached that conclusion only by using a patchwork of shifting metrics that cast the Black Belt in a misleadingly favorable light. He analyzed educational outcomes by comparing the *gap* in performance in North Carolina to the *gap* in performance nationwide. JA1170; JA3131. But he analyzed unemployment by comparing the *absolute* unemployment rate in North Carolina to the *absolute* unemployment rate in other states. JA1170-1172; JA3133-3134. And he analyzed income and poverty by comparing their *rate of change* in recent decades in North Carolina to their *rate of change* in other states. JA1172-1173; JA3134. He then conceded that if he had used the *same* methodology throughout, it would show that "North Carolina was worse than the nation as a whole" across several of the same metrics. JA1172-1174; *see* JA1170-1171; JA2468-2469. The court ignored that testimony.

County Selection. The court also asserted that Dr. Burch "cherrypicked" the counties to include in her analysis of the Black Belt by including Edgecombe while omitting Pasquotank and Tyrrell. JA1653-1654. But Dr. Burch analyzed the eleven counties with the highest concentrations of Black people in North Carolina. JA31; JA2036. Dr. Taylor adopted the same counties as the relevant regional unit, relied

on them throughout his report, and affirmed that he was not "disput[ing] Dr. Burch's definition" of the Black Belt. JA1095-1096; JA3127. Dr. Collingwood used slightly different counties because he had a different *task*: analyzing the likely performance of demonstrative districts that would *not* include Edgecombe but *would* include certain majority-white counties. *Contra* JA1653.

At any rate, the cherry-picking charge is nonsensical on its own terms. Dr. Burch's county-level charts show a uniform pattern of racial disparities across every county she analyzed, and the disparities Dr. Burch cataloged are frequently *less severe* in Edgecombe, the county she allegedly cherry-picked. JA2034-2044. Removing Edgecombe would only have bolstered her conclusions. And there is no evidence that adding Pasquotank or Tyrrell Counties would have changed the outcome. The court's criticism of Dr. Burch thus has no evidentiary foundation.

Ultimately, Factor Five asks whether Black voters bear the effects of past discrimination in ways that hinder their effective political participation. Unrebutted evidence that the court ignored answers that question with a decisive yes.

F. Factor Six: Racial Appeals in Political Campaigns

Senate Factor Six asks whether political campaigns have been "characterized by overt or subtle racial appeals." *Gingles*, 478 U.S. at 37. North Carolina political campaigns in each of the last four election cycles, at every level of government, have been characterized by racial appeals, often explicit ones.

Drawing on a deep body of political-science literature, Dr. Burch defined explicit (or overt) racial appeals, which overtly reference race or racial stereotypes, and implicit (or subtle) racial appeals, which involve coded language, imagery, or issue framing without naming race directly. JA787-789; JA2047-2049. Using those research-based definitions, she identified specific instances in which recent North Carolina candidates or campaigns invoked racial fear, resentment, or stereotypes—explicitly or implicitly—in their messaging. JA792-806; JA2050-2056. This approach tracks how scholars have long understood racial appeals to operate in modern campaigns, particularly in jurisdictions where overt racism has become less socially acceptable but racial polarization remains pronounced. JA2048; JA2470.

Applying that framework, Dr. Burch documented racial appeals in each of the last four election cycles and at every level of government—statewide, congressional, legislative, and local. JA806; JA2050-2056. In 2018, she identified racial appeals in statewide and congressional races, including attacks against Justice Anita Earls, a Black candidate for North Carolina Supreme Court, that featured imagery of Black criminal defendants. JA2054-2055; *see* JA801-802. In 2020, racial appeals appeared in congressional and local races. Madison Cawthorn declared that his opponent wanted to "ruin White males," JA801; Representative Murphy declared that Vice President Kamala Harris was "only picked for her color and her race," JA800-801; and Eric Whitfield won a local education race after referring to Black

people as "ignorant darkies," JA804; *see* JA2051-2052. In the 2022 U.S. Senate race, political advertisements repeatedly associated Cheri Beasley, a Black candidate, with violent crime and images of incarcerated Black men. JA797-800; JA2052. That same cycle included local and legislative races marked by overtly racist statements and imagery, including a county sheriff's explicit racial slurs and a House candidate's online posts sharing a video entitled "Aryan: Our Purpose" and a link to a neo-Nazi manifesto. JA2051-2053. And in testimony the court also ignored, Representative Reives provided unrebutted evidence that he personally was the subject of multiple racially charged campaign attacks during the same cycle. JA467-473.

There was more in 2024. Gubernatorial nominee Mark Robinson stated "I'm not African American—just AMERICAN," and used rhetoric that echoed white-supremacist themes. JA2050-2051; JA793-795; JA2737. In the 2024 Attorney General race, campaign messaging portrayed a candidate as un-American through racially charged references to China. JA795-796; JA2053. In the state school superintendent race, a Black candidate was attacked as having "spent his professional life going after white people and Jews" and "advocating racial preferences for Black students." JA797; JA2737-2739. The racial appeals Dr. Burch identified were not isolated slips or historical relics, but recurrent features of modern, high-profile North Carolina campaigns, often explicit and extreme.

The court rejected Dr. Burch's analysis and instead credited Defendants' expert, Dr. Donald Critchlow. Dr. Critchlow did not analyze whether campaigns employed overt or subtle racial appeals—the inquiry Factor Six requires. JA1222-1225; JA1239. Instead, he searched newspaper coverage for "charges of racism," using only three keywords—"racism," "bigotry," and "issues"—across 20 contests for just three offices over a 16-year period. JA3086; JA1225; JA1231-1235. His approach thus measured a different phenomenon altogether: whether newspapers used three particular words to report accusations of racism in certain elections. Dr. Critchlow expressly disclaimed any effort to identify implicit racial appeals, did not examine campaign content itself, and conceded that his methodology would miss many of the examples Dr. Burch identified. JA1222-1225.

Indeed, while Dr. Critchlow purported to find "charges of racism" using his flawed metric in 5% of the elections he considered—a number that itself shows Factor Six favors Plaintiffs—he acknowledged on cross-examination that had his research extended to events post-dating his report, he additionally would have identified "charges of racism" in Mark Robinson's 2024 gubernatorial campaign. JA1251-1252. The court stated, incorrectly, that this still totals just "three campaigns out of 40 (i.e., 7.5%)." JA1677. In fact, Dr. Critchlow analyzed only *20* contests, JA3091-3092, so even his overly narrow analysis found "charges of

racism" in *15%* of those contests (3 out of 20). (It appears the district court counted each election twice because it has two candidates.)

The court also dismissed Plaintiffs' evidence of racial appeals as "isolated" and faulted Dr. Burch for failing to supply a "denominator." JA1671. But Factor Six asks the qualitative question whether campaigns have been "characterized" by racial appeals; indeed, *Gingles* itself relied on a series of "specific examples of racial appeals" just like the ones Dr. Burch identified here. 478 U.S. at 37, 40. Other courts regularly consider the same type of evidence, including from Dr. Burch. *See, e.g.*, *Landry*, 151 F.4th at 704. The court should not have jettisoned Dr. Burch's presentation of classic Factor Six evidence in favor of a standard the Supreme Court has never required and that would be all but impossible to satisfy.

Finally, the court stated that "having lived in this State for the past 33 years, the court has observed thousands of political campaigns" and has not observed "overt or subtle racial appeals." JA1677. But "[a] judge may not decide a case on his personal knowledge of particular facts, affecting the issue." *S. Shipyard Corp. v. The Tugboat Summitt*, 294 F. 284, 285 (4th Cir. 1923). It was an abuse of discretion for the court to make itself a witness for the defense.

G. Factor Seven: Extent of Black Electoral Success in the Jurisdiction

Factor Seven considers "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 37. This

factor "heavily" supports liability when Black candidates' electoral success depends on high concentrations of minority voters. *Alpha Phi Alpha*, 700 F. Supp. 3d at 1282-84; *see Singleton*, 582 F. Supp. 3d at 1019-20; *Miss. State Conf. of NAACP v. State Bd. of Election Comm'rs*, 739 F. Supp. 3d 383, 461 (S.D. Miss. 2024).

The district court's decision in *Milligan* illustrates the proper application of this factor. There, the court had "little difficulty finding that Senate Factor 7 weigh[ed] heavily in favor of" plaintiffs where no Black candidate had ever won in the majority-white districts at issue, Black candidates were largely shut out of statewide offices, and the "overwhelming majority" of Black state legislators came from "majority-minority districts." *Singleton*, 582 F. Supp. 3d at 1019 (cleaned up). As here, the defense argued that Black candidates enjoyed substantial success statewide, including in legislative races. *Id.* at 1019-20. But that failed to "engage" with the dispositive point: "nearly all" Black electoral success was attributable to the creation of majority-Black and majority-minority districts. *Id.*

This case closely parallels *Milligan*. Most importantly, in the only endogenous elections conducted in the districts challenged here—both of which are majority-white—the Black candidate in SD2 lost by over 14 points, and no Black candidate ran in SD1. JA2744-2745; JA2756-2757. Under the 2022 plan, the same counties also sat in majority-white districts, and the Black candidate in then-SD3 lost by over five points, while the white candidate ran unopposed in then-SD1.

JA143. These results mark a sharp departure from the prior two decades, when the Black Belt counties were in two majority-Black Senate districts that elected Black candidates. JA2057-2058.

That pattern holds across the Black Belt. In 2024, a Black candidate lost to a white opponent in majority-white SD11, while a Black candidate defeated a white opponent in majority-minority SD5. JA2740. In 2022, an incumbent Black Senator—whose district had included Black Belt counties when he won in 2020—lost by over 15 points after his district was redrawn to exclude the Black Belt and become majority-white. JA2058. As a result, residents of the Black Belt in all but Edgecombe County—the sole Black Belt county now located in a majority-minority district—are now represented by white senators. JA2058; JA2740; JA2756-2757.

The same dependence on majority-Black or majority-minority districts appears statewide. In 2024, the large majority of Black legislators in both chambers were elected from majority-Black or majority-minority districts, while Black candidates overwhelmingly lost when running in majority-white districts. JA2740-2741. Only one Black senator defeated a white major-party opponent in a majority-white district, and she did so in a district containing parts of Durham and Chatham counties. JA2740-2741. And Black candidates also struggle to win in statewide elections where there is no Black majority to elect them: North Carolina has never elected a Black U.S. Senator, Governor, or Attorney General. JA2056.

The court emphasized statewide proportionality and examples of Black officials elected elsewhere in the State. JA1681. But as Dr. Burch explained, that analysis highlights "Black representation in all of North Carolina *except* the districts and region of the state in question." JA2484. "[T]he rights of some minority voters under § 2 may [not] be traded off against the rights of other members of the same minority class." *Johnson v. DeGrandy*, 512 U.S. 997, 1019 (1994). The court also stated that the "[r]acial composition of the district … is not part of Senate Factor seven," JA1681, but cited no support for that proposition. If Black candidates are only elected from majority-Black or majority-minority districts, that doesn't tend to *dis*prove vote dilution under the totality of circumstances—in fact, just the opposite. *Singleton*, 582 F. Supp. 3d at 1019-20; *Miss. NAACP*, 739 F. Supp. 3d at 461. The court also stated that Dr. Burch should not have considered majority-minority districts because "Section 2 does not require crossover districts." JA1681. But the court never explained how the election of Black candidates in majority-minority districts in other areas of the State tends to establish that, in majority-*white* SD1 and SD2, the political process is equally open to Black candidates. Properly understood, Factor Seven supports Plaintiffs.

H. Factor Eight: Lack of Responsiveness to Black Community Needs

Factor Eight examines "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the

minority group." *Gingles*, 478 U.S. at 37. Relevant evidence includes failures to address the educational, healthcare, and civil rights concerns of Black communities, as well as enactment of policies that affirmatively burden Black political participation. *Miss. NAACP*, 739 F. Supp. 3d at 462. Here, the evidence demonstrates that the General Assembly has been unresponsive to Black voters in precisely these areas.

Plaintiffs' fact witnesses testified that the General Assembly has failed to respond to the educational needs of Black communities in northeastern North Carolina. Witness after witness described chronic underfunding of public schools serving Black students and the diversion of resources toward overwhelmingly white charter schools—choices that have entrenched segregation and deprived Black children of equal educational opportunity. JA356; JA375-376; JA381-383; JA397-398; JA481-482. Dr. Burch's expert analysis likewise documented persistent racial segregation in Black Belt schools and large disparities in educational outcomes between Black and white students both regionally and statewide. JA2028-2042.

The same non-responsiveness appears in healthcare policy. Plaintiffs' fact witnesses testified that the General Assembly waited a decade to approve Medicaid expansion, despite repeated calls from Black communities. JA356; JA383-384, JA400; JA481. They also described the closure of the Office of Minority Health and resulting loss of institutional focus on conditions disproportionately affecting Black

residents. JA481-482. Dr. Burch's analysis confirmed that Black residents experience worse health outcomes across every major metric. JA2042-2045.

Plaintiffs' witnesses further testified to non-responsiveness on civil rights imperatives. Over the last decade alone, the Supreme Court has three times invalidated North Carolina redistricting plans as unconstitutional racial gerrymanders, and this Court struck down a separate election law that targeted Black voters "with almost surgical precision," imposing "the most restrictive voting law North Carolina has seen since the era of Jim Crow." *McCrory*, 831 F.3d at 214, 229. As Representative Pierce testified, when the General Assembly repeatedly enacts voting laws and maps found by courts to discriminate against Black people, "that really makes you raise your eyebrows as an African American voter." JA387-388. Senator Blue similarly testified that laws like the ones the General Assembly has enacted in recent years are "anathema" to Black political participation. JA423.

The court failed to engage with this evidence. JA1684-1689. It instead relied heavily on Dr. Taylor's use of statewide public-opinion data, JA1685, even though Dr. Taylor himself conceded that those measures "wouldn't tell us anything" about the General Assembly's responsiveness to *Black* voters or to the *Black Belt counties* specifically, JA1178. The court also treated federal spending and isolated state budget line items as evidence of responsiveness, JA1685-1686, even though federal expenditures are not controlled by the General Assembly and Dr. Taylor did not

compare funding of Black Belt counties and predominantly white counties, JA1182-1183.

The court mostly ignored Plaintiffs' fact witnesses, but declared some of their testimony "partisan." JA1687-1688. But testimony from members of affected communities about whether elected officials are responsive to their particularized needs is precisely the testimony Factor Eight contemplates. *Miss. NAACP*, 739 F. Supp. 3d at 462-63. Here, five Black witnesses with decades of lived experience in northeastern North Carolina offered consistent, specific accounts of legislative inaction and misaligned priorities, and Defendants presented no fact testimony to rebut them. JA355-356; JA383-388; JA396-400; JA424-425; JA476-482. Dr. Taylor's concessions that racial disparities persist across every major domain only reinforce Plaintiffs' showing. This factor supports Plaintiffs.

I. Factor Nine: Tenuousness of the State's Justifications

Factor Nine asks "whether the policy underlying the challenged practice or procedure is tenuous." *Gingles*, 478 U.S. at 37. The inquiry is not whether the State can articulate some facially legitimate districting principle, but whether the asserted policy actually explains the challenged configuration. *Veasey v. Abbott*, 830 F.3d 216, 262 (5th Cir. 2016) (en banc).

Here, the challenged plan splinters the Black Belt counties—long grouped within two majority-minority districts—across an unprecedented four districts. The

division of Black voters between SD1 and SD2 is visually obvious, fractures a "significant community of interest," reduces compactness, and abandons long-established districting patterns. *Supra* pp.4-6. The boundary between SD1 and SD2 snakes across the State to pair northeastern Black Belt counties with southeastern coastal counties with which they do not "have much in common," further undermining any claim that the configuration reflects coherent communities. JA399-400.

The district court concluded that the State's justification was not tenuous because the General Assembly invoked the North Carolina Constitution's Whole County Provision and related districting principles. JA1690. But state law makes clear that § 2 compliance trumps the Whole County Provision, and Plaintiffs presented multiple ways to preserve the Black Belt community of interest while producing maps that outperform the enacted plan according to traditional redistricting criteria. *Supra* § I.

The court ultimately rested on Senator Hise's suggestion that the enacted plan grouped four of five "fingerling" counties and counties that shared certain media markets. JA1690-1691. But even Senator Hise—whose motives the court never questioned despite his post as the top Republican on the redistricting committee and despite accusing Plaintiffs' fact witnesses of partisanship, JA1687—mustered only a vague explanation that there were "some conversations about" these ideas, JA875,

and he did not explain why these factors, which are not in the State's redistricting criteria, JA1712, suddenly took on paramount importance in 2023 after decades of preserving the Black Belt counties instead. Anyways, one of Plaintiffs' demonstration maps groups all *five* fingerling counties. JA2135. Factor Nine favors Plaintiffs.

J. The District Court's Conclusions about Party Preference Were Legally and Factually Flawed

Although the Supreme Court has never held as much, this Court has explained that if the "causes" of racially polarized voting "could [be] isolated and measured," a showing "that partisanship rather than race" causes polarization could be relevant to § 2's totality inquiry. *Charleston Cnty.*, 365 F.3d at 352. That showing can take place only in exceedingly rare cases: "partisanship and race as determinants of voting are 'inextricably intertwined'" in places like northeastern North Carolina. *Id.* The district court nevertheless reached the unprecedented conclusion that "party preference rather than racial preference drives voting in North Carolina." JA1702. That ruling rested on a clearly erroneous evaluation of the law and facts.[6]

1. The court did not even mention the governing legal standards. In the context of racially polarized voting, polarization itself "will ordinarily create a

[6] Plaintiffs preserve their argument that causation is "irrelevant" to the § 2 inquiry. *Gingles*, 478 U.S. at 64 (plurality opinion).

sufficient inference" that polarization is racial because the "surest indication of race-conscious politics is a pattern of racially polarized voting." *Nipper v. Smith*, 39 F.3d 1494, 1525-26 (11th Cir. 1994) (en banc). A defendant seeking to overcome that inference must provide "systematic proof" that "*voters* "' partisan preferences, rather than their race, "*caused*" the polarized voting, typically through "party registration information" or "survey research." *Charleston Cnty.*, 365 F.3d at 352 (emphasis added); *see Gingles*, 478 U.S. at 53 n.21 ("racial polarization" turns on "race of the voter"). That proof must "unmistakably show[] that divergent voting patterns among white and minority voters are best explained by partisan affiliation," *Pierce*, 97 F.4th at 223 (quoting *LULAC v. Clements*, 999 F.2d 831, 861 (5th Cir. 1993)), because a § 2 plaintiff need only show that polarization is "plausibly on account of race," *Milligan*, 599 U.S. at 19. The court entirely disregarded these rules and the heavy burden they place on a § 2 defendant seeking to invoke this theory. JA1691-1692.

2. The district court's legal error skewed its assessment of the evidence. As an initial matter, although *Charleston County* saddles defendants with the burden of showing that partisan affiliation "*caused* polarized voting," 365 F.3d at 352 (emphasis added), the court's partisanship theory relied entirely on the testimony of Dr. Alford, who admitted that he conducted *no causation analysis* at all. His testimony was striking: Dr. Alford openly admitted that he had not "done any work" to analyze causation. JA980-983; *see Alpha Phi Alpha*, 700 F. Supp. 3d at 1276

(same). That precise testimony doomed the partisanship theory in *Charleston County*, 365 F.3d at 352, and is a key reason Dr. Alford's partisanship arguments have been resoundingly rejected in "similar" § 2 cases, JA939-950; *see, e.g.*, *Miss. NAACP*, 739 F. Supp. 3d at 454. It should have been dispositive here.

Dr. Alford's analysis, and by extension the court's, also addressed the wrong question. A partisanship theory focuses on whether the race of the "*voters*" caused racially polarized voting. *Pierce*, 97 F.4th at 223 (emphasis added). But Dr. Alford unequivocally testified that his report focused exclusively on the race of *candidates*, and whether a *candidate's* race or party better explained racially divergent voting patterns *as between those two variables*. JA984-985. That is altogether irrelevant, because it provides no evidence or opinion that a *voter's* party affiliation better explained racially polarized voting as compared to the *voter's* race. JA981. The statement that Black voters vote for Democrats is entirely consistent with the statement that Black voters vote for Democrats because of those voters' race.

The limited testimony Dr. Alford did provide on voters' race only *supported* the conclusion that racial considerations drive Black and white people to vote differently. He explained that it's "very likely to be correct" that Black voters "consistently support Democratic candidates because Democratic candidates promote policies and values shared by Black voters," rather than because the candidates are "Democrats." JA981. He testified that it's "the party of the candidate

[that] tells us a lot about" whether the candidate will do "a better job of advancing the interests of Black voters in North Carolina." JA982-983. Indeed, he explained that he "know[s] a lot about voting behavior" and "it is the case" that "candidates who are Democrats may be more likely than candidates who are Republicans to hold particular policy views that Black voters believe will advance the interests of Black people." JA981-982. In other words, he didn't disaggregate Black voter cohesion from race; he tethered it to "support for issues important to black citizens." *Miss. NAACP*, 739 F. Supp. 3d at 453.

Similarly, to the extent correlation between the race of voters and the race of candidates is probative, Dr. Alford's analysis showed that Black voters *do* cohesively support Black candidates. In the single non-partisan election the district court deemed "particularly persuasive," JA1695, Black voters overwhelmingly voted for the Black candidate (at a rate of around 75%) over the White candidate—even without a partisan cue. JA2990. So if this election proves anything (and the district court cautioned against drawing conclusions "based on just one contest" everywhere else in its opinion, JA1699), it shows, as Dr. Alford acknowledged, that "the race of the candidate has explanatory value for the cohesion we see in Black voter preferences." JA971-972. And at the same time, across all 65 elections over five cycles, only a single minority-preferred minority candidate won SD1 or SD2,

while six minority-preferred white candidates prevailed. JA2509-2510, JA2744-2745; *Charleston County*, 365 F.3d at 353.

3. The court also ignored Plaintiffs' proof that "partisanship and race" are "inextricably intertwined" in northeastern North Carolina, *Charleston Cnty.*, 365 F.3d at 352—a textbook error that warrants reversal, *Heyer*, 984 F.3d at 355.

Most glaringly, it is undisputed that over 97% of Black voters in northeastern North Carolina support the same candidates, higher cohesion than existed in *Milligan*, 599 U.S. at 22, while approximately 80% of white voters oppose those same candidates. JA2745-2751. That should have created a powerful inference that voters are polarized for racial reasons—indeed, it would be remarkable if Black voters voted cohesively 97% of the time for purely non-racial reasons—but the court did not even mention it as a relevant datapoint. *Nipper*, 39 F.3d at 1525.

The court likewise ignored Plaintiffs' evidence confirming this straightforward inference. Plaintiffs' fact witnesses, many of whom are experienced North Carolina politicians, uniformly testified that Black voters vote for Democrats because of alignment on "issues that are relevant to … Black voters." JA388; *see* JA354-355; JA400-401; JA425-426; JA479-481. The parties' political platforms taking disparate positions on issues important to Black voters, *compare, e.g.*, JA2721-2724, *with* JA2688, and comparative track records of running Black candidates, JA2995-2998, JA3186-3187 (21 Black Democrats compared to 3 Black

Republicans over last five cycles), confirm the same thing. So does the history of partisan realignment around racial issues. JA344-345; JA355; JA385-386; JA425-426; *Alpha Phi Alpha*, 700 F. Supp. 3d at 1359. The court never mentioned this evidence.

In sum, the court ignored unrebutted and conceded evidence that Black voters vote cohesively for Democrats for race-based reasons, and relied instead on irrelevant evidence that Defendants' own expert admitted could not explain voter behavior. In a two-party system, it will always be the case that, when Black and white voters systematically vote differently, Black voters will favor one party and white voters will favor the other. That inevitability does not preclude § 2 liability.

IV. The Court Should Order a Remedial Plan

When "the record permits only one resolution of the factual issue, remand is unnecessary, and [this Court] may rule based on the record before" it. *Raleigh Wake*, 827 F.3d at 345. As in *Raleigh Wake*, the evidence "permits only one resolution," and this Court should "reverse the district court's judgment" and "remand with instructions to enter immediately judgment for Plaintiffs." *Id.* at 345, 353-54.

This Court should give the General Assembly "14 days" from the date of its decision to enact remedial districts if it chooses to do so, and should direct the district court to decide objections to any such remedial map within 28 days. *Singleton*, 582 F. Supp. 3d at 937; *see Turtle Mountain Band of Chippewa Indians v. Howe*, 2023

WL 8004576, at *17 (D.N.D. Nov. 17, 2023). The court should be directed to evaluate the performance of the districts using results from statewide elections for the past five cycles, and to reject the proposed remedial district if white bloc voting usually defeats Black-preferred candidates. If the General Assembly does not enact a valid remedial district meeting these criteria, the court should be directed to order use of Plaintiffs' Demonstration Map D starting in 2028. *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1017 n.4 (8th Cir. 2006).

CONCLUSION

The Court should reverse and order a remedial plan.

Dated: February 17, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically on February 17, 2026 and will, therefore, be served electronically upon all counsel.

s/ *Elisabeth S. Theodore*
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(g), the undersigned counsel for appellants certifies that:

1. This brief contains 15,968 words, excluding the parts exempted by Fed. R. App. P. 32(f). That complies with this Court's order extending the word count for this brief to 16,000 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a) because it has been prepared using Microsoft Office Word and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

s/ *Elisabeth S. Theodore*
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