CHAIRMAN DANIEL: ... Michael Carvanus, Jake Dorn, Rod Fuller, Dwight Green, Dean Gustafson, Mike Harris, Sherry Hedrick, and Linda Matthews, so it looks like they've all ganged up on us today.

So today the calendar has two bills on it. We're just going to hear Senate Bill 744 today. We are continuing to review Senate Bill 745, based on the Court's guidance, and trying to make sure that that score is as good as possible. We intended to proceed with that map today, but after scoring the map on the metrics required by the Supreme Court, the mean-median and efficiency gap analysis, we determined we could attempt to draw a map that would better meet the Court's test, so that map will be presented at the meeting tomorrow morning at 9:00 that was already scheduled and already noticed. So just one bill today.

By way of introduction, on February 4th, the majority of the Supreme Court of North Carolina found unconstitutional the congressional and legislative maps enacted by the General Assembly and enjoined their use for the upcoming 2022 elections. The Supreme Court
ordered the General Assembly to submit to the three-judge trial court a proposed remedial plan that complies with all provisions of the North Carolina Constitution. So we're here today to follow that order and believe that the proposed maps we will present do in fact comply with the constitution as the Supreme Court's majority interpreted in the February 14th Harper v Hall opinion.

So let's talk about the process. As you all know, the Supreme Court's remedial order gave the General Assembly two weeks, until this Friday, to submit to the trial court proposed remedial plans. Senate Republican and Democratic leadership made a commitment to each other to try to work together to find common ground. Leadership met several times and exchanged good faith proposals. Ultimately, no agreement could be reached.

SENATOR DAVIS: Yes, we'd like to raise an inquiry of the chair.

CHAIRMAN DANIEL: State your inquiry.

SENATOR DAVIS: I just want to make sure, for clarity purposes, understanding the process. You said there was a current map, and
I'm assuming that's the map that's now gone out and that's been shared, that that's going to be revised and -- for the purpose of the -- looking at the scoring and getting those scores better.

Is that correct?

CHAIRMAN DANIEL: The congressional map will change, yes.

SENATOR DAVIS: The congressional map. Okay.

CHAIRMAN DANIEL: And we anticipate it will be released sometime later this evening.

SENATOR DAVIS: Okay. So that will be released later this evening.

Mr. Chair, when do you anticipate, then, that coming before the committee and moving through the committee?

CHAIRMAN DANIEL: So it will be before the committee tomorrow morning at 9:00 a.m. At the same time, we will consider the House legislative map, assuming that they have, you know, sent it to us by that time.

SENATOR DAVIS: Okay. Thanks, Mr. Chair.

CHAIRMAN DANIEL: We would like to thank Senator Blue for his willingness to work
with us. Regardless, I am confident in the maps we will propose today -- or the map we will propose today and tomorrow morning.

We've used this two-week period to draw maps that we believe are constitutionally compliant. Namely, what we submit today and tomorrow are plans that honor neutral redistricting criteria, plans that respect the will of the people, plans that meet the political science standards the Supreme Court used to measure voting power, and plans that ensure that the right of all voters in North Carolina to vote on equal terms is respected.

One other item we present -- before we present the proposed remedial plans for the Senate map, the chairs would like to address an issue raised in the Supreme Court concerning what is called a racially polarized voting study.

The Supreme Court's majority found that the Stephenson decision requires the General Assembly to conduct such a study. If you'll look in your materials, you should have some information regarding that on your desk. As a
result, the trial court ordered the General Assembly as part of what we file on Friday to provide the initial assessment of whether a racially polarized voting analysis requires the drawing of a VRA district. We will comply in good faith with that order but wanted to take time now briefly to describe why we believe, as we did with the enacted plans, that a majority -- that majority-minority districts are completely unnecessary in North Carolina for African American voters to have an equal opportunity to elect the candidates of their choice.

Recall that the General Assembly cannot draw districts using race under the Voting Rights Act unless we satisfy the three Gingles preconditions, which are, one, a reasonably compact majority-minority voting age population district; two, a politically cohesive minority community; and three, white bloc voting usually defeating that community's candidate of choice.

To draw VRA districts, according to Covington and other recent US Supreme Court cases, the General Assembly needs a strong basis in evidence for each of those three factors.
There is no evidence available to demonstrate
the presence of these conditions. Let's start
with what we knew before the enacted plans were
passed in the fall.

First, we learned through redistricting
litigation from the last decade that there was
not enough evidence to support a finding that
the Gingles threshold conditions were met in
North Carolina. Second, in our most recent
redistricting efforts, overseen and approved by
the courts, not only did the Common Cause v Lewis court approve our decision to draw race
blind, the court conducted its own racial
analysis finding none of the Gingles factors
were met. Thus the Common Cause court found as
recently as January 2020 that no Section 2
districts are required in North Carolina.
Indeed, African American candidates were elected
in numbers that equal or exceed the percentage
of black voting age population in 2018 and 2020
under maps that did not use race to draw
districts.

We also proved as much in January's
trial over the enacted plans. There were two
expert witnesses, one from the plaintiffs and
one of our own, who confirmed that no VRA districts were required.

First, plaintiffs' expert Dr. Moon Duchin produced the polarization analysis to determine what would constitute an effective district for black voters. She did not, however, conduct a Gingles analysis. In fact, at trial, Dr. Duchin admitted that she was not offering an opinion in this case that black voters require -- and this is a quote from Dr. Duchin, she was not, quote, offering an opinion in this case that black voters require a district anywhere in the state of North Carolina with at least 50 percent black voting age population, unquote.

Instead, the test she adopted by its plain terms demonstrates that a district with 50 percent BVAP is not required to be an effective black district. In fact, she testified that, quote, effective black districts could have a black voting age population as low as 25 percent.

The legislative defendants did such a polarization report. Dr. Jeffrey Lewis, who offered the report in front of you and that we
are submitting to the record, confirms the absence of legally significant racially polarized voting in North Carolina.

Dr. Lewis studied the polarization rates for hundreds of elections, including primary elections and general elections. Those can be found in the tables in the report for the years 2014, 2016, 2018, and 2020.

What his report does is use those prior elections to assess the voting strength of black voters in the 2020 plans and enacted legislative and congressional plans. He concluded using Dr. Duchin's definition of an effective black district which, remember, was less than 50 percent BVAP, that there were at least three effective black congressional districts in the 2021 enacted plan, at least 12 effective black Senate districts in the 2021 enacted plan, and at least 31 effective black districts in the 2021 House enacted plan.

Considering all of this, the three-judge panel found as a matter of fact a finding that was not disturbed but adopted in full by the Supreme Court that, quote, in no district enacted or in 2020 does it appear that
a majority of BVAP is needed for that district to regularly generate majority support for minority preferred candidates in the reconstituted elections, unquote.

In plain terms, majority-minority districts are not required to elect candidates of minority voters' choice.

The evidence before the General Assembly when it enacted the 2021 plans and the evidence available today to the General Assembly, including the reports by Dr. Duchin and Dr. Lewis, clearly demonstrate that nowhere in the state is there evidence of legally significant racially polarized voting.

Under the circumstances of this case, the General Assembly cannot now draw districts to achieve a racial target because it would, as we noted months ago, subject the state to liability under the Equal Protection Clause of the 14th Amendment of the US Constitution.

Next, we will also discuss briefly how we approach drawing proposed remedial maps. First, a brief point to make sure we are on the same page. I will refer to the enacted map and the proposed remedial map. The former is what
we passed in November of 2021 that is currently
enjoined by the Supreme Court. The latter is
what you have before you today.

In drawing these proposed remedial
plans, pending court approval, we followed the
Supreme Court order closely and carefully,
prioritizing the map as a whole as directed.

The opinion stated, quote, in a
statewide election, ascertaining the will of the
people is straightforward, but in legislative
elections, voters have -- only have equal
representational influence if results fairly
reflect the will of the people not only district
by district but in aggregate and on equal terms.

Again, quoting from the opinion, quote,
the partisan gerrymandering violation is based
on the redistricting plan as a whole, not a
finding with regard to any individual district.
Certainly, it is possible, as the plaintiffs in
the trial court demonstrated, to identify which
individual districts in the state legislative
maps ignore traditional redistricting principles
to achieve a partisan outcome that otherwise
would not occur. It is possible to identify the
most gerrymandered individual districts, but
here the violation is statewide because of the
evidence that on the whole the districts have
been drawn such that voters supporting one
political party have their votes systematically
devalued by having less opportunity to elect
representatives to seats compared to an equal
number of voters in the favored party, end of
quote.

As I just quoted from the opinion, the
Supreme Court found the map as a whole to be
unconstitutional. Certainly, we can and did
identify districts that could be considered for
changes in this proposed remedial plan. And
Senator Newton will go through all of those
changes to the Senate proposal in a moment, but
I want to underscore the point -- this point:
To comply, we were instructed to consider the
map as a whole. So how do we do that? How do
we evaluate the map as a whole?

The court order addresses this, and I
am going to read the relevant section from the
order, and I'm quoting here. Please stay awake.

Quote -- quoting the Court:
As the trial court's finding of fact
indicate, there are multiple reliable ways of
demonstrating the existence of an unconstitutional partisan gerrymander. In particular, mean-median difference analysis, efficiency gap analysis, close votes, close seat analysis, and partisan symmetry analysis may be useful in assessing whether the mapmaker adhered to traditional neutral districting criteria and whether a meaningful partisan skew necessarily results from North Carolina's unique political geography.

If some combination of these metrics demonstrates there is a significant likelihood that the districting plan will give the voters of all political parties substantially equal opportunity to translate votes into seats across the plan, then the plan is presumptively constitutional.

To be sure, the evidence in this case and in prior partisan gerrymandering cases provides ample guidance as to the possible bright line standards that can be used to distinguish presumptively constitutional redistricting plans from partisan gerrymanders, end of quote.

The analysis the Court lists are
mean-median difference analysis, efficiency gap analysis, close votes analysis, close seats analysis, and partisan symmetry. Out of these analyses, mean-median and efficiency gap analysis are the broadly used and replicable political science techniques that produce a quantifiable metric to analyze.

So let me stop to define these terms.

Mean-median difference is a simple measure of asymmetry that attempts to measure partisan skew. A large difference between a party's median district and its average statewide vote share can suggest partisan skew.

Efficiency gap looks at the number of wasted votes across districts. The efficiency gap is calculated by taking one party's total wasted votes in an election, subtracting the other party's total wasted votes, and dividing this by the total number of votes cast. A large difference between the party's wasted votes is said to indicate one party is treated more favorably than the other by the redistricting map.

I'm going to again quote the court order where mean-median and efficiency gap
analysis were explained.

Quote: Based on Dr. Magleby's testimony, any mean-median difference that is not zero could be treated as presumptively unconstitutional. However, using the actual mean-median difference measure from 1972 through 2016, the average mean-median difference in North Carolina's congressional redistricting plans was 1 percent. That measure instead could be a threshold standard such that any plan with a mean-median difference of 1 percent or less, when analyzed using representative sample of past elections, is presumptively constitutional, end of quote.

To underscore the point of this section of the order, the Court proposes a standard for the mean-median analysis of 1 percent or less when analyzing a proposed map. And again, this is to analyze the map as a whole, not any particular county grouping or district. The proposed standard is a mean-median score of 1 percent or less, and if the map meets this standard it is presumptively constitutional.

Now I will read the relevant section in the court order on the efficiency gap analysis.
Quote: With regard to the efficiency gap measure, courts have found that an efficiency gap above 7 percent in any districting plan's first election year will continue to favor that party for the life of the plan. It is entirely workable to consider the 7 percent efficiency gap threshold as a presumption of constitutionality such that, absent other evidence, any plan falling within the limit is presumptively constitutional. The efficiency gap, like other measures of partisan symmetry, is not premised on a strict proportional representation but rather on the notion that the magnitude of the winner's bonus should be approximately the same for both parties, end of quote.

To summarize, the proposed standard using the efficiency gap, the court says that a score of 7 percent or below -- again, this is for the entire map and not for a county grouping or district -- is presumptively constitutional.

So at this time, I would like to recognize Senator Newton for explanation of Senate Bill 744. And I believe Senator Ford has a motion.
SENATOR FORD: Send forward an amendment.

CHAIRMAN DANIEL: All right. The committee members have a copy of the amendment to Senate Bill 744.

Senator Newton, you are recognized to explain the amendment.

SENATOR NEWTON: Thank you, Mr. Chairman.

Members, with these mean-median and efficiency gap standards in mind, I'll now step through the proposed remedial Senate plan as a whole, highlighting how the map scores in these metrics and how it compares to the enacted Senate map. And again, when I'm talking about the enacted Senate map, that's the November 2021 map as opposed to the remedial map which is what we're considering today.

So first, on the mean-median test, the proposed remedial Senate map scores approximately negative .65 in the mean-median and efficiency gap --

SENATOR CLARK: Mr. Chair.

CHAIRMAN DANIEL: Senator Clark.

SENATOR CLARK: When is it an
CHAIRMAN DANIEL: Can we let Senator Newton get through his presentation and then wait until then.

SENATOR NEWTON: So just so you're aware, the mean-median and efficiency gap tests, when you have a negative number, it indicates a Republican advantage. A positive number indicates a Democratic advantage. So this is a negative .65, so it indicates a slight Republican advantage.

But I just want to repeat that the proposed -- that the mean -- that according to the Court, the mean-median score for the proposed remedial Senate map is presumptively constitutional and the remedial map -- because the remedial map scores better than plus or minus 1 percent. So the remedial map is well within the Court's proposed standard for presumptive constitutionality of plus or minus 1 percent.

For the efficiency gap, the Court's proposed standard is plus or minus 7 percent. The proposed remedial Senate map scores approximately negative 3.97 percent. That's
3.97 percent, again, well within the Court's proposed standard for presumptive constitutionality of plus or minus 7 percent.

Before I go into the specific changes on a county-by-county and district-by-district basis, I want to underscore how seriously and meticulously we followed this proposed standard in the Supreme Court's order. We made significant changes to some districts, we made tweaks in other districts, and we did everything we could, in the short time we had, to produce a proposed remedial map that meets these political science standards for measuring the partisan fairness of the statewide map.

Here are a few other metrics demonstrating how the overall map has changed, proving that it's a, quote, unquote, fair map, using the definitions and metrics of the Supreme Court order.

The proposed remedial Senate map includes ten districts that were within -- that were within 10 points in the 2020 presidential race. That is ten competitive districts. In fact, eight of those districts are in a tighter range of 47 to 53 percent for the Republican
vote share in the 2020 presidential race. Four districts are 49/49 or 50/48 in favor of one side or the other.

In the enacted Senate map from 2020, President Trump won 30 of the districts. In the proposed remedial Senate map, Trump won 28 districts, but only 26 with over 50 percent.

In the enacted Senate map from 2020, Governor Cooper won 23 of the districts. In the proposed remedial Senate map, Cooper won 25 districts.

In 2020, the closest statewide race was for attorney general. Josh Stein won 50.1 percent to 49.9 percent, a difference of 13,622 votes out of over 5.4 million votes. In the proposed remedial Senate map, Stein wins 23 of the 50 seats. However, Stein was within 636 votes in two Senate districts of winning 25 of the 50 seats. So let me say that again. In the closest race in 2020, essentially a 50/50 race statewide, the Democrat candidate was just 67 votes away in Senate District 21 and 569 votes away in Senate District 24 from capturing exactly 25 seats, or 50 percent of the seats. That, we believe, is a fair map, folks.
We used 12 statewide races in our composite metric for the mean-median and efficiency gap analyses. These are the same 12 races used by the plaintiffs' expert, Dr. Mattingly, in analyzing our enacted map. So we used the plaintiffs' expert's 12 races. Those races are president, US Senate, governor, lieutenant governor, attorney general, auditor, commissioner of ag, labor, secretary of state, and treasurer from 2020, and president and lieutenant governor from 2016. I just want to note again, these are the races that Dr. Mattingly chose. I don't believe the analysis would change if you were to look at additional races from 2020 or 2016, but you're certainly welcome, of course, to do that.

But of these 12 races, the statewide winner in that contest also won a majority of the Senate districts in 10 of the 12 races. One race resulted in a 25/25 tie. The only exception to this was the 2020 AG race where Josh Stein won statewide by only 13,000 votes or .2 percent. In that case, Stein would have won 23 of the 50 Senate seats. However, a mere 636 votes across two additional Senate districts
would have resulted in a 25/25 tie, reflecting result of a very close statewide race.

In the enacted Senate map, we worked hard to keep municipalities whole. You remember that, we tried to keep municipalities whole, worked hard to do that. In that map, we split 19 precincts to keep as many municipalities whole as possible. However, the plaintiffs' expert, Dr. Mattingly, testified that in his opinion, municipalities were only kept whole in the Senate map to gain partisan advantage.

Therefore, in this proposed remedial map, we prioritized compliance with the Court's order, meaning mean-median and efficiency gap standards, keeping precincts whole, competitiveness and compactness over municipalities being kept whole.

In the proposed remedial map, we reduced split VTDs statewide from 19 to three. All three of these split VTDs occur in Wake county, and the reason for this is the population deviation in the Wake-Granville county grouping is so close to the lower limit that there's little flexibility in drawing the six districts here within the plus or minus
5 percent deviation.

We attempted to split as few VTDs as possible while complying with the court order, and we were able to reduce the split VTDs from ten in Wake county in the enacted map to only three in the proposed remedial map. Ten in Wake county in the enacted map, three statewide in the remedial map. Significant improvement in split VTDs.

The Court also -- the court order stated that we could consider where incumbent senators live in the drawing of the remedial map. We did that, and no senators are double-bunked with other members other than those who are paired together due to the Stephenson county groupings. With Senator Clark running for congress, there are no Democratic members double-bunked with other incumbents. Again, zero Democrats are double-bunked in this map.

Now, I'll go through the changes on the proposed remedial map as compared to the enacted map.

As I just mentioned, that we've removed as many split VTDs as possible across the state.
The counties where we removed split VTDs are Buncombe, Cabarrus, Caldwell, Guilford, Randolph, and Sampson. When we removed these split VTDs, it caused Senate District 35 to become overpopulated. We moved a VTD in Union county and some VTDs in Randolph county to make Senate Districts 35, 29, and 25 balance within the plus or minus 5 percent deviation.

In the Cumberland-Moore county grouping, we altered Senate District 19 and Senate District 21 to make Senate District 21 extremely competitive. In the composite score developed by Dr. Mattingly to evaluate the districts, the composite Republican average for Senate District 21 is 50.17 percent.

President Trump received 49.94 percent to President Biden's 48.35 percent. This hypercompetitive district was drawn to comply with the court's order which results in more competitive districts and partisan fairness statewide.

In the Guilford-Rockingham county grouping, we drew Senate District 28 to match the court-ordered configuration for the 2018 and 2020 elections. The proposed remedial draw for
Senate District 28 exactly replicates -- exactly replicates the court-ordered draw which was completed by the special master at that time Nathan Persily. Likewise, the border between Senate District 26 and Senate District 27 in southern Guilford county follows the Persily draw exactly.

We attempted to maximize compactness in these districts while considering member residences in Guilford county. Senator Berger lives in Senate District 26, Senator Garrett lives in Senate District 27, and Senator Robinson lives in Senate District 28.

In the Forsyth-Stokes county grouping, we drew Senate District 31 and Senate District 32 to respect member residences. Senator Krawiec lives in Senate District 31. Senator Lowe lives in Senate District 32.

In the enacted Senate plan, we attempted to keep as much of Winston-Salem whole as possible while not splitting any other municipality in Forsyth county. In the proposed remedial map, we attempted to draw two very compact districts and meet the Court's statewide guidance for partisan fairness.
There is an alternative configuration for Forsyth county that pairs it with Yadkin instead of Stokes. We evaluated that configuration; however, the resulting districts in this configuration, Senate District 31, 32, and 36, in Alexander, Wilkes, Surry, and Stokes counties, would have been less compact. This configuration also made it much harder to respect incumbent residences and keep those members, Senators Lowe and Krawiec, in different districts.

I want to note that while Stokes and Yadkin county are each very Republican-leaning counties, Yadkin county is slightly more Republican. In 2020, President Trump received 78 percent of the vote in Stokes county. In Yadkin county, he received 80 percent of the vote. We decided to leave Stokes, the slightly less Republican county, paired with Forsyth, draw two more compact districts, and comply with the court's order for partisan fairness in the statewide plan.

We also concluded that Buncombe county paired better with McDowell and Burke to create the most logical and compact districts in that
county grouping and in the Henderson-Polk-Rutherford and Cleveland-Gaston-Lincoln county groupings. If we had switched these county groupings, the resulting districts would have been significantly less compact.

In Buncombe county, we altered Senate District 46 and Senate District 49, making each district more compact than in the enacted map. We also removed split VTDs which were drawn in the enacted map to keep municipalities whole.

In the Iredell-Mecklenburg county grouping, we drew six districts respecting incumbent residences. Senators Sawyer, Marcus, Waddell, Mohammed, and Salvador each have districts. There's an open seat in southern Mecklenburg county where Senator Jeff Jackson lives but is not running. In the enacted Senate map, this southern Mecklenburg district was quasi-competitive in the enacted map but leaning Democrat. In the proposed remedial map, this district had a Republican composite percentage of 45.5 percent, and Trump only received 41.6 percent of the vote in 2020. Therefore, this district is no longer competitive in all
likelihood. Again, this district and others in this county grouping were drawn to meet the Court's statewide standard for partisan fairness.

In the northeast, we flipped the configuration of those counties so that Senate District 1 includes Carteret, Pamlico, Hyde, Dare, Washington, Chowan, Perquimans, and Pasquotank. We renumbered the other district which is now Senate District 3. It now includes Warren, Halifax, Northampton, Martin, Bertie, Hertford, Gates, Camden, Currituck, and Tyrrell.

What was Senate District 3 in the enacted map is now Senate District 2 in the proposed remedial map. The new Senate District 3 in the proposed remedial map is competitive with a composite Republican average of 47 percent. These districts were drawn to meet the Court's standard for statewide partisan fairness.

In New Hanover county, we changed some of the precincts that were in Senate District 8. In the enacted map, we chose precincts to balance population between Districts 7 and 8 while keeping all municipalities whole. In the
proposed remedial map, we prioritize compactness in meeting the Court's proposed standards for statewide partisan fairness. Senate District 7 is now configured to be a very close -- very close to a 50/50 district, with Biden narrowly carrying the district in 2020: 49.2 percent to 49 percent.

The districts are more compact in this draw than they were in the enacted map, and Senate District 7 is more competitive. This configuration of Senate District 7 was a component of the statewide plan that meets the Court's proposed standards for partisan fairness and competitiveness.

Finally -- finally -- in Wake county, as mentioned previously, we removed as many split VTDs as possible which were in -- which were -- which were in the enacted map to keep municipalities whole. The proposed remedial draw in Wake county has three split VTDs, down from ten, and these split only to balance population and to keep the districts within the 5 percent deviation. All incumbents in the county, Senators Blue, Batch, Chaudhuri, Crawford, and Nickel, have their own districts.
We attempted to maximize compactness in these districts and comply with the state's order on statewide partisan fairness.

Senate District 17 is more Democrat-leaning than in the enacted map. President Biden carried the district 51.5 to 46.4. What is now Senate District 18, which includes Granville county and northern Wake county, is also more Democratic-leaning compared to what was Senate District 13 in the enacted Senate map. Senate District 18 was carried by Biden 50.9 to 47.3.

Again, these districts were drawn to meet the Court's proposed metrics for mean-median and efficiency gap tests of statewide partisan fairness and political responsiveness.

Mr. Chair, this concludes my summary of the proposed remedial Senate map, and I'm happy to take any questions.

CHAIRMAN DANIEL: Thank you, Senator Newton. I think Senator Clark had a question.

SENATOR CLARK: Thank you, Mr. Chair.

Mr. Chair, a lot of comments have been made referencing Dr. Mattingly's use of 12
elections in his analysis. Did he, by chance, compute efficiency gap and mean-median scores with those -- that data? Dr. Mattingly.

SENATOR NEWTON: I do not know the answer to that.

SENATOR CLARK: Well, he did not.

Are you aware that he personally is somewhat disdainful of the use of individual measures, such as mean-median and efficiency gap, for the determination whether or not a plan is fair or not?

SENATOR NEWTON: I do not.

SENATOR CLARK: Well, he does. Read some of his writings and view some of his lectures, you'll find that out.

Also, I'd like to draw your attention again to, let's see, paragraph 167 of the opinion by the Court. You read that to us previously, but you sort of read very quickly over the part that said such that absence of other evidence -- in other words, if there's other evidence to the contrary that a plan is constitutional -- then we cannot presumptively assume it's constitutional.

Have you actually, maybe, performed
some of the tests performed by Dr. Mattingly to
determine whether or not there was evidence to
the contrary with regard to the plans that you
presented to us today?

SENATOR NEWTON: I don't necessarily
agree with your characterization of what the
order says. It does not explicitly say what you
just described.

We have met the constitutional
presumption under two of the measures, and they
were examples of many measures, specific
test examples that are easy -- easily replicable by
anyone so that they understand what we're saying
is in fact true that these are constitutionally
presumptive -- presumptively constitutional. We
believe that they are, even though, yes, there
are other -- you know, you may propose to the
Court anything you want, I suppose.

SENATOR CLARK: Well, I don't want to
propose anything I want to propose.

But it states explicitly here with
regard to the efficiency gap, it applies in the
absence of evidence to the contrary, and
Dr. Mattingly, in his presentations, presented a
lot of evidence to the contrary. So I was
wondering whether or not you ran any form of ensemble analysis to determine whether or not there possibly was evidence to the contrary and therefore the efficiency gap measures really were not presumptively constitutional.

SENATOR NEWTON: We ran the ensemble for those two measures that was most favorable to the plaintiffs, frankly, which is your own expert's 12 races, so we think we have more than met the majority's desire to see metrics that are presumptively constitutional.

SENATOR CLARK: Mr. Chair.

CHAIRMAN DANIEL: Follow-up.

SENATOR CLARK: Using 12 elections to determine what the average -- or the mean efficiency gap score is or mean-median score is does not constitute ensemble analysis.

SENATOR NEWTON: Senator Clark, you and I are just going to have to agree to disagree on this, and we'll let the lawyers fight it out in their briefings before the courts.

SENATOR CLARK: Thank you, Mr. Chair.

CHAIRMAN DANIEL: Senator Blue.

SENATOR BLUE: Thank you, Mr. Chair.

And just a couple questions. I want to
understand that Senator Newton, you understand that the evidence in the trial was still the evidence before the trial court now. The evidence found at the trial court level and as affirmed in the North Carolina Supreme Court is the evidence that the trial court will use to determine whether or not the gerrymanders that they identified have been repaired.

SENATOR NEWTON: Senator Blue, I suspect they'll also consider the reports of counsel, including other third parties that aren't even explaining the work that they're doing. So I don't think they're limited. It certainly -- it's up to them.

SENATOR BLUE: I understand that. Let me ask you another question, then, if you will, Mr. Chairman.

CHAIRMAN DANIEL: Follow-up, Senator Blue. You are recognized for a series of questions.

SENATOR BLUE: Were you aware that in finding that there were gerrymanders in Wake county, and this was specific findings, I think, and the Court findings page 82 through 86, I got it in the Supreme Court opinion as well, but
they found that part of what created the gerrymanders in Wake county was -- and I'll paraphrase it, but I think closely to quoting it, that the map that you -- the 19 -- the 2021 map had packed leaning VTDs, voting tabulation districts, into Districts 14, 15, 16, and 18 in order to make Districts 13 and 17 as competitive as possible for Republicans, and it put Raleigh's few Republican-leaning VTDs in District 13.

I know that there were some changes in the numbers of the district, but what has your proposed map done, a redraw of the map done, to address those specific other factors in determining that there's not a political gerrymander still in Wake county?

SENATOR NEWTON: As I described earlier, Senator Blue, what we have done we believe meets the Court's test, including in Wake county.

SENATOR BLUE: Follow-up, Mr. Chairman.

CHAIRMAN DANIEL: You're recognized for a series of questions, Senator Blue.

SENATOR BLUE: Thank you, sir.

But my specific question, have you gone
into Districts 14, 15, 16, and 18 to see whether you reduced the Democratic average in those four districts, all in Wake county, with the average in the other two districts to determine whether this observation, this specific finding affirmed by the Supreme Court and made by the trial court, that the gerrymander consisted of the illegal packing of Democratic voters in those four districts? Have you measured how you addressed that specific finding?

SENATOR NEWTON: It's been measured in our overall approach satisfying the Court's order.

SENATOR BLUE: But not specific the.

SENATOR NEWTON: I can't -- I can't go to that level of detail with you, but it is what it is, and we'll be happy to -- you know, you'll obviously get a chance to look at exactly what we did in that area.

SENATOR BLUE: Following up. I know you indicated there was a slight difference, maybe half a percent or something, in both of those districts in the Democratic performance.

And are you aware that in the evidence in the trial court, those four districts in Wake
county that I identified all are over 60 plus percent Democratic performing, some of them 70 percent, as opposed to the 50 percent of the two -- you consider them competitive districts in Wake county? Are you aware of that?

SENATOR NEWTON: I'm not going to debate you on that, Senator Blue.

SENATOR BLUE: No. No. I just asked are you aware of it.

SENATOR NEWTON: I am not aware of that.

SENATOR BLUE: Okay. Another question. You indicated that you did in Guilford county what the Persily special master report did in Guilford county in 2019. You replicated exactly what he did; is that right?

SENATOR NEWTON: Yes, we replicated those two Persily maps.

SENATOR BLUE: Are you aware that Persily's maps were aimed at fixing a racial gerrymander and did not relate at all to a political gerrymander in Guilford county?

SENATOR NEWTON: Well, Senator Blue, I can tell you that with those draws, we satisfied the Court's requirements.
SENATOR BLUE: If I could just then follow-up.

And the Court, regarding Guilford county, found specifically that Mattingly's expert report in fact found that there could be three Democratic districts drawn in Guilford county.

SENATOR NEWTON: I have no reason to doubt that.

SENATOR BLUE: Do you realize that Mattingly's report found that -- in fact, I think he said that three districts pack an exceptional number of Democrats in District 28 and exceptionally few in District 26, and that if in fact you unpacked 28 and whatever the other number in Guilford county is, the other Democratic district, you would have all districts with greater than 54 percent Democratic performance?

SENATOR NEWTON: Senator Blue, I just recommend that you submit that to your counsel and have them brief that up and propose that it's of significance.

We believe we've met the standard the Court set out on our statewide analytics around
this map.

SENATOR BLUE: Okay. And just for the record, I'm not a party. I don't have counsel in this matter. Okay.

SENATOR NEWTON: Fair enough. Thank you, Senator Blue.

CHAIRMAN DANIEL: Senator Blue, can you hit your microphone.

SENATOR BLUE: I'm neither a party nor a witness in the proceedings, so I don't have counsel.

But you also indicated that in the simulated plans, out of the billions or millions that somebody made, maybe not him, across elections that less than one-tenth of 1 percent of the plans had more packed Democrats into these two districts than the adopted plan.

SENATOR NEWTON: If that's what he said, that's what he said.

SENATOR BLUE: Okay. And I'm about done.

You indicate that you changed precincts in New Hanover county.

SENATOR NEWTON: That's correct.

SENATOR BLUE: And you changed
precincts in that district because you had sacrificed -- you wanted to sacrifice municipal completeness for compactness; is that correct? You were willing to cut the city limits in order to get a more compact map.

SENATOR NEWTON: The Court -- the majority of the Court signaled to us that keeping municipalities whole was not as important to it as it seemed to be to us in the enacted map. Therefore, we changed New Hanover county to improve its scores under the Supreme Court majority's test for what would be sufficient and constitutional. So we believe we've met that test better, even assuming we did before in New Hanover. The whole state scores better when we -- when we made this move in New Hanover.

SENATOR BLUE: And just to follow up, because as you were talking about him I was thinking of comparables.

In Buncombe county, you chose to keep a municipality whole even though you could have gotten a more compact had you not kept the municipality whole; is that right?

SENATOR NEWTON: I don't know the
answer to that.

SENATOR BLUE: So that I can get my
numbers right on the test that you use -- and
I'm not going back to being a mathematician, but
as I understand it, you said that the -- in the
mean-median in the 2021 map, looking at the
districts as they existed, was 1 percent -- what
was .65 percent, I think you said; is that
right?

SENATOR NEWTON: No. The mean-median
test is on this map, the proposed remedial map.

SENATOR BLUE: So you didn't go back
and see what the mean-medians were in the --

SENATOR NEWTON: In the enacted map?

SENATOR BLUE: -- 2021 map? Yes.

SENATOR NEWTON: Not to my knowledge.

SENATOR BLUE: And you didn't do the
efficiency gap on the 2021 map?

SENATOR NEWTON: Well, no. I take that
back. We did. And these are improvements over
the enacted map.

SENATOR BLUE: Well, that's what I
thought you said.

Well, what were these two measurements
in the 2021 map?
SENATOR NEWTON: I don't have that in front of me.

SENATOR BLUE: And you say in the proposal that's before us, the efficiency gap --

SENATOR NEWTON: We can get you that.

SENATOR BLUE: -- is minus 3.97, I believe you said.

SENATOR NEWTON: That's correct, 3.97.

SENATOR BLUE: And something .65.

SENATOR NEWTON: .65. Negative .65 and negative 3.97. And I'll be happy to provide you with any data we have on the enacted map.

SENATOR BLUE: Other than in New Hanover county, did you take a district and increase the Republican score, that is, a performance of Republican candidates, throughout this map anywhere? And I'll say so -- that I'm not trying to trick you or anything. I'll represent to you that you just indicated that you moved precincts in New Hanover county and the movement of those precincts made that district a more Republican district. And I'm asking you is there anywhere else in the map that you moved precincts that did that.
SENATOR NEWTON: Senate District 7, which is the New Hanover county district, is now very, very close to a 50/50 district.

SENATOR BLUE: My question to you is what was it before?

SENATOR NEWTON: I do not have the answer to that.

SENATOR BLUE: So you don't dispute that it was a more Democratic district before you added those additional four precincts to it in the proposal?

SENATOR NEWTON: I do not, but I will say that we scored it as it was -- in the enacted form and it scored worse under the majority's opinion and guidance to us than after this change. So this improved the scoring both as to compactness and meeting the Court's proposed standards for statewide partisan fairness.

SENATOR BLUE: Last question, Mr. Chairman.

And you read the opinion, I take it, and you've had advice about what it means. Is it -- as you state what this new map does, is it your opinion that it didn't matter to the
Supreme Court in their ruling and based on the
opinion and order that there was a map -- to use
their exact language, I think, basically made
the chances equal for parties that got a similar
number of the votes to do what the other party
did as far as seats that came out of the General
Assembly through that particular election?

SENATOR NEWTON: Senator Blue, I will
not speak for the Supreme Court. I don't know
what they're thinking.

CHAIRMAN DANIEL: Senator Perry.

SENATOR PERRY: Thank you,
Mr. Chairman, but I've been worn out by the
court proceedings in here today. I'll pass.
Thank you.

CHAIRMAN DANIEL: Senator Clark.

SENATOR CLARK: Thank you, Mr. Chair.
I have a comment and a few questions, if you
don't mind.

CHAIRMAN DANIEL: You're recognized for
a few questions.

SENATOR CLARK: Thank you.
Mr. Chair, you all have made mention
about Dr. Duchin. In January 2018, she wrote an
article "Gerrymandering Metrics: How to
measure? What's the baseline?"

In this particular article regarding the use of the efficiency gap as a single judicially manageable indicator of partisan gerrymandering, she stated that the problem is that gerrymandering is a fundamentally multidimensional problem, so it is manifestly impossible to convert that into a single number without a loss of information that is bound to produce many false positives or false negatives for gerrymandering.

Then later in an article, May of 2017 -- maybe not later, but in another article in 2017 -- regarding the efficiency gap, she wrote: In its simplest form, we can see that the efficiency gap has numerous potentially undesirable properties. One, it penalizes proportionality; two, is volatile in competitive races; three, it fetishizes three-to-one landslide districts; four, it breaks down in edge cases; and five, it's nongranular.

Did you all evaluate your use of the efficiency gap to determine whether or not any of these problems existed in your analysis?

SENATOR NEWTON: Mr. Chair.
CHAIRMAN DANIEL: Senator Newton.

SENATOR NEWTON: All I can say to that, Senator Clark, is apparently the Supreme Court majority disagreed with the plaintiffs' witness on those points because they were very specific about the metrics to be used under those two tests. And we did not rely on a single test. We have two tests in addition to all the anecdotal evidence that I went through earlier here today.

SENATOR CLARK: Mr. Chair.

CHAIRMAN DANIEL: You are recognized for a series of questions.

SENATOR CLARK: Oh, thank you, Mr. Chair.

And you also indicated that you used 12 elections for your -- for calculating the average efficiency gap, I believe, and you thought that was a representative sample sufficient?

SENATOR NEWTON: We thought it was more than appropriate to use the plaintiffs' expert's own 12 races that he represented to the Court were representative and appropriate to use. So instead of having that fight and taking that
fight on, we used his 12 races, and we do think that's appropriate.

SENATOR CLARK: Did Dr. Mattingly say that the use of only 12 elections were sufficient for calculating mean-median scores and efficiency gap scores for making a determination as to whether or not a map was constitutionally compliant? He didn't use those tests for that purpose.

SENATOR NEWTON: Chair Clark, we do not consult with Dr. Mattingly.

SENATOR CLARK: Well, you've indicated you've consulted his work quite extensively since we've been here.

No further questions, Mr. Chair.

CHAIRMAN DANIEL: Any other comments or questions?

Senator Marcus.

SENATOR MARCUS: Thank you, Mr. Chair. I have a series of questions about the process, if I could.

CHAIRMAN DANIEL: You are recognized for a series of questions.

SENATOR MARCUS: Thank you very much. I'm curious, and I know I've heard from
many voters in my district and across the state
who are curious about the process for how we
came up with this map, a lot of frustration that
we saw it so late, that this is the first
hearing and the first day that the public's been
able to see it. It's also the first day I got
to see it.

So some of my initial questions I'm
hoping you can answer are when was -- when was
this map completed? In other words, when was
the last time this map that we're seeing today
was changed by you or whoever drew this map?

CHAIRMAN DANIEL: Senator Newton.
SENATOR NEWTON: Yesterday. I'm
not -- I don't recall specifically,
Senator Marcus, but although it was subject to
change literally before, you know, we came in
this room. We were scoring it to make sure it
satisfied the Court's criteria, and until we had
that score we could not release a map. And as
you know, we were dealing with an
extraordinarily compressed timeframe and did the
very best we could in the time we had.

So it was -- you know, the earliest we
could release the map was, like, midmorning
today. We did not finish it until the night before, late the night before.

    SENATOR MARCUS: Okay. What I hear you saying, it was not edited at all after -- after yesterday at some point, and the delay in us not seeing it until today was due to your internal analysis of it and deciding whether to make any additional changes. Is that what you said?

    SENATOR NEWTON: We released it as soon as we were -- we were confident it was going to be the right map, and we actually -- so that was, what, midmorning this morning that it scored well. And we were -- you know, we want to make sure it scores well. So if we -- we didn't want to release something and pull it back unless we had to. You know, we're doing the very best we can in the time we've got. So we released it as soon as it was ready to go.

How's that.

    SENATOR MARCUS: Okay. I'm also curious about who drew the map, what legislators were involved, what staff was involved, consultants, et cetera.

    SENATOR NEWTON: Well, Senator Daniel and I and to a lesser extent -- as you know,
Senator Hise is not here today, he hasn't been here the last few days. Working with typical staff like we normally would with a bill. Of course, we do have outside counsel, but primarily with our staffers.

SENATOR MARCUS: Were any professional mapmakers involved in drawing this map?

SENATOR NEWTON: Not to my knowledge.

SENATOR MARCUS: Okay. Thank you.

SENATOR CLARK: Mr. Chair.

CHAIRMAN DANIEL: Senator Clark.

SENATOR CLARK: Thank you, Mr. Chair.

Senator Newton, could you explain to me the process that you all went through in your attempts to achieve the desired scores.

SENATOR NEWTON: We started with the enacted map and tried to improve the scoring of the enacted map and satisfy all the requirements of the Court that we've already described in detail. They were multifaceted. So when we got to an acceptable score, we thought we had a map that passed muster and was in fact competitive as required by the majority opinion and no need to go any further.

CHAIRMAN DANIEL: Senator Blue.
SENATOR BLUE: Just a quick follow-up again because I'm somewhat confused.

If in fact the Court adopted all of the facts found by the trial court, that is, the Supreme Court, and the trial court is bound by their findings from however long ago they made their findings, how are you going to fix the gerrymander without addressing what they found to be the specific gerrymanders?

And I understand that you don't measure whether a map is gerrymandered by specific districts, but I'm just trying to figure out how you fix it without addressing the gerrymanders that they have found are political gerrymanders because they're still political gerrymanders when you've changed them -- changed the map if you haven't addressed why they became political gerrymanders.

Can you answer that for me because that's what's got me confused regardless of the wording in the opinion or the test that they say -- and by the way, they said those four tests are among many other possible tests that you can use to determine whether a gerrymander is present.
SENATOR NEWTON: I think that's a question that is going to be asked of the Court. We've done the best we can. We have what we believe is a constitutionally compliant map. And as you said, it's not a district -- you know, a single district doesn't kick out a map, and I don't believe the district you're discussing is going to in any way invalidate a constitutionally acceptable map statewide. And, you know, that district presents unique challenges with respect to population. So we're going to let the lawyers brief it out and let the Court consider it, and if you're right, you're right; if you're wrong, you're wrong.

SENATOR BLUE: Last question, again, Mr. Chairman.

CHAIRMAN DANIEL: Follow-up.

SENATOR BLUE: And with regard to the New Hanover district which wasn't in question, if the intentional creation of these other districts knowing what the partisan performance was, although -- I mean, that's what the testimony was about, that's why the expert said you had to know what the partisan performance was, you couldn't have drawn them because the
chances were .08 out of a trillion that you could have drawn that combination without knowing what the partisan performance was.

And if that was the basis for finding these other eight gerrymanders in the Senate map, what gives you assurance that they won't find that this specific decision to change New Hanover is not an additional specific partisan gerrymander?

SENATOR NEWTON: Because it made the scoring they gave us to work with, thin though it was in terms of concreteness, we -- that change scored better than the alternative, and so we are -- it better satisfies the order of the Court as it's written and the metrics they provided, few that they were, than the alternative. And if they -- that doesn't satisfy them, maybe they'll -- you know, they'll have to make that decision.

But we have a constitutionally acceptable map, a fair map, a competitive map, and we're satisfied that it's going to pass muster. But if you're right, may perhaps it won't.

SENATOR BLUE: Okay.
SENATOR NEWTON: But we'll see.

SENATOR CLARK: Mr. Chair.

CHAIRMAN DANIEL: Senator Clark.

SENATOR CLARK: You know, I'm not an attorney, and I think I understood what Senator Blue said, but I'm not sure. So if you don't mind, I have to ask this one more time.

The courts identified very specific problems with this plan, and they said it was unconstitutional, but it sounds like I'm hearing that you're saying, well, we fixed it without addressing any of the problems identified based solely on gaming a couple of scores, a mean-median and efficiency gap scores, to say that you have solved the problem. Something sounds not quite right about that.

CHAIRMAN DANIEL: I'll take that as a statement. I don't think that's a question that Senator Newton needs to respond to.

Any other comments or questions from the committee?

Seeing none, we have a motion by Senator Ford before the committee to amend Senate Bill 744.

All in favor of the motion, please
indicate by saying aye.

COMMITTEE MEMBERS: Aye.
CHAIRMAN DANIEL: All opposed no.
COMMITTEE MEMBERS: No.
CHAIRMAN DANIEL: The ayes have it.

The bill as amended is back before the committee.

Is there any further discussion?

Seeing none, I see a motion from Senator Perry to give the bill as amended a favorable report.

Anything else I needed to add?

UNIDENTIFIED SPEAKER: [Unintelligible].

CHAIRMAN DANIEL: Rolled into a new PCS and unfavorable to the original bill.

All in favor of that, please indicate by saying aye.

COMMITTEE MEMBERS: Aye.
CHAIRMAN DANIEL: All opposed no.
COMMITTEE MEMBERS: No.
CHAIRMAN DANIEL: The ayes have it.

The bill passes.

Thank you for your work, Committee.

(End of recording.)
STATE OF NORTH CAROLINA   )
COUNTY OF WAKE   )  CERTIFICATE

I, DENISE MYERS BYRD, Stenographic Court Reporter, CSR 8340, do hereby certify that the transcription of the recorded Senate Redistricting Committee held on February 16, 2022, was taken down by me stenographically to the best of my ability and thereafter transcribed under my supervision; and that the foregoing pages, inclusive, constitute a true and accurate transcription of said recording.

Signed this the 18th day of February 2022.

Denise Myers Byrd
CSR 8240, RPR, CLR 102409-2