

NORTH CAROLINA GENERAL ASSEMBLY
SENATE REDISTRICTING COMMITTEE

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

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

20 By way of introduction, on
21 February 4th, the majority of the Supreme Court
22 of North Carolina found unconstitutional the
23 congressional and legislative maps enacted by
24 the General Assembly and enjoined their use for
25 the upcoming 2022 elections. The Supreme Court

1 ordered the General Assembly to submit to the
2 three-judge trial court a proposed remedial plan
3 that complies with all provisions of the
4 North Carolina Constitution. So we're here
5 today to follow that order and believe that the
6 proposed maps we will present do in fact comply
7 with the constitution as the Supreme Court's
8 majority interpreted in the February 14th Harper
9 v Hall opinion.

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

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

22 CHAIRMAN DANIEL: State your inquiry.

23 SENATOR DAVIS: I just want to make
24 sure, for clarity purposes, understanding the
25 process. You said there was a current map, and

1 I'm assuming that's the map that's now gone out
2 and that's been shared, that that's going to be
3 revised and -- for the purpose of the -- looking
4 at the scoring and getting those scores better.

5 Is that correct?

6 CHAIRMAN DANIEL: The congressional map
7 will change, yes.

8 SENATOR DAVIS: The congressional map.
9 Okay.

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

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

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

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

22 SENATOR DAVIS: Okay. Thanks,
23 Mr. Chair.

24 CHAIRMAN DANIEL: We would like to
25 thank Senator Blue for his willingness to work

1 with us. Regardless, I am confident in the maps
2 we will propose today -- or the map we will
3 propose today and tomorrow morning.

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

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

21 The Supreme Court's majority found that
22 the Stephenson decision requires the General
23 Assembly to conduct such a study. If you'll
24 look in your materials, you should have some
25 information regarding that on your desk. As a

1 result, the trial court ordered the General
2 Assembly as part of what we file on Friday to
3 provide the initial assessment of whether a
4 racially polarized voting analysis requires the
5 drawing of a VRA district. We will comply in
6 good faith with that order but wanted to take
7 time now briefly to describe why we believe, as
8 we did with the enacted plans, that a
9 majority -- that majority-minority districts are
10 completely unnecessary in North Carolina for
11 African American voters to have an equal
12 opportunity to elect the candidates of their
13 choice.

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

22 To draw VRA districts, according to
23 Covington and other recent US Supreme Court
24 cases, the General Assembly needs a strong basis
25 in evidence for each of those three factors.

1 There is no evidence available to demonstrate
2 the presence of these conditions. Let's start
3 with what we knew before the enacted plans were
4 passed in the fall.

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

23 We also proved as much in January's
24 trial over the enacted plans. There were two
25 expert witnesses, one from the plaintiffs and

1 one of our own, who confirmed that no VRA
2 districts were required.

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

16 Instead, the test she adopted by its
17 plain terms demonstrates that a district with
18 50 percent BVAP is not required to be an
19 effective black district. In fact, she
20 testified that, quote, effective black districts
21 could have a black voting age population as low
22 as 25 percent.

23 The legislative defendants did such a
24 polarization report. Dr. Jeffrey Lewis, who
25 offered the report in front of you and that we

1 are submitting to the record, confirms the
2 absence of legally significant racially
3 polarized voting in North Carolina.

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

9 What his report does is use those prior
10 elections to assess the voting strength of black
11 voters in the 2020 plans and enacted legislative
12 and congressional plans. He concluded using
13 Dr. Duchin's definition of an effective black
14 district which, remember, was less than
15 50 percent BVAP, that there were at least three
16 effective black congressional districts in the
17 2021 enacted plan, at least 12 effective black
18 Senate districts in the 2021 enacted plan, and
19 at least 31 effective black districts in the
20 2021 House enacted plan.

21 Considering all of this, the
22 three-judge panel found as a matter of fact a
23 finding that was not disturbed but adopted in
24 full by the Supreme Court that, quote, in no
25 district enacted or in 2020 does it appear that

1 a majority of BVAP is needed for that district
2 to regularly generate majority support for
3 minority preferred candidates in the
4 reconstituted elections, unquote.

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

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

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

21 Next, we will also discuss briefly how
22 we approach drawing proposed remedial maps.
23 First, a brief point to make sure we are on the
24 same page. I will refer to the enacted map and
25 the proposed remedial map. The former is what

1 we passed in November of 2021 that is currently
2 enjoined by the Supreme Court. The latter is
3 what you have before you today.

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

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

15 Again, quoting from the opinion, quote,
16 the partisan gerrymandering violation is based
17 on the redistricting plan as a whole, not a
18 finding with regard to any individual district.
19 Certainly, it is possible, as the plaintiffs in
20 the trial court demonstrated, to identify which
21 individual districts in the state legislative
22 maps ignore traditional redistricting principles
23 to achieve a partisan outcome that otherwise
24 would not occur. It is possible to identify the
25 most gerrymandered individual districts, but

1 here the violation is statewide because of the
2 evidence that on the whole the districts have
3 been drawn such that voters supporting one
4 political party have their votes systematically
5 devalued by having less opportunity to elect
6 representatives to seats compared to an equal
7 number of voters in the favored party, end of
8 quote.

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

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

23 Quote -- quoting the Court:

24 As the trial court's finding of fact
25 indicate, there are multiple reliable ways of

1 demonstrating the existence of an
2 unconstitutional partisan gerrymander. In
3 particular, mean-median difference analysis,
4 efficiency gap analysis, close votes, close seat
5 analysis, and partisan symmetry analysis may be
6 useful in assessing whether the mapmaker adhered
7 to traditional neutral districting criteria and
8 whether a meaningful partisan skew necessarily
9 results from North Carolina's unique political
10 geography.

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

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

25 The analysis the Court lists are

1 mean-median difference analysis, efficiency gap
2 analysis, close votes analysis, close seats
3 analysis, and partisan symmetry. Out of these
4 analyses, mean-median and efficiency gap
5 analysis are the broadly used and replicable
6 political science techniques that produce a
7 quantifiable metric to analyze.

8 So let me stop to define these terms.

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

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

24 I'm going to again quote the court
25 order where mean-median and efficiency gap

1 analysis were explained.

2 Quote: Based on Dr. Magleby's
3 testimony, any mean-median difference that is
4 not zero could be treated as presumptively
5 unconstitutional. However, using the actual
6 mean-median difference measure from 1972 through
7 2016, the average mean-median difference in
8 North Carolina's congressional redistricting
9 plans was 1 percent. That measure instead could
10 be a threshold standard such that any plan with
11 a mean-median difference of 1 percent or less,
12 when analyzed using representative sample of
13 past elections, is presumptively constitutional,
14 end of quote.

15 To underscore the point of this section
16 of the order, the Court proposes a standard for
17 the mean-median analysis of 1 percent or less
18 when analyzing a proposed map. And again, this
19 is to analyze the map as a whole, not any
20 particular county grouping or district. The
21 proposed standard is a mean-median score of
22 1 percent or less, and if the map meets this
23 standard it is presumptively constitutional.

24 Now I will read the relevant section in
25 the court order on the efficiency gap analysis.

1 Quote: With regard to the efficiency
2 gap measure, courts have found that an
3 efficiency gap above 7 percent in any
4 districting plan's first election year will
5 continue to favor that party for the life of the
6 plan. It is entirely workable to consider the
7 7 percent efficiency gap threshold as a
8 presumption of constitutionality such that,
9 absent other evidence, any plan falling within
10 the limit is presumptively constitutional. The
11 efficiency gap, like other measures of partisan
12 symmetry, is not premised on a strict
13 proportional representation but rather on the
14 notion that the magnitude of the winner's bonus
15 should be approximately the same for both
16 parties, end of quote.

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

22 So at this time, I would like to
23 recognize Senator Newton for explanation of
24 Senate Bill 744. And I believe Senator Ford has
25 a motion.

1 SENATOR FORD: Send forward an
2 amendment.

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

6 Senator Newton, you are recognized to
7 explain the amendment.

8 SENATOR NEWTON: Thank you,
9 Mr. Chairman.

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

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

23 SENATOR CLARK: Mr. Chair.

24 CHAIRMAN DANIEL: Senator Clark.

25 SENATOR CLARK: When is it an

1 appropriate time for questions?

2 CHAIRMAN DANIEL: Can we let Senator
3 Newton get through his presentation and then
4 wait until then.

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

12 But I just want to repeat that the
13 proposed -- that the mean -- that according to
14 the Court, the mean-median score for the
15 proposed remedial Senate map is presumptively
16 constitutional and the remedial map -- because
17 the remedial map scores better than plus or
18 minus 1 percent. So the remedial map is well
19 within the Court's proposed standard for
20 presumptive constitutionality of plus or minus
21 1 percent.

22 For the efficiency gap, the Court's
23 proposed standard is plus or minus 7 percent.
24 The proposed remedial Senate map scores
25 approximately negative 3.97 percent. That's

1 3.97 percent, again, well within the Court's
2 proposed standard for presumptive
3 constitutionality of plus or minus 7 percent.

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

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

20 The proposed remedial Senate map
21 includes ten districts that were within -- that
22 were within 10 points in the 2020 presidential
23 race. That is ten competitive districts. In
24 fact, eight of those districts are in a tighter
25 range of 47 to 53 percent for the Republican

1 vote share in the 2020 presidential race. Four
2 districts are 49/49 or 50/48 in favor of one
3 side or the other.

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

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

12 In 2020, the closest statewide race was
13 for attorney general. Josh Stein won
14 50.1 percent to 49.9 percent, a difference of
15 13,622 votes out of over 5.4 million votes. In
16 the proposed remedial Senate map, Stein wins 23
17 of the 50 seats. However, Stein was within 636
18 votes in two Senate districts of winning 25 of
19 the 50 seats. So let me say that again. In the
20 closest race in 2020, essentially a 50/50 race
21 statewide, the Democrat candidate was just 67
22 votes away in Senate District 21 and 569 votes
23 away in Senate District 24 from capturing
24 exactly 25 seats, or 50 percent of the seats.
25 That, we believe, is a fair map, folks.

1 We used 12 statewide races in our
2 composite metric for the mean-median and
3 efficiency gap analyses. These are the same 12
4 races used by the plaintiffs' expert,
5 Dr. Mattingly, in analyzing our enacted map. So
6 we used the plaintiffs' expert's 12 races.

7 Those races are president, US Senate,
8 governor, lieutenant governor, attorney general,
9 auditor, commissioner of ag, labor, secretary of
10 state, and treasurer from 2020, and president
11 and lieutenant governor from 2016. I just want
12 to note again, these are the races that
13 Dr. Mattingly chose. I don't believe the
14 analysis would change if you were to look at
15 additional races from 2020 or 2016, but you're
16 certainly welcome, of course, to do that.

17 But of these 12 races, the statewide
18 winner in that contest also won a majority of
19 the Senate districts in 10 of the 12 races. One
20 race resulted in a 25/25 tie. The only
21 exception to this was the 2020 AG race where
22 Josh Stein won statewide by only 13,000 votes or
23 .2 percent. In that case, Stein would have won
24 23 of the 50 Senate seats. However, a mere 636
25 votes across two additional Senate districts

1 would have resulted in a 25/25 tie, reflecting
2 result of a very close statewide race.

3 In the enacted Senate map, we worked
4 hard to keep municipalities whole. You remember
5 that, we tried to keep municipalities whole,
6 worked hard to do that. In that map, we split
7 19 precincts to keep as many municipalities
8 whole as possible. However, the plaintiffs'
9 expert, Dr. Mattingly, testified that in his
10 opinion, municipalities were only kept whole in
11 the Senate map to gain partisan advantage.
12 Therefore, in this proposed remedial map, we
13 prioritized compliance with the Court's order,
14 meaning mean-median and efficiency gap
15 standards, keeping precincts whole,
16 competitiveness and compactness over
17 municipalities being kept whole.

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

1 5 percent deviation.

2 We attempted to split as few VTDS as
3 possible while complying with the court order,
4 and we were able to reduce the split VTDS from
5 ten in Wake county in the enacted map to only
6 three in the proposed remedial map. Ten in Wake
7 county in the enacted map, three statewide in
8 the remedial map. Significant improvement in
9 split VTDS.

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

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

24 As I just mentioned, that we've removed
25 as many split VTDS as possible across the state.

1 The counties where we removed split VTDS are
2 Buncombe, Cabarrus, Caldwell, Guilford,
3 Randolph, and Sampson. When we removed these
4 split VTDS, it caused Senate District 35 to
5 become overpopulated. We moved a VTD in Union
6 county and some VTDS in Randolph county to make
7 Senate Districts 35, 29, and 25 balance within
8 the plus or minus 5 percent deviation.

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

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

22 In the Guilford-Rockingham county
23 grouping, we drew Senate District 28 to match
24 the court-ordered configuration for the 2018 and
25 2020 elections. The proposed remedial draw for

1 Senate District 28 exactly replicates -- exactly
2 replicates the court-ordered draw which was
3 completed by the special master at that time
4 Nathan Persily. Likewise, the border between
5 Senate District 26 and Senate District 27 in
6 southern Guilford county follows the Persily
7 draw exactly.

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

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

19 In the enacted Senate plan, we
20 attempted to keep as much of Winston-Salem whole
21 as possible while not splitting any other
22 municipality in Forsyth county. In the proposed
23 remedial map, we attempted to draw two very
24 compact districts and meet the Court's statewide
25 guidance for partisan fairness.

1 There is an alternative configuration
2 for Forsyth county that pairs it with Yadkin
3 instead of Stokes. We evaluated that
4 configuration; however, the resulting districts
5 in this configuration, Senate District 31, 32,
6 and 36, in Alexander, Wilkes, Surry, and Stokes
7 counties, would have been less compact. This
8 configuration also made it much harder to
9 respect incumbent residences and keep those
10 members, Senators Lowe and Krawiec, in different
11 districts.

12 I want to note that while Stokes and
13 Yadkin county are each very Republican-leaning
14 counties, Yadkin county is slightly more
15 Republican. In 2020, President Trump received
16 78 percent of the vote in Stokes county. In
17 Yadkin county, he received 80 percent of the
18 vote. We decided to leave Stokes, the slightly
19 less Republican county, paired with Forsyth,
20 draw two more compact districts, and comply with
21 the court's order for partisan fairness in the
22 statewide plan.

23 We also concluded that Buncombe county
24 paired better with McDowell and Burke to create
25 the most logical and compact districts in that

1 county grouping and in the Henderson-Polk-
2 Rutherford and Cleveland-Gaston-Lincoln county
3 groupings. If we had switched these county
4 groupings, the resulting districts would have
5 been significantly less compact.

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

12 In the Iredell-Mecklenburg county
13 grouping, we drew six districts respecting
14 incumbent residences. Senators Sawyer, Marcus,
15 Waddell, Mohammed, and Salvador each have
16 districts. There's an open seat in southern
17 Mecklenburg county where Senator Jeff Jackson
18 lives but is not running. In the enacted Senate
19 map, this southern Mecklenburg district was
20 quasi-competitive in the enacted map but leaning
21 Democrat. In the proposed remedial map, this
22 district had a Republican composite percentage
23 of 45.5 percent, and Trump only received
24 41.6 percent of the vote in 2020. Therefore,
25 this district is no longer competitive in all

1 likelihood. Again, this district and others in
2 this county grouping were drawn to meet the
3 Court's statewide standard for partisan
4 fairness.

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

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

21 In New Hanover county, we changed some
22 of the precincts that were in Senate District 8.
23 In the enacted map, we chose precincts to
24 balance population between Districts 7 and 8
25 while keeping all municipalities whole. In the

1 proposed remedial map, we prioritize compactness
2 in meeting the Court's proposed standards for
3 statewide partisan fairness. Senate District 7
4 is now configured to be a very close -- very
5 close to a 50/50 district, with Biden narrowly
6 carrying the district in 2020: 49.2 percent to
7 49 percent.

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

15 Finally -- finally -- in wake county,
16 as mentioned previously, we removed as many
17 split VTDS as possible which were in -- which
18 were -- which were in the enacted map to keep
19 municipalities whole. The proposed remedial
20 draw in wake county has three split VTDS, down
21 from ten, and these split only to balance
22 population and to keep the districts within the
23 5 percent deviation. All incumbents in the
24 county, Senators Blue, Batch, Chaudhuri,
25 Crawford, and Nickel, have their own districts.

1 We attempted to maximize compactness in these
2 districts and comply with the state's order on
3 statewide partisan fairness.

4 Senate District 17 is more
5 Democrat-leaning than in the enacted map.
6 President Biden carried the district 51.5 to
7 46.4. What is now Senate District 18, which
8 includes Granville county and northern wake
9 county, is also more Democratic-leaning compared
10 to what was Senate District 13 in the enacted
11 Senate map. Senate District 18 was carried by
12 Biden 50.9 to 47.3.

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

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

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

23 SENATOR CLARK: Thank you, Mr. Chair.

24 Mr. Chair, a lot of comments have been
25 made referencing Dr. Mattingly's use of 12

1 elections in his analysis. Did he, by chance,
2 compute efficiency gap and mean-median scores
3 with those -- that data? Dr. Mattingly.

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

6 SENATOR CLARK: Well, he did not.

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

12 SENATOR NEWTON: I do not.

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

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

25 Have you actually, maybe, performed

1 some of the tests performed by Dr. Mattingly to
2 determine whether or not there was evidence to
3 the contrary with regard to the plans that you
4 presented to us today?

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

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

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

21 But it states explicitly here with
22 regard to the efficiency gap, it applies in the
23 absence of evidence to the contrary, and
24 Dr. Mattingly, in his presentations, presented a
25 lot of evidence to the contrary. So I was

1 wondering whether or not you ran any form of
2 ensemble analysis to determine whether or not
3 there possibly was evidence to the contrary and
4 therefore the efficiency gap measures really
5 were not presumptively constitutional.

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

12 SENATOR CLARK: Mr. Chair.

13 CHAIRMAN DANIEL: Follow-up.

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

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

22 SENATOR CLARK: Thank you, Mr. Chair.

23 CHAIRMAN DANIEL: Senator Blue.

24 SENATOR BLUE: Thank you, Mr. Chair.

25 And just a couple questions. I want to

1 understand that Senator Newton, you understand
2 that the evidence in the trial was still the
3 evidence before the trial court now. The
4 evidence found at the trial court level and as
5 affirmed in the North Carolina Supreme Court is
6 the evidence that the trial court will use to
7 determine whether or not the gerrymanders that
8 they identified have been repaired.

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

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

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

21 SENATOR BLUE: Were you aware that in
22 finding that there were gerrymanders in Wake
23 county, and this was specific findings, I think,
24 and the Court findings page 82 through 86, I got
25 it in the Supreme Court opinion as well, but

1 they found that part of what created the
2 gerrymanders in Wake county was -- and I'll
3 paraphrase it, but I think closely to quoting
4 it, that the map that you -- the 19 -- the 2021
5 map had packed leaning VTDS, voting tabulation
6 districts, into Districts 14, 15, 16, and 18 in
7 order to make Districts 13 and 17 as competitive
8 as possible for Republicans, and it put
9 Raleigh's few Republican-leaning VTDS in
10 District 13.

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

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

21 SENATOR BLUE: Follow-up, Mr. Chairman.

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

24 SENATOR BLUE: Thank you, sir.

25 But my specific question, have you gone

1 into Districts 14, 15, 16, and 18 to see whether
2 you reduced the Democratic average in those four
3 districts, all in Wake County, with the average
4 in the other two districts to determine whether
5 this observation, this specific finding affirmed
6 by the Supreme Court and made by the trial
7 court, that the gerrymander consisted of the
8 illegal packing of Democratic voters in those
9 four districts? Have you measured how you
10 addressed that specific finding?

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

14 SENATOR BLUE: But not specific the.

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

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

24 And are you aware that in the evidence
25 in the trial court, those four districts in Wake

1 county that I identified all are over 60 plus
2 percent Democratic performing, some of them
3 70 percent, as opposed to the 50 percent of the
4 two -- you consider them competitive districts
5 in wake county? Are you aware of that?

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

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

10 SENATOR NEWTON: I am not aware of
11 that.

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

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

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

23 SENATOR NEWTON: Well, Senator Blue, I
24 can tell you that with those draws, we satisfied
25 the Court's requirements.

1 SENATOR BLUE: If I could just then
2 follow-up.

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

8 SENATOR NEWTON: I have no reason to
9 doubt that.

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

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

24 We believe we've met the standard the
25 Court set out on our statewide analytics around

1 this map.

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

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

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

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

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

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

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

22 You indicate that you changed precincts
23 in New Hanover county.

24 SENATOR NEWTON: That's correct.

25 SENATOR BLUE: And you changed

1 precincts in that district because you had
2 sacrificed -- you wanted to sacrifice municipal
3 completeness for compactness; is that correct?
4 You were willing to cut the city limits in order
5 to get a more compact map.

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

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

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

25 SENATOR NEWTON: I don't know the

1 answer to that.

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

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

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

14 SENATOR NEWTON: In the enacted map?

15 SENATOR BLUE: -- 2021 map? Yes.

16 SENATOR NEWTON: Not to my knowledge.

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

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

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

24 well, what were these two measurements
25 in the 2021 map?

1 SENATOR NEWTON: I don't have that in
2 front of me.

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

6 SENATOR NEWTON: We can get you that.

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

9 SENATOR NEWTON: That's correct, 3.97.

10 SENATOR BLUE: And something .65.

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

14 SENATOR BLUE: Other than in
15 New Hanover county, did you take a district and
16 increase the Republican score, that is, a
17 performance of Republican candidates, throughout
18 this map anywhere? And I'll say so -- that I'm
19 not trying to trick you or anything. I'll
20 represent to you that you just indicated that
21 you moved precincts in New Hanover county and
22 the movement of those precincts made that
23 district a more Republican district. And I'm
24 asking you is there anywhere else in the map
25 that you moved precincts that did that.

1 SENATOR NEWTON: Senate District 7,
2 which is the New Hanover county district, is now
3 very, very close to a 50/50 district.

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

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

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

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

20 SENATOR BLUE: Last question,
21 Mr. Chairman.

22 And you read the opinion, I take it,
23 and you've had advice about what it means. Is
24 it -- as you state what this new map does, is it
25 your opinion that it didn't matter to the

1 Supreme Court in their ruling and based on the
2 opinion and order that there was a map -- to use
3 their exact language, I think, basically made
4 the chances equal for parties that got a similar
5 number of the votes to do what the other party
6 did as far as seats that came out of the General
7 Assembly through that particular election?

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

11 CHAIRMAN DANIEL: Senator Perry.

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

16 CHAIRMAN DANIEL: Senator Clark.

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

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

22 SENATOR CLARK: Thank you.

23 Mr. Chair, you all have made mention
24 about Dr. Duchin. In January 2018, she wrote an
25 article "Gerrymandering Metrics: How to

1 measure? what's the baseline?"

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

12 Then later in an article, May of
13 2017 -- maybe not later, but in another article
14 in 2017 -- regarding the efficiency gap, she
15 wrote: In its simplest form, we can see that
16 the efficiency gap has numerous potentially
17 undesirable properties. One, it penalizes
18 proportionality; two, is volatile in competitive
19 races; three, it fetishizes three-to-one
20 landslide districts; four, it breaks down in
21 edge cases; and five, it's nongranular.

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

25 SENATOR NEWTON: Mr. Chair.

1 CHAIRMAN DANIEL: Senator Newton.

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

11 SENATOR CLARK: Mr. Chair.

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

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

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

21 SENATOR NEWTON: We thought it was more
22 than appropriate to use the plaintiffs' expert's
23 own 12 races that he represented to the Court
24 were representative and appropriate to use. So
25 instead of having that fight and taking that

1 fight on, we used his 12 races, and we do think
2 that's appropriate.

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

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

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

15 No further questions, Mr. Chair.

16 CHAIRMAN DANIEL: Any other comments or
17 questions?

18 Senator Marcus.

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

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

24 SENATOR MARCUS: Thank you very much.

25 I'm curious, and I know I've heard from

1 many voters in my district and across the state
2 who are curious about the process for how we
3 came up with this map, a lot of frustration that
4 we saw it so late, that this is the first
5 hearing and the first day that the public's been
6 able to see it. It's also the first day I got
7 to see it.

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

13 CHAIRMAN DANIEL: Senator Newton.

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

24 So it was -- you know, the earliest we
25 could release the map was, like, midmorning

1 today. We did not finish it until the night
2 before, late the night before.

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

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

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

24 SENATOR NEWTON: Well, Senator Daniel
25 and I and to a lesser extent -- as you know,

1 Senator Hise is not here today, he hasn't been
2 here the last few days. Working with typical
3 staff like we normally would with a bill. Of
4 course, we do have outside counsel, but
5 primarily with our staffers.

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

8 SENATOR NEWTON: Not to my knowledge.

9 SENATOR MARCUS: Okay. Thank you.

10 SENATOR CLARK: Mr. Chair.

11 CHAIRMAN DANIEL: Senator Clark.

12 SENATOR CLARK: Thank you, Mr. Chair.

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

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

25 CHAIRMAN DANIEL: Senator Blue.

1 SENATOR BLUE: Just a quick follow-up
2 again because I'm somewhat confused.

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

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

19 Can you answer that for me because
20 that's what's got me confused regardless of the
21 wording in the opinion or the test that they
22 say -- and by the way, they said those four
23 tests are among many other possible tests that
24 you can use to determine whether a gerrymander
25 is present.

1 SENATOR NEWTON: I think that's a
2 question that is going to be asked of the Court.
3 We've done the best we can. We have what we
4 believe is a constitutionally compliant map.
5 And as you said, it's not a district -- you
6 know, a single district doesn't kick out a map,
7 and I don't believe the district you're
8 discussing is going to in any way invalidate a
9 constitutionally acceptable map statewide. And,
10 you know, that district presents unique
11 challenges with respect to population. So we're
12 going to let the lawyers brief it out and let
13 the Court consider it, and if you're right,
14 you're right; if you're wrong, you're wrong.

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

17 CHAIRMAN DANIEL: Follow-up.

18 SENATOR BLUE: And with regard to the
19 New Hanover district which wasn't in question,
20 if the intentional creation of these other
21 districts knowing what the partisan performance
22 was, although -- I mean, that's what the
23 testimony was about, that's why the expert said
24 you had to know what the partisan performance
25 was, you couldn't have drawn them because the

1 chances were .08 out of a trillion that you
2 could have drawn that combination without
3 knowing what the partisan performance was.

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

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

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

25 SENATOR BLUE: Okay.

1 SENATOR NEWTON: But we'll see.

2 SENATOR CLARK: Mr. Chair.

3 CHAIRMAN DANIEL: Senator Clark.

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

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

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

20 Any other comments or questions from
21 the committee?

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

25 All in favor of the motion, please

1 indicate by saying aye.

2 COMMITTEE MEMBERS: Aye.

3 CHAIRMAN DANIEL: All opposed no.

4 COMMITTEE MEMBERS: No.

5 CHAIRMAN DANIEL: The ayes have it.

6 The bill as amended is back before the

7 committee.

8 Is there any further discussion?

9 Seeing none, I see a motion from

10 Senator Perry to give the bill as amended a

11 favorable report.

12 Anything else I needed to add?

13 UNIDENTIFIED SPEAKER:

14 [Unintelligible].

15 CHAIRMAN DANIEL: Rolled into a new PCS

16 and unfavorable to the original bill.

17 All in favor of that, please indicate

18 by saying aye.

19 COMMITTEE MEMBERS: Aye.

20 CHAIRMAN DANIEL: All opposed no.

21 COMMITTEE MEMBERS: No.

22 CHAIRMAN DANIEL: The ayes have it.

23 The bill passes.

24 Thank you for your work, Committee.

25 (End of recording.)

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STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE) C E R T I F I C A T E

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