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No. 83-1968

Supreme Court, U.S.,
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

LACY H. THORNBURG, *et al.*,
Appellants,
v.
RALPH GINGLES, *et al.*,
Appellees.

On Appeal from the United States District Court
for the Eastern District of North Carolina

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED JUNE 2, 1984
PROBABLE JURISDICTION NOTED APRIL 29, 1985

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**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

<i>Date</i>	<i>Documents</i>
9.16.81	Complaint
10.16.81	Designation of Three-Judge Court
11.13.81	Plaintiff's Motion to Supplement Complaint
11.19.81	Order Allowing Supplement of Complaint
1.29.82	Defendant's Motion to Consolidate with No. 81-1066-Civ.5
2.18.82	Order Consolidating No. 81-803-Civ.5 with No. 81-1066-Civ.5
3.17.82	Motion to Certify the Class Motion to Further Amend the Complaint
3.25.82	Order Allowing Second Supplement to Complaint
3.29.82	Answer To Second Supplemental Complaint
4.02.82	Stipulation of Class Action
4.22.82	Motion for Voluntary Dismissal of Claim as to N.C. Districts for the United States Congress
4.23.82	Application for Hearing on Preliminary Injunction
4.27.82	Order Granting Motion for Partial Voluntary Dismissal
4.30.82	Hearing on Temporary Restraining Order
5.03.82	Motion for Temporary Restraining Order Denied
5.12.82	Motion to Consolidate 82-545-CIV-5 with 81-803-CIV-5 and 81-1066-CIV-5
7.26.82	Order Consolidating 82-545-CIV-5 with 81-803-CIV-5 and 81-1055-CIV-5

JA-2

DOCKET ENTRIES (Cont.)

<i>Date</i>	<i>Documents</i>
8.18.82	Motion to File Third Supplement on Amended Complaint
9.03.82	Answer to Third Amended Complaint
9.29.82	Order Allowing Third Amended Complaint
12.22.82	Plaintiff's Motion for Summary Judgment
1.18.83	Defendant's Cross-Motion for Summary Judgment
7.14.83	Pre-Trial Order Pre-Trial Conference
7.21.83	<i>Gingles</i> Plaintiffs' Pre-Trial Brief <i>Pugh</i> Plaintiffs' Pre-Trial Brief Defendants' Pre-Trial Brief
7.21.83	Motion by Plaintiffs in 81-1066-CIV-5 To Intervene In Trial of 81-803-CIV-5
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7.22.83	Motion to Intervene Granted
7.25.83	Trial Before Three-Judge Court (8 Days)
9.22.83	Order entering Summary Judgment in favor of Defendants In 82-545-CIV-5
10.07.83	Plaintiff's Proposed Findings of Fact and Conclusions of Law
10.07.83	Defendants' Proposed Findings of Fact and Conclusions of Law
1.27.84	Memorandum Opinion and Order
2.03.84	Notice of Appeal to the Supreme Court

JA-3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 81-803-CIV-5

RALPH GINGLES, *et al.*

Plaintiffs,

vs.

RUFUS L. EDMISTEN, *et al.*

Defendants.

FILED

JAN 27 1984

J. RICH LEONARD, CLERK
U.S. DISTRICT COURT
E. DIST. NO. CAR.

ORDER

For the reasons set forth in the Memorandum Opinion of the court filed this day;

It is ADJUDGED and ORDERED that:

1. Chapters 1 and 2 of the North Carolina Session Laws of the Second Extra Session of 1982 (1982 redistricting plan) are declared to violate section 2 of the Voting rights Act of 1965, amended June 29, 1982, 42 U.S.C. § 1973, by the creation of the following legislative districts: Senate Districts Nos. 2 and 22, and House of Representatives Districts Nos. 8, 21, 23, 36, and 39.

2. Pending further orders of this court, the defendants, their agents and employees, are enjoined from conducting any primary or general elections to elect members of the State Senate or State House of Representatives to represent, *inter*

alia, registered black voters resident in any of the areas now included within the legislative districts identified in paragraph 1. of this Order, whether pursuant to the 1982 redistricting plan, or any revised or new plan.

This Order does not purport to enjoin the conduct of any other primary or general elections that the State of North Carolina may see fit to conduct to elect members of the Senate or House of Representatives under the 1982 redistricting plan, or to elect candidates for any other offices than those of the State Senate and House of Representatives. *See N.C.G.S. 120-2.1 (1983) Cum. Supp.*)

3. Jurisdiction of this court is retained to entertain the submission of a revised legislative districting plan by the defendants, or to enter a further remedial decree, in accordance with the Memorandum Opinion filed today in this action.

4. The award of costs and attorneys fees as prayed by plaintiffs is deferred pending entry of a final judgment, or such earlier date as may be shown required in the interests of justice.

J. Dickson Phillips, Jr.
United States Circuit Judge

W. Earl Britt, Jr.
Chief United States District Judge

Franklin T. Dupree, Jr.
Senior United States District Judge

I certify the foregoing to be a true and correct copy of the Order.

J. Rich Leonard, Clerk
United States District Court
Eastern District of North Carolina

By Cherlyn Wells
Deputy Clerk

JA-5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 81-803-CIV-5

RALPH GINGLES, *et al.*

Plaintiffs,

vs.

RUFUS L. EDMISTEN, *et al.*

Defendants.

FILED

JAN 27 1984

J. RICH LEONARD, CLERK
U.S. DISTRICT COURT
E. DIST. NO. CAR.

MEMORANDUM OPINION

Before PHILLIPS, Circuit Judge, BRITT, Chief District Judge,
and DUPREE, Senior District Judge.

PHILLIPS Circuit Judge:

In this action Ralph Gingles and others, individually and as representatives of a class composed of all the black citizens of North Carolina who are registered to vote, challenge on constitutional and statutory grounds the redistricting¹ plan

¹ For consistency and convenience we use the term "redistricting" throughout as a more technically, as well as descriptively, accurate one than the terms "apportionment" or "reapportionment" sometimes used by the parties herein to refer to the specific legislative action under challenge here. See *Carstens v. Lamm*, 543 F. Supp. 68, 72 n.3 (D. Col. 1982).

enacted in final form in 1982 by the General Assembly of North Carolina for the election of members of the Senate and House of Representatives of that state's bicameral legislature. Jurisdiction of this three-judge district court is based on 28 U.S.C. §§ 1331, 1343, and 2284 (three judge court) and on 42 U.S.C. § 1973c.

The gravamen of plaintiffs' claim is that the plan makes use of multi-member districts with substantial white voting majorities in some areas of the state in which there are sufficient concentrations of black voters to form majority black single-member districts, and that in another area of the state the plan fractures into separate voting minorities a comparable concentration of black voters, all in a manner that violates rights of the plaintiffs secured by section 2 of the Voting Rights Act of 1965, amended June 29, 1982, 42 U.S.C. § 1973 (Section 2, or Section 2 of the Voting Rights Act), 42 U.S.C. §§ 1981 and 1983, and the thirteenth, fourteenth and fifteenth amendments to the United States Constitution.² In particular, the claim is that the General Assembly's plan impermissibly dilutes the voting strength of the state's registered black voters by submerging black voting minorities in multi-member House District No. 36 (8 members - Mecklenburg County), multi-member House District No. 39 (5 members - part of Forsyth County), multi-member House District No. 23 (3 members - Durham County), multi-member House District No. 21 (6 members - Wake County), multi-member House District No. 8 (4 members - Wilson, Edgecombe and Nash Counties), and multi-member Senate District No. 22 (4 members - Mecklenburg and Cabarrus Counties), and by fracturing between more than one senate district in the northeastern section of the state a concentration of black voters sufficient in numbers and con-

² The original complaint also included challenges to population deviations in the redistricting plan allegedly violative of one-person-one-vote principles, and to congressional redistricting plans being contemporaneously enacted by the state's General Assembly. Both of these challenges were dropped by amended or supplemental pleadings responsive to the evolving course of legislative action, leaving only the state legislature "vote dilution" claims for resolution.

tiguity to constitute a voting majority in at least one single-member district, with the consequence, as intended, that in none of the senate districts into which the concentration is fractured (most notably, Senate District 2 with the largest mass of the concentration) is there an effective voting majority of black citizens.

We conclude on the basis of our factual findings that the redistricting plan violates Section 2 of the Voting Rights Act in all the respects challenged, and that plaintiffs are therefore entitled to appropriate relief, including an order enjoining defendants from conducting elections under the extant plan. Because we uphold plaintiffs' claim for relief under Section 2 of the Voting Rights Act, we do not address their other statutory and constitutional claims seeking the same relief.

I

General Background and Procedural History

In July of 1981, responding to its legal obligation to make any redistrictings compelled by the 1980 decennial census, the North Carolina General Assembly enacted a legislative redistricting plan for the state's House of Representatives and Senate. This original 1981 plan used a combination of multi-member and single-member districts across the state, with multi-member districts predominating; had no district in which blacks constituted a registered voter majority and only one with a black population majority; and had a range of maximum population deviations from the equal protection ideal of more than 20%. Each of the districts was composed of one or more whole counties, a result then mandated by state constitutional provisions adopted in 1968 by amendments that prohibited the division of counties in legislative districting. At the time this original redistricting plan was enacted (and at all critical times in this litigation) forty of North Carolina's one hundred counties were covered by section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (Section 5, or Section 5 of the Voting Rights Act.).

Plaintiffs filed this action on September 16, 1981, challenging that original redistricting plan for, *inter alia*, its population deviations, its submergence of black voter concentrations in some of the multi-member districts, and the failure of the state to obtain preclearance, pursuant to Section 5, of the 1968 constitutional amendments prohibiting county division in legislative districting.

After this action had been filed, the state submitted the 1968 no-division-of-counties constitutional provisions for original Section 5 preclearance by the Attorney General of the United States. While action on that submission was pending, the General Assembly convened again in special session and in October 1981 repealed the original districting plan for the state House of Representatives and enacted another. This new plan reduced the range of maximum population deviations to approximately 16%, retained a preponderance of multi-member districts across the state, and again divided no counties. No revision of the extant Senate districting plan was made.

In November 1981, the Attorney General interposed formal objection, under Section 5, to the no-division-of-counties constitutional provisions so far as they affected covered counties. Objection was based on the Attorney General's expressed view that the use of whole counties in legislative districting required the use of large multi-member districts and that this "necessarily submerges cognizable minority population concentrations into larger white electorates." Following this objection to the constitutional provisions, the Attorney General further objected, on December 7, 1981, and January 20, 1982, to the then extant redistricting plans for both the Senate and House as they affected covered counties.

In February 1982, the General Assembly again convened in extra session and on February 11, 1982, enacted for both the Senate and House revised redistricting plans which divided some counties both in areas covered and areas not covered by Section 5. Again, on April 19, 1982, the Attorney General interposed objections to the revised districting plans for both

the Senate and House. The letter interposing objection acknowledged some improvement of black voters' situation by reason of county division in Section 5 covered areas, but found the improvements insufficient to permit preclearance. The General Assembly once more reconvened in a second extra session on April 26, 1982, and on April 27, 1982, enacted a further revised plan which again divided counties both in areas covered and areas not covered by Section 5. That plan, embodied in chapters 1 and 2 of the North Carolina Session Laws of the Second Extra Session of 1982, received Section 5 preclearance on April 30, 1982. As precleared under Section 5, the plan constitutes the extant legislative districting law of the state, and is the subject of plaintiffs' ultimate challenge by amended and supplemented complaint in this action.³

During the course of the legislative proceedings above summarized, this action proceeded through its pre-trial stages.⁴ Amended and supplemental pleadings accommodating to successive revisions of the originally challenged redistricting plan were allowed. Extensive discovery and motion practice was had; extensive stipulations of fact were made and embodied in pretrial orders. The presently composed three-

³ The final plan's division of counties in areas of the state not covered by Section 5 was challenged by voters in one such county on the basis that the division violated the state's 1968 constitutional prohibition. The claim was that in non-covered counties of the state the constitutional prohibition remained in force, notwithstanding its suspension in covered counties by virtue of the Attorney General's objection. In *Cavanagh v. Brock*, No. 82-545-CIV-5 (E.D.N.C. Sept. 22, 1983), which at one time was consolidated with the instant action, this court rejected that challenge, holding that as a matter of state law the constitutional provisions were not severable, so that their effective partial suspension under federal law resulted in their complete suspension throughout the state.

⁴ At one stage in these proceedings another action challenging the redistricting plan for impermissible dilution of the voting strength of black voters was consolidated with the instant action. In *Pugh v. Hunt*, No. 81-1066-CIV-5, also decided this day, we earlier entered an order of the deconsolidation and permitted the black plaintiffs in that action to intervene as individual and representative plaintiffs in the instant action.

judge court was designated by Chief Judge Harrison L. Winter of the United States Court of Appeals for the Fourth Circuit on October 16, 1981. The action was designated a plaintiff class action by stipulation of the parties on April 2, 1982. Following enactment and Section 5 preclearance of the April 27, 1982, Senate and House districting plans, the pleadings were closed, with issue joined for trial on plaintiffs' challenge, by amended and supplemented complaint, to that finally adopted plan.

Following a final pre-trial conference on July 14, 1983, trial to the three-judge court was held from July 25, 1983, through August 3, 1983. Extensive oral and documentary evidence was received. Decision was deferred pending the submission by both parties of proposed findings of fact and conclusions of law, briefing and oral argument. Concluding oral arguments of counsel were heard by the court on October 14, 1983, and a limited submission of supplemental documentary evidence by both parties was permitted on December 5, 1983.

Having considered the evidence, the memoranda of law submitted by the parties, the stipulations of fact, and the oral arguments of counsel, the court, pursuant to Fed.R.Civ.P. 52(a), enters the following findings of fact and conclusions of law, prefaced with a discussion of amended Section 2 of the Voting Rights Act and of certain special problems concerning the proper interpretation and application of that section to the evidence in this case.

II

Amended Section 2 Of The Voting Rights Act

From the outset of this action plaintiffs have based their claim of racial vote dilution not only on the fourteenth and fifteenth amendments, but on Section 2 of the Voting Rights Act. As interpreted by the Supreme Court at the time this action was commenced, former Section 2,⁵ secured no further

⁵ Former Section 2, enacted pursuant to Congress's constitutional enforcement powers, provided simply:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political
(footnote continued on next page)

voting rights than were directly secured by those constitutional provisions. To the extent "vote dilution" claims lay under either of the constitutional provisions or Section 2,⁶ the requirements for proving such a claim were the same: there must have been proven both a discriminatorily "dilutive" effect traceable in some measure to a challenged electoral mechanism and, behind that effect, a specific intent on the part of responsible state officials that the mechanism should have had the effect. *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

While this action was pending for trial and after the ultimately challenged redistricting plan had been enacted and given Section 5 preclearance, Congress amended Section 2⁷ in drastic and, for this litigation, critically important respects. In rough summary, the amended version liberalized the statutory vote dilution claim in two fundamental ways. It removed any necessity that discriminatory intent be proven, leaving only the necessity to show dilutive effect traceable to a challenged electoral mechanism; and it made explicit that the dilutive effect might be found in the "totality of the circumstances" within which the challenged mechanism operated and not alone in direct operation of the mechanism.

(footnote continued from previous page)

subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 1973b(f)(2) of this title.

42 U.S.C. § 1973 (1976).

⁶ It is not now perfectly clear—but neither is it of direct consequence here—whether a majority of the Supreme Court considers that a racial vote dilution claim, as well as a direct vote denial claim, lies under the fifteenth amendment and, in consequence, lay under former Section 2. See *Rogers v. Lodge*, 458 U.S. 613, 619 n.16 (1982). It is well settled, however, that such claims lie under the fourteenth amendment, though only upon proof of intent as well as effect. See *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

⁷ H.R. 3112, amending Section 2 and extending the Voting Rights Act of 1965, was passed by the House on October 15, 1981. On June 18, 1982, the Senate adopted a different version, S. 992, reported out of its Committee on the Judiciary. The House unanimously adopted the Senate bill on June 23, 1982, and it was signed into law by the President on June 29, 1982. There was no intervening conference committee action.

Following Section 2's amendment, plaintiffs amended their complaint in this action to invoke directly the much more favorable provisions of the amended statute. All further proceedings in the case have been conducted on our perception that the vote dilution claim would succeed or fail under amended Section 2 as now the obviously most favorable basis of claim.⁸

Because of the amended statute's profound reworking of applicable law and because of the absence of any authoritative Supreme Court decisions interpreting it,⁹ we preface our findings and conclusions with a summary discussion of the amended statute and of our understanding of its proper application to the evidence in this case. Because we find it dispositive of the vote dilution claim, we may properly rest decision on the amended statute alone and thereby avoid addressing the still subsisting constitutional claims seeking the same relief. See *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring).

⁸ Of course, the direct claims under the fourteenth (and possibly the fifteenth) amendment remain, and could be established under *Bolden* by proof of a dilutive effect intentionally inflicted. But no authoritative decision has suggested that proof *alone* of an unrealized discriminatory intent to dilute would suffice. A dilutive effect remains an essential element of constitutional as well as Section 2 claims. See Hartman, *Racial Vote Dilution and Separation of Powers: An Exploration of the Conflict Between the Judicial "Intent" and the Legislative "Results" Standards*, 50 Geo. W.L. Rev. 689, 737-38 n.318 (1982). Neither is there any suggestion that the remedy for an unconstitutional intentional dilution should be any more favorable than the remedy for a Section 2 "results" violation. Whether the evidence of discriminatory intent might nevertheless have limited relevance in establishing a Section 2 "result" claim is another matter.

⁹ There have, however, been a few lower federal court decisions interpreting and applying amended Section 2 to state and local electoral plans. All generally support the interpretation we give the statute in the ensuing discussion. See *Major v. Treen*, Civil Action No. 82-1192 Section C (E.D. La. Sept. 23, 1983) (three-judge court); *Rybicki v. State Board of Elections*, No. 81-C-6030 (N.D. Ill. Jan. 20, 1983) (three-judge court); *Thomasville Branch of NAACP v. Thomas County*, Civil Action No. 75-34-THOM (M.D. Ga. Jan. 26, 1983); *Jones v. City of Lubbock*, Civil Action No. CA-5-76-34 (N.D. Tex. Jan. 20, 1983); *Taylor v. Haywood County*, 544 F. Supp. 1122 (W.D. Tenn. 1982) (on grant of preliminary injunction).

Section 2, as amended, reads as follows:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in Section 4(f)(2), as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Without attempting here a detailed analysis of the legislative history leading to enactment of amended Section 2, we deduce from that history and from the judicial sources upon which Congress expressly relied in formulating the statute's text the following salient points which have guided our application of the statute of the facts we have found.

First. The fundamental purpose of the amendment to Section 2 was to remove intent as a necessary element of racial vote dilution claims brought under the statute ¹⁰

¹⁰ Senator Dole, sponsor of the compromise Senate version ultimately enacted as Section 2, stated that one of his "key objectives" in offering it was to

make it unequivocally clear that plaintiffs may base a violation of Section 2 on a showing of discriminatory "results", in which case proof of discriminatory intent or purpose would be neither required, nor relevant. I was convinced of the inappropriateness of an "intent standard"

(footnote continued on next page)

This was accomplished by codifying in the amended statute the racial vote dilution principles applied by the Supreme Court in its pre-*Bolden* decision in *White v. Regester*, 412 U.S. 755 (1973). That decision, as assumed by the Congress,¹¹ required no more to establish the illegality of a state's electoral mechanism than proof that its "result," irrespective of intent, when assessed in "the totality of circumstances" was "to cancel out or minimize the voting strength of racial groups," *Id.* at 765 - in that case by submerging racial minority voter concentrations in state multi-member legislative districts. The *White v. Regester* racial vote dilution principles, as assumed by the Congress, were made explicit in new subsection (b) of Section 2 in the provision that such a "result," hence a violation of secured voting rights, could be established by proof "based on the totality of circumstances . . . that the political processes leading to nomination or election . . . are not equally open to participation" by members of protected minorities. *Cf. id.* at 766.

Second. In determining whether, "based on the totality of circumstances," a state's electoral mechanism does so "result" in racial vote dilution, the Congress intended that courts should look to the interaction of the challenged mechanism with those historical, social and political factors generally suggested as probative of dilution in *White v. Regester* and sub-

(footnote continued from previous page)

as the sole means of establishing a voting rights claim, as were the majority of my colleagues on the Committee.

S. Rep. No. 417, 97th Cong., 2d Sess. 193 (1982) (additional views of Sen. Dole) (hereinafter S. Rep. No. 97-417).

¹¹ Congressional opponents of amended Section 2 contended in debate that *White v. Regester* did not actually apply a "results only" test, but that, properly interpreted, it required, and by implication found, intent also proven. The right or wrong of that debate is essentially beside the point for our purposes. We seek only Congressional intent, which clearly was to adopt a "results only" standard by codifying a decision unmistakably assumed—whether or not erroneously—to have embodied that standard. See Hartman, *Racial Vote Dilution*, *supra* note 8, at 725-26 & n.236.

sequently elaborated by the former Fifth Circuit in *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd on other grounds sub nom. East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976) (per curiam). These typically include, per the Senate Report accompanying the compromise version enacted as amended Section 2:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals;
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

While these enumerated factors will often be the more relevant ones, in some cases other factors will be indicative of the alleged dilution.

S. Rep. No. 97-417, *supra* note 10, at 28-29 (footnotes omitted).

Third. Congress also intended that amended Section 2 should be interpreted and applied in conformity with the general body of pre-*Bolden* racial vote dilution jurisprudence that applied the *White v. Regester* test for the existence of a dilutive "result."¹²

Critical in that body of jurisprudence are the following principles that we consider embodied in the statute.

The essence of racial vote dilution in the *White v. Regester* sense is this: that primarily because of the interaction of substantial and persistent racial polarization in voting patterns (racial bloc voting) with a challenged electoral mechanism, a racial minority with distinctive group interests that are capable of aid or amelioration by government is effectively denied the political power to further those interests that numbers alone would presumptively, see *United Jewish Organization v. Carey*, 430 U.S. 144, 166 n.24 (1977), give it in a voting constituency not racially polarized in its voting behavior. See *Nevett v. Sides*, 571 F.2d 209, 223 & n.16 (5th Cir. 1978). Vote dilution in this sense can exist notwithstanding the relative absence of structural barriers to exercise of the electoral franchise. It can be enhanced by other factors - cultural, political, social, economic - in which the racial minority is relatively disadvantaged and which further operate to diminish practical political effectiveness. *Zimmer v. McKeithen*, *supra*. But the demonstrable unwillingness of substantial numbers of the ra-

¹² See S. Rep. No. 97-417, *supra* note 10, at 32 ("[T]he legislative intent [is] to incorporate [*White v. Regester*] and extensive case law . . . which developed around it."). See also *id.* at 19-23 (*Bolden* characterized as "a marked departure from [the] prior law" of vote dilution as applied in *White v. Regester*, *Zimmer v. McKeithen*, and a number of other cited federal decisions following *White v. Regester*).

cial majority to vote for any minority race candidate or any candidate identified with minority race interests is the linchpin of vote dilution by districting. *Nevelt v. Sides*, *supra*; see also *Rogers v. Lodge*, 458 U.S. 613, 623 (1981) (emphasizing centrality of bloc voting as evidence of purposeful discrimination).

The mere fact that blacks constitute a voting or population minority in a multi-member district does not alone establish that vote dilution has resulted from the districting plan. See *Zimmer*, 485 F.2d at 1304 ("axiomatic" that at-large and multi-member districts are not *per se* unconstitutional). Nor does the fact that blacks have not been elected under a challenged districting plan in numbers proportional to their percentage of the population. *Id.* at 1305.¹³

On the other hand, proof that blacks constitute a population majority in an electoral district does not *per se* establish that no vote dilution results from the districting plan, at least where the blacks are a registered voter minority. *Id.* at 1303. Nor does proof that in a challenged district blacks have recently been elected to office. *Id.* at 1307.

Vote dilution in the *White v. Regester* sense may result from the fracturing into several single-member districts as well as from the submergence in one multi-member district of black voter concentrations sufficient, if not "fractured" or "submerged," to constitute an effective single-member district voting majority. See *Nevelt v. Sides*, 571 F.2d 209, 219 (5th Cir. 1978).

Fourth. Amended Section 2 embodies a congressional purpose to remove all vestiges of minority race vote dilution perpetuated on or after the amendment's effective date by state or local electoral mechanisms.¹⁴ To accomplish this, Con-

¹³ This we consider to be the limit of the intended meaning of the disclaimer in amended Section 2 that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973.

¹⁴ Both the Senate and House Committee Reports assert a purpose to forestall further purposeful discrimination that might evade remedy under
(footnote continued on next page)

gress has exercised its enforcement powers under section 5 of the fourteenth and section 2 of the fifteenth amendments¹⁵ to create a new judicial remedy by private action that is broader in scope than were existing private rights of action for constitutional violations of minority race voting rights. Specifically, this remedy is designed to provide a means for bringing states and local governments into compliance with constitutional guarantees of equal voting rights for racial minorities without the necessity to prove an intentional violation of those rights.¹⁶

Fifth. In enacting amended Section 2, Congress made a deliberate political judgment that the time had come to apply

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the stringent intent-plus-effects test of *Bolden* and to eradicate existing or new mechanisms that perpetuate the effects of past discrimination. See S. Rep. 97-417, *supra* note 10, at 40; H.R. Rep. No. 227, 97th Cong., 1st Sess. 31 (1981) (hereinafter H.R. Rep. No. 97-227).

We accept—and it is not challenged in this action by the state defendants—that Congress intended the amendment to apply to litigation pending upon its effective date. See *Major v. Treen*, *supra*, slip op. at 40-41 n.20.

¹⁵ Both the Senate and House Committee Reports express an intention that amended Section 2 be regarded as remedial rather than merely redefinitional of existing constitutional voting rights. See S. Rep. No. 97-417, *supra* note 10, at 39-43; H.R. Rep. No. 97-227, *supra* note 14, at 31.

¹⁶ Congressional proponents of amended Section 2 were at pains in debate and committee reports to disclaim any intention or power by Congress to overrule the Supreme Court's constitutional interpretation in *Bolden* only that the relevant constitutional provisions prohibited intentional racial vote dilution, and to assert instead a power comparable to that exercised in the enactment of Section 5 of the Voting Rights Act to provide a judicial remedy for enforcement of the state's affirmative obligations to come into compliance. See, e.g., S. Rep. 97-417, *supra* note 10, at 41 ("Congress cannot alter the judicial interpretations in *Bolden* . . . [T]he proposal is a proper statutory exercise of Congress' enforcement power. . . .").

No challenge is made in this action to the constitutionality of Section 2 as a valid exercise of Congress's enforcement powers under the fourteenth (and possibly fifteenth) amendment, and we assume constitutionality on that basis. See *Major v. Treen*, *supra*, slip op. 44-61 (upholding constitutionality against direct attack).

the statute's remedial measures to *present conditions* of racial vote dilution that might be established in particular litigation; that national policy respecting minority voting rights could no longer await the securing of those rights by normal political processes, or by voluntary action of state and local governments, or by judicial remedies limited to proof of intentional racial discrimination. *See, e.g.*, S. Rep. 97-417, *supra* note 10, at 193 (additional view of Senator Dole) (asserting purpose to eradicate "racial discrimination which . . . still exists in the American electoral process").

In making that political judgment, Congress necessarily took into account and rejected as unfounded, or assumed as outweighed, several risks to fundamental political values that opponents of the amendment urged in committee deliberations and floor debate. Among these were the risk that the judicial remedy might actually be at odds with the judgment of significant elements in the racial minority;¹⁷ the risk that creating "safe" black-majority single-member districts would perpetuate racial ghettos and racial polarization in voting behavior;¹⁸ the risk that reliance upon the judicial remedy would supplant the normal, more healthy processes of acquiring political power by registration, voting and coalition building;¹⁹ and the

¹⁷ *See Voting Rights Act: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 542-46 (Feb. 1, 1982) (hereafter *Senate Hearings*) (prepared statement of Professor McManus, pointing to disagreements within black community leadership over relative virtues of local districting plans).

¹⁸ *See Subcommittee on the Constitution of the Senate Committee on the Judiciary*, 97th Cong., 2d Sess., Voting Rights Act, Report on S. 1992, at 42-43 (Comm. Print 1982) (hereafter *Subcommittee Report*), reprinted in S. Rep. No. 97-417, *supra* note 10, 107, 149 (asserting "detrimental consequence of establishing racial polarity in voting where none existed, or was merely episodic, and of establishing race as an accepted factor in the decision-making of elected officials"); *Subcommittee Report*, *supra*, at 45, reprinted in S. Rep. No. 97-417, *supra* note 10, at 150 (asserting that amended Section 2 would aggravate segregated housing patterns by encouraging blacks to remain in safe black legislative districts).

¹⁹ *See Subcommittee Report*, *supra* note 18, at 43-44, reprinted in S. Rep. No. 97-417, *supra* note 10, at 149-50.

fundamental risk that the recognition of "group voting rights" and the imposing of affirmative obligation upon government to secure those rights by race-conscious electoral mechanisms was alien to the American political tradition.²⁰

For courts applying Section 2, the significance of Congress's general rejection or assumption of these risks as a matter of political judgment is that they are not among the circumstances to be considered in determining whether a challenged electoral mechanism presently "results" in racial vote dilution, either as a new or perpetuated condition. If it does, the remedy follows, all risks to these values having been assessed and accepted by Congress. It is therefore irrelevant for courts applying amended Section 2 to speculate or to attempt to make findings as to whether a presently existing condition of racial vote dilution is likely in due course to be removed by normal political processes, or by affirmative acts of the affected government, or that some elements of the racial minority prefer to rely upon those processes rather than having the judicial remedy invoked.

III

Findings of Fact

A.

The Challenged Districts

The redistricting plans for the North Carolina Senate and House of Representatives enacted by the General Assembly of North Carolina in April of 1982 included six multi-member districts and one single-member district that are the subjects of the racial vote dilution challenge in this action.

²⁰ See *Senate Hearings, supra*, note 17, at 1351-54 (Feb. 12, 1982) (prepared statement of Professor Blumstein); *id.* at 509-10 (Jan. 28, 1982) (prepared statement of Professor Erler), *reprinted in* S. Rep. No. 97-417, *supra* note 10, at 147; *id.* at 231 (Jan. 27, 1982) (testimony of Professor Berns), *reprinted in* S. Rep. No. 97-417, *supra* note 10, at 147.

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The multi-member districts, each of which continued pre-existing districts and apportionments, are as follows, with their compositions, and their apportionments of members and the percentage of their total populations and of their registered voters that are black:

<i>District</i>	<i>% of Population that is Black</i>	<i>% of Registered Voters that is Black (as of 10/4/82)</i>
Senate No. 22 (Mecklenburg and Cabarrus Counties (4 members))	24.3	16.8
House No. 36 (Mecklenburg County) (8 members)	26.5	18.0
House No. 39 (Part of Forsyth County) (5 members)	25.1	20.8
House No. 23 (Durham County) (3 members)	36.3	28.6
House No. 21 (Wake County) (6 members)	21.8	15.1
House No. 8 (Wilson, Nash and Edgecombe Counties) (4 members)	39.5	29.5

As these districts are constituted, black citizens make up distinct population and registered-voter minorities in each.

Of these districts, only House District No. 8 is in an area of the state covered by § 5 of the Voting Rights Act.

At the time of the creation of these multi-member districts, there were concentrations of black citizens within the boundaries of each that were sufficient in numbers and contiguity to constitute effective voting majorities in single-member districts lying wholly within the boundaries of the multi-member districts, which single-member districts would satisfy all constitutional requirements of population and geographical configuration. For example, concentrations of black citizens em-

braced within the following single-member districts, as depicted on exhibits before the court, would meet those criteria:

<i>Multi-Member District</i>	<i>Single-Member District: location and racial composition</i>	<i>Exhibit</i>
Senate No. 22 (Mecklenburg/Cabarrus Counties)	Part of Mecklenburg County; 70.0% Black	Pl. Ex. 9
House No. 36 (Mecklenburg County)	(1) Part of Mecklenburg County; 66.1% Black	Pl. Ex. 4
	(2) Part of Mecklenburg County; 71.2% Black	Pl. Ex. 4
House No. 39 (Part of Forsyth County)	Part of Forsyth County; 70.0% Black	Pl. Ex. 5
House No. 23 (Durham County)	Part of Durham County; 70.9% Black	Pl. Ex. 6 substitute
House No. 21 (Wake County)	Part of Wake County; 67.0% Black	Pl. Ex. 7
House No. 8 (Wilson, Edgecombe, Nash Counties)	Parts of Wilson, Edgecombe and Nash Counties; 62.7% Black	Pl. Ex. 8

The single-member district is Senate District No. 2 in the rural northeastern section of the state. It was formed by extensive realignment of existing districts to encompass an area which formerly supplied components of two multi-member Senate districts (No. 1 of 2 members; No. 6 of 2 members). It consists of the whole of Northampton, Hertford, Gates, Bertie, and Chowan Counties, and parts of Washington, Martin, Halifax and Edgecombe Counties. Black citizens made up 55.1% of the total population of the district, and 46.2% of the population that is registered to vote. This does not constitute them an effective voting majority in this district.²¹

²¹ We need not attempt at this point to define the exact population level at which blacks would constitute an effective (non-diluted) voting majority, either generally or in this area. Defendant's expert witness testified that a general "rule of thumb" for insuring an effective voting majority is 65%. This
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This district is in an area of the state covered by § 5 of the Voting Rights Act.

At the time of creation of this single-member district, there was a concentration of black citizens within the boundaries of this district and those of adjoining Senate District No. 6 that was sufficient in numbers and in contiguity to constitute an effective voting majority in a single-member district, which single-member district would satisfy all constitutional requirements of population and geographical configuration. For example, a concentration of black voters embraced within a district depicted on Plaintiff's Exhibit 10(a) could minimally meet these criteria, though a still larger concentration might prove necessary to make the majority a truly effective one, depending upon experience in the new district alignments. In such a district, black citizens would constitute 60.7% of the total population and 51.02% of the registered voters (as contrasted with percentages of 55.1% and 46.2%, respectively, in challenged Senate District 2).

B

Circumstances Relevant To The Claim Of Racial Vote Dilution: The "Zimmer Factors"

At the time the challenged districting plan was enacted in 1982, the following circumstances affected the plan's effect

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is the percentage used as a "benchmark" by the Justice Department in administering § 5. Plaintiffs' expert witness opined that a 60% population majority in the area of this district could only be considered a "competitive" one rather than a "safe" one.

On the uncontradicted evidence adduced we find—and need only find for present purposes—that the extant 55.1% black population majority does not constitute an effective voting majority, i.e., does not establish *per se* the absence of racial vote dilution, in this district. See *Kirksey v. Board of Supervisors*, 554 F.2d 139, 150 (5th Cir. 1977) ("Where . . . cohesive black voting strength is fragmented among districts, . . . the presence of districts with bare *population majorities* not only does not necessarily preclude dilution but . . . may actually enhance the possibility of continued minority political impotence.").

upon the voting strength of black voters of the state (the plaintiff class), and particularly those in the areas of the challenged districts.

A History Of Official Discrimination Against Black Citizens In Voting Matters

Following the emancipation of blacks from slavery and the period of post-war Reconstruction, the State of North Carolina had officially and effectively discriminated against black citizens in matters touching their exercise of the voting franchise for a period of around seventy years, roughly two generations, from ca. 1900 to ca. 1970. The history of black citizens' attempts since the Reconstruction era to participate effectively in the political process and the white majority's resistance to those efforts is a bitter one, fraught with racial animosities that linger in diminished but still evident form to the present and that remain centered upon the voting strength of black citizens as an identified group.

From 1868 to 1875, black citizens, newly emancipated and given the legal right to vote, effectively exercised the franchise, in coalition with white Republicans, to control the state legislature. In 1875, the Democratic Party, overwhelmingly white in composition, regained control of state government and began deliberate efforts to reduce participation by black citizens in the political processes. These efforts were not immediately and wholly successful and black male citizens continued to vote and to hold elective office for the remainder of the nineteenth century.

This continued participation by black males in the political process was furthered by Fusionists' (Populist and Republican coalition) assumption of control of the state legislature in 1894. For a brief season, this resulted in legislation favorable to black citizens' political participation as well as their economic advancement.

The Fusionists' legislative program favorable to blacks impelled the white-dominated Democratic Party to undertake an

overt white supremacy political campaign to destroy the Fusionist coalition by arousing white fears of Negro rule. This campaign, characterized by blatant racist appeals by pamphlet and cartoon, aided by acts of outright intimidation, succeeded in restoring the Democratic Party to control of the legislature in 1898. The 1898 legislature then adopted constitutional amendments specifically designed to disenfranchise black voters by imposing a poll tax and a literacy test for voting with a grandfather clause for the literacy test whose effect was to limit the disenfranchising effect to blacks. The amendments were adopted by the voters of the state, following a comparable white supremacy campaign, in 1900. The 1900 official literacy test continued to be freely applied for 60 years in a variety of forms that effectively disenfranchised most blacks. In 1961, the North Carolina Supreme Court declared unconstitutional the practice of requiring a registrant to write the North Carolina Constitution from dictation, but upheld the practice of requiring a registrant "of uncertain ability" to read and copy in writing the state Constitution. *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398 (1961). At least until around 1970, the practice of requiring black citizens to read and write the Constitution in order to vote was continued in some areas of the state. Not until around 1970 did the State Board of Elections officially direct cessation of the administration of any form of literacy test.

Other official voting mechanisms designed to minimize or cancel the potential voting strength of black citizens were also employed by the state during this period. In 1955, an anti-single shot voting law applicable to specified municipalities and counties was enacted. It was enforced, with the intended effect of fragmenting a black minority's total vote between two or more candidates in a multi-seat election and preventing its concentration on one candidate, until declared unconstitutional in 1972 in *Dunston v. Scott*, 336 F. Supp. 206 (E.D.N.C. 1972). In 1967, a numbered-seat plan for election in multi-member legislative districts was enacted. Its effect was, as intended, to prevent single-shot voting in multi-member legislative dis-

tricts. It was applied until declared unconstitutional in the *Dunston* case, *supra*, in 1972.

In direct consequence of the poll tax and the literacy test, black citizens in much larger percentages of their total numbers than the comparable percentages of white citizens were either directly denied registration or chilled from making the attempt from the time of imposition of these devices until their removal. After their removal as direct barriers to registration, their chilling effect on two or more generations of black citizens has persisted to the present as at least one cause of continued relatively depressed levels of black voter registration. Between 1930 and 1948 the percentage of black citizens who successfully sought to register under the poll tax and literacy tests increased from zero to 15%. During this eighteen-year period that only ended after World War II, no black was elected to public office in the state. In 1960, twelve years later, after the Supreme Court decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), only 39.1% of the black voting age population was registered to vote, compared to 92.1% of age-qualified whites. By 1971, following the civil rights movement, 44.4% of age-qualified blacks were registered compared to 60.6% of whites. This general range of statewide disparity continued into 1980, when 51.3% of age-qualified blacks and 70.1% of whites were registered, and into 1982 when 52.7% of age-qualified blacks and 66.7% of whites were registered.²²

²² The recent history of white and black voter registration statewide and in the areas of the challenged districts is shown on the following chart.

	Percent of Voting Age Population Registered to Vote					
	1978		1980		1982	
	White	Black	White	Black	White	Black
Whole State	61.7	43.7	70.1	51.3	66.7	52.7
Mecklenburg	71.3	40.8	73.8	48.4	73.0	50.8
Forsyth	65.8	58.7	76.3	67.7	69.4	64.1
Durham	63.0	39.4	70.7	45.8	66.0	52.9
Wake	61.2	37.5	76.0	48.9	72.2	49.7
Wilson	60.9	36.3	66.9	40.9	64.2	48.0

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Under the present Governor's administration an intelligent and determined effort is being made by the State Board of Elections to increase the percentages of both white and black voter registrations, with special emphasis being placed upon increasing the levels of registration in groups, including blacks, in which those levels have traditionally been depressed relative to the total voting age population. This good faith effort by the currently responsible state agency, directly reversing official state policies which persisted for more than seventy years into this century, is demonstrably now producing some of its intended results. If continued on a sustained basis over a sufficient period, the effort might succeed in removing the disparity in registration which survives as a legacy of the long period of direct denial and chilling by the state of registration by black citizens. But at the present time the gap has not been closed, and there is of course no guarantee that the effort will be continued past the end of the present state administration.

The present condition - which we assess - is that, on a statewide basis, black voter registration remains depressed relative to that of the white majority, in part at least because of the long period of official state denial and chilling of black

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	<i>Percent of Voting Age Population Registered to Vote</i>					
	<i>10/78</i>		<i>10/80</i>		<i>10/82</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
Edgecombe	63.8	37.9	68.2	50.4	62.7	53.1
Nash	61.2	39.0	72.0	41.2	64.2	43.0
Bertie	75.6	46.0	77.0	54.1	74.6	60.0
Chowan	71.3	44.3	77.4	53.9	74.1	54.0
Gates	80.9	73.5	83.9	77.3	83.6	82.3
Halifax	66.8	40.9	72.0	50.4	67.3	55.3
Hertford	75.6	56.6	81.8	62.5	68.7	58.3
Martin	69.3	49.7	76.9	55.3	71.2	53.3
Northampton	72.4	58.5	77.0	63.9	82.1	73.9
Washington	74.3	62.8	82.2	66.0	75.6	67.4

citizens' registration efforts. This statewide depression of black voter registration levels is generally replicated in the areas of the challenged districts, and in each is traceable in part at least to the historical statewide pattern of official discrimination here found to have existed.

Effects Of Racial Discrimination In Facilities, Education, Employment, Housing And Health

In consequence of a long history, only recently alleviated to some degree, of racial discrimination in public and private facility uses, education, employment, housing and health care, black registered voters of the state remain hindered, relative to the white majority, in their ability to participate effectively in the political process.

At the start of this century, *de jure* segregation of the races in practically all areas of their common life existed in North Carolina. This condition continued essentially unbroken for another sixty-odd years, through both World Wars and the Korean conflict, and through the 1950's. During this period, in addition to prohibiting inter-racial marriages, state statutes provided for segregation of the races in fraternal orders and societies; the seating and waiting rooms of railroads and other common carriers; cemeteries; prisons, jails and juvenile detention centers; institutions for the blind, deaf and mentally ill; public and some private toilets; schools and school districts; orphanages; colleges; and library reading rooms. With the exception of those laws relating to schools and colleges, most of these statutes were not repealed until after passage of the federal Civil Rights Act of 1964, some as late as 1973.

Public schools in North Carolina were officially segregated by race until 1954 when *Brown v. Board of Education* was decided. During the long period of *de jure* segregation, the black schools were consistently less well funded and were qualitatively inferior. Following the *Brown* decision, the public schools remained substantially segregated for yet another fifteen years on a *de facto* basis, in part at least because of various practical impediments erected by the state to judicial

enforcement of the constitutional right to desegregated public education recognized in *Brown*. As late as 1960, only 226 black students throughout the entire state attended formerly all-white public schools. Until the end of the 1960's, practically all the state's public schools remained almost all white or almost all black. Substantial desegregation of the public schools only began to take place around a decade ago, following the Supreme Court's decision in *Swann v. Mecklenburg County Board of Education*, 402 U.S. 1 (1971). In the interval since, "white-flight" patterns in some areas of the state have prevented or reversed developing patterns or desegregation of the schools. In consequence, substantial pockets of *de facto* segregation of the races in public school education have re-arisen or have continued to exist to this time though without the great disparities in public funding and other support that characterized *de jure* segregation of the schools.

Because significant desegregation of the public schools only commenced in the early 1970's, most of the black citizens of the state who were educated in this state and who are over 30 years of age attended qualitatively inferior racially segregated public schools for all or most of their primary and secondary education. The first group of black citizens who have attended integrated public schools throughout their educational careers are just now reaching voting age. In at least partial consequence of this segregated pattern of public education and the general inferiority of *de jure* segregated black schools, black citizens of the state who are over 25 year of age are substantially more likely than whites to have completed less than 8 years of education (34.6% of blacks; 22.0% of whites), and are substantially less likely than whites to have had any schooling beyond high school (17.3% of blacks; 29.3% of whites).

Residential housing patterns in North Carolina, as generally in states with histories of *de jure* segregation, have traditionally been separated along racial lines. That pattern persists today in North Carolina generally and in the areas covered by the challenged districts specifically; in the latter, virtually all residential neighborhoods are racially identifiable. Statewide,

black households are twice as likely as white households to be renting rather than purchasing their residences and are substantially more likely to be living in overcrowded housing, substandard housing, or housing with inadequate plumbing.

Black citizens of North Carolina have historically suffered disadvantage relative to white citizens in public and private employment. Though federal employment discrimination laws have, since 1964, led to improvement, the effects of past discrimination against blacks in employment continue at present to contribute to their relative disadvantage. On a statewide basis, generally replicated in the challenged districts in this action, Blacks generally hold lower paying jobs than do whites, and consistently suffer higher incidences of unemployment. In public employment by the state, for example, a higher percentage of black employees than of whites is employed at every salary level below \$12,000 per year and a higher percentage of white employees than black is employed at every level above \$12,000.

At least partially because of this continued disparity in employment opportunities, black citizens are three times as likely as whites to have incomes below the poverty level (30% to 10%); the mean income of black citizens is 64.9% that of white citizens; white families are more than twice as likely as black families to have incomes over \$20,000; and 25.1% of all black families, compared to 7.3% of white families, have no private vehicle available for transportation.

In matters of general health, black citizens of North Carolina are, on available primary indicators, as a group less physically healthy than are white citizens as a group. On a statewide basis, the infant mortality rate (the standard health measure used by sociologists) is approximately twice as high for non-whites (predominately blacks) as for whites. This statewide figure is generally replicated in Mecklenburg, Forsyth, Durham, Wake, Wilson, Edgecombe and Nash Counties (all included within the challenged multi-member districts). Again, on a statewide basis, the death rate is higher for black

citizens than for white, and the life-expectancy of black citizens is shorter than is that of whites.

On all the socio-economic factors treated in the above findings, the status of black citizens as a group is lower than is that of white citizens as a group. This is true statewide, and it is true with respect to every county in each of the districts under challenge in this action. This lower socioeconomic status gives rise to special group interests centered upon those factors. At the same time, it operates to hinder the group's ability to participate effectively in the political process and to elect representatives of its choice as a means of seeking government's awareness of and attention to those interests.²³

Other Voting Procedures That Lessen The Opportunity Of Black Voters To Elect Candidates Of Their Choice

In addition to the numbered seat requirement and the anti-single shot provisions of state law that were declared unconstitutional in 1972, *see supra* p. 28, North Carolina has, since 1915, had a majority vote requirement which applies to all primary elections, but not to general elections. N.C.G.S. § 163-111.²⁴

The general effect of a majority vote requirement is to make it less likely that the candidates of any identifiable voting

²³ Section 2 claimants are not required to demonstrate by direct evidence a causal nexus between their relatively depressed socio-economic status and a lessening of their opportunity to participate effectively in the political process. *See* S. Rep. No. 97-417, *supra* note 10, at 29 n.114. Under incorporated *White v. Regester* jurisprudence, "[i]nequality of access is an inference which flows from the existence of economic and educational inequalities." *Kirksey v. Board of Supervisors*, 554 F.2d 139, 145 (5th Cir.), *cert. denied*, 434 U.S. 968 (1977). Independently of any such general presumption incorporated in amended Section 2, we would readily draw the inference from the evidence in this case.

²⁴ There is no suggestion that when originally enacted in 1915, its purpose was racially discriminatory. That point is irrelevant in assessing its present effect, as a continued mechanism, in the totality of circumstances bearing upon plaintiffs' dilution claim. *See* Part II, *supra*.

minority will finally win elections, given the necessity that they achieve a majority of votes, if not in a first election, then (if called for) in a run-off election. This generally adverse effect on any cohesive voting minority is, of course, enhanced for racial minority groups if, as we find to be the fact in this case, *see infra* pp. 48-58, racial polarization in voting patterns also exists.

While no black candidate for election to the North Carolina General Assembly—either in the challenged districts or elsewhere—has so far lost (or failed to win) an election solely because of the majority vote requirement, the requirement nevertheless exists as a continuing practical impediment to the opportunity of black voting minorities in the challenged districts to elect candidates of their choice.

The North Carolina majority vote requirement manifestly operates with the general effect noted upon *all* candidates in primary elections. Since 1950, eighteen candidates for the General Assembly who led first primaries with less than a majority of votes have lost run-off elections, as have twelve candidates for other statewide offices, including a black candidate for Lt. Governor and a black candidate for Congress. The requirement therefore necessarily operates as a general, ongoing impediment to any cohesive voting minority's opportunity to elect candidates of its choice in any contested primary, and particularly to any racial minority in a racially-polarized vote setting.²⁵

North Carolina does not have a subdistrict residency requirement for members of the Senate and House elected from multi-member districts, a requirement which could to some degree off-set the disadvantage of any voting minority in multi-member districts.²⁶

²⁵ See *White v. Regester*, 412 U.S. 775, 766 (1973).

²⁶ See *id.* at 766 n.10.

Use Of Racial Appeals In Political Campaigns

From the Reconstruction era to the present time, appeals to racial prejudice against black citizens have been effectively used by persons, either candidates or their supporters, as a means of influencing voters in North Carolina political campaigns. The appeals have been overt and blatant at some times, more subtle and furtive at others. They have tended to be most overt and blatant in those periods when blacks were openly asserting political and civil rights—during the Reconstruction-Fusion era and during the era of the major civil rights movement in the 1950's and 1960's. During the period from ca. 1900 to ca. 1948 when black citizens of the state were generally quiescent under *de jure* segregation, and when there were few black voters and no black elected officials, racial appeals in political campaigning were simply not relevant and accordingly were not used. With the early stirrings of what became the civil rights movement following World War II, overt racial appeals reappeared in the campaign of some North Carolina candidates. Though by and large less gross and virulent than were those of the outright white supremacy campaigns of 50 years earlier, these renewed racial appeals picked up on the same obvious themes of that earlier time: black domination or influence over "moderate" or "liberal" white candidates and the threat of "negro rule" or "black power" by blacks "bloc voting" for black candidates or black-"dominated" candidates. In recent years, as the civil rights movement, culminating in the Civil Rights Act of 1964, completed the eradication of *de jure* segregation, and as overt expressions of racist attitudes became less socially acceptable, these appeals have become more subtle in form and furtive in their dissemination, but they persist to this time.

The record in this case is replete with specific examples of this general pattern of racial appeals in political campaigns. In addition to the crude cartoons and pamphlets of the outright white supremacy campaigning of the 1890's which featured white political opponents in the company of black political leaders, later examples include various campaign materials,

unmistakably appealing to the same racial fears and prejudices, that were disseminated during some of the most hotly contested statewide campaigns of the state's recent history: the 1950 campaign for the United States Senate; the 1954 campaign for the United States Senate; the 1960 campaign for Governor; the 1968 campaign for Governor; the 1968 Presidential campaign in North Carolina; the 1972 campaign for the United States Senate; and most recently, in the imminent 1984 campaign for the United States Senate.

Numerous other examples of assertedly more subtle forms of "telegraphed" racial appeals in a great number of local and statewide elections, abound in the record. Laying aside the more attenuated forms of arguably racial allusions in some of these, we find that racial appeals in North Carolina political campaigns have for the past thirty years been widespread and persistent.

The contents of these materials reveal an unmistakable intention by their disseminators to exploit existing fears and prejudices and to create new fears and prejudices on the part of white citizens in regard to black citizens and to black citizens' participation in the political processes of the state. The continued dissemination of these materials throughout this period and down to the present time evidences an informed perception by the persons who have disseminated them that they have had their intended effect to a degree warranting their continued use.

On this basis, we find that the historic use of racial appeals in political campaigns in North Carolina persists to the present time and that its effect is presently to lessen to some degree the opportunity of black citizens to participate effectively in the political processes and to elect candidates of their choice.

The Extent Of Election Of Black Citizens To Public Office

Statewide history. It appears that, with one exception, no black citizen was elected during this century to public office in North Carolina until after World War II. In 1948 and during

the early 1950's a few black citizens were elected to various city councils. Twenty years later, in 1970, there were in the state 62 black elected officials. In 1969 a black citizen was elected to the State House of Representatives for the first time since Reconstruction; in 1975 two blacks were elected, for the first time, to the Senate. From 1970 to 1975 the number of black elected officials increased from 62 to over 200 statewide; in 1982, that number had increased to 255.

At present the number of elected black officials remains quite low in relation to total black population, which is 22.4% of the state total. Black citizens hold 9% of the city council seats (in cities of over 500 population); 7.3% of county commission seats; 4% of sheriff's offices; and 1% of the offices of Clerk of Superior Court. There are 19 black mayors, 13 of whom are in majority black municipalities. Of the black city council members, approximately 40% are from majority black municipalities or election districts. Three black judges have been elected in statewide elections to seats to which they had been appointed by the Governor. Other than these judges, no black has yet been elected during this century to any statewide office or to the Congress of the United States as a representative of this state.

Between 1971 and 1982 there have been, at any given time, between two and four black members of the North Carolina House of Representatives out of a total of 120—between 1.6% and 3.3%. From 1975 to 1983 there have been, at any given time, either one or two black members of the State Senate out of a total of 50—between 2% and 4%. Most recently, in 1982, after this action was filed, 11 black citizens were elected to the State House of Representatives. Six of those 11 were elected from multi-member districts in which blacks constituted a voting minority (including 5 of those challenged); 5 were elected from newly created majority black districts.

Historically, in those multi-member districts where some blacks have succeeded in being elected, overall black candidates have been significantly less successful than white candida-

cies have been significantly less successful than white candidates. Black candidates who, between 1970 and 1982, won in Democratic primaries in the six multi-member districts under challenge here were three times as likely to lose in the general election as were their white Democratic counterparts, a fact of statistical significance in assessing the continued effect of race in those elections.

In The Challenged Multi-Member Districts

House District 36 (Mecklenburg County); Senate District 22 (Mecklenburg/Cabarrus Counties).

In this century one black citizen has been elected to the State House of Representatives and one black citizen has been elected to the Senate from Mecklenburg County. The House member was elected as one of an eight-member delegation in 1982, after this lawsuit was commenced. Seven other black citizens had previously run unsuccessfully for a House seat. The Senate member served as one of a 4-member delegation from Mecklenburg and Cabarrus Counties from 1975 to 1980. Since then two black citizens have run unsuccessfully and no black now serves on the Senate delegation.

Since World War II, blacks, who now constitute 31% of the city's population, have been elected to the City Council of Charlotte, but never in numbers remotely proportional to their percentage of the city's population. During the period 1945 to 1975, when the council was elected all at-large, blacks constituted 5.4% of its membership. From 1977-1981, when the council was elected partially at-large and partially by districts, blacks won 28.6% of the district seats compared with 16.7% of the at-large seats, though more ran for the latter than the former.

One black citizen has been elected (three times) and defeated one time for membership on the five-member County Board of Commissioners, and presently serves. Two black citizens have been elected and now serve on the nine-member County Board of Education.

Following trial of this action, a black citizen was elected mayor of the City of Charlotte, running as a Democrat against a white Republican. The successful black candidate, a widely-respected architect, received approximately 38% of the white vote.

House District No. 29 (part of Forsyth County).

Before 1974 Black citizens had been elected to the City Council of Winston-Salem, but to no other public office. In 1974 and again in 1976 a black citizen was elected to the House of Representatives as one of a five-member delegation. In 1978 and 1980 other black citizens ran unsuccessfully for the House. In 1982, after this litigation was commenced, two black citizens were elected to the House.

No black citizen has been elected to the Senate from Forsyth County.

Since 1974, a black citizen has been elected, twice failed to be reelected, then succeeded in being reelected to one of eight seats on the otherwise all-white Board of Education; and another has been elected, failed to be reelected, then succeeded in being reelected to one of five seats on the otherwise all-white Board of County Commissioners.

House District No. 23 (Durham County).

Since 1973 a black citizen has been elected each two-year term to the State House. No black citizen has been elected to the Senate. Since 1969, blacks have been elected to the Board of County Commissioners, and three of twelve Durham City Council members are blacks elected in at-large elections. The City of Durham is 47% black in population.

House District No. 21 (Wake County).

A black citizen has been twice elected to the State House five-member delegation from this district and is presently serving. Another black citizen was elected for two terms to the State Senate, serving from 1975 to 1978.

A black citizen has been twice elected Sheriff of Wake County and is presently in that office. Another black citizen, who lives in an affluent white neighborhood, has served since 1972 as the only black on the seven-member County Board of Commissioners. Another black citizen, elected from a majority black district, serves as the only black on the nine-member County School Board. Another black citizen served one term as mayor of the City of Raleigh from 1973 to 1975, and still another serves on the Raleigh City Council.

House District No. 8 (Edgecombe, Nash, Wilson Counties).

There has never been a black member of the State House or Senate from the area covered by this district. There had never been a black member of the Board of County Commissioners of any of the three counties until 1982 when two blacks were elected to the five-member Board in Edgecombe County, in which blacks constitute 43% of the registered voters. In Wilson County, where the black population is 36.5% of the total, one of nine members of the County Board of Education is black. In the City of Wilson, which is over 40% black in population, one of six city councilmen is black.

Senate District No. 2 (Northampton, Hertford, Gates, Bertie, Chowan, and parts of Washington, Martin, Halifax and Edgecombe Counties).

No black person has ever been elected to the State Senate from any of the area covered by the district. In the last four years, black candidates have won three elections for the State House from areas within the borders of this district, one in 1980 in a majority-white multi-member district, two in 1982 in different majority-black districts. In Gates County,, where 49% of the registered voters are black, a black citizen has been elected and presently serves as Clerk of Court. In Halifax County, black citizens have run unsuccessfully for the Board of County Commissioners and for the City Council of Roanoke Rapids.

Looking only to these basic historical facts respecting black citizens' election to public office, we draw the following inferences. Thirty-five years after the first successful candidacies for public office by black citizens in this century, it has now become possible for black citizens to be elected to office at all levels of state government in North Carolina. The chances of a black candidate's being elected are better where the candidacy is in a majority-black constituency, where the candidacy is in a single-member rather than a multi-member or at-large district, where it is for local rather than statewide office, and where the black candidate is a member of the political party currently in the ascendancy with voters. Relative to white candidates running for the same office at whatever level, black candidates remain at a disadvantage in terms of relative probability of success. The overall results achieved to date at all levels of elective office are minimal in relation to the percentage of blacks in the total population. There are intimations from recent history, particularly from the 1982 elections, that a more substantial breakthrough of success could be imminent—but there were enough obviously aberrational aspects present in the most recent elections to make that a matter of sheer speculation.²⁷ In any event, the success that has been achieved by black candidates to date is, standing alone, too minimal in total numbers and too recent in relation to the long history of complete denial of any elective opportunities to compel or even

²⁷ Both parties offered evidence—*anecdotal, informed "lay opinion," and documentary*—to establish on the one hand that recent black successes indicated an established breakthrough from any preexisting racial vote dilution and on the other, that those successes are too "haphazard" and aberrational in terms of specific candidacies, issues, and political trends and, in any event, still too minimal in numbers, to support any such ultimate inference. Heavily emphasized with respect to successful black candidacies in 1982 was the fact that in some elections the pendency of this very litigation worked a one-time advantage for black candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting, and that this cannot be expected to recur. Our finding, as stated in text, reflects our weighing of these conflicting inferences.

arguably to support an ultimate finding that a black candidate's race is no longer a significant adverse factor in the political processes of the state—either generally or specifically in the areas of the challenged districts.

Racial Polarization in Voting

Statistical evidence presented by duly qualified expert witnesses for plaintiffs, supplemented to some degree by direct testimony of lay witnesses, establishes, and we find, that within all the challenged districts racially polarized voting exists in a persistent and severe degree.

Multi-Member Districts

To analyze the existence and extent of any racially polarized voting in the challenged multi-member districts, Dr. Bernard Grofman, a duly qualified expert witness for plaintiffs, had collected and studied data from 53 sets of recent election returns involving black candidacies in all of the challenged multi-member districts.²⁸ Based upon two complementary methods of analysis of the collected data,²⁹ Grofman gave as his opinion, and we find, that in each of the elections analyzed racial polarization did exist and that the degree revealed in every

²⁸ Included were all the elections for the General Assembly in which there were black candidates in Mecklenburg, Durham, and Forsyth County; elections for the State House of Representatives in Wilson, Edgecombe, and Nash Counties; and elections for the State Senate in Cabarrus County for the election years 1978, 1980, and 1982; county-wide local elections in each of Wilson, Edgecombe and Nash Counties in which there were black candidates. The 53 elections included both primary and general elections and represented a total of 32 different election contests.

²⁹ The two methods employed, both standard in the literature for the analysis of racially polarized voting, were an "extreme case" analysis and an "ecological regression" analysis. The extreme case analysis focuses on voting in racially segregated precincts; the regression analysis uses both racially segregated and racially mixed precincts and provides any corrective method to reflect the fact that voters in the two types may behave differently. In Dr.

(footnote continued on next page)

election analyzed was statistically significant, in the sense that the probability of its occurring by chance was less than one in 100,000;³⁰ and that in all but two of the elections the degree revealed was so marked as to be substantively significant, in the sense that the results of the individual election would have

Grofman's analysis the results under both methods conformed closely in most cases. The purpose of both methods is simply to determine the extent to which blacks and whites vote differently from each other in relation to the race of candidates.

Defendants' duly qualified expert witness, Dr. Thomas Hofeller, had studied Dr. Grofman's data and the mathematics of his analysis of that data, and heard his live testimony. Aside from two mathematical or typographical errors, Dr. Hofeller did not question the accuracy of the data, its adequacy as a reliable sample for the purpose used, nor that the methods of analysis used were standard in the literature. He questioned the reliability of an extreme case analysis standing alone, but, as indicated, Dr. Grofman's did not stand alone. Dr. Hofeller also questioned Dr. Grofman's failure to make an exact count of voter turn-out by race rather than using estimated figures. The literature makes no such demand of precision in obtaining this figure, and Dr. Grofman's method of estimating is accepted. Dr. Hofeller made no specific suggestion of error in the figures used.

We have accepted the accuracy and reliability of the data collected and the methods of analysis used by Dr. Grofman for the purposes offered. The general reliability of Dr. Grofman's analysis was further confirmed by the testimony of Dr. Théodore Arrington, a duly qualified expert witness for the *Pugh* intervenor-plaintiffs, see note 4, *supra*. Proceeding by a somewhat different methodology and using different data, Dr. Arrington came to the same general conclusion respecting the extent of racial polarization in the narrower area of his study.

³⁰ These conclusions were reached by determining the correlation between the voters of one race and the number of voters who voted for a candidate of specified race. In experience, correlations above an absolute value of .5 are relatively rare and correlations above .9 extremely rare. All correlations found by Dr. Grofman in the elections studied had absolute values between .7 and .98, with most above .9. This reflected statistical significance at the .00001 level - probability of chance as explanation for the coincidence of voter's and candidate's race less than one in 100,000. Cf. *Major v. Treen*, *supra*, slip op. 30-32 n.17 (comparable analysis of racial vote polarization by correlation coefficients).

been different depending upon whether it had been held among only the white voters or only the black voters in the election.³¹

Additional facts revealed by this data support the ultimate finding that severe (substantively significant) racial polarization existed in the multi-member district elections considered as a whole.³² In none of the elections, primary or general, did a black candidate receive a majority of white votes cast. On the average, 81.7% of white voters did not vote for any black candidate in the primary elections. In the general elections, white voters almost always ranked black candidates either last or next to last in the multi-candidate field except in heavily Democratic areas; in these latter, white voters consistently ranked black candidates last among Democrats if not last or next to last among all candidates. In fact, approximately two-thirds of white voters did not vote for black candidates in general elections even after the candidate had won the Democratic primary and the only choice was to vote for a Republican or no one. Black incumbency alleviated the general level of polarization revealed, but it did not eliminate it. Some black incumbents were reelected, but none received a majority of white votes even when the election was essentially uncontested. Republican voters were more disposed to vote for

³¹ The two exceptions involved 1982 State House elections in Durham and Wake Counties, respectively, in which black candidates were elected to seats in majority white multi-member districts. Both were incumbents, and in Durham County there were only two white candidates in the race for three seats so that the black candidate had to win. Though each black candidate won, neither received a majority of the white vote cast. These two exceptions did not alter Dr. Grofman's conclusion that, in his terms, racial polarization in the elections analyzed as a whole was substantially significant. Nor do they alter our finding to the same effect.

³² Defendants' expert witness questioned the accuracy of any opinion as to the "substantive" significance of statistically significant racial polarization in voting that did not factor in all of the circumstances that might influence particular votes in a particular election. This flies in the face of the general use, in litigation and in the general social science literature, of correlation analysis as the standard method for determining whether vote dilution in the legal (substantive) sense exists, a use conceded by defendant's expert.

white Democrats than to vote for black Democrats. The racial polarization revealed, of course, runs both ways, but it was much more disadvantageous to black voters than to white. Aside from the basic population and registered voter majority advantages had by white voters in any racially polarized setting, fewer white voters voted for black candidates than did black voters for white candidates. In these elections, a significant segment of the white voters would not vote for any black candidate, but few black voters would not vote for any white candidate. One revealed consequence of this disadvantage is that to have a chance of success in electing candidates of their choice in these districts, black voters must rely extensively on single-shot voting, thereby forfeiting by practical necessity their right to vote for a full slate of candidates.

The racial polarization revealed in the multi-member elections considered as a whole exists in each of the challenged districts considered separately, as indicated by the following specific findings related to elections within each district.

**House District No. 36 And Senate District No. 22
(Mecklenburg And Cabarrus Counties).**

In elections in House District No. 36 (Mecklenburg County) between 1980 and 1982, the following percentages of black and white voters voted for the black candidates indicated:

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
1980 (Maxwell)	22	71	28	92
1982 (Berry)	50	79	42	92
1982 (Richardson)	39	71	29	88

In elections in Senate District No. 22 (Mecklenburg and Cabarrus Counties) between 1978 and 1982, the following per-

percentages of white and black voters voted for the black candidates indicated:

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
1978 (Alexander)	47	87	41	94
1980 (Alexander)	23	78	n/a	n/a
1982 (Polk)	32	83	33	94

The fact that candidate Berry received votes from one half of the white voters in the primary does not alter the conclusion that there is substantial racially polarized voting in Mecklenburg County in primaries. There were only seven white candidates for eight positions in the primary and one black candidate had to be elected. Berry, the incumbent chairman of the Board of Education, ranked first among black voters but seventh among whites.

The only other black candidate who approached receiving as many as half of the white votes was Fred Alexander, running in the 1978 Senate primary as an incumbent. Alexander ranked last among white voters in the primary and would have been defeated if the election had been held only among the white voters.

Approximately 60% of the white voters voted for neither Berry nor Alexander in the general election.

House District No. 39 (Forsyth County).

In House and Senate elections in Forsyth County from 1978-1982 the following percentages of white and black voters voted for the black candidates indicated:

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
<i>1978 House -</i>				
Kennedy, H.	28	76	32	93
Norman	8	29	n/a	n/a
Ross	17	53	n/a	n/a
Sumter (Repub.)	n/a	n/a	33	25

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	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
<i>1980 House -</i>				
Kennedy, A.	40	86	32	96
Norman	18	36	n/a	n/a
<i>1980 Senate -</i>				
Small	12	61	n/a	n/a
<i>1982 House -</i>				
Hauser	25	80	42	87
Kennedy, A.	36	87	46	94

As revealed by this data, no black candidate, whether successful or not, has received more than 40% of the white votes cast in a primary, and no black candidate has received more than 46% of the white votes cast in a general election during the last four elections.

Though black candidates Kennedy and Hauser won the House election in 1982, this does not alter the conclusion that substantial racial polarization of voting continued through that election. White voters ranked Kennedy and Hauser seventh and eighth, respectively, out of eight candidates in the general election. In contrast black voters ranked them first and second respectively.

House District No. 23 (Durham County).

In House and Senate Elections from 1978 through 1982, the following percentages of white and black voters voted for the black candidates indicated:

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
<i>1978 Senate -</i>				
Barns (Repub.)	n/a	n/a	17	5
<i>1978 House -</i>				
Clement	10	89	n/a	n/a
Spaulding	16	92	37	89

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
<i>1980 House -</i>				
Spaulding	n/a	n/a	49	90
<i>1982 House -</i>				
Clement	26	32	n/a	n/a
Spaulding	37	90	43	89

Black candidate Spaulding ran uncontested in the general election in 1978 and in the primary and general election in 1980. In the 1982 election there was no Republican opposition and the general election was, for all practical purposes, unopposed. A majority of white voters failed to vote for the black candidate in the general election in each of these years even when they had no other choice. Furthermore, in the 1982 primary, there were only two white candidates for three seats so that one black necessarily had to win. Even in this situation, 63% of white voters did not vote for the black incumbent, the clear choice of the black voters. At least 37% of white voters voted for no black candidate even when one was certain to be elected.

House District No. 21 (Wake County).

In elections for the North Carolina House of Representatives from 1978 through 1982 the following percentages of white and black voters voted for the black candidate indicated:

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
1978 (Blue)	21	76	n/a	n/a
1980 (Blue)	31	81	44	90
1982 (Blue)	39	82	45	91

The fact that black candidate Blue won election in the last two of these candidacies does not alter the conclusion that substantial racial polarization in voting persists in this district. In Wake County winning the Democratic primary is historically tantamount to election. Nevertheless, in these elections

from 60% to 80% of white voters did not vote for the black candidate in the primary compared to 76% and 80% of black voters who did.

Wake County is overwhelmingly Democratic in registration and normally votes along party lines. Nonetheless, 55% of white voters did not vote for the black Democrat in the general election.

House District No. 8 (Wilson, Nash, Edgecombe Counties).

In county-wide or district-wide elections from 1976 through 1982 in House District No. 8 and Wilson, Edgecombe and Nash Counties, the following percentages of white and black voters voted for the black candidates indicated:

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
<i>House District No. 8</i>				
1982 House-Carter	4	66		
<i>Wilson County</i>				
1982 Congress-				
1st Primary-Michaux	6	96		
2nd Primary-Michaux	7	98		
1976 County Commission-				
Jones	32	77		
<i>Edgecombe County</i>				
1982 Congress-				
1st Primary-Michaux	2	84		
2nd Primary-Michaux	3	97		
1982 County Commission-				
Green	0	14		
McClain	0	27		
Thorne	4	75	38	91
Walker	2	82	36	94

	<i>Primary</i>		<i>General</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
<i>Nash County</i>				
1982 Congress-				
1st Primary	6	73		
2nd Primary	6	81		
1982 County Commission-				
Sumner	9	82		

With one exception, over this period more than 90% of the white voters have failed to vote for the black candidate in every primary in each of these three counties. The one time, in 1982, that black Democratic candidates have run in a general election, they failed to receive over 60% of the white vote even though Edgecombe County is overwhelmingly (88.5%) Democratic.

This data reveals racial polarization of voting in House District No. 8 so extreme that, all other factors aside, no black has any chance of winning election in the district as it is presently constituted. This conclusion, as expressed in evidence by plaintiffs' expert witness, was not seriously challenged by defendants.

Single-Member District

Senate District No. 2.

Essentially unchallenged and unrebutted opinion evidence given by plaintiffs' expert witness, Dr. Grofman, and testimonial evidence of experienced local political observers and black community leaders establishes that severe and persistent racial polarization in voting exists in the area covered by the challenged single-member Senate District No. 2.

Based on these evidentiary findings with respect to racial polarization in voting, we find that in each of the challenged districts racial polarization in voting presently exists to a substantial or severe degree, and that in each district it presently operates to minimize the voting strength of black voters.

Other Factors Bearing Upon The Claim Of Racial Vote Dilution

Increased participation by black citizens in the political process.

The court finds that in recent years there has been a measurable increase in the ability and willingness of black citizens to participate in the state's political processes and in its government at state and local levels. The present state administration has appointed a significant number of black citizens to judicial and executive positions in state government, and evinces a good faith determination further to open the political processes to black citizens by that means. In some areas of the state, including some of those directly involved in this litigation, there is increased willingness on the part of influential white politicians openly to draw black citizens into political coalitions and openly to support their candidacies. Indeed, among the witnesses for the state were respected and influential political figures who themselves fit that description.

The court has considered what this implies for the plaintiffs' claim of present racial vote dilution—of a present lack of equal opportunity by black citizens relative to white citizens to participate in the political process and to elect candidates of their choice. Our conclusion is that though this wholesome development is undoubtedly underway and will presumably continue, it has not proceeded to the point of overcoming still entrenched racial vote polarization, and indeed has apparently done little to diminish the level of that single most powerful factor in causing racial vote dilution. The participatory level of black citizens is still minimal in relation to the overall black population, and, quite understandably, is largely confined to the relatively few forerunners who have achieved professional status or otherwise emerged from the generally depressed socio-economic status which, as we have found on the record produced in this case, remains the present lot of the great bulk of black citizens.

Divisions Within The Black Community.

Not all black citizens in North Carolina, notwithstanding that the class technically certified in this action includes all who are registered to vote, share the same views about the present reality of racial vote dilution in the challenged districts (or presumably elsewhere), nor about the appropriate solution to any dilution that may exist.

Several black citizens testified in this action, as witnesses for the state, to this effect, identifying their own views as opposed to those advanced by plaintiffs' witnesses. In terms of their experience, achievement and general credibility as witnesses, the views of these defendant-witnesses were clearly as deserving of acceptance by the court as were those of the black citizens who, in larger numbers, testified as witnesses for the plaintiffs.

Two facts appeared, however, to the court. The first is that the views expressed by defendants' witnesses went almost exclusively to the desirability of the remedy sought by plaintiffs, and not to the present existence of a condition of vote dilution. The other fact is that the defendants' witnesses' views must be accounted, on the record adduced in this case, a distinct minority viewpoint within the plaintiff class as certified. The division between the two elements is essentially one of proper political ends and means to break free of racial vote dilution as a present condition, and not of the present existence of that condition. Only if a dissident element were so large as to draw in question the very existence of an identifiable black community whose "ability to participate" and "freedom to elect candidates of *its* choice" could rationally be assessed, could the existence of a dissident view have relevance to the establishment of a racial vote dilution claim. That clearly is not the circumstance here, on the record made in this action. As earlier indicated, the further political question of the proper means to eradicate such racial vote dilution as might be shown presently to exist has been decided by Congress and does not properly figure in our judicial inquiry. *See Part II, supra.*

Fairness Of The State Legislative Policy Underlying The Challenged Redistricting

Under amended § 2 it presumably remains relevant to consider whether race-neutral and compelling state policies might justify a redistricting plan that concededly, or at least arguably, “results” *prima facie* in racial vote dilution. The Senate Report, discussing the continued relevance of the “tenuous state policy” inquiry as one of the incorporated *Zimmer* factors that evolved in *White v. Regester* dilution jurisprudence, indicates as much, though “tenuousness” as a gauge of intent is obviously no longer relevant under § 2’s “result-only” test.

If the procedure markedly departs from past practices or from practices elsewhere in the jurisdiction, that bears on the fairness of its impact. But even a consistently applied practice premised on a racially neutral policy would not negate a plaintiff’s showing through other factors that the challenged practice denies minorities fair access to the process.

S. Rep. No. 97-417, *supra* note 10, at 29 & n.117. *See also Major v. Treen, supra*, slip op. 67-74 (analyzing state redistricting policy in terms of fairness).

The parties in this litigation have addressed the point under the “tenuous state policy” rubric, and we will assume the inquiry’s continued relevance under a “results”-only test. On this basis, we are persuaded that no state policy, either as demonstrably employed by the legislature in its deliberations, or as now asserted by the state in litigation, could “negate a showing” here that actual vote dilution results from the challenged district plan.

During the legislative deliberations on the redistricting plan, the legislature was well aware of the possibility that its plan could result under then applicable federal law in impermissible dilution of black citizens’ voting strength if concentrations of black voters were intentionally “submerged” in multi-member districts or “fractured” into separate districts. That fact was brought to its attention by special counsel, by black citizens’ groups concerned with the problem, and by various

legislators who proposed plans specifically designed to avoid any possibility of impermissibly diluting black citizens' votes in these ways. The specific dilution problems presented by the black voter concentrations in the challenged districts in this litigation were known to and discussed in legislative deliberations.

The basic policy justification advanced by the state in this litigation for the legislature's declination to create single-member districts to avoid submerging concentrations of black voters in the challenged multi-member districts was the maintenance of an historical, functionally sound tradition of using whole counties as the irreversible "building blocks" of legislative districting. Although the state adduced fairly persuasive evidence that the "whole-county" policy was well-established historically, had legitimate functional purposes, and was in its origins completely without racial implications, that all became largely irrelevant as matters developed in this particular legislative redistricting plan. At the time of its final enactment, the state policy—though compelled—was that counties *might* be split. When the Attorney General declined to give preclearance to the state constitutional prohibition of county divisions in redistricting, the state acquiesced and, indeed, divided counties thereafter both in non-covered as well as covered counties in the final redistricting plan. *See* note 3, *supra*. To the extent the policy thereafter was to split counties only when necessary to meet population deviation requirements or to obtain § 5 preclearance of particular districts—and this is what the record demonstrates—such a policy obviously could not be drawn upon to justify, under a fairness test, districting which results in racial vote dilution.

The same findings apply, though with added force, to Senate District No. 2. There, of course, in the final plan counties *were* split; indeed four were split in the face of a proposed plan which would have yielded an effective black-majority single-member district which only involved splitting two counties. Other policy considerations that were plainly shown to have influenced the legislature in its final drawing of Senate District No. 2 lines

were the protection of incumbents and, in the words of one legislator-witness in this action, swallowing the "smallest of three pills" offered by the Justice Department in preclearance negotiations respecting the lowest permissible size of the black population concentration in the district. Obviously, neither of these policies could serve to outweigh a racial dilution result.

The final policy consideration suggested by the state is the avoidance of race-conscious gerrymandering. While there may be some final constitutional constraint here, *cf. Karcher v. Daggett*, ___ U.S. ___, ___, 51 U.S.L.W. 4853, 4860 (U.S. June 22, 1983) (Stevens, J., concurring), we find that it is not approached here by the available means of avoiding submergence or fragmentation of any of the black voter concentrations at issue. The most serious problem is that posed by the configuration of the black voter concentration in House District No. 8, comprised of Wilson, Nash and Edgecombe Counties. The configuration of the single-member district specifically suggested by the plaintiffs as a viable one is obviously not a model of aesthetic tidiness. But given the evidence, not challenged by defendants, that in the present multi-member district the black population, 39.5% of the total, simply cannot hope ever to elect a candidate of its choice, aesthetics, as opposed to compactness and commonality of interests, cannot be accorded primacy. *See Carstens v. Lamm, supra; Skolnick v. State Electoral Board*, 336 F. Supp. 839, 843 (N.D. Ill. 1971) (three-judge court) (even compactness not a fundamental requirement).

Ultimate Findings Of Fact

1. Considered in conjunction with the totality of relevant circumstances found by the court—the lingering effects of seventy years of official discrimination against black citizens in matters touching registration and voting, substantial to severe racial polarization in voting, the effects of thirty years of persistent racial appeals in political campaigns, a relatively depressed socio-economic status resulting in significant degree from a century of *de jure* and *de facto* segregation, and the

continuing effect of a majority vote requirement—the creation of each of the multi-member districts challenged in this action results in the black registered voters of that district being submerged as a voting minority in the district and thereby having less opportunity than do other members of the electorate to participate in the political process and to elect representatives of their choice.

2. Considered in conjunction with the same circumstances, the creation of single-member Senate District No. 2 results in the black registered voters in an area covered by Senate Districts Nos. 2 and 6 having their voting strength diluted by fracturing their concentration into two districts in each of which they are a voting minority and in consequence have less opportunity than do other members of the electorate to participate in the political process and to elect representatives of their choice.³³

³³ The state challenges the basic premise of this finding with the familiar argument that the relative merits of legislative division of a minority population that is not large enough to form voting majorities in two single-member districts into an effective voting majority in one single-member district and an ineffective minority in another or, on the other hand, dividing it into two substantially influential minorities in two districts is so problematical that neither the one nor the other division can properly be adjudged “dilutive” by a court. *See, e.g., Seamon v. Upham*, 536 F. Supp. 931, 949 (E.D. Tex.) (three-judge court) *rev'd on other grounds*, 456 U.S. 37 (1982); compare *Jordan v. Winter*, 541 F. Supp. 1135, 1143 (N.D. Miss. 1982) (three-judge court), *vacated and remanded for further consideration in light of amended § 2*, 103 S. Ct. 2077 (1983) (legislative preference unchallengeable) with *Kirksey v. Board of Supervisors*, 554 F.2d at 150 (dilution possible even if one of districts has a bare black population majority). The specific argument here is that any increase in the present minority population of 55.1% in Senate District No. 2 will be at the expense of the present 49.3% black population in Senate District No. 6, the obvious source of District 2 increase.

We are not impressed with the argument. While the dilemma is a real one, we think it is one that Congress has, in effect, committed to the judgment of the black community to whom it has given the private right of action under amended § 2. The right created is, by definition, that of a “class” and the procedural means of vindicating it by a class action has also been provided by

(footnote continued on next page)

IV

CONCLUSIONS OF LAW

1. The court has jurisdiction of the parties and of the subject matter of the action under 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1973c.

2. The court is properly convened as a three-judge court under 28 U.S.C. § 2284(a).

3. The action has been properly certified as a class action on behalf of all black residents of North Carolina who are registered to vote. No challenge is made to the propriety of the class action under any of the criteria of the governing class action rule, Rule 23, Fed. R. Civ. P.

4. Of the challenged districts, only House District No. 8 (Wilson, Edgecombe and Nash) and Senate District No. 2 include counties that are covered under § 4(a) of the Voting

(footnote continued from previous page)

Congress in Fed.R.Civ.P. 23. When, as here, such a class action is brought by a class which includes such a fragmented concentration of black voters, a group judgment about the group's best means of access to the political process must be assumed reflected in the specific claim made by the class. The legitimacy of that group judgment, from the standpoint of members of the class identified, can be put to test by standard procedures: by challenges to the adequacy of representation or the typicality of claims by any members of the identified class who question the wisdom or validity of the class claim under Rule 23(a)(3) & (4), Fed.R.Civ.P., or even by attempted intervention under Rule 24, Fed.R.Civ.P. When, as here, no such challenges are made, a dilution claim made by the class is properly assessed in the terms made, and on the understanding that any judgment entered on its basis will be binding on all members of the class who may not later second-guess it under ordinary principles of claim preclusion, *see* Restatement (Second) Judgments § 24 comments b, c; § 25 comments f, m; § 41(1)(e), (2) comment e, or, possibly, judicial estoppel, *see Allen v. Zurich Ins. Co.*, 667 F.2d 1162 (4th Cir. 1982).

If this were not the approach taken, a foolproof means would be provided for irremediable fracturing of any such minority voter concentration. That cannot have been intended by Congress. A different situation of course would be presented if the class of black voters bringing such a dilution-by-fracturing claim included only the voters in one of the districts into which the fracturing had occurred. That is not this case.

Rights Act and for which preclearance is required under § 5 of that Act, 42 U.S.C. § 1973c.

The Attorney General's indication on April 27, 1982, that, so far as it affected covered counties, he would interpose no objection under § 5 to the legislative enactment of the redistricting plan which, *inter alia*, created House District No. 8 and Senate District No. 2 does not have the effect of precluding this claim by plaintiffs brought under amended § 2 to challenge the redistricting plan in respect of these two districts. 42 U.S.C. § 1973c; *Major v. Treen*, *supra*, slip op. at 200 n.1; *United States v. East Baton Rouge Parish School Board*, 594 F.2d 56, 59 n.9 (5th Cir. 1979); *see also Morris v. Gressette*, 432 U.S. 491, 506-07 (1977). Because the standards by which the Attorney General assesses voting changes under § 5 are different from those by which judicial claims under § 2 are to be assessed by the judiciary, *see* S. Rep. No. 97-417, *supra* note 10, at 68, 138-39, and because the former are applied in a non-adversarial administrative proceeding, the Attorney General's preclearance determination has no issue preclusive (collateral estoppel) effect in this action. *See* Restatement (Second) Judgments §§ 27 comment C; 83(2) & (3) (1980).

5. The meaning and intended application of amended § 2 of the Voting Rights Act in relation to the claims at issue in this action are as stated in Part II of this Memorandum Opinion.

6. On the basis of this court's ultimate findings of fact, the plaintiffs have established that the creation by the General Assembly of North Carolina of multi-member House Districts Nos. 8, 21, 23, 36 and 39, multi-member Senate District No. 22, and single-member Senate District No. 2 will, as applied, result in an abridgement of their voting rights, as members of a class protected by subsection (a) of amended § 2 of the Voting Rights Act, in violation of that section.

7. The plaintiffs are entitled to appropriate relief from the violation.

REMEDY

Having determined that the state's redistricting plans, in the respects challenged, are not in compliance with the mandate of amended § 2 of the Voting Rights Act, the court will enter an order declaring the redistricting plan violative of § 2 in those respects, and enjoining the defendants from conducting elections pursuant to the plan in its present form.

In deference to the primary jurisdiction of state legislatures over legislative reapportionment, *White v. Weiser*, 412 U.S. 783, 795 (1973), we will defer further action to allow the General Assembly of North Carolina an opportunity to exercise that jurisdiction in an effort to comply with § 2 in the respects required. This is especially appropriate where, as here, the General Assembly adopted the plan found violative of § 2 before the enactment of the amended version of that statute which now applies, and where there has accordingly been no previous legislative opportunity to assess the amended statute's substantial new requirements for affirmatively avoiding racial vote dilution rather than merely avoiding its intentional imposition.

Having determined that the present plan violates a secured voting right, our obligation remains, however, to provide affirmative judicial relief if needed to insure compliance by the state with its duty to construct districts that do not dilute the voting strength of the plaintiff class in the ways here found, or in other ways. See *In re: Illinois Congressional Districts Reapportionment Cases*, No. 81 C 1395, slip op. (N.D. Ill. 1981), *aff'd mem. sub nom.*, *Ryan v. Otto*, 454 U.S. 1130 (1982); *Rybicki v. State Board of Elections*, No. 81 C 6030 (N.D. Ill. Jan. 12, 1982); *Kirksey v. Board of Supervisors*, 554 F.2d 139 (5th Cir.), *cert. denied*, 434 U.S. 968 (1977).

Recognizing the difficulties posed for the state by the imminence of 1984 primary elections, the court will convene at any time, upon request of the state, to consider and promptly to rule upon any redistricting plan that has been enacted by the

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State in an effort to comply with the mandates of § 2 and with this decision. Failing legislative action having that effect within a reasonable time under the circumstances, not later than March 16, 1984, the court will discharge its obligation to develop and implement an appropriate remedial plan.

An appropriate order will issue.

I. STIPULATIONS

The parties to *Gingles v. Edmisten* and *Pugh v. Hunt* enter into the following stipulation for use in these actions.

- A. Jurisdictional Stipulations (1-6)
- B. Legislative Chronology (7-48 with Exhibits A-II and AAA-RRR)
- C. Other Stipulations of Fact (49-193 with Exhibits JJ-SS)

A. Jurisdictional Stipulations

1. The Court has jurisdiction over the subject matter of these two actions pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (a)(4).

2. A three judge court is properly convened pursuant to 28 U.S.C. § 2284(a).

3. The court has jurisdiction over all parties to the actions.

* * * * *

4. *Gingles v. Edmisten* has been properly certified as a class action on behalf of all black residents of North Carolina who are registered to vote.

5A. Ralph Gingles is an adult black resident of Gaston County, North Carolina and is registered to vote.

B. Sippio Burton is an adult black resident of Cumberland County, North Carolina and is registered to vote.

C. Joe P. Moody is an adult black resident of Halifax County, North Carolina and is registered to vote.

D. Fred Belfield is an adult black resident of Edgecombe County, North Carolina and is registered to vote.

* * * * *

6C. Maron McCullough, is an adult black resident of Iredell County and is registered to vote and affiliated with the Republican party.

6D. Paul B. Eaglin is an adult black resident of Cumberland County and is registered to vote and affiliated with the Republican party.

* * * * *

6I. Joe B. Roberts is an adult black resident of Mecklenburg County is registered to vote and is affiliated with the Republican party.

B. Legislative Chronology

7. The 1981 General Assembly, pursuant to N.C.G.S. 120-11.1, convened on Wednesday, January 14, 1981.

8. On January 16, 1981, the Speaker of the North Carolina House of Representatives, the Honorable Liston B. Ramsey, pursuant to Rules 26 and 27 of the Rules of the 1981 House of Representatives, General Assembly of North Carolina, appointed the following members of the Legislative Redistricting Committee: Representatives Jones and Lilley, Chairmen; Representatives Bundy and Messer, Vice Chairmen; Representatives Almond, Barnes, Beam, Blue, Bone, Brennan, Chapin, Church, D. Clark, Craven, Creecy, Diamont, Enloe, Bob Etheridge, Evans, Gillam, Grady, Guy, Hackney, Hege, Hiatt, Hightower, Holmes, J. Hunt, R. Hunter, T. Hunter, Lacey, McAlister, Morgan, Nash, Nesbitt, Nye, Quinn, Rabon, Redding, Rhodes, Spaulding, and Taylor.

9. Representatives Blue, Creecy and Spaulding were the only black members of the House during the 1981 General Assembly.

10. On January 19, 1981, the President of the North Carolina Senate, the Honorable James C. Green, pursuant to Rules 31 and 32 of the Rules of the 1981 Senate, Gen-

eral Assembly of North Carolina, appointed the following members of the Committee on Redistricting—Senate: Senators Rauch, Chairman; Duncan, Allsbrook, Vice-Chairmen; Allred, Ballenger, Barnes, Boger, Cavanagh, Clarke, Creech, Garrison, Gray, Hardison, Harrington, Kincaid, Lawing, Mills, Noble, Palmer, Raynor, Royall, Soles, Speed, Thomas of Craven, Thomas of Henderson, Walker, Warren, and Wright. The members of the Committee on Redistricting—Senate, appointed on January 19, 1981, were all white.

11. On July 2, 1981, Chapter 771 of the 1981 Session Laws (Regular Sessions, 1981), AN ACT TO PROVIDE FOR THE SEVERABILITY OF PROVISIONS OF REDISTRICTING ACTS OF THE GENERAL ASSEMBLY, was ratified in the General Assembly. (Exhibit A).

12. On July 3, 1981, Chapter 800 (House Bill 415) of the 1981 Session Laws (Regular Sessions, 1981), which redistricted the House of Representatives, was ratified in the General Assembly. (Exhibit B). The Legislative Services Office prepared a map indicating districts of and computer statistics analyzing the districts created by that Chapter (Exhibit C, D, respectively).

13. On July 3, 1981, Chapter 821 (Senate Bill 313) of the 1981 Session Laws (Regular Sessions, 1981) which redistricted the Senate was ratified in the General Assembly. (Attachment E). The Legislative Services Office prepared a map indicating and computer statistics analyzing the districts created by that Chapter. (Exhibits F, G respectively).

14. On September 16, 1981 *Gingles v. Edmisten*, 81-803-CIV-5, was filed alleging, *inter alia* that the apportionments of the North Carolina House of Representatives and Senate violated the one person one vote requirement of the equal protection clause, illegally and unconstitutionally diluted the voting strength of black citizens, and

that Article II, §§ 3(3) and 5(3) of the North Carolina Constitution were being enforced without having been pre-cleared pursuant to § 5 of the Voting Rights Act.

15. On September 23, 1981, North Carolina made its initial submission of Article II, § 3(3) and § 5(3) of the North Carolina Constitution to the United States Department of Justice pursuant to § 5 of the Voting Rights Act. This submission was completed on October 1, 1981.

16. On October 10, 1981, the President Pro Tempore of the Senate appointed Senator Frye of Guilford County to the Committee on Redistricting—Senate in response to a request by Senator Gray of Guilford County that she be removed from the Committee.

17. Senator Frye was the only black member of the Senate during the 1981 General Assembly.

18. On October 29, 1983, the General Assembly met again to consider redistricting pursuant to Resolutions 66 and 80 of the 1981 Session Laws (Regular Sessions, 1981). (Exhibits H, I).

19. On October 30, 1981, Chapter 1130 (House Bill 1428) of the 1981 Session Laws (Regular Sessions, 1981), AN ACT TO APPORTION THE DISTRICTS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES, was ratified in the General Assembly (Exhibit J). The Legislative Services Office prepared a map indicating and computer statistics analyzing the districts created by that Chapter. (Exhibits K, L respectively). The General Assembly did not enact a new apportionment of the Senate.

20. The Legislative Services Office did not systematically analyze proposed reapportionment plans using race as a factor until after the October, 1981 legislative sessions.

21. On November 25, 1981, *Pugh v. Hunt*, 81-1066-CIV-5 was filed in the Superior Court for Iredelle County, North

Carolina. It was subsequently removed to this Court. It alleged, *inter alia* that the apportionments of the North Carolina House of Representatives and the North Carolina Senate violate the Fourteenth Amendment of the United States Constitution.

22. By letter of November 30, 1981, the United States Attorney General interposed objection pursuant to § 5 of the Voting Rights Act to two amendments to the Constitution of North Carolina, Article II, § 3(3) and § 5(3). (Exhibit M).

23. By letter of December 7, 1981, the United States Attorney General interposed an objection pursuant to § 5 of the Voting Rights Act to Chapter 894 (S.B. 87,) and Chapter 821 (S.B. 313), North Carolina's reapportionment plans for the State Senate and the United States Congress. (Exhibit N).

24. The Legislative Services Office, in analyzing plans proposed or adopted after December, 1981, used the population statistics indicated in Exhibit N-1.

25. By letter of January 20, 1982, the United States Attorney General interposed an objection pursuant to § 5 of the Voting Rights Act to Chapter 1130 (H.B. 1428), North Carolina's reapportionment plan for the State House of Representatives. (Exhibit O).

26. On January 28, 1982, the Senate Committee on Redistricting—Senate and the House Redistricting Subcommittee met to be briefed by the State's retained counsel. At a joint meeting the Senate Committee and the House Subcommittee adopted the redistricting criteria in Exhibit O-1. On February 2, the full House Committee on Legislative Redistricting adopted the amended redistricting criteria contained in Exhibit O-2.

27. On February 3, 1982, Representative Joe Hege presented to the House Committee on Legislative Redistrict-

ing a map illustrating the Republican House single-member redistricting plan, attached as the final document in the minutes and transcripts of the House Legislative Redistricting Committee, entitled "*House Legislative Redistricting, February Session--1982*" (Exhibit LLL).

The plan contained all single member house districts of contiguous territory and had, according to statistics supplied by Mr. Hege, a population deviation of less than plus or minus 5%. The apportionment included majority black single member districts in Mecklenburg, Forsyth, Guilford, Cumberland, Wake, Durham, and Northeast North Carolina.

28. On February 4, 1982, the Congressional redistricting committees of the House and Senate, the Senate Committee on Redistricting—Senate and the House Committee on Legislative Redistricting held a joint public hearing in the State Legislative Building in Raleigh. Notices of the hearing were published in the *Asheville Citizen* and *Asheville Times*, *Durham Morning Herald*, the *Raleigh News and Observer*, and the *Charlotte Observer*, on January 31, February 1, 2, 3, and 4, 1982, with the exception of the *Asheville Citizen* and *Asheville Times*, which did not publish on January 31, 1982. Said notice, in its entirety, is reflected by Exhibit P. In addition, those groups listed in Exhibits Q and Q-1 were provided with press releases and supporting information in the manner indicated. (Exhibits Q, Q-1). A transcript of this public hearing is attached as Exhibit AAA.

29. On February 4, 1982, at the public hearing, the North Carolina Black Lawyers Association submitted a proposed apportionment of the North Carolina Senate which contained three majority black single-member districts. Each of the single-member districts in the apportionment plan contained contiguous territory and had a population deviation of less than plus or minus 5%. The statistics used to produce this plan were obtained from

the 1980 census and are accurate. This apportionment included a Senate district wholly within Mecklenburg County which is 62.3% black and a Senate district in northeast North Carolina which is 60.7% black.

30. At the public hearing on February 4, 1982 the North Carolina Black Lawyers Association presented a proposed apportionment of the North Carolina House of Representatives which contained ten majority black single-member districts. This map included a single-member district wholly within Wake County which is 67% black, a single-member district wholly within Durham County which is 71.9% black, a single-member district wholly within Forsyth County which is 81.6% black, a single-member district in Mecklenburg County which is 69.9% black, and an additional single-member district in Mecklenburg County which is 56.8% black. The single-member districts in this plan all contain contiguous territory, have less than plus or minus 5% population deviation and are statistically accurate based on the 1980 census.

31. The House and Senate proposals of the North Carolina Black Lawyers Association are attached as the final two documents in the "*N.C. General Assembly Extra Session 1982, Redistricting Public Hearings of 02-04-82, Minutes, Transcripts, and Attachments*" (Exhibit AAA).

32. On February 9, 1982, the North Carolina General Assembly convened in an extra session for the purpose of enacting new apportionment plans for the State House of Representatives, State Senate, and United States Congress pursuant to a proclamation of the Governor. (Exhibit Q-2).

33. On February 11, 1982, Chapter 4 (House Bill 1) of the Session Laws of the First Extra Session 1982, which again redistricted the House of Representatives was ratified in the General Assembly. (Exhibit R). The Legislative Services Office prepared a map and computer statis-

tics analyzing the districts created by this Chapter. (Exhibits S, T respectively).

34. On February 11, 1982, Chapter 5 (Senate Bill 1) of the Session Laws of the First Extra Session, 1982, which again redistricted the Senate was ratified in the General Assembly on February 11, 1982. (Exhibit U). The Legislative Services Office prepared a map indicating and computer statistics analyzing the districts created by this Chapter. (Exhibits V, W respectively).

35. In addition, by Chapter 7 of the Session Laws of the First Extra Session, the General Assembly enacted a new apportionment of North Carolina's Congressional districts. This plan was pre-cleared by the United States Attorney General, and by Order dated April 27, 1982, the claims in *Gingles v. Edmisten*, regarding the Congressional plans were voluntarily dismissed.

36. In addition to enacting its State legislative redistricting plans, the General Assembly ratified on February 11, 1982, Chapter 3 of the Session Laws of the First Extra Session, 1982 providing, among other matters, for alternative dates for North Carolina's filing period and primaries. (Exhibit X).

37. By letter of April 19, 1982, the United States Attorney General interposed an objection to the House and Senate Redistricting Plans, Chapters 4 and 5 of the Session Laws of the First Extra Session, 1982, and deferred consideration of Chapter 3. (Exhibit Y). On April 26, 1982, the General Assembly reconvened for the Second Extra Session.

38. On April 26, 1982, Representative Joe Hege filed House Bill 7 which would create a single-member redistricting plan for the House. The bill was drawn by the Legislative Services Office's Bill Drafting Division using a computer print-out furnished by Representative Hege (Exhibit Y-1, Y-2, respectively). House Bill 7 received its

first reading on April 27, 1982, and was referred to the House Committee on Legislative Redistricting.

39. On April 27, 1982, Senator Ballenger offered to the Committee on Redistricting—Senate a map with accompanying statistics outlining a single-member Senate district plan and by substitute motion, moved its adoption. That motion was tabled. (Exhibits Y-3, Y-2).

40. On April 27, 1982, Senators Ballenger and Wright filed Senate Bill 2 which would create a single-member redistricting plan for the Senate. As the General Assembly adjourned that day the bill never received its first reading. The bill was prepared by the Legislative Services Office's Bill Drafting Division from a computer print-out furnished by Senator Ballenger (Exhibits Y-3, Y-2, respectively).

41. The plans referred to in Paragraphs 32, 33 and 34 all contain contiguous territory, have less than plus or minus 5% population deviation and are statistically accurate.

42. Chapter 1 (House Bill 1) of the Session Laws of the Second Extra Session, 1982, which redrew House Districts 17 and 18, was ratified in the General Assembly on April 27, 1982. (Exhibit Z). The Legislative Services Office produced a map indicating and computer statistics analyzing the new plan. (Exhibits AA, and BB).

43. Chapter 2 (Senate Bill 1) of the Session Laws of the Second Extra Session, 1982, which redrew Senate Districts 1, 2, 3, 6, 9, 10, and 11, was ratified in the General Assembly on April 27, 1982. (Exhibit CC). The Legislative Services Office produced a map indicating and computer statistics analyzing the new plan. (Exhibits DD, EE respectively).

44. On April 27, 1982, Chapter 3 (House Bill 2) of the Session Laws of the Second Extra Session, 1982, which provided, among other matters, for alternative dates for

North Carolina's filing period and primaries. (Exhibit FF).

45. By letter of April 30, 1982, the United States Attorney General indicated that he would not interpose an objection to Chapters 1 and 2 of the Session Laws of the Second Extra Session, 1982, (the amended House and Senate redistricting plans) but interposed an objection to the candidate filing period and primary election date contained in Chapter 3 of said Session Laws. (Exhibit GG.) The State of North Carolina, through the North Carolina State Board of Elections, responded to the objection of the United States Attorney General on May 6, 1982, by revising the 1982 primary election timetable for the State of North Carolina, providing *inter alia*, that the date of the primary elections for 1982 be changed from June 10, 1982, to June 29, 1982, as is exhibited by the letter and attachments to Mr. William Bradford Reynolds from Mr. Alex K. Brock of the State Board of Elections. (Exhibit HH).

46. By letter of May 20, 1982, the Office of the Attorney General indicated it would not interpose an objection to the revised 1982 primary election timetable for 1982 as amended by the State Board of Elections. (Attachment II).

47. In accordance with the revised timetable and with Chapters 2 and 3 of the Sessions Laws of the Second Extra Session, Primary and General Elections were held for the North Carolina General Assembly in 1982.

48. Exhibits AAA-UUU are accurate copies of the Journals of the North Carolina House of Representatives of the North Carolina Senate, the minutes of the House and Senate Redistricting Committees and of the transcripts of committee meetings and floor debates relating to redistricting. The transcripts are accurate transcriptions of those portions of the meetings which they purport to transcribe.

- AAA — NC General Assembly—Extra Session 1982—
Redistricting Public Hearings of February 4,
1982—Minutes, Transcripts and Attachments
- BBB — NC General Assembly—First Extra Session 1982
—House and Senate Journals
- CCC — 1981 Senate Redistricting—Minutes of Senate
Redistricting Committee Meetings and Other
Supplementary Materials
- DDD — NC Senate Legislative Redistricting—First Ex-
tra Session 1982 (February) Senator Marshall A.
Rauch, Chairman
- EEE — Verbatim Transcript of the Senate of the Gen-
eral Assembly of the State of NC—Second Extra
Session, April 1982
- FFF — 1981 General Assembly, Regular Sessions—1981
Senate Legislative Redistricting—Committee
Meeting Transcripts
- GGG — 1981 Senate Redistricting—October Special Ses-
sion—Minutes and Supplementary Related Ma-
terials
- HHH — NC General Assembly—(Second Extra Session
1982) Bills, Amendments, Roll Calls, and Maps
- III — Journal of the Senate of the General Assembly
of the State of NC—Second Extra Session 1982
- JJJ — NC General Assembly 1982—First Extra Ses-
sion—Transcript of Senate Proceedings—Febru-
ary 9-10-11, 1982—Floor Debate
- KKK — NC General Assembly—First Extra Session 1982
(February)—Summary of Proceedings with
Supplementary Materials (Senate)
- LLL — House Legislative Redistricting, February Ses-
sion—1982

- MMM — NC House of Representatives 1981—Legislative Reapportionment History and Information
- NNN — NC House Reapportionment—October 1981: Legislative History for HB-1428
- OOO — House Legislative Redistricting—April Session—1982
- PPP — NC General Assembly—First Extra Session 1982.—HB-1 (Session Laws Chapter 4): Bill Drafts, Amendments Offered, and Roll Calls
- QQQ — NC General Assembly (Second Extra Session 1982)—House Journal
- RRR — 1981 General Assembly, Regular Sessions 1981—House Legislative Redistricting Committee Meeting Transcripts
- SSS — Volume 1 Minutes—House Legislative Redistricting Committee—February 2, 1982
Volume 2 Minutes—House Legislative Redistricting Committee—February 3, 1982
- TTT — North Carolina General Assembly Second Extra Session—1982 Senate Legislative Redistricting Committee Meetings—Minutes and Transcripts
- UUU — NC General Assembly (Second Extra Session 1982)—House Legislative Redistricting Committee—Meeting Transcripts (April, 1982)

C. Other Stipulations of Fact

49. The vote abstracts, voter turnout figures, and voter registration figures used by Bernard Grofman and Thomas Hofeller as the basis of their analyses of or testimony about voting patterns are accurate and genuine. Any party or witness may refer to the information indicated

in these documents during the course of the trial of these actions without further foundation.

50. The following is an accurate list of the black candidates who filed to run in the indicated elections. All candidates were Democrats unless otherwise indicated. This is not a complete list of all elections in which there were black candidates.

A. Mecklenburg County

1978 Senate — Fred Alexander
 1980 Senate — Fred Alexander
 1980 House — Bertha Maxwell
 1982 Senate — James Polk
 1982 House — Phil Berry
 James Richardson

B. Durham County

1978 Senate — Alexander Barnes (Rep)
 1978 House — Howard Clement
 Kenneth Spaulding
 1980 House — Kenneth Spaulding
 1982 House — Howard Clement
 Kenneth Spaulding

C. Forsyth County

1978 House — Harold Kennedy
 Joseph Norme
 C. C. Ross
 1980 Senate — Moses Small
 1980 House — Annie Kennedy
 Joseph Norman
 Rodney Sumter
 1982 House, 39th District—C. B. Houser
 Annie Kennedy
 1981 Winston-Salem—Winston-Salem City Council—
 Southeast Ward Larry Womble

51. The General Assembly divided counties in the apportionment of the House of Representatives and of the Senate only when necessary to bring population deviation under plus or minus 5% or when necessary to obtain pre-clearance from the United States Department of Justice pursuant to § 5 of the Voting Rights Act of 1965, as amended.

52. From 1776 through 1981, no county was divided in the formation of either House or Senate districts with the exception of six and then seven borough towns which were additional House districts from 1776 until 1835.

52A. In multimember districts there is no subdistrict or residency requirement which requires that at-large candidates reside in particular geographic subdistricts.

53. From 1835 through 1981 all North Carolina House and Senate Districts have been either single or multi-member districts consisting of an entire county of two or more whole counties joined together.

54. On May 27, 1983, Representatives John Jordan and Chris Barker introduced House Joint Resolution Bill 1146 in the North Carolina General Assembly. That resolution authorized the Legislative Research Commission to study the feasibility of redistricting in 1990 so as to have single-member districts. It charged the Commission to produce a map redistricting the Senate and House into single-member districts and to report to the 1985 General Assembly. It was referred to the House Committee on Rules and received an unfavorable report on June 3, 1983.

55. In February and April, 1982 the General Assembly was aware that multi-member districts in Mecklenburg, Forsyth, Durham, Wake, Wilson, Edgecombe and Nash Counties would be maintained if these counties were not divided.

56. For statistics which use white and non-white, non-white is 93% black in North Carolina.

57. The percentage of the population and of the registered voters in the following House and Senate districts is as indicated:

<i>House District and Number</i>	<i>Percentage of population that is Black¹</i>	<i>Percent of Registered Voters that is Black</i>
Mecklenburg (#36)	26.5	18.0 ²
Forsyth (#39)	25.1	20.8 ³
Durham (#23)	36.3	28.6 ²
Wake (#21)	21.8	15.1 ²
Wilson-Edgecombe-Nash (#8)	39.5	29.5 ²
 <i>Senate Districts</i>		
Mecklenburg-Cabarrus (#22)	24.3	16.8 ²
Northeast North Carolina (#2)	55.1	46.2 ⁴

¹ From Legislative Services Office, derived from 1980 Census.

² From October 4, 1982 State Board of Elections Registration Statistics Part II.

³ October 4, 1982 Forsyth registration minus registration for Belews Creek, Salem Chapel #1 and Salem Chapel #2 precincts.

⁴ October 4, 1982 registration for whole counties from State Board of Elections Registration Statistics Part II; township registration October 4, 1982 from Washington, Martin, Halifax, and Edgecombe Boards of Elections.

58. A lower percentage of the black population than of the white population is registered to vote in Mecklenburg, Forsyth, Durham, Wake, Wilson, Edgecombe, Nash, Halifax, Northampton, Hertford, Gates, Martin, Bertie, Washington and Chowan Counties. Specifically, the percentage of the black and white voting age population which is registered to vote in each of these counties is as follows:

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<i>County</i>	<i>Percent of Voting Age Population Registered to Vote 1970^{1,2}</i>		<i>Percent of Voting Age Population Registered to Vote 1980³</i>	
	<i>White</i>	<i>Black</i>	<i>White</i>	<i>Black</i>
Mecklenburg	66.3	40.6	68.1	43.8
Forsyth	73.0	73.6	69.7	62.8
Durham	72.0	64.0	66.1	43.3
Wake	63.7	37.2	68.3	42.3
Wilson	66.2	36.3	64.4	40.0
Edgecombe	75.4	46.0	67.3	40.7
Nash	48.2	18.4	58.1	21.3
Halifax	92.4	47.9	69.7	48.2
Northampton	107.8	80.7	74.6	61.6
Hertford	73.4	64.6	78.9	60.0
Gates	79.3	57.5	82.5	77.6
Martin	86.6	66.0	73.9	53.3
Bertie	106.2	98.3	77.0	50.1
Washington	68.2	78.1	80.1	64.3
Chowan	77.3	48.7	72.3	53.3

¹ Number of white/non-white voters as of June 5, 1970 divided by total white/black population 21 years old or older.

² Beginning in the twelve-month period following the 1972 Presidential Election, county Boards of Elections have been required to remove from permanent registration records the names of all persons who have failed to vote for a period of four years. Beginning January 2, 1981, after the 1980 Presidential Election and thereafter for each subsequent presidential election, county Boards of Elections are not allowed to remove from registration records the name of any person who voted in either one of the two most recent presidential elections or in any other election conducted in the period between the two presidential elections. County Boards of Elections may also remove the names of any persons who have either moved their residence from the county or who have died, as indicated by Certificates of Death received from the State Department of Human Resources or cancellation notices received from other counties and states as to residency.

³ Number of white/black registered voters as of April 8, 1980 divided by total white/black population 18 years old or older.

59. The following is the percent of the population, the voting age population and the registered voters that is black in the indicated counties:

	<i>Percent of Population that is Black</i>	<i>1980 Percent of VAP that is black</i>	<i>Percent of Reg. voters that is Black</i>
Mecklenburg	26.5	24.0	16.9
Forsyth	24.4	22.0	20.3
Durham	36.3	33.6	24.9
Wake	21.7	20.5	13.7
Wilson	36.4	32.4	23.0
Edgecombe	50.8	46.7	34.6
Nash	32.9	29.4	13.2
Halifax	47.1	44.0	35.2
Northampton	60.7	56.2	51.4
Hertford	54.8	51.1	44.3
Gates	52.6	49.4	47.8
Martin	44.5	40.6	33.1
Bertie	59.2	54.5	44.2
Washington	43.3	39.1	34.0
Chowan	41.5	38.1	31.2

60. Exhibit JJ, entitled "Vital Statistics of Counties in North Carolina," is a compilation of registration figures for each county as of February 9, 1982, with estimated percentages of voting population registered figured for white, non-white, and total voting age populations by race.

61. Exhibits KK and LL "Registration Statistics Parts I and II," is the most recent statewide compilation of voter registration figures for each county in the state by race and party, reported as of October 4, 1982.

62. In 1980 there were 1,319,054 black people in North Carolina. That is 22.4% of the total population. (Source: 1980 Census).

63. The mean income of households in 1979 was as follows:

	<i>Black</i>	<i>White</i>	<i>Difference</i>
North Carolina	\$13,833	\$21,162	\$7,329 (34.6%)
National	\$15,806	\$24,939	\$9,133 (36%)
Difference	\$ 1,973	\$ 3,770	

64. 44.7% of the households with no vehicles available are black households. 75% of black households and 93% of white households have vehicles available.

65. 30.3% of black people in North Carolina live in poverty compared to 10.0% of white people.

66. Non-white households in North Carolina are 23.0% of all households but are 42% of all poverty households. (A poverty household is one in which the combined household income falls below 100% of the poverty level (adjusted by family size) established by the United States Office of Management and Budget.) Blacks account for 11.7% of the United States population but are 32.5% of the United States population living in poverty.

67. In North Carolina 51% of the single parent households have a black head of household.

68. Between 1970 and 1980 non-white workers consistently had a higher incidence of unemployment than white workers. For each of these years non-whites were a higher percentage of claimants for unemployment benefits than the percentage of the workforce which is non-white.

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<i>Year</i>	<i>Male non-white Claimants¹</i>	<i>Male non-white in Workforce²</i>	<i>Female non-white Claimants¹</i>	<i>Female non-white in Workforce²</i>
1970	21.0	13.3	18.6	8.5
1971	16.7	13.3	17.8	8.5
1972	17.7	13.3	19.0	8.2
1973	22.8	11.0	18.0	8.6
1974	15.9	11.0	19.0	8.6
1975	13.5	11.0	14.0	8.6
1976	17.6	11.0	13.4	8.6
1977	18.0	11.0	12.6	8.6
1978	22.3	11.2	14.1	9.0
1979	18.1	11.2	17.4	9.0
1980	17.3	11.2	16.2	9.0

¹ Percent of all claimants which is non-white male/female.

² Percent of all labor force which is non-white male/female
[Note: This is taken from the ESC first survey week of each year.]

69. As of June 30, 1980, the percent of North Carolina permanent full-time employees subject to the State Personnel Act, excluding universities, that fall in each salary range was as follows:

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<i>Salary Range</i>	<i>Percent of White Employees</i>	<i>Percent of Black Employees</i>
Less than \$8,000	2.06	7.41
\$8,000—\$8,999	5.09	12.40
\$9,000—\$9,999	7.88	14.33
\$10,000—\$10,999	12.15	20.05
\$11,000—\$11,999	11.21	15.82
\$12,000—\$12,999	11.21	10.72
\$13,000—\$14,999	14.59	7.88
\$15,000—\$16,999	8.36	3.55
\$17,000—\$19,999	12.02	4.73
\$20,000—\$23,999	7.54	1.93
\$24,000+	7.88	1.17

Median salaries: White \$13,053
Black \$10,790

A higher percent of black employees than of white employees is employed at every salary level below \$12,000 and a higher percent of white employees than of black employees is employed at every salary level above \$12,000.

70. As of December 31, 1980, permanent full-time North Carolina State Government employees covered by the State Personnel Act, excluding university system personnel, numbered 50,012, 78% of whom were white, 21% black, and 1% of other ethnic/racial origins. One half of employees earn below the following amounts annually:

	<i>White</i>	<i>Black</i>	<i>Other</i>
male	13000	11000	12000
female	12000	11000	11000

71. The following chart shows the white and black percentage of employees of each salary grade classification group for June 30, 1977, and December 31, 1981. These figures include all permanent full time non-university em-

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ployees subject to the State Personnel Act. In the 83-87 category, others (non-white, non-blacks) decreased in both number and percentage. In the 93+ category there were 18 employees on June 30, 1977, and 12 on December 31, 1981.

<i>Salary Grade</i>	<i>White</i>		<i>Black</i>	
	<i>6/30/77</i>	<i>12/31/81</i>	<i>6/30/77</i>	<i>12/31/81</i>
48-52	39.1	37.5	60.4	62.1
53-57	73.6	65.9	25.8	32.7
58-62	85.9	77.1	13.5	21.9
63-67	90.6	88.3	8.8	10.7
68-72	93.7	90.0	5.6	9.0
73-77	95.6	93.2	3.9	5.9
78-82	97.2	94.9	2.5	4.6
83-87	79.3	90.0	6.7	7.0
88-92	83.4	86.8	0.8	2.7
93+	100.0	100.0	0.0	0.0

72. For the period from December 31, 1978, to June 20, 1980, black permanent full-time non-University State Employees subject to the State Personnel Act showed the following percentage increases in the following categories as exemplified by the table below:

	<i>Percentage Increase</i>	<i>Percent Black 12/31/78-6/30/80</i>
Officials and Administrators	+14.5%	5.3% to 6.2%
Skilled Craft	+14.0%	8.6% to 10%
Office and Clerical	+11.7%	12.8% to 14.5%
Protective Service	+11.1%	17.6% to 19.8%
Professional	+10.0%	10.6% to 11.5%
Paraprofessional	+11.0%	34.0% to 38.2%
Service & Maintenance	+ 2.3%	42.9% to 43.9%

73. Infant mortality rates in North Carolina are higher for non-whites than for whites. For the five year period

from 1976-1980 the infant mortality rate by race was as follows:

	<i>Fetal</i> ¹	<i>Neonatal</i> ²	<i>Post Neonatal</i> ³
White	9.4	9.5	3.3
Non-white	16.9	15.8	7.5

¹ The fetal death rate is the number of nonabortion fetal deaths after 20 weeks gestation per 1000 live births plus fetal deaths.

² The neonatal death rate is the number of deaths from birth to 28 days per 1000 live births.

³ The post neonatal death rate is the number of deaths from 29 days to 1 year per 1000 live births that attained the age of 29 days. This is a four year rather than a five year measure.

(Source: "Maternal and Child Care Statistics in North Carolina over the last Decade, "North Carolina Department of Human Resources, Spring 1981.)

74. The birth weight and infant death rate by race for the following North Carolina counties is as indicated below.

1975-1979 Five Year Rate

	<i>Percent</i>						<i>Post</i>	
	<i>Above 2501g</i> ¹		<i>Fetal Death</i> ²		<i>Neonatal</i> ³		<i>Neonatal</i> ⁴	
	<i>at birth</i>				<i>Death</i>		<i>Death</i>	
	White	Non-W	White	Non-W	White	Non-W	White	Non-W
Mecklenburg	94.1	86.6	7.9	15.7	9.0	19.5	3.0	5.9
Forsyth	94.0	87.2	9.0	15.0	9.7	16.2	2.5	4.6
Durham	94.4	86.6	6.7	17.8	7.2	14.5	2.1	6.8
Wake	94.1	86.7	9.1	15.5	8.0	15.9	2.8	6.8
Wilson	94.4	86.2	8.8	22.3	11.4	16.3	3.2	8.8
Edgecombe	93.5	86.9	7.7	13.5	7.7	14.8	2.8	6.9
Nash	94.8	89.2	11.0	17.8	6.6	18.1	2.8	9.1

¹ It is considered healthy for a baby to weigh more than 2501 grams at birth. 2501 grams is 5.5 lbs.

² The fetal death rate includes deaths after 20 weeks of gestation excluding abortions.

³ The neonatal death rate includes deaths from birth to 28 days.

⁴ The post-neonatal death rate includes deaths from 29 days to one year.

(Source: "Maternal and Child Health Statistics, "North Carolina Department of Human Resources, 1979.

75. The death rate for non-whites in North Carolina is higher than the death rate¹ for whites.² For example, the age-adjusted mortality rate for 1978 was:

	<i>White</i>	<i>Non-white</i>
male	916.9	1192.5
female	453.7	621.8

¹ Deaths per 100,000 population adjusted for age.

² North Carolina mortality rates for years during the decade from 1970 to 1980 are not completely accurate. Because minorities were undercounted in North Carolina in the 1970 census, projections for minority populations for years between 1970 and 1980 were based on an inaccurately low estimate of the minority population and resulted in high estimate of the death rate. For example, death rate figures for 1980 based on the 1980 census are 1.6% lower for whites and 6.2% lower for blacks than death rates for 1980 based on projections from the 1970 census.

76. From 1978 to 1979 the North Carolina death rate decreased by five percent for non-white females, by four percent for non-white males, by one percent for white males, and by one percent for white females.

77. The following table shows life expectancy in 1973 and 1974.

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Selected Life Table Values, by Age, Color and Sex:
 North Carolina, 1973 and 1974

<i>Value</i>		<i>Total</i>	<i>White</i>		<i>Non-White</i>	
			<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
Expectation of Life:						
at Birth						
	1973	68.90	66.68	74.70	59.06	67.56
	1974	69.87	67.54	75.44	60.13	69.04
At Age 1						
	1973	69.32	66.91	74.88	59.86	68.32
	1974	70.16	67.77	75.40	60.74	69.59
At Age 25						
	1973	46.64	44.37	51.67	37.92	45.43
	1974	47.30	44.99	52.14	38.48	46.67
At Age 65						
	1973	13.95	12.32	15.88	11.61	13.95
	1974	14.23	12.56	16.07	11.89	14.49
Percent Surviving from Birth:						
To Age 1						
	1973	97.97	98.19	98.44	97.04	97.45
	1974	98.19	98.20	98.75	97.38	97.79
To Age 25						
	1973	95.69	95.49	97.21	92.79	95.56
	1974	96.21	95.99	97.59	93.74	95.96
To Age 65						
	1973	68.61	63.17	82.03	44.99	65.05
	1974	70.51	65.13	83.35	46.16	68.46

Median Age
At Death:

1973	73.52	70.35	79.92	62.58	72.01
1974	74.40	71.03	80.34	63.17	73.51

Note: North Carolina mortality rates for years during the decade from 1970 to 1980 are not completely accurate. Because minorities were undercounted in North Carolina in the 1970 census, projections for minority populations for years between 1970 and 1980 were based on an inaccurately low estimate of the minority population and resulted in high estimate of the death rate. For example, death rates for 1980 based on projections from the 1970 census.

78. The following percentage of black and white students failed the North Carolina Competency Test in the fall of 1980, 1981, and 1982 (by school district). This chart reflects only the first time each student took the test; those who failed were given the opportunity to take the test again later.

79. The following table reflects the gains in reading for North Carolina students between 1977 and 1982 based on the annual testing program as shown for black students and for all North Carolina students.

North Carolina Average	Scale Scores
------------------------	--------------

Grade 3—5.1% gain over 1977-1982, from 391 to 411	
---	--

Grade 6—4.7% gain over 1977-1982, from 489 to 512	
---	--

Grade 9—3.0% gain over 1977-1982, from 562 to 579	
---	--

Black North Carolina Students' Average
--

Grade 3—7.7% gain over 1977-1982, from 362 to 390

Grade 6—6.9% gain over 1977-1982, from 448 to 479

Grade 9—4.7% gain over 1977-1982, from 507 to 531

80. In 1980 76% of the high school seniors who were awarded certificates instead of diplomas were black. (A certificate means the student completed all requirements for graduation but did not pass both parts of the competency test.) There were a total of 1,193 students awarded certificates: 984 black, 288 white; and 21 others. This number represents 1.82% of all high school seniors who neither withdrew nor were retained. (The racial composition and number of seniors who withdrew or were retained is not available.)

Of those receiving certificates, some were handicapped. The type of handicap by ethnic origin is as follows:

<i>Type of Handicap</i>	<i>Ethnic Group</i>					
	<i>Black</i>		<i>White</i>		<i>Other</i>	
		<i>%</i>		<i>%</i>		<i>%</i>
Not handicapped	314	24.3	61	4.7	5	.3
Multiple handicapped	12	.9	12	.9	2	.2
Educable mentally handicapped	612	47.3	191	14.8	7	.5
Hearing impaired			1			
Visually impaired			1			
Learning disabled	28	2.2	16	1.2		
Other handicap	18	1.4	6	.5	7	.5
	76.1%		22.3%		1.6%	

81. Black adults have fewer years of education than do white adults. The following chart shows the percent of the black/white adults 25 years old and over by the number of years of education completed.

	<i>Black</i>	<i>White</i>
Elementary (0-8 yrs.)	34.6%	22.0%
High School (1-3 yrs.)	22.4%	20.0%
High School (4 yrs.)	25.7%	28.4%
College (1-3 yrs.)	10.0%	14.7%
College (4 or more yrs.)	7.3%	14.6%

82. Between 1970 and 1980, the percentage of black adults 25 years of age or older, who had completed at least four years of high school or education beyond high school increased from 22.9% to 43%, an increase of 87.8%. The increase in white adults with at least four years of high school or education beyond high school, during the period from 1970 to 1980, was from 42.2% to 57.7%, a 36.7% increase.

83. A higher percent of black households in North Carolina rent their homes and live in substandard or overcrowded housing than of white households. The following

chart shows the percent of each race which falls in each category according to the North Carolina Citizen's Survey (1979).³

	<i>Percent Buying</i>	<i>Percent Renting</i>	<i>Percent Over- crowded¹</i>	<i>Percent Inadequate Plumbing²</i>
White	80.8 ⁴	16.8	2.4	0.7
Black	55.0 ⁴	41.5	12.0	8.5
Other	71.4	23.8	14.3	9.6
Whole State	75.6	21.7	4.4	2.2

¹ Overcrowding is defined as more than one person per room.

² Inadequate plumbing is defined as no plumbing or lacking at least one of hot and cold piped water, flush toilet, and bathtub or shower.

³ Between 1970 and 1980 according to census figures, the percentage of blacks in owner occupied housing units increased from 45.5% to 50.9%, an increase of over 5% of the black population and an increase of more than 10% above the proportion in owner occupied housing units in 1970. During this same period, whites in owner occupied housing units increased from 70.0% to 72.8%, an increase of 2.8% of the white population and an increase of 4% of the proportion in owner occupied housing in 1970.

⁴ The figures in the 1979 North Carolina Citizen's Survey show a higher percentage of whites and blacks in owner-occupied housing than the 1979 figures from the 1980 Census. In the Citizen's Survey, 25.5% of the respondents were in the 18-29 age group compared to 32% estimated in that age group by the Division of State Budget and Management and 31.4% estimated by the March 1979 Current Population Survey. Of 1,389 respondents to the Citizens Survey, the raw figures show between 1,103 and 1,105 whites, and 250 to 279 non-whites answering the housing questions.

84. In the Spring of 1981, the North Carolina Housing Finance Agency, the United States Secretary of Housing

and Urban Development, and the United States Secretary of the Treasury identified 24 urban census tracts which were eligible for loans under the Mortgage Subsidy Bond Tax Act. The criterion is that 70% or more of the families have income which are 80% or less of the statewide median family income. Of the 48,562 people living in these census tracts 39,369 (81%) were black compared to 8,814 (18%) white and 174 (.6%) indian. The tracts eligible for targetting are as follows:

Table 10
NORTH CAROLINA CENSUS TRACTS ELIGIBLE FOR TARGETING

<i>County No.</i>	<i>Tract</i>	<i>County</i>	<i>1980 Total Pop.</i>	<i>White</i>	<i>Black</i>	<i>American Indian</i>
21	2.00	Buncombe	2173	557	1608	7
51	1.00	Cumberland	1005	441	523	34
51	2.00	Cumberland	2787	487	2249	48
51	3.00	Cumberland	1482	449	958	0
51	13.00	Cumberland	2269	77	2186	2
63	12.01	Durham	864	0	859	0
63	12.02	Durham	976	1	975	0
65	201.00	Edgecombe	401	34	367	0
67	6.00	Forsyth	2718	23	2689	4
67	8.02	Forsyth	3065	710	2309	17
81	108.01	Guilford	703	459	221	14
119	4.00	Mecklenburg	623	338	281	3
119	6.00	Mecklenburg	1901	66	1825	3
119	7.00	Mecklenburg	757	90	665	0
119	8.00	Mecklenburg	3346	95	3246	0
119	37.00	Mecklenburg	2562	6	2547	0
119	49.00	Mecklenburg	215	0	215	0
129	111.00	New Hanover	3755	132	3607	12
129	113.00	New Hanover	1381	1024	351	5
129	114.00	New Hanover	1675	5	1665	4
189	9.00	Wake	4033	118	3904	5
191	10.00	Wanye	3007	2658	337	4
191	17.00	Wanne	567	271	268	1
195	8.00	Wilson	6297	773	5514	4
24 Census Tracts			48562	8814	39369	174

85. In *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959), the United States Supreme Court affirmed the decision of the North Carolina Supreme Court which upheld the use of the literacy requirement for voting in North Carolina. In *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398 (1961), the North Carolina Supreme Court struck down the practice of requiring registrants to write the North Carolina Constitution from dictation but upheld the requirement of ability to read and write the North Carolina Constitution to be administered to all applicants of uncertain ability. Use of the literacy requirement in North Carolina did not totally cease until 1970.

86. In 1970, a referendum was submitted to the voters of North Carolina to amend the constitution of North Carolina to delete the literacy requirement for voting. Of the proposed constitutional amendments before the voters at that time, the amendment to delete the literacy requirement was the only one defeated. The amendment was defeated in each of the following counties: Mecklenburg, Forsyth, Durham, Wake, Wilson, Edgecombe, Nash, Halifax, Northampton, Hertford, Gates, Martin, Bertie and Washington. The literacy requirement is currently N.C.G.S. § 163-58 and Article VI § 3 of the North Carolina Constitution but is not currently enforced.

87. N.C.G.S. § 163-67(a) provides that "No person shall be registered to vote without first making a written, sworn and signed application to register upon the form prescribed by the State Board of Elections. If the applicant cannot write because of physical disability, his name shall be written on the application for him by the election official to whom he makes application, but the specific reason for the applicant's failure to sign shall be clearly stated upon the face of his application."

88. Since 1915 North Carolina has had a majority vote requirement for party primaries. The first majority vote

requirement was enacted at the same time as the initial enactment of the primary election on method of nomination of candidates. It currently is contained in N.C.G.S. § 163-111 and reads as follows:

(a) **Nomination Determined by Majority; Definition of Majority.**—Except as otherwise provided in this section, nominations in primary elections shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

- (1) If a nominee for a single office is to be selected, and there is more than dividing the total vote cast for all aspirants by two. Any excess of the sum so ascertained shall be a majority and the aspirant who obtains a majority shall be declared the nominee.
- (2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the majority shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the aspirant who obtains a majority shall be declared the nominee.

(b) **Right to Demand Second Primary.**—If an insufficient number of aspirants receive a majority of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

- (1) If a nominee for a single office is to be selected and no aspirant receives a majority of the votes cast, the aspirant receiving the highest number

of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.

- (2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

89. North Carolina has never had a majority-vote requirement for general elections.

90. In 1983, Representative Kenneth Spaulding, black, introduced legislation, HB 171, to reduce the majority vote requirement to 40% for primaries for the U.S. Senate, congressional seats, state-wide offices, the General Assembly and judgeships. This bill was defeated in the House Election Laws Committee. Later in the 1983 Session, after

the defeat of HB 171, Representative Spaulding introduced HB 536 to reduce the majority vote requirement to 41% for primaries as long as the leading candidate obtained at least 3% more of the votes than the next highest votegetter. This bill was defeated in the House Election Laws Committee.

91. North Carolina enacted an anti-single shot voting law for local elections in specified counties and municipalities in 1955. It was enforced until it was declared unconstitutional in 1972 in *Dunston v. Scott*, 336 F.Supp. 206 (EDNC 1972). It has not been enforced since 1972. At least since 1915, North Carolina has not had an anti-single shot provision for nomination or election of candidates for the North Carolina General Assembly.

92. North Carolina enacted a numbered seat requirement for specified legislative multi-member districts in 1967. The provision was modified and re-enacted when the General Assembly was reapportioned in 1971. It was declared unconstitutional in 1972 in *Dunston v. Scott*, 336 F.Supp 206 (EDNC 1972), primarily on the ground that it did not apply statewide. Numbered seat requirements prevent single shot voting.

93. North Carolina has not had a numbered seat plan for election of legislators since 1972.

94. At least since 1950, North Carolina has not had any statutory or regulatory provisions for slating of candidates in any county or district with any significant concentration of minority votes. (There have, during this period, been some provisions for nomination by convention from some western counties with a very low percentage of minority votes.)

95. By district, the following number of black members have served in the General Assembly:

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<i>District (Number of Seats)</i>	69	71	73	75	77	79	81	83
Mecklenburg House (8)	0	0	0	0	0	0	0	1
Mecklenburg/Cabarrus Senate (4)	0	0	0	1	1	1	0	0
Forsyth House (5)	0	0	0	1	1	1*	0	2
Forsyth Senate (2)	0	0	0	0	0	0	0	0
Durham House (3)	0	0	1	1	1	1	1	1
Durham Senate (2)	0	0	0	0	0	0	0	0
Wake House (6)	0	0	0	0	0	0	1	1
Wake Senate (3)	0	0	0	1	1	0	0	0
Wilson/Edgecombe/Nash House (4)	0	0	0	0	0	0	0	0
Senators from counties in Senate District #2 (1)	0	0	0	0	0	0	0	0
Representatives from counties in Senate District #2	0	0	0	0	0	0	1	2**

*Appointed mid-term

**Both elected from majority black districts

96. No black person was elected to the North Carolina General Assembly from 1900 until 1969 when one black representative was elected. No black person was elected to the Senate until 1975 when two black senators were elected. The number and percent of black members serving in the General Assembly since 1969 is as follows:

<i>Term</i>	<i>House (Number followed by Percent)</i>	<i>Senate (Number followed by Percent)</i>
1969-70	1 (.8%)	0
1971-72	2 elected and 1 appointed mid-term (2.5%)	0
1973-74	3 (2.5%)	0
1975-76	4 (3.3%)	2 (4%)
1977-78	4 (3.3%) ²	2 ¹ (4%)
1979-80	3 elected and 1 appointed mid-term (3.3%)	1 (2%)
1981-82	3 (3.5%)	1 (2%)
1983-84	11 (9.2%) ³	1 (2%) ³

¹ One black senator resigned midterm and a black person was appointed to that seat.

² Three blacks resigned midterm and were replaced by black members.

³ Five representatives and the senator (or one half) were elected from districts which are majority black. Five representatives were elected at large from majority white multimember districts which are not covered by § 5 of the Voting Rights Act. Prior to 1982 all districts were majority white and all elections were at large.

97. The following are the only black people to serve in the North Carolina General Assembly this century:

<i>Session</i>	<i>Name</i>	<i>Party-County</i>	<i>District</i>	<i>Terms</i>
1969-70	Henry E. Frye	D-Guilford	26th House	1969-70
1971-72	Henry E. Frye	D-Guilford	26th House	1971-72
	Joy J. Johnson	D-Robeson	24th House	1971-72
	Alfreda Webb ¹	D-Guilford	26th House	1971-72
1973-74	Henry E. Frye	D-Guilford	23rd House	1973-74
	Joy J. Johnson	D-Robeson	21st House	1973-74
	Henry M. Michaux, Jr.	D-Durham	16th House	1973-74

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<i>Session</i>	<i>Name</i>	<i>Party-County</i>	<i>District</i>	<i>Terms</i>
1975-76	Fred D. Alexander	D-Mecklenburg	22nd Senate	1975-76
	John W. Winters	D-Wake	14th Senate	1975-76
	Richard C. Erwin	D-Forsyth	29th House	1975-76
	Henry E. Frye	D-Guilford	23rd House	1975-76
	Joy J. Johnson	D-Robeson	21st House	1975-76
	Henry M. Michaux, Jr.	D-Durham	16th House	1975-76
1977-78	Fred D. Alexander	D-Mecklenburg	22nd Senate	1977-78
	John W. Winters	D-Wake	14th Senate	1977*
	Clarence E. Lightner ²	D-Wake	14th Senate	1977-78
	Richard C. Erwin	D-Forsyth	29th House	1977-78
	Henry E. Frye	D-Guilford	23rd House	1977-78
	Joy J. Johnson	D-Robeson	21st House	1977-78
	Henry M. Michaux, Jr.	D-Durham	16th House	1977
	A.J. Howard Clements ³	D-Durham	16th House	1977-78
	Howard L. Kennedy, Jr. ⁴	D-Forsyth	29th House	1978
Robert E. Davis ⁵	D-Robeson	21st House	1978	
1979-80	Fred D. Alexander	D-Mecklenburg	22nd Senate	1979-80
	Robert E. Davis	D-Robeson	21st House	1979-80
	Henry E. Frye	D-Guilford	23rd House	1979-80
	Kenneth B. Spauling	D-Durham	16th House	1979-80
	Anne B. Kennedy ⁶	D-Forsyth	29th House	1979-80
	Rowe Motley	D-Mecklenburg	22nd Senate	1980
1981-82	Henry E. Frye	D-Guilford	19th Senate	1981-82
	Dan T. Blue, Jr.	D-Wake	15th House	1981-82
	Kenneth B. Spaulding	D-Durham	16th House	1981-82
	C. Melvin Creecy	D-Northampton	5th House	1981-82
1983-	William N. Martin	D-Guilford	31st Senate	1983
	Frank W. Balance, Jr.	D-Warren	7th House	1983
	Phillip O. Berry	D-Mecklenburg	36th House	1983
	Dan T. Blue, Jr.	D-Wake	21st House	1983
	C. Melvin Creecy	D-Northampton	5th House	1983
	C.R. Edwards	D-Cumberland	17th House	1983
	Herman C. Gist	D-Guilford	26th House	1983
	C.B. Hauser	D-Forsyth	39th House	1983
	Luther R. Jeralds	D-Cumberland	17th House	1983
	Annie Kennedy Brown	D-Forsyth	39th House	1983
	Sidney A. Locks	D-Robeson	16th House	1983
Kenneth B. Spaulding	D-Durham	23rd House	1983	

¹ Webb was appointed December 31, 1971, to replace McNeil Smith (Guilford).

² Lightner was appointed on August 3, 1977, to replace John W. Winters (Wake County).

³ Clement was appointed on August 3, 1977, to replace Henry M. Michaux, Jr. (Durham County).

⁴ Kennedy was appointed February 9, 1978, to replace Richard C. Erwin (Forsyth County).

⁵ Davis was appointed February 17, 1978, to replace Joy J. Johnson (Robeson County).

⁶ Kennedy was appointed October 19, 1979, to replace Judson DeRamos (Forsyth County).

⁷ Motley was appointed in April, 1980, to replace Fred Alexander (Mecklenburg County).

General Note on Term of Office: Article II, Section 9 of the Constitution of North Carolina sets the terms of office for Legislators. Prior to 1983, this commenced "at the time of their election". In 1982, a constitutional amendment was approved setting "the first day of January next after their election," as the starting date.

98. North Carolina General Statutes § 163-11 provides the mechanism for filling a vacancy in the General Assembly. Between 1967 and 1973, the Governor was required to appoint for the remainder of the term the person elected by the County Executive Committee of the political party with which the vacating member was affiliated when elected from the county in which the vacating member resided. In 1973, the provision was amended to provide that, in the case of a multi-county district, the Governor should appoint the person recommended by the district House of Representatives or senatorial committee of the political party with which the vacating member was affiliated when elected. Members of the respective district committees were chosen by the county conventions or county executive committees of each political party, with at least

one member from each county within the district, with votes on the committee based on population of the respective counties. The provision has since been amended to provide further adjustments in situations in which part of a county is included within a district.

99. Of 299 clerical and non-professional workers, other than pages appointed for one week's service, employed by the General Assembly for the week ending February 4, 1983, 24 (8.0%) have been identified by Mr. George R. Hall, Jr., Legislative Services Officer, to be black. (Records are not kept on the race of employees of the General Assembly.) Of these 24, 9 are housekeepers, 11 are secretaries to the black Representatives and Senator, 3 are on the Sergeant-of-Arms staff, and 1 is on the House Clerk's staff. 170 of the 299 clerical and non-professional workers other than pages are personal secretaries to the individual representatives and senators. Each senator and representative selects his or her personal secretary.

100. No black person has been elected to statewide office in North Carolina or to the United States Congress from North Carolina since 1900 with the exception of Clifford Johnson who was elected as a Superior Court Judge in 1978, Richard Irwin who was elected to the Court of Appeals in 1978, and Charles Becton who was elected to the Court of Appeals in 1982. Each of these was elected to fill a seat to which he had previously been appointed.

101. All judges who were appointed were appointed by the Governor in office at that time. Special Superior Court Judges are appointed by the Governor for four year terms and do not run for election at any time. There are eight Special Superior Court Judges. All other judicial positions are normally filled by election, including Supreme Court Justices, Judges of the Court of Appeals, Resident Superior Court Judges, and District Court Judges, although initially a judge may take office by gubernatorial appointment to fill a vacancy in office.

102. There were no black judges in North Carolina before 1968. Since 1968 the following number and percent of judges in North Carolina have been black:

	<i>District</i>	<i>Resident Superior</i>	<i>Special Superior</i>	<i>Court of Appeals</i>	<i>Supreme Court</i>
1968	1/112(0.9%)	0/41	0/8	0/12	0
1970	1/112(0.9%)	0/41	0/8	0/12	0
1972	2/112(1.8%)	0/41	1/8(12.5%)	0/12	0
1974	4/118(3.4%)	0/42	1/8(12.5%)	0/12	0
1976	5/118(4.29%)	0/47	1/8(12.5%)	0/12	0
1978	6/124(4.8%)	1/58(1.7%)	1/8(12.5%)	1/12(8.3%)	0
1980	9/124(7.3%)	1/58(1.7%)	0/8	1/12(8.3%)	0
1982	11/124(9.1%)	1/58(1.7%) ¹	2/8(25%)	2/12(16.7%)	0
1983	12/124(9.7%)	0/58	2/8(25%)	2/12(16.7%)	1/7(14.2%)

¹ Judge Johnson stopped serving as a Superior Court Judge in 1982 when appointed to the Court of Appeals. He is counted in both places on this chart.

² There is no official record of the number of black lawyers in North Carolina but the North Carolina Association of Black Lawyers has identified approximately 350. This is an underestimate of the actual number but is approximately 4% of all lawyers in North Carolina.

103. Exhibit SS is a list of black candidates who ran for the North Carolina House of Representatives or Senate since 1970 with success in Primary and General Elections indicated.

104. North Carolina has 100 counties. They range in black population from 0.1% to 60.7%. Each has between three and seven county commissioners. Exhibit MM is a list of all known black County Commissioners in North Carolina.

105. Exhibit NN is a publication by the Institute of Government of the University of North Carolina entitled

“Form of Government of North Carolina Counties” (1981 Edition), giving county population, form of government, and method of selecting the governing body.

106. There are 17 municipalities with a population over 25,000 in North Carolina; 25 municipalities with a population between 10,000 and 25,000; 28 municipalities with a population between 5,000 and 10,000; 67 municipalities with a population between 2,500 and 5,000; 109 municipalities with a population between 1,000 and 2,500; 112 municipalities with a population between 500 and 1,000; and an unknown number of towns or villages with a population less than 500.

107. Exhibit OO is a publication by the Institute of Government of the University of North Carolina of Chapel Hill, entitled “Form of Government of North Carolina Cities” (1981 Edition), giving North Carolina cities by size and providing information such as county of location, form of government, type and selection of governing body, for all known North Carolina municipalities with populations of 500 or more.

108. Exhibit PP is a list of all known black mayors in North Carolina as of May, 1983. Exhibit QQ is a list of all known black city council members in North Carolina as of May, 1983.

109. Prior to 1969 the State Board of Elections had no black members. For each year since 1969, the North Carolina State Board of Elections has had at least one black member, out of the total of five members. Since October, 1981, the State Board of Elections has had two black members. Black members serving on the Board of Elections during the period from 1969 through the present are as follows:

L. H. Jones, 1969-1977

Dr. Sidney Y. Barnwell, 1977-1981

William Marsh, 1981—still serving on the Board

Ellore Erwin, 1981—still serving on the Board

(Ellore Erwin is a Republican. The rest are Democrats.)

110. Mecklenburg County (House District #36) can be divided into eight single-member House districts with two and only two districts over 65% black in population.

111. At its February, 1982 Session, the North Carolina House of Representatives had available to it the proposal of the North Carolina Association of Black Lawyers, a proposal presented by Representative Hege, (R-Davidson County) and a staff drawn plan, each of which contained two single-member districts in Mecklenburg County which were majority black in population. The plan developed by the member of the legislative staff included a district which was 66.1% black in population and a district which was 71.2% black in population.*

112. The Mecklenburg/Cabarrus County Senate district (Senate District #22) can be divided into four single member districts with one of the districts over 65% black in population.* Only one majority black Senate district with a black population over 65% can be drawn.

113. In February, 1982, the General Assembly had before it the plan of the Black Lawyers Association and the plan presented by Senator Ballenger (R-Catawba County) each of which created a single-member Senate district wholly within Mecklenburg County which was over 60% black in population. In addition, a member of the legislative staff developed a single-member district in Mecklenburg County which was 70.77% black in population.*

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

114. If Mecklenburg County were divided into single-member districts, for either the House or Senate, it would be the first division of that county for legislative districts.

115. The 1966 and 1971 plan for election of members to the General Assembly placed Mecklenburg County in an eight-member House of Representatives district consisting solely of Mecklenburg County. No black person was elected as a Representative from that district from 1966 through 1981. During that period seven black people ran for the House of Representatives.

116. The House district consisting of Mecklenburg County was not changed in the 1982 apportionment. In the 1982 general election, Mecklenburg County elected eight members of the North Carolina House for 1983-1984. One of those members, Phillip O. Berry is black. James D. Richardson, who is also black, ran but was not elected. He came in ninth.

117. The 1971 plan for election of members to the General Assembly placed Mecklenburg County in a four-member Senate District consisting of Mecklenburg and Cabarrus Counties. No senator from Mecklenburg County was black until 1975. Fred D. Alexander, who was black and was from Mecklenburg County ran for the Senate but was defeated in 1972. He was elected to the North Carolina Senate from that district for the 1975-76, and 1977-78, and 1979-80 General Assemblies. Alexander filed for reelection in 1980, but died before the primary was held. When Alexander died, Rowe Motley, who is black, was appointed by the Governor to fill Alexander's unexpired term. Alexander's name could not be removed from the primary election ballot. Alexander lost the primary.

118. Mecklenburg and Cabarrus County elected four members to the Senate in 1982. James Polk, who is black, ran as a Democrat but was defeated in the General Election, running fifth.

119. Mecklenburg County has a five-member Board of County Commissioners, all of whom are elected-at-large. Currently, one of those five members, Robert L. Walton, is black. Walton was first elected in 1976. In 1978 he was defeated in his bid for reelection. Walton was elected in 1980 and 1982.

120. Mecklenburg County has never had a black Sheriff. It has a black VAP of 24%.

121. Clifton E. Johnson, who is black, was appointed to the North Carolina Court of Appeals in 1982, where he is currently serving. Johnson was appointed to the District Court for Mecklenburg County in 1969 and was subsequently elected and reelected to that position. He was appointed by the Governor to be a Resident Superior Court Judge from Mecklenburg County in 1978, having been nominated by voters in the Mecklenburg County primary and elected by statewide vote in the general election. He ran unopposed in that election. Johnson was the first and only black resident Superior Court Judge from Mecklenburg County of five Resident Superior Court Judges. He is the only black ever to serve as a Resident Superior Court Judge in North Carolina. He served in that role until his appointment to the North Carolina Court of Appeals. At the time Johnson was appointed to the Court of Appeals, Yvonne Mims Evans, a black attorney, sought to fill the Superior Court vacancy, but the Mecklenburg County Democrat Party Executive Committee selected a white nominee instead, and the white nominee was appointed by the Governor. There are currently no black Resident Superior Court Judges.

122. Mecklenburg County is a single-member Judicial District, which elects ten District Court Judges. Currently, two of those judges, T. Michael Todd, and Terry Sherrill are black. Todd was appointed in 1979 and elected in 1980. He came in third in the vote of the Mecklenburg

County Bar for nominations for the seat. He came in behind two white candidates. Todd was, nonetheless, appointed by the Governor. Terry Sherrill came in third in the vote of the Mecklenburg County Bar behind two white candidates and was appointed by the Governor in 1983.

123. The Charlotte-Mecklenburg Board of Education has nine members elected at large to four-year terms on a staggered schedule. Currently, two of those members, Sarah Belle Stephenson and George E. Battle, Jr., are black. Stephenson was elected in 1980 for the first time. Battle was elected in 1978 for the first time and was re-elected in 1982. Until his resignation to run for a House seat in the North Carolina General Assembly, Phillip O. Berry, who is black, was chairman of the Board, serving along with Stephenson and Battle. Berry was first elected to the Board in 1976 and was re-elected in 1980. Of six or more persons seeking to replace Berry upon his resignation, a white person was selected by the remaining Board members although Arthur Griffin, who is black, sought the position.

124. Exhibit RR is an accurate list of black candidates who have run for countywide office in Mecklenburg County or in municipal elections for the City of Charlotte since 1964.

125. The Mecklenburg County Board of Elections has three members. From March 2, 1970, until his death in May of 1972, Mr. Walter B. Nivens served on that Board, and was Chairperson from March of 1972, until his death. Jack Martin also served on the Mecklenburg County Board of Elections from July 13, 1972, through March of 1974, serving as Chairperson for a part of that time. Phyllis Lynch has served on the Mecklenburg County Board of Elections since June of 1977 through the present and has been Chairperson since June of 1981 through the present. Nivens, Martin and Lynch are black and are the

only black people who have served on the Mecklenburg County Board of Elections.

126. The immediate Past Chairman of the Mecklenburg County Democratic Executive Committee, for the term from 1981 through May 1983, was Robert Davis, who is black. Davis is the only black person ever to hold that position.

127. The City of Charlotte, located in Mecklenburg County, has a total population of 314,447 according to 1980 census figures. 31% of the population and 20.6% of the registered voters in Charlotte are black.

128. The Charlotte City Council has eleven members, seven elected from Districts and four elected at large. Of the current members, Charles Dannelly and Ronald Leeper, both elected from majority black districts, and Harvey Gantt, elected at large, are black. Gantt was first elected to the City Council in 1975, and re-elected in 1977. He was elected to the City Council again in 1981. He is currently Mayor Pro-Tem of Charlotte. Gantt did not run for City Council in 1979 because he ran for Mayor. He was defeated by a white candidate in the Democratic Primary. Dannelly and Leeper were both first elected in 1977 and re-elected in 1979 and 1981.

129. The portion of Forsyth County which is in House District 39 can be divided into five single-member districts. Either one district over 65% black can be formed or two majority black districts can be formed.*

130. In February, 1982, the General Assembly had available to it the plan of the Black Lawyers Association and a plan presented by Representative Hege (R-Davidson), each of which contained a single member district wholly

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

within Forsyth County which was over 80% black in population. In addition, a member of the legislative staff had developed a single-member district in Forsyth County which was 70.00% black in population.*

131. It is not possible to draw a majority-black single-member Senate district in Forsyth County.

132. In the 1982 General Elections for members of the North Carolina General Assembly, District thirty-nine elected five Representatives of whom two, C. B. Hauser and Annie Brown Kennedy, are black. District 39 consists solely of Forsyth County, not including two townships of Forsyth County placed in District 29.

133. Richard C. Erwin, who is black, was elected as a member of the North Carolina House of Representatives from Forsyth County for 1975-76 and 1977-78. He resigned from the General Assembly upon his appointment as a Judge of the North Carolina Court of Appeals in 1977, to which he was elected in 1978, and where he continued to serve until his appointment in October 1980 as a United States District Court Judge for the Middle District of North Carolina. Erwin, one of twelve Court of Appeals Judges, was the first black to serve on the Court of Appeals when he was appointed in 1977.

134. Harold L. Kennedy, Jr., was appointed February 9, 1978, to replace Richard C. Erwin in the North Carolina General Assembly upon Erwin's appointment to the North Carolina Court of Appeals. Kennedy is black and is from Forsyth County. Kennedy ran for re-election to the House of Representatives in 1978 and lost.

135. On October 19, 1979, Annie B. Kennedy, who is black, was appointed to replace Judson DeRamus, who

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

is white, as a member of the North Carolina House of Representatives from Forsyth County. Kennedy ran for re-election in 1980 and lost; she ran in 1982 and won.

136. The Forsyth County Board of County Commissioners has five members elected at large. Currently, that Board has one black member, Mazie Woodruff. When elected in 1976, she was the first black member of the Forsyth County Board of County Commissioners. Forsyth County elects Commissioners for four year terms. Woodruff ran again in 1980 and was defeated by a white candidate. She ran again in 1982 and was elected.

137. Forsyth County has never had a black Sheriff. The Voting Age Population of Forsyth County is 22% black.

138. James Arthur Beaty, Jr., a black resident of Forsyth County, was appointed by the Governor as a special Superior Court Judge in 1981.

139. The Forsyth County School Board has eight members elected at-large. Beauford Bailey, who is black, is currently a member of that Board. Thirty seven percent of the student enrollment of the Forsyth County Public Schools is black. The population of Forsyth County is 24% black.

140. In Forsyth County there has been no black chairman of the Democratic Party.

141. The Forsyth County Board of Elections has three members. H. B. Goodson, who is black, served on that Board from 1973 until 1979. Joan Cardwell, who is also black, has served on that Board from 1979 through the present and is Secretary.

142. The City of Winston Salem, located in Forsyth County, has a total population of 131,885 according to 1980 census figures. 40.16% of the population and 31.9%

of the registered voters in the City of Winston Salem are black.

143. The Winston-Salem City Council has eight members elected from wards in addition to the mayor. Currently there are four black members on the Council. Larry Little, Vivian Burke, Virginia Newell, and Larry Womble. Little, Burke, and Newell were all elected in 1977 and re-elected in 1981 from majority black wards. Womble was first elected in 1981 by defeating an incumbent white Democrat in the primary and a white Republican in the general election. His ward has 4,536 white registered voters, 2,893 black registered voters, and three of other races. Prior to 1977, C. C. Ross, Carl Russell, and Richard Davis, all black, were elected in 1970 and 1974 from majority black wards. (The election schedule was changed from even to odd years between the 1974 and 1977 election.)

144. Durham County (House District #23) can be divided into three single member districts with one and only one of them over 65% black in population.*

145. In February, 1982, the General Assembly had before it the Black Lawyers Association apportionment which contained a single member district in Durham County which was over 70% black in population and the proposal of Representative Hege, (R-Davidson County) which contained a single-member district within Durham County which was over 65% black in population. In addition, a member of the legislative staff has developed a single-member district for Durham County which was 70.91% black in population.

146. It is not possible to draw a majority-black single-member Senate district which is in Durham County or which includes substantial parts of Durham County.

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

147. If Durham County were divided into single-member districts, for either House or Senate districts, the division of Durham County would be the first division of that county for legislative districts.

148. At all times since 1973, one of Durham County's three Representatives to the North Carolina House of Representatives has been black. Black members from Durham County during that period are as follows:

1. Henry M. Michaux, Jr.—elected to the 1973, 1975, and 1977 General Assemblies (resigned in 1977 to become United States Attorney for the Middle District of North Carolina).
2. A. J. Howard Clement, III, appointed to the expiration of Michaux's term in 1977 General Assembly. He ran for re-election in 1978 and 1982 and was defeated both times in the Democratic Primary.
3. Kenneth B. Spaulding—elected to terms in the 1979, 1981, and 1983 General Assemblies, where he continues to serve.

149. Prior to 1973 no black person was elected to the House of Representatives from Durham County and no black person has ever been elected to the Senate from Durham County.

150. The Durham County Board of County Commissioners has five members elected at large. No blacks served prior to 1967. The following black people have served on the Commission since 1969:

Asa T. Spaulding	1969-72
Nathan Garrett	1973-74
William V. Bell	1973-current
Edna Spaulding	1975-current

William V. Bell is currently Chairman of the Durham County Board of County Commissioners.

151. Durham County has never had a black Sheriff. Durham County has a black Voting Age Population of 33.6%.

152. Chales L. Becton, a black resident of Durham County, was appointed by the Governor to the North Carolina Court of Appeals as one of its twelve judges in 1981. He was elected by a statewide vote to that office in 1982 to fill the remainder of the term until 1984. Becton and four other incumbents ran unopposed in the 1982 election. Ten Democrats ran for the three other seats which were up for election in 1982 with no incumbents running.

153. Durham County is a single-county judicial district with four District Court Judges. Prior to 1977, none were black. In 1979, the Governor appointed William G. Pearson, who is black to be a District Court Judge. Pearson was elected in 1978 and in 1982. In 1979 the Governor appointed Karen Galloway, who is black, to be a District Court Judge. Galloway was elected in 1982.

154. The Durham County Board of Elections is a three-member board. From March 2, 1970, until June of 1981, William Marsh was a member of that board. Marsh, who is black, served as chairman for six years ending in 1979. Since 1981 there has not been a black member on the Board.

* 155. The Chairmanship of the Durham County Democratic Party has been held by a black for approximately ten of the last fourteen years. Persons serving in the chairmanship during that period are as follows:

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

<i>Name</i>	<i>Beginning of Term</i>
* Lavonia Allison, B	1969 or 1970
Howard Clement, B	1974
Willie Lovett, B	1977
Barbara Smith, W	1979
Robert Sugg, W	1981
Jeanne Lucas, B	1983

Lavonia Allison was the first black chairman of the Durham County Democratic Party.

* B—indicates black
W—indicates white

156. The City of Durham, located in Durham County, has a total population of 100,538 according to corrected census figures. 47.08% of the population and 38.9% of the registered voters in the City of Durham are black.

157. The Durham City Council consists of twelve members, in addition to the mayor. Six are elected at large. Six are elected at large, but must reside in wards. Currently, the following three members are black: Ralph Hunt, representing a majority black ward; Chester L. Jenkins elected at large; and A. J. Howard Clement, appointed on May 16, 1983, to the expiration of Maceo K. Sloan's term. Sloan, who is also black, was elected at large and resigned April 18, 1983.

158. Wake County (House District #21) can be divided into six single member districts with one and only one of them over 65% black in population.*

159. In February, 1982, the Legislature had available to it the proposal of the Black Lawyers Association which contained a single-member district in Wake County which

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

was over 65% black in population. In addition, a member of the legislative staff had prepared a single-member district for Wake County which was 68.5% black in population.*

160. If Wake County were divided into single-member House districts, it would be the first division of that county for House districts. Wake County was divided the first time for Senate districts in 1982.

161. It is not possible to draw a single-member majority black Senate district which is in Wake County or includes substantial parts of Wake County.

162. Dan T. Blue, Jr., who is black, was elected as a member of the House from Wake County for the 1981-82 and 1983-84 General Assemblies. In the 1982 Democratic primary, Blue received the highest vote total of the fifteen Democrats running. In the 1982 general election, Blue received the second highest vote total of the seventeen candidates for six seats. Five of the seventeen candidates were Libertarians. All Democratic candidates won. Blue had run in 1978 as a Democrat and he lost in the primary.

163. John W. Winters, who is black, was elected as a Senator from Wake County for the 1975-76 and 1977-78 General Assemblies. Upon Winters' resignation, to accept an appointment as a member of the North Carolina Utilities Commission, Clarence E. Lightner, who is black, and is from Wake County, was appointed to replace Winters in the North Carolina Senate. Except for the period from 1975-78, Wake County has never had a black Senator.

164. Wake County has a seven-member Board of County Commissioners, who must reside in districts, but who are nominated and elected-at-large. Elizabeth B. Cofield, who is black, is a member of the Wake County Board of Coun-

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

ty Commissioners. Cofield was first elected in 1972 and has been re-elected to successive four year terms since then. She is the only black person to serve on the Wake County Board of County Commissioners.

165. Wake County is a single-county Judicial District with eight District Court Judges of whom currently 2, Stafford Bullock and George Greene, are black. Judge Bullock was appointed by the Governor in 1974 and was elected in 1976 and re-elected in 1980 and has been serving continuously since 1974. Judge Greene was elected in 1974, 1978 and 1982. In addition, Acie Ward was appointed by the Governor to the District Court bench in 1982. She was defeated in her bid for election in 1982. The person who defeated her is white.

166. The Sheriff of Wake County, John J. Baker, Jr., is black. In 1982, Sheriff Baker was elected to his second consecutive term. Baker received 45,775 votes (63.5%) in the general election November 2, 1982, while his Republican opponent Clyde Cook, received 25,646 votes (36.5%). In the Democratic primary held June 29, 1982 Baker received 26,329 votes, Tracy Bowling received 12,218 votes, and Ira C. Fuller received 4,162 votes. Cook, Bowling and Fuller are all white. On November 2, 1982, 77.6% of the registered voters in Wake County were Democrats and 22.4% of the registered voters were Republicans.

167. When John Baker first ran for Sheriff in 1978, he received 15,250 votes in the Democratic primary compared to 15,102 for Lestor Kelly and 7,409 for Robert Decatsye both of whom are white. In the second primary Baker got 22,415 votes to 18,925 for Kelly. In the General election Baker got 32,882 votes compared to 31,882 for Cook, the Republican who is white. Baker was the first black sheriff in North Carolina this century.

168. Wake County has a nine-member Board of Education, all of whom are elected from districts. Currently,

one of those nine members, Vernon Malone, is black. Malone was elected from a majority black district.

169. The Wake County Board of Elections consists of three members. J. J. Sansom, Jr. served from March 2, 1970 until December of 1977, when he resigned. Rosa Gill has been a member since December 6, 1977, and has been Chairperson since April 19, 1979. Sansom and Gill are both black.

170. There has never been a black chairman of the Wake County Democratic Party.

171. The City of Raleigh, located in Wake County, has a total population of 150,255 according to 1980 census figures. 27.43% of the population and 18.1% of the registered voters in Raleigh are black.

172. Clarence E. Lightner, who is black, was elected as and served as Mayor of Raleigh from 1973 to 1975. Raleigh is located in Wake County and is the capital of North Carolina. Lightner is the only black Mayor Raleigh has ever had.

173. The Raleigh City Council has 7 members, two elected at large and five elected from wards, plus the mayor serving ex-officio. Since 1979, Arthur Calloway, who is black, has represented a majority black ward on the City Council. Calloway initially defeated William Knight, also black, who served from 1973 until 1979. No other members of the Raleigh City Council are black.

174. House District 8 (Wilson, Edgecombe and Nash Counties) can be divided into four single-member districts with one and only one over 60% black in population.*

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

175. House District #8 is not changed from the 1971 apportionment. There has never been a black representative from this district.

176. Edgecombe County has a five-member Board of County Commissioners, all of whom are elected at large. Currently, two of those County Commissioners, Thomas Walker and J. O. Thorne, are black. 43% of the registered voters in Edgecombe County are black. Walker and Thorne are the first blacks to serve on the Edgecombe County Board of Commissioners. Wilson County and Nash County have never had a black county commissioner.

177. Wilson County, Edgecombe County, and Nash County have not had a black sheriff in this century. The voting age population of Wilson County is 32.4% black, The voting age population of Nash County is 29.4% black. The voting age population of Edgecombe County is 46.7% black. The Supervisor of Elections of Nash County recalls no black candidate for sheriff over the last 20 years. Over the last twenty years, only one black has filed for and run for the office of sheriff in Wilson County. Frank Jones, who is black, ran in 1974. Out of the field of four candidates, the incumbent, W. Robinson Pridgen, received 3,586 votes in the first primary. Jones, the black candidate received 2,480 votes in the first primary. Two other white candidates received, respectively, 1,662 and 1,270 votes, respectively, in the first primary. Pridgen defeated Jones in the second primary by a vote of 6,321 to 3,414. Over the last ten years only one black is known to have filed for and run for office of sheriff in Edgecombe County.

178. The Wilson, Edgecombe and Nash County Democratic parties have never had a black chairman.

179. It is not possible to draw more than two single-member majority black House districts in Guilford County. One majority black district currently exists.

180. It is not possible to draw more than one single-member majority black Senate district in Guilford County. There is now a single-member Senate district in Guilford County which is 54.9% black in population.

181. On December 31, 1971, Alfreda Webb, who is black, was appointed to replace McNeil Smith, who is white, as a member of the North Carolina House of Representatives from Guilford County. Webb ran for re-election in 1972 and lost in the primary.

182. Henry E. Frye, who was appointed to the North Carolina Supreme Court in 1983 and who is black, was elected to the North Carolina General Assembly as a Representative from Guilford County for the 1969-70, 1971-72, 1973-74, 1975-76, 1977-78 and 1979-80 General Assemblies and was elected as a Senator from Guilford County for the 1981-82 General Assembly. Frye did not run in 1982. Frye is one of seven Supreme Court Justices and is the first black to serve on the North Carolina Supreme Court this century.

183. In the 1982 elections for members of the 1983 General Assembly, William M. Martin, who is black, was elected from the 31st Senate District, consisting of Jefferson Township, Greensboro Precincts 3, 4, 5, 6, 7, 8, 9, 11, 19, 25, 29, and 30, High Point Precincts 3, 5, 6, 7, 11, 12, and 19, Jamestown Precincts 1, 2, and 3, Sumner Township and Block 921 of Census Tract 166 in High Point Township, all in Guilford County. The 31st Senate District is 54.9% black in population. In 1980 William Martin had run for the House of Representatives from Guilford County in a countywide at large election and lost. He was the only black candidate in that election.

184. In the 1982 elections for members of the 1983 General Assembly, Herman C. Gist, who is black, and who is from Guilford County, was elected from the 26th House District consisting of Providence Township of Randolph

County, Greensboro Precincts 5, 6, 7, 8, 19, 29, and 30 and Fentress Township of Guilford County, as a member of the North Carolina House of Representatives for the 1983-84 General Assembly. The 26th House District is 66.9% black in population. Gist had run for city council for Greensboro in an at-large election in 1980 and lost.

185. Guilford County has five Commissioners elected at large for four year staggered terms. Guilford County has not had a black County Commissioner since 1978. At that time B. A. Hall, who had served since 1974, was defeated in his bid for re-election. There has been no black County Commissioner in Guilford County prior to 1974.

186. Guilford County is in a single-county judicial district electing eight District Court Judges of whom currently one, William Hunter, is black. Hunter ran for judge in a countywide single seat election in 1980 and lost. He was appointed by the Governor in 1981.

187. Guilford County has never had a black sheriff.

188. In February, 1982, and in April, 1982, the Senate Redistricting Committee was informed that a Senate district could be drawn in the area of Senate District 2 which was 59.4% black in population.

189. In February, 1982, the Senate Redistricting Committee had before it the proposal of the Black Lawyers Association which contained a proposed single-member district in the general area of current Senate District which was 60.7% black in population.*

190. In February 1982, Senate District #2 was 51.7% black. In response to the objection letter of the Attorney General of the United States dated April 19, 1982 (Exhibit Y), in April, 1982, the General Assembly amended

* Each district would be contiguous, reasonably compact, and have a population deviation of less than plus or minus 5%.

the apportionment of the Senate such that Senate District #2 became a 55.1% black district. It is only possible to draw a Senate district with a 60% or more black majority in the area of Senate District #2 in part by decreasing the 49.3% black percentage in the area of Senate District #6. It is not possible to draw two majority black Senate districts in these areas with both of them over 55% black in population.

191. None of the counties in Senate District #2 had a black sheriff.

192. There are currently four black sheriffs in North Carolina. They serve in Wake, Pender, New Hanover, and Warren Counties. There is currently one black Clerk of Court, in Gates County.

TRANSCRIPT OF PROCEEDINGS
(EXCERPTS)

[19] FURTHER PROCEEDINGS 10:26 A.M.

(Whereupon,

Bernard N. Grofman

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION

* * * * *

[30] There are several points to be made about the North Carolina House Map. First of all, in the covered jurisdictions—the 40 counties covered under Section 5 of the Voting Rights Act—there are 11 counties which have been divided. They include District 17, which includes part of Cumberland; District 5, Bertie, Gates, Hertford and Northampton; District Number 7, Halifax and Martin and also Warren, which is not a Section 5 covered county; District Number 26, Guilford—and also part of Guilford, Randolph, which is again not a Section 5 covered county. But in any case, a total of 11 counties have been divided. And I repeat that counties which have been divided are indicated by placing in those counties the township boundary demarcation lines as a signal that these counties have been divided in the House reapportionment.

In the non-covered portions of the State, 15 counties have been divided. They are Henderson, Watauga, Avery, Burke, Iredell, Alexander, Catawba, Stokes, Forsyth, Randolph, Chatham, Warren, Pender, Graham and New Hanover. I have deliberately gone over this perhaps too fast. But since this information is available in the stipulation, it seems appropriate to proceed on.

* * * * *

[31] Ms. Winner: At this point I move plaintiff's exhibits 2 and 3 into evidence, as well as * * *

* * * * *

Q. Dr. Grofman, are you familiar with the literature concerning multi-member districts?

A. Yes; I am.

Q. Would you describe to the Court or compare for the Court the features of multi-member districts with the features of single-member districts?

A. There are several—there are five basic features of multi-member districts which I would wish to contrast with features of single-member districts. First, except under the unlikely circumstance that districts are perfectly homogeneous in their population, [32] multi-member districts tend to submerge racial or other minorities. Relatedly, large multi-member districts reduce political competition and incentives to voter turnout because of the winner take all nature feature of multi-member districts. The majority of voters in a multi-member district can and usually does elect all of the representatives to that district.

Voters who see no chance of a candidate of their choice being elected are less likely to vote. Minority voters who may compromise portions of a competitive single-member district or a majority black single-member district are also likely to be submerged by multi-member districts, especially large multi-member districts.

Q. Would you describe for the Court or define for the Court what you mean by "submerged"?

A. Yes. As I define submergence, there are three components to submergence in a multi-member district. First, there must be a sufficient concentration of black voting strength sufficiently concentrated so as to form a majority of a potential single-member district.

Secondly, the present black voting strength must constitute a minority of the voters in the existing multi-member district. Thirdly, voting within the multi-member district must be racially polarized.

[33] Thank you. Are there other comparisons between the features of multi-member districts and single-member districts?

A. Yes. So far I have indicated only the first of such comparisons, the issue of submergence and impact on turnout. The second comparison is one having to do with the base of geographic representation. Multi-member districts almost never give equal representation to all of the geographic areas within the larger multi-member district. And large sets of voters—and in particular, black voters—may have no representative or less than equal opportunity to elect representatives who reside in their neighborhood.

Q. Are there further features of multi-member districts as compared to single-member districts?

A. The third feature is that in a multi-member district the link between a constituent and his or her representative is weakened relative to what it would be in a single-member district.

In a multi-member district, common sensically it is less clear who a voter ought to go to to deal with neighborhood-related problems. There does not exist a one-to-one linkage between voter and representatives.

Multi-member districts are particularly pernicious in their effects when the multi-member [34] representatives—that is, when those elected from the multi-member district—live in only some sections of the multi-member district. And whole large populations, including minority populations, have no representative who lives in their neighborhood or only limited representation from their neighborhood; and thus have no individual representing them who could be expected to be familiar with special

issues that arise on a neighborhood basis or portion of city basis.

* * * * *

[36] The witness: And I have now completed Item Number 3, which dealt with a link between a constituent and his representative, comparing that link in single-member versus multi-member districts.

The fourth point that I would make is that campaigns in multi-member districts cost considerably more to run than campaigns in single-member districts, which are, of course, going to be smaller in size. Thus, minorities in other less wealthy segments of the society are going to find it difficult to run successful campaigns in large, multi-member districts because of the barriers imposed by additional costs.

The fifth point I would make—which I believe is point Number 6 in the text. There are some minor points which I am skipping over simply for sake of brevity. The fifth point I would make is that multi-member districts fail to satisfy a criterion which political scientists have proposed it important for any election system to satisfy. That is a criterion called consistency.

DIRECT EXAMINATION 10:54 A.M.
(Resumed)

By Ms. Winner:

[37] Q. What is consistency?

A. Well, it is easier to define inconsistency, if I may. An election system is inconsistent if it is possible for a candidate to win in every precinct or every county, say, in a multi-county, multi-member district—if it is possible to win in every precinct or a every county and still lose the election.

Multi-member districts as they operate in North Carolina are theoretically inconsistent; whereas single-member districts always satisfy the consistency requirement.

Q. Dr. Grofman, have you examined the North Carolina apportionment plan to determine whether or not these theoretical problems exist in North Carolina?

A. Yes; I have.

Q. Calling your attention to the first feature that you pointed out—that of submergence—have you found that submergence occurs in North Carolina?

A. I have indeed found that submergence occurs in North Carolina.

* * * * *
[48] Would you compare these illustrative single-member districts with the single-member districts which the state has enacted in the Section 5 covered counties?

A. In shape and in nature, these districts are comparable to the district which were created in the covered counties of the state. I might note, however, that the proposed single-member districts in Mecklenburg replacing the Mecklenburg-Cabarrus combined district; in Durham, in Forsyth, in Wake and in Mecklenburg for the House seats—all have the property that they do not require the crossing of county lines. Each single-member district can be composed solely within a given county.

* * * * *
[50] Q. Would you define for the Court what racially polarized voting is?

A. Quite simply, racial polarization occurs when white voters and black voters vote differently from one another.

Q. Is that in any way different from racial bloc voting?

A. No; it is not. Racial polarization and racial block voting are used in the literature and in the court cases—

at least the court cases with which I am familiar—synonymously.

* * * * *
[51] The elections which I analyzed were all of the elections in the period 1978 to 1982 in these counties involving races in which at least one black was a candidate for either the House or Senate. And those included both primary and general races.

In addition, I analyzed county board primaries in Edgecombe, Wilson and Nash and a county board general election in Edgecombe. And I analyzed the patterns of voting in Edgecombe, Wilson and Nash for the Michaux-Valentine first and second congressional primary as it applied to those three counties.

Q. What were the criteria—

A. (Interposing) I am sorry. That was a 1982 election.

Q. What were the criteria which you used to pick the elections which you analyzed?

A. There were six factors which I took into account before deciding what elections to analyze and before conducting any analysis. First, since we are concerned with polarization in House and Senate elections, it made most sense to me to examine to the extent possible races in the House and in the Senate.

Secondly, since we are concerned with racial polarization it was easiest and most appropriate to look at that in the context of black-white contests, although [52] racial polarization can occur even in elections in which there are no black candidates.

Third, it seemed absolutely essential to have a complete set of elections so as not to be misled by idiosyncratic features of a particular, perhaps unrepresentative, election sample. Fourth, I felt it important to have an adequate representation in terms of the total number of

elections per each county so that we again would not be misled by features of a particular election. And I determined that at least three elections in each county would be sufficient and indeed necessary.

Fifth, I determined it important that there be an adequate representation of different election years, since no single election year can be representative, especially since there will be important differences between—in general, there will be important differences—between elections in which there is a presidential contest or election years in which there is a presidential contest and election years in which there is not a presidential contest; or perhaps between years in which there is a Republican incumbent running for a statewide or national office and years in which there is not a Republican incumbent running for statewide or national office.

Sixth, however, it was important not to go [53] back too far in time lest we obtain elections which did not reflect current patterns of polarization. In balancing the need for an adequate sample of election years and the need for a representative sample of election years, I concluded that three election years—1978, 1980 and 1982, totaling five calendar years—came closest to the ideal.

Finally, if it is impossible to get enough elections of the type we want within a given county or within a given specified range of years, then we should look for additional elections involving black candidates which are as similar as possible to legislative races—for example, ones like county board elections, which also involve a county-wide race. And that was the selection criteria I used in the case of Edgecombe, Wilson and Nash, where there was not an adequate sample of three elections or three contests involving black-white contests from the North Carolina House or the North Carolina Senate in the period 1978 to 1982—or indeed, from any period in recent North Carolina electoral history.

And in those counties, in addition to looking at the one primary which did involve—House primary in the counties—which did involve a black candidate, I also looked at county board elections in each and at a [54] congressional race involving a black-white contest which resulted in two primaries and in a congressional district which encompassed all three of these counties—that is to say, which included as part of the congressional district Edgecombe, Wilson and Nash.

Q. What methods have you used to analyze the data?

A. There are two basic methods which I made use of which are methods standard in the literature for the analysis of racial polarization. The first of these is a method called ecological regression. And the second is a method called extreme case analysis.

Q. What is an extreme case analysis?

A. Extreme case analysis is when in order to understand the voting behavior of white voters and black voters, one looks at precincts which are overwhelmingly composed of members of one race. Thus, if one were interested in the voting behavior of white voters, one would look at voting precincts which had at least 95 percent white population. To understand the voting behavior of black voters, one would look at precincts which had at least, say, 95 percent black population. That is called in the literature extreme case analysis.

Q. What is the purpose of an ecological [55] regression analysis to determine racially polarized voting?

A. The purpose of an ecological regression analysis is to determine if there is racial polarization—that is to say, to determine whether or not white voters and black voters vote differently from one another.

Q. What comparisons are performed in an ecological regression analysis?

A. The basic comparison is a comparison of the proportion of vote received by black or white candidates in each precinct with the proportion of black/white voters in each precinct. That is to say, we look at—for a given black or a given white candidate, we look at the vote received by that candidate or candidates. And we compare that vote in the precinct with the racial proportion in that precinct.

Q. Is there an additional comparison that you make?

A. There are two related comparisons. We may either look at candidates individually and ask for the comparison between the proportion of the vote for a given candidate and the proportion of the district which is of a given race; or we may combine—and this is, again, a standard technique in literature. We may combine all candidates of a given race and examine the [56] votes—the combined votes—for candidates of a given race within each precinct, looking at the comparison of the votes for candidates of a given race versus the racial composition of each of the precincts.

* * * * *

[57] FURTHER PROCEEDINGS 11:45 A.M.

* * * * *

Q. Dr. Grofman, if you made a graph of the comparison that you performed in the ecological regression analysis and if race was not a factor in the—if the race of the voter were not a factor in who he or she voted for, what would that graph look like?

A. If we looked at a graph which compared vote proportions received by particular candidates with the racial composition of each of the precincts and race wasn't a factor related to how voters voted, what you would expect to find is that the points on this graph basically would be randomly scattered all over the place; or possibly they

might fall on a flat line like indicating essentially that all voters voted alike regardless of race. But most often, you would expect that they would be randomly scattered.

[58] Q. And if you graph the comparison and the race of the voter is a factor in determining who they vote for, then what does the graph look like?

A. Well, if voting were racially polarized and you looked at such a graph, what you would expect to find is that in comparing the proportion of votes for a given candidate or candidates with, say, the proportion white voters in each precinct, you would expect to see these points that show these proportions fall on something very much like a straight line which will slope either up or down.

Q. And what would it mean if the line sloped up?

A. If the line sloped up, that would mean that as the proportion of whites increased—that is, as the proportion of white voters in each precinct increased—the proportion of votes received by that candidate also increased.

Q. What does it mean if the line slopes down?

A. If the line slopes down, that would mean that as the proportion of whites in the precinct increased the candidate would get fewer votes.

Q. What do you do if the points don't fall exactly on the straight line?

A. Well, points never fall—just in my experience—never fall exactly on a straight line, even when [59] voting was racially polarized. So when the points look like they might be a straight line, you would try to determine whether in fact the points were close enough to forming a straight line to act as if they actually were a straight line.

Q. How do you decide if they are close enough to a straight line for them to be considered a straight line?

A. Well, there are two tests that social scientists and statisticians apply. One is the interocular test. You look at the graph and say, "Is this a straight line?" and if it sort of jumps up and hits you between the eyes, then you decide, "Yes. That is really a straight line." And then if you really want to——

Judge Britt: (Interposing) Do you call that eyeballing it?

The witness: Well, it depends on what state you are in. Social scientists manage to have fancy terms for some unfancy things. And in social science, partly tongue in cheek, it is called the interocular test—i-n-t-e-r-o-c-u-l-a-r.

However, there is also a standard statistic to look at. And that is the statistic which is called correlation or the correlation coefficient, or also [60] called "R" or "Pearson's R" after a gentleman named Pearson, who was the first to propose it.

By Ms. Winner:

Q. What is the range of possible correlation coefficients?

A. The range of possible correlation coefficients is from -1 to $+1$; $+1$ indicating lines or positive numbers indicating lines which slope up, negative numbers indicating lines which slope down.

Usually political scientists will talk about the absolute value of the correlation coefficient. That is, they will pay no attention to the sign. So if something has, say, an absolute value above .5, that would mean that either it was greater than .5 or it was less than $-.5$.

In political science I think it would be fair to say that values of correlations—at least in the kinds of regressions we are dealing with here, one variable versus another

variable—values of correlations above .5 are relatively rare. And certainly most political scientists would treat any value of a correlation above .5 as a situation in which they would act, in effect, as if the points fell on a straight line.

Q. Have you done other ecological regression analyses?
[61] A. I have done some other ecological regressions and of course, many, many other kinds of regression analyses—thousands of regression analyses over the last decade.

Q. What is the normal range of correlation coefficients that you have found in those past analyses?

A. In most of the analyses I have done, one finds correlation—one is happy when one finds correlation coefficients above .3. The only time—the highest correlation coefficient that I can remember occurred when you look at how a person said he was going to vote in an election that was going to take place tomorrow and you compared that with how the person actually voted tomorrow in that case, you got a correlation of around .91.

Q. How do you determine whether or not—

A. (Interposing) There were some people who just didn't know their own minds.

Q. How do you determine whether the correlation coefficient is statistically significant?

A. Again, there is a standard statistical test for the statistical significance of the value of the correlation coefficient. And in the computer programs that I used, that standard measure of statistical significance is reported.

Usually in social science, the rule is that [62] is the statistical significance is less than .01, then certainly we would regard something as statistically significance. .01

would mean that there is less than a 1 in 100 chance that this observed pattern of line likeness could have, in fact, occurred just by chance.

Q. Once you determine the statistical significance of the information, who other factors do you determine in an ecological regression analysis?

A. Well, there are a number of things that can be done with the information from an ecological regression analysis and also from extreme case analysis. You can, for example, determine whether or not voting is racially polarized. You can determine the proportion of the white or the black vote which goes to white or black candidates. You can determine the proportion of white or black voters who vote for particular white or black candidates.

You can determine the ranking of black or white candidates among white or black voters. And you can also determine turnout figures in the election, including the turnout of the white voters and the turnout of the black voters estimated from the regression. And you can also determine the average number of ballots cast in the election by white voters and by black voters. In North Carolina in a multi-member district election, [63] voters may have up to eight ballots or up to eight votes that they could cast. Voters, however, may not choose to make use of the full electoral option. And they may cast less than eight votes.

We can calculate how many ballots on average each voter casts. And we can determine that also separately by the race of the voter.

* * * * *

[77] Judge Phillips: You are being clear. I wonder if it might be appropriate to ask Mr. Leonard if there is any substantial question about the accuracy of these particular exhibits as they reflect or if they reflect the sheer mathematics of the situation? We seem to be spending an awful

lot of time to develop a point that, while not within the range, I suppose, of judicial notice, is almost there.

Mr. Leonard: If the court please, we don't disagree with Dr. Grofman's arithmetic, just his conclusions. The methodology that he has used is a methodology that Dr. Hofer will, in fact, rely on and [78] will be using some of Dr. Grofman's exhibits to rebut the conclusions that he comes to.

* * * * *

[79] Dr. Grofman, from the results of your analyses of these 55—

A. (Interposing) 53.

Q. 53—excuse me—elections, did you reach any general conclusions?

A. Yes. I reached a number of general conclusions.

Q. What are those conclusions?

A. The first general conclusion that I reached about polarization in all of the eight counties in question is that in each and every one of the 53 elections which I analyzed, these elections were racially polarized. Indeed, there was racial polarization even in elections with black incumbents and even in elections [80] with blacks running in which there was no contest.

The correlations ranged from .7 to .98 with most well above .9. Again, I can give an illustration from Durham. But I won't bother. The court can see quite clearly that in Durham all but one of the correlations are quite high. And even that one is at the .7 level, which is still well above the range which would be considered significant. And moreover, the statistical significance test of all the regression analyses found a statistical significance level of .00001—that is to say, a likelihood that the results could have occurred by chance alone of less than 1 in 100,000.

The second general conclusion—actually, I am going to give it in three parts. First, in North Carolina general elections no black candidate ever got a majority of whites to vote for him or her. And this was true even for black incumbents and even for candidates running in races which were uncontested. Even such individuals—such black candidates—did not receive the votes of a majority of white voters.

Indeed, on average over these elections more than 60 percent of the white voters did not vote for the black candidate.

The second part of my second conclusion deals with primaries. On average in the eight counties in the [81] primaries, less than 20 percent of white voters voted for the black candidate. Except in unusual cases—3 out of 25—in all the primary elections, 60 percent or more of whites did not vote for the black candidate. I might note the three exceptions.

In the three exceptions the votes for the black candidate given by white voters ranged between 47 percent and 50 percent in the primary. But then in the general election the candidate went on to get less than a majority of the votes of white voters in all three of these cases.

The third part of my general conclusion 2 is that in general elections black candidates almost always rank last or next to last among white voters except in general elections in heavily Democratic areas where black candidates sometimes rank last overall, but almost always rank last or next to last among Democrats.

And similarly, in primaries—again, with a handful of exceptions—white voters give fewest votes to black candidates of any candidates in the race.

Turning now to my third conclusion—third general conclusion—looking at primaries and general elections as a

two-stage process which candidates must overcome if they are to be elected, since it does no good to be potentially capable of winning a general [82] election if one has lost the primary or to be potentially of winning a primary if one is certain not to lose the general election, I would conclude that in North Carolina in the eight counties I have studied black candidates cannot get a majority of whites to vote for them, no matter what these black candidates do and no matter who these black candidates are. In short, racial polarization is severe and persistent.

My fourth general conclusion is that although black incumbency—that is, the presence of a black incumbent in a race—moderates the amount of racial polarization, it does not eliminate it, since as I indicated earlier, all of the races I analyzed did involve racial polarization including those with black incumbents.

Moreover, if we look not at black elected incumbents but at black appointed incumbents, we find that being a black appointed incumbent is no great help to electoral success. There were three black appointed incumbents in these races, 1978 to 1982. All three lost, either in the primary or the general election.

Actually, just as a footnote, there were potentially—one might count there being four appointed incumbents. A black candidate, Motley, was appointed to replace Alexander, who died. Alexander held the position [83] of Senator from Mecklenburg and Cabarrus. However, the election took place before Motley's name or anyone else's name that appear on the ballot. And in that race, Alexander—who was not alive—lost. But nonetheless, in that race, Alexander received the clear, overwhelming support of the black community. And Alexander received less than one third of the votes in the white community.

I might note in general, that the appointed black incumbents got less than one third of the white voters to vote for them in each of these three cases.

My fifth general conclusion is as follows: even though a constituency has elected a black candidate in the past, this does not provide a guarantee that it will do so in the future, especially if the black incumbent who is the present occupant of that position does not run in the future in subsequent races.

My sixth conclusion: in general elections, wherever there is a black Democrat running and wherever a Democrat loses, it will be the black Democrat who loses. For all practical purposes, Republicans never vote for black Democrats. But, Republicans do sometimes vote for white Democrats.

Judge Dupree: How do you find out who anybody votes for?

[84] The witness: The techniques in question here are to look at, again, ecological regressions, looking at now the proportion Republican in each district rather than the proportion black in a district and comparing the vote patterns as districts change in their proportion Republican.

What we find when we do that is that as the Republican proportion increases, the likelihood of a vote for the black candidate decreases; and indeed, decreases so dramatically that one can have confidence in the conclusion that for all practical purposes, Republicans simply do not vote for black Democrats. But they do vote for white Democrats.

There is another form of analysis I have performed if you wish me to go into it, which also supports that conclusion. That is to be found in Appendix 5 to Exhibit 11.

By Ms. Winner:

Q. Dr. Grofman, in explaining that you used the word "districts."

A. I am sorry—precincts, I think. Whenever I am talking, I will distinguish—precincts are the areas in voters register. Districts are the constituencies from which candidates run.

Q. Do you have any further general conclusions?

[85] A. Yes. I have two further general conclusions. My seventh general conclusion is with respect to single shot voting. For a non-incumbent black to win an election in which it was realistically possible to elect an all-white slate—that is to say, it might not be realistically possible to elect an all-white slate if, in fact, there are no candidates running in opposition to the nominees, as in Durham, for example, in 1980.

If you have a non-incumbent black trying to win an election in which it was realistically possible to elect an all-white slate, the black community has to vote almost exclusively for the black candidate in order to provide any reasonable chance for that black candidate to be elected, given the degree of racial polarization in these counties.

And my eighth and final general conclusion about all of the counties as a whole is that even though blacks must often concentrate—black voters must often concentrate their votes on black candidates in order to give these black candidates a chance at winning, on balance whites—that is to say, white voters—are less willing to vote for black candidates than black voters are willing to vote for white candidates.

And again, I can provide, if the court wishes, exact calculations to support that conclusion.

[86] Do these general conclusions also apply to the individual counties?

A. Yes. These general conclusions apply to each of the counties singly as well.

Q. Have you conducted your analysis county by county?

A. Yes; I have.

* * * * *

Q. What are your conclusion about Forsyth County?

A. In Forsyth, blacks will lose unless Republicans—black candidates will lose in the general election unless Republicans do poorly, since if there is a [87] Republican winner in the general election, that Republican winner will knock off the black Democrats, since as I previously indicated, Republicans do not vote for black Democrats although they do vote for some white Democrats.

Moreover, in Forsyth County examining the pattern of racial polarization over the three election years, there is no consistent trend to suggest that racial polarization is declining over time in this county.

Q. Have you examined in particular the results of the 1982 House election in Forsyth county?

A. Yes; I have.

Q. In that election, how many black candidates won?

A. In that election, two black candidates won.

Q. In your opinion, what is the likelihood of that result repeating itself?

A. I think the likelihood of that result repeating itself is very close to zero.

Q. What is the basis of that opinion?

A. The basis for that opinion is severalfold. First of all, the racial polarization in Forsyth in 1982 was exactly identical to what it was in 1980 in the primary. What was different between 1980 and 1982 was [88] that in 1980 there

were five white candidates running for five seats. In 1982, there were nine white candidates running for five seats in the primary.

In both cases, 1980 and 1982, there were two black candidates running in the primary. In 1982 there were more white candidates than white voters could vote for. And moreover, there were not white incumbents in the race, because four out of five white incumbents had declined to run for re-election.

So the white vote was split nine ways in the primary, while the black vote was concentrated among two black candidates. Absent a situation in which whites will once again so split their vote, there is no reason to anticipate that two black candidates would emerge from a primary in Forsyth, even though two of those blacks are now incumbents.

The reason for that, as indicated, is that the degree of racial polarization in Forsyth, particularly in the primary, does not lead one to believe that white voters will vote for black candidates.

* * * * *

[90] Another difference between 1980 and 1982 which cannot be expected to reoccur in 1984 is that in Forsyth from 1980 to 1982 black turnout in the primary stayed constant. But white turnout in the primary decreased. I note, as I have previously noted, that 1980 was a general presidential election year. One might also take note of the fact that 1984 is a general presidential year. It also is a year in which there in the state of North Carolina is an incumbent Republican candidate for the United States Senate who is likely to be running.

Insofar as portions of this decline in voter turnout can be attributed to a decline in Republican voters, certainly one would expect those Republican voters who are white and who do not vote for black candidates would be more likely to turn out in 1984; and secondly, that in general

the discrepancies between white voter turnout and black voter turnout which manifests itself in 1980 election would again emerge in 1984.

In 1980 there was a considerable discrepancy in the general election between the turnout figures for whites and for blacks. In 1982, black turnout declined slightly, but only slightly from what it had been in 1980. White turnout in the general election in Forsyth in 1982 declined substantially—20 percentage [91] points—from what it had been in 1982.

Clearly, 1982 is not a representative year, nor are the circumstances—multiplicity of white candidates, low white turnout, off presidential year—which occurred in 1982 likely to repeat themselves in the future. And certainly at worst one can say there is no guarantee that they would repeat themselves in the future.

* * * * *

[94] Q. Dr. Grofman, did you reach any conclusions as a result of your analysis about Mecklenburg County?

A. Yes. I reached some conclusions about Mecklenburg County specifically in addition to the general conclusions applicable to all of the districts that I looked at.

Q. What were the specific conclusions that you reached about Mecklenburg County?

A. My clear conclusions about Mecklenburg were very similar to my conclusions about Forsyth. In Mecklenburg, blacks will lose unless Republicans do poorly since, as I noted before, if there is a Republican winner he or she will be most likely to knock off the black Democrat rather than a white Democrat because of the racial polarization that exists in the election.

This also implies that one can expect a difference in election outcomes in years in which there are special incentives for Republican turnout than in other years—in

particular, years in which there is a Republican incumbent or a popular Republican candidate running either for a national or a statewide ticket.

Judge Phillips: Do you think you could summarize the conclusions that you have reached in general with respect to all of these and simply devote your—

[95] The witness: (Interposing) No. With respect, your honor, I could not. The conclusions do, in fact, differ from county to county.

Judge Phillips: Very well.

By Ms. Winner:

Q. Do you have any other conclusions about Mecklenburg County?

A. Yes. In Mecklenburg—and this is, indeed, a general conclusion which applies to all of the counties. I indicated this conclusion previously for Forsyth. In Mecklenburg and Forsyth and in the other districts which I looked at, there are no consistent trends over the course of the three elections which would suggest that racial polarization is declining over time in these counties or in these districts.

Q. Do you have further conclusions specifically about Mecklenburg County?

A. No; I do not.

Q. Did you examine the 1982 House race in Mecklenburg County?

A. Yes; I did.

Q. Were you present in Dr. Hoffer's deposition where he gave an explanation for why candidate Richardson lost?

A. Yes; I was.

[96] Q. Do you recall what that explanation was?

A. Dr. Hoffer indicated as a factor in the defeat of Mr. Richardson the fact that he received inadequate support from the black community.

Q. Do you agree with that analysis?

A. No; I do not.

Q. Why not?

A. If one looks at the data which is to be found in Appendix 3, Table 1, you will see that Mr. Richardson received the votes of 88 percent of the black voters and the votes of only 29 percent of the white voters—this in a county which is over—and lost to a Republican in in a county which is overwhelmingly Democrat.

Given that 88 percent of the black voters voted for him and 21 percent of the white majority population of the district voted for him, it seems to me rather absurd to blame his lack of success on a failure of adequate support from the black community.

* * * * *

[98] Q. Do you have any particular conclusions about Durham County?

A. Yes. I have some general conclusions about Durham County. In Durham I would conclude that winning the Democratic nomination is tantamount to election. And thus this means that given the incumbency advantage, [99] it is likely that present black incumbents would have a reasonable probability, while certainly not a certainty, of re-election.

However, if these incumbents do not run, the observed levels of racial polarization in the primary make very problematic the selection of a black candidate to supersede a retiring black incumbent.

* * * * *

[100] The witness: To repeat, if I may, briefly and clearly, the candidates in 1978, Mr. Spaulding and Mr. Clements—one received 10 percent or ten percent of white voters voted for one of these candidates. 16 percent of white voters for the other. 89 percent of black voters voted for one of these candidates. 92 percent of black voters voted for the other. The data in question are to be found on the first page of Appendix 3 to Exhibit 11, Table I.

Okay. Turning to the 1982 election, since one would not wish to be accused of not looking at 1982, 37 percent of the white voters voted for the incumbent black candidate. And that is to say, 73 percent of the white voters didn't—I am sorry—63 percent of the white voters did not vote for the incumbent black candidate in the primary. And on the other hand, 90 percent of the black voters did vote for the incumbent black candidate, [101] Mr. Spaulding.

By Ms. Winner:

Q. Dr. Grofman, how many candidates were there in the Durham County primary in 1982?

A. There were four candidates in the Durham primary in 1982, two of them black and two of them white.

Q. How many seats were there?

A. There were three seats to be filled.

Q. Does that influence your analysis of that county—that election?

A. That makes it even more patently obvious to the extent of racial polarization, insofar as the primary election is one in which it is mathematically certain that a black candidate must be elected. That is to say, there are two whites, two blacks, three individuals being selected. One of the individuals selected—at least one of the individuals selected—must be a black. At least one of the individuals selected must be a white.

What this implies is that white voters in such a primary might be inclined—knowing that a black candidate is guaranteed of election in that primary—might be inclined to cast votes for a particular black candidate as opposed to another black candidate in order [102] to have the black candidate whom they would regard as the lesser of two evils elected. Thus, there would be an additional incentive for white voters, even those who might not normally vote for a black candidate, to vote for a black candidate in an election where it was a certainty that one black candidate would win and the question was which one it was going to be.

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[147] FURTHER PROCEEDINGS 3:36 P.M.

CROSS-EXAMINATION 3:56 P.M.

By Mr. Leonard:

* * * * *

[159] Q. If I understand that definition as you have used it—please correct me if I am wrong. If the white population in a particular election district does not vote for or [160] support black candidates in the same percentage that the black population of that election district supports the black candidates, then it is your opinion that there is racial bloc voting or racial polarization in that election; is that correct?

A. That is correct.

Q. Now, with respect to that definition, do you quantify at all—do you find that there is in some elections some racial bloc voting in other elections a significant amount of racial bloc voting or do you quantify it in some other way?

A. There are two ways to distinguish among levels of racial bloc voting for the absence or presence of racial bloc voting. The first question is is there racial bloc voting? The answer to that is based on the relationship between the race of voters and their votes. If there is a consistent relationship between race of the voter and the way in which the voter votes, then there is indeed racial polarization.

Having established that initial fact, one may then ask is the observed racial polarization at a level which is statistically significant? In answering that question, one may look at the correlation coefficients. One may look at in particular the level of statistical significance of the correlation coefficient.

[161] I have previously testified that I have done so for each and every one of the 53 elections I have examined and have found each and every one of them to be statistically significant.

Q. When you say "statistically significant"—

A. (Interposing) I am sorry. I have not finished my answer.

Q. Go ahead.

A. One may also wish to consider "whether or not there is substantively major important substantively significant racial polarization." There is no consensus as to what such a term would mean, though as I have testified, in my view a situation in which a majority of the white voters are unwilling to vote for any black candidate would certainly constitute such substantively significant racial polarization.

* * * * *

[175] Q. And specifically candidate two was Charlie Grady Houser, now Representative Houser?

A. Yes.

Q. And candidate three was Annie Kennedy?

A. Yes.

Q. And they were the two black candidates?

A. Yes.

Q. And they were successful in the election; is that correct?

A. Yes.

Q. Now, did you specifically take this election into consideration when you formed your conclusion with respect to the 53 elections that you looked at, that in Forsyth County and in North Carolina generally, there is substantially significant racially polarized voting?

A. Yes; this is one of the 53 elections I analyzed.

Q. And so the record is clear, in that election C. G. Houser received—and I am only going to use the regression estimates and not the extreme case estimates—received .87 percent—I'm sorry—received 87 percent of the black vote and 42 percent of the white vote?

[176] A. That is correct.

Q. And Representative Kennedy received 94 percent of the black vote and 46 percent of the white vote?

A. That is correct.

Q. And is it correct, Dr. Grofman, to state that your conclusion with respect to substantially significant racial polarization in voting with respect to Forsyth County assumes race to be the predominant factor in that election?

A. No; that is not correct.

Q. What other factors did you consider?

A. Did I consider in asking the question whether there is racial polarization?

Q. Correct.

A. The only question which I considered in answering—the only data I considered in answering the question of racial polarization is the voting behavior of whites and blacks.

Q. Listen carefully to my question again. With respect to your conclusion that there is substantially significant racial polarization in voting in Forsyth County, did you assume that race was the predominant factor in the election?

A. No, I did not. I can only repeat the answer I gave previously.

[177] Q. Do you know what I mean by “factor”?

A. Yes.

Q. Is race a factor in an election?

A. Yes.

Q. What other factors did you consider with respect to Forsyth County to come to your conclusion which is that there is racial polarization—I'm sorry—that there is substantially significant racial polarization in voting in Forsyth County?

A. None; that is to say racial polarization as I have defined it deals with the voting patterns of the white voters versus the voting patterns of black voters. Therefore, I look at the voting patterns of white voters versus the voting patterns of black voters to determine racial polarization.

Q. Then you considered only the factor of voting in your conclusion?

A. Yes; since the definition of racial polarization I have given is the definition having to do with voting.

Q. Let me strike that question and re-ask it. You therefore considered only the voting patterns that you found in the statistical data that you looked at in order to reach your conclusion?

A. Yes; that is correct with the exception of [178] the fact that I did have knowledge of which candidates—which black candidates were incumbents.

Q. And you knew which ones were black and white?

A. That is correct.

Q. I believe you testified that—I don't want to change the words and I don't remember them specifically so please correct me if I am wrong—that you could practically guarantee that the election results in Forsyth County in 1984 with respect to the two blacks would not be repeated as they were in '82; is that correct?

A. That is my belief; yes.

Q. Can you tell the court any instance in which a black incumbent in the General Assembly has lost an election when that incumbent sought re-election?

A. There are no such examples in which—in counties in which—there are no such examples.

* * * * *

[181] Q. Now, if you would for me, let's move on to the Durham House primary in June of 1982 which is Gingles Exhibit 16(D).

* * * * *

Q. First of all, Dr. Grofman, what do you conclude from this exhibit with respect to the ability of the black community to single-shot vote?

A. The black community in this exhibit did give the bulk of its vote to candidate number four.

Q. Well, the bulk by approximately three to one; [182] isn't that right?

A. That's right.

Q. Would you agree, Dr. Grofman, that single-shot voting by the black community in Durham County at least from the results of this election shows a high degree of political sophistication?

A. It either shows a high degree of political sophistication or a high degree of racial polarization.

Q. With respect to the conclusion that you drew, looking at the fact that Clement received 32 percent of the black vote and 27 percent of the white vote, Spaulding received 90 percent of the black vote and 42 percent of the white vote, does this election form part of your conclusion that there is substantially significant racially polarized voting in Durham County?

A. Yes. In this election, I have not concluded that there is substantially significant racially polarized voting.

Q. I'm sorry. I didn't hear that.

A. In this election—the question you specifically asked was: Is this one of the elections that I took into account in deciding whether or not, in the county as a whole, there was substantially significant polarization. The answer to that question is, "Yes."

Unless I be misinterpreted, let me be clear [183] that I am not concluding that in this election there was substantially significant racial polarization. There was statistically significant racial polarization. There was racial polarization.

Mr. Leonard: May I have just a moment?

(Pause.)

By Mr. Leonard:

Q. Now, Dr. Grofman, in that election—the one we were referring to—Representative Spaulding who is a black was a winner and Mr. Clements who is black was a loser; is that right?

A. Yes.

Q. Now go with me if you would to Gingles exhibit 16(c) which is—I'm sorry—(E) which is the very next exhibit which is the summary sheet on Durham County in the House general election of November of 1982 to elect three candidates—I'm sorry—to elect three representatives and there were three Democrats running and one Independent white; is that right?

A. Yes; that's correct.

Q. And Representative Spaulding was the black—one of the three black Democrats in that election; correct?

A. Correct.

Q. Looking again at the column which would be the [184] third column, "Regression estimate," Representative Spaulding received 89 percent of the black vote in that election and the next closest candidate who was white received 13 percent and the other two white candidates received less than that; correct?

A. Yes; that is correct.

Q. Is that an example of single-shot voting by blacks?

A. Yes.

Q. And does that election indicate to you that there is a high degree of political sophistication by the blacks?

A. There again, either a high degree of political sophistication or high racial polarization.

Q. All right. Please note over in the regression estimate column that Spaulding received 43 percent of the white vote.

A. That is correct.

Q. Do you conclude—do you consider this election as part of the overall information when you came to your conclusion that there is substantially significant racial polarization in voting in Durham County?

A. Yes.

* * * * *

[186] Q. Looking at the column, "Regression Estimates," would you draw any conclusion from the fact that Senator Alexander received 87 percent of the vote and the next [187] highest vote among the blacks received by white candidates was 27 percent, the other three being lower, with respect to the political sophistication of blacks in Mecklenburg County to single-shot vote?

A. Again, blacks were concentrating their ballots on the black candidates.

* * * * *

[189] Q. Do you draw a conclusion, Dr. Grofman, from those statistics with respect to the sophistication of black voters to use single-shot voting?

A. Yes; black voters are using single-shot or concentrated voting—casting fewer ballots than they are entitled to cast and concentrating those ballots on black candidates.

[193] Q. Go with me, please, to Gingles Exhibit 17(D) which is the House primary in Wake County in June of 1982.

[194] Mr. Leonard: June 1982, the House primary in Wake County.

By Mr. Leonard:

Q. There were 15 candidates to—15 Democratic candidates to fill six nomined positions; is that correct?

A. Yes; that is correct.

Q. Only one of those was a black?

A. Yes; that is correct.

Q. That is Representative Dan Blue who is listed as candidate number two on this exhibit?

A. Yes.

Q. Who was the highest vote-getter in that election?

A. Candidate two, Mr. Blue.

Q. And he received 82 percent of the black vote and 39 percent of the white vote?

A. That is correct.

Q. And from this election do you conclude that there is substantially significant racial polarization in voting in Wake County?

A. In Wake County, or in that particular election?

Q. In that election.

A. In that election; no, I do not.

[195] Q. Tell me, what is it statistically that causes you to believe that this does not meet your definition of substantially significant racial polarization in voting?

A. Substantially significant racial polarization in voting as I have defined it occurs when the differences in the voting pattern of black voters and white voters are such that the racial composition of the electorate will affect the election outcome, that is to say, such that if the election were held entirely within the members of one community as opposed to entirely within the members of the other

community, the set of candidates who would be elected would be different.

Q. And this is not such an example?

A. That is correct.

* * * * *

[203] REDIRECT EXAMINATION 10:27 A.M.

By Ms. Winner:

Q. Dr. Grofman, Mr. Leonard has just taken you through some eight individual election contests. How do these eight contests compare to the other 45 contests which you have analyzed in terms of the degree of racial polarization?

A. They are among the election contests with the least racial polarization and, indeed, they include the only election contests in which I have concluded that there is not substantially significant racial polarization.

* * * * *

Q. Drawing your attention to plaintiff's exhibit number 15(f) and I am going to briefly go over these in [204] the same order that Mr. Leonard did.

* * * * *

Q. Could you point out how white voters ranked the two black candidates, Kennedy and Houser, in that election?

A. Yes; white voters of the eight candidates in that race for general election in Forsyth County in November 1982, white voters ranked the two black candidates seven and eight—last and next to last—for five seats to be filled.

Q. And how did black voters rank those two candidates in that election?

A. First and second.

Q. Moving on to plaintiff's exhibit number 16(d) which is the Durham County June 1982 primary?

A. Yes.

[205] Q. Was it possible in that election for a black candidate not to be elected?

A. No; it was not.

Q. Why was that?

A. There were four candidates in the race. Two of them were black. Two of them were white. There were three seats to be filled, therefore it is mathematically impossible to have elected fewer than one black candidate since there were only two white candidates in the race and three seats to be filled.

Q. What is the percentage of white voters who did not vote for the black incumbent?

A. Percentage of white voters who did not vote for the black incumbent is 63 percent.

Q. And what is the percentage of white voters who did not vote for each of the white incumbents?

A. 32 percent and 33 percent.

* * * * *

[214] Q. Now, I believe that yesterday afternoon you testified concerning plaintiff's exhibit number 19 on cross-examination?

A. Yes; that is correct.

Q. And my recollection is that you testified or that you agreed with Mr. Leonard that Republicans are unable to defeat 67 percent of the black Democrats who made it to general election; is that right?

A. That is correct.

Q. What is the percentage of white Democrats that Republicans are unable to defeat?

A. 88.2.

[215] Q. And do you consider that to be a significant difference?

A. Given the sample size, that is the large number of cases looked at, yes.

* * * * *

[216] Q. Now, on cross-examination you calculated the average size of a North Carolina house district?

A. Yes; I did.

[217] Q. And that average included all the districts in the state?

A. That is correct.

Q. Does the fact that average size in North Carolina is not higher than some or all of those largest averages in the country change your opinion about whether Mecklenburg County is an unusually large house district?

A. No, it does not.

Q. Does it change your opinion about whether Forsyth County is an unusually large house district?

A. No, it does not.

Q. Does it change your opinion about whether Wake County is an unusually large house district?

A. No, it does not.

Q. Does it change your opinion about whether the Wilson-Edgecombe-Nash district is an unusually large house district?

A. No, it does not.

Q. What is that opinion?

A. That opinion is that all these districts are large house districts relative to either the average size of the states with the largest average size house districts or, even more

particularly, with respect to North Carolina since North Carolina four, five, six and eight are higher than 2.91, the figure calculated for [218] North Carolina.

Q. And drawing your attention to the senate, does the fact that North Carolina's average senate district—

Judge Phillips: (Interposing) Why don't you shortcut that and ask him the same question. This is just nails in the coffin. All of this is in the record and you are simply trying to emphasize that his conclusion is unchanged.

By Ms. Winner:

Q. Is your conclusion unchanged about the Mecklenburg-Cabarrus senate district?

A. It is not; it is both unchanged and reinforced since a within North Carolina comparison strengthens the point made yesterday.

* * * * *

[219]

EXAMINATION

By Judge Dupree:

Q. I would like to ask Dr. Grofman if the study of the kind you have made and on which you have based the conclusions given us assumes that all candidates, regardless of race, are equally qualified in all of these elections?

A. It makes no assumptions whatsoever about relative qualifications of candidates since those, I believe, that judgment should be made by voters.

Q. How can you be sure that the election results do not reflect judgment of the voters as to the relative qualifications of the candidates and not necessarily their racial preferences?

A. I cannot read the minds of the voters, but when black voters consistently rank black candidates one or two in

their preference ordering and white voters consistently rank black candidates at the bottom of their preference ordering in a society which has a history of racial discrimination and in which there is clear racial polarization, it seems to me a plausible, indeed, the most plausible explanation is that race is what is determining the elections.

* * * * *

[224] (Whereupon

Harry Watson

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 11:01 A.M.

By Ms. Winner:

* * * * *

[276] Q. Who won that election?

A. Jesse Helms.

Q. What do you conclude about racial involvement in politics during this time period according to that election?

A. That racial appeals were still a very important [277] part of the political climate of the state; that they could be used and were used by leading white candidates and that the political power of blacks was still so weak that they could not defeat candidates who took these kinds of positions.

* * * * *

[278] Q. Have you also examined the congressional race for the second congressional district that happened in 1972?

A. Yes.

Q. Who were the candidates in that race?

A. In the Democratic primary the candidates were Richard L. Fountain and Howard Lee.

Q. And have you examined the election occurring in that race by county?

A. Yes.

Q. Where did you obtain those returns?

A. I obtained them from the *Durham Morning Herald* coverage of the election after it was over.

Q. Is that a source on which historians normally rely?

A. Yes.

Q. What did you conclude from that analysis of that election? Before that, what race is Mr. Lee?

A. He is black.

Q. And what race is Mr. Fountain?

A. He is white.

Q. And now what did you conclude from your analysis [279] of that election?

A. I compared the percent voting for Lee with the percent of non-white registered voters in each of the counties. There are 12 counties in the District. With the exception of Mr. Lee's home county of Orange County, the proportion voting for Lee did not differ from the proportion of non-white registered voters by more than nine percent and usually it was much, much closer than that—three percent, four percent.

Q. What were the counties in that district at that time?

A. Caswell, Edgecombe, Franklin, Granville, Halifax, Nash, Northampton, Orange, Person, Vance, Warren and Wilson.

Q. In particular, what were the results that you found in Wilson, Edgecombe and Nash counties?

A. In Edgecombe, the percent for Lee was 41.2; the percent of non-white registered voters was 35.6.

In Nash, the percent for Lee was 33.9; the percent of none-white registered voters was 25.7.

In Wilson, the percent for Lee was 32.4 and the percent of non-white registered voters was 24.7.

Q. And what about in Halifax and Northampton counties?

A. Sorry. In Halifax, the percent for Lee was [280]

* * * * *

[281] Q. What were the results of your study with regard to voter registration?

A. Well, the percent of black voters registered in 1960 was 39.1 percent. The percent of white voters was 92.1 percent. For whites, that was the highest [282] proportion in the south. For blacks, it was not the highest proportion in the south.

* * * * *

[284] By Ms. Winner:

Q. Do you have before you exhibit number 41?

A. Yes.

(Plaintiff exhibit 41 was marked for identification.)

Q. What is that?

A. This is a graph of the number of black officials elected in North Carolina between 1970 and 1981.

Q. What do you conclude from that graph?

A. Well, the number of black elected officials in 1970 was very, very small. The figures here show that it was 62, I believe.

Over the next three years, it more than doubled [285] and then by 1975 it had quadrupled to something over 200 so that between 1970 and 1975, the number of black elected officials in North Carolina increased dramatically.

Thereafter, growth almost stopped except for a jump between 1977 and 1978. The curve is almost flat thereafter.

Q. And what does that tell you about the extent of election of blacks in North Carolina?

A. It is still very, very low.

* * * * *

[307] Q. Professor Watson, what is your overall conclusion about the role of race in North Carolina politics during the first 75 years of the century?

A. It has been extremely important throughout that period. Whites continued to be very fearful of the exercise of political power by blacks and politicians [308] found that they could appeal to those white fears and win elections on the basis of those appeals. They found indeed that such appeals were essential to their successs.

Blacks found that they did not have sufficient political power to counter those appeals or to punish, in effect, the officeholders or politicians who made them.

Q. What is your overall conclusion about participation of black people in the political process in this century?

A. Since disfranchisement, it has been very, very low and it has increased only as a result of the legislative and political court battles, struggles in Congress and in the neighborhoods.

* * * * *

[325] (Whereupon

Paul Luebke

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 3:01 P.M.

By Ms. Guinier:

* * * * *

[344] "... Helping to forge city policies of divergent and sometimes controversial views and ensure public support for them."

(Pause.)

They go on to say that Mr. Knox is best equipped for that.

It is my professional judgment that the *Charlotte Observer* concluded that a black person could not bring together black and white communities, that you must be white to bring together black and white communities, an extraordinary conclusion in that they have acknowledged that the black candidate was, in fact, more qualified on the merits.

Judge Phillips: Are you testifying that you think that that expression of editorial opinion communicates an idea to voters that has racial significance?

The Witness: Yes, sir.

Judge Phillips: That is your testimony?

The Witness: Yes, sir.

By Ms. Guinier:

Q. I direct your attention now to plaintiff's exhibit 47 and ask you to describe that.

A. This is an ad by the Knox campaign. The line to which I draw the court's attention is at the bottom of the text,

[345] “. . . We urge you to vote for a mayor who is concerned for the total city, not just a few selected areas.”

These are sophisticated telegrams, I acknowledge, but they are codes that say, “Harvey Gantt, a black person, could only represent a few selected black areas whereas Eddy Knox, a white man, can represent the total city.”

Q. I ask you to describe plaintiff's exhibit 48.

A. 48 is another Knox campaign ad which has brought together a number of statements including the *Charlotte Observer* editorial which I alluded to a few minutes ago. What we see in this advertisement is that in example after example, the emphasis is upon all sections of the city, for example, the *Charlotte Weekly Sunday*, the third reference that Eddy Knox has a reputation in all sections of the city.

Quoting from former mayors of Charlotte, the ad goes on,

“. . . Eddy Knox will serve all the people of Charlotte.”

Editorial, “Knox can unify this city.”

Charlotte Weekly Sunday—I'm sorry. I've got two pages and I've repeated.

Former city council members and city council commissioners write,

[346] “. . . He has a compassion for all our citizens,”

Again, a sophisticated telegraph message, but the idea that to support all citizens, one must be a white.

Judge Dupree: Doesn't every candidate for public office at any level in the governmental structure always make that claim?

The Witness: Sir, I think not. I think that the emphasis on selected areas juxtaposed to all the city is a particular phenomenon of racial politics.

* * * * *

[350] Q. I direct your attention to plaintiff's exhibit 50. Do you have a copy of that in front of you?

A. Yes.

(Plaintiff exhibit 50 was marked for identification.)

Q. Can you identify that document, please?

A. Yes; this is a document from the *Durham Morning Herald* published in the month before the May, 1980 Democratic primary in which the newspaper reporter summarizes efforts to elect an all-white Durham County board of commissioners as well as an all-white Durham County board of education.

The article takes note of the fact that the all-white electoral attempt was in the wake of a successful all-white election slate elected for city council elections in November of 1979. This is noted in the third column of the article.

[351] In that election, the "code," the telegraphed issue was progress and the issue was a low-income black community which was fighting the extension of a highway. This article links then both the November 1979 successful attempt to elect an all-white slate as well as a proposed all-white slate for May, 1980.

* * * * *

[352] Ms. Guinier: That is correct, your honor.

By Ms. Guinier:

Q. May I direct your attention to plaintiff's exhibit 51 and ask if you can identify that?

(Plaintiff's exhibit 51 was marked for identification.)

A. It is an advertisement which appeared in the *Durham Morning Herald* on May 4, 1980, on the eve of the May 1980 primary election.

Q. Is this one of the research materials that you have used in forming your conclusion?

A. Yes; it is a campaign advertisement.

Q. And could you describe this particular document for us?

A. This is a document which shows a picture of five white members of the all-white slate alluded to previously and urges people to vote for these five candidates.

Q. And what conclusions do you draw from this particular document?

A. This is not particularly sophisticated. It is merely saying—it is showing the pictures of five white men and saying, if you wish to vote white here is your slate.

[353] Q. Did you also analyze any—

Judge Britt: Just a moment. I want to ask a question. Do I take it that you feel that the only way that racial telegraphing could be avoided would be to eliminate photographs from political ads?

The Witness: Sir, I examine these elections in a political context. I do not mean to suggest that every time a picture of a white candidate appears that that is racial appeal and therefore I do not suggest as a remedy that pictures must be banned from political campaigns. But in the context of Durham County politics for May 1980, my analysis is that the use or purpose of placing five white men's picture in the paper was to make a racial appeal to white voters.

Judge Britt: You may proceed.

Ms. Guinier: Thank you, your honor.

By Ms. Guinier:

Q. Did your analysis of plaintiff's exhibit 51 also include an analysis of the language that was used in that particular advertisement?

A. Yes; at the bottom of the ad is a reference to "continued progress in Durham County." This refers to, for those who are familiar with the context of Durham County politics, the use of progress as the code word in the November 1970 city council elections which I referred [354] to previously. So the words, "continued progress—"

Q. (Interposing) What was the date of that election?

A. November 1979.

Q. I'm sorry. Would you repeat that?

A. November of 1979, and May 1980. "Continued progress," my interpretation of that is to remind voters of the issues in 1979—fall of 1979.

* * * * *

[360] Q. Could you identify plaintiff's exhibit 52?

A. Yes, ma'am; this is the letter which was mailed over the signature of candidate Valentine to "neighbors" in Wilson, Halifax, Nash and Edgecombe counties. The important points from the standpoint of racial telegraphing are at the bottom of the page, page one, final paragraph.

The seemingly well-organized block vote—so much so, the point here, block is spelled correctly, b-l-o-c, the bloc vote, but for purposes of this letter, the word bloc has been misspelled b-l-o-c-k so that any kind of casual reading of this letter could, in fact, be seen as the well-organized black vote. That is the meaning of part one of that sentence.

* * * * *

[361] Judge Phillips: Do you have an opinion based upon your expertise as to any significance as bearing upon racial appeals of any of the material in plaintiff's exhibit 52?

The Witness: Yes, sir.

Judge Phillips: What is it?

The Witness: If you and your white friends don't vote on July 27, my opponent's black vote will decide the election for you.

Judge Phillips: What particular parts of that exhibit do you point to that are supporting that opinion?

[362] The Witness: I point to the top of page two of exhibit 52, and to the final paragraph on page one.

* * * * *

[365] By Ms. Guinier:

Q. You have described a letter sent out by the Valentine for Congress campaign entitled "Dear Neighbor." Do you also have the letter which is attached to plaintiff's exhibit 52 which was sent out by the Valentine for Congress campaign that is addressed, "Dear Fellow Democrats"?

A. Yes, I do.

* * * * *

[366] Judge Phillips: Will you identify it by reference to the exhibit?

The Witness: Yes; I have it as number 52(b).

"... Dear Fellow Democrat: Tuesday, July 27 is an important date for Democrats in Durham County."

The final two paragraphs of the first page of that exhibit, read:

"... Our polls indicate that the same *well-organized block vote* which was so obvious and influential in the first primary *will turn out again* on July 27. My opponent will again be *busing his supporters* to the polling places in record numbers. If you and your friends don't vote on July 27, my opponent's *block vote will decide the election* for you."

By Ms. Guinier:

Q. Dr. Luebke, can you interpret those particular pro-
tions that you have just read?

Judge Phillips: Can you give an opinion as to their
capacity to convey a racial appeal in the context?

[367] The Witness: Yes; I can give an opinion.

By Ms. Guinier:

Q. Would you, please?

A. Yes. My opinion is that this is urging white voters to
take note of black voters' prior participation in the first
primary and that if you and your white friends don't vote
on July 27, my opponent's black bloc vote will decide the
election for you.

* * * * *

[385] Judge Phillips: (Interposing) Try to respond to
the question. What, in your opinion, in this particular ex-
hibit constitutes a racial appeal?

The Witness: In context, sir, the picture and the three
final sentences of the advertisement.

By Ms. Guinier:

Q. Can you describe the picture?

[386] A. Yes. The picture is of Governor Hunt and Rev-
erend Jesse Jackson meeting in the executive mansion on
March 11, 1983—on March 11th.

Q. Can you or would you please read the three sentences
that in your opinion are a racial appeal?

A. “. . . We must register at least 200,000 black voters
in North Carolina in the next two motnhs (Jesse Jackson).
Governor James B. Hunt, Jr. wants the state board of
elections to boost minority voter registration in North
Carolina,”

From the Chapel Hill newspaper.

Third, the text of the ad:

“ . . . Ask yourself, ‘is this a proper use of taxpayers’ funds?’ ”

Q. Why, in your opinion, is the picture a racial appeal?

A. It is a racial appeal because it is drawing to the attention of the public that an opponent or likely opponent has a controversial black leader in his office.

Q. In your opinion, what about the three sentences that you read is a racial appeal?

A. The three sentences which I read draw attention to the fact that black voters are being registered. And it questions whether or not it is legitimate for a [387] Governor to support the voter registration of blacks.

* * * * *

Q. Can you compare the cartoons in plaintiffs’ exhibits 22 and 23 with the political advertisement in plaintiffs’ exhibit 53(c)?

A. Yes.

* * * * *

[388] The Witness: I compare exhibits 22 and 23 and 53(c) and see in the two what I refer to as continuity in racial politics.

By Ms. Guinier:

Q. What do you mean by that?

A. By “continuity,” I mean that themes which were extremely overt in exhibits 22 and 23, which I recall to be 1898, are subtle—more subtle—in 1983. And yet the content of the exhibit shows similarities.

That is, the question is being raised whether it is legitimate for a Governor who is white to be meeting with a

political leader—controversial political leader—who is black.

* * * * *

[402] Q. The significance in relation to the participation of blacks and whites in the State of North Carolina?

A. There is a truism—

Judge Phillips: (Interposing) No; no. Just answer her question, Mr. Witness, if you will. It will go along much better.

The Witness: Thank you. Could you repeat the question?

By Ms. Guinier:

Q. Yes. What is the significance between the data that you have examined regarding the demographic status of blacks and whites in the State of North Carolina and the participation by blacks and whites in the political process in this state?

A. The significance is that for all the socioeconomic measures which I have reviewed, the socioeconomic status of blacks is lower than the socioeconomic status of whites.

Q. What is the significance of that to the participation by blacks and whites in the political process in North Carolina?

A. The significance of that is that a fundamental finding of political sociology for the United States is that the lower one's socioeconomic status the less [403] likely one is to participate in the political process.

* * * * *

[412] CROSS-EXAMINATION 9:55 A.M.

By Mr. Leonard:

* * * * *

[418] Q. Is it your testimony, Dr. Luebke, that two people looking at a political ad which opposes the busing of

school children—that no person could draw a reasonable inference that that is not a racial appeal?

A. I have testified about racial appeal in the context of the definition which I use in my work. And your question is too vague for me because I don't have any examples to comment as to whether or not it is a racial appeal.

Q. You have testified that you used quantitative methodologies in your professional experience?

A. Uh-huh.

Q. Tell the Court what quantitative methodologies you used in coming to your opinion with respect to the racial appeals in the various campaigns that you have testified to?

A. The racial appeals which I have testified about are based on case study analysis. Those are not quantitative studies.

Q. Have you interviewed specific individuals to determine the impact of the claimed racial appeal in those elections?

[419] A. I have not relied on my interviews with anyone to draw my conclusions concerning specific documents which I have been discussing.

Q. So the answer to my question is "no"?

A. Yes—yes, no.

Q. Yes, the answer to my question is "no"; is that correct?

A. I will be 100 percent sure if you repeat that question. Then I will try to give you that straight; "yes-no" that you are asking for.

Q. Dr. Luebke, is the answer to the question I propounded to you "yes" or "no"?

A. But I don't remember that question to which you want a "yes-no" answer.

Q. Well, viewing the state of the record, I will leave that question where it is.

(Pause.)

Dr. Luebke, is it fair political comment for one candidate running for a public office to lay out in a political ad his background and political experience versus his opponent's?

A. Yes.

Q. And if he compares the public service of the two candidates, is that fair comment?

A. Yes.

* * * * *

[422] Q. Do those organizations or groups ordinarily put out a piece of literature in which they carry the pictures and some information about the slate they are supporting?

A. Yes. It is common.

Q. And is there anything in exhibit 51, which is the ad in Durham County for the county board of commissioners of the May 6, 1980, election, other than the pictures of the five candidates that you found to be racially telegraphing or racial telegraphing?

A. Yes.

Q. What else?

A. Based on my experience as a political sociologist referring to—

Q. (Interposing) We know what your experience is. Just tell me what else in the ad is a racial telegraph other than the pictures of the candidates, please.

A. Yes. "Vote for continued progress in Durham County" had meaning in the context of 1970-1980 political context of Durham County.

Q. Were any of these candidates incumbents?

A. Yes.

Q. It is not likely that a candidate for public office seeking re-election would use the terminology [423] "continue your progress by supporting me"?

A. In Durham County, the appearance of this ad on May 4, 1980, is no accident.

Q. Dr. Luebke, I ask you: Is it not usual in politics for an incumbent seeking re-election to use terminology asking the electorate to support him for continued progress?

A. Yes. The word "progress" can be used.

Q. Now, do you know who Bill Bell is?

A. Yes.

Q. Who is he?

A. He is the chairman of the county commissioners in Durham County.

Q. The chairman of the county board of commissioners in Durham County?

A. Yes.

Q. And when was he elected last?

A. He was last elected in 1982.

Q. And when was he elected before that?

A. I believe Mr. Bell was first elected in 1972.

Q. Was he elected in the election of 1980?

A. He was.

Q. Do you know Eleanor Spaulding?

A. Yes, sir.

Q. Is she a member of the county board of [424] commissioners of Durham County?

A. She is.

Q. Was she elected or re-elected in the election in 1980?

A. She was.

Q. Is it correct, Doctor Luebke, that in the election in which this ad was used as one of the tools for this slate that there were two black people elected to the county board of commissioners in Durham County?

A. Yes.

Judge Britt: What is your answer?

The witness: Yes.

Judge Britt: You have got to speak out so the reporter can get it down, Mr. Witness.

The witness: I am sorry, sir—yes.

By Mr. Leonard:

Q. Now, how does one go about getting elected chairman of the county board in Durham County?

A. It is a vote of the five incumbent commissioners when they convene the new county commission.

Q. So if there is a contest, the winner has to have at least three votes; is that right?

A. That is right.

Q. And if Mr. Bell is the chairman of the county board, he had to have at least three votes to become [425] chairman; correct?

A. That is correct.

Q. Now, what is the mathematical possibility that he could have been elected chairman of the county board of Durham County without white support?

A. Which question are you asking, sir—concerning the election or concerning his election of county commission—to the chair of the county commission? Those are two separate votes. One is a vote of the county commission. One is a vote of the people.

Q. What is the mathematical possibility, Dr. Luebke, that Mr. Bill Bell could have been elected chairman of the county board of supervisors in Durham County without white support in the election for chairman?

A. Zero.

Mr. Leonard: That is all I have.

* * * * *

REDIRECT EXAMINATION 10:16 A.M.

* * * * *

[426] By Ms. Guinier:

Q. Is it usual for a candidate to put a picture of his opponent in his own political advertisement?

A. It is highly unusual. It represents free publicity under normal circumstances.

Q. Now, directing your attention back to plaintiffs' Exhibit 51?

A. Yes.

Q. What was the significance in your opinion to the use of the word "progress" in that political advertisement?

A. "Continued progress" is a statement in the context of the November 1979 city council election in which an all-white slate was elected to the Durham city council. The term "progress" was used consistently in [427] that cam-

paign for public office—the city council campaign. And “continued progress” is a reference to that success—that electoral success by that all-white slate.

* * * * *

Phyllis D. Lynch

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 10:20 A.M.

By Ms. Guinier:

* * * * *

[429] Q. Are you involved in electoral politics in Charlotte-Mecklenburg?

A. I am.

Q. In what capacity?

A. I am chairman of the Mecklenburg County Board of Elections. And I also serve as a member of the black political caucus and belong to the caucus' issues and candidates committee.

Q. How long have you been involved in electoral politics?

A. I have been involved approximately 18 years.

Q. When did you first register to vote?

A. When I was—in 1968.

* * * * *

[431] Q. Now, have you encountered any problems as a member of the black political caucus or in your involvement in electoral politics in getting out the black vote?

A. Yes.

Q. What are those problems?

[432] A. Traditionally, the black community has not been encouraged to participate in the electoral process. Many people still feel that literacy test, poll tax—things that have been removed—are still in existence. And it is a very slow process to try to educate people that there need not be a fear of using the voting machine or going down to vote.

We encounter as we go to talk to individuals in various places about registration that older people tend to feel that they had in prior years been told by the whites that they work for that there was really no need to take an active involvement in local government; that they would take care of that for them; anything they needed, to contact them.

Many people feel that if the husband is registered to vote, the wife does not need to register to vote; and that their children should stay in their place and not try to cause any trouble. And there has been resistance by blacks to vote because they felt threatened in some degree.

Q. When you say "threatened," what do you mean?

A. Well, you weren't encouraged to participate. And to some people it is looked at that if you go out and try to get people elected to office, that they are not going to respond to you anyway if they are white; and if [433] they are black, that they are going to going to have conformed to the degree that they don't relate to you anyway.

Q. You said that a low to medium number of whites would vote for a black candidate. What following does a black candidate need to get those white supporters?

A. The issues and candidates committee has looked at this very closely because everyone looks for success. Success in politics is viewed as actually a victory in getting people elected. So in looking at this and inquiring, we have found that whites tend to want blacks to be the pro-

fessions, high echelon, have high visibility. And that is very difficult to acquire.

Blacks have not been in traditional leadership roles in the community. So we have not had an opportunity to demonstrate our ability to provide the kind of leadership that people feel that they want to vote for a person for.

* * * * *

[435] Q. In your opinion, how many times does a black candidate have to run before they are elected?

A. Unless it is a very unusual circumstance or a person who has been extremely visible and successful in some capacity, generally at least two times.

Q. Is this also true of a white candidate who is running for the state house or state senate?

A. No. There have been white candidates who have at their first try been able to make it that would have had fairly equal credentials to blacks who have tried at the same time.

Q. Have those blacks with the same credentials won?

A. No. They have not won.

Q. How, in your experience, is a black candidate received in the white community?

A. Very seldom.

Q. What do you mean by that?

A. Well, I mean that the opportunity—the city of [436] Charlotte, as can be seen by the exhibit that you had me point to originally, shows that the black community is still isolated. We are a progressive city working toward trying to improve that. But at this time, however, we still have approximately 90-plus percent of the black community residing on the west side of town.

So it is very difficult if you live on one side of town, go to a black church, socialize at a black club, to be invited over to the white side of town where the white church is, the white clubs, *et cetera*; so that it is very seldom.

Q. Are there any other problems that a black candidate has in getting exposure in the white community?

A. Yes. The mere fact that, as I mentioned a minute ago, we are still somewhat a—the mere fact that I can sit here and say that there is a white side of town and a black side of town shows that there are some problems that are related specifically to race.

Therefore, individuals who are black and who are seeking exposure to get elected have to try to figure out how to get invited to various affairs in the white community, have to figure out how they can convince the white constituent that they are indeed capable of providing leadership.

Generally, there are no blacks that I know of [437] who have headed United Way campaign drives, airport bonds or things of this nature that would give them the exposure that the white community normally looks at from the standpoint of leadership. Most whites who are running for office have been heads of different committees or have very active roles in leadership positions, demonstrating therefore to the community that they have the ability to sit on these elective bodies, make decisions and govern affairs.

It is difficult for blacks to demonstrate that when they have not had the opportunity to have the same positions in the community.

Q. Is there any problem in terms of raising money?

A. There will be tremendous problems with raising money. This is one of the things that when we counsel blacks from the caucus' committee that we emphasize—that it will take a great deal of money and time and a commitment on the candidate's part—the prospective candidate's

part—to make several sacrifices and more than likely contributing money on their own.

Q. Is the problem limited to just raising money?

A. No. Not only do you have to raise money, but you have to figure out the wisest way to expend that money from the standpoint of using effective publicity [438] about your candidacy and being able to get out into the respective community with your concerns.

Q. Can you give me an example of what you are talking about in terms of trying to figure out the wisest way to spend the money?

A. An example would be that in Dr. Bertha Maxwell's campaign, she was running for the first female—black female—to run for the North Carolina State House of Representatives. In the formulation of her strategy the idea was to use her as a test case to see whether or not we could bring together what was viewed as very successful in anybody's campaign—in talking with white public relations firms, what would she need to remove these barriers.

We sought her to run. She had experience from the standpoint of being visible in the community, having worked with the school system, having been a professor at the University of North Carolina at Charlotte. Having the title of "doctor" to help legitimize her credentials.

We raised with her assistance well over \$20,000 that was used primarily to purchase large billboards to be put in the white community, the downtown community; to buy radio and newspaper advertisements; to present her as a first-class candidate.

[440] FURTHER PROCEEDINGS 10:55 A.M.

* * * * *

Q. What was the outcome of Dr. Maxwell's candidacy?

[441] A. Dr. Maxwell was victorious in the primary and defeated in the general election.

Q. What year was that?

A. 1980—I am sorry—this past election, which was 1982 or 1981, whenever the last general election. This is 1983. So it would probably be in 1981, I guess.

Q. What has been your experience in getting white politicians to support the candidacy of a black?

A. It has been difficult over the years in trying to get white politicians to support black candidates.

Q. In your experience with the issues and candidates committee, do you have a particular function?

A. Yes. I help to invite white candidates in and set up appointments for them to speak with the entire body.

Q. What has been your experience in attempting to forge coalitions with white politicians?

A. The coalitions have not been successful, because a number of blacks that we have tried to run have not won.

Q. Why have the blacks that you have tried to elect not won?

A. They did not get white votes.

Q. Are there any other factors that contribute to the difficulty in getting blacks elected to office in [442] Mecklenburg County in addition to those that you mentioned?

A. The biggest factor is getting exposure and convincing the white voter that there is nothing to fear from having blacks in elective office.

Q. Is there any difficulty in creating a pool of available or willing candidates?

A. There is an awful lot of difficulty because, as I mentioned earlier, success is the factor through which you can

get people encouraged to run. When black candidates—when we are unable to point out to black candidates a number of victories, then they don't want to necessarily take the time.

It is difficult because, number one, you have to identify a black who can financially go to serve in these respective offices. Because of the economic situations, many blacks are not in positions—they are not in jobs that they can be released from those jobs in order to serve.

Because the positions in North Carolina as a whole pay really just expenses and a very small amount of money to those people who serve, you would have to be fairly well off to offer yourself as a candidate. Many blacks, not being in that situation—we have to figure out a way that they can be released from the positions [443] they hold and can financially subsidize their income.

We also have to, because we have not had the experience of running different campaigns, get people in that can help them from that standpoint.

Q. What about encouraging people who have sought office and have been defeated?

A. Well, after you have run two or three times and have not won, you sort of lose your desire to serve.

Q. Do you have any particular examples that you can point to?

A. Dr. Bertha Maxwell will not run again. Jim Ross, who was a candidate for the House, will not run again. There are a number of other people who have indicated that they would not run for those reasons; or in the process of trying to win have gone to their heavenly father.

Q. Now, when you say they have indicated that they would not run for those reasons, what reasons are you referring to?

A. The difficulty in attracting the white vote; the difficulty in raising money; the difficulty in projecting yourself to be the type of individual that is acceptable, regardless of the credentials that you have and the status that you have tried to form. Getting out the black vote is a tremendous effort—getting people to register to vote and then follow up with that and actually vote.

* * * * *

[445] Q. Are these difficulties that you describe for blacks running for city and county races the same as for blacks running for the State House or the State Senate?

A. It appears that it is more difficult to get blacks elected at the State House and Senate level than it is to get them elected at the local school board, city council and county commission level.

Q. Why is that?

A. First of all, it is a countywide or districtwide election. If you are running for the State Senate, you must not only capture the votes in Mecklenburg County, but you then must go into another county to capture—that senatorial district is divided.

If you run for the State House, then you must not only win the city—you have to win the city and the county votes. An example would be in Dr. Maxwell's case, she won enough votes in the city. She lost by some 2,000 votes in the county because it is very difficult the way the county is laid out. As you can see, it is rather densely populated. So a person who must go out in those areas must either have white contacts—which the population is a larger white population than is concentrated in the city.

So you must have contacts out in those areas. [446] And the rural population and their attitudes tend to be a little bit different than the urban area.

Q. Given these problems, what must the black community do to elect a candidate to represent their interest at the State House and State Senate level?

A. They have got to get more black votes to help counteract the fact that they can't get white votes.

Q. In your opinion, it is important to elect a black person to represent the black community?

A. I think it is.

Q. Why is that?

A. First of all, I think that it helps from the standpoint of making people feel that they have got representation. Someone there is going to understand their issues and relate back to it.

When you look at a state race with the candidates going to Raleigh, coming back only on the weekend, a person—a constituent—not living in the white community may never see their elected official. A person living in the black community would have to come back to the black community. And therefore, the likelihood of them being able to relate to the concerns of the people and being able to even get in touch with them is going to be greater.

We live in Mecklenburg County approximately [447] three hours from Raleigh. So the likelihood of blacks being able to go down to Raleigh during the course of the legislature is very thin.

Q. Now, looking again at plaintiffs' exhibit—I believe it is 4(A)—can you identify the area in which most of the white elected officials live in Mecklenburg County? If you want to approach the map if you can't read it—

Judge Phillips: (Interposing) What representatives are you asking her to locate?

Ms. Guinier: The State House.

By Ms. Guinier:

Q. Just give the name of the area.

A. The majority of the delegation, all white, would tend to live in the southeast section of the city of Charlotte, known as the Silk Stocking or Myers Park area.

* * * * *

[449] CROSS-EXAMINATION 11:08 A.M.

By Mr. Leonard:

Q. Ms. Lynch, as chairman of the—what is it—the issues and candidates committee of the political black caucus for Mecklenburg County?

A. No. I serve as a member of that committee. I am not the chairman of that committee.

Q. Do you from time to time call the Mecklenburg legislative delegation to meetings in Charlotte on the weekends or when the legislature is not in session?

A. I have had occasion to do that. Yes.

Q. Do you know Representative Louise Brennan?

A. I do.

Q. Do you know what her phone number is?

A. I can find it, if that is what you mean.

Q. How about the rest of the delegation? Did you have any trouble finding their phone numbers?

A. No. As chairman of the board of elections, we put out a list that has all those numbers on it. So I could find it.

Q. So you don't have any difficulty getting in touch with these members of the House?

A. It is my role to get in touch with them. So I don't have any difficulty.

[450] Q. Does the political black caucus of Mecklenburg County have any problem getting in touch with these legislators?

A. From the standpoint of knowing the phone numbers and being able to call them—no.

Q. Have they responded when you asked them to come to meetings of the black political caucus?

Ms. Winner: We object to——

Judge Phillips: (Interposing) Overruled.

The witness: We have not been able to get them to the degree that we would feel comfortable. We have had some who are more responsive than others. Yes.

By Mr. Leonard:

Q. Has Representative Brennan been responsive?

A. Yes.

Q. Tell us, in your opinion, of the eight members currently serving from the Mecklenburg delegation who you feel has been responsive to the black political caucus?

Ms. Winner: Your honor, can we have a standing objection to the relevancy of questions on responsiveness so that we don't have to keep interrupting the testimony.

Judge Phillips: Well, why don't you state [451] the basis? Do you take the position that there is no relevance to issues of responsiveness because there is a footnote in the report that says that unresponsiveness is sought to be proven and responsiveness can be shown in rebuttal? Is that the basis of your objection?

Ms. Winner: That is the general basis of the opinion. I think the Senate report makes clear that it is the objec-

tive rather than the more subjective factors of responsiveness that are being considered; and that only if the plaintiff is attempting to prove unresponsiveness may the defendant rebut by proving responsiveness.

Judge Phillips: We will overrule the objection on that basis—that is, the objective that the evidence of responsiveness is not relevant, there being no evidence in the case of unresponsiveness from the plaintiffs' side. That objection is overruled and on a continuing basis.

Ms. Winner: Thank you.

Judge Phillips: Also, this is cross-examination. And it seems to me that the line of direct examination which inquired very specifically in matters of access to representatives has opened this matter for cross-examination irrespective of responsiveness and unresponsiveness. You may proceed.

[452] By Mr. Leonard:

Q. So you find no difficulty—I am sorry. I forgot the question. Of the eight members of the Mecklenburg House delegation, tell us those whom you have no difficulty making contact with. Ms. Lynch, when I say “you,” I mean not only you because of your position as chairman of the board of elections, but the black political caucus and those committees which involve themselves with state legislative matters.

A. The black representative Phil Berry would be the most responsive in that he attends the black political caucus meetings and on a regular basis updates us on legislation that he feels is relevant to the needs of the black community or issues that he feels that he would like some input from us as to what our position would be.

Q. Excuse me. Let me interrupt for just one moment. We will have you go on in just a minute. But in his role as a member of the caucus, does Representative Berry

serve as a liaison between the black political caucus and the Mecklenburg delegation?

A. Not in an official capacity. I am sure that he would be able to—if asked, I guess, by the delegation—do so. But we have not asked him to do so.

Q. Well, does he ever indicate to you at your meetings that he discusses these issues on the agenda [453] of your committee with other members of the delegation?

A. I would—I can remember a couple of incidents that I have heard him say that—I think they have delegation meetings. And I would assume that in some of those meetings he has indicated concerns.

Q. Tell us what other members of the delegation are available to you when you look for them or seek them out.

A. In terms of trying to write them, I guess they would all be equal beyond his level, because generally if we do not call them we don't hear from them.

Q. When you call them, do they respond to your requests?

A. From the standpoint of being courteous and taking a telephone message—yes; from the standpoint of necessarily voting in the manner in which we have requested—that could be debatable. And in fairness, we would have to look at each particular issue that we have asked them to consider.

Q. Does the Mecklenburg County political caucus keep a roll call of the eight House members during a session to determine whether they vote for or against the interests of the black political caucus from the county?

A. Not an official tally. We have several people that serve as—I guess you would call it monitors. And [454] they have the information. This information is then brought to the committee when we get ready to make endorsements or whatever.

Q. In the 1982 Democratic primary in Mecklenburg County, how many candidates that the black political caucus endorsed won in the primary?

A. You mean the entire—every office?

Q. For the House?

A. Oh, for the House. I think all that we endorsed for the primary won.

Q. Let me remind you that I believe Mr. Richardson ran well in 1982; didn't he?

A. Well, he won the primary. He didn't win the general.

Q. And in the general election, how many of the candidates that were endorsed by the caucus won?

A. All but Mr. Richardson.

Q. Now, Ms. Lynch—

A. (Interposing) Might I state, too, for clarity: We endorsed the Democratic ticket, which consisted of six whites and two blacks. So six whites won and one black for the House.

Q. In the general election for the House?

A. In the general election for the House.

Q. And in the primary election for the House in [455] 1982, you also endorsed six blacks and two whites; did you not?

A. No. We endorsed the other way around. We endorsed six whites and two blacks.

Q. Did I misstate that? I am sorry. How many votes did Mr. Richardson lose by in the general election in 1982?

A. 250 votes.

Q. Out of how many?

A. I think he got 12,000-14,000. I am not really sure.

Q. How many times had he run for public office before?

A. He had not run. This was his first try for public office.

Q. For any public office?

A. For any public office.

* * * * *

[461] Q. In your experience as chairman of the Mecklenburg County board of elections, do you perceive, Ms. Lynch, that black people have any difficulty fully and completely participating in the political process in Mecklenburg County?

A. Yes. I feel that black people do have some problems in participating fully in the electoral process.

Q. Be very specific, if you would, with the court. And tell us what those are.

A. Simply that history and tradition has not encouraged the black citizens of Mecklenburg County to register and vote; that many people, as I stated before, are still afraid of what they will have to face. The literacy rate in Mecklenburg County is about 50,000 [462] people that are illiterate. Many of those live in the black community. And many people still feel that they will be asked to read or write something in order to register to vote. The biggest problem we have to overcome is to assure them that that is not the case. And it is a slow process in doing that. But once it is done, then they tend to come out.

Q. Did the State Board of Elections recently run a program called a citizens awareness program relating to the registration of voters in the state?

A. Did indeed.

Q. Was Mecklenburg County a major focus of that campaign?

A. Mecklenburg County was a major focus of that campaign.

Q. Did that campaign result in a substantial increase in the number of black voters who were registered to vote in the county?

A. It had—a number of people were registered. But in view of the fact that there are more unregistered—

Q. (Interposing) Excuse me.

A. I will have to say no. It did not result in substantial, because there are over 35,000 unregistered.

Q. So there are still 35,000 black people who are eligible to vote but who are not registered?

[463] A. That is correct.

Q. Did that campaign have any impact on your opinion with respect to the fears and the impediments to blacks' in registering to vote?

A. The campaign showed that there was going to be—in Mecklenburg County, we try to make voting or registration accessible to everyone. This is what makes it so frustrating that many people still hold these myths to be true, because it still makes it difficult to get people to register with a county that has well over 50 percent of its eligible population which are black still unregistered.

Q. Well, it is a myth; isn't it?

A. Well, I know it to be a myth since the rule is a rule. But in trying to convince people who don't know it to be a myth and who are still questioning whether or not they will reap some reprisal as a result of that, we run into people that have served in prison or something. And they are concerned about how they can become full citizens again.

Q. Certainly one of the things you have done, Ms. Lynch, with respect to getting greater black participation and registration is the vote task force?

A. Correct.

Q. And Mr. Reid, who I understand is the next [464] witness, is the chairman of that?

A. That is correct.

Q. Would you point to that as one of the major efforts that you have undertaken in Mecklenburg County?

A. I would indeed.

Q. Would you say overall that the effort by the State Board of Elections was one which was designed to try to improve the participation by blacks in the process?

A. Certainly.

Q. Incidentally, you actively supported representative Louise Brennan in the last election; didn't you?

A. I supported the Democratic ticket, of which she was a part.

Q. Did you support her in the primary?

A. I supported the—yes; I did. I supported all incumbents.

Q. Did you support Susan Green for county commissioner?

A. I did.

Q. Did you support Pam Patterson for city council?

A. She is my district councilperson. I did.

Q. Did you support Ben Tyson for the State Senate?

A. Ben Tyson—yes; I did.

Q. I am sorry—Tyson. Did you support Betty [465] Chapin for the city council?

A. Yes; I did.

Q. Are all those people white?

A. All those people are white.

Mr. Leonard: That is all.

Ms. Guinier: We have no redirect, your honor.

Judge Phillips: Thank you, Ms. Lynch.

Judge Dupree: Let me ask a question.

EXAMINATION

By Judge Dupree:

Q. You are chairman of the Mecklenburg County board of elections?

A. Yes, sir.

Q. How long have you held a position on the board?

A. I have been the chairman going into my third year.

* * * * *
[467] Q. Now, this candidate, Dr. Maxwell—she was a professor at the University of North Carolina at Charlotte?

A. She is.

Q. Was this the first time that she had run for public office?

A. It is the first time she had run for public office.

Q. And you say that she does not plan to run again?

A. She does not.

Q. Do you know offhand about how her experience in losing the first time out compares with the candidates of the other race who lose the first time out?

A. From the standpoint of money and visibility, as I stated earlier, we try to assess what a first-timer goes through—which is generally a hard time—getting visibility, raising money.

We raised over \$20,000, which is a very large amount for a State House race in a county like Mecklenburg, in order to give her the edge. In comparison, we have had whites who have had less visibility than Dr. Maxwell, live in other areas of the community and were still unable to—she was unable to get elected. And they [468] were elected. Representative Black is one example.

Q. Let me ask you this question: Have you ever known a white to get defeated the first time out?

A. Not with the money and everything that she had—no. But I have known of whites who have lost. But it was generally because they didn't have money or visibility or inroads in the community.

Q. I am just interested in whether or not it is normal for a person who runs in Mecklenburg County to get elected the first time out, regardless of race.

A. Depending on the kind of campaign—there are serious candidates for office. And then there are people that just sort of want to get out there to get a little exposure. And maybe they intend to run for another office.

We felt that in Dr. Maxwell's case she was sort of a test project; that many people have assessed for us why black candidates lose. Their assessment generally is, "well, you all didn't raise enough money. You didn't let the person receive the kind of visibility they needed," *et cetera, et cetera*.

So Dr. Maxwell was our test case. She was very well known in the Charlotte area. She was very well liked in the Charlotte community. We got the money. We got the publicity that they advised us. Maybe we just [469] had the wrong consultant. But we followed the advice that was outlined to aspire you to victory.

Q. She sounds like a highly qualified candidate.

A. She is.

* * * * *
[470]

Samuel L. Reid

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 11:40 A.M.

By Ms. Guinier:

* * * * *
[472] Q. Have you been involved in electoral politics in Charlotte?

A. Yes; I have.

Q. In what capacity?

A. Last capacity as precinct chairman; second vice chairman of the Democratic party, Mecklenburg County; special registrar for the board of elections, Mecklenburg County; and at present, chairman of the vote task force.

Q. What is the vote task force?

A. The vote task force is an outgrowth of a committee of the black political caucus which is comprised of volunteer workers that are concerned about the participation of blacks in the political process.

Q. How long has the vote task force been in existence?

A. As an official organization, since 1979—'78.

Q. Prior to that time?

A. It was a committee actively encouraging people to register and vote and trying to stimulate political involvement.

* * * * *

[479] CROSS EXAMINATION 11:52 A.M.

By Mr. Leonard:

Q. Mr. Reid, how long has your vote task force project been in existence?

A. Since 1978.

Q. Tell us specifically where you go to register voters and the procedure of going about doing it.

A. We go all over the city at request. But we initiate drives primarily in the black community whereas there is a need for our type services of making voter registration more accessible to them.

We are special registrars. We make requests on a two day or a one-day notice to the board in writing that we are going to be at a certain place at a certain time. Before the special registrars, you would have to make a written request 14 days prior to the drive. And therefore, a lot of people felt that—a lot of [480] organizations that we come in contact with plan tonight and want to execute the drive next week or tomorrow, which is under the guidelines.

Q. Tell us some of the places that you have taken your vote task force.

A. We work Memorial stadium at the soccer games. We have registered at gay rallies. We registered at the festival in the park—just about any and everywhere. And most of

our requests come from the black community. But we are open and we initiate drives in all communities.

Q. But for instance, if a black church is having a picnic on a Sunday, you make a request to send the vote task force to the picnic? And you can register people?

A. They make the request.

Q. They make the request to you or to the board?

A. To me. At times they make it to the board. And the board referred them to me if it is not before 14 days.

Q. Do you have any difficulty when those requests are made getting approval from the board?

A. No.

Q. Did you have any difficulty getting members of your task force group to go those locations?

A. None.

Q. How many members on your task force?

[481] A. Approximately 15 to 20. Sometimes it swells up to 50.

Q. Any of them white?

A. Yes.

Q. How many of the 50?

A. Approximately 15.

Q. Do you have any difficulty getting those white members to go to the black functions to register people?

A. No—not once we pair them off in communities. Are you talking community drives or clubs or what?

Q. Anybody?

A. No.

Q. Do you ever get any requests from white groups?

A. Yes.

Q. Give us some examples.

A. We did one for the gay and lesbian liberation, UNCC campus. We done one for the gay, I think, liberation. It was a club request—the Odyssey club. And we done some for Sane. We have done a few for a couple other community organizations. I can't think of the names right now.

Q. How many blacks have been registered in Mecklenburg County since you started your—that is, new black voters have been registered—since you started your project a few years back?

[482] A. I would say between 6,000 to 7,000.

Q. I may have misunderstood you. But did you say 6,000 to 7,000?

A. Correct.

Q. Did you take your vote task force into any of the businesses or industrial plants or work places in the county?

A. No; we haven't. That is something we are working on.

Q. That is part of the overall state board of elections commission program, though; isn't it?

A. Yes.

Q. Are you part of that?

A. No; I am not. I am a special registrar. I do not deal—the board initiates it. As far as high school registration and all those, those are the board of elections functions.

Q. Are those separate functions from the vote task force?

A. Yes.

Q. So you are not familiar with those?

A. I know the board has registration within the city concerning high schools and businesses.

* * * * *

[484] Q. I think everybody would agree you are doing a great job on a volunteer basis. And you have been registering blacks in Mecklenburg County at a faster rate than the whites have been registered; have you not?

A. Correct. That is due because the requests are coming in more readily now from the black community.

Q. On election day what does the vote task force do?

A. Basically we use the same technique we use in getting people to register. We go into communities, put on workshops, letting them know there is nothing to be afraid of to use the voting machine.

We knock on doors and remind them to go vote, offer transportation if they need it in the elections community.

Q. And specifically on election day you transport people to the polls; do you not?

A. We help in that way. We offer rides.

Q. And if I lived in Mecklenburg County and couldn't get to the polls and called the board of elections, they would give me your vote task force phone number; right?

A. Right.

[485] Q. And the newspaper publishes that number?

A. Correct.

Q. So anybody in Mecklenburg County who doesn't have transportation can use the resources of the vote task force?

A. Correct.

* * * * *

[494] (Whereupon,

Robert W. Spearman

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 12:15 P.M.

By Mr. Leonard:

* * * * *
[497] Q. Do you now hold a political appointment in the State of North Carolina?

A. Yes. I am now chairman of the North Carolina state elections board.

* * * * *
[510] A. Well, I became a member of the state board of elections on November 9th, 1981. Shortly before that, I had been asked by Governor Hunt if I would be willing to serve in that position. And I had told him that I would be and I was interested in it.

And I talked with him some at that point about what I perceived to be a need to try to increase voter registration levels in North Carolina.

[511] Then the board members were sworn in on November 9th, 1981. And the topic of voter registration was one of the first items discussed at the first meeting on that day within the board meeting.

Q. Do you recall what the voter registration statistics for whites and non-whites were in the state in November of 1981?

A. Well, of persons eligible to register, approximately 58.6 percent were, in fact, registered at that time. And I believe some of the exhibits have that broken down by race. The percentage of eligible persons registered was higher

among the white population than among the black population.

Approximately 63 percent of voting age whites were registered, whereas approximately 42.7 percent of voting age blacks were registered.

* * * * *

[543] CROSS-EXAMINATION 2:57 P.M.

By Ms. Winner:

* * * * *

[551] Q. All right. Now, you have had complaints from black citizens around the state about problems they have had with their local boards of elections; have you not?

A. I have had some.

Q. And in fact, you have had some complaints out of Durham County; haven't you?

A. Yes.

Q. And the Durham county board is all white; isn't it?

* * * * *

[571] Q. But there was a 20 percent gap between the black registered voters and the white registered voters in 1982; wasn't there?

A. There was a gap of approximately 20 percent when one compares the percentage of white persons of voting age who were registered with the percentage of black persons of voting age who were registered.

Q. At the beginning of 1982?

A. As of February 1982; right.

Q. So if you register 1 percent of those a year, it will take 20 years to close that gap; is that right?

A. If you made up what you describe as—if you closed 1/20th of the gap every year, it would take 20 years. Yes.

* * * * *

[584] REDIRECT EXAMINATION

By Mr. Leonard:

* * * * *

[585] A. Well, according to the figures I am looking at, the total white registration on October 6, 1980, was 2,313,722.

Q. Correct. And what was it on—

A. (Interposing) On October 4, 1982, the total white registration was 2,201,189.

Q. Now, would you subtract the—

A. (Interposing) Well, the difference is approximately 112,000, except it is 112,000 fewer whites registered in October '82 than October '80, according to these figures.

Q. So while the black registration went up between 1980 and '82 by 12,096, the white registration dropped by 112,533; is that correct?

A. That is correct.

* * * * *

[589] Q. So that is it correct to state that the actual substantive or proportional increase of registration for blacks is higher than it is for whites?

A. Yes—of the increase.

Q. Of the increase?

[590] A. In other words, of the increase blacks registered in an amount greater than their proportion in the population.

* * * * *

(Whereupon,

Larry Bunnell Little

was called as a witness, duly sworn, and testified as follows:)

* * * * *

[592] Q. Do you currently hold any elective positions?

A. I am the alderman of the north ward, Winston-Salem.

Q. What is the racial composition of that ward?

A. My ward is approximately 75 percent black.

Q. Do you hold any special positions on the board of aldermen of Winston-Salem?

A. I serve as chairman of the aldermen's public works committee and vice chairman of the aldermen's general committee.

Q. How did you get selection for those positions?

A. Well, there were recommendations and votes by the committee members. The mayor made recommendations. Then the committee members and the full board had the final say-so in the adoption of those recommendations.

* * * * *

[593] Three members are black, one white. And the general committee is also three blacks and one white.

* * * * *

[595] Q. What is the level of interracial social mixing in Forsyth County?

[596] A. I don't know how to really qualify that. I can only say my own personal experience from having been born and reared in Winston-Salem. Essentially we are a segregated town to the extent that the black community primarily lives in the east section of the city. And it is

referred to not as the black community, but as East Winston.

And the living patterns for whites, of course, are in the western parts of the city. There are some exceptions because blacks do, in fact, live in the western part, but in very, very small and rare instances.

Insofar as organizations or country clubs, they are still all white. And religiously probably—well, blacks attend black churches. And whites attend white churches with the rare exception perhaps being a few blacks attending the Catholic church.

Social clubs—there are black social clubs. And there are white social clubs. And that is not a lot of interracial gathering taking place there.

* * * * *

[617] Q. Did any of those people win in 1978? Did any of those black candidates win in 1978?

A. No. In 1978 all blacks running for office lost in Forsyth County.

* * * * *

Q. Did any other black citizens run for public [618] office in Forsyth County in 1980 besides Maizie Woodruff?

A. Yes. In 1980 four black candidates sought office. Maizie Woodruff, of course, was seeking reelection to the board of county commissioners. Buford Bailey was seeking to get back on the school board in 1980. Jean Burkins was seeking to get elected to a judgeship. And Ann Brown Kennedy was seeking election to the state house of representatives. She was presently sitting in the general assembly as a result of an appointment to fulfill the unexpired term of Judson Deramus, who had been appointed to a judgeship.

Q. And did a Mr. H. B. Goodson also run for office?

A. Pardon me. In 1980, H. B. Goodson ran for the county commissioners.

Q. What happened to Mr. Goodson's candidacy?

A. In the primary—there were three seats available. And in the first primary Mr. Goodson ran fourth. He ran close enough to call for a runoff election. And he did not call for a runoff election to the county commissioners.

If I may expound on that, I personally as well as a delegation of black leaders in the community went to Mr. Goodson and asked him not to call for a runoff in the [619] '80 county commissioners. Our thinking for that was that we had Jean Burkens running for judge—district court judge. We have never in our history elected a black to a district court judgeship in Forsyth County.

And Ms. Burkens led the first primary in a crowded field. There would certainly be a runoff, because anytime a black is in a second—if a white can qualify for a second runoff against a black, they certainly will. And usually it ends up being some sort of a racial contest.

And the point I make is that we felt that we had the best time in our history to elect a black to the district court judgeship. Her opponent—the person who finished second, Mr. B. R. Browder—we felt could not muster the support necessary to overtake her in a runoff. We felt there was a serious credibility problem. And our own analysis showed us that many people voted for him thinking they were voting for his brother, who was more established in the community.

So our thinking was that if Mr. Goodson called for a runoff in the county commissioners race, the person he would have to challenge—Mr. Neil Bettinger, the president of the Business League of Winston-Salem and a respected person in the community—could marshal his white supporters to the polls.

[620] And they probably—being out there voting for Mr. Bettinger, would probably go along and vote for Browder. So our thinking to Mr. Goodson was it would be difficult to beat Mr. Bettinger. But the other risk involved is that if you bring Bettinger supporters to the poll, that will help Mr. Browder. And we begged him to consider foregoing the runoff election so that in the runoff we would just have two candidates out there. And that would be Ms. Jean Burkens as well as Mr. B. R. Browder for the district court judgeship.

Q. And what happened—

Mr. Leonard: (Interposing) Excuse me, counsel. If the court please, I move to strike that testimony as being highly speculative, based on probabilities certainly beyond this witness' ability to predict probability. And the formal ground is that the testimony is incompetent, irrelevant and immaterial.

Ms. Winner: May I respond to that?

Judge Phillips: You may.

Ms. Winner: The testimony just offered is not offered to show the accuracy of Mr. Little's prediction of what would have happened in that election. I think that that is not material.

The reason that it is offered is to show the dilemma that black people are in in Forsyth County. That [621] is, they have to get a black person not to run in a runoff in order to protect another black candidate; and that that sort of dilemma of black candidates itself is material, whether or not their fear was accurate—or their prediction was accurate.

Judge Phillips: I think we understand the general purpose for which it was offered. And we will overrule the objection and will not strike it. But we will consider it and make a determination of its probative force.

Let me say now that it seems to me to be marching fairly close to the line of relevance. There is just so much in all of the nuances of every political campaign and the thinking that is running through the mind of every candidate and his supporters as it might bear upon the racial problem and the political scene that the court can absorb and try to disentangle.

Ms. Winner: Yes, sir. I understand.

By Ms. Winner:

Q. Was Ms. Burkens successful in the primary?

A. She was successful in the primary. And she won the runoff.

Q. Was she successful in the general election?

A. No. She was defeated in the general election.

* * * * *

[625] Q. If the city council had been elected at large, would you have won?

A. No; I would not.

Q. Why not?

A. The reason I wouldn't have won is because, first of all, I don't think I could have run. And the reason I don't think I could have won is because I have [626] been in the forefront of a lot of community involvements for better housing, health conditions. And when you are a black leader in Winston-Salem, you are very outspoken. And as a result of being outspoken, you become controversial.

And as a result, it becomes most difficult to receive the white vote. And so usually when we think of running someone at large, the first thing we have to look at is, is the person qualified. And then second, we have to think about someone that will not offend the white citizens or someone

who hasn't been in the forefront of community involvement for public housing and things of this sort.

So we tend to try—when thinking of a county-wide race, we tend to look for someone who has been just marginally involved, so that—well, to coin a phrase, we want a moderate or a lightweight. In past terms, quite frankly, we look for countywide races some that are perceived in many instances in the black community as our competitors to run for office.

Ms. Winner: I don't have any other questions.

CROSS-EXAMINATION 9:37 A.M.

By Mr. Leonard:

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[628] By Mr. Leonard:

Q. Mr. Little, the court record already shows that this legislative district—house district 39, which is composed of most of Forsyth County other than these two townships, which are Salem Chapel and Belews Creek—is 25.1 percent black. The entire district is 25.1 percent black; and that there are five members from the district, two of whom are black?

A. Yes.

Q. That would indicate to you that the blacks have a greater proportion of the delegation from Forsyth County than is their voting strength; would it not?

A. Yes; that would.

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[635] Q. So it was in 1982 that you became aware of the fact that there was an issue concerning multi-member versus single-member districts?

A. Well, I have been aware of the issue. We have talked about the necessity to have single-member districts in the general assembly, on the county commissioners, on the school board and throughout for the last 10 to 15 years, because there is just very little possibility—or at times, we just can't elect anyone at large.

So we have talked about it. Quite frankly, we just never thought it would happen. We just thought we would just never get beyond the talking stages of it. [636] And quite honestly, I was surprised to see it get this far in the general assembly.

When I found out about it, I said, "hey, it is great," because I had discussed it with a lot of black leaders, ministers and others. And so when I found out about it, I immediately called representative Spaulding and asked if there was anything I could do to facilitate the process.

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[637] Q. When was that?

A. It was while the debate was going on in the general assembly about proposed districts. I called the senator from our area—senator Dick Bond, who was serving on the committee to discuss that—and told him that the other black members of the board of aldermen as well as the Black ministerial association in Winston-Salem strongly favored single-member districts for the state house.

I sent a telegram to representative Spaulding. And we also called representative Margaret Tennille to let her know of our overwhelming sentiments for that. And I also called—well, he wasn't there at that time. But I called C. B. Houser about it.

Q. C. B. wasn't a member of the legislature?

A. No. He wasn't a member of the legislature. But I knew he was running for the legislature. And so I thought I would, you know, give him a call.

Q. What position did C. B. Houser take?

A. When I informed Mr. Houser of the sentiments from the blacks on the board of aldermen and the black ministers, he told me he had not looked at it properly; and that he could see some sentiments for the [638] single-member district.

And I asked him, "well, why don't you make a statement to that effect?" And he said when he first got a glimpse of the single-member district—and he told me in the conversation that he really hadn't studied it that far or thoroughly; but that he—with the information I had given him of the sentiments and how we felt in the community, Mr. Houser said that he agreed with that. But he didn't know how to take a position today that was contrary to what he had said yesterday.

But he would try to figure out a way that he could state his opposition—his preference—for single-member districts. That is what he told me.

I may add, counsel, that after that—that conversation that representative Houser and I had and others talked to him about it—I think he later felt that it would be politically bad for him to take a stand in favor of single-member districts because he said he thought it would cost him white votes. And he needed white votes to win. So he backed away from what he had agreed to do.

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[642] By Judge Dupree:

Q. You referred to a representative Tennille, is it?

[643] A. Yes—Margaret Tennille.

Q. What is her race?

A. White.

Q. And she took the position on the single-member district question that it would be better not to adopt it, since it would enhance the chances of Republicans?

A. Correct.

Q. So as between enhancing the rights or the chances of the blacks and the Republicans, she chose to go with the system that would be against the Republicans?

A. Against the Republicans and against the blacks.

Q. Against the blacks, but instead of going for the blacks?

A. Yes. And quite frankly, your honor, if I may expound, that was a dilemma that we all considered. And we looked at it and said, "we need representation. And we don't need in 1983"—

Q. (Interposing) You were willing to take your chances against the Republicans?

A. Oh, yes. But we just wanted to be in the halls so that we could be a part of the debate. And right now, it is a hit and miss proposition. And most of the times, we miss—as with the school board, the county commissioners. Usually we—as I stated, until last year blacks were not elected to any office in [644] Forsyth County outside of the board of aldermen.

Judge Phillips: Do you think the Democrats and Republicans in Forsyth County might also say that in recent history it has been a hit or miss proposition for them as Democrats or Republicans?

The Witness: Oh, for Republicans it has been less than a hit and miss. For Democrats, it has been almost a sure thing.

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[645] (Whereupon,

Willie Lovett

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 10:02 A.M.

By Ms. Winner:

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[646] Q. Can you describe for the Court your involvement in politics in Durham County?

A. Presently I am chairman of the Durham Committee on the Affairs of Black People. And I have held that position for two and a half or three years. Before that, I was co-chair of the political committee for a couple of years.

I was also the chairman of the Democratic party from 1977 to 1979 and the first vice chair from '79 to '81.

Q. What is the membership of the Durham Committee on the Affairs of Black People?

A. That is a number that I can't give you because I don't know. The way we operate is that any person who is interested can participate in the organization, can get on the mailing list by attending the meetings. So we don't have membership dues as such. So that is difficult to assess.

The impact and the responsiveness in the community to the Durham committee and its recommendations and its programs is rather massive.

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[652] Q. Do you think that it is important for black people to have black representatives?

A. First of all, it is important for black people to have representation—what I call true representation, be that black or white.

Q. What does that mean to you?

A. The tendency is that if an elected official does not feel accountable to that segment of the population, then the likelihood of the responsiveness to problems will be diminished as compared to a person who is truly represented by that community in the sense that that community could determine whether or not that person serves or not.

Common sense and actual experience says that that responsiveness would be different. So from that point of view, the black community needs true representation. I think that a black person in most cases would [653] have more first-hand knowledge and would be more accessible in that kind of situation than the typical white person, because the white person is not going to live generally within the inner area of that district. He may be on the fringes of that district.

In addition to that, I think that the perception from the black community itself that "I have a representation. I have somebody that I can go to" is there if that person is black moreso that if that person is white.

So these are realities that we have seen from experience. And I think they are true. And I think that they can be demonstrated.

Q. Have you been involved in any voter registration efforts in Durham County?

A. I have been involved in many voter registration efforts from the days when I was precinct chair in Pearson town precinct, number 34, for about five years; as co-chair of the political committee. And even today we are constantly trying to increase registration and make registration more accessible; but more importantly, to convince citizens that registration is not the major problem that some of them perceive. And this comes as a result of a long history of problems in registration and the treatment that citizens receive when they attempt to [654] register.

So it is two sides to that coin: accessibility in process and procedures and the perception on the part of the citizens who are not registered that this is not that bad. It is not going to be a problem. You aren't going to be intimidated. So we fight both battles in Durham. And we still do.

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[655] Q. Can you describe the method or the way one had to—strike that. Can you describe when you were involved in voter registration in the late sixties and early seventies what was the method for registering?

A. Initially when I first became involved, the registration—there were two opportunities to register people: one at the board of elections office at any time, which is typically from 8:00 to 5:00 or whatever. And then there were three Saturdays prior to an election where registrars would be at each of the polling places to register people.

That was basically—those were the two ways that you could register. And this was during the time between 1966 and 1972, most of that time when I was precinct chair.

Later the process was changed so that there could be special registration drives under certain circumstances.

Q. Before you go on, let me ask you a question about the prior period. Did the system of elections and registration at the board of elections pose any particular problems for black people?

A. Well, generally, anytime you have registration being conducted during office hours and most people are working and don't get paid and don't have the opportunity

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[664] Q. How does at large voting in Durham County operate as a barrier to the election of black people?

A. At large voting—I guess I can describe that by describing the situation that exists today and try to relate how that ties back to at large voting. But first of all, there is a high degree of—there is a racial issue interjected in most elections in Durham County.

Where there is competition and where we have opponents, the media does a job in that regard that really adds to that situation. The record will show that only a certain percentage of whites tend to vote for black candidates. And that varies depending upon whether there is opposition of not and how well contested it is. But even when there is no opposition, you have a certain percentage of whites who don't vote for black candidates, even though there is no one else to vote for.

Q. When you said the media contributes, what did you mean by that?

[665] A. They tend to build up the racial aspects. In fact, in every article where there is a black candidate running, the point is always made that "Mr. Lovett, who is black." really building up the racial identity of the candidate and really adding to the racial thrust that is already there. And Durham has had a long history of that—the Durham media.

Q. Are there any other barriers that you perceive in an at large system?

A. Well, first of all, you have to run citywide. And that requires more effort on the candidate who is running, more money, cover a broader area. We have some 100,000 people in the city of Durham—in excess of 100,000—108,000. And it covers quite an area.

So from the standpoint of being able to cover the area, it is expensive and time consuming. In addition to that, because of what I said about the tendency for whites in large numbers—and I always say that there are exceptions.

And what I am really talking about is about 20 percent in the best situation would vote for a black candidate based upon the numbers I have seen.

Because of that factor, the perception is that the only way you can win an election is to be able to appeal to a large segment of white voters in order to win. So therefore, you limit the number and types of [666] candidates that you can get to run.

Just to cite the state house as an example, to my knowledge we have only had three persons to run for that position—three, maybe four—three that I know about. And all of those have had similar backgrounds.

Q. What is the background?

A. Well, you need to be in business or you need to be a lawyer. You need to have—the distinction between black candidates and white candidates in that regard—in addition to those two, you have to have something else going for you like a name, well-known, you know; contrasted to white candidates who are lawyers and who have the money and the time to get off, they don't always require that name recognition and the, you know, super kind of person.

And I think the record will speak for that as well, if you look at people who are currently serving in the legislature.

Q. Is there a method of election that you think will solve that problem?

A. Single-member districts, I think, would minimize the problem in the sense that you have a smaller area to deal with. You would have an opportunity—the perception of having to get so many white votes would be minimized to the extent that you would probably have more [667] candidates running.

For example, I would not run because I have—the perception in my mind is because I am so outspoken and really

involved that I couldn't get large numbers of white folk to vote for me. So I would not run for the state house today or tomorrow or any other time in the foreseeable future, as an example.

Q. When you say you wouldn't run, do you mean you would not run in an at-large—

A. (Interposing) That is exactly right.

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[694] REDIRECT EXAMINATION 11:28 A.M.

By Ms. Winner:

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[695] (Whereupon,

G. K. Butterfield, Jr.

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 11:30 A.M.

By Ms. Winner:

Q. Will you state your name, please?

A. G. K. Butterfield, Jr.

Q. What is your address, Mr. Butterfield?

A. 1001 West Vance Street; Wilson, North Carolina.

Q. How long have you lived in Wilson?

A. I have lived in Wilson all of my life with the exception of a period of time in which I was away for my higher education and when I was in the military.

Q. What is your occupation?

A. I am an attorney.

Q. For the record, what is your race?

[696] A. I am black.

Q. And your age?

A. 36.

Q. What is the racial composition of your clientele?

A. In my law practice?

Q. Yes?

A. I would say 95 percent black.

Q. Do you belong to any professional associations?

A. Yes. I belong to the American Bar Association; the National Bar Association; the North Carolina Association of Black Lawyers, of which I am the president; the North Carolina State Bar. That is about it.

Q. What is the National Bar Association?

A. That is a predominantly black national organization of black attorneys.

Q. Can you describe for the Court your involvement in politics in Wilson County?

Mr. Leonard: If the Court please, so that the record is clear—I believe this issue has come up before. But the state is going to object to any testimony with respect to these covered counties, unless it is offered by the plaintiffs with respect to their 14th Amendment claim versus their statutory claim, on the ground that the statutory issue has been decided [697] pursuant to Section 5 of the Voting Rights Act; and that this Court has no jurisdiction to retry the statutory issues.

Judge Phillips: We will receive the evidence subject to that objection. And we will give a clear indication in any-

thing that we say as to the way we considered the evidence. So you will be protected.

Mr. Leonard: Thank you, your honor.

Ms. Winner: Your honor, perhaps not now—but we were not aware of that issue until we received—actually until a day before we received the brief. May we have some opportunity at some time to address that issue?

Judge Phillips: Before this Court says anything about this issue, there will be an opportunity for both sides to address it with memoranda.

Ms. Winner: Thank you.

By Ms. Winner:

Q. Mr. Butterfield, will you describe your involvement in the electoral politics in Wilson County?

A. I would say that my political involvement goes back to 1953.

Q. How old were you at that time?

A. I was six years of age.

Q. What was your involvement then?

[698] A. My father ran for the board of aldermen in Wilson as the first black to ever offer himself for that position. And so I can probably with accuracy trace the political developments in Wilson from 1953 up to the current time.

Q. What happened to your father's candidacy?

A. In 1953 the city of Wilson utilized single-member districts for the board of aldermen—a pure single-member district plan. We had six aldermen, each elected from a single district.

And my father ran from district 3, which at the time had grown to a population or at least a voter registration of

about 50 percent black. And there was a tie vote for the board of aldermen.

And to resolve the tie, the two names were deposited into a hat. And a child drew names. And my father's name was selected. And so he became a city alderman in 1953.

Q. How long was he a city alderman?

A. They had two-year terms at that time. And of course, they still do have two-year terms. He ran again in 1955 and was re-elected in 1955 from the third ward. And after his second election, he was appointed the chairman of the budget committee for the city. This was in 1955.

[699] Q. What happened to the form of government in the city of Wilson after that?

A. It was changed suddenly between the 1955 and the 1957 election to an at-large system of elections, which is the current system we have today. And he was defeated in 1957.

Q. Did he run at large in 1957?

A. He ran at large in 1957 and came in last place.

Q. When was the next time somebody black was elected to the city council or the board of aldermen of the city of Wilson?

A. 1975.

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[701] Q. How many members does the Wilson County people—

A. (Interposing) For progress.

Q. How many members does that have?

A. We have unlimited membership. It is open to any person who has an interest in the affairs of black people

in the city and county of Wilson. It is not restricted to race. However, the organization at the present time is all black and has been in existence now for about four years. I do not hold an office at the present time except to serve on the political action committee.

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[702] Q. What is the level of social integration in Wilson County?

A. I would say it is practically non-existent. There are exceptions. But essentially there is no social integration of clubs and other organizations that exist in the community.

Q. Are churches in Wilson County integrated?

A. No. I know one person who belongs to an all-white church. But except for that one exception, the churches are segregated, as well as many other phases of community life.

Q. Are there country clubs in Wilson County?

A. There are; yes.

Q. What is their level of integration?

A. To my knowledge, there are no black members of any of the country clubs in Wilson.

[703] Q. Can you describe the residential—the racial segregation or integration of residences in Wilson County?

A. We primarily have two communities, one black and one white. In recent years, there has been some tendency to integrate some of the formerly segregated communities. But to put it on the map and to look at it, there are two distinct communities, one black and one white, divided by a railroad track.

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[704] Q. Have you been involved in any efforts to get black citizens to register to vote?

A. I have. I have been very active in the voter registration arena and have been for some time.

Q. How early did you begin those efforts?

A. I would say around 1968, when a group of us walked from Raleigh to Wilson in an effort to stimulate voter registration—not only in Wilson, but in eastern North Carolina. That was my first major involvement in voter registration.

Q. How were you allowed to register in 1968 in Wilson County?

A. In 1968 and up until recently, I might say, the philosophy of the Wilson County Board of Elections was not to allow voter registration outside of the courthouse—the county courthouse. We tried on many occasions to persuade the County Board of Elections to decentralize the voter registration process and to allow registration on weekends and after hours and by deputy registrars.

[705] And we were met with resistance for years and years. And we were told that the officials did not believe in registration outside of the courthouse. They felt as though that if black people were unwilling to make the sacrifice and come to the courthouse for 15 minutes in order to register, then the board of elections should not make that process more available.

Q. Now, what particular problems for black people did courthouse registration present?

A. I know of three problems. There may be others. But I know of three directly. One is that many black people work 9:00 to 5:00—8:00 to 5:00—and are unable to get off to come to the courthouse for the purpose of registration. That would be one reason.

A second reason is the matter of transportation. We have a very large county. And Stantonsburg, for example, is about 20 minutes from the courthouse. And transportation is a problem. Many people do not have cars and do not have access to other means of transportation. And so it becomes a very difficult task to get to the courthouse.

The third reason, which I think is as important as any of the others that have been stated, is that many people—black people, particularly elderly black people—are afraid of the courthouse. That may sound [706] absurd. But in dealing with illiterate, elderly black people, we find this awful fear of the courthouse because, you know—some of the reasons that I have heard, they say that they remember all white juries. They remember when black people had to sit on one side of the courtroom. And white people had to sit on the other side of the courtroom.

The sheriff is white—always has been—the clerk of court, register of deeds, tax collector, tax supervisor. And so there is an equation made by elderly black—and I see this more in elderly than I do younger blacks—that there is something to fear about the courthouse. And so many people for that one reason do not make the trip to the courthouse.

Judge Phillips: Are you describing a present situation or are you responding to the situation as it existed at the time you describe of courthouse registration only?

The Witness: No, sir. Some of that exists today. But I did say that it is more prevalent among 55 year olds and older, I would say.

By Ms. Winner:

Q. When was voter registration first allowed outside of the courthouse?

A. Several years ago—I would say in the late [707] seventies—the general assmebly made it possible for registrars of the various precincts to be authorized to register persons

to vote. And so our focus then became to get some black registrars in the various precincts who could register people to vote. And so the first effort was, I would say, 1978.

Q. What were the results of your effort to get black registrars?

A. We were able to get two or three black registrars—one in an all-black precinct and two others in 50-50 type precincts. But those registrars at that time were restricted to registration within their precinct. And so they could not cross the precinct boundaries.

Q. What problem did that present?

A. That meant that the registration by these officials had to be concentrated in their home community. And they could not go to large gatherings, such as churches and picnics and other places where people from all over came.

Q. Did you or other members of the black community try to expand the registration opportunities of precinct registrars?

A. Yes. We approached the board of elections and asked that the restriction be dropped so that registrars [108] and judges could travel throughout the county without restrictions. And we were opposed, because the officials felt as though the registration should only take place in the registrar's precinct and should not be elsewhere.

And that was the steadfast philosophy of the county board of elections—that they would not make registration any more convenient than they had to by law. And that continued up until the citizen awareness year came about from the state board of elections. That is when it began to change.

Q. What year was that?

A. 1982—last year.

Q. All right. Now, are there any special registrars in Wilson County?

A. The 1981 general assembly mandated that each county with 15 or more precincts would have at least two registrars, two deputy—well, special registration commissioners—one Democrat and one Republican.

And that is what was appointed—one Democrat and one Republican—even though the black community had requested that numerous special registration commissioners be appointed. They only did what the law required them to do.

Q. Now, after the precinct registrars were allowed to register people outside of their precincts, have [709] there been some further efforts to register voters in Wilson County?

A. In 1982 the Wilson County People for Progress embarked upon a massive voter registration drive. It was, I suggest, in response to the candidacy of Mr. Michaux, who was running for Congress. And the organization was very successful in registering, some say, 2,000 black people within a six-week span of time just prior to the 1982 primary.

Q. What was the response of the board of elections to that registration effort?

A. Well, there was no response while it was in progress. But two days after the election, the board of elections at the canvass—after each election there is a canvass, two days after the election. At the canvass meeting of the board of elections, the board of elections changed the policy and the procedures for massive registration.

And the new procedures to be followed in the future after that meeting were to be as follows. There had to be a six-day notice before there was any mass registration. The notice had to contain the date, the time, the place and who

was to be present for the mass registration. It also reduced the compensation that registrars and judges and special registration [710] commissioners were to receive from 50 cents per voter to 25 cents per voter.

And these new rules were promulgated two days after the Michaux election and were placed into effect. I might say, for fairness, they were not enforced because a complaint was made to the Justice Department by the black community. And the Justice Department said to the board of elections that these changes were subject to pre-clearance. And so they have not been enforced.

Q. Have they been submitted?

A. No. They have not been submitted. Now, in preparing the budget for '83-84, the compensation aspect of compensating the registrars has been completely eliminated now. So registrars in the next fiscal year will receive no compensation whatsoever for registering persons to vote, whereas before it was 50 cents.

Q. What are the current barriers to registration of black people that you perceive in Wilson County?

A. There are no legal barriers existing in our community. Registration now is easier than it ever has been in our county. There are some psychological barriers to voter registration which still persist.

Q. What are those psychological barriers?

A. One psychological barrier is that there is a belief on the part of many people that politics will— [711] one's participation in politics will make no difference in their individual lives and in the lives of their families. And so it is a complete waste of time to get involved in the political process.

That is a perception that is ill-founded. But many people believe that it will make no difference if they get involved. That is one.

The second thing is that, as I alluded to earlier, the problem of the courthouse barrier. Many people simply don't want to go to the courthouse. In my precinct, precinct 3, not only is the board of elections housed in the courthouse, but we vote in the courthouse. That is the polling place for that precinct.

And it is a large black precinct. And it is in the heart of the black community—not the courthouse. But the people who vote reside in a very compact area. And many people have told me, "I don't want to go to the courthouse. I am 70 years old. I have never been to the courthouse before. And I am not going now." And that is a barrier.

Another barrier is that most all the polling places are located in white communities. And so the black person has to travel long distances to get to the polling place. And in our city—you would have to see the precinct map to really understand it. But we have [712] what we call two-mile islands. You know, we have precincts that are two miles long and two blocks in width. And so it is like a cane. And so the furthest points in some of the precincts are two miles apart, which means that the person has to travel perhaps a mile to get to the polling place. And that is a barrier.

Q. Do those precincts extend into the black community and into the white community?

A. Yes. As I testified earlier, the railroad track divides the two communities. And the precinct boundaries, which were created back in the forties, I guess, run from east to west in the opposite direction than the railroad track. And so they extend throughout the city in a very narrow strip.

And it has the effect of requiring persons who reside in those precincts to travel long distances to vote. And there is no commonality in those precincts. There is a very poor

black area in the precinct and a very wealthy element in the white community.

Q. In your opinion, what would help encourage black voter registration in Wilson County?

A. One thing that would help improve is if we could see the presence of black office holders. That would be a stimulus in creating the desire on the part of black people to get registered to vote, if they could [713] see persons who can be successful in the electoral process.

Q. What is the extent of election of black people in Wilson County?

A. There have been a few. They have been very limited. We have one black elected to the board of education who was elected in 1970 and was re-elected in 1982. And that sounds odd. But there was a reorganization in the process. And he did not have to run again until 1982.

Q. How many members are on the Wilson County Board of Education?

A. Nine.

Q. What is the black population in Wilson County?

A. 36½ percent.

Q. Are there any other black elected officials in Wilson County?

A. We have one black on the city council.

Q. Out of how many members?

A. Out of six councilmembers—one out of six.

Q. What is the black population of the city of Wilson?

A. 40.27 percent.

Q. Are there any other black elected officials in Wilson County?

[714] A. No. We have never had a black elected in the history of the county to the board of commissioners. We have tried and have failed. We have never had a sheriff or any of the other elected positions, except the city council and the board of education.

Q. Have you been involved in any efforts to recruit black candidates?

A. Every election we attempt to recruit black candidates to run for public office. And we have a tremendous amount of difficulty in doing this, because the more qualified—and I use those words very carefully. But the more qualified black candidates who would be acceptable to the black community do not want to run.

And the stated reason is that, "I can't win. Why should I run if I can't win?" That is always the response that we get. And so it is very difficult to encourage people to run for public office.

Q. Are you familiar with the current house of representatives district which contains Wilson County?

A. Yes. We reside in the 8th district.

Q. What else is in that district?

A. Wilson, Nash and Edgecombe counties.

Q. Do you know whether there has ever been a black representative from that district?

A. There has never been, to my knowledge.

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[715] By Ms. Winner:

Q. Are you aware of the—do you think that there is a system or a method of electing the representatives from that district which would be better for the black community?

A. Yes.

[716] Q. What is that method?

A. I have looked at the 8th district very carefully. And I have looked at it for some time, even before it became known as the 8th district. It was the 7th district, still comprised of the same three counties.

And I have tried to figure out whether or not black candidates for the state house could be successful in this three-county area. And while I am not prepared to say that absolutely no black could ever be elected in this four-member district, I am willing to say that it would almost take a minor miracle for it to happen.

It would have to take a combination of certain variables falling in place. One variable would have to be a low white turnout; a high black turnout; a solid, single-shot vote by the black community; and a very attractive black candidate to the white community; and the presence of eight or ten or maybe twelve persons running for four seats.

If all of those variables fell in place, it is my opinion that a black candidate would be able to, not win the election, but at least to place sufficient to be in a runoff. What would happen in the runoff, I don't know. But I don't believe a black person could get a clear majority, even assuming those variables to be in place, in a primary.

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[737] (Whereupon,

Fred Belfield, Jr.

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 2:02 P.M.

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By Ms. Winner:

[738] Q. Are you currently a member of any organizations?

A. Well, I am a member of the NAACP, Y Men's Club. Those are the two civic groups I am a member of.

Q. Have you held any positions in the NAACP?

A. Yes; I have.

Q. What position is that?

A. Well, I have held the position of president for ten years.

Q. What branch is that?

A. That is the Rocky Mount branch of the NAACP.

Q. What years were you president?

A. I was president from '68 to '76 and then again from '78 to '80.

* * * * *

[747] Q. What are the current barriers to getting black people to register in Edgecombe County and in Rocky Mount?

A. Well, transportation. Another barrier would be fear.

Q. Fear of what?

A. Well, fear of the process. Obviously, people who have never registered, based on conversations with some of them and especially the older people—I would say people above 50 who have been around and who can remember back in the forties and fifties how difficult it was to register to vote—still aren't sure that when they go down to register, even though you tell them that you don't have to worry about reading the constitution or a portion of the constitution or the literacy test—they are not sure that you are telling the truth; that I may have to do more than just sign the voter registration card after I have been asked the proper information.

Another barrier is when you don't get full cooperation out of the registrars.

Q. What do you mean by that?

A. Well, registrars can be out of place. For example, if you are trying to register people when you don't have a specific, designated day, you may or may not find them. And that could be a barrier.

[748] And another one is—well, I believe I said it. But I will say it again—lack of cooperation.

Q. Lack of cooperation from whom?

A. The registrar.

Q. What is it that they do that is not cooperative?

A. Not making themselves available; or—well, here is another one that you get sometime: "I am out of cards. I have to wait until the executive of the board of elections sends me some more cards."

Q. Is there anyplace in Edgecombe County other than the city hall—any public place in Edgecombe County other than the city hall and the board of elections—that you can regularly register?

A. Public places?

Q. Yes, sir.

A. Not that I know of. We do have floating registrars that they allow to—I am not sure of that total number. But I know in my precinct, which is probably the largest one in Edgecombe County, we do have two floating registrars allowed to float anywhere in that precinct wherever people are concentrated.

If there is an activity going on, they can go to this and register people. But county widespread—I am not sure that they do that. In fact, I would be [749] inclined to be-

lieve that they don't allow it, because complaints were filed in 1982 with the justice department in connection with lack of cooperation.

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[750] Q. Are you familiar with how the media dealt with that election?

A. Well, every time I picked up the paper and read anything coming from the news media, it always emphasized Michaux as the black candidate who is seeking to become the first black elected congressman from North Carolina since reconstruction.

Q. Was that limited to the newspapers?

A. Well, all news media—radio and TV.

Q. How does the media in those two counties treat white candidates?

Well, they just list them as a candidate. They don't emphasize race.

* * * * *

[753] Q. Do you think it is important for black people to have black representatives?

A. I think so.

Q. Why?

A. For a number of reasons. Number one, I think it is a good role model for our young people growing up. It gives them some incentive to want to participate and get involved in local government, state government and national government.

Another reason is I think that the black views need to be heard on all levels about all the issues involved. For example, I can think of the ERA issue. Blacks were never

consulted, to my knowledge—those that I have asked; nor have I ever been consulted by any politician as to what are your views on that. That is an emotional issue. We were just bypassed.

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Q. Do you think that white elected officials can represent the black community?

[754] A. It is possible for some that are willing to closely align themselves with the black community. But most politicians tend to shy away from that because they don't want to be branded as a black lover, which another candidate with a more conservative view can use that to defeat him.

* * * * *

[763] I see. But whenever in eastern North Carolina the people have a choice about these matters, they usually are still lined up along racial lines; aren't they—in club memberships and things?

A. Mostly. We organized a new 4-H club in Nash County this year that is integrated out there in the community. But it is a small—it is a slow process.

Q. It is very gradual; isn't it—the process of integrating all of these activities?

A. Very slow; yeah.

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[765] (Whereupon,

Joe P. Moody

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 2:45 P.M.

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By Ms. Guinier:

[773] Q. Have you conducted any registration drives [774] or attempted to register any people who work as tenant farmers?

A. Yes; I have.

Q. Have you had any problems registering those people?

A. Some people live back on the farm and been farming all their life—not their farm, but they work for some white people. And they are skeptical about getting off and trying to register because they are scared that the man might get mad with them or might make them move or whatever—she or he.

* * * * *

[781] A. No; he didn't.

Q. What is the racial composition of the six-member county commission in Halifax?

A. All six of them are all white.

Q. Has a black person ever been elected to the county commission in Halifax County?

A. No; they have not.

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[787] (Whereupon,

Theodore Arrington

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 3:30 P.M.

By Mr. Hunter:

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[789] By Mr. Hunter:

Q. Dr. Arrington, what studies have you done of campaign costs and contributions in Mecklenburg County?

A. I studied all of the official campaign reports of all the candidates for local office except for state senator from 1975 through 1980. And I also studied in depth all of the contributors to all of the candidates in 1978 and 1979.

Q. What elections would these be composed of? Would you explain that for the court, please?

[790] A. These would be composed of the North Carolina House; Charlotte city council, both at large and district; county commission; and such single-member executive offices as sheriff; and the school board.

Q. Of the Charlotte city council elections that you studied—do they have both multi-member and single-member districts in Mecklenburg County?

A. Yes.

Q. When I say “single-member districts,” are these districts in which the candidates are nominated and elected from one district?

A. Yes.

Q. What data did you glean from these campaign costs and contribution lists? How did you organize the data?

A. In organizing the data, what we did was look at the official campaign reports and record the name, address, party registration, sex, race of each contributor to each candidate during that time. And then we merged those files with the information on the candidates—how much they spent, whether they had run before for public office, and so forth. And when we merged those two, then we had an accurate picture of who gave how much to which candidates.

Q. Is this methodology that you used in comparing [791] this data standardly recognized in the political science academic community?

A. Yes.

Q. Did you conduct this study for purposes of this lawsuit?

A. No. I received a grant from the foundation of the University of North Carolina at Charlotte to do this study for academic purposes.

Q. After comparing this data, what conclusions did you reach after you completed your study?

A. I reached four basic conclusions. First of all, at large election campaigns cost candidates more than twice as much as do single-member district elections. Secondly, I found that giving to candidates tends to follow racial lines. That is, blacks tend to contribute to black candidates. And whites tend to contribute to white candidates.

We discovered that only 2 percent of the money that white candidates received had come from black contributors; whereas, we discovered that about 30 percent of the money received by black candidates came from white contributors. Third—

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[793] By Mr. Hunter:

Q. Dr. Arrington, is your first conclusion—that that the cost of running in a multi-member district being greater than twice the cost of running in a single-member district—true for black candidates as well as for white candidates?

A. Yes.

Q. Is it also true that the cost of running in a multi-member district is more than twice the cost of running in a

single-member district—true for winners as well as losing candidates?

A. Yes.

Q. What conclusion did you reach in regard to [794] the contributions that whites may make to black campaigns?

A. When whites contributed to black candidates, they gave less than when they contributed to white candidates.

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Q. Did black contributors contribute on the average as much money to black candidates as white contributors contributed to white candidates?

A. No.

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[800] Q. How does the use of multi-member districts impede the election of blacks in North Carolina in these elections?

A. It impedes them first of all because the black population is substantially submerged in the larger, mostly white multi-member districts; and secondly, because multi-member districts require more money to [801] campaign. And blacks tend to have less money to spend on such campaigns.

Q. When the political science literature examines the relationship between the socioeconomic status of citizens and participation in the election process, what do their examinations find?

A. The literature consistently shows that persons who have low socioeconomic status tend to participate in politics less than those who have high socioeconomic status.

Q. Does this finding in the political science literature in your experience and education apply to North Carolina elections in these multi-member districts?

A. Yes. It is one of the factors which help to explain why blacks participate less—for example, vote less—than do whites.

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[829] (Whereupon,

Frank Winston Ballance, Jr.

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 9:05 A.M.

By Ms. Guinier:

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[830] Q. Have you been involved in politics?

A. Yes; I have,

Q. Could you describe what your present position is.

A. I am presently a representative from the 7th House district to the North Carolina general assembly, having been elected in 1982, I guess.

* * * * *

[831] Q. What political organizations are you a member of?

A. I am a member—vice-president of the Warren County political action council. I am chairman of the second congressional district black caucus.

Q. What is the Warren County political action committee?

[832] A. The Warren County political action council is an organization which involves itself in the political aspects of Warren County in terms of voter registration, supporting candidates for office, involving issues of political and non-political affecting the Warren County commission.

It is an unorganized—unincorporated is what I meant to say—organization—informal organization.

Q. What is the racial composition of its membership?

A. As far as I know, it is all black. There may be some Indians who are members.

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[833] Q. You testified that you are elected from a majority black district. Is that a single House seat or a multi-member district?

A. That is a single House district seat.

Q. Was that a single House district seat in 1980?

A. No; it was not. I believe we were part of the—what is known as the 22nd district. I don't recall what number it was at that time. But it is the same district that primarily now is comprised of the 22nd House district, Vance, Warren, Person, Granville.

Q. Did you ever consider running for the 22nd House district when Warren County was part of it?

[834] A. I considered it, but not seriously.

Q. Why is that?

A. I couldn't get elected.

Q. Why is that?

A. Well, the history is that in the multi-member districts it is difficult for blacks to be elected, particularly in the district that I reside in. I know Mr. Clayton ran at least three times. The district was about 40 percent black, as I recall. He never got elected.

Floyd McKissick, Jr. ran one time, maybe twice. He did not get elected. And others have run for the same seat—for a seat in that district. And the history is that those

candidates have received tremendous support from the black communities in the district in the various counties, but they received very little support from the white communities in those districts. As a result, they were not able to be elected.

I therefore concluded that it would not be profitable or wise for me to run for that office because I would be wasting my time and efforts in terms of not being able to get elected.

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[838] Q. Where did you campaign in terms of the white community?

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[839] So that was basically my campaign in the white community because I felt that going into the residential areas would not be feasible. It was not traditional, and I did not do it. I did campaign in the black community and of course in the black churches.

Q. Did you campaign at any white churches?

A. No.

Q. Were you invited to any predominantly white civic clubs?

A. None. I was a bit surprised. I am fairly well known in Warrenton, and I have been there for—since 1966. It is a small town. I know many of the people, but I did not get invited to a single what I would call a civic club in the white community.

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[840] Q. What about in Warren County?

A. Warren County—the black population was 59.9 percent black. It is about 5 percent Indian.

Q. Are you familiar with the housing patterns in those counties?

A. Yes.

Q. Would you describe those, please?

A. Generally speaking, in the area housing patterns—you can demonstrate that blacks live in certain areas and whites live in certain areas. And this is true even in the rural areas to a degree. For example, you have certain precincts that are predominantly black—heavily black. You have others that are predominantly white.

In the rural areas you do have, of course, as

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[841] There are distinct housing patterns in the area—black and white communities.

Q. What is the level of social attraction between the races?

A. It is very limited. There is some, but it is not very much. On the social level you don't have very much social racial intermingling.

Q. Would you describe, please, the level of municipal services in the black community compared to the white communities?

A. There is again a distinct pattern of what I would call discrimination, or it might better be described I guess as a lower level of services in the black community than you find in the white community.

[842] In the general area that I am talking about, you find that in the cities you can tell when you leave the white community and go to the black community by the quality of the streets, the street lights. Even we found in several situations you have less fire hydrants and you have smaller water lines in the black community. For example, you might have a two-inch line in the black community and a six-inch line in the white community.

I think these patterns have persisted over a long period of time and still persists. There is some effort to correct that through lawsuits and through voluntary efforts to have these patterns changed. There is some change coming, but it is still distinctive.

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[846] Q. How would you describe the voting patterns of people throughout these counties?

A. Well, if I understand your question, what you have is this: When a black candidate runs for office, if he is a good candidate—and we like good candidates too—then you can count on getting the black vote. But you cannot count on getting support in the white community.

And that has been true in race after race for [847] office after office.

On the other hand, when white candidates run, again if they are good candidates, they can count on getting the white vote and the black vote. And we don't have the kind of reciprocity that we ought to have in my opinion. I don't know. I think whites for some reason, whatever, feel that they do not want—yet they refuse to—numbers. And I don't mean that is absolute; of course, it is not. But they do not vote to elect black candidates as a general principle. They vote against them. It doesn't make any difference how qualified they are.

Q. How do these voting patterns affect participation by black voters?

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Because many people have been told—black people—that your vote doesn't make any difference anyway. A lot of them want to believe that; a lot of them believe that.

When you convince those folk that their vote does mean something, that they can go out and elect people of their

choice and they go out and you get them excited [848] about the campaign and get them to participate and get them to come out and vote, you have a result which their candidate which everybody was enthused about is defeated—and this happens time and again—then you have very—have a very difficult time convincing those folk to come back again.

What happens is that it convinces them that their vote doesn't make a difference; that it won't be any different whether they go out and vote or not. And so as a result of that, it makes it more difficult for candidates to get support.

Q. Do black voters or black people participate in the political process at the same level as whites?

A. No. In addition to what I have just said—and that is one of the things that is just the end result. You know, blacks—well, you have to go all the way back, I guess, to when we could not participate. And then you come up and you have some of the artificial barriers removed, but it is very difficult to remove some of the psychological barriers. And a lot of those barriers are still there, such as the feeling that “I work for Mr. Jones who is white, who owns the farm, and he really doesn't think that I ought to be participating in voting and registration. And he is the one who pays my salary.” You know, this is the kind of thought process that many blacks go through. And [849] they are not willing in many instances—this is a psychological barrier, I would say. Many times it is a real barrier, because many of those folk that they work for don't want them to participate, and they will make it be known.

For example, in Warren County, on primary day normally that is a day of setting tobacco from early in the morning until late at night. And you know, the particular farmer will make sure that everybody he has influence with is in the tobacco field. And of course, the farmer himself—the white farmer—can take off in his truck and go down and vote. But the people that are working for him are left in the

field. And that happens more than you might think. And this might affect 10 or 12 voters on one particular place on that particular day.

So you have the psychological barriers as I was talking about. You also have the actual barrier of the people being prevented in many instances from participating. And of course, there is a carryover also. I think there is still some fear in black voters in the area I am talking about. Whether it is justified or not—it may well be justified, because I think the Klan—and if you go back in history far enough, the red shirts, may be the people who put the initial fear on blacks—that you don't participate.

Well, the Klan is still alive in North Carolina [850] as you well know. I don't know if the record shows it, but in the Greensboro situation where people were killed by the Klan or the Statesville situation where recently a cross was burned in the home of a minister—in the yard of a minister—and that comes out in the state press and I guess in the national press. People are aware that some of these situations still exist.

And of course, when you have this kind of intimidation, you do have an effect on the willingness of people to go out and get involved in politics.

Now, obviously that is not the same extent that it used to be. But there is still some lingering effects from that.

Q. Do you in your opinion—do blacks have an equal opportunity to elect representatives of their choice in districts where whites are a majority of the voters?

A. No. I think for the same reasons I have given you. In addition, I think there are probably some blacks that probably can get elected—and the record shows that some have been elected—in multi-member districts. But the answer to your question is no. Blacks do not have the same opportunity to elect people of their choice in multi-member districts.

Q. In the legislature have you worked with any blacks who have been elected from multi-member districts in [851] which blacks were a minority of the total electorate?

A. Yes. We have several in the general assembly.

Q. Could you describe your experience working with some of those black legislators?

A. Yeah. I would say first of all that they are good people. But I guess they are like other people who get elected. And the problem is see is this: There is a degree of intimidation on these blacks who are elected from the multi-member districts. It goes like this: A white who is elected in the multi-member district can take a stand that is directly contrary to the minority black vote in that district and get reelected.

A black cannot take a stand that is directly contrary to the majority white and feel that he can get reelected. And when I say "take a stand," I am talking about an issue that may be a racial issue, for example. And you have a black who is elected in a multi-member district—he does not feel the same freedom to take a stand on that issue knowing that when he goes back for reelection he has got to go down in the white community and stand for reelection, and the whites can throw him out of office, whether his stand was justified or not.

And that has an effect in my opinion and in my experience on blacks who are elected in multi-member districts.

[852] Q. Could you give us an example?

A. Well, I do recall that during the time that we served this year that one or two issues came up, and being from a single-member district I was asked to take the lead on the issue. I think that may have been the reason for it.

Q. You were asked to take the lead by whom?

A. We have a black caucus in the general assembly—all the black members of the general assembly. And of course, the discussions were on that caucus meeting—there were several of us. And I think the reason was that probably the fact that I was elected from a single-member district, I was asked to take the lead.

Q. In your opinion, or should say in your experience, have blacks who are not in your district come to you as a representative in the House with their problems?

A. Yes, on more than one occasion. And I welcome them, some of whom knew me and some did not, but who knew that I had been elected from Warren County. And when they came to me—I am not sure for what reason—but they felt that—at least during my discussions I found they felt I would be responsive to the issues that they had at hand.

And in some case I was able to be of help and some I was not. But I made an effort to. I feel like—well, I guess sometimes people read about what you say or what you do or hear about it and they feel like this is a [353] person that I can go to. I recall when I was younger—I guess I was not old enough to vote at that time. But I did have a congressman. But the way I perceived it in my mind—my congressman was from New York. His name was Adam Powell. He spoke on the issues the way that I felt.

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By Ms. Guinier:

Q. Directing your attention to that map, do you believe that blacks in that district have an equal opportunity to elect a representative of their choice?

A. That is in the district as it now exists?

Q. That is right.

[854] A. No. That is Monk Harrington's district. He is from Bertie County. The district is less than 50 percent

black as it now exists. And a black cannot be elected in my opinion in that district running against Mr. Harrington or running against anyone else who is a good white candidate.

Q. And when you say the district is less than 50 percent black, are you referring to the voters or population?

A. Voting age population, as I recall. I believe it is 55 percent black overall populationwise.

Q. Do you have an opinion as to why some people do not want to enlarge that district?

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The witness: I know why Monk Harrington would not want to enlarge it, because if the district were enlarged to be a majority black population district, he might not be reelected. I think the same thing would apply to some white citizens who live in that district who may not want to have a black representative.

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[855] CROSS-EXAMINATION 9:49 A.M.

By Mr. Leonard:

Q. Did the Warren County political action council endorse a candidate for clerk of superior court in the last election?

A. Quite possibly so. If I recall correctly, it was Richard Hunter or we didn't endorse anybody. I don't recall.

Q. Isn't it correct that Richard Hunter, the white incumbent, ran against a black person in that election?

A. Well, yeah.

Q. What was wrong with the black person that the council didn't want to endorse him?

A. Let me answer your first question. I think it is correct that Mr. Hunter ran against, again, Mr. Byrd, I believe who was the black candidate who ran.

Q. What was there about the black person that caused your council to reject that black and support Mr. Hunter?

A. Mr. Byrd was not a good candidate in the [856] collective opinion of the political action council.

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[866] Q. Have you been successful in getting any of those white leaders to openly support you?

A. Going back to this last race, I don't believe that anyone came out openly and notoriously supporting me in my race for the state House.

Q. But you had to get some white votes?

A. I did get some votes. When I say "opening and notoriously," for example, there were some whites in Warren-ton whom I have known for years and they have known me in my work as a lawyer, and I know that they supported me. But they didn't go out and campaign down the street.

Q. Has anyone, for example, in Northampton County—a white political leader who would feel free in the contemporary setting openly to support a good black candidate in your opinion?

A. I would think yes, there would be some. I think there would be very few. That would be my opinion.

[867] I think you will find, Judge, that there are some whites across the board in the following maybe two categories: Some will come to you privately and say, "Frank, I support you," and will give me a check. I got a couple of contributions. But you do not find very many who are willing to go out and get on the stump. When I say "get on the stump," I mean just go out and say publicly that

“I think Frank Ballenger is a candidate that you should support.” Maybe that day is coming, but it hasn’t quite come around yet.

Q. It is better than it was?

A. Yes; it is.

Q. Ten years ago?

A. Ten years? A lot better than it was 20 years ago.

Q. But it is still, I take it in your opinion, from your own experience improbable in that region that a good black candidate can gain the open support of a significant influential white political figure?

A. That is true. And of course, if a white political figure is also a candidate, then he is going to be very reluctant to risk his own political—

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[925] (Whereupon,

Leslie Bevacqua

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 11:57 A.M.

By Ms. Heenan:

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[926] Q. What is your present job, Ms. Bevacqua?

A. I am the appointments aide for boards and commissions to Governor James B. Hunt, Jr.

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[937] Q. Can you tell us by name who is serving on the inmate grievance board?

A. Yes, I can. The black members on the inmate grievance commission are Mr. J. G. Butterfield, Dr. [938] Elizabeth Stovall, and Reverend George Battle.

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[1064] (Whereupon,

Marshall Rauch

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 3:53 P.M.

]1065[By Mr. Leonard:

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Q. Are you currently a member of the general assembly of North Carolina?

A. I am.

Q. What position do you hold?

A. I am presently co-chairman of the finance committee, and I am chairman of the legislative ethics committee.

Q. In which House?

A. In the Senate.

Q. How long have you been a member of the state Senate, Senator Rauch?

A. I have been in the Senate 17 years. This is my 17th year.

Q. During your senatorial service, how many legislative redistrictings have you been involved in?

A. I have been involved in two.

Q. When was the first?

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A. I believe the first was in 1971. I was a member of the Senate redistricting committee. In 1981 I was chairman of the Senate redistricting committee.

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[1068] Q. How long have you known Ralph Gingles, Sr.?

A. 30 years maybe. Ralph was on the Gaston County good neighbor council with me. That is when we came very close—30 years ago—20 years ago.

Q. Has he ever been in your home?

A. Sure.

Q. Do you know his son?

[1069] A. "Skipper"?

Q. Ralph, Jr.?

A. Yeah. I know his son very well.

Q. And you know that "Skipper" or Ralph, Jr. is one of the named plaintiffs in this action?

A. Yes. That was a surprise to both of us.

Ms. Winner: Well, I object to what was a surprise to Mr. Gingles.

Judge Phillips: Well, we won't consider that answer.

By Mr. Leonard:

Q. How long have you known the Ralph Gingles who is a plaintiff in this action?

A. 25 years or so. When he was real little, I didn't know him. Let's say at least 10 or 15 years.

Q. Now, did there come a time in the 1981 session of the legislature when you became involved in redistricting?

A. I am sorry?

Q. You had a role to play in the redistricting process this last time?

A. Oh, yes.

Q. Tell the court what committee it was and what role you played?

A. Well, the redistricting—the Senate redistricting went to the Senate redistricting committee, and I was [1070] chairman of that committee.

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[1075] Q. Now, Senator Rauch, prior to February 9th of 1982, had anyone from the State of North Carolina approached you to urge you to support the concept of single-member districts in the larger metropolitan counties?

A. I don't think so. But there is a possibility that Senator Billy—Senator Bill Mills always wanted, I believe it was, numbered seats. I believe the first time I heard it was February 9th when Senator Frye asked that we vote on a single member district. And then Senator Mills made a motion for a subcommittee to study it.

Q. When did Ralph Gingles, Jr., the plaintiff in this action, first contact you to urge you to support single member districts for the larger metropolitan counties?

A. He never did.

Q. Do you know whether or not Mr. Gingles is a constituent—the plaintiff in this case is a constituent of yours?

[1076] A. Sure, he is.

Q. Do you know where he lives?

A. Sure.

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[1079] CROSS-EXAMINATION 4:17 P.M.

By Ms. Guinier:

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[1085] Q. And in fact, as a result of the department of justice's objection to the North Carolina constitutional amendment, you were permitted to break county lines wherever that was necessary to get predominantly black districts?

A. Right.

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Q. The amendments that prohibited dividing counties were thrown out as far as you were concerned as a result of the department of justice's objection to those amendments?

A. That is correct. We could break the lines.

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Q. It was your understanding, Senator, that the legislative redistricting criteria that you referred to [1086] indicated that you could cross county lines?

A. That is correct.

Q. And this legislative criteria was the basis on which you redistricted the Senate?

A. That is correct.

* * * * *

Q. Now, after this lawsuit was filed and the department of justice had objected both to the North Carolina constitutional provision as well as to the first [1087] Senate reapportionment plan, you told the staff to come up with good plans that would enable or enhance the election of minorities; is that correct?

A. Definitely.

Q. And this meant drawing single member districts where a majority of the people within what was previously a multi-member district were black if a single member district were drawn?

That is correct.

Q. And you were not told of any legal reason why this could not be done across the entire state?

A. That is right.

Q. And you were not told, for example, that it could only be done if the plan were gerrymandered?

A. No.

Q. And you were advised by the staff or by the counsel who were retained that they were looking specifically at Mercklenburg County to see if a 65 percent majority black district could be drawn?

A. We talked about that; yes.

* * * * *

[1096] CROSS-EXAMINATION

By Ms. Guinier:

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[1097] Q. I am handing you a copy of a deposition that you gave in this case. Could you please turn to page 90 of that deposition? Would you please read aloud starting with line 2 to the top of page 91, line 2?

* * * * *

A. Okay. "... Did you have any advice on the issue of whether or not to take Mecklenburg county as a covered county and treat it and give it a separate district?"

"... I don't think we were told to do that."

"... You were not told to do that?"

"... I don't think it was suggested."

"... But these are your decisions, aren't they? These aren't legal decisions."

"... We could have done it."

"... Right. But you neglected to do it?"

"... We chose not to do it."

[1098] "... So you made an affirmative decision not to do it?"

"... Yes."

"... What was the basis upon which that affirmative decision not to do it was made?"

"... It wasn't necessary."

"... It wasn't necessary to comply with the section 5 requirement?"

"... That is correct."

"... Was any discussion given to other sections of the voting rights or the fifteenth amendment at that time?"

"... No; but we were aware of the mandate."

"... You were aware of the submergence question?"

"... Yes."

* * * * *

[1121] Q. Now haven't you also said that the primary reason that legislators are concerned about not breaking county line was because that's how their old districts were drawn and that's how they get elected?

A. Yes, that's one of the main reasons.

* * * * *

[1158] Whereupon,

Louise S. Brennan

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 10:59 A.M.

By Mr. Leonard:

* * * * *

[1159] Q. Are you a member of the North Carolina House?

A. Yes, I am.

Q. North Carolina House of Representatives?

A. Yes.

Q. What's your educational background?

A. I have a B. A. in English and political science, and an M. A. in political science.

Q. And what district to you represent in the House of Representatives?

A. 36th district.

Q. And that's Mecklenburg county?

A. Yes.

* * * * *

[1178] A. I believe that in campaigns that I've participated in in the past 20 years, both black and white communities open up their communities to candidates of the other race. And I have seen nothing to the contrary.

Q. And have you, during the course of those years, supported black candidates?

A. Yes, I have.

Q. Just name a few for the court.

A. Harvey Gantt, Arnie Shuford, Jim Pope, Bob Walton.

Q. Have you contributed money to their campaigns?

A. To at least 3 of those 4.

Q. Have you helped and assisted them in their campaign activities?

A. Yes. Yes, I have.

Q. Tell the court just briefly, Ms. Brennan, what your experience is with respect to the ability of black people to register and have access to the political process in the county—and please, briefly.

A. Briefly, during the past 20 years, I have participated in helping to open up the process for blacks and everyone else beginning in 1963 and '64 prior to the Voting Rights Act. We put on a substantial registration drive with the help of Dr. Hawkins, who had a foundation grant to do that.

I have consistently, in all my Democratic Party [1179] involvement, supported wide open registration and participation in the political process and continue to do so.

* * * * * * * * *

[1189] Q. Now at the February 6 meeting which took place after the public hearing, Jim Richardson was present, is that correct?

A. That's correct.

Q. And Phil Berry was present?

A. Uh-huh.

Q. Harvey Gantt was present?

A. Yes.

Q. And Sara Stephenson was present?

A. Yes.

Q. And Raleigh Bynum was present?

A. Yes.

Q. And Arthur Griffin was present?

A. Yes.

Q. And there were a number of black leaders present at that meeting?

A. Yes.

Q. Almost to a person, the black people at that meeting spoke out in favor of single member districts, did they not?

* * * * *

[1190] Q. Do you remember my question?

A. Yes, I do. And I will say several people present didn't say anything. Several people did express support for single member districts. And at least one expressed support for the current at large district.

Q. And who was that one person?

A. Malachi Green.

Q. And is Malachi Green the only person you can recall who spoke out in favor of the districting system as it presently existed?

A. I believe at that meeting he's the only one.

Q. Now the other people who spoke out in favor of single member districts specifically told you that they did not like the multi-member district scheme for Mecklenburg county, is that correct?

A. Well, I'm not sure they told me they didn't like that, but they said they would rather have single member districts.

* * * * *

[1191] And they told you that one of the reasons that they were in favor of single member districts in Mecklenburg county is that in order to elect a candidate of their choice the way the system presently exists, blacks have to concentrate their votes?

A. I doubt that concentration or single-shooting was ever mentioned in that particular meeting.

Q. You don't recall that a number of the people complained that blacks have to single-shoot in order to elect a black candidate?

A. I don't believe that that was ever mentioned.

Q. Were you present when Phyllis Lynch testified last week in this courtroom?

A. Yes, I was.

Q. Were you present when she said that blacks have to single-shoot in order to elect a candidate of their choice?

A. Yes, I was present when she said that.

Q. And you were present when Phyllis Lynch testified that the reason blacks have to single-shoot especially in the primaries is because there are some white people who are reluctant to vote for a black candidate?

A. I was present when she testified to that.

Q. After Ms. Lynch testified, did you talk to her?

A. Yes, I did.

[1192] Q. When she came off the stand?

A. Yes, I did.

Q. And didn't you tell her that you would be doing the same thing if you were her?

A. I said if my goals were hers.

Q. Now in February of 1982, at the meeting that you had at the Charlotte Youth Council?

A. Yes.

Q. You told the black people who were speaking on behalf of single member districts that you were opposed to changing the present plan, is that correct?

A. Yes.

Q. And you told them that the Justice Department has been working with the legislature and that the legislature's plan would probably be approved, is that correct?

A. Yes.

Q. And you told them that it was all over but the shouting, is that correct? Words to that effect?

A. Yes, I did, probably. I don't really recall saying that, but if they say I did, I probably did.

Q. And you spoke very frankly?

A. I always do.

Q. And you told them, and I'm paraphrasing again, "We Democrats are not going to let Republicans get into the legislature."

[1193] A. No, well, paraphrasing, I would never have said it that way. It's quite likely that I said I would not willingly relinquish seats to Republicans.

Q. And you said, and I'm paraphrasing again, that single member districts would open the doors to Republicans?

A. Well, it depends on how the districts are drawn. I doubt that I said that, you know. But it would certainly depend on how the districts were drawn.

Ms. Guinier: May I have a moment, please?

(Pause.)

By Ms. Guinier:

Q. Now at the time of this meeting, one of the primary concerns of the black people who were assembled was they had been unable to elect a black person to the house of representatives from Mecklenburg county, is that correct?

A. I think that was their concern, but I'm not sure that it is well placed.

Q. My question was that was one of the concerns they expressed to you?

A. Yes.

Q. And again, paraphrasing, didn't you tell them, "We are going to get you a black candidate this time"?

A. Oh, no. I certainly would never have said that. [1194] We had 2 black candidates present who I knew would be candidates. Phil Berry announced to me that date that he was going to be a candidate and Jim Richardson was already an announced candidate, at least to his personal friends. So I know that 2 candidates were running, so I never would have said that.

Q. Did you say, again paraphrasing, that we're going to get a black person elected this time?

A. I thought we would get 2 elected this time—this past time.

Q. Did you say something to that effect?

A. Yes, I probably did.

* * * * *

Q. Who was that candidate?

A. Jim Ross.

Q. And when did he run?

A. He ran in 1970 with me, although I lost in the [1195] primary. He lost in the general election that year because it was in the middle of the busing controversy.

Q. In your opinion, was he a qualified candidate?

A. Yes, he was.

Q. Now you also described on direct examination your experience with Dr. Bertha Maxwell who ran for the house in 1980. And she was defeated in the general election?

A. Yes.

Q. In your opinion, is she a qualified candidate?

A. Yes, she was.

Q. You've also mentioned Jim Richardson. And the fact that you were familiar with his run for the North Carolina house. He won the primary, did he not?

A. Yes, he did.

Q. And he lost the general election, is that correct?

A. Yes.

Q. And that was in 1982?

A. Yes.

Q. In your opinion, was he a qualified candidate?

A. Highly qualified.

Q. You state you were also familiar with James Polk who ran for the senate. He ran from Mecklenburg county, is that correct.

A. Yes.

Q. And he was nominated in the primary, is that [1196] correct?

A. Uh-huh.

Q. And he lost the general election?

A. Yes, he did.

Q. In your opinion, was he a qualified candidate?

A. He was.

Q. Jim Black is a member of the delegation as it presently exists from Mecklenburg county, is that correct?

A. Yes.

Q. And Jim Black was first elected in 1980, is that correct?

A. Uh-huh.

Q. And when Bertha Maxwell ran in 1980, Jim Black also ran for the house from Mecklenburg county in the general election?

A. Yes.

Q. And this was the first time that Jim Black had run for public office, is that correct?

A. Yes, it was.

Q. And Jim Black was elected?

A. Yes, he was.

Q. And Jim Black is white?

A. Yes, he is.

* * * * *

[1211] CROSS-EXAMINATION 12:10 P.M.

By Ms. Guinier:

* * * * *

[1216] Q. And in fact, you believed—or, in fact, you testified that the school system in Wake county was integrated only as a result of litigation.

A. That is correct, yes.

Q. And you testified that neighborhoods in Wake county are identifiable by race?

A. They are, certainly.

Q. And that churches in Wake county are segregated by race?

A. Absolutely.

Q. And that social clubs in Wake county are racially identifiable?

A. As far as I know, they certainly are.

Q. And that the black community in Raleigh tends to be poorer than the white community in Raleigh?

A. That has been proven.

Q. That blacks still face problems with regard to employment discrimination in Wake county?

A. I'm sure they do, yes.

Q. And you testified in your deposition that in many instances when the housing authority has attempted to [1217] purchase land and locate public housing in the white community that they have faced opposition?

A. That is correct.

Q. And that some of this opposition was racially motivated?

A. I'm not sure I used that—if you say I said that, and it's in that deposition, then I did. But I don't recall saying it just that way.

Q. Do you believe that?

A. I'm sure that race has something to do with that, certainly.

Q. Now you testified that the southeastern part of Raleigh is where most black people live, is that correct?

A. That is correct.

* * * * *

Q. Are municipal services in the black community [1218] equal to those in the white community?

A. Such as—give me—be very specific on that, if you will.

Q. Such as the paving of streets in the black community?

A. Certainly more—there are probably more unpaved streets in the predominantly black areas of the city than there would be in the predominantly white areas. I'm fairly sure that that's an accurate statement. I don't know what they are. I can't be more specific than that.

Q. Now do you believe that these problems with regard to housing segregation and employment discrimination and the other problems that you mentioned are part of the lingering effect of past discrimination?

A. Oh, I am sure that they are. Yes.

* * * * *

[1219] Q. And you believe that a black office holder has more sensitivity and understanding to the needs of black people?

A. I think that's a very, very good statement.

Q. You've worked in campaigns for various black people who have run for office in Wake county?

A. Almost all of them.

Q. And worked in the campaign for John Baker when he ran for sheriff in 1978?

A. Yes, certainly did.

Q. And in 1982?

A. Yes.

Q. And you are familiar with John Baker's record?

[1220] A. Oh, yes. Record—you mean as sheriff or as what?

Q. You're familiar with him personally?

A. I know John Baker personally, yes.

Q. And you know that John Baker played professional football and was an all-pro prior to being elected, is that correct?

A. Yes, millions of people know that.

Q. And that prior to running for office, his name was well known in the white community?

A. Yes, I'd have to say that he was very well known.

Q. You are also familiar with Acie Ward?

A. Yes.

Q. Is she a black woman lawyer?

A. Yes.

Q. She ran for district court judge in Wake county in 1982?

A. Yes, she did.

Q. She ran as an incumbent?

A. Yes.

Q. She lost?

A. Yeah, Acie Ward ran as an incumbent having sat or whatever the correct English is—having been appointed to the bench and served maybe 6 months and then was—maybe

less than that and then had to run for election to the seat.

[1221] Q. And you believe that race was one of the factors in her defeat?

A. I'm fairly sure that that's not in that deposition. No, I didn't say that. I think I believe I said to you that that may have been a contributing factor but there were some other things, too, that probably attributed to her defeat.

Q. It was one of the factors?

A. Could very well have been one of the factors. I am fairly sure I told you that.

Q. You're familiar with her.

A. Very familiar with her.

Q. And she's the only black person who has ever been elected to the Wake county board of commissioners?

A. She certainly is, yes.

Q. And she does not live in the black community?

A. She does not.

Q. In fact, she lives in an affluent section of Raleigh that's predominantly white?

A. You're quoting me accurately on that.

* * * * *

[1223] Whereupon,

Malachi J. Green

was called as a witness, duly sworn, and testified as follows:

DIRECT EXAMINATION 12:25 P.M.

By Mr. Leonard:

* * * * *

[1234] Q. Did Knox and Gantt at one point in their political careers contest one another for the mayor's position in Charlotte?

A. Indeed, they did.

Q. Is one of them black?

A. Harvey Gantt is black.

Q. Is one of them white?

A. Eddie Knox is white.

Q. Who did you support?

A. I supported Eddie Knox.

Q. There's been testimony here that the Knox campaign made overt racial appeals during the Knox-Gantt campaign. Did you observe any of those appeals during that campaign by Knox?

A. I did not, sir.

Q. Or by anybody on his behalf?

A. I did not observe such.

Q. Let me show you what's been—may I approach the witness?

Judge Phillips: You may.

By Mr. Leonard: Let me show you what's been [1235] marked Gingles exhibit No. 46 which is in evidence and has been identified as an editorial from the—

A. The *Charlotte Observer*.

Q. *Charlotte Observer*, and you'll note I've marked the last two paragraphs. Would you just read those to yourself for the moment, please?

(Witness complies.)

Now, Mr. Green, do you have an opinion as to whether or not those two paragraphs of that editorial constitute a racial appeal or a racial overtone with respect to the candidates in that race?

Ms. Winner: Objection.

Judge Phillips: Overruled.

A. In my opinion, Mr. Leonard, they do not constitute any appeal to race because the divergent and sometimes controversial views that are referred to in the editorial have direct reference to two big issues that were the principal campaign themes.

Q. Did either of those issues have anything to do with race?

A. No, only insofar as any issue has to do with race—public transportation, growth management. Those were the two big issues.

Q. Would you have an opinion as to whether or not the black citizens of the city of Charlotte would have taken [1236] that editorial to be a reflection on the racial background of the two candidates?

A. I can't speak, of course, for all the citizens of Charlotte, but no one ever raised that issue to me or I never heard it discussed during the campaign.

Q. Prior to the time that you and I discussed this last night, had you ever heard it raised by anybody?

A. No.

Q. Was your support for Eddie Knox in that campaign open?

A. Very.

Q. Did people know you were supporting him?

A. Yes, sir.

Q. Did your name at times appear in ads for Mr. Knox?

A. Endorsement ads and every other report. We sponsored all kinds of affairs for him.

* * * * *

[1277] RECROSS-EXAMINATION 3:37 P.M.

By Ms. Winner:

Q. Mr. Green, have you examined the election returns for the general assembly elections in Mecklenburg county for the last four or six years?

* * * * *

[1278] Q. Do you think that race was a factor in defeat of Bertha Maxwell from the general assembly?

A. No.

Q. Do you think that race was a factor in the defeat of Jim Polk when he ran for the senate?

A. Ms. Winner, let me change the answer to that first question. Yeah.

[1279] Q. Do you think that race is a factor in the defeat of Jim Polk when he ran for the Senate?

A. Yeah. You said "a" factor.

Q. A factor. Do you think that race was a factor in the defeat of Jim Richardson when he ran for the house in 1982?

A. Yeah.

Ms. Winner: I don't have any other questions.

EXAMINATION 3:37 P.M.

By Judge Dupree:

Q. I'm not sure that I understood your answer to a question relating to the relative chance of a black candidate to be elected to the state senate from the Mecklenburg-Cabarrus district as presently constituted. Let me put the question in this way:

Let's assume that we have a Democratic primary in which there are two candidates, one black and one white. Each of them is qualified to represent the district in the senate. In your opinion, does either of those candidates, just on those facts alone, have a better chance to be elected than the other?

A. Yes.

Q. Which one?

A. I think the white person would have a better [1280] chance.

* * * * *

(Whereupon,

Arthur John Howard Clement, III,

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 3:40 P.M.

By Mr. Leonard:

Q. Would you state your full name and your address, please?

A. I am Arthur John Howard Clement, III. I'm at 2505 Weaver Street, in Durham, North Carolina.

Q. And you are an American who is black and male?

A. Obviously.

* * * * *

[1295] Q. Did you have whites actively participating in your campaign?

A. Very much so.

Q. Do you know any policy of the Durham County Democratic Party which impedes black people from participating in the process in that county?

A. No, I don't.

Q. What's the makeup of the executive committee?

A. The chairman—the chairperson of the executive committee is Mrs. Lucas. She's a black woman. The—most of the other offices—many of the offices—in fact, there's a good mix in the current Democratic party, black, white, women, young people, in the current leadership hierarchy of the Democratic party.

Q. Do you know of any reason why blacks are not able to elect the candidates of their choice for the general assembly in Durham county?

A. Well, if I may, sir, if the Durham committee had given me its endorsement, theoretically I think I could have been in the state legislature today, and Durham county would have had two blacks in the state legislature from Durham county. But the Durham committee did not see fit to give me its endorsement. Consequently I was denied a significant portion of the black vote. Consequently, I lost.

* * * * *

[1300] (Whereupon,

Allen Adams

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION

By Mr. Leonard:

* * * * *
[1301] Q. Are you currently a member of the General Assembly?

A. I am.

Q. And in the House of Representatives?

A. Yes.

Q. From what county?

A. Wake county.
* * * * *

[1306] Q. What about the formal election board process itself? What's your experience with respect to blacks' participation in the board of elections?

A. Well, I can remember 1960 we started a registration drive called a vote-mobile drive. And that was done in conjunction with the Jaycees and the League of Women Voters. And the vote on the election board was two to one. We got John Duncan's vote, and one Democrat. And one Democrat voted against it. But anyway, we did that, and from then on we have—in the—through the elections process—board process made every effort to make registration and voting available to all the citizens.

At that time we had special emphasis on black [1307] registration because they were underregistered.

Q. You mentioned the precinct level. Are you familiar with blacks holding precinct offices in the county?

A. Yes.

Q. Can you tell the court how long a history that has?

A. Well, it's been ever since I've been in Wake County. There were a number of black precinct chairmen and vice

chairmen. Let me, if I may, Mr. Leonard—I digressed a little bit on the election process. The Wake county board of elections has had a black member since 1968 or '69. J. J. Sanson was appointed by me. And I think there has been continuously since then a black member on the Wake county board of elections. The current chairman of the Wake county board of elections is Rosa Guild, who is black.

* * * * *

[1333] Q. Can you give examples of the Wake county delegation supporting legislation that was of specific interest to the black community?

A. Yes. When the blacks asked us to abolish the single-member districts for the school board—as you heard Mr. Malone testify—on the grounds that that diluted the voting influence of black citizens, we introduced a bill over the objection of a number of other elements in the county to set up the mechanism to go to at-large elections for the school board.

That was specifically at the request of the black organizations—the four black organizations: the Raleigh-Wake Citizens Association, the Black Women's Political Caucus, the Wake County Democratic Black Caucus [1334] and the fourth one, which met together. Mr. Winley was presiding. Mr. Malone was there. Substantially every black leader in Wake county was there. And the purpose of the meeting was to ask us to do away with single-member districts in Wake county for the school board because it lessened the influence of the black voters. And we introduced that legislation and have it pending.

Q. Is there a black caucus in the house of representatives?

A. Yes.

Q. Do they at times generate proposals to the legislature out of that caucus?

A. Yes.

Q. Can you recall any such issues in the last two sessions?

A. Yes. Their main program was the voter registration battles that chairman Spearman referred to that the legislature passed. And I introduced one of those. And representative Blue and I and Ballance worked on those in the house election laws committee. And we got all three of them passed.

Wilma Woodard, our senator, was introducing them in the senate and handled the bills in the senate. There were three specific proposals. One was voter [1335] registration in public libraries. The second was to have a voter registrar at each high school. And the third was the Department of Motor Vehicles license examiners giving an opportunity to people when they renew their driver's license to register to vote or change their registration. And all three of those passed.

Q. Was there any legislation in the health field that came out of the caucus?

A. Well, I don't know that it was an official action of the caucus. But Representative Lockes from Robeson county introduced a bill on the sickle cell anemia funds—to have funds for sickle cell—which I understand is peculiarly applicable to blacks. I think only blacks get sickle cell anemia.

And they were intrested in that—the caucus was. And that was placed in the budget. In fact, we took the funds out of the governor's block grant funds and funded \$281,000 for sickle cell anemia.

Q. Did all of this legislation which you referred to become law in North Carolina?

A. Yes. It is law now.

* * * * *

[1369] (Whereupon,

Thomas Brooks Hofeller

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 10:17 A.M.

By Mr. Leonard:

* * * * *

[1387] Q. Is that information available from the voting records in Mecklenburg county?

A. To the best of my belief, it is.

Q. What else did you observe?

A. Dr. Grofman appears to give a very great weight to the correlation between two variables, where one variable is the percent of black registration and the other variable is the percent of performance by the black candidates?

He went through the data. And he listed out that there were correlation coefficients that were extremely high. And there were significances that were extremely low, which made them very good. And I don't argue that those correlations and significance represent the relationship of those two variables.

I would just like to point out that my opinion is that one would find that sort of correlation between white and black voting behavior in other races where whites and blacks were candidates and in other races in which other

issues were at stake—that the presence of high degree of correlation and high significance does not really prove the causality of his judgment that there is significant racially polarized bloc voting.

[1388] It is very academically exciting to have that correlate so well. But I am not sure that it would be fair to draw the conclusion that it proves his point, especially when evidence is not presented as to whether or not those kinds of voting behaviors are present anywhere else in the state or anywhere else in the nation.

Q. What other observations did you make?

A. Again, in my opinion I think that it is very difficult from my experience in electoral analysis to use just the results of votes as a model for determining what happened in an election. There are a large number of factors—some of which are quantifiable, some of which are non-quantifiable—which are present in any election in any given year, such as the positions of the candidates on issues. After all, elections are decided by issues.

I think it would be naive to assume that every election is decided upon the race of the candidate. Financing is an issue. The general approval rating of the candidate is an issue. The candidate's skill as a candidate and the skill of the persons who are managing his or her campaign are important. Name I.D. is important. Ballot position is important. The general atmosphere in that campaign year is important. The same characteristics for the other candidates are also important.

[1389] So I guess what I am trying to say here is that the correlation analysis and the statistical significance and all that data in the printouts is only one factor in trying to lead to an evaluation of the election. And therefore, one should not necessarily give the weight that one might feel on the correlation over to the other factors when somebody is making a determination.

* * * * *

[1419] CROSS-EXAMINATION 12:05 P.M.

By Ms. Winner:

* * * * *

[1430] A. Submergence with relation to multi-member districts takes place when there is a minority population which is sufficiently concentrated such that a district can be drawn to include that population—a reasonable district—in which that minority would constitute a majority.

But at the same time, the total of all the minority inhabitants of that multi-member district do not constitute a majority of that multi-member district's population.

Q. And when you say a reasonable district could be drawn, do you mean one that is intact and contiguous?

A. Reasonably so. Reasonably so.

Q. Using that definition—I think that you testified that you have examined the concentration of minority voters in Mecklenburg and Forsyth and Durham and Wake counties; is that correct?

A. Along with several other counties in the state also.

Q. But you have examined it in both counties?

A. Yes.

Q. Using that criterion, do you consider there to [1431] be submergence in the Mecklenburg county house district?

A. The multi-member seat?

Q. Yes—in Mecklenburg county? Would you like me to put the map up?

A. I was just going to get the district numbers—district 36?

Q. Yes?

A. Yes. The answer is yes—in accordance with that definition; yes.

Q. Do you consider there to be submergence in the Mecklenburg-Cabarrus senate district, which is senate district number 22?

A. Yes.

Q. Do you consider there to be submergence in the Durham county house district—I can't recall the number?

A. 23; yes.

Q. And do you consider there to be submergence in the Wake county house district number 21?

A. Yes.

Q. And do you consider there to be submergence in the Forsyth county house district number 39?

A. Yes.

Q. Do you consider there to be submergence in the Wilson-Edgecombe-Nash house district number 8?

A. Yes.

* * * * *

[1437]

CROSS-EXAMINATION

(Resumed)

By Ms. Winner:

Q. Dr. Hofeller, have you analyzed the elections in Mecklenburg, Forsyth and Durham and Wake counties to determine whether black voters single-shot vote more than white voters do?

A. Yes.

Q. In your opinion, do black voters have to single-shot vote in order to be able to elect black candidates in those counties?

A. I am not sure that I can say conclusively in every instance that they would have to have single shot. But I think as a general rule the answer would be yes.

* * * * *

[1441] Q. In looking at professor Grofman's results, is it correct that the extreme case analysis and the regression analysis correspond within a few percentage points in almost all of the cases?

A. In many of the cases they do conform rather closely.

Q. In most of the cases?

A. Yes.

Q. Now, you testified that professor Grofman did not have any turnout data or turnout estimate; is that what you said?

A. No. What I said was that I would like to have seen figures on the number of blacks and the number of whites who turned out. Certainly I know that he had Democratic and Republican turnout in those primary elections and general turnout in the general election.

Q. Is there any way to determine the exact number of blacks and whites who voted in each election in each precinct without going and counting the registration cards?

A. Not that I know of.

[1442] Q. In the political science literature, is it standard for political scientists to count registration cards to determine black and white turnout?

A. I am not sure that it has ever been done. But that doesn't mean that it isn't a valid way to operate. I know

that in terms of analyzing political data for vote analysis for trying to win elections and determine elections, there have been times when people have gone to the voter registration forms and affidavits. So it certainly isn't beyond the realm of things you could do.

Q. But it is unusual?

A. If you were just dealing in an academic situation probably you wouldn't go to the trouble of getting that data.

Q. And the reason is that it is extremely time-consuming to do that—and tedious?

A. Again, it is a matter of how extreme you think it is.

Q. But it would be a matter of going through card by card?

A. Yes; definitely.

Q. And determining whether everybody voted and what race they were?

A. Yes.

Q. Have you ever done that in any analysis that [1443] you did?

A. No—not for this kind of a study. Again, I have done it in terms of political analysis—practical politics dealing with real elections. Yes.

Q. But you have not done it for this kind of study?

A. It depends on what you characterize as “this kind of study.”

Q. Are you familiar with the method that Dr. Grofman used for estimating turnout?

A. No. I can't say that I really am.

* * * * *

[1445] Q. Now, do you agree that a standard methodology in political science for determining voting polarization is to look at correlations?

A. Yes.

Q. And that that would be at least one of the steps that should be performed in order to determine whether or not there is substantial significant polarized [1446] voting?

A. Yes.

Q. Would you agree that all of the correlations that Dr. Grofman arrived at or found in his studies were statistically significant?

A. I think I already stated that they were statistically significant.

Q. All of them?

A. He gave the significance factor of them. It was .00001, which was the best that the printout could show.

Q. And you agree that that is statistically significant?

A. I agree that his correlation between those two variables is statistically significant.

* * * * *

[1447] By Ms. Winner:

Q. Looking at defendants' exhibit 14(d), you have testified that Richardson's place on the ballot could have been one of the reasons why he lost; is that correct?

A. Yes. That is correct.

Q. And he is candidate number 8?

A. Yes.

Q. Is it correct that the person next to Richardson—that is, candidate number 7—came in third in that election?

A. Yes.

Q. And that the candidate next to that person, candidate number 6, came in second in the election?

[1448] A. I am not sure that he didn't come in first.

Q. He came in first in the election?

A. Yes.

Q. And that way over on the other page, candidate number 15—who I believe would have been the seventh Republican—got 3,000 more votes than Mr. Richardson got?

A. Yes. I think you have to note, though, of course, the Republicans and Democrats are on a different row in the ballot. And I think that you have to recall that my testimony is that the ballot position has an effect on the votes received. I didn't say it was going to be totally determinant.

Obviously if it were, the top alphabetical candidate would always win every election.

Q. At least in this election, while Mr. Richardson was in eighth place, the candidate who was number 7 in both the Democratic row and the Republican row did substantially better than he did?

A. That is right. But I would say that .3 of 1 percent of vote difference could be accounted for by position on ballot just as any other factor. It could have been that if candidate number 7 were higher on the ballot, he might have gotten more votes.

* * * * *

[1451] Q. Would you say that there was racially polarized voting in the general election in the Mecklenburg county for the senate in 1982?

A. Polarized voting?

Q. Yes.

A. Yes.

Q. In each of the elections contained in exhibits 13 through 18, were there any that did not have racially polarized voting?

A. I do not recall seeing one.

* * * * *
[1454] Q. You did not conduct an investigation of the totality of the circumstances in any of these places; did you?

A. Some of the factors which I mentioned as being necessary to prove or to form an opinion of substantially [1455] significant racially polarized voting are very difficult to obtain. And if one was indeed trying to prove a case on that, one would want to look at them all. And I did not look at them all.

Q. And in fact, when I took your deposition a week and a half ago, you said that you hadn't looked at anything other than the voter returns at that time; isn't that right?

A. That is correct.

* * * * *
[1458] By Ms. Winner:

Q. Prior to your employment in this case, have you ever done an analysis of racially polarized voting?

A. No.