NORTH CAROLINA GENERAL ASSEMBLY
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27603

Statement by Sen. Bob Rucho and Rep. David Lewis Regarding Proposed VRA Districts

In anticipation of the public hearing scheduled for June 23, 2011, we want to correct several erroneous statements that have appeared in the news media regarding our proposed Voting Rights Act ("VRA") districts.

Claim 1: The proposed VRA districts plan includes an illegal "packing" strategy.

"I think they unnecessarily and probably illegally pack minority voters into districts," said Sen. Dan Blue, D-Wake. "I need to analyze them a little bit further, but my initial impression is they're engaged in packing in non-Section 5 Voting Rights Act districts." ("Blue questions legality of draft redistricting maps," SGR Today, 6/20/11)

"How…'packing' may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates." *Voinovich v. Quilter*, 507 U.S. 146, 153-154 (1993).

Senator Dan Blue, among others, has stated that our proposed majority black districts result in illegal "packing" of black voters. There is no factual or legal basis for this argument.

The U.S. Supreme Court has defined the term "packing" to mean the intentional creation of super majority black districts designed to prevent the creation of one or more other majority black districts. *See Voinovich v Quilter,* 507 U.S. 146 (2003). We have not engaged in this practice. Senator Blue is presumably aware of the Supreme Court's definition of packing. If there is another Supreme Court case that supports Senator Blue's definition we request that he provide it to us.

Claim 2: The proposed VRA districts plan includes too many majority-minority districts.

"The new maps include 24 majority-black districts in the N.C. House and 10 in the Senate, according to an attached memo." ("North Carolina redistricting maps may hurt Republican allies William Brisson, Dewey Hill," *Fayetteville Observer*, 6/20/11)

"Any legislative district designated as a Section 2 district under the current redistricting plans, and any future plans, must satisfy either the numerical majority requirement as defined herein, or be redrawn in compliance with the Whole County Provision of the Constitution of North Carolina and with *Stephenson I* requirements." *Strickland v. Bartlett*, 649 S.E.2d 364, 376 (N.C. 2007).

Our proposed Senate plan includes only nine majority black Senate districts. We were unable to identify a tenth reasonably compact majority black population which could be used to create a tenth majority black Senate district. Senate District 32 is not a majority black district because of the absence of sufficient black population in Forsyth County. In proposed Senate District 32, blacks comprise 39.48% of the voting age population. Voting age Hispanics constitute 12.21%.

Congressman Watt has advised us that urban Hispanic populations in his Congressional district tend to vote for the same candidates favored by urban African Americans voters. Thus, our proposed version of Senate District 32 provides the black community with a tenth opportunity to elect a candidate of their choice, provided African American voters in Forsyth County can build a coalition with urban Hispanic voters.

Our proposed Senate District 13 was constructed, as was the predecessor District 13, to have a plurality Native American population (26.49%). The Native American population combines with the black population (25.92%) to establish a majority minority district. However, this district is neither majority Native American nor majority black.

Congressman Watt has advised us that black voters and Native American voters do not tend to vote for the same candidate and are not politically cohesive. The predecessor district to our proposed Senate District 13 has always elected a white candidate. Current Senate District 13 never elected a black or a Native American candidate. The failure of an African American or

Native American to be elected from current Senate District 13 seems to support Congressman Watt's opinion.

There are only twenty four proposed majority black House districts in our proposed plan. Some media outlets have reported that there are twenty seven majority black House districts.

The alleged twenty-fifth district, House District 47, is a majority Native American district and replicates a similar district in the 2003 house plan. It does not count towards giving the black community a proportional and equal opportunity to elect candidates of their choice.

Two other alleged majority black districts, House Districts 71 and 72 in Forsyth County cannot both be drawn with a black voting age population of over 50%. Neither district is therefore a majority black district.

Claim 3: The proposed VRA districts plan is solely an attempt to maintain Republicans' political power.

"Democrats charged that Republicans are trying to pack black Democrats into districts so as to make it easier for the GOP to win the remaining ones… 'They want to make sure they maintain their power,' said Fleming El-Amin, a local activist who sits on the Democratic committee that will review the redistricting recommendations." ("GOP well within rights on redistricting, but Garrou would be heavy loss," *Winston-Salem Journal*, 6/22/11)

The State has an obligation to comply with the Voting Rights Act. In the 2003 plans, rather than comply with the VRA, the previous Legislative leadership engaged in a redistricting technique called "cracking."

Under Supreme Court precedent, one example of "cracking" or "fragmenting" occurs when Legislative leaders remove black population from a majority black district and spread these voters into other adjoining districts that will elect a white candidate but not a black candidate. *See Voinovich v Quilter* 507 US 146, 153 (2003); *Thornburg v Gingles*, 478 U.S. 30, 46 n.11 (1986). Based upon these Supreme Court definitions, in creating the 2003 plans, the former Legislative leaders "cracked" majority black districts in two different ways.

First, in the 2003 plans, populations in several formerly majority black districts were reduced to populations levels of 39% to 49% black. This practice was rejected by the North Carolina and United States Supreme Courts in *Strickland v Bartlett,* 129 S.Ct. 1231 (2009). Where possible, majority black districts drawn to comply with the VRA must be based upon an actual majority of black voters.

Second, the Legislative leaders rejected several majority black districts in locations at which the black community had a right, under the VRA, to a majority black district.

While districts that adjoin majority black districts may become more competitive for Republican candidates because of compliance with the VRA, such competitiveness results from compliance with the VRA. This is the opposite of the prior Legislative leadership intentionally cracking majority black districts required by the VRA to ensure the re-election of white incumbents.

Claim 4: The proposed VRA districts plan dilutes the influence of minority voters.

"It is illegal to arbitrarily pack minorities into the same districts just for the sake of doing it because you dilute the minorities' voting strength in other districts." Senator Dan Blue, D-Wake ("Blue questions legality of draft redistricting maps," SGR Today, 6/20/11)

"[A] minority group must constitute a numerical majority of the voting population in the area under consideration before Section 2 of the VRA requires the creation of a legislative district to prevent the dilution of the votes of that minority group." *Strickland v. Bartlett*, 649 S.E.2d 364, 371 (N.C. 2007).

In 2003, the Legislative leadership pursued a strategy which reduced the number of majority black districts and replaced them with two types of districts.

Districts that were between 40 and 50% black were called "effective" majority districts. The Legislative leaders argued that it was not necessary to create majority black districts under the VRA because black populations over 40% were "good enough" to elect a black candidate.

In 2003, Legislative leaders also supported "influence districts." These were districts with black populations between 30% and 40%. These districts have very rarely elected black

candidates, but the Legislative leaders argued that black voters would be able to "influence" the election of candidates who were "sympathetic" to their point of view.

A Supreme Court case called *Georgia v Ashcroft,* 539 U.S. 461 (2000)*,* provided some legal support for this proposition. However, in a case called *LULAC v Perry,* 548 U.S 399 (2006), the US Supreme Court clarified that "influence" districts were not required by the VRA.

Moreover, *Georgia v Ashcroft* was legislatively over-ruled in 2006 when the Congress re-enacted Section 5 of the VRA. See Federal Register Vol. 76, no. 27 at 7471: Report by the United States House of Representatives, Committee on the Judiciary, Report 109-478 at 68-72.

Finally, in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed by Bartlett v Strickland*, 129 S.Ct. 123 (2009), the North Carolina and U.S. Supreme Courts announced that majority black districts must be drawn with an actual majority black voting age population.

Thus, the current 2003 plans violate the voting rights of black citizens in two ways. Alleged majority black districts were not drawn with a true majority of black voters. And "influence districts" were incorrectly substituted for true majority black districts. Our proposed VRA districts do not repeat these violations.

Claim 5: These districts are a done deal and will be enacted with no input from voters.

We have had an unprecedented number of public hearings. For example, in 2001 Legislative leaders held 26 public hearings including hearings in 13 counties covered by section 5 of the Voting Rights Act. In 2001, Legislative leadership did not produce proposed legislative or congressional plans until the end of the public hearing process. In 2003, we are aware of no public hearings held on proposed plans.

By way of contrast, in 2011, we have already held 36 public hearings including 24 in counties that are covered by section 5 of the Voting Rights Act. Under our current schedule we intend to hold three public hearings. The first will be on June 23 and will focus on proposed

VRA districts and four other districts. On July 7, 2011, we intend to hold an additional public hearing.

We have also provided an unprecedented level of redistricting support to the Black Caucus. This included the hiring of additional staff with special redistricting expertise and technology assistance not provided to other members of the General Assembly.

Starting on March 24, 2011, we have repeatedly asked for input from the Democratic leadership and the Black Caucus on the issue of majority black districts. We understand that the Black Caucus has produced alternative maps, however, they have not been provided to us. Further, while we have received some input from individual members regarding specific districts, to date we have received no suggestions for proposed plans from the Democratic leadership or any of several interest groups to whom we have made requests for recommendations and input.

We are more than willing to entertain specific suggestions related to our proposed plans and specific districts.

Claim 6: The proposed VRA districts plan violates principles of compactness.

"State Sen. Eric Mansfield, a Democrat, said he's disappointed by the shape of his new district. The old district is a compact, somewhat rectangular shape covering the northwest corner of Cumberland County. Mansfield said the new shape resembles a crab." ("North Carolina redistricting maps may hurt Republican allies William Brisson, Dewey Hill," *Fayetteville Observer*, 6/20/11)

This argument misstates the law. Majority black districts must be based upon reasonably compact black populations, not districts.

Congressman Butterfield's First Congressional district has been found by a federal court to be based upon a reasonably compact black population. Using Congressman Butterfield's district as an example, we believe that all of our proposed legislative districts are based upon reasonably compact black populations.

However, we would entertain any specific suggestions from the Black Caucus or others identifying more compact majority black populations to form the core of alternative majority black districts, provided the total districts proposed provide black voters with a substantially proportional state-wide opportunity to elect candidates of their choice. Moreover, any such districts must comply with *Strickland v Bartlett*, and be drawn at a level that constitutes a true majority of black voting age population.