

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:15-CV-00399**

SANDRA LITTLE COVINGTON; )  
HERMAN BENTHLE LEWIS, JR.; )  
VIOLA RYALS FIGUEROA; )  
CRYSTAL GRAHAM JOHNSON; )  
MARCUS WALTER MAYO; JULIAN )  
CHARLES PRIDGEN, SR.; GREGORY )  
KEITH TUCKER; CYNTHIA C. )  
MARTIN; JOHN RAYMOND )  
VERDEJO; DEDREANA IRENE )  
FREEMAN; MILO PYNE; VALENCIA )  
APPLEWHITE; DAVID LEE MANN; )  
MARY EVELYN THOMAS; JAMAL )  
TREVON FOX; CHANNELLE )  
DARLENE JAMES; CATHERINE )  
WILSON KIMEL; VANESSA VIVIAN )  
MARTIN; SUSAN SANDLER )  
CAMPBELL; MARSHALL ANSIN; )  
ROSA H. MUSTAFA; ANTOINETTE )  
DENNIS MINGO; RUTH E. SLOANE; )  
CLAUDE DORSEY HARRIS III; )  
BRYAN OLSHAN PERLMUTTER; )  
LA'TANTA DENISHIA )  
MCCRIMMON; CATHERINE OREL )  
MEDLOCK-WALTON; MARVIN )  
CORNELOUS ARRINGTON; )  
JUANITA ROGERS; JAMES EDWARD )  
ALSTON; and MARK R. )  
ENGLANDER; )

Plaintiffs, )

v. )

THE STATE OF NORTH CAROLINA; )  
ROBERT A. RUCHO, in his official )  
capacity only as the Chairman of the )  
North Carolina Senate Redistricting )  
Committee; DAVID R. LEWIS, in his )  
official capacity only as the Chairman of )  
the North Carolina House of )

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**DEFENDANTS' ANSWER TO  
FIRST AMENDED COMPLAINT**



black voting age population that must be included in districts reasonably enacted to protect the state from liability under the Voting Rights Act.

In truth, it is plaintiffs who are advocating the illegal use of race to the extent they are seeking an order from the Court directing the state to adopt alternative districts that follow no state or federal criteria and instead assign black voters to alternative districts strictly for political advantage.

Based upon the foregoing, defendants answer plaintiffs' amended complaint as follows:

#### **FIRST DEFENSE**

The claims and factual issues raised by this action are currently pending before the North Carolina Supreme Court in the case of *Dickson v. Rucho*, No. 201PA12-2. This Court should abstain and defer any consideration of this action because the constitutional claims and other factual issues raised by this action may be mooted or presented in a different posture following conclusion of the state court proceedings, including any potential appeal to the United States Supreme Court.

#### **SECOND DEFENSE**

Plaintiffs, their counsel, and any other real party in interest are barred from bringing this action under the doctrine of claim preclusion.

#### **THIRD DEFENSE**

Plaintiffs, their counsel, and any other real party in interest are barred from bringing this action under the doctrine of issue preclusion.

#### **FOURTH DEFENSE**

Plaintiffs should be denied any potential preliminary or permanent injunction relief on the ground of laches.

#### **FIFTH DEFENSE**

Plaintiffs' claims should be dismissed on the grounds of estoppel.

#### **SIXTH DEFENSE**

Answering the specific allegations of plaintiffs' complaint, defendants state as follows:

#### **"NATURE OF THE ACTION"**

1. Defendants admit that plaintiffs are seeking to challenge the constitutionality of certain senate and house districts. In all other respects, defendants deny the allegations of paragraph 1.

2. Defendants deny that Session Law 2011-402 was ever designated as "Rucho Senate 3." In all other respects, defendants admit the allegations of paragraph 2.

3. Defendants admit that the term Total Black Voting Age Population ("TBVAP") refers to persons of voting age who reported to the Census Bureau that they were any part black. In all other respects defendants deny the allegations of paragraph 3.

4. Defendants deny the allegations of paragraph 4.

5. Defendants deny the allegations of paragraph 5.

6. Defendants deny the allegations of paragraph 6.

7. Defendants admit that in the enacted legislative plans and all alternative plans, "vote tabulation districts" (which are often synonymous with the term "precinct")

were divided into different house or senate districts. In all other respects, defendants deny the allegations of paragraph 7.<sup>1</sup>

8. Defendants deny the allegations of paragraph 8.

9. Defendants admit that plaintiffs are seeking declaratory and injunctive relief. In all other respects, defendants deny the allegations of paragraph 9.

### **“PARTIES”**

10-31. Defendants admit the allegations of paragraphs 10-31.

32. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 32.

33-35. Defendants admit the allegations of paragraphs 33-35.

36. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 36.

37-40. Defendants admit the allegations of paragraph 37-40.

41. Defendants admit that North Carolina is one of the fifty states in the United States of America and that Article I of the North Carolina Constitution speaks for itself. In all other respects, defendants deny the allegations of paragraph 41.

42-49. Defendants admit the allegations of paragraphs 42-49.

### **“JURISDICTION AND VENUE”**

50-52. Defendants admit the allegations of paragraphs 50-52.

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<sup>1</sup> A vote tabulation district is a unit of geography used by the Census Bureau. In 2011, most but not all North Carolina precincts were identical to the vote tabulation districts used by the Census Bureau. Because plaintiffs use the word “precinct” instead of vote tabulation district, defendants will respond to plaintiffs’ allegations regarding divided vote tabulation districts by using the term “precinct.”

**“FACTUAL ALLEGATIONS”**

**“Overview of 2011 Senate and House Redistricting Process”**

53. Defendants admit that during the legislative process districts reasonably enacted by the State to avoid liability under the Voting Rights Act were published before other districts pursuant to State constitutional redistricting criteria and that the General Assembly reasonably adopted districts that were based upon criteria established by the United States Supreme Court, the North Carolina Constitution, and the North Carolina Supreme Court. In all other respects, defendants deny the allegations of paragraph 53.

54. Defendants admit the allegations of paragraph 54.

55. Defendants admit that Senator Rucho and Representative Lewis directed the work performed by Dr. Hofeller and that written statements by Senator Rucho and Representative Lewis speak for themselves. In all other respects, defendants deny the allegations of paragraph 55.

56. Defendants deny the allegations of paragraph 56.

57. Defendants deny the allegations of paragraph 57.

58. Defendants admit the allegations of paragraph 58.

59. Defendants admit the allegations of paragraph 59.

**“The Public Statements Made by Senator Rucho and Representative Lewis Describing the Criteria That Shaped the Challenged House and Senate Districts.”**

60. Defendants admit that Senator Rucho and Representative Lewis issued joint written statements on June 17, June 22, and July 12 and that those statements speak for

themselves. In all other respects, defendants deny the allegations of paragraph 60 and its subparts.

61. Defendants admit that the public statements by Senator Rucho and Representative Lewis speak for themselves. In all other respects, defendants deny the allegations of paragraph 61.

62. Defendants admit that the legislative record speaks for itself including the votes cast by members of the Senate and House in support of or in opposition to the enacted legislative redistricting plans. In all other respects, defendants deny the allegations of paragraph 62.

**“A Comparison of the Enacted Plans and Previous Plans”**

63. Defendants admit that either the legislative or public records contain information regarding the demographics of districts enacted by the 1992, 2003, and 2011 General Assemblies as well as the interim plan ordered by the North Carolina Superior Court (and affirmed by the North Carolina Supreme Court) for the 2002 General Election, and that this information speaks for itself. In all other respects, defendants deny the allegations of paragraph 63.

64. Defendants admit that either the legislative or public records contain information regarding the demographics of districts enacted by the 1992, 2003, and 2011 General Assemblies as well as the interim plan ordered by the North Carolina Superior Court (and affirmed by the North Carolina Supreme Court) for the 2002 General Election, and that this information speaks for itself. In all other respects, defendants deny the allegations of paragraph 64.

65. Defendants admit the allegations of paragraph 65.

66. Defendants admit that prior legislative redistricting plans reflected the areas of the state where prior General Assemblies concluded that majority black, majority-minority coalition districts, crossover districts, or influence districts should be enacted for political reasons or to reasonably protect the state from liability under Section 5 or Section 2 of the Voting Rights Act, that prior General Assemblies did not apply any consistent legal standards regarding the location or number of districts enacted for political reasons or to reasonably avoid liability under the Voting Rights Act or the percentage of black voting age population to include in these districts, and that the location of majority black, majority-minority coalition districts, crossover districts, or influence districts established by the prior enacted legislative plans, the 2011 enacted legislative plans, or all 2011 alternative legislative plans are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 66.

67. Defendants admit that alternative plans were offered by the Democratic Caucus and the Legislative Black Caucus when the General Assembly convened in late July 2011 to enact redistricting plans and that these alternative plans speak for themselves. In all other respects, defendants deny the allegations of paragraph 67.

68. Defendants deny the allegations of paragraph 68.

69. Defendants deny the allegations of paragraph 69.

70. Defendants admit the allegations of paragraph 70.



71. Defendants admit that Senator Nesbitt and Senator McKissick offered proposed senate plans that did not comply with state constitutional criteria for legislative redistricting or federal law as established by both the North Carolina Supreme Court and the United States Supreme Court, and that those plans speak for themselves. In all other respects, defendants deny the allegations of paragraph 71.

72. Defendants admit that Representative Martin and Representative Alexander offered proposed house plans that did not comply with state constitutional criteria for legislative redistricting or federal law as established by both the North Carolina Supreme Court and the United States Supreme Court, and that those plans speak for themselves. In all other respects, defendants deny the allegations of paragraph 72.

**“County-Based Analysis of Challenged Senate Districts”**

**“Senate District 4”**

73. Defendants admit the allegations of paragraph 73.

74. Defendants admit that the 2011 enacted SD 4 is located in a 10-county combination, that the 2003 version of SD 4 was located in a different seven-county combination, that the 2011 SD 4 includes all of Vance, Warren, and Halifax Counties and pieces of Nash and Wilson Counties, that race was one of the criterion used to draw the enacted 2003 SD 4, the enacted 2011 SD 4, and all 2011 alternative versions of SD 4, and that race was not the predominant criterion used to draw the 2011 enacted SD 4. In all other respects, defendants deny the allegations of paragraph 74.

75. Defendants admit that portions of Nash County were included in the 2011 enacted SD 4 and SD 11, that the TBVAP of the portion of Nash County assigned to SD

4 is 51.03% and that the TBVAP of the portion of Nash County assigned to SD 11 is 25.78%.<sup>2</sup> In all other respects, defendants deny the allegations of paragraph 75.

76. Defendants deny the allegations of paragraph 76.

77. Defendants admit that portions of Wilson County are included in the 2011 enacted SD 4 and SD 11, that the TBVAP in the portion of Wilson County assigned to SD 4 is 63.62% and that the TBVAP for the portion of Wilson County assigned to SD 11 is 24.10%. In all other respects, defendants deny the allegations of paragraph 77.

78. Defendants deny the allegations of paragraph 78.

79. Defendants admit that the map included in this paragraph appears to represent the 2011 SD 4. In all other respects, defendants deny the allegations of paragraph 79.

80. Defendants admit that the 2003 version of Senate District 4 was located in a different county combination than the 2011 enacted version of SD 4, that at the time of the 2010 census the 2003 version was underpopulated by 27,526 (-14.43%), that the amount by which the district was underpopulated exceeded the margin of victory by the Democratic candidate in the only contested election in this district (2006), and that the percentage by which the Democratic candidate won elections held in this district for 2004 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 80.

81. Defendants deny the allegations of paragraph 81.

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<sup>2</sup> Unless stated otherwise, defendants' responses to plaintiffs' allegations regarding percentages of TBVAP are based upon the 2010 census.

**“Senate District 5”**

82. Defendants admit that the TBVAP for the 2011 enacted version of SD 5 is 51.97%, that the 2011 SD 5 is located in a four-county combination, that the 2003 version of SD 5 was located in a six-county combination, that the 2011 SD 5 includes Greene County and portions of Pitt, Wayne, and Lenoir Counties, that race was one of the criterion used to draw the 2011 enacted SD 5, and that race was not the predominant criterion used to draw the 2011 enacted SD 5. In all other respects, defendants deny the allegations of paragraph 82.

83. Defendants admit that portions of Lenoir County are included in SD 5 and SD 7, that the TBVAP of the portion of Lenoir County assigned to SD 5 is 64.59%, and that the portion of Lenoir County assigned to SD 7 is 16.16%. In all other respects, defendants deny the allegations of paragraph 83.

84. Defendants admit that eight precincts in Lenoir County were divided into two senate districts. In all other respects, defendants deny the allegations of paragraph 84.

85. Defendants admit that portions of Pitt County are included in the 2011 SD 5 and SD 7, that the TBVAP of the portion of Pitt County included in SD 5 is 49.28%, and that the TBVAP of the portion of Pitt County included in SD 11 is 16.07%. In all other respects, defendants deny the allegations of paragraph 85.

86. Defendants admit that sixteen precincts in Pitt County are divided into two senate districts. In all other respects, defendants deny the allegations of paragraph 86.

87. Defendants admit that portions of Wayne County are included in the 2011 SD 5 and SD 7, that the TBVAP in the portion of Wayne County included in SD 5 is 55.95%, and that the TBVAP of the portion of Wayne County included in SD 11 is 16.17%. In all other respects, defendants deny the allegations of paragraph 87.

88. Defendants admit that sixteen precincts in Wayne County are divided into two senate districts. In all other respects, defendants deny the allegations of paragraph 88.

89. Defendants admit that the map included in paragraph 89 appears to represent the 2011 SD 5. In all other respects, defendants deny the allegations of paragraph 89.

90. Defendants deny the allegations of paragraph 90.

**“Senate District 14”**

91. Defendants admit the allegations of paragraph 91.

92. Defendants admit that the version of SD 14 ordered by the Superior Court in 2002 and the enacted 2003 version were located in a one-county group consisting of Wake County, that these districts were majority-minority coalition districts and were not majority TBVAP, that the TBVAP for the 2011 enacted SD 14 is 51.28%, and that the 2011 enacted SD 14 is located in a two-county combination consisting of Wake and Franklin Counties. In all other respects, defendants deny the allegations of paragraph 92.

93. Defendants admit that race was one of the criterion used to draw the interim 2002 SD 14, the enacted 2003 SD 14, the enacted 2011 SD 14, and all 2011 alternatives of SD 14, that race was not the predominant criterion used to draw the 2011 enacted SD

14, and that under the 2010 census the TBVAP for the following districts are SD 15 (10.07%); SD 16 (15.03%); SD 17 (9.48%); and SD 18 in Wake (17.96%). In all other respects, defendants deny the allegations of paragraph 93.

94. Defendants admit that 34 precincts in Wake County are divided into different senate districts. In all other respects, defendants deny the allegations of paragraph 94.

95. Defendants admit that the map included in paragraph 95 appears to represent the 2011 SD 14. In all other respects, defendants deny the allegations of paragraph 95.

96. Defendants admit the allegations of paragraph 96.

97. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants are without knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 97.

98. Defendants admit that the 2003 version of SD 14 was a majority-minority coalition district with TBVAP of 42.62%, that at the time of the 2010 census the 2003 version of SD 14 was overpopulated by 41,804 persons (+21.92%), that the margin of victory for the successful Democratic candidate in this district for contested elections from 2004 through 2010 was less than the amount by which this district was overpopulated, and that the election results for this district from 2004 through 2012 are

matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 98.

99. Defendants deny the allegations of paragraph 99.

**“Senate District 20”**

100. Defendants admit that the 2003 version of SD 20 was a majority-minority coalition district and was not majority TBVAP, that the 2003 version of SD 20 was located in a three-county combination consisting of Durham, Chatham, and Lee Counties, that the 2011 SD 20 includes all of Granville County and a portion of Durham County, and that the TBVAP for the 2011 enacted SD 20 is 51.04%. In all other respects, defendants deny the allegations of paragraph 100.

101. Defendants admit that the 2011 version of SD 20 is included in a four-county combination of Durham, Granville, Person, and Caswell Counties, that two senate districts were enacted in this county group, that part of Durham County is assigned to SD 20, and that part of Durham County is assigned to SD 22. In all other respects, defendants deny the allegations of paragraph 101.

102. Defendants admit that race was one of the criterion used to draw the enacted 2003 SD 20, the enacted 2011 SD 20 and all 2011 alternative versions of SD 20, that race was not the predominant criterion used to draw the 2011 enacted SD 20, and that the TBVAP in the portion of Durham County assigned to SD 20 is 59.18%. In all other respects, defendants deny the allegations of paragraph 102.

103. Defendants admit that thirty-five precincts in Durham County are divided into two senate districts. In all other respects, defendants deny the allegations of paragraph 103.

104. Defendants admit that the map included in paragraph 104 appears to represent the 2011 SD 20.

105. Defendants admit the allegations of paragraph 105.

106. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants are without knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 106.

107. Defendants admit that the 2003 version of SD 20 was located in a different county combination than the 2011 version and was a majority-minority coalition district with a TBVAP of 44.64%, that the Democratic candidate in this district was elected from 2004 through 2010 running either unopposed or against candidates who raised so little in campaign funds that none of them were obligated to file campaign finance reports, and that the election results in the district from 2004 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 107.

108. Defendants deny the allegations of paragraph 108.

**“Senate District 21”**

109. Defendants admit that the 2003 version of SD 21 was a majority-minority coalition district with a TBVAP of 44.93%, that the 2003 version of Senate District 21 was located in a two-county combination including Cumberland and Bladen Counties, that the 2011 version of SD 21 is located in a two-county combination that includes Hoke and Cumberland Counties, that the 2011 SD 21 includes all of Hoke County and a portion of Cumberland County, and that the TBVAP for the 2011 version of SD 21 is 51.53%. In all other respects, defendants deny the allegations of paragraph 109.

110. Defendants admit that SD 19 is located entirely within a portion of Cumberland County and that SD 21 is located in a portion of Cumberland County and all of Hoke County. In all other respects, defendants deny the allegations of paragraph 110.

111. Defendants admit that race was one of the criterion used to draw the enacted 2003 SD 21, the enacted 2011 SD 21 and all 2011 alternative versions of SD 21, that race was not the predominant criterion used to draw the 2011 enacted SD 21, that the portion of Cumberland County included in the 2011 SD 21 has a TBVAP of 56.92%, and that the TBVAP of SD 19 is 22.49%. In all other respects, defendants deny the allegations of paragraph 111.

112. Defendants admit that thirty-three precincts in Cumberland County are divided into two senate districts. In all other respects, defendants deny the allegations of paragraph 112.



113. Defendants admit that the map included in paragraph 113 appears to represent the 2011 SD 21. In all other respects, defendants deny the allegations of paragraph 113.

114. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants are without knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 114.

115. Defendants admit that the 2003 version of SD 21 was a majority-minority coalition district located in a different county combination than the 2011 version, that the 2003 version had a TBVAP of 44.93%, that at the time of the 2010 census, the 2003 version of SD 21 was underpopulated by 26,593 persons (-13.94%), that in each of the contested elections in this district from 2004 through 2010 the margin of victory for the successful Democratic candidate was less than the amount by which the 2003 district was underpopulated, and that the election results for this district from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 115.

116. Defendants deny the allegations of paragraph 116.

**“Senate District 28”**

117. Defendants admit that the 2003 version of SD 28 was located in a three-county combination consisting of Rockingham, Guilford, and Davidson Counties, that the

2011 version of SD 28 is located in a two-county combination consisting of Rockingham and Guilford Counties, that the 2003 version was a majority-minority coalition district with a TBVAP of 47.20%, that the 2003 and the 2011 versions are both located in Guilford County, and that the TBVAP for the 2011 version of SD 28 is 56.49%. In all other respects, defendants deny the allegations in paragraph 117.

118. Defendants admit that the 2011 versions of 27 and 28 are located in Guilford County and that SD 26 is located in Rockingham and Guilford County. In all other respects, defendants deny the allegations in paragraph 118.

119. Defendants admit that race was one of the criterion used to draw the enacted 2003 SD 28, the enacted 2011 SD 28 and all alternative 2011 versions of SD 28, that race was not the predominant criterion used to draw the 2011 enacted SD28, and that the 2011 SD 28 had a TBVAP of 56.49%. In all other respects, defendants deny the allegations in paragraph 119.

120. Defendants admit that in the 2011 Senate Plan sixteen precincts in Guilford County are divided into different senate districts. In all other respects, defendants deny the allegations in paragraph 120.

121. Defendants admit that the map included in paragraph 121 appears to represent the 2011 SD 28.

122. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts.

In all other respects, defendants are without knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 122.

123. Defendants admit that under the 2010 census the 2003 version of SD 28 was a majority-minority coalition district with a TBVAP of 47.20%, that there were no contested elections in the district from 2004 through 2008, that under the 2010 census the 2003 version of SD 28 was underpopulated by 13,673 persons (-7.17%), that the margin of victory of the Democratic candidate in the 2010 general election was less than the amount by which this district was underpopulated, and that the election results in this district from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 123.

124. Defendants deny the allegations of paragraph 124.

**“Senate District 32”**

125. Defendants admit that under the 2010 census the TBVAP for the enacted 2011 SD 32 is 42.53%. In all other respects, defendants deny the allegations of paragraph 125.

126. Defendants admit that the 2011 version of SD 32 is located in a two-county combination consisting of Forsyth and Yadkin Counties, that the 2003 version of SD 32 was located in a county group consisting of only Forsyth County, that the 2011 SD 32 is located entirely in Forsyth County, and that the 2011 SD 31 is located in a portion of Forsyth and all of Yadkin County. In all other respects, defendants deny the allegations of paragraph 126.

127. Defendants admit that race was one of the criterion used to draw the enacted 2003 SD 32, the enacted 2011 SD 32, and all 2011 alternative versions of SD 32, that race was not the predominant criterion used to draw the 2011 enacted SD 32, that under the 2010 census the 2003 version of SD 32 had a TBVAP of 42.52%, that the 2011 enacted version of SD 32 had a TBVAP of 42.53%, and that the portion of the 2011 SD 31 located in Forsyth County had a TBVAP of 7.19%. In all other respects, defendants deny the allegations of paragraph 127.

128. Defendants admit that forty three precincts in Forsyth County are divided into two senate districts. In all other respects, defendants deny the allegations of paragraph 128.

129. Defendants admit that the map included in paragraph 129 appears to represent the 2011 SD 32.

130. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants are without knowledge or information sufficient to form a belief about the allegations of paragraph 130.

131. Defendants admit that the election results for this district from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 131.

132. Defendants deny the allegations of paragraph 132.

**“Senate District 38 and 40”**

133. Defendants admit that under the 2003 Senate plan, Mecklenburg County included two majority-minority coalition districts that were not majority TBVAP, that the 2011 Senate plan includes two majority TBVAP districts in Mecklenburg County, and that under the 2011 Senate plan the TBVAP for SD 38 is 52.51%. In all other respects, defendants deny the allegations of paragraph 133.

134. Defendants admit the allegations of paragraph 134.

135. Defendants admit that race was one of the criterion used to draw the enacted 2003 SDs 38 and 40, the enacted 2011 SDs 38 and 40, and all 2011 alternative versions of SD 38 and 40, that race was not the predominant criterion used to draw the 2011 enacted SDs 38 and 40, that under the 2010 census the TBVAP for SD 38 is 52.51%, that the TBVAP for SD 40 is 51.84%, that the TBVAP for SD 39 is 6.99%, and that the TBVAP for SD 41 is 13.15%. In all other respects, defendants deny the allegations of paragraph 135.

136. Defendants admit that 30 precincts in Mecklenburg County are divided into different senate districts, and that the two majority TBVAP districts include 24 precincts that are divided into separate senate districts. In all other respects, defendants deny the allegations of paragraph 136.

137. Defendants admit that the maps included in paragraph 137 appear to represent SD 38 and SD 40. In all other respects, defendants deny the allegations of paragraph 137.

138. Defendants admit the allegations of paragraph 138.

139. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants are without knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 139.

140. Defendants admit that under the 2010 census, the 2003 version of SD 38 was a majority-minority coalition district with a TBVAP of 46.97%, that under the 2003 census the 2003 version of SD 38 was overpopulated by 47,572 persons (+24.94%), that the Democratic candidate in this district faced no opposition in 2004 and 2006, that the margin of victory for the Democratic candidate in 2008 and 2010 was less than the amount by which the district was overpopulated, and that the election results for this district from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 140.

141. Defendants admit that under the 2010 census the 2003 version of SD 40 was a majority-minority coalition district with a TBVAP of 35.43%, that under the 2010 census the 2003 version of SD 40 was overpopulated by 54,523 persons (+28.59%), that the margin of victory by the Democratic candidate in 2004-2010 was less than the amount by which this district was overpopulated, and that the election results for this district from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 141.

142. Defendants deny the allegations of paragraph 142.

**“County-Based Analysis of Challenged House Districts”**

**“House District 5”**

143. Defendants admit that under the 2010 census the TBVAP for the enacted 2011 HD 5 is 54.17%.

144. Defendants admit that race was one of the criterion used to draw the 2003 enacted HD 5, the 2011 enacted HD 5, and all 2011 alternative versions of HD 5, that race was not the predominant criterion used to draw the 2011 enacted HD 5, and that the enacted 2011 HD is located in a nine-county combination and includes all of Bertie, Hertford and Gates Counties and a portion of Pasquotank County. In all other respects, defendants deny the allegations of paragraph 144.

145. Defendants admit that portions of Pasquotank County are located in 2011 HD 5 and HD 1 and that the TBVAP of the portion of Pasquotank County located in HD 5 is 52.64%, and that the portion of Pasquotank County located in HD 1 is 17.33%. In all other respects, defendants deny the allegations of paragraph 145.

146. Defendants deny the allegations of paragraph 146.

147. Defendants admit that under the 2010 census the 2003 HD 5 was underpopulated by 7,861 persons (-9.89%), that the 2003 version of HD 5 was located in a four county group consisting of Bertie, Hertford, Gates and Perquimans, that in elections in 2006 and 2010 the Democratic candidate’s margin of victory was less than the amount by which the district was underpopulated, and that the election results in this district from 2004 through 2012 are matters of public record which speak for themselves.

148. Defendants deny the allegations of paragraph 148.

**“House District 7”**

149. Defendants admit that under the 2010 census the TBVAP for the enacted 2011 HD 7 is 50.67%.

150. Defendants admit that race was one of the criterion used to draw the enacted 2003 HD 7, the enacted 2011 HD 7, and all 2011 alternative versions of HD 7, that race was not the predominant criterion used to draw the 2011 enacted HD7, that the enacted 2011 HD 7 is located in a two-county combination consisting of Franklin and Nash Counties, and that portions of both counties are included in the 2011 HD 7. In all other respects, defendants deny the allegations of paragraph 150.

151. Defendants admit that under the 2010 census the portion of Nash County included in the enacted 2011 HD 7 has a TBVAP of 52.92% and that the portion of Nash County included in 2011 HD 25 has a TBVAP of 15.02%. In all other respects, defendants deny the allegations of paragraph 151.

152. Defendants admit that 15 precincts in Nash County are divided between 2011 HD 7 and 2011 HD 25. In all other respects, defendants deny the allegations of paragraph 152.

153. Defendants admit that portions of Franklin County are included in HD 7 and HD 25, that the TBVAP for the portion of Franklin County included in HD 7 is 45.07%, and that the TBVAP for the portion of Franklin County in HD 25 is 17.17%. In all other respects, defendants deny the allegations of paragraph 153.



154. Defendants admit that seven precincts in Franklin County are divided between HD 7 and HD 25. In all other respects, defendants deny the allegations of paragraph 154.

155. Defendants admit that the map included in paragraph 155 appears to represent the 2011 HD 7. In all other respects, defendants deny the allegations of paragraph 155.

156. Defendants admit that the 2003 version of HD 7 was included in a three-county combination consisting of Halifax, Nash and Franklin Counties, that under the 2010 census the 2003 HD 7 was underpopulated by 20,026 persons (-25.20%), that the total vote received by the Democratic candidate in the district in elections in 2004, 2006, and 2010 was less than the amount by which this district was underpopulated, and that the election results for the district from 2004 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 156.

157. Defendants deny the allegations of paragraph 157.

**“House District 12”**

158. Defendants admit that the enacted 2011 HD 12 is located in a 20-county combination, that it includes portions of Craven, Lenoir, and Greene Counties, and that under the 2010 census the TBVAP is 50.60%. In all other respects, defendants deny the allegations of paragraph 158.

159. Defendants admit that portions of Craven County are located in the 2011 HD 3, the 2011 HD 10, and the 2011 HD 12, that the TBVAP in the portion of Craven

County located in HD 12 is 44.70%, that the TBVAP in the portion of Craven County located in HD 3 is 12.93%, and that the TBVAP in the portion of Craven County located in HD 10 is 13.66%. In all other respects, defendants deny the allegations of paragraph 159.

160. Defendants admit that 23 precincts in Craven County are divided into different house districts. In all other respects, defendants deny the allegations of paragraph 160.

161. Defendants admit that portions of Lenoir County are located in the 2011 HD 12 and the 2011 HD 10, that the portion of Lenoir County located in HD 12 has a TBVAP of 59.84%, and that the portion of Lenoir County included in HD 10 has a TBVAP of 15.74%. In all other respects, defendants deny the allegations of paragraph 161.

162. Defendants admit that seven precincts in Lenoir County are divided between the 2011 HD 10 and HD 12. In all other respects, defendants deny the allegations of paragraph 162.

163. Defendants admit that portions of Greene County are located in the 2011 HD 12 and the 2011 HD 10, that the TBVAP for the portion of Greene County located in HD 12 is 42.52%, and that the TBVAP for the portion of Greene County located in HD 10 is 24.49%. In all other respects, defendants deny the allegations of paragraph 163.

164. Defendants admit that precincts in Greene County are divided into the 2011 HD 10 and HD 12. In all other respects, defendants deny the allegations of paragraph 164.

165. Defendants admit that the map included in paragraph 165 appears to represent the 2011 HD 12. In all other respects, defendants deny the allegations of paragraph 165.

166. Defendants admit that the 2003 version of HD 12 was located in a seven-county combination, that the 2003 version of HD 12 was located in Craven and Lenoir Counties, that in violation of state constitutional criteria applicable to legislative districts the 2003 HD 12 was a majority-minority coalition district with a TBVAP of 46.45%, that under the 2010 census the 2003 version of HD 12 was underpopulated by 15,862 persons (-19.96%), that in all general elections from 2004 through 2010 the Democratic candidate's margin of victory was less than the amount by which this district was underpopulated, and that election results in this district from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 166.

167. Defendants deny the allegations of paragraph 167.

**“House District 21”**

168. Defendants admit that under the 2010 census the TBVAP for the enacted 2011 HD 21 is 51.90%.

169. Defendants admit that the 2011 HD 21 is part of a 20-county combination, that it includes portions of Duplin, Sampson, and Wayne Counties, that prior versions of the district were majority-minority coalition districts, and that in violation of North Carolina's constitutional criteria for house districts no prior version of HD 21 or any

2011 alternative versions were created with a majority TBVAP. In all other respects, defendants deny the allegations of paragraph 169.

170. Defendants admit that Duplin County is divided into the 2011 HD 21 and HD 4, that the TBVAP for the portion of Duplin County in HD 21 is 45.75%, and that the TBVAP for the portion of Duplin County in HD 4 is 15.13%. In all other respects, defendants deny the allegations of paragraph 170.

171. Defendants admit the allegations of paragraph 171.

172. Defendants admit that precincts in Duplin County are divided between HD 4 and HD 21. In all other respects, defendants deny the allegations of paragraph 172.

173. Defendants admit that Sampson County is divided between HD 21 and HD 22, that the TBVAP for the portion of Sampson County located in HD 21 is 53.71%, and that the portion of Sampson County located in HD 22 is 21.28%. In all other respects, defendants deny the allegations of paragraph 173.

174. Defendants admit the allegations of paragraph 174.

175. Defendants admit that eight precincts in Sampson County are divided between HD 21 and HD 22. In all other respects, defendants deny the allegations of paragraph 175.

176. Defendants admit that Wayne County is divided between the 2011 HD 4, 2011 HD 10, and 2011 HD 21, that under the 2010 census the TBVAP for the portion of Wayne County in HD 21 is 54.08%, and that the TBVAP in HD 4 is 16.91%. In all other respects, defendants deny the allegations of paragraph 176.

177. Defendants admit that thirteen precincts in Wayne County are divided between HD 4 and HD 21. In all other respects, defendants deny the allegations of paragraph 177.

178. Defendants admit that the map included in paragraph 178 appears to represent the 2011 HD 21. In all other respects, defendants deny the allegations of paragraph 178.

179. Defendants admit that the 2003 version of HD 21 was located in a seven-county combination, that the 2003 version of HD 21 was located in Sampson and Wayne Counties, that under the 2010 census the 2003 version was a majority-minority coalition district drawn in violation of state constitutional criteria applicable to legislative districts with a TBVAP of 46.25%, that under the 2010 census the 2003 version of HD 21 was underpopulated by 9,837 persons (-12.38%), that there were no contested elections in this district from 2004 through 2008, that in the 2010 General Election the Democratic candidate's margin of victory was less than the amount by which the district was underpopulated, and that the election results for the district from 2004 through 2010 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 179.

180. Defendants deny the allegations of paragraph 180.

**“House District 24”**

181. Defendants admit that under the 2010 census the TBVAP for the enacted 2011 HD 24 is 57.33%.

182. Defendants admit that the 2011 HD 24 is located in a two-county combination consisting of Wilson and Pitt Counties and that a portion of both counties is included in 2011 HD 24. In all other respects, defendants deny the allegations of paragraph 182.

183. Defendants admit that a portion of Pitt County is included in HD 8 and HD 24, that the TBVAP for the portion of Pitt County in HD 24 is 54.74%, and that the TBVAP for the portion of Pitt County in HD 8 is 34.13%. In all other respects, defendants deny the allegations of paragraph 183.

184. Defendants admit that ten precincts in Pitt County are divided into different house districts. In all other respects, defendants deny the allegations of paragraph 184.

185. Defendants admit that Wilson County is divided into HD 24 and HD 8, that the TBVAP for the portion of Wilson County in HD 24 is 61.58%, and that the TBVAP for the portion of Wilson County in HD 8 is 23.42%. In all other respects, defendants deny the allegations of paragraph 185.

186. Defendants admit that four precincts in Wilson County are divided into HD 24 and HD 8. In all other respects, defendants deny the allegations of paragraph 186.

187. Defendants admit that the map included in paragraph 187 appears to represent the 2011 HD 24. In all other respects, defendants deny the allegations of paragraph 187.

188. Defendants admit that the 2003 version of HD 24 was located in a two-county combination consisting of Wilson and Edgecombe Counties, that under the 2010 census the 2003 version of HD 24 had a TBVAP of 56.07%, that under the 2010 census

the 2003 version of HD 24 was underpopulated by 17,333 persons (-21.81%), that the margin of victory for the Democratic candidate in the only contested election from 2004 through 2010 was less than the amount by which this district was underpopulated, and that election results for this district from 2004 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 188.

189. Defendants deny the allegations of paragraph 189.

**“House Districts 29 and 31”**

190. Defendants admit that under the 2010 census the 2003 version of HD 29 and 31 were majority-minority coalition districts with TBVAP of less than 50%, that the 2011 HD 29 has a TBVAP of 51.34% and that the 2011 HD 31 has a TBVAP of 51.81%. In all other respects, defendants deny the allegations of paragraph 190.

191. Defendants admit that under the 2011 House plan, Durham County and Orange County form a two-county combination, that five house districts are included within this two-county combination, that the 2011 HDs 29, 30, and 31 are located wholly within Durham County, and that HD 50 is located in portions of Durham and Orange Counties.

192. Defendants admit that the TBVAP in HD 29 is 51.34%, that the TBVAP in HD 31 is 51.81%, that the TBVAP of HD 30 is 18.43%, and that the portion of HD 50 that is located in Durham County has a TBVAP of 15.34%.

193. Defendants admit that 21 precincts in Durham County are divided into different house districts. In all other respects, defendants deny the allegations of paragraph 193.

194. Defendants admit that the maps included in paragraph 194 appear to represent the 2011 HDs 29 and 31. In all other respects, defendants deny the allegations of paragraph 194.

195. Defendants admit the allegations of paragraph 195.

196. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 196.

197. Defendants admit that the 2003 version of HD 29 was located in a two-county combination consisting of Durham and Person Counties, that the 2003 HD 29 was underpopulated by 9,416 persons (-11.85%), that the Democratic candidate had no opposition in the elections of 2004, 2006, and 2010, that the Democratic candidate had no Republican opposition in the election of 2008, that in 2008 the Democratic candidate was opposed by a Libertarian candidate in the general election, that the Libertarian candidate did not raise sufficient funds to be required to file campaign finance reports, and that the elections in this district from 2002 through 2012 are matters of public record that speak for themselves. In all other respects, defendants deny the allegations of paragraph 197.



198. Defendants admit that the 2003 version of HD 31 was located in a two-county combination consisting of Durham and Person Counties, that under the 2010 census the 2003 district was overpopulated by 11,812 persons (+14.86%), that the Democratic candidate for this district had no opposition in 2006 and 2008, that in 2004 the Democratic candidate was opposed only by a Libertarian candidate, that in 2010 the Democratic candidate was opposed by a Republican candidate, and that in 2010 the margin of victory for the Democratic candidate was 12,699 votes or only 887 persons higher than the amount by which the district was overpopulated. In all other respects, defendants deny the allegations of paragraph 198.

199. Defendants deny the allegations of paragraph 199.

**“House District 32”**

200. Defendants admit that under the 2010 census the TBVAP for the 2011 HD 32 is 50.45%.

201. Defendants admit that the 2011 HD 32 is part of a four-county combination consisting of Person, Granville, Vance, and Warren Counties, and that HD 32 consists of all of Vance and Warren Counties and a portion of Granville County.

202. Defendants admit that Granville County is divided into HD 32 and HD 2, that the TBVAP in the portion of Granville County located in HD 32 is 54.26%, and that the TBVAP of the portion of Granville County located in HD 2 is 26.57%. In all other respects, defendants deny the allegations of paragraph 202.

203. Defendants admit that precincts in Granville County are divided into HD 2 and HD 32. In all other respects, defendants deny the allegations of paragraph 203.

204. Defendants deny the allegations of paragraph 204.

**“House Districts 33 and 38”**

205. Defendants admit that in prior redistricting plans, prior General Assemblies enacted only one majority black house district in Wake County, that for political reasons prior General Assemblies instead cracked a second reasonably compact majority black population group into majority white districts, and that the 2011 House plan created two adjacent majority black house districts in Wake County. In all other respects, defendants deny the allegations of paragraph 205.

206. Defendants admit that eleven house districts are located wholly within Wake County (HDs 11, 33, 34, 35, 37, 38, 39, 40, 41 and 49), that the TBVAP for 2011 HD 33 is 51.42%, and that the TBVAP for House District 38 is 51.37%. In all other respects, defendants deny the allegations of paragraph 206.

207. Defendants admit that the TBVAP for the 2011 Wake County house districts is: HD 33 (51.42%); HD 38 (51.37%); HD 11 (14.84%); HD 34 (17.03%); HD 35 (17.41%); HD 36 (7.74%); HD 37 (13.83%); HD 40 (9.76%); HD 41 (7.40%); and HD 49 (8.87%). In all other respects, defendants deny the allegations of paragraph 207.

208. Defendants admit that 43 precincts in Wake County are divided into different house districts. In all other respects, defendants deny the allegations of paragraph 208.

209. Defendants admit that the maps included in paragraph 209 appear to represent the 2011 versions of HD 33 and HD 38. In all other respects, defendants deny the allegations of paragraph 209.

210. Defendants admit the allegations of paragraph 210.

211. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants are without knowledge or information sufficient to form a belief about the allegations of paragraph 211.

212. Defendants admit that the 2003 version of HD 33 was overpopulated by 15,293 persons (+19.25%), that the Democratic candidate for this district had no opposition in the 2006 general election, that the Democratic candidate’s margin of victory in the 2010 General Election was less than the amount by which this district was overpopulated, and that the election results in this district from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 212.

213. Defendants admit that in the 2003 House Plan the General Assembly cracked a reasonably compact majority black population into other districts for political reasons, that under the 2010 census the 2003 version of HD 38 had a TBVAP of 27.96% versus the 2011 version which has a TBVAP of 51.37%, that in fulfillment of the political interests of the 2003 General Assembly the effect of cracking a second majority black population in the 2003 plan resulted in a district that elected a white Democrat, and that the election results for this district from 2004 through 2012 are matters of public

record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 213.

214. Defendants deny the allegations of paragraph 214.

**“House Districts 42 and 43”**

215. Defendants admit that prior to the 2011 plan, the General Assembly enacted two majority-minority coalition districts in Cumberland County and that under the 2010 census, the 2011 HD 42 has a TBVAP of 52.56% and the 2011 HD 43 has a TBVAP of 51.45%. In all other respects, defendants deny the allegations of paragraph 215.

216. Defendants admit the allegations of paragraph 216.

217. Defendants admit that under the 2010 census the TBVAP for the following 2011 house districts is: HD 42 (52.56%); HD 43 (51.45%); HD 44 (25.38%); and HD 45 (19.57%). In all other respects, defendants deny the allegations of paragraph 217.

218. Defendants admit that 27 precincts in Cumberland County are divided into different house districts. In all other respects, defendants deny the allegations of paragraph 218.

219. Defendants admit that the maps included in paragraph 219 appear to represent HD 42 and HD 43. In all other respects, defendants deny the allegations of paragraph 219.

220. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts.

In all other respects, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 220.

221. Defendants admit that the 2003 version of HD 42 was included in a two-county combination consisting of Cumberland and Bladen Counties, that at the time of the 2010 census the 2003 version of HD 42 was underpopulated by 11,017 persons (-13.86%), that the 2003 version of HD 42 was a majority-minority coalition district with a TBVAP of 47.94%, that the Democratic candidate for this district was unopposed in 2006, 2008, and 2010, that the total vote received by the Democratic candidate in 2006 and 2010 was less than the amount by which this district was underpopulated, that in the 2004 General Election the margin of victory for the Democratic candidate was less than the amount by which this district was underpopulated, and that the election results from 2002 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 221.

222. Defendants deny the allegations of paragraph 222.

**“House District 48”**

223. Defendants admit that under the 2010 census the TBVAP for 2011 HD 48 is 51.27%.

224. Defendants admit that the 2011 version of HD 48 is part of a 20-county combination, that the 2003 version of HD 48 was located within a three-county combination consisting of Robeson, Hoke, and Scotland Counties and that HD 48 was located in each of these counties, that the 2003 version of HD 48 was a majority-minority coalition district with a TBVAP under the 2010 census of 45.56%, and that the 2003

version of HD 48 violated state constitutional criteria applicable to legislative districts. In all other respects, defendants deny the allegations of paragraph 224.

225. Defendants admit that Hoke County is divided between HD 48 and HD 66, that the TBVAP in the part of HD 48 located in Hoke County is 45.51%, and that the TBVAP for the part of HD 66 located in Hoke County is 27.51%. In all other respects, defendants deny the allegations of paragraph 225.

226. Defendants admit that five precincts in Hoke County were divided into different house districts. In all other respects, defendants deny the allegations of paragraph 226.

227. Defendants admit that Richmond County is divided into HD 48 and HD 66, that the TBVAP for the part of Richmond County in HD 48 is 50.91%, and that the TBVAP for the part of Richmond County in HD 66 is 15.16%. In all other respects, defendants deny the allegations of paragraph 227.

228. Defendants admit that precincts in Richmond County are divided into HD 48 and HD 66. In all other respects, defendants deny the allegations of paragraph 228.

229. Defendants admit that Robeson County is divided into four house districts (HD 46, HD 47, HD 48, and HD 66), that HD 47 is the only majority Native American district in either the 2003 or 2011 House or Senate plans, and that the TBVAP for the portion of each district that is in Robeson County is: HD 48 (57.97%); HD 46 (13.69%); HD 47 (17.36%); HD 66 (29.53%). In all other respects, defendants deny the allegations of paragraph 229.

230. Defendants admit that twenty precincts in Robeson County are divided into different house districts. In all other respects, defendants deny the allegations of paragraph 230.

231. Defendants admit that Scotland County is divided between HD 48 and HD 66, that the TBVAP for the portion of Scotland County included in HD 48 is 49.84%, and that the TBVAP for the portion of Scotland County included in HD 66 is 16.62%. In all other respects, defendants deny the allegations of paragraph 231.

232. Defendants admit that five precincts in Scotland County are divided into HD 48 and HD 66. In all other respects, defendants deny the allegations of paragraph 232.

233. Defendants admit that the map included in paragraph 233 appears to represent the 2011 HD 48. In all other respects, defendants deny the allegations of paragraph 233.

234. Defendants admit that the 2003 version of HD 48 was located in a three-county group consisting of Scotland, Hoke, and Robeson Counties and that the 2003 HD 48 was located in each of these counties, that the 2003 version was a majority-minority coalition district with a TBVAP under the 2010 census of 45.56%, that the 2003 version of HD 48 violated state constitutional criteria applicable to legislative districts, that under the 2010 census the 2003 version of HD 48 was underpopulated by 13,018 persons (-16.38%), that the Democratic candidate for this district faced no opposition in 2004, 2006, and 2008, that the Democratic candidate's margin of victory in the 2010 General Election was less than the amount by which the district was underpopulated, and that

elections in this district from 2002 through 2012 are matters of public record that speak for themselves. In all other respects, defendants deny the allegations of paragraph 234.

235. Defendants deny the allegations of paragraph 235.

**“House Districts 57, 58, and 60”**

236. Defendants admit that prior to 2011, the General Assembly had elected to create only two majority black house districts in Guilford County, that for political reasons prior General Assemblies instead cracked a third reasonably compact majority black population into other districts, and that under the 2010 census the TBVAP for 2011 districts enacted for Guilford County is: HD 57 (50.69%); HD 58 (51.11%); HD 60 (51.36%); HD 59 (13.58%); HD 61 (15.33%); and HD 62 (13.30%). In all other respects, defendants deny the allegations of paragraph 236.

237. Defendants admit that 37 precincts in Guilford County are divided into different legislative districts. In all other respects, defendants deny the allegations of paragraph 237.

238. Defendants admit that the maps included in paragraph 238 appear to represent the 2011 HD 57, HD 58, and HD 60. In all other respects, defendants deny the allegations of paragraph 238.

239. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts.



In all other respects, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 239.

240. Defendants admit that a white candidate won the general election in HD 57 in 2010 and 2012. In all other respects, defendants deny the allegations of paragraph 240.

241. Defendants deny the allegations of paragraph 241.

**“House Districts 99, 102, and 107”**

242. Defendants admit that under the 2010 census the TBVAP for the 2011 HD 99 is 54.65%, that the TBVAP for the 2011 HD 102 is 53.53%, and that the TBVAP for the 2011 HD 106 is 51.12%, and that the TBVAP for the 2011 HD 107 is 52.52%. In all other respects, defendants deny the allegations of paragraph 242.

243. Defendants admit that the following 2011 house districts are located in Mecklenburg County: 88, 92, 98, 99, 100, 101, 102, 103, 104, 105, 106, and 107.

244. Defendants admit that under the 2010 census the TBVAP for districts located in Mecklenburg County is: HD 99 (54.65%); HD 101 (51.31%); HD 102 (53.53%); HD 106 (51.12%); HD 107 (52.52%); HD 88 (7.94%); HD 92 (18.18%); HD 103 (13.07%); HD 104 (8.17%); HD 105 (9.54%); and HD 100 (32.01%). In all other respects, defendants deny the allegations of paragraph 244.

245. Defendants admit that prior to 2011, prior General Assemblies created a combination of majority black, majority-minority coalition districts, and influence districts in Mecklenburg County and that prior General Assemblies for political reasons cracked reasonably compact majority-minority communities into districts that were

designed to elect white Democrats. In all other respects, defendants deny the allegations of paragraph 245.

246. Defendants admit that 49 precincts in Mecklenburg County are divided into different house districts. In all other respects, defendants deny the allegations of paragraph 246.

247. Defendants admit that the maps included in paragraph 247 appear to represent 2011 HD 99, HD 102, and HD 107. In all other respects, defendants deny the allegations of paragraph 247.

248. Defendants admit the allegations of paragraph 248.

249. Upon information and belief, any representation made by the Attorney General in 1997 to the United States Attorney General regarding redistricting would have applied only to a congressional redistricting plan enacted in 1997 and would have no relevance to the presence of the “*Gingles* factors” as they related to legislative districts. In all other respects, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 249.

250. Defendants admit that under the 2010 census the 2003 version of HD 99 was a majority-minority coalition district with a TBVAP of 41.26%, that under the 2010 census the district was overpopulated by 32,850 persons (+41.34%), that the margin of victory for the Democratic candidate in the 2008 and 2010 General Elections was less than the amount by which the district was overpopulated, and that the election results for this district from 2008 through 2012 are matters of public record which speak for themselves.

251. Defendants admit that the 2003 version of HD 102 was a minority white district with a TBVAP of 42.74%, that the 2003 version of HD 102 was underpopulated by 10,148 persons (-12.77%), and that the election results for this district for 2008 through 2012 are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 251.

252. Defendants admit that under the 2010 census the 2003 version of HD 107 was a majority-minority coalition district, that the 2003 version of HD 107 was overpopulated by 13,998 persons (+17.62%), and that the election results for this district are matters of public record which speak for themselves. In all other respects, defendants deny the allegations of paragraph 252.

253. Defendants deny the allegations of paragraph 253.

### **“CAUSE OF ACTION”**

#### **“Violation of the Equal Protection Clause of the United States Constitution”**

254. Defendants re-allege and incorporate by reference, as if fully set forth herein, their response to paragraphs 1-253.

255. Defendants admit that Section I of the Fourteenth Amendment to the United States Constitution speaks for itself. In all other respects, defendants deny the allegations of paragraph 255.

256-259. Defendants deny the allegations of paragraph 256-259.

WHEREFORE, defendants request that this Court

1. Dismiss plaintiffs' claims with prejudice;
2. Grant judgment for the defendants on all of plaintiffs' claims;

3. Grant such other or further relief as the Court deems appropriate, including but not limited to an award to defendants of their attorneys' fees and costs.

This the 14th day of August, 2015.

NORTH CAROLINA DEPARTMENT OF  
JUSTICE

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**CERTIFICATE OF SERVICE**

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **Defendants' Answer to First Amended Complaint** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 14th day of August, 2015.

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