



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

**Statement by Senator Bob Rucho and Representative David Lewis Regarding
Proposed State Legislative Redistricting Plans**

July 12, 2011

Today we are pleased to release our initial proposals for 2011 state legislative redistricting maps.

These maps are available on the General Assembly's website.

We will hold public hearings on these proposed plans on July 18, 2011, from 3:00 P.M. until 9:00 P.M. Locations for these hearings will include: the North Carolina Museum of History in Wake County, Fayetteville Technical Community College, Nash Community College, Roanoke-Chowan Community College, UNC Wilmington, Guilford Technical Community College, Central Piedmont Community College, Western Carolina University, Appalachian State University, and Asheville-Buncombe Technical Community College.

Individuals interested in providing comments should call the General Assembly or consult the General Assembly's web site for sign-up procedures.

North Carolina has been the subject of numerous legal challenges to redistricting plans. Given this history, our primary goal is to propose maps that will survive any possible legal challenge. The first legal requirement is that legislative districts comply with the "one person one vote" standard affirmed in *Stephenson v Bartlett*, 355 N.C. 354 (2002) ("*Stephenson I*") and *Stephenson v Bartlett*, 357 N. C. 301 (2003) ("*Stephenson II*"). The second requirement is the creation of plans that will obtain preclearance under Section 5 of the Voting Rights Act

(“VRA”), and foreclose the possibility of a successful challenge under Section 2 of the Voting Rights Act. Finally, plans must comply with State constitutional requirements as explained in the *Stephenson* decisions, and the decisions by the North Carolina Supreme Court and the United States Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed*, *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009).

1. One person, one vote

All of our districts have been constructed with sufficient population so that they are within plus or minus 5% of the ideal population for state senate districts (190,710) and state house districts (79,462).

2. Voting Rights Act districts (“VRA districts”)

We have explained our understanding of the Voting Rights Act in our statement issued on June 17, 2011. In our original plans, we proposed nine majority black Senate districts and twenty four majority black House districts. “Majority” means in excess of 50% as required by the *Strickland* decision and affirmed by the US Supreme Court.

Based upon comments we received during the public hearing process, we have made several changes in our proposed VRA districts. For example, in the House plan, we elected to delete a majority black district we had proposed for southeastern North Carolina based upon the strong statements opposing such a district, including from the Southern Coalition for Social Justice (“SCSJ”) as part of the broader Alliance for Fair Redistricting and Minority Voting Rights. The remaining 23 districts with a majority of black voting age population (“BVAP”) combined with two over 40% BVAP districts, continue to provide black voters with a substantially proportional and equal opportunity to elect candidates of their choice. See *Johnson v DeGrandy*, 512 U.S. 997 (1994). Creating these districts also provides the State with a strong

argument for preclearance of the plans under Section 5 of the Voting Rights Act. Federal Register Vol. 76, no. 27 at 7471; Report by the United States House of Representatives, Committee on the Judiciary, 109th Congress, 2d Session, Report 109-478 at 68-72 (2006); *Beer v. United States*, 425 U.S. 130 (1976).

Consistent with feedback provided at the public hearings or in person and as permitted by law, we have also made other changes in our proposed House VRA districts affecting Rep. Mobley, Rep. Gill, Rep. Earle, and the elimination of the southeastern district described above.

In the Senate, we have made two significant changes. Hoke and Cumberland Counties have been combined to form a majority black district (District 21). In the 2003 Senate plan, minorities in Hoke County were included in District 13 which was a mixed minority district which has elected a white Senator. Under our revised proposal, the black community in Hoke will now be part of a cohesive majority black district which should be able to elect a candidate of the minority community's choice. Both Cumberland and Hoke are covered by Section 5 of the Voting Rights Act.

We have also elected to change our proposed Senate District 32 in Forsyth County to create a district with a percentage of BVAP (42.53%) which exceeds the percentage suggested for that district by the SCSJ.

Several of our critics have incorrectly argued that our plans “pack” African American voters. We have repeatedly asked Democratic leaders and others to provide a legal case which defines “packing” as either a majority black district or creating enough districts to give black voters a substantially equal and proportional opportunity to elect candidates of their choice. To date, we have not received any case citations to this effect from any of our critics. Regardless, in 1982, these same arguments were considered and rejected by Congress when it amended Section 2 of the Voting Rights Act. See *Gingles v Edmisten*, 590 F. Supp. 345, 356-357 (E.D. N.C. 1984) (Phillips, J.), *affirmed*, *Thornburg v Gingles*, 478 U.S. 30 (1986).

Since March 17, 2011, we have repeatedly requested Democratic leaders and members of the minority community to provide us with proposed redistricting plans. To date, only the SCSJ has submitted alternative plans. In prior testimony, Anita Earls, Executive Director of the SCSJ, advised us that majority black districts are still needed in the State of North Carolina. Consistent with that testimony, the SCSJ has proposed nine senate districts with a BVAP from 40% to over 50%, twenty house districts with a BVAP from 40% to over 50%, and one house district with a BVAP of 37.06%. Even though all of the SCSJ districts have been drawn to achieve a specific level of black population, no one has accused the SCSJ of packing black voters.

There are two major differences between the SCSJ minority districts and our proposed VRA districts.

First, we have complied, as we must, with the holding by the United States Supreme Court and the North Carolina Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed*, *Bartlett v Strickland*, 129 U.S. 1231 (2009). These decisions require that districts drawn to insulate the State from liability under the Voting Rights Act must be drawn with a black voting age population in excess of 50% plus one.

Five of the nine districts SCSJ contends are “VRA” senate districts are drawn at majority black levels while four are drawn at levels above 40% BVAP. We have proposed ten senate districts with nine of those districts drawn at majority levels. We agree with the SCSJ that our tenth senate district, District 32, cannot be drawn within Forsyth County in excess of 50% plus one.

The SCSJ has also proposed eleven majority black house districts, nine house districts with black populations in excess of 40%, and one house district with black population at 37.5%. We have drawn all of our house districts at levels above 50% except for two districts in Forsyth

County. We again agree with the position of the SCSJ that two majority BVAP districts cannot be drawn in Forsyth County.

Aside from the lack of black population in Forsyth County, which prevents a majority black senate district and two majority black house districts, in light of *Bartlett*, we see no principled legal reason not to draw all VRA districts at the 50% or above level when it is possible to do so. Now that it is apparent that these majority black districts can be drawn, any decision to draw a few selected districts at less than a majority level could be used as evidence of purposeful discrimination or in support of claims against the State filed under Section 2. Thus, in order to best protect the State from costly and unnecessary litigation, we have a legal obligation to draw these districts at true majority levels.

Second, we have a disagreement with the SCSJ regarding the number of majority black districts that should be drawn in each map. SCSJ has proposed nine districts it contends are “VRA” senate districts as compared to the ten districts in our proposed senate plan. In the House, the SCSJ has recommended 21 districts it contends are “VRA” districts as compared to the 25 districts we have suggested. Our proposed plan provides black voters in North Carolina with substantial or rough proportionality in the number of VRA districts in which they have an equal opportunity to elect their preferred candidates of choice. Our plans, therefore, give the State an important defense to any lawsuit that might be filed challenging the plans under Section 2 of the Voting Rights Act. *See Johnson v DeGrandy*, 512 U.S. 997 (1994). The plans proposed by the SCSJ fail to give black voters a proportional and equal opportunity and therefore would not provide the State with this defense.

3. State Constitutional requirements

Our senate and house plans have been drawn in compliance with the State constitutional requirements stated in *Stephenson I* and *II*, along with the decision of the North Carolina

Supreme Court in *Strickland v Bartlett*, 361 N.C. 491 (2007), *affirmed*, *Bartlett v Strickland*, 109 S.Ct. 1231 (2009). These decisions establish a hierarchy of constitutional rules for drawing districts within a whole county or combinations of counties. We encourage interested members of the public to consult these decisions as well as the *Legislator's Guide to North Carolina Legislative and Congressional Redistricting* published on the General Assembly's website.

We look forward to hearing comments and suggestions related to these proposed legislative maps during the public hearing scheduled for July 18, 2011.