



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

**Joint Statement by Senator Bob Rucho, Chair of the Senate Redistricting Committee,
and Representative David Lewis, Chair of the House Redistricting Committee,
released on June 17, 2011**

The Chairs of the Joint House and Senate Redistricting Committee are committed to proposing fair and legal districts for all citizens of North Carolina, including our minority communities. Therefore, on June 23, 2011, the Joint House and Senate Redistricting Committee will hold a public hearing on Voting Rights Act districts and four other districts proposed by the Chairs for the 2011 State Senate and State House redistricting plans.

Locations for this public hearing include the North Carolina Museum of History in Wake County, Fayetteville Technical Community College, Guilford Technical Community College, UNC Charlotte, UNC Wilmington, East Carolina University, and Roanoke-Chowan Community College. The public hearing will run from 3:00 PM to 9:00 PM. Individuals interested in speaking should call the General Assembly or consult the General Assembly's web site for sign-up procedures.

We have decided to focus this public hearing on proposed legislative Voting Rights Act ("VRA") districts and four other proposed districts. We have chosen this option because of the importance of minority voting rights. Moreover, the decisions by the North Carolina Supreme Court in *Stephenson v. Bartlett*, 355 N.C. 354 (2002) ("*Stephenson I*"), and *Stephenson v. Bartlett*, 357 N.C. 301 (2003) ("*Stephenson II*"), require that VRA districts be created before other legislative districts.

The Chairs believe that there is a strong basis in the record to conclude that North Carolina remains obligated by federal and state law to create majority African American districts. Our conclusion is based upon the history surrounding the creation of VRA districts in the State of North Carolina, both as ordered by the federal courts and as adopted by the Legislature, from 1986 through the present. Our conclusion is also supported by evidence and testimony submitted to the Joint Redistricting Committee or received at public hearings.

In creating new majority African American districts, we are obligated to follow the decisions in *Stephenson I* and *II* as well as 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). Under the *Strickland* decisions, districts created to comply with section 2 of the Voting Rights Act, must be created with a “Black Voting Age Population” (“BVAP”), as reported by the Census, at the level of at least 50% plus one.¹ Thus, in constructing VRA majority black districts, the Chairs recommend that, where possible, these districts be drawn at a level equal to at least 50% plus one “BVAP.” To determine the percentage of “BVAP” in proposed districts, we have used a more specific census category listed in our reports as “Total Black Voting Age Population” (“TBVAP”). This category includes any person 18 years old or older, who self identifies as wholly or partially “any part black.” It is our understanding that this Census category is preferred by the United States Department of Justice and the United States Supreme Court. *See Georgia v. Ashcroft*, 539 U.S. 461, 473 n. 1 (2003).

During our proceedings we have asked for advice on the number, shape, and locations of VRA districts that should be included in the Senate and House plans. During our public hearings, members of the public requested that current majority African American districts be retained, where possible, and that additional majority black districts be created, where possible.

¹ The North Carolina Supreme Court described the required majority as Citizen Black Voting Age Population (“CBVAP”). The 2010 Census did not report on this category of information.

Based upon this testimony, along with input we have received from at least one black incumbent House member, the Chairs recommend, where possible, that each plan include a sufficient number of majority African American districts to provide North Carolina's African American citizens with a substantially proportional and equal opportunity to elect their preferred candidates of choice.

Based upon the statewide TBVAP figures, proportionality for the African American citizens in North Carolina means the creation of 24 majority African American House districts and 10 majority African American Senate districts. Based upon census figures for both 2000 and 2010, the 2003 plans do not satisfy this standard. The 2003 Senate plan, used in elections from 2004 to 2010, contains zero districts in which African Americans constitute a TBVAP majority. The 2003 House plan, as amended for the 2010 General Election, contains nine districts in which African Americans constitute a TBVAP majority based upon 2000 census figures. The 2003 House plan, as amended for the 2010 General Election, contains ten districts in which African Americans constitute a TBVAP majority based upon 2010 census figures.

The Chairs note that under the benchmark 2003 plans, only eighteen African American members are currently serving in the House and only seven African Americans are currently serving in the Senate. The Chairs also note that two incumbent African American senators were defeated in the 2010 General Election. Both of these former African American incumbents (Don Davis in District 5 and Tony Foriest in District 24) were defeated by white candidates in districts with a TBVAP population below 40%.

Unlike the 2003 benchmark plans, the Chairs' proposed 2011 plans will provide substantial proportionality for North Carolina's African American citizens. The 2011 House plan, recommended by Chairman Lewis, consists of 24 majority African American House districts and two additional districts in which the TBVAP percentage exceeds 43%. Moreover, the 2011 Senate plan proposed by Chairman Rucho consists of 9 majority African American

Senate districts. Chairman Rucho has been unable to identify a reasonably compact majority African American population to create a tenth majority African American district.

Increasing the number of majority African American districts will ensure non-retrogressive legislative plans. Thus, adopting plans that increase the number of majority black districts will expedite the preclearance of each plan pursuant to Section 5 of the Voting Rights Act. *See* 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). Substantial proportionality also furthers the State’s obligation to comply with Section 2 of the Voting Rights Act. *See Johnson v. DeGrandy*, 512 U.S. 997 (1994).

In creating proposed majority black districts, the Chairs have been guided by testimony and advice received from experts recommended by the Democratic legislative leadership. Based upon this information, the Chairs have rejected the possibility of any districts that would constitute the “cracking” or “packing” of any reasonably compact African American population, as those terms have been defined by the United States Supreme Court. *See Quilter v. Voinovich*, 507 U.S. 146, 153-154 (1993). Nor have the Chairs supported any district that would involve the “stacking” of a minority population. We understand the term “stacking” to mean the submergence of a less affluent, geographically compact, African American population capable of being a majority in a single member district, within a larger, more affluent majority white population.

We wish to point out several features of the proposed VRA districts upon which the Chairs invite public comment.

First, testimony during the public hearing in New Hanover County indicated that the minority community in that area of the State would support the creation of a new majority African American House district to replace the former House District 18. That district was

constructed in the 2003 House plan with an African American voting age population substantially below 50% plus one. In *Strickland v. Bartlett*, both the North Carolina Supreme Court and the Supreme Court of the United States ruled that African American districts needed by the State to comply with Section 2 of the Voting Rights Act must be established with a BVAP of 50% plus one. In response to testimony during the New Hanover public hearing, the plan proposed by Chairman Lewis includes a revised black voting age majority version of District 18 that complies with the *Strickland* decisions.

The Chairs also wish to receive comments regarding the Senate and House districts to be adopted in Forsyth County. Districts in Forsyth County were found to be in violation of Section 2 of the Voting Rights Act in the decision of *Thornburg v. Gingles*, 478 U. S. 30 (1986). This decision has never been vacated or over-ruled and is still binding on the State. Moreover, the historical and legislative records indicate that all of the elements necessary to prove a Section 2 violation in Forsyth County still remain, except as described below.

In 2003, as reported by the 2000 Census, the State created three legislative districts in Forsyth that consisted of a TBVAP in excess of 40%: Senate District 32 – 41.42%; House District 71 – 51.57%; and House District 72 – 43.40%. Pursuant to the 2010 Census, these districts have the following percentage of TBVAP population: Senate District 32 - 42.52%.; House District 71 - 51.09%; and House District 72 - 45.40%. Unfortunately, also under the 2010 Census, all three districts are under-populated for compliance with the constitutional requirement of one person one vote. Because all three districts are under-populated, all three must be adjusted to add additional total population. *See Stephenson I and II*. Adding additional total population has the effect of decreasing the percentage of the African American voting age population in each district.

Because House Districts 71 and 72 are both significantly under-populated, Chairman Lewis believes that it is not possible to create two majority African American House districts in

Forsyth. He is concerned that it may not be possible to create one reasonably compact majority black house district in Forsyth County and another district that would keep District 72 at a TBVAP level that reasonably approaches its benchmark level. Based upon the experience in Democratic primaries for Senate District 32, there is also concern that a plurality House district in the 40% range or under may not re-elect the current African American incumbent in House District 72. Therefore, at this time, Chairman Lewis has recommended that both House districts, which currently elect two black incumbents, be created at TBVAP levels above 43%. Thus, under the 2010 Census, proposed House District 71 has a TBVAP population of 47.31%. Proposed District 72 would be established with a TBVAP percentage of 43.33%.

Chairman Rucho believes that it is not possible to create a majority black Senate district in Forsyth. He therefore recommends that proposed Senate District 32 be created at a TBVAP percentage of 39.32%.² Chairman Rucho also recommends that the current white incumbent for the Forsyth Senate district not be included in the proposed Senate District 32. The white incumbent has defeated African American candidates in Democratic primaries in 2004 and 2010. The Senate Chair recommends this adjustment in the absence of a tenth reasonably compact majority African American senate population. If adopted by the General Assembly, proposed coalition District 32 will provide African American citizens with a more equal, and tenth opportunity, to elect a candidate of choice.

The Chairs also wish to note their attempts to consider political access and opportunities for the Native American population located in southeastern North Carolina. In recognition of those important interests, the House Chair recommends that House District 47 be retained as a majority Native American District.

² Proposed Senate District 32 also contains a Hispanic population of 12.21%, thus rendering this district as a “majority minority” district. While we have not performed a cohesion analysis involving African Americans and Hispanics, we have been advised by Congressman Watt that, in his opinion, urban African American and Hispanic voters who reside in his congressional district are cohesive.

In the 2003 Senate plan, Robeson County was combined with Hoke County to create a two county, single Senate district (Senate District 13). Chairman Rucho believes that it is not possible to create a majority Native American Senate district that complies with federal and state law. Because it is not possible to create a majority Native American Senate district, the *Stephenson I* and *II* county combination rules prevent the re-establishment of District 13 based upon a combination of Robeson and Hoke Counties. Under the 2010 Census, the combined population of Robeson and Hoke is slightly lower than the maximum negative population deviation range (minus 5%). Thus, unlike the 2003 Senate plan, Robeson County cannot be grouped with Hoke County. As a result, Robeson County has been combined with Columbus County to form a two county senate district. Under this configuration, proposed Senate District 13 will retain a significant and influential percentage of Native American citizens.

The Chairs have solicited redistricting input from North Carolina's Hispanic population. Based upon the 2010 Census, neither Chair was able to identify a reasonably compact Hispanic population that could form the basis for either a majority Hispanic House or Senate District. The Chairs would entertain any proposals for a majority Hispanic House or Senate district that complies with applicable federal and state law.

On March 24, 2011, we announced that the Chairs would recommend legislative redistricting plans that complied with the criteria established in *Stephenson I* and *II* and *Bartlett v. Strickland*. On that date, and on other occasions, including numerous public hearings, the Chairs have solicited members of the General Assembly and the public for any information, comments and advice related to redistricting. On March 24, 2011, every member of the General Assembly received notice of the resources available to them for the preparation of proposed districts and plans. The Chairs also have taken the unprecedented step of providing additional expert staff and technology assistance to the Legislative Black Caucus, requested by the Black Caucus in order to draw their own proposed districts and plans. As of today, we have not

received any proposals for specific legislative districts or proposed state wide legislative plans from the Democratic leadership or the Legislative Black Caucus

Nevertheless, the Chairs remain interested and open to other proposed configurations for majority minority districts as well as non-VRA districts. The Chairs will also consider recommendations regarding legislative districts in Forsyth County and any proposed Senate plan that includes ten majority African American districts, provided any such proposals are based upon ten reasonably compact majority African American populations.

As we stated on March 24, 2011, the Chairs continue to recommend that alternative proposals comply with the requirements of *Stephenson I* and *II* and *Bartlett v. Strickland*. We also recommend that any proposed state-wide plan contain a sufficient number of districts that will bring African American citizens as close as possible to substantial proportionality in the number of majority African American districts.