



North Carolina General Assembly
Senate Democratic Leader

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14TH DISTRICT

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COMMITTEES:

APPROPRIATIONS/BASE BUDGET
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SELECT COMMITTEE ON NOMINATIONS
SELECT COMMITTEE ON UNC BOARD OF GOVERNORS

August 4, 2017

Representative David Lewis

Senator Ralph Hise

I'd like to offer the following additional criteria for the Joint Legislative Redistricting Committee to consider.

"Race must be considered to comply with the Voting Rights Act (VRA), but if race becomes the dominant factor in drawing any district, that district must be narrowly tailored to avoid a violation of the Equal Protection Clause of the U.S. Constitution. Districts drawn based predominantly on race are not narrowly tailored to avoid a violation of Section 2, and thus in violation of the U.S. Constitution, if they are drawn using some fixed racial goal, like 50% BVAP, or if they are drawn for partisan or other reasons, using a BVAP higher than necessary to permit black citizens a reasonable opportunity to elect their candidates of choice. Further, a decision to draw race-based districts must be supported by legislative findings based on substantial evidence.

In addition, the intentional destruction of a functioning crossover or coalition district may violate the Constitution."

Thank you for your consideration.

Dan Blue





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Please allow me to recommend the following additional criteria for the Joint Legislative Redistricting Committee:

Under the federal Voting Rights Act of 1965, race must be considered in drawing election districts to ensure that the voting strength of voters of color is not abridged or diluted. This does not mean that districts should be based on race, and it does not mean that majority-minority districts should be drawn everywhere it is possible to do so.

When drawing each district, the legislature should consider what level of black voting age population (called "BVAP") is necessary in that district to provide black voters a reasonable opportunity to elect a candidate of their choice. The legislature should make this finding based on "substantial evidence," which could include an analysis of voting patterns and election history in each proposed district. Based on this analysis, it is necessary to draw a majority-minority district only if voters of color in the community (1) live in an area that is geographically compact enough to form a majority-minority district, (2) vote cohesively as a group, and (3) are usually unable to elect their candidates of choice because of white bloc voting in that area. Similarly, the decision to increase the BVAP level in a district, even if not to above 50% BVAP, should be based on that same "substantial evidence" that such alteration is necessary to ensure that black voters in the district would have a reasonable opportunity to elect their candidates of choice. The intentional destruction of a functioning crossover or coalition district may violate the Constitution.

If these criteria are present in a community, the legislature may draw a district based on race, but the district must be "narrowly tailored" to overcome the precise discrimination it seeks to remedy. The U.S. Supreme Court has said that using one-size-fits-all racial quotas in drawing districts without first analyzing past election results and voting patterns in each district, as the General Assembly did in 2011, does not pass the "narrow tailoring" test.



On incumbency: Incumbency protection is not legally required in redistricting, but it may be considered as a secondary criterion after first ensuring compliance with federal and state law. Where incumbency protection has been recognized as a traditional redistricting criterion, it has been accepted because it was employed uniformly and not used to gain partisan advantage. Incumbency protection for one party's incumbents alone may run afoul of the Constitution. Similarly, significant constitutional issues would arise if incumbency is used in the redrawing of unconstitutional race-based districts to protect a unfair partisan advantage gained by the unlawful packing and cracking of Black voters.



Dan Blue