



**STATEMENT OF ALLISON J. RIGGS
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RIGHTS
SOUTHERN COALITION FOR SOCIAL JUSTICE
U.S. HOUSE COMMITTEE ON ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS**

“Voting in America: Ensuring Free and Fair Access to the Ballot”

**Hearing on April 1, 2021
Submitted on March 30, 2021**

Chairman Butterfield, Ranking Member Steil, and Members of the Subcommittee on Elections of the U.S. House of Representatives Committee on House Administration: thank you for allowing me the opportunity today to testify on “Voting in America: Ensuring Free and Fair Access to the Ballot” and to highlight many of the contrived barriers for Southern voters – in particularly, Black, Latinx, AAPI and Indigenous voters – impeding free and fair participation for them in our elections.

The Southern Coalition for Social Justice

My name is Allison Riggs, and I am the Co-Executive Director and Chief Counsel for Voting Rights at the Southern Coalition for Social Justice (SCSJ). SCSJ is a 501(c)(3) nonprofit organization founded in August 2007 in Durham, North Carolina by a multidisciplinary group, predominantly people of color, who believed that families and communities engaged in social justice struggles need a team of lawyers, social scientists, community organizers, and media specialists to support them in their efforts to dismantle structural racism and oppression. SCSJ partners with communities of color and economically disadvantaged communities in the South to defend and advance their political, social, and economic rights through the combination of legal advocacy, research, organizing, and communications.

SCSJ is unique because of the community lawyering approach we employ and because of the overlapping mix of racial justice issues we address, driven by the goals and priorities of the diverse communities with whom we work. No other national or regional organization brings together community lawyering skills with multi-issue organizing that focuses on addressing the unique legacy of slavery and racial discrimination that characterizes the history and culture of the South. Our strengths include the mix of legal, organizing, research and media tools we bring to the issues we work on, and the fact that we work with Black, Latinx, AAPI, and immigrant communities. Our focus on voting rights advocacy and litigation across the South will hopefully allow me to supply this committee with helpful information to consider about designing federal protections for access to the political process.

In my verbal and written remarks, I will share with you some of the challenges facing southern voters of color in the fight to secure access to the ballot box. In the fifteen years I have been working on democracy issues in the South, I can tell you categorically that the South has not changed—not nearly enough. It remains the most active battlefield in this seemingly never-ending war; where the Southern Strategy remains ever visible and effective; where politics are a proxy for race and embolden acts taken to restrict access to the ballot box; and where electoral success by voters of color is met with voter suppression.

Federal intervention is still needed, and I hope this esteemed body will gather the data necessary to tailor and enact effective legislation to provide that aid, both recognizing the ugly history of racial discrimination in voting in this country and identifying modern manifestations of Jim Crow tactics. The communities that SCSJ and other voting rights groups serve are crying out for your help.

The 2020 Presidential Election, the Run-Up to It, and Its Aftermath

There are many conflicting messages around the 2020 election. We saw record levels of turnout across the country, including southern states like North Carolina, Georgia and Texas.¹ We saw election administrators facing the unprecedented challenge of conducting a presidential election during a global pandemic. While there did seem to be some exposure to the COVID virus, particularly for some poll workers, we saw limited evidence in November, if any, of “super spreader” events associated with voting activity.² Election officials, community volunteers and voters all stepped up to make voting as safe as possible.

Although in many ways a success, that success came with a cost to Black and Brown voters. Consistent with previous elections and studies, non-white poorer voters waited longer to vote, sometimes more than an hour.³ The history of official discrimination in this country has left Black and Brown voters economically disadvantaged, and they still bear the burden of that discrimination when those voters, who may have the fewest resources and least flexible schedules, must wait excessive times to participate in our democracy. Again, just like in 2016, Black and Latinx voters were specifically targeted by the wave of misinformation flooding American’s screens.⁴ Lastly, artificial hurdles to participation, the living remnants of our country’s ugly history of discrimination, continue to act as barriers to participation by Black voters, from unreliable mail service in predominantly Black communities to disproportionate exclusion of Black voters because of a very broken criminal legal system.⁵

Most significant, that success has been met in return with a wave of voter suppression laws. The drumbeat of cries for erecting new barriers to voting has been strong since immediately after

¹ Kevin Schaul, Kate Rabinowitz and Ted Mellnik, WASHINGTON POST, “2020 Turnout Is the Highest in Over a Century,” Nov. 5, 2020, available at: <https://www.washingtonpost.com/graphics/2020/elections/voter-turnout/> (last accessed Mar. 30, 2021).

² Anthony Izaguirre, ASSOCIATED PRESS, “Poll workers contract virus, but Election Day link unclear,” Nov. 15, 2020, available at: <https://apnews.com/article/public-health-iowa-michael-brown-virginia-elections-2dfd1012549622cf45294d96663f4cc5> (last accessed Mar. 30, 2021).

³ Kevin Quealy and Alicia Parlapiano, NEW YORK TIMES, “Election Day Voting in 2020 Took Longer in America’s Poorest Neighborhoods,” Jan. 4, 2021, available at: <https://www.nytimes.com/interactive/2021/01/04/upshot/voting-wait-times.html> (last accessed Mar. 30, 2021).

⁴ Shannon Bond, NATIONAL PUBLIC RADIO, “Black and Latino Voters Flooded with Disinformation in Election’s Final Days,” Oct. 30, 2020, available at: <https://www.npr.org/2020/10/30/929248146/black-and-latino-voters-flooded-with-disinformation-in-elections-final-days> (last access Mar. 30, 2021).

⁵ Grace Panetta, BUSINESS INSIDER, “How Black Americans Still Face Disproportionate Barriers to the Ballot Box in 2020,” Sep. 18, 2020, available at: <https://www.businessinsider.com/why-black-americans-still-face-obstacles-to-voting-at-every-step-2020-6> (last accessed Mar. 30, 2021).

the election, but in the last few weeks, we have seen substantial legislative activity to answer these cries, particularly in Georgia and Texas. It is certainly not limited to these states; across the country, under the false mantle of “election integrity,” flying in the face of all facts and reason, legislatures are aggressively imposing new and unnecessary restrictions on the right to vote. But the impact in the South will be felt the most strongly.

We are living that experience right now in North Carolina. Sadly, state in which SCSJ is based has become the prime example of what Justice Ruth Bader Ginsburg knew would happen after the Supreme Court invalidated the coverage formula associated with Section 5 of the Voting Rights Act of 1965—without the umbrella, voters would get soaked.⁶ On the day the *Shelby County* decision was released, North Carolina’s legislative leadership celebrated and announced they would now move forward with a “full” elections omnibus bill.⁷ Fewer than three days before the end of the legislative sessions, North Carolinians got to see what that “full” bill was – a rollback of every election reform instituted in the previous 15 years that had finally leveled the playing field and eliminated the disparities in Black and White registration and turnout. That “full” bill – 2013’s House Bill 589 (HB 589)—imposed an onerous photo ID requirement for voting, cut 10 days of early voting, eliminated same-day registration, eliminate out-of-precinct voting, and eliminate pre-registration for 16- and 17-year-olds.⁸ Each of these changes would have a disproportionate impact on Black voters in this state, making it extremely hard for them to vote.⁹

My organization challenged this law immediately, of course, but it took us three years and millions of dollars to finally secure a ruling from the Fourth Circuit Court of Appeals that the law was intentionally racially discriminatory, designed with almost “surgical precision” to change election rules in a way that would disadvantage Black voters the most.¹⁰ More than the time and cost, there were elections conducted with the photo ID requirement, without same-day registration, and without out-of-precinct voting. Thousands of voters, disproportionately Black, were denied the franchise while we litigated that case, and those are real injuries to those voters’ fundamental right to vote that can never be made whole.

And, sadly, that win did not end the story. Early voting, by far the mechanism of participation most strongly preferred by North Carolinians in 2020 and well before, was not left alone. In 2018, the North Carolina legislature enacted a law requiring the entirety the state’s 100 counties offer uniform voting hours. While that may sound acceptable in the abstract, in practice, it had a terrible effect on the ability of voters, particularly those of color, to get to a polling place. After the enactment of the “uniform hours requirement,” 43 of North Carolina’s 100 counties eliminated at least one early voting site, almost half reduced the number of weekend days when

⁶ See *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

⁷ See *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 216 (4th Cir. 2016).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 214.

early voting was offered, and about two-thirds reduced the number of weekend hours, compared to 2014.¹¹

Going into the 2020 general election amid a raging global pandemic, we knew that the effect felt by Black voters would be acute absent intervention. On behalf of Democracy North Carolina and the League of Women Voters of North Carolina, along with individual voters, we filed a federal lawsuit in May of 2020 seeking accommodations for voting during the COVID-19 pandemic.¹² While the use of absentee-by-mail voting had been incredibly low in North Carolina in previous elections, we knew that voters of color faced significant hurdles in getting their mail absentee ballots accepted when used in greater numbers in other states.¹³

During the litigation, we secured several important wins for voters, particularly voters of color. We raised the claim that the uniform hours requirement and its resulting reduction in the number of early voting sites would make voting more dangerous for voters by increasing the number of voters per site. On the eve of our evidentiary preliminary injunction hearing, the Executive Director of the North Carolina State Board of Elections issued an emergency order modifying how county boards of election early voting plans would be reviewed for approval by the State Board of Elections, thereby effectively mitigating the terrible impact of the uniform hours requirement. Sadly, this admirable and necessary action wrought upon her office legislative disdain and retribution.

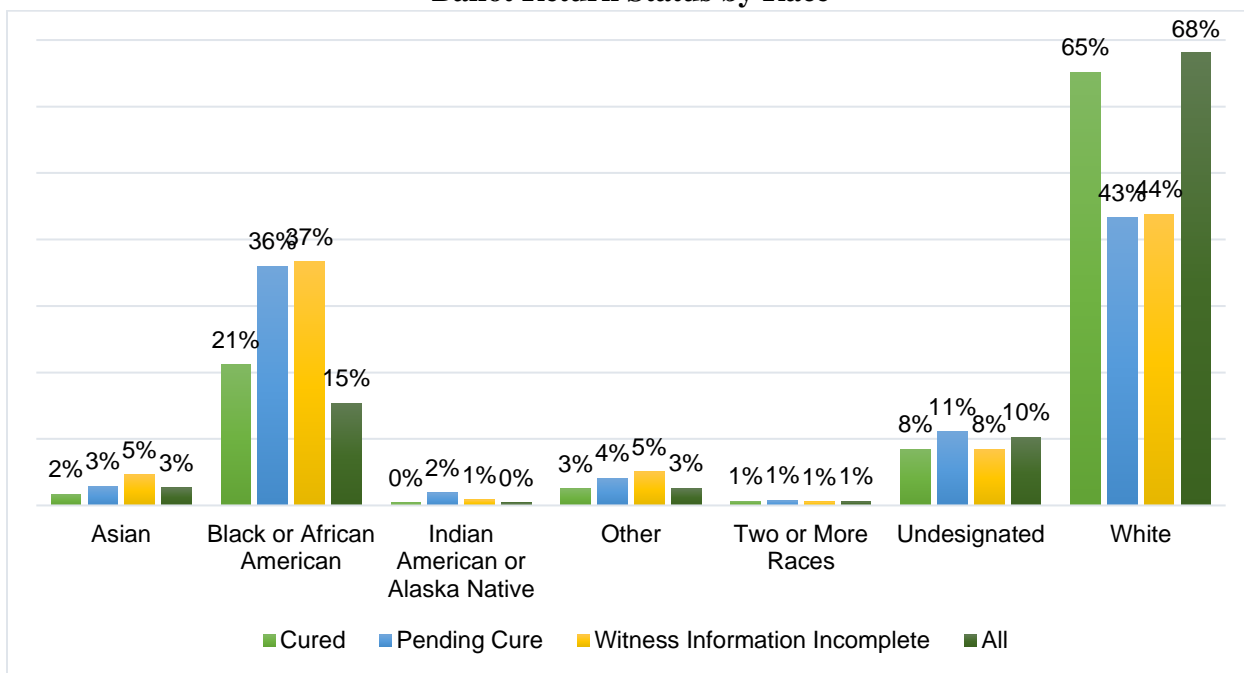
We also secured a preliminary injunction ruling that allowed voters the right to notice and opportunity to cure their absentee ballot if it was deficient in some way that may result in the ballot being discounted. While our data analytics are not yet complete because of some coding differences amongst North Carolina's 100 counties, we can say that Black voters disproportionately took advantage of the cure mechanism and that Black voters continue to disproportionately have their absentee ballots discounted.

¹¹ Democracy North Carolina, "Greater Costs, Fewer Options: The Impact of the Early Voting Uniform Hours Requirement in the 2018 Election," available at <https://democracync.org/research/greater-costs-fewer-options-the-impact-of-the-early-voting-uniform-hours-requirement-in-the-2018-election/> (last visited Mar. 30, 2021).

¹² *Democracy NC v. NC State Bd. of Elections*, Case No. No. 20-cv-457 (M.D.N.C.).

¹³ Jane C. Timm, NBC News, "A White Person and a Black Person Vote by Mail in the Same State. Whose Ballot is More Likely to be Rejected?" Aug. 9, 2020, available at: <https://www.nbcnews.com/politics/2020-election/white-person-black-person-vote-mail-same-state-whose-ballot-n1234126> (last accessed Mar. 30, 2021).

Ballot Return Status by Race



Like in other states, the North Carolina General Assembly did not respond to the challenges and accomplishments of the 2020 general election with more help and expansion of access to the franchise: instead, once again, under the guise of “election integrity,” the state legislature has acted consistently this year to make voting harder, and as in the past, we believe this will disproportionately burden voters of color.

One troubling bill that has been filed and is moving its way through the legislative process in North Carolina is Senate Bill 326 (SB 326). With no justification, this bill would require voters to submit an absentee ballot request form earlier than they were required to submit it in 2020 (the deadline in 2020 was one week before Election Day, and this bill would alter the deadline to two weeks before Election Day). Currently, absentee ballots that are postmarked by Election Day and received by 3 days after Election Day are counted, but SB 326 would require all civilian absentee ballots to be received by 5 PM on Election Day to be counted.

Examining when absentee ballots were requested in 2020 reveals a harsh disparity in who would have been denied an absentee ballot had the proposed new deadline been in place in 2020. The following data have been provided by Democracy North Carolina, based on its analysis of data publicly available on the website of the North Carolina State Board of Elections:

2020 absentee request totals from Oct. 21st-27th By Race & Ethnicity ¹⁴	
Asian: 1,016	Other: 1,186

¹⁴ <https://democracync.org/research/election-integrity-act-is-jim-crow-era-voter-suppression/> (data analysis by Democracy NC utilizing NCSBE data via <https://dl.ncsbe.gov/>).

<ul style="list-style-type: none"> Total Accepted: 446 	<ul style="list-style-type: none"> Total Accepted: 492
Black/African American: 7,451 <ul style="list-style-type: none"> Total Accepted: 3,113 	Two or More Races: 280 <ul style="list-style-type: none"> Total Accepted: 141
Indian American: 216 <ul style="list-style-type: none"> Total Accepted: 82 	Undesignated: 6,352 <ul style="list-style-type: none"> Total Accepted: 3,401
Native Hawaiian or Pacific Islander: 5 <ul style="list-style-type: none"> Total Accepted: 2 	White: 20,650 <ul style="list-style-type: none"> Total Accepted: 11,042
Hispanic / Latinx: 1,312 <ul style="list-style-type: none"> Total Accepted: 554 	NOT Hispanic / Latinx: 23,253 <ul style="list-style-type: none"> Total Accepted: 11,770

SCSJ internal data show that in the first few days after Election Day in 2020, Black voters’ ballots represented a significant percentage of those ballots received when compared to White voters’ ballots (where race was designated).

Accepted 11/4		Accepted 11/5		Accept 11/6	
Race	Ballots	Race	Ballots	Race	Ballots
Black or African American	726	Black or African American	696	Black or African American	165
White	3,582	White	2,893	White	807

In the 2020 election, Black voters comprised 18.7% of the electorate.¹⁵ To be clear, all these voters who relied on the United States Postal Service would be disenfranchised under the new law. But the harm to Black voters, whose participation rate has dropped below the rate seen in 2008 and 2012, is very troubling.¹⁶

The reason for that is unclear right now—although postal service in rural and poor communities can be very unpredictable, but the bottom line is that Black voters would be disproportionately harmed by the proposed change in law requiring ballots be received by Election Day. Our partners at Democracy North Carolina estimate that with 1 million North Carolinians

¹⁵https://s3.amazonaws.com/dl.ncsbe.gov/Press/NC%20Voter%20Turnout%20Statistics/voter_turnout_stats_20201103.pdf

¹⁶ Coleen Harry, WFAE, “NC’s Black Voter Turnout Was Up In 2020. What Was Behind It? Jan. 29, 2021, available at: <https://www.wfae.org/politics/2021-01-29/ncs-black-voter-turnout-was-up-in-2020-what-was-behind-it> (“The state’s Black voter turnout rate, while higher than 2016, was less than 2012 and 2008 when Barack Obama ran.”)

taking advantage of voting by mail in the 2020 general election, SB 326 would disenfranchise more than 24,000 voters, with almost half identifying as Black, brown, or indigenous persons.¹⁷

Moreover, just this week, a voter purge bill that advocates have successfully defeated in previous legislative sessions has been refiled in the North Carolina General Assembly.¹⁸ Given the fomenting and unjustified legislative outrage directed at the North Carolina State Board of Elections and its director, we cannot rest assured that our efforts to educate decision-makers about racially discriminatory voter purge laws will be successful. This bill would require the use of stale jury summons data to purge voters from the rolls, likely disproportionately affecting immigrant voters who have attained eligibility. Immigrants in North Carolina are naturalizing by the thousands every year.¹⁹ While certainly not every one of those newly-naturalized citizens will receive jury summons every year, it is quite common for civic engagement groups to conduct voter registration at naturalization ceremonies, meaning that these persons may be registered at a higher rate than the average North Carolinian. As such, these new citizens may be receiving jury summons at a higher rate than the average North Carolinian, and thousands of eligible North Carolina voters may be subject to removal from the voter rolls. As we have come to expect, these laws are not framed in racial terms, but will like undermine access to the ballot box and have a racially disparate impact.

Lastly, understanding the state of political participation after the 2020 election cannot be fully explored without talking about the elephant in the room this year: redistricting and how it will affect access to the ballot box. SCSJ is the Community Redistricting Organizations Working for Democracy (CROWD) Academy initiative in eight southern states, and the communities with which we work across the South know what redistricting has and now will this mean. The process will be manipulated to undermine the voices of voters of color.

In the last decade, the North Carolina legislature's repeated violations of the Fourteenth Amendment in redistricting, local and statewide, should give anyone pause, and are strong evidence of the need for federal protections. Indeed, we are now on the eve of the first redistricting cycle since the 1970s without the protections of Section 5 of the Voting Rights Act, for North Carolinians and other voters who enjoyed its protections. The burden on those harmed by

¹⁷ <https://democracync.org/research/election-integrity-act-is-jim-crow-era-voter-suppression/> (data analysis by Democracy NC utilizing NCSBE data via <https://dl.ncsbe.gov/>).

¹⁸ See 2021 Senate Bill 377, Short title: "Remove Foreign Citizens from Voting Rolls," at <https://webservices.ncleg.gov/ViewBillDocument/2021/1941/0/DRS45186-ND-116>; N.C. governor vetoes controversial bill to remove names from voter rolls, Richard Craver Nov 6, 2019, Winston-Salem Journal, https://journalnow.com/news/elections/local/n-c-governor-vetoes-controversial-bill-to-remove-names-from-voter-rolls/article_e429fb89-8464-5356-a70b-6c7f2084c348.html

¹⁹ According to the Department of Homeland Security, there were 13,890 persons residing in North Carolina who were naturalized during Fiscal Year 2017. See "2017 Year of Immigration Statistics, Table 22. Persons Naturalized by State or Territory of Residence: Fiscal Years 2015 to 2017," available at <https://www.dhs.gov/immigration-statistics/yearbook/2017/table22>.

redistricting plans that violate the Fourteenth Amendment will be too great if Congress does not act quickly.

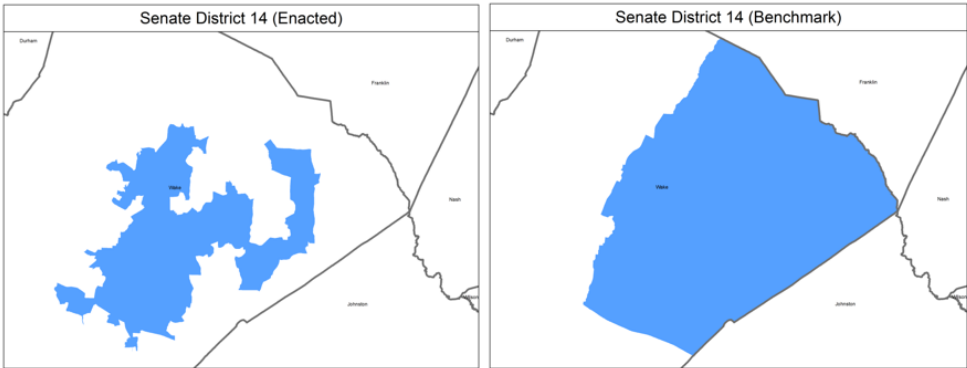
The only way to fully appreciate the risk imminent in this redistricting cycle is to review how many egregiously unconstitutional redistricting plans were put forth by the North Carolina General Assembly last cycle, when the protections of Section 5 were still in place. It started in 2011, of course, when the legislature packed black voters into as few districts as possible, statewide, to limit their political power. They took districts in places where racially polarized voting had eased, and where the candidates of choice of Black voters were consistently being elected and reconfigured those districts to pack more Black voters into them, against the protestation of Black voters, in a cynical misinterpretation of the Voting Rights Act. The example seen below is just one example of many where Black voters were segregated and packed into districts across the state:

2011 Racial Gerrymandering Senate District 14

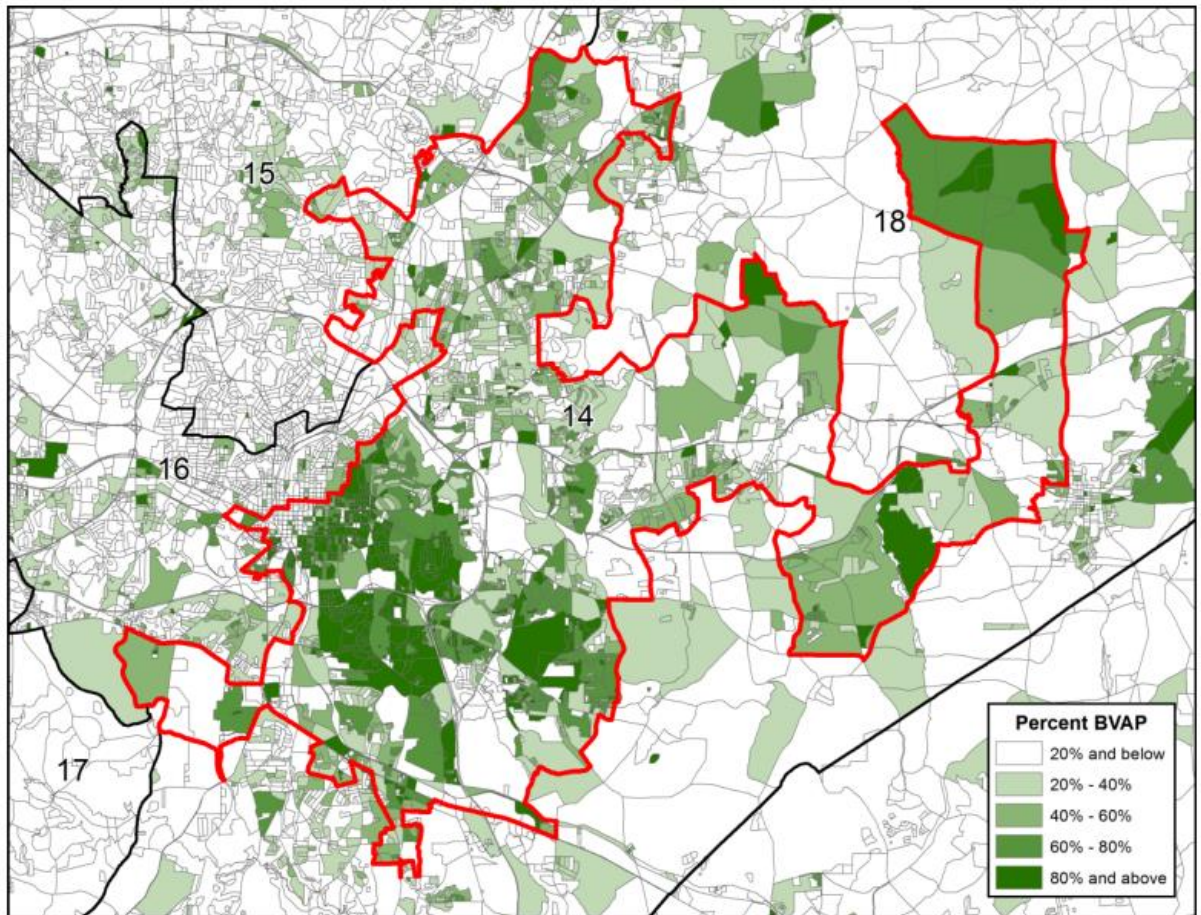
- Candidate of choice of black voters won in 2010 with 65.92% of the vote
 - Uncontested in 2012
- Candidate of choice of black voters also won in 2004, 2006, and 2008

- Black VAP: 51.28%
- Split VTDs: 29
- Most Compact: 0 of 7 measures

- Black VAP: 44.93%
- Split VTDs: 11



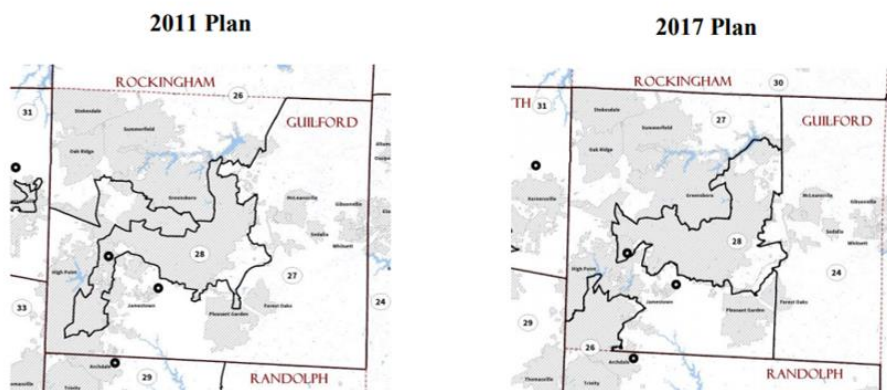
Senate District 14



Plaintiffs filed lawsuits immediately in North Carolina state court, alleging violation of the Fourteenth Amendment. When the state courts failed to timely identify the constitutional flaws and offer Plaintiffs and all North Carolina voters relief from these constitutional injuries, different groups of voters sought relief from the federal courts. The federal courts found that the challenged districts did in fact violation the Equal Protection Clause.²⁰ But even when the North Carolina General Assembly was given the first chance to remedy their unconstitutional districts, the legislature perpetuated their racial packing and retained the core of their unconstitutional districts, as seen in one example below:

²⁰ *Harris v. McCrory*, 159 F. Supp. 3d 600 (2016); *North Carolina v. Covington*, ___ U.S. ___, 137 S.Ct. 2211, 198 L.Ed.2d 655 (2017) (mem.).

The Core of Unconstitutional SD 28 Is Retained in the 2017 Version



Once again, a federal court was called into remedy this failure to adhere to constitutional voting protections.²¹

Unfortunately, the legislature last decade was not content simply engaging in redistricting practices that would harm Black voters at the state level. The legislative leadership push through several county and municipal redistricting plans in the form of local bills, normally only enacted with the full consent of the local delegation, over the objection of local elected officials and voters. In Duplin and Lenoir Counties, these legislative acts restructuring the Board of County Commissioners and School Board, respectively, would have constituted dilutive and improper modifications of a consent decree that was put into place to provide black voters in the county with the opportunity to elect members to the Board of County Commission and Board of Education.²² In Pitt County, the legislature shifted district seats to at-large seats for the Board of Education via a local bill, which triggered an objection from the United States Department of Justice under Section 5 of the Voting Rights Act.²³ Other local bills creating Fourteenth Amendment violations and injuries to Black voters had to be litigated, at great expense to voters and voting rights advocates.²⁴

²¹ *Covington v. North Carolina*, 138 S. Ct. 2548 (June 28, 2018).

²² *NAACP v. Duplin County, NC*, Case No. 88-cv-7 (E.D.N.C. 2012); *Holmes v. Lenoir County, NC, Board of Education*, Case No. 86-120-cv-4 (E.D.N.C. 2012).

²³ See April 30, 2012, Letter from Thomas Perez to Robert Sonnenberg, interposing an objection to the implementation of Session Law 2011-174 (SB 260) (2011), available at: <https://www.justice.gov/crt/voting-determination-letter-84> (last accessed Mar. 30, 2021).

²⁴ *Greensboro Branch of the NAACP v. Guilford County, NC, Board of Elections, et al.*, Case No. 1:12-cv-111 (M.D.N.C. 2012) (plaintiffs successfully challenging on equal protection grounds a redistricting plan for the Guilford County Board of County Commissioners that would have effectively deprived a swath of county citizens of any representation for two years); *Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections*, and *Wright v. North Carolina*, Consolidated Civil Action No. 5:15-CV-156 and No. 5:13-CV-607, 2017 U.S. Dist. LEXIS 162673 (4th Cir. September 29, 2017) (finding that the North Carolina General Assembly violated the Fourteenth

We are already seeing troubling efforts underway this cycle. In Fayetteville, a city where Section 5 was needed in the past, there is already work being done to shift the district elections to at-large elections, despite some troubling evidence that racially polarized voting may have increased in the last two major election cycles.²⁵ It is no exaggeration to say that North Carolina has a problem complying with the Fourteenth Amendment and with, particularly in the last 10 years, repeatedly trying to make it harder to vote. The North Carolina General Assembly in the last decade has done nothing but trample the guarantees in the Fourteenth Amendment and previously secured voting rights victories in decades of struggle by voters of color here in this state. Congress must act now to stop the onslaught.

Thank you for your time and attention today. I would be happy to take any questions.

Amendment in its systematic over- and under-population of Board of Education and Board of County Commissioner districts created by 2013 and 2015 local bills, which Plaintiffs allege disfavored Black voters in the county); *Brandon v. Guilford Cty. Bd. of Elections*, 921 F.3d 194, 196 (4th Cir. 2019) (Greensboro voters prevailed in a lawsuit alleging that legislatively-drawn city council district boundaries violated the Fourteenth Amendment by under- and over-populating certain districts to disadvantage Black and Democratic voters).

²⁵ <https://www.voteyesfayetteville.com/>

<https://www.fayobserver.com/story/opinion/2021/03/27/troy-williams-black-candidates-fayetteville-and-cumberland-can-win-large/7012191002/>