

January 29, 2016

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

STATE OF NORTH CAROLINA, *et al.*,

Defendants.

Civil Action No. 1:15-cv-00399

Sur-Rebuttal Report of Dr. Allan J. Lichtman to Reports Submitted by Expert for
Defendants

Distinguished Professor of History
American University
Washington, DC



Allan J. Lichtman

I. SUMMARY OF OPINIONS

In this report I respond to the report submitted by the expert for defendants, M. V. Hood (henceforth Hood Report) that addresses my prior two affidavits. After examining the Hood report I conclude that his report does not refute my quantitative empirical findings regarding the ability of African-American voters in North Carolina to elect African-American candidates or in rare instances white candidates of their choice in districts that are 40 percent or more African American but less than 50 percent African American in their voting age population. I also find that the Hood report contains no new original analysis and is marked by consequential omissions and errors in its efforts to reanalyze my findings regarding African-American opportunity districts in North Carolina.

II. 40%-49.9% OPPORTUNITY DISTRICTS FOR AFRICAN AMERICAN VOTERS IN NORTH CAROLINA

Contrary to what Dr. Hood indicates in his report there is nothing talismanic about 50%+ African-American voting age population (BVAP) districts in North Carolina.¹ To the contrary, my analysis of the actual results of elections demonstrated that not only do black candidates or in the rare instance a white candidate of choice of African-American voters usually prevail in North Carolina legislative districts that are 40 percent or more BVAP, they almost invariably prevail in such districts. As indicated by Tables 1 to 3 in my first affidavit, for the primary and general elections of 2008 and 2010 in such 40%+ BVAP districts African-American candidates or white candidates of choice of African-American voters prevailed in all elections (both primary and general) in 19 of 21 State House districts for a win rate of 90 percent, in all elections in 7 of 8 State Senate districts for win rate of 88 percent, and in all elections in 2 of 2 Congressional districts for a win rate of 100 percent. Combining results for all three types of districts, African-American candidates or candidates of choice of African-American voters prevailed in all elections in 28 of 31 40%+ black voting age population districts studied for a win rate of 90 percent.²

In response to Dr. Hood's report that African-American opportunity districts must be drawn at 50%+ BVAP, the following analysis distinguishes between elections held in 40% to 49.9% BVAP legislative districts and elections held in 50%+ BVAP legislative districts. State House districts, which are also the focus of Dr. Hood's report, provide a test of the effectiveness of legislative districts for African-American voters, given that there are about an equal number 40% to 49.9% BVAP House districts and 50%+ BVAP House districts in

¹ Dr. Bernard Grofman, the expert witness for prevailing plaintiffs in the landmark U. S. Supreme Court case, *Thornburg v. Gingles*, states that, "there is no "magic percentage" in terms of minority population to determine when a district offers minorities a realistic opportunity to elect candidates of choice." Bernard Grofman, "Operationalizing the Section 5 Retrogression Standard of the Voting Rights Act in the Light of *Georgia v. Ashcroft*: Social Science Perspectives on Minority Influence, Opportunity and Control," March 13, 2006, p. 14, <https://www.princeton.edu/csdp/events/Grofman040606/Grofman040606.pdf>.

² First affidavit of Professor Allan J. Lichtman, *Dickson v. Rucho* (11 CVS 16896), Tables 1-3. Contrary to Dr. Hood's criticism that I did not analyze so-called exogenous elections (elections for offices other than state legislature) in my affidavits I did include in my affidavits the most relevant and comparable exogenous elections: that is, elections for Congress in legislative districts. I do so in this report as well. These results take into account all elements of the elections in these districts including black cohesion – the black vote for candidates of their choice, the white bloc vote against the candidates and the racial composition of the turnout in primary and general elections.

the benchmark plan. The results of the analysis reported in Table 1 and Summary Table 2 confirm the finding that 50%+ districts *are not necessary* to provide African-American voters the opportunity to elect candidates of their choice to state legislative positions in North Carolina.³

As indicated in Summary Table 2 the actual outcomes of legislative elections in North Carolina State House districts are on balance slightly more favorable for African-American candidates and white candidates of choice of African-American voters in 40%-49.9% BVAP districts than in 50%+ BVAP districts. As indicated in Table 2, African-American candidates or candidates of choice of African American voters prevailed in all elections in 90 percent of 40%-49.9% BVAP districts, 1 percentage point less than the comparable 91 percent tally for 50%+ BVAP districts.

For individual election results within the State House districts (there are two primary and two general elections in each district). Table 2 indicates that African-American candidates or candidates of choice of African-American voters prevailed in 98 percent of elections held in 40%-49.9% BVAP House districts, 3 percentage points higher than the comparable win rate of 95 percent win rate for 50%+ BVAP House districts. African-American candidates were also more successful in gaining election in 40%-49.9% BVAP House districts than in 50%+ BVAP districts. As indicated in Table 2, African-American candidates prevailed in 90 percent of all elections in 40%-49.9% BVAP House districts, which is 8 percentage points higher than the comparable 82 percent win rate for African-American candidates in 50%+ BVAP House districts.

In addition to the election of candidates of choice who in rare instances have been white, the election of African-American candidates is also relevant to assessing voting rights issues. A report that accompanied the 1982 renewal of the Voting Rights Act by the Senate Committee on the Judiciary, listed the so-called "Senate Factors" which are part of a "totality of the circumstances" analysis under Section 2 of the Voting Rights Act. Factor 7 is "the extent to which members of the minority group have been elected to public office in the jurisdiction."⁴

³ In the interest of caution, I have included House District 43 among the 50%+ districts. It was initially crafted as a district in the 40% to 49.9% BVAP range but later became a 50%+ BVAP district under the 2010 Census. This district elected an African-American candidate in all elections. Its omission or inclusion as a 40%-49.9% BVAP district would add to the finding of the relative effectiveness of such districts. All of the information on State House districts presented in this report and my initial affidavit as well as information on State Senate and Congressional districts in my affidavit was readily available to members of the State Legislature and their staffs well before the post-2010 redistricting. The analyses of these districts require no advanced statistical techniques, but only simple sorting, counting, and the computation of percentages.

⁴ *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986) (quoting S. Rep. No. 97-417, at 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206-07).

Table 1
**Electoral Analysis of 2008 and 2010 Elections State House Districts With 40%-49.9%
 BVAP Compared to Districts with 50%+ BVAP**

STATE HOUSE DISTRICTS 40%-49.9% BVAP						
District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary	2008 General Election	2010 Democratic Primary	2010 General Election
HD 5:	49.0%	48.9%	BLACK	BLACK	NONE: BLACK	BLACK
HD 12	47.5%	46.5%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 21	48.4%	46.3%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 29	44.7%	40.0%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 31	44.7%	47.2%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 42	45.1%	47.9%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 48	45.5%	45.6%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 72	43.4%	48%	NONE: BLACK	BLACK	BLACK	BLACK
HD 99	28.3%	41.3%	BLACK	BLACK	BLACK	BLACK
HD 102	46.1%	42.7%	NONE: WHITE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE CHOICE
STATE HOUSE DISTRICTS 50%+ BVAP						
District	% Black VAP 2000 Census	% Black VAP 2010 Census	Result :2008 Democratic Primary	Result: 2008 General Election	Result: 2010 Democratic Primary	Result: 2010 General Election
HD 7	56.0%	60.8%	BLACK	BLACK	NONE: BLACK	BLACK
HD 8	50.4%	50.2%	WHITE: NOT CHOICE	WHITE: CHOICE	WHITE: NOT CHOICE	WHITE: CHOICE
HD 24	54.8%	56.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 27 *	52.9%	54.0%	NONE: WHITE	NONE: WHITE	NONE: WHITE	NONE : WHITE
HD 33	50.0%	51.7%	NONE: BLACK	BLACK	BLACK	BLACK
HD 43	48.7%	54.7%	BLACK	BLACK	BLACK	BLACK
HD 60	50.6%	54.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 58	53.4%	53.4%	NONE: BLACK	BLACK	BLACK	BLACK
HD 71	51.6%	51.1%	NONE: BLACK	BLACK	NONE: BLACK	BLACK
HD 101	50.6%	55.7%	NONE: BLACK	BLACK	BLACK	BLACK
HD 107	50.5%	47.1%	BLACK	BLACK	NONE: BLACK	BLACK
<p>* This analysis presumes that white candidate Michael Wray was the candidate of choice of black voters in 2008 and 2010. He was selected without primary or general election opposition in HD 27 in 2008 and 2010. In 2006, he was the candidate of choice of black voters in a primary election victory against black opponents. Without this presumption the comparison would be more favorable for 40% to 49.9% BVAP House districts as compared to 50%+ BVAP House districts.</p>						

Table 2
Summary of Results From Table 1, State House Districts With 40%-49.9% BVAP
Compared to Districts with 50%+ BVAP

PRIMARY AND GENERAL ELECTIONS						
# OF 40%-49.9% BVAP HOUSE DISTRICTS	# OF DISTRICTS WON BY BLACK CANDIDATES OR WHITE CANDIDATES OF CHOICE IN ALL ELECTIONS	WIN RATE	# OF 50%+ BVAP HOUSE DISTRICTS	# OF DISTRICTS WON BY BLACK CANDIDATES OR WHITE CANDIDATES OF CHOICE IN ALL ELECTIONS	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
10	9	90%	11	10	91%	-1%
# OF ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	# OF ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
40	39	98%	44	42	95%	+3%
# OF ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	# OF ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
40	36	90%	44	36	82%	+8%
PRIMARY ELECTIONS ONLY						
# OF PRIMARY ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF PRIMARY ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	# OF PRIMARY ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF PRIMARY ELECTIONS WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
20	19	95%	220	20	91%	+4%
# OF PRIMARY ELECTIONS IN 40%-49.9% BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	# OF PRIMARY ELECTIONS IN 50%+ BVAP HOUSE DISTRICTS	# OF ELECTIONS WON BY BLACK CANDIDATES	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
20	18	90%	22	18	82%	+8%

With respect to Democratic primary elections, highlighted in the Hood report, Table 2 indicates that African-American candidates or candidates of choice of African-American voters prevailed in 95 percent of primary elections held in 40%-49.9% House districts, 4 percentage points higher than the comparable 91 percent win rate for African-American candidates in 50%+ BVAP House districts. African-American candidates were also successful in winning primary elections in 40%-49.9% BVAP House districts than in 50%+ BVAP House districts. African-American candidates prevailed in 90 percent of primary elections in 40%-49.9% BVAP House districts, 8 percentage points higher than the comparable 82 percent win rate for African-American primary candidates in 50%+ BVAP House districts.

In his report Dr. Hood provides only a single analytic table referencing actual electoral results in North Carolina legislative elections (Hood Report, Table 3). This Table, which is reproduced below examines only State House elections and does not consider elections in State Senate or Congressional Districts, which are analyzed in my first and second affidavits (and additionally analyzed below) and which include districts that are only in the 40%-49.9% BVAP range, with none at 50%+ BVAP. Nonetheless, an appropriate unpacking of this complex table demonstrates that it confirms rather than contradicts the conclusion that legislative districts in the range of 40% to 49.9% BVAP provide African-American voters a realistic opportunity to elect African-American candidates or in the rare instance a white candidate of choice of African-American voters.

First, Dr. Hood, in this table and in his commentary, incorrectly discounts uncontested elections. Although these elections do not provide information on polarized voting between blacks and whites, they provide important information on the effectiveness of legislative districts for African-American voters, the central point of controversy in this litigation. The occurrence of uncontested elections in a district is a powerful indicator that a district is effective in providing minority voters the opportunity to elect African-American candidates or in the rare instance white candidates of their choice, to office. General elections in legislative districts are typically contested and Democratic candidates prevailed in all general elections held in State House as well as State Senate and Congressional districts in the range of 40% to 49.9% BVAP. All but one uncontested Democratic primary elections in these 40%-49.9% BVAP districts produced an African-American nominee. Two uncontested elections produced white nominees in the 2008 and 2010 Democratic primaries in a 50%+ BVAP House district: HD 27, which is 52.9% BVAP under the 2000 Census and 54.0% BVAP under the 2010 Census.

The absence of any challenger to African-American Democratic primary candidates in a district typically demonstrates that the district is sufficiently effective for African-American voters that white candidates declined to complete, even though as indicated above (see also, Section IV of this report) the Democratic Party nomination was a virtually sure route to victory in general election in districts with 40%-49.9% BVAP. An uncontested primary election involving a black nominee would hardly be expected in districts that did not provide African-American voters the ability to elect candidates of their choice in primary elections.

Hood Report, p. 8

Table 3. State House Races Analyzed by Professor Lichtman, 2008-2010

	All	Primary	General
Contested	41.7% [35]	35.7% [15]	47.6% [20]
Uncontested	58.3% [49]	64.3% [27]	52.4% [22]
<i>N</i>	84	42	42
Contested Races Only:			
Black Candidate of Choice Defeated ¹⁶	8.6% [3]	20.0% [3]	0.0% [0]
Black Candidate of Choice Wins	91.4% [32]	80.0% [12]	100.0% [20]
District \geq 50% Black VAP	45.7% [16]	46.7% [7]	45.0% [9]
District 40.0-49.9% Black VAP	45.7% [16]	33.3% [5]	55.0% [11]
<i>N</i>	35	15	20

When uncontested and contested elections in Dr. Hood's Table 3 are both considered, there are 42 Democratic primary elections in total. These include elections in 40%-49.9% BVAP House districts and elections in 50%+ BVAP House districts, which are co-mingled indistinguishably in Dr. Hood's Table. In only 3 of these 42 primary elections according to Dr. Hood's Table 3 was the African-American candidate of choice defeated, for a win rate of 93 percent (39 of 42). In addition, Dr. Hood provides summary statistics only with no information on elections in specific House Districts. Yet an examination of my Table 1 above discloses that *two of these three losses* by candidates of choice of African American voters occurred in the 2008 and 2010 primary elections *in a 50%+ BVAP House district*: HD 8, which was 50.4 BVAP under the 2000 Census and 50.2 percent BVAP under the 2010 Census. Only one of the three losses occurred in a 40% to 49.9% BVAP State House district, in the 2010 primary in HD 102.

Even considering only contested Democratic primary elections in State House elections, African-American candidates and candidates of choice fare well in 40%-49.9% BVAP districts. As indicated in my Table 3 below there were 5 contested Democratic primary elections in 40%-49.9% BVAP House districts. African-American candidates or candidates of choice of African American voters prevailed in 4 of 5 elections, for a win rate of 80 percent. There were 10 contested Democratic primary elections in 50%+ BVAP House districts. African-American candidates or candidates of choice prevailed in 8 of 10 elections, for the same win rate of 80 percent African-American candidates had a win rate of 80 percent in contested Democratic State House primaries in 40%-49.9% BVAP districts, again equal to the win rate for African-American candidates in 50%+ BVAP districts.

With respect to general elections, Dr. Hood's Table 3 reports a 100 percent win rate for African-American candidates or African-American candidates of choice. Thus, as indicated above, victory in the Democratic primary in these districts is tantamount to victory in the general election for every State House district (and every State Senate or Congressional district) at or above 40 percent BVAP. Dr. Hood does not challenge my finding that the candidates emerging from the primaries in these districts and winning the general election were the candidates of choice of African-American voters.

Dr. Hood does criticize my report for allegedly failing to report in most cases the degrees of polarized voting between blacks and whites in district elections. The critical point, however, is that regardless of polarized voting patterns in North Carolina, African-American candidates of choice almost invariably prevailed in Democratic primaries and invariably prevailed in general elections in districts greater than or equal to 40 percent BVAP but less than 50 percent BVAP. What follows below is an examination of polarized voting and of the electoral mechanisms that explain the overwhelming success of African American candidate of choice in North Carolina legislative districts in the range of 40% to 49.9% BVAP.⁵

⁵ Dr. Hood also criticizes my report for not examining elections earlier in the cycle than 2008 and 2010. However, not only are these the most recent elections under the prior redistricting plan, but they include a general election and a midterm election year and a good Democratic year (2008) and a good Republican year (2010). Moreover, Dr. Hood does not independently analyze any elections that would cast doubt on the 2008 and 2010 results.

Table 3
State House Districts With 40%-49.9% BVAP Compared to Districts with
50%+ BVAP: Contested Democratic Primary Elections Only

PRIMARY AND GENERAL ELECTIONS						
# OF CONTESTED DEMOCRATIC PRIMARIES IN 40%-49.9% BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	# OF CONTESTED DEMOCRATIC PRIMARIES IN 50%+ BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES OR BLACK VOTER CANDIDATES OF CHOICE	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
5	4	80%	10	8	80%	0%
# OF CONTESTED DEMOCRATIC PRIMARIES IN 40%-49.9% BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES	WIN RATE	# OF CONTESTED DEMOCRATIC PRIMARIES IN 50%+ BVAP HOUSE DISTRICTS	# WON BY BLACK CANDIDATES	WIN RATE	DIFFERENCE 40%-49.9% DISTRICTS WITH 50%+ BVAP DISTRICTS
5	4	80%	10	8	80%	0%

III. Polarized Voting in North Carolina

Dr. Hood correctly indicates that voting is polarized between African-Americans and whites in both primary and general elections in North Carolina. However, he fails to note that such polarization is essentially universal across the United States and that the existence of polarized voting does not imply that majority-African-American districts are necessary for African-American voters to have the ability to elect candidates of their choice to legislative office.

Dr. Hood chose to highlight for his analysis of polarized voting in North Carolina, exit polls for the 2008 Democratic primary between Barack Obama and Hillary Clinton and the 2008 general election between Obama and John McCain, both black versus white contests. Considering first the primary election, exit poll results reported in Table 4 demonstrate that racial polarization in North Carolina is similar to polarization nationwide in the in 2008 primaries and to racial polarization in other primaries held within a month of North Carolina's May 6, 2008 contest.

Although North Carolina's racial polarization in the 2008 Democratic primary slightly exceeds the national average, this distinction does not work to the detriment of African-American Democratic primary candidates in the state. Dr. Hood's report fails to analyze the two distinct components of racial polarization and their implications for black candidate success in Democratic primary elections. Both analyses by social scientists and the guidelines of the U. S. Supreme Court in its three-prong "*Gingles Test*," recognize that racial polarization consists of both minority (in this case African American) cohesion behind candidates of their choice (*Gingles* prong 2) and white bloc voting against these candidates (*Gingles* prong 3). For African-Americans, vote dilution in a jurisdiction or district occurs when white bloc voting is usually sufficient to defeat the candidates of choice of a cohesive African-American electorate. In mathematically equivalent terms, this means that the combination of African American cohesion and white crossover voting is not sufficient to elect African-American candidates of choice.⁶

Thus, the higher the level of African-American cohesion and the higher the level of white crossover voting, the better the prospects for African-American candidates. In North Carolina, the Democratic primary exit poll cited by Dr. Hood shows that the African-American cohesion level of 91 percent behind candidate Obama is much higher than the white bloc vote of 63 percent against Obama, which is equivalent to a white crossover level of 37 percent. To illustrate the implications of these results for African-American electoral success, consider hypothetically a district in which African-Americans comprised 40 percent of Democratic primary voters. Based on the exit poll cohesion and crossover results for North Carolina the African American candidate would garner 91% of the vote from the 40 percent of voters that are African American and 37 percent from the 60 percent of voters that are white. Based on these results, the expected Democratic primary vote for the African

⁶ *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986). See also, Mary J. Kosterlitz, "Thornburg v. Gingles: The Supreme Court's New Test for Analyzing Minority Vote Dilution," *Catholic University Law Review* 36(2) (1987), <http://scholarship.law.edu/cgi/viewcontent.cgi?article=1961&context=lawreview>.

Table 4
Exit Poll Results for Blacks and Whites 2008 Democratic Presidential Primary
Nation, North Carolina, Proximate Primaries

JURISDICTION	% BLACK VOTERS FOR OBAMA	% WHITE VOTERS FOR OBAMA
NATION*	82%	39%
NORTH CAROLINA	91%	37%
PENNSYLVANIA	90%	37%
INDIANA	89%	40%
KENTUCKY	90%	23%
Source: ABC News 2008 Democratic Primary Exit Poll Results - Key Groups, http://abcnews.go.com/images/PollingUnit/08DemPrimaryKeyGroups.pdf . * Did not include states without exit polls in 2008.		

-American candidate in this district is 58.6%.⁷ As will be demonstrated below, however, the expected African-American component of the Democratic primary vote in North Carolina legislative districts in the range of 40%-49.9% BVAP is almost always far higher than 50 percent.

Exit poll results for the 2008 general election reported in Table 5 also demonstrates similar racial polarization in North Carolina and the nation overall. The exit poll results for the state additionally indicate that in a district in which African Americans comprised 40 percent of all general election voters, the African-American candidate would garner 95% of the vote from the 40 percent of voters that are African-American and 35 percent from the 60 percent of voters that are white. Based on these results, the expected general election vote for the African-American candidate in this district is 59.0%.⁸

IV. The Dynamics of Partisan Legislative Elections for African-American Voters.

Dr. Hood's focus on polarized voting overlooks the actual racial dynamics of partisan legislative elections in North Carolina. For a district to perform effectively for African-American voters in North Carolina, it need not be majority African American. If African-Americans also have a majority in Democratic primary elections, such districts will provide African-American voters a realistic opportunity to elect candidates of their choice. This dynamic for African-American voters in North Carolina, analyzed below, explains why African-American candidates or in the rare instance a white candidate of choice of African American voters have almost invariably prevailed in North Carolina legislative districts with a 40% to 49.9% BVAP.⁹

The analysis first examines African-American turnout in Democratic primary elections. This analysis begins with findings of the 2008 Democratic primary exit poll between Obama and Clinton cited by Dr. Hood. It then provides a district-specific analysis of the actual African-American percentage of both Democratic registrants and Democratic primary voters in 2008 and 2010 in all 40%-49.9% BVAP State House, State Senate, and Congressional Districts in North Carolina.

In focusing on polarized voting results in the 2008 Democratic presidential primary exit polls for North Carolina, Dr. Hood passes over an important finding of this poll: the white and black percentages of the Democratic primary electorate. This Democratic primary exit poll indicates that the percentage of African Americans in the voting age population of a

⁷ (.4*91% + .6*37% = 58.6%). For an explication of minority cohesion and white bloc voting and how these voting patterns affect the prospects for minority candidates in a district, see Allan J. Lichtman and J. Gerald Hebert, "A General Theory of Vote Dilution," *Berkeley La Raza Law Journal*, 6(1) (1993), 1-25.

⁸ (.4*95% + .6*35% = 58.6%).

⁹ Professor Grofman states in his 2006 article, "On the other hand, districts where minorities are less than a majority of the overall electorate may nonetheless afford minorities a realistic opportunity to elect candidates of choice if the minority constitutes a majority of the electorate in the primary of the party most closely associated with the interests of that minority, and if there is also sufficient reliable white cross-over voting in the general election for the victor in that primary to win the general election with near certainty." Grofman, "Operationalizing the Section 5 Retrogression Standard," p. 15.

district will not be a reliable guide to the African-American percentage of voters in a Democratic primary. Rather the African-American primary percentage is likely to be substantially higher than the voting age population.

Data from the 2008 Democratic primary exit poll, reported in Table 5, indicates that African Americans comprised 34 percent of the state's Democratic primary electorate in 2008, 63 percent higher than the 20.9 African-American percentage of the state's voting age population. In turn, the white and the Hispanic and other component of the Democratic primary electorate is substantially lower than each group's percentage of the state's the voting age population.

It is also feasible to directly measure the racial component of the 2008 Democratic primary electorate because the state maintains registration and turnout data by race. These results, reported in Table 6 indicate that the exit poll slightly underestimates the African-American percentage of the 2008 Democratic primary electorate. According to results reported in Table 6, African Americans comprised 37 percent of the state's Democratic primary electorate in 2008, 77 percent higher than the 20.9 African-American percentage of the state's voting age population. In turn, the white, Hispanic and other component of the Democratic primary electorate is again substantially lower than each group's percentage of the state's the voting age population.¹⁰

These two sets of results for the 2008 Democratic primary indicate that a state legislative district in North Carolina with a BVAP in the range of 40% to 49.9% will have a much higher African-American percentage of the Democratic primary electorate, likely well in excess of a 50 percent majority.

Analysis of the 2010 statewide primary in North Carolina confirms these findings, even for a midterm year when African-American turnout is especially reduced relative to presidential years and also a good year for Republicans in North Carolina. The data reported in Table 6, indicates that African Americans comprised 33 percent of the state's Democratic primary electorate in 2010, 58 percent higher than the 20.9 African American percentage of the state's voting age population. In turn, the white, Hispanic and other component of the Democratic primary electorate is substantially lower than each group's percentage of the state's the voting age population.

Thus multiple analyses from the 2008 and 2010 Democratic primaries statewide indicate the legislative districts in the 40% to 49.9% BVAP range should typically have African-American majorities in Democratic primary elections that are well in excess of 50

¹⁰ Compilations of turnout by race statewide and in legislative districts as well as compilations of statewide general election results in legislative were prepared under my instruction by David Ely of Compass Demographics, who also prepared data under my instruction for the North Carolina litigation of the state's VIVA legislation.

Table 5
Exit Poll Results for Blacks and Whites 2008 General Election
Nation, North Carolina,

JURISDICTION	% BLACK VOTERS FOR OBAMA	% WHITE VOTERS FOR OBAMA
NATIONAL	95%	43%
NORTH CAROLINA	95%	35%
Source: http://www.cnn.com/ELECTION/2008/primaries/results/epolls/#NCDEM .		

Table 6
Turnout by Blacks, Whites and Others 2008 and 2010 Democratic Primary Election,
North Carolina,

2008 EXIT POLL BY RACE				
RACE	PERCENTAGE OF DEMOCRATIC PRIMARY VOTERS	PERCENTAGE OF VOTING AGE POPULATION (VAP)	PERCENTAGE POINT DIFFERENCE: PRIMARY VOTERS AND VAP	PERCENT DIFFERENCE: PRIMARY VOTERS AND VAP
WHITE	62%	68.4%	-6.4 POINTS	-9%
BLACK	34%	20.9%	+13.1 POINTS	+63%
HISPANIC & OTHERS	4%	10.7%	-6.7 POINTS	-63%
2008 STATE TURNOUT DATA BY RACE				
RACE	PERCENTAGE OF DEMOCRATIC PRIMARY VOTERS	PERCENTAGE OF VOTING AGE POPULATION (VAP)	PERCENTAGE POINT DIFFERENCE: PRIMARY VOTERS AND VAP	PERCENT DIFFERENCE: PRIMARY VOTERS AND VAP
WHITE	60%	68.4%	-8.4 POINTS	-12%
BLACK	37%	20.9%	+16.1 POINTS	+77%
HISPANIC & OTHERS	4%	10.7%	-6.7 POINTS	-63%
2010 STATE TURNOUT DATA BY RACE				
RACE	PERCENTAGE OF DEMOCRATIC PRIMARY VOTERS	PERCENTAGE OF VOTING AGE POPULATION (VAP)	PERCENTAGE POINT DIFFERENCE: PRIMARY VOTERS AND VAP	PERCENT DIFFERENCE: PRIMARY VOTERS AND VAP
WHITE	64%	68.4%	-4.4 POINTS	-6%
BLACK	33%	20.9%	+12.1 POINTS	+58%
HISPANIC & OTHERS	3%	10.7%	-7.7 POINTS	-72%
Source: http://www.cnn.com/ELECTION/2008/primaries/results/epolls/#NCDEM ; 2010 Census of Population; voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.				

percent. This expectation is borne out by a district-specific analysis that looks at the actual African-American percentages of both the Democratic registration and the Democratic electorate in the 2008 and 2010 Democratic primaries in all State House, State Senate and Congressional districts in the 40% to 49.9% BVAP range.

Tables 7 to 9 report the actual African-American and white percentages of the Democratic registration and the Democratic turnout in the 2008 and 2010 primaries for State House, State Senate, and Congressional districts respectively in the 40% to 49.9% BVAP range. To be clear, these statistics are not the turnout rates of African Americans and whites, but the percentages of African Americans and whites among the registered Democrats and among the actual primary voters in each district. Table 10 summarizes the detailed results for Tables 7 to 9.

The results reported in Tables 7-9 and summarized in Table 10 for Democratic registration and turnout in the 2008 and 2010 primaries in 40%-49.9% BVAP legislative districts in North Carolina discloses that for Democratic primaries these districts are neither coalition nor crossover districts. Rather they are what Dr. Grofman terms African-American “control districts,” which are districts “where minorities, themselves alone, can constitute a majority of the actual electorate.”¹¹ In these districts African Americans almost invariably comprise a substantial majority of Democratic registrants and Democratic primary voters. In both the 2008 and 2010 primaries Table 10 discloses that with but a single exception (Democratic primary turnout in HD 29 in the 2010 election) African Americans comprise at least a rounded 54 percent of both Democratic registrants and Democratic primary voters.

In most instances these African-American Democratic registrants and primary voters comprise well more than a 55 percent majority. For Democratic registrants in the 2008 primary African Americans comprised more than a 60 percent majority in 85 percent of all 40%-49.9% BVAP legislative districts in North Carolina. In 2008, African Americans also comprised more than a 60 percent majority of Democratic primary voters in 90 percent of all 40%-49.9% BVAP legislative districts. For Democratic registrants in the 2010 primary African Americans comprised more than a 60 percent majority in 95 percent of all 40%-49.9% BVAP legislative districts. In 2010, African Americans also comprised more than a 60 percent majority of Democratic primary voters in 55 percent of all 40%-49.9% BVAP legislative districts.

Dr. Hood in his report does not provide a systematic analysis of the African-American component of Democratic registration and Democratic primary turnout in 40%-49.9% BVAP legislative districts in North Carolina. Instead, citing the work of Dr. Brunell Dr. Hood focuses on the African-American share of the Democratic primary turnout on only

¹¹ Grofman, “Operationalizing the Section 5 Retrogression Standard,” p. 11.

Table 7
African-American & Non-Hispanic White Percentage of Democratic Party Registration and Turnout, State House Districts With 40%-49.9% BVAP, 2008 & 2010 Democratic Primary Elections

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary		2010 Democratic Primary	
			Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout	Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout
HD 5:	49.0	48.9%	60.6%	60.6%	62.7%	56.1%
HD 12	47.5	46.5%	72.6%	73.7%	73.7%	65.3%
HD 21	48.4	46.3%	70.1%	71.0%	71.8%	55.2%
HD 29	44.7	40.0%	55.0%	54.0%	57.0%	47.8%
HD 31	44.7	47.2%	68.6%	72.6%	69.5%	71.5%
HD 42	45.1	47.9%	76.6%	83.7%	77.4%	85.2%
HD 48	45.5	45.6%	59.5%	64.1%	60.6%	57.9%
HD 72	43.4	45.4%	71.9%	75.9%	72.6%	72.5%
HD 99	28.3	41.3%	66.6%	75.7%	67.1%	72.7%
HD 102	46.1	42.7%	65.1%	64.2%	65.4%	56.5%

Source: voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.

Table 8
African-American & Non-Hispanic White Percentages of Democratic Party Registration and Turnout, State Senate Districts With 40%-49.9% BVAP, 2008 Democratic Primary

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary		2010 Democratic Primary	
			Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout	Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout
SD 3:	47.0	46.9	63.8%	63.3%	66.4%	55.3%
SD 4	49.1	49.7	59.7%	59.8%	62.4%	56.1%
SD 14	41.0	42.6	67.0%	70.5%	68.0%	69.7%
SD 20	44.6	44.6	62.5%	64.1%	64.1%	56.1%
SD 21	41.0	44.9	70.9%	75.1%	73.1%	73.7%
SD 28	44.2	47.2	71.7%	75.0%	73.3%	76.0%
SD 32	41.4	42.5	68.1%	71.8%	69.4%	68.1%
SD 38	47.7	47.0	73.3%	78.5%	73.3%	74.8%

Source: voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.

Table 9
African-American & Non-Hispanic White Percentage of Democratic Party Registration and Turnout, U. S. Congress Districts With 40%-49.9% BVAP, 2008 Democratic Primary

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Democratic Primary		2010 Democratic Primary	
			Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout	Black Percentage Of Democratic Registration	Black Percentage Of Democratic Turnout
CD 1:	48.1	48.6	63.7%	63.7%	66.2%	57.3%
CD 12	42.8	43.8	70.1%	74.1%	71.1%	67.8%
Source: voter_history_20140127 and voter_snapshot_20081104 and voter_snapshot_20100504 in the State's SEIMS data.						

Table 10
Summary of Democratic Registration and Primary Turnout 2008 & 2010 In 20 40%-
49.9% BVAP Legislative Districts, From Tables 6-8

	BLACK PERCENTAGE OF DEMOCRATIC REGISTERED VOTERS 2008 PRIMARY	BLACK PERCENTAGE OF DEMOCRATIC ELECTORATE 2008 PRIMARY	BLACK PERCENTAGE OF DEMOCRATIC REGISTERED VOTERS 2010 PRIMARY	BLACK PERCENTAGE OF DEMOCRATIC ELECTORATE 2010 PRIMARY
LESS THAN 55%	0	1 (5%) (HD 29 54.0%)	0	1 (5%) (HD 29: 47.8% BVAP)
55% - 60%	3 (15%)	1 (5%)	1 (5%)	8 (40%)
60% - 65%	4 (20%)	6 (30%)	4(20%)	0
65%-70%	5 (25%)	0	7 (35%)	4 (20%)
MORE THAN 70%	8 (40%)	12 (60%)	8 (40%)	7 (35%)
SUMMARY: MORE THAN 60%	17 (85%)	18 (90%)	19 (95%)	11 (55%)

two elections in two districts: the 2010 primary elections in SD 3 and HD 102. These primary elections are the only contests out of 40 primary elections held in 40%-49.9% BVAP legislative districts in which African Americans failed to elect candidates of their choice. Dr. Hood's analyses of turnout in these two districts is critical to Dr. Hood's report, because they constitute the only specific analyses that purport to show that the defeat of black candidates can be attributed to the failure to draw districts at or above the 50% BVAP level. Yet even for these two exceptional cases, Dr. Hood's analysis fails to withstand scrutiny.

For SD 3 Dr. Hood claims that African Americans comprised only 46.4 percent of the 2010 primary turnout. He does not cite a specific source for this finding, but only generally refers in his footnote to the North Carolina State Board of Elections. Dr. Hood makes this alleged less-than-majority black turnout a central point of his report saying that it accounted for his additional finding that the two black candidates in the 2010 SD 3 primary taken together received only a minority of the vote that "equated to 46.2%." (Hood Report, p. 10). The critical bottom line for Dr. Hood is that for these black candidates to have gained even a mere combined majority of the vote it would have required a majority black turnout in SD 3 for which he says "the creation of a majority-black [VAP] district would most likely be required." (Hood Report, p. 11)

These claims by Dr. Hood, including his assertion that a black majority turnout in SD 3 would have required the creation of a majority-black VAP district cannot withstand scrutiny. In fact, although SD 3 had a BVAP 46.9 percent under the 2010 Census, based on actual registration and turnout by race as indicated in Table 8, African Americans actually comprised 66.4 percent of 2010 Democratic registrants and 55.3 percent of Democratic voters in the SD 3 2010 primary election. The inaccuracy of Dr. Hood's turnout estimates for the 2010 Democratic primary is additionally demonstrated by his erroneous reporting of the vote share received by the two African-American candidates competing in SD 3 in that primary. The official election results for the 2010 Democratic primary in SD 3 as reported by the North Carolina State Board of Elections and reproduced from the Board's website in Table 11, demonstrate that the two black candidates Bordeaux and Armstrong garnered 9,414 votes or *50.26 percent of the vote (not 46.2 percent)* to 9,313 or 49.73 percent of the vote for white incumbent candidate Jenkins. Thus, against a white incumbent, the African-American candidates actually garnered a slight majority of the Democratic primary vote. As I previously noted in my analysis of this election in my Second Affidavit, "Jenkins prevailed because of a split in the African-American vote."¹²

With respect to House District 102, Dr. Hood reports that "In 2010 House District 102 was 42.7% black VAP." (Hood Report, p. 10) He fails to note, however, that as in SD 3, African Americans in HD 102 comprised a much higher 56.5 percent of the 2010 Democratic primary turnout, thus establishing effective control over the primary election. As in SD 3 the white candidate prevailed not because of any defect in the district but because in a very low turnout election African Americans were barely cohesive, providing only 53.6 percent of their vote for

¹² Second affidavit of Professor Allan J. Lichtman. *Dickson v. Rucho* (11 CVS 16896). Page 17.

Table 11
Official Results of the 2010 Democratic Primary Election in Senate District 3

NC STATE SENATE DISTRICT 3 - DEM (Vote For 1)

3 of 3 Counties Reporting

	Percent	Votes
Clark Jenkins	49.73%	9,313
Frankie L. Bordeaux	38.01%	7,119
Florence Arnold Armstrong	12.26%	2,295

Source: <http://results.enr.clarityelections.com/NC/15705/29325/en/summary.html>.

the African-American candidate. I also previously presented this analysis in my Second Affidavit.¹³

Thus Democrats controlled the primary elections in the virtually every instance in the 20 legislative districts that are 40% to 49.9% black in voting age population legislative districts in North Carolina in the benchmark plan. In turn, the Democratic nominees in these 20 districts have without exception prevailed in general elections, creating a clear two-step path for African-American voters to nominate and then elect candidates of their choice. The overwhelming Democratic composition of these districts that makes party nomination tantamount to election is confirmed by examining the results of four 2008 and 2010 statewide general elections within the precincts of each district.

Results of these statewide general elections for 40%-49.9% legislative districts in North Carolina are presented in Tables 12-14 and summarized in Table 15. These results demonstrate overwhelming support for general election Democratic candidates in all 20 state legislative districts with a BVAP in the range of 40% to 49.9%. Table 12 for State House Districts indicates that the mean vote for Democratic candidates in the four general elections exceeded 60 percent in every district and exceeded 70 percent in 7 of 10 districts. Table 13 for State Senate Districts indicates that the mean vote for Democratic candidates in the four general elections exceeded 60 percent in every district and exceeded two-thirds (67 percent) percent in 6 of 8 districts. Table 14 for Congressional districts indicates that the mean vote for Democratic candidates in the four general elections was a rounded 65 percent or more in both districts. Summary Table 14 indicates that for all 80 general elections with the boundaries of 40%-49.9% North Carolina legislative districts the win rate for Democratic candidates was 100%. Summary Table 15 additionally indicates that the two-party vote for Democratic candidates exceeded 60 percent in 93 percent of these elections and exceeded 65 percent in 76 percent of these elections.

¹³ *Ibid.*, pp. 17-18.

Table 12
2008 and 2010 General Election Results for 40%-49.9% State House Districts,
Democratic Percentage of Two Party Vote

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Governor	2008 US President	2008 US Senate	2010 US Senate	Mean Four Elections
HD 5:	49.0%	48.9%	70.4%	60.5%	62.6%	55.9%	62.3%
HD 12	47.5%	46.5%	70.3%	60.5%	62.2%	54.3%	61.8%
HD 21	48.4%	46.3%	67.9%	63.1%	66.6%	58.6%	64.1%
HD 29	44.7%	40.0%	78.1%	82.4%	81.2%	78.2%	80.0%
HD 31	44.7%	47.2%	76.7%	78.7%	78.6%	76.5%	77.6%
HD 42	45.1%	47.9%	75.2%	74.0%	74.8%	71.7%	73.9%
HD 48	45.5%	45.6%	78.1%	70.4%	72.5%	67.4%	72.1%
HD 72	43.4%	45.4%	75.8%	75.3%	76.7%	67.1%	73.7%
HD 99	28.3%	41.3%	66.4%	75.5%	76.1%	72.7%	72.7%
HD 102	46.1%	42.7%	67.9%	80.3%	80.2%	74.3%	75.7%
Source: http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2003.asp?Plan=House_Redistricting_Plan&Body=House; http://www.ncleg.net/representation/Content/BaseData/BD2011.aspx							

Table 13
2008 and 2010 General Election Results for 40%-49.9% State Senate Districts,
Democratic Percentage of Two Party Vote

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Governor	2008 US President	2008 US Senate	2010 US Senate	Mean Four Elections
SD 3:	47.0	46.9	69.2%	60.6%	64.4%	57.2%	62.9%
SD 4	49.1	49.7	70.6%	61.3%	64.6%	57.4%	63.5%
SD 14	41.0	42.6	67.5%	69.3%	70.0%	64.3%	67.8%
SD 20	44.6	44.6	75.2%	76.7%	76.9%	73.3%	75.5%
SD 21	41.0	44.9	71.5%	69.7%	71.1%	65.5%	69.5%
SD 28	44.2	47.2	69.3%	69.5%	72.1%	61.2%	68.0%
SD 32	41.4	42.5	72.6%	72.0%	73.7%	62.5%	70.2%
SD 38	47.7	47.0	66.5%	74.4%	75.4%	69.1%	71.4%

Source: ;

http://www.ncleg.net/representation/Content/Plans/PlanPage_DB_2003.asp?Plan=2

[003 Senate Redistricting Plan&Body=Senate;](#)

<http://www.ncleg.net/representation/Content/BaseData/BD2011.aspx>

Table 14
2008 and 2010 General Election Results for 40%-49.9% Congressional Districts,
Democratic Percentage of Two Party Vote

District	% Black VAP 2000 Census	% Black VAP 2010 Census	2008 Governor	2008 US President	2008 US Senate	2010 US Senate	Mean Four Elections
CD 1:	48.1	48.6	71.0%	63.0%	66.1%	59.2%	64.8%
CD 12	42.8	43.8	67.9%	70.7%	72.6%	63.6%	68.7%

Source:

http://www.ncleg.net/Representation/Content/Plans/PlanPage_DB_2003.asp?Plan=Congress_ZeroDeviation&Body=Congress;

<http://www.ncleg.net/representation/Content/BaseData/BD2011.aspx>

Table 15
Summary of General Election Results 2008 & 2010 In 20 40%-49.9% BVAP Legislative
Districts, From Tables 11-13

	# OF ELECTIONS IN WHICH VOTE FOR DEMOCRATIC CANDIDATE EXCEEDED 50%	# OF ELECTIONS IN WHICH VOTE FOR DEMOCRATIC CANDIDATE EXCEEDED 60%	# OF ELECTIONS IN WHICH VOTE FOR DEMOCRATIC CANDIDATE EXCEEDED 65%
80 ELECTIONS IN ALL DISTRICTS	80 (100%)	74 (93%)	61 (76%)

V. Dr. Hood's Interpretation of *Bartlett v. Strickland*.

Dr. Hood states in his report that the Supreme Court has also stipulated in *Bartlett v. Strickland* that the appropriate remedy for vote dilution, when conditions dictate, involves the creation of single-member majority-minority districts. He additionally states that, "majority-minority districts to be the proper remedy in avoiding a potential Section 2 vote dilution claim." (Hood Report, p. 8). It is unclear what Dr. Hood means by "remedy" in this sentence. Absent a finding of a voting rights violation, there is no need for a state or locality to fashion a "remedy." It is this slippage between the latitude according states in deciding how to provide minority electoral opportunities in a redistricting plan and the requirements for a successful voting rights challenge that in my view leads Dr. Hood to misinterpret the guidance *Bartlett* provides to state and local jurisdictions and their expert advisers.

As a redistricting advisor to governmental bodies and independent groups, I am aware of the guidance provided by Supreme Court decisions including *Gingles*, *Johnson v. De Grandy* (in which I was an expert witness for the U. S. Department of Justice), *Bartlett v. Strickland*, *LULAC v. Perry* (in which I was an expert witness for plaintiffs), and *Alabama Legislative Black Caucus v. Alabama* (in which I was an expert witness for plaintiffs).¹⁴ As construed in *Bartlett* the satisfaction of "prong one" of the *Gingles* test requires a showing that the minority group at issue constitutes at least 50 percent of the voting age population in an additional district. However, the *Bartlett* opinion does not impose 50 percent single race VAP requirement upon jurisdictions. Rather in the words of the majority opinion, "*§2 allows States to choose their own method of complying with the Voting Rights Act.*" (emphasis added). In detail the opinion states:

"Our holding that §2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion. Assuming a majority-minority district with a substantial minority population, a legislative determination, based on proper factors, to create two crossover districts may serve to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal. The option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more. And as the Court has noted in the context of §5 of the Voting Rights Act, "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or [crossover] districts." *Ashcroft*, 539 U. S., at 482. Much like §5, §2 allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts."

Following Supreme Court guidance and my own decades of experience as a social scientist analyzing hundreds of redistricting plans, my advice has been that a voting rights district need not conform to any pre-conceived or mechanical minority voting age population. Rather, the district should provide minority voters a realistic opportunity to elect candidates of

¹⁴ *Johnson v. De Grandy* 512 U.S. 997 (1994); *Bartlett v. Strickland*, 129 S.Ct. 1231 (2009); *League Of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 475 (2006), *Alabama Legislative Black Caucus v. Alabama* (Slip Opinion), No. 13-895 (March 2015).

their choice. For African-American districts, depending on location, given their different turnout and voting behavior such districts may often be drawn at well below 50 percent of the African-American voting age population. African-American opportunity districts drawn at well below 50 percent BVAP at my recommendation have withstood judicial scrutiny or not been subject to litigation challenge. See, for example, *Campuzano v. Illinois State Board of Elections*, 200 F. Supp. 2d 905 (N. D. Ill, 2002) and *League of Women Voters v. Detzner*, The Second Judicial Circuit in and for Leon County Florida, CASNo.:2012-CA-2842, 30 December 2015.

In testimony before the Illinois State Senate by a staunch advocate of voting rights for African Americans, Kristen Clarke, former Co-Director of the Political Participation Group of the NAACP Legal Defense and Education Fund, commonly known as LDF explained why both legally and substantively states need not draw African-American opportunity districts at or above the 50% BVAP level:

“Moreover, state legislatures throughout the country remain free to create affirmative opportunities for minorities to elect a candidate of choice even if a substantial minority population does not meet the 50 percent threshold. This is particularly true in those areas of the country that have experienced a significant increase in their minority population over recent time. In fact, *Bartlett* acknowledges that legislatures have the option of creating minority opportunity districts (when other redistricting factors are considered) even if a substantial minority population does not meet the 50 percent threshold. In that way, *Bartlett* does not bar the voluntary creation of a district where a minority group less than the 50 percent threshold can have the opportunity to elect a representative of choice.”¹⁵

VI. Conclusions

None of the analyses in Dr. Hood’s report or in Dr. Brunell’s earlier report contradict the finding in my first two affidavits that North Carolina state legislative districts in the range of 40% to 49.9% BVAP provide African-American voters a realistic opportunity to elect candidates of their choice. Additional analyses presented in this report strengthen that finding.

The comparison of State House districts in the range of 40% to 49.9% BVAP with 50%+ BVAP State House districts demonstrates that districts in the former category at least as effective or even more effective for African-American voters than districts in the majority black category. This finding holds for the analysis of all State House elections held in these districts, as well as in the analysis of primary elections only. For primary elections, analysis of the racial composition of the electorate from the 2008 statewide exit poll demonstrates that black cohesion well exceeds white bloc voting against the black candidate of choice, creating favorable circumstances for the nomination of a black candidate. Turnout estimates from the exit polls as well as actual primary turnout in the 2008 and 2010 primaries indicate that the black percentage

¹⁵ Testimony of Kristen Clarke Before the Illinois Senate Redistricting Committee, “Hearing on The Voting Rights Act and Other Legal Requirements in Redistricting,” December 8, 2009, p. 3, <http://ilga.gov/senate/Committees/Redistricting/Testimony%20of%20Kristen%20Clarke%20-%20NAACP%20Legal%20Defense%20and%20Educational%20Fund.pdf>.

of the primary electorate should far exceed the black percentage of the voting age population.

This expectation is confirmed by a district specific analysis of the actual black percentage of registered voters and the primary electorate in the 2008 and 2010 Democratic primaries. The results of this analysis demonstrates that in North Carolina in the 2008 and 2010 primaries African Americans almost invariably comprise very substantial majorities of Democratic registrants and Democratic primary voters in 40% to 49.9% BVAP State House, State Senate, and Congressional districts. Thus in the critical Democratic primaries these are not “coalition districts” as Dr. Hood claims. Rather African Americans control the primaries in these districts and are not dependent on votes from other racial groups. Analysis also demonstrates that for these 40% to 49.9% BVAP legislative districts, nomination in the Democratic primary is tantamount to victory in the general election.

Scrutiny of Dr. Hood’s analyses of exit polls (Hood Report, Tables 1 and 2), and election results in State House districts (Hood Report, Table 3) only confirms these findings. In addition, Dr. Hood misanalyses the exceptional elections in SD 3 and HD 102 and misinterprets the guidance provided to state jurisdictions in *Bartlett v. Strickland*.