

# A View From the Frontlines of the Battlefield

Litigating Redistricting Cases in NC after the  
2010 Census



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# Legal Approaches

## ⌘ Voting Rights Act

- Prohibits intentional discrimination in districting plans and discriminatory effect
- Packing and cracking minority populations
  - Can another majority minority district be drawn?

## ⌘ Racial Gerrymandering

- Prohibited under the 14<sup>th</sup> Amendment
- If race predominates in the drawing of districts, can only be upheld if race was only narrowly used to further a really compelling state interest
- Reduces minority influence, packing that doesn't reach Section 2 levels

## ⌘ Partisan Gerrymandering

- Theoretically prohibited under either the 14<sup>th</sup> or 1<sup>st</sup> Amendment
- Still no SCOTUS-endorsed standard

## ⌘ Other

- OPOV cases – population deviations used for improper purposes

## ⌘ State constitutional attacks

# 2011 Statewide Redistricting

- ✎ Before 2011, only 10 majority black House districts, but a substantial number of black candidates elected from non-majority black districts
  - In 2011, drew 23 egregiously non-compact majority black districts
- ✎ Before 2011, 0 majority black Senate districts, but a substantial number of black candidates elected from non-majority black districts
  - In 2011, drew 9 egregiously non-compact majority black districts
- ✎ CD 1 and 12 bumped up to over 50% BVAP, even though they hadn't been that high in years

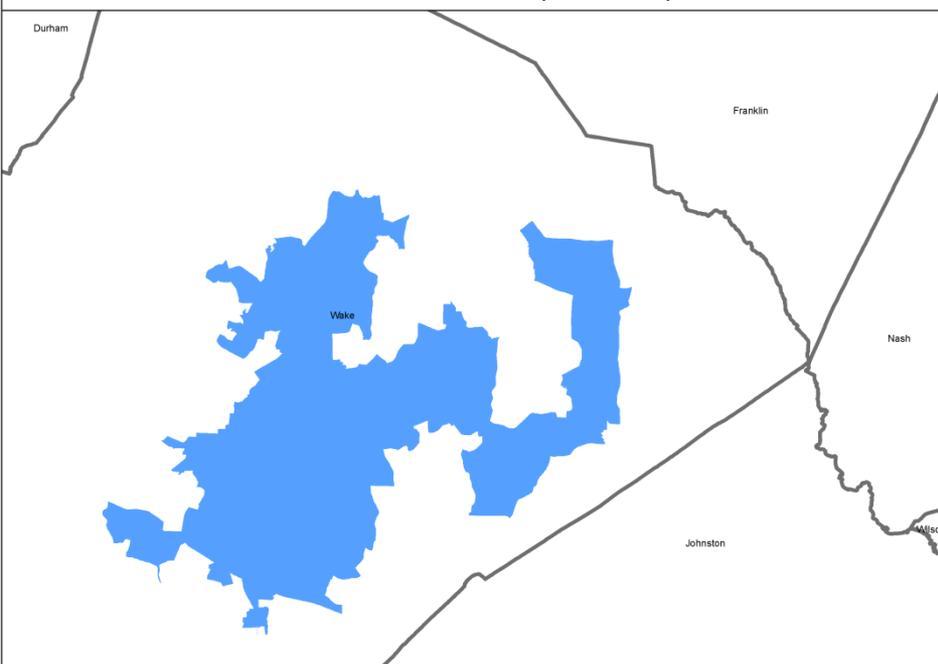
# Senate District 14

- 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

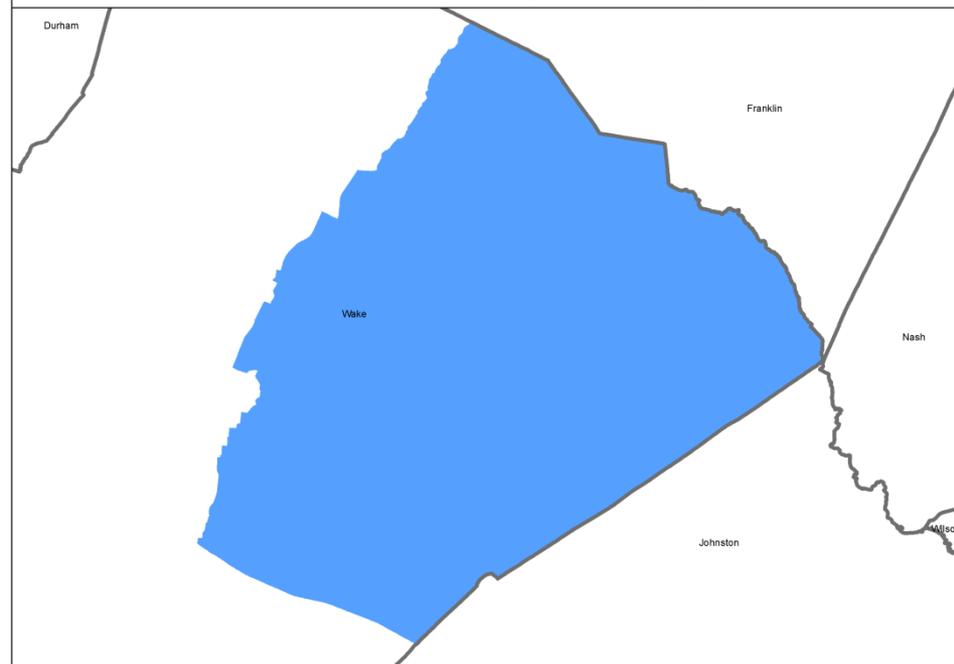
- Black VAP: 51.28%
- Split VTDs: 29
- Most Compact: 0 of 7 measures

- Black VAP: 44.93%
- Split VTDs: 11

Senate District 14 (Enacted)



Senate District 14 (Benchmark)



# Redistricting Litigation

## ☞ Racial gerrymandering

- Race predominated in the drawing of district lines, without justification
- Packed black voters to limit their political power

## ☞ Dickson v. Rucho

- State court
- State legislative and congressional plans
- North Carolina Supreme Court reversed TWICE by SCOTUS

## ☞ Harris v. McCrory

- Federal court
- Congressional plans

## ☞ Covington v. NC

- Federal court
- State legislative plans

# Redistricting Litigation

## ∞ Partisan Gerrymandering

- 2016 congressional “remedy” redistricting
  - 10-3 plan
- Two cases (Common Cause v. Rucho, LWV v. Rucho) filed in federal court in 2016
  - Plaintiffs urging two different theories of liability, cases consolidated
- Trial the week of October 16, 2017
- Whitford case argued in October 3, 2017
  - At the frontline of the battlefield, sometimes you don’t get the luxury of waiting for the rules of war to get established

# Whac-A-Mole Litigation



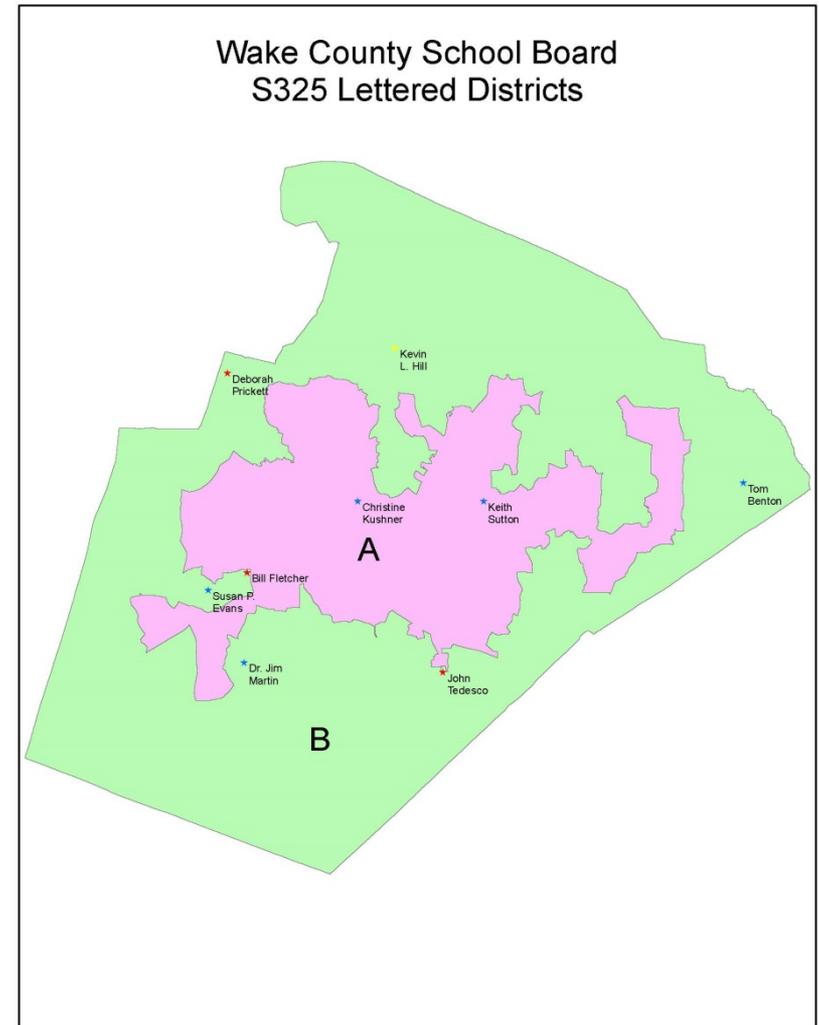
It's 2017, and NC still hasn't had congressional elections under constitutional districts

# State Legislative Remedy

- ⌘ November 1, 2017 – three-judge panel appoints Nathaniel Persily of Stanford University as Special Master
- ⌘ Determine whether state’s legislative remedial districts:
  - Cure the racial gerrymandering
  - Comply with state law prohibiting mid-decade redistricting
- ⌘ “The State is not entitled to multiple opportunities to remedy its unconstitutional districts.”

# Wake County, NC, Local Redistricting Bills

- ☞ Wake County generally
- ☞ School Board – 2013
  - 9 S-M to 7-2 plan
- ☞ County Commission – 2015
  - 7 at-large to 7-2 plan
- ☞ Deviations
  - 2011 SB redistricting (1.6% dev.)
    - MID-DECADE REDISTRICTING
  - Super districts:
    - Donut: -4.9%
    - Ugly Munchkin: +4.9%
    - Overall: 9.8%



# Wright v. Wake County BoE

## RWCA v. Barefoot

- ✎ What this was about: socioeconomic diversity student assignment plans
- ✎ Favoring rural/suburban voters over urban voters

### Theory of the Case:

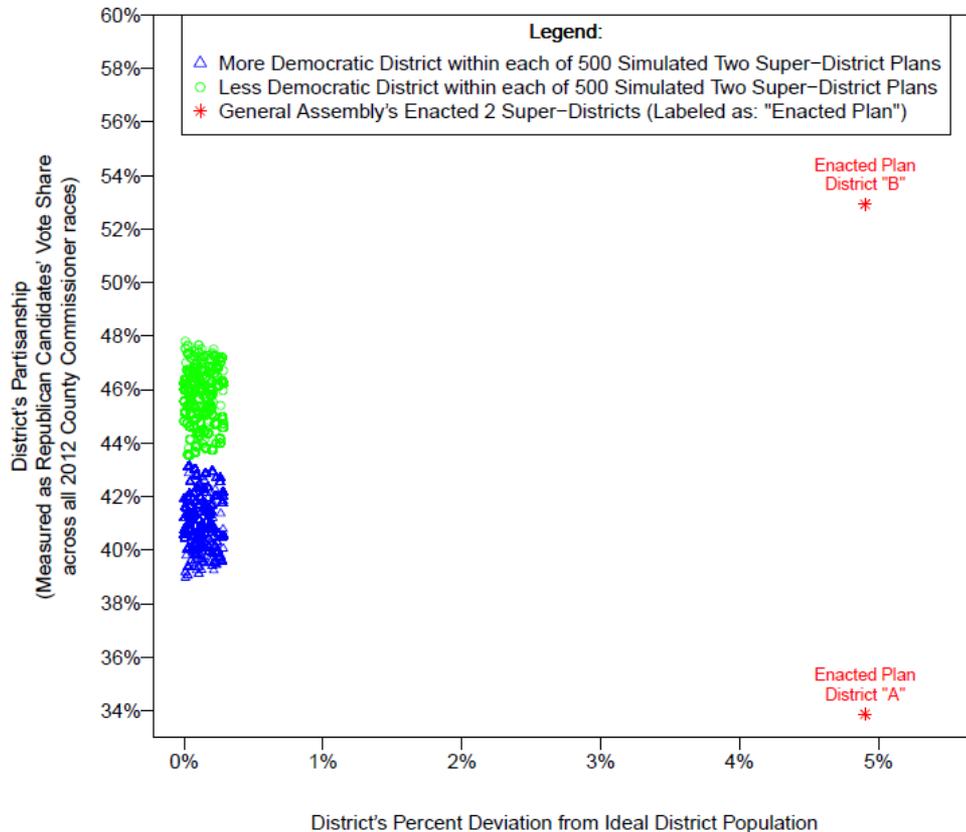
- ✎ One Person, One Vote – 14<sup>th</sup> Amendment Claim
- ✎ *Larios v. Cox*
  - Summary affirmance
  - 10% is not a safe harbor
  - Steven’s opinion concurring in affirmance:
    - “...the equal-population principle remains the only clear limitation on improper districting practices, and we must be careful not to dilute its strength.”

# 4<sup>th</sup> Circuit Ruling - 2016

- ⌘ Fourth Circuit reversed the trial court, ruled that plans were unconstitutional
- ⌘ “Plaintiffs have proven that it is more probable than not that the population deviations at issue here reflect the predominance of an illegitimate reapportionment factor, namely an “intentional effort” to create “a significant partisan advantage.””

# 4<sup>th</sup> Circuit Ruling - 2016

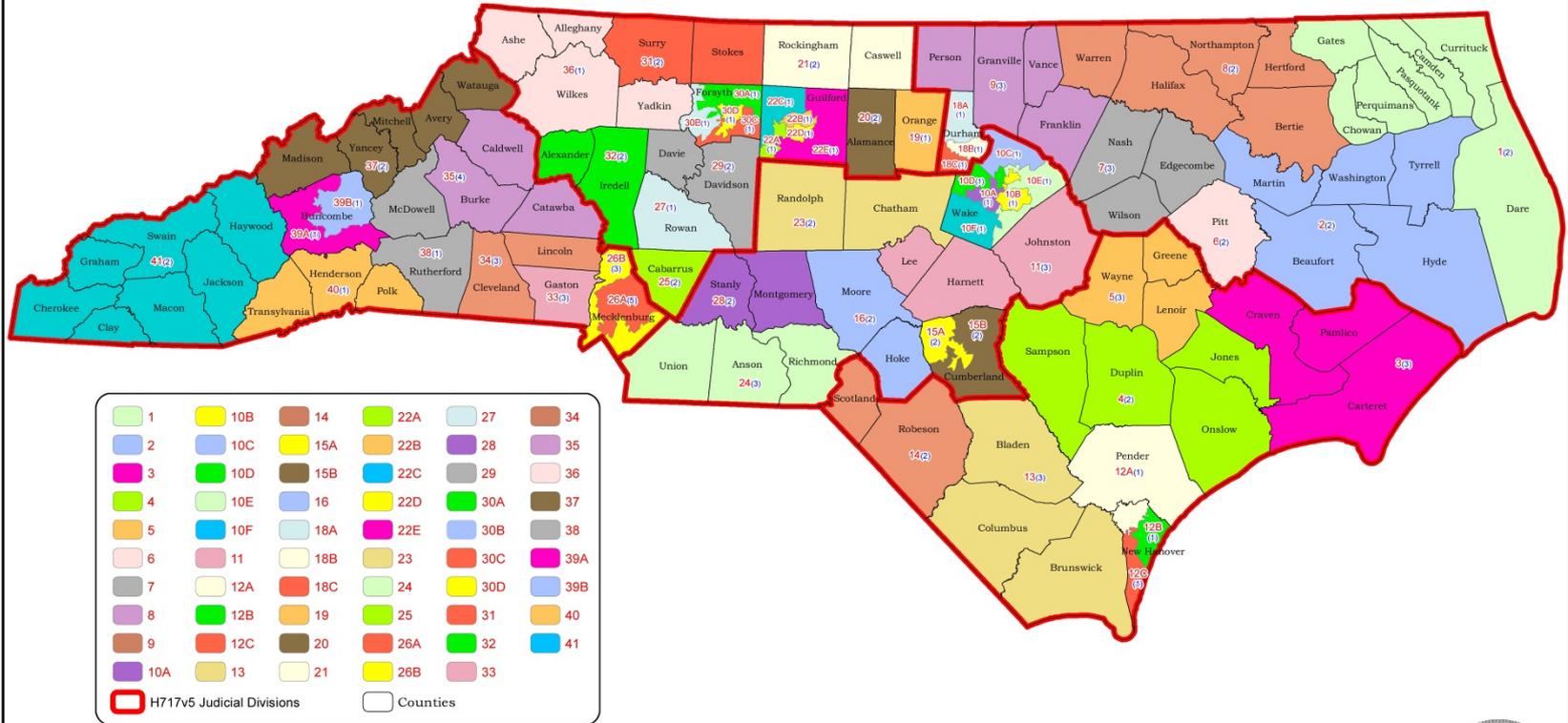
Two Super-District Plans:  
Comparison of Enacted and Simulated Plan Districts  
On Population Deviation and Partisanship (2012 County Commissioner Elections)



“Dr. [Jowei] Chen analyzed whether the population deviations in the seven single-member district plans and the two super districts plans were motivated by a partisan purpose using computer simulation programming techniques that allow him to generate randomly a large number of alternative redistricting plans created subject to traditional redistricting criteria.”

# Coming to a Theater Near You – January 2018

## H717, 2017 Session, 5th Ed, Superior Court



Printed by the NC General Assembly, October 6, 2017.  
The number of Superior Court Judges is shown in blue.

H717v5 Superior Court



# Questions?

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