

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**IN THE GENERAL COURT OF JUSTICE**  
**SUPERIOR COURT DIVISION**  
**19-CVS-011321**

**KELLY ALEXANDER, JR., et al.,**

**Plaintiffs,**

**v.**

**STATE BOARD OF ELECTIONS, et**  
**al.,**

**Defendants.**

**AFFIDAVIT OF DAN BISHOP**

The undersigned, duly sworn, deposes and says as follows:

1. My name is Dan Bishop. I am a resident of Mecklenburg County, North Carolina.
2. I served in the North Carolina House of Representatives in 2015-16 and in the North Carolina Senate in 2017-18 and part of 2019. I resigned the Senate effective September 17, 2019 to take a seat in the United States House of Representatives for the Ninth Congressional District of North Carolina, having been elected in a special election on September 10, 2019. I represented Mecklenburg County in both the state House (District 104) and Senate (District 39).
3. I was the lead primary sponsor of N.C. Sess. Laws 2018-14 ("S.L. 2018-14"), the purposes of which were to resolve gross voting-age population disparities in similarly situated Superior Court districts in Mecklenburg County and to align District Court elections the County to the newly drawn Superior Court districts.

4. S.L. 2018-14 resulted indirectly from a months-long examination of judicial districting and methods of judicial selection, precipitated by statewide judicial redistricting legislation originating as House Bill 717, passed on October 5, 2017. I was a cochair of the Senate Select Committee on Judicial Reform and Redistricting appointed by the Senate president pro tem to evaluate HB 717 as well as alternative methods of judicial selection. The Committee met for these tasks on November 8, December 6 and December 13, 2017 and January 3, 2018. (See <https://www.ncleg.gov/Documents/372>) Following this roughly 90-day process, the president pro tem and speaker appointed a Joint Select Committee on Judicial Reform and Redistricting, of which I also served as a cochair, and it met January 11, January 22 and April 27, 2018. (See <https://www.ncleg.gov/Committees/CommitteeInfo/NonStanding/6719#Documents>) On May 28, 2018, I filed Senate Bill 757, which became S.L. 2018-14.

5. As HB 717 developed in the House, information circulated showing that the existing Superior Court districts in Mecklenburg County were grossly disparate in voting-age population per judicial seat, with a 3:1 disparity from the most to least populous. That is, the most populous district contained 233,186 persons per judicial seat; the least populous contained 75,628 persons per seat, which is a ratio of 3.08:1. A graphic of that information that I saw at the time is attached as Exhibit A. Witnesses presenting before the Senate Select Committee advised that this disparity was unconstitutional under *Blankenship v. Bartlett*, 581 S.E.2d 759 (N.C. 2009). I recall having been advised at some point during my 2015-16 term in the House, by a

member of the nonpartisan legislative analysis staff, Erika Churchill, that the Superior Court districts in Mecklenburg were out of balance, although I did not then know about *Blankenship* or the details of the imbalance.

6. Upon independent research and investigation, I learned that the Mecklenburg Superior Court districts had not been adjusted since 1987 and that it was a fair guess that gross population disparities had existed, unaddressed, since at least 2000. The lead Plaintiff, Kelly Alexander, although he complains of current variability in Mecklenburg District Court seats per judge of 1.64:1, (*see* Compl. ¶¶ 89, 91), has served continuously in the House I believe since 2006, and never took action to address the much greater disparity in voting power among the Superior Court districts, even after *Blankenship* appeared in 2010 and the General Assembly resolved promptly a similar disparity in Wake County. To the contrary, Rep. Alexander's allegations tout his role in the creation of the Mecklenburg Superior Court districts that had become grossly disparate in population per seat. (Compl. ¶ 25) All legislators, including those from Mecklenburg, either failed to notice this problem or failed to act to correct it.

7. An objective of the Select Committees was to develop bipartisan consensus around either a statewide judicial redistricting plan or legislation to propose a constitutional amendment to modify the method of selecting judges for some or all of the state courts. No such consensus emerged, but I considered it essential to remediate the gross disparity in the Mecklenburg Superior Court districts, if nothing else.

8. As HB 717 passed the House, it proposed not only modifications to Superior Court districts across the State, but also to elect District Court judges in the more populous counties from the same districts as the Superior Court. I had believed for some time that this concept made sense. The issue was first raised with me by Sen. Jeff Tarte, who served North Mecklenburg, in early 2017, and I agreed with his request to cosponsor a bill to make that reform for the Mecklenburg District Court, which was Senate Bill 306, filed April 10, 2017. It did not progress.

9. HB 717, as it came to the Senate, proposed the same basic structure of Superior Court districts for Mecklenburg County that then existed, replacing one in-town district and two more-or-less suburban districts with one in-town and one suburban district. In each case, multi-member districts were used. In almost all the other urban counties, however, the bill used single-member districts, including those legislated for Wake County shortly after *Blankenship*.

10. During discussion in the Senate Select Committee, Sen. Joel Ford (D-Mecklenburg) commented that he saw racial implications in the two multi-member districts proposed for Mecklenburg in HB 717. Taking note of Sen. Ford's comment, I thought that the approach to districting the Superior Courts in all of the urban counties should be consistent, did not wish to preserve the cores of the existing Mecklenburg districts and was aware that multimember districts are disfavored, so I asked staff to prepare a map for Mecklenburg with single-member Superior Court districts similar to Wake County's, adding one superior court judge to Mecklenburg's

existing allotment, as HB 717 had proposed, and to allocate the District Court seats among the Superior Court districts so drawn.

11. I believe I communicated the drafting request to Jim Blaine, Chief of Staff to the president pro tem. I specified that no race data be used, that the districts be balanced to within plus or minus 5 percent voting age population, that precincts not be split, and that efforts be made to avoid double-bunking incumbents. Staff returned a districting plan for Mecklenburg that the cochairs of the Senate Select Committee included in an alternative, statewide districting plan that was published for public comment and discussion at the December 13, 2017 meeting. (See [https://www.ncleg.gov/documentsites/committees/senate2017-156/12-13-17/JBK-18B%20&%20JBK-19B%20insets\\_19x36.pdf](https://www.ncleg.gov/documentsites/committees/senate2017-156/12-13-17/JBK-18B%20&%20JBK-19B%20insets_19x36.pdf)) During committee discussions, Democrat members requested stat packs including racial demographic data, but I never reviewed that data.

12. The staff-drafted plan for single-member Mecklenburg Superior Court districts and coordinated multimember District Court elections was subsequently included in statewide judicial districting proposal Options B and C published for comment by cochairs of the Joint Select Committee in, apparently, February 2018. (See <https://www.ncleg.gov/Committees/CommitteeInfo/NonStanding/6719#Joint%20Judicial%20Committee%20Options%20with%20Incumbency%20Data>) None of these statewide options garnered consensus support, so none was enacted.

13. As it became clear that no statewide redistricting plan would be enacted, I began to focus on preparing legislation for a Mecklenburg-only plan to resolve the

state constitutional voting rights violation in the existing Superior Court districts and to align District Court elections to proper Superior Court districts. As the starting point, I used the single-member districting plan developed as described above. I had received no specific criticisms of that plan, nor had any legislator or member of the public proposed any alternative, to my knowledge. The one concern expressed in general was the prospect of double-bunking incumbent judges, which several members cautioned against.

14. In preparing to file SB 757, I personally re-examined with great care the incumbency data vis-à-vis the Senate staff-drafted districting plan for Mecklenburg County and manually moved individual precincts among the districts in order to further reduce the prospect of incumbents running against each other in the immediate or more remote future. I explained each of the precinct moves and their incumbent-protection effects in an email to the remainder of the Mecklenburg County Senate delegation immediately after filing SB 757 with Sen. Tarte as the other primary cosponsor.

15. That email, which invited my Democratic colleagues to cosponsor SB 757, is substantially reproduced in Exhibit 4 to the Complaint. It is not accurate that Chief District Court Judge Regan A. Miller (misidentified as Miller Regan in the Complaint) sent an email to District Court judges “on my behalf” to explain the purposes of the bill. He instead excerpted the email that I sent to my Mecklenburg Senate colleagues inviting their support for and cosponsorship of SB 757.

16. Just as race was not a factor in the original drafting of the Mecklenburg districting plan by Senate staff, it played no part whatsoever in my incumbent-protection adjustments. My comments replicated in Exhibit 4 explain completely the rationale for all of those adjustments.

17. The reasons that I believed District Court elections should be aligned to the new Superior Court districts were as follows:

a) It seemed to me illogical that judges of the senior division of the trial court were elected by fewer voters than judges of the junior division (elected at large);

b) Given Mecklenburg's allocation of 21 District Court judges, voters could more easily inform themselves and meaningfully participate in elections of those judges by reducing the total number of positions for each voter to elect;

c) Given Mecklenburg's large population size, even then over a million people, requiring candidates for District Court judge to run county-wide imposed an untenable burden on the candidates;

d) District Court judge was the only multi-seat, intra-county office in Mecklenburg County still elected at large (other than councils of small towns), given that the Superior Court, school board, county commission and city council of Charlotte had all long since been districted, in part or in whole. The same reasons that counseled in favor of districting those offices in my view also weighed in favor of districting the election of district court judges.

e) A proliferation of districts by creating different, single-member districts for the District Court judges across the county — i.e. by failing to align the

District Court elections with the same districts for the Superior Court elections — would have caused voter confusion.

18. I explained this reasoning to my Mecklenburg Senate colleagues in writing and to the Senate Elections committee and on the floor. I also explained it in the House Rules Committee. No legislator or member of the public proposed to me or in my presence a different or better districting plan or other way of addressing the gross disparities in the previous Superior Court districts.

19. Because there were 21 District Court judges allocated to Mecklenburg County and eight Superior Court judges under the map produced by Senate staff, in order to align District and Superior Court judges elections, it was necessary to use multimember districts for the election of District Court judges. Also, because the number of District Court positions is not evenly divisible by the number of Superior Court positions, it was necessary to allocate one more District Court seat to some Superior Court districts than others. Correspondingly, even though the single-member Superior Court districts were drawn to have +/- 5 percent population balance, it was not possible to achieve precise population balance per District Court seat.

20. Absent having my memory refreshed by an appropriate document, I cannot recall how the District Court seats were allocated among the Superior Court districts. It appears that, in furtherance of the objective to avoid “double-bunking” incumbents, staff allocated three seats to the districts in which the greatest number of incumbents resided and two seats to the districts with fewer resident incumbents.



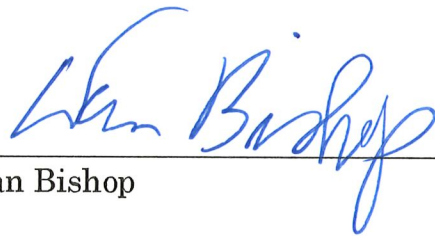
For example, although District 26D was most populous, with a VAP of 120,320, it had only one resident, incumbent District Court judge, Aretha Blake. Two District Court seats were allocated to 26D. District 26A was next-to-least populous, with a VAP of 110,900, but had five resident District Court judges. I ameliorated that incumbent-crowding phenomenon by removing one of these five, Judge Louis Trosch residing in precinct 68, to District 26H. But even with that revision, there were four incumbents for the three seats allocated to District 26A.

21. The maximum disparity in voting age population per District Court seat in the Mecklenburg judicial districts, at 1.64:1, is far below the disparities of 4:1 to 4.93:1 that the Supreme Court adjudged gross and presumptively impermissible in *Blankenship*. Moreover, the relatively modest disparities in the Mecklenburg District Court seats are justified by the judicial and electoral administration benefits of aligning the District Court elections to the same districts as used in the Superior Court elections. Finally, with the benefit of 2020 census information, the General Assembly can continue to reduce the disparities by adjusting district boundaries further or allocating an additional District Court seat or two to Mecklenburg, or both.

22. When I requested S.L. 2018-14 to be drafted, and when it was ratified by the General Assembly, I was not (and still am not) aware of any precedent that could call into question the constitutionality of a District Court district because of the relatively small population differences of residents per judge that exist under the Mecklenburg County District Court districts as established by S.L. 2018-14. The several valid reasons that support these differences include: first, the District Court

districts are based upon new Superior Court districts that were designed to remedy far worse population deviations in the prior Superior Court districts; second, the interests of justice and voter participation are served by using the same judicial districts for both Superior and District Court; and third, such imbalances as now exist are slightly higher because of efforts to avoid crowding incumbents in the same district.

This 11th day of November, 2019.



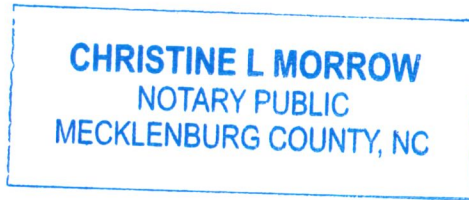
Dan Bishop

Sworn to and subscribed before me

this 11<sup>th</sup> day of November, 2019

Christine L Morrow  
Notary Public

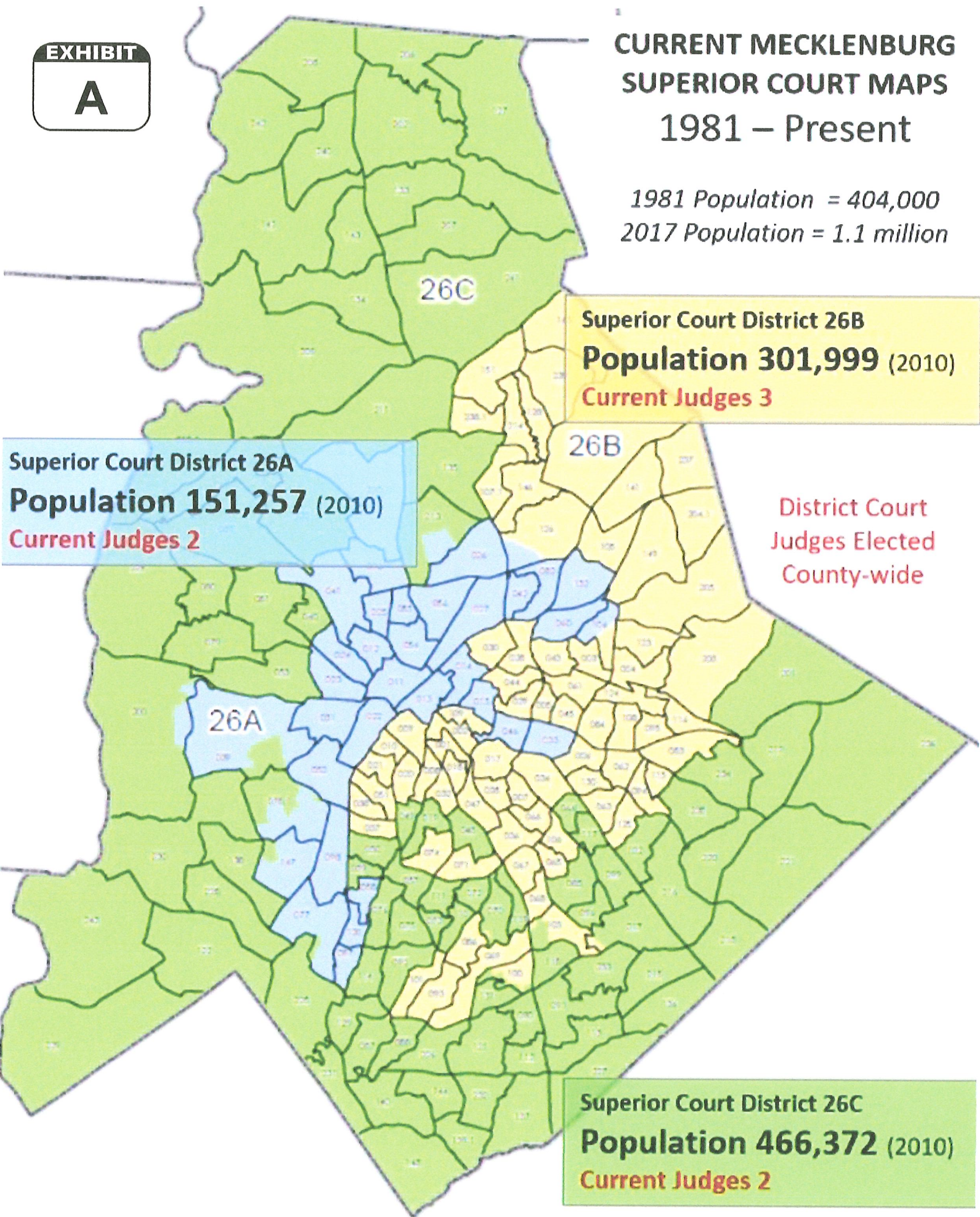
My commission expires: 10.7.24



**EXHIBIT**  
**A**

# CURRENT MECKLENBURG SUPERIOR COURT MAPS 1981 – Present

1981 Population = 404,000  
2017 Population = 1.1 million



Superior Court District 26A  
**Population 151,257** (2010)  
Current Judges 2

Superior Court District 26B  
**Population 301,999** (2010)  
Current Judges 3

Superior Court District 26C  
**Population 466,372** (2010)  
Current Judges 2

District Court  
Judges Elected  
County-wide