

EXHIBIT 3

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

SHAUNA WILLIAMS, et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his
official capacity as Chair of the House Standing
Committee on Redistricting, et al.,

Defendants.

Civil Action No. 23 CV 1057

NORTH CAROLINA STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

PHILIP BERGER, in his official capacity as the
President Pro Tempore of the North Carolina
Senate, et al.,

Defendants.

Civil Action No. 23 CV 1104

**EXPERT REPLY REPORT OF ANTHONY E. FAIRFAX
on the Development of Demonstrative Plans for
State Senate and House Districts for the State of North Carolina**

October 17, 2024

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5. Throughout the reports of Dr. Barber and Dr. Trende, they refer to precincts instead of Voting Districts (“VTDs”) in their analysis. I will follow suit and use precincts instead of VTDs throughout this reply report.
6. As I did in my opening report, I isolated the select cluster regions and performed simple modifications to the 2023 Enacted Plans in order to conduct my apportionment analysis. I used Maptitude. In order to respond to Dr. Barber’s suggestion that such changes were not possible, maps and reports were generated to display and present the small changes made using Maptitude. The partisan performance of the cluster districts was obtained by averaging the same 19 elections Dr. Barber used in his analysis. Like Dr. Barber, the data for these 19 elections was obtained from Dave’s Redistricting (“DRA”).

V. Apportionment Analysis

7. Dr. Barber disagrees with my statement that I find “no redistricting criteria justification for . . . the Enacted Plan[s]’ high population deviation” in specific regions of the state.² In support of this, he primarily cites the fact that none of the districts I examine in the enacted plans breach the state’s +/- 5% deviation limit for legislative districts.³ This fact is not in dispute, and so Dr. Barber’s report misses the point. I was not asked to determine whether the specific clusters fit within the state’s maximum allowable population deviation. Instead, I was asked to analyze the specific clusters and make a determination of whether any traditional redistricting criteria explained the population deviations that do exist within those specific clusters.⁴ Dr. Barber’s analysis tends to support rather than undercut my conclusion that the deviations I identified are not justified by any traditional redistricting criteria (i.e., equal population, contiguity, compactness, respect for political subdivisions, and preserving communities of interest).⁵
8. Dr. Barber also mentions my Illustrative Plans and their population deviations.⁶ My Illustrative Plans are, as the name denotes, illustrations. They are not designed to be the only possible plans, but instead demonstrate what reasonably configured districts can be drawn that would also include majority-BVAP districts. In this case, the Illustrative Plans demonstrate that *Gingles* I can be satisfied by constructing reasonably configured majority-BVAP districts. My Illustrative Plans and the clusters examined in my apportionment analysis cannot be

² Fairfax August 1, 2024 Report, pg 75.

³ Barber September 26, 2024 Report, pg 36.

⁴ In addition, I was not asked to consider non-redistricting criteria aspects such as the placement of geographic assets within certain districts. That is to say, placing a golf course or shopping center or another desired asset within a particular district. Those inclusions occur during the process of redistricting but are not part of the established traditional redistricting criteria.

⁵ See 2023 Senate Plan Criteria, N.C. Gen. Assembly (Oct. 2023), <https://webservices.ncleg.gov/ViewDocSiteFile/81635> (“Traditional Districting Principles. We observe that the State Constitution’s limitations upon redistricting and apportionment uphold what the United States Supreme Court has termed ‘traditional districting principles.’ These principles include factors such as ‘compactness, contiguity, and respect for political subdivisions.’ *Stephenson II* (quoting *Shaw v. Reno*, 509 U.S. 630 (1993)).”).

⁶ Barber September 26, 2024 Report, pg 37.

directly compared without considering that, unlike the clusters in the Enacted Plan, my Illustrative Plans adhere to both traditional redistricting criteria and compliance with *Gingles* I.

9. In contrast, as I mentioned in my initial report regarding population deviations within certain districts in the 2023 Enacted Plans, “I was able to create and observe multiple options that would allow me to shift one or two VTDs that would bring the district population closer to the ideal population and the overall population deviation closer to zero.”⁷ In his rebuttal, Dr. Barber does not dispute the possibility of this and the existence of such alternative possibilities is something I have commonly provided an expert opinion as to.⁸
10. However, since Dr. Barber suggests that such simple changes are not possible, Appendix A includes illustrative examples of each modified select cluster region, where the district’s population deviation moves closer to the ideal. For each of the cluster regions, I was able to locate, within a few minutes, multiple options where one or two precincts (VTDs) would bring the district’s population closer to the ideal and result in similar or better redistricting criteria metrics (e.g., compactness or political subdivision splits). *See* Appendix.
11. For example, the modified HD Wake County Cluster shows a lower deviation with just two precinct shifts (App’x Figure A-1 (precinct shifts in red), Table A-1 (deviation)) a change that slightly increases compactness scores (App’x Table A-2), and splits the same number of census places (App’x Figure A-2). Similar precinct shifts yield the same results in other clusters, proving that Dr. Barber’s doubts of whether this is possible are misplaced. *See* Appendix at pgs A-5–A-13.
12. The process of selecting a precinct and viewing the potential changed population for a district in Maptitude is extremely simple and straightforward. Any beginner to moderately experienced Maptitude map drawer would be able to easily identify multiple precinct options within minutes. The process is literally three steps. One, select the precinct (VTD) option as the desired level. Two, select the district to add to. And three, select the precinct to add. Once the precinct is selected the map drawer can view the total population, population deviation, and other results in the display window. To view other precinct options the map drawer would simply click on the clear the selection button and select another precinct.
13. The examples in Appendix A are by no means all or even most of the possible options for reducing the population deviation in each of these clusters; they are included simply to reassure that it is quite simple to reduce the population deviation, as I attested to in my initial report. But these examples confirm that Dr. Barber’s asserted concerns about the range of possibilities I described in my initial report are misplaced and without support.

⁷ Fairfax August 1, 2024 Report, pgs 65-68.

⁸ *See, e.g.*, Fairfax August 1, 2024 Report, pg 76 (attesting to the possibility of drawing such alternatives).

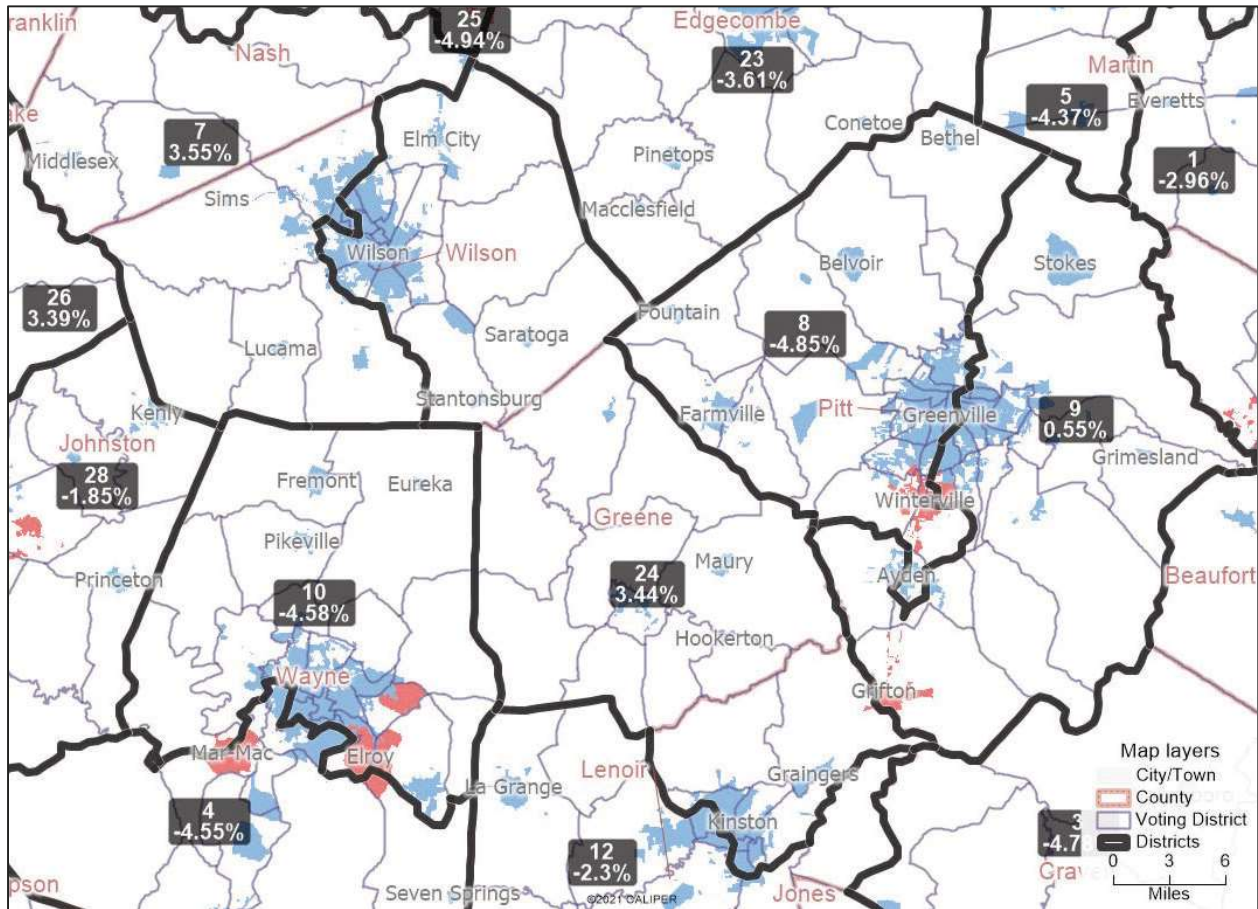


Figure 21 - Illustrative Plan B HD24 – Census Places

XI. Conclusion

72. After reviewing the analysis and responses from Dr. Barber and Dr. Trendle, my opinions remain the same as in my August 1, 2024 Report.

Dated: 10/17/24

Signed: Anthony E. Fairfax
Anthony Fairfax