IN THE UNITED STATES DISTRICT COURT
FOR THE 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

NAACP PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO RECONSIDER IN PART THE COURT'S ORDER ON PARTIAL SUMMARY JUDGMENT

INTRODUCTION

This is the rare case in which reconsideration is warranted. Newly submitted expert analysis addresses the precise evidentiary gap identified by the Court in dismissing Plaintiffs' malapportionment claims—whether partisan considerations predominated in driving the population deviations in the challenged districts. In that analysis, Legislative Defendants' own expert – Dr. Barber – opined that even minor apportionment changes within each challenged cluster would cause a "sizable shift" in partisan performance, confirming that those deviations were engineered to maximize Republican advantage. These opinions reinforce summary judgment evidence that (1) the district populations within each challenged cluster were deliberately manipulated to maximize partisan performance; and (2) no legitimate districting considerations informed apportionment within clusters. Dr. Barber also found that the only thing correlated with statewide population deviations was cluster-level deviations—demonstrating that the only way to understand deviation at a statewide level is to understand it cluster by cluster. These findings squarely reinforce Plaintiffs' malapportionment theory, in precisely the evidentiary area this Court previously found lacking.

Defendants' opposition does nothing to alter the consequences of their own Expert's opinions. Rather than confront them head on, they attempt to deflect by (1) erroneously reconfiguring the burden of proof for malapportionment, (2) engaging in post-hoc reinterpretation of Dr. Barber's opinions, and (3) repackaging old summary judgment arguments in lieu of briefing the narrow issue before the court now. None of these tactics rebut their own expert's report, nor the conclusion—supported by additional expert

analysis and witness testimony—that the population deviations in the four challenged clusters are explained by the pursuit of partisan advantage. Plaintiffs' motion for reconsideration should be granted and this Court should resolve the malapportionment claims after the opportunity to consider all evidence at trial.

ARGUMENT

I. Legislative Defendants Misconstrue Plaintiffs' Burden of Proof.

Plaintiffs' evidentiary burden at summary judgment was to "cite[] evidence from which a rational trier of fact could find" that "the pursuit of partisan advantage predominated over all traditional districting criteria, resulting in the minor deviations from mathematical equality within the House and Senate maps." Doc. 98 ("PSJ Order") at 22, 28. Legislative Defendants contend that only one form of evidence can satisfy that standard: a uniform, linear pattern of overpopulating disfavored (here, Democratic) districts and underpopulating favored (Republican) ones. Doc. 113 ("Opp'n") at 7-8. But that argument misapprehends the *Larios* test, conflating the harm itself—unequal voting power—with the mechanism by which that harm is achieved. This Court should reject Defendants' constrained evidentiary standard.

To be sure, *Larios* held that the systematic over- or underpopulation of districts to secure partisan advantage can constitute evidence of illegitimate political districting considerations. *Larios v. Cox*, 300 F. Supp. 2d 1320, 1325 (N.D. Ga.), *aff'd*, 542 U.S. 947 (2004) (mem.). The constitutional violation *Larios* identified, however, is not systematic manipulations for partisan advantage, but the *unequal voting strength* created by those

manipulations. *Larios*, 300 F. Supp. 2d at 1351. The injury is malapportionment; the mechanism is pursuit of partisan advantage.

Neither *Larios* nor its progeny require a rigid one-to-one relationship between over- or underpopulation and party lean in every district; nor do they foreclose the possibility that apportionment manipulation may take more complex forms. Precedent reinforces the need for a holistic, fact-intensive analysis of the challenged population deviations, rather than the reductive test Defendants propose. *See Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 342-43 (4th Cir. 2016) (considering a range of factors—including correlation between deviation and partisanship, consistency of deviations, availability of less biased alternatives, and sequence of events leading to the plan's adoption—to determine whether improper motives predominated); *Perez v. Abbott*, 250 F. Supp. 3d 123, 190 (W.D. Tex. 2017) (same). Application of the appropriate burden of proof indicates this fact-intensive analysis must occur at trial and that, in light of new evidence produced, judgment as a matter of law would be clear error.

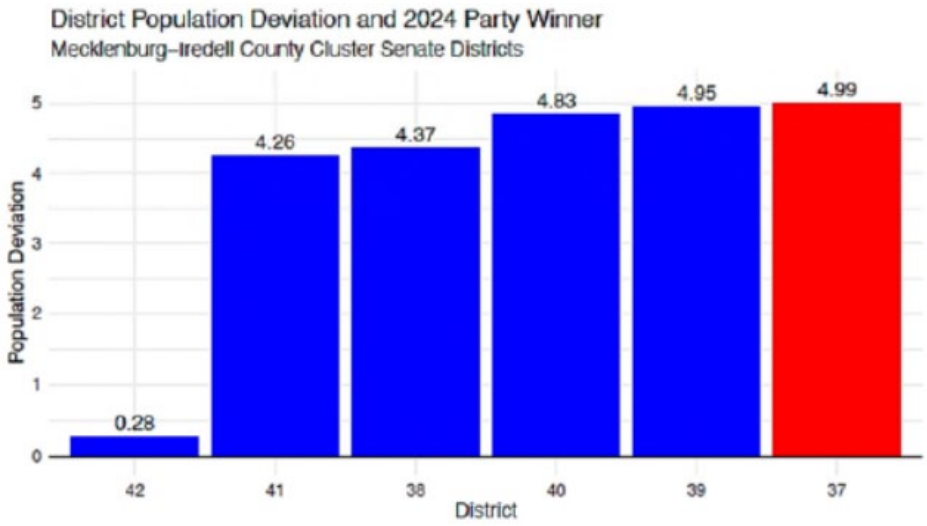
II. Legislative Defendants' Own Witnesses and Evidence Confirm "No Other Considerations" Were Made Beyond Partisanship in the Challenged Clusters.

Defendants' oversimplified view that malapportionment can only be shown through a uniform, statewide pattern is contradicted by their own expert. Dr. Barber's supplemental report and deposition testimony confirms that systematic partisan advantage can be achieved through multiple methods of district population manipulation—and that the challenged clusters are four such examples. As Dr. Barber explained, each challenged cluster is carefully calibrated to maximize Republican advantage; district deviations are so

finely tuned that even minor tweaks—even a single digit or fraction of a percentage point—produce a "sizable shift" in the district's partisan composition. Doc. 101-2 at 32-35.

The charts in Defendants' Opposition illustrate this truth: The stark asymmetries among the districts within each cluster (each of which contain at least one district extremely close to *Stephenson*'s absolute limit of +/-5%) belie any good faith effort to equalize population and instead reveal deliberate malapportionment to produce Republican advantage. Take the **Mecklenburg-Iredell County cluster**:

Figure 9: Apportionment in Iredell-Mecklenburg County Senate Districts and Incumbent Party in Each District



Opp'n at 10.

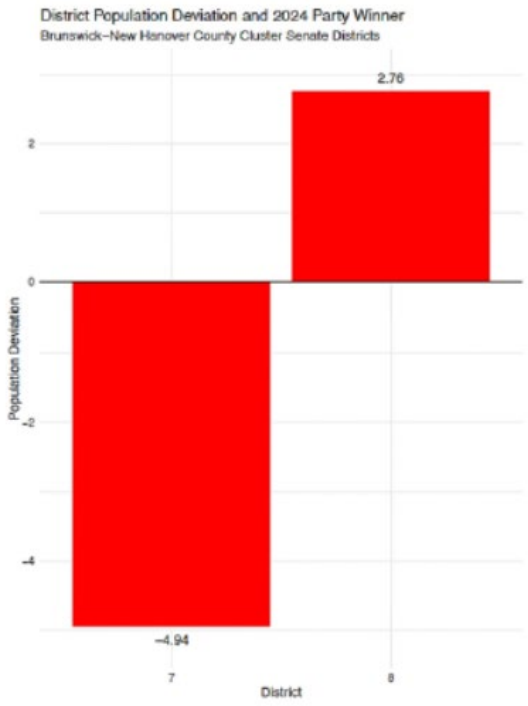
Defendant's chart shows that SD42 is nearly 4% underpopulated compared to every other district in the cluster. The remaining districts—SD37 through SD41—are all overpopulated, most by nearly 5%. While SD42 has a slight Democratic lean, it is "very competitive[.]" Doc 101-2 at 33. This illustrates how the northernmost districts were overpopulated to allow southernmost SD42 to remain underpopulated and more favorable

to Republicans. Doc. 101-3 at 8. If SD42 took on additional population from its neighbors, moving toward equal population, it would become more Democratic. *Id.;* Doc 101-2 at 33.

Defendants argue this means nothing, because the most overpopulated district in the cluster is Republican. Opp'n at 9-10. But this observation *supports* Plaintiffs' theory. SD37 is a heavily Republican district, configured in a portion of the cluster (containing all of Iredell County) where it is impossible to draw anything but a heavily Republican district. By taking on as much population as possible (one-hundredth of a percent away from the *Stephenson* maximum) without risking partisan performance, SD37 starts a cascade of overpopulation from north to south, leaving the fewest voters in southernmost SD42. Doc. 101-3 at 8. As Dr. Barber opined, including any additional population in SD42 would harm Republican performance. Doc. 101-5 at 37:2-24. Overpopulating SD37 ensures that this never comes to pass. That a Republican district is also overpopulated does not change that SD42 is underpopulated for partisan advantage.

The **New Hanover cluster** graph depicts a different, but equally effective variant of population manipulation for party advantage:

Figure 10: Apportionment in Brunswick-New Hanover County Senate Districts and Incumbent Party in Each District



Opp'n at 11.

This illustrates that SD7 is underpopulated by nearly 5% (again very near the *Stephenson* limit) and differs from SD8 by 7.7%—no mean feat in a cluster with only two districts. What the chart does *not* show is that SD7's lower population results from carving out the most Democratic (and most Black) population—downtown Wilmington—and assigning it to SD8, where it is subsumed in heavily Republican areas. Doc. 101-3 at 8. This severs the heart of Wilmington from the rest of the municipality, diluting its voting strength across both districts. *Id.* Splitting downtown Wilmington preserves SD7 as a Republican-leaning district while keeping SD8 safely Republican. *Id.*

Defendants' counterargument is that there is no partisan advantage created by this deviation simply because "Republicans won both districts[.]" Opp'n at 11. This is contradicted by Dr. Barber's opinion that even small shifts will harm Republican partisan performance in SD7. Doc. 101-2 at 33. And even if a Democrat had won SD7, these deviations ensure that SD7 will be much closer than if the districts were more equally populated.

Defendants' charts for Wake and Forsyth tell a similar story. Opp'n at 10-12. Do these charts evince a "good faith effort to construct districts" "as nearly of equal population as is practicable" in these clusters? *Reynolds v. Sims*, 377 U.S. 533, 577 (1964).[1] To ask the question is to answer it, so Defendants dare not.

The partisan consequences in the challenged clusters are not "random" as Defendants suggest. Opp'n at 12. They are simply more nuanced than uniformly underpopulating Republican districts and uniformly overpopulating Democratic ones—as observed by Dr. Barber, the clusters are so precisely engineered to favor Republicans that even slight changes would cause "sizable shift[s]" towards Democrats. Doc. 101-2 at 32-35.

Dr. Barber's conclusions dovetail with Plaintiffs' expert evidence that no other legitimate districting criteria accounts for population deviations in the challenged clusters. Doc. 101-6 at 64-68; Doc. 101-3 at 5; *see Larios*, 542 U.S. at 949 (weighing heavily findings that population deviations did not result from any attempt to create compact or

[1] This remains the standard even for deviations of less than 10%. All that changes in such a case is who bears the burden of proof. *Daly v. Hunt*, 93 F.3d 1212, 1219-20 (4th Cir. 1996).

contiguous districts, keep counties whole, or preserve prior district cores). They also confirm the map drawers' testimony that partisan gain was the sole consideration informing intra-cluster deviations. *See* Doc. 102 ("Mot.") at 11. Legislative Defendants' newfound assertion that "no evidence even hints that the General Assembly underpopulated and overpopulated districts along partisan lines," Opp'n at 18, is belied by admissions throughout the record. *See e.g.,*

- Doc. 82-14 (Hise Dep. Tr) at 457:22-458:23 (testimony that Senate map drawers "picked the precincts that in the presidential race had performed least well for Republicans and removed them … from New Hanover County");
- Hise Dep Tr. ("Ex. A") at 458:22-459:13 (testimony that "no other considerations" were made in apportioning the New Hanover County cluster apart from equal population requirements and political considerations);
- 10/23/23 Senate Tr. ("Ex. B") at 34:19-35:1 (Senate floor testimony justifying New Hanover cluster lines based on partisan performance);
- Ex. A at 463:4-9 (testimony that, in configuring the Mecklenburg-Iredell cluster, map drawers "would try to get the political—historic political performance as high as [they] could on the races [they] selected without violating—without splitting a VTD or a municipal boundary.").
- Doc. 82-15 (Springhetti Dep. Tr.) at 95:5-7, 143:2-4 (testifying that adjustments to the House draft map were based on "partisan performance" and that no discussion of equal district population occurred, just making districts "[p]lus or minus 5 [percent] straightforward.")

At minimum, this evidence creates an issue of fact as to whether "the pursuit of partisan advantage predominated" in the apportionment of the challenged clusters. Testimony confirms that the map drawers apportioned each cluster to maximize Republican performance to the fullest extent possible within the minimally compliant +/- 5% population deviation for each district. Dr. Barber confirms that each cluster was

engineered to achieve that outcome. And Mr. Fairfax confirms that no legitimate districting criteria accounts for the population deviations in question.

III. Dr. Barber's Report Provides Powerful Evidence That Plaintiffs' One-Person One-Vote Claims Are Best Evaluated at the Cluster Level, Not the Statewide Level.

Despite Legislative Defendants' attempts to reframe their own expert's opinions, Dr. Barber's newly-available report plainly states that the most relevant analysis of an individual district's population deviation is within that district's cluster:

> The only variable that is statistically significant [to a district's population] is the variable measuring the county cluster average population deviation. This makes sense given that districts that are drawn from county clusters that start out over (or under) populated are much more likely to themselves also be over (or under) populated.

Doc. 101-2 at 41. Defendants' claim that Plaintiffs somehow "misread" Dr. Barber's meaning, Opp'n at 13, cannot change the logical consequence of Dr. Barber's opinions: in North Carolina, cluster-level deviation is the most relevant comparator for individual district deviation.[2]

IV. Dr. Barber's Deposition Testimony Supports Plaintiffs' Arguments.

Legislative Defendants erroneously argue that NAACP Plaintiffs "misread" and "misstate the record," Opp'n at 13, 16, and instead attempt to explain what Dr. Barber himself meant to say by contending that, if he had an opportunity to explain, his answer could have been different. Opp'n at 14-15. But Dr. Barber did have a chance to explain his opinion in the deposition and asked follow-up questions to clarify what he was being asked. *E.g.*, Doc. 101-5 at 12:21-13:16. A plain reading of his testimony confirms Dr. Barber's

[2] At most, Defendants offer contrary interpretations of the plain statements in Dr. Barber's reports, signifying that this issue should be resolved at trial.

opinions are clear that any reduction in population deviation would diminish Republican partisan performance in the challenged clusters.

Specifically, Dr. Barber testified that when mapdrawers "go to draw the districts inside of that grouping, those districts are more likely to be overpopulated themselves." Doc. 101-5, at 12:14-16. Dr. Barber agreed that if a mapdrawer "were to try to make every district within a particular cluster have the exact same population figure, that as the ideal, we would take that [] as the ideal population figure for that cluster, [and] that number will change depending on which cluster you are in." *Id.* at 13:1-16. And Dr. Barber testified that "there's a strong relationship[]" between "what cluster a district is in" and "what population that district will have across the plan as a whole[.]" *Id.* at 13:17-22. He added that "the county clusters are hard boundaries[,] and that "[t]he districts do not cross over the county groupings." *Id.* at 15:3-13.

Dr. Barber further testified that comparing deviations between districts within the same cluster is analytically valid. *Id.* at 15:19-25. He agreed that "the districts in separate clusters [] do not impact the population figures in each other[.]" *Id.* at 16:1-6. And with respect to the particular clusters Mr. Fairfax identified, Dr. Barber's testimony confirmed that moving virtually any VTD into or out of the challenged districts would either harm the Republican partisan performance in that cluster or cause a district's population deviation to exceed +/-5%. *Id.* at 29:1-31:14 (Brunswick-New Hanover), 37:2-24 (Iredell-Mecklenburg), 39:21-40:21 (Wake), 44:24-45:8, 46:1-20 (Forsyth-Stokes). Dr. Barber's testimony aligns with his report: the only variable correlated with statewide population

deviation is cluster-level population deviation, and this correlation is "strong[.]" *Id.* at 13:17-23. This confirms the best place to assess deviations is at the cluster level.

Legislative Defendants' newfound objection to Dave's Redistricting is also unavailing. Opp'n at 16. Dr. Barber himself repeatedly relied on Dave's Redistricting. Barber Dep. Tr. ("Ex. C") 35:6-18, 137:9-25. It is not suddenly an unmoored, unreliable source because Plaintiffs also rely on it. And further, Dr. Barber was told the exhibits relied on the preset DRA elections and accepted that characterization. Barber Supplemental Tr. 43:1-15 ("Ex. D").

Similarly, Legislative Defendants' contention that "NAACP Plaintiffs' counsel failed to supply the information Dr. Barber needed to offer accurate answers," Opp'n at 17, falls flat in light of the transcript of his testimony. Dr. Barber repeatedly caveated his testimony where he felt necessary, yet none of these caveats prevented Dr. Barber from testifying that the challenged clusters were optimized for Republican partisan performance. For example, despite caveating that he would want to study the elections used and populations of various VTDs, Dr. Barber testified that it's "an accurate description" to recognize that Senate District 42 is "at a minimum, one of the most Republican leaning districts you could draw in this area of the state[.]" Doc. 101-5, at 37:2-24. Dr. Barber came to similar caveats—and conclusions—throughout his deposition. *See generally* Doc. 101-5. Defendants' argument that Dr. Barber needed more information to offer such opinions is undermined by his own testimony, where he offered such opinions regardless. In any event, these qualms about his testimony go to the weight of the evidence and is appropriately reserved for consideration at trial, not summary judgment.

Defendants also suggest that these portions of Dr. Barber's deposition are inadmissible. Opp'n at 17. But even assuming these arguments were correct (they are not), inadmissible deposition testimony can demonstrate a triable issue of fact where "it will be possible to put the information . . . into an admissible form." *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 538-39 (4th Cir. 2015) (internal quotations and alterations omitted).

V. Defendants Mischaracterize Prior Briefing.

Defendants erroneously contend that the parties "fulsomely briefed" at summary judgment one of the principal questions now before the Court: whether malapportionment claims require plan-wide evidence of systemic partisan advantage as a matter of law. Opp'n at 4. That claim is plainly incorrect. It is telling that Defendants cannot point to any substantive discussion of the issue in their own summary judgment papers. They cannot because they did not brief the issue at summary judgment. Nor did Plaintiffs. Though Defendants cherry-pick from Plaintiffs' opposition, two of the quoted statements—related to the constitutional injury in a malapportionment claim—are fundamental to the issue of standing, not the merits of malapportionment. Doc. 82 at 18. There is a difference between the two, as Defendants readily acknowledge. *See* Opp'n at 21 (citing the Court's observation that a ruling on the merits is distinct from a threshold standing inquiry).

Likewise, the cited position that Plaintiffs "may '*Appropriately Allege Deviations Within County Clusters*,'" *id.* at 4, did not respond to any claim by Defendants that malapportionment challenges require plan-wide evidence of partisan manipulation—because no such claim was made. Instead, it rebutted Defendants' argument that

malapportionment can be proven only if illegitimate considerations predominated over the county-grouping requirement. *Id.* at 16-18.

Even now, Defendants stop short of endorsing a plan-wide malapportionment standard in opposing reconsideration—understandably so, given the substantial precedent rejecting that approach. *See* Mot. at 15-16. Defendants instead renew their argument that partisan gerrymandering is insufficient to establish actionable malapportionment under *Rucho*. Opp'n at 7-8. The Court expressly declined to take up that issue (SJ Order at 22), and notably, no other court has ever applied *Rucho* as Defendants urge. Doc. 82 at 24. That is because malapportionment claims are meant to address a constitutional harm not contemplated in the political gerrymandering framework: the "[o]verweighting and overvaluation of the votes of those living here … and undervaluation of the votes of those living there," resulting in "discrimination against those individual voters living in disfavored areas." *See* Opp'n at 8 (quoting *Sims*, 377 U.S. at 563; *see also* Doc. 82 at 23-26). As previously explained, Doc. 82 at 23-26, Defendants cannot justify deviations from the one-person, one-vote guarantee of the Equal Protection Clause without a legitimate state interest. Partisan advantage cannot be such an interest.

CONCLUSION

Plaintiffs respectfully request the Court reconsider and reverse its dismissal on partial summary judgment of their malapportionment claims in Counts 3 and 7 of the NAACP Complaint based upon new evidence available and/or clear error in the court's prior order and/or to avoid a manifest injustice in preventing Plaintiffs from presenting evidence on these claims at trial.

Additionally, Plaintiffs respectfully request that if this motion remains under consideration by the Court before trial, that the Court allow a proffer of evidence on Counts 3 and 7 at trial to allow for an orderly disposition of the matter.

Dated: May 24, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 3,123 words as counted by the word count feature of Microsoft Word.

/s/ *Christopher Shenton*
Christopher Shenton

CERTIFICATE OF SERVICE

I certify that on May 24, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ *Christopher Shenton*
Christopher Shenton

Exhibit A

Excerpts of Sen. Ralph Hise Deposition

be removed.

We ultimately decided -- don't know that the decision is at this level, as that doesn't match the final. The final decision was that we picked the precincts that in the presidential race had performed least well for Republicans and removed them from -- or most well, depending on which side of that aisle you're on -- and removed them from New Hanover County.

Q. So the precincts that were the most heavily Democratic, you moved them over so SD8?

A. Specifically the precincts that had voted least heavily for Donald Trump.

Q. Was Donald Trump the candidate of choice for Black voters?

MR. STRACH: Objection.

THE WITNESS: We've been through this a couple of times. I think to the concept of saying did the majority of Black voters vote for Donald Trump, I think the answer is clearly no.

BY MS. HARRIS KLEIN:

Q. So I see a black number and a red number in that area. Can you tell me what those are?

A. The black number -- I am almost positive that that is a deviation from normal percentages. So we're looking to say is it between minus 5 or plus 5 for

that district; so does it meet the equal population requirements.

The red number is an election result, and I will make a general assumption that it is presidential performance.

Q. Other than the political consideration, were there any other criteria -- so other than the equalizing population and the political that you've mentioned, were there any other criteria that can explain that little notch that goes into New Hanover County?

A. There are no other considerations that we made.

Q. Let's look at Mecklenburg County.

A. Yes.

Q. Do you recall where the idea for Mecklenburg County came from? I guess it's the Mecklenburg/Iredell --

A. It is. Pod.

Q. -- pod.

Do you recall where the idea came for that idea?

A. Similar to what I've said before. Iredell is actually fairly close to being a full district. Has a very narrow region at the top where it contains to

keeping one of the non-Charlotte municipalities whole and getting a better political percentage, which one --

A. If it were towards keeping a full -- not dividing a municipality, not dividing a VTD, we would try to get the political -- historic political performance as high as we could on the races we selected without violating -- without splitting a VTD or a municipal boundary.

Q. Did you work with anybody who's familiar with the Mecklenburg area when you drafted this part of the senate map?

A. Senator Newton would be the chair that is closest to the Mecklenburg area. Has the part of "Sweet Union," as he says, that is part of that. But he does not reside in Mecklenburg County.

Q. Without telling me any communications that he's told to you, what is your general understanding of his familiarity with the area?

A. As residing in a neighboring county, not as a legislator who interacts with their elected officials or runs for office within the county.

Q. Let's go to the next exhibit. This will be marked Exhibit 44.

(Exhibit No. 44 was marked for identification.)

Exhibit B

Excerpts of October 23, 2023 Senate Redistricting Committee Hearing

probably in the stat pack, but I don't know which of these maps that I have in front of me has it. The racial breakdown of those six precincts.

SENATOR DANIEL: Well, just to remind the committee, this map was not drawn using any racial data. It hadn't been uploaded into the computer at that point. And so staff may have that information now, but I haven't looked at it.

SENATOR NEWTON: With that caveat, I'll turn to Ms. Churchill.

ERIKA CHURCHILL: Mr. Chair, if you'll give me just a moment, I'm pulling up the stat pack online.

SENATOR NEWTON: You take your time.

While we're looking for that, Senator Hise has a comment or a question.

SENATOR HISE: Yes. I would also just to add to the discussion that it is clear in this process that we used political consideration in drawing these maps, and the districts represent the political decision as they are some of the strongest Democrat voting precincts within District 7 -- or within

New Hanover county, not within District 7.

SENATOR NEWTON: Ms. Churchill.

ERIKA CHURCHILL: Thank you, Mr. Chair.

From the stat pack that is available on the General Assembly's website, District 7 has a total black population of 16,543 which equates to 8.34 percent. District 8 has a total white population of 36,975 which equates to 17.23 percent.

We do not currently have those available as broken down by split municipalities, but we can attempt to get that information for the committee if that is desired.

SENATOR NEWTON: Is that a "yes," you do desire that?

Okay. Thank you, Ms. Churchill.

Any other comments or questions?

Senator Blue.

SENATOR BLUE: Thank you, Mr. Chairman.

First, I believe that everybody on the committee, and including the chairs and the president pro tem, got a letter from the Southern Coalition for Social Justice in response to Senator Hise's invitation that

Exhibit C

Excerpts of October 30, 2024 Deposition of Dr. Barber

in aggregating and collecting that data at the precinct level and so the research outlet that compiled these elections, for some reason, maybe hit a snag or some reason that they were unable to do the work for that particular year, but I'm not entirely certain.

Q What's the research outlet that compiled the election -- the precinct level election results for these races?

A So I obtained these data from a source called Dave's Redistricting. It's a redistricting platform that's publically available and they compile election results. They rely on, in some cases, a team that's called VEST, V-E-S-T. And I'm going to -- I can't remember the -- it's an acronym and I can't remember the exact acronym. It's Voting Election -- I think it might be Voting Election Study Team and it's a group of academics who gather and compile election results and then disaggregate them to the precinct level.

Q So you're not disputing that there was a contested Supreme Court race statewide in 2018?

MS. RIGGINS: Objection. Go ahead.

THE WITNESS: I don't know.

Q Do you know whether these are the most probative elections for you to study or include in your partisan index?

Court and a judge makes that call.

Q Staying with your report, I think I see where my mistaken page number came from, jumping up to page 9, it should be on the screen now, I want to direct your attention to footnote 3, where you list the 19 statewide election results that you considered the conducting your analysis; is that right?

A Yes.

Q And you use these elections because they were available in Dave's Redistricting Map; is that correct?

A Yes, in addition to the fact that they're statewide elections, right.

Q Did you consider using any elections besides these?

A Not with any serious -- not with any real seriousness, given the difficulty in assembling and aggregating the data. So these were readily available and met the needs of what I felt was necessary to do in this report.

Q Fair to say that the reason these are the elections you relied upon is because the data was available and reliable?

MS. RIGGINS: Objection. Go ahead.

THE WITNESS: Available and reliable and met the -- like met the needs of the task that I was --

Exhibit D

Excerpts of April 11, 2025 Deposition of Dr. Barber

District 75? I will take it as a standing stipulation you don't know which elections these are. I will represent to you it's the standard composite from Daves Redistricting.

MS. RIGGINS: Objection. Doctor Barber, you can answer to the extent you know and this exhibit actually shows you the top of the cluster, which I'm not sure it does. But go ahead.

A. It looks like there is one, two -- it looks like there's possibly four precincts that he could choose from if he were to select from District 75. All four of those appear to have a Republican lean to some degree, some more than others.

Yeah. There is variation there. So there's, you know, a few options available to him there. I would just also note that 91 is adjacent to other -- other districts. And so there is, you know, other -- as he says, there is like probably other potential configurations that one could do as well in this grouping.

Q. But of those VTDs that could move from HD 75 to HD 91 while still being contiguous, all of those VTDs moving from anyone -- let me