

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

COMMON CAUSE, et al., )  
)  
Plaintiffs, )  
vs. ) Civil Action No.  
) 1:16-CV-2016-WO-JEP  
ROBERT A. RUCHO, in his official )  
capacity as Chairman of the North )  
Carolina Senate Redistricting )  
Committee for the 2016 Extra )  
Session and Co-Chairman of the )  
Joint Select Committee on )  
Congressional Redistricting, )  
et al., )  
)  
Defendants. )  
)  
LEAGUE OF WOMEN VOTERS OF NORTH )  
CAROLINA, et al., )  
)  
Plaintiffs, )  
vs. ) Civil Action No. 1:16-CV-1164  
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Carolina Senate Redistricting )  
Committee for the 2016 Extra )  
Session and Co-Chairman of the )  
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et al, )  
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Defendants. )  
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)

VIDEOTAPED DEPOSITION OF  
REPRESENTATIVE DAVID LEWIS

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9:28 A.M.  
THURSDAY, JANUARY 26, 2017

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POYNER SPRUILL  
301 FAYETTEVILLE STREET, SUITE 1900  
RALEIGH, NORTH CAROLINA

1                   So I became, I guess, acutely  
2 interested in it because I was having to run in  
3 a year in which litigation was radically  
4 changing the normal schedule of elections.

5                   Other than that, my -- I was elected in  
6 2002, and in 2003, one of my duties was to vote  
7 on the redistricting plan that was presented,  
8 but I was in no way involved in the preparation  
9 of that plan.

10                  In 2011, then Speaker Tillis asked me  
11 to serve as senior chairman of the House  
12 Redistricting Committee. The House is a big  
13 body, so it's not unusual to have multiple  
14 chairs. My designation as senior chair meant  
15 that I was the overall chair of the committee.  
16 So in that capacity, I led the House  
17 redistricting effort for both the U.S. Congress  
18 and the North Carolina House and served in that  
19 capacity from early 2011 until that term ended.  
20 I do not believe the House reconstituted a  
21 redistricting committee.

22                   In February of 2016, then current  
23 Speaker Moore and Senator Berger appointed a  
24 Joint Legislative Redistricting Committee  
25 between the House and the Senate to respond to

1 the recent court ruling in the Harris case, and  
2 I was named chair for the House of that  
3 committee

4 Q. In 2011 had you requested or made known your  
5 interest in serving as senior chair of the  
6 redistricting committee?

7 A. I had not.

8 Q. Why do you feel you were chosen to lead that?

9 A. Candidly, I think there's a couple of reasons.  
10 One, it's obvious that I'm unelectable to  
11 congress, and so I think the Speaker felt that I  
12 would not have personal ambition at stake.

13 Two, I had worked with my colleagues to  
14 develop a level of trust and fairness. I think  
15 being the redistricting chair means, you know, a  
16 lot of people take the decisions that have to  
17 come out that are policy decisions very  
18 personally, and I think the Speaker felt that my  
19 personality would be able to win enough votes to  
20 pass a plan without angering too many folks.

21 Q. And when you say people may be angry because  
22 they take decisions personally, how -- in the  
23 context of serving in the legislature, how does  
24 that get communicated to a redistricting chair?

25 A. Well, the best way to communicate is to vote no,

1 but certainly you have conversations, people  
2 say, you know, I wish you would put this line  
3 here or you know I've always represented  
4 County X and now I will no longer represent  
5 County X, why are you doing this to me. Those  
6 are the kinds of things that are said both in a  
7 formal setting such as a redistricting committee  
8 but also in the more intimate setting of the  
9 hallways of the legislature or in the  
10 legislative cafeteria, et cetera.

11 Q. And do legislators express those sorts of  
12 concerns that you just talked about as to both  
13 state legislative and congressional lines?

14 A. Yes.

15 Q. I want to talk about the 2011 plan and your role  
16 in the creation of that plan.

17 You acted as senior chair of the House  
18 Redistricting Committee and worked with  
19 Senator Rucho who was chairing the Senate  
20 committee, correct?

21 A. Yes, sir.

22 Q. And how was your role and Senator Rucho's role  
23 defined by those chair positions?

24 A. The chair of a legislative committee is  
25 responsible for the overall administration of

1 the committee in accordance with the Chamber  
2 rules. The chair is generally afforded the  
3 opportunity to appoint committee staff such as  
4 they are. We're not like congress where we have  
5 necessarily large staffs.

6 The specific goal that Senator Rucho  
7 and I had legislatively was to try and create a  
8 plan -- we were -- we were acutely aware that  
9 North Carolina, I believe along with Texas  
10 combined have more legislative -- I mean more  
11 redistricting appeals and litigation than any  
12 other state. So we tried to develop a plan that  
13 we thought followed the law. That's largely  
14 documented in the legislative guide of 2011.

15 Off the top of my head, certainly we  
16 wanted -- we understood in congressional  
17 redistricting that you had the one-person,  
18 one-vote requirement that the districts needed  
19 to be the same size so everybody's vote counts  
20 the same. There was compliance with the Voting  
21 Rights Act. North Carolina had one Voting  
22 Rights Act district. We paid special attention  
23 to that. And then we drew the rest of the  
24 state.

25 Q. And when you say "we drew the rest of the

1 state," you did not actually draw the lines for  
2 the maps, correct?

3 A. I did not actually maneuver the mouse to draw  
4 the lines, no, sir.

5 Q. Who actually drew the lines for those maps?

6 A. Dr. Tom Hofeller.

7 Q. And Dr. Tom Hofeller was hired by you and  
8 Senator Rucho, correct?

9 A. During the 2011 cycle, I am unclear of exactly  
10 who hired Dr. Hofeller.

11 Q. Do you know who made the decision to hire Tom  
12 Hofeller as the map drawer for the 2011 cycle?

13 A. To the best of my knowledge, Senator Tillis had  
14 already started the wheels in motion before I  
15 was named chair.

16 And forgive me, for the record, he is  
17 now senator. I should have referred to him as  
18 Speaker Tillis. My apologies.

19 Q. But you had met Dr. Hofeller previously,  
20 correct?

21 A. I had met Dr. Hofeller once before. I believe  
22 it was in 2009. I attended a meeting of the  
23 Republican National Committee and Dr. Hofeller  
24 was one of the presenters. He spoke about  
25 redistricting.

1                   At the time I held North Carolina seat  
2                   on the RNC's redistricting committee. I don't  
3                   recall Dr. Hofeller's presentation in great  
4                   detail. I do recall, like everything else the  
5                   RNC does, it was you need to get ready for this,  
6                   you need to be able to raise money for this, you  
7                   need to be able to hire good people to do this,  
8                   you need to take this seriously, largely the  
9                   same kind of stuff that they always do.

10                  Q. How did they explain the importance of those  
11                   preparations?

12                  A. Well, they just reiterated that redistricting is  
13                   a once-in-a-decade project that many states  
14                   don't gear up for and have to kind of reinvent  
15                   the wheel every time, if you will. They talked  
16                   about just being prepared.

17                                I do recall, of course, that there was  
18                   talk that it was widely believed that the other  
19                   side, the Democratic Party, had controlled the  
20                   redistricting process for a long time and that  
21                   there would possibly be opportunities to weaken  
22                   that iron hand that the Democrats held on in  
23                   most of the states at that point.

24                  Q. And did you have an understanding at that  
25                   time -- at that time of the importance of

1 not receive this letter?

2 A. That's correct.

3 Q. Were you aware at the time that Dr. Hofeller  
4 began working for North Carolina on the 2011  
5 redistricting that Dr. Hofeller also worked for  
6 the Republican State Leadership Committee?

7 A. I was not.

8 Q. Were you aware that Dr. Hofeller was working on  
9 redistricting issues outside of North Carolina?

10 A. Yes, I was.

11 Q. And what did you understand his work to entail?

12 A. I knew that Dr. Hofeller was involved in other  
13 states. I would have to make an assumption that  
14 he was drawing maps. The reason I knew he was  
15 involved in other states is we would often have  
16 to schedule the times that we could meet with  
17 him when he was going to be in North Carolina  
18 and not in another state.

19 Q. And for his work in North Carolina,  
20 Dr. Hofeller, as a technical matter, was hired  
21 by the Ogletree firm, correct?

22 A. I believe that to be correct, yes, sir.

23 Q. And the State hired the Ogletree firm?

24 A. Yes, sir, that's correct.

25 Q. But you had direct communications with



1 Dr. Hofeller regarding the 2011 plan, correct?

2 A. Yes, sir.

3 Q. And in those communications, you provided  
4 instructions to Dr. Hofeller as to the criteria  
5 under which he should draw the 2011 plan,  
6 correct?

7 A. Yes, sir.

8 Q. Those instructions were not in written form,  
9 though, correct?

10 A. Correct.

11 Q. Did you communicate any instructions to  
12 Dr. Hofeller regarding the criteria for 2011 in  
13 writing?

14 A. I don't believe so.

15 Q. What were your instructions to Dr. Hofeller in  
16 drafting the 2011 plan?

17 A. I wanted to prove that we could navigate the  
18 myriad of legal court of opinions and statutory  
19 requirements and pass a plan that complied with  
20 the law.

21 Q. Did you discuss with Dr. Hofeller at the time of  
22 the 2011 plan being drafted the expected  
23 partisan performance of the districts he was  
24 drawing?

25 A. I don't recall that that was discussed

1 Q. Do you recall any discussion with Senator Rucho,  
2 Dr. Hofeller or any legislative staff about the  
3 use of partisan advantage as a criteria --  
4 criterion for enacting a plan?

5 A. I don't recall any specific discussions. I  
6 believe that partisan considerations have  
7 historically been a traditional redistricting  
8 principle, and so I'm confident that at some  
9 point those -- we did discuss partisan  
10 ramifications or possibly partisan likely  
11 outcomes of the districts that were going to be  
12 drawn.

13 Q. And on what basis would you assess those  
14 outcomes?

15 A. I think we would have looked at historical  
16 vote -- votes that had been cast and try to use  
17 that as a predictor of future elections.

18 Q. And on what basis did you rely on past election  
19 results for that purpose?

20 A. I'm sorry, I don't understand your question.

21 Q. For what reason did you rely on past election  
22 results as a predictor of possible future  
23 election results?

24 A. The nature of redistricting is a political  
25 undertaking. There are numerous laws and court

1 decisions that impact the ability of map drawers  
2 to create a legal document. We attempted to  
3 understand all of those and apply them.

4 But to be candid, when you apply all  
5 the rules that are there, there are sometimes  
6 some discretionary decisions that could be made,  
7 and I've been open and candid with folks that  
8 when it gets to that point and all the other  
9 thresholds have been met -- we're talking about  
10 2011 -- that I would often view those decisions  
11 through a partisan lens.

12 Q. And so the partisan considerations that you just  
13 discussed you would put in the category of those  
14 discretionary decisions, correct?

15 A. Yes, sir.

16 Q. At the time of the 2011 plan, do you recall the  
17 use of the specific term "partisan advantage" as  
18 a criterion discussed for drawing the  
19 legislative -- I'm sorry -- the congressional  
20 maps?

21 A. I don't remember if that exact terminology was  
22 used in 2011.

23 Q. In 2011, when Dr. Hofeller provided the maps for  
24 the first time to you and Senator Rucho, did you  
25 have any discussion of the expected partisan

1 performance of those maps?

2 A. I believe in 2011 I did look at the historic  
3 election trends and felt pretty confident that  
4 there were districts that would give Republicans  
5 an opportunity to be competitive.

6 Q. Let me ask about that. When you say give  
7 Republicans an opportunity to be competitive,  
8 what metric do you apply to that?

9 A. So again, you have to go back to the principles  
10 that we were trying to operate under,  
11 one-person, one-vote, but obviously you can draw  
12 lines to accomplish that in multiple ways.

13 We did apply a partisan lens on the  
14 past election results, and that was a factor in  
15 creating some of the districts that we felt  
16 would better give the Republicans an opportunity  
17 to elect candidates, where in the past the map  
18 makers had made different decisions and,  
19 frankly, grouped different groups of people with  
20 a different expected outcome.

21 Q. And I just want to understand the mechanics of  
22 how you came to expect that about a particular  
23 district.

24 So you were presented with a statewide  
25 map by Dr. Hofeller, correct?

1 going to go and talk to the members of Congress.

2 Q. So part of what I'm interested in is how the  
3 maps that you looked at and the election results  
4 you've just been testifying about paired up.

5 So for any map that you looked at, did  
6 you also have election results that showed how  
7 past elections would come out under that map?

8 A. If I could maybe change your question just a  
9 bit. We did have the -- how the elections in  
10 the past did turn -- did turn out and could  
11 apply them to the geographic area that the  
12 districts were drawn. I think that's what  
13 you're trying to ask.

14 Q. That's what I was trying to ask. You in fact  
15 did that?

16 A. Yes, sir.

17 Q. You applied the results of the past elections to  
18 the newly drawn geographic areas before the maps  
19 were fully enacted?

20 A. That was one of the criteria that we used, yes.

21 Q. Okay. I want to, I guess, fast forward a little  
22 bit to the 2016 plan.

23 You have testified that you were  
24 asked -- you and Senator Rucho were asked by  
25 Senator Berger and Speaker Moore to chair a

1 the other side.

2 If I may, again, on the 5th, we learned  
3 of the decision. It's kind of unfortunate when  
4 those decisions come out on Friday because you  
5 have to ask your staff to stay back and work and  
6 you do yourself. So in addition to getting the  
7 press statement out -- and I do not remember if  
8 I made the phone call to our counsel or if the  
9 counsel called me, but I do remember that we  
10 agreed to meet to discuss and understand the  
11 Harris case on Saturday the 6th at 2:00 to be  
12 exact.

13 Q. So before -- I'm going to table the scheduling  
14 discussion until we've had some chance to review  
15 those documents that y'all are producing today.

16 I really want to go back to ask about  
17 what the scope of your responsibility was going  
18 to be as chair.

19 A. Yes, sir. Under Speaker Tillis, he gave me  
20 basically full authority to act on his behalf  
21 and on behalf of the House. It was my  
22 understanding from Speaker Moore that I would  
23 continue to act in his stead on behalf of the  
24 House. So I felt fully empowered at that time  
25 to act on behalf of the House.

1           garner from the Harris decision is that that  
2           Court said that we had not established a pattern  
3           of racially polarized voting in the state which  
4           means that we should not consider race in  
5           drawing -- drawing districts.

6                       The Court also wrote that they did not  
7           like the serp -- I believe the word was  
8           serpentine nature of the shape of the 12th  
9           congressional district.

10                      So my first job was to try to  
11           understand what the Harris court wanted us to  
12           do. Maybe what I learned instead is what they  
13           didn't want us to do, which was to consider race  
14           and they didn't like the shape of the 12th.

15           Q.   And from that review of the Harris court  
16           decision, what instructions did you determine  
17           you needed to give to the map maker?

18           A.   That race should not be considered in drawing  
19           the map; that the shape of the 12th district  
20           needed to change; that the traditional  
21           redistricting principles of one-person, one-vote  
22           would need to be honored; that traditional  
23           redistricting principles such as compactness  
24           should be followed; that -- to be candid with  
25           you, since 2011, the level of criticism we

1 received for the number of split VTDs and split  
2 precincts was acutely on my mind, and I asked  
3 that we do all we can not to split precincts or  
4 split VTDs.

5 I told him that, again, one of the  
6 traditional redistricting criteria is  
7 incumbency, that we should take a look at the  
8 incumbents and at least be knowledgeable of any  
9 changes that we were going to do may or may not  
10 impact them.

11 I felt and feel that the 2011 map is  
12 ultimately a legal document, and if you are  
13 going to consider the incumbency of the members,  
14 part of that consideration includes the  
15 partisan -- I apologize, I don't know the  
16 correct word. Part of it considering incumbency  
17 is how they are registered to vote politically,  
18 if they're a Democrat or a Republican.

19 And at this moment, those are the ones  
20 that I recall that we discussed.

21 Q. So that is when you hired Dr. Hofeller to be the  
22 map drawer for the 2016 map, correct?

23 A. I did.

24 Q. And so the instructions that you just recounted  
25 come from -- and we'll get to the timeline --



1 in front of you as Exhibit 39. Can you identify  
2 this document, Representative Lewis?

3 A. Yes, sir. This is my calendar from February 6th  
4 through, I guess, February 19th showing most of  
5 the redistricting stuff that I did that week.

6 Q. And just to clarify your last answer,  
7 Representative Lewis, if you could look at the  
8 last page of the document.

9 MR. STRACH: Somebody copied this --  
10 the 5th should be the first page and the 19th  
11 should be the last page.

12 BY MR. THORPE:

13 Q. It's the 5th through the 19th?

14 A. Yes, sir. I apologize.

15 Q. It's my understanding that the redactions in  
16 this document are nonresponsive in that they are  
17 not in any way related to redistricting; is that  
18 correct?

19 A. That's correct.

20 Q. And it's my understanding if there is a page  
21 missing, it's because there were no responsive  
22 entries from that day, correct?

23 A. Yes.

24 Q. This list has a 2:00 p.m. entry on Saturday,  
25 February 6th, a redistricting meeting at I

1 assume the offices of Ogletree Deakins, correct?

2 A. Yes, sir.

3 Q. Who was in attendance at that meeting?

4 A. I was there. Brent Woodcox was there. The

5 Ogletree counsel was there. I don't remember if

6 the Attorney General counsel was there or not.

7 And I believe that to be it.

8 Q. Were any other legislators at that meeting?

9 A. Senator Rucho was on the phone, but he was not

10 in the room, although his presence is always

11 felt.

12 Q. And did Dr. Hofeller attend that meeting?

13 A. I don't remember if he did or not.

14 Q. Had Dr. Hofeller been -- had you decided that

15 Dr. Hofeller would be hired for the 2016 plan by

16 the time this meeting occurred?

17 A. No. I made that decision at about that same

18 time. The first decision -- I don't know how

19 much I'm supposed -- I wanted to fight and

20 wanted to appeal, so that was the first thing we

21 discussed.

22 MR. FARR: Okay, we're not going to

23 talk about what was discussed at that meeting

24 with counsel.

25 THE WITNESS: Yes, sir.

1 BY MR. THORPE:

2 Q. When did you make the decision to hire  
3 Dr. Hofeller?

4 A. On Saturday, February 6th.

5 Q. Okay. And Dr. Hofeller was in fact hired on  
6 February 6th?

7 A. I sought his counsel. I was acting under what I  
8 believed to be my authority to do so. I think  
9 we later clarified in the redistricting  
10 committee that I did in fact have that  
11 authority, but in my mind, yes.

12 Q. And other than conversations that involved  
13 counsel, did you have a conversation with  
14 Dr. Hofeller on Saturday, February 6th?

15 A. I believe we -- I do believe we spoke by phone  
16 either on the 6th or the 7th to talk about the  
17 Harris response.

18 Q. Was Senator Rucho also on that call?

19 A. I don't believe he was on that call.

20 Q. And what was the substance of that telephone  
21 call?

22 A. We have to draw a map to comply with the Harris  
23 decision. We need to get together and talk  
24 about it.

25 Q. Did you discuss at that time any of the

1 instructions that we were talking about before  
2 we took our break?

3 A. I don't remember if we talked about any of the  
4 drawing criteria at that point other than what I  
5 understood the Harris court said they didn't  
6 like.

7 Q. At that time you did not provide Dr. Hofeller  
8 with instructions regarding other criteria to be  
9 used in drawing these maps?

10 A. I do not believe I did.

11 Q. Was it your understanding that Dr. Hofeller  
12 would begin working on maps immediately?

13 A. I didn't have that understanding. It's my  
14 belief that what we did was arrange to meet on  
15 Monday the 9th.

16 Q. So just to clarify, Monday is February 8th. The  
17 9th indicates that you have a meeting with  
18 Hofeller at 4:00 p.m. Did you first meet on  
19 Tuesday, February 9th?

20 A. We did. I'm sorry. Yep.

21 Q. On Monday, February 8th, did you have any  
22 communication with Dr. Hofeller?

23 A. To be clear, I don't remember if it was  
24 Saturday, Sunday or Monday that I called him and  
25 said we need to get together.

1 A. Yes.

2 Q. And Senator Rucho agreed?

3 A. I want to say yes because I think he did, but I  
4 don't know if I can -- he didn't disagree with  
5 it.

6 Q. And Dr. Hofeller in fact had been hired on that  
7 Saturday the 6th, correct?

8 MR. FARR: Objection to form.

9 You can answer.

10 THE WITNESS: I think I spoke to  
11 Hofeller on the 6th. I don't know that we  
12 actually in terms of offer an exception and  
13 consideration, I don't know that we did that on  
14 the 6th, but I'm pretty sure I communicated to  
15 him that I wanted him to get involved and we  
16 arranged to meet and talk about the maps at some  
17 point.

18 BY MR. THORPE:

19 Q. Was it your understanding that Dr. Hofeller  
20 would begin work on the 2016 plan prior to your  
21 meeting on Tuesday the 9th?

22 A. No.

23 Q. And you did not communicate to him prior to  
24 Tuesday the 9th any instructions regarding the  
25 plan except as you earlier testified what the

1 Harris court did not want, correct?

2 A. To the best of my memory, yes.

3 Q. And on Tuesday, February 9th, you met at  
4 Dr. Hofeller's home?

5 A. Yes.

6 Q. Did you arrive with Senator Rucho?

7 A. No. We didn't -- we didn't ride together.

8 Q. And you had no face-to-face contact with Senator  
9 Rucho in between the Harris decision and the  
10 beginning of that meeting with Dr. Hofeller,  
11 correct?

12 A. Not that I recall.

13 Q. Okay. So let's talk about the substance of that  
14 meeting with Dr. Hofeller. How did it begin?

15 A. Obviously, Dr. Hofeller and I have worked  
16 together since 2011, so you exchange the normal  
17 pleasantries. We then began to talk about the  
18 Harris Court's decision. If I recall correctly,  
19 we talked about the 12th first because we had  
20 drawn the 12th in 2011 as a strongly Democratic  
21 district because it had been adjudicated so  
22 long. We talked about, you know, what do you do  
23 with that.

24 One of the goals that I had, frankly,  
25 because the criticism from 2011 was to keep

1 counties whole and doing away with the 12th,  
2 which is what the judge asked us to do, would  
3 help keep a lot of counties whole. So I  
4 remember being pretty excited about that.

5 Q. And you felt that doing away with the 12th was a  
6 requirement of the Harris court?

7 A. That was my understanding.

8 Q. Did Dr. Hofeller or Senator Rucho express any  
9 additional goals or approaches regarding  
10 changing the 12th district?

11 A. I remember only vaguely the conversation. I  
12 think we realized that we were going to have to  
13 collapse the district either into Mecklenburg or  
14 into Guilford. Over half the population was  
15 already in Mecklenburg, as I recall, and it  
16 seemed to make a nice looking congressional  
17 district to collapse it into the 12th. So that  
18 may have been one -- that may have been the  
19 first one we drew.

20 Q. Did you discuss the likely partisan outcome of a  
21 district drawn entirely into Mecklenburg county?

22 A. I believe that was probably one of the things  
23 that we looked at, yes.

24 Q. So you considered whether the revised 12th would  
25 remain a Democratic district?

1 A. Yes.

2 Q. Did you consider the strength of the revised  
3 12th as a Democratic district?

4 A. No, we didn't. I don't recall that we looked at  
5 was it as -- was it as Democratic as it was  
6 before. I don't think we did that.

7 Q. And you're speaking now about in that initial  
8 conversation?

9 A. Yes, sir.

10 Q. After you talked about the 12th, what was the  
11 next topic related to the revised maps?

12 A. Well, we tried to go back and -- the shape of  
13 the 1st district in the 2011 map we believed --  
14 which, again, we believed to be constitutional,  
15 but that -- if -- if we were not required -- in  
16 fact, we were prohibited by the Harris court of  
17 drawing a Voting Rights district, then the next  
18 priority would be how do you redraw the 1st not  
19 relying on race. Because, of course, as you  
20 change the lines of one district, every district  
21 that touched it would change as well.

22 Q. And who provided the answer to that question?

23 A. As best I can recall, I think we simply started  
24 working -- Dr. Hofeller started working, to be  
25 clear, with staying in the same basic geographic



1 A. Yes.

2 Q. And did those come from you or did those come  
3 from Senator Rucho in the course of that  
4 conversation?

5 A. Mostly from me.

6 Q. And did Dr. Hofeller at that time provide his  
7 input on those goals?

8 A. Dr. Hofeller, in every experience I've had with  
9 him, has tried to be accommodating to what he's  
10 asked to do. So like many good people,  
11 salespeople, if you asked him can this be done,  
12 the answer is, yes, we'll figure out how to do  
13 it. So that's the nature of the conversation  
14 that I recall.

15 Q. So in that conversation, you provided a list of  
16 objectives and Dr. Hofeller indicated he could  
17 meet those objectives?

18 A. I think we talked about the objectives. I don't  
19 believe -- I don't think I enumerated a list  
20 per se.

21 Q. In that conversation, did you communicate to  
22 Dr. Hofeller that race could not be considered  
23 in drawing the maps?

24 A. Yes.

25 Q. In that first conversation, did you communicate

1 possible?

2 A. Yes.

3 Q. Did you communicate that Dr. Hofeller should  
4 minimize the number of split voter districts or  
5 precincts?

6 A. Yes.

7 Q. Did you communicate that Dr. Hofeller should  
8 protect incumbents?

9 A. I think the words we used were we had to  
10 consider the incumbents as, you know, they're  
11 people, they're currently serving members of  
12 Congress. And so I don't remember that I said  
13 at all cost we had to protect the people, but I  
14 did think -- I'm certain that was one of the  
15 criteria that we talked about.

16 And if I may, one of the reasons I'm  
17 certain about that is Dr. Hofeller was saying  
18 that he was not sure he had the residency  
19 addresses of the incumbents, which is one of the  
20 things I think I provided to him and messed that  
21 up too, which I'm sure you'll get to that.

22 Q. Did you discuss the partisan affiliation of  
23 incumbents in discussing considering those  
24 incumbents' residences?

25 A. No.

1 Q. Did you otherwise discuss the partisan balance  
2 of North Carolina's congressional delegation?

3 A. I was certainly aware of the registration of all  
4 the members of Congress that we had at the time,  
5 so to the extent that the incumbents are  
6 affiliated with one party or the other, yes, we  
7 talked about that.

8 Q. You discussed that the North Carolina  
9 congressional delegation at the time you were  
10 having the conversation had 10 Republican  
11 members and 3 Democratic members?

12 A. I believe so, yes.

13 Q. Did you discuss individual districts, members  
14 from individual districts?

15 A. I don't remember that we discussed individual  
16 members. At that point it was just kind of --  
17 when you talk about the incumbents, it's just  
18 kind of understood that you're talking about  
19 them as a collective being the members of  
20 Congress and as individuals.

21 Q. Did Dr. Hofeller express to you at that time any  
22 concerns about the ability to draw districts  
23 that would keep the incumbents elected in 2014  
24 in their districts?

25 A. I don't know that that was immediately discussed

1 the map we were being ordered to redraw, but I  
2 believe that to be the extent of our  
3 conversation.

4 Q. Did Dr. Hofeller offer any additional criteria  
5 that may be used in drawing the 2011 -- I'm  
6 sorry -- the 2016 maps during that conversation?

7 A. Not that I recall.

8 Q. And consistent with your earlier testimony, it  
9 is your responsibility to provide the criteria  
10 and Dr. Hofeller's responsibility to implement  
11 the criteria, correct?

12 A. Yes, sir.

13 Q. Now, Senator Rucho testified yesterday that one  
14 of the meetings with Dr. Hofeller was  
15 interrupted by an appointment that he had. You  
16 have on your calendar for Wednesday,  
17 February 10th, an additional meeting with  
18 Dr. Hofeller. Were either of those meetings  
19 segmented? Meaning did one occur -- did you  
20 have two meetings in one day at some point?

21 A. I remember the day that Dr. Hofeller had to  
22 attend to a medical situation. I believe that I  
23 waited until after he returned to go to his  
24 home.

25 I think Senator Rucho may have gone

1           briefly -- there was at least one time that  
2           Senator Rucho went to Dr. Hofeller's house that  
3           I was not with him and I think it was that day  
4           because I knew Hofeller was going to have to  
5           leave pretty early.

6           Q.    And when you say that day, what day do you mean?

7           A.    As best I recall, it was probably the Wednesday,  
8           February 10th, that Dr. Hofeller had a medical  
9           issue to attend to, and I believe his -- if I  
10          remember correctly, his appointment was at 11:00  
11          or something and so I didn't see a need to go  
12          over there that morning, but I think Senator  
13          Rucho may have gone on his own that morning  
14          without me.

15          Q.    But you only participated in the meeting that  
16          occurred that day after Dr. Hofeller's  
17          appointment?

18          A.    Yes.

19          Q.    And so that meeting occurred on Wednesday,  
20          February 10th?

21          A.    Yes.

22          Q.    What was the substance of that meeting?

23          A.    We reviewed the criteria we talked about before.  
24          By that point I believe there were some  
25          preliminary maps to look at.

1 Q. Just -- I apologize. Just to clarify an earlier  
2 point, the meeting that you had on Tuesday,  
3 February 9th, the criteria that you provided you  
4 provided orally, correct?

5 A. Yes, sir.

6 Q. You provided no document indicating those  
7 criteria?

8 A. No, sir.

9 Q. Did you take any notes to that meeting regarding  
10 the criteria?

11 A. No, sir.

12 Q. Did you take any notes to the meeting at all?

13 A. No, sir.

14 Q. Did Dr. Hofeller take notes regarding the  
15 criteria during the meeting?

16 A. I don't know.

17 Q. So, I'm sorry, for the meeting on Wednesday,  
18 February 10th, you said that Dr. Hofeller had  
19 begun creating maps?

20 A. Yes. To the best of my knowledge, I looked at  
21 some -- and I said maps. I looked at some  
22 images on the screen. Yeah, I do think there  
23 were some there that day.

24 Q. And to your knowledge, did Dr. Hofeller begin  
25 working on those maps before your Tuesday

1 I kind of walked away from that belief and we  
2 spent a lot of time talking about if there was a  
3 way to keep Asheville whole because we had  
4 gotten some push back on the way it was drawn.  
5 So we talked about that. I remember that  
6 consumed a lot of that conversation.

7 Q. When you say push back on the way that it was  
8 drawn, you mean the way that it was drawn in the  
9 2011 map?

10 A. Yes, sir.

11 Q. Ultimately you determined it was not possible to  
12 keep Asheville whole?

13 A. Well, we looked at a couple of different  
14 scenarios, but in every scenario we came up  
15 with, Buncombe was going to wind of being split.  
16 Buncombe is where Asheville is. So in the end,  
17 I made the decision that the squeeze wasn't  
18 worth the effort to do. We kept it largely the  
19 same as it was in the 2011 plan.

20 Q. And where counties are split, how would you  
21 look -- when you looked at Dr. Hofeller's  
22 computer or the state computer, how would you  
23 look at those splits within a county?

24 A. On Maptitude, it's -- it's kind of like a more  
25 advanced version of Google Maps. I mean, you

1 can zoom in or zoom out or whatever you want to  
2 do, so I do think I looked at a couple of  
3 different areas where counties could be divided  
4 or would be divided.

5 Q. And presumably when you're looking at those  
6 lines, you are looking at voter districts on  
7 either side of those lines, correct?

8 A. Yes, that's correct.

9 Q. And what information did you have about those  
10 voter districts?

11 A. Most of the time -- and I say most of the time,  
12 I'll clarify that in a minute. Nearly every  
13 time I looked at the maps, it was the political  
14 data from the Tillis-Hagan race in '14 and, of  
15 course, there's like a little running ticker  
16 thing, if you will, that shows how many people  
17 live in the districts. Those things I believe  
18 were what were on the screen most of the time.

19 Q. And when you say on the screen, do you mean on  
20 the screen during that meeting with Hofeller?

21 A. Yes.

22 Q. And to confirm, the Tillis-Hagan 2014 Senate  
23 race was the race for which election results  
24 were displayed?

25 A. That's the one I understood the most. There



1 was -- there was another instance where  
2 Dr. Hofeller was using another combination of  
3 political races. I didn't -- in my mind the  
4 closest political race with equally matched  
5 candidates who spent about the same amount of  
6 money was the 2014 U.S. Senate race. That's the  
7 one I chose to look at.

8 Q. You chose to look at that race?

9 A. I did.

10 Q. You requested the election results from that  
11 race?

12 A. I did.

13 Q. To view the performance of individual voter  
14 districts?

15 A. That's correct.

16 Q. In maps you were evaluating?

17 A. Yes, sir, that's correct.

18 Q. Did you specifically look at Buncombe county?

19 A. I looked specifically at Buncombe county several  
20 times, and I don't remember if we even made any  
21 changes to it in the contingent map. We  
22 certainly -- we certainly tried.

23 Again, some of the feedback we received  
24 over the four years, people felt like maybe you  
25 could keep Buncombe county whole. I couldn't

1 ever figure out a way to do that.

2 Q. Which congressional districts are on either side  
3 of the county split in Buncombe county?

4 A. 10 and 11.

5 Q. Both of those districts are held by Republicans,  
6 correct?

7 A. Yes, sir.

8 Q. Prior to the 2011 redistricting, Asheville had a  
9 Democratic representative, correct?

10 A. I don't believe so, but I don't remember.  
11 Charles Taylor was a long-time Republican  
12 congressman from that area. I don't remember if  
13 he still held the seat or had lost it. I'm  
14 sorry, I just --

15 Q. That's okay.

16 A. I've been to his events. That's why I remember  
17 his name. I'm sorry.

18 Q. The maps that you looked at in that meeting with  
19 Hofeller, those were maps that had all 13  
20 districts?

21 A. Again, you could zoom out and see 13 or you  
22 could zoom in and see one.

23 Q. Dr. Hofeller testified on Tuesday that in  
24 building these maps he would begin, for example,  
25 with just a map for District 1 to look at how to

1 do District 1 differently.

2 Did you look at any maps that had a  
3 single district?

4 A. I remember looking at the 12th all contained  
5 within Mecklenburg, I'm certain of that.

6 Q. When looking at the 12th district, did you look  
7 at it given the results of the Tillis-Hagan race  
8 that you testified previously?

9 A. Yes.

10 Q. What did you observe about the partisan  
11 performance of the revised or potentially  
12 revised 12th district under that race?

13 A. I remember, to the best of my knowledge, that  
14 Senator Hagan had carried that area, but I don't  
15 remember the numbers.

16 Q. Other than looking at maps on the screen with  
17 Dr. Hofeller, what else occurred at that second  
18 meeting?

19 A. I don't -- I don't recall. We looked at maps,  
20 looked at -- or I say maps, looked at scenarios  
21 perhaps is a better way to say it, but I don't  
22 remember that we did any -- I don't think we did  
23 anything else.

24 Q. How long did that meeting last?

25 A. If I remember correctly, it was pretty long. I

1 don't remember -- and I will say I don't  
2 remember what I had at 5:30 that day, but I  
3 don't think I made it. I think it was pretty  
4 long.

5 Q. And because I failed to ask earlier, how long  
6 did the meeting on Tuesday, February 9th last?

7 A. It was probably two hours or so. It wasn't  
8 as -- it wasn't as long.

9 Q. Did you provide any additional instructions  
10 regarding the criteria for drawing the 2016 maps  
11 to Dr. Hofeller at the Wednesday, February 10th  
12 meeting?

13 A. Not that I recall.

14 Q. What instructions did you give to Dr. Hofeller  
15 regarding the work that you should do going  
16 forward?

17 A. I don't remember how far along he was. I think  
18 we were still trying to keep Buncombe county  
19 whole and Asheville whole at that point, but I  
20 don't remember. So I don't think I gave any  
21 additional instructions other than, you know,  
22 perhaps keep working on -- on getting a map  
23 prepared.

24 Q. Did you give him any deadlines regarding a map?

25 A. I did not give him a deadline, I don't believe a

1 Q. During this period, were you reporting on the  
2 progress of redistricting to Senator Berger and  
3 Speaker Moore?

4 A. I don't recall having a conversation with  
5 Speaker Moore. I know I didn't have a  
6 conversation with Senator Berger.

7 Q. So the only conversation that you had with  
8 Senator Moore up to this point is the  
9 conversation on the 5th when you learned of the  
10 Harris decision?

11 A. Yes.

12 Q. And I understand where this is going, but to tee  
13 this up properly, in that conversation with  
14 Speaker Moore, did you receive any instructions  
15 as to criteria that should be followed for the  
16 2016 plan?

17 MR. FARR: And since he can't waive  
18 Speaker Moore's legislative privilege, he can't  
19 answer that question.

20 BY MR. THORPE:

21 Q. The other meetings that you had on February 11th  
22 are listed as being related to the U.S. Census.  
23 Did those have any bearing on the 2016  
24 redistricting or was the 2016 redistricting plan  
25 at all discussed at either of those meetings?

1 Q. Was the schedule for the following week publicly  
2 announced that day?

3 A. Certainly the public -- to the best of my  
4 knowledge, the public hearing was announced. I  
5 don't remember -- I think we announced the whole  
6 thing, but I don't remember that exactly.

7 Q. Now, between your meeting with Dr. Hofeller on  
8 Wednesday afternoon and the end of Friday,  
9 February 12th, did you have any further  
10 communication with Dr. Hofeller?

11 A. Yes.

12 Q. What was the substance of that communication?

13 A. I did look at the map again. I don't -- I'm  
14 embarrassed it's not on the calendar. I don't  
15 remember exactly when it was that I talked with  
16 him.

17 Q. Meaning you went to his house? You had another  
18 in-person meeting with him?

19 A. Yes. Yes. Apparently I didn't record it, but,  
20 yeah, I met with Dr. Hofeller again before  
21 the -- before the public hearing process began  
22 on the 15th.

23 Q. But you don't know what day that meeting  
24 occurred?

25 A. I know it was not Sunday the 14th. So it would

1 have either been the afternoon of Friday the  
2 12th or Saturday the 13th. I can't remember.

3 Q. Did Senator Rucho also attend that meeting?

4 A. No, sir.

5 Q. That was a meeting just between you and  
6 Dr. Hofeller?

7 A. That's right.

8 Q. Is there anyone else who could identify when  
9 that meeting occurred?

10 A. Dr. Hofeller may have had the notes on it.

11 Q. Were there notes taken at that meeting?

12 A. Not in any form other than Dr. Hofeller may  
13 have -- may have a calendar entry. I don't  
14 know.

15 Q. And what did you review with Dr. Hofeller at  
16 that meeting?

17 A. We looked at other -- different scenarios,  
18 again, trying to figure out what the ultimate  
19 map would look like. I don't remember  
20 specifically -- I think it was about this point  
21 that I gave up on trying to keep Asheville  
22 whole, but other than that, I don't remember --  
23 it was not -- this one was not a particularly  
24 long one.

25 Q. Why did you give up on that goal?

1 change as few -- you know, have as little change  
2 as we could.

3 Q. I'm going to push for a yes-or-no answer on the  
4 initial question which is --

5 A. I'm sorry.

6 Q. When you looked at maps with Dr. Hofeller, the  
7 comparison points when you looked at a new  
8 district was the 2011 map which you refer to as  
9 the benchmark map, correct?

10 A. So I'm going to answer yes, but I'd like to  
11 qualify it only in that I in my mind knew what  
12 the 2011 map was largely. I don't know that we  
13 ever put them side by side. I just -- so when  
14 you have lived with something as long as I have,  
15 the 2011 map, you just know their certain  
16 features of it.

17 Q. When you say you don't know whether you put them  
18 side by side, you earlier testified that you  
19 were looking, for example, at the existing  
20 county line split for Buncombe county. So you  
21 were reviewing 2011 maps in making  
22 determinations about the 2016 map, correct?

23 A. Yes. The 2011 map was also on Dr. Hofeller's  
24 computer and he could look at it as he wanted  
25 to.



1 Q. And as Dr. Hofeller built new districts for the  
2 2016 map, did he begin with the 2011 map to your  
3 knowledge?

4 A. I don't -- I don't know that he did. Some of  
5 the earlier versions of the map would lead me to  
6 think he did.

7 Q. The maps that you reviewed in that meeting on  
8 either Friday or Saturday are near-final  
9 versions of the 2016 map?

10 A. Yes.

11 Q. So --

12 A. And I may clarify that, it's near the final  
13 version of what I intended to submit. In other  
14 words, you can never presume the legislature is  
15 going to pass what you present. So it was near  
16 my final form. I'm not implying that it was  
17 absolutely done.

18 Q. It is the near-final version of what you  
19 intended to submit to the legislature?

20 A. Yes, sir.

21 Q. And the map that you submitted to the  
22 legislature was ultimately adopted with a minor  
23 distinction for an incumbency issue, correct?

24 A. Yes, sir.

25 Q. At either that meeting or in any conversation

1           that happened since Tuesday, February 9th, did  
2           you at any time provide Dr. Hofeller with any  
3           additional instructions regarding criteria to be  
4           used in developing the map?

5           A.    I don't immediately recall that I did.

6           Q.    Did you communicate to Dr. Hofeller any metric  
7           or approach to balancing the different criteria?

8           A.    Other than the one-person, one-vote which we  
9           believe is sacrosanct, no.

10          Q.    Did Dr. Hofeller communicate to you how he  
11          intended to balance the criteria?

12          A.    I don't believe we discussed it in those terms.

13          Q.    Did Senator Rucho, to your knowledge,  
14          communicate to Dr. Hofeller any additional  
15          instructions regarding the criteria to be used  
16          in developing the map between your meeting on  
17          Tuesday and the time that you reviewed the  
18          near-final maps on either Friday or Saturday?

19          A.    I don't know.

20          Q.    What instructions did you give to Dr. Hofeller  
21          regarding any additional changes to the maps  
22          after that meeting?

23          A.    I don't -- regarding what Dr. Hofeller was  
24          drawing on his computer, I don't think I gave  
25          him any additional instructions after that

1 beyond the technical aspects that you just  
2 expressed about the public hearing?

3 A. I don't recall that anyone tried to ask one. I  
4 don't recall. It was Valentine's Day.

5 Q. You don't remember any substantive discussion of  
6 the approach that you and Senator Rucho were  
7 taking to the redistricting plan or any  
8 discussion of the criteria in that conference  
9 call?

10 A. No.

11 Q. So that public hearing occurs on Monday,  
12 February 15, 2016, as you state it occurs both  
13 in Raleigh and around the state via  
14 videoconference. You attend that hearing?

15 A. Yes, sir.

16 Q. Senator Rucho attends that hearing?

17 A. Yes, sir.

18 Q. Does Dr. Hofeller attend that hearing?

19 A. No, sir.

20 Q. Did you communicate to Dr. Hofeller that he  
21 should not attend that hearing?

22 A. No, sir.

23 Q. Who was aware at the time that that hearing  
24 occurred that Dr. Hofeller was the map drawer?

25 A. I was -- I was aware that Dr. Hofeller was

1 drawing a map for me and for Senator Rucho. I  
2 don't know that anybody else knew that Hofeller  
3 was drawing our map, and I don't know who else  
4 was working on maps on their own.

5 Q. You had not communicated that information to  
6 members of the committee, for example?

7 A. I don't believe I had, no, sir.

8 Q. Had you communicated that information to Speaker  
9 Moore?

10 A. I am certain at some point that I told him that  
11 I was working with Hofeller, yes.

12 Q. Had you communicated that information to Senator  
13 Berger?

14 A. I did not speak to Senator Berger.

15 Q. At the time of the public hearing, did you have  
16 any copy or physical document that reflected the  
17 map that you had viewed on Dr. Hofeller's  
18 computer on Saturday -- or on Friday?

19 A. No, sir.

20 Q. Did you have the document that ultimately became  
21 the adopted criteria already prepared?

22 A. I certainly had thought about it. I don't  
23 remember if it was in its final form or not.

24 Q. Okay. Let's talk about, for a second, the  
25 drafting of that document.

1 A. Yes, sir.

2 Q. Did you write that document?

3 A. The document was written at my direction but  
4 largely by Brent Woodcox. The wording in there  
5 is a little more his style than mine, but these  
6 were the criteria that I asked him to write.

7 Q. To your knowledge, are there multiple versions  
8 of that document, different drafts of that  
9 document?

10 A. I don't know. And again, I know this is on the  
11 record from yesterday, but we drafted these as  
12 individual criteria. And so the document which  
13 is Exhibit 24 is a compilation of the adopted  
14 criteria, but this is not actually how the  
15 document looked until after the committee met.

16 Q. So just to clarify, you presented the -- and  
17 we're going to go through this in more detail a  
18 little bit more, but you presented the criteria  
19 individually. In reviewing the criteria before  
20 you presented them, you were viewing each  
21 criteria on a separate page or in a separate  
22 document?

23 A. I don't remember if it was just a page break or  
24 if it was individual. I don't know.

25 As far as -- I know when I was

1 presenting them, it was one criteria on the page  
2 at a time.

3 Q. I understand. So your -- when did you first see  
4 any document with written criteria?

5 A. I don't remember exactly when first started  
6 working on this. May have tasked Brent to do  
7 it, and I say may because I don't remember, at  
8 the meeting that was held the prior week on  
9 either the 11th or --

10 Q. 12th possibly?

11 A. I don't recall at what point I asked Brent to  
12 help me compose this, but...

13 Q. You requested that Brent Woodcox draft a  
14 document reflecting written criteria for the  
15 2016 plan, correct?

16 A. I'm sorry. Would you repeat the question.

17 Q. You requested that Brent Woodcox draft a  
18 document reflecting the intended criteria for  
19 the 2016 plan, correct?

20 A. Yes, with the caveat that it was my intended  
21 criteria, not necessarily the committee's.

22 Q. Understood.

23 When did you make that request?

24 A. I don't remember exactly when I asked Brent to  
25 do it.

1 I instructed him to say that the shape of the  
2 12th had to change. I'm sure I instructed him  
3 that -- that the court had told us we could not  
4 use race.

5 I'm sure I told him -- one of the -- I  
6 don't remember if I told him this or not, but I  
7 remember one of the things that one of the  
8 courts had said was in drawing the 12th  
9 originally as a heavily Democratic district  
10 Dr. Hofeller had used the McCain-Obama numbers  
11 and it seems like one of the court rulings had  
12 said that was not an appropriate thing. So I  
13 thought we had talked about including that in  
14 the criteria as well, but the compactness we  
15 talked about. Incumbency we talked about.

16 Q. What did you instruct Brent Woodcox to include  
17 as regards compactness?

18 A. I tried to convey to him that we needed some  
19 kind of measurable standard, like keeping  
20 counties whole. I know there are political  
21 scientists that can do research, but I don't  
22 know how to do all that.

23 So we talked about trying to keep  
24 counties whole and keeping VTDs and precincts  
25 whole largely because, well, one, we had gotten

1           that. I'm sorry, it was a long time ago.

2           Q.    And you directed him to address that to  
3           incumbents under the enacted plan, correct?

4           A.    Yes, sir.

5           Q.    Which you earlier referred to as the benchmark  
6           plan, correct?

7           A.    Yes, sir.

8           Q.    So incumbency mattered with respect to the 2011  
9           plan?

10          A.    Yes, sir.

11          Q.    What else did you instruct Brent Woodcox  
12          regarding the criteria?

13          A.    Well, we were told by the Harris court, to my  
14          understanding, that we couldn't use race. So we  
15          did talk about -- I think one of the things we  
16          said was that race couldn't be considered per  
17          the Harris court.

18                         We also talked about partisan data in  
19          terms of historic elections were a factor that  
20          could be considered in drawing the maps.

21          Q.    Did you instruct him that the criteria should  
22          include understanding partisan data to construct  
23          the maps?

24          A.    I believe the way I had been -- I believe the  
25          way that I had told Dr. Hofeller and the way



1 that I told Brent is the only way we can get  
2 this by the court is if we use only political  
3 data as the only other identifying information  
4 because you've got to recall the Harris court --  
5 you know, we were under the order because they  
6 said we had racially gerrymandered a map.

7 Q. I understand. What definition of political data  
8 did you provide to Brent Woodcox? You've  
9 earlier testified that you wanted to look at  
10 election returns.

11 A. Yeah.

12 Q. Did you specify that political data should  
13 include returns of prior elections?

14 A. I believe I did, yes, with the exception of  
15 Obama-McCain and Obama-Romney.

16 Q. You specified that the election returns to be  
17 used as political data for the 2016 map would be  
18 statewide elections that did not include the two  
19 presidential elections in 2008 and 2012?

20 A. Yes, I believe that to be correct.

21 Q. Brent Woodcox included that at your direction?

22 A. Yes.

23 Q. Did you discuss any weighting of the elections  
24 to be used for determining the relevance of the  
25 political data?

1 A. Not with Brent, no.

2 Q. Did this discussion happen before or after you  
3 reviewed maps with Dr. Hofeller looking at the  
4 Tillis-Hagan race?

5 A. It was almost certainly before.

6 Thank you for providing this calendar,  
7 by the way. It's actually very helpful.

8 It would have been -- certainly would  
9 have been prior to --

10 Q. To refresh your memory, Representative, I  
11 believe you earlier testified that you looked at  
12 the Tillis-Hagan race for Mecklenburg county  
13 when you met with Dr. Hofeller on Wednesday of  
14 that week.

15 A. That's right.

16 Q. This meeting with Brent Woodcox occurred after  
17 the Wednesday of that week, correct?

18 A. Yes, sir.

19 Q. So at the time that you instructed Brent Woodcox  
20 to include partisan data, including the 2014  
21 senate election as a criteria for the 2016 map,  
22 you had already viewed a map with Dr. Hofeller  
23 that evaluated the performance of a district  
24 using that data, correct?

25 A. Yes, sir.

1 Q. What else did you instruct Brent Woodcox?

2 A. I don't know if he was tasked with making sure  
3 we had the court reporter or not; probably not.  
4 As counsel, he wouldn't have been tasked with  
5 that.

6 I don't think there was --

7 Q. More specifically, what did you instruct Brent  
8 Woodcox should be included in the adopted  
9 criteria?

10 A. I don't think there was anything else.

11 Q. Did you instruct Brent Woodcox that the partisan  
12 advantage criteria should be included in the  
13 adopted criteria that you presented?

14 A. Yes.

15 Q. What did you communicate to Brent Woodcox about  
16 the partisan advantage criteria?

17 A. That the current registration of the members of  
18 Congress consisted of 10 Republicans and 3  
19 Democrats, and so to the extent possible, the  
20 new -- or contingent map should reflect that  
21 because, again, that was one of my goals.

22 Q. One of your goals was to maintain the partisan  
23 balance under what you've referred to as the  
24 benchmark map, correct?

25 MR. FARR: Objection to the form.

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You can answer.

THE WITNESS: Yes.

BY MR. THORPE:

Q. Did you give him any instruction on the specific language to be used for the political advantage criteria?

A. I don't recall giving him any specific language. That's why I was asking for his help.

Q. Did you give him any instruction about including political considerations in any other criteria?

A. I'm not sure I understand your question. I'm sorry.

Q. Did you give him any instruction about, for example, what you earlier testified as the importance of political considerations in protecting incumbents?

A. I did not give Brent any additional instructions that I can recall.

MR. FARR: Ben, keep going until you're ready to stop, but can we get to a quick break time.

BY MR. THORPE:

Q. What direction did you give Brent Woodcox about when he should provide you with the document you requested?

1 A. At Dr. Hofeller's house, yes.

2 Q. So this meeting that occurred on Wednesday is  
3 the only meeting that you attended with Senator  
4 Rucho where you evaluated maps drawn by  
5 Dr. Hofeller, correct?

6 A. Yes.

7 Q. So yesterday Senator Rucho testified that in  
8 looking at maps with Dr. Hofeller there was a  
9 point where you were essentially choosing  
10 between two different maps.

11 Do you recall that process?

12 A. I do.

13 Q. Do you recall what the differences were between  
14 those two maps?

15 A. One of the maps split more counties and more  
16 VTDs than the one we ultimately decided to go  
17 forward with.

18 Q. So what direction did you give to Dr. Hofeller  
19 as to which map to choose?

20 A. The one that best complied with all the criteria  
21 was the one that split the fewest counties,  
22 fewest VTDs, so that was the one that we decided  
23 upon.

24 Q. And you testified earlier that you had looked at  
25 that meeting at the election results from the

1 Tillis-Hagan Senate election when looking at  
2 some district map.

3 Did you look at the result of the 2014  
4 Senate election when looking at the map that you  
5 chose?

6 A. Yes, sir.

7 Q. Did you look at the result of any other election  
8 when looking at the map that you chose?

9 A. I did not intentionally do that. At one point  
10 there was a map up that I think Dr. Hofeller had  
11 his own formula that he was using, and I just  
12 asked for the Tillis results because I thought  
13 that was the most reliable, most frequent --  
14 most in my mind.

15 Q. Do you know which other races went into the  
16 formula that was displayed on the screen that  
17 you saw?

18 A. Offhand I don't.

19 Q. And did you give Dr. Hofeller any direction as  
20 to which races should be given priority in  
21 making decisions about the map?

22 A. No, other than not to use the presidential in  
23 '08 and '12.

24 Q. But as between the races that were available --  
25 well, first of all, were the races that were

1 available to Dr. Hofeller for evaluating these  
2 maps identical to the races that are in the 2016  
3 stat pack?

4 A. Yes, sir. The one -- and to be clear, the one  
5 that was distributed to the committee by me,  
6 yes.

7 Q. Understood. Which is 20 statewide races and  
8 excludes the 2008 and 2012 presidential  
9 elections, correct?

10 A. I believe that to be correct.

11 Q. And those were the only races available to  
12 Dr. Hofeller, as you just testified, were -- did  
13 you instruct him not to use any other races to  
14 which he may have had access?

15 A. I did not.

16 Q. As between those 20 races, did you express any  
17 preference for one race as against another in  
18 terms of its relevance?

19 A. Again, I thought the Tillis-Hagan race was the  
20 most relevant.

21 Q. And you communicated that to Dr. Hofeller?

22 A. I did.

23 Q. Did he communicate to you which races he felt  
24 were relevant?

25 A. He probably did say which ones were in his

1           figuring, but I don't remember what they were.

2           Q.   Did Senator Rucho have any perspective on which  
3           of those basket of races were relevant?

4           A.   I don't -- I don't recall that he expressed much  
5           of a -- that he engaged a lot on that particular  
6           subject.

7           Q.   The second conversation that I had a few  
8           questions about was the conversation with Brent  
9           Woodcox that we were talking about right before  
10          lunch. You instructed Brent Woodcox to include  
11          an incumbency criteria in the criteria that he  
12          was to draft at your instruction.

13                           How did you define incumbency for Brent  
14                           Woodcox?

15           A.   The current seated member of Congress under the  
16           2011 map.

17          Q.   Did you instruct him to include in that  
18          definition anything about that member's  
19          political party?

20          A.   I did not.

21          Q.   Did you feel it was necessary to know or  
22          identify the political party of any incumbent  
23          for the purposes of the incumbency criteria?

24          A.   I know you want a shorter answer. When you're  
25          in politics, you simply know the party of the



1 member of Congress from your state, so I don't  
2 know that I specifically said identify their  
3 party because I knew what it was, and I assume  
4 most everybody else that serves in the General  
5 Assembly knows what political party the seated  
6 members of Congress belong to.

7 Q. And the instruction regarding incumbency was  
8 designed to avoid placing two incumbents in the  
9 same revised district, correct?

10 A. Yes, sir.

11 Q. And was that goal achieved?

12 A. With one exception.

13 Q. And that exception was?

14 A. Congressman Holding paired with Congressman  
15 Price.

16 Q. And Congressman Holding, nonetheless, ran and  
17 won in a district where he is not resident,  
18 correct?

19 A. Yes, sir.

20 Q. Was Senator Rucho present for the conversation  
21 with Brent Woodcox?

22 A. No, he was not.

23 Q. Did you make Senator Rucho aware of the  
24 conversation with Brent Woodcox?

25 A. I don't know that Senator Rucho and I talked

1 of Exhibit 24?

2 Q. Either, to be honest, but the actual draft that  
3 was presented by -- drafted by and presented to  
4 you by Brent Woodcox either in a form that  
5 separated them out or in a complete form.

6 A. Yes, sir. Certainly some time on February 15th.  
7 I do not believe I saw anything over the  
8 weekend.

9 Q. And again, you have no memory of receiving  
10 drafts of that document?

11 A. I do not.

12 Q. So the only version of that document of which  
13 you're aware is the one that was presented to  
14 committee?

15 A. Yes, sir.

16 Q. When that document was presented to you on the  
17 15th and to Senator Rucho on the 15th, did  
18 anyone else receive a copy of that document or  
19 the information contained in that document?

20 A. Yes. I believe the people who were present in  
21 the meeting at 5:00 p.m. all would have seen it.

22 Q. Okay. So the meeting at 5:00 p.m. is entitled  
23 "Status Check." And who was present at that  
24 meeting?

25 A. I was. Senator Rucho was. Brent Woodcox was.

1           that would have needed to have been made to the  
2           map.  None were discovered.  I believe --

3           Q.  Who had access to the map at that time?

4           A.  Rucho and me.

5           Q.  And how did you have access to the map?

6           A.  Via Dr. Hofeller's computer.

7           Q.  So only when you were present in meeting with  
8           Dr. Hofeller did you see the map that you knew  
9           was going to be sent to the legislature?

10          A.  That's right.

11          Q.  And do you know when Senator Rucho last viewed  
12          that map?

13          A.  I don't.

14          Q.  Did Dr. Hofeller indicate to you that anyone  
15          else had come to view the map?

16          A.  I don't recall that he said that.

17          Q.  Did he indicate that -- do you know whether  
18          Senator Berger had viewed the map?

19          A.  I don't know.

20          Q.  Do you know whether Speaker Moore had viewed the  
21          map?

22          A.  I don't know.

23          Q.  Had Andrew Tripp viewed the map?

24          A.  I don't know.

25          Q.  Did Andrew Tripp -- what was Andrew Tripp's

1 the joint committee at the meeting to follow the  
2 next morning?

3 A. That's correct.

4 Q. And it was decided that you would present the  
5 adopted criteria to the joint committee?

6 A. That's correct.

7 Q. Who made that decision?

8 A. To be candid, Senator Rucho likes to preside.  
9 So we've worked together, so I got to present  
10 and he presided.

11 Q. Did you present the criteria that were then  
12 available to you and those at that meeting to  
13 Dr. Hofeller at that time?

14 A. I don't -- I don't think so.

15 Q. So the written criteria were not available to  
16 Dr. Hofeller before -- when did the written  
17 criteria become available to Dr. Hofeller?

18 A. I don't think the written criteria was available  
19 to him until it was adopted by the committee.

20 Q. Okay. And how was it communicated to him after  
21 it was adopted by the committee?

22 A. I believe that I had a phone call with him that  
23 said the map that we saw was the one that I want  
24 to introduce. If any of this criteria hadn't  
25 passed the committee, we'd have to really

1           caused consternation and I thought by having the  
2           committee adopt the criteria that I had used  
3           that that would be one less thing that a court  
4           could object to or I could be criticized for not  
5           being open about the criteria that I used.

6           Q.    And as to the former, is that because the  
7           criteria adopted by the committee would bind the  
8           committee's members in consideration of a map?

9           A.    The criteria that was adopted by the committee  
10           would be the guiding point, if you will, of maps  
11           that the committee would consider.

12           Q.    So the committee would not consider maps that  
13           violated the criteria laid out by the committee?

14           A.    So --

15           MR. FARR:  I want to object to the form  
16           of that, but you can answer.

17           THE WITNESS:  Well, to be clear, I  
18           don't -- I don't feel comfortable saying what  
19           Senator Rucho as the chairman would have allowed  
20           to be sent forward.  I would have opposed it if  
21           it violated the criteria that the committee had  
22           adopted.

23           BY MR. THORPE:

24           Q.    Now, you referenced a moment ago a book that  
25           came up in your depositions from the 2011

1           redistricting. Is that any written criteria or  
2           is that the legislative guide that was  
3           introduced as an exhibit on Tuesday?

4           A. I was referring to the legislative guide that  
5           was introduced on Tuesday.

6           Q. So in the 2011 redistricting, there was no  
7           written set of criteria for how maps were to be  
8           drawn?

9           A. No. In 2011, there was written criteria that  
10          was released with each map, but what the  
11          criticism was was that it was Rucho and my  
12          criteria and not formally adopted by a  
13          committee. We released a statement explaining  
14          the criteria with each map that we released, but  
15          the committees didn't vote on those statements.

16          Q. I understand. So the formal adoption of the  
17          criteria is meant to reflect the joint  
18          committee's at least majority view on the  
19          constraints under which the maps will be built,  
20          correct?

21          A. Yes, sir.

22          Q. If you've -- I think you've already got it in  
23          front of you, but we're going to talk about  
24          Deposition Exhibit 24, and I'm also likely to  
25          talk about stuff from the Exhibit 34, previously

1 Committee generally understand the one-person,  
2 one-vote requirements to be mandatory?

3 A. Yes, sir, I think so.

4 Q. What about the criterion for contiguity, is that  
5 similarly easy to sell as a pretty much  
6 mandatory criteria?

7 A. I believe so.

8 Q. And the third criterion, Political Data, we've  
9 earlier talked about some of the details of this  
10 which is the basket of elections that would be  
11 used.

12 How did you determine that this  
13 criteria should include election results rather  
14 than registration data?

15 A. It is my belief that election results are a  
16 better predictor of voting behavior than is  
17 registration.

18 Q. Why is that?

19 A. Because registration is generally a one-time  
20 thing. People sometimes change their mind,  
21 change the way they think about things but don't  
22 go to the trouble to change their registration.  
23 And also, frankly, North Carolina has a very  
24 large population that is registered as  
25 unaffiliated with either political party. So it

1 is -- you can just tell more about how an area  
2 generally votes by the way it votes than the way  
3 folks are registered.

4 Q. And the data that would be available to the map  
5 drawer and to the folks voting on the map under  
6 political data would be at the voting district  
7 level?

8 A. So two-part question. Certainly the data would  
9 have been available to the map drawer. The  
10 committee was provided basically towards the end  
11 a stat pack. They could have asked and got more  
12 detailed. I don't know if any of them did or  
13 not.

14 Q. So the stat pack that was provided to the  
15 committee provided it at a district-wide basis?

16 A. Yes, sir, I believe that's correct.

17 Q. And you made the determination not to include  
18 the last two presidential contests, correct?

19 A. It was my understanding that -- I don't remember  
20 if it was the Harris court or another court, but  
21 I had come under the understanding that we were  
22 directed not to use that race.

23 Q. But you made that decision?

24 A. Yes, sir.

25 Q. And you instructed Dr. Hofeller to follow that



1 decision?

2 A. Yes, sir.

3 Q. And also included in this criterion "No data  
4 identifying the race of individual voters shall  
5 be used in the construction or consideration of  
6 districts."

7 A. That's correct.

8 Q. That means that unavailable to the map drawer  
9 would be your standard census data that includes  
10 metrics like race, correct?

11 A. Yes, sir.

12 Q. And did you instruct Dr. Hofeller not to look at  
13 any data he may otherwise have regarding the  
14 race of individuals that would live in the  
15 designed districts?

16 A. I did.

17 Q. How did you instruct him of that?

18 A. That was one of the initial conversations we had  
19 in trying to understand and communicate what we  
20 thought the Harris court said, which is race  
21 shouldn't be used as a factor. So we just said  
22 we won't use it at all.

23 Q. In the context of that discussion, did you also  
24 discuss whether and how the 2016 map would  
25 comply with the Voting Rights Act?

1 A. We did not.

2 Q. You had no discussion with Dr. Hofeller  
3 regarding VRA compliance?

4 A. We did not. And the reason is that our  
5 reading -- my reading of the Harris case said  
6 that we had not established a pattern of  
7 racially polarized voting. Again, I would  
8 respectfully disagree with that, but  
9 nonetheless, the Court made that determination,  
10 and so we were drawing a map to comply with the  
11 Harris order.

12 Q. So based on your instruction, Dr. Hofeller had  
13 no discretion to evaluate the VRA compliance of  
14 the maps that he drew, correct?

15 MR. FARR: Objection to the form.

16 Go ahead.

17 THE WITNESS: I don't exactly  
18 understand what you're asking, but I will simply  
19 say Dr. Hofeller was instructed not to look at  
20 the race of the people in the districts in which  
21 he was drawing. Race was not to be a  
22 consideration or factor in the drawing of these  
23 maps.

24 And, sir, while you're getting ready, I  
25 do want to state for the record that you were

1 right, based on this, the next one considered  
2 was partisan advantage. I was ambiguous about  
3 that. You were correct.

4 BY MR. THORPE:

5 Q. Do you recall why you responded to Senator  
6 Rucho's question by asking him to hold back the  
7 partisan advantage criteria from distribution?

8 A. Yes. Because I wanted members to focus on what  
9 we were saying one at a time.

10 Q. And you recognize that with other criteria, like  
11 contiguity, they were passed out while the prior  
12 one was being discussed, correct?

13 A. I don't recall that. I can say that when you're  
14 presenting to the committee, you're not in  
15 control of the functions of it.

16 Q. Understood.

17 Did you know at the time that this was  
18 being distributed that partisan advantage would  
19 be among these criteria more controversial than  
20 others?

21 A. I feel like it probably would, yes.

22 Q. And why is that?

23 A. Partisanship always gets people concerned. And,  
24 you know, it's clear to me that the Democrats in  
25 the General Assembly would prefer some map be

1 created that better suited what they considered  
2 to be the correct partisan makeup of the maps.

3 I thought long and hard about maybe  
4 saving that one and running the incumbency one  
5 because, again, people know what the incumbents  
6 are, I mean, you just do, but I believe that  
7 every decision that is made, even if it's in a  
8 capacity in which you're not trying to exercise  
9 partisanship comes from the perspective of your  
10 view of life, and I think it's just honest to  
11 say that we're going to -- we're going to  
12 acknowledge that partisanship is in this.

13 And I will point out that as it's  
14 written that it just says that the committee  
15 shall make reasonable efforts to construct the  
16 2016 Contingent Congressional Plan to maintain  
17 the current partisan makeup.

18 Q. And that is the current partisan makeup as  
19 reflected in the 2011 maps, correct?

20 A. Yes, sir.

21 Q. And the partisan performance of the districts in  
22 the 2011 map was evaluated at the time the 2011  
23 maps were enacted, correct?

24 A. I'm sorry. Would you repeat that question.

25 Q. At the time that you passed the 2011 maps, one

1 of the factors that you evaluated was the  
2 expected partisan performance of those maps.

3 A. Yes, sir.

4 Q. And the 2012 congressional election did not  
5 maintain the partisan balance of  
6 North Carolina's congressional delegation, did  
7 it?

8 A. The 2012 election elected 13 members of Congress  
9 and that established the balance, if you want to  
10 use that word.

11 Q. It established a balance. So is it correct to  
12 say that each decennial redistricting, assuming  
13 that there's just one in a ten-year period,  
14 establishes the balance between parties for the  
15 purposes of a congressional delegation?

16 A. I think that after the census is performed, the  
17 task of establishing criteria to draw lawful  
18 districts begin, and the construction of those  
19 districts will yield some political outcome when  
20 the elections are held.

21 Q. And the political goal of maintaining that  
22 balance over the course of a redistricting cycle  
23 is what you are referring to in this criterion?

24 MR. FARR: Objection to form.

25 THE WITNESS: Would you repeat the

1 Q. Just to stipulate to the facts, let's assume the  
2 2012 election was 9 Republicans and 4 Democrats.

3 MR. FARR: Excuse me. Can I just say  
4 something. David McIntire was elected in 2012.

5 THE WITNESS: Okay. I was just trying  
6 to answer. I didn't remember that.

7 MR. FARR: Right. He just didn't  
8 remember that. No big deal.

9 BY MR. THORPE:

10 Q. But the current partisan makeup is 10-3 and  
11 that's a makeup that existed under the 2011  
12 maps?

13 A. Yes, sir.

14 Q. A goal that these criteria pursue is maintaining  
15 the balance from that map?

16 A. Yes, sir.

17 Q. And why is that a legitimate goal?

18 A. In my opinion and in my firmest belief, the 2011  
19 enacted map was drawn in compliance with the  
20 law. That map had elected -- in 2014 -- I'll  
21 correct myself -- 10 Republicans and 3  
22 Democrats. We were being ordered by a court to  
23 redraw the map. I could not see any reason to  
24 not consider among the other factors that as of  
25 the day before the Harris decision came down the

1           Republicans maintained a partisan advantage of  
2           10 seats to 3 seats. I could not see a reason  
3           why -- again, being ordered to redraw these  
4           maps -- that we would not make maintaining that  
5           a goal, not the sole goal but a goal.

6           Q.    When you said before the committee you  
7           acknowledge freely this would be a political  
8           gerrymander, which is not against the law, what  
9           was the basis for that statement?

10          A.    We were back in session. Because a court had  
11          ruled that an idea, a map, if you will, that I  
12          drew -- that I was responsible for, I take  
13          ownership, my name is on it, Rucho-Lewis 2 or  
14          something like that -- was racially  
15          gerrymandered, I took -- I respectfully continue  
16          to disagree with that, but my comment -- and if  
17          you show me the page, I'll be --

18          Q.    This is on Page 48.

19          A.    My comment there was to reinforce the fact that  
20          we were there because we were accused of doing a  
21          racial gerrymander and that there was no way  
22          anybody could accuse us in this map because we  
23          did not look at race.

24                            What I should have continued to say  
25                            probably is those that will continue to disagree

1 with the map will call it a political  
2 gerrymander, but I don't -- I did say "which is  
3 not against the law" because it's my  
4 understanding that it's not.

5 So I'll be happy to try to elaborate  
6 more, but I don't want to take your time either.

7 Q. You stand by the statement that you make on  
8 Pages 4 to -- I'm sorry -- Lines 4 to 6 on  
9 Page 48?

10 A. I would point out -- first, yes, but I would  
11 point out on Line 4 that my use of saying that  
12 this would be is I could have better worded that  
13 and saying there is no way you could consider  
14 this a racial gerrymander, which is what's  
15 brought all of us back up here to Raleigh. The  
16 only way you could possibly attack it would be  
17 as a political gerrymander.

18 Q. Understood.

19 And you acknowledge that that attack  
20 might occur after saying "I would propose that  
21 to the extent possible, the map drawers create a  
22 map which is perhaps likely to elect 10  
23 Republicans and 3 Democrats."

24 Did I read that correctly?

25 MR. FARR: What tab and page is this?



1 MR. THORPE: This is the joint  
2 committee.

3 THE WITNESS: Page 48.

4 MR. THORPE: Page 48 of the joint  
5 committee hearing on the 16th.

6 THE WITNESS: Yes, sir, that's what I  
7 said. And to be clear for everybody, we're on  
8 Exhibit 34, Page 48.

9 BY MR. THORPE:

10 Q. Is it Tab 1?

11 A. Yes, sir.

12 Q. There was already a map that had been drawn at  
13 the time that you made this statement, correct?

14 A. Yes, sir.

15 Q. And did that -- was that map likely to elect 10  
16 Republicans and 3 Democrats in your assessment  
17 based on what you knew at the time?

18 A. Based on my assessment and what I knew at the  
19 time, it gave Republicans an opportunity to  
20 elect 10 members to Congress.

21 Q. And what was your basis for believing that?

22 A. I had looked at the historical performance of  
23 the districts, namely, the Tillis-Hagan race,  
24 and I believe that because Tillis had done well,  
25 that gave the Republicans an opportunity to

1 elect possibly 10 seats.

2 Q. To be clear, you had evaluated each new district  
3 under the results of the 2014 Senate  
4 Tillis-Hagan race?

5 A. That's correct.

6 Q. And the result of placing those election results  
7 into the new districts was a 10-3 Republican  
8 advantage, correct?

9 A. To the best of my memory, yes.

10 Q. Did you evaluate the historical performance of  
11 all of those districts by any other race?

12 A. At the time of drawing the map, no, but prior to  
13 presenting the map I did, yes.

14 Q. Prior to presenting the map to the committee?

15 A. Yes, sir.

16 Q. Okay. Please explain when that occurred, how  
17 that occurred.

18 A. The next day, or whenever I rolled the map out,  
19 the stat pack was there and I had to explain it  
20 to the committee. So at the same time I was  
21 familiarizing myself with it, obviously I read  
22 it.

23 So I would have learned, for instance,  
24 that in 2008, Attorney General Roy Cooper  
25 carried all 13 of these seats. I would have

1 learned that in 2012, the state auditor, who was  
2 a Democrat, won six or seven of these seats. I  
3 would have seen all that, yes.

4 Q. And at the time you had seen the map, but the  
5 others that were going to see the stat pack had  
6 not seen the map; is that correct?

7 A. That's right.

8 Q. So at the time you made this statement to the  
9 committee in asking them to vote for the  
10 criterion partisan advantage, you were the one  
11 that had viewed, other than Dr. Hofeller, the  
12 historical performance of these new districts  
13 based on these prior elections, correct?

14 MR. FARR: Objection.

15 THE WITNESS: It's possible that  
16 Senator Rucho had as well.

17 BY MR. THORPE:

18 Q. If you would turn in the same transcript to  
19 Page 54, though you may want to start on Page 53  
20 which is the beginning of your statement. You  
21 say at the end of Page 53:

22 "Mr. Chairman, the only thing I  
23 could add is that we want to make clear  
24 that we -- that we, to the extent we are  
25 going to use political data in drawing

1           this map, it is to gain partisan  
2           advantage on the map. I want that  
3           criteria to be clearly stated and  
4           understood."

5                        What do you mean by "gain partisan  
6           advantage"?

7   A.   Every line that's drawn creates some grouping of  
8       people. I was being clear that the use of the  
9       political data would be for the purpose of  
10      trying to comply with the criteria, specifically  
11      the one about the partisan advantage.

12   Q.   Okay. So just to walk through that a little bit  
13      more mechanically, you have asked the committee  
14      to approve a criterion that says let's use  
15      political data and defines that political data  
16      as past election results, correct?

17   A.   Yes, sir.

18   Q.   And you have asked the committee to approve a  
19      criteria that says partisan advantage will be  
20      one of the considerations in determining, as you  
21      testified earlier, the constraints that will  
22      govern the map that we adopt, correct?

23   A.   Yes, sir.

24   Q.   And this statement is a statement that the use  
25      of that political data will be for the purpose

1 of, in your words, gaining partisan advantage,  
2 correct?

3 A. Yes, sir, that's what I said.

4 Q. And at the time that you made this statement,  
5 you had evaluated the likely outcome of  
6 congressional races in the newly designed  
7 districts under at least some of those  
8 historical election returns, correct?

9 A. Yes, sir.

10 Q. And other than Senator Rucho and Dr. Hofeller,  
11 no one else had at that time evaluated the new  
12 districts under that same data?

13 MR. FARR: Objection to the form.

14 You may answer.

15 THE WITNESS: I don't know. I hadn't  
16 shown it to anyone else.

17 BY MR. THORPE:

18 Q. But to your knowledge they had not?

19 A. Correct.

20 Q. I want to better understand exactly why the  
21 political data matters for that purpose. So if  
22 you could turn to Page 57. Beginning on  
23 Line 7, in response to a question of what  
24 constitutes partisan advantage, you say -- I'm  
25 sorry -- beginning on Line 8:

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"To perhaps expound on it a bit, this would contemplate looking at the political data, which was an earlier criteria adopted by this committee, and as you draw the lines, if you're trying to give a partisan advantage, you would want to draw the lines so that more of the whole VTDs voted for the Republican on the ballot than they did a Democrat, if that answers your question."

So is that your understanding of how the map drawer, here Dr. Hofeller, uses political data for drawing maps that better satisfy the partisan advantage criteria?

A. Among the other criteria, yes.

Q. To repeat the question. To better satisfy specifically the partisan advantage criteria, is it your understanding that the mechanism you describe here on Page 57 is what Dr. Hofeller does to change the lines within the maps?

MR. FARR: Objection to the form.

You may answer.

THE WITNESS: Yes.

BY MR. THORPE:

Q. Have you observed Dr. Hofeller, or any other map

1 drawer, moving a VTD from one district to  
2 another and the resulting difference in likely  
3 election results?

4 A. I have, yes.

5 Q. And on Page 62, we have mostly covered this  
6 ground, but on Line 18 and 19 you say:

7 "The goal is to elect 10 Republicans  
8 and 3 Democrats."

9 Is that correct? Did I read that --

10 A. You did, sir.

11 Q. And you stand by that statement as to the  
12 partisan advantage criteria?

13 A. Yes, sir.

14 Q. Was there any reason that you felt that the  
15 partisan advantage criteria was necessary to the  
16 plan that you would adopt?

17 MR. FARR: Objection to form.

18 You may answer.

19 THE WITNESS: I --

20 BY MR. THORPE:

21 Q. I'm going to ask a different question.

22 You earlier described certain partisan  
23 considerations as discretionary. Was there  
24 anything about the drafting of the 2016 plan and  
25 your responsibility for it that made you feel

1 that you were required to include partisan  
2 advantage as a criteria?

3 MR. FARR: Objection to the form.

4 You may answer.

5 THE WITNESS: We were there because we  
6 had been accused in my opinion wrongly, a court  
7 found wrong in my opinion, respectfully, that we  
8 racially gerrymandered a map.

9 We made clear at the time that we  
10 followed the law in 2011. We also made clear  
11 that we had political considerations then as  
12 well. Those were, for whatever reason -- well,  
13 because of the court order we were back.

14 So I was making sure in part that I was  
15 reaffirming that the districts that I was going  
16 to produce were going to provide an opportunity  
17 for 10 Republicans to win reelection.

18 And if I may, because I was going to  
19 answer you a while ago, if you've ever been  
20 asked -- if you ever have the opportunity to be  
21 tasked with doing this, there's nothing more  
22 personal to a member of a legislature than the  
23 district they serve. It doesn't matter if it's  
24 the State House district, a U.S. House district,  
25 that district is precious to those folks.



1 population. The consideration of where that can  
2 be made is for consideration of incumbency or  
3 for political impact.

4 Q. And my question is: What was your rationale for  
5 including the phrase "and political impact" in  
6 this sentence?

7 A. Because -- forgive me for interrupting you.  
8 Because I believe you ought to be  
9 honest in the work that you are doing. I've  
10 already said in this deposition that I believe  
11 every choice that we make is in some way  
12 political, and I'm -- this simply acknowledges  
13 that Dr. Hofeller may have chosen to divide a  
14 county in a certain way because of the political  
15 impact of the districts contained therein.

16 Q. Did you evaluate -- at the time that this was  
17 voting on in committee, had you evaluated  
18 whether any of the county splits in the 2016  
19 plan divided counties based on political impact?

20 A. I don't -- I don't remember.

21 Q. Okay. Let's talk about incumbency, which we've  
22 already discussed a little bit.

23 From that second sentence:

24 "However, reasonable efforts shall  
25 be made to ensure that incumbent members

1 of Congress are not paired with another  
2 incumbent in one of the new districts  
3 conducted in the 2016 Contingent  
4 Congressional Plan."

5 What is required of the map maker --  
6 what did you intend to require of the map maker  
7 in stating that reasonable efforts shall be  
8 made?

9 A. If it were possible to comply with all the  
10 criteria and not have to put two incumbents in  
11 the same district, then that would have been the  
12 preferred method.

13 Q. Did you give Dr. Hofeller any instruction of how  
14 to rank the different criterion in terms of  
15 whether it is more okay to violate one than  
16 another?

17 A. No.

18 Q. Did you give Dr. Hofeller any tools or  
19 mechanisms by which to weight the criteria  
20 relative to one another?

21 A. No.

22 Q. Did you indicate to Dr. Hofeller that they  
23 should all be weighed equally?

24 A. Yes.

25 Q. Do you consider incumbency as it's defined in

1                   "The stat pack attached to the maps  
2                   placed on each one of your desks show  
3                   which election results were used in  
4                   building these districts."

5           A.    Yes, sir, I see that.

6           Q.    So when you say an opportunity to elect, you  
7                   mean looking at the likely outcomes based on  
8                   past election results?

9           A.    Yes.    Yes.

10          Q.    And did you use any metric or discuss any metric  
11                   to determine how competitive a seat needs to be  
12                   in order to consider that one party or another  
13                   has an opportunity to elect a member to that  
14                   seat?

15          A.    None other than looking at the historic data.  I  
16                   wish I were smart enough to know another way,  
17                   but I don't.

18          Q.    And so looking at that historic data, how many  
19                   seats would you say that -- based on the  
20                   information you had in front of you at the time  
21                   the Democratic Party had an opportunity to elect  
22                   members of Congress too?

23          A.    I think they had a strong opportunity to elect  
24                   members to three of the seats and a lesser  
25                   opportunity to elect members in the other seats.

1 opportunity for a Democrat to be elected to  
2 Congress.

3 Q. And as we discussed before, Guilford county also  
4 has a county line split, and that split, you  
5 testified earlier, addresses an incumbency issue  
6 for Representatives Walker and Adams; is that  
7 correct?

8 A. That split is necessary to comply with the  
9 one-person, one-vote and apparently also  
10 separates Walker and Adams.

11 Q. Did you evaluate the partisan performance of  
12 individual VTDs in Guilford county?

13 A. I did when we made the change to take Walker and  
14 Adams out of the same district. And, frankly,  
15 doing that made the 6th, to the best of my  
16 memory, a -- the VTD that got included was a  
17 little bit of a higher performing Democratic VTD  
18 than the one that we took out.

19 Q. And consistent with the districts that we  
20 earlier discussed, Dr. Hofeller, while still  
21 complying with all the instructions that you  
22 gave him, was able to or allowed to move  
23 individual VTDs from District 6 to District 13  
24 in Guilford county, or vice versa, for political  
25 impact; is that correct?

1 A. Yes.

2 Q. Are there other districts where Democrats had an  
3 opportunity to be elected?

4 A. You know, it's really hard to speculate. I've  
5 already gone through almost half the map.

6 The 11th, which is sort of the mountain  
7 district, has almost always -- I stand corrected  
8 from something I said this morning.

9 I did realize that Heath Shuler briefly  
10 represented that area, but for most of my  
11 lifetime it's been a Republican stronghold just  
12 based on past vote. The 10th is the same way.  
13 So those are just -- those people just vote  
14 Republican. The 13th, the same way.

15 The 8th -- the Hoke incumbent part of  
16 the 8th are a little bit more inclined to vote  
17 Democratic, but typically Rowan and Cabarrus and  
18 Stanley and Montgomery typically vote  
19 Republican. So I would say that was probably a  
20 lesser opportunity for the Democrats to win.

21 The 7th I say would be a lesser  
22 opportunity for them to win.

23 The 2nd -- the 2nd is a little more  
24 competitive, and I probably should have  
25 mentioned that.

1           The Wake county area is not necessarily  
2           a consistent historic Republican voting  
3           precinct. Certainly Nash county is not.

4           Harnett county, my own, is pretty -- is  
5           a county I would classify as trending Republican  
6           but it's not rock solid. So the right candidate  
7           in District 2 could make an impact as well

8       Q. Now, just as a -- we're both looking at  
9       Deposition Exhibit 25. Does any district under  
10      the 2016 Contingent Congressional Plan not  
11      contain a county split?

12     A. Does any district not contain a county split?

13     Q. Is there any district without a county split?

14     A. 12. Mecklenburg is a county that has two, but  
15      the 12th does not contain a split.

16     Q. That's correct. Thank you for the correction.

17                   And the 12th is exactly the size that  
18                   the 12th needs to be because of the equal  
19                   population requirement, correct?

20     A. Correct. But the other answer to your question  
21      is I believe all the other districts contain a  
22      county split.

23     Q. Right. And the followup to that is where a  
24      district contains a county split, there is the  
25      opportunity to move individual VTDs based on

1 political impact from one district to another  
2 district; is that correct?

3 A. Yes.

4 Q. And did you give Dr. Hofeller instructions to do  
5 so consistent with the partisan advantage  
6 criteria that was later adopted?

7 A. Along with the other criteria, yes.

8 Q. The second part of the sentence is "make no  
9 mistake, this is a weaker map than the enacted  
10 plan in that respect."

11 What's the basis for that statement?

12 A. Again, looking at historical data, this map is  
13 much weaker as far as a Republican-performing  
14 district in the 9th. It's much weaker in the  
15 6th. It's much weaker in the 2nd.

16 So I don't remember, frankly, if the  
17 11th or the 10th changed much, but in terms of  
18 districts that had historical performance --  
19 performing for Republicans, if I had access to  
20 that stuff I could show you which ones, but this  
21 is a weaker map than -- if you look district by  
22 district only at historical data, in many of the  
23 districts, historical data would have shown a  
24 stronger Republican performance level than the  
25 one will for this one.

1 the enacted map as -- or more close -- more  
2 closely resembling them than the other -- the  
3 other districts are.

4 Q. Whatever changes happened in District 11 in the  
5 2016 map, they would have had to happen in  
6 Buncombe county, correct?

7 A. Sir, I don't have the enacted map in front of  
8 me. That sounds right, but I'm not -- I don't  
9 have the 2011 map, but that's my recollection.  
10 My recollection is that is basically the same.

11 Q. Did you evaluate the partisan impact of whatever  
12 changes occurred in Buncombe county?

13 A. Yes.

14 Q. If you could turn to Page 29. In Line 6 you  
15 say:

16 "To be clear, the map that you have  
17 before you was drawn using criteria that  
18 was openly debated and adopted by the  
19 Joint Redistricting Committee."

20 You're making this statement on the  
21 19th as the House is considering whether to  
22 adopt the bill with the new districts?

23 A. Yes.

24 Q. The map that is being evaluated was drawn prior  
25 to the Joint Redistricting Committee meeting,



1 correct?

2 A. Yes.

3 Q. And it was drawn by Dr. Hofeller on your  
4 instructions prior to the written criteria being  
5 adopted by the Joint Redistricting Committee,  
6 correct?

7 A. Correct.

8 And if I could pause one moment, the  
9 question you asked me before this, the only  
10 change that was made after the criteria was  
11 adopted was the Guilford county change. So  
12 there was that one change made.

13 Q. Other than the Guilford county -- thank you for  
14 that.

15 Other than the Guilford county change,  
16 the map being debated and voted on in this  
17 hearing had been drawn prior to the Joint  
18 Redistricting Committee meeting?

19 A. That's right.

20 Q. And it had been drawn prior to the criteria that  
21 were voted on by the Joint Redistricting  
22 Committee --

23 A. That's right.

24 Q. -- being -- I'm sorry, two separate questions.  
25 Prior to that criteria actually being

1 written down?

2 MR. FARR: Objection to the form.

3 THE WITNESS: I believe that to be  
4 correct.

5 BY MR. THORPE:

6 Q. If you would turn to 31.

7 MR. FARR: Page 31?

8 MR. THORPE: Yes.

9 BY MR. THORPE:

10 Q. You explain -- actually, beginning at the bottom  
11 of Page 30 -- that you look at election results  
12 rather than political registration because  
13 election outcomes are much better predictors of  
14 how people actually vote than partisan  
15 registration is. You then discuss unaffiliated  
16 voters in North Carolina, which is similar to a  
17 discussion we had before.

18 Do you consider for the likely partisan  
19 performance of any district the number of  
20 unaffiliated voters in a given district?

21 A. I didn't in drawing this map. I can't say that  
22 I don't from time to time look at things like  
23 that.

24 Q. But for purposes of drawing this map,  
25 registration data made no difference whatsoever?

1 A. That's right.

2 Q. The sole political data used were the historic  
3 election results?

4 A. Yes, sir.

5 Q. And where you say on Line 15 "I freely  
6 acknowledge that I sought partisan advantage as  
7 based on the criteria in drawing this map," you  
8 stand by that statement?

9 A. Yes, sir.

10 Q. Number -- Page Number 32, Line 16. I actually  
11 want to discuss a couple different statements.  
12 If you still have the committee transcripts in  
13 front of you, we're going to talk about  
14 something from that too, but on Line 16 you say:

15 "But for the criteria adopted by  
16 the committee which instructed the map  
17 drawers to do certain things like try to  
18 maintain compactness, try to make -- you  
19 know, take incumbency into account, try  
20 to make the districts look more compact,  
21 be more compact, keep more counties  
22 compact, we could have been much more  
23 aggressive partisan-wise trying to obtain  
24 a map that would elect 11 Republicans.  
25 But you can't really do that if you

1            simply consider partisanship as a part  
2            of the criteria, which is what we did."

3                            That was your testimony before the full  
4            House, correct?

5            A.    Yes.

6            Q.    And before the Joint Committee --

7                            MR. FARR:    Is that Exhibit 34?

8                            MR. THORPE:    Yes.

9                            MR. FARR:    What's the date?

10                            MR. THORPE:    The 16th.

11                            MR. FARR:    Which would be Tab 1.

12            BY MR. THORPE:

13            Q.    On Page 50, you are asked a question by Senator  
14                            McKissick that actually begins on Page 49. It  
15                            is discussing the partisan advantage criteria.  
16                            And you respond to say "I propose" -- this  
17                            begins on Line 7.

18                            "I propose that we draw the maps to  
19                            give a partisan advantage to 10  
20                            Republicans and 3 Democrats because I do  
21                            not believe it's possible to draw a map  
22                            with 11 Republicans and 2 Democrats."

23                            Do you recall that statement?

24            A.    Yes.

25            Q.    And in both circumstances you stand by that

1 testimony?

2 A. I stand by the testimony because, as I said, if  
3 you follow all the criteria, I don't know how  
4 you would create a different map than what we  
5 have.

6 Q. Did you discuss whether it was possible either  
7 with Senator Rucho -- did you discuss with  
8 Senator Rucho whether it was possible to design  
9 an 11-2 map?

10 A. Never seriously, but yes.

11 Q. What does that mean?

12 A. I never devoted much time because we didn't have  
13 it, but if your sole goal was to create a  
14 political draw, you could find a way to group  
15 enough people that would create Republican  
16 opportunity districts, if you will, but you  
17 would have to violate all the other criteria  
18 that we have.

19 You certainly couldn't have kept 83  
20 counties intact. You couldn't only have 12  
21 split VTDs. So if -- you know, the gerrymander  
22 is what's at issue here.

23 Certainly we knew also that the Harris  
24 court was going to look at this map, and when  
25 they look at this map, what I think they see is

1 this is on Page 34.

2 A. Yes, sir.

3 Q. -- you sort of expand on what you have  
4 previously discussed as a rationale for the  
5 partisan advantage criteria. On Line 16 you  
6 say:

7 "I will tell you that the committee  
8 adopted the criteria -- adopt criteria,  
9 one of which was to seek partisan  
10 advantage for the Republicans. Now, if  
11 you ask me personally if I think that is  
12 a good thing, I will tell you I do.

13 "I think you are a great man."

14 You are referring to the person asking  
15 the question.

16 "I think you are a fine public  
17 servant. I think electing Republicans is  
18 better than electing Democrats. So I  
19 drew this map in a way to help foster  
20 what I think is better for the country."

21 Now, earlier you testified that  
22 partisan politics is just an inevitable  
23 consideration in redistricting. Here it seems  
24 like you are testifying that maximizing  
25 Republican advantage has a separate benefit.

1 MR. FARR: Objection to the form.

2 I also would like to point out that  
3 he's referring to Representative Martin. I'd  
4 like to make that clear because I think he's a  
5 great guy too.

6 THE WITNESS: So would you ask the  
7 question again.

8 BY MR. THORPE:

9 Q. Does this testimony provide in your view a  
10 reason for partisan advantage as a criteria in  
11 the 2016 redistricting?

12 A. I stand by this statement. I would point out  
13 only that it may have been said in a little more  
14 cavalier fashion than was dignified on the House  
15 floor.

16 Representative Martin and I, although  
17 we're political adversaries, are personal  
18 friends. I've been to his home.

19 This was more the kind of conversation  
20 that we should have had outside and not on the  
21 floor, but, yes, I mean, I stand by what I said.

22 Q. And then on Page 37, Line 18, you're asked again  
23 by Representative Martin:

24 "Are there any races that are not  
25 listed on these charts that the mapmakers

1 or to spending or to whatever is going to  
2 largely reflect the Republican label behind my  
3 name. So I -- when I make decisions, that is  
4 the honest way to reflect the lens or the method  
5 by which I make those decisions.

6 Q. And how does that belief that it's an inherent  
7 part of who we are translate to the  
8 redistricting process that you reference in this  
9 quote?

10 A. While you only divide -- you know, you've got to  
11 do the one-person, one-vote thing. It would be  
12 dishonest and naive of me to say that where you  
13 put a line in X county may not affect the  
14 balance of a congressional district. So if I  
15 have a different political philosophy or I have  
16 no political philosophy that I'm willing to  
17 acknowledge, still whatever you put a line for  
18 whatever purpose will have political impact.

19 I just -- it would be easy -- believe  
20 me, I want to embrace and be able to say that I  
21 think the non-partisan thing is a great thing.  
22 People love to hear about that.

23 I think it's more honest to say I'm  
24 going to follow the law, and I'm going to follow  
25 everything that's required of me by the law ,



1 but if there is a -- if there is a discretionary  
2 decision to make, I will make it through the  
3 lens of an elected Republican.

4 Q. And do you consider the inclusion of partisan  
5 advantage as a criteria in the 2016 Contingent  
6 Congressional Plan -- used to adopt the 2016  
7 Contingent Congressional Plan such a  
8 discretionary decision?

9 A. Yes.

10 Q. Do you consider any of the other criteria in the  
11 2016 adopted criteria a discretionary decision?

12 A. Largely, yeah. I mean, you can draw -- you  
13 know, I chose to apply the definition of  
14 compactness that I believe, which is trying to  
15 keep as many counties whole as we can. If I had  
16 not had that as a goal, I think we could have  
17 still drawn a pretty map; it just -- maybe it's  
18 just stripes through the state. I don't know.

19 I think that these -- these -- other  
20 than the equal population that these were  
21 considered and balanced and harmonized together  
22 and produced a map that to the eye of a judge I  
23 think they recognized that we tried to follow  
24 the instructions they gave us, which were very  
25 limited.

1           that the districts were supposed to touch. I  
2           know there's been some drawn in the past that  
3           didn't touch. Those weren't found to be  
4           constitutional.

5                        So, I mean, I certainly think -- I  
6           can't cite you a case. I'm not an attorney. So  
7           I will just say it's a traditional redistricting  
8           principle.

9           Q.    For the 2016 Contingent Congressional Plan  
10           Adopted Criteria, did you consider the use of  
11           political data as opposed to any other data  
12           discretionary?

13           A.    I consider the use of political data to  
14                    reemphasize that we in no way were using racial  
15                    data, which is the whole point of the Harris  
16                    case. So I do think it is absolutely necessary  
17                    to point out that the only data other than the  
18                    population that can be used would be political,  
19                    which means you can't use race.

20                        So, yeah, I think that was essential to  
21           complying with the Harris order.

22           Q.    Okay. We began this discussion with partisan  
23           advantage. Did you think it was discretionary  
24           whether this plan needed to address the shape of  
25           the 12th district?