

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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capacity as Chairman of the North)
Carolina Senate Redistricting)
Committee for the 2016 Extra)
Session and Co-Chairman of the)
2016 Joint Select Committee on)
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)

VIDEOTAPED DEPOSITION OF
THOMAS B. HOFELLER

10:05 A.M.
TUESDAY, JANUARY 24, 2017

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

1 would be residences of incumbents, but that's
2 really part of the voter file.

3 Q. When you say results of elections, you're
4 referring to how a particular geographic area
5 voted in primary or general elections?

6 A. Yes.

7 Q. Do you -- for your purposes in your database
8 work, do you use primary election results or
9 general election results or both?

10 A. Generally we use general election results,
11 usually a presidential, U.S. Senate, House of
12 Representatives, statewide votes such as
13 governor, lieutenant governor, attorney general.
14 Some states have more elected officials. Other
15 states have less. And also, of course,
16 legislative results. We're also interested, of
17 course, in registration numbers too.

18 Q. For what purpose do you use election results?

19 A. To determine how areas that are being drawn into
20 new districts or taken out of new districts vote
21 and to try and make an estimate of what
22 electoral success may be in newly formed
23 districts, although it doesn't always end up
24 being exactly as you predicted.

25 Q. Are past election results in your opinion the

1 best predictor of how a particular geographic
2 area is likely to vote --

3 A. Yes.

4 Q. -- in a future election?

5 Is that an industry standard among
6 people who are engaged in map drawing for
7 political parties on either side?

8 A. Yes. Well, I don't know -- I can't tell you
9 about the other side. I haven't drawn districts
10 for partisan Democrats except in very limited
11 circumstances, but in most cases I think experts
12 across the country would agree that past
13 elections are the best, if not imperfect,
14 indicator of what future results may be.

15 Q. Is there any more reliable indicator of future
16 election results than how a particular
17 geographic area voted in past elections in your
18 opinion?

19 A. Not really, no.

20 Q. Is your opinion based not only on your own
21 experience but social science research,
22 political scientists and others who sample that
23 sort of thing?

24 A. Certainly any that I've talked to or read have
25 said that, but, yes. The people who actually

1 draw the districts want that information more
2 than anything else. And I think people who are
3 voting on the districts, the people who may be
4 authorizing these plans or passing the
5 redistricting statutes would all want to know
6 what the past election results are in the area
7 that they're going to get a new plan.

8 Q. So in your opinion, the most important
9 information in trying to give one party or the
10 other a partisan advantage in the redistricting
11 process would be past election results?

12 A. If that was what you were trying to do, yes.

13 Q. And when you are engaged by the Republican Party
14 or by Republican legislators in the state, that
15 is your objective, isn't it, to draw districts
16 that will give that party the maximum advantage
17 in state legislative or congressional elections?

18 A. Not always.

19 Q. What other instances are you asked to draw
20 districts?

21 A. There are other criteria at play in drawing
22 districts. First you have one-person, one-vote,
23 which is a federal requirement. You have the
24 requirements of the Voting Rights Act, which are
25 also federal. There are traditional

1 Q. But you did draw the districts in 2011. You
2 were the principal architect.

3 A. In 2011?

4 Q. Yes, with the congressional districts.

5 A. I did draft districts, yes.

6 Q. And you were the principal architect?

7 A. Well, people have stylized me that way, but...

8 Q. Haven't you testified to that effect previously?

9 A. I believe my memory is that I've testified to
10 the fact that it was my job in the -- in the
11 redistricting to be kind of the principal
12 gatekeeper/scorekeeper of what was being drawn.

13 So I would typically maintain the
14 current copy of the map, and to some degree I
15 was the architect, but, of course, I didn't make
16 the decisions as to where the districts would
17 actually go. That decision rested with the
18 chairman in North Carolina, Chairman Lewis and
19 Chairman Rucho as directors of the two
20 committees as to what would actually be done in
21 the end.

22 Q. Let me show you Page 20, starting at Line 12
23 through Line 16, of your deposition in Harris v
24 McCrory taken on May 6, 2014. If you would read
25 the question and your answer.

1 THE WITNESS: Excuse me. As the
2 architect, I was designing the plan in
3 accordance with the specifications that the
4 legislature wanted, mainly represented by the
5 chairman of the two committees.

6 BY MR. BONDURANT:

7 Q. You operated under the instructions given to you
8 by Senator Rucho and Representative Lewis who
9 were the co-chairmen of the joint committee of
10 the senate and house in 2011?

11 A. Yes.

12 Q. And by specifications, you mean the instructions
13 which they gave you?

14 A. That's true.

15 Q. And all of those instructions were oral?

16 A. Yes.

17 Q. There were no instructions given to you in
18 writing?

19 A. No.

20 Q. There were no -- there's no paper trail against
21 which we can evaluate your description of the
22 instructions?

23 A. I don't believe so, no.

24 Q. And that was a deliberate choice on your part?

25 A. If I received instructions on what I was to do,

1 the next five cycles and solidify a
2 Republican Congressional majority?"

3 Was that the objective of the REDMAP
4 strategy, principal objective?

5 A. I guess so. I don't really know for sure
6 because, again, I was just hired to do certain
7 parts of it.

8 Q. And on the next page, it gives an answer to the
9 question of how that could be accomplished.
10 "Control of the redistricting process."

11 That is precisely what you advocated in
12 your article marked as Exhibit 2, if you can
13 control the redistricting -- control the
14 legislature, you could control the redistricting
15 process.

16 MR. FARR: Objection.

17 THE WITNESS: Not precisely true, no.
18 That's -- the premise of your question is not
19 correct.

20 You may -- that may be a component.
21 There are other components to controlling the
22 redistricting process.

23 I think that the -- once again, this
24 PowerPoint frame speaks for itself. Yes, if
25 you -- if you have control of more chambers in

1 the right places, you will do better in
2 redistricting. I think that goes without
3 saying.

4 BY MR. BONDURANT:

5 Q. Now, if you'll turn to the page ending in
6 numbers 446, it is headed "What will it take in
7 2010?" and then it compares the cost of 20 to 25
8 new Republican congressional districts for the
9 next five cycles through redistricting, with the
10 cost of competing in 20 to 25 competitive swing
11 or Democratic leaning congressional districts
12 for the next five cycles.

13 Do you see that?

14 A. Yes.

15 Q. Had you seen that rationale before for the
16 REDMAP Project?

17 A. I have not been reticent to state the premise
18 that it's much more expensive to elect
19 Republicans in seats that are more balanced
20 politically or Democrat controlled than it is to
21 win elections in seats that lean Republican or
22 are Republican seats.

23 And that -- again, this is a
24 fundraising piece so what they're -- they
25 believed they were trying to do here is to say

1 And for my part, I could really get enough work
2 done on it in the amount of time that I usually
3 had to do it.

4 Q. Did your computer have North Carolina
5 redistricting data loaded on it that was not
6 available on the General Assembly's computer?

7 A. No.

8 Q. Did you get the North Carolina specific data,
9 election results, geographic boundaries, that
10 sort of data, from the North Carolina
11 legislature's computer?

12 A. Some yes. Some no.

13 Q. What other sources do you get data pertaining to
14 North Carolina?

15 A. The United States Bureau of the Census puts out
16 a geographic mapping file called TIGER,
17 T-I-G-E-R. It's an acronym. And it puts out,
18 of course, the redistricting data file, which is
19 all the demographic data. So essentially your
20 map and your demographic data comes directly
21 from the Census Bureau.

22 So we would have gotten that data
23 through the developers of Maptitude, Caliper
24 Corporation in Newton, Massachusetts. So they
25 would take the TIGER file and the redistricting

1 data file and format it to run specifically on
2 Maptitude, which was their redistricting GIS
3 system.

4 The political data, i.e., the election
5 data and the registration data, were compiled by
6 Legislative Services, the IT people, and were
7 publicly available to everybody, and that was
8 the database that I also had for my computer.

9 Q. The Legislative Service Office also got the
10 TIGER data from the Census just as yours was?

11 A. Yes. There is no other source of the data.

12 Q. So in that respect, their data and your data
13 were identical?

14 A. To the best of my knowledge, they were. I never
15 found any differences.

16 Q. And the political data on the Legislative
17 Service Office computer was the data that you
18 downloaded and used for your purposes in
19 redistricting North Carolina?

20 A. Actually, somebody else downloaded it for me,
21 put it on my computer, but it was --

22 Q. But the data was the same?

23 A. It was the same data. I think it was actually a
24 subset of all the data that they had.

25 Q. One of the things you counsel in this PowerPoint

1 BY MR. BONDURANT:

2 Q. So would it be fair to say there's no paper
3 trail of any communication between you and
4 Senator Rucho or Representative Lewis or any
5 representative in the legislature in connection
6 with the 2016 redistricting?

7 A. Are you asking between them and specifically
8 with me?

9 Q. Yes.

10 A. The answer is, no, there was not any.

11 Q. If you'll turn over two more pages, I would like
12 to ask you about another "Legal Perils" that you
13 listed in your PowerPoint. Quote, "Don't get
14 caught in 'criteria hell.'"

15 What message were you conveying there?

16 A. Now, the message is is don't state criteria for
17 your plan and draw your plan by -- to draw your
18 plan by the criteria that you cannot adhere to.

19 Q. So did you have any written criteria when you
20 drew the 2011 congressional redistricting plan?

21 A. To me specifically are you asking?

22 Q. Yes.

23 A. No, not to me specifically.

24 Q. And did Senator Rucho or Representative Lewis or
25 any other representative of the legislature or

1 geography that was contained in the TIGER file
2 which we got from the U.S. Census Bureau.

3 Q. But the election result data you got from the
4 Legislative Service Office?

5 A. The Legislative Service data came from -- was
6 tabulated to the VTD level.

7 Q. To the VTD level. Are you calling that voter
8 districts or voter tabulation districts?

9 A. VTD are voter districts.

10 Q. Okay.

11 A. That's the formal census name for it.

12 Q. Is that the smallest unit for which you had
13 political data available?

14 A. Yes.

15 Q. Were census blocks larger or smaller than voter
16 districts?

17 A. Smaller.

18 Q. Smaller. Could you get voting history data at
19 the census block level?

20 A. In order to run on Maptitude, you had to, what
21 we call, disaggregate the election data down to
22 the block level.

23 Q. Did you do that?

24 A. Yes. I didn't do it. Somebody else did it.

25 Q. On your computer.

1 A. I received the data onto my computer already at
2 the block level. All the data was based on the
3 block level and then it was reaggregated back up
4 to VTDs and also to other units of census
5 geography, like block groups, tracks, counties,
6 places, all sorts of different aggregations.

7 Q. Who disaggregated the voter history data to the
8 block level that you used?

9 A. The disaggregation on my block level data was
10 actually done by Mike Wild, who was my partner,
11 associate, different times different things.

12 At this level, the disaggregation of
13 the data on the North Carolina computer was done
14 by Legislative Services IT branch.

15 Q. But one of the capabilities of the Maptitude
16 program was to give you the ability to aggregate
17 and disaggregate voter tabulation data down to
18 the block level?

19 A. Well, the data already existed in the system at
20 those various levels, so the program wasn't --
21 wasn't reaggregating it back up. If you were
22 working in terms of voter districts, you had the
23 data in your system already for the voter
24 districts.

25 Q. When you were working on the congressional map

1 Q. And what colors did you use and what did those
2 colors indicate?

3 A. Well, I usually use the rainbow spectrum because
4 everybody's familiar with that. It goes violet,
5 indigo blue, green, yellow, orange and red and
6 variations of those colors.

7 Q. What did violet indicate?

8 A. I didn't use violet that much. I used -- red
9 was -- it really depends on what you're
10 displaying and how you want it to stand out.

11 Q. When you were trying to measure the relative
12 strength of the Republican vote in a voter
13 district, what colors did you use and what did
14 those colors indicate?

15 A. Well, sometimes I use different color themes
16 too. You can also use chromatic coloring, which
17 is varying the shading of one color from one to
18 the other.

19 But usually, if I was displaying voter
20 history data that -- red would be the most
21 Democratic and dark blue would be the most
22 Republican.

23 Q. And when you say the most Democratic, what would
24 that indicate in terms of percentages or
25 likelihood of voting Democrat in the future?

1 factors into account in his report."

2 MR. FARR: Can I see that, please,
3 before we have questions on it.

4 BY MR. BONDURANT:

5 Q. I want to focus on a specific sentence. Is it
6 true, as you stated in your first expert report,
7 in 2011, politics was the primary policy
8 determinant in drafting the New Plan, referring
9 to the 2011 Congressional Redistricting Plan?

10 A. I said it. It's true. I said it. Yes.

11 Q. And your instructions in that regard came from
12 Senator Rucho and Representative Lewis?

13 A. Well, I think this was actually my -- my
14 statement rather than their statement, but
15 politics was certainly a major factor,
16 absolutely. It is in every redistricting.

17 Q. And would you turn to Paragraph 40.

18 A. Thank you.

19 Q. In Paragraph 40, you said, in part:

20 "The General Assembly's goal was to
21 increase Republican voting strength in
22 New Districts 2, 3, 6, 7 and 13. This
23 could only be accomplished by placing
24 all the strong Democratic VTDs in either
25 New Districts 1 or 4."

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THE WITNESS: My answer was no. Okay.

BY MR. BONDURANT:

Q. What was their primary goal?

A. The primary goal was to draw a map that the clerk would approve of so they would follow the clerk's directive.

Q. And the primary partisan goal was to achieve a 10-3 Republican advantage in 2016, was it not?

A. That was a goal, yes.

Q. And that was their primary partisan goal?

A. What you describe by definition as a partisan goal, but it wasn't their primary goal as far as the drafting of the plan.

Q. You go on to say in Paragraph 9 after stating the primary goal:

"As a result of the 2010 General Elections, Democrats were elected in 7 districts (1, 4, 7, 8, 11, 12 and 13) while Republicans were elected in 6 districts (2, 3, 5, 5, 9 and 10).

"Following the 2014 General Election, Democrats were elected in only 3 districts (1, 4 and 12). Republicans were elected in the 10 remaining districts."

1 concentrating Democratic voting strength
2 in Districts 1, 4 and 12," and you again
3 site Map 3 attached to your report.

4 Did I read it correctly?

5 A. Yes.

6 Q. Was that the strategy which you as the principal
7 architect of the map followed in achieving the
8 Republicans' primary goal?

9 A. In that plan?

10 Q. Yes.

11 MR. FARR: Objection.

12 THE WITNESS: Yes.

13 BY MR. BONDURANT:

14 Q. And so you had said previously that you wanted
15 to create districts in which Republicans would
16 have an opportunity to elect Republican
17 candidates, correct?

18 A. Correct.

19 Q. And conversely, you want to minimize the number
20 of districts in which Democrats would have an
21 opportunity to elect a Democratic candidate?

22 A. Correct.

23 Q. And you did that by concentrating as many
24 Democratic voters as possible into three
25 specific districts, 1, 4 and 12?

1 A. Correct.

2 Q. And removing as many Democratic voters as you
3 could from the districts that you wanted to
4 create as districts in which Republicans would
5 be elected?

6 A. As many as was reasonably possible, yes.

7 Q. And the Democrats who remained in the districts
8 that you had decided would be Republican
9 opportunity-to-elect districts, those Democrats'
10 opportunities to elect a Democratic candidate of
11 their choice would be diminished, would they
12 not?

13 MR. FARR: Objection.

14 THE WITNESS: It would depend on what
15 their choice was.

16 BY MR. BONDURANT:

17 Q. Their opportunity to elect a Democratic
18 candidate in the districts in which you
19 increased Republican voting strength would be
20 diminished, would it not?

21 A. Yes.

22 Q. Did you use the same strategy of assigning
23 voters to the districts that you wanted to be
24 Republican opportunity-to-elect districts based
25 on their voting history in the 2016

1 reapportionment as you did in 2011?

2 A. It was a strategy, but it was not the principal
3 strategy.

4 Q. What was the principal strategy?

5 A. The principal strategy was to follow criteria
6 which would draw a plan which would be
7 acceptable to the Court.

8 Q. The criteria that you followed in 2016 were
9 written criteria, were they not?

10 A. The committee in 2016 -- we're talking about
11 2016?

12 Q. Yes.

13 A. -- adopted a criteria statement.

14 Q. And did you follow those criteria?

15 A. Yes.

16 Q. Did you have a hand in drafting those criteria?

17 A. Not in the formal sense, no. I may have
18 discussed it with -- probably did discuss it
19 with the chairman.

20 Q. Did you --

21 A. I couldn't have proceeded on the plan without
22 their instructions on what criteria I was
23 supposed to follow.

24 Q. Did you start working on the plan before the
25 criteria were approved by the committee?

1 A. Yes.

2 Q. How far in advance of the approval of the
3 criteria on February 16, 2016, did you start
4 working on a plan for the reapportionment in
5 2016 of congressional districts?

6 A. I think it was either probably the day after the
7 decision came out. It might have been the same
8 day, but that was late in the day. So it would
9 have had to have been the next day.

10 Q. The decision came out, do you recall, on
11 February 5, 2016, that is, the decision in the
12 Harris case?

13 A. I knew about the decision, and I knew I was
14 going to be asked to draft a new plan, yes.

15 Q. Did you do anything to start drafting plans 2016
16 prior to the decision in February, on
17 February 5th?

18 A. No.

19 Q. Did you have any communications with
20 Senator Rucho or Representative Lewis about the
21 possibility that you might be asked to draft a
22 new plan in the Harris case between the close of
23 the trial at the end of October and the decision
24 on February 5th?

25 A. Not that I can recall. I don't think so.

1 MR. FARR: I objected.

2 You may answer if you can.

3 THE WITNESS: Read it again. I'm
4 sorry. I'm just not --

5 (Record Read.)

6 THE WITNESS: The answer to your
7 question is yes.

8 BY MR. BONDURANT:

9 Q. Now, in 2016 you were instructed not to consider
10 any racial data in drafting the 2016 plan,
11 correct?

12 A. Yes.

13 Q. Without racial data, did you consider, in
14 drafting the plan, compliance with the Voting
15 Rights Act in drafting any of the districts?

16 A. I did not use political data in drafting the
17 plan.

18 Q. You didn't use any political data --

19 A. I'm sorry. Any demographic data, racial, ethnic
20 data.

21 Q. And therefore you did not consider compliance
22 with the Voting Rights Act in drafting the 2016
23 plan because you had no access to racial data?

24 MR. FARR: I'm going to object to the
25 form of the question.

1 THE WITNESS: I did not use political
2 data in drafting the plan -- or registration --
3 I'm sorry, I'm getting this wrong.

4 I did not use racial or ethnic data in
5 drafting the plan.

6 BY MR. BONDURANT:

7 Q. You used only political data?

8 A. That's correct.

9 Q. And political data -- by political data you
10 meant the results of statewide elections from
11 2008 to 2014 excluding the presidential races in
12 2008 and 2012?

13 A. That's true.

14 Are we through with this?

15 Q. Maybe.

16 I would like you to turn to the second
17 page of Exhibit 18.

18 MR. THORPE: It's under the binder.

19 THE WITNESS: I'm sorry. It's
20 underneath.

21 BY MR. BONDURANT:

22 Q. On that page I have excerpted testimony from the
23 trial. You're perfectly welcome to look at that
24 testimony at Page 525 of the Harris trial.

25 MR. FARR: What are we looking at now?

1 results in other statewide elections as far as
2 determining whether the districts were going to
3 in the future vote Democratic or Republican.

4 A. Generally true, yes.

5 Q. And you said specifically "I know from
6 experience that the underlying political nature
7 of the precincts in the state does not change no
8 matter what race you use to analyze it."

9 Do you see that language?

10 A. I do.

11 Q. Was that true?

12 A. It's true in the context of the word
13 "underlying," yes, and by that, really I'm
14 talking about the ranking of the precincts one
15 to another. They might all vote a little bit
16 more one way or another, but they'll be
17 generally in the same spot on a continuum of all
18 the precincts.

19 Q. Whether it was deep red, sort of red, light blue
20 or dark blue in your ranking of districts?

21 A. I think I could generally agree with that, yes.
22 There might be some context in which it would
23 not be true. I don't think you want to go into
24 that now.

25 Q. Was that still the case at the time you did the

1 drafting of the 2016 plan?

2 A. Yes.

3 Q. And then in the next sentence, on Page 525, you
4 said:

5 "The only way the underlying
6 political demographics change in a
7 precinct is if the precinct is changed in
8 the nature of the people that are living
9 in the precinct. So once a precinct has
10 found to be a strong Democratic precinct,
11 it's probably going to act as a strong
12 Democratic precinct in every subsequent
13 election. The same would be true of
14 Republican precincts."

15 MR. FARR: Can he look at the
16 transcript, please.

17 MR. BONDURANT: Yes.

18 MR. FARR: And also, I'm going to make
19 a request tomorrow I'm going to want to get
20 copies of any exhibits that you're going to use
21 to cross-examine Senator Rucho or Representative
22 Lewis which is pretty customary here in
23 North Carolina.

24 MR. BONDURANT: It's certainly not
25 covered by the federal rules.

1 MR. FARR: Objection to the form.

2 THE WITNESS: I really think it's up to
3 the attorneys to interpret the Court opinion. I
4 know the Court didn't like the districts.

5 BY MR. BONDURANT:

6 Q. You recall the Court ruling occurred on
7 February 5th?

8 A. I think it was Friday, late Friday afternoon
9 February 5th, yes.

10 Q. And that between the end of the trial until the
11 Court ruling, you had no contact with
12 Representative Lewis or Senator Rucho or anyone
13 in North Carolina pertaining to the districts,
14 the congressional districts that were at issue
15 in Harris?

16 A. I don't know if I didn't have any contact, but
17 we certainly weren't considering redraws at that
18 point.

19 Q. All right. And when did you first begin working
20 on redrawing a plan?

21 A. After the ruling came out.

22 Q. Was that before or after you had any
23 communication from Senator Rucho or
24 Representative Lewis as to how that plan was to
25 be structured?

1 A. I made -- I guess probably over that weekend I
2 made some preliminary looks on what might have
3 been possible to draw.

4 Q. That is, you drew some maps on your computer?

5 A. Yes. You have copies of those maps.

6 Q. When did you first have any communication with
7 Representative Lewis or Senator Rucho as
8 co-chairs of the Joint Select Committee on
9 Congressional Redistricting regarding the
10 criteria which they wanted you to follow in
11 drafting the 2016 plan?

12 A. I don't remember a specific time, but I imagine
13 it was that weekend. It was for sure by Monday
14 because we only had eight days to draw that map
15 so I had to know which way I was to proceed.

16 Q. What were the communications? Can you describe
17 them? What did they tell you they wanted the
18 new map?

19 A. Well, the number one goal was to draw a map that
20 the Court would accept. So we wanted to make
21 sure that the Court's objections were addressed,
22 and the primary way to do that was to put the
23 neutral criteria on top and other criteria
24 underneath it and to not be in a position where
25 anybody could say that race had even come close

1 Another criteria was to look at
2 districts that would be as favorable within
3 those criteria of -- of drawing a plan that was
4 advantageous to Republican candidates.

5 Q. Were there any written communications that set
6 forth any of those criteria?

7 A. No. You have to remember, we had -- by that
8 time we had maybe six days left to go, and those
9 are criteria that I can well keep in my head.

10 Q. Did you make any notes of any of the
11 conversations with Representative Lewis or
12 Senator Rucho in that period between
13 February 5th and February 16th?

14 A. I remember the plan was actually brought into a
15 form to be presented to the legislature long
16 before the 16th. So again, we only had eight
17 days. And the answer to your question directly
18 is, no, I have no notes.

19 Q. Is it correct that you were instructed by the
20 map drawers to create a map that was likely to
21 elect 10 Republicans and 3 Democrats?

22 A. Initially no, but during the process, yes, to a
23 certain degree, within the limits of the other
24 criteria that had to be put on top in order to
25 meet what we thought would be the demands of the

1 federal court in the drafting of this plan
2 because the whole goal and the overarching goal
3 of the plan was to make sure that whatever was
4 drawn was a plan according to neutral criteria
5 and that would be acceptable to that Court.

6 Q. Is there any written document that you have seen
7 that refers to a desire to comply with the
8 Voting Rights Act as being a factor in the
9 drawing of the 2016 plan? That's a yes-or-no
10 answer.

11 A. No, but I want to elaborate.

12 Q. A "no" answer requires an elaboration?

13 MR. FARR: If he wants to give one.

14 THE WITNESS: I just want to say that
15 compliance of the Voting Rights Act is not an
16 option; you have to comply.

17 BY MR. BONDURANT:

18 Q. When did you first see a draft of what became
19 the written adopted criteria?

20 A. I don't recall I did. I may have seen it after
21 it was done. I just don't know.

22 (WHEREUPON, Plaintiffs' Exhibit 24 was
23 marked for identification.)

24 BY MR. BONDURANT:

25 Q. Can you identify Exhibit 24 as the 2016

1 Contingent Congressional Plan Committee Adopted
2 Criteria?

3 A. Yes.

4 Q. Did you see a draft of this document before it
5 was adopted by the meeting of the joint
6 committee on February 16th?

7 A. I don't really recall. I was more interested in
8 getting the plan into shape to be presented.

9 Q. So you were drafting a plan to comply with these
10 criteria even before the criteria was drafted --
11 was adopted?

12 A. Well, I had to have been because the plan was
13 for the most part finished by the time the
14 criteria were formally adopted by the committee.

15 Q. Were there any changes in the plan that you
16 drafted made after the criteria were adopted on
17 February 16th?

18 A. Yes.

19 Q. So the plan was in nearly final form before
20 criteria was adopted and was changed afterwards?

21 A. Yes.

22 Q. When you received the written criteria, did you
23 regard them as your instructions that you were
24 to follow in conforming the plan which you had
25 drafted to the criteria adopted by the

1 committee?

2 A. I'm sorry. Did you -- could you repeat that
3 again.

4 (Record Read.)

5 THE WITNESS: I think the answer to
6 that question is no, but I can explain if you
7 want me to.

8 BY MR. BONDURANT:

9 Q. So you did not regard yourself bound by the
10 written criteria?

11 A. I would have been bound by the written criteria
12 at the time that it came out, but that's not the
13 question you asked me.

14 Q. When you received the criteria after they were
15 adopted on 2016, did you regard yourself bound
16 by them?

17 A. Of course.

18 Q. Did you modify the plan to conform to the
19 criteria?

20 A. It already conformed to the criteria.

21 Q. The first criteria was equal population which is
22 a constitutional requirement.

23 A. Yes.

24 Q. And that's a background requirement of every
25 reapportionment plan, correct?

1 BY MR. BONDURANT:

2 Q. Your understanding of the Harris decision was
3 the Court ruled that you could not use race as a
4 predominant factor in drawing District 1 or
5 District 12?

6 A. That's a different question, isn't it.

7 Q. Can you answer the question I asked, not the one
8 you like.

9 MR. FARR: Objection. Let's not do
10 that.

11 THE WITNESS: Read the question back
12 for me, please.

13 MR. BONDURANT: Just get your witness
14 to be responsive.

15 MR. FARR: He's been responsive all
16 day.

17 (Record Read.)

18 THE WITNESS: Or in any other part of
19 the plan. The answer is, yes, that was my
20 understanding.

21 BY MR. BONDURANT:

22 Q. In the next sentence in the adopted criteria,
23 you were instructed the data identifying race of
24 individuals or voters shall not be used in
25 construction or consideration of districts in

1 the 2016 plan.

2 Did you follow that instruction?

3 A. Yes.

4 Q. So you did not consider race or the racial
5 composition of any of the districts in drawing
6 the 2016 plan?

7 A. I did not use race as a data factor in drawing
8 the plan.

9 Q. And without having racial data, you could not
10 determine whether or not any of the districts
11 were retrogressive for purposes of Section 2 of
12 the Voting Rights Act, could you?

13 MR. FARR: Objection to that question
14 for a variety of reasons.

15 THE WITNESS: When the plans were drawn
16 and presented before the committee, the
17 Democrats asked for the racial and ethnic data.
18 The racial and ethnic data had shown that the
19 plan was retrogressive. It would have come up
20 with that data and the plan would have had to
21 have been modified.

22 MR. BONDURANT: That was not my
23 question.

24 Would you read my question back and
25 would you give me an answer to my question.

1 (Record Read.)

2 THE WITNESS: I would know that --
3 generally that District 1 would not have been
4 retrogressive because it was drawn in the same
5 area.

6 BY MR. BONDURANT:

7 Q. Did you look at whether any of the other
8 districts were compliant with the Voting Rights
9 Act?

10 A. None of the other areas --

11 Q. Was that a "yes" or a "no"?

12 A. I'm sorry. Just ask it again.

13 MR. BONDURANT: Would you read the
14 question back.

15 (Record Read.)

16 THE WITNESS: No because there were no
17 other Voting Rights districts in the state
18 before in the previous benchmark plan.

19 BY MR. BONDURANT:

20 Q. The next sentence of your instructions were
21 that:

22 "Voting districts ('VTDs') should be
23 split only when necessary to comply with
24 zero deviation population requirements
25 set forth in order to ensure integrity of

1 THE WITNESS: -- is I did not -- well,
2 no, I didn't draw any maps that had fewer than
3 13 precinct splits, period.

4 BY MR. BONDURANT:

5 Q. Let's go to next paragraph. It's headed
6 Partisan Advantage.

7 "The partisan makeup of congressional
8 delegation under the enacted plan is 10
9 Republicans and 3 Democrats."

10 That was the 2011 plan which you
11 drafted, correct?

12 A. First of all, I don't really understand what
13 "enacted plan" means in that statement. Does
14 that mean -- I think that means the 2011 map,
15 the way it's worded.

16 Q. That's what I thought it meant too.

17 A. I just wanted to make sure we were speaking
18 about the same thing.

19 Q. The status quo was 10-3?

20 A. Yes, it was.

21 Q. And that was under the 2011 plan which you
22 drafted?

23 A. That's true.

24 Q. And your instructions were to preserve that
25 partisan advantage.

1 A. My instructions were to make an effort to
2 preserve that partisan advantage, yes.

3 Q. And you succeeded in that objective?

4 A. I don't believe that's the case, no.

5 Q. In the 2016 election, how many Republicans were
6 elected?

7 A. Ten.

8 Q. How many Democrats were elected?

9 A. Three.

10 Q. Was that your objective?

11 A. No. My objective was as the criteria stated.
12 That was a -- that was an election where all the
13 incumbents -- I don't know if it was all the
14 incumbents, but most the incumbents won. There
15 was actually one race where two incumbent
16 Republicans ended up being pitted against one
17 another, but that doesn't have anything to do
18 with what I actually think the potential
19 partisan makeup of the plan was.

20 Q. You were instructed to make reasonable efforts
21 to draw a 10-3 Republican advantage plan?

22 A. Yes, I'll agree with that statement.

23 Q. And you achieved that objective?

24 A. No, I don't think I did, actually. I don't
25 think it was achievable under the criteria, the

1 other criteria which limited the drafting of the
2 plan.

3 Q. So you don't think a 10-3 partisan advantage was
4 achievable under the written criteria you were
5 given by the joint committee?

6 A. I thought it was certainly possible, yes.

7 Q. So it was achievable?

8 A. It was achievable, but it could also not be
9 achievable. Every election is different. The
10 number of candidates, the type of candidates
11 that win, the general political climate,
12 everything goes into who's going to win these
13 elections and --

14 Q. I thought you told us previously that it is your
15 expert opinion that how a precinct or a voter
16 tabulation district votes, whether Democratic or
17 Republican, was highly predictive of how it
18 would vote in the future and that would be true
19 over a series of elections unless there were
20 major population shifts in the composition of
21 the district.

22 Wasn't that your prior testimony?

23 A. I think for the most part, yes. Yes.

24 Q. Now, one of the instructions was to essentially
25 do away with the 12th district which was a

1 last-minute changes, but they weren't of very
2 great substance.

3 Q. And the criteria, the written criteria,
4 Exhibit 21 -- excuse me, Exhibit 24, were in
5 your hands before you made that final plan which
6 you turned over to Representative Lewis and
7 Senator Rucho?

8 A. Well, first of all, the first plan I turned over
9 to Senator Rucho and Representative Lewis was
10 not the final plan; it was the near-final plan.
11 And the written criteria, I didn't know the
12 written criteria until after the committee met
13 and adopted it.

14 Q. So you prepared a plan before February 16th, the
15 date on which the committee hearing was held and
16 which the criteria were formally adopted?

17 A. For the most part it was final, yes.

18 Q. The written criteria was then adopted and given
19 to you?

20 A. Yes. I don't really recall how they were given
21 to me, but I was aware they had been adopted.

22 Q. Did you modify the plan after receiving the
23 written criteria as adopted on February 16th?

24 A. Yes.

25 Q. What modifications did you make?

1 A. I modified the plan because an incumbent address
2 was incorrectly located in the incumbency file
3 which I received and had resulted in the
4 incumbent being outside of the district that was
5 intended for him.

6 Q. And who is the incumbent?

7 A. It was the member in the 6th. I don't remember.

8 Q. Was that Mr. Holding?

9 A. No. That was the 6th district. Holding was --
10 actually, he was drawn in the 4th, I believe,
11 and was in the final plan. He lived in Guilford
12 County.

13 MR. SPEAS: Walker.

14 THE WITNESS: Walker. Yes, Walker.

15 BY MR. BONDURANT:

16 Q. So you drew a Republican incumbent into the new
17 4th district pairing him with the Democratic
18 incumbent in that district, correct?

19 A. That's the way the plan ended up, yes.

20 Q. So you did not avoid pairing incumbents in
21 drafting the 2016 plan?

22 A. The decision was made because --

23 Q. Is the answer yes or no?

24 A. I'm sorry, I don't know what the yes-or-no
25 answer is.

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(Record Read.)

THE WITNESS: That's true.

BY MR. BONDURANT:

Q. And Representative Holding in fact decided to run in Representative Elder's district -- Elmer's district and ultimately defeated her in the Republican primary?

A. Well --

MR. FARR: Yes.

THE WITNESS: Yes, but it was actually more of that district was his district than her district.

BY MR. BONDURANT:

Q. Okay. So did you make any other modifications in the plan that you had drafted before February 16th after you received the written instructions?

A. No.

Q. And you don't know whether you could have drafted a plan that would have divided fewer counties and at the same time achieve the partisan objective of a 10-3 plan?

A. I did not draw such a plan.

Q. And you don't know whether such a plan can be drawn?

1 Q. And you divided counties for political impact?

2 A. The primary reason for dividing counties was to
3 conform to one-person, one-vote, but, yes, the
4 politics was considered when county divisions
5 were made.

6 Q. So if there were a collision between politics
7 and keeping counties whole, politics won?

8 MR. FARR: Objection.

9 THE WITNESS: No, that's not correct.

10 BY MR. BONDURANT:

11 Q. You told us that you divided counties for
12 political impact, correct?

13 A. No, I didn't tell you that. Within counties
14 that were split, politics were considered.
15 That's not -- what you said is not what I said.

16 Q. Well, the instructions were that you could
17 divide counties for political impact.

18 Did you follow those instructions?

19 MR. FARR: I think he's answered the
20 question, but you can go ahead and answer it
21 again.

22 THE WITNESS: I wouldn't characterize
23 what I did that way.

24 When a county was divided and when the
25 plan was presented to the chairman as presented,

1 BY MR. BONDURANT:

2 Q. Can you identify Exhibit 28.

3 A. Those are statewide totals for various
4 elections.

5 Q. And are those --

6 A. And it also would give you a key to
7 understanding what the column headers were on
8 Exhibit 27.

9 Q. You read Exhibits 27 and 28 together, correct?

10 A. Yes, unless you knew what the -- knew what they
11 stood for.

12 Q. And Exhibit 28 are the results of the 2008
13 through 2014 elections on which you relied in
14 drafting the 2016 plan?

15 A. They include the elections that I used.

16 Q. Help me understand how you used these election
17 results. Did you weight the results in some
18 elections more heavily in others?

19 A. No.

20 Q. Did you take an average?

21 A. Yes.

22 Q. So you averaged all of these together and just
23 used a single numerical average in identifying
24 which VTDs were likely to vote Democratic and
25 which VTDs were likely to vote Republican?

1 MR. FARR: Objection.

2 THE WITNESS: As you stated the
3 question, the answer is no.

4 BY MR. BONDURANT:

5 Q. How did you use these results?

6 A. I used only part of these results. There would
7 be no need to use all of these contests in order
8 to get a pretty good cross section of what the
9 past vote had been.

10 Q. Which contest did you use?

11 A. I can't tell you off the top of my head. I
12 would be glad to provide that if you want it.

13 Q. I would like for you to do so. How long will it
14 take you to do that?

15 A. Well, I don't have it with me, so I'd at least
16 have to get back and give it to my attorneys and
17 they can give it to you.

18 Q. So if I understand your answer correctly, you
19 did not average all 20 races. You selected some
20 of the 20 and averaged them and used that number
21 in -- as the political data which you used in
22 assigning VTDs and counties to various
23 congressional districts.

24 A. Where the county was split, that would be
25 correct.

1 Q. And where you were assigning a whole county, you
2 looked at the voting history in that particular
3 county?

4 A. Not really, no.

5 Q. What data -- political data did you look at for
6 a county that was not being split?

7 A. I didn't really look at any data for the
8 counties, except the populations, of course.

9 Q. How did you know whether the county would be
10 likely to be -- if included in a district would
11 result in a Republican district versus a
12 Democratic district?

13 A. I guess -- I guess I'd have to correct my answer
14 in saying that for the whole counties I did see
15 the shading so I had a general idea, but I
16 didn't actually use the thematic display to
17 divide the counties.

18 I may not divide the counties. Where
19 the counties were divided, I used the VTD
20 schematic. Where the counties weren't divided,
21 a lot of it was because the counties -- there
22 were the same counties that were in the previous
23 districts and because a general look at the --
24 at the thematics of the county would give me a
25 rough idea of whether or not it was a strong

1 Democratic or Republican county.

2 Q. When you say thematics, you're speaking of the
3 color codings?

4 A. Yes.

5 Q. And the color codings told you whether or not a
6 county was more likely to vote Democratic than
7 Republican?

8 MR. FARR: Objection.

9 THE WITNESS: Again, I didn't have the
10 totals, but, also, I've drawn a lot of
11 legislative districts in these areas and I
12 remember what the legislative districts look
13 like too.

14 BY MR. BONDURANT:

15 Q. And in each instance you were relying primarily
16 on the voting history of people in that county
17 as you were in the VTDs in deciding whether you
18 would include that county in trying to create a
19 predominantly Democratic district or
20 predominantly Republican district?

21 A. Well, remember, the initial criteria was try to
22 split as few counties as possible, but if you're
23 building a plan, as you're building a plan,
24 there's a running total -- a running tally
25 that's on the machine.

1 Q. A running tally not only of the population but
2 of the voting history?

3 A. Whatever you select to display you can put up
4 there. You have a choice. You can pick certain
5 fields to be summary fields.

6 Q. And voting history was one of those fields?

7 A. Well, it would be multiple fields, yes.

8 Q. Did you run any of the compactness measures of
9 the 2016 plan on Map Quest -- excuse me --
10 Maptitude?

11 MR. FARR: And you're talking about
12 before the plan was enacted?

13 MR. BONDURANT: Before or after.

14 MR. FARR: Afterwards, I instruct you
15 not to answer that question.

16 MR. BONDURANT: On what ground?

17 MR. FARR: Work product.

18 BY MR. BONDURANT:

19 Q. Before the plan was enacted, did you run any of
20 the tests of compactness?

21 A. No.

22 Q. And was that also true of the 2011 plan?

23 A. I don't remember.

24 MR. FARR: Emmet, I also think it's
25 Rule 26 -- it's a rule on experts.

1 on the last page of this exhibit?

2 A. Yes.

3 Q. And feel free to take a moment to review that.
4 My question is whether sitting here now there
5 are any documents that you're aware of that fall
6 into any of these categories that haven't --
7 that we have not already received.

8 A. In all this, I think -- I think I've been
9 responsive as I can. I don't know what some of
10 these statistical systems are in 6.

11 Q. So you're talking about the references to the
12 statistical analysis software, the Stata and R,
13 SPSS?

14 A. I know SPSS and I know SASS. I don't know Stata
15 and R. Maybe it's my vintage.

16 Q. I assume, then, you don't have documents that
17 were -- that are code created in that software.

18 A. There wasn't any new -- no, there was no code
19 and no reports.

20 Q. And in particular, I'm interested in the
21 testimony you gave earlier about the average
22 that you compiled of election returns in
23 analyzing the 2016 districts.

24 Was that -- I don't recall us seeing
25 any data file that contained that average. Is

1 that something that you've produced already or
2 you can produce?

3 A. It's not really in any data file. It's -- you
4 type a formula in to Maptitude at the time you
5 are shading the precincts and you put in the
6 formula and it produces it, but it doesn't
7 actually go into any database. I think it's
8 more done on the fly. Maybe Maptitude puts it
9 in an intermediate file, but I know not. It's
10 like a black box to me.

11 Q. Did you print out any hard reports once
12 Maptitude was running that formula?

13 A. The only hard copy I would have would be to
14 print a map which displayed the thematics, which
15 I really didn't do, or of the map itself.

16 Q. But you can provide us the formulas so that we
17 can determine which -- which data you were --

18 A. Sure.

19 Q. -- averaging?

20 A. And I'd be happy to do that.

21 Q. Okay. Other than that, is there anything else
22 that you have that relates to any of these
23 categories?

24 A. There's nothing in here that -- if you all have
25 a Maptitude system, you know what files are in

1 Q. And then what about the next page, 59, "Congress
2 17-A," that one's -- there's some pretty major
3 changes at this point.

4 A. Yeah, something that I was pretty sure wasn't
5 going to work at all.

6 Q. Why is that?

7 A. Well, first of all, it doesn't comply with the
8 criteria to try and keep incumbents to the
9 extent as possible in their districts. And,
10 again, it's just an experiment to see what the
11 possibilities could be.

12 Q. So before you had spoken with the chairman, what
13 did you -- how -- how did you know that keeping
14 incumbents in their districts would be a
15 criteria that they would want you to follow?

16 A. There's a big basic difference between
17 experimental maps that I produce and what I have
18 spoken to the chairman about as the general
19 criteria that they were interested in doing.

20 I think probably at this point I had
21 spoken to them, but that doesn't -- that means
22 that I have to start knowing what to do and then
23 modulate the maps or backtrack and get them to a
24 form that is within the bounds of the criteria.

25 Q. So when you spoke with them at some point before

1 compactness tests are not significantly affected
2 by the actual size of the district but by the
3 shape of the district.

4 BY MS. EARLS:

5 Q. So you were looking at it and determining based
6 on that that it was more compact by looking at
7 it?

8 A. Yes, and it would be.

9 Q. You also testified earlier about the Voting
10 Rights Act compliance. And how did you go about
11 ensuring Voting Rights Act compliance in drawing
12 the 2016 congressional plan?

13 A. Well, first of all, the only district we had to
14 worry about was District 1, and since it was
15 drawn in the general area that District 1 has
16 been in for decades, actually, and since I was
17 familiar with the old House of Representative
18 districts which are -- actually have been
19 contested now, but which were drawn in 2011, I
20 knew that this new configuration was going to be
21 acceptable under the Voting Rights Act. And
22 indeed, if it hadn't been, the minute that
23 somebody wanted to look at those racial scores,
24 they would probably be objecting to it, and
25 those were known before the map was passed.

1 Q. But you knew that without actually looking at
2 the racial demographics?

3 A. Pretty much. Oh, yes. Past experience.

4 And that was the only district which
5 was a Voting Rights district in the state or has
6 been since -- since the initial map that was
7 thrown out in the Shaw decision.

8 Q. I want to look at District 19 -- or Map 19-H
9 which -- which is -- it's number 48, Page 48 on
10 Exhibit 31?

11 A. H?

12 Q. Yes. Congress 19-H. Did you -- did you do a
13 political impact analysis using the formula with
14 the average of election returns for this map?

15 A. Okay, I'm trying to find it.

16 Q. I'm sorry. It's Page 48 of Exhibit 31.

17 A. I got them mixed. Okay.

18 I want to make you understand one
19 thing. There was a difference between the
20 political statistics that we may have looked at
21 for the plan as a whole after -- when we were
22 kind of benchmarking the plan and the formula
23 that was in the thematic display. So we might
24 look at several different indicator races, such
25 as 2014 Senate or a governor race.