

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
)
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)
2016 Joint Select Committee on)
Congressional Redistricting,)
et al,)
Defendants.)

VIDEOTAPED DEPOSITION OF

THOMAS B. HOFELLER - VOLUME II

2:02 P.M.
FRIDAY, FEBRUARY 10, 2017

POYNER SPRUILL
301 FAYETTEVILLE STREET, SUITE 1900

RALEIGH, NORTH CAROLINA

1 Then you go on to G12, "G" which is
2 governor in 2012.

3 And G10S is Senate in 2010.

4 And I think I skipped some over here.
5 I'm sorry. Let's start at the beginning again
6 after the 100.

7 Q. Okay.

8 A. The first one is for governor. The next one is
9 for senate. The next one is for commissioner of
10 insurance. Then you go into the 12 general.
11 You have governor. You have commissioner of
12 labor. And in G10 you have U.S. Senate. And in
13 14 you have U.S. Senate.

14 Q. And then what does the -- so that's in the
15 numerator of the formula?

16 A. The numerator of those same races that you have
17 both the Democratic and Republican vote.

18 Q. You mean the denominator?

19 A. The denominator.

20 Q. Right.

21 A. Okay. So the numerator, just to make it clear,
22 is the sum of the Republican votes. The
23 denominator is the sum of the Republican plus
24 the Democratic votes.

25 Q. And this formula, then, does not include any

1 suit your purpose and that's why you included
2 them in the formula.

3 What was the purpose that the formula
4 was designed to achieve?

5 A. To give me an indication of the two-party
6 partisan characteristics of VTDs.

7 Q. Okay. So how did you -- then can you describe
8 to us how you used this formula in drawing the
9 congressional districts.

10 A. When I was looking -- when it was necessary,
11 actually, to divide a county, I put the result
12 of this formula -- well, it was actually in
13 the -- on the screen -- and indicated that I
14 wanted to see the precinct or VTD level and used
15 it as a partial guide to where I would put the
16 lines for the districts, but it was not -- it
17 was one of many factors.

18 Q. Right. In devising the thematic based on this
19 formula, do you remember how many intervals you
20 had up on the screen?

21 A. Well, I think I had some different intervals at
22 different times, but my usual method is to use
23 5 percent intervals usually centered around
24 50 percent.

25 Q. So can you describe, then, how that would work.

1 How many -- like what would be the lowest bound
2 and the upper bound with the 5 percent
3 intervals?

4 A. I usually use eight factors. So maybe it would
5 be three above 50 and five below or maybe it
6 would be the other way around, but it's centered
7 on 50.

8 Unfortunately, Maptitude doesn't have
9 an option that allows you to pick that right off
10 the bat, so you have to enter them in manually.

11 Q. You have to enter in what manually?

12 A. The percentage breaks on the intervals.

13 MS. EARLS: John, are you ready to try
14 to -- I want to -- for you to be able to
15 describe how you did that in Maptitude and we
16 can then print out a screen shot and you can
17 tell us if that's what it looked like when you
18 were using this formula to create a thematic.

19 THE WITNESS: It might be difficult for
20 me to do it without seeing the screen that he's
21 using.

22 MS. EARLS: John, are you able to -- I
23 don't think -- well, first, can we break and let
24 me confer.

25 THE VIDEOGRAPHER: Off record at

1 2:16 p.m.

2 (Brief Recess.)

3 THE VIDEOGRAPHER: On record at
4 2:17 p.m.

5 MS. EARLS: So I'm asking John
6 O'Hale -- John, do you want to identify -- well,
7 I guess you don't have a mic.

8 John O'Hale, who is assisting us for
9 the purpose -- assisting the plaintiffs for the
10 purposes of this deposition, and he's an
11 attorney with Poyner Spruill.

12 BY MS. EARLS:

13 Q. Dr. Hofeller, can you describe how you -- how
14 you divided up the data to create your thematic
15 when you were using this formula so that John
16 can replicate that?

17 A. Okay. Well, I can give you an example of one
18 way I might have divided it up rather than the
19 way.

20 Q. Okay.

21 A. I already stated already that I might have used
22 different breaks at different times.

23 Q. Okay.

24 A. I just don't really remember.

25 Q. Okay. What is one way that you might have done

1 it?

2 A. Let's see. 50 to 55, 55 to 60, 65 to 100. And
3 below would have been 50 to 45, 45 to 40, 40 to
4 35, 35 to 30, 30 to 25 and 25 and below. If
5 that's eight intervals. I don't have a scratch
6 pad here so I don't --

7 Q. And is there any particular color scheme that
8 you used to create the thematic?

9 A. Yes. I used the rainbow theme.

10 Q. Okay. So I'm going to give John a minute to
11 pull that up and print it out and then we'll
12 make it an exhibit and see if that helps us
13 understand what you were looking at when you
14 were --

15 A. Sure.

16 Q. It won't have data because we don't have the
17 same data set, but at least the thematic -- we
18 can look at that.

19 A. Well, if it isn't the same data, it won't be the
20 same. Okay, we'll just --

21 MR. FARR: He'll look at what you
22 produce.

23 THE WITNESS: I'll look and then
24 comment.

25 MS. EARLS: Okay. Thank you.

1 Okay, John, just let me know.

2 (Discussion held off the written
3 record.)

4 BY MS. EARLS:

5 Q. Did you use this formula in any other analysis
6 other than the thematic for -- as you were
7 drawing the districts?

8 A. Okay, I'm not -- I'm not clear on the precision
9 of your question there. Could you try it again,
10 please.

11 Q. Yes. I'm trying to understand in addition to
12 using this formula to create a thematic to show
13 a percentage of Republican vote -- am I correct
14 that that's what it showed you, the percentage
15 of Republican vote in a VTD?

16 A. The percentage of the Republican vote was of the
17 two-party vote.

18 Q. Right. The percentage of the Republican vote of
19 the two-party vote?

20 A. Yes.

21 Q. At the VTD level?

22 A. At the VTD level.

23 Q. Did you use this formula for any other
24 evaluation of the districts?

25 A. Okay. When I was -- at the county level?

1 Q. At any level.

2 A. I did not use it. When I was at the block
3 level, I did not use it. And those were the
4 only three levels.

5 Q. And so you're saying that when you would -- as
6 you were drawing the districts, when you were
7 looking at data at the county level, you didn't
8 use this formula?

9 A. No.

10 Q. And so the only -- as you were drawing
11 districts, the only time you looked at the
12 results of this formula was when you were --
13 when you were looking at the VTD level?

14 A. Yes. Because keeping counties whole was a
15 higher priority, and I didn't really need the
16 data to do that.

17 Q. So how did the data help you as you were using
18 at the VTD level?

19 A. Well, it gave me an idea of the characteristics
20 of the VTDs that were on the screen.

21 Q. And what characteristics?

22 A. Well, the formula.

23 Q. Right. But I'm just asking you to tell us what
24 the characteristics -- what characteristics
25 using the formula gave you for the VTDs.

1 Q. But you thought this formula would give you some
2 useful information regarding the partisan makeup
3 of the VTD?

4 A. Partisan characteristics, yes.

5 Q. And did you think that knowing the partisan
6 characteristics of the VTD based on this formula
7 would be of assistance in predicting future
8 elections?

9 A. I think I explained before, I think, that
10 individual VTDs tend to carry -- all things
11 being equal, tend to carry the same
12 characteristics through a string of elections.
13 They may not have the same exact result, but
14 they may, absent some unusual feature, line up
15 from one end of the spectrum -- political
16 spectrum to the other in roughly the same order.

17 MS. EARLS: I would request
18 permission -- at this point, I want to give John
19 a little more time to get the intervals and the
20 thematic right, but I'm finished otherwise with
21 the questions I have. I want to give Mr. Speas
22 an opportunity. Can we do that?

23 MR. FARR: Sure.

24 ///

25 ///

1 So this produced the kind of 50/50 split that
2 was good for determining this.

3 Q. Okay. Is it fair to say the seven elections in
4 Exhibit 42 reflect your best professional
5 judgment as to the elections that should be used
6 for this particular purpose?

7 MR. FARR: Objection.

8 You can answer.

9 THE WITNESS: You know, I'm not here to
10 say that I have all the answers on this.
11 Somebody else may come up with a different set
12 of elections that they might want to use and
13 they might have equally valid reasons for
14 wanting to use them. It's kind of a subjective
15 idea.

16 What you're really looking for is
17 something that will come up with the kind of
18 result, again, that you came to the conclusion
19 on on 43 which is a 50/50 result.

20 The reason you use more than one
21 election is because you don't want to pick up
22 the characteristics of that election as it may
23 pertain to one part of the state or the other
24 part of the state because of the candidates or
25 whatever was happening.

