

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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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)
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VIDEOTAPED DEPOSITION OF
SENATOR ROBERT A. RUCHO

9:40 A.M.

WEDNESDAY, JANUARY 25, 2017

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

1 the federal court would have even had a question
2 about it.

3 Q. Let's talk about the day that the decision came
4 out, February 5, 2016. Does that sound right?

5 A. Late in the afternoon.

6 Q. On a Friday afternoon?

7 A. Yes, ma'am.

8 Q. When did you find out about the opinion?

9 A. I think I got a phone call or a reporter or
10 somebody might have called me and said, "Well,
11 what do you think about this," and I said at
12 that point "I don't know yet because I
13 haven't" -- this is the first I had heard of it,
14 but I think that's probably when I might have
15 got notified of it.

16 Q. So you first learned about the decision from a
17 reporter?

18 A. Yes, ma'am.

19 Q. Who was that reporter?

20 A. They're very quick. Oh, I can't remember. They
21 asked a question whenever, something like that,
22 and they always call me because I'm the senate
23 redistricting chair.

24 Q. And you were a party to that decision or to that
25 case, right?

1 A. Harris and McCrory, right?

2 Q. Yes.

3 A. Well, I had interest in it.

4 Q. What did you do after you got that phone call?

5 A. Probably tried to contact our counsel to try to
6 get an understanding as to what indeed it meant
7 and, more importantly, what would be required of
8 us to comply with what they -- what the opinion
9 said.

10 Q. You said you probably called your counsel. Do
11 you have recollection?

12 A. As best I can recollect, because I would have
13 needed to understand what the responsibilities
14 would be for the redistricting effort to comply
15 with the Harris court order.

16 Q. Did you make that phone call that evening on
17 Friday?

18 A. As soon as I found out about the decision, so
19 sometime during that evening. It was -- my
20 recollection it was somewhere after 5:00 or 6:00
21 on Friday.

22 Q. What did you do after that, after you'd spoke
23 with your counsel?

24 A. I believe we tried to find a time to meet. Now,
25 that would have been the 5th, 6th either by

1 meeting in person or phone. I couldn't remember
2 exactly if I made the trip into Raleigh or I was
3 on a phone call, but trying to understand what
4 we needed to do to comply with the order.

5 Q. When did you meet either by phone or by person?

6 A. As best I can recollect, it might have been the
7 Saturday following Friday, and I think I'm
8 accurate in that.

9 Q. Who was present?

10 A. I believe I was on the phone call, so I can't
11 remember exactly who might have been there other
12 than the attorneys and potentially
13 Representative Lewis. So I would have been
14 there just listening, and that's the best I can
15 remember on that because I don't remember coming
16 to Raleigh on that Saturday.

17 Q. Was Dr. Hofeller there?

18 A. I don't remember that.

19 Q. Were the others, as best you remember, together
20 in person in Raleigh and you called in from
21 Charlotte?

22 A. It would have been from Matthews.

23 Q. Matthews. I'm sorry?

24 A. It's different than Charlotte. And I can't
25 speak to that because there could have been some

1 use traditional redistricting criteria to abide
2 by what the court asked us to do. Under the
3 circumstances, it was clear to both
4 Representative Lewis, myself and counsel that
5 the court, despite mountains of evidence, found
6 that there was no racially polarized voting in
7 the State of North Carolina, and in that sense
8 we were not able to use race in any manner.

9 It was also clear from the order that
10 the 12th district was not something that many
11 people liked, even though it's something that we
12 inherited, it had been litigated on many
13 occasions, the Supreme Court validated it and we
14 used it in our 2011 plan to get pre-clearance
15 and follow the law as it was understood by us.

16 Q. When you met with Dr. Hofeller on that Monday or
17 Tuesday, did you discuss criteria at that
18 meeting?

19 A. Yes, ma'am, I think we were discussing that so
20 that we would have the opportunity to clearly
21 state to Dr. Hofeller what we felt was the key
22 criteria in doing so.

23 Again, you know better than I that
24 equal population is one that is mandated and you
25 know we could go through that whole list of

1 contiguity, talking about the issue of changing
2 the 12th and consolidating it, which I thought
3 was a great idea, especially in lieu of the
4 court's decision and all of the other criteria
5 that were there.

6 We had a chance to go through that, and
7 then Dr. Hofeller would be trying to
8 implement that on the map so we could get a map
9 that would meet the requirements of the court
10 and have no misunderstanding as to what we were
11 trying to do. And it was clearly that we did
12 not include race anywhere in the drawing of that
13 map.

14 Q. Did Dr. Hofeller provide input on the criteria?

15 A. I can't believe -- think that -- you know, if he
16 told us, input would be more like, well, this is
17 what I would need to do in order to achieve what
18 you want to achieve, just letting us -- you
19 know, informing us what he would do.

20 But he was the person with the
21 knowledge, and we basically told him these are
22 the things that we needed to achieve because
23 this is what we believed was required of us to
24 comply with the Harris decision.

25 And in building the criteria, I think

1 we had about eight points on there, recognizing
2 that not one of those is a -- takes priority
3 over any other and it was a harmonization of all
4 of those criteria that allowed us to find a map
5 that finally was approved by the court.

6 Q. Did you tell Dr. Hofeller in that meeting on
7 Monday or Tuesday that you wanted to give
8 Republicans a 10-3 advantage in the new
9 congressional plan?

10 A. I believe that what we wanted to do in
11 explaining the criteria that we wanted to --
12 similarly do what was in the original enacted
13 map that was a 10-3, we would like to see
14 whether it was possible to achieve the same mix
15 and -- and what that really means is to give
16 Republicans an opportunity in competitive
17 districts that would have been drawn by
18 following and harmonizing all of the criteria
19 necessary to achieve our goal of getting the
20 Harris court satisfied with our map.

21 Q. So did you tell Dr. Hofeller that day that --

22 A. That was one of the list that we would have
23 wanted him to include in his efforts.

24 MR. FARR: Senator Rucho --

25 THE WITNESS: Sir.

1 MR. FARR: -- would you let Caroline
2 finish her question so it's easier for the
3 court reporter.

4 THE WITNESS: That's fine.

5 BY MS. MACKIE:

6 Q. Thank you.

7 Senator, you mentioned a list with
8 about eight points. Is there a document that
9 reflects the criteria that you discussed that
10 day with Dr. Hofeller?

11 A. The document was I think one of the -- one of
12 the pieces of evidence that was submitted
13 yesterday. I think it was number 28.

14 Q. Let me hand you what was marked as Exhibit 24.

15 A. 24. Okay. Sorry.

16 Q. Is that the document that you discussed with
17 Dr. Hofeller?

18 A. That reflects the criteria that was established
19 to have us achieve our goal of getting the map
20 drawn that would have been acceptable to the
21 Harris court.

22 Q. I'm sorry, I may not have understood your
23 answer. I may not have phrased my question
24 correctly.

25 Did you have this document in front of

1 you when you met with Dr. Hofeller on
2 February 8th or 9th?

3 A. Not this document. It would have been putting
4 together what would have been traditional
5 redistricting criteria which, again, equal
6 population, contiguity, the political data,
7 partisan advantage.

8 Of course, the 12th district was
9 something that the court had requested or
10 suggested that would be remedied. Of course
11 compactness and how we felt it was to be
12 achieved by having all counties and, of course,
13 a traditional redistricting criteria including
14 incumbency when possible. This explains what we
15 explained to him.

16 Q. Did you look at a document with criteria on it
17 when you met with Dr. Hofeller?

18 A. Not that I recollect.

19 Q. So there was no one document with the criteria
20 that you discussed?

21 A. Not at the time we discussed with Dr. Hofeller.

22 Q. When was Exhibit 24 created, first created?

23 A. Goodness gracious. It was sometime during that
24 week prior to submitting the plans because
25 Dr. Hofeller needed to have some -- the criteria

1 so that he could produce a map that complied
2 with those in a harmonized fashion. I don't
3 remember exactly the date.

4 Q. Do you know who drafted Exhibit 24?

5 A. Not specifically. I don't know the individual.
6 I don't remember who it was.

7 Q. Did you have a part in drafting Exhibit 24?

8 A. My part of it would have been at the time we sat
9 down and talked with Dr. Hofeller, as we told
10 him the areas that we felt were important, I
11 would have just put my opinion in as to when and
12 how they would work and what they were trying to
13 do, asking questions, making sure that
14 everything was as best we could make it.

15 Q. Did you take any notes at that meeting?

16 A. No, ma'am.

17 Q. And who was present when you met on Monday or
18 Tuesday?

19 A. I remember it was Dr. Hofeller, myself,
20 Representative Lewis, Attorney Goodson, Brent
21 Woodcox and probably Jim Blaine.

22 Q. Who is Attorney Goodson?

23 A. He works with the Speaker's office.

24 Q. And who is Jim Blaine?

25 A. Jim Blaine is -- works with the legislature.

1 Q. What does he do with the legislature?

2 A. He's, I think, Senator Berger's -- I think his
3 title is chief of staff with the pro tem's
4 office.

5 Q. Was Senator Berger at that meeting?

6 A. No, ma'am.

7 Q. And where did you meet?

8 A. I believe it was at Dr. Hofeller's home.

9 Q. Did Dr. Hofeller show you any maps that day?

10 A. Some initial maps. As you know, the map drawing
11 is a process of iterations, and at that point he
12 would have done some basics well beyond my level
13 of how Maptitude work, not only my level of
14 knowledge but looking at some preliminary maps
15 that he may have been working on as far as the
16 basics.

17 And then after we refined what we were
18 looking for as far as specific criteria, then he
19 would have finalized it and then got it to the
20 point where it was ready to be submitted to the
21 committee.

22 Q. So the maps that you reviewed that day meeting
23 with Dr. Hofeller were drawn by him without any
24 input from you and Representative Lewis?

25 A. It would have been -- it would have been a --

1 the cursory or the preliminary requirements of
2 getting the map on there and all that stuff and
3 then some preliminary designs or ideas as to
4 what might be done in regard to drawing the map.
5 It is a long process in a short period
6 of time, so it would have been some cursory
7 designs. And then as we refined the criteria
8 that was necessary for us to comply with the
9 court order, he would have refined the map to
10 the -- to one that would be able to be presented
11 to the committee, to the General Assembly.

12 Q. Did you have any discussion about the partisan
13 breakdown of the maps that Dr. Hofeller showed
14 you?

15 A. Not that I recollect. All I can say is that
16 we -- by that time we had come to the conclusion
17 that, of course, race was totally to be not
18 included and also partisan registration was not
19 to be included in there and that the 12th
20 district was not to be -- or was to be
21 consolidated, however it would have been put
22 together. And it took, I'm sure, some time to
23 figure out how to best do that.

24 And then again, after that, equal
25 population would have been a requirement that

1 Q. What about the next three on the first page of
2 Exhibit 24?

3 A. The political data, it was designed for us to be
4 able to use election results as a way of
5 determining how those districts would have been
6 put into place, you know, what VTDs were there
7 with the -- part of the criteria of making sure
8 that we did whole counties wherever we could.

9 And actually, 13 split counties and 12
10 split VTDs is the best it's ever been. I don't
11 believe any other map has ever achieved that
12 kind of what you would call compactness because
13 keeping whole counties whole together is what we
14 considered important in regard to compactness.

15 Q. Did you just orally tell that information to
16 Dr. Hofeller or did you e-mail it to him? How
17 did you convey --

18 A. It was just a discussion as to what we felt. I
19 mean, a lot of what we did in the 2016
20 contingent were similar in the sense that these
21 were all things that were done at the time of
22 2011 so it was a repeat but with the fact that
23 we totally eliminated race completely and in
24 doing political data as far as how we drew the
25 maps and put counties together. And I believe

1 Dr. Hofeller's testimony was there, but we
2 wanted to eliminate any possibility that race
3 was included in any of the design of the
4 districts.

5 Q. Was partisan advantage a goal of the 2011
6 Congressional Plan?

7 A. What partisan advantage in my judgment really
8 says is that it's important to be able to have
9 congressional districts that even Republicans
10 have a chance of winning and try to be
11 competitive in.

12 If you look at the maps and you look at
13 the stat packs in the '11 and in the 2016 maps,
14 not one -- out of the 13, 10 of them that are
15 there in, quote, won by Republicans, not one of
16 them has a Republican majority in it. So any of
17 those districts require a candidate to come
18 forward and garner Republican votes,
19 unaffiliated votes and even potentially some
20 Democrat votes to win that election so they're
21 competitive.

22 Q. I'm sorry. You're talking registration numbers?

23 A. I'm talking, in essence, the people that
24 comprise the district. It would have required
25 in our state -- we have about 22 to 25 percent

1 unaffiliated voters, and I believe that reflects
2 pretty closely as to the breakdown in most of
3 the districts. None of those districts were
4 ever a slam dunk majority for the Republicans.

5 Q. In terms of registered Republicans?

6 A. People that would have participated there, yes.
7 Registered, yes.

8 Q. Based on their voter registration?

9 A. (Witness nodding head up and down.)

10 Q. Yes? Is that a "yes"?

11 A. Yes. Even though when we drew the maps,
12 registration was not one of the criteria that we
13 actually used. It was strictly election
14 results. I'm basically going now as to what the
15 final results were having looked at it
16 subsequently.

17 Q. So you looked at it after the fact and noticed
18 that Republicans were not a majority of the
19 registered voters in any of the districts
20 enacted?

21 A. That's correct. And that is also similar to the
22 2011 plan.

23 Q. Did you e-mail Dr. Hofeller with the criteria
24 that you discussed at that meeting?

25 A. I don't recollect doing that, no, ma'am.

1 Q. Did you draw straws?

2 A. Is that the long or the short straw?

3 Q. I don't know. You tell me.

4 Did Hofeller attend this public
5 hearing?

6 A. No, ma'am.

7 Q. Did you send him transcripts of the public
8 hearing?

9 A. I don't recall that.

10 Q. Did members of the public have the opportunity
11 to submit written comments?

12 A. Yes, ma'am.

13 Q. And was that in addition to attending a public
14 hearing or was that separate from attending the
15 public hearing?

16 A. They could go on to the website and submit --
17 even if they attended, they still had the
18 ability to submit a public comment too, and if
19 they didn't attend it, they could do it. So it
20 was pretty broad based.

21 Q. Did you send -- did you receive written comments
22 through the website?

23 A. Yes.

24 Q. Do you have a recollection of how many you
25 received?

1 A. I don't recall.

2 Q. Okay. Did you send those to Dr. Hofeller?

3 A. No, ma'am.

4 Q. Did you in any way convey the comments from the
5 public to Dr. Hofeller?

6 A. No. I mean, other than the fact that in the
7 criteria -- I mean, there was no specifics in
8 the sense of Representative Lewis and I
9 independently read the reports. You know, we
10 were present there for most of it, but any of
11 the written, and if there was anything pertinent
12 we would have related it to Dr. Hofeller that
13 was needed.

14 Q. So you and Representative Lewis read this
15 transcript?

16 A. I did, and I'm assuming he did also, and then
17 also the written comments that would have come.

18 Q. When did you read those?

19 A. Probably late -- that was a very long meeting on
20 the 15th, but we read it to see if there was
21 anything specifically on the written comments
22 because we were present for most of the -- or I
23 was and I'm sure he was too -- present for most
24 of the public hearing.

25 Q. And then you conveyed some of those comments to

1 draw the maps?

2 A. That -- some people chose to use their time to
3 discuss that, but that wasn't pertinent to what
4 we were there for public hearing-wise.

5 Q. Why wasn't that pertinent?

6 A. Because we were concerned about getting the map
7 drawn. That had nothing to do with what our
8 goal was, and that was to comply with the Harris
9 order.

10 Q. Did you convey any comments to Dr. Hofeller
11 about public comments relating to the partisan
12 makeup of the map that he was drawing?

13 A. I can't -- I don't believe I did.

14 Q. Okay. If you will turn to Page 58 -- actually,
15 if you'll turn to Page 57 first. You see about,
16 oh, at Line 10 there's a speaker Mr. Tom Byers?

17 A. Yes, ma'am.

18 Q. Do you recall Mr. Byers speaking from Asheville?

19 A. Gracious, we must have had probably maybe close
20 to 200 speakers. So I don't remember Mr. Byers.

21 Q. Fair enough. Not a memory test. Luckily we
22 have a transcript here to help us.

23 If you will look at Page 59 and
24 starting at Line 3 just read the next two
25 paragraphs.

1 A. Just read them --

2 Q. You can read them out loud.

3 A. Okay. Starting at Line 3:

4 "We need to create a non-partisan
5 redistricting" --

6 Q. I'm sorry. Page 59.

7 A. 59. Okay. Starting on page -- okay.

8 "But when too many officeholders
9 represent districts drawn to be safe, the
10 incentive for compromise is greatly
11 reduced. And nowadays, the safe district
12 effect is compounded by an incumbent's
13 reasonable concern that he or she may
14 face a primary challenger.

15 "It seems fair to assume that we can
16 all agree that at present, gridlock at
17 the Congressional level is a serious
18 problem. It's not an easy problem to
19 resolve, but reducing the number of safe
20 districts would surely have some
21 favorable impact by increasing the
22 incentive to compromise."

23 Q. And if you will read on Page 58 beginning at
24 Line 16, the sentence that starts with "When,"
25 and just read through the end of that paragraph.

1 A. "When the party in power manipulates
2 boundaries to give itself an edge, the
3 end result is elected officials who don't
4 necessarily represent the true preference
5 of the majority. That is not good."

6 Q. Does that refresh your recollection about
7 whether since citizens spoke out about the
8 potential partisan impact of the plan?

9 A. It's just a concern raised by an individual.
10 You know, whether it's accurate or not is -- you
11 know, each person would make up their own
12 choice.

13 But, you know, our goal was to create
14 districts that were competitive and that would
15 give an opportunity for Republicans and
16 Democrats to win districts. So, you know, we
17 appreciate his advice, but I don't know if I
18 necessarily agree with his comment completely.

19 Q. You did not convey that to Dr. Hofeller?

20 A. No, ma'am.

21 Q. And so you did not take his comment into
22 consideration in drawing the 2016 plan?

23 A. I don't recall that, no, ma'am.

24 Q. Okay. If you will turn to Page 114.

25 A. Again what, please.

1 Q. 114. And once you get there, you can look at
2 page 113 see who the speaker is.

3 A. Okay. I have 113 before me.

4 Q. Do you see at the bottom where it's a Mr. Brian
5 McCollum? He's a student at UNC Charlotte.

6 A. I see that.

7 Q. And then on the next page, Page 114, is some of
8 Mr. McCollum's statements, and if you will read
9 beginning at Line 17 and read through --

10 A. Beginning on 17 on Page 114.

11 Q. 114 and then read through Line 1 on 115.

12 A. On page 17 -- excuse me. On Line 17:

13 "You know, we have 13 congressional
14 districts in the state, and only three of
15 them are Democratic -- or held by
16 Democrats. So there's 10 held by
17 Republicans, 3 by Democrats."

18 Continue or --

19 Q. Continue.

20 A. "That just does not really add up
21 when you consider we're in a 50/50 split,
22 you know, liberal/conservative. We went
23 to Obama in 2008. We went for Mitt
24 Romney in 2012. It's pretty even split.
25 So you would think the congressional

1 districts would match that."

2 Q. Did you convey Mr. McCollum's comments to
3 Mr. Hofeller?

4 A. No. And I would probably say to you, even in
5 lieu of something that was discussed yesterday,
6 the congressional districts and the redrawing --
7 and the drawing of districts is -- it's
8 recognized that these are not statewide
9 elections. These are congressional districts
10 based on geography, and I'm not sure that
11 there's a reflection with the partisan makeup
12 and the results because each of the districts
13 choose their own elected individual. So I
14 chose --

15 Q. What do you mean?

16 A. So in essence, I chose not to include that
17 because these are not statewide elections.
18 These are district elections and each district
19 is -- the people from that district elect their
20 representative. It isn't a necessary reflection
21 of the -- of the -- of what would be statewide
22 population and partisan numbers.

23 Q. Would you agree that Mr. McCollum's comments
24 contradict the criteria of partisan advantage
25 that's listed on Exhibit 24?

1 A. Mr. McCollum, again, another 1 of 200, has an
2 opinion that he presented. I don't agree with
3 the -- with his analysis of saying then there
4 should be similar results based on what partisan
5 registration is because it's a different type of
6 an election.

7 It's an election based on geography.
8 It's not statewide. So I'm not sure what he's
9 saying -- it's not part of the electoral system
10 that we presently have in America.

11 Q. But you had a goal of drawing a plan that would
12 make reasonable efforts to construct districts
13 that would elect 10 Republicans and 3 Democrats?

14 A. It would have reflected what was on the enacted
15 plan in 2011. And if we were able to follow all
16 of the criteria that were established to produce
17 a map that passed and was accepted by the Harris
18 court, then, you know, 10-3 be what it be.

19 Q. My question is: That was one of your criteria,
20 right, the 10-3?

21 A. It was one of the criteria. As long as you took
22 all of the criteria into place, not strictly
23 partisan. So that's what is very important.
24 It's a harmonization of all the criteria, not
25 not just dealing with partisanship.

1 Q. Exhibit 24, the adopted criteria, this -- had
2 this document been drafted as of February 15,
3 2016?

4 A. I can't remember if it was in its final
5 ready-for-delivery type to be presented to
6 committee, but we pretty much understood what
7 would have been involved in it.

8 Q. And you had already met with Dr. Hofeller and
9 conveyed the criteria that you wanted him to use
10 to draw the maps?

11 A. We had an opportunity to explain to Dr. Hofeller
12 what we would have expected in there, and the
13 purpose of the criteria was to meet the
14 requirements of the Harris court.

15 Q. As far as you know, was Dr. Hofeller working on
16 maps on February 15, 2016?

17 A. I don't know if he was doing it that day or not.

18 Q. Was it your understanding after you met with him
19 the prior Monday or Tuesday he would start
20 immediately working on maps?

21 A. Try it again.

22 Q. Let me clarify.

23 When you met with him on that Monday or
24 Tuesday, you looked at some maps that he had
25 already drawn.

1 A. We looked at some beginning maps, you know,
2 knowing that there would have had to have
3 been -- one of the criteria would have been
4 trying to keep counties whole, trying to -- you
5 know, that's some of the original stuff you had
6 before we even refined it down to some of the
7 specifics dealing with trying to get to
8 resolution of the Harris order.

9 Q. So after you met on that Monday or Tuesday, was
10 Dr. Hofeller drawing the map that he would
11 present to you and Representative Lewis?

12 A. It was in the process.

13 Q. Okay. Did members of the public convey any
14 concern about the lack of transparency in the
15 process?

16 A. One that I recollect was that -- I guess it was
17 snowing on that Monday so some of them felt that
18 the turnout wouldn't be quite as robust as it
19 could have been, even though we did have
20 significant participation. That was one comment
21 that I remembered, but there wasn't anything we
22 could do about the snow and especially with our
23 timeline.

24 Q. Right. Did members of the public express
25 concern about not knowing the criteria that you

1 would use to draw the maps?

2 A. To my recollection it wasn't mentioned.

3 Q. Did anyone express concern about not having
4 draft maps available to look at?

5 A. I don't recall anyone asking for draft maps,
6 but, again, we were on a very tight schedule
7 trying to get everything done in about eight
8 days, so I can't remember if anyone specifically
9 had requested that.

10 Q. And the announcement for this public hearing was
11 made you think about one week after the decision
12 came out in Harris?

13 A. As best I can remember, it was on the Friday
14 prior to the Monday to get notice out to as many
15 people as we could to let them be informed.

16 Q. So you were halfway through the two-week period
17 when you announced that there would be a public
18 hearing?

19 A. I would -- yeah, that probably would be
20 accurate.

21 Q. Okay. If you'll turn to Page 43. And if you
22 look at the bottom of Page 42, you can identify
23 the speaker as a Mr. Gary Grant who appeared to
24 be in Halifax county.

25 A. I can see where Mr. Grant begins.

1 Q. Okay. Will you look at Page 43 and beginning at
2 Line 17 read that paragraph out loud.

3 A. Line 43 --

4 Q. Page 43.

5 A. 17.

6 Q. Line 17.

7 A. "You have produced no maps for
8 alternatives that we would have the
9 opportunity to see, so how do we know
10 that you won't come back with something
11 just as crazy as what you've done
12 already? How can citizens make
13 intelligent comments on something that
14 we have not seen? How do we know that
15 you won't produce the same kind of crazy
16 maps again?"

17 Q. And again, you didn't convey any of these
18 comments to Dr. Hofeller?

19 A. We had 200 people plus presenting their
20 thoughts, and they were all welcome to speak.

21 Q. Did you and Representative Lewis have any
22 conversations about producing maps for members
23 of the public to see?

24 A. The -- I don't recall having a discussion with
25 senator -- Representative Lewis about that

1 specific issue.

2 Q. If you will turn to Page 239.

3 MR. FARR: What page, Caroline?

4 MS. MACKIE: 239, second to last page.

5 BY MS. MACKIE:

6 Q. And beginning on Line 6, these are your closing
7 comments --

8 A. Yes.

9 Q. -- to the public and members of the Select
10 Committee on Redistricting who were helping run
11 this public hearing; is that correct?

12 A. All the members of the Joint Select Committee
13 were invited to participate and appreciate the
14 fact that some of them were able to be at the
15 satellite locations to help it be smoothly run
16 and to listen to the comments.

17 Q. Okay. And you say that:

18 "...we will have a chance to digest
19 all the information we received today
20 and try to establish some criteria upon
21 which we would like to draw these maps
22 that would coincide with what the court
23 decision was read."

24 My question is: What did you do with
25 the criteria after this public hearing?

1 A. If there was anything that we felt was
2 necessary, we would have refined it prior to
3 submitting it to the full Select Committee on
4 Tuesday the 10th -- excuse me, at 10:00.

5 But the basic criteria are traditional
6 redistricting principles. So we felt they were
7 pretty consistent with what we felt needed to be
8 done to achieve what the Harris court and to
9 comply with the Harris court.

10 Q. The criteria were drafted as of February 15,
11 2016, right?

12 A. Well, if there was any need of making final
13 changes prior to submitting it to the Joint
14 Select Committee for approval, I mean, we would
15 have refined it if need be.

16 Q. Did you make changes to the criteria?

17 A. I can't recall if we did. It's basic
18 redistricting principles that we followed,
19 consistent.

20 Q. You have no recollection of whether you made
21 changes to the criteria following this public
22 hearing?

23 A. I don't.

24 Q. Okay. You can set this notebook to the side. I
25 don't think we'll come back to it.

1 Q. But for yourself, you may have, you just don't
2 remember?

3 A. Correct.

4 Q. Do you remember having conversations with
5 Senator Berger about the committee just in
6 general?

7 A. Once we established a schedule, I'm sure at some
8 point we had a chance to discuss time scheduling
9 and things of that sort --

10 Q. Okay.

11 A. -- to meet the 19th deadline.

12 Q. Right. In this first meeting, you testified
13 this was the first meeting and then met on the
14 16th?

15 A. Yes, ma'am. Sorry.

16 Q. What was the role of the committee?

17 A. Well, the committee was going to have an
18 opportunity to take up the criteria that
19 Representative Lewis and I were able to put
20 together in establishing how the map or how the
21 maps -- the map would be drawn to meet the needs
22 or the requirements of the Harris court.

23 Q. Did Dr. Hofeller attend this committee meeting?

24 A. No, ma'am.

25 Q. Did you send the transcript to him?

1 A. No, ma'am.

2 Q. Did you and Representative Lewis meet to prepare
3 for this meeting?

4 A. I don't know if it was a specific time, but, of
5 course, we discussed it, what we wanted to
6 achieve and how we were going to do it.

7 Q. Would you have had that discussion in person or
8 by telephone or by e-mail?

9 A. Either in person or by phone, yes, ma'am.

10 Q. Do you remember one or the other?

11 A. I can't be specific. I know we communicated to
12 make sure that we were prepared to present the
13 criteria.

14 Q. Did you look at any documents to prepare for
15 this meeting?

16 MR. FARR: For the committee hearing?

17 MS. MACKIE: The committee hearing,
18 yes.

19 THE WITNESS: Other than making sure
20 that we knew exactly what we wanted presented,
21 the agenda and the -- who was going to present
22 the criteria and who would chair, that kind of
23 thing, and that was discussed between myself and
24 Representative Lewis.

25 BY MS. MACKIE:

1 was to be drawn, yes.

2 Q. Okay. Thank you.

3 Let's see. Did Dr. Hofeller review
4 this written criterion?

5 A. I think I've already answered that question.

6 Q. Was that for this one?

7 A. For all of them.

8 Q. So he did not review any of these written --

9 A. No, ma'am.

10 Q. The next page, DEF 12, does that show the
11 committee vote on this criterion?

12 A. Yes, ma'am.

13 Q. If you will turn to the next page, DEF 13. What
14 is this criterion?

15 A. This is the political data, talking about the
16 elections that would have been included in the
17 election results that would have been included
18 in the statewide elections.

19 As a matter of fact, I can read it and
20 probably explain it a lot clearer for you. And
21 that is:

22 "The only data other than population
23 data to be used to construct congressional
24 districts shall be election results in
25 statewide contests since 2008, not

1 delegation."

2 Q. And what is your understanding of what this
3 means?

4 A. My understanding of it is in the enacted plan
5 there was a 10-3 partisan makeup. And by
6 following all of the criteria in the -- all
7 eight criteria and harmonizing them together, we
8 asked if -- at the time if the map could be
9 drawn with the same 10-3 opportunity for
10 Republicans to have a chance to win in
11 districts.

12 Q. Why 10-3?

13 A. It was probably a combination of meeting all of
14 the criteria were there, harmonizing them
15 together, making sure that -- other than the
16 equal population that each of them were met
17 where they could be and how they fitted together
18 and then working hard to fulfill that as far as
19 compact or districts, which meant whole counties
20 when possible, reducing the number of split
21 counties, which we reduced to 13, and reducing
22 the number of split VTDs.

23 In essence, this is the result that if
24 it could be achieved it was there and that's why
25 it was chosen.

1 that will elect 10 Republicans and 3 Democrats?

2 MR. FARR: Objection to the form.

3 THE WITNESS: I think where it says the
4 committee shall make every reasonable effort to
5 construct districts in 2016 similar to what the
6 10-3 was in the enacted plan. That's what the
7 criteria says.

8 BY MS. MACKIE:

9 Q. And by applying the other criteria, it's your
10 testimony that 10-3 is the result?

11 MR. FARR: Objection to form.

12 THE WITNESS: All I'll say to you is
13 that by complying with all of the criteria and
14 blending them together, a 10-3 map could be
15 delivered.

16 Now, I think Representative Lewis
17 during the discussion clearly stated that the
18 districts aren't as strong as they were, but
19 that was something that could be achieved in
20 being able to get what was the most compact map
21 in regards to whole counties and the most
22 compact map in dealing with VTDs being whole.
23 So that was the result coming back as the
24 criteria were achieved and harmonized.

25 BY MS. MACKIE:

1 harmonize all of the criteria. Not one of
2 them -- this is not given the priority. As you
3 blend them altogether, this is what was able to
4 be achieved in regards to the map. The next
5 election it could be totally different. This
6 doesn't guarantee anybody winning the other
7 seats.

8 And especially if you look at the
9 makeup in the stat pack after the map was
10 approved, which we got a chance because, in
11 reality, Senator McKissick requested it. And it
12 wasn't in the original stat pack because it was
13 never considered. Race -- he asked that race be
14 included in the final stat pack and also
15 partisan registration be considered. We didn't
16 include that in our original stat pack because
17 we never used that in drawing the maps.

18 But if you look back, not one of those
19 districts out of the 13 have a majority
20 Republican. It requires a combination of
21 Republican, unaffiliated and Democrat votes to
22 win an election, to be the winning candidate.

23 So there's no guarantee that anyone
24 would -- would have the same 10-3 going into
25 future elections based on the candidate, based

1 elections.

2 BY MS. MACKIE:

3 Q. Did it allow you to better predict that
4 Republicans would win in 10 districts?

5 A. Our understanding is that the election results
6 does give you that ability to do so.

7 Q. Thank you.

8 If you'll -- we were actually talking
9 about the page DEF 15, partisan advantage. Just
10 a couple more questions on that.

11 On Page DEF 16, does that reflect the
12 committee vote on the partisan advantage
13 criterion?

14 A. Yes.

15 Q. And was that vote on party lines?

16 A. It appears to be.

17 Q. And did you and Representative Lewis both
18 support that criterion?

19 A. Yes.

20 MS. MACKIE: Now may be a good time to
21 break for lunch.

22 THE VIDEOGRAPHER: Off record at
23 12:01 p.m.

24 (Lunch Recess.)

25 THE VIDEOGRAPHER: On record at

1 compactness of the current districts and
2 keep more counties and VTDs whole as
3 compared to the current enacted plan.

4 "Division of counties shall only be
5 made for reasons of equalization of
6 population, consideration of incumbency
7 and political impact. Reasonable efforts
8 shall be made not to divide a county into
9 more than two districts."

10 And we felt in doing so, also
11 conforming with what the Harris order was, we
12 also were able to -- by consolidating senate
13 district -- excuse me -- Congressional
14 District 12, it went a large way in producing
15 compact districts and keeping many, many
16 counties whole.

17 Q. How did you measure compactness?

18 A. I didn't.

19 Q. Okay. Did you consider keeping counties and
20 VTDs whole as a way to make compact districts?

21 A. Well, we were responding to comments in the
22 Harris decision. By consolidating the 12th
23 district as we did, it opened up a number of
24 opportunities for us to keep whole counties, and
25 we felt that that was one of the cornerstones as

1 how to establish compact districts. And of
2 course, along with that is you do that -- if you
3 keep the VTDs from being split, that also helps.

4 Q. Did you have conversations with Dr. Hofeller
5 about how to measure compactness?

6 A. No.

7 Q. How did you evaluate the compactness of the plan
8 that he submitted to you and Representative
9 Lewis?

10 A. Other than looking at it, there was no -- no
11 test taken.

12 Q. So no mathematical measures?

13 A. That is correct.

14 Q. Okay. When was this criterion adopted -- or
15 developed?

16 A. During the same period of time we talked about.

17 Q. So around that Monday, Tuesday meeting?

18 A. Yes.

19 Q. Did Dr. Hofeller provide input on this specific
20 language?

21 A. Had -- provided no input. As to this language,
22 his expertise was helpful in achieving our --
23 getting this criteria implemented.

24 Q. What was his -- what did he say about
25 compactness?

1 made for reasons of equalizing population,
2 consideration of incumbency and political
3 impact."

4 Can you explain what that means?

5 A. Well, as you know, one of the criteria was equal
6 population, which we have as mandatory, and
7 therefore, whenever a county were to be divided,
8 that would be one of the reasons why we did it
9 because of trying to get the equalization of
10 733,498, and so that would be a requirement in
11 the criteria.

12 Secondly, in trying to not double bunk
13 incumbents, there were times that we had to
14 modify the compactness to allow us to achieve
15 that criteria.

16 And then as far as the political
17 impact, and that would be to kind of try to
18 follow the political data. In helping to draw
19 those districts, there had to be some
20 modification in the compactness rule.

21 Q. What do you mean when you say follow the
22 political data?

23 A. Well, in essence, as we were drawing the
24 districts in the -- I say when Dr. Hofeller was
25 drawing the districts, as he was using the

1 election data that was used in trying to
2 determine where the district line would be when
3 a -- when a county was being split, he would be
4 using the political data that would be there.

5 Q. So he could use the political data that was the
6 other criteria that we addressed, the third one
7 on Page DEF 13?

8 A. That was another one of the criteria that we
9 established and that was the election results,
10 and he was using election results to try to
11 achieve the goal of drawing a district to meet
12 the equalization population, one-person,
13 one-vote. It's just a matter of how --

14 Q. How did he use election results to --

15 A. Well, let me rephrase that. In having the
16 ability to keep it so that you get one-person,
17 one-vote, you can go ahead and be able to use
18 the data in deciding what part you put in and
19 what part you don't. I think I'm correct in how
20 I say that.

21 Q. Okay. And my question is the term "political
22 impact" in this criteria, how -- what does that
23 mean?

24 A. I would be speculating because I didn't write
25 this, but I'm assuming that we would be called

1 the political impact is to what VTDs would be
2 included and not included in that district.

3 Q. So Dr. Hofeller could use election results from
4 2008 to 2012 to decide which VTDs should be
5 included or excluded from a district?

6 A. As long as he conformed with all of the other
7 criteria. That was the key part. It wasn't one
8 being -- overriding any other. They all had to
9 be melded or harmonized together to be able to
10 put together a district -- or excuse me --
11 district maps that the Harris group -- excuse
12 me -- the Harris court would feel competent in
13 supporting and that's something that they did,
14 so...

15 Q. So the population has to be equal --

16 A. I'm sorry. Say it again.

17 Q. The population has to be equal in all of the
18 districts?

19 A. As close as reasonably possible.

20 Q. But in terms of deciding who should go into
21 those districts and where the line should be
22 drawn to make that determination, Dr. Hofeller
23 would use the election results?

24 A. In being able to draw the district lines, he
25 does have that capability of using the election

1 results in deciding what VTD should be or
2 shouldn't be included.

3 Q. And he had that authority?

4 A. Yes. But now you understand it is minimally
5 used because you have 87 counties that are
6 whole. So you're talking about very minuscule
7 changes that would be made to adjust a VTD
8 because there were only 12 VTDs that had to be
9 split, so it isn't rampant.

10 But, again, the key point was all of
11 the eight criteria had to be harmonized for
12 Dr. Hofeller to continue to do what we had asked
13 him to do.

14 Q. And you said that you did not write this
15 language on --

16 A. You asked me earlier who wrote it. I didn't
17 know who wrote it, but it wasn't me as far as
18 what, you know, the word political impact would
19 be or political data. So I'm giving you my best
20 estimate.

21 Q. Thank you.

22 Did you and Representative Lewis direct
23 that this should be the criteria?

24 A. We actually said that we agreed upon the
25 compactness issue as being one of the criteria

1 and -- but we weren't necessarily the person
2 that wrote part of the explanation.

3 Q. Did you agree that counties could be split for
4 reasons of political impact?

5 A. Yes.

6 Q. If you'll turn to the next page, DEF 20, does
7 that reflect the vote on the compactness
8 criterion?

9 A. Yes.

10 Q. And if you will turn to the next page, 21, what
11 is this criterion?

12 A. This is part of the redistricting principles
13 that allowed for incumbency to be used in
14 deciding the district lines. And that is a
15 consistent principle that we abided by in the
16 original maps, and we tried as best we could to
17 achieve that same criteria with incumbency.

18 Q. Did you achieve that in the enacted plan in
19 2016?

20 A. To the best of our ability.

21 Q. But in fact there were incumbents who were
22 bunked together?

23 A. Yes.

24 Q. Representative Price and Representative Holding
25 were placed in the same district?

1 court to approve our map and to comply with what
2 they had requested of us. So we felt that
3 changing that criteria at that point would --
4 could have been counterproductive possibly.

5 Q. And my question is: You wanted Dr. Hofeller to
6 have the ability to divide counties for reasons
7 of political impact?

8 A. That was in the original criteria and that's
9 what we felt was important to continue to have.

10 Q. And if you will turn to DEF 27, the same
11 question: What is this proposed criteria?

12 A. The -- and I'll read it.

13 "The second sentence of Compact
14 Criteria Number 6 should read as written:
15 "Division of counties shall only be
16 made for reasons of equalizing population,"
17 adding "preserving communities defined by
18 actual shared interests, consideration of
19 incumbency and political impact."

20 There was a discussion during the
21 meeting about what and how do you define, in
22 essence, communities of interest, and we spoke
23 with staff and they reported to the committee
24 that there is no clear definition of what
25 communities of interest actually were, and so

1 the decision was to reject this amendment and
2 stay consistent with our eight criteria so that
3 we would stay in line with what we believed was
4 the -- what the court would support in regard to
5 the maps we drew.

6 Q. Did you instruct Dr. Hofeller to preserve
7 communities of interest?

8 A. We instructed Dr. Hofeller to follow the
9 criteria.

10 Q. Did you instruct Dr. Hofeller to preserve
11 communities of interest?

12 MR. FARR: Object to the form, but you
13 can answer.

14 THE WITNESS: That's not in one of the
15 criteria; so therefore that was not one of the
16 guidelines that Dr. Hofeller had to follow.

17 BY MS. MACKIE:

18 Q. Did you talk to Dr. Hofeller after this
19 committee hearing? And let me -- let me
20 rephrase that.

21 Did you convey any information that you
22 learned from the committee hearing to
23 Dr. Hofeller following the committee hearing?

24 A. Specifically about the committee hearing?

25 Q. Yes.

1 Q. Why did Representative Lewis make this statement
2 before the committee?

3 A. The way we were handling the Joint Committee, I
4 was going to chair it and he was going to
5 present the criteria.

6 Q. So you were running the meeting but he would be
7 the one actually making presentations?

8 A. Well, if you've seen legislative meetings, the
9 chairman is there and then you have a person, a
10 representative or senator in this case because
11 it was a joint, that would present what was to
12 be taken up by and debated and voted on by the
13 committee.

14 Q. And on Page 12, Line 8, it says: "Mr. Chairman,
15 at your direction."

16 Did Representative Lewis say that
17 because you were chairing the committee?

18 A. That's proper protocol.

19 Q. Okay. Thank you.

20 If you'll turn to Page 48, and on
21 Line 4 through 6, Representative Lewis says:
22 "I acknowledge freely that this
23 would be a political gerrymander, which
24 is not against the law."

25 Do you see that?

1 A. I see it.

2 Q. Do you agree with his statement?

3 A. Based on what we understood the law required of
4 us and especially after having to follow the --
5 what was required of us by the Harris court, it
6 was -- in achieving our criteria, the term
7 political gerrymandering was something that
8 Representative Lewis uses.

9 I don't know -- I see nothing wrong
10 with that comment.

11 Q. Would you agree that the 2016 congressional --
12 Contingent Congressional Plan was a political
13 gerrymander?

14 MR. FARR: Objection to the form.

15 THE WITNESS: No, because of the fact
16 that it followed all of the -- it wasn't just
17 politics. It followed all of the criteria that
18 were established, traditional criteria,
19 redistricting criteria that would be expected of
20 us and in addition to which the other requests
21 that were made by the Harris court in
22 outlining -- in how we interpreted and had to
23 abide by their order.

24 BY MS. MACKIE:

25 Q. Did you tell Representative Lewis that you

1 THE WITNESS: Our understanding is that
2 the Supreme Court of the -- the United States
3 Supreme Court has never called political
4 gerrymander unconstitutional. So therefore we
5 followed the law and did so in producing the
6 criteria -- the list of criteria that we used in
7 meeting the needs and what was expected of us by
8 the Harris court.

9 BY MS. MACKIE:

10 Q. If you will turn to Page 50 and look at Line 7
11 through 10. Representative Lewis says:

12 "I propose that we draw the maps to
13 give a partisan advantage to 10 Republicans
14 and 3 Democrats because I do not believe
15 it's possible to draw a map with 11
16 Republicans and 2 Democrats."

17 Do you agree with Representative
18 Lewis's statement that I just read?

19 A. I will say yes, and I will explain it even
20 further.

21 In following the criteria that -- and
22 meeting all of the criteria as we blend them
23 together, the 10-3 map that Representative Lewis
24 was describing was doable, something that we
25 explained -- we talked about earlier, and

1 apparently the 11-2 that he commented about is
2 not.

3 So as we had whole counties, as we had
4 the limited VTDs, as we met all the other
5 criteria, a 10-3 map is something that could be
6 achieved but also recognizing the partisan
7 advantage only gives Republicans an opportunity
8 to win an election in what is a competitive
9 district.

10 And he did go on to say later on that
11 those districts are actually more competitive
12 than they were in the 2011 plan.

13 Q. If you will go back to Exhibit 35, which is this
14 packet that we were just looking at and turn to
15 Page DEF 31. And it may also help if you want
16 to look in Exhibit 34, Page 130 of the
17 transcript.

18 Senator Rucho, on Page DEF 31 of
19 Exhibit 35, there's a motion for -- three
20 motions that were made to the committee. Can
21 you explain what those are?

22 A. I need an opportunity to read it for a few
23 minutes. Okay.

24 Q. Sure.

25 A. It appears to be an adoption by Senator Hise of

1 justify that claim and Representative Lewis
2 responds.

3 A. May I read it?

4 Q. Please.

5 A. My best estimate of what was done is that
6 Senator Ford wanted to get some clarification as
7 to how Representative Lewis had made the
8 statement that he did about weaker maps, and I
9 think Representative Lewis did not have the
10 material in front of him but said you look at
11 the stat packs, you can look at every district
12 and determine if there was changes in what was
13 the 2011 stat pack versus the 2016 stat pack.

14 Q. Did you look at the stat pack to make that
15 comparison?

16 A. No.

17 Q. So again, you don't know whether the 2016 map is
18 weaker?

19 A. My responsibility was -- and the responsibility
20 of Representative Lewis was to get the map to
21 comply with all of the criteria, harmonize them
22 and get it passed and on to the Harris Court
23 before the end of the 19th. So that's what we
24 were in the process of doing.

25 Q. If you will turn to Page 22. And at the bottom,

1 Senator McKissick asked if you can identify any
2 consultants or persons that provided assistance
3 in drawing these districts, and if you will read
4 your response.

5 A. Yes. I said that it wasn't relevant and
6 therefore unnecessary to say.

7 Q. Why was that not relevant?

8 A. It wasn't relevant because, in essence, the
9 criteria were established. The orders -- the
10 rule -- the guidelines were there, and whether
11 Dr. Hofeller or anybody else was doing that, in
12 this case it was Dr. Hofeller, as you know, it
13 wasn't relevant to this map moving forward.

14 Q. You didn't think that your fellow senators
15 deserved to know who drew the maps?

16 MR. FARR: Objection to the form.

17 THE WITNESS: No.

18 BY MS. MACKIE:

19 Q. And if you will turn to the next page, Page 24,
20 your statement at the top says:

21 "I'll be clear, the criteria that
22 Representative Lewis has submitted is
23 the criteria that was used to draw the
24 maps, and probably that's as much as we
25 need to know."

1 A. The maps were based on the criteria. What else
2 needs to be known?

3 Q. If you'll turn to Page 28 and you'll see at the
4 bottom of Page 27 that -- this is you speaking.
5 You say:

6 "...when the criteria were
7 established, we wanted to be clear what
8 each of the goals -- stated goals were,
9 and, therefore, we needed to be sure
10 that whatever they were we understood
11 them to be.

12 "And then any time that a future
13 legislator or a future court needed to
14 know that we know specifically what we
15 were trying to achieve."

16 Was your purpose in having written
17 criteria so that a future court would know what
18 your goals were?

19 A. The -- it goes back to the original when we drew
20 2011. We had criteria when we were drawing
21 those maps.

22 Redistricting is very complex and you
23 need a recipe or you need a roadmap as to draw
24 them and to draw any of the maps, and this was
25 our roadmap to accomplish that because we felt

1 A. That's a good question. I would say to you that
2 if -- bizarre looking maps.

3 Q. Okay. So when you use the word gerrymander,
4 you're not being specific --

5 A. Can I clarify.

6 Q. Yep.

7 A. Bizarre looking maps -- now that I understand it
8 a lot better -- that don't follow the
9 redistricting criteria, traditional criteria.

10 Q. Is that true for both a partisan gerrymander and
11 a racial gerrymander?

12 MR. STRACH: Objection.

13 You can answer that if you can.

14 THE WITNESS: I don't have a judgment
15 on that part.

16 BY MS. RIGGS:

17 Q. Okay. Well, what do you -- you're familiar with
18 the term "partisan gerrymander" or "political
19 gerrymander," right? You've heard it?

20 A. Yes.

21 Q. What would you understand that to mean?

22 A. A political gerrymandering would -- basically to
23 give advantage probably to one or another of the
24 parties that were drawing it.

25 Q. And what do you understand a racial gerrymander

1 A. I would probably define it at the level of
2 saying that they did not follow the
3 redistricting principles and part of that was
4 exposed in the 2003 redistricting redraw by the
5 courts.

6 So I would probably just say that
7 simplistically that, you know, they just didn't
8 follow the law when they were drawing the maps
9 and the legal precedence that came with it
10 following the Constitution. That's the level
11 that I would probably put it at.

12 Q. So do you think the 2001 and 2003 plans, to use
13 your words, gave advantage to Democrats over
14 Republicans?

15 A. I would say that the Democrats, by not following
16 the law, did take advantage of the system.

17 Q. Okay. And do you know -- do you remember what
18 the composition of the congressional delegation
19 was in 2002 and 2004?

20 A. No.

21 Q. Would it surprise you if it was 7-6 Republican
22 control in both congressional sessions?

23 A. I don't know.

24 Q. But it wouldn't surprise you?

25 A. I don't know.

1 I can't remember what day I got back in to
2 Raleigh, and it would have been set up probably
3 last minute. We were in the 14-day crunch time
4 which was already two days or three days gone,
5 so...

6 Q. So you didn't have any conversation with
7 Dr. Hofeller on Sunday, February 7th?

8 A. I don't believe so.

9 Q. Did you have any conversations with Dr. Hofeller
10 before you met with him in person at his house
11 on the 8th or 9th?

12 A. I don't believe so.

13 Q. Okay. So you go to his house on the 8th or 9th,
14 and this is your first time with Dr. Hofeller
15 since the Harris trial, first time talking about
16 redistricting, right?

17 A. As best I can recollect.

18 Q. Okay. I want to ask you a few more questions
19 about what y'all discussed at that meeting, but
20 first I want to finish my timeline.

21 After you left that meeting, when was
22 the next time that you talked to Dr. Hofeller?

23 A. I think there were -- I think he had an
24 appointment that day, and I think -- I can't
25 remember. I think we came back in the later

1 agreed that this was the map that we would go
2 with.

3 Q. So that couldn't have been the initial meeting,
4 right?

5 A. No. There might have been a subsequent one, but
6 I can't -- it could have been a subsequent one.

7 Q. So if you did in fact approve of the final map
8 at Hofeller's home, there was at least another
9 in-person meeting at his home?

10 A. As best I can recollect.

11 Q. Okay. I think when we talk about some of these
12 draft maps, it might jog your memory a little
13 bit on that front, but where I was actually
14 trying to get to was how did Dr. Hofeller give
15 you draft maps? Hand them to you in person?
16 E-mailing them to you?

17 A. No. We would have been there and it was either
18 on the screen or something that he was able to
19 print out.

20 Q. So if you viewed a draft map, it was only in the
21 presence of Dr. Hofeller?

22 A. I would say yes.

23 Q. Okay. Do you remember the dates when you and
24 Representative Lewis finally said this is the
25 map that does it?

1 Q. Were staff free to communicate with Dr. Hofeller
2 without you being an intermediary?

3 A. I just don't remember how it was done when it
4 was identified. It was -- I just can't remember
5 if someone else gave -- just said "fix that
6 problem." Again, it was not an issue to be
7 concerned about because it was an error in the
8 address and that's all it was.

9 Q. Sure. And I wasn't actually speaking about with
10 respect to that change. I mean globally were
11 staff authorized to directly provide
12 Dr. Hofeller with what he asked for or in any
13 other way directly communicate with
14 Dr. Hofeller?

15 A. No. It would be something either from
16 Representative Lewis or myself on something that
17 was critical.

18 Q. So fair to say -- going back to this first
19 meeting on the 8th or the 9th, fair to say based
20 on this timeline that we've constructed that
21 Hofeller didn't have any instructions from you
22 prior to your first meeting with him?

23 A. There -- Representative Lewis and I would have
24 shared our initial vision of what we needed to
25 do subsequent to our Saturday meeting. And

1 through and establish the criteria, what happens
2 next in the meeting?

3 A. I would probably say to you that was probably a
4 time that Dr. Hofeller needed to go to his
5 appointment.

6 Q. Okay.

7 A. And sometime I think -- and I'm guessing, I'm
8 trying to remember. Sometime later on that
9 afternoon we returned after his appointment and
10 to continue the discussion and fall in line with
11 some of the things that he was needing to do.
12 And, of course, when he did his work, I'm sure
13 we were gone.

14 Q. So when you came back after his appointment,
15 were you still discussing the criteria or you
16 had moved on to other topics?

17 A. Well, if the criteria is what we used to draw
18 the maps, then either we reiterated them or --
19 but they were laid out for him to know what
20 needed to be done so that we could harmonize
21 them together and get it approved by the Harris
22 court.

23 Q. At what point did he tell you he had already had
24 some draft maps done?

25 A. I don't recall that -- you know, that being

1 called Congressional 2016 Contingent and then
2 Contingent B, Contingent C, and then there's a
3 series that are labeled Congress 16, dash, a
4 letter, then there are some that are labeled
5 Congress 19, dash, a letter, and there's a bunch
6 of them.

7 Take your time to look through them,
8 but I'm actually going to ask a few questions
9 before we get into the details with those

10 You've had a chance to look through
11 those?

12 A. Yep, best I could.

13 Q. So after the first meeting February 8th or 9th
14 until when you and Representative Lewis settled
15 on a final map before the tweak, the correction
16 of the address of the incumbent in Greensboro,
17 how many drafts did Dr. Hofeller show you?

18 A. I think I remember the original time was not --
19 I don't think you -- well, you can just look. I
20 think yesterday was mentioned they started from
21 reverse as to what he started. There were a lot
22 of iterations as to how he was trying to
23 configure this. And so I think it was -- it's
24 reversed because there were a lot more different
25 changes, different counties together in the 4th

1 district was different.

2 The best I can remember is the first
3 time there was just the preliminary map and then
4 I think I remember two other maps that I
5 remember looking at that I paid any attention
6 to.

7 Q. Was one of those the map that you ultimately
8 approved?

9 A. Yes.

10 Q. So there was only one map that you rejected?

11 A. I think we came -- I came down to the two that I
12 felt -- and I speak for -- Representative Lewis
13 can speak for himself -- that met the criteria
14 that we were trying to do, including a map that
15 reduced or split the least amount of counties
16 and the least amount of VTDs along with
17 harmonizing the rest of the criteria that were
18 established. That's how I came -- personally
19 made a decision on it.

20 Q. So if you reviewed one of Dr. Hofeller's draft
21 maps, it was only at his house on his computer,
22 correct?

23 A. Yes, ma'am.

24 Q. And based on our conversation, we think there
25 was only -- maybe only one trip to

1 partisan advantage criteria was satisfied?

2 A. I am saying to you that the partisan advantage

3 was every bit as important as every other

4 criteria in there and as was harmonized, and

5 under the circumstances if indeed it was 10-3 --

6 you know, as we won the election in 2010 under

7 Democrat maps, anything can happen in an

8 election.

9 Q. So the answer is, yes, you were satisfied that
10 that criteria was satisfied?

11 A. We believed that all of them were harmonized and
12 everything was taken equally.

13 Q. Everything was satisfied, correct?

14 A. All criteria was satisfied.

15 Q. Okay. And you can't remember if in the plan you
16 rejected whether the partisan advantage criteria
17 was satisfied?

18 A. I think the main problem that I had, that got my
19 attention, was the number of split counties and
20 split VTDs, and that automatically would have
21 rejected that map.

22 Q. So as I understand, that's mostly relating to
23 your compactness criteria, right?

24 A. I looked at that as every one of them. I don't
25 just pick out one and say this is the one I

1 was -- when I selected the one that I needed or
2 that I felt comfortable with -- and, of course,
3 Representative Lewis had a vote in this too --
4 that was the one that I focused on. So I don't
5 remember.

6 Q. Do you remember what any of the additional
7 counties that were split were?

8 A. No, ma'am.

9 Q. So sitting here today, you can't tell me that --
10 which one of these you may have seen before?

11 A. Correct.

12 Q. Did you leave that meeting with Dr. Hofeller the
13 second day with any papers in hand?

14 A. I don't remember doing so. I would have
15 probably waited until all of the data was
16 inputted into the -- into the state computer.

17 Q. Okay. How long -- about how long did that
18 meeting last that day?

19 A. Probably an hour or two hours, maybe somewhere
20 in there.

21 Q. And safe to say you hadn't met with Dr. Hofeller
22 in person between that first and second meeting?

23 A. I don't recall meeting him before those two.

24 Q. So walking into his house the second time, did
25 you say, "Hey, Dr. Hofeller, is it possible to

1 draw a 10-3 map"?

2 A. We asked him which one of the maps conforms the
3 best to what the criteria was, and he showed us
4 the two choices. And the one that we selected
5 was the map that is -- is before -- is the one
6 that's been accepted and passed by the General
7 Assembly, but each of them to one plus or minus
8 extent achieved the criteria that we wanted to
9 established. Not one of them is going to
10 achieve everything.

11 Of course, you know, taking in
12 consideration the population is critical because
13 that's required by the Constitution, but it's a
14 blending of it. We just picked and choose the
15 ones that we felt we could do and achieve the
16 criteria that were established.

17 Q. What did Dr. Hofeller represent to you about the
18 partisan advantage in the two plans that he
19 presented to you?

20 A. I'm trying to remember how much of a discussion
21 we had on that thing. I'm not sure there was a
22 lot of detail. I just don't remember exactly
23 what part of that we discussed.

24 Q. You would have had to discuss it, though, right,
25 because it was a criteria?

1 A. We did it to the best of our ability.

2 Q. Right. And so I want to understand if you're
3 not doing any sort of independent analysis, was
4 Dr. Hofeller telling you that, yes, this
5 satisfies all the criteria?

6 A. I think we probably got the best look at it when
7 the stat packs came out as to be able to say,
8 you know, what did the elections do, how did
9 they, you know, come about.

10 Q. But you told me that you left that meeting
11 decided on this was our plan.

12 A. Yes, and we thought that would be the best way
13 that achieved all of the criteria that we had,
14 every one of them.

15 Q. So you knew that before you saw the stat pack at
16 the General Assembly the next day?

17 A. Well, we validated it with the stat pack.

18 Q. Okay. That's fine, but you knew it at the end
19 of that day?

20 A. It was our best guess.

21 Q. And it was based on what Dr. Hofeller told you?

22 A. It was based on the map, the way it looked and
23 the information that he did share with us the
24 best he could.

25 Q. And you didn't necessarily go one by one in

1 A. No. I mean, that was some of the evidence that
2 was in the Harris case, a gentleman from Harvard
3 talked about that and there was a real question
4 as to whether -- and the courts have ruled on it
5 that they said registration is not as
6 predictable as election results. So I know
7 there's no prohibition on it. It's just a
8 matter of what you think is the better way to do
9 it or not.

10 Q. So why prohibit him from using it?

11 A. We just felt it wasn't what we wanted to do.

12 Q. You looked at it later?

13 A. Partisan -- well, after the map was done, yeah.
14 I mean, I didn't -- I didn't look at the final
15 map that -- in the stat pack that included all
16 of the other changes until after the map was
17 passed. You know, that was something that
18 Senator McKissick had asked for when he wanted
19 to have a similar stat pack to 2011.

20 Q. Okay.

21 MR. STRACH: Allison, is this a good
22 stopping point to take a break?

23 MS. RIGGS: It's actually a great
24 stopping point.

25 THE VIDEOGRAPHER: Off the record at

1 Q. Do you think a map that had shot for a 9-4
2 division might have been more likely to get
3 approved by the Harris court?

4 A. I had no way of knowing what the Harris court
5 was going to do. I was surprised at the
6 original decision, to be very honest with you.

7 Q. So you had no discussion about durability.

8 Leaving that meeting that day, were
9 you, in essence, happy with what you bought,
10 happy with what Dr. Hofeller did?

11 MR. STRACH: Objection.

12 Answer if you can.

13 THE WITNESS: I was happy with the fact
14 that the process was going, and our goal was to
15 get the maps -- the map approved and ready to be
16 delivered on the 19th to the court. That was my
17 principal goal to get it done.

18 BY MS. RIGGS:

19 Q. And you never -- when you reviewed the map, you
20 never asked Dr. Hofeller, after having woven in
21 all the criteria, was it possible to draw an
22 11-2 map?

23 A. I think in talking with Dr. Hofeller on any of
24 this stuff, my judgment would have been that if
25 we'd try to draw an 11-2 map, we would have lost

1 some of the criteria that was necessary to
2 achieve our goal. In essence, you would have
3 gone beyond the limit of the counties that we
4 had. I mean, we have an ideal number of
5 counties, you know, 13 counties and 12 VTDS. I
6 mean, that's where the splits occur.

7 You know, best I could guess and best
8 judgment that I had that might have been
9 pressing the issue beyond the ability to do it.

10 Q. So Dr. Hofeller told you that?

11 A. That was my judgment.

12 Q. What does that mean?

13 A. That's my experience that I would have had.

14 Dr. Hofeller didn't offer 11-2 and I didn't ask
15 for an 11-2.

16 Q. Likewise, Dr. Hofeller didn't offer a 9-4 and
17 you didn't ask for a 9-4?

18 A. I wanted to see what could be done to deliver
19 the criteria that we established. We believed
20 had this been done like was supposed to be done
21 in setting the criteria that our goal was to get
22 the court to approve our map so that it could
23 allow for the election. It was already delayed
24 over a month, so that's not -- we weren't happy
25 with the fact that -- that's not what you try to

1 there. Had they established their own criteria
2 they would have been able to bring it up during
3 the initial discussion when the criteria was
4 established, when we voted on each of the
5 criteria.

6 Q. Well, they did, right, they had amendment
7 criteria that they proposed?

8 A. But there was no map to show that this is how it
9 would have been done.

10 Q. Right, but it's reasonable, isn't it, to want to
11 know what the criteria are to see then what you
12 can do?

13 A. Every one of those -- I mean, other than the
14 12th district, that really is a consolidation,
15 it's all the traditional redistricting
16 principles.

17 Q. On the joint hearing on the 16th, the Democrats
18 did not have these criteria in hand, correct?

19 A. They -- that was the time that they had a chance
20 to discuss it, have it explained and to vote on
21 it.

22 Q. Do you know when the notice for the joint
23 hearing on the 16th went out?

24 A. I do not.

25 Q. Did the Democrats know that they had money and a

1 computer before it was discussed in that meeting
2 on the 16th?

3 A. There was some discussion on that with -- I just
4 don't remember when that was brought to their
5 attention, whether -- you know, whether the
6 state would have paid money for it or whether
7 they would have found another way to deliver and
8 subsequently supported by the State, but, you
9 know, if they felt it was important enough to
10 draw alternative maps that they believe were in
11 line with what the court asked for, they would
12 have had the same opportunity as of the decision
13 on February 5th to do the same thing.

14 Q. But they weren't -- there was no legislative
15 action to authorize their use of computers and
16 state money until the 16th, correct?

17 A. There was -- the same thing was done in the
18 original, so that's why we did it, you know, in
19 the original time we did in 2011. So that time
20 we did the same thing at this point, you know
21 with the \$25,000 so we're consistent with what
22 we -- how everybody was treated.

23 Q. So the answer is, yes, it wasn't until the 16th
24 that there was legislative action to --

25 A. I don't recall if they were notified earlier.

1 column -- actually, the easiest, it's the fourth
2 one from the right. It's pct_EL12G_LG_D.

3 Do you see that column?

4 A. No. Tell me again where that is.

5 Q. It's the fourth column from the right.

6 A. On which page again?

7 Q. Same page we were on before.

8 A. Sorry.

9 Q. It's the lieutenant governor's race.

10 A. Under the LG.

11 Q. It's the fourth column from the right, and the
12 column title is pct_EL12G_LG_D.

13 Do you see that?

14 A. Okay.

15 Q. Now, can you scroll down through that list and
16 tell me how many -- and that's the percent that
17 the Democratic candidate got in the lieutenant
18 governor race in 2012.

19 Can you tell me in how many districts
20 did the Democratic candidate win?

21 A. It looks like three.

22 Q. So that -- using that metric, this 2016
23 Contingent Plan is a 10-3 map, right?

24 A. As far as past election experience, it appears
25 to be, but yet again, this 2016 election was a

1 very unusual election, not with only the changes
2 that occurred but also on the presidential side
3 too. This was what you call not a normal year.

4 Q. I understood your position, and your position is
5 this isn't a 10-3 plan because 2016 is unusual,
6 but we've just gone back and seen that 2010 and
7 2012 election results reconstituted also
8 indicated it was a 10-3 plan.

9 So my question is: Was 2012 an unusual
10 or not normal election?

11 A. I don't know the answer to that.

12 Can we look at Roy Cooper's election?

13 Q. Your counsel can ask you about that. I'm done
14 with that exhibit.

15 Senator Rucho --

16 A. Both of them?

17 Q. Yes, I'm done with them.

18 Did you have that stat pack in hand
19 when you met with the Senate Republican caucus?

20 A. This stat pack?

21 Q. Yes. Probably right because it was produced
22 with the Redistricting Committee meeting.

23 A. It probably would have been part of the public
24 record on the screen. I can't remember if I had
25 it in my hand when we talked, and if we talked,

1 MR. STRACH: Objection; form.

2 You can answer that if you can, if you
3 know what that means.

4 THE WITNESS: I don't. You might need
5 to explain what you're asking for.

6 BY MS. RIGGS:

7 Q. Would you describe North Carolina as a swing
8 state?

9 MR. STRACH: Objection to form.

10 THE WITNESS: It's hard. It changes.
11 It could be a swing state. I mean, you've got
12 two U.S. Senators that are Republican. You've
13 got a Democrat governor now. You know, it could
14 be what -- federal and state could make a
15 difference too, you know, federal candidate may
16 lean Republican and state candidates may lean
17 Democrat.

18 BY MS. RIGGS:

19 Q. Okay. You don't take much stock from just
20 looking at statewide voter registration
21 breakouts, though, right?

22 A. No, because, one, it changes; two, you really
23 don't know whether somebody votes -- how they
24 vote, actually. And then you have -- in the
25 last few years you've had a significant growth

1 in unaffiliated voters. Where do you categorize
2 them.

3 Q. Have you ever had the chance to go back and look
4 at in congressional elections the share of the
5 two-party vote statewide, so look at how many
6 votes Republican congressional candidates get
7 and how many votes Democratic candidates get?

8 A. No reason to.

9 Q. Okay. So you've never looked at that?

10 A. (Witness shaking head from side to side.)

11 Q. Would it surprise you to hear that Republicans
12 win the two party -- the vote share of the two
13 party with like 53 percent of the vote?

14 A. Congressional races are not statewide elections.
15 They're regional geographic elections. So you
16 can't look at what a statewide vote is.

17 You look at what each district actually
18 does to elect their candidate. To me that would
19 be apples and oranges.

20 Q. Well, this metric I'm talking about is
21 aggregating the votes from each district, so
22 it's not comparing District 1 to District 12.
23 It's just saying Republican candidates for
24 Congress and all across the state get X number
25 of votes and Democratic get Y number of votes.