

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.)
)

DEPOSITION OF M.V. HOOD III

9:26 A.M.

WEDNESDAY, MAY 3, 2017

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

1 A. Okay. Yes. I mean, I used that index for
2 various components of the report. Part of it is
3 on Page 25, you're correct.

4 Q. So in Table 12 where you have percent
5 Republican, that's based on the index?

6 A. Yes.

7 Q. And do you know if you compute the average of
8 percent Republican figures in your table what
9 you get?

10 A. Oh, the average of these figures?

11 Q. Yes.

12 A. I didn't do that, so no. I mean, it could
13 obviously be done.

14 Q. Well, if I told you that the average of those
15 figures is 50.2 percent, would you agree that
16 that's pretty close to 50 percent?

17 MR. FARR: Objection to the form.

18 THE WITNESS: If that's -- if that's
19 the average, then yes.

20 BY MS. EARLS:

21 Q. And would you agree that that represents -- that
22 50.2 percent represents a very high level of
23 competitiveness?

24 A. That would be competitive, yes.

25 ///

1 (WHEREUPON, Plaintiffs' Hood Exhibit 3
2 was marked for identification.)

3 BY MS. EARLS:

4 Q. I've handed you what's marked as Hood Exhibit 3,
5 and I'll represent to you that this is from the
6 North Carolina State Board of Elections website,
7 the November 8, 2016, official statewide
8 election results for the governor and Council of
9 State offices.

10 I'll give you a minute to look at
11 the -- what I'm asking you to look at is the
12 margins by which the candidates won here.

13 Because wouldn't you agree that five of the ten
14 contests in 2016 of these statewide races were
15 decided by less than 1 percentage point?

16 A. Just looking at this very quickly, yes.

17 Q. So isn't it fair to say that North Carolina is a
18 competitive state between Democrats and
19 Republicans?

20 MR. FARR: Objection to the form.

21 THE WITNESS: Well, this is one
22 election cycle in one set of elections, and some
23 of these are fairly competitive, I agree.

24 BY MS. EARLS:

25 Q. In assessing the North Carolina political scene,

1 North Carolina has become a purple state in
2 presidential elections."

3 A. Yes, I mean at that point. We've had two
4 presidential elections since then.

5 Q. So let me turn back to your report for this case
6 on Page 5.

7 A. Okay.

8 Q. The very first sentence of the first paragraph
9 on that page says:

10 "Current Republican success in
11 holding 10 of 13 congressional seats in
12 the state is not due solely then to the
13 redistricting process."

14 And my question for you is: Does that
15 mean, then, you agree that it is due at least in
16 part to the redistricting process?

17 A. Well, I think most -- most scholars would say
18 that redistricting has some effect on election
19 outcomes, yes.

20 Q. And in your report --

21 A. I'm not denying that.

22 Q. Okay. In your report, do you do any analysis to
23 quantify how much the 10-3 Republican advantage
24 was due to factors other than the redistricting
25 process?

1 A. Well, in that section I do, the section we're
2 in.

3 Q. And how do you do that?

4 A. Well, I collected some data from the FEC, for
5 instance, and I also collected data from the
6 internet from various sources, including
7 candidate websites that were still left up or
8 left over from that election about challenger
9 quality or experience, for instance.

10 Q. So let me ask you about these candidate
11 websites. Are those reflected in the footnotes?

12 MR. FARR: Can you tell me what you're
13 referring to, Anita, what page you're referring
14 to the candidate websites.

15 MS. EARLS: I'm actually not referring
16 to a page. He just told me that he looked at
17 candidate websites, and I'm just trying to
18 figure out where I might know which ones those
19 were.

20 THE WITNESS: I guess I didn't list
21 those. Not everyone had one.

22 BY MS. EARLS:

23 Q. So in the data that you've just described that
24 you looked at, did you do any kind of regression
25 analysis to attempt to quantify how much any of

1 those factors contributed to the 10-3 Republican
2 advantage?

3 A. Okay. Well, this is what I would say: No, I
4 did not do a statistical model, but when you use
5 the word quantify, I quantified things. That's
6 just providing numbers. But, no, I don't
7 produce a statistical model.

8 Q. And I'm correct, am I not, that you would need
9 to have some kind of statistical model to
10 quantify the impact of those -- any of those
11 particular factors on the outcome of the 10-3
12 Republican advantage in North Carolina
13 congressional elections?

14 MR. FARR: Objection to the form.

15 THE WITNESS: Not alone. If you wanted
16 to figure out how these factors contributed
17 simultaneously, yes, but just as, you know, the
18 tables list quantities of various interests
19 here, sort of single interest that could be
20 looked at. So, again, you would need a
21 statistical model if you wanted to control for
22 things simultaneously, if that makes sense.

23 BY MS. EARLS:

24 Q. I assume that you are believing that each of
25 these things happen simultaneously; that is to

1 say, in every congressional election there's
2 something you can observe about the challenger,
3 there's something you can observe about
4 candidate spending. These things happen
5 simultaneously in the real world, right?

6 A. Yes.

7 Q. Now, you did look at the criteria that -- you
8 did look at the criteria that the General
9 Assembly adopted?

10 A. I did.

11 Q. And you agree that -- and I'll just show you the
12 criteria. This was previously marked as Chen
13 Exhibit 12.

14 A. Okay.

15 Q. And do you agree that incumbency protection is
16 one of the -- or it says incumbency. On the
17 second page incumbency is one of the criteria
18 that the General Assembly listed.

19 A. Right. I mean, I may have used the term
20 incumbency protection.

21 Q. And so to the extent that incumbency protection
22 was a factor in the outcome, the 10-3 Republican
23 advantage, it would still be, then, due to the
24 redistricting process, correct?

25 MR. FARR: Objection to form.

1 THE WITNESS: Well, due -- you know,
2 for instance, not double stacking incumbents in
3 the same district, yeah, that's handled through
4 the redistricting process.

5 BY MS. EARLS:

6 Q. Now, in this criteria -- do you see on the first
7 page the criteria heading Partisan Advantage?

8 A. Yes.

9 Q. You don't mention that anywhere in your report
10 as a factor that you looked at, right?

11 A. I don't remember. I just honestly don't
12 remember. If it's not there, then it's not
13 there.

14 Q. Do you think that it's relevant to an analysis
15 of whether the Republican success in holding 10
16 of 13 congressional seats was caused by the
17 redistricting process?

18 MR. FARR: Objection to form.

19 THE WITNESS: Well, again, in this case
20 incumbents' incumbency from the previous
21 election cycle and -- is certainly related to
22 that, to politics. I mean, if you're going to
23 engage in incumbent protection, then it's going
24 to be somewhat dependent on who the incumbents
25 were from the previous election cycle is what

1 challengers for many years.

2 Q. And they have established relationships with
3 their party?

4 A. Most of them certainly. I mean, there are a lot
5 of incumbency advantages or incumbent
6 advantages.

7 Q. So what are some of the other important
8 incumbency advantages?

9 A. The fact that incumbents hold office and, for
10 instance, they have staff in the district or in
11 the state and in Washington, DC, that can help
12 with constituent services, for instance. I
13 mean, that's not something a challenger has.
14 So that would be another example.

15 Q. Anything else you would identify as an important
16 aspect?

17 A. Well, sometimes name recognition over
18 challengers. If you've been in office and
19 you've held that office for a while in the same
20 general area, you're more likely to have higher
21 name recognition.

22 Q. And did you in your report here do any
23 statistical modeling or regression analysis that
24 would quantify the magnitude of the effect of
25 incumbency advantage in North Carolina

1 elections, congressional elections?

2 A. No, I already said I didn't.

3 Q. Now, isn't it also true that -- well, let me
4 just finish with the money spent.

5 A. Okay.

6 Q. In the sentence right above Table 2, you say:

7 "In the only open seat race (CD 13),
8 the Republican candidate outspent the
9 Democratic candidate by \$1.15 million."

10 Do you see that?

11 A. Yes.

12 Q. And then Table 2 you're reporting the Republican
13 and Democratic expenditures in the 2016
14 congressional elections; is that correct?

15 A. Yes.

16 Q. And for District 13 you have numbers there
17 that -- and the difference of 515,000 instead of
18 1.15 million. Can you explain that?

19 A. I would have to double -- I don't know. I would
20 have to double-check that if I made a
21 misstatement or unless I was -- I'd have to
22 check into it is the short answer.

23 Sometimes -- I mean, there are
24 different ways you can look at spending, like
25 money raised versus money spent, for instance.

1 MS. EARLS: I understand what you're
2 saying.

3 THE WITNESS: Well, I would be glad to
4 check my numbers.

5 MS. EARLS: All right. We'll recheck
6 our numbers too.

7 BY MS. EARLS:

8 Q. Let me understand this: Did the Republican
9 expenditures category include expenditures for
10 primary and general elections or just general
11 elections?

12 A. I'd have to check. I'd have to look at that.

13 Q. Okay. So then let me turn to a slightly
14 different topic.

15 A. Okay.

16 Q. You've done research, have you not, on the way
17 in which redistricting impacts the incumbency
18 advantage?

19 A. Yes.

20 (WHEREUPON, Plaintiffs' Hood Exhibit 6
21 was marked for identification.)

22 BY MS. EARLS:

23 Q. Can you identify what's been marked as Hood
24 Exhibit 6?

25 A. It's an article I wrote with Seth McKee.

1 Q. And if you would turn with me to Page 207 of
2 this article.

3 A. Okay.

4 Q. The first sentence of the third full -- third
5 paragraph on that page says:

6 "To provide empirical support for
7 the role of redistricting in influencing
8 electoral outcomes in Georgia, we regress
9 the Republican share of the two-party U.S.
10 House vote onto the following covariate,"
11 and then you describe a number of variables.

12 A. Yes.

13 Q. Did you do -- use that method or any similar
14 analysis in this case to examine the impact of
15 redistricting on the electoral outcomes in
16 North Carolina?

17 A. Not this specific method.

18 Q. What method did you use?

19 A. Well, I did look at core retention levels in
20 this report, in the expert report, so, I mean,
21 they're related. I didn't use this exact model
22 that we have on this paper, no, that's fair.

23 Q. And how is the core retention data that you
24 looked at related to this regression model that
25 you use here?

1 whether you looked at VAP --

2 A. Most of the time when I've looked at this for
3 redistricting plans, for instance, in Virginia,
4 it doesn't make much of a difference.

5 Q. But I'm correct, am I not, that you did not use
6 that -- those numbers, that data, those
7 percentages on core retention in North Carolina
8 to do any regression analysis to determine the
9 impact that it might have had on the vote shares
10 for candidates in North Carolina?

11 A. I did not do a regression analysis on that
12 factor, no.

13 Q. And in Georgia, didn't you find that the -- and
14 from -- staying now on Page 208 of what we've
15 marked as Hood Exhibit 6. From 1992 to 2004,
16 the presence -- and this is now the last
17 sentence of the next to last paragraph -- or
18 second to last sentence in the last paragraph.

19 "As hypothesized, the presence of
20 redrawn constituents essentially has no
21 effect on the vote shares of Republican
22 incumbents. By comparison, for Democratic
23 incumbents, going from a district with
24 0 percent redrawn constituents to 70
25 percent redrawn constituents increases the

1 Republican vote by more than 20 points."

2 A. That's an accurate reading of that sentence,
3 yes. Again, this was in Georgia.

4 Q. Right. Do you have any reason to believe that
5 it would be different -- this impact would be
6 different in North Carolina?

7 A. Well, I would say we would -- we would test
8 again. We would test for the impact. I mean,
9 we could hypothesize that it could be the same,
10 but we could empirically test it.

11 Q. Let me turn now to Page 7 of your report.

12 A. Okay.

13 Q. And I want to look at the second sentence of the
14 second paragraph there. It's the sentence
15 following Footnote 10. And you say:

16 "Although all 12 of these districts
17 were contested, evidence collected
18 indicates that these incumbents did not
19 face experienced challengers."

20 And I just want to know which evidence
21 you are referring to there.

22 A. That would be in Table 1.

23 Q. So that conclusion is based on whether or not
24 the challenger had previously held elected
25 office?

1 written at one point in time talking about
2 future events isn't always conclusive.

3 Q. Then going back to Page 7 of your report.

4 A. Okay.

5 Q. You also look at what you call North Carolina's
6 political geography; is that right?

7 A. Yes.

8 Q. And in coming up with your -- and am I correct
9 that the map that you show in Figure 2 is based
10 on the either 10 or 11 races that formed the
11 basis of your partisan index?

12 A. Yes, that's correct. That's the partisan index.

13 Q. Why didn't you include any results from the 2008
14 election?

15 A. I'm not sure. I mean, I made a decision at some
16 point to include the election cycles I included.

17 Q. And --

18 A. So I don't know.

19 Q. Can you tell me why you only used statewide
20 races?

21 A. Yes. Because I think in some ways this gives a
22 little better indication of the partisan
23 leanings of these -- these are voting districts
24 compared to, say, state house or state senate
25 races or congressional races which are more

1 district specific. I'm just trying to give an
2 overview of the state here.

3 Q. And so then would you agree that using the
4 statewide races in effect controls for those
5 district-specific factors that would be present
6 if you were using congressional elections?

7 MR. FARR: Objection to the form.

8 THE WITNESS: Not necessarily because
9 they're two different elections and this is
10 being measured off of the statewide races.

11 BY MS. EARLS:

12 Q. Right. But this measure, for example, doesn't
13 take into account any differences there might be
14 in the challenger's experience in the
15 congressional district, right?

16 A. That's correct.

17 Q. And it doesn't reflect or take into account any
18 difference in candidate spending in
19 congressional elections because it's a statewide
20 race?

21 A. Well, they're all statewide races. It's an
22 index, right, and, of course, the reason to use
23 an index is because any single election could be
24 influenced by certain factors that might make it
25 unrepresentative, so -- or less representative

1 of the state as a whole, so that's the reason
2 you usually use an index.

3 Q. And as we discussed earlier, the index that you
4 used -- and the results are on Table 9 on
5 Page 23 -- I'm sorry, that's core retention.
6 Let me get the right table.

7 The index for the 13 congressional
8 districts is on Table 12 on Page 25.

9 A. Right. I mean, I used the index at various
10 points. It's used in Table 12, that's true.
11 It's used in Figure 2 as well.

12 Q. Right. And so the races that you chose to --
13 that form the basis of your index for Figure 2
14 are races in which there's a slight Democratic
15 advantage overall, right? It's 50.2?

16 A. According to your calculation you shared, that's
17 accurate, yes.

18 MR. FARR: And for that reason I
19 register an objection to the form of the last
20 question.

21 BY MS. EARLS:

22 Q. Well, if you'd like to take a moment and add up
23 those 13 numbers and find the average, I'm happy
24 to wait for that.

25 MR. FARR: You want my calculator?

1 THE WITNESS: I'm not my dad. I'm not
2 going to do math without a calculator. I don't
3 doubt you necessarily.

4 Okay. So 50.2.

5 BY MS. EARLS:

6 Q. That's the figure you got as the average?

7 A. Average Republican, yeah.

8 Q. So is that -- so that's a slight -- a 50.2
9 slight Republican advantage?

10 A. Yes, that's what I calculated.

11 Q. And would you agree that using results from past
12 races, such as the 10 or 11 that you selected,
13 is the best predictor of the outcome of future
14 elections?

15 MR. FARR: Objection to form.

16 THE WITNESS: Well, it's not the -- I'm
17 not necessarily using that index to project an
18 election outcome. I'm using it to try to get a
19 handle on the partisan inclination of the
20 district, if that makes sense. I don't think I
21 make any predictive statements.

22 BY MS. EARLS:

23 Q. So looking at Figure 2, can you tell me what GIS
24 software you used to produce that map?

25 A. ArcGIS.

1 Q. And that shows the partisan distribution based
2 on your index at the precinct level; is that
3 correct?

4 A. Right. The VTD level I think technically is
5 what it's referred to in North Carolina. So
6 that would be the smallest unit of analysis that
7 we have to look at.

8 Q. How did you come up with the four gradations of
9 0 to 25, 25 to 50, 50 to 75 and 75 to 100?

10 A. That's just based on my own experience in
11 classifying those districts or those VTDs.

12 Q. Okay. And --

13 A. So the VTDs are shaded and then later it's used
14 for the congressional district rendering as
15 well.

16 Q. And it would have been possible to use more
17 gradations, correct?

18 A. Certainly, but it gets to the point where no one
19 can tell what's going on too, even in color.

20 Q. Have you seen literature -- political science
21 literature that categorizes a VTD as competitive
22 if it's within 5 percent of 50 percent, so
23 between 45 percent and 55 percent?

24 A. That's usually how -- I don't know. I don't
25 know specifically about categorizing a VTD. A

1 lot of elections are categorized that way.

2 There may be some -- I mean, there could be some
3 political science literature out there. I just
4 don't know.

5 Q. And why not use that type of measure in your
6 color scheme for this map here?

7 A. Well, I could have. I guess as the author of
8 the report, this is how I chose to present
9 things.

10 Q. Then you also talk about the four subregions.
11 Why did you identify the subregions?

12 A. Because traditionally, in the study of state
13 politics, sub geographic regions are important,
14 especially in southern politics. These were
15 written about all the way back with the dean of
16 southern politics, V.O. Key, and his seminal
17 work, Southern Politics in State and Nation.

18 So we could argue about these
19 subregions. I'm using his categorization and I
20 state that.

21 Q. Well, do you think that the subregions relate to
22 any of the redistricting criteria that the
23 General Assembly stated it would follow in 2016?

24 A. No, I didn't state that. Again, this is a state
25 map. We're trying to get an idea of the

1 Q. I want to ask you about Footnote 14 on Page 10.
2 And you say there in the second sentence:

3 "...one cannot ignore the fact that
4 these districts are affected by spatial
5 considerations."

6 A. Right.

7 Q. What did you mean by that?

8 A. Well, spatial meaning in that context geographic
9 considerations. So, for instance, for one, the
10 shape of the state and the geographic
11 distribution of partisans within the state.

12 Q. So did you do any analysis to attempt to
13 determine whether it's possible -- even given
14 what you've shown us on the map as the partisan
15 distribution of voters in North Carolina,
16 whether it's possible to draw 13 congressional
17 districts that comply with the other criteria
18 that the General Assembly has identified but do
19 not result in districts with a 10-3 partisan
20 makeup?

21 A. So --

22 MR. FARR: Object to the form.

23 THE WITNESS: Are you asking me if I
24 engaged in attempting to draw congressional
25 districts in North Carolina? Is that fair?

1 BY MS. EARLS:

2 Q. I'm asking if you examined that in any way
3 whether you drew them or someone else drew them.

4 A. I did not. I mean, the maps I created and
5 analyzed are all in the report. I guess there's
6 two maps.

7 Q. And then you also talk about this concept of
8 natural packing. Is that a term that's used in
9 political science literature?

10 A. Sometimes. I have some citations. I think it
11 actually came -- I'm not claiming credit for
12 that term, but others have used it, including
13 judges and scholars now.

14 Q. So what's your -- what's your definition of that
15 term?

16 A. So that's -- in Footnote 14 I cite a court case,
17 the Vieth court case, and -- well, there's some
18 other citations in 15 that are academic.

19 So natural parking would simply -- in
20 that context would simply mean partisans -- the
21 same kind of partisans clustering close to one
22 another geographically, so Democrats living
23 around other Democrats, Republicans living
24 around other Republicans.

25 Q. But that doesn't ultimately tell you anything

1 about what is possible in terms of districting
2 plans and the ultimate partisan composition of
3 the districts in those plans, right?

4 MR. FARR: Objection.

5 You may answer.

6 THE WITNESS: Well, not definitively,
7 no. It sort of leads to some questions, though.

8 BY MS. EARLS:

9 Q. And your Figure 2 doesn't indicate anything
10 about population density of these different
11 partisan distributions, right?

12 A. No. I mean, you can only plot so many things on
13 a map and make it sensical. I mean, I do talk
14 about population density in the report. I don't
15 remember plotting that on a map.

16 Q. But the population density would also have an
17 impact on the extent to which districts are --
18 the way in which North Carolina could be divided
19 into 13 congressional districts and the ultimate
20 partisan makeup of those districts, right?

21 A. Well, certainly. You have to -- I'm not saying
22 you don't consider population. I'm just saying
23 there's so many things you can plot on a single
24 map.

25 Q. Sure. So then I want to ask you just a couple

1 questions on Table 3 that's on Page 10.

2 A. Okay.

3 Q. What's the -- you say that the state is
4 50 percent Republican. What's the basis for
5 that number here on this table?

6 A. That should be an aggregation or an average of
7 all the VTDs.

8 Q. And again, using your index?

9 A. Right. Right. So these are -- VTDs are the
10 unit of analysis in Table 3.

11 Q. Okay. And do you know what percentage of the
12 state population is in each of your four
13 subregions?

14 A. Not off the top of my head, no.

15 Q. And can you explain for me what the minus 1 to 1
16 range for autocorrelation in your Moran's I
17 statistic?

18 A. Moran's I is a measure of spacial
19 autocorrelation, so basically how much
20 clustering do you see within those given
21 subregions.

22 Q. And what would a zero in that range reflect?

23 A. A completely random pattern -- completely random
24 pattern spatially speaking.

25 Q. In your analysis you used four categories,

1 analysis. And on Page 15 you present a chart of
2 how the proportion of congressional seats held
3 by Republicans in North Carolina is related to
4 the state's efficiency gap; is that right?

5 A. Yes, that's correct.

6 Q. Now, that's only for elections 1992 to 2016,
7 right?

8 A. Right.

9 Q. And you've looked at Professor Jackman's
10 rebuttal report?

11 A. Yes, I did.

12 Q. And I can --

13 A. I have it here.

14 Q. You're aware that he repeated this analysis but
15 for all elections in his database, right?

16 A. For all of them, right.

17 Q. Right.

18 A. So that would be other states, from what I'm
19 taking from his rebuttal report. That's what I
20 remember.

21 Q. Right. So I'm now referring to Page 14 of
22 Jackman Deposition Exhibit 3, which is his
23 rebuttal report. And you have that in front of
24 you.

25 A. Yes, I've got it.

1 Q. And he says at the bottom of that page, when I
2 apply Hood's regression model to all elections
3 in my database, he gets a much lower r-squared.
4 In other words, while seat share may explain
5 83 percent of the variance in North Carolina's
6 efficiency gaps from 1992 to 2016, it explains
7 only 50 percent of the variance in efficiency
8 gaps nationwide from 1972 to 2016; is that
9 right?

10 A. That's what he reports, yes. So that would be
11 more than just North Carolina is what I was
12 saying.

13 Q. Right. But you don't have any reason to --

14 A. I'm not saying that's wrong.

15 Q. Okay. That was my question.

16 So, then, on Page 14 of your report,
17 you say that this is the -- it's in the very
18 first paragraph. I guess it's the second full
19 sentence starting with the word "Consistently."

20 A. Okay.

21 Q. You say:

22 "Consistently holding a majority of
23 congressional seats without having ever
24 secured a majority of the statewide vote
25 might raise some eyebrows."

1 than a majority of the seats potentially.

2 I mean, again, there are a lot of
3 factors involved at that point, including the
4 candidates running and all that in the election.

5 Q. So just a quick question about Footnote 21. You
6 point out that a voter can split their ticket
7 voting for a candidate of a different party for
8 various races.

9 Have you done any analysis of the
10 frequency of ticket splitting in North Carolina?

11 A. No, I've not.

12 Q. So looking at your hypothetical districting
13 plan, which is beginning on Page 16, that's
14 something you created for this report, correct?

15 A. Yes. Yes.

16 Q. And we talked at the beginning about --

17 A. Yes, I had never done anything on the efficiency
18 gap before this, as I said.

19 Q. We talked about how the percentages need to be
20 corrected for this paragraph?

21 A. That's right. Yes.

22 Q. But isn't it also true that those percentages
23 then impact your conclusion that the
24 hypothetical is in fact similar to -- and this
25 is the first sentence -- well, first and second

1 your --

2 A. From this study, yes, that's correct.

3 Q. And then on Page 73, the last sentence of your
4 conclusion you state:

5 "This research demonstrates
6 convincingly that an act as simple as
7 redrawing political boundaries can have
8 substantial effects on voter preferences."

9 A. Yes, that's what it says.

10 Q. And that was your conclusion based on your
11 study?

12 A. Based on the study, yes.

13 Q. So then -- turning back, then, to your
14 efficiency gap example, I wanted to
15 understand -- so I'm looking here on Page 16,
16 Table 5. I wanted to understand why you divided
17 Group 1 into Group 1A and 1B. What was the
18 significance of that?

19 A. Well, again, those in the hypothetical, those
20 would be Democrats, and it's divided by race,
21 essentially.

22 Q. I see. So 1A might -- in your hypothetical
23 might be -- A and B are different races, white
24 voters and black voters?

25 A. Yes. In this simple hypothetical, yes.

1 BY MS. EARLS:

2 Q. So I'm looking at Page 14. It's the first
3 paragraph under Number 7, Hood Efficiency Gap
4 Analysis.

5 A. Okay.

6 Q. And the last sentence of that paragraph says:

7 "Indeed, the standard deviation of the
8 two-party vote share in North Carolina's
9 congressional elections from 1992 to 2016
10 is just 3.1 percent, indicating an
11 impressive degree of electoral stability."

12 I just want to ask if you have any
13 reason to dispute or disagree with his
14 3.1 percent figure.

15 A. Not beyond saying I didn't calculate that
16 figure, but if he's done it correctly, then it
17 should be correct.

18 Q. And then in your examples, in your analysis of
19 the efficiency gap, you vary Group 3's vote
20 share from Party B from 51 percent to
21 99 percent.

22 A. I think it starts at 49 percent to 99 percent.
23 Yeah.

24 Q. So that 49 to 99 percent is a much greater
25 fluctuation in vote share than North Carolina

1 elections actually exhibited.

2 A. If this is correct, yes. Again, this is a
3 hypothetical.

4 Q. Now, I want to make sure I'm clear on how -- on
5 your understanding of the efficiency gap
6 measures.

7 Do you agree that it's not a measure of
8 proportional representation if that term is
9 meant to refer to seats share and vote share
10 having a one-to-one relationship?

11 A. I don't think it's an exact measure of that, no.
12 I think it, as I point out, seems to be
13 correlated with that, though.

14 Q. But you do agree it's not a measure of
15 proportional representation --

16 MR. FARR: Objection to form.

17 BY MS. EARLS:

18 Q. -- if that's a one-to-one seats to votes?

19 MR. FARR: I withdraw my objection.

20 THE WITNESS: Not if it's that. I'm
21 saying it is related to that.

22 BY MS. EARLS:

23 Q. Then turning to the part of your report that --
24 Section IV now begins on Page 20, The 2016
25 Congressional Redistricting.

1 to incumbency.

2 Q. But there's nothing -- so if we look at the
3 incumbency section of the criteria, there's
4 nothing in there that either uses the words
5 district core retention or expresses that
6 concept in other words, is there?

7 A. No. No. I mean, that was my determination as
8 someone who oftentimes looks at redistricting
9 factors that that's something that needs to be
10 looked at, though.

11 Q. And you also looked at compactness. That is
12 something that's in the adopted criteria?

13 A. Yes, that's directly in the criteria.

14 Q. And then when you -- in the next sentence you
15 say:

16 "To place things in context, I
17 further provide a number of comparisons
18 between the 2011 and 2016 congressional
19 plans on compactness, maintaining
20 communities of interest and VTD splits."

21 A. Yes.

22 Q. But you did not compare the 2011 and 2016
23 congressional plans on district core retention,
24 did you?

25 A. Well, you need -- you need two cycles to have a

1 pretty good website.

2 Q. And you also didn't, if I'm reading this
3 correctly, compare the 2011 and 2016
4 congressional redistricting plans on incumbency
5 protection, correct?

6 A. That's correct. I just looked at incumbency
7 protection for the 2016 plan.

8 Q. Do you know whether incumbency protection was
9 prioritized in the 2011 redistricting plan?

10 A. I don't remember what the criteria said for that
11 plan.

12 Q. Is there a reason why you didn't compare 2011
13 and 2016 on the question of incumbency
14 protection?

15 A. Well, again, I was mostly focused on the 2016
16 plan, and I was making comparisons that I
17 thought were germane. So I could have looked
18 all that up, that's true, but I didn't.

19 Q. On the question of incumbency protection, would
20 you agree that the General Assembly could have
21 met this criteria more precisely if they had
22 avoided pairing all 13 incumbents?

23 MR. FARR: Objection.

24 THE WITNESS: Well, that would be
25 perfect, I guess, on that metric.

1 given greater weight.

2 A. No.

3 Q. In your analysis of the 2016 Congressional
4 Redistricting and Partisanship, looking on
5 Page 24 -- this is Section V of your report.
6 The first sentence there you say that you are
7 using the same partisan vote index that you
8 previously described.

9 A. Right.

10 Q. And in Footnote 30, you describe how you use GIS
11 to assign the VTDs. And I know there weren't
12 many of them, but how did you deal with split
13 VTDs in your analysis?

14 A. Good question. I drew a centroid in the middle
15 of the VTD and I pulled it into the
16 congressional district where most of the VTD
17 lay.

18 Q. Okay. So when you say that you drew the most --
19 you drew a centroid and put the district in the
20 district where most of the VTD lie, was that
21 based on geographic area or population?

22 A. It was area.

23 Q. And in Table 12, which is your classification of
24 the districts, you used a plus or minus 5
25 percent range for competitiveness.

1 Is that fair?

2 A. Yes.

3 Q. Using that measure of competition, do you know
4 how many of the 2016 congressional elections in
5 North Carolina actually were competitive?

6 A. No. I didn't look that up.

7 Q. And then you also say:

8 "Some additional evidence of
9 potential electoral competition is the
10 fact that the average percentage of
11 Democratic registrants for these
12 districts stands at 42.5 percent while
13 the average percentage of Republican
14 residents is 34.3 percent."

15 A. Right.

16 Q. Which district -- which districts are you
17 referring to there? When you say these
18 districts, is that all 13 districts?

19 A. I think I'm talking about the ones that are
20 labeled competitive.

21 Q. So the ones that are Republican competitive?

22 A. Yes, I think that's right.

23 Q. Okay. So not the safe Republican, just the
24 Republican competitive?

25 A. Right.

1 Q. And which is more reliable, the voting history
2 or the registration, in your view?

3 A. Well, I mean, registration is only going to get
4 you so far in trying to figure out things. We
5 talked about this earlier. It's a metric you
6 can use, but creating the partisan index from
7 the vote outcomes actually gets you closer, I
8 think, to the partisan makeup of a district,
9 VTD, whatever you're looking at.

10 MS. EARLS: I don't have any further
11 questions. Thank you.

12 MR. NELSON: I have some questions.

13 (Discussion held off the record.)

14 (Brief Recess: 2:19 to 2:24 p.m.)

15 EXAMINATION

16 BY MR. NELSON:

17 Q. Good afternoon, Dr. Hood. My name is Peter
18 Nelson. I represent the Common Cause
19 plaintiffs. I'm going to, as I said before the
20 break, do my best not to duplicate any of the
21 efforts from this morning. And you'll have to
22 bear with me if I'm shuffling papers a little
23 bit because I'm working from a few different
24 documents.

25 A. Good afternoon.

1 that they spent, right?

2 A. Well, and making -- again, you know a table can
3 draw comparisons, even a simple table. So those
4 are made.

5 Q. So the comparison you're saying there is that
6 because the Republicans spent more money than
7 the Democrats or the Democrats -- the incumbent
8 spent more money than their challengers, the
9 analysis was because they spent more that
10 contributed to the outcome?

11 A. Well, I believe so, yes. Now, I can't exactly
12 quantify that. As we talked about, I didn't run
13 a multivariate statistical model.

14 Q. And did you do anything to quantify the
15 magnitude of the impact of any of the other
16 non-redistricting factors that you discuss in
17 that section of your report on the 10-3
18 Republican advantage?

19 A. Not beyond what we're talking about here,
20 tabular data, that is. Even if I had done a
21 statistical analysis, I didn't. I only have
22 13 cases here, so that's not a very large number
23 of cases to work with.

24 Q. So is that the reason that you didn't do a
25 statistical analysis?

1 A. No, but it would have been a factor involved in
2 the statistical analysis.

3 Q. If you can turn -- I guess we're still on
4 Page 7. Or if you can turn to Page 7 of
5 Exhibit 1, in the last sentence of the second
6 full paragraph you say:

7 "In conclusion, there is little doubt
8 that factors other than redistricting
9 related to the 2016 elections in
10 North Carolina helped to produce the
11 noted 10 to 3 partisan division."

12 When you say there's little doubt, do
13 you mean you have little doubt?

14 A. Well, I'm the one writing the report, so, yes, I
15 think that's fair.

16 Q. And that is based on your observations and the
17 tabular data that you collected, right?

18 A. In this particular case, yes, and based on the
19 fact that I have a record of scholarship that
20 studies congressional elections as well and that
21 I'm familiar with the topic in a more general
22 sense.

23 Q. And the factors other than redistricting that
24 you refer to in this sentence, are those limited
25 to the incumbency protection factors that you

1 cross-state comparison in core retention, you've
2 usually seen it used within states, right?

3 A. Yes. Now, I'm not saying someone hasn't. I'm
4 just not aware of it.

5 Q. So you agree that the extent to which core
6 retention is prioritized for a redistricting may
7 vary from state to state, right?

8 A. Certainly.

9 Q. And that to understand the significance of core
10 retention for a state, you would need to look at
11 other redistrictings in that same state?

12 A. Well, it would tell you what kind of emphasis
13 was placed on core retention in a given
14 redistricting cycle. If you wanted to compare
15 it to other redistricting cycles to see if it
16 was greater or less, then you could do that.
17 You could, yeah.

18 Q. And do you think there would be some value in
19 understanding whether core retention was greater
20 or less relative to other redistrictings in that
21 state?

22 A. Well, not so much in this particular case, no.

23 Q. Why not?

24 A. Because I was looking at what happened in 2016,
25 and I did reach back to 2011. You know, that's

1 did read the plaintiffs' expert reports.

2 Q. But there's no other discussion in this report
3 of running hypothetical districting simulations
4 one way or another?

5 A. That's probably true. I mean, I'd have to --
6 without looking through the report all the way
7 again, I think that's true.

8 Q. Okay. And what is the basis for this statement
9 that the question of what constitutes an
10 unconstitutional partisan gerrymander is not
11 resolved by running a set of hypothetical
12 districting simulations?

13 A. I'm just saying I don't know that that gets at
14 the question.

15 Q. You didn't do any analysis one way or another
16 whether it gets at the question for this report;
17 you just offered your opinion that it doesn't
18 get at the question, right?

19 A. That particular technique, that's correct.

20 Q. If you could turn to -- just one other follow-up
21 question.

22 If you go back to Page 20 of your
23 report of Exhibit 1, you were asked what
24 information you considered in comparing your two
25 hypothetical plans to -- in describing them as a

1 Q. So if a simulation used zero population
2 deviation, then that would be reasonable in
3 your --

4 A. Closer to reality in my opinion, I guess is the
5 way I would put it.

6 Q. In the bottom paragraph on the second page of
7 Hood Exhibit 14 -- and when I say second page, I
8 mean the first page of text.

9 A. Okay.

10 Q. There's -- you have a short discussion of the
11 Harris case, right?

12 A. Yes.

13 Q. And you say:

14 "As a consequence of the Harris
15 decision, the provisions of Section 2
16 were not applicable."

17 What's the basis for that statement?

18 A. Well, that's my understanding, that Districts 1
19 and 12 were redrawn or needed to be redrawn from
20 the results of that case.

21 Q. And it's your understanding that the provisions
22 of Section 2 were not applicable after Harris?

23 A. Well, that's what I wrote.

24 Q. Well, I'm asking if that's your opinion.

25 A. That's my understanding.

1 Q. What is that understanding based on?

2 A. What happened after the court case.

3 Q. When you say what happened after the court case,
4 what are you referring to specifically?

5 A. The court ordered that those districts, which
6 were majority-minority districts in the prior
7 plan, had to be redrawn.

8 Q. And so it's your understanding based on that
9 order that the provisions of Section 2 were not
10 applicable after the Harris decision?

11 A. Well, in that particular iteration, yes.

12 Q. That particular iteration meaning the drawing of
13 the 2016 plan?

14 A. The drawing of the 2016 plan, yes.

15 Q. And do you know whether any of the drafters of
16 the 2016 plan thought that the provisions of
17 Section 2 were applicable? Do you know one way
18 or another?

19 A. No.

20 Q. And it's your opinion that the state was not
21 required to create congressional districts
22 within a specific range of Black VAP, right?

23 MR. FARR: Objection.

24 THE WITNESS: That's my understanding,
25 yes.

1 BY MR. NELSON:

2 Q. So just to be clear, because there was an
3 objection, you say in your report that the state
4 was not required to create congressional
5 districts within a specific range of Black VAP,
6 right?

7 A. Yes.

8 Q. And what is the basis for that statement?

9 A. The -- again, the court decision that came out.

10 Q. In the footnote, Footnote 7, you say in the
11 second sentence:

12 "Influence districts (less than
13 50 percent) are not a remedy under
14 Section 2."

15 What's the basis for that statement?

16 A. That's my interpretation of what the courts have
17 said on that matter.

18 Q. And what's your definition of an influence
19 district?

20 A. Well, somewhere less than 50 percent.

21 Q. That's it? That's the entirety of your
22 understanding of an influence district?

23 A. No. I mean, an influence district is not a
24 majority-minority district, but it may have a
25 sizable proportion of its constituents who are

1 minorities, for instance, so it could be
2 40 percent black, 45 percent black.

3 Q. And then you state that the fact that two
4 districts were created that contained
5 44.5 percent and 36.2 percent Black VAP was not
6 a function of the Voting Rights Act.

7 Is that based on your understanding of
8 the Harris decision?

9 A. Yes.

10 Q. You say it was the result of a confluence of
11 other considerations. What were those other
12 considerations?

13 A. Well, I think, again, a chief one that we've
14 talked about quite a bit today is incumbency
15 protection, and so -- and again, related to
16 incumbency protection, maintenance of district
17 cores.

18 So if you have a district that was a
19 majority-minority district, even if it's not a
20 majority-minority district in the new plan but
21 maintains a sizable share of the district core,
22 then you're going to have a sizable number of
23 minority constituents in that district. So
24 that's an example of what I'm talking about
25 there.

1 Q. In the adopted criteria, the incumbency
2 protection only talks about not pairing
3 incumbents, right?

4 MR. FARR: Objection to the form.

5 THE WITNESS: That's right.

6 BY MR. NELSON:

7 Q. How many incumbents would he be allowed to pair
8 and still have a simulation be reasonable in
9 your view?

10 A. Well, I mean, the General Assembly got up to 11,
11 so -- I mean, that's the reality, so that's at
12 least possible.

13 Q. So a simulation where 11 or --

14 A. Or more.

15 Q. -- incumbent were not paired would satisfy that
16 criterion in your view?

17 MR. FARR: Objection. Sorry I
18 interrupted. I apologize.

19 THE WITNESS: Yes.

20 BY MR. NELSON:

21 Q. You say:

22 "Professor Mattingly's use of the
23 actual congressional vote in his
24 redistricting simulations is problematic.
25 It's not clear that this measure is an

1 Q. So you think that no simulation is valid without
2 doing detailed interviews with legislators and
3 all the rest?

4 A. Well, I think that's an important point in all
5 this, certainly.

6 Q. You don't do any interviews with legislators in
7 this case, right?

8 A. Right.

9 Q. Or any of what you called "all the rest"?

10 A. Right.

11 Q. Do you believe that -- do you agree that for a
12 partisan gerrymandering case, having a set of
13 plans that are drawn without partisan
14 considerations but exhibit comparable
15 non-partisan metrics allows us to see how the
16 alleged partisan considerations in the disputed
17 plan substantively alter the outcomes that
18 emerge from a less or non-partisan process?

19 MR. FARR: Objection.

20 THE WITNESS: What -- let's -- that's
21 sort of become a loaded term. How would you
22 define gerrymandering?

23 BY MR. NELSON:

24 Q. Well, you don't get to ask questions.

25 How do you define partisan

1 gerrymandering?

2 A. Well, in class, we typically define it as
3 drawing districts to gain a political advantage.

4 Q. Okay. So using that definition --

5 A. That was a pretty long question.

6 Q. Sure. I'm happy to ask you again.

7 A. All right.

8 Q. Using your definition of partisan
9 gerrymandering, in a case concerning partisan
10 gerrymandering, do you agree that having a set
11 of plans that are drawn without partisan
12 considerations but exhibit comparable
13 non-partisan metrics allows us to see how the
14 plan in dispute -- how partisan considerations
15 substantively altered that plan in dispute?

16 MR. FARR: Objection.

17 BY MR. NELSON:

18 Q. Do you understand? It's a long question.

19 A. Barely. I guess one thing I would say is how
20 are you going to remove politics completely from
21 a process that the state engaged in by the
22 General Assembly. I don't know that that's
23 fully possible.

24 Q. How about removing consideration of political
25 data?

1 the plan that was actually drawn?

2 A. It could give some hints, but again, if you
3 really didn't know all the ins and outs why a
4 plan was being drawn by the legislature itself,
5 then maybe not.

6 Q. When you say it could give some hints, why is
7 that?

8 A. Well, you just may not be able to determine
9 things definitively. So like in Virginia, you
10 know, I know one of the House of Delegates
11 districts was crafted slightly differently
12 because there was a House of Delegate member who
13 wanted their funeral home to be in their
14 district. So, you know, I guess you could say
15 that's a personal consideration, a political
16 consideration.

17 Would you -- could you be able to pick
18 up on stuff like that without sort of inside
19 baseball knowledge? Probably not.

20 Q. Earlier when you answered my question by saying
21 it could give you some hints if you looked at a
22 bunch of what you call counterfactual maps that
23 were drawn that used comparable criteria and
24 metrics of the actual map but excluded, you
25 know, political data, partisan considerations,

1 you agree that that could give you some hints
2 about how much the partisan considerations or
3 political data affected the outcome of the
4 actual map that was drawn, right?

5 A. It could give you some hints. Yeah, I don't
6 disagree with that.

7 Q. In the last paragraph of your second report, you
8 say that you -- I think that's supposed to say
9 respectfully disagree, unless I'm wrong.

10 A. Respectfully, yeah.

11 Q. You say you respectfully disagree with the
12 inference that Professor Mattingly draws in his
13 report concerning the will of the people.

14 What is the inference that you say
15 Professor Mattingly draws that you are
16 disagreeing with?

17 A. He refers in his report somewhere, maybe more
18 than once, about the will of the people being
19 subverted through the redistricting process.
20 That's what I'm referring to. I know it's in
21 here.

22 Q. So the inference that you're disagreeing with is
23 that the will of the people is subverted through
24 the redistricting process?

25 A. I don't agree with his conclusion on that. Yes,

1 account citizen opinion in drawing districts?

2 A. I think most of the time they do. Most states
3 now hold open hearings and have ways for citizen
4 feedback to get to legislators.

5 Q. And do you know if that was done here with
6 respect to the 2016 plan?

7 A. I didn't look into that specifically, but again,
8 most states have adopted something like that.

9 MR. NELSON: I don't think I have any
10 further questions. Do you guys want to take a
11 minute? So let's take a short break.

12 (Brief Recess: 4:08 to 4:18 p.m.)

13 BY MR. NELSON:

14 Q. All right. Welcome back.

15 A. Thank you.

16 Q. I just have a couple more questions.

17 On Page 25 of your first report in
18 Table 12 --

19 A. Okay.

20 Q. -- you list five districts as being competitive
21 Republican districts having somewhere between 50
22 and 55 percent Republican share, right?

23 A. Right.

24 Q. And you said based on voluminous research that
25 incumbents typically outperform their

1 partisan -- the partisan balance, right?

2 A. Of the district typically, yes.

3 Q. And there were incumbents running in four of
4 these five districts that you list as
5 competitive Republican, right?

6 A. Right.

7 Q. If you could turn to Page 26. Earlier I asked
8 you about your reference at the bottom of the
9 page to hypothetical districting simulations and
10 the efficiency gap measure which you said do not
11 resolve the question of what constitutes an
12 unconstitutional partisan gerrymander.

13 Do you see that sentence? I turned the
14 sentence around. It's at the bottom of Page 26.
15 You see what I'm referring to?

16 A. Yes.

17 Q. You said that the technique of hypothetical
18 districting simulations doesn't work. That's
19 something that you said earlier in your opinion,
20 right?

21 A. I don't know that it solves the issue or answers
22 the question is what I'm saying.

23 Q. What technique does work, or what answers the
24 question?

25 A. I don't know. I don't know that we're there

213