

Exhibit 12

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

COMMON CAUSE, et al.,)
)
)
Plaintiffs,)
)
vs.) Civil Action No.)
) 1:16-CV-2016-WO-JEP

ROBERT A. RUCHO, in his official)
capacity as Chairman of the North)
Carolina Senate Redistricting)
Committee for the 2016 Extra)
Session and Co-Chairman of the)
Joint Select Committee on)
Congressional Redistricting,)
et al.,)
)
Defendants.)
)

LEAGUE OF WOMEN VOTERS OF NORTH)
CAROLINA, et al.,)
)
Plaintiffs,)
)
vs.) Civil Action No. 1:16-CV-1164

ROBERT A. RUCHO, in his official)
capacity as Chairman of the North)
Carolina Senate Redistricting)
Committee for the 2016 Extra)
Session and Co-Chairman of the)
2016 Joint Select Committee on)
Congressional Redistricting,)
et al.,)
)
Defendants.)
)
)

VIDEOTAPED DEPOSITION OF
THOMAS B. HOFELLER

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

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1 turned out in the end. The 10th is the same.
 2 The 5th is different in -- because the
 3 13th was an attempt to split fewer counties. So
 4 the split in Caldwell is different and it
 5 puts -- it gets rid of the split into Iredell
 6 County.
 7 The boundary between the 13th and --
 8 what's then the 13th in the final map was -- I'm
 9 sorry.
 10 The 2nd was in the beginning map,
 11 changed the number to the 13th. There was a
 12 number split at the last minute, a number shift.
 13 So it's a different line in Guilford and some
 14 shifts there of counties.
 15 8 is pretty much the same.
 16 What shows up as the 2nd on the final
 17 map was the 13th on this map that we're talking
 18 about. So the numbers were shifted, but it's
 19 somewhat different. You can see on -- see where
 20 the number 4 is on the map, on 19-C, the number
 21 for District 4 --
 22 Q. Yes.
 23 A. -- in Wake County. There's a little appendage
 24 that goes down from the middle of 13 into that
 25 yellow area. That was changed.

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1 I think that's pretty much the
 2 differences. I think the Buncombe County line
 3 was maybe a little bit different, but I'm not
 4 sure there's enough detail there.
 5 Q. What I was trying to understand is what -- what
 6 were the reasons for those changes. You gave a
 7 couple of reasons, but are there any -- you
 8 mentioned for a couple of the changes it was
 9 done to avoid dividing a county, but are
 10 there -- some of these changes don't avoid
 11 dividing a county.
 12 What were the reasons for those
 13 changes?
 14 A. I can't tell you for sure whether 19-C was what
 15 we call zeroed out, had zero population
 16 deviations.
 17 Q. But these changes are more substantial than what
 18 you would need to zero out the plan.
 19 A. Yes, I agree with you. Some of them were --
 20 some of them were political in nature, although
 21 I don't know they made much difference
 22 politically, actually. Some degree of political
 23 change.
 24 Q. And when you say you don't think that they made
 25 much difference politically, what -- what do you

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1 mean by that?
 2 A. I mean they probably could have made much more
 3 than about a percent difference or something
 4 like that.
 5 Q. A percent difference in what?
 6 A. In the political makeup of the plan. Again, I'd
 7 have to -- have to look at the two maps in
 8 greater detail, but it's pretty much
 9 substantially the same format. So most of the
 10 changes were cosmetic, really.
 11 The only major shift was in -- I'm
 12 trying to look at the map and -- in the --
 13 what's labeled in the final map contingency, the
 14 6th -- the division actually of Guilford County.
 15 And, of course, one of the criteria that I was
 16 directed was to avoid splitting counties. And
 17 in Congress 19-C, which is Page 53, you can see
 18 that there's a triple split of Guilford and that
 19 wasn't acceptable.
 20 Q. But not all the changes resulted in fewer split
 21 counties.
 22 A. No, but, for instance, the change we see in 13
 23 and 4 was actually more a compactness change
 24 than anything else.
 25 Q. So help me understand, in this criteria,

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1 compactness is defined -- and now I'm looking at
 2 what was marked as Exhibit 24, I think.
 3 Do you have that in front of you?
 4 A. I think it's 24. Do you want a copy?
 5 Q. No. I have it here.
 6 In Exhibit 24, Compactness under the
 7 criteria is defined as -- or it says that you
 8 keep more counties and VTDS whole as compared to
 9 the current enacted plan and then it talks about
 10 when you can divide counties.
 11 Is there any other -- and you testified
 12 that you didn't run the compactness measures
 13 prior to the plan being enacted. So other than
 14 looking at keeping counties whole and VTDS
 15 whole, was there anything else that you
 16 evaluated in determining the compactness of the
 17 districts?
 18 A. Well, 50 years of drawing districts and knowing
 19 a lot about compactness, I knew there was not
 20 going to be any problem with the fact that these
 21 new districts were going to be significantly
 22 more compact than the plan was that was tossed
 23 out by the Court.
 24 Q. Right. But when you just told me, for example,
 25 that a change that was made between the map

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1 "Congress 19-C" on Page 53 and the ultimate
 2 enacted map "Congress 2016 Contingent-C" on
 3 Page 42, you said, well, we made that change to
 4 make it more compact, and I was trying to
 5 understand what else you were using to make that
 6 judgment other than it didn't split a county or
 7 it didn't split VTDs.
 8 A. Well, they have a test that is actually
 9 recognized, to some extent, called the
 10 interocular test and the invention of Bernie
 11 Grofman --
 12 Q. That's right.
 13 A. -- which is the eyeball test, and one could see
 14 that the compactness score for 14 was going to
 15 be significantly affected by that intrusion into
 16 the middle of the district. So it was
 17 determined it would be better to do -- to not do
 18 that unnecessarily.
 19 MR. FARR: For what district?
 20 THE WITNESS: This was the 4th district
 21 in the plan. It was an intrusion on the
 22 "Congress 19-C" which was an earlier map into
 23 the yellow district right where the "W" is in
 24 Wake County. And even though the district is
 25 small, the compactness tests are not -- some

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1 compactness tests are not significantly affected
 2 by the actual size of the district but by the
 3 shape of the district.
 4 BY MS. EARLS:
 5 Q. So you were looking at it and determining based
 6 on that that it was more compact by looking at
 7 it?
 8 A. Yes, and it would be.
 9 Q. You also testified earlier about the Voting
 10 Rights Act compliance. And how did you go about
 11 ensuring Voting Rights Act compliance in drawing
 12 the 2016 congressional plan?
 13 A. Well, first of all, the only district we had to
 14 worry about was District 1, and since it was
 15 drawn in the general area that District 1 has
 16 been in for decades, actually, and since I was
 17 familiar with the old House of Representative
 18 districts which are -- actually have been
 19 contested now, but which were drawn in 2011, I
 20 knew that this new configuration was going to be
 21 acceptable under the Voting Rights Act. And
 22 indeed, if it hadn't been, the minute that
 23 somebody wanted to look at those racial scores,
 24 they would probably be objecting to it, and
 25 those were known before the map was passed.

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1 Q. But you knew that without actually looking at
 2 the racial demographics?
 3 A. Pretty much. Oh, yes. Past experience.
 4 And that was the only district which
 5 was a Voting Rights district in the state or has
 6 been since -- since the initial map that was
 7 thrown out in the Shaw decision.
 8 Q. I want to look at District 19 -- or Map 19-H
 9 which -- which is -- it's number 48, Page 48 on
 10 Exhibit 31?
 11 A. H?
 12 Q. Yes. Congress 19-H. Did you -- did you do a
 13 political impact analysis using the formula with
 14 the average of election returns for this map?
 15 A. Okay, I'm trying to find it.
 16 Q. I'm sorry. It's Page 48 of Exhibit 31.
 17 A. I got them mixed. Okay.
 18 I want to make you understand one
 19 thing. There was a difference between the
 20 political statistics that we may have looked at
 21 for the plan as a whole after -- when we were
 22 kind of benchmarking the plan and the formula
 23 that was in the thematic display. So we might
 24 look at several different indicator races, such
 25 as 2014 Senate or a governor race.

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1 Q. So --
 2 A. So if you're looking -- we would know what the
 3 politics of that plan were by looking at some of
 4 the races individually.
 5 I didn't have -- I didn't have the data
 6 point in my database that could be produced
 7 inside Maptitude that would average out all
 8 these scores. I suppose somebody could do it
 9 who knew the system better than I did, but all I
 10 had was me and eight days.
 11 Q. Right. But while you might have been looking at
 12 different combinations of election returns, I
 13 also want to make sure we have the full universe
 14 of election returns that you potentially were
 15 looking at.
 16 And is it correct that the list of
 17 elections in Exhibit 28, the 2016 Redistricting
 18 Database Field Key --
 19 A. 28.
 20 Q. Exhibit 28.
 21 A. Let me find it.
 22 Yes, I believe that the races that I
 23 used for the thematic -- is that what you want?
 24 Q. Well, for both the thematic and then I'll ask
 25 you separately for when you were evaluating

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1 the --
 2 A. Yes. These were what were -- well, these are
 3 the races that -- the races that I used came
 4 from races from this list.
 5 Q. Okay. So there weren't any additional election
 6 returns or other types of political data that
 7 you were evaluating at any point in time?
 8 A. No.
 9 Q. So then going back to Congress 19-H, is it
 10 possible that this was a map that had -- where
 11 the political data showed that it would be a 9-4
 12 set of districts instead of a 10-3?
 13 A. Well, first of all, I don't agree with the
 14 premise that the map that we have now is a 10-3
 15 plan, and I stated that before.
 16 Q. Why not?
 17 A. Because I think there are districts in there
 18 that in a good election year with good
 19 candidates the Democrats could carry.
 20 Q. How many?
 21 A. Three maybe.
 22 Q. So you think that it could be a 7-6 plan, three
 23 additional, are you saying?
 24 A. That would be 6-7, yes.
 25 Q. And are there some -- are there any particular

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1 election returns that you were relying on to
 2 make that calculus?
 3 A. Yes. And I've agreed to give you --
 4 Q. So again, that was based on your formula?
 5 A. Yes.
 6 Q. Okay. So then do you recall what Congress 19-H,
 7 what your formula generated in terms of the
 8 political impact of this set of districts?
 9 A. Again, I'm not sure that I actually calculated
 10 on a districtwide basis, so --
 11 Q. You mean on a plan-wide basis?
 12 A. For the whole plan, yes.
 13 Q. Okay.
 14 A. First of all, it split an unnecessary number of
 15 counties too.
 16 Q. Those are all my questions. Thank you.
 17 A. Okay.
 18 MR. FARR: Thank you.
 19 MR. BONDURANT: Tom, will you let us
 20 know when he can give us the information
 21 regarding these specific elections that he used
 22 to prepare the 2016 plan.
 23 MR. FARR: Sure. We'll try to tell you
 24 when he can get those back to you before you
 25 leave.

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1 MR. BONDURANT: And the mathematical
 2 average or whatever.
 3 MR. FARR: Right. We'll know when we
 4 can do that before we break up this week, I
 5 hope.
 6 MR. BONDURANT: That would be nice.
 7 THE WITNESS: I'll give you --
 8 MR. FARR: Maybe we can do it before
 9 you leave.
 10 THE WITNESS: I'll give you the
 11 formula, the actual formula that was entered in
 12 Maptitude, and I'll give you the races that
 13 entered.
 14 MR. BONDURANT: Good. Thank you.
 15 THE WITNESS: You're welcome.
 16 THE VIDEOGRAPHER: This concludes the
 17 deposition. The time is 6:15 p.m.
 18 [SIGNATURE RESERVED]
 19 [DEPOSITION CONCLUDED AT 6:15 P.M.]
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 23
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1 ACKNOWLEDGEMENT OF DEPONENT
 2
 3 I, THOMAS B. HOFELLER, Ph.D., declare under the
 4 penalties of perjury under the State of North Carolina that
 5 I have read the foregoing pages, which contain a correct
 6 transcription of answers made by me to the questions
 7 therein recorded, with the exception(s) and/or addition(s)
 8 reflected on the correction sheet attached hereto, if any.
 9 Signed this the _____ day of _____, 2017.
 10
 11
 12 THOMAS B. HOFELLER, Ph.D.
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