

Exhibit 13

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 JAMES G. GIMPEL

9:55 A.M.

THURSDAY, APRIL 27, 2017

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1 Q. And at the bottom of Page 19, the last sentence
 2 of that -- the -- I guess the paragraph at the
 3 top of the page, the last sentence says:
 4 "But the point is that when you
 5 accommodate the goal of ensuring
 6 descriptive representation using a
 7 template something like Districts 1 and
 8 12 of the 2012 plan as the background,
 9 this makes it far more difficult to
 10 produce any sizable number of competitive
 11 seats in the rest of North Carolina."
 12 Why do you say that using a template
 13 something like Districts 1 and 12 of the 2012
 14 plan was at issue?
 15 A. Well, you know, I'm using 1 and 12 as the most
 16 accessible or convenient example of districts
 17 that were drawn to satisfy VRA or that were in
 18 compliance. As I said, it's entirely possible,
 19 okay, that I could have drawn a couple of other
 20 districts that encompass, you know, large or 45
 21 or 50 percent black populations in other parts
 22 of the state and replicated the analysis with
 23 those.
 24 I'm not sure much would change about
 25 the analysis, which is why having that kind of

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1 cookie cutter, that template of 1 and 12 was
 2 helpful. And what I'm saying is that, you know,
 3 you take those African American voters out or,
 4 in other words, hold those districts constant or
 5 hold two VRA districts constant on the map maybe
 6 configured differently, all right, and because
 7 of what you said a minute ago about the
 8 correspondence of Democratic partisanship and
 9 the black population, it's going to be difficult
 10 to produce a large number of competitive seats
 11 in the rest of the state.
 12 Q. I think you just used the term VRA district.
 13 What is that?
 14 A. What is it called, Voting Rights Act? That's a
 15 convention I picked up from the lingo associated
 16 with the legalese of redistricting cases. VRA,
 17 I guess I assume that to mean Voting Rights Act,
 18 a district that's drawn in compliance with
 19 Voting Rights Act. It's just legalese. You
 20 know, maybe I should describe it some other way.
 21 Q. But you don't know what a district that's drawn
 22 in compliance with the Voting Rights Act is?
 23 A. Well, I don't know all the legalese surrounding
 24 it, not being an attorney, not being an election
 25 lawyer, but my understanding is that the goal of

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1 the VRA districts is to draw districts that
 2 ensure -- that guarantee, you know, regular
 3 election of members of a minority, racial,
 4 ethnic minority, could be black, could be
 5 Latino.
 6 I know that there has been some
 7 controversy about, you know, where those
 8 percentages need to be in terms of voting age
 9 population or total population. I think there's
 10 some debate about that, but, yeah, I mean, there
 11 is some degree of artful drawing of districts
 12 that's allowed in order to accomplish the goal,
 13 you know, of promoting black membership in the
 14 U.S. Congress or Latino membership in the U.S.
 15 Congress, so that's my understanding.
 16 Q. On Page 20, the second to last sentence of the
 17 paragraph at the top of the page begins with
 18 "Constrained by the need." What basis do you
 19 have for saying that the people who drew the
 20 2016 map were constrained by the need to
 21 consider the African American population as a
 22 political bloc tied to a particular geography?
 23 A. Well, my understanding is that -- nothing as yet
 24 in the law has abolished the VRA, right, the
 25 Voting Rights Act. And the Voting Rights Act is

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1 commonly understood, I think, by legislators and
 2 others to require that the African American
 3 population be concentrated in such a way in
 4 sufficient numbers that they can regularly elect
 5 a member of their own race or ethnicity, and
 6 same with Latinos, to congress -- maybe not, you
 7 know, every single election but regularly.
 8 And I think that, you know, again, it
 9 seems to me that one of the critical questions
 10 is what degree of concentration is necessary to
 11 ensure that that happens. We discussed that
 12 earlier.
 13 Q. So do you believe that the General Assembly was
 14 required to create congressional districts
 15 within some specific range of black voting age
 16 population?
 17 MR. STRACH: Objection.
 18 You can answer that if you can.
 19 THE WITNESS: Yeah, I don't know
 20 that -- exactly what was circulating in the
 21 heads of the state legislators involved, but
 22 they certainly must have had cognizance of the
 23 fact that if they cracked into the African
 24 American communities in drawing the districts,
 25 okay, that they were inviting the kind of

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1 scrutiny that had led to the creation of these
 2 districts in the first place.
 3 So, I mean, there is a recent history,
 4 difficult history here in North Carolina. I
 5 don't need to remind you of that, and how could
 6 the state legislature not have been thinking of
 7 that, okay, when you know they are looking at
 8 this map, okay, and realizing that, you know,
 9 they are saddled, you know, with some very
 10 conflicting and difficult demands in creating
 11 this new map. It's implausible for me to think,
 12 okay, that, you know, this was not a
 13 consideration.
 14 BY MR. NELSON:
 15 Q. So you think that the General Assembly
 16 considered race data when drawing the map?
 17 MR. STRACH: Objection. Hold, Jim.
 18 Which map are you talking about?
 19 BY MR. NELSON:
 20 Q. You think that the General Assembly considered
 21 race data when drawing the 2016 map?
 22 MR. STRACH: Objection; calls for
 23 speculation.
 24 Answer that if you can.
 25 THE WITNESS: You don't have to

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1 consider race data. You don't have to consider
 2 race data, okay. There's no need to go to race
 3 data, you know, to know, okay -- especially
 4 given the knowledge that a lot of these folks
 5 have of what's going on in this state and how
 6 long they've been around, you don't need race
 7 data to consider race data in order to draw maps
 8 that ensure the representation of African
 9 Americans in the state of North Carolina.
 10 And, you know, one of the ways that you
 11 can do that, by the way, and not consider race
 12 data is by falling back on districts that look
 13 in many ways like the districts from previous
 14 elections.
 15 BY MR. NELSON:
 16 Q. And in the materials that you reviewed to
 17 prepare this, including legislative history
 18 reports, did you see any discussion of
 19 consideration of the African American population
 20 as a political bloc tied to a particular
 21 geography?
 22 A. Well, I believe that the thrust of the mandate
 23 passed, that the legislature was under was
 24 to -- was to not focus on the race data. That's
 25 what emerged.

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1 But as I said, you don't necessarily
 2 have to explicitly consider race data, okay, if
 3 you know the state well, okay, and you have the
 4 guidance of the previous maps which you know
 5 have repeatedly elected black incumbents by
 6 pretty safe margins.
 7 Q. Just to be clear, any statement you make about
 8 whether or not the General Assembly actually
 9 considered race in drawing the 2016 map is
 10 speculation because you haven't seen any
 11 discussion of it?
 12 A. Yes.
 13 Q. And you say on 20 that -- on Page 20 at the top
 14 that the General Assembly was required to modify
 15 the 2012 map restricted to modest alterations
 16 while still achieving an acceptable outcome.
 17 What is the basis for saying they were
 18 restricted -- that the General Assembly was
 19 restricted to modest alterations in 2016?
 20 A. I'm sorry, where are you at here?
 21 Q. Top of Page 20. The second sentence we just
 22 discussed.
 23 A. Okay. Well, I think that that weight of the
 24 various requirements and the weight of past
 25 redistricting practice, you know, limited the

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1 legislature in what it could do.
 2 In addition, you know, there's no
 3 question that, you know, that two-week window to
 4 turn the maps around was pretty limiting as
 5 well. You know, how much can you accomplish
 6 when you have the weight of these various
 7 requirements, plus the weight, you know, of the
 8 previous map, the existing map, that is, the
 9 2012 map, and undoubtedly, you know, a great
 10 many stakeholders on both sides, including the
 11 incumbent members of congress themselves, you
 12 know, chiming in to make their voices heard.
 13 So, you know, how much radical change
 14 can there be -- how much radical change can
 15 there be. When I say modest change, I mean as
 16 opposed to like wholesale, you know, very
 17 radical changes. And, you know, I don't see
 18 how, you know, you can radically change a map
 19 given the various strictures and requirements of
 20 map drawing, the stakeholders that are present,
 21 you know, the conflicting criteria that you're
 22 trying to balance, you've got a couple weeks to
 23 do it, you know, how much change can you expect.
 24 Not much.
 25 Q. Have you seen any evidence that the incumbent

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1 representatives chimed in in any way in the
 2 process of drawing the 2016 map?
 3 MR. STRACH: Objection.
 4 Answer that if you can.
 5 THE WITNESS: I don't -- I don't know
 6 that for a fact. I know that in the past among
 7 the stakeholders very interested in all
 8 redistricting are, of course, the incumbent
 9 members, okay. It would only stand to reason
 10 that they'd have an opinion about it.
 11 So it doesn't take much of an
 12 imagination to figure that, you know, people
 13 whose congressional careers depend to some
 14 degree on the way these districts are drawn or
 15 care about it, even if they are largely
 16 insulated, you know, by their other resources,
 17 at least they care about the way the districts
 18 are drawn. It would certainly stand to reason
 19 that they would have a view on this.
 20 I do believe that in a redistricting
 21 hearing that Tom referenced in a discussion we
 22 had by phone --
 23 MR. STRACH: Hold on a second. Don't
 24 talk about anything you and Tom discussed.
 25 Are you talking about Tom Farr?

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1 MR. NELSON: To the extent that
 2 information that Dr. Gimpel received from
 3 Mr. Farr was information that he relied on or
 4 considered in generating his report and his
 5 opinions here, we are entitled to that
 6 information.
 7 MR. STRACH: I don't know what he's
 8 going to say, but I'm going to instruct him not
 9 to discuss discussions with Tom Farr, period.
 10 MR. NELSON: I think that's
 11 inconsistent with Rule 26 and a discussion that
 12 we had on the record earlier today with
 13 Mr. Farr.
 14 MR. STRACH: That's fine. I disagree.
 15 MR. NELSON: I mean, I think that we're
 16 entitled to know -- if he relied on information
 17 that he received from Mr. Farr, we're entitled
 18 to know what that is.
 19 MR. STRACH: Okay. We're not going to
 20 talk about it today.
 21 MR. NELSON: We definitely reserve our
 22 right to pursue that --
 23 MR. STRACH: Of course.
 24 MR. NELSON: -- that information.
 25 MR. THORPE: Okay. I just want to make

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1 sure this is clear for the record. You are
 2 instructing your retained expert not to -- I
 3 apologize, I just want to use the language of
 4 the rule.
 5 MR. STRACH: What I said is on the
 6 record. It's been transcribed. I'm not going
 7 to be cross-examined about it.
 8 MR. THORPE: Okay. I will say for the
 9 record we've asked your witness to identify
 10 facts or data provided by the party you
 11 represent, attorney from your firm that the
 12 expert considered in forming the opinions to be
 13 expressed. I just want to be clear you're
 14 instructing him not to answer those questions.
 15 MR. STRACH: That's not what I'm
 16 instructing him.
 17 MR. NELSON: You've instructed him not
 18 to disclose information that he received from
 19 Mr. Farr that he said that he considered in
 20 reaching his opinion.
 21 MR. STRACH: He didn't say whether he
 22 considered it or not. And I've told him not to
 23 discuss conversations he's had with Mr. Farr.
 24 MR. NELSON: Well, to be very clear, if
 25 I ask him if in fact he did consider that

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1 information in reaching his opinion and he was
 2 about to talk about it, then are you instructing
 3 him not to disclose that information?
 4 MR. STRACH: If he says he considered
 5 it, then he can discuss it.
 6 BY MR. NELSON:
 7 Q. Okay. Dr. Gimpel, the information that you were
 8 about to tell me, did you consider --
 9 A. Well, I think --
 10 MR. STRACH: Jim, Jim, listen to the
 11 question first, then talk.
 12 BY MR. NELSON:
 13 Q. Dr. Gimpel, the information you were about to
 14 describe in a call with Mr. Farr, is that
 15 information that you considered or relied on in
 16 preparing this report in reaching your opinions
 17 in this case?
 18 A. It's a small tidbit of information that is
 19 probably pretty trivial in the grand scheme of
 20 things, which means that --
 21 MR. STRACH: Jim, let me ask you: Did
 22 you rely on the information or not? That's a
 23 yes-or-no question.
 24 THE WITNESS: It bears on the question
 25 that he asked me.

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