

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 FAULKNER FOX

11:15 A.M.

WEDNESDAY, MARCH 22, 2017

SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 WEST HIGHWAY 54, SUITE 101
DURHAM, NORTH CAROLINA

1 Q. So why don't we take a look at your voter
2 information sheet from the State Board of
3 Elections. I'm going -- the court reporter will
4 mark this as Fox 1.

5 (WHEREUPON, Defendants' Fox Exhibit 1
6 was marked for identification.)

7 BY MR. McKNIGHT:

8 Q. Ms. Fox, this is a copy of a printout of your
9 publicly available voter information that is on
10 file with the North Carolina State Board of
11 Elections, and so I just want to go through this
12 document with you to make sure that it looks
13 accurate.

14 Is your name and address accurate at
15 the top of the first page?

16 A. Yes, it is.

17 Q. And you reside in Durham county, correct?

18 A. Yes, I do.

19 Q. And you're a registered Democrat?

20 A. Yes.

21 Q. And have you been a registered Democrat the
22 entire time you've been registered to vote?

23 A. In North Carolina or everywhere?

24 Q. Well, everywhere to the extent you can register
25 for both.

1 A. Yes. Yes.

2 Q. And how long have you been registered in
3 North Carolina?

4 A. Well, I lived here in 1992 through 1994, so I
5 see that's listed here as legacy or something.
6 I was registered those two years, and then we
7 moved to Texas, and then when we came back, I
8 changed my registration from Texas to
9 North Carolina.

10 Q. And I think you were working -- your husband
11 said you were working for NARAL in the early
12 1990s.

13 A. That's correct.

14 Q. When you went to Texas, what did you do?

15 A. I worked at the University of Texas at Austin.
16 I taught creative writing.

17 Q. That's the same thing you're doing here at Duke?

18 A. Yes. I also was a journalist in Texas.

19 Q. Did you work for a specific publication?

20 A. No. I was freelance.

21 Q. And in looking at your polling place here, is
22 that correct on Page 1?

23 A. Yes, it is.

24 Q. And you live in Precinct 7?

25 A. I do.

1 Q. And the 1st Congressional District?

2 A. Yes.

3 Q. And do all the rest of the districts here look
4 correct?

5 A. They do.

6 Q. And then I know this is -- you got a lengthy
7 voting history here as well on the second, third
8 and fourth pages, but take a minute and look at
9 those and make sure that your voting history
10 appears to be accurate.

11 A. Okay. Yes, that looks correct.

12 Q. All right. Can you tell me a little bit about
13 your educational background. Where did you go
14 to undergrad?

15 A. Harvard, and I graduated in 1986.

16 Q. What was your degree in?

17 A. Literature.

18 Q. And then did you attend any other school after
19 that?

20 A. Yes, I did. I have a Master's from Yale
21 University in American Studies, and I have an
22 MFA, which is a Master's in Fine Arts, from
23 Vermont College in Poetry.

24 Q. And did you live in Vermont at any point?

25 A. No. It's a low-residency program. So I did

1 interrogatories under oath?

2 A. I did.

3 Q. And I just want to look at some of these
4 answers, then. I don't think I asked you this
5 either. Have you ever served in the military?

6 A. No, I have not.

7 Q. In Interrogatory 1, we've already gone over your
8 name and address and all that. And as we're
9 going through these, if you see anything that
10 you think is incorrect, feel free to point it
11 out to me.

12 A. Okay. Thank you.

13 Q. That's one of the reasons why we're here today,
14 to make sure everything's accurate.

15 Interrogatory Number 1, in general,
16 asks about congressional elections that you've
17 participated in.

18 A. Yes.

19 Q. And so in your answer to (b) here, you say that
20 you voted for a candidate running for U.S.
21 Congress in 2016; is that right?

22 A. Yes, I did.

23 Q. And did your candidate of choice win in 2016?

24 A. Yes, he did, as a direct result of packing,
25 right, so that my district was packed, so he

1 won.

2 Q. Now, how do you know it was a direct result of
3 packing?

4 A. Well, I mean, I'm not saying it was a direct,
5 but my district was packed so it would have been
6 inconceivable that a Republican could win in my
7 congressional district.

8 Q. When you say packing, what do you mean by that?

9 A. By packing, I mean that certain districts are
10 drawn so that all of the Democrats are smooshed
11 together so that they're going to win with a
12 huge surplus of votes needed because everybody's
13 been packed into one heavily Democratic
14 district. So that's how my district is, so
15 there was no surprise. It would have been
16 inconceivable to me that Butterfield would not
17 win is what I'm saying.

18 Q. You were in the 4th Congressional District
19 before that?

20 A. Yes, I was.

21 Q. What years were you in the 4th Congressional
22 District?

23 A. So I believe it would have been the 4th when I
24 was here earlier as well, in '92 to '94, because
25 David Price was my person then. So those early

1 districts?

2 A. No.

3 Q. And do you know what kind of considerations may
4 affect how lines are drawn during redistricting?

5 A. Well, I know what was considered in 2011, I know
6 why they were asked to redo it in 2016, and I've
7 read the statements that Representative Lewis
8 gave that the main priority was to maintain a
9 10-3 split, so that even though they were
10 required to redraw, they were going to maintain
11 that partisan advantage for the Republicans. I
12 believe he said something like "Partisan
13 gerrymandering is not illegal and we're going to
14 do it." I'm paraphrasing.

15 Q. Well, do you know what other factors generally
16 go into -- when a legislature draws districts
17 either for congress or for any other office, do
18 you know what kind of factors affect where
19 district lines are drawn?

20 A. Well, I think they want to have the same amount
21 of voters in each one, or around the same
22 amount. So then they start messing around with
23 percentage of Democrats, percentage of
24 Republicans, keeping certain districts cracked,
25 other ones packed, right. So these are all ways

1 to increase Republican influence in a way that
2 is undemocratic and not representative of what
3 the voters in North Carolina would want.

4 Q. And how do you know what the voters in
5 North Carolina would want?

6 A. Well, I think one of the things that I really
7 want to emphasize is I live in North Carolina
8 because it's a purple state, right. I came here
9 from Texas, which is a red state, I've lived in
10 Massachusetts and Connecticut, which are blue
11 states, and as an activist, I want to live
12 somewhere competitive. I want to live somewhere
13 like North Carolina.

14 So I look at the numbers of how many
15 congressional votes were Democratic and how many
16 congressional votes were Republican, and I see
17 that it's really close. It's like 46, 47, 51.
18 So it's really, really close. And then I look
19 at our congressional delegation of 3 and 10 and
20 I think this doesn't represent our state in any
21 way. If someone looked at just that, they would
22 think, look at North Carolina, what a red state.

23 But that's not my experience of this
24 state. It's not why I'm an activist in this
25 state. I mean, I'm not -- you don't want to

1 just beat your head against the wall, right.

2 You want to be somewhere where you can make an
3 impact and persuade people. And that is the
4 nature of North Carolina. That's why it's
5 purple. But our congressional delegation
6 doesn't show that at all.

7 Q. How have you been harmed by being in a district
8 that, for example, GK Butterfield won this time
9 or before that in a district like David Price,
10 that he had won since? How have you been harmed
11 by that?

12 A. I'm a North Carolinian, right. So I'm in
13 Congressional District 1, and I was in 4, but
14 let's just take something like the Affordable
15 Care Act. So in 2009 we worked hard to have
16 that policy win, right, legislatively.

17 Now, I want that -- I want that
18 healthcare to remain. I don't want 24 million
19 people to not have health insurance, but my
20 congressional delegation as a North Carolinian
21 does not reflect what the voters would want.

22 North Carolina is way more Democratic
23 than the congressional delegation exhibits, and
24 so we're not going to have enough votes in the
25 legislature and it's not in keeping with who --

1 what we would actually want. So legislatively
2 it's a huge harm to me.

3 Q. How do you know that North Carolina is much more
4 Democratic than the congressional delegation
5 reflects? Is there any reason other than you're
6 totaling up the votes for Congress that the
7 Democratic candidates got and the votes that the
8 Republican candidates got and comparing those
9 two things?

10 A. Yes. And it's always close to 50 percent, and
11 yet we have 10 Republicans and 3 Democrats.

12 Q. And you said was close to 50 percent --

13 A. The congressional votes that are cast. The
14 votes that people cast. So you have I think it
15 was 46.7 of those were Democratic in 2016 and
16 yet we have 3 representatives.

17 And so it's -- it's -- it's not
18 irrelevant that I live in Congressional
19 District 1, but I'm a North Carolinian; I want
20 my whole delegation to represent my state so
21 that when something comes up, like a vote for
22 the Affordable Care Act, that the
23 North Carolinians represent -- that are in the
24 delegation represent our state, that they're not
25 so wildly gerrymandered that there's 3 and 10.

1 We're not going to be able to fight back against
2 things that Trump wants or things that other
3 Republicans want. And so North Carolina is not
4 being effectively represented.

5 Q. Have you tried to influence legislators or --
6 and specifically Members of Congress who are
7 outside the 1st District since 2016, since the
8 election?

9 A. You're talking about congressional people like
10 Walter Jones?

11 Q. Well, you mentioned you didn't want the
12 Affordable Care Act repealed, right. Have you
13 engaged anybody on that specifically?

14 A. Yes. I mean, are we talking about 2016 or are
15 you talking about 2009?

16 Q. After 2016, after that election.

17 A. Yes, that's what we do. We have these postcard,
18 you know, parties where people are writing to
19 their congressional -- while I'm based in
20 Durham, I'm working with people around the
21 state. So that's what we do. I mean, we've had
22 more contact with our legislators in 2016, more
23 people contacting, calling, we're telling people
24 to call all the time. If you can't get through,
25 call again, leave a message.

1 So that's a statewide effort because
2 these are -- these are issues that affect all of
3 us. It's really -- there's -- there's very
4 little that I do that's, like, I'm until
5 District 1 so let me just kind of stay in 1 and
6 be really glad that I have GK Butterfield.
7 That's not how you're going to get things done.

8 Q. So the statewide efforts that you say you're
9 involved in, is that through a particular
10 organization?

11 A. No, not necessarily. I mean, so the
12 organization that I work with is called Durham
13 for Organizing Action, DFO Action, right, so
14 that is a grassroots organization, volunteers
15 only, coming out of Durham for Obama, which was
16 a grassroots volunteer organization that started
17 in 2008.

18 So that organization has shifted now
19 and has a new title, and so we work in
20 coordination with other grassroots organizations
21 all over the state.

22 Q. So are you saying that organization has tried to
23 engage Members of Congress who don't represent
24 Durham, Members of Congress other than GK
25 Butterfield, other than David Price?

1 Congress who's a Republican who's doing things
2 that you as an active Democrat agree with,
3 right?

4 A. He did one thing, and that's why we wrote him a
5 thank you note because it was unusual,
6 extraordinary and we thought, let him know that,
7 yeah, we'd like to see these tax returns.

8 And just to be totally honest, a bunch
9 of Republicans would like to see those tax
10 returns. That is not a partisan issue at this
11 point. The majority of Americans want to see
12 those tax returns.

13 Q. So are you saying -- now, I understand your
14 organization Durham for Organizing Action, they
15 are not involved in engaging other Members of
16 Congress outside of Durham, outside of GK
17 Butterfield. That organization is not. You're
18 saying you're working with other organizations
19 that are involved in engaging other Members of
20 Congress in the state; is that right?

21 A. Yes. I mean, we feel like we have the most
22 power with our own congressman, and that's why
23 gerrymandering is a problem because he can -- he
24 can do whatever he wants. He's in a safe seat.
25 I mean, within reason. He doesn't have to be as

1 responsive to us as he would if he had to
2 compete for his seat.

3 So it's not -- even when there's a
4 Democrat that you like, if he's not having to
5 compete, he or she, then they don't have to be
6 as responsive to people like me who are citizen
7 activists.

8 Q. Can you give me an example of how Congressman
9 Butterfield has not been responsive to an
10 interest that you or your group Durham for
11 Organizing Action has had?

12 A. Well, he's certainly better than Tillis and
13 Burr. He answers our phone calls. He, you
14 know, doesn't run -- if he has a town hall, he
15 actually comes.

16 So it's not so much about -- it's about
17 policy things. If we want to disagree with a
18 certain policy, he -- he just -- he has a kind
19 of safety because he didn't have to compete for
20 his seat, so that makes him less needing to
21 engage with the people that he represents.

22 Q. And I guess going back to my question, though,
23 is there a specific example that you can give me
24 of Congressman Butterfield not being responsive
25 to your needs or the needs of the group that you

1 work with?

2 A. I guess I want to go back to what I said before,
3 which is I see myself as a North Carolinian.
4 Being in Congressional District 1 is not a way
5 that I self identify because what matters to me
6 is the entire congressional delegation, and they
7 do not represent North Carolina.

8 So for something like the ACA, we are
9 not going to be -- they're going to be -- 10 of
10 them are not going to do what the Democrats --
11 what the Democratic policy would be because
12 they're going to fall in line with Republicans.
13 Maybe they'll break ranks if there's some
14 extraordinary scandal and it's absolutely sure
15 that Donald Trump was working with the Russians,
16 let's say something like that, then maybe
17 they'll break ranks. So it's got to be extreme.

18 So my interests as a Democrat in
19 North Carolina are being harmed all the time
20 because the congressional delegation doesn't
21 represent North Carolina, the North Carolina
22 that I know, the purple state that I chose to
23 live in so I could be an activist.

24 Q. Well, were you involved in the efforts to help
25 Representative Kissell that your husband

1 Q. There's different types of Democrats, right?
2 There's conservative Democrats and then you have
3 more progressive Democrats?

4 A. That's right.

5 Q. GK Butterfield is probably a more progressive
6 Democrat.

7 A. Than?

8 Q. Others.

9 A. Yes. In certain ways, yes.

10 Q. All right. So -- and the same thing on the
11 Republicans, there's a spectrum, right?

12 A. There is, but there are many, many votes,
13 unfortunately, that are party lines.

14 So that's what I'm trying to get you
15 guys to understand: The congressional
16 delegation for North Carolina does not represent
17 North Carolina because there are times, whether
18 or not in the particular current situation, it's
19 coming from pressure from the White House where
20 the Republicans and he's saying -- or he seems
21 to have said yesterday, you know, "I will come
22 after you." So people start to think, okay, if
23 I don't do this, if I break ranks with the White
24 House, then there are going to be repercussions
25 on me.

1 So it matters what party you belong to
2 whether or not you are conservative for that
3 party or liberal because there are certain
4 things where there's too much pressure not to
5 stay with what your party is doing. So it
6 totally matters when you're a Republican or a
7 Democrat. There is no liberal Republican that
8 would be the same as a conservative Democrat
9 because of the pressure to vote party lines on
10 certain votes.

11 And that's what I'm trying to explain
12 is that that congressional delegation for
13 North Carolina hurts me as a North Carolinian
14 because there are too many Republicans and some
15 of the votes they're going to vote party lines.

16 So it's not about the temperament of
17 the person or even the political spectrum
18 within. Some things are just party lines, and I
19 as a Democrat am not represented accurately in
20 my state.

21 Q. So are you saying that the Republicans who are
22 elected don't represent you when they vote the
23 party line, how about if they broke party ranks
24 and they voted a different way?

25 A. That's why we sent a thank you note to Walter

1 Jones when he asked for Trump's tax returns. So
2 it does happen, but it's the exception; it's not
3 the rule. They're not free agents. They are
4 very connected to their party.

5 And so when there are so many
6 Republicans allegedly representing me as a
7 North Carolinian, that -- my voice is being
8 diluted. My voice is being hurt.

9 Q. Well, I think you mention that in your view
10 there are no safe -- or, I'm sorry, not safe --
11 no swing seats in Congress right now in
12 North Carolina.

13 A. Yeah.

14 Q. Is that your opinion?

15 A. Congressional. It would be very hard to find
16 one that was competitive.

17 Q. Well, how do you explain what Walter Jones did
18 in that case? If he's not in a swing district,
19 how do you explain what he did there?

20 A. I can only give you my opinion.

21 Q. Yeah, sure.

22 A. I think Trump is so appalling that some people
23 are willing to break party ranks and say we have
24 got to see this man's tax returns.

25 So I don't know if he would have broken

1 Q. I just have like one more question.

2 Ms. Fox, if we could redraw the
3 congressional districts, what do you think that
4 they should look like? Or what would they look
5 like if they were not gerrymandered, in your
6 view?

7 A. Do you mean like -- like can I say how they
8 would look or just --

9 Q. Yeah, however you would describe it.

10 A. Well, I think we kind of had that in the early
11 2000s. I think given the nature of the way in
12 which North Carolina is purple, if it's going
13 back and forth between Democrats have 6,
14 Republicans have 7, Democrats have 7,
15 Republicans have 6, then you know that things
16 are accurately representing the will of the
17 voters in North Carolina.

18 So I don't have that map embedded in my
19 mind, but I think we had something that was
20 fair. You know, I don't -- so we had, like,
21 whatever it was, an efficiency of like one or
22 two and so you could compare how was
23 North Carolina looking in 2000 compared to other
24 states. And so now we're, like, off the charts.
25 We're like the craziest state there is. We're

1 profoundly unfair, profoundly gerrymandered in
2 the Republicans' favor.

3 So I don't know what those maps look
4 like. So we had something that seemed fair to
5 me in the early 2000s, up through 2011.

6 Q. So is what you're saying, is it you would prefer
7 a map that's drawn that has a balance of 6 --
8 6 or 7 one way or the other for the Republicans
9 or Democrats?

10 A. I'm saying that that -- those results lead me to
11 believe that the map was drawn fairly, right.
12 So again, I'm an activist. I'm not a map
13 drawer. I'm not a lawyer. So I'm looking at
14 what is the impact on people that I work with,
15 the people that I canvas, the people that I
16 train, the people -- so that seems to me the
17 North Carolina that I know and chose to live in
18 is purple. It's pretty close Democrat and
19 Republican.

20 So I'm just giving you the results.
21 I'm not a map drawer, so I can't say to you so
22 draw down through Buncombe county and go around.
23 That's not my area of expertise.

24 Q. So are you saying that the map drawers in your
25 view should take partisan considerations into

1 account but make the districts more balanced?

2 A. I'm saying that it should be a fair committee
3 that would be equal numbers of Democrats and
4 Republicans, right. So you shouldn't have 25
5 and 12 and then think you're going to come up
6 with something that's fair. And I'm saying that
7 it should be however the map is drawn -- and,
8 again, I'm not going to say go around this lake
9 or cut down through this highway, but however it
10 is drawn should reflect the actual composition
11 of North Carolina in terms of Republicans and
12 Democrats.

13 Q. So should the map be drawn with that outcome in
14 mind?

15 A. Which outcome in mind?

16 Q. Like what you perceive to be a more balanced
17 outcome between the number of Republicans that
18 are elected and the number of Democrats that are
19 elected.

20 A. I'll have to answer that differently, which is
21 if it were, I would not be a plaintiff in this
22 lawsuit. So I'm not going to go in and say how
23 people should draw the maps. I am going to tell
24 you that I'm a plaintiff because if there were
25 10 Republican congressional seats and 3

1 Democratic congressional seats, this state has
2 been gerrymandered. There is no other way that
3 you would have that result.

4 So I can only speak from the results
5 and how that impacts my work as an activist. I
6 can't tell you, again, cut under this lake or go
7 through this highway. That's not -- that's not
8 my area. Okay. I'm just explaining to you why
9 I'm a plaintiff.

10 Q. So would you be a plaintiff in this lawsuit if
11 the breakdown was 9-4, with Republicans having
12 9?

13 A. Again, it's like, you go to Mars. I think part
14 of it is this idea of how it is now would last
15 even if there were, like, a wave, a super
16 Democratic wave, right. So it's the durability
17 of what we've got now, right.

18 So basically I want a fair playing
19 field because what I like to do is persuade
20 people. And so the way it is now, there is no
21 district in North Carolina that is worth my time
22 to work in. There is no congressional district
23 that's worth my time because it's either been
24 packed so the Democrat is going to win so don't
25 waste your time there or it's been cracked where

1 the Democrat can't possibly win.
2 So what I'm saying is that I want a
3 playing field that I can compete in as an
4 activist. We don't have that in the
5 congressional dele -- we don't have that in the
6 way it's drawn in North Carolina, so there's
7 nothing I can do as a citizen activist
8 congressionally, and that's unfair and that's
9 why I'm a plaintiff.

10 Q. How do you know that? How do you know --

11 A. Because I look at the numbers of how it comes
12 out. And so you have this over -- this total
13 surplus of Democratic votes in Durham and then
14 you have these people like Thomas Mills, there's
15 no way he can be competitive in the 8th
16 Congressional District because there's too many
17 Republicans in there. It doesn't matter if he's
18 the most awesome candidate ever. So many people
19 are going to vote party lines.

20 Q. But there's only been one election in that
21 district under the current districts.

22 A. Which district are you talking about?

23 Q. In the 8th District. There's only been one
24 election in that district.

25 A. I don't know. I mean, he's someone that I know

1 make; Butterfield is going to win.

2 Q. He's already doing what you want him to do,
3 right?

4 A. It's not that he's doing it. It's that I'm a
5 North Carolinian. There are 13 people that
6 represent North Carolina. Only 3 of them
7 represent my interests, and that's not fair or
8 accurate to who lives in North Carolina.

9 Q. So you would like better opportunities to
10 influence people, though, in other districts?

11 A. I would like there to be more Democrats in the
12 congressional delegation from North Carolina
13 because that seems fair given who the voters
14 are. I mean, if the voters were, whatever,
15 80 percent Republican, then I would just have to
16 suck it up or move to a different state, but
17 that's not the case.

18 That's why I live in North Carolina,
19 because it is purple, because it is a mix. I
20 like persuading people. I don't want to sit up
21 in Massachusetts where everyone -- that would
22 drive me crazy, right -- where everyone thought
23 the same way I did. That's not interesting to
24 me.

25 Q. What breakdown would be fair, though?