

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19-cv-012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, *et al.*,

Defendants.

**DECLARATION OF DR.
JOWEI CHEN**

I, Dr. Jowei Chen, upon my oath, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.
2. I am an Associate Professor in the Department of Political Science at the University of Michigan, Ann Arbor. I am also a Research Associate Professor at the Center for Political Studies of the Institute for Social Research at the University of Michigan and a Research Associate at the Spatial Social Science Laboratory at Stanford University. In 2007, I received a M.S. in Statistics from Stanford University, and in 2009, I received a Ph.D. in Political Science from Stanford University.
3. I have published academic papers on legislative districting and political geography in several political science journals, including The American Journal of Political Science and The American Political Science Review, and Election Law Journal. My academic areas of expertise include legislative elections, spatial statistics, geographic information systems (GIS) data, redistricting, racial politics, legislatures, and political geography. I have expertise in

the use of computer simulations of legislative districting and in analyzing political geography, elections, and redistricting.

4. I have testified either at deposition or at trial in the following cases: Rene Romo et al. v. Ken Detzner et al. (Fla. 2d Judicial Cir. Leon Cnty. 2013); Missouri National Association for the Advancement of Colored People v. Ferguson-Florissant School District and St. Louis County Board of Election Commissioners (E.D. Mo. 2014); Raleigh Wake Citizens Association et al. v. Wake County Board of Elections (E.D.N.C. 2015); City of Greensboro et al. v. Guilford County Board of Elections (M.D.N.C. 2015); Common Cause et al. v. Robert A. Rucho et al. (M.D.N.C. 2016); The League of Women Voters of Pennsylvania et al. v. Commonwealth of Pennsylvania et al. (No. 261 M.D. 2017); Georgia State Conference of the NAACP et al. v. The State of Georgia et al. (N.D. Ga. 2017); The League of Women Voters of Michigan et al. v. Ruth Johnson et al. (E.D. Mich. 2017); William Whitford et al. v. Beverly Gill et al. (W.D. Wis. 2018); Common Cause et al. v. David Lewis et al. (N.C. Super. 2019).

5. I have been retained by Plaintiffs in the above-captioned matter. My Curriculum Vitae is attached to this Declaration. I am being compensated \$500 per hour for my work in this case.

6. Plaintiffs' counsel have asked me to analyze the effect of North Carolina's 2016 enacted congressional districting plan (the "2016 Plan") on the partisan composition of the individual Plaintiffs' congressional districts.

7. To analyze this question, I rely upon two sets of simulated congressional districting plans that I have created. I originally created these simulated plans for use in the federal lawsuit *Common Cause v. Rucho*. The simulated plans I use for my analysis in this

Declaration are the same 2,000 simulated plans that comprised my Simulation Set 1 and Simulation Set 2 in *Rucho*.

8. Simulation Set 1 and Simulation Set 2 use the same general approach that I employed in creating simulated state House and state Senate plans in *Common Cause v. Lewis*. Specifically, I instructed the computer to generate congressional districting plans that strictly follow all of the non-partisan criteria enumerated in the February 16, 2016 Adopted Criteria of the Joint Select Committee on Congressional Redistricting (the “2016 Adopted Criteria”).

9. In Simulation Set 1, the computer algorithm created 1,000 independent simulated plans following the five traditional districting criteria from the 2016 Adopted Criteria:

- a) Population Equality: North Carolina’s 2010 Census population was 9,535,483, so districts in the 13-member plan have an ideal population of 733,498.7. Specifically, then, the computer simulation algorithm populated each districting plan such that precisely nine districts have a population of 733,499, while the remaining four districts have a population of 733,498.
- b) Contiguity: The simulations required districts to be geographically contiguous. As described in the Adopted Criteria, water contiguity is permissible.
- c) Minimizing County Splits: The simulations avoided splitting any of North Carolina’s 100 counties, except when doing so is necessary to avoid violating one of the aforementioned criteria. Furthermore, as mandated by the 2016 Adopted Criteria, the computer always avoided splitting a county into more than two simulated districts.
- d) Minimizing VTD Splits: North Carolina is divided into 2,692 VTDs. The computer simulation algorithm attempted to keep these VTDs intact and not split

them into multiple districts, except when doing so is necessary for creating equally-populated districts.

- e) Geographic Compactness: The simulation algorithm prioritized the drawing of geographically compact districts whenever doing so does not violate any of the aforementioned criteria.

10. In Simulation Set 2, the computer algorithm created 1,000 independent simulated plans following the same five traditional districting criteria specified above, plus avoiding pairing the incumbents who were in office at the time of the 2016 redistricting.

11. I evaluated the congressional districts in which each Plaintiff would live under the 2,000 computer-simulated using the following list of residential addresses for the Plaintiffs that counsel for the Plaintiffs provided me. I used these addresses to identify the specific district in which each Plaintiff would be located under each computer-simulated plan, as well as under the 2016 Plan.

- a) Amy Clare Oseroff: 119 N Longmeadow Rd. Greenville, NC 27858
- b) Rebecca Harper: 1841 Stonebanks Loop, Cary, NC 27518
- c) David Dwight Brown: 18 Laurel Brook Ct. Greensboro, NC 27407
- d) Joseph Gates: 419 Kyfields, Weaverville, NC 28787
- e) Mark S. Peters: 5 Carter Crest Ln, Fletcher, NC 28732
- f) Virginia Walters Brien: 3028 Airlie St, Charlotte, NC, 28205
- g) John Balla: 7353 Newport Ave., Raleigh, NC 27613
- h) Kathleen Barnes: 392 Sunny Acre Lane, Brevard, NC 28712
- i) Jackson Thomas Dunn, Jr.: 1629 Providence Rd, Charlotte NC 28207
- j) Donald Allan Rumph: 3238 Quail Pointe Dr., Greenville, NC 27858-7335

- k) Lily Nicole Quick: 4338 Clovelly Drive, Greensboro, NC 27406
- l) Shawn Rush: 104 South Long Street, East Spencer, NC 28144
- m) Gettys Cohen: 3 Aspen Dr, Smithfield, NC 27577
- n) Richard R. Crews: 1503 Land Harbor, Newland NC, 28657

12. To compare the partisanship of the districts in which each Plaintiff would live under the simulated plans and the 2016 Plan, I use two different measures of partisanship.

13. First, I use the statewide elections specified in the 2016 Adopted Criteria. The 2016 Adopted Criteria state that when evaluating the political composition of congressional districts, the General Assembly would consider “election results in statewide contests since January 1, 2008, not including the last two presidential contests.” There were 20 non-presidential statewide elections between January 1, 2008 and the adoption of the 2016 Plan, and I use these 20 statewide elections to measure the average Democratic vote share in each Plaintiff’s district under the simulated plans and under the 2016 Plan.

14. Second, I use the partisanship formula that Dr. Hofeller disclosed in the *Rucho* case that he had used in drawing the 2016 Plan. The Hofeller formula aggregates together, with equal weights, the partisan results from seven statewide elections: The 2008 Gubernatorial, U.S. Senate, and Commissioner of Insurance elections; the 2010 U.S. Senate election; the 2012 Gubernatorial and Commissioner of Labor elections; and the 2014 U.S. Senate election. I use these seven statewide elections to measure the average Democratic vote share in each Plaintiff’s district under the simulated plans and under the 2016 Plan.

15. Figures 1 to 4 present the results of this analysis. These Figures each list the individual Plaintiffs and describe the partisanship of each Plaintiff’s district of residence in the 2016 Plan, as well as in one of the sets of 1,000 simulated congressional districting plans.

Specifically, Figures 1 and 2 describe each Plaintiff's district of residence in the 2016 House Plan and compare it to the district in which that Plaintiff would reside under each of the 1,000 simulated plans in Simulation Set 1. Figure 1 uses the 20 statewide elections from 2008-2014 to measure the partisanship of districts, and Figure 2 uses the Hofeller formula to measure the partisanship of districts. Figures 3 and 4 repeat this analysis but using Simulation Set 2 rather than Simulation Set 1.

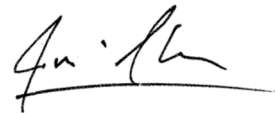
16. To explain these analyses with an example, in Figure 1, each row corresponds to a particular individual Plaintiff. In the first row, describing plaintiff Amy Clare Oseroff, the red star depicts the partisanship of the Plaintiff's 2016 Plan district (CD-1), as measured by Democratic vote share using the 20 statewide elections from 2008-2014. The 1,000 gray circles on this row depict the Democratic vote share of each of the 1,000 simulated districts in which the Plaintiff would reside in each of the 1,000 simulated plans in Simulation Set 1, based on that Plaintiff's current home address. In the far right margin, to the right of each row, I list in parentheses how many of the 1,000 simulated plans would place the plaintiff in a more Republican-leaning district (on the left) and how many of the 1,000 simulations would place the plaintiff in a more Democratic-leaning district (on the right) than the Plaintiff's 2016 Plan district. Thus, for example, the first row of Figure 1 reports that 100% of the 1,000 computer-simulated plans in Simulation Set 1 would place Plaintiff Amy Clare Oseroff in a less Democratic-leaning district than her actual 2016 Plan district (CD-1). Therefore, I can conclude that Oseroff's 2016 Plan district is a partisan statistical outlier when compared to her district under the 1,000 Simulation Set 1 plans.

17. Figures 1 and 2 show that nine Plaintiffs who currently live in Republican-leaning districts would live in a more Democratic district in at least 91% of the 1,000 Simulation Set 1

plans (Cohen, Quick, Rumph, Dunn, Barnes, Peters, Gates, Brown, and Harper). Figures 1 and 2 show that the remaining five Plaintiffs would live in a less Democratic district in at least 86% of the Simulation Set 1 plans (Oseroff, Rush, Crews, Balla, and Brien), and three of these five Plaintiffs are extreme outliers above the 98% level. Figures 3 and 4 show largely similar results for Simulation Set 2.

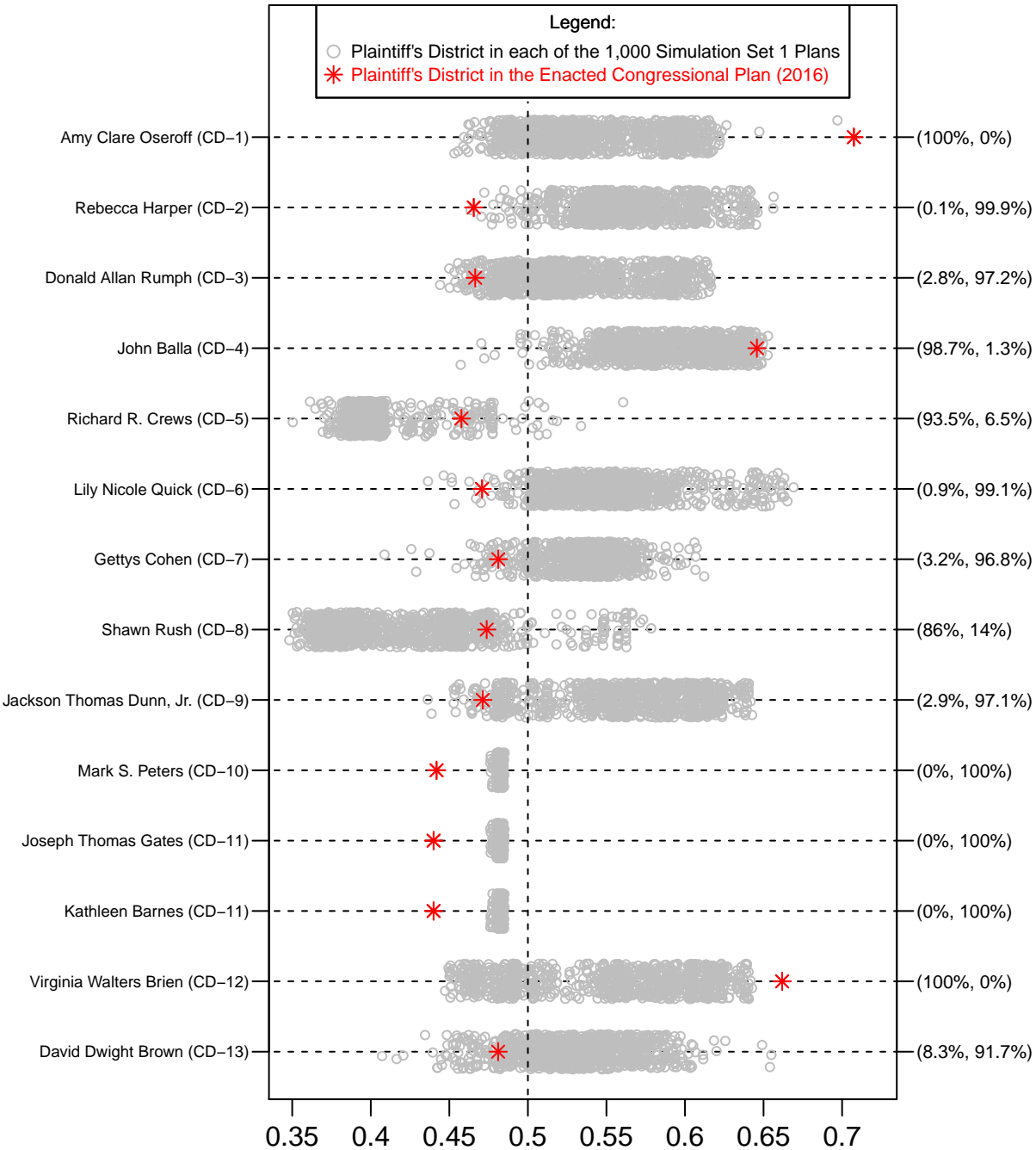
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This 30th day of September, 2019.



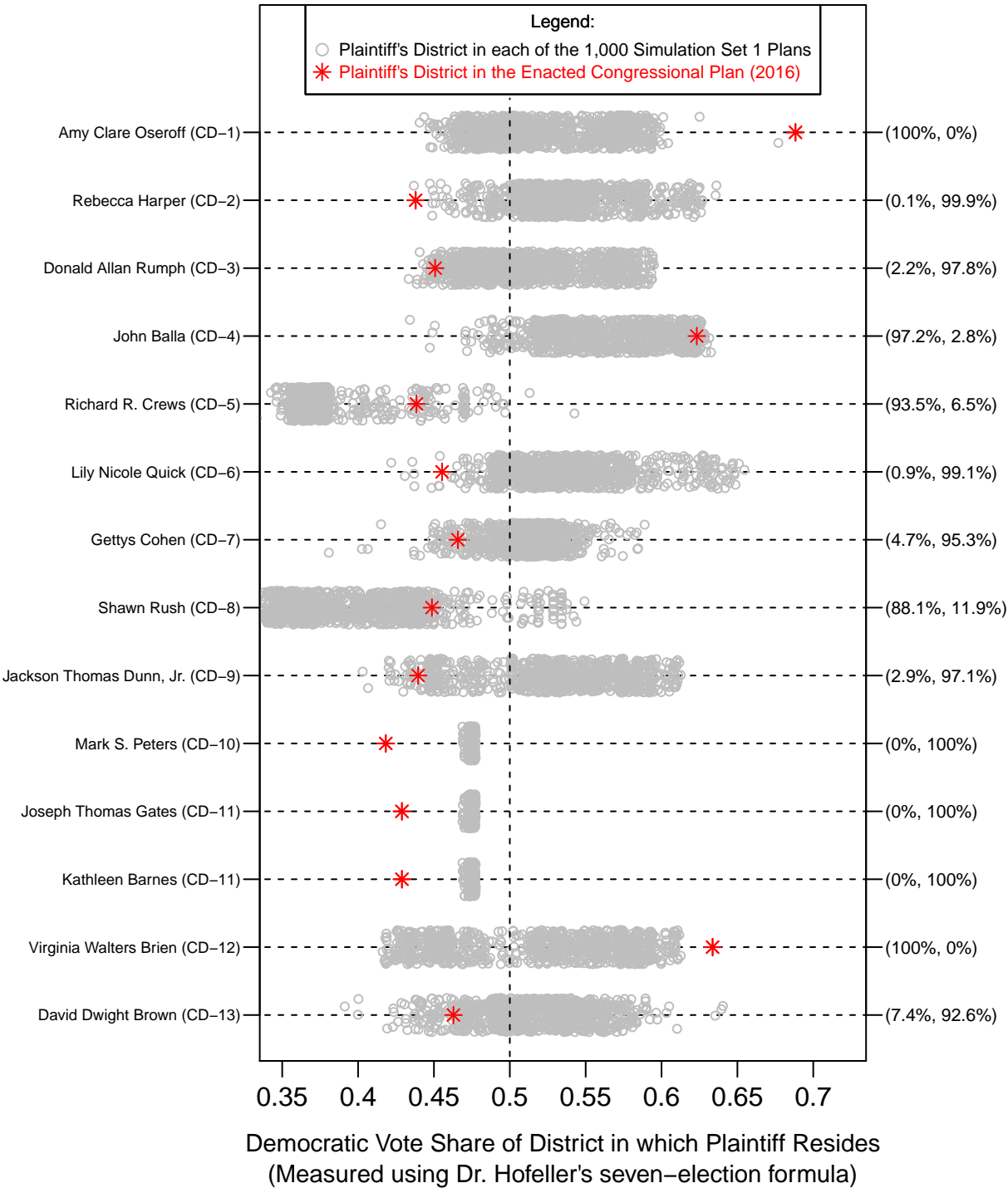
Dr. Jowei Chen

Simulation Set 1

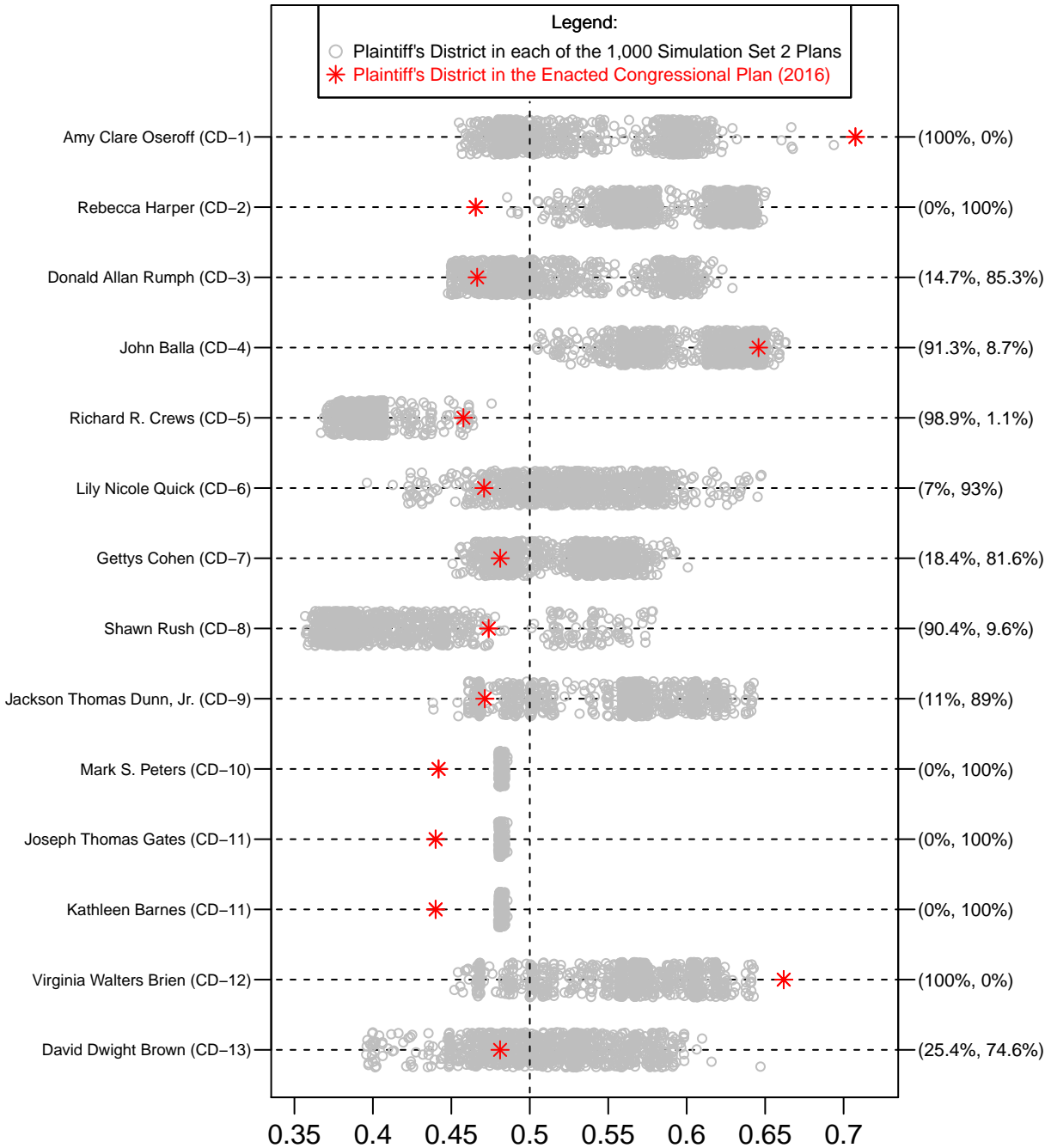


Democratic Vote Share of District in which Plaintiff Resides
(Measured using votes summed across all 20 statewide elections during 2008–2014)

Simulation Set 1

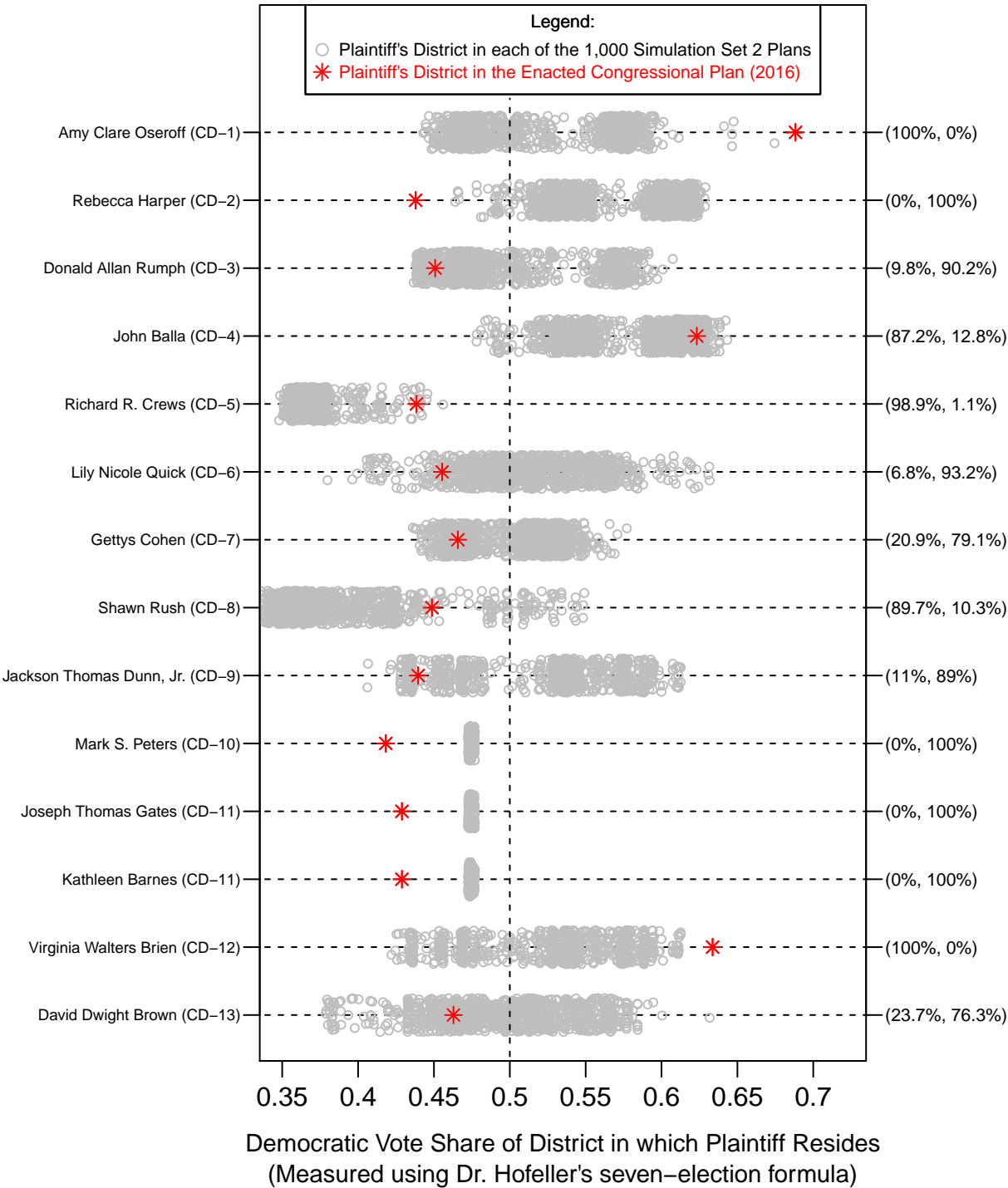


Simulation Set 2



Democratic Vote Share of District in which Plaintiff Resides
(Measured using votes summed across all 20 statewide elections during 2008–2014)

Simulation Set 2



Jowei Chen
Curriculum Vitae

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505 South State Street
Ann Arbor, MI 48109-1045
Phone: 917-861-7712, Email: jowei@umich.edu
Website: <http://www.umich.edu/~jowei>

Academic Positions:

Associate Professor (2015-present), Assistant Professor (2009-2015), Department of Political Science, University of Michigan.
Faculty Associate, Center for Political Studies, University of Michigan, 2009 – Present.
W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2013.
Principal Investigator and Senior Research Fellow, Center for Governance and Public Policy Research, Willamette University, 2013 – Present.

Education:

Ph.D., Political Science, Stanford University (June 2009)
M.S., Statistics, Stanford University (January 2007)
B.A., Ethics, Politics, and Economics, Yale University (May 2004)

Publications:

Chen, Jowei and Neil Malhotra. 2007. “The Law of k/n: The Effect of Chamber Size on Government Spending in Bicameral Legislatures.”

[*American Political Science Review*, 101\(4\): 657-676.](#)

Chen, Jowei, 2010. “The Effect of Electoral Geography on Pork Barreling in Bicameral Legislatures.”

[*American Journal of Political Science*, 54\(2\): 301-322.](#)

Chen, Jowei, 2013. “Voter Partisanship and the Effect of Distributive Spending on Political Participation.”

[*American Journal of Political Science*, 57\(1\): 200-217.](#)

Chen, Jowei and Jonathan Rodden, 2013. “Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures”

[*Quarterly Journal of Political Science*, 8\(3\): 239-269.](#)

Bradley, Katharine and Jowei Chen, 2014. "Participation Without Representation? Senior Opinion, Legislative Behavior, and Federal Health Reform."

[*Journal of Health Politics, Policy and Law*. 39\(2\), 263-293.](#)

Chen, Jowei and Tim Johnson, 2015. "Federal Employee Unionization and Presidential Control of the Bureaucracy: Estimating and Explaining Ideological Change in Executive Agencies."

[*Journal of Theoretical Politics*, Volume 27, No. 1: 151-174.](#)

Bonica, Adam, Jowei Chen, and Tim Johnson, 2015. "Senate Gate-Keeping, Presidential Staffing of 'Inferior Offices' and the Ideological Composition of Appointments to the Public Bureaucracy."

[*Quarterly Journal of Political Science*. Volume 10, No. 1: 5-40.](#)

Chen, Jowei and Jonathan Rodden, 2015. "Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders."

[*Election Law Journal*. Volume 14, Number 4: 331-345.](#)

Chen, Jowei and David Cottrell, 2016. "Evaluating Partisan Gains from Congressional Gerrymandering: Using Computer Simulations to Estimate the Effect of Gerrymandering in the U.S. House."

[*Electoral Studies*. Volume 44 \(December 2016\): 329-340.](#)

Chen, Jowei, 2017. "Analysis of Computer-Simulated Districting Maps for the Wisconsin State Assembly."

[*Election Law Journal*. Volume 16, Number 4 \(December 2017\): 417-442.](#)

Non-Peer-Reviewed Publication:

Chen, Jowei and Tim Johnson. 2017. "Political Ideology in the Bureaucracy."

[*Global Encyclopedia of Public Administration, Public Policy, and Governance*.](#)

Chen, Jowei. October 4, 2017. Time Magazine Op-Ed.

<http://time.com/4965673/wisconsin-supreme-court-gerrymandering-research/>

Chen, Jowei and Jonathan Rodden. January 2014. New York Times Op-Ed.

<https://www.nytimes.com/2014/01/26/opinion/sunday/its-the-geography-stupid.html>

Research Grants:

Principal Investigator. [National Science Foundation Grant SES-1459459](#), September 2015 – August 2018 (\$165,008). "The Political Control of U.S. Federal Agencies and Bureaucratic Political Behavior."

"Economic Disparity and Federal Investments in Detroit," (with Brian Min) 2011. Graham Institute, University of Michigan (\$30,000).

“The Partisan Effect of OSHA Enforcement on Workplace Injuries,” (with Connor Raso) 2009.
John M. Olin Law and Economics Research Grant (\$4,410).

Invited Talks:

September, 2011. University of Virginia, American Politics Workshop.
October 2011. Massachusetts Institute of Technology, American Politics Conference.
January 2012. University of Chicago, Political Economy/American Politics Seminar.
February 2012. Harvard University, Positive Political Economy Seminar.
September 2012. Emory University, Political Institutions and Methodology Colloquium.
November 2012. University of Wisconsin, Madison, American Politics Workshop.
September 2013. Stanford University, Graduate School of Business, Political Economy Workshop.
February 2014. Princeton University, Center for the Study of Democratic Politics Workshop.
November 2014. Yale University, American Politics and Public Policy Workshop.
December 2014. American Constitution Society for Law & Policy Conference: Building the Evidence to Win Voting Rights Cases.
February 2015. University of Rochester, American Politics Working Group.
March 2015. Harvard University, Voting Rights Act Workshop.
May 2015. Harvard University, Conference on Political Geography.
October 2015. George Washington University School of Law, Conference on Redistricting Reform.
September 2016. Harvard University Center for Governmental and International Studies, Voting Rights Institute Conference.
March 2017. Duke University, Sanford School of Public Policy, Redistricting Reform Conference.
October 2017. Willamette University, Center for Governance and Public Policy Research
October 2017, University of Wisconsin, Madison. Geometry of Redistricting Conference.
February 2018: University of Georgia Law School
September 2018. Willamette University.
November 2018. Yale University, Redistricting Workshop.
November 2018. University of Washington, Severyns Ravenholt Seminar in Comparative Politics.
January 2019. Duke University, Reason, Reform & Redistricting Conference.
February 2019. Ohio State University, Department of Political Science. Departmental speaker series.

Conference Service:

Section Chair, 2017 APSA (Chicago, IL), Political Methodology Section
Discussant, 2014 Political Methodology Conference (University of Georgia)
Section Chair, 2012 MPSA (Chicago, IL), Political Geography Section.
Discussant, 2011 MPSA (Chicago, IL) “Presidential-Congressional Interaction.”
Discussant, 2008 APSA (Boston, MA) “Congressional Appropriations.”
Chair and Discussant, 2008 MPSA (Chicago, IL) “Distributive Politics: Parties and Pork.”

Conference Presentations and Working Papers:

“Ideological Representation of Geographic Constituencies in the U.S. Bureaucracy,” (with Tim Johnson). 2017 APSA.

“Incentives for Political versus Technical Expertise in the Public Bureaucracy,” (with Tim Johnson). 2016 APSA.

“Black Electoral Geography and Congressional Districting: The Effect of Racial Redistricting on Partisan Gerrymandering”. 2016 Annual Meeting of the Society for Political Methodology (Rice University)

“Racial Gerrymandering and Electoral Geography.” Working Paper, 2016.

“Does Deserved Spending Win More Votes? Evidence from Individual-Level Disaster Assistance,” (with Andrew Healy). 2014 APSA.

“The Geographic Link Between Votes and Seats: How the Geographic Distribution of Partisans Determines the Electoral Responsiveness and Bias of Legislative Elections,” (with David Cottrell). 2014 APSA.

“Gerrymandering for Money: Drawing districts with respect to donors rather than voters.” 2014 MPSA.

“Constituent Age and Legislator Responsiveness: The Effect of Constituent Opinion on the Vote for Federal Health Reform.” (with Katharine Bradley) 2012 MPSA.

“Voter Partisanship and the Mobilizing Effect of Presidential Advertising.” (with Kyle Dropp) 2012 MPSA.

“Recency Bias in Retrospective Voting: The Effect of Distributive Benefits on Voting Behavior.” (with Andrew Feher) 2012 MPSA.

“Estimating the Political Ideologies of Appointed Public Bureaucrats,” (with Adam Bonica and Tim Johnson) 2012 Annual Meeting of the Society for Political Methodology (University of North Carolina)

“Tobler’s Law, Urbanization, and Electoral Bias in Florida.” (with Jonathan Rodden) 2010 Annual Meeting of the Society for Political Methodology (University of Iowa)

“Unionization and Presidential Control of the Bureaucracy” (with Tim Johnson) 2011 MPSA.

“Estimating Bureaucratic Ideal Points with Federal Campaign Contributions” 2010 APSA. (Washington, DC).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” Vanderbilt University Conference on Bicameralism, 2009.

“When Do Government Benefits Influence Voters’ Behavior? The Effect of FEMA Disaster Awards on US Presidential Votes,” 2009 APSA (Toronto, Canada).

“Are Poor Voters Easier to Buy Off?” 2009 APSA (Toronto, Canada).

“Credit Sharing Among Legislators: Electoral Geography’s Effect on Pork Barreling in Legislatures,” 2008 APSA (Boston, MA).

“Buying Votes with Public Funds in the US Presidential Election,” Poster Presentation at the 2008 Annual Meeting of the Society for Political Methodology (University of Michigan).

“The Effect of Electoral Geography on Pork Spending in Bicameral Legislatures,” 2008 MPSA.

“Legislative Free-Riding and Spending on Pure Public Goods,” 2007 MPSA (Chicago, IL).

“Free Riding in Multi-Member Legislatures,” (with Neil Malhotra) 2007 MPSA (Chicago, IL).

“The Effect of Legislature Size, Bicameralism, and Geography on Government Spending: Evidence from the American States,” (with Neil Malhotra) 2006 APSA (Philadelphia, PA).

Reviewer Service:

American Journal of Political Science
American Political Science Review
Journal of Politics
Quarterly Journal of Political Science
American Politics Research
Legislative Studies Quarterly
State Politics and Policy Quarterly
Journal of Public Policy
Journal of Empirical Legal Studies
Political Behavior
Political Research Quarterly
Political Analysis
Public Choice
Applied Geography

STATE OF NORTH CAROLINA
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IN THE GENERAL COURT OF JUSTICE
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No. 19-cv-012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, *et al.*,

Defendants.

**DECLARATION OF
BLAKEMAN B. ESSELSTYN**

I, Blakeman B. Esselstyn, upon my oath, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.
2. I am a Principal at FrontWater, LLC and EQV Maps.
3. I have been retained by Plaintiffs in the above captioned matter. My Curriculum Vitae is attached to this Declaration. I am being compensated \$200 per hour for my work in this case.
4. At Plaintiffs' request, I have created the enclosed maps of North Carolina's current congressional districts.
5. The first thirteen enclosed maps show each of North Carolina's thirteen congressional districts. In each of these maps, the red and blue shading represents the relative vote margin in the 2016 North Carolina Attorney General election in a single VTD, with darker blue shading representing larger Democratic vote margins and darker red shading indicating larger Republican vote margins (both normalized by acreage). Using actual vote differentials

rather than percentage differentials allows one to more easily see the effects of small shifts in district lines on the ultimate outcomes.

6. I obtained all map data for these thirteen maps from the North Carolina General Assembly. I obtained the 2016 elections data via a public records request to the North Carolina General Assembly.

7. The final two enclosed maps show the division of the campus of North Carolina A&T State University across Congressional Districts 6 and 13, and the division of the campus of UNC Asheville across Congressional Districts 10 and 11. I created these maps using the QGIS software program.

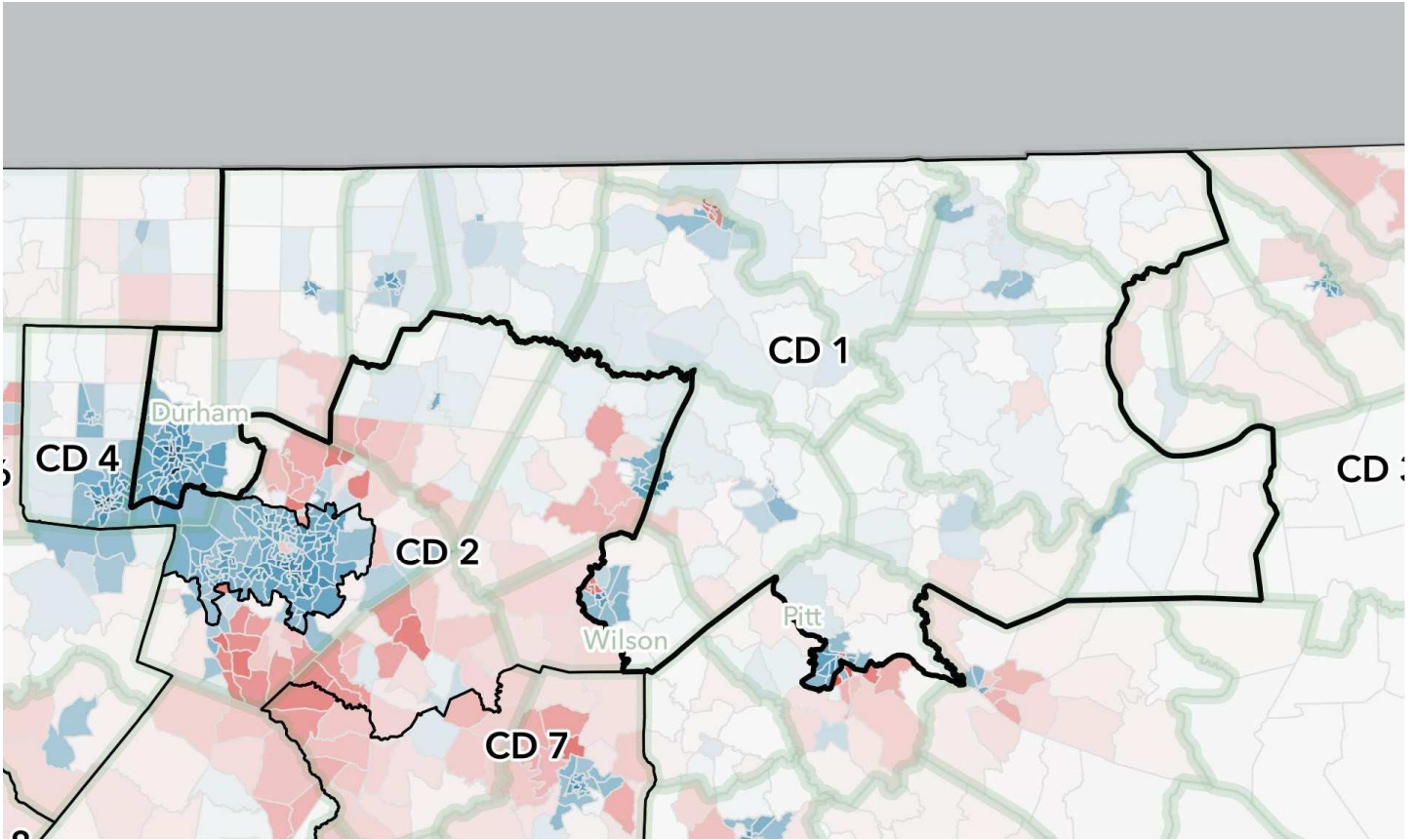
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

This 30th day of September, 2019

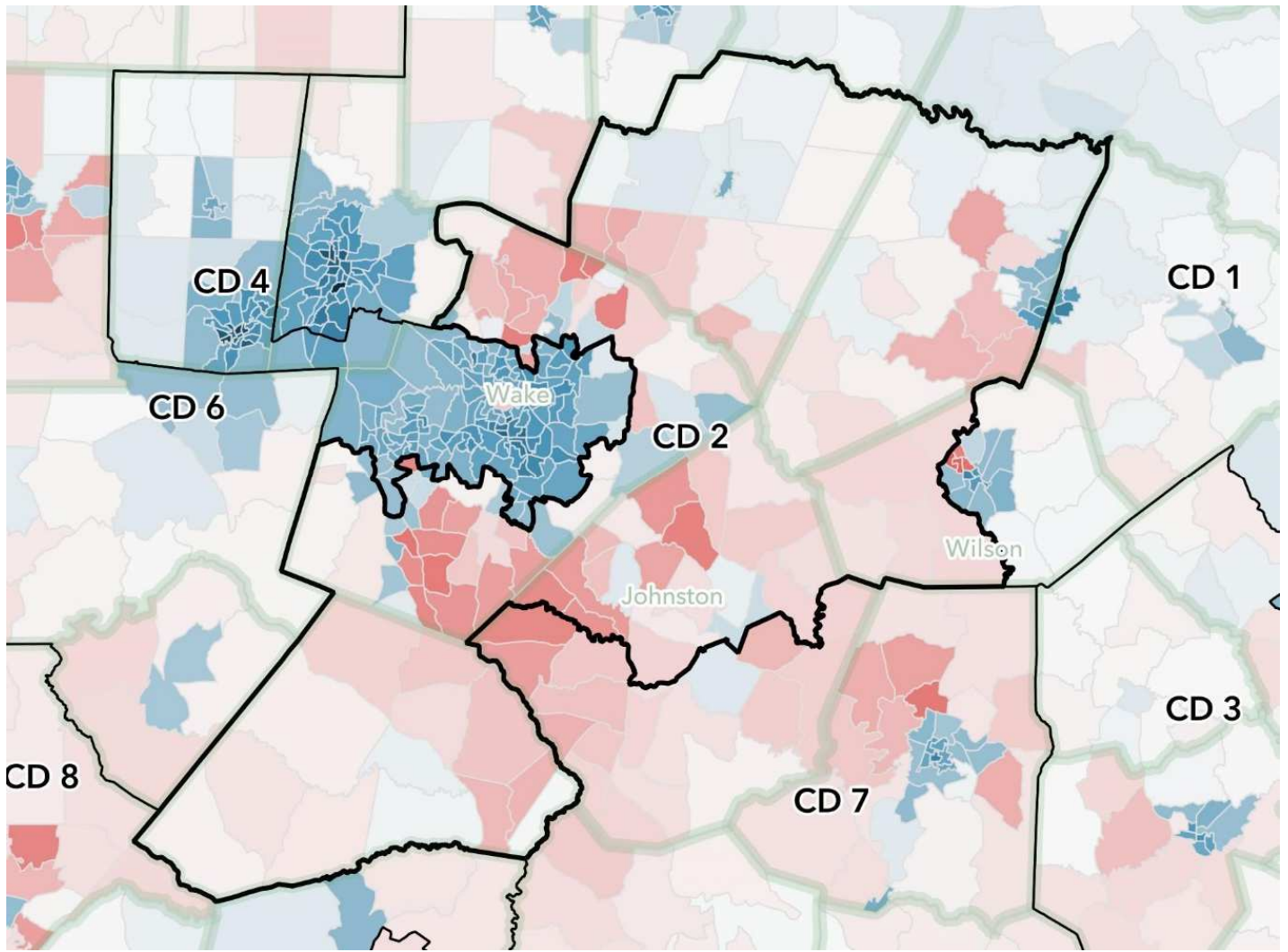


Blakeman B. Esselstyn

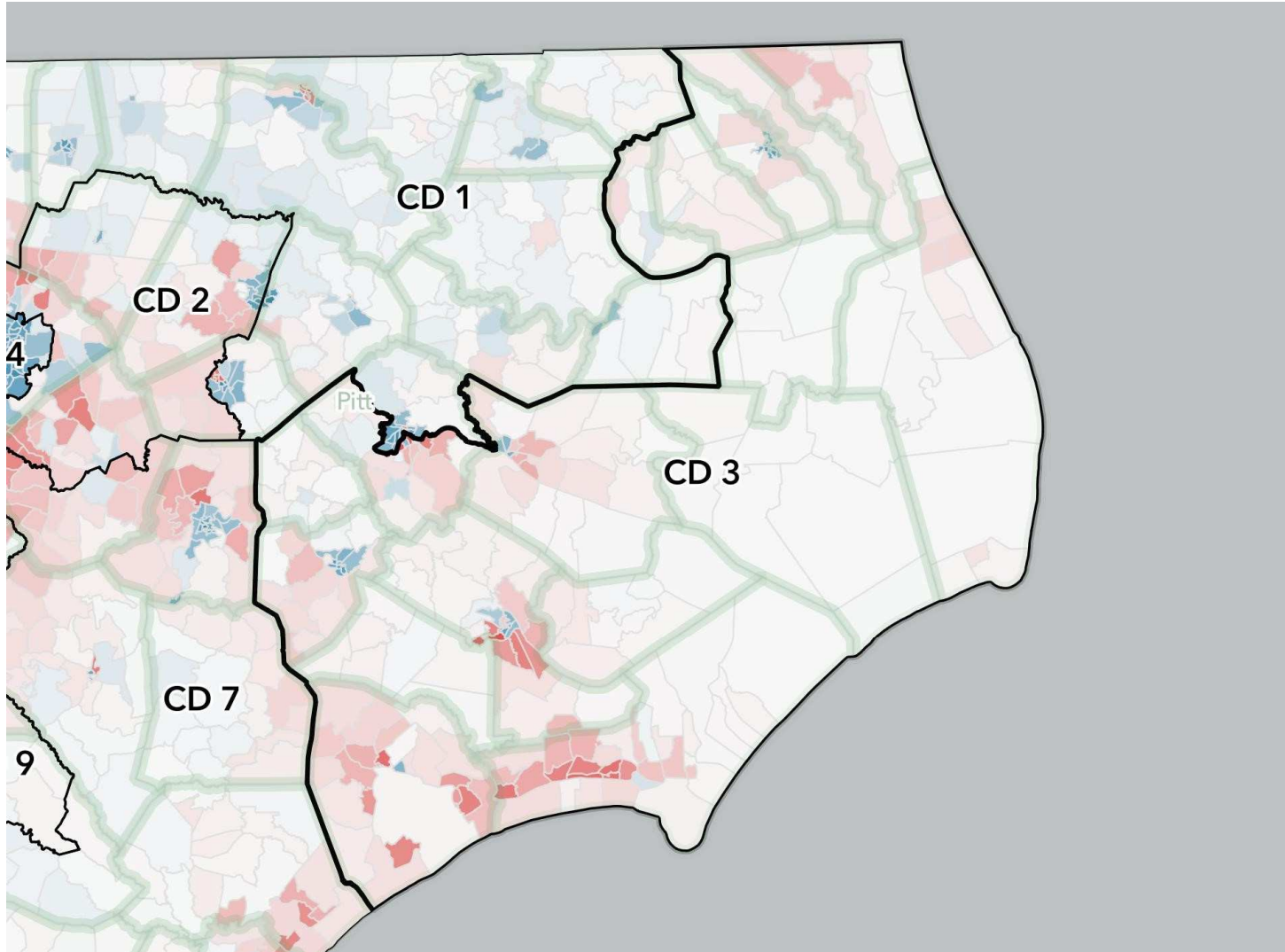
Congressional District 1



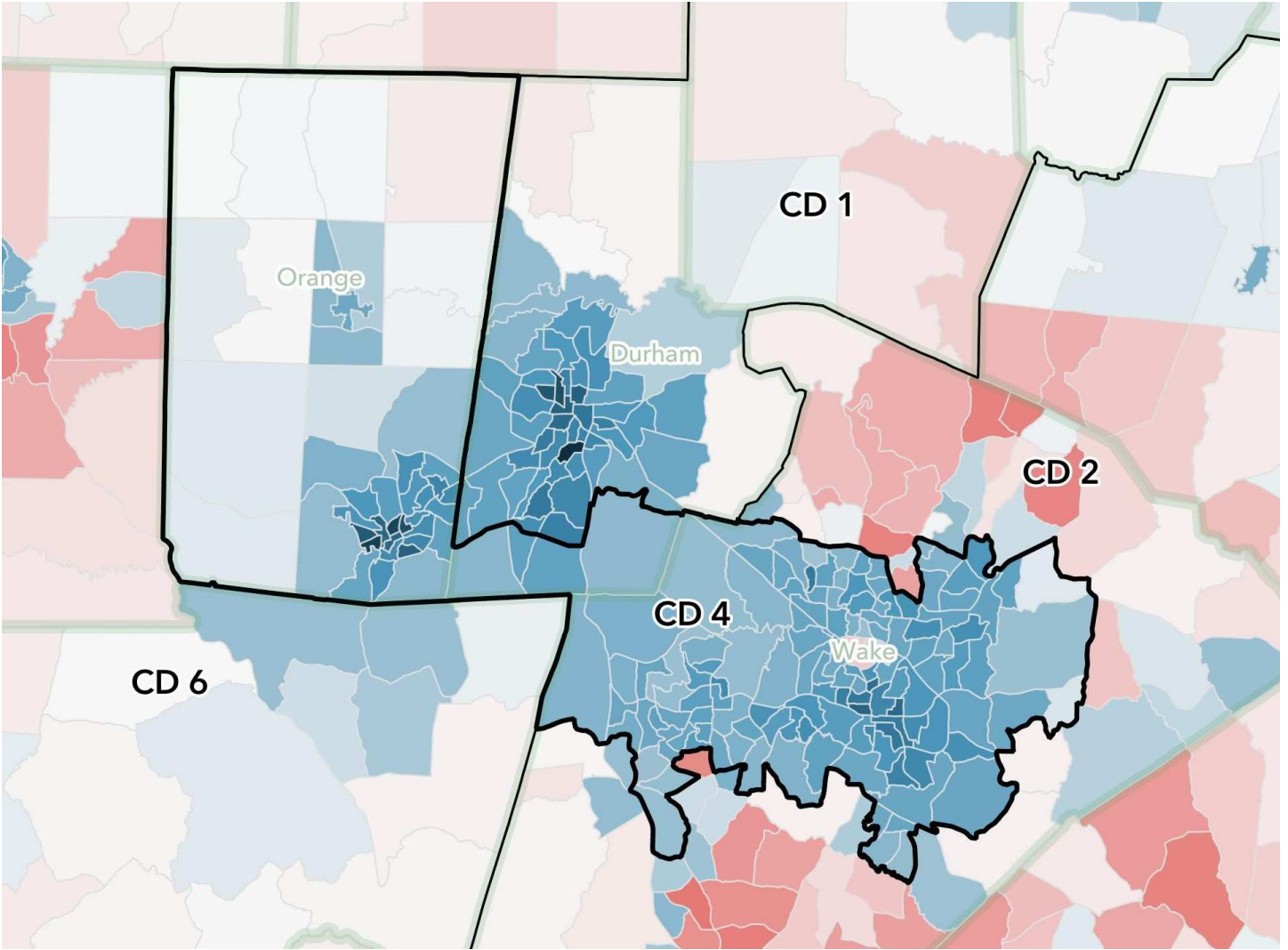
Congressional District 2



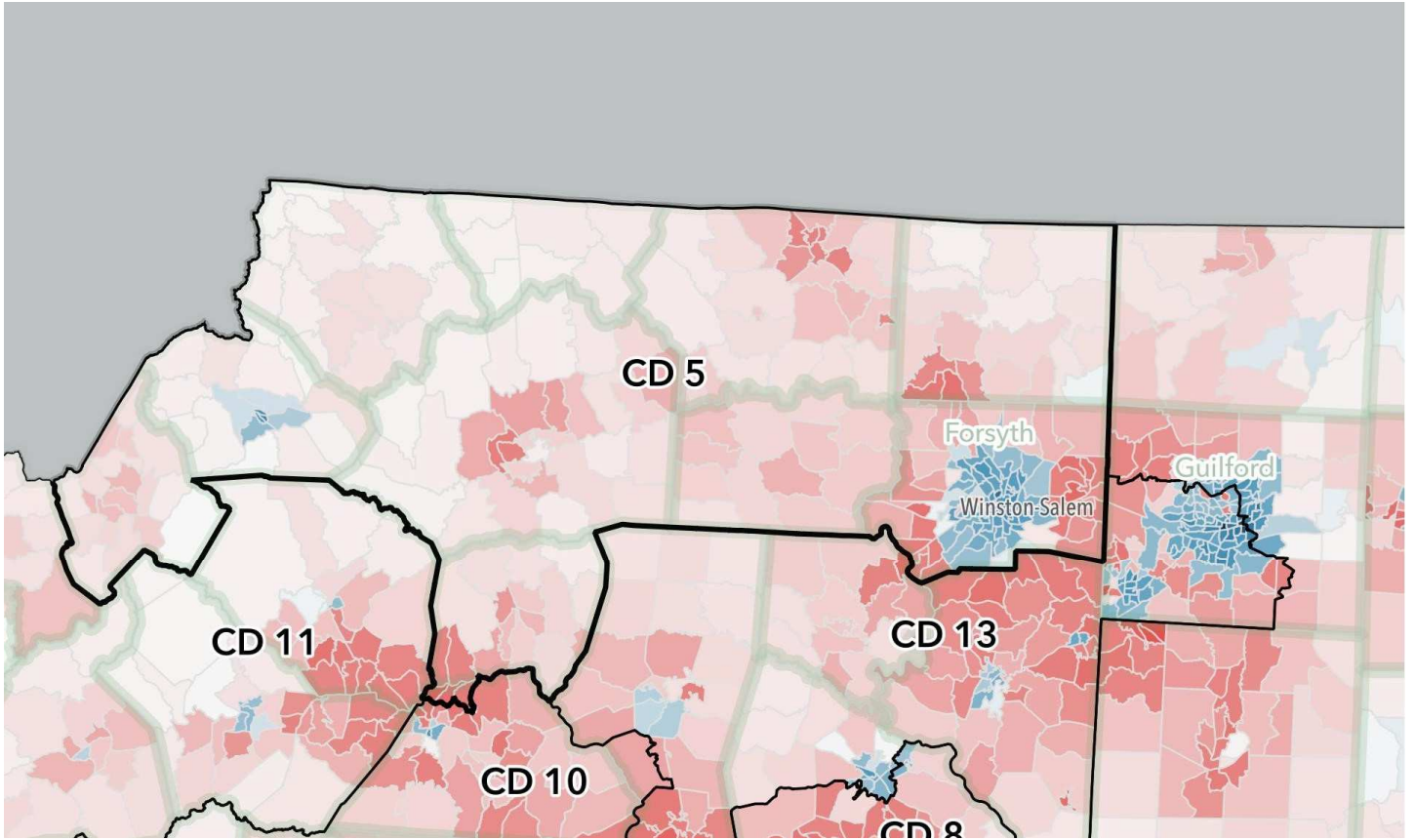
Congressional District 3



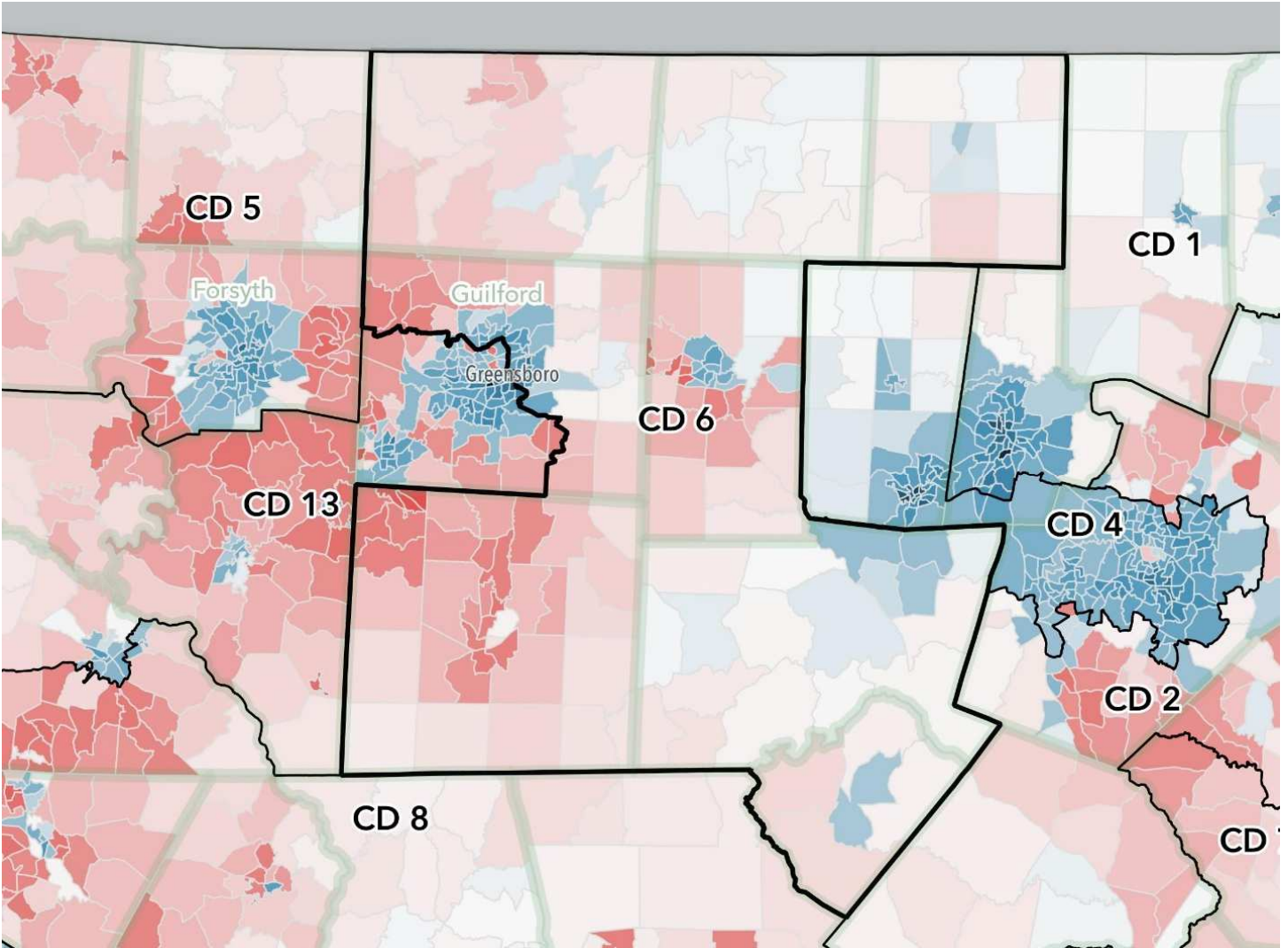
Congressional District 4



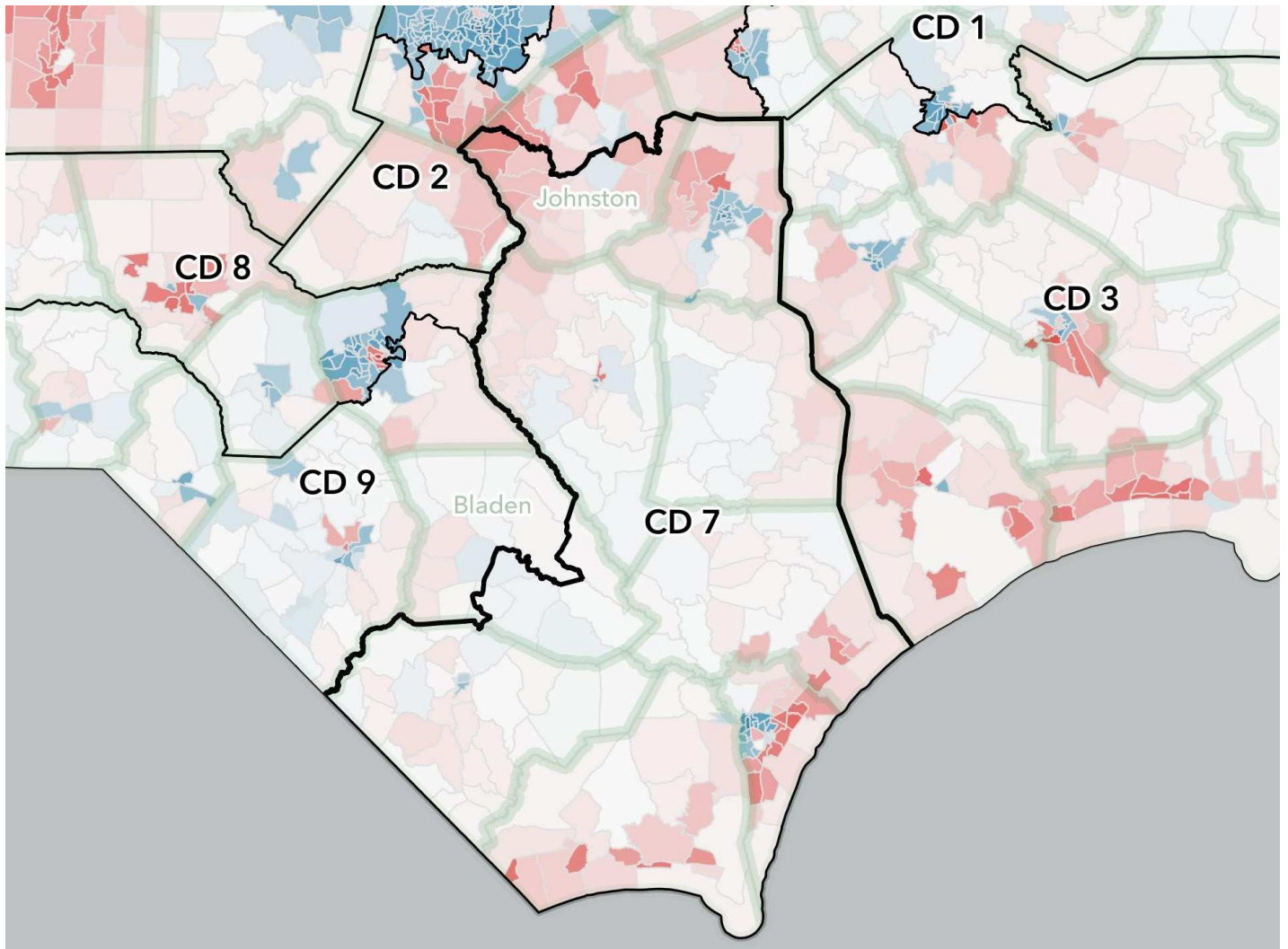
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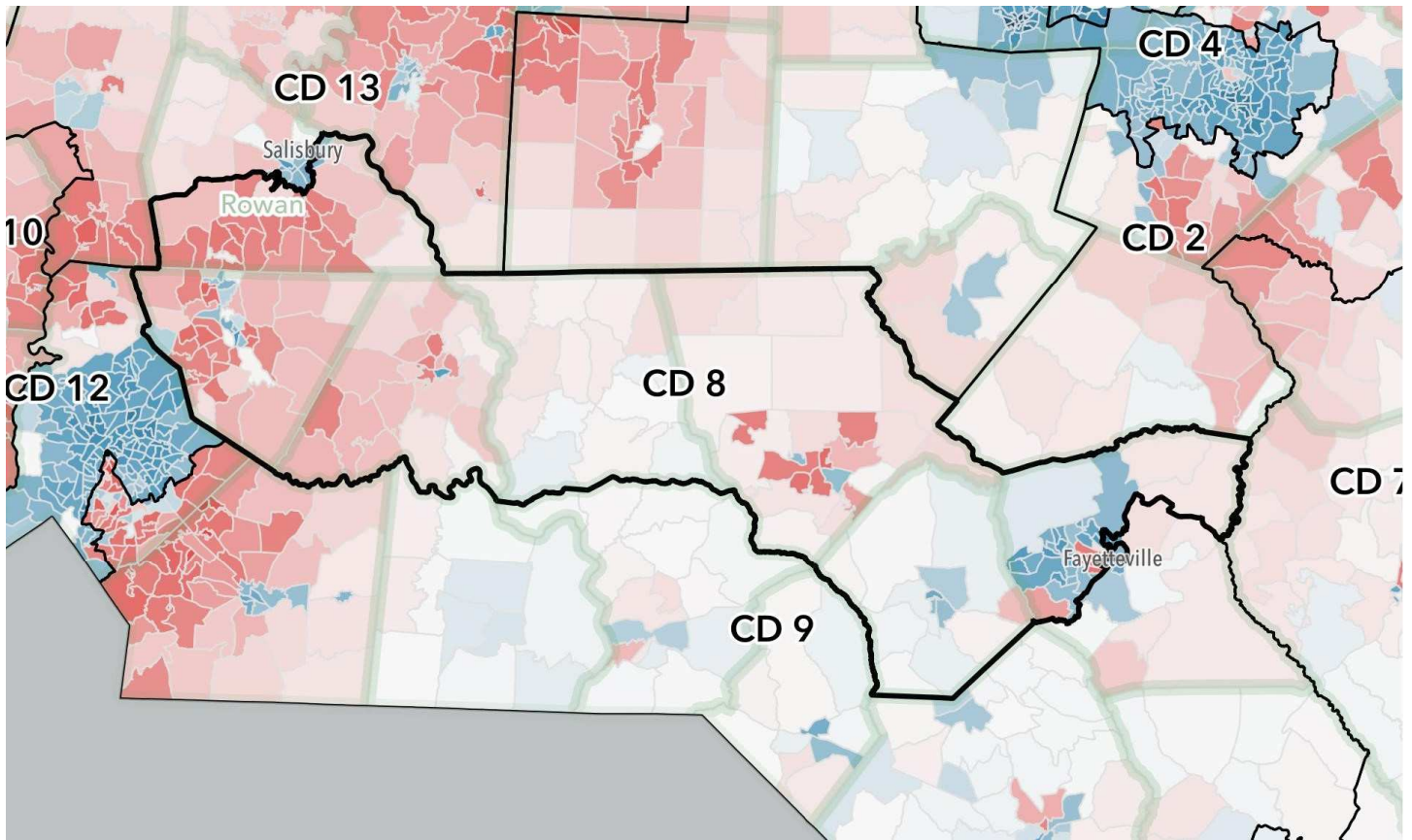
Congressional District 6



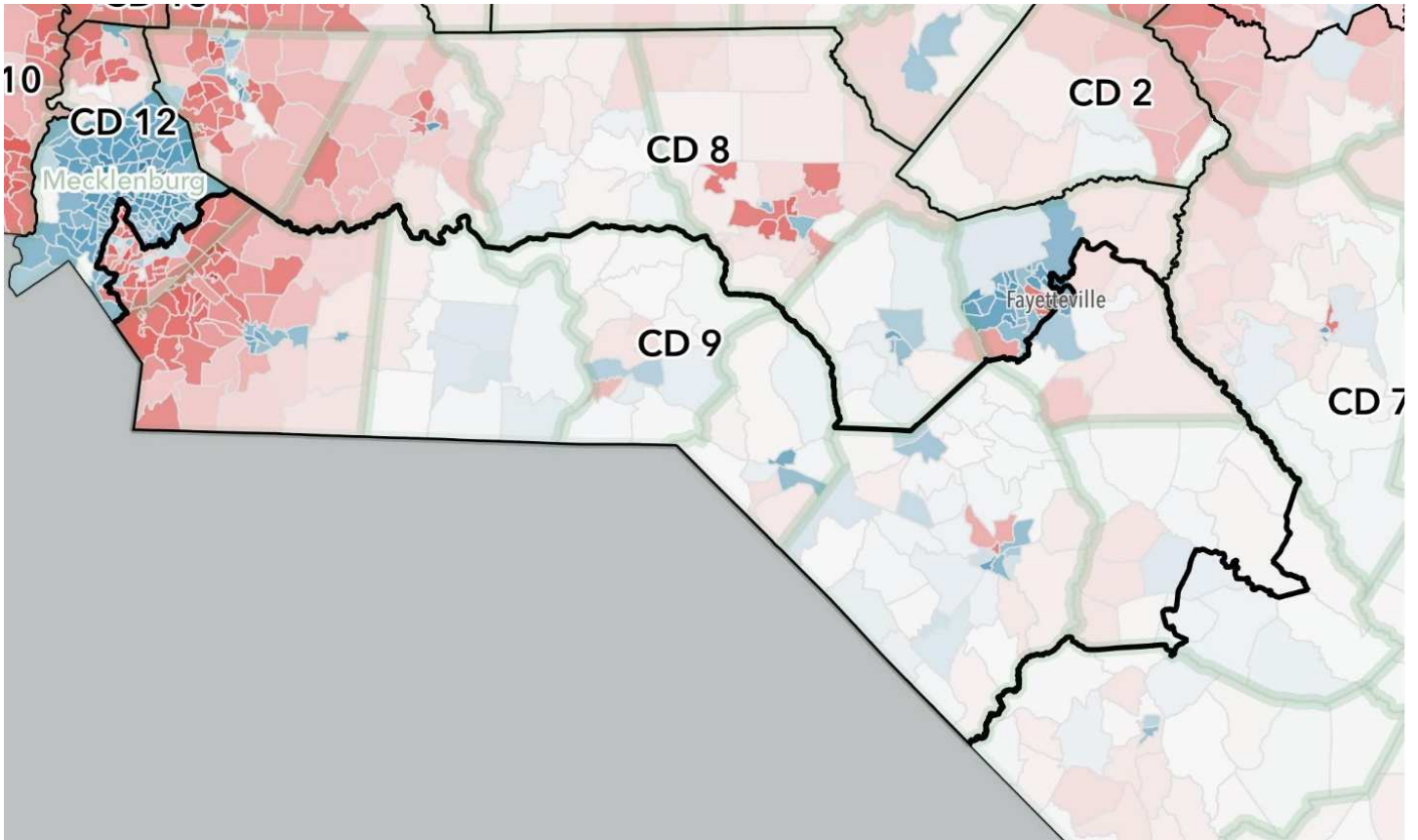
Congressional District 7



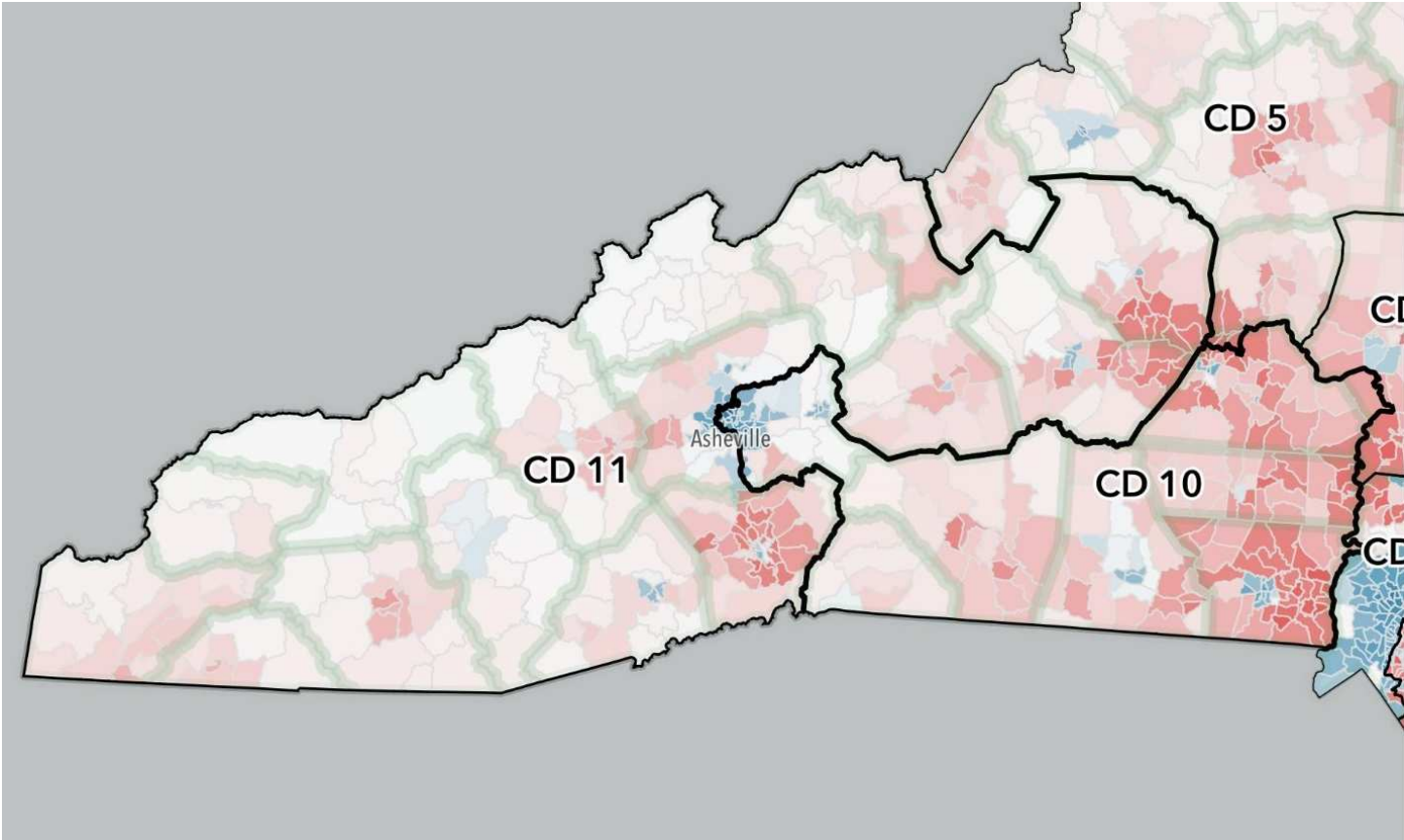
Congressional District 8



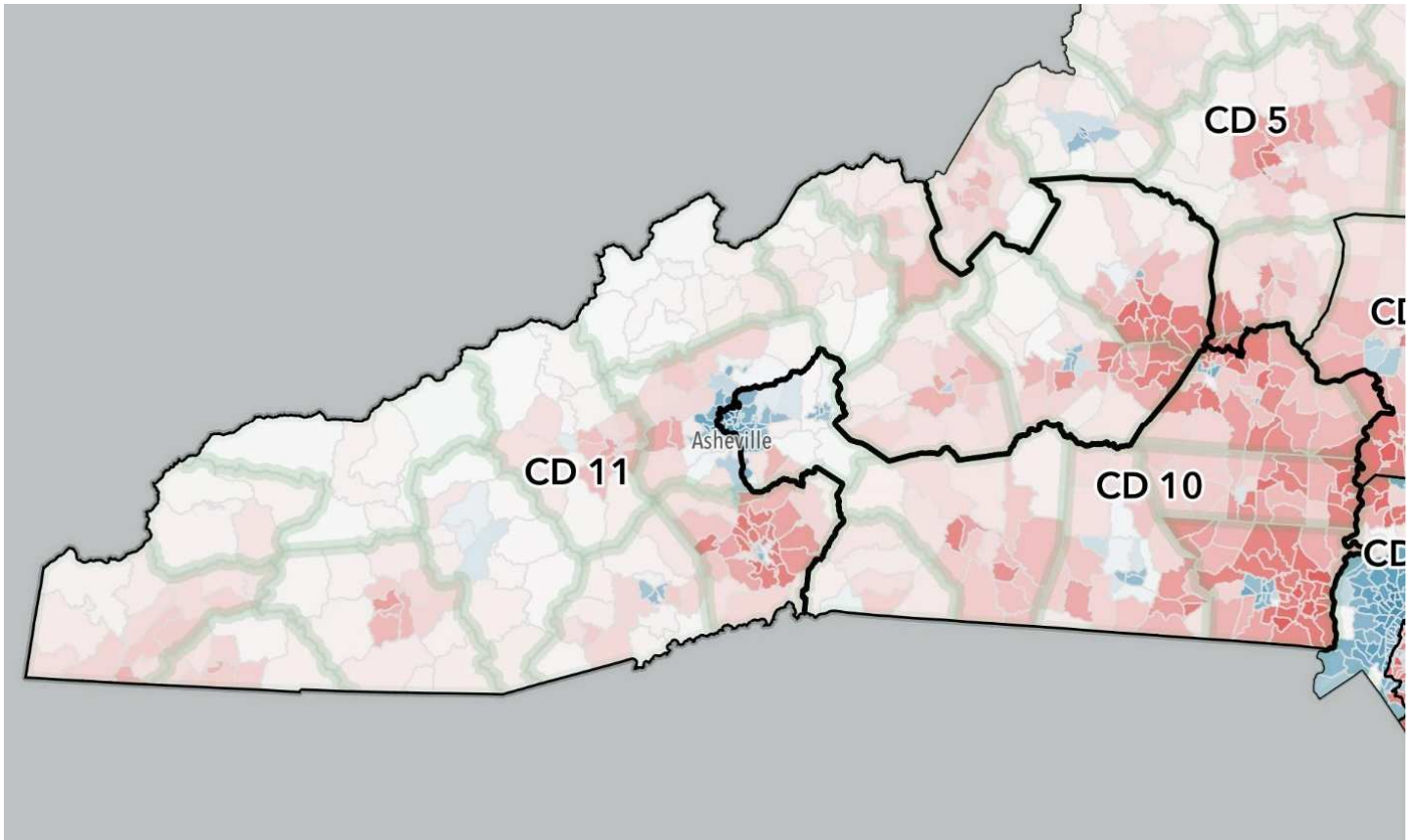
Congressional District 9



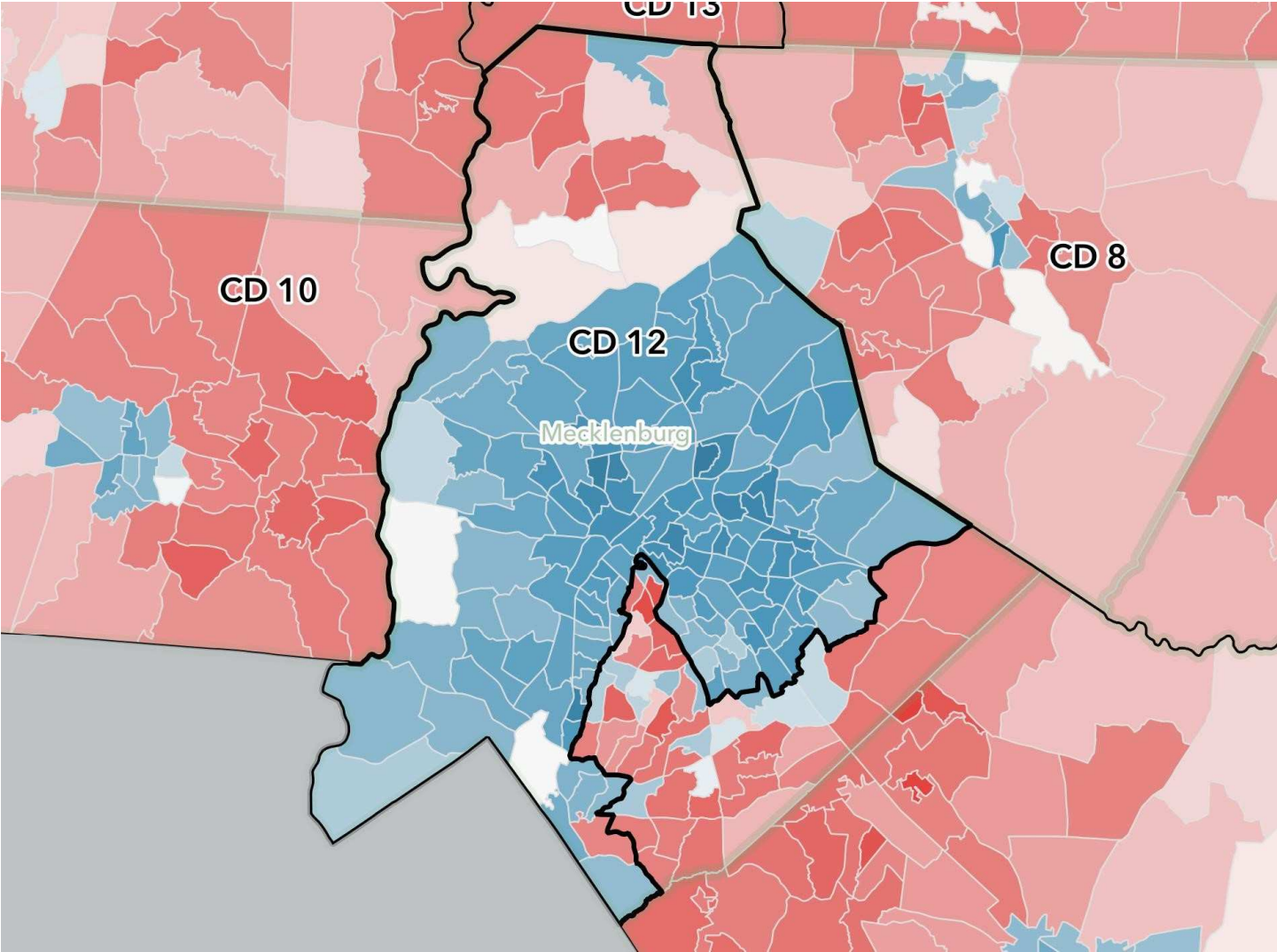
Congressional District 10



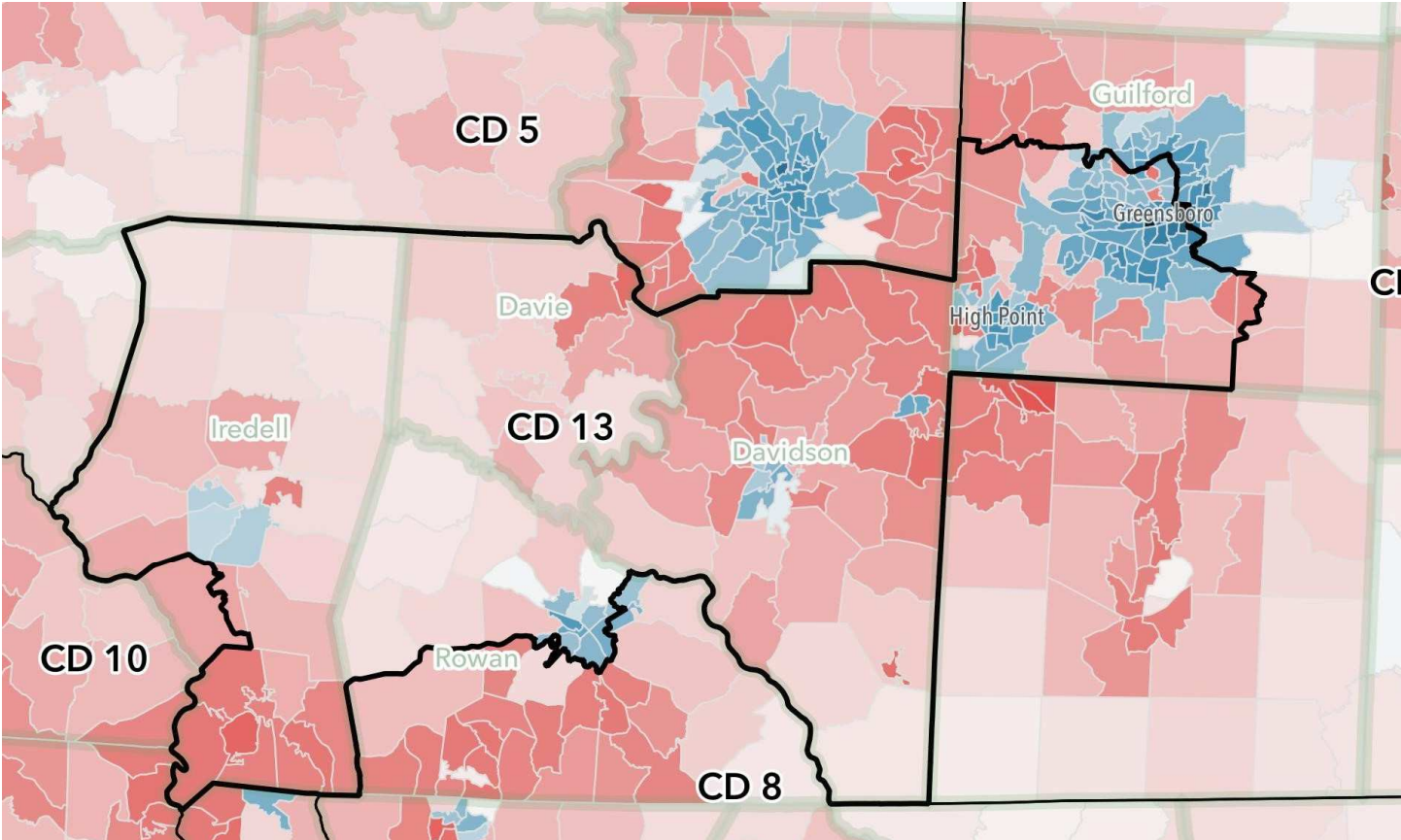
Congressional District 11



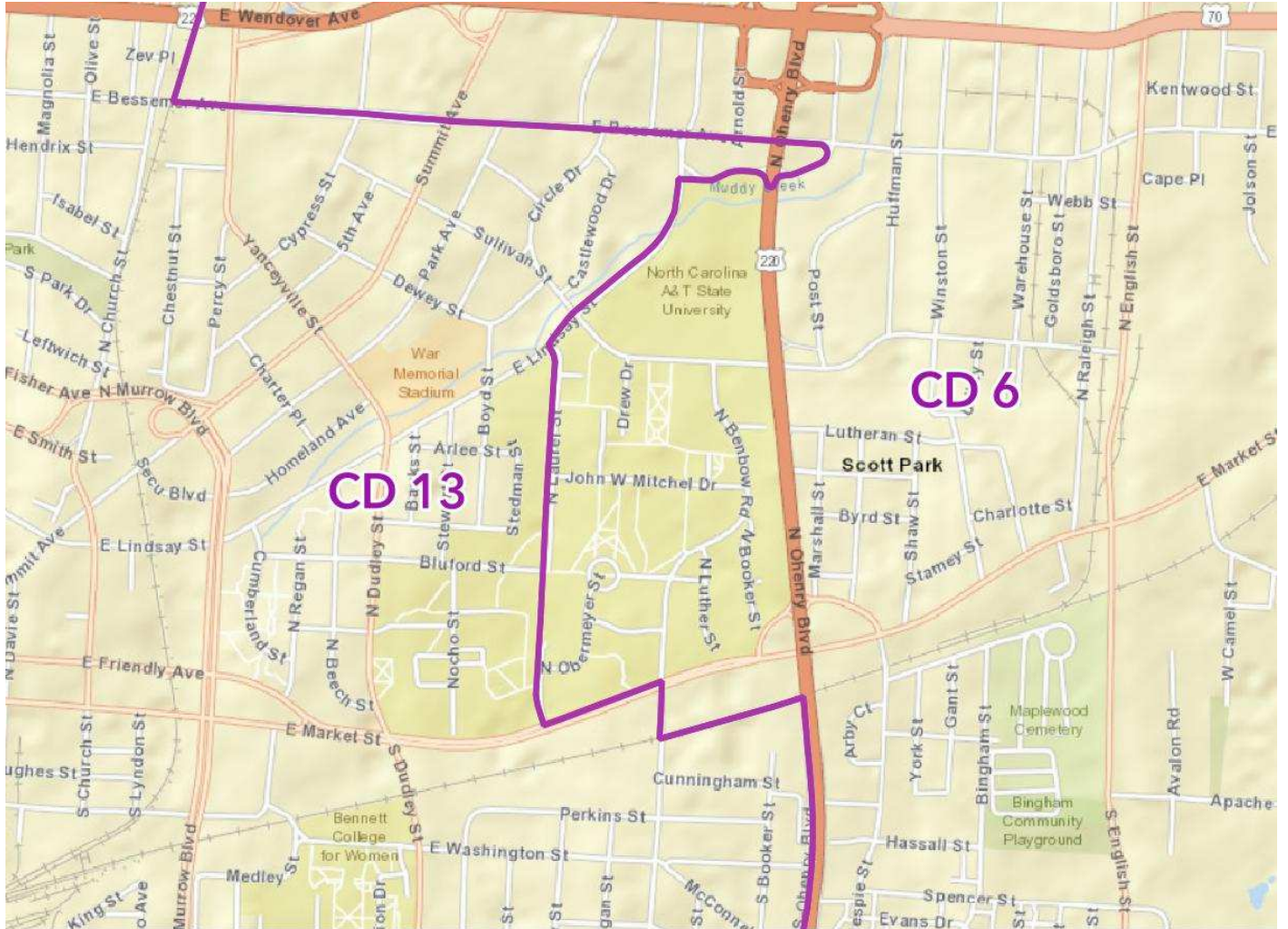
Congressional District 12



Congressional District 13



Splitting of North Carolina A&T State University



Splitting of UNC Asheville



Blakeman B. (“Blake”) Esselstyn

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blake@frontwater.com · 828·338·8528

EDUCATION

- University of Pennsylvania, School of Engineering and Applied Science, Master of Computer and Information Technology, 2003; GPA 4.0
- Yale University, Geology & Geophysics and International Studies, Bachelor of Arts, 1996

PROFESSIONAL CERTIFICATIONS

- Geographic Information Systems Professional (GISP), #6946, 2009
- American Institute of Certified Planners (AICP), #026364, 2013

EMPLOYMENT (Teaching positions listed separately)

- Redistricting Consultant, EQV Maps (and as Blake Esselstyn), Asheville, NC, 2016-present
- Principal Consultant, FrontWater, LLC, Asheville, NC, 2015-present
- Urban Planner III – GIS Specialist, City of Asheville Department of Planning and Urban Design, Asheville, NC, 2008-2015
- Urban Planner II, City of Asheville Planning Department, Asheville, NC, 2004-2008
- Independent GIS Consultant, Freelance, Asheville, NC, 2003-2004
- GIS Programmer, Azavea, Inc., Philadelphia, PA, 2002
- Web Support Fellow, University of Pennsylvania, Philadelphia, PA, 2002
- GIS Analyst, Applied Geographics, Inc., Boston, MA, 2001
- GIS Intern, Community and Environmental Spatial Analysis Center, Seattle, WA, 2000
- GIS Analyst, Applied Geographics, Inc., Boston, MA, 2000
- Mapping Technician, Schlosser Geographic Systems, Seattle, WA, 1997
- Digital Mapping Resources Consultant, Social Science Statistical Laboratory at Yale University, New Haven, CT, 1997
- Special Assistant to the CityRoom Coordinator, Neighborhood Partnerships Network, New Haven, CT, 1996-1997
- Lab Monitor, Center for Earth Observation at Yale University, New Haven, CT, 1995

TEACHING EMPLOYMENT

- Adjunct Faculty, Lenoir-Rhyne University, Asheville, NC, 2019
Taught full-semester graduate-level Geographic Information Systems (GIS) course
- Adjunct Faculty, Western Carolina University, Asheville, NC, 2017
Taught full-semester graduate-level GIS course
- GIS Course Assistant, University of Pennsylvania, Philadelphia, PA, 2002-2003
Served as teaching assistant for two undergraduate GIS semester courses
- Teacher, Equity American School, Guatemala City, Guatemala, 1998-1999
Led mathematics department for grades 7-12; taught one technology course
- Teacher, International School of Panama, Panama City, Republic of Panama, 1997-1998
Taught computer programming and mathematics to secondary school students

SPEAKER OR PANELIST

- “Methods and Techniques in Redistricting,” Harvard Geography of Redistricting Conference, Cambridge, MA, 2019
- “Redistricting Software: A new generation of geospatial tools,” North Carolina GIS Conference, Winston-Salem, NC, 2019
- “The Latest Mapping Technology,” Reason, Reform & Redistricting Conference, Duke University, Durham, NC, 2019
- “What are all These Districts? How did We Get Here, and Redistricting Reform,” Grassroots Democracy: A Nonpartisan Voter Education Series, Leicester, NC, 2019
- “Re-GIS-tracting? A new generation of redistricting geo-tools,” Mountain Regional GIS Alliance, Asheville, NC, 2019
- “Representing (mis)representation,” Tapestry Data Storytelling Conference, University of Miami, Miami, FL, 2018
- “A Redistricting Tour,” Democracy in our Hands Conference, Asheville, NC, 2018
- “Dis-tricks: GIS and Public Understanding of Redistricting,” NC ArcGIS Users Group, Asheville, NC, 2018
- “Visual Explanations of Gerrymandering,” Highlands Indivisible, Highlands, NC, 2018
- “Dave’s Redistricting App,” Metric Geometry of Gerrymandering Workshop, University of Texas, Austin, TX, 2018
- “Districting Voter Education Forum,” Democracy North Carolina, Asheville, NC, 2017
- “When GIS leads planners astray,” American Planning Association National Conference, New York, NY, 2017

- “Conveying Uncertainty with GIS,” Azavea, Philadelphia, PA, 2017
- “GISkepticism,” Appalachian State University, Boone, NC, 2017
- “When GIS leads planners astray,” North Carolina Planning Conference, American Planning Association North Carolina Chapter, Asheville, NC, 2016
- “What if the ‘S’ in GIS stood for Skepticism?” Mountain Regional GIS Alliance, Asheville, NC, 2015
- “Open Data? Show Me the Money!” North Carolina GIS Conference, Raleigh, NC, 2015

TEACHING AS SINGLE-CLASS GUEST SPEAKER (On redistricting and/or GIS)

- Lenoir-Rhyne University, Public Policy Processes Course (speaking on redistricting), 2019
- Western Carolina University, Geographic Information Systems Course (speaking on GIS), 2019
- Duke University, Democracy Lab Seminar (speaking on redistricting software tools), 2018
- University of North Carolina Asheville, Political Science: US Elections Course (speaking on redistricting), 2018
- University of North Carolina Asheville, Mathematics: Voting Theory Course (speaking on redistricting), 2018
- Lenoir-Rhyne University, Sustainability Management & Decision Making Course (speaking on GIS/location intelligence), 2018
- Yale University, School of Organization and Management: Business Information Course (speaking on Maptitude—one class + multiple labs), 1997

LITIGATION EXPERIENCE (As GIS expert)

- Expert witness analysis, deposition, and testimony for City of Asheville, in *Jensen v. City of Asheville*, Buncombe County Superior Court, 2009-2010
- Expert witness analysis and testimony for City of Asheville, in *Hall v. City of Asheville*, Buncombe County Superior Court, 2007
- Expert witness analysis and testimony for City of Asheville, in *Arnold v. City of Asheville*, Buncombe County Superior Court, 2005

PUBLIC REDISTRICTING PROJECT EXPERIENCE

- Software operator and presenter, National Conference of State Legislatures Redistricting Seminar: Redistricting Simulation, Providence, RI, 2019

- Hands-on GIS software workshop session leader, Metric Geometry of Gerrymandering Group (MGGG) Conference at the University of Texas, Austin, TX, 2018
- Co-leader of redistricting hackathon, Metric Geometry of Gerrymandering Group (MGGG) Conference at Duke University, Durham, NC, 2017
- Preparation of simulated redistricting plans for Democracy North Carolina's Districting Voter Education Forum, Asheville, NC, 2017
- Hands-on GIS software workshop session assistant, Metric Geometry of Gerrymandering Group (MGGG) Conference at Tufts University, Medford, MA, 2017
- Preparation of redistricting map exhibits used in *Vesilind v. Virginia State Board of Elections* trial, Richmond, VA, 2017
- Redistricting software operator (converting retired jurists' instructions into maps), Duke University and Common Cause NC independent redistricting commission simulation, Raleigh, NC and Winston-Salem, NC, 2016

MEDIA APPEARANCES, OP-EDS, AND CITATIONS

- "With No Supreme Court End to Gerrymandering, Will States Make It More Extreme?" (citation/link of blog article), *New York Times*, June 28, 2019
- "The Supreme Court takes on gerrymandering. A cottage industry wants to prove it's gone too far," *USA Today*, March 26, 2019
- "Gerrymandering: 'Packing' and 'Cracking,' the meat and potatoes of partisan redistricting," *USA Today*, March 25, 2019
- "NC gerrymandering: Turner, McGrady lead reform effort on redistricting" *Asheville Citizen-Times*, February 14, 2019
- "Looking for a Way Forward on Redistricting Reform," *Duke Today*, January 28, 2019
- "Will Asheville try to stop the state from splitting it into districts?" (map citation), *Asheville Citizen-Times*, January 23, 2019
- "Some takeaways from NC's elections," WRAL.com, Nov 7, 2018
- "New Asheville districts are racial gerrymandering, black council members say" *Asheville Citizen-Times*, July 2, 2018
- "Legislature sets up districts for Asheville council, eliminates primaries" (map citation), *Asheville Citizen-Times*, June 27, 2018
- "Van Duyn to back Asheville council districts bill if Senate shifts election dates" (map citation), *Asheville Citizen-Times*, June 21, 2018
- "I Ran the Worst 5K of My Life So I Could Explain Gerrymandering to You," *POLITICO Magazine*, November 15, 2017

- “Event to cover Nov. vote on City Council districts,” *Asheville Citizen-Times*, October 17, 2017
- “Who makes the grade? This week’s editorial report card,” *Asheville Citizen-Times*, June 2, 2017
- “Asheville grows; Charlotte, Raleigh and their suburbs grow faster,” *Asheville Citizen-Times*, May 29, 2017
- “Boundary issues: Where does Asheville end?” (op-ed), *Mountain Xpress*, April 29, 2016
- “For better or worse, Asheville growth inevitable,” *Asheville Citizen-Times*, November 21, 2015
- “St. Lawrence Green no litmus test for voters” (op-ed), *Mountain Xpress*, October 29, 2015

REDISTRICTING AND GIS SOFTWARE EXPERIENCE

- MapInfo (first used 1996)
- Maptitude (first used 1997)
- Esri ArcGIS/ArcInfo/ArcView (first used 2000)
- QGIS (first used 2015)
- Maptitude for Redistricting (first used 2016)
- Dave’s Redistricting App (first used 2016)
- DistrictBuilder (first used 2017)
- Esri Redistricting (first used 2018)
- Districtr (first used 2019)

SELECTED AWARDS (As team member)

- G. Herbert Stout Award for Visionary use of GIS by Local Government, 2009
- International Economic Development Council, Excellence in New Media Initiatives, 2008
- Marvin Collins Outstanding Planning Award for Innovations in Planning Services, Education, and Public Involvement, 2007

ADDITIONAL TRAINING

- Public Data, Public Access, Privacy, and Security: U.S. Law and Policy, Urban and Regional Information Systems Association Certified Workshop, Raleigh, NC, 2015
- An Overview of Open Source GIS Software, Urban and Regional Information Systems Association Certified Workshop, Portland, OR, 2012

- An Introduction to Public Participation GIS: Using GIS to Support Community Decision Making, Urban and Regional Information Systems Association Certified Workshop, Orlando, FL, 2010
- 3-D Geospatial Best Practices and Project Implementation Methods, Urban and Regional Information Systems Association Certified Workshop, Vancouver, BC (Canada), 2006

BOARDS AND COMMISSIONS

- Asheville City Council Appointee to Comprehensive Plan Advisory Committee, 2016-2018

MEMBERSHIPS

- Urban and Regional Information Systems Association (URISA)
- Mountain Regional GIS Alliance (MRGAC)
- American Planning Association (APA)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19-cv-012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, *et al.*,

Defendants.

**DECLARATION OF
ELISABETH S. THEODORE**

I, Elisabeth S. Theodore, declare and say as follows:

1. I am over the age of eighteen (18) and competent to testify as to the matters set forth herein.
2. I am a partner with the law firm Arnold & Porter Kaye Scholer LLP and one of the attorneys representing Plaintiffs in this case.
3. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction.
4. Attached as Exhibit A is a true and correct copy of the transcript of the Deposition of Thomas B. Hofeller, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 24, 2017).
5. Attached as Exhibit B is a true and correct copy of the transcript of the Deposition of Representative David Lewis, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 26, 2017).

6. Attached as Exhibit C is a true and correct copy of the Redistricting Criteria for the 2016 Congressional Plan adopted by the North Carolina General Assembly Joint Committee on Redistricting on February 16, 2016.

7. Attached as Exhibit D is a true and correct copy of the transcript of proceedings before the North Carolina General Assembly Joint Committee on Redistricting on February 16, 2016.

8. Attached as Exhibit E is a true and correct copy of the transcript of proceedings before the North Carolina General Assembly Joint Committee on Redistricting on February 17, 2016.

9. Attached as Exhibit F is a true and correct copy of the transcript of floor proceedings before the North Carolina House of Representatives on February 19, 2016.

10. Attached as Exhibit G is a true and correct copy of Exhibit 42 to the Second Deposition of Thomas B. Hofeller, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Feb. 10, 2017).

11. Attached as Exhibit H is a true and correct copy of the transcript of the Second Deposition of Thomas B. Hofeller, Volume II, prepared in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Feb. 10, 2017).

12. Attached as Exhibit I is a true and correct copy of the Second Declaration of Thomas B. Hofeller, prepared in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Oct. 26, 2017).

13. Attached as Exhibit J is a true and correct copy of the transcript of the Deposition of Robert A. Rucho, taken in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Jan. 25, 2017).

14. Attached as Exhibit K is a true and correct copy of excerpts to Defendants' Responses to Plaintiffs' First Requests for Admission, filed in *Common Cause v. Rucho*, No. 16-cv-1026 (M.D.N.C. Apr. 24, 2017).

15. Attached as Exhibit L is a true and correct copy of excerpts of the transcript of the Trial Testimony of Thomas Hofeller, given in *Harris v. McCrory*, No. 13-cv-949 (M.D.N.C. Oct. 14, 2015).

16. Attached as Exhibit M is a true and correct copy of the Engagement Letter Contract dated February 16, 2016 between Legislative Defendants and Dr. Thomas Hofeller, introduced as an exhibit in *Common Cause v. Rucho*, No. 16-cv-1026.

Respectfully submitted this the 30th day of September, 2019.

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore

Exhibit A

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

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

1
2 NC DEPARTMENT OF JUSTICE
BY: ALEC PETERS, ESQ.
3 JAMES BERNIER, JR., ESQ.
PO Box 629
4 Raleigh, NC 27602
(919) 716-6400
APeters@ncdoj.gov
JBernier@ncdog.gov

6
7 Also Present: Robert A. Rucho
David Lewis
Dalton Oldham, Esq.

8
9
10 The Reporter: Discovery Court Reporters
and Legal Videographers, LLC
BY: DENISE MYERS BYRD, CSR 8340
11 BRENT TROUBLEFIELD,
VIDEOGRAPHER
4208 Six Forks Road, Suite 1000
12 Raleigh, NC 27609
(919) 424-8242
(919) 649-9998 Direct
Denise@DiscoveryDepo.com

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15 --o0o--

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1 APPEARANCES

2 For the Plaintiffs: Common Cause, et al.

3
4 BONDURANT MIXSON & ELMORE
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7
8 POYNER SPRUILL
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CAROLINA P. MACKIE, ESQ.
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ESpeas@poynerspruill.com
CMackie@poynerspruill.com

11
12
13 For the Plaintiffs: League of Women Voters, et al.
14 SOUTHERN COALITION FOR
SOCIAL JUSTICE
15 BY: ANITA S. EARLS, ESQ.
1415 Highway 54
16 Suite 101
Durham, NC 27707
17 (919) 323-3380 x 115
AnitaEarls@southerncoalition.org

18
19 For the Defendants:
20 OGLETREE DEAKINS NASH SMOAK
BY: THOMAS A. FARR, ESQ.
21 PHILLIP J. STRACH, ESQ.
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23 Raleigh, NC 27609
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Thomas.Farr@ogletreedeakins.com
24 Phil.Strach@Ogletreedeakins.com
25

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1 THE VIDEOGRAPHER: On record at
2 10:05 a.m. Today's date is January 24, 2017.
3 This is the videotaped deposition of
4 Thomas B. Hofeller taken in the matter of League
5 of Women Voters of North Carolina, et al.,
6 versus Robert A. Rucho, et al., in the Civil
7 Action Number 116-CV-1164 taken in the
8 United States District Court for the Middle
9 District of North Carolina; and also in Common
10 Cause, et al., plaintiffs, versus Robert A.
11 Rucho, et al., defendants in the United States
12 District Court for the Middle District of
13 North Carolina, Civil Action Number
14 116-CV-1026-WO-JEP.
15 Would counsel please now introduce
16 themselves and whom they represent and then the
17 court reporter will swear in the witness.
18 MR. BONDURANT: I'm Emmet Bondurant. I
19 represent Common Cause.
20 MR. SPEAS: I'm Edwin Speas. I also
21 represent Common Cause.
22 MR. THORPE: Ben Thorpe. I represent
23 Common Cause.
24 MS. EARLS: Anita Earls representing
25 the League of Women Voters, plaintiff.

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6

1 MS. MACKIE: Caroline Mackie
2 representing Common Cause.
3 MR. FARR: Tom Farr from the Ogletree
4 office in Raleigh representing the defendants in
5 both cases.
6 MR. STRACH: Phil Strach with Ogletree
7 representing the defendants in both case.
8 MR. BERNIER: James Bernier, Assistant
9 Attorney General representing defendants in both
10 cases.
11 THOMAS B. HOFELLER,
12 having been first duly sworn or affirmed by the
13 Certified Shorthand Reporter and Notary Public
14 to tell the truth, the whole truth and nothing
15 but the truth, testified as follows:
16 EXAMINATION
17 BY MR. BONDURANT:
18 Q. Would you state your full name and address for
19 the record.
20 A. Thomas Brooks Hofeller, 6701 Point Vista Circle,
21 Raleigh, North Carolina, 27615.
22 Q. How long have you lived in Raleigh,
23 Dr. Hofeller?
24 A. Since October 14th of 2014.
25 Q. Are you currently employed?

8

1 A. Well, I'm semiretired, but I don't have a
 2 regular job. I do consulting work.
 3 Q. What sort of consulting work are you now doing?
 4 A. I have -- well, at least I had -- I don't know
 5 if I still have it now, but I had a consulting
 6 contract with the Republican National Committee,
 7 a monthly contract, and I do work in
 8 redistricting and court testimony, legal
 9 support.
 10 Q. For the Republican National Committee and
 11 related organizations?
 12 A. Mostly not, no. I really do it for other
 13 organizations.
 14 Q. Other organizations being whom?
 15 A. Well, in this case it's the defendant
 16 intervenors through the lawyer's office. And I
 17 am currently also active in a case in Virginia
 18 Besilind, and I've been retained by the lawyer
 19 for the defendant intervenors.
 20 Q. Is your contract with the Republican National
 21 Committee in writing?
 22 A. It was in writing a long time ago. It's sort of
 23 just gone on a month-to-month basis, and, of
 24 course, we've just had the change in
 25 administration so I don't know actually what my

9

1 status is there at the time.
 2 Q. Do you have a copy of that contract?
 3 A. Probably somewhere, yes, but I'd have to look
 4 for it.
 5 Q. Let me ask the court reporter to mark as
 6 Hofeller Exhibit 1 a copy of your resume.
 7 (WHEREUPON, Plaintiffs' Exhibit 1 was
 8 marked for identification.)
 9 BY MR. BONDURANT:
 10 Q. Do you recognize that as the resume you
 11 presented in the Covington case?
 12 A. Of course I'd have one more addition to it,
 13 which is my participation in the Besilind case
 14 in Virginia.
 15 Q. The addition being cases in which you are either
 16 currently involved or have testified as an
 17 expert?
 18 A. Well, I haven't testified. I've given an expert
 19 report in Besilind.
 20 Q. Is it your intention to provide an expert report
 21 in this case?
 22 A. I haven't been asked to do it yet so I don't
 23 know.
 24 Q. In your resume you indicate that you've had
 25 50 years experience in the redistricting field.

10

1 Could you elaborate on that and tell us what you
 2 mean by that.
 3 A. Well, in 1965, I was hired by the majority
 4 leader I believe in the state senate in
 5 California, that's a long time ago, to help
 6 develop a database for use in redistricting in
 7 California.
 8 California had just been ordered by the
 9 court to switch to one-person, one-vote, and
 10 they needed to do a mid decade redistricting,
 11 and it was a project involving the mashing of
 12 census tracks to precincts in California so they
 13 could build a political and demographic
 14 database.
 15 In 1970, I was part of a firm which was
 16 retained by the California assembly to build a
 17 computerized redistricting system for use in the
 18 1971 redistricting. This involved creation of
 19 software and databases for use in that
 20 redistricting.
 21 I did essentially the same thing but
 22 for a -- through the Rose Institute of State and
 23 Local Government in the '80s, built another
 24 computerized redistricting system, and I've been
 25 drawing plans and looking at -- building

11

1 databases and looking at databases.
 2 I also testified in a trial in
 3 Mississippi in the late '70s, Conner V Finch, I
 4 think it was, and built another redistricting
 5 system.
 6 So I've been active in the
 7 redistricting field for -- for now going on
 8 51 years, I guess.
 9 Q. In 1989, you became the redistricting director
 10 for the Republican National Committee?
 11 A. Actually, that's not true. I was the
 12 redistricting director at the RNC first in 1982.
 13 I believe January of '82 I became redistricting
 14 director and also the director of their computer
 15 services division, so I was wearing two hats
 16 there for a while.
 17 Q. What was your -- what were your duties as
 18 redistricting director for the RNC beginning in
 19 1982?
 20 A. Well, we were just finishing up the 1980
 21 redistricting cycle, and I was responsible for
 22 aiding and assisting Republican organizations
 23 across the country in fulfilling their
 24 redistricting needs. It was really kind of the
 25 tail end of that process then.

12

1 As computer services director, I ran
 2 the IT shop for the Republican National
 3 Committee in Washington, DC.
 4 Q. And what did the IT shop consist of as far as
 5 redistricting was concerned?
 6 A. Most of it was data work, building databases and
 7 lending technical assistance to the players in
 8 the redistricting process as needed.
 9 Q. How did those databases relate to the
 10 redistricting process?
 11 A. Well, in redistricting, you essentially have two
 12 sets of data that have to operate in tandem:
 13 One is political data, which are the results of
 14 elections, and also of registration, and that
 15 has to be matched and merged with data which
 16 comes from the United States Census Bureau which
 17 gives the demographics of the areas. And
 18 there's quite a bit of work involved in melding
 19 the two types of data together.
 20 Q. When you say political data, could you tell us
 21 precisely what you mean.
 22 A. Results of elections and registration numbers.
 23 Q. Any other political data? Is there a definition
 24 of the term?
 25 A. The only thing I can think of right offhand

13

1 would be residences of incumbents, but that's
 2 really part of the voter file.
 3 Q. When you say results of elections, you're
 4 referring to how a particular geographic area
 5 voted in primary or general elections?
 6 A. Yes.
 7 Q. Do you -- for your purposes in your database
 8 work, do you use primary election results or
 9 general election results or both?
 10 A. Generally we use general election results,
 11 usually a presidential, U.S. Senate, House of
 12 Representatives, statewide votes such as
 13 governor, lieutenant governor, attorney general.
 14 Some states have more elected officials. Other
 15 states have less. And also, of course,
 16 legislative results. We're also interested, of
 17 course, in registration numbers too.
 18 Q. For what purpose do you use election results?
 19 A. To determine how areas that are being drawn into
 20 new districts or taken out of new districts vote
 21 and to try and make an estimate of what
 22 electoral success may be in newly formed
 23 districts, although it doesn't always end up
 24 being exactly as you predicted.
 25 Q. Are past election results in your opinion the

14

1 best predictor of how a particular geographic
 2 area is likely to vote --
 3 A. Yes.
 4 Q. -- in a future election?
 5 Is that an industry standard among
 6 people who are engaged in map drawing for
 7 political parties on either side?
 8 A. Yes. Well, I don't know -- I can't tell you
 9 about the other side. I haven't drawn districts
 10 for partisan Democrats except in very limited
 11 circumstances, but in most cases I think experts
 12 across the country would agree that past
 13 elections are the best, if not imperfect,
 14 indicator of what future results may be.
 15 Q. Is there any more reliable indicator of future
 16 election results than how a particular
 17 geographic area voted in past elections in your
 18 opinion?
 19 A. Not really, no.
 20 Q. Is your opinion based not only on your own
 21 experience but social science research,
 22 political scientists and others who sample that
 23 sort of thing?
 24 A. Certainly any that I've talked to or read have
 25 said that, but, yes. The people who actually

15

1 draw the districts want that information more
 2 than anything else. And I think people who are
 3 voting on the districts, the people who may be
 4 authorizing these plans or passing the
 5 redistricting statutes would all want to know
 6 what the past election results are in the area
 7 that they're going to get a new plan.
 8 Q. So in your opinion, the most important
 9 information in trying to give one party or the
 10 other a partisan advantage in the redistricting
 11 process would be past election results?
 12 A. If that was what you were trying to do, yes.
 13 Q. And when you are engaged by the Republican Party
 14 or by Republican legislators in the state, that
 15 is your objective, isn't it, to draw districts
 16 that will give that party the maximum advantage
 17 in state legislative or congressional elections?
 18 A. Not always.
 19 Q. What other instances are you asked to draw
 20 districts?
 21 A. There are other criteria at play in drawing
 22 districts. First you have one-person, one-vote,
 23 which is a federal requirement. You have the
 24 requirements of the Voting Rights Act, which are
 25 also federal. There are traditional

16

1 redistricting criteria such as respect for
 2 communities of interest, counties in particular,
 3 cities. You have compactness. You have
 4 contiguity. So there are other factors that
 5 play off against the political data.
 6 Q. But as far as attempting to achieve a partisan
 7 advantage for the party whom you were hired to
 8 represent, is political data the principal data
 9 on which you would rely to achieve that
 10 objective?
 11 A. I'm not sure I agree with the premise of your
 12 question. I really never have been hired by a
 13 political party to actually draw lines, so I
 14 can't quite -- maybe you could ask that a
 15 different way.
 16 Q. When you're employed by a law firm representing
 17 legislators, such as Senator Rucho or
 18 Representative Lewis, were you employed to give
 19 political considerations, principal
 20 consideration in drawing congressional districts
 21 in North Carolina?
 22 A. Well, again, when I've -- usually when I've been
 23 hired by a law firm, it hasn't been to actually
 24 draw districts. It's been to provide litigation
 25 support and analysis.

17

1 A. I'm sorry. Does this start at Line 10?
 2 Q. Line 16.
 3 A. I'm sorry.
 4 Q. "Would you describe yourself as the principal
 5 architect?"
 6 A. I guess I said I would.
 7 Q. Yes.
 8 A. It depends on what you mean by architect too.
 9 Q. Well, what you meant by architect when you
 10 answered the question was that you were the
 11 principal person who was responsible for
 12 drafting the plan that was ultimately adopted by
 13 the North Carolina General Assembly in 2011.
 14 A. Okay. Well, what I've always said is that an
 15 architect draws or designs a building -- excuse
 16 me -- according to the specifications by the
 17 person who wants the building built.
 18 So if you say that that's -- if you
 19 define it as such, I was the architect, but I
 20 wasn't building what I thought was needed to be
 21 built. I was building what the --
 22 Q. You were working at the direction of some
 23 other --
 24 MR. FARR: Can he finish his answer,
 25 please.

19

1 Q. But you did draw the districts in 2011. You
 2 were the principal architect.
 3 A. In 2011?
 4 Q. Yes, with the congressional districts.
 5 A. I did draft districts, yes.
 6 Q. And you were the principal architect?
 7 A. Well, people have stylized me that way, but...
 8 Q. Haven't you testified to that effect previously?
 9 A. I believe my memory is that I've testified to
 10 the fact that it was my job in the -- in the
 11 redistricting to be kind of the principal
 12 gatekeeper/scorekeeper of what was being drawn.
 13 So I would typically maintain the
 14 current copy of the map, and to some degree I
 15 was the architect, but, of course, I didn't make
 16 the decisions as to where the districts would
 17 actually go. That decision rested with the
 18 chairman in North Carolina, Chairman Lewis and
 19 Chairman Rucho as directors of the two
 20 committees as to what would actually be done in
 21 the end.
 22 Q. Let me show you Page 20, starting at Line 12
 23 through Line 16, of your deposition in Harris v
 24 McCrory taken on May 6, 2014. If you would read
 25 the question and your answer.

18

1 THE WITNESS: Excuse me. As the
 2 architect, I was designing the plan in
 3 accordance with the specifications that the
 4 legislature wanted, mainly represented by the
 5 chairman of the two committees.
 6 BY MR. BONDURANT:
 7 Q. You operated under the instructions given to you
 8 by Senator Rucho and Representative Lewis who
 9 were the co-chairmen of the joint committee of
 10 the senate and house in 2011?
 11 A. Yes.
 12 Q. And by specifications, you mean the instructions
 13 which they gave you?
 14 A. That's true.
 15 Q. And all of those instructions were oral?
 16 A. Yes.
 17 Q. There were no instructions given to you in
 18 writing?
 19 A. No.
 20 Q. There were no -- there's no paper trail against
 21 which we can evaluate your description of the
 22 instructions?
 23 A. I don't believe so, no.
 24 Q. And that was a deliberate choice on your part?
 25 A. If I received instructions on what I was to do,

20

1 the instructions came from the people who wanted
 2 it done. It would have been their choice as to
 3 how they wanted to give me the instructions, not
 4 mine.
 5 Q. But you advised them not to give you
 6 instructions in writing, to do so orally?
 7 A. I don't recollect that.
 8 Q. And when you received instructions, you made no
 9 written record or notes of the instructions?
 10 A. No.
 11 Q. Let me go forward with your history. According
 12 to your resume --
 13 A. Are we done with this exhibit?
 14 Q. Yes. You may need it again, but...
 15 You've told us you became a
 16 redistricting director in 1982. According to
 17 your resume, you were again made redistricting
 18 director for the Republican National Committee
 19 from March 1989 to November 1993.
 20 A. I believe that's not right.
 21 Q. If you'll turn to Page 7 of your resume. You
 22 list Republican -- National Republican
 23 Congressional Committee, redistricting director.
 24 A. That's correct, but it's not the Republican
 25 National Committee.

21

1 Q. Thank you for the correction.
 2 What is the difference between the
 3 Republican National Committee and the Republican
 4 Congressional Committee?
 5 A. The Republican National Committee is the
 6 official committee of the Republican Party. It
 7 puts on the conventions. Its primary function,
 8 actually, is putting on the nominating
 9 conventions. I believe legally -- I'm not an
 10 attorney so I don't know exactly that, but it is
 11 the Party.
 12 The National Republican Congressional
 13 Committee is the political committee of the
 14 Republican members of Congress, the caucus, and
 15 its duty is mainly to support electing and
 16 supporting Republicans in elections.
 17 Q. What were your duties as redistricting director
 18 for the Republican Congressional Committee in
 19 the March '89 through November '93 period?
 20 A. I would describe them as functionally the same,
 21 but the client was different. The National
 22 Republican Congressional Committee is
 23 overwhelmingly involved with the reelection and
 24 election of members to Congress from the
 25 Republican Party.

22

1 The National Committee has a much wider
 2 interest in redistricting involving state
 3 legislatures and Congress.
 4 Q. Was your focus in that capacity on achieving as
 5 much of a partisan advantage for the Republican
 6 members of Congress as possible in the states?
 7 A. I think you have to understand that as a
 8 redistricting --
 9 Q. Is that a "yes" or a "no"?
 10 A. It's a "no" the way you asked it.
 11 Q. Do you want to explain?
 12 A. Yes. The National Republican Congressional
 13 Committee does not draw districts and go into a
 14 state and say we've drawn your districts, here
 15 they are, all you need to do is enact this plan.
 16 You wouldn't be there very long if you did that.
 17 So our job, as was a lot of the jobs of
 18 the National Republican Committee, was to
 19 prepare Republican stakeholders for the
 20 redistricting process ahead of time and to
 21 support them in their needs to go through the
 22 process. So it was more an advisory role than
 23 it was anything else.
 24 The districts -- congressional
 25 districts in the United States are drawn by the

23

1 states, not by the national parties or national
 2 organizations.
 3 Q. Did you assist any states in drafting
 4 congressional plans during the -- that election
 5 cycle?
 6 A. I don't rightly remember one way or the other.
 7 That's been quite a few years.
 8 Q. Then according to your resume, you were again
 9 the redistricting director beginning in
 10 July 1999 through March 2003.
 11 What were your duties during that
 12 period?
 13 A. Well, just for the record, I was redistricting
 14 director for the Republican National Committee
 15 at that time, not the National Congressional
 16 Committee.
 17 Q. So in the '89 period, you were redistricting
 18 director for the congressional committee; in the
 19 '99 through 2003 period, you were the
 20 redistricting director for the Republican
 21 National Committee?
 22 A. That's correct.
 23 Q. What were your duties as redistricting director
 24 for the Republican National Committee?
 25 A. Again, I came on board in '99, I believe it was

24

1 like April, but I'm not sure. I'd have to look
 2 at my resume. Again, as I described to you
 3 already, the first task that I was involved in
 4 was getting the states ready, the stakeholders
 5 ready for the redistricting process.

6 A lot of people have actually forgotten
 7 about redistricting. Some have never been
 8 through it before. Some actually were glad to
 9 have forgotten about it, but there's a lot of
 10 education that needs to be done in terms of
 11 database building, in terms of acquisition of
 12 computer equipment and software and in terms of
 13 the status of the law. Redistricting law
 14 changes a lot between decades and to some degree
 15 the politics of redistricting. So we would go
 16 to states and help people when they wanted help.

17 I believe in that decade we also put on
 18 a redistricting conference. We also monitored
 19 the census. Before I got that job, I was
 20 actually the staff director of the U.S. House
 21 Subcommittee on the Census, and we monitored the
 22 activities of the Census Bureau, educated people
 23 about that data, where to get it, what they
 24 needed to do, in some cases emphasized to them
 25 that they needed to get as good a count as they

25

1 could of all their citizens, not all their
 2 citizens, actually all of their inhabitants, and
 3 get people actually thinking actively about
 4 redistricting.

5 It's many times hard to draw -- get
 6 their attention to it because --

7 Q. Did you draft plans --

8 A. Excuse me. I'm not finished yet. Do you want
 9 me to --

10 Q. If you want to take the time, go ahead.

11 A. Okay. Alright. I just said as the
 12 redistricting process unfolds, people come up
 13 with problems and with issues, and it was our
 14 job to assist them and make them as successful
 15 in accomplishing their redistricting goals as
 16 they could be.

17 Q. And the redistricting goals as far as the
 18 Republicans were concerned was to gain maximum
 19 partisan advantage?

20 MR. FARR: Objection to the form.

21 THE WITNESS: I wouldn't say that
 22 that's actually a correct premise. There are
 23 many things going on in redistricting and not
 24 always is partisan advantage the top goal.
 25 There are other criteria that are

26

1 involved. There are lots of interests involved.
 2 And so we took what they wanted to have as their
 3 goals and would say -- advise them on what would
 4 be wise and what would be unwise and how they
 5 could get it done.

6 BY MR. BONDURANT:

7 Q. Did you assist state legislators in drafting
 8 plans during the '99 to 2003 period that you
 9 were redistricting director for the Republican
 10 National Committee?

11 A. Again, it's been a long time and I don't
 12 remember the specifics of where I went and what
 13 I did.

14 Q. Did you assist the North Carolina Republicans in
 15 drafting plans for the -- in the 2009 -- excuse
 16 me -- in the 1999/2003 election cycle?

17 A. That would be the 2001 redistricting cycle?

18 Q. Yes.

19 A. If my memory serves me correctly, the plans in
 20 2001 were drafted by the Democrats and the
 21 majority in the legislature.

22 Q. That was not my question.

23 Did you assist the Republican members
 24 of the legislature in drafting plans for that
 25 cycle?

27

1 A. Those would have been sample plans, yes.

2 Q. Again in 2009 to 2011 you became a redistricting
 3 consultant for the Republican National
 4 Committee. What was the difference between your
 5 duties as a redistricting consultant versus
 6 redistricting director in the prior election
 7 cycle?

8 A. I wouldn't describe it as being much different.
 9 I think it was more the terms of my employment
 10 than it was the duties, a difference in duties.

11 It was to their advantage and to my
 12 advantage to come in as a consultant in that
 13 election -- or in that redistricting cycle
 14 rather than as an employee.

15 Q. Did you have a written contract with the RNC as
 16 a redistricting consultant?

17 A. Yes.

18 Q. Do you have a copy of that contract?

19 A. I don't know.

20 Q. Do you recall what that contract prescribed your
 21 duties to be?

22 A. I have no recollection of the actual specifics
 23 of the contract.

24 Q. In April 2011 you entered into a separate
 25 contract with the State Government Leadership

28

1 Foundation, correct?
 2 A. Okay. Yes.
 3 Q. Do you have a copy of that contract?
 4 A. I might, but I don't have it certainly readily
 5 at hand.
 6 (WHEREUPON, Plaintiffs' Exhibit 2 was
 7 marked for identification.)
 8 BY MR. BONDURANT:
 9 Q. Dr. Hofeller, I've asked the court reporter to
 10 mark Hofeller Exhibit 2. Can you identify it?
 11 A. That's a paper that I wrote while I was at the
 12 RNC.
 13 Q. Do you know approximately what the date of this
 14 paper is? It appears to be undated.
 15 A. It would have been, I believe, either 2009 or
 16 2010. I don't actually recall the date. I
 17 think it was published in a publication of the
 18 National Committee.
 19 Q. At the conclusion of the paper, the paper
 20 describes you as one of the GOP's preeminent
 21 redistricting experts. Would you agree with
 22 that description?
 23 A. Are you talking about the part in italics?
 24 Q. Yes.
 25 A. Let me read through it.

29

1 Again, one of the problems that I think
 2 both parties have in terms of redistricting is
 3 it's a process that only happens once a decade,
 4 very seasonal, and usually politicians and
 5 political operatives are focused on the problem
 6 at hand, usually the next election and a lot of
 7 other issues. Members of the legislature have a
 8 constant stream of legislation that's going
 9 through their chambers, and it's very difficult
 10 for them to -- excuse me -- to focus on a
 11 process that isn't right on top of them.
 12 And one of the problems with
 13 redistricting is that it requires a lot of
 14 preparation. It's not something you can turn to
 15 after the election, directly preceding the line
 16 drawing and say, oh, we're going to have
 17 redistricting, we have to get ready now.
 18 If you wait until that happens, you
 19 won't be ready and you'll have a lot of
 20 difficulty.
 21 So it was, I guess, probably best
 22 described as a wake-up piece, pay attention,
 23 this is coming up, you need to focus.
 24 Q. And in the second full paragraph, you say in the
 25 last sentence:

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1 Q. Certainly.
 2 A. Now that I've read it again, can you repeat your
 3 question. I'm sorry.
 4 Q. Would you agree with the statement that you are
 5 the GOP's -- one of the GOP's preeminent
 6 redistricting experts?
 7 A. I guess I would, yes.
 8 Q. Is there anyone with the GOP, including all of
 9 its iterations and committees, that you regard
 10 as more expert in partisan redistricting than
 11 you?
 12 MR. FARR: Objection to the form.
 13 THE WITNESS: I don't think I describe
 14 myself as a preeminent expert in partisan
 15 redistricting.
 16 I describe myself as it is describes --
 17 as it reads. It speaks for itself.
 18 There are some people across the
 19 country who are pretty knowledgeable in the
 20 field. I've just been, I think, at it longer
 21 than most of them.
 22 BY MR. BONDURANT:
 23 Q. Why did you write this paper?
 24 A. You know, that's been many years ago so I have
 25 to speculate on the exact motivations.

30

1 "Why are these state-level contests
 2 so important to the GOP? It is because
 3 it is in the states where the results of
 4 the 2010 census will be used to redraw
 5 the boundaries of congressional
 6 districts which will be used in the 2012,
 7 2014, 2016, 2018 and 2020 elections. The
 8 outcome of this battle will determine the
 9 electoral playing field for the next
 10 decade."
 11 Then in the next two sentences you say:
 12 "If the GOP wins big at the state
 13 and legislative level, it can be more
 14 assured of retaking and keeping control
 15 of the U.S. House. These election
 16 contests in 2010 are 'the hidden national
 17 elections of 2010 and beyond' and will
 18 determine GOP success in the 2012
 19 elections following redistricting."
 20 Do you see that?
 21 A. I do.
 22 Q. And you were trying to convince the Republican
 23 National Committee and the Republican Party to
 24 focus on the 2010 state elections as a method of
 25 achieving control of the House of

32

1 Representatives in Congress for the next decade.
 2 Isn't that fair?
 3 A. I don't know that I'd state it exactly as you
 4 stated it, but I would just say that anybody who
 5 knows anything about redistricting knows that
 6 the congressional districts are drawn in the
 7 states and that the states will draw the lines
 8 and in many ways that will control the shapes of
 9 the districts and who will be in control in
 10 Congress over the next decade.
 11 So I think that most of the readers of
 12 this already were aware of this, but, once
 13 again, it was trying to get them focused on it a
 14 little earlier than they might want to focus on
 15 it.
 16 Q. On Page 2, in the incomplete paragraph at the
 17 top of the page, you say:
 18 "Due to McCain-Feingold, it is now
 19 illegal for the RNC to raise and spend
 20 non-federal dollars to fund technical --
 21 critical technical and legal operations,
 22 and other national GOP organizations
 23 have been unwilling, or unsuccessful, in
 24 filling this funding void."
 25 Do you see that?

33

1 A. I do.
 2 Q. And the point you were making there is that the
 3 subset of GOP organizations weren't willing to
 4 fund the sort of technical support that you felt
 5 was necessary to prepare for the 2010 election
 6 cycle and take advantage of it?
 7 MR. FARR: Objection.
 8 You can answer.
 9 THE WITNESS: I don't think it was a
 10 matter of will. It was a matter of resources.
 11 McCain-Feingold changed the way that
 12 politics was funded in the country radically,
 13 and I think we were trying to explain to the
 14 states that they couldn't depend on the RNC to
 15 be able to give them the level of monetary
 16 support that they may have received in the
 17 previous redistricting cycle because of the
 18 limitations of fundraising.
 19 BY MR. BONDURANT:
 20 Q. In the next sentence you said:
 21 "The RNC had the foresight to
 22 reactivate its redistricting office in
 23 early 2009, but it has had to use federal
 24 dollars to do so."
 25 That is the office of which you were

34

1 the consultant in 2009, correct?
 2 A. I was consultant to that office, yes.
 3 Q. On the third page, in the last full paragraph
 4 above the map, you say: "This year's
 5 elections" -- you're referring to the 2010
 6 election cycle -- "could result in the GOP's
 7 full line-drawing control of as many as 151
 8 seats or as few as 16," correct?
 9 A. Well, that's what I said then. It turned out a
 10 lot differently.
 11 Q. Well, we'll see how it turned out.
 12 On the last page you again emphasize
 13 that "A switch of as few as 77 seats out of
 14 4,889 could have a huge impact on both parties'
 15 redistricting fortunes."
 16 MR. FARR: What page is that, Emmet?
 17 MR. BONDURANT: Page 6.
 18 THE WITNESS: I'm sorry, I just don't
 19 see it. Oh, here it is, the incomplete
 20 paragraph at the top.
 21 Yes, that's really a -- well, I guess
 22 that's true.
 23 BY MR. BONDURANT:
 24 Q. The point you were making is that if the
 25 Republicans, through whatever organizations,

35

1 could switch as few as 77 state legislative
 2 seats out of almost 5,000, that could have a
 3 huge impact on the makeup of the congressional
 4 delegation in the House of Representatives?
 5 A. Well, that's just a fact.
 6 Q. And that's the point you were trying to make to
 7 the Republican leadership?
 8 A. I didn't say that. I said the point I was
 9 trying to make is that you better pay attention
 10 to elections out in the states or state
 11 legislatures, in other statewide offices because
 12 it's going to have a national impact.
 13 Sometimes it's hard to get people to
 14 think about that because they may be saying,
 15 well, we're interested in congressional
 16 elections this next year and how those elections
 17 turn out. I'm saying there's another dimension
 18 to this year's elections.
 19 Q. And it's a long-term dimension that would apply
 20 to the entire decade: 2012, 2014, 2016, 2018,
 21 2020?
 22 A. Yes, that's true.
 23 (WHEREUPON, Plaintiffs' Exhibit 3 was
 24 marked for identification.)
 25 BY MR. BONDURANT:

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1 Q. Could you identify Deposition Exhibit 3, a
 2 PowerPoint presentation at which you were
 3 present on June 7, 2009.
 4 A. Yes.
 5 Q. Were you a presenter in that PowerPoint
 6 presentation?
 7 A. I was. I don't -- actually, I don't know how
 8 much Congressman Westmoreland said and I said.
 9 I was present, and I'm sure I spoke to it.
 10 Q. You were the principal author of this
 11 PowerPoint, weren't you?
 12 A. Yes.
 13 Q. And does that date of June 7 help you date your
 14 article that we identified as Hofeller
 15 Exhibit 2? Was Hofeller Exhibit 2 written
 16 before or after?
 17 A. I just have no recollection. I don't know.
 18 Q. It doesn't help you date it one way or the
 19 other?
 20 A. No, really not.
 21 Q. On the page that ends with the Bates number
 22 RSLC1535, you're emphasizing the importance of
 23 Republicans being at the table to get either
 24 full control or split control of the
 25 redistricting process.

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1 A. I'm sorry, I'm still trying to find the page.
 2 Q. Look at 1535. It's --
 3 A. Oh, I'm sorry. I didn't see the numbers at the
 4 bottom.
 5 This PowerPoint frame speaks for
 6 itself. There are three statuses that you can
 7 find yourself -- either party can find itself in
 8 in a redistricting process in an individual
 9 state. You either have full control, which
 10 means you can draw the lines that you think are
 11 best for the state; you have split control,
 12 which could result in a deadlock situation where
 13 either the two parties' operatives have to come
 14 to a compromise or it can end up in the courts.
 15 Q. When you say best for the state, if you're in
 16 full control, you really mean best for the party
 17 that is in full control?
 18 A. No. I said best for the state.
 19 Q. You don't think that it also in your terminology
 20 meant that if you were in full control, speaking
 21 to a Republican audience, you could draw the
 22 lines in a way that would be best for the Party?
 23 A. I think I already answered that question earlier
 24 in this deposition where I said there are many
 25 other factors that come in to play in

38

1 redistricting, so it's --
 2 Q. That wasn't my question.
 3 MR. FARR: Can he finish.
 4 BY MR. BONDURANT:
 5 Q. Can you draw the lines for the best interest of
 6 the Party, a partisan advantage over the other
 7 party if you're in control?
 8 MR. FARR: Excuse me, Emmet. I would
 9 like to ask you to let him finish his answer.
 10 MR. BONDURANT: I would like him to be
 11 responsive and not make a speech.
 12 MR. FARR: I think he was answering
 13 your question.
 14 MR. BONDURANT: Can you read the
 15 question back.
 16 (Record Read.)
 17 THE WITNESS: I think the answer would
 18 be you could if that was your goal.
 19 BY MR. BONDURANT:
 20 Q. On the page numbered 47, you break down which
 21 party has control of how many legislative seats
 22 currently.
 23 A. 1547?
 24 Q. Yes.
 25 A. No, that's not correct. We're not talking about

39

1 legislative seats here.
 2 Q. You're talking about congressional seats?
 3 A. That's true.
 4 Q. So the PowerPoint presentation headed 2010
 5 Reapportionment, Partisan Control of Process, as
 6 of 2010, based on the 2001 apportionment, the
 7 GOP controlled the apportionment of 107 seats,
 8 the Democrats controlled 124 seats.
 9 A. Again, that's not a precisely correct question.
 10 Q. Can you give me a precisely correct answer?
 11 A. No, then.
 12 Q. What is the information you're attempting to
 13 portray under "Partisan Control of Process" when
 14 you list GOP? What is the 107?
 15 A. I believe -- and I haven't seen this PowerPoint
 16 for a long time, but I believe what I'm saying
 17 here is that in the states in which the -- this
 18 is a result of the 2008 elections, not the 2010
 19 elections, so all the elections up to the point
 20 where I did the PowerPoint, GOP would have full
 21 control of the redistricting process in states
 22 which contained 107 congressional seats.
 23 Q. And likewise, the Democrats would have control
 24 of both houses in states that had 124 seats?
 25 A. No. They would have control of the process.

40

1 Each state -- states have different processes
 2 for redistricting. So, again, that's not
 3 precisely true. The Democrats would be -- would
 4 have control in states that contained 124 seats.
 5 Q. And there would be 161 seats in which the
 6 parties divided control -- controlling one house
 7 or the other in the state legislature?
 8 A. No, that's not precisely true because not in all
 9 states does the legislature do the
 10 redistricting.
 11 So I would say that this was our read
 12 as to which party would be in control of the
 13 line-drawing process, and in this case it would
 14 be split, but it doesn't say how it was split or
 15 how it was done.
 16 Q. The states in which the legislature does not
 17 control redistricting are the so-called
 18 commission states?
 19 A. Yes.
 20 Q. And you list them as controlling 36 seats?
 21 A. Yes.
 22 Q. And then there's seven states that have only one
 23 representative so they are elected at large and
 24 there is no redistricting?
 25 A. That's true.

41

1 Q. If you'll turn to the page numbered 1560, you
 2 say in your PowerPoint "Key Factors in Election
 3 Targeting, Within +to -5 of Control."
 4 What is the message you're conveying to
 5 your audience there?
 6 A. Actually, that frame conveys a whole series of
 7 messages. Do you want me to go through them
 8 all?
 9 Q. Let me try this: You're suggesting here that
 10 the Republicans target states in which they have
 11 an opportunity to shift legislative control from
 12 the Democrats of one house or both to the
 13 Republican Party?
 14 A. That's the first bullet, and the answer to that
 15 would be you could look at that as a starting
 16 point to where you thought committing, again,
 17 national money to the states would have a good
 18 chance of switching control of a legislative
 19 chamber. Of course, there are other states that
 20 have lots of representatives where the number
 21 may be plus or minus a lot higher number.
 22 That's just one message in this PowerPoint frame
 23 there. There are other messages too.
 24 (WHEREUPON, Plaintiffs' Exhibit 4 was
 25 marked for identification.)

42

1 BY MR. BONDURANT:
 2 Q. Can you identify Exhibit 4.
 3 A. That is a press release which was released by
 4 the Republican State Leadership Committee on
 5 February 19, 2010.
 6 Q. Did you have any role in drafting that press
 7 release?
 8 A. I don't really remember.
 9 Q. Is that press release consistent with the
 10 article which you had written previously urging
 11 Republican leaders to pay attention to the 2010
 12 redistricting, the article that we identified as
 13 Hofeller Exhibit 2?
 14 MR. FARR: Have you had a chance to
 15 read this exhibit?
 16 THE WITNESS: No. I really have to
 17 read -- I'd have to study -- I don't know which
 18 one predated the other one. This was not
 19 written by me. It was written by the people who
 20 controlled communications in that organization.
 21 So if you want to give me time, I can
 22 read through it and refresh myself with it.
 23 BY MR. BONDURANT:
 24 Q. I can ask you some questions about it and
 25 perhaps save us some time.

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1 You're familiar with the -- what became
 2 known as the REDMAP Project?
 3 A. Yes.
 4 Q. You as a consultant worked to further the REDMAP
 5 Project?
 6 A. I don't know -- you have to tell me what you
 7 mean by further it.
 8 Q. Assist in carrying it out.
 9 A. Okay. It was a portion of the REDMAP Project
 10 too. I think the main interest of the RSLC had
 11 was looking at places where they would pinpoint
 12 their resources in the upcoming election.
 13 My job was more one, once again,
 14 preparing stakeholders for the process that was
 15 coming up.
 16 Q. The purpose of the REDMAP Project was to win
 17 state legislative seats that would have a
 18 critical impact on redistricting in 2011.
 19 A. That's what they say, yes.
 20 Q. And the redistricting primarily was
 21 congressional redistricting?
 22 A. No. The RSLC is interested in legislative
 23 redistricting and legislative elections. That's
 24 its role. That's as defined from the
 25 Republican -- the National Republican

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1 Congressional Committee.
 2 Q. If you would go down to the third full
 3 paragraph, after reciting the people who were
 4 going to be leading it:
 5 "The four were active in the
 6 formulation of the American Majority
 7 Project (AMP) which was started to help
 8 state legislative races around the
 9 country that would affect congressional
 10 redistricting and decided the joining
 11 their efforts with the RSLC would have
 12 the most impact."
 13 A. I have to read the piece to understand the
 14 premise. I don't know what "the four were
 15 active" means. I have to read the piece to
 16 know.
 17 Q. Well, if you need to read a one-page document,
 18 go right ahead.
 19 MR. FARR: It's a two-page document.
 20 It's quite a few paragraphs.
 21 THE WITNESS: I would like to read
 22 every document that I'm testifying about.
 23 MR. FARR: And you can read it, Tom.
 24 MR. SPEAS: I don't think the record
 25 reflects that Senator Rucho and Representative

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1 Lewis are here and have been here since the
 2 beginning. I think it should. And also
 3 Mr. Oldham is here and has been here since the
 4 beginning, and Mr. Peters is here now.
 5 You agree with that, Tom?
 6 MR. FARR: Yes. Thank you for that
 7 clarification.
 8 THE WITNESS: All right. So in the
 9 paragraph above, we're talking about the senior
 10 advisors to the REDMAP Project, I believe, four
 11 individuals, not including myself, and they were
 12 active in the formation of the AMP, which I
 13 don't really remember until I saw this document
 14 because they were interested in the -- in the
 15 fact that legislative races would have an impact
 16 on congressional redistricting.
 17 BY MR. BONDURANT:
 18 Q. In fact, the REDMAP strategy was a strategy of
 19 the Republican State Legislative Committee to
 20 win Republican control of state legislatures
 21 that would have the largest impact on
 22 congressional redistricting, correct?
 23 MR. FARR: Objection.
 24 THE WITNESS: Again, I think the
 25 document speaks for itself.

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1 BY MR. BONDURANT:
 2 Q. I wasn't asking you about the document. I was
 3 asking about your knowledge of the REDMAP
 4 strategy.
 5 Would you read the question back.
 6 (Record Read.)
 7 MR. FARR: And I object to the form.
 8 You can answer.
 9 THE WITNESS: Again, REDMAP was --
 10 BY MR. BONDURANT:
 11 Q. Can you answer the -- the question has a
 12 yes-or-no answer.
 13 MR. FARR: Let him answer the question.
 14 BY MR. BONDURANT:
 15 Q. You can answer yes or no and then you can
 16 explain.
 17 A. Ask the question again. I'm sorry.
 18 (Record Read.)
 19 THE WITNESS: That's correct in part.
 20 BY MR. BONDURANT:
 21 Q. What part about it is incorrect?
 22 A. The other goal, of course, was just to win
 23 control of state legislatures, which is their
 24 primary mission. Aside from that, they were
 25 looking at legislative chambers that would

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1 change the control of the redistricting process.
 2 Q. And the REDMAP strategy of gaining control of
 3 state legislatures that would have the greatest
 4 impact on congressional redistricting was the
 5 strategy which you were proposing in your
 6 article "The Looming Redistricting Storm, How
 7 will the Republican Party Fare" that we marked
 8 as Exhibit 2.
 9 A. Again, I don't know which document predated
 10 which other document. So it was talking
 11 essentially about the same subject, yes.
 12 Does that satisfy you?
 13 Q. My real question: Was REDMAP your idea or was
 14 it somebody else's?
 15 A. No, it wasn't my idea.
 16 Q. Who is the principal author?
 17 A. The leadership of the RSLC.
 18 Q. And who would you identify personally to have
 19 been the brains behind the REDMAP strategy if it
 20 were not you?
 21 A. The leadership of the RSLC.
 22 Q. And what individuals would you name as being
 23 principally the authors of the REDMAP strategy?
 24 A. Well, that would have been Chairman Gillespie
 25 and Vice-Chairman Tom Reynolds, I'm sure advised

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1 by their political team. They had their own
 2 political team.
 3 Q. Were there any other individuals who in your
 4 opinion would be more knowledgeable about the
 5 origins of the REDMAP strategy than those two
 6 individuals?
 7 A. I think they had an executive director at the
 8 time. I just don't remember who it was.
 9 Q. Was that Chris Jankowski?
 10 A. I believe so, yes.
 11 Q. What was his role in developing the REDMAP
 12 strategy, if you know?
 13 A. I don't know.
 14 Q. Was his role more influential than yours?
 15 A. I was working for them, so I would have to say,
 16 yes, his role was more influential.
 17 MR. FARR: Emmet, we'd like to take
 18 breaks about every hour. When you have a
 19 chance, we'd like to take a break.
 20 MR. BONDURANT: Let's go through this
 21 document and then we'll...
 22 (WHEREUPON, Plaintiffs' Exhibit 5 was
 23 marked for identification.)
 24 BY MR. BONDURANT:
 25 Q. Dr. Hofeller, could you identify Exhibit 5.

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1 A. It's a PowerPoint made by the RSLC. I don't
 2 really remember it. I don't even remember if I
 3 ever actually saw this before.
 4 Q. So you don't know whether you saw it before or
 5 not?
 6 A. I don't, no.
 7 Q. Let's see if we can refresh your recollection.
 8 A. Okay. Thank you.
 9 Q. If you'll turn to the second page, the first
 10 heading is "Congressional Redistricting:
 11 Drawing Maps for the Next Five Elections."
 12 MR. FARR: Before we have any questions
 13 on that, could he just have time to go through
 14 the document.
 15 MR. BONDURANT: Sure. Absolutely.
 16 MR. FARR: Thank you.
 17 THE WITNESS: Okay.
 18 BY MR. BONDURANT:
 19 Q. You've had an opportunity to review Exhibit 5?
 20 A. Yes. Thank you.
 21 Q. Is it an accurate description of the REDMAP
 22 strategy as you knew it?
 23 A. I guess so. I guess I would have to say yes.
 24 Again, it wasn't my document. So I think it's
 25 primarily a fundraising piece.

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1 Q. And you were an integral part as a consultant of
 2 the efforts to redistrict in 2011 on behalf of
 3 the Republican State Legislative Committee and
 4 its foundation?
 5 MR. FARR: Objection to the form.
 6 THE WITNESS: I would have to say that
 7 I've already described to you what my role was.
 8 So if you're talking about their
 9 fundraising strategy, which this particular
 10 exhibit is related to, I was not involved in the
 11 fundraising.
 12 BY MR. BONDURANT:
 13 Q. You were involved in the map drawing?
 14 A. Again, in terms of the RSLC, I was not hired to
 15 be a map drawer. In fact, my contract with the
 16 RSLC ran out, I believe, before map drawing
 17 really started to any degree or extent in the
 18 country.
 19 Q. Let's go through this and be sure we are
 20 understanding the REDMAP Project.
 21 The second full page begins:
 22 "Congressional Redistricting:
 23 Drawing Maps for the Next Five Elections.
 24 Question: How do we create 20 to 25 new
 25 Republican Congressional districts over

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1 the next five cycles and solidify a
 2 Republican Congressional majority?"
 3 Was that the objective of the REDMAP
 4 strategy, principal objective?
 5 A. I guess so. I don't really know for sure
 6 because, again, I was just hired to do certain
 7 parts of it.
 8 Q. And on the next page, it gives an answer to the
 9 question of how that could be accomplished.
 10 "Control of the redistricting process."
 11 That is precisely what you advocated in
 12 your article marked as Exhibit 2, if you can
 13 control the redistricting -- control the
 14 legislature, you could control the redistricting
 15 process.
 16 MR. FARR: Objection.
 17 THE WITNESS: Not precisely true, no.
 18 That's -- the premise of your question is not
 19 correct.
 20 You may -- that may be a component.
 21 There are other components to controlling the
 22 redistricting process.
 23 I think that the -- once again, this
 24 PowerPoint frame speaks for itself. Yes, if
 25 you -- if you have control of more chambers in

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1 the right places, you will do better in
 2 redistricting. I think that goes without
 3 saying.
 4 BY MR. BONDURANT:
 5 Q. Now, if you'll turn to the page ending in
 6 numbers 446, it is headed "What will it take in
 7 2010?" and then it compares the cost of 20 to 25
 8 new Republican congressional districts for the
 9 next five cycles through redistricting, with the
 10 cost of competing in 20 to 25 competitive swing
 11 or Democratic leaning congressional districts
 12 for the next five cycles.
 13 Do you see that?
 14 A. Yes.
 15 Q. Had you seen that rationale before for the
 16 REDMAP Project?
 17 A. I have not been reticent to state the premise
 18 that it's much more expensive to elect
 19 Republicans in seats that are more balanced
 20 politically or Democrat controlled than it is to
 21 win elections in seats that lean Republican or
 22 are Republican seats.
 23 And that -- again, this is a
 24 fundraising piece so what they're -- they
 25 believed they were trying to do here is to say

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1 that an investment by donors of this amount of
 2 money could save a lot more money in the future.
 3 And again, they just pulled up 31.5 million
 4 versus 255 million I guess mostly based on what
 5 they perceive would be the amount of money that
 6 would be spent on congressional races which, of
 7 course, continues to rise as do all election
 8 costs.
 9 Q. As you were working as a consultant for the
 10 Republican State Legislative Committee during
 11 this period of time, did you have that rationale
 12 explained to you in these terms?
 13 A. Well, I already knew it. I didn't need to have
 14 it explained to me.
 15 Q. So you agreed with this analysis?
 16 A. I agree with the premise of the slide which is
 17 it is more efficient money-wise to put yourself
 18 in the position to draw better seats for
 19 yourself than to campaign in seats where you are
 20 at a disadvantage.
 21 Q. Or competitive seats?
 22 MR. FARR: Objection to the form.
 23 THE WITNESS: Again, in some cases it
 24 might not be a competitive versus a Republican
 25 seat. It might be a competitive seat versus the

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1 Democratic seat. In that case you would be at a
 2 better advantage. I mean, that's just
 3 elementary politics.
 4 MR. BONDURANT: Do you want to take
 5 this break now?
 6 MR. FARR: Sure. Thank you, Emmet.
 7 THE VIDEOGRAPHER: Off record at
 8 11:17 a.m.
 9 (Brief Recess.)
 10 THE VIDEOGRAPHER: On record at
 11 11:31 a.m.
 12 (WHEREUPON, Plaintiffs' Exhibit 6 was
 13 marked for identification.)
 14 BY MR. BONDURANT:
 15 Q. Dr. Hofeller, can you identify Exhibit 6?
 16 A. Let me just review it quickly.
 17 Q. Certainly.
 18 A. In answer to your question, it's a -- I guess a
 19 political report from REDMAP on the progress of
 20 their project.
 21 Q. It's dated July 2010?
 22 A. Yes.
 23 Q. Do you recall whether you saw this report at or
 24 about the time it was published?
 25 A. No. I mean, no, I don't recall.

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1 Q. In the ordinary course as the consultant
 2 employed by the Republican State Legislative
 3 Committee, would you expect to have seen these
 4 reports routinely?
 5 A. Not necessarily, no.
 6 Q. I want to ask you about the couple paragraphs
 7 here. In the introduction, it says:
 8 "The REDistricting MAjority Project
 9 (REDMAP) is a program of the Republican
 10 State Leadership Committee (RSLC)
 11 dedicated to winning Republican control
 12 of state legislatures that will have the
 13 most impact on Congressional
 14 redistricting 2011."
 15 Do you see that?
 16 A. I do.
 17 Q. You were familiar with that as being the
 18 objective of the REDMAP Project in 2010?
 19 A. It was an objective, yes.
 20 Q. And in the last full paragraph, it says:
 21 "Impact on Congressional
 22 Redistricting: If and when Republicans
 23 are successful in the races addressed in
 24 this report, the Republican Party will
 25 have an impact on the redrawing of

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1 numerous Congressional districts across
 2 the country, an effect that will be felt
 3 for the next decade."
 4 Let me stop there. You were familiar
 5 with that would be the effect of the REDMAP
 6 Project if it were successful?
 7 A. Yes. If it were successful, yes.
 8 Q. Would you agree that that seems very similar to
 9 that which you were advocating in your article
 10 marked as Exhibit 2?
 11 A. Yes, I'd say so. Again, I don't know -- I don't
 12 know if this predates or postdates my article so
 13 I can't tell you. I just don't remember.
 14 Q. And based on your experience, you knew that if
 15 the Republicans could control the redistricting
 16 of congressional districts, the effect would be
 17 felt for the entire decade, not merely for one
 18 or two elections?
 19 A. The effect of the redistricting process in
 20 general is felt for five following elections, of
 21 course, unless there are lawsuits.
 22 Q. Intervening court rulings?
 23 A. Which are numerous.
 24 Q. But absent intervening court rulings, the effect
 25 of a partisan redistricting in 2012 would be

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1 felt for the entire decade?
 2 A. Again, the -- any redistricting's effects are
 3 felt through the entire period until the next
 4 line-drawing process, so that would be 2021 in
 5 this case.
 6 Q. Did you agree with the last sentence that
 7 Republicans have an opportunity to create 20 to
 8 25 new Republican congressional districts
 9 through the redistricting process over the next
 10 five election cycles, solidifying a Republican
 11 House majority?
 12 A. I'm just going on to read the rest of the
 13 paragraph, if you don't mind.
 14 Q. Sure, go right ahead. I'll get to the rest of
 15 it too, but...
 16 MR. FARR: Emmet, one other question
 17 about this line of questioning. Is it a good
 18 time for me to ask you a question?
 19 MR. BONDURANT: Sure.
 20 MR. FARR: I'm wondering, was this --
 21 these exhibits from RSL, were these obtained by
 22 you through a subpoena?
 23 MR. BONDURANT: Yes.
 24 MR. FARR: Did we get copies of those?
 25 MR. BONDURANT: It's my understanding

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1 you did.
 2 MR. FARR: But we didn't get copies of
 3 the exhibits.
 4 MR. THORPE: They are responsive
 5 production to the subpoena.
 6 MR. FARR: So we didn't -- when the
 7 documents were produced to you, you didn't
 8 provide copies of those documents to us prior to
 9 this deposition?
 10 MR. BONDURANT: I thought they had been
 11 produced. In fact, I thought the RSLC gave them
 12 to you simultaneous with us.
 13 MR. THORPE: Yes, that's right.
 14 MR. FARR: I don't remember, but it
 15 could be true. We'll check.
 16 MR. BONDURANT: If you don't have them,
 17 I will guarantee you'll get copies.
 18 MR. FARR: Okay.
 19 MR. BONDURANT: And intended -- I had
 20 assumed that the RSLC had produced them to
 21 everybody simultaneously.
 22 MR. FARR: And, Emmet, that's possible,
 23 but I don't remember it so we'll just check.
 24 MR. BONDURANT: Yeah.
 25 MR. FARR: If it didn't happen, then

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1 I'm sure it was inadvertent.
 2 BY MR. BONDURANT:
 3 Q. Do you need the question read back?
 4 A. Probably. Yes. I'm sorry.
 5 Q. That's all right.
 6 (Record Read.)
 7 THE WITNESS: I would agree on the
 8 premise that you understand that this is not my
 9 document. I didn't write it. I haven't had a
 10 chance to look at the conclusions that they've
 11 made.
 12 The prediction of what seats are
 13 possible to win and what the results will be is
 14 rather subjective analysis, particularly before
 15 the elections.
 16 So the author of this piece thought
 17 there were 20 to 25 congressional districts that
 18 would be made more favorable to the Republicans,
 19 so I agree the article says that. I haven't had
 20 a chance to look at their state-by-state
 21 analysis and say if it agreed with my analysis.
 22 They might have been more optimistic than I
 23 might have been. They might have been more
 24 pessimistic. I just don't know.
 25 BY MR. BONDURANT:

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1 Q. But you understood at the time, that is, in the
 2 summer of 2010, that this was the optimistic
 3 projection of the Republican State Legislative
 4 Committee that it can win 20 to 25 new
 5 congressional seats by targeting state
 6 legislative races?
 7 A. I'm sorry, I just stated just before that that
 8 was their prediction, and I don't know --
 9 Q. My question is: Were you aware that was their
 10 understanding and prediction at the time?
 11 A. That it was their understanding and prediction?
 12 Q. Yeah.
 13 A. I don't know that I really was, no. I may have
 14 made my own estimate as to what was possible,
 15 but I don't -- I have -- I don't remember this
 16 piece. I didn't write it. So all I can say is
 17 this was their prediction which they put out. I
 18 was busy doing what I was hired to do and this
 19 was not it.
 20 Q. But you were hired to work for this committee.
 21 A. Obviously if I was hired I worked for the
 22 committee, yeah.
 23 Q. And you were hired to work for this committee on
 24 the redistricting that would follow the 2010
 25 election.

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1 A. No. I was hired to help stakeholders to prepare
 2 for the redistricting process and be ready to do
 3 the work they wanted to do, whatever they wanted
 4 to do.
 5 Q. And by stakeholders, you mean Republican
 6 legislators in states that were going to be
 7 responsible for the redistricting after the 2010
 8 census?
 9 A. Well, there are actually numerous stakeholders,
 10 among which are Republican caucuses in various
 11 state legislatures.
 12 Q. You were not assisting Democratic state
 13 legislators in preparing for the 2010 census?
 14 A. No, I don't believe so. No. I don't know, they
 15 might have seen this fundraising piece or these
 16 pieces and taken action.
 17 Q. You mentioned your own estimates. Do you recall
 18 what your estimates were of the likely effect of
 19 the REDMAP Project if it were successful on the
 20 congressional redistricting?
 21 A. I don't know how much of it you could have
 22 actually attributed to the REDMAP Project. That
 23 was just one of the factors that went into this
 24 process of doing better in the 2010 elections.
 25 Q. Did you have an estimate of what effect it would

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1 have on congressional elections if Republicans
 2 could gain control of more state legislatures in
 3 the 2010 election?
 4 A. To that I can say, yes, I did have an estimate
 5 if they gained control. That's a more generic
 6 question than what you asked before.
 7 Q. What was your estimate of the number --
 8 A. It was wrong, I can tell you that.
 9 Q. What was your estimate --
 10 A. I don't remember exactly. I had a piece of
 11 paper that I had written notes down on. I don't
 12 remember exactly what it says. I don't have
 13 that piece of paper any more.
 14 Q. Do you remember generally what your estimate --
 15 A. I think this was generally in the ballpark, yes.
 16 Q. When you say this was generally in the ballpark,
 17 20 to 25 gain of Republican seats was in the
 18 ballpark?
 19 A. It was certainly a possibility, yes.
 20 Q. Was it consistent with your estimate?
 21 A. Again, I don't have my estimates in front of me
 22 so I don't know. I think it was generally -- it
 23 was generally consistent with my estimate that
 24 if we had a high degree of success in the 2010
 25 elections for the state legislatures and other

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1 statewide offices, which were also important,
 2 that we would do better in redistricting.
 3 And I don't think that this kind of a
 4 gain is -- was, again, generally consistent with
 5 what I thought. Again, this is a very
 6 subjective process. They have a chart on the
 7 second page which goes through certain states
 8 and makes that analysis.
 9 Q. And did you go through that chart in the summer
 10 of 2010 or a similar one?
 11 A. I don't recall ever having seen this particular
 12 piece.
 13 MR. FARR: Tom, let him finish his
 14 question.
 15 THE WITNESS: I'm sorry.
 16 BY MR. BONDURANT:
 17 Q. With specific reference to North Carolina, the
 18 chart on Page 2 indicates that the objective of
 19 the REDMAP Project was to neutralize the
 20 Democratic advantage in both the North Carolina
 21 House and Senate.
 22 Do you see that?
 23 A. Yeah, I see it.
 24 Q. Did you understand that to be an objective of
 25 the REDMAP Project in the summer of 2010?

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1 A. Again, I didn't write this piece. This is a
 2 specific objection, but I'm sure that the
 3 Democrat -- or the REDMAP would want to try and
 4 enhance the Republican numbers in both houses of
 5 the state legislature.
 6 Q. With specific reference to North Carolina, you
 7 knew that the objective was neutralize the
 8 Democratic advantage in North Carolina, take
 9 over control?
 10 A. Well, you can neutralize the Democratic
 11 advantage by winning one chamber, not both
 12 chambers. So it would -- it would be the goal
 13 of the RSLC to elect more Republican members to
 14 either of the chambers in the North Carolina
 15 legislature, and if they had control of one
 16 chamber, then the Democrats would not be able to
 17 draw the maps they wanted. They might have to
 18 compromise.
 19 Q. Did you understand in your work as a consultant
 20 for the Republican State Legislative Committee
 21 that the goal of the REDMAP Project was to win
 22 traditionally swing states so they could be
 23 redrawn by the Republicans?
 24 A. Again, you have to define what you mean by a
 25 swing state. There are many definitions of a

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1 swing state.
 2 Q. Well, let me read you a sentence.
 3 "If REDMAP achieves its goals,
 4 nearly half of the traditionally swing
 5 states [sic] will be drawn by Republicans
 6 before the 2012 election cycle."
 7 What is your definition of a swing
 8 state?
 9 A. The generic definition is a state which will
 10 vote either Republican or Democratic depending
 11 on the issues and the candidates and the amount
 12 of money spent in the election.
 13 If you look at it in redistricting
 14 context, it would be -- I don't think you'd have
 15 what they call a swing state in the context of
 16 redistricting.
 17 Q. But you understood when you were working for the
 18 Republican State Legislative Committee as a
 19 consultant that one of its goals was to win
 20 control of the redistricting process in at least
 21 half of the traditional swing states?
 22 A. I really don't remember whether that was the
 23 percentage involved.
 24 All I remember is that they were --
 25 they would be doing their full -- fulfilling

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1 their mission, which was to enhance the number
 2 of Republican legislators, and that they were
 3 focused in on chamber control more than anything
 4 else and the byproduct for that chamber control
 5 is an effect on the redistricting process.
 6 Q. From your recollection, you would not disagree
 7 with the statement that the goal of the project
 8 was to win control in traditionally swing states
 9 so that at least half of them would be redrawn
 10 by the Republican Party?
 11 MR. FARR: Objection.
 12 THE WITNESS: Well, in order to redraw
 13 half the seats --
 14 BY MR. BONDURANT:
 15 Q. Do you agree -- do you agree or disagree with
 16 the statement?
 17 A. I guess, no. The way you asked the question, my
 18 answer would be no.
 19 Q. Are you saying you think the statement is
 20 incorrect when it says if REDMAP achieves its
 21 goal, nearly half of the traditionally swing
 22 states will be redrawn by Republicans before the
 23 2012 election cycle?
 24 A. Again, it depends on the fact that I don't know
 25 what they meant by swing states, and if it's

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1 half of the swing states, that's I think
 2 different than what you asked me the first time.
 3 So --
 4 Q. The question is: Do you agree or disagree with
 5 the statement that that was the goal as stated
 6 in this document of the REDMAP Project?
 7 A. I do not disagree that that was the goal of this
 8 statement, yeah, in there.
 9 Q. And as you understood the project at the time,
 10 you understood that to be part of the goal?
 11 A. Again, I don't -- I can't speak as to the
 12 specifics of that particular statement which is
 13 not authored by me or said by me.
 14 The project was to win control of more
 15 states legislators -- legislatures and that
 16 would have a very significant effect on
 17 redistricting.
 18 MR. BONDURANT: Mark that as 6A,
 19 please.
 20 (WHEREUPON, Plaintiffs' Exhibit 6A was
 21 marked for identification.)
 22 THE WITNESS: Is that not the same
 23 piece. No. Okay.
 24 MR. FARR: Not to interrupt you, do you
 25 have an extra one of these for the Attorney

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1 General's Office so they can start looking at
 2 these too?
 3 Thank you very much. I should have
 4 asked earlier.
 5 BY MR. BONDURANT:
 6 Q. Dr. Hofeller, can you identify Deposition
 7 Exhibit 6A as simply another version of
 8 Exhibit 6?
 9 A. It appears to be, yes. Maybe more detailed.
 10 Q. I'm not even sure there's any differences, just
 11 on different paper.
 12 A. Maybe they were trying to make it more
 13 understandable to some people.
 14 Q. But in any event, you would identify that as
 15 being a political report dated July 10th of the
 16 REDMAP Project for which you were a consultant?
 17 A. That's what the header says. Yes, I agree
 18 that's what it is.
 19 Q. And if it were produced at that time, you expect
 20 routinely that you would have seen it?
 21 A. No. In fact, I don't remember seeing it at all.
 22 (WHEREUPON, Plaintiffs' Exhibit 7 was
 23 marked for identification.)
 24 THE WITNESS: Actually, he would be
 25 familiar with this because that was drawn in

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1 your state by a Democrat.
 2 BY MR. BONDURANT:
 3 Q. Can you identify Exhibit 7 as a PowerPoint which
 4 you authored dated January 24, 2011?
 5 A. Yes, I could identify it as you stated.
 6 Q. And at the time you authored this, you were
 7 redistricting coordinator for the Republican
 8 National Committee?
 9 A. Yes.
 10 Q. Were you redistricting coordinator for the
 11 Republican National Committee at the same time
 12 that you were a redistricting consultant of the
 13 Republican State Legislative Committee?
 14 A. Let me think. I believe so, yes. I think the
 15 contract with the RSLC ran out in April of that
 16 year.
 17 Q. So in February or January you were still on the
 18 payroll of the RNC, not the RSLC?
 19 A. To the best of my knowledge, I was, yes,
 20 receiving funding from both.
 21 Q. When you are retained by state legislatures or
 22 law firms to assist them in redistricting, does
 23 this PowerPoint contain the advice which you
 24 give them in that relationship?
 25 A. Generally, yes, I think.

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1 Q. Does the PowerPoint --
 2 A. I would just like to expand a little, that
 3 whatever PowerPoint I might give might be more
 4 tailored to the audience to whom it has been
 5 given.
 6 Q. Specifically in the PowerPoint, you advise your
 7 audience and you advise your clients to make
 8 sure that the computer you use for redistricting
 9 is kept in a private location?
 10 A. Yes.
 11 Q. Now, in North Carolina, the state legislative
 12 office had its own redistricting computer; is
 13 that correct?
 14 A. Yes.
 15 Q. And it used Maptitude?
 16 A. It believe it was a hybrid of Maptitude hooked
 17 up to an ESRI program too. So it was a hybrid
 18 system. It had a lot more capacity to produce
 19 reports and maps than did the Maptitude system.
 20 Q. All right. How did the state legislative
 21 Maptitude system compare to the Maptitude system
 22 that you had on your own computer?
 23 A. I only used it really once or twice, I think,
 24 but it was abysmally slow. The display
 25 capabilities of the system were not very good.

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1 And for my part, I could really get enough work
 2 done on it in the amount of time that I usually
 3 had to do it.
 4 Q. Did your computer have North Carolina
 5 redistricting data loaded on it that was not
 6 available on the General Assembly's computer?
 7 A. No.
 8 Q. Did you get the North Carolina specific data,
 9 election results, geographic boundaries, that
 10 sort of data, from the North Carolina
 11 legislature's computer?
 12 A. Some yes. Some no.
 13 Q. What other sources do you get data pertaining to
 14 North Carolina?
 15 A. The United States Bureau of the Census puts out
 16 a geographic mapping file called TIGER,
 17 T-I-G-E-R. It's an acronym. And it puts out,
 18 of course, the redistricting data file, which is
 19 all the demographic data. So essentially your
 20 map and your demographic data comes directly
 21 from the Census Bureau.
 22 So we would have gotten that data
 23 through the developers of Maptitude, Caliper
 24 Corporation in Newton, Massachusetts. So they
 25 would take the TIGER file and the redistricting

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1 data file and format it to run specifically on
 2 Maptitude, which was their redistricting GIS
 3 system.
 4 The political data, i.e., the election
 5 data and the registration data, were compiled by
 6 Legislative Services, the IT people, and were
 7 publicly available to everybody, and that was
 8 the database that I also had for my computer.
 9 Q. The Legislative Service Office also got the
 10 TIGER data from the Census just as yours was?
 11 A. Yes. There is no other source of the data.
 12 Q. So in that respect, their data and your data
 13 were identical?
 14 A. To the best of my knowledge, they were. I never
 15 found any differences.
 16 Q. And the political data on the Legislative
 17 Service Office computer was the data that you
 18 downloaded and used for your purposes in
 19 redistricting North Carolina?
 20 A. Actually, somebody else downloaded it for me,
 21 put it on my computer, but it was --
 22 Q. But the data was the same?
 23 A. It was the same data. I think it was actually a
 24 subset of all the data that they had.
 25 Q. One of the things you counsel in this PowerPoint

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1 presentation under the heading "Computer
 2 Perils," you warn to remember recent e-mail
 3 disasters and you have three --
 4 A. Can you give me the page.
 5 Q. -- three exclamation points.
 6 A. How many pages in? I found it. Headed
 7 "Computer Perils"?
 8 Q. Yes.
 9 A. After the page it says "Check out your
 10 Computer"?
 11 Q. Correct.
 12 A. Okay.
 13 Q. What e-mail disasters were you referring to?
 14 A. I think all of us have -- have observed in this
 15 nation the disasters which come from having your
 16 e-mails open to the public. I think we had an
 17 example in the last election, so...
 18 Q. Were there any specific references to
 19 redistricting e-mails that you had in mind?
 20 A. My general philosophy on e-mails is that you
 21 should be very careful what you say in any
 22 e-mail because, for the most part, e-mails are
 23 forever and they're not really private.
 24 Q. And you knew you were doing redistricting for a
 25 public body, correct?

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1 A. In the North Carolina context?
 2 Q. Yes.
 3 A. Yes.
 4 Q. And you knew that under North Carolina law, once
 5 the redistricting was passed, any e-mails that
 6 were communicated to legislators would be public
 7 records so there would be transparency?
 8 MR. FARR: Objection.
 9 THE WITNESS: I don't actually know
 10 that to be true. I'm not an expert on
 11 North Carolina law. I think that is a legal
 12 question that should go to the attorneys.
 13 BY MR. BONDURANT:
 14 Q. We'll come to that.
 15 A. Okay.
 16 Q. But you did not want any instructions that you
 17 received to become public as far as
 18 redistricting in North Carolina is concerned?
 19 MR. FARR: Objection.
 20 THE WITNESS: Once again, I think one
 21 has to realize that redistricting --
 22 BY MR. BONDURANT:
 23 Q. Was that a "yes" or a "no"?
 24 A. The way you asked it it's a no.
 25 Q. No, you did not want your e-mails to become

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1 public?
 2 MR. FARR: That's not the question.
 3 THE WITNESS: That's not the question.
 4 Do you want to ask the question and
 5 I'll answer it yes or no.
 6 BY MR. BONDURANT:
 7 Q. You did not want any e-mails relating to your
 8 work in the redistricting in North Carolina to
 9 become public?
 10 A. No. Any e-mails that I sent and some which I
 11 had sent actually did become public.
 12 Could I expand my answer, please.
 13 Q. My question is did you want them to become
 14 public, not whether over your objections they
 15 became public.
 16 A. I did not think that this, like any other piece
 17 of legislation, should be developed by e-mail.
 18 It should be developed by consultation.
 19 So I would have to answer your question
 20 by saying if I wrote e-mails, I wouldn't mind
 21 their being public. I don't think it's wise to
 22 write e-mails when it isn't necessary because
 23 you have no control over it and you have no
 24 control over the answers that might come back
 25 from the e-mail.

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1 So if you'll allow me to expand a
 2 little, I would say that my experience with
 3 legislation in general -- and maybe you can ask
 4 this question of the chairmen when you get
 5 them -- is that all legislation is the result of
 6 compromise and of discussions that people have
 7 and they don't generally do them through e-mail.
 8 Q. Turn to the page entitled "Legal Perils" where
 9 you say "A journey to legal HELL starts with but
 10 a single misstatement or a stupid e-mail."
 11 A. Yes. I think recent events of this election
 12 year have made that quite obvious to anybody.
 13 Q. You wrote this in 2011.
 14 A. Well, it was -- it is true in 2011 as it was in
 15 2005 as it was in 2000. It's always true.
 16 People think that e-mail is an intimate
 17 conversation between two people and it isn't.
 18 Q. And two pages later you say "E-Mails are the
 19 tool of the devil. Use personal contact or a
 20 safe phone."
 21 A. I'm sorry. That's two pages back, yes.
 22 I made that statement. I think it's
 23 true.
 24 Q. And that's the advice you gave Senator Rucho and
 25 Representative Lewis in working in

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1 North Carolina?
 2 A. No, I don't know that I gave them this advice
 3 directly. Somebody else may have given them
 4 this advice.
 5 Q. But it is the method under which you operated,
 6 that you avoided putting anything in writing or
 7 receiving anything in writing to the extent
 8 possible as far as your redistricting work is
 9 concerned?
 10 A. The decision as to whether or not I would
 11 receive anything in writing or not was their
 12 decision. The decision on whether or not I
 13 would send anything in writing would also be
 14 their decision. If they asked for a report, I
 15 would give a report. I'd be glad to write a
 16 report. A report is different than an e-mail.
 17 Q. In connection with the North Carolina
 18 redistricting both in 2011 and 2016, you as a
 19 policy matter made a decision not to send any
 20 e-mails and not to receive any e-mails as far as
 21 that redistricting was concerned?
 22 MR. FARR: Objection.
 23 You can answer.
 24 THE WITNESS: Do you want to ask that
 25 differently? I'm sorry.

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1 BY MR. BONDURANT:
 2 Q. No.
 3 A. Okay. I would say I did not make a policy
 4 decision as to e-mails in -- in 2016.
 5 Q. Did you send any e-mails in connection with 2016
 6 redistricting?
 7 A. I don't think so, no.
 8 Q. Did you receive any e-mails in connection with
 9 the 2016 redistricting?
 10 A. I don't think anything that would be of any
 11 interest in the matter of this case, no. I
 12 might have -- there might have been an e-mail or
 13 something that said we should go to lunch, okay.
 14 I just don't remember. I didn't find anything
 15 on my e-mails that would indicate that.
 16 Q. Did you send any letters, memoranda or documents
 17 in connection with the 2016 redistricting or
 18 receive any?
 19 A. I think you have to understand that there wasn't
 20 a lot of --
 21 Q. Is that a "yes" or a "no"?
 22 A. Ask it again.
 23 (Record Read.)
 24 THE WITNESS: Not to my recollection,
 25 unless you consider the plan itself a document.

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1 BY MR. BONDURANT:
 2 Q. So would it be fair to say there's no paper
 3 trail of any communication between you and
 4 Senator Rucho or Representative Lewis or any
 5 representative in the legislature in connection
 6 with the 2016 redistricting?
 7 A. Are you asking between them and specifically
 8 with me?
 9 Q. Yes.
 10 A. The answer is, no, there was not any.
 11 Q. If you'll turn over two more pages, I would like
 12 to ask you about another "Legal Perils" that you
 13 listed in your PowerPoint. Quote, "Don't get
 14 caught in 'criteria hell.'"
 15 What message were you conveying there?
 16 A. Now, the message is is don't state criteria for
 17 your plan and draw your plan by -- to draw your
 18 plan by the criteria that you cannot adhere to.
 19 Q. So did you have any written criteria when you
 20 drew the 2011 congressional redistricting plan?
 21 A. To me specifically are you asking?
 22 Q. Yes.
 23 A. No, not to me specifically.
 24 Q. And did Senator Rucho or Representative Lewis or
 25 any other representative of the legislature or

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1 their counsel convey to you any written criteria
 2 for the 2011 plan?
 3 A. To me specifically again?
 4 Q. Yes.
 5 A. No.
 6 Q. So as far as you were concerned in drafting the
 7 plan as the principal architect in 2011, there
 8 were no written criteria, everything was
 9 communicated to you orally in terms of
 10 instructions?
 11 A. Well, there -- were you saying something?
 12 MR. FARR: No.
 13 BY MR. BONDURANT:
 14 Q. Do you need that read back?
 15 A. No.
 16 Q. It's got a yes-or-no answer.
 17 MR. BONDURANT: Would you read it back,
 18 please.
 19 (Record Read.)
 20 THE WITNESS: Okay. Well, we've
 21 already had a discussion about principal
 22 architect, so I'm going to say that there was no
 23 written criteria specifically directed at me.
 24 BY MR. BONDURANT:
 25 Q. Criteria in any form other than oral, none were

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1 communicated to you in 2011?
 2 A. My recollection is there was criteria drawn up
 3 during the process, and I was certainly aware of
 4 what was in that criteria. I also knew, for
 5 instance --
 6 Q. During the 2011 process?
 7 A. Yes.
 8 Q. What -- what are you referring to? Did you see
 9 a document?
 10 A. There are rules in the North Carolina
 11 Constitution, as interpreted by the Supreme
 12 Court, as to how legislative plans should be
 13 drawn, including the county grouping rule.
 14 Q. I'm speaking of congressional districts.
 15 A. I don't know that there are any specific rules,
 16 but then again that's a -- in the Constitution,
 17 that's a --
 18 Q. I simply want to clarify. You saw, in 2011,
 19 nothing in writing that set forth any
 20 instructions, criteria, standards that you were
 21 to meet in drafting the 2011 Congressional Plan?
 22 MR. FARR: Objection.
 23 THE WITNESS: Again, I don't really
 24 remember, but my recollection is that there were
 25 some statements along the way before the plan

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1 was actually finalized that had to be adhered
 2 to, but I don't really remember. So I knew
 3 there were certain standards that we had to meet
 4 for sure, but I didn't receive personally any
 5 written criteria.
 6 (WHEREUPON, Plaintiffs' Exhibit 8 was
 7 marked for identification.)
 8 BY MR. BONDURANT:
 9 Q. Dr. Hofeller, can you identify Exhibit 8?
 10 A. That appears to be an e-mail from me to Joel
 11 Raupe, May 24, 2011, actually relaying a message
 12 from Lindsay Fisher, director of policy for the
 13 RSLC.
 14 Q. Attached to it are a list of dates that you were
 15 in Raleigh working on the North Carolina
 16 redistricting. Is that a list which you
 17 prepared?
 18 A. I'm sorry, I don't see the list of dates.
 19 Q. I may have handed you the wrong exhibit.
 20 A. Okay. We'll come back to this maybe.
 21 Q. No. Keep it.
 22 A. Okay.
 23 Q. Now, at the time Exhibit 8 was written, you were
 24 at this point a consultant for the Republican
 25 State Legislative Committee?

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1 A. Which e-mail?
 2 Q. Your e-mail to Joel Raupe dated May 24th.
 3 A. I was consultant to whom?
 4 Q. The Republican State Legislative Committee.
 5 A. I don't know for sure. I don't know -- I think
 6 maybe not. Again, I don't remember when our
 7 contract with the RSLC expired.
 8 Q. I think it began in March -- according to your
 9 resume, it began in May 2009 and ran through
 10 April 2011, and then in April 2011 you say in
 11 your resume that you were employed by the State
 12 Government Leadership Foundation as a
 13 consultant. Is that --
 14 A. I don't know. I have to go back and look at my
 15 resume.
 16 Q. It's Page 4 of your resume.
 17 A. I'm getting there.
 18 Q. Excuse me. It's Page 3.
 19 A. It says that my -- my period of employment as a
 20 consultant ended in 2012.
 21 Q. And began in April 2011.
 22 A. Right. I'm sorry. I was a year off. My
 23 apologies.
 24 Q. No apology necessary.
 25 A. So the answer to your question is, yes, I was

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1 employed by the RSLC at the time that was
 2 written.
 3 Q. And the contracting officer was Chris Jankowski?
 4 A. Yes.
 5 Q. And he was also the executive director of the
 6 Republican State Legislative Committee at the
 7 same time?
 8 A. That's my recollection, yes.
 9 Q. So he had two hats, one with the foundation, one
 10 with the committee?
 11 A. It wasn't an exceptionally large staff so many
 12 people wore multiple hats.
 13 Q. The answer was "yes"?
 14 A. Yes.
 15 Q. Now, let's go back to Exhibit 8. Do you recall
 16 reviewing the draft of the letter to legislative
 17 leaders that is attached as Exhibit 8?
 18 A. I have to review it, please.
 19 Q. Certainly.
 20 A. I don't remember specifically whether I saw it
 21 or not.
 22 Q. But this is your e-mail which you can identify
 23 to which it was attached?
 24 A. Yes.
 25 Q. So you would not deny having seen the letter?

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1 A. Probably I saw it. I just don't really
 2 remember. I did attach it to the letter so I
 3 probably reviewed it before I attached it.
 4 Q. Were you aware that the Republican State
 5 Legislative Committee was going to offer your
 6 assistance to state legislatures in
 7 redistricting following the census?
 8 A. Yes.
 9 Q. And let me see if I can refresh your
 10 recollection more about the letter that is
 11 attached.
 12 Now, by May you knew the results of the
 13 2010 elections, correct?
 14 A. Yes.
 15 Q. And you were aware in May of 2011 that the
 16 Republican Party now controlled 56 legislative
 17 chambers?
 18 A. I don't -- I have no reason to challenge that
 19 figure. Probably, yes.
 20 Q. And you were aware at the time that the
 21 Republican State Legislative Committee had
 22 retained a team of seasoned redistricting
 23 experts that we will make available to you at no
 24 cost to your caucus for assistance.
 25 A. Yes.

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1 Q. And that was the plan, and that legislative --
 2 that team of seasoned redistricting experts
 3 consisted of you and your company?
 4 A. Yes.
 5 Q. And you were aware that this Republican State
 6 Legislative Committee was offering you to -- in
 7 your assistance in drawing proposed maps for
 8 both congressional and legislative
 9 redistricting?
 10 A. Yes.
 11 Q. And that you were the leader of the team?
 12 A. Yes.
 13 Q. And you were aware that the plan was to have the
 14 entirety of the redistricting effort by your
 15 team, quote, "paid for using non-federal dollars
 16 through our 501(c)(4) organization, the State
 17 Government Leadership Foundation"?
 18 A. From the standpoint of the RSLC, I guess that
 19 was true. How they paid for it was really not
 20 concern to me. I was just interested in getting
 21 paid.
 22 Q. Do you remember how you got paid?
 23 A. By check.
 24 Q. And was the check from the Foundation or the
 25 RSLC?

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1 A. I think it was from the Foundation, but I don't
 2 recall. That was several years back.
 3 Q. And do you recall under your contract how much
 4 you were to be paid per month?
 5 A. No.
 6 (WHEREUPON, Plaintiffs' Exhibit 9 was
 7 marked for identification.)
 8 BY MR. BONDURANT:
 9 Q. Can you identify Exhibit 9 as the final version
 10 of the draft letter that was attached to your
 11 e-mail identified as Exhibit 8?
 12 MR. FARR: Objection to the form.
 13 THE WITNESS: I don't know whether it
 14 was the final copy or not. I didn't write it so
 15 I don't know. It looks to me like it's the same
 16 letter.
 17 BY MR. BONDURANT:
 18 Q. I believe it to be the same.
 19 A. Okay. I don't know if it was final form or
 20 maybe it was a draft or whatever it was. I just
 21 don't remember.
 22 Q. Did you have any understanding as to how
 23 Jankowski's letter that you reviewed the draft
 24 of was to be sent?
 25 A. It says "Dear Legislative Leaders" at the top,

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1 so I imagine they were sending it out to the
 2 leaders in the various chambers of our state's
 3 legislatures.
 4 Q. You would not expect the letter to be going to
 5 all legislative leaders in all 50 states but
 6 only to the Republican leaders in the states
 7 controlled by the Republicans?
 8 A. No, I don't think that's true.
 9 Q. You think it went to the Democratic leader in
 10 Massachusetts?
 11 A. I don't think that's the question you asked me.
 12 I believe it went to the entire
 13 leadership across the country of all the
 14 legislatures whether they were in the majority
 15 or the minority.
 16 Q. When you say leadership, you're speaking of
 17 Republican leadership?
 18 A. Yes.
 19 Q. You didn't expect the letter to go to the
 20 Democrats?
 21 A. No doubt they saw it.
 22 Q. Why are you so confident the Democrats saw it
 23 other than by subpoena?
 24 A. I think public documents are hard to keep
 25 secret.

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1 (WHEREUPON, Plaintiffs' Exhibit 10 was
 2 marked for identification.)
 3 BY MR. BONDURANT:
 4 Q. Dr. Hofeller, I've shown you Exhibit 10, a
 5 budget that was produced by the Republican State
 6 Legislative Committee in response to a subpoena
 7 for the period April '11, 2011, through
 8 November 2012.
 9 Does that refresh your recollection as
 10 to the amounts you and Mr. Oldham were being
 11 paid by the Republican State Legislative
 12 Committee?
 13 A. Yes.
 14 Q. And is that accurate as far as you know?
 15 A. Well, I don't specifically know whether this
 16 particular budget was actually accepted or not.
 17 I just don't remember.
 18 Q. But you remember seeing the budget at the time?
 19 A. I probably made the budget up. Again, I have to
 20 look at my records to know if it was accepted.
 21 Q. You have records that would show that?
 22 A. Yes.
 23 Q. And this was -- these payments were made
 24 pursuant to a contract with you?
 25 A. Yes.

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1 Q. Was the contract with you individually or with
 2 your LLC global strategies?
 3 A. Geographic Strategies.
 4 Q. Geographic Strategies, thank you.
 5 A. I believe it was between the RSLC and the LLC.
 6 Q. Geographic Strategies?
 7 A. Yes.
 8 Q. And Geographic Strategies had two principals?
 9 A. Actually, there were three people in the LLC,
 10 the three people that are named here.
 11 Q. You, Mr. Oldham and Wild?
 12 A. Michael Wild.
 13 Q. Michael Wild.
 14 A. Who just died this summer.
 15 Q. Gee, I'm sorry.
 16 A. Believe me, I am too.
 17 (WHEREUPON, Plaintiffs' Exhibit 11 was
 18 marked for identification.)
 19 BY MR. BONDURANT:
 20 Q. Dr. Hofeller, I'm showing you what's been marked
 21 as Exhibit 11. Attached to it is a list of
 22 dates in 19 -- excuse me, in 2011 reflecting --
 23 purporting to reflect your travels to Raleigh in
 24 connection with the North Carolina
 25 redistricting.

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1 A. Yes, that's what's in there.
 2 Q. Is that list of dates information you supplied
 3 to Mr. Farr so he could provide it to Mr. Speas
 4 and Ms. Earls?
 5 A. I believe so, yes.
 6 Q. And in fact, the e-mail at the bottom is from
 7 you to Tom Farr enclosing that information?
 8 A. It is.
 9 Q. And that information is accurate so far as you
 10 know?
 11 A. So far as I know.
 12 (WHEREUPON, Plaintiffs' Exhibit 12 was
 13 marked for identification.)
 14 BY MR. BONDURANT:
 15 Q. Can you identify Exhibit 12 as invoices rendered
 16 by your firm to Mr. Farr and his law firm
 17 Ogletree Deakins Nash Smoak & Stewart covering
 18 the period August 9th through the last date
 19 being January 27, 2011?
 20 A. Actually, I think it was from the period of
 21 April 1, 2011, through January 31st of 2012.
 22 Q. That's correct. Thank you.
 23 A. You're welcome.
 24 Q. Help me understand this. You were being paid
 25 simultaneously by the Foundation for work on

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1 redistricting and you were being paid separately
 2 by Mr. Farr's law firm for your work in
 3 North Carolina?
 4 MR. FARR: Objection to the form.
 5 Go ahead.
 6 THE WITNESS: Yes. It was a different
 7 body of work I was being paid for by the two
 8 sources.
 9 BY MR. BONDURANT:
 10 Q. I had understood from Mr. Jankowski's letter to
 11 state legislative leaders at which we looked as
 12 Exhibit 10 that the entire effort at the state
 13 level was going to be paid for by the Republican
 14 Foundation with 501(c)(3) money.
 15 Can you explain why you were being paid
 16 separately by Mr. Farr's law firm?
 17 A. The amount of --
 18 MR. FARR: Objection to the form.
 19 Go ahead.
 20 THE WITNESS: The amount of contract
 21 with the RSLC was for work that was generally
 22 across the country. It was not a specifically
 23 long, involved process of drawing maps in
 24 individual states. When I look at a map which
 25 the state was drawing and make comments on the

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1 map or offer suggestions on the map, but, as you
 2 know, required by contract was assisting states
 3 with all the problems that they had with
 4 their -- their line-drawing process.
 5 BY MR. BONDURANT:
 6 Q. So when Mr. Jankowski states in Exhibit 9 in the
 7 letter to the legislative leaders that, quote,
 8 "The entirety of this effort will be paid for
 9 using non-federal dollars through 501(c)(4)
 10 organization, the State Government Leadership
 11 council" [sic], that would not be accurate?
 12 That was only paying you for national efforts,
 13 and specific efforts at a state level, like
 14 North Carolina, were going to be paid for
 15 separately?
 16 MR. FARR: Objection.
 17 THE WITNESS: I don't understand what
 18 your question to me is on that.
 19 BY MR. BONDURANT:
 20 Q. Well, the specific question is -- if you want to
 21 look back at Exhibit 9, in that letter "Dear
 22 Legislative Leaders," Mr. Jankowski offers the
 23 help of the redistricting team led by Tom
 24 Hofeller and then says, I quote, "The entirety
 25 of this effort will be paid for using

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1 non-federal dollars through our 0501(c)(4)
 2 organization, the State Government Leadership
 3 Foundation." That statement as applied to
 4 North Carolina is simply not true?
 5 A. I disagree with the premise of your question
 6 there.
 7 Q. Is the statement true or not? Was the entirety
 8 of your effort in redistricting offered to the
 9 state legislative leaders in the State of
 10 North Carolina paid for by the Foundation?
 11 MR. FARR: Objection to the form.
 12 THE WITNESS: No.
 13 BY MR. BONDURANT:
 14 Q. Okay. My point exactly.
 15 Did you have a separate engagement
 16 letter with Mr. Farr and his law firm?
 17 A. I don't believe we ever had an engagement
 18 letter, no.
 19 Q. So it was all oral?
 20 A. To the best of my recollection.
 21 Q. And whom were you engaged by Mr. Farr and his
 22 law firm to represent or assist?
 23 A. I don't represent anybody. I was engaged to
 24 help in the line-drawing process and what we
 25 expected to be the upcoming legal contests

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1 which, of course, did actually happen.
 2 Q. Whom did you understand Mr. Farr's clients to
 3 be?
 4 A. My understanding, although he can better answer
 5 that himself, is he was retained by the
 6 legislature.
 7 Q. The legislature generally or by Senator Rucho
 8 and Representative Lewis?
 9 A. I don't know the specifics of their law firm's
 10 letter of engagement.
 11 Q. Did you --
 12 A. If there was one.
 13 Q. Did you have any understanding at the time
 14 whether Mr. Farr was representing those two
 15 legislators as individuals or was representing
 16 the Republican majority in the legislature or
 17 was representing the entire General Assembly of
 18 the legislature?
 19 A. Again, you'd have to ask Mr. Farr his
 20 understanding.
 21 Q. No. My question was what was your understanding
 22 at the time.
 23 A. My understanding was he was representing the
 24 legislature.
 25 ///

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1 (WHEREUPON, Plaintiffs' Exhibit 13 was
2 marked for identification.)
3 BY MR. BONDURANT:
4 Q. Dr. Hofeller, can you identify Exhibit 13 as a
5 collection of invoices rendered by Geographic
6 Strategies?
7 A. That's what it appears to be. Yes, I think so.
8 Q. And a W-9 which you signed in January 28, 2012?
9 A. Yes.
10 Q. These were invoices to requisition the payment
11 as shown on the budget that we examined
12 previously?
13 A. Yes.
14 MR. FARR: Emmet, when you have a good
15 stopping time, let's take a break when it's
16 convenient for you.
17 MR. BONDURANT: Sure. This is a
18 perfect time. Sure.
19 MS. MACKIE: Let me state for the
20 record, an e-mail went out with a courtesy copy
21 of those documents 30 minutes ago.
22 MR. FARR: And I'll also state for the
23 record that my office is unable to find any
24 evidence that this has been provided to us, your
25 e-mail you just referenced.

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1 MS. MACKIE: Understood. All the
2 e-mail went out today with all of those
3 documents.
4 THE VIDEOGRAPHER: Off record at
5 12:40 p.m.
6 (Lunch Recess.)
7 THE VIDEOGRAPHER: On record at
8 1:46 p.m.
9 (WHEREUPON, Plaintiffs' Exhibit 14 was
10 marked for identification.)
11 BY MR. BONDURANT:
12 Q. Dr. Hofeller, can you identify Exhibit 14 as the
13 description of the Maptitude software program
14 that you used and the Legislative Service Office
15 in the North Carolina General Assembly used?
16 A. No. It's the -- it's the current description of
17 what they have.
18 Q. Current description.
19 A. Gone through many versions since then.
20 Q. What version do you use?
21 A. I'm still using the 2011 version.
22 Q. 2011 version?
23 A. Uh-huh.
24 Q. Was that the same version that was loaded in the
25 North Carolina Legislative Service Office?

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1 A. At that time it would have had to have been
2 either 2010 or 2011, but, remember, I told you
3 before that they were using a hybrid system that
4 was coupled up with ESRI's GIS software. I used
5 a stand-alone on a microprocessor -- not a
6 microprocessor -- laptop.
7 Q. What GIS software did you use?
8 A. Well, Maptitude is a form of GIS software.
9 Caliper Corporation's main line of business is
10 GIS software. Maptitude for redistricting lies
11 on top of their GIS.
12 Q. And was North Carolina using the Maptitude GIS
13 software?
14 A. I think in part but not wholly.
15 Q. Not wholly?
16 A. It appeared to me when I got on it that it had
17 more of ESRI's mapping capabilities in it than
18 did the standalone Maptitude system.
19 Q. In your Maptitude software program, you could
20 identify voter tabulation districts based on how
21 they voted in past elections?
22 A. Actually, that's -- they're not called voter
23 tabulation districts. They're voter districts.
24 VTD stands for voter district.
25 Yes, it was part of the hierarchical

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1 geography that was contained in the TIGER file
2 which we got from the U.S. Census Bureau.
3 Q. But the election result data you got from the
4 Legislative Service Office?
5 A. The Legislative Service data came from -- was
6 tabulated to the VTD level.
7 Q. To the VTD level. Are you calling that voter
8 districts or voter tabulation districts?
9 A. VTD are voter districts.
10 Q. Okay.
11 A. That's the formal census name for it.
12 Q. Is that the smallest unit for which you had
13 political data available?
14 A. Yes.
15 Q. Were census blocks larger or smaller than voter
16 districts?
17 A. Smaller.
18 Q. Smaller. Could you get voting history data at
19 the census block level?
20 A. In order to run on Maptitude, you had to, what
21 we call, disaggregate the election data down to
22 the block level.
23 Q. Did you do that?
24 A. Yes. I didn't do it. Somebody else did it.
25 Q. On your computer.

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1 A. I received the data onto my computer already at
 2 the block level. All the data was based on the
 3 block level and then it was reaggregated back up
 4 to VTDs and also to other units of census
 5 geography, like block groups, tracks, counties,
 6 places, all sorts of different aggregations.
 7 Q. Who disaggregated the voter history data to the
 8 block level that you used?
 9 A. The disaggregation on my block level data was
 10 actually done by Mike Wild, who was my partner,
 11 associate, different times different things.
 12 At this level, the disaggregation of
 13 the data on the North Carolina computer was done
 14 by Legislative Services IT branch.
 15 Q. But one of the capabilities of the Maptitude
 16 program was to give you the ability to aggregate
 17 and disaggregate voter tabulation data down to
 18 the block level?
 19 A. Well, the data already existed in the system at
 20 those various levels, so the program wasn't --
 21 wasn't reaggregateing it back up. If you were
 22 working in terms of voter districts, you had the
 23 data in your system already for the voter
 24 districts.
 25 Q. When you were working on the congressional map

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1 in North Carolina, you used voter data down to
 2 the census block level in designing the plans?
 3 MR. FARR: Can we clarify which plan
 4 you're talking about.
 5 MR. BONDURANT: 2011.
 6 THE WITNESS: When necessary, yes.
 7 BY MR. BONDURANT:
 8 Q. Did you have a method of grading either the
 9 voter tabulation districts or voter districts,
 10 as you call them, or the census block districts
 11 based on their relative Republican or Democratic
 12 voting strength?
 13 A. I don't know what you mean by the term "graded."
 14 Q. Did you color code the districts that were, say,
 15 50/50 districts differently from those that were
 16 very strongly Republican or very strongly
 17 Democratic?
 18 A. You have multiple ways which you can display
 19 data in any unit of geography. You have a label
 20 which can be one or more items from the database
 21 and you can also do what they call thematics,
 22 and I think that's what you mean by grading.
 23 And you can color the units of geography by some
 24 percentage or by some number as you wish.
 25 That's something that the user specifies.

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1 Q. What was your practice in terms of coloring
 2 census blocks or voter districts based on their
 3 voting performance?
 4 A. Depended on what I was doing.
 5 Q. In North Carolina, in congressional
 6 redistricting, how did you color code those
 7 districts?
 8 A. Again, it depends on what I was looking for at
 9 that particular point in constructing the
 10 district.
 11 Q. Well, did you identify the districts that were
 12 strongly Republican and strongly Democratic?
 13 A. I'm sorry. What do you mean again by districts?
 14 Q. Voter districts or census block.
 15 A. Well, census blocks have very little meaning
 16 with the disaggregate data.
 17 So you would display election data or
 18 registration data usually at the VTD level, or
 19 sometimes we call them precincts, but they're
 20 not exactly one-on-one comparison.
 21 Q. And displaying them at the voting district
 22 level, how did you color code the districts?
 23 A. When I was using -- when I was displaying them
 24 at all, if I was displaying them, I would
 25 usually display them by voting history data.

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1 Q. And what colors did you use and what did those
 2 colors indicate?
 3 A. Well, I usually use the rainbow spectrum because
 4 everybody's familiar with that. It goes violet,
 5 indigo blue, green, yellow, orange and red and
 6 variations of those colors.
 7 Q. What did violet indicate?
 8 A. I didn't use violet that much. I used -- red
 9 was -- it really depends on what you're
 10 displaying and how you want it to stand out.
 11 Q. When you were trying to measure the relative
 12 strength of the Republican vote in a voter
 13 district, what colors did you use and what did
 14 those colors indicate?
 15 A. Well, sometimes I use different color themes
 16 too. You can also use chromatic coloring, which
 17 is varying the shading of one color from one to
 18 the other.
 19 But usually, if I was displaying voter
 20 history data that -- red would be the most
 21 Democratic and dark blue would be the most
 22 Republican.
 23 Q. And when you say the most Democratic, what would
 24 that indicate in terms of percentages or
 25 likelihood of voting Democrat in the future?

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1 A. Well, it wasn't always a set percentage break,
 2 but usually it centered around 50 percent.
 3 Q. 50 percent. So if a district were likely in the
 4 future to vote 50 percent Democratic and
 5 50 percent Republican, what color would you
 6 assign to it?
 7 MR. FARR: Objection to form.
 8 You can answer.
 9 THE WITNESS: Yeah, I think that's the
 10 wrong premise to your question. Ask that again.
 11 BY MR. BONDURANT:
 12 Q. If you had a district that voted Democratic 75
 13 or 80 percent of the time, what color would you
 14 assign to it?
 15 A. In the past?
 16 Q. Yes.
 17 A. It would probably be red.
 18 Q. And in 2011 --
 19 A. I'm sorry. 75 percent Democratic?
 20 Q. Yes.
 21 A. Red.
 22 Q. And was that true in 2011 in North Carolina?
 23 A. Yes. I think 75 percent is fair to say would be
 24 in the -- but not very many of those.
 25 Q. And if it voted 60 percent Democratic in the

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1 election you were using in North Carolina, which
 2 was the 2008 presidential election between Obama
 3 and McCain, what color would you assign to it?
 4 MR. FARR: Objection to the form.
 5 THE WITNESS: If I were using Obama and
 6 McCain to begin with -- let me see. 60 percent,
 7 you said?
 8 BY MR. BONDURANT:
 9 Q. (Nodding head up and down.)
 10 A. It might or might not be red at 60.
 11 Q. And if it --
 12 A. You can change -- you can change the percentage
 13 breaks. That's one of the things you can do
 14 with it.
 15 Q. What percentage breaks did you use in the
 16 apportionment of districts in congressional
 17 districts in North Carolina in 2011?
 18 A. I don't rightly remember. I'm sure I used
 19 different breaks at different times.
 20 Q. Do you have a record of what your percentage
 21 breaks were?
 22 A. No.
 23 Q. But you did use percentage breaks in deciding
 24 whether to assign a voter district to one
 25 congressional district or another?

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1 A. Sometimes.
 2 Q. Did you do so in 2011 in apportioning the
 3 congressional districts?
 4 A. Sometimes.
 5 (WHEREUPON, Plaintiffs' Exhibit 15 was
 6 marked for identification.)
 7 BY MR. BONDURANT:
 8 Q. Let me ask you to look at Exhibit 15. You were
 9 working in North Carolina in 2011. Did you see
 10 a copy of the Legislator's Guide to
 11 North Carolina Legislative and Congressional
 12 Redistricting at that time?
 13 A. I wasn't really working in North Carolina at
 14 that time doing districts, but I did see a copy
 15 of this.
 16 Q. Let me see if I understand your answer. I
 17 thought you identified the dates that you were
 18 in North Carolina in Raleigh working on the 2011
 19 congressional district map in the exhibit which
 20 you sent to Mr. Farr. Do you need to look back
 21 at it?
 22 A. No. I recollect from that exhibit that that was
 23 asking when did I make a trip to North Carolina.
 24 Q. Were you working on congressional districts on
 25 those trips?

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1 A. No.
 2 Q. On none of those trips?
 3 A. Well, yes, some of the trips. The congressional
 4 districts were really the last to be drawn.
 5 Q. They were drawn in June and July of 2011, were
 6 they not?
 7 A. I don't recall the date that I actually started
 8 on them. The districting of the legislative
 9 districts is much more complex.
 10 Q. I was not asking about the legislative
 11 districts. I was asking --
 12 A. Okay. Well, I don't know exactly --
 13 MR. FARR: I think that was responsive
 14 to your question. He was explaining why he had
 15 not started on the congressional districts.
 16 BY MR. BONDURANT:
 17 Q. When you looked at the legislative guide, you
 18 saw that the Legislative Service Office on
 19 Page 14 had an extensive description of its
 20 redistricting technology.
 21 A. I'm sorry. Which page?
 22 Q. Page 14.
 23 A. Yes.
 24 Q. Was there any data on your computer that was not
 25 available to you on the Legislative Service

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1 Office computer?
 2 A. I didn't use the Legislative Service computer.
 3 It would have been available if I had been using
 4 it, yes.
 5 Q. That was not my question.
 6 My question is: Was there any data
 7 available to you on your computer for
 8 redistricting North Carolina that was not
 9 present on the Legislative Service Office
 10 computer?
 11 A. I don't recall when the election and
 12 registration data actually became available from
 13 the IT division in Legislative Services. So
 14 depending on where this came up in March, I
 15 don't believe that the census data came out
 16 until March of that year.
 17 Q. That may well be true, but you were
 18 redistricting in July of 2011 in North Carolina,
 19 correct?
 20 A. Yes.
 21 Q. And by July of 2011, the census data had been
 22 published in March and was available both to the
 23 North Carolina Legislative Office and available
 24 to you directly from the census?
 25 A. The census data was available publicly. Anybody

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1 could get it that wanted it.
 2 Q. Correct. And so I repeat my question: In July
 3 of 2011, when you were working on the maps for
 4 the 2011 congressional district, was there any
 5 data on the Maptitude laptop that you were using
 6 that was not also available to you on the
 7 North Carolina Legislative Service Office
 8 Maptitude computer program?
 9 A. I think to answer that honestly, I don't know
 10 exactly what they had on their computer in the
 11 way of election data, but I certainly had what I
 12 thought was sufficient for redistricting on
 13 there.
 14 Q. Well, you got all of your voting history data
 15 from the Legislative Service Office computer?
 16 A. That's true.
 17 Q. You got census data directly from the Census?
 18 A. No. Actually we got that from Caliper
 19 Corporation.
 20 Q. From Caliper?
 21 A. Uh-huh.
 22 Q. Which got it from the Census?
 23 A. Yes.
 24 Q. And if the North Carolina Legislative Service
 25 Office was a subscriber to and used Maptitude,

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1 it would have gotten the same data from Caliper
 2 Corporation that you got?
 3 A. Yes.
 4 Q. So I repeat my question to you: Do you know of
 5 any data --
 6 A. Let me add to that answer. I don't know whether
 7 they processed that data through Maptitude or
 8 whether they processed it another way. So it
 9 would have been the same data on both systems
 10 for the census. What the chain of evidence was,
 11 how the data was transferred might have been
 12 different.
 13 Q. So sitting here today, do you know of any data
 14 that was -- that pertained to the congressional
 15 redistricting in North Carolina that was
 16 available to you on your computer that was not
 17 equally available to you on the Legislative
 18 Service Office computer?
 19 A. Again, I want to answer this honestly to you.
 20 There may have been data that we received from
 21 North Carolina that was never loaded onto my
 22 computer because it may not have been one of the
 23 races that I thought was necessary to do my
 24 work. So I can't say to you truthfully that I
 25 know that every piece of data that was on the

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1 legislative system that I had available to me on
 2 my computer, as you asked.
 3 Q. My question was: Was there any data on your
 4 computer pertaining to the North Carolina
 5 congressional redistricting that was not also
 6 available to you on the Legislative Service
 7 Office's computer that used the Maptitude
 8 program?
 9 A. I'm sorry, I thought you asked that question
 10 differently, the other way around.
 11 The answer is: There was no data on my
 12 computer that North Carolina would not have. I
 13 misunderstood your question.
 14 Q. Did you read the previous page of the
 15 Legislator's Guide to North Carolina Legislative
 16 and Congressional Redistricting dealing with
 17 legislative confidentiality?
 18 A. This is Page 13 you're talking about?
 19 Q. Yes.
 20 A. Do you have anything specifically you want me to
 21 address?
 22 Q. The first question is: Did you read that page
 23 in 2011 when you were deciding whether to use
 24 the Legislative Service Office computer as
 25 opposed to using your own private laptop?

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1 MR. FARR: Objection to the form.
 2 THE WITNESS: I have no recollection of
 3 reading this page specifically, no.
 4 BY MR. BONDURANT:
 5 Q. Were you aware at the time you were doing the
 6 redistricting in North Carolina that if you used
 7 the Legislative Service Office computer after
 8 the redistricting was passed all of that
 9 information would become publicly available?
 10 A. At what period did you say?
 11 Q. In 2011.
 12 A. Any time in 2011?
 13 Q. Any time in 2011.
 14 A. Again, I was not aware of the policy any time in
 15 2011.
 16 (WHEREUPON, Plaintiffs' Exhibit 16 was
 17 marked for identification.)
 18 BY MR. BONDURANT:
 19 Q. Dr. Hofeller, can you identify Defendant's
 20 Exhibit 16 as excerpts from your first expert
 21 report in Harris and the second page is excerpts
 22 from your second expert report in Harris and a
 23 portion of your testimony at the trial?
 24 MR. FARR: I'm going to object to this
 25 exhibit because -- I'm going to object to the

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1 extent that he hasn't been able to look at his
 2 entire reports.
 3 MR. BONDURANT: I have it here. He's
 4 welcome to examine it. Let's see if he can
 5 answer the question.
 6 MR. FARR: No. I want to state my
 7 objection and then you can proceed as you want
 8 to.
 9 I think he should be allowed to see his
 10 actual report. And this document also has got
 11 headings on it which I do not think were
 12 included in Dr. Hofeller's report. That has
 13 been prepared by you or someone on your legal
 14 team.
 15 THE WITNESS: I am not going to attest
 16 to the validity of a document that I didn't make
 17 up unless I can see the document from which it
 18 came.
 19 BY MR. BONDURANT:
 20 Q. Dr. Hofeller, I have handed you a copy of your
 21 first expert report in Harris. I'm sorry I
 22 didn't bring extra copies.
 23 If you'll turn to Paragraph 23.
 24 MR. FARR: Can we have that marked?
 25 MR. BONDURANT: I'm not going to mark

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1 it.
 2 MR. FARR: I would like for it to be
 3 marked.
 4 MR. BONDURANT: That suits me. Let's
 5 make it 16A.
 6 (WHEREUPON, Plaintiffs' Exhibit 16A was
 7 marked for identification.)
 8 BY MR. BONDURANT:
 9 Q. Turn to Paragraph 23. Read Paragraph 23 aloud.
 10 A. "Political control of the
 11 redistricting process can also become an
 12 overarching factor. This is especially
 13 true when control shifts between the two
 14 political parties.
 15 "This was the case in North Carolina
 16 when, in 2010, the Republicans took
 17 control of both chambers of the General
 18 Assembly (since the Governor has no role
 19 in North Carolina redistricting).
 20 "Politics was the primary policy
 21 determinant in drafting of the New Plan.
 22 The same was true of the Old Plan except
 23 that the Democrats political policy
 24 choices were different. Professor
 25 Ansolabehere did not take any of these

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1 factors into account in his report."
 2 MR. FARR: Can I see that, please,
 3 before we have questions on it.
 4 BY MR. BONDURANT:
 5 Q. I want to focus on a specific sentence. Is it
 6 true, as you stated in your first expert report,
 7 in 2011, politics was the primary policy
 8 determinant in drafting the New Plan, referring
 9 to the 2011 Congressional Redistricting Plan?
 10 A. I said it. It's true. I said it. Yes.
 11 Q. And your instructions in that regard came from
 12 Senator Rucho and Representative Lewis?
 13 A. Well, I think this was actually my -- my
 14 statement rather than their statement, but
 15 politics was certainly a major factor,
 16 absolutely. It is in every redistricting.
 17 Q. And would you turn to Paragraph 40.
 18 A. Thank you.
 19 Q. In Paragraph 40, you said, in part:
 20 "The General Assembly's goal was to
 21 increase Republican voting strength in
 22 New Districts 2, 3, 6, 7 and 13. This
 23 could only be accomplished by placing
 24 all the strong Democratic VTDS in either
 25 New Districts 1 or 4."

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1 Do you see that language?
 2 A. Yes. That's part of that paragraph, yes.
 3 Q. And did you carry out that goal in drafting the
 4 2011 plan to increase Republican voting strength
 5 in New Districts 2, 3, 6 and 7?
 6 A. I'm just thinking of where they were. Okay,
 7 I've read the paragraph.
 8 Would you read the question.
 9 (Record Read.)
 10 BY MR. BONDURANT:
 11 Q. 6, 7 and 13.
 12 A. Yes.
 13 Q. And you did that by taking Democratic voters
 14 from those districts and placing them either in
 15 New Districts 1 or 4?
 16 MR. FARR: Objection to the form.
 17 THE WITNESS: That's not exactly a
 18 valid description of the process.
 19 BY MR. BONDURANT:
 20 Q. Quote, "This could only be accomplished by
 21 placing all the strong VTDS in either
 22 Districts 1 and 4," correct?
 23 A. Yes, but that wasn't your original question.
 24 My words speak for myself and I stand
 25 by them.

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1 Q. And were some of the strong Democratic VTDS
 2 previously in Districts 2, 3, 6, 7 and 13?
 3 A. I would have to -- there's a report that you get
 4 out of Maptitude that is called a plan
 5 components or communities of interest, I don't
 6 remember the right name, but if you ran that
 7 report you would actually get a summary of which
 8 population from which old district is contained
 9 in which new districts.
 10 So without that report, I can't say
 11 that actually that happened in the case of each
 12 one of these districts.
 13 What I would actually draw is to draw
 14 1 and 4 and then draw the districts around them.
 15 Q. Do you have the capability of generating such a
 16 report today based on the 2011 data on your
 17 computer?
 18 A. Yes.
 19 Q. In Paragraph 68, if you'll turn to that, you
 20 state, and I quote:
 21 "The General Assembly's overarching
 22 goal in 2011 was to create as many safe
 23 and competitive districts for Republican
 24 incumbents or potential candidates as
 25 possible."

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1 Is that a goal you established or was
 2 it a direction you were given?
 3 A. Okay. Can I read the rest of the paragraph into
 4 the record?
 5 Q. Just answer my question.
 6 MR. FARR: He can read the rest of the
 7 paragraph into the record if he wants.
 8 MR. BONDURANT: Only if it's necessary
 9 to answer the question.
 10 MR. FARR: Well, I assume he does since
 11 he asked to do that.
 12 THE WITNESS: In the middle of that
 13 sentence there's an "and" which continues which
 14 is part of the premise of the paragraph. So
 15 that was one of the overarching goals, and then
 16 there's an and it's -- "and to unravel what the
 17 Republicans believed to have been succession of
 18 Democrat gerrymanders in previous decades."
 19 BY MR. BONDURANT:
 20 Q. Was that instruction given to you by
 21 Senator Rucho and Representative Lewis or was
 22 that your goal?
 23 A. No. That was their goal too.
 24 Q. And when you say General Assembly here, you're
 25 really speaking of Senator Rucho and

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1 Representative Lewis?
 2 A. No. I'm speaking of the General Assembly. They
 3 are officers of the General Assembly. It's the
 4 General Assembly which passes a plan and
 5 approves it.
 6 Q. Did you think that the Democrats voted for a
 7 goal to create as many safe Republican districts
 8 as possible?
 9 A. I doubt it, but some of them might have voted
 10 for the plan. I don't know. I didn't pay any
 11 attention.
 12 Q. At the time you were drafting the plan, had the
 13 General Assembly voted to establish a goal of
 14 creating as many Republican districts in 2011 as
 15 possible?
 16 A. Not formally, no.
 17 Q. All of your instructions came from
 18 Representative Lewis and Senator Rucho?
 19 A. Yes.
 20 Q. There was no official action in the General
 21 Assembly prior to you're receiving those
 22 instructions?
 23 MR. FARR: Objection to the form.
 24 THE WITNESS: I don't know. I just
 25 told you that I received my instruction from

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1 Representative Lewis and Senator Rucho.
 2 BY MR. BONDURANT:
 3 Q. In 2011 did you attempt and experiment to see
 4 how many Republican districts you could create?
 5 A. Not specifically, no.
 6 Q. How about generally?
 7 A. I had an idea what was possible, and I think
 8 what was possible is pretty much in line with
 9 what was drawn.
 10 Q. And what was drawn was a 10-3 Republican
 11 partisan advantage plan?
 12 MR. FARR: Objection to the form.
 13 THE WITNESS: Again --
 14 BY MR. BONDURANT:
 15 Q. Was that a "yes" or a "no"?
 16 A. That has to be a "no" the way you asked that
 17 question.
 18 Q. What plan -- what did you think was possible?
 19 A. I think it was possible to draw ten districts in
 20 which the Republicans would either be most
 21 likely to win or would have an opportunity to
 22 win.
 23 Q. And how many districts would the Democrats be
 24 likely to win or have an opportunity to win?
 25 A. I would have to go back and look at the

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1 statistics, but I'm sure it was more than three.
 2 Q. How many more than three?
 3 A. I'd have to go back and look at the statistics.
 4 Q. Let's turn to your second expert report, which
 5 I'll ask the court reporter to make as Hofeller
 6 Exhibit 16B.
 7 (WHEREUPON, Plaintiffs' Exhibit 16B was
 8 marked for identification.)
 9 BY MR. BONDURANT:
 10 Q. Turn to Paragraph 9.
 11 MR. FARR: I'm sorry to do this. Can
 12 we take a break and get a copy of that. I
 13 really don't want my witness to be
 14 cross-examined on an exhibit that I don't have.
 15 MR. BONDURANT: Sure, I don't mind.
 16 THE VIDEOGRAPHER: Off record at
 17 2:20 p.m.
 18 (Brief Recess.)
 19 THE VIDEOGRAPHER: On record at 2:32
 20 p.m.
 21 (Record Read.)
 22 BY MR. BONDURANT:
 23 Q. If you'll turn to Paragraph 9 of your second
 24 report.
 25 A. Okay.

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1 Q. I'm going to ask you about this sentence:
 2 "The Republicans' primarily goal was
 3 to create as many districts as possible
 4 in which GOP candidates would be able to
 5 successfully compete for office."
 6 Did I read that correctly?
 7 A. Yes.
 8 Q. And this time instead of saying General
 9 Assembly, you said the Republicans. You're
 10 referring to Senators Rucho -- Senator Rucho and
 11 Representative Lewis?
 12 MR. FARR: Objection.
 13 THE WITNESS: In their -- in their --
 14 I'm trying to draw out the right word. In their
 15 capacity as chairmen of the two redistricting
 16 committees.
 17 BY MR. BONDURANT:
 18 Q. So it was a Republican goal to create as many
 19 districts as possible in which GOP candidates
 20 would be able to successfully compete for office
 21 in 2011?
 22 A. Yes. You've added to the sentence, but I assume
 23 it was 2011, yes.
 24 Q. Well, this report was given in the Harris case
 25 in connection with the 2011 redistricting.

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1 A. Absolutely.
 2 Q. And that's what you were talking about.
 3 A. Yes.
 4 Q. Would it be fair to say that in 2016 the
 5 Republican goal as conveyed to you by
 6 Senator Rucho and Representative Lewis, their
 7 primary goal was to create as many districts as
 8 possible in which GOP candidates would be able
 9 to successfully compete for office?
 10 A. No.
 11 MR. FARR: Objection.
 12 You can answer it.
 13 THE WITNESS: Sorry.
 14 BY MR. BONDURANT:
 15 Q. That was not their primary goal in 2016?
 16 A. No.
 17 Q. What was their goal in terms -- their partisan
 18 goal?
 19 A. Well, you didn't say partisan goal. You said
 20 goal, primarily goal.
 21 Q. With that amendment, was their partisan goal to
 22 create as many --
 23 A. Could you read back the first question that he
 24 asked me, please.
 25 (Record Read.)

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1 THE WITNESS: My answer was no. Okay.
 2 BY MR. BONDURANT:
 3 Q. What was their primary goal?
 4 A. The primary goal was to draw a map that the
 5 clerk would approve of so they would follow the
 6 clerk's directive.
 7 Q. And the primary partisan goal was to achieve a
 8 10-3 Republican advantage in 2016, was it not?
 9 A. That was a goal, yes.
 10 Q. And that was their primary partisan goal?
 11 A. What you describe by definition as a partisan
 12 goal, but it wasn't their primary goal as far as
 13 the drafting of the plan.
 14 Q. You go on to say in Paragraph 9 after stating
 15 the primary goal:
 16 "As a result of the 2010 General
 17 Elections, Democrats were elected in 7
 18 districts (1, 4, 7, 8, 11, 12 and 13)
 19 while Republicans were elected in 6
 20 districts (2, 3, 5, 5, 9 and 10).
 21 "Following the 2014 General
 22 Election, Democrats were elected in only
 23 3 districts (1, 4 and 12). Republicans
 24 were elected in the 10 remaining
 25 districts."
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1 That was your statement under oath in
 2 Harris in Paragraph 9?
 3 A. Yes.
 4 Q. Was it true?
 5 A. Were the facts as I stated them true?
 6 Q. Yes.
 7 A. Following the 2014 general election, yes, it was
 8 true.
 9 Q. And in Paragraph 10, you explain the strategy
 10 that you used to accomplish the goal in
 11 Paragraph 9; is that correct?
 12 A. Yes.
 13 Q. You state:
 14 "The Republican strategy was to
 15 weaken Democratic strength in Districts 7,
 16 8 and 11; and to completely revamp
 17 District 13, converting it into a
 18 competitive GOP district.
 19 "At the same time, 2 GOP-held
 20 districts (Districts 2 and 9) needed
 21 marginal improvement in GOP voting
 22 strength" and then you cite a map which is
 23 attached.
 24 Continuing quoting:
 25 "This policy goal was attained by
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1 concentrating Democratic voting strength
 2 in Districts 1, 4 and 12," and you again
 3 site Map 3 attached to your report.
 4 Did I read it correctly?
 5 A. Yes.
 6 Q. Was that the strategy which you as the principal
 7 architect of the map followed in achieving the
 8 Republicans' primary goal?
 9 A. In that plan?
 10 Q. Yes.
 11 MR. FARR: Objection.
 12 THE WITNESS: Yes.
 13 BY MR. BONDURANT:
 14 Q. And so you had said previously that you wanted
 15 to create districts in which Republicans would
 16 have an opportunity to elect Republican
 17 candidates, correct?
 18 A. Correct.
 19 Q. And conversely, you want to minimize the number
 20 of districts in which Democrats would have an
 21 opportunity to elect a Democratic candidate?
 22 A. Correct.
 23 Q. And you did that by concentrating as many
 24 Democratic voters as possible into three
 25 specific districts, 1, 4 and 12?
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1 A. Correct.
 2 Q. And removing as many Democratic voters as you
 3 could from the districts that you wanted to
 4 create as districts in which Republicans would
 5 be elected?
 6 A. As many as was reasonably possible, yes.
 7 Q. And the Democrats who remained in the districts
 8 that you had decided would be Republican
 9 opportunity-to-elect districts, those Democrats'
 10 opportunities to elect a Democratic candidate of
 11 their choice would be diminished, would they
 12 not?
 13 MR. FARR: Objection.
 14 THE WITNESS: It would depend on what
 15 their choice was.
 16 BY MR. BONDURANT:
 17 Q. Their opportunity to elect a Democratic
 18 candidate in the districts in which you
 19 increased Republican voting strength would be
 20 diminished, would it not?
 21 A. Yes.
 22 Q. Did you use the same strategy of assigning
 23 voters to the districts that you wanted to be
 24 Republican opportunity-to-elect districts based
 25 on their voting history in the 2016
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1 reapportionment as you did in 2011?
 2 A. It was a strategy, but it was not the principal
 3 strategy.
 4 Q. What was the principal strategy?
 5 A. The principal strategy was to follow criteria
 6 which would draw a plan which would be
 7 acceptable to the Court.
 8 Q. The criteria that you followed in 2016 were
 9 written criteria, were they not?
 10 A. The committee in 2016 -- we're talking about
 11 2016?
 12 Q. Yes.
 13 A. -- adopted a criteria statement.
 14 Q. And did you follow those criteria?
 15 A. Yes.
 16 Q. Did you have a hand in drafting those criteria?
 17 A. Not in the formal sense, no. I may have
 18 discussed it with -- probably did discuss it
 19 with the chairman.
 20 Q. Did you --
 21 A. I couldn't have proceeded on the plan without
 22 their instructions on what criteria I was
 23 supposed to follow.
 24 Q. Did you start working on the plan before the
 25 criteria were approved by the committee?

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1 A. Yes.
 2 Q. How far in advance of the approval of the
 3 criteria on February 16, 2016, did you start
 4 working on a plan for the reapportionment in
 5 2016 of congressional districts?
 6 A. I think it was either probably the day after the
 7 decision came out. It might have been the same
 8 day, but that was late in the day. So it would
 9 have had to have been the next day.
 10 Q. The decision came out, do you recall, on
 11 February 5, 2016, that is, the decision in the
 12 Harris case?
 13 A. I knew about the decision, and I knew I was
 14 going to be asked to draft a new plan, yes.
 15 Q. Did you do anything to start drafting plans 2016
 16 prior to the decision in February, on
 17 February 5th?
 18 A. No.
 19 Q. Did you have any communications with
 20 Senator Rucho or Representative Lewis about the
 21 possibility that you might be asked to draft a
 22 new plan in the Harris case between the close of
 23 the trial at the end of October and the decision
 24 on February 5th?
 25 A. Not that I can recall. I don't think so.

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1 Q. No oral communications? No written
 2 communications?
 3 A. No.
 4 Q. No nothing.
 5 (WHEREUPON, Plaintiffs' Exhibit 18 was
 6 marked for identification.)
 7 MR. FARR: I'm going to register the
 8 same objection. I prefer to be examining him on
 9 the actual report.
 10 BY MR. BONDURANT:
 11 Q. Dr. Hofeller, I've handed you a document marked
 12 Exhibit 18. It is, in part, excerpts from your
 13 first expert report and your deposition in
 14 Harris. You have your first expert report
 15 before you. It is Exhibit 16A.
 16 A. I do, yes. Thank you.
 17 Q. If you'll turn to Paragraph 33.
 18 A. Do you have a page number?
 19 Q. The paragraphs are numbered.
 20 A. I know that.
 21 Q. In Paragraph 33 you say, in part:
 22 "My experience in drafting and
 23 evaluating plans has continued to
 24 reinforce my expert opinion that the best
 25 predictor of future election success is

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1 past voting behavior."
 2 And I'll just stop there.
 3 A. Well, I'll go on to say not registration. I
 4 made that statement, yes.
 5 Q. And you go on to elaborate that:
 6 "This is clearly the case as more
 7 and more voters are tending to register
 8 non-partisan or independent."
 9 A. Question?
 10 Q. That was your testimony under oath then?
 11 A. Yes.
 12 Q. And it is your opinion now?
 13 A. Yes.
 14 Q. And it was past voting behavior that you used in
 15 assigning VTDs to various congressional
 16 districts in drafting the 2016 plan?
 17 MR. FARR: Objection.
 18 THE WITNESS: In part. It was not the
 19 principal reason that a majority of the VTDs
 20 were assigned to various districts in 2016 plan.
 21 BY MR. BONDURANT:
 22 Q. In 2011 you used voting history to assign
 23 districts -- voting tabulation districts to
 24 various congressional districts to achieve a
 25 partisan advantage, did you not?

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1 A. I think with the exception of the first
 2 district, for the most part, although some --
 3 some of the areas in the state were assigned as
 4 whole counties, and in whole counties you're
 5 certainly not looking at data on the precinct
 6 level.
 7 Q. Let me go back and see if I sort of understand
 8 your methodology.
 9 When you approached the drafting of the
 10 2011 plan, did you start by drafting districts
 11 for the whole state, or did you start by
 12 drafting individual districts to construct them
 13 to create a Republican or Democratic advantage?
 14 A. The first district that was drawn in the 2011
 15 map was the 1st district, which was a Section 2
 16 VRA district. So in that district it was
 17 important to make sure that the minority voting
 18 strength was correct.
 19 So from then on I was using political
 20 voting history as the thematic for splitting
 21 counties among VTDs when I was actually
 22 splitting a county.
 23 Q. So let me see if I understand you.
 24 So you start out with the first
 25 district with -- because you regarded it as a

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1 Voting Rights Act district with a minimum
 2 African American population of 50.1 percent?
 3 A. I don't think there was a specific target. We
 4 knew that 50.1 percent was an important mark
 5 there, yes, and we wanted to have it over
 6 50 percent.
 7 Q. Once you drew the first district to make sure it
 8 would be a majority black voting age district,
 9 you then proceeded with other districts using
 10 political data?
 11 A. Yes. In the -- after that, yes, although there
 12 were some other reasons why the 1st became --
 13 was placed in its actual enacted format too.
 14 Q. That has already been litigated in the Harris
 15 case. I don't want to relitigate it one way or
 16 the other. I'm simply --
 17 A. That's obvious.
 18 Q. -- trying to understand the methodology that you
 19 started with the first district and then you
 20 proceeded block by block to build individual
 21 districts that would create a Republican or a
 22 Democratic advantage until you came up with a
 23 statewide plan for all 13 districts.
 24 A. No, that's not -- again, the premise of your
 25 question gives me a problem. If you built the

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1 district block by block, we'd still be building
 2 the districts.
 3 Q. How did you build the individual districts?
 4 A. The first level that you look at for
 5 redistricting is actually the county level. So
 6 a lot of counties in the state go into districts
 7 in whole pieces and then you look at how you're
 8 going to divide the counties, which is done VTD
 9 by VTD.
 10 Q. So if you looked at a particular county and it
 11 was a heavy Republican district, you would put
 12 it in a district that you wanted to make a
 13 Republican congressional district, and if you
 14 saw a county that was a heavy Democratic
 15 district, you would assign it to either 1 or 4
 16 or 12, one of the districts that you were trying
 17 to make a predominant Democratic district?
 18 A. Okay. Well, one of your statements in that
 19 premise was incorrect.
 20 Q. Just tell me what you did.
 21 A. Well, okay, some of the districts have to be the
 22 way they are. For instance, the 11th district,
 23 which I believe is in the far western corner of
 24 the state, is going to be shaped the way it is
 25 for the most part because it is in the corner of

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1 the state and there's not really much you can
 2 do.
 3 Another factor you're looking at when
 4 you're drawing districts are preservation of
 5 communities of interest and making sure that
 6 incumbents don't get paired, to the extent that
 7 it's possible. So a lot of whole counties go in
 8 there not because of what their actual voting
 9 strength is but because of their locations.
 10 Q. All right. In 2011 you in fact paired four
 11 incumbents, did you not?
 12 A. I don't remember.
 13 Q. All four were Democrats.
 14 A. I don't remember.
 15 Q. In drafting the 2011 plan, you weighed partisan
 16 advantage for the Republican Party more heavily
 17 than compliance with the Voting Rights Act, did
 18 you not?
 19 A. You have to comply with --
 20 Q. Please answer yes or no.
 21 MR. FARR: If it can be answered yes or
 22 no.
 23 THE WITNESS: I think I have to say no
 24 to that question.
 25 BY MR. BONDURANT:

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1 Q. Well, let me show you your deposition.
 2 A. Okay.
 3 MR. FARR: I'd like to see it first
 4 before you give it to him.
 5 BY MR. BONDURANT:
 6 Q. Look at Page 24 in your deposition taken in the
 7 Harris case May 6, 2014, beginning at Line 15
 8 and continuing through Line 19.
 9 MR. FARR: May I see that, please. And
 10 where are we looking at, Emmet?
 11 MR. BONDURANT: Line 15.
 12 MR. FARR: Okay. Line 15 through 24?
 13 BY MR. BONDURANT:
 14 Q. Beginning Line 15 --
 15 A. I mean, I have to get it in front of me. I
 16 can't see that far.
 17 Are you looking at 15, 16 and 17?
 18 Here, let me just undo it so we don't have to
 19 pass the whole book back and forth.
 20 Q. Beginning Line 16 -- Line 15 you were asked the
 21 following questions:
 22 "As you were drawing the districts,
 23 did you weigh partisan advantage more
 24 heavily in compliance with the Voting
 25 Rights Act?"

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1 "What was that estimate?"
 2 "That -- that three of the
 3 districts were most certainly going to
 4 be strong Democratic districts and that
 5 the remaining districts would be more
 6 competitive or remain competitive for
 7 Republican candidates."
 8 Question: "And those three strong
 9 Democratic districts were?"
 10 Answer: "1, 4 and 12."
 11 "Okay." Question: "Okay. What was
 12 the result of the 2012 election with
 13 regard to partisan advantage?"
 14 Answer: "Four Democrats won
 15 election in the House of Representatives --
 16 to the House of Representatives, U.S.
 17 House of Representatives, and the
 18 remainder were Republicans."
 19 Question: "Now, when you -- as you
 20 were drawing the plan, did Senator Rucho
 21 and Representative Lewis give you any
 22 instructions as to whether partisan
 23 advantage or competitiveness was to take
 24 precedence over compliance with the
 25 Voting Rights Act as you drew the

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1 Your answer was: "For the plan as a
 2 whole?"
 3 The question was "Then yes."
 4 Your answer beginning at Line 20:
 5 "For the plan as a whole, I would
 6 have to say yes."
 7 MR. FARR: And then what else did he
 8 say?
 9 BY MR. BONDURANT:
 10 Q. Go ahead and read the rest of it.
 11 A. Okay. You're taking this statement heavily out
 12 of context here.
 13 Q. Just read it.
 14 A. Okay. Let's start back on the previous page,
 15 then. At Line 10 on the previous page:
 16 "And what were those instructions?"
 17 "My instructions were to draw the
 18 plan to make it -- have an increased
 19 number of competitive districts for GOP
 20 candidates."
 21 Question: "Did you make any
 22 evaluation of the likely results --
 23 partisan results of the plan enacted by
 24 the General Assembly?"
 25 Answer: "Yes."

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1 districts?"
 2 Answer: "No."
 3 "Again, as you were drawing the
 4 districts, did you weigh partisan
 5 advantage more heavily than compliance
 6 with the Voting Rights Act?"
 7 Answer: "For the plan as a whole?"
 8 "Yes."
 9 Or that was -- I'm sorry. I said "For
 10 the plan as a whole" and then the question was
 11 "yes."
 12 "For the plan as a whole, I would
 13 have to say yes, but the plan was
 14 compliant with the Voting Rights Act.
 15 There were many, many -- 12 of the 13
 16 districts which were drawn as political
 17 districts."
 18 Q. That was your testimony then?
 19 A. It's my testimony now.
 20 Q. Now, turn to Page 25. Would you agree that
 21 compliance with the Voting Rights Act was not
 22 the predominant factor in your drawing of the
 23 congressional districts in 2011?
 24 A. Is there something you want to point to here?
 25 Q. Well, I've asked you the question first.

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1 Was it true that compliance with the
2 Voting Rights Act was not a predominant factor
3 in your drawing of the congressional districts
4 in 2011?
5 Can you answer it without reading your
6 deposition?
7 MR. FARR: Objection.
8 BY MR. BONDURANT:
9 Q. If you don't remember, I'll show you your
10 deposition.
11 A. Again, you're asking the question out of
12 context, sir.
13 Q. No. I'm asking you the question that was asked.
14 MR. FARR: Well, then he can explain
15 the context.
16 THE WITNESS: Okay. If you're
17 asking --
18 BY MR. BONDURANT:
19 Q. Let me get the question repeated.
20 A. Okay.
21 Q. Is it true in 2011 that compliance with the
22 Voting Rights Act was not the predominant factor
23 in the drawing of the congressional districts?
24 Yes or no?
25 MR. FARR: I object to the form of the

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1 question.
2 THE WITNESS: Okay, I'm a little bit
3 confused by your negatives there.
4 It was not the predominant factor in
5 the drawing of the entire plan.
6 Does that answer your question?
7 BY MR. BONDURANT:
8 Q. That answered it fine.
9 A. Good. Now I'll embellish by saying it was a
10 factor in District 1.
11 Q. It was a factor in District 1 but not in the
12 entire plan in 2011?
13 A. With the exception of District 1, it was not a
14 factor, no.
15 Q. Would it also be true that partisan advantage
16 took precedence over compliance with the Voting
17 Rights Act in your drafting of the 2011 plan?
18 MR. FARR: Objection.
19 THE WITNESS: Again, the way you ask
20 the question I have to say no.
21 BY MR. BONDURANT:
22 Q. Well, turn to Page 27 of your deposition.
23 A. Do you want me to explain why I say no?
24 Q. Page 27 will be fine.
25 A. Okay. I'll get it.

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1 Q. Do you see the question beginning with "Did
2 partisan advantage take precedence over
3 compliance with the Voting Rights Act"?
4 A. Can you tell me which line you're reading from.
5 Q. You have to share it with me. Right at the top
6 of the page, beginning with Line 1.
7 MR. FARR: Can I see that, please.
8 THE WITNESS: Absolutely. You might
9 look at the preceding page at the bottom.
10 BY MR. BONDURANT:
11 Q. Top of Page 27 you ask:
12 "Did partisan advantage take
13 precedence over compliance with the
14 Voting Rights Act?"
15 What was your answer?
16 MR. FARR: I object to the question
17 because I think this is related to District 12
18 because I just looked at the deposition.
19 BY MR. BONDURANT:
20 Q. Can you answer the question?
21 A. What is the question? I don't understand the
22 question. You read a statement.
23 Q. Starting at Line 24 on Page 11:
24 "Let me talk about District 12 for
25 just a minute. When you were drawing

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1 District 12, did partisan advantage take
2 precedence over the Voting Rights Act?"
3 Your answer was: "Yes."
4 Is that true?
5 A. Yes in the case of District 12, but you made the
6 original question out of context.
7 Q. Was it also true with Districts 2 through 13?
8 A. You're asking me a new question now?
9 Q. Yes.
10 A. Yes.
11 Q. And that the only district in which compliance
12 with the Voting Rights Act took precedence over
13 partisan advantage with the Republican Party was
14 District 1 in the 2011 redistricting?
15 MR. FARR: Objection.
16 BY MR. BONDURANT:
17 Q. Do you need it read back?
18 A. I can't -- yes, please, I need the whole context
19 of this question. I'm not trying to evade your
20 question. I just want to make sure I give you a
21 truthful answer.
22 Are we talking with regard to this
23 document?
24 MR. FARR: Just read the question back.
25 (Record Read.)

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1 MR. FARR: I objected.
 2 You may answer if you can.
 3 THE WITNESS: Read it again. I'm
 4 sorry. I'm just not --
 5 (Record Read.)
 6 THE WITNESS: The answer to your
 7 question is yes.
 8 BY MR. BONDURANT:
 9 Q. Now, in 2016 you were instructed not to consider
 10 any racial data in drafting the 2016 plan,
 11 correct?
 12 A. Yes.
 13 Q. Without racial data, did you consider, in
 14 drafting the plan, compliance with the Voting
 15 Rights Act in drafting any of the districts?
 16 A. I did not use political data in drafting the
 17 plan.
 18 Q. You didn't use any political data --
 19 A. I'm sorry. Any demographic data, racial, ethnic
 20 data.
 21 Q. And therefore you did not consider compliance
 22 with the Voting Rights Act in drafting the 2016
 23 plan because you had no access to racial data?
 24 MR. FARR: I'm going to object to the
 25 form of the question.

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1 THE WITNESS: I did not use political
 2 data in drafting the plan -- or registration --
 3 I'm sorry, I'm getting this wrong.
 4 I did not use racial or ethnic data in
 5 drafting the plan.
 6 BY MR. BONDURANT:
 7 Q. You used only political data?
 8 A. That's correct.
 9 Q. And political data -- by political data you
 10 meant the results of statewide elections from
 11 2008 to 2014 excluding the presidential races in
 12 2008 and 2012?
 13 A. That's true.
 14 Are we through with this?
 15 Q. Maybe.
 16 I would like you to turn to the second
 17 page of Exhibit 18.
 18 MR. THORPE: It's under the binder.
 19 THE WITNESS: I'm sorry. It's
 20 underneath.
 21 BY MR. BONDURANT:
 22 Q. On that page I have excerpted testimony from the
 23 trial. You're perfectly welcome to look at that
 24 testimony at Page 525 of the Harris trial.
 25 MR. FARR: What are we looking at now?

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1 The second page?
 2 MR. BONDURANT: Yeah.
 3 THE WITNESS: Okay, I've read it.
 4 BY MR. BONDURANT:
 5 Q. Do you remember giving that testimony?
 6 A. Yes.
 7 Q. Was that testimony true?
 8 A. Yes.
 9 Q. Is it true today?
 10 A. Yes.
 11 Q. So let me see if I can understand it.
 12 From your experience, based on looking
 13 at what you call political data, which is the
 14 voting results in past elections, the political
 15 nature of a precinct or voter district does not
 16 change over time unless there is a change in the
 17 makeup of the population of the district?
 18 A. Okay, that's not exactly what I remember this
 19 statement meaning in the context of the trial,
 20 but, again, since you confused me by your
 21 context, I have to have it read to me again.
 22 MR. BONDURANT: Would you read the
 23 questions back.
 24 (Record Read.)
 25 THE WITNESS: I have to answer that yes

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1 but with a qualification.
 2 BY MR. BONDURANT:
 3 Q. What is that qualification?
 4 A. I think the underlying nature of the precinct,
 5 with respect to precincts surrounding it in
 6 particular, will not change, but its voting
 7 behavior could change. If you take a strong
 8 precinct that might have been strong Republican
 9 precinct before redistricting and you put it in
 10 a heavily Democratic district, it might modify
 11 its behavior.
 12 So I think generally your statement is
 13 true but specifically not necessarily true.
 14 Q. In your trial testimony, you were questioned on
 15 why you used only the results of the 2008
 16 Obama-McCain as your election data in drafting
 17 the 2011 plan. Do you recall that?
 18 A. Yes.
 19 Q. And you said that you thought that was
 20 representative but that it was also correlated
 21 with the results in other statewide elections at
 22 which you had looked.
 23 A. Yes.
 24 Q. Therefore it didn't make a lot of difference
 25 whether you used the Obama-McCain results or the

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1 results in other statewide elections as far as
 2 determining whether the districts were going to
 3 in the future vote Democratic or Republican.
 4 A. Generally true, yes.
 5 Q. And you said specifically "I know from
 6 experience that the underlying political nature
 7 of the precincts in the state does not change no
 8 matter what race you use to analyze it."
 9 Do you see that language?
 10 A. I do.
 11 Q. Was that true?
 12 A. It's true in the context of the word
 13 "underlying," yes, and by that, really I'm
 14 talking about the ranking of the precincts one
 15 to another. They might all vote a little bit
 16 more one way or another, but they'll be
 17 generally in the same spot on a continuum of all
 18 the precincts.
 19 Q. Whether it was deep red, sort of red, light blue
 20 or dark blue in your ranking of districts?
 21 A. I think I could generally agree with that, yes.
 22 There might be some context in which it would
 23 not be true. I don't think you want to go into
 24 that now.
 25 Q. Was that still the case at the time you did the

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1 drafting of the 2016 plan?
 2 A. Yes.
 3 Q. And then in the next sentence, on Page 525, you
 4 said:
 5 "The only way the underlying
 6 political demographics change in a
 7 precinct is if the precinct is changed in
 8 the nature of the people that are living
 9 in the precinct. So once a precinct has
 10 found to be a strong Democratic precinct,
 11 it's probably going to act as a strong
 12 Democratic precinct in every subsequent
 13 election. The same would be true of
 14 Republican precincts."
 15 MR. FARR: Can he look at the
 16 transcript, please.
 17 MR. BONDURANT: Yes.
 18 MR. FARR: And also, I'm going to make
 19 a request tomorrow I'm going to want to get
 20 copies of any exhibits that you're going to use
 21 to cross-examine Senator Rucho or Representative
 22 Lewis which is pretty customary here in
 23 North Carolina.
 24 MR. BONDURANT: It's certainly not
 25 covered by the federal rules.

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1 MR. FARR: It's certainly customary
 2 here in North Carolina.
 3 MR. SPEAS: I don't believe that's
 4 customary.
 5 MR. FARR: Well, I believe it is,
 6 Eddie.
 7 MR. SPEAS: Well, I've never heard any
 8 such rule.
 9 MR. FARR: Well, you know what, we can
 10 call the magistrate up today and see if we are
 11 entitled to have copies of exhibits. Or what we
 12 can do --
 13 MR. SPEAS: Of a deposition in advance?
 14 MR. FARR: Or what we can do is stop
 15 the deposition and make copies of all these
 16 things before the witness is examined. We can
 17 do it that way, if you'd like, like we did the
 18 report. I'm entitled to see the exhibit while
 19 he's being cross-examined.
 20 MR. SPEAS: You have copies of every
 21 one of these.
 22 MR. FARR: I didn't know what you were
 23 going to use today.
 24 MR. SPEAS: Why didn't you bring the
 25 documents that have to do with the case,

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1 Mr. Farr.
 2 MR. FARR: Are you serious, Eddie?
 3 MR. SPEAS: Damn right I'm serious.
 4 MR. FARR: You're serious I should have
 5 known you were going to cross-examine him on
 6 trial testimony?
 7 MR. SPEAS: You should have know your
 8 witness was going to be asked about his prior
 9 testimony.
 10 MR. FARR: I should have known he was
 11 going to be cross-examined on exhibits that
 12 weren't produced for us before the deposition?
 13 MR. BONDURANT: Should we go back on
 14 the record for this deposition instead of
 15 resolving other problems?
 16 MR. FARR: Well, I would like to have
 17 copies of exhibits that are going to be used to
 18 cross-examine my witness tomorrow.
 19 MR. BONDURANT: Your question is under
 20 advisement.
 21 BY MR. BONDURANT:
 22 Q. Do you have Page 525 before you from which I
 23 just quoted, Dr. Hofeller?
 24 A. Okay. You're specifically talking about the
 25 second section that's underlined or shaded

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1 yellow, right?
 2 Q. The sentence beginning "The only way the
 3 underlying political demographics change" and
 4 ending with "The same would be true of
 5 Republican precincts."
 6 A. Yes.
 7 Q. That was your testimony under oath then and it
 8 would be your opinion now when you -- in
 9 connection with your drafting of the 2016 plan?
 10 A. Yes.
 11 Q. Do you recall that the results of the 2011 plan
 12 were that in 2012 the Democrats carried a
 13 majority of the statewide vote both for
 14 president and the majority of the statewide vote
 15 for congressional elections?
 16 A. I don't know. I have to see that data put
 17 before me.
 18 Q. But the result of the 2012 election was that
 19 instead of 10-3 Republicans that you projected
 20 it, the Republicans took 9 seats with 49 percent
 21 of the vote and the Democrats took only 4 seats
 22 with 51 percent of the vote.
 23 A. I don't agree with --
 24 MR. FARR: Objection to the form.
 25 THE WITNESS: -- with the first premise

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1 of your question about my prediction.
 2 BY MR. FARR:
 3 Q. Well, let's lay aside the prediction.
 4 The results in 2012 were that the
 5 Democrats took 51 percent of the statewide vote
 6 in congressional elections but elected only 4
 7 Democrats, and the Republicans took 49 percent
 8 and elected 9 Republicans.
 9 A. Again, I don't have those percentages in front
 10 of me. I know that the results of the election
 11 were the election of 4 Democrats and 9
 12 Republicans.
 13 Q. And you knew that the Democrats took more votes
 14 in congressional elections than the Republicans?
 15 A. I don't know.
 16 MR. FARR: Hasn't he answered that
 17 before, like two other times?
 18 THE WITNESS: I don't know that.
 19 BY MR. BONDURANT:
 20 Q. You don't know that?
 21 A. No.
 22 MR. FARR: We'd like to take a break
 23 when it's convenient.
 24 MR. BONDURANT: This would be a perfect
 25 time.

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1 THE VIDEOGRAPHER: Off the record at
 2 3:18 p.m.
 3 (Brief Recess.)
 4 THE VIDEOGRAPHER: On record at
 5 3:32 p.m.
 6 MR. FARR: With the indulgence of
 7 plaintiff's counsel, I did want to make a
 8 statement: That under Local Rule 30.1(d), the
 9 Middle District says that deposing counsel shall
 10 provide to the witness's counsel a copy of all
 11 documents shown to the witness during the
 12 deposition. The copy shall be provided either
 13 before the deposition beginnings or
 14 contemporaneously of the showing of each
 15 document with the witness.
 16 MR. BONDURANT: Which is precisely the
 17 procedure we're following of giving you copies
 18 of each document as it is being shown to the
 19 witness during the deposition.
 20 MR. FARR: Several of the documents
 21 that have been used today we have not been given
 22 copies. Most of them you have.
 23 MR. BONDURANT: I'm not aware of any
 24 that we haven't given you copies of, but if
 25 there are any, we'll be delighted to have copies

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1 made. We did make copies of both reports which
 2 were the only two that we did not previously
 3 mark as exhibits. We produced multiple copies.
 4 MR. FARR: Well, we don't have a copy
 5 of the transcript you were examining him from.
 6 So I was just -- I'm clarifying and I
 7 appreciate the fact that we have received copies
 8 of almost all the exhibits that have been used
 9 today, but tomorrow I'm asking if there are
 10 going to be exhibits used to cross-examine
 11 Senator Rucho that we be given a copy of that
 12 document.
 13 MR. BONDURANT: Shall we proceed?
 14 MR. FARR: Thank you.
 15 (WHEREUPON, Plaintiffs' Exhibit 17 was
 16 marked for identification.)
 17 BY MR. BONDURANT:
 18 Q. You have been previously been given Deposition
 19 Exhibit 17 which is the -- from the
 20 North Carolina General Assembly website.
 21 Can you identify that as the final
 22 result of your 2011 redistricting?
 23 A. It was the plan enacted by the General Assembly.
 24 Q. And you were the principal architect and
 25 draftsman of the plan?

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1 A. As we've defined it, yes.

2 Q. And the election return data you used in

3 drafting the districts was the 2008 election

4 returns of the presidential election marked here

5 in this exhibit?

6 A. I did from time to time use other election

7 results in drawing districts, but not for the

8 congressional plan.

9 Q. Not for the congressional plan?

10 A. Right.

11 Q. You used only the 2008 Obama-McCain general

12 election results?

13 A. I don't recall for sure. I might have used some

14 other results, but by the time the trial rolled

15 around we had the 2012 also.

16 Q. Do you recall using any results other than the

17 Obama-McCain results?

18 A. As we were drawing districts during that

19 redistricting cycle, we oft-time looked at other

20 races too of a plan once it was at sort of a

21 bench-like level to look at other politics of

22 the plan, but they were not in thematic display

23 that was on the map for the VTDs.

24 Does that clarify it for you?

25 Q. Let me see if I understand you. You used only

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1 data on which you drew the plan of the 2008

2 presidential election results and no other

3 election results?

4 A. I'm sorry, I'm trying to -- there are only two

5 pages of this?

6 Q. Yes.

7 A. I don't think there's any -- any election data

8 listed on that result, on those two pages.

9 Q. If you look under Statewide by District and VTD,

10 the third from the bottom line, 2008 Election

11 Results, Part 1, 2008 Election Returns, Part 2,

12 and then back onto the next block, Individual

13 District by VTD, you see the same legend, 2008

14 Election Returns, Part 1, 2008 Election Returns,

15 Part 2.

16 Is it your recollection that that was

17 only the Obama election returns and no others?

18 A. I don't think that's what the document is about,

19 if you want me to explain.

20 Q. I'm simply asking you what your recollection

21 was.

22 A. I'm sorry. Again, my recollection of what?

23 Q. Of what elections you used in actually assigning

24 VTDs and counties among districts to create a

25 Republican advantage in as many districts as

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1 the -- you actually used only the results of the

2 Obama-McCain 2008 election. You looked at

3 results in other statewide elections and saw

4 that those results were correlated to them, but

5 you did not use those other results.

6 Would that be fair?

7 A. Partially.

8 Q. What part is unfair?

9 A. You can only -- you have to choose the thematic

10 that you want to put up on the actual system,

11 the map that's on the screen of the GIS system,

12 Maptitude, while you're drafting, but that

13 doesn't preclude you from when the plan reaches

14 a certain point of bringing in other election

15 results and looking at them to see if the plan

16 is reacting specifically to the way you wanted

17 it to be drawn, but that is not on the display

18 on the computer at the time.

19 Does that clarify that for you?

20 Q. What was displayed on your computer was only the

21 2008 Obama election results?

22 A. For the most part, but I can't vouch that at

23 some point I may not have put up another

24 display.

25 Q. And what is listed in Exhibit 17 is the source

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1 possible.

2 MR. FARR: Objection to the form.

3 THE WITNESS: Okay. That's a different

4 question than you asked me before, but I will

5 say again, to clarify once more, that while I

6 was drawing the districts, particularly in a

7 county where the county was being split between

8 two or more districts, the display on my screen

9 as to the coloring of the precincts was a

10 political percentage which was almost always the

11 McCain-Obama race for president in 2008. We did

12 not have, obviously, 2012 then.

13 BY MR. BONDURANT:

14 Q. I don't want to belabor this, but let me show

15 you a page from your deposition.

16 A. I'll need to see the surrounding pages too,

17 so...

18 Q. You're perfectly welcome to read as much as you

19 would like to read.

20 A. Thank you.

21 Q. Look at Page 56, beginning at Line 2 and ending

22 in Line 4 --

23 MR. FARR: I've never done this in a

24 video deposition, and I regret that I have to,

25 but I'm going to go around behind him.

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1 MR. BONDURANT: Go right ahead.
 2 THE WITNESS: What line are we starting
 3 on?
 4 BY MR. BONDURANT:
 5 Q. Line 2 through Line 4. Would you read the
 6 question out loud and answer.
 7 A. I'll read the question out.
 8 "Did you use any election data other
 9 than the 2008 Obama election in putting
 10 districts or outside?"
 11 "I did not."
 12 Now, I want to go back and read the
 13 context. May I add something?
 14 Q. If you think it's necessary to make your answer
 15 complete.
 16 A. Yes. I go back to the question on the bottom of
 17 Page 55, Line 23. Actually, I go back to the
 18 question before that, 19, Line 19 of Page 55.
 19 "Okay. Based on your past
 20 experience and your knowledge, you count
 21 a vote for Obama as a vote for a black or
 22 a Democrat?"
 23 Answer: "A Democrat."
 24 "Did you use any other election
 25 results in putting VTDs inside or outside

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1 of Congressional District 12?"
 2 Answer: "I'm sorry. Did you say
 3 political?"
 4 Question: "Did you use any election
 5 other than the 2008 Obama election
 6 putting districts" -- and I think they
 7 mean VTDs there -- "in or outside and
 8 also implied is of CD 12?"
 9 And the answer is: "I did not."
 10 Q. CD 12 is not mentioned in the last sentence.
 11 A. CD 12 is mentioned in the context of the
 12 question that led up to that question. I'm
 13 sorry, it's --
 14 Q. Did you use --
 15 MR. FARR: Can he finish his answer?
 16 Are you done?
 17 BY MR. BONDURANT:
 18 Q. Did you use any data --
 19 MR. FARR: Are you done, Tom?
 20 THE WITNESS: No, I'm not done.
 21 In the context of building CD 12, it is
 22 true that that is the race I used.
 23 BY MR. BONDURANT:
 24 Q. How about CD's 11, 10, 9, 8, 7, 5, 6, 3 and 2,
 25 did you use any data other than the Obama

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1 election?
 2 A. All the districts except District 1.
 3 Q. 1 or 4?
 4 A. Okay. I don't actually remember, but my
 5 recollection would be that probably not. That's
 6 probably not true.
 7 We used other election data in
 8 evaluating the districts as they were being
 9 drawn, but it was not on the screen. So you
 10 might draw a plan, a version of the plan and
 11 look at the other election data also and then
 12 adjust the plan, but -- go ahead.
 13 Q. It was all election data, past voting history
 14 used as a predictor of future performance of
 15 either the county or the VTD or the census
 16 block?
 17 A. No. It would be -- it would be a predictor of
 18 possible behavior of the VTD.
 19 Q. Of the VTD?
 20 A. We don't have political data that is that
 21 granular for blocks.
 22 Q. You mentioned earlier that you were -- you
 23 couldn't remember whether you had paired
 24 districts. Let me see if I can refresh your
 25 recollection.

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1 Isn't it true that your 2011 plan
 2 paired Representative Larry Kissell, who was a
 3 Democrat, and Mike McIntyre, the Democratic
 4 incumbent in the 8th district, and drew them
 5 into the new 8th district which was designed to
 6 be a strongly Republican district?
 7 A. Could I see the document you're reading from.
 8 Q. No. Could you --
 9 A. Ask your question again. You're trying to
 10 refresh my memory.
 11 MR. BONDURANT: Can you read the
 12 question back.
 13 (Record Read.)
 14 THE WITNESS: Once again, I don't
 15 recall. I'd have to see a map of the plan with
 16 the incumbent residences on it to answer that
 17 question accurately.
 18 MR. FARR: We'll stipulate to whatever
 19 the facts are.
 20 MR. BONDURANT: Okay.
 21 THE WITNESS: So will I.
 22 BY MR. BONDURANT:
 23 Q. I just didn't know whether you remembered or
 24 not.
 25 ///

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1 (WHEREUPON, Plaintiffs' Exhibit 19 was
2 marked for identification.)
3 BY MR. BONDURANT:
4 Q. Dr. Hofeller, can you identify the Exhibit 19
5 which is entitled Proposed 10-3 Map?
6 A. I can identify that's the title of the map, yes.
7 Q. Have you ever seen it before?
8 A. It certainly looks like a map that might have
9 come off my system, yes.
10 Q. Is it your recollection that's a map you
11 designed?
12 A. Once again, I don't remember. Okay. I'm sorry.
13 Q. Do you recall deliberately drafting a map that
14 would create a 10-3 Republican partisan
15 advantage during the 2011 redistricting and
16 submitting it to Representative Lewis and
17 Senator Rucho?
18 A. Well, that's a two-part question. First of all,
19 I don't remember this map; and secondly of all,
20 I don't remember who saw it. So if I drew it,
21 it may have been something that I drew and it
22 wasn't going to work. I drew a lot of
23 alternative maps along the way and we took a lot
24 of different paths in developing these plans to
25 see what would work.

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1 Q. So you just don't remember that map one way or
2 the other?
3 A. I don't remember it specifically, no. I'm
4 sorry. I can see it's vastly different from the
5 plan that was finalized.
6 (WHEREUPON, Plaintiffs' Exhibit 20 was
7 marked for identification.)
8 BY MR. BONDURANT:
9 Q. Dr. Hofeller, can you identify Exhibit 50?
10 Excuse me. Exhibit 20. I misspoke.
11 MR. FARR: I wish it was 50.
12 MR. BONDURANT: No, you don't.
13 THE WITNESS: Well, the title reads
14 Final REDMAP Report dated 21 December 2010.
15 BY MR. BONDURANT:
16 Q. Did you see a copy of that report?
17 A. I don't remember.
18 Q. At or about the time it was issued?
19 A. I don't remember. I have no recollection of
20 this report.
21 (WHEREUPON, Plaintiffs' Exhibit 21 was
22 marked for identification.)
23 BY MR. BONDURANT:
24 Q. Can you identify 21 as a REDMAP 2012 summary
25 report?

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1 A. Yes.
2 Q. Have you seen it before?
3 A. Not that I remember.
4 Q. You didn't have any role in either preparing it
5 or reading it at the time to your recollection?
6 A. No. It's kind of hard to read in black and
7 white.
8 (WHEREUPON, Plaintiffs' Exhibit 22 was
9 marked for identification.)
10 BY MR. BONDURANT:
11 Q. Exhibit 22, can you identify that, sir?
12 A. REDMAP Political Report, Final Report, it says.
13 Q. As consultant for the Republican State
14 Legislative Committee and the Foundation, would
15 you in the ordinary course have received the
16 final report from the REDMAP strategy?
17 A. No, actually I wouldn't. I probably would have
18 compiled all these items myself.
19 Q. So it's your belief that you would have compiled
20 the data that is in 20 and 21 and 22?
21 A. Well, again, I'd have to read them over
22 completely, but as to the changes in the
23 composition of the legislative bodies, I would
24 have known that data, yes.
25 Q. And it's your recollection you actually compiled

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1 the data for the authors of the reports?
2 A. No. I compiled the data -- I think I actually
3 compiled for the RNC rather than for the RSLC.
4 So they may have been given copies of these
5 reports. I just don't remember.
6 Q. And do you remember seeing these reports at the
7 time --
8 A. No.
9 Q. -- that they were published?
10 A. No.
11 (WHEREUPON, Plaintiffs' Exhibit 23 was
12 marked for identification.)
13 BY MR. BONDURANT:
14 Q. Can you identify Exhibit 23?
15 A. States the 2012 RSLC year-end report.
16 Q. Had you ever seen that report?
17 A. Not that I can remember.
18 Q. Are you familiar with the information in it?
19 A. I don't know. I'd have to read it.
20 Q. Let me specifically call your attention to the
21 second full paragraph in the last sentence, or
22 next to last sentence.
23 "After 2010, Republicans took
24 control of 20 legislative bodies and
25 moved one from Democratic control to

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1 being evenly divided."
 2 Is that your recollection as being
 3 accurate?
 4 A. The last sentence of that paragraph?
 5 Q. That's the next to the last sentence in the
 6 second full paragraph.
 7 A. Says "Further, there were 25 states"?
 8 Q. Let's start again. See the --
 9 A. Oh, the third sentence from the back.
 10 Q. The full sentence, the first -- excuse me. The
 11 second full paragraph begins:
 12 "Much of the Republican successes in
 13 the 2012 state legislative races and at
 14 the congressional level was attributed to
 15 the RSLC's Redistricting Majority Project
 16 (REDMAP) - a forward-thinking effort
 17 undertaken after the 2008 election to
 18 focus resources in the 2009-2010 cycle on
 19 states projected to gain seats after the
 20 national census.
 21 "After 2010, Republicans took
 22 control of 20 legislative bodies and
 23 moved one from Democratic control to
 24 being evenly divided."
 25 Is that information consistent with

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1 your recollection?
 2 A. Yes.
 3 Q. And it's accurate?
 4 A. I can't verify that. I'd have to see the
 5 reports that I did.
 6 I know some of the composition of some
 7 of the legislatures continued to shift during
 8 the period after the election.
 9 Q. Then the next sentence continuing:
 10 "Further, there were 25 states where
 11 Republicans held majorities in both
 12 legislative chambers, up from 14. This
 13 shift in legislative power allowed
 14 Republicans to control the redistricting
 15 process and create 20 to 25 new
 16 Republican congressional districts,
 17 solidifying a Republican House majority
 18 and Republican majorities in state houses
 19 across the country."
 20 Was that statement accurate to your
 21 knowledge?
 22 A. You know, I can't really say that for sure. It
 23 would depend on what they mean by 20 to 25 new
 24 Republican congressional districts. That wasn't
 25 my statement, so I don't know.

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1 Again, I'd have to go back and
 2 reevaluate what that specific number was.
 3 Q. Well, you wouldn't question the accuracy of
 4 RSLC's REDMAP reports that we've identified?
 5 A. I don't think I'd really be interested in that
 6 figure. I had my own figures and that was what
 7 I was using.
 8 Q. What were your figures, the results --
 9 A. Again, I don't remember because I don't have
 10 those reports in front of me. That's been a
 11 number of years now and that's not my focus. I
 12 know it was a good election.
 13 Q. From a Republican point of view?
 14 A. I guess you would have to say that, yeah.
 15 Q. I would expect you would.
 16 I want to turn now to 2016. You
 17 testified in the Harris trial in October of
 18 2015, correct?
 19 A. I don't remember specifically when the trial
 20 was, but I testified in it.
 21 Q. And you previously had testified that the Court
 22 on February 5, 2016, declared the 1st and the
 23 12th districts to have been invalidly racially
 24 gerrymandered and invalidated the plan.
 25 Do you recall that?

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1 MR. FARR: Objection to the form.
 2 THE WITNESS: I really think it's up to
 3 the attorneys to interpret the Court opinion. I
 4 know the Court didn't like the districts.
 5 BY MR. BONDURANT:
 6 Q. You recall the Court ruling occurred on
 7 February 5th?
 8 A. I think it was Friday, late Friday afternoon
 9 February 5th, yes.
 10 Q. And that between the end of the trial until the
 11 Court ruling, you had no contact with
 12 Representative Lewis or Senator Rucho or anyone
 13 in North Carolina pertaining to the districts,
 14 the congressional districts that were at issue
 15 in Harris?
 16 A. I don't know if I didn't have any contact, but
 17 we certainly weren't considering redraws at that
 18 point.
 19 Q. All right. And when did you first begin working
 20 on redrawing a plan?
 21 A. After the ruling came out.
 22 Q. Was that before or after you had any
 23 communication from Senator Rucho or
 24 Representative Lewis as to how that plan was to
 25 be structured?

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1 A. I made -- I guess probably over that weekend I
 2 made some preliminary looks on what might have
 3 been possible to draw.
 4 Q. That is, you drew some maps on your computer?
 5 A. Yes. You have copies of those maps.
 6 Q. When did you first have any communication with
 7 Representative Lewis or Senator Rucho as
 8 co-chairs of the Joint Select Committee on
 9 Congressional Redistricting regarding the
 10 criteria which they wanted you to follow in
 11 drafting the 2016 plan?
 12 A. I don't remember a specific time, but I imagine
 13 it was that weekend. It was for sure by Monday
 14 because we only had eight days to draw that map
 15 so I had to know which way I was to proceed.
 16 Q. What were the communications? Can you describe
 17 them? What did they tell you they wanted the
 18 new map?
 19 A. Well, the number one goal was to draw a map that
 20 the Court would accept. So we wanted to make
 21 sure that the Court's objections were addressed,
 22 and the primary way to do that was to put the
 23 neutral criteria on top and other criteria
 24 underneath it and to not be in a position where
 25 anybody could say that race had even come close

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1 to predominating.
 2 Q. When you say neutral criteria, what criteria are
 3 you referring to?
 4 A. Well, let's go through the criteria from one end
 5 to the other.
 6 Q. No. I want to know which ones you and
 7 Senator Rucho and Representative Lewis discussed
 8 where the criteria that you call neutral that
 9 you were to consider in drafting the plan.
 10 A. Well, okay. First of all is one-person,
 11 one-vote. Second is the Voting Rights Act,
 12 which are the two federal criteria so they
 13 always stand on the top of any redistricting.
 14 The third criteria was adherence to
 15 particularly county lines. And the next
 16 criteria was to avoid the breaking of precincts.
 17 We're we were also going to look at contiguity
 18 which from time to time has been a problem in
 19 North Carolina. Looking at compactness.
 20 Looking at district cores or communities of
 21 interest, and part of that, a sub feature of
 22 that is to try and make sure that as few
 23 incumbents as possible are not -- are double
 24 bunked. That's our slang term for saying
 25 drawing in the same district.

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1 Another criteria was to look at
 2 districts that would be as favorable within
 3 those criteria of -- of drawing a plan that was
 4 advantageous to Republican candidates.
 5 Q. Were there any written communications that set
 6 forth any of those criteria?
 7 A. No. You have to remember, we had -- by that
 8 time we had maybe six days left to go, and those
 9 are criteria that I can well keep in my head.
 10 Q. Did you make any notes of any of the
 11 conversations with Representative Lewis or
 12 Senator Rucho in that period between
 13 February 5th and February 16th?
 14 A. I remember the plan was actually brought into a
 15 form to be presented to the legislature long
 16 before the 16th. So again, we only had eight
 17 days. And the answer to your question directly
 18 is, no, I have no notes.
 19 Q. Is it correct that you were instructed by the
 20 map drawers to create a map that was likely to
 21 elect 10 Republicans and 3 Democrats?
 22 A. Initially no, but during the process, yes, to a
 23 certain degree, within the limits of the other
 24 criteria that had to be put on top in order to
 25 meet what we thought would be the demands of the

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1 federal court in the drafting of this plan
 2 because the whole goal and the overarching goal
 3 of the plan was to make sure that whatever was
 4 drawn was a plan according to neutral criteria
 5 and that would be acceptable to that Court.
 6 Q. Is there any written document that you have seen
 7 that refers to a desire to comply with the
 8 Voting Rights Act as being a factor in the
 9 drawing of the 2016 plan? That's a yes-or-no
 10 answer.
 11 A. No, but I want to elaborate.
 12 Q. A "no" answer requires an elaboration?
 13 MR. FARR: If he wants to give one.
 14 THE WITNESS: I just want to say that
 15 compliance of the Voting Rights Act is not an
 16 option; you have to comply.
 17 BY MR. BONDURANT:
 18 Q. When did you first see a draft of what became
 19 the written adopted criteria?
 20 A. I don't recall I did. I may have seen it after
 21 it was done. I just don't know.
 22 (WHEREUPON, Plaintiffs' Exhibit 24 was
 23 marked for identification.)
 24 BY MR. BONDURANT:
 25 Q. Can you identify Exhibit 24 as the 2016

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1 Contingent Congressional Plan Committee Adopted
 2 Criteria?
 3 A. Yes.
 4 Q. Did you see a draft of this document before it
 5 was adopted by the meeting of the joint
 6 committee on February 16th?
 7 A. I don't really recall. I was more interested in
 8 getting the plan into shape to be presented.
 9 Q. So you were drafting a plan to comply with these
 10 criteria even before the criteria was drafted --
 11 was adopted?
 12 A. Well, I had to have been because the plan was
 13 for the most part finished by the time the
 14 criteria were formally adopted by the committee.
 15 Q. Were there any changes in the plan that you
 16 drafted made after the criteria were adopted on
 17 February 16th?
 18 A. Yes.
 19 Q. So the plan was in nearly final form before
 20 criteria was adopted and was changed afterwards?
 21 A. Yes.
 22 Q. When you received the written criteria, did you
 23 regard them as your instructions that you were
 24 to follow in conforming the plan which you had
 25 drafted to the criteria adopted by the

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1 committee?
 2 A. I'm sorry. Did you -- could you repeat that
 3 again.
 4 (Record Read.)
 5 THE WITNESS: I think the answer to
 6 that question is no, but I can explain if you
 7 want me to.
 8 BY MR. BONDURANT:
 9 Q. So you did not regard yourself bound by the
 10 written criteria?
 11 A. I would have been bound by the written criteria
 12 at the time that it came out, but that's not the
 13 question you asked me.
 14 Q. When you received the criteria after they were
 15 adopted on 2016, did you regard yourself bound
 16 by them?
 17 A. Of course.
 18 Q. Did you modify the plan to conform to the
 19 criteria?
 20 A. It already conformed to the criteria.
 21 Q. The first criteria was equal population which is
 22 a constitutional requirement.
 23 A. Yes.
 24 Q. And that's a background requirement of every
 25 reapportionment plan, correct?

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1 MR. FARR: Objection to the form.
 2 You can answer.
 3 THE WITNESS: I don't think it's a
 4 background criteria. It's a mandatory criteria.
 5 BY MR. BONDURANT:
 6 Q. It's a mandatory constitutional requirement
 7 coming from a decision called Wesberry v Sanders
 8 in 1963, correct?
 9 A. I'm aware of that case, yes.
 10 Q. And every congressional reapportionment plan
 11 which has been drafted since then is expected to
 12 comply with the one-person, one-vote
 13 requirement?
 14 A. Yes, except it's not always clear exactly what
 15 that compliance is.
 16 Q. And the second criteria which the joint
 17 committee instructed you was contiguity, that
 18 is, congressional districts shall be composed of
 19 contiguous territory and contiguity by water is
 20 sufficient, correct?
 21 A. Contiguous territory, yes. And if memory serves
 22 me right, I believe that's a requirement which
 23 the State Supreme Court has laid down because
 24 when the plans were adopted in earlier decades,
 25 some of the plans were what we would say

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1 contiguous by touch. In fact, some districts
 2 crossed over other districts, so you'd have
 3 to -- if you were walking from one district to
 4 the other, you would have to enter a black hole
 5 to get to the other districts.
 6 Q. So in both 2011 and 2016, you applied a
 7 contiguity standard in drafting the plans?
 8 A. In accordance with the dictates of the State
 9 Supreme Court, yes.
 10 Q. In the third heading called political data, you
 11 were instructed that the only data other than
 12 population data to be used to construct the
 13 congressional district shall be election results
 14 in statewide contests since January 1, 2008, not
 15 including the last two presidential contests.
 16 A. Yes.
 17 Q. And the -- were you told why you were not to use
 18 the results of either the last two presidential
 19 contests in constructing the plan?
 20 A. If my memory serves me correctly, in the Harris
 21 trial, the plaintiffs objected to the use of
 22 those elections. Even though there was, of
 23 course, a decision that there was no racial
 24 block voting in the state, they -- they --
 25 Q. My question was were you told.

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1 A. Yes, I was told why. It was because of the
 2 decision that came out in the Harris case that
 3 had mentioned -- in my belief I was told this --
 4 that the use of that data was a factor in their
 5 decision on District 12.
 6 Q. So you believe --
 7 A. I would have used it under the normal course of
 8 events, but, again, the number one criteria --
 9 the number one overarching criteria in drawing
 10 this plan was to draw a plan that was going to
 11 be acceptable to the three-judge panel.
 12 Q. Let me ask you to look at Exhibit 24. Can you
 13 point to any sentence in Exhibit 24 of the
 14 adopted criteria that states that the purpose of
 15 the plan was to comply with the Harris decision?
 16 A. I don't know. I don't think so.
 17 Q. Can you point to any written communication that
 18 said that a criteria in drafting the 2016 plan
 19 was to comply with the Harris decision?
 20 A. No, but I have a qualification.
 21 MR. FARR: You can explain it.
 22 THE WITNESS: Okay. The Court decision
 23 in the Harris case ordered the state to draw a
 24 new map, draft a new map, in fact, to draft a
 25 map within a two-week period. It would have

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1 been unacceptable to draw -- to go ahead to
 2 proceed to draw a plan that you didn't think
 3 would comply with the Court's decision.
 4 BY MR. BONDURANT:
 5 Q. The Court decision did not tell you how to draw
 6 a map, did it? It did not tell you what
 7 criteria to use.
 8 A. It told us that we could not use race as the
 9 predominant criteria.
 10 Q. Other than not using the racial quota for
 11 districts.
 12 A. Yes, but we were all aware -- excuse me. We
 13 were all aware of what took place during the
 14 trial and why especially the 12th district and
 15 even the 1st district, to some extent, were
 16 ruled to be unconstitutional.
 17 Q. And you were not told how to draw the districts?
 18 You were only told that you could not use race
 19 as the predominant factor in drawing a district,
 20 correct?
 21 A. No.
 22 MR. FARR: Objection to the form.
 23 THE WITNESS: I'm sorry.
 24 MR. FARR: Because that's a legal
 25 issue, but you can answer it.

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1 BY MR. BONDURANT:
 2 Q. Your understanding of the Harris decision was
 3 the Court ruled that you could not use race as a
 4 predominant factor in drawing District 1 or
 5 District 12?
 6 A. That's a different question, isn't it.
 7 Q. Can you answer the question I asked, not the one
 8 you like.
 9 MR. FARR: Objection. Let's not do
 10 that.
 11 THE WITNESS: Read the question back
 12 for me, please.
 13 MR. BONDURANT: Just get your witness
 14 to be responsive.
 15 MR. FARR: He's been responsive all
 16 day.
 17 (Record Read.)
 18 THE WITNESS: Or in any other part of
 19 the plan. The answer is, yes, that was my
 20 understanding.
 21 BY MR. BONDURANT:
 22 Q. In the next sentence in the adopted criteria,
 23 you were instructed the data identifying race of
 24 individuals or voters shall not be used in
 25 construction or consideration of districts in

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1 the 2016 plan.
 2 Did you follow that instruction?
 3 A. Yes.
 4 Q. So you did not consider race or the racial
 5 composition of any of the districts in drawing
 6 the 2016 plan?
 7 A. I did not use race as a data factor in drawing
 8 the plan.
 9 Q. And without having racial data, you could not
 10 determine whether or not any of the districts
 11 were retrogressive for purposes of Section 2 of
 12 the Voting Rights Act, could you?
 13 MR. FARR: Objection to that question
 14 for a variety of reasons.
 15 THE WITNESS: When the plans were drawn
 16 and presented before the committee, the
 17 Democrats asked for the racial and ethnic data.
 18 The racial and ethnic data had shown that the
 19 plan was retrogressive. It would have come up
 20 with that data and the plan would have had to
 21 have been modified.
 22 MR. BONDURANT: That was not my
 23 question.
 24 Would you read my question back and
 25 would you give me an answer to my question.

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1 (Record Read.)
 2 THE WITNESS: I would know that --
 3 generally that District 1 would not have been
 4 retrogressive because it was drawn in the same
 5 area.
 6 BY MR. BONDURANT:
 7 Q. Did you look at whether any of the other
 8 districts were compliant with the Voting Rights
 9 Act?
 10 A. None of the other areas --
 11 Q. Was that a "yes" or a "no"?
 12 A. I'm sorry. Just ask it again.
 13 MR. BONDURANT: Would you read the
 14 question back.
 15 (Record Read.)
 16 THE WITNESS: No because there were no
 17 other Voting Rights districts in the state
 18 before in the previous benchmark plan.
 19 BY MR. BONDURANT:
 20 Q. The next sentence of your instructions were
 21 that:
 22 "Voting districts ('VTDs') should be
 23 split only when necessary to comply with
 24 zero deviation population requirements
 25 set forth in order to ensure integrity of

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1 political data."
 2 Do you see that?
 3 A. That's what it says, yes.
 4 Q. What does it mean when it says that you could
 5 divide VTDs in order to ensure the integrity of
 6 political data?
 7 A. That addresses the fact that whenever you split
 8 voting districts, the data are allotted on the
 9 basis of adult population and essentially the
 10 voting results are distributed homogeneously to
 11 every block based on their populations, their
 12 adult populations. So you don't really have a
 13 way of knowing what the political factors are
 14 most exactly on either side of that split.
 15 The political value of the precinct in
 16 the machine will be pretty much the same on both
 17 sides of that split, except for rounding errors.
 18 In fact, political data was not distributed down
 19 to the block level for all blocks. They had to
 20 have a certain number of people in them before
 21 it was disaggregated down to the block level.
 22 Q. So am I correct that you could split a VTD where
 23 it was necessary to achieve the partisan
 24 political objective of a 10-3 Republican map?
 25 MR. FARR: Objection to the form.

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1 THE WITNESS: No, I don't agree with
 2 that at all.
 3 BY MR. BONDURANT:
 4 Q. Did you generate any maps that split fewer VTDs
 5 but did not achieve your 10-3 partisan
 6 objective?
 7 A. If I understand your question, you said was
 8 there any other plan drawn that --
 9 Q. Do you need the question read back?
 10 A. Okay.
 11 (Record Read.)
 12 THE WITNESS: Not necessarily down to
 13 exact levels of one-person, one-vote.
 14 The reason precincts were split was to
 15 adhere to the one-person, one-vote rule.
 16 There's no way you could draw a map without
 17 splitting 12 precincts. It's theoretically and
 18 actually impossible unless you split one
 19 precinct more than one time.
 20 BY MR. BONDURANT:
 21 Q. So you did not draw any maps with fewer precinct
 22 splits but which did not accomplish your 10-3
 23 Republican advantage?
 24 A. I think the answer to that --
 25 MR. FARR: Objection.

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1 THE WITNESS: -- is I did not -- well,
 2 no, I didn't draw any maps that had fewer than
 3 13 precinct splits, period.
 4 BY MR. BONDURANT:
 5 Q. Let's go to next paragraph. It's headed
 6 Partisan Advantage.
 7 "The partisan makeup of congressional
 8 delegation under the enacted plan is 10
 9 Republicans and 3 Democrats."
 10 That was the 2011 plan which you
 11 drafted, correct?
 12 A. First of all, I don't really understand what
 13 "enacted plan" means in that statement. Does
 14 that mean -- I think that means the 2011 map,
 15 the way it's worded.
 16 Q. That's what I thought it meant too.
 17 A. I just wanted to make sure we were speaking
 18 about the same thing.
 19 Q. The status quo was 10-3?
 20 A. Yes, it was.
 21 Q. And that was under the 2011 plan which you
 22 drafted?
 23 A. That's true.
 24 Q. And your instructions were to preserve that
 25 partisan advantage.

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1 A. My instructions were to make an effort to
 2 preserve that partisan advantage, yes.
 3 Q. And you succeeded in that objective?
 4 A. I don't believe that's the case, no.
 5 Q. In the 2016 election, how many Republicans were
 6 elected?
 7 A. Ten.
 8 Q. How many Democrats were elected?
 9 A. Three.
 10 Q. Was that your objective?
 11 A. No. My objective was as the criteria stated.
 12 That was a -- that was an election where all the
 13 incumbents -- I don't know if it was all the
 14 incumbents, but most the incumbents won. There
 15 was actually one race where two incumbent
 16 Republicans ended up being pitted against one
 17 another, but that doesn't have anything to do
 18 with what I actually think the potential
 19 partisan makeup of the plan was.
 20 Q. You were instructed to make reasonable efforts
 21 to draw a 10-3 Republican advantage plan?
 22 A. Yes, I'll agree with that statement.
 23 Q. And you achieved that objective?
 24 A. No, I don't think I did, actually. I don't
 25 think it was achievable under the criteria, the

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1 other criteria which limited the drafting of the
 2 plan.
 3 Q. So you don't think a 10-3 partisan advantage was
 4 achievable under the written criteria you were
 5 given by the joint committee?
 6 A. I thought it was certainly possible, yes.
 7 Q. So it was achievable?
 8 A. It was achievable, but it could also not be
 9 achievable. Every election is different. The
 10 number of candidates, the type of candidates
 11 that win, the general political climate,
 12 everything goes into who's going to win these
 13 elections and --
 14 Q. I thought you told us previously that it is your
 15 expert opinion that how a precinct or a voter
 16 tabulation district votes, whether Democratic or
 17 Republican, was highly predictive of how it
 18 would vote in the future and that would be true
 19 over a series of elections unless there were
 20 major population shifts in the composition of
 21 the district.
 22 Wasn't that your prior testimony?
 23 A. I think for the most part, yes. Yes.
 24 Q. Now, one of the instructions was to essentially
 25 do away with the 12th district which was a

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1 district which the Republicans had inherited
 2 from the 2001 or maybe even the earlier
 3 redistricting that was -- that stayed strangely
 4 configured.
 5 A. Yes. What was the question?
 6 Q. Did that make it easier for you to draft the
 7 2016 plan?
 8 A. No. Just made it necessary to draft it
 9 differently.
 10 Q. When you -- how did you begin drafting the 2016
 11 plan? Did you start with the 1st district again
 12 as you did in the 2011 plan and build around it?
 13 A. No, not really. I was more interested in what
 14 we were going to do with the middle of the state
 15 where the big changes were going to be, so if
 16 the -- if the 12th district was going to have to
 17 be dissolved and particularly if the 4th
 18 district was to take a different shape. The
 19 center part of the state was much more difficult
 20 to draw than the two east and west sides of the
 21 state.
 22 Q. So what district did you draw first?
 23 A. I don't remember. I'd have to review my maps,
 24 but I was -- I was really looking at both. I
 25 may have looked at the 1st first and then turned

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1 to the rest of the state, but the biggest
 2 problem that I knew I had to solve was how to
 3 reconfigure around a new configuration in the
 4 center of the state with the 4th and the 12th
 5 not being the same as they were in the other
 6 map.
 7 Q. So the 4th and the 12th were predominantly
 8 Democratic districts?
 9 A. Oh, yes.
 10 Q. And you wanted to configure the new districts to
 11 be predominantly Democratic districts?
 12 A. Yes. Yes.
 13 Q. The new 4th, the new 12th and the new or
 14 existing 1st were all intended to be
 15 predominantly Democratic districts?
 16 A. Yes, but much less Democratic.
 17 Q. And in making them less Democratic, you took
 18 Democrats out of those previous districts and
 19 put them in districts that were going to be
 20 predominantly Republican districts?
 21 A. No, I don't think I would characterize that was
 22 the way the plan was drafted at all.
 23 Q. Well, how did you make the 1st district less
 24 Democratic unless you put people who were
 25 formerly Democrats in that district into other

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1 districts?
 2 A. Well, first of all, the predominance of the
 3 criteria using as many -- of dividing as few
 4 counties as possible and using whole VTDs was
 5 going to have that effect. There was no way
 6 that it was going to happen otherwise.
 7 Q. It was going to have that effect of moving -- of
 8 moving Democrats out of the 1st district and
 9 putting them into districts in which they would
 10 be outvoted by Republicans, correct?
 11 A. Again --
 12 MR. FARR: Objection.
 13 THE WITNESS: I wouldn't characterize
 14 it that way at all. If you go to a plan where
 15 whole counties predominate, the voters are going
 16 to fall where they fall.
 17 BY MR. BONDURANT:
 18 Q. Let's talk about maintaining whole counties.
 19 Would it have been possible to draft a
 20 plan that kept more counties whole than the plan
 21 that you drafted?
 22 A. Perhaps, yes.
 23 Q. And if that had been done, would you have been
 24 able to achieve your 10-3 partisan advantage?
 25 A. Well, again, I didn't see the plan as the 10-3

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1 plan to begin with, but I don't think it would
 2 have significantly impacted the politics of the
 3 plan.
 4 Q. Did you try to draw a plan that would draft --
 5 that would divide fewer counties?
 6 A. Not that I recall, no.
 7 Q. And how many counties did your 2016 plan divide?
 8 A. If I remember, it was 13.
 9 Q. So would it be fair to say that you made no
 10 effort to draw a plan that would divide fewer
 11 than 13 counties?
 12 A. That would be true, yes.
 13 Q. Could you -- was it necessary to divide 13
 14 counties in order to achieve your 10-3 partisan
 15 advantage that you were to make reasonable
 16 efforts to construct?
 17 A. As opposed to what?
 18 Q. Well, you told me that you wanted to avoid
 19 dividing counties. You made no effort to draft
 20 a plan to divide fewer counties. And I'm asking
 21 you whether or not the reason that you didn't
 22 try to draft a plan that would divide, for
 23 example, 12 counties was that that was not
 24 possible and at the same time accomplish your
 25 other partisan objective which was to create a

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1 plan that would maintain the 10-3 Republican
 2 advantage.
 3 A. I'm sorry, I forgot the first part of that
 4 question because I was listening to the second
 5 part of the question.
 6 Would you read that back.
 7 (Record Read.)
 8 THE WITNESS: My answer is I don't
 9 know. I didn't make such an attempt, but I
 10 don't know that the premise of your question is
 11 correct.
 12 BY MR. BONDURANT:
 13 Q. Did you measure with your Maptitude program the
 14 compactness of the 2016 plan?
 15 A. I don't remember whether I ran a compactness
 16 report or not. I honestly don't. You don't get
 17 compactness results as you're drawing the plan.
 18 That's not the way the system works.
 19 Q. Once you have drawn a plan, you can run a
 20 compactness report on Maptitude, can you not?
 21 A. That's true.
 22 Q. And Maptitude, in fact, gives you the ability to
 23 measure the compactness of the plan by eight
 24 standards?
 25 A. Eight tests, yes.

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1 Q. Did you run any of those tests to measure the
 2 compactness of the 2016 plan?
 3 A. Before or after the plan was voted?
 4 Q. After the plan was adopted and before you
 5 presented it to Senator Rucho and Representative
 6 Lewis as your proposed work product following
 7 their instructions.
 8 A. Actually the plan was adopted after -- by the
 9 General Assembly after it was given to them.
 10 Q. I understand.
 11 A. Okay. So I have to say the premise of your
 12 question again is not accurate enough for me to
 13 make an answer.
 14 Q. Well, let's go step-by-step.
 15 Senator Rucho didn't draft a plan.
 16 A. He didn't draw the lines, that's true.
 17 Q. Representative Lewis didn't draft the plan.
 18 A. That's correct.
 19 Q. You got the written criteria from them.
 20 A. Yes.
 21 MR. FARR: Objection.
 22 BY MR. BONDURANT:
 23 Q. Correct?
 24 A. I got criteria from them before I did any
 25 serious work on the plan. I didn't formulate

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1 even the beginnings of what were the final plan
 2 until I received criteria from them.
 3 Q. And were those criteria the written criteria
 4 that are set forth in Exhibit 24?
 5 A. Yes.
 6 Q. Were there any other criteria not set forth in
 7 those two pages?
 8 A. As I said before, I think the other criteria
 9 was -- the primary motivation for drawing the
 10 plan the way it was was to make sure that a plan
 11 was drawn that would be acceptable to the
 12 three-judge panel. It had to be reviewed by the
 13 three-judge panel, and if we didn't feel it was
 14 going to be acceptable to the three-judge panel,
 15 it wouldn't have been a worthwhile exercise to
 16 draw the plan. And it was accepted.
 17 Q. And you received the written criteria and then
 18 you prepared a final plan which you then turned
 19 over to Senator Rucho and Representative Lewis
 20 so they would have something to introduce?
 21 A. No, I don't think that timeline is correct.
 22 Q. All right. When did you complete your final
 23 plan?
 24 A. I think, for the most part, a couple days before
 25 the plan went to the committee. There were some

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1 last-minute changes, but they weren't of very
 2 great substance.
 3 Q. And the criteria, the written criteria,
 4 Exhibit 21 -- excuse me, Exhibit 24, were in
 5 your hands before you made that final plan which
 6 you turned over to Representative Lewis and
 7 Senator Rucho?
 8 A. Well, first of all, the first plan I turned over
 9 to Senator Rucho and Representative Lewis was
 10 not the final plan; it was the near-final plan.
 11 And the written criteria, I didn't know the
 12 written criteria until after the committee met
 13 and adopted it.
 14 Q. So you prepared a plan before February 16th, the
 15 date on which the committee hearing was held and
 16 which the criteria were formally adopted?
 17 A. For the most part it was final, yes.
 18 Q. The written criteria was then adopted and given
 19 to you?
 20 A. Yes. I don't really recall how they were given
 21 to me, but I was aware they had been adopted.
 22 Q. Did you modify the plan after receiving the
 23 written criteria as adopted on February 16th?
 24 A. Yes.
 25 Q. What modifications did you make?

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1 A. I modified the plan because an incumbent address
 2 was incorrectly located in the incumbency file
 3 which I received and had resulted in the
 4 incumbent being outside of the district that was
 5 intended for him.
 6 Q. And who is the incumbent?
 7 A. It was the member in the 6th. I don't remember.
 8 Q. Was that Mr. Holding?
 9 A. No. That was the 6th district. Holding was --
 10 actually, he was drawn in the 4th, I believe,
 11 and was in the final plan. He lived in Guilford
 12 County.
 13 MR. SPEAS: Walker.
 14 THE WITNESS: Walker. Yes, Walker.
 15 BY MR. BONDURANT:
 16 Q. So you drew a Republican incumbent into the new
 17 4th district pairing him with the Democratic
 18 incumbent in that district, correct?
 19 A. That's the way the plan ended up, yes.
 20 Q. So you did not avoid pairing incumbents in
 21 drafting the 2016 plan?
 22 A. The decision was made because --
 23 Q. Is the answer yes or no?
 24 A. I'm sorry, I don't know what the yes-or-no
 25 answer is.

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1 (Record Read.)
 2 THE WITNESS: That's true.
 3 BY MR. BONDURANT:
 4 Q. And Representative Holding in fact decided to
 5 run in Representative Elder's district --
 6 Elmer's district and ultimately defeated her in
 7 the Republican primary?
 8 A. Well --
 9 MR. FARR: Yes.
 10 THE WITNESS: Yes, but it was actually
 11 more of that district was his district than her
 12 district.
 13 BY MR. BONDURANT:
 14 Q. Okay. So did you make any other modifications
 15 in the plan that you had drafted before
 16 February 16th after you received the written
 17 instructions?
 18 A. No.
 19 Q. And you don't know whether you could have
 20 drafted a plan that would have divided fewer
 21 counties and at the same time achieve the
 22 partisan objective of a 10-3 plan?
 23 A. I did not draw such a plan.
 24 Q. And you don't know whether such a plan can be
 25 drawn?

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1 A. I would say, with my experience in
 2 redistricting, it would be difficult, but it
 3 may -- it would have been difficult.
 4 Q. Do you know whether a plan could have been
 5 drawn -- could divide fewer VTDs than the 13
 6 which you divided in the 2016 plan and still
 7 achieve the partisan objective?
 8 A. I don't think dividing one less precinct would
 9 have made one bit of difference one way or the
 10 other.
 11 Q. So the question is: Do you know or do you not
 12 know?
 13 A. I know it would not have made a difference.
 14 Q. So you could have achieved the 10-3 partisan
 15 advantage and divided fewer VTDs than you
 16 divided in the plan; is that correct?
 17 A. I don't believe that. As you asked it, the
 18 theoretical minimum number of VTDs one could
 19 divide in a 13-district plan is 12 unless you
 20 divide a VTD more than one time, which is
 21 essentially another division. I said that
 22 before today.
 23 Q. And so under the criteria on compactness, the
 24 instructions were that counties could be divided
 25 under certain circumstances, correct?

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1 A. The instructions were to adhere to the
 2 one-person, one-vote rule. And once again, it
 3 would be impossible to draw a plan that's
 4 compliant with one-person, one-vote without
 5 dividing counties.
 6 Q. You could also under the instructions divide
 7 counties by considering incumbency to avoid
 8 pairing incumbents.
 9 If you turn to the second page of the
 10 exhibit, the last sentence under Compactness:
 11 "Division of counties shall only be
 12 made for reasons of equalizing population,
 13 consideration of incumbency and political
 14 impact."
 15 So there were three exceptions that you
 16 could divide counties, correct?
 17 A. That's what the -- that's what the criteria
 18 state, yes.
 19 Q. But because you paired two incumbents, you did
 20 not divide counties for incumbency?
 21 A. The pairing of the incumbent formerly in the
 22 13th was not a result of not dividing a county.
 23 Wake County was divided no matter which way that
 24 line went. That line went the way it went more
 25 for compactness purposes than anything else.

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1 Q. And you divided counties for political impact?
 2 A. The primary reason for dividing counties was to
 3 conform to one-person, one-vote, but, yes, the
 4 politics was considered when county divisions
 5 were made.
 6 Q. So if there were a collision between politics
 7 and keeping counties whole, politics won?
 8 MR. FARR: Objection.
 9 THE WITNESS: No, that's not correct.
 10 BY MR. BONDURANT:
 11 Q. You told us that you divided counties for
 12 political impact, correct?
 13 A. No, I didn't tell you that. Within counties
 14 that were split, politics were considered.
 15 That's not -- what you said is not what I said.
 16 Q. Well, the instructions were that you could
 17 divide counties for political impact.
 18 Did you follow those instructions?
 19 MR. FARR: I think he's answered the
 20 question, but you can go ahead and answer it
 21 again.
 22 THE WITNESS: I wouldn't characterize
 23 what I did that way.
 24 When a county was divided and when the
 25 plan was presented to the chairman as presented,

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1 it was explained to them and it was explained --
 2 those splits were explained to them and they
 3 were okay with the plan as drawn.
 4 No way would I have ever brought a plan
 5 presentation without their knowing what had
 6 happened.
 7 BY MR. BONDURANT:
 8 Q. Is there anything in the written criteria that
 9 says that maintaining county whole would
 10 predominate over political objectives?
 11 A. I don't know. You'd have to read them.
 12 Q. Can you point to anything in there, the
 13 documents you have before you and have seen it.
 14 A. I could read it all. I don't know whether it
 15 was in there or not, but those were part of my
 16 instructions because that's part of placing
 17 community of interest together. And part of
 18 fulfilling the predominate motivation for the
 19 plan which was to draw a plan that was
 20 acceptable to the Court. And maintaining
 21 counties whole is a preeminent neutral criteria
 22 across the United States, and it's a criteria
 23 which courts have mentioned time after time.
 24 Q. Is there anything in this document or in any
 25 written communication to you that tells you that

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1 keeping counties whole would predominate over
 2 the political objective?
 3 MR. BERNIER: Objection; asked and
 4 answered. Object to form.
 5 THE WITNESS: Okay. Under the
 6 compactness rule, it says "Division of counties
 7 shall only be made for reasons of equalizing
 8 population, consideration of incumbency and
 9 political impact."
 10 There was no other reason given for
 11 dividing counties, but it was implicit in the
 12 situation that we were dealing with the Court
 13 that we keep counties and VTDs whole whenever
 14 possible. Again, I believe that was one of the
 15 complaints that the Court registered in their
 16 decision about the other plan.
 17 BY MR. BONDURANT:
 18 Q. Is that the only language to which you can
 19 point? It says division of counties shall only
 20 be made for reasons of equalizing population,
 21 consideration of incumbency and political
 22 impact?
 23 Is there anything in the adopted
 24 criteria that even uses the words "communities
 25 of interest"?

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1 A. I don't think that word is in there, no.
 2 Q. Is there anything in the written criteria that
 3 says that municipalities or trade areas should
 4 not be divided?
 5 A. I've never heard of a trade area.
 6 Q. You never heard of a trade area?
 7 A. I mean, I've never heard of it mentioned as any
 8 sort of a measurable criteria.
 9 Do we have maps to trade areas?
 10 Q. Is there anything that mentioned communities of
 11 interest in the criteria?
 12 A. I don't believe so except -- except indirectly.
 13 A county is a community of interest.
 14 Q. Your Maptitude program enabled you to identify
 15 communities of interest as one of the specific
 16 programmable impacts in the plan, isn't it?
 17 MR. FARR: Objection.
 18 THE WITNESS: No, that's not accurate.
 19 The problem with that has always been
 20 whose community and whose interest.
 21 City -- corporate boundaries are in the
 22 system. Counties are in the system. Some other
 23 governmental entities are in the system, but I
 24 don't believe that Maptitude identifies anything
 25 other than those in its levels of geography.

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1 BY MR. BONDURANT:
 2 Q. You were not told to pay any attention to
 3 municipal boundaries?
 4 A. Again --
 5 Q. Is that yes or no?
 6 A. Yes, I actually believe that I was told that
 7 orally, but that implicitly goes without not
 8 dividing counties.
 9 The problem you have in North Carolina
 10 is that county corporate limit lines are very
 11 irregular, and it actually clashes with the rule
 12 to keep VTDs whole. So you can't go both ways.
 13 You either go one way or the other, and you
 14 would divide hundreds of VTDs -- hundreds of
 15 cities if you follow just corporate limits.
 16 Q. Turn back momentarily to Exhibit 14, which is
 17 the Maptitude software description.
 18 A. The 1916 version?
 19 Q. Look at the fifth page, top right-hand corner.
 20 You have it?
 21 There's a bullet point:
 22 "Identify communities of interest,
 23 geographically cohesive areas such as
 24 cities, neighborhoods, or racial or
 25 ethnic enclaves that tend to have similar

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1 interests and vote as a bloc."
 2 MR. FARR: What page are you on, Emmet?
 3 BY MR. BONDURANT:
 4 Q. That's one of the capabilities of Maptitude,
 5 isn't it?
 6 MR. FARR: Where are you?
 7 MR. BONDURANT: Page 5.
 8 THE WITNESS: Well, we could get into a
 9 half-hour discussion here about what Maptitude
 10 means by communities of interest, but there
 11 are -- there is nothing in Maptitude's
 12 demographic database that I know of,
 13 particularly in the version of Maptitude that
 14 I've been using, that identifies anything else
 15 than corporate limits and what they call census
 16 designated places, except for other things like
 17 Indian reservations and such, but community of
 18 interest has a multitudinous meaning depending
 19 on who wants to apply what community of
 20 interest.
 21 BY MR. BONDURANT:
 22 Q. In short, you were not instructed to consider
 23 communities of interest in the adopted criteria
 24 and you did not do so?
 25 MR. FARR: Objection. He's been asked

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1 five times.
 2 THE WITNESS: I define a county as a
 3 community of interest, it's a recognized
 4 community of interest, and as such I was
 5 certainly directed to adhere to that.
 6 BY MR. BONDURANT:
 7 Q. Dr. Hofeller, in constructing your plan, did
 8 you -- let me withdraw that. If I can find --
 9 excuse me.
 10 A. Can I have a break, please.
 11 MR. BONDURANT: Certainly.
 12 THE VIDEOGRAPHER: Off record at
 13 4:54 p.m.
 14 (Brief Recess.)
 15 THE VIDEOGRAPHER: On record at
 16 5:09 p.m.
 17 (WHEREUPON, Plaintiffs' Exhibit 25 was
 18 marked for identification.)
 19 BY MR. BONDURANT:
 20 Q. Can you identify Exhibit 25 as the 2016
 21 Congressional Contingent Plan Corrected that you
 22 drafted?
 23 A. Yes.
 24 (WHEREUPON, Plaintiffs' Exhibit 26 was
 25 marked for identification.)

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1 BY MR. BONDURANT:
 2 Q. Can you identify Exhibit 26 as the General
 3 Assembly's website showing the data on which you
 4 relied in drafting the 2016 plan?
 5 MR. FARR: Objection.
 6 THE WITNESS: I'm sorry, there's no
 7 data on this sheet.
 8 BY MR. BONDURANT:
 9 Q. You get the data by going to the computer and
 10 asking for the PDF of the 2004 election runs,
 11 2008 election returns and so on, correct?
 12 A. Actually, the state has more data than is listed
 13 on here.
 14 Q. Well, I understand.
 15 A. Okay. So it's part of the data that the state
 16 has, and it's -- implicit by that it's part of
 17 the data that I would have had available to me
 18 if I had wanted to draw it down.
 19 But most of the data is actually census
 20 data. We had the '04 returns, the '08 returns
 21 and the '10 returns, but we also had some --
 22 when this plan was drawn, we had '12 returns and
 23 '14 returns.
 24 (WHEREUPON, Plaintiffs' Exhibit 27 was
 25 marked for identification.)

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1 BY MR. BONDURANT:
 2 Q. Can you identify Exhibit 27, please.
 3 A. It -- it's a special report that was made up of
 4 the plan. I believe this was the report that
 5 was presented to the committee at the beginning
 6 of their hearing.
 7 Q. And it reflects what data?
 8 A. Total population data and political data. Let
 9 me see if it has registration on it. I don't
 10 believe it does.
 11 So it has a number of political races.
 12 I remember listening at the hearing and people
 13 had difficulty in identifying what the headers
 14 were all about.
 15 Q. Exhibit 27 is the data on which you relied in
 16 drafting the 2016 plan?
 17 A. In part, yes.
 18 Q. Population data and the results of statewide
 19 elections from 2008 through 2014, excluding the
 20 presidential elections in 2008 and 2012,
 21 correct?
 22 A. Yes, but I don't think there's any 2014 data in
 23 this report because I didn't see it at first.
 24 (WHEREUPON, Plaintiffs' Exhibit 28 was
 25 marked for identification.)

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1 BY MR. BONDURANT:
 2 Q. Can you identify Exhibit 28.
 3 A. Those are statewide totals for various
 4 elections.
 5 Q. And are those --
 6 A. And it also would give you a key to
 7 understanding what the column headers were on
 8 Exhibit 27.
 9 Q. You read Exhibits 27 and 28 together, correct?
 10 A. Yes, unless you knew what the -- knew what they
 11 stood for.
 12 Q. And Exhibit 28 are the results of the 2008
 13 through 2014 elections on which you relied in
 14 drafting the 2016 plan?
 15 A. They include the elections that I used.
 16 Q. Help me understand how you used these election
 17 results. Did you weight the results in some
 18 elections more heavily in others?
 19 A. No.
 20 Q. Did you take an average?
 21 A. Yes.
 22 Q. So you averaged all of these together and just
 23 used a single numerical average in identifying
 24 which VTDs were likely to vote Democratic and
 25 which VTDs were likely to vote Republican?

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1 MR. FARR: Objection.
 2 THE WITNESS: As you stated the
 3 question, the answer is no.
 4 BY MR. BONDURANT:
 5 Q. How did you use these results?
 6 A. I used only part of these results. There would
 7 be no need to use all of these contests in order
 8 to get a pretty good cross section of what the
 9 past vote had been.
 10 Q. Which contest did you use?
 11 A. I can't tell you off the top of my head. I
 12 would be glad to provide that if you want it.
 13 Q. I would like for you to do so. How long will it
 14 take you to do that?
 15 A. Well, I don't have it with me, so I'd at least
 16 have to get back and give it to my attorneys and
 17 they can give it to you.
 18 Q. So if I understand your answer correctly, you
 19 did not average all 20 races. You selected some
 20 of the 20 and averaged them and used that number
 21 in -- as the political data which you used in
 22 assigning VTDs and counties to various
 23 congressional districts.
 24 A. Where the county was split, that would be
 25 correct.

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1 Q. And where you were assigning a whole county, you
 2 looked at the voting history in that particular
 3 county?
 4 A. Not really, no.
 5 Q. What data -- political data did you look at for
 6 a county that was not being split?
 7 A. I didn't really look at any data for the
 8 counties, except the populations, of course.
 9 Q. How did you know whether the county would be
 10 likely to be -- if included in a district would
 11 result in a Republican district versus a
 12 Democratic district?
 13 A. I guess -- I guess I'd have to correct my answer
 14 in saying that for the whole counties I did see
 15 the shading so I had a general idea, but I
 16 didn't actually use the thematic display to
 17 divide the counties.
 18 I may not divide the counties. Where
 19 the counties were divided, I used the VTD
 20 schematic. Where the counties weren't divided,
 21 a lot of it was because the counties -- there
 22 were the same counties that were in the previous
 23 districts and because a general look at the --
 24 at the thematics of the county would give me a
 25 rough idea of whether or not it was a strong

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1 Democratic or Republican county.
 2 Q. When you say thematics, you're speaking of the
 3 color codings?
 4 A. Yes.
 5 Q. And the color codings told you whether or not a
 6 county was more likely to vote Democratic than
 7 Republican?
 8 MR. FARR: Objection.
 9 THE WITNESS: Again, I didn't have the
 10 totals, but, also, I've drawn a lot of
 11 legislative districts in these areas and I
 12 remember what the legislative districts look
 13 like too.
 14 BY MR. BONDURANT:
 15 Q. And in each instance you were relying primarily
 16 on the voting history of people in that county
 17 as you were in the VTDs in deciding whether you
 18 would include that county in trying to create a
 19 predominantly Democratic district or
 20 predominantly Republican district?
 21 A. Well, remember, the initial criteria was try to
 22 split as few counties as possible, but if you're
 23 building a plan, as you're building a plan,
 24 there's a running total -- a running tally
 25 that's on the machine.

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1 Q. A running tally not only of the population but
 2 of the voting history?
 3 A. Whatever you select to display you can put up
 4 there. You have a choice. You can pick certain
 5 fields to be summary fields.
 6 Q. And voting history was one of those fields?
 7 A. Well, it would be multiple fields, yes.
 8 Q. Did you run any of the compactness measures of
 9 the 2016 plan on Map Quest -- excuse me --
 10 Maptitude?
 11 MR. FARR: And you're talking about
 12 before the plan was enacted?
 13 MR. BONDURANT: Before or after.
 14 MR. FARR: Afterwards, I instruct you
 15 not to answer that question.
 16 MR. BONDURANT: On what ground?
 17 MR. FARR: Work product.
 18 BY MR. BONDURANT:
 19 Q. Before the plan was enacted, did you run any of
 20 the tests of compactness?
 21 A. No.
 22 Q. And was that also true of the 2011 plan?
 23 A. I don't remember.
 24 MR. FARR: Emmet, I also think it's
 25 Rule 26 -- it's a rule on experts.

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1 BY MR. BONDURANT:
 2 Q. Do you expect to testify as an expert in this
 3 case?
 4 MR. FARR: He doesn't know yet.
 5 BY MR. BONDURANT:
 6 Q. Do you know what subjects you are expected to
 7 testify concerning?
 8 A. I don't know. Depends on what they want me to
 9 testify on.
 10 Q. So once you -- that decision is made and I
 11 presume you'll issue an expert report and tell
 12 us?
 13 A. If so directed, yes. That's the usual
 14 procedure.
 15 Q. Have you ever made a calculation of what
 16 percentage of the statewide vote in
 17 North Carolina the Democrats would have to win
 18 in order to win a majority of the congressional
 19 delegation under the 2011 or the 2016 plans?
 20 A. I don't think that one necessarily follows the
 21 other. Every election is different.
 22 Q. My question is: Have you ever attempted to
 23 calculate or predict what percentage of the
 24 statewide vote Democrats would have to win in
 25 order to win a majority of North Carolina's 13

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1 to which it is conclusive as to the fairness of
 2 an election.
 3 BY MR. BONDURANT:
 4 Q. I was not suggesting whether it's conclusive or
 5 not. It's a measure based on the idea if the
 6 vote share of the major parties in a state were
 7 reversed that their shares of the congressional
 8 delegation should also come close to matching
 9 the vote share. Is that your --
 10 A. Okay. I think, as I understand your question,
 11 the answer is it's a general academic
 12 conclusion, but there are a lot more factors
 13 that go into who's going to win or not win an
 14 election other than the statewide percentages,
 15 particularly if you look at the percentages
 16 within individual congressional districts.
 17 Q. Is the concept of partisan symmetry as a measure
 18 of partisan fairness or unfairness one that is
 19 well accepted in the academic community?
 20 MR. FARR: Objection.
 21 You can answer if you can.
 22 THE WITNESS: I haven't read all the
 23 articles on that so I'm not sure of what the
 24 level of acceptance is.
 25 I know that it's a concept that's been

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1 congressional seats under the 2016 plan which
 2 you drafted?
 3 A. Under the 2016 plan, no.
 4 Q. If Democrats had won the same share of the
 5 statewide vote in the 2016 election as the
 6 Republicans won, which was 53 percent of the
 7 vote, how many additional seats would the
 8 Democrats have won in North Carolina?
 9 A. It depends where they won the votes.
 10 Q. Have you attempted to make any calculation?
 11 A. I'm sorry. What? Calculation of?
 12 Q. Of how many seats the Democrats would have won
 13 if they received the same share of the statewide
 14 vote in North Carolina as the Republicans
 15 received in congressional elections.
 16 A. No.
 17 Q. Are you familiar with the word partisan
 18 symmetry?
 19 A. Yes.
 20 Q. Do you understand the term partisan symmetry to
 21 mean that it's a measure of the fairness of an
 22 apportionment?
 23 MR. FARR: Objection.
 24 THE WITNESS: I understand what
 25 partisan symmetry is. I don't know the extent

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1 around for decades, actually. I was familiar
 2 with it in the '70s. And certainly in terms of
 3 an academic goal, it would be nice if we could
 4 say that if you won a majority of the votes cast
 5 for the offices in that state, it would be nice
 6 if you won a majority of the seats, but then
 7 you'd have proportional representation, and this
 8 country isn't run on proportional
 9 representation. It's won by geography
 10 districts.
 11 So there again, there are a lot of
 12 facts that go into that analysis. So it isn't
 13 true just standing by itself.
 14 BY MR. BONDURANT:
 15 Q. Have you made any attempt to evaluate the
 16 partisan symmetry of the 2016 Congressional
 17 Redistricting Plan in North Carolina?
 18 A. No. It would be almost impossible to do with
 19 one election.
 20 (WHEREUPON, Plaintiffs' Exhibit 29 was
 21 marked for identification.)
 22 BY MR. BONDURANT:
 23 Q. Dr. Hofeller, can you identify Exhibit 29 as the
 24 official election results in the 2016 general
 25 election in North Carolina, including not only

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1 the presidential vote but the vote for the
 2 Senate and the U.S. House of Representatives?
 3 MR. FARR: What did you describe this
 4 as, Emmet?
 5 MR. BONDURANT: The official general
 6 election results in 2016.
 7 MR. FARR: Okay.
 8 THE WITNESS: Actually, it includes the
 9 U.S. Senate vote too, yes.
 10 BY MR. BONDURANT:
 11 Q. So it's President, Senate, House of
 12 Representatives?
 13 A. The federal offices.
 14 Q. Yes. And it reflects, does it not, that you
 15 achieved your 10-3 partisan objective of 10
 16 Republicans being elected and 3 Democrats?
 17 MR. FARR: Objection to the form.
 18 THE WITNESS: Again, I don't agree with
 19 the premise of your question. If you want to
 20 ask it a different way, I might give you an
 21 answer you want.
 22 BY MR. BONDURANT:
 23 Q. Democrats were elected in the 1st, 4th and 12th
 24 districts, were they not?
 25 A. Yes.

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1 Q. By large majorities?
 2 MR. FARR: Objection to the form.
 3 THE WITNESS: Well, the sheet actually
 4 shows the 68 percent in the 1st and a 68 percent
 5 in the 4th and a 64 percent vote in the --
 6 MR. FARR: You're looking at the wrong
 7 thing.
 8 THE WITNESS: I'm sorry. A 67 percent
 9 vote in the 12th.
 10 BY MR. BONDURANT:
 11 Q. And those were larger percentages than any
 12 Republican was elected in any of the ten other
 13 districts?
 14 A. I don't know. I'd have to look at all of them.
 15 Actually, it's not true as you stated
 16 it. Walter Jones got 67.2 percent of the vote
 17 in his district and Alma Adams got 67.02.
 18 Q. Thank you for that correction.
 19 So the result was 10 Republicans were
 20 elected and 3 Democrats were elected in 2016?
 21 A. Yes.
 22 Q. And that was the same partisan breakdown that
 23 had occurred in 2014?
 24 A. I think you elected 4 Democrats in 2014.
 25 MR. FARR: We'll stipulate to that.

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1 MR. BONDURANT: Four in 2012.
 2 MR. FARR: It was 10-3 in 2014 and 9-4
 3 in 2012.
 4 MR. BONDURANT: Yeah.
 5 I think I have no other questions.
 6 THE WITNESS: Amazing.
 7 (Discussion held off the record.)
 8 EXAMINATION
 9 BY MS. EARLS:
 10 Q. Good afternoon, Dr. Hofeller. I'm Anita Earls.
 11 A. Yes. We've met a few times.
 12 Q. Yes. Thank you. I appreciate your sticking in
 13 with us, and I do have to ask you a few
 14 questions, but I'll try to be fairly brief.
 15 First, I want to make sure that you
 16 received our subpoena. I think we're at 30.
 17 THE REPORTER: We're at 30.
 18 (WHEREUPON, Plaintiffs' Exhibit 30 was
 19 marked for identification.)
 20 BY MS. EARLS:
 21 Q. If you would take a look at what's been marked
 22 as Exhibit 30, do you recognize that?
 23 A. Yes, I believe. I don't know if I saw it all,
 24 but I saw what I needed to see.
 25 Q. Did you see the list of documents to be produced

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1 on the last page of this exhibit?
 2 A. Yes.
 3 Q. And feel free to take a moment to review that.
 4 My question is whether sitting here now there
 5 are any documents that you're aware of that fall
 6 into any of these categories that haven't --
 7 that we have not already received.
 8 A. In all this, I think -- I think I've been
 9 responsive as I can. I don't know what some of
 10 these statistical systems are in 6.
 11 Q. So you're talking about the references to the
 12 statistical analysis software, the Stata and R,
 13 SPSS?
 14 A. I know SPSS and I know SASS. I don't know Stata
 15 and R. Maybe it's my vintage.
 16 Q. I assume, then, you don't have documents that
 17 were -- that are code created in that software.
 18 A. There wasn't any new -- no, there was no code
 19 and no reports.
 20 Q. And in particular, I'm interested in the
 21 testimony you gave earlier about the average
 22 that you compiled of election returns in
 23 analyzing the 2016 districts.
 24 Was that -- I don't recall us seeing
 25 any data file that contained that average. Is

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1 that something that you've produced already or
 2 you can produce?
 3 A. It's not really in any data file. It's -- you
 4 type a formula in to Maptitude at the time you
 5 are shading the precincts and you put in the
 6 formula and it produces it, but it doesn't
 7 actually go into any database. I think it's
 8 more done on the fly. Maybe Maptitude puts it
 9 in an intermediate file, but I know not. It's
 10 like a black box to me.
 11 Q. Did you print out any hard reports once
 12 Maptitude was running that formula?
 13 A. The only hard copy I would have would be to
 14 print a map which displayed the thematics, which
 15 I really didn't do, or of the map itself.
 16 Q. But you can provide us the formulas so that we
 17 can determine which -- which data you were --
 18 A. Sure.
 19 Q. -- averaging?
 20 A. And I'd be happy to do that.
 21 Q. Okay. Other than that, is there anything else
 22 that you have that relates to any of these
 23 categories?
 24 A. There's nothing in here that -- if you all have
 25 a Maptitude system, you know what files are in

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1 there because it would be in the same computer.
 2 They would be the same in your computer as they
 3 are in our computer or they would be readily
 4 available from the state.
 5 Q. Okay. You testified this morning that you are
 6 currently retained -- the one thing that you're
 7 engaged in that's not on your c.v. is a case in
 8 Virginia where you are retained.
 9 A. Yes.
 10 Q. And can you tell me the name of that case again.
 11 Besilind?
 12 A. B-E-S-I-L-I-N-D versus State Board of Elections.
 13 Q. And what type of case is that?
 14 A. It's -- I believe -- again, the lawyers could
 15 speak for it better than I could, but it's
 16 about -- basically about compactness and the
 17 plaintiff's witness had drawn some alternative
 18 maps for his report, and I commented on that.
 19 There was also a slight reference to contiguity
 20 which I commented on, but it was mainly on
 21 compactness.
 22 They were suing, I believe, again, on
 23 the fact that a number of districts were not in
 24 conformance with the Virginia State
 25 Constitution's requirement for compactness

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1 districts.
 2 Q. And you submitted an expert report in that case?
 3 A. I did.
 4 Q. Could you provide us a copy of that report?
 5 A. Sure.
 6 Q. Thank you.
 7 A. Absolutely.
 8 Q. Now, you also testified that you haven't been
 9 asked to do a report in this case, and I
 10 understand the exchange that happened earlier.
 11 I just want to be clear that counsel
 12 understands if you are identified as an expert,
 13 then we would have another chance to depose him
 14 as an expert witness.
 15 MR. FARR: Sure. Absolutely.
 16 BY MS. EARLS:
 17 Q. So all of your testimony today, then, has been
 18 based on your experience in drawing
 19 congressional redistricting maps for
 20 North Carolina, not any analysis you've done
 21 subsequent to the enactment of the 2016 map?
 22 A. I just amend that to say it's also my experience
 23 in drawing congressional districts and
 24 legislative districts across the nation.
 25 Q. Okay. Let me -- I just have a couple of

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1 questions about the criteria, and it might help
 2 to try to do this chronologically.
 3 I understand that you received notice
 4 of the Court opinion in 2016 on February 5th,
 5 the Friday night it was issued; is that right?
 6 A. I don't know whether I actually got the decision
 7 sent to me that night or the next day. I just
 8 don't remember.
 9 Q. And then who did you first have contact with
 10 about drawing a map in response to the Court's
 11 order?
 12 A. Attorneys. Attorneys.
 13 Q. And then -- and do you recall when -- when you
 14 spoke with attorneys?
 15 A. Not exactly, but I'm sure it was probably the
 16 next day. I just don't remember. I was more
 17 concerned about how we were going to meet the
 18 deadline.
 19 Q. So then who first gave you instructions
 20 regarding the criteria you should follow in --
 21 in constructing a remedial plan?
 22 A. The chairman.
 23 Q. And who -- was that both of them together? Was
 24 this a conference call? How did that happen?
 25 A. I don't actually remember. I remember that I

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1 spoke to them I think it was -- we either had a
 2 meeting or I spoke to them on the phone, but
 3 there was no way I could proceed with a plan in
 4 any reasonable fashion without knowing what
 5 their wishes were regarding how the map should
 6 be drawn. Back to the architect analysis: You
 7 have to know what kind of a house they want.
 8 Q. And I'm trying to be clear on who was telling
 9 you what the criteria should be and when you
 10 first learned that.
 11 So you think that it could have been a
 12 phone call, it could have been in person, but it
 13 was early -- was it the Monday after the Court
 14 decision?
 15 A. It had to have been Monday. I mean, we had
 16 eight days to draw this plan, the full map, and
 17 usually this is a process which spreads out over
 18 months rather than days. Everybody thinks we
 19 had like two weeks, but we didn't really have
 20 two weeks to draw the plan because it had to go
 21 through the legislative process.
 22 Q. Was anyone else working on these congressional
 23 districts with you?
 24 A. There were a number of people who came to look
 25 at the plans, yes.

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1 Q. Who else came to look at the plans?
 2 A. Jim Blaine came to look. Brent Woodcox came to
 3 look. Both of the chairmen came to look. The
 4 speaker's attorney, Woodson, and the speaker
 5 actually came to look at the plan at one point.
 6 Q. So before they came to look at it, you had to do
 7 some drawing?
 8 A. Well, yes. They're not going to come to look at
 9 nothing.
 10 Q. So who did you talk to -- do you recall whether
 11 you talked to Senator Rucho or Representative
 12 Lewis or both of them together before you
 13 started drawing the plans?
 14 A. There was a stage, again, which you can see on
 15 the maps that I presented to you where I just
 16 had to look and see what was possible. I
 17 consider that more a -- an advisory role to say
 18 this is generally what you can do or what I
 19 think you should be doing, but you have to
 20 instruct me on what you think is preeminent.
 21 And, of course, it goes without saying
 22 that when the Court gives you an order that you
 23 have to draw a new map and present it in -- what
 24 was it, two weeks? Was it 14 days or was it
 25 16 days? I don't remember -- and you have to

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1 pass it through the legislature, that you have
 2 to start and also you have to draw a plan which
 3 is going to be acceptable to the Court, that you
 4 think the Court will not find fault with because
 5 that's what the Court ordered you to do is to
 6 draw the map, a new map. So I had to be
 7 thinking about that.
 8 Q. Let me just show you -- I'm going to mark this
 9 collection of maps as a single exhibit.
 10 (WHEREUPON, Plaintiffs' Exhibit 31 was
 11 marked for identification.)
 12 BY MS. EARLS:
 13 Q. So Exhibit 31 is a collection of 22 maps, and
 14 they all have a Bate stamp at the bottom so we
 15 can identify the page numbers.
 16 Are these the maps you identified as
 17 the ones you provided to us?
 18 A. I provided you block assignment files for all of
 19 these maps, which is the normal way that you
 20 transmit plans.
 21 Q. So let me just ask you, page DEF 000042, the
 22 first page of Deposition Exhibit 31, are you
 23 saying you didn't actually print out this map,
 24 you just provided a block assignment file for
 25 it?

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1 A. Well, of course I printed it out or you wouldn't
 2 have these maps. These maps came -- I printed
 3 out for you to have, being responsive to your
 4 subpoena.
 5 Q. Thank you. That's what I was trying to
 6 understand.
 7 A. I think you have them probably in reverse
 8 chronological order, but that's okay.
 9 Q. I put them in the order they were numbered so I
 10 apologize. So what you're saying is that the
 11 000064 came before the 000042?
 12 A. I'm just going to look through it briefly here
 13 for you. It's a lot of maps.
 14 I think they're in reverse
 15 chronological order. I'm not absolutely --
 16 somebody may have mixed it up.
 17 Q. Let me just start at the back, then, and ask you
 18 about the page 64 in Deposition Exhibit 31. And
 19 at the bottom there's a little label "Congress
 20 16-A."
 21 A. Yes. That doesn't imply it was the 16th map.
 22 Q. Does it have any significance, the 16-A?
 23 A. You know, it had significance in my mind. I
 24 think I used 16 because it was 2016. I wouldn't
 25 take anything from most of these names.

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1 Q. Do you know if this was a map you had drawn
 2 before you talked to the redistricting chairman?
 3 A. I'm not sure. It might have been, yes.
 4 Q. And is that same true of "Congress 16-B"?
 5 A. I think, yes, probably.
 6 Q. And then what about Page 62, which is "Congress
 7 Southern Transit," is that another example you
 8 were looking at before you talked to the
 9 chairman?
 10 A. Yes.
 11 Q. And what about Page 61, "Congress 16-C," did you
 12 look -- is that a map you prepared before you
 13 spoke with the chairman?
 14 A. At this point I don't rightly remember. I'm
 15 sorry.
 16 Q. I don't know -- I don't know that there's a lot
 17 of difference between them, but what about
 18 "Congress 16-D"?
 19 A. They're all either variations or a little more
 20 refinement of an area that I wanted to take off
 21 in to try to point myself with what could be
 22 done. So as I think in line with doing my duty
 23 as a consultant to the chairman, I had to know
 24 what was possible to do --
 25 Q. Right.

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1 A. -- and then say, okay, here are some examples --
 2 here's an example. I don't know that they saw
 3 all these maps, and I probably decided that they
 4 weren't actually germane to the decisions they
 5 needed to make.
 6 Q. And what made you conclude that?
 7 A. Well, first of all, they weren't complete plans.
 8 They weren't -- and as you can see, they contain
 9 a lot of the old districts, which particularly
 10 you can see the shape of the 4th, which I was
 11 pretty much convinced that was going to have to
 12 go in its present form.
 13 So I was just playing with different
 14 areas of the state to try to figure out what was
 15 possible so I can say, all right, this is what
 16 we -- a direction we may need to go in. Again,
 17 this was in my mind saying number one
 18 overarching requirement was that we had to draw
 19 a map that the Court would approve.
 20 Q. So it's your testimony that you don't recall
 21 whether the maps beginning on Page 64 up to
 22 Page 60 were shown to the redistricting chairman
 23 or not?
 24 A. No, I don't think these were. These were all
 25 drawn very close together in time.

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1 Q. And then what about the next page, 59, "Congress
 2 17-A," that one's -- there's some pretty major
 3 changes at this point.
 4 A. Yeah, something that I was pretty sure wasn't
 5 going to work at all.
 6 Q. Why is that?
 7 A. Well, first of all, it doesn't comply with the
 8 criteria to try and keep incumbents to the
 9 extent as possible in their districts. And,
 10 again, it's just an experiment to see what the
 11 possibilities could be.
 12 Q. So before you had spoken with the chairman, what
 13 did you -- how -- how did you know that keeping
 14 incumbents in their districts would be a
 15 criteria that they would want you to follow?
 16 A. There's a big basic difference between
 17 experimental maps that I produce and what I have
 18 spoken to the chairman about as the general
 19 criteria that they were interested in doing.
 20 I think probably at this point I had
 21 spoken to them, but that doesn't -- that means
 22 that I have to start knowing what to do and then
 23 modulate the maps or backtrack and get them to a
 24 form that is within the bounds of the criteria.
 25 Q. So when you spoke with them at some point before

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1 you tried the experiment that was "Congress
 2 17-A," what did they tell you the criteria were
 3 that they wanted you to follow?
 4 A. They told me what the criteria was to follow
 5 pretty much after the Court ruling came out, but
 6 I certainly wasn't going to waste their time
 7 looking at maps that I didn't think were ever
 8 going to be acceptable either to them or to
 9 their criteria.
 10 Q. Well, you testified before that when you talked
 11 with them, you didn't have anything in writing
 12 but you could -- you didn't take any notes but
 13 you could remember the criteria they were giving
 14 you that they wanted you to follow.
 15 A. Well, I don't think you have to take notes to
 16 remember the criteria. They were pretty simple.
 17 Q. So my question to you is can you -- because as I
 18 heard you outline the eight things that your
 19 criteria were, it's not exactly the same as what
 20 these written criteria are. So what were the
 21 criteria that they told you?
 22 A. Well, first of all, I've stated many times
 23 during this deposition that the overarching
 24 requirement of this map was that it be
 25 acceptable to the Court and the Court not strike

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1 it down, and even though that's not in the
 2 criteria statement, it's absolutely mandatory
 3 because there's no use wasting your time drawing
 4 a map that you don't think the Court will do.
 5 So you might call it a criteria, but
 6 I'd likely say that it was a mandate that you
 7 had to draw a map acceptable to the Court.
 8 They'd be upset if you didn't do that.
 9 And I knew that we had to have
 10 one-person, one-vote, and I knew we had to have
 11 contiguity and I knew we had to have a better
 12 degree of compactness than the other map. We
 13 had to adhere to whole counties because -- and
 14 whole precincts because, again, that had been
 15 mentioned. It had been mentioned both at trial
 16 and at -- and in the opinion, at least in my
 17 recollection of the parts of it that I read.
 18 We obviously would avoid any contiguity
 19 errors and we would avoid, to the extent
 20 possible, of pairing incumbents, although it
 21 ended up with one pair and that was actually a
 22 Republican with a Democrat. And that was
 23 certainly enough to be started on the map.
 24 Q. So those were -- so what you just outlined are
 25 the things that you heard verbally from the

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1 chairman?
 2 A. It's what I remember that I heard verbally. I'm
 3 sorry, again, it's been nine months now, and it
 4 was a pretty fast process, I know, takes a lot
 5 of energy just to draw the maps.
 6 Q. And you also testified that you had some input
 7 on the criteria, on the written criteria. Did
 8 you have discussions with them about each of
 9 these factors that were ultimately adopted as
 10 being appropriate for criteria for these plans?
 11 A. I don't remember whether I had a discussion with
 12 each and every one, but I may have had
 13 discussions with them -- I did have discussions
 14 with them that would lead them to draw up that
 15 criteria. Those factors were, for the most
 16 part, discussed right off the bat.
 17 Q. So the other thing that I think has not come out
 18 clearly when you were drawing these districts in
 19 2016, what was the data that you had on your
 20 screen in the thematic to pull up as you were --
 21 A. The thematic were the combination of different
 22 races, political races.
 23 Q. Right. Election contests?
 24 A. Election contests.
 25 MR. FARR: Hey, Tom, I know it's late,

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1 but make sure Anita gets to finish her question.
 2 THE WITNESS: I'm sorry. Just hit me.
 3 BY MS. EARLS:
 4 Q. And that's the combination that you'll give us
 5 the formula for?
 6 A. Yes.
 7 Q. Okay. So then let me understand, are the rest
 8 of the maps from Pages 58 -- so "Congress ST-B"
 9 -- and this is pages back up to 42 of
 10 Exhibit 31, those are all alternatives that you
 11 looked at after you had spoken to the chairman
 12 and you had a mutual understanding about the
 13 criteria?
 14 A. I think two or three of them I may have done
 15 right off the bat just to see what is possible.
 16 I think you have to get up to what you've
 17 labeled as 53 before you start seeing something
 18 near the format that the final map took, and I
 19 say near the format.
 20 Q. So that would be the --
 21 A. 19-C.
 22 Q. 19-C.
 23 A. Page 53.
 24 Q. And so is that a map that you then showed to the
 25 chairman?

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1 A. I believe probably so. I don't know whether I
 2 showed it to both of them, but certainly they or
 3 their representative saw that, that map.
 4 Q. And can you explain sort of what the thinking
 5 was that got you from that map to the later
 6 versions of the map? In other words, what
 7 feedback did you get on this map that caused you
 8 to make the changes reflected in the later maps?
 9 A. I'll just move around the map if you want me to.
 10 Q. Yes, please.
 11 A. Okay. As you can see from looking at the two
 12 maps -- do you have copies of them over there?
 13 I'm looking at the map which is Page 42 and I'm
 14 looking at the map which is Page 53, which is
 15 the final version.
 16 You can see that District 1 is pretty
 17 near the format of the final map. District 3
 18 changed the boundary line between 7 and 3 to put
 19 Onslow County in the 7th and to take Duplin and
 20 Wayne out of 7 and put them into the 13th.
 21 The configuration of the 9th district
 22 is pretty much as it turned out in the end
 23 except that the division line in Cumberland
 24 County is somewhat different.
 25 The 12th is pretty much the format that

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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

242

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,

243

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.
 13
 14
 15
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 18
 19
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 22
 23
 24
 25

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1 ERRATA SHEET

2 Case Name: Common Cause v Rucho / LWV NC v Rucho

3 Witness Name: THOMAS B. HOFELLER, Ph.D.

4 Deposition Date: Tuesday, January 24, 2017

5

6 Page/Line	Reads	Should Read
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24		
25 Signature	Date	

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1 STATE OF NORTH CAROLINA)
) CERTIFICATE
 2 COUNTY OF WAKE)
 3
 4
 5 I, DENISE MYERS BYRD, Court Reporter and Notary
 6 Public, the officer before whom the foregoing proceeding
 7 was conducted, do hereby certify that the witness(es) whose
 8 testimony appears in the foregoing proceeding were duly
 9 sworn by me; that the testimony of said witness(es) were
 10 taken by me to the best of my ability and thereafter
 11 transcribed under my supervision; and that the foregoing
 12 pages, inclusive, constitute a true and accurate
 13 transcription of the testimony of the witness(es).
 14 I do further certify that I am neither counsel for,
 15 related to, nor employed by any of the parties to this
 16 action, and further, that I am not a relative or employee
 17 of any attorney or counsel employed by the parties thereof,
 18 nor financially or otherwise interested in the outcome of
 19 said action.
 20 This the 6th day of February 2017.
 21
 22
 23
 24 Denise Myers Byrd
 CSR 8340, RPR, CLR 102409-02
 25

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Exhibit B

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
REPRESENTATIVE DAVID LEWIS

9:28 A.M.
THURSDAY, JANUARY 26, 2017

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

1
2 NC DEPARTMENT OF JUSTICE
3 BY: ALEC PETERS, ESQ.
4 JAMES BERNIER, JR., ESQ.
5 PO Box 629
6 Raleigh, NC 27602
7 (919) 716-6400
8 APeters@ncdoj.gov
9 JBernier@ncdog.gov

10 Also Present: Alesha Brown, SCSJ

11 The Reporter: Discovery Court Reporters
12 and Legal Videographers, LLC
13 BY: DENISE MYERS BYRD, CSR 8340
14 BRENT TROUBLEFIELD,
15 VIDEOGRAPHER
16 4208 Six Forks Road, Suite 1000
17 Raleigh, NC 27609
18 (919) 424-8242
19 (919) 649-9998 Direct
20 Denise@DiscoveryDepo.com

21 --o0o--

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23 Page

24 By Mr. Thorpe..... 6

25 --o0o--

1 APPEARANCES
2
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23 SOCIAL JUSTICE
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7 Calls for Redistricting" 175
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9 --o0o--
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1 THE VIDEOGRAPHER: On record at
 2 9:28 a.m. Today's date is January 26, 2017.
 3 This is the videotaped deposition of
 4 David Lewis taken in the matter of Common Cause,
 5 et al., versus Robert A. Rucho, et al., in the
 6 United States District Court for the Middle
 7 District of North Carolina, Civil Action Number
 8 116-CV-1026-WO-JEP.
 9 Also in the matter of League of Women
 10 Voters of North Carolina, et al., versus Robert
 11 A. Rucho, et al., in the United States District
 12 Court for the Middle District of North Carolina,
 13 Civil Action Number 116-CV-1164.
 14 Would counsel please introduce
 15 themselves.
 16 MR. THORPE: Ben Thorpe representing
 17 the plaintiffs in the Common Cause case.
 18 MR. BONDURANT: Emmet Bondurant
 19 representing the plaintiffs in the Common Cause
 20 case.
 21 MS. EARLS: Anita Earls representing
 22 the League of Women Voters plaintiffs.
 23 MS. MACKIE: Caroline Mackie, Common
 24 Cause plaintiffs.
 25 MR. PETERS: Alec Peters, the Attorney

5

1 General's Office on behalf of defendants in both
 2 cases.
 3 MR. BERNIER: James Bernier, Jr., on
 4 behalf of the defendants in both cases.
 5 MR. STRACH: Phil Strach, Ogletree
 6 Deakins on behalf of the defendants in both
 7 cases.
 8 MR. FARR: Tom Farr, Raleigh office of
 9 Ogletree Deakins here on behalf of the
 10 defendants in both cases.
 11 DAVID LEWIS,
 12 having been first duly sworn or affirmed by the
 13 Certified Shorthand Reporter and Notary Public
 14 to tell the truth, the whole truth and nothing
 15 but the truth, testified as follows:
 16 EXAMINATION
 17 BY MR. THORPE:
 18 Q. Good morning, Representative Lewis. My name is
 19 Ben Thorpe. I represent the plaintiffs in the
 20 Common Cause case. I'll be taking your
 21 deposition today.
 22 Could you state your name and address
 23 for the record, please, sir.
 24 A. My name is David Lewis. I reside at 118
 25 Kingsway Drive in Dunn, North Carolina.

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1 Q. And it is our understanding that you have waived
 2 your legislative privilege to be here today.
 3 MR. FARR: He's waived his legislative
 4 privilege in reference to the 2016 Congressional
 5 Plan and the 2011 Congressional Plan.
 6 BY MR. THORPE:
 7 Q. The plaintiffs in these cases have served
 8 discovery requests on defendants, and I want to
 9 know what search of your own documents you have
 10 been requested to do in order to comply with
 11 those discovery requests.
 12 Have you been asked to search your
 13 personal e-mail or your state e-mail for the
 14 purpose of this case?
 15 A. I believe I was, yes, sir.
 16 Q. And how did you form that search?
 17 A. The legislature has a procedure in place. Dan
 18 Frye is the head of the Information Service
 19 Division. He and Bart Goodson, who at the time
 20 was the counsel to Speaker Moore, performed the
 21 searches as were required.
 22 Q. And they actually performed the searches on both
 23 your state and personal accounts?
 24 A. Yes, sir.
 25 Q. Did they search anything beyond e-mail? Did

7

1 they search any paper documents?
 2 A. They asked me if I had any notebook or anything
 3 like that, and I didn't have anything that I
 4 thought was responsive.
 5 Q. So they requested responsive paper documents,
 6 correct?
 7 A. Yes, sir.
 8 Q. But you found no responsive paper documents?
 9 A. No, sir.
 10 Q. And you searched your legislative office for
 11 those paper documents?
 12 A. Yes, sir.
 13 Q. Did you also search your home for those
 14 documents?
 15 A. Yes, sir.
 16 Q. We'll return to some of the scheduling issues
 17 because I understand you'll be producing some of
 18 those later in the deposition, but is it your
 19 regular practice to schedule appointments or
 20 meetings with other members of the legislature
 21 or related to your legislative duties in some
 22 electronic format?
 23 A. Yes, sir.
 24 Q. What format is that?
 25 A. If I may, I think it may help you understand if

8

1 I give a little bit longer answer.
 2 Q. Please.
 3 A. The state provides a Microsoft Outlook system
 4 that members are allowed to use, but our
 5 Legislative Ethics Commission issued an opinion
 6 that only official business should be recorded
 7 on that calendar, so that makes it very
 8 difficult as a part-time legislator for our
 9 staff to know if we're going to be in town or
 10 out of town or what we were doing.
 11 The concern that the Legislative Ethics
 12 Commission came up with is if I were going to
 13 put -- for instance, that maybe I was going to
 14 attend a political fundraiser or maybe I was
 15 going to meet with a perspective client, that
 16 that might be considered using the state
 17 resources for non-official business.
 18 I've been trying to figure out a way to
 19 streamline that, but as of yet have not been
 20 able to reach a consensus.
 21 For the record, the state -- the
 22 Legislative Ethics Commission is appointed by
 23 the Speaker. It consists of three Democrats and
 24 three Republicans, and the Senate appoints a
 25 like body. So we try to run these issues

9

1 through them to make sure nobody gets in
 2 trouble. I say all that to say that forces
 3 members to basically maintain their own
 4 calendar.
 5 I use an iPhone. It is linked in with
 6 the Microsoft Exchange Server. And we'll be
 7 presenting the calendar from those dates to you
 8 very shortly.
 9 Q. Thank you.
 10 So in preparing for this deposition,
 11 what documents did you review?
 12 A. I reviewed the complaint that was filed. I
 13 reviewed the transcripts of the Joint
 14 Legislative Redistricting Committee. I reviewed
 15 the transcripts from the House Redistricting
 16 Committee. I reviewed the transcripts from the
 17 Senate Redistricting Committee. I reviewed the
 18 transcripts from the public hearing that was
 19 held, and I also took a look at the 2011
 20 Legislative Guide to Redistricting.
 21 Q. And who did you meet with in preparation for
 22 this deposition?
 23 A. To prepare for this deposition, I met with our
 24 legal team who are seated in this room today.
 25 Q. Did you meet with Dr. Hofeller in preparation

10

1 for this deposition? Prior to depositions
 2 beginning on Tuesday, did you meet with
 3 Dr. Hofeller in preparation for this deposition?
 4 A. I did not meet with Dr. Hofeller in preparation
 5 for this deposition. I cannot recall if he was
 6 present at a briefing that may have been with
 7 the attorneys.
 8 Q. And that briefing would be in preparation for
 9 this deposition or separate?
 10 A. Yes, sir. Yes, sir.
 11 Q. So just in terms of your legislative background,
 12 when were you first elected to the
 13 North Carolina legislature?
 14 A. I was elected in 2002.
 15 Q. And when did your involvement in redistricting
 16 begin beyond voting on plans?
 17 A. Kind of an interesting answer, if you'll give me
 18 just a moment. The election of 2002 was a very
 19 unusual election. It's one in which the
 20 legislative maps were challenged and actual
 21 elections put on hold and rescheduled I think
 22 three times. In fact, we kind of joked it's
 23 like the football game that they keep moving the
 24 end time and you never really know what the
 25 field's going to look like.

11

1 So I became, I guess, acutely
 2 interested in it because I was having to run in
 3 a year in which litigation was radically
 4 changing the normal schedule of elections.
 5 Other than that, my -- I was elected in
 6 2002, and in 2003, one of my duties was to vote
 7 on the redistricting plan that was presented,
 8 but I was in no way involved in the preparation
 9 of that plan.
 10 In 2011, then Speaker Tillis asked me
 11 to serve as senior chairman of the House
 12 Redistricting Committee. The House is a big
 13 body, so it's not unusual to have multiple
 14 chairs. My designation as senior chair meant
 15 that I was the overall chair of the committee.
 16 So in that capacity, I led the House
 17 redistricting effort for both the U.S. Congress
 18 and the North Carolina House and served in that
 19 capacity from early 2011 until that term ended.
 20 I do not believe the House reconstituted a
 21 redistricting committee.
 22 In February of 2016, then current
 23 Speaker Moore and Senator Berger appointed a
 24 Joint Legislative Redistricting Committee
 25 between the House and the Senate to respond to

12

1 the recent court ruling in the Harris case, and
 2 I was named chair for the House of that
 3 committee
 4 Q. In 2011 had you requested or made known your
 5 interest in serving as senior chair of the
 6 redistricting committee?
 7 A. I had not.
 8 Q. Why do you feel you were chosen to lead that?
 9 A. Candidly, I think there's a couple of reasons.
 10 One, it's obvious that I'm unelectable to
 11 congress, and so I think the Speaker felt that I
 12 would not have personal ambition at stake.
 13 Two, I had worked with my colleagues to
 14 develop a level of trust and fairness. I think
 15 being the redistricting chair means, you know, a
 16 lot of people take the decisions that have to
 17 come out that are policy decisions very
 18 personally, and I think the Speaker felt that my
 19 personality would be able to win enough votes to
 20 pass a plan without angering too many folks.
 21 Q. And when you say people may be angry because
 22 they take decisions personally, how -- in the
 23 context of serving in the legislature, how does
 24 that get communicated to a redistricting chair?
 25 A. Well, the best way to communicate is to vote no,

13

1 but certainly you have conversations, people
 2 say, you know, I wish you would put this line
 3 here or you know I've always represented
 4 County X and now I will no longer represent
 5 County X, why are you doing this to me. Those
 6 are the kinds of things that are said both in a
 7 formal setting such as a redistricting committee
 8 but also in the more intimate setting of the
 9 hallways of the legislature or in the
 10 legislative cafeteria, et cetera.
 11 Q. And do legislators express those sorts of
 12 concerns that you just talked about as to both
 13 state legislative and congressional lines?
 14 A. Yes.
 15 Q. I want to talk about the 2011 plan and your role
 16 in the creation of that plan.
 17 You acted as senior chair of the House
 18 Redistricting Committee and worked with
 19 Senator Rucho who was chairing the Senate
 20 committee, correct?
 21 A. Yes, sir.
 22 Q. And how was your role and Senator Rucho's role
 23 defined by those chair positions?
 24 A. The chair of a legislative committee is
 25 responsible for the overall administration of

14

1 the committee in accordance with the Chamber
 2 rules. The chair is generally afforded the
 3 opportunity to appoint committee staff such as
 4 they are. We're not like congress where we have
 5 necessarily large staffs.
 6 The specific goal that Senator Rucho
 7 and I had legislatively was to try and create a
 8 plan -- we were -- we were acutely aware that
 9 North Carolina, I believe along with Texas
 10 combined have more legislative -- I mean more
 11 redistricting appeals and litigation than any
 12 other state. So we tried to develop a plan that
 13 we thought followed the law. That's largely
 14 documented in the legislative guide of 2011.
 15 Off the top of my head, certainly we
 16 wanted -- we understood in congressional
 17 redistricting that you had the one-person,
 18 one-vote requirement that the districts needed
 19 to be the same size so everybody's vote counts
 20 the same. There was compliance with the Voting
 21 Rights Act. North Carolina had one Voting
 22 Rights Act district. We paid special attention
 23 to that. And then we drew the rest of the
 24 state.
 25 Q. And when you say "we drew the rest of the

15

1 state," you did not actually draw the lines for
 2 the maps, correct?
 3 A. I did not actually maneuver the mouse to draw
 4 the lines, no, sir.
 5 Q. Who actually drew the lines for those maps?
 6 A. Dr. Tom Hofeller.
 7 Q. And Dr. Tom Hofeller was hired by you and
 8 Senator Rucho, correct?
 9 A. During the 2011 cycle, I am unclear of exactly
 10 who hired Dr. Hofeller.
 11 Q. Do you know who made the decision to hire Tom
 12 Hofeller as the map drawer for the 2011 cycle?
 13 A. To the best of my knowledge, Senator Tillis had
 14 already started the wheels in motion before I
 15 was named chair.
 16 And forgive me, for the record, he is
 17 now senator. I should have referred to him as
 18 Speaker Tillis. My apologies.
 19 Q. But you had met Dr. Hofeller previously,
 20 correct?
 21 A. I had met Dr. Hofeller once before. I believe
 22 it was in 2009. I attended a meeting of the
 23 Republican National Committee and Dr. Hofeller
 24 was one of the presenters. He spoke about
 25 redistricting.

16

1 At the time I held North Carolina seat
 2 on the RNC's redistricting committee. I don't
 3 recall Dr. Hofeller's presentation in great
 4 detail. I do recall, like everything else the
 5 RNC does, it was you need to get ready for this,
 6 you need to be able to raise money for this, you
 7 need to be able to hire good people to do this,
 8 you need to take this seriously, largely the
 9 same kind of stuff that they always do.
 10 Q. How did they explain the importance of those
 11 preparations?
 12 A. Well, they just reiterated that redistricting is
 13 a once-in-a-decade project that many states
 14 don't gear up for and have to kind of reinvent
 15 the wheel every time, if you will. They talked
 16 about just being prepared.
 17 I do recall, of course, that there was
 18 talk that it was widely believed that the other
 19 side, the Democratic Party, had controlled the
 20 redistricting process for a long time and that
 21 there would possibly be opportunities to weaken
 22 that iron hand that the Democrats held on in
 23 most of the states at that point.
 24 Q. And did you have an understanding at that
 25 time -- at that time of the importance of

17

1 controlling a state legislative chamber to
 2 control the redistricting process?
 3 A. Yes.
 4 Q. And the North Carolina House was controlled by
 5 the Democratic Party prior to the 2010 election,
 6 correct?
 7 A. The control had gone back and forth as far as
 8 the partisan balance.
 9 Q. Immediately prior to the --
 10 A. Yes, sir, that's correct.
 11 Q. And after the 2010 election, beginning in 2011,
 12 the Republican Party took control of the
 13 North Carolina House, correct?
 14 A. Yes, sir.
 15 Q. And they had control of both the North Carolina
 16 House and the North Carolina Senate?
 17 A. The Republican Party registered members were the
 18 majority in both chambers.
 19 Q. So your involvement in the Republican National
 20 Committee -- Redistricting Committee, did that
 21 predate your -- based on the date that you just
 22 said, did that predate your chairmanship?
 23 A. Yes. That would have been -- the one meeting I
 24 attended in '09 was before I was named chairman
 25 in 2011.

18

1 Q. And that was the only RNC redistricting
 2 committee meeting that you attended?
 3 A. That I recall, yes, sir.
 4 Q. Where was that meeting?
 5 A. I don't remember. The RNC will pick a city
 6 somewhere in the U.S. and we're expected to fly
 7 into it and to participate. I was trying to
 8 remember because I anticipated you were going to
 9 ask me that question. I cannot remember where
 10 that meeting was. I do think it was -- they
 11 only meet -- they only meet four times a year,
 12 so I'm pretty sure it was the winter meeting
 13 which is held in January, but I'm not certain of
 14 that.
 15 Q. But you believe it was 2009?
 16 A. It was either '09 or '10, yes, sir.
 17 Q. And you're certain that Dr. Hofeller presented
 18 at that conference?
 19 A. Yes, sir.
 20 Q. Are you aware of an organization -- at the time
 21 of the 2011 congressional plan being drafted,
 22 were you aware of an organization called the
 23 Republican State Leadership Committee?
 24 A. No, sir.
 25 Q. Were you aware of a national Republican program

19

1 called Operation REDMAP?
 2 A. No, sir.
 3 Q. I'm going to turn to what was previously marked
 4 as Deposition Exhibit 9.
 5 A. Thank you, sir.
 6 MR. THORPE: I have additional copies
 7 if folks need.
 8 MR. FARR: I've got mine.
 9 BY MR. THORPE:
 10 Q. Are you familiar with this document?
 11 A. I heard it discussed in a prior deposition, but
 12 I had never seen it before the deposition was
 13 taken two days ago.
 14 Q. Based on that earlier discussion, can you
 15 identify this document as a letter from the
 16 chief executive officer of the Republican State
 17 Leadership Committee to legislative leaders?
 18 A. Based on the prior deposition I can. I will
 19 point out that I don't see any letterhead on
 20 this, but I would agree I think that's fair,
 21 yes, sir.
 22 Q. Do you recall whether you received this letter?
 23 A. I do not recall receiving this and do not
 24 believe that I did.
 25 Q. But you have no way of being sure that you did

20

1 not receive this letter?
 2 A. That's correct.
 3 Q. Were you aware at the time that Dr. Hofeller
 4 began working for North Carolina on the 2011
 5 redistricting that Dr. Hofeller also worked for
 6 the Republican State Leadership Committee?
 7 A. I was not.
 8 Q. Were you aware that Dr. Hofeller was working on
 9 redistricting issues outside of North Carolina?
 10 A. Yes, I was.
 11 Q. And what did you understand his work to entail?
 12 A. I knew that Dr. Hofeller was involved in other
 13 states. I would have to make an assumption that
 14 he was drawing maps. The reason I knew he was
 15 involved in other states is we would often have
 16 to schedule the times that we could meet with
 17 him when he was going to be in North Carolina
 18 and not in another state.
 19 Q. And for his work in North Carolina,
 20 Dr. Hofeller, as a technical matter, was hired
 21 by the Ogletree firm, correct?
 22 A. I believe that to be correct, yes, sir.
 23 Q. And the State hired the Ogletree firm?
 24 A. Yes, sir, that's correct.
 25 Q. But you had direct communications with

21

1 Dr. Hofeller regarding the 2011 plan, correct?
 2 A. Yes, sir.
 3 Q. And in those communications, you provided
 4 instructions to Dr. Hofeller as to the criteria
 5 under which he should draw the 2011 plan,
 6 correct?
 7 A. Yes, sir.
 8 Q. Those instructions were not in written form,
 9 though, correct?
 10 A. Correct.
 11 Q. Did you communicate any instructions to
 12 Dr. Hofeller regarding the criteria for 2011 in
 13 writing?
 14 A. I don't believe so.
 15 Q. What were your instructions to Dr. Hofeller in
 16 drafting the 2011 plan?
 17 A. I wanted to prove that we could navigate the
 18 myriad of legal court of opinions and statutory
 19 requirements and pass a plan that complied with
 20 the law.
 21 Q. Did you discuss with Dr. Hofeller at the time of
 22 the 2011 plan being drafted the expected
 23 partisan performance of the districts he was
 24 drawing?
 25 A. I don't recall that that was discussed

22

1 specifically with Dr. Hofeller at the time the
 2 maps were being drawn.
 3 Q. Did you have discussions with anyone at the time
 4 of -- anyone other than counsel at the time the
 5 2011 maps were being drafted about the expected
 6 partisan performance of the plan?
 7 MR. FARR: Anyone other than other
 8 legislators who haven't waived their legislative
 9 privilege.
 10 THE WITNESS: I'm trying to recall. I
 11 want to answer your question as fully as I can.
 12 I've been deposed on this a couple of times. I
 13 don't remember who all I may have spoken to.
 14 At some point or other I'm sure that I
 15 did speak with Representative Patrick McHenry.
 16 We are college friends. I don't think he asked
 17 anything specific. I think he was more curious.
 18 BY MR. THORPE:
 19 Q. In what district does Representative McHenry
 20 represent?
 21 A. I believe it's the 10th of North Carolina.
 22 Q. Do you recall discussing with Representative
 23 McHenry the expected changes to the 10th
 24 district of North Carolina?
 25 A. I probably did.

23

1 Q. In advance of the maps being enacted.
 2 A. In advance of the maps being enacted, not only
 3 did I talk to Representative McHenry, but
 4 Senator Rucho and I made an effort to reach out
 5 to most of the members of Congress that we had
 6 any kind of relationship with. He knew more of
 7 them than I did, frankly, but, you know, we did
 8 seek their input and advice, but I would really
 9 be hard-pressed to remember the specific
 10 conversations.
 11 Q. Did you reach out to Democratic members of
 12 Congress as well?
 13 A. Yes.
 14 Q. Which Democratic members of Congress do you
 15 remember reaching out to?
 16 A. The only Democratic member that I met with was
 17 Representative Butterfield. That was -- I met
 18 with him in Raleigh in SENATOR Rucho's
 19 conference room. I did not meet with any other
 20 Democratic member of Congress.
 21 Q. Did you provide any instruction to Dr. Hofeller
 22 for the 2011 plan that partisan advantage should
 23 be a criteria under which the plan would be
 24 drawn?
 25 A. I don't recall giving that specific criteria.

24

1 Q. Do you recall any discussion with Senator Rucho,
 2 Dr. Hofeller or any legislative staff about the
 3 use of partisan advantage as a criteria --
 4 criterion for enacting a plan?
 5 A. I don't recall any specific discussions. I
 6 believe that partisan considerations have
 7 historically been a traditional redistricting
 8 principle, and so I'm confident that at some
 9 point those -- we did discuss partisan
 10 ramifications or possibly partisan likely
 11 outcomes of the districts that were going to be
 12 drawn.
 13 Q. And on what basis would you assess those
 14 outcomes?
 15 A. I think we would have looked at historical
 16 vote -- votes that had been cast and try to use
 17 that as a predictor of future elections.
 18 Q. And on what basis did you rely on past election
 19 results for that purpose?
 20 A. I'm sorry, I don't understand your question.
 21 Q. For what reason did you rely on past election
 22 results as a predictor of possible future
 23 election results?
 24 A. The nature of redistricting is a political
 25 undertaking. There are numerous laws and court

25

1 decisions that impact the ability of map drawers
 2 to create a legal document. We attempted to
 3 understand all of those and apply them.
 4 But to be candid, when you apply all
 5 the rules that are there, there are sometimes
 6 some discretionary decisions that could be made,
 7 and I've been open and candid with folks that
 8 when it gets to that point and all the other
 9 thresholds have been met -- we're talking about
 10 2011 -- that I would often view those decisions
 11 through a partisan lens.
 12 Q. And so the partisan considerations that you just
 13 discussed you would put in the category of those
 14 discretionary decisions, correct?
 15 A. Yes, sir.
 16 Q. At the time of the 2011 plan, do you recall the
 17 use of the specific term "partisan advantage" as
 18 a criterion discussed for drawing the
 19 legislative -- I'm sorry -- the congressional
 20 maps?
 21 A. I don't remember if that exact terminology was
 22 used in 2011.
 23 Q. In 2011, when Dr. Hofeller provided the maps for
 24 the first time to you and Senator Rucho, did you
 25 have any discussion of the expected partisan

26

1 performance of those maps?
 2 A. I believe in 2011 I did look at the historic
 3 election trends and felt pretty confident that
 4 there were districts that would give Republicans
 5 an opportunity to be competitive.
 6 Q. Let me ask about that. When you say give
 7 Republicans an opportunity to be competitive,
 8 what metric do you apply to that?
 9 A. So again, you have to go back to the principles
 10 that we were trying to operate under,
 11 one-person, one-vote, but obviously you can draw
 12 lines to accomplish that in multiple ways.
 13 We did apply a partisan lens on the
 14 past election results, and that was a factor in
 15 creating some of the districts that we felt
 16 would better give the Republicans an opportunity
 17 to elect candidates, where in the past the map
 18 makers had made different decisions and,
 19 frankly, grouped different groups of people with
 20 a different expected outcome.
 21 Q. And I just want to understand the mechanics of
 22 how you came to expect that about a particular
 23 district.
 24 So you were presented with a statewide
 25 map by Dr. Hofeller, correct?

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1 A. It -- it got to that point. I don't remember if
 2 the first time I met with Dr. Hofeller if there
 3 were 13 districts drawn.
 4 You also have to remember, very early
 5 on we were hopeful we would get a 14th seat, and
 6 I think we missed it like by about 15,000 people
 7 or something like that. So I'm not certain that
 8 I saw a complete map to start with.
 9 Q. So in advance of seeing a statewide map, you saw
 10 maps of individual districts?
 11 A. I saw -- certainly I saw the current drawing of
 12 the map. I know I had at least one
 13 conversation -- one conversation, as I said,
 14 with Representative McHenry. So certainly I saw
 15 that, the current enacted plan as a whole map.
 16 I don't remember -- when you say --
 17 when you and I talk about a whole map,
 18 oftentimes you -- or I tend to look at it in
 19 areas that I can understand and focus on. So it
 20 is entirely possible that the first time
 21 Dr. Hofeller and I looked at a map he had drawn
 22 all 13 seats, but I don't recall that was the
 23 order that we went in.
 24 I also don't recall, frankly, getting
 25 to an individual district level until we were

28

1 going to go and talk to the members of Congress.
 2 Q. So part of what I'm interested in is how the
 3 maps that you looked at and the election results
 4 you've just been testifying about paired up.
 5 So for any map that you looked at, did
 6 you also have election results that showed how
 7 past elections would come out under that map?
 8 A. If I could maybe change your question just a
 9 bit. We did have the -- how the elections in
 10 the past did turn -- did turn out and could
 11 apply them to the geographic area that the
 12 districts were drawn. I think that's what
 13 you're trying to ask.
 14 Q. That's what I was trying to ask. You in fact
 15 did that?
 16 A. Yes, sir.
 17 Q. You applied the results of the past elections to
 18 the newly drawn geographic areas before the maps
 19 were fully enacted?
 20 A. That was one of the criteria that we used, yes.
 21 Q. Okay. I want to, I guess, fast forward a little
 22 bit to the 2016 plan.
 23 You have testified that you were
 24 asked -- you and Senator Rucho were asked by
 25 Senator Berger and Speaker Moore to chair a

29

1 joint redistricting committee. When did that
 2 discussion take place?
 3 A. To the best of my recollection, the decision
 4 from the Harris court came out on the 5th --
 5 Q. That's correct.
 6 A. -- of February. It's kind of -- it's kind of
 7 interesting, but -- of note, Senator Rucho and I
 8 have kind of been the go-to people when it comes
 9 to -- when it comes to redistricting. It's kind
 10 of been our job to work with the Speaker and the
 11 president pro tem's press people to respond
 12 whenever the decisions come out either in our
 13 favor or against us.
 14 On the 5th of February 2016, Speaker
 15 Moore's communications person was out so I was
 16 more involved than usual with preparing our
 17 response. I remember talking to Speaker Moore
 18 on the 5th and him telling me to head up this
 19 process I think were -- was my charge from him.
 20 Q. Do you recall exactly when you learned of the
 21 Harris decision?
 22 A. It was on a Friday afternoon. It was pretty
 23 interesting. I was with Mr. Speas and Ms. Earls
 24 that day giving another deposition, so I was in
 25 Raleigh, and that's -- I think that's another

30

1 reason I worked with the press folks a little
 2 bit closer than I had in the past because I was
 3 here anyway.
 4 Q. And had you attended the trial in Harris?
 5 A. I believe I got three of the four days.
 6 Q. And I know that you were deposed in the Dixon
 7 case and the Covington case that you just
 8 mentioned.
 9 Did you offer any other sworn testimony
 10 in the Harris case?
 11 A. To the best of my knowledge, I was not called in
 12 the Harris case.
 13 Q. But you were aware of the Harris litigation as
 14 it was ongoing?
 15 A. Yes, sir.
 16 Q. Did the Harris Court's decision surprise you?
 17 A. It did. We were -- and still are, frankly --
 18 optimistic that we followed the law and are
 19 still optimistic that ultimately the decision
 20 will be reversed by the Supreme Court, but, yes,
 21 I was personally surprised that the court ruled
 22 as it did.
 23 Q. Between the conclusion of the Harris trial and
 24 the release of the Court's opinion on
 25 February 5th, did you have any discussions with

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1 Senator Rucho regarding the likely outcome in
 2 Harris?
 3 A. No.
 4 Q. In that same time period, did you have any
 5 discussions with Dr. Hofeller at all?
 6 MR. FARR: About the case?
 7 MR. THORPE: About redistricting.
 8 THE WITNESS: No.
 9 BY MR. THORPE:
 10 Q. After -- so your first conversation about your
 11 obligations with regard to a contingent plan
 12 came from a conversation with Speaker Moore on
 13 the 5th, correct?
 14 A. On the 5th is when I began to try and understand
 15 what the Harris court had ordered us to do, what
 16 the parameters around what we were ordered to do
 17 were and, well, to be frank, if we were actually
 18 going to have to do it because it was my intent
 19 that we should try to ask the Court not to
 20 require this.
 21 Q. And you testified that you were told to take
 22 charge of this process. What was that going to
 23 entail?
 24 A. The -- as we operate in two different courts,
 25 the court of jurisprudence and the court of

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1 public opinion, the first task that I had to was to
 2 get a response out that was credited to Senator
 3 Rucho and to me. My process to do that is we
 4 write the message that we want to get out. A
 5 lot of times the press people will massage it
 6 for different messaging reasons, and generally I
 7 speak -- I have one of our attorneys review it
 8 to make sure we're not saying something we're
 9 not supposed to. We're always very careful to
 10 express our displeasure without trying to offend
 11 the Court.

12 Q. When you jointly author documents with Senator
 13 Rucho, how do you share those documents as
 14 they're being drafted?

15 A. Sometimes we literally are sitting in front of a
 16 laptop that either a person on my staff or, more
 17 likely, one of the press staff is using. There
 18 are times when we have to call Senator Rucho or
 19 the staff has to call me and read it and I say
 20 it sounds okay.

21 You're probably asking is it ever
 22 e-mailed back and forth; that has probably
 23 occurred. I don't remember if it occurred on
 24 the 5th or not because, again, I was in Raleigh.

25 Q. Do you keep either electronic or printed drafts

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1 of those documents as they're edited?

2 A. I heard the question asked yesterday, if I may,
 3 about deleting e-mails. I don't delete e-mails,
 4 but I don't make any active attempt to keep
 5 paper copies. In fact, often there aren't paper
 6 copies.

7 Usually it's in the case of the press
 8 statement, "Are you okay with this" or "Here, we
 9 wrote what you said, is this okay." And
 10 sometimes I may want to change a word or two.

11 Sometimes, frankly, Senator Rucho and I
 12 don't agree on how strong or -- of how strong
 13 the statement should be expressing our joy with
 14 a decision or our displeasure. So we talk that
 15 through and try to come to a consensus.

16 Q. So slightly different question than the one you
 17 answered about e-mail: When you actively edit a
 18 statement that appears in, for example, a Word
 19 document, do you do that on a computer or do you
 20 do that on a printed version of the document?

21 A. Usually on a computer.

22 Q. And is it your practice to keep the edits that
 23 you would provide to either Senator Rucho or,
 24 for example, the press office?

25 A. Only in the -- only in so much as I'm sure

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1 they're still in either the "sent" file or some
 2 file on my computer.

3 Q. So as to those sorts of documents, you would
 4 e-mail them, for example, to the press office?

5 A. So I think that's a two-part question. The
 6 finished document is always e-mailed out to the
 7 press. The emerging document is sometimes
 8 edited and approved via e-mail. It's sometimes
 9 done because we're both in the room. It's
 10 sometimes done one of us in the room, one of us
 11 on the phone.

12 So just to be clear, yes, the finished
 13 document is always e-mailed. The developing
 14 document is sometimes.

15 Q. And just to reiterate the very specific
 16 question, when you are editing a document, do
 17 you save separate versions or drafts of the
 18 document?

19 A. I don't, no.

20 Q. We got a little bit derailed from your response
 21 to how you were to take charge of the process.
 22 I think you sort of have gone through the public
 23 opinion side of it. What's the other side of
 24 it?

25 A. Yes, sir. And I'm sorry if I went too far into

35

1 the other side.

2 If I may, again, on the 5th, we learned
 3 of the decision. It's kind of unfortunate when
 4 those decisions come out on Friday because you
 5 have to ask your staff to stay back and work and
 6 you do yourself. So in addition to getting the
 7 press statement out -- and I do not remember if
 8 I made the phone call to our counsel or if the
 9 counsel called me, but I do remember that we
 10 agreed to meet to discuss and understand the
 11 Harris case on Saturday the 6th at 2:00 to be
 12 exact.

13 Q. So before -- I'm going to table the scheduling
 14 discussion until we've had some chance to review
 15 those documents that y'all are producing today.

16 I really want to go back to ask about
 17 what the scope of your responsibility was going
 18 to be as chair.

19 A. Yes, sir. Under Speaker Tillis, he gave me
 20 basically full authority to act on his behalf
 21 and on behalf of the House. It was my
 22 understanding from Speaker Moore that I would
 23 continue to act in his stead on behalf of the
 24 House. So I felt fully empowered at that time
 25 to act on behalf of the House.

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1 Q. And what did you understand your role and
 2 Senator Rucho's role to be relative to the map
 3 drawer?
 4 A. Relative to the map drawer, like any bill is
 5 developed in the legislature, someone has an
 6 idea and the idea is fleshed out in some
 7 component or other and then it's run through the
 8 legislative process.
 9 So by this point -- and I say by this
 10 point because I've been dealing with
 11 redistricting since 2011 -- I felt a bit more
 12 empowered and understood my role a bit better
 13 with the map drawer and understood that the map
 14 drawer worked for me and at my instruction.
 15 Q. And when you say at your instruction, what
 16 instructions did you understand you would be
 17 providing to the map drawer once the Harris
 18 decision was released?
 19 A. The first objective was to understand what the
 20 Harris court was going to ask us to do. I
 21 actually hoped, when I heard we had lost the
 22 Harris case, that the Harris court might give us
 23 some direction or some principles to use in
 24 drawing the map.
 25 The only thing that I was able to

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1 garner from the Harris decision is that that
 2 Court said that we had not established a pattern
 3 of racially polarized voting in the state which
 4 means that we should not consider race in
 5 drawing -- drawing districts.
 6 The Court also wrote that they did not
 7 like the serp -- I believe the word was
 8 serpentine nature of the shape of the 12th
 9 congressional district.
 10 So my first job was to try to
 11 understand what the Harris court wanted us to
 12 do. Maybe what I learned instead is what they
 13 didn't want us to do, which was to consider race
 14 and they didn't like the shape of the 12th.
 15 Q. And from that review of the Harris court
 16 decision, what instructions did you determine
 17 you needed to give to the map maker?
 18 A. That race should not be considered in drawing
 19 the map; that the shape of the 12th district
 20 needed to change; that the traditional
 21 redistricting principles of one-person, one-vote
 22 would need to be honored; that traditional
 23 redistricting principles such as compactness
 24 should be followed; that -- to be candid with
 25 you, since 2011, the level of criticism we

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1 received for the number of split VTDs and split
 2 precincts was acutely on my mind, and I asked
 3 that we do all we can not to split precincts or
 4 split VTDs.
 5 I told him that, again, one of the
 6 traditional redistricting criteria is
 7 incumbency, that we should take a look at the
 8 incumbents and at least be knowledgeable of any
 9 changes that we were going to do may or may not
 10 impact them.
 11 I felt and feel that the 2011 map is
 12 ultimately a legal document, and if you are
 13 going to consider the incumbency of the members,
 14 part of that consideration includes the
 15 partisan -- I apologize, I don't know the
 16 correct word. Part of it considering incumbency
 17 is how they are registered to vote politically,
 18 if they're a Democrat or a Republican.
 19 And at this moment, those are the ones
 20 that I recall that we discussed.
 21 Q. So that is when you hired Dr. Hofeller to be the
 22 map drawer for the 2016 map, correct?
 23 A. I did.
 24 Q. And so the instructions that you just recounted
 25 come from -- and we'll get to the timeline --

39

1 the first conversation that you had with
 2 Dr. Hofeller regarding the criteria you would
 3 use for the 2016 map, correct?
 4 A. As best I recall, yes.
 5 Q. Now, you've just discussed incumbency as a
 6 traditional redistricting criteria. Is it your
 7 testimony that the partisan affiliation of an
 8 incumbent is a traditional redistricting
 9 criteria?
 10 A. It's my understanding that incumbency itself is,
 11 and if you're going to consider incumbency, you
 12 have to consider the incumbent and that would
 13 mean that their partisan affiliation would be a
 14 part of that to that end.
 15 Q. On what basis did you determine the other what
 16 you have termed traditional redistricting
 17 criteria?
 18 A. It probably goes without saying that I'm not an
 19 attorney and I've never studied the law as you
 20 have and many of the folks in this room have. I
 21 have learned a lot, and I've tried to read the
 22 various cases, especially those that apply to
 23 North Carolina.
 24 We had developed the legislator's
 25 redistricting guide in 2011, and you simply

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1 begin to learn certain things are a part of the
 2 redistricting process, and I can't say there was
 3 any one moment where lightening came down from
 4 the mountain and I was exposed to what
 5 redistricting criteria are.
 6 I would just say that we're all the sum
 7 of our parts, and I was attempting to convey
 8 traditional principles as I had understood them.
 9 Q. And one of the reasons that you felt traditional
 10 redistricting principles were important for the
 11 2016 criteria was for the purpose of having the
 12 plan approved by the Harris court, correct?
 13 A. Yes.
 14 MR. THORPE: Do you want to take a
 15 break, Tom?
 16 MR. FARR: Sure.
 17 THE VIDEOGRAPHER: Off record at
 18 10:27 a.m.
 19 (Brief Recess.)
 20 THE VIDEOGRAPHER: On record at
 21 10:41 a.m.
 22 (WHEREUPON, Plaintiffs' Exhibit 39 was
 23 marked for identification.)
 24 BY MR. THORPE:
 25 Q. I've asked the court reporter to mark what's now

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1 in front of you as Exhibit 39. Can you identify
 2 this document, Representative Lewis?
 3 A. Yes, sir. This is my calendar from February 6th
 4 through, I guess, February 19th showing most of
 5 the redistricting stuff that I did that week.
 6 Q. And just to clarify your last answer,
 7 Representative Lewis, if you could look at the
 8 last page of the document.
 9 MR. STRACH: Somebody copied this --
 10 the 5th should be the first page and the 19th
 11 should be the last page.
 12 BY MR. THORPE:
 13 Q. It's the 5th through the 19th?
 14 A. Yes, sir. I apologize.
 15 Q. It's my understanding that the redactions in
 16 this document are nonresponsive in that they are
 17 not in any way related to redistricting; is that
 18 correct?
 19 A. That's correct.
 20 Q. And it's my understanding if there is a page
 21 missing, it's because there were no responsive
 22 entries from that day, correct?
 23 A. Yes.
 24 Q. This list has a 2:00 p.m. entry on Saturday,
 25 February 6th, a redistricting meeting at I

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1 assume the offices of Ogletree Deakins, correct?
 2 A. Yes, sir.
 3 Q. Who was in attendance at that meeting?
 4 A. I was there. Brent Woodcox was there. The
 5 Ogletree counsel was there. I don't remember if
 6 the Attorney General counsel was there or not.
 7 And I believe that to be it.
 8 Q. Were any other legislators at that meeting?
 9 A. Senator Rucho was on the phone, but he was not
 10 in the room, although his presence is always
 11 felt.
 12 Q. And did Dr. Hofeller attend that meeting?
 13 A. I don't remember if he did or not.
 14 Q. Had Dr. Hofeller been -- had you decided that
 15 Dr. Hofeller would be hired for the 2016 plan by
 16 the time this meeting occurred?
 17 A. No. I made that decision at about that same
 18 time. The first decision -- I don't know how
 19 much I'm supposed -- I wanted to fight and
 20 wanted to appeal, so that was the first thing we
 21 discussed.
 22 MR. FARR: Okay, we're not going to
 23 talk about what was discussed at that meeting
 24 with counsel.
 25 THE WITNESS: Yes, sir.

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1 BY MR. THORPE:
 2 Q. When did you make the decision to hire
 3 Dr. Hofeller?
 4 A. On Saturday, February 6th.
 5 Q. Okay. And Dr. Hofeller was in fact hired on
 6 February 6th?
 7 A. I sought his counsel. I was acting under what I
 8 believed to be my authority to do so. I think
 9 we later clarified in the redistricting
 10 committee that I did in fact have that
 11 authority, but in my mind, yes.
 12 Q. And other than conversations that involved
 13 counsel, did you have a conversation with
 14 Dr. Hofeller on Saturday, February 6th?
 15 A. I believe we -- I do believe we spoke by phone
 16 either on the 6th or the 7th to talk about the
 17 Harris response.
 18 Q. Was Senator Rucho also on that call?
 19 A. I don't believe he was on that call.
 20 Q. And what was the substance of that telephone
 21 call?
 22 A. We have to draw a map to comply with the Harris
 23 decision. We need to get together and talk
 24 about it.
 25 Q. Did you discuss at that time any of the

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1 instructions that we were talking about before
 2 we took our break?
 3 A. I don't remember if we talked about any of the
 4 drawing criteria at that point other than what I
 5 understood the Harris court said they didn't
 6 like.
 7 Q. At that time you did not provide Dr. Hofeller
 8 with instructions regarding other criteria to be
 9 used in drawing these maps?
 10 A. I do not believe I did.
 11 Q. Was it your understanding that Dr. Hofeller
 12 would begin working on maps immediately?
 13 A. I didn't have that understanding. It's my
 14 belief that what we did was arrange to meet on
 15 Monday the 9th.
 16 Q. So just to clarify, Monday is February 8th. The
 17 9th indicates that you have a meeting with
 18 Hofeller at 4:00 p.m. Did you first meet on
 19 Tuesday, February 9th?
 20 A. We did. I'm sorry. Yep.
 21 Q. On Monday, February 8th, did you have any
 22 communication with Dr. Hofeller?
 23 A. To be clear, I don't remember if it was
 24 Saturday, Sunday or Monday that I called him and
 25 said we need to get together.

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1 Q. Beyond that phone call in any of those three
 2 days, did you have any additional communication
 3 with Dr. Hofeller?
 4 A. No.
 5 Q. Are you personally aware of whether Senator
 6 Rucho had any communication with Dr. Hofeller
 7 during that time?
 8 A. I am not.
 9 Q. Did you communicate with Senator Rucho during
 10 that time?
 11 A. Senator Rucho and I spoke -- we probably spoke
 12 by phone on Monday. I know we didn't speak on
 13 Sunday because, to be candid, it was the
 14 Super Bowl.
 15 MR. FARR: Some things have higher
 16 priority.
 17 BY MR. THORPE:
 18 Q. Where were you over the weekend, Representative?
 19 A. Well, I was supposed to be home preparing for
 20 the Super Bowl party I talked my wife in to;
 21 instead, I was at Ogletree to then return home
 22 to rush for our Super Bowl party which was the
 23 next day.
 24 Q. And did you return to Raleigh on Monday or on
 25 Tuesday?

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1 A. I don't remember if I came to Raleigh on Monday
 2 the 8th or not. I certainly returned on Tuesday
 3 the 9th.
 4 Q. And did you meet with Senator Rucho before you
 5 met with Dr. Hofeller?
 6 A. I don't recall that Senator Rucho and I met face
 7 to face. I know that we spoke on the phone at
 8 some point that Monday or Tuesday, but I don't
 9 know that we actually met face to face before
 10 going to see -- before I went to see
 11 Dr. Hofeller.
 12 Q. And you believe you had one phone call with
 13 Senator Rucho in between the meeting at Ogletree
 14 on Saturday and the meeting with Hofeller on
 15 Tuesday, correct?
 16 A. The best I can recall.
 17 Q. What was the substance of that conversation?
 18 A. We talked briefly, as best I can recall, about
 19 our hope that a stay could be issued and that we
 20 could appeal the case, and then we talked
 21 about -- that I was ready to hire Hofeller to
 22 prepare maps that we could review. And to the
 23 best of my recollection, he didn't have any
 24 disagreement with that.
 25 Q. So you decided to hire Dr. Hofeller?

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1 A. Yes.
 2 Q. And Senator Rucho agreed?
 3 A. I want to say yes because I think he did, but I
 4 don't know if I can -- he didn't disagree with
 5 it.
 6 Q. And Dr. Hofeller in fact had been hired on that
 7 Saturday the 6th, correct?
 8 MR. FARR: Objection to form.
 9 You can answer.
 10 THE WITNESS: I think I spoke to
 11 Hofeller on the 6th. I don't know that we
 12 actually in terms of offer an exception and
 13 consideration, I don't know that we did that on
 14 the 6th, but I'm pretty sure I communicated to
 15 him that I wanted him to get involved and we
 16 arranged to meet and talk about the maps at some
 17 point.
 18 BY MR. THORPE:
 19 Q. Was it your understanding that Dr. Hofeller
 20 would begin work on the 2016 plan prior to your
 21 meeting on Tuesday the 9th?
 22 A. No.
 23 Q. And you did not communicate to him prior to
 24 Tuesday the 9th any instructions regarding the
 25 plan except as you earlier testified what the

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1 Harris court did not want, correct?
 2 A. To the best of my memory, yes.
 3 Q. And on Tuesday, February 9th, you met at
 4 Dr. Hofeller's home?
 5 A. Yes.
 6 Q. Did you arrive with Senator Rucho?
 7 A. No. We didn't -- we didn't ride together.
 8 Q. And you had no face-to-face contact with Senator
 9 Rucho in between the Harris decision and the
 10 beginning of that meeting with Dr. Hofeller,
 11 correct?
 12 A. Not that I recall.
 13 Q. Okay. So let's talk about the substance of that
 14 meeting with Dr. Hofeller. How did it begin?
 15 A. Obviously, Dr. Hofeller and I have worked
 16 together since 2011, so you exchange the normal
 17 pleasantries. We then began to talk about the
 18 Harris Court's decision. If I recall correctly,
 19 we talked about the 12th first because we had
 20 drawn the 12th in 2011 as a strongly Democratic
 21 district because it had been adjudicated so
 22 long. We talked about, you know, what do you do
 23 with that.
 24 One of the goals that I had, frankly,
 25 because the criticism from 2011 was to keep

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1 counties whole and doing away with the 12th,
 2 which is what the judge asked us to do, would
 3 help keep a lot of counties whole. So I
 4 remember being pretty excited about that.
 5 Q. And you felt that doing away with the 12th was a
 6 requirement of the Harris court?
 7 A. That was my understanding.
 8 Q. Did Dr. Hofeller or Senator Rucho express any
 9 additional goals or approaches regarding
 10 changing the 12th district?
 11 A. I remember only vaguely the conversation. I
 12 think we realized that we were going to have to
 13 collapse the district either into Mecklenburg or
 14 into Guilford. Over half the population was
 15 already in Mecklenburg, as I recall, and it
 16 seemed to make a nice looking congressional
 17 district to collapse it into the 12th. So that
 18 may have been one -- that may have been the
 19 first one we drew.
 20 Q. Did you discuss the likely partisan outcome of a
 21 district drawn entirely into Mecklenburg county?
 22 A. I believe that was probably one of the things
 23 that we looked at, yes.
 24 Q. So you considered whether the revised 12th would
 25 remain a Democratic district?

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1 A. Yes.
 2 Q. Did you consider the strength of the revised
 3 12th as a Democratic district?
 4 A. No, we didn't. I don't recall that we looked at
 5 was it as -- was it as Democratic as it was
 6 before. I don't think we did that.
 7 Q. And you're speaking now about in that initial
 8 conversation?
 9 A. Yes, sir.
 10 Q. After you talked about the 12th, what was the
 11 next topic related to the revised maps?
 12 A. Well, we tried to go back and -- the shape of
 13 the 1st district in the 2011 map we believed --
 14 which, again, we believed to be constitutional,
 15 but that -- if -- if we were not required -- in
 16 fact, we were prohibited by the Harris court of
 17 drawing a Voting Rights district, then the next
 18 priority would be how do you redraw the 1st not
 19 relying on race. Because, of course, as you
 20 change the lines of one district, every district
 21 that touched it would change as well.
 22 Q. And who provided the answer to that question?
 23 A. As best I can recall, I think we simply started
 24 working -- Dr. Hofeller started working, to be
 25 clear, with staying in the same basic geographic

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1 area. We did consider Congressman Butterfield's
 2 incumbency. We were able to keep more counties
 3 whole.
 4 Q. To be clear, I'm only asking about this first
 5 conversation that you're having about the 1st
 6 district in this first meeting.
 7 A. Right. Those were the -- those were the basic
 8 goals that we talked about.
 9 Q. And at this time neither you nor Senator Rucho
 10 had yet presented Dr. Hofeller with the
 11 instructions again that we talked about just
 12 before the break?
 13 A. It was at this meeting that we talked about
 14 those instructions.
 15 Q. And did those instructions come at the beginning
 16 of the meeting or did you begin by talking about
 17 the issues that you've just discussed based on
 18 the Harris court opinion?
 19 A. We talked about the Harris court opinion first,
 20 and when -- then you say, well, how are you
 21 going to try to address it and you have to kind
 22 of outline general goals or objectives, which is
 23 what we did.
 24 Q. And you provided those general goals or
 25 objectives to Dr. Hofeller?

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1 A. Yes.

2 Q. And did those come from you or did those come

3 from Senator Rucho in the course of that

4 conversation?

5 A. Mostly from me.

6 Q. And did Dr. Hofeller at that time provide his

7 input on those goals?

8 A. Dr. Hofeller, in every experience I've had with

9 him, has tried to be accommodating to what he's

10 asked to do. So like many good people,

11 salespeople, if you asked him can this be done,

12 the answer is, yes, we'll figure out how to do

13 it. So that's the nature of the conversation

14 that I recall.

15 Q. So in that conversation, you provided a list of

16 objectives and Dr. Hofeller indicated he could

17 meet those objectives?

18 A. I think we talked about the objectives. I don't

19 believe -- I don't think I enumerated a list

20 per se.

21 Q. In that conversation, did you communicate to

22 Dr. Hofeller that race could not be considered

23 in drawing the maps?

24 A. Yes.

25 Q. In that first conversation, did you communicate

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1 that the serpentine nature of the 12th district

2 needed to be corrected?

3 A. Yes.

4 Q. In that conversation, did you communicate that

5 one person, one vote requirements needed to be

6 met?

7 A. Yes.

8 Q. In that conversation, did you communicate that

9 compactness would be a requirement?

10 A. I remember we talked about -- and I'm trying to

11 answer your question. I don't remember if I

12 used the word "compactness." I remember that we

13 talked about trying to keep counties whole.

14 You see, here's where my lack of

15 knowledge of the law gets me in trouble

16 sometimes. The compactness indicator that I

17 believe the Stephenson decision in the

18 legislative districts came up with about trying

19 to keep counties whole was a way to judge

20 compactness, and so I don't know if I used the

21 word compactness, but I remember saying, you

22 know, let's keep as many counties whole as we

23 can.

24 Q. You communicated that Dr. Hofeller, in drawing

25 the 2016 map, should as many counties whole as

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1 possible?

2 A. Yes.

3 Q. Did you communicate that Dr. Hofeller should

4 minimize the number of split voter districts or

5 precincts?

6 A. Yes.

7 Q. Did you communicate that Dr. Hofeller should

8 protect incumbents?

9 A. I think the words we used were we had to

10 consider the incumbents as, you know, they're

11 people, they're currently serving members of

12 Congress. And so I don't remember that I said

13 at all cost we had to protect the people, but I

14 did think -- I'm certain that was one of the

15 criteria that we talked about.

16 And if I may, one of the reasons I'm

17 certain about that is Dr. Hofeller was saying

18 that he was not sure he had the residency

19 addresses of the incumbents, which is one of the

20 things I think I provided to him and messed that

21 up too, which I'm sure you'll get to that.

22 Q. Did you discuss the partisan affiliation of

23 incumbents in discussing considering those

24 incumbents' residences?

25 A. No.

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1 Q. Did you otherwise discuss the partisan balance

2 of North Carolina's congressional delegation?

3 A. I was certainly aware of the registration of all

4 the members of Congress that we had at the time,

5 so to the extent that the incumbents are

6 affiliated with one party or the other, yes, we

7 talked about that.

8 Q. You discussed that the North Carolina

9 congressional delegation at the time you were

10 having the conversation had 10 Republican

11 members and 3 Democratic members?

12 A. I believe so, yes.

13 Q. Did you discuss individual districts, members

14 from individual districts?

15 A. I don't remember that we discussed individual

16 members. At that point it was just kind of --

17 when you talk about the incumbents, it's just

18 kind of understood that you're talking about

19 them as a collective being the members of

20 Congress and as individuals.

21 Q. Did Dr. Hofeller express to you at that time any

22 concerns about the ability to draw districts

23 that would keep the incumbents elected in 2014

24 in their districts?

25 A. I don't know that that was immediately discussed

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1 that day. I know we talked about if we could
 2 all avoid -- we didn't want to place two
 3 incumbent members in the same seat. I know we
 4 talked about that.

5 I don't remember if we talked about --
 6 and I'm sorry, I'll try harder. Would you ask
 7 me that again.

8 Q. Did you discuss -- did Dr. Hofeller express any
 9 concern about any incumbents under revised maps
 10 being able to hold their seat?

11 A. Oh, I don't remember if he brought it out or I
 12 brought it out that you don't actually have to
 13 live in the district in which you run, so we did
 14 talk about that, but I don't think we talked
 15 about any concern on that day that he had about
 16 not being able to not double bunk -- which is
 17 terminology for two members in the same seat. I
 18 don't think we talked -- I don't think he
 19 expressed concern on that day.

20 Q. That is the extent of the criteria that you or
 21 the instructions that you gave to Dr. Hofeller
 22 regarding the districts on that day?

23 A. It may could go without saying, but I probably
 24 should say it. We did reaffirm that it was the
 25 2010 census that we had to use because that was

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1 the map we were being ordered to redraw, but I
 2 believe that to be the extent of our
 3 conversation.

4 Q. Did Dr. Hofeller offer any additional criteria
 5 that may be used in drawing the 2011 -- I'm
 6 sorry -- the 2016 maps during that conversation?

7 A. Not that I recall.

8 Q. And consistent with your earlier testimony, it
 9 is your responsibility to provide the criteria
 10 and Dr. Hofeller's responsibility to implement
 11 the criteria, correct?

12 A. Yes, sir.

13 Q. Now, Senator Rucho testified yesterday that one
 14 of the meetings with Dr. Hofeller was
 15 interrupted by an appointment that he had. You
 16 have on your calendar for Wednesday,
 17 February 10th, an additional meeting with
 18 Dr. Hofeller. Were either of those meetings
 19 segmented? Meaning did one occur -- did you
 20 have two meetings in one day at some point?

21 A. I remember the day that Dr. Hofeller had to
 22 attend to a medical situation. I believe that I
 23 waited until after he returned to go to his
 24 home.

25 I think Senator Rucho may have gone

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1 briefly -- there was at least one time that
 2 Senator Rucho went to Dr. Hofeller's house that
 3 I was not with him and I think it was that day
 4 because I knew Hofeller was going to have to
 5 leave pretty early.

6 Q. And when you say that day, what day do you mean?

7 A. As best I recall, it was probably the Wednesday,
 8 February 10th, that Dr. Hofeller had a medical
 9 issue to attend to, and I believe his -- if I
 10 remember correctly, his appointment was at 11:00
 11 or something and so I didn't see a need to go
 12 over there that morning, but I think Senator
 13 Rucho may have gone on his own that morning
 14 without me.

15 Q. But you only participated in the meeting that
 16 occurred that day after Dr. Hofeller's
 17 appointment?

18 A. Yes.

19 Q. And so that meeting occurred on Wednesday,
 20 February 10th?

21 A. Yes.

22 Q. What was the substance of that meeting?

23 A. We reviewed the criteria we talked about before.
 24 By that point I believe there were some
 25 preliminary maps to look at.

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1 Q. Just -- I apologize. Just to clarify an earlier
 2 point, the meeting that you had on Tuesday,
 3 February 9th, the criteria that you provided you
 4 provided orally, correct?

5 A. Yes, sir.

6 Q. You provided no document indicating those
 7 criteria?

8 A. No, sir.

9 Q. Did you take any notes to that meeting regarding
 10 the criteria?

11 A. No, sir.

12 Q. Did you take any notes to the meeting at all?

13 A. No, sir.

14 Q. Did Dr. Hofeller take notes regarding the
 15 criteria during the meeting?

16 A. I don't know.

17 Q. So, I'm sorry, for the meeting on Wednesday,
 18 February 10th, you said that Dr. Hofeller had
 19 begun creating maps?

20 A. Yes. To the best of my knowledge, I looked at
 21 some -- and I said maps. I looked at some
 22 images on the screen. Yeah, I do think there
 23 were some there that day.

24 Q. And to your knowledge, did Dr. Hofeller begin
 25 working on those maps before your Tuesday

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1 meeting or after your Tuesday meeting?
 2 A. I believe it would have been after, but -- you
 3 know, one thing I learned doing redistricting
 4 the first time around in 2011, a lot of people
 5 just do this as a hobby and for fun. So I don't
 6 know what Dr. Hofeller may or may not have
 7 already done.
 8 Q. And what maps did you look at on Wednesday,
 9 February 10th?
 10 A. I don't remember. I remember -- I don't
 11 remember exactly what map. I remember thinking
 12 that I was pleased with how the 12th looked, all
 13 being contained within Mecklenburg county. I
 14 can't recall exactly how some of the districts
 15 looked. Many of them still look basically the
 16 same as they did in the 2011 map. I noticed
 17 that.
 18 I do recall one conversation that day
 19 he and I had when we did the 2011 maps. We felt
 20 it was an important thing to let the major
 21 metropolitan areas in the state have more than
 22 one member of Congress. We thought that would
 23 boost their ability to get things done in
 24 Washington.
 25 Going more with keeping counties whole,

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1 I kind of walked away from that belief and we
 2 spent a lot of time talking about if there was a
 3 way to keep Asheville whole because we had
 4 gotten some push back on the way it was drawn.
 5 So we talked about that. I remember that
 6 consumed a lot of that conversation.
 7 Q. When you say push back on the way that it was
 8 drawn, you mean the way that it was drawn in the
 9 2011 map?
 10 A. Yes, sir.
 11 Q. Ultimately you determined it was not possible to
 12 keep Asheville whole?
 13 A. Well, we looked at a couple of different
 14 scenarios, but in every scenario we came up
 15 with, Buncombe was going to wind of being split.
 16 Buncombe is where Asheville is. So in the end,
 17 I made the decision that the squeeze wasn't
 18 worth the effort to do. We kept it largely the
 19 same as it was in the 2011 plan.
 20 Q. And where counties are split, how would you
 21 look -- when you looked at Dr. Hofeller's
 22 computer or the state computer, how would you
 23 look at those splits within a county?
 24 A. On Maptitude, it's -- it's kind of like a more
 25 advanced version of Google Maps. I mean, you

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1 can zoom in or zoom out or whatever you want to
 2 do, so I do think I looked at a couple of
 3 different areas where counties could be divided
 4 or would be divided.
 5 Q. And presumably when you're looking at those
 6 lines, you are looking at voter districts on
 7 either side of those lines, correct?
 8 A. Yes, that's correct.
 9 Q. And what information did you have about those
 10 voter districts?
 11 A. Most of the time -- and I say most of the time,
 12 I'll clarify that in a minute. Nearly every
 13 time I looked at the maps, it was the political
 14 data from the Tillis-Hagan race in '14 and, of
 15 course, there's like a little running ticker
 16 thing, if you will, that shows how many people
 17 live in the districts. Those things I believe
 18 were what were on the screen most of the time.
 19 Q. And when you say on the screen, do you mean on
 20 the screen during that meeting with Hofeller?
 21 A. Yes.
 22 Q. And to confirm, the Tillis-Hagan 2014 Senate
 23 race was the race for which election results
 24 were displayed?
 25 A. That's the one I understood the most. There

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1 was -- there was another instance where
 2 Dr. Hofeller was using another combination of
 3 political races. I didn't -- in my mind the
 4 closest political race with equally matched
 5 candidates who spent about the same amount of
 6 money was the 2014 U.S. Senate race. That's the
 7 one I chose to look at.
 8 Q. You chose to look at that race?
 9 A. I did.
 10 Q. You requested the election results from that
 11 race?
 12 A. I did.
 13 Q. To view the performance of individual voter
 14 districts?
 15 A. That's correct.
 16 Q. In maps you were evaluating?
 17 A. Yes, sir, that's correct.
 18 Q. Did you specifically look at Buncombe county?
 19 A. I looked specifically at Buncombe county several
 20 times, and I don't remember if we even made any
 21 changes to it in the contingent map. We
 22 certainly -- we certainly tried.
 23 Again, some of the feedback we received
 24 over the four years, people felt like maybe you
 25 could keep Buncombe county whole. I couldn't

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1 ever figure out a way to do that.
 2 Q. Which congressional districts are on either side
 3 of the county split in Buncombe county?
 4 A. 10 and 11.
 5 Q. Both of those districts are held by Republicans,
 6 correct?
 7 A. Yes, sir.
 8 Q. Prior to the 2011 redistricting, Asheville had a
 9 Democratic representative, correct?
 10 A. I don't believe so, but I don't remember.
 11 Charles Taylor was a long-time Republican
 12 congressman from that area. I don't remember if
 13 he still held the seat or had lost it. I'm
 14 sorry, I just --
 15 Q. That's okay.
 16 A. I've been to his events. That's why I remember
 17 his name. I'm sorry.
 18 Q. The maps that you looked at in that meeting with
 19 Hofeller, those were maps that had all 13
 20 districts?
 21 A. Again, you could zoom out and see 13 or you
 22 could zoom in and see one.
 23 Q. Dr. Hofeller testified on Tuesday that in
 24 building these maps he would begin, for example,
 25 with just a map for District 1 to look at how to

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1 do District 1 differently.
 2 Did you look at any maps that had a
 3 single district?
 4 A. I remember looking at the 12th all contained
 5 within Mecklenburg, I'm certain of that.
 6 Q. When looking at the 12th district, did you look
 7 at it given the results of the Tillis-Hagan race
 8 that you testified previously?
 9 A. Yes.
 10 Q. What did you observe about the partisan
 11 performance of the revised or potentially
 12 revised 12th district under that race?
 13 A. I remember, to the best of my knowledge, that
 14 Senator Hagan had carried that area, but I don't
 15 remember the numbers.
 16 Q. Other than looking at maps on the screen with
 17 Dr. Hofeller, what else occurred at that second
 18 meeting?
 19 A. I don't -- I don't recall. We looked at maps,
 20 looked at -- or I say maps, looked at scenarios
 21 perhaps is a better way to say it, but I don't
 22 remember that we did any -- I don't think we did
 23 anything else.
 24 Q. How long did that meeting last?
 25 A. If I remember correctly, it was pretty long. I

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1 don't remember -- and I will say I don't
 2 remember what I had at 5:30 that day, but I
 3 don't think I made it. I think it was pretty
 4 long.
 5 Q. And because I failed to ask earlier, how long
 6 did the meeting on Tuesday, February 9th last?
 7 A. It was probably two hours or so. It wasn't
 8 as -- it wasn't as long.
 9 Q. Did you provide any additional instructions
 10 regarding the criteria for drawing the 2016 maps
 11 to Dr. Hofeller at the Wednesday, February 10th
 12 meeting?
 13 A. Not that I recall.
 14 Q. What instructions did you give to Dr. Hofeller
 15 regarding the work that you should do going
 16 forward?
 17 A. I don't remember how far along he was. I think
 18 we were still trying to keep Buncombe county
 19 whole and Asheville whole at that point, but I
 20 don't remember. So I don't think I gave any
 21 additional instructions other than, you know,
 22 perhaps keep working on -- on getting a map
 23 prepared.
 24 Q. Did you give him any deadlines regarding a map?
 25 A. I did not give him a deadline, I don't believe a

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1 hard deadline. He knew that we were under a
 2 deadline of -- set by the court and we would
 3 need at least two or three days in the
 4 legislature. So I think it was we all were
 5 working with the understanding that we have
 6 something ready to go early that next week.
 7 Q. So did you have any other meetings related to
 8 redistricting on Wednesday, February 10th?
 9 A. No.
 10 Q. Did you have a follow-up meeting after the
 11 meeting with Hofeller with Senator Rucho?
 12 A. I didn't meet with Senator Rucho after, no.
 13 Q. Did Senator Rucho, to your knowledge, provide
 14 any additional instructions regarding criteria
 15 for the 2016 plan to Dr. Hofeller on Wednesday,
 16 February 10th?
 17 A. To my knowledge he didn't.
 18 Q. On Thursday, February 11th at 9:00 a.m., there's
 19 a redistricting process meeting on your
 20 schedule. What is that meeting?
 21 A. Yes, sir. So one of the duties of being the
 22 chair of the committee is to sort of map out how
 23 things are going to go, and it's -- it was at
 24 that day -- it was in it says in Jackson's
 25 conference room. That's Senator Brent Jackson.

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1 He just has a nicer conference room than I had
 2 access to.
 3 I remember that we mapped out -- so --
 4 MR. FARR: Let me stop you for a
 5 second. Were there attorneys present for that
 6 meeting?
 7 THE WITNESS: I don't remember, Tom.
 8 MR. FARR: Okay.
 9 THE WITNESS: So all I remember us
 10 doing at that meeting, though, is talking about
 11 if there's a hard stop that the map has to be
 12 enacted by to submit to the Court, the General
 13 Assembly itself would need a certain amount of
 14 time to go through the House and the Senate
 15 process. We wanted to hold a public hearing. I
 16 think we talked about those kind of logistical
 17 things. I don't remember there --
 18 BY MR. THORPE:
 19 Q. Who do you remember being present at that
 20 meeting?
 21 A. I am almost certain that Senator Rucho was
 22 there. I think Senator Rucho's LA was there,
 23 Will Verbiest. My assistant was there because,
 24 again, this was logistical stuff.
 25 Q. What is your assistant's name?

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1 A. His name is Mark Coggins.
 2 Brent Woodcox was there. He's the
 3 legal counsel to redistricting, so maybe that
 4 was the lawyer that was there.
 5 And I believe -- now that you've said
 6 lawyers, I believe Bart Goodson, who's the
 7 counsel to Speaker Moore, was there as well, but
 8 I'm not certain.
 9 Q. I'm not going to ask any questions about the
 10 conversation that happened at that meeting, but
 11 after that meeting, were there deadlines set for
 12 the various events that would occur over the
 13 course of the next week?
 14 A. There were -- there were goals set, if you will.
 15 I don't know that we -- let me try that answer
 16 again.
 17 So when you have a lot of moving parts,
 18 you've got two legislative bodies that aren't
 19 even in session at the time. I was tasked with
 20 managing the redistricting process for the
 21 House, but I don't have the authority to call
 22 the House back, for instance. So there were
 23 goals set, and I think we agreed to meet the
 24 next day, and that would have probably been when
 25 the hard deadlines were set.

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1 Q. During this period, were you reporting on the
 2 progress of redistricting to Senator Berger and
 3 Speaker Moore?
 4 A. I don't recall having a conversation with
 5 Speaker Moore. I know I didn't have a
 6 conversation with Senator Berger.
 7 Q. So the only conversation that you had with
 8 Senator Moore up to this point is the
 9 conversation on the 5th when you learned of the
 10 Harris decision?
 11 A. Yes.
 12 Q. And I understand where this is going, but to tee
 13 this up properly, in that conversation with
 14 Speaker Moore, did you receive any instructions
 15 as to criteria that should be followed for the
 16 2016 plan?
 17 MR. FARR: And since he can't waive
 18 Speaker Moore's legislative privilege, he can't
 19 answer that question.
 20 BY MR. THORPE:
 21 Q. The other meetings that you had on February 11th
 22 are listed as being related to the U.S. Census.
 23 Did those have any bearing on the 2016
 24 redistricting or was the 2016 redistricting plan
 25 at all discussed at either of those meetings?

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1 A. No, sir.
 2 Q. So those are left on your schedule as responsive
 3 because the census relates to redistricting?
 4 A. Yes, sir.
 5 Q. Did you have any other meetings with Senator
 6 Rucho on Thursday, February 11th?
 7 A. Not that I recall.
 8 Q. Do you recall any phone conversations to Senator
 9 Rucho?
 10 A. I don't recall.
 11 Q. On Friday the only thing on the schedule is a
 12 planning and managing process meeting. You've
 13 testified that it is likely that the hard
 14 deadlines for the following week were set at
 15 that meeting. Do you recall who was at that
 16 meeting?
 17 A. I remember that we definitely included some of
 18 the central staff, which is the General Assembly
 19 term for the permanent staff at the building,
 20 because they handled the logistics of setting up
 21 the public hearing and also of the -- preparing
 22 for the committee to meet the next week.
 23 So I believe Erika Churchill was there.
 24 Dan Frye was there. They may have had some of
 25 their staff there, but I don't remember.

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1 Q. Was the schedule for the following week publicly
 2 announced that day?
 3 A. Certainly the public -- to the best of my
 4 knowledge, the public hearing was announced. I
 5 don't remember -- I think we announced the whole
 6 thing, but I don't remember that exactly.
 7 Q. Now, between your meeting with Dr. Hofeller on
 8 Wednesday afternoon and the end of Friday,
 9 February 12th, did you have any further
 10 communication with Dr. Hofeller?
 11 A. Yes.
 12 Q. What was the substance of that communication?
 13 A. I did look at the map again. I don't -- I'm
 14 embarrassed it's not on the calendar. I don't
 15 remember exactly when it was that I talked with
 16 him.
 17 Q. Meaning you went to his house? You had another
 18 in-person meeting with him?
 19 A. Yes. Yes. Apparently I didn't record it, but,
 20 yeah, I met with Dr. Hofeller again before
 21 the -- before the public hearing process began
 22 on the 15th.
 23 Q. But you don't know what day that meeting
 24 occurred?
 25 A. I know it was not Sunday the 14th. So it would

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1 have either been the afternoon of Friday the
 2 12th or Saturday the 13th. I can't remember.
 3 Q. Did Senator Rucho also attend that meeting?
 4 A. No, sir.
 5 Q. That was a meeting just between you and
 6 Dr. Hofeller?
 7 A. That's right.
 8 Q. Is there anyone else who could identify when
 9 that meeting occurred?
 10 A. Dr. Hofeller may have had the notes on it.
 11 Q. Were there notes taken at that meeting?
 12 A. Not in any form other than Dr. Hofeller may
 13 have -- may have a calendar entry. I don't
 14 know.
 15 Q. And what did you review with Dr. Hofeller at
 16 that meeting?
 17 A. We looked at other -- different scenarios,
 18 again, trying to figure out what the ultimate
 19 map would look like. I don't remember
 20 specifically -- I think it was about this point
 21 that I gave up on trying to keep Asheville
 22 whole, but other than that, I don't remember --
 23 it was not -- this one was not a particularly
 24 long one.
 25 Q. Why did you give up on that goal?

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1 A. Well, again, if you're trying to keep counties
 2 whole, we couldn't figure out any way to keep
 3 Buncombe whole. So if you've got to split it,
 4 the existing split that was understood by the
 5 voters seemed to be a good place to do it. So
 6 that would be one of the 13 splits that we have.
 7 Q. Now, you refer -- have referred a couple of
 8 times to the existing splits or the existing
 9 map. Am I correct in understanding that the
 10 2011 districts served as the base for the maps
 11 that Dr. Hofeller was working on?
 12 A. That may be a technical question beyond my
 13 ability to answer, but I'd like to try.
 14 So I always referred to the 2011 map as
 15 the enacted map or the benchmark map and then
 16 the 2016 map as the contingent map because it
 17 was contingent upon the Harris court approving
 18 it. So if that's not the correct terminology,
 19 I'm just trying to tell you that's how I used
 20 it.
 21 Q. But when you reviewed districts with
 22 Dr. Hofeller, the starting point for those maps
 23 was what you just referred to as the benchmark
 24 map which was the 2011 districts, correct?
 25 A. One of the considerations that we had was to

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1 change as few -- you know, have as little change
 2 as we could.
 3 Q. I'm going to push for a yes-or-no answer on the
 4 initial question which is --
 5 A. I'm sorry.
 6 Q. When you looked at maps with Dr. Hofeller, the
 7 comparison points when you looked at a new
 8 district was the 2011 map which you refer to as
 9 the benchmark map, correct?
 10 A. So I'm going to answer yes, but I'd like to
 11 qualify it only in that I in my mind knew what
 12 the 2011 map was largely. I don't know that we
 13 ever put them side by side. I just -- so when
 14 you have lived with something as long as I have,
 15 the 2011 map, you just know their certain
 16 features of it.
 17 Q. When you say you don't know whether you put them
 18 side by side, you earlier testified that you
 19 were looking, for example, at the existing
 20 county line split for Buncombe county. So you
 21 were reviewing 2011 maps in making
 22 determinations about the 2016 map, correct?
 23 A. Yes. The 2011 map was also on Dr. Hofeller's
 24 computer and he could look at it as he wanted
 25 to.

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1 Q. And as Dr. Hofeller built new districts for the
 2 2016 map, did he begin with the 2011 map to your
 3 knowledge?
 4 A. I don't -- I don't know that he did. Some of
 5 the earlier versions of the map would lead me to
 6 think he did.
 7 Q. The maps that you reviewed in that meeting on
 8 either Friday or Saturday are near-final
 9 versions of the 2016 map?
 10 A. Yes.
 11 Q. So --
 12 A. And I may clarify that, it's near the final
 13 version of what I intended to submit. In other
 14 words, you can never presume the legislature is
 15 going to pass what you present. So it was near
 16 my final form. I'm not implying that it was
 17 absolutely done.
 18 Q. It is the near-final version of what you
 19 intended to submit to the legislature?
 20 A. Yes, sir.
 21 Q. And the map that you submitted to the
 22 legislature was ultimately adopted with a minor
 23 distinction for an incumbency issue, correct?
 24 A. Yes, sir.
 25 Q. At either that meeting or in any conversation

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1 that happened since Tuesday, February 9th, did
 2 you at any time provide Dr. Hofeller with any
 3 additional instructions regarding criteria to be
 4 used in developing the map?
 5 A. I don't immediately recall that I did.
 6 Q. Did you communicate to Dr. Hofeller any metric
 7 or approach to balancing the different criteria?
 8 A. Other than the one-person, one-vote which we
 9 believe is sacrosanct, no.
 10 Q. Did Dr. Hofeller communicate to you how he
 11 intended to balance the criteria?
 12 A. I don't believe we discussed it in those terms.
 13 Q. Did Senator Rucho, to your knowledge,
 14 communicate to Dr. Hofeller any additional
 15 instructions regarding the criteria to be used
 16 in developing the map between your meeting on
 17 Tuesday and the time that you reviewed the
 18 near-final maps on either Friday or Saturday?
 19 A. I don't know.
 20 Q. What instructions did you give to Dr. Hofeller
 21 regarding any additional changes to the maps
 22 after that meeting?
 23 A. I don't -- regarding what Dr. Hofeller was
 24 drawing on his computer, I don't think I gave
 25 him any additional instructions after that

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1 meeting.
 2 Q. Did you instruct him to supply the legislature
 3 with those maps?
 4 A. I did, but I didn't know exactly how to go about
 5 doing that. That's one of the things that we
 6 established early next week that, you know,
 7 they're going to set up a computer up for him
 8 and all that kind of stuff.
 9 I don't think I gave him specific
 10 instructions come on this day and do this. I
 11 don't think we had gotten quite to that point
 12 yet.
 13 Q. But you did not instruct him to make any
 14 additional changes or revisions to the map you
 15 saw at that meeting?
 16 A. No, sir, not that I can recall, I didn't.
 17 Q. So at that meeting your understanding was that
 18 the map that you had just viewed with
 19 Dr. Hofeller would be the map that he submitted
 20 to the legislature?
 21 A. Yes, sir.
 22 Q. On Sunday, February 14, 2016, there's a
 23 conference call listed at 5:00 p.m. What does
 24 that entry refer to?
 25 A. We scheduled multiple public hearings to take

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1 place the next day. Some of the legislative
 2 members that were going to preside and assist --
 3 you need to have a member at each one of these
 4 sites. They had not taken part in the 2011
 5 process.
 6 So we just talked through the technical
 7 side. So the way it will work is the presiding
 8 chair in Raleigh will say we're going to the
 9 Asheville site now or go to the federal site now
 10 and then you're in charge and you recognize
 11 whoever is signed up to speak. And we talked
 12 about that.
 13 Frankly, we talked about if there --
 14 because we have to, we talked about there would
 15 be general -- there would be a sergeant-at-arms
 16 and there would be General Assembly police and
 17 that the most -- most of these sites were at the
 18 community college, they were very helpful, and
 19 the community college had provided us sort of an
 20 emergency backup plan.
 21 Q. So the folks on this call are principally
 22 legislators?
 23 A. Yes.
 24 Q. Did they have an opportunity to ask questions
 25 about the redistricting process that was ongoing

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1 beyond the technical aspects that you just
 2 expressed about the public hearing?
 3 A. I don't recall that anyone tried to ask one. I
 4 don't recall. It was Valentine's Day.
 5 Q. You don't remember any substantive discussion of
 6 the approach that you and Senator Rucho were
 7 taking to the redistricting plan or any
 8 discussion of the criteria in that conference
 9 call?
 10 A. No.
 11 Q. So that public hearing occurs on Monday,
 12 February 15, 2016, as you state it occurs both
 13 in Raleigh and around the state via
 14 videoconference. You attend that hearing?
 15 A. Yes, sir.
 16 Q. Senator Rucho attends that hearing?
 17 A. Yes, sir.
 18 Q. Does Dr. Hofeller attend that hearing?
 19 A. No, sir.
 20 Q. Did you communicate to Dr. Hofeller that he
 21 should not attend that hearing?
 22 A. No, sir.
 23 Q. Who was aware at the time that that hearing
 24 occurred that Dr. Hofeller was the map drawer?
 25 A. I was -- I was aware that Dr. Hofeller was

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1 drawing a map for me and for Senator Rucho. I
 2 don't know that anybody else knew that Hofeller
 3 was drawing our map, and I don't know who else
 4 was working on maps on their own.
 5 Q. You had not communicated that information to
 6 members of the committee, for example?
 7 A. I don't believe I had, no, sir.
 8 Q. Had you communicated that information to Speaker
 9 Moore?
 10 A. I am certain at some point that I told him that
 11 I was working with Hofeller, yes.
 12 Q. Had you communicated that information to Senator
 13 Berger?
 14 A. I did not speak to Senator Berger.
 15 Q. At the time of the public hearing, did you have
 16 any copy or physical document that reflected the
 17 map that you had viewed on Dr. Hofeller's
 18 computer on Saturday -- or on Friday?
 19 A. No, sir.
 20 Q. Did you have the document that ultimately became
 21 the adopted criteria already prepared?
 22 A. I certainly had thought about it. I don't
 23 remember if it was in its final form or not.
 24 Q. Okay. Let's talk about, for a second, the
 25 drafting of that document.

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1 A. Yes, sir.
 2 Q. Did you write that document?
 3 A. The document was written at my direction but
 4 largely by Brent Woodcox. The wording in there
 5 is a little more his style than mine, but these
 6 were the criteria that I asked him to write.
 7 Q. To your knowledge, are there multiple versions
 8 of that document, different drafts of that
 9 document?
 10 A. I don't know. And again, I know this is on the
 11 record from yesterday, but we drafted these as
 12 individual criteria. And so the document which
 13 is Exhibit 24 is a compilation of the adopted
 14 criteria, but this is not actually how the
 15 document looked until after the committee met.
 16 Q. So just to clarify, you presented the -- and
 17 we're going to go through this in more detail a
 18 little bit more, but you presented the criteria
 19 individually. In reviewing the criteria before
 20 you presented them, you were viewing each
 21 criteria on a separate page or in a separate
 22 document?
 23 A. I don't remember if it was just a page break or
 24 if it was individual. I don't know.
 25 As far as -- I know when I was

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1 presenting them, it was one criteria on the page
 2 at a time.
 3 Q. I understand. So your -- when did you first see
 4 any document with written criteria?
 5 A. I don't remember exactly when first started
 6 working on this. May have tasked Brent to do
 7 it, and I say may because I don't remember, at
 8 the meeting that was held the prior week on
 9 either the 11th or --
 10 Q. 12th possibly?
 11 A. I don't recall at what point I asked Brent to
 12 help me compose this, but...
 13 Q. You requested that Brent Woodcox draft a
 14 document reflecting written criteria for the
 15 2016 plan, correct?
 16 A. I'm sorry. Would you repeat the question.
 17 Q. You requested that Brent Woodcox draft a
 18 document reflecting the intended criteria for
 19 the 2016 plan, correct?
 20 A. Yes, with the caveat that it was my intended
 21 criteria, not necessarily the committee's.
 22 Q. Understood.
 23 When did you make that request?
 24 A. I don't remember exactly when I asked Brent to
 25 do it.

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1 Q. How did you communicate your intended criteria
2 to Brent Woodcox?
3 A. To the best of my knowledge, we were at the
4 legislative building in my office and we talked
5 about it. I don't believe we were off site.
6 That's to the best of my knowledge. And I don't
7 remember at what point in this we set down in my
8 office and talked.
9 Q. What instructions did you give Brent Woodcox as
10 to what should be included in your intended
11 adopted criteria?
12 A. I asked Brent to flesh out the criteria that I
13 wanted to present to the committee, so the items
14 that are listed in 24 are what I asked Brent to
15 help me create, help me write.
16 Q. So I need to understand the substance of what
17 you communicated so that I know how he knew what
18 to include in the document.
19 A. Understand.
20 Q. What instructions did you provide him about what
21 should end up in that document?
22 A. So I don't remember the exact conversation. I'm
23 sure one of the things I said was have it
24 reflect one-person, one-vote, which he
25 translated into equal population. I'm sure that

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1 I instructed him to say that the shape of the
2 12th had to change. I'm sure I instructed him
3 that -- that the court had told us we could not
4 use race.
5 I'm sure I told him -- one of the -- I
6 don't remember if I told him this or not, but I
7 remember one of the things that one of the
8 courts had said was in drawing the 12th
9 originally as a heavily Democratic district
10 Dr. Hofeller had used the McCain-Obama numbers
11 and it seems like one of the court rulings had
12 said that was not an appropriate thing. So I
13 thought we had talked about including that in
14 the criteria as well, but the compactness we
15 talked about. Incumbency we talked about.
16 Q. What did you instruct Brent Woodcox to include
17 as regards compactness?
18 A. I tried to convey to him that we needed some
19 kind of measurable standard, like keeping
20 counties whole. I know there are political
21 scientists that can do research, but I don't
22 know how to do all that.
23 So we talked about trying to keep
24 counties whole and keeping VTIDs and precincts
25 whole largely because, well, one, we had gotten

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1 significant criticism from the 2011 map on that
2 point and, two, we felt that that would be -- I
3 knew that the judges were going to review this
4 map and they were going to look for -- to make
5 sure that we made a valid effort to comply at
6 least what they asked us to do.
7 So one of the things that I thought
8 would help if the districts were compact, if the
9 counties weren't split, if it were a
10 good-looking map. So I -- this wording is
11 largely Brent's, but he's communicating what I
12 asked him to.
13 Q. What did you communicate to Brent Woodcox about
14 incumbency as a criteria?
15 A. That incumbency was a traditional redistricting
16 principle, that we have to acknowledge that it
17 exists.
18 Q. What did you say to him specifically about the
19 2000 -- protecting incumbents from the 2011
20 maps?
21 A. Just that the incumbency would be acknowledged
22 and be considered as one of the criteria. I
23 think the ultimate language we settled on was
24 reasonable effort would be made to acknowledge
25 where the incumbents live or something like

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1 that. I'm sorry, it was a long time ago.
2 Q. And you directed him to address that to
3 incumbents under the enacted plan, correct?
4 A. Yes, sir.
5 Q. Which you earlier referred to as the benchmark
6 plan, correct?
7 A. Yes, sir.
8 Q. So incumbency mattered with respect to the 2011
9 plan?
10 A. Yes, sir.
11 Q. What else did you instruct Brent Woodcox
12 regarding the criteria?
13 A. Well, we were told by the Harris court, to my
14 understanding, that we couldn't use race. So we
15 did talk about -- I think one of the things we
16 said was that race couldn't be considered per
17 the Harris court.
18 We also talked about partisan data in
19 terms of historic elections were a factor that
20 could be considered in drawing the maps.
21 Q. Did you instruct him that the criteria should
22 include understanding partisan data to construct
23 the maps?
24 A. I believe the way I had been -- I believe the
25 way that I had told Dr. Hofeller and the way

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1 that I told Brent is the only way we can get
 2 this by the court is if we use only political
 3 data as the only other identifying information
 4 because you've got to recall the Harris court --
 5 you know, we were under the order because they
 6 said we had racially gerrymandered a map.
 7 Q. I understand. What definition of political data
 8 did you provide to Brent Woodcox? You've
 9 earlier testified that you wanted to look at
 10 election returns.
 11 A. Yeah.
 12 Q. Did you specify that political data should
 13 include returns of prior elections?
 14 A. I believe I did, yes, with the exception of
 15 Obama-McCain and Obama-Romney.
 16 Q. You specified that the election returns to be
 17 used as political data for the 2016 map would be
 18 statewide elections that did not include the two
 19 presidential elections in 2008 and 2012?
 20 A. Yes, I believe that to be correct.
 21 Q. Brent Woodcox included that at your direction?
 22 A. Yes.
 23 Q. Did you discuss any weighting of the elections
 24 to be used for determining the relevance of the
 25 political data?

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1 A. Not with Brent, no.
 2 Q. Did this discussion happen before or after you
 3 reviewed maps with Dr. Hofeller looking at the
 4 Tillis-Hagan race?
 5 A. It was almost certainly before.
 6 Thank you for providing this calendar,
 7 by the way. It's actually very helpful.
 8 It would have been -- certainly would
 9 have been prior to --
 10 Q. To refresh your memory, Representative, I
 11 believe you earlier testified that you looked at
 12 the Tillis-Hagan race for Mecklenburg county
 13 when you met with Dr. Hofeller on Wednesday of
 14 that week.
 15 A. That's right.
 16 Q. This meeting with Brent Woodcox occurred after
 17 the Wednesday of that week, correct?
 18 A. Yes, sir.
 19 Q. So at the time that you instructed Brent Woodcox
 20 to include partisan data, including the 2014
 21 senate election as a criteria for the 2016 map,
 22 you had already viewed a map with Dr. Hofeller
 23 that evaluated the performance of a district
 24 using that data, correct?
 25 A. Yes, sir.

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1 Q. What else did you instruct Brent Woodcox?
 2 A. I don't know if he was tasked with making sure
 3 we had the court reporter or not; probably not.
 4 As counsel, he wouldn't have been tasked with
 5 that.
 6 I don't think there was --
 7 Q. More specifically, what did you instruct Brent
 8 Woodcox should be included in the adopted
 9 criteria?
 10 A. I don't think there was anything else.
 11 Q. Did you instruct Brent Woodcox that the partisan
 12 advantage criteria should be included in the
 13 adopted criteria that you presented?
 14 A. Yes.
 15 Q. What did you communicate to Brent Woodcox about
 16 the partisan advantage criteria?
 17 A. That the current registration of the members of
 18 Congress consisted of 10 Republicans and 3
 19 Democrats, and so to the extent possible, the
 20 new -- or contingent map should reflect that
 21 because, again, that was one of my goals.
 22 Q. One of your goals was to maintain the partisan
 23 balance under what you've referred to as the
 24 benchmark map, correct?
 25 MR. FARR: Objection to the form.

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1 You can answer.
 2 THE WITNESS: Yes.
 3 BY MR. THORPE:
 4 Q. Did you give him any instruction on the specific
 5 language to be used for the political advantage
 6 criteria?
 7 A. I don't recall giving him any specific language.
 8 That's why I was asking for his help.
 9 Q. Did you give him any instruction about including
 10 political considerations in any other criteria?
 11 A. I'm not sure I understand your question. I'm
 12 sorry.
 13 Q. Did you give him any instruction about, for
 14 example, what you earlier testified as the
 15 importance of political considerations in
 16 protecting incumbents?
 17 A. I did not give Brent any additional instructions
 18 that I can recall.
 19 MR. FARR: Ben, keep going until you're
 20 ready to stop, but can we get to a quick break
 21 time.
 22 BY MR. THORPE:
 23 Q. What direction did you give Brent Woodcox about
 24 when he should provide you with the document you
 25 requested?

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1 A. The absolute latest that it could have been done
 2 would have been Tuesday, February 16th, in time
 3 for the committee to meet. Probably I would
 4 have asked for it on Monday the 15th.
 5 Q. Did you expect to see drafts of that document
 6 before it was completed, or did you expect to
 7 receive a single document and accept that
 8 document?
 9 A. I believe I anticipated receiving drafts and
 10 adding or subtracting from them. I don't know
 11 that I actually did because I think we had to
 12 amend the -- amend the criteria once it was
 13 presented because something was left out, but I
 14 can't remember what it was at this exact moment
 15 in time.
 16 Q. So just to be very clear on this, did you
 17 receive any drafts of this criteria before you
 18 presented it to the committee on Tuesday, the
 19 following Tuesday?
 20 A. So to be absolutely clear, I'm certain that I
 21 received the language before I presented it to
 22 the committee.
 23 Q. In the form that it was presented?
 24 A. Yes. I don't remember if I received other
 25 versions of it or not.

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1 Q. If you had received other versions of it
 2 previously, would they have been received by
 3 e-mail?
 4 A. With Brent, probably so.
 5 MR. THORPE: Okay, we can take a break
 6 or a lunch break.
 7 THE VIDEOGRAPHER: Off record at
 8 12:04 p.m.
 9 (Lunch Recess.)
 10 THE VIDEOGRAPHER: On record at
 11 1:13 p.m.
 12 BY MR. THORPE:
 13 Q. Representative Lewis, I want to follow up on a
 14 couple conversations that you had in that first
 15 week of the process that we were previously
 16 discussing.
 17 On Wednesday, that would be
 18 February 10th, you attended a meeting at
 19 Dr. Hofeller's home with Senator Rucho. You
 20 testified earlier that at that meeting you
 21 evaluated maps that Dr. Hofeller had worked on.
 22 A. Yes, sir, that's correct.
 23 Q. The only other meeting at which you evaluated
 24 maps with Dr. Hofeller was on either Friday or
 25 Saturday of that week, correct?

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1 A. At Dr. Hofeller's house, yes.
 2 Q. So this meeting that occurred on Wednesday is
 3 the only meeting that you attended with Senator
 4 Rucho where you evaluated maps drawn by
 5 Dr. Hofeller, correct?
 6 A. Yes.
 7 Q. So yesterday Senator Rucho testified that in
 8 looking at maps with Dr. Hofeller there was a
 9 point where you were essentially choosing
 10 between two different maps.
 11 Do you recall that process?
 12 A. I do.
 13 Q. Do you recall what the differences were between
 14 those two maps?
 15 A. One of the maps split more counties and more
 16 VTDs than the one we ultimately decided to go
 17 forward with.
 18 Q. So what direction did you give to Dr. Hofeller
 19 as to which map to choose?
 20 A. The one that best complied with all the criteria
 21 was the one that split the fewest counties,
 22 fewest VTDs, so that was the one that we decided
 23 upon.
 24 Q. And you testified earlier that you had looked at
 25 that meeting at the election results from the

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1 Tillis-Hagan Senate election when looking at
 2 some district map.
 3 Did you look at the result of the 2014
 4 Senate election when looking at the map that you
 5 chose?
 6 A. Yes, sir.
 7 Q. Did you look at the result of any other election
 8 when looking at the map that you chose?
 9 A. I did not intentionally do that. At one point
 10 there was a map up that I think Dr. Hofeller had
 11 his own formula that he was using, and I just
 12 asked for the Tillis results because I thought
 13 that was the most reliable, most frequent --
 14 most in my mind.
 15 Q. Do you know which other races went into the
 16 formula that was displayed on the screen that
 17 you saw?
 18 A. Offhand I don't.
 19 Q. And did you give Dr. Hofeller any direction as
 20 to which races should be given priority in
 21 making decisions about the map?
 22 A. No, other than not to use the presidential in
 23 '08 and '12.
 24 Q. But as between the races that were available --
 25 well, first of all, were the races that were

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1 available to Dr. Hofeller for evaluating these
 2 maps identical to the races that are in the 2016
 3 stat pack?
 4 A. Yes, sir. The one -- and to be clear, the one
 5 that was distributed to the committee by me,
 6 yes.
 7 Q. Understood. Which is 20 statewide races and
 8 excludes the 2008 and 2012 presidential
 9 elections, correct?
 10 A. I believe that to be correct.
 11 Q. And those were the only races available to
 12 Dr. Hofeller, as you just testified, were -- did
 13 you instruct him not to use any other races to
 14 which he may have had access?
 15 A. I did not.
 16 Q. As between those 20 races, did you express any
 17 preference for one race as against another in
 18 terms of its relevance?
 19 A. Again, I thought the Tillis-Hagan race was the
 20 most relevant.
 21 Q. And you communicated that to Dr. Hofeller?
 22 A. I did.
 23 Q. Did he communicate to you which races he felt
 24 were relevant?
 25 A. He probably did say which ones were in his

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1 figuring, but I don't remember what they were.
 2 Q. Did Senator Rucho have any perspective on which
 3 of those basket of races were relevant?
 4 A. I don't -- I don't recall that he expressed much
 5 of a -- that he engaged a lot on that particular
 6 subject.
 7 Q. The second conversation that I had a few
 8 questions about was the conversation with Brent
 9 Woodcox that we were talking about right before
 10 lunch. You instructed Brent Woodcox to include
 11 an incumbency criteria in the criteria that he
 12 was to draft at your instruction.
 13 How did you define incumbency for Brent
 14 Woodcox?
 15 A. The current seated member of Congress under the
 16 2011 map.
 17 Q. Did you instruct him to include in that
 18 definition anything about that member's
 19 political party?
 20 A. I did not.
 21 Q. Did you feel it was necessary to know or
 22 identify the political party of any incumbent
 23 for the purposes of the incumbency criteria?
 24 A. I know you want a shorter answer. When you're
 25 in politics, you simply know the party of the

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1 member of Congress from your state, so I don't
 2 know that I specifically said identify their
 3 party because I knew what it was, and I assume
 4 most everybody else that serves in the General
 5 Assembly knows what political party the seated
 6 members of Congress belong to.
 7 Q. And the instruction regarding incumbency was
 8 designed to avoid placing two incumbents in the
 9 same revised district, correct?
 10 A. Yes, sir.
 11 Q. And was that goal achieved?
 12 A. With one exception.
 13 Q. And that exception was?
 14 A. Congressman Holding paired with Congressman
 15 Price.
 16 Q. And Congressman Holding, nonetheless, ran and
 17 won in a district where he is not resident,
 18 correct?
 19 A. Yes, sir.
 20 Q. Was Senator Rucho present for the conversation
 21 with Brent Woodcox?
 22 A. No, he was not.
 23 Q. Did you make Senator Rucho aware of the
 24 conversation with Brent Woodcox?
 25 A. I don't know that Senator Rucho and I talked

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1 about the conversation. I know that we talked
 2 about the criteria before it was presented to
 3 the committee.
 4 Q. You -- did you communicate to Senator Rucho that
 5 there would be written criteria that you had
 6 instructed someone to draft?
 7 A. Yes, sir.
 8 Q. Did he have the opportunity to review that
 9 criteria before it was presented to the
 10 committee?
 11 A. Yes, sir.
 12 Q. When did he have that opportunity?
 13 A. I'm certain he would have seen it -- I'm certain
 14 he would have seen it by the Monday,
 15 February 15th, meeting at 5:00. He may have
 16 seen it earlier in the day, but I don't think
 17 so. I think that's when he saw it.
 18 Q. Returning to something we were talking about
 19 before lunch, when did you first see it? And
 20 when I say "see it," I mean the document that is
 21 now Exhibit 24 -- or I'm sorry -- the document
 22 that includes all of the adopted criteria as
 23 they were presented to the joint committee.
 24 A. May I ask for clarification, sir. Are you
 25 referring to Exhibit 24 or the individual parts

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1 of Exhibit 24?
 2 Q. Either, to be honest, but the actual draft that
 3 was presented by -- drafted by and presented to
 4 you by Brent Woodcox either in a form that
 5 separated them out or in a complete form.
 6 A. Yes, sir. Certainly some time on February 15th.
 7 I do not believe I saw anything over the
 8 weekend.
 9 Q. And again, you have no memory of receiving
 10 drafts of that document?
 11 A. I do not.
 12 Q. So the only version of that document of which
 13 you're aware is the one that was presented to
 14 committee?
 15 A. Yes, sir.
 16 Q. When that document was presented to you on the
 17 15th and to Senator Rucho on the 15th, did
 18 anyone else receive a copy of that document or
 19 the information contained in that document?
 20 A. Yes. I believe the people who were present in
 21 the meeting at 5:00 p.m. all would have seen it.
 22 Q. Okay. So the meeting at 5:00 p.m. is entitled
 23 "Status Check." And who was present at that
 24 meeting?
 25 A. I was. Senator Rucho was. Brent Woodcox was.

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1 It says Andrew Tripp so I'm going to say Andrew
 2 Tripp was there.
 3 Q. And who is Andrew Tripp?
 4 A. Andrew Tripp is counsel for Speaker Berger.
 5 MR. FARR: Speaker Berger?
 6 THE WITNESS: Sorry. Now I'm getting
 7 tired.
 8 Andrew Tripp is counsel for Senator
 9 Berger. And there were no other members in the
 10 room. It is possible that my staff aide, Mark
 11 Coggins, was there as well, but I don't
 12 remember.
 13 BY MR. THORPE:
 14 Q. And the purpose of that meeting was to discuss
 15 the criteria that had been drafted?
 16 A. That was one of the purposes, yes.
 17 Q. What were the others?
 18 A. We talked about the criteria that had been
 19 drafted. We talked about some of the individual
 20 feedback from the public hearing that we had
 21 just held. We talked about the logistics as far
 22 as we were going to use -- which committee room
 23 we were going to use.
 24 We talked about, basically, were there
 25 any changes from -- you know, that at that point

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1 that would have needed to have been made to the
 2 map. None were discovered. I believe --
 3 Q. Who had access to the map at that time?
 4 A. Rucho and me.
 5 Q. And how did you have access to the map?
 6 A. Via Dr. Hofeller's computer.
 7 Q. So only when you were present in meeting with
 8 Dr. Hofeller did you see the map that you knew
 9 was going to be sent to the legislature?
 10 A. That's right.
 11 Q. And do you know when Senator Rucho last viewed
 12 that map?
 13 A. I don't.
 14 Q. Did Dr. Hofeller indicate to you that anyone
 15 else had come to view the map?
 16 A. I don't recall that he said that.
 17 Q. Did he indicate that -- do you know whether
 18 Senator Berger had viewed the map?
 19 A. I don't know.
 20 Q. Do you know whether Speaker Moore had viewed the
 21 map?
 22 A. I don't know.
 23 Q. Had Andrew Tripp viewed the map?
 24 A. I don't know.
 25 Q. Did Andrew Tripp -- what was Andrew Tripp's

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1 purpose at the meeting?
 2 A. As general counsel to Senator Berger, he often
 3 assists, just like Mark Goodson who was general
 4 counsel to Speaker Moore. How do you say this
 5 politely. I think they just kind of look over
 6 our shoulder to be sure that the corner offices
 7 are in the loop of what's going on.
 8 Q. And with the understanding that this would
 9 prompt an instruction, I need to be clear: Had
 10 you received any instruction from either Senator
 11 Berger or Speaker Moore regarding the criteria
 12 that are to be included in the 2016 map?
 13 MR. FARR: Because he can't waive their
 14 legislative privilege, he cannot answer that
 15 question.
 16 MR. THORPE: I understand. Can you
 17 instruct him not to answer.
 18 MR. FARR: I think I just did.
 19 BY MR. THORPE:
 20 Q. Okay. Was there any -- there were no changes to
 21 the adopted criteria that had been presented for
 22 the purpose of that meeting?
 23 A. That's correct.
 24 Q. So it was decided that the adopted criteria as
 25 presented at that meeting would be submitted to

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1 the joint committee at the meeting to follow the
 2 next morning?
 3 A. That's correct.
 4 Q. And it was decided that you would present the
 5 adopted criteria to the joint committee?
 6 A. That's correct.
 7 Q. Who made that decision?
 8 A. To be candid, Senator Rucho likes to preside.
 9 So we've worked together, so I got to present
 10 and he presided.
 11 Q. Did you present the criteria that were then
 12 available to you and those at that meeting to
 13 Dr. Hofeller at that time?
 14 A. I don't -- I don't think so.
 15 Q. So the written criteria were not available to
 16 Dr. Hofeller before -- when did the written
 17 criteria become available to Dr. Hofeller?
 18 A. I don't think the written criteria was available
 19 to him until it was adopted by the committee.
 20 Q. Okay. And how was it communicated to him after
 21 it was adopted by the committee?
 22 A. I believe that I had a phone call with him that
 23 said the map that we saw was the one that I want
 24 to introduce. If any of this criteria hadn't
 25 passed the committee, we'd have to really

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1 scramble and redraw, but it did.
 2 Q. That conversation occurred after the joint
 3 select committee meeting on February 16?
 4 A. Yes, sir.
 5 Q. This was a telephone conversation just between
 6 you and Dr. Hofeller?
 7 A. Yes.
 8 Q. And you communicated to him because the adopted
 9 criteria had passed, the map that you had both
 10 viewed in your earlier meeting was the map that
 11 you would use?
 12 A. Yes, sir.
 13 Q. Let's talk about the makeup of the joint
 14 committee for a second.
 15 You said that you served on the House
 16 committee during 2011 as senior chair. Senator
 17 Rucho was in the Senate. The joint committee
 18 has a different makeup. Who determined the
 19 makeup of that committee?
 20 A. Speaker Moore on behalf of the House and Senator
 21 Berger on behalf of the Senate.
 22 Q. And what is the partisan makeup of that
 23 committee?
 24 A. I don't know.
 25 Q. But they would have been responsible for

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1 determining that or that would be governed by
 2 legislative rule?
 3 A. The leadership has the discretion to appoint the
 4 committee.
 5 Q. And the limited role of the committee was to
 6 offer an enacted plan to be voted on by the --
 7 in the special session?
 8 A. I think that's accurate, yes, sir.
 9 Q. And what defines the role of the chairs within
 10 the committee?
 11 A. Well, a chair is responsible for the
 12 administrative functions of the committee. It's
 13 our job to ensure that staff is adequately
 14 provided a committee room, that the materials
 15 are available for the members, that the public
 16 has access, you know, everything from the copies
 17 are made to the microphones work to the actual
 18 policy leadership.
 19 Typically a committee chair will chair
 20 a committee of which they have particular
 21 interest. If you have interest in tax law, you
 22 would chair the finance committee, for instance.
 23 Q. In your role as cochair of the joint committee
 24 for 2016, did you receive any instruction as --
 25 I'm sorry.

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1 Is there any written document that
 2 explains your authority in that role?
 3 A. I don't believe the document addressed my
 4 authority. There would be a written appointment
 5 letter that Speaker Moore would have written and
 6 signed.
 7 A lot of the authority of a committee
 8 chair is just inherent to being named the chair.
 9 Q. Did anything in that appointment letter
 10 reference the adoption of criteria that would
 11 govern the drawing of the map?
 12 A. No, sir.
 13 Q. So on what basis did you and Senator Rucho
 14 determine that part of your responsibility in
 15 chairing the committee was to develop written
 16 criteria?
 17 A. In 2011, we adopted criteria. We sought input
 18 from various sources. We produced the
 19 Legislator's Guide to Redistricting, and to be
 20 candid with you, during one of the depositions,
 21 I believe in this room, one of the attorneys,
 22 Mr. Speas, I believe, asked me several questions
 23 to the tune of you -- you put this book out
 24 there but the committee never voted on it. So I
 25 was trying to learn from past things that had

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1 caused consternation and I thought by having the
 2 committee adopt the criteria that I had used
 3 that that would be one less thing that a court
 4 could object to or I could be criticized for not
 5 being open about the criteria that I used.
 6 Q. And as to the former, is that because the
 7 criteria adopted by the committee would bind the
 8 committee's members in consideration of a map?
 9 A. The criteria that was adopted by the committee
 10 would be the guiding point, if you will, of maps
 11 that the committee would consider.
 12 Q. So the committee would not consider maps that
 13 violated the criteria laid out by the committee?
 14 A. So --
 15 MR. FARR: I want to object to the form
 16 of that, but you can answer.
 17 THE WITNESS: Well, to be clear, I
 18 don't -- I don't feel comfortable saying what
 19 Senator Rucho as the chairman would have allowed
 20 to be sent forward. I would have opposed it if
 21 it violated the criteria that the committee had
 22 adopted.
 23 BY MR. THORPE:
 24 Q. Now, you referenced a moment ago a book that
 25 came up in your depositions from the 2011

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1 redistricting. Is that any written criteria or
 2 is that the legislative guide that was
 3 introduced as an exhibit on Tuesday?
 4 A. I was referring to the legislative guide that
 5 was introduced on Tuesday.
 6 Q. So in the 2011 redistricting, there was no
 7 written set of criteria for how maps were to be
 8 drawn?
 9 A. No. In 2011, there was written criteria that
 10 was released with each map, but what the
 11 criticism was was that it was Rucho and my
 12 criteria and not formally adopted by a
 13 committee. We released a statement explaining
 14 the criteria with each map that we released, but
 15 the committees didn't vote on those statements.
 16 Q. I understand. So the formal adoption of the
 17 criteria is meant to reflect the joint
 18 committee's at least majority view on the
 19 constraints under which the maps will be built,
 20 correct?
 21 A. Yes, sir.
 22 Q. If you've -- I think you've already got it in
 23 front of you, but we're going to talk about
 24 Deposition Exhibit 24, and I'm also likely to
 25 talk about stuff from the Exhibit 34, previously

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1 marked Exhibit 34 which is committee transcripts
 2 and specifically the joint committee hearing on
 3 the 16th.
 4 Who made the decision to present the
 5 written criteria one by one?
 6 A. I did.
 7 Q. And did you also make the decision to have the
 8 committee members vote on the criteria before
 9 all of the remaining criteria were available?
 10 A. I did.
 11 Q. Why did you make that decision?
 12 A. I wanted to make sure that each of the members,
 13 first of all, focused on the criteria that was
 14 before them.
 15 It's been my experience in the
 16 legislature, as with many other things, if you
 17 put ten items on a sheet, people get distracted
 18 looking at number six when you need their
 19 attention on number one. So that's the first
 20 reason.
 21 The second is had any of these not
 22 passed, we may would have had to adjust
 23 subsequent ones to be able to produce a map.
 24 Q. Did you have alternative drafts of subsequent
 25 criterion in case some of these didn't pass?

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1 A. I did not. We would have -- I thought about
 2 that a lot, and we would have had to recess and
 3 regroup had that happened.
 4 Q. So you began the session by explaining the goal
 5 of this plan. What was the goal as you stated
 6 it to the joint committee?
 7 A. Sir, I know you're looking at the committee
 8 transcript. I'll be happy to read it, but I
 9 don't remember what I said.
 10 Q. Well, more generally, what was your
 11 understanding of the goal of placing these
 12 particular adopted criteria before the
 13 committee?
 14 A. In this case, I think that the transcript would
 15 better speak for itself. As I recall, it is to
 16 establish what criteria were going to be used in
 17 creating and evaluating the finished product
 18 that the committee was tasked with producing.
 19 Q. And you had previously testified that -- scratch
 20 that.
 21 So I want to jump to the discussion of
 22 political data as a criteria that begins --
 23 criterion that begins on Page 24.
 24 A. I'm at Page 24, sir.
 25 Q. So we just testified that these were being

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1 introduced one at a time, but in fact, what
 2 would happen is as one was being discussed, the
 3 next individual page would be circulated to the
 4 members, correct?
 5 A. I don't recall. The sergeant-at-arms kind of
 6 take control of the administrative part of that.
 7 I don't know that it was my intent that they
 8 went out early, but that may have happened. I
 9 don't know.
 10 Q. And if you look at the bottom of Page 24,
 11 there's a short back and forth between Senator
 12 Rucho and you about whether to hand out the
 13 criteria as before after Political Data and you
 14 indicate on Line 25 "Let's not distribute."
 15 Which is the criteria that follows
 16 Political Data? That's Partisan Advantage,
 17 correct?
 18 MR. FARR: Objection to the form, but
 19 you can answer if you can.
 20 BY MR. THORPE:
 21 Q. The criteria to be distributed following after
 22 Political Data was Partisan Advantage, correct?
 23 A. So I apologize if I didn't understand exactly
 24 what you were asking. On Page 24, it does --
 25 Senator Rucho does ask me do I -- he said

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1 "You've got political data before you. Do you
 2 want the next criteria sent out to members," and
 3 I said "Let's do the political data and then
 4 move on to the next one. Let's not distribute."
 5 Q. And when you refer to the "next one," the next
 6 one would be Political Data -- I'm sorry --
 7 Partisan Advantage, correct? This is -- I would
 8 just refer you to 24 as they were handed out in
 9 order.
 10 A. Well, to be candid with you, I don't know -- so
 11 for the sake of this deposition, I will say that
 12 we went in the same order that they're on this
 13 page, but I just don't remember.
 14 Q. Okay. You can also, if you want, have
 15 Deposition Exhibit 35 in front of you because it
 16 has them in the order that they were handed out.
 17 Regardless, was there a discussion in
 18 advance of the joint committee hearing of the
 19 difficulty associated with including partisan
 20 advantage as a criteria in the adopted criteria?
 21 A. I don't recall a discussion noting that this
 22 criteria had any more difficulty than the rest.
 23 Q. Okay. So to go through the criteria sort of one
 24 by one -- and we'll go back to certain aspects
 25 of your testimony before the committee -- the

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1 first criteria that was made available to the
 2 committee was Equal Population. And you earlier
 3 testified that that is sacrosanct, correct?
 4 A. I did.
 5 Q. Meaning that all necessary steps would be taken
 6 to make districts as equal as practicable?
 7 A. Yes, sir.
 8 Q. And in North Carolina, that means essentially
 9 one person difference?
 10 A. Yes, sir.
 11 Q. Did you make -- is your testimony before the
 12 committee or before any of these other groups
 13 that that is necessary and non-negotiable as a
 14 criterion?
 15 A. I don't recall what I said to the committee
 16 about that.
 17 I'll go on, if you'd like, and say that
 18 when you're working on getting things going, a
 19 lot of times you start with the one that the
 20 most people understand, and this -- of course
 21 there was no objection to that one. So you kind
 22 of establish how the committee's going to run by
 23 something that there's not going to be
 24 disagreement on.
 25 Q. But the members of a Congressional Redistricting

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1 Committee generally understand the one-person,
 2 one-vote requirements to be mandatory?
 3 A. Yes, sir, I think so.
 4 Q. What about the criterion for contiguity, is that
 5 similarly easy to sell as a pretty much
 6 mandatory criteria?
 7 A. I believe so.
 8 Q. And the third criterion, Political Data, we've
 9 earlier talked about some of the details of this
 10 which is the basket of elections that would be
 11 used.
 12 How did you determine that this
 13 criteria should include election results rather
 14 than registration data?
 15 A. It is my belief that election results are a
 16 better predictor of voting behavior than is
 17 registration.
 18 Q. Why is that?
 19 A. Because registration is generally a one-time
 20 thing. People sometimes change their mind,
 21 change the way they think about things but don't
 22 go to the trouble to change their registration.
 23 And also, frankly, North Carolina has a very
 24 large population that is registered as
 25 unaffiliated with either political party. So it

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1 is -- you can just tell more about how an area
 2 generally votes by the way it votes than the way
 3 folks are registered.
 4 Q. And the data that would be available to the map
 5 drawer and to the folks voting on the map under
 6 political data would be at the voting district
 7 level?
 8 A. So two-part question. Certainly the data would
 9 have been available to the map drawer. The
 10 committee was provided basically towards the end
 11 a stat pack. They could have asked and got more
 12 detailed. I don't know if any of them did or
 13 not.
 14 Q. So the stat pack that was provided to the
 15 committee provided it at a district-wide basis?
 16 A. Yes, sir, I believe that's correct.
 17 Q. And you made the determination not to include
 18 the last two presidential contests, correct?
 19 A. It was my understanding that -- I don't remember
 20 if it was the Harris court or another court, but
 21 I had come under the understanding that we were
 22 directed not to use that race.
 23 Q. But you made that decision?
 24 A. Yes, sir.
 25 Q. And you instructed Dr. Hofeller to follow that

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1 decision?
 2 A. Yes, sir.
 3 Q. And also included in this criterion "No data
 4 identifying the race of individual voters shall
 5 be used in the construction or consideration of
 6 districts."
 7 A. That's correct.
 8 Q. That means that unavailable to the map drawer
 9 would be your standard census data that includes
 10 metrics like race, correct?
 11 A. Yes, sir.
 12 Q. And did you instruct Dr. Hofeller not to look at
 13 any data he may otherwise have regarding the
 14 race of individuals that would live in the
 15 designed districts?
 16 A. I did.
 17 Q. How did you instruct him of that?
 18 A. That was one of the initial conversations we had
 19 in trying to understand and communicate what we
 20 thought the Harris court said, which is race
 21 shouldn't be used as a factor. So we just said
 22 we won't use it at all.
 23 Q. In the context of that discussion, did you also
 24 discuss whether and how the 2016 map would
 25 comply with the Voting Rights Act?

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1 A. We did not.
 2 Q. You had no discussion with Dr. Hofeller
 3 regarding VRA compliance?
 4 A. We did not. And the reason is that our
 5 reading -- my reading of the Harris case said
 6 that we had not established a pattern of
 7 racially polarized voting. Again, I would
 8 respectfully disagree with that, but
 9 nonetheless, the Court made that determination,
 10 and so we were drawing a map to comply with the
 11 Harris order.
 12 Q. So based on your instruction, Dr. Hofeller had
 13 no discretion to evaluate the VRA compliance of
 14 the maps that he drew, correct?
 15 MR. FARR: Objection to the form.
 16 Go ahead.
 17 THE WITNESS: I don't exactly
 18 understand what you're asking, but I will simply
 19 say Dr. Hofeller was instructed not to look at
 20 the race of the people in the districts in which
 21 he was drawing. Race was not to be a
 22 consideration or factor in the drawing of these
 23 maps.
 24 And, sir, while you're getting ready, I
 25 do want to state for the record that you were

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1 right, based on this, the next one considered
 2 was partisan advantage. I was ambiguous about
 3 that. You were correct.
 4 BY MR. THORPE:
 5 Q. Do you recall why you responded to Senator
 6 Rucho's question by asking him to hold back the
 7 partisan advantage criteria from distribution?
 8 A. Yes. Because I wanted members to focus on what
 9 we were saying one at a time.
 10 Q. And you recognize that with other criteria, like
 11 contiguity, they were passed out while the prior
 12 one was being discussed, correct?
 13 A. I don't recall that. I can say that when you're
 14 presenting to the committee, you're not in
 15 control of the functions of it.
 16 Q. Understood.
 17 Did you know at the time that this was
 18 being distributed that partisan advantage would
 19 be among these criteria more controversial than
 20 others?
 21 A. I feel like it probably would, yes.
 22 Q. And why is that?
 23 A. Partisanship always gets people concerned. And,
 24 you know, it's clear to me that the Democrats in
 25 the General Assembly would prefer some map be

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1 created that better suited what they considered
 2 to be the correct partisan makeup of the maps.
 3 I thought long and hard about maybe
 4 saving that one and running the incumbency one
 5 because, again, people know what the incumbents
 6 are, I mean, you just do, but I believe that
 7 every decision that is made, even if it's in a
 8 capacity in which you're not trying to exercise
 9 partisanship comes from the perspective of your
 10 view of life, and I think it's just honest to
 11 say that we're going to -- we're going to
 12 acknowledge that partisanship is in this.
 13 And I will point out that as it's
 14 written that it just says that the committee
 15 shall make reasonable efforts to construct the
 16 2016 Contingent Congressional Plan to maintain
 17 the current partisan makeup.
 18 Q. And that is the current partisan makeup as
 19 reflected in the 2011 maps, correct?
 20 A. Yes, sir.
 21 Q. And the partisan performance of the districts in
 22 the 2011 map was evaluated at the time the 2011
 23 maps were enacted, correct?
 24 A. I'm sorry. Would you repeat that question.
 25 Q. At the time that you passed the 2011 maps, one

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1 of the factors that you evaluated was the
 2 expected partisan performance of those maps.
 3 A. Yes, sir.
 4 Q. And the 2012 congressional election did not
 5 maintain the partisan balance of
 6 North Carolina's congressional delegation, did
 7 it?
 8 A. The 2012 election elected 13 members of Congress
 9 and that established the balance, if you want to
 10 use that word.
 11 Q. It established a balance. So is it correct to
 12 say that each decennial redistricting, assuming
 13 that there's just one in a ten-year period,
 14 establishes the balance between parties for the
 15 purposes of a congressional delegation?
 16 A. I think that after the census is performed, the
 17 task of establishing criteria to draw lawful
 18 districts begin, and the construction of those
 19 districts will yield some political outcome when
 20 the elections are held.
 21 Q. And the political goal of maintaining that
 22 balance over the course of a redistricting cycle
 23 is what you are referring to in this criterion?
 24 MR. FARR: Objection to form.
 25 THE WITNESS: Would you repeat the

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1 question, please.
 2 BY MR. THORPE:
 3 Q. When you say maintain the current partisan
 4 makeup of North Carolina's congressional
 5 delegation, you are referring to the partisan
 6 makeup, in your words, established by the 2012
 7 election, the first election in this
 8 redistricting cycle, correct?
 9 MR. FARR: Objection.
 10 THE WITNESS: I apologize. I'm not
 11 understanding what you're asking.
 12 BY MR. THORPE:
 13 Q. The current partisan makeup of the
 14 North Carolina congressional delegation at the
 15 time of this map is 10 Republicans and 3
 16 Democrats, correct?
 17 A. Yes, sir.
 18 Q. That has been the partisan makeup of the
 19 North Carolina congressional delegation since
 20 the 2014 election, correct?
 21 A. I believe since the 2012 election.
 22 Q. Just to --
 23 MR. FARR: We'll stipulate to the
 24 facts.
 25 BY MR. THORPE:

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1 Q. Just to stipulate to the facts, let's assume the
 2 2012 election was 9 Republicans and 4 Democrats.
 3 MR. FARR: Excuse me. Can I just say
 4 something. David McIntire was elected in 2012.
 5 THE WITNESS: Okay. I was just trying
 6 to answer. I didn't remember that.
 7 MR. FARR: Right. He just didn't
 8 remember that. No big deal.
 9 BY MR. THORPE:
 10 Q. But the current partisan makeup is 10-3 and
 11 that's a makeup that existed under the 2011
 12 maps?
 13 A. Yes, sir.
 14 Q. A goal that these criteria pursue is maintaining
 15 the balance from that map?
 16 A. Yes, sir.
 17 Q. And why is that a legitimate goal?
 18 A. In my opinion and in my firmest belief, the 2011
 19 enacted map was drawn in compliance with the
 20 law. That map had elected -- in 2014 -- I'll
 21 correct myself -- 10 Republicans and 3
 22 Democrats. We were being ordered by a court to
 23 redraw the map. I could not see any reason to
 24 not consider among the other factors that as of
 25 the day before the Harris decision came down the

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1 Republicans maintained a partisan advantage of
 2 10 seats to 3 seats. I could not see a reason
 3 why -- again, being ordered to redraw these
 4 maps -- that we would not make maintaining that
 5 a goal, not the sole goal but a goal.
 6 Q. When you said before the committee you
 7 acknowledge freely this would be a political
 8 gerrymander, which is not against the law, what
 9 was the basis for that statement?
 10 A. We were back in session. Because a court had
 11 ruled that an idea, a map, if you will, that I
 12 drew -- that I was responsible for, I take
 13 ownership, my name is on it, Rucho-Lewis 2 or
 14 something like that -- was racially
 15 gerrymandered, I took -- I respectfully continue
 16 to disagree with that, but my comment -- and if
 17 you show me the page, I'll be --
 18 Q. This is on Page 48.
 19 A. My comment there was to reinforce the fact that
 20 we were there because we were accused of doing a
 21 racial gerrymander and that there was no way
 22 anybody could accuse us in this map because we
 23 did not look at race.
 24 What I should have continued to say
 25 probably is those that will continue to disagree

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1 with the map will call it a political
 2 gerrymander, but I don't -- I did say "which is
 3 not against the law" because it's my
 4 understanding that it's not.
 5 So I'll be happy to try to elaborate
 6 more, but I don't want to take your time either.
 7 Q. You stand by the statement that you make on
 8 Pages 4 to -- I'm sorry -- Lines 4 to 6 on
 9 Page 48?
 10 A. I would point out -- first, yes, but I would
 11 point out on Line 4 that my use of saying that
 12 this would be is I could have better worded that
 13 and saying there is no way you could consider
 14 this a racial gerrymander, which is what's
 15 brought all of us back up here to Raleigh. The
 16 only way you could possibly attack it would be
 17 as a political gerrymander.
 18 Q. Understood.
 19 And you acknowledge that that attack
 20 might occur after saying "I would propose that
 21 to the extent possible, the map drawers create a
 22 map which is perhaps likely to elect 10
 23 Republicans and 3 Democrats."
 24 Did I read that correctly?
 25 MR. FARR: What tab and page is this?

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1 MR. THORPE: This is the joint
 2 committee.
 3 THE WITNESS: Page 48.
 4 MR. THORPE: Page 48 of the joint
 5 committee hearing on the 16th.
 6 THE WITNESS: Yes, sir, that's what I
 7 said. And to be clear for everybody, we're on
 8 Exhibit 34, Page 48.
 9 BY MR. THORPE:
 10 Q. Is it Tab 1?
 11 A. Yes, sir.
 12 Q. There was already a map that had been drawn at
 13 the time that you made this statement, correct?
 14 A. Yes, sir.
 15 Q. And did that -- was that map likely to elect 10
 16 Republicans and 3 Democrats in your assessment
 17 based on what you knew at the time?
 18 A. Based on my assessment and what I knew at the
 19 time, it gave Republicans an opportunity to
 20 elect 10 members to Congress.
 21 Q. And what was your basis for believing that?
 22 A. I had looked at the historical performance of
 23 the districts, namely, the Tillis-Hagan race,
 24 and I believe that because Tillis had done well,
 25 that gave the Republicans an opportunity to

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1 elect possibly 10 seats.
 2 Q. To be clear, you had evaluated each new district
 3 under the results of the 2014 Senate
 4 Tillis-Hagan race?
 5 A. That's correct.
 6 Q. And the result of placing those election results
 7 into the new districts was a 10-3 Republican
 8 advantage, correct?
 9 A. To the best of my memory, yes.
 10 Q. Did you evaluate the historical performance of
 11 all of those districts by any other race?
 12 A. At the time of drawing the map, no, but prior to
 13 presenting the map I did, yes.
 14 Q. Prior to presenting the map to the committee?
 15 A. Yes, sir.
 16 Q. Okay. Please explain when that occurred, how
 17 that occurred.
 18 A. The next day, or whenever I rolled the map out,
 19 the stat pack was there and I had to explain it
 20 to the committee. So at the same time I was
 21 familiarizing myself with it, obviously I read
 22 it.
 23 So I would have learned, for instance,
 24 that in 2008, Attorney General Roy Cooper
 25 carried all 13 of these seats. I would have

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1 learned that in 2012, the state auditor, who was
 2 a Democrat, won six or seven of these seats. I
 3 would have seen all that, yes.
 4 Q. And at the time you had seen the map, but the
 5 others that were going to see the stat pack had
 6 not seen the map; is that correct?
 7 A. That's right.
 8 Q. So at the time you made this statement to the
 9 committee in asking them to vote for the
 10 criterion partisan advantage, you were the one
 11 that had viewed, other than Dr. Hofeller, the
 12 historical performance of these new districts
 13 based on these prior elections, correct?
 14 MR. FARR: Objection.
 15 THE WITNESS: It's possible that
 16 Senator Rucho had as well.
 17 BY MR. THORPE:
 18 Q. If you would turn in the same transcript to
 19 Page 54, though you may want to start on Page 53
 20 which is the beginning of your statement. You
 21 say at the end of Page 53:
 22 "Mr. Chairman, the only thing I
 23 could add is that we want to make clear
 24 that we -- that we, to the extent we are
 25 going to use political data in drawing

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1 this map, it is to gain partisan
 2 advantage on the map. I want that
 3 criteria to be clearly stated and
 4 understood."
 5 What do you mean by "gain partisan
 6 advantage"?
 7 A. Every line that's drawn creates some grouping of
 8 people. I was being clear that the use of the
 9 political data would be for the purpose of
 10 trying to comply with the criteria, specifically
 11 the one about the partisan advantage.
 12 Q. Okay. So just to walk through that a little bit
 13 more mechanically, you have asked the committee
 14 to approve a criterion that says let's use
 15 political data and defines that political data
 16 as past election results, correct?
 17 A. Yes, sir.
 18 Q. And you have asked the committee to approve a
 19 criteria that says partisan advantage will be
 20 one of the considerations in determining, as you
 21 testified earlier, the constraints that will
 22 govern the map that we adopt, correct?
 23 A. Yes, sir.
 24 Q. And this statement is a statement that the use
 25 of that political data will be for the purpose

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1 of, in your words, gaining partisan advantage,
 2 correct?
 3 A. Yes, sir, that's what I said.
 4 Q. And at the time that you made this statement,
 5 you had evaluated the likely outcome of
 6 congressional races in the newly designed
 7 districts under at least some of those
 8 historical election returns, correct?
 9 A. Yes, sir.
 10 Q. And other than Senator Rucho and Dr. Hofeller,
 11 no one else had at that time evaluated the new
 12 districts under that same data?
 13 MR. FARR: Objection to the form.
 14 You may answer.
 15 THE WITNESS: I don't know. I hadn't
 16 shown it to anyone else.
 17 BY MR. THORPE:
 18 Q. But to your knowledge they had not?
 19 A. Correct.
 20 Q. I want to better understand exactly why the
 21 political data matters for that purpose. So if
 22 you could turn to Page 57. Beginning on
 23 Line 7, in response to a question of what
 24 constitutes partisan advantage, you say -- I'm
 25 sorry -- beginning on Line 8:

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1 "To perhaps expound on it a bit,
 2 this would contemplate looking at the
 3 political data, which was an earlier
 4 criteria adopted by this committee, and
 5 as you draw the lines, if you're trying
 6 to give a partisan advantage, you would
 7 want to draw the lines so that more of
 8 the whole VTDs voted for the Republican
 9 on the ballot than they did a Democrat,
 10 if that answers your question."
 11 So is that your understanding of how
 12 the map drawer, here Dr. Hofeller, uses
 13 political data for drawing maps that better
 14 satisfy the partisan advantage criteria?
 15 A. Among the other criteria, yes.
 16 Q. To repeat the question. To better satisfy
 17 specifically the partisan advantage criteria, is
 18 it your understanding that the mechanism you
 19 describe here on Page 57 is what Dr. Hofeller
 20 does to change the lines within the maps?
 21 MR. FARR: Objection to the form.
 22 You may answer.
 23 THE WITNESS: Yes.
 24 BY MR. THORPE:
 25 Q. Have you observed Dr. Hofeller, or any other map

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1 drawer, moving a VTD from one district to
 2 another and the resulting difference in likely
 3 election results?
 4 A. I have, yes.
 5 Q. And on Page 62, we have mostly covered this
 6 ground, but on Line 18 and 19 you say:
 7 "The goal is to elect 10 Republicans
 8 and 3 Democrats."
 9 Is that correct? Did I read that --
 10 A. You did, sir.
 11 Q. And you stand by that statement as to the
 12 partisan advantage criteria?
 13 A. Yes, sir.
 14 Q. Was there any reason that you felt that the
 15 partisan advantage criteria was necessary to the
 16 plan that you would adopt?
 17 MR. FARR: Objection to form.
 18 You may answer.
 19 THE WITNESS: I --
 20 BY MR. THORPE:
 21 Q. I'm going to ask a different question.
 22 You earlier described certain partisan
 23 considerations as discretionary. Was there
 24 anything about the drafting of the 2016 plan and
 25 your responsibility for it that made you feel

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1 that you were required to include partisan
 2 advantage as a criteria?
 3 MR. FARR: Objection to the form.
 4 You may answer.
 5 THE WITNESS: We were there because we
 6 had been accused in my opinion wrongly, a court
 7 found wrong in my opinion, respectfully, that we
 8 racially gerrymandered a map.
 9 We made clear at the time that we
 10 followed the law in 2011. We also made clear
 11 that we had political considerations then as
 12 well. Those were, for whatever reason -- well,
 13 because of the court order we were back.
 14 So I was making sure in part that I was
 15 reaffirming that the districts that I was going
 16 to produce were going to provide an opportunity
 17 for 10 Republicans to win reelection.
 18 And if I may, because I was going to
 19 answer you a while ago, if you've ever been
 20 asked -- if you ever have the opportunity to be
 21 tasked with doing this, there's nothing more
 22 personal to a member of a legislature than the
 23 district they serve. It doesn't matter if it's
 24 the State House district, a U.S. House district,
 25 that district is precious to those folks.

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1 So when you have 10 incumbent members
 2 of Congress who are Republicans, it kind of
 3 reassures them that you're not out to get them
 4 too.
 5 BY MR. THORPE:
 6 Q. To move forward in the -- let me ask one other
 7 version of my question.
 8 Based on your understanding of the
 9 Harris decision, was there any requirement in
 10 the Harris decision that you consider partisan
 11 advantage?
 12 A. No.
 13 Q. There was, however, what you viewed as a
 14 requirement to change the shape of the 12th
 15 district, correct?
 16 A. Yes, sir.
 17 Q. And that is the explanation for the 12th
 18 district criterion?
 19 A. Yes, sir.
 20 Q. And your solution, as you earlier testified, to
 21 the 12th district problem was to move the 12th
 22 district into Mecklenburg county, correct?
 23 A. Yes, sir.
 24 Q. And that new county -- I'm sorry. That new
 25 district at the time that you presented this

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1 criterion, you were aware of the partisan
 2 political performance of that new district,
 3 correct?
 4 A. Yes, sir.
 5 Q. You knew that that would be a -- remain a
 6 Democratic district?
 7 A. I knew that it likely would, yes.
 8 MR. FARR: I think you said that
 9 before.
 10 BY MR. THORPE:
 11 Q. The compactness criteria that you introduced you
 12 earlier testified includes on your instruction
 13 the idea that division of counties should be
 14 minimized and that VTDs should be kept whole
 15 where possible, correct?
 16 A. Yes, sir.
 17 Q. There is a sentence in here I want to discuss
 18 which is "Division of counties shall only be
 19 made for reasons of equalizing population,
 20 consideration of incumbency and political
 21 impact."
 22 The new district that we just
 23 discussed, the district that is in Mecklenburg
 24 county, has a county line split to -- that is
 25 made for reasons of equalizing population,

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1 correct? There are more people in Mecklenburg
 2 county than you can have in a single district.
 3 A. That's correct.
 4 Q. So that is an example of making a division of a
 5 county for reason of equalizing population; is
 6 that correct?
 7 A. Yes, sir.
 8 Q. So what's an example of dividing a county for
 9 consideration of incumbency?
 10 A. In Guilford county, Representative Mark Walker
 11 and Representative Alma Adams both had homes in
 12 Guilford county, and we were tempted not to put
 13 them in the same district. So that's an example
 14 of that.
 15 Q. And so in consideration of their -- and I'm
 16 sorry, the political parties of those
 17 individuals?
 18 A. Representative Adams is a Democrat.
 19 Representative Walker is a Republican.
 20 Q. And so the consideration of their incumbency
 21 results in a county line split in Guilford
 22 county?
 23 A. Yes, sir.
 24 Q. And where that county line split occurs in
 25 Guilford county, there are presumably whole VTDS

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1 on both sides of that line? Or is there a VTD
 2 split?
 3 A. I do not recall if that's one of the VTDS that
 4 had to be split. And I'll tell you why, if I
 5 may.
 6 When Dr. Hofeller -- by this point we
 7 got this map here was able to load the map on
 8 the General Assembly's computer and we had the
 9 wrong address for Representative Walker, so
 10 obviously you can't move where he lives. So we
 11 changed -- we either changed a whole VTD or that
 12 might have been one of the ones we had to
 13 divide. I just don't remember. By this point
 14 it was kind of fast and furious.
 15 Q. And based on Dr. Hofeller's testimony, that
 16 change that you just explained to deal with that
 17 incumbency issue was the only change to the map
 18 that Dr. Hofeller showed you in your meeting the
 19 previous Friday or Saturday in the map that was
 20 ultimately enacted; is that correct?
 21 A. No. This -- the Walker-Adams double bunk
 22 situation was not discovered until the map was
 23 loaded on the state computer, and that occurred
 24 on -- I apologize, I've lost my calendar now.
 25 That occurred after the criteria were adopted.

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1 So whatever date that was, that's when that was
 2 discovered. It was not known before then.
 3 MR. FARR: Excuse me. Do you mind if
 4 we take a break.
 5 MR. THORPE: No. Understood.
 6 MR. FARR: Thank you.
 7 THE VIDEOGRAPHER: Off record at
 8 2:22 p.m.
 9 (Brief Recess.)
 10 THE VIDEOGRAPHER: On record at
 11 2:37 p.m.
 12 BY MR. THORPE:
 13 Q. Representative Lewis, we had been discussing the
 14 2016 Contingent Congressional Plan Committee
 15 Adopted Criteria that were adopted by the joint
 16 committee on the 16th of February -- 16th or
 17 17th of February, and we were talking about
 18 compactness.
 19 The sentence we were discussing states
 20 "Division of counties shall only be made for
 21 reasons of equalizing population, consideration
 22 of incumbency and political impact."
 23 We had discussed an example of why such
 24 a division would be made to equalize population
 25 and an example of why such a division would be

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1 made for consideration of incumbency.
 2 What is an example of a division of
 3 county that would be made for political impact?
 4 A. I don't know. And to be clear, the only reason
 5 a county would be divided is the one-person,
 6 one-vote rule.
 7 There are 83 counties that aren't
 8 divided. I don't know exactly where
 9 Dr. Hofeller divided a county to give you an
 10 example of that.
 11 Q. Now, you state that the only reason a county
 12 would be divided would be for a one-person,
 13 one-vote rule, but there was in fact an
 14 amendment offered in the committee that would
 15 have reduced this sentence to just that and that
 16 amendment was rejected, correct?
 17 A. I don't remember.
 18 Q. Okay. So if we can look at -- this is
 19 Exhibit 35. If you'll look at the page at the
 20 bottom that says DEF 00025.
 21 A. I have it.
 22 Q. Senator Dan Blue offered an amendment that would
 23 have had that exact sentence read:
 24 "Division of counties shall only be
 25 made for reasons of equalizing population

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1 and for reasons of complying with federal
 2 law."
 3 That amendment was -- if you look at
 4 the next page -- rejected 23-11, correct?
 5 A. Yes, sir.
 6 Q. If what you just said is true and the only
 7 reason that counties would ever be divided is
 8 for equalizing population, why was that
 9 amendment rejected?
 10 MR. FARR: I object to --
 11 BY MR. THORPE:
 12 Q. Why did you vote against that amendment?
 13 MR. FARR: I don't object to that.
 14 THE WITNESS: The way the original
 15 criteria was written, it specified equalizing
 16 population, which is one-person, one-vote,
 17 consideration of incumbency and political
 18 impact.
 19 I voted against that amendment because
 20 I knew the next factor was going to be
 21 incumbency, so...
 22 BY MR. THORPE:
 23 Q. And you knew that division of counties was
 24 necessary for incumbency?
 25 A. So division of county is necessary to equalize

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1 population. The consideration of where that can
 2 be made is for consideration of incumbency or
 3 for political impact.
 4 Q. And my question is: What was your rationale for
 5 including the phrase "and political impact" in
 6 this sentence?
 7 A. Because -- forgive me for interrupting you.
 8 Because I believe you ought to be
 9 honest in the work that you are doing. I've
 10 already said in this deposition that I believe
 11 every choice that we make is in some way
 12 political, and I'm -- this simply acknowledges
 13 that Dr. Hofeller may have chosen to divide a
 14 county in a certain way because of the political
 15 impact of the districts contained therein.
 16 Q. Did you evaluate -- at the time that this was
 17 voting on in committee, had you evaluated
 18 whether any of the county splits in the 2016
 19 plan divided counties based on political impact?
 20 A. I don't -- I don't remember.
 21 Q. Okay. Let's talk about incumbency, which we've
 22 already discussed a little bit.
 23 From that second sentence:
 24 "However, reasonable efforts shall
 25 be made to ensure that incumbent members

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1 of Congress are not paired with another
 2 incumbent in one of the new districts
 3 conducted in the 2016 Contingent
 4 Congressional Plan."
 5 What is required of the map maker --
 6 what did you intend to require of the map maker
 7 in stating that reasonable efforts shall be
 8 made?
 9 A. If it were possible to comply with all the
 10 criteria and not have to put two incumbents in
 11 the same district, then that would have been the
 12 preferred method.
 13 Q. Did you give Dr. Hofeller any instruction of how
 14 to rank the different criterion in terms of
 15 whether it is more okay to violate one than
 16 another?
 17 A. No.
 18 Q. Did you give Dr. Hofeller any tools or
 19 mechanisms by which to weight the criteria
 20 relative to one another?
 21 A. No.
 22 Q. Did you indicate to Dr. Hofeller that they
 23 should all be weighed equally?
 24 A. Yes.
 25 Q. Do you consider incumbency as it's defined in

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1 this adopted criteria document to be a
 2 traditional redistricting criteria?
 3 A. Yes.
 4 Q. Did you consider incumbency as it's defined in
 5 this document during the redistricting in 2011?
 6 A. Yes.
 7 Q. How did you consider incumbency during
 8 redistricting in 2011?
 9 A. We were aware of where the incumbents lived and
 10 made effort to not combine one district with two
 11 incumbents.
 12 Q. What efforts were taken in that regard in 2011?
 13 A. I would say substantial efforts were taken in
 14 2011. As you know, what I refer to as the
 15 enacted plan or the baseline plan, whatever, is
 16 Rucho-Lewis 2A. Rucho-Lewis 1, I don't think
 17 there were any incumbents that were combined.
 18 There were a variety of reasons why the
 19 changes to the map were necessary and that
 20 created a situation of double bunking some
 21 incumbents, but our first stab at it I don't
 22 think double bunk any of them.
 23 Q. The plan actually enacted double bunked how
 24 many?
 25 A. I didn't remember. I think I heard in this room

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1 yesterday it was four.
 2 Q. And in addition to incumbency, one of the
 3 considerations in the 2011 plan was also
 4 partisan advantage; is that correct?
 5 A. In the 2011 plan?
 6 Q. Yes.
 7 A. Yes.
 8 Q. And how did you weigh the consideration of
 9 partisan advantage against the consideration of
 10 incumbency?
 11 A. In 2011?
 12 Q. '11.
 13 A. I don't know that it would be accurate to say
 14 they were weighed equally, but I don't remember
 15 making a conscious choice to put one over the
 16 other.
 17 Q. What is the interest of the state or the
 18 legislature in incumbents being reelected to
 19 Congress in your view?
 20 MR. FARR: I'll object to the extent
 21 that calls for a legal opinion, but otherwise
 22 you can answer.
 23 THE WITNESS: You know, there's a lot
 24 of people -- just like in independent
 25 redistricting, there's -- a lot of people have

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1 strong opinions about term limits and they think
 2 incumbency is not something that is valued.
 3 I can tell you as somebody who has been
 4 around a while, knowing how to get things done
 5 for the people that you represent is important.
 6 So to the extent that I think -- for
 7 instance, in District 1, if he's not currently,
 8 he's the immediate past, I know Representative
 9 Butterfield is the chair of the Congressional
 10 Black Caucus. That's certainly a very
 11 influential spot. I know in the 10th,
 12 Representative McHenry either is or has just
 13 come off being the chair of the banking
 14 committee. These things are important.
 15 I do think incumbency is -- is a worthy
 16 traditional consideration in redrawing of lines.
 17 BY MR. THORPE:
 18 Q. So one of the factors that you've cited as to
 19 why is the seniority of members in the House?
 20 A. That was -- yeah, I think that's a fair
 21 characterization.
 22 Q. I want to move on from the adopted criterion
 23 and, given our time constraints, I'm actually
 24 going to skip forward a little bit in the
 25 two-week period of the drafting to the testimony

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1 that you give on the floor of the House of
 2 Representatives.
 3 So let me introduce as Exhibit 40 --
 4 A. May I put this book away, please.
 5 Q. Yes.
 6 -- transcripts from the House floor.
 7 (WHEREUPON, Plaintiffs' Exhibit 40 was
 8 marked for identification.)
 9 BY MR. THORPE:
 10 Q. This hearing occurs on the 19th, and at this
 11 time the committees --
 12 MR. FARR: Which tab?
 13 MR. THORPE: I'm sorry. It's 2016/2/19
 14 Session One.
 15 MR. FARR: Does it say Floor Session
 16 One?
 17 MR. THORPE: Floor Session One,
 18 11:30 a.m.
 19 MR. FARR: Yeah. I think, David,
 20 that's Tab 3.
 21 THE WITNESS: I have it before me.
 22 BY MR. THORPE:
 23 Q. You are at this point testifying to the full
 24 house on the criteria used in the 2016
 25 redistricting; is that correct?

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1 A. House rules would refer to it as debating the
 2 bill, but, yes, largely it's the same thing.
 3 Q. You are speaking to the House. And at this time
 4 has the map been released?
 5 A. Yes.
 6 Q. And the map that has been released is based on
 7 criteria that at that time have been adopted and
 8 are publicly available?
 9 A. Yes.
 10 Q. And you are speaking to encourage passage of the
 11 bill; is that correct?
 12 A. Yes, sir.
 13 Q. I want to go to Page 5.
 14 A. Yes, sir, I'm there.
 15 Q. On Line 3 --
 16 MR. THORPE: Does somebody have a
 17 highlighted copy?
 18 THE WITNESS: I do.
 19 MS. MACKIE: Can we switch those out?
 20 THE WITNESS: Well, that part's not
 21 highlighted but certain parts are.
 22 (Discussion held off the reporter's
 23 written record.)
 24 THE WITNESS: So we're returning to
 25 Section 3, page --

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1 BY MR. THORPE:
 2 Q. Page 5.
 3 A. Yes, sir, I'm there.
 4 Q. And we are really staying on the topic of
 5 partisan advantage.
 6 So beginning on Line 3, a further --
 7 you are explaining the criteria.
 8 "A further criteria was partisan
 9 advantage. We believe this map will
 10 produce an opportunity to elect 10
 11 Republican members of Congress, but make
 12 no mistake, this is a weaker map than
 13 the enacted plan in that respect."
 14 I sort of want to take that sentence in
 15 two parts.
 16 What do you mean when you say "an
 17 opportunity to elect 10 Republican members of
 18 Congress"?
 19 A. Past election results are a pretty good
 20 indicator of future performance.
 21 Q. And you have just explained that past election
 22 results were used in building these districts,
 23 correct?
 24 I'm sorry. In your actual speech
 25 before the House on Page 4, you say:

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1 "The stat pack attached to the maps
 2 placed on each one of your desks show
 3 which election results were used in
 4 building these districts."
 5 A. Yes, sir, I see that.
 6 Q. So when you say an opportunity to elect, you
 7 mean looking at the likely outcomes based on
 8 past election results?
 9 A. Yes. Yes.
 10 Q. And did you use any metric or discuss any metric
 11 to determine how competitive a seat needs to be
 12 in order to consider that one party or another
 13 has an opportunity to elect a member to that
 14 seat?
 15 A. None other than looking at the historic data. I
 16 wish I were smart enough to know another way,
 17 but I don't.
 18 Q. And so looking at that historic data, how many
 19 seats would you say that -- based on the
 20 information you had in front of you at the time
 21 the Democratic Party had an opportunity to elect
 22 members of Congress too?
 23 A. I think they had a strong opportunity to elect
 24 members to three of the seats and a lesser
 25 opportunity to elect members in the other seats.

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1 Q. Okay. So to break that up a little bit, how do
 2 you define a strong opportunity?
 3 A. In Congressional District 4, I am personally
 4 aware that Orange county is typically a solid
 5 Democratic stronghold. The whole VTD precincts
 6 that connect through Durham I think fit that
 7 description as well. And based on only the
 8 ocular test and knowing where the state house
 9 districts kind of fall, there appear to be
 10 Democratic areas in Wake.
 11 I would say District 4 is a strong
 12 opportunity for Democrats to elect or for the
 13 people to elect a Democrat to congress.
 14 Q. Do you think there is any opportunity for the
 15 Republicans to elect a member to congress from
 16 District 4?
 17 A. I think it would be a real challenge. It would
 18 have to be somebody -- and again, I don't want
 19 to speculate with the time we have. I think the
 20 right person from Orange county may be
 21 affiliated with the university might could make
 22 a stab at it.
 23 Q. In your review of historic election data in
 24 evaluating what became the 2016 Contingent
 25 Congressional Map, did you see any evidence in

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1 the election results that a Republican could win
 2 District 4?
 3 A. Not that I recall.
 4 Q. What other districts were you referring to as
 5 strong Democratic districts in your earlier
 6 answer?
 7 A. Well, District 1 is in a part of the state that
 8 is traditionally Democratic. I believe all the
 9 seats in the North Carolina House that are
 10 contained within District 1 have elected a
 11 Democrat. And I know the county of Durham
 12 itself is a pretty strong Democratic county, so
 13 I would say District 1 is an opportunity --
 14 pretty strong opportunity for the Democrats to
 15 elect a Democrat to congress.
 16 Q. And you evaluated election returns from historic
 17 elections to determine -- in part to determine
 18 that it is a strong Democratic district?
 19 A. I did.
 20 Q. What's the third strong Democratic district?
 21 A. The third strongest would be the 12th in
 22 Mecklenburg. The -- while there is some
 23 Republican strength there, I think there are
 24 maybe one or two Republican state House seats
 25 contained in there. If -- there's like four or

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1 five Democratic state seats so I would assume
 2 state house seats. So I would assume -- and
 3 based on past performance that that would be a
 4 pretty good opportunity for the Democrats to
 5 elect a Democrat to congress.
 6 Q. What would you include in the category of lesser
 7 opportunities for -- and that's your phrasing --
 8 for Democratic members of Congress to win a
 9 congressional seat?
 10 A. Okay. Well, you take District 9, for instance.
 11 Anson, Richmond, Scotland and Robeson and
 12 Bladen, frankly, are traditionally Democratic
 13 counties. They are offset in large part by the
 14 big population of Union county and the area of
 15 Mecklenburg county, but I can tell you the area
 16 of Cumberland county that is contained in
 17 District 9, if you evaluated state house seats
 18 are all three Democratic seats.
 19 So I would say that the -- even though
 20 the historic results gave an opportunity for the
 21 Republicans to win nine, it's by no means a slam
 22 dunk for them to win nine.
 23 Q. You did evaluate historic election results as to
 24 District 9 in looking at this map with
 25 Dr. Hofeller, or at least before the enactment

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1 of the map, correct?
 2 A. Yes, sir.
 3 Q. Did you evaluate the VTDs on the county line
 4 splits in Mecklenburg, Cumberland and Bladen
 5 counties?
 6 A. I don't remember specifically if I looked at
 7 them or not.
 8 Q. Consistent with your instructions to him, was
 9 Dr. Hofeller allowed under your instructions to
 10 move the county line -- the VTDs bordering the
 11 county line into or out of District 9 consistent
 12 with the instructions that you gave him for
 13 political impact?
 14 A. That would have been one of the criteria that he
 15 could have done it, yes.
 16 Q. So that is a district that -- well, what's the
 17 next district that you would consider a lesser
 18 opportunity for a Democratic candidate?
 19 A. The 3rd -- yes, the 3rd. If you'll look at what
 20 we refer to in North Carolina as the finger
 21 counties, which are Chowan, Perquimans,
 22 Pasquotank, Camden, Currituck, those are
 23 traditionally Democratic areas as well. Hyde
 24 county traditionally Democrat. Greene, Lenoir.
 25 The 3rd is certainly an opportunity for

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1 the right Democratic candidate to be able to run
 2 a competitive race.
 3 Q. That district also contains a county line split,
 4 correct?
 5 A. Yes, sir, it does.
 6 Q. Did you evaluate the performance of voter
 7 districts in Pitt county?
 8 A. I don't remember if I looked at them
 9 specifically or not.
 10 Q. But consistent with your instructions,
 11 Dr. Hofeller could move VTDs either into or out
 12 of District 3 in Pitt county for political
 13 impact, correct?
 14 A. Yes.
 15 Q. Are there any additional districts where a
 16 Democratic candidate has an opportunity to be
 17 elected?
 18 A. The next one would be the 6th district: Lee
 19 county. While it has one Democrat and one
 20 Republican in the state House is a pretty evenly
 21 divided county as far as how they perform voting
 22 wise. Chatham is a solid Democratic county.
 23 The area of the 6th that is in Guilford county
 24 is a pretty solid Democratic base.
 25 So I would say the 6th also provides an

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1 opportunity for a Democrat to be elected to
 2 Congress.
 3 Q. And as we discussed before, Guilford county also
 4 has a county line split, and that split, you
 5 testified earlier, addresses an incumbency issue
 6 for Representatives Walker and Adams; is that
 7 correct?
 8 A. That split is necessary to comply with the
 9 one-person, one-vote and apparently also
 10 separates Walker and Adams.
 11 Q. Did you evaluate the partisan performance of
 12 individual VTDs in Guilford county?
 13 A. I did when we made the change to take Walker and
 14 Adams out of the same district. And, frankly,
 15 doing that made the 6th, to the best of my
 16 memory, a -- the VTD that got included was a
 17 little bit of a higher performing Democratic VTD
 18 than the one that we took out.
 19 Q. And consistent with the districts that we
 20 earlier discussed, Dr. Hofeller, while still
 21 complying with all the instructions that you
 22 gave him, was able to or allowed to move
 23 individual VTDs from District 6 to District 13
 24 in Guilford county, or vice versa, for political
 25 impact; is that correct?

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1 A. Yes.

2 Q. Are there other districts where Democrats had an

3 opportunity to be elected?

4 A. You know, it's really hard to speculate. I've

5 already gone through almost half the map.

6 The 11th, which is sort of the mountain

7 district, has almost always -- I stand corrected

8 from something I said this morning.

9 I did realize that Heath Shuler briefly

10 represented that area, but for most of my

11 lifetime it's been a Republican stronghold just

12 based on past vote. The 10th is the same way.

13 So those are just -- those people just vote

14 Republican. The 13th, the same way.

15 The 8th -- the Hoke incumbent part of

16 the 8th are a little bit more inclined to vote

17 Democratic, but typically Rowan and Cabarrus and

18 Stanley and Montgomery typically vote

19 Republican. So I would say that was probably a

20 lesser opportunity for the Democrats to win.

21 The 7th I say would be a lesser

22 opportunity for them to win.

23 The 2nd -- the 2nd is a little more

24 competitive, and I probably should have

25 mentioned that.

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1 political impact from one district to another

2 district; is that correct?

3 A. Yes.

4 Q. And did you give Dr. Hofeller instructions to do

5 so consistent with the partisan advantage

6 criteria that was later adopted?

7 A. Along with the other criteria, yes.

8 Q. The second part of the sentence is "make no

9 mistake, this is a weaker map than the enacted

10 plan in that respect."

11 What's the basis for that statement?

12 A. Again, looking at historical data, this map is

13 much weaker as far as a Republican-performing

14 district in the 9th. It's much weaker in the

15 6th. It's much weaker in the 2nd.

16 So I don't remember, frankly, if the

17 11th or the 10th changed much, but in terms of

18 districts that had historical performance --

19 performing for Republicans, if I had access to

20 that stuff I could show you which ones, but this

21 is a weaker map than -- if you look district by

22 district only at historical data, in many of the

23 districts, historical data would have shown a

24 stronger Republican performance level than the

25 one will for this one.

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1 The Wake county area is not necessarily

2 a consistent historic Republican voting

3 precinct. Certainly Nash county is not.

4 Harnett county, my own, is pretty -- is

5 a county I would classify as trending Republican

6 but it's not rock solid. So the right candidate

7 in District 2 could make an impact as well

8 Q. Now, just as a -- we're both looking at

9 Deposition Exhibit 25. Does any district under

10 the 2016 Contingent Congressional Plan not

11 contain a county split?

12 A. Does any district not contain a county split?

13 Q. Is there any district without a county split?

14 A. 12. Mecklenburg is a county that has two, but

15 the 12th does not contain a split.

16 Q. That's correct. Thank you for the correction.

17 And the 12th is exactly the size that

18 the 12th needs to be because of the equal

19 population requirement, correct?

20 A. Correct. But the other answer to your question

21 is I believe all the other districts contain a

22 county split.

23 Q. Right. And the followup to that is where a

24 district contains a county split, there is the

25 opportunity to move individual VTDs based on

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1 Q. Under the 2011 map?

2 A. Yes, sir.

3 Q. Are there any districts that under the 2016 map

4 show a stronger Republican performance than the

5 2011 map?

6 A. Not that I recall.

7 Q. And from that you have characterized the map as

8 a whole as a weaker map in this statement?

9 A. Yes.

10 Q. If we could turn to Page 22, we're going to talk

11 about the 11th district again for a moment.

12 On Line 14, you say:

13 "The 11th, for instance, the

14 mountain district, really I think the

15 only change that was made there had to do

16 with trying to equalize some population

17 because additional population had been

18 pushed west, if you will, from the 10th

19 and from the 5th."

20 So those are the districts that border

21 11, and I presume that means 11 geographically

22 has to get a little bit smaller because it's got

23 more population; is that correct?

24 MR. FARR: If you know.

25 BY MR. THORPE:

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1 Q. What does it mean to try to equalize some
 2 population because additional population had
 3 been pushed west?
 4 A. Oh, so the Harris court didn't like the 2011
 5 drawing of the 12th. And essentially the 12th,
 6 think of it as a wall that basically ran through
 7 the state. So when that was gone, it let the --
 8 some of the population could flow west, and I
 9 think that's what I'm trying to say there.
 10 Q. And that population that had been in the 12th
 11 that extended up the state, some of it goes to
 12 the adjoining --
 13 A. Yes, sir.
 14 Q. Okay. So what changes did you observe to the
 15 11th in the 2016 plan as a result?
 16 A. I really don't recall. As I told you earlier
 17 today, the reason that's probably in my remarks
 18 is we made an effort to see if we could keep
 19 Buncombe county together. We could not figure
 20 out how to do that, and so it was probably just
 21 on my mind.
 22 I was probably trying to tell the
 23 members of the House that in terms of looking
 24 for the changes to the maps, 11 and 10 and 5
 25 were probably as pretty close to the old map or

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1 the enacted map as -- or more close -- more
 2 closely resembling them than the other -- the
 3 other districts are.
 4 Q. Whatever changes happened in District 11 in the
 5 2016 map, they would have had to happen in
 6 Buncombe county, correct?
 7 A. Sir, I don't have the enacted map in front of
 8 me. That sounds right, but I'm not -- I don't
 9 have the 2011 map, but that's my recollection.
 10 My recollection is that is basically the same.
 11 Q. Did you evaluate the partisan impact of whatever
 12 changes occurred in Buncombe county?
 13 A. Yes.
 14 Q. If you could turn to Page 29. In Line 6 you
 15 say:
 16 "To be clear, the map that you have
 17 before you was drawn using criteria that
 18 was openly debated and adopted by the
 19 Joint Redistricting Committee."
 20 You're making this statement on the
 21 19th as the House is considering whether to
 22 adopt the bill with the new districts?
 23 A. Yes.
 24 Q. The map that is being evaluated was drawn prior
 25 to the Joint Redistricting Committee meeting,

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1 correct?
 2 A. Yes.
 3 Q. And it was drawn by Dr. Hofeller on your
 4 instructions prior to the written criteria being
 5 adopted by the Joint Redistricting Committee,
 6 correct?
 7 A. Correct.
 8 And if I could pause one moment, the
 9 question you asked me before this, the only
 10 change that was made after the criteria was
 11 adopted was the Guilford county change. So
 12 there was that one change made.
 13 Q. Other than the Guilford county -- thank you for
 14 that.
 15 Other than the Guilford county change,
 16 the map being debated and voted on in this
 17 hearing had been drawn prior to the Joint
 18 Redistricting Committee meeting?
 19 A. That's right.
 20 Q. And it had been drawn prior to the criteria that
 21 were voted on by the Joint Redistricting
 22 Committee --
 23 A. That's right.
 24 Q. -- being -- I'm sorry, two separate questions.
 25 Prior to that criteria actually being

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1 written down?
 2 MR. FARR: Objection to the form.
 3 THE WITNESS: I believe that to be
 4 correct.
 5 BY MR. THORPE:
 6 Q. If you would turn to 31.
 7 MR. FARR: Page 31?
 8 MR. THORPE: Yes.
 9 BY MR. THORPE:
 10 Q. You explain -- actually, beginning at the bottom
 11 of Page 30 -- that you look at election results
 12 rather than political registration because
 13 election outcomes are much better predictors of
 14 how people actually vote than partisan
 15 registration is. You then discuss unaffiliated
 16 voters in North Carolina, which is similar to a
 17 discussion we had before.
 18 Do you consider for the likely partisan
 19 performance of any district the number of
 20 unaffiliated voters in a given district?
 21 A. I didn't in drawing this map. I can't say that
 22 I don't from time to time look at things like
 23 that.
 24 Q. But for purposes of drawing this map,
 25 registration data made no difference whatsoever?

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1 A. That's right.
 2 Q. The sole political data used were the historic
 3 election results?
 4 A. Yes, sir.
 5 Q. And where you say on Line 15 "I freely
 6 acknowledge that I sought partisan advantage as
 7 based on the criteria in drawing this map," you
 8 stand by that statement?
 9 A. Yes, sir.
 10 Q. Number -- Page Number 32, Line 16. I actually
 11 want to discuss a couple different statements.
 12 If you still have the committee transcripts in
 13 front of you, we're going to talk about
 14 something from that too, but on Line 16 you say:
 15 "But for the criteria adopted by
 16 the committee which instructed the map
 17 drawers to do certain things like try to
 18 maintain compactness, try to make -- you
 19 know, take incumbency into account, try
 20 to make the districts look more compact,
 21 be more compact, keep more counties
 22 compact, we could have been much more
 23 aggressive partisan-wise trying to obtain
 24 a map that would elect 11 Republicans.
 25 But you can't really do that if you

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1 simply consider partisanship as a part
 2 of the criteria, which is what we did."
 3 That was your testimony before the full
 4 House, correct?
 5 A. Yes.
 6 Q. And before the Joint Committee --
 7 MR. FARR: Is that Exhibit 34?
 8 MR. THORPE: Yes.
 9 MR. FARR: What's the date?
 10 MR. THORPE: The 16th.
 11 MR. FARR: Which would be Tab 1.
 12 BY MR. THORPE:
 13 Q. On Page 50, you are asked a question by Senator
 14 McKissick that actually begins on Page 49. It
 15 is discussing the partisan advantage criteria.
 16 And you respond to say "I propose" -- this
 17 begins on Line 7.
 18 "I propose that we draw the maps to
 19 give a partisan advantage to 10
 20 Republicans and 3 Democrats because I do
 21 not believe it's possible to draw a map
 22 with 11 Republicans and 2 Democrats."
 23 Do you recall that statement?
 24 A. Yes.
 25 Q. And in both circumstances you stand by that

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1 testimony?
 2 A. I stand by the testimony because, as I said, if
 3 you follow all the criteria, I don't know how
 4 you would create a different map than what we
 5 have.
 6 Q. Did you discuss whether it was possible either
 7 with Senator Rucho -- did you discuss with
 8 Senator Rucho whether it was possible to design
 9 an 11-2 map?
 10 A. Never seriously, but yes.
 11 Q. What does that mean?
 12 A. I never devoted much time because we didn't have
 13 it, but if your sole goal was to create a
 14 political draw, you could find a way to group
 15 enough people that would create Republican
 16 opportunity districts, if you will, but you
 17 would have to violate all the other criteria
 18 that we have.
 19 You certainly couldn't have kept 83
 20 counties intact. You couldn't only have 12
 21 split VTDs. So if -- you know, the gerrymander
 22 is what's at issue here.
 23 Certainly we knew also that the Harris
 24 court was going to look at this map, and when
 25 they look at this map, what I think they see is

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1 whole counties and lines that make sense, and we
 2 didn't want to take any chances to do anything
 3 extreme that would throw it out.
 4 So again, all the criteria are
 5 followed, and if all the criteria are followed,
 6 I don't see how you would make an 11 -- how you
 7 would provide opportunities for 11 Republicans,
 8 perhaps, to win.
 9 Q. So in your view, constrained by the other
 10 criteria, 10-3 is the best you can do?
 11 A. I don't know if I would use the word
 12 "constrained." I would say consistent with all
 13 the criteria that I provided Hofeller and the
 14 committee agreed with and adopted and
 15 harmonizing those together, then the map is what
 16 it is.
 17 Q. Constrained by the other criteria, the
 18 opportunity to elect, as you defined it, 10
 19 Republicans to congressional seats is the
 20 maximum number of seats that the partisan
 21 advantage criteria will allow?
 22 MR. FARR: I'm going to object to that
 23 question.
 24 You can answer.
 25 THE WITNESS: I believe I already have,

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1 but I'll say yes.
 2 BY MR. THORPE:
 3 Q. Did you consider any maps that were likely to
 4 elect 9 Republicans and 4 Democrats?
 5 A. Yes.
 6 Q. When did you consider those maps?
 7 A. One of the scenarios that I looked at with
 8 Dr. Hofeller would have accomplished that, but
 9 it would have been at the expense of splitting
 10 more counties and more VTDs.
 11 Q. You did not evaluate any maps with an equal
 12 number of county or VTD splits that would have
 13 elected fewer -- would have likely elected fewer
 14 than 10 Republicans?
 15 A. I'm sorry. I don't understand the question.
 16 You just asked me if we looked at a 9-4
 17 map and I said we did. So, yes, we looked at a
 18 map that gave us a stronger likelihood of
 19 electing 9 Republicans. If you're going to --
 20 you know, but it would have violated the other
 21 criteria.
 22 Q. So the only change to my second question was:
 23 Did you evaluate any maps with an equal number
 24 of county and VTD splits to this map?
 25 A. No. And I'm sorry, I misunderstood.

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1 Q. No, that's okay.
 2 Back in your House testimony --
 3 A. May I ask my attorney a question. I don't mind
 4 you listening to what I'm going to say.
 5 It might be possible to ask my staff,
 6 Mark, to see if the meeting with the governor's
 7 people can be pushed back. I know he's not
 8 finished. I don't mind trying to get this done
 9 today.
 10 MR. FARR: How much time do you think
 11 you need?
 12 MR. THORPE: Significant enough that --
 13 MR. BONDURANT: I think you probably
 14 ought to go with the meeting and we'll split it
 15 and come back if we need to.
 16 THE WITNESS: Yes, sir, I'll be more
 17 than glad to do that.
 18 I'm sorry, I've tried to answer the
 19 questions that you have, and I'm sorry that I
 20 asked you to stop them.
 21 MR. BONDURANT: You've done the best
 22 you can. We work together on this.
 23 BY MR. THORPE:
 24 Q. In your House floor session testimony, which is
 25 from the 19th and that we were previously in --

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1 this is on Page 34.
 2 A. Yes, sir.
 3 Q. -- you sort of expand on what you have
 4 previously discussed as a rationale for the
 5 partisan advantage criteria. On Line 16 you
 6 say:
 7 "I will tell you that the committee
 8 adopted the criteria -- adopt criteria,
 9 one of which was to seek partisan
 10 advantage for the Republicans. Now, if
 11 you ask me personally if I think that is
 12 a good thing, I will tell you I do.
 13 "I think you are a great man."
 14 You are referring to the person asking
 15 the question.
 16 "I think you are a fine public
 17 servant. I think electing Republicans is
 18 better than electing Democrats. So I
 19 drew this map in a way to help foster
 20 what I think is better for the country."
 21 Now, earlier you testified that
 22 partisan politics is just an inevitable
 23 consideration in redistricting. Here it seems
 24 like you are testifying that maximizing
 25 Republican advantage has a separate benefit.

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1 MR. FARR: Objection to the form.
 2 I also would like to point out that
 3 he's referring to Representative Martin. I'd
 4 like to make that clear because I think he's a
 5 great guy too.
 6 THE WITNESS: So would you ask the
 7 question again.
 8 BY MR. THORPE:
 9 Q. Does this testimony provide in your view a
 10 reason for partisan advantage as a criteria in
 11 the 2016 redistricting?
 12 A. I stand by this statement. I would point out
 13 only that it may have been said in a little more
 14 cavalier fashion than was dignified on the House
 15 floor.
 16 Representative Martin and I, although
 17 we're political adversaries, are personal
 18 friends. I've been to his home.
 19 This was more the kind of conversation
 20 that we should have had outside and not on the
 21 floor, but, yes, I mean, I stand by what I said.
 22 Q. And then on Page 37, Line 18, you're asked again
 23 by Representative Martin:
 24 "Are there any races that are not
 25 listed on these charts that the mapmakers

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1 considered?"

2 And I assume that Representative Martin

3 is there referring to the stat pack that

4 contains the basket of races we've been

5 discussing; is that correct?

6 A. He was.

7 Q. And your response is: "No, sir"?

8 A. Which is accurate.

9 Q. And you did not consider any other races and you

10 did not instruct Dr. Hofeller to consider other

11 races?

12 A. Correct.

13 Q. Did you instruct Dr. Hofeller to use all of the

14 races that were provided in the stat pack?

15 A. No, I did not.

16 Q. At Line 3 of this same page, Representative

17 Martin asks you:

18 "Representative Lewis, would it be

19 accurate to say that the mapmakers

20 considered every one of the races that's

21 listed in the charts that were presented

22 at committee several times."

23 And you respond: "Yes, sir."

24 Is that correct?

25 A. I did respond to that by saying "Yes, sir."

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1 Looking back, perhaps the answer would have been

2 "I assume so" or "I think so."

3 Q. When did you learn that not all the races listed

4 in those charts were used in constructing the

5 2016 maps?

6 A. Well, to be candid, I don't know that I ever

7 learned that. I'm just saying when I looked at

8 the maps, to make it simpler for me,

9 Dr. Hofeller would just turn on the Tillis-Hagan

10 thing. I don't really know what he looked at.

11 Q. You did not instruct and the written criteria do

12 not instruct every one of the races to be used?

13 A. That's correct.

14 Q. You have testified a couple times today that

15 partisanship is an inevitable part of the

16 redistricting process.

17 Is that a correct assessment of your

18 testimony?

19 A. Yes, sir.

20 Q. And -- well, I'll just -- if we could mark as

21 Exhibit 41 a printout of a recent news article

22 that I will ask you about a quote. And then

23 this is on Page 4, but if you want to take a

24 minute to read through the article, I have, of

25 course, no objection.

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1 (WHEREUPON, Plaintiffs' Exhibit 41 was

2 marked for identification.)

3 THE WITNESS: No, I'm fine.

4 BY MR. THORPE:

5 Q. So on Page 4, beneath the large block of space,

6 you are quoted as saying:

7 "I think partisanship is an

8 inherent part of who we are, and I think

9 it will always have some role in the

10 decisions that we make and that includes

11 redistricting. It should not be a

12 predominant factor, but it will always

13 be a factor. Whether you acknowledge it

14 or not, it will always be a factor, and

15 to not acknowledge that is either naive

16 or dishonest."

17 Were you accurately quoted in this

18 article?

19 A. Yes.

20 Q. And do you stand by that statement?

21 A. I do.

22 Q. When you say it's an inherent part of who we

23 are, what do you mean?

24 A. We're all the sum of our parts. The collective

25 being of my political lens that I apply to taxes

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1 or to spending or to whatever is going to

2 largely reflect the Republican label behind my

3 name. So I -- when I make decisions, that is

4 the honest way to reflect the lens or the method

5 by which I make those decisions.

6 Q. And how does that belief that it's an inherent

7 part of who we are translate to the

8 redistricting process that you reference in this

9 quote?

10 A. While you only divide -- you know, you've got to

11 do the one-person, one-vote thing. It would be

12 dishonest and naive of me to say that where you

13 put a line in X county may not affect the

14 balance of a congressional district. So if I

15 have a different political philosophy or I have

16 no political philosophy that I'm willing to

17 acknowledge, still whatever you put a line for

18 whatever purpose will have political impact.

19 I just -- it would be easy -- believe

20 me, I want to embrace and be able to say that I

21 think the non-partisan thing is a great thing.

22 People love to hear about that.

23 I think it's more honest to say I'm

24 going to follow the law, and I'm going to follow

25 everything that's required of me by the law ,

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1 but if there is a -- if there is a discretionary
 2 decision to make, I will make it through the
 3 lens of an elected Republican.
 4 Q. And do you consider the inclusion of partisan
 5 advantage as a criteria in the 2016 Contingent
 6 Congressional Plan -- used to adopt the 2016
 7 Contingent Congressional Plan such a
 8 discretionary decision?
 9 A. Yes.
 10 Q. Do you consider any of the other criteria in the
 11 2016 adopted criteria a discretionary decision?
 12 A. Largely, yeah. I mean, you can draw -- you
 13 know, I chose to apply the definition of
 14 compactness that I believe, which is trying to
 15 keep as many counties whole as we can. If I had
 16 not had that as a goal, I think we could have
 17 still drawn a pretty map; it just -- maybe it's
 18 just stripes through the state. I don't know.
 19 I think that these -- these -- other
 20 than the equal population that these were
 21 considered and balanced and harmonized together
 22 and produced a map that to the eye of a judge I
 23 think they recognized that we tried to follow
 24 the instructions they gave us, which were very
 25 limited.

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1 Q. So if we could, I think it's valuable to address
 2 those criteria one by one on the question that
 3 we just discussed.
 4 This is -- I'm not looking at in
 5 Exhibit 24, but I think the actual criteria are
 6 Exhibit 24.
 7 A. Yes, sir, they are.
 8 Q. Equal population, observing the equal population
 9 requirement is not a discretionary decision,
 10 correct?
 11 A. In my opinion it is not.
 12 Q. Is requiring contiguous territory a
 13 discretionary decision?
 14 A. I believe it is a traditional redistricting
 15 criteria.
 16 Q. And as a traditional redistricting criteria,
 17 your understanding is that the use of a
 18 traditional redistricting criteria like
 19 contiguity will be a factor in assessing the
 20 likelihood that a court will allow a given plan;
 21 is that correct?
 22 A. Yes, sir.
 23 Q. But is it discretionary?
 24 A. You know, I'm not as familiar with the law as
 25 some folks are. Obviously I've always believed

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1 that the districts were supposed to touch. I
 2 know there's been some drawn in the past that
 3 didn't touch. Those weren't found to be
 4 constitutional.
 5 So, I mean, I certainly think -- I
 6 can't cite you a case. I'm not an attorney. So
 7 I will just say it's a traditional redistricting
 8 principle.
 9 Q. For the 2016 Contingent Congressional Plan
 10 Adopted Criteria, did you consider the use of
 11 political data as opposed to any other data
 12 discretionary?
 13 A. I consider the use of political data to
 14 reemphasize that we in no way were using racial
 15 data, which is the whole point of the Harris
 16 case. So I do think it is absolutely necessary
 17 to point out that the only data other than the
 18 population that can be used would be political,
 19 which means you can't use race.
 20 So, yeah, I think that was essential to
 21 complying with the Harris order.
 22 Q. Okay. We began this discussion with partisan
 23 advantage. Did you think it was discretionary
 24 whether this plan needed to address the shape of
 25 the 12th district?

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1 A. No. I thought that was a requirement of the
 2 Harris court.
 3 Q. Did you think it was discretionary whether the
 4 plan needed to meet some measure of compactness?
 5 A. I think to a judge or to the general public or
 6 to any interesting -- interested person, a map
 7 that looks pretty and seems to flow will have a
 8 better chance of being accepted.
 9 So as to compactness, again, I can't
 10 really -- I could not really find a definition
 11 of compactness that was consistently applied.
 12 So I would say that the concept, as abstract as
 13 it might be, of compactness is a traditional
 14 redistricting criteria, but I don't really think
 15 there's a uniform way to define what that is.
 16 Q. Understood. But as a -- finding some measure of
 17 compactness, you felt that was necessary for the
 18 2016 adopted criteria?
 19 MR. FARR: Objection to the form.
 20 BY MR. THORPE:
 21 Q. Did you think -- could you have asked your -- in
 22 drafting the 2016 adopted criteria, did you feel
 23 you had discretion as to whether compactness
 24 would be one of the criteria?
 25 A. I didn't think there was anything that was

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1 absolutely requiring us to consider compactness
 2 other than in previous court cases the word
 3 "compactness" had been used often.
 4 Q. And so similar to your response on contiguity,
 5 one of the things you considered about
 6 compactness was it may be a factor that weighed
 7 in favor of or against a court allowing the 2016
 8 plan?
 9 A. Yes.
 10 Q. And finally, incumbency, did you consider
 11 incumbency a discretionary choice that you made
 12 in drafting the 2016 adopted criteria?
 13 A. I think it is a traditional redistricting
 14 criteria. We were trying to comply with the
 15 court order, not pick a fight with the members
 16 of Congress, so that's why I did that.
 17 MR. THORPE: Okay. We're good.
 18 (Discussion held off the reporter's
 19 written record.)
 20 MR. FARR: We can go off the record.
 21 THE VIDEOGRAPHER: Off the record at
 22 3:44 p.m.
 23 [SIGNATURE RESERVED]
 24 [DEPOSITION CONCLUDED AT 3:44 P.M.]
 25

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1 A C K N O W L E D G E M E N T O F D E P O N E N T
 2
 3 I, DAVID LEWIS, declare under the penalties of
 4 perjury under the State of North Carolina that I have read
 5 the foregoing pages, which contain a correct transcription
 6 of answers made by me to the questions therein recorded,
 7 with the exception(s) and/or addition(s) reflected on the
 8 correction sheet attached hereto, if any.
 9 Signed this the day of , 2017.
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DAVID LEWIS

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1 E R R A T A S H E E T
 2 Case Name: Common Cause v Rucho / LWV NC v Rucho
 3 Witness Name: DAVID LEWIS
 4 Deposition Date: Thursday, January 26, 2017
 5
 6 Page/Line Reads Should Read
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 25 Signature Date

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1 S T A T E O F N O R T H C A R O L I N A)
 2) C E R T I F I C A T E
 3 C O U N T Y O F W A K E)
 4
 5 I, DENISE MYERS BYRD, Court Reporter and Notary
 6 Public, the officer before whom the foregoing proceeding was
 7 conducted, do hereby certify that the witness(es) whose
 8 testimony appears in the foregoing proceeding were duly
 9 sworn by me; that the testimony of said witness(es) were
 10 taken by me to the best of my ability and thereafter
 11 transcribed under my supervision; and that the foregoing
 12 pages, inclusive, constitute a true and accurate
 13 transcription of the testimony of the witness(es).
 14 I do further certify that I am neither counsel for,
 15 related to, nor employed by any of the parties to this
 16 action, and further, that I am not a relative or employee of
 17 any attorney or counsel employed by the parties thereof, nor
 18 financially or otherwise interested in the outcome of said
 19 action.
 20 This the 14th day of February 2017.
 21
 22
 23
 24
 25

Denise Myers Byrd
 CSR 8340, RPR, CLR 102409-02

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Exhibit C

2016 Contingent Congressional Plan Committee Adopted Criteria

Equal Population

The Committee will use the 2010 federal decennial census data as the sole basis of population for the establishment of districts in the 2016 Contingent Congressional Plan. The number of persons in each congressional district shall be as nearly as equal as practicable, as determined under the most recent federal decennial census.

Contiguity

Congressional districts shall be comprised of contiguous territory. Contiguity by water is sufficient.

Political data

The only data other than population data to be used to construct congressional districts shall be election results in statewide contests since January 1, 2008, not including the last two presidential contests. Data identifying the race of individuals or voters shall not be used in the construction or consideration of districts in the 2016 Contingent Congressional Plan. Voting districts (“VTDs”) should be split only when necessary to comply with the zero deviation population requirements set forth above in order to ensure the integrity of political data.

Partisan Advantage

The partisan makeup of the congressional delegation under the enacted plan is 10 Republicans and 3 Democrats. The Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan to maintain the current partisan makeup of North Carolina’s congressional delegation.

Twelfth District

The current General Assembly inherited the configuration of the Twelfth District from past General Assemblies. This configuration was retained because the district had already been heavily litigated over the past two decades and ultimately approved by the courts. The Harris court has criticized the shape of the Twelfth

District citing its “serpentine” nature. In light of this, the Committee shall construct districts in the 2016 Contingent Congressional Plan that eliminate the current configuration of the Twelfth District.

Compactness

In light of the Harris court’s criticism of the compactness of the First and Twelfth Districts, the Committee shall make reasonable efforts to construct districts in the 2016 Contingent Congressional Plan that improve the compactness of the current districts and keep more counties and VTDs whole as compared to the current enacted plan. Division of counties shall only be made for reasons of equalizing population, consideration of incumbency and political impact. Reasonable efforts shall be made not to divide a county into more than two districts.

Incumbency

Candidates for Congress are not required by law to reside in a district they seek to represent. However, reasonable efforts shall be made to ensure that incumbent members of Congress are not paired with another incumbent in one of the new districts constructed in the 2016 Contingent Congressional Plan.

Exhibit D

NORTH CAROLINA GENERAL ASSEMBLY
JOINT COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Tuesday, February 16, 2016
Reported by Carol M. Smith

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

2	<p>1 SEN. RUCHO: Let's come to order for a 2 few moments. Would everybody please take their 3 seats? We're going to have about a 10- or 15- 4 minute break to get some papers printed up and 5 ready to go as a part of our agenda, but what we 6 will do first is identify the Sergeant-at-Arms that 7 are here today. We've got -- for the House side, 8 we've got Reggie Sills, Marvin Lee, David Layden 9 and Terry McCraw, and then we've got our Senate 10 Sergeant-at-Arms Jim Hamilton, Ed Kesler and Hal 11 Roach. These folks help us make this meeting 12 organized and run efficiently, and we wouldn't be 13 able to do a good job without them.</p> <p>14 I appreciate everybody yesterday coming 15 out and helping us accomplish our public hearing. 16 We had a lot of good thoughts and advice, and I 17 hope that you've taken some time to read the public 18 comments that came over the Internet so that we can 19 be able to talk about the subject matter on an 20 intelligent level.</p> <p>21 Representative Lewis and I want to again 22 remark about the fact that the staff has done a 23 remarkable job for us in putting together 24 yesterday's public hearing and this meeting, and 25 the IT folks were miracle workers in trying to</p>	4	<p>1 SEN. MCKISSICK: Here. 2 CLERK: Senator Smith? 3 SEN. SMITH: Here. 4 CLERK: Senator Smith-Ingram? 5 SEN. SMITH-INGRAM: Present. 6 CLERK: Senator Wells? 7 SEN. WELLS: Here. 8 CLERK: Senator Blue? 9 SEN. BLUE: Here. 10 CLERK: Senator Ford? 11 (No response.) 12 CLERK: Senator Ford? 13 (No response.) 14 CLERK: Senator Wade? 15 (No response.) 16 CLERK: Senator Barefoot? 17 SEN. BAREFOOT: Here. 18 CLERK: Senator Randleman? 19 SEN. RANDLEMAN: Here. 20 CLERK: Senator Jackson? 21 SEN. JACKSON: Here. 22 CLERK: Representative Lewis? 23 REP. LEWIS: Here. 24 CLERK: Representative Jones? 25 REP. JONES: Here.</p>
3	<p>1 coordinate six sites plus Raleigh to do a good job 2 and allow us to be able to reach out across the 3 state with this public hearing that is -- that was 4 yesterday, and it was successful, and we're 5 thrilled that they could do such a good job for us.</p> <p>6 All right, the first point -- and I'm 7 going to have Mr. Verbiest, our clerk, do a roll 8 call, and would you just, as your name is 9 mentioned, please recognize it, or if we hear 10 quiet, we know you're not here.</p> <p>11 CLERK: Senator Sanderson? 12 SEN. SANDERSON: Present. 13 CLERK: Senator Brown? 14 SEN. BROWN: Here. 15 CLERK: Senator Apodaca? 16 (No response.) 17 CLERK: Senator Clark? 18 SEN. CLARK: Present. 19 CLERK: Senator Harrington? 20 SEN. HARRINGTON: Here. 21 CLERK: Senator Hise? 22 SEN. HISE: Here. 23 CLERK: Senator Lee? 24 SEN. LEE: Here. 25 CLERK: Senator McKissick?</p>	5	<p>1 CLERK: Representative Hager? 2 REP. HAGER: Here. 3 CLERK: Representative Stevens? 4 REP. STEVENS: Here. 5 CLERK: Representative Hurley? 6 REP. HURLEY: (No response.) 7 CLERK: Representative Stam? 8 REP. STAM: Here. 9 CLERK: Representative Jordan? 10 REP. JORDAN: Here. 11 CLERK: Representative Johnson? 12 REP. JOHNSON: Here. 13 CLERK: Representative Brawley? 14 REP. BRAWLEY: Present. 15 CLERK: Representative Hardister? 16 REP. HARDISTER: Here. 17 CLERK: Representative Davis? 18 REP. DAVIS: Here. 19 CLERK: Representative McGrady? 20 REP. MCGRADY: Here. 21 CLERK: Representative Michaux? 22 REP. MICHAUX: Here. 23 CLERK: Representative Cotham? 24 REP. COTHAM: Here. 25 CLERK: Representative Hanes?</p>

<p style="text-align: right;">6</p> <p>1 REP. HANES: Here. 2 CLERK: Representative Moore? 3 REP. MOORE: Here. 4 CLERK: Representative Farmer- 5 Butterfield? 6 REP. FARMER-BUTTERFIELD: Here. 7 CLERK: Representative Dixon? 8 (No response.) 9 CLERK: Representative Hurley? 10 REP. HURLEY: Right here. 11 CLERK: Thank you. 12 SEN. RUCHO: And I think my name was 13 omitted, so I might just mention the fact that I'm 14 here today -- 15 CLERK: Yes. Sorry. 16 SEN. RUCHO: -- despite a long day 17 yesterday. All right. 18 We've got some work to do today. We've 19 got just about 15 minutes, and may I ask you to 20 just stay at ease for about 15 minutes, and then we 21 will begin the meeting and have a full agenda 22 before us. 23 Representative Lewis, do you have any 24 other thoughts or comments you'd like to share? 25 REP. LEWIS: No.</p>	<p style="text-align: right;">8</p> <p>1 so under the circumstances, we are taking a 2 precaution, and we anticipate some reaction from 3 the Supreme Court on the motion for stay which will 4 allow the election to continue forward, and then 5 allow the court case to continue on its normal 6 course, which would be, in my judgment, a better 7 way to go, since the election has already been 8 started, and we don't want to disenfranchise the 9 voters in any manner. 10 That being said, we are going to begin 11 our agenda. Representative Lewis, would you have 12 any comments at this time? 13 REP. LEWIS: No, sir. 14 SEN. RUCHO: No? Okay. Then we're going 15 to go on to the second, which is discussion of the 16 criteria of the 2016 Contingent Congressional Maps, 17 and what these are, are criteria as to how these 18 maps should be drawn to try to meet the 19 requirements imposed by the Court and also remain 20 within the legal limits of the law. Representative 21 Lewis? 22 REP. LEWIS: Mr. Chairman, ladies and 23 gentlemen of the Joint Select Committee on 24 Congressional Redistricting and members of the 25 public, I too would like to offer a brief</p>
<p style="text-align: right;">7</p> <p>1 SEN. RUCHO: Okay. Then just at ease for 2 about 10 to 15 minutes. Thank you. 3 (DISCUSSION OFF RECORD) 4 SEN. RUCHO: Spend a few minutes taking a 5 look at that, and see from its beginning on through 6 the latest maps what has transpired. I think it 7 would be very educational. Thank you. 8 (RECESS, 10:14 - 10:23 A.M.) 9 SEN. RUCHO: All right, let's call this 10 Joint Select Committee on Redistricting back into 11 order. You have a copy of the agenda before you, 12 and there's just one correction on the agenda. On 13 the right quadrant, under Senate, it had Harry 14 Warren. It should be Senator Harry Brown, so fix 15 that. Okay. 16 Well, yesterday we had a chance to have a 17 public hearing, and I think each of you knows that 18 the General Assembly, based on the Harris case, 19 there was an opinion given by the three-judge 20 panel, and we are responding to that. We still 21 believe that the maps that are presently enacted 22 are fair, legal, and constitutional, as has been 23 validated by five different bodies, including the 24 Justice Department, including a three-judge panel, 25 including the Supreme Court on three occasions, and</p>	<p style="text-align: right;">9</p> <p>1 historical perspective on what brings us here 2 today. 3 In 2011, after the release of the Census, 4 this General Assembly set out to create fair and 5 legal Congressional districts. In doing so, the 6 2011 process included an unprecedented number of 7 public hearings, 36 scheduled before the release of 8 the maps, 7 after the release of our original 9 proposed districts, 10 dedicated to receiving 10 public comment on the release of the entire plan, 11 and an additional 10 after the release of our 12 respective proposals for the legislative districts. 13 Additionally, we provided easy public 14 access for public comment via the North Carolina 15 General Assembly Web site, and invited additional 16 written comments through both e-mail and the US 17 Postal Service. Senator Rucho and I thank the 18 thousands of citizens who exercised their right to 19 offer comments at that set of public hearings or 20 submit written comments. All of those comments 21 were reviewed by the chairs and preserved as a 22 permanent record of citizen input on this important 23 task. 24 We also took back then the unprecedented 25 step of providing the leadership of the minority</p>

<p style="text-align: right;">10</p> <p>1 parties in the House and the Senate and the 2 Legislative Black Caucus specialized computer 3 hardware and software in their respective offices, 4 along with staff support which was available to all 5 members. The 2011 General Assembly did ultimately 6 adopt redistricting plans, as I recall, largely 7 along party lines, as unfortunately, so many items 8 here are decided.</p> <p>9 For purposes of my discussion today, I 10 will refer to the 2011 plans as the enacted plans. 11 The enacted congressional redistricting plan of 12 2011 was first precleared by the United States 13 Department of Justice, as was required by Section 5 14 of the Voting Rights Act. The enacted 15 Congressional redistricting plan was then 16 challenged in state courts through what is known as 17 the Dixon versus Rucho case. The plan was affirmed 18 by a three-judge panel and by the North Carolina 19 Supreme Court.</p> <p>20 The enacted Congressional redistricting 21 plan has been used to elect members of the US House 22 of Representatives in 2012 and 2014, and has also 23 seen citizens file for election in each of the 13 24 districts this year. Further, voting has begun, 25 and we are informed by the State Board of Elections</p>	<p style="text-align: right;">12</p> <p>1 70 speakers participating. There were also more 2 than 80 comments submitted online.</p> <p>3 The chairs thank all the citizens who 4 participated yesterday. The chair reminds the 5 members that the written comments have been placed 6 on the General Assembly's Web site, and a link e- 7 mailed to each of your e-mail accounts.</p> <p>8 Mr. Chairman, at your direction, I would 9 like to submit to the committee a series of 10 proposals to establish criteria for the drawing of 11 the 2016 contingent Congressional map.</p> <p>12 SEN. RUCHO: Yes, sir, Chairman Lewis. 13 You can begin and go through the rotation as -- as 14 you planned.</p> <p>15 REP. LEWIS: Mr. Chairman, I'd like staff 16 to distribute the 2016 Congressional -- pardon 17 me -- the 2016 contingent Congressional plan 18 proposed criteria, beginning with "Equal 19 Population," to the members.</p> <p>20 SEN. RUCHO: Sergeant-at-Arms will be 21 passing this out, and we're going to take our time, 22 read it thoroughly, and then -- so Representative 23 Lewis will explain it, and then we'll debate each 24 of them as we move forward. (Pause.) 25 Has everyone received a copy of the first</p>
<p style="text-align: right;">11</p> <p>1 that more than 16,000 citizens have already 2 requested to vote by mail.</p> <p>3 Unfortunately, the enacted plan was 4 challenged again in what is known as the Harris 5 versus McCrory case. In that decision, in which we 6 respectfully disagree with the three-judge panel, 7 it was found that the 1st Congressional District 8 and the 12th Congressional District are racial 9 gerrymanders, and they ordered new maps be drawn by 10 February 19th, and that the election for US House 11 not be held under the current maps.</p> <p>12 While, as Chairman Rucho said, we are 13 confident that a stay of this decision, which 14 interrupts an election already in progress, will be 15 granted, and that the enacted map will ultimately 16 be upheld on appeal, we are required to begin the 17 process of drawing a 2016 contingent Congressional 18 map. I reiterate that while the 2011 plan was 19 dictated by the Cromartie and Strickland decisions 20 of the US Supreme Court, we will move forward to 21 establish a plan based on the Harris opinion.</p> <p>22 The process -- this process began with 23 the appointment of this joint select committee, and 24 continued yesterday with the public hearings held 25 in six locations across the state, with more than</p>	<p style="text-align: right;">13</p> <p>1 one? They're not in any order as far as priorities 2 or anything. They're just going to be set forward.</p> <p>3 VARIOUS COMMITTEE MEMBERS: No, no.</p> <p>4 SEN. RUCHO: Okay. Hang on. This first 5 one is called "Equal Population." (Pause.)</p> <p>6 All right, does everyone have a copy 7 that -- now, let's be clear. Ladies and gentlemen 8 in the audience, the members of the committee will 9 be participating within this meeting. I know we 10 have a number of members that have come here with 11 interest, and we're delighted to have them, and 12 recognize that every member that is here can submit 13 a reimbursement form, but the people that are on 14 the committee will be the ones participating in 15 today's business activity of this committee 16 meeting.</p> <p>17 All right, Representative Lewis, first 18 one.</p> <p>19 REP. LEWIS: Mr. Chairman, as I explain 20 this one, I would request that the Sergeant-at-Arms 21 go ahead and distribute the second one, which is 22 entitled "Contiguity."</p> <p>23 Mr. Chairman, the first criteria that I 24 would urge the committee to adopt is that each 25 district should be of equal population. This is</p>

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<p>1 pretty self-explanatory. This is in line with one 2 person, one vote. It simply says, as members can 3 read, that the number of persons in each 4 Congressional district shall be as near equal as 5 practicable, as determined under the most recent 6 Census, which of course would be the 2010 Census. 7 Mr. Chairman, I move adoption of this criteria. 8 REP. STEVENS: Are you waiting for a 9 second? 10 SEN. RUCHO: I've got a motion from 11 Representative Lewis to move forward with this 12 adoption of this first equal -- equal population. 13 Representative Stevens, thank you. We've got a 14 second. Discussion, ladies and gentlemen? 15 (No response.) 16 SEN. RUCHO: All right, I see none. All 17 in favor of the adoption of the equal population -- 18 yes. I'll go back. We're going to go ahead and 19 we're going to do roll-call vote on this. And so 20 I'm saying we're going to have a roll call from the 21 clerk on the equal population. Please identify -- 22 or just say "Aye" or "Nay," please. Mr. Verbiest? 23 CLERK: Senator Rucho? 24 SEN. RUCHO: Aye. 25 CLERK: Chairman Lewis?</p>	<p>1 CLERK: Representative Jordan? 2 REP. JORDAN: Aye. 3 CLERK: Representative McGrady? 4 REP. MCGRADY: Aye. 5 CLERK: Representative Michaux? 6 REP. MICHAUX: No. 7 CLERK: Representative Moore? 8 REP. MOORE: Aye. 9 CLERK: Representative Stam? 10 REP. STAM: Aye. 11 CLERK: Representative Stevens? 12 REP. STEVENS: Aye. 13 CLERK: Representative Dixon? 14 (No response.) 15 SEN. RUCHO: You do have Senator Apodaca 16 is here now? 17 CLERK: Yes, I do. 18 SEN. RUCHO: Okay. 19 CLERK: Senator Apodaca? 20 SEN. APODACA: Aye. 21 CLERK: Senator Barefoot? 22 SEN. BAREFOOT: Aye. 23 CLERK: Senator Blue? 24 SEN. BLUE: Aye. 25 CLERK: Senator Brown?</p>
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<p>1 REP. LEWIS: Aye. 2 CLERK: Representative Jones? 3 REP. JONES: Aye. 4 CLERK: Representative Brawley? 5 REP. BRAWLEY: Aye. 6 CLERK: Representative Cotham? 7 REP. COTHAM: Aye. 8 CLERK: Representative Davis? 9 REP. DAVIS: Aye. 10 CLERK: Representative Farmer- 11 Butterfield? 12 REP. FARMER-BUTTERFIELD: Aye. 13 CLERK: Representative Hager? 14 REP. HAGER: Aye. 15 SEN. RUCHO: Please speak up, please. 16 CLERK: Representative Hanes? 17 REP. HANES: Aye. 18 CLERK: Representative Hardister? 19 REP. HARDISTER: Aye. 20 CLERK: Representative Hurley? 21 REP. HURLEY: Aye. 22 CLERK: Representative Jackson? 23 REP. JACKSON: Aye. 24 CLERK: Representative Johnson? 25 REP. JOHNSON: Aye.</p>	<p>1 SEN. BROWN: Aye. 2 CLERK: Senator Clark? 3 SEN. CLARK: Aye. 4 CLERK: Senator Ford? 5 (No response.) 6 CLERK: Senator Harrington? 7 SEN. HARRINGTON: Aye. 8 CLERK: Senator Hise? 9 SEN. HISE: Aye. 10 CLERK: Senator Jackson? 11 SEN. JACKSON: Aye. 12 CLERK: Senator Lee? 13 SEN. LEE: Aye. 14 CLERK: Senator McKissick? 15 SEN. MCKISSICK: Aye. 16 CLERK: Senator Randleman? 17 SEN. RANDLEMAN: Aye. 18 CLERK: Senator Sanderson? 19 SEN. SANDERSON: Aye. 20 CLERK: Senator Smith? 21 SEN. SMITH: Aye. 22 CLERK: Senator Smith-Ingram? 23 SEN. SMITH-INGRAM: Aye. 24 CLERK: Senator Wade? 25 (No response.)</p>

<p style="text-align: right;">18</p> <p>1 CLERK: Senator Wells? 2 SEN. WELLS: Aye. 3 CLERK: Only one nay. 4 SEN. RUCHO: Okay. Ladies and gentlemen, 5 we had the roll vote, and there was just one 6 negative, so the first criteria establishing equal 7 population has passed. All right. Representative 8 Lewis? 9 REP. LEWIS: Thank you, Mr. Chairman. 10 Mr. Chairman, the next criteria I propose the 11 committee adopt -- adopt is "Contiguity." This 12 simply says that -- 13 REP. STEVENS: Mr. Chairman, we don't 14 have copies of it yet. 15 SEN. RUCHO: I'm sorry? Please repeat 16 that again. You don't have the second? 17 REP. STEVENS: I do not have a copy, and 18 perhaps I'm sitting a little out of the way. 19 SEN. RUCHO: Okay. Sergeant-at-Arms, 20 would someone please get the contiguity criteria? 21 REP. LEWIS: Mr. Chairman, if it pleases 22 the Chair, I would respectfully request that -- the 23 next criteria I intend to offer is "Political 24 Data." If that could be distributed to the 25 committee, perhaps to save a little time?</p>	<p style="text-align: right;">20</p> <p>1 REP. LEWIS: Senator Blue, thank you for 2 that question. Let me be clear that it does not, 3 and I would be opposed to any form of single-point 4 contiguity has been ruled as not a legal form of 5 mapmaking in the past. 6 SEN. RUCHO: Follow-up? 7 SEN. BLUE: Does it contemplate any 8 minimal distance on the water that is used to 9 determine that geographically, areas are 10 contiguous? 11 REP. LEWIS: Senator Blue, I don't 12 believe it contemplates the Atlantic Ocean, but, I 13 mean, as you know, sir, we have beautiful sounds in 14 our state that that is a community, and so the 15 water -- I can't give you an exact -- an exact 16 definition of how much water is too much water. 17 SEN. BLUE: Last point. 18 SEN. RUCHO: Follow-up? 19 SEN. BLUE: Does it contemplate the point 20 in the Cape Fear River in one of your counties 21 that's currently used as a basis for connecting 22 geographically parts of the 4th Congressional 23 District? 24 REP. LEWIS: Senator Blue, I appreciate 25 that inquiry. I would -- I would point out that</p>
<p style="text-align: right;">19</p> <p>1 SEN. RUCHO: Okay, that's fine. 2 Sergeant-at-Arms, would you please distribute the 3 third criteria, which is "Political Data"? 4 Representative Lewis, would you want staff to read 5 this, the specifics as they're presented, or do you 6 prefer to do it yourself? 7 REP. LEWIS: Mr. Chairman, are you trying 8 to imply I can't say "contiguity"? 9 (Laughter.) 10 SEN. RUCHO: That is a mouthful. I agree 11 with you. All right. We have before us -- would 12 you please read this first -- or the second, 13 "Contiguity"? 14 MS. CHURCHILL: "Contiguity: 15 Congressional districts shall be comprised of 16 contiguous territory. Contiguity by water is 17 sufficient." 18 SEN. RUCHO: Representative Lewis? 19 REP. LEWIS: Members, this is a standard 20 redistricting practice, and I would move the 21 adoption of the criteria by the committee. 22 SEN. RUCHO: All right. Senator Blue? 23 SEN. BLUE: Question of Representative 24 Lewis: Does this contemplate single-point 25 contiguity in water?</p>	<p style="text-align: right;">21</p> <p>1 there is an island there, so there is actually land 2 in the middle of the Cape Fear, that exact point 3 that you're referring to, but I would have to say 4 that I do not believe that that is the intent of 5 this. 6 SEN. RUCHO: Senator Smith, did you have 7 a question? 8 SEN. SMITH: No. 9 SEN. RUCHO: Oh, okay. Any additional 10 questions or comments on the contiguity criteria? 11 (No response.) 12 SEN. RUCHO: Seeing none, all right, Mr. 13 Verbiest, would you do roll call again? 14 CLERK: Representative Lewis? 15 REP. LEWIS: Aye. 16 CLERK: Representative Jones? 17 REP. JONES: Aye. 18 CLERK: Representative Brawley? 19 REP. BRAWLEY: Aye. 20 CLERK: Representative Cotham? 21 REP. COTHAM: Aye. 22 CLERK: Representative Davis? 23 REP. DAVIS: Aye. 24 CLERK: Representative Farmer- 25 Butterfield?</p>

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<p>1 REP. FARMER-BUTTERFIELD: Aye. 2 CLERK: Representative Hager? 3 REP. HAGER: Aye. 4 CLERK: Representative Hanes? 5 REP. HANES: Aye. 6 CLERK: Representative Hardister? 7 REP. HARDISTER: Aye. 8 CLERK: Representative Hurley? 9 REP. HURLEY: Aye. 10 CLERK: Representative Jackson? 11 REP. JACKSON: Aye. 12 CLERK: Representative Johnson? 13 REP. JOHNSON: Aye. 14 CLERK: Representative Jordan? 15 REP. JORDAN: Aye. 16 CLERK: Representative McGrady? 17 REP. MCGRADY: Aye. 18 CLERK: Representative Michaux? 19 REP. MICHAUX: Aye. 20 CLERK: Representative Moore? 21 REP. MOORE: Aye. 22 CLERK: Representative Stam? 23 REP. STAM: Aye. 24 CLERK: Representative Stevens? 25 REP. STEVENS: Aye.</p>	<p>1 CLERK: Senator Sanderson? 2 SEN. SANDERSON: Aye. 3 CLERK: Senator Smith? 4 SEN. SMITH: Aye. 5 CLERK: Senator Smith-Ingram? 6 SEN. SMITH-INGRAM: Aye. 7 CLERK: Senator Waddell? 8 (No response.) 9 CLERK: Senator Wade? 10 (No response.) 11 CLERK: Senator Wells? 12 SEN. WELLS: Aye. 13 SEN. RUCHO: Any against? 14 CLERK: Unanimous. 15 SEN. RUCHO: All right, members of the 16 committee, the criterion on contiguity passed 17 unanimously and was adopted unanimously. All 18 right. 19 REP. LEWIS: Mr. Chairman, I'd like to -- 20 SEN. RUCHO: Mr. Lewis, you've got 21 "Political Data" before you, and you would like the 22 next criteria sent out to the members? 23 REP. LEWIS: Mr. Chairman, if we could, 24 let's do "Political Data," and then we'll move on 25 to the next one. Let's not distribute --</p>
23	25
<p>1 CLERK: Senator Rucho? 2 SEN. RUCHO: Aye. 3 CLERK: Senator Apodaca? 4 SEN. APODACA: Aye. 5 CLERK: Senator Barefoot? 6 SEN. BAREFOOT: Aye. 7 CLERK: Senator Blue? 8 SEN. BLUE: Aye. 9 CLERK: Senator Brown? 10 SEN. BROWN: Aye. 11 CLERK: Senator Clark? 12 SEN. CLARK: Aye. 13 CLERK: Senator Harrington? 14 SEN. HARRINGTON: Aye. 15 CLERK: Senator Hise? 16 SEN. HISE: Aye. 17 CLERK: Senator Jackson? 18 SEN. JACKSON: Aye. 19 CLERK: Senator Lee? 20 SEN. LEE: Aye. 21 CLERK: Senator McKissick? 22 SEN. MCKISSICK: Aye. 23 CLERK: Senator Sandleman? Senator 24 Randleman? I'm sorry. 25 SEN. RANDLEMAN: Aye.</p>	<p>1 SEN. RUCHO: All right. So you want to 2 just take care of that. Would -- Ms. Churchill, 3 would you read the one on political data, please? 4 MS. CHURCHILL: "Political Data: The 5 only data other than population data to be used to 6 construct Congressional districts shall be election 7 results in statewide contests since 2008, not 8 including the last two Presidential contests. Data 9 identifying the race of individuals or voters shall 10 not be used in the construction or consideration of 11 districts in the 2016 contingent Congressional 12 plan. Voting districts, referred to as VTDS, 13 should be split only when necessary to comply with 14 the zero deviation population requirements set 15 forth above in order to ensure the integrity of 16 political data." 17 SEN. RUCHO: All right. Representative 18 Lewis, that is before the committee. 19 REP. LEWIS: Mr. Chairman, I -- 20 SEN. RUCHO: Let him explain it, please. 21 REP. LEWIS: I believe it explains 22 itself. I'll be happy to yield to -- 23 SEN. RUCHO: All right. Question, 24 Senator Blue? 25 SEN. BLUE: Yeah. This might be one for</p>

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1 the staff, Mr. Chairman.
2 SEN. RUCHO: All right. Staff?
3 SEN. BLUE: The second -- the second full
4 paragraph, can you restrict -- and I think I know
5 where you're trying to go to, but can you restrict
6 the use of race in drawing the two districts in
7 question and be in conformity with the Voting
8 Rights Act as the Court enunciated in its decision
9 several weeks ago?
10 SEN. RUCHO: Representative Lewis, do you
11 want to respond to that?
12 REP. LEWIS: Mr. Chairman, thank you.
13 Senator Blue, I appreciate that inquiry. It is my
14 understanding and reading of the opinion that race
15 is not to be a factor in drawing the districts.
16 Adoption of this criteria would mean that the ISD
17 staff of the General Assembly would be instructed
18 to establish computers, and I believe the software
19 is called Maptitude, and the staff would be
20 instructed not to include race as a field that
21 could be used to draw districts.
22 I'll go one step further and say
23 respectfully that race was not considered when the
24 General Assembly passed the 12th District of the
25 enacted plan, but the Court still questioned its

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1 use. This would contemplate that that data would
2 not be available to mapmakers who make maps to
3 comply with the Harris order.
4 SEN. RUCHO: Follow-up?
5 SEN. BLUE: You're saying that
6 notwithstanding all of the jurisprudence in this
7 area, at least that I've seen over the last 25, 30
8 years, that you're going to draw minority districts
9 without taking into account whether minorities are
10 in the minority district?
11 REP. LEWIS: Senator Blue, I believe the
12 Harris opinion found that there was not racially
13 polarized voting in the state, and therefore, the
14 race of the voters should not be considered. My
15 proposal would be that we use political data only,
16 and do not use race to draw Congressional
17 districts.
18 SEN. BLUE: One last --
19 SEN. RUCHO: Follow-up?
20 SEN. BLUE: I long for the day, just like
21 you do, Representative Lewis, when we can do that,
22 and I hope it's sooner rather than later, but I
23 don't think it's wise to spit in the eyes of three
24 federal judges who control the fate of where we're
25 going to go with redistricting, and I understand

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1 what you're trying to do here, but I think it's an
2 insult to their intelligence to take this approach,
3 and I think that they will show you the ultimate
4 power of the federal judiciary that's existed since
5 1802 in Marbury versus Madison if you do this.
6 REP. LEWIS: Respectfully, sir, it would
7 never be my intent to offend or to question the
8 dignity of the office of a federal judge. If
9 anything I said hitherunto has done that, I
10 apologize; however, it is my understanding that
11 when we drew the enacted plan, we applied the
12 Cromartie and Strickland decisions as best we knew
13 how to do in drawing the 1st. We did not use race
14 when we drew the 12th.
15 The Court has found those both to be
16 racial gerrymanders. It would be my -- they also
17 found, based on my reading of the opinion -- I'm
18 certainly not spitting in their face; I'm trying to
19 read what they said -- that there's not racially
20 polarized voting. If that is indeed the case, then
21 race should not be a factor.
22 SEN. RUCHO: Smith-Ingram?
23 Representative Smith-Ingram? I'm sorry. Before I
24 do that, I -- Senator McKissick got me first.
25 Please, Senator McKissick.

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1 SEN. MCKISSICK: Sure. The thing that
2 I'm deeply concerned about is that the Voting
3 Rights Act and the courts have historically
4 indicated that it's appropriate to use race in
5 drawing Congressional districts, and I don't
6 understand why we would abandon it as a criteria.
7 From what I understand from reading the
8 most recent decision, Harris versus McCrory, what
9 they were concerned about was the fact that it was
10 a predominant consideration, so there was an
11 overconcentration of African-American voters
12 because majority-minority districts were created,
13 and I think that was what I understood to be the
14 finding, the creation of these majority-minority
15 districts, when historically the 1st and 12th
16 districts could elect a candidate choice without
17 being a majority-minority district. I think it
18 would be a misreading of the case to say that race
19 could not be used as a consideration.
20 REP. LEWIS: Senator McKissick, as
21 always, I appreciate your counsel. I would
22 reiterate that in drawing of the 12th, race was not
23 con- -- race was not a considered factor. In the
24 drawing of the 1st, we attempted to comply with the
25 Cromartie and Strickland cases, which we believed

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1 called for, and still believe called for the -- if
2 a district is drawn under the Voting Rights Act to
3 be a majority-minority district, that it contain a
4 majority of minorities. The Court has found that
5 racially polarized voting does not exist to the
6 extent to do that.

7 During the trial, which I know Senator
8 Blue attended -- I don't remember who-all else was
9 there -- there was various testimony offered from
10 the stand of how much minority population is
11 enough. The judges were well aware that that
12 conversation had gone on from the stand. They
13 offered no guidance into how much minority
14 population should be used; therefore, I simply say
15 we draw the maps without using minority -- without
16 using any race considerations. That way, they
17 cannot -- the federal court will be clear that in
18 the construction of districts that we did not use
19 racial consideration if it's not even a factor that
20 can be selected on the computer.

21 SEN. MCKISSICK: Follow-up, Mr. Chair?
22 SEN. RUCHO: Follow-up.
23 SEN. MCKISSICK: So how would you propose
24 that you comply with the requirements, say, of the
25 Voting Rights Act, which basically indicates that

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1 you should create districts that allow minorities
2 to elect a candidate of choice if race is not an
3 appropriate consideration? I don't know how you
4 accomplish that objective without having it,
5 certainly not as the predominant consideration. I
6 would agree that cannot be done, and should not be
7 done, but I'm trying to understand how you do that
8 otherwise if you completely eliminate race as a
9 criteria that you look at in drafting the maps, and
10 then secondly -- and this shifts gears a little
11 bit -- why would we not want to consider the --

12 SEN. RUCHO: Which question? Is this
13 your --
14 SEN. MCKISSICK: Okay, yeah.
15 SEN. RUCHO: -- first question?
16 SEN. MCKISSICK: Yeah, first question.
17 SEN. RUCHO: Okay.
18 SEN. MCKISSICK: Go ahead, Representative
19 Lewis. Thank you, sir.

20 REP. LEWIS: Senator, I believe that my
21 earlier answer that -- and I have a great deal of
22 respect for you. I understand that you are an
23 attorney, and I am not an attorney. It's my
24 reading of the case that the Court has found that
25 there was not racially polarized voting, which is

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1 the trigger point to draw a VRA -- VRA district.
2 Therefore, if that is not the case, then we believe
3 the enacted maps should stand as they are. If
4 we're going to redraw the maps with the Harris
5 order, which says there's not racially polarized
6 voting, then we believe that race should not be a
7 consideration in drawing the maps.

8 SEN. MCKISSICK: Follow-up, Mr. Chairman.
9 SEN. RUCHO: Follow-up.
10 SEN. MCKISSICK: Why would we not here
11 want to consider the election results of the 2008
12 and 2000 -- I guess '12 presidential elections? Is
13 there a specific reason why we want to exclude
14 those specific election results and include other
15 potential election results within that same general
16 time frame?
17 REP. LEWIS: Yes, sir.
18 SEN. MCKISSICK: Because, I mean, the
19 thing that's obvious to anybody is we had an
20 African-American running for President in those two
21 election cycles.
22 REP. LEWIS: Yes, sir, and I don't recall
23 which pages it's on, but in the Harris opinion, one
24 of the judges wrote that using the 2008
25 Obama/McCain data was really a code for trying to

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1 use black versus white, so we simply say we
2 exclude -- we take that off the table. We can use
3 all the other ones.

4 SEN. MCKISSICK: And I would suggest that
5 we should --
6 SEN. RUCHO: Follow-up?
7 SEN. MCKISSICK: Yes. Thank you, Mr.
8 Chair. I would suggest that there's nothing
9 improper in considering those particular races
10 within a greater context of all races that we might
11 have used as benchmarks for consideration for the
12 performance of districts or how they might vote,
13 but I think to eliminate those specifically would
14 be an inappropriate criteria.

15 I would have to go back to the decisions.
16 I think things can be used as code in combination
17 with other actions that are taken, like drawing
18 minority -- majority-minority districts, but yet
19 saying race is not a factor, and it was done for
20 political reasons. I think within the greater
21 context, perhaps the Court might have viewed it
22 that way, but if you identify this discretely as
23 being one parameter among many, I don't think that
24 that would be inappropriate to consider.
25 I find it fine -- you know, I don't think

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1 we need to go in there and split these precincts.
2 I think splitting the precincts would probably be a
3 code word for understanding that you could
4 segregate voters out based upon race as well, so I
5 mean, I have no problems not -- not going in there
6 and splitting out these precincts, and I think
7 keeping the voter tabulation districts as whole as
8 possible is a good component, but I would be
9 opposed to the elimination of consideration of the
10 2008 and 2012 presidential data as well as other --
11 any other racial data that would be provided in the
12 normal data packages that for many, many years have
13 always been used by this General Assembly in
14 drawing these Congressional districts. Thank you,
15 sir.
16 REP. LEWIS: Mr. Chairman, respectfully,
17 I --
18 SEN. RUCHO: Yes, sir?
19 REP. LEWIS: -- believe that was a
20 statement, to which I'll just respond I
21 respectfully disagree with the gentleman from
22 Durham.
23 SEN. RUCHO: All right. Thank you.
24 Senator Smith-Ingram?
25 SEN. SMITH-INGRAM: Thank you, Mr. Chair.

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1 In regards to the proposed criteria as it relates
2 to the voting districts and the split, one of the
3 concerns that resonated across the state, as shown
4 in the hearings, and as we talked to constituents,
5 particularly in the finger counties in
6 Congressional District 1, there is some concern
7 about precincts being split, and a lot of voter
8 confusion because of split counties and split
9 precincts. Do you think the language in the last
10 sentence goes far enough to help us alleviate that
11 problem, and not have that issue as we move toward
12 drawing new maps?
13 REP. LEWIS: Senator, I thank you for
14 that question. I would say that, as I've
15 maintained all along, I believe that voters are
16 sophisticated enough that split political districts
17 do not cause confusion, but to the extent that we
18 can not split them, we shouldn't, so I do think
19 this sentence goes far enough in saying the only
20 reason you would want to split a VTD, or a voting
21 district, is to help with the zero population
22 requirement that this committee has already
23 adopted.
24 SEN. SMITH-INGRAM: Follow-up.
25 SEN. RUCHO: Follow-up.

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1 SEN. SMITH-INGRAM: So I can assume from
2 what you are saying that the only reason we had
3 split counties and split precincts in the previous
4 plan is because we were trying to meet the mandate
5 of the zero deviation?
6 REP. LEWIS: No, ma'am, that's not at all
7 what I said. What this says is that -- what this
8 says is in drawing the map, this contingent plan
9 that we are -- that we are talking about is that
10 the VTDs should be split only when necessary to
11 comply with the zero deviation requirements. I was
12 not at all speaking about the enacted map, in which
13 I'm certain that some precincts and voting
14 districts were split for political purposes.
15 SEN. SMITH-INGRAM: Last follow-up, Mr.
16 Chair.
17 SEN. RUCHO: Last follow-up.
18 SEN. SMITH-INGRAM: Just a statement. I
19 understand that our voters across the state are
20 very sophisticated; however, there was a lot of
21 confusion created with the split counties and the
22 split precincts, and so I just -- as we're moving
23 forward, we need to be careful that they are not
24 disenfranchised by that confusion. Thank you,
25 Representative Lewis.

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1 SEN. RUCHO: Thank you. I've got
2 Representative Stam.
3 REP. STAM: Yes. I like this criteria.
4 It's very principled, and it's principles that I've
5 heard, for example, the Senate Minority Leader
6 state publicly many times. Let's not -- let's not
7 consider race anymore. We're past that.
8 SEN. RUCHO: Okay. Representative
9 Michaux?
10 REP. MICHAUX: Mr. Chairman, I'm having a
11 problem not identifying race, and if I recall, Mr.
12 Lewis -- and I'm reading from the opinion. It says
13 here that "This does not mean that race can never
14 play a role in redistricting. Legislatures are
15 almost always cognizant of race when drawing
16 district lines, and simply being aware of race
17 poses no Constitutional violation."
18 What they're saying to you is that you
19 still can use race in the matter, but you cannot
20 make it the predominant factor. That's the way I
21 read it, and I think that this --
22 SEN. RUCHO: Representative Lewis?
23 REP. LEWIS: Representative Michaux,
24 thank you for that. My response to that would be
25 that not being aware of race means that you

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1 couldn't have been motivated by race.
2 REP. MICHAUX: May I follow up?
3 SEN. RUCHO: Follow-up, Representative
4 Michaux?
5 REP. MICHAUX: What did you say just now?
6 REP. LEWIS: Sir, I believe you read from
7 the opinion, which I don't have before me, that --
8 in which the judges said being aware of race does
9 not necessarily mean that race was a predominant
10 factor, but it doesn't require it. And if that's
11 not what you read, understand that you have the
12 opinion in front of you, and I don't.
13 REP. MICHAUX: What they're saying is it
14 cannot be a predominant factor, Mr. Lewis, but you
15 can use race.
16 SEN. RUCHO: Representative Michaux, I
17 think what Senator -- Representative Lewis is
18 saying is you can use race, but it doesn't require
19 you to use race.
20 REP. MICHAUX: It says you can use race,
21 but it must not be the predominant factor.
22 REP. LEWIS: Mr. Chairman, I would say
23 "can use" does not say "must use." Therefore, I
24 would move the adoption of this criteria.
25 SEN. RUCHO: Representative Hager,

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1 please?
2 REP. HAGER: Thank you, Mr. Chairman.
3 Representative Lewis, I want to commend you on
4 the -- when you said only when necessary when you
5 split districts and precincts. I come from a
6 district and precinct prior to these maps. My
7 precinct was split, and we worked it out, like I
8 said, and I appreciate what you said about the
9 sophistication of the voters. It was there, but
10 this criteria does help that situation, and prior
11 to these maps, we see -- we saw that with the
12 previous maps in Rutherford County, so thank you
13 very much.
14 SEN. RUCHO: I'm sorry. I've got Senator
15 Blue. Excuse me.
16 SEN. BLUE: Just a comment, since the
17 motion to adopt it has been made. Mr. Chairman, I
18 agree totally with Representative Stam. As I told
19 Representative Lewis, there are places in this
20 state where considering race in redrawing districts
21 is inappropriate under the Voting Rights Act, under
22 the 14th Amendment. There are places in this state
23 where the Voting Rights Act requires that race be
24 considered to some degree to ensure that, based on
25 history, that minorities can elect people of their

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1 choice.
2 We know that this three-judge panel has
3 the power of its own to draw districts, and we can
4 play these games with them. I thought that as a
5 body from the standpoint of letting the
6 Legislature, the reason that we ordered -- or at
7 least required that the Court, if reversing these
8 districts, sent it back to the Legislature to have
9 an opportunity or a shot at fixing it is because it
10 was felt that the Legislature could fix it, but I
11 can assure you that if you go about doing this,
12 then those three gentlemen are going to draw
13 districts for you.
14 Maybe that's what you want, and if that's
15 what you want, I will vote with you on this
16 amendment, but I think that you -- that it's
17 transparent the game that you're trying to play.
18 Some of us do strongly believe that we should move
19 away from using race in making any decision in
20 American life, but we also believe that you comply
21 with the law until we get to that point, and I
22 think that you're aware of the fact, just as I am,
23 that if you take this blind approach, you're in
24 direct violation of Section 2 of the Voting Rights
25 Act. And so I'm just -- I just say that to you.

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1 I'm going to vote against this proposal.
2 You'll probably withdraw it, given the debate, but
3 I'm going to vote against it because I think that
4 it's showing disrespect for the law as it exists
5 and disrespect for this three-judge federal
6 district court.
7 REP. LEWIS: Well, Senator --
8 SEN. RUCHO: Representative Lewis?
9 REP. LEWIS: Thank you, Mr. Chairman.
10 I'm going to reiterate my earlier comments to you,
11 sir, that in no way has anything that I have said
12 had the intent, and I hope not the effect, of
13 causing any offense to any member of the federal
14 judiciary. I would reiterate the only way to make
15 sure that race is not the predominant factor is to
16 make sure it's not a factor when the maps are being
17 considered.
18 This Court -- I'll go one step further.
19 With the utmost respect to the Court, this Court
20 was shown that race was not a factor that was
21 considered in drawing of the 12th, but they still
22 found that it was a factor. This is -- this way we
23 make sure that in fact, it is not.
24 SEN. RUCHO: Members of the committee?
25 Senator McKissick?

<p style="text-align: right;">42</p> <p>1 SEN. MCKISSICK: Representative Lewis, 2 are you aware of any racially polarized voting 3 studies which have been conducted since the 2010 4 Census occurred? 5 REP. LEWIS: Senator McKissick, 6 respectfully, I would direct you to the 7 redistricting tab of the General Assembly Web site. 8 I believe there are some studies that are listed 9 there. Certainly there are numerous studies that 10 are referenced in the various lawsuits. I know the 11 General Assembly did commission a study on racially 12 polarized voting. I do not believe the Harris 13 court admitted or considered it. 14 SEN. MCKISSICK: Follow-up, Mr. Chair. 15 SEN. RUCHO: Follow-up. 16 SEN. MCKISSICK: Is it not possible to go 17 back and find that data, which is reasonably 18 current, since it was done since 2010, to examine 19 the racially polarized voting patterns throughout 20 the state, because different parts of the state are 21 different? Our urban areas have different 22 characteristics, and there's more coalition 23 politics. Other parts of our state, racially 24 polarized voting patterns are present, and continue 25 to exist.</p>	<p style="text-align: right;">44</p> <p>1 REP. MCGRADY: Second. 2 SEN. RUCHO: Second, Representative 3 McGrady. Any additional discussion? 4 (No response.) 5 SEN. RUCHO: All right. Seeing none, we 6 can -- Mr. Clerk, would you begin the roll call? 7 CLERK: Lewis? 8 REP. LEWIS: Aye. 9 CLERK: Jones? 10 REP. JONES: Aye. 11 CLERK: Brawley? 12 REP. BRAWLEY: Aye. 13 CLERK: Cotham? 14 REP. COTHAM: No. 15 CLERK: Davis? 16 REP. DAVIS: Aye. 17 CLERK: Farmer-Butterfield? 18 REP. FARMER-BUTTERFIELD: No. 19 CLERK: Hager? 20 REP. HAGER: Aye. 21 CLERK: Hanes? 22 REP. HANES: No. 23 CLERK: Hardister? 24 REP. HARDISTER: Aye. 25 CLERK: Hurley?</p>
<p style="text-align: right;">43</p> <p>1 I would suggest that we go back and look 2 at those studies, analyze them, and use those 3 studies as part of the database that would be used 4 to move forward in drawing these districts. Any 5 reason why we cannot do that? 6 REP. LEWIS: Respectfully, sir, I may -- 7 I may agree with you, but the Court does not. 8 SEN. MCKISSICK: And I'd have to 9 respectfully disagree on that. 10 REP. LEWIS: Noted. 11 SEN. RUCHO: Senator Clark? 12 SEN. CLARK: Thank you, Mr. Chairman. 13 With regard to the language on the voting districts 14 in here, would it not be more appropriate to 15 separate that and have it stand alone as its own 16 criteria? I don't understand the rationale for 17 including it in the criteria about political data. 18 REP. LEWIS: Senator, I appreciate that 19 question. Frankly, we could have had an additional 20 criteria. I prefer just to let it stay as it is. 21 SEN. RUCHO: Excuse me. Representative 22 Lewis, do you make the motion to adopt the 23 political data criteria? 24 REP. LEWIS: I do, Mr. Chairman. 25 SEN. RUCHO: All right.</p>	<p style="text-align: right;">45</p> <p>1 REP. HURLEY: Aye. 2 CLERK: Jackson? 3 REP. JACKSON: No. 4 CLERK: Johnson? 5 REP. JOHNSON: Aye. 6 CLERK: Jordan? 7 REP. JORDAN: Aye. 8 CLERK: McGrady? 9 REP. MCGRADY: Aye. 10 CLERK: Michaux? 11 REP. MICHAUX: No. 12 CLERK: Moore? 13 REP. MOORE: No. 14 CLERK: Stam? 15 REP. STAM: Aye. 16 CLERK: Stevens? 17 REP. STEVENS: Aye. 18 CLERK: Rucho? 19 SEN. RUCHO: Aye. 20 CLERK: Apodaca? 21 SEN. APODACA: Aye. 22 CLERK: Barefoot? 23 SEN. BAREFOOT: Aye. 24 CLERK: Blue? 25 SEN. BLUE: No.</p>

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47	<p>1 CLERK: Nine nays. Nine nays. (Pause.) 2 There's 11. 11 out of 34. 3 SEN. RUCHO: 11 out of 34 nays. Okay. 4 The result of that is 23 ayes, 11 nos, and two were 5 not present. Okay. Representative Lewis? 6 REP. LEWIS: Mr. Chairman, I would ask -- 7 with your permission, I've asked the Sergeants-at- 8 Arms to distribute the criteria labeled "Partisan 9 Advantage." If you could direct the staff to read 10 that, I'd be happy to speak on it. 11 SEN. RUCHO: Ms. Churchill, would you 12 read the one on partisan advantage? 13 MS. CHURCHILL: "Partisan Advantage: The 14 partisan makeup of the Congressional delegation 15 under the enacted plan is 10 Republicans and 3 16 Democrats. The committee shall make reasonable 17 efforts to construct districts in the 2016 18 contingent Congressional plan to maintain the 19 current partisan makeup of North Carolina's 20 Congressional delegation." 21 SEN. RUCHO: Representative Lewis, 22 explain. 23 REP. LEWIS: Mr. Chairman, the 24 explanation of this is reasonably simple. As we 25 are allowed to consider political data in the</p>
48	<p>1 drawing of the maps, I would propose that to the 2 extent possible, the map drawers create a map which 3 is perhaps likely to elect 10 Republicans and 3 4 Democrats. I acknowledge freely that this would be 5 a political gerrymander, which is not against the 6 law. 7 SEN. RUCHO: All right. Members of the 8 committee, any questions? Senator Blue? 9 SEN. BLUE: Just one, Mr. Chairman, and 10 this is a point of order since you've got my friend 11 the rules committee chairman up there. What are 12 the rules under which this committee is operating, 13 House or Senate? If it's the Senate -- and if it's 14 neither, where do they come from, but if it's the 15 Senate, aren't ayes and nays prohibited in 16 committee votes? 17 SEN. APODACA: The chairs agreed we'd 18 operate under the House rules, and I can tell you I 19 wasn't here for that, but they did. 20 (Laughter.) 21 SEN. RUCHO: All right. Senator Blue? 22 SEN. BLUE: One follow-up. 23 SEN. RUCHO: Let me have your attention. 24 SEN. BLUE: Since I'm not familiar with 25 the House rules anymore, there is a permitted</p>
49	<p>1 abstention in the ayes and nos under the House 2 rules; is there not? 3 SEN. APODACA: Mr. Chairman? 4 SEN. RUCHO: Representative Stam, if you 5 can respond to that question? 6 REP. STAM: I could. There is no such 7 rule under House rules now or when Senator Blue was 8 the Speaker of the House. 9 SEN. RUCHO: Senator Blue, did you get 10 your answer? 11 SEN. BLUE: I got an answer. 12 (Laughter.) 13 SEN. RUCHO: Good. Thank you. Okay. 14 Members of the committee, let's pay close attention 15 to this. Senator McKissick? 16 SEN. MCKISSICK: In looking at this 17 particular criteria, I mean, certainly partisan 18 advantage is a legitimate consideration, but I 19 don't know why, based upon the number of Democratic 20 registered voters, Republican registered voters and 21 unaffiliated voters in this state we would want to 22 ever sit and ingrain as a criteria for 23 redistricting that we would only allow one party 3 24 seats in Congress, and the other one, 10 in 25 Congress, when not very long ago, before 2010, we</p>

<p style="text-align: right;">50</p> <p>1 had 7 Democrats and 5 Republicans, so I'm trying to 2 understand why you feel this would be fair, 3 reasonable, and balanced in terms of voter 4 registrations in this state as it is currently 5 divided. 6 REP. LEWIS: Thank you for your question, 7 Senator. I propose that we draw the maps to give a 8 partisan advantage to 10 Republicans and 3 9 Democrats because I do not believe it's possible to 10 draw a map with 11 Republicans and 2 Democrats. 11 (Laughter.) 12 SEN. MCKISSICK: Follow-up, if I could. 13 SEN. RUCHO: Follow-up. 14 SEN. MCKISSICK: Were you aware of the 15 fact that in the 2012 election cycle, if you total 16 the total number of votes received by Democrats 17 running for Congress versus the total number of 18 votes cast for Republicans running for Congress, 19 that Democratic candidates had a higher number of 20 total votes, but ended up with fewer seats? Were 21 you aware of that factor in drawing up this 22 criteria? 23 REP. LEWIS: I am aware, Senator -- first 24 of all, thank you for your question. I am aware 25 that there are numerous examples, especially</p>	<p style="text-align: right;">52</p> <p>1 Come up with something different. It 2 could be 5 Democratic seats, and there's no reason 3 why that couldn't be accomplished. It could be 6 4 Democratic seats and still give the Republicans an 5 edge, but to say you're going to marginalize with 6 only 3 seats as a criteria, let the voters decide. 7 REP. LEWIS: Well, sir, I definitely -- I 8 thank you for that comment. Certainly we look 9 forward to receiving -- what I'm asking this 10 committee to adopt is the maps that this -- that 11 the chairs will present to this committee absent a 12 stay arriving from the Court. Certainly the 13 members of this committee that don't feel this 14 balance is appropriate can certainly offer their 15 own maps for consideration. 16 SEN. RUCHO: Representative Lewis, in the 17 case Senator McKissick brought forth, if you see 18 some districts that tend to have a larger voter 19 turnout than others, that could easily explain what 20 Senator McKissick described. Am I not correct? 21 REP. LEWIS: Yes, sir. I think that's a 22 constant variable in this. If you have an area 23 that has a lot of contested races, those areas tend 24 to produce more folks to the polls. If you have -- 25 you know, we don't want to get into the Electoral</p>
<p style="text-align: right;">51</p> <p>1 through the 2000s, when the majority of seats went 2 to a party that had the fewer votes. We elect our 3 representatives based on a system of drawing 4 districts and the people in those districts being 5 able to vote. We do not elect at large. I know 6 you're very much aware of that, and we will -- this 7 will maintain that system. 8 SEN. MCKISSICK: Last follow-up, Mr. 9 Chairman. 10 SEN. RUCHO: Follow-up. Last follow-up. 11 SEN. MCKISSICK: I would simply say this: 12 If we were looking at a fair and reasonable 13 division as a criteria moving forward, it wouldn't 14 necessarily have to be an even division. It 15 could -- obviously, since majority -- Republicans 16 are a majority now, give Republicans a slight edge, 17 but to come up with such an imbalance in a split I 18 think is highly inappropriate. It's unfair. It 19 does not recognize the way votes have been cast in 20 this state as recently as 2012. It doesn't 21 recognize the division of registered voters in this 22 state between Democrats, Republicans, and 23 Independents, and it's really a matter of political 24 gerrymandering in the worst sense in which we can 25 do so.</p>	<p style="text-align: right;">53</p> <p>1 College, but I can remember this debate's been 2 going on since 2000 because of the use -- you know, 3 there are times -- do you maximize or, for lack of 4 a more polite term, do you pump up or boost up 5 votes in certain areas to try and create the larger 6 cumulative total, or do you file, run, and win in 7 the districts in which you live? Our system has 8 historically been the latter. 9 SEN. RUCHO: I have a follow-up there. 10 Senator McKissick, go ahead. 11 SEN. MCKISSICK: Yeah. Simply this: I 12 think what voters want are more competitive 13 districts, more competitive districts where they 14 have a clear choice between a Democrat, a 15 Republican, and perhaps an unaffiliated candidate 16 that's running, but not ones that are gerrymandered 17 to give one party or the other just a clear 18 partisan advantage. More competitive districts, I 19 support completely, but that means drawing the maps 20 in a way where you're not from the outset 21 establishing criteria that gives one party an 22 unfair advantage. 23 SEN. RUCHO: Representative Lewis? 24 REP. LEWIS: Mr. Chairman, the only thing 25 that I could add is that we want to make clear that</p>

<p style="text-align: right;">54</p> <p>1 we to the extent are going to use political data in 2 drawing this map, it is to gain partisan advantage 3 on the map. I want that criteria to be clearly 4 stated and understood. I have the utmost respect 5 for those that do not agree with this particular 6 balance. 7 I will say -- and the gentleman from 8 Durham did not say this, but I will say that during 9 the public comment yesterday, more than one speaker 10 referred to, "Can't we just draw them where there's 11 5 this way or 6 that way?" That is partisan 12 gerrymandering if you're drawing 5 and 7 or 6 13 and -- whatever it is. I'm making clear that our 14 intent is to use -- is to use the political data we 15 have to our partisan advantage. 16 SEN. RUCHO: Representative Michaux? 17 REP. MICHAUX: Yeah. Mr. Chairman, you 18 know if we were where you are today and we came up 19 with this idea, you-all would be jumping all over 20 the place, trying to dissuade us from that. First 21 you want to -- you really want to dissuade race 22 from being put in here. Now you want to make sure 23 that you keep your 10 to 3 advantage, the same 24 situation that got you in trouble before, and now 25 you're going to -- what you're telling us is, "We</p>	<p style="text-align: right;">56</p> <p>1 For example, near a military base, they have much 2 fewer voters than the population -- in other words, 3 it's a bogus statistic, so I don't use it anymore. 4 SEN. RUCHO: Thank you. I've got 5 Representative Hager. 6 REP. HAGER: Thank you, Mr. Chairman. 7 You know I haven't been here long, but I guess in 8 the House, I've become one of the more senior 9 members with my colleagues that came in in 2011, 10 but, you know, I got to thinking -- and I have the 11 utmost respect for Senator McKissick and 12 Representative Michaux, but, you know, if I beat my 13 dog every day for 4 or 5 years and then I quit 14 doing it and I told David to quit beating his dog, 15 you'd consider me a little bit hypocritical, 16 wouldn't you, David? 17 If you look at that map on the wall and 18 look at the 1992 map and look at District 10 and 19 District 1, District 10 is my district now. Look 20 at where we've come with District 10 since then. I 21 mean, it's just -- it's amazing to me that we can 22 argue that we shouldn't -- that the folks that have 23 been here for a long time can argue that we 24 shouldn't gerrymander these on political reasons, 25 and they're some of the same people that developed</p>
<p style="text-align: right;">55</p> <p>1 want you to do this, and you vote for it, and this 2 is the way it's going to be," period, end of 3 report. 4 SEN. RUCHO: Okay. There was no 5 question, I don't think, so -- unless you want to 6 respond to his comment. 7 REP. LEWIS: No. 8 SEN. RUCHO: Okay. I've got 9 Representative Stam first. 10 REP. STAM: Yes. I'd like to share a 11 statistic that I haven't used in about 10 years, 12 but I'll tell you why. During the last 13 redistricting by the other party in 2004, I did 14 jump up and down because I saw what was coming. In 15 the election of 2004 for the House -- write these 16 statistics down -- 52 percent of the voters chose 17 the Republican candidate, 44 percent, the 18 Democratic candidate, and 4 percent, Libertarian. 19 Well, that should be a landslide for Republicans, 20 but it ended up that we were in the minority, 57 to 21 63. 22 The reason I stopped using those type of 23 statistics is I realized that it can be totally 24 skewed by whoever happens to not have a candidate 25 opposing that person. That shows a huge advantage.</p>	<p style="text-align: right;">57</p> <p>1 that map of District 1 and District 10 in 1992. 2 SEN. RUCHO: Thank you. Any additional 3 questions? Senator Smith-Ingram? 4 SEN. SMITH-INGRAM: Thank you, Mr. Chair. 5 Can you be specific as to what constitutes partisan 6 advantage? Do we have to tie it to a number? 7 REP. LEWIS: No, ma'am, but I will -- 8 first of all, thank you for the question. To 9 perhaps expound on it a bit, this would -- this 10 would contemplate looking at the political data, 11 which was an earlier criteria adopted by this 12 committee, and as you draw the lines, if you're 13 trying to give a partisan advantage, you would want 14 to draw the lines so that more of the whole VTDs 15 voted for the Republican on the ballot than they 16 did the Democrat, if that answers your question. 17 SEN. SMITH-INGRAM: I think that -- 18 SEN. RUCHO: Follow-up? 19 SEN. SMITH-INGRAM: Thank you. Follow- 20 up. It answers about 50 percent of my question. 21 If I could ask you another one, maybe a different 22 way? You threw out some numbers. Would there not 23 be partisan advantage with 8/5? 24 REP. LEWIS: Thank you for that question, 25 Senator. I would point out that indeed, you could</p>

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1 use political numbers to draw a partisan -- to draw
2 districts in which 8 Republicans would win or 5
3 Democrats. I'm saying to the extent that you can,
4 make it 10/3.
5 SEN. SMITH-INGRAM: Last follow-up.
6 SEN. RUCHO: Last follow-up.
7 SEN. SMITH-INGRAM: Just a statement. I
8 am concerned that we are trying to mimic the
9 outcome of the previous election that never existed
10 for a very long time in North Carolina until this
11 district was redrawn in 2011. The challenge here
12 is we are balancing where we are with where we have
13 been historically, but at the end of the day, we
14 are elected to come together, to work together, to
15 serve the constituents and citizens of North
16 Carolina. This is one of the concerns resonated
17 yesterday, and many of us have it here. We are
18 drawing these lines so that we get to pick our
19 voters as opposed to them choosing us. It is
20 unfair. It should not be perpetuated in this
21 process, and I will not be supporting it.
22 SEN. RUCHO: Thank you. Representative
23 Jones?
24 REP. JONES: Thank you, Mr. Chair. I
25 appreciate it. I want to say how much I have

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1 enjoyed this discussion about -- about
2 gerrymandering. You know, that's a word that seems
3 to me, as someone who has lived in North Carolina
4 for all my life and has really kind of studied the
5 political process particularly over the last few
6 decades, a word that was never really used until
7 somehow the Republicans came to a majority in 2010.
8 Just as we're taking this little trip
9 down memory lane for just a moment, I -- I remember
10 things like multi-member districts in North
11 Carolina when we were drawing the legislature. I
12 thought what an extreme opportunity that was to
13 gerrymander.
14 I saw it happen in my own area where, you
15 know, we couldn't do single-member districts. We
16 couldn't even do double-member districts.
17 Sometimes it had to be three- or four-member
18 districts in order for the political party in
19 charge at the time, which was the Democratic Party,
20 to gain a political advantage, so Representative
21 Lewis, I appreciate your honesty as you come
22 forward today, and we -- and we explain that
23 political gerrymandering I guess is what it is, but
24 I just find it very interesting to hear some of the
25 comments coming from some of the avenues that we're

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1 hearing them come from today. We never heard those
2 comments for decades and decades and decades in
3 North Carolina, whether it was the media, whether
4 it was the majority party, whomever, and so I guess
5 the process is what it is.
6 I'm glad that we have had some court
7 decisions that have led to what I think is a lot
8 less gerrymandering than what we had in prior
9 decades, where we -- now we do have single-member
10 districts. Now we do have where we don't just
11 split counties in any possible way, and we have the
12 pod system and things like that, so I really take
13 offense when I hear those that say that somehow the
14 political gerrymandering of today is greater than
15 somehow it was in prior years, when anybody that
16 goes back and studies the history knows that that's
17 simply not the case.
18 That's my comment, and I will ask I guess
19 a question for you, Representative Lewis. Is it
20 possible that people might choose to vote for a
21 candidate that is of a different political party
22 than what their political affiliation is?
23 REP. LEWIS: Well, thank you for that
24 question, Representative Jones. Of course it is.
25 I mean, we all offer ourselves, and the voters in

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1 our districts decide that we best represent what we
2 believe the direction of the government should be
3 and that's how they cast their votes, so certainly
4 a person is free to vote ever how they choose to
5 vote.
6 REP. JONES: Well, that's what I think,
7 and I think regardless how you draw these
8 districts -- you know, I come from an area where I
9 can remember a time where voting for the Democratic
10 party was extremely -- extremely high, and that
11 time has changed, and those votes have changed. A
12 lot of people that I can tell don't necessarily
13 vote for the same party that they're registered,
14 and so I -- you know, I think we ought to respect
15 the voters as individuals, and whether they're
16 registered Democrat, Republican, Libertarian,
17 unaffiliated, whatever, recognize that they do have
18 an opportunity to vote for any candidate that is on
19 the ballot before them. I appreciate your answer,
20 and I appreciate your honesty and integrity and
21 going forward with the process.
22 SEN. RUCHO: Thank you, Representative
23 Jones. Senator Clark?
24 SEN. CLARK: Thank you, Mr. Chairman.
25 I'm having difficulty understanding why I should

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1 agree to vote for maps to bake in partisan
2 advantage that was achieved through the use of
3 unconstitutional maps. Could you explain that to
4 me?
5 REP. LEWIS: Well, to be clear, sir,
6 we -- we are proposing that the maps that are drawn
7 now under this criteria which we have passed a
8 plank of, and continue to move forward, one of the
9 goals in drawing the map will be to preserve the
10 10/3. With all due respect, I've listened to this,
11 and we can of course continue to discuss this as
12 long as the committee wants to. It's always sort
13 of amazed me that if the map elects one side, the
14 other side considers -- considers it a gerrymander,
15 and something bad. If it elects their side, they
16 consider it a work of art, and good government, so
17 this is saying that one of the goals will be to
18 elect -- to speak directly to your point, the goal
19 is to elect 10 Republicans and 3 Democrats.
20 SEN. RUCHO: Thank you. Representative
21 Lewis, there was a comment earlier about the
22 districts, the 13 districts that exist, 10
23 presently Republican, and 3 Democrat, and under the
24 circumstances, could you explain a little bit about
25 the makeup of the Republican districts and who

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1 they're composed of, and what is necessary for that
2 Republican to win an election?
3 REP. LEWIS: Thank you for the question,
4 Mr. Chairman. First of all, it would be necessary
5 to go back and review the stat packs and whatnot
6 from the 2011 districts, which are online if
7 anybody would like to do that, but to the best of
8 my knowledge, Republicans hold no majority as far
9 as voter registration in any of those districts.
10 It's also -- well, and it is firmly my
11 belief that it's the responsibility of each of the
12 political parties to nominate quality candidates
13 who can appeal to the entire political spectrum.
14 It was pointed out yesterday during the public
15 hearing that the unaffiliated ranks in our state
16 continue to grow. If you don't get them -- if you
17 don't get a large percentage of the unaffiliated
18 vote in most of our districts, you're not going to
19 win, and so I would say that you are required to
20 have a good-quality candidate that appeals to the
21 political expectations of the majority of the folks
22 in that district.
23 I can go back, and we can go through some
24 of the points. I do still -- I actually maintain
25 that the districts that we have now are largely

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1 competitive. I pointed out before that in the race
2 for attorney general that Attorney General Cooper
3 won nearly all of these. We can go back through
4 this 2011 debate if we'd like to, but I would again
5 maintain that you've got to put forward a good
6 candidate that appeals to the majority of folks,
7 and that the majority of folks in these districts
8 in the enacted plan are not registered Republicans.
9 In fact, to the best of my knowledge, in all but
10 perhaps one, we are the minority in all of the
11 districts.
12 SEN. RUCHO: Thank you. Okay,
13 Representative Jackson?
14 REP. JACKSON: Thank you, Mr. Chairman.
15 Senator Clark took one of my points that I was
16 going to make, but part of my uneasiness with this
17 is that it refers to the current Congressional
18 plan. I think you could make reference just saying
19 that you want to do it to a partisan advantage and
20 maximize Republican members, and I could agree with
21 that, I guess, but you have that opportunity.
22 I would point out that your maps
23 originally had a 9/4 split, and that any reference
24 to 10/3 is not what your maps were; your maps were
25 a 9/4 split. What you've done is taken out the

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1 2012 election, but that's not my question.
2 My question is, are we going to rank
3 these criteria in any order, because you've used
4 words in this criteria like "reasonable efforts."
5 Well, if -- are the -- how will the mapmakers know
6 what a reasonable effort is? In trying to come up
7 with 10 Republican districts, will they be able to
8 make a reasonable effort that means they can now
9 consider race? Will they be able to make a
10 reasonable effort that means that now they can
11 consider the 2008, 2012 elections? Will they be
12 able to split precincts as part of making a
13 reasonable effort to make a 10/3 split?
14 REP. LEWIS: Representative Jackson,
15 thank you for that series of questions. The answer
16 to your question, the first part was -- I'm sorry.
17 Mr. Chairman, I'm sorry.
18 SEN. RUCHO: Go ahead, please.
19 REP. JACKSON: Will there be any type of
20 ranking of these criteria anywhere?
21 REP. LEWIS: No. No is the answer.
22 That's why these criteria are being presented
23 individually and discussed and debated
24 individually. Map -- drawing maps is largely a
25 balancing act. We are trying to specify certain

66	<p>1 things that you cannot use. You asked about race. 2 You cannot use that, and I apologize; I don't 3 remember what else you asked about, Representative 4 Jackson. 5 REP. JACKSON: Follow-up, Mr. Chairman? 6 SEN. RUCHO: Follow-up. 7 REP. JACKSON: Okay. So it would be your 8 contention, then, that making reasonable efforts 9 would not include violating any of the other 10 criteria that we have passed? 11 REP. LEWIS: Absolutely. Mr. Chairman? 12 SEN. RUCHO: Yes? 13 REP. LEWIS: If there aren't further 14 questions, I move adoption of the 2016 contingent 15 Congressional plan proposed criteria labeled 16 "Partisan Advantage." 17 SEN. RUCHO: All right. 18 REP. JONES: Second. 19 SEN. RUCHO: Representative Jones has 20 seconded. All right, members of the committee, 21 there has been considerable discussion, and if 22 there's any additional thoughts, this is your 23 opportunity. 24 (No response.) 25 SEN. RUCHO: Seeing none, Mr. Clerk,</p>	68	<p>1 CLERK: Jordan? 2 REP. JORDAN: Aye. 3 CLERK: McGrady? 4 REP. MCGRADY: Aye. 5 CLERK: Michaux? 6 REP. MICHAUX: No. 7 CLERK: Moore? 8 REP. MOORE: No. 9 CLERK: Stam? 10 REP. STAM: Aye. 11 CLERK: Stevens? 12 REP. STEVENS: Aye. 13 CLERK: Rucho? 14 SEN. RUCHO: Aye. 15 CLERK: Apodaca? 16 SEN. APODACA: Aye. 17 CLERK: Barefoot? 18 SEN. BAREFOOT: Aye. 19 CLERK: Blue? 20 SEN. BLUE: No. 21 CLERK: Brown? 22 SEN. BROWN: Aye. 23 CLERK: Clark? 24 SEN. CLARK: No. 25 CLERK: Harrington?</p>
67	<p>1 please go through the roll. 2 CLERK: Lewis? 3 REP. LEWIS: Aye. 4 CLERK: Jones? 5 REP. JONES: Aye. 6 CLERK: Brawley? 7 REP. BRAWLEY: Aye. 8 CLERK: Cotham? 9 REP. COTHAM: No. 10 CLERK: Davis? 11 REP. DAVIS: Aye. 12 CLERK: Farmer-Butterfield? 13 REP. FARMER-BUTTERFIELD: No. 14 CLERK: Hager? 15 REP. HAGER: Aye. 16 CLERK: Hanes? 17 REP. HANES: No. 18 CLERK: Hardister? 19 REP. HARDISTER: Aye. 20 CLERK: Hurley? 21 REP. HURLEY: Aye. 22 CLERK: Jackson? 23 REP. JACKSON: No. 24 CLERK: Johnson? 25 REP. JOHNSON: Aye.</p>	69	<p>1 SEN. HARRINGTON: Aye. 2 CLERK: Hise? 3 SEN. HISE: Aye. 4 CLERK: Jackson? 5 SEN. JACKSON: Aye. 6 CLERK: Lee? 7 SEN. LEE: Aye. 8 CLERK: McKissick? 9 SEN. MCKISSICK: No. 10 CLERK: Randleman? 11 SEN. RANDLEMAN: Aye. 12 CLERK: Sanderson? 13 SEN. SANDERSON: Aye. 14 CLERK: Smith? 15 SEN. SMITH: No. 16 CLERK: Smith-Ingram? 17 SEN. SMITH-INGRAM: No. 18 CLERK: Wells? 19 SEN. WELLS: Aye. 20 CLERK: 23-11. 21 SEN. RUCHO: All right, members of the 22 committee, roll call on the "Partisan Advantage" 23 criteria was ayes, 23, nos, 11. 24 We'll be going on to the next one, and 25 that is -- okay, got it. This is the 12th</p>

<p style="text-align: right;">70</p> <p>1 District. Would you, Ms. Churchill, read out -- 2 read this criteria, please? 3 MS. CHURCHILL: "12th District: The 4 current General Assembly inherited the 5 configuration of the 12th District from past 6 General Assemblies. This configuration was 7 retained because of the -- because the district had 8 already been heavily litigated over the past two 9 decades, and ultimately approved by the courts. 10 The Harris court has criticized the shape of the 11 12th District, citing its serpentine nature. In 12 light of this, the committee shall construct 13 districts in the 2015 contingent Congressional plan 14 that eliminate the current configuration of the 15 12th District." 16 SEN. RUCHO: And, Representative Lewis, 17 would you explain the criteria under the "12th 18 District" heading? 19 REP. LEWIS: Thank you, Mr. Chairman. 20 This largely goes -- I'll try to use my friend from 21 Wake, Representative Jackson's, words. As these 22 criteria stand on their own and have to be 23 considered together, what this is saying is that 24 the mapmakers will make an effort to draw the 12th 25 Congressional District in a shape that the judges</p>	<p style="text-align: right;">72</p> <p>1 good idea. 2 SEN. RUCHO: Members of the -- oh, I'm 3 sorry. Go ahead, Chairman Lewis. 4 REP. LEWIS: Mr. Chairman, I just -- I 5 just wanted to thank Senator Blue for his words. 6 I'm glad that after two decades of drawing maps, 7 we've found something we can agree on. 8 SEN. RUCHO: All right, members of the 9 committee. Senator McKissick? 10 SEN. MCKISSICK: While I appreciate the 11 fact that the 12th District has an unusual shaped 12 appearance, I'm also aware of the fact that it's 13 gone up before the Supreme Court previously, and 14 when I think of the fact that one of the things we 15 have to consider is communities of interest, and 16 communities of interest is certainly something 17 that's a very valid consideration in drawing 18 Congressional districts, and I've heard it stated 19 on numerous occasions that communities of interest 20 test here is met and satisfied with the shape being 21 what it is today. 22 Now, while it may appear a bit 23 serpentine, a little bit unusual, I think it's 24 possible to reconfigure the district, perhaps to 25 make it somewhat more compact, but it links</p>
<p style="text-align: right;">71</p> <p>1 would not consider serpentine. 2 SEN. RUCHO: Does that conclude your 3 explanation? 4 REP. LEWIS: Yes, sir. 5 SEN. RUCHO: Okay. Members of the 6 committee. 7 SEN. BLUE: Mr. Chairman? 8 SEN. RUCHO: Senator Blue? 9 SEN. BLUE: I want to commend 10 Representative Lewis. I agree that the 12th 11 District ought to be contiguous, it ought to be 12 compact, as all of the other districts in the 13 state, and I think a good starting point for 14 drawing constitutional maps would be to start with 15 the 12th District and make it compact, and let it 16 impact the other districts. 17 I think differently about the 1st, 18 because I think that the law requires it. I have 19 no particular love for the shape of any of these 20 strange districts, but if you're serious about 21 creating a district that's compact, that's 22 contiguous, and that covers as few counties as 23 possible by not unreasonably splitting county 24 lines, by not splitting county lines except where 25 necessary to comply with population, I think it's a</p>	<p style="text-align: right;">73</p> <p>1 together significant cores of the urban parts of 2 our state along the main street of the state, which 3 is now Interstate 85. Interstate 85 is the main 4 corridor. 5 Those urban areas are linked from 6 Charlotte going through Greensboro and back up into 7 the Piedmont area of our state, so I would not want 8 to abandon it. I'd want to perhaps reconfigure it, 9 but keeping in mind the communities of interest 10 that it ties together, major urban cores with 11 populations that have similar interests and 12 concerns, along with major banking centers. 13 One of the -- I've heard before that that 14 particular district had more banking headquarters 15 than any Congressional district in our country, and 16 I rely upon that based upon the sources of that 17 data, so I would not abandon it; I would simply try 18 to reconfigure it, perhaps make it more compact, 19 but to respect the communities of interest that it 20 does unify. 21 SEN. RUCHO: Thank you. Any additional 22 questions? Well, let me first say, Representative 23 Lewis, do you want to make a comment to that? 24 REP. LEWIS: (Shakes head.) 25 SEN. RUCHO: Representative Hanes?</p>

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<p>1 REP. HANES: Thank you, Mr. Chairman. I 2 think both the senators have -- have excellent 3 points. I agree especially with Senator Blue and 4 his statements with regard to what we need to be 5 looking at as a whole as we consider what these 6 districts look like. Certainly when it comes to 7 Democrats -- and I know we're trying to avoid the 8 word "race" here, but when it comes to folks who 9 look like me, we want our voices heard everywhere, 10 and so in that regard, part of the way we do that 11 is to put our communities together within our 12 counties. I think while we certainly don't have to 13 abandon what the 12th is right now, certainly we 14 need to be looking at very strongly doing what 15 Senator Blue suggests, and so I will be supporting 16 it. Thank you. 17 SEN. RUCHO: Thank you. Members of the 18 committee, any additional questions or comments? 19 (No response.) 20 SEN. RUCHO: Representative Lewis, do you 21 have a motion? 22 REP. LEWIS: Mr. Chairman, I move that 23 the 2016 contingent Congressional plan proposed 24 criteria labeled "12th District" be adopted. 25 SEN. APODACA: Second.</p>	<p>1 CLERK: Hurley? 2 REP. HURLEY: Aye. 3 CLERK: Jackson? 4 REP. JACKSON: Yes. 5 CLERK: Johnson? 6 REP. JOHNSON: Aye. 7 CLERK: Jordan? 8 REP. JORDAN: Aye. 9 CLERK: McGrady? 10 REP. MCGRADY: Aye. 11 CLERK: Michaux? 12 REP. MICHAUX: Aye. 13 CLERK: Moore? 14 REP. MOORE: Aye. 15 CLERK: Stam? 16 REP. STAM: Aye. 17 CLERK: Stevens? 18 REP. STEVENS: Aye. 19 CLERK: Rucho? 20 SEN. RUCHO: Aye. 21 CLERK: Apodaca? 22 SEN. APODACA: Aye. 23 CLERK: Barefoot? 24 SEN. BAREFOOT: Aye. 25 CLERK: Blue?</p>
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<p>1 SEN. RUCHO: Second by Senator Apodaca. 2 Members of the committee, you have this motion 3 before you. Any questions or comments prior to a 4 roll call vote? 5 (No response.) 6 SEN. RUCHO: Seeing none, Mr. Clerk, 7 would you go through the roll call, please? 8 CLERK: Lewis? 9 REP. LEWIS: Aye. 10 CLERK: Jones? 11 REP. JONES: Aye. 12 CLERK: Brawley? 13 REP. BRAWLEY: Aye. 14 CLERK: Cotham? 15 REP. COTHAM: Yes. 16 CLERK: Davis? 17 REP. DAVIS: Aye. 18 CLERK: Farmer-Butterfield? 19 REP. FARMER-BUTTERFIELD: Yes. 20 CLERK: Hager? 21 REP. HAGER: Aye. 22 CLERK: Hanes? 23 REP. HANES: Yes. 24 CLERK: Hardister? 25 REP. HARDISTER: Aye.</p>	<p>1 SEN. BLUE: Aye. 2 CLERK: Brown? 3 SEN. BROWN: Aye. 4 CLERK: Clark? 5 SEN. CLARK: Aye. 6 CLERK: Harrington? 7 SEN. HARRINGTON: Aye. 8 CLERK: Hise? 9 SEN. HISE: Aye. 10 CLERK: Jackson? 11 SEN. JACKSON: Aye. 12 CLERK: Lee? 13 SEN. LEE: Aye. 14 CLERK: McKissick? 15 SEN. MCKISSICK: No. 16 CLERK: Randleman? 17 SEN. RANDLEMAN: Aye. 18 CLERK: Sanderson? 19 SEN. SANDERSON: Aye. 20 CLERK: Smith? 21 SEN. SMITH: Aye. 22 CLERK: Smith-Ingram? 23 SEN. SMITH-INGRAM: Aye. 24 CLERK: Wells? 25 SEN. WELLS: Aye.</p>

<p style="text-align: right;">78</p> <p>1 CLERK: One no. 2 SEN. RUCHO: So 33 aye and 1 no, correct? 3 CLERK: Yes. 4 SEN. RUCHO: Members of the committee, 5 the roll call vote on that, the criteria for the 6 12th District adoption, is 33 aye and 1 no. All 7 right. 8 Before we go on to the next criteria, 9 I'll make a statement to the committee that under 10 the House rules, there is a way of amending or 11 submitting an amendment forward. If you'll contact 12 Ms. Churchill on this, she will assist you in doing 13 so if you desire. 14 All right, that being said, 15 Representative Lewis, before us is -- 16 REP. LEWIS: "Compactness." 17 SEN. RUCHO: -- "Compactness." All 18 right. Please, Ms. Churchill, would you read that? 19 MS. CHURCHILL: "Compactness: In light 20 of the Harris court's criticism of the compactness 21 of the 1st and 12th Districts, the committee shall 22 make reasonable efforts to construct districts in 23 the 2016 contingent Congressional plan that improve 24 the compactness of the current districts and keep 25 more counties and VTDS whole as compared to the</p>	<p style="text-align: right;">80</p> <p>1 Mecklenburg. There's only 1 in Wake, I believe. 2 There's only 1 in Wake, and so 2 counties. There 3 may be 2 in Guilford. Is there any other county 4 with more than 1 incumbent? 5 REP. LEWIS: Senator Blue, thank you for 6 that question, and candidly, I don't believe so, 7 but I don't know that, either. 8 SEN. RUCHO: Follow-up? 9 SEN. BLUE: So if the only place that you 10 would worry about splitting the county to protect 11 the incumbency would be Mecklenburg County based on 12 the current layout -- I know that there are some of 13 us counties that are split 3 and 4 different ways, 14 but I know in Wake County, there's only 1 resident 15 Congressperson, although we have 4 districts here, 16 and I think that the same is true of every other 17 county except Mecklenburg, with the exception of 18 Guilford. There may be 2 from Guilford. I'm not 19 sure, but nevertheless, why should we split 20 counties if you don't have to, to protect the 21 incumbents? Why shouldn't we leave counties whole 22 all over the state except where you have to split 23 them because of population? 24 SEN. RUCHO: Representative Lewis? 25 REP. LEWIS: Thank you for that question,</p>
<p style="text-align: right;">79</p> <p>1 current enacted plan. Division of counties shall 2 only be made for reasons of equalizing population, 3 consideration of incumbency, and political impact. 4 Reasonable effort shall be made not to divide a 5 county into more than two districts." 6 SEN. RUCHO: Representative Lewis, would 7 you please explain the "Compactness" criteria? 8 REP. LEWIS: Thank you, Mr. Chairman. To 9 be clear, the -- trying to explain compactness is 10 very difficult, as I don't know that there is a 11 hard-and-fast definition that I can offer to the 12 committee. The way that I will interpret it is 13 again trying to keep as many counties whole as 14 possible, to split as few precincts as possible, 15 and again, only to -- and to only do that to 16 equalize population. 17 I would -- I would point out, again going 18 back to my friend, Representative Jackson's 19 question, these criteria kind of layer on each 20 other, and so I would -- I would urge the committee 21 to adopt the guideline on compactness. 22 SEN. RUCHO: Senator Blue? 23 SEN. BLUE: Thank you. Representative 24 Lewis, other than in 3 counties, are there multiple 25 incumbents? I know that there's more than 1 in</p>	<p style="text-align: right;">81</p> <p>1 Senator Blue. My response would simply be that 2 considering where incumbents live, and for lack of 3 a better way to say it, the protection of 4 incumbents has always been an accepted political 5 practice in drawing maps. This does not require us 6 to do that. This simply says that that could be 7 one of the reasons that a county would be split. 8 The most important part of this is trying 9 to establish that we won't split counties more than 10 2 times, and we've already passed a criteria that 11 this reiterates, that the biggest reason a county 12 should be split is only to equalize the population 13 between the districts. 14 SEN. BLUE: Follow-up. 15 SEN. RUCHO: Follow-up. 16 SEN. BLUE: And I agree with that, but 17 I'm saying under the current scenario -- and in 18 fact, I think Mecklenburg is the only county that 19 has two Congresspeople, so you could split 20 Mecklenburg anyhow because you've got to split it 21 because it's got over 750,000, or whatever the 22 number is, people. You've got to split Wake; 23 you've got to split Mecklenburg. The others could 24 be made whole except for population purposes, so 25 why would you adopt criteria saying that you're not</p>

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1 going to split counties except to protect
2 incumbents when you don't have any incumbents to
3 protect, and you ultimately say that you will split
4 them for political impact, which means that you can
5 indiscriminately split counties however you want to
6 anyhow if you determine what the political impact
7 is? Why would you say that, and why would you put
8 that provision in there?
9 SEN. RUCHO: Representative --
10 SEN. BLUE: And that being said, would
11 you be willing to --
12 SEN. RUCHO: One question. Let him
13 answer this one first, please.
14 SEN. BLUE: It's part of the same
15 question. That being said, would you be willing to
16 strike after the comma and the word "population" on
17 the third from the bottom line the phrases
18 "consideration of incumbency" and "political
19 impact" so that there's a clear signal that you're
20 not going to split counties since you don't have to
21 split them to protect incumbents, so that you're
22 not going to split counties except where you have
23 to, to get to the one person, one vote requirement?
24 SEN. RUCHO: Representative Lewis, why
25 don't you answer his first question first? He

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1 asked too many questions.
2 REP. LEWIS: Senator Blue, thank you for
3 that series of inquiries. I do apologize because I
4 don't remember exactly what you asked.
5 SEN. BLUE: Do you need me to reask it?
6 REP. LEWIS: Let me just say that it is
7 my intent to split as few counties as we possibly
8 can, and to not allow the counties to be divided
9 more than two times. Our overarching goal of this,
10 as Representative Jackson and I have had some
11 continued conversation, all of these criteria kind
12 of overlap on each other.
13 I would agree with you that equalizing
14 population is a mandatory reason that a county may
15 have to be split. I would also say that it would
16 be dishonest of me to say that political impact
17 can't be considered in how you draw districts.
18 I don't see any harm in leaving the words
19 "consideration of incumbency" because there's no
20 requirement that the districts be drawn to include
21 the current seated members. It just allows for
22 the -- the consideration that they are -- that they
23 are in fact there.
24 SEN. BLUE: One last follow-up.
25 SEN. RUCHO: Last follow-up.

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1 SEN. BLUE: If there is no incumbency,
2 then incumbents won't be considered in splitting
3 districts, and that can't be the reason for
4 splitting it. I'm simply saying that when you say
5 "political impact," you take away everything else
6 you put in that phrase, and if we believe in
7 keeping counties whole to the extent possible,
8 especially small counties, if we believe in that,
9 then all we've got to do is say we're only going to
10 split counties to equalize population, and I'm
11 wondering why it's so critical that you say
12 "political impact," since that phrase is loaded
13 with all kinds of subjective determinations, with
14 the ability to totally disregard this earlier
15 portion saying that you're not going to split
16 counties, or you're only going to split counties to
17 put them into two districts, because you don't say
18 you won't split them; you say you'll make
19 reasonable efforts not to. I'm saying why don't we
20 have an absolute prohibition on splitting counties
21 except when it's necessary to comply with one
22 person, one vote?
23 REP. LEWIS: Thank you for that question,
24 Senator Blue. My response to that would be that we
25 will look forward to reviewing maps that you may

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1 submit that follow that criteria. I feel very
2 comfortable that we've made clear through this
3 process of what our -- what our intents are, and I
4 would prefer that this criteria remain as it's
5 written.
6 SEN. RUCHO: Thank you. Representative
7 Jones?
8 REP. JONES: Thank you, Mr. Chairman. I
9 just wanted to clarify the record that there are
10 two Congressmen that live in Guilford County, Mark
11 Walker of the 6th District, and Alma Adams of the
12 12th District.
13 SEN. RUCHO: Okay. I've got -- I've got
14 Senator Smith.
15 SEN. SMITH: Thank you, Mr. Chairman. I
16 certainly appreciate the idea of compactness. I
17 very much want to see precincts and counties left
18 whole. I would respectfully tell you that in 2011,
19 there was a district drawn where an incumbent was
20 drawn out. It was the district that I lived in,
21 and so the 7th Congressional District drew -- was
22 changed to the 8th Congressional District, and the
23 Congressman McIntyre, who was the incumbent, was
24 drawn out essentially of his own district, and my
25 concern is what Senator Blue has said. The idea of

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1 compactness is great, but when we leave in this
2 other phrase about incumbency, we have taken away
3 the other reason, the only reason that really
4 should be the case, and that is population.
5 REP. LEWIS: Senator, I appreciate that.
6 Again, I would state that equalizing population is
7 definitely the required reason that a county may
8 have to be split. This simply allows for
9 consideration of incumbency and consideration of
10 political impact. I don't -- I don't see that that
11 would interfere with us being able to use
12 compactness in drawing the maps.
13 SEN. SMITH: Follow-up, Mr. Chair?
14 SEN. RUCHO: Follow-up.
15 SEN. SMITH: I just would point out that
16 population was not the case in 2011, and my concern
17 is that if we agree to this and keep this as
18 incumbency and political impact, that that will end
19 up trumping population, and splitting counties and
20 precincts.
21 SEN. RUCHO: Thank you. Representative
22 Lewis, do you want to comment?
23 REP. LEWIS: No.
24 SEN. RUCHO: You're all set? Just a
25 quick -- is it -- a question for the Chair,

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1 Representative Lewis: Is it a requirement for a
2 Congressional candidate to live in the district
3 they're running in?
4 REP. LEWIS: No. A candidate for
5 Congress is not required to reside in the district
6 in which they run.
7 SEN. RUCHO: Okay, thank you. I've got
8 Representative Hager.
9 REP. HAGER: Thank you, Mr. Chairman, and
10 thank you, Representative Lewis, for -- for this
11 particularly, because as I said earlier, Rutherford
12 County, prior to the Rucho-Lewis maps that we're
13 under today, split Rutherford County between the
14 10th and the 11th. Now, I find it -- and I have a
15 question for you. I find it very ironic that that
16 split for the 11th included -- came down Main
17 Street in Rutherfordton to include Walter Dalton's
18 house, so the question I have for you is we won't
19 split districts depending on who we think may run
20 for that Congressional district; would that be
21 correct?
22 REP. LEWIS: Yes, sir, that's correct.
23 SEN. RUCHO: Okay. All right. I've got
24 Senator McKissick.
25 SEN. MCKISSICK: Let me ask you this,

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1 Representative Lewis: The way this is drafted now,
2 what I'm seeing is a statement of an aspirational
3 goal, but not a strict requirement. Is that
4 correct, or is that a misreading? It's one thing
5 to aspire to accomplish these things, which I
6 support. It's another thing if you make it a
7 litmus test, so can you clarify that?
8 REP. LEWIS: Thank you for that question,
9 Senator McKissick. Let me say that this is an
10 aspirational goal.
11 SEN. MCKISSICK: In which case, I embrace
12 it.
13 SEN. RUCHO: Okay. From the Chair,
14 Senator McKissick [sic], a question that
15 Representative Jackson asked earlier, and when you
16 talk about the criteria, is it accurate to say that
17 all of them are weighted at the same level, and
18 it's a matter of harmonizing to try to get to a map
19 that meets those criteria?
20 (No response.)
21 SEN. RUCHO: David?
22 REP. LEWIS: I'm sorry, Mr. Chairman.
23 SEN. RUCHO: Oh, I'm sorry. From the
24 Chair, a question for you.
25 REP. LEWIS: Yes, sir?

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1 SEN. RUCHO: Based on what Representative
2 Jackson asked earlier, all of these criteria listed
3 that's being submitted and voted upon, is it fair
4 to say that the criteria established are not ranked
5 as far as priorities, but are a matter of
6 harmonizing until you can get a map that meets
7 those criteria?
8 REP. LEWIS: That's correct, sir. We are
9 seeking aspirational harmony.
10 (Laughter.)
11 SEN. RUCHO: Okay. Do you have a motion?
12 REP. LEWIS: Mr. Chairman, I would move
13 that the 2016 contingent Congressional plan
14 proposed criteria labeled "Compactness" be adopted
15 by the committee.
16 SEN. RUCHO: All right. I've got --
17 Representative Davis has seconded that motion.
18 Members of the committee, any questions, comments
19 prior to a roll call vote? Representative Farmer-
20 Butterfield?
21 REP. FARMER-BUTTERFIELD: Thank you. I
22 want to ask about the hearings yesterday and how
23 much impact they had on the criteria, if any, based
24 on what you're presenting today.
25 SEN. RUCHO: Representative Lewis?

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<p>1 REP. LEWIS: Thank you for that -- thank 2 you for that inquiry, Representative. I will tell 3 you that many things that stand out in my mind are 4 do away with the 12th, keep counties whole, all of 5 which we've addressed in this, so I would say that 6 they had a great deal of impact on the criteria 7 that you have before you. 8 SEN. RUCHO: All set? Okay. Yes, 9 Representative Stevens? 10 REP. STEVENS: Thank you, Mr. Chair, and 11 I just wanted to commend Representative Lewis and 12 perhaps answer some of the things that some of the 13 people are talking about, and I'd like to read -- I 14 guess it's about one and a half paragraphs of one 15 of the most recent redistricting cases in March of 16 2015. 17 It says, "Now consider the nature of 18 those offsetting 'traditional race-neutral 19 districting principles.' We have listed several, 20 including 'compactness, contiguity, respect for 21 political subdivisions or communities defined by 22 actual shared interests,' incumbency protection, 23 and political affiliation," those things that we've 24 done. 25 The next paragraph says, "But we have not</p>	<p>1 CLERK: Brawley? 2 REP. BRAWLEY: Aye. 3 CLERK: Cotham? 4 REP. COTHAM: No. 5 CLERK: Davis? 6 REP. DAVIS: Aye. 7 CLERK: Farmer-Butterfield? 8 REP. FARMER-BUTTERFIELD: No. 9 CLERK: Hager? 10 REP. HAGER: Aye. 11 CLERK: Hanes? 12 REP. HANES: Yes. 13 CLERK: Hardister? 14 REP. HARDISTER: Aye. 15 CLERK: Hurley? 16 REP. HURLEY: Aye. 17 CLERK: Jackson? 18 REP. JACKSON: No. 19 CLERK: Johnson? 20 REP. JOHNSON: Aye. 21 CLERK: Jordan? 22 REP. JORDAN: Aye. 23 CLERK: McGrady? 24 REP. MCGRADY: Aye. 25 CLERK: Michaux?</p>
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<p>1 listed equal population objectives. And there is a 2 reason for that omission. The reason that equal 3 population objectives do not appear on this list of 4 'traditional' criteria is that equal population 5 objectives play a major -- different role in a 6 State's redistricting process. That role is not a 7 minor one. Indeed, in light of the Constitution's 8 demands, that role may often prove 'predominant' in 9 the ordinary sense of that word," because the equal 10 population, it goes on to talk about in the voting 11 rights districts we really have to take a different 12 focus on that, so I commend you for all of the 13 criteria you've set forward. It seems to comply 14 with the most recent case law. 15 SEN. RUCHO: Representative Lewis? 16 REP. LEWIS: Yes, sir, Mr. Chairman? 17 SEN. RUCHO: All set? We've got a motion 18 before us that we approve of the criteria that was 19 listed and debated on the compactness. We've had a 20 second from Representative Davis. Mr. Clerk, would 21 you call the roll? 22 CLERK: Lewis? 23 REP. LEWIS: Aye. 24 CLERK: Jones? 25 REP. JONES: Aye.</p>	<p>1 REP. MICHAUX: No. 2 CLERK: Moore? 3 REP. MOORE: Yes. 4 CLERK: Stam? 5 REP. STAM: Yes. 6 CLERK: Stevens? 7 REP. STEVENS: Yes. 8 CLERK: Rucho? 9 SEN. RUCHO: Aye. 10 CLERK: Apodaca? 11 SEN. APODACA: Aye. 12 CLERK: Barefoot? 13 SEN. BAREFOOT: Aye. 14 CLERK: Blue? 15 SEN. BLUE: No. 16 CLERK: Brown? 17 SEN. BROWN: Aye. 18 CLERK: Clark? 19 SEN. CLARK: No. 20 CLERK: Harrington? 21 SEN. HARRINGTON: Aye. 22 CLERK: Hise? 23 SEN. HISE: Aye. 24 CLERK: Jackson? 25 SEN. JACKSON: Aye.</p>

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<p>1 CLERK: Lee? 2 SEN. LEE: Aye. 3 CLERK: McKissick? 4 SEN. MCKISSICK: Aye. 5 CLERK: Randleman? 6 SEN. RANDLEMAN: Aye. 7 CLERK: Sanderson? 8 SEN. SANDERSON: Aye. 9 CLERK: Smith? 10 SEN. SMITH: No. 11 CLERK: Smith-Ingram? 12 SEN. SMITH-INGRAM: Aye. 13 CLERK: Wells? 14 SEN. WELLS: Aye. 15 SEN. RUCHO: Members of the committee, 16 the roll was taken. We have the ayes, 27, the 17 noes, 7. That was adopted. Okay, everyone, pay 18 close attention here. We have before us another 19 criteria entitled "Incumbency." Ms. Churchill? 20 MS. CHURCHILL: "Incumbency: Candidates 21 for Congress are not required by law to reside in a 22 district they seek to represent; however, 23 reasonable efforts shall be made to ensure that 24 incumbent members of Congress are not paired with 25 another incumbent in one of the new districts</p>	<p>1 REP. JONES: Aye. 2 CLERK: Brawley? 3 REP. BRAWLEY: Aye. 4 CLERK: Cotham? 5 (No response.) 6 CLERK: Davis? 7 (No response.) 8 CLERK: Farmer-Butterfield? 9 REP. FARMER-BUTTERFIELD: Yes. 10 CLERK: Hager? 11 REP. HAGER: Aye. 12 CLERK: Hanes? 13 REP. HANES: Aye. 14 CLERK: Hardister? 15 REP. HARDISTER: Aye. 16 CLERK: Hurley? 17 REP. HURLEY: Aye. 18 CLERK: Jackson? 19 REP. JACKSON: Aye. 20 CLERK: Johnson? 21 REP. JOHNSON: Aye. 22 CLERK: Jordan? 23 REP. JORDAN: Aye. 24 CLERK: McGrady? 25 REP. MCGRADY: Aye.</p>
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<p>1 constructed in the 2016 contingent Congressional 2 plan." 3 REP. LEWIS: Mr. Chairman, I'd call this 4 the Senator Smith criteria, and I'd move its 5 adoption. 6 SEN. RUCHO: All right. That was the 7 explanation? 8 REP. LEWIS: Well, this is also 9 aspirational, and attempting to harmonize the other 10 criteria. 11 SEN. RUCHO: All right. Members of the 12 committee, any questions or comments on the 13 criteria before you dealing with incumbency? 14 (No response.) 15 SEN. RUCHO: Seeing none, Representative 16 Lewis has a motion that we -- that we approve -- 17 adopt the incumbency criteria. Representative 18 Brawley seconded. We have before us -- any 19 additional thoughts or questions? 20 (No response.) 21 SEN. RUCHO: If not, we'll take a roll. 22 Mr. Clerk? 23 CLERK: Lewis? 24 REP. LEWIS: Aye. 25 CLERK: Jones?</p>	<p>1 CLERK: Michaux? 2 REP. MICHAUX: Aye. 3 CLERK: Moore? 4 REP. MOORE: Aye. 5 CLERK: Stam? 6 REP. STAM: Aye. 7 CLERK: Stevens? 8 REP. STEVENS: Aye. 9 CLERK: Rucho? 10 SEN. RUCHO: Aye. 11 CLERK: Apodaca? 12 SEN. APODACA: Aye. 13 CLERK: Barefoot? 14 SEN. BAREFOOT: Aye. 15 CLERK: Blue? 16 SEN. BLUE: Aye. 17 CLERK: Brown? 18 SEN. BROWN: Aye. 19 CLERK: Clark? 20 SEN. CLARK: No. 21 CLERK: Harrington? 22 SEN. HARRINGTON: Aye. 23 CLERK: Hise? 24 SEN. HISE: Aye. 25 CLERK: Jackson?</p>

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1 SEN. JACKSON: Aye.
2 CLERK: Lee?
3 SEN. LEE: Aye.
4 CLERK: McKissick?
5 SEN. MCKISSICK: Aye.
6 CLERK: Randleman?
7 SEN. RANDLEMAN: Aye.
8 CLERK: Sanderson?
9 SEN. SANDERSON: Aye.
10 CLERK: Smith?
11 SEN. SMITH: Aye.
12 CLERK: Smith-Ingram?
13 SEN. SMITH-INGRAM: Aye.
14 CLERK: Wells?
15 SEN. WELLS: Aye.
16 SEN. RUCHO: All right.
17 REP. MICHAUX: Mr. Chairman?
18 SEN. RUCHO: One second. Let me call the
19 vote, please. We had aye, 31, no, 1. That
20 criteria for incumbency has been adopted. All
21 right. Question, Senator -- Representative
22 McKissick -- I mean, excuse me -- sorry. Mr.
23 Michaux, did you have a question?
24 REP. MICHAUX: No.
25 SEN. RUCHO: Okay. I thought I heard

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1 something from over there.
2 REP. LEWIS: Thank you, Mr. Chairman,
3 members.
4 SEN. RUCHO: Okay, let me see. All
5 right. We -- I mentioned earlier that --
6 amendments being submitted. Are there any
7 amendments that are going to be submitted? All
8 right. Representative Blue?
9 SEN. BLUE: I have one that --
10 SEN. RUCHO: Excuse me, Senator Blue.
11 I'm sorry.
12 SEN. BLUE: I have one. I had to change
13 it after the adoption of one of the other
14 amendments. I had given it to Erika earlier.
15 SEN. RUCHO: All right. It's being
16 worked on?
17 SEN. BLUE: Yeah.
18 SEN. RUCHO: Okay. I think Senator Hise
19 has an amendment. Okay. Senator Hise, do you have
20 an amendment?
21 SEN. HISE: I have a motion.
22 SEN. RUCHO: Motion. One second. They
23 need to have copies for distribution. (Pause.)
24 I'd like to have the committee stand at ease for a
25 few moments while we have some copies made of the

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1 amendments, so a couple of minutes to break.
2 (RECESS, 12:04 - 12:22 P.M.)
3 SEN. RUCHO: All right, members of the
4 committee, I think you have on each of your desks a
5 copy of an amendment submitted by Representative
6 Paul Stam, "Amendment to Political Data Criteria
7 #3." Representative Stam?
8 REP. STAM: Yes. It's just sort of
9 technical. I kept reading that thing, and the way
10 it read, you could read it that you couldn't
11 consider data from the 2008 election, since it said
12 "since 2008," so this makes clear that yes, you can
13 consider 2008 and things forward.
14 SEN. RUCHO: All right. You've explained
15 it. Is that a motion you're making?
16 REP. STAM: I move the amendment.
17 SEN. RUCHO: Representative Lewis?
18 REP. LEWIS: Mr. Chairman, if I could, to
19 the maker of the amendment, Representative Stam,
20 would the gentleman consider striking "#3" to make
21 clear that these are in no particular order? In
22 other words, it would say, "Amendment to Political
23 Data Criteria."
24 REP. STAM: Oh, sure. Well, it would
25 be -- yes, yes, I do. Whether it's spelled

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1 "criterion" or "criteria," I will.
2 SEN. RUCHO: All right. So therefore,
3 the amendment that you've having strikes out -- or
4 it just says "Amendment to Political Data," and
5 then you're striking out -- excuse me -- "Political
6 Data Criteria." You're striking out "#3"?
7 REP. STAM: We're striking out "#3."
8 SEN. RUCHO: Just "#3." Members of the
9 committee, is that clear?
10 REP. LEWIS: Mr. Chairman?
11 SEN. RUCHO: Who's calling me? Oh,
12 Representative Lewis?
13 REP. LEWIS: I would support the
14 gentleman's amendment.
15 SEN. RUCHO: All right. Representative
16 Stam has submitted an amendment before you, and
17 it's open for discussion. Members of the
18 committee?
19 (No response.)
20 SEN. RUCHO: Seeing none, would you have
21 a roll call, Mr. Clerk?
22 CLERK: Lewis?
23 REP. LEWIS: Aye.
24 CLERK: Lewis, aye. Jones?
25 REP. JONES: Aye.

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<p>1 CLERK: Jones, aye. Brawley? 2 REP. BRAWLEY: Aye. 3 CLERK: Brawley, aye. Cotham? 4 REP. COTHAM: Aye. 5 CLERK: Cotham, aye. Davis? 6 REP. DAVIS: Aye. 7 CLERK: Davis, aye. Farmer-Butterfield? 8 REP. FARMER-BUTTERFIELD: Aye. 9 CLERK: Farmer-Butterfield, aye. Hager? 10 REP. HAGER: Aye. 11 CLERK: Hager, aye. Hanes? 12 REP. HANES: Aye. 13 CLERK: Hanes, aye. Hardister? 14 REP. HARDISTER: Aye. 15 CLERK: Hardister, aye. Hurley? 16 REP. HURLEY: Aye. 17 CLERK: Hurley, aye. Jackson? 18 REP. JACKSON: Aye. 19 CLERK: Jackson, aye. Johnson? 20 REP. JOHNSON: Aye. 21 CLERK: Johnson, aye. Jordan? 22 REP. JORDAN: Aye. 23 CLERK: Jordan, aye. McGrady? 24 REP. MCGRADY: Aye. 25 CLERK: McGrady, aye. Michaux?</p>	<p>1 CLERK: Jackson, aye. Lee? 2 SEN. LEE: Aye. 3 CLERK: Lee, aye. McKissick? 4 SEN. MCKISSICK: No. 5 CLERK: McKissick, no. Randleman? 6 SEN. RANDLEMAN: Aye. 7 CLERK: Randleman, aye. Sanderson? 8 SEN. SANDERSON: Aye. 9 CLERK: Sanderson, aye. Smith? 10 SEN. SMITH: No. 11 CLERK: Smith, no. Smith-Ingram? 12 SEN. SMITH-INGRAM: Nay. 13 CLERK: Smith-Ingram, no. Wells? 14 SEN. WELLS: Aye. 15 CLERK: Aye. 4. 16 SEN. RUCHO: That makes 30 yeses. Did 17 everybody vote? 18 CLERK: Yes. 30 to 4. 19 SEN. RUCHO: All right, members of the 20 committee, on the roll-call vote on Representative 21 Stam's amendment dealing with -- and it's titled 22 "Amendment to Political Data Criteria." It is 23 adopted 30 to 4. 24 Okay, we'll now just -- we'll go on to 25 the next. (Pause.) All right, members, you have</p>
103	105
<p>1 REP. MICHAUX: Aye. 2 CLERK: Michaux, aye. Moore? 3 REP. MOORE: Aye. 4 CLERK: Moore, aye. Stam? 5 REP. STAM: Aye. 6 CLERK: Stam, aye. Stevens? 7 REP. STEVENS: Aye. 8 CLERK: Stevens, aye. Rucho? 9 SEN. RUCHO: Aye. 10 CLERK: Rucho, aye. Apodaca? 11 SEN. APODACA: Aye. 12 CLERK: Apodaca, aye. Barefoot? 13 SEN. BAREFOOT: Aye. 14 CLERK: Barefoot, aye. Blue? 15 SEN. BLUE: No. 16 CLERK: Blue, no. Brown? 17 SEN. BROWN: Aye. 18 CLERK: Brown, aye. Clark? 19 SEN. CLARK: No. 20 CLERK: Clark, no. Harrington? 21 SEN. HARRINGTON: Aye. 22 CLERK: Harrington, aye. Hise? 23 SEN. HISE: Aye. 24 CLERK: Hise, aye. Jackson? 25 SEN. JACKSON: Aye.</p>	<p>1 an amendment coming out toward you, and it is 2 "Amendment, Compactness Criteria." It's -- all 3 right. 4 REP. LEWIS: Mr. Chairman? 5 SEN. RUCHO: Yes, sir, Representative 6 Lewis? Excuse me, Representative Lewis. I've 7 got -- we need to have Senator Blue explain his 8 amendment. Go ahead. 9 REP. LEWIS: I was wondering if Senator 10 Blue would agree to a -- to a technical fix to 11 strike the number sign and the 6. 12 SEN. BLUE: I would. 13 SEN. RUCHO: Okay. Members of the 14 committee, on Senator Blue's amendment, the title 15 will be, "Amendment, Compactness Criteria." You 16 will scratch "#6." That will not be in there. 17 All right, Senator Blue, everyone has a 18 copy of the amendment. Would you like to explain 19 your amendment? 20 SEN. BLUE: I would. Thank you, Mr. 21 Chairman. Mr. Chairman and ladies and gentlemen of 22 the committee and Senators and House members 23 present, what I tried to do in this amendment is 24 simply recognize that the county is the most 25 important governmental unit following the state,</p>

<p style="text-align: right;">106</p> <p>1 because they're extensions of the state, and to set 2 forth clearly that we are -- we're only going to 3 divide counties when you're equalizing population, 4 although that's a federal requirement, too, and 5 when you're complying with federal law. 6 It's something you've got to do. You 7 might as well admit that we have to comply with 8 federal law. Federal law is supreme, and so this 9 says that we will split counties only when you're 10 trying to get down to zero deviation in population, 11 which we're going to try to do, I take it, and only 12 when you're complying with a federal law regarding 13 redistricting. All of the other reasons that have 14 been given would not be justification for splitting 15 counties, and I move the adoption of the amendment. 16 SEN. RUCHO: Representative Lewis? 17 REP. LEWIS: Thank you, Mr. Chairman, and 18 thank you, Senator Blue, for that explanation. Let 19 me be clear, ladies and gentlemen. We of course 20 are going to comply with federal law. We would not 21 be here were we not attempting to comply with the 22 federal decision issued by the courts. I would 23 submit that this amendment is not necessary, and 24 should not be adopted because we of course are 25 going -- as Senator Blue said, of course we're</p>	<p style="text-align: right;">108</p> <p>1 were looking at. I can't really look at all that I 2 want to. 3 SEN. RUCHO: Okay. You all set? Members 4 of the committee -- oh, excuse me. Senator Hise? 5 SEN. HISE: Thank you, Mr. Chairman, and 6 this may be for -- just trying to get clarity on 7 what this amendment would actually do. One of the 8 outcomes of the last maps is that all of the major 9 urban areas in the state were represented by two 10 Congressmen that was coming in, and something we 11 saw at least that was coming in. Would this 12 amendment prohibit that type of decision for those 13 districts so that -- as that would be a political 14 impact that was coming in that we could not make 15 sure that urban areas were represented by two 16 Congressmen? 17 SEN. RUCHO: Okay. Representative -- 18 excuse me. Senator Blue, would you please answer 19 that question? 20 SEN. BLUE: I'll be happy to answer that. 21 Certainly not. As I said, the only two counties 22 that absolutely would be guaranteed to be 23 represented by two Congresspeople would be 24 Mecklenburg and Wake, since each of them has a 25 population in excess of the 700-plus thousand</p>
<p style="text-align: right;">107</p> <p>1 going to comply with the federal law. 2 As we've already had a pretty lengthy 3 discussion, that consideration, the word 4 "consideration" of incumbency and political impact 5 may be considered. It's not required to be 6 considered, and I've already stated for the record 7 that equalizing population is the most important 8 reason that a county would be divided. I would 9 respectfully ask the members to vote against this 10 amendment. 11 SEN. RUCHO: I've got Representative 12 Stam. 13 REP. STAM: I would oppose the amendment, 14 and point out what may be obvious. Senator Blue as 15 the Minority Leader is going to be perfectly 16 entitled to submit his own plan, and nothing in 17 what we've written would prohibit him from striking 18 those two criteria from his maps. He doesn't need 19 this amendment to do what he wants to do. 20 SEN. RUCHO: Yes, Senator Blue? 21 SEN. BLUE: Just a comment. My cape 22 disappeared, and I'm not Superman anymore, so I 23 can't do a map in a day that takes into account all 24 of the stuff that we have as criteria. I was 25 thinking we were narrowing the things that we</p>	<p style="text-align: right;">109</p> <p>1 that's necessary to draw a Congressional district. 2 If you started drawing a district toward an urban 3 area, then you could split that urban area when you 4 got to it so that it's in two separate districts. 5 This would in no way prohibit having two 6 Congresspeople from whichever other urban areas 7 other than Wake and Mecklenburg, where you'd be 8 guaranteed at least two, where you could bring them 9 into one of the urban counties, but you couldn't 10 split it but one time, so you get -- you could get 11 two from Guilford, two from Cumberland, two from 12 Forsyth, two from any of the counties, including 13 the smallest, if you paired it with a much bigger 14 population. 15 SEN. RUCHO: Representative Lewis, 16 comment? 17 REP. LEWIS: No, sir. I would say I'm 18 sure that the answer Senator Blue gave is correct 19 to Senator Hise's question. I just again would not 20 support the amendment as it's drafted for the 21 reasons that I've already stated. 22 SEN. RUCHO: All right. Members of the 23 committee, you have an amendment before you from 24 Senator Blue, and the amendment is entitled 25 "Amendment, Compactness Criteria." Any additional</p>

110	<p>1 questions, comments?</p> <p>2 (No response.)</p> <p>3 SEN. RUCHO: Seeing none, the roll call,</p> <p>4 Mr. Clerk?</p> <p>5 CLERK: Lewis?</p> <p>6 REP. LEWIS: No.</p> <p>7 CLERK: Lewis, no. Jones?</p> <p>8 REP. JONES: No.</p> <p>9 CLERK: Jones, no. Brawley?</p> <p>10 REP. BRAWLEY: No.</p> <p>11 CLERK: Brawley, no. Cotham?</p> <p>12 REP. COTHAM: Yes.</p> <p>13 CLERK: Cotham, yes. Davis?</p> <p>14 REP. DAVIS: No.</p> <p>15 CLERK: Davis, no. Farmer-Butterfield?</p> <p>16 REP. FARMER-BUTTERFIELD: Yes.</p> <p>17 CLERK: Farmer-Butterfield, yes. Hager?</p> <p>18 REP. HAGER: No.</p> <p>19 CLERK: Hager, no. Hanes?</p> <p>20 REP. HANES: Yes.</p> <p>21 CLERK: Hanes, yes. Hardister?</p> <p>22 REP. HARDISTER: No.</p> <p>23 CLERK: Hardister, no. Hurley?</p> <p>24 REP. HURLEY: No.</p> <p>25 CLERK: Hurley, no. Jackson?</p>
111	<p>1 REP. JACKSON: Yes.</p> <p>2 CLERK: Jackson, yes. Johnson?</p> <p>3 REP. JOHNSON: No.</p> <p>4 CLERK: Johnson, no. Jordan?</p> <p>5 REP. JORDAN: No.</p> <p>6 CLERK: Jordan, no. McGrady?</p> <p>7 REP. MCGRADY: No.</p> <p>8 CLERK: McGrady, no. Michaux?</p> <p>9 REP. MICHAUX: Aye.</p> <p>10 CLERK: Michaux, aye. Moore?</p> <p>11 REP. MOORE: Aye.</p> <p>12 CLERK: Moore, aye. Stam?</p> <p>13 REP. STAM: No.</p> <p>14 CLERK: Stam, no. Stevens?</p> <p>15 REP. STEVENS: No.</p> <p>16 CLERK: Stevens, no. Rucho?</p> <p>17 SEN. RUCHO: No.</p> <p>18 CLERK: Rucho, no. Apodaca?</p> <p>19 SEN. APODACA: No.</p> <p>20 CLERK: Apodaca, no. Barefoot?</p> <p>21 SEN. BAREFOOT: No.</p> <p>22 CLERK: Barefoot, no. Blue?</p> <p>23 SEN. BLUE: Aye.</p> <p>24 CLERK: Blue, aye. Brown?</p> <p>25 SEN. BROWN: No.</p>
112	<p>1 CLERK: Brown, no. Clark?</p> <p>2 SEN. CLARK: Aye.</p> <p>3 CLERK: Clark, aye. Harrington?</p> <p>4 SEN. HARRINGTON: No.</p> <p>5 CLERK: Harrington, no. Hise?</p> <p>6 SEN. HISE: No.</p> <p>7 CLERK: Hise, no. Jackson?</p> <p>8 SEN. JACKSON: No.</p> <p>9 CLERK: Jackson, no. Lee?</p> <p>10 SEN. LEE: No.</p> <p>11 CLERK: Lee, no. McKissick?</p> <p>12 SEN. MCKISSICK: Aye.</p> <p>13 CLERK: McKissick, aye. Randleman?</p> <p>14 SEN. RANDLEMAN: No.</p> <p>15 CLERK: Randleman, no. Sanderson?</p> <p>16 SEN. SANDERSON: No.</p> <p>17 CLERK: Sanderson, no. Smith?</p> <p>18 SEN. SMITH: Aye.</p> <p>19 CLERK: Smith, aye. Smith-Ingram?</p> <p>20 SEN. SMITH-INGRAM: Aye.</p> <p>21 CLERK: Smith-Ingram, aye. Wells?</p> <p>22 SEN. WELLS: No.</p> <p>23 CLERK: No.</p> <p>24 SEN. RUCHO: All right, members of the</p> <p>25 committee, the roll call vote was aye -- excuse</p>
113	<p>1 me -- no, 23; aye, 11.</p> <p>2 All right, we have another one before us,</p> <p>3 and this one will be Senator Erica Smith-Ingram's</p> <p>4 amendment on criteria.</p> <p>5 REP. LEWIS: Mr. Chairman?</p> <p>6 SEN. RUCHO: Yes, Representative Lewis?</p> <p>7 REP. LEWIS: Would Senator Smith-Ingram</p> <p>8 agree to a small technical amendment to strike the</p> <p>9 number and "6"?</p> <p>10 SEN. SMITH-INGRAM: Yes.</p> <p>11 REP. LEWIS: Thank you, ma'am.</p> <p>12 SEN. RUCHO: Members of the committee,</p> <p>13 Senator Smith-Ingram has agreed to a technical</p> <p>14 amendment that will strike the title, and the title</p> <p>15 will read "Amendment to Compactness Criteria," and</p> <p>16 that'll be all it'll say there.</p> <p>17 Okay, I have Senator Smith-Ingram to</p> <p>18 present her amendment.</p> <p>19 SEN. SMITH-INGRAM: Thank you, Mr. Chair.</p> <p>20 In light of our previous discussions and our effort</p> <p>21 to promote harmony, you can have one-part harmony,</p> <p>22 two-part, three-part. In this case, this will add</p> <p>23 the four-part harmony, and I would ask staff if</p> <p>24 there is needed discussion about the actual</p> <p>25 language, it came from the federal case.</p>

114	<p>1 REP. LEWIS: Mr. Chairman?</p> <p>2 SEN. RUCHO: Representative Lewis,</p> <p>3 comment?</p> <p>4 REP. LEWIS: Yes, sir. I appreciate the</p> <p>5 amendment and the sentiment expressed by the</p> <p>6 Senator. I would offer that it appears to me that</p> <p>7 the language that's attempting to be added is</p> <p>8 somewhat vague and nebulous, as I don't know that</p> <p>9 we have a defined -- or an actionable definition of</p> <p>10 what "community of interest" is, or "community of</p> <p>11 shared interest," so respectfully, I would ask the</p> <p>12 committee to defeat this amendment.</p> <p>13 SEN. RUCHO: Members of the committee,</p> <p>14 any questions or comments?</p> <p>15 (No response.)</p> <p>16 SEN. RUCHO: We have a motion before us</p> <p>17 dealing with "Amendment to Compact Criteria"</p> <p>18 submitted by Senator Erica Smith-Ingram. You have</p> <p>19 that before you. Seeing no comments or questions,</p> <p>20 Mr. Clerk, roll call, please?</p> <p>21 CLERK: Lewis?</p> <p>22 REP. LEWIS: No.</p> <p>23 CLERK: Lewis, no. Jones?</p> <p>24 REP. JONES: No.</p> <p>25 CLERK: Jones, no. Brawley?</p>	116	<p>1 CLERK: Michaux, yes. Moore?</p> <p>2 REP. MOORE: Yea.</p> <p>3 CLERK: Moore, yea. Stam?</p> <p>4 REP. STAM: No.</p> <p>5 CLERK: Stam, no. Stevens?</p> <p>6 REP. STEVENS: Yes.</p> <p>7 CLERK: Stevens --</p> <p>8 REP. STEVENS: Sorry. No.</p> <p>9 CLERK: Stevens, no. Rucho?</p> <p>10 SEN. RUCHO: No.</p> <p>11 CLERK: Rucho, no. Apodaca?</p> <p>12 SEN. APODACA: No.</p> <p>13 CLERK: Apodaca, no. Barefoot?</p> <p>14 SEN. BAREFOOT: No.</p> <p>15 CLERK: Barefoot, no. Blue?</p> <p>16 SEN. BLUE: Yes.</p> <p>17 CLERK: Blue, yes. Brown?</p> <p>18 SEN. BROWN: No.</p> <p>19 CLERK: Brown, no. Clark?</p> <p>20 SEN. CLARK: Yes.</p> <p>21 CLERK: Clark, yes. Harrington?</p> <p>22 SEN. HARRINGTON: No.</p> <p>23 CLERK: Harrington, no. Hise?</p> <p>24 SEN. HISE: No.</p> <p>25 CLERK: Hise, no. Jackson?</p>
115	<p>1 REP. BRAWLEY: No.</p> <p>2 CLERK: Brawley, no. Cotham?</p> <p>3 REP. COTHAM: Yes.</p> <p>4 CLERK: Cotham, yes. Davis?</p> <p>5 REP. DAVIS: No.</p> <p>6 CLERK: Davis, no. Farmer-Butterfield?</p> <p>7 REP. FARMER-BUTTERFIELD: Yes.</p> <p>8 CLERK: Farmer-Butterfield, yes. Hager?</p> <p>9 REP. HAGER: No.</p> <p>10 CLERK: Hager, no. Hanes?</p> <p>11 REP. HANES: Yes.</p> <p>12 CLERK: Hanes, yes. Hardister?</p> <p>13 REP. HARDISTER: No.</p> <p>14 CLERK: Hardister, no. Hurley?</p> <p>15 REP. HURLEY: No.</p> <p>16 CLERK: Hurley, no. Jackson?</p> <p>17 REP. JACKSON: Yes.</p> <p>18 CLERK: Jackson, yes. Johnson?</p> <p>19 REP. JOHNSON: No.</p> <p>20 CLERK: Johnson, no. Jordan?</p> <p>21 REP. JORDAN: No.</p> <p>22 CLERK: Jordan, no. McGrady?</p> <p>23 REP. MCGRADY: No.</p> <p>24 CLERK: McGrady, no. Michaux?</p> <p>25 REP. MICHAUX: Yes.</p>	117	<p>1 SEN. JACKSON: No.</p> <p>2 CLERK: Jackson, no. Lee?</p> <p>3 SEN. LEE: No.</p> <p>4 CLERK: Lee, no. McKissick?</p> <p>5 SEN. MCKISSICK: Yes.</p> <p>6 CLERK: McKissick, yes. Randleman?</p> <p>7 SEN. RANDLEMAN: No.</p> <p>8 CLERK: Randleman, no. Sanderson?</p> <p>9 SEN. SANDERSON: No.</p> <p>10 CLERK: Sanderson, no. Smith?</p> <p>11 SEN. SMITH: Aye.</p> <p>12 CLERK: Smith, aye. Smith-Ingram?</p> <p>13 SEN. SMITH-INGRAM: Aye.</p> <p>14 CLERK: Smith-Ingram, aye. Wells?</p> <p>15 SEN. WELLS: No.</p> <p>16 CLERK: Wells, no. 23-11.</p> <p>17 SEN. RUCHO: 23 no; 11 yes?</p> <p>18 CLERK: Yes.</p> <p>19 SEN. RUCHO: Members of the committee, on</p> <p>20 "Amendment to Compactness Criteria" from Senator</p> <p>21 Erica Smith-Ingram, the ayes, 11; the noes, 23.</p> <p>22 That amendment was not adopted.</p> <p>23 All right, we have another one, and I</p> <p>24 believe it's already at your desk, and this one is</p> <p>25 "Communities of Interest," submitted by Senator</p>

<p style="text-align: right;">118</p> <p>1 Floyd McKissick. Senator McKissick, would you like 2 to explain your amendment? 3 SEN. MCKISSICK: Sure, and it's very 4 straightforward. It's not seeking to amend any 5 other criteria. This would just be a criteria that 6 is aspirational, as many of the others. It does 7 follow case law in terms of what is stated, and 8 what this says is that the committee will make 9 reasonable efforts to respect political 10 subdivisions, cities, towns, what have you, as well 11 as communities as defined by actual interest. What 12 I would like to do is recognize Kara as well as 13 Erica, perhaps, to provide further clarification in 14 terms of existing case law. 15 I think we are -- we would be remiss if 16 we did not include this as one of the benchmarks 17 that we would seek to use in drawing the plans as 18 we move forward. I can't imagine why we would want 19 to ignore communities of shared interest or not 20 respect political subdivisions other than counties. 21 This is talking about other political subdivisions 22 or towns that might be within these Congressional 23 districts, which should also be respected to the 24 extent it's possible and feasible to do so, not 25 just counties.</p>	<p style="text-align: right;">120</p> <p>1 on the vagueness of these terms, to reject this 2 additional criteria. 3 SEN. MCKISSICK: Follow-up, Mr. Chair? 4 SEN. RUCHO: Senator McKissick? 5 SEN. MCKISSICK: Let me ask you this, 6 Representative Lewis: I see you have some problems 7 with that terminology that was used by the US 8 Supreme Court, which I think is pretty clear in 9 terms of a directive, but what is the objection to 10 respecting political subdivisions, because I would 11 think that we would all want to do so for the 12 cities and towns and communities -- 13 SEN. RUCHO: Representative Lewis? 14 SEN. MCKISSICK: -- represent, and they 15 are used collectively by the Supreme Court, but I 16 mean, if you have problems with that, I think 17 you've got still to follow it, or you end up in 18 litigation. I don't think any of us want to end up 19 in litigation any more than we already are in this 20 state. I don't know why -- what's the objection to 21 respecting political subdivisions? 22 REP. LEWIS: Well, sir, to be clear, as I 23 pointed out when we adopted the compactness 24 criteria, it's not our intent to split -- we're 25 going to do the best we can to keep as many</p>
<p style="text-align: right;">119</p> <p>1 Kara, Erika, if you could comment, 2 please? 3 SEN. RUCHO: Please identify yourself and 4 respond to Senator McKissick's request if you can. 5 MS. MCCRAW: I'm Kara McCraw, staff 6 attorney with the Legislative Analysis Division. 7 Senator McKissick is referring to the last part of 8 this amendment. The term -- the language "respect 9 political subdivisions and communities defined by 10 actual shared interests" is language that was used 11 by the Supreme Court in the Miller v. Johnson case 12 from 1995 as part of the list of traditional race- 13 neutral districting principles. 14 SEN. RUCHO: All right. Representative 15 Lewis? 16 REP. LEWIS: Thank you, Mr. Chairman, and 17 thank you, Senator, for offering this additional 18 criteria. As best I can understand it, to the 19 extent it's required by federal law, of course 20 we're going to be mindful of that, but as you and I 21 had an aside conversation earlier, I don't believe 22 we have defined in this state at least what a 23 community of interest is. I don't understand, 24 actually, what "actual shared interests" means, so 25 therefore, I would have to ask the committee, based</p>	<p style="text-align: right;">121</p> <p>1 counties and as many VTDs whole. I'll give you a 2 direct example of why I think this is vague. 3 We've already heard from the gentleman 4 from Wake, Senator Blue, as he I think correctly 5 stated that a county is the most important 6 political subdivision. I actually -- I actually 7 agree with that. Your city, Durham, has annexed 8 into Wake County, so when I say it's vague and 9 nebulous, how do you know which -- which interest 10 you're going to follow? I think we've done a good 11 job in this committee of saying we're going to keep 12 as many counties and as many VTDs whole as we can. 13 SEN. RUCHO: Okay, I've got 14 Representative Stam. 15 REP. STAM: Yes, I was about to make the 16 same point. Cary has annexed into Chatham, so 17 under this, it would give mapmakers an excuse to 18 break the Wake/Chatham line so they could keep Cary 19 together. Angier, if you can believe it, has 20 annexed into Wake County. I don't know how David 21 Lewis let them do that. With this amendment, 22 mapmakers could despoil Wake County just to get a 23 few more Republicans into the Harnett County 24 district. 25 REP. LEWIS: Mr. Chairman?</p>

<p style="text-align: right;">122</p> <p>1 SEN. RUCHO: Representative Lewis? 2 REP. LEWIS: For the record, while I do 3 not support Senator McKissick's amendment, I think 4 anywhere Angier can be shared is a positive thing. 5 (Laughter.) 6 SEN. RUCHO: Senator McKissick? 7 SEN. MCKISSICK: I would simply say that 8 we ought to try to respect these political 9 subdivisions. I don't think with the current mood 10 of this General Assembly, we have to worry about 11 too many more annexations occurring for a while, 12 so, you know, respecting political subdivisions is 13 a valid criteria regardless of what those political 14 subdivisions might look like, so obviously I 15 support it, but I can certainly put my finger in 16 the air and see the way these winds are blowing. 17 SEN. RUCHO: Members of the committee, 18 any additional questions? Senator? 19 SEN. SMITH-INGRAM: Yes. Representative 20 Lewis, I'm a little bit confused about your 21 objection to the use of this language inasmuch as 22 it relates to not having a definitive definition. 23 Is it possible for staff to be able to comment on 24 what is the definition used in North Carolina of 25 "communities of interest" as we have applied it in</p>	<p style="text-align: right;">124</p> <p>1 the citizens of Wake County? I don't think we've 2 ever defined it. I certainly think that to the 3 extent that it's not restricted from being used as 4 the maps are prepared that, you know, I think 5 that's something that the map drawers may wish to 6 try and use, but I don't know that it -- I don't 7 understand -- I don't understand it enough, and I 8 do want to take this opportunity to respectfully 9 let my friend from Durham know that, as I reminded 10 him, I'm not an attorney, and in no way have I 11 tried to disrespect or disregard any ruling from 12 the US Supreme Court, nor from this federal trial 13 court, but I'm not prepared to stand before this 14 committee today and say that I understand what this 15 is trying to do; therefore, I continue to oppose 16 this new criteria. 17 SEN. RUCHO: Members of the committee? 18 (No response.) 19 SEN. RUCHO: From the Chair, 20 Representative Lewis, I recognize, and I think the 21 committee recognizes the full effort to keep 22 counties whole. I think the counties are 23 relatively stable in their -- in their borders, but 24 yet a municipality and a town and the like, with 25 annexation, deannexation and the like, is more</p>
<p style="text-align: right;">123</p> <p>1 the past? 2 SEN. RUCHO: The chair will allow that. 3 Which staff member would like to define 4 "communities of interest"? 5 MS. MCCRAW: I'm Kara McCraw, staff 6 attorney with the Legislative Analysis Division. 7 North Carolina has not adopted a definition of 8 "communities of interest." 9 SEN. RUCHO: Follow-up? 10 SEN. SMITH-INGRAM: Follow-up. As I 11 recall, Representative Stevens just read from -- I 12 believe she was citing case law, but it just seems 13 that all the other elements that you have already 14 in the criteria are there, with the exception of 15 communities of interest, and so I'm just concerned 16 about why you have adopted the other three, and why 17 you feel comfortable with that, but not with the 18 communities of interest. 19 SEN. RUCHO: Representative Lewis? 20 REP. LEWIS: Well, again, thank you for 21 that inquiry, Senator. I would just say again that 22 as we've never defined what a community of interest 23 is -- and the example I tried to use with Senator 24 McKissick, how do you define -- is the City of 25 Durham a more important community of interest than</p>	<p style="text-align: right;">125</p> <p>1 variable. Do you think that that may be one of the 2 reasons for what could be adding confusion? 3 REP. LEWIS: I think that's fair. I 4 think that's a good indication of why I say this is 5 vague, and not really defined. We got a request 6 from a member for the central staff to explain how 7 communities of interest are defined in the state, 8 and they're not, so since there's not a definition, 9 they shouldn't be in the criteria. 10 SEN. RUCHO: Members of the committee, 11 we've had discussion on this issue. We have an 12 amendment before us, submitted by Senator Floyd 13 McKissick dealing with communities of interest. 14 Any additional questions, comments? 15 (No response.) 16 SEN. RUCHO: Seeing none, Mr. Clerk, a 17 roll call, please? 18 CLERK: Lewis? 19 REP. LEWIS: No. 20 CLERK: Lewis, no. Jones? 21 REP. JONES: No. 22 CLERK: Jones, no. Brawley? 23 REP. BRAWLEY: No. 24 CLERK: Brawley, no. Cotham? 25 REP. COTHAM: Yes.</p>

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<p>1 CLERK: Cotham, yes. Davis? 2 REP. DAVIS: No. 3 CLERK: Davis, no. Farmer-Butterfield? 4 REP. FARMER-BUTTERFIELD: Yes. 5 CLERK: Farmer-Butterfield, yes. Hager? 6 REP. HAGER: No. 7 CLERK: Hager, no. Hanes? 8 REP. HANES: Yes. 9 CLERK: Hanes, yes. Hardister? 10 REP. HARDISTER: No. 11 CLERK: Hardister, no. Hurley? 12 REP. HURLEY: No. 13 CLERK: Hurley, no. Jackson? 14 REP. JACKSON: Yes. 15 CLERK: Jackson, yes. Johnson? 16 REP. JOHNSON: No. 17 CLERK: Johnson, no. Jordan? 18 REP. JORDAN: No. 19 CLERK: Jordan, no. McGrady? 20 REP. MCGRADY: No. 21 CLERK: McGrady, no. Michaux? 22 REP. MICHAUX: Aye. 23 CLERK: Michaux, aye. Moore? 24 REP. MOORE: Aye. 25 CLERK: Moore, aye. Stam?</p>	<p>1 CLERK: McKissick, aye. Randleman? 2 SEN. RANDLEMAN: No. 3 CLERK: Randleman, no. Sanderson? 4 SEN. SANDERSON: No. 5 CLERK: Sanderson, no. Smith? 6 SEN. SMITH: Aye. 7 CLERK: Smith, aye. Smith-Ingram? 8 SEN. SMITH-INGRAM: Aye. 9 CLERK: Smith-Ingram, aye. Wells? 10 SEN. WELLS: No. 11 CLERK: Wells, no. 12 SEN. RUCHO: Members of the committee, 13 the result of the vote on Senator McKissick's 14 amendment dealing with communities of interest, 15 aye, 11; no, 22. The motion is not adopted. 16 Members of the committee, any additional 17 amendments? Any motions? 18 REP. LEWIS: Mr. Chairman -- 19 SEN. RUCHO: Senator Hise? Oh, excuse 20 me. 21 REP. LEWIS: Mr. Chairman? 22 SEN. RUCHO: Yes, sir? 23 REP. LEWIS: I just wanted to thank the 24 members for their indulgence this morning, and I'm 25 proud of the 2016 contingent Congressional plan</p>
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<p>1 REP. STAM: No. 2 CLERK: Stam, no. Stevens? Stevens? 3 (No response.) 4 CLERK: Rucho? 5 SEN. RUCHO: No. 6 CLERK: Rucho, no. Apodaca? 7 SEN. APODACA: No. 8 CLERK: Apodaca, no. Barefoot? 9 SEN. BAREFOOT: No. 10 CLERK: Barefoot, no. Blue? 11 SEN. BLUE: Aye. 12 CLERK: Blue, aye. Brown? 13 SEN. BROWN: No. 14 CLERK: Brown, no. Clark? 15 SEN. CLARK: Aye. 16 CLERK: Clark, aye. Harrington? 17 SEN. HARRINGTON: No. 18 CLERK: Harrington, no. Hise? 19 SEN. HISE: No. 20 CLERK: Hise, no. Jackson? 21 SEN. JACKSON: No. 22 CLERK: Jackson, no. Lee? 23 SEN. LEE: No. 24 CLERK: Lee, no. McKissick? 25 SEN. MCKISSICK: Aye.</p>	<p>1 proposed criteria that we have adopted. I did want 2 to say for the record that it's my intent that 3 these be used in the drawing of the 2016 contingent 4 Congressional plan in response to the lawsuit only. 5 This is not an attempt to establish any other long- 6 running criteria. 7 SEN. RUCHO: Okay. Senator Hise, you 8 have a motion? 9 SEN. HISE: Mr. Chairman, I have a 10 motion, a written motion. 11 SEN. RUCHO: Okay. Has that been sent 12 out to each member? 13 SEN. HISE: Sergeant-at-Arms -- 14 SEN. RUCHO: Are the Sergeant-At Arms 15 distributing it? Let's take about a two- or three- 16 minute break so everybody can read this motion. 17 (Pause.) 18 Has everyone had an opportunity to review 19 Senator Hise's motion? Representative Jackson? 20 REP. JACKSON: Thank you, Mr. Chairman. 21 One question would be the way this is worded -- 22 SEN. RUCHO: Well, let me do this: if 23 it's dealing with what's in there, I'm going to 24 give Senator Hise a chance to explain it. I was 25 giving everybody a chance to review it.</p>

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1 All right, everybody has it. Senator
2 Hise, would you like to explain that motion, and
3 then we'll open it up for discussion?
4 SEN. HISE: Thank you, Mr. Chairman.
5 Basically what this does is it consolidates the
6 criteria we've already adopted and voted on into
7 one piece, and then directs the co-chairs to go
8 through the process of developing the maps on the
9 basis of those criteria, and provides the sum of
10 \$25,000 under the way we need to appropriate it,
11 with approval of the speaker, and those type of
12 things in the interim that are coming in, and then
13 allows the minority party to have access to the
14 same funds, and to draw maps under those criteria
15 or any other criteria that they would establish.
16 It also rescinds that provided that the Supreme
17 Court issues a stay.
18 SEN. RUCHO: Representative Lewis,
19 comment?
20 REP. LEWIS: Thank you, Mr. Chairman and
21 members. Just to be clear where I hope we're going
22 with this, as you know, we are still optimistic
23 that we'll receive a stay from the Supreme Court.
24 If we do not receive a stay, it would be the
25 chairs' intent to bring a map before this committee

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1 for recommendation for introduction to a special
2 session that would be held later this week.
3 The chairs would encourage in the
4 issue -- in the -- for the goal of increased
5 transparency that should other people have maps
6 that they'd like this committee to consider, that
7 they get them prepared and submitted as well, but
8 to be clear, once the General Assembly convenes,
9 there would also be an opportunity for maps to be
10 presented to either the House or the Senate
11 redistricting committees when they meet.
12 However, the House rules, and I believe
13 the Senate rules -- I won't speak for the Senate
14 rules, but I know the House rules will require that
15 any amendments that are offered to the plans that
16 are submitted in fact be complete plans. In other
17 words, you would have to have all 13 districts
18 drawn to -- you would -- instead of trying to amend
19 whatever plan that this committee will release, you
20 would have to in essence prepare and release a plan
21 to compete with this plan.
22 SEN. RUCHO: All right. Members of the
23 committee? Senator Blue? Oh, excuse me. Let me
24 do this: Representative Jackson asked a question
25 earlier. Go ahead, please.

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1 REP. JACKSON: My question, I guess, was
2 directed to you as chairman, or either Senator
3 Hise. I was just wondering if we could change the
4 first sentence of Paragraph 3. The way you've got
5 it written is that the co-chairs, Lewis and Rucho,
6 can pick their mapmakers, but our entire caucus
7 would have to do it, the members of this committee,
8 which means we'd have to stay together and vote and
9 do things like that, and I would just ask that you
10 consider substituting that, and as Minority Leader
11 of the Senate, let Senator Blue make that choice
12 for us, and our entire caucus not be involved and
13 have to make that decision.
14 SEN. RUCHO: Senator Hise, do you have a
15 thought or a comment, or would you like to ponder
16 that one a little bit?
17 SEN. HISE: I don't see what's written as
18 requiring that type of vote or operation from the
19 minority caucus. This coming in would allow them
20 to decide if they want to allow their leader to
21 make that decision all on his own. I think that's
22 within the way it's written here, so I don't
23 necessarily see that issue in the way it's written,
24 but however the minority -- the members of the
25 minority part of this committee choose to select

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1 who the mapmaker is their concern.
2 SEN. RUCHO: Okay. Senator Blue?
3 SEN. BLUE: Two questions, basically,
4 practical questions. I assume that the co-chairs
5 have consulted with somebody who's available to be
6 the consultant to draw a map. We haven't, but I
7 can assure you that anybody that you consult with
8 normally isn't going to do it, at least not for us,
9 on a contingent fee basis, and we don't know when
10 there may be an order one way or the other on this
11 stay if the plaintiffs have until midafternoon to
12 submit their papers. I don't know what the Chief
13 Justice is going to do or when he's going to do it,
14 but practically speaking, first, we haven't
15 consulted with anybody, but secondly, if you
16 consult with somebody, you've got to promise them
17 you're going to pay them, and this says that you
18 won't pay them even if they work two or three days
19 if a stay is granted.
20 SEN. RUCHO: All right. Representative
21 Lewis?
22 REP. LEWIS: Mr. Chairman and Senator
23 Blue, if we need to have the attorney review this,
24 we certainly can, and correct any offending
25 language. I just wanted to state for the record

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1 that it is the intent, after having consulted with
2 the Speaker and the President Pro Tem, that any
3 mapmaker engaged would be paid.
4 I think -- well, I don't think. What the
5 language is trying to say is that should a stay be
6 issued, the maps would never be released, not that
7 the person would not be paid for their time. We're
8 not trying to get somebody to draw maps on a
9 contingency fee. We're having maps drawn
10 contingent upon us not getting a stay.
11 I would be glad, if you are concerned
12 about the way the language is written, to take a
13 moment and have that defined, but I did want to
14 state for the record that the intent would be any
15 map drawer that you would engage or the minority
16 party would engage would be paid for their time.
17 SEN. RUCHO: Senator Blue?
18 SEN. BLUE: Andrew has some language
19 that'll fix it.
20 SEN. RUCHO: All right. Senator Hise?
21 SEN. HISE: I think they may be -- I just
22 wanted to say I think they may be working on some
23 clarification, but the intent as drafted is that
24 work done while it's authorized to be done would be
25 paid for, but once the stay came out or a ruling

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1 came out that we would stop work at that point, and
2 wouldn't be paid for work done after that point
3 that was coming in, but while the authorization
4 exists, we would pay for those funds, thinking we'd
5 get the check cut within 24 hours.
6 SEN. RUCHO: We'll stand at ease a moment
7 while we're studying some language, if we may.
8 While that's being looked at, Senator Blue, did you
9 have a second point that you were making?
10 SEN. BLUE: I did, as a matter of fact.
11 Do you have some experts hanging around who can do
12 this mapmaking that we might could talk to? We
13 haven't engaged anybody.
14 SEN. RUCHO: I think we're probably going
15 to use the one that you're presently using now.
16 SEN. BLUE: Which one is that one?
17 SEN. RUCHO: Whichever one that is.
18 SEN. BLUE: Is there capability within
19 the staff to do it, Mr. Chair?
20 SEN. RUCHO: I'm sorry. Say that again?
21 SEN. BLUE: Is there capability within
22 the staff to do mapmaking?
23 SEN. RUCHO: Ms. Churchill? Okay. Is
24 there capability within the staff of being able to
25 draw maps as requested by the minority party?

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1 MS. CHURCHILL: If there is a member of
2 the General Assembly that would like a map drawn,
3 we will do so at their direction; however, we will
4 need instruction from that member how to assign all
5 the geography of the state.
6 SEN. RUCHO: Does that answer your
7 question?
8 SEN. BLUE: You need instructions as to
9 how to sign -- assign what?
10 SEN. RUCHO: No, how to assign.
11 MS. CHURCHILL: How to assign the
12 geography of the state.
13 SEN. RUCHO: How you want the -- they can
14 draw the map. Just give them the direction on how
15 you want the -- the districts to be drawn.
16 SEN. BLUE: Okay.
17 SEN. RUCHO: Follow-up?
18 SEN. BLUE: Yeah, one follow-up. I'm
19 trying to keep up with the many iterations of the
20 case -- cases involving redistricting, and I think
21 that in that sense, even those instructions now are
22 considered confidential; is that correct?
23 MS. CHURCHILL: At this point in time,
24 any member of the General Assembly that makes a
25 drafting or information request to any legislative

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1 employee, that drafting and information request is
2 treated as confidential, subjective to legislative
3 confidentiality by that legislative employee. Upon
4 enactment of any Congressional plan, the plans
5 themselves and the drafting and information
6 requests related to that plan do become a public
7 record.
8 SEN. RUCHO: Okay. Still working, so
9 just -- oh, excuse me. Senator McKissick? We're
10 working on the language, so --
11 SEN. MCKISSICK: Sure. I understand.
12 This is a question to Erika to get further
13 clarification. In terms of the stat packs of data
14 that would be available, would we have the same
15 type of data that was available in 2011 as a basis
16 for drawing -- drawing plans? I mean, I know
17 there was some discussion today about not
18 considering race as a factor and, you know, things
19 of that sort, but would we still have available
20 data packs that are -- provide the statistics and
21 data that we would have used in 2011 were we
22 drawing those districts, and if so, is any of that
23 data updated at this time as well?
24 MS. CHURCHILL: Mr. Chair, as I
25 understand it -- and Mr. Frye will need to correct

<p style="text-align: right;">138</p> <p>1 me, because he maintains our databases, but there 2 have been no changes to the 2011 database. It 3 still has the 2010 Census data in it. It still has 4 the voter registration data in it. It still has 5 the election data in it. We still have the 6 capability of running exactly the same reports off 7 of that database. 8 SEN. MCKISSICK: Last follow-up. 9 SEN. RUCHO: Follow-up. 10 SEN. MCKISSICK: Yeah. Erika, I mean -- 11 and I know this is not a fair question, perhaps, 12 but to what extent can we get reasonably quick 13 turnaround, considering the time frame that we're 14 in? I think our challenge is obviously we relied 15 upon consultants and experts before, Mr. David 16 Harris and Mr. Bill Gilkeson, but they are both 17 attorneys engaged in private practice, handling 18 clients, and to think that we can displace them 19 this quickly to get them reengaged on less than 24 20 hours notice is not a -- perhaps a reasonable 21 expectation. 22 I'm trying to see if we want to get these 23 maps drawn, I think Senator Blue is on the right 24 track. We're going to need to rely upon in-house 25 resources, perhaps supplemented by consultants, but</p>	<p style="text-align: right;">140</p> <p>1 SEN. RUCHO: I think what you're -- what 2 you reflect is what our concern is, that we have a 3 short -- short window, and we're all faced with 4 that same tight timeline, so -- but I'm sure staff, 5 as Ms. Churchill said, will do its best to help you 6 achieve your goal. Representative -- or Chairman 7 Lewis? 8 REP. LEWIS: Thank you, Mr. Chairman. 9 Senator McKissick, just to be clear, sir, the 10 criteria that will be available to the mapmaker 11 that Senator Rucho and I employ will only be the 12 criteria that this -- that this committee has 13 adopted. The stat packs, as you well recall, 14 contain additional information. That information 15 obviously will be available at the end of the map 16 drawing process. Just to be clear, the map drawer 17 that Senator Rucho and I will contract with will 18 have only access to the criteria that this 19 committee has adopted. 20 SEN. MCKISSICK: Follow-up. 21 SEN. RUCHO: Yes, sir. Follow-up. 22 SEN. MCKISSICK: Some of the critical 23 language in here under Bullet 3, if we go down 24 about five lines, it talks about using the adopted 25 criteria or any other criteria selected by the</p>
<p style="text-align: right;">139</p> <p>1 are we going to be able to get quick turnaround? 2 MS. CHURCHILL: Mr. Chair, if I might, we 3 will do our best. We do have a limited number of 4 people who have the capa- -- the knowledge to 5 actually use the mapping software, but amongst 6 ourselves, once we know what the requests are, we 7 will try to efficiently meet all of the needs. 8 SEN. MCKISSICK: Thank you. 9 SEN. RUCHO: All right. Senator 10 McKissick, any specifics? I mean, you were talking 11 about the stat packs and all that. Do you have any 12 specific criteria that you want included in the 13 stat pack? 14 SEN. MCKISSICK: I mean, as long as we 15 have the same type of stat pack that we had 16 previously, the demographic data and the political 17 data that's available, I think we'll probably be 18 okay. I cannot think of any additional data that 19 we would need. As long as that's readily 20 accessible and we can get pretty quick 21 turnaround -- I am deeply concerned that since we 22 did not learn about the availability of the funds 23 for consultants before today that trying to engage 24 people who are deeply familiar with be challenging 25 at this late point in time.</p>	<p style="text-align: right;">141</p> <p>1 minority caucus, so if we want to use other 2 criteria that might be consistent with the ruling 3 in Harris versus McCrory -- and we would contend 4 that race can be used; it just cannot be the 5 predominant factor. I just want to know that that 6 data will be available if we need to use and rely 7 upon it in drafting constitutionally correct 8 districts, because that was not included in your 9 criteria, but this language in this particular 10 motion does give us as the minority caucus the 11 right to use other criteria. 12 SEN. RUCHO: Hold on. I'll try to get 13 you an answer. (Pause.) Our understanding -- the 14 Chairs' understanding is that, you know, in drawing 15 maps, you can request any data you feel that needs 16 to be there to help you achieve what you believe is 17 a -- a map trying to resolve the issue dealing with 18 the court decision. 19 SEN. MCKISSICK: Thank you. 20 SEN. RUCHO: Okay. Senator Blue? 21 SEN. BLUE: Yes. So that I can follow 22 that point up, it's my understanding, and correct 23 me, that the -- that the database will have 24 information about the 2012, 2014 elections in 25 addition to the data that was available at the time</p>

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1 the original maps were drawn. That is, they will
2 be current in the information that they have. Is
3 that right?
4 SEN. RUCHO: Let's ask Mr. Frye if he'll
5 be kind enough to explain what is in the database,
6 and of course, it's based on the 2010 Census, but
7 election results you're asking about.
8 MR. FRYE: Yes. So -- so what I've got
9 worked up for this round is there's -- you know, of
10 course, you know, like we were talking about, all
11 of the old data is totally in place if it makes
12 sense to use that for whoever wants it, and for the
13 2016 database, I've got total population, voting
14 age population, because that's the only thing
15 that's not -- just election data, right, and that
16 is just election data. There's the 2008 general
17 election, basically all the Council of State
18 contests. There's the 2010 general election, US
19 Senate, the 2012 general election, you know,
20 basically governor and Council of State contests,
21 and -- and then the 2014 US Senate.
22 SEN. RUCHO: Does that help you?
23 SEN. BLUE: You said 2014 US Senate.
24 2014 Congressional data, elections data?
25 SEN. RUCHO: Mr. Frye?

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1 MR. FRYE: Well, for the -- no, for the
2 2014 database, it has just the US Senate.
3 SEN. BLUE: I can't hear him.
4 SEN. RUCHO: Could you repeat that again?
5 We missed you with that.
6 MR. FRYE: For the 2014 general election,
7 I've just got US Senate. There are other --
8 because there's sort -- there's a difference
9 between like what data is -- has been generally
10 processed and what data is sort of ready to go in
11 our redistricting database. There's kind of a fair
12 gap between those two things, so we do have some
13 other information relating to other contests from
14 2014, but --
15 SEN. BLUE: So the database will not have
16 the location of current incumbents or anything like
17 that?
18 SEN. RUCHO: Mr. Frye?
19 MR. FRYE: What we have is locations of
20 current incumbents that -- a lot of them were
21 updated as of the 2011 cycle, so we may want to
22 double-check. There are a few of them I was
23 looking at that we may want to double-check on
24 their addresses and see if they've moved.
25 SEN. RUCHO: Senator Blue?

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1 SEN. BLUE: I'm just trying to make sure
2 that whatever data is used by one is used and
3 available by all.
4 SEN. RUCHO: Well, my --
5 SEN. BLUE: If we're basing it on the
6 legislative computers and the legislative database.
7 SEN. RUCHO: If I'm understanding it
8 correctly, any data that you need to have is going
9 to be available as long as you give some -- some
10 request for it. Am I correct?
11 MR. FRYE: Well, certainly --
12 SEN. BLUE: Aspirational.
13 MR. FRYE: Yeah. I'm concerned about
14 timeline, you know, about preparing things, and
15 certain things are prepared and ready to go, and
16 yeah, those things can be --
17 SEN. RUCHO: Ms. Churchill?
18 MS. CHURCHILL: (Inaudible.)
19 SEN. RUCHO: Talking about the data -- I
20 think that was Mr. Frye's question. Okay, that's
21 where we are. All right, still on -- did we get
22 the language?
23 REP. STAM: Yeah, on a big-picture issue
24 here, while they're working out the language, I was
25 minority leader during the Pender County

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1 redistricting. Speaker Hackney was the speaker.
2 If I had been offered a deal like this, I would go
3 give Representative Lewis and Senator Rucho a big
4 bear hug and "Thank you."
5 SEN. RUCHO: Don't hug us.
6 SEN. BLUE: Certainly no kiss associated
7 with it.
8 (Laughter.)
9 SEN. RUCHO: Representative -- or Senator
10 Blue?
11 SEN. BLUE: Yeah. I have a question of
12 the Chair, but I guess you've got a motion pending,
13 so I'll wait --
14 SEN. RUCHO: We've got a motion.
15 SEN. BLUE: -- until after the motion.
16 SEN. RUCHO: Yeah, we've got a motion
17 first. Senator Hise?
18 SEN. HISE: Question, probably directed
19 for staff. If -- and under this motion where it
20 currently is, if the minority caucus is going to
21 load additional information, including things like
22 race and others, onto the stat pack for the
23 operations, do we have a sufficient wall of
24 separation, say separate computers, separate
25 databases, separate operating, that the co-chairs

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1 do not have access to that information, or the
2 other committees cannot have access to that
3 information, because it's inconsistent with the
4 criteria that's established, so can we make sure
5 that once those are loaded, they are not available
6 if they are not part of the criteria for the co-
7 chairs' drawing?
8 SEN. RUCHO: Mr. Frye?
9 MR. FRYE: Yes. I believe for -- if the
10 co-chairs are working on a plan, they can work on
11 it and follow the criteria separately, and for any
12 reports they produce, would just use that
13 information.
14 SEN. RUCHO: To follow up on what his
15 question is, is there a clear wall that we have to
16 actually request that information before it's
17 eligible -- eligible for us to use? Am I correct?
18 I mean, you're talking a firewall?
19 SEN. HISE: Yeah, making sure that no
20 one -- once it's loaded in, anyone could draw --
21 could pull it up. I want to make sure that you
22 don't have access to that information.
23 MR. FRYE: Right. No, there is a
24 firewall.
25 SEN. RUCHO: Okay.

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1 MR. FRYE: It is not a central server
2 that would be --
3 SEN. RUCHO: Are you okay, Senator Hise?
4 Ms. Churchill, you okay?
5 REP. LEWIS: Mr. Chairman?
6 SEN. RUCHO: Where am I?
7 REP. LEWIS: Mr. Chairman?
8 SEN. RUCHO: Oh, excuse me.
9 REP. LEWIS: I think perhaps we can --
10 can summarize this by saying that all people will
11 have access to all of the data. This committee has
12 directed the chairs not to use some of it, so the
13 computer on which this committee's map is drawn
14 will only contain the criteria that was adopted by
15 the committee, so to kind of get the gist of what
16 Senator Blue was trying to ask, he can have access
17 to more stuff than we can, not less.
18 SEN. RUCHO: Okay. Representative --
19 REP. MICHAUX: Yeah, I just wanted to be
20 clear on this. It says that you-all must do your
21 maps according to the criteria that this body has
22 passed. It also says that our group can use any --
23 this criteria or any other criteria we deem
24 necessary. Is that correct?
25 SEN. RUCHO: That's correct.

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1 SEN. MICHAUX: Okay.
2 SEN. RUCHO: Okay. Are we close with the
3 language?
4 REP. LEWIS: Mr. Chairman?
5 SEN. RUCHO: Yes, sir, Representative?
6 REP. LEWIS: Could we deal with another
7 matter while this is being perfected?
8 SEN. RUCHO: Yes, sir. Let's just
9 displace this amendment if we can, Senator Hise,
10 while we're working on the language, and
11 Representative Lewis has another issue he'd like to
12 bring before -- before us.
13 REP. LEWIS: Mr. Chairman, what I'd like
14 to do is offer a motion that the committee directs
15 the ISD to establish a computer and to populate the
16 database of that computer with only the information
17 that is consistent with the criteria adopted by the
18 committee today, and to ensure that the firewalls
19 that Mr. Frye spoke of are in place during the
20 entire time that the map for this committee is
21 drawn.
22 SEN. RUCHO: We have a motion before us.
23 Do we have a second on that, David?
24 SEN. APODACA: Second.
25 SEN. RUCHO: Second, Senator Apodaca.

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1 Second. Representative Michaux?
2 REP. MICHAUX: I was trying to get the
3 gist of what he -- what his motion is.
4 REP. LEWIS: May I speak on my motion?
5 SEN. RUCHO: Yes, sir.
6 REP. LEWIS: Members, the motion would
7 direct ISD to establish a computer with the
8 Maptitude software that has only the criteria as
9 defined and authorized by this committee to use,
10 and it is on that computer that the chairs would
11 work, along with any consultant they would hire, to
12 produce a map to return back to this committee for
13 review.
14 What it's doing in essence is limiting
15 the chairs to only the criteria that this committee
16 has adopted, while making sure that it does not
17 limit the minority party to have access to whatever
18 they deem important to be able to fully participate
19 in this process.
20 SEN. RUCHO: Follow-up?
21 SEN. MICHAUX: Follow-up. What about the
22 firewall separating the two on that?
23 REP. LEWIS: Thank you for that -- that
24 question, Representative Michaux. I was trying to
25 use the same language that Mr. Frye. What I'm --

<p style="text-align: right;">150</p> <p>1 to be absolutely clear, the only data the map 2 drawers on behalf of this committee can have is the 3 data that the criteria adopted by this committee 4 allows. There -- the firewall means that you won't 5 be able -- the map drawer won't have access to flip 6 a switch and say, "Well, I really do want to see 7 what the 2008 presidential race was." That will 8 not be loaded on the computer that he has access 9 to. 10 SEN. RUCHO: Okay. Senator McKissick? 11 SEN. MCKISSICK: Representative Lewis, 12 just to get some clarification here, if we as the 13 minority caucus want to look at the 2008 race, or 14 we want to look at other variables other than those 15 that were approved today, in the past, we had our 16 own computer available that also had Maptitude, or 17 whatever the appropriate program was at that time, 18 which we could utilize for crafting maps that 19 were -- met our criteria, so I'm just wanting to 20 determine if we will have a separate computer 21 available to us that we can use that will give us 22 the additional data that we might seek to use in 23 preparing maps. 24 REP. LEWIS: Senator -- 25 SEN. RUCHO: Representative Lewis?</p>	<p style="text-align: right;">152</p> <p>1 SEN. RUCHO: We'll get a copy of that. 2 All right. We have a motion before us from 3 Representative Lewis. It's been explained; it's 4 been debated. Any additional thoughts or questions 5 on that before we move to adopt his motion? 6 (No response.) 7 SEN. RUCHO: Seeing none, Mr. Clerk, if 8 you'd be kind enough to call roll? 9 CLERK: Lewis? 10 REP. LEWIS: Aye. 11 CLERK: Lewis, aye. Jones? 12 REP. JONES: Aye. 13 CLERK: Jones, aye. Brawley? 14 REP. BRAWLEY: Aye. 15 CLERK: Brawley, aye. Cotham? 16 REP. COTHAM: No. 17 CLERK: Cotham, no. Davis? 18 REP. DAVIS: Aye. 19 CLERK: Davis, aye. Farmer-Butterfield? 20 (No response.) 21 CLERK: Hager? 22 REP. HAGER: Aye. 23 CLERK: Hager, aye. Hanes? 24 REP. HANES: No. 25 CLERK: No? Hanes, no. Hardister?</p>
<p style="text-align: right;">151</p> <p>1 REP. LEWIS: Thank you, Mr. Chairman. 2 Senator McKissick and Mr. Chairman, if my motion is 3 adopted, I will offer the identical motion for the 4 minority party, except that they are able to 5 populate the data with whatever they want to 6 populate it with. 7 SEN. MCKISSICK: With that being said, I 8 could support this, but I want to make sure that 9 the minority party does have their own computer 10 populated with their own data, separate and apart 11 from the fields or subcategories which have been 12 identified as appropriate criteria today. 13 REP. LEWIS: Yes, sir, we're on the exact 14 same page on that point. 15 SEN. MCKISSICK: Thank you. 16 SEN. RUCHO: Okay. You -- any additional 17 questions on -- 18 REP. MICHAUX: Yeah. Can we get that in 19 writing? 20 (Laughter.) 21 REP. LEWIS: Mr. Chairman? 22 SEN. RUCHO: Yes, sir? 23 REP. LEWIS: We do have a court reporter, 24 so perhaps we could forward that to Representative 25 Michaux, and he could read it.</p>	<p style="text-align: right;">153</p> <p>1 REP. HARDISTER: Aye. 2 CLERK: Hardister, aye. Hurley? 3 REP. HURLEY: Aye. 4 CLERK: Hurley, aye. Jackson? 5 REP. JACKSON: No. 6 CLERK: Jackson, no. Johnson? 7 REP. JOHNSON: Aye. 8 CLERK: Johnson, aye. Jordan? 9 REP. JORDAN: Aye. 10 CLERK: Jordan, aye. McGrady? 11 REP. MCGRADY: Aye. 12 CLERK: McGrady, aye. Michaux? 13 REP. MICHAUX: No. 14 CLERK: Michaux, no. Moore? 15 REP. MOORE: Nay. 16 CLERK: Moore, nay. Stam? 17 REP. STAM: Aye. 18 CLERK: Stam, aye. Stevens? 19 (No response.) 20 CLERK: Rucho? 21 SEN. RUCHO: Aye. 22 CLERK: Rucho, aye. Apodaca? 23 SEN. APODACA: Aye. 24 CLERK: Apodaca, aye. Barefoot? 25 SEN. BAREFOOT: Aye.</p>

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<p>1 CLERK: Barefoot, aye. Blue? 2 SEN. BLUE: No. 3 CLERK: Blue, no. Brown? 4 SEN. BROWN: Aye. 5 CLERK: Brown, aye. Clark? 6 SEN. CLARK: No. 7 CLERK: Clark, no. Harrington? 8 SEN. HARRINGTON: Aye. 9 CLERK: Harrington, aye. Hise? 10 SEN. HISE: Aye. 11 CLERK: Hise, aye. Jackson? 12 SEN. JACKSON: Aye. 13 CLERK: Jackson, aye. Lee? 14 SEN. LEE: Aye. 15 CLERK: Lee, aye. McKissick? 16 SEN. MCKISSICK: No. 17 CLERK: McKissick, no. Randleman? 18 SEN. RANDLEMAN: Aye. 19 CLERK: Randleman, aye. Sanderson? 20 SEN. SANDERSON: Aye. 21 CLERK: Sanderson, aye. Smith? 22 SEN. SMITH: No. 23 CLERK: Smith, no. Smith-Ingram? 24 SEN. SMITH-INGRAM: Nay. 25 CLERK: Smith-Ingram, nay. Wells?</p>	<p>1 Representative Lewis, seconded by Senator 2 McKissick, was that -- for the minority party to 3 have access to the computer and have all the 4 information they deem necessary for them to 5 participate in trying to see what was requested as 6 a remedy for the three-judge panel's decision. Any 7 questions or comments? 8 REP. MICHAUX: Yeah. I want to know what 9 the last part of that motion was that he made. It 10 was sort of sub rosa. 11 SEN. RUCHO: Is that a question to 12 Representative Lewis? 13 REP. MICHAUX: Representative Lewis. 14 REP. LEWIS: Representative Michaux, what 15 I said was that the minority members -- the members 16 of the minority party on this committee may caucus 17 and elect a member or members to direct the drawing 18 of these maps on their behalf, and if they're 19 unable to do so, that the responsibility would be 20 vested in Senator Blue. 21 SEN. RUCHO: Do you have a follow-up 22 question? 23 REP. MICHAUX: We -- what I -- you are 24 vesting -- you're telling us what to do? Is that 25 what I'm hearing?</p>
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<p>1 SEN. WELLS: Aye. 2 CLERK: Wells, aye. 3 SEN. RUCHO: All right, members of the 4 committee, a motion by Representative Lewis 5 requiring and asking that the computer that will be 6 used by the majority party will only contain the 7 criteria that's been established and voted upon 8 today, and that vote was aye, 21, no, 11, so that 9 passed. 10 REP. LEWIS: Mr. Chairman? 11 SEN. RUCHO: Representative Lewis? 12 REP. LEWIS: For motion. 13 SEN. RUCHO: Motion. 14 REP. LEWIS: Mr. Chairman, I move that 15 the minority party be given access to a computer 16 and whatever information they deem necessary to 17 populate that computer in order to fully 18 participate in this pro- -- in this process. 19 Further, I move that the minority party members of 20 this committee may caucus and designate that 21 responsibility to one or more members, and if they 22 are not able to do that, that the responsibility 23 would fall to Senator Blue. 24 SEN. MCKISSICK: I'll second that. 25 SEN. RUCHO: All right. The motion by</p>	<p>1 REP. LEWIS: To repeat for the third 2 time, Representative Michaux, the minority party 3 members of this committee would caucus and 4 designate members or members to act on their 5 behalf, and if they are unable to do so, that that 6 responsibility would fall to Senator Blue. 7 REP. MICHAUX: Mr. Chairman? 8 SEN. RUCHO: Yes, sir? 9 REP. MICHAUX: Why don't you -- 10 SEN. RUCHO: Follow-up? 11 REP. MICHAUX: Yes. Why don't you let us 12 make that decision as to who it should fall -- fall 13 to? 14 REP. LEWIS: Mr. Chairman? 15 SEN. RUCHO: Yes, sir? 16 REP. LEWIS: Could we have maybe staff 17 clarify what it means that the minority party can 18 caucus and designate members or members, if that's 19 not allowing them to make a decision? Could 20 somebody explain exactly what language I'm not 21 communicating? 22 SEN. RUCHO: Okay. Senator Apodaca, you 23 had a comment? 24 SEN. APODACA: Mr. Chairman, inquiry of 25 the Chair.</p>

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<p>1 SEN. RUCHO: Yes, sir? 2 SEN. APODACA: I'm somewhat confused. I 3 thought Representative Jackson asked this question 4 about how they could nominate somebody. I thought 5 this is what we were trying to fix. 6 SEN. RUCHO: All right. Then you're the 7 one that's going to explain to -- to Senator -- 8 Representative Michaux. Okay? All right. A 9 motion is before us. It's been seconded. Any 10 additional questions or comments on Representative 11 Lewis' motion? 12 (No response.) 13 SEN. RUCHO: Seeing none -- 14 CLERK: Lewis? 15 SEN. RUCHO: -- Mr. Clerk, roll call, 16 please? 17 CLERK: Lewis? 18 REP. LEWIS: Aye. 19 CLERK: Lewis, aye. Jones? 20 REP. JONES: Aye. 21 CLERK: Jones, aye. Brawley? 22 REP. BRAWLEY: Aye. 23 CLERK: Brawley, aye. Cotham? 24 REP. COTHAM: Aye. 25 CLERK: Cotham, aye. Davis?</p>	<p>1 CLERK: Moore, aye. Stam? 2 REP. STAM: Aye. 3 CLERK: Stam, aye. Stevens? 4 (No response.) 5 CLERK: Rucho? 6 SEN. RUCHO: Aye. 7 CLERK: Rucho, aye. Apodaca? 8 SEN. APODACA: Aye. 9 CLERK: Apodaca, aye. Barefoot? 10 SEN. BAREFOOT: Aye. 11 CLERK: Barefoot, aye. Blue? 12 SEN. BLUE: Aye. 13 CLERK: Blue, aye. Brown? 14 SEN. BROWN: Aye. 15 CLERK: Brown, aye. Clark? 16 SEN. CLARK: Aye. 17 CLERK: Clark, aye. Harrington? 18 SEN. HARRINGTON: Aye. 19 CLERK: Harrington, aye. Hise? 20 SEN. HISE: Aye. 21 CLERK: Hise, aye. Jackson? 22 SEN. JACKSON: Aye. 23 CLERK: Jackson, aye. Lee? 24 SEN. LEE: Aye. 25 CLERK: Lee, aye. McKissick?</p>
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<p>1 REP. DAVIS: Aye. 2 CLERK: Davis, aye. Farmer-Butterfield? 3 REP. FARMER-BUTTERFIELD: Aye. 4 CLERK: Aye? Farmer-Butterfield, aye. 5 Hager? 6 SEN. RUCHO: Please speak loudly, folks. 7 REP. HAGER: Aye. 8 CLERK: Hager, aye. Hanes? 9 REP. HANES: Aye 10 CLERK: Hanes, aye. Hardister? 11 REP. HARDISTER: Aye. 12 CLERK: Hardister, aye. Hurley? 13 REP. HURLEY: Aye. 14 CLERK: Hurley, aye. Jackson? 15 REP. JACKSON: Aye. 16 CLERK: Jackson, aye. Johnson? 17 REP. JOHNSON: Aye. 18 CLERK: Johnson, aye. Jordan? 19 REP. JORDAN: Aye. 20 CLERK: Jordan, aye. McGrady? 21 REP. MCGRADY: Aye. 22 CLERK: McGrady, aye. Michaux? 23 REP. MICHAUX: No. 24 CLERK: Michaux, no. Moore? 25 REP. MOORE: Aye.</p>	<p>1 SEN. MCKISSICK: Aye. 2 CLERK: McKissick, aye. Randleman? 3 SEN. RANDLEMAN: Aye. 4 CLERK: Randleman, aye. Sanderson? 5 SEN. SANDERSON: Aye. 6 CLERK: Sanderson, aye. Smith? 7 SEN. SMITH: Aye. 8 CLERK: Smith, aye. Smith-Ingram? 9 SEN. SMITH-INGRAM: Aye. 10 CLERK: Smith-Ingram, aye. Wells? 11 SEN. WELLS: Aye. 12 CLERK: Wells, aye. 13 SEN. RUCHO: Members of the committee, 14 after a roll-call vote, 32 aye and 1 no, so 15 therefore, that has been settled. Senator Hise, do 16 we have language? 17 SEN. HISE: I think we have two 18 amendments. 19 SEN. RUCHO: Two amendments? 20 SEN. HISE: Yeah. 21 SEN. RUCHO: All right. Are you going to 22 present it, or staff? 23 SEN. HISE: I can present them. I think 24 staff's going to read them. The first one is to 25 clarify the payments made for work performed.</p>

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<p>1 SEN. RUCHO: Let's pay attention, here. 2 I know we're moving forward. Go ahead, please. 3 SEN. HISE: The first is to add some 4 clarification for the -- to allow payments for work 5 performed prior to the stay. 6 SEN. RUCHO: All right. First -- the 7 first amendment, Ms. Churchill, would you explain 8 what that amendment says and what it does? 9 MS. CHURCHILL: Yes, Mr. Chair. The 10 amendment would be to the end, to the last sentence 11 of Paragraph 2 and Paragraph 3 of Senator Hise's 12 motion. It would remove the period at the end of 13 that sentence, inset a semicolon, and all of the 14 following at the end of each sentence: "Provided, 15 however, this authorization shall permit 16 compensation to be paid for any work performed 17 prior to the issuance of such stay." 18 SEN. RUCHO: Members of the committee, 19 you have that before you. Is there any questions 20 on that first amendment that has been put forward 21 by Senator Hise on trying to provide some clarity 22 in what was brought up by Senator Blue? 23 Representative Jackson? 24 REP. JACKSON: Thank you, Mr. Chairman. 25 Would that -- that would amendment allow payment</p>	<p>1 CLERK: Hager, yes. Hanes? 2 REP. HANES: Yes. 3 CLERK: Hanes, yes. Hardister? 4 REP. HARDISTER: Aye. 5 CLERK: Hardister, aye. Hurley? 6 REP. HURLEY: Aye. 7 CLERK: Hurley, aye. Jackson? 8 REP. JACKSON: Yes. 9 CLERK: Jackson, yes. Johnson? 10 REP. JOHNSON: Aye. 11 CLERK: Johnson, aye. Jordan? 12 REP. JORDAN: Aye. 13 CLERK: Jordan, aye. McGrady? 14 REP. MCGRADY: Aye. 15 CLERK: McGrady, aye. Michaux? 16 REP. MICHAUX: Aye. 17 CLERK: Michaux, aye. Moore? 18 REP. MOORE: Aye. 19 CLERK: Moore, aye. Stam? 20 REP. STAM: Aye. 21 CLERK: Stam, aye. Stevens? 22 (No response.) 23 CLERK: Rucho? 24 SEN. RUCHO: Aye. 25 CLERK: Rucho, aye. Apodaca?</p>
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<p>1 for services provided prior to the approval of 2 this? 3 SEN. RUCHO: No, sir, I don't believe so. 4 REP. JACKSON: Thank you. 5 SEN. RUCHO: Yeah. Questions? Any 6 additional? 7 (No response.) 8 SEN. RUCHO: All right, we have an 9 amendment before us that was read by staff, and we 10 will ask the Clerk to have a roll-call vote on 11 that, please. 12 CLERK: Lewis? 13 REP. LEWIS: Aye. 14 CLERK: Lewis, aye. Jones? 15 REP. JONES: Aye. 16 CLERK: Jones, aye. Brawley? 17 REP. BRAWLEY: Aye. 18 CLERK: Brawley, aye. Cotham? 19 REP. COTHAM: Aye. 20 CLERK: Cotham, aye. Davis? 21 REP. DAVIS: Yes. 22 CLERK: Davis, yes. Farmer-Butterfield? 23 REP. FARMER-BUTTERFIELD: Yes. 24 CLERK: Farmer-Butterfield, yes. Hager? 25 REP. HAGER: Yes.</p>	<p>1 SEN. APODACA: Aye. 2 CLERK: Apodaca, aye. Barefoot? 3 SEN. BAREFOOT: Aye. 4 CLERK: Barefoot, aye. Blue? 5 SEN. BLUE: Aye. 6 CLERK: Blue, aye. Brown? 7 SEN. BROWN: Aye. 8 CLERK: Brown, aye. Clark? 9 SEN. CLARK: Aye. 10 CLERK: Clark, aye. Harrington? 11 SEN. HARRINGTON: Aye. 12 CLERK: Harrington, aye. Hise? 13 SEN. HISE: Aye. 14 CLERK: Hise, aye. Jackson? 15 SEN. JACKSON: Aye. 16 CLERK: Jackson, aye. Lee? 17 SEN. LEE: Aye. 18 CLERK: Lee, aye. McKissick? 19 SEN. MCKISSICK: Aye. 20 CLERK: McKissick, aye. Randleman? 21 SEN. RANDLEMAN: Aye. 22 CLERK: Randleman, aye. Sanderson? 23 SEN. SANDERSON: Aye. 24 CLERK: Sanderson, aye. Smith? 25 SEN. SMITH: Aye.</p>

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<p>1 CLERK: Smith, aye. Smith-Ingram? 2 SEN. SMITH-INGRAM: Aye. 3 CLERK: Smith-Ingram, aye. Wells? 4 SEN. WELLS: Aye. 5 CLERK: Wells, aye. 6 SEN. RUCHO: Members of the committee, 7 we -- okay. Members of the committee, Amendment 1, 8 which was read by staff, was agreed upon 9 unanimously, 33 to zero. 10 Senator Hise, Amendment Number 2? 11 SEN. HISE: Thank you, Mr. Chairman. 12 This was with some further consultation with 13 Senator Blue, and clarifies for a legislative 14 confidentiality amendment when that applies, and 15 applies to once it's submitted to this committee, 16 and she has specific language they can read. 17 SEN. RUCHO: Ms. Churchill, can you read 18 the clarifying language there, please? 19 MS. CHURCHILL: Yes, sir. In Paragraph 20 2, this new sentence would be inserted at the -- 21 following the first sentence. "The co-chairs shall 22 control legislative confidentiality of any drafting 23 requests or maps produced from this authority 24 unless and until presented to the committee in the 25 co-chairs' discretion."</p>	<p>1 CLERK: Farmer-Butterfield, yes. Hager? 2 REP. HAGER: Yes. 3 CLERK: Hager, yes. Hanes? 4 REP. HANES: Yes. 5 CLERK: Hanes, yes. Hardister? 6 REP. HARDISTER: Aye. 7 CLERK: Hardister, aye. Hurley? 8 REP. HURLEY: Aye. 9 CLERK: Hurley, aye. Jackson? 10 REP. JACKSON: Yes. 11 CLERK: Jackson, yes. Johnson? 12 REP. JOHNSON: Aye. 13 CLERK: Johnson, aye. Jordan? 14 REP. JORDAN: Aye. 15 CLERK: Jordan, aye. McGrady? 16 REP. MCGRADY: Aye. 17 CLERK: McGrady, aye. Michaux? 18 REP. MICHAUX: Yes. 19 CLERK: Michaux, yes. Moore? 20 REP. MOORE: Aye. 21 CLERK: Moore, aye. Stam? 22 REP. STAM: Aye. 23 CLERK: Stam, aye. Rucho? 24 SEN. RUCHO: Aye. 25 CLERK: Rucho, aye. Apodaca?</p>
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<p>1 For Paragraph 3, this sentence would be 2 inserted after -- following the first sentence: 3 "The minority caucus' designee, Senator Blue, shall 4 control legislative confidentiality of any drafting 5 requests or maps produced from this authority 6 unless and until presented to the committee in 7 Senator Blue's discretion." 8 SEN. RUCHO: Members of the committee, 9 you have that before you. Any questions or 10 comments? 11 (No response.) 12 SEN. RUCHO: Seeing -- seeing none, Mr. 13 Clerk, would you do the roll call? 14 CLERK: Lewis? 15 REP. LEWIS: Aye. 16 CLERK: Lewis, aye. Jones? 17 REP. JONES: Aye. 18 CLERK: Jones, aye. Brawley? 19 REP. BRAWLEY: Aye. 20 CLERK: Brawley, aye. Cotham? 21 REP. COTHAM: Aye. 22 CLERK: Cotham, aye. Davis? 23 REP. DAVIS: Yes. 24 CLERK: Davis, yes. Farmer-Butterfield? 25 REP. FARMER-BUTTERFIELD: Yes.</p>	<p>1 SEN. APODACA: Aye. 2 CLERK: Apodaca, aye. Barefoot? 3 SEN. BAREFOOT: Aye. 4 CLERK: Barefoot, aye. Blue? 5 SEN. BLUE: Aye. 6 CLERK: Blue, aye. Brown? 7 SEN. BROWN: Aye. 8 CLERK: Brown, aye. Clark? 9 SEN. CLARK: Aye. 10 CLERK: Clark, aye. Harrington? 11 SEN. HARRINGTON: Aye. 12 CLERK: Harrington, aye. Hise? 13 SEN. HISE: Aye. 14 CLERK: Hise, aye. Jackson? 15 SEN. JACKSON: Aye. 16 CLERK: Jackson, aye. Lee? 17 SEN. LEE: Aye. 18 CLERK: Lee, aye. McKissick? 19 SEN. MCKISSICK: Aye. 20 CLERK: McKissick, aye. Randleman? 21 SEN. RANDLEMAN: Aye. 22 CLERK: Randleman, aye. Sanderson? 23 SEN. SANDERSON: Aye. 24 CLERK: Sanderson, aye. Smith? 25 SEN. SMITH: Aye.</p>

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<p>1 CLERK: Smith, aye. Smith-Ingram? 2 SEN. SMITH-INGRAM: Aye. 3 CLERK: Smith-Ingram, aye. Wells? 4 SEN. WELLS: Aye. 5 CLERK: Wells, aye. 6 SEN. RUCHO: Members of the committee, 7 the roll-call vote was 33 aye, zero nay. 8 Now, what you have before you is a motion 9 set forth by Senator Hise which has been amended, 10 and now it's before you for any further discussion 11 or questions, and if there are none, then we will 12 take a vote to adopt Senator Hise's motion. 13 Thoughts, questions? 14 (No response.) 15 SEN. RUCHO: Seeing none, Mr. Clerk, a 16 vote, please? 17 CLERK: Lewis? 18 REP. LEWIS: Aye. 19 CLERK: Lewis, aye. Jones? 20 REP. JONES: Aye. 21 CLERK: Jones, aye. Brawley? 22 REP. BRAWLEY: Aye. 23 CLERK: Brawley, aye. Cotham? 24 REP. COTHAM: No. 25 CLERK: Cotham, no. Davis?</p>	<p>1 CLERK: Stam, aye. Rucho? 2 SEN. RUCHO: Aye. 3 CLERK: Rucho, aye. Apodaca? 4 SEN. APODACA: Aye. 5 CLERK: Apodaca, aye. Barefoot? 6 SEN. BAREFOOT: Aye. 7 CLERK: Barefoot, aye. Blue? 8 SEN. BLUE: No. 9 CLERK: Blue, no. Brown? 10 SEN. BROWN: Aye. 11 CLERK: Brown, aye. Clark? 12 SEN. CLARK: No 13 CLERK: Clark, no. Harrington? 14 SEN. HARRINGTON: Aye. 15 CLERK: Harrington, aye. Hise? 16 SEN. HISE: Aye. 17 CLERK: Hise, aye. Jackson? 18 SEN. JACKSON: Aye. 19 CLERK: Jackson, aye. Lee? 20 SEN. LEE: Aye. 21 CLERK: Lee, aye. McKissick? 22 SEN. MCKISSICK: No. 23 CLERK: McKissick, no. Randleman? 24 SEN. RANDLEMAN: Aye. 25 CLERK: Randleman, aye. Sanderson?</p>
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<p>1 REP. DAVIS: Yes. 2 CLERK: Davis, yes. Farmer-Butterfield? 3 REP. FARMER-BUTTERFIELD: No. 4 CLERK: Farmer-Butterfield, no. Hager? 5 REP. HAGER: Aye. 6 CLERK: Hager, aye. Hanes? 7 REP. HANES: No. 8 CLERK: Hanes, no. Hardister? 9 REP. HARDISTER: Aye. 10 CLERK: Hardister, aye. Hurley? 11 REP. HURLEY: Aye. 12 CLERK: Hurley, aye. Jackson? 13 REP. JACKSON: No. 14 CLERK: Jackson, no. Johnson? 15 REP. JOHNSON: Aye. 16 CLERK: Johnson, aye. Jordan? 17 REP. JORDAN: Aye. 18 CLERK: Jordan, aye. McGrady? 19 REP. MCGRADY: Aye. 20 CLERK: McGrady, aye. Michaux? 21 REP. MICHAUX: No. 22 CLERK: Michaux, no. Moore? 23 REP. MOORE: Nay. 24 CLERK: Moore, nay. Stam? 25 REP. STAM: Aye.</p>	<p>1 SEN. SANDERSON: Aye. 2 CLERK: Sanderson, aye. Smith? 3 SEN. SMITH: No. 4 CLERK: Smith, no. Smith-Ingram? 5 SEN. SMITH-INGRAM: No. 6 CLERK: Smith-Ingram, no. Wells? 7 SEN. WELLS: Aye. 8 CLERK: Wells, aye. 9 SEN. RUCHO: Okay, members of the 10 committee, when that motion was up for adoption as 11 amended, we have 22 aye and 11 no. I believe that 12 we have concluded our business for today. 13 SEN. BLUE: Just a request, Mr. Chair. 14 SEN. RUCHO: Senator Blue? 15 SEN. BLUE: As I prepare to do this, 16 could you have the Clerk make available to me his 17 roll-call votes on these items, since it's all 18 official now? 19 SEN. RUCHO: That can be done. 20 SEN. BLUE: Thank you. 21 SEN. RUCHO: Okay. Senator Blue requests 22 that he gets a copy of the roll-call votes. Thank 23 you. 24 Before we finish up, let me just make it 25 clear. Now that we have criteria established, and</p>

<p style="text-align: right;">174</p> <p>1 understanding that there is access to computers and 2 the necessary resources to accomplish that, I'm 3 sure that the map drawers will do their job, come 4 forward with a map. We will possibly have a 5 meeting tomorrow. The chairs will allow you 6 notice. We're going to need to give the map 7 writers -- or drawers a chance to do their work. 8 We are also waiting for a decision by the Supreme 9 Court on the motion for stay to allow that election 10 to take place in an orderly manner, without any 11 voter dysfunction, so we will let you know at what 12 time tomorrow, or whether we will be meeting 13 tomorrow. 14 REP. STAM: Mr. Chair? 15 SEN. RUCHO: Sir? 16 REP. STAM: What is the earliest we would 17 be -- I mean, can we block out the morning for real 18 work, other work? 19 SEN. RUCHO: I think to give sufficient 20 time for map drawers to work, I think we would be 21 looking at -- the earliest would be 1:00. Okay? 22 Members of the committee, any questions on what was 23 discussed? 24 (No response.) 25 SEN. RUCHO: You all know what we've got,</p>	<p style="text-align: right;">176</p> <p>STATE OF NORTH CAROLINA COUNTY OF WAKE CERTIFICATE I, Carol M. Smith, a duly commissioned Notary Public in and for the State of North Carolina, do hereby certify that on February 16, 2016, this proceeding was held before me, this proceeding being reported by me verbatim and then reduced to typewritten form under my direct supervision; that the foregoing is a true and correct transcript of said proceedings to the best of my ability and understanding; that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action. IN WITNESS WHEREOF, I have hereto set my hand, this the 29th day of February, 2016.</p> <p style="text-align: center;">_____ Notary Public</p> <p>Carol M. Smith Notary Number 19943320153</p>
<p style="text-align: right;">175</p> <p>1 so stay tuned, and thank you for your quick 2 response. Meeting adjourned. 3 (WHEREUPON, THE MEETING WAS CONCLUDED AT 1:43 P.M.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	

Exhibit E

NORTH CAROLINA GENERAL ASSEMBLY
JOINT COMMITTEE ON REDISTRICTING

TRANSCRIPT OF THE PROCEEDINGS

In Raleigh, North Carolina
Wednesday, February 17, 2016
Reported by Jennifer C. Carroll, RMR, CRR

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

2	1 (The proceedings were called to order at 2 4:08 p.m.) 3 CHAIRMAN RUCHO: Can we have the Select 4 Committee on Congressional Redistricting come to 5 order? Would everyone please take their seat. 6 We've got a few bits of housekeeping to take care 7 of prior to beginning the -- the map 8 presentations. Hopefully, we have a number of 9 different maps that will be available for folks to 10 take a look at. 11 And Senator Apodaca asked me if he was 12 going to be able to have dinner and be able to get 13 to the Carolina-Duke game. And I said we're going 14 to ask Senator Blue, Senator McKissick, and 15 Representative Michaux what -- if they think we've 16 got a shot at that. 17 SEN. MCKISSICK: I don't have any extra 18 tickets, I'm sorry. 19 SEN. APODACA: That's always his answer. 20 CHAIRMAN RUCHO: Okay. 21 SEN. MCKISSICK: It depends. 22 CHAIRMAN RUCHO: Okay. Well, we had a 23 very informative meeting yesterday. We were able 24 to get some criteria established, and so we're 25 going to go ahead and begin today with a -- well,	4	1 THE CLERK: Farmer-Butterfield? 2 REP. FARMER-BUTTERFIELD: Here. 3 THE CLERK: Hager? 4 REP. HAGER: Here. 5 THE CLERK: Hanes? 6 REP. HANES: Here. 7 THE CLERK: Hardister? 8 REP. HARDISTER: Here. 9 THE CLERK: Hurley? 10 REP. HURLEY: Here. 11 THE CLERK: Jackson? 12 REP. JACKSON: Here. 13 THE CLERK: Johnson? 14 REP. JOHNSON: Here. 15 THE CLERK: Jordan? 16 REP. JORDAN: Present. 17 THE CLERK: McGrady? 18 REP. McGRADY: Here. 19 THE CLERK: Michaux? 20 REP. MICHAUX: Here. 21 THE CLERK: Moore? 22 REP. MOORE: Present. 23 THE CLERK: Stam? 24 REP. STAM: Here. 25 THE CLERK: Stevens?
3	1 let me, first of all, introduce the 2 sergeants-at-arms who help us make this a -- a 3 successful and efficiently run meeting. From the 4 House sergeant-at-arms, I have Reggie Sills, 5 Marvin Lee, David Layton, Terry McGraw; and from 6 the Senate sergeant-at-arms, I have Dale Huff, Ed 7 Kessler, and Hal Roach. 8 Thanks very much for helping us. 9 Then the next item will be a roll call 10 for attendance. 11 And, Mr. Clerk, would you proceed with the 12 roll call. 13 And please say it loud enough so we know 14 you're here or not here. 15 THE CLERK: Okay. Starting with the 16 House: Lewis. 17 REP. LEWIS: Here. 18 THE CLERK: Jones? 19 REP. JONES: Here. 20 THE CLERK: Brawley? 21 REP. BRAWLEY: Here. 22 THE CLERK: Cotham? 23 REP. COTHAM: Here. 24 THE CLERK: Davis? 25 REP. DAVIS: Here.	5	1 REP. STEVENS: Here. 2 THE CLERK: Dixon? 3 REP. DIXON: Here. 4 CHAIRMAN RUCHO: Okay. 5 THE CLERK: Now, the Senate. 6 CHAIRMAN RUCHO: Senate. 7 THE CLERK: Rucho? 8 CHAIRMAN RUCHO: Here. 9 THE CLERK: Apodaca? 10 SEN. APODACA: Here. 11 THE CLERK: Barefoot? 12 SEN. BAREFOOT: Here. 13 THE CLERK: Blue? 14 SEN. BLUE: Here. 15 THE CLERK: Brown? 16 SEN. BROWN: Here. 17 THE CLERK: Clark? 18 SEN. CLARK: Present. 19 THE CLERK: Ford? 20 (No response.) 21 THE CLERK: Harrington? 22 SEN. HARRINGTON: Here. 23 THE CLERK: Hise? 24 SEN. HISE: Here. 25 THE CLERK: Jackson?

<p style="text-align: right;">6</p> <p>1 SEN. JACKSON: Here. 2 THE CLERK: Lee? 3 SEN. LEE: Here. 4 THE CLERK: McKissick? 5 SEN. McKISSICK: Here. 6 THE CLERK: Randleman? 7 SEN. RANDLEMAN: Here. 8 THE CLERK: Sanderson? 9 SEN. SANDERSON: Here. 10 THE CLERK: Smith? 11 SEN. SMITH: Here. 12 THE CLERK: Smith-Ingram? 13 (No response.) 14 THE CLERK: Wade? 15 SEN. WADE: Here. 16 THE CLERK: Wells? 17 SEN. WELLS: Here. 18 CHAIRMAN RUCHO: Okay. We are ready to 19 begin our meeting. And again, there aren't very 20 many opening remarks. We look forward to moving 21 forward in an effort to comply with the 22 three-judge panel's direction as to redrawing some 23 Congressional district maps and the Congressional 24 districts. 25 Again, as you might expect, we still</p>	<p style="text-align: right;">8</p> <p>1 And Senator McKissick? 2 SEN. McKISSICK: Not at this time. 3 CHAIRMAN RUCHO: Okay. So let me ask: 4 Are there any members of the committee that have 5 maps that they would like to offer as far as 6 having an opportunity to present them today so 7 that their input can be taken by this committee? 8 What we plan to do today is submit some 9 maps -- or a map, take a look at it, debate it, 10 approve it, so that the General Assembly can move 11 forward when the special session is called, and we 12 can go ahead and achieve what is the goal of 13 complying with the federal court. 14 Okay. That being said, then let's go 15 ahead and -- Representative Blue -- excuse me, 16 Representative Lewis, you'll be ready to explain 17 the maps, and I think the sergeant-at-arms can 18 probably start passing them out with the stat 19 packs that were decided upon yesterday during the 20 establishment of the criteria that -- upon which 21 these maps were drawn. 22 Say it again. 23 MS. CHURCHILL: They have not arrived 24 from the print shop yet. They are on their way. 25 CHAIRMAN RUCHO: Okay. Let's wait a</p>
<p style="text-align: right;">7</p> <p>1 believe that the enacted maps are fair, legal, and 2 constitutional that has -- as been validated by a 3 number of North Carolina courts. But under that 4 circumstance, we are following the direction of 5 the three-judge panel from the Middle District, 6 and so that's what we're going to do. 7 The first part that I would like to 8 request -- and -- and yesterday, if you remember 9 correctly, we authorized \$25,000 for each, 10 majority and minority, side to draw maps. And I 11 will -- I will ask -- 12 (Cell phone ringing.) 13 CHAIRMAN RUCHO: I don't ever do to that 14 my wife. But I did. 15 I will ask that -- we will first ask 16 Senator Blue: Do you have any maps that you are 17 planning to present today? 18 SEN. BLUE: Not at present. 19 CHAIRMAN RUCHO: Not at the present. 20 Okay. 21 Representative Jackson, I think you 22 were -- 23 Representative Michaux, do you? 24 REP. MICHAUX: Not yet. 25 CHAIRMAN RUCHO: Not yet. Okay.</p>	<p style="text-align: right;">9</p> <p>1 little bit. They're on their way from the print 2 shop as we speak. And so if we'll stay at ease 3 for a few moments, and as soon as they come, then 4 we will go ahead and distribute them out so that 5 you'll have a chance to look at them. And so -- 6 Representative Lewis will explain the map. So 7 stand at ease, please. 8 (Proceedings are held at ease.) 9 CHAIRMAN RUCHO: Members of the 10 Committee, just for your knowledge, you'll be 11 getting some hard copies now, and at the end of 12 this meeting we will have them online with the 13 same documentation that you will be receiving 14 in -- upon arrival. 15 SEN. APODACA: Mr. Chairman, housekeeping 16 matter, if we could. 17 CHAIRMAN RUCHO: Say that again. 18 SEN. APODACA: A housekeeping matter, if 19 we might. 20 CHAIRMAN RUCHO: Housekeeping, yes. 21 SEN. APODACA: Yes. When we call the 22 roll, could we call the Upper Chamber first 23 instead of the House? It seems like that would be 24 more appropriate. 25 REP. MICHAUX: I thought that was already</p>

<p style="text-align: right;">10</p> <p>1 being done.</p> <p>2 CHAIRMAN RUCHO: Senator Apodaca, I think</p> <p>3 you should have learned your lesson when</p> <p>4 Representative Michaux already called you a lame</p> <p>5 duck. So...</p> <p>6 But then again, that's the nicest thing</p> <p>7 that anybody has ever called Senator Apodaca.</p> <p>8 So...</p> <p>9 SEN. APODACA: In 14 years, that's the</p> <p>10 nicest thing.</p> <p>11 REP. MICHAUX: I called you one, too.</p> <p>12 CHAIRMAN RUCHO: I'm honored.</p> <p>13 Sergeant-at-arms, will you please let me</p> <p>14 know when the maps are passed out so we can move</p> <p>15 forward.</p> <p>16 Representative Lewis, before he makes his</p> <p>17 presentation, wants me to let you know that these</p> <p>18 are probably some of the most -- some of the best</p> <p>19 maps that's been out in 40 years. So...</p> <p>20 At least 40?</p> <p>21 REP. LEWIS: Four.</p> <p>22 CHAIRMAN RUCHO: Four?</p> <p>23 REP. LEWIS: Four.</p> <p>24 CHAIRMAN RUCHO: Okay.</p> <p>25 Sergeant-at-arms, are we all set?</p>	<p style="text-align: right;">12</p> <p>1 districts. Race was not considered and is not</p> <p>2 present on these reports.</p> <p>3 Partisan advantage: We believe this map</p> <p>4 will produce an opportunity to elect ten</p> <p>5 Republican members of Congress. But make no</p> <p>6 mistake, this is a weaker map than the enacted</p> <p>7 plan in that respect.</p> <p>8 The 12th District: This map does away</p> <p>9 with the serpentine 12th District that dates back</p> <p>10 to 1992.</p> <p>11 Compactness: Only 13 counties and 13</p> <p>12 VTDs were split in this map. Let me repeat that:</p> <p>13 Only 13 counties and 13 VTDs were split in this</p> <p>14 map. In accordance with the criteria, more whole</p> <p>15 counties and more whole precincts, or VTDs, are</p> <p>16 the best indicator of compactness we believe we</p> <p>17 are able to achieve.</p> <p>18 Incumbency: Only two incumbents are</p> <p>19 double-bunked in this map; one Republican and one</p> <p>20 Democrat. Eleven Republicans [sic] were placed in</p> <p>21 a district by themselves.</p> <p>22 Mr. Chairman?</p> <p>23 CHAIRMAN RUCHO: Yes, sir.</p> <p>24 REP. LEWIS: Anticipating some inquiries,</p> <p>25 I will suspend my presentation and take questions</p>
<p style="text-align: right;">11</p> <p>1 Does everyone in -- on the committee have</p> <p>2 a copy of the map and the statistics?</p> <p>3 All right. Then let's -- let's quiet</p> <p>4 down so we can get this done.</p> <p>5 Representative Lewis, would you be kind</p> <p>6 enough to present the maps for us?</p> <p>7 REP. LEWIS: Thank you, Mr. Chairman.</p> <p>8 Members, good afternoon. Yesterday, this</p> <p>9 committee approved seven criteria for the 2016</p> <p>10 contingent Congressional redistricting, and a map</p> <p>11 was produced in accordance with that criteria.</p> <p>12 While I am happy to take questions from the</p> <p>13 committee, first I would like to take a moment to</p> <p>14 walk through the criteria and discuss how this map</p> <p>15 addresses each of the criteria.</p> <p>16 First, equal population: All these</p> <p>17 districts are drawn with either 7,000 -- pardon</p> <p>18 me. All these districts are drawn with either --</p> <p>19 with either 733,499 persons or 733,498 total</p> <p>20 persons. This is as equal -- this is as equal as</p> <p>21 practical and in accordance with federal law.</p> <p>22 Contiguity: All the areas in every</p> <p>23 district are comprised of contiguous territory.</p> <p>24 Political data: The stat report show</p> <p>25 which election results were used in building these</p>	<p style="text-align: right;">13</p> <p>1 at your direction.</p> <p>2 CHAIRMAN RUCHO: Okay. Members of the</p> <p>3 Committee, you have the proposed map before you.</p> <p>4 And again, I'll just remind you: This is the only</p> <p>5 one that will be reviewed today because we just --</p> <p>6 you know, there were no other maps submitted by</p> <p>7 either the minority House and/or Senate or any</p> <p>8 individual. So this is the map we're going to be</p> <p>9 discussing today. And after discussion is</p> <p>10 completed, this committee will take a vote, and</p> <p>11 we'll either be against or referring this to the</p> <p>12 General Assembly for its special session for</p> <p>13 adoption so we can comply with the three-judge</p> <p>14 panel from the Middle District.</p> <p>15 Members of the Committee.</p> <p>16 All right. Let's start off with Senator</p> <p>17 McKissick.</p> <p>18 SEN. MCKISSICK: Thank you, Mr. Chair. I</p> <p>19 would like to be recognized for a series of</p> <p>20 questions, if that's possible.</p> <p>21 CHAIRMAN RUCHO: We'll go through the</p> <p>22 Chair.</p> <p>23 SEN. MCKISSICK: Yes, absolutely.</p> <p>24 CHAIRMAN RUCHO: And we'll go one after</p> <p>25 another.</p>

<p style="text-align: right;">14</p> <p>1 SEN. McKISSICK: I was wondering if I 2 could first get some understanding of the 3 percentages of Democrats and Republicans in these 4 various districts. If we can have, perhaps, a 5 staff person review that with us. 6 CHAIRMAN RUCHO: So let me -- let me be 7 clear. Now, you want the -- 8 First of all, Representative Lewis, 9 that's not part of the stat pack, correct? 10 SEN. McKISSICK: We don't have a stat 11 pack. The only thing we have are -- 12 CHAIRMAN RUCHO: The election results. 13 All right. What would you request? 14 SEN. McKISSICK: Well, what I would like 15 to know is what the breakdown is in terms of 16 Democrat, Republican, and unaffiliated voters in 17 each of these particular districts, as a starting 18 point. It would also be helpful to understand -- 19 I know there was -- who exactly is double-bumped. 20 It would appear that Representative Adams, who 21 represented the 12th District -- 22 CHAIRMAN RUCHO: Well, hold it. Let's -- 23 let's get first -- that first part cleared up. 24 First of all, you requested -- 25 Senator McKissick requested that we get</p>	<p style="text-align: right;">16</p> <p>1 statistics that you have. 2 CHAIRMAN RUCHO: All right. 3 SEN. McKISSICK: Thank you. And I wanted 4 to follow up. 5 CHAIRMAN RUCHO: Follow-up question, yes, 6 sir. 7 SEN. McKISSICK: Precisely look at the 8 performance characteristics of each district in 9 terms of whether it's a Democratic performance 10 district, and if so, by what percentage, a 11 Republican performance district, so that we have 12 some idea the extent to which there are 13 competitive swing districts. 14 I know Representative Lewis has indicated 15 that the map may not be quite as favorable as it 16 was before to Republican majority. But to the 17 extent to which we could get data that 18 specifically breaks down the performance 19 characteristics of each of these Congressional 20 districts, that would be helpful. Then we can 21 understand what we're looking at. 22 REP. LEWIS: Mr. Chairman and Members? 23 CHAIRMAN RUCHO: Yes. Representative 24 Lewis. 25 REP. LEWIS: Members, if I could direct</p>
<p style="text-align: right;">15</p> <p>1 some information on party affiliation in each of 2 the districts. Is that something we can achieve, 3 either now or -- 4 MS. CHURCHILL: It is something we cannot 5 achieve while the committee is in meeting. 6 CHAIRMAN RUCHO: Right. Okay. Just 7 state that again, please, in the microphone. 8 MS. CHURCHILL: At this juncture we can't 9 achieve it while the committee is meeting. But we 10 can achieve that for Senator McKissick. 11 SEN. McKISSICK: Okay. And the 12 committee -- 13 REP. LEWIS: Mr. Chairman? 14 CHAIRMAN RUCHO: Yes, sir. 15 REP. LEWIS: Could I speak to that one 16 point? 17 CHAIRMAN RUCHO: Representative Lewis. 18 REP. LEWIS: Yes, sir. 19 Obviously, the staff can provide to the 20 gentleman whatever statistics he asked for. I did 21 want to say that the -- in the drawing of this 22 map, we looked at election results. We think 23 those are better indicators of voting performance 24 than voter registration, which is why you don't -- 25 which is why that's not shown in these -- in the</p>	<p style="text-align: right;">17</p> <p>1 your attention to the documents that you have 2 before you -- I probably should have done a better 3 job of going through that. 4 If you will, first of all, you should 5 have a document before you that's entitled "2016 6 Redistricting Database Field Key." It's an 8-1/2 7 by 11 sheet of -- two sheets of paper. 8 Does everyone see that or have access to 9 that document? 10 If you'll look at that document, it 11 will -- actually, if you'll look at the right-hand 12 column, the right-hand column of that document, 13 this is a computer code. This is the way the 14 computer generated the election results which we 15 looked at. 16 For instance, you'll see under "2008 17 General Election Attorney General," there's a code 18 there at the right-hand column. Again, I direct 19 your attention, EL08G_AG_D. You can take and find 20 that same code on the stat pack that was 21 distributed to you. And, in fact, it would be on 22 what I would consider page 2 of the stat pack. If 23 you'll look across the top -- I'm referring now to 24 the big -- to the big set of documents that you 25 have. You'll see it says, "Election Results 2008,</p>

<p style="text-align: right;">18</p> <p>1 general, AG, AD, CA." You should be able to go in 2 and find "EL08G_AG." 3 For example, the very first listed item 4 on this page I'm referring to, you'll see it says, 5 District 1 -- excuse me, it says "district," and 6 then beside it, "EL08G_AG_D." That would be the 7 results in District 1 for the candidate Roy Cooper 8 who was the Democratic nominee for the Attorney 9 General's office. 10 So to maybe make this easier, perhaps you 11 could write the word "Cooper" where it says 12 "EL08G_AG_D." And using these two documents, you 13 will be able to see what the election results are. 14 I believe it would be fair to say -- and, 15 Mr. Chairman, the staff can certainly correct 16 me -- that the -- as you look at the code, the 17 EL08G_AG, that, obviously, is Attorney General. 18 And then the "_D" would be Democrat. 19 So while the field key will explain 20 exactly who it is referring to, you can probably 21 get a good feeling for if it's comparing the 22 Democrat for that office or the Republican for 23 that office. 24 CHAIRMAN RUCHO: Okay. And just a 25 clarity, Senator McKissick, before you go on to</p>	<p style="text-align: right;">20</p> <p>1 CHAIRMAN RUCHO: Explain. 2 REP. LEWIS: Mr. Chairman, if I may. 3 CHAIRMAN RUCHO: Yes. Representative 4 Lewis, you have -- 5 REP. LEWIS: I just want to say that I 6 completely agree with Senator McKissick, that 7 would be a whole lot easier way to look at these 8 reports. I asked for that to be done. And it's 9 not the way, unfortunately, the system generates 10 the reports. But if you would indulge me for just 11 a moment, I'm going to get my notes and we'll go 12 sheet by sheet, and we'll add those names, if you 13 would be so kind. 14 SEN. McKISSICK: I would certainly 15 indulge you, without a doubt. I think that would 16 be a helpful exercise for all of us who are not 17 acquainted with this and haven't seen it before. 18 CHAIRMAN RUCHO: Representative Lewis, 19 would you -- 20 And, Members of the Committee, please take 21 note as Representative Lewis explains what each of 22 the AG, CI, and the like is, based on the year of 23 the election. 24 Okay. Representative Lewis, you have the 25 microphone.</p>
<p style="text-align: right;">19</p> <p>1 your next question -- and I think Representative 2 Lewis mentioned it -- that the criteria that was 3 established never used registration or race -- 4 racial demographics in the -- in production of 5 these maps. So that's why that information was 6 not available. But at any point you can go ahead 7 and request from staff what you think you need as 8 far as additional documentation. Okay? 9 Next question. 10 SEN. McKISSICK: Sure. If it's 11 possible -- and I understand these codes are -- 12 could probably be figured out and calculated. But 13 if we could actually put the names of the various 14 candidates on -- above these various categories. 15 Considering the amount of time that we have to 16 review and digest this information, it would save 17 an awful lot of time rather than going back and 18 forth between sheets to decipher the codes. There 19 may be codes that you guys are familiar with from 20 looking at it, but from someone seeing it upon 21 first impression, it becomes somewhat challenging 22 to -- to make certain of precisely what I'm 23 reviewing at any given point in time. So, I mean, 24 it would seem to be a simple thing to add in terms 25 of a category.</p>	<p style="text-align: right;">21</p> <p>1 REP. LEWIS: Thank you, Mr. Chairman. 2 Members, if you will look at the page 3 that's, of course, labeled at the top "2016 4 Contingent Congressional Plan," and then if you 5 will look in the second left-hand column, you will 6 see the code "EL08G_AG_D." Okay? Does everybody 7 see this particular document? 8 Okay. Then with that, if you'll go with 9 me, you'll see the first column says "District 1." 10 The second column is that code that I just gave. 11 The third column, if you would write the word 12 "Cooper," write the word "Cooper" at the top of 13 that column, it might make it easier to -- to 14 understand. If you would skip the next column, 15 which currently says "68,474," you'll get to the 16 following column. If you would write the word 17 "Crumley." 18 If you would then skip the following 19 column and go to the column that says 20 "EL08G_AD_D." Does everyone see that? The first 21 number is 233,665. If you would please write 22 the -- if you would skip right next -- right over 23 to the column that says "71.44" and write the word 24 "Wood," W-O-O-D. Wood. 25 And then skip the column that says</p>

<p style="text-align: right;">22</p> <p>1 "93,433." And then you'll come to "28.56," and 2 write the word "Merritt," M-E-R-R-I-T-T. 3 If you'll then skip the next column, 4 which has "327098." And also skip the column that 5 has the "220038." 6 Yes, sir. I'm sorry. 220,038. If I 7 could pause for just a minute. 8 CHAIRMAN RUCHO: Yes, sir. 9 (Representative Lewis and Chairman Rucho 10 confer.) 11 REP. LEWIS: So where it says "66.68," 12 you would write "Ansley" -- is that correct? And 13 then you would skip the 109968 and get to the 14 33.32, and write the word "Troxler," 15 T-R-O-X-L-E-R. 16 If I could pause for only a moment to 17 make sure the members understand. I chose, in my 18 notes, to use the percentages of the votes cast. 19 The numbers that I asked you to skip by are also 20 relevant. That's number of raw votes cast, on the 21 report. 22 Okay. The next page that I have -- 23 CHAIRMAN RUCHO: And this is Election 24 Results 2008, correct? 25 REP. LEWIS: Yes, sir.</p>	<p style="text-align: right;">24</p> <p>1 a little bit more confusing than it has been. 2 SEN. BROWN: It should be Odom. 3 REP. LEWIS: On my notes, I skip over to 4 where it says "EL08G_CL_D," for Commissioner of 5 Labor. This is towards the right side of the 6 page. 7 SEN. BROWN: Mr. Chairman. 8 (Representative Lewis and Chairman Rucho 9 confer.) 10 REP. LEWIS: Members, the Chairman has 11 noticed me that I used the word "Causey" and 12 should have used the word "Odom." I apologize. 13 It's still the Republican nominee versus the 14 Democratic nominee. 15 If you'll look over where it says 16 "EL08G_CL_D," that's for Commissioner of Labor. 17 SEN. McKISSICK: The column beginning 18 with the "328927"? Are you that far across? 19 REP. LEWIS: No, sir. I actually skipped 20 that -- 21 SEN. McKISSICK: Skipped that. 22 REP. LEWIS: -- Senator, only because I 23 was trying to go by my notes. And I will go back 24 and refill the gaps in. 25 SEN. McKISSICK: That's fine.</p>
<p style="text-align: right;">23</p> <p>1 The next page that I have begins with the 2 code EL08G_CI_D. And the number in the first 3 column is 232,552. If you would, to be 4 consistent, go to the next column, which says 5 70.70 percent, and write the word "Goodwin." This 6 is the race for commissioner of insurance. The 7 word "Goodwin." 8 CHAIRMAN RUCHO: Representative Lewis, 9 everybody has a -- what they call the 2016 10 Redistrict Database Key, with the codes on it, 11 too. So that should also be there, just for your 12 information. 13 Do you have that there, Senator 14 McKissick? It's a two-page, front and back, and 15 it gives you the code, the elections, the 16 candidates. 17 SEN. McKISSICK: Yes, sir, I do have it. 18 CHAIRMAN RUCHO: Okay. So that's the key 19 to using the database. 20 REP. LEWIS: If it's all right, I'll just 21 continue, Mr. Chairman. 22 And then if you skip the next column at 23 88227 to get to where it says "26.82," the word 24 "Causey" should appear. Causey. 25 And, Members, if you will, this might be</p>	<p style="text-align: right;">25</p> <p>1 Thank you, Mr. Chairman. 2 REP. LEWIS: I apologize for that. 3 But under the Commissioner of Labor, 4 where it says "68.42," the name -- and I will 5 apologize if I mispronounce the nominee's name, 6 but it was D-O-N-N-A-N, Donnan. And then if you 7 skip over to where it says "31.58," the nominee's 8 name was Berry, B-E-R-R-Y. 9 (Representative Lewis confers with 10 Chairman Rucho.) 11 CHAIRMAN RUCHO: Representative Lewis, 12 that "W" is a write-in. Okay. 13 REP. LEWIS: All right. Mr. Chairman and 14 Members, I'll be happy to return to this page, but 15 my notes are -- my notes are incomplete about that 16 middle -- that middle section there. I think 17 that's a write-in. But just to confer with the 18 Chair, I don't want to state in the microphone 19 something I'm not absolutely sure of. 20 But anyway, moving on. The next page 21 that I have -- 22 REP. STAM: Mr. Chairman. Mr. Chairman. 23 Mr. Chairman. Woohoo. 24 CHAIRMAN RUCHO: Yes, sir. 25 Representative Hager. Oh, Stam. Excuse me.</p>

<p style="text-align: right;">26</p> <p>1 REP. STAM: I'm searching. Is there 2 maybe some -- some motion or somehow where we 3 could relieve Representative Lewis from this 4 tedious task. Maybe we've all sort of gotten the 5 idea now and we could just -- just an idea. Just 6 an idea. 7 CHAIRMAN RUCHO: Good question. 8 Senator McKissick, now that we've 9 identified a key for you, are you comfortable in 10 as far as being able to relate the specific name 11 to this, or would you want us to go through it 12 and -- 13 SEN. MCKISSICK: What would be helpful, 14 if we don't have the information available now -- 15 I mean, it would be great, perhaps, if staff -- I 16 mean, I understand you can't get it on there 17 because of, I guess, software limitations in the 18 way you can categorize this stuff. But it 19 would -- I think the exercise we're going through 20 provides very valuable -- 21 CHAIRMAN RUCHO: Fine. Then we will -- 22 we will continue. 23 SEN. MCKISSICK: But I don't want to be 24 laborious. 25 CHAIRMAN RUCHO: Representative Lewis --</p>	<p style="text-align: right;">28</p> <p>1 that has "USS," for United States Senate. The 2 Democrat would be Hagan, the Republican would be 3 Dole, the Libertarian would be Cole. 4 Is everybody kind of getting comfortable 5 with this? 6 Okay. And that would complete that page. 7 The others would be write-ins and whatnot. So 8 we'll turn the page to the one that begins "2010 9 General." 10 This race is the race for the U.S. Senate 11 in 2010. The column that says "USS_D" would be 12 Marshall, M-A-R-S-H-A-L-L. The column that has _R 13 would be Burr, B-U-R-R. _L would be Beitler, 14 B-E-I-T-L-E-R. Again, I apologize if I 15 mispronounce a name. 16 Turning to page, Election Results 2012 17 General, G and LG. Again, where it says 18 "EL12G_GV_D," the first column would be Dalton, 19 D-A-L-T-O-N. The same -- the corresponding column 20 with an "R" on it would be McCrory. Corresponding 21 column with an "L" on it, for Libertarian, would 22 be Howe, H-O-W-E. There was a write-in that -- 23 that's there. And then a write-in miscellaneous. 24 So that's what those other G's are there. 25 The one that says "LG_D" would be Coleman,</p>
<p style="text-align: right;">27</p> <p>1 We'll -- we'll continue. 2 Representative Lewis, please continue. 3 REP. LEWIS: Okay. The next one in the 4 stat pack, it reads -- starts with "EL08G_GV_D." 5 Let me see if I can speed up a little bit 6 here. In 2008-GV-D, if you'll look there, 7 obviously the "D" is for Democrat. That would be 8 Perdue, P-E-R-D-U-E. If you look over to the 9 column that has "R," that would be McCrory, 10 M-C-C-R-O-R-Y. And then if you see the column 11 with the "L," for Libertarian, that would be 12 Munger, M-U-N-G-E-R. 13 Now I know what you want me to look at, 14 I'll do it faster. I apologize. 15 CHAIRMAN RUCHO: Okay. 16 REP. LEWIS: Continuing on. 2008, where 17 it says "EL08LG" -- does everybody see that? That 18 would be Dalton. 2008 LG R would be Bitteringer. 19 And the "L," the Libertarian, would be Rhodes, 20 R -- R-H-O-D-E-S. I believe that completes that 21 page. 22 Turn next to the one that begins "EL08G 23 -SPI." The "D" there would be Atkinson, 24 A-T-K-I-N-S-O-N. The "R" would be Morgan, 25 M-O-R-G-A-N. And then the -- you see the column</p>	<p style="text-align: right;">29</p> <p>1 C-O-L-E-M-A-N. LG_R would be Forest, F-O-R-E-S-T. 2 And that will complete that page. 3 Turning now to the Election Results 2012 4 General. The one that begins "AD," of course, for 5 Auditor. The Democrat, the "D," nominee would be 6 Wood, and the "R" nominee would be Goldman, 7 G-O-L-D-M-A-N. 8 Then where you see it says "_CA_D" for 9 Commissioner of Agriculture, the Commissioner 10 nominee for the Democratic Party is Smith, 11 S-M-I-T-H. _R, the Republican, is Troxler, 12 T-R-O-X-L-E-R. 13 Also on that page is "CI," for 14 Commissioner of Insurance. The Commissioner of 15 Insurance, the Democratic nominee is Goodwin, 16 G-O-O-D-W-I-N, and the Republican is Causey, 17 C-O -- C-A-U-S-E-Y. That completes that page. 18 Turning over where you see the next kind 19 of -- thinking you're getting the feeling of how 20 this works now. The "CL" is Commissioner of 21 Labor. CL_D would be the Democratic nominee. The 22 last name was Brooks, B-R-O-O-K-S. The _R, the 23 Republican nominee, would be Berry, B-E-R-R-Y. 24 That will complete that race. 25 Where it says "SS," that's Secretary of</p>

<p style="text-align: right;">30</p> <p>1 State. The "SS_D," the nominee would have been 2 Marshall, M-A-R-S-H-A-L-L. And the SS_R, the 3 Republican, would have been Goodwin, 4 G-O-O-D-W-I-N. 5 Turning to the following page, you see it 6 says "SPI," which is, of course, superintendent of 7 public instruction. Superintendent of public 8 instruction, D, Dr. Adkinson was the nominee, 9 A-D-K-I-N-S-O-N. And _R, the Republican was 10 Tedesco, T-E-D-E-S-C-O. 11 Also on that page, you see "Treasurer," 12 or TR. The Democratic -- the _D, for the 13 Democratic nominee, is Cowell, C-O-W-E-L-L. _R, 14 the Republican, was Royal, R-O-Y-A-L. 15 And the final page is the 2014 United 16 States Senate race. This one, please notice the 17 first category is "USS_R." That would be Tillis. 18 So the Republican is listed first on this one. 19 And where it says 'USS_D,' the nominee, of course, 20 was Hagan. And where it says "_L," it was Haugh. 21 I apologize if I mispronounce that. It's 22 H-A-U-G-H. 23 Mr. Chairman, this -- this concludes this 24 part of the report. 25 CHAIRMAN RUCHO: Okay. Senator</p>	<p style="text-align: right;">32</p> <p>1 County whole. And that is the home of 2 Representative Price, based on the records that we 3 have in the General Assem -- the General Assembly. 4 And there are whole precincts in Durham that 5 connect to an area in Wake County. That area is 6 the home of Representative Holding. 7 Representative Adams is not bunked with any other 8 incumbent member, nor is any other sitting member 9 of the delegation. 10 But, Mr. Chairman, I would like -- 11 CHAIRMAN RUCHO: Yes. 12 REP. LEWIS: -- to direct staff or ISD as 13 quickly as possible to provide members with maps 14 that have the home location of the incumbent. 15 CHAIRMAN RUCHO: Addresses, locations. 16 All right. 17 Ms. Churchill, request that we go ahead 18 and get maps that will identify the location of 19 the incumbents, if you'll be kind enough. 20 Okay. 21 SEN. MCKISSICK: One point of 22 clarification, Mr. Chairman, if I could. The 23 incumbent for District 13 would be whom? 24 REP. LEWIS: Representative Adams. 25 SEN. MCKISSICK: That's what I was</p>
<p style="text-align: right;">31</p> <p>1 McKissick, you have everything you've asked for on 2 that. Next question. 3 SEN. MCKISSICK: Yes. I was just looking 4 at the maps here, and I notice that it looks as if 5 there is a double-bumping, I think you had it 6 indicated doubling-bumping of -- of certain 7 incumbent members of our Congressional delegation. 8 And it looks as if Representative Alma Adams is 9 one of those. Okay. I think you said there were 10 two cases where there were double-bumped. Is that 11 what you indicated, or did I mistakenly hear what 12 your remarks were? 13 Yeah, I'm trying to figure out who the 14 other is. 15 REP. LEWIS: Well, Senator, I think 16 that's a very good question. And the location of 17 the homes of the incumbents should appear on this 18 map, so let me apologize for that. 19 What my remarks said earlier is that 20 there are two incumbent members of Congress that 21 were -- unfortunately had to be drawn into the 22 same district. They are Representative David 23 Price and Representative George Holding. 24 If you'll notice, the new 4th District 25 includes all of Orange County. It keeps Orange</p>	<p style="text-align: right;">33</p> <p>1 thinking. 2 And for 12, who do we have there? 3 REP. LEWIS: I do not believe -- there is 4 no current incumbent in -- in the proposed 12. 5 SEN. MCKISSICK: Okay. So I'm looking 6 at -- 13 here would be Adams. 12 would be? 7 REP. LEWIS: Vacant? 8 SEN. MCKISSICK: Vacant. 9 CHAIRMAN RUCHO: No incumbent. 10 SEN. MCKISSICK: No incumbent? 11 CHAIRMAN RUCHO: Correct. 12 SEN. MCKISSICK: Who would have formerly 13 been in 12? 14 That would have been -- 15 REP. LEWIS: Well, just to be clear. 16 SEN. MCKISSICK: -- Adams' district 17 before. 18 REP. LEWIS: Just to be clear -- 19 CHAIRMAN RUCHO: Let him answer, please. 20 SEN. MCKISSICK: Sure. 21 CHAIRMAN RUCHO: Thank you. 22 REP. LEWIS: One of the instructions 23 given by this committee was to do away with the 24 shape of the 12th. The 12th is now contained 25 entirely inside Mecklenburg County. So from my</p>

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1 knowledge -- well, the fact that certainly
2 Representative Adams does not live in Mecklenburg
3 County; therefore, that's why she's -- her home
4 does not appear in Mecklenburg County. She lives
5 in Guilford County, to the best of my knowledge.
6 SEN. McKISSICK: Exactly. That's what I
7 was a bit confused about.
8 Okay. So what we have, we have a
9 district which Congresswoman Adams can run from,
10 which is the 13th District. Is that correct?
11 REP. LEWIS: Yes, sir. But I would
12 remind you that an individual seeking election to
13 the U.S. House does not have to reside in the
14 district which they run.
15 SEN. McKISSICK: I understand.
16 And in terms of applying these
17 performance characteristics to the 13th District,
18 would this be a Democratic- or Republican-leaning
19 district?
20 REP. LEWIS: Senator, I believe you would
21 need to look race by race. And by "race by race,"
22 I'm referring, of course, to the political races.
23 The data that we just went through, I believe the
24 district would be one of the ten that lean
25 Republican.

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1 SEN. McKISSICK: That would lean
2 Republican?
3 REP. LEWIS: Yes, sir.
4 SEN. McKISSICK: Okay.
5 CHAIRMAN RUCHO: Follow-up.
6 SEN. McKISSICK: Follow-up, if I could.
7 CHAIRMAN RUCHO: Follow-up.
8 SEN. McKISSICK: In the three districts
9 you have identified as being Democratic districts,
10 I assume what we're looking at is the 1st
11 District, the 4th District, and the 12th District.
12 Would that be a logical assumption, or do I stand
13 to be corrected?
14 REP. LEWIS: No, sir. You are correct in
15 your -- in your -- in your analysis.
16 CHAIRMAN RUCHO: Follow-up.
17 SEN. McKISSICK: Yeah. And -- and I
18 guess the follow-up I have is that I -- I do have
19 concern -- I mean, I see that we have certainly
20 provided Representative Adams with a district to
21 run from. I need to drill down deeper to see the
22 numbers and see how close of a district that is in
23 terms of her capacity to compete. And I've not
24 had a chance to drill down those numbers yet, but
25 I assume, based upon what you've indicated, that

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1 it is a -- perhaps a very strongly Republican
2 leaning district, particularly looking at the
3 counties that are contained within it. And I was
4 thinking about their historical representation
5 here in the General Assembly.
6 And I see the 12th being carved out. But
7 I guess this all just gives me concern receiving
8 it all so quickly, trying to digest it quickly,
9 trying to move forward with this at -- what is
10 almost like the speed of light. And while I
11 appreciate the fact that there were some funds
12 made available to the minority caucus to, perhaps,
13 get maps drawn, to be candid with you, to get maps
14 drawn on a short notice and short order, within
15 24 hours, has proven to be very challenging.
16 So I will thank you for the information
17 you provided. It does provide me with some
18 concerns, which I've articulated. And I'm -- it
19 would certainly be nice if we did have the
20 Republican/Democratic breakout in terms of
21 registrations. And if I'm talking to Erika, she
22 can get that. Is there any way, perhaps, staff
23 can also -- I know it wasn't one of the criteria
24 used in drawing these maps, but they can filter
25 down a subcategory that would have provided us

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1 with the racial breakout of each district? Is
2 that possible to obtain from staff even though I'm
3 aware with respect to the fact it was not a --
4 CHAIRMAN RUCHO: Senator McKissick, let
5 me get clear now. You're requesting some data
6 on -- on the registration of the 13 districts, and
7 you're requesting the data and the demographics on
8 the -- the racial breakdown on the 13 districts?
9 SEN. McKISSICK: That is correct,
10 Mr. Chair.
11 CHAIRMAN RUCHO: Okay. Now, just as a
12 bit of a information, you talk about a -- a time
13 schedule. Well, we're all under a very tight time
14 schedule since the Court gave us two weeks -- or
15 14 days to do it, and it occurred on a Monday --
16 on a Friday night, so it really kind of brought it
17 down to ten days. And so this is a heroic effort
18 that we could even get all of this accomplished in
19 that short of period of time. So we're all under
20 tight -- tight time schedules, just for your
21 information. Thank you.
22 SEN. McKISSICK: I respect that. It's
23 just that you knew the attributes before
24 yesterday. And we learned them yesterday.
25 CHAIRMAN RUCHO: Thank -- thank you.

<p style="text-align: right;">38</p> <p>1 And, Members of the Committee, any -- 2 Senator Clark. 3 SEN. CLARK: Mr. Chair, I have a question 4 for staff. 5 CHAIRMAN RUCHO: Say it again, please. 6 SEN. CLARK: Question for staff. 7 CHAIRMAN RUCHO: Yes. 8 SEN. CLARK: If we provided a stat pack 9 based on this 2011 database, would that provide 10 Senator McKissick everything he's asking for and 11 then some? 12 CHAIRMAN RUCHO: Ms. Churchill, do you 13 have a response to that? 14 MS. CHURCHILL: I believe Senator Clark 15 is asking if -- would the 2011 stat pack that was 16 generally presented to the General Assembly during 17 that round of redistricting, would that answer 18 Senator McKissick's questions. I believe Senator 19 McKissick is shaking his head, no, it would not 20 answer his questions. 21 SEN. McKISSICK: It would. 22 MS. CHURCHILL: The one thing that 23 definitely was in the stat pack was the party 24 registration information. So, yes, it would at 25 least answer that piece of it.</p>	<p style="text-align: right;">40</p> <p>1 Brown. 2 SEN. BROWN: Just a quick comment, just 3 to talk about the 13th District and its 4 competitiveness. The Democrats have won that 5 district, if you'll look through this, on several 6 occasions. So it's obviously a competitive 7 district because they have won some races in that 8 district. 9 CHAIRMAN RUCHO: Okay. Representative 10 Michaux. 11 REP. MICHAUX: Mr. Chairman, following up 12 on what Senator McKissick asked for -- and you 13 might wonder why, even though you have taken out 14 race as a criteria, we still need to have race 15 mentioned in here because of the Section 2 Voting 16 Rights Act. You've got -- we've got to have that 17 information in there. And there's a determination 18 of whether or not Section 2 has been violated in 19 this -- in this map. 20 CHAIRMAN RUCHO: Representative Lewis, 21 you have a comment on that, please. 22 REP. LEWIS: Mr. Chairman, 23 certainly Representative Michaux is much more 24 learned in this area than I am. 25 I just want to state, again, for the</p>
<p style="text-align: right;">39</p> <p>1 CHAIRMAN RUCHO: All right. Follow-up. 2 SEN. McKISSICK: What I would like to 3 have provided is a stat pack based on 2011 4 database applied to the districts as shown here on 5 this map. 6 CHAIRMAN RUCHO: Staff, can we accomplish 7 that? 8 It will be accomplished. 9 SEN. McKISSICK: Thank you. 10 CHAIRMAN RUCHO: And as Representative 11 Lewis said, we'll be -- you'll be getting all of 12 the data you need. It won't be before this 13 committee today, because it will take time to 14 achieve it. Had, I'm sure, individual members had 15 made requests on some of that, we probably could 16 have gotten it done, but not during this time. 17 But there are opportunities to, again, 18 review the maps. There will be redistricting 19 committee meetings that we'll have another chance 20 to review it. And then, of course, on the floor, 21 both in the House and the Senate. 22 So, Senator McKissick, I want you to rest 23 up; you're going to have plenty of opportunity. 24 SEN. McKISSICK: Thank you. 25 CHAIRMAN RUCHO: Okay. I've got Senator</p>	<p style="text-align: right;">41</p> <p>1 record on -- for this committee that race was not 2 considered in the drawing of this map. Later 3 today, we're going to ask this committee to adopt 4 this map. After this map is adopted and prepared 5 for introduction to the General Assembly, I 6 believe the -- Senator McKissick requests, and 7 perhaps Senator Clark requests, and now that 8 Representative Michaux requests, would be to take 9 this map and to populate it with the data that 10 they have asked for. That can certainly be done 11 after this committee adopts this map and -- and as 12 it moves forward. 13 CHAIRMAN RUCHO: Yes, sir. Follow-up. 14 REP. MICHAUX: But -- but would not that 15 information now help us to make a determination as 16 to how we wanted to vote out of this committee on 17 these -- on this map? 18 REP. LEWIS: Thank you for that question, 19 Representative. The information on race is simply 20 not available to provide to you at this moment on 21 this map. 22 CHAIRMAN RUCHO: Follow-up? 23 REP. MICHAUX: Then when is it going to 24 be available and when are we going to have an 25 opportunity to see it?</p>

<p style="text-align: right;">42</p> <p>1 REP. LEWIS: Well, just to be clear, 2 Representative -- and I want to clearly state 3 this -- as an individual member of this committee, 4 you can request whatever information on this map 5 on this -- on any district, on any county, on 6 anything that you want, but it will -- but race is 7 not going to be considered by this committee as we 8 adopt this map and recommend it to be passed by 9 the General Assembly. 10 REP. MICHAUX: Mr. Chairman? 11 CHAIRMAN RUCHO: Yes, sir. 12 REP. MICHAUX: My follow-up to -- to -- 13 to Representative Lewis. 14 Representative Lewis, the three-judge 15 panel found that these drawings were 16 unconstitutional and it was based predominantly on 17 race. There are other factors that you should -- 18 that should be considered in terms -- for 19 instance, as I said before, a violation of 20 Section 2 of the Voting Rights Act. We need -- 21 I'm not going to vote for another unconstitutional 22 map if I can't determine whether or not Section 2 23 is being violated by what you've done. 24 REP. LEWIS: Well, thank you for 25 clarifying, Representative Michaux. To the best</p>	<p style="text-align: right;">44</p> <p>1 REP. STAM: Would appropriate motion be 2 in order to give this a favorable report? I would 3 like to make such a motion at the appropriate 4 time. 5 CHAIRMAN RUCHO: All right. Well, thank 6 you. I think, actually, Representative -- Senator 7 Hise requested that earlier. So we'll do that. 8 Senator Blue, question. 9 SEN. BLUE: No question; just a comment. 10 CHAIRMAN RUCHO: All right. 11 SEN. BLUE: Mr. Chairman, I don't think 12 it takes much imagination to see exactly what 13 you've done here. In three districts -- that is, 14 the 1st, the 4th, and the 12th -- you've, again, 15 managed to stuff about half of the black 16 population in the state. And all you've got to do 17 is look -- you can -- you can name it whatever you 18 want to name it; it still is what it is. 19 When you just peruse very quickly the 20 statistics on all of these races, you see exactly 21 what is going on in each of these three districts. 22 You've got 66 to 68 percent -- you call it 23 "Democratic performance." But anybody who looks 24 at the numbers see that you're at the core of the 25 cities in this state and that the areas that you</p>
<p style="text-align: right;">43</p> <p>1 of my knowledge, you didn't vote for the 2011 2 plan. The plans that you voted for have, in fact, 3 been unconstitutional. 4 But let me continue in my answer. The 5 criteria that this committee adopted in open 6 debate yesterday was the following: Equal 7 population, contiguity, political data, partisan 8 advantage, the 12th District compactness, and 9 incumbency. That is the criteria that this 10 committee debated and adopted over about a 11 three-and-a-half, four-hour period. Those are the 12 criteria that were used to draw these maps. Those 13 are the criterion that these members will be asked 14 to base their decision on. 15 CHAIRMAN RUCHO: Representative Lewis. 16 (Chairman Rucho and Representative Lewis 17 confer.) 18 CHAIRMAN RUCHO: Representative Michaux, 19 you all set? 20 REP. MICHAUX: Yeah. 21 CHAIRMAN RUCHO: Very good. Thank you. 22 All right. Do we have anybody else 23 presenting a question or -- 24 REP. STAM: Mr. Chairman? 25 CHAIRMAN RUCHO: Yes, Representative Stam.</p>	<p style="text-align: right;">45</p> <p>1 extract are the -- are the primarily minority 2 communities, whether you're in Durham or Wake or 3 Mecklenburg. 4 The more important thing is that you 5 can't use partisanship as a proxy for race. And 6 that's exactly what you've done here. We know 7 because we've been unable to draw these maps 8 overnight. And you didn't draw them overnight 9 either. And we know that they were imported into 10 this place, and they weren't originally conceived 11 or drawn on the legislative computers. 12 But let me say this: The biggest 13 challenge that we have is basically the 14 dismantling of democracy that this map represents, 15 in that you create three districts that perform at 16 a 65 to 70 percent level for one party, then ten 17 districts that perform in the low to mid 50s range 18 for the other party. Now, you're assaulting 19 democracy even though you're doing it in the name 20 of partisanship. 21 And historically, the courts have said 22 that they're going to stay out of the political 23 thicket when it comes to gerrymandering based on 24 partisanship. 25 But I will tell you, this is such a bold</p>

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1 and audacious move that it's probably what the
2 courts have been waiting for to wade into this
3 area. And I will assure you of that. And if you
4 think the people in this state are mad because of
5 the way you districted the last time, they're
6 going to be furious because of the way you're
7 doing this district. This is an abomination. It
8 is a direct assault on democracy. It is
9 disingenuous to think that you've now created
10 districts that don't take race into account just
11 because you say race hasn't been taken into
12 account.

13 When we get the stat -- stat packs on
14 these districts, I will assure you of two things:
15 Number 1, the black voting age population in
16 Districts 1 and District 12 are equal or greater
17 than it was in the two districts that have been
18 rejected so far. And Number 2, that -- that in
19 the other district, District 4, I guess, where you
20 take Wake County and send it a certain way, you
21 will find the same kind of phenomenon.

22 So I say that you might call it
23 partisanship in districting like this. But here
24 in the middle of Black History Month, it is as
25 pernicious as the same kinds of activity that has

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1 given a scar to so many Southern states over the
2 last 150 years.

3 You call it what you want. It is still
4 using race as a basis as to how you elect the
5 Congresspeople in North Carolina.

6 CHAIRMAN RUCHO: Representative Lewis.
7 REP. LEWIS: Mr. Chairman, I just point
8 out even Senator McKissick's acknowledged that
9 race was not a factor in drawing this map, Senator
10 Blue appears to want to try to create something
11 that does not exist.

12 So I will point out again: I have
13 already read the criteria. I will not -- I will
14 not belabor it. But the criteria that was used to
15 draw this map was adopted by this committee
16 yesterday and repeated by me a few minutes earlier
17 today.

18 CHAIRMAN RUCHO: Yes, sir. Thank you.
19 And -- and Senator Blue, when you use --
20 say that using the partisan, that partisan was
21 never used. All it was is the political data
22 coming from elections, and you have that before
23 you. So for you to tie together race in that just
24 doesn't make any sense. So that -- that being
25 said --

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1 Yes, Representative Butterfield.
2 REP. FARMER-BUTTERFIELD: Thank you,
3 Mr. Chair.
4 I wanted to ask that we look at the
5 criteria we have that was adopted by this majority
6 yesterday and apply that to these three districts
7 for me.
8 REP. LEWIS: Certainly.
9 CHAIRMAN RUCHO: Representative Lewis.
10 And while he's preparing, can I remind
11 everybody here to please keep your maps so we can
12 have them and we don't have to cut down some
13 additional trees, if at all possible. And -- so
14 thank you. That and the stat packs. So bring
15 them and make them available for the redistricting
16 committee meetings, House and Senate, and on the
17 floor.
18 Representative Lewis.
19 REP. LEWIS: Mr. Chairman, could I just
20 clarify with Representative Farmer-Butterfield?
21 You wanted to go through three districts
22 that Senator Blue referred to based on the
23 criteria that was adopted.
24 Yes, ma'am. First of all, the first
25 criteria was equal population. The population of

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1 the 1st is 733,499.
2 The second criteria is contiguity. I
3 think you can look at the map -- and even this
4 map, if it's more helpful without county lines,
5 and be able to see that all the territory is
6 contiguous. It does touch.
7 Political data: I've provided that to
8 you. That shows what the election results were
9 within inside this district.
10 The partisan advantage: I've conceded
11 that Republicans don't have a great partisan
12 advantage in the 1st.
13 The 12th: The -- the drawing of the
14 1st -- the -- one of the criterion yesterday was
15 do away with the certain serpentine shape of the
16 12th. So that would not apply to the 1st.
17 Compactness: I think you will notice
18 that nearly every county in the 1st is a whole
19 county. You will see that there are three divided
20 counties in the 1st, Wilson being one of them.
21 That was done to take into account the residency
22 of the incumbent. Pitt -- Pitt was divided to --
23 again, based on the requirement to have equal
24 population. And you'll see that Durham is divided
25 as well, as best I recall, as -- as a combination

<p style="text-align: right;">50</p> <p>1 of the need to equalize population, and political 2 concerns as well. 3 In the 4th, the criteria for equal 4 population is met. The population in the 4th is 5 733,499. 6 Contiguity: You'll notice that it is all 7 of Orange County. It connects nicely through 8 Durham in whole precincts. And you'll see that it 9 connects into Wake. All of the area is 10 contiguous. 11 The area of political data I provided to 12 you in the stat packs, the partisan advantage, 13 I've conceded that I think the Republicans are 14 going to have to work hard to win this seat. 15 The 12th District: This -- the doing 16 away with the serpentine 12th does not apply to 17 the drawing of the 4th. 18 Compactness: I think you can see that 19 it's one whole county. It's -- it is, in my 20 opinion, a very compact district. And in the area 21 of incumbency, one incumbent member of Congress 22 resides in Orange County. So it takes that into 23 account as well. 24 As far as the 12th goes, an area of equal 25 population. The population of the 12th is</p>	<p style="text-align: right;">52</p> <p>1 Michaux had a question. 2 REP. MICHAUX: Yeah. Mr. Chairman, I've 3 just got a short question. 4 Representative Lewis, do you believe that 5 what you have done here, that African-American 6 voters have a reasonable opportunity to elect 7 candidates of their choice? 8 REP. LEWIS: Representative Michaux, I've 9 conceded that you're a brilliant man. I've 10 conceded that you're a very good attorney. I'm 11 going to answer that by saying these maps were 12 adopted by the criteria -- were drawn by the 13 criteria adopted by this committee. The winks and 14 the nods are not going to change my answer. Or 15 the smirks. 16 CHAIRMAN RUCHO: Follow-up? 17 REP. MICHAUX: That was the answer I 18 expected. 19 CHAIRMAN RUCHO: Okay. 20 REP. LEWIS: Glad -- glad to oblige. 21 CHAIRMAN RUCHO: All right. 22 Representative Hager. 23 REP. HAGER: Thank you, Mr. Chairman. 24 Just a quick statement, if it's okay with you. 25 As I sit here, we listen to the issues</p>
<p style="text-align: right;">51</p> <p>1 733,498. 2 The contiguity: You'll see that it is 3 all connected territory within Mecklenburg County. 4 The political data I have provided to you, 5 partisan advantage, I have conceded that the 6 Republicans have to work really hard to win this 7 seat. 8 The 12th District: You will see it is 9 certainly not a serpentine district that snakes 10 all the way up through the state. 11 Compactness: I think certainly you can 12 recognize that it is compact. 13 And incumbency for this particular 14 district was not a consideration because there is 15 not an incumbent residing in the 12th at this 16 time. 17 REP. FARMER-BUTTERFIELD: Thank you. 18 CHAIRMAN RUCHO: Follow-up? 19 REP. FARMER-BUTTERFIELD: Follow-up. 20 I appreciate that information. It's 21 certainly helpful, because I live in District 1. 22 And I was also concerned about how District 12 was 23 leading as it relates to party. So that's been 24 real helpful. 25 CHAIRMAN RUCHO: I've got Representative</p>	<p style="text-align: right;">53</p> <p>1 that we've had, and I want to commend Senator 2 Rucho and Representative Lewis for the good job 3 you guys have done on this. Thank you guys for 4 your hard work. 5 Senator Blue said that the people are 6 mad -- or will be mad in North Carolina for -- 7 over these maps. 8 Senator Blue, you know, the last three 9 elections, we returned more and more Republican 10 majorities in this House and the Senate. If 11 they're mad, I think we -- they're mad you -- you 12 mad -- may be mad at the wrong person. 13 The Democrats in this case, in the 14 minority party, have returned no maps. We don't 15 have anything else to consider. Even though, as 16 the way I understand it, that unless the 17 Republicans had colluded with the radio stations 18 and the TV stations to only deliver the message of 19 a three-judge panel to Republican areas, that the 20 minority party had the same amount of time to 21 bring maps forward. Two weeks, as far as I 22 understand, that Representative Lewis and Senator 23 Rucho worked to get this -- get these maps to us. 24 You know, at the end of the day, 25 Representative Michaux talks about Section 2 of</p>

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1 the VRA. What he fails to mention is there's a
2 three -- let me -- let see if I got it right. A
3 three-threshold condition to be met. We didn't
4 talk about those. We can go over those.
5 I think it's not just as simple as saying
6 the VRA says -- Section 2 says you've got to do
7 this. And, you know, what I find strange is a lot
8 of the -- these three -- three conditions were met
9 on the Supreme Court decision on Thornburg --
10 Thornburg versus Gingles that was because of
11 Democrat-drawn maps back in the '80s. So I find
12 that very ironic that these were pushed forward
13 because of past Democratic-controlled maps that
14 were drawn.
15 So I say all of this to say that, you
16 know, these guys have worked hard. They've
17 complied to the three-judge panel, even though I
18 think all of us on this side of the aisle believe
19 that the maps were -- drawn originally were
20 constitutional.
21 So I think what we ought to do,
22 Mr. Chairman, is move this map forward and go
23 ahead and vote on it, and let's vote on it and get
24 it out so we can all go home.
25 CHAIRMAN RUCHO: Thank you,

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1 Representative Hager.
2 Representative Lewis, comments?
3 REP. LEWIS: No, sir.
4 CHAIRMAN RUCHO: Okay. I've got Senator
5 McKissick for a question.
6 Excuse me, I had Representative Jones.
7 Okay. He -- he offers you to have first
8 voice.
9 SEN. MCKISSICK: And this is a question
10 of co-chairs or perhaps of staff. I was wondering
11 if we could get a copy of the plan in a digital
12 format that we -- say, on a jump drive or
13 something like that, that can be downloaded to a
14 database for further analysis?
15 REP. LEWIS: Mr. Chairman --
16 SEN. MCKISSICK: And if so, when that
17 might be available.
18 REP. LEWIS: Mr. Chairman?
19 CHAIRMAN RUCHO: Yes, sir.
20 Representative Lewis.
21 REP. LEWIS: Thank you, Mr. Chairman.
22 I would like to state for the record that
23 staff has been instructed as soon as this
24 committee adopts this plan to make that
25 information available.

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1 SEN. MCKISSICK: So point of
2 clarification, Mr. Chair.
3 CHAIRMAN RUCHO: Follow-up question.
4 SEN. MCKISSICK: If we were to provide a
5 jump drive or -- will they be like a jump drive or
6 some device available where we could obtain that?
7 CHAIRMAN RUCHO: Ms. Churchill, do you
8 have any answer to that?
9 MS. CHURCHILL: Senator McKissick, from
10 the chair's instructions for posting on the Web,
11 the block assignment file will be on the Web
12 following the conclusion of this meeting.
13 SEN. MCKISSICK: On the Web it will be
14 available?
15 MS. CHURCHILL: Yes, sir.
16 SEN. MCKISSICK: Thank you.
17 MS. CHURCHILL: Okay.
18 CHAIRMAN RUCHO: Representative Jones.
19 REP. JONES: Thank you, Mr. Chairman.
20 I just want to take the opportunity,
21 perhaps with Representative Hager, and just
22 commend the chairs and everyone involved for the
23 work here under very difficult circumstances and
24 very difficult time limits to be able to comb back
25 with something like this.

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1 And I just wanted to kind of reiterate
2 the fact of the compactness of the districts.
3 Just for the benefit, perhaps, of the people --
4 people listening in that may not understand or
5 just to reiterate that with Congressional
6 districts, it's absolute zero deviation.
7 People ask sometimes, well, why do you
8 divide a county? And the answer is, it's
9 impossible not to.
10 But for you to draw 13 Congressional
11 districts and only divide 13 counties, only divide
12 13 precincts, is quite commendable and goes beyond
13 what should be expected. And I think you-all have
14 done an absolute brilliant job in doing that. And
15 obviously you know that whatever map you came back
16 with, you were going to be subject to some type of
17 criticism that we've heard here today, and no
18 doubt will hear going forward.
19 But I will say this, and going back,
20 perhaps, to a few of the comments that were made
21 yesterday, which we won't repeat. But when the
22 minority party was in the majority, I think it's
23 pretty clear that they stopped at no limits when
24 it came to political gerrymandering to their
25 advantage.

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1 When you look at the legislative maps
2 that were drawn back in the previous decades, with
3 two-member districts, three-member districts,
4 four-member districts, however a district had to
5 be drawn in order to gain that political favor --
6 favoritism for the majority at the time, there was
7 no stone left unturned. But, yet, you've come
8 back with a map here that has -- has answered the
9 critics, has compiled -- complied with the law as
10 the judge panel suggested. And I -- I think you
11 really need to be commended.

12 And briefly, I just wanted to add to
13 something that Senator Brown mentioned earlier
14 with the 13th district. But I will take issue
15 with those that would say that you cannot elect
16 Democratic members in these districts. If you --
17 if you look at the data that we've been given --
18 for instance, the very first race on the -- on the
19 sheet, 2008 Attorney General race, which was a
20 contested partisan race, I would -- I would point
21 out that the Democratic candidate won 13 out of
22 the 13 Congressional districts.

23 If you look at the next one, which was
24 the auditor's race, the Democratic candidate won
25 nine of the 13 districts. If you go to the next

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1 page and look at the commissioner of insurance
2 race, the Democrat won eight of the 13 districts.

3 So I think -- to give credit to the
4 people of this state, we're not talking about
5 robots. They do have an opportunity to vote for
6 the candidates of your choice. And I think that
7 they have shown that they will cross party lines
8 or they will vote for the candidate of their
9 choice, whether it's a Republican or a Democrat,
10 which would suggest that if you have the right
11 candidate, that you have an opportunity to win in
12 any -- in any district. And I think that should
13 be pointed out.

14 Again, Representative Lewis, Senator
15 Rucho, thank you--all for the hard work and look
16 forward to supporting your efforts.

17 CHAIRMAN RUCHO: Thank you.

18 Senator Apodaca.

19 SEN. APODACA: Thank you, Mr. Chairman.

20 I think it might be good if we're talking
21 about history month and history lessons, we have a
22 little General Assembly history. I think back
23 to -- Senator Rucho, what? 2003? When we had a
24 hearing similar to this and we were told that we
25 could find our own computer and draw our own maps

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1 and weren't offered anything from the majority
2 party to help us towards that goal. Am I correct
3 in that? I was -- kind of remembered that.

4 CHAIRMAN RUCHO: Yes, sir. Those were
5 unconstitutional districts, if you remember.

6 SEN. APODACA: Yeah, they were.

7 But I -- you know, I'm struck -- you
8 know, I look at this wall and all of these maps.
9 And I would say, I would submit, that this map is
10 probably the best map since 1980.

11 Representative Michaux, I guess that was
12 your tenth term. I don't remember how long you
13 were here.

14 Smile, Mickey.

15 But, you know, we talk about splitting
16 districts and we just talked about we have 13
17 split districts. 2011, we had 32. 2001, we had
18 27. 1998, we had 21. 1997, we had 20. And 1992,
19 we had 44. So today, we have 13, with this
20 proposed map, split districts. So --

21 CHAIRMAN RUCHO: Counties.

22 SEN. APODACA: Counties, excuse me.

23 Counties split. Both, yeah.

24 So this is much better than what we've
25 had in the past, and I submit it to you.

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1 CHAIRMAN RUCHO: Senator Brown.

2 SEN. BROWN: Thank you, Mr. Chairman.

3 I'm not sure I can say much more than
4 Representative Jones and Senator Apodaca just
5 touched on. I, too, was going to mention that in
6 the '08 election, that Attorney General Cooper won
7 every single one of these -- these districts.

8 SEN. MCKISSICK: That's what they're
9 hoping for.

10 SEN. BROWN: So I think that tells you
11 the competitiveness of these districts.

12 And again, to keep these maps where you
13 only split 13 counties -- everybody needs to go
14 home and try it, and I can promise you, it's hard
15 to do it by splitting any less than that and keep,
16 you know, the populations the same in each of
17 these counties.

18 So again, I -- I think this is a pretty
19 dang good job, and I would hope that the members
20 of -- that live in each of these counties
21 appreciate the fact that we've tried to keep them
22 as whole as we have. And I think it's a very good
23 map. Thank you.

24 CHAIRMAN RUCHO: Representative Michaux.

25 REP. MICHAUX: Yeah, Mr. Chairman, since

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1 my name has been used in vain a little bit here.
2 CHAIRMAN RUCHO: It was just a question
3 of whether it was a tenth or the 16th term that
4 you were at, at that point, I think.
5 REP. MICHAUX: Well, at the term that he
6 mentioned, I was a United States Attorney for the
7 Middle District of North Carolina. So I wanted to
8 clear that up. Make sure you understood. Just
9 like you got your facts wrong on that one, you are
10 wrong on this, too.
11 But irrespective of -- irrespective of --
12 SEN. APODACA: Mr. Chairman, may I ask
13 Representative Michaux a question?
14 CHAIRMAN RUCHO: In a moment.
15 Finish up.
16 REP. MICHAUX: If he wants to ask me a
17 question, let him go ahead on.
18 CHAIRMAN RUCHO: Go ahead.
19 REP. MICHAUX: Ask him who he voted for
20 in his first race?
21 SEN. APODACA: I don't remember. I
22 believe it was you. But we were all young at one
23 time.
24 Did you prosecute these maps when you
25 were in the U.S. Attorney's Office?

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1 REP. MICHAUX: I didn't -- I didn't have
2 to. I helped draw the ones in '80.
3 CHAIRMAN RUCHO: Okay. You have a
4 follow-up to that?
5 REP. MICHAUX: Yeah. I just wanted to
6 say, Mr. Chairman, that what -- what -- what
7 Representative Hagar says, he needs to go back --
8 I'm glad he's a student of the law because he
9 needs to really go back. Section 2 is a valuable
10 part of the Voting Rights Act. It is a part -- if
11 you read the decision by the three-judge panel,
12 Section 2 is mentioned in there. If you read the
13 decision in the Alabama case, Section 2 is
14 mentioned in there.
15 All of these things fall in line. What
16 you -- what you're basically doing here is trying
17 to avoid using race, you have already brought race
18 into the picture.
19 CHAIRMAN RUCHO: Thank you.
20 All right. Any other questions, Members
21 of the Committee? Any --
22 Yes, sir. Senator McKissick.
23 SEN. McKISSICK: And it may be premature
24 to ask this question. But assuming these maps are
25 approved tomorrow and they go on to the Court, I'm

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1 just wondering what's been determined and what has
2 been proposed in terms of deadlines for filing
3 periods in the postponement of the Congressional
4 district elections? Because we clearly have
5 situations here which would, in my mind, compel us
6 to reset the Congressional district elections at a
7 later date and reopen these final periods.
8 So I was wondering what has been thought
9 about or what has been considered in terms of new
10 date for the Congressional district elections or
11 proposed opening periods for filing of candidacy.
12 Because otherwise, we end up with one district
13 where there won't even be anybody.
14 REP. LEWIS: Mr. Chairman.
15 CHAIRMAN RUCHO: Yes, sir.
16 REP. LEWIS: In an attempt to answer the
17 Senator's question, it is the intent tomorrow,
18 provided a stay is not issued, that a bill would
19 be sourced to create a new redistricting map to
20 comply with the decision in the Harris case.
21 There will be a separate bill that would be
22 sourced that would reestablish when the new
23 Congressional election would be done. Obviously,
24 there are factors to take into account, a certain
25 amount of time it takes to get the ballots

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1 prepared and mailed out and whatnot.
2 But just for planning purposes, I
3 believe, sir, you could anticipate that the -- the
4 Senate would deal with the adoption of the maps
5 first and the House would deal with the adoption
6 of the new election schedule, and then the two
7 would cross. And, you know, of course it would
8 require action by both sides.
9 I know that there are several members
10 that have begun to work on this with our staff. I
11 can't give you the exact dates now; frankly,
12 because I don't know what they are.
13 SEN. McKISSICK: Thank you.
14 CHAIRMAN RUCHO: Follow-up. You all set?
15 SEN. McKISSICK: I -- I think that
16 clarifies it. I mean, do we have any proposed
17 dates? I mean, are we talking about May for the
18 election or...
19 REP. LEWIS: Mr. Chairman?
20 CHAIRMAN RUCHO: Yes, sir.
21 REP. LEWIS: I'll be happy to try and
22 share, or perhaps Representative Jones could meet
23 with the senator after we adjourn.
24 To my knowledge, the dates have not been
25 finalized yet. I know that they're both in

<p style="text-align: right;">66</p> <p>1 conversations with our central staff. I know 2 Representative Jones on the behalf of the House 3 has been in contact with the State Board. I 4 don't -- to be candid with you, I don't know that 5 we've set what the dates are just yet. 6 SEN. MCKISSICK: Okay. Thank you. 7 CHAIRMAN RUCHO: To -- to help out with 8 that, you know, having worked on the part when we 9 establish the filing and the like for the March 10 15th, there are seven days that the boards of 11 elections, both central and counties, are required 12 to do certain things. So what you do is you work 13 back, and that hasn't been done yet. Okay. 14 All right. Members of the Committee, I 15 don't see any additional questions or comments. 16 Senator Hise, for a motion? 17 SEN. HISE: Thank you, Mr. Chairman. 18 We've been tasked by the President Pro 19 Tem for the Senate and the Speaker of the House 20 with recommending a proposed contingent 21 Congressional map that complies with the trial 22 court's order in the matter of Harris versus 23 McCrory, to the extent that that order is not 24 stayed by higher authority. To comply with our 25 directive and after extensive debate today, I move</p>	<p style="text-align: right;">68</p> <p>1 THE CLERK: Rucho, aye. 2 Apodaca? 3 SEN. APODACA: Aye. 4 THE CLERK: Apodaca, aye. 5 Barefoot? 6 SEN. BAREFOOT: Aye. 7 THE CLERK: Barefoot, aye. 8 Blue? 9 SEN. BLUE: No. 10 THE CLERK: Blue, no. 11 Brown. 12 SEN. BROWN: Aye. 13 THE CLERK: Brown, aye. 14 Clark? 15 SEN. CLARK: No. 16 THE CLERK: Clark, no. 17 Harrington? 18 SEN. HARRINGTON: Aye. 19 THE CLERK: Harrington, aye. 20 Hise? 21 SEN. HISE: Aye. 22 THE CLERK: Hise, aye. 23 Jackson. 24 SEN. JACKSON: Aye. 25 THE CLERK: Jackson, aye.</p>
<p style="text-align: right;">67</p> <p>1 that the committee recommend favorably to the 2 General Assembly the contingent Congressional map 3 presented to the committee today by you and 4 Co-chairman Lewis, and that committee staff be 5 given leave to format this recommendation, 6 recommending contingent map as needed for 7 submission as a report of recommended legislation 8 to the General Assembly. 9 CHAIRMAN RUCHO: Thank you, Senator Hise. 10 Members of the committee, we have a 11 motion before us to adopt these maps and be able 12 to submit them to the General Assembly for the 13 short -- for the special session. 14 Any questions or comments? 15 (No response.) 16 CHAIRMAN RUCHO: All right. Seeing none, 17 Mr. Clerk, may we have a roll -- 18 THE CLERK: As per Senator Apodaca -- 19 CHAIRMAN RUCHO: -- roll call first. And 20 Senator Apodaca wants to be called first, if you 21 will be kind enough. 22 THE CLERK: We'll begin with the Senate. 23 CHAIRMAN RUCHO: Thank you. 24 THE CLERK: Rucho? 25 CHAIRMAN RUCHO: Aye.</p>	<p style="text-align: right;">69</p> <p>1 Lee? 2 SEN. LEE: Aye. 3 THE CLERK: Lee, aye. 4 McKissick? 5 SEN. MCKISSICK: No. 6 THE CLERK: McKissick, No. 7 Randleman? 8 SEN. RANDLEMAN: Aye. 9 THE CLERK: Randleman, aye. 10 Sanderson? 11 SEN. SANDERSON: Aye. 12 THE CLERK: Sanderson, aye. 13 Smith? 14 SEN. SMITH: No. 15 THE CLERK: Smith, no. 16 Smith-Ingram? 17 SEN. SMITH-INGRAM: No. 18 THE CLERK: Smith-Ingram, no. 19 Wade? 20 SEN. WADE: Aye. 21 THE CLERK: Wade, aye. 22 Wells? 23 SEN. WELLS: Aye. 24 THE CLERK: Wells, aye. 25 Lewis?</p>

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<p>1 REP. LEWIS: Aye. 2 THE CLERK: Lewis, aye. 3 Jones. 4 REP. JONES: Aye. 5 THE CLERK: Jones, aye. 6 Brawley? 7 REP. BRAWLEY: Aye. 8 THE CLERK: Brawley, aye. 9 Cotham. 10 REP. COTHAM: No. 11 THE CLERK: Cotham, no. 12 Davis? 13 REP. DAVIS: Yes. 14 THE CLERK: Davis, yes. 15 Farmer-Butterfield? 16 REP. FARMER-BUTTERFIELD: No. 17 THE CLERK: Farmer-Butterfield, no. 18 Hager? 19 REP. HAGER: Aye. 20 THE CLERK: Hager, aye. 21 Hardister? 22 REP. HARDISTER: Aye. 23 THE CLERK: Hardister, aye. 24 Haynes? 25 REP. HAYNES: No.</p>	<p>1 Stevens? 2 REP. STEVENS: Aye. 3 THE CLERK: Stevens, aye. 4 CHAIRMAN RUCHO: Members of the 5 Committee, the roll was taken and you have 24 6 ayes, in favor of adoption of the maps, 11 noes. 7 That will be submitted to the General Assembly at 8 its special session. 9 I'll remind everyone again that please 10 save the maps that you have and bring them with 11 you so that we can be able to save staff time 12 in -- in trying to accomplish that. 13 The -- I think you need to stay tuned to 14 the -- to the e-mails for the next meeting, which 15 I'm assuming will be... 16 All right. Will be the call of the chair 17 and specifically on redistricting committee. 18 Representative Lewis, any additional 19 comments? 20 REP. LEWIS: Mr. Chairman, just an 21 announcement to the members: We've been informed 22 that the governor has called and has issued a 23 proclamation for an extra session. The General 24 Assembly will convene on Thursday, February 18th 25 at 10 o'clock a.m.</p>
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<p>1 THE CLERK: Haynes, no. 2 Hurley? 3 REP. HURLEY: Aye. 4 THE CLERK: Hurley, aye. 5 Jackson? 6 REP. JACKSON: No. 7 THE CLERK: Jackson, no. 8 Johnson? 9 REP. JOHNSON: Aye. 10 THE CLERK: Johnson, aye. 11 Jordan? 12 REP. JORDAN: Aye. 13 THE CLERK: Jordan, aye. 14 McGrady? 15 REP. McGRADY: Aye. 16 THE CLERK: Grady, aye. 17 Michaux? 18 REP. MICHAUX: No. 19 THE CLERK: Michaux, no. 20 Moore? 21 REP. MOORE: Nay. 22 THE CLERK: Moore, nay. 23 Stam? 24 REP. STAM: Aye. 25 THE CLERK: Stam, aye.</p>	<p>1 CHAIRMAN RUCHO: Okay. Members of the 2 Committee, we're about ready to conclude our 3 meeting. But again, I will just let you know, 4 without objection, the chairs will sign this 5 report when it's prepared to be submitted to -- to 6 the General Assembly. 7 Okay. 8 REP. LEWIS: Mr. Chairman? 9 CHAIRMAN RUCHO: Yes, sir. 10 Representative Lewis. 11 REP. LEWIS: I just also wanted to state 12 for record that the Chair's acknowledged the 13 request from Senator McKissick, and perhaps 14 others, to make this information available and the 15 Chair's understand that may require additional 16 information than what's been provided here or what 17 was considered in drawing of the maps. 18 CHAIRMAN RUCHO: Okay. Ladies and 19 gentlemen, thank you for your attention, and this 20 committee is adjourned. 21 (The proceedings in this matter adjourned 22 at 5:37 p.m.) 23 24 25</p>

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STATE OF NORTH CAROLINA
COUNTY OF WAYNE

CERTIFICATE

I, Jennifer C. Carroll, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that on February 17, 2016, the proceeding was held before me at the time and place aforesaid, that all parties were present as represented, and that the record as set forth in the preceding pages represents a true and accurate transcription of the proceedings to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand, this the 26th day of February, 2016.

Jennifer C. Carroll, RMR, CRR

Exhibit F

NORTH CAROLINA GENERAL ASSEMBLY
NORTH CAROLINA HOUSE OF REPRESENTATIVES

TRANSCRIPT OF THE PROCEEDINGS
FLOOR SESSION ONE (11:30 A.M.)

In Raleigh, North Carolina
Friday, February 19, 2016
Reported by Rachel L. Hammond, CVR-M

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

1 (Reporter's note: Proceedings in this matter
2 began at 11:30 a.m. on February 19, 2016.)

3 SPEAKER MOORE: The House will come to order.
4 Members will take their seats. Visitors will retire
5 from the chamber. The Sergeant-at-Arms will close the
6 doors. Members and guests are asked to please silence
7 all electronic devices.

8 This morning's prayer will be offered by
9 Representative Avila. We'd ask all members and all
10 guests in the gallery to please stand for the prayer
11 and remain standing for the Pledge of Allegiance.

12 Representative Avila.

13 (Prayer and the Pledge of Allegiance.)

14 SPEAKER MOORE: The gentleman from Harnett,
15 Representative Lewis, is recognized for a motion.

16 REP. LEWIS: Mr. Speaker, the journal for
17 February 18, has been examined and found to be correct.
18 I move that it stand approved as written.

19 SPEAKER MOORE: Representative Lewis moves that
20 the journal for February 18 be approved as written;
21 those in favor will say "aye."

22 (Voice vote.)

23 SPEAKER MOORE: Those opposed "no."

24 The ayes have it. The journal is approved as
25 written. Notices and announcements -- strike that.

1 Reports of standing committees.

2 Representative Lewis, the Chair on the
3 Committee -- the Redistricting Committee is recognized
4 to send forward the committee report. The clerk will
5 read.

6 CLERK: Representative Lewis Redistricting
7 Committee reported Senate Bill 2 2016 Contingent
8 Congressional Plan.

9 SPEAKER MOORE: Calendar for this morning.
10 Senate Bill 2, the clerk will read.

11 (Bill read by clerk.)

12 SPEAKER MOORE: The gentleman from Harnett,
13 Representative Lewis, is recognized to debate the bill.
14 The House will come to order.

15 Members, before the gentleman starts, I want to
16 remind the body we do have the court reporter with us
17 again here today. So all of the extra noise and the
18 chatter that is occurring makes it very difficult for
19 her to hear. So, again, if you need to have any extra
20 conversations, I would ask members to please step off
21 the floor to do so or to keep that to a very low tone.

22 The gentleman from Harnett has the floor to
23 debate the bill.

24 REP. LEWIS: Thank you, Mr. Speaker. Members
25 of the House, we are here today to comply with a court

1 order issued in the Harris versus McCrory case, which
2 instructed us not to hold the 2016 race for the United
3 States House of Representatives under the current map
4 and instructed us to redraw the districts. We, as you
5 know, have appealed and sought a stay of that decision.
6 However, as of this moment, that stay has not been
7 granted. We are still hopefully optimistic that it
8 will, in fact, come. However, out of respect for the
9 rule of law and the court's findings, I will present to
10 you today a 2016 Contingent Congressional Map. I will
11 point out that this map was created based on criteria
12 that was adopted by a Joint Select Committee of the
13 House and the Senate appointed by the Speaker and the
14 President Pro Tem; the committee adopted this criteria
15 on February 16.

16 I will point out to you the criteria on which
17 the maps before you were drawn. First, was the
18 criteria of equal population. All of the districts
19 were drawn with either 733,499 total persons or 733,498
20 total persons. This is as equal as practicable and is
21 in accordance with federal law. Another criteria was
22 contiguity. All the areas of every district are
23 composed within contiguous territories. Another
24 criteria was political data. The stat pack attached to
25 the maps placed on each one of your desk show which

1 election results were used in building these districts.
2 Race was not considered and is not present in these
3 reports. A further criteria was partisan advantage.
4 We believe that this map will produce an opportunity to
5 elect ten Republican members of Congress, but make no
6 mistake, this is a weaker map than the enacted plan in
7 that respect. The Committee further adopted criteria
8 to do away with the 12th district, which has been
9 described as serpentine in nature because of the shape,
10 the way it appears on a map. The drawing of this
11 corrected -- the drawing of this plan before you
12 corrects that. An additional criteria was compactness.
13 Only 13 counties and 12 voting districts were split in
14 this map. In accordance with the criteria, more whole
15 counties and more whole precincts are the best
16 indicator of compactness that we believe to be
17 available. An additional criteria adopted by the
18 committee was incumbency. In this map, only two
19 incumbent members of Congress reside in the same
20 congressional district, one Republican and one
21 Democrat. They are Representative Holding and
22 Representative Price, both of whom reside within the
23 geographic territory that makes up the proposed 4th
24 Congressional District. Eleven incumbents were placed
25 in a congressional district by themselves.

1 I want to offer only a bit of historical
2 context that I hope you will consider when you're
3 voting for those maps. The 1992 Congressional Plan
4 split 44 counties; the 1997 plan split 22 counties; the
5 1998 plan split 21 counties; the 2001 plan split 28
6 counties and 22 Voting Tabulation Districts; the 2011
7 Congressional Plan, which I'll refer to henceforth as
8 the enacted plan, split 40 counties and 68 voting
9 districts, or VTDs; and the map that you have before
10 you splits 13 counties and 12 VTDs.

11 I am very proud and appreciative of all of the
12 work that members of the committee gave, that our
13 central staff dedicated themselves to do. I appreciate
14 all of the members who brought forward constructive
15 advice on how to design these maps to comply with the
16 court decision. And I look forward to being able to
17 more fully debate and explain these maps as directed by
18 the Speaker. But I would ask for your support. I
19 believe that this is a major step forward and should
20 the stay not be granted by the U.S. Supreme Court, I
21 believe that this map, drawn in accordance with the
22 criteria that I have mentioned in my earlier remarks,
23 will help us comply with the court order from the
24 Harris case. And I would respectfully ask at the
25 conclusion of this debate that you would vote "aye" on

1 this bill. Thank you, Mr. Speaker.

2 SPEAKER MOORE: For what purpose does the
3 gentleman from Durham, Representative Michaux, arise?

4 REP. MICHAUX: To speak on the bill.

5 SPEAKER MOORE: The gentleman has the floor to
6 debate the bill.

7 REP. MICHAUX: Mr. Speaker and ladies and
8 gentlemen of the House, I'm not going to ask
9 Representative Lewis any questions on this. I think
10 that has been thoroughly covered in committee, and the
11 record has been made in committee on this. What I want
12 to do very simply is to caution you about what you're
13 about to do. And in order to set the framework for
14 that -- what I want to say about this, I want to quote
15 a couple of things from the Harris decision that got us
16 where we are today. The first is that on page 2 of
17 that decision -- page 3 it says, "This does not mean
18 that race can never play a role in redistricting.
19 Legislatures are almost always cognizant of race when
20 drawing district lines, and simply being aware of race
21 poses no constitutional violation. Only when race is
22 the 'dominant and controlling' consideration in drawing
23 district lines does strict scrutiny, strict scrutiny
24 apply." What the Court is saying very simply in this
25 is that race can still be used in drawing lines, but if

1 you use race, "strict scrutiny" applies. It doesn't
2 mean it can't be applied, but you have to look at it a
3 little bit closer than the way you normally look at.
4 What this body has done in this -- I'm sorry, what the
5 committee has done, is they have taken race out of the
6 equation totally and completely. In other words, this
7 map that you have before you today was drawn without
8 consideration of race.

9 Now everybody tries to think that we're going
10 to have a colorblind situation and wishes for one,
11 which is the ultimate dream in euphoria. Race will
12 always be there because there will always be
13 differences either race, class, whatever way you want
14 to put it. So you cannot, you cannot do maps without
15 including race as a part of it.

16 The second part of that, or other part of that
17 decision says this, "redistricting legislation must,"
18 and I repeat, "redistricting legislation must comply
19 with the Voting Rights Act of 1965." Many people have
20 thought that the Shelby case knocked out the Voting
21 Rights Act. It did not. It only knocked out Section 4
22 from the Voting Rights Act, that section which set up a
23 formula for which preclearance was required. The
24 Voting Rights Act of 1965 still stands. And I repeat,
25 that it says that any district lines must comply with

1 the Voting Rights Act of 1965. And in that same vein,
2 they said that, "the Voting Rights Act prohibits states
3 from adopting plans that would result in vote dilution
4 under section 2." So, Section 2 basically is the
5 operative clause under which we operate and draw
6 district lines.

7 Now, what you have done with this map is you
8 have gone in the complete opposite, and you have made
9 race a predominant factor again because you left it
10 out. You don't consider whether or not these districts
11 that have been drawn on this map create any dilution of
12 minority registrants, minority voting. You don't have
13 any clue as to whether or not minorities, African
14 Americans in particular, are able to elect
15 representatives of their choice. That's because you
16 cut out race as a factor in determining what these
17 lines are being drawn for. So I say that you set up an
18 unconstitutionally drawn map, and you're sending back
19 another unconstitutionally drawn map. But that is not
20 for me to decide. That is for the Court to decide.
21 But just taking a simple look at it you say, well, how
22 do we do this? All you have to do -- you don't have to
23 make it a predominant factor. You can look at it and
24 you can draw lines that fall within parameters that
25 don't make race a predominant factor and still

1 guarantee that you don't have voter dilution and still
2 guarantee that you have a position where African
3 Americans are able to elect persons of their choosing.

4 Now, there is one other thing I want to call to
5 your attention out of that same decision. It says that
6 there is strong evidence -- and this comes from the
7 Harris decision -- "There is strong evidence that race
8 was the only nonnegotiable criterion and that
9 traditional redistricting principles were subordinated
10 to race." I say again, "There is strong evidence that
11 race was the only nonnegotiable criterion." Here
12 again, in these maps that are being drawn, race is the
13 only nonnegotiable criterion that has brought these
14 maps about.

15 Finally, it says, "A congressional district
16 necessarily is crafted because of race, when a racial
17 quota is the single filter through which all
18 line-drawing decisions are made." Now, folks, it
19 doesn't take a rocket scientist or a mathematician to
20 figure that if you're going to draw district lines,
21 you've got to take into account the population of that
22 district. How it affects not just one part of the
23 population, but the total, the total population, and
24 that includes members of any ethnic group, any racial
25 group, anything. It all has to be considered. Here,

1 in this map that was drawn, none of that was
2 considered. And I say to you that I know what you're
3 going to do. Everybody is going -- both sides are
4 going to probably go lockstep, no question about it.
5 But what you're doing is you're setting up a situation
6 where there is a good possibility of you coming back
7 here again if the courts find that you have not
8 followed their instructions. They could send it back.
9 They could do it themselves, or they could put in a
10 Special Master to draw the lines. There are other
11 things here, everybody says, well, it is confusing.
12 Chaos reigns as a result of this. Well, folks, those
13 of us on this side did not cause that chaos. We were
14 never asked to have any input into this. We got -- to
15 give you an example, this map that you have drawn
16 today, I think the decision was handed down February 5
17 or February 6, and before any criteria was set up, I
18 understand from folks on the other side, that plans
19 were already being drawn and criteria was already being
20 set up -- not having been set up, but maps were being
21 drawn without that. And then to come in on, I think,
22 Tuesday of this -- Monday or Tuesday of this week and
23 pass criteria, and on Wednesday we've got a map, then
24 there's a problem. There are many things wrong with
25 this, and I know this was done in a hurry. But we need

1 to take the time to make sure that every facet of this
2 thing is covered. A lot of folks don't want to talk
3 about race. I don't particularly. One thing about my
4 good friend Martin Luther King, Jr., Martin told me --
5 I never heard him use the word "colorblind" because in
6 his thinking we will never have a colorblind society.
7 And unfortunately, or fortunately, it is here, and it's
8 faced. And we have to take it into consideration. And
9 when you take it out, then that becomes a predominant
10 factor in this whole thing. So you're going to do what
11 you're going to do, but I don't think you've seen the
12 end of this problem yet.

13 REP. LEWIS: Mr. Speaker.

14 SPEAKER MOORE: For what purpose does the
15 gentleman from Harnett, Representative Lewis, arise?

16 REP. LEWIS: Would the distinguished gentleman
17 from Durham yield to a question?

18 SPEAKER MOORE: Does the gentleman from Durham,
19 Representative Michaux, yield to the gentleman from
20 Harnett?

21 REP. MICHAUX: The gentleman will yield. I
22 don't know how distinguished he is.

23 SPEAKER MOORE: He yields.

24 REP. MICHAUX: I yield.

25 REP. LEWIS: Mr. Speaker, I appreciate not only

1 the distinguished but the well-dressed gentleman taking
2 time to yield to me.

3 Representative Michaux, you referenced the
4 Harris decision in your remarks. Would I be safe to
5 operate under the belief that you have it before you?

6 REP. MICHAUX: You -- yes, sir. Here it is,
7 yes.

8 REP. LEWIS: Thank you. May I ask another
9 question, Mr. Speaker?

10 SPEAKER MOORE: The gentleman is recognized for
11 a second question. Does the gentleman from Durham
12 yield?

13 REP. MICHAUX: Yes, I yield.

14 SPEAKER MOORE: He yields.

15 REP. LEWIS: Thank you, Mr. Speaker.

16 Representative, may I ask you to please look at page 57
17 of that opinion?

18 REP. MICHAUX: 57?

19 REP. LEWIS: Page 57, yes, sir. And, sir, the
20 particular --

21 REP. MICHAUX: Yes, sir, I have it.

22 REP. LEWIS: Right before the number 2 there,
23 there is a sentence that reads in part, "As the
24 defendants," which would have been us, "fail to meet
25 the third Gingles factor, the Court concludes that

1 section 2 did not require the defendants to create a
2 majority-minority district in CD 1." Is that not
3 saying that the Court finds that racially polarized
4 voting was not present or proven so that we shouldn't
5 have used it in drawing the map?

6 REP. MICHAUX: That's not what it says to me,
7 Representative Lewis. What it says to me is that there
8 was racially polarized showing in that. You didn't
9 meet the requirements, the third requirement of --
10 requirements in the Gingles case. Which set up the
11 fact that if you have racial polarization, you have got
12 to take into consideration these factors.

13 REP. LEWIS: Mr. Speaker, may I ask the
14 gentleman another question?

15 SPEAKER MOORE: Does the gentleman from Durham
16 yield to an additional question?

17 REP. MICHAUX: Yes, I yield.

18 SPEAKER MOORE: He yields.

19 REP. LEWIS: Thank you, Mr. Speaker, and thank
20 you, Representative. If I may, would you turn to
21 page 56 of the same opinion of which we were just
22 looking.

23 REP. MICHAUX: I have it, yes, sir.

24 REP. LEWIS: Thank you, sir. When the Court
25 writes, "the composition and election results under the

1 earlier version of CD 1 vividly demonstrate that,
2 though not previously a majority-BVAP district, the
3 white majority" -- this is the operative part I'd like
4 your advice on -- "the white majority did not vote as a
5 bloc to defeat the African-Americans' candidate of
6 choice. In fact, precisely the opposite occurred in
7 these two districts: significant crossover voting by
8 white voters supported the African-American candidate."
9 Does that not indicate that the Harris court did not
10 find racially polarized voting?

11 REP. MICHAUX: I'm not sure that it does,
12 Representative Lewis, because you have to have certain
13 iterations in these types of situations. It's known,
14 and it is a known fact, and it has been proved.
15 Gingles proved it and several of the other cases,
16 Stevens' case proved it, that whites sometimes
17 basically vote as a bloc in order to keep
18 African-Americans, or whatever ethnic group, out. And
19 that has happened -- it has happened in my case. I
20 personally had it happen to me. So this iteration in
21 here is actually stating what should not or could not
22 have to happen. And of course, you know, you're on
23 that segment. I've got that page marked also.

24 REP. LEWIS: May I ask the gentleman an
25 additional question?

1 SPEAKER MOORE: Does the gentleman from Durham
2 yield to an additional question?

3 REP. MICHAUX: Yes, sir.

4 SPEAKER MOORE: He yields.

5 REP. LEWIS: Just for the sake of this
6 conversation, Representative Michaux, and I've
7 acknowledged freely in earlier meetings that you are an
8 attorney and I'm not. You're much more versed in the
9 law. Would you acknowledge at least with me -- and I
10 apologize to skip around in this opinion, but do --
11 would I be correct to operate under the understanding
12 of this opinion that at least in the opinion issued in
13 the Harris court, that the third Gingles element of
14 establishing racially polarized voting per this court
15 decision was not met?

16 REP. MICHAUX: Yes, it says that.

17 REP. LEWIS: Thank you, sir. Mr. Speaker, may
18 I ask the gentleman another question on another subject
19 matter?

20 SPEAKER MOORE: Does the gentleman from Durham
21 yield to an additional question from the gentleman from
22 Harnett?

23 REP. MICHAUX: Yes, sir. I yield.

24 SPEAKER MOORE: He yields.

25 REP. LEWIS: Thank you, Mr. Speaker, and thank

1 you, Representative. You mentioned in your remarks the
2 map that is prepared before us and also perhaps the
3 steps that were taken in the preparation of those maps,
4 I was wondering, sir, if you would speak to what -- and
5 of course, I only ask for your personal knowledge, of
6 what steps the Democratic Party took, or the Democratic
7 members of this House took, to comply with the court
8 order that we were all notified about on February 6.

9 REP. MICHAUX: My answer to you, Representative
10 Lewis, on that is we were not ordered to comply with
11 that decision. You were ordered to comply with that
12 decision. We did not draw the maps. You drew the
13 maps, so that decision was aimed at you. The matter is
14 in court. If the Court wants our advice, we will give
15 them that advice. We tried to give you our advice on
16 the mistakes that you made. You could take them any
17 kind of way you see, and it comes back, you say, well,
18 the minority party helped us do this.

19 This is a problem that you created. This is a
20 problem that you have to solve. If the Courts want our
21 opinion on it, they will ask us, and we are prepared --
22 we will be prepared to answer any questions that the
23 Court raises with us on it. And by the way,
24 Representative Lewis, let me just -- since you are
25 referring to the opinion, you referred to page 55 on

1 that -- 56 on that. On 54, "Strikingly, there is no
2 evidence that the General Assembly conducted or
3 considered any sort of a particularized
4 polarized-voting analysis during the 2011 redistricting
5 process." So I just wanted to clear that up.

6 REP. LEWIS: Mr. Speaker, may I ask the
7 gentleman another question?

8 SPEAKER MOORE: Does the gentleman from Durham
9 yield to an additional question?

10 REP. MICHAUX: Anytime. Yes, sir.

11 SPEAKER MOORE: He yields.

12 REP. LEWIS: Thank you, Mr. Speaker, and thank
13 you, Representative. I just wanted to -- and this is
14 along the lines of the last question I asked, if I may.
15 Would it be fair to say that you, as a member of the
16 General Assembly, as a member of the Joint Select
17 Committee, and of the House Committee, while, by your
18 own remarks, had the opportunity to participate and
19 offer input to the map, have instead elected not to do
20 that and are preparing instead to offer maps that you
21 developed to the Court? So it would be fair to say
22 that you declined largely to constructively participate
23 in the legislative process, preferring to focus on the
24 judicial process?

25 REP. MICHAUX: In the joint meeting of the

1 committee, several amendments were offered by the
2 minority party. They were all killed. In other
3 instances in this body when we have tried to
4 participate and offer what we thought were constructive
5 amendments, whether some, even folks on your side have
6 agreed, we have been struck down. And here again, I
7 refer to my good friend Martin Luther King, Jr. Martin
8 said, Mickey, you have always got to be able to -- if
9 they hit you on one side to turn the other cheek and
10 let them hit you on -- you know, don't hit back. Well,
11 I've been hit on both cheeks by you-all, and I am just
12 not going to let you hit me anymore. And that's -- I
13 mean, that's it, Mr. Lewis, why should we, why should
14 we -- when you haven't sought our help in the beginning
15 and you haven't sought our help now. You haven't asked
16 us anything. You have already gone on and done these
17 maps before we even had a committee meeting.

18 REP. LEWIS: Mr. Speaker, may I ask the
19 gentleman another question?

20 SPEAKER MOORE: Does the gentleman from Durham
21 yield to an additional question from the gentleman from
22 Harnett?

23 REP. MICHAUX: Yes, I yield.

24 SPEAKER MOORE: He yields.

25 REP. LEWIS: Thank you, Mr. Speaker, and thank

1 you, Representative. I do not have the committee
2 minutes before me, and I am certainly prepared to be
3 corrected. Did members of the minority party, the
4 Democratic Party, offer amendments in the form of a map
5 or guidelines to how the map should look, or were those
6 amendments largely unrelated to the drawing of a map?

7 REP. MICHAUX: The amendments affected the
8 criteria under which the maps were to be drawn.

9 REP. LEWIS: Thank you, sir, for your time.
10 And thank you, Mr. Speaker.

11 SPEAKER MOORE: For what purpose does the
12 gentleman from Bladen, Representative Brisson, arise?

13 REP. BRISSON: To see if Representative Lewis
14 will yield for a couple of questions.

15 SPEAKER MOORE: Does the gentleman from Harnett
16 yield to the gentleman from Bladen?

17 REP. LEWIS: I do, Mr. Speaker.

18 SPEAKER MOORE: He yields.

19 REP. BRISSON: Thank you, Mr. Speaker. Thank
20 you, Representative Lewis. It may take me a minute
21 here to get through my questions, but in the beginning
22 when the Courts made the decision, it was certainly
23 on -- obviously it was on district 1 and 12, which was
24 two out of the 13 districts. And, I guess, I'm
25 certainly not speaking for any of the other members,

1 but I kind of assumed that should we -- evidently,
2 we've got a problem there. When we started off I
3 thought, I assumed, that maybe the problem could be
4 worked out in the general consensus of that district.
5 Do you understand what I'm saying? That maybe it
6 didn't involve the whole state. One of my questions,
7 how much time did the committee spend on concentrating
8 on trying to get in compliance in that general area
9 versus -- and when was the decision made to do it
10 statewide because it changed? In the original
11 committee was kind of -- I saw the members. It looked
12 like that it was maybe not intentionally set up, but
13 basically a lot of -- it was close by neighbors
14 involved in that general vicinity of the state on the
15 committee, maybe one or two scattered out away from,
16 kind of, more distant away. And after the two
17 questions that I'm trying to ask, and I'll them both is
18 how much time, or if any time was spent on just the
19 general consensus and vicinity of the question -- the
20 two districts in question? And at what time did the
21 committee decide to expand and redo the whole state?
22 And did the committee look at maybe taking a look at
23 the committee then when they went to the full state to
24 maybe justify expanding the committee or make sure we
25 have broader input from throughout the state?

1 REP. LEWIS: Thank you for that question,
2 Representative. Let me do my very best to answer.
3 First of all, you are right when you say the case that
4 was brought and adjudicated by the three-judge panel
5 involved the 1st Congressional District and the 12th,
6 not all 13. However, when you're drawing districts,
7 what you're talking about is assigning geographic areas
8 where 733,498 or 499 people can elect a member to the
9 U.S. House. So, when you change lines in one part of
10 the state, you are essentially moving people. And as
11 you move people that a cause in one district almost
12 certainly causes a change in those around it. So what
13 you'll notice when you look at the proposed map is that
14 some districts seem to have changed very little. The
15 11th, for instance, the mountain district, really I
16 think the only change that was made there had to do
17 with trying to equalize some population because
18 additional population had been pushed west, if you
19 will, from the 10th and from the 5th. So, as far as
20 the time spent, what the committee did was debate the
21 criteria that we felt would help us comply with the
22 Harris court decision. We respect the judges and want
23 to honor both the written law and the spirit in which
24 they issued the opinion. But in candor, there was not
25 a great deal of curative language in the opinion that

1 said had you done X, Y and Z, we would not have found
2 the way we found. So what the committee did instead is
3 it went through in a full and open session in which
4 amendments were, in fact, considered, and it adopted
5 criteria that it felt would help us be able to comply
6 with the court order. Those, as I have said, were the
7 equal population, the contiguity, the political data,
8 partisan advantage, doing away with the serpentine
9 nature of the 12th, compactness, and incumbency. So
10 once the committee adopted those criteria, we set about
11 and have been able to produce a map which is based on
12 those criteria.

13 I think what you're asking about in particular
14 is there are some counties that seem to be
15 geographically far away from either the 1st or the 12th
16 that their district lines have changed. And I will
17 openly concede that you are right in the observation
18 that you have made. But, again, for lack of a better
19 analogy, if you picture a child playing with a balloon,
20 when the child will squeeze the balloon in one part,
21 another part will change its shape. And that is
22 largely why districts all across the state changed.
23 But, again, I would point out, even though certain
24 counties may have changed the district they were in or
25 certain counties may be divided that weren't divided

1 before, this map divides only 13 counties and only 12
2 VTDs. So this map, to the extent that it has to be
3 used because a stay is not granted, at least based on
4 the criteria adopted by the committee, is a superior
5 map and we believe complies with what we were ordered
6 to do by the Court.

7 REP. BRISSON: Thank you.

8 SPEAKER MOORE: Does the gentleman from Bladen
9 wish to ask an additional question?

10 REP. BRISSON: I just --

11 SPEAKER MOORE: Or does the gentleman wish to
12 debate the bill?

13 REP. BRISSON: I just wanted to ask to make
14 sure that I got my question, both questions answered.

15 SPEAKER MOORE: Does the gentleman from Harnett
16 yield to an additional question?

17 REP. LEWIS: I yield.

18 SPEAKER MOORE: He yields. The gentleman is
19 recognized -- and Representative Brisson, I am trying
20 to do this orderly because the court reporter is trying
21 to make a record, so bear with me on that. The
22 gentleman has the floor for a question.

23 REP. BRISSON: Thank you, Mr. Speaker. Thank
24 you, Representative Lewis. What -- so did the
25 committee ever look at expanding when we decided to

1 go -- that was one of my questions, expanding the
2 committee to make sure that we had a pretty much
3 representation statewide on the committee?

4 REP. LEWIS: Thank you for that question,
5 Representative. And I did fail to answer it the first
6 time you asked it, I apologize. The Speaker and the
7 President Pro Tem made these appointments about a week
8 ago today. We have been operating under -- I think
9 even those opposed to the maps, would acknowledge that
10 we have been operating under a very compressed
11 timetable. And when the decisions were made, I did not
12 ask the Speaker and the President Pro Tem to expand the
13 membership of the committees. They certainly have the
14 authority to do that. I don't even know, in candor,
15 that it was contemplated to expand the committee. We
16 did make clear though, in every effort that we could,
17 that all members of the General Assembly, regardless if
18 they were voting members of the committee or not, were
19 encouraged to attend the committee and were certainly
20 given a chance to speak. I think, in fact, I think
21 several did actually ask questions or take part in the
22 debate that were not actually seated members of the
23 committee. And I would point out that while it is
24 pretty much a expected tradition of the General
25 Assembly that a member of the General Assembly that

1 wants to address a standing committee can certainly do
2 so, I think we actually went above and beyond trying to
3 reassure members that their input or their questions
4 were welcomed whether or not they were a seated member
5 of the committee.

6 REP. BRISSON: Thank you, Representative Lewis.
7 Mr. Speaker, can I speak on the bill?

8 SPEAKER MOORE: The gentleman has the floor to
9 debate the bill.

10 REP. BRISSON: Thank you, Mr. Speaker. Ladies
11 and gentlemen, I just -- and I know that we have ended
12 up with less split counties, divided counties, which is
13 great. But I just want to remind this body that with
14 small populated counties, and I represent -- two out of
15 three that I represent are kind of considered small
16 population -- any time that the smaller counties have
17 to be divided, it does make a big difference to the
18 people. Maybe not statewide concerns, but the
19 general -- people in general in small populations, they
20 feel like divided, when you divide them, they are not
21 whole. And we don't get a whole lot of recognition
22 with the small population to begin with. We don't feel
23 that maybe our word is not heard. Our message is not
24 heard quite as well as the larger counties populated.
25 But when you divide us in half or take a third of our

1 folks, it does have the people concerned that maybe we
2 don't end up with the representation in Congress or
3 wherever it be. And that is my concern and it is all
4 about the small populated. Anytime that we can do
5 anything to help those situations, I hope that we will
6 certainly consider that. Thank you so much, Mr.
7 Speaker.

8 SPEAKER MOORE: For what purpose does the
9 gentleman from Wake, Rep. Martin, arise?

10 REP. MARTIN: To see if the gentleman from
11 Harnett would yield to a few questions.

12 SPEAKER MOORE: Does the gentleman from
13 Harnett, Representative Lewis, yield to the gentleman
14 from Wake?

15 REP. LEWIS: I yield, Mr. Speaker.

16 SPEAKER MOORE: He yields.

17 REP. MARTIN: Thank you, Mr. Speaker, and thank
18 you, Representative Lewis. I was in attendance in the
19 committees and tried to pay attention to the questions
20 that were asked. Unfortunately, I made the mistake of
21 the sitting next to Representative Torbett, and we were
22 cutting up in class a little bit. So, Representative
23 Lewis, I may repeat some of the questions that you have
24 already attempted to answer and for that I apologize,
25 but blame Representative Torbett for that.

1 Mr. Speaker, the first question I would ask the
2 gentleman from Harnett is regarding Dr. Hofeller who I
3 believe he said was the map drawer. And my question
4 is, was Dr. Hofeller paid for his services with public
5 funds? And if so, how much did he receive in public
6 money?

7 REP. LEWIS: Thank you for that question,
8 Representative. Dr. Hofeller has not, to my knowledge,
9 invoiced the state yet. I do anticipate that he will.
10 I don't have access to that at the moment. It
11 certainly would not exceed the 25,000 that was
12 authorized to Chairman Rucho and myself on behalf of
13 the Republicans and the 25,000 that was authorized to
14 the Democrats to be able to produce the maps. But I
15 don't have an exact figure. I'm sorry.

16 REP. MARTIN: Thank you, sir. Mr. Speaker, to
17 ask another question of the gentleman.

18 SPEAKER MOORE: Does the gentleman from Harnett
19 yield to an additional question from the gentleman from
20 Wake?

21 REP. LEWIS: I yield.

22 SPEAKER MOORE: He yields.

23 REP. MARTIN: Thank you, Mr. Speaker. Thank
24 you, Representative Lewis. Representative Lewis has
25 been quite up front that this is an attempt to get ten

1 seats for Republicans and three for Democrats and that
2 this has partisan purposes. So my question to the
3 gentleman from Harnett is, is this essentially a
4 partisan gerrymander?

5 REP. LEWIS: Well, thank you for that question,
6 Representative. To be clear, the map that you have
7 before you was drawn using criteria that was openly
8 debated and adopted by the Joint Redistricting
9 Committee. Those factors that went into this were of
10 course the requirement to have equal population,
11 contiguity. Political data did play a part in drawing
12 the map. We did seek partisan advantage in drawing the
13 map. We did seek to eliminate the shape of the 12th
14 Congressional District. We did strive for compactness,
15 a lot to what Representative Brisson was just referring
16 to, trying not to split the smaller rural counties if
17 we could. And we considered incumbency. So, as I said
18 earlier in the committee, when a partisan such as you
19 or I look at a political map, some of us see an evil
20 sinister gerrymander if it doesn't meet the objectives
21 that we would like for it to meet. And some see it as
22 a work of art or a work of good public policy. So I
23 would submit to you that the map was drawn based on the
24 criteria adopted by the committee, and is, in fact,
25 good public policy.

1 REP. MARTIN: Thank you, Representative Lewis.
2 And, Mr. Speaker, to see if the gentleman would yield
3 to another question.

4 SPEAKER MOORE: Does the gentleman from Harnett
5 yield to an additional question from the gentleman from
6 Wake?

7 REP. LEWIS: I yield.

8 SPEAKER MOORE: He yields.

9 REP. MARTIN: And I apologize, Mr. Speaker, you
10 can rule me out of order pretty quickly, but a slight
11 editorial comment. Representative Lewis and I are both
12 fathers, and I will note that when our babies made
13 their first production in their diaper, we think it is
14 beautiful also. And I will withdraw that, and with it,
15 an apology.

16 Representative Lewis, the next question I would
17 have for you is do you believe that a partisan
18 gerrymander -- that -- I will restate that. That a
19 plan that would elect ten Republicans and three
20 Democrats in a state that is much more evenly divided
21 in electorates would violate the U.S. Constitution or
22 our State Constitution?

23 REP. LEWIS: Thank you for that question,
24 Representative. To be clear, when I went through the
25 criteria earlier, we did not look at political

1 registration because we believe that election results,
2 election outcome are much better predictors of how the
3 people actually vote than partisan registration is. I
4 mean, you and I have had conversations in the past
5 about the continued growth of the total percentage of
6 voters that choose to list themselves as unaffiliated.
7 We have talked about that in the past. So we believe
8 that we looked at the political results of past
9 elections and have been able to produce a map that will
10 still require the political parties or the individual
11 seeking to be elected within those districts to offer a
12 good solid candidate who can appeal to their base, be
13 it Democrat or Republican, but also be able to appeal
14 to the ever-growing unaffiliated. So, we believe that
15 while -- and I freely acknowledge that I sought
16 partisan advantage as based on the criteria in drawing
17 this map. We do believe that the map has been drawn in
18 a fair and open attempt to comply with the court
19 ruling.

20 REP. MARTIN: Mr. Speaker, to see if the
21 gentleman would yield to another question.

22 SPEAKER MOORE: Does the gentleman from Harnett
23 yield to an additional question from the gentleman from
24 Wake?

25 REP. LEWIS: I yield.

1 SPEAKER MOORE: He yields.

2 REP. MARTIN: Thank you, sir. Representative
3 Lewis, my question actually is intended to get more at
4 the issue not of partisan registration but actual
5 election results, and more specifically, election
6 results in congressional elections since we are talking
7 about congressional districts here. So my question is,
8 do you believe that it is constitutional under the
9 federal and the state constitutions to draw a plan, to
10 have a plan that elects ten Republicans and three
11 Democrats where election results of the past several
12 cycles are much more -- would suggest a much more --
13 are much closer than a ten to three margin?

14 REP. LEWIS: Thank you for that question,
15 Representative. And let me try to answer it a
16 different way. But for the criteria adopted by the
17 committee which instructed the map drawers to do
18 certain things like try to maintain compactness, try to
19 make, you know -- take incumbency into account, try to
20 make the districts look more compact, be more compact,
21 keep more counties compact, we could have been much
22 more aggressive partisan-wise trying to obtain a map
23 that would elect 11 Republicans. But you can't really
24 do that if you simply consider partisanship as a part
25 of the criteria adopted by the committee, which is what

1 we did.

2 REP. MARTIN: Mr. Speaker, to see if the
3 gentleman would yield to another question.

4 SPEAKER MOORE: Does the gentleman from Harnett
5 yield to an additional question from the gentleman from
6 Wake?

7 Actually before the gentleman does -- before
8 these students leave, the students up on the right, the
9 Chair wanted to recognize a group of elementary
10 students from Easley Elementary School in Durham.
11 Would you all please stand so that we can welcome you
12 and thank you for being with us today. From Durham
13 your representatives are Representative Hall,
14 Representative Michaux, I believe Representative Meyer
15 has part of Durham. Am I missing anybody?

16 REP. MICHAUX: Luebke.

17 SPEAKER MOORE: Representative Luebke is not
18 here, I don't think. So those are your representatives
19 also. Thanks for being with us today.

20 Sorry for the interruption. I believe the
21 gentleman from Wake was stating a question at this
22 point. The gentleman from Wake has the floor to
23 continue propounding the question to the gentleman from
24 Harnett.

25 REP. MARTIN: Thank you very much, Mr. Speaker.

1 Representative Lewis, the question I'm going to ask is
2 an attempt to restate the question I've previously
3 asked, and the fault is all with me for not stating it
4 clearly. You've produced a district with ten
5 Republicans, likely to elect ten Republicans and three
6 Democrats. You stated, I think, just stated that you
7 could have even done 11 Republicans and two Democrats,
8 and I am trying to understand and get an answer from
9 you as to whether or not you think that the plan you
10 have now with the partisan result it has, in light of
11 congressional election results of North Carolina, is
12 constitutional?

13 REP. LEWIS: Representative, thank you for that
14 question. As -- and I'm not trying to sound like a
15 broken record. I know that you're an attorney. I'm
16 not. I will tell you that the committee adopted
17 criteria, one of which was to seek partisan advantage
18 for the Republicans. Now, if you ask me personally if
19 I think that is a good thing, I will tell you I do. I
20 think you are a great man. I think you are a fine
21 public servant. I think electing Republicans is better
22 than electing Democrats. So I drew this map in a way
23 to help foster what I think is better for the country.

24 REP. MARTIN: Mr. Speaker, to see if the
25 gentleman would yield to another question.

1 SPEAKER MOORE: Does the gentleman from Harnett
2 yield to an additional question from the gentleman from
3 Wake?

4 REP. LEWIS: I yield.

5 SPEAKER MOORE: He yields.

6 REP. MARTIN: Thank you, Mr. Speaker. And let
7 me add for the record that I think the gentleman from
8 Harnett is a fine public servant also with the interest
9 in the public at heart, and to boot, he has wonderful
10 hair also.

11 Mr. Speaker and members, I do feel that we have
12 a tendency to treat questioning on the floor of the
13 General Assembly like a cross-examination. We've heard
14 the adage, physician heal thyself. I think in this
15 case lawyer heal thyself is appropriate. So I don't
16 want to turn this into a cross-examination, but I've
17 tried to answer the question about his opinion on the
18 constitutionality of a partisan gerrymander. I don't
19 think it has been answered, but to avoid this from
20 turning into cross-examination, I would like to move on
21 to another question. And that question is, Dr.
22 Hofeller and anyone else involved in the map drawing,
23 what data did they use to meet your stated criteria of
24 attempting to get a ten to three Republican advantage?

25 REP. LEWIS: Well, thank you for that question,

1 Representative. On every member's desk and also before
2 every member in the committee, the Joint Committee, the
3 Committee in the Senate, and the Committee in the
4 House, is a stat pack, if you will, that lists a
5 variety of races that over 2008, 2010, and 2014, we
6 list out all of the political contests that were used.
7 I'll be happy, if you would like me to, to let you know
8 which ones they were, but I think it's pretty clear to
9 the members and on the record which political contests
10 we used. Just real quick, Attorney General 2008,
11 Commissioner of Agriculture 2008, you know, in fact --
12 yeah, I mean, we used a variety of political contests
13 from 2008 through 2014, all of which we provided to the
14 members on their desk.

15 REP. MARTIN: Mr. Speaker, to see if the
16 gentleman would yield to another question.

17 SPEAKER MOORE: Does the gentleman from Harnett
18 yield to an additional question from the gentleman from
19 Wake?

20 REP. LEWIS: Yes, sir, I yield.

21 SPEAKER MOORE: He yields.

22 REP. MARTIN: Thank you, Mr. Speaker. And Mr.
23 Speaker, the gentleman from Harnett has been most
24 gracious with his time in committee, in several
25 committee meetings over going through the lists and

1 explaining what the races are and what the codes meant.
2 But I do want to ask just a couple of clarifying
3 questions on that if I could. Representative Lewis,
4 would it be accurate to say that the mapmakers
5 considered every one of the races that's listed in the
6 charts that were presented at committee several times.

7 REP. LEWIS: Yes, sir.

8 REP. MARTIN: And another question, Mr.
9 Speaker.

10 SPEAKER MOORE: Does the gentleman wish to ask
11 an additional question?

12 REP. MARTIN: Yes, sir.

13 SPEAKER MOORE: And does the gentleman from
14 Harnett yield to an additional question?

15 REP. LEWIS: Yes, sir.

16 SPEAKER MOORE: He yields.

17 REP. MARTIN: Thank you, Mr. Speaker. And,
18 Representative Lewis, are there any races that are not
19 listed on these charts that the mapmakers considered?

20 REP. LEWIS: No, sir.

21 REP. MARTIN: Mr. Speaker, to see if the
22 gentleman would yield to another question.

23 SPEAKER MOORE: Does the gentleman yield to an
24 additional question?

25 REP. LEWIS: I yield.

1 SPEAKER MOORE: He yields.

2 REP. MARTIN: Thank you, Mr. Speaker. Thank
3 you, Representative Lewis. In looking at those
4 different races, did you weigh, for example, the
5 results in lieutenant gubernatorial elections equally
6 with those of say a gubernatorial election?

7 REP. LEWIS: Thank you for that question,
8 Representative. I think it is important to understand,
9 the races that we used were statewide. We were trying
10 to get, you know, the broadest swath of data that would
11 apply equally in every district. I've had a couple of
12 members say, well, why didn't you look at the race for
13 Congress and whatnot, and it was just too hard to
14 figure out how the data -- you know, for districts that
15 have changed over time would work. So in terms of did
16 we weigh them equally, to be candid with you, I think
17 that those of us that spend way too much time in
18 politics know that certain races, maybe weren't as
19 equal as they should be because one party or the other
20 either had a nonincumbent candidate that was trying to
21 seek the office, which we believe -- you know, I'm sure
22 you would agree, that most of the time, most the time
23 incumbency is an advantage. Sometimes it might have
24 been an underfunded campaign. So we looked at all of
25 them, but, no, my gut would tell me that I would gain

1 more or garner more by looking at the Governor's
2 results than I would the Lieutenant Governor's results
3 and so on. But we looked at all of them and tried to
4 blend the results. I mean, you know, frankly they
5 don't always come up like we want them to. The
6 Attorney General, the Democratic nominee for AG has won
7 in all 13 of these. So certainly the strength of the
8 candidate, if that is what you're trying to ask,
9 certainly that matters.

10 REP. MARTIN: Mr. Speaker, to see if the
11 gentleman would yield to another question.

12 SPEAKER MOORE: Does the gentleman from Harnett
13 yield to an additional question from the gentleman from
14 Wake?

15 REP. LEWIS: I yield. Yes, sir.

16 SPEAKER MOORE: He yields.

17 REP. MARTIN: Thank you, Mr. Speaker. I would
18 like to thank the gentleman from Harnett for his
19 patience also.

20 SPEAKER MOORE: Representative Martin, I
21 apologize, the gentleman's time has expired. The Chair
22 will, however, at the Chair's discretion will allow the
23 gentleman to ask one additional question.

24 REP. MARTIN: I would be happy to yield in my
25 time if that is permissible under the rules because

1 this is my fault.

2 SPEAKER MOORE: It is actually the gentleman's
3 time spending to ask the question. But the Chair will
4 give the gentleman one additional question.

5 REP. MARTIN: Thank you, Mr. Speaker.
6 Representative Lewis, the question I would ask is, do
7 you believe under these maps that African American
8 voters have a reasonable opportunity to elect a
9 candidate of their choice in any of the districts
10 you've drawn? And if so, which of those districts do
11 they have such an opportunity? And if so, how did you
12 determine that?

13 REP. LEWIS: Thank you for that question,
14 Representative. As I've said before, the criteria that
15 we used in drawing these maps has been spelled out.
16 One of those criteria was not race. Race was not
17 considered in the drawing of these maps. I do not know
18 what the racial composition of the voters that reside
19 in these districts is. So I don't feel that is a
20 question that I can give a direct answer to as race was
21 not among the criteria considered when we drew these
22 maps, based on our understanding of the Harris case,
23 which said that racially polarized voting did not
24 exist. Thank you.

25 SPEAKER MOORE: And, Representative Martin,

1 should the gentleman wish additional questions, the
2 gentleman will be recognized a second time for that in
3 just a bit if the gentleman so desires.

4 For what purpose does the lady from Buncombe,
5 Representative Fisher, arise?

6 REP. FISHER: To ask a question of the bill
7 sponsor, please.

8 SPEAKER MOORE: Does the gentleman from Harnett
9 yield to the lady from Buncombe?

10 REP. LEWIS: Yes, sir. I yield.

11 SPEAKER MOORE: He yields.

12 REP. FISHER: Take a breath, Representative. I
13 know you've been on the spot for a little while, but I
14 appreciate your taking a moment to answer. I had a
15 concern passed along to me and because it happens to
16 deal with my district, which I thought was kind of
17 unusual because I thought that this was only going to
18 deal with a couple of congressional districts, but it
19 seems like it is stretching even further west. Can you
20 tell me why, for example, Calvary Baptist Church area
21 on Haywood Road in West Asheville might have been moved
22 from the 10th to the 11th district?

23 REP. LEWIS: Thank you for the question,
24 Representative. And sadly, while I know you represent
25 one of the most beautiful parts of our state, I am not

1 immediately familiar with the church that you
2 referenced. I will tell you that the changes that were
3 made in Buncombe County were to equalize population
4 that had been moved around because other districts were
5 redrawn.

6 REP. FISHER: A follow-up.

7 SPEAKER MOORE: Does the gentleman from Harnett
8 yield to an additional question from the lady from
9 Buncombe?

10 REP. LEWIS: Yes, sir. I yield.

11 SPEAKER MOORE: He yields.

12 REP. FISHER: And I think then from your
13 answer -- from your previous answer, that I can assume
14 that the same would be true for having moved part of
15 Biltmore Forest in Asheville to the 11th, east of
16 Sweeten Creek Road, from the 11th to the 10th. And
17 then an area of North Asheville in Woodfin from the
18 10th to the 11th; am I assuming correctly?

19 REP. LEWIS: Thank you for the question,
20 Representative. The reason that we would have divided
21 counties would have been one of the criteria that was
22 listed earlier and considered by the committee. I have
23 a map on my desk that shows only whole VTDs of Buncombe
24 County. I'm afraid I just don't know -- my wife
25 actually fussed at me because I've been gone for two

1 weeks doing this. She would like to go to Grove Park
2 this weekend. So maybe I could visit Biltmore Forest
3 when I'm there, but I don't that we're going to be able
4 to make it.

5 REP. FISHER: Well, I hope you'll be able to.
6 There's a great Arts and Crafts Mission Furniture
7 Conference going on there right now that my daughter
8 helped plan. But I think --

9 SPEAKER MOORE: Does the lady wish to ask an
10 additional question?

11 REP. FISHER: I would like to speak on the bill
12 for just briefly, Mr. Speaker.

13 SPEAKER MOORE: The lady is recognized to
14 debate the bill and to do a public service announcement
15 for Asheville as well.

16 REP. FISHER: Sure, I can do an advertisement
17 anytime. I'm very proud of my town. I appreciate the
18 representative taking the time to try to address my
19 questions. But the point, I guess, I would like to
20 make in having asked the questions in the first place
21 is that we are, again, embarking on an exercise that
22 will further confuse the voters. I know from having
23 listened to the four or so hours of the public hearing
24 that we had several examples of people who have gone to
25 their polling places, filled out their ballot, only to

1 find out that they didn't know who their congressperson
2 was. So they were surprised to see either one name or
3 another on their ballot. They thought that this person
4 was their Congressperson, but it turns out it was
5 somebody else. And I would just caution us that if
6 we're going to have to do this, there needs to be some
7 way, some efficient way, to educate the voters about
8 the changes that are being made. And try to make it
9 easier for them to do what is their right to do, which
10 is exercise their vote. So, I just felt it important
11 to make the body aware, or again aware, of how
12 difficult this whole thing is making it for the voters
13 in North Carolina. Thank you, Mr. Speaker.

14 SPEAKER MOORE: Members, I hope you'll join me
15 in welcoming, we have another school group with us
16 today. We have students from the Longleaf School of
17 the Arts here in Raleigh with us. If you all would
18 please stand and let us welcome you. Thank you for
19 being with us today.

20 For what purpose does the lady from Wilson,
21 Representative Farmer-Butterfield, arise?

22 REP. FARMER-BUTTERFIELD: To speak on the bill.

23 SPEAKER MOORE: The lady has the floor to
24 debate the bill.

25 REP. FARMER-BUTTERFIELD: Thank you,

1 Mr. Speaker. I feel compelled to speak on this as an
2 African American. If I think about redistricting for
3 me in my district, I went from Wilson and Edgecombe to
4 Wilson and Pitt. My constituents from Edgecombe and
5 Wilson were reluctant about the change in terms of
6 redistricting as it related to my having Pitt County.
7 But if I look back, I am happy with Pitt County and I
8 consider it a blessing that I was able to move from
9 Wilson, Edgecombe with experience and represent the
10 economic engine of the East in Pitt County.

11 So today in looking at the congressional
12 districts, I want to talk about the process. Public
13 hearings were convened before the release of draft maps
14 for the public to view. Was that really cost efficient
15 and necessary? Nothing was available for the public to
16 respond to. Why would we do that? Let's talk about
17 moving from one extreme to the other. In drawing the
18 initial maps, we went from African Americans exceeding
19 50 percent in those districts, the two key districts
20 that we're talking about that have been changed. Now,
21 we are looking at no consideration at all for race.
22 It's overreaching in that the maps guarantee election
23 of ten Republicans and three Democrats so is said.
24 Democrats are 43 percent of the voters in this state
25 and only given an opportunity for three districts for

1 Congress doesn't seem balanced at all. In fact, one of
2 the districts that was recently drawn, we were told
3 that it was leaning Republican. What about
4 legislators, are they required to protect minority
5 communities from racially polarized voting patterns?
6 Yes, they are. Voter discrimination matters. If,
7 indeed, public hearings mattered and the input of
8 African Americans had been taken into consideration,
9 perhaps we would not be in this position we are in
10 today. In fact, I know we would not be in the position
11 we are in today.

12 Finally, when the leadership was asked in
13 committee this morning if the map was drawn prior to
14 the public hearings held on Monday and prior to the
15 criterion being decided on Tuesday the response was, I
16 can't say. So given all of these factors I share with
17 you, I ask that you vote against these maps that have
18 been redrawn. Thank you.

19 SPEAKER MOORE: For what purpose does the
20 gentleman from Forsyth, Representative Hanes, arise?

21 REP. HANES: To ask the bill sponsor a question
22 and to speak on the bill.

23 SPEAKER MOORE: Does the gentleman from Harnett
24 yield to the gentleman from Forsyth?

25 REP. LEWIS: I yield.

1 SPEAKER MOORE: He yields.

2 REP. HANES: Representative Lewis, let's talk
3 about race for just a second, and some of the
4 representatives here know that I like this
5 conversation. And I fashion myself as a person who can
6 do it -- talk about race without getting racial. So I
7 want to ask you a question, and it is a little nuanced
8 from the questions that have been asked to you
9 regarding race this morning. Representative Lewis,
10 does race impact the maps that have been drawn? The
11 question is not did you consider race, but does race
12 impact the maps that have been drawn?

13 REP. LEWIS: Thank you for the question,
14 Representative. All I can tell you is that race was
15 not a consideration when the maps were drawn. I am
16 not, to be candid with you, sure I truly understand the
17 nature of the nuanced question.

18 REP. HANES: Okay. Okay. Thank you.
19 Mr. Speaker, to speak on the bill, please.

20 SPEAKER MOORE: The gentleman from Forsyth has
21 the floor to debate the bill.

22 REP. HANES: So, ladies and gentlemen, let's
23 have a brief conversation about race, and it goes all
24 of the way back to the beginning. So as you know, in
25 the beginning God created heaven and earth. He created

1 man and woman and said, this is good. And then he
2 created America, and he said, I like that too. And
3 then black folk and white folk got together in a most
4 disagreeable one-sided contract negotiation. And I can
5 assure you that both black folk and white folk got to
6 America on a boat. Okay? And over the years black
7 folk, my folks, continued to have disagreement about
8 this contract that we got brought into here. And over
9 the years we got our freedom. Representative Michaux
10 was elected to the House of Representatives, and here
11 we are today talking about race and elections.

12 The question I asked was, does race impact this
13 map? That is either directly or indirectly. And the
14 answer is, of course it does; of course it does. What
15 we have here is we have Democrats submerged in majority
16 Republican districts, ten of them, and Republicans
17 submerged in majority Democratic districts, three of
18 them. Of course, it matters. If you look at the
19 numbers for the state, there are 1.9 million
20 Republicans; 95 percent of them are white. The
21 2.6 million Democrats; 41 percent of them are black.
22 So saying in some way that we did not use race is
23 frankly just simple subterfuge toward achieving a
24 broader goal. And that is a goal that was admitted
25 during our committee, and that goal was the maintenance

1 of districts that disenfranchise Democrats. And in
2 many ways, whether that is intentional or not, those
3 districts silenced the voices of people who look like
4 me.

5 Two of the largest minority populations in this
6 state, Forsyth and Guilford County, have been silenced
7 with regard to congressional politics. We could have
8 gone nine to four, with a district there in the Triad
9 maintained Representative Alma Adams, and we could have
10 achieved this goal of eliminating the serpentine
11 districts, as we've called them, of the 12th district.
12 And we could have been gone away from here hours ago.
13 We chose not to do that, and we continue to think about
14 these maps as not impacting race.

15 Let me just make one more statement, and it is
16 from a op-ed I wrote in the Winston-Salem Chronicle
17 this week. And I want to read for you the last
18 paragraph of that statement as it regards to how we
19 need to think about and how race actually does matter,
20 you know, for us. I said, "Black people are, in fact,
21 people and should be counted in the whole! Our lives,
22 our voices, and our votes matter from Murphy to Manteo.
23 We are part of the fabric of North Carolina and have
24 earned our right to representation through
25 constitutionally consistent districts in every corner

1 of this state. We paid for that right by whip, through
2 blood, by protest, and through eventual freedom. It is
3 never the wrong time to do the right thing." Thank
4 you.

5 SPEAKER MOORE: For what purpose does the
6 gentleman from Rockingham, Representative Jones, arise?

7 REP. JONES: To debate the bill.

8 SPEAKER MOORE: The gentleman has the floor to
9 debate the bill.

10 REP. JONES: Thank you, Mr. Speaker. Ladies
11 and gentlemen of the House, I have to say that I have
12 been quite fascinated with so many aspects of this
13 debate, and discussion throughout the committee process
14 and today on the floor, and I just want to speak to
15 that a little bit. You know, as someone who has lived
16 in the state of North Carolina for all of my life and
17 has been kind of a student of election history over the
18 past few decades in particular, I continue to be quite
19 fascinated and have really enjoyed this conversation,
20 particularly when we have heard about gerrymandering.
21 And I think it behooves us a little bit to consider
22 maybe a little trip down memory lane when we think
23 about gerrymandering. Because, quite frankly, I'm not
24 sure that a lot of people knew that the word was
25 invented until Republicans took the majority in 2010.

1 I never really heard it reported on very much through
2 the media. I never heard it spoken about in the
3 General Assembly. I thought it was fascinating as we
4 were in committee this week as we saw the maps up on
5 the wall that went all the way back to 1992 at least.
6 I also happen to recall a time that the state
7 legislature looked very different than it does today.
8 And, you know, there was no stone unturned. We
9 remember a time of single-member districts and
10 two-member districts and three-member districts and
11 four-member districts. You know, whatever it took to
12 keep the majority in the time at the majority that
13 seemed to be fine. And so a lot of the voices that I
14 hear today representing the minority party that used to
15 be in the majority, I have to wonder, you know, where
16 were those voices in the Democratic Party for decades
17 and decades and decades?

18 You know, I've heard it also a lot of
19 complaining about the fact that there are ten
20 Republican congressman and three Democrats. That there
21 currently are and that these maps as, Representative
22 Lewis has been very candid and transparent and honest,
23 something that I for one greatly appreciate, and
24 would've greatly appreciated that conversation over the
25 decades. So thank you, Representative Lewis, for your

1 honesty and integrity and transparency in coming right
2 out and saying that, yes, I do believe as we adopted in
3 the committee that there was an attempt made at that
4 partisan advantage. And I keep hearing the complaints
5 from the other side that enjoyed that partisan
6 advantage because of gerrymandering for so many
7 decades.

8 I would just remind the members of this body
9 that if you look over the last 40 years and see how
10 North Carolinians have voted consistently in federal
11 races, I would remind you that in eight of the last
12 nine presidential elections, they have voted
13 Republican. That is 89 percent of the time. And I
14 would remind you that you may not know that in the last
15 16 United States Senate races in North Carolina, 13 of
16 those races went Republican. That was 81 percent of
17 the time. So to me, I don't see a problem in thinking
18 that if you have ten Republicans and three Democrats,
19 which is 77 percent, you might could make the argument
20 that Republicans are underrepresented. But the point
21 of the matter is these maps are not your problem. The
22 problem is that your national party has left the values
23 of the majority of the people in North Carolina. And I
24 would take you back to the 2010 election of the
25 legislature when this Republican majority gained its

1 majority by 16 votes. Those were under maps that the
2 Democrats drew. And fortunately, we had court cases
3 over the years that eliminated the two and three and
4 four-member districts, and we have the pod system now
5 where you can't just divide counties wherever. But I
6 would just remind the listeners and the voters and the
7 students from North Carolina to study your history and
8 to understand when you hear all these comments and all
9 these complaints about gerrymandering, well, we sat at
10 the master's feet for decades and perhaps some people
11 learned something. But I would suggest that they are
12 fair. Okay? I understand the Democrats don't like it.
13 The Republicans didn't like the map for decades, but
14 they are fair, they are legal, and they are by the
15 rules.

16 And finally, ladies and gentlemen, I would not
17 accept that Democrats cannot be elected in these
18 districts. If you look at the voting data before you,
19 for instance, we mentioned this in committee, the 2008
20 election for the Attorney General, the Democrat won 13
21 out of 13 of these congressional districts. You go
22 down the line, the State Auditor, the Democrat won 9 of
23 13 of these districts. I believe the Commissioner of
24 Insurance won a majority of these districts. And so,
25 ladies and gentlemen, I would submit that the people of

1 North Carolina are not robots. They have the perfect
2 opportunity to elect the candidate of their choice, and
3 they can and they do cross party lines whenever they
4 feel it necessary. They look at the candidates. And
5 so I would suggest that we trust the voters of North
6 Carolina to go out there and make their choice.
7 Recognize that we are putting forward fair and legal
8 maps based on what the courts have directed us to do,
9 and I commend, for one, the people who have worked
10 very, very hard. I want to mention once again the
11 staff that has worked hard, the people that have worked
12 hard to put this forward. We have been given a very
13 difficult task in a very short period of time, and I
14 think we should be proud of the process and the
15 results. Thank you, Mr. Speaker.

16 SPEAKER MOORE: For what purpose does the
17 gentleman from Cumberland, Representative Floyd, arise?

18 REP. FLOYD: Inquiry, with the Chair.

19 SPEAKER MOORE: The gentleman may state his
20 inquiry.

21 REP. FLOYD: It is a very simple inquiry, Mr.
22 Chair. Are we going to meet the 5:00 deadline?

23 SPEAKER MOORE: One way or another.

24 For what purpose does the gentleman from
25 Haywood, Representative Queen, arise?

1 REP. QUEEN: To speak on the bill.

2 SPEAKER MOORE: The gentleman has the floor to
3 debate the bill.

4 REP. QUEEN: You know, we have heard a lot of
5 good points being made, but whenever your criteria is
6 for political advantage, this General Assembly is
7 disenfranchising voters. Where politicians get to
8 select their voters versus voters selecting their
9 politicians, something is awry.

10 Now, Representative Jones was talking about
11 history and the 2010 election was a historic one
12 because it was the first election since Citizens United
13 was passed, and there was about \$20 million that was
14 never in our elections that swung a lot of them. I was
15 in that election, and I experienced that tsunami of
16 outside money. So things have historically affected
17 races, but for this body to work on a bill that
18 basically empowers the politicians, not the citizens,
19 for the vote when the absolute foundation of our system
20 is one vote per citizen and every vote is equal. I
21 think if there was a -- or I will just -- I'll say, how
22 does -- whenever you do that, whenever you gerrymander
23 in a manner that we are speaking and in the manner it
24 was done after the last census by this body, how does
25 that affect the voters' trust in the system? Will

1 their vote count equally or have they been
2 disenfranchised by the drawing of the district that
3 they live in where their vote really won't count in
4 that particular district? And one of the things that
5 I'll use as a data point on that is registered voters
6 self-identify themselves in this state, over
7 2.76 million Democrats and 2.01 million Republicans.
8 The democrats self-identify, but they are
9 disenfranchised in many of their districts by the
10 gerrymandering that has gone on. If we want to make
11 voting a truthful one vote per person, we need to
12 recognize every vote should count equally. I don't
13 think we're doing that here. I think it is clearly the
14 criteria that has been stated, been stated quite
15 clearly that that's not what we're doing, but that is
16 what we should be doing. So that's that point. The
17 second one is, in my region I would contend the
18 criteria that should be in addition to one vote per
19 citizen and every vote counts equally, that should be
20 certainly the criteria, the first one. The second one
21 is communities of interest should be contained in this
22 compactness. And I live in the mountains, as you all
23 know, and we have one urban core, one city, Asheville,
24 a wonderful city, that has been the center of our
25 mountain region since our state was founded. It has

1 grown to be a fabulous center. Well, the
2 gerrymandering last time that the courts have thrown
3 out -- or -- has taken our urban core away from our
4 region. So our congressman does not have the city of
5 his region in his district. So whether he's a Charles
6 Taylor or Heath Shuler, he's Democrat or Republican,
7 because you know the 11th district has flipped back and
8 forth for decades, but we always had a unified district
9 with our urban core in it. But for complete political
10 advantage, our congressional district has been neutered
11 from its urban core, and we all know that the urban
12 cores drive the economics of regions. So for these two
13 reasons I think this is a very unfortunate bill because
14 neither of these important issues, communities of
15 interest and one vote per citizen, are embodied in the
16 criteria that have been used to draw it. Thank you.

17 REP. STAM: Mr. Speaker.

18 SPEAKER MOORE: For what purpose does the
19 gentleman from Wake, Representative Stam, arise?

20 REP. STAM: Would Representative Queen yield
21 for one question?

22 SPEAKER MOORE: Does the gentleman from Haywood
23 yield to the gentleman from Wake?

24 REP. QUEEN: I will.

25 SPEAKER MOORE: He yields.

1 REP. STAM: Representative Queen, I chaired our
2 State Platform Committee for a few years; it's
3 available. Have you ever thought of maybe changing the
4 policies and platform of your party so that you would
5 attract voters?

6 REP. QUEEN: I try to speak to the needs of the
7 citizens in this state every day, Representative Stam.

8 SPEAKER MOORE: For what purpose does the
9 gentleman from Wake, Representative Martin, arise?

10 REP. MARTIN: Mr. Speaker, I think to speak a
11 second time.

12 SPEAKER MOORE: The gentleman is recognized to
13 speak on the bill a second time.

14 REP. MARTIN: Thank you very much, Mr. Speaker.
15 Members, I'll leave the gentleman from Harnett alone
16 now. He was good to indulge me in a long series of
17 questions. But I do want to respond to a couple of
18 statements that were made both in the course of this
19 debate and throughout the committee debate and also to
20 the press.

21 There has been a contention made somehow that
22 Democrats failed to participate in this process, that
23 we offered no alternatives, and nothing could be
24 further from the truth. We offered several
25 amendments -- which I think I'm correct in saying that

1 the record will show were opposed by every single
2 Republican member of the committees. In those
3 committees the Democratic members of the committee told
4 you that you needed to draw districts that gave
5 minority voters the opportunity to elect candidates of
6 their choice, that you have said that you refuse to
7 even consider that data. The Democratic members of
8 these committees told you that they thought it was
9 important to keep Representative Alma Adams, a highly
10 capable minority member of the North Carolina
11 Congressional Delegation, a district in which she has a
12 hope of getting reelected, but you declined to
13 incorporate that request. We told you that it is
14 important to consider one of the basic principles of
15 redistricting, communities of interest, which you heard
16 the gentleman from Bladen, Representative Brisson, I
17 think elude to in his comments and also the gentleman
18 from Forsyth, Representative Hanes, talk about also.
19 But you declined to incorporate that input. And
20 without a doubt, we told you that we did not want to
21 see a partisan gerrymander. Yet you shamelessly and
22 proudly got up and proclaimed that that was exactly
23 what you were going to do. We participated in full;
24 you just chose to ignore our participation. Anyone who
25 says differently is selling something.

1 The gentleman from Rockingham, Representative
2 Jones, also talked about the importance of history, and
3 any Democrat that gets up and tells you that Democrats
4 have not participated in partisan gerrymandering
5 doesn't know what they're talking about and is paying
6 no attention to history. But that's a very 20th
7 Century way of looking at things, and it is not what
8 the public in North Carolina in the 21st Century wants
9 to hear. Folks, people are turning away from your
10 party and mine.

11 Representative Stam's comment about platforms
12 and so forth was from out of nowhere. Democrats have
13 had success in elections as much as Republicans. I
14 think the statistics show and the consensus is we are a
15 purple state now, but in the end, we are a state that
16 is losing a partisan flavor because voters are turning
17 away in droves from you and us. The leading candidate
18 right now for your presidential nomination is a guy who
19 gave significant amounts of money to Hillary Clinton,
20 the leading candidate for my party's nomination. The
21 other leading candidate for my party's nomination is a
22 senator who was unaffiliated until 2015. That should
23 tell both of our parties something. We ignore what the
24 voters are telling us at our peril. They do not want
25 to see partisan gerrymanderers like what the Democrats

1 used to do and what the Republicans are doing now.

2 Now, I was not here the last time Democrats
3 drew statewide districts, but I was here and
4 participated significantly in drawing the Pender and
5 New Hanover districts, which were ordered by the
6 courts. That district came into my committee with a
7 two to one Republican advantage, and it left with a two
8 to one Republican advantage. There was probably no way
9 for us to screw with the partisan mixture of that, but
10 we didn't. And it left -- I think it is safe to say,
11 with the two Republican members from those counties
12 very satisfied with the result. So don't try to lay
13 the guilt of the Democratic party's past on me. I can
14 say that I never have and never will support partisan
15 gerrymandering, and I think it is safe to say that a
16 good number of my colleagues on the other side of the
17 aisle joined me in that also.

18 So folks, let's join together and at least
19 acknowledge that the public does not think that the
20 definition of fair is the childish statement, you did
21 it first. These districts are going to pass just like
22 the gerrymandered districts that Democrats did in the
23 past passed also. I'm under no illusions that we have
24 the ability to stop it. But next time we have the
25 chance to do this, let's find a better way.

1 SPEAKER MOORE: For what purpose does the
2 gentleman from Durham, Representative Michaux, arise?

3 REP. MICHAUX: To ask Representative Lewis a
4 question.

5 SPEAKER MOORE: Does the gentleman from Harnett
6 yield to the gentleman from Durham?

7 REP. LEWIS: I yield.

8 SPEAKER MOORE: He yields.

9 REP. MICHAUX: And, David, honestly, this will
10 be my last question to you. In drawing the maps, was
11 anything made or said or asked to what extent we must
12 preserve the existing minority percentages in order to
13 maintain the minority's present ability to elect its
14 candidate of choice?

15 REP. LEWIS: Representative, thank you for the
16 question. It is my understanding of the Harris
17 decision that they did not find the tests were met that
18 racially polarized voting existed and, as such, we did
19 not consider race in any way when we drew these
20 districts.

21 REP. MICHAUX: Thank you.

22 SPEAKER MOORE: For what purpose does the
23 gentleman from Cumberland, Representative Lucas, arise?

24 REP. LUCAS: To speak briefly on the bill.

25 SPEAKER MOORE: The gentleman has the floor to

1 debate the bill.

2 REP. LUCAS: Thank you, Mr. Speaker. Ladies
3 and gentlemen, I have sat here very attentively as I
4 have contemplated what we are about to do. And that
5 is, we are about to sanction maps that will identify
6 folk who will represent us in the United States
7 Congress. And I would have to say that we should live
8 in a democracy. We do live in a democracy. And when
9 you live in a democracy, our personal feelings and
10 doubts ought to be superseded by what is best for our
11 people. And I'm not so sure that I'm getting that.
12 I've heard some snide snickering. I've heard some
13 snide remarks about, well, you all gerrymandered, so
14 therefore, we're going to do it. Well, if it was wrong
15 then, it is wrong now. Let's do what's right by the
16 people of this great state of North Carolina. They
17 deserve better than this. It is not about partisan
18 bickering. I am saddened to see that we're turning it
19 into that. It should be about who can best do the job
20 for the people of this great state. And people who
21 live in this state, many of them are now saying I don't
22 care whether you are identified as a Democrat or as a
23 Republican. They want to be identified as a citizen,
24 an independent. And they want to have good
25 representation. And that model is trending more and

1 more, and the more we sit here and bicker, the more
2 we're going to see that trend grow.

3 We, last session, I thought were on the right
4 track here in the House when we voted to have an
5 independent commission draw boundary lines, and I
6 thought that was great. I wish that we could get the
7 Senate on board to do the very same thing. That is the
8 most honest and the fairest way to get what we want to
9 have done accomplished. Let's get serious about this;
10 let's stop this partisan bickering; let's move on for
11 the state of North Carolina. Thank you.

12 SPEAKER MOORE: For what purpose does the
13 gentleman from Durham, Representative Hall, arise?

14 REP. L. HALL: To speak on the bill.

15 SPEAKER MOORE: The gentleman has the floor to
16 debate the bill.

17 REP. L. HALL: Thank you, Mr. Speaker. And I
18 want to certainly give thanks to all of those who
19 worked on these maps and have made what I will take to
20 be an effort to satisfy some different interests.

21 I referenced it yesterday when we talked about
22 what we were going to do for voting, and I want to
23 reference it again today because I think we may be
24 missing the boat on this. And I think because you
25 occupy this leadership position and the Court has told

1 you to back and draw these districts, they really
2 weren't saying come back and draw the districts for
3 yourself or to perpetuate your party's power. They
4 were under the impression, and if they didn't
5 explicitly say it, I think they meant to say it, and
6 thought you understood it, that these districts should
7 be drawn for the people of the state of North Carolina.
8 Now we've already heard people talk about the
9 statistics and whether or not there is a certain number
10 of Democrats, a certain number of Republicans and
11 almost a equal number of unaffiliated as there are
12 Republicans, certainly a much larger number of
13 registered Democrats. So we know factually,
14 statistically that is the case. Now that would be
15 turned on the head by the 10-3 districts that we've
16 drawn here now. That is a fact. We can't get around
17 it. And Representative Lewis did say that was his
18 intention, so that has been achieved. So the partisan
19 advantage has been maintained, but not really in
20 compliance with the registered voters of North
21 Carolina.

22 I heard in response to the question about
23 expert map drawers that there was some confusion that
24 maybe the Democrats had authorized or entered into a
25 contract for the person who drew these maps to be paid

1 from the \$25,000 that the committee indicated could be
2 used by Democrats. We did not do that. I hope there
3 is no accounting problem, that someone gets confused
4 and thinks that the \$25,000 that was supposed to be
5 authorized by the committee to Democrats had been
6 waived and authorized to be paid to the person who drew
7 these maps who we don't know how much he charged for
8 them. But we certainly did not -- and under the terms
9 of the committee, I think it says they have to be
10 authorized and released by us. We did not do that, and
11 I just want to make sure that is clear on the record
12 because I heard it stated otherwise.

13 Now, we've ended up with a difference without a
14 distinction here, 10-3, that was our intent to keep it
15 the way it was, and so we understand that. Not maps
16 for the citizens, maps to keep the partisan advantage.
17 And much has been made and I understand it, that the
18 intent was to maintain this partisan advantage. I
19 appreciate those who in this House, and that is one
20 thing we did agree on, at least the majority of us,
21 that we need a Redistricting Committee. A lot of
22 people signed onto that bill that went out of here and
23 voted for it because we recognized we need a
24 Redistricting Committee.

25 We could have tried to do work in the spirit of

1 a redistricting committee, try to draw fair districts
2 for the citizens of North Carolina, try to have
3 communities of interest together so they can be
4 represented effectively and efficiently, and not make a
5 partisan advantage or make an incumbency advantage the
6 priority. We didn't do that.

7 I want to make sure that it is clear on the
8 record as well, and there has been some reference to
9 it, I think Representative Martin who was at the
10 committee meetings when the criteria was adopted. Now,
11 Representative Hager said that they were working on the
12 maps for two weeks before we came to Raleigh, and that
13 was his statement in the committee. That was before
14 the maps were even issued. So if there was some
15 question of someone saying we can't comment as to
16 whether these maps were drawn before the criteria was
17 established, go back and check the record. That was a
18 statement from Representative Hager, and I believe him
19 to be an honest Representative.

20 The question now is, what happened in the
21 committee? When we adopted the criteria for the maps
22 that were already being drawn or worked on for two
23 weeks. So you wonder, does the criteria come first, or
24 do the maps come first? But at any rate, on the
25 timeline when we went to adopt the criteria, I think

1 Representative Martin already referenced it, and you
2 can go back and check the record. That every
3 Democratic criteria that was put forward was voted down
4 along party lines, every one. Certainly you had a
5 two-thirds one-third majority on the committee, and
6 every one was voted down. I think it is important to
7 note that one of those criteria specifically stated
8 division of counties shall only be made for reasons of
9 equalizing population, preserving communities defined
10 by actual shared interests. That shared interest has
11 been addressed by people already, and some of you I'm
12 sure have districts but are not satisfied because
13 communities of shared interest were not respected. And
14 Representative Brisson was certainly right to bring
15 that forward and ask that question, how did you violate
16 that principle? Well, the answer, again, was, when
17 that request was put forward in committee, it was voted
18 down. And so I take people at their word in what
19 they're saying, but we also can't live in an alternate
20 reality.

21 Race is on the ground in North Carolina based
22 on where we live, based on hundreds of years of
23 history, and Jim Crow laws and slavery and
24 discrimination and redlining. It's there. We see it
25 every day when we drive through communities on our way

1 to Raleigh. We live it every day when we're back home,
2 and it is still there. We talk about it in our
3 university system and other places when we do
4 budgeting. So we see it, and we know it. So to draw
5 this plan and say we don't recognize race in North
6 Carolina, and we recognize the racial impact of the
7 plan. But we won't say the word. We're going to do
8 enough in theory to get by the court order, but we're
9 not going to do enough to do good service to the
10 citizens of North Carolina and respect them I think is
11 a short coming that we could do better. So I hope, as
12 someone has already said, that we'll make sure we get a
13 redistricting commission. We shouldn't have to have
14 this discussion. We should be able to recognize what
15 the composition of the voters of North Carolina is,
16 what they would express, and not hold them back from
17 being able to work together and be effectively
18 represented.

19 I heard, finally, a lot of times throughout the
20 committee discussions sitting there -- and one of the
21 responses continued to be, well, when you were in
22 charge, you did it. Now, I don't remember how many of
23 you remember Sherman and Mr. Peabody when they used to
24 get in the time machine, and they would go back in
25 history and visit all of these different places. Well,

1 the people of North Carolina are trying to go forward,
2 and we continue to talk about rebranding this state and
3 looking at the future. Hopefully, as Representative
4 Jones said, you learn not what to do going forward by
5 the failings of Democratic redistricting efforts. You
6 should have learned what not to do going forward in
7 redistricting. And so, the canority (ph) of saying,
8 well you did it so I can do it, and there should not be
9 any response is not enough. We should be trying to get
10 better. That is what redistricting commission is
11 about. And so again, I hope that we will leave that
12 behind, leave it behind with the Model T, leave it
13 behind with the horse and buggy, leave it behind with
14 the flip phone. We're not going back. Unaffiliated
15 voters are about to eclipse registered Republican
16 voters in North Carolina. Let's go forward. Let's not
17 continue to use the mistakes of the past as
18 justification for making mistakes now that will affect
19 our future. So I hope you'll vote against this bill.
20 Put us to the test to do better. Let's free ourselves
21 from the mistakes of the past. Let's pursue a better
22 future for the citizens of North Carolina. Let's draw
23 a map that lets them be full participants in their
24 government. Thank you.

25 SPEAKER MOORE: For what purpose does the

1 gentleman from Rutherford, Representative Hager, arise?

2 REP. HAGER: To speak on the bill.

3 SPEAKER MOORE: The gentleman has the floor to
4 debate the bill.

5 REP. HAGER: Thank you, Mr. Speaker. You know,
6 we've said this several times. I've said it in
7 committee and to everyone that would listen,
8 Representative Stam accused me of practicing law
9 without a license, but I think I'm okay on the floor
10 just as long as I don't do it outside of here.

11 Representative Michaux and I have talked about
12 this, you know, page 53 of the statement from the
13 three-judge court says, "A failure to establish any
14 (one) of the Gingles factors is fatal to the
15 defendants' claim." Now, there is three thresholds we
16 talked about to meet, and I'm going to go over them
17 real quick because I've got other stuff we need to talk
18 about. Vote dilution must meet all three of these
19 thresholds. This report said that the vote dilution
20 has to -- as a failure of it has shown because there is
21 no voting prioritization in there. It shows it time
22 and time again in this. Representative Jones contends
23 that we are in violation of the Voter Rights Act of
24 Section 2, and he made the statement that sometimes
25 whites vote as a bloc. Well, that's not one of the

1 criteria. The criteria says they regularly vote as a
2 bloc, not sometimes. Sometimes is not the requirement.
3 It's regularly.

4 Now, again, and I would like to talk a little
5 bit of what Representative Hall talked about. I did
6 not say in committee that we had been working on the
7 those for two -- I said, you guys had the same
8 opportunity as we did to work on those. That is what I
9 said. You can check the record. And you would think
10 that most folks in this body would say, well, my
11 district is a gerrymandered district because I won by
12 32 percent my first election. Let me read you a little
13 statistics from the first election I had. In
14 Rutherford County, there's 22,000 Democrats, 12,000
15 Republicans, and 8,000 Independents. I agree with what
16 Representative Jones says. People aren't dumb.
17 They're going to vote where their philosophy is.
18 They're going to vote where their values are; 22,000
19 Democrats, 12,000 Republicans, and I won by 32 percent.
20 The voters know what is going on. They will vote with
21 their values. The voters of the Democrats did not
22 leave the party; the party left them.

23 SPEAKER MOORE: For what purpose does the
24 gentleman from Rockingham, Representative Jones, arise?

25 REP. JONES: To debate the bill a second time.

1 SPEAKER MOORE: The gentleman is recognized to
2 debate the bill a second time.

3 REP. JONES: Thank you, Mr. Speaker. I realize
4 the hour is late, and I will try to make a few brief
5 points. I would just suggest that the minority side
6 has used the vast majority of the time in debate today.
7 So there are a few points that I think deserve to be
8 made just simply for the record.

9 First of all, briefly I would just humbly
10 suggest that we do not live in a democracy. We live in
11 a constitutional republic. And there is quite a change
12 about that, you know, democracy is like two lions and a
13 lamb deciding what to have for dinner. And I would say
14 that things would look very different in our country
15 and if we were really a democracy. But this is the out
16 workings of a system -- of a constitutional republic,
17 and that is why we are here today as representatives of
18 the people to do the work of the people.

19 Secondly, I would just say that with all due
20 respect, there is a degree of hypocrisy to stand up and
21 just suggest that this is no more than partisan
22 bickering. Nobody is saying that, well, you know, it
23 is just great that one side is doing it because the
24 other side used to do it. But I would suggest that
25 everyone in this room, every representative in this

1 room, benefited from the system whether you are in the
2 General Assembly or not, and I was not in the general
3 assembly in the past decade. But in the past decade
4 and some of you in the decades before that benefited
5 from this system quite well, and I never heard a
6 complaint. I never heard a suggestion that we need to
7 change the process. We need to do something
8 differently.

9 Thirdly, I just want to reiterate, just
10 remember these three numbers, 89 percent in the last 40
11 years, the people of North Carolina have voted for the
12 Republican candidate for president 89 percent of the
13 time; 81 percent in the last 16 U.S. Senate races in
14 the last 40 years the people of North Carolina have
15 voted for the Republican candidate 81 percent of the
16 time. And then 77 percent, 77 percent is ten
17 Republicans out of 13 congressional districts. So I
18 would suggest that all of the stuff that we've heard
19 today that, in fact, that is not overrepresentation,
20 that these maps are not overrepresenting. The people
21 of North Carolina have clearly stated that on the
22 federal level, they are identifying more with the
23 Republican Party and that -- you can't gerrymander a
24 statewide election, okay? So when you --

25 REP. HAMILTON: Mr. Speaker.

1 SPEAKER MOORE: For what purpose does the lady
2 from New Hanover, Representative Hamilton, arise?

3 REP. HAMILTON: To see if the gentleman would
4 yield for a question.

5 SPEAKER MOORE: Does the gentleman from
6 Rockingham yield to the lady from New Hanover?

7 REP. JONES: I will gladly yield when I
8 conclude my remarks.

9 SPEAKER MOORE: He doesn't yield at this time.
10 The lady will be recognized if she would like to ask a
11 question later.

12 The gentleman from Rockingham has the floor to
13 continue debating the bill.

14 REP. JONES: Thank you, Mr. Speaker. So, the
15 point that I'm making is that I believe it is wrong to
16 suggest that a split of the three Democrats and ten
17 Republicans is somehow very unfairly wrong. This is a
18 federal election, and when you look at the federal
19 elections that we have conducted over the past 40 years
20 for the U.S. Senate and for the President of the United
21 States, it is very clear that even in a greater
22 percentage of the time, the people have voted for the
23 Republican nominee.

24 Finally, I would like to also talk about voter
25 registration. We keep hearing voter registration, and

1 I think Representative Lewis has very aptly said that
2 we believe that voting history, voting result is a
3 better indicator than voter registration. And the
4 other side continues to point out that we have more
5 registered Democrats than we do registered Republicans
6 in this state, and that is true. And it is also true
7 that we have a rising number of unaffiliated voters.
8 And quite frankly, we incentivize that with the laws in
9 this state because we allow unaffiliated voters to vote
10 in the primary of their choice. It is very easy for
11 people to go back and forth or whatever. But we
12 incentivize people often times to be unaffiliated. I
13 would simply suggest to you that if every registered
14 Democrat goes out and votes Democrat and the registered
15 Republicans vote Republican, and you can split
16 unaffiliateds down the middle, I think Democrats would
17 do very well under these maps. It is very clear that
18 Democratic candidates can win in these districts as
19 we've pointed out. It has been done in other races
20 before.

21 And, finally, my last point, we keep hearing
22 this call for a somehow independent redistricting
23 committee and this idea that maybe we will put on two
24 Democrats and two Republicans, and then we're going to
25 have this one individual that has the great wisdom of

1 King Solomon that has absolutely no partisan
2 affiliation, has no bias whatsoever. Somehow there's
3 this one perfect individual out there that is going to
4 have no bias and is going to have the wisdom of Solomon
5 and we're going to have these perfect maps. And,
6 ladies and gentlemen, I would conclude that that is not
7 going to happen because it is not possible to find that
8 individual. So, again, we thank you for the debate.

9 And, Mr. Speaker, if the lady has her question,
10 I would be happy to yield.

11 SPEAKER MOORE: Does the lady from New Hanover
12 wish to propound a question to the gentleman from
13 Rockingham?

14 REP. HAMILTON: I do, sir.

15 SPEAKER MOORE: She is recognized, and the
16 gentleman has indicated he would yield. The lady has
17 the floor to state her question.

18 REP. HAMILTON: Thank you, Representative
19 Jones. Just curious, over the last 40 years how many
20 state elections that are also run statewide, for
21 instance Governor, Attorney General, et cetera, how
22 many of those positions have elected Republican versus
23 Democrat?

24 REP. JONES: Thank you to the lady for that
25 question; I appreciate that. The point I was making is

1 that this is a federal election. And I don't have the
2 statistics in front of me; perhaps you do. My point is
3 that I think it's irrelevant because we're talking
4 about a federal election, and we all know that there
5 are people in this state that might vote one way on the
6 local election or even the state election but they see
7 the national parties in a very different way. And the
8 minority here can respectfully disagree, but there are
9 many people that feel that on the national level that
10 your party has moved quite a bit to the left and away
11 from the majority of the voters in this state. And
12 that is reflected in the fact that they have voted
13 89 percent of the time for the Republican candidate for
14 president, 81 percent of the time for the Republican
15 candidate for the U.S. Senate. And they might do that,
16 and they might still vote Democrat on a local or state
17 level.

18 REP. HAMILTON: Thank you.

19 SPEAKER MOORE: For what purpose does the
20 gentleman from Harnett, Representative Lewis, arise?

21 REP. LEWIS: I wanted to ask a series of
22 questions to Representative Michaux. No, Mr. Speaker,
23 I would like to speak a second time.

24 SPEAKER MOORE: The gentleman is recognized to
25 debate the bill a final and second time.

1 REP. LEWIS: Thank you, Mr. Speaker. Mr.
2 Speaker and members, I want to thank all of you for
3 your patience today, for the dignity that has been
4 shown in this chamber. Obviously, this is an issue
5 that all of us care very much about in our attempt to
6 best comply with the court ruling. I did want to state
7 a couple of last thoughts for the record and prior to
8 the vote if I could.

9 First of, with all due respect, the Harris
10 opinion does not find racially polarized voting, nor
11 has any member of the body submitted any kind of
12 document showing that there is racially polarized
13 voting in the state. Further, I realize the time has
14 been short, but we've even had members of the minority
15 stand up and speak about possible ways that districts
16 could have been drawn. Yet despite the fact that
17 central staff and even special staff was made available
18 to them, nobody has submitted a map showing how they
19 think the districts should be drawn.

20 I also want to say that these plans in no way
21 guarantee the election of ten Republicans. If you will
22 look at -- I know the lady from New Hanover asked about
23 statewide election results; they're actually -- most of
24 them are on our desk. And you will see that in all 13
25 of these districts, for instance, Attorney General

1 Cooper won them. I think -- I'm not going to go into
2 what some has been said before, but I think it has a
3 great deal to do with the quality of the candidate and
4 the message that they have in trying to elect -- or
5 trying to offer themselves.

6 The final thing that I would like to say is
7 while it has been talked about much throughout the
8 committee and through today's hearing, we did adopt in
9 an open forum what the criteria for these maps would
10 be. We did say that all of the criteria would be
11 considered together, and we would make every effort to
12 harmonize them. I believe the map that you have before
13 you addresses the concerns of the Harris opinion. I
14 believe it provides a way for us to move forward and to
15 move on and comply with the order of the Court, and I
16 would respectfully ask for your support in voting "aye"
17 on adopting these maps. Thank you, Mr. Speaker, and
18 thank you, members of the House.

19 SPEAKER MOORE: Further discussion, further
20 debate. If not, the question before the House is the
21 passage of Senate Bill 2 on its second reading. Those
22 in favor will vote "aye;" those opposed will vote "no."
23 The clerk will open the vote.

24 The clerk will lock the machine and record the
25 vote; 65 having voted in the affirmative and 43 in the

1 negative. Senate Bill 2 passes its second reading and
2 will be read a third time.

3 Further discussion, further debate?

4 For what purpose does the gentleman from
5 Cumberland, Representative Floyd, arise?

6 Further discussion, further debate? If not the
7 question before the House is the passage of Senate Bill
8 2 on it's third reading. Those in favor will say
9 "aye."

10 (Voice vote.)

11 SPEAKER MOORE: Those opposed "no."

12 (Voice vote.)

13 SPEAKER MOORE: In the opinion of the Chair,
14 the ayes have it. The ayes do have it. Senate Bill
15 2 passes its third reading. The bill is ordered
16 enrolled.

17 Special message from the Senate, the clerk will
18 read.

19 CLERK: House Bill 2, Senate Committee
20 Substitute, third edition. A bill to be entitled An
21 Act to Revise Procedures for the Conduct of the 2016
22 Primary Election to Comply with the Court Order in
23 Harris v. McCrory.

24 SPEAKER MOORE: The bill is ordered calendared
25 for immediate consideration. The clerk will read.

1 REP. FLOYD: Mr. Speaker.

2 SPEAKER MOORE: Just a moment. The clerk will
3 read the bill.

4 CLERK: Representative Jones and Hardister,
5 House Bill 2. A bill to be entitled An Act to Revise
6 Procedures for the Conduct of the 2016 Primary Election
7 to Comply with the Court Order in Harris v. McCrory.
8 The General Assembly of North Carolina enacts.

9 SPEAKER MOORE: For what purpose does the
10 gentleman from Cumberland, Representative Floyd, arise?

11 REP. FLOYD: Inquiry, Mr. Speaker.

12 SPEAKER MOORE: The gentleman may state his
13 inquiry.

14 REP. FLOYD: I know my light came on but I also
15 thought I pushed the red button for the last vote.

16 SPEAKER MOORE: How does the gentleman wish to
17 be recorded on the passage of the previous bill on the
18 vote?

19 REP. FLOYD: No.

20 SPEAKER MOORE: The gentleman was recorded as a
21 "no" vote on the prior bill. If the gentleman would
22 like to change it to a yes the Chair will be glad to do
23 that.

24 For what purpose does the gentleman from
25 Rockingham, Representative Jones, arise?

1 REP. JONES: To debate the bill.

2 SPEAKER MOORE: The gentleman has the floor to
3 debate the bill.

4 And again, members, we would ask that the
5 conversations could be held down. We still have our
6 court reporter here recording the proceedings.

7 The gentleman has the floor.

8 REP. JONES: Thank you, Mr. Speaker. Ladies
9 and gentlemen of the House, House Bill 2 that we passed
10 yesterday the Senate has amended and we are in support
11 of the Senate Committee Substitute. The difference is
12 that section 3 of that bill is taken out. We discussed
13 yesterday that section 3 has to do with the
14 presidential election, the electors to the electoral
15 college. And what we voted to do yesterday was to
16 adopt the old or existing congressional primary -- I'm
17 sorry. Congressional maps for the parties to use to
18 submit their presidential electors. That was done by
19 request with both political parties. However, they've
20 changed their mind on that, they would rather go with
21 the new districts if there are new districts and so
22 this section has been taken out. And so what that
23 simply means is that if this plan goes forth and there
24 is a congressional primary on June 7 and we adopt these
25 congressional maps or any congressional maps, whatever

1 congressional districts we end up using to elect our
2 congressmen, we will use those same districts to select
3 the presidential electors. So that is the change, and
4 I would ask for a green vote that we support the Senate
5 Committee Substitute to House Bill 2.

6 SPEAKER MOORE: So, does the gentleman wish to
7 make a motion to concur with the Senate Committee
8 Substitute for House Bill 2?

9 REP. JONES: Yes, sir. I make a motion to
10 concur.

11 SPEAKER MOORE: The gentleman has made that
12 motion and has debated the motion. Further discussion,
13 further debate on the motion to concur? If not, the
14 question before the House is the motion to concur with
15 the Senate Committee Substitute to House Bill 2. Those
16 in favor will vote "aye" those opposed will vote "no."
17 The clerk will open the vote.

18 Do the following members wish to record on this
19 vote: Representatives Cleveland, Steinburg, Whitmire,
20 and Blust?

21 The clerk will lock the machine and record the
22 vote; 75 having voted in the affirmative and 30 in the
23 negative. The motion to concur with the Senate
24 Committee Substitute to House Bill 2 is adopted. The
25 bill is ordered enrolled and sent to the Governor by a

1 special messenger.

2 The House will be at ease.

3 (At ease.)

4 SPEAKER MOORE: The House will come back to
5 order. Members, the House is about to go into recess
6 until 3:00. However, I want the members to know at
7 3:00 there will be no votes. The only purpose for the
8 3:00 session is for ratification. We are going to wait
9 on ratification for awhile until we hear some news
10 perhaps from Washington. So for those members who
11 would like to be back at 3:00, you're welcome to do so,
12 but the Chair does not anticipate any votes at that
13 time.

14 Notices and announcements?

15 For what purpose does the lady from Yancey,
16 Representative Presnell, arise?

17 REP. PRESNELL: For a moment of personal
18 privilege.

19 SPEAKER MOORE: The lady has the floor to speak
20 to a point of personal privilege.

21 The house will come to order.

22 REP. PRESNELL: I just wanted to wish my seat
23 mate, Representative Turner, a Happy Birthday.

24 SPEAKER MOORE: Further notices and
25 announcements? If not, the House will stand in recess

1 until 3:00 p.m.

2 (THE PROCEEDINGS IN THIS MATTER ADJOURNED AT 1:34 P.M.)

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

CERTIFICATE

I, Rachel L. Hammond, a Notary Public in and for the State of North Carolina duly commissioned and authorized to administer oaths and to take and certify hearings, do hereby certify that on February 19, 2016, this hearing was held before me at the time and place aforesaid, that all parties were present as represented, and that the record as set forth in the preceding 86 pages represents a true and accurate transcript of the proceedings to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand, this the 25th day of February, 2016.



Notary Public

Rachel L. Hammond
Notary Number
201126500152

NORTH CAROLINA GENERAL ASSEMBLY
NORTH CAROLINA HOUSE OF REPRESENTATIVES

TRANSCRIPT OF THE PROCEEDINGS
FLOOR SESSION TWO (3:00 P.M.)

In Raleigh, North Carolina
Friday, February 19, 2016
Reported by Rachel L. Hammond, CVR-M

Worley Reporting
P.O. Box 99169
Raleigh, NC 27624
919-870-8070

1 (Reporter's note: Proceedings in this matter
2 began at 3:00 p.m. on February 19, 2016.)

3 SPEAKER MOORE: The House will come back to
4 order. Ratification of bills and resolutions. The
5 clerk will read.

6 CLERK: The Enrolling Clerk reports the
7 following: Bills duly ratified, properly enrolled, and
8 prepared for presentation to the office of the
9 Secretary of State: Senate Bill 2, An Act to Realign
10 the Congressional Districts, As Recommended by the
11 Joint Select Committee on Congressional Redistricting,
12 and Comply to the Court Order in Harris v. McCrory.

13 The enrolling clerk reports the following bills
14 duly ratified for presentation to the Governor: House
15 Bill 2, An Act to Revise Procedures for the Conduct of
16 the 2016 Primary Election to Comply with the Court
17 Order in Harris v. McCrory.

18 The enrolling clerk reports the following
19 resolution duly ratified, properly enrolled, and
20 prepared for the presentation to the office of the
21 Secretary of State: House Joint Resolution 3, A Joint
22 Resolution Providing for Adjournment Sine Die of the
23 2016 Extra Session.

24 SPEAKER MOORE: Notices and announcements?
25 The gentleman from Gaston, Representative

1 Torbett, is recognized for a motion.

2 REP. TORBETT: Thank you, Mr. Speaker. Mr.
3 Speaker, I move that the 2016 Extra House of
4 Representatives Session do now adjourn sine die.

5 SPEAKER MOORE: Representative Torbett moves
6 seconded by Representative Langdon, that the 2016
7 Special Session of the House of Representatives do now
8 adjourn sine die.

9 Those in favor will say "aye."

10 (Voice vote.)

11 SPEAKER MOORE: Those opposed "no." The ayes
12 have it.

13 It is ordered that a message be sent to the
14 Senate informing that honorable body that the House has
15 concluded the public business and now stands ready to
16 adjourn.

17 Message from the Senate. The clerk will read.

18 CLERK: Mr. Speaker: The Senate has concluded
19 the business of the 2016 Extra Session of the 2015
20 General Assembly and is adjourning sine die, pursuant
21 to House Joint Resolution 3, A Joint Resolution
22 Providing for Adjournment Sine Die of the 2016 Extra
23 Session. Respectfully, Sarah Lang, Principal Clerk.

24 SPEAKER MOORE: Noted. I now declare this
25 House of the 2016 General Assembly Extra Session

1 adjourned sine die.

2 (THE PROCEEDINGS IN THIS MATTER ADJOURNED AT 3:11 P.M.)

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

CERTIFICATE

I, Rachel L. Hammond, a Notary Public in and for the State of North Carolina duly commissioned and authorized to administer oaths and to take and certify hearings, do hereby certify that on February 19, 2016, this hearing was held before me at the time and place aforesaid, that all parties were present as represented, and that the record as set forth in the preceding 4 pages represents a true and accurate transcript of the proceedings to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand, this the 25th day of February, 2016.



Notary Public

Rachel L. Hammond
Notary Number
201126500152

Exhibit G

FORMULA

$(100 * (G08G_RV + G08S_RV + G08K_RV + G12G_RV + G12O_RV + G10S_RV + G14S_RV)) / (G08G_RV + G08G_DV + G08S_DV + G08S_RV + G08K_DV + G08K_RV + G12G_DV + G12G_RV + G12O_DV + G12O_RV + G10S_DV + G10S_RV + G14S_DV + G14S_RV)$

SEVEN FACTORS

1. 08 Governor
2. 08 U. S. Senate
3. 08 Commissioner of Insurance
4. 12 Governor
5. 12 Commissioner of Labor
6. 10 U. S. Senate
7. 14 U. S. Senate

EXHIBIT 42
WIT: Dr. Hazeller
DATE: 2/10/17
DENISE MYERS BYRD

Exhibit H

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 - VOLUME II

2:02 P.M.
FRIDAY, FEBRUARY 10, 2017

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

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1
2 Also Present: Dalton Oldham, Esq.
Alesha Brown, SCSJ
3
4 The Reporter: Discovery Court Reporters
and Legal Videographers, LLC
5 BY: DENISE MYERS BYRD, CSR 8340
BRENT TROUBLEFIELD,
6 VIDEOGRAPHER
4208 Six Forks Road, Suite 1000
7 Raleigh, NC 27609
(919) 424-8242
(919) 649-9998 Direct
Denise@DiscoveryDepo.com
8
9
10 --o0o--
11
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16 By Mr. Speas..... 275
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1 APPEARANCES
2
3 For the Plaintiffs: Common Cause, et al.
4
5 POYNER SPRUILL
6 BY: EDWIN M. SPEAS, JR., ESQ.
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10 For the Plaintiffs: League of Women Voters, et al.
11 SOUTHERN COALITION FOR
SOCIAL JUSTICE
12 BY: ANITA S. EARLS, ESQ.
1415 Highway 54
13 Suite 101
Durham, NC 27707
(919) 323-3380 x 115
AnitaEarls@southerncoalition.org
14
15 For the Defendants:
16 OGLETREE DEAKINS NASH SMOAK
17 BY: THOMAS A. FARR, ESQ.
4208 Six Fork Road
18 Suite 1100
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(919) 787-9700
19 Thomas.Farr@ogletreedeakins.com
Phil.Strach@Ogletreedeakins.com
20
21 NC DEPARTMENT OF JUSTICE
22 BY: JAMES BERNIER, JR., ESQ.
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23 Raleigh, NC 27602
(919) 716-6400
24 APeters@ncdoj.gov
JBernier@ncdog.gov
25

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1 THE VIDEOGRAPHER: On record at
 2 2:02 p.m. Today's date is February 10, 2017.
 3 This is Volume II of the deposition of
 4 Thomas Hofeller.
 5 Could the court reporter now please
 6 swear in the witness.
 7 THOMAS B. HOFELLER,
 8 having been first duly sworn or affirmed by the
 9 Certified Shorthand Reporter and Notary Public
 10 to tell the truth, the whole truth and nothing
 11 but the truth, testified as follows:
 12 --o0o--
 13 MR. FARR: Are we going to identify
 14 ourselves.
 15 MS. EARLS: Sure. So this is Anita
 16 Earls for the League of Women Voters plaintiffs.
 17 MR. SPEAS: Eddie Speas for the Common
 18 Cause plaintiffs.
 19 MS. MACKIE: Caroline Mackie, Common
 20 Cause plaintiffs.
 21 MR. BERNIER: Assistant Attorney
 22 General James Bernier for defendants.
 23 MR. FARR: Tom Farr, Ogletree Deakins,
 24 representing the defendants.
 25 And before we start, I want to point

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1 out that the defendants have agreed, as an
 2 accommodation to the plaintiffs, to make
 3 Dr. Hofeller available to answer questions that
 4 were posed to me by plaintiffs' counsel about
 5 his formula. That is our understanding of what
 6 the purpose of this deposition is about or any
 7 questions reasonably related to the questions I
 8 was asked about Dr. Hofeller's formula.
 9 And I would also point out that I added
 10 up the minutes in the previous deposition, and I
 11 think there's 55 or less minutes left.
 12 MS. EARLS: Okay. Thank you, Tom. I'd
 13 like to mark this as Exhibit 42.
 14 (WHEREUPON, Plaintiffs' Exhibit 42 was
 15 marked for identification.)
 16 EXAMINATION
 17 BY MS. EARLS:
 18 Q. Dr. Hofeller, can you identify what has been
 19 marked as Exhibit 42, please.
 20 A. It's a one-sheet piece of paper which has the
 21 formula which I entered into Maptitude to have a
 22 feature displayed on VTDs on the system. A
 23 thematic, I guess, would probably be the better
 24 word.
 25 Q. And I also want to ask you to take a look at

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1 Exhibit 28, what was previously marked as
 2 Exhibit 28.
 3 A. Do you want to see this, Tom?
 4 MR. FARR: No. We've got a copy.
 5 BY MS. EARLS:
 6 Q. And my question is: The seven factors on
 7 Exhibit 42, do those all come from the elections
 8 that are identified in this Database Field Key
 9 that's Exhibit 28?
 10 A. I believe so, yes.
 11 Q. And can you tell me what the shorthand code is
 12 in the formula? So what do each of those codes
 13 stand for?
 14 A. The first letter in the field identifier which
 15 you describe as the code is the -- stands for
 16 general election, "08" is the general election
 17 of '08 and "G" would be governor.
 18 Q. And then --
 19 A. Then the dash RV is Republican vote.
 20 Q. And the same is true for the remaining elements
 21 of the formula, that is to say --
 22 A. Well, the key code is the "K" which -- "GO8K,"
 23 that would be the third factor there. That
 24 would be the general election of '08. "K" is
 25 commissioner of insurance.

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1 Then you go on to G12, "G" which is
 2 governor in 2012.
 3 And G10S is Senate in 2010.
 4 And I think I skipped some over here.
 5 I'm sorry. Let's start at the beginning again
 6 after the 100.
 7 Q. Okay.
 8 A. The first one is for governor. The next one is
 9 for senate. The next one is for commissioner of
 10 insurance. Then you go into the 12 general.
 11 You have governor. You have commissioner of
 12 labor. And in G10 you have U.S. Senate. And in
 13 14 you have U.S. Senate.
 14 Q. And then what does the -- so that's in the
 15 numerator of the formula?
 16 A. The numerator of those same races that you have
 17 both the Democratic and Republican vote.
 18 Q. You mean the denominator?
 19 A. The denominator.
 20 Q. Right.
 21 A. Okay. So the numerator, just to make it clear,
 22 is the sum of the Republican votes. The
 23 denominator is the sum of the Republican plus
 24 the Democratic votes.
 25 Q. And this formula, then, does not include any

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1 votes that were for independent candidates or --
 2 A. You're correct.
 3 Q. When did you devise this formula?
 4 A. When I started on the -- actually, I devised it
 5 first during the Harris case. I was trying to
 6 prove that no matter what you used, you'd get
 7 the same district if you maximized for
 8 Democratic vote in the 12th, but I had this on
 9 my computer from the very beginning of the '16
 10 process for the new congressional districts.
 11 Q. And who did you -- did you talk to anyone about
 12 the election returns that you would include in
 13 this formula?
 14 A. Not that I remember, no.
 15 Q. So you made the decision to include these seven
 16 factors?
 17 A. I did.
 18 Q. And Exhibit 28, which has the Database Field
 19 Key, is just -- am I right that that's just a
 20 listing of all the election returns that were
 21 available that are reflected in Exhibit 27?
 22 A. Well, there are more results in your Exhibit 28
 23 than there are in 42.
 24 Q. Right.
 25 A. As I remember the process correctly, this was

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1 the sheet that helped the members of the
 2 committee decode the headers on the election
 3 results that were produced when the bill came to
 4 committee.
 5 Q. And my question is just so if you look at
 6 Exhibit 27 in the notebook in front of you --
 7 A. 27?
 8 Q. Yes. Am I correct this is the data that was
 9 available to the committee when they were
 10 considering the districts?
 11 A. You know, I can't testify to that as a matter of
 12 my personal knowledge because I wasn't there
 13 when the committee received the bill, but it's
 14 my understanding that it was the sheet that was
 15 produced.
 16 Q. Right. But I'm just wanting to ask about the
 17 election returns contained in Exhibit 27 that 28
 18 is the key for.
 19 These 20 elections, did you have --
 20 when you were devising this formula, did you
 21 have access to the data for all 20 elections
 22 contained in Exhibit 27?
 23 A. I didn't -- just to be clear on my answer, I
 24 didn't have Exhibit 27. I looked up the
 25 elections on the website, the General Assembly's

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1 website, but -- I'm sorry, probably the
 2 Secretary of State's website for those
 3 elections, and they had the statewide total of
 4 those elections.
 5 Q. And they also had the returns by precinct for
 6 those elections?
 7 A. Well, they had them, yes.
 8 Q. And what I'm trying to understand, when you
 9 devised this formula --
 10 A. Yes.
 11 Q. -- you picked seven elections?
 12 A. I did.
 13 Q. And you had at least available to you the 20
 14 elections that are represented in Exhibit 27.
 15 A. I had all the elections that the State Board of
 16 Elections has available publicly on their
 17 website.
 18 Q. Okay.
 19 A. Which I assume would include all of these.
 20 Q. Okay. So how did you decide to include these
 21 seven elections in your -- in the formula?
 22 A. I just thought they were good indicator
 23 elections. Some of them were better for
 24 Republicans than others, and I wanted to get a
 25 good variety of elections.

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1 Q. And what made these particular seven good
 2 indicators?
 3 A. I just felt in my own mind that they would be
 4 good elections to have. I don't know how else
 5 to explain it. I -- never mind.
 6 Q. Well, I guess I'm asking what about these
 7 particular elections made them good to predict
 8 the --
 9 A. Well, since I haven't reexamined it since I did
 10 that, and that was almost a year ago, I don't
 11 really remember exactly what my thinking was at
 12 that time. All I can say to you is that I
 13 thought at that time those were good elections
 14 to have and that they would suit the purposes
 15 that I needed for data to have available to me
 16 while these districts were being formulated.
 17 MR. FARR: Excuse me for a second.
 18 Tom, would you make sure you let Anita
 19 finish your question.
 20 THE WITNESS: I'm sorry. I apologize.
 21 MS. EARLS: Sometimes my questions are
 22 awkward, so I understand the challenge.
 23 BY MS. EARLS:
 24 Q. You had just said that you -- at the time these
 25 were the seven elections that you thought would

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1 suit your purpose and that's why you included
 2 them in the formula.
 3 What was the purpose that the formula
 4 was designed to achieve?
 5 A. To give me an indication of the two-party
 6 partisan characteristics of VTDs.
 7 Q. Okay. So how did you -- then can you describe
 8 to us how you used this formula in drawing the
 9 congressional districts.
 10 A. When I was looking -- when it was necessary,
 11 actually, to divide a county, I put the result
 12 of this formula -- well, it was actually in
 13 the -- on the screen -- and indicated that I
 14 wanted to see the precinct or VTD level and used
 15 it as a partial guide to where I would put the
 16 lines for the districts, but it was not -- it
 17 was one of many factors.
 18 Q. Right. In devising the thematic based on this
 19 formula, do you remember how many intervals you
 20 had up on the screen?
 21 A. Well, I think I had some different intervals at
 22 different times, but my usual method is to use
 23 5 percent intervals usually centered around
 24 50 percent.
 25 Q. So can you describe, then, how that would work.

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1 How many -- like what would be the lowest bound
 2 and the upper bound with the 5 percent
 3 intervals?
 4 A. I usually use eight factors. So maybe it would
 5 be three above 50 and five below or maybe it
 6 would be the other way around, but it's centered
 7 on 50.
 8 Unfortunately, Maptitude doesn't have
 9 an option that allows you to pick that right off
 10 the bat, so you have to enter them in manually.
 11 Q. You have to enter in what manually?
 12 A. The percentage breaks on the intervals.
 13 MS. EARLS: John, are you ready to try
 14 to -- I want to -- for you to be able to
 15 describe how you did that in Maptitude and we
 16 can then print out a screen shot and you can
 17 tell us if that's what it looked like when you
 18 were using this formula to create a thematic.
 19 THE WITNESS: It might be difficult for
 20 me to do it without seeing the screen that he's
 21 using.
 22 MS. EARLS: John, are you able to -- I
 23 don't think -- well, first, can we break and let
 24 me confer.
 25 THE VIDEOGRAPHER: Off record at

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1 2:16 p.m.
 2 (Brief Recess.)
 3 THE VIDEOGRAPHER: On record at
 4 2:17 p.m.
 5 MS. EARLS: So I'm asking John
 6 O'Hale -- John, do you want to identify -- well,
 7 I guess you don't have a mic.
 8 John O'Hale, who is assisting us for
 9 the purpose -- assisting the plaintiffs for the
 10 purposes of this deposition, and he's an
 11 attorney with Poyner Spruill.
 12 BY MS. EARLS:
 13 Q. Dr. Hofeller, can you describe how you -- how
 14 you divided up the data to create your thematic
 15 when you were using this formula so that John
 16 can replicate that?
 17 A. Okay. Well, I can give you an example of one
 18 way I might have divided it up rather than the
 19 way.
 20 Q. Okay.
 21 A. I already stated already that I might have used
 22 different breaks at different times.
 23 Q. Okay.
 24 A. I just don't really remember.
 25 Q. Okay. What is one way that you might have done

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1 it?
 2 A. Let's see. 50 to 55, 55 to 60, 65 to 100. And
 3 below would have been 50 to 45, 45 to 40, 40 to
 4 35, 35 to 30, 30 to 25 and 25 and below. If
 5 that's eight intervals. I don't have a scratch
 6 pad here so I don't --
 7 Q. And is there any particular color scheme that
 8 you used to create the thematic?
 9 A. Yes. I used the rainbow theme.
 10 Q. Okay. So I'm going to give John a minute to
 11 pull that up and print it out and then we'll
 12 make it an exhibit and see if that helps us
 13 understand what you were looking at when you
 14 were --
 15 A. Sure.
 16 Q. It won't have data because we don't have the
 17 same data set, but at least the thematic -- we
 18 can look at that.
 19 A. Well, if it isn't the same data, it won't be the
 20 same. Okay, we'll just --
 21 MR. FARR: He'll look at what you
 22 produce.
 23 THE WITNESS: I'll look and then
 24 comment.
 25 MS. EARLS: Okay. Thank you.

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1 Okay, John, just let me know.
 2 (Discussion held off the written
 3 record.)
 4 BY MS. EARLS:
 5 Q. Did you use this formula in any other analysis
 6 other than the thematic for -- as you were
 7 drawing the districts?
 8 A. Okay, I'm not -- I'm not clear on the precision
 9 of your question there. Could you try it again,
 10 please.
 11 Q. Yes. I'm trying to understand in addition to
 12 using this formula to create a thematic to show
 13 a percentage of Republican vote -- am I correct
 14 that that's what it showed you, the percentage
 15 of Republican vote in a VTD?
 16 A. The percentage of the Republican vote was of the
 17 two-party vote.
 18 Q. Right. The percentage of the Republican vote of
 19 the two-party vote?
 20 A. Yes.
 21 Q. At the VTD level?
 22 A. At the VTD level.
 23 Q. Did you use this formula for any other
 24 evaluation of the districts?
 25 A. Okay. When I was -- at the county level?

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1 Q. At any level.
 2 A. I did not use it. When I was at the block
 3 level, I did not use it. And those were the
 4 only three levels.
 5 Q. And so you're saying that when you would -- as
 6 you were drawing the districts, when you were
 7 looking at data at the county level, you didn't
 8 use this formula?
 9 A. No.
 10 Q. And so the only -- as you were drawing
 11 districts, the only time you looked at the
 12 results of this formula was when you were --
 13 when you were looking at the VTD level?
 14 A. Yes. Because keeping counties whole was a
 15 higher priority, and I didn't really need the
 16 data to do that.
 17 Q. So how did the data help you as you were using
 18 at the VTD level?
 19 A. Well, it gave me an idea of the characteristics
 20 of the VTDs that were on the screen.
 21 Q. And what characteristics?
 22 A. Well, the formula.
 23 Q. Right. But I'm just asking you to tell us what
 24 the characteristics -- what characteristics
 25 using the formula gave you for the VTDs.

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1 A. The characteristics, once again, at the risk of
 2 being redundant here, the Republican two-party
 3 vote of the VTD.
 4 Q. Did you -- did anyone else look at this formula
 5 or the thematic that was based on it while you
 6 were drawing the districts?
 7 A. I believe I said in the first part of this
 8 deposition the other day that there were people
 9 who came in to see the work and I would show
 10 them the same thematic display.
 11 Q. And you developed this formula and used it as
 12 the thematic display because you thought it
 13 accurately reflected the underlying partisan --
 14 the likely partisan outcome at the VTD level?
 15 MR. FARR: Objection to the form.
 16 You can answer.
 17 THE WITNESS: Which word are you using,
 18 "likely" or "underlying"?
 19 BY MS. EARLS:
 20 Q. Likely. Let's start with likely.
 21 A. Okay. I don't -- I don't -- that is not a
 22 predicate that I think I can answer the question
 23 to. I don't know how -- exactly how precincts
 24 are going to vote in the future. It varies from
 25 election to election.

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1 Q. But you thought this formula would give you some
 2 useful information regarding the partisan makeup
 3 of the VTD?
 4 A. Partisan characteristics, yes.
 5 Q. And did you think that knowing the partisan
 6 characteristics of the VTD based on this formula
 7 would be of assistance in predicting future
 8 elections?
 9 A. I think I explained before, I think, that
 10 individual VTDs tend to carry -- all things
 11 being equal, tend to carry the same
 12 characteristics through a string of elections.
 13 They may not have the same exact result, but
 14 they may, absent some unusual feature, line up
 15 from one end of the spectrum -- political
 16 spectrum to the other in roughly the same order.
 17 MS. EARLS: I would request
 18 permission -- at this point, I want to give John
 19 a little more time to get the intervals and the
 20 thematic right, but I'm finished otherwise with
 21 the questions I have. I want to give Mr. Speas
 22 an opportunity. Can we do that?
 23 MR. FARR: Sure.
 24 ///
 25 ///

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1 EXAMINATION
 2 BY MR. SPEAS:
 3 Q. Can you hear me, Dr. Hofeller?
 4 A. Yes, I can.
 5 Q. How are you today?
 6 A. All right.
 7 Q. Good. Let me make sure I understand. You used
 8 this formula set out in Exhibit 42 to give you
 9 some indication of the partisan character of
 10 VTDs; is that right?
 11 A. That's correct.
 12 MR. FARR: Let him finish, too, Tom.
 13 THE WITNESS: I'm sorry, I thought he
 14 was finished.
 15 MR. SPEAS: I was.
 16 THE WITNESS: I heard a question mark.
 17 MR. FARR: I just want to make sure.
 18 BY MR. SPEAS:
 19 Q. You did not use this formula to give you some
 20 indication of the partisan character of
 21 counties, correct?
 22 A. I'm sorry, I didn't hear all that question.
 23 Q. You did not use this formula to give you some
 24 indication of a partisan character of a county?
 25 A. Of a what?

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1 Q. County.
 2 MR. FARR: County.
 3 THE WITNESS: Of a county as a whole?
 4 BY MR. SPEAS:
 5 Q. Yes.
 6 A. No.
 7 Q. What did you use to determine the -- to give you
 8 a partisan indication of a county as a whole?
 9 A. I didn't use anything.
 10 Q. You simply randomly grouped counties together to
 11 form these districts without regard to their
 12 partisan performance; is that correct?
 13 A. No, that's not correct.
 14 Q. Then how did you use -- what did you use to
 15 determine the partisan character of a county as
 16 a whole?
 17 A. I already said to you I didn't determine the
 18 partisan character of a county as a whole.
 19 Q. How did you determine to assign a county to a
 20 particular district to carry out the direction
 21 to create a plan that would likely produce a
 22 10-3 Republican split?
 23 MR. FARR: Objection to the form.
 24 You can answer.
 25 THE WITNESS: I don't agree with the

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1 predicate of your question. I'm sorry. There
 2 were a lot of factors that were involved in
 3 choosing the locations of the districts.
 4 BY MR. SPEAS:
 5 Q. And one of those was the partisan character of
 6 the county, correct?
 7 A. Yes, but it was not the main characteristic.
 8 Q. And my question is: What did you use to
 9 determine the partisan character of a county?
 10 What elections? What other information did you
 11 use to determine the partisan character of a
 12 county?
 13 A. My answer is the same as when you asked the
 14 question before. I did not use any data to
 15 determine that.
 16 Q. Did you simply know what the partisan character
 17 of counties was?
 18 A. I wish my mind was that good -- my memory was
 19 that good.
 20 Q. Is it entirely an accident that the result of
 21 the 2016 election was 10 Republicans and 3
 22 Democrats?
 23 MR. FARR: Objection.
 24 You may answer.
 25 THE WITNESS: Well, again, I don't

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1 understand your -- you mean like random?
 2 BY MR. SPEAS:
 3 Q. Yes.
 4 A. No.
 5 Q. How did you --
 6 A. But it wasn't -- that wasn't the prime factor
 7 that I was using in the creation of the plan, as
 8 I stated before.
 9 Q. I'm not asking you what your view of your prime
 10 factor was.
 11 I'm asking you what information you
 12 used to assign a county to a district with
 13 regard to partisan performance.
 14 A. May I see, please, the criteria sheet from the
 15 committee that I saw in the last deposition.
 16 Q. Sure. Exhibit 24.
 17 MR. OLDHAM: Eddie, do you mind if we
 18 hand him a copy of that?
 19 MR. FARR: He's got it.
 20 BY MR. SPEAS:
 21 Q. Do you have Exhibit 24 in front of you?
 22 A. Yes.
 23 Q. And with Exhibit 24 in front of you, can you
 24 answer the question how you decided to assign a
 25 county to a district in order to carry out the

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1 partisan advantage criteria?
 2 A. Again, I don't agree with the premise of your
 3 question.
 4 Q. Can you answer my question?
 5 A. I can answer your question by saying I don't --
 6 I don't agree with the premise of your question.
 7 If you ask it a different way, I may be able to
 8 answer it.
 9 Q. How did you decide to assign a county to a
 10 district?
 11 A. The first criteria which governed the makeup of
 12 the plan was to create a plan which would
 13 satisfy the requirements of the Court to draw a
 14 plan and it would conform with what we felt
 15 would be the view of the Court of the plan, to
 16 get a plan that was acceptable to the Court.
 17 And in order to do that, whole counties
 18 would be used. Of course, the -- the federal
 19 factors of equal population and compactness in
 20 criteria; to some extent, of course, previous
 21 districts, to the extent it was possible given
 22 the limitations of the decision.
 23 So except for the fact that two
 24 districts were broken up that were in the plan
 25 before, the 4th district and the 12th district,

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1 almost to complete extent, my first goal was to
 2 draw a map that was whole -- had as few county
 3 splits as possible, therefore as many counties
 4 whole as possible and that was compact,
 5 contiguous and, to the extent possible, retained
 6 incumbents.
 7 Q. Okay. Was one of your directions to draw a plan
 8 that would likely produce a 10-3 partisan
 9 Republican -- partisan -- a 10-3 Republican
 10 advantage?
 11 MR. FARR: Objection to the form.
 12 You can answer.
 13 THE WITNESS: Okay. Just say that
 14 again.
 15 BY MR. SPEAS:
 16 Q. Was one of your directions to draw a plan that
 17 would produce a 10-3 Republican advantage?
 18 MR. FARR: Objection to the form.
 19 THE WITNESS: Actually, not to my
 20 recollection, no. That was not the prime
 21 criteria, the instructions that I was given.
 22 BY MR. SPEAS:
 23 Q. Was one of the criteria adopted by the General
 24 Assembly entitled partisan advantage?
 25 A. Yes.

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1 Q. And what partisan advantage was -- did the --
 2 did the legislature seek, a 10-3 advantage?
 3 A. Well, my understanding of the way it was to work
 4 was within the bounds of satisfying the other
 5 criteria that there could -- that partisan
 6 advantage would be considered, yes.
 7 Q. And how did you satisfy the legislature's desire
 8 to obtain a partisan advantage in drawing the
 9 plan?
 10 A. When I was particularly looking at split
 11 counties, I looked at the VTD thematic.
 12 Q. And what about -- when you were assigning a
 13 whole county to a district, what did you look at
 14 in deciding which district to assign that whole
 15 county to?
 16 A. That was primarily a function of compactness,
 17 keeping counties whole and keeping districts, to
 18 the extent possible, in the areas that they were
 19 before.
 20 Q. What partisan information did you look at in
 21 deciding whether to assign a county to one
 22 district or another?
 23 A. I believe I already told you that I didn't have
 24 the partisan characteristics of the counties
 25 displayed.

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1 Q. Did you use the formula set out in Exhibit 42 to
 2 determine the partisan character of the plan as
 3 a whole?
 4 A. I did after the plan was finished.
 5 Q. So after the plan was finished, did you apply
 6 the formula to the plan as a whole?
 7 A. Yes.
 8 Q. And what was the results of that application of
 9 the formula to the plan as a whole?
 10 A. I believe that the plan was a 3-D -- 2 or 3
 11 split, 7 Republican plan, or it could be 8-2, 3.
 12 Does that add up? No -- yes.
 13 Q. Let me ask the court reporter to mark this
 14 document as Exhibit 43.
 15 (WHEREUPON, Plaintiffs' Exhibit 43 was
 16 marked for identification.)
 17 BY MR. SPEAS:
 18 Q. Dr. Hofeller, Exhibit 43 is a document that I
 19 prepared. It reflects my effort to apply your
 20 formula using the results of the seven
 21 elections. And as you can see in the left
 22 column there are elections listed.
 23 Is it accurate that the seven elections
 24 listed there are the seven elections listed in
 25 Exhibit 42?

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1 A. I believe so, yes.
 2 Q. And is it correct that the numerator in your
 3 formula is the Republican vote for each of those
 4 elections in the year -- in the particular year?
 5 A. I'm sorry, repeat that again.
 6 Q. Is it true that the numerator in your formula is
 7 the Republican vote in those seven elections?
 8 A. If you apply the formula that I used for
 9 thematic coloring of VTDs to your data, that
 10 would be your use of the formula.
 11 Q. Is that the way you used the formula to
 12 determine the partisan impact of the plan as a
 13 whole?
 14 A. No.
 15 Q. How did you determine -- use your formula to
 16 determine the partisan impact of the plan as a
 17 whole?
 18 A. I would look at the formula as regards to each
 19 district, not to the state as a whole.
 20 Q. Okay. And how did you determine the number of
 21 votes cast in each district from each of those
 22 seven elections?
 23 A. If you look at Maptitude, there is usually
 24 sitting behind the map another box that has the
 25 data in it which shows the data for each -- each

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1 election. And sometimes percentages are also
 2 displayed for those. You can extract manually
 3 pretty much -- not manually, but you can extract
 4 that from Maptitude into an Excel spreadsheet
 5 and you can use the Excel spreadsheet to add up
 6 these factors and do the division that you did
 7 on this -- according to the same formula that's
 8 on the sheet that's in Exhibit 42.
 9 Q. And are those Excel spreadsheets still on your
 10 computer?
 11 A. I have an Excel spreadsheet, yes, for that, for
 12 the final plan.
 13 MR. SPEAS: And, Mr. Farr, would you
 14 produce that Excel spreadsheet -- or those Excel
 15 spreadsheets for us, please.
 16 THE WITNESS: It would just be one
 17 sheet. Actually, I don't know that I have the
 18 whole sheet. I just have the result.
 19 BY MR. SPEAS:
 20 Q. So you used the information on this Excel
 21 spreadsheet to make some prediction with regard
 22 to the partisan -- likely partisan performance
 23 of each district; is that correct?
 24 MR. FARR: Objection.
 25 THE WITNESS: It kind of depends on how

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1 you define partisan performance, but I produced
 2 the percentages and looked at the percentages
 3 and made my -- my own determination of how I
 4 thought the plan had turned out, yes.
 5 BY MR. SPEAS:
 6 Q. And what were those percentages? How did you
 7 calculate those percentages?
 8 A. According to the formula.
 9 Q. Okay. And this formula produces a percentage,
 10 correct?
 11 A. Yes.
 12 Q. And if the formula produced the percent --
 13 50 percent for a particular district, how would
 14 you classify that district?
 15 A. 50 percent exactly?
 16 Q. Uh-huh.
 17 A. I'd classify that as a swing district.
 18 Q. And if it produced a 55 percent Republican vote,
 19 how would you characterize the district?
 20 A. I would -- I would --
 21 MR. FARR: Objection to the form, but
 22 go ahead and answer it.
 23 THE WITNESS: A district over 55 would
 24 be at least leaning -- leaning or Republican.
 25 So it depends what -- what you ascribe to each

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1 description.
 2 BY MR. SPEAS:
 3 Q. And how would you classify a district where the
 4 percent was 60 percent Republican?
 5 A. I think I would look at that district which
 6 would be one that Republicans would most likely
 7 win all the time.
 8 Of course, you know, you have things
 9 that go on in campaigns that surprise everybody,
 10 so nothing is a sure bet. A lot of it depends
 11 on candidates, the general political climate,
 12 funding, opponents. Lots of factors go into
 13 elections.
 14 Q. Okay. And how would you -- how did you classify
 15 a district for which the percentage was 45
 16 percent?
 17 A. Exactly 45 percent?
 18 Q. Yes.
 19 A. That's kind of on the line between a swing
 20 district and a Democratic district.
 21 Q. Is it accurate in your evaluation that for
 22 districts between 50 and 45 percent you
 23 classified them as leaning Democratic districts?
 24 A. I'm sorry. Between --
 25 Q. 50 and 45. 45 and 50.

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1 A. Between 50 and 45, I think they're in the swing
2 district range, yes.
3 Q. And less than 45, how did you classify?
4 A. Well, they're going from leaning Democratic
5 districts, highly leaning Democratic districts
6 to pretty much safe Democratic districts.
7 Q. And was there a percent at which you would
8 classify a district as a safe Democratic
9 district?
10 A. I would say that in my view, if it were under
11 40 percent, it would certainly be safe.
12 Q. Okay. And by the same token, if it were more --
13 if it were 60 percent or more, it would be, in
14 your evaluation, a safe Republican district?
15 A. All other things being equal, with the same
16 clarification that anything can happen in any
17 election.
18 Q. And you testified earlier, I believe, that you
19 typically used a 5 percent interval in making
20 the various judgments you were making, including
21 the judgments about which colors to use to
22 identify VTDs, correct?
23 A. I wouldn't say generally all the time. I think
24 we were just talking specific to the drawing of
25 this map.

1 Q. Okay.
2 A. I use those percentages sometimes. Sometimes I
3 use percentage ranges that are small, closer
4 together, sometimes farther apart, sometimes
5 less breaks. It really depends what I'm trying
6 to -- what information I'm seeing displayed on
7 the screen.
8 Q. And when the information you wanted to see
9 displayed on the screen was a likely partisan
10 result for the district, which interval did you
11 use?
12 A. I'm sorry. Let's try that again.
13 MR. SPEAS: Could you read that back,
14 please.
15 (Record Read.)
16 THE WITNESS: Can I ask you to clarify
17 district as in complete congressional district
18 or district as in voting district.
19 BY MR. SPEAS:
20 Q. I mean complete congressional district.
21 A. Well, I think I already told you that I felt
22 that those were the ranges to classify the
23 districts, again, all other things being equal.
24 Q. Okay. What about district as in terms of a VTD
25 district or voting tabulation district, same

1 interval?
2 A. Well, of course, depending on the election and
3 who's running and what year it is, I think that
4 VTDs can be more volatile than the -- a district
5 as a whole be it a legislative district or a
6 congressional district.
7 Q. And at some point in this process -- well, let
8 me rephrase that.
9 After you had completed the plan and
10 presented it to Senator Rucho and Representative
11 Lewis, did you meet with -- well, strike that.
12 Did you meet with Representative Lewis
13 and Senator Rucho and explain to them your
14 assessment of the likely partisan results of the
15 plan as a whole?
16 A. I don't remember the exact conversations with
17 it, but I know that I did express my view about
18 the nature of the plan, yes.
19 Q. And in that conversation did you review your
20 view as to the likely partisan result in each
21 district?
22 A. The likely partisan results in each district, of
23 course, are very much determined on which
24 incumbents are in the district and, again, the
25 nature of the election. So if I were advising

1 somebody on how I thought a district would
2 perform, I would say this district is probably
3 more than likely to elect the incumbent, this
4 district the incumbent may now or in the future
5 have difficulty getting reelected.
6 Of course, some incumbents don't run
7 again, so you always have to look at that.
8 Q. Did you at any point ever prepare a map shading
9 districts by your view of their likely partisan
10 result?
11 A. Not that I can remember.
12 Q. I'm sorry?
13 A. I said not that I can remember.
14 Q. Might you have done that?
15 A. I might have. I just don't remember. That's
16 been nine months. Actually, more than that.
17 Q. And did you ever meet with Representative Lewis
18 and explain to him what you believe the likely
19 result of each district would be, partisan
20 result would be?
21 A. Well, casting aside the fact that some districts
22 were pretty much obvious what they would be, I
23 did give him my views on the -- some of the
24 districts in the plan, the ones that weren't
25 really obvious.

1 Q. And did you give that same information to
2 Senator Rucho?
3 A. I don't really remember whether I gave it
4 directly to Rucho or not.
5 Q. Did you at any point meet with Speaker Moore to
6 discuss about your plan?
7 A. I think as I said before, Speaker Moore -- I did
8 meet with Speaker Moore once, but I think that
9 was before the plan was finalized. It wasn't
10 after -- in the final phase of it.
11 Q. After the plan was finalized, did you meet with
12 Speaker Moore to explain to him your view of the
13 partisan results of the plan?
14 A. No.
15 Q. Did you meet with Senator Berger at any point to
16 explain to him the likely partisan results of
17 the plan?
18 A. I don't believe so, no.
19 Q. Even after --
20 A. I just don't really remember. I don't -- I
21 don't -- I don't think I met with him after the
22 plan was completed at all. At that point it was
23 into the committee process. My job was done.
24 Q. Did you at any point meet with members of -- any
25 member of Congress --

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1 A. No.
2 Q. -- to explain your view of the partisan results
3 of the plan?
4 A. I apologize. No, I didn't. I had no contact
5 with any members of Congress.
6 Q. Did you meet with anyone from the RNC to explain
7 to them your view of the likely results of the
8 plan?
9 A. No.
10 Q. Did you meet with any legislative staff
11 members -- North Carolina legislative staff
12 members to explain to them your view about the
13 likely result of the plan?
14 A. At what time period?
15 Q. From -- in February 2016.
16 A. At any time in February?
17 Q. Yes.
18 A. Yes.
19 Q. And who did you meet with?
20 MR. FARR: I think this was covered in
21 the other deposition.
22 MR. SPEAS: If it was --
23 THE WITNESS: It was covered in the
24 other deposition.
25 BY MR. SPEAS:

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1 Q. Did you meet with any legislative staff member
2 in February of 2016 to discuss the formula set
3 out in Exhibit 42?
4 A. No.
5 Q. Did you meet with any legislative staff member
6 in February of 2016 to discuss your views about
7 the likely partisan impact of the plan?
8 A. I'm sorry, I didn't catch all that.
9 (Record Read.)
10 THE WITNESS: Yes, I think I already
11 answered that question.
12 BY MR. SPEAS:
13 Q. And if you could remind me, who did you -- who
14 do you recall meeting with?
15 A. Jim Blaine.
16 Q. Did you look at alternative formulas,
17 alternative to the formula in Exhibit 42, in the
18 process of developing the 2016 plan?
19 A. No.
20 Q. Did -- and Ms. Earls may have asked this. I'm
21 not sure. Let me ask it.
22 Did you consider using any other
23 elections other than the seven you used when you
24 were putting this formula together?
25 A. I did not use the presidential election results

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1 because of the problem that was raised by the
2 plaintiffs in the Harris case with the use of
3 presidential election results, and I wanted to
4 avoid that -- that area of their objection even
5 though I don't think it was valid.
6 Q. You used two council state races in your
7 formula, labor and insurance, correct?
8 A. Yes.
9 Q. Did you consider using other council state
10 election results in this formula?
11 A. I may have looked at them, but I didn't choose
12 them. That's all I can really say. I didn't
13 want to get too many elections in the formula
14 anyway. It's hard enough to type into the
15 system without getting too many in there.
16 Q. And when you were deciding on the elections to
17 use in this formula, I notice that you use
18 U.S. Senate elections more than any other
19 election, correct?
20 A. That would be correct.
21 Q. And why was that?
22 A. Well, I believe there were probably more senate
23 elections in that time period than there were
24 gubernatorial elections or presidential
25 elections.

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1 Q. And I notice that you used elections from four
 2 presidential election years and two from
 3 non-presidential years; is that correct?
 4 A. Yes.
 5 Q. And was that a deliberate choice on your part?
 6 A. I think there's more meaningful data in the
 7 presidential election years than there were in
 8 the non-presidential election years. You have
 9 the governor's race -- I guess you would call it
 10 the Council of State races in the presidential
 11 election years. There are many less races that
 12 are statewide in the non-presidential years. So
 13 senate is pretty much the only one there.
 14 MR. SPEAS: I think those are the
 15 question I have for the moment.
 16 Could we take just a short break and
 17 see where we are with this other set of
 18 questions.
 19 THE WITNESS: Are we taking a break?
 20 MR. SPEAS: Yes.
 21 THE VIDEOGRAPHER: Off record at
 22 2:56 p.m.
 23 (Brief Recess.)
 24 THE VIDEOGRAPHER: On record at
 25 3:19 p.m.

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1 BY MR. SPEAS:
 2 Q. Dr. Hofeller, two or three other questions.
 3 First, you indicated that you have on
 4 your computer an Excel spreadsheet that is
 5 related to the estimation of partisan
 6 performance.
 7 Do you have any other documents on your
 8 computer related to that question?
 9 A. I can't recall there would be anything else I
 10 would have.
 11 MR. SPEAS: Tom, we would -- Tom Farr,
 12 we would ask Dr. Hofeller to provide us that
 13 Excel spreadsheet and to search his computer to
 14 determine whether there are any other documents
 15 that are related to Exhibit 42 or responsive to
 16 the document request and subpoenas we previously
 17 filed.
 18 MR. FARR: Okay. Thanks.
 19 BY MR. SPEAS:
 20 Q. Dr. Hofeller, the formula in Exhibit 42 that you
 21 used in preparing the congressional plan in
 22 2016, could it be used to estimate the partisan
 23 performance of other elections other than
 24 congressional elections?
 25 A. Sure.

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1 Q. And I am correct, I believe, that Exhibit 42
 2 reflects your best estimate using all your years
 3 experience generally and in North Carolina in
 4 particular for identifying the elections that
 5 best predict -- would best predict future
 6 election results, correct?
 7 MR. FARR: Objection to the form.
 8 You can answer.
 9 THE WITNESS: Are you talking about
 10 North Carolina?
 11 BY MR. SPEAS:
 12 Q. Yes.
 13 A. Or in general.
 14 Q. Yes, North Carolina.
 15 A. Actually, no, I don't think it's the best that
 16 could be used.
 17 Q. It's the one you used?
 18 A. It is the one I used.
 19 Q. And you thought it was good enough to advise
 20 your clients, correct?
 21 A. It wasn't -- the formula wasn't actually used to
 22 advise my clients. The formula was used to
 23 assist me in drafting the plan.
 24 Q. To assist you in drafting the plan to make sure
 25 it carried out your clients' directions,

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1 correct?
 2 A. Yes, all of them.
 3 Q. One -- I want to just ask you finally a couple
 4 of quick questions about Exhibit 28. You might
 5 want to put it in there. This is the exhibit
 6 listing the election results that were on the
 7 legislative database, as I understand it, in
 8 2016.
 9 You chose not to use the 2008
 10 commissioner of labor election results and
 11 instead use the 2008 commissioner of insurance
 12 election results. Do you know why you chose one
 13 over the other?
 14 A. I don't recall.
 15 Q. You chose not to use the 2012 lieutenant
 16 governor election results as a part of your
 17 formula. Do you recall why you did not use that
 18 election?
 19 A. I can answer that two ways. I can say I thought
 20 I had enough -- enough contests in there
 21 already, and you kind of put your -- your finger
 22 on it when you produced Exhibit 43 for me
 23 because it ended up with about a 50/50 result,
 24 which is kind of where you want it to be. So
 25 you don't want to skew one way or another way.

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1 So this produced the kind of 50/50 split that
 2 was good for determining this.
 3 Q. Okay. Is it fair to say the seven elections in
 4 Exhibit 42 reflect your best professional
 5 judgment as to the elections that should be used
 6 for this particular purpose?
 7 MR. FARR: Objection.
 8 You can answer.
 9 THE WITNESS: You know, I'm not here to
 10 say that I have all the answers on this.
 11 Somebody else may come up with a different set
 12 of elections that they might want to use and
 13 they might have equally valid reasons for
 14 wanting to use them. It's kind of a subjective
 15 idea.
 16 What you're really looking for is
 17 something that will come up with the kind of
 18 result, again, that you came to the conclusion
 19 on on 43 which is a 50/50 result.
 20 The reason you use more than one
 21 election is because you don't want to pick up
 22 the characteristics of that election as it may
 23 pertain to one part of the state or the other
 24 part of the state because of the candidates or
 25 whatever was happening.

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1 And you don't want to get too many
 2 elections because, I guess as I said before, if
 3 you look at that formula, Exhibit 42, it's hard
 4 enough to get that into the computer without
 5 having the computer reject it because it doesn't
 6 have a parentheses or something or a plus sign
 7 where it should be.
 8 MR. SPEAS: Thank you, Dr. Hofeller.
 9 THE WITNESS: You're welcome.
 10 MR. SPEAS: Ms. Earls.
 11 FURTHER EXAMINATION
 12 BY MS. EARLS:
 13 Q. You just testified that these seven elections
 14 did not -- was not the best set of elections
 15 that you could have used. Why is that?
 16 A. Well, normally when I'm drawing districts in a
 17 state, I'll use presidential elections, but as I
 18 said before, the plaintiffs in the Harris
 19 case -- I believe you were in that case -- seem
 20 to raise an objection to using the presidential
 21 election because Obama was in it.
 22 Q. Actually, I wasn't in the Harris case, but --
 23 MR. FARR: We missed you.
 24 THE WITNESS: I'm sorry.
 25 MS. EARLS: That's quite all right. I

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1 didn't want to claim something that I --
 2 MR. FARR: We'll stipulate that Anita
 3 was not in the Harris case.
 4 MS. EARLS: I didn't want to claim
 5 credit for something I did not deserve.
 6 THE WITNESS: Have I got my cases
 7 right.
 8 MR. FARR: Harris is right.
 9 THE WITNESS: I'm sorry. I apologize.
 10 MS. EARLS: No worries.
 11 Can I mark this as Plaintiffs'
 12 Exhibit 44.
 13 (WHEREUPON, Plaintiffs' Exhibit 44 was
 14 marked for identification.)
 15 BY MS. EARLS:
 16 Q. So I've handed you what's been marked as
 17 Plaintiffs' Exhibit 44, and it's a three-page
 18 exhibit.
 19 The second page is the key. We
 20 couldn't print it out so that it came out with
 21 the map, but that's the -- shows you the
 22 intervals for the colors on the thematic.
 23 The third page shows you the elections
 24 that were used in the formula.
 25 I believe I misspoke earlier. We

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1 actually did ultimately have the seven elections
 2 that we could put into the formula. And I
 3 realize that your testimony was that you used
 4 different intervals at different times, but --
 5 but this is one that you might have used.
 6 And so looking at this first page of
 7 Exhibit 44, is this roughly what the screen
 8 would have looked like if you were looking at
 9 the entire state using the formula that is in
 10 Exhibit 42?
 11 A. Of course, without being able to verify it all,
 12 if this came out right -- I would never testify
 13 to the coloring on any map that I couldn't
 14 verify myself independently. I'd be remiss as
 15 an expert if I didn't do that.
 16 It's the type of map -- it's the type
 17 of map, if you shaded the precincts according to
 18 the way you did, that you might -- might see.
 19 Q. So I understand that you're not testifying here
 20 as an expert but actually testifying as a fact
 21 witness to what you actually did as you were
 22 drawing the maps, and I'm wondering, then, if
 23 you could produce for us a screen shot that
 24 would show what you were looking at when you
 25 were using this formula.

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1 MR. FARR: No. That's a question for
 2 me to answer, not for Dr. Hofeller.
 3 MS. EARLS: Well, I can ask him if he
 4 can -- if he's capable of doing that.
 5 THE WITNESS: Well, first of all, when
 6 I'm drawing, I wouldn't have the whole state up
 7 because, as I said before, I didn't use this
 8 when I was putting in counties. And of course,
 9 just because when you're seeking only to split a
 10 small number of counties, there's just so many
 11 ways you can combine these counties to make them
 12 not work at all.
 13 So when I was placing the counties
 14 among the districts, I wouldn't have this map up
 15 at all. Too much information.
 16 BY MS. EARLS:
 17 Q. Right. So we did request -- just for the
 18 record, we did request that you come with your
 19 computer so that we could see how this formula
 20 translates into what you were looking at when
 21 you were drawing the districts, and that was
 22 objected to and you have not done that.
 23 So my question is whether -- all we're
 24 trying to get is a visual of what you were
 25 looking at when you used this formula as you

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1 were drawing the districts. And my question
 2 right now is just is it possible, not will you
 3 because that's an answer -- a question that your
 4 counsel will answer, but is it possible for you
 5 to produce a screen shot of what you were
 6 looking at when you used this formula.
 7 A. Yes, of course.
 8 MR. FARR: And I would just state,
 9 then, objection, which is already clear from the
 10 record that he's testified several times he
 11 didn't use this formula to create a map that
 12 shaded the entire state.
 13 MS. EARLS: I understand. Well, I just
 14 actually want to see what the screen actually
 15 looked like, so whether it's a single VTD or a
 16 piece of a county, just an example of what it
 17 looked like.
 18 MR. FARR: Okay.
 19 MS. EARLS: That's all I have.
 20 MR. SPEAS: Thank you.
 21 MR. FARR: We have no questions.
 22 THE VIDEOGRAPHER: This concludes the
 23 deposition. The time is 3:29 p.m.
 24 [SIGNATURE RESERVED]
 25 [DEPOSITION CONCLUDED AT 3:29 P.M.]

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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 therein
 7 recorded, with the exception(s) and/or addition(s) reflected
 8 on the correction sheet attached hereto, if any.
 9 Signed this the _____ day of _____, 2017.
 10
 11
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 15
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 20
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 24
 25

THOMAS B. HOFELLER, Ph.D.

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1 ERRATA SHEET
 2 Case Name: Common Cause v Rucho / LWV NC v Rucho
 3 Witness Name: THOMAS B. HOFELLER, Ph.D. - VOL II
 4 Deposition Date: Friday, February 10, 2017
 5
 6 Page/Line Reads Should Read
 7 _____
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 9 _____
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 22 _____
 23
 24
 25 Signature Date

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<p>1 STATE OF NORTH CAROLINA)) CERTIFICATE 2 COUNTY OF WAKE) 3 4 5 I, DENISE MYERS BYRD, Court Reporter and Notary 6 Public, the officer before whom the foregoing proceeding was 7 conducted, do hereby certify that the witness(es) whose 8 testimony appears in the foregoing proceeding were duly 9 sworn by me; that the testimony of said witness(es) were 10 taken by me to the best of my ability and thereafter 11 transcribed under my supervision; and that the foregoing 12 pages, inclusive, constitute a true and accurate 13 transcription of the testimony of the witness(es). 14 I do further certify that I am neither counsel for, 15 related to, nor employed by any of the parties to this 16 action, and further, that I am not a relative or employee of 17 any attorney or counsel employed by the parties thereof, nor 18 financially or otherwise interested in the outcome of said 19 action. 20 This the 17th day of February 2017. 21 22 23 24 Denise Myers Byrd 25 CSR 8340, RPR, CLR 102409-02</p> <p style="text-align: right;">307</p>	

Exhibit I

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

COMMON CAUSE, et al.,)
)
Plaintiffs,)
)
v.)
)
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.)
_____)

CIVIL ACTION
No. 1:16-CV-1026-WO-JEP

THREE JUDGE PANEL

League of Women Voters of North)
Carolina, et al.)
)
Plaintiffs)
)
v.)
)
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.)
_____)

CIVIL ACTION
No. 1:16-CV-1164-WO-JEP

THREE JUDGE COURT

SECOND DECLARATION OF THOMAS B. HOFELLER, PH.D.

DEFENDANT'S EXHIBIT
Case No. 16cv1026
16cv1164
Exhibit No. 5116

I, Thomas Brooks Hofeller, under penalty of perjury, declare the following:

1. The source data for the figures, maps, and tables contained in this declaration is information received from the staff of the North Carolina General Assembly and the 2010 Decennial Census Redistricting Data File and the 2010 TIGER File received from the United States Bureau of the Census. The maps referenced were created using a GIS software package called Maptitude for Redistricting developed by Caliper Corporation located in Newton, Massachusetts.

Response to the 2016 Plan Screenshots Referenced in the Declaration of Timothy Stallmann (Exhibits 4007 – 4015)

2. The exhibits referenced in the Declaration of Timothy Stallmann (“Stallmann Declaration”) are screenshots from the Maptitude software he used to display both a statewide map (Plaintiffs’ Exhibit 4007) and eight detailed maps (Plaintiffs’ Exhibits 4008 through 4015) focusing in on some of the individual counties divided in North Carolina’s 2016 Contingent Congressional Plan (the “2016 Plan”).

3. Mr. Stallmann’s screenshots are not an accurate reflection of the screens I used in the mapdrawing process for the 2016 Plan for several reasons. First, Mr. Stallmann’s screenshot maps do not have a total population label inside each census voting tabulation district (“VTD”). It would also be impossible to draft plans without this information on the map.

4. Second, the screenshots Mr. Stallmann has presented could not have been used in the actual line-drawing process because he does not have a “pending changes” panel. The “pending changes” panel summarizes the characteristics of the geographic

units which have been selected by the mapdrawer as well as the revised characteristics of the source district and the target district with the changes incorporated. If the plan drafter then wants to accept the change, the drafter must return to the toolbox to “approve” the change.

5. Third, I did not display the VTDs when working with whole counties in the initial development of the 2016 Plan. The initial county configuration of the 2016 Plan was developed without any political data displayed on the screen. This is too much data for this part of the line-drawing process

6. Fourth, I did not display the legend panel as I would also have known the thematic color if I were displaying VTDs and it would have interfered with a full display of the map. I did, however, display it on my demonstrative screenshots referenced below for the convenience of the Court.

7. Fifth, I did not use Mr. Stallmann’s thematic colors to display election data at the VTD level when splitting counties. Plaintiffs are well aware that the thematic color display I used contained a rainbow spectrum as we discussed that fact in my deposition. The demonstrative maps I provided, which are labeled as Exhibits 5104 through 5115, show these thematic display colors. I color my maps using the rainbow spectrum which is a continuum. In contrast, Mr. Stallmann presents his data in a bi-chromatic scale, using varying tones on red and blue, which is not my practice. Mr. Stallmann’s presentation is a more polarized display method, with every VTD being either Republican (shades of red) or Democratic (shades of blue). Similarly, Plaintiffs’ Exhibits 4066-4077 which are described as the “Hofeller . . . Maptitude Screenshots” with “Red

and Blue Shading” are not accurate because I never viewed any maps on my screen using red and blue thematic shading while working on the 2016 Plan. Presumably, these screenshots were also created by Mr. Stallman for Plaintiffs as I did not create them.

8. To illustrate my testimony above, I have included a screenshot such as the one I would have used for splitting counties as a demonstrative. (See attached Figure 1). For this demonstrative, I did not use a county that was actually split in the 2016 Plan. For the counties that were split in the 2016 Plan, I created Exhibits 5104 through 5115 showing only the map portion of the screen. This allows the map to be large enough to read and is about the same size as the maps were on my monitor.

9. Finally, I note that Mr. Stallmann has produced spilt-counties maps for only 8 of the 13 split counties (Buncombe, Cumberland, Guilford, Johnston, Mecklenburg, Pitt, Wake and Wilson). He did not produce maps for Bladen, Catawba, Durham, Iredell and Rowan Counties, which were also split. The split-county exhibits I created, Exhibits 5104 through 5115, show all 13 split counties.

Response to Discussion of Exhibit 4023 (Map 17A) and Exhibit 4024 (Map ST-B) in Stallman Declaration

10. Mr. Stallmann also discusses Exhibit 4023 (Map 17A) and Exhibit 4024 (Map ST-B) introduced by Plaintiffs as trial exhibits. These are discarded maps I made that were never shown to the Chairmen of the Redistricting Committees responsible for adopting the 2016 Plan. Instead, these were my trial maps for examining possible configurations which might have been included in the 2016 Plan.

11. Exhibit 4024, identified as Map ST-B, utilizes a version of a district that runs across the southern border of the state stretching from Mecklenburg County to Cumberland County. The same potential district configuration was considered but discarded in the drafting of the 2011 Plan. Map ST-B divides Buncombe, Catawba, Durham, Forsyth, Granville, Guilford, Iredell, Jones, Mecklenburg, Nash, Orange, Rowan, Union, and Wake between two districts. It divides Cumberland County between three districts. While only dividing Mecklenburg County between two districts, District 8 is not contiguous within that county because it contains a double traversal which crosses from Cabarrus County to Mecklenburg County in two separate places.

12. Exhibit 4023, identified as Map 17A, is also a map I prepared but discarded. It has 14 county fractures. Alexander, Burke, Durham, Guilford, Jones, Nash, and Orange Counties are each split between two districts. It fractures Wake and Cumberland County between three districts and Mecklenburg County between 4 districts. In the 2016 Plan, no county is divided between more than two districts.

13. Since the Redistricting Committee Chairmen also expressed a preference against unnecessarily division of counties with small populations (under 100,000), the division of Jones County between Districts 2 and 3 in both Plans 17A and ST-B should have been moved to Pitt County.

14. Both Maps 17A and ST-B have excessive district population deviations. Map ST-B has a top-to-bottom range deviation of 5,685 persons and Map 17A's top-to-bottom range deviation is 3,533 persons. The top-to-bottom range is the difference between the highest-populated district and the lowest-populated district. In congressional

maps, that figure should be no more than one. These plans were not “zeroed out” which is further indication that they would not have been presented as viable maps to the Redistricting Committee Chairmen. A table comparing the population deviations for these plans with the population deviation of the 2011 and 2016 plans follows:

District Population Deviations From Ideal District Population

2016 Plan		2011 Enacted Plan		2016 Plan 17A		2016 Plan STB	
Dist.	Dev.	Dist.	Dev.	Dist.	Dev.	Dist.	Dev.
01	0	01	0	01	6	01	-260
02	0	02	0	02	1516	02	1477
03	-1	03	-1	03	-958	03	1023
04	0	04	0	04	-2	04	-1861
05	0	05	0	05	464	05	550
06	-1	06	-1	06	-525	06	224
07	0	07	-1	07	-2017	07	-2017
08	0	08	0	08	1001	08	-905
09	-1	09	0	09	-311	09	4208
10	0	10	-1	10	438	10	621
11	0	11	0	11	-558	11	-1699
12	-1	12	0	12	-291	12	-1285
13	0	13	0	13	1233	13	-80

Source: 2010 Decennial Census Redistricting Data File (U. S. Census Bureau).

15. Copies of these maps which more clearly show the boundaries of the districts in relation to county lines are contained in Exhibits 2004-17 and 2004-18. Mr. Stallmann’s maps of these two plans do not clearly allow an examination of the district borders in relation to the county boundaries.

Incumbent Placement in the 17A and ST-B Maps

16. Map 17A would have triple-bunked Congressmen Butterfield, Jones, and Rouser in District 2. It would have double-bunked Congresswoman Foxx and Congressman Walker in District 5. This would have left Districts 3, 7, and 9 vacant.

17. Map ST-B would have triple-bunked Congressmen Butterfield, Jones, and Rouser in District 2. It would have double-bunked Congressmen Hudson and Pittenger in District 9. It would have left Districts 3, 7, and 12 vacant.

Response to 20-election contest set used by Mr. Stallmann to Analyze 17A and ST-B Maps

18. Mr. Stallmann's analyses of the 17A and ST-B Maps uses 20 past statewide election contests to compute the political characteristics while I used only seven statewide contests. Only this seven statewide contest analysis was used to analyze the 2016 Plan. While the development of the 2016 Plan was underway, the North Carolina General Assembly's Information Service staff prepared a statistical package (called a "stat-pack") which would be used to present the information on the 2016 Plan to the redistricting committees and the full membership of both chambers of the General Assembly. I worked with the legislative staff and the Redistricting Chairmen to determine what political election statistics would be presented.

19. Both the 20-election and seven-election analyses used an extremely simple algebraic formula to develop a single percentage which show the political characteristics of individual VTDs or whole plans. Formulae such as these have been used in

redistricting since the 1970s and do not require a large portion of the resources of today's high-powered computers to generate.

20. The 20-contest formula explained in Mr. Stallmann's declaration is, in reality, quite simple. The votes for the Republicans running in the 20 statewide contests are summed. This is the Aggregate Republican vote. Then, the votes for both the Republicans and Democrats running for in the 20 statewide contests are summed and averaged. This is the Aggregate Two-Party Vote. Then, the Aggregate Republican Vote is divided by the Aggregate Two-Party Vote yielding a decimal value, which is multiplied by 100 to convert it into a percentage called the Average Aggregate Republican Vote. I used the same process using only the seven election contests I selected to construct and analyze the 2016 Plan.

21. I compared the aggregate statewide average vote for the 20 election contests used by Mr. Stallmann with the aggregate statewide average for the seven election contest that I used. The average aggregate statewide vote for the 20 election contests used by Mr. Stallmann is 51.42% for the Democrats and 48.58% Republicans. The average aggregate statewide vote for the seven election contests I used is 49.28% for the Democrats and 50.72% Republicans. This means that, on a statewide basis, the 20-contest index used by Mr. Stallmann is 2.14% more favorable for the Democrats. The seven-contest statewide average I used is closer to a 50-50 split for the two parties.

22. Each district in the maps in Exhibit 4023 (Map 17A) and Exhibit 4024 (Map ST-B) is labeled with a district number and the corresponding 20-contest score. Using the more balanced seven-contest analysis I used, I prepared the table below which

contains the Republican percentages for 2011 and 2016 Plans along with the Republican percentages for Maps 17A and ST-B:

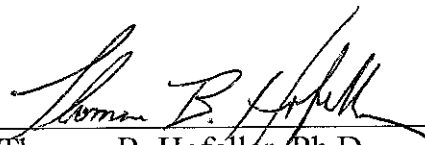
**2011 and 2016 Congressional Plans Compared to 17A and ST-B Maps
Using Seven Statewide Election Contests (Hofeller)**

Contingent Plan		2011 Enacted Plan		2016 Plan 17A		2016 Plan STB	
Dist.	% Rep.	Dist.	% Rep.	Dist.	% Rep.	Dist.	% Rep.
01	31.20%	1	27.59%	01	27.90%	01	28.00%
02	55.63%	13	55.74%	02	49.50%	02	49.50%
03	55.04%	3	54.91%	03	50.50%	03	50.40%
04	37.02%	4	29.59%	04	51.90%	04	54.30%
05	55.71%	5	58.58%	05	54.50%	05	55.60%
06	54.41%	6	56.76%	06	51.60%	06	55.70%
07	53.68%	7	56.14%	07	50.50%	07	50.50%
08	54.94%	8	56.93%	08	53.90%	08	56.70%
09	55.72%	9	60.53%	09	57.20%	09	57.40%
10	57.95%	10	57.50%	10	54.10%	10	56.80%
11	57.08%	11	58.23%	11	52.60%	11	58.30%
12	36.18%	12	23.62%	12	53.90%	12	30.30%
13	53.51%	2	56.50%	13	50.50%	13	50.70%

DECLARATION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

This 26th day of October, 2017.



 Thomas B. Hofeller, Ph.D.

31754670.1

FIGURE 1

TYPICAL MAPTITUDE SCREEN (HOFELLER)

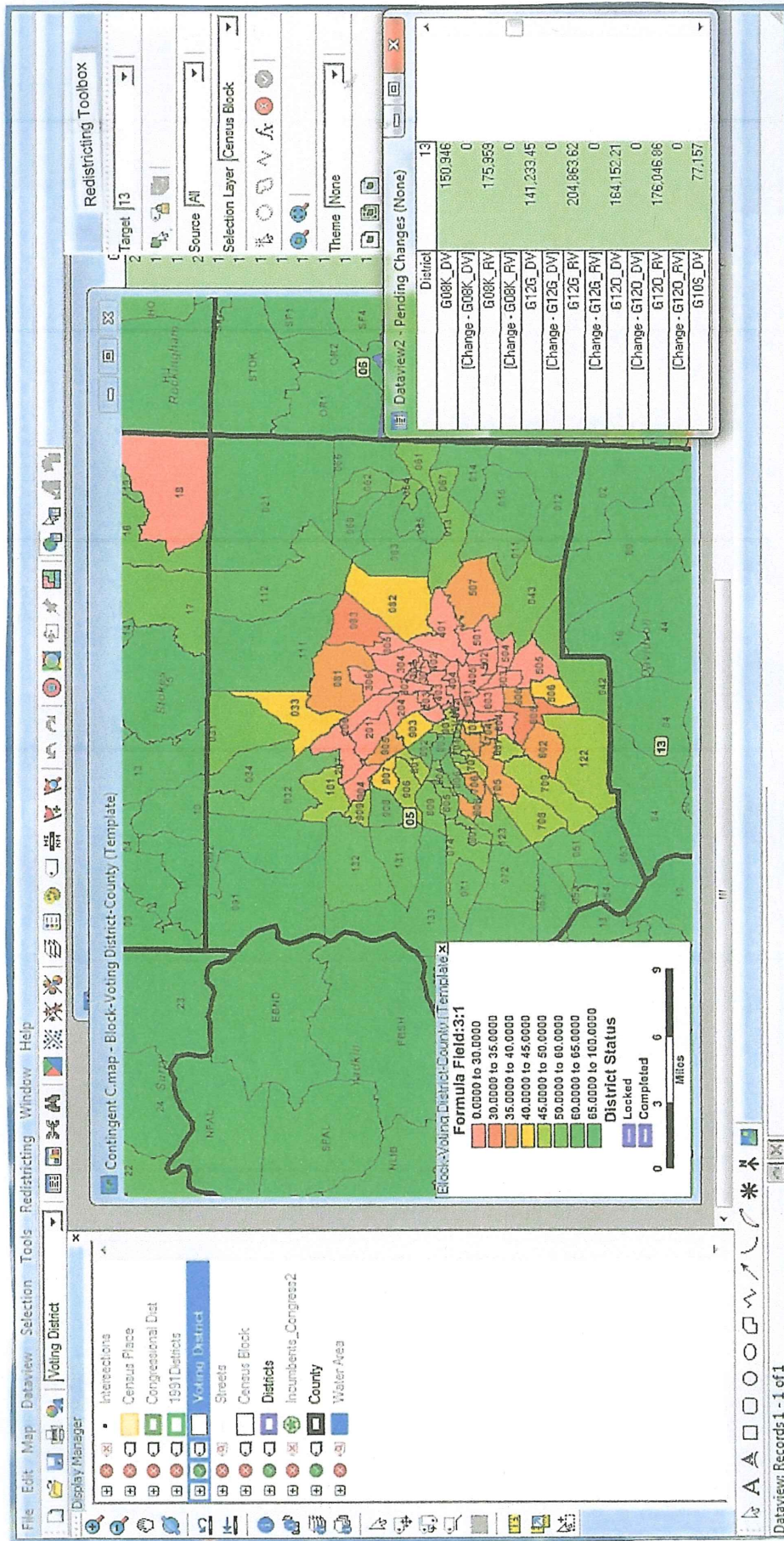


Exhibit J

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
SENATOR ROBERT A. RUCHO

9:40 A.M.
WEDNESDAY, JANUARY 25, 2017

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

1
2 NC DEPARTMENT OF JUSTICE
3 BY: ALEC PETERS, ESQ.
4 JAMES BERNIER, JR., ESQ.
5 PO Box 629
6 Raleigh, NC 27602
7 (919) 716-6400
8 APeters@ncdoj.gov
9 JBernier@ncdog.gov

10 Also Present: Representative David Lewis
11 Alesha Brown, SCSJ

12 The Reporter: Discovery Court Reporters
13 and Legal Videographers, LLC
14 BY: DENISE MYERS BYRD, CSR 8340
15 BRENT TROUBLEFIELD,
16 VIDEOGRAPHER
17 4208 Six Forks Road, Suite 1000
18 Raleigh, NC 27609
19 (919) 424-8242
20 (919) 649-9998 Direct
21 Denise@DiscoveryDepo.com

22 --o0o--

23 INDEX OF EXAMINATION
24 Page
25 By Ms. Mackie..... 6
By Ms. Riggs..... 156

26 --o0o--

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3 For the Plaintiffs: Common Cause, et al.
4
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23
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1 THE VIDEOGRAPHER: On record at
 2 9:40 a.m. Today's date is January 25, 2017.
 3 This is the videotaped deposition of
 4 Robert Rucho taken in the matter of Common
 5 Cause, et al., plaintiffs, versus Robert A.
 6 Rucho, et al., defendants, in the United States
 7 District Court for the Middle District of
 8 North Carolina, Civil Action 116-cv-1026-WOJ-EP.
 9 Also in the matter of League of Women
 10 Voters of North Carolina, et al., plaintiffs,
 11 versus Robert A. Rucho, et al., defendants, in
 12 the United States District Court for the Middle
 13 District of North Carolina, Civil Action
 14 116-CV-1164.
 15 Would counsel please now introduce
 16 themselves.
 17 MS. MACKIE: Caroline Mackie on behalf
 18 of Common Cause.
 19 MS. RIGGS: Allison Riggs from the
 20 Southern Coalition for Social Justice on behalf
 21 of the League of Women Voters, plaintiffs.
 22 MR. BONDURANT: Mr. Bondurant. I
 23 represent Common Cause and the Common Cause
 24 plaintiffs.
 25 MR. THORPE: Ben Thorpe representing

5

1 Q. How are you employed?
 2 A. Presently retired.
 3 Q. Congratulations. When did your term as senator
 4 end?
 5 A. The 31st of December '16.
 6 Q. And you are not engaged in any other employment
 7 right now?
 8 A. You mean presently?
 9 Q. Right.
 10 A. Just retired.
 11 Q. No longer practicing orthodontics?
 12 A. No. Dentistry. No.
 13 Q. Dentistry. I'm sorry.
 14 Senator, are you waiving your
 15 legislative privilege today for the matters
 16 we're going to discuss?
 17 MR. FARR: He's waiving his legislative
 18 privilege for matters related to the 2016
 19 Congressional Plan or the 2011 Congressional
 20 Plan.
 21 MS. MACKIE: Thank you.
 22 THE WITNESS: That's what I'm doing.
 23 BY MS. MACKIE:
 24 Q. Thank you.
 25 I'm going to hand you a document which

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1 Common Cause plaintiffs.
 2 MR. PETERS: Alec Peters with the
 3 Attorney General's Office on behalf of the
 4 defendants.
 5 MR. BERNIER: Assistant Attorney
 6 General James Bernier, Jr., on behalf of the
 7 defendants.
 8 MR. OLDHAM: Dalton Oldham on behalf of
 9 the General Assembly.
 10 MR. STRACH: Phil Strach with Ogletree
 11 Deakins on behalf of the defendants.
 12 MR. FARR: Tom Farr with the Raleigh
 13 office of Ogletree Deakins, and I'm here on
 14 behalf of the defendants and Senator Rucho.
 15 ROBERT A. RUCHO,
 16 having been first duly sworn or affirmed by the
 17 Certified Shorthand Reporter and Notary Public
 18 to tell the truth, the whole truth and nothing
 19 but the truth, testified as follows:
 20 EXAMINATION
 21 BY MS. MACKIE:
 22 Q. Good morning, Senator. Can you state your name
 23 and address for the record.
 24 A. Robert Anthony Rucho, 305 Trafalger Place in
 25 Matthews, North Carolina.

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1 we will mark as Exhibit 32.
 2 (WHEREUPON, Plaintiffs' Exhibit 32 was
 3 marked for identification.)
 4 BY MS. MACKIE:
 5 Q. Have you seen this document before?
 6 A. I can't recall it. In speaking with our
 7 attorneys, I knew that I was to attend this
 8 deposition, but I don't remember receiving this
 9 specifically.
 10 Q. Okay. If you will turn to the second to last
 11 page, the top says Exhibit A. Have you seen
 12 this part of the document before?
 13 A. I don't recall that.
 14 Q. Okay. And if you will turn to the last page
 15 under that heading that says "List of Documents
 16 and Things to be Produced."
 17 And same question: Have you seen that
 18 list before?
 19 A. Again, I don't recall.
 20 Q. Did anyone tell you that you should produce
 21 documents for today's deposition?
 22 A. I believe that Andrew Tripp, who is the attorney
 23 for Senator Berger, responded through my staff
 24 for this, any request that was there.
 25 Q. When do you -- when did he do that?

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1 A. When -- I assume when it all came about. That's
 2 my recollection. I could be in error, but
 3 that's all I recall.
 4 Q. I'm sorry. Do you know if he re-sent it to you?
 5 A. I do not.
 6 Q. Do you know --
 7 A. It would have been -- if they were looking for
 8 e-mails or calendar, it would have probably gone
 9 to my legislative assistant who would have tried
 10 to identify it if it was at all possible.
 11 Q. And who is your legislative assistant?
 12 A. Let me try to remember now. They left me a few
 13 months ago. Oh, gracious. I'm not sure I
 14 recall directly, but I can get that for you if
 15 you give me a chance to remember.
 16 Q. Is it male or female?
 17 A. Male.
 18 Q. And is he still employed by the General
 19 Assembly?
 20 A. Yes.
 21 MR. FARR: Caroline, can I clarify
 22 something?
 23 MS. MACKIE: Sure.
 24 MR. FARR: There was a search conducted
 25 for Items 1 and 2, and any versions of the

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1 congressional plan would have been produced by
 2 Dr. Hofeller.
 3 And the search was unable to uncover
 4 any calendars for Senator Rucho showing when he
 5 met with the people listed in Item Number 2.
 6 MS. MACKIE: Okay.
 7 BY MS. MACKIE:
 8 Q. Senator, let me point you to Number 1 on that
 9 list. Are you aware of any congressional plans
 10 that were drawn on the legislative computer?
 11 A. The one that I'm aware of was submitted by
 12 Dr. Hofeller at the request of Representative
 13 Lewis and myself in time for us to bring it
 14 before the General Assembly for passage and then
 15 be able to send the enacted or the passed plan
 16 on to the Court as requested or required.
 17 Q. So you are not aware of versions of the
 18 congressional plan in 2016 that were drawn on a
 19 legislative computer? Am I understanding --
 20 A. Just the ones that would have been done by
 21 Dr. Hofeller.
 22 Q. So only on his computer?
 23 A. Well, he might have made some changes on the
 24 state employee -- the state computer after the
 25 time he submitted the plan as it was being

10

1 adjusted. I know that we made some minor
 2 changes because of address changes and things of
 3 that sort, but the things that he did, he have
 4 worked on the state computer at that time, I'm
 5 sure.
 6 Q. Okay. How do you keep a calendar?
 7 A. At that time it would have been on my iPhone.
 8 It would have been on the computer in my
 9 legislative office at that time, but I was just
 10 trying to -- if I could get it lined up, I would
 11 try to be at the right place when I was supposed
 12 to be.
 13 Q. And when you say "that time," do mean
 14 February 25, 2016, through January 10, 2017?
 15 A. When I was a senator, yes, ma'am.
 16 Q. Okay. Was your iPhone a personal iPhone or was
 17 it a legislative --
 18 A. My personal.
 19 Q. Do you still have that phone?
 20 A. I do.
 21 Q. Okay. And what about after your term ended as a
 22 senator?
 23 A. I would work -- I'd be doing my own scheduling
 24 so it would be on my iPhone.
 25 Q. Okay. So if we would need you to search your

11

1 calendar for any meetings that satisfy this
 2 request, you could do that?
 3 MR. FARR: And it has been done.
 4 THE WITNESS: We would have looked at
 5 it, yes, ma'am, and --
 6 BY MS. MACKIE:
 7 Q. Did you personally search your iPhone calendar?
 8 A. Looking back, the -- and I don't know very much
 9 about iPhones, nor do I know much about
 10 computers, unfortunately, but after a period of
 11 time it just erases off the -- off the iPhone,
 12 you know, going back six, eight months, I think,
 13 at least that's what it appears because I can't
 14 find anything on there.
 15 Q. So you did search --
 16 A. Yes.
 17 Q. -- for meetings with Phil Berger, Tim Moore or
 18 any member of the Ogletree law firm on your
 19 calendar?
 20 A. Yes.
 21 Q. Did anybody assist you with that search?
 22 A. Again, it would have been handled -- and I think
 23 I'm correct that Andrew Tripp would have
 24 assisted us with this, trying to make sure that
 25 we complied with your request.

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1 Q. So did you turn over your cell phone to Andrew
 2 Tripp?
 3 A. No. It would have been my job to do that.
 4 Q. So did you personally search?
 5 A. I did look through it, yes, ma'am, to try to
 6 identify if there were meetings that were
 7 described for, let's say, Senator Berger or, who
 8 else, Tim Moore and Ogletree Deakins.
 9 Q. And is it your testimony that nobody assisted
 10 you on that search of your iPhone calendar?
 11 A. On my iPhone, it would have been just me.
 12 Q. Senator, what did you do to prepare for your
 13 deposition today?
 14 A. I read back on a number of -- let's say the 2011
 15 redistricting map for the Congressional
 16 districts, read -- I just basically tried to
 17 refresh as much as I could.
 18 It's -- going back to 2011, it's kind
 19 of hard to remember all the things that went on
 20 at that time, especially congressional,
 21 legislative and all of the things in addition to
 22 doing legislative work, but just tried to get
 23 briefed up as to the, let's say, senate --
 24 joint -- joint House and Senate Committee
 25 meeting, read the minutes of it, of course, the

13

1 floor debate in the senate, the Redistricting
 2 Committee meeting, trying to refresh my memory
 3 where I could.
 4 Q. Did you review the 2016 map?
 5 A. I did look back at it to try to identify it, and
 6 I did look at the material that we distributed
 7 to the committee members dealing with the
 8 criteria that was established.
 9 And what our goal was is to, in a very
 10 short period of time, comply with the court
 11 order on redrawing the congressional maps even
 12 though we believed, and I believe today, that
 13 the original 2011 enacted maps were
 14 constitutional, and I anticipate the courts
 15 responding to that appropriately, but just
 16 refreshing my memory on the '16 events.
 17 Q. Did you review documents that stated your
 18 criteria as you just described it, that your
 19 goal was to comply with the court order in a
 20 short period of time?
 21 A. Yes ma'am. I went ahead and went through the
 22 criteria. I'm not going to sit and try to
 23 repeat it to you. If you want me to, just give
 24 me one of those --
 25 Q. We'll get there.

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1 A. -- and describe it.
 2 But, yes, we went there through
 3 there -- I went through there trying to
 4 remember -- along with the minutes remember what
 5 and why we added all of those into place and
 6 just refresh my memory as to how I prepared at
 7 that time to enact or to pass the contingent
 8 map.
 9 Q. My question is: Did you review a document that
 10 says on its face that your goal was to comply
 11 with the court order?
 12 A. No. That was the goal. The criteria is what
 13 I -- is what I reviewed. The goal was always to
 14 comply with the order. We had no alternative
 15 there. So that was the goal, and the criteria
 16 was how we tried to achieve it.
 17 Q. Did you meet with Dr. Hofeller to prepare for
 18 your deposition?
 19 A. He was present when -- when I had a chance to go
 20 over these documents or talking about them, if I
 21 had any questions about it or the like.
 22 Q. And when was that meeting?
 23 A. I think -- I think it was last Wednesday.
 24 Q. Who else was present?
 25 A. The attorneys, Representative Lewis, again, the

15

1 other attorney would also be Brent Woodcox.
 2 Q. Who is Brent Woodcox?
 3 A. He is the legislative -- the legal counsel for
 4 the Redistricting Committee and also an attorney
 5 for the General Assembly.
 6 Q. Was he previously your attorney, or did he work
 7 in your office previously?
 8 A. Yes, ma'am. He helped us with the
 9 redistricting.
 10 Q. In 2011?
 11 A. '11 and '16.
 12 Q. And you were here all day yesterday for
 13 Dr. Hofeller's deposition?
 14 A. Yes, ma'am.
 15 Q. I think we'll be shorter today.
 16 A. Thank God.
 17 Q. Senator, when were you first elected to the
 18 legislature?
 19 A. I think it was in 1997.
 20 Q. Was that to the Senate?
 21 A. In the Senate, yes, ma'am. I was there from
 22 1997 until 2004, took a three-and-a-half to
 23 four-year sabbatical and then returned back in
 24 the Senate again.
 25 Q. So you returned in 20 -- elected --

16

1 A. I think it was June of '06 I took Senator
 2 Pittenger's unexpired term, and then when I was
 3 reelected in the primary, so and then I finished
 4 up, as I said to you, 2016 December 31st.
 5 Q. How many terms did you serve?
 6 A. I believe it's eight -- an eight and a plus.
 7 Q. And that 2006 year would be the plus?
 8 A. (Witness nodding head up and down.)
 9 Q. Yes?
 10 A. Yes, ma'am.
 11 Q. Thank you.
 12 In 2011 were you appointed chair of the
 13 Senate Redistricting Committee?
 14 A. Yes, ma'am.
 15 Q. Who appointed you?
 16 A. Senator Berger.
 17 Q. How many times were you reappointed as chair of
 18 that committee?
 19 A. Just the one time. We -- it was 2011, and I've
 20 been the chair of it ever since.
 21 Q. So it was continuous?
 22 A. No one else would take the job.
 23 Q. And Representative Lewis was appointed chair of
 24 the House Redistricting Committee at the same
 25 time?

17

1 A. Yes, ma'am.
 2 Q. And who appointed him?
 3 A. I believe Speaker Tillis at that time.
 4 Q. In 2011. Okay.
 5 I want to talk about the 2011
 6 Congressional Plan. Were you and Representative
 7 Lewis responsible for the enactment of that
 8 plan?
 9 MR. FARR: Objection to the form.
 10 THE WITNESS: Representative Lewis and
 11 I by being chairs of the committee were
 12 responsible to bring a plan before the General
 13 Assembly through the process -- the formal
 14 process of committees and debate and the like
 15 and then pass it with the principal goal of
 16 getting the 2011 plan pre-cleared by the Justice
 17 Department so that it can be ready for the next
 18 election, and I believe it was 2012.
 19 BY MS. MACKIE:
 20 Q. You were a defendant in two lawsuits over that
 21 plan, right?
 22 A. I may have lost count as to the number of
 23 lawsuits, but at least two.
 24 Q. Over the congressional plan, do you recall the
 25 Dixon case?

18

1 A. Yes, ma'am. The Dixon v Rucho and -- and then
 2 the --
 3 Q. Harris v McCrory.
 4 A. The Harris case.
 5 Q. And did you testify in both of those cases
 6 through affidavits and depositions?
 7 A. I did in the Dixon-Rucho case. I testified both
 8 in affidavit and also before Judge Ridgeway's
 9 three-judge panel. And also -- I think it was
 10 just an affidavit in the Harris case. I don't
 11 think I ever testified in court.
 12 Q. Did you have your deposition taken in the Harris
 13 case?
 14 A. All I can say is I believe that's accurate.
 15 Q. Okay. To the best of your recollection, was
 16 your testimony in both of those cases accurate?
 17 A. Yes.
 18 Q. And are you -- sitting here today, are you aware
 19 of any testimony that you gave in those cases
 20 that is not accurate?
 21 A. No.
 22 Q. You testified in those cases that Dr. Hofeller
 23 was the architect of the congressional plan?
 24 A. "The architect" has been misused, should I say.
 25 In reality -- and I tried to explain this I

19

1 think in another deposition, but clearly stating
 2 that my idea of an architect is someone -- if
 3 I'm building a house and I am hiring someone
 4 with knowledge in a certain area and I'm the
 5 owner, I'm going to tell them what they need to
 6 do and then they put it on paper to get it done.
 7 So the term "architect" clearly is
 8 someone that will assist us -- at this time
 9 Representative Lewis and myself -- in pretty
 10 much following our guidelines and what we told
 11 them to do and what we wanted, and that was the
 12 role of Dr. Hofeller in, quote, unquote, being
 13 "the architect."
 14 Q. Dr. Hofeller was hired by Ogletree Deakins for
 15 the 2011 plan; is that right?
 16 A. I believe you're right.
 17 Q. And he was not hired to work with the
 18 redistricting committee in 2011?
 19 A. I think he was hired to work with Representative
 20 Lewis and myself as far as putting together a
 21 plan that would be presented to the
 22 redistricting committee. I think I'm accurate
 23 in that statement.
 24 Q. Did he appear before the committee?
 25 A. No.

20

1 Q. Were you in attendance at the Harris trial in
 2 Greensboro in October of 2015?
 3 A. Yes, ma'am.
 4 Q. Were you there for the entire trial?
 5 A. Four days' worth.
 6 Q. Was Representative Lewis there?
 7 A. He was present at periods during that -- during
 8 the court hearing.
 9 Q. Was Dr. Hofeller there?
 10 A. Yes.
 11 Q. Was Mr. Oldham there?
 12 A. I believe he was.
 13 Q. At the end of that trial, did you form an
 14 opinion about what the court was likely to do?
 15 A. Can you explain what you mean by that. I'm not
 16 sure I understand the question.
 17 Did I form an opinion?
 18 Q. Yes. Did you have any suspicion or guess as to
 19 what the court might decide on Congressional
 20 Districts 1 and 12?
 21 A. Well, yes, I did, and I'll clarify why. I sat
 22 through that case and, of course, I was -- I sat
 23 through all of the Dixon versus Rucho in the
 24 state level court, and the evidence was clear
 25 that there was never a negative comment about

21

1 the fact that racially polarized voting existed
 2 in North Carolina. Both plaintiff and
 3 defendants had expert testimony. I remember
 4 during the public hearing the attorney for the
 5 NAACP said that, Ms. Earls said that as part of
 6 all the evidence and testimony that was set
 7 forth, and I was very surprised that the court
 8 ignored that.
 9 Actually, there was one other thing
 10 that kind of added to that, and actually
 11 Representative Butterfield, who was the
 12 congressman from the CD 1, actually testified
 13 that, you know, with his experience having been
 14 the congressman there that there is indeed
 15 racially polarized voting in CD 1, and to have
 16 the court totally ignore that and make a
 17 decision that contradicted the constitution,
 18 contradicted the legal precedent was a
 19 tremendous surprise to me. So I was extremely
 20 surprised at their decision to ignore the
 21 evidence as it was presented.
 22 Q. And you did not testify in that trial?
 23 A. No.
 24 Q. Did Representative Lewis testify?
 25 MR. FARR: Object to the form of the

22

1 question, but that's fine.
 2 THE WITNESS: I don't recall that. I
 3 don't recall whether he did. I don't think so,
 4 but --
 5 BY MS. MACKIE:
 6 Q. But at the end of the trial you felt the court
 7 would affirm the constitutionality of
 8 Congressional Districts 1 and 12?
 9 A. Yes, ma'am, because we followed the law.
 10 Q. Did you have any discussions with Senator Berger
 11 about the trial?
 12 A. As a committee chairman, I would report back to
 13 Senator Berger as to what was going on. And, of
 14 course, I would have explained to him what I
 15 experienced there as representing the General
 16 Assembly as chairman of the Senate Redistricting
 17 Committee, explaining to him what I thought
 18 occurred.
 19 Of course, I'm sure with the media
 20 coverage and the like Senator Berger was well
 21 aware of what transpired, but I did explain what
 22 I thought went on.
 23 Q. Did you have conversations with other
 24 legislators about the Harris trial?
 25 A. Only when people would have asked me, but

23

1 that's -- I can't remember specifics.
 2 Q. Following the trial, the end of the trial and
 3 the decision of the court in February of 2016,
 4 did you have any conversations with Senator
 5 Berger about redrawing the 2011 Congressional
 6 Plan?
 7 A. Okay. Say that one more time with your
 8 question.
 9 Q. Sure. Between the end of the Harris trial in
 10 October of 2015 and the date that the decision
 11 came out from the Harris court in February of
 12 2016, did you and senator Berger have
 13 conversations about redrawing the 2011
 14 Congressional Plan?
 15 MR. FARR: And I'm going to just
 16 instruct you on something, Senator Rucho, and
 17 this is based upon a position taken by the
 18 Attorney General in other cases that I've read.
 19 You've waived your legislative privilege so you
 20 can answer her question as to what you may have
 21 said, but Senator Berger and other legislators
 22 have not waived their legislative privilege.
 23 You have no right to waive their legislative
 24 privilege for them.
 25 Therefore, I instruct you not to answer

24

1 any questions about what Senator Berger or any
 2 other legislator said to you.
 3 BY MS. MACKIE:
 4 Q. To be clear, the question was just did you have
 5 conversations. So that was the first --
 6 A. Repeat that question one more time.
 7 MR. FARR: I heard it. I just wanted
 8 everyone to know where we were going with this.
 9 BY MS. MACKIE:
 10 Q. The question is: Did you and Senator Berger
 11 have any discussion between October of 2015 and
 12 February of 2016 about redrawing the 2011
 13 Congressional Plan?
 14 A. I don't recall having any discussions about
 15 redrawing it because I never anticipated losing
 16 and having the court consider the maps
 17 unconstitutional on CD 1 and CD 12.
 18 Q. So you did not plan to be redrawing the
 19 congressional plan?
 20 A. I followed the law and that is -- I saw no
 21 reason why that would ever be challenged by the
 22 court, especially after the fact that the
 23 Ridgeway court in the district court in
 24 North Carolina unanimously found them all to be
 25 constitutional. So I could never understand why

25

1 the federal court would have even had a question
 2 about it.
 3 Q. Let's talk about the day that the decision came
 4 out, February 5, 2016. Does that sound right?
 5 A. Late in the afternoon.
 6 Q. On a Friday afternoon?
 7 A. Yes, ma'am.
 8 Q. When did you find out about the opinion?
 9 A. I think I got a phone call or a reporter or
 10 somebody might have called me and said, "Well,
 11 what do you think about this," and I said at
 12 that point "I don't know yet because I
 13 haven't" -- this is the first I had heard of it,
 14 but I think that's probably when I might have
 15 got notified of it.
 16 Q. So you first learned about the decision from a
 17 reporter?
 18 A. Yes, ma'am.
 19 Q. Who was that reporter?
 20 A. They're very quick. Oh, I can't remember. They
 21 asked a question whenever, something like that,
 22 and they always call me because I'm the senate
 23 redistricting chair.
 24 Q. And you were a party to that decision or to that
 25 case, right?

26

1 A. Harris and McCrory, right?
 2 Q. Yes.
 3 A. Well, I had interest in it.
 4 Q. What did you do after you got that phone call?
 5 A. Probably tried to contact our counsel to try to
 6 get an understanding as to what indeed it meant
 7 and, more importantly, what would be required of
 8 us to comply with what they -- what the opinion
 9 said.
 10 Q. You said you probably called your counsel. Do
 11 you have recollection?
 12 A. As best I can recollect, because I would have
 13 needed to understand what the responsibilities
 14 would be for the redistricting effort to comply
 15 with the Harris court order.
 16 Q. Did you make that phone call that evening on
 17 Friday?
 18 A. As soon as I found out about the decision, so
 19 sometime during that evening. It was -- my
 20 recollection it was somewhere after 5:00 or 6:00
 21 on Friday.
 22 Q. What did you do after that, after you'd spoke
 23 with your counsel?
 24 A. I believe we tried to find a time to meet. Now,
 25 that would have been the 5th, 6th either by

27

1 meeting in person or phone. I couldn't remember
 2 exactly if I made the trip into Raleigh or I was
 3 on a phone call, but trying to understand what
 4 we needed to do to comply with the order.
 5 Q. When did you meet either by phone or by person?
 6 A. As best I can recollect, it might have been the
 7 Saturday following Friday, and I think I'm
 8 accurate in that.
 9 Q. Who was present?
 10 A. I believe I was on the phone call, so I can't
 11 remember exactly who might have been there other
 12 than the attorneys and potentially
 13 Representative Lewis. So I would have been
 14 there just listening, and that's the best I can
 15 remember on that because I don't remember coming
 16 to Raleigh on that Saturday.
 17 Q. Was Dr. Hofeller there?
 18 A. I don't remember that.
 19 Q. Were the others, as best you remember, together
 20 in person in Raleigh and you called in from
 21 Charlotte?
 22 A. It would have been from Matthews.
 23 Q. Matthews. I'm sorry?
 24 A. It's different than Charlotte. And I can't
 25 speak to that because there could have been some

28

1 other people on a phone call also.
 2 But it was put together since our time
 3 was already running from Friday because we had
 4 to get this completed by the 19th. There was a
 5 lot of work ahead of us to do so if we were
 6 going to comply with the order. And the first
 7 goal would have been to determine what needed to
 8 be done to comply with that order.
 9 Q. Who were the attorneys who were on that call?
 10 A. I know for sure Mr. Farr. I can't recollect who
 11 else might have been in the room at that time
 12 because I wasn't in there.
 13 Q. So that was -- as best you remember, that was on
 14 Saturday, the day after the decision came out;
 15 is that right?
 16 A. That is correct the best I can remember.
 17 Q. Did you come to Raleigh at some point?
 18 A. It probably was the first of the next week. We
 19 weren't in session at that time. So my best --
 20 either Monday or Tuesday of that week trying to
 21 get in and try to begin the process of redrawing
 22 a map that would have met the requirements and
 23 complied with the Harris order.
 24 And so best I can recollect, it was
 25 either Monday or Tuesday that I was in Raleigh

29

1 to be in the process and get ready to set up the
 2 public hearing on the 15th and get all the other
 3 parts of it in order.
 4 Q. Did you meet with Dr. Hofeller at some point
 5 that week of February 8th?
 6 A. Yes, ma'am. I believe it was either on -- could
 7 have been Monday or Tuesday or Wednesday of that
 8 week speaking with Dr. Hofeller.
 9 Q. So that was one of the first things that you did
 10 after you spoke with your counsel about the
 11 decision when it came out?
 12 A. Was to --
 13 Q. To meet with Dr. Hofeller.
 14 A. Well, once we were able to establish what was
 15 necessary to comply with the order, it was our
 16 responsibility, both Representative Lewis and
 17 myself, to let Dr. Hofeller know indeed what we
 18 needed to do to establish the criteria that
 19 we've already gotten.
 20 You know, we tried to establish
 21 criteria and have it implemented on the map so
 22 that -- to the best of our ability to comply
 23 with the court order.
 24 Q. When did you establish the criteria?
 25 A. It was on -- during the entire process trying to

30

1 use traditional redistricting criteria to abide
 2 by what the court asked us to do. Under the
 3 circumstances, it was clear to both
 4 Representative Lewis, myself and counsel that
 5 the court, despite mountains of evidence, found
 6 that there was no racially polarized voting in
 7 the State of North Carolina, and in that sense
 8 we were not able to use race in any manner.
 9 It was also clear from the order that
 10 the 12th district was not something that many
 11 people liked, even though it's something that we
 12 inherited, it had been litigated on many
 13 occasions, the Supreme Court validated it and we
 14 used it in our 2011 plan to get pre-clearance
 15 and follow the law as it was understood by us.
 16 Q. When you met with Dr. Hofeller on that Monday or
 17 Tuesday, did you discuss criteria at that
 18 meeting?
 19 A. Yes, ma'am, I think we were discussing that so
 20 that we would have the opportunity to clearly
 21 state to Dr. Hofeller what we felt was the key
 22 criteria in doing so.
 23 Again, you know better than I that
 24 equal population is one that is mandated and you
 25 know we could go through that whole list of

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1 contiguity, talking about the issue of changing
 2 the 12th and consolidating it, which I thought
 3 was a great idea, especially in lieu of the
 4 court's decision and all of the other criteria
 5 that were there.
 6 We had a chance to go through that, and
 7 then Dr. Hofeller would be trying to
 8 implement that on the map so we could get a map
 9 that would meet the requirements of the court
 10 and have no misunderstanding as to what we were
 11 trying to do. And it was clearly that we did
 12 not include race anywhere in the drawing of that
 13 map.
 14 Q. Did Dr. Hofeller provide input on the criteria?
 15 A. I can't believe -- think that -- you know, if he
 16 told us, input would be more like, well, this is
 17 what I would need to do in order to achieve what
 18 you want to achieve, just letting us -- you
 19 know, informing us what he would do.
 20 But he was the person with the
 21 knowledge, and we basically told him these are
 22 the things that we needed to achieve because
 23 this is what we believed was required of us to
 24 comply with the Harris decision.
 25 And in building the criteria, I think

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1 we had about eight points on there, recognizing
 2 that not one of those is a -- takes priority
 3 over any other and it was a harmonization of all
 4 of those criteria that allowed us to find a map
 5 that finally was approved by the court.
 6 Q. Did you tell Dr. Hofeller in that meeting on
 7 Monday or Tuesday that you wanted to give
 8 Republicans a 10-3 advantage in the new
 9 congressional plan?
 10 A. I believe that what we wanted to do in
 11 explaining the criteria that we wanted to --
 12 similarly do what was in the original enacted
 13 map that was a 10-3, we would like to see
 14 whether it was possible to achieve the same mix
 15 and -- and what that really means is to give
 16 Republicans an opportunity in competitive
 17 districts that would have been drawn by
 18 following and harmonizing all of the criteria
 19 necessary to achieve our goal of getting the
 20 Harris court satisfied with our map.
 21 Q. So did you tell Dr. Hofeller that day that --
 22 A. That was one of the list that we would have
 23 wanted him to include in his efforts.
 24 MR. FARR: Senator Rucho --
 25 THE WITNESS: Sir.

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1 MR. FARR: -- would you let Caroline
 2 finish her question so it's easier for the
 3 court reporter.
 4 THE WITNESS: That's fine.
 5 BY MS. MACKIE:
 6 Q. Thank you.
 7 Senator, you mentioned a list with
 8 about eight points. Is there a document that
 9 reflects the criteria that you discussed that
 10 day with Dr. Hofeller?
 11 A. The document was I think one of the -- one of
 12 the pieces of evidence that was submitted
 13 yesterday. I think it was number 28.
 14 Q. Let me hand you what was marked as Exhibit 24.
 15 A. 24. Okay. Sorry.
 16 Q. Is that the document that you discussed with
 17 Dr. Hofeller?
 18 A. That reflects the criteria that was established
 19 to have us achieve our goal of getting the map
 20 drawn that would have been acceptable to the
 21 Harris court.
 22 Q. I'm sorry, I may not have understood your
 23 answer. I may not have phrased my question
 24 correctly.
 25 Did you have this document in front of

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1 you when you met with Dr. Hofeller on
 2 February 8th or 9th?
 3 A. Not this document. It would have been putting
 4 together what would have been traditional
 5 redistricting criteria which, again, equal
 6 population, contiguity, the political data,
 7 partisan advantage.
 8 Of course, the 12th district was
 9 something that the court had requested or
 10 suggested that would be remedied. Of course
 11 compactness and how we felt it was to be
 12 achieved by having all counties and, of course,
 13 a traditional redistricting criteria including
 14 incumbency when possible. This explains what we
 15 explained to him.
 16 Q. Did you look at a document with criteria on it
 17 when you met with Dr. Hofeller?
 18 A. Not that I recollect.
 19 Q. So there was no one document with the criteria
 20 that you discussed?
 21 A. Not at the time we discussed with Dr. Hofeller.
 22 Q. When was Exhibit 24 created, first created?
 23 A. Goodness gracious. It was sometime during that
 24 week prior to submitting the plans because
 25 Dr. Hofeller needed to have some -- the criteria

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1 so that he could produce a map that complied
 2 with those in a harmonized fashion. I don't
 3 remember exactly the date.
 4 Q. Do you know who drafted Exhibit 24?
 5 A. Not specifically. I don't know the individual.
 6 I don't remember who it was.
 7 Q. Did you have a part in drafting Exhibit 24?
 8 A. My part of it would have been at the time we sat
 9 down and talked with Dr. Hofeller, as we told
 10 him the areas that we felt were important, I
 11 would have just put my opinion in as to when and
 12 how they would work and what they were trying to
 13 do, asking questions, making sure that
 14 everything was as best we could make it.
 15 Q. Did you take any notes at that meeting?
 16 A. No, ma'am.
 17 Q. And who was present when you met on Monday or
 18 Tuesday?
 19 A. I remember it was Dr. Hofeller, myself,
 20 Representative Lewis, Attorney Goodson, Brent
 21 Woodcox and probably Jim Blaine.
 22 Q. Who is Attorney Goodson?
 23 A. He works with the Speaker's office.
 24 Q. And who is Jim Blaine?
 25 A. Jim Blaine is -- works with the legislature.

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1 Q. What does he do with the legislature?
 2 A. He's, I think, Senator Berger's -- I think his
 3 title is chief of staff with the pro tem's
 4 office.
 5 Q. Was Senator Berger at that meeting?
 6 A. No, ma'am.
 7 Q. And where did you meet?
 8 A. I believe it was at Dr. Hofeller's home.
 9 Q. Did Dr. Hofeller show you any maps that day?
 10 A. Some initial maps. As you know, the map drawing
 11 is a process of iterations, and at that point he
 12 would have done some basics well beyond my level
 13 of how Maptitude work, not only my level of
 14 knowledge but looking at some preliminary maps
 15 that he may have been working on as far as the
 16 basics.
 17 And then after we refined what we were
 18 looking for as far as specific criteria, then he
 19 would have finalized it and then got it to the
 20 point where it was ready to be submitted to the
 21 committee.
 22 Q. So the maps that you reviewed that day meeting
 23 with Dr. Hofeller were drawn by him without any
 24 input from you and Representative Lewis?
 25 A. It would have been -- it would have been a --

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1 the cursory or the preliminary requirements of
 2 getting the map on there and all that stuff and
 3 then some preliminary designs or ideas as to
 4 what might be done in regard to drawing the map.
 5 It is a long process in a short period
 6 of time, so it would have been some cursory
 7 designs. And then as we refined the criteria
 8 that was necessary for us to comply with the
 9 court order, he would have refined the map to
 10 the -- to one that would be able to be presented
 11 to the committee, to the General Assembly.
 12 Q. Did you have any discussion about the partisan
 13 breakdown of the maps that Dr. Hofeller showed
 14 you?
 15 A. Not that I recollect. All I can say is that
 16 we -- by that time we had come to the conclusion
 17 that, of course, race was totally to be not
 18 included and also partisan registration was not
 19 to be included in there and that the 12th
 20 district was not to be -- or was to be
 21 consolidated, however it would have been put
 22 together. And it took, I'm sure, some time to
 23 figure out how to best do that.
 24 And then again, after that, equal
 25 population would have been a requirement that

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1 there is no -- that's just mandatory.
 2 Q. At this point you were still currently Senate
 3 Redistricting Committee chair?
 4 A. Yes, ma'am.
 5 Q. So you didn't have to be reappointed that week?
 6 A. Once they gave me the job, it was mine. So, no,
 7 I don't believe we had to get reappointed.
 8 Q. Did you schedule committee meetings?
 9 A. I'm sure at that point we were trying to be sure
 10 that we had a map ready to bring before.
 11 It's like any other piece of
 12 legislation, whether it's redistricting or any
 13 other. You get your concept, you sit down with
 14 people that are helping you put it together and
 15 then you bring it forward to the committee for
 16 debate, discussion, amendments or whatever might
 17 be done.
 18 And in conjunction with that, as we did
 19 when we did the 2011 map, we had criteria
 20 established as to how to draw those maps, fair
 21 and legal at that time.
 22 Well, in this case, even though we
 23 really believed our map was constitutional, the
 24 court required us to come up with an alternative
 25 map in a very short period of time. We had to

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1 have the map -- finished map, passed map in the
 2 hands of the court by the 19th is my best guess,
 3 my best recollection, so...
 4 Q. My question is: Did you schedule committee
 5 meetings?
 6 A. We were -- first of all, we needed to get a map
 7 close so that we can have something to bring
 8 forward. But, yes, we actually set up a public
 9 hearing on the 15th and then committee hearings
 10 to follow.
 11 Q. When did you set up that public hearing?
 12 A. It was the latter part of -- what was the week
 13 prior to the 15th?
 14 Q. The week of the 8th.
 15 A. Right. It was somewhere in there talking with
 16 Ms. Churchill and the other staff members who
 17 helped us with the -- the IT department who
 18 helped us with the original redistricting,
 19 setting up public hearings and the like. So we
 20 did set up the public hearing. I think it was
 21 in about five or six locations on that Monday.
 22 Q. What did you do between that initial meeting
 23 with Dr. Hofeller on Monday or Tuesday and then
 24 setting up the public hearing, which I believe
 25 you said was you set that up at the end of the

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1 week. What else did you do that week?

2 A. Well, I'm sure getting all of the -- working
3 with staff to get the documentation ready for
4 the committee meetings, that included the list
5 of criteria listed and being able to explain.

6 And then we also had to set up the
7 Joint House and Senate Redistricting Committee
8 to adopt the criteria.

9 And then, of course, we had additional
10 committee meetings on redistricting, additional
11 committee meetings with the possibility that we
12 would have to establish a new election schedule
13 so that it would have had to comply with what
14 the Harris court wanted us to do different than
15 what was the normal primary time.

16 Q. When -- you said earlier that the court gave you
17 two weeks to draw new plans.

18 A. 14 days, but that -- that also included
19 weekends. That also included the fact that we
20 didn't learn of it until Friday late. So we
21 lost a lot of time in what is -- it took us
22 months to do the original map, the 2011 map, and
23 we had to really -- and I think the staff worked
24 very hard to try to help us get this
25 accomplished in a timely manner.

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1 Q. Is it your understanding that the two-week
2 timeframe came from a general statute?

3 A. That should be revisited at some point, but,
4 yes, my understanding was that's what the 14
5 days were, but it's still not enough time -- or
6 let's just say to you not without having to put
7 a lot of pressure on a lot of people to try to
8 meet that schedule.

9 Q. But you did it in 2016?

10 A. Magically.

11 Q. When you met with Dr. Hofeller on Monday or
12 Tuesday of that week, did Dr. Hofeller take any
13 notes about the criteria that you discussed?

14 A. Not that I know of.

15 Q. How did you convey the criteria that he should
16 use in drawing the maps to him?

17 A. Well, the criteria, as you can see before us, a
18 lot of it is evident. I mean, we recognize that
19 any congressional district there is zero
20 deviation, so that's an automatic. That
21 automatically is a criteria.

22 The issue of contiguity is a
23 requirement in redistricting. The counties have
24 to be adjacent to one another, connected. Of
25 course --

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

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

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

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

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

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

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

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

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

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

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

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1 unaffiliated voters, and I believe that reflects
 2 pretty closely as to the breakdown in most of
 3 the districts. None of those districts were
 4 ever a slam dunk majority for the Republicans.
 5 Q. In terms of registered Republicans?
 6 A. People that would have participated there, yes.
 7 Registered, yes.
 8 Q. Based on their voter registration?
 9 A. (Witness nodding head up and down.)
 10 Q. Yes? Is that a "yes"?
 11 A. Yes. Even though when we drew the maps,
 12 registration was not one of the criteria that we
 13 actually used. It was strictly election
 14 results. I'm basically going now as to what the
 15 final results were having looked at it
 16 subsequently.
 17 Q. So you looked at it after the fact and noticed
 18 that Republicans were not a majority of the
 19 registered voters in any of the districts
 20 enacted?
 21 A. That's correct. And that is also similar to the
 22 2011 plan.
 23 Q. Did you e-mail Dr. Hofeller with the criteria
 24 that you discussed at that meeting?
 25 A. I don't recollect doing that, no, ma'am.

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1 Q. Did you communicate with him by e-mail in
 2 February of 2016?
 3 A. I don't remember communicating with Dr. Hofeller
 4 by e-mail.
 5 Q. Did he advise you not to e-mail him?
 6 A. He never told me that.
 7 Q. You were here yesterday in his deposition.
 8 A. Yes, ma'am.
 9 Q. You saw the PowerPoints or heard testimony about
 10 the PowerPoint where he warned against putting
 11 things in writing during redistricting.
 12 Do you agree with Dr. Hofeller's
 13 concerns?
 14 MR. FARR: Objection to the form.
 15 THE WITNESS: I'm not sure that I can
 16 communicate clearly -- as clearly as I would
 17 verbally when I'm communicating issues or what
 18 requirements that I'm asking Dr. Hofeller or any
 19 of my staff people on an e-mail versus verbally.
 20 I probably comply to the Roy Cooper
 21 philosophy of never putting -- never doing
 22 e-mails, so...
 23 BY MS. MACKIE:
 24 Q. So would that be a yes that you --
 25 A. Well, similarly, I just don't do e-mails or

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1 rarely do. Especially I don't want any
 2 misunderstanding when I'm explaining to people
 3 what I would expect from them.
 4 Q. Did you communicate with Dr. Hofeller in writing
 5 through counsel?
 6 MR. FARR: Well, I'll object to that.
 7 Instruct you not to answer.
 8 MS. MACKIE: The question is just
 9 whether that happened, not the subject of any of
 10 those communications.
 11 THE WITNESS: I can't recall that that
 12 was done through counsel.
 13 BY MS. MACKIE:
 14 Q. You don't recall e-mailing Dr. Hofeller and
 15 copying Mr. Farr on the e-mails?
 16 A. I don't recall doing that.
 17 Q. I'm going to get into some notebooks which we
 18 will mark as exhibits.
 19 MR. FARR: Caroline, before we do this,
 20 can we take a break.
 21 THE VIDEOGRAPHER: Off record at
 22 10:37 a.m.
 23 (Brief Recess.)
 24 THE VIDEOGRAPHER: On record at
 25 10:52 a.m.

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1 BY MS. MACKIE:
 2 Q. Senator Rucho, I want to follow up on a couple
 3 of things that we discussed before the break.
 4 One of the things is that Saturday
 5 meeting where you called in from Matthews,
 6 right?
 7 A. That's what I recollect, yes.
 8 Q. Did you discuss goals for the new map at that
 9 meeting?
 10 MR. FARR: Objection. Instruct you not
 11 to answer. Attorney-client privilege.
 12 BY MS. MACKIE:
 13 Q. So that was a conversation with your counsel on
 14 that day?
 15 A. Yes, ma'am.
 16 Q. So you are not going to answer any questions
 17 about the substance of that conversation based
 18 on attorney-client privilege?
 19 MR. FARR: Because I've told him to not
 20 answer.
 21 THE WITNESS: Advice of my counsel.
 22 BY MS. MACKIE:
 23 Q. Thank you.
 24 You said earlier that you -- at some
 25 point that following week, the week of

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1 February 8th, 9th --
 2 A. Whatever the Monday -- the 8th.
 3 Q. Yes, I'm having trouble remembering that date.
 4 -- that Hofeller needed the criteria
 5 that week so it was put into writing at some
 6 point that week.
 7 Is that an accurate assessment of your
 8 testimony?
 9 A. I would say to you that once we established the
 10 criteria, it was a document that was being
 11 presented to the Joint House and Senate
 12 Committee on Redistricting would have had a
 13 written document explaining the criteria so that
 14 it would have been able to be discussed and
 15 voted on for approval.
 16 Q. And my question is when was the criteria put
 17 into a document.
 18 A. Sometime during that week.
 19 Q. The week of February 8th?
 20 A. Right. Prior to -- prior to the committee
 21 meetings.
 22 Q. And what was the purpose of putting it in
 23 writing?
 24 A. To present it to the committee.
 25 Q. Was another purpose to present it to

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1 Dr. Hofeller?
 2 A. No, ma'am. We had already had that discussion.
 3 Q. And he had already started drawing maps?
 4 A. With our guidance.
 5 (WHEREUPON, Plaintiffs' Exhibit 33 was
 6 marked for identification.)
 7 BY MS. MACKIE:
 8 Q. You have in front of you what we have marked as
 9 Exhibit 33 which is a notebook containing the
 10 public hearing transcript.
 11 Have you seen this before?
 12 A. Yes, ma'am.
 13 Q. Who planned this hearing?
 14 A. The meeting was asked -- Representative Lewis
 15 and I requested Ms. Churchill and IT from the
 16 General Assembly to put it together.
 17 Q. And what was the purpose of it?
 18 A. To get public input.
 19 Q. Public input into what exactly?
 20 A. What would have been the -- as we did in the
 21 original maps, 2011 maps, we wanted to hear from
 22 the public any comments they may have in regard
 23 to congressional redistricting.
 24 Q. Did you want to hear from the public on the
 25 criteria used to draw the maps?

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1 A. Whatever they chose to talk about. There was no
 2 requirement anyway.
 3 Q. But what was your goal?
 4 A. To hear what they had to say. There were no
 5 specifics. Whatever they thought they needed to
 6 tell us prior to moving forward would have been
 7 open for their -- for their comments.
 8 Q. How did you select the locations for this
 9 hearing?
 10 A. We allowed staff to do so, similar to picking
 11 where we had locations suitable for -- what is
 12 the proper term -- videoconferencing at
 13 different community colleges that had that
 14 ability, actually. When there was possibilities
 15 of accommodating some of the senators or House
 16 members to a location they wanted to, staff was
 17 able to identify suitable sites and we were able
 18 to put together, I think as I mentioned to you,
 19 about five or six sites.
 20 Q. Did you advise staff on the counties where
 21 these -- the hearing should take place?
 22 A. Other than Raleigh, of course, where we had it,
 23 but we allowed them to use the location that
 24 they found they could have a suitable
 25 audio/visual capabilities.

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1 Q. So you didn't suggest to staff that they should
 2 look for a location around Fayetteville?
 3 A. Not that I remember.
 4 Q. You left that completely up to staff?
 5 A. (Witness nodding head up and down.)
 6 Q. Did you tell staff how many locations you
 7 wanted?
 8 A. We told them five or six, where possible. And
 9 there was a very short timeframe, actually. So
 10 we didn't have the luxury of putting -- they had
 11 to do it very quickly.
 12 Q. When did you announce that the public hearing
 13 would take place?
 14 A. As best I can remember, I thought it was on the
 15 Friday prior to the county -- prior to the
 16 hearing on the 15th.
 17 Q. Okay. So Friday, February 12th?
 18 A. I believe that's correct.
 19 Q. Okay. And how did you announce it?
 20 A. I allowed Ms. Churchill to do what normally is
 21 done as far as public announcement.
 22 Q. Through the --
 23 A. Media.
 24 Q. Was it through the redistricting committee
 25 website or how?

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1 A. Well, that was part of it, but I think they also
 2 did it through media contact, similar to what
 3 they did the first time.
 4 Q. Did you give Ms. Churchill any instruction on
 5 how she should announce it or avenues of the
 6 media she should use or anything like that?
 7 A. Just like she did the first time.
 8 Q. Did you preside at this hearing?
 9 A. I was -- I presided at the Raleigh location, and
 10 then there were House and Senate members that
 11 presided at the satellite location.
 12 Q. And were the satellite locations linked into the
 13 Raleigh location through videoconference or
 14 through teleconference?
 15 A. I'm not sure I know the difference.
 16 Q. Could you see the people in the other locations?
 17 A. Yes.
 18 Q. And you could also hear them?
 19 A. Yes, ma'am. And we rotated through the -- each
 20 of the sites.
 21 Q. Okay. Could the people in the other location
 22 see you?
 23 A. Yes.
 24 Q. Could they see each other?
 25 A. Could they see --

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1 Q. So could the individuals who showed up in
 2 Fayetteville see the people who were in
 3 New Hanover county?
 4 A. I think the person who was speaking at the time
 5 when they came to the podium or came to the
 6 microphone. Is that what you mean?
 7 Q. Sure.
 8 A. If they came to the microphone, the camera is on
 9 them, and so when they saw the people that were
 10 in the other locations listening could see that
 11 individual.
 12 Q. Okay. So everybody who attended this public
 13 hearing, wherever they were, they could see the
 14 person speaking?
 15 A. Yes, ma'am.
 16 Q. And I'm sorry, did you say whether you presided
 17 at this hearing?
 18 A. I did.
 19 Q. And you did preside. I'm sorry, that was not a
 20 clear question.
 21 A. I presided.
 22 Q. Thank you.
 23 How did you decide that you would be
 24 the one to preside at this hearing?
 25 A. I spoke with Representative Lewis and --

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1 Q. Did you draw straws?
 2 A. Is that the long or the short straw?
 3 Q. I don't know. You tell me.
 4 Did Hofeller attend this public
 5 hearing?
 6 A. No, ma'am.
 7 Q. Did you send him transcripts of the public
 8 hearing?
 9 A. I don't recall that.
 10 Q. Did members of the public have the opportunity
 11 to submit written comments?
 12 A. Yes, ma'am.
 13 Q. And was that in addition to attending a public
 14 hearing or was that separate from attending the
 15 public hearing?
 16 A. They could go on to the website and submit --
 17 even if they attended, they still had the
 18 ability to submit a public comment too, and if
 19 they didn't attend it, they could do it. So it
 20 was pretty broad based.
 21 Q. Did you send -- did you receive written comments
 22 through the website?
 23 A. Yes.
 24 Q. Do you have a recollection of how many you
 25 received?

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1 A. I don't recall.
 2 Q. Okay. Did you send those to Dr. Hofeller?
 3 A. No, ma'am.
 4 Q. Did you in any way convey the comments from the
 5 public to Dr. Hofeller?
 6 A. No. I mean, other than the fact that in the
 7 criteria -- I mean, there was no specifics in
 8 the sense of Representative Lewis and I
 9 independently read the reports. You know, we
 10 were present there for most of it, but any of
 11 the written, and if there was anything pertinent
 12 we would have related it to Dr. Hofeller that
 13 was needed.
 14 Q. So you and Representative Lewis read this
 15 transcript?
 16 A. I did, and I'm assuming he did also, and then
 17 also the written comments that would have come.
 18 Q. When did you read those?
 19 A. Probably late -- that was a very long meeting on
 20 the 15th, but we read it to see if there was
 21 anything specifically on the written comments
 22 because we were present for most of the -- or I
 23 was and I'm sure he was too -- present for most
 24 of the public hearing.
 25 Q. And then you conveyed some of those comments to

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1 Dr. Hofeller?
 2 A. I don't recollect directly. I mean, if it was
 3 necessary we would have been, but that would
 4 have been our -- based on our judgment.
 5 Q. So yes or no? Did you convey any of the
 6 comments from --
 7 A. No.
 8 Q. Okay. Did members of the public make comments
 9 either at the public hearing or through written
 10 submissions showing concern about a potential
 11 partisan gerrymander?
 12 A. Not that I can recall.
 13 Q. You have no recollection of members concerned
 14 about an unequal balance of political power in
 15 the congressional plans?
 16 MR. FARR: Objection to the form.
 17 You can answer.
 18 THE WITNESS: I can't recall that.
 19 BY MS. MACKIE:
 20 Q. Do you have a recollection of members of the
 21 public asking the legislature to leave politics
 22 out of the map-drawing process?
 23 A. I can't recall.
 24 Q. Do you have a recollection of members of the
 25 public requesting a non-partisan commission to

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1 draw the maps?
 2 A. That -- some people chose to use their time to
 3 discuss that, but that wasn't pertinent to what
 4 we were there for public hearing-wise.
 5 Q. Why wasn't that pertinent?
 6 A. Because we were concerned about getting the map
 7 drawn. That had nothing to do with what our
 8 goal was, and that was to comply with the Harris
 9 order.
 10 Q. Did you convey any comments to Dr. Hofeller
 11 about public comments relating to the partisan
 12 makeup of the map that he was drawing?
 13 A. I can't -- I don't believe I did.
 14 Q. Okay. If you will turn to Page 58 -- actually,
 15 if you'll turn to Page 57 first. You see about,
 16 oh, at Line 10 there's a speaker Mr. Tom Byers?
 17 A. Yes, ma'am.
 18 Q. Do you recall Mr. Byers speaking from Asheville?
 19 A. Gracious, we must have had probably maybe close
 20 to 200 speakers. So I don't remember Mr. Byers.
 21 Q. Fair enough. Not a memory test. Luckily we
 22 have a transcript here to help us.
 23 If you will look at Page 59 and
 24 starting at Line 3 just read the next two
 25 paragraphs.

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1 A. Just read them --
 2 Q. You can read them out loud.
 3 A. Okay. Starting at Line 3:
 4 "We need to create a non-partisan
 5 redistricting" --
 6 Q. I'm sorry. Page 59.
 7 A. 59. Okay. Starting on page -- okay.
 8 "But when too many officeholders
 9 represent districts drawn to be safe, the
 10 incentive for compromise is greatly
 11 reduced. And nowadays, the safe district
 12 effect is compounded by an incumbent's
 13 reasonable concern that he or she may
 14 face a primary challenger.
 15 "It seems fair to assume that we can
 16 all agree that at present, gridlock at
 17 the Congressional level is a serious
 18 problem. It's not an easy problem to
 19 resolve, but reducing the number of safe
 20 districts would surely have some
 21 favorable impact by increasing the
 22 incentive to compromise."
 23 Q. And if you will read on Page 58 beginning at
 24 Line 16, the sentence that starts with "When,"
 25 and just read through the end of that paragraph.

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1 A. "When the party in power manipulates
 2 boundaries to give itself an edge, the
 3 end result is elected officials who don't
 4 necessarily represent the true preference
 5 of the majority. That is not good."
 6 Q. Does that refresh your recollection about
 7 whether since citizens spoke out about the
 8 potential partisan impact of the plan?
 9 A. It's just a concern raised by an individual.
 10 You know, whether it's accurate or not is -- you
 11 know, each person would make up their own
 12 choice.
 13 But, you know, our goal was to create
 14 districts that were competitive and that would
 15 give an opportunity for Republicans and
 16 Democrats to win districts. So, you know, we
 17 appreciate his advice, but I don't know if I
 18 necessarily agree with his comment completely.
 19 Q. You did not convey that to Dr. Hofeller?
 20 A. No, ma'am.
 21 Q. And so you did not take his comment into
 22 consideration in drawing the 2016 plan?
 23 A. I don't recall that, no, ma'am.
 24 Q. Okay. If you will turn to Page 114.
 25 A. Again what, please.

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1 Q. 114. And once you get there, you can look at
 2 page 113 see who the speaker is.
 3 A. Okay. I have 113 before me.
 4 Q. Do you see at the bottom where it's a Mr. Brian
 5 McCollum? He's a student at UNC Charlotte.
 6 A. I see that.
 7 Q. And then on the next page, Page 114, is some of
 8 Mr. McCollum's statements, and if you will read
 9 beginning at Line 17 and read through --
 10 A. Beginning on 17 on Page 114.
 11 Q. 114 and then read through Line 1 on 115.
 12 A. On page 17 -- excuse me. On Line 17:
 13 "You know, we have 13 congressional
 14 districts in the state, and only three of
 15 them are Democratic -- or held by
 16 Democrats. So there's 10 held by
 17 Republicans, 3 by Democrats."
 18 Continue or --
 19 Q. Continue.
 20 A. "That just does not really add up
 21 when you consider we're in a 50/50 split,
 22 you know, liberal/conservative. We went
 23 to Obama in 2008. We went for Mitt
 24 Romney in 2012. It's pretty even split.
 25 So you would think the congressional

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1 districts would match that."
 2 Q. Did you convey Mr. McCollum's comments to
 3 Mr. Hofeller?
 4 A. No. And I would probably say to you, even in
 5 lieu of something that was discussed yesterday,
 6 the congressional districts and the redrawing --
 7 and the drawing of districts is -- it's
 8 recognized that these are not statewide
 9 elections. These are congressional districts
 10 based on geography, and I'm not sure that
 11 there's a reflection with the partisan makeup
 12 and the results because each of the districts
 13 choose their own elected individual. So I
 14 chose --
 15 Q. What do you mean?
 16 A. So in essence, I chose not to include that
 17 because these are not statewide elections.
 18 These are district elections and each district
 19 is -- the people from that district elect their
 20 representative. It isn't a necessary reflection
 21 of the -- of the -- of what would be statewide
 22 population and partisan numbers.
 23 Q. Would you agree that Mr. McCollum's comments
 24 contradict the criteria of partisan advantage
 25 that's listed on Exhibit 24?

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1 A. Mr. McCollum, again, another 1 of 200, has an
 2 opinion that he presented. I don't agree with
 3 the -- with his analysis of saying then there
 4 should be similar results based on what partisan
 5 registration is because it's a different type of
 6 an election.
 7 It's an election based on geography.
 8 It's not statewide. So I'm not sure what he's
 9 saying -- it's not part of the electoral system
 10 that we presently have in America.
 11 Q. But you had a goal of drawing a plan that would
 12 make reasonable efforts to construct districts
 13 that would elect 10 Republicans and 3 Democrats?
 14 A. It would have reflected what was on the enacted
 15 plan in 2011. And if we were able to follow all
 16 of the criteria that were established to produce
 17 a map that passed and was accepted by the Harris
 18 court, then, you know, 10-3 be what it be.
 19 Q. My question is: That was one of your criteria,
 20 right, the 10-3?
 21 A. It was one of the criteria. As long as you took
 22 all of the criteria into place, not strictly
 23 partisan. So that's what is very important.
 24 It's a harmonization of all the criteria, not
 25 not just dealing with partisanship.

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1 Q. Exhibit 24, the adopted criteria, this -- had
 2 this document been drafted as of February 15,
 3 2016?
 4 A. I can't remember if it was in its final
 5 ready-for-delivery type to be presented to
 6 committee, but we pretty much understood what
 7 would have been involved in it.
 8 Q. And you had already met with Dr. Hofeller and
 9 conveyed the criteria that you wanted him to use
 10 to draw the maps?
 11 A. We had an opportunity to explain to Dr. Hofeller
 12 what we would have expected in there, and the
 13 purpose of the criteria was to meet the
 14 requirements of the Harris court.
 15 Q. As far as you know, was Dr. Hofeller working on
 16 maps on February 15, 2016?
 17 A. I don't know if he was doing it that day or not.
 18 Q. Was it your understanding after you met with him
 19 the prior Monday or Tuesday he would start
 20 immediately working on maps?
 21 A. Try it again.
 22 Q. Let me clarify.
 23 When you met with him on that Monday or
 24 Tuesday, you looked at some maps that he had
 25 already drawn.

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1 A. We looked at some beginning maps, you know,
 2 knowing that there would have had to have
 3 been -- one of the criteria would have been
 4 trying to keep counties whole, trying to -- you
 5 know, that's some of the original stuff you had
 6 before we even refined it down to some of the
 7 specifics dealing with trying to get to
 8 resolution of the Harris order.
 9 Q. So after you met on that Monday or Tuesday, was
 10 Dr. Hofeller drawing the map that he would
 11 present to you and Representative Lewis?
 12 A. It was in the process.
 13 Q. Okay. Did members of the public convey any
 14 concern about the lack of transparency in the
 15 process?
 16 A. One that I recollect was that -- I guess it was
 17 snowing on that Monday so some of them felt that
 18 the turnout wouldn't be quite as robust as it
 19 could have been, even though we did have
 20 significant participation. That was one comment
 21 that I remembered, but there wasn't anything we
 22 could do about the snow and especially with our
 23 timeline.
 24 Q. Right. Did members of the public express
 25 concern about not knowing the criteria that you

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1 would use to draw the maps?
 2 A. To my recollection it wasn't mentioned.
 3 Q. Did anyone express concern about not having
 4 draft maps available to look at?
 5 A. I don't recall anyone asking for draft maps,
 6 but, again, we were on a very tight schedule
 7 trying to get everything done in about eight
 8 days, so I can't remember if anyone specifically
 9 had requested that.
 10 Q. And the announcement for this public hearing was
 11 made you think about one week after the decision
 12 came out in Harris?
 13 A. As best I can remember, it was on the Friday
 14 prior to the Monday to get notice out to as many
 15 people as we could to let them be informed.
 16 Q. So you were halfway through the two-week period
 17 when you announced that there would be a public
 18 hearing?
 19 A. I would -- yeah, that probably would be
 20 accurate.
 21 Q. Okay. If you'll turn to Page 43. And if you
 22 look at the bottom of Page 42, you can identify
 23 the speaker as a Mr. Gary Grant who appeared to
 24 be in Halifax county.
 25 A. I can see where Mr. Grant begins.

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1 Q. Okay. Will you look at Page 43 and beginning at
 2 Line 17 read that paragraph out loud.
 3 A. Line 43 --
 4 Q. Page 43.
 5 A. 17.
 6 Q. Line 17.
 7 A. "You have produced no maps for
 8 alternatives that we would have the
 9 opportunity to see, so how do we know
 10 that you won't come back with something
 11 just as crazy as what you've done
 12 already? How can citizens make
 13 intelligent comments on something that
 14 we have not seen? How do we know that
 15 you won't produce the same kind of crazy
 16 maps again?"
 17 Q. And again, you didn't convey any of these
 18 comments to Dr. Hofeller?
 19 A. We had 200 people plus presenting their
 20 thoughts, and they were all welcome to speak.
 21 Q. Did you and Representative Lewis have any
 22 conversations about producing maps for members
 23 of the public to see?
 24 A. The -- I don't recall having a discussion with
 25 senator -- Representative Lewis about that

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1 specific issue.
 2 Q. If you will turn to Page 239.
 3 MR. FARR: What page, Caroline?
 4 MS. MACKIE: 239, second to last page.
 5 BY MS. MACKIE:
 6 Q. And beginning on Line 6, these are your closing
 7 comments --
 8 A. Yes.
 9 Q. -- to the public and members of the Select
 10 Committee on Redistricting who were helping run
 11 this public hearing; is that correct?
 12 A. All the members of the Joint Select Committee
 13 were invited to participate and appreciate the
 14 fact that some of them were able to be at the
 15 satellite locations to help it be smoothly run
 16 and to listen to the comments.
 17 Q. Okay. And you say that:
 18 "...we will have a chance to digest
 19 all the information we received today
 20 and try to establish some criteria upon
 21 which we would like to draw these maps
 22 that would coincide with what the court
 23 decision was read."
 24 My question is: What did you do with
 25 the criteria after this public hearing?

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1 A. If there was anything that we felt was
 2 necessary, we would have refined it prior to
 3 submitting it to the full Select Committee on
 4 Tuesday the 10th -- excuse me, at 10:00.
 5 But the basic criteria are traditional
 6 redistricting principles. So we felt they were
 7 pretty consistent with what we felt needed to be
 8 done to achieve what the Harris court and to
 9 comply with the Harris court.
 10 Q. The criteria were drafted as of February 15,
 11 2016, right?
 12 A. Well, if there was any need of making final
 13 changes prior to submitting it to the Joint
 14 Select Committee for approval, I mean, we would
 15 have refined it if need be.
 16 Q. Did you make changes to the criteria?
 17 A. I can't recall if we did. It's basic
 18 redistricting principles that we followed,
 19 consistent.
 20 Q. You have no recollection of whether you made
 21 changes to the criteria following this public
 22 hearing?
 23 A. I don't.
 24 Q. Okay. You can set this notebook to the side. I
 25 don't think we'll come back to it.

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1 I'm going to hand you what we will mark
 2 as Exhibit 34.
 3 (WHEREUPON, Plaintiffs' Exhibit 34 was
 4 marked for identification.)
 5 MR. FARR: Thank you, Caroline. Thank
 6 you for doing this. I know it's a pain.
 7 MS. MACKIE: Do you have it.
 8 BY MS. MACKIE:
 9 Q. And, Senator Rucho, just to make things a little
 10 bit easier, there is a table of contents in the
 11 front.
 12 A. Yes, ma'am.
 13 Q. And what Exhibit 34 has in it are the Joint
 14 Committee meetings, the House Committee meetings
 15 and the Senate Committee meetings. And also,
 16 just for the record, there is a typo on Number 5
 17 on the table of contents. That should be
 18 February 19, not 17.
 19 MR. FARR: Which one is that?
 20 MS. MACKIE: Number 5, the House
 21 Committee meeting is February 19th.
 22 BY MS. MACKIE:
 23 Q. Senator Rucho, have you seen these transcripts
 24 before?
 25 A. I've had a chance to review most of them.

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1 Q. Okay. If you will turn to Tab 1, can you
 2 identify this transcript for us?
 3 A. Yes. It appears to be a transcript of the --
 4 should be the Joint House and Senate Committee
 5 on Redistricting, yes.
 6 Q. Was this the first meeting of the Joint
 7 Committee on Redistricting?
 8 A. Yes.
 9 Q. Who appointed the members of that committee?
 10 A. Senator Berger and Speaker Moore.
 11 Q. And did Senator Berger and Speaker Moore also
 12 determine the size of that committee?
 13 A. Yes.
 14 Q. Did they also determine the political makeup of
 15 that committee?
 16 A. They chose the members of the committee, yes,
 17 ma'am.
 18 Q. Did you have any input into who would be members
 19 of that committee?
 20 A. I don't recall if I did comment about that or
 21 not to Senator Berger. I can't remember.
 22 Q. Do you know if Representative Lewis had input on
 23 the makeup of the Select Committee on
 24 Redistricting?
 25 A. I don't know the answer to that.

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1 Q. But for yourself, you may have, you just don't
 2 remember?
 3 A. Correct.
 4 Q. Do you remember having conversations with
 5 Senator Berger about the committee just in
 6 general?
 7 A. Once we established a schedule, I'm sure at some
 8 point we had a chance to discuss time scheduling
 9 and things of that sort --
 10 Q. Okay.
 11 A. -- to meet the 19th deadline.
 12 Q. Right. In this first meeting, you testified
 13 this was the first meeting and then met on the
 14 16th?
 15 A. Yes, ma'am. Sorry.
 16 Q. What was the role of the committee?
 17 A. Well, the committee was going to have an
 18 opportunity to take up the criteria that
 19 Representative Lewis and I were able to put
 20 together in establishing how the map or how the
 21 maps -- the map would be drawn to meet the needs
 22 or the requirements of the Harris court.
 23 Q. Did Dr. Hofeller attend this committee meeting?
 24 A. No, ma'am.
 25 Q. Did you send the transcript to him?

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1 A. No, ma'am.
 2 Q. Did you and Representative Lewis meet to prepare
 3 for this meeting?
 4 A. I don't know if it was a specific time, but, of
 5 course, we discussed it, what we wanted to
 6 achieve and how we were going to do it.
 7 Q. Would you have had that discussion in person or
 8 by telephone or by e-mail?
 9 A. Either in person or by phone, yes, ma'am.
 10 Q. Do you remember one or the other?
 11 A. I can't be specific. I know we communicated to
 12 make sure that we were prepared to present the
 13 criteria.
 14 Q. Did you look at any documents to prepare for
 15 this meeting?
 16 MR. FARR: For the committee hearing?
 17 MS. MACKIE: The committee hearing,
 18 yes.
 19 THE WITNESS: Other than making sure
 20 that we knew exactly what we wanted presented,
 21 the agenda and the -- who was going to present
 22 the criteria and who would chair, that kind of
 23 thing, and that was discussed between myself and
 24 Representative Lewis.
 25 BY MS. MACKIE:

1 Q. Other than the agenda, did you look at any
 2 documents?
 3 A. Not that I can recall. Well, I mean, of course
 4 the criteria that we submitted.
 5 Q. Okay. That was going to be my question.
 6 A. Yeah.
 7 Q. So you did look at Exhibit 24 which was the
 8 criteria or some version -- was it some version
 9 of Exhibit 24?
 10 A. I -- it was -- yes.
 11 Q. Okay. I'm sorry to do this to you, we're going
 12 to sort of move back and forth between some
 13 exhibits. Keep this one out because we will
 14 come back to it.
 15 I'm going to hand you what we will mark
 16 as Exhibit 35.
 17 (WHEREUPON, Plaintiffs' Exhibit 35 was
 18 marked for identification.)
 19 BY MS. MACKIE:
 20 Q. Senator Rucho, have you seen this document
 21 before?
 22 A. No, ma'am, I don't recall seeing it.
 23 Q. Can you identify it as Defendant's Responses to
 24 Plaintiffs' First Set of Interrogatories and
 25 Request for Production of Documents in the

1 Common Cause lawsuit?
 2 A. That's what it says.
 3 Q. Okay. Did you help provide answers for the
 4 questions on this document?
 5 A. I don't recall.
 6 Q. Do you know if your -- well, if you'll look at
 7 Question Number 3 on Page 5. Question 3 asked
 8 for identification of all persons who assisted
 9 in responding, and the response says:
 10 "Counsel for legislative defendants
 11 assisted in responding to all
 12 interrogatories."
 13 Do you know who that means by counsel
 14 for legislative defendants?
 15 A. I don't -- I don't know who that would be
 16 specifically.
 17 Q. So you have no knowledge of who responded or
 18 assisted in responding to these discovery
 19 requests?
 20 A. No, ma'am.
 21 Q. Okay. If you'll look at sort of the second half
 22 of this document, there are some documents
 23 attached to it that have what lawyers call a
 24 Bate stamp at the bottom. It's DEF 0001 and so
 25 on. Do you see those documents?

1 A. Yes, DEF and then going from --
 2 Q. From 1 to 41.
 3 A. Okay. Yes.
 4 Q. Are these materials from the February 16th Joint
 5 Committee meeting?
 6 A. The 1 and 2 looks like they're off of the
 7 website. I don't think I looked at them other
 8 than what they do is list the committee members.
 9 Q. And DEF 0000 -- several 0's and then a 3, is
 10 that the meeting notice that you sent out for
 11 the February 16th hearing for the Joint Select
 12 Committee on Redistricting?
 13 A. That appears to be the meeting notice.
 14 Q. And it's sent from a William -- you'll have to
 15 help me with the pronunciation of his last name.
 16 A. Verbiest.
 17 Q. Verbiest.
 18 A. That was the -- my legislative assistant.
 19 Q. Whose name you could not recall earlier.
 20 A. Right.
 21 Q. Okay, glad we cleared that up.
 22 A. And he was the -- he ran the committee for us as
 23 far as staffing.
 24 Q. Okay.
 25 A. Thank you. I must be getting old.

1 Q. We all are.
 2 If you will turn to Page 9. And can
 3 you tell me what this is.
 4 A. And that is -- you're talking about DEF and the
 5 last number is 9?
 6 Q. Yes.
 7 A. It's titled 2016 Contingent Congressional Plan
 8 Proposed Criteria, Submitted by David Lewis, and
 9 that looks like one of the criteria that we were
 10 up for discussion.
 11 Q. Okay. And the first one up for discussion was
 12 equal population; is that right?
 13 A. That's the one-person, one-vote, yes, ma'am.
 14 Q. And that was the first criteria submitted to the
 15 committee on February 16th?
 16 A. I don't know if it was the first, if there's an
 17 order or something of that sort, but that was
 18 one of the criteria that was included in the
 19 criteria.
 20 Q. The transcript would reflect the order that the
 21 criteria were presented, right?
 22 A. Then I would say to you that that was the first
 23 one that was discussed.
 24 Q. Okay. When you presented the criteria to the
 25 Select Committee, why did you present them one

1 by one?
 2 A. Primarily to be able to have discussion on each
 3 of the criteria and to -- and I believe we
 4 actually voted on and recorded vote on every one
 5 of the criteria.
 6 Q. And so you handed out what is on page DEF 00009
 7 by itself to the committee; is that right?
 8 A. I don't recall if it was done completely and
 9 specifically, whichever way it was handed out so
 10 that it could be discussed one point at a time.
 11 Q. Why didn't you give out all of the criteria at
 12 one time?
 13 A. Probably would have confused the issue. What we
 14 were trying to do was establish the criteria
 15 that we believed was necessary for us to comply
 16 with the Harris case order.
 17 Q. Did you think it was important that members of
 18 the committee be able to see the full criteria
 19 at one time when they were debating and voting
 20 on the criteria?
 21 A. Never thought about that. Just wanted to make
 22 sure we had a complete discussion on each of
 23 them, each of the eight that were -- that were
 24 part of the criteria.
 25 Q. Okay. What is your understanding of the equal

1 population criterion?
 2 A. That is a requirement of one-person, one-vote.
 3 And I believe the number 733,498 and/or 99, but
 4 there is zero deviation in the population of
 5 each of the congressional districts.
 6 Q. Who wrote the language that's on this -- the
 7 page DEF 9?
 8 A. Who --
 9 Q. Who?
 10 A. -- wrote it?
 11 Q. Uh-huh. Yes.
 12 A. I don't know.
 13 Q. Did you and Representative Lewis both support
 14 this criterion?
 15 A. Yes.
 16 Q. Did Dr. Hofeller provide input on this
 17 criterion?
 18 A. Not that I can recall.
 19 Q. Did he review the language that's on page DEF 9
 20 before you submitted it to the committee?
 21 A. Did who?
 22 Q. Dr. Hofeller.
 23 A. Not that I can recall. We didn't submit it to
 24 him, so...
 25 Q. And the next page, Page 10, does that show the

1 committee vote on the first criterion?
 2 A. Yes, ma'am.
 3 Q. Okay. If you will turn to the next page,
 4 DEF 11, what is this one?
 5 A. Again, one of the criteria that was submitted,
 6 and this one deals with contiguity and it talks
 7 about the fact that congressional districts
 8 should be comprised of counties that are
 9 adjacent and contiguous with one another, no
 10 kind of point contact which has been done in the
 11 past. And then, of course, parts of the coast
 12 we have the islands, the water would have been
 13 sufficient for the contiguity.
 14 Q. Explain what is meant by contiguity by water is
 15 sufficient.
 16 A. At best I can, not being an attorney, there are
 17 islands that are off the coast and they have
 18 water between them or you have a river running
 19 between two parts of a city and the water would
 20 not show that it's not contiguous with one part
 21 and the other, meaning adjacent to each other in
 22 part of it.
 23 Q. So under this criterion, would a district that
 24 connected Wilmington to Nags Head be contiguous
 25 by water?

1 A. Between Wilmington and Nags Head?
 2 Q. Yes.
 3 A. I can't see that being a contiguous.
 4 In essence, I'm not talking about the
 5 ocean. We're talking about bodies of water or
 6 water, you know, between islands off or right
 7 next to where you have the lion's share of the
 8 district and all the counties are involved in
 9 it. So I would be surprised if that would be a
 10 contiguous district.
 11 Q. Did you have conversations with Dr. Hofeller
 12 about contiguity by water?
 13 A. No, but somewhere, either something passed by
 14 the General Assembly to clarify this issue, and
 15 I don't think it's in the Constitution, but this
 16 was how the language was so that there wouldn't
 17 be any abuses of what you described going from
 18 Wilmington to Nags Head.
 19 Q. Okay. So a district that connected Wilmington
 20 to Nags Head would be an abuse?
 21 A. Would be?
 22 Q. Would be an abuse.
 23 A. I would just say to you that I don't think it
 24 would -- I don't believe that that's what the
 25 term "contiguity" would mean going outside the

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1 ocean.
 2 I'm talking about rivers and islands
 3 that would be off -- still part of the same
 4 county but off the -- you know, off the
 5 mainland.
 6 Q. Who wrote this language on Page DEF 11?
 7 A. I don't recall.
 8 Q. And do you know when it was written?
 9 A. It was written when the criteria were prepared
 10 for the Joint Committee.
 11 Q. Which was sometime the week of February 8th?
 12 A. When it was being put together. I'm assuming
 13 that would be the timeframe.
 14 Q. And when was this criterion actually developed?
 15 A. This specific one or --
 16 Q. Yes.
 17 A. -- contiguity?
 18 Q. This specific contiguity?
 19 A. You mean as part of ours?
 20 Q. Yes.
 21 A. My understanding is it has been part of the
 22 traditional redistricting principles and
 23 therefore that's why it was included in the
 24 criteria.
 25 Q. Did you discuss contiguity as one of the

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1 criterion in the Saturday meeting with
 2 Dr. Hofeller or that --
 3 A. I don't -- I tell you I don't know if
 4 Dr. Hofeller was there that day.
 5 Q. That's right.
 6 Did you discuss it at that -- well --
 7 A. I mean, it's if traditional criteria, then these
 8 are the things that we believed would have been
 9 required for us to have a legal map that was
 10 ready to be presented to the court and would
 11 find no resistance to approval, and so this is
 12 part of the traditional redistricting
 13 principles.
 14 Q. Did you and Representative Lewis both support
 15 this criterion?
 16 A. Yes.
 17 Q. And did you discuss this specific criterion of
 18 contiguity with Dr. Hofeller on that Monday or
 19 Tuesday, February 8th or 9th?
 20 A. Those were part of the traditional redistricting
 21 principles that should have been included in our
 22 discussion, and I'm assuming we did.
 23 Q. So, yes, you did?
 24 A. I would say as part of this, you know,
 25 establishing the guidelines for him to know what

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1 was to be drawn, yes.
 2 Q. Okay. Thank you.
 3 Let's see. Did Dr. Hofeller review
 4 this written criterion?
 5 A. I think I've already answered that question.
 6 Q. Was that for this one?
 7 A. For all of them.
 8 Q. So he did not review any of these written --
 9 A. No, ma'am.
 10 Q. The next page, DEF 12, does that show the
 11 committee vote on this criterion?
 12 A. Yes, ma'am.
 13 Q. If you will turn to the next page, DEF 13. What
 14 is this criterion?
 15 A. This is the political data, talking about the
 16 elections that would have been included in the
 17 election results that would have been included
 18 in the statewide elections.
 19 As a matter of fact, I can read it and
 20 probably explain it a lot clearer for you. And
 21 that is:
 22 "The only data other than population
 23 data to be used to construct congressional
 24 districts shall be election results in
 25 statewide contests since 2008, not

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1 including the last two presidential
 2 contests.
 3 "Data identifying the race of
 4 individuals or voters shall not be used
 5 in the construction or consideration of
 6 districts in the 2016 Contingent
 7 Congressional. Voting districts (VTDs)
 8 should be split only when necessary to
 9 comply with zero deviation population
 10 requirements set forth above in order to
 11 ensure integrity of political data."
 12 Q. When was this criterion established?
 13 A. Same time as we were putting and defining the
 14 rest of them.
 15 Q. And when was this actual language written?
 16 A. Specifically this language in preparation for
 17 the handout to the committee.
 18 Q. So this was criteria that you discussed in the
 19 Monday or Tuesday meeting with Dr. Hofeller and
 20 then sometime later that week it was put into
 21 written form?
 22 A. It was discussed with Dr. Hofeller so he had the
 23 guidelines to be able to draw the map that would
 24 have complied with the Harris order, and this is
 25 how and what we would have expected to be.

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1 how many others it might have included.
 2 Q. At least based on this language, those are the
 3 only two excluded, right?
 4 A. I would assume that would be correct. I can't
 5 speak clearly on it.
 6 Q. The written criterion does not exclude the 2012
 7 lieutenant governor race?
 8 A. The written does not exclude it.
 9 Q. Did you have discussions with anyone about the
 10 relative weight that should be given to the
 11 elections that were included in this criterion?
 12 A. Okay, repeat that again.
 13 Q. Let me back up.
 14 Did you and Representative Lewis have
 15 any conversations about how to use these
 16 election results?
 17 A. Did we -- I'm not sure I understand how we used
 18 them. I used them in helping -- getting the
 19 political data for us to -- the election result
 20 data for Dr. Hofeller and ourselves to draw
 21 districts that would have complied with the
 22 Harris case.
 23 Q. Let me ask it a different way. Do you know how
 24 Dr. Hofeller used these races when he was
 25 drawing the maps?

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1 Q. Who decided that the presidential contest should
 2 not be included in the election results
 3 considered?
 4 A. Representative Lewis and myself, along with
 5 contact advice with our counsel reflected what
 6 the Harris court said in regard to not wanting
 7 to or not feeling comfortable with the
 8 Obama-McCain election in 2008, and therefore the
 9 McCain -- excuse me -- the Romney and Obama
 10 election in 2012, that the court was not
 11 comfortable with those elections, and so we
 12 chose not to include them in the political data.
 13 Q. Did you include the 2012 lieutenant governor
 14 race?
 15 A. I don't have that before me. I can't remember
 16 specifically which ones were included, but --
 17 Q. But based on this definition, that would be a
 18 statewide contest since 2008, right?
 19 A. It was, but specifically the court said that
 20 they were not comfortable with including the
 21 presidential race.
 22 Q. So was the 2008 and 2012 the only statewide
 23 contest that you excluded within that timeframe?
 24 A. I don't recall. I mean, I don't remember the
 25 ones that we included in there specifically or

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1 A. No, ma'am.
 2 Q. Did you give him any instructions on how to use
 3 the election results?
 4 A. No, ma'am.
 5 Q. Who provided the election results to
 6 Dr. Hofeller?
 7 A. I'm assuming it came from the state computer,
 8 Mr. Frye.
 9 Q. Did you instruct Mr. Frye to send these results
 10 to Mr. Hofeller?
 11 A. I didn't, no, ma'am. It would have been -- I
 12 think Dr. Hofeller reported or testified
 13 yesterday that the state computer, all that was
 14 inputted and then he received that information,
 15 at least that's my best recollection.
 16 Q. So you -- when this criteria was presented to
 17 the committee, did you have an understanding of
 18 how Dr. Hofeller was going to use these election
 19 results in drawing the maps?
 20 A. No, ma'am.
 21 Q. Was it your understanding that he would give
 22 each race -- and by race, I mean election
 23 contest -- the same amount of weight?
 24 A. I never discussed that with him.
 25 Q. Okay. Did the committee provide any input on

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1 the weight that should be given to these
 2 election results?
 3 A. That was not discussed in the committee.
 4 Q. Did Dr. Hofeller provide any input on this
 5 criterion?
 6 A. No.
 7 Q. And the next page, DEF 14, does that show the
 8 committee vote on the political data criterion?
 9 A. Yes, it appears to.
 10 Q. And you and Representative Lewis both supported
 11 this criteria?
 12 A. Yes.
 13 Q. If you will turn to the next page, DEF 15. And
 14 can you explain what this criterion is?
 15 A. This is the one dealing with partisan advantage
 16 and the -- it's probably easier for me just to
 17 read it.
 18 "The partisan makeup of the
 19 congressional delegation under the
 20 enacted plan is 10 Republican and
 21 3 Democrats. The Committee shall make
 22 reasonable efforts to construct districts
 23 in 2016 Contingent Congressional Plan to
 24 maintain the current partisan makeup of
 25 North Carolina's congressional

1 delegation."
 2 Q. And what is your understanding of what this
 3 means?
 4 A. My understanding of it is in the enacted plan
 5 there was a 10-3 partisan makeup. And by
 6 following all of the criteria in the -- all
 7 eight criteria and harmonizing them together, we
 8 asked if -- at the time if the map could be
 9 drawn with the same 10-3 opportunity for
 10 Republicans to have a chance to win in
 11 districts.
 12 Q. Why 10-3?
 13 A. It was probably a combination of meeting all of
 14 the criteria were there, harmonizing them
 15 together, making sure that -- other than the
 16 equal population that each of them were met
 17 where they could be and how they fitted together
 18 and then working hard to fulfill that as far as
 19 compact or districts, which meant whole counties
 20 when possible, reducing the number of split
 21 counties, which we reduced to 13, and reducing
 22 the number of split VTDS.
 23 In essence, this is the result that if
 24 it could be achieved it was there and that's why
 25 it was chosen.

1 Q. Are you saying that the 10-3 is a result of
 2 applying the other adopted criteria?
 3 A. All the criteria together was the result you can
 4 come up with a 10-3 partisan makeup.
 5 Q. So by having contiguous districts and districts
 6 made up of whole counties and equal population
 7 and all of the other seven criteria, it's your
 8 testimony that the result of applying those is a
 9 10-3 partisan makeup congressional plan?
 10 A. By harmonizing all of these together, all of the
 11 criteria that a 10-3 plan can be achieved.
 12 Q. Did you have conversations with Dr. Hofeller
 13 about numbers other than 10-3?
 14 A. I can't recall specifically other than the fact
 15 that I guess until Dr. Hofeller could work
 16 through the criteria what kind of result could
 17 be developed.
 18 I mean, at that point there may have
 19 been discussion as to what's available, what can
 20 be done, what can't be done, which one gives the
 21 map that most closely fits the criteria,
 22 especially dealing with split counties and split
 23 VTDS. That was important to us because that was
 24 one of the issues raised by the Harris court.
 25 Q. But you instructed him that he should draw a map

1 that will elect 10 Republicans and 3 Democrats?
 2 MR. FARR: Objection to the form.
 3 THE WITNESS: I think where it says the
 4 committee shall make every reasonable effort to
 5 construct districts in 2016 similar to what the
 6 10-3 was in the enacted plan. That's what the
 7 criteria says.
 8 BY MS. MACKIE:
 9 Q. And by applying the other criteria, it's your
 10 testimony that 10-3 is the result?
 11 MR. FARR: Objection to form.
 12 THE WITNESS: All I'll say to you is
 13 that by complying with all of the criteria and
 14 blending them together, a 10-3 map could be
 15 delivered.
 16 Now, I think Representative Lewis
 17 during the discussion clearly stated that the
 18 districts aren't as strong as they were, but
 19 that was something that could be achieved in
 20 being able to get what was the most compact map
 21 in regards to whole counties and the most
 22 compact map in dealing with VTDS being whole.
 23 So that was the result coming back as the
 24 criteria were achieved and harmonized.
 25 BY MS. MACKIE:

1 Q. And you did in fact achieve this goal?
 2 A. It's not a goal because, in reality, it was
 3 achieving one of the criteria. Not one of them
 4 is a priority over another. They were blended
 5 together.
 6 Q. But the 2016 congressional election did elect 10
 7 Republicans and 3 Democrats?
 8 A. It did in this last election, but in other
 9 elections -- and if you look back in future
 10 elections or you look back in the past, I
 11 believe Roy Cooper as Attorney General was able
 12 to get elected in -- if I'm not mistaken in all
 13 of them, so in all 13 districts.
 14 So any Democrat candidate that chose to
 15 run that could convince the Democrats,
 16 unaffiliated voters and any crossover
 17 Republicans could have won the election as is
 18 evidenced by -- in the data pack that we had,
 19 the stat pack that we had.
 20 Q. Looking at the second sentence of this criteria,
 21 the committee succeeded in its efforts to
 22 construct districts to maintain the current
 23 partisan makeup in the 2016 election, right?
 24 MR. FARR: Objection.
 25 THE WITNESS: The committee was able to

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1 harmonize all of the criteria. Not one of
 2 them -- this is not given the priority. As you
 3 blend them altogether, this is what was able to
 4 be achieved in regards to the map. The next
 5 election it could be totally different. This
 6 doesn't guarantee anybody winning the other
 7 seats.
 8 And especially if you look at the
 9 makeup in the stat pack after the map was
 10 approved, which we got a chance because, in
 11 reality, Senator McKissick requested it. And it
 12 wasn't in the original stat pack because it was
 13 never considered. Race -- he asked that race be
 14 included in the final stat pack and also
 15 partisan registration be considered. We didn't
 16 include that in our original stat pack because
 17 we never used that in drawing the maps.
 18 But if you look back, not one of those
 19 districts outs of the 13 have a majority
 20 Republican. It requires a combination of
 21 Republican, unaffiliated and Democrat votes to
 22 win an election, to be the winning candidate.
 23 So there's no guarantee that anyone
 24 would -- would have the same 10-3 going into
 25 future elections based on the candidate, based

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1 on the reality of whether people were happy with
 2 the economy or nationally or statewide and the
 3 like, so...
 4 BY MS. MACKIE:
 5 Q. If you would go back to Page DEF 13, the
 6 political data criterion.
 7 A. Yes.
 8 Q. Why did you use election results instead of
 9 registration numbers?
 10 A. The -- our understanding is, and I believe the
 11 courts have even agreed to it, choosing election
 12 results is a better predictor of, I think,
 13 election results going into the future. I mean,
 14 if I remember the right term.
 15 Choosing election results is the best
 16 predictor of what result you might see. There's
 17 no guarantee that it will happen, but that is a
 18 predictor of it.
 19 Q. So understanding election results instead of
 20 registration numbers would help you achieve a
 21 10-3 partisan split?
 22 A. It would help us identify in drawing the
 23 districts how it was -- you know, how you would
 24 put the district together. You didn't have
 25 race. You didn't have any other specifics. You

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1 had whole counties. And then you were able to
 2 identify, as Dr. Hofeller talked about
 3 yesterday, identifying VTDs that you would put
 4 in or out.
 5 Q. But using --
 6 MS. MACKIE: We can take -- do we need
 7 to take a break. It's probably about time
 8 anyway.
 9 THE VIDEOGRAPHER: Off record at
 10 11:59 a.m.
 11 (Discussion held off the record.)
 12 THE VIDEOGRAPHER: On record at
 13 11:59 a.m.
 14 BY MS. MACKIE:
 15 Q. Senator Rucho, my question is: Did using
 16 election results instead of registration numbers
 17 help you achieve the partisan advantage goal of
 18 10 Republicans and 3 Democrats?
 19 MR. FARR: Objection to form.
 20 You may answer.
 21 THE WITNESS: I don't know if it helped
 22 achieve the partisan results.
 23 What it did is it allowed those
 24 districts to be competitive to allow -- give
 25 Republicans an opportunity to win those

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1 elections.
 2 BY MS. MACKIE:
 3 Q. Did it allow you to better predict that
 4 Republicans would win in 10 districts?
 5 A. Our understanding is that the election results
 6 does give you that ability to do so.
 7 Q. Thank you.
 8 If you'll -- we were actually talking
 9 about the page DEF 15, partisan advantage. Just
 10 a couple more questions on that.
 11 On Page DEF 16, does that reflect the
 12 committee vote on the partisan advantage
 13 criterion?
 14 A. Yes.
 15 Q. And was that vote on party lines?
 16 A. It appears to be.
 17 Q. And did you and Representative Lewis both
 18 support that criterion?
 19 A. Yes.
 20 MS. MACKIE: Now may be a good time to
 21 break for lunch.
 22 THE VIDEOGRAPHER: Off record at
 23 12:01 p.m.
 24 (Lunch Recess.)
 25 THE VIDEOGRAPHER: On record at

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1 1:08 p.m.
 2 BY MS. MACKIE:
 3 Q. Senator, before the lunch break we were working
 4 through Exhibit 35. Do you still have that in
 5 front of you?
 6 A. Yes, ma'am, I do. Thank you.
 7 Q. If you will turn to the page with the Bates
 8 stamp DEF 17.
 9 A. Yes.
 10 Q. What is this criterion?
 11 A. This is one of the eight criterion that you
 12 discussed, that in order to address a concern
 13 raised by the Harris court as far as the
 14 configuration of the 12th district, and I'm just
 15 citing some comments that was the serpentine
 16 nature, Representative Lewis and I decided that
 17 it would be a good thing in trying to comply
 18 fully with the Harris order to consolidate the
 19 Congressional District Number 12 within
 20 Mecklenburg county, and that really is all that
 21 that talks about.
 22 Q. When did you develop this criterion?
 23 A. This specific one?
 24 Q. Yes.
 25 A. It was a result of -- actually, if you go back,

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1 it is something that I would have liked to have
 2 done in the original but found a lot of
 3 resistance from then Congressman Watt. So it
 4 was something that was put together as we read
 5 the Harris opinion.
 6 Q. Did you decide to include this as a part of the
 7 criteria on that Monday or Tuesday when you met
 8 with Dr. Hofeller?
 9 A. Well, it originated with reading the opinion,
 10 but the decision between Representative Lewis
 11 and myself and our counsel occurred about that
 12 time.
 13 Q. And the next page, DEF 18, does that reflect the
 14 vote on this fifth criteria?
 15 A. Yes, ma'am.
 16 Q. Okay. If you will turn to the next page,
 17 DEF 19, what is this page talking about?
 18 A. This one is dealing with compactness. And I'll
 19 read it so that it will be self-evident.
 20 "In light of the Harris court's
 21 criticism of compactness of the First and
 22 Twelfth Districts, the Committee shall
 23 make reasonable efforts to construct
 24 districts in the 2016 Contingent
 25 Congressional Plan that improves the

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1 compactness of the current districts and
 2 keep more counties and VTDs whole as
 3 compared to the current enacted plan.
 4 "Division of counties shall only be
 5 made for reasons of equalization of
 6 population, consideration of incumbency
 7 and political impact. Reasonable efforts
 8 shall be made not to divide a county into
 9 more than two districts."
 10 And we felt in doing so, also
 11 conforming with what the Harris order was, we
 12 also were able to -- by consolidating senate
 13 district -- excuse me -- Congressional
 14 District 12, it went a large way in producing
 15 compact districts and keeping many, many
 16 counties whole.
 17 Q. How did you measure compactness?
 18 A. I didn't.
 19 Q. Okay. Did you consider keeping counties and
 20 VTDs whole as a way to make compact districts?
 21 A. Well, we were responding to comments in the
 22 Harris decision. By consolidating the 12th
 23 district as we did, it opened up a number of
 24 opportunities for us to keep whole counties, and
 25 we felt that that was one of the cornerstones as

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1 how to establish compact districts. And of
 2 course, along with that is you do that -- if you
 3 keep the VTDs from being split, that also helps.
 4 Q. Did you have conversations with Dr. Hofeller
 5 about how to measure compactness?
 6 A. No.
 7 Q. How did you evaluate the compactness of the plan
 8 that he submitted to you and Representative
 9 Lewis?
 10 A. Other than looking at it, there was no -- no
 11 test taken.
 12 Q. So no mathematical measures?
 13 A. That is correct.
 14 Q. Okay. When was this criterion adopted -- or
 15 developed?
 16 A. During the same period of time we talked about.
 17 Q. So around that Monday, Tuesday meeting?
 18 A. Yes.
 19 Q. Did Dr. Hofeller provide input on this specific
 20 language?
 21 A. Had -- provided no input. As to this language,
 22 his expertise was helpful in achieving our --
 23 getting this criteria implemented.
 24 Q. What was his -- what did he say about
 25 compactness?

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1 A. Didn't.
 2 Q. You didn't discuss compactness when you met
 3 with --
 4 A. We -- on this compactness issue dealing with 12
 5 being consolidated?
 6 Q. Well, just the compactness criterion that we're
 7 looking at right now.
 8 A. Well, I mean, if what our -- this criteria, if
 9 implemented along with the other eight -- the
 10 other seven, achieving that allowed us to have a
 11 map that would be approved by and accepted by
 12 the Harris Court. And we felt that going to
 13 13 -- keeping all the counties whole except for
 14 13 and 12 VTDs was a major step in achieving
 15 that effort.
 16 Q. So my question is what -- what did you talk with
 17 Dr. Hofeller about with regard to compactness?
 18 A. That we wanted to consolidate the 12th district
 19 down to -- and at that point the decision was
 20 made that Mecklenburg county was the best
 21 location to accomplish that.
 22 Q. So by putting the 12th district just into
 23 Mecklenburg county you would achieve this
 24 criterion of compactness?
 25 A. By doing the 12th, yes. But the other advantage

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1 is if you look at the original enacted map, as
 2 it was described as being serpentine, it divided
 3 many counties as it was following the pathway
 4 along its route, and so we felt that by doing
 5 that, consolidating it would also give us the
 6 ability to allow for whole counties all along
 7 that stretch and that would help us in achieving
 8 the goal of compactness.
 9 Q. What about districts on the eastern side of the
 10 state?
 11 A. And what?
 12 Q. Did you consider compactness for those
 13 districts?
 14 A. As we worked on CD 1, I think you -- well, first
 15 of all, the Court had already -- the Supreme
 16 Court had already made a decision that the way
 17 CD 1 was originally put together prior to us was
 18 what would be considered compact, and that was
 19 why we tended to follow that same -- similar
 20 design in the enacted map.
 21 But there were some modifications on
 22 CD 1 and kept counties whole around it, and by
 23 doing that it allowed -- allowed a lot of other
 24 counties to be kept whole because it's -- on one
 25 side, if it follows the county line, on the

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1 other side it doesn't it doesn't break the
 2 counties. So therefore we had the ability to
 3 have whole counties.
 4 Q. So is it your testimony that by making the 1st
 5 and the 12th districts compact, the other
 6 districts around those districts were also
 7 compact?
 8 MR. FARR: Objection to form, but you
 9 can answer.
 10 THE WITNESS: I don't think that's
 11 properly -- I don't agree with your premise
 12 because our other districts were compact as was
 13 originally, and we felt confident that it was in
 14 the proper design of it.
 15 But by keeping whole counties as we
 16 could following the criteria of the eight
 17 criteria, we were able to, in essence, in the
 18 interocular test, have the map look better than
 19 it did prior to that even though we still
 20 believed that the original map is constitutional
 21 and will ultimately be judged by that by the
 22 Supreme Court.
 23 BY MS. MACKIE:
 24 Q. The second to last sentence says:
 25 "Division of counties shall only be

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1 made for reasons of equalizing population,
 2 consideration of incumbency and political
 3 impact."
 4 Can you explain what that means?
 5 A. Well, as you know, one of the criteria was equal
 6 population, which we have as mandatory, and
 7 therefore, whenever a county were to be divided,
 8 that would be one of the reasons why we did it
 9 because of trying to get the equalization of
 10 733,498, and so that would be a requirement in
 11 the criteria.
 12 Secondly, in trying to not double bunk
 13 incumbents, there were times that we had to
 14 modify the compactness to allow us to achieve
 15 that criteria.
 16 And then as far as the political
 17 impact, and that would be to kind of try to
 18 follow the political data. In helping to draw
 19 those districts, there had to be some
 20 modification in the compactness rule.
 21 Q. What do you mean when you say follow the
 22 political data?
 23 A. Well, in essence, as we were drawing the
 24 districts in the -- I say when Dr. Hofeller was
 25 drawing the districts, as he was using the

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1 election data that was used in trying to
 2 determine where the district line would be when
 3 a -- when a county was being split, he would be
 4 using the political data that would be there.
 5 Q. So he could use the political data that was the
 6 other criteria that we addressed, the third one
 7 on Page DEF 13?
 8 A. That was another one of the criteria that we
 9 established and that was the election results,
 10 and he was using election results to try to
 11 achieve the goal of drawing a district to meet
 12 the equalization population, one-person,
 13 one-vote. It's just a matter of how --
 14 Q. How did he use election results to --
 15 A. Well, let me rephrase that. In having the
 16 ability to keep it so that you get one-person,
 17 one-vote, you can go ahead and be able to use
 18 the data in deciding what part you put in and
 19 what part you don't. I think I'm correct in how
 20 I say that.
 21 Q. Okay. And my question is the term "political
 22 impact" in this criteria, how -- what does that
 23 mean?
 24 A. I would be speculating because I didn't write
 25 this, but I'm assuming that we would be called

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1 the political impact is to what VTDs would be
 2 included and not included in that district.
 3 Q. So Dr. Hofeller could use election results from
 4 2008 to 2012 to decide which VTDs should be
 5 included or excluded from a district?
 6 A. As long as he conformed with all of the other
 7 criteria. That was the key part. It wasn't one
 8 being -- overriding any other. They all had to
 9 be melded or harmonized together to be able to
 10 put together a district -- or excuse me --
 11 district maps that the Harris group -- excuse
 12 me -- the Harris court would feel competent in
 13 supporting and that's something that they did,
 14 so...
 15 Q. So the population has to be equal --
 16 A. I'm sorry. Say it again.
 17 Q. The population has to be equal in all of the
 18 districts?
 19 A. As close as reasonably possible.
 20 Q. But in terms of deciding who should go into
 21 those districts and where the line should be
 22 drawn to make that determination, Dr. Hofeller
 23 would use the election results?
 24 A. In being able to draw the district lines, he
 25 does have that capability of using the election

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1 results in deciding what VTD should be or
 2 shouldn't be included.
 3 Q. And he had that authority?
 4 A. Yes. But now you understand it is minimally
 5 used because you have 87 counties that are
 6 whole. So you're talking about very minuscule
 7 changes that would be made to adjust a VTD
 8 because there were only 12 VTDs that had to be
 9 split, so it isn't rampant.
 10 But, again, the key point was all of
 11 the eight criteria had to be harmonized for
 12 Dr. Hofeller to continue to do what we had asked
 13 him to do.
 14 Q. And you said that you did not write this
 15 language on --
 16 A. You asked me earlier who wrote it. I didn't
 17 know who wrote it, but it wasn't me as far as
 18 what, you know, the word political impact would
 19 be or political data. So I'm giving you my best
 20 estimate.
 21 Q. Thank you.
 22 Did you and Representative Lewis direct
 23 that this should be the criteria?
 24 A. We actually said that we agreed upon the
 25 compactness issue as being one of the criteria

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1 and -- but we weren't necessarily the person
 2 that wrote part of the explanation.
 3 Q. Did you agree that counties could be split for
 4 reasons of political impact?
 5 A. Yes.
 6 Q. If you'll turn to the next page, DEF 20, does
 7 that reflect the vote on the compactness
 8 criterion?
 9 A. Yes.
 10 Q. And if you will turn to the next page, 21, what
 11 is this criterion?
 12 A. This is part of the redistricting principles
 13 that allowed for incumbency to be used in
 14 deciding the district lines. And that is a
 15 consistent principle that we abided by in the
 16 original maps, and we tried as best we could to
 17 achieve that same criteria with incumbency.
 18 Q. Did you achieve that in the enacted plan in
 19 2016?
 20 A. To the best of our ability.
 21 Q. But in fact there were incumbents who were
 22 bunked together?
 23 A. Yes.
 24 Q. Representative Price and Representative Holding
 25 were placed in the same district?

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1 A. Are we talking '16?
 2 Q. 2016, yes.
 3 A. Yes, they were.
 4 Q. So you did not actually achieve this goal?
 5 A. You have to understand one of the criteria does
 6 not supersede any of the others. They're all
 7 blended together. You cannot just pick one and
 8 say we're doing this exclusively. This is a
 9 blending process. So we tried to take all of
 10 them into consideration as the map was drawn.
 11 Q. Did you achieve the equal population goal?
 12 A. As reasonably as it can be. We were within
 13 one -- one point.
 14 Q. Is that a "yes"?
 15 A. Yes.
 16 Q. Were these criteria discussed and debated at the
 17 committee hearing on February 16th?
 18 A. Let me make sure we're talking about the right
 19 date here.
 20 Yes.
 21 Q. And let me just ask you to look at Page DEF 22.
 22 Does that reflect the vote on incumbency as a
 23 part of the criteria?
 24 A. Yes. Good vote. 31 to 1 basically.
 25 Q. Was there any significance to the order in which

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1 you presented the criteria to the committee?
 2 A. They're of equal importance. So there was no --
 3 there was no -- you could have used any one
 4 first and any one second. There was no -- it
 5 was not set up on points. It was all equally
 6 important.
 7 Q. And that's true even though the first criterion
 8 that was debated and presented to the committee
 9 was equal population which is -- I believe you
 10 said is mandatory?
 11 A. Under the Constitution, it is absolutely
 12 mandatory, but it still is as important as
 13 anything else. We had to modify when the
 14 population existed by one vote, one other
 15 district had that extra vote, like 733,499 would
 16 have been that. So you always have a way of
 17 achieving it. Sometimes it isn't ideal, but
 18 that's as ideal as we could make it.
 19 Q. If you would turn to Exhibit DEF 23 in the same
 20 exhibit, Exhibit 35. Can you tell me what this
 21 is?
 22 A. Let me read it, please.
 23 Q. Sure.
 24 A. It was an amendment on the criteria in Number 13
 25 put forth by Representative Stam, a member of

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1 the committee, and it's probably just as easy
 2 for me to read it to you, and that is:
 3 "The first sentence of Political
 4 Data Criteria should read as written:
 5 "The only data other than population
 6 data to be used to construct congressional
 7 districts shall be election results in
 8 statewide contests since January 2008,
 9 not including the last two presidential
 10 contests," which is consistent.
 11 I'll be honest, I don't remember
 12 exactly why that date was put in there, but
 13 there must have been an important reason to
 14 include that change because it was evident that
 15 the vote was bipartisan.
 16 Q. And just so we're clear, the change was to add
 17 January 1st to the year 2008?
 18 A. That really is the change.
 19 Q. Okay. And that's the extent of that amendment?
 20 A. Yes, ma'am.
 21 Q. And that amendment passed?
 22 A. Yes, ma'am.
 23 Q. If you will turn to the next page, DEF 25, and
 24 if you'll read it and then let me know what this
 25 proposed criteria is.

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1 A. That was an amendment put forward by Senator
 2 Blue, a member of the committee, and just as
 3 easy if I read it.
 4 "The second sentence of Compact
 5 Criteria 6 should read as written:
 6 "Division of counties shall only be
 7 made for reasons of equalizing population
 8 and for reasons of complying with the
 9 federal law."
 10 That eliminated the issue of incumbency
 11 which we felt was part of the traditional -- and
 12 the political impact was also eliminated in
 13 that, but, in essence, we felt that it was
 14 important to remain consistent with the
 15 traditional redistricting principles.
 16 And the vote -- I can't tell -- 23-11,
 17 I think. I can't make that one out.
 18 Q. I think that's right.
 19 So you felt it was important to keep --
 20 to allow Dr. Hofeller to divide counties for
 21 reasons of political impact?
 22 A. I would say to you that the striking incumbency
 23 and the political impact was part of the total
 24 criteria that we established and felt that that
 25 was how we had to achieve getting the Harris

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1 court to approve our map and to comply with what
 2 they had requested of us. So we felt that
 3 changing that criteria at that point would --
 4 could have been counterproductive possibly.
 5 Q. And my question is: You wanted Dr. Hofeller to
 6 have the ability to divide counties for reasons
 7 of political impact?
 8 A. That was in the original criteria and that's
 9 what we felt was important to continue to have.
 10 Q. And if you will turn to DEF 27, the same
 11 question: What is this proposed criteria?
 12 A. The -- and I'll read it.
 13 "The second sentence of Compact
 14 Criteria Number 6 should read as written:
 15 "Division of counties shall only be
 16 made for reasons of equalizing population,"
 17 adding "preserving communities defined by
 18 actual shared interests, consideration of
 19 incumbency and political impact."
 20 There was a discussion during the
 21 meeting about what and how do you define, in
 22 essence, communities of interest, and we spoke
 23 with staff and they reported to the committee
 24 that there is no clear definition of what
 25 communities of interest actually were, and so

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1 the decision was to reject this amendment and
 2 stay consistent with our eight criteria so that
 3 we would stay in line with what we believed was
 4 the -- what the court would support in regard to
 5 the maps we drew.
 6 Q. Did you instruct Dr. Hofeller to preserve
 7 communities of interest?
 8 A. We instructed Dr. Hofeller to follow the
 9 criteria.
 10 Q. Did you instruct Dr. Hofeller to preserve
 11 communities of interest?
 12 MR. FARR: Object to the form, but you
 13 can answer.
 14 THE WITNESS: That's not in one of the
 15 criteria; so therefore that was not one of the
 16 guidelines that Dr. Hofeller had to follow.
 17 BY MS. MACKIE:
 18 Q. Did you talk to Dr. Hofeller after this
 19 committee hearing? And let me -- let me
 20 rephrase that.
 21 Did you convey any information that you
 22 learned from the committee hearing to
 23 Dr. Hofeller following the committee hearing?
 24 A. Specifically about the committee hearing?
 25 Q. Yes.

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1 A. No.
 2 Q. Did you convey any information about proposed
 3 amendments to the criteria to Dr. Hofeller?
 4 A. No.
 5 Q. And did you convey any information about adopted
 6 amendments to the criteria to Dr. Hofeller?
 7 A. I don't remember speaking with Dr. Hofeller
 8 directly about the dealings of the committee.
 9 Q. And Page DEF 28, does that reflect the vote on
 10 the amendment submitted by Senator Smith-Ingram?
 11 A. Yes.
 12 Q. And was that amendment rejected by the
 13 committee?
 14 A. Yes.
 15 Q. If you'll turn to the next page, DEF 29, is this
 16 a proposed criterion to add communities of
 17 interest?
 18 A. Yes.
 19 Q. And I won't belabor the same questions we just
 20 went through since we just talked about
 21 communities of interest, but you did not convey
 22 any information to Dr. Hofeller about this
 23 proposed criteria, did you?
 24 A. Based on my last answer, we asked staff to give
 25 us a clear definition of what communities of

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1 interest; there was not one. So it would make
 2 no sense to put in something into a criteria
 3 that we couldn't have defined.
 4 Q. And was this amendment rejected by the committee
 5 on Page DEF 30?
 6 A. Yes.
 7 Q. If you will go back to the notebook which is
 8 Exhibit 34, and we're going to look at some
 9 specific things within Tab 1, which is the
 10 transcript of that committee hearing on
 11 February 16th.
 12 If you'll turn to Page 8. And if you
 13 need to read it, you can, but what I would like
 14 to know is the statement that Representative
 15 Lewis makes beginning at the bottom of Page 8
 16 that continues on to Page 12.
 17 A. I would like to read it.
 18 Q. Okay.
 19 A. Up to the end of Chairman Lewis's comment,
 20 right?
 21 Q. Yes.
 22 A. Okay.
 23 Q. Did someone write the language of this
 24 statement?
 25 A. I don't know.

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1 Q. Why did Representative Lewis make this statement
 2 before the committee?
 3 A. The way we were handling the Joint Committee, I
 4 was going to chair it and he was going to
 5 present the criteria.
 6 Q. So you were running the meeting but he would be
 7 the one actually making presentations?
 8 A. Well, if you've seen legislative meetings, the
 9 chairman is there and then you have a person, a
 10 representative or senator in this case because
 11 it was a joint, that would present what was to
 12 be taken up by and debated and voted on by the
 13 committee.
 14 Q. And on Page 12, Line 8, it says: "Mr. Chairman,
 15 at your direction."
 16 Did Representative Lewis say that
 17 because you were chairing the committee?
 18 A. That's proper protocol.
 19 Q. Okay. Thank you.
 20 If you'll turn to Page 48, and on
 21 Line 4 through 6, Representative Lewis says:
 22 "I acknowledge freely that this
 23 would be a political gerrymander, which
 24 is not against the law."
 25 Do you see that?

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1 A. I see it.
 2 Q. Do you agree with his statement?
 3 A. Based on what we understood the law required of
 4 us and especially after having to follow the --
 5 what was required of us by the Harris court, it
 6 was -- in achieving our criteria, the term
 7 political gerrymandering was something that
 8 Representative Lewis uses.
 9 I don't know -- I see nothing wrong
 10 with that comment.
 11 Q. Would you agree that the 2016 congressional --
 12 Contingent Congressional Plan was a political
 13 gerrymander?
 14 MR. FARR: Objection to the form.
 15 THE WITNESS: No, because of the fact
 16 that it followed all of the -- it wasn't just
 17 politics. It followed all of the criteria that
 18 were established, traditional criteria,
 19 redistricting criteria that would be expected of
 20 us and in addition to which the other requests
 21 that were made by the Harris court in
 22 outlining -- in how we interpreted and had to
 23 abide by their order.
 24 BY MS. MACKIE:
 25 Q. Did you tell Representative Lewis that you

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1 disagreed with his characterization?
 2 A. I don't.
 3 Q. You don't disagree?
 4 A. I said that is how he defined it, and I'm
 5 comfortable with how he did.
 6 Q. So would you agree, then, that a map that is
 7 likely to elect 10 Republicans and 3 Democrats
 8 is a political gerrymander?
 9 MR. FARR: Objection to the form.
 10 THE WITNESS: No, because of the fact
 11 that it followed the criteria that were
 12 established. Not one -- the politics didn't
 13 take precedent, not one of them took precedent,
 14 and they were all treated equally. It was a
 15 harmonization of all of those criteria which
 16 allowed us to achieve what the court had
 17 expected of us.
 18 BY MS. MACKIE:
 19 Q. So what part of his sentence here that we're
 20 looking at on Lines 4 through 6 do you agree
 21 with?
 22 A. I'm comfortable with his statement.
 23 Q. Okay. And you're comfortable that it's not
 24 against the law to draw a political gerrymander?
 25 MR. FARR: Objection to the form.

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1 THE WITNESS: Our understanding is that
 2 the Supreme Court of the -- the United States
 3 Supreme Court has never called political
 4 gerrymander unconstitutional. So therefore we
 5 followed the law and did so in producing the
 6 criteria -- the list of criteria that we used in
 7 meeting the needs and what was expected of us by
 8 the Harris court.
 9 BY MS. MACKIE:
 10 Q. If you will turn to Page 50 and look at Line 7
 11 through 10. Representative Lewis says:
 12 "I propose that we draw the maps to
 13 give a partisan advantage to 10 Republicans
 14 and 3 Democrats because I do not believe
 15 it's possible to draw a map with 11
 16 Republicans and 2 Democrats."
 17 Do you agree with Representative
 18 Lewis's statement that I just read?
 19 A. I will say yes, and I will explain it even
 20 further.
 21 In following the criteria that -- and
 22 meeting all of the criteria as we blend them
 23 together, the 10-3 map that Representative Lewis
 24 was describing was doable, something that we
 25 explained -- we talked about earlier, and

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1 apparently the 11-2 that he commented about is
 2 not.
 3 So as we had whole counties, as we had
 4 the limited VTDs, as we met all the other
 5 criteria, a 10-3 map is something that could be
 6 achieved but also recognizing the partisan
 7 advantage only gives Republicans an opportunity
 8 to win an election in what is a competitive
 9 district.
 10 And he did go on to say later on that
 11 those districts are actually more competitive
 12 than they were in the 2011 plan.
 13 Q. If you will go back to Exhibit 35, which is this
 14 packet that we were just looking at and turn to
 15 Page DEF 31. And it may also help if you want
 16 to look in Exhibit 34, Page 130 of the
 17 transcript.
 18 Senator Rucho, on Page DEF 31 of
 19 Exhibit 35, there's a motion for -- three
 20 motions that were made to the committee. Can
 21 you explain what those are?
 22 A. I need an opportunity to read it for a few
 23 minutes. Okay.
 24 Q. Sure.
 25 A. It appears to be an adoption by Senator Hise of

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1 the criteria and in addition to -- for which we
 2 were to follow so we could comply with the
 3 Harris case.
 4 And it also authorizes the co-chairs
 5 and the minority party -- and I know that was at
 6 that time Senator McKissick was the contact that
 7 we had directly -- to spend upwards of \$25,000,
 8 each group, to be able to hire a map drawer to
 9 come up with a map that they believe would be
 10 able to meet the criteria and be able to be
 11 submitted as an example to, of course, the full
 12 Senate and full House and ultimately, if it
 13 passes, to the Harris Court, but it just
 14 authorized those resources to be utilized by
 15 both the majority and the minority party to have
 16 access to the computer and offer each group an
 17 opportunity to submit maps for committee -- the
 18 Redistricting Committee debate and ultimately to
 19 the floor.
 20 We did something very similar to this,
 21 I believe it was either 50 or \$60,000 that were
 22 offered for minority members to -- in the Senate
 23 and in the House to draw maps back in 2011.
 24 Unfortunately, they didn't take advantage of the
 25 opportunity to submit maps in any timely manner,

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1 and similarly this time they chose not to submit
 2 a map so we had something to compare and
 3 contrast.
 4 Q. Had Dr. Hofeller been engaged before
 5 February 16, 2016?
 6 MR. FARR: Objection to the form.
 7 You can answer.
 8 THE WITNESS: I'd probably say no. To
 9 the best of my recollection, no.
 10 BY MS. MACKIE:
 11 Q. He had not been engaged to draw --
 12 A. To draw a map, a contingency map?
 13 Q. Yes.
 14 A. We never anticipated having to draw one up until
 15 February 5th at 5:00 or 6:00.
 16 Q. But you met with Dr. Hofeller on February 8th or
 17 9th and talked about what the map would look
 18 like and looked at maps that he had drawn. And
 19 I believe you --
 20 A. You're saying engaged, like hired him to --
 21 Q. When did you hire Dr. Hofeller to draw maps?
 22 A. You know, I can't recollect that. I did not
 23 hire him and --
 24 Q. Who hired him?
 25 A. I think it was done very similar manner through

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1 our legal office.
 2 Q. Was an engagement letter sent to Dr. Hofeller?
 3 A. I don't know the answer to that question.
 4 Q. Did Hofeller submit invoices to you?
 5 A. Not to me.
 6 Q. Did he submit invoices to Ogletree Deakins?
 7 A. To the legal office.
 8 Q. When did he submit those invoices?
 9 A. I don't know.
 10 Q. Did you see them?
 11 A. No, ma'am.
 12 Q. How much did Dr. Hofeller charge to draw the
 13 2016 Congressional Plan?
 14 A. I have no way of knowing.
 15 Q. But it presumably would be less than \$25,000
 16 based on this motion?
 17 A. I don't know what it was, so I can't comment on
 18 that.
 19 Q. So you don't know how much Dr. Hofeller was
 20 paid?
 21 A. No, ma'am.
 22 Q. And you don't know whether he submitted
 23 invoices?
 24 A. I'm assuming he did. I don't know how much he
 25 got paid and how much he charged.

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1 Q. And you never saw any invoices?
 2 A. Not that I remember.
 3 Q. Why not?
 4 A. Why not?
 5 Q. Yes.
 6 A. I didn't hire him. It was done through the
 7 legal firm. So I wouldn't be the one to do that
 8 directly.
 9 Q. Who paid Dr. Hofeller?
 10 A. I'm assuming it was done through the legal firm.
 11 Q. Where did the money come from to pay --
 12 A. I assume that's when they billed the General
 13 Assembly. So I don't remember seeing any bills
 14 that Dr. Hofeller submitted.
 15 Q. Public funds were used to pay Dr. Hofeller,
 16 right?
 17 A. As part of our legal expenses in defending a
 18 case.
 19 Q. Do you know how many hours Dr. Hofeller worked?
 20 A. No, ma'am.
 21 Q. Did you have any written communications with
 22 Hofeller about his fees?
 23 A. Not that I remember.
 24 Q. Do you know what his hourly rate was?
 25 A. No, ma'am.

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1 Q. If you will turn to -- it's DEF 34 and there's
 2 some handwriting on top of the Bates stamp.
 3 It's the page that looks just like the page we
 4 were looking at with some handwritten additions.
 5 Do you have a recollection of what
 6 these handwritten additions meant?
 7 MR. FARR: I'm sorry. What page are
 8 you on?
 9 MS. MACKIE: DEF 34.
 10 THE WITNESS: I don't -- I'm not sure I
 11 can read it very easily either. The writing is
 12 small.
 13 My recollection is that there was some
 14 discussion by the Democrat representative from
 15 Wake county when they asked for some
 16 clarification as to when the -- when it could
 17 have started as far as payment is concerned, and
 18 it's the best I can remember as to what this
 19 did, but it arose from a question from
 20 Representative Darren -- and I can't remember
 21 his last name.
 22 BY MS. MACKIE:
 23 Q. Jackson?
 24 A. Jackson. Thank you.
 25 Q. So did this amendment just clarify that any

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1 experts engaged to draw maps could be paid for
 2 work completed prior to February 16, 2016?
 3 A. I'm assuming that's what it says, yes. It
 4 helped clarify the language on it because he
 5 raised that question.
 6 Q. If you will look at the next two pages, DEF 35
 7 and 36, did these pages reflect the vote on the
 8 payment motion?
 9 A. It appears that both of them passed, bipartisan
 10 support.
 11 Q. And if you will look at Page DEF 37 and there's
 12 other handwritten additions to that page, if
 13 you'll read through those and tell me what those
 14 mean.
 15 A. Yeah. I'm not sure I can read them very well.
 16 I would probably say to you there was some
 17 additional clarification, but I can't make heads
 18 or tails out of this.
 19 Q. Let me try to help you out.
 20 A. Go ahead.
 21 Q. In Paragraph 2, the addition says:
 22 "The co-chairs shall control
 23 legislative confidentiality of any
 24 drafting request or maps produced..."
 25 And I think you move up:

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1 "...from this authority unless and
2 until presented to the committee in the
3 co-chair's discretion."
4 A. I don't recollect what specifically this issue
5 was addressing. I just don't remember that.
6 Q. Is it your understanding that you were able to
7 control legislative confidentiality of drafting
8 requests for maps produced?
9 A. I can't remember exactly what this specific
10 amendment dealt with.
11 Q. Do you remember if you supported it or not?
12 A. I did.
13 Q. And are you looking at Page DEF 38?
14 A. Yes.
15 Q. Is that the vote on this amendment?
16 A. It appears to be.
17 Q. Okay. Senator, if you'll look at Page 135 of
18 the transcript, and I want to ask you about
19 Senator Blue's question that begins on Line 11
20 and your response to that.
21 What did you mean when you said "I
22 think we're probably going to use the one that
23 you're presently using now"?
24 A. I was responding to Senator Blue, and my
25 understanding was that we would be using at that

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1 point to do map drawing Dr. Hofeller.
2 Q. So did you think that Senator Blue was also
3 going to be using Dr. Hofeller?
4 A. I don't know if he was really looking for
5 assistance from us as who to hire to draw the
6 maps. I think he was just trying to identify
7 Dr. Hofeller as a map drawer that we would use.
8 Q. Okay. At this point you had already started
9 working with Dr. Hofeller?
10 A. Yes.
11 Q. And he had already drawn maps?
12 A. He was working on the process.
13 Q. Okay. If you'll turn to Tab 2 in this notebook.
14 And what is this transcript?
15 A. It looks like the second meeting of the Joint
16 Committee on Redistricting.
17 Q. Did you present a map at this meeting?
18 A. I think I mentioned that in there, so I'm trying
19 to remember. I don't remember exactly the
20 sequence of the time, but --
21 Q. I may be able to refresh your recollection.
22 If you'll turn to Page 8 and there's a
23 statement by you. Does that refresh your
24 recollection whether you presented a map --
25 A. Let me read it, if I may.

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1 Q. Certainly.
2 A. Yes. Apparently a map was being presented to
3 the committee. We -- as chairman I asked if
4 there were any additional maps that would like
5 to be submitted with the hope that we would get
6 the minority party to engage in the process.
7 They were aware, as we were, as of February 5th
8 that maps would need to be redrawn or now maps
9 would need to be redrawn. So we would have
10 hoped that they would have recognized that and
11 prepared maps to move forward with.
12 Q. When the Joint Committee met the day before, on
13 February 16th, did you tell the committee that a
14 map would be presented the following day?
15 A. I -- let me see if I said anything in the back
16 end of this as to when the next committee
17 meeting would be.
18 I don't remember.
19 Q. Okay.
20 A. Apparently there was a notice put out for the
21 next committee meeting and it was scheduled for
22 whatever time that was. I don't have that here.
23 Q. Did you tell members of the minority party that
24 they should submit a map by February 17th?
25 A. We -- and I can't remember how that was done. I

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1 know we clarified the language as to the 25,000.
2 I know following the same procedure we did when
3 I spoke with Senator McKissick and Senator Blue
4 when we did the 2011 map that we would have
5 hoped them to participate in a similar manner.
6 Resources were provided to help them achieve and
7 submit their version of the map.
8 I can only speak to the Senate side.
9 Representative Lewis could explain to you
10 exactly what he may have done to speak to the
11 House members.
12 Q. When did you receive the map from Dr. Hofeller
13 that you presented at this committee hearing?
14 A. I don't remember exactly when Dr. Hofeller had
15 the map inputted onto the legislative computer.
16 I don't know the answer to that question.
17 Q. Would it have been sometime between the
18 committee meeting on February 16th and this
19 committee meeting on the 17th?
20 A. I don't know the answer to that. I don't know
21 when it was inputted on there.
22 Q. If you will turn to Tab 3. Actually, I'm sorry,
23 Tab 6.
24 A. Six.
25 Q. I'm sorry, let's actually go back to that Joint

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1 Committee meeting on February 17th. You may not
 2 have to go back to the transcript.
 3 Was the map approved by the committee
 4 that day?
 5 A. For the Joint Committee, I would assume yes.
 6 No, I don't know. I don't remember.
 7 Q. Okay. Let's go back just to get that straight
 8 for the record.
 9 A. That is what, Tab 2?
 10 Q. That is Tab 2. And if you'll turn to Page 72.
 11 A. 72?
 12 Q. Yes.
 13 A. The -- the maps were -- there was a motion for
 14 adoption of the maps and there was a vote --
 15 role call vote to adopt the maps, and we were --
 16 I think that was the 18th. Am I not correct?
 17 What was the date of that one?
 18 Q. The date is at the very top of the page.
 19 A. 17th. Okay. That was Wednesday the 17th that
 20 that was done, and we needed to have everything
 21 completed by the 19th. So time was of the
 22 essence for us to comply with the Harris court,
 23 and this was the next step before it went into
 24 Senate and House redistricting committees.
 25 Q. So the map that you presented to the Joint

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1 Committee on February 17th was approved by the
 2 Joint Committee on February 17th?
 3 A. Actually, Representative Lewis presented that
 4 map.
 5 Q. Okay. Thank you for that correction.
 6 The map that Representative Lewis
 7 presented to the Joint Committee on
 8 February 17th was approved by the Joint
 9 Committee on that same day?
 10 A. On the 17th.
 11 Q. And was the vote 24 in favor and 11 against?
 12 And it may help to look at Page 72, Lines 12
 13 through 6.
 14 A. 24 and 11, that's accurate.
 15 Q. Was that based on party lines?
 16 A. Yes.
 17 Q. Now we can go back to Tab 6.
 18 Is this a transcript of the Senate
 19 Redistricting Committee on February 18th?
 20 A. Yes.
 21 Q. If you will turn to Page 8.
 22 A. Okay. Page 8.
 23 Q. And the bottom of Page 6 shows that you were the
 24 speaker.
 25 A. The bottom of Page 6.

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1 Q. Yes, is the start. It says "Senator Rucho" and
 2 it's the start of your statement that continues
 3 on to Page 8.
 4 A. The Senate Redistricting Committee was taking up
 5 the map and Representative Lewis was presenting
 6 that map to the Senate Redistricting Committee.
 7 Q. Okay. Thank you.
 8 On Lines 4 through 6 --
 9 A. Of page?
 10 Q. Of Page 8 you say:
 11 "And any amendments that come
 12 forward have to include the entire state
 13 map."
 14 Why was that?
 15 A. It is usually redistricting process where if you
 16 make adjustments on one district, it has a
 17 rippling effect on others. And so if you don't
 18 have a map in its entirety, it's impossible to
 19 be sure that what change was made in not
 20 achieving any of the eight criteria would have
 21 been impacted. So it was important for that
 22 full map to be your amendment.
 23 Q. When you say "any amendments," do you mean
 24 alternative maps?
 25 A. Alternate maps, change in the maps, someone says

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1 I want to change the number in District 4,
 2 that's the kind of thing that would need to be
 3 done.
 4 Q. So you're saying if someone wants to make a
 5 change to District 4, they need to present a map
 6 of the entire --
 7 A. Reflecting that change and how it impacts the
 8 entire map.
 9 Q. Okay. Why did you redraw the entire
 10 congressional plan?
 11 MR. FARR: Objection to form.
 12 THE WITNESS: Well, that goes back to
 13 what we originally were charged in doing. If
 14 you remember, we had to -- under advice of the
 15 Harris court, they weren't happy with the 12th
 16 district. So when you consolidated that, you
 17 impacted all of the counties that were involved
 18 in that part.
 19 So that in itself was, you know, one
 20 major portion, and that goes to the ripple
 21 effect. Once you change one district, you
 22 change many, and if you changed the 12th, which
 23 crisscrossed many of the counties, then it
 24 requires you to make major changes everywhere.
 25 BY MS. MACKIE:

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1 Q. Did you have any discussions about only changing
 2 Congressional Districts 1 and 12 and the
 3 districts close to those districts?
 4 A. It's not possible to do that because once you
 5 change one and trying to meet all the criteria
 6 that has been established, you can't just try to
 7 make those changes and conform to the criteria
 8 that we established which we believed was
 9 critical for the Harris court to accept and to
 10 approve our maps.
 11 Q. So you had to change the entire map?
 12 A. In essence, to achieve what the Harris court
 13 would have expected for us, at least that's what
 14 we interpreted the Harris court needed us to do.
 15 Q. If you'll turn to Page 10, and on Lines 13 to
 16 15, Representative Lewis says:
 17 "But make no mistake in that regard,
 18 this is a weaker map than the enacted
 19 plan."
 20 What is meant by that?
 21 A. I mentioned earlier to you that in drawing these
 22 maps following these criteria that were
 23 established to conform with what the Harris
 24 Court wanted us to do, I mentioned earlier that
 25 Representative Lewis in describing the maps that

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1 they were less -- let's just say it was not as
 2 easy for Republicans to win that seat or to
 3 Democrats, for that matter, but it changed -- it
 4 weakened any type of partisan changes that might
 5 have been there or political.
 6 Q. How did you determine that?
 7 A. That is a statement that probably needs to be
 8 answered by Representative Lewis, to be honest
 9 with you.
 10 Q. But you agreed with his statement, right?
 11 A. I believe -- I agreed with his premise.
 12 Q. Did you have a way to determine that the 2016
 13 map was weaker than the 2011 map?
 14 A. I'm not familiar with one.
 15 Q. Okay. So you don't actually know whether it was
 16 weaker?
 17 A. I went on his statement, and I had no reason to
 18 doubt it.
 19 Q. If you will turn to Pages 12 and 13. And I'll
 20 let you read this.
 21 A. Okay.
 22 Q. My question is going to be about Senator Ford's
 23 questions which are similar to the questions I
 24 was just asking you.
 25 On Page 12 you asked about the data to

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1 justify that claim and Representative Lewis
 2 responds.
 3 A. May I read it?
 4 Q. Please.
 5 A. My best estimate of what was done is that
 6 Senator Ford wanted to get some clarification as
 7 to how Representative Lewis had made the
 8 statement that he did about weaker maps, and I
 9 think Representative Lewis did not have the
 10 material in front of him but said you look at
 11 the stat packs, you can look at every district
 12 and determine if there was changes in what was
 13 the 2011 stat pack versus the 2016 stat pack.
 14 Q. Did you look at the stat pack to make that
 15 comparison?
 16 A. No.
 17 Q. So again, you don't know whether the 2016 map is
 18 weaker?
 19 A. My responsibility was -- and the responsibility
 20 of Representative Lewis was to get the map to
 21 comply with all of the criteria, harmonize them
 22 and get it passed and on to the Harris Court
 23 before the end of the 19th. So that's what we
 24 were in the process of doing.
 25 Q. If you will turn to Page 22. And at the bottom,

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1 Senator McKissick asked if you can identify any
 2 consultants or persons that provided assistance
 3 in drawing these districts, and if you will read
 4 your response.
 5 A. Yes. I said that it wasn't relevant and
 6 therefore unnecessary to say.
 7 Q. Why was that not relevant?
 8 A. It wasn't relevant because, in essence, the
 9 criteria were established. The orders -- the
 10 rule -- the guidelines were there, and whether
 11 Dr. Hofeller or anybody else was doing that, in
 12 this case it was Dr. Hofeller, as you know, it
 13 wasn't relevant to this map moving forward.
 14 Q. You didn't think that your fellow senators
 15 deserved to know who drew the maps?
 16 MR. FARR: Objection to the form.
 17 THE WITNESS: No.
 18 BY MS. MACKIE:
 19 Q. And if you will turn to the next page, Page 24,
 20 your statement at the top says:
 21 "I'll be clear, the criteria that
 22 Representative Lewis has submitted is
 23 the criteria that was used to draw the
 24 maps, and probably that's as much as we
 25 need to know."

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1 A. The maps were based on the criteria. What else
 2 needs to be known?
 3 Q. If you'll turn to Page 28 and you'll see at the
 4 bottom of Page 27 that -- this is you speaking.
 5 You say:
 6 "...when the criteria were
 7 established, we wanted to be clear what
 8 each of the goals -- stated goals were,
 9 and, therefore, we needed to be sure
 10 that whatever they were we understood
 11 them to be.
 12 "And then any time that a future
 13 legislator or a future court needed to
 14 know that we know specifically what we
 15 were trying to achieve."
 16 Was your purpose in having written
 17 criteria so that a future court would know what
 18 your goals were?
 19 A. The -- it goes back to the original when we drew
 20 2011. We had criteria when we were drawing
 21 those maps.
 22 Redistricting is very complex and you
 23 need a recipe or you need a roadmap as to draw
 24 them and to draw any of the maps, and this was
 25 our roadmap to accomplish that because we felt

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1 that those criteria, harmonized together, would
 2 meet the requirements by the Harris case.
 3 So we clearly state that whether it's
 4 the court or legislators or anybody else, this
 5 is how we arrived at the map, the 2016
 6 contingent map, which, again, we didn't feel was
 7 necessary because we were still confident that
 8 the 2011 map would remain -- would be found to
 9 be constitutional, but we were meeting the
 10 requirements of the court at the time this was
 11 done. And all we had now was another day left
 12 before we had to complete it so we were running
 13 out of time.
 14 Q. And to that end, if you will turn to Page 63.
 15 A. 60?
 16 Q. 63, yes. Did the map pass the Senate
 17 Redistricting Committee on February 18th?
 18 A. Yes.
 19 Q. And was it by a vote of 12 to 5?
 20 A. That's correct.
 21 Q. Was that based on party lines?
 22 A. Likely.
 23 Q. I'm going to hand you what we will mark as
 24 Exhibit 36.
 25 ///

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1 (WHEREUPON, Plaintiffs' Exhibit 36 was
 2 marked for identification.)
 3 THE WITNESS: Are we finished with this
 4 book?
 5 MS. MACKIE: I think so.
 6 BY MS. MACKIE:
 7 Q. Senator Rucho, does Exhibit 36 have transcripts
 8 of the Senate floor sessions on February 18th
 9 and February 19th?
 10 A. Yes.
 11 Q. And was Senate Bill 2 introduced on the floor of
 12 the Senate in the February 18th session, which
 13 is behind Tab 1. And to help you out, you may
 14 want to look at Page 25.
 15 A. Yes.
 16 Q. And if you will turn to Page 107. And you may
 17 want to look at Page 104 to see who the speaker
 18 is.
 19 A. I assume you're alluding to Senator Berger.
 20 Q. Yes.
 21 A. Okay.
 22 Q. Had Senator Berger seen the map before
 23 February 18, 2016?
 24 MR. FARR: Remember my instructions to
 25 you.

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1 THE WITNESS: Yes. Yes, I understand.
 2 I believe the map was online on the
 3 redistricting website. I'm sure this would have
 4 been the third meeting that we would have had
 5 with members of the Senate both in the Joint
 6 Conference Committee on Redistricting, Senate
 7 Redistricting and now on the floor. I think I
 8 even mentioned the fact that there were at least
 9 40 members that have been present one way or the
 10 other in this.
 11 So my best guess is that at some point
 12 Senator Berger had seen the map.
 13 BY MS. MACKIE:
 14 Q. And if you will turn to -- well, did Senate
 15 Bill 2 pass the Senate on February 18th?
 16 A. Yes.
 17 Q. Page 110, the vote reflected there.
 18 A. Yes.
 19 Q. And was it 32 in favor and 15 opposed?
 20 A. That is correct.
 21 Q. And was that on party lines?
 22 A. I don't have the breakdown before me, but I'll
 23 assume yes.
 24 MS. MACKIE: We've been going for
 25 almost an hour and a half. Do you want to take

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1 a break?
 2 MR. FARR: Okay.
 3 MS. MACKIE: We'll do just a quick
 4 break.
 5 MR. FARR: Sure. Thank you.
 6 THE VIDEOGRAPHER: Off record at 2:25
 7 p.m.
 8 (Brief Recess.)
 9 THE VIDEOGRAPHER: On record at
 10 2:40 p.m.
 11 BY MS. MACKIE:
 12 Q. Senator, if you could look at Tab 2 in
 13 Exhibit 36, which is the Senate floor session on
 14 February 19th.
 15 Was a bill introduced at this session
 16 that's related to the logistics of a new
 17 congressional election in 2016?
 18 A. Let me just be clear that the one we talked
 19 about in the morning was Senate Bill 2. This
 20 was House Bill 2. Actually, it came over from
 21 the House.
 22 They had originated the bill dealing
 23 with setting up the -- I think it was a June
 24 primary election for congressional races that
 25 would run under the map that we have

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1 submitted -- had submitted to the Harris court.
 2 So yes.
 3 Q. And did House Bill 2 pass the Senate on
 4 February 19th? Page 3 may answer that question
 5 for you.
 6 A. Yes.
 7 Q. Actually, Page 14 is the third reading.
 8 A. Right. Bipartisan support.
 9 Q. Thank you. You can put that notebook away.
 10 I'm going to hand you what we will mark
 11 as Exhibit 37.
 12 (WHEREUPON, Plaintiffs' Exhibit 37 was
 13 marked for identification.)
 14 BY MS. MACKIE:
 15 Q. Senator Rucho, can you tell me what Exhibit 37
 16 is?
 17 A. It appears to be Senate Bill 4, Creation of
 18 Bipartisan State Board of Elections and Ethics
 19 Enforcement.
 20 Q. And were you a sponsor of this bill?
 21 A. I can't remember if I sponsored it or I ran it
 22 on the floor or what, but I was -- I was part of
 23 the effort to pass it during one of the special
 24 sessions.
 25 Q. And what is your understanding of what this bill

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1 does?
 2 MR. STRACH: Objection. We're not
 3 going to testify -- I'm going to instruct him
 4 not to testify on any matters outside of
 5 congressional redistricting.
 6 MS. MACKIE: Okay.
 7 MR. STRACH: He's not waived his
 8 legislative immunity as to anything but
 9 congressional redistricting as Mr. Farr said
 10 earlier.
 11 BY MS. MACKIE:
 12 Q. So you're maintaining legislative privilege and
 13 immunity with regard to Senate Bill 4?
 14 A. Yes.
 15 Q. I am going to hand you what was marked yesterday
 16 as Exhibit 16A. And I do have extra copies of
 17 that.
 18 Have you seen this document before,
 19 Senator Rucho?
 20 A. I don't recall it. I know it was discussed
 21 yesterday, but I don't recall seeing it or
 22 reading it.
 23 Q. Okay. I'm going to ask you about one specific
 24 paragraph in it. If you'll turn to Page 23 and
 25 it's Paragraph 68.

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1 Have you read Paragraph 68?
 2 A. Yes, ma'am.
 3 Q. Do you agree with Dr. Hofeller that the General
 4 Assembly's overarching goal in 2011 was to
 5 create as many safe and competitive districts
 6 for Republican incumbents or potential
 7 candidates as possible?
 8 MR. STRACH: Objection.
 9 You can answer that.
 10 THE WITNESS: I would probably say our
 11 overarching goal was to pass the redistricting
 12 maps and to get preclearance from the Justice
 13 Department so that an election can take place in
 14 2012 on the normal schedule.
 15 And, no, I don't agree with the premise
 16 that they were the overarching goal as described
 17 by Dr. Hofeller.
 18 BY MS. MACKIE:
 19 Q. Okay. If you will flip back to Paragraph 23,
 20 the first line says:
 21 "Political control of the
 22 redistricting process can also become an
 23 overarching factor."
 24 Would you agree with that statement?
 25 A. I'd like to read it.

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1 Q. Sure. I'm only asking about that first sentence
 2 in Paragraph 23.
 3 MR. STRACH: Read the whole paragraph
 4 for context.
 5 THE WITNESS: I'm not sure I concur
 6 with his premise primarily because of the fact
 7 that in 2010 the Republicans running on
 8 Democratically-drawn gerrymandered maps, we
 9 ended up winning the majority. And so I'm not
 10 sure that -- you know, if based on what he
 11 described it was contradicted by the results of
 12 the 2010 election.
 13 BY MS. MACKIE:
 14 Q. Okay. So you disagree that political control of
 15 the redistricting process can also become an
 16 overarching factor?
 17 MR. STRACH: Objection.
 18 You can answer that.
 19 THE WITNESS: I'm not sure I
 20 understand. Overarching factor for what? For?
 21 BY MS. MACKIE:
 22 Q. Would you agree that political control can be a
 23 factor that takes precedence over other factors
 24 in redistricting?
 25 MR. STRACH: Objection.

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1 THE WITNESS: I don't mean to be
 2 difficult. Are we talking political control
 3 like controlling the legislative House and
 4 Senate? Is that what we're describing?
 5 BY MS. MACKIE:
 6 Q. Sure. We can agree on that definition for
 7 political control.
 8 A. When we were running in 2010, it wasn't for the
 9 purpose of -- it was the purpose of changing the
 10 direction of the government, not necessarily --
 11 the state government, not for any other reason.
 12 So I'm not sure -- I'm not sure I believe in
 13 that premise.
 14 Q. Okay. Thank you.
 15 Are you familiar with the Republican
 16 State Leadership Committee?
 17 A. RSLC?
 18 Q. Yes.
 19 A. I think it was discussed at length yesterday.
 20 Q. Had you heard of the RSLC before yesterday?
 21 A. I did.
 22 Q. How did you hear of it?
 23 A. I think back in 2010 or somewhere in that period
 24 of time when -- and I'm going on memory -- there
 25 was the -- the RSLC was in the process of trying

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1 to help many states gain the majority in the --
 2 for the Republicans in a number of states across
 3 the country.
 4 I actually -- if I'm not mistaken, I
 5 think I went to one RSLC meeting and probably
 6 walked away disappointed because I think they
 7 had a series of tiers that they -- they thought
 8 would be winning opportunities for them and
 9 North Carolina didn't even make into the top
 10 four tiers. So I said that's disappointing,
 11 because, you know, everyone thinks that they can
 12 win the majority.
 13 I know of them, but that's probably the
 14 extent of what I do know.
 15 Q. When did you go to an RSLC meeting?
 16 A. My recollection it was either in Raleigh or in
 17 Charlotte. It was back in 2010 or earlier. And
 18 they came around explaining what they were
 19 doing. And I'm sure as a legislator I was
 20 invited to attend probably to learn more than --
 21 I learned something that I never had known
 22 before.
 23 Q. And that was the only RSLC meeting you had went
 24 to?
 25 A. Best I can remember.

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1 Q. I want to hand you what was marked yesterday as
 2 Exhibit 9.
 3 MS. MACKIE: And, Phil, I'm sorry, I do
 4 not have extra copies of this one.
 5 THE WITNESS: Dear legislator letter.
 6 MR. STRACH: All right.
 7 BY MS. MACKIE:
 8 Q. Did you receive a copy of this letter?
 9 A. I don't remember.
 10 Q. Have you seen this letter before?
 11 A. I think this was something that was discussed
 12 yesterday, but nothing that I've seen -- nothing
 13 prior than what was discussed yesterday.
 14 Q. So did you receive it?
 15 A. I don't believe I had.
 16 Q. And do you remember seeing it before yesterday?
 17 A. No.
 18 Q. I'm going to hand you what we will mark as
 19 Exhibit 38.
 20 (WHEREUPON, Plaintiffs' Exhibit 38 was
 21 marked for identification.)
 22 THE WITNESS: Yes, I've read it.
 23 BY MS. MACKIE:
 24 Q. Have you seen this document before?
 25 A. I don't believe I received the letter. I

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1 believe this is the meeting that I attended. It
 2 was in Charlotte. And at that time the Chairman
 3 Hayes had invited us to attend, and it was
 4 during the period of time in 2010 that Senator
 5 Berger, Speaker Tillis and myself attempted to
 6 increase the number of our seats in the House
 7 and the Senate, and that was when we ran under
 8 the Democrat gerrymandered maps.
 9 Q. Who is Robin Hayes?
 10 A. Robin Hayes is the chairman -- was the chairman
 11 at that time of the North Carolina GOP.
 12 Q. And you said that you think that this may have
 13 been the RSLC meeting that you attended?
 14 A. My recollection is yes.
 15 Q. So it would have been --
 16 A. I know it's in Charlotte, and I remember that
 17 Robin Hayes was -- probably led the -- or
 18 introduced him as he was probably hosting it.
 19 Q. And would that meeting have been June 23, 2010?
 20 A. I don't know. I don't remember.
 21 Q. Do you think it was in 2010 when you went to the
 22 RSLC meeting?
 23 A. My guess is, especially with my name there, I
 24 must have been invited to it. As a legislator,
 25 I'm sure I was invited, and if it was in the

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1 Charlotte area I probably attended it.
 2 Q. My question was was it in 2010.
 3 A. As best I can tell.
 4 Q. And if you look in the first paragraph, he
 5 writes that -- he's writing about the impact
 6 they will have on the upcoming 2011
 7 redistricting process.
 8 Does that refresh your recollection
 9 about when this meeting might have taken place?
 10 A. Where do you see that part? Okay, I got it. In
 11 the last line of the first paragraph.
 12 Q. Yes.
 13 A. Well, I guess at that point if indeed the
 14 Republicans could have won the election in 2010,
 15 they would have had a say in the redistricting
 16 process.
 17 Q. Did you provide a state update at this meeting?
 18 A. I doubt it because I had nothing to update them
 19 on. I was just a senator working for a
 20 majority, and so I'm not sure what I would have
 21 talked to them about. As a matter of fact, I'm
 22 sure this was their meeting. They wouldn't have
 23 wanted me to speak there.
 24 Q. Well, if you look at the last paragraph, it says
 25 "I would like to invite you to a breakfast

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1 meeting to learn more," et cetera, et cetera,
 2 "in a state update from Thom, Phil and Bob."
 3 A. I don't remember back in 2010 if I spoke at this
 4 meeting or not. I can't -- I can't imagine I
 5 would have, but if it would have been, it would
 6 have been Speaker Tillis and Senator Berger, not
 7 likely me.
 8 Q. Okay. So you don't remember providing a state
 9 update at this meeting?
 10 A. No, ma'am.
 11 Q. Are you familiar with the State Government
 12 Leadership Foundation?
 13 A. I don't think so. The name doesn't -- the
 14 acronym in the name doesn't ring a bell.
 15 Q. Okay. You have not heard of the SGLF?
 16 A. No.
 17 Q. In 2011 were you -- were you aware of
 18 Dr. Hofeller's role with the RSLC?
 19 A. I met Dr. Hofeller back in 2000. At the time we
 20 were in the minority, and I wasn't on the
 21 redistricting committee, but I did meet
 22 Dr. Hofeller at that time, but I don't think --
 23 I didn't know who he worked for, to be honest
 24 with you. It might have been the RNC or
 25 somebody, but I can't specifically tell you that

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1 I knew what -- who he was employed by.
 2 Q. And when you hired him in 2011 to draw maps for
 3 North Carolina in 2011, were you aware of his
 4 role with the RSLC?
 5 A. I don't know if I was familiar with that. I
 6 know that he was very knowledgeable about that,
 7 and in 2011 our goal was to get the maps
 8 approved by the Justice Department, pre-cleared
 9 and then have it ready for 2012. So I was
 10 hopefully counting on if he had expertise to
 11 help us achieve that goal.
 12 Q. But you did not know that he also was working
 13 for the RSLC?
 14 A. I don't believe I was, no.
 15 MS. MACKIE: Thank you, Senator. I
 16 don't have any other questions for you.
 17 THE WITNESS: Thank you.
 18 MS. MACKIE: But you're not done yet.
 19 THE WITNESS: I thought I was ready to
 20 go home and take my power nap.
 21 EXAMINATION
 22 BY MS. RIGGS:
 23 Q. Thank you for your patience, Senator Berger --
 24 or, Senator Rucho. Sorry.
 25 A. No problem.

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1 Q. As I mentioned, my name is Allison Riggs, and I
 2 represent the League of Women Voters in a
 3 separate case brought second in these quasi
 4 consolidated actions.
 5 I'm not going to repeat questions that
 6 Ms. Mackie asked. There's a couple of places
 7 where I felt like I need a little clarification
 8 and a few places where I want to go into a
 9 little bit more detail, but I will be as brief
 10 as possible.
 11 I want to go back to the conversation
 12 you had with Ms. Mackie earlier this morning
 13 when you were reviewing your deposition notice
 14 and talking about your search for calendar
 15 items, calendar meetings, that discussion.
 16 Do you remember that?
 17 A. Yes.
 18 Q. Okay. Do you use Outlook on your legislative
 19 computer to schedule your meetings?
 20 A. I really don't know how the legislative computer
 21 worked. That was -- staff people did that, so I
 22 don't know if it was Outlook or not. I don't --
 23 Q. So you don't know if there was any link -- let
 24 me strike that.
 25 Do you use Outlook on your iPhone to

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1 schedule meetings?
 2 A. I know it works. I don't know how it works.
 3 Q. So you don't know if there was any link between
 4 your iPhone and your calendar or computer in
 5 your legislative office?
 6 A. There may be. I don't know.
 7 Q. Well, one way to get at that is did your
 8 legislative assistant ever schedule a meeting
 9 for you and then it would pop up on your iPhone?
 10 A. Yes.
 11 Q. Okay. Fair to say that for most meetings that
 12 you would have you would have a calendar item
 13 for that?
 14 A. I mean, there are -- you know, being in the
 15 legislative building, you could be walking down
 16 the corridor and someone would say "Come in here
 17 a minute," so it wouldn't be something
 18 scheduled.
 19 I can't say whether it would or
 20 wouldn't. Of course, you have constituents, you
 21 set your calendar and work like that, but
 22 sometimes yes, sometimes no.
 23 Q. Okay. Standard, though, if you were going to
 24 meet with your lawyers, you would mark it on
 25 your calendar so you wouldn't forget?

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1 A. If it helped me be there, of course, I would try
 2 to do that.
 3 Q. Same thing with if you were meeting with
 4 Dr. Hofeller, a few days in advance you would
 5 mark it on your calendar so you wouldn't forget?
 6 A. Best guess.
 7 Q. Okay. Do you know what the policy at the
 8 legislature with respect to archiving e-mails
 9 and calendar items?
 10 A. No.
 11 Q. Do you know what the practice is at the
 12 legislature with respect to deleting e-mails or
 13 calendar items?
 14 A. No.
 15 Q. Is it your personal practice ever to delete
 16 e-mails?
 17 A. If it's on my personal computer or my personal
 18 iPhone I would assume, especially when I keep
 19 getting messages that I have too many messages
 20 on there, it says you have to delete something
 21 to get some more. So that's probably how I
 22 would respond to that.
 23 Q. Do you receive e-mails at your legislative
 24 e-mail account on your personal iPhone?
 25 A. Not anymore.

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1 Q. Did you when you were in the Senate?
 2 A. I think I might have, best I can guess.
 3 Q. And so your same rule would apply, you would
 4 delete those if you had a memory issue on your
 5 phone?
 6 A. Yes.
 7 Q. What about on your legislative computer, when
 8 you were in the legislature, was it your
 9 practice to delete e-mails?
 10 A. I never used the e-mail -- I mean, I never used
 11 computer in the legislative building. It was
 12 always handled by -- I never used it so...
 13 Q. At the very end when you were talking with
 14 Ms. Mackie you mentioned that you had met
 15 Dr. Hofeller first in 2000; is that correct?
 16 A. Yes.
 17 Q. In what setting did you first meet him?
 18 A. I think at the time that I met him he was
 19 working with Senator Ballantine who was the
 20 minority leader on redistricting.
 21 Q. So you met him in the context of doing
 22 redistricting in North Carolina after the 2000
 23 census?
 24 A. Yes, with the caveat that I was not on the
 25 redistricting committee. So if it was, it

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1 was -- it was related to redistricting, but
 2 that's the extent of it. I didn't get involved
 3 with map drawing or anything of that sort.
 4 Q. But you did vote on the 2001 Congressional
 5 Redistricting Plan?
 6 A. I can't remember if I voted yes or no, but,
 7 yeah, I probably voted, and again in 2003
 8 because that covered the period of time that I
 9 was there.
 10 Q. Okay. And did you talk to Dr. Hofeller in 2001
 11 and 2003?
 12 A. I remember in 2000. I can't recollect any
 13 other.
 14 Q. Was that your first introduction to
 15 redistricting in 2001?
 16 A. Yes, because of the fact that I had not been in
 17 the General Assembly, '97, so that would have
 18 been the first period of time that we would have
 19 been involved with redistricting.
 20 Q. And understanding that you weren't on the
 21 redistricting committee, did you still take --
 22 take the opportunity to look at all of the
 23 materials made available --
 24 A. No.
 25 Q. -- to you?

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1 A. Well, only when the map came out. There wasn't
 2 any other time that I would spend. Other people
 3 were involved in that, the other people on the
 4 committee.
 5 Q. I understand, but when it came to the Senate
 6 floor and you were asked to vote on it one way
 7 or the other, did you look at the stat packs
 8 associated with the 2001 plan?
 9 A. I would assume before I voted on it I would have
 10 looked at it. Would I have understood it or
 11 whatever, the complications of it, that's
 12 another question, but, you know, if I'm going to
 13 vote on a bill I'm going to at least look at it.
 14 Q. So I understood you to tell Ms. Mackie that you
 15 had -- that you were referring to the 2001 plan
 16 as a Democrat gerrymander.
 17 Did I correctly understand what you
 18 told her?
 19 A. I believe that, yes. And the 2003 plan too.
 20 Q. So you thought both were Democratic political
 21 gerrymanders?
 22 A. No. They were gerrymanders because they didn't
 23 follow the law.
 24 Q. Okay. Well, how about you define for me the
 25 word "gerrymander" in your mind.

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1 A. That's a good question. I would say to you that
 2 if -- bizarre looking maps.
 3 Q. Okay. So when you use the word gerrymander,
 4 you're not being specific --
 5 A. Can I clarify.
 6 Q. Yep.
 7 A. Bizarre looking maps -- now that I understand it
 8 a lot better -- that don't follow the
 9 redistricting criteria, traditional criteria.
 10 Q. Is that true for both a partisan gerrymander and
 11 a racial gerrymander?
 12 MR. STRACH: Objection.
 13 You can answer that if you can.
 14 THE WITNESS: I don't have a judgment
 15 on that part.
 16 BY MS. RIGGS:
 17 Q. Okay. Well, what do you -- you're familiar with
 18 the term "partisan gerrymander" or "political
 19 gerrymander," right? You've heard it?
 20 A. Yes.
 21 Q. What would you understand that to mean?
 22 A. A political gerrymandering would -- basically to
 23 give advantage probably to one or another of the
 24 parties that were drawing it.
 25 Q. And what do you understand a racial gerrymander

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1 to be?
 2 MR. STRACH: Objection.
 3 Again, you can answer this if you can.
 4 THE WITNESS: After experiencing the
 5 Harris court, I surely recognize what it's not,
 6 but the -- the -- I guess it would be the fact
 7 that either race was used predominantly or there
 8 are -- well, there used to be -- probably not so
 9 much now after Shelby -- Section 5 violations
 10 with retrogression and things like that.
 11 BY MS. RIGGS:
 12 Q. So when you use the term gerrymander, you might
 13 use it in a way that's separate and apart from
 14 either a partisan gerrymander or racial
 15 gerrymander?
 16 MR. STRACH: Objection.
 17 Answer if you can.
 18 THE WITNESS: Repeat the question.
 19 BY MS. RIGGS:
 20 Q. So what I'm getting at is you said the 2001 and
 21 2003 were Democrat gerrymanders, and what I want
 22 to understand is does that mean you're talking
 23 about gerrymandering separate and apart from
 24 partisan gerrymandering and racial
 25 gerrymandering?

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1 A. I would probably define it at the level of
 2 saying that they did not follow the
 3 redistricting principles and part of that was
 4 exposed in the 2003 redistricting redraw by the
 5 courts.
 6 So I would probably just say that
 7 simplistically that, you know, they just didn't
 8 follow the law when they were drawing the maps
 9 and the legal precedence that came with it
 10 following the Constitution. That's the level
 11 that I would probably put it at.
 12 Q. So do you think the 2001 and 2003 plans, to use
 13 your words, gave advantage to Democrats over
 14 Republicans?
 15 A. I would say that the Democrats, by not following
 16 the law, did take advantage of the system.
 17 Q. Okay. And do you know -- do you remember what
 18 the composition of the congressional delegation
 19 was in 2002 and 2004?
 20 A. No.
 21 Q. Would it surprise you if it was 7-6 Republican
 22 control in both congressional sessions?
 23 A. I don't know.
 24 Q. But it wouldn't surprise you?
 25 A. I don't know.

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1 Q. And you would -- if that were true, would that
 2 change your opinion that Democrats created an
 3 advantage for themselves in the 2001 and 2003
 4 redistricting process?
 5 MR. STRACH: Objection.
 6 You can answer.
 7 THE WITNESS: Clarification, if I may.
 8 Are we talking about legislative or
 9 congressional maps?
 10 BY MS. RIGGS:
 11 Q. Only congressional. Only congressional.
 12 So if it's true that Republicans had
 13 7-6 majorities in both the 2002 and 2004
 14 congressional delegations based on the 2001 and
 15 2003 redistrictings, if that's true, does that
 16 change your opinion that the 2001 and 2003 plans
 17 gave Democrats an advantage over Republicans?
 18 MR. STRACH: Objection.
 19 You can answer if you're comfortable
 20 speculating about the truth of the facts.
 21 THE WITNESS: I really don't know if
 22 I've got an answer to it because I don't
 23 remember all that went on at that point.
 24 BY MS. RIGGS:
 25 Q. All right. Next thing I want to talk to you

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1 about is I'm still a little fuzzy on some of
 2 this timeline stuff, so bear with me, and I just
 3 want to pin some stuff down as best we can
 4 without having any calendar items.
 5 First, I want to talk about from the
 6 Harris trial to February 5th when the court
 7 ruled in 2016. You and Dr. Hofeller were both
 8 at the Harris trial in Greensboro, correct?
 9 A. I was at the Harris trial in Greensboro and I
 10 believe Dr. Hofeller was also.
 11 Q. And until February 5, 2016, did you have any
 12 opportunities to meet with or talk with
 13 Dr. Hofeller?
 14 A. You mean like on redistricting stuff?
 15 Q. Yes.
 16 A. Not that I can recollect.
 17 Q. So October, November, December, January, first
 18 five days of February, no discussions with
 19 Dr. Hofeller on redistricting?
 20 A. I was supposed to be a potential witness in that
 21 case, and I can't remember -- I don't remember
 22 if Dr. Hofeller was there when I was preparing
 23 to potentially be a witness there. So I just
 24 don't remember if he was in the room when I was
 25 there.

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1 Q. Okay. And to be clear, I'm asking after that.
 2 From the end of the Harris trial when
 3 you were at least in the same room with him in
 4 the courtroom --
 5 A. Yes.
 6 Q. -- to February 5, 2016, did you have any
 7 opportunity to talk to Dr. Hofeller in person or
 8 on the phone about redistricting?
 9 A. I don't remember that.
 10 Q. And then -- so you certainly during that
 11 timeframe didn't retain him to do anything?
 12 A. I think I spoke with Ms. Mackie and I said I
 13 didn't anticipate losing that case so there
 14 would have been no reason to retain him.
 15 Q. So 5:00 p.m. on February 5th when you find out
 16 about the Harris ruling --
 17 A. Closer to 6:00.
 18 Q. You didn't speak with Dr. Hofeller that evening,
 19 correct?
 20 A. No, ma'am.
 21 Q. And you can't remember if he was on the call on
 22 February 6th?
 23 A. I don't remember that.
 24 Q. You don't remember if he was on the call or not?
 25 A. That's correct. I remember being on the call.

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1 I'm pretty sure it was on the day after.
 2 Q. The evening of February 5th, did it immediately
 3 occur to you that you would have Dr. Hofeller
 4 help out again?
 5 A. I didn't know exactly what was required of us by
 6 the ruling so I probably waited until we had
 7 some feedback.
 8 Q. By the evening of that Saturday, February 6th,
 9 at that point in your mind were you sure
 10 Dr. Hofeller was going to help you?
 11 A. I can't be sure of that. I mean, it wouldn't
 12 have been my decision alone. It would have been
 13 Representative Lewis and myself to make that
 14 decision.
 15 Q. Okay.
 16 A. So once we recognized that it was needing to be
 17 done, of course there may have been a need to
 18 bring Dr. Hofeller if he was available to do
 19 that, but I can't say to you Saturday night that
 20 I said yes.
 21 Q. But you met with Dr. Hofeller on Monday or
 22 Tuesday, right?
 23 A. That's correct.
 24 Q. So when did that meeting get set up?
 25 A. Probably on Monday or so, whenever I came back.

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1 I can't remember what day I got back in to
 2 Raleigh, and it would have been set up probably
 3 last minute. We were in the 14-day crunch time
 4 which was already two days or three days gone,
 5 so...
 6 Q. So you didn't have any conversation with
 7 Dr. Hofeller on Sunday, February 7th?
 8 A. I don't believe so.
 9 Q. Did you have any conversations with Dr. Hofeller
 10 before you met with him in person at his house
 11 on the 8th or 9th?
 12 A. I don't believe so.
 13 Q. Okay. So you go to his house on the 8th or 9th,
 14 and this is your first time with Dr. Hofeller
 15 since the Harris trial, first time talking about
 16 redistricting, right?
 17 A. As best I can recollect.
 18 Q. Okay. I want to ask you a few more questions
 19 about what y'all discussed at that meeting, but
 20 first I want to finish my timeline.
 21 After you left that meeting, when was
 22 the next time that you talked to Dr. Hofeller?
 23 A. I think there were -- I think he had an
 24 appointment that day, and I think -- I can't
 25 remember. I think we came back in the later

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1 afternoon to continue the meeting. He had an
 2 appointment that he had already scheduled. So I
 3 can't remember if it's that day or the day
 4 afterwards, but -- because he had a doctor's
 5 appointment that he had scheduled.
 6 Q. So you may have actually met with him twice on
 7 whatever day that first day is?
 8 A. Continuation.
 9 Q. Okay. So you would have gone to his house, left
 10 and then gone back to his house?
 11 A. The best I can remember.
 12 Q. So after that continuation of the first meeting,
 13 when was the next meeting that you had with
 14 Dr. Hofeller?
 15 A. I don't recall.
 16 Q. How many times did you meet with Dr. Hofeller
 17 between the first meeting and the enactment of
 18 the 2016 contingent plan?
 19 A. I don't recall.
 20 Q. Did you talk to him every day during that
 21 12-day --
 22 A. I don't recall.
 23 Q. Well, I want to narrow it -- sometimes narrowing
 24 it down may jog your memory, but bear with me.
 25 I'm going to ask you some detailed questions.

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1 If you don't recall, you can say that.
 2 Did you meet with Dr. Hofeller in
 3 person again after that first meeting?
 4 A. I don't recall as far as meeting again.
 5 Q. Did Dr. Hofeller ever come down to the
 6 legislative office or legislative building, I
 7 guess I should say?
 8 A. I'm sure he did when he inputted the maps.
 9 Q. Okay.
 10 A. And I can't remember if I saw him that day or
 11 not, but I'm not sure why -- even then if I was
 12 supposed to.
 13 Q. Was it ever the case that you would see his next
 14 versions of the maps where he wouldn't be the
 15 deliverer? I mean, would he give them to
 16 Representative Lewis and Representative Lewis
 17 would give them to you? Did that ever happen?
 18 A. You know, at one point Representative Lewis and
 19 I found the map that achieved the criteria that
 20 was required of us to get the Harris court to go
 21 along with it, and that meant specifically the
 22 best map that had the least amount of counties
 23 that were split and VTs that were split. And
 24 at one point at his home -- and I just don't
 25 remember what day -- Representative Lewis and I

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1 agreed that this was the map that we would go
 2 with.
 3 Q. So that couldn't have been the initial meeting,
 4 right?
 5 A. No. There might have been a subsequent one, but
 6 I can't -- it could have been a subsequent one.
 7 Q. So if you did in fact approve of the final map
 8 at Hofeller's home, there was at least another
 9 in-person meeting at his home?
 10 A. As best I can recollect.
 11 Q. Okay. I think when we talk about some of these
 12 draft maps, it might jog your memory a little
 13 bit on that front, but where I was actually
 14 trying to get to was how did Dr. Hofeller give
 15 you draft maps? Hand them to you in person?
 16 E-mailing them to you?
 17 A. No. We would have been there and it was either
 18 on the screen or something that he was able to
 19 print out.
 20 Q. So if you viewed a draft map, it was only in the
 21 presence of Dr. Hofeller?
 22 A. I would say yes.
 23 Q. Okay. Do you remember the dates when you and
 24 Representative Lewis finally said this is the
 25 map that does it?

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1 A. I can't give you the exact date. I don't
 2 remember.
 3 Q. So what if we link it to the Joint Committee
 4 meeting on the 17th when the map was presented.
 5 On the 17th is when it was presented, I'm pretty
 6 sure. Was it that day or a few days in advance
 7 of that meeting?
 8 A. It was prior to -- it was prior to the time that
 9 he came down to the legislative building to
 10 input the map on the state computer, so whenever
 11 that was.
 12 Q. You don't remember when he came to do that?
 13 A. I don't.
 14 Q. Generally would staff need like 24 hours
 15 after --
 16 A. I don't even know how it's done.
 17 Q. Okay. Did your interactions with Dr. Hofeller
 18 stop once you had decided this is the map?
 19 A. The only thing I believe was necessary was that
 20 when we had to make the modification due to the
 21 fact that the wrong address for congressman from
 22 Greensboro, I believe, we had the wrong address
 23 there and I think he made a modification on the
 24 map and subsequently we amended it, but -- and I
 25 can't remember if I or -- I think I found out

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1 about it. I wasn't even aware of it until we
 2 had to amend the map. So I'm not even sure what
 3 period of time that was.
 4 Q. Okay. Do you remember how you found out about
 5 that error?
 6 A. When I found out that we had an amendment to
 7 bring forth, amended version of it and we needed
 8 to have that in -- I can't even remember which
 9 committee it was in, but I think it was one of
 10 our redistricting committees, if I'm not
 11 mistaken, the best I can remember.
 12 Q. Let me make sure I understand. So you only
 13 learned about that error when someone brought
 14 forth an amended version?
 15 A. When staff folks gave me an amended version. I
 16 was probably chairing the committee at that
 17 time. It wasn't anything earth-shattering.
 18 Q. Right.
 19 A. So therefore it wouldn't have been something I
 20 would have to know about immediately. It was
 21 just a corrective change.
 22 Q. How did you notify Dr. Hofeller that you needed
 23 to make that change?
 24 A. I don't know if I did it or staff did it or what
 25 it was. I don't remember exactly.

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1 Q. Were staff free to communicate with Dr. Hofeller
 2 without you being an intermediary?
 3 A. I just don't remember how it was done when it
 4 was identified. It was -- I just can't remember
 5 if someone else gave -- just said "fix that
 6 problem." Again, it was not an issue to be
 7 concerned about because it was an error in the
 8 address and that's all it was.
 9 Q. Sure. And I wasn't actually speaking about with
 10 respect to that change. I mean globally were
 11 staff authorized to directly provide
 12 Dr. Hofeller with what he asked for or in any
 13 other way directly communicate with
 14 Dr. Hofeller?
 15 A. No. It would be something either from
 16 Representative Lewis or myself on something that
 17 was critical.
 18 Q. So fair to say -- going back to this first
 19 meeting on the 8th or the 9th, fair to say based
 20 on this timeline that we've constructed that
 21 Hofeller didn't have any instructions from you
 22 prior to your first meeting with him?
 23 A. There -- Representative Lewis and I would have
 24 shared our initial vision of what we needed to
 25 do subsequent to our Saturday meeting. And

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1 there's a lot of preliminary work that needs to
 2 be done by Dr. Hofeller and I'm sure -- I don't
 3 know how much map drawing you've done. I know
 4 there's a lot of preliminary work that needs to
 5 be done to get ready for implementing the
 6 changes.
 7 So repeat your question one more time.
 8 Q. So I understand when you and Representative
 9 Lewis sat down with Dr. Hofeller on the 8th or
 10 the 9th for the first time you shared with him
 11 your version. My question is: Before sitting
 12 down with him at his home, you didn't give him
 13 any input?
 14 A. I did not.
 15 Q. And you had talked with Caroline about the maps
 16 that Dr. Hofeller had already, the sort of
 17 general sketches when you came in to meet with
 18 him on the 8th or the 9th.
 19 Do you remember that?
 20 A. It was just some of the data that was on the
 21 board. I don't believe it had anything other
 22 than some traditional redistricting criteria
 23 that would have normally been there, like the
 24 zero deviation and as far as that goes and
 25 things like that, which is -- some of it's

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1 included in that criteria, but --
 2 Q. But he didn't have that yet?
 3 A. That's correct. I mean, but that's something
 4 that he knew would have been in there anyhow.
 5 It's just normally done when you draw maps,
 6 redistricting maps.
 7 Q. And I recall what you told her was one of those
 8 criteria he was trying to keep counties whole.
 9 A. Well, the criteria is listed here. We've
 10 already discussed it today, all eight of this
 11 especially.
 12 Q. But he didn't have that yet?
 13 A. I -- well, that was always something we tried to
 14 do whenever we could. The only time we ever did
 15 it differently is if we were required to
 16 accommodate the Voting Rights Act, which when we
 17 redrew this map we were clearly told there was
 18 no racially polarized voting and therefore there
 19 was no need for use of race and then that kind
 20 of gives us some clear direction.
 21 Q. So when you sat down with Dr. Hofeller on the
 22 8th or 9th, factoring in the fact that you had
 23 to leave for his appointment, about how long did
 24 that first meeting last?
 25 A. I have no way of being able to say whether it

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1 was an hour or two hours. I can't remember.
 2 Q. It was in that range?
 3 A. Yeah, somewhere.
 4 Q. It wasn't a ten-hour meeting?
 5 A. No.
 6 Q. How did the meeting go? What was the first
 7 thing that you talked about when you sat down?
 8 A. Representative Lewis and I discussed with him
 9 some of the thoughts that we had that needed to
 10 be included in this. Talked about some of the
 11 original or traditional redistricting
 12 requirements. And at that point we had come to
 13 the conclusion the 12th district would be
 14 consolidated, letting him know that that would
 15 be done. Basically outlined, without the final
 16 draft, the redistricting criteria that we
 17 established.
 18 Q. Okay.
 19 A. That was instructions to him.
 20 Q. All oral?
 21 A. Absolutely.
 22 Q. Did he ask questions about any of the criteria?
 23 A. He's a very knowledgeable man. He understood
 24 pretty much what we were describing.
 25 Q. Okay. So after you and Representative Lewis go

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1 through and establish the criteria, what happens
 2 next in the meeting?
 3 A. I would probably say to you that was probably a
 4 time that Dr. Hofeller needed to go to his
 5 appointment.
 6 Q. Okay.
 7 A. And sometime I think -- and I'm guessing, I'm
 8 trying to remember. Sometime later on that
 9 afternoon we returned after his appointment and
 10 to continue the discussion and fall in line with
 11 some of the things that he was needing to do.
 12 And, of course, when he did his work, I'm sure
 13 we were gone.
 14 Q. So when you came back after his appointment,
 15 were you still discussing the criteria or you
 16 had moved on to other topics?
 17 A. Well, if the criteria is what we used to draw
 18 the maps, then either we reiterated them or --
 19 but they were laid out for him to know what
 20 needed to be done so that we could harmonize
 21 them together and get it approved by the Harris
 22 court.
 23 Q. At what point did he tell you he had already had
 24 some draft maps done?
 25 A. I don't recall that -- you know, that being

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1 said. I can't even tell you if they were
 2 preliminarily or -- call them what you want,
 3 there are a number of iterations you have to go
 4 through. I'm not even sure what you call a
 5 draft map when it might not have included all
 6 the criteria that he needed to harmonize so that
 7 he could get a map that would be worth looking
 8 at.
 9 Q. Well, I understand for sure he wouldn't have had
 10 time to deal with the criteria in that, but you
 11 said he had some draft maps already.
 12 A. There were some maps on the board. Whether you
 13 call them draft maps or not, you know, those are
 14 the preliminary use of the traditional
 15 redistricting that you would be using.
 16 Q. Okay. So he's got a big poster board? What did
 17 it say on the board?
 18 A. On the screen.
 19 Q. On his computer?
 20 A. Yes.
 21 Q. So he showed you some maps on his computer?
 22 A. Just how some of the things were breaking out,
 23 testing, you know, what parts you put together,
 24 what parts you don't.
 25 Q. Do you remember approximately how many maps he

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1 showed you that day?
 2 A. I remember one, so...
 3 Q. Could it have been more than one?
 4 A. I don't remember.
 5 Q. When he was showing you that map, did he also
 6 show you any -- it probably would have looked
 7 differently, but any political data, like a stat
 8 pack?
 9 A. No.
 10 Q. And what did he tell you about that one map
 11 about how -- I think you said how things were
 12 breaking out. How did he -- what did he tell
 13 you about that map?
 14 A. There wasn't much to say because it was so
 15 preliminary. He needed time to implement the
 16 guidelines that we established with the criteria
 17 that he needed to implement it.
 18 Q. When you were giving Dr. Hofeller the criteria
 19 at that meeting, I think you phrased it earlier
 20 in your discussion with Ms. Mackie that you were
 21 wanting to do 10-3 if it were possible; is that
 22 correct?
 23 A. We -- we believed that to be similar to what the
 24 other maps were that was if it was possible we
 25 would have liked to have done that.

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1 Q. Okay.
 2 A. That would have allowed those districts to be
 3 competitive.
 4 Q. So when Dr. Hofeller showed you that first map,
 5 did you ask him "Is this a 10-3 map"?
 6 A. I didn't ask that.
 7 Q. Did you ask him what the political implications
 8 were of his preliminary work?
 9 A. I'm not even sure at that level of early review
 10 that you can even be doing that because you
 11 really don't have the districts lined up and,
 12 more importantly, you don't have the criteria
 13 that are in place.
 14 Q. So was one of your questions at that first
 15 meeting with Dr. Hofeller "Let us know if 10-3
 16 is possible"?
 17 A. We asked him to put a map up and tell us -- you
 18 know, try to put all these together to harmonize
 19 them and let's see what is doable. We had no
 20 clue if it was 10-3 or 9-4, whatever. You know,
 21 this was a brand new map based on criteria that
 22 did not include race.
 23 Q. But you had already walking in there knew that
 24 you wanted to ask him to look for a 10-3 map?
 25 A. It was a request that we had, could it be done.

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1 Who knew until you actually have a map.
 2 Q. Did you ask him to look for an 11-2 map?
 3 A. At that point being so early on where there
 4 wasn't really, you know, all the implementation,
 5 I don't even believe that's a legitimate
 6 question. So I'm saying you don't ask for 11-2.
 7 It wasn't even on the board. The districts
 8 weren't even identified. So I'm not even sure
 9 that would be a question that I would ask.
 10 Q. Well, wouldn't the same be true for a 10-3?
 11 A. No, because the 10-3 was there because of the
 12 fact that it was consistent with what the
 13 enacted map was.
 14 Q. Right, but you're starting from scratch then,
 15 right?
 16 A. Starting from scratch and saying this is
 17 something we'd like to see. We didn't say can
 18 it be done.
 19 Q. Well, why didn't you say "We'd like to see an
 20 11-2 map"?
 21 A. We would like to see a 10-3; show us what you
 22 can or can't do with it following the criteria
 23 that we established.
 24 Q. I'm still not understanding, though, why you
 25 didn't want to see the whole range of

184

1 possibilities.

2 A. We needed to see something to begin with and

3 then be able to modify it if it needed to be

4 modified, but you need a starting point.

5 Q. Did you leave Dr. Hofeller's home with any

6 papers in hand?

7 A. I don't remember that being -- no.

8 Q. Do you remember if the preliminary map that he

9 showed you on his computer screen that day had a

10 name associated with it?

11 A. No.

12 Q. I want to hand to you what was previously marked

13 as Exhibit 31 yesterday.

14 A. This is the final map, am I correct, the enacted

15 map?

16 Q. No. So I'll represent to you yesterday -- my

17 understanding is these were draft maps that

18 Dr. Hofeller produced to plaintiffs in this

19 case. Based on an eyeball contingency looks

20 pretty similar to the enacted map, but this is

21 how we got them and there's a whole bunch of

22 them.

23 And if you skim through them, the

24 nomenclature is at the bottom left so you can

25 see what it's named. There's a series that are

185

1 called Congressional 2016 Contingent and then

2 Contingent B, Contingent C, and then there's a

3 series that are labeled Congress 16, dash, a

4 letter, then there are some that are labeled

5 Congress 19, dash, a letter, and there's a bunch

6 of them.

7 Take your time to look through them,

8 but I'm actually going to ask a few questions

9 before we get into the details with those

10 You've had a chance to look through

11 those?

12 A. Yep, best I could.

13 Q. So after the first meeting February 8th or 9th

14 until when you and Representative Lewis settled

15 on a final map before the tweak, the correction

16 of the address of the incumbent in Greensboro,

17 how many drafts did Dr. Hofeller show you?

18 A. I think I remember the original time was not --

19 I don't think you -- well, you can just look. I

20 think yesterday was mentioned they started from

21 reverse as to what he started. There were a lot

22 of iterations as to how he was trying to

23 configure this. And so I think it was -- it's

24 reversed because there were a lot more different

25 changes, different counties together in the 4th

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1 district was different.

2 The best I can remember is the first

3 time there was just the preliminary map and then

4 I think I remember two other maps that I

5 remember looking at that I paid any attention

6 to.

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

8 approved?

9 A. Yes.

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

11 A. I think we came -- I came down to the two that I

12 felt -- and I speak for -- Representative Lewis

13 can speak for himself -- that met the criteria

14 that we were trying to do, including a map that

15 reduced or split the least amount of counties

16 and the least amount of VTDs along with

17 harmonizing the rest of the criteria that were

18 established. That's how I came -- personally

19 made a decision on it.

20 Q. So if you reviewed one of Dr. Hofeller's draft

21 maps, it was only at his house on his computer,

22 correct?

23 A. Yes, ma'am.

24 Q. And based on our conversation, we think there

25 was only -- maybe only one trip to

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1 Dr. Hofeller's after the initial meeting?

2 A. I believe that's correct, yes.

3 Q. At that meeting would you have been presented

4 with those two draft maps that you saw?

5 A. Yes. I would say yes.

6 Q. So he explained to you about each of them and

7 then you made a decision?

8 A. As to how close we were to conforming with the

9 criteria that had been established in

10 harmonizing them.

11 Q. And just clarifying what you said with respect

12 to Exhibit 31 before, you said he went in

13 reverse. Did you --

14 A. No. That's what y'all said yesterday when it

15 was presented.

16 Q. Okay. I wasn't here yesterday.

17 Is it your understanding that the maps

18 toward the back of the packet were earlier

19 versions?

20 A. That's what was said yesterday. I can't speak

21 to it. I was just listening.

22 Q. Just your understanding?

23 A. And I didn't see the maps yesterday.

24 Q. There's obviously a lot more than two maps in

25 this pack. So is it fair to say that you hadn't

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1 seen before today most of the maps in this
 2 packet?
 3 A. I'd probably say yes.
 4 Q. Tell me about the map that you rejected.
 5 A. I don't remember exactly how it was except that
 6 it did have more split counties and more split
 7 VTDs, and to me that was something that was
 8 considered seriously by the court, and if indeed
 9 they followed the criteria that we established
 10 as we harmonized them together and the map that
 11 would have given least amount, which is pretty
 12 much the one that we enacted or that we voted
 13 on, passed, came down to 13 county splits and 12
 14 VTD splits.
 15 Q. Do you remember -- the plan that you rejected,
 16 do you remember how many more counties were
 17 split?
 18 A. No. I was just told it was higher. I don't
 19 remember.
 20 Q. Dr. Hofeller didn't tell you the exact number?
 21 A. I don't remember.
 22 Q. Did he provide you stat packs for those maps
 23 when you considered them?
 24 A. I don't think so. I think the stat packs would
 25 have had to come from the General Assembly

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1 computer.
 2 Q. Right. Fair enough. As we call them stat
 3 packs, they're produced by the General Assembly.
 4 Did he provide you any statistical data
 5 on the two maps he was presenting you with?
 6 A. I think the only part that I could remember
 7 clearly was the split counties and the split
 8 VTDs, which was important.
 9 Q. So you don't remember whether it was one more
 10 county or five more counties?
 11 A. Correct.
 12 Q. Same question for VTDs, do you remember
 13 approximately how many more VTDs?
 14 A. I don't remember.
 15 Q. Okay. Did he tell you what the effect was on
 16 incumbent -- incumbent protection in both plans
 17 that he presented to you?
 18 A. Definitely not the first day.
 19 Q. Right. Right.
 20 A. Subsequent days I'm sure we asked at that point
 21 to see exactly how -- in trying to conform
 22 completely with what we presented as far as the
 23 redistricting criteria that we established.
 24 Repeat your question one more time,
 25 please.

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1 Q. I wanted to know -- so like what you were
 2 saying, I want to know -- I want to know did he
 3 tell you how it complied with the incumbency
 4 criteria?
 5 A. Incumbency, thank you. Under that situation, I
 6 knew we were struggling in what was the 4th
 7 district because of the close proximity
 8 between District 4 and District 2, which would
 9 have been Elmer's and Price and Holding. So I
 10 knew there was a problem in that area.
 11 Everything else was okay. I knew Elma
 12 Adams had her own district in the northern part
 13 because everything had been consolidated down
 14 into Mecklenburg for the 12th. So everyone else
 15 seemed to be in a position of --
 16 Q. So when you had that second meeting at
 17 Dr. Hofeller's when he presented you with the
 18 two, did you have your criteria list and you're
 19 sort of checking to make sure that everything
 20 was satisfied on both plans?
 21 A. Mentally that is what we did.
 22 Q. Okay. Excellent.
 23 Were both plans that were presented to
 24 you equally populated within that one person?
 25 A. One-person, one-vote?

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1 Q. Well, yes. I think there's an odd number of
 2 people in the state of North Carolina so you
 3 couldn't --
 4 A. There would have been one of them that would
 5 have been there, but off the computer -- and I
 6 think, I don't know very much about Maptitude
 7 other than it gives some very nice pictures, but
 8 I'm sure that when he told us he zeroed them out
 9 it would have been as close to, again, meeting
 10 the criteria on equal population.
 11 Q. Okay. So you didn't reject the plan that you
 12 rejected because it didn't satisfy the equal
 13 population criteria?
 14 A. The maps that he presented got as close to that
 15 as we could and that's what needed to be done
 16 for us to get approval, which we did get from
 17 the Harris court.
 18 Q. And then the second criteria, contiguity, did
 19 both plans that he presented you at that second
 20 meeting satisfy the contiguity criteria?
 21 A. As best I can guess.
 22 Q. I'm going to skip down to the 12th district.
 23 Did both plans consolidate, as you
 24 described, the 12th district in Mecklenburg
 25 county?

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1 A. I believe that is correct.

2 Q. And we discussed incumbency. Do you recall that

3 both plans had the same --

4 A. I don't remember the incumbency issue as to

5 whether one was different than the other. I

6 remember the one that we ended up choosing had

7 the one problem with incumbency that wasn't able

8 to be addressed, not without making an unusual

9 shape.

10 Q. Okay. And then what about partisan advantage,

11 were both plans in your mind 10-3 plans?

12 A. I don't -- I don't remember that. You know, I

13 know the one that was 10-3 was selected. I

14 can't remember if indeed the other one was.

15 Now, you know, recognizing when it's

16 10-3, it doesn't mean 10 Republicans are going

17 to win that time and again. I think if you look

18 at Roy Cooper's elections within there, I think

19 you'll find that Roy Cooper won many of them.

20 So if the right candidate is in place,

21 any candidate can win that thing. So, you know,

22 to say that it would be 10 Republicans is not

23 necessarily so.

24 Q. The plan that you ended up going with that day,

25 the one of the two, were you satisfied that your

193

1 partisan advantage criteria was satisfied?

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

3 was every bit as important as every other

4 criteria in there and as was harmonized, and

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

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

7 Democrat maps, anything can happen in an

8 election.

9 Q. So the answer is, yes, you were satisfied that

10 that criteria was satisfied?

11 A. We believed that all of them were harmonized and

12 everything was taken equally.

13 Q. Everything was satisfied, correct?

14 A. All criteria was satisfied.

15 Q. Okay. And you can't remember if in the plan you

16 rejected whether the partisan advantage criteria

17 was satisfied?

18 A. I think the main problem that I had, that got my

19 attention, was the number of split counties and

20 split VTDS, and that automatically would have

21 rejected that map.

22 Q. So as I understand, that's mostly relating to

23 your compactness criteria, right?

24 A. I looked at that as every one of them. I don't

25 just pick out one and say this is the one I

194

1 needed or wanted. I'm trying to blend them all

2 together to make sure that the map that we were

3 able to select, which we ended up doing and we

4 ultimately got presented and the election met

5 all of the criteria.

6 So to pick out one and say this one

7 achieved it, you know, it might have been less,

8 it might have been more, but it all achieved it

9 to some level.

10 Q. But keeping counties whole and keeping VTDS

11 whole was a factor you were considering in

12 deciding whether this was a compact plan or not?

13 A. It was critical for me because of the fact that

14 the court had raised serious questions about it

15 and that was something we wanted to have

16 addressed.

17 Q. Did Dr. Hofeller explain why the plan that you

18 rejected had more split counties and VTDS?

19 A. I don't remember the explanation.

20 Q. Flipping -- so I want to turn back to

21 Exhibit 31.

22 Based on the names of any of these

23 maps, do any of these seem to be the plan that

24 you rejected?

25 A. I don't remember the names nor -- when I

195

1 was -- when I selected the one that I needed or

2 that I felt comfortable with -- and, of course,

3 Representative Lewis had a vote in this too --

4 that was the one that I focused on. So I don't

5 remember.

6 Q. Do you remember what any of the additional

7 counties that were split were?

8 A. No, ma'am.

9 Q. So sitting here today, you can't tell me that --

10 which one of these you may have seen before?

11 A. Correct.

12 Q. Did you leave that meeting with Dr. Hofeller the

13 second day with any papers in hand?

14 A. I don't remember doing so. I would have

15 probably waited until all of the data was

16 inputted into the -- into the state computer.

17 Q. Okay. How long -- about how long did that

18 meeting last that day?

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

20 in there.

21 Q. And safe to say you hadn't met with Dr. Hofeller

22 in person between that first and second meeting?

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

24 Q. So walking into his house the second time, did

25 you say, "Hey, Dr. Hofeller, is it possible to

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1 draw a 10-3 map"?

2 A. We asked him which one of the maps conforms the

3 best to what the criteria was, and he showed us

4 the two choices. And the one that we selected

5 was the map that is -- is before -- is the one

6 that's been accepted and passed by the General

7 Assembly, but each of them to one plus or minus

8 extent achieved the criteria that we wanted to

9 established. Not one of them is going to

10 achieve everything.

11 Of course, you know, taking in

12 consideration the population is critical because

13 that's required by the Constitution, but it's a

14 blending of it. We just picked and choose the

15 ones that we felt we could do and achieve the

16 criteria that were established.

17 Q. What did Dr. Hofeller represent to you about the

18 partisan advantage in the two plans that he

19 presented to you?

20 A. I'm trying to remember how much of a discussion

21 we had on that thing. I'm not sure there was a

22 lot of detail. I just don't remember exactly

23 what part of that we discussed.

24 Q. You would have had to discuss it, though, right,

25 because it was a criteria?

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1 A. It may have been. Again, the criteria was

2 critical to me first and then especially dealing

3 with the -- you know, we had a lot of questions

4 raised by the court on the compactness, which is

5 the counties, and then the VTDs. So that was an

6 important issue for me to get resolved to the

7 best possible way.

8 Q. Okay. Was he using the 10-3 terminology too?

9 A. He -- I don't remember if he went ahead and said

10 that this was a 10-3 map that he could guarantee

11 or anything like that. I don't believe that --

12 you know, who knew what really would be until

13 you get your real stat packs in there to exactly

14 determine what you might have.

15 Q. But were you under the impression that

16 Dr. Hofeller was analyzing the political data as

17 he was drawing the maps?

18 A. I think he was putting in the election results

19 that was part of the criteria. So I'm assuming

20 that he had some idea as to what was done

21 because that's part of what was being put

22 together since race and partisan registration

23 were not factors.

24 Q. So if he didn't use the 10-3 terminology, did he

25 say this satisfies your partisan advantage

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1 criteria?

2 A. That was not the prime goal of saying which one

3 could achieve all of those factors, all of the

4 criteria. It isn't just that. You keep harping

5 on that. That's not the only thing that was

6 important.

7 Q. Well, I want to know how you were satisfied that

8 all the criteria were met.

9 A. To the -- you match all the criteria to the best

10 possible. Again, it was, one, if it looked

11 good, which was definitely better than what we

12 had as far as appearance was concerned.

13 Secondly, that the counties that

14 were -- you know, you could easily see which

15 ones were split and not and then he could give

16 us some feedback as to what VTDs were.

17 I mean, those were some of the factors

18 that you tried to get as close as possible to.

19 Q. I understand, but you had to satisfy yourself

20 that all of the criteria had been satisfied and

21 harmonized. You were -- ultimately the buck

22 stopped with you?

23 A. Representative Lewis and myself.

24 Q. Right. So at some point you had to be sure that

25 that goal had been met, right?

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

2 Q. Right. And so I want to understand if you're

3 not doing any sort of independent analysis, was

4 Dr. Hofeller telling you that, yes, this

5 satisfies all the criteria?

6 A. I think we probably got the best look at it when

7 the stat packs came out as to be able to say,

8 you know, what did the elections do, how did

9 they, you know, come about.

10 Q. But you told me that you left that meeting

11 decided on this was our plan.

12 A. Yes, and we thought that would be the best way

13 that achieved all of the criteria that we had,

14 every one of them.

15 Q. So you knew that before you saw the stat pack at

16 the General Assembly the next day?

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

18 Q. Okay. That's fine, but you knew it at the end

19 of that day?

20 A. It was our best guess.

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

22 A. It was based on the map, the way it looked and

23 the information that he did share with us the

24 best he could.

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

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1 criteria since -- through the criteria list
 2 since you were more concerned about --
 3 A. It was a blending. There's no way you just pick
 4 out does this fit, does this fit.
 5 Q. Okay. So I understand that basis. I still want
 6 to understand everything he told you about the
 7 partisan performance of this map, the one you
 8 went with.
 9 A. I'm trying to remember exactly what part of it
 10 he was able to share with us only because of the
 11 fact that I'm not sure that anybody was
 12 guaranteed that one was a 10-3 or a 9-4 or
 13 whatever it may be because there's no way of
 14 being sure.
 15 You go back to the 2010 election, you
 16 know, things change and, you know, things happen
 17 differently.
 18 We just felt that this was a map that
 19 met the criteria, that was established in our
 20 criteria and one did not meet all of that
 21 criteria, especially when it started splitting
 22 extra counties.
 23 Q. Right. Okay. I follow.
 24 Did he say "There's no guarantees this
 25 is a 10-3 map"?

201

1 A. I would have to say to you that nobody can
 2 guarantee any of that.
 3 Q. That wasn't my question.
 4 Did he tell you that?
 5 A. I don't recall him saying it.
 6 Q. Okay. Was it something that you just knew to be
 7 true always? There's no guarantees in
 8 elections?
 9 A. There really isn't any guarantees in elections.
 10 I mean, you know, none of those districts were
 11 majority Republican districts.
 12 Q. Okay. By registration?
 13 A. By registration, right. Or -- well, if someone
 14 is a "U," are they an "R" or a "D."
 15 I'm talking about the fact that by
 16 registration, there's no way of knowing that and
 17 that's why it was built on election results.
 18 Q. But you had instructed Dr. Hofeller not to use
 19 registration data. So you weren't talking about
 20 registration data with him that day?
 21 A. I'm talking about subsequent, when you look at
 22 the results similar to what we did on the
 23 enacted maps. You know, at some point you look
 24 at them and say, wait a minute, there are no
 25 majority Republicans in this district.

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1 Q. I'm still struggling to understand how you were
 2 satisfied that the enacted plan satisfied all
 3 the criteria and one of the criteria being the
 4 partisan advantage.
 5 So did he tell you which election
 6 results he had used in his map drawing?
 7 A. He didn't specifically explain that to me or
 8 tell me that. It was a matter of just
 9 determining which one seemed to fit the criteria
 10 as best we could.
 11 Again, you know, partisan was one part
 12 of it, but it wasn't the only part of it.
 13 Compactness was critical to it. There's just
 14 not one -- one you pull out and say that's the
 15 one I want.
 16 Q. I know, but you've talked about a metric for
 17 compactness. You talked about Hofeller told you
 18 about the number of counties kept whole, the
 19 number of VTDs kept whole, so you're using some
 20 metric there. I want to understand what is the
 21 metric he was telling you with respect to
 22 political performance for the map.
 23 A. I'm trying to remember what he said, and I'm not
 24 sure I can tell you exactly that. You know,
 25 some folks may call it a 10-3 map. I know

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1 that's what was discussed on it, but I can't say
 2 to you -- nor did we have an abundance -- too
 3 much time to resolve this issue. Our goal was
 4 to get this before the court on the 19th. So we
 5 did the best we could with what we had, the time
 6 limit.
 7 Q. So you didn't talk about how the proposed
 8 districts would have performed using 2010 U.S.
 9 Senate election results?
 10 A. I don't remember discussing that with him.
 11 Q. And you did not discuss with him how those
 12 districts would have performed using 2012
 13 gubernatorial election results?
 14 A. I never remember Dr. Hofeller mentioning that --
 15 that -- the fact or the statistic.
 16 Q. Okay. Going to the criteria and the decision to
 17 not use registration data, I understood you told
 18 Ms. Mackie that the courts have said that
 19 election results are more probative.
 20 A. Predictable.
 21 Q. Predictable?
 22 A. Yeah.
 23 Q. Do you understand that map drawer -- that
 24 there's any legal prohibition on using
 25 registration data in map drawing?

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1 A. No. I mean, that was some of the evidence that
 2 was in the Harris case, a gentleman from Harvard
 3 talked about that and there was a real question
 4 as to whether -- and the courts have ruled on it
 5 that they said registration is not as
 6 predictable as election results. So I know
 7 there's no prohibition on it. It's just a
 8 matter of what you think is the better way to do
 9 it or not.
 10 Q. So why prohibit him from using it?
 11 A. We just felt it wasn't what we wanted to do.
 12 Q. You looked at it later?
 13 A. Partisan -- well, after the map was done, yeah.
 14 I mean, I didn't -- I didn't look at the final
 15 map that -- in the stat pack that included all
 16 of the other changes until after the map was
 17 passed. You know, that was something that
 18 Senator McKissick had asked for when he wanted
 19 to have a similar stat pack to 2011.
 20 Q. Okay.
 21 MR. STRACH: Allison, is this a good
 22 stopping point to take a break?
 23 MS. RIGGS: It's actually a great
 24 stopping point.
 25 THE VIDEOGRAPHER: Off the record at

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1 4:00 p.m.
 2 (Brief Recess.)
 3 THE VIDEOGRAPHER: On record at
 4 4:14 p.m.
 5 BY MS. RIGGS:
 6 Q. Just a couple last questions about your second
 7 meeting at Dr. Hofeller's house when you
 8 reviewed the two maps.
 9 Did you have any discussion with him
 10 about the two maps about how incumbents might
 11 fair in future elections? So that's to say, did
 12 you look at the map and say "Dr. Hofeller, can
 13 Pittenger win in this district"?
 14 A. I didn't ask that question, nor did he tell me
 15 that, but the fact is since it was a different
 16 primary day, I'm not even sure you could make
 17 that judgment because having a primary in June,
 18 the people that would have run it are running
 19 against an incumbent who are having a very
 20 difficult time running. So it's not like an
 21 ordinary election year if you know what I'm
 22 saying to you.
 23 Q. The primary, but the general election was the
 24 same normal time, right?
 25 A. Well, of course, but in the primary you know who

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1 would have won and who wouldn't have won. And,
 2 you know, again, in a shortened cycle, you know
 3 as well as I do you need money to win these
 4 elections. It was a tight time to try to
 5 generate that for anybody other than a
 6 non-incumbent -- for anybody other than an
 7 incumbent. So no.
 8 Q. Did you -- so I used Pittenger as an example.
 9 Did you speak about any other particular
 10 congressional incumbent?
 11 A. As to their likelihood of winning?
 12 Q. Yes.
 13 A. I did not speak on that.
 14 Q. So is it your testimony that you spoke with
 15 Dr. Hofeller about none of the current
 16 incumbents with respect to their ability to get
 17 reelected in November?
 18 A. No. The only thing we talked about was where
 19 are they in the district.
 20 Q. Okay. Leaving that -- okay.
 21 Did you have any discussion with
 22 Dr. Hofeller about durability? And by that I
 23 mean one of your criteria was aiming for a 10-3
 24 delegation. Did you have any discussion about
 25 whether it would be a 10-3 delegation for the

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1 rest of the decade?
 2 A. No, we did not. It just doesn't last over time.
 3 It withers away as was evident in the 2010
 4 legislative elections. Districts change --
 5 Q. Sure.
 6 A. -- during that period of time, so chances are
 7 you cannot guarantee anything like that.
 8 Q. Your goal -- but you're a Republican, right,
 9 sir?
 10 A. Yes.
 11 Q. Your goal was to maintain Republican advantage
 12 for as long as possible, correct?
 13 MR. STRACH: Objection.
 14 THE WITNESS: My goal was to get a map
 15 in front of the Harris court that they would
 16 approve and not have to redraw it or do
 17 something like that. That was my have goal, as
 18 it was the 2011 to get the pre-clearance on the
 19 maps. I mean, those are -- those -- there's no
 20 election without that being done. So my job was
 21 to get the election maps ready so there could be
 22 an election. That's my goal.
 23 BY MS. RIGGS:
 24 Q. But you didn't think there was anything such as
 25 thing as an unconstitutional partisan

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1 gerrymander, right?
 2 MR. STRACH: Objection.
 3 Answer that if you can.
 4 THE WITNESS: The way the law -- the
 5 way my understanding -- and I'm not a lawyer.
 6 My understanding is that the partisan
 7 gerrymandering did not occur.
 8 BY MS. RIGGS:
 9 Q. So sitting there with Dr. Hofeller that second
 10 day, you didn't think the Harris court was going
 11 to reject a map because it created a 10-3 split,
 12 did you?
 13 A. After the result of the Harris case, I didn't
 14 know what the Harris court was going to do
 15 because I never expected them to reject the map
 16 that we had, especially based on the evidence
 17 that was there in front of the three-judge
 18 panel.
 19 Q. So you were worried that having it be too
 20 extreme as far as partisan split could create a
 21 problem?
 22 A. All I'm saying, to answer your question, I
 23 didn't know what the court was going to do so
 24 that's why we put the criteria that we believed
 25 addressed the concerns of the court.

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1 Q. Do you think a map that had shot for a 9-4
 2 division might have been more likely to get
 3 approved by the Harris court?
 4 A. I had no way of knowing what the Harris court
 5 was going to do. I was surprised at the
 6 original decision, to be very honest with you.
 7 Q. So you had no discussion about durability.
 8 Leaving that meeting that day, were
 9 you, in essence, happy with what you bought,
 10 happy with what Dr. Hofeller did?
 11 MR. STRACH: Objection.
 12 Answer if you can.
 13 THE WITNESS: I was happy with the fact
 14 that the process was going, and our goal was to
 15 get the maps -- the map approved and ready to be
 16 delivered on the 19th to the court. That was my
 17 principal goal to get it done.
 18 BY MS. RIGGS:
 19 Q. And you never -- when you reviewed the map, you
 20 never asked Dr. Hofeller, after having woven in
 21 all the criteria, was it possible to draw an
 22 11-2 map?
 23 A. I think in talking with Dr. Hofeller on any of
 24 this stuff, my judgment would have been that if
 25 we'd try to draw an 11-2 map, we would have lost

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1 some of the criteria that was necessary to
 2 achieve our goal. In essence, you would have
 3 gone beyond the limit of the counties that we
 4 had. I mean, we have an ideal number of
 5 counties, you know, 13 counties and 12 VTDs. I
 6 mean, that's where the splits occur.
 7 You know, best I could guess and best
 8 judgment that I had that might have been
 9 pressing the issue beyond the ability to do it.
 10 Q. So Dr. Hofeller told you that?
 11 A. That was my judgment.
 12 Q. What does that mean?
 13 A. That's my experience that I would have had.
 14 Dr. Hofeller didn't offer 11-2 and I didn't ask
 15 for an 11-2.
 16 Q. Likewise, Dr. Hofeller didn't offer a 9-4 and
 17 you didn't ask for a 9-4?
 18 A. I wanted to see what could be done to deliver
 19 the criteria that we established. We believed
 20 had this been done like was supposed to be done
 21 in setting the criteria that our goal was to get
 22 the court to approve our map so that it could
 23 allow for the election. It was already delayed
 24 over a month, so that's not -- we weren't happy
 25 with the fact that -- that's not what you try to

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1 do during an election.
 2 Q. So based on your extensive experience chairing
 3 the redistricting committee and being involved
 4 in redistricting, you think it was possible to
 5 draw a map that satisfied all of the criteria
 6 but the 10-3?
 7 A. Repeat that question again.
 8 Q. And if you want -- if it would help you to look
 9 at the criteria list that's Exhibit 24.
 10 A. I've got it here.
 11 Q. Could you have drawn a map that had equal
 12 population, was contiguous, had limited
 13 political data, compressed the 12th district,
 14 was compact and protected incumbents and yet
 15 wasn't a 10-3 split?
 16 A. I still think the 10-3 is something that may not
 17 be a reality. I think it's more of an
 18 aberration. You know, to be -- I think that it
 19 just wasn't an ordinary election this last time,
 20 you know.
 21 Q. We'll get to that. I'm going to have some more
 22 questions about that, but you were satisfied
 23 that the 10-3 criteria was satisfied. And what
 24 I'm asking you is could you have drawn a map
 25 that satisfied all of the rest of the criteria

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1 and been 9-4 based on your broad and -- broad
 2 knowledge in North Carolina?
 3 A. I don't know.
 4 Q. You didn't look?
 5 A. I didn't look.
 6 Q. Next, I want to sort of ask a few questions
 7 about the process.
 8 As I understood it, you -- one of the
 9 things you said with Ms. Mackie is you offered
 10 the Democrats an opportunity to submit another
 11 map -- to submit an alternative map during the
 12 legislative process but they didn't; is that
 13 right?
 14 A. They were -- as they did in the 2011, I spoke
 15 with Senator McKissick on numerous occasions,
 16 money was available, computer was available and
 17 all of that stuff. There was never a map done
 18 on the time -- to include it in, again, the
 19 minority, both House and Senate, chose never --
 20 to not deliver one. So that was their decision,
 21 I imagine.
 22 Q. Am I correct, though, that the minority members
 23 didn't know what the criteria were until that
 24 meeting on the 16th?
 25 A. They -- the criteria that we established was

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1 there. Had they established their own criteria
 2 they would have been able to bring it up during
 3 the initial discussion when the criteria was
 4 established, when we voted on each of the
 5 criteria.
 6 Q. Well, they did, right, they had amendment
 7 criteria that they proposed?
 8 A. But there was no map to show that this is how it
 9 would have been done.
 10 Q. Right, but it's reasonable, isn't it, to want to
 11 know what the criteria are to see then what you
 12 can do?
 13 A. Every one of those -- I mean, other than the
 14 12th district, that really is a consolidation,
 15 it's all the traditional redistricting
 16 principles.
 17 Q. On the joint hearing on the 16th, the Democrats
 18 did not have these criteria in hand, correct?
 19 A. They -- that was the time that they had a chance
 20 to discuss it, have it explained and to vote on
 21 it.
 22 Q. Do you know when the notice for the joint
 23 hearing on the 16th went out?
 24 A. I do not.
 25 Q. Did the Democrats know that they had money and a

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1 computer before it was discussed in that meeting
 2 on the 16th?
 3 A. There was some discussion on that with -- I just
 4 don't remember when that was brought to their
 5 attention, whether -- you know, whether the
 6 state would have paid money for it or whether
 7 they would have found another way to deliver and
 8 subsequently supported by the State, but, you
 9 know, if they felt it was important enough to
 10 draw alternative maps that they believe were in
 11 line with what the court asked for, they would
 12 have had the same opportunity as of the decision
 13 on February 5th to do the same thing.
 14 Q. But they weren't -- there was no legislative
 15 action to authorize their use of computers and
 16 state money until the 16th, correct?
 17 A. There was -- the same thing was done in the
 18 original, so that's why we did it, you know, in
 19 the original time we did in 2011. So that time
 20 we did the same thing at this point, you know
 21 with the \$25,000 so we're consistent with what
 22 we -- how everybody was treated.
 23 Q. So the answer is, yes, it wasn't until the 16th
 24 that there was legislative action to --
 25 A. I don't recall if they were notified earlier.

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1 Q. Okay. At any point between February 5th and the
 2 enactment of the plan, did you have a Republican
 3 caucus meeting?
 4 A. Between February 5th -- I'm sure there were
 5 Republican caucus meetings during the time that
 6 we were called back in.
 7 Is that what you're asking?
 8 Q. Yes.
 9 A. Yes, I'm sure we had.
 10 Q. Whole caucus or broken up by Senate and House?
 11 A. Likely it -- I don't think we had any joint
 12 caucus meetings, so it would have been Senate
 13 and House had their own private conference,
 14 private meetings.
 15 Q. And did you have multiple Senate Republican
 16 caucus meetings during that special session?
 17 A. I don't recall how many of them we had.
 18 Q. Did you have any meetings prior to introducing
 19 the criteria?
 20 A. I don't recall.
 21 Q. Did you have any Republican -- Senate Republican
 22 caucus meetings after you'd seen the draft map,
 23 the draft -- the two draft maps that
 24 Dr. Hofeller showed you at that second visit?
 25 A. I'm trying to remember when did we get called

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1 back in because unless they were there, all the
 2 members, there would not have been a caucus. I
 3 just don't remember what day we were called back
 4 in for that. I don't think we were called back
 5 in on the 15th which was the public hearing. A
 6 lot of people were in their home locations
 7 helping with the public hearing. So that would
 8 have had to have been Tuesday.
 9 So you're asking the question --
 10 Q. Well, this is helpful. I'm trying to pin down
 11 when there was Senate Republican caucus
 12 meetings.
 13 A. I don't remember the day we were called back in
 14 and whether it was Tuesday or not and whether it
 15 was everybody or just the Redistricting
 16 Committee or the Joint Redistricting Committee
 17 ultimately.
 18 Q. By the first floor meeting -- floor debate
 19 everyone had to be called back?
 20 A. Senate debate.
 21 Q. Yes.
 22 A. I would assume yes.
 23 Q. But you don't know if everyone would had to have
 24 been called back between the Senate
 25 Redistricting Committee and the Senate floor?

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1 A. Correct. Because it could have been -- and I
 2 just don't remember what day we were called back
 3 in. It could have been the redistricting folks
 4 might have been called back in because it was a
 5 committee meeting like that, but I don't
 6 remember.
 7 Q. Did you ever have sub caucus meetings when just
 8 the redistricting committee folks were around?
 9 A. No. The only time we had caucus -- not
 10 caucus -- committee meetings, it was posted.
 11 Q. No. But I'm asking about caucus meetings.
 12 Did you have whoever was available from
 13 the Republican caucus meet?
 14 A. Not that I remember.
 15 Q. So you did meet, but we're not sure when, the
 16 Republican caucus?
 17 A. There were caucus meetings during the time that
 18 we were called back in.
 19 Q. Okay. And did you take the map that you and
 20 Representative Lewis had approved to the
 21 Republican caucus meeting?
 22 A. I think that was -- at the time it was brought
 23 forward in the -- when the joint caucus -- the
 24 joint caucus voted on it, I believe it was put
 25 on the website and so it would have been public.

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1 Q. Okay.
 2 A. The best I -- I don't believe we -- it was
 3 part -- it was public at that point.
 4 Q. Did you explain to members of the Senate
 5 Republican caucus your support for the version
 6 of the map that you chose?
 7 A. If in explaining -- well, if it was in the
 8 caucus and we did, I urged everybody, House
 9 Republicans and Democrats, to attend the caucus
 10 meetings -- not caucus -- the committee meetings
 11 even if they weren't on the committee. So by
 12 the time we actually had a Senate floor, there
 13 were about 40 members who had already been
 14 briefed at least twice as to what was in the
 15 map, what the criteria was and all of that
 16 thing.
 17 So we made an effort to try to make
 18 sure that as many people, even if you weren't on
 19 the committee, could come in to attendance so
 20 that everybody would have numerous opportunities
 21 to see what was going on and understand it.
 22 Q. I wasn't asking about the committee meeting. I
 23 was asking about the caucus meeting.
 24 So obviously no Democrats were invited
 25 to the Senate Republican --

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1 A. So repeat your question.
 2 Q. So did you explain to members of the Senate
 3 Republican caucus why you were supporting this
 4 plan?
 5 A. I probably would have explained the criteria
 6 that was there, and I probably would have said
 7 that this is the closest that we can get to
 8 achieve our criteria and then we believe that
 9 this would be the best plan to send forward to
 10 have the Harris court feel that we complied with
 11 all of the issues that the Harris court had
 12 brought to our attention.
 13 Q. And did you go through criteria by criteria and
 14 say it satisfied this, satisfied that?
 15 A. No, because the criteria was explained early on.
 16 And I don't know why you keep asking that. We
 17 don't do it on a one-by-one basis. It's overall
 18 broadly looked at and said does it work or does
 19 it not work. We're not pulling them out and
 20 saying this fits, well, you know, all of a
 21 sudden you make a change and if it goes from a
 22 90 to a 70 is that good or bad, there's no way
 23 of measuring that. So it's looked at through
 24 the broad picture.
 25 Q. What did you tell members of the Senate

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1 Republican caucus about the political
 2 performance of this map?
 3 A. I told them that this meets the needs of what we
 4 believe that the criteria wanted us to establish
 5 and that the court would be able to accept.
 6 Q. Did you represent that this would likely produce
 7 a 10-3?
 8 A. I don't recall if I mentioned that or not.
 9 Q. You can't recall if you mentioned that to your
 10 fellow Republicans?
 11 A. No. It was six, eight months ago. At that
 12 point I'm talking about it. I mean, everybody
 13 was discussing it in committee meetings. So I
 14 just don't recall that.
 15 Q. Did you make any representations about whether
 16 Republican incumbents would be treated well
 17 under this new map?
 18 A. Well, the incumbency, everybody knows what it
 19 was, it was there as best we could. One
 20 Republicans -- two Republicans were put into --
 21 well, not really. As it turned out, they ran --
 22 Holding ran in the 2nd district even though he
 23 was in the 4th. Price and Holding were in the
 24 4th together. So I'm not sure that's good or
 25 bad on that -- on that issue.

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1 Repeat your question one more time.
 2 Q. Did you -- when you were in that Senate
 3 Republican caucus meeting, did you make any
 4 representations to the caucus members about how
 5 incumbents -- Republican incumbents would fair
 6 under this new map?
 7 A. I don't believe this is a 10-3 map in a normal
 8 election.
 9 Q. It was a 10-3 in 2016, correct?
 10 A. I think that's not a normal election.
 11 Q. Okay. Well, since we're going to talk about
 12 that, why don't you pull out Exhibit 27.
 13 We're done with that.
 14 Do you recognize this document?
 15 A. Yes, ma'am. That was the stat pack that came
 16 from -- in the original version of -- or just --
 17 I say stat pack. It's probably not that.
 18 What it is it talks about the election
 19 results that were included. Unfortunately, I
 20 don't see it, but there's supposed to be a key
 21 to it to determine which one is which.
 22 Q. If it would help you as we're going through --
 23 A. There's the key.
 24 Q. -- this is 28.
 25 A. Somehow or another it was done quickly and we

222

1 didn't get the names transcribed over there
 2 where it says GV, and I think that's where
 3 governor would be and things like that.
 4 Q. Sure.
 5 A. I think in the subsequent stat pack that came
 6 out that was requested by Senator McKissick and
 7 delivered, it had the names rather than the keys
 8 or the codes.
 9 Q. Can you turn to the sixth page with me. It's
 10 the 2010 General Election Results for the U.S.
 11 Senate?
 12 A. Sixth page.
 13 Q. They're not numbered. I counted it.
 14 A. So election results 2010 or --
 15 Q. Yes, 2010 general USS.
 16 A. Got it.
 17 Q. Can you look at the third column which is the
 18 percent that the Democratic candidate got in the
 19 2010 election. And can you count up how many --
 20 in how many of the congressional districts did a
 21 Democrat -- did the Democrat win based on these
 22 reconstituted election results?
 23 A. I see three.
 24 Q. Okay. So using the 2010 Senate race, it's a
 25 10-3 plan?

223

1 A. Yes.
 2 Q. 10 Republicans, 3 Democrats?
 3 A. That's what I read.
 4 Q. Was 2010 -- the 2010 election a normal election?
 5 A. I don't believe -- it was probably more normal
 6 than this one because of all of the confusion
 7 with the changing of the primary dates and which
 8 districts people were going to be running in.
 9 I don't think this one is a normal
 10 election in any way because there were probably
 11 still people out there wondering what precincts
 12 or what districts they were running in or they
 13 were supposed to vote in.
 14 Q. So the only thing that made 2016 not normal was
 15 the changing of the primary dates?
 16 A. Well, that's part of it. And when people were
 17 running in different districts, different
 18 counties.
 19 Q. Doesn't that happen after every redistricting?
 20 A. No, because they had already had two or three
 21 elections -- I think it was two or three
 22 elections they had run already under the
 23 original enacted map. People were -- it was
 24 towards the middle of the cycle.
 25 Q. So 2010 is a normal election by your metric,

224

1 then?
 2 A. I would say to you yes. We've added probably
 3 750,000 new people into the state and things
 4 like that which change the demographics.
 5 Q. All right. Can you turn to the next page, then.
 6 At the top in blue, it says Election Results
 7 2012 General G and LG.
 8 Do you see that page?
 9 A. Okay, I've got Election Results 2012 General G
 10 and LG.
 11 Q. Yes.
 12 A. Okay.
 13 Q. So can you look at the third column which is the
 14 percent that the Democratic candidate got for
 15 governor, and scroll down there and count for
 16 me. In how many districts did the Democratic
 17 candidate win?
 18 A. In 2012.
 19 Q. For the governor.
 20 A. Uh-huh. I see three.
 21 Q. Okay. So using that election results metric,
 22 this is a 10-3 plan with Republicans having 10
 23 and Democrats having 3, right?
 24 A. Yes.
 25 Q. So then can you scroll over, same page, the 14th

225

1 column -- actually, the easiest, it's the fourth
 2 one from the right. It's pct_EL12G_LG_D.
 3 Do you see that column?
 4 A. No. Tell me again where that is.
 5 Q. It's the fourth column from the right.
 6 A. On which page again?
 7 Q. Same page we were on before.
 8 A. Sorry.
 9 Q. It's the lieutenant governor's race.
 10 A. Under the LG.
 11 Q. It's the fourth column from the right, and the
 12 column title is pct_EL12G_LG_D.
 13 Do you see that?
 14 A. Okay.
 15 Q. Now, can you scroll down through that list and
 16 tell me how many -- and that's the percent that
 17 the Democratic candidate got in the lieutenant
 18 governor race in 2012.
 19 Can you tell me in how many districts
 20 did the Democratic candidate win?
 21 A. It looks like three.
 22 Q. So that -- using that metric, this 2016
 23 Contingent Plan is a 10-3 map, right?
 24 A. As far as past election experience, it appears
 25 to be, but yet again, this 2016 election was a

226

1 very unusual election, not with only the changes
 2 that occurred but also on the presidential side
 3 too. This was what you call not a normal year.
 4 Q. I understood your position, and your position is
 5 this isn't a 10-3 plan because 2016 is unusual,
 6 but we've just gone back and seen that 2010 and
 7 2012 election results reconstituted also
 8 indicated it was a 10-3 plan.
 9 So my question is: Was 2012 an unusual
 10 or not normal election?
 11 A. I don't know the answer to that.
 12 Can we look at Roy Cooper's election?
 13 Q. Your counsel can ask you about that. I'm done
 14 with that exhibit.
 15 Senator Rucho --
 16 A. Both of them?
 17 Q. Yes, I'm done with them.
 18 Did you have that stat pack in hand
 19 when you met with the Senate Republican caucus?
 20 A. This stat pack?
 21 Q. Yes. Probably right because it was produced
 22 with the Redistricting Committee meeting.
 23 A. It probably would have been part of the public
 24 record on the screen. I can't remember if I had
 25 it in my hand when we talked, and if we talked,

227

1 I can't remember that, but okay.
 2 Q. So you don't remember if you discussed any of
 3 these specific election results with --
 4 A. People would have gone on their own to the stat
 5 pack, and we encourage that, actually, as we did
 6 during one of the committee meetings. I think
 7 Senator Ford had asked questions, and once he
 8 was given the key or the code, he was able to...
 9 Q. Can you grab the criteria?
 10 A. Got it.
 11 Q. All right. Did you ever have any discussions
 12 with Dr. Hofeller -- and I think you sort of
 13 were skirting around with this because there was
 14 an issue with Representative Holding and
 15 Representative Price and Representative Elmers
 16 living pretty close to each other.
 17 Did you ever have a discussion with
 18 Dr. Hofeller about whether it was possible to
 19 keep them in their own -- each in their own
 20 district if you relaxed the equal population
 21 requirement a little bit, so maybe had
 22 population deviations of 10 or a hundred?
 23 A. I don't see that -- I don't see there's any way
 24 to compromise on the equal population.
 25 Q. So on that criteria no compromise?

228

1 A. That's not my choice. That's mandated.
 2 Q. But on the incumbency criteria, that was allowed
 3 to be compromised?
 4 A. There's a give and a take on most every other
 5 one, but on the -- you had to be there, at least
 6 that was my understanding under the court
 7 requirement.
 8 Q. Can you pull up -- pull out Exhibit 25, which is
 9 the enacted map, and keep the criteria out.
 10 A. Is this it?
 11 Q. No. It's a single piece of paper floating
 12 around. There you go. Thank you.
 13 So looking at the compactness criteria,
 14 which is on the second page of the criteria --
 15 go back to the criteria exhibit.
 16 A. Okay, got it.
 17 Q. The compactness one on the second page. It
 18 says:
 19 "Division of counties shall only be
 20 made for reasons of equalizing population,
 21 consideration of incumbency and political
 22 impact."
 23 Did I read that right?
 24 A. That's what it says.
 25 Q. So in the enacted plan that you have in front of

229

1 you, there's 13 county splits. Did Dr. Hofeller
 2 explain to you why each of those counties were
 3 split?
 4 A. He did not go in detail. It was part of what he
 5 felt he needed to do to implement our criteria.
 6 Q. So you left the -- you left it up to
 7 Dr. Hofeller to make the judgment that any
 8 county split was only split for equal
 9 population, consideration of incumbency or
 10 political impact, correct?
 11 A. That's correct. And there are 13 areas that
 12 this would be impacted --
 13 Q. So fair to say --
 14 A. -- out a 100.
 15 Q. So sitting here today, you can't tell me which
 16 of the 13 splits were for political impact as
 17 opposed to equal population?
 18 A. No.
 19 Q. Do you have any sense of which splits --
 20 understanding he didn't tell you that
 21 specifically, do you have any sense of which
 22 county splits were made for political impact?
 23 A. No.
 24 Q. Did -- same thing with all the split VTDs which
 25 aren't represented on this map, did Dr. Hofeller

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1 go through each split VTD and tell you why he
 2 decided to split that VTD?
 3 A. No.
 4 Q. So you don't know sitting here today whether
 5 VTDs were split for equal population reasons or
 6 political impact reasons?
 7 A. All I know is that he followed the criteria to
 8 the best he could to get it achieved.
 9 Q. And you were satisfied with that representation
 10 by Dr. Hofeller?
 11 A. Yes, ma'am.
 12 Q. If you don't mind -- well, going back, you've
 13 had the opportunity to review a whole lot of
 14 election results over the last 15 years when --
 15 in your work on redistricting, right?
 16 A. I haven't been on redistricting for 15 years.
 17 Q. Well, you've voted on it.
 18 A. Well, I think in the last -- since 2011 is where
 19 I had to be responsible for it.
 20 Q. Okay. So since 2011 you've spent a lot of time
 21 with redistricting and, by necessity, election
 22 results, right?
 23 A. Where necessary.
 24 Q. Okay. Does that give you a sense of, you know,
 25 North Carolina's political bent?

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1 MR. STRACH: Objection; form.
 2 You can answer that if you can, if you
 3 know what that means.
 4 THE WITNESS: I don't. You might need
 5 to explain what you're asking for.
 6 BY MS. RIGGS:
 7 Q. Would you describe North Carolina as a swing
 8 state?
 9 MR. STRACH: Objection to form.
 10 THE WITNESS: It's hard. It changes.
 11 It could be a swing state. I mean, you've got
 12 two U.S. Senators that are Republican. You've
 13 got a Democrat governor now. You know, it could
 14 be what -- federal and state could make a
 15 difference too, you know, federal candidate may
 16 lean Republican and state candidates may lean
 17 Democrat.
 18 BY MS. RIGGS:
 19 Q. Okay. You don't take much stock from just
 20 looking at statewide voter registration
 21 breakouts, though, right?
 22 A. No, because, one, it changes; two, you really
 23 don't know whether somebody votes -- how they
 24 vote, actually. And then you have -- in the
 25 last few years you've had a significant growth

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1 in unaffiliated voters. Where do you categorize
 2 them.
 3 Q. Have you ever had the chance to go back and look
 4 at in congressional elections the share of the
 5 two-party vote statewide, so look at how many
 6 votes Republican congressional candidates get
 7 and how many votes Democratic candidates get?
 8 A. No reason to.
 9 Q. Okay. So you've never looked at that?
 10 A. (Witness shaking head from side to side.)
 11 Q. Would it surprise you to hear that Republicans
 12 win the two party -- the vote share of the two
 13 party with like 53 percent of the vote?
 14 A. Congressional races are not statewide elections.
 15 They're regional geographic elections. So you
 16 can't look at what a statewide vote is.
 17 You look at what each district actually
 18 does to elect their candidate. To me that would
 19 be apples and oranges.
 20 Q. Well, this metric I'm talking about is
 21 aggregating the votes from each district, so
 22 it's not comparing District 1 to District 12.
 23 It's just saying Republican candidates for
 24 Congress and all across the state get X number
 25 of votes and Democratic get Y number of votes.

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1 A. I've never looked at it.
 2 Q. Okay. Republicans control 10 out of the 13
 3 districts, right?
 4 MR. STRACH: Objection to form.
 5 THE WITNESS: At this point.
 6 BY MS. RIGGS:
 7 Q. Do you know what percentage that equals out to?
 8 A. 10 of 13?
 9 Q. Yes.
 10 A. Not offhand.
 11 Q. If I hand you a calculator --
 12 A. You calculate.
 13 Q. No. You're the witness. That's the rules.
 14 Tell me what 10 divided by 13 is.
 15 A. I have to turn it on first. There it is. 76.
 16 Q. Is it 76.9 percent?
 17 A. Uh-huh.
 18 Q. So Republicans now constitute 76.9 percent of
 19 the North Carolina's congressional delegation,
 20 right?
 21 A. You can't compare it on a statewide election.
 22 They're not statewide candidates. They're
 23 district candidates and they represent
 24 geographical areas different. As each of those
 25 districts are, they represent different

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1 geographical areas. So I see no way of making a
 2 characterization that because there are 54
 3 percent victory that they should only have 54
 4 percent elected people. That just doesn't ring
 5 true in my mind.
 6 Q. That wasn't my question, sir.
 7 I was just asking you right now in
 8 Washington, DC, 10 out of 13 congressional seats
 9 are represented by Republicans, right?
 10 A. In North Carolina.
 11 Q. Right. So in Washington, DC, 76.9 percent of
 12 the congress people are currently Republicans;
 13 is that correct?
 14 A. That's correct.
 15 Q. Okay.
 16 MS. RIGGS: Can we take a break now and
 17 do a brief conference.
 18 MR. STRACH: I was hoping you would say
 19 you're about done.
 20 MS. RIGGS: I'm about done.
 21 THE VIDEOGRAPHER: Off the record at
 22 4:51 p.m.
 23 (Brief Recess.)
 24 THE VIDEOGRAPHER: On record at
 25 5:03 p.m.

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1 BY MS. RIGGS:
 2 Q. Thank you for your patience, Senator Rucho. I'm
 3 almost done here.
 4 One question I forgot to ask you is:
 5 After you left the second meeting with
 6 Dr. Hofeller with the map that you were
 7 decided -- that you and Representative Lewis had
 8 decided on but before the committee met, the
 9 Joint Committee met, did you give that map to
 10 anyone else in the legislature?
 11 A. I did not walk away with a map.
 12 Q. Okay. Did you authorize Dr. Hofeller to give it
 13 to anyone else?
 14 A. No, ma'am. His responsibility was to get and
 15 put it on the state computer.
 16 Q. So as far as you know, Senator Berger, for
 17 example, didn't have a copy of that before you
 18 made it public on the website?
 19 A. I -- as far as I know, absolutely not.
 20 Q. And the same with any other senator?
 21 A. (Witness shaking head from side to side.)
 22 Q. Answer verbally.
 23 A. Yes. To my knowledge, none of them had a copy
 24 of that map.
 25 Q. Okay. And you didn't let the Senate Republican

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1 caucus know anything about the map that you
 2 decided before that committee meeting?
 3 A. I don't believe -- I don't believe we had a time
 4 of a caucus prior to the -- I don't believe that
 5 we had prior to the Joint Committee where we
 6 took up the issue of criteria.
 7 Q. You didn't send them any e-mails?
 8 A. No.
 9 Q. Okay. I have no further questions.
 10 MR. STRACH: Any other questions?
 11 We have no questions. Thank you.
 12 THE VIDEOGRAPHER: This concludes the
 13 deposition. The time is 5:05 p.m.
 14 [SIGNATURE RESERVED]
 15 [DEPOSITION CONCLUDED AT 5:05 P.M.]
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1 ERRATA SHEET
 2 Case Name: Common Cause v Rucho / LWV NC v Rucho
 3 Witness Name: ROBERT A. RUCHO
 4 Deposition Date: Wednesday, January 25, 2017
 5
 6 Page/Line Reads Should Read
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 25 Signature Date

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1 ACKNOWLEDGEMENT OF DEPONENT
 2
 3 I, ROBERT A. RUCHO, declare under the penalties of
 4 perjury under the State of North Carolina that I have read
 5 the foregoing pages, which contain a correct transcription
 6 of answers made by me to the questions therein recorded,
 7 with the exception(s) and/or addition(s) reflected on the
 8 correction sheet attached hereto, if any.
 9 Signed this the day of , 2017.
 10
 11
 12 ROBERT A. RUCHO
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1 STATE OF NORTH CAROLINA)
 2) CERTIFICATE
 3 COUNTY OF WAKE)
 4
 5 I, DENISE MYERS BYRD, Court Reporter and Notary
 6 Public, the officer before whom the foregoing proceeding was
 7 conducted, do hereby certify that the witness(es) whose
 8 testimony appears in the foregoing proceeding were duly
 9 sworn by me; that the testimony of said witness(es) were
 10 taken by me to the best of my ability and thereafter
 11 transcribed under my supervision; and that the foregoing
 12 pages, inclusive, constitute a true and accurate
 13 transcription of the testimony of the witness(es).
 14 I do further certify that I am neither counsel for,
 15 related to, nor employed by any of the parties to this
 16 action, and further, that I am not a relative or employee of
 17 any attorney or counsel employed by the parties thereof, nor
 18 financially or otherwise interested in the outcome of said
 19 action.
 20 This the 16th day of February 2017.
 21
 22
 23
 24 Denise Myers Byrd
 25 CSR 8340, RPR, CLR 102409-02

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Exhibit K

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

COMMON CAUSE, *et al.*,)
)
Plaintiffs,)
)
v.)
)
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.)

Civil Action No. 1:16-CV-1026-WO-JEP
Three-Judge Court

League of Women Voters of North)
Carolina, *et al.*,)
)
Plaintiffs,)
)
v.)
)
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.)

Civil Action No. 1:16-CV-1164-WO-JEP
Three-Judge Panel

**DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST REQUESTS FOR
ADMISSION**

Defendants, by and through undersigned counsel, serve their objections and responses to Plaintiffs' First Set of Requests for Admissions:

GENERAL OBJECTIONS

Defendants make the following answers, responses, and objections to Plaintiffs' First Requests for Admission ("Requests"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Requests. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Requests were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Request should not be taken as an admission that

Defendants accept or admit the existence of any facts assumed by such Request or that such response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants responds to part of or all of any Request is not intended to be, and shall not be, construed as, a waiver by Defendants of any part of any objection to any Request.

Defendants will respond to Plaintiff's Requests for Admission in accordance with Rule 36 of the Federal Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules.

These responses are provided solely for the purpose of and in relation to this action.

RESPONSES AND OBJECTIONS TO REQUESTS FOR ADMISSION

1. Attached Exhibit 1 is a true and accurate copy of the redistricting legislation enacted by the General Assembly on February 19, 2016.

Response: Admitted.

2. Attached Exhibit 2 is a true and accurate copy of the map created by the legislation contained in Exhibit 1.

Response: Admitted.

3. Attached Exhibit 3 is a true and accurate copy of the congressional map adopted by the Joint Select Committee on Congressional Redistricting (JCCR) on February 17, 2016.

Response: Admitted.

4. Attached Exhibit 4 is a true and accurate copy of the transcript of a public hearing convened by the JCCR on February 15, 2016. That transcript accurately and fully reflects the February 15 public hearing.

Response: Admitted.

5. Attached Exhibit 5 is a true and accurate copy of the transcript of the February 16, 2016 meeting of the JCCR. That transcript accurately and fully reflects the February 16 JCCR meeting.

Response: Admitted.

6. Attached Exhibit 6 is a true and accurate copy of the February 17, 2016 meeting of the JCCR. That transcript accurately and fully reflects the February 17 JCCR meeting.

Response: Admitted.

7. Attached Exhibit 7 is a true and accurate copy of the transcript of the February 18, 2016 meeting of the Senate Redistricting Committee. That transcript accurately and fully reflects the February 18 Senate committee meeting.

Response: Admitted.

8. Attached Exhibit 8 is a true and accurate copy of the transcript of the February 19, 2016 meeting of the Senate Redistricting Committee. That transcript accurately and fully reflects the February 19 Senate committee meeting.

Response: Admitted.

9. Attached Exhibit 9 is a true and accurate copy of the transcript of the February 18, 2016 Floor Session of the Senate. That transcript accurately and fully reflects the February 18 Senate Floor Session.

Response: Admitted.

10. Attached Exhibit 10 is a true and accurate copy of the transcript of the February 19, 2016 Floor Session of the Senate. That transcript accurately and fully reflects the February 19 Senate Floor Session.

Response: Admitted.

11. Attached Exhibit 11 is a true and accurate copy of the transcript of the February 18, 2016 House Redistricting Committee. That transcript accurately and fully reflects the February 18 House committee meeting.

Response: Admitted.

12. Attached Exhibit 12 is a true and accurate copy of the transcript of the February 19, 2016 House Redistricting Committee. That transcript accurately and fully reflects the February 19 House committee meeting.

Response: Admitted.

13. Attached Exhibit 13 is a true and accurate copy of the transcript of the February 18, 2016 Floor Session of the House. That transcript accurately and fully reflects the February 18 House Floor Session.

Response: Admitted.

14. Attached Exhibit 14 is a true and accurate copy of the transcript of the February 19, 2016 Floor Session of the House. That transcript accurately and fully reflects the February 19 House Floor Session.

Response: Admitted.

15. Attached Exhibit 15 contains true and accurate copies of entries on a website maintained by the defendant North Carolina State Board of Elections that accurately report the results of the 2016 election in each congressional district (1-13) by county.

Response: Admitted.

16. Attached Exhibit 16 is a true and accurate copy of criteria adopted by the JCCR on February 16, 2016.

Response: Admitted.

17. A true and accurate copy of the election results contained on the General Assembly's website and loaded on Dr. Hofeller's personal computer is contained in the attached Exhibit 17.

Response: Admitted.

18. The formula Dr. Hofeller used to evaluate the partisan performance of congressional districts he was drawing is attached as Exhibit 18. (This formula includes the results of seven statewide elections: the 2008 elections for US Senate, Governor and Commissioner of Insurance, the 2010 election for US Senate, the 2012 elections for Governor and Commissioner of Labor and the 2014 election for US Senate.)

Response: Defendants admit that Dr. Hofeller used the formula in Exhibit 18 that included the results of the statewide elections listed above to evaluate the political characteristics of the congressional districts he drew. In all other respects, this Request is denied.

19. The terms on which Dr. Hofeller was retained to develop the 2016 Congressional Redistricting Plan are accurately and fully described in the attached Exhibit 19.

Response: Admitted.

20. The maps attached as Exhibit 20 (and contained in Exhibit 31 to the Hofeller deposition) are the only maps drawn by Hofeller in carrying out his work for Rucho and Lewis in February 2016, other than the maps in attached Exhibits 2 and 3.

Response: Admitted.

21. The documents Thomas Farr provided plaintiff's counsel by email on February 14, 2017 are the only non-privileged documents relating to the 2016 Congressional Redistricting Plan on Hofeller's computer. A true and accurate copy of those documents is contained in attached Exhibit 21.

Response: Defendants admit that email exchanges between counsel and defendants' discovery responses state that all non-privileged, relevant documents from Dr. Hofeller's computer have been produced. In all other respects, this Request is denied.

22. Attached Exhibit 22 (which contains exhibits 6, 6a, 9, 10, 13, 21, 22, and 23 from Hofeller's deposition in this matter) are true and accurate copies of business records of the Republican State Leadership Committee (RSLC).

Response: Defendants admit that Exhibit 22 contains copies of certain documents produced by the Republican State Leadership Committee in response to a subpoena from Plaintiffs, however, Defendants cannot admit or deny whether records that they did not create and maintain are "business records" within the meaning of this Request.

23. One or more plaintiffs has standing to challenge the constitutionality of the 2016 Congressional Redistricting Plan as a whole.

Response: Denied.

24. One or more of the individual plaintiffs in *Common Cause v. Rucho*, 1:16-CV-1026-WO-JEP, has standing to challenge the constitutionality of each congressional district (1-13) contained in the 2016 Congressional Redistricting Plan.

Response: Denied.

25. No Democratic member of the General Assembly voted for the legislation relating to the 2016 Congressional Redistricting Plan in any committee or on the floor of the Senate or House.

Response: Admitted.

26. No Republican member voted against the legislation relating to the 2016 Congressional Redistricting Plan in any committee or on the floor of the Senate or the House.

Response: Denied.

27. Representative David Lewis and Senator Robert Rucho were appointed Chairs of the House and Senate Redistricting Committees and charged with redrawing the 2011 Congressional Redistricting Plan declared unconstitutional on February 5, 2016.

Response: Defendants admit that Representative David Lewis and Senator Robert Rucho were appointed Chairs of the House and Senate Redistricting Committees and that those committees were charged with redrawing the 2011 Congressional Redistricting Plan in accordance with the *Harris* court's February 5, 2016 order. In all other respects, this Request is denied.

Exhibit L

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

DAVID HARRIS, CHRISTINE)	
BOWSER, and SAMUEL LOVE,)	Greensboro, North Carolina
)	October 14, 2015
Plaintiff,)	9:06 a.m.
)	
vs.)	
)	
PATRICK MCCRORY, in his)	
capacity as Governor of North)	Case No. 1:13CV949
Carolina, NORTH CAROLINA STATE)	
BOARD OF ELECTIONS, and JOSHUA)	
HOWARD, in his capacity as)	
Chairman of the North Carolina)	
State Board of Elections,)	
)	
Defendants.)	

TRANSCRIPT OF BENCH TRIAL VOLUME II OF III HELD BEFORE
THE HON. **WILLIAM L. OSTEN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **MAX O. COGBURN, JR.**, UNITED STATES DISTRICT JUDGE
THE HON. **ROGER L. GREGORY**, UNITED STATES DISTRICT JUDGE

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POB 31608
Raleigh, NC 27622

1 my opinion, as were many other people, and one of the things I
2 did was to look at how these different elections track one
3 another.

4 The other thing I might add, too, is that I didn't
5 draw this plan in a vacuum as far as the data was concerned.
6 First of all, I've drawn numerous plans in the state of North
7 Carolina over decades. I drew the State Senate districts and
8 the State House districts, and I know from that experience that
9 the underlying political nature of the precincts in the state
10 does not change no matter what race you use to analyze it.

11 The only way the underlying political demographics,
12 if you could use that term, change in a precinct is if the
13 precinct is changed in the nature of the people that are living
14 in the precinct. So once a precinct is found to be a strong
15 Democratic precinct, it's probably going to act as a strong
16 Democratic precinct in every subsequent election. The same
17 would be true for Republican precincts.

18 So if you used a conglomeration of elections, my
19 experience is you'd come up with the same -- the same result.
20 You may find a little higher score for the Democrats overall in
21 one election because the candidate did better, or you might
22 find a lower one, but the general ranking of the precincts as
23 to how Republican or how Democratic they are is simply not
24 going to change.

25 Q All right. Now, and to clarify again, when you were

Exhibit M



**NORTH CAROLINA GENERAL ASSEMBLY
JOINT SELECT COMMITTEE ON CONGRESSIONAL REDISTRICTING**

February 16, 2016

VIA HAND DELIVERY

Dr. Thomas Hofeller

Dear Dr. Hofeller:

We require your professional assistance. Earlier today, a motion prevailed in the meeting of the Joint Select Committee on Congressional Redistricting (the "Committee") authorizing the Co-Chairs to engage a map drawing expert to produce a contingent Congressional Map or Maps using the attached criteria prevailing today on individual motions in the Committee (the "Adopted Criteria"). Based on your knowledge and experience, we believe you are best qualified to produce such a map or maps. Therefore, we offer to engage you to produce such a map for possible presentation to the Committee and ultimate use by the General Assembly.


OUR OFFER OF ENGAGEMENT IS SUBJECT TO THE FOLLOWING TERMS:

- You will produce a map of 13 congressional districts in North Carolina that complies with the Adopted Criteria. The map you produce may be presented to the Committee, the General Assembly or any third party in the sole discretion of the Co-Chairs.
- As a legislative contractor and consultant, your work will be subject to legislative confidentiality as prescribed by Article 17 of Chapter 120 of the General Statutes. Your work may also be subject to the doctrine of legislative privilege as provided by the common law in North Carolina. By directive of the Committee, these protections will accrue to the benefit of the Co-Chairs of the Committee, and the Co-Chairs shall have the sole discretion to grant any request for their waiver. Finally, and notwithstanding the foregoing, all drafting and information requests to you and documents prepared by you concerning redistricting shall no longer be confidential and shall become public records upon the act establishing the relevant district plan becoming law.
- To allow us and you to better to predict the cost of this engagement, we are prepared to offer compensation to you in the form of a flat fee equal to \$25,000.00 payable upon

receipt by the Legislative Services Officer of an invoice from you for work performed and upon prior approval from the President Pro Tempore of the Senate and the Speaker of the House.

Should the terms of this engagement be acceptable to you, please indicate your acceptance in the space marked below. We appreciate your willingness to serve in this manner, and we look forward to working with you pursuant to the Committee's directive.

Sincerely,


Rep. David Lewis


Sen. Bob Rucho

Enclosures

Agreed and Accepted to by:


Dr. Thomas Hofeller

Date: February 16, 2016

Agreement Authorized and Approved:

Sen. Phil Berger
President Pro Tempore

Rep. Tim Moore
Speaker