TATE OF NO TH CAROLINA   IN THE GENERAL COURT OF JUSTICE
                                      SUPERIOR COURT DIVISION
COUNTY OF WAKE   18 CVS 014001

COMMON CAUSE, et al.,   )
)
            Plaintiffs,   )
)
     vs.   )
)
DAVID LEWIS, IN HIS OFFICIAL   )
CAPACITY AS SENIOR CHAIRMAN OF   )
THE HOUSE SELECT COMMITTEE ON   )
REDISTRICTING, et al.,   )
)
            Defendants.   )
)

                DEPOSITION OF LEON SCHALLER

_____

                       1:27 P.M.

                 Thursday, May 9, 2019
_____

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                RALEIGH, NORTH CAROLINA

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24

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                                                        4

1   LEON SCHALLER,

2   having been first duly sworn or affirmed by the

3   Certified Shorthand Reporter and Notary Public

4   to tell the truth, the whole truth and nothing

5   but the truth, testified as follows:

6   EXAMINATION

7   BY MR. PENCOOK:

8   Q.   Thank you. Can you please state your name for

9   the record.

10   A.   Leon Charles Schaller.

11   Q.   All right. Schaller?

12   A.   Yes, Schaller.

13   Q.   Well, Mr. Schaller, my name is Nate Pencook. We

14   met just a moment ago. I represent the

15   intervenor defendants in this lawsuit. I'm from

16   the law firm of Shanahan Law Group based in

17   Raleigh, and I'm here today to just learn more

18   about what you know about the claims and

19   allegations that you've made in this lawsuit and

20   any facts that you know that relate to those

21   claims and allegations.

22   Does that make sense?

23   A.   Yes.

24   Q.   And I want to say I appreciate you driving out

25   here from Alamance County. It's quite a drive,

1   especially depending on which time of day you

2   come, so I appreciate it.

3   A.   You're welcome.

4   Q.   Have you ever been deposed before?

5   A.   Yes.

6   Q.   When were you deposed?

7   A.   Back in the 19 -- early 1980s, I believe it was.

8   Q.   And what was the matter in which you were

9   deposed?

10   A.   Asbestos litigation.

11   Q.   Were you a party to that litigation?

12   A.   No.

13   Q.   Well, so I guess you kind of get how depositions

14   go. It's a question-and-answer session. It's

15   important for us not to talk over one another,

16   so if I ask a question, I'll ask that you let me

17   finish it, and if you're giving an answer, I'll

18   be sure to let you finish it.

19   Does that sound fair?

20   A.   Yes.

21   Q.   If there's a question that I ask that you don't

22   understand, please just let me know and I'll try

23   and rephrase it, and if you answer my question,

24   I'm going to presume that you understood it.

25   Is that okay?

6

1   A.   Yes.

2   Q.   If you need a break today -- I don't think we're

3   going to be here for too long, but all you need

4   to do is ask for one. The only thing that I'll

5   ask of you is that you answer any question

6   that's on the table. Is that fair?

7   A.   Yes.

8   Q.   Now, do you understand that you're under oath

9   today?

10 A.   Yes.

11 Q.   And that you're sworn to tell the truth as

12   though you were testifying in open court?

13 A.   Yes.

14 Q.   Are you under the influence of any sort of drugs

15   or medication or suffering from any illness that

16   would prevent you from being able to fully

17   recall the things that have happened in the past

18   or to be honest about what you're testifying

19   about?

20 A.   No.

21 Q.   Is there any other reason the testimony that you

22   give today would not be truthful?

23 A.   No.

24 Q.   Mr. Schaller, when were you born?

25 A.   1931 July 24th.

1   Q.   And where were you born?

2   A.   Chicago.

3   Q.   Where do you live now?

4   A.   I live in Burlington, North Carolina.

5   Q.   What's your address?

6   A.   3819 Asbury Court, 27215.

7   Q.   That's a Burlington address?

8   A.   It's a Burlington address.

9   Q.   Okay. What's the name of the neighborhood that

10   you live in?

11   A.   It's a continuing care retirement community.

12   Twin Lakes Continuing Care Retirement Community.

13   Q.   How long have you lived there?

14   A.   Eight years.

15   Q.   Where did you live before that?

16   A.   In Chapel Hill, North Carolina.

17   Q.   What was your address there?

18   A.   303 Chesapeake Way.

19   Q.   And how long did you live there?

20   A.   About ten years. Roughly ten years.

21   Q.   Where did you live before that?

22   A.   In Hockessin, Delaware.

23   Q.   Okay. I guess what brought you to

24   North Carolina?

25   A.   I had been retired for some time and my wife

                                                              8

1   decided that we would be better off living

2   closer to one of our children in our late years.

3   Q.   Okay. I'm assuming your children live in

4   North Carolina.

5   A.   I have a daughter that lives in North Carolina.

6   Q.   Okay. Great. So do you have your high school

7   diploma?

8   A.   Do I have a high school, yes.

9   Q.   Any undergraduate degrees?

10   A.   Yes.

11   Q.   Where did you get your undergraduate degrees

12   from?

13   A.   The Illinois Institute of Technology.

14   Q.   And what was your degree in?

15   A.   Fire protection and safety engineering.

16   Q.   Do you have any graduate degrees?

17   A.   No.

18   Q.   And can you just tell me when did you get your

19   undergraduate degree?

20   A.   1954.

21   Q.   You said you're retired, correct?

22   A.   Yes.

23   Q.   Where did you work prior to your retirement?

24   A.   For the Dupont company in Delaware.

25   Q.   And how long did you work for the Dupont

9

1   company?

2   A.   32 years.

3   Q.   All right. Did you ever serve in the military

4   at all?

5   A.   Yes.

6   Q.   When did you serve?

7   A.   I served in 1949 to 1950 as an enlisted sailor

8   and then 1954 to '57 as a junior officer.

9   Q.   Well, I appreciate your service. Thank you.

10   Do you have any email addresses?

11   A.   Yes.

12   Q.   Can you state what those addresses are.

13   A.   Sure. Lcschaller@gmail.com.

14   Q.   Is that your only email address?

15   A.   Yes.

16   Q.   Have you had any prior email addresses before

17   that?

18   A.   I have in the past years.

19   Q.   In the recent past?

20   A.   Up until about six or seven years ago.

21   Q.   And what was that email address?

22   A.   I don't recall. It was an nc.rr.com server.

23   Q.   And you no longer have access to that email

24   address?

25   A.   No.

                                                    10

1   Q.   Did you forward your emails from that address to

2   your Gmail account?

3   A.   No.

4   Q.   Do you have any social media accounts?

5   A.   I believe I'm on Facebook.

6   Q.   Okay. Are you on Twitter at all?

7   A.   No.

8   Q.   Do you have a LinkedIn?

9   A.   Huh?

10   Q.   A LinkedIn.

11   A.   No.

12   Q.   Instagram?

13   A.   No.

14   Q.   What did you do to prepare for your deposition

15   today?

16   A.   I met with my counsel for an hour and a half

17   this morning.

18   Q.   This morning.

19   A.   And we had a telephone conference Tuesday.

20   Q.   And is that it?

21   MS. KONKEL: Objection; ambiguous.

22   THE WITNESS: Yes.

23   BY MR. PENCOOK:

24   Q.   Sorry. So you met with your lawyers today --

25   A.   Yes.

                                                              11

1   Q.   -- for about an hour and a half?

2   A.   Yes.

3   Q.   You had a phone call with your lawyers

4   previously?

5   A.   On Tuesday.

6   Q.   Okay. And how long was that call?

7   A.   About an hour.

8   Q.   Is that the only thing that you did to prepare

9   for your deposition today?

10   A.   Well, I reviewed the documents that I had

11   submitted.

12   Q.   Okay. Which documents?

13   A.   A number of emails to various persons, and one

14   or two newspaper articles, clippings that I

15   made. And I reviewed the interrogatory that I

16   completed and the complaint.

17   Q.   Any other documents?

18   A.   Not that I recall.

19   Q.   How did you become involved with this lawsuit?

20   A.   I responded to a Common Cause request for

21   persons who were interested in working on the

22   gerrymandering issue.

23   Q.   Can you describe the request that you responded.

24   To?

25   A.   I don't recall. It was an email -- or it was an

12

1   online -- I'm a member of Common Cause, or at

2   least I subscribe, a contributor. I don't

3   remember the specific nature of the --

4   Q.   Sorry. What was that?

5   A.   I don't recall the specific nature of the

6   request, but it did concern a gerrymandering

7   issue.

8   Q.   So it was not an email?

9   A.   It was not an email. Well, it was on -- it was

10   online -- yeah, probably came by email. Yes,

11   sir. Yes.

12   Q.   So you received an email from Common Cause and

13   you responded to that email?

14   A.   I think that's correct.

15   Q.   And so once you responded to that email, what

16   happened next?

17   A.   Well, I was contacted by someone, I forget who

18   it was, but to see if I would be interested --

19   or be willing to become a plaintiff in the case.

20   Q.   Do you know if that was an attorney who

21   contacted you?

22   A.   No. I don't know.

23   Q.   So then what was your response to that person

24   who contacted you?

25   A.   I said I would be interested in participating in

                                                              13

1   the case.

2   Q.   Okay.   And why were you interested in

3   participating in the case?

4   A.   I believe gerrymandering is a -- is a serious

5   problem in a democracy.

6   Q.   And so you participated because you believed

7   gerrymandering is a serious problem?

8   A.   Yes.

9   Q.   I think we'll get back to that, but do you know

10   any of the other plaintiffs who have joined in

11   this lawsuit?

12   A.   None.

13   Q.   And you've seen the list of everybody who's on

14   the complaint?

15   A.   Yes.

16   Q.   You've reviewed it and you don't know any of

17   those people?

18   A.   I didn't review it thoroughly. I glanced at it

19   and there's nobody I recognized.

20   Q.   But you do know NC Democratic Party and

21   Common Cause?

22   A.   Yes.

23   Q.   Other than your attorneys, who have you spoken

24   to about this lawsuit?

25   A.   My -- my wife and a couple of friends that I

14

1   mentioned that I was a plaintiff in the case.

2   Q.   Can you just describe the nature of those

3   conversations.

4   A.   Just that I was asked to be a plaintiff in this

5   gerrymandering case.

6   Q.   Did you talk about the claims or allegations

7   that you made in this lawsuit with any of them?

8   A.   No.

9   Q.   Did you talk with any of them about the strategy

10   involved in this lawsuit?

11   A.   No.

12   Q.   So it's just, hey, I'm a plaintiff and this case

13   involves redistricting?

14   A.   No. I think it was just that I'm a plaintiff.

15   Q.   So they don't even know what the case is about?

16   A.   They may, but I didn't elucidate.

17   Q.   Now, are you paying your attorneys for their

18   work in this lawsuit?

19   A.   No.

20   Q.   Do you know who is?

21   A.   No.

22   Q.   Did you -- I guess you don't think it's

23   important for you to know who's paying this.

24   MS. KONKEL: Objection; argumentative.

25   You can answer.

15

1   THE WITNESS: Do I think it's

2   important? I don't have an opinion on that.

3   BY MR. PENCOOK:

4   Q.   Okay. Mr. Schaller, do you follow politics

5   closely?

6   A.   I wouldn't say closely, no.

7   Q.   More than a casual observer, though?

8   A.   I would say not more than a casual observer, no.

9   Q.   So you're a casual observer of politics?

10   A.   Yes.

11   Q.   Where do you like to get your news about

12   politics?

13   A.   Probably public television and the week news

14   magazine is my primary source.

15   Q.   So public television, you mean C-SPAN?

16   A.   No. Public television, NPR.

17   Q.   Any particular reason why you prefer those news

18   sources?

19   A.   I regard them as fairly well balanced.

20   Q.   When did you register to vote?

21   A.   In North Carolina?

22   Q.   Well, when did you first register to vote?

23   A.   I think it was around 1952.

24   Q.   And where were you registered in 1952?

25   A.   Chicago.

1   Q.   And then where -- when did you first register in

2   North Carolina?

3   A.   Probably 2001 or so. About 2001, when I moved

4   here.

5   Q.   Do you consider yourself an informed voter?

6   MS. KONKEL: Objection; ambiguous.

7   THE WITNESS: Modestly informed.

8   BY MR. PENCOOK:

9   Q.   How do you go about informing yourself on who

10   you prefer to vote for?

11   A.   I would like to believe that my voting decisions

12   are primarily based on party affiliation.

13   Q.   Which party affiliation do you typically vote

14   for?

15   A.   The Democratic Party, although I'm not a

16   Democrat. I'm not a registered Democrat.

17   Q.   Well, let's talk about that for a second. I

18   have an exhibit here that I'd like to show you.

19   And this will be Schaller Exhibit 1.

20   (WHEREUPON, Schaller Exhibit 1 was

21   marked for identification.)

22   BY MR. PENCOOK:

23   Q.   And do you know what this document is?

24   A.   No.

25   Q.   Okay. Have you ever seen this document before?

                                                          17

1   A.   No, I haven't.

2   Q.   Well, I'll represent to you that this is the

3   voting record that appears on the website of the

4   State Board of Elections, and it identifies your

5   details, your jurisdictions, where you vote and

6   your voting history. Take a second to look at

7   it and let me know when you've done that.

8   A.   Okay.

9   Q.   So does this appear to be an accurate reflection

10   of your voting history?

11   A.   I cannot tell you that because I don't remember

12   the specifics -- in the right-hand column I

13   don't -- I don't -- I'm not sure I understand

14   what the Democratic, Non-Partisan, Democratic,

15   Republican reference is.

16   Q.   I guess the exhibit sticker is marking over --

17   A.   Oh, this down here in the lower right-hand

18   corner.

19   Q.   Right.

20   A.   What does that say?

21   Q.   That's just the partisanship of whichever race.

22   So those are primary races.

23   A.   These are primaries.

24   Q.   Yes, sir. Does that make sense?

25   A.   Yes.

                                                        18

1   Q.   So with that knowledge, does this look to be

2   accurate to you?

3   A.   I can't tell you. I don't remember. I have no

4   reason to believe it isn't.

5   Q.   Okay. So I guess take a look, then, on the

6   second page. It says here that you voted in

7   May 2014 in the Republican primary; is that

8   right?

9   A.   Could be.

10   Q.   Do you recall voting in the Republican primary

11   in 2014?

12   A.   I don't recall specifically voting in the

13   Republican primary.

14   Q.   Can you think of any reason why you might have

15   voted in the Republican primary in 2014?

16   A.   I must have had a reason. Possibly because I

17   felt that the Republican -- among the Republican

18   candidates one would be a better choice than the

19   other.

20   Q.   And what would make a Republican primary

21   candidate a better choice than another

22   Republican primary candidate in your mind?

23   A.   Perhaps someone who was less inclined to adhere

24   to the party line as a matter of policy.

25   Q.   Okay. Does it have anything to do with whether

                                                        19

1   you believe that the person you were voting for

2   was a more competitive candidate for the

3   Democrats?

4   A.   No, I don't -- I don't believe that I would

5   employ that strategy.

6   Q.   Okay. On the first page here it says that you

7   are unaffiliated.

8   A.   Yes.

9   Q.   Have you always registered unaffiliated?

10   A.   No.

11   Q.   When were you not registered unaffiliated?

12   A.   Prior to moving to North Carolina.

13   Q.   What was your party affiliation when you moved

14   to North Carolina -- sorry -- prior to moving to

15   North Carolina?

16   A.   Republican.

17   Q.   And why did you register unaffiliated when you

18   moved to North Carolina?

19   A.   Because I became disenchanted with the direction

20   that the Republican Party was taking.

21   Q.   But you don't consider yourself a Democrat?

22   A.   I'm unaffiliated.

23   Q.   Why were you disenchanted with the Republican

24   Party when you moved to North Carolina?

25   A.   Probably partly because the Republican Party was

20

1   becoming more doctrinaire and I was becoming

2   more liberal in my thinking.

3   Q.   So I think you might have said a term that I

4   didn't understand. The Republican Party was

5   becoming more what?

6   A.   Doctrinaire.

7   Q.   Doctrinaire?

8   A.   Yes.

9   Q.   What do you mean by that?

10   A.   Well, they're less inclined to the principles

11   that the Democratic -- that Republican Party

12   traditionally adhered to, small government,

13   equal rights, and a balanced budget, and I

14   just -- I just felt that they were becoming more

15   concerned with consolidating power than they

16   were adhering to those principles.

17   Q.   So since you've lived in North Carolina, have

18   you voted in every state legislative race that's

19   been held?

20   A.   I believe I have. I can't say for sure, but

21   that was my intent.

22   Q.   And have you preferred Democratic or Republican

23   candidates in those races?

24   A.   Primarily Democratic.

25   Q.   Do you anticipate your preference changing any

21

1   time in the future?

2   A.   I don't anticipate it, no.

3   Q.   Have you ever voted for a Republican candidate

4   for General Assembly?

5   A.   In North Carolina?

6   Q.   Yes, sir.

7   A.   I don't think so, no.

8   Q.   Have you ever voted for any Republican candidate

9   while you've been in North Carolina?

10   A.   I don't believe so. I don't know. I don't

11   think so.

12   Q.   I guess what influences how you vote?

13   MS. KONKEL: Objection; vague.

14   THE WITNESS: What influences how I

15   vote?

16   BY MR. PENCOOK:

17   Q.   Yes.

18   A.   My perception of the -- of the -- the manner in

19   which the candidate will reflect my views.

20   Q.   And if there's a Republican who was more closely

21   aligned with your views, you would vote for that

22   candidate over the Democratic candidate?

23   A.   I believe I would.

24   Q.   But you haven't encountered any Republicans who

25   align more closely with your views since you've

22

1   lived in North Carolina?

2   A.   No, I haven't.

3   Q.   I guess I want to ask you about one of the

4   documents that you produced in this lawsuit.

5   (WHEREUPON, Schaller Exhibit 2 was

6   marked for identification.)

7   BY MR. PENCOOK:

8   Q.   I'll give you a moment to read it, and if you'd

9   let me know when you're done.

10   A.   Okay.

11   Q.   Do you recognize this document?

12   A.   Yes.

13   Q.   What is this?

14   A.   It's an email.

15   Q.   And is this an email that you sent to Gene

16   Ferrell on April 12, 2017?

17   A.   Yes, it is.

18   Q.   It says in here, and if you'll just read along

19   with me:

20   "Gene: You may recall I agreed

21   to be a member at large of the

22   Democratic precinct. I was reminded

23   by Bob Walker that I would need to

24   change my registration from

25   unaffiliated to Democrat. I decided

                                                          23

1   I can't bring myself to do that so

2   must withdraw. See you tomorrow.

3   Leon Schaller."

4   Do you see where it says that?

5   A.   Yes.

6   Q.   Who is Gene Ferrell?

7   A.   Gene Ferrell is I believe the precinct captain

8   of the precinct in which Twin Lakes Community is

9   located.

10   Q.   And he had asked you to be a member at large of

11   that precinct?

12   A.   Uh-huh.

13   Q.   What's your role as a member at large?

14   A.   I have no idea.

15   Q.   And so you said you would need to change your

16   registration from unaffiliated to Democrat in

17   order to be a member at large and you couldn't

18   bring yourself to do that, right?

19   A.   Right.

20   Q.   Why couldn't you bring yourself to change your

21   registration?

22   A.   Because I'm comfortable as an unaffiliated

23   registered voter.

24   Q.   Is it important to you to be able to participate

25   in Democratic Party politics?

1   A.   No.

2   Q.   And so your decision to stay unaffiliated has

3   more to do with how you would like to be

4   registered and less to do with how you'd like to

5   organize?

6   MS. KONKEL: Objection; leading.

7   THE WITNESS: Would you repeat the

8   question.

9   BY MR. PENCOOK:

10 Q.   Sure. Your decision to stay unaffiliated has

11   less to do with your preference in participating

12   in party politics and more with how you'd like

13   to present yourself as a voter?

14   MS. KONKEL: Same objection.

15   THE WITNESS: Less to do -- the first

16   part of the question was?

17 BY MR. PENCOOK:

18 Q.   Let me just ask it a different way.

19   You could only participate in the

20   Democratic Party precinct here if you registered

21   as a Democrat, right?

22 A.   Right.

23 Q.   You chose not to do that --

24 A.   Right.

25 Q.   -- because you wanted to stay unaffiliated?

25

1   A.   Right.

2   Q.   Why is your party affiliation, as it's listed on

3   the State Board of Elections, so important to

4   you?

5   A.   I like to think of myself as non-partisan.

6   Q.   And why do you like to think of yourself as

7   non-partisan?

8   A.   Well, because it enables me to perceive myself

9   as being more objective in my political

10   persuasion.

11   Q.   Do you think that somebody who votes only for

12   Democrats is objective?

13   MS. KONKEL: Objection; calls for

14   speculation.

15   THE WITNESS: They could be.

16   BY MR. PENCOOK:

17   Q.   And do you think that you're objective even

18   though you've only voted for Democrats while

19   you've been in North Carolina?

20   A.   Yes.

21   Q.   Okay. And why do you say that?

22   A.   Because I believe it.

23   Q.   Why do you believe it?

24   A.   I believe I am objective, and I believe that my

25   voting record is more based on the direction I

26

1   want to see the state move than it is on a party

2   affiliation.

3   Q.   And is the direction that you want to see the

4   state move in the direction of the Democratic

5   Party?

6   A.   More so.

7   Q.   I think that I am done with that exhibit so you

8   can set that to the side.

9   So which state house district do you

10   live in?

11   A.   64.

12   Q.   And who's representing District 64?

13   A.   Dennis Riddell.

14   Q.   Do you know Representative Riddell?

15   A.   I don't know him.

16   Q.   Have you had any conversations with him?

17   A.   No. I met him. He made a presentation at

18   Twin Lakes one time.

19   Q.   What was the nature of his presentation?

20   A.   Oh, I don't recall. I believe I may have

21   responded with an email to the presentation and

22   that might give us a clue as to what the subject

23   was, but I don't recall offhand.

24   Q.   Do you think that you produced that email in

25   connection with this lawsuit?

                                                        27

1   A.   I believe -- if it's an email that is relevant I

2   did.

3   Q.   And so you recall meeting him. Did you have any

4   sort of dialogue with him at all?

5   A.   No, I did not speak to him. I just listened.

6   Q.   And when was that meeting?

7   A.   I don't recall. It was probably a few years

8   ago.

9   Q.   Do you feel that he represents your interests in

10   Raleigh?

11 A.   Not the way I would like to have them

12   represented.

13 Q.   Okay. Can you explain that?

14 A.   Dennis Riddell, as I understand it, follows the

15   Republican leadership party line pretty

16   exclusively.

17 Q.   And is there -- is there anything that the

18   Republicans in the legislature have done that

19   you've agreed with?

20 A.   I imagine there is -- there are.

21 Q.   Can you name anything that you agree with?

22 A.   I can't -- offhand I cannot.

23 Q.   And do you know for a fact that he has, as you

24   say, toed the party line the whole time he's

25   been there?

28

1   A.   For a fact, no, I can't say that.

2   Q.   So you don't know whether he's voted with the

3   Democrats on anything?

4   A.   I don't know that he has voted or not voted for

5   the Democrats on anything. I don't know that

6   for a fact.

7   Q.   And do you know if the Democrats have voted with

8   him on anything?

9   A.   No.

10   Q.   Do you think if he had joined into legislation

11   or voted for legislation that was supported by

12   both parties that would be representing your

13   interest in Raleigh?

14   A.   I would think so, yes.

15   Q.   So do you think it's possible that he has

16   represented your interest in Raleigh?

17   A.   It's possible, sure.

18   Q.   Which state senate district do you live in?

19   A.   State senate district?

20   Q.   Yes, sir.

21   A.   I don't know the district number offhand. Maybe

22   6. Or is that the congressional district. 24.

23   Q.   24 is what I understand your district to be.

24   A.   Okay.

25   Q.   Does that sound right to you?

29

1   A.   Sounds about right.

2   Q.   Do you know who your state senator is?

3   A.   Rick Gunn.

4   Q.   And do you know Senator Gunn?

5   A.   No.

6   Q.   Have you met him before?

7   A.   Never have.

8   Q.   And do you feel that he represents your

9   interests in Raleigh?

10   A.   I suspect he does not.

11   Q.   But I guess if he was voting for legislation

12   that the Democrats also supported, do you feel

13   that would represent your interest?

14   A.   That would.

15   Q.   And so ultimately he may have represented your

16   interest in Raleigh; is that right?

17   A.   Yes.

18   Q.   And what are the interests that you claim you

19   would like to have represented in Raleigh?

20   A.   I believe Governor Cooper -- Governor Cooper's

21   approach to state politics is -- is closer to my

22   vision as the way the state ought to be than

23   his -- the position of the Republican-controlled

24   legislature.

25   Q.   Well, what's your understanding of

                                                    30

1   Governor Cooper's way of doing politics?

2   A.   Well, I believe, perhaps because he's in a

3   minority, he's got an adversarial relationship

4   with the legislature that he would prefer more

5   bipartisanship, but at the moment I think the

6   issue which stands out is his view on education

7   and funding for education which is more

8   expansive than I think the Republicans.

9   Q.   Okay. Do you feel like you've got a

10   constitutional right to have your policy

11   preferences represented in Raleigh?

12   A.   No.

13   Q.   Do you know which congressional district you

14   live in?

15   A.   Federal?

16   Q.   Yes, sir.

17   A.   6. Does that sound right?

18   Q.   Sounds right to me.

19   Do you know who your representative is?

20   A.   Mark Walker.

21   Q.   And have you ever met Representative Walker?

22   A.   No, I don't think I have. It's possible he may

23   have appeared at Twin Lakes one time.

24   Q.   And do you feel that he represents your

25   interests in DC?

1   A.   Not the way I would like them represented.

2   Q.   Okay. But again, you don't think you have a

3   constitutional right to that representation?

4   A.   No.

5   Q.   So I guess let me show you --

6   (WHEREUPON, Schaller Exhibit 3 was

7   marked for identification.)

8   BY MR. PENCOOK:

9   Q.   This is a map of Alamance County which shows the

10   house districts and the precincts. So you take

11   a look at that and let me know when you're done.

12   A.   Okay.

13   Q.   And do you recognize this map?

14   A.   Well, I have never seen this map before.

15   Q.   Okay. Have you ever looked at the legislative

16   maps at all?

17   A.   Only in connection with one of the expert

18   exhibits.

19   Q.   You looked at the expert exhibits?

20   A.   I glanced at them, yeah.

21   Q.   Which expert exhibits did you look at?

22   A.   I don't recall which one it was. There were

23   four.

24   Q.   You reviewed all four of them?

25   A.   I looked at all four of them.

                                                        32

1   Q.   Were those the exhibits that your attorneys

2   submitted in connection with this lawsuit?

3   A.   Yes.

4   Q.   Let's take a look back here. Do you know which

5   precinct you live in?

6   A.   No. Offhand, I do not know what the precinct

7   is.

8   Q.   Well, if you look at the map, can you identify

9   where you live?

10 A.   Approximately, yes.

11 Q.   Would you -- would you mark it there for me.

12 A.   (Witness complying.)

13 Q.   I'll just take a look here. Okay.

14   MS. KONKEL: Can I take a look as well.

15   MR. PENCOOK: Sure. Absolutely.

16 BY MR. PENCOOK:

17 Q.   So I'll represent to you -- and this is in your

18   voting record. If you need to look back, you're

19   more than welcome to. Your voting district is

20   O3N. And so if you look there on the map,

21   you're just a little bit off as to where O3N is,

22   but you're right about there.

23   MS. KONKEL: Objection. Is there a

24   question?

25   MR. PENCOOK: I'm getting to one.

                                                          33

1   Thank you.

2   BY MR. PENCOOK:

3   Q.   Do you know if this map was in place when you

4   moved there?

5   A.   No, I don't know that.

6   Q.   When did you move to Burlington?

7   A.   Eight years ago. That would have been 2011

8   about.

9   Q.   Do you recall when in 2011?

10 A.   It was I think April or so.

11 Q.   April 2011. Okay.

12   Did your -- did the way that the

13   district that you were moving into was drawn

14   have any influence on your decision to move

15   there?

16 A.   No.

17 Q.   And did you have any understanding of whether

18   the district you were moving into typically

19   elected Republicans or Democrats?

20 A.   No.

21 Q.   I guess you said you moved to Burlington to move

22   into a retirement community. Did you say that?

23 A.   I don't recall whether I said that.

24 Q.   Why did you move to Burlington?

25 A.   To move into Twin Lakes Continuing Care

                                                          34

1   Retirement Community.

2 Q.   So I want to think back to your previous

3   district. So you previously lived in

4   Chapel Hill, correct?

5 A.   Right.

6 Q.   Do you know which state house district you lived

7   in when you were there?

8 A.   No. I don't recall.

9 Q.   Do you recall who your representative was when

10   you lived there?

11 A.   I don't recall.

12 Q.   Do you recall voting in any of those elections

13   for state house?

14 A.   I voted -- to the best of my knowledge, I voted

15   in every election.

16 Q.   Do you believe that you voted for the Democrat

17   in your state house race?

18 A.   I believe I did.

19 Q.   Did you ever contact your state house

20   representative about anything?

21 A.   I don't believe so. I don't recall having done

22   that.

23 Q.   And I guess do you recall which state senate

24   district that you lived in?

25 A.   In Chapel Hill?

                                                    35

1   Q.   Yes.

2   A.   No.

3   Q.   But you believe that you probably voted for a

4   Democrat?

5   A.   Probably did.

6   Q.   Do you have any opinion on whether you felt

7   packed into that district?

8   A.   In Chapel Hill?

9   Q.   Yes, sir.

10   A.   No.

11   Q.   You don't have an opinion or you don't believe

12   you were packed?

13   A.   I don't have an opinion.

14   Q.   Did you feel that your representatives in the

15   state house and state senate listen to you?

16   A.   In Chapel Hill?

17   Q.   Yes, sir.

18   A.   Yes.

19   Q.   Can you name a time when they had listened to

20   you?

21   A.   Well, since I didn't contact them, I don't

22   think -- I can't say that they listened to me.

23   Q.   Why didn't you contact your representatives?

24   A.   I don't recall having a reason to, although I

25   can't say that I never did. I don't recall

                                                          36

1   contacting them.

2   Q.   When would you have a reason to contact your

3   representatives?

4   A.   If there was an issue that was brought to my

5   attention that I felt strongly about and that I

6   felt my opinion might make a difference.

7   Q.   And so there was -- while you lived in

8   Chapel Hill, there was nothing that you really

9   felt strongly about that you felt you should

10   contact your representative for?

11   MS. KONKEL: Objection;

12   mischaracterizes the witnesses's testimony.

13   THE WITNESS: Would you repeat the

14   question.

15   BY MR. PENCOOK:

16   Q.   Sure. While you were in Chapel Hill, you said

17   that you didn't contact your representatives,

18   right?

19   A.   Right.

20   Q.   And you said that something that would make you

21   contact your representative would be something

22   that you cared about, right?

23   A.   Right.

24   Q.   So there was nothing that you cared about, then,

25   that made you contact your representatives while

37

1   you lived in Chapel Hill; is that right?

2   MS. KONKEL: Same objection.

3   THE WITNESS: There were things that I

4   cared about in Chapel Hill, but I believe I felt

5   well represented.

6   BY MR. PENCOOK:

7   Q.   Okay. Is it fair to say that you didn't contact

8   your representatives because they were

9   Democrats?

10 A.   No, I don't think it was fair -- I wouldn't

11   think it was fair to say that I didn't contact

12   them because they were Democrats because they

13   were Democrats.

14 Q.   But generally speaking, your policy preferences

15   are what the Democrats prefer and because of

16   that you didn't feel like you needed to contact

17   the Democrats to do what you wanted them to do?

18 A.   That's correct.

19 Q.   Do you feel -- do you have any sense for whether

20   Chapel Hill has more Democrats or Republicans?

21 A.   I've heard Chapel Hill referred to as a

22   Democratic enclave.

23 Q.   So you think it's pretty packed with Democrats?

24   MS. KONKEL: Objection; ambiguous as to

25   the meaning of the word packed.

38

1   THE WITNESS: Do I think it's packed

2   with -- no. That was -- packed would be a verb

3   that I don't think applies.

4   BY MR. PENCOOK:

5   Q.   Okay. How would you describe the dispersion of

6   Democrats throughout Chapel Hill?

7   A.   I would describe it as a strongly Democratic

8   area.

9   Q.   Do you feel that the number of Democrats that

10   lived in your area had any impact on your

11   ability to influence your legislators?

12   A.   Of my ability to influence -- no.

13   Q.   Do you think that your legislators listened to

14   you any less because they were in a district

15   that contained a lot of Democrats?

16   A.   No.

17   Q.   If you still lived at your previous address, do

18   you think that you would be harmed by the maps

19   as they're drawn now?

20   A.   I don't know.

21   Q.   Do you have any idea what your district looks

22   like -- your previous district looks like now?

23   A.   No.

24   Q.   So can you just explain to me why you're a

25   plaintiff in this lawsuit?

1   A.   I responded to the Common Cause solicitation for

2   people who were interested in dealing

3   with addressing this issue.

4   Q.   And you previously said that you thought

5   gerrymandering is a serious problem to

6   democracy; is that right?

7   A.   I do feel that way.

8   Q.   Is that your policy preference that -- or is

9   that your policy belief that gerrymandering is a

10   serious problem?

11   A.   I don't understand the term policy belief.

12   Q.   Well, I guess -- I guess what I'd like to ask is

13   really do you think that gerrymandering harms

14   you politically?

15   A.   It deprives me of realizing the principle of one

16   man, one vote.

17   Q.   Okay.   How does it do that?

18   A.   Because the purpose of gerrymandering is to skew

19   the ability of each voter throughout the state

20   to have an equal opportunity to have his vote

21   counted on a one-man, one-vote basis.

22   Q.   And so you think that your vote counts for less

23   when you submit your ballots because of the

24   maps?

25   A.   It counts as a vote, but it's the ability of the

40

1   aggregate voters of a given political persuasion

2   that is affected by gerrymandering adversely or

3   in favor.

4 Q. So it's an aggregate harm and not necessarily a

5   harm to you specifically?

6 A. It's both.

7 Q. Okay. Well, how are you specifically harmed?

8 A. Specifically, if I am in a gerrymandered

9   district, such as 64 and 63, my vote for a

10   Democratic candidate has less impact or

11   influence on the outcome of the election than if

12   I were in a district that had a Democratic

13   majority.

14 Q. There a couple of things I'd like to talk about

15   there.

16   Do you think that the entire state

17   legislative map, both the state house and state

18   senate map, are gerrymandered or just certain

19   districts?

20 A. I don't know whether -- I don't know.

21 Q. But you believe that 64 and 63 are

22   gerrymandered?

23 A. I believe that them, among many districts, are

24   gerrymandered.

25 Q. And I guess can you just define gerrymandering

41

1   for me. I don't know if we actually defined

2   that term.

3 A.   Gerrymandering is a practice by a political

4   party usually designed to assure that voters of

5   a political -- of a preferred political party

6   are concentrated in areas that will ensure their

7   candidate will be elected and deprive the --

8   dilute the impact of the voters of the opposite

9   party.

10 Q.   How do the maps ensure an outcome?

11   MS. KONKEL: Objection; lack of

12   foundation.

13   THE WITNESS: They don't absolutely

14   ensure a given outcome, but they certainly skew

15   the chance of an outcome being in a desired

16   direction by two methods. One is to dilute the

17   voting power of the minority -- the party that

18   they wish to keep out of power and to

19   concentrate or assure a majority of the voters

20   of the party they wish to promote in other

21   districts.

22 BY MR. PENCOOK:

23 Q.   And I guess how was a majority assured? I mean,

24   you just said that it's drawn to assure a

25   majority of voters. How is it assured?

                                                    42

1   A.   I didn't -- if I used the term assured, I

2   borrowed it from your previous question.

3   I don't suggest that anything is

4   assured, but it skews the opportunity in favor

5   of an outcome. It does that by -- I described

6   the two methods. One is diluting the vote of

7   the other party -- of members of the other party

8   affiliation and concentrating to assure a

9   majority of voters of the desired political

10   persuasion.

11   Q.   And do you feel that your vote has been diluted

12   in your house district specifically?

13   A.   Yes, I believe it has. Yes.

14   Q.   How has it been diluted?

15   A.   Well, District 63 and 64, as I understand it,

16   those two districts were -- divide the normally

17   Democratically favored community around

18   Burlington into two districts which dilutes the

19   number of Democrats that are available in either

20   of the districts.

21   Q.   So do you believe that your district should be

22   amongst other Democrats?

23   A.   No.

24   Q.   Let me ask you this: Do you believe that you

25   have any constitutional rights that are harmed

43

1   by the maps?

2   A.   Constitutional right?

3   Q.   Yes, sir.

4   A.   By the current districts?

5   Q.   Yes, sir.

6   A.   Yes.

7   Q.   Okay.   Which constitutional rights are harmed?

8   A.   Well, I believe, if I understand it correctly,

9   the North Carolina Constitution requires that

10   people be given an equal opportunity to be

11   represented.

12   Q.   And you feel like you don't have an equal

13   opportunity to be represented?

14   A.   I feel that the -- the way the maps are drawn

15   impinges or reduces that opportunity.

16   Q.   Well, are you represented or are you not

17   represented?

18   A.   I am represented.

19   Q.   So how have you lost out on an opportunity to be

20   represented by these maps?

21   MS. KONKEL: Objection;

22   mischaracterizes the witnesses's testimony.

23   THE WITNESS: How -- repeat the

24   question, please.

25   BY MR. PENCOOK:

44

1   Q.   Sure.   How have the maps deprived you of an

2   opportunity to be represented?

3   A.   The maps have not deprived me of the opportunity

4   to be represented.   The fact that the state is

5   significantly gerrymandered to pack and crack

6   districts or voting -- voters in ways that are

7   favorable to a specific political party has

8   affected the makeup of the legislature.

9   Q.   Has it affected your ability to have a

10   representative?

11   A.   To the extent that the legislature is -- is not

12   representative of the makeup -- of the makeup of

13   the population of the state where all of us are

14   deprived of the representation that we deserve.

15   Q.   What do you mean by it's not representative of

16   the population of the state?

17   A.   Well, the purpose of gerrymandering, as we've

18   discussed before, is to provide one party with

19   an advantage in numbers of representatives that

20   are elected into the legislature that is not

21   consistent with the distribution of political

22   representation of the voters of the state.   And

23   to that extent, the resulting legislative makeup

24   does not represent the will -- the makeup of the

25   population in general in terms of their

45

1   political persuasion.

2   Q.   Okay. Do you know whether the legislature is

3   elected at large statewide or whether it's done

4   district by district?

5   A.   It's district by district, yeah. The only

6   statewide as I understand it are cabinet members

7   or the governor.

8   Q.   And so do you expect that the overall number of

9   Republican versus Democrat legislators is going

10   to be entirely on the nose as to the partisan

11   split statewide?

12   A.   Oh, no. Did you say do I believe?

13   Q.   Yes, sir.

14   A.   No.

15   Q.   Do you think that you have a constitutional

16   right to a legislature that's representative of

17   the population of the state?

18   A.   In what respect? What -- what aspect of the

19   population do you mean?

20   Q.   Well, you just recently said that the makeup of

21   the legislature doesn't reflect the partisan --

22   A.   Politically, yeah.

23   Q.   Do you believe that you have a constitutional

24   right to have the legislature reflect the

25   partisan makeup of the state?

46

1   A.   No.

2   Q.   Why not?

3   A.   Because each voter is entitled to vote for whom

4   they choose regardless of party affiliation and

5   regardless of their party affiliation, and

6   hopefully, in an ideal world, voters would vote

7   for the person regardless of party affiliation

8   that they feel most -- will most -- will best

9   reflect their political views, their views on

10   how things ought to be.

11   Q.   Do you think that the maps prevent people from

12   doing that?

13   A.   Yes.

14   Q.   How?

15   A.   You mean the maps as currently --

16   Q.   Yes, sir.

17   A.   Because they impose -- because of the

18   gerrymandering creates pockets of voters that

19   are more inclined to elect a majority of

20   representatives of their political persuasion to

21   the legislature. And while in an ideal world

22   people would disregard party affiliation when

23   they vote, the fact is that gerrymandering tends

24   to -- how should I put it -- I would say

25   suppress -- well, let me -- gerrymandering tends

47

1   to suppress the views of persons of the targeted

2   political persuasion.

3   Q.   Do the maps prevent voters from casting their

4   vote in favor of their preferred candidate?

5   A.   No.

6   Q.   Okay.

7   MS. KONKEL: Counsel, when you're done

8   with this line of questioning, could we take a

9   break.

10   MR. PENCOOK: Sure. We can take a

11   break now.

12   MS. KONKEL: Okay. Thank you.

13   (Brief Recess: 2:24 to 2:33 p.m.)

14   BY MR. PENCOOK:

15   Q.   Thank you again, Mr. Schaller.

16   Do you have any opinions on what things

17   the legislature should consider when it's

18   drawing the legislative districts?

19   A.   Yes.

20   Q.   Okay. What are those opinions?

21   A.   I believe the districts ought to be drawn

22   without regard to party affiliation and as

23   uniformly in terms of population as feasible.

24   Q.   Let's say that the legislature drew the maps

25   without considering partisan affiliation and the

48

1   outcome of the maps was such that you had the

2   same circumstances that you've alleged here

3   where there's a population -- the makeup of the

4   legislature doesn't reflect the partisan

5   leanings of the population. Would you say that

6   your rights were harmed in that instance?

7 A.   If the legislature -- repeat the question.

8 Q.   Sure. So let's assume that the legislature

9   didn't consider party affiliation like you

10   wanted. Okay.

11 A.   Right.

12 Q.   And then let's also assume that the outcome of

13   the elections was exactly the same as the 2018

14   elections. All right. So you have the same

15   partisan makeup of the electorate and the same

16   outcome of the legislature. Do you feel like

17   you would be harmed in that instance by the

18   maps?

19 A.   In that hypothetical situation, I would feel

20   that I would not have been harmed as a result of

21   the makeup of the maps, but it is a very

22   unlikely scenario.

23 Q.   Why do you think it's unlikely?

24 A.   Well, because in a state the size of

25   North Carolina, I believe this is about the

49

1   tenth largest state population in the country,

2   the chances of a non-partisan algorithm used in

3   setting up districts would result in a similar

4   outcome as the situation we are confronted with

5   today is extremely unlikely.

6   Q.   And I guess do you feel like the consideration

7   of partisan affiliation in drawing maps violates

8   your constitutional right?

9   A.   Yes.

10 Q.   How?

11 A.   Because it results in the gerrymandered system.

12 Q.   Well, I guess, which rights would it violate?

13 A.   Constitutional rights, you're talking about the

14   North Carolina Constitution?

15 Q.   Yes.

16 A.   Which I'm not intimately familiar with, but I

17   would presume that it would violate my right to

18   an equal opportunity to have my vote counted as

19   much as anyone else's.

20 Q.   But again, every time you cast a vote, it

21   increases the tally by one; is that right?

22 A.   It increases the vote count by one?

23 Q.   Yes.

24 A.   Yes.

25 Q.   So you mentioned you think that there should be

1   no party affiliation considered and it should be

2   as uniform in population as feasible. Do you

3   know whether there's a constitutional

4   requirement under the state constitution to keep

5   the counties whole?

6   A.   No, I'm not aware of that.

7   Q.   Well, there is a constitutional provision that

8   requires that. Do you think that that's a good

9   thing?

10 A.   I have no opinion on that.

11 Q.   Do you have any opinion on whether the districts

12   should be compact?

13   MS. KONKEL: Objection; ambiguous.

14 BY MR. PENCOOK:

15 Q.   Do you know what I mean when I say compact?

16 A.   No.

17 Q.   What's your understanding of the term compact?

18   Do you know what it means in general?

19 A.   Compact means the constituent elements really

20   tightly bound together or placed together.

21 Q.   So based on that definition, do you think that

22   the maps -- that each district should be

23   compact?

24 A.   Not necessarily, no.

25 Q.   Okay. In what circumstance would you say it

51

1   should not be compact?

2 A.   Primarily, the goal ought to be to have each

3   district to be approximately equal population

4   and in sparsely populated areas, it would be

5   less compact.

6 Q.   Let me give you a hypothetical situation here.

7   Let's say that the Republicans in North Carolina

8   were clustered in ten different areas of the

9   state. Okay?

10 A.   Okay.

11 Q.   Do you believe that the map would need to split

12   those ten different areas 50 different ways --

13   I'm sorry -- 25 different ways -- I'm sorry.

14   Would those areas need to be split 50

15   different ways in order to make the maps fair?

16 A.   No.

17 Q.   Okay. Why not?

18 A.   Because as I previously intended to state, I

19   don't believe that party affiliation ought to be

20   a factor in drawing maps.

21 Q.   Okay. Do you think that the protection of

22   incumbents should be something considered when

23   drawing the maps?

24 A.   No.

25 Q.   Why not?

52

1   A.   Because it's not something that the voters need

2   to be confronted with. The -- if it's necessary

3   to redraw a map to reduce or eliminate

4   gerrymandering, that ought to be the primary

5   goal.

6   Q.   Do you think that if incumbency protection was

7   considered when drawing the maps that that would

8   violate any of your constitutional rights?

9   A.   My constitutional rights, I can't say because

10   I'm not that familiar with the constitution.

11   Q.   Is there any benefit that you can think of to

12   having consistency in who represents you?

13   A.   Consistency in what respect? You mean

14   incumbency?

15   Q.   Right.

16   A.   There may be.

17   Q.   Can you think -- what would be something that

18   would be a benefit?

19   A.   Well, the representative would gain seniority

20   over time and therefore might be able to shower

21   more benefits on its constituents.

22   Q.   And is there also any benefit in knowing who

23   your representative is in being able to contact

24   them and developing a relationship with them?

25   A.   There might be some benefits in that.

53

1   Q.   There have been some allegations in this lawsuit

2   that you made about the polarization of the

3   legislature and maybe of parties in general.

4   A.   Allegations that I made?

5   Q.   Yes, sir.

6   A.   Okay.

7   Q.   Are there any factors -- what factors come into

8   play in the polarization of the political

9   parties in your opinion?

10   A.   One factor is the desire to remain in office,

11   and it places a premium on adhering to the party

12   line which confers campaign benefits.

13   Q.   Do you think that the positions of political

14   parties embodied in their party platforms has

15   anything to do with polarization -- as a cause

16   of polarization, I should say?

17   A.   The positions of the parties on -- you mean

18   their party -- what do you mean by party lines?

19   Q.   Their policy preferences. The positions that

20   they've stated on various legislation. Does

21   that have -- is that a cause of polarization?

22   A.   Probably is. Yes, I would expect it would be.

23   Q.   And does polarization affect both parties or

24   just the Republicans?

25   A.   It affects both parties, I'm sure.

54

1   Q.   You said in your complaint that the Republican

2   representatives pay no heed to your views and

3   interests when they're in office. Do you agree

4   with that?

5   A.   I said that?

6   Q.   Yes, sir.

7   MS. KONKEL: Objection;

8   mischaracterizes the source.

9   THE WITNESS: Paid no views to my --

10   BY MR. PENCOOK:

11   Q.   Right. The statement is:

12   "Republican representatives pay

13   no heed to these voters' views and

14   interests once in office."

15   Do you agree that the representatives

16   pay no heed to you?

17   A.   I would say that I wouldn't -- that is a blanket

18   statement which I can't agree to. I wouldn't

19   say --

20   Q.   You disagree with it as to you?

21   A.   It overstates the situation in that I don't

22   think they pay no heed to me. I can't make that

23   generalization.

24   Q.   Do you make any political contributions,

25   Mr. Schaller?

55

1   A.   Yes.

2   Q.   Who have you made contributions to?

3   A.   The Democratic National Committee.

4   Q.   Anyone else?

5   A.   I suspect the -- in the last couple of years

6   probably the congressional campaign --

7   Democratic Congressional Campaign Committee,

8   although I can't be sure. I'd have to look back

9   at my check stubs.

10 Q.   Those are the only two that you can recall

11   making donations to?

12 A.   Yes.

13 Q.   Have you made any contributions to any

14   North Carolina-based political organizations?

15 A.   I don't think so.

16 Q.   Have you made any contributions to Common Cause?

17 A.   Yes.

18 Q.   Have you made any contributions to Democracy

19   North Carolina?

20 A.   I don't think so.

21 Q.   Would it surprise you if you had made a

22   contribution to Democracy North Carolina?

23 A.   I'm not familiar with the organization so it

24   probably would surprise me.

25 Q.   Have you made any contributions to any

56

1   legislative candidates both state or federal?

2   A.   I don't believe so.

3   Q.   Do you typically make donations to individuals

4   or mostly to organizations?

5   A.   Typically I would make them to the organization.

6   Q.   Is there any reason why you have that

7   preference?

8   A.   I believe -- the reason I make contributions to

9   the organization is because I would rather they

10   decide how to -- how it can best be spent.

11   Q.   Do you think that your political donations are

12   speech?

13   A.   No.

14   Q.   Why not?

15   A.   Because they're -- they're simply my way of

16   supporting a candidates and the causes that I

17   believe in. They are no different than making a

18   contribution of my time toward a campaign.

19   Q.   Do you think that the way the maps are drawn

20   make your donations any less effective?

21   A.   No because I don't recall having donated to the

22   state causes.

23   Q.   Is voting speech?

24   A.   Is voting speech. I have never thought about

25   that, and I don't have an opinion on that.

57

1 Q. Do you feel like you're expressing yourself when

2   you vote?

3 A. No. I think I'm voting for a candidate to

4   represent me.

5 Q. And is there anything about the maps that

6   prevent you from voting and expressing yourself

7   in your vote?

8 A. No because I don't believe I'm expressing myself

9   in that context.

10 Q. Do you believe you have a freedom of

11   association?

12 A. Yes.

13 Q. Do you think that the maps burden your freedom

14   of association?

15 A. No.

16 Q. Now, you said you're either a member or a donor

17   of Common Cause.

18 A. Well, I donate money to them. I don't know if

19   I'm a member or not.

20 Q. Are you on their email list?

21 A. I'm on their list.

22 Q. Do they send you mail?

23 A. They send me stuff from time to time.

24 Q. Do you go to any meetings for Common Cause?

25 A. No.

1   Q.   Has Common Cause ever contacted you to encourage

2   your legislators to do something?

3   A.   I don't recall. I don't recall whether they

4   have or not.

5   Q.   Have you ever contacted a legislator based on

6   something Common Cause has said to you?

7   A.   I don't know. I don't recall.

8   Q.   All right. I want to show you a copy of the

9   amended complaint which is Exhibit 4.

10   (WHEREUPON, Schaller Exhibit 4 was

11   marked for identification.)

12 BY MR. PENCOOK:

13 Q.   All right. Now, I am not going to ask you to

14   read this entire thing --

15 A.   Thank you.

16 Q.   -- right here and right now because we will be

17   here for a long time, but I will direct you to

18   certain parts. But I guess, just based on

19   looking at the first few pages of this document,

20   do you know what it is?

21 A.   Right.

22 Q.   What is it? What is this document?

23 A.   It's the complaint that is the basis for the

24   lawsuit.

25 Q.   Okay. And you understand that your attorneys

                                                        59

1   filed this under your name?

2   A.   My name, among others.

3   Q.   Did you review this prior to it being filed?

4   A.   I don't recall. I had seen it. I don't recall

5   whether it was before or after it was filed.

6   Q.   Have you reviewed it since it's been filed?

7   A.   I have scanned it. I haven't reviewed it. I

8   haven't read the whole thing.

9   Q.   So you allowed your lawyers to file this under

10   your name without having reviewed it?

11   MS. KONKEL: Objection; argumentative;

12   mischaracterizes the witness's testimony.

13   THE WITNESS: I didn't allow --

14   specifically allow as an active term. I

15   didn't --

16 BY MR. PENCOOK:

17 Q.   Did you -- you did not authorize them to file

18   this on your behalf?

19 A.   I didn't --

20   MS. KONKEL: Objection; calls for

21   privileged information about communications

22   between counsel and the client.

23   I'm going to instruct you not to answer

24   questions that call for answers about

25   communications between you and your attorneys.

60

1   BY MR. PENCOOK:

2   Q.   I'm not trying to find out communications

3   between you and your attorneys. That's not what

4   I'm asking. I just want to know if you believe

5   that what's in here is true and accurate to the

6   best of your knowledge.

7   A.   I know of no inconsistencies or inaccuracies.

8   Q.   That's fine.

9   So if you would, let's turn to page 7

10   and paragraph 19.

11 A.   Okay.

12 Q.   This says -- I'm looking at the fourth sentence

13   here, kind of near the middle of the page or in

14   the middle of the paragraph.

15   "In constructing the cluster, the

16   General Assembly cracked Democratic

17   voters in Burlington across the two

18   districts. Republican candidates have

19   won every election in House District 64

20   since the 2011 redistricting, with over

21   58 percent of the vote in 2012 and 2018,

22   and running unopposed in 2014 and 2016."

23   Do you see where it says that?

24 A.   Yes.

25 Q.   Regarding that second sentence I just read, do

                                                    61

1   you know what House District 64 was like under a

2   Democratic map?

3   A.   No.   Under a Democratic map?

4   Q.   Yes, sir.   Under a map that was drawn by a

5   legislature controlled by the Democratic Party.

6   A.   No, I don't.

7   Q.   Do you think that the district -- the

8   Republicans winning that district since 2012 has

9   harmed you in any way?

10   A.   Has harmed me?

11   Q.   Yes, sir.

12   A.   Not personally, no.

13   Q.   And it says here -- so in constructing a

14   cluster, the General Assembly cracked Democratic

15   voters in Burlington across the two districts.

16   And so you said you live in Burlington.

17   Are you within the city limits of Burlington?

18   A.   Within the city limits of Burlington. Actually,

19   I think I am within the city limits of Elon.

20   Twin Lakes Community straddles both Burlington

21   and the town of Elon. And so a part of -- as a

22   matter of fact, the mayor of Elon lives in our

23   cul-de-sac, but our mailing address is

24   Burlington. And since it's a nonprofit, we

25   don't pay property taxes. It's not relevant to

                                                                             62

1   whether we're in Elon or Burlington whichever

2   side of the street we live on.

3 Q.   So, then, did the General Assembly crack you if

4   you -- based on living in Burlington?

5 A.   How do you mean cracked me?

6 Q.   Well, so it says here in constructing the

7   cluster, the General Assembly cracked Democratic

8   voters.

9   I guess, what do you mean by cracked?

10 A.   My understanding that the term cracked means

11   that the cluster of Democratic voters that

12   formerly were in one district, which would have

13   given them a majority, were divided into two

14   districts to dilute their effectiveness as a

15   voting bloc.

16 Q.   Are you in a Democratic cluster that was

17   cracked? Do you live in a Democratic cluster

18   that was cracked?

19 A.   Do I live in a Democratic cluster that was

20   cracked. My understanding is that the

21   Burlington area is more Democratic -- tends to

22   be Democratic, and by cracking the Burlington

23   area into two districts, it reduced the power of

24   the -- the density of the Democratic vote, so in

25   that respect I suppose that's true.

63

1   Q.   But do you live in a place of Burlington where

2   the Democrats are packed?

3   MS. KONKEL: Objection; ambiguous.

4   THE WITNESS: I don't know. I don't

5   know what the distribution of Democrats in my

6   neighborhood is.

7   BY MR. PENCOOK:

8   Q.   Do you know whether your precinct typically

9   elects a Democrat or a Republican?

10   A.   I do not know that.

11   Q.   Do you think Burlington being cracked is wrong

12   in every instance of it being cracked?

13   A.   How many instances are there that you're

14   referring to?

15   Q.   I'm not sure how many times Burlington has been

16   cracked, but do you think that every time

17   Burlington is cracked that it's wrong?

18   A.   If it is cracked -- if it has been cracked for

19   how many times, whatever number of times, and I

20   can't imagine it being multiple times, but if it

21   is cracked and it is cracked to achieve a

22   gerrymandered result, it's wrong. If it is

23   cracked because that's the way the natural

24   distribution of voters ought to be, then it's

25   not wrong.

                                                          64

1   Q.   Do you believe that the Democrat controlled

2   legislature drew -- strike that.

3   Mr. Schaller, do you have any issues

4   with how your senate district is drawn?

5   A.   No, I'm not familiar with how it's drawn.

6   Q.   Okay. So you don't feel harmed by the way your

7   senate district is drawn?

8   A.   Not to the extent that I'm ignorant to how it's

9   drawn I don't feel harmed.

10   Q.   Do you believe that you're challenging the way

11   your senate district is drawn in this lawsuit?

12   A.   I don't believe so.

13   Q.   Okay.

14   A.   I'm not aware of that, I should say.

15   Q.   If you take a look -- flip to page 58,

16   paragraphs 174 through 176. And if you'll just

17   read those paragraphs and let me know when

18   you're done.

19   A.   Okay.

20   Q.   When you read through that, did you see anywhere

21   where you were challenging or complaining about

22   the way that Senate District 24 was drawn?

23   A.   No.

24   Q.   If you had any complaints about the way Senate

25   District 24 was drawn, do you think you would

                                                          65

1   have put them here?

2   A.   I would have put them there?

3   Q.   Or your lawyers.

4   A.   I would imagine so, yes.

5   Q.   I'll represent to you that when you moved, the

6   legislature was in the process of -- or was

7   about to redraw the maps. Do you know or have

8   any opinion on what the legislature looked at

9   when it drew the maps?

10 A.   No.

11   MS. KONKEL: Objection; calls for

12   speculation.

13 BY MR. PENCOOK:

14 Q.   Do you believe they considered vote history?

15   MS. KONKEL: Objection; calls for

16   speculation.

17   THE WITNESS: I have no idea.

18 BY MR. PENCOOK:

19 Q.   So as far as you know, the legislature didn't

20   consider partisanship at all when it drew the

21   maps?

22   MS. KONKEL: Objection; calls for

23   speculation.

24   THE WITNESS: I don't know that it -- I

25   don't know that they did or not.

BY MR. PENCOOK:

Q.   If they did consider partisan vote history,
      would they have considered your partisan vote
      history when they were drawing the Alamance
      County maps?

A.   2011?

Q.   Yes, sir.

A.   I don't think they would have had any voting --
      well, they would have from my previous district,
      they would have access to that, I suppose, from
      my north Chapel Hill area, but whether they
      would have considered it, I don't know. I have
      no idea.

Q.   So, then, do you think that the legislature
      discriminated against you when it drew House
      District 64?

A.   Discriminated against me. Discriminated against
      me. No, I can't say that they did.

Q.   Why do you think they would have considered your
      voting history if you're registered
      unaffiliated?

A.   That's a good question. I don't know.

Q.   Do you have any opinion as to why they might
      have done that?

A.   I don't think -- I don't know that they did

67

1   discriminate against me. I think my previous

2   answer would suggest that I don't think they

3   discriminated -- I have no reason to believe

4   they did.

5   Q.   Let's just take a look at paragraph 211. It's

6   on page 71. And I'd like to take a look at the

7   second sentence there. Well, I need to read the

8   first to give you the context.

9   "Elections under the 2017 Plans

10   are anything but free. They are rigged

11   to predetermine electoral outcomes and

12   guarantee one party control of the

13   legislature."

14   Do you really think that the outcomes

15   are predetermined and that there's nothing that

16   can be done to change the outcome of all of the

17   elections based on the maps that are drawn?

18   MS. KONKEL: Objection; misstates the

19   paragraph of the complaint that was just read.

20   BY MR. PENCOOK:

21   Q.   And I'm not particularly asking you about that

22   paragraph. I'm asking you whether you think

23   that the maps are -- that the maps predetermine

24   electoral outcomes and that there's nothing that

25   can be done to change the outcome.

68

1 A.   Nothing that can be done short of redrawing the

2   maps?

3 Q.   Yes, sir.

4 A.   From a practical standpoint, I believe that's

5   the case.

6 Q.   What do you think is more important, the way the

7   maps are drawn or voter turnout in determining

8   the outcome of an election?

9 A.   I think there is a correlation there, a

10   relationship, I should say, between the two

11   parts of that question. The way the maps are

12   drawn probably suppresses voter turnout because

13   in a district that is heavily Republican, say,

14   Democratic voters may be inclined to not even

15   bother voting, especially in the local

16   elections -- or the state elections because

17   their vote -- they don't feel their vote will be

18   counted.

19 Q.   Why do you think they feel that their vote won't

20   be counted?

21 A.   Well, if they're in a heavily Republican-

22   gerrymandered district, it doesn't matter

23   whether they vote or not, they're not -- it's

24   going to be a Republican outcome in the case of

25   Democratic voters and they might feel that their

69

1   vote didn't -- isn't worth bothering to go out

2   and vote.

3   Q. Don't you think Republicans in that sort of

4   district might feel the same way?

5   A. Well, they might, but there are so many more of

6   them that it doesn't matter.

7   Q. Well --

8   A. Both parties encourage voter turnout, but, of

9   course, if you've got 30 percent of the voters

10   coming to vote, if 70 percent of that 30 percent

11   are Republicans, you can understand what the

12   outcome would be.

13 Q. So I guess, in short, you think that the maps

14   may influence voter turnout but ultimately voter

15   turnout is the decider?

16 A. I feel that gerrymandering can negatively affect

17   voter turnout.

18 Q. So you disagree with what I just said?

19 A. I don't think so. I thought I was rephrasing

20   it.

21 Q. Okay.

22 A. But maybe you could restate your statement -- if

23   you restate your statement, I can confirm

24   whether I agree or not.

25 Q. That's fine.

70

1   Do you think that voter turnout -- I'm

2   trying to restate your testimony to understand

3   what you said.

4   A.   Okay.

5   Q.   And I think you said that while voter turnout is

6   impacted by the maps, ultimately the outcome of

7   the election is decided by voter turnout.

8   A.   No. I think voter turnout is virtually impacted

9   by gerrymandering, but the outcome of the

10   election is determined by the distribution of

11   the ratio of Republican and Democratic

12   registered voters in a district.

13   Q.   Will you take a look at -- look at page 73,

14   paragraph 220. And I want to take a look at the

15   second sentence there.

16   "The 2017 Plans burden

17   Common Cause's ability to convince

18   voters in gerrymandered districts to

19   vote in state legislative elections

20   and to communicate with legislators."

21   Do you see where it says that?

22   A.   Yes, uh-huh.

23   Q.   And you mentioned you're a Common Cause member.

24   MS. KONKEL: Objection;

25   mischaracterizes the witness's testimony.

71

1   BY MR. PENCOOK:

2   Q.   I'm sorry. What did you say about your

3   relationship to Common Cause?

4   A.   I'm a contributor and I may be a member. I'm

5   not sure.

6   Q.   Has the way the maps are drawn made you any less

7   likely to or any more likely to listen to what

8   Common Cause has to say about voting and

9   communicating with your legislators?

10   A.   I don't think it's influenced my participation

11   in that respect.

12   Q.   And let's just flip the page and take a look at

13   paragraph 221. This is in the middle of the

14   page after the word Id. It says:

15   "Indeed, many plaintiffs and other

16   Democratic voters who currently live in

17   Republican state House or Senate

18   districts would live in districts that

19   would be more likely to have, or would

20   almost definitely have, a Democratic

21   representative but for the gerrymander."

22   Do you believe that you'd have a

23   Democratic representative but for the

24   gerrymander?

25   A.   I believe that's a possibility more so than the

72

1   fact -- the fact that it is today.

2   Q.   The next sentence says:

3   "Moreover, but for the

4   gerrymander, Plaintiffs and other

5   Democratic voters would have an

6   opportunity to elect a majority of

7   the state House and Senate which

8   would afford an opportunity to

9   influence legislation."

10   How would you specifically have an

11   opportunity to elect a majority?

12   A.   Only by -- only by voting.

13   Q.   Don't you elect your representative, though, and

14   not the makeup of the legislature as a whole?

15   A.   Yes.

16   Q.   Let's read the next sentence here.

17   A.   What page are we on?

18   Q.   Same page, 221, page 74.

19   A.   74.   What line are we on?

20   Q.   It's the next line.   It's the last sentence on

21   this page.   And it says:

22   "The retaliation has also

23   impermissibly burdened the associational

24   rights of Plaintiffs and the NCDP by

25   making it more difficult for Democrats

73

1   to register voters, recruit candidates,

2   attract volunteers, raise money,

3   campaign, and turn out the vote."

4   Do you do any of those things?

5   A.   Well, not being a Democrat, I guess it didn't

6   explicitly apply to me, but I haven't actively

7   gone out and recruited voters or anything like

8   that.

9   Q.   I think I'm done with that for now. I may come

10   back to it. Don't hold me to it.

11   Okay. So I mentioned at the beginning

12   of this that I represent the intervenor

13   defendants. Do you know what that means?

14   A.   No.

15   Q.   Do you know that there are seven Republican

16   voters who have moved to intervene in this

17   lawsuit?

18   A.   I've heard that number of them.

19   Q.   And are you aware that one of those intervenors

20   has the same state senate and state house

21   districts that you have?

22   A.   No.

23   Q.   Well, I will tell you his name is Ben York. He

24   lives in the same state house and state senate

25   districts that you do. Do you think that he has

74

1   the same constitutional rights as you do?

2   A. Oh, yes.

3   Q. The same rights that you're alleging in this

4   lawsuit?

5   A. Yes.

6   Q. Do you think he's got a right to elect

7   representatives of his choosing?

8   A. He has the right to vote for a representative of

9   his choosing.

10 Q. Do you have any concerns that -- well, strike

11   that.

12   So let me -- I just want to show you --

13   we can do it on that map there. Pull up

14   Exhibit -- is that one?

15 A. 3 right here.

16 Q. Exhibit 3. So if you're successful in this

17   lawsuit, how would you have these districts

18   redrawn?

19 A. I have no specific plan for redrawing them, but

20   there are many ways that they could be done

21   using mathematical algorithms based -- that

22   would achieve the objectives of compactness and

23   equal -- equal population densities, that sort

24   of thing, and probably take into account

25   minimizing the disruption of other political

75

1   districts, like counties and municipalities and

2   whatnot.

3   Q.   Okay. Have you run any computer simulations --

4   A.   No.

5   Q.   Have you hand drawn any district maps?

6   A.   No, I haven't.

7   Q.   So is your opinion on the partisanship of your

8   district based on what you've read or been told?

9   A.   Yes.

10   Q.   How would you draw the district -- how could you

11   draw the district without harming the same

12   rights that you're alleging here in Ben York?

13   A.   By drawing the districts in a manner that we

14   discussed earlier, using -- ignoring political

15   party affiliations and worrying only about

16   population, equal population and contiguous

17   districts and respecting political boundaries

18   where it's feasible. I think we could generate

19   a map which would not harm anyone.

20   Q.   I think I probably just got a few more questions

21   for you, and they are related to the discovery

22   that's been exchanged in this lawsuit.

23   Do you understand that the legislative

24   defendants sent you requests to produce

25   documents?

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1   A.   Yes.

2   Q.   What did you do to --

3   A.   They didn't send them to me, but I did produce

4   documents at somebody's request.

5   Q.   Right. And they sent them to your lawyers --

6   A.   Right.

7   Q.   -- who accepted service on your behalf. Does

8   that sound right?

9   A.   Okay.

10   Q.   How did you go about finding documents that were

11   responsive to those requests?

12   A.   I went primarily through my email computer files

13   and found documents that were relevant to this

14   issue, this case.

15   Q.   Did you read every single document in your

16   inbox, or did you do any searches?

17   A.   I looked at titles, primarily. I did some

18   searches, yes.

19   Q.   What searches did you do?

20   MS. KONKEL: Don't reveal privileged

21   information if the answer involved instructions

22   from your lawyers.

23   BY MR. PENCOOK:

24   Q.   And I'm not asking you what your lawyers

25   instructed you to search. I'm just asking what

77

1   you used to search, what terms you used.

2   A.   I don't recall all the terms I used. I used

3   several terms, several searches. I don't

4   recall. Obviously, gerrymandering was one.

5   Q.   And redistricting might have been another?

6   A.   Could have been.

7   Q.   And did you search anything else? Did you

8   search -- do you have any hard copy files that

9   you keep?

10   A.   I had a couple of newspaper clippings that I

11   believe dealt with that issue.

12   Q.   There were no other things, hard copy documents

13   other than the newspaper clippings?

14   A.   I don't think so.

15   Q.   And did you check your Facebook to see if there

16   was anything on there about redistricting?

17   A.   At the time when we were doing this I had

18   cancelled my Facebook account.

19   Q.   I'm ready to do the same thing, to be honest

20   with you.

21   So I guess let's take a look at one of

22   the email that you produced.

23   (WHEREUPON, Schaller Exhibit 5 was

24   marked for identification.)

25   BY MR. PENCOOK:

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1   Q.   I'll give you a moment to review it. Let me

2   know when you've taken a look.

3   A.   Okay.

4   Q.   What is this document?

5   A.   It's an email.

6   Q.   And is this an email that you sent to Dennis

7   Riddell --

8   A.   Right.

9   Q.   -- on February 18, 2015?

10   A.   Right.

11   Q.   And it says:

12   "I hope you will give careful

13   consideration to House Bill 92 which

14   addresses gerrymandering in North

15   Carolina. While our party may be in

16   power now and able to control the

17   process, history shows that neither

18   party has a monopoly on redistricting."

19   Why did you say "our party" to

20   Representative Riddell?

21   A.   You know, I don't know. My guess is that I

22   might have -- might be a typo. I might have

23   intended to say your party, but I can't say for

24   sure. It certainly wasn't my party.

25   Q.   Okay. And you didn't at the time write that in

                                                          79

1   an effort to mislead Representative Riddell?

2   A.   I don't believe I would do that.

3   Q.   And so do you think that he listened to you any

4   less or any more because of the way you wrote

5   this email?

6   MS. KONKEL: Objection; calls for

7   speculation.

8   THE WITNESS: My intent was not to

9   deceive him. I think it was a typo.

10   MR. PENCOOK: All right. Let's take a

11   brief break and we'll come back in and see if I

12   have any other questions for you.

13   (Brief Recess: 3:23 to 3:31 p.m.)

14   BY MR. PENCOOK:

15   Q.   Mr. Schaller, I'm nearly done.

16   A.   Okay.

17   Q.   I just want to go back to your preparation for

18   this. You mention that you met with your

19   attorneys. Who was present at that meeting?

20   A.   Met with my attorneys --

21   Q.   Yes, sir.

22   A.   -- this morning.

23   Q.   And who was there with you?

24   A.   Ms. Caroline and my attorney Kaitlin. The three

25   of us.

                                                        80

1   Q.   Anybody else?

2   A.   This morning, no.

3   Q.   And the phone call that you had in preparation

4   for this, who were the participants in that

5   phone call?

6   A.   Kaitlin and I.

7   Q.   Nobody else?

8   A.   Nobody else.

9   Q.   Okay. Well, those are all the questions I have

10   for you, Mr. Schaller. Thank you.

11   MS. KONKEL: Thank you.

12   MR. COX: I have no questions.

13   MS. PROUTY: I actually have a few

14   questions.

15   EXAMINATION

16   BY MS. PROUTY:

17   Q.   Mr. Schaller, my name is Erika Prouty. I'm with

18   the law firm Baker Hostetler. I represent the

19   legislative defendants in this case.

20   A.   Okay.

21   Q.   So one quick follow-up question. Is Caroline

22   your attorney?

23   A.   Caroline is not my attorney.

24   Q.   She's not your attorney. So could you tell us

25   what you discussed.

                                                        81

1   MS. KONKEL: Objection; calls for

2   privileged material.

3   MS. MACKIE: Just for the record, I am

4   his attorney. I don't want to answer questions,

5   but we both represent the individual plaintiffs.

6   MS. PROUTY: But if you doesn't

7   understand that he has --

8   MS. MACKIE: And that's fine. You can

9   ask him. I just wanted to make that clear.

10   BY MS. PROUTY:

11   Q.   Do you understand that you have an

12   attorney-client relationship with Caroline?

13   A.   No, I don't.

14   Q.   You don't?

15   A.   I only met Caroline this morning.

16   Q.   So could you tell us what you discussed with

17   Caroline this morning.

18   MS. KONKEL: Objection; calls for

19   privileged information. We've told you that

20   she's his attorney.

21   MS. PROUTY: But if he doesn't

22   understand or believe that Caroline is his

23   attorney, then how is that information

24   privileged.

25   MS. MACKIE: Can we go off the record.

                                                    82

1   (Discussion held off the record.)

2   THE WITNESS: May I respond --

3   MS. KONKEL: No. We instructed you not

4   to respond.

5   THE WITNESS: -- to your question.

6   MS. PROUTY: Let's go back on the

7   record.

8   BY MS. PROUTY:

9   Q.   If they've instructed you not to answer, I don't

10   mean to reveal any privileged information.

11   A.   Okay.

12   Q.   Okay. So we'll move on.

13   Mr. Schaller, are you aware of the

14   shape of your district prior to 2017?

15   A.   No.

16   Q.   So if I told you that it did not change from

17   2011 to 2017, you don't have any reason to

18   believe that's not true?

19   A.   That's true.

20   Q.   And is the reason that you never brought a

21   complaint about the shape of your district in

22   2017 is because Common Cause had never

23   previously contacted you about bringing such a

24   lawsuit?

25   A.   The reason I didn't bring -- bring the subject

83

1   up before this is because I was unaware of it.

2   Q.   So it wasn't until Common Cause recruited you to

3   join this lawsuit that you were aware of the

4   allegations in the complaint?

5   A.   Yes, that's correct.

6   Q.   You also stated earlier that you believe that

7   there may be people who are not voting in the

8   state legislative races -- or not turning out to

9   vote in state legislative races because their

10   vote won't change the outcome.

11 A.   Because they believe their vote will not change

12   the outcome.

13 Q.   Are you aware that state legislative races

14   happen every two years?

15 A.   Yes.

16 Q.   And usually every two years there's also a

17   presidential election or some congressional

18   elections or other elections other than state

19   legislative races?

20 A.   Yes.

21 Q.   Has anyone ever told you that they're not voting

22   in -- turning out to vote for the presidential

23   election because they don't think their vote

24   will matter in the state legislative race?

25 A.   Nobody ever told me that.

                                                            84

1   Q.   And you talked about earlier that you are a

2   contributor to Common Cause.

3   A.   Yes.

4   Q.   And we also discussed earlier that you've

5   produced emails in this case; is that right?

6   A.   I have produced emails.

7   MS. PROUTY: So I will ask the reporter

8   to mark this as Exhibit 6.

9   (WHEREUPON, Schaller Exhibit 6 was

10   marked for identification.)

11   BY MS. PROUTY:

12   Q.   So do you recognize this document?

13   A.   I do, yes. I think -- I seem to. Yeah.

14   Q.   So what is it?

15   A.   What is it. It's an email from Common Cause.

16   Q.   To who?

17   A.   Gerrymandering update.

18   Q.   And who is the email to?

19   A.   To me, but this is my old email address.

20   Q.   Okay. So lschaller@nc.rr.com is --

21   A.   That is an old email address, and I don't know

22   how it got to me by that one. There's a current

23   email address up in the upper right-hand corner.

24   Q.   Okay. And so this is dated January 8, 2019 --

25   A.   Right.

                                                         85

1   Q.   -- is that correct?

2   A.   Right.

3   Q.   And you received this email?

4   A.   I must have, yes.

5   Q.   And this email says:

6   "Rucho versus Common Cause

7   Emergency Fund -- chip in today to

8   help us win at the Supreme Court and

9   end partisan gerrymandering in all

10   50 states for good."

11   A.   Where are we reading all of that?

12   Q.   Just below where it says Common Cause, the first

13   sentence.

14   A.   Oh, yeah. Okay. I got it.

15   Q.   So the very last sentence at the bottom says:

16   "Please make your contribution

17   to our Rucho versus Common Cause

18   Emergency Fund today."

19   A.   Right.

20   Q.   Did you donate money to Common Cause in response

21   to this email?

22   A.   I don't recall whether I did or not.

23   Q.   What do you understand the purpose of

24   Common Cause to be?

25   A.   The purpose of Common Cause is to encourage good

1   government.

2   Q.   And why do you donate to Common Cause?

3   A.   To encourage good government.

4   Q.   And so you've given money to Common Cause in the

5   past, correct?

6   A.   I have in the past.

7   Q.   So I think we discussed earlier some of the

8   factors that you think legislatures should

9   consider in drawing legislative districts.

10   A.   Yes.

11   Q.   Can you remind me what some of those are.

12   A.   Equal -- districts with equal numbers of voters,

13   primarily, without regard to political party.

14   Q.   Are there any others?

15   A.   That's the primary -- primary one that I can

16   think of offhand.

17   Q.   I think we also talked about compactness and not

18   disrupting counties. Are those also factors

19   that should be considered?

20   A.   Those are things that ought to be considered in

21   the mix, not of primary importance, but yeah.

22   Q.   So how would you rank those in order of

23   importance?

24   A.   I would say districts of roughly equal

25   population -- population of registered voters

1   would be -- or of residents I guess would be a

2   better way of putting it.

3   Q.   Okay.

4   A.   That would be number one.

5   Q.   What about any of the others?

6   A.   Well, there are other considerations. Ancillary

7   considerations, for instance, respecting

8   political districts like counties and cities

9   where it's -- where it wouldn't disrupt the

10   primary or interfere with the primary goal of

11   districts of roughly equal population.

12   Q.   I think you also mentioned that you would prefer

13   if a computer algorithm drew legislative

14   districts.

15   A.   Yes.

16   Q.   So would a human being need to tell the

17   algorithm how to draw the districts?

18   A.   You mean how would one develop the algorithm?

19   Q.   Or tell the algorithm what to consider in

20   drawing the districts.

21   A.   One doesn't tell an algorithm something. One

22   develops an algorithm which takes into account

23   these factors, and those are the factors that we

24   discussed. I'd tell the program -- the

25   programmer to, number one, make sure that the

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1   districts are -- there are no gaps in the

2   districts and that the districts are of an equal

3   number of populations, dividing the population

4   as a state in whatever -- by whatever number of

5   districts you want. And I think of secondary

6   importance would be to try and keep counties as

7   intact as they can without violating the first

8   principle. And then a tertiary goal would be to

9   try to keep the municipalities intact.

10   Q.   So the programmer develops the code that goes

11   into the algorithm?

12   A.   Right.

13   Q.   So how does the programmer decide number one,

14   number two, number three?

15   A.   Well, it would -- he wouldn't make those

16   decisions. The decisions about ranking would be

17   given to him.

18   Q.   And who would give those decisions to him or

19   her?

20   A.   Well, the Court would decide how many -- or

21   well, there are -- there are how many -- what's

22   the population of North Carolina is, about 10

23   million people, and there are how many

24   districts, legislative districts. You would

25   divide the number -- the population divided by

89

1   the number of legislative districts and

2   determine how many -- what population ought to

3   be -- approximately what population ought to be

4   in each district.

5   Q.   Right. But in terms of deciding which factors

6   are the most important, you know, number one is

7   equal population, number two is not dividing

8   counties, number three is not disrupting

9   municipalities, who decides that ranking?

10   A.   In your hypothetical question, if I were going

11   to do it, I would be the one to decide that and

12   I would do it in that order, population

13   consistency, keeping the counties intact and

14   keeping the municipalities intact.

15   Q.   So do you understand the process by which the

16   districts are drawn now?

17   A.   I have -- I have -- I don't understand it in

18   detail, but I understand from the complaint how

19   it was done.

20   Q.   And what's your understanding of how that was

21   done?

22   A.   That was done by packing and cracking I believe

23   are the terms of art that were used to pack

24   Republicans in to assure a majority of them in

25   certain districts and to dilute the Democratic

90

1   voters in other districts to reduce their

2   impact.

3   Q.   Okay. Let's focus on how the 2017 plans were

4   passed into law. Do you understand the process

5   by which the -- that the 2017 plans became law?

6   Who drew the districts?

7   A.   The map?

8   Q.   Yes.

9   A.   There were a group of Republicans, I understand,

10   that got together and drew the maps, and they

11   had one person in particular, I forgot his name,

12   who was more proficient -- the most proficient

13   in that particular work.

14   Q.   So it was passed by the legislature?

15   MS. KONKEL: Is that a question?

16   BY MS. PROUTY:

17   Q.   Are you aware that the maps were passed by the

18   legislature?

19   A.   That were approved by the legislature, I

20   suppose. They were done -- the work was done by

21   a sub group.

22   Q.   So when the -- when a new map is drawn in the

23   future, do you know who will be drawing it?

24   A.   I don't know. I think that would depend on what

25   the Court decides, how the Court decides the

                                                        91

1   issue.

2   Q.   So when the maps are drawn in the future by

3   whomever, who should be the one deciding which

4   one of these factors is the most important?

5   A.   I believe that will be part of the Court's

6   decision.

7   Q.   Do you believe that the Court should be deciding

8   which factors are the most important?

9   A.   I believe so in this case.

10   Q.   So let's go back to how these -- the 2017 plans,

11   the current maps, were passed into law. So I

12   think I asked you this before. Do you know

13   whether it was passed by the legislature as a

14   bill?

15   A.   I don't know how it came in to being.

16   Q.   Did you ever contact any representatives or

17   state senators about what you would like the new

18   district to look like?

19   A.   No.

20   Q.   Have you ever contacted your state

21   representative for any help with constituent

22   services?

23   A.   No.

24   Q.   So you've never called your state

25   representatives's office to ask for help with

                                                             92

1   any state agency?

2   A.   I don't think so, no.

3   Q.   Are you aware of anything that's preventing you

4   from doing that in the future?

5   A.   No.

6   Q.   Do you have any reason to believe that they

7   would ask you what your political preferences

8   are when they would call?

9   A.   No, they wouldn't do that. No.

10   Q.   And have you ever contacted your

11   representative's office on specific policy

12   issues?

13   A.   Well, I've sent a couple of emails regarding,

14   for instance, gerrymandering that are a matter

15   of record here.

16   Q.   And -- strike that.

17   Are there any specific issues that are

18   important to your community?

19   A.   Well, no major issues. One issue that had come

20   up recently, we live in a continuing care

21   retirement community and a bunch of people take

22   a lot of meds and there was some proposed

23   legislation last year which would have imposed

24   additional taxes on medications, and I did -- I

25   was asked to join in responding in a

93

1   letter-writing campaign to try to discourage the

2   legislature from enacting that legislation.

3   Q. Did you write such a letter to the legislature?

4   A. I think I did, as I recall.

5   Q. Do you know who it was sent to?

6   A. No. It may be a matter of record here. I don't

7   know.

8   Q. Do you know if any action was taken on that

9   legislation?

10 A. I think it was not acted on.

11 Q. Are there any specific ways that your

12   representative -- strike that.

13   I think you mentioned that

14   Representative Riddell had visited the

15   Twin Lakes center recently.

16 A. Yeah, I believe so. My email to him was --

17 Q. Do you know why he was there?

18 A. Probably part of the -- part of his election

19   campaign. I don't know.

20 Q. Was he there to talk about a specific issue?

21 A. I don't recall.

22 Q. Do you know who invited him there?

23 A. We have a -- what I call a speakers bureau there

24   and we have monthly presentations by a lot of

25   people, and next month it's going to be the

94

1   president of Elon University and the editor of

2   the state magazine, things like that, and he

3   might have been in response to that call. I

4   don't know.

5   Q.   Okay. I don't have anything further.

6   MS. KONKEL: We have a brief redirect.

7   EXAMINATION

8   BY MS. KONKEL:

9   Q.   All right. Just a few more questions.

10   Mr. Schaller, you mentioned that you

11   are registered as unaffiliated; is that correct?

12 A.   That's correct.

13 Q.   And about how long have you been registered as

14   unaffiliated?

15 A.   Probably since 2001 when I moved to

16   North Carolina.

17 Q.   And to your knowledge, while you've lived in

18   North Carolina, have you always been registered

19   as unaffiliated?

20 A.   Yes.

21 Q.   Since moving to North Carolina, have you

22   consistently voted for candidates of any

23   particular political party?

24 A.   Yes. Pretty consistently Democrat.

25 Q.   Have you done any political volunteer work in

                                                                95

1   the last ten years?

2   A.   Yes.

3   Q.   Could you name any of that work.

4   A.   During the 2016 presidential campaign, I did

5   some data entry work for the local Democratic

6   Party.

7   Q.   How often do you vote?

8   A.   I vote -- I vote in each election. As I recall,

9   I voted consistently in each election.

10   Q.   And why is it that you make a point to vote so

11   regularly?

12   A.   I think it's a matter of good citizenship.

13   Q.   You testified a moment ago that you believe you

14   voted in every election in North Carolina to

15   your recollection. Does that include elections

16   for the North Carolina House?

17   A.   Yes.

18   Q.   And you mentioned that your representative right

19   now in your House district is Representative

20   Riddell.

21   A.   Uh-huh.

22   Q.   And what is his political party?

23   A.   He's Republican.

24   Q.   In general, would you say that Representative

25   Riddell's views align with yours?

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1   A.   No.   I would say in general they don't.

2   Q.   Have you ever voted for Representative Riddell?

3   A.   No.

4   Q.   Have you ever contacted Representative Riddell

5   to express your views on a particular issue?

6   A.   I've sent him at least one email, I recall, on

7   gerrymandering.

8   Q.   And why did you do that?

9   A.   Because I feel gerrymandering is an important

10   issue to address, and I felt that he ought to be

11   aware of that.

12   Q.   In the instances you contacted Representative

13   Riddell about something other than

14   gerrymandering, why did you send that email?

15   A.   I'd have to recall, which I don't at the moment,

16   what the issue was. Maybe you can refresh my

17   memory.

18   Q.   If you thought that a candidate was the most

19   qualified person for the job, would you vote for

20   that candidate regardless of the person's race

21   or ethnicity?

22   A.   Yes.

23   Q.   Would you vote for an African American

24   candidate?

25   A.   Yes.

97

1   Q.   Are there any issues in current state politics

2   that are particularly important to you that you

3   can think of?

4   A.   I believe the state budget is important,

5   particularly with respect to education.

6   Q.   Could you say a little more about that issue.

7   A.   Well, North Carolina is crawling its way up

8   among the states in expenditures for education,

9   per capita expenditures. We're nowhere near

10   where we ought to be. I think it's important to

11   have a -- not only a well-paid teaching staff in

12   North Carolina, but there ought to be stability

13   in the -- in the way it's structured so we can

14   attract people for the long haul.

15   Q.   And as far as you know, do the Republican

16   Party's views on that issue reflect your views?

17   A.   No, not to the extent I would like. They seem

18   to be less -- less forthcoming than

19   Governor Cooper would like in budgeting for

20   education.

21   MS. KONKEL: Thank you. No further

22   questions from me.

23   MR. PENCOOK: I've just got one.

24   FURTHER EXAMINATION

25   BY MR. PENCOOK:

                                                        98

1   Q.   You just mentioned -- she asked you about have

2   you done any campaign activity within the last

3   ten years.   Have you worked on any other

4   campaigns other than the Hillary Clinton

5   campaign?

6   A.   I don't think so, no.

7   Q.   And are you a member of any other political

8   organizations within the past ten years?

9   A.   Possibly Common Cause, but that would be -- and

10   that's bipartisan, supposedly.

11   Q.   But no Democratic Party organizations?

12   A.   No, I don't think so.   No.

13   MR. PENCOOK: Okay. All right. I have

14   no further questions.

15   [SIGNATURE RESERVED]

16   [DEPOSITION CONCLUDED AT 3:55 P.M.]

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ACKNOWLEDGEMENT OF DEPONENT

I, LEON SCHALLER, declare under the penalties of perjury under the State of North Carolina that I have read the foregoing pages, which contain a correct transcription of answers made by me to the questions therein recorded, with the exception(s) and/or addition(s) reflected on the correction sheet attached hereto, if any.

Signed this the   day of   , 2019.

LEON SCHALLER

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E R R A T A   S H E E T

Case Name: Common Cause, et al., v David Lewis, et al.

Witness Name: Leon Schaller

Deposition Date: Thursday, May 9, 2019

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Signature   Date

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1 | STATE OF NORTH CAROLINA   )
)   C E R T I F I C A T E
2 | COUNTY OF WAKE   )

3

4   I, DENISE MYERS BYRD, Court Reporter and Notary

5 | Public, the officer before whom the foregoing proceeding was

6 | conducted, do hereby certify that the testimony of said

7 | witness was taken down by me via stenotype to the best of my

8 | ability and thereafter transcribed under my supervision; and

9 | that the foregoing pages, inclusive, constitute a true and

10 | accurate transcription of the testimony of the witness.

11   I do further certify that I am neither counsel for,

12 | related to, nor employed by any of the parties to this

13 | action, and further, that I am not a relative or employee of

14 | any attorney or counsel employed by the parties thereof, nor

15 | financially or otherwise interested in the outcome of said

16 | action.

17   This the 20th day of May 2019.

18

19

20

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

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