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False testimony in North Carolina gerrymandering trial? Judges exclude GOP expert witness claims.

By Will Doran The News & Observer (Raleigh, N.C.) (TNS) Jul 25, 2019 Updated 1 hr ago

RALEIGH, N.C. — The trial challenging North Carolina’s legislative lines as unconstitutional, partisan gerrymanders took a dramatic turn Thursday, when an expert witness for Republican lawmakers admitted some of his testimony on their behalf was incorrect.

The challengers used that admission to ask for that testimony by Claremont McKenna College political scientist Douglas Johnson to be struck from the record.

“His testimony in his direct (examination) is just incorrect,” said Daniel Jacobson, a lawyer who represents the redistricting reform group Common Cause NC. “The numbers are wrong.”

The three-judge panel overseeing the case agreed to strike parts of Johnson’s testimony.

Wake County Superior Court Judge Paul Ridgeway, who is leading the panel, said North Carolina’s rules for expert witnesses say that “his opinions must be the product of reliable methods and principles ... and the principles used by Dr. Johnson were not reliable.”

It’s not clear yet how the decision will affect the outcome of trial, which is still ongoing. But expert witness testimony is important in cases like gerrymandering challenges, which rely on highly technical arguments and data.

A main issue has been the personal files of the late Tom Hofeller, a well-known mapmaker responsible for redistricting in North Carolina and other Republican-controlled states.

The plaintiffs in the case, who include the North Carolina Democratic Party as well as Common Cause, say Hofeller's files show he didn't follow the rules when drawing North Carolina's maps. He used racial data and completed much of his work before the legislature ever approved the rules he was supposedly bound by, they say.

But Republican lawmakers have defended the maps, saying anything on Hofeller's personal computer was merely a hobby, and not official work for the legislature. And Johnson had testified for them that Hofeller's personal maps were not actually all that similar to the maps the legislature ultimately approved.

On Thursday, Johnson admitted to several errors under cross-examination.

Those included, in one example, an admission that his analysis left out 11 districts that had the exact same shape in both Hofeller's personal files and in the maps that were ultimately adopted by the legislature.

Jacobson, the Common Cause attorney, asked Johnson, "You don't think that including those would have significantly changed your calculations?"

Johnson responded he still stands by his findings, despite the errors.

"It would have been a change in degrees, but not a change in conclusion," he said.

Jacobson continued to press Johnson on how he could stand by his findings "when you don't know what the correct numbers are."

The judges agreed, ruling to strike all of Johnson's testimony in which he compared Hofeller's maps to the maps enacted by the General Assembly, as well as comparing Hofeller's maps to maps Common Cause had submitted in a different court case in 2017.

That related in part to a statement that North Carolina Senate leader Phil Berger's spokesman, Pat Ryan, made to The News & Observer earlier this month about the case.

Ryan said "the Hofeller play maps are more similar to what Common Cause submitted to the federal court in 2017 than the maps enacted by the legislature."

Jacobson asked Johnson on Thursday if Berger's office got that information from him, and if it was based on the analysis he now admits was flawed.

"Correct," Johnson said. "I probably owe Pat Ryan an apology."

The trial is expected to wrap up Friday. It's moving forward in the state courts and is challenging the state legislative maps, not the congressional maps that were recently upheld by the U.S. Supreme Court in a high-profile win for Republican lawmakers.

Earlier this week, Johnson was just one of several witnesses that Republican lawmakers called on to defend the maps they approved in 2017, which were drawn to replace other maps from 2011 that had been ruled unconstitutional due to racial gerrymandering. Both the 2011 and 2017 maps were drawn by Hofeller.

(EDITORS: STORY CAN END HERE)

On Wednesday, one of the main witnesses was Republican Rep. John Bell of Goldsboro, who is the House Majority Leader.

The challengers in the case have claimed that since Democratic candidates statewide received a majority of the votes in 2018, but did not win a majority in either the House or the Senate, the maps unfairly deprive Democratic voters of their right to voice their opinions in state politics.

But Bell shot back against those claims, saying that North Carolina is mostly a rural state, and rural areas tend to be more conservative. And he said that just because he's a Republican doesn't mean his Democratic constituents get ignored.

“We have a number of small-town mayors who are Democratic, so we have to work together,” Bell said, listing off a litany of Democrat-led towns in his district that covers parts of Johnston, Wayne and Greene counties. “We work together to better our district.”

Bell also pointed out that while he represents this heavily agricultural area in the North Carolina House, a Democrat represents much of the same area in the N.C. Senate. Bell said he and that Democrat, Sen. Don Davis, frequently work together on issues like hurricane relief for their constituents.

“I represent a lot of Democrats,” Bell said. “Personally, I’m a Republican. ... I’m well aware that without Democratic support and unaffiliated support, I would not get elected.”

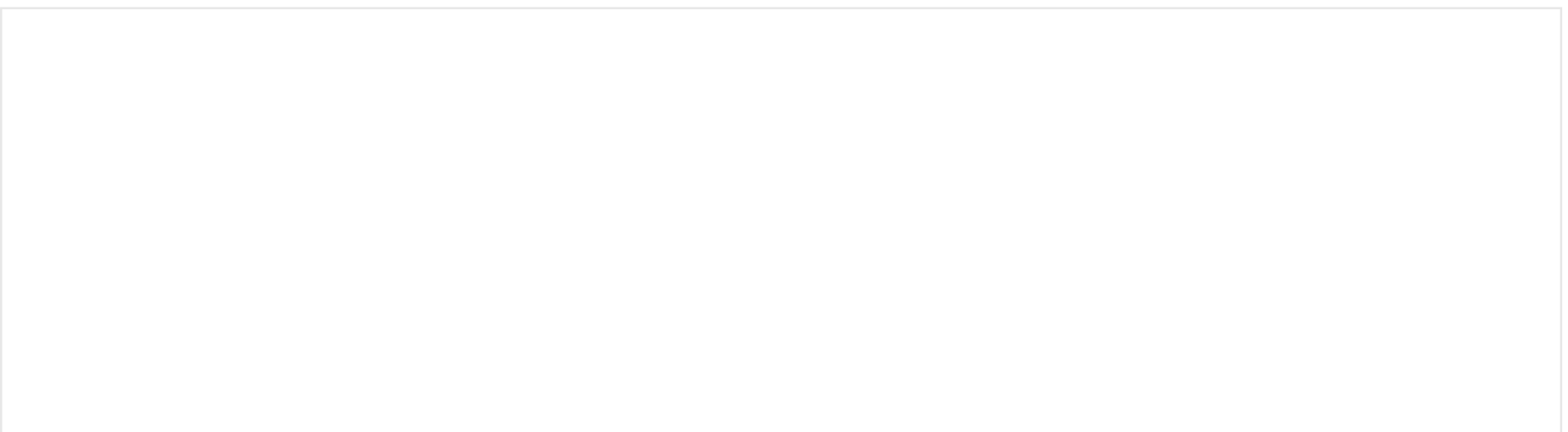
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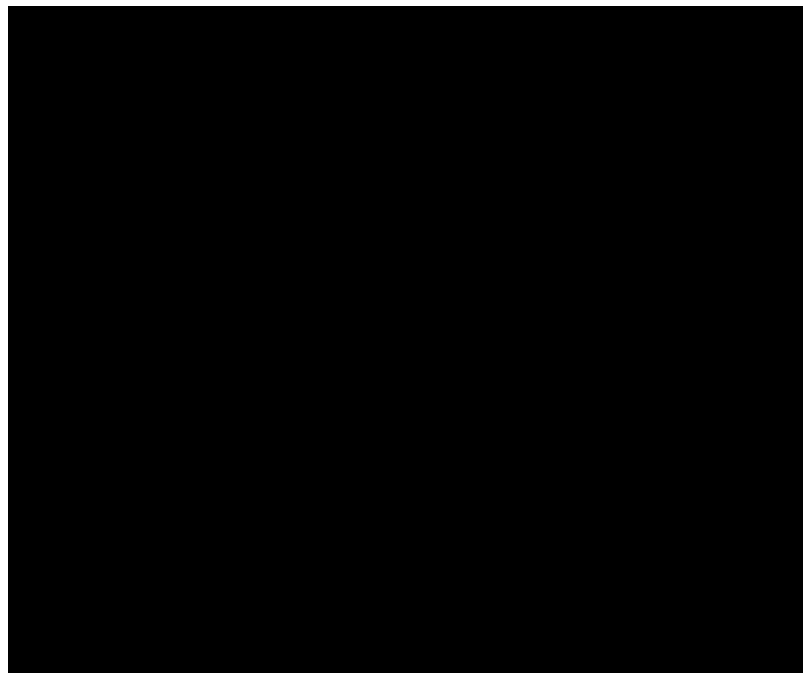
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