

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

WILLIAM WHITFORD, et al.,

Plaintiffs,

vs.

Case No. 15-CV-421-bbc

GERALD NICHOL, et al.,

Defendants.

VIDEOTAPED DEPOSITION OF

ADAM R. FOLTZ

Madison, Wisconsin

March 31, 2016

9:27 a.m. to 1:28 p.m.

Laura L. Kolnik, RPR/RMR/CRR

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<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 RATHJE/WOODWARD, LLC</p> <p>4 MR. DOUGLAS M. POLAND</p> <p>5 10 East Doty Street</p> <p>6 Madison, Wisconsin 53703</p> <p>7 dpoland@rathjewoodward.com</p> <p>8 (608) 441-5104</p> <p>9</p> <p>10 FOR THE DEFENDANTS:</p> <p>11 STATE OF WISCONSIN DEPARTMENT OF JUSTICE</p> <p>12 MR. BRIAN P. KEENAN, Assistant Attorney General</p> <p>13 17 West Main Street</p> <p>14 P.O. Box 7857</p> <p>15 Madison, Wisconsin 53707-7857</p> <p>16 keenanbp@doj.state.wi.us</p> <p>17 (608) 266-0020</p> <p>18 FOR THE DEPONENT:</p> <p>19 BELL GIFTOS ST. JOHN, LLC</p> <p>20 MR. KEVIN M. ST. JOHN</p> <p>21 5325 Wall Street, Suite 2200</p> <p>22 Madison, Wisconsin 53718-7980</p> <p>23 kstjohn@bellgiftos.com</p> <p>24 (608) 216-7995</p> <p>25</p>	<p>1 E X H I B I T S</p> <p>2</p> <p>3 Exhibit 73 Subpoena..... 7</p> <p>4 Exhibit 74 DVD and flash drive..... 12</p> <p>5 Exhibit 75 Deposition transcript from Baldus case 21</p> <p>6 12/21/11</p> <p>7 Exhibit 76 Deposition transcript from Baldus case 23</p> <p>8 2/1/12</p> <p>9 Exhibit 77 Deposition transcript from Baldus case 24</p> <p>10 4/30/13</p> <p>11 Exhibit 78 Defendants' Rule 26(a)(1) Initial..... 26</p> <p>12 Disclosures</p> <p>13 Exhibit 79 Baldus opinion 3/22/12..... 62</p> <p>14 Exhibit 80 Transcript of 3/23/16 motion hearing... 70</p> <p>15 Exhibit 81 Document prepared by Dr. Gaddie..... 83</p> <p>16 Exhibit 82 Email string from 4/20/11..... 92</p> <p>17 Exhibit 83 Lanterman Amended Declaration and DVD.. 109</p> <p>18</p> <p>19 Referred to:</p> <p>20 Gaddie 39 Plan Comparisons spreadsheet..... 127</p> <p>21 Gaddie 43 Team Map spreadsheet..... 155</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 STATE OF WISCONSIN DEPARTMENT OF JUSTICE</p> <p>2 MR. GABE JOHNSON-KARP, Assistant Attorney General</p> <p>3 17 West Main Street</p> <p>4 P.O. Box 7857</p> <p>5 Madison, Wisconsin 53707-7857</p> <p>6 johnsonkarp@doj.state.wi.us</p> <p>7 (608) 266-0020</p> <p>8</p> <p>9</p> <p>10</p> <p>11 I N D E X</p> <p>12 ADAM R. FOLTZ</p> <p>13 By Mr. Poland 5</p> <p>14 By Mr. Keenan175</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 (Original transcript supplied to Attorney Poland.)</p> <p>21 (Original exhibits attached to original transcript.</p> <p>22 Scanned copies of paper exhibits provided to attorneys.</p> <p>23 CDs and flash drives were not reproduced.)</p> <p>24</p> <p>25</p>	<p>1 P R O C E E D I N G S</p> <p>2 (Exhibit No. 73 marked for identification.)</p> <p>3 THE VIDEOGRAPHER: My name is Steve Peters,</p> <p>4 videographer associated with Halma-Jilek Reporting,</p> <p>5 Incorporated, Milwaukee, Wisconsin.</p> <p>6 This is the beginning of the video deposition</p> <p>7 of Adam R. Foltz on March 31, 2016; the time 9:27</p> <p>8 a.m.</p> <p>9 This is the case concerning William Whitford,</p> <p>10 et al., plaintiffs, versus Gerald Nichol, et al.,</p> <p>11 defendants, Case No. 15-cv-421-bbc pending in the</p> <p>12 United States District Court for the Western</p> <p>13 District of Wisconsin.</p> <p>14 Will counsel now please state their appearances</p> <p>15 starting with the plaintiffs.</p> <p>16 MR. POLAND: Doug Poland of Rathje & Woodward</p> <p>17 appearing on behalf of the plaintiffs.</p> <p>18 MR. ST. JOHN: Kevin St. John, Bell Giftos St.</p> <p>19 John, appearing on behalf of the deponent.</p> <p>20 MR. KEENAN: Brian Keenan with the Wisconsin</p> <p>21 Department of Justice appearing on behalf of the</p> <p>22 defendants.</p> <p>23 MR. JOHNSON-KARP: Gabe Johnson-Karp with the</p> <p>24 Wisconsin Department of Justice also on behalf of</p> <p>25 the deponent.</p>

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<p>1 THE VIDEOGRAPHER: The court reporter, Laura 2 Kolnik, will now swear in the witness. 3 ADAM R. FOLTZ, called as a witness herein, 4 after having been first duly sworn, was examined and 5 testified as follows: 6 MR. ST. JOHN: Doug, before we begin, I'd just 7 like to put on the record that in the Baldus 8 litigation there were a variety of motions that were 9 raised that related to legislative privilege. The 10 Baldus court ruled that with respect to the 11 testimony, the deposition testimony of Mr. Foltz, 12 that the legislative privilege did not apply, 13 allowed the plaintiffs to seek information that went 14 into the deliberative process as well as documents 15 that went into that. 16 We are here to produce information for the 17 plaintiffs and will testify to those matters that -- 18 that relate to what was asserted as a legislative 19 privilege. I note that some courts dealing with 20 legislative privilege have looked at it as a 21 testimonial privilege, and other courts have looked 22 at the question of what would be submitted into 23 evidence as a different question as what would be 24 discoverable. 25 So without waiving those rights that may be</p>	<p>1 Have you seen a copy of the exhibit -- of 2 Exhibit 73 before, Mr. Foltz? 3 A. I have. 4 Q. All right. When did you receive a copy of Exhibit 5 73, the subpoena? 6 A. Last week at some point. 7 Q. And you are represented by counsel here today, 8 correct? 9 A. That's correct. 10 Q. What did you do to prepare for your deposition 11 today? 12 A. I met with counsel and read my prior depositions 13 from the Baldus action. 14 Q. And when you say "counsel," who did you meet with 15 specifically? 16 A. Gabe Johnson-Karp and Kevin St. John. 17 Q. Did you meet with any counsel other than 18 Mr. St. John and -- and Mr. Karp? 19 MR. JOHNSON-KARP: Johnson-Karp. 20 Q. Johnson-Karp. 21 A. No, I did not. 22 Q. Was anyone present at the meetings that you had with 23 Mr. Johnson-Karp and Mr. St. John? 24 A. There was a brief overlap with Tad Ottman, but the 25 meetings were not concurrent.</p>
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<p>1 asserted at a later time by either the defendants or 2 the deponents, we make Mr. Foltz available for your 3 deposition. 4 MR. POLAND: I understand, Kevin. I understand 5 the preservation. 6 EXAMINATION 7 BY MR. POLAND: 8 Q. Good morning, Mr. Foltz. 9 A. Good morning. 10 Q. Will you please state your name for the record? 11 A. Adam Foltz. 12 Q. And can you spell your last name, please? 13 A. F-O-L-T-Z. 14 Q. And Mr. Foltz, do you reside within the State of 15 Wisconsin? 16 A. I do. 17 Q. You're appearing here this morning pursuant to a 18 subpoena that was issued to you, correct? 19 A. That's correct. 20 Q. All right. And the court reporter has marked as 21 Exhibit No. 73 a subpoena. I'm giving a copy to you 22 and I'll give a copy to your -- your counsel as 23 well. I'm also will hand you a check for \$45 in 24 payment of the witness fee. I'll tender that to you 25 now for -- for the appearance this morning.</p>	<p>1 Q. Did you talk with anyone other than Mr. Johnson-Karp 2 and Mr. St. John about your deposition today? 3 A. Yes. 4 Q. Who else did you speak with? 5 A. Senator Fitzgerald, chief of staff to Senator 6 Fitzgerald, mentioned it to my girlfriend, but 7 that's about it. Oh, also the Speaker's office. 8 Zach Bemis from the Speaker's office I also made 9 aware that I was being deposed. 10 Q. What did you talk about with Mr. Fitzgerald? 11 A. Just generally made him aware that I would be 12 required to give a deposition in the ongoing 13 litigation. 14 Q. Did you talk about the substance of your testimony 15 at all at the deposition? 16 A. No. 17 Q. Did you talk about any of the issues that were -- 18 that you thought might come up during the 19 deposition? 20 A. No. 21 Q. What about the chief of staff of Senator Fitzgerald, 22 did you talk about the substance at all of the -- 23 your testimony of the deposition? 24 A. No, again just generally made him aware that I would 25 be required to come in for a deposition.</p>

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1 Q. All right. And I think in addition to your
2 girlfriend there was one other person that you said
3 that you had talked to about the deposition or about
4 the subpoena?
5 **A. Yeah. Zach Bemis.**
6 Q. Zach Bemis. Did you talk with Zach Bemis at all
7 about the substance of the deposition or your
8 testimony?
9 **A. No.**
10 Q. Did you -- and you mentioned that you did review
11 documents to prepare for your testimony today?
12 **A. Yes.**
13 Q. What documents did you review?
14 **A. I read prior depositions and the exhibits that were**
15 **part of those depositions as well.**
16 Q. All right. And those were the -- the depositions
17 from the Baldus litigation, correct?
18 **A. That's correct, and the 30(b)(6) that followed. I**
19 **believe that was still considered part of the**
20 **Baldus, but I'm not 100 percent on that.**
21 Q. I'd like you to take a look at Exhibit A to the
22 subpoena. That's the very last page of Exhibit No.
23 73.
24 **A. Uh-huh.**
25 Q. Did you read Exhibit A when you received a copy of

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1 the subpoena?
2 **A. I did.**
3 Q. All right. And so you see that there's a request to
4 produce documents, and it requests all MS Excel
5 spreadsheets. Do you understand that MS stands for
6 Microsoft?
7 **A. I do.**
8 Q. All right. "All Microsoft Excel spreadsheets and
9 Microsoft Word documents in native format generated
10 during the redistricting process and formation of
11 the state assembly boundaries set out in Act 43 of
12 2011 that mention or evaluate potential or actual
13 partisan performance between the dates of April 1,
14 2011 and August 9, 2011." Do you see that?
15 **A. I do.**
16 Q. And did you search for those documents?
17 **A. I did.**
18 Q. And did you find any documents?
19 **A. I did.**
20 Q. All right. Do you have those documents with you
21 today?
22 **A. Yes.**
23 MR. POLAND: I'm going to have the court
24 reporter mark these as Exhibit --
25 MR. ST. JOHN: A copy for you.

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1 MR. POLAND: An extra copy?
2 MR. ST. JOHN: That would be for the court
3 reporter.
4 MR. POLAND: For the court reporter. Got it.
5 (Exhibit No. 74 marked for identification.)
6 BY MR. POLAND:
7 Q. Mr. Foltz, you've produced today and been handed a
8 CD-ROM and then a flash drive as well. Are the --
9 are there identical documents on both the CD-ROM and
10 the flash drive or are they two different
11 collections of documents?
12 **A. I produced the flash drive.**
13 Q. You produced the flash drive, okay. So the CD-ROM
14 is an exact copy of what's on the flash drive?
15 **A. That's my understanding.**
16 Q. All right. Okay. Let me ask you about where you
17 searched for documents to respond to the subpoena.
18 **A. Uh-huh.**
19 Q. Where did you search for documents in response to
20 the subpoena?
21 **A. So there were some remaining emails from the prior**
22 **litigation so my process was to sort those emails by**
23 **attachment, whether or not there was a presence of**
24 **an attachment, and then to secondarily sort that by**
25 **the date range listed in Exhibit A.**

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1 **Then I proceeded to work through just in**
2 **sequence, I can't remember if I worked from April 1**
3 **down or August 9 up, and then initially just checked**
4 **to see if the attachment was, in fact, a Word or an**
5 **Excel document. If it was, I would then more**
6 **closely examine it to see if it was something that**
7 **was enumerated here in Exhibit A that dealt with**
8 **partisan performance actual or projected.**
9 Q. Okay. So the emails that you -- those were emails
10 that you searched through; is that correct?
11 **A. That's correct.**
12 Q. Where were the emails located?
13 **A. There was a folder on my Microsoft Outlook and then**
14 **also a Gmail folder that contained the emails that**
15 **were searched.**
16 Q. All right. Was the -- is the Gmail folder, was that
17 actually on the computer that you were using?
18 **A. I mean in the sense that any Gmail folder is**
19 **available whenever you log into it at whatever**
20 **computer. Yes. I guess.**
21 Q. Okay. Let me back up a second. When you say that
22 you searched -- you searched email, was that email
23 that was actually residing on a computer that you
24 have access to now?
25 **A. The -- the Outlook would be resident on the computer**

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1 **that I work on. The -- the Google would be, you**
 2 **know, Gmail would be saved on the server but**
 3 **accessible with my login and password.**
 4 Q. So essentially web mail; is that correct?
 5 **A. Yeah.**
 6 Q. Do you -- you don't still have the computer that you
 7 used for legislative redistricting in 2011; is that
 8 correct?
 9 **A. No, I do not.**
 10 Q. And that was -- that was given to the LTSB some time
 11 ago, correct?
 12 **A. Correct.**
 13 Q. How did the -- how did files that relate to the 2011
 14 legislative redistricting make their way onto your
 15 computer that you're using now in your work?
 16 **A. I want to be very clear about the distinction**
 17 **between files and emails. The emails were available**
 18 **because you log in to your state -- your state login**
 19 **with whatever server LTSB has, and the emails are**
 20 **available across multiple machines.**
 21 Q. I understand. So there's a server that LTSB retains
 22 that has emails on it even if those emails might
 23 have been from a few years ago?
 24 **A. That's correct.**
 25 Q. All right. So even if you get a new computer, sort

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1 of like with web mail, you can go back and you can
 2 get those emails that were on the LTSB email server?
 3 **A. Yes, that's my understanding.**
 4 Q. Understood. Okay. Did you do anything physically
 5 to transfer any files from your -- from the computer
 6 that you used for legislative redistricting in 2011
 7 to the computer that you have now?
 8 **A. No, the emails just are there once you log in.**
 9 Q. Understood. The -- the email -- so what you have
 10 produced then on the flash drive and the CD-ROM,
 11 these were all attachments to emails, you said?
 12 **A. That's correct.**
 13 Q. All right.
 14 **A. One point on that, too. Two of the files were**
 15 **zipped files that in that zip file contained Excels**
 16 **so I produced both the zip and took the liberty of**
 17 **also unzipping so you have the Excel files that**
 18 **would be contained within.**
 19 Q. All right. So as I look at this, and I've just
 20 opened this up, and I'd be happy to pop -- pop the
 21 drive in or the CD-ROM into the computer if you want
 22 to look at it as well, but I've got the flash drive
 23 at least in my directory. I'm looking at it now.
 24 **A. Uh-huh.**
 25 Q. And I see one, two, three, four, five separate Excel

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1 files, and then I see two -- two zip files. Do I
 2 understand your testimony correctly that those
 3 separate Excel files are actually contained in the
 4 zip files --
 5 **A. Yeah.**
 6 Q. -- too?
 7 **A. They would be duplicative.**
 8 Q. They're duplicative?
 9 **A. Yes.**
 10 Q. Okay. Okay. So what we have -- essentially what
 11 you've produced are one, two, three, four, five
 12 separate Excel spreadsheets; is that correct?
 13 **A. Uh-huh. I believe so.**
 14 Q. All right. And we'll go into them a little bit more
 15 detail. I just want to try to get the general
 16 contours of what we have.
 17 **A. Okay.**
 18 Q. Mr. Foltz, do you know whether these particular
 19 Excel files that you've produced today were also
 20 produced in the Baldus litigation?
 21 **A. I believe they were. Yes.**
 22 Q. Okay. Do you know why these particular spreadsheets
 23 would have been saved on the email server that LTSB
 24 has?
 25 **A. The emails that they were attached to were from**

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1 **technical support staff that are employed by LTSB,**
 2 **the GIS team specifically within LTSB.**
 3 Q. I understand. Did you look any -- well, strike that
 4 question.
 5 In addition to emails stored on the LTSB
 6 server, where did you look for documents to respond
 7 to Exhibit A on -- on the subpoena?
 8 **A. The -- the Gmail account that I mentioned**
 9 **previously.**
 10 Q. Did you look anywhere else for documents that would
 11 respond to the subpoena?
 12 **A. No.**
 13 Q. Did you look at any paper files you might have had?
 14 **A. No. No.**
 15 Q. Do you know what -- did you retain any paper files?
 16 **A. I do have one copy of one of the summary sheets that**
 17 **was produced during Baldus that I have kept that I**
 18 **did not bring with me today.**
 19 Q. But that was something that was produced in Baldus?
 20 **A. That's correct.**
 21 Q. And when you say "summary sheets," was that a
 22 summary spreadsheet or --
 23 **A. Yes.**
 24 Q. All right. Does it fall within the time period that
 25 was requested in the subpoena?

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1 **A. It's a paper copy so I wouldn't really have a way of**
 2 **tracking the date.**
 3 Q. I see. The date does not appear at all in the paper
 4 copy?
 5 **A. Correct.**
 6 Q. All right. I understand. Did you look for any
 7 documents that might be stored someplace else
 8 electronically?
 9 **A. No.**
 10 Q. Did you look -- did you look at any cloud storage
 11 accounts to see whether there might be any
 12 responsive documents?
 13 **A. No. The -- the closest to a cloud where anything**
 14 **would have been would have been the Gmail or if you**
 15 **consider the LTSB Outlook web or email server to be**
 16 **a cloud, but nothing beyond the Gmail or the LTSB**
 17 **Outlook server.**
 18 **A. Do you use a Dropbox account or any other cloud**
 19 **storage account for work that you -- or strike that**
 20 **question.**
 21 **Did you use a Dropbox account or any other**
 22 **cloud storage account for work that you did on**
 23 **redistricting in 2011?**
 24 **A. No, I did not.**
 25 Q. Did you look to see if you had any flash drives that

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1 might have responsive information to the subpoena?
 2 **A. I did not.**
 3 Q. Do you know whether you have any flash drives that
 4 might contain responsive information?
 5 **A. I don't believe I do.**
 6 Q. What about CD-ROMs or DVD-ROMs. Did you look for
 7 any that might have responsive information?
 8 **A. No.**
 9 Q. Do you know whether you have any that might?
 10 **A. I don't believe I do.**
 11 Q. Who is your current employer?
 12 **A. Senator Scott Fitzgerald.**
 13 Q. All right. And so that's a -- that's a change of
 14 employment that you had since the time that you
 15 testified in the Baldus litigation; is that correct?
 16 **A. Yes and no. So the first two rounds of Baldus**
 17 **depositions I was not in the senator's employ, but**
 18 **when we got to the 30(b)(6) in the third round, I**
 19 **was working for the senator at that point.**
 20 Q. What's your current position with Senator
 21 Fitzgerald?
 22 **A. Legislative aide.**
 23 Q. Other than the files that you've produced here
 24 today, do you have access to any of the files that
 25 you created between April and August 2011 in

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1 connection with your work on Act 43?
 2 **A. I don't directly, but I know they're available as**
 3 **exhibits from prior depositions, and I have reviewed**
 4 **those exhibits.**
 5 Q. Okay. And other than the exhibits that you've
 6 reviewed, are there any documents that you're aware
 7 of that you still have access to from -- that were
 8 created between April and August 2011?
 9 **A. That paper copy may have been created sometime, but**
 10 **again that was just a paper copy of a summary**
 11 **spreadsheet that was produced during the Baldus**
 12 **discovery.**
 13 Q. Anything other than that?
 14 **A. Not that I can think of.**
 15 Q. Now, we just talked a few minutes ago about the
 16 depositions that you gave in the Baldus versus
 17 Brennan case?
 18 **A. Uh-huh.**
 19 Q. Correct? And you understand that was the lawsuit
 20 that was tried in the federal court in Milwaukee in
 21 2012 in connection with the 2011 redistricting,
 22 correct?
 23 **A. Yes.**
 24 Q. And you recall being deposed three separate times in
 25 that case?

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1 **A. Yes.**
 2 Q. Do you remember the date of the first deposition you
 3 gave in that case?
 4 **A. No, not particularly. It was sometime early twenty**
 5 **or late twenty-- late 2011?**
 6 Q. I won't make you guess.
 7 MR. POLAND: Can we mark this as Exhibit 75,
 8 please?
 9 (Exhibit No. 75 marked for identification.)
 10 Q. Mr. Foltz, I'm handing you a copy of a document that
 11 the court reporter has marked as Exhibit No. 75.
 12 Take just a minute, please, and look at the
 13 document.
 14 **A. Where should I go with exhibits that are no longer**
 15 **used? Just hand them to --**
 16 Q. That's Mr. St. John's job. It's one of the duties
 17 of counsel.
 18 MR. ST. JOHN: You'll want this one.
 19 THE WITNESS: I want this one.
 20 MR. POLAND: He'll keep you organized.
 21 MR. ST. JOHN: We miss Maria for this. Judging
 22 from the other deposition transcripts, she was the
 23 organizer.
 24 MR. POLAND: She was very -- she was very neat
 25 at depositions, that's for sure. She kept us

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<p style="text-align: right;">Page 22</p> <p>1 organized.</p> <p>2 BY MR. POLAND:</p> <p>3 Q. Mr. Foltz, have you seen Exhibit No. 75 before?</p> <p>4 A. I have.</p> <p>5 Q. Okay. And you recognize that as a copy of the</p> <p>6 transcript of your deposition taken in the Baldus</p> <p>7 case on December 21, 2011?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall being deposed in -- roughly on</p> <p>10 that date in 2011?</p> <p>11 A. Sounds right.</p> <p>12 Q. Now, I'm not going to go through all the questions</p> <p>13 that you were asked in this deposition, but I do</p> <p>14 have a few questions about it for you.</p> <p>15 A. Yes.</p> <p>16 Q. You testified a few minutes ago that you have reread</p> <p>17 the transcripts of your depositions in the Baldus</p> <p>18 case?</p> <p>19 A. Yes.</p> <p>20 Q. When was the last time that you read the Exhibit 75?</p> <p>21 A. Late last week.</p> <p>22 Q. And is your testimony that you gave in Exhibit 75</p> <p>23 true and correct?</p> <p>24 A. It is.</p> <p>25 Q. Is there anything in your testimony that you believe</p>	<p style="text-align: right;">Page 24</p> <p>1 transcript.</p> <p>2 Q. When did you do that?</p> <p>3 A. About the same time, late last week.</p> <p>4 Q. All right. And is your testimony that you gave in</p> <p>5 Exhibit 76 true and correct?</p> <p>6 A. It is.</p> <p>7 Q. Is there anything in your testimony reflected in</p> <p>8 Exhibit 76 that you believe needs to be changed to</p> <p>9 make it true and correct?</p> <p>10 A. No, it's all true and correct first time around.</p> <p>11 Q. You can set that to the side.</p> <p>12 MR. POLAND: Just for the record, these copies</p> <p>13 of these transcripts, they don't have the exhibits</p> <p>14 attached, these are just the transcripts themselves.</p> <p>15 Q. And you testified as well that you do recall being</p> <p>16 deposed a third time in connection with the Baldus</p> <p>17 case?</p> <p>18 A. That's correct.</p> <p>19 (Exhibit No. 77 marked for identification.)</p> <p>20 Q. Mr. Foltz, I'm handing you a copy of a document that</p> <p>21 the court reporter has marked as Exhibit No. 77, ask</p> <p>22 you to take a look at that, please.</p> <p>23 A. Okay.</p> <p>24 Q. Can you identify Exhibit 77?</p> <p>25 A. It appears to be a transcript of my third round of</p>
<p style="text-align: right;">Page 23</p> <p>1 needs to be changed to make it true and correct?</p> <p>2 A. It's all true and correct.</p> <p>3 Q. You can set that to the side for the moment. We</p> <p>4 might come back to it.</p> <p>5 A. Okay.</p> <p>6 (Exhibit No. 76 marked for identification.)</p> <p>7 Q. Mr. Foltz, handing you a copy of a document the</p> <p>8 court reporter has marked as Exhibit No. 76, and ask</p> <p>9 you to take a look at that.</p> <p>10 A. Okay.</p> <p>11 Q. Can you identify Exhibit 76?</p> <p>12 A. It appears to be the continuation or second</p> <p>13 deposition, I'm not sure how exactly it's</p> <p>14 classified, of my depositions.</p> <p>15 Q. Fair enough. And do you see that there is a date of</p> <p>16 February 1st, 2012. It's in very tiny print in the</p> <p>17 upper left-hand corner.</p> <p>18 A. I do see that -- I do see the date of February 1st.</p> <p>19 Q. All right. Do you recall being deposed on</p> <p>20 February -- on or about February 1st, 2012 in</p> <p>21 connection with the Baldus case?</p> <p>22 A. Yes.</p> <p>23 Q. Have you reviewed this particular transcript that's</p> <p>24 Exhibit 76?</p> <p>25 A. Slightly different format, but the same -- but the</p>	<p style="text-align: right;">Page 25</p> <p>1 depositions related to the Baldus litigation.</p> <p>2 Q. All right. And we've been referring to it as the</p> <p>3 Baldus litigation. If you look at the caption, the</p> <p>4 caption actually does say Baldus versus members of</p> <p>5 the Wisconsin Government Accountability Board, and</p> <p>6 then it lists the members of the board there,</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. All right. But if we refer to this as the Baldus</p> <p>10 litigation, you'll know what I'm referring to?</p> <p>11 A. I will.</p> <p>12 Q. And you recently reviewed Exhibit 77 as well?</p> <p>13 A. I did.</p> <p>14 Q. When was the last time that you reviewed Exhibit 77?</p> <p>15 A. Late last week, beginning of this week.</p> <p>16 Q. Is your testimony in Exhibit 77 true and correct?</p> <p>17 A. It is.</p> <p>18 Q. Is there anything in your testimony in Exhibit 77</p> <p>19 that you need -- that you believe needs to be</p> <p>20 changed to make it true and correct?</p> <p>21 A. No.</p> <p>22 Q. You can set that to the side as well.</p> <p>23 Now, do you understand that you've been named</p> <p>24 as a witness in a new redistricting case that's</p> <p>25 scheduled to go to trial in less than two months?</p>

7 (Pages 22 to 25)

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1 **A. I do understand that.**
 2 Q. And that's the case that we're -- that you are
 3 appearing in today, correct?
 4 **A. That's correct.**
 5 Q. For this deposition? You understand that there is a
 6 different group of plaintiffs and the lead plaintiff
 7 is a man with the last name Whitford?
 8 **A. Uh-huh.**
 9 Q. Do you understand that?
 10 **A. Yes.**
 11 Q. So if I refer to this case as the Whitford
 12 litigation, will you know that I'm talking about
 13 this case that's been scheduled for trial in the
 14 Western District of Wisconsin this year?
 15 **A. Yes.**
 16 **(Exhibit No. 78 marked for identification.)**
 17 Q. Mr. Foltz, I'm handing you a copy of a document the
 18 court reporter has marked as Exhibit 78. I'm going
 19 to ask you to take a look at that.
 20 **A. (Witness reading.)**
 21 Q. Have you seen Exhibit 78 before?
 22 **A. I believe I have.**
 23 Q. Were you aware on or about this -- this date October
 24 7 of 2015 that's on the document that you were
 25 identified as an individual potentially having

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1 knowledge regarding the matter and as a potential
 2 witness to provide testimony?
 3 **A. I believe so. Yeah.**
 4 Q. When was the first time that you heard about the
 5 Whitford case?
 6 **A. Probably when the initial action was filed. I'm not**
 7 **recalling the specific date, but when the initial**
 8 **action was filed.**
 9 Q. Did you see -- if I represent to you on or about in
 10 July of 2015, does that sound about right?
 11 **A. Yeah, that sounds about right.**
 12 Q. Did you see a copy of the complaint in the Whitford
 13 case when it was filed?
 14 **A. I did.**
 15 Q. Have you seen copies of any other documents that
 16 have actually been filed with the court in the
 17 Whitford case?
 18 **A. Yes.**
 19 Q. Were you asked to review them by someone?
 20 **A. No.**
 21 Q. Why did you review the documents that have been
 22 filed in the Whitford case?
 23 **A. General curiosity.**
 24 Q. How did you find out that the Whitford case had been
 25 filed?

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1 **A. I don't remember exactly how I found out. I**
 2 **probably saw something in the Journal Sentinel or**
 3 **WisPolitics or something along those lines.**
 4 Q. Did anybody tell you that it had been filed?
 5 **A. Not that I can recall.**
 6 Q. Have you discussed the Whitford case with anyone
 7 other than your counsel and the people that you
 8 mentioned earlier today that you had told about this
 9 deposition?
 10 **A. Not that I can directly recall. I'm sure it's come**
 11 **up in conversation, but not that I can specifically**
 12 **recall.**
 13 Q. Have you discussed the Whitford case with
 14 Mr. Keenan?
 15 **A. Yes.**
 16 Q. When did you discuss the Whitford case with
 17 Mr. Keenan?
 18 **A. I don't know off the top of my head.**
 19 Q. Do you remember whether it was before or after the
 20 time of the Rule 26 initial disclosures where you
 21 were identified as a potential witness?
 22 **A. I'm assuming it was before, but I don't know that**
 23 **for a fact.**
 24 Q. Did you have any discussions with Mr. Keenan about
 25 the substance of the allegations in the -- in the

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1 Whitford complaint?
 2 **A. I'm sure I did. Yes.**
 3 Q. Do you recall the substance of any of those
 4 discussions?
 5 MR. ST. JOHN: I'm going to assert a
 6 attorney-client privilege objection to that. The
 7 legislature had notified the attorney general's
 8 office and requested representation from the
 9 attorneys general's office at or about or before the
 10 time to cover -- which would cover the time period
 11 in question. Mr. Foltz continues to be represented
 12 by the attorney general's office, and all
 13 communications with subordinate attorneys within the
 14 attorney general's office would fall under the scope
 15 of the privilege. I'm going to instruct you not to
 16 answer the question as to substance.
 17 BY MR. POLAND:
 18 Q. Are you going to follow your counsel's instruction
 19 not to answer the question?
 20 **A. I will.**
 21 MR. KEENAN: And I would just like to interpose
 22 and join the objection, but then also state an
 23 attorney work product objection to the extent it's
 24 not covered by the attorney-client privilege if it
 25 will get into the thought processes of an attorney.

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1 But if he's not going to answer, he's not going to
2 answer, but I just want to make a separate objection
3 on that basis.
4 BY MR. POLAND:
5 Q. Do you know, Mr. Foltz, do you know whether there is
6 any kind of a joint defense agreement between the
7 Wisconsin State Legislature and the -- the
8 defendants in the Whitford litigation?
9 **A. I'm not aware of one.**
10 Q. All right. Have you -- have you spoken with anyone
11 about a joint defense agreement?
12 **A. Not -- no, not that I can think of, no.**
13 Q. All right. Have -- do you have any kind of a
14 retainer agreement with Mr. St. John?
15 **A. I don't know if we do. I'm not exactly sure how the**
16 **mechanics of that works. I just know that**
17 **Mr. St. John is here representing me as counsel.**
18 Q. All right. And Mr. Johnson-Karp is here
19 representing you as counsel as well, correct?
20 **A. That's correct.**
21 Q. Mr. Keenan is not here representing you personally
22 as your counsel, correct?
23 **A. That's my understanding.**
24 Q. Have you discussed the Whitford case with any of the
25 legislators, members of the Wisconsin State Senate

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1 or Assembly?
2 **A. Senator Fitzgerald.**
3 Q. All right. And what did you discuss with Senator
4 Fitzgerald about -- about the Whitford litigation?
5 **A. Generally I can recall making him aware that there**
6 **was a new action out there.**
7 Q. Did you talk with Senator Fitzgerald about the
8 substance of the allegations in the Whitford
9 complaint?
10 **A. Generally. I don't remember specifically talking**
11 **about the substance of that, but I do generally give**
12 **him an overview of what is being claimed to the best**
13 **of my understanding of it.**
14 Q. All right. Do you recall what you told him about
15 the substance of the allegations in the Whitford
16 case?
17 **A. Not specifically, no.**
18 Q. All right. What did you tell him generally?
19 **A. Just that a new action had been brought against the**
20 **Act 43 map, specifically the assembly map is my**
21 **understanding.**
22 Q. Did you ever have any conversations with -- with
23 anyone at the Department of Justice, the Wisconsin
24 Department of Justice, that is, about the assignment
25 of counsel to represent you with respect to the

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1 Whitford action?
2 **A. Yeah. There were some conversations.**
3 Q. All right. Who did you talk to?
4 **A. At Department of Justice are you asking?**
5 Q. Correct.
6 **A. I believe there were conversations with Andy Cook**
7 **over there, Dave Meany. I'm trying to think who**
8 **else from DOJ. Mike Austin was probably around as**
9 **well. I believe that's everybody from DOJ that we**
10 **would have touched base with.**
11 Q. Okay. Do you know whether Mr. Keenan is
12 representing the Wisconsin State Legislature in the
13 Whitford case?
14 **A. I don't believe so.**
15 Q. Did you have any discussion with any other
16 legislative aides in either the Wisconsin State
17 Senate or Wisconsin State Assembly about the
18 Whitford case?
19 **A. Yes.**
20 Q. And who have you spoken with who are legislative
21 aides about the Whitford case?
22 **A. Tad Ottman and then Zach Bemis are the ones that**
23 **jump to -- jump to mind. I'd also point out the**
24 **forementioned girlfriend is also an employee of the**
25 **state legislature.**

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1 Q. And what's her name?
2 **A. Lauren Clark.**
3 Q. Did you speak with Mr. Ottman about the substance of
4 the allegations in the Whitford case?
5 **A. I'm sure we did. Yeah.**
6 Q. Do you recall what you talked about with Mr. Ottman
7 in terms of the substance of the allegations?
8 **A. Not specifically, no.**
9 Q. Do you recall generally?
10 **A. I mean just an overview of what they're claiming and**
11 **what the -- what the theory is behind it, my**
12 **understanding.**
13 Q. All right. Did you talk with Mr. Ottman at all
14 about any of the -- the defense theories in the
15 case?
16 **A. No, not really, not that I can recall.**
17 Q. Have you -- have you had conversations with -- with
18 Mr. Keenan about the defense theories in the case?
19 **A. Can I --**
20 MR. KEENAN: I think the objection will stand,
21 but you can answer yes or no obviously.
22 THE WITNESS: Yes.
23 BY MR. POLAND:
24 Q. When did you have conversations with Mr. Keenan
25 about the defense theories in the case?

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1 **A. I don't know if defense theories is the right label**
 2 **for it. I mean I've talked to, you know, Mr. Keenan**
 3 **in general about everything involved with this, so I**
 4 **don't know if defense theories is a proper way of**
 5 **phrasing it.**
 6 Q. Okay. How would you phrase it, what you spoke with
 7 him about?
 8 **A. I would say general discussions, general discussions**
 9 **on the process, things like that.**
 10 Q. And when you say "the process," do you mean the
 11 process of redistricting?
 12 **A. The process that led to Act 43.**
 13 Q. Okay. Was anyone else present when you had those
 14 discussions with Mr. Keenan?
 15 **A. Yeah, one time I believe Tad was -- Tad was**
 16 **involved.**
 17 Q. Anyone else present at those discussions you had?
 18 **A. No. No.**
 19 Q. What was the substance of the discussions that you
 20 had with Mr. Keenan about the process that led to
 21 Act 43?
 22 MR. ST. JOHN: I'm going to interpose an
 23 assertion of attorney-client privilege with respect
 24 to discussions that Mr. Foltz had with Mr. Keenan
 25 during a date range that you haven't -- that isn't

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1 clear to me from your question. But it's to repeat
 2 the same objection -- or I'm sorry, the same
 3 assertion of privilege as repeated -- I'm sorry, as
 4 I stated previously on the same basis.
 5 MR. POLAND: Just to clarify the date range, it
 6 would be since the filing of the Whitford complaint.
 7 THE WITNESS: Okay.
 8 MR. KEENAN: And I would just like to join in
 9 the objections and my work product objections, but I
 10 don't have an objection to him answering something
 11 that would be the equivalent of the privilege log
 12 descriptor of what a conversation was, but then
 13 getting into the substance I would have an
 14 objection.
 15 MR. POLAND: Yeah.
 16 MR. KEENAN: If that makes sense.
 17 MR. POLAND: I think so.
 18 MR. KEENAN: I think maybe your question was
 19 aimed more at that.
 20 MR. POLAND: It was aimed at the substance. I
 21 think I had the description. I think the witness
 22 testified it was a general discussion about the
 23 process that led to Act 43 so I think I know the
 24 topic.
 25 MR. KEENAN: Right.

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1 MR. POLAND: And does that -- does your
 2 objection include an instruction not to answer as
 3 well?
 4 MR. ST. JOHN: My -- the assertion of the
 5 privilege includes an instruction not to answer
 6 questions relating to the substance of the
 7 conversations between Mr. Foltz and Mr. Keenan.
 8 BY MR. POLAND:
 9 Q. All right. And will you follow your counsel's
 10 instruction not to answer the question?
 11 **A. I will.**
 12 Q. All right. You said you had conversations as well
 13 with Zach Bemis about the Whitford case?
 14 **A. Yes.**
 15 Q. And again who's Mr. Bemis?
 16 **A. He is a policy advisor and legal counsel I believe**
 17 **is his title, generally legislative aide to Speaker**
 18 **Vos.**
 19 Q. Did you talk with Mr. Bemis about the substance of
 20 the allegations in the Whitford complaint?
 21 **A. I'm sure we did at some point.**
 22 Q. Do you recall those -- the substance of those
 23 conversations?
 24 **A. Not specifically. Again probably just a broad**
 25 **overview of what -- what the complaint was.**

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1 Q. And then you mentioned you also spoke with Lauren
 2 Clark?
 3 **A. Uh-huh.**
 4 Q. And Lauren Clark is a legislative aide, too?
 5 **A. Yes.**
 6 Q. Who is Lauren Clark a legislative aide to?
 7 **A. She's chief of staff to Senator Luther Olsen.**
 8 Q. Did you speak with Ms. Clark about the substance of
 9 the allegations in the Whitford case?
 10 **A. No.**
 11 Q. Did you talk with Ms. Clark about any of the
 12 defenses in the Whitford case?
 13 **A. Defense, no.**
 14 Q. What was the nature of the conversations you've had
 15 with Ms. Clark about the Whitford case?
 16 **A. Just made her aware that there was another case out**
 17 **there.**
 18 Q. When were you first approached to be a witness in
 19 the Whitford case?
 20 **A. The date -- whatever the date of the subpoena is.**
 21 Q. All right. Well, let me back -- let me back up
 22 then. In Exhibit No. 78, you were identified as
 23 potentially testifying as a witness.
 24 MR. ST. JOHN: I object to the question. It's
 25 not -- it's a mischaracterization of what the

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<p>1 document says.</p> <p>2 BY MR. POLAND:</p> <p>3 Q. All right. Let's just read it then. Okay. Exhibit</p> <p>4 78, do you see that this is a document -- if you</p> <p>5 turn to the third page, you'll see it was a document</p> <p>6 that was filed by -- by Mr. Keenan and</p> <p>7 Mr. Russomanno on behalf of the Wisconsin Department</p> <p>8 of Justice. Do you see that? This is on the third</p> <p>9 page.</p> <p>10 A. Yes. Yes.</p> <p>11 Q. And you see it was filed October 7, 2015, correct?</p> <p>12 A. I do see that, yes.</p> <p>13 Q. All right. Now, if you turn to the first page</p> <p>14 under -- on the very first page it states,</p> <p>15 "Defendants, by their attorneys, make the following</p> <p>16 initial disclosures," then there's a letter A. It</p> <p>17 says, "Individuals potentially having knowledge</p> <p>18 regarding this matter," and you were identified</p> <p>19 there, correct?</p> <p>20 A. It reads that way, yes.</p> <p>21 Q. Then if you look at the paragraph just below it it</p> <p>22 states, "To the extent it may become relevant if the</p> <p>23 case survives the motion to dismiss, Adam Foltz, who</p> <p>24 was involved in the 2012 districting process, may</p> <p>25 provide testimony regarding that process and the</p>	<p>1 that?</p> <p>2 A. I've had conversations with Mr. Keenan about the</p> <p>3 litigation in general, yes.</p> <p>4 Q. But and so I want to make sure I'm clear here. In</p> <p>5 terms of what you might testify to at trial, have</p> <p>6 you had any conversations with Mr. Keenan about</p> <p>7 that?</p> <p>8 MR. KEENAN: I'm going to object as vague. I</p> <p>9 don't understand that.</p> <p>10 MR. ST. JOHN: The --</p> <p>11 MR. KEENAN: And attorney-client privilege.</p> <p>12 MR. ST. JOHN: I'm going to -- can I have the</p> <p>13 question read back for the purpose of determining</p> <p>14 whether I should assert the attorney-client</p> <p>15 privilege?</p> <p>16 (Question read.)</p> <p>17 MR. ST. JOHN: I'm going to assert the</p> <p>18 attorney-client privilege with respect to that</p> <p>19 question. It seeks substantive communications</p> <p>20 between Mr. Foltz and Mr. Keenan.</p> <p>21 MR. POLAND: And does that include an</p> <p>22 instruction not to answer?</p> <p>23 MR. ST. JOHN: It includes an instruction not</p> <p>24 to answer.</p> <p>25 BY MR. POLAND:</p>
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<p>1 basis for districting." Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Now, do you understand that the case did survive a</p> <p>4 motion to dismiss?</p> <p>5 A. I do understand that, yes.</p> <p>6 Q. So now this document does state that you may provide</p> <p>7 testimony regarding that -- the process actually</p> <p>8 from the 2011 districting, correct?</p> <p>9 A. That's fair.</p> <p>10 Q. And the bases for that, correct?</p> <p>11 A. Yes.</p> <p>12 Q. When were you first approached about providing</p> <p>13 testimony?</p> <p>14 A. I don't know if approached is a proper term. I</p> <p>15 don't recall any specific conversation before the</p> <p>16 filing of this document.</p> <p>17 Q. So did anybody ever call you up or talk to you and</p> <p>18 say, "Adam, would you be willing to testify for the</p> <p>19 defendants at the trial of the Whitford case?"</p> <p>20 A. Not that I recall, no.</p> <p>21 Q. All right. Have you had any conversations with</p> <p>22 anyone about what you might testify to at trial of</p> <p>23 the Whitford case?</p> <p>24 A. No.</p> <p>25 Q. Have you had any conversations with Mr. Keenan about</p>	<p>1 Q. Are you going to follow your counsel's advice and</p> <p>2 not answer the question?</p> <p>3 A. Yes.</p> <p>4 Q. As you sit here today, do you know whether you will</p> <p>5 be called as a witness to testify in the trial in</p> <p>6 the Baldus case?</p> <p>7 A. I don't.</p> <p>8 Q. If you are called to testify as a witness -- I'm</p> <p>9 sorry, strike that last question. I said Baldus.</p> <p>10 As you sit here today, do you know whether you</p> <p>11 will be called to testify as a witness in the trial</p> <p>12 of the Whitford case?</p> <p>13 A. I do not know that.</p> <p>14 Q. If you are called to testify, do you know what you</p> <p>15 would testify about?</p> <p>16 A. I have a general idea that I would be testifying</p> <p>17 about the redistricting process and, you know,</p> <p>18 what's enumerated here on page 1 of the document.</p> <p>19 Beyond that, no.</p> <p>20 Q. So as you sit here today, you don't know of any</p> <p>21 specific testimony that you might be asked to give</p> <p>22 during the trial of the Whitford case; is that</p> <p>23 correct?</p> <p>24 A. I think that's fair.</p> <p>25 Q. Go back to your testimony that you gave in the -- in</p>

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1 the Baldus case and just talk generally, and then
 2 we'll get a little more specific. You testified in
 3 one or more of your depositions in the Baldus case
 4 that you were one of the three people who actually
 5 drew the draft and then final legislative districts
 6 that ended up as Act 43, correct?
 7 **A. Correct.**
 8 Q. And so that would have included you, Tad Ottman, and
 9 Joe Handrick, correct?
 10 **A. That's correct.**
 11 Q. And if we need to as I ask you these questions, if
 12 we need to refer back to the testimony, we can
 13 certainly do that.
 14 **A. Understood.**
 15 Q. You also testified in the Baldus action in your
 16 depositions that in drawing the draft and final
 17 districts for Act 43, you took into consideration a
 18 concern about drawing districts that are similar in
 19 population, correct?
 20 **A. I believe that's a correct summary.**
 21 Q. And let's just go -- let's just go to a deposition
 22 transcript so we can lock that in. If you look
 23 at -- at your December 21, 2011 deposition --
 24 **A. Uh-huh.**
 25 Q. -- which is Exhibit No. 75, and if you turn to page

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1 193. Actually I think it's probably on the end of
 2 one hundred -- page 193, and then -- and then into
 3 194, there is -- there's some questions about the --
 4 the traditional criteria.
 5 **A. Okay.**
 6 Q. And there is a -- well, the question on line -- that
 7 begins on line 25, page 193, it says, "Do you agree
 8 the principles by which the map were drawn were
 9 those that were equal population, sensitivity to
 10 minority concerns, and compact and contiguous
 11 districts?"
 12 Do you see that?
 13 **A. I'm sorry, where is that?**
 14 Q. This begins at line 25 on page 193.
 15 **A. Yeah.**
 16 Q. And then it goes through the first four lines on --
 17 on page 194.
 18 **A. Okay.**
 19 Q. So there's a reference to equal population,
 20 sensitivity to minority concerns, and compact and
 21 contiguous districts. Do you see that?
 22 **A. Yes.**
 23 Q. And you answered that question, "Yes," correct?
 24 **A. I'm sorry, where is the answer? I keep on losing my**
 25 **spot here.**

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1 Q. Sure. It's -- the layout on this page is the top is
 2 193 and then 194 is directly under it so it just
 3 follows down.
 4 **A. Okay. Sorry. All right. Yeah. Yeah.**
 5 Q. All right. So this is -- this is still correct
 6 testimony as you sit here today?
 7 **A. Yep.**
 8 Q. All right. So you did take into consideration in
 9 drawing districts for Act 43 a concern about drawing
 10 those districts to be similar in population; is that
 11 correct?
 12 **A. That is correct.**
 13 Q. Did you personally analyze the similarity in
 14 population among districts that you drew?
 15 **A. It was part -- yes, it was part of what you would**
 16 **see when you were actually doing the process behind**
 17 **the computer.**
 18 Q. All right. Did anyone else assist you with that
 19 analysis?
 20 **A. I guess I'm not following the question. I mean that**
 21 **analysis was just part of the software.**
 22 Q. Part of the autoBound software?
 23 **A. Correct.**
 24 Q. So there was no separate analysis that would have
 25 been conducted in terms of trying to determine

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1 whether you've got districts that are similar in
 2 population?
 3 **A. I don't know if I would agree with that**
 4 **clarification of it that there was -- I'm sure at**
 5 **some point someone like a Dr. Gaddie took a look at**
 6 **the map and, you know, made sure that it was within**
 7 **what was deemed to be acceptable primarily for**
 8 **population equality. And if you were to deem that a**
 9 **separate analysis, I think that would be fair.**
 10 Q. As you sit here today, other than the -- using the
 11 autoBound software itself, can you identify any
 12 documents that you would have used or looked at to
 13 analyze similarity of populations of the districts
 14 that were drawn as part of Act 43?
 15 **A. The memoranda that were produced for the members of**
 16 **the legislature did contain a reference to the**
 17 **population of the districts.**
 18 Q. And they may have referred to the -- they may have
 19 referred to the populations. Did they include any
 20 kind of an analysis of -- of those -- of any
 21 differences?
 22 **A. Of the over -- of the population differences?**
 23 Q. Correct.
 24 **A. I think in the analysis in so much as there was I**
 25 **believe a baseline of what the district was with**

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1 **regard to population, over/under population and then**
 2 **where the new district landed, analysis might be**
 3 **strong because I believe it was just a sentence in**
 4 **that memorandum.**
 5 Q. And was that produced in the Baldus litigation?
 6 **A. It was.**
 7 Q. Any of the work that you performed in drawing
 8 districts for Act 43 that analyzed or took into
 9 account population -- population differences among
 10 districts, would that have been reflected in the
 11 materials that were produced in the Baldus
 12 litigation?
 13 **A. That sounds right.**
 14 Q. Now, you also took into account sensitivity to
 15 minority concerns in drawing the districts --
 16 **A. Uh-huh.**
 17 Q. -- for Act 43?
 18 **A. Yes.**
 19 Q. And did you personally do any analysis of some
 20 aspect of the sensitivity to minority concerns in
 21 the districts that you drew?
 22 **A. There's a lot in that question. Could you be a**
 23 **little bit more specific?**
 24 Q. What did you do to take into account sensitivity to
 25 minority concerns in the districts that you were

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1 drawing for Act 43?
 2 **A. Yeah. And that's where a lot of the expert help**
 3 **comes in on this is them working with you to try to**
 4 **make sure that those concerns are addressed.**
 5 Q. And Dr. Gaddie, Keith Gaddie would have been one of
 6 the people who was assisting with that analysis; is
 7 that correct?
 8 **A. Yes.**
 9 Q. There were some other people who assisted as well?
 10 **A. Not from an analysis standpoint, but, you know, as**
 11 **was discussed in the Baldus litigation, there were**
 12 **other -- there were other factors, the counsel**
 13 **working with MALDEF, various other exchanges and**
 14 **inputs that maybe don't rise to the level of**
 15 **analysis, but definitely were part of the process.**
 16 Q. And in terms of other people who were involved, did
 17 your testimony in the Baldus litigation identify any
 18 of those people who would have been involved?
 19 **A. Not -- maybe not my testimony, but I was asked**
 20 **questions related to various documents that were**
 21 **produced that reflected others that may have been**
 22 **involved in that process.**
 23 Q. Do you believe that -- that you produced in the Bal
 24 -- as part of the Baldus litigation any documents
 25 that you would have relied on in analyzing

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1 sensitivity to minority concerns in the districts
 2 that were drawn?
 3 **A. That's again a lot going on in that question. So**
 4 **could you narrow it down a little bit?**
 5 Q. Sure. So -- well, for the purpose of analyzing
 6 minority concerns or concerns to minority interests
 7 in the various districts that were drawn as part of
 8 Act 43 -- strike that question.
 9 Were there -- are there -- were there any
 10 documents or materials that you considered when you
 11 were assessing sensitivity to minority concerns as
 12 part of drawing Act 43 that to your knowledge were
 13 not produced as part of the Baldus litigation?
 14 **A. No. You would have all of those documents from the**
 15 **prior litigation.**
 16 Q. There was -- there was nothing that you recall as
 17 you sit here today that you withheld from production
 18 or at least didn't give to counsel as part of the
 19 Baldus litigation that impacted your analysis of
 20 minority concerns?
 21 **A. No.**
 22 MR. ST. JOHN: Can I have that last question
 23 and answer read back because I think there might
 24 have been a negative in there, and I'm not sure that
 25 the transcript is clear on that last answer.

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1 (Question and answer read.)
 2 BY MR. POLAND:
 3 Q. One of the other factors that you testified you took
 4 into account in drawing districts in Act 43 was
 5 compactness, correct?
 6 **A. Uh-huh.**
 7 Q. And did you personally conduct any analyses of
 8 compactness of the districts that you were drawing
 9 as part of Act 43?
 10 **A. I would take a little issue with again analysis. It**
 11 **was something that is produced by the autoBound**
 12 **software, various compactness scores and various**
 13 **measures that geographers or demographers or your**
 14 **Dr. Gaddies of the world would use.**
 15 **I would say again taking a little bit of an**
 16 **issue with the word analysis that it's more of just**
 17 **a report that is produced to be reviewed by others**
 18 **that have a greater degree of familiarity with those**
 19 **metrics.**
 20 Q. Who would have reviewed any reports produced by
 21 autoBound with respect to compactness?
 22 **A. Primarily Dr. Gaddie.**
 23 Q. Do you recall discussing with Dr. Gaddie compactness
 24 of districts that you were drawing with Act 43?
 25 **A. Not specifically, no.**

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1 Q. Did -- did Dr. Gaddie provide you with any -- any
2 feedback on the compactness of the districts?
3 **A. Not that I can recall. I'm sure he did at some**
4 **point, but I don't recall any specific guidance or**
5 **red flags or anything along those lines.**
6 Q. Do you recall any way in which you integrated any
7 comments Dr. Gaddie had into the way that you were
8 drawing the districts in Act 43?
9 **A. No.**
10 Q. Do -- do you believe that -- well, strike that.
11 Can you identify any specific documents or
12 feedback that Dr. Gaddie provided to you as -- with
13 respect to compactness of districts?
14 **A. No, not specifically, no.**
15 Q. Do you believe that to the extent that you did
16 consider compactness that would be reflected in the
17 materials produced in the Baldus case?
18 **A. I believe that's accurate.**
19 Q. And then you also testified that you took into
20 account contiguity of the districts that you drew
21 for Act 43, correct?
22 **A. Yes.**
23 Q. And I'm going to have the same string of questions
24 here.
25 **A. Right.**

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1 Q. In terms of -- in terms of analyses or assessments I
2 guess of the contiguity of districts, is that
3 something that you personally did as you were
4 drawing the districts?
5 **A. As -- in so much as there is a report. And**
6 **contiguity is a little bit of a weird one with**
7 **Wisconsin because of discontinuous areas that are**
8 **within municipal boundaries but are not necessarily**
9 **attached. So the software doesn't know prior**
10 **Wisconsin precedent on contiguity. The software**
11 **will kick back an error saying you have a**
12 **discontiguous assignment. But just knowing that we**
13 **have a precedent in Wisconsin for municipal**
14 **contiguity as opposed to a literal or geographic**
15 **contiguity, that's I guess where the report**
16 **transcends into a little bit more just an analysis**
17 **or an understanding of the districting process in**
18 **Wisconsin.**
19 Q. Are there reports then that would have been produced
20 by autoBound, would that reflect the -- any I guess
21 to the extent you call it analysis or assessment of
22 contiguity that would have existed as you drafted
23 the districts?
24 **A. I can't remember if contiguity is a report or if**
25 **it's more of an error that the software kicks back,**

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1 **so something maybe a little less formal than a**
2 **full-on report, but just maybe at some point in the**
3 **process the autoBound software jumps up and says,**
4 **"Hey, District 76 isn't entirely contiguous. Why**
5 **don't you go back and fix that."**
6 **So I don't know if it was a formal report, but**
7 **something that I'm sure the software would flag.**
8 Q. In terms of integrating any kind of feedback that
9 autoBound gave you, that's something that you're
10 essentially doing on the fly, you're changing it as
11 you go?
12 **A. I don't know if you're integrating feedback from**
13 **autoBound with regard to that because of the**
14 **different -- I don't want to say unique because I**
15 **don't know what other states are, but what the**
16 **software understands contiguity to be and what the**
17 **standard is in Wisconsin are two separate things.**
18 **So integration might not be the best way to -- to**
19 **reflect that.**
20 Q. All right. Was there anything that you would have
21 created that would have tried to bridge that gap
22 then between what autoBound is telling you in a
23 report and what you know about Wisconsin that's
24 specific to contiguity?
25 **A. How do you mean?**

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1 Q. Well, I guess if autoBound is telling you something
2 about discontinuous districts and that's not taking
3 into account what you know specifically about
4 Wisconsin, how would you translate what autoBound is
5 telling you then into how you're trying to draw
6 districts that are contiguous?
7 **A. Okay, I think if I'm following your question, if you**
8 **were to have a contiguity flag pop up, and I'm not**
9 **sure if this is the case on the current map, but I**
10 **know it was from the old map, I believe it's the**
11 **airport in Racine was discontinuous to the Racine**
12 **city boundaries but was assigned to the same**
13 **district.**
14 **So if you were to be in a situation where**
15 **autoBound, again not fully remembering if it's a**
16 **report or just an error message, if that pops up and**
17 **it, you know, jumps you over to that part of the map**
18 **and says this isn't touching, well, I'm going to**
19 **look at that, I'm going to say, okay, so this island**
20 **over here I assigned the entire city or a ward,**
21 **although we didn't really assign wards, I'm going to**
22 **make sure that that discontinuous, geographically**
23 **discontiguous area is in fact what I intended to**
24 **assign back to that main municipality.**
25 **So I guess there are certain ways to do that.**

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1 **So let's go back to the Racine airport example where**
 2 **I could click on that, you know, a group of census**
 3 **blocks or, you know, ward, or whatever level of**
 4 **geography I'm playing around with at that point and**
 5 **make sure that that is in fact a city of Racine**
 6 **census block or city of Racine ward, and that will**
 7 **be my check to see that that is in fact what I was**
 8 **intending to do.**
 9 Q. So it is -- it is changes that are made are made
 10 through the software as opposed to having some kind
 11 of -- of separate analysis that you would do and
 12 then go back and perhaps change districts for
 13 contiguity?
 14 **A. I think that's fair -- I think that's a fair**
 15 **classification.**
 16 Q. In terms of any changes that were made then for
 17 contiguity purposes to the draft districts that you
 18 were drawing for Act 43, those would have been
 19 reflected in the autoBound files themselves?
 20 **A. I don't know if that's an accurate way of**
 21 **classifying it.**
 22 Q. Okay. You don't know if they would have been
 23 reflected in -- in the autoBound files?
 24 **A. Well, if I'm understanding your question, you're**
 25 **saying is that if a contiguity error was flagged or**

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1 **any movement of a line for that matter, if that --**
 2 **once that change is made, is it reflected going**
 3 **back? I don't know.**
 4 Q. Okay. So you don't know if the change is actually
 5 recorded or the basis for the change is actually
 6 recorded?
 7 **A. Yeah. That's -- I think that's a fair -- I think**
 8 **that's a fair characterization.**
 9 Q. As you sit here today, do you know whether there
 10 were -- whether there were any kinds of analyses of
 11 contiguity that were produced, whether by autoBound
 12 or that you would have produced as you went through
 13 and drafted the maps for Act 43?
 14 MR. ST. JOHN: Let me just object to form.
 15 It's compound. You can answer the question if you'd
 16 like.
 17 THE WITNESS: Yeah, I think it goes back to the
 18 larger talk about contiguity being a little
 19 different. I don't even remember if autoBound had a
 20 contiguity report or if it was more just an error
 21 message.
 22 BY MR. POLAND:
 23 Q. Just a flag that popped up that you testified to?
 24 **A. Yeah, I don't remember the mechanics of the software**
 25 **with regard to that specifically.**

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1 Q. Would any of the work that you performed with
 2 respect to these traditional redistricting criteria
 3 that we just went over have been reflected on the
 4 computer that you used for the districting purposes
 5 in 2011?
 6 **A. I don't -- I don't understand the question, I guess.**
 7 **If you wouldn't mind reading it back or restating**
 8 **it.**
 9 MR. POLAND: Sure. We can have the court
 10 reporter read it back.
 11 (Question read.)
 12 THE WITNESS: I guess I'm not totally following
 13 the question. I mean these scores are embodied in
 14 the map itself, and the map then has a certain
 15 backhand analysis that can be done like contig --
 16 compactness reports and things like that.
 17 So the work with regard to traditional
 18 redistricting criteria is reflected in so much as
 19 that once you produce a map, you can use vari --
 20 various analytics to help you have a better
 21 understanding of the work you were doing while you
 22 were making assignments.
 23 BY MR. POLAND:
 24 Q. And all that work was performed on the districting
 25 computer that you had in 2011, correct?

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1 **A. Yes.**
 2 Q. You didn't do that on other computers or other
 3 machines, correct?
 4 **A. That's correct.**
 5 Q. And there was a lot of testimony about that
 6 obviously in your previous three depositions. That
 7 was the computer that you had in the Michael Best &
 8 Friedrich offices, correct?
 9 **A. That's correct, and it was subsequently moved over**
 10 **to the Capitol after the conclusion of at least that**
 11 **portion of the litigation and everything.**
 12 Q. Right. Yep, and I think we have quite a bit of
 13 testimony on the whole chain of custody of the
 14 computer.
 15 **A. Yes.**
 16 Q. And those files were files that you would have
 17 turned over to -- well, strike that.
 18 The files that were on the -- the computer that
 19 you used for redistricting in 2011, those you had
 20 turned over to counsel during the Baldus litigation,
 21 correct?
 22 **A. Yes.**
 23 Q. And you no longer have that computer, correct?
 24 **A. I do not.**
 25 Q. When did you last use that computer?

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1 **A. It would have been after I had come back from**
 2 **Michael Best and right about the time -- this would**
 3 **have been 2012. I'd come back to the Capitol, and**
 4 **then there was a period where I had that just in the**
 5 **Capitol.**
 6 **Then I left state service, took an unpaid leave**
 7 **of absence to work on a campaign, so that would have**
 8 **been the period. I would -- I would ballpark that**
 9 **at the latter part of August, maybe early September,**
 10 **and that would have been the last I had had any**
 11 **interaction with that computer.**
 12 Q. Of what year? August or September of?
 13 **A. Twelve.**
 14 Q. And so that was -- that was testimony I think that
 15 you gave in one of your other depositions as well, I
 16 think it was the 2013 deposition?
 17 **A. Okay.**
 18 Q. I -- I believe. But we can go back and double check
 19 that.
 20 So you have not -- to the best of your
 21 knowledge since approximately August or so of
 22 2012 --
 23 **A. Uh-huh.**
 24 Q. -- you have not had access to the computer that you
 25 used for legislative redistricting purposes?

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1 **A. That's correct.**
 2 Q. And do you know where that computer is now?
 3 **A. I don't know.**
 4 Q. Now, would you agree with me that in drafting the
 5 districts that make up Act 43, you took into account
 6 the partisan political makeup of those districts?
 7 **A. I would say it was a tool available to us.**
 8 Q. All right. And it was not only available, but you
 9 did take into account the partisan political makeup
 10 of the districts as you were drawing them, correct?
 11 **A. How -- how so?**
 12 Q. Well, let me -- let me ask you, did you take that
 13 into account in drawing the districts?
 14 **A. When you're sitting at the autoBound software and**
 15 **you make an assignment, there is the potential and**
 16 **the ability to have a slew of partisan former races**
 17 **and things like that available to you, so it is**
 18 **something that is available to you in the autoBound**
 19 **software.**
 20 Q. Okay. And you did -- you did take into account the
 21 potential partisan performance of districts as you
 22 were creating those districts in Act 43, correct?
 23 **A. I would take issue with classification of that. I**
 24 **think it's something that once you are done making**
 25 **assignments that are associated with that, then**

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1 **there is a number available to you that you can**
 2 **refer back to.**
 3 Q. All right. Is it your testimony that in drawing the
 4 districts you did not intend to actually create a
 5 partisan advantage for republicans in those
 6 districts?
 7 **A. The -- the way the -- the way the process works is**
 8 **that when you sit down with a member, and they tell**
 9 **you that they want a certain municipality in or out**
 10 **of their district, if their reasoning for that is I**
 11 **used to go to high school there and I would like to**
 12 **represent that area, I currently don't; I have**
 13 **family in that area that I would like to represent**
 14 **that I currently don't; or if it's there's a lot of**
 15 **republicans there, and I would like to get to know**
 16 **those folks, my -- my position as a legislative**
 17 **staffer isn't to pass a value judgment on what the**
 18 **motivation of a member is. My job is to try to**
 19 **accommodate that to the best of my ability and then**
 20 **to either tell my bosses I was able to accommodate**
 21 **that or make them aware that I wasn't able to**
 22 **accommodate that so when they're going through the**
 23 **vote whipping process that they have that**
 24 **information available to them.**
 25 Q. So as a legislative aide then as you're meeting with

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1 individual legislators, you're attempting to
 2 accommodate within each individual district as much
 3 as you can their preference for the makeup of the
 4 district?
 5 **A. I think that's fair.**
 6 Q. All right. And that does have a partisan component
 7 to it, correct?
 8 **A. It can. I mean if a member says -- going back to**
 9 **the kind of previous hypothetical, if the member**
 10 **wants that more republican area, it is my job to try**
 11 **to accommodate them. Or if their reasoning is that**
 12 **they used to go to high school there, I have to take**
 13 **that into account with equal weight regardless of**
 14 **the motivation behind it.**
 15 Q. All right. And but you did take into account the
 16 potential partisan performance of each of the
 17 districts on which you worked in Act 43, correct?
 18 MR. ST. JOHN: I'm going to object to that.
 19 It's vague. When you say "account," I don't
 20 understand whether you're asking as he's drawing or
 21 at some other time in the redistricting process.
 22 You can answer that question if you wish unless
 23 you wish to restate the question.
 24 MR. POLAND: Can you read back Mr. St. John's
 25 objection one more time?

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<p style="text-align: right;">Page 62</p> <p>1 (Mr. St. John's objection was read.)</p> <p>2 BY MR. POLAND:</p> <p>3 Q. This is during -- this is during the drafting</p> <p>4 process is the question.</p> <p>5 A. Uh-huh. No, to echo the -- to echo the objection of</p> <p>6 legal counsel, account I struggle with because it is</p> <p>7 there, it is available. So I mean can I see that</p> <p>8 once I try to accommodate a member or not able to</p> <p>9 accommodate a member's request, can I, you know,</p> <p>10 wrap up that specific district for -- again wrap</p> <p>11 up's a strong term, but draw a district to equal</p> <p>12 population that accommodates at least what I believe</p> <p>13 to the best of my ability their question. There is</p> <p>14 a number, a series of numbers that would pop up that</p> <p>15 reflect partisanship.</p> <p>16 Q. Did you ever read the opinion of the -- of the</p> <p>17 Baldus court?</p> <p>18 A. I did.</p> <p>19 Q. All right. Let's go ahead mark this as an exhibit.</p> <p>20 What are we on now?</p> <p>21 THE COURT REPORTER: 79.</p> <p>22 (Exhibit No. 79 marked for identification.)</p> <p>23 THE VIDEOGRAPHER: We are going off the record</p> <p>24 at 10:29 a.m.</p> <p>25 (Break taken.)</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Okay.</p> <p>2 Q. And I'd like -- like you to look at the second full</p> <p>3 paragraph that begins, "As we noted..." and you can</p> <p>4 let me know when you're there.</p> <p>5 A. Okay.</p> <p>6 Q. And I'll just start reading that. The opinion</p> <p>7 states, "As we noted, the venue of the redistricting</p> <p>8 work was the offices of Michael Best. The actual</p> <p>9 drafters included..." and it's got a number of</p> <p>10 people listed, and you're one of them, correct?</p> <p>11 A. It appears that way, yes.</p> <p>12 Q. Now, if we look just after that list of people, the</p> <p>13 opinion continues on to read, "The drafters relied</p> <p>14 on a computer program called autoBound to work with</p> <p>15 various district lines. They testified that the</p> <p>16 partisan makeup of the potential new districts</p> <p>17 played no part at all in their decisions. Handrick,</p> <p>18 for instance, testified that he did not know if</p> <p>19 partisan makeup was considered, that he had no</p> <p>20 access to voting data from past elections, and that"</p> <p>21 the "only," quote, "population equality, municipal</p> <p>22 splits, compactness, contiguity, and communities of</p> <p>23 interest," close quote, "were considered. Foltz</p> <p>24 testified that he worked with legal counsel and</p> <p>25 experts and that Speaker Fitzgerald, Senator</p>
<p style="text-align: right;">Page 63</p> <p>1 THE VIDEOGRAPHER: We are back on the record at</p> <p>2 10:35 a.m.</p> <p>3 BY MR. POLAND:</p> <p>4 Q. Mr. Foltz, just before we broke, I asked you if you</p> <p>5 had read an opinion that was written by the Baldus</p> <p>6 court in that case. And you said that you had read</p> <p>7 that -- read an opinion, correct?</p> <p>8 A. Uh-huh. Yes. That's a yes.</p> <p>9 Q. And just to be clear for the record, specific</p> <p>10 opinion that I'm talking about is one that was</p> <p>11 issued on March 22nd, 2012.</p> <p>12 A. Okay.</p> <p>13 Q. I'm going to hand you a copy of the document that</p> <p>14 the court reporter has marked as Exhibit No. 79, ask</p> <p>15 you to take a look at that. Copies. Sorry.</p> <p>16 MR. KEENAN: No, we've got them. Kevin.</p> <p>17 BY MR. POLAND:</p> <p>18 Q. And you have read Exhibit 79 before?</p> <p>19 A. I believe so.</p> <p>20 Q. Do you remember the last time that you read it?</p> <p>21 A. It would have been a long long time ago.</p> <p>22 Q. You've not read it lately?</p> <p>23 A. No.</p> <p>24 Q. I'd like you to turn to page 845, and it would be in</p> <p>25 the upper right-hand corner is page 845.</p>	<p style="text-align: right;">Page 65</p> <p>1 Fitzgerald, Robin Vos, and Senator Zipperer advised</p> <p>2 him where to draw the boundaries."</p> <p>3 Do you see that language?</p> <p>4 A. I do.</p> <p>5 Q. All right. This is just to give you some context</p> <p>6 for a question I'm going to ask.</p> <p>7 A. Okay.</p> <p>8 Q. The next paragraph starts out, "In June and July</p> <p>9 2011, Foltz had meetings about redistricting with</p> <p>10 every single republican member of the state</p> <p>11 assembly. He did not meet with any democrats.</p> <p>12 Nevertheless, he testified that it was not," open</p> <p>13 quote, "a part of the goal to increase the</p> <p>14 republican membership in the legislature," close</p> <p>15 quote. "Before his meetings with the republicans,</p> <p>16 each person was required to sign a confidentiality</p> <p>17 agreement promising not to discuss anything that was</p> <p>18 said. Ottman had similar meetings conducted under</p> <p>19 the same cloak of secrecy."</p> <p>20 Do you see that language?</p> <p>21 A. I do.</p> <p>22 Q. All right. So now I'd like you to turn to page 851,</p> <p>23 please, of the opinion.</p> <p>24 A. Okay.</p> <p>25 Q. And I'm going to direct your attention to the second</p>

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1 column of 851.

2 **A. Uh-huh.**

3 Q. And your -- the court here is talking about

4 population deviations and so this is in the context

5 of that discussion. I'd like you to -- to look at

6 the sentence that's one, two, three, four, five

7 lines down, starts out, "Numbers like these..." Do

8 you see that?

9 **A. Okay.**

10 Q. All right. "Numbers like these place a very heavy

11 burden on the plaintiffs to show a constitutional

12 violation. In the final analysis, they have failed

13 to surmount that burden. We come to that conclusion

14 not because we credit the testimony of Foltz, Ottman

15 and the other drafters to the effect that they were

16 not influenced by partisan factors; indeed, we find

17 those statements to be almost laughable. But the

18 partisan motivation that in our view clearly lay

19 behind Act 43 is not enough to overcome the de

20 minimis population deviations that the drafters

21 achieved at least under that theory."

22 Do you see that?

23 **A. I do.**

24 Q. Do you disagree with Chief Judge Wood and District

25 Judges Stadtmueller and Dow that partisan motivation

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1 clearly lay behind Act 43?

2 **A. I would go back to my prior -- my prior testimony**

3 **that my job is to accommodate the requests of the**

4 **members of the Wisconsin State Assembly,**

5 **particularly the republican caucus given that I was**

6 **employed by the Speaker. My job is to accommodate**

7 **their requests to the best of my ability and to make**

8 **sure those requests are juxtaposed, working with**

9 **experts and legal counsel, aren't running afoul of**

10 **various statutory and constitutional requirements.**

11 **Now, I'm not going to tell you that when a**

12 **member of the state assembly sat me down and asked**

13 **for X, Y, and Z that their motivations might have**

14 **been partisan. But like I said earlier, it's not my**

15 **job to place a value judgment on that and say you**

16 **don't get to make those requests because of the**

17 **partisan motivation, or if the motivation is that**

18 **they want to represent their old high school.**

19 Q. Did you -- were you aware that there was a hearing

20 last week in the Whitford case in the federal

21 district court here?

22 **A. Yeah, vaguely aware; generally aware, yes.**

23 Q. Summary -- a hearing on summary judgment motions

24 that the defendants had brought and a Daubert motion

25 that the plaintiffs had brought. Did you know the

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1 purpose of the motions?

2 **A. Not knowing what a Daubert motion is, I generally**

3 **understood it to be a motion for summary judgment.**

4 Q. Fair enough. Did you attend that hearing?

5 **A. I did not.**

6 Q. Did you speak with anybody about that hearing?

7 **A. Yes.**

8 Q. All right. Who did you speak with about that

9 hearing?

10 **A. Zach Bemis, Brian Keenan.**

11 Q. What -- what discussions did you have with

12 Mr. Keenan about that hearing?

13 MR. KEENAN: I'm going to assert the same

14 objections we've been asserting before.

15 MR. ST. JOHN: I'll join the assertion that the

16 substance of the communication with Mr. Keenan would

17 be covered by the attorney-client privilege. I

18 reiterate that the basis for it is the fact that the

19 attorney general represents Mr. Foltz today, that

20 Brian Keenan is a subordinate employee of the

21 attorney general's office; that there is no conflict

22 of interest which prevents Mr. Keenan in his

23 representation of his state clients from also

24 providing representation.

25 I am here specifically also representing -- I'm

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1 here specifically representing Mr. Foltz with

2 respect to his deposition, but an attorney-client

3 relationship continues to exist between Mr. Foltz as

4 an employee of the legislature and the attorney

5 general, and that the privilege would apply to all

6 of the subordinate attorneys within the attorney

7 general's office.

8 MR. POLAND: And Kevin, does you -- your

9 objection includes an instruction not to answer?

10 MR. ST. JOHN: As to the substance of the

11 communication, not to the fact of the communication

12 or the general subject matter of the communication.

13 BY MR. POLAND:

14 Q. And are you going to follow your client -- your

15 counsel's instruction not to answer the question?

16 **A. Yes.**

17 Q. What was the general topic of the conversation that

18 you had with Mr. Keenan about the hearing in the

19 Whitford case last week?

20 **A. Just generally the hearing itself.**

21 Q. All right. Did you discuss at all with -- with

22 Mr. Keenan how anything that was said in that

23 hearing might affect your testimony today?

24 **A. No.**

25 Q. Have you -- have you reviewed a transcript of the

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<p style="text-align: right;">Page 70</p> <p>1 hearing of -- from last week?</p> <p>2 A. I have not.</p> <p>3 MR. POLAND: Would you mark this as Exhibit --</p> <p>4 THE COURT REPORTER: 80.</p> <p>5 MR. POLAND: -- 80.</p> <p>6 (Exhibit No. 80 marked for identification.)</p> <p>7 Q. Mr. Foltz, I'm handing you a copy of a document that</p> <p>8 the court reporter has marked as Exhibit No. 80, and</p> <p>9 I'll ask you to take a look at that.</p> <p>10 A. Okay. (Witness reading.)</p> <p>11 Q. Have you seen Exhibit 80 before?</p> <p>12 A. No.</p> <p>13 Q. All right. Since you haven't, then I'll just</p> <p>14 identify it for the record that it's a transcript of</p> <p>15 a hearing held in the Whitford case on March 23rd,</p> <p>16 2016 beginning at 9:30 a.m. I'd like you to turn to</p> <p>17 page 9 of the transcript.</p> <p>18 A. Okay.</p> <p>19 Q. And I'd like you to look at beginning at line 13 of</p> <p>20 the transcript, you'll see there's a question by</p> <p>21 Judge Crabb.</p> <p>22 A. Uh-huh.</p> <p>23 Q. She -- Judge Crabb says, "I have one question. For</p> <p>24 the purpose of summary judgment, are you denying</p> <p>25 that the legislature had any partisan intent when</p>	<p style="text-align: right;">Page 72</p> <p>1 disputing that they districted with partisan</p> <p>2 advantage."</p> <p>3 Do you see that testimony?</p> <p>4 A. I do.</p> <p>5 Q. You wouldn't dispute those statements by Mr. Keenan,</p> <p>6 would you?</p> <p>7 MR. ST. JOHN: Objection. Form. You wouldn't</p> <p>8 dispute that Mr. Keenan made them or the content? I</p> <p>9 don't understand the question.</p> <p>10 MR. POLAND: The substance of the statements</p> <p>11 that Mr. Keenan made.</p> <p>12 BY MR. POLAND:</p> <p>13 Q. You don't disagree with those statements that</p> <p>14 Mr. Keenan made, do you?</p> <p>15 A. I take a little issue with just the broader context</p> <p>16 of the legislature and a broader legislative intent</p> <p>17 where it's again me as a legislative staffer trying</p> <p>18 to amalgamate the individual requests of many many</p> <p>19 different legislators, I believe we were at 60 at</p> <p>20 the time, and balancing all those var -- various</p> <p>21 interests.</p> <p>22 So I think -- and again going back to the prior</p> <p>23 testimony, if an individual legislator asked me for</p> <p>24 a certain thing, it's my job to try to accommodate</p> <p>25 that, and that legislator obviously has a very</p>
<p style="text-align: right;">Page 71</p> <p>1 it" -- and she says, "You're not."</p> <p>2 Mr. Keenan says, "No, we're not."</p> <p>3 Judge Crabb says, "That's good."</p> <p>4 Mr. Keenan goes on to say, "Our argument is</p> <p>5 that even assuming there's partisan intent and that</p> <p>6 there was some partisan intent, the standard still</p> <p>7 doesn't work."</p> <p>8 Do you see that colloquy?</p> <p>9 A. I do.</p> <p>10 Q. All right. I'd like you also now to turn to page</p> <p>11 24. And I'd like you to look at page number 13 --</p> <p>12 or I'm sorry, line 13.</p> <p>13 A. Uh-huh.</p> <p>14 Q. See again Judge Crabb states, "You're not really</p> <p>15 disputing that the republicans drew this plan with</p> <p>16 the desire to create the best possible election</p> <p>17 process for the republicans, are you?"</p> <p>18 Mr. Keenan says, "I would say I would dispute</p> <p>19 whether it's the best possible."</p> <p>20 Judge Crabb then says, "I'm not saying it</p> <p>21 turned out to be the best, but that their intent was</p> <p>22 to do the best job they could to safeguard the</p> <p>23 common seats and to increase the number of seats</p> <p>24 that would be available to republicans."</p> <p>25 Mr. Keenan then says, "I think -- I'm not</p>	<p style="text-align: right;">Page 73</p> <p>1 parochial interest in their own district. So my job</p> <p>2 is to accommodate those.</p> <p>3 So I take a little bit of issue with the</p> <p>4 broader -- a broader implication of the legislature</p> <p>5 as a whole.</p> <p>6 Q. In performing your work in Act 43, and indeed as the</p> <p>7 Baldus court identified in its opinion, there</p> <p>8 were -- there were other elected representatives who</p> <p>9 participated in the drafting process, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And that included your -- your boss at that time,</p> <p>12 Speaker Jeff Fitzgerald, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that also included Senate Majority Leader Scott</p> <p>15 Fitzgerald who you work for now, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And that also included, I believe, Robin Vos,</p> <p>18 Senator Zipperer were two of the others that were</p> <p>19 mentioned, correct?</p> <p>20 A. That's correct.</p> <p>21 Q. And certainly you had the -- you had the assembly</p> <p>22 speaker, and you had the senate majority leader who</p> <p>23 were part of that process, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. You met with both Speaker Fitzgerald and Senate</p>

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1 Majority Leader Fitzgerald as part of the process of
2 drawing the districts in 2011, correct?
3 **A. Yeah, they were part of that broader group that you**
4 **had enumerated.**
5 Q. And so your -- you may have met individually with
6 different representatives, but you also met with
7 the -- the senate majority leader and the assembly
8 speaker with respect to drawing the districts, too,
9 correct?
10 **A. Along with Senator Zipperer, Representative Vos,**
11 **Representative Suder.**
12 Q. So the legislative leadership was a part of that
13 process, too, correct?
14 **A. Which part of the process? Because there was a lot**
15 **of different steps to this process.**
16 Q. Part of the drafting process.
17 **A. It was part of the determination of regional**
18 **alternatives. I want to be specific just because**
19 **process and drafting, there's a lot of different**
20 **ways it could go.**
21 **Their involvement was specifically the**
22 **determination of multiple regional alternatives,**
23 **which direction they would prefer to go.**
24 Q. And they did review those with you, correct?
25 **A. That's correct.**

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1 Q. You do not intend to testify at trial that you
2 didn't intend to advantage republicans in creating
3 districts that make up Act 43, do you?
4 MR. ST. JOHN: Objection to form.
5 THE WITNESS: I -- yeah, repeat the question or
6 restate the question.
7 BY MR. POLAND:
8 Q. Sure. If asked -- if asked at trial, you don't
9 intend to testify that you -- that in drawing Act
10 43, you didn't intend to advantage republicans,
11 correct?
12 **A. My testimony will be consistent with the testimony**
13 **I'm giving today that my job was to balance the**
14 **requests of individual legislators to the best of my**
15 **ability.**
16 Q. And the only legislators that you met with were
17 members of the republican caucus, correct?
18 **A. That's correct.**
19 Q. In drafting Act 43, you took into account the
20 potential partisan performance of the districts you
21 were drawing by taking previous election data and
22 calculating how the districts would perform on a
23 partisan basis, correct?
24 **A. I take issue with a few things in that question.**
25 **Your question builds in an idea of projection going**

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1 **forward that wasn't part of the process. The -- the**
2 **pro -- I mean the number available was a history of**
3 **past performance and how a new district's lines, if**
4 **you were to go back in time and put that new**
5 **district in place for a prior election, what that**
6 **performance would have been, assuming -- I think**
7 **it's also I should point out assuming that that seat**
8 **would be open at the time as well.**
9 Q. You -- as part of your work on Act 43, you worked
10 with Keith Gaddie, correct?
11 **A. Yes.**
12 Q. And you worked with Keith Gaddie on partisanship
13 analyses, correct?
14 **A. I don't specifically recall working with Dr. Gaddie**
15 **on partisanship specifically.**
16 Q. All right. You met with Dr. Gaddie several times
17 when he was in Madison, correct?
18 **A. Correct.**
19 Q. And in the -- and this is in the spring of 2011. So
20 unless I tell you otherwise, I'd like you to assume
21 a time frame between April 1st, 2011 and June 30,
22 2011, okay?
23 And you met with Dr. Gaddie in approximately
24 mid-April of 2011 in Madison?
25 **A. I don't specifically recall that time frame, but**

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1 **I'll take your word for it.**
2 Q. All right. And you met with Dr. Gaddie in Madison
3 in late May of 2011?
4 **A. Again not specifically recalling, but I would**
5 **imagine.**
6 Q. All right. Do you recall meeting with Dr. Gaddie in
7 Madison a third time in June of 2011?
8 **A. Again not specifically recalling that it was in June**
9 **or how many times we met, but I know that Dr. Gaddie**
10 **came in a few times.**
11 Q. Do you know that Dr. Gaddie was deposed in the
12 Whitford litigation?
13 **A. I do know that.**
14 Q. All right. And do you know it was earlier this
15 month that he was deposed?
16 **A. I take your word for it.**
17 Q. Did you read a transcript of Dr. Gaddie's
18 deposition?
19 **A. No, I did not.**
20 Q. Did you talk to anyone about Dr. Gaddie's
21 deposition?
22 **A. Yes.**
23 Q. Who did you talk with about Dr. Gaddie's deposition?
24 **A. Mr. Keenan.**
25 Q. All right. When did you talk with Mr. Keenan about

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1 Dr. Gaddie's deposition?
 2 **A. I don't specifically recall. Sometime after his**
 3 **deposition.**
 4 Q. Did you talk about the substance of Dr. Gaddie's
 5 testimony with Mr. Keenan?
 6 MR. ST. JOHN: You can answer that question.
 7 THE WITNESS: I don't --
 8 MR. ST. JOHN: It's a yes or no question. Did
 9 you talk about the substance?
 10 THE WITNESS: Yeah. I'd say that's fair.
 11 BY MR. POLAND:
 12 Q. All right. Did you talk with Mr. Keenan about
 13 specific testimony that Dr. Gaddie gave on
 14 partisanship analyses?
 15 **A. Not that I can specifically recall, no.**
 16 Q. What was the substance of the discussion that you
 17 had with Mr. Keenan about Dr. Gaddie's deposition
 18 testimony?
 19 MR. ST. JOHN: I'll assert the attorney-client
 20 privilege with respect to that conversation about
 21 the substance for the reasons previously stated,
 22 instruct the witness not to answer the question.
 23 BY MR. POLAND:
 24 Q. And you'll follow your counsel's instruction not to
 25 answer that question?

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1 **A. I will.**
 2 MR. KEENAN: And I'd just interpose the
 3 additional work product objection I've been making
 4 in this deposition.
 5 Q. Turning your attention back to the spring of 2011,
 6 so again between April and the end of June, each
 7 time you met with Dr. Gaddie in Madison, that was at
 8 the offices of Michael Best & Friedrich, correct?
 9 **A. Yes.**
 10 Q. And each time you met with him, you discussed with
 11 him the draft districts that were -- that had been
 12 created at the time and various aspects of those
 13 districts, correct?
 14 **A. I think that's fair.**
 15 Q. Now, one of the tasks that Dr. Gaddie had in working
 16 as a consultant in the spring of 2011 was to develop
 17 a regression model that would take data from
 18 previous elections and calculate how the draft
 19 districts that you were drawing would perform on a
 20 partisan basis, correct?
 21 **A. Yeah, I think that's fair, but there's some**
 22 **ambiguity in there which I'm sure we'll get to**
 23 **shortly here.**
 24 Q. Now, Dr. Gaddie's regression model could be used to
 25 attempt to forecast the partisan performance of

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1 districts that you were drawing based on election
 2 results from past elections, correct?
 3 MR. ST. JOHN: Can you read the question back,
 4 please?
 5 (Question read.)
 6 MR. ST. JOHN: I'll just object to that that it
 7 calls for speculation and asks for the witness's
 8 opinion on non-fact testimony.
 9 THE WITNESS: I don't know if that's a proper
 10 way of determining what Dr. Gaddie's work was. I
 11 know that there was a regression model. I don't
 12 know what the probative value is to that model going
 13 forward as opposed to a summary of past performance.
 14 BY MR. POLAND:
 15 Q. Did you ever -- did you ever use Dr. Gaddie's
 16 regression analysis or regression model to predict
 17 the partisan outcome of districts that you were
 18 drawing?
 19 **A. To be clear on this, Dr. Gaddie's regression model**
 20 **was not some -- was not information that was**
 21 **available to us during the drawing process.**
 22 Q. Did you ever give Dr. Gaddie draft district
 23 boundaries and ask him to run those through his
 24 regression model for the purpose of determining what
 25 the partisan makeup of that district would be?

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1 **A. Not that I can recall. Like I said, it's not --**
 2 **it's not a data point we had available to us during**
 3 **the drawing, but that doesn't mean that there wasn't**
 4 **a point where Dr. Gaddie used his regression model**
 5 **after, you know, more of a -- I don't want to say**
 6 **completion of the process, but once the process had**
 7 **gotten to a certain point.**
 8 Q. Is it your understanding that Dr. Gaddie's
 9 regression model could be used to forecast partisan
 10 performance in the newly configured districts that
 11 you were drawing?
 12 **A. I don't -- again I don't think that's an -- I don't**
 13 **know if academics would say that that's a**
 14 **forward-looking projection. I don't know enough**
 15 **about the nuts and bolts of the regression. So my**
 16 **understanding was it was a regression based off of**
 17 **prior elections. So I don't know if that inherently**
 18 **or if you need to do more to a regression to make it**
 19 **something that's not just backward looking but also**
 20 **forward looking. I don't understand enough about**
 21 **that.**
 22 **But again it was not, you know, it wasn't -- it**
 23 **wasn't something I had available to me as I clicked**
 24 **through and made assignments on the map. So it**
 25 **wasn't -- it just wasn't something I dealt with on a**

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1 **day-in/day-out basis.**
 2 Q. But did you -- did you take any of the draft
 3 districts that you were drawing and review them with
 4 Dr. Gaddie and get Dr. Gaddie's feedback from how he
 5 believed that those districts would perform on a
 6 partisan basis in elections going forward?
 7 **A. Not that I specifically recall. Again, not**
 8 **really -- not really understanding if his regression**
 9 **has a forward-looking component to it. That's what**
 10 **I keep on getting hung up on. I don't know if you**
 11 **were to sit down with Dr. Gaddie, which you have, if**
 12 **he would say that it's a forward projection or**
 13 **simply something that looks backward, so I don't --**
 14 **I take issue with forward projection because I**
 15 **really don't understand enough of the political --**
 16 **the social science behind it and how that would lead**
 17 **to implications or projections for future elections.**
 18 Q. Did you -- did you -- your understanding of it
 19 notwithstanding, did -- did Dr. Gaddie ever give you
 20 any feedback on the potential partisan performance
 21 of any districts that then caused you to go back and
 22 adjust the district boundaries that you were
 23 drawing?
 24 **A. No.**
 25 MR. POLAND: Would you mark this, please.

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1 (Exhibit No. 81 marked for identification.)
 2 Q. Mr. Foltz, I'm handing you a copy of a document that
 3 the court reporter has marked as Exhibit 81. I'd
 4 like you to take a look at this document, then I'll
 5 have some questions for you about it.
 6 **A. (Witness reading.) Okay.**
 7 Q. Have you ever seen Exhibit 81 before?
 8 **A. I have.**
 9 Q. When did you first see Exhibit 81?
 10 **A. I first saw this exhibit when plaintiffs were**
 11 **exploring a 30(b)(6), a second -- not to be confused**
 12 **with my prior 30(b)(6) deposition, but a new**
 13 **30(b)(6) deposition earlier in the month of March, I**
 14 **believe, maybe late February. This was attached as**
 15 **an exhibit to that.**
 16 Q. All right. And when you say March, you're talking
 17 about 2013 now, correct?
 18 **A. '16.**
 19 Q. Oh, just of this year?
 20 **A. Just of this year.**
 21 Q. So this is not -- Exhibit 81 is not a document that
 22 you saw during the Baldus litigation?
 23 **A. That's correct.**
 24 Q. All right. So you just saw this as of March 2016.
 25 Who -- who gave you a copy of Exhibit 81?

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1 **A. Somebody from DOJ. As I said, it was something that**
 2 **was attached when your clients were exploring the**
 3 **idea of a 30(b)(6) deposition. This was attached to**
 4 **that 30(b)(6).**
 5 Q. Understand. Did you -- you never saw Exhibit 81
 6 between April and June of 2011?
 7 **A. No.**
 8 Q. All right. I'd like you to take a look -- well,
 9 strike that question.
 10 Do you know who drafted Exhibit 81?
 11 **A. My understanding it was Dr. Gaddie.**
 12 Q. All right. And I'll represent to you that
 13 Dr. Gaddie did testify at his deposition that he did
 14 draft this document.
 15 **A. Okay.**
 16 Q. I'd like you to look at the first paragraph.
 17 **A. Uh-huh.**
 18 Q. Do you see that Dr. Gaddie says in this document the
 19 measure -- "The measure of partisanship should exist
 20 to establish the change in the partisan balance of
 21 the district. We are not in court at this time; we
 22 do not need to show that we have created a fair,
 23 balanced, or even a reactive map. But we do need to
 24 show to lawmakers the political potential of the
 25 district."

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1 Do you see that?
 2 **A. I do.**
 3 Q. Did you ever discuss with Dr. Gaddie the need to
 4 show to lawmakers the political potential of a
 5 district?
 6 **A. No, not that I can recall.**
 7 Q. Did you ever discuss the -- the potential
 8 political -- I'm sorry, the political potential of
 9 the district with Mr. Ottman or Mr. Handrick?
 10 **A. Political potential of the district. Are we**
 11 **referring to Dr. Gaddie's regression or are we**
 12 **saying in a broader context?**
 13 Q. Let's -- let's talk about first with respect to
 14 Dr. Gaddie's regression model.
 15 **A. Yeah. And going back to that, the regression model**
 16 **was not something that we had as a data point**
 17 **available to us when we were assigning various units**
 18 **of geography to a given district.**
 19 Q. And when you say "we," are you speaking for
 20 yourself and Mr. Ottman and Mr. Handrick?
 21 **A. I'm speaking for myself.**
 22 Q. Just for yourself.
 23 **A. But the data point of the regression output was not**
 24 **available to us as the map drawers/legislative staff**
 25 **tasked with this.**

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1 Q. Did Dr. Gaddie ever tell you the output of the
2 regression model?
3 **A. The output of the -- so the output of the regression**
4 **model when a map was completed or -- because I mean**
5 **there's a couple different ways that question could**
6 **go. There was an exchange between Joe Handrick and**
7 **Dr. Gaddie that referenced his regression. Again**
8 **though we didn't have that available on our**
9 **computers.**
10 **I believe at some point, too, Dr. Gaddie ran**
11 **some type of analysis, some type of, I don't know,**
12 **social science on it. He may have used his**
13 **regression model on that. I don't know that for a**
14 **fact, though.**
15 Q. Did you ever discuss that with Dr. Gaddie by --
16 well, strike that question.
17 Did you ever discuss with Dr. Gaddie the output
18 of his regression model with respect to any
19 districts that you were drawing?
20 **A. Maybe. Like I said, there was an analysis. I don't**
21 **know if that analysis was based off of his**
22 **regression or not. So I don't -- I can't answer**
23 **that question with any degree of certainty.**
24 Q. And what's the analysis that you're talking about?
25 **A. He did some type of curve or some types of curves**

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1 **that took the form of an Excel sheet somewhere late**
2 **in the process after -- well, again I don't want to**
3 **get too far out there, but it was later in the**
4 **process he ran some type of analysis that may or --**
5 **I don't know if he used the regression or not.**
6 Q. All right. And those -- those curves that he ran,
7 were those Excel spreadsheets -- strike that
8 question.
9 Did you discuss with Dr. Gaddie those curves
10 that he created?
11 **A. I'm sure we did at some point. I don't have any**
12 **specific recollection of the curve. Again not**
13 **knowing if it was based off of a regression or based**
14 **off of some different type of composite score, but**
15 **I'm sure at some point we talked about it, but I**
16 **don't have any specific recollection.**
17 Q. All right. I'd like to go back to Exhibit 81 and
18 look at the second paragraph. Do you see where it
19 says, "I have gone through the electoral data for
20 state office and built a partisan score for the
21 assembly districts."
22 Do you know what Dr. Gaddie is talking about
23 there when he uses the term "partisan score"?
24 **A. I'm assuming that is a reference to the regression**
25 **that we've been discussing.**

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1 Q. All right. And then he goes on to say, "It is based
2 on a regression analysis of the assembly vote from
3 2006, 2008, and 2010..."
4 Do you see that?
5 **A. I do.**
6 Q. All right. Did you have an understanding at the
7 time that that was the basis for Dr. Gaddie's
8 regression analysis?
9 **A. I don't -- I didn't remember specifically that it**
10 **was '06, '8 and '10. I know it was past partisan**
11 **analysis that was fed into the regression model, but**
12 **I don't know where Dr. Gaddie chose to draw his**
13 **cutoff or line of demarcation of what data goes in**
14 **versus what data that doesn't.**
15 Q. All right. And then that sentence goes on to state,
16 "...and it is based on prior election indicators of
17 future election performance."
18 Do you see that?
19 **A. I do.**
20 Q. Do you understand that Dr. Gaddie's regression model
21 was intended to relate to future election
22 performance?
23 **A. Based on plain language reading of this that seems**
24 **to be the case.**
25 Q. Was that your understanding at the time in 2011?

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1 **A. No, not necessarily. Like I said, I didn't know if**
2 **it was simply something that would look to past**
3 **results to give you an understanding of where things**
4 **are, you know, today, today in this context being**
5 **the -- when the map was drawn or being evaluated.**
6 **But again, evaluate is a bad word because we didn't**
7 **have this available to us to evaluate.**
8 Q. Looking at the third paragraph then of Exhibit 81,
9 Dr. Gaddie says, "I am also building a series of
10 visual aids to demonstrate the partisan structure of
11 Wisconsin politics. The graphs will communicate the
12 top-to-bottom party basis of the state politics. It
13 is evident from the recent Supreme Court race and
14 also the Milwaukee County executive contest that the
15 partisanship of Wisconsin is invading the ostensibly
16 non-partisan races on the ballot this year."
17 Do you see that language?
18 **A. I do.**
19 Q. All right. Did you ever see any visual aids or
20 graphs that Dr. Gaddie created?
21 **A. Going back to the prior testimony, there was -- like**
22 **I said, late in the process, there was some type of**
23 **analysis he ran that again I'm not sure if it was**
24 **the regression model or some different type of**
25 **composite he used. So I think that would classify**

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1 as a visual aid, but again I'm not sure how he
2 defines visual aid.
3 Q. Did you see, is there any way that you define visual
4 aid that would characterize output that Dr. Gaddie
5 gave to you?
6 A. I think I go back to that curve, although normally
7 when I think of Microsoft Excel I don't think of
8 visual aid, I think of a spreadsheet, but Dr. Gaddie
9 did create some series of curves that he used in his
10 evaluation late in the process.
11 Q. Do you recall looking at any of those curves that
12 Dr. Gaddie created?
13 A. I'm sure I did.
14 Q. Do you remember where you had looked at those?
15 A. Physically where I was?
16 Q. Correct.
17 A. It would have been at Michael Best.
18 Q. Was Dr. Gaddie there with you at the time?
19 A. He would have to have been.
20 Q. And you would have discussed those curves with him?
21 A. Again not recalling a specific conversation on the
22 curves, I'm sure we talked about them when he
23 produced them.
24 Q. Was anyone else present with you when you talked
25 about the curves with Dr. Gaddie?

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1 A. I don't specifically recall anyone being there, but
2 there was a good chance that it was Tad Ottman,
3 possibly even Joe Handrick.
4 Q. Was there a room at Michael Best that you referred
5 to or that was generally referred to as the map
6 room?
7 A. Yeah, I think that's a safe way of describing our
8 office.
9 Q. Was there -- was a discussion of these curves --
10 strike that question.
11 Did the discussion of curves that you had with
12 Dr. Gaddie occur in the map room?
13 A. Yeah.
14 Q. Were you looking at -- at potential -- well, strike
15 that.
16 Were you -- were you looking at -- at maps at
17 the same time you were discussing the curves with
18 Dr. Gaddie?
19 A. I don't know if we were or not.
20 Q. Do you recall the discussions that you had, the
21 substance of the discussions you had with Dr. Gaddie
22 about the curves?
23 A. No.
24 Q. Now, another -- another task of Dr. Gaddie's was to
25 assist you and Tad Ottman and Joe Handrick in

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1 identifying a proxy for partisan outcome; is that
2 correct?
3 A. I'm not sure what you mean by that. I think your --
4 not to assume too much in your question, but are you
5 referring to the email exchange with Handrick and
6 Gaddie on the correlation between the two?
7 MR. POLAND: Let's just mark that.
8 (Exhibit No. 82 marked for identification.)
9 Q. Mr. Foltz, I'm handing you a copy of a document that
10 has been marked at depositions before, but we're
11 going to mark it as Exhibit No. 82 here for your
12 deposition.
13 A. Okay. Many times before.
14 Q. Yes.
15 A. (Witness reading.)
16 Q. Mr. Foltz, have you seen Exhibit No. 82 before?
17 A. Yes.
18 Q. And I want you to look at the lower right-hand
19 corner of Exhibit 82. Do you see there is what we
20 refer to as a Bates stamp there that says Foltz
21 001059?
22 A. I do.
23 Q. On the first page. Do you understand that indicates
24 that this is a document that came from your files or
25 files that you produced?

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1 A. Yes, that's my understanding of the Bates numbering.
2 Q. And I will represent that this was produced as part
3 of the Baldus litigation.
4 A. Uh-huh.
5 Q. The -- is this the -- the email exchange that you
6 were referring to in your testimony a minute ago?
7 A. Yeah. I'm just reviewing it.
8 Q. Yep, no, take a minute to review it.
9 A. (Witness reading.) Okay.
10 Q. And you've seen Exhibit 82 before, correct?
11 A. I have.
12 Q. When was the last time that you saw Exhibit 82?
13 A. I would have seen it in my preparation for this
14 deposition as I reviewed prior exhibits that have
15 been produced during the Baldus depositions.
16 Q. All right. Now, turning your attention to the top
17 of Exhibit 82, you'll see there is a -- a Gmail
18 header, and it has your Gmail address there,
19 correct?
20 A. That's correct.
21 Q. And so Exhibit 82 came from your Gmail files,
22 correct?
23 A. Yes.
24 Q. And the -- just below that there is a header that
25 says -- it's got Joseph Handrick's name and it says

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1 to Adam Foltz and Tad Ottman, and the date is
2 Wednesday, April 20th, 2011, correct?
3 **A. I -- yes.**
4 Q. All right. And the message just below that, it's
5 just a single line, it says, "See Keith's comments
6 below." Do you see that?
7 **A. I do.**
8 Q. And so if we -- if we jump down to the message
9 that's directly below that, it says that it's from
10 rkgaddie@ou.edu. Do you see that?
11 **A. I do.**
12 Q. And that's Dr. Gaddie's email address, or at least
13 it was at that time?
14 **A. Yes.**
15 Q. And then this is going to joeminocqua@msn.com,
16 correct?
17 **A. Yes.**
18 Q. And that's Joe Handrick?
19 **A. Yes.**
20 Q. And the date of that is it's the same date, April
21 20th, 2011, correct?
22 **A. Uh-huh.**
23 Q. Now, do you see the body of that message states,
24 "Hey, Joe. I went ahead and ran the regression
25 models for 2006, 2008, and 2010 to generate open

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1 seat estimates on all of the precincts."
2 Do you see that?
3 **A. I do.**
4 Q. All right. What did you understand that to mean
5 when you received this forwarded email from
6 Mr. Handrick?
7 **A. Regression model -- I mean it's fairly**
8 **self-explanatory. He ran a regression on those**
9 **three election cycles and then generated some type**
10 **of model. Precinct is a bit of a -- I don't know**
11 **what he means there because in Wisconsin we don't**
12 **really refer to things as precincts so I don't know**
13 **if he's referring to like the ward level or**
14 **something bigger or smaller. I'm assuming it's the**
15 **ward level. But I don't know what data set he was**
16 **working off of so I don't know what precincts is**
17 **referring to specifically.**
18 Q. Did you talk with Dr. Gaddie at all about -- about
19 the running the regression models to generate open
20 seat estimates on all of the whether they were
21 precincts or wards?
22 **A. In so much as I knew that it was part of what he was**
23 **working on.**
24 Q. Did you talk with Mr. Handrick about this work of
25 Dr. Gaddie's?

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1 **A. I'm sure we did at some point.**
2 Q. What was the substance of your conversation with
3 Mr. Handrick about this particular work Dr. Gaddie
4 was doing?
5 **A. Yeah, I don't -- I don't remember.**
6 Q. Now, the next paragraph down -- well, actually did
7 you talk with Mr. -- Mr. Ottman about this
8 particular work that Dr. Gaddie was doing?
9 **A. I'm sure we spoke about it at some point.**
10 Q. What was the substance of your conversation with
11 Mr. Ottman about that work?
12 **A. I don't remember the specific points of the**
13 **conversation, but I'm sure we talked about it.**
14 Q. If you look at the next paragraph down, you'll see
15 that Dr. Gaddie comments "At this point" -- well, to
16 make it complete, "But at this point, if you asked
17 me, the power of the relationships indicates that
18 the partisanship proxy you are using," and then in
19 parens "all races, is an almost perfect proxy for
20 the open seat vote and the best proxy you'll come up
21 with."
22 Do you see that statement?
23 **A. I do.**
24 Q. All right. What did you understand this to mean
25 when you received this email in 2011?

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1 **A. That there was a composite of races that achieved a**
2 **certain degree of accuracy basically, or it**
3 **correlated with what Dr. Gaddie was doing.**
4 Q. Doing with his regression model, correct?
5 **A. Yeah.**
6 Q. So the intention was to come up with a proxy for the
7 output of Dr. Gaddie's regression model, correct?
8 **A. I would -- I would take issue with the phrasing of**
9 **that question because I mean this was -- it's an**
10 **attempt to have an accurate descriptor of a**
11 **district, and if you believe that a sophisticated**
12 **analysis or a more sophisticated analysis like**
13 **Dr. Gaddie's is more accurate, you're going to**
14 **strive for our lesser sophisticated composites to**
15 **try to be that. I mean you want an accurate number,**
16 **and if you -- it's predicated on believing that, you**
17 **know, Dr. Gaddie's regression is accurate, but**
18 **you're looking for something that can describe a --**
19 **a statistic that can describe the political world**
20 **basically, and you want that to be accurate. You**
21 **don't want to be working with inaccurate data.**
22 Q. Correct. But you also didn't want to have to go
23 back to Dr. Gaddie every time and have him run his
24 regression analysis every time, correct?
25 **A. I mean you just physically couldn't do that.**

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1 Q. And that's why you needed to have -- you needed to
2 have a partisanship proxy so that those numbers
3 didn't have to be generated by Dr. Gaddie's
4 regression model every time you wanted to get that
5 information, correct?
6 **A. I don't -- I don't know if that's the motivation for
7 it. I mean you're looking for a statistic to
8 describe the world around you. And it's more just
9 that there are certain limitations not only of, you
10 know, just the mathematical limitations of, you
11 know, me not being a social scientist or, you know,
12 Tad or Joe not being a social scientist, but the
13 autoBound software itself, things like that where
14 Dr. Gaddie may use something much more sophisticated
15 to develop this type of regression analysis. We
16 don't have that. We just have a fairly simple way
17 of looking at the world around us with, you know,
18 averages basically.**
19 Q. Right. And that's what the proxy was designed to
20 do, correct?
21 **A. To give us a statistic to describe a district.**
22 Q. And one of the descriptions is the partisan makeup
23 of that district, correct, or the partisan outcome
24 of that district?
25 MR. ST. JOHN: Object to form. It's compound.

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1 MR. POLAND: It is compound. Could you read
2 the question back, please?
3 (Question read.)
4 MR. POLAND: You can answer if you understand
5 the question.
6 THE WITNESS: I would take -- I'm sorry, not to
7 have you do this again, what was the question?
8 (Question read.)
9 THE WITNESS: I would have -- I would take
10 issue with outcome. I would take issue with
11 anything that purports to be forward looking. I
12 think makeup is accurate. I think it's more -- more
13 accurate to describe it because it is -- any
14 composite is an average of prior races with regard
15 to, you know, a composite, just a sum total of prior
16 races. So I think makeup is probably a little bit
17 more accurate.
18 BY MR. POLAND:
19 Q. What if I used the word potential partisan outcome
20 of that district based on past election data?
21 **A. Again I would take issue with that. I would take
22 issue with the forward looking on taking prior races
23 and just simply coming up with an average.**
24 Q. Is it your understanding, though, that both
25 Dr. Gaddie's regression model and the partisanship

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1 proxy could be used for the purpose of determining
2 the potential partisan outcome of a future election
3 based on the past election data?
4 **A. Yeah. And again, I take -- I take issue with that.
5 I mean obviously taking Dr. Gaddie's mention here of
6 the -- or, you know, from the prior exhibit on
7 forward looking at face value, the averages were
8 averages. And so I don't know if the difference
9 between the regression model is something built into
10 that, some coefficient or something in the math that
11 creates a forward-looking aspect to it and just how
12 it's structured, what the math is, where what I know
13 of the composites is that they are just simply
14 averages of prior races.**
15 So I'll leave it to the social scientists to
16 debate whether past performance is indicative of
17 future results, but this -- this metric, this
18 composite is just nothing more than prior election
19 results. And any time you get into that, the
20 individual nuances of races are going to factor in
21 because, you know, you can have very competitive
22 races that come out to be 50/50. We've seen a
23 series of wave elections in Wisconsin.
24 I mean, you know, certainly lower ticket races
25 are much more subjective -- or much more subject to

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1 **these nuances than maybe top of the ticket where
2 things maybe average out a little bit more across
3 the state. So I take issue with that because I
4 think the individual races can sometimes throw this
5 off, and I think the individual races are obviously
6 backward-looking occurrences.**
7 So I take a little bit of issue with that, and
8 I think that individual races have unique
9 characterization -- or characteristics to them that
10 don't necessarily make it something you can look
11 forward in the future because I don't know what the
12 future holds. You know, I mean obviously we're
13 going to have a much more competitive U.S. Senate
14 race this time around than when Robert Gerald Lorge
15 ran against Herb Kohl, you know, things like that.
16 Q. Did you -- did you use the partisanship proxy that
17 Dr. Gaddie identified in assessing the partisan
18 makeup of the draft districts that you were creating
19 for Act 43?
20 **A. It was an available data point to us.**
21 Q. And I understand that it was available, but did you
22 actually refer to it as you were drawing districts
23 for Act 43?
24 **A. You could have. You could have made an assignment
25 and then gone over to whatever portion of the matrix**

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1 **to look at that. That is something that was**
 2 **available to you as a map drawer.**
 3 Q. And I understand it was available, but I'm just
 4 asking a different question. So I'm asking whether
 5 you actually did that as part of the drawing
 6 process.
 7 **A. Yeah, I'm sure -- I mean I think it's safe to say**
 8 **that when assignments were made I could reference**
 9 **that and look at it, yes.**
 10 Q. But the question is a little different. I know you
 11 could, there's a potential there. But it's not a
 12 conditional question. The question is did you
 13 actually do that?
 14 **A. Yeah, it was there. It was on the screen.**
 15 Q. Did you ever modify a district that you drew after
 16 reviewing either results of an application of
 17 Dr. Gaddie's regression model or applying a partisan
 18 proxy -- partisanship proxy to that district?
 19 **A. There's a couple of different things in that**
 20 **question that's kind of required to be split out.**
 21 **As I testified to, if you make assignments, the**
 22 **partisan proxy score is there. The regression**
 23 **analysis is not something that was available to us**
 24 **as we were drawing so that's -- I think it's an**
 25 **important distinction to make.**

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1 Q. That's fair. So let's just limit the question to
 2 the partisan proxy score.
 3 **A. Right.**
 4 Q. Did you ever -- after -- after generating a partisan
 5 proxy score, looking at partisan proxy score for a
 6 draft district that you drew, did you ever
 7 reconfigure the district in a way that increased the
 8 partisan proxy score for republicans?
 9 **A. Well, and again I've got to take a little issue with**
 10 **the phrasing of that question. Because partisan**
 11 **proxy score for the republicans has certain**
 12 **implications for the broader map. Partisan proxy**
 13 **score to an individual district is a different**
 14 **thing. So again I want to make sure we're not**
 15 **crossing streams here.**
 16 **So if you draw a district and you finalize the**
 17 **assignments for it, again finalize being kind of a**
 18 **nebulous term, I can look at that partisan proxy. I**
 19 **do not recall any specific instance where I looked**
 20 **at that and said the member's requests are wrong,**
 21 **I'm going to go a different direction and overrule**
 22 **them. Again my job was to accommodate the member's**
 23 **requests for that district to the best of my**
 24 **ability.**
 25 **So if that member wanted a certain township**

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1 **that maybe was 50/50, that's their right to request**
 2 **that.**
 3 Q. Did you ever adjust the boundaries of a district
 4 based on a partisan proxy score for a specific
 5 district?
 6 **A. Not that I can specifically recall.**
 7 Q. What about for -- what about for the map overall,
 8 for the assembly districts overall in the state?
 9 **A. Well, again, not wanting to cross streams here. So**
 10 **what are you saying, that if there was an individual**
 11 **partisan proxy score?**
 12 Q. Well, let me ask the question. Was there -- was
 13 there a partisan proxy score that was generated for
 14 the act -- for the map as a whole, all the assembly
 15 districts together?
 16 **A. There was at one point a summary of the partisan**
 17 **proxy scores for all the districts. That summary**
 18 **did not exist until after the map had been basically**
 19 **finalized.**
 20 Q. Do you recall when that was, the time frame?
 21 **A. No, I don't. It would have been -- it would have**
 22 **been sometime around the drafting request, you know.**
 23 **I don't know if I ran it before that or after we put**
 24 **in the drafting request just because we were trying**
 25 **to get the drafting process going. So somewhere in**

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1 **there after all the decisions had been made I could**
 2 **take that partisan score and dump it into a**
 3 **spreadsheet, which, you know, we've talked about**
 4 **before, and I'm sure we'll talk about again.**
 5 Q. All right. Just to make sure that I'm clear on this
 6 then, is it your testimony that after reviewing a
 7 partisan proxy score for a specific district, you
 8 did not change that district in a way that increased
 9 the partisan proxy score for the republicans?
 10 **A. And again, this is the crossing of districts between**
 11 **individual and the broader context of the map. So**
 12 **the process, the leadership team did have various**
 13 **regional alternatives available to them. They would**
 14 **make a decision based on the various factors. If**
 15 **they asked me what the partisan score was of that, I**
 16 **could tell them at the time that option A is, you**
 17 **know, a certain partisan proxy score of X percent**
 18 **and another option is Y, and that option X gives the**
 19 **member everything they're asking for, but option Y**
 20 **defers to the member next door who wants the same**
 21 **piece of territory they do.**
 22 **And so, you know, they know that there is a**
 23 **competition between two members for a same township.**
 24 **And then they would also have available to them the**
 25 **scores if they asked for them, whether it be prior**

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1 **election races, you know, whether it be, you know,**
 2 **J.B. Van Hollen in 2010, or if they wanted to, they**
 3 **could also have access to that composite score, that**
 4 **amalgamation.**
 5 Q. Did it ever occur as part of the drafting process
 6 that the legislative leadership asked you for those
 7 partisan proxy scores on a regional basis?
 8 **A. On a regional basis?**
 9 Q. Correct.
 10 **A. So yeah, again going back to the testimony, if we**
 11 **put up a map -- or I don't remember exactly how we**
 12 **structured that process, but if they asked me, I**
 13 **would have that data available to me. I don't**
 14 **recall specific instances of them asking me that,**
 15 **but I'm sure at some point it was brought up or**
 16 **asked of me what the various performances were for**
 17 **the various options.**
 18 Q. All right. And did you ever have any conversations
 19 with either Tad Ottman or Joe Handrick about the
 20 partisan proxy scores of either individual districts
 21 or of regions?
 22 MR. ST. JOHN: Object to form.
 23 THE WITNESS: I mean in so much as if Tad
 24 offered an alternative that had a certain percent
 25 and I had another percent, I'm sure that's -- I'm

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1 sure that was discussed or it was data that was
 2 available. But, you know, that's reflecting where
 3 he has senators that may be asking for certain
 4 different boundaries than my representatives, then
 5 it's like well, here's where we hit -- here's where
 6 we hit the disagreement is that the senator would
 7 like the outside boundary of their district to look
 8 different than the assembly rep. Here are the
 9 various options. And, you know, with assembly
 10 districts it's a little different because you could
 11 be buried within the senate district and not affect
 12 the outer boundary potentially.
 13 So, you know, there's -- for every, you know,
 14 one that Tad -- every one member that Tad has to
 15 deal with, I have potentially three times the input
 16 so I'm balancing more concerns than Tad might be at
 17 a given -- for a given region.
 18 Q. Did you ever have any discussions with Joe Handrick
 19 about the partisan proxy scores that were generated
 20 for individual districts?
 21 **A. I'm sure we discussed it.**
 22 Q. Do you recall what you discussed with -- with
 23 Mr. Handrick about -- about those scores for
 24 districts?
 25 **A. No, not -- not specifically. But like I said, I'm**

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1 **sure it came up in the weighing of the alternatives.**
 2 Q. Did -- did you ever have discussions with
 3 Mr. Handrick in the context of where to draw
 4 boundaries for different assembly districts with
 5 respect to the partisan proxy score for that
 6 district?
 7 **A. State that again or --**
 8 Q. I can rephrase it. In other words, did you ever
 9 discuss with Mr. Handrick the partisan proxy outcome
 10 of a draft district and how those district lines
 11 could be changed to increase the republican partisan
 12 proxy score for that district?
 13 **A. Not that I can specifically recall. I think it's**
 14 **more in the context of I have an alternative, Joe**
 15 **has an alternative, and I don't want to say that in**
 16 **such a way that it limits us to one alternative**
 17 **each, but everybody has alternative or alternatives,**
 18 **and in that context I'm sure that that metric came**
 19 **up, but I don't recall specific instances of where**
 20 **there were regional alternatives and their specific**
 21 **scores.**
 22 MR. POLAND: So at this point in time we're
 23 going to -- let's take a break because we have to
 24 change the tape, and then we're going to look at
 25 some files on the computer.

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1 THE WITNESS: Sounds good.
 2 THE VIDEOGRAPHER: This ends disk number one of
 3 the video deposition of Adam R. Foltz on March 31,
 4 2006; the time 11:26 a.m.
 5 (Exhibit No. 83 marked for identification.)
 6 THE VIDEOGRAPHER: This is the beginning of
 7 disk number two of the video deposition of Adam R.
 8 Foltz on March 31, 2016; the time 11:41 a.m.
 9 BY MR. POLAND:
 10 Q. Mr. Foltz, you had testified earlier today that you
 11 used a specific computer in your redistricting work
 12 in 2011, correct?
 13 **A. That's correct.**
 14 Q. And do you recall from the Baldus case that the
 15 plaintiffs in that case obtained the internal and
 16 one external hard drive from the computer that you
 17 used for redistricting purposes?
 18 **A. Yes. I would say internal hard drives probably more**
 19 **accurately.**
 20 Q. And that's correct because there were two mirrored
 21 internal hard drives, each one was 500 gigabytes,
 22 correct?
 23 **A. That's my understanding.**
 24 Q. And do you recall that in the Baldus case, the
 25 plaintiffs, they retained a computer forensic expert

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<p style="text-align: right;">Page 110</p> <p>1 named Mark Lanterman to conduct a forensic analysis 2 of the internal and external hard drives in the 3 computer that you used? 4 A. Yeah, the name sounds familiar. 5 Q. I've had the court reporter mark as Exhibit No. 83 a 6 document that I'm handing to you right now, and I'd 7 ask you to take a look at it. For the record, there 8 is a cover letter and Amended Declaration of Mark 9 Lanterman, and Exhibit A, which is Mr. Lanterman's 10 essentially CV, and then Exhibit B there is a DVD 11 attached. 12 A. Okay. 13 Q. And I'll give you just a minute to take a look at 14 that. 15 A. (Witness reading.) Okay. I think I'm good. 16 Q. Have you seen Exhibit No. 83 before? 17 A. No, I haven't. 18 Q. All right. So you haven't seen Mr. Lanterman's 19 declaration itself? 20 A. No. 21 Q. And I know you don't yet know what's on the disk 22 because we haven't put it into the computer yet, but 23 have you seen any kind of a DVD or spreadsheets that 24 have been created by Mark Lanterman specifically in 25 the Whitford case?</p>	<p style="text-align: right;">Page 112</p> <p>1 With "WRK32586." Do you see that? 2 A. I do. 3 Q. All right. Do you -- do you know what that 4 designation -- WRK32586 designation means? 5 A. It's a tag used by LTSB internally for inventory 6 tracking and management. 7 Q. All right. If you look in paragraph 14, 8 Mr. Lanterman's declaration states, "Second, CFS 9 recovered, identified, and produced any active or 10 deleted Excel spreadsheets created, accessed, or 11 modified during the months of April, May, or June of 12 2011 from the system named," open quote, "ASM 13 Republican WRK32586," close quote, "which I 14 understand was assigned to Adam Foltz." 15 Do you see that? 16 MR. ST. JOHN: Next page. 17 MR. POLAND: This is on page 4. 18 MR. ST. JOHN: Oh, I'm sorry. 19 MR. POLAND: It's paragraph 14. 20 THE WITNESS: Yeah. I do see that. 21 BY MR. POLAND: 22 Q. Is it your understanding that the WRK32586 computer 23 was the computer that was assigned to you? 24 A. I don't remember if that was the specific tag for 25 it. I'm assuming it's accurate.</p>
<p style="text-align: right;">Page 111</p> <p>1 A. I may have, but I don't know who the author was. 2 Q. All right. I'd like you to take a look, please -- 3 or strike that question. Let me ask you this. 4 Are you aware that the plaintiffs in the 5 Whitford case retained Mark Lanterman to conduct 6 some additional analyses of the internal and 7 external hard disk drives from the redistricting 8 computer that you used? 9 A. I didn't know that you had retained Lanterman. I 10 knew that there was an image of the old computer 11 sitting there with Lanterman. 12 Q. You weren't aware though up until I just asked the 13 question that Mr. Lanterman had conducted some 14 additional analyses for the purpose of the Whitford 15 case? 16 A. I knew that additional work was happening on those 17 old images so I didn't know it was specifically 18 attributed to Lanterman. 19 Q. I understand. I'd like you to look, please, 20 beginning on page 4 at paragraph 14 of 21 Mr. Lanterman's declaration. 22 A. I'm sorry, where are you again? 23 Q. Sure, it's page 4, beginning on paragraph 14. 24 A. Okay. 25 Q. And there is a header that says Systems Associated</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. All right. Do you have any reason to believe that 2 it's not accurate? 3 A. I wouldn't think so. 4 Q. All right. Mr. Lanterman continues on and says, 5 "Across the two hard drives in this system, a total 6 of 86 spreadsheets were responsive. However, the 7 majority of those were exact duplicates. After 8 identifying and removing duplicates, a total of 27 9 unique files remained." 10 Do you see that? 11 A. I do. 12 Q. All right. Mr. Lanterman then goes on in paragraph 13 15 to state, "I provided a copy of the spreadsheet I 14 created as well as the 27 responsive spreadsheets to 15 counsel for the plaintiffs. Copies of the 16 spreadsheet that I created, as well as the 27 17 responsive spreadsheets, are contained on the 18 DVD-ROM provided contemporaneously with this 19 declaration." 20 Do you see that? 21 A. I do. 22 Q. And I will just state for the record that that's the 23 CD-ROM that's -- I'm sorry, the DVD-ROM that's 24 attached as Exhibit B to Mr. Lanterman's 25 declaration.</p>

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<p style="text-align: right;">Page 114</p> <p>1 A. Okay.</p> <p>2 Q. Mr. Lanterman then goes down in paragraph 16 and</p> <p>3 says, "I also identified relevant spreadsheets from</p> <p>4 the external hard drive associated with the WRK32586</p> <p>5 system."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. And it is your recollection that there was a hard</p> <p>9 drive that was associated with your redistricting</p> <p>10 computer, correct?</p> <p>11 A. An external hard drive, yes.</p> <p>12 Q. External. Mr. Lanterman states in paragraph 16,</p> <p>13 "This external hard drive was used in conjunction</p> <p>14 with a backup program that packaged files within</p> <p>15 compressed zip volumes that first needed to be</p> <p>16 decompressed. After that, CFS identified a total of</p> <p>17 57 spreadsheets that had been created or modified</p> <p>18 between April and June 2001. Of those 57, 11 files</p> <p>19 were duplicates, leaving a total of 46 unique</p> <p>20 files."</p> <p>21 He then continues on, "I created an Excel</p> <p>22 spreadsheet detailing the locations, dates, and</p> <p>23 other information of all responsive spreadsheets</p> <p>24 that were identified on the external hard drive</p> <p>25 associated with the WRK32586 system," and then in</p>	<p style="text-align: right;">Page 116</p> <p>1 attached to the Lanterman affidavit or declaration</p> <p>2 that was Exhibit 83, and we've put it into a laptop</p> <p>3 computer that Mr. Foltz now has access to.</p> <p>4 BY MR. POLAND:</p> <p>5 Q. And if there's any need, Mr. Foltz, during the time</p> <p>6 that we're going through this exercise that you need</p> <p>7 to refer back to Mr. Lanterman's declaration, please</p> <p>8 let me know, feel free to do that.</p> <p>9 So I'd like you to open up, please, the</p> <p>10 spreadsheet that is WRK32586 Responsive Spreadsheets</p> <p>11 File Detail Report.</p> <p>12 A. 32586.</p> <p>13 Q. Correct.</p> <p>14 A. Okay.</p> <p>15 Q. And file detail report. There's a separate one for</p> <p>16 the external hard drive, but I'd like to just stay</p> <p>17 on the 32586 for now.</p> <p>18 A. Okay.</p> <p>19 Q. All right. And are you there?</p> <p>20 A. I am.</p> <p>21 Q. All right. Now, can you identify these -- from the</p> <p>22 file names, these spreadsheets as spreadsheets</p> <p>23 that -- that you created?</p> <p>24 A. Me or the autoBound software seems to be a generally</p> <p>25 fair way of characterizing them.</p>
<p style="text-align: right;">Page 115</p> <p>1 open parens he says -- or in parens he says, open</p> <p>2 quote, WRK32586 External HD Responsive Spreadsheets</p> <p>3 File Detail Report.xlsx, close quote, close paren.</p> <p>4 And then finally he concludes, "I provided a</p> <p>5 copy of the spreadsheet I created as well as the 46</p> <p>6 unique identified spreadsheets to counsel for the</p> <p>7 plaintiffs. Copies of the spreadsheet that I</p> <p>8 created as well as the 46 unique identified</p> <p>9 spreadsheets are contained on the DVD-ROM provided</p> <p>10 contemporaneously with this declaration."</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. I wanted to make sure that you saw that for the</p> <p>14 context of looking at the spreadsheets we're going</p> <p>15 to look at.</p> <p>16 A. I understand.</p> <p>17 Q. Let's go ahead then and put the DVD in the computer.</p> <p>18 We can go off the record here while we set that up.</p> <p>19 THE VIDEOGRAPHER: We are going off the record</p> <p>20 then at 11:50 a.m.</p> <p>21 (Discussion held off the record.)</p> <p>22 THE VIDEOGRAPHER: We are back on the record at</p> <p>23 11:55 a.m.</p> <p>24 MR. POLAND: For the record, I just want to</p> <p>25 note that during the break we took the DVD that was</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. All right. Now, I just asked you about file names.</p> <p>2 If you scroll over to the right -- this is a pretty</p> <p>3 big spreadsheet, and if you scroll over to the</p> <p>4 right, you'll see in column F it should be there is</p> <p>5 a file path.</p> <p>6 A. Okay.</p> <p>7 Q. And you'll see a file path that says from -- I'm</p> <p>8 looking at the first about, oh, I don't know, 30 or</p> <p>9 so rows on the spreadsheet, Users\afoltz. Do you</p> <p>10 see that --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- in column F?</p> <p>13 A. Yeah. Yes, I do.</p> <p>14 Q. All right. And then if you scroll a little further</p> <p>15 over to the right, in columns H and I, you'll see H</p> <p>16 is an Author column?</p> <p>17 A. Okay.</p> <p>18 Q. Do you see that? And then I is a Last Saved by</p> <p>19 column?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And you'll see in the Author column -- and we'll get</p> <p>22 into detail with specific spreadsheets, but you'll</p> <p>23 see that your name appears in some of those afoltz,</p> <p>24 correct?</p> <p>25 A. Uh-huh.</p>

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1 Q. As author? Tad Ottman's name appears as author in
2 some of those, correct? Ronald Keith Gaddie
3 appears, correct?
4 **A. Uh-huh. Yes.**
5 Q. And there are others as well. I'm just establishing
6 this as a general point. And then there is also in
7 column I an indication of who it was last saved by,
8 correct?
9 **A. Yes.**
10 Q. And then there are a few other columns in there
11 Office Created Date, Office Last Printed Date,
12 Office Last Saved Date, and then there are some
13 other columns, correct?
14 **A. Okay.**
15 Q. As we sit here, do you have any reason to doubt that
16 the spreadsheets that we have identified in the
17 WRK32586 Responsive Spreadsheets File Detail Report
18 are spreadsheets that came from your redistricting
19 computer?
20 **A. I'm sorry, was the question do I have any reason to**
21 **dispute that?**
22 Q. Yeah, to doubt it or dispute it.
23 **A. I don't see why it would. It seems --**
24 Q. I'd like to ask you then to look at -- to look at
25 row 6 in the spreadsheet that we're looking at right

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1 now.
2 **A. Okay.**
3 Q. And the file name in particular.
4 **A. Okay.**
5 Q. We had talked a few minutes ago about -- about file
6 names, and I know in one of your earlier depositions
7 we had talked about naming conventions.
8 **A. Uh-huh.**
9 Q. Do you recall generally that discussion?
10 **A. Yeah, it was reviewed as part of my deposition.**
11 Q. All right. So there is, for example, the
12 spreadsheet that's identified in row 6
13 Composite_Adam_Assertive_Curve. Do you see that?
14 **A. I do.**
15 Q. What -- what does that -- the file naming convention
16 that you use, what does that indicate with respect
17 to that specific spreadsheet?
18 **A. I take issue with the question for a couple of**
19 **reasons. One, it was created by Dr. Gaddie so he**
20 **would have been responsible for naming the file.**
21 **Secondly, my prior deposition about naming**
22 **conventions was specific to how I named autoBound**
23 **files, and this is an Excel spreadsheet.**
24 Q. Okay. So the naming convention that you used for
25 autoBound files was not a naming convention that you

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1 used for Excel spreadsheets?
2 **A. That's fair. There may be overlap where something**
3 **kicked out of a map shares the same file name as an**
4 **autoBound name plan, but the naming conventions that**
5 **were mentioned in my prior deposition was an attempt**
6 **to keep myself organized with regard to autoBound.**
7 Q. Okay. So with respect to the spreadsheet on row 6
8 that says Composite_Adam_Assertive_Curve, is it your
9 testimony that that is not a name that you created?
10 **A. Yeah. That is my testimony.**
11 Q. All right. Do you know what the -- what the term
12 "composite" in that file name refers to?
13 **A. No.**
14 Q. Do you know what the term -- what the name Adam
15 refers to?
16 **A. That would be me.**
17 Q. All right. What about the term "assertive" as used
18 in that file name?
19 **A. No.**
20 Q. All right. What about -- what about "curve" as used
21 in that file name?
22 **A. I think it's -- I think it's a red and blue and**
23 **orange curve that Dr. Gaddie -- this goes back to**
24 **the testimony of visual aids. I believe, you know,**
25 **when I was saying I don't view Excel as a visual**

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1 **aid, but Dr. Gaddie references it, I think that --**
2 **I'm pretty sure that's what this is.**
3 Q. And we'll come back and we'll pull one out and look
4 at it. I just want to make sure I understand the
5 names that are used here.
6 The -- in rows -- in rows 8 and 9, there's a
7 reference to Composite_Current_Curve. Do you see
8 those two references?
9 **A. Yes, I do.**
10 Q. All right. And as you noted, those were
11 spreadsheets that at least were authored by
12 Professor Gaddie, correct?
13 **A. Yes. Hold on, I mislicked here.**
14 Q. Sure. The --
15 **A. Edit undo.**
16 MR. ST. JOHN: Sorry. There we go.
17 THE WITNESS: Yeah, typing when I should be
18 scrolling. Let me see --
19 MR. ST. JOHN: Your keys are in a different
20 place. He's hitting delete.
21 THE WITNESS: Yeah, I'm hitting the period
22 delete instead of the scroll. There's a number pad
23 on this one. Sorry about that.
24 MR. ST. JOHN: Can we have that question
25 restated?

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1 MR. POLAND: Or just read back.
 2 THE WITNESS: Yeah, 8 and 9 is our point of
 3 reference?
 4 MR. POLAND: 8 and 9 is what we're looking at.
 5 THE WITNESS: And the question? I'm sorry.
 6 MR. POLAND: Can you read back the question?
 7 (Question read.)
 8 THE WITNESS: It appears from the data
 9 associated with the file that yes, this was
 10 Dr. Gaddie's product.
 11 BY MR. POLAND:
 12 Q. All right. And the spreadsheet also indicates that
 13 they were last saved by you, correct?
 14 **A. That appears to be the case, yes.**
 15 Q. And they were last saved on May 28, 2011 -- I'm
 16 sorry, strike that question.
 17 Column J indicates that they were created on
 18 May 28th, 2011, correct?
 19 **A. Yes.**
 20 Q. All right. Do you know is that a time when
 21 Dr. Gaddie was visiting in Madison?
 22 **A. I don't recall that specifically, but it seems to**
 23 **fit that that would be the case.**
 24 Q. Do you recall working with Dr. Gaddie on any curves
 25 or any Excel spreadsheets that had the title curve

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1 or name curve in the file name while Dr. Gaddie was
 2 visiting in Madison?
 3 **A. I think worked with. I didn't do anything with or**
 4 **to any curves. That was just Dr. Gaddie's**
 5 **production, so I want to be careful about the word**
 6 **"work." I didn't do anything on them or to them.**
 7 Q. Is it your testimony that Dr. Gaddie created these
 8 spreadsheets and then provided you with an
 9 electronic copy of them?
 10 **A. I think it's a fair summary of it.**
 11 Q. How did Dr. Gaddie provide you with the electronic
 12 copies of the spreadsheets?
 13 **A. I don't recall.**
 14 Q. All right. Do you recall whether there was a flash
 15 drive used or whether they were emailed or whether
 16 there was a Dropbox account that was used?
 17 **A. Wouldn't have been Dropbox. Probably wasn't email.**
 18 **Maybe a flash drive, maybe some type of burnable**
 19 **disk, but I don't recall.**
 20 Q. Do you recall what you did with these curves once
 21 you had saved them to your computer?
 22 **A. No, maybe printed them, but I really don't -- I**
 23 **really don't remember doing anything specific with**
 24 **these.**
 25 Q. All right. Looking again at the file name for -- on

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1 8 and 9, Composite_Current_Curve, do you know what
 2 the term "composite" refers to?
 3 **A. No, no, I don't.**
 4 Q. All right. What about the -- what about the term
 5 "current" as used in those file names?
 6 **A. I don't recall specifically, but I would assume that**
 7 **it has something to do with the map that was in**
 8 **place at this time, so this would have been the**
 9 **prior -- the redistricting plan prior to Act 43, but**
 10 **I don't know that with 100 percent certainty.**
 11 Q. All right. Just below that -- those two rows in
 12 rows 10 and 11, do you see there are file names that
 13 both say Composite_Joe_Assertive_Curve?
 14 **A. I do.**
 15 Q. Do you know what "composite" refers to in that file
 16 name?
 17 **A. No.**
 18 Q. Do you know what Joe refers to?
 19 **A. Joe Handrick.**
 20 Q. All right. And then the term "assertive," do you
 21 know what that refers to?
 22 **A. No.**
 23 Q. Then below those two rows, and now we're in rows 12
 24 and 13, you'll see a file name
 25 Composite_Joe_Base_Curve. Do you see that?

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1 **A. I do.**
 2 Q. And again do you know what "composite" refers to
 3 there?
 4 **A. No.**
 5 Q. And Joe refers to Mr. Handrick?
 6 **A. Correct.**
 7 Q. And then do you know what "base curve" refers to?
 8 **A. No.**
 9 Q. If you turn down to row 20 or scroll down to row 20,
 10 you'll see a spreadsheet that's labeled Plan
 11 Comparisons. That's the file name.
 12 **A. Uh-huh.**
 13 Q. All right. And then if you scroll across over to
 14 column H and column I, you'll see that you are
 15 identified as the author and the person who last
 16 saved that, correct?
 17 **A. Correct on both accounts.**
 18 Q. All right. And that was created on, at least
 19 according to the metadata, May 9th of 2011?
 20 **A. May 2nd of 2011?**
 21 Q. Okay. So we're on row 20, correct?
 22 **A. Yep. Office created date 5/2/11.**
 23 Q. Okay. All right. Fair enough. It does -- it does
 24 say that there. I was looking I guess in -- in
 25 column C where it says May 9th, 2011. If you look

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1 at column C.
2 **A. Yeah.**
3 Q. Any idea why there is a difference between those
4 two?
5 **A. I have no idea.**
6 Q. All right. We might have to have Mr. Lanterman
7 explain that.
8 It also identifies that -- that the file was --
9 was modified it appears on April 27th of 2012, and
10 I'm looking in column E. Do you see that?
11 **A. Column E line 20 4/27 of 2012.**
12 Q. Right. So that was the year after it was created.
13 Do you see that?
14 **A. Yeah. Yeah.**
15 Q. Do you know why it might have been modified in April
16 of 2012?
17 **A. No.**
18 Q. All right. Do you recall the Plan Comparisons
19 spreadsheet as you sit here today?
20 **A. Not by name, but I believe that's the red and blue**
21 **summary statistics.**
22 Q. Yeah, let's just -- there are a couple that I've got
23 hard copies of and so some of these it might be
24 easier to take a look at them in hard copies so
25 everyone can look at them.

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1 **A. Uh-huh.**
2 MR. POLAND: I guess the question, Brian, a
3 question for you on management, do we want -- if
4 we've got documents that have been marked as
5 exhibits already in this deposition, I've remarked a
6 couple, should we remark them or just keep them as
7 they are?
8 MR. KEENAN: I haven't necessarily been doing
9 that since it's already been marked with Gaddie.
10 MR. POLAND: Okay.
11 MR. KEENAN: I don't -- if you want to, feel
12 free. I don't see the need to.
13 MR. POLAND: Yeah, I don't see the need to
14 either then. Let's just -- let's not do it. It's
15 more question for management for us at trial.
16 I'd like the record to reflect that I'm handing
17 the witness a copy of a document that's been
18 previously marked as Exhibit 39 Gaddie.
19 BY MR. POLAND:
20 Q. And I'll give you a minute to take a look at that,
21 Mr. Foltz.
22 **A. (Witness reading.) Okay.**
23 Q. Is Exhibit 39 a document that you've seen before?
24 **A. Yes.**
25 Q. All right. And I'll represent to you that this is

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1 a -- a printout of the Plan Comparisons.xlsm file
2 that appears in row 20 in the spreadsheet we were
3 just looking at. We can -- we can certainly open it
4 up as well on the DVD if you'd like.
5 **A. I don't see a need to at this point.**
6 Q. Okay. All right. Make sure I've got the right one
7 here.
8 MR. POLAND: Are you guys okay?
9 MR. ST. JOHN: Uh-huh. Yep.
10 BY MR. POLAND:
11 Q. All right. Sorry if I already asked you this. Have
12 you seen Exhibit 39 before?
13 **A. Yes.**
14 Q. All right. Is Exhibit 39 a document that you
15 created?
16 **A. Yes.**
17 Q. All right. What is Exhibit 39?
18 **A. It appears to be a summary of partisan scores for**
19 **districts.**
20 Q. And is -- was this created using the proxy that we
21 had talked about earlier in your deposition?
22 **A. I believe so. Yes.**
23 Q. Why was Exhibit 39 created?
24 **A. To create a summary as to the various changes in the**
25 **districts.**

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1 Q. Now, up at the top of Exhibit 39 there's a label
2 that says Milwaukee Gaddie 4_16_11_V1_B. Do you see
3 that?
4 **A. I do.**
5 Q. What is the significance of that title?
6 **A. That would probably be reflective of the autoBound**
7 **file that would have been associated with a map that**
8 **led to this summary.**
9 Q. Okay. And so when you were -- when we were talking
10 before about naming conventions for autoBound files,
11 that's a naming convention that you would have used?
12 **A. Yes.**
13 Q. Okay. So if we look -- if we look over on Exhibit
14 39, this identifies districts 1 through 99, correct?
15 **A. Yes.**
16 Q. And those are the assembly districts in Wisconsin?
17 **A. For this given version of a map, yes.**
18 Q. All right. And by the way, was this -- was this the
19 final version of the -- of the assembly district
20 maps that was included in Act 43?
21 **A. No, this wouldn't have been.**
22 Q. All right. So looking --
23 **A. To the best of my recollection this would not be.**
24 Q. I understand. I understand. Is it -- is it your
25 belief that there was a -- a subsequent

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1 configuration of the assembly districts that
2 superseded this?
3 **A. Yes.**
4 Q. If we look at the -- at the column right next to the
5 District column, there's a column that's labeled
6 Assembly. Do you see that?
7 **A. Yes.**
8 Q. All right. At the top. And then across the header
9 rows it says Current, New, Delta. Do you see that?
10 **A. Yes.**
11 Q. All right. Now, if we look down the column that
12 says Current, there are a number of -- there's
13 some -- some red -- there's a red bar that fills in
14 part of that cell, and then there are percentages
15 next to that. Do you see that?
16 **A. I do.**
17 Q. All right. What does that indicate?
18 **A. I believe that is the composite score.**
19 Q. What's it a composite score of?
20 **A. We talked earlier about the composite. I don't**
21 **remember what the individual components -- this goes**
22 **back to the testimony on regression versus a less**
23 **sophisticated summary. I believe it to be that**
24 **number.**
25 Q. All right. And so that would be -- so, for example,

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1 when we look at district 1 it says Current, and it
2 says 51.15 percent, correct?
3 **A. Yes.**
4 Q. And so what is the 51.15 percent? What does that
5 number mean?
6 **A. That would be that if you applied the composite --**
7 **again I believe it's the composite -- to the first**
8 **assembly district as it existed prior to Act 43,**
9 **that would have been the composite of those races**
10 **looking back backwards in time.**
11 Q. All right. And so that would have been -- that
12 would have been the republican share in that
13 district, correct?
14 **A. I believe the composite is to republican score. I**
15 **think that's an accurate classification.**
16 Q. All right. So now if we go -- if we go directly
17 over to the right, there is a column that's labeled
18 New. Do you see that?
19 **A. I do.**
20 Q. And so in the New column sticking with the first row
21 it says 51.22 percent. Do you see that?
22 **A. I do.**
23 Q. And so what does the column that's -- that's headed
24 New, what does that indicate?
25 **A. That for this given version of the map, that that**

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1 **attempt at drawing the first assembly district is --**
2 **again assuming it's the composite, which I'm fairly**
3 **sure of, that that new district in this possible**
4 **proposed map or map that I drew of 51.22 is the new**
5 **composite for that given district.**
6 Q. All right. And that's the republican score again,
7 correct?
8 **A. I believe so. Yes.**
9 Q. And then next to that there is a column that says
10 Delta. Do you see that?
11 **A. I do.**
12 Q. And that's simply the difference, the change from
13 the current to the new?
14 **A. Yes.**
15 Q. And by "the change," I mean the change in composite
16 scores from the current to the new, correct?
17 **A. Yes. That appears to be correct.**
18 Q. And so if we look down the column that's headed
19 Delta, we can see that some of the -- some of the
20 scores go up and some of the scores go down,
21 correct?
22 **A. Uh-huh. Yes.**
23 Q. Now, if we move directly next to that, there is a --
24 a column that has an overall heading of Senate,
25 correct?

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1 **A. Yes.**
2 Q. And that's essentially the same process that we go
3 through there. We're looking at the senate
4 districts, and there's a current score, a new score,
5 and then a Delta, correct?
6 **A. Yes.**
7 Q. All right. And those are all -- those are
8 republican scores; is that correct?
9 **A. Yes.**
10 Q. Now, if we look all the way down at the bottom of
11 the first page of Exhibit 39, there are two other
12 boxes that are on the bottom. Do you see that?
13 **A. I do.**
14 Q. All right. There's one box on the left that says
15 Current Map. Do you see that?
16 **A. I do.**
17 Q. All right. Now, under Current Map there is a line
18 that says Safe GOP, and then in parens 55 percent
19 plus, and then there's a close paren. Do you see
20 that?
21 **A. I do.**
22 Q. What does that indicate?
23 **A. Generally that a district that achieves that**
24 **percentage or greater is classified as being safe.**
25 Q. All right. And what does it mean by -- what does

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1 "safe" mean?

2 **A. Generally that it's not a district that is going to**

3 **be a targeted district in an electoral process I**

4 **think is a fair way of classifying it.**

5 Q. Now, if we -- and there are numbers in the assembly

6 and senate that are associated with a safe GOP,

7 right? There's 27 under assembly and seven under

8 senate, correct?

9 **A. Correct.**

10 Q. If we look just below that line, we'll see it says

11 Lean GOP. What does the lean GOP mean?

12 **A. Again fairly self-explanatory that that district,**

13 **looking at prior elections, has a tendency to be**

14 **leaning in the direction of GOP.**

15 Q. All right. And so for assembly we see that's a 13

16 and 8 for senate, correct?

17 **A. Yes.**

18 Q. All right. And those -- those numbers there refer

19 to districts, correct?

20 **A. The total number, the count of districts.**

21 Q. As opposed to -- correct. Yes. I think we

22 understand one another.

23 So then there is a -- a tally that says Total

24 GOP Seats (safe plus lean), and that simply is a

25 tally of the previous two lines, correct?

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1 **A. Yes.**

2 Q. Moving down from there, it says Swing, 48 to 52

3 percent. Do you see that?

4 **A. I do.**

5 Q. What -- what does that indicate?

6 **A. Districts that, again using kind of**

7 **back-of-the-napkin common ways of referring to them,**

8 **are a little bit more susceptible to swinging back**

9 **and forth between the parties using this average of**

10 **races.**

11 Q. All right. And so we see 19 assembly districts and

12 five senate districts that fall under that swing

13 row, correct?

14 **A. Correct.**

15 Q. So if we look just below that then, there is a line

16 that says Lean DEM, 45.1 percent to 47.9 percent.

17 Do you see that?

18 **A. I do.**

19 Q. All right. And there are numbers that are

20 associated with that, 7 and 3, correct?

21 **A. Yes.**

22 Q. And then safe DEM is 45 percent?

23 **A. Uh-huh. Yes.**

24 Q. And then --

25 **A. Sorry.**

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1 Q. That's all right. And there's no -- there's no

2 lower number there, correct?

3 **A. No, the total lines are next.**

4 Q. Okay. And so the Total DEM seats (safe plus lean),

5 and then there are total numbers of 40 and 13,

6 correct?

7 **A. Correct.**

8 Q. So if we move to the next box over, New Map, that

9 contains the same general rows. In other words,

10 Safe GOP, New Lean GOP, Total GOP Seats, as the

11 previous box, correct?

12 **A. Correct.**

13 Q. So if we compare the two, if we look at the current

14 map and the new map, this would indicate that with

15 the district configuration on page 1, the new map

16 would yield 52 total GOP seats in the assembly

17 versus 40 under the current map, correct?

18 **A. Correct.**

19 Q. And it would yield 18 total GOP seats under the new

20 map versus 15 under the current map, correct?

21 MR. ST. JOHN: Object to -- object to form

22 or -- I'm sorry, the question is would yield -- or

23 maybe I'll object to foundation. The testimony was

24 not what would yield from that.

25 MR. POLAND: Well, you can object to the form,

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1 Kevin.

2 MR. ST. JOHN: Object -- object to form. Go

3 ahead, restate the -- may the court reporter please

4 restate the question for the witness?

5 (Question read.)

6 THE WITNESS: So for this version of a map that

7 would be reflected in these scores and how they are

8 categorized, in yield to the attorney's objection,

9 maybe has a little bit more built into it, but

10 that's the summary statistics.

11 BY MR. POLAND:

12 Q. Under the partisan proxy score that was -- that came

13 out of autoBound?

14 **A. Yes.**

15 Q. All right. Under the -- under the New Swing line of

16 the New Map, that indicates 9 assembly seats versus

17 19 assembly seats under the swing for the current

18 map, correct?

19 **A. Correct.**

20 Q. And then in the senate it's 2 for new swing under

21 the new map versus 5 under the swing line for the

22 current map, correct?

23 **A. Yes.**

24 Q. And then if we look down, just to finish this off,

25 with the DEM seats, there would be -- total DEM

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1 seats under the new map, there would be 13 indicated
 2 in the senate, which is the same as under the
 3 current map, correct?
 4 **A. I'm sorry, where are you again?**
 5 Q. Sure. Under the New Map box, I'm under the Total
 6 DEM Seats.
 7 **A. Okay.**
 8 Q. And there would be 13 under -- for the senate under
 9 the new map, correct?
 10 **A. Uh-huh. Yes.**
 11 Q. Versus -- which is the same as under the current
 12 map, correct?
 13 **A. Yes.**
 14 Q. And then if you look at the assembly under the new
 15 map, it indicates 38 total DEM seats versus 40 under
 16 the current map, correct?
 17 **A. Yes.**
 18 Q. Now, this is -- this particular spreadsheet has
 19 several tabs to it, correct?
 20 **A. I believe so. Yes.**
 21 Q. So if we look at, for example, the next page, you'll
 22 see there's a header at the top that says Statewide
 23 Milwaukee Gaddie 4_16_11_V1_B?
 24 **A. Okay.**
 25 Q. And we can also look at the spreadsheet on Excel if

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1 you'd prefer to do that.
 2 **A. No, I'm good.**
 3 Q. Either way is fine. And so this is -- well, what
 4 does that -- the title Statewide 2 Milwaukee Gaddie
 5 4_16_11_V1_B indicate to you?
 6 **A. Just the -- the name of the autoBound file that**
 7 **would have fed into this summary sheet.**
 8 Q. And this is -- again this is a file that you -- that
 9 you created using autoBound?
 10 **A. Yes.**
 11 Q. And was the general description of the layout of --
 12 that you had described for the first page that we
 13 looked at tabbed, does that apply to this second tab
 14 as well?
 15 **A. It appears to, yes.**
 16 Q. Now, this -- do you know why Statewide 2 -- or
 17 strike that question. Does the Statewide 2 have any
 18 specific meaning to you versus the name Milwaukee
 19 that's used in the -- on the first tab?
 20 **A. No. If memory serves, I normally labeled my**
 21 **statewide plans with statewide in them, so I don't**
 22 **know if there's any difference between the first**
 23 **page and the second page other than the file name,**
 24 **but I don't -- there's really no significance to me**
 25 **other than that.**

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1 Q. Okay. All right. Would you turn to the -- to the
 2 next page or the next tab then. You'll see there's
 3 a header that says Final Map. Do you see that?
 4 **A. I do.**
 5 Q. All right. What does that indicate to you?
 6 **A. That if -- that it was probably the final map, but**
 7 **it may not be. I don't know if this reflects the**
 8 **Baldus court's decision. I don't know if there were**
 9 **any subsequent changes. So it may not be the final**
 10 **map, but I think it's a safe assumption that very**
 11 **near the completion of the process.**
 12 Q. All right. And I note, and again you can look at
 13 the spreadsheet on Excel if you want, I note that
 14 there's a second tab that is also -- has a header
 15 that says Final Map.
 16 **A. Okay.**
 17 Q. Do you know whether there's any difference between
 18 those two?
 19 **A. No, not without sitting down with it more I --**
 20 Q. Oh, the only difference that I have noted, and I'm
 21 not trying to testify, the only difference I've
 22 noted is that in the first of the two final maps,
 23 the districts are -- are numbered one through 99,
 24 and in the second tab they appear to be sorted in
 25 some way.

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1 **A. Okay.**
 2 Q. But not by district number.
 3 **A. Okay. Yep.**
 4 Q. And then the -- but the general description again
 5 that you had given for the -- the first page of
 6 Exhibit 39 applies to the final map --
 7 **A. Yes.**
 8 Q. -- page as well?
 9 Is it -- if we look again at the bottom then,
 10 current map versus the new map, is it fair to say
 11 that this printout indicates that under the current
 12 map there would be 40 total GOP seats in the
 13 assembly and 15 in the senate; is that correct?
 14 **A. It appears that way, yes.**
 15 Q. All right. And then under the new map total GOP
 16 seats there would be 52 in the assembly and 17 in
 17 the senate, correct?
 18 **A. Correct.**
 19 Q. And if we look at the swing under the current map,
 20 19 assembly, five in senate, correct?
 21 **A. Correct.**
 22 Q. And then in -- under the new map, the new swing, 10
 23 in assembly and three in senate, correct?
 24 **A. Correct.**
 25 Q. And if we look at under the total DEM seats there

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1 are 40 total DEM seats in the -- under the current
2 map, 40 in the assembly and 13 in the senate,
3 correct?
4 **A. Yes.**
5 Q. And then under new map, 37 total DEM seats in the
6 assembly and 13 in the senate, correct?
7 **A. Correct.**
8 Q. Would you turn to the final page then, and there is
9 a header that says Kessler Map. Do you see that?
10 **A. I do.**
11 Q. What does that indicate?
12 **A. That it's a summary of -- I'm assuming this is a**
13 **summary of the map that -- I can't remember the name**
14 **of the organization, but I believe Representative**
15 **Kessler was part of a group that tried to come in**
16 **during the Baldus litigation as an amicus party. I**
17 **believe this is a summary of the partisan composite**
18 **from the autoBound plan that would have been**
19 **associated with that map.**
20 Q. Okay. If we -- and I am going to draw you back to
21 the -- back to the spreadsheet now. This is the
22 Responsive Spreadsheets File Detail Report that you
23 had been looking at.
24 **A. Okay.**
25 Q. And ask you to take a look at line 20 that says Plan

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1 Comparisons.
2 **A. Okay.**
3 Q. If you look, we had talked before about the -- about
4 the access and the modified and that it was a 2012
5 date?
6 **A. Okay. What columns are we looking at here?**
7 Q. So we're looking at columns D and E.
8 **A. Okay.**
9 Q. All right.
10 **A. Yes.**
11 Q. You're there?
12 **A. Yes.**
13 Q. So you see that there is a -- an access and a
14 modified date in April of 2012. Do you see that?
15 April 27, 2012?
16 **A. Yes.**
17 Q. All right. Do you know when Representative Kessler
18 came up with his -- with his map that he had
19 submitted?
20 **A. I don't remember.**
21 Q. Do you know whether the -- whether the revisions
22 or -- revisions that you had made to your Plan
23 Comparisons.xlsx in April of 2012 related to
24 Representative Kessler's map?
25 **A. I don't know if that's why it was flagged.**

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1 Q. I'd like you to take a look, Mr. Foltz, on -- we're
2 sticking on the Responsive Spreadsheets File Detail
3 Report right now.
4 **A. Okay.**
5 Q. There is a -- a row 33, Team Map Curve.xlsx. Do you
6 see that?
7 **A. I do.**
8 Q. And if you look -- if you scroll over to the right,
9 you'll see that -- that Dr. Gaddie is listed as the
10 author, and it's identified as being created on June
11 14th. Do you see that?
12 **A. I do.**
13 Q. Okay. Scroll -- yeah, you've got to scroll over to
14 the Office Created Date is row -- or column J.
15 **A. Yep, 6/14 of '11.**
16 Q. Yep. Right. Do you recall what the Team Map Curve
17 was or what it represented?
18 **A. Not specifically. It seems like it could be a curve**
19 **that resulted from the -- the final -- or the map**
20 **that was subsequent -- or following the regional --**
21 **the meetings with leadership where the regional**
22 **alternatives were discussed, but I don't know that**
23 **for a fact.**
24 Q. All right. I'm going to ask you to do this then on
25 your computer. Can you open up -- can you find the

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1 Team Map Curve within the folder, that's the WRK?
2 **A. Okay. So I'm at the directory. So which folder am**
3 **I looking at?**
4 Q. You're looking for Team Map Curve.
5 **A. So 32586 Responsive Spreadsheets Duplicated?**
6 Q. Right. Exactly.
7 **A. And Team Map Curve.**
8 Q. Dot.xlsx.
9 **A. I believe I'm there.**
10 Q. Okay.
11 **A. I think we're --**
12 Q. You've got it open?
13 **A. Yes, sir.**
14 Q. I'm just going to turn my screen so you can see it
15 to make sure at least it looks like we're looking at
16 the same thing.
17 **A. Yep.**
18 Q. All right. What is Team Map Curve?
19 **A. I -- again not specifically recalling when in the**
20 **process this is. I believe this is an analysis**
21 **Dr. Gaddie ran on what was the map that resulted**
22 **from the regional meetings, but again I don't know**
23 **if it's the final map or something close to it in**
24 **the -- close to the final map in kind of the**
25 **process.**

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1 Q. All right. Just generally speaking, is -- you had
2 testified previously about the curves that
3 Dr. Gaddie created?
4 **A. Yeah.**
5 Q. And what's -- what's -- this is an example of one of
6 the curves that he had created?
7 **A. Right.**
8 Q. What's your understanding of what Dr. Gaddie was --
9 why he created these curves?
10 **A. I really don't know what question he was trying to**
11 **answer with this. I don't really know what he was**
12 **attempting to -- attempting to evaluate with this.**
13 Q. Dr. Gaddie had created these curves as a visual
14 representation or a visual aid, correct?
15 **A. It appears that way, yes.**
16 Q. And you looked at printouts of these -- of at least
17 some curves with Dr. Gaddie?
18 **A. I don't know if we looked at printouts. I don't --**
19 **I don't really recall how we looked at these or**
20 **really even looking at them.**
21 Q. All right. Did you look at any of these curves with
22 Dr. Gaddie?
23 **A. I'm sure we did at some point.**
24 Q. Do you have a specific recollection of -- of viewing
25 them with Dr. Gaddie?

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1 **A. No.**
2 Q. Do you remember whether they would have been printed
3 out or would have been pulled up on a computer
4 screen?
5 **A. I don't remember. It could have been either. It**
6 **could have been both.**
7 Q. Did -- what was the nature of the discussions that
8 you had with Dr. Gaddie about the -- the curves that
9 he created?
10 **A. I don't really recall any conversations that**
11 **happened related to these curves.**
12 Q. All right. Do you remember -- do you know what
13 the -- what the file name Team Map means?
14 **A. Going back to prior testimony, I believe if -- I**
15 **believe it was maybe not the final map, but**
16 **something that was close to it and probably a map**
17 **that was following the process in which leadership**
18 **got together and made their decisions on the various**
19 **regional alternatives.**
20 Q. I'm sorry. I didn't mean to cut you off.
21 **A. No. I was done.**
22 Q. Do you know whether -- whether the word "team" has
23 any particular significance in -- in the file name?
24 **A. I think the significance is going back to the prior**
25 **testimony of I believe this was something that**

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1 **followed once leadership had made their decisions,**
2 **and then as I testified to before, they made their**
3 **decisions on various regional alternatives, but they**
4 **didn't necessarily fit together because you may have**
5 **taken an alternative that I proposed in one area and**
6 **an alternative that Joe Handrick had proposed in**
7 **another, and those two areas may crash, the puzzle**
8 **pieces might not fit together.**
9 **So after those decisions were made, there was**
10 **another process where you tried to have -- you had**
11 **to iron out those wrinkles or portions where they**
12 **didn't -- they didn't meet together well, they**
13 **didn't join together well.**
14 **So I think this curve would probably be that**
15 **map after the regional decisions were made. But**
16 **like I said, it might not be the final final product**
17 **that ultimately became Act 43.**
18 Q. If you look on the -- on the Responsive Spreadsheets
19 File Detail Report, so back out to that sort of
20 overall spreadsheet.
21 **A. Okay.**
22 Q. We had talked before about the -- on line number 6
23 or row number 6 Composite_Adam_Assertive_Curve.xlsx.
24 **A. Okay.**
25 Q. Do you see that?

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1 **A. I do.**
2 Q. All right. Can you open that file for me?
3 **A. Okay. I should be there.**
4 Q. All right. So that's the composite Adam assertive
5 curve?
6 **A. Yes.**
7 Q. All right. And you have that one open?
8 **A. I do.**
9 Q. All right. Have -- do you recall seeing this
10 particular curve before?
11 **A. Again same as with the other ones, not a specific**
12 **recollection of this curve, but I'm sure we looked**
13 **at it at some point.**
14 Q. All right. Does -- does looking at this particular
15 spreadsheet now that you have it open, does that
16 give you any -- any further indication of what
17 the -- what the file name, the "composite Adam
18 assertive" means?
19 **A. No.**
20 Q. All right. Okay. I'd like you to go now to the --
21 to the folder that has the -- has the WRK32586, the
22 external. Do you see that? And I'd like you to
23 look at the --
24 **A. I'm sorry, am I looking at a sheet or a folder here?**
25 Q. Looking at a sheet. This is WRK32586 External HD

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1 Responsive Spreadsheets File Data Report -- File
2 Detail Report.
3 **A. Okay. WRK3258 External HD Responsive Spreadsheets**
4 **File Detail Report.**
5 Q. Right.
6 **A. Yes, I'm there.**
7 Q. It's not a short name.
8 **A. Yes, but I am there.**
9 Q. You got it. Okay. Terrific. There is a -- there
10 are a number of files in here that -- file names
11 that refer to Kessler map.
12 **A. Okay.**
13 Q. Okay? And so, for example, there is -- if we look
14 on row 5, you'll see a file name that says -- it's
15 users\afoltz\desktop\workspace\Kessler\Kessler
16 Map\Data. Do you see that?
17 **A. I do.**
18 Q. And then if you go down to line -- or to row 16,
19 there's another one that says Work
20 Space\Kessler\Pass1_Key. Do you see that?
21 **A. I do.**
22 Q. All right. And there are a couple of others as
23 well. Do you know what these particular
24 spreadsheets are? And we can open them up and take
25 a look at them if you want.

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1 **A. I don't know what these particular spreadsheets are.**
2 Q. Okay. Let's do that. Let's open the first one at
3 least, the one that says Kessler Map Data asm.xls.
4 **A. External, 32586. They're labeled a little**
5 **differently here. There's a C in front of**
6 **everything.**
7 Q. Yeah, that's right. There's a C in front of mine,
8 too. Sorry. I was shortcutting that.
9 **A. And which one are you looking at specifically now?**
10 Q. This is User --
11 C:\user\afoltz\desktop\workspace\Kessler\Kessler Map
12 Data.asm?
13 **A. Data.asm. Okay. I'm there.**
14 Q. All right. You have that spreadsheet open?
15 **A. I do.**
16 Q. All right. What -- what is this spreadsheet?
17 **A. I don't know.**
18 Q. As you sit here today, do you recall where you got
19 this spreadsheet from?
20 **A. My guess is that when Representative Kessler and his**
21 **group introduced their map, I reached out to a**
22 **service agency, probably LTSB, maybe LRB, and got**
23 **the map. And, you know, autoBound files, assuming**
24 **it's an autoBound file, which I don't remember, have**
25 **a lot of associated folders and files that come with**

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1 **it. It seems like this would be something that**
2 **could have been associated with that when we**
3 **received a copy of the Kessler map.**
4 Q. Okay. Would you -- would you take a look -- and I'm
5 sorry, I'm just asking you to jump back and forth
6 here between two different things. I'm going to ask
7 you to go back out to the WRK32586 External HD
8 Responsive Spreadsheets File Detail Report.
9 **A. And I am there.**
10 Q. Okay. You're there?
11 **A. Yes.**
12 Q. So if we look at row 5 again.
13 **A. Yep.**
14 Q. And that's the entry for the spreadsheet we were
15 just looking at.
16 **A. Uh-huh.**
17 Q. It says it was created on May 2nd, 2011.
18 **A. Okay.**
19 Q. Okay. Now, if you scroll over further, if you look
20 under the -- if you look under the author, the line
21 is blank and it says last saved by TVAENDRW. Do you
22 see that?
23 **A. I do.**
24 Q. And it -- it says -- and then it says an office
25 created date of 5/24/2005. Do you see that?

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1 **A. Yeah, I do.**
2 Q. Does that give you any further indication of when
3 that spreadsheet was created?
4 **A. The date's very odd. I mean an '05 date showing up**
5 **anywhere in here is very strange so I can't explain**
6 **that.**
7 Q. All right. Do you know who -- who the TVANDERW is?
8 **A. Without knowing exactly, I would assume it's Tony**
9 **Van Der Wielen.**
10 Q. Okay. And if we -- if we go down to line or row 16,
11 that is also a file name that has a reference to
12 Kessler in there?
13 **A. Okay.**
14 Q. And you'll see that that has a created date of May
15 2nd, 2011 as well?
16 **A. Okay.**
17 Q. And if we go down to line 31, there is another entry
18 that says -- has Kessler in the title, in the file
19 name?
20 **A. 31?**
21 Q. Yep. 31.
22 **A. Okay.**
23 Q. And that also was created on May 2nd, 2011?
24 **A. Okay.**
25 Q. And then there are -- there are two more in row 35

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1 and row 42, there are two others that -- file names
2 that have Kessler in them and they both have create
3 dates of May 2nd, 2011?
4 **A. Okay.**
5 Q. Do you see those?
6 **A. I do.**
7 Q. Does that -- whether it's the file names or the
8 dates of creation, does that give you any other
9 information or jog your memory about the -- about
10 those particular files?
11 **A. No.**
12 Q. All right.
13 **A. I mean just it seems -- the only thing that jumps**
14 **out is that it appears that I got it from Tony --**
15 **one of the author changes, tag changes on 42 from**
16 **Tony Van Der Wielen or what I assume to be Tony's**
17 **name to LTSB. So it -- the only thing that jumps**
18 **out at me is it just seems to indicate that I got it**
19 **from LTSB. However, I don't know that for a fact,**
20 **and LTSB may have passed it on to LRB if it were say**
21 **introduced as a draft. I don't know if there was**
22 **any handoff between the service agencies.**
23 Q. Could -- so could this possibly have pertained to a
24 redistricting plan that Representative Kessler had
25 put together before the Baldus litigation?

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1 **A. I have no way of knowing that. I don't know when he**
2 **would have started working on the map that**
3 **eventually became their amicus brief. I mean maybe**
4 **-- and the other thing I don't know if created is to**
5 **the file or to when it was created on a local**
6 **computer so created may be when Representative**
7 **Kessler started his work on it, but then there's**
8 **another creation date when I reached out to the**
9 **service agencies and it transferred over to my**
10 **computer. I don't know, you know, what created**
11 **means in that context.**
12 Q. Okay.
13 MR. POLAND: Tell you what, give me about five
14 minutes. Leave it up there. I'm not sure if I'm
15 going to ask you about any more when we're back.
16 THE VIDEOGRAPHER: We are going off the record
17 at 12:43 p.m.
18 (Discussion held off the record.)
19 THE VIDEOGRAPHER: We are back on the record at
20 12:49 p.m.
21 By MR. POLAND:
22 Q. Mr. Foltz, I'm going to hand you a document that's
23 been previously marked as Gaddie Exhibit No. 43.
24 Have you seen Exhibit No. 43 before?
25 **A. I'm sure I have. I don't specifically recall this**

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1 **one, but I'm sure I have.**
2 Q. All right. You recall a few minutes ago we were
3 looking at a curve it said Team_Map_Curve?
4 **A. Yeah.**
5 Q. All right. And do you see at the top this page 1
6 says Team Map, second page says Team Map Ranking,
7 the third page again says Team Map again?
8 **A. I do see that. Yes.**
9 Q. All right. Do you recall ever looking at -- or
10 strike that question.
11 Is -- is Exhibit 43 a printout from -- from the
12 autoBound program?
13 **A. No.**
14 Q. Printout generated by autoBound program? How would
15 -- how would Exhibit 43 have been generated?
16 **A. I don't -- you know, they would have been an Excel**
17 **file.**
18 Q. Okay. And again, this is the same format as some of
19 the printouts that we were just looking at before,
20 specifically Gaddie Exhibit No. 39.
21 **A. Okay.**
22 Q. Correct?
23 **A. Correct.**
24 Q. One question I didn't ask you, if you look down at
25 the bottom where we've got the Current Map, and then

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1 the New Map boxes at the bottom of the page, what's
2 the purpose of comparing those numbers under the
3 current map with the new map?
4 **A. Just to get a feel for where things are after all**
5 **the decisions had been made.**
6 Q. Did you share the kinds of printouts like we see in
7 Exhibit 43 with the legislative leadership?
8 **A. There's a couple things in that question. During**
9 **the process in which the broader leadership was**
10 **making decisions on the regional alternatives,**
11 **nothing like this would have been available to them.**
12 **There may have been a point after they made their**
13 **decisions where I showed it to someone of that**
14 **leadership team. I don't specifically recall either**
15 **way, though.**
16 Q. All right. Did you -- did you discuss with any of
17 the legislative leadership the -- the changes in the
18 numbers that were -- that were identified from
19 current map to new map on any printouts from Excel
20 files like Exhibit 43 or Exhibit 39?
21 **A. Yeah. Again not that I specifically recall. Like I**
22 **said, I may have shown this to someone after they**
23 **made their decisions, but I don't specifically**
24 **recall having done that.**
25 Q. Did you have discussions at all with Mr. Ottman

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1 about the changes coming from -- or generated by
2 looking at a comparison between the current map and
3 the new map?
4 **A. I'm sure I did at some point, but I don't**
5 **specifically recall any conversation with regard to**
6 **the team map.**
7 Q. Were the -- were those changes from current map to a
8 new map in different districts, was that information
9 that you used as part of the decision of how to draw
10 district lines?
11 **A. No.**
12 Q. Did there ever come a time when you looked at the --
13 the differences in either total GOP seats as they're
14 identified, for example, on Exhibit 43 from a
15 current map to a new map and decided that you were
16 going to adjust district lines to either increase or
17 decrease the total GOP seat count?
18 MR. ST. JOHN: Can I have that question read?
19 Before you answer it.
20 (Question read.)
21 THE WITNESS: No. The -- this point in the
22 process would have been after the regional
23 alternatives were decided and then there was that
24 smoothing-out process. So the changes would be more
25 in the context of the different regions not

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1 necessarily merging together and then having to try
2 to accommodate the fact that these didn't -- these
3 two different regional choices didn't merge, they
4 didn't mesh, and then, you know, trying to
5 accommodate leadership's decision and the wishes of
6 the members as we went through that smoothing-out
7 process.
8 BY MR. POLAND:
9 Q. You can set that document to the side.
10 There are two other spreadsheets I wanted to
11 ask you about. These are going to be in a different
12 folder.
13 **A. Okay.**
14 Q. So you can get back to the -- to the DVD directory.
15 **A. Okay.**
16 Q. And for this I'd like you to look at the -- I think
17 it's on this one. Let me just make sure. Make sure
18 I've got the right one here. So this would be the
19 file that's the WRK32864.
20 **A. 32864. The folder or --**
21 Q. Yep. If you look under the Responsive Spreadsheets
22 Duplicated.
23 **A. Okay.**
24 Q. All right.
25 **A. Okay. I believe I'm there.**

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1 Q. All right. I'd like you to open up the Summary.xlsx
2 spreadsheet.
3 **A. Summary singular?**
4 Q. Yeah, summary singular. You'll see there are two
5 and it's the summary singular.
6 **A. Okay. Okay. Summary singular xls sheet.**
7 Q. Right.
8 **A. Okay.**
9 Q. All right. Are you there?
10 **A. I am.**
11 Q. All right. And -- I'll just take a glance over your
12 shoulder to make sure we're looking at the same
13 thing. Yes. I'll give you a minute to take a look
14 at it.
15 **A. (Witness reading.)**
16 Q. Let me know when you've had a chance to look at it.
17 **A. Okay.**
18 Q. All right. Have you had a chance to look at that?
19 **A. Yeah.**
20 Q. Is this a -- a spreadsheet that you've ever seen
21 before?
22 **A. I'm sure I saw it at some point in the process, but**
23 **I don't specifically recall seeing it.**
24 Q. All right. Did -- did you create this spreadsheet?
25 **A. I don't believe so.**

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1 Q. Do you know who did?
2 **A. I don't know.**
3 Q. Looking at the -- looking at the rows 2 and 3,
4 you'll see it says "Statistical pickup. Currently
5 held DEM seats that moved to 55 percent or better"?
6 **A. Uh-huh.**
7 Q. Do you see that? Do you know what that indicates?
8 **A. That the seat in question's composite score moved**
9 **from something sub 55 to something greater than 55.**
10 Q. Okay. And this would have been an analysis of a
11 specific plan or a specific map?
12 **A. Yeah, it would have been. I don't know which one,**
13 **though, and there's nothing to --**
14 Q. That's what I was about to ask you, if there was a
15 way of telling based on this spreadsheet which one
16 it might have been.
17 **A. No, there isn't.**
18 Q. If you look just below that or just down a few rows
19 to row 13 and 14, you see it says, "GOP Seats
20 strengthened a lot. Currently held GOP seats that
21 start at 55 percent or below that improve by at
22 least one percent"?
23 **A. I do.**
24 Q. All right. What does -- do you know what that
25 means?

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1 **A. It's fairly self -- I mean it seems to me that the**
 2 **composite increased by at least one percent on**
 3 **whatever map this is. And start below 55. So below**
 4 **55, and an improvement on whatever score is used**
 5 **here, I'm assuming the composite, by at least one**
 6 **percent.**
 7 Q. All right. And then if we go down below that, we
 8 see it says -- and this is rows 35 and 36 it says,
 9 "GOP seats strengthened a little. Currently held
 10 GOP seats that start at 55 percent or below that
 11 improve less than one percent."
 12 Do you see that?
 13 **A. I do.**
 14 Q. And again is that something you'd say that's fairly
 15 self-explanatory?
 16 **A. Yeah. Fairly.**
 17 Q. All right. And then rows 53 and 54, "GOP seats
 18 weakened a little. Currently held GOP seats that
 19 start at 55 percent or below that decline."
 20 Do you see that?
 21 **A. I do.**
 22 Q. Does that have any meaning beyond the explanation
 23 that's given there?
 24 **A. Yeah. Yeah, currently held seats that start at 55**
 25 **or below that decline. Yeah. I think it's fairly**

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1 **self-explanatory in that sentence.**
 2 Q. All right. Below that then we see "GOP seats likely
 3 lost. Currently held GOP seats that drop below 45
 4 percent?"
 5 **A. Okay.**
 6 Q. All right. And any specific meaning to that beyond
 7 what's written there?
 8 **A. No. Seems again to be fairly self-explanatory.**
 9 Q. All right. Below that there is a -- a 74 -- line 74
 10 and 75. It says, "GOP donors to the team.
 11 Incumbents with numbers above 55 percent that donate
 12 to the team."
 13 Do you see that?
 14 **A. I do.**
 15 Q. What does that indicate?
 16 **A. I don't know.**
 17 Q. Did you ever hear that term used before, donors to
 18 the team?
 19 **A. No. Maybe. Nothing that I recall.**
 20 Q. All right. We had -- we had looked at an Exhibit
 21 39, for example, a spreadsheet that was labeled Team
 22 Map, and we'd seen a Team Curve before.
 23 **A. Uh-huh.**
 24 Q. Does that -- the captions in those documents about
 25 team have anything -- any meaning in -- in the

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1 context of this spreadsheet that donate to the team?
 2 **A. I wouldn't think so. It may just be a broader**
 3 **reference to the caucus, not necessarily**
 4 **attributable to the map. So I don't know which one**
 5 **that could refer to.**
 6 Q. All right. And then below in rows 89 and 90 you'll
 7 see it says, "DEMS weakened. Currently held DEM
 8 seats 45 percent or better that become more GOP."
 9 Do you see those? Do you see those rows?
 10 **A. I do.**
 11 Q. All right. And is there any specific meaning that
 12 you attribute to that heading?
 13 **A. No, I mean the heading, or the subheading I should**
 14 **say, is fairly self-explanatory to what the -- what**
 15 **the numbers below seem to indicate.**
 16 Q. Okay. Does having looked at this spreadsheet at all
 17 reflect your recollection about who might have
 18 prepared this?
 19 **A. No.**
 20 Q. Do you know why it was prepared?
 21 **A. No.**
 22 Q. All right. I'd like you to take a look then at the
 23 other spreadsheet, the one that you had identified
 24 before as Summaries, plural.
 25 **A. Okay. Okay. Summaries plural within the same**

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1 **folder?**
 2 Q. Right. Yeah.
 3 **A. Yes.**
 4 Q. Should be just right there.
 5 **A. Okay.**
 6 Q. All right. Are you there?
 7 **A. I am.**
 8 Q. I'll give you a minute to take a look at it if you'd
 9 like.
 10 **A. (Witness reading.) A lot of columns here.**
 11 Q. Yeah. There are a lot of columns.
 12 **A. Okay. I think I've got -- I'm sure you'll point me**
 13 **to the columns and rows that you're specifically**
 14 **asking about.**
 15 Q. Yeah, I will.
 16 **A. There's a lot going on here.**
 17 Q. And this is the last spreadsheet I'm going to ask
 18 you about. Is this -- is this a spreadsheet that
 19 you've seen before?
 20 **A. Not that I can recall.**
 21 Q. Not one that you prepared then?
 22 **A. I don't believe so. This just doesn't feel like**
 23 **something I would prepare.**
 24 Q. Do you know who did prepare it?
 25 **A. No.**

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1 Q. If you look at the sheet one and if you're scrolled
2 all the way over to the left, so we're in columns A
3 through L, do you see that there is a -- on cell A1
4 it says Racine/Kenosha?
5 **A. I do see that.**
6 Q. All right. What does that refer to?
7 **A. I am assuming Racine and Kenosha.**
8 Q. All right. And then if you look in column A, there
9 are a number of numbers, 61, 62, 63, 64, 65, 66. Do
10 you see those?
11 **A. I do.**
12 Q. Do those refer to the assembly district numbers that
13 are in Racine and Kenosha?
14 **A. Yes.**
15 Q. And then just below that SD 21, SD 22, those are the
16 two senate districts?
17 **A. That's correct.**
18 Q. Now, if we look over in the next row, I'm sorry, the
19 next column it says Current Law, and there are some
20 numbers down that column, correct?
21 **A. Uh-huh.**
22 Q. Then in row -- in column D it says Base Map, there's
23 some numbers below that; if you look at column F it
24 says Assertive Map, some numbers below that?
25 **A. Uh-huh.**

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1 Q. And then over in column I it says Aggressive Map and
2 there are some numbers below that. Do you see that?
3 **A. Uh-huh.**
4 Q. Do you know what the numbers are --
5 **A. Yes.**
6 Q. -- that appear in those columns?
7 **A. I don't know. I would assume it's some type of**
8 **composite score but not knowing if it's the same**
9 **composite score you see in the summary sheets that I**
10 **put together with the red and the blue formatting.**
11 Q. Are those partisan scores?
12 **A. They would be partisan composite scores.**
13 Q. Are those partisan composite scores for the GOP do
14 you know?
15 **A. I believe so. Yes.**
16 Q. If you scroll over then, I'd like to look at it's
17 columns AG through AR.
18 **A. AG through AR?**
19 Q. Yeah.
20 **A. Oh, too far. Okay.**
21 Q. So you'll see that beginning in -- it's column AG,
22 row 1, it says Tale of the Tape. Do you see that?
23 **A. I do.**
24 Q. Do you know what that refers to?
25 **A. I think it's just a back-of-the-napkin way of**

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1 **referring to a summary of the overall map.**
2 Q. All right. And we see there and I'm looking here
3 now at rows 3 through 16, so just staying within the
4 assembly.
5 **A. Uh-huh.**
6 Q. This looks to me at least like we have the same
7 Strong GOP, Lean GOP, Total GOP, then Swing numbers,
8 and then Lean DEM, Strong DEM, and Total DEM as we
9 saw at the bottom of some of the xl file printouts
10 we looked at before, correct?
11 **A. Correct.**
12 Q. All right. Then if we -- if we look over at columns
13 AL through AR, you see AL has Joe Assertive, column
14 AN has Tad assertive -- or Tad Aggressive. Column
15 AP says Adam Aggressive. Do you see those?
16 **A. I do.**
17 Q. All right. Do those -- and then there are some
18 partisan scores below those as well, right?
19 **A. Yes. Or I'm sorry, no, there are counts below**
20 **those, not scores.**
21 Q. Those are counts?
22 **A. I believe so.**
23 Q. Okay. Well, yes. Okay. Understand. Right.
24 District counts in other words?
25 **A. Yes. For those various categories. This thing is**

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1 **horribly formatted.**
2 Q. And then over on the -- in column AR it says Team
3 Map. Do you see that?
4 **A. Yes.**
5 Q. And those have zero below all of those, correct?
6 **A. They do.**
7 Q. All right. Looking at -- looking at those columns,
8 Joe Assertive, Tad Aggressive, Adam Aggressive, does
9 that refresh any recollection about any meaning that
10 those -- we saw some of those file names before --
11 that those might have?
12 **A. Those are not my file names.**
13 Q. Okay. Is it your understanding that those represent
14 different district configurations?
15 **A. It appears to be that way, yes.**
16 Q. All right. Now, in the -- in the center of -- of
17 that collection of rows and columns we were looking
18 at, there's -- and this is column AK. It says
19 "Current map: 49 seats are 50 percent or better."
20 Do you see that?
21 **A. Uh-huh.**
22 Q. Do you know what that means?
23 **A. Again fairly self-explanatory. I think it's a**
24 **reflection that under the current -- or pre Act 43**
25 **redistricting plan, that using whatever composite,**

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1 **there were 49 seats that were 50 percent or better.**
 2 Q. And that would be 50 percent or better GOP, correct?
 3 **A. Correct.**
 4 Q. And then below that it says "Team Map: 59 assembly
 5 seats are 50 percent or better."
 6 Do you see that?
 7 **A. I do.**
 8 Q. And what does that mean?
 9 **A. Again I think it's fairly self-explanatory that the
 10 team map was with 59 seats that were 50 percent or
 11 better on that composite.**
 12 Q. All right. I'd like then to draw your attention to
 13 this would be columns AU through BL.
 14 **A. AU through BL.**
 15 Q. Right. And we're going to be looking at rows 2
 16 through 6.
 17 **A. Okay.**
 18 Q. And so there is -- there's a header that says Good
 19 Outcomes, and then there are some columns that are
 20 defined below that, "Statistical Pickup," and "55
 21 Percent and Below GOP Inc Strengthened," "45 Percent
 22 and Over DEM Incumbent Weakened," "GOP Donors. "
 23 Do you see that?
 24 **A. I do.**
 25 Q. Okay. Does that have any meaning for you? Do you

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1 know what that means?
 2 **A. No. I mean they're fairly self-explanatory. I mean
 3 it's -- and there's no data below it either.**
 4 Q. Right.
 5 **A. Yeah.**
 6 Q. Did you -- I was going to ask you've never seen this
 7 spreadsheet, but I'll ask the questions anyways.
 8 Have you ever seen a version of this spreadsheet
 9 that has anything filled in there?
 10 **A. Not that I can think of.**
 11 Q. All right. And then to the right of that it says
 12 Bad Outcomes, and it says, "45 Percent and Above DEM
 13 Incumbent Strengthened," next to it "55 Percent and
 14 Below GOP Weakened."
 15 **A. Uh-huh.**
 16 Q. Then next to it is "Statistical Loss," then "GOP
 17 Non-donors." Do you see that?
 18 **A. I do.**
 19 Q. Do you know what that means?
 20 **A. I mean again I think the headings are fairly
 21 self-explanatory. You know, calls back to a lot of
 22 the same language used in that summary spreadsheet
 23 from before.**
 24 Q. All right. And if you look just below -- didn't
 25 mean to cut you off there.

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1 **A. No.**
 2 Q. But if you look below that, you'll see it looks like
 3 it's sort of a -- a key or some definitions. So
 4 this begins in row 18. Just below that it says,
 5 "Statistical pickup equals seat that is currently
 6 held by DEM that goes to 55 percent or more."
 7 **A. Uh-huh.**
 8 Q. And below it says, "Example: If number 13 Cullen
 9 goes from 45 percent to 58 percent."
 10 Do you see that?
 11 **A. I do.**
 12 Q. And then below, "GOP incumbent strengthened equals
 13 positive movement on composite."
 14 **A. Yeah.**
 15 Q. Do you see that? Does that have any meaning for
 16 you?
 17 **A. Again I think it's fairly self-explanatory on
 18 various ways that this is attempting to summarize
 19 the decisions that were made.**
 20 Q. All right. So it's equating a GOP incumbent
 21 strengthened -- what does a positive movement on
 22 composite mean?
 23 **A. I think it would be a pos -- well, a positive change
 24 from current plan to new plan on whatever composite
 25 metric is being used.**

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1 Q. So it would increase the partisan score for the GOP?
 2 **A. I think that's a fair summary.**
 3 Q. And then below that "DEM incumbent weakened equals
 4 positive GOP movement on composite"?
 5 **A. Uh-huh. Sorry.**
 6 Q. And below that it says, "GOP donors equals those who
 7 are helping the team."
 8 **A. Right.**
 9 Q. Do you see that? Does that refresh your memory at
 10 all about what it means to be a donor who's helping
 11 the team?
 12 **A. Yeah, I don't -- again not knowing if that's
 13 referring to a map or to, you know, a
 14 back-of-the-napkin way of referring to the caucus, I
 15 don't know specifically what the intent was. It
 16 could be either.**
 17 Q. All right. So just below that then we see it says,
 18 "DEM incumbent strengthened equals DEM over 45
 19 percent who has negative movement on composite."
 20 Do you see that?
 21 **A. I do.**
 22 Q. And so does that indicate -- the negative movement
 23 on composite, that means it's going to be a lower
 24 composite score on the composite?
 25 **A. Yes.**

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1 Q. All right. Below that it says, "GOP incumbent
2 weakened equals those 55 percent and below who have
3 negative movement on composite." Again that's a --
4 that's going to be a loss in the partisan score?
5 **A. Uh-huh. Yes.**
6 Q. And then "Statistical loss equals seat that is
7 currently held by GOP that goes to 45 percent or
8 below," then in parens, "Example: If number 47 goes
9 all Dane County" -- or CTY. I assume that means
10 county?
11 **A. Right.**
12 Q. -- "we lose the number, but not the incumbent."
13 Do you see that?
14 **A. I do.**
15 Q. Right. And what does that indicate?
16 **A. It seems to -- well, I mean the first part is fairly**
17 **self-explanatory of there's a belief that if a seat**
18 **dips below 45, it's statistically lost. 47 goes we**
19 **lose the number, but not the incumbent. I think**
20 **this is just alluding to a remuneration where --**
21 **where an incumbent may not keep the same number, but**
22 **yet this metric is based off of the seat number.**
23 **That's how I read it.**
24 Q. All right. And then finally just below that it
25 says, "GOP non-donors equals those over 55 percent

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1 who do not donate points."
2 Do you see that?
3 **A. I do.**
4 Q. What does that mean?
5 **A. It seems to imply that an incumbent is over 55**
6 **percent and does not take a negative hit on the**
7 **composite.**
8 Q. Do you know what the -- the reference to non-donors
9 means?
10 **A. I think it's -- again I think it's a little bit more**
11 **self-explanatory that it's that they maintain or**
12 **increase on their composite.**
13 Q. All right.
14 MR. POLAND: Just a minute here. Okay. I
15 think that's all I have.
16 MR. KEENAN: I have some questions.
17 EXAMINATION
18 BY MR. KEENAN:
19 Q. We'll just start off on the document that we're on
20 now, the Summaries spreadsheet. I believe you
21 testified before this deposition you had never seen
22 this spreadsheet?
23 **A. I may have. I don't specifically recall it, though.**
24 Q. Okay. And so Mr. Poland asked you a series of
25 questions asking you to read words in the

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1 spreadsheet and then give your impression of them.
2 Do you recall those questions?
3 **A. Yes.**
4 Q. Okay. Was that -- were your answers based on any
5 preexisting knowledge of what this document
6 contained?
7 **A. No, just trying to interpret it on the -- on the**
8 **fly.**
9 Q. Okay. And then we also looked at a similar document
10 called Summary singular?
11 **A. Yes.**
12 Q. Mr. Poland also asked you a series of questions
13 about that document. Were your answers about it
14 based on any knowledge you had coming into this
15 deposition about the contents of the document?
16 **A. No. I -- like I said, I may have seen this at some**
17 **point, but my summaries were the -- the red and blue**
18 **sheets as we've talked about.**
19 Q. And so your answers where he asked you to read some
20 words on the spreadsheet and then tell what they
21 meant, that was just based on you reading them here
22 at the deposition and giving your opinion?
23 **A. Uh-huh.**
24 MR. POLAND: Object to the form of the
25 question. Leading.

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1 THE WITNESS: Yes, I was reading them on the
2 fly and trying to extrapolate based on the heading,
3 the plain language reading, plus if there were any
4 data below that what was implicated.
5 BY MR. KEENAN:
6 Q. And both the summary and the summary documents, did
7 you create those documents?
8 **A. I don't -- no, I didn't.**
9 Q. And so you don't actually know what -- do you know
10 what the author of the document intended by the
11 terms and titles that he used in them?
12 **A. No. Everybody in the process had their own way of**
13 **summarizing the decisions that were made. My**
14 **process was the red and blue spreadsheets with --**
15 **with the summary data at the bottom and the formulas**
16 **and the conditional formatting, so that's the way I**
17 **chose to summarize the decisions that were**
18 **ultimately made by the legislative leaders and**
19 **eventually the caucus as a whole, the body as a**
20 **whole.**
21 Q. Okay. And just some factual questions. Coming out
22 of the 2010 elections, how many assembly seats had
23 the republicans won?
24 **A. Sixty in the assembly I believe was where we were**
25 **at.**

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1 Q. Okay. And then in the 2012 election, how many seats
2 did the republicans win?
3 **A. 2012, 63?**
4 Q. I believe that's correct, but so there was -- in
5 2010 there were 60 republicans who won assembly
6 seats; is that correct?
7 **A. I believe so. Yes.**
8 Q. And if we look at, for example, Exhibit -- Gaddie
9 Exhibit 43 which you were shown as a Team Map
10 summary sheet.
11 **A. Yes.**
12 Q. Okay. If we look at the Current Map, that refers to
13 the -- the plan that was in place for the 2010
14 election?
15 **A. Yes.**
16 Q. Okay. And that shows that there's 40 total GOP
17 seats, safe plus lean. Do you see that?
18 **A. I do.**
19 Q. And then there's swing seats 19, 48 to 52. Do you
20 see that?
21 **A. I do.**
22 Q. Okay. So am I correct in reading this sheet that in
23 the 2010 elections the republicans won more seats
24 than that were characterized as total GOP seats and
25 all the swing seats in the current map?

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1 **A. Yeah, the sum of those two would have been 59 seats,**
2 **and we came out of the -- we, the republican**
3 **assembly caucus, came out of that election with 60**
4 **seats.**
5 Q. Okay. And then looking at the New Map, this Team
6 Map sheet shows there's total GOP seats, safe plus
7 lean 52, and then swing 48 to 52 of 10. That's
8 correct?
9 **A. Yes, it is.**
10 Q. And how many republican assembly people are there
11 right now?
12 **A. Sixty-three.**
13 Q. Okay. So republicans have won even more seats than
14 are listed here as total GOP seats safe and lean and
15 all the swing districts; is that correct?
16 **A. The sum of those two numbers 52 and 10 would lead**
17 **you with 62, and the current membership is 62, so**
18 **yes.**
19 Q. Okay. So I just want to go back to your deposition
20 testimony. I'm looking at Exhibit 75. This is the
21 deposition from December 21, 2011. This was the
22 first deposition from the Baldus case.
23 **A. Okay.**
24 Q. And Mr. Poland had previously shown you also some --
25 an opinion in the Baldus case that referenced some

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1 testimony about the goals of the -- the process and
2 the maps. So I'm going to point you to page 156 of
3 the deposition.
4 **A. Okay.**
5 Q. And if you look at line 16 to 18, there's a question
6 and answer, and it's -- question is, "Was it a part
7 of the goal to increase the republican membership in
8 the legislature?"
9 The answer is, "No."
10 Do you see that?
11 **A. I do.**
12 Q. Okay. And you've testified today that the tes --
13 this testimony remains correct?
14 **A. Yes. I have testified that -- to that.**
15 Q. What was the republican membership in the
16 legislature at the time you were drawing the Act 43
17 map?
18 **A. Sixty members in the assembly.**
19 Q. Okay. And then how many senators?
20 **A. Eighteen at that point?**
21 Q. Okay. So was it a part of your goal to increase the
22 republican membership in the legislature from 60 to
23 above 60?
24 **A. No.**
25 Q. Okay. We can move on to page 195.

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1 **A. Okay.**
2 Q. And there's a question starting on line 3 that says,
3 "What about maximizing republican representation in
4 the assembly?"
5 And the answer is, "No."
6 Was it a goal of yours in drafting the maps
7 that became Act 43 to maximize republican
8 representation in the assembly?
9 **A. No.**
10 Q. And why do you say that?
11 **A. My goal is to get -- well, it's the competing goals**
12 **of redistricting. Not only the -- you know, the**
13 **criteria of compactness, contiguity, sensitivity to**
14 **minority concerns, but there was also the other end**
15 **of this which is that it is a bill like any other**
16 **bill that requires a certain number of votes that**
17 **gets over the finish line in the state assembly.**
18 Q. Okay. So and by testifying that you -- your goal
19 was not to maximize republican representation in the
20 assembly, did you mean that you did not consider
21 republican partisanship at all in drawing the Act 43
22 districts?
23 MR. POLAND: Object to the form of the
24 question. Leading.
25 THE WITNESS: The -- again going back to the

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1 prior testimony that when I sat down with a member
2 of the legislature and they asked me for a certain
3 thing, my job is to try to accommodate that. If I
4 can't accommodate that, or at least partially
5 accommodate that, we run the risk of losing votes of
6 members to ultimately pass this bill.
7 So I need to be cognizant of what their
8 requests are regardless of the motivation of that.
9 And like I said, whether it be that they want to
10 represent their old high school that they don't
11 currently represent or if there are more friendly
12 republicans in that area, I have to try to
13 accommodate that to the best of my ability.
14 BY MR. KEENAN:
15 Q. In this deposition -- in this deposition today and
16 then in the other depositions there's been questions
17 asked about things you consider when drawing
18 districts.
19 A. Uh-huh.
20 Q. What do you understand that to mean when someone
21 asks you what you were considering when you were
22 drawing districts?
23 A. Well, and again it goes back to traditional
24 redistricting criteria: compactness, contiguity,
25 population equality, sensitivity to minority

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1 concerns, and then also consideration of what that
2 specific member is asking for with regard to
3 their -- with regard to their district.
4 Q. And I guess I kind of meant something more along the
5 lines of what -- what did you understand when
6 someone refers to drawing a district? What actually
7 were you doing when you're drawing a district?
8 A. The mechanical process --
9 Q. Yeah.
10 A. -- of drawing the district? It's a matter of
11 assigning geography to a district, to a number, so
12 that that geography at its smallest can be a census
13 block and at its largest could be multiple counties.
14 And so you select that level of geography and an
15 associated district number, and then you basically
16 click something in the software that assigns Door
17 County to District 1 in that case. You know,
18 obviously Peninsula, that's always kind of been the
19 first assembly district. So in that case you can
20 very easily just assign the entirety of the county
21 as opposed to assigning census block by census block
22 or municipality by municipality.
23 Q. And when you were working in the autoBound program
24 actually drawing a district, what kind of
25 partisanship information was available to you while

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1 engaging in the process of assigning geographic
2 areas to a particular district?
3 A. Partisan data including the history of prior
4 elections under what would be if you took those
5 prior elections and applied it to the new lines,
6 those would be available. So you could look at a
7 prior, you know, J.B. Van Hollen from 2010 race
8 under a new configuration or an evolving and draw a
9 configuration. And then also the partisan composite
10 was available to look at for that individual
11 district as the geographic assignments were made.
12 Q. And you used the example of drawing District 1.
13 When you were drawing District 1, what type of
14 partisanship information was available on the screen
15 in autoBound? Was it just District 1 or was it the
16 entire state?
17 A. If other districts were assigned, it is possible
18 that I could see that. If District 2 had already
19 been -- let's say I assigned District 1 because it's
20 the Peninsula and it's easy to assign. I could see
21 the partisan numbers, whether it be the history or
22 the composite for that district, and then I could
23 see District 2, that individual districts, because
24 the matrix has more lines -- every district is a
25 line, so I could see multiple districts, and by that

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1 I mean multiple lines, but only so much as the
2 screen would show me at a given time.
3 Q. And could you see the impact a change you're making
4 to a particular district would have on the entire
5 state's political balance?
6 A. No.
7 MR. KEENAN: I think I might want to take a
8 break to make sure there's no other questions in my
9 notes. I may just have a couple more, but I may be
10 done. So --
11 THE VIDEOGRAPHER: We are going off the record
12 at 1:27 p.m.
13 (Discussion held off the record.)
14 THE VIDEOGRAPHER: We are back on the record at
15 1:28 p.m.
16 MR. KEENAN: We're back on the record and I
17 have no further questions.
18 MR. ST. JOHN: I have no further questions.
19 MR. POLAND: I don't have any questions either.
20 THE VIDEOGRAPHER: This ends the video
21 deposition of Adam R. Foltz on March 31, 2016; the
22 time 1:28 p.m.
23 (Deposition ended at 1:28 p.m.)
24
25

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Adam R. Foltz**

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<p>1 STATE OF WISCONSIN } 2 } SS: 3 COUNTY OF WALWORTH } 4 5 I, LAURA L. KOLNIK, Registered Professional 6 Reporter and Notary Public in and for the State of 7 Wisconsin, do hereby certify that the foregoing 8 proceedings were taken before me on the 31st day of 9 March, 2016. 10 11 That the appearances were as noted initially. 12 13 That before said witness testified, he was first 14 duly sworn by me to testify the truth, the whole truth 15 and nothing but the truth relative to said cause. 16 17 I further certify that I am neither counsel for, 18 related to, nor employed by any of the parties to the 19 action in which this proceeding was taken; and, further, 20 that I am not a relative or employee of any attorney or 21 counsel employed by the parties hereto, nor financially 22 interested, or otherwise, in the outcome of this action. 23 24 That the foregoing proceedings are true and correct 25 as reflected by my original machine shorthand notes taken at said time and place. Dated this ____ day of _____, ____ _____ LAURA L. KOLNIK, RPR/RMR/CRR Notary Public State of Wisconsin My commission expires February 23, 2018</p>	

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