

EXHIBIT 1

Soto Palmer, et al.

v.

Hobbs, et al.

* * * * *

Video-Recorded Remote Deposition
Upon Oral Examination of
Paul Graves
December 14, 2022

* * * * *

REPORTED BY:

LAKESIDE REPORTING

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Paul Graves

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, in his official
capacity as Secretary of State
of Washington, and the STATE OF
WASHINGTON,

Defendants,

and

JOSE TREVINO, ISMAEL G. CAMPOS,
and State Representative
ALEX YBARRA,

Intervenor-Defendants.

No. 3:22-cv-05035-RSL

VIDEO-RECORDED REMOTE DEPOSITION UPON ORAL EXAMINATION OF
PAUL GRAVES

Wednesday, December 14, 2022
9:02 a.m. to 4:55 p.m.

VIDEOGRAPHER: MIKE ELDERKIN

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1 December 14, 2022, Remote Proceedings:

2 PROCEEDINGS: 9:02 a.m.

3 THE VIDEOGRAPHER: We're now on the record.

4 The time is 9:02 a.m. Today's date is December 14th,
5 2022, and this is the video-recorded deposition of
6 Paul Graves being held remotely in the matter of
7 Susan Soto Palmer, et al, versus Steven Hobbs, et al, in
8 the United States District Court, Western District of
9 Washington.

10 The video operator is Mike Elderkin of Lakeside
11 Reporting, 218 Main Street, Kirkland, Washington.

12 Will counsel and all present please introduce
13 yourselves for the record.

14 MR. DUNN: This is Chad Dunn on behalf of
15 the plaintiffs.

16 MR. MILLSTEIN: Aaron Millstein from
17 K&L Gates on behalf of Mr. Graves.

18 MR. HUGHES: Andrew Hughes from the
19 Attorney General's Office on behalf of the State of
20 Washington.

21 MS. WORTHINGTON: Kate Worthington,
22 Assistant Attorney General, on behalf of the Secretary of
23 State.

24 MR. STOKESBARY: Drew Stokesbary from
25 Chalmers & Adams on behalf of the Intervenor-Defendants

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1 and cross-plaintiffs.

2 THE VIDEOGRAPHER: If that's everyone, will
3 the court reporter please swear in the witness.

4 PAUL GRAVES,
5 having been sworn/affirmed on oath to tell the truth, the
6 whole truth, and nothing but the truth, testified as
7 follows:

8 E X A M I N A T I O N

9 BY MR. DUNN:

10 Q Please tell us your name.

11 A Paul Graves.

12 Q Mr. Graves, my name is Chad Dunn. I believe we've
13 met and spoke for the first time today; is that true?

14 A I think so.

15 Q I don't recall ever having any contact with you
16 prior to this deposition.

17 Is that your recollection as well?

18 A I don't recall it, either.

19 Q All right. My information is you're a lawyer; is
20 that a fact?

21 A That's right.

22 Q When did you become a lawyer?

23 A In 2007.

24 Q Have you had the occasion to take depositions
25 before?

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1 A Yes, I have.

2 Q About how many times?

3 A Twenty or 25.

4 Q Is part of your regular law practice today to take
5 depositions?

6 A No, it's not.

7 Q About when's the last time you took one?

8 A 2015 or 2016.

9 Q All right. It sounds like you're not involved, at
10 least in terms of your law practice in litigation, at
11 least in the recent years; is that fair to say?

12 A I'm not primarily a litigator. I'm an in-house
13 counsel for a trucking company.

14 Q We'll talk more about that in a minute.

15 Have you given a deposition before?

16 A Yes.

17 Q About how many occasions?

18 A Once.

19 Q And what was the -- What was the nature of the
20 dispute?

21 A It was an Open Public Meetings Act and Public
22 Records Act lawsuit from last year.

23 Q Was that case related to your work on the
24 Redistricting Commission?

25 A It was.

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1 Q Have you ever otherwise given a deposition?

2 A No.

3 Q Have you given testimony in court?

4 A No.

5 Q Not for any reason?

6 A No.

7 Q Have you ever been a party to a lawsuit?

8 A Yes.

9 Q How many?

10 A I guess maybe two.

11 Q The first one you recall, what was the nature of the
12 dispute?

13 A It was the Public Meetings Act, Public Records Act
14 case from last year.

15 Q Your information is that you were a named defendant
16 in that case?

17 A I can't recall if I was a named defendant or if it
18 was simply the Redistricting Commission that was a named
19 defendant.

20 Q Okay. Did you otherwise intervene in the case in
21 your individual capacity?

22 A No.

23 Q What is the second lawsuit that you were a party to?

24 A I don't know if it's necessarily a lawsuit, but I --
25 I'm a -- was a foster parent. I adopted my son.

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1 Q I see. Was that since the Open Meetings lawsuit or
2 prior to that?

3 A No. I adopted him in 2015.

4 Q So other than Open Meetings lawsuit and the
5 testimony that you're undertaking today, have you given
6 testimony in any other way in relation to your work on the
7 Redistricting Commission?

8 A No.

9 Q Well, as a lawyer who has taken depositions, you
10 probably recall some of these things. Let me just walk
11 through just a little -- a little bit of background with
12 you.

13 You know, I don't -- I expect the rest of our
14 discussion to go the rest of today as it has in these last
15 few minutes. I don't expect to get any more excited than
16 I have been. I hope to be courteous to you. I hope you
17 can return the favor. This is our one opportunity to find
18 out what your testimony will be on various issues in this
19 Federal Court, and federal judges will later rely on to
20 decide issues of law and fact.

21 You understand that?

22 A Yes, I do.

23 Q Now, as friendly and professional as I hope we can
24 be with one another, you understand you're under oath
25 today?

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1 A I do understand that.

2 Q And you understand that our conversation today is
3 going to be reduced to a booklet form, and ultimately
4 that's going to be used by the lawyers and the judges and
5 potentially witnesses in reliance on what happens later in
6 this proceeding.

7 Do you understand that?

8 A Yes, I understand.

9 Q And so it's critically important that above all else
10 you tell us the truth today.

11 Do you understand that?

12 A I do understand that.

13 Q Now, it's my job -- and I can promise you now that
14 I'll fail at it a time or two, but it's my job to ask you
15 a question that you understand. So only you know whether
16 you understood my question. So if you didn't understand
17 it, just speak up and let me know. I'll be happy to
18 rephrase, as I've said. You know, I'm certain I'll foul
19 up a sentence or two, so I'm happy to rephrase things when
20 necessary.

21 Do you understand?

22 A Yes, I do.

23 Q You're also not trapped here by any means. You were
24 served a subpoena today; is that --

25 You were served a subpoena to be at this deposition?

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1 A Yes, I was.

2 Q All right. And you're here in response to that
3 subpoena; is that right?

4 A That's right.

5 Q All right. Now, if at some point in time you need
6 to take a break, you need to confer with counsel, you just
7 let me know that. I'll almost always be happy to
8 accommodate that.

9 There may be some occasions where I want to finish a
10 few questions or a topic; but I'll ask you to do that, and
11 then we'll be happy to take a break.

12 Do you understand that?

13 A Yes, I do.

14 Q Now, the final piece here is, of course, we're
15 videotaped in this proceeding, and ultimately the Court
16 may rely on watching the videotape; but according to the
17 law, as you probably know, the transcript is the official
18 proceeding.

19 So if you make a noise or make a gesture, I may ask
20 you to confirm that in words; and that's not to be
21 difficult or rude to you, but that's to make sure our
22 transcript is accurate.

23 Do you understand that?

24 A I do. I aim to be courteous to you and especially
25 to the court reporter.

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1 Q All right. If you have any other questions along
2 the way, that will be fine. I just want to start a little
3 bit with the background.

4 It's my information you're in a law firm conference
5 room; is that true?

6 A Right now yes, I am.

7 Q What information do you have available to you in
8 front of you?

9 A Nothing.

10 Q Do you have any equipment in front of you?

11 A I have a computer.

12 Q And what is -- What is open and operable on that
13 computer at the moment?

14 A It's a Zoom meeting screen that seems to have all
15 your lovely faces on it.

16 Q Okay. Anything else?

17 A No, not that I can tell.

18 Q Are there any documents or papers about you?

19 A No.

20 Q All right. Is there anybody in the room with you?

21 A Yes. My attorney, Mr. Millstein, is here.

22 Q All right. Mr. Millstein is your personal counsel?

23 A Do you mean --

24 Q Does he represent you individually?

25 A I think that's right. I -- I know that it's --

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1 There's a -- I don't know if it's a complicating factor
2 that it's -- This is a deposition as a result of work for
3 a state agency, so I don't know if there's some
4 distinction there that matters.

5 Q Okay. Well, I'm not trying to be tricky. I'm not
6 asking at the moment who is paying the lawyer.

7 It's just your understanding that Mr. Millstein is
8 providing you legal advice today?

9 A Yes, that's what I believe.

10 Q Are there any other lawyers that you have in this
11 proceeding?

12 A No.

13 Q Okay. Do you have any other legal counsel that
14 advised you over the course of your work on the
15 Redistricting Commission?

16 A Yes.

17 Q Who are they?

18 A We had counsel from the Attorney General's Office.

19 Q Anyone else?

20 A Well, there was -- There were primarily two counsel
21 we had from the Attorney General's Office. We also had
22 training on public records and the Voting Rights Act and
23 some other things from different people from the Attorney
24 General's Office.

25 And then, of course, over the course of the

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1 redistricting process I also received legal advice from
2 Rob Maguire at Davis Wright Tremaine.

3 Q Anyone else?

4 A No, I think that's it.

5 Q All right. Are any of these people -- Well, let me
6 before I get to that.

7 The AG's office, who were the two individuals you
8 just identified?

9 A I genuinely can't recall their names right now.

10 Q That's fine. And I should have told you that.

11 We're going to ask you some things that you may not
12 remember. You may need to look at some documents. You
13 know, all that's fine. So just tell us that, you know, "I
14 don't recall. I need to go look at it."

15 If there's some document that you would look at, you
16 know, reference that, but --

17 So you don't recall either of the names of the
18 lawyers at the Attorney General's Office?

19 A Not off the top of my head right now, I'm afraid
20 not.

21 Q But it's the case that one or two or both of those
22 people were the people who also gave you the training on
23 the Open Meetings Act and the VRA, or is it a different
24 lawyer?

25 A If I recall, there were different people --

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1 Q Okay.

2 A -- who provided those various trainings.

3 Q So there might have been a third lawyer that spoke
4 on the Open Meetings Act and the VRA?

5 A I think so.

6 Q And then Mr. Maguire is with what firm?

7 A Davis Wright Tremaine.

8 Q And was he your lawyer, or was he the Commission's
9 lawyer?

10 A He represented me --

11 Q Did he represent --

12 A -- as counsel.

13 Q -- you as a commissioner?

14 I beg your pardon.

15 A Sorry.

16 Q I talked over you. I'm sorry.

17 That's another thing we should have talked about at
18 the beginning. As you know, the record can only take down
19 one voice at a time. I'll do a better job of not
20 interrupting you, if you could give me a little second to
21 finish the questions before you start to "ask."

22 So Mr. Maguire represented you in your capacity as a
23 redistricting commissioner. Did he represent anybody else
24 to your knowledge?

25 A Yes.

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1 Q Who is that?

2 A He represented Commissioner Joe Fain as well.

3 Q Anyone else?

4 A And the State Republican Party.

5 Q Anyone else that you know?

6 A Not that I know of.

7 Q Who paid Mr. Maguire?

8 A For that work?

9 Q Yes.

10 A It was the state party, the State Republican Party.

11 Q To your knowledge did the state pay any funds to
12 Mr. Maguire's efforts?

13 A Not that I know of.

14 Q I assume the Attorney Generals, those two lawyers,
15 the lawyer that you spoke with on the VRA and the Open
16 Meetings Act, those are state employees as far as you
17 understand?

18 A I believe so.

19 Q Okay. Your lawyers today, who are paying them?

20 A You mean Mr. Millstein?

21 Q Yes.

22 A I believe it's the state.

23 Q All right. Have we spoken about all the lawyers
24 that represent you in your individual capacity and in your
25 capacity as a redistricting commissioner?

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1 A Yes.

2 Q All right. Would you say that you prepared for your
3 deposition today?

4 A Yes.

5 Q How so?

6 A I met with Mr. Millstein yesterday.

7 Q And as you know, I'm not permitted and I'm not
8 trying to ask you about your communications with
9 Mr. Millstein. So to the extent I ask you something that
10 requires you to divulge that, you just tell that to me.
11 I'd be happy to rephrase the question.

12 Okay. About how long did you meet with
13 Mr. Millstein yesterday?

14 A An hour and a half.

15 Q Did you look at any documents or materials in that
16 hour and a half?

17 A I looked at a couple documents.

18 Q What documents did you look over?

19 A There were some emails, communications, I think
20 documents that I had produced.

21 Q Can you recall any?

22 A There was one that I had with Margot Spindola that I
23 recall.

24 Q What was the gist of it?

25 A Ms. Spindola and I had an email exchange back and

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1 forth about various aspects of the redistricting process
2 and communications that she had put out publicly in
3 response to the maps that the commissioners had proposed.

4 Q Who is Ms. Spindola?

5 A She works for or represents the -- a group called
6 the Redistricting Justice for Washington.

7 Q What other documents do you recall looking at?

8 A I don't recall the other ones specifically, I'm
9 afraid to say.

10 Q Do you recall looking at any legal papers related to
11 this litigation?

12 A I've seen a memo from Mr. Millstein.

13 Q Is this a memo that Mr. Millstein created, or --

14 A Yes, it is.

15 Q All right. This sounds like it's in relation to his
16 legal representation of you; is that fair to say?

17 A Yes.

18 Q Okay. Any other documents that your lawyer did not
19 create that you can recall looking at?

20 A No.

21 Q Did you look at any pleadings in the case?

22 A Yesterday, you mean?

23 Q Yes, sir.

24 A No.

25 Q And did you look at any expert reports?

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1 A No.

2 Q What else, if anything, did you do to prepare for
3 the deposition today?

4 A Nothing else.

5 Q Did you have any conversations with anyone other
6 than Mr. Millstein about the deposition in advance of it?

7 A No.

8 Q Have you reviewed any of the depositions that have
9 been taken in this case?

10 A No.

11 Q Have they been described to you?

12 A No.

13 Q Have we discussed everything you've done to prepare
14 for the deposition?

15 A Yes.

16 Q Now, in background just, you know, general
17 background about yourself, can you tell us sort of, you
18 know, where you grew up, are you married, where you live,
19 that sort of thing.

20 A I grew up in Maple Valley, Washington. I'm married.
21 I have kids. I live in Newcastle.

22 Q And you're a lawyer, you testified; is that right?

23 A That's right.

24 Q Give us the benefit of your educational background.

25 A I went to Western Washington University for

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1 undergrad. I went to Duke University where I received a
2 law degree and a Master's in Philosophy.

3 Q And when did you graduate there?

4 A 2007.

5 Q And did you take the Bar?

6 A I did.

7 Q Where at?

8 A Bellevue.

9 Q Okay. In Washington state?

10 A That's right.

11 Q Have you applied for any other Bar other than
12 Washington?

13 A No.

14 Q And presumably you were licensed thereafter?

15 A Yes.

16 Q What kind of work did you start doing after
17 licensure?

18 A I was a law clerk.

19 Q For whom?

20 A For Jim Johnson on the Washington State Supreme
21 Court.

22 Q In the course of -- How long did you work for
23 Justice Johnson?

24 A One year.

25 Q In the course of that work did you have occasion to

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1 work on a voting rights or election-related matter that
2 you can recall?

3 A No.

4 Q What did you do after that work?

5 A I worked for the Perkins Coie Law Firm.

6 Q What kind of work did you do there?

7 A Litigation.

8 Q What kind of litigation work?

9 A Civil litigation.

10 Q Was the civil litigation work related to election or
11 voting rights law?

12 A No.

13 Q How would you describe the law generally that you
14 handled litigation for?

15 A I worked for some of the great companies that call
16 Washington home, including in particular that one big
17 airplane manufacturer that was started here.

18 Q It sounds like you were doing business litigation
19 then generally; is that fair to say?

20 A Yes.

21 Q How long were you at Perkins Coie?

22 A Until the end of 2015.

23 Q Then what did you do?

24 A I'm sorry, until the end of 2016.

25 Q Okay. Then what did you do?

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1 A Then I -- At the end of November of 2016 I was
2 elected to the State House of Representatives, and
3 simultaneous with that I went to serve as an in-house
4 lawyer for a trucking company.

5 Q So at the same time you were elected legislator is
6 about when you started working for the trucking company
7 in-house?

8 A That's right.

9 Q When you ran for the Legislature were you a party's
10 nominee?

11 A Yes.

12 Q Which party is that?

13 A The Republican Party.

14 Q So was your race in 2016 for the Legislature the
15 first time you sought elective office?

16 A Yes.

17 Q Did you have a contested primary?

18 A No.

19 Q Did you have a contested general election?

20 A Yes.

21 Q What was the name of your opponent in the general
22 election?

23 A Darcy Burner.

24 Q And what is that person's race or ethnicity?

25 MR. STOKESBARY: Objection as to form.

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1 A I think she's White.

2 Q (By Mr. Dunn) And what is your race or ethnicity?

3 A White.

4 Q Other than the race in 2016 have you ever otherwise
5 run for office?

6 A Yes.

7 Q When was the next time?

8 A 2018.

9 Q Again, for the state -- I mean for the State
10 Legislature, same district?

11 A That's right.

12 Q Did you have a contested primary in that race?

13 A No.

14 Q I assume again you sought the Republican nomination?

15 MR. STOKESBARY: Objection as to form.

16 A I did.

17 Q (By Mr. Dunn) And did you have a general election
18 opponent?

19 A Yes.

20 Q What was that person's name?

21 A Lisa Callan.

22 Q And what is that person's race or ethnicity?

23 MR. STOKESBARY: Objection as to form.

24 A I think she's White.

25 Q (By Mr. Dunn) Okay. Did you prevail in that race?

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1 A No.

2 Q What was the margin, as best you recall?

3 A Five points, somewhere in there.

4 Q Was there a central group of issues that were sort
5 of argued about in that 2018 campaign that you can recall?

6 MR. STOKESBARY: Objection as to form.

7 MR. MILLSTEIN: Objection, vague.

8 MR. HUGHES: Objection, vague.

9 A Yeah, I'm not quite sure I --

10 Can you be a little more specific?

11 Q (By Mr. Dunn) Sure. Is there any issue that you
12 can recall you and your opponent debated in the 2018
13 campaign?

14 MR. STOKESBARY: Objection, vague.

15 Objection, lack of foundation.

16 MR. HUGHES: Objection, vague.

17 MR. MILLSTEIN: Objection, vague.

18 MR. DUNN: Where in Rule 30 does it tell
19 you that you can object to vague? You object to form or
20 nonresponsive, otherwise you're coaching the witness.

21 MR. HUGHES: That's just not true, but I
22 appreciate the advice, Chad.

23 Q (By Mr. Dunn) So your lawyers are trying to, you
24 know, coach you along the way. It's already worked once
25 for you there, Mr. Graves. You --

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1 MR. STOKESBARY: Objection as to form.

2 Q -- didn't answer the question.

3 MR. DUNN: Excuse me, Mr. Stokesbary. I'm
4 going to finish my question.

5 Q (By Mr. Dunn) So I'm asking you do you remember any
6 issue that was debated during the 2018 campaign?

7 MR. STOKESBARY: Objection as to form,
8 asked and answered.

9 MR. MILLSTEIN: Objection to the form.

10 MR. HUGHES: Objection, vague.

11 A And with all the respect in the world, I must take
12 issue with the claim that I've been coached in some way.

13 I'm trying to answer your questions as honestly as I
14 can. I -- Maybe these lawyers are better lawyers than I
15 am; but if you're asking me what in general did we talk
16 about during the course of eight months of a legislative
17 campaign, there were a lot of things, and it would be
18 really helpful for me if you can be a little more
19 specific.

20 Q (By Mr. Dunn) You can't recall a specific issue
21 from that campaign?

22 MR. STOKESBARY: Objection, asked and
23 answered.

24 MR. HUGHES: Objection, argumentative.

25 MR. MILLSTEIN: Objection to form.

1 MR. STOKESBARY: Objection to the form.

2 Objection, argumentative.

3 Q (By Mr. Dunn) What you can recall.

4 A Okay. We debated, and there were issues over
5 education, the education funding system, the way that
6 taxes might be raised at the state level or at the local
7 school district level and how those levies might equal
8 out.

9 As you probably recall, there was the McCleary
10 lawsuit that required or essentially held that it violated
11 the State Constitution for local school districts to be
12 spending too much money on education, providing -- thereby
13 providing a disparate education system based on the ZIP
14 code where students live.

15 And over the course of six years or so the
16 Legislature sought to increase state levy funds for
17 schools and thereby reduce in count the available school
18 levies the local school districts were able and authorized
19 and required to raise.

20 We talked quite a bit about traffic. I represented
21 a district in East King County that is a suburban
22 district, and there were tons of issues. It was a driving
23 community, a commuting community. The biggest city in the
24 district was Issaquah, which spans I-90. And so even
25 getting across and around town on I-90 was a really big

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1 challenge. And then the district went all the way over to
2 Snoqualmie Pass.

3 So from the interchange where Highway 18 meets I-90
4 is a real mess of an intersection, and I've been working
5 with seatmates and other people over the course of years
6 to try to get that interchange fixed to get the traffic
7 flowing there more smoothly.

8 Taxes were most certainly a big issue in the race in
9 2018. Again, we had talked about raising the state levy,
10 raising the state taxes and reducing local school levies.
11 My opponent was on the Issaquah school board; and we had a
12 dispute over whether to -- whether it was appropriate for
13 the Issaquah School District to seek a maximum levy
14 available to it that year, and that was certainly
15 something that we talked about.

16 We talked about the Public Records Act. You may
17 recall that the Legislature at the time considered itself
18 exempt from the Public Records Act, and I thought that was
19 wrong. And I introduced a bill to make clear that the
20 Legislature itself needed to have its records open to the
21 public, and we talked quite a bit about that.

22 Of course, this was 2018; so this was two years
23 after Donald Trump was elected president, and that most
24 certainly factored into the race. I mean, I can tell you
25 that I spent most of my time knocking on doors with my

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1 neighbors in my district and trying to hear from them.

2 And the No. 1 difference that I heard between 2016
3 and 2018 was that wow, people in east King County really
4 did not like Donald Trump and really didn't like the
5 Republican Party as a result.

6 We had some even more specific issues, too, about
7 issues like the Tahoma School District. They needed a new
8 superintendent, and so there were -- We were sort of
9 tangentially drawn into that in some ways.

10 There were dozens of other issues, of course, that
11 came up over the course of the campaign because the State
12 Legislature was involved with just about every issue of
13 policy and taxation in the state.

14 I'm happy to keep going if you would like me to.

15 Q No, that's helpful. Thank you.

16 In your opinion were any of those issues central
17 issues in that campaign?

18 MR. STOKESBARY: Objection as to form.

19 A Could you define the word, what do you mean by
20 central there?

21 Q (By Mr. Dunn) Well, how would you use the word
22 central? Do you know how you would use the word?

23 A It's -- It's -- I would probably use it in different
24 ways.

25 MR. STOKESBARY: Objection, argumentative.

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1 A I would probably use it in different ways in
2 different contexts. It would be helpful to know what
3 you're trying to get at.

4 Q (By Mr. Dunn) How would you -- How would you
5 describe were the primary issues in that campaign, if any?

6 MR. MILLSTEIN: Objection to form.

7 A With the caveat that --

8 MR. STOKESBARY: Objection to the form.

9 A With the caveat that they're not -- This isn't
10 totally exhaustive. It probably was some combination of
11 Donald Trump and more generally the Republican brand,
12 education, transportation and taxes.

13 Q (By Mr. Dunn) Okay. Other than the 2016 and the
14 2018 races at any other time had you sought elective
15 office?

16 A I ran for student body president in college.

17 Q Any other time?

18 A No.

19 Q Now, you mentioned this Public Records Act issue
20 that you had raised. At the point in time you were
21 running in 2018 had you been successful in changing the
22 public records law, or you were still advocating for that
23 change?

24 A I was still advocating for a change.

25 Q Did the Legislature ultimately make the change that

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1 you were advocating for?

2 A If I recall correctly, the Legislature lost a court
3 case, which I can't -- I don't know if -- I can't recall
4 if after that the Legislature enacted specific rules
5 related to the Public Records Act or if it instead just
6 went along with the holding of the court case.

7 Q Okay. In your work for the trucking company as
8 in-house counsel, describe generally what your
9 responsibilities are there.

10 A I oversee all the legal aspects of a company that
11 employs about 2,500 people in seven western states. I
12 provide a lot of advice and counsel to groups like our
13 human resources group and our finance and operations
14 teams. And then I oversee outside counsel when the
15 company is involved with litigation.

16 Q Do you supervise other lawyers?

17 A I'm the only lawyer who works for my company.

18 Q Do you supervisor outside counsel?

19 A Yes, I do.

20 Q Approximately how many firms are you supervising
21 now?

22 A Four or five.

23 Q I assume these are firms handling litigation on
24 behalf of your employer; is that fair?

25 A That's right.

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1 Q Okay. Is the company that you work for publicly
2 owned or traded?

3 A No.

4 Q It's privately owned?

5 A That's right.

6 Q Who is the private owner?

7 A There are --

8 MR. STOKESBARY: Objection as to form.

9 A There are four primary shareholders in the company.

10 Q (By Mr. Dunn) Who are they?

11 MR. STOKESBARY: Objection as to form.

12 A Ed Vander Pol, Eric Vander Pol, Henry Vander Pol and
13 John Vander Pol.

14 Q (By Mr. Dunn) Are any of them involved in
15 political -- in politics, as far as you know?

16 MR. HUGHES: Objection, vague.

17 MR. STOKESBARY: Objection as to form.
18 Objection, vague.

19 MR. MILLSTEIN: Objection to form.

20 A I think they vote.

21 Q (By Mr. Dunn) Have any of them run for office?

22 A No.

23 MR. STOKESBARY: Objection as to form.

24 A No.

25 Q (By Mr. Dunn) Have any of them made political

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1 contributions that you are aware of?

2 A I think so.

3 Q Did they make any to your campaign?

4 A Yes.

5 Q All right. I want to transition and talk about your
6 training, education and experience in voting rights law.

7 Did you have any specialized training in law school
8 on voting rights law?

9 A No.

10 Q And have you had any specialized training since law
11 school in voting rights law?

12 A No.

13 Q Would you consider yourself --

14 A I'm sorry. Let me -- If I can clarify that answer.
15 We did receive training on the Redistricting Commission
16 here.

17 And then I was also appointed last year as a
18 redistricting commissioner on the King County Council
19 Redistricting Commission, and we received some training
20 related to both the federal and state Voting Rights Act as
21 part of that commission.

22 Q Okay. Other than the training that you received in
23 the statewide Redistricting Commission and the King County
24 Redistricting Commission, have you had any other voting
25 rights law training?

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1 A No.

2 Q Do you consider yourself an expert in voting rights
3 law?

4 A No.

5 Q And I'm not trying to be tricky or play games with
6 you, but ultimately you're going to testify in my
7 expectation in this case; and if you're going to be
8 proffered as an expert witness in voting rights law, this
9 is my chance to explore that question, so that's why I'm
10 asking these.

11 A It would be news to me if I were to be proffered as
12 an expert witness.

13 Q All right. So do you recall having handled any
14 litigation in relation to elections?

15 A No.

16 Q And have you handled any litigation in relation to
17 civil rights?

18 MR. HUGHES: Objection, vague.

19 MR. STOKESBARY: Objection, vague.

20 A I've devoted most of my pro bono work as a lawyer to
21 representing foster kids in trial courts, and from my
22 point of view that very much involves civil rights.

23 Q (By Mr. Dunn) Are those cases in state court or
24 Federal Court, foster kids cases?

25 A I think every case I've handled has been in state

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1 court.

2 Q Have you ever handled a federal civil rights case as
3 a lawyer?

4 A No.

5 Q All right. You mentioned the King County
6 Redistricting Commission and that you were appointed to
7 that last year. Did I hear that right?

8 A That's right.

9 Q Okay. And does the King County Redistricting
10 Commission do its work at about the same time the State
11 Redistricting Commission does, or is it on a different
12 schedule?

13 A Pretty close. The State Commission had a
14 November 15th deadline to complete its work, and the King
15 County Council Redistricting Commission had a
16 December 31st deadline to complete its work; but much of
17 the work, public hearings and receiving the data and
18 things like that took place over the course of 2021.

19 Q And both of those dates you just gave were in the
20 year 2021?

21 A Yes, that's right.

22 Q And did the King County Redistricting Commission
23 complete its work by December 31?

24 A Yes.

25 Q Did it adopt a plan?

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1 A I'm not sure if it uses the phrase -- I'm not sure
2 if it uses the same phrase that the state law does with
3 respect to adopting a plan. I just can't recall that
4 right now, but it adopted maps that have been approved and
5 are going to be in use.

6 Q Okay. Is there any litigation related to those
7 plans or maps?

8 A Not that I know of.

9 MR. STOKESBARY: Objection as to form.

10 A Not that I know.

11 Q (By Mr. Dunn) Has there been any allegation that
12 you're aware of with regard to your work in the King
13 County Redistricting Commission related to the Open
14 Records Act?

15 A Not that I know of.

16 MR. HUGHES: Objection, vague.

17 Q (By Mr. Dunn) Has there been any allegation that
18 you've heard of on the King -- on your King County work as
19 to violations of Open Meetings laws?

20 MR. MILLSTEIN: Objection to form.

21 MR. HUGHES: Objection, vague.

22 MR. STOKESBARY: Objection to form.

23 Objection, vague.

24 A I don't think there's been litigation. We had one
25 meeting with that Commission that was on Zoom, and that

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1 was -- We had a number of people who showed up and tried
2 to interrupt the meeting, and we ultimately had to cut
3 that meeting short. And I know -- I don't think there
4 were actually concerns about it; but I had in the back of
5 my mind that maybe there would be a Public Meetings Act
6 question or something, but I don't believe that there's
7 been litigation that's come out of that.

8 Q (By Mr. Dunn) You haven't seen any demand letters or
9 legal letters to that effect?

10 A I have not, no.

11 Q Now, you served in a capacity as a commissioner on
12 the State Redistricting Commission; is that right?

13 MR. STOKESBARY: Objection, asked and
14 answered.

15 A Yes, I did.

16 Q (By Mr. Dunn) And did you have a particular title
17 or role on the Commission?

18 A I was a commissioner.

19 Q Any other specialized title, like president,
20 secretary, or some other office holder role?

21 A No.

22 Q Okay. Does the -- Did the Redistricting Commission
23 have officers of that type?

24 A The Commission had a Chair.

25 Q Any other officers you're aware of?

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1 A No.

2 Q Did the statewide Redistricting Commission adopt
3 maps or plans?

4 A Yes.

5 Q Of what type?

6 MR. HUGHES: Objection, vague.

7 MR. STOKESBARY: Objection, vague.

8 MR. MILLSTEIN: Objection, vague.

9 A Could you say what you mean by what type?

10 Q (By Mr. Dunn) What kinds of maps or plans did the
11 Commission pass? What were they referred to as?

12 A Are you asking like --

13 Oh, I'm sorry, I just want to make sure I'm
14 answering accurately.

15 MR. HUGHES: I didn't hear the last part.

16 A Sorry. I just want to make sure I'm answering
17 accurately. Are you asking did we adopt legislative and
18 congressional maps?

19 Q (By Mr. Dunn) Yes. Is that how you would refer to
20 the maps you passed is legislative and congressional?

21 A Yes.

22 Q Any other kinds of maps or plans the Commission
23 passed?

24 A They were the -- There's the maps themselves that
25 you can see in pictures, and you can kind of zoom in on.

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1 Those were also -- There were also data files associated
2 with those that could tell you exactly which precincts,
3 for example, were in which district and things like that.

4 Q Did the Commission fail to pass any plans it was
5 charged with adopting?

6 MR. STOKESBARY: Objection as to form.

7 MR. HUGHES: I'm going to object to the
8 extent it calls for a legal conclusion.

9 MR. MILLSTEIN: Object to the extent it
10 calls for a legal conclusion.

11 MR. STOKESBARY: Object to the extent it
12 calls for a legal conclusion.

13 A Well, that's a hard question to answer because, of
14 course, as you saw we didn't have maps completed by our
15 November 15th deadline.

16 Q (By Mr. Dunn) Well, I'm asking your opinion. In
17 your opinion did the Redistricting Commission pass or
18 adopt its plans by the deadline?

19 MR. STOKESBARY: Objection, calls for a
20 legal conclusion.

21 MR. MILLSTEIN: Objection, calls for a
22 legal conclusion.

23 A It's -- I mean, I'm not trying to be cute. It
24 really is an interesting question because we didn't adopt
25 our maps by the midnight November 15th deadline.

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1 We completed the work on the maps by the next
2 afternoon, the 16th. And then, of course, we said that we
3 were disappointed that we came so close to meeting the
4 deadline, but that we hoped the Supreme Court, which of
5 course takes over if the Commission cannot reach agreement
6 by its deadline, we would hope the Supreme Court would
7 consider those maps when it did the work.

8 And then ultimately the Supreme Court decided --
9 Well, even that's kind of hard to describe. It's not a
10 hundred percent clear whether it decided to declare in a
11 legal sense that we had completed the product on time, or
12 if instead it simply held that as a matter of practicality
13 we had substantial compliance. I even today have a hard
14 time explaining exactly how the law all worked with all of
15 that.

16 So again, I don't mean to be cute, but I have a hard
17 time answering the question.

18 Q (By Mr. Dunn) What, if anything, did the Commission
19 pass by midnight on November the 15th?

20 MR. STOKESBARY: Objection as to form.

21 MR. HUGHES: Objection to the extent it
22 calls for a legal conclusion.

23 MR. STOKESBARY: Objection to the extent it
24 calls for a legal conclusion.

25 MR. MILLSTEIN: Objection to the extent it

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1 calls for a legal conclusion.

2 A By midnight on the 15th we had reached agreement on
3 a plan that could be translated into the maps themselves,
4 but doing that translating takes quite a bit of time.

5 Q (By Mr. Dunn) Did you have a name for this thing
6 that you passed?

7 A Not that I can recall.

8 Q Did that relate to the legislative map, the
9 congressional map, or both?

10 A I think we had -- We reached agreement on both sets
11 of maps.

12 Q Was the Redistricting Commission charged with
13 adopting plans for anything other than the legislative and
14 congressional maps?

15 MR. MILLSTEIN: Objection to the extent it
16 calls for a legal conclusion.

17 MR. STOKESBARY: Objection to the extent it
18 calls for a legal conclusion.

19 A I think we had some obligations when it came to
20 reporting to the Legislature. We -- The statute, if I
21 recall correctly, calls for a report to the Legislature
22 and maybe a resolution to the Legislature as well.

23 Q (By Mr. Dunn) Anything else that you recall the
24 Commission was charged with doing?

25 A We had to do all kinds of things. We had to hear

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1 from the public, and we had to try to do our level best to
2 meet the criteria the statute lays out for us when
3 drawings those maps.

4 Q All right. Let me back up. When is it that you
5 first became involved with the Redistricting Commission?

6 A I was appointed I think at the end of January, 2021.

7 Q By whom?

8 A The Republican House Leader.

9 Q How is it that you first came to realize that you
10 would be appointed?

11 A The Republican House Leader gave me a call and told
12 me that he was planning to appoint me.

13 Q Did you seek the position?

14 A I told him that I would be interested in it.

15 Q When did that happen?

16 A Maybe about a month before the appointment itself.

17 Q And did you do that on your own volition, or did
18 somebody reach out to you and suggest it to you?

19 A I think it was -- I think it was my idea at first.
20 I, of course, talked with plenty of people about the
21 prospect, but I think I had the notion myself of putting
22 my name in the hat for the position.

23 Q When did you start thinking about doing that?

24 A About a month before the appointment.

25 Q This would have been December then of 2020?

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1 A Yeah, or thereabouts.

2 Q What made you, you know, think about this as
3 something you were interested in doing?

4 A It's a neat thing. You know, it's a once a decade
5 thing. It's an important thing.

6 We have what I think is a really good process in our
7 state to draw maps in something of a fair way. And then,
8 you know, as a personal matter one of the last Republicans
9 to have done this was Slade Gorton. He was a mentor and a
10 good close personal friend, and a big part of me thought
11 that if it was something that he did it would be a
12 worthwhile thing to do.

13 Q How do you spell that name?

14 A S-L-A-D-E, and his last name is G-O-R-T-O-N.

15 Q Did you understand Mr. Gorton had been a
16 commissioner in the 2011 process?

17 A Yes, he was.

18 Q Had he been a commissioner prior to that as well?

19 A No, I don't think so.

20 Q At the time that you were thinking about seeking
21 your -- this appointment, did you have any contact with
22 Mr. Gorton?

23 A He I'm afraid to say passed away.

24 MR. STOKESBARY: Objection as to form.

25 A I'm afraid to say he was no longer with us at that

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1 point.

2 Q (By Mr. Dunn) I see. He passed away about what
3 year?

4 A It was the -- It was sometime in 2020. It was
5 during the pandemic.

6 Q Did you ever have occasion to talk to him about his
7 redistricting work before he passed?

8 A I did.

9 Q What sort of things did he tell you about that work
10 that you recall?

11 A It's funny, we talked less about the 2011
12 Commission, and we talked more about he had served in the
13 State Legislature and then served as Attorney General for
14 the state. And he was involved in redistricting in the 19
15 I think '60s, '70s and '80s, maybe even '90s, too.

16 So we just talked about various stories and, you
17 know, different -- different characters who were involved
18 in all those commissions and things like that. And some
19 of them weren't even commissions. They were just
20 legislative redistricting, so different, you know, things
21 that happened during those processes.

22 Q Do you recall any specific advice he gave you?

23 A No, because we weren't talking in the context of my
24 considering being on a commission like this.

25 Q All right. So when you started thinking about this

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1 how did you send out, you know, sort of feelers or
2 information to folks that you would like to be considered?

3 A I called the House Republican Leader and told him
4 I'd like to be considered.

5 Q And had you had a prior relationship with him, I
6 guess from serving in the Legislature?

7 A Yes, that's correct.

8 Q And what is the name of the House Republican Leader?

9 A J.T. Wilcox.

10 Q Other than your dealings was him as a member of the
11 Legislature, are you otherwise friends with, social with
12 Mr. Wilcox?

13 A Yes, I consider him a friend.

14 Q Is he somebody that you travel with and socialize
15 with?

16 A I've traveled with him to, you know, --

17 MR. HUGHES: Compound.

18 A -- to caucus events. And, of course, we were in
19 Olympia together.

20 Q (By Mr. Dunn) All in relation to your legislative
21 service?

22 A Yeah. I mean we were, of course, friends otherwise.

23 Q Other than reach out to Mr. Wilcox, did you do
24 anything else to seek interest?

25 A Talked with the chairman of the State Republican

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1 Party.

2 Q Who was that person?

3 A Caleb Heimlich, H-E-I-M-L-I-C-H.

4 Q Had that person been the Chair of the party when you
5 were running for office?

6 A No.

7 Q When is it they got elected, if you know?

8 A I think Caleb was elected in 2017.

9 Q Did you do anything else to seek appointment?

10 A I mean, I talked with people in the Legislature.

11 Q Other members?

12 A Yes.

13 Q Did you reach out to anybody on the Senate side, the
14 Senate leadership?

15 A I don't think so.

16 Q Any reason why not?

17 A Something of a rivalry with the House and the
18 Senate.

19 Q I see. Did you have some competition or other folks
20 that you knew that you were up against in terms of getting
21 this appointment?

22 A I did not know who else Representative Wilcox was
23 considering.

24 Q Did you engage in any sort of application process,
25 submit any documents about your training, education,

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1 experience, background, that sort of thing?

2 A I don't think so.

3 Q How is it that you learned you would be appointed?

4 A If I recall correctly, Representative Wilcox called
5 me and told me he was planning to appoint me.

6 Q Did he give you any other direction or advice in the
7 context of that conversation?

8 A I think he said, "I trust you to do a good job."

9 Q Anything else you recall?

10 A I think even then, because we knew one of the first
11 tasks that we needed to do on the Commission was to -- for
12 the four appointed commissioners to appoint a fifth
13 nonpartisan, non-voting Chair. So I don't know if that
14 first conversation or shortly thereafter, but we talked
15 about where we would look to find a Chair.

16 Q Were any names discussed?

17 A I don't recall.

18 Q Anything else you recall about that conversation?

19 A No.

20 Q Did you continue to have contact with Mr. Wilcox
21 over the course of your service on the Commission?

22 A Yes.

23 Q Would you share draft plans with Mr. Wilcox?

24 MR. HUGHES: Object to form.

25 A I think I had --

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1 MR. MILLSTEIN: Object to form.

2 A -- at one time --

3 MR. STOKESBARY: Objection to form.

4 A -- in -- In I think September of 2021 all of the
5 commissioners released draft legislative and congressional
6 maps, and I met with Representative Wilcox a day or two
7 before that to talk and, you know, to show him the draft
8 plans that I was planning to publish.

9 Q (By Mr. Dunn) Did you also show him the plans that
10 were published by other members?

11 A No. They were published on the Redistricting
12 Commission's website.

13 Q Did you ever receive -- remember receiving any
14 guidance from Mr. Wilcox directly about any particular
15 district?

16 MR. MILLSTEIN: Objection to form.

17 MR. STOKESBARY: Objection as to form.

18 A When we were talking through that kind of draft map
19 he took a keen interest in the 2nd Legislative District
20 which he represents, and I think he had -- Gosh, it's sort
21 of in Pierce County where you get up kind of close to
22 South Puyallup, and there were just some areas there that
23 he, you know, had -- He said he had like long-time
24 connections there, and boy, he'd love to keep those areas;
25 but it was -- I don't know if I'd call it guidance, but it

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1 was more sort of, you know, here's, you know, some places
2 in my district that I have great affection for, and I
3 think he wanted me to just pass that along.

4 Q (By Mr. Dunn) Anything else you recall he told you
5 about a specific district?

6 A No.

7 Q The areas in the 2nd District that he mentioned
8 wanting to keep, was he -- did he keep those in the final
9 map?

10 A I don't recall.

11 Q Now, as I'm sure you understand, this lawsuit today
12 that we're here to discuss with you is about the area
13 around Yakima and Pasco, which I'm going to refer to
14 interchangeably as the 14th/15th Legislative District,
15 that area of the state.

16 When we talk about that do you know generally where
17 I'm speaking of?

18 A I do know generally. I'm guessing we'll make it
19 really clear when we're talking about specific things
20 because, of course, Pasco is pretty far outside of the
21 14th; but I know generally the Yakima Valley and what
22 you're talking about.

23 Q All right. And so was there any conversation with
24 Mr. Wilcox about the Yakima Valley or the 14th/15th
25 Legislative District area?

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1 A Not that I recall specifically.

2 Q At the outset of your appointment did you receive
3 any other sort of requests or direction from any
4 legislative member?

5 A At the outset of the -- Sorry. You just asked at the
6 outset of my appointment?

7 Q Yes, sir.

8 A No.

9 Q At the beginning I think you said or just a little
10 while ago I think you said you were appointed around the
11 end of January. Did I -- Did I take that down right?

12 A That sounds about right.

13 Q Do you know about -- Can you be more specific on the
14 date, or we'd have to look at the records?

15 A I'm afraid I can't.

16 Q All right. Do you recall whether the other members
17 were appointed at or about the same time?

18 A I think we were all appointed within about a week or
19 two of each other.

20 Q Did you do anything leading up to the appointment?
21 I mean, before you got appointed to prepare to do the
22 work, if you were appointed.

23 A I might have poked around and looked for news
24 articles on the past commissions, something like that, but
25 not much more than that.

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1 Q It sounds like you didn't do a deep dive into what
2 legal requirements there were, for example.

3 A I read the statute that authorized the Commission.
4 It's not very long.

5 Q Any other legal research you recall having done?

6 A No.

7 Q So after your appointment sort of what's the kind of
8 first thing that happens? I mean in terms of the
9 Commission.

10 A From the Commission's business point of view we
11 scheduled an early Commission meeting, a public meeting to
12 go over some early basic stuff and to try to start doing
13 the things that we needed to do.

14 Q Do you know about when that was?

15 A You're asking when our first meeting was?

16 Q About when.

17 A February or March, probably.

18 Q Did you have any discussion with the other
19 Commission members about setting up that meeting? Or, you
20 know, where did the idea come from to set the meeting up?

21 A Two questions there. The first one, I talked
22 with -- I did talk with each of the other three appointed
23 commissioners after we'd all been appointed.

24 I had already known Commissioner Fain, so I, you
25 know, talked with him about it. And I had not yet met

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1 Commissioner Sims or Commissioner Walkinshaw, and so I
2 talked with them to introduce myself.

3 And I don't remember if the idea came from one
4 particular place. I think we all maybe simply knew that
5 we needed to get an early meeting on the books.

6 Q You mentioned having known Mr. -- Commissioner Fain.
7 How is it that you had experience with him?

8 A I'd served in the Legislature with him.

9 Q At the point in time you had your first meeting had
10 there already been discussions about who the fifth
11 commissioner would be?

12 MR. HUGHES: Objection, lack of foundation.

13 MR. STOKESBARY: Objection, lack of
14 foundation.

15 MR. MILLSTEIN: Objection, lack of
16 foundation.

17 A Sorry. Are you asking did we -- did we have
18 Commission discussions among ourselves as commissioners?

19 Q (By Mr. Dunn) Yes.

20 A I can't remember if we had started that conversation
21 before we had our first meeting.

22 Q It sounds like, though, the first meeting occurred
23 without the fifth commissioner having yet been selected;
24 is that fair to say?

25 A I think that's right.

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1 Q In advance of the first meeting was there any sort
2 of training or, you know, preparation that you undertook?

3 A Not that I recall.

4 Q So what -- I understand there's videotape of it.
5 I'm not asking you to remember it precisely, but what
6 generally happened in the first meeting?

7 A I think we talked through some bookkeeping things or
8 some administration type things of how we would keep
9 minutes for the meetings and how we would conduct them.
10 This was, of course, during the pandemic, so we were
11 conducting them by Zoom.

12 And I think we at least began a discussion about how
13 we would go about selecting the fifth commissioner.

14 Q At that point in time did you have any staff for the
15 Commission?

16 A I don't think so.

17 Q I didn't know if it was the case that, you know,
18 when the government set this, you know, Commission up if
19 it started with some staff or if it was the job of the
20 commissioners to hire the first employees.

21 A That's a good question. If I recall correctly, I
22 think maybe the clerk of the State House and maybe the
23 secretary of the Senate were staffed to it for those early
24 meetings. Don't quote me on that, but I seem to remember
25 that.

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1 And then I think within a few weeks of our first
2 meeting the Commission hired an executive director for the
3 Commission, who then went and hired the nonpartisan staff
4 for the Commission.

5 Q Who -- What is the name of the executive director
6 that was hired?

7 A Lisa McLean.

8 Q And was Ms. McLean the executive director throughout
9 all of the Commission's work in 2011 -- 2021?

10 A Yes.

11 Q It sounds like from your last answer that the
12 executive director then did the interview and hiring
13 process for everybody else that was hired.

14 Did I get that right?

15 A For the -- For people who were working for the
16 Commission itself, yes.

17 Q Okay. Did you at any point, you know, interview
18 candidates to be hired as staff for the Commission?

19 A I don't think so.

20 Q How is it that Ms. McLean was arrived at as the
21 person to hire for the executive director?

22 A Oh, I'm sorry. Let me clarify that last one. I did
23 interview Ms. McLean, --

24 Q Okay.

25 A -- but not that I recall others.

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1 Q Did you interview anybody else for the executive
2 director position?

3 A Yes.

4 Q Who were they?

5 A I'm afraid I don't recall their names now.

6 Q About how many?

7 A I think I was involved with interviewing two other
8 people.

9 Q Do you know how it is that Ms. McLean was a
10 candidate, how she was suggested? Did she just cold
11 apply, or do you know how she came along to the
12 Commission?

13 A She had been staffed for the Census Commission or
14 something census related the year before when the
15 government conducted the census here in the state, and I
16 think we put -- We put out an open, you know, application
17 process. And I don't know if it was somebody who tapped
18 her on the shoulder and said, "You should apply for this,"
19 or if she instead, you know, had heard about it and
20 applied.

21 Q When you mentioned she worked for the Census
22 Commission was that a state office or federal office?

23 A I don't remember exactly right now.

24 Q But your recollection is she had done some work on
25 the census in Washington state prior to seeking employment

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1 with the Redistricting Commission?

2 A I think that's right.

3 Q Now, I know you said that it was left to

4 Ms. McLean -- And am I saying that right, McLean?

5 A M-C-L-E-A-N.

6 Q Okay. It was left to Ms. McLean to hire the rest of
7 the staff. Did you participate in any way?

8 A In hiring the remainder of the Commission staff?

9 Q Yes.

10 A No.

11 Q Did Ms. McLean need approval from you or the
12 Commission generally when she made a hiring decision?

13 A No.

14 Q Was there at any occasion, you know, over the course
15 of the Commission's work where a staffer was discharged,
16 their employment was terminated?

17 A I think there was.

18 Q Did that occur more than once?

19 A Not that I know of.

20 Q Can you recall the circumstances of the person that
21 was terminated?

22 A I don't remember the -- I'm not sure I knew all the
23 specifics, and I don't recall them as I sit here right
24 now.

25 Q Can you recall who it was that was terminated?

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1 A I think it was a man by the name of Jamie Nixon.

2 Q Do you know why?

3 A I'm afraid I don't. I would ask Ms. McLean about
4 that.

5 Q Did Ms. McLean have to seek approval from you or the
6 Commission to make a termination decision?

7 A No.

8 MR. DUNN: We've been going about an hour,
9 and if it's acceptable to you, I need to go to the
10 restroom. So if everybody can agree, shall we return at
11 ten minutes after the hour?

12 THE WITNESS: (Nodded.) Great.

13 MR. DUNN: All right. I'll see you in ten
14 minutes.

15 THE WITNESS: Or we can do five if you
16 want.

17 THE VIDEOGRAPHER: Going --

18 MR. DUNN: Five is fine with me. We'll be
19 back in five minutes.

20 THE WITNESS: Great.

21 THE VIDEOGRAPHER: Going off record, the
22 time is 10:00 a.m.

23 (Discussion off the record.)

24 (Break 10:00 a.m. to 10:09 a.m.)

25 THE VIDEOGRAPHER: Back on the record, the

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1 time is 10:09.

2 Q (By Mr. Dunn) All right. Mr. Graves, before the
3 break we were sort of talking about the first meeting and
4 the appointment of Ms. McLean as the executive director.

5 At that point in time as of the first meeting had
6 you had kind of any training? And I don't necessarily
7 mean any voting rights training. Training about records
8 or software or sort of anything at that point.

9 A I don't think so.

10 Q All right. And when is it that you think that that
11 sort of started, that you kind of got your on-boarding
12 training, if you would even call it that?

13 A I'm not really sure we received something that I
14 would call on-boarding training.

15 Q Okay. Did you -- Well, let me come it at from this
16 way. What training, if any, did you receive after you
17 were appointed?

18 A Received a state computer and a state phone, and I
19 think I talked with legislative technology services about
20 setting those up and passwords and things like that.

21 We had training about the Public Records Act, the
22 Open Public Meetings Act, about the Voting Rights Act.
23 I'm not sure exactly if you would call it training, but
24 we also spent a good amount of time talking and learning
25 about tribal issues and ultimately adopting a Tribal

1 Compact Policy for the Commission.

2 Q Any other general topics or training you recall?

3 A I received a pretty basic training in how to use a
4 software called Edge, which is a map drawing software.

5 Q Did that happen at about the time you were issued
6 your phone and computer?

7 A No, it was later.

8 Q Okay. Any other training you recall?

9 A Not that I recall sitting here right now.

10 Q So on the state computer or phone did you have any
11 kind of specialized software installed on there that
12 related to redistricting or the census or data analysis?

13 A On the computer I had that software called Edge.

14 Q Any other software on there that you used for
15 redistricting? Other than, you know, email and maybe a
16 word processor.

17 A Yeah, beyond Outlook and Word I don't recall other
18 specific applications or programs.

19 Q Did you have access to any, you know, large dataset
20 analysis software, you know, statistics software or a
21 software called R Data or something like that?

22 A No.

23 Q Are you familiar with either of those softwares or
24 performing statistical analysis?

25 A The R --

1 MR. HUGHES: Objection, compound.

2 MR. STOKESBARY: Objection, compound.

3 A Sorry, are you asking about R?

4 Q (By Mr. Dunn) Yes.

5 A I'm familiar with the software application R.

6 Q Okay. Well, let me because we've had an objection
7 then go back. Are you familiar with statistical analysis
8 software?

9 A In general?

10 Q Yes.

11 A I don't know if familiar is the right word, but I'm
12 aware that it exists.

13 Q Which one or ones?

14 A R and Excel. Those are the two primary ones that
15 I'm aware of.

16 Q Can you operate R? Can you do work on it?

17 A Only at the most basic --

18 MR. STOKESBARY: Objection as to form.

19 A Only at the most basic rudimentary level.

20 Q (By Mr. Dunn) Did you do any work on R in the
21 course of your redistricting work?

22 A No.

23 Q Would you use Excel at all for any of the
24 redistricting work?

25 A Some.

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1 Q How so?

2 A Again, really basic stuff. You know, you take a
3 draft map or something, and it would -- You could take
4 numbers that were associated with that and put them into
5 basic charts.

6 Q Basic like population and election data?

7 A Things like that.

8 Q Have you at any point in time used those softwares
9 to perform -- the software packages to perform what's
10 called a racially polarized voting analysis?

11 MR. STOKESBARY: Objection, lack of
12 foundation. Objection as to form.

13 A No.

14 Q (By Mr. Dunn) Would you know how to perform a
15 racially polarized voting analysis?

16 MR. STOKESBARY: Objection as to form.

17 A I would rely on others to do an analysis like that.

18 Q (By Mr. Dunn) All right. You mentioned that you
19 had some public records training and some Open Meetings
20 Act training. Was that one in the same, or were those
21 separate training events?

22 A With the State Commission?

23 Q Yes, sir.

24 A I think we covered them in the same meeting, but I
25 don't recall specifically.

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1 Q And how -- How was that training?

2 MR. HUGHES: Objection, vague.

3 MR. MILLSTEIN: Objection, vague.

4 MR. STOKESBARY: Objection, vague.

5 A I think we had a Zoom meeting where we heard from an
6 attorney at the Attorney General's Office about the
7 topics.

8 Q (By Mr. Dunn) Do you remember who that attorney
9 was?

10 A I'm afraid that I don't right now.

11 Q Can you recall whether there were written materials
12 or slides provided?

13 A I don't remember.

14 Q Was it more than one training or that one occasion?

15 A I also received a training on both of those issues
16 with the King County Council Redistricting Commission.

17 Q Okay. I appreciate that. But focusing on the
18 statewide Redistricting Commission did you have just that
19 one training, or were there other occasions?

20 A That's the one that I recall.

21 Q And now, you also mentioned the VRA training. Who
22 performed that?

23 A If I recall correctly, I think it was also an
24 attorney from the Attorney General's Office.

25 Q Did you have any contact or receive any training

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1 from a lawyer with the United States Department of Justice
2 Voting Rights Division?

3 A Not that I recall.

4 Q Do you recall interacting with a former United
5 States Department of Justice Voting Rights Division
6 lawyer?

7 MR. STOKESBARY: Objection as to form.

8 A Not that I know of.

9 Q (By Mr. Dunn) Can you recall the name of the person
10 at the Washington Attorney General's Office that provided
11 the Voting Rights Act training?

12 A I'm afraid that I can't sitting here right now.

13 Q Did you also have Voting Rights Act training as part
14 of your King County service?

15 A Yes.

16 Q Was the person who performed the training in King
17 County the same person from the State Attorney General's
18 Office?

19 A No.

20 Q Can you recall whether there was any slides or
21 handouts in either of those trainings?

22 A I have in the vague recesses of my mind I think
23 there was, but I can't recall them specifically.

24 Q Can you recall whether they were provided to you so
25 that you sort of permanently have them after the training?

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1 A I don't remember.

2 Q All right. Now, you also mentioned that you had
3 some tribal training. What was the nature of it?

4 A Again, I'm not exactly sure if you call it training,
5 but we heard again, I think from the State Attorney
6 General's Office, about the prospect of a tribal
7 consultation policy and having one of those in place for
8 the Commission and what it would do and how it might
9 operate.

10 Q And you mentioned you ultimately entered into a
11 compact. Did I hear that right?

12 A I don't remember if it was called a compact or if it
13 was a tribal consultation policy. I can't remember the
14 name of the document specifically.

15 Q What is the nature of that document?

16 MR. HUGHES: Objection, lack of foundation.

17 MR. STOKESBARY: Objection as to form.

18 MR. MILLSTEIN: Objection to form.

19 A Because the tribes that operate in Washington are
20 independent sovereigns there's formality required to
21 conduct government-to-government communications and
22 operations; and so Washington has a statute in general
23 that provides how agencies can set up a consultation
24 policy so that tribal governments themselves, if they want
25 to communicate with those agencies know how to do so, and

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1 you can have good government-to-government relations.

2 Q (By Mr. Dunn) Did you enter into this policy sort
3 of as a whole, or were there separate ones with each, you
4 know, tribe?

5 MR. MILLSTEIN: Objection to form.

6 A It was one policy that --

7 MR. STOKESBARY: Objection to form.

8 A It was one policy for the Commission that in part
9 explained to tribal governments how if they wanted to
10 communicate with the Redistricting Commission, how they
11 might go about doing so.

12 Q (By Mr. Dunn) All right. Now, you mentioned
13 earlier that there came a point in time where each member
14 of the Commission put out their proposal or proposed maps.

15 Do you recall that? You met with Mr. Wilcox, the
16 House Republican Leader, about the proposal that you were
17 about to issue.

18 Do you recall that testimony generally?

19 A Generally I do.

20 Q Okay. All right. About when was it the four of you
21 put out plans?

22 A Sorry. What do you mean?

23 Q About when was this event where each of the four
24 members of the Commission put out plans?

25 A If I recall correctly, it was sometime in September

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1 of 2021.

2 Q Was that the first time that plans had been released
3 by any of the commissioners?

4 MR. STOKESBARY: Objection as to form.

5 A I think so.

6 Q (By Mr. Dunn) Was that the first time any
7 commissioner had shared with you a plan?

8 A No.

9 Q When had you prior received proposed plans?

10 A I saw proposed -- the proposed maps that
11 Commissioner Fain was planning to release maybe a few days
12 before they were released.

13 Q Had you seen anybody else's before they were
14 released?

15 A No.

16 Q And had you seen any plans from anybody who was not
17 on the Commission prior to you putting out your first
18 public plan?

19 A Yes.

20 Q Which were those?

21 A The Commission had set up a pretty neat system where
22 you could draw your own maps or draw your own districts,
23 things like that, from any member of the public who wanted
24 to do so; and I'm not sure that I was able to review all
25 of those, but I tried to look at a goodly number of them.

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1 Q Were there any plans that you looked at that were
2 not submitted to the public portal prior to issuing your
3 first public plan?

4 A Sorry, not submitted to what did you say?

5 Q Not submitted through the website.

6 A Yes.

7 Q Which are those?

8 A There was one in particular. A Government Affairs
9 manager for the City of Renton and I had a meeting where
10 we talked about the 11th Legislative District, which is
11 partly in Renton.

12 Q Who was that person?

13 A Doug Levy.

14 Q Is there any other plan that you received in advance
15 of you releasing your first public plan that wasn't
16 submitted through the website?

17 A I can't remember the timing on it, if this was
18 before or after we released our plans, but we received a
19 proposal from the Yakama Nation about the 14th Legislative
20 District.

21 Q Any others you recall?

22 A No.

23 Q Now, did you consult or -- Let me back up and
24 rephrase.

25 The plan that you ended up proposing in September of

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1 2021, did you draw it?

2 A On Edge, do you mean?

3 Q Yeah. Were you the person who actually put the
4 lines, selected where the lines went, or did you have
5 somebody doing that for you?

6 A I had somebody doing that for me.

7 Q Who was that?

8 A A man by the name of Anton Grose, A-N-T-O-N,
9 G-R-O-S-E.

10 Q And who did he work for?

11 A He worked for the Commission.

12 Q What was his title, if any?

13 A I think data analyst.

14 Q Was he assigned to work solely with you or with
15 other members as well?

16 A He worked primarily with me.

17 Q Did you select him, you know, and hire him for that
18 position?

19 A I can't recall on the legal paperwork if it was the
20 Commission itself who hired him or if I did, but I
21 interviewed him before he came on board.

22 Q Well, is it fair to say he was hired because you
23 wanted him hired?

24 A That's probably a fair assessment.

25 Q Was it the case that each member of the Commission

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1 sort of had one or several staff members that they
2 selected that worked for them?

3 A That's generally --

4 MR. HUGHES: Objection, lack of foundation.

5 A -- how the hiring went.

6 MR. STOKESBARY: Objection, lack of
7 foundation.

8 Q (By Mr. Dunn) Who was the staff or staffers that
9 generally worked with Mr. Fain?

10 A A man by the name of Paul Campos.

11 Q Anyone else?

12 A Not that I recall.

13 Q Who were the staff or staffers that primarily worked
14 with Commissioner Sims?

15 A A woman by the name of Osta Davis. Her first name
16 is O-S-T-A.

17 Q Anyone else?

18 A No.

19 Q And who was the staff or staffers that worked with
20 Commissioner Walkinshaw?

21 A A woman by the name of Ali O'Neil.

22 Q Anyone else?

23 A I mean, we each, of course, you know, were
24 communicating with like the Commission staff,
25 communication staff, things like that.

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1 Q But those were the primary people for each of you?

2 A That's, I think, a fair way of putting it.

3 Q Did you have another, you know, staffer that was
4 primarily assigned to you other than Mr. Grose?

5 A Yes.

6 Q Who was that?

7 A Evan Ridley, R-I-D-L-E-Y.

8 Q And what was Mr. Ridley's primary responsibilities?

9 A He primarily focused on communications.

10 Q By communications do you mean communications with
11 other members of the Commission, or like press and media
12 communications, or all the above?

13 A Primarily things like press, social media, things
14 like that.

15 Q Did the other commissioners have a press and media
16 adviser or staffer as well?

17 A They may have, but I didn't really work or interact
18 with them if they did.

19 Q All right. Was Mr. Grose and Mr. Ridley both paid
20 by the Commission, as far as you understand?

21 A I believe so.

22 Q Did you receive a salary as a member of the
23 Commission?

24 A No.

25 Q Did any of the other commissioners receive a salary,

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1 as far as you know?

2 A I think some commissioners -- Commissioners were
3 entitled to take a per diem in certain ways, and I think
4 some of them may have.

5 Q Per diem and salary or pay, or just per diem as you
6 understood it?

7 A Just per diem.

8 Q Did you ever take any per diem?

9 A I did for just that one week leading up to the
10 November 15th deadline.

11 Q Why then?

12 A I was working on this thing for about 20 hours a day
13 that week.

14 Q Why did you not take per diem during the other time?

15 A I'm blessed to have good jobs, and I care about
16 saving taxpayer money. And even though it's not a big
17 amount, I viewed this role as one that was important, and
18 I didn't think it would be right to take money that I
19 didn't need from the Commission.

20 Q Do you remember what the rate or how much per diem
21 you were entitled to take if you wanted to?

22 A I think it was a hundred dollars a day on any day
23 that you worked on Commission work.

24 Q Do you know whether all three of the other
25 commissioners took the per diem?

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1 A I don't know.

2 Q Do you know if any of the other commissioners took
3 the per diem for the entire time of their service on the
4 Commission?

5 A I don't know what you mean by entire time because,
6 of course, there were plenty of days when we weren't
7 working on things.

8 Q Well, do you know if any of the other commissioners
9 took per diem for every day that they did Redistricting
10 Commission work?

11 A I don't know about every day.

12 Q Was the per diem something that the Commission had
13 to vote to approve on, or you submitted a form and it was
14 paid?

15 A It was just submitted in a form. It was paid and
16 then would appear as a budget on our regular monthly
17 meetings.

18 Q On your budgeting were you given a budget by the
19 state or told how much you could spend on a regular basis?

20 A Yes. We had an appropriation in the budget from the
21 state for the Commission's work.

22 Q And how was that set up? Was it just a total
23 amount, or was it by the month? Or how were you
24 instructed what the budget was?

25 A It was passed as part of the biennial budget, so the

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1 two-year budget that we have in our state for our state's
2 general operating budget.

3 Q Do you remember the amount?

4 A Not -- not exactly.

5 Q Did the Commission at some point in time consider
6 and adopt a budget?

7 A Yes.

8 Q And was that -- You know, did -- Was that
9 contentious, or was that a fairly cooperative, easy
10 process, the budgeting process?

11 MR. STOKESBARY: Objection as to form.

12 MR. MILLSTEIN: Objection to form.

13 A I'd describe it probably as somewhere in between.

14 Q (By Mr. Dunn) Okay. Can you recall -- and it's
15 fine if you don't. As I said at the beginning of this I'm
16 going to ask you some things you just don't remember in
17 the record, just tell us that; but can you recall about
18 when the budget was approved?

19 A I don't recall.

20 Q Can you recall whether there was any dissent or
21 disagreement over the budget?

22 A We certainly had, you know, questions about it. We
23 wanted to dive into line items and ask questions about
24 those to make sure that we were stewarding public money
25 appropriately.

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1 Q Was there anybody who voted against the budget that
2 you recall?

3 A Not that I recall.

4 Q Do you recall any controversy over a particular
5 budget line item that should be there or shouldn't be
6 there, an argument that a member of the Commission had?

7 A We had it was kind of a longer discussion about --
8 What was it? We were going to hire a vendor to help us
9 set up the website and then I think do some social media
10 or some, you know, traffic connecting or however that all
11 works together, and I think we just had questions about
12 the size and scope of that project.

13 Q Was there any discussion at any point about
14 obtaining legal advisers or budgeting for legal advice?

15 A I don't think so.

16 Q Was there any discussion at any point about
17 budgeting for Voting Rights Act advisers or people who
18 analyze election data and give opinions on matters that
19 pertain to the Voting Rights Act?

20 A When it came to authorizing the budget?

21 Q Yes, sir.

22 A Not that I recall.

23 Q And can you recall whether or not there was a line
24 item in the budget that was approved for receiving advice
25 or guidance on matters related to the federal Voting

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1 Rights Act?

2 A I'm afraid I don't remember the budget line item by
3 line item.

4 Q Now, at some point in time did the Commission
5 consider hiring a Voting Rights Act adviser?

6 MR. HUGHES: Objection, vague.

7 MR. STOKESBARY: Objection, vague.

8 MR. MILLSTEIN: Objection, vague.

9 A I had some discussions with our Chair about that
10 prospect.

11 Q (By Mr. Dunn) About when did these begin, these
12 discussions?

13 A Maybe in the summer or the fall of 2021. I can't
14 recall specifically.

15 Q What was -- What did you and the Chair discuss?

16 A We talked about the prospect for having a
17 demographer or a data person who might be able to review
18 election results and data and provide some conclusions or
19 some advice based on that.

20 Q What was your position on that?

21 A I thought it would be helpful if we could work it
22 out, but it was a challenge to find somebody who could be
23 acceptable to all four commissioners, all the voting
24 commissioners.

25 Q What was the challenge?

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1 A The people who seem to do that kind of work, the
2 kind of demographers or data experts who do that kind of
3 work for a living seemed tend to work almost exclusively
4 for one party or the other, and ours is a bipartisan
5 commission where to get approval you need approval of at
6 least one or both of the Republican appointed and
7 Democratic appointed Commission commissioner.

8 So finding an agreement on somebody when the
9 universe of people who can do it seem to be pretty
10 polarized was challenging.

11 Q Were there names actually discussed?

12 A Yes.

13 Q What are the names you recall?

14 A Matt Barreto.

15 Q Any others?

16 A I know his last name was Brunell. I can't recall his
17 first name.

18 Q Any others?

19 A Not that I recall.

20 Q Who, if you know, was proposing Dr. Barreto?

21 A I think it was Commissioner Sims.

22 Q Is it Mr. Brunell or Dr. Brunell, or do you know?

23 A I don't know.

24 Q All right. Well, I mean no disrespect. I'm going
25 to call him Mr. Brunell -- Mr. Brunell.

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1 So who was proposing Mr. Brunell, if you know?

2 A I suggested him as a possibility.

3 Q Any other names suggested that you can recall?

4 A No, not that I can recall.

5 Q And did it come to a vote at some point in time, or
6 were these just informal discussions that were happening?

7 A I don't think there was ever a vote on it.

8 Q Was there any public discussions of it in public
9 meetings that you recall?

10 A I don't remember. I'd have to go back and look at
11 the meetings.

12 Q Other than the discussion you had with the Chair,
13 did you discuss it directly with any other members of the
14 Commission?

15 A Yes.

16 Q Which ones?

17 A I think I had a discussion with Commissioner Sims
18 about it.

19 Q Any others?

20 A Not that I recall.

21 Q What do you recall about the discussion with
22 Ms. Sims?

23 A I think we talked about that very issue that I just
24 identified, that it was hard to find somebody who could be
25 plausibly, you know, non- or bipartisan.

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1 Q Was there any consideration given to hiring both?

2 A Not that I recall.

3 Q Was there any -- And this is going to sound the
4 same, but it's not. Was there any consideration given to
5 hiring one demographer proposed by the Republican
6 commissioners and also one demographer proposed by the
7 Democratic commissioners?

8 A I don't recall a conversation like that.

9 Q Was this discussion that happened over the course
10 of, you know, days or weeks, or was this sort of a one-day
11 discussion and that was the end of it?

12 A It was probably over the course of a week or so.

13 Q Other than a demographer was there any discussion
14 about hiring a Voting Rights Act adviser?

15 A No.

16 Q And just, you know, for the purpose of clarity, was
17 there any discussion about hiring a lawyer that
18 specialized in Voting Rights Act work?

19 A The Commission was advised by lawyers from the
20 Attorney General's Office, and we generally turned to that
21 office for legal advice.

22 Q So was it your view, anyway, that you had access to
23 Voting Rights Act advisers in the State Attorney General's
24 Office?

25 A I thought that we had the ability to ask questions

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1 of the Attorney General's office on the Voting Rights Act.

2 Q Was it your view that you didn't need another legal
3 adviser on the Voting Rights Act?

4 A I don't know if I considered it that way.

5 Q How is it that you became aware of Mr. Brunell?

6 A I don't remember.

7 Q Had you had any prior dealings with him?

8 A No.

9 Q Do you know anything about his training, education
10 or experience that you can share with us?

11 A Not much as I sit here right now. It was -- Again,
12 it was over the course of a week, and there were a lot of
13 other things that were going on. I just don't remember
14 that much about it.

15 Q Did you have any discussion with anybody at the
16 Republican Party about Mr. Brunell?

17 A Do you mean --

18 MR. STOKESBARY: Objection as to form.

19 A Yeah. Sorry. Do you mean the State Republican
20 Party?

21 Q (By Mr. Dunn) Yes.

22 A I don't recall any conversations like that.

23 Q Did you have any discussion with anybody at the
24 National Republican Party about Mr. Brunell?

25 A The Republican National Committee?

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1 Q Yes, sir.

2 A Not that I recall.

3 Q And did you have any discussion with Mr. Wilcox
4 about Mr. Brunell?

5 A No.

6 Q Did you ever talk to Mr. Brunell about the fact that
7 you were going to propose him?

8 A No.

9 Q Have you ever spoken with Mr. Brunell?

10 A Yes.

11 Q When was that?

12 A Around maybe August of last year.

13 Q Was that in relation to this possible appointment,
14 or was it a different discussion?

15 A It was relation -- in relation to the work of the
16 Commission.

17 Q What is it that you spoke with him about?

18 A I just talked with him pretty briefly about, you
19 know, the work we were doing on the Commission and how our
20 Commission operated and asking if he would -- you know,
21 might be available if we needed him to do any work with
22 the Commission.

23 Q At that point in time did you share with him any
24 plans or proposals?

25 A No.

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1 Q Did you talk to him about any specific districts or
2 area of the state?

3 A No.

4 Q Did you talk to him about any of the work that he
5 might be asked to do with any level of specificity?

6 A No. Very, very generally.

7 Q Did he give you any advice as to what he would
8 propose to do?

9 A No.

10 Q Do you know if anyone else talked to him about
11 potential work with the Washington Redistricting
12 Commission other than you?

13 A I don't know.

14 Q How is it that you came to the belief that you
15 couldn't obtain enough votes to appoint Mr. Brunell?

16 A I think I deduced it logically.

17 Q Based on the discussion you had with Commissioner
18 Sims?

19 A I don't even know if it was based on that.

20 Q Do you feel that you were disadvantaged as a
21 Commission member by not having the information a
22 demographer could have provided?

23 A I don't think disadvantaged is the word I would use.

24 Q What word would you use?

25 A I think it could have been helpful to have, you

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1 know, a catonic, nonpartisan demographer.

2 Q Is it your belief that the partisanship of the
3 demographer impacts their conclusions?

4 A It's the lawyer in me, but I viewed them in the way
5 that you might an expert witness in a lawsuit.

6 Q So it was your view that you couldn't trust
7 information provided by a demographer that had
8 historically worked with Democrats?

9 MR. HUGHES: Objection, misstates the prior
10 testimony.

11 MR. STOKESBARY: Objection, misstates the
12 prior testimony.

13 MR. MILLSTEIN: Objection, misstates the
14 prior testimony.

15 A That's not what I said.

16 Q (By Mr. Dunn) What is the reason you were unwilling
17 to support Dr. Barreto?

18 A He worked exclusively for the Democratic National
19 Committee, for the Hilary Clinton campaign and for
20 Democrats more generally. And because the demographer
21 work is so closely related to partisanship, I thought that
22 it would be a real challenge to get a truly independent
23 opinion.

24 Q What investigation, if any, did you do into
25 Dr. Barreto's training, education and experience?

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1 A I think I looked at his CV.

2 Q Anything else you recall?

3 A I might have looked at his social media accounts.

4 Q Anything else you recall?

5 A No.

6 Q Did you give any consideration to hiring your own
7 demographer?

8 A Me personally?

9 Q Yes, sir.

10 A No.

11 Q Did you give consideration into hiring a demographer
12 to check Dr. Barreto's work?

13 A You mean after his report was released?

14 Q At any time.

15 A I'm just not sure what kind of -- You said
16 Dr. Barreto's work. What work do you mean?

17 Q Well, at the time of appointment or later when
18 Dr. Barreto produced his analysis did you give
19 consideration to hiring your own person to -- checking
20 that work to see if it was accurate?

21 MR. STOKESBARY: Objection, lack of
22 foundation.

23 A I certainly considered hiring somebody to review the
24 report and provide a legal analysis of its implications.

25 Q (By Mr. Dunn) Did you -- Did you consider a

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1 demographer to check Dr. Barreto's work?

2 A I think I may have, but it was -- This was all, you
3 know, maybe a few weeks before our November 15th deadline,
4 and there was so much to do that we had to act pretty
5 quickly.

6 Q So is it your position by the time you saw
7 Dr. Barreto's report you didn't have time to hire your own
8 demographer to check it?

9 A I think it would have been a real challenge to do
10 so.

11 Q Now, back earlier when you said in the summer/fall
12 of 2021, did you give consideration then that since the
13 commissioners aren't going to agree on a demographer,
14 either of the Republican commissioners can hire one to run
15 the data from our perspective?

16 MR. HUGHES: Object to form.

17 MR. MILLSTEIN: Object to form.

18 MR. STOKESBARY: Object to form.

19 A Not that I recall.

20 Q (By Mr. Dunn) What, if anything, was in the budget
21 for hiring a Voting Rights Act adviser or consultant?

22 MR. STOKESBARY: Objection, asked and
23 answered.

24 MR. HUGHES: I'm going to object to vague
25 as to the budget.

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1 MR. STOKESBARY: Objection as to vague.

2 A I think if you mean the Redistricting Commission
3 budget, again, I'm afraid I don't remember it line by
4 line.

5 Q (By Mr. Dunn) Well, was it the case that -- You
6 know, I just want to know if your testimony is going to be
7 later, "We didn't have the money to hire a demographer or
8 adviser," I'm trying to find that out today. Or if it was
9 rather, "The money was there, but we decided not to do
10 it." Which one?

11 MR. HUGHES: Object to form.

12 MR. STOKESBARY: Object to form.

13 MR. MILLSTEIN: Object to form.

14 A I'm afraid I don't recall specifically. I'm not
15 sure that we got that far along in those discussions.

16 Q (By Mr. Dunn) It sounds like, though, from your
17 prior testimony today the decision not to hire a
18 demographer wasn't based on money. It was based on the
19 other reasons you stated. Is that fair?

20 A I mean again, I'm not sure there was a specific
21 decision not to. It's just we didn't hire one as a
22 Commission.

23 Q And you didn't hire one individually?

24 A No.

25 Q Do you know whether Mr. Fain hired one individually?

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1 A I don't know.

2 Q Now, you mentioned that you hired a legal response
3 to Dr. Barreto's report. Did I hear that correctly?

4 A I asked for legal --

5 MR. STOKESBARY: Objection as to form.

6 A I asked for legal advice after the opinion came out.

7 Q (By Mr. Dunn) And from whom did you ask the legal
8 advice?

9 A Rob Maguire.

10 Q How did you know --

11 A M-A-G- -- Sorry, M-A-G-U-I-R-E.

12 Q How did you know Mr. Maguire?

13 A I don't recall when -- when we first met, but I've
14 known him for a good long time.

15 Q Before you were elected to the Legislature did you
16 know Mr. Maguire?

17 A Yes.

18 Q What kind of work does he do, if you know?

19 A He's the head of the civil litigation department at
20 a law firm called Davis Wright Tremaine.

21 Q What information did you have that he had experience
22 with Voting Rights Act work?

23 A He provided legal advice to the commissioners in the
24 2011 Commission.

25 Q Was he the retained counsel for the Commission, as

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1 far as you know, in 2011?

2 A I don't know the arrangements in 2011.

3 Q You just know that he provided some legal advice in
4 relation to the 2011 redistricting process?

5 A Yes.

6 Q You don't know at whose request?

7 A I'm afraid I don't.

8 Q Now, did you hire Mr. Maguire, or was it the case
9 that the Commission did?

10 MR. STOKESBARY: Objection, asked and
11 answered.

12 A He was -- It was -- He was retained by me and
13 Commissioner Fain and the Washington State Republican
14 Party.

15 Q (By Mr. Dunn) And who is it that paid him?

16 MR. STOKESBARY: Objection, asked and
17 answered.

18 A The Washington State Republican Party.

19 Q (By Mr. Dunn) Did you provide any funds for his
20 work?

21 A Out of my pocket?

22 Q Yes, sir.

23 A I was happy to do this job on a volunteer basis, but
24 I didn't want to pay money to do it.

25 Q So is that a no?

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1 A That is a no.

2 Q Do you know whether Mr. Fain provided any money to
3 Mr. Maguire?

4 A I don't know.

5 Q Do you know whether the Redistricting Commission
6 paid any of Mr. Maguire's fee?

7 A I don't --

8 MR. STOKESBARY: Objection. Objection,
9 asked and answered.

10 A It did not.

11 Q (By Mr. Dunn) All right. Now, did you ultimately
12 receive some advice from Mr. Maguire?

13 A Yes.

14 Q In what form?

15 A In the form of a memorandum.

16 Q Did you release that memorandum publicly?

17 A Yes.

18 Q Why did you release your lawyer's advice publicly?

19 A It was responding to a public -- a document that had
20 been released publicly; and I thought in all fairness,
21 even though it was certainly a privileged document, that
22 if I were to be relying on any advice in it, the people of
23 Washington deserved to know what I was relying on.

24 Q And what was the memorandum responding to that you
25 just mentioned?

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1 A It was responding to a report released by Matt
2 Barreto in late October of 2021.

3 Q Is that what you asked Mr. Maguire to do, respond to
4 Dr. Barreto's report?

5 A No.

6 Q What advice or -- I mean what requests did you make
7 of Mr. Maguire?

8 A I asked him if he would review the report and
9 provide a legal analysis of the statements and claims that
10 were in there.

11 Q Anything else you asked him to do?

12 A No.

13 Q Did you have any information as to whether or not
14 Mr. Maguire had available to him demographers or data
15 analysts that could analyze election results and
16 population data?

17 A I don't know.

18 Q Was it your understanding that Mr. Maguire or
19 somebody available to him would be checking Dr. Barreto's
20 work as to whether or not there was the existence of
21 racially polarized voting in the Yakima Valley?

22 A I don't know if Mr. Maguire had somebody do that.

23 MR. STOKESBARY: Objection as to form.

24 Q (By Mr. Dunn) Did you -- Did you view that as an
25 important part of what needed to occur in response to

1 Dr. Barreto's analysis?

2 MR. MILLSTEIN: Objection to form.

3 A It was so close to our deadline --

4 MR. HUGHES: And also -- Sorry, I'm going
5 to object to the extent it calls for a legal conclusion.

6 A It was -- It was so close to our deadline that we
7 had, and we had so much work to do to get it done that my
8 primary focus was trying to figure out the legal
9 implications and what we were allowed to or required to do
10 with respect to Legislative Districts in the Yakima
11 Valley.

12 Q (By Mr. Dunn) Did you call Mr. Brunell and ask if he
13 could do a responsive demographic analysis in time?

14 A No.

15 Q So is it the case that you were assuming it could
16 not be done in time?

17 A I don't know if it was an assumption, but it seems
18 like it would be pretty hard.

19 Q In your discussions with Mr. Maguire did you ask him
20 to check the demographic analysis work?

21 A I asked him to review the report and to provide an
22 analysis of its findings.

23 Q As you sit here today are you aware of whether
24 anyone that gave you advice before the plan was adopted
25 tested Dr. Barreto's factual analysis and came up with a

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1 different conclusion?

2 MR. MILLSTEIN: Objection to form.

3 MR. STOKESBARY: Objection to form.

4 A I guess maybe the -- in the broadest sense. I mean,
5 some of the stuff in there was easy for me to Google, for
6 example. Maybe that counts as a yes to your question.

7 Q (By Mr. Dunn) But as far as you know, nobody has
8 performed the statistical racially polarized voting
9 analysis or replicated what Dr. Barreto did and determined
10 whether he did it correctly?

11 MR. STOKESBARY: Objection, lack of
12 foundation.

13 MR. HUGHES: And misstates the prior
14 testimony.

15 MR. STOKESBARY: Objection, misstates the
16 prior testimony.

17 MR. MILLSTEIN: Objection, misstates the
18 prior testimony.

19 A I'm afraid that I don't know if somebody has done
20 that work since.

21 Q (By Mr. Dunn) Did you make any attempt to replicate
22 Dr. Barreto's analysis?

23 A Like I said, I mean, I Googled like some, you know,
24 election results for like the 2012 U.S. Senate race,
25 things like that.

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1 Q You didn't otherwise analyze the election data for
2 the existence of racially polarized voting?

3 MR. MILLSTEIN: Objection to the extent it
4 calls for a legal conclusion.

5 MR. STOKESBARY: Objection to the extent it
6 calls for a legal conclusion.

7 A Sorry. Could you ask the question again?

8 Q (By Mr. Dunn) Did you perform yourself a racially
9 polarized voting analysis, if you even know what that is?

10 A I wouldn't say I conducted a --

11 MR. STOKESBARY: Objection, compound
12 question.

13 A I wouldn't say I conducted a full analysis along
14 those lines.

15 Q (By Mr. Dunn) What is it that you were Googling?

16 A Just, you know, like the -- like including primarily
17 in the report, you know, the first election it talks about
18 the 2012 U.S. Senate race, so I just wanted to at least,
19 you know, look at those. Those numbers are easy to pull
20 and look at.

21 Q Did you find anything inconsistent with what
22 Dr. Barreto had opined on that race when you Googled it?

23 MR. STOKESBARY: Objection as to form.

24 A No. It was a pretty -- pretty thorough thumping,
25 that race was.

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1 Q (By Mr. Dunn) Why did you not seek this legal advice
2 from the Washington Attorney General's Office?

3 MR. HUGHES: I'm going to object to the
4 extent this is intruding on attorney-client privileged
5 materials.

6 MR. STOKESBARY: Objection.

7 MR. MILLSTEIN: And I will object on this
8 ground. To the extent your -- the question is going to
9 ask for any testimony or discussions he's had with the
10 AG's office, I'm going to instruct the witness not to
11 answer as subject to the attorney-client privilege.

12 A And with all that could you ask the question again?

13 Q (By Mr. Dunn) Sure. Why is it you asked Mr. Maguire
14 for this legal advice and not the Washington Attorney
15 General's Office?

16 MR. HUGHES: Same objection.

17 A I never said I talked with -- I never said I did not
18 talk with the Attorney General's Office about it.

19 Q (By Mr. Dunn) So at some point in time did you ask
20 the Washington Attorney General's Office for their opinion
21 of Dr. Barreto's report?

22 MR. HUGHES: Go ahead, Aaron.

23 MR. MILLSTEIN: I'm going to object and
24 instruct the witness not to answer questions about the
25 advice he sought on legal issues from the Attorney

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1 General's Office as subject to the attorney-client
2 privilege.

3 MR. HUGHES: And I'll join the objection. I
4 obviously can't join the instruction, but I will join the
5 objection.

6 MR. STOKESBARY: I join the objection -- I
7 join the objection as well.

8 A Yeah, I'm just afraid that my conversations with the
9 Attorney General's Office when I was an appointed
10 commissioner are -- I think those are fairly covered by
11 the attorney-client privilege.

12 Q (By Mr. Dunn) All right. So you will not answer my
13 question as to why it is you did not ask the Washington
14 Attorney General's Office for its legal opinion on
15 Dr. Barreto's report on the basis of --

16 MR. STOKESBARY: Objection, argumentative.

17 MR. DUNN: Let me just finish my question.

18 MR. STOKESBARY: I thought you did, Chad.
19 I'm sorry.

20 MR. DUNN: I'm just trying to have a clean
21 record here.

22 Q (By Mr. Dunn) I just want to make sure it's clear
23 based on your lawyer's objection and instruction that you
24 will not answer my question on why it is you didn't ask
25 the Washington Attorney General's Office for its legal

1 advice on Dr. Barreto's report.

2 MR. MILLSTEIN: Objection, misstates prior
3 testimony.

4 MR. STOKESBARY: Objection, argumentative.
5 Objection, misstates prior testimony.

6 MR. HUGHES: Objection, misstates --
7 Objection, misstates the prior testimony. I also join
8 Drew's argument.

9 A I guess maybe there's an assumption in that question
10 that you -- It seemed like you're saying that I did not
11 ever talk with the Attorney General's Office about that.

12 Is that a fair assumption of your question?

13 Q (By Mr. Dunn) I'm not today -- until we take up the
14 matter with the Court, if we decide to take up the matter
15 with the Court -- trying to get into your discussion of
16 what the Attorney General's response was to you.

17 I'm merely trying to establish whether or not you
18 asked the Washington Attorney General's Office for its
19 legal opinion about Dr. Barreto's report, without regard
20 to what that opinion was, if it was ever provided or
21 stated.

22 MR. STOKESBARY: Objection. I think this
23 question is covered by attorney-client privilege.

24 MR. HUGHES: I was going to say the same
25 thing, Drew.

1 MR. MILLSTEIN: Yes, same objection.

2 A I know it's frustrating -- It's always frustrating
3 when you get into privilege issues because these are --
4 you know, it was right around the time when we had our
5 deadline coming up and everything; but I do understand and
6 care about the privilege, and I'm afraid I can't answer
7 questions about my communications or legal advice that I
8 sought with the Attorney General's Office.

9 Q (By Mr. Dunn) All right. And that includes even
10 what it is that you sought from them?

11 MR. STOKESBARY: Objection, asked and
12 answered, argumentative, attorney-client privilege.

13 A I'm sorry. You're asking -- I just want to make
14 clear I'm answering the question. You're asking if I'm
15 not going to testify about what I asked the Attorney
16 General's Office about?

17 Q (By Mr. Dunn) With respect to Dr. Barreto's report,
18 yes.

19 A I think that's really squarely privileged.

20 Q Okay. To the extent anything was provided to you
21 from the Washington Attorney General's Office in response
22 to Dr. Barreto's report, did you provide it to
23 Mr. Maguire?

24 A You're asking if I provided communications,
25 privileged communications to a lawyer?

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1 Q From one of your lawyers to one of your other
2 lawyers.

3 A I don't believe that I did.

4 Q Can you recall whether you provided anything from
5 the Washington Attorney General's Office that they had
6 provided to you, if you had given any of that to
7 Mr. Maguire?

8 A No.

9 Q Can you recall if there were any discussions between
10 Mr. Maguire and the Washington Attorney General's Office?

11 MR. STOKESBARY: Objection as to form.

12 A I think they -- I think they might have had a
13 conversation about what a representation arrangement would
14 or could look like.

15 Q (By Mr. Dunn) What a representation arrangement
16 would or could look like to the Commission or to you, or
17 both?

18 A All of it.

19 Q Do you know who it is that Mr. Maguire spoke with?

20 A I don't know.

21 Q Did you at any point in time -- Were you talking on
22 any emails or written communication between Mr. Maguire
23 and the Washington Attorney General's Office?

24 A Not that I recall.

25 Q Other than the report, the letter that you have

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1 described that was released publicly, did you receive any
2 other work product from Mr. Maguire?

3 A No.

4 Q Do you -- Did you participate at all in the
5 preparation of the opinion that Mr. Maguire provided?

6 A No.

7 Q When you received the opinion were you provided any
8 briefing or discussion from Mr. Maguire or someone at his
9 law firm about it?

10 A Not that I recall.

11 Q Did you receive any drafts of it in advance?

12 A No.

13 Q Is it then the case that you did not provide any
14 edits or substantive suggestions about what is in the
15 letter?

16 A I did not.

17 Q Are you aware of Mr. Maguire receiving any edits or
18 suggestions from any other source?

19 A You mean like other lawyers in his law firm?

20 Q Or anyone else.

21 A No, I don't know.

22 Q How is it that you communicated with Mr. Maguire
23 about the work he was performing for you?

24 A We had a phone call, and then we had the -- a
25 representation agreement. And then he sent me the memo, I

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1 think by email.

2 Q Do you recall having any other email discussion with
3 him?

4 MR. STOKESBARY: Objection as to form.

5 A I don't -- I don't recall if there was.

6 Q (By Mr. Dunn) Did you have text communications with
7 Mr. Maguire?

8 A I don't think so, but I don't recall.

9 Q Did you provide him anything in relation to his work
10 other than Dr. Barreto's report?

11 A Not that I recall.

12 Q Did you ever at any point in time have any contact
13 with Dr. Barreto?

14 A No.

15 Q Did it occur to you upon receiving Dr. Barreto's
16 report to ask him or talk to him about his opinions?

17 A No.

18 Q Did you make any attempt to inquire further about
19 Dr. Barreto's opinions other than read his report?

20 A I sought the advice of --

21 MR. HUGHES: Objection, misstates the prior
22 testimony.

23 MR. STOKESBARY: Objection, misstates the
24 prior testimony.

25 MR. MILLSTEIN: Objection, misstates the

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1 prior testimony.

2 A I sought advice about the implications, especially
3 the implications for again what the Commission was legally
4 allowed or required to do.

5 Q (By Mr. Dunn) Did you read Dr. Barreto's report?

6 A Yes.

7 Q Did you review the slide presentation that
8 Dr. Barreto provided?

9 MR. HUGHES: Objection, asked and answered.

10 A I think you're -- Just to make sure we're talking
11 about the same thing, there was the PowerPoint
12 presentation -- maybe it was 20 or 30 slides, something
13 like that. It got published in a Crosscut article. Is
14 that the one we're talking about?

15 Q (By Mr. Dunn) So is it the slide presentation that
16 you reviewed?

17 A I'm sorry. I don't -- I saw the slide presentation.

18 Q Did you see anything else other than -- from
19 Dr. Barreto other than the slide presentation?

20 A I think that was -- I think that was what I saw.

21 Q At the point in time that you received Dr. Barreto's
22 slide presentation had you had any other communications,
23 received any other communications to the extent that it
24 was somebody's belief or opinion that the Voting Rights
25 Act required a Latino majority, Latino performing district

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1 in the Yakima Valley?

2 MR. MILLSTEIN: Objection to form.

3 MR. STOKESBARY: Objection, form.

4 MR. HUGHES: I'll join that objection.

5 A You know, we heard a lot of public testimony last
6 year; and I can't recall specifically, but again, I have
7 kind of vague remembering that maybe some witnesses who
8 testified might have made a suggestion like that.

9 Q (By Mr. Dunn) Do you recall whether any members of
10 the Commission made the argument to you prior to
11 Dr. Barreto's report being released that the Voting Rights
12 Act implicated the map in the Yakima Valley?

13 A Not that I recall specifically.

14 Q When you received Dr. Barreto's report how did you
15 learn of it?

16 A Published in a news article.

17 Q Did someone bring the news article to your
18 attention?

19 A I don't remember how I -- if somebody sent it to me
20 or if I just saw it.

21 Q Did you share Dr. Barreto's report with anyone when
22 you became aware of it?

23 A Yes.

24 Q With whom?

25 A Rob Maguire.

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1 Q Anyone else?

2 A I think I -- I think I sent it to Mr. Grose as well.

3 Q Anyone else?

4 A Not that I recall right here.

5 Q Was it the case that your first conversations with
6 Mr. Maguire about him providing you legal advice happened
7 after the release of Dr. Barreto's report?

8 A Yeah, that's when we first talked about him serving,
9 yes.

10 Q Prior to that first conversation with Mr. Maguire
11 was it the case that whatever legal advice you got on the
12 Voting Rights Act, if you received any, you got it from
13 the Washington Attorney General's Office?

14 MR. MILLSTEIN: Objection to form.

15 MR. STOKESBARY: Objection to form.

16 A Like I said, I also received some training from the
17 King County Council Redistricting Commission, and then the
18 Federal Department of Justice has a pretty good background
19 memo on the Voting Rights Act that I read.

20 Q (By Mr. Dunn) You read this background the Federal
21 Department of Justice had?

22 A Yeah. If you Google Department of Justice Voting
23 Rights Act, Section 2, something like that, it's a -- I
24 don't know -- maybe 20 paragraph document that provides
25 the background.

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1 Q And you looked at that on the website?

2 A In the Department of Justice website, I think that's
3 where it was.

4 Q Yes. Well, I'm just -- I'm just trying to -- I
5 don't know what you looked at, so I'm just trying to
6 figure out did you look at their website? My
7 understanding is the DOJ also has a manual on -- They have
8 manuals on all sorts of things.

9 So did you look at their official manual, or you
10 just looked at the website?

11 A I don't know how they -- how they clarify it, but
12 what I saw from the Department of Justice was on a
13 website.

14 Q All right. Any other source of information about
15 the federal Voting Rights Act that you looked at,
16 received, that we haven't talked about?

17 A I mean I, you know, poked around and read some court
18 cases on it maybe early on after I was appointed, but I
19 can't recall those specifically.

20 Q Can you recall the names of any of those cases?

21 A Greg Abbott was the -- maybe the defendant in the
22 Texas case that I recall, a case with a Hunt as a party;
23 but I don't recall. I'm not -- I've never been the
24 greatest with remembering case names.

25 Q How is it that you learned to look into those two

1 cases?

2 A I'm a lawyer.

3 Q What part of being a lawyer helped you identify
4 those two cases?

5 A Again, I've read others, too. I just can't recall
6 them here right now.

7 But, you know, as a lawyer understand that the
8 courts have a role in interpreting statutes like the
9 federal Voting Rights Act, and I thought it would be
10 useful to peruse some of those to get, you know, the
11 background of how the courts approached these things and
12 what kind of considerations they're looking at.

13 Q So did you go on Westlaw or Lexis and just type in
14 Voting Rights Act, or where did you start?

15 A I used Google Scholar.

16 Q And how did you start with Google Scholar?

17 A I think I probably, you know, typed in Voting Rights
18 Act, Section 2, something along those lines.
19 Redistricting maybe was a search term.

20 Q Can you recall at any point in time someone
21 suggesting to you, "Hey, read this case," or, "We're going
22 to be in violation of this case," or, "We need to pay
23 attention to that one," anything of that sort?

24 A Not that I recall.

25 MR. HUGHES: Just object to the extent it

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1 calls for attorney-client privileged materials.

2 Q (By Mr. Dunn) Outside of any attorney-client
3 communications?

4 A Not that -- not that I recall.

5 MR. DUNN: All right. We've been going
6 about another hour. If it's acceptable we'll take another
7 five minutes.

8 THE WITNESS: Sounds good.

9 MR. DUNN: All right.

10 THE VIDEOGRAPHER: Going off record, this
11 is the end of Media 1. The time is 11:07.

12 (Break 11:07 a.m. to 11:13 a.m.)

13 THE VIDEOGRAPHER: Back on the record.

14 Here begins Media 2. The time is 11:13.

15 MR. DUNN: I'm sorry, did I hear somebody
16 say something? No? All right.

17 Q (By Mr. Dunn) Before the break we were talking about
18 the training and Voting Rights Act research that you did,
19 and just to try to get your back, your mind back to where
20 we're at here.

21 And I understand you testified earlier that you
22 don't intend to give expert opinion on the Voting Rights
23 Act today; but as a member of the Commission who received
24 all this training and did this -- the research that you
25 did, what is your understanding of the requirements of the

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1 Voting Rights Act with respect to the work you did as a
2 commissioner?

3 MR. MILLSTEIN: Objection to the extent --

4 MR. STOKESBARY: Objection to the extent --

5 MR. MILLSTEIN: -- it calls for a legal
6 conclusion.

7 MR. STOKESBARY: -- it calls for a legal
8 conclusion.

9 A Well, like I said, you know, predominantly the
10 Section 2 of the Voting Rights Act was most relevant to
11 the work we did as a Commission.

12 And I always want to quote the statute itself
13 directly, and I don't have it in front of me; but the
14 requirements of Section 2, especially Section B,
15 Subsection B that explains the totality of the
16 circumstances test, that was what I understood we needed
17 to try to figure out and comply with.

18 Q (By Mr. Dunn) Did you become familiar generally or
19 specifically with something called the Gingles test?

20 A I'm aware of the Gingles case and the factors that
21 came out of it.

22 Q And did you look at the preconditions that the
23 Gingles case asks courts to consider when they're
24 presented with a Voting Rights Act challenge?

25 A Yes.

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1 Q Other than the report that Dr. Barreto put out, have
2 you seen any other analysis of any part of the Washington
3 legislative map on one or several of the Gingles
4 preconditions?

5 And if the only thing you've seen is privileged,
6 then just say that.

7 A No, I -- I'm trying to recall on the congressional
8 map, the 9th Congressional District in particular --
9 Again, there was a lot of public testimony, and I can't
10 remember if any of that specifically involved Gingles
11 factors when it came to the 9th Congressional District;
12 but I have somewhere in the recesses of my mind that there
13 might have been something along those lines.

14 Q Was there any other Gingles analysis performed on
15 the Yakima Valley area other than Dr. Barreto's that
16 you're aware of?

17 A I don't know if there was one that was conducted in
18 2011. I'm aware, I think generally, that there was -- it
19 was the subject of discussion in the 2011 Commission, but
20 I don't know if there was a Gingles analysis done then.

21 Q But it sounds like as you sit here today the only
22 one you know of that involved the Yakima area was the
23 Dr. Barreto report?

24 A Like I just said, I mean, I don't know if there was
25 one from the 2011 Commission or earlier commissions.

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1 Q But there wasn't another one from 2021?

2 A Not that I know of.

3 Q Now, did you perform your own Gingles analysis with
4 respect to any of the maps?

5 A I don't know if I'd, you know, describe it as doing
6 a full Gingles analysis; but again, I tried to take into
7 account all the information that we received and to do my
8 level best to use all that and then try to comply with
9 Section 2 as I understood it.

10 Q Do you have an opinion whether or not Section 2 of
11 the Voting Rights Act has any requirements with regard to
12 the characteristics of the district in the Yakima Valley
13 for the state legislative map?

14 MR. MILLSTEIN: Objection to the extent it
15 calls for a legal conclusion.

16 MR. STOKESBARY: Objection to the extent it
17 calls for a legal conclusion.

18 MR. HUGHES: Same objection.

19 A As I understand Section 2, its -- its requirements
20 apply to every legislative and congressional district
21 drawn in the country.

22 Q (By Mr. Dunn) Well, do you have an opinion as to
23 whether or not it would violate Section 2 of the Voting
24 Rights Act to not draw a district in the Yakima Valley
25 that's greater than 50 percent citizen voting age

1 population Latino or Hispanic?

2 MR. MILLSTEIN: Objection --

3 MR. STOKESBARY: Objection, form.

4 MR. MILLSTEIN: -- to the extent it calls
5 for a legal conclusion.

6 MR. STOKESBARY: Same objection.

7 MR. HUGHES: Join.

8 A It's hard to answer, and it was hard to answer then
9 because, of course, the law in this area is not exactly
10 specific or exact. And, of course, its application to any
11 particular district or any particular geographic area is
12 also challenging to try to figure out or predict ahead of
13 time.

14 I -- The way I came about it and thought about it
15 when we drew our maps was that there was significant
16 dispute over what Section 2 or the 14th Amendment allowed
17 or required in the Yakima Valley.

18 Q (By Mr. Dunn) Do you have an opinion about what the
19 Section 2 or 14th Amendment allowed or required in the
20 Yakima Valley?

21 MR. MILLSTEIN: Objection, calls for a
22 legal conclusion.

23 MR. STOKESBARY: Same objection.

24 A It's --

25 MR. HUGHES: Objection, compound.

1 A I thought that it was -- how do I put it? I don't
2 know if it was a firm conclusion because again, we had
3 conflicting opinions about that particular question.

4 And again, the courts are -- treated these -- You
5 know, it's hard to try to glean general principles from
6 the way courts have treated it; and, of course, the courts
7 are changing some of these rules, too, and even were when
8 we were doing that.

9 So I don't know if it's fair to say that I had a
10 firm conclusion on exactly what was allowed or required,
11 but I took the approach that there was significant dispute
12 over all that; and I tried to do my best also in the
13 confines of our bipartisan Commission to see if we could
14 reach an agreement on a map.

15 Q (By Mr. Dunn) Was it your opinion that the map that
16 the Commission finally approved for the legislative map
17 complied with federal law?

18 MR. MILLSTEIN: Objection, calls for a
19 legal conclusion.

20 MR. STOKESBARY: Same objection.

21 A I believe that it does.

22 Q (By Mr. Dunn) And do you base that opinion on
23 anything other than the research and training you were
24 given, the legal opinion you procured, and Dr. Barreto's
25 report?

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1 A I suppose it's -- I'd probably also add, you know,
2 the actual 15th District itself, the characteristics that
3 it has.

4 Q Anything else that you base that opinion on?

5 A I don't know if it was already included in what you
6 said, but a lot of it was based on, you know, in a number
7 of the opinions about Section 2 or the Equal Protection
8 Clause, there's at least something in there saying that
9 map drawers have discretion.

10 You know, there's not a specific requirement to draw
11 specific lines from either the Voting Rights Act or from
12 the Equal Protection Clause. And so I would rely on that,
13 too, that we -- That map drawers have discretion in how to
14 go about fashioning maps to comply with all of the
15 requirements.

16 And then especially in the context of our bipartisan
17 Commission, that a Commission like that has some leeway to
18 draw districts in areas that might be challenged.

19 Q So is it your view the fact that you had a
20 Commission doing this work had more leeway, as you say,
21 than say the Legislature?

22 A I'm not sure that I put it quite that way. I -- I
23 don't know. In fact, I'm not even sure that it would have
24 much legal significance.

25 I just think as a matter of common sense or

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1 intuition, a bipartisan Commission that requires votes
2 from both kinds of parties is more likely to get you
3 toward a map that endeavors to comply with the federal law
4 and Constitution than does a strictly partisan process.

5 Q Did somebody instruct you --

6 MR. HUGHES: Can I interrupt you really
7 quickly? Can I request we go off the record for just a
8 minute?

9 MR. DUNN: Okay.

10 THE VIDEOGRAPHER: Going off record, the
11 time is 11:22.

12 (Discussion off the record.)

13 (Record read back.)

14 THE VIDEOGRAPHER: Back on the record, the
15 time is 11:24.

16 Q (By Mr. Dunn) So again focusing on the Yakima Valley
17 area, was there any part of the final adopted map for that
18 district, the Legislative District, that was directed by
19 the federal Voting Rights Act?

20 In other words, were there any characteristics about
21 the adopted 15th Legislative District that were driven by
22 the federal Voting Rights Act to your knowledge?

23 MR. MILLSTEIN: Objection to the extent it
24 calls for a legal conclusion.

25 MR. STOKESBARY: Same objection.

1 MR. HUGHES: Same objection.

2 A I mean, again, it might not be what you're asking,
3 but, you know, Section 2 of the Voting Rights Act applies
4 to every Legislative District in the country; but I don't
5 think that's what you're getting at.

6 Could you maybe ask it a different way?

7 Q (By Mr. Dunn) Yeah, sure. I'm happy to.

8 Is there anything about the 15th Legislative
9 District that you think would be different if the federal
10 Voting Rights Act wasn't law?

11 MR. MILLSTEIN: Objection to the extent it
12 calls for a legal conclusion.

13 MR. HUGHES: I'll object, that calls for
14 speculation.

15 MR. STOKESBARY: Same objection to both.

16 MR. MILLSTEIN: And objection, calls for
17 speculation.

18 A Yeah, I -- It's hard to know because, of course,
19 there's the legal aspect of it and what Section 2 and the
20 Equal Protection Clause allow or require, but there's also
21 how that law interacts with a Commission like ours when
22 we're trying to negotiate Legislative Districts.

23 It's hard for me to say what things would have been
24 like or how things would have proceeded differently if
25 Section 2 weren't enforced.

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1 Q (By Mr. Dunn) But sitting here you can't think of,
2 you know, an election result, a demographic characteristic
3 or anything in particular about the adopted Legislative
4 District in the Yakima Valley that is that way because of
5 the operation of the federal Voting Rights Act?

6 MR. HUGHES: Objection, misstates prior
7 testimony.

8 MR. STOKESBARY: Objection --

9 MR. MILLSTEIN: Objection to form.

10 MR. STOKESBARY: Sorry. I've got some fire
11 alarms -- Sorry. I've got some fire alarms going off
12 here, but I join all the other objections.

13 A Yeah, the use of the word operation there is again a
14 little hard for me to exactly answer because, you know,
15 again, one of the real challenges here is that the law is
16 not -- You know, it's not crystal clear. It's not ten
17 feet and less is okay. Ten feet one inch more is okay.

18 It's a -- It's a totality of the circumstances kind
19 of complicated test. I guess I can say that, you know,
20 it's certainly an issue that came up during negotiations
21 and something that I know, you know, Commissioner Sims in
22 particular was really -- really concerned and cared about.
23 You know.

24 So I don't know if it exactly answers the question
25 of the operation of Section 2, but, you know, the fact

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1 that the district is the majority of eligible voters are
2 Hispanic maybe is responsive to that question.

3 Q (By Mr. Dunn) Okay. What is -- and if you don't
4 remember, that's fine -- but do you recall what the racial
5 breakdown of the district is, even generally?

6 A I think it's maybe 30 percent White by total
7 population. It's 50 -- maybe 50.1 percent citizens of
8 voting age population Hispanic.

9 Q It sounds like based on your prior testimony that
10 the 50.1 percent citizen voting age act -- citizen voting
11 age population Hispanic or Latino was at that number
12 because of the Voting Rights Act; is that fair to say?

13 MR. MILLSTEIN: Objection, misstates prior
14 testimony --

15 MR. STOKESBARY: Same --

16 MR. MILLSTEIN: -- and calls for a legal
17 conclusion.

18 MR. STOKESBARY: Same objections.

19 A Yeah. No, not exactly.

20 Q (By Mr. Dunn) What, if anything, drove the district
21 to be 50.1 percent citizen voting age population Latino or
22 Hispanic?

23 A That was something that Commissioner Sims --

24 MR. STOKESBARY: Sorry, I couldn't find the
25 mute button, but objection as to form.

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1 A That characteristic --

2 MR. HUGHES: Objection -- Sorry.

3 Objection, misstates the record.

4 MR. STOKESBARY: Same objection.

5 A That, you know, was certainly something that
6 Commissioner Sims cared deeply about and I think was one
7 that, you know, if the district didn't have that
8 characteristic she, you know, may have chosen not to vote
9 for the map as a whole.

10 Q (By Mr. Dunn) And did you approve of the district
11 being 50.1 percent citizen voting age population Latino or
12 Hispanic?

13 A I voted yes for the map, yeah.

14 Q And did you view that district as being legal when
15 you voted for it?

16 MR. STOKESBARY: Objection --

17 MR. MILLSTEIN: Objection to the extent it
18 calls for a legal conclusion.

19 MR. STOKESBARY: Same objection.

20 A Yes.

21 Q (By Mr. Dunn) Did you ever at any point in time
22 express to Commissioner Sims or another commissioner that
23 you thought drawing that district at a particular
24 percentage citizen voting age population Latino or
25 Hispanic was illegal or unjust or wrong?

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1 MR. MILLSTEIN: Objection to form.

2 MR. STOKESBARY: Join that objection.

3 A I'm sorry. Are you asking if I said some percentage
4 was -- a percentage of Hispanic eligible voters would be
5 wrong or something?

6 Q (By Mr. Dunn) Yes. At any point in time did you
7 express to members of the Commission or any member of the
8 Commission that drawing that district to reach 50.1
9 percent citizen voting age population Latino or Hispanic
10 was illegal?

11 A Was illegal?

12 Q Yes.

13 A No, I don't think I expressed that opinion.

14 Q Now, stepping away from the Yakima Valley for a
15 moment, was there anywhere else in the legislative or the
16 congressional map where Section 2 of the Voting Rights Act
17 was an issue in terms of establishing a new district?

18 MR. MILLSTEIN: Objection to form.

19 MR. HUGHES: Objection, vague.

20 MR. STOKESBARY: Same objections.

21 A Every district we drew had to comply with Section 2.

22 Q (By Mr. Dunn) I appreciate that. Was there anyplace
23 else in the legislative or congressional map where someone
24 advocated to you Section 2 of the Voting Rights Act
25 requires you to draw a new district with this

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1 characteristic?

2 A I think there was public testimony to that effect.

3 Q Can you recall which area or areas?

4 A I recall the 9th Congressional District. I think
5 there may have been public testimony to that effect.

6 Q Any other areas?

7 A I can't recall if it was a Section 2 based argument
8 or not, but I do recall we talked about what you might
9 call a majority-minority district in Snohomish County, a
10 legislative district.

11 Q I'm sorry, some noise happened. I didn't hear which
12 county that was.

13 A Snohomish County. S-N-O-H-O-M-I-S-H, in case you're
14 not from Washington.

15 Q Was that a congressional or legislative district?

16 A Legislative district.

17 Q Any other areas?

18 A Again, with the caveat that I can't recall if the
19 exact arguments were Section 2 focused or if they were
20 instead, you know, more broadly racial, you know, appeal
21 or racial justice focused, I think there was some
22 discussion about Legislative Districts in Pierce County as
23 well.

24 Q Can you think of any others?

25 A Not that I recall.

1 Q Other than the Dr. Barreto report and Mr. Maguire's
2 report did you see any other Voting Rights Act analysis on
3 any area of either of the maps by somebody who was alleged
4 to be a Voting Rights Act expert?

5 A I assume you're not asking about communications that
6 are privileged.

7 Q Yes, excluding communications that are privileged.

8 A And, you know, with the caveat, of course, about the
9 trainings that we received, that I received on the Voting
10 Rights Act in general, I don't recall other specific
11 analyses along those lines.

12 Q You mentioned in the course of some of these other
13 areas of the state and also in the Yakima Valley this
14 metric of majority minority I think is the term you used.

15 And by majority minority do you mean majority
16 citizen voting age population or majority a different
17 metric?

18 A Even that is a whole definitional challenge. Plenty
19 of people use it in different ways. You can talk about it
20 in terms of the total population of a district, although
21 even that's hard, too, because --

22 Well, it gets even harder, if I can step back,
23 because, of course, the census itself in 2020 did not ask
24 about -- I'm sorry, did not ask about citizenship. It
25 asked about race; but for the first time it and the

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1 American Community Survey, which we also relied on,
2 allowed respondents to check more than one box.

3 And so you immediately had some issues over how you
4 categorize people who checked more than one box, and then
5 you would have issues over whether you're talking about
6 the total population in the district. Then it could be
7 people who are under 18, so they're not eligible to vote
8 or they're not otherwise eligible to vote.

9 Or you could sometimes talk about it in terms of the
10 voting age population or the voting age population who are
11 citizens, so eligible voters. And all that's really murky
12 and fun and a definitional challenge.

13 And I'm not sure I'm answering your question
14 specifically. I'm sorry about that.

15 Q That's all right. You used the phrase majority
16 minority, so I just -- How is it that you used that
17 phrase?

18 A I think when we -- when I was using it a few minutes
19 ago we were talking -- it was in the context of the 9th
20 Congressional District. Does that sound right?

21 Q In the 9th Congressional District and in the Yakima
22 Valley you've used that phrase. I'm just trying to
23 understand what you mean by it. I'm not trying to trick
24 you, just what do you mean when you --

25 A No, no, no. I just -- I don't recall myself using

1 it in the context of the Yakima Valley. I think I
2 mentioned it when I was talking about the public testimony
3 that we received on the 9th Congressional District, and
4 that was -- Maybe I was trying to get at that.

5 That was part of the challenge of hearing testimony
6 like that was we really didn't have much -- You know, it
7 wasn't the right forum to -- You know, if somebody from
8 the -- You know, just a normal citizen is testifying in
9 front of a Commission like that, to try to get lawyerly
10 and grill them and say, "What exactly do you mean by
11 majority minority," which was a phrase that was used quite
12 a bit during -- during public testimony.

13 Q Well, did the final district that was adopted with
14 respect to the Yakima Valley, was it majority minority in
15 your opinion?

16 A I should really clarify here. I use that term when
17 describing what other people, how they described things.
18 I myself try to be pretty specific.

19 If I have used it colloquially during this
20 discussion here right now, let me try to clarify that
21 record. You asked about the Yakima Valley. There are, of
22 course, two Legislative Districts there. But if you're
23 asking me about the 15th Legislative District, my -- the
24 way I would classify and describe it is that it's got a
25 majority of its eligible voters are Hispanic.

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1 Q All right. The majority of the eligible voters
2 being Hispanic in that district, did you view that
3 requirement from the Voting Rights Act? I mean, was that
4 required by the Voting Rights Act in your opinion?

5 MR. MILLSTEIN: Objection --

6 A Again, --

7 MR. MILLSTEIN: -- to the extent it calls
8 for a legal conclusion.

9 MR. STOKESBARY: Same objection, and
10 objection as to form.

11 A I wasn't fully convinced that it was required. I
12 knew that it would eventually take a court to try to
13 finally settle that question; but I knew that there were
14 good faith arguments that it needed to have a majority of
15 eligible voters be Hispanic, and I knew there was a good
16 faith argument that taking into account race at all would
17 have been unconstitutional.

18 Q (By Mr. Dunn) Did you know that the district was
19 greater than 50 percent citizen voting age population
20 Latino and Hispanic when you voted for the plan?

21 A Yes.

22 Q Now, going back to the training and research that
23 you did on the Voting Rights Act, what is it that you
24 believe is required if the Gingles test is met?

25 MR. STOKESBARY: Objection.

1 MR. MILLSTEIN: Objection, calls for a
2 legal conclusion.

3 MR. STOKESBARY: Same objection.

4 A Do you mean if the first three factors of Gingles
5 are met, and then you get into the totality of the
6 circumstances test?

7 Q (By Mr. Dunn) Assuming that a court finds that
8 Gingles preconditions are met and the totality of
9 circumstances are met, what is required?

10 MR. MILLSTEIN: Objection, calls for a
11 legal conclusion.

12 MR. STOKESBARY: Same objection.

13 A The remedy itself is an interesting legal question,
14 if it gets to a court opinion like that. Courts have
15 taken different views on how to draw a new district or
16 what requirements a new district might have to have in
17 those circumstances.

18 Q (By Mr. Dunn) Okay. Do you have an opinion on
19 what's required if the Gingles test and totality of
20 circumstances factors are met?

21 MR. STOKESBARY: Objection, calls for a
22 legal conclusion. Objection as to form.

23 A I think it's case by case, and you would have to try
24 to determine exactly why all that would not have been met
25 in a particular case, and then try to fashion a remedy

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1 that addresses whatever the problem was.

2 Q (By Mr. Dunn) Are there circumstances where when
3 there's a Gingles violation found that you can draw a
4 district that is greater than 50 percent of the race at
5 issue in the Gingles analysis and not give any
6 consideration to how the district performs?

7 MR. STOKESBARY: Objection as to form.
8 Objection, calls for a legal conclusion.

9 MR. HUGHES: Objection, calls for --

10 MR. MILLSTEIN: Objection, calls for
11 speculation.

12 MR. STOKESBARY: Objection, calls for --

13 MR. HUGHES: Same objections. Okay.
14 Sorry.

15 A I'm sorry. And I'm not sure I quite understood the
16 question. Could you ask it again?

17 Q (By Mr. Dunn) No, fair enough. I mean, is there --
18 When a Gingles test has been met, the totality of the
19 circumstances have been met, is the remedy solely to
20 consider the race of the voters in the district, or is
21 there some other part of the remedy that is to be
22 considered?

23 MR. MILLSTEIN: Objection, calls for a
24 legal conclusion. Objection, speculation.

25 MR. STOKESBARY: Same objections, and

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1 object as to form.

2 A In my understanding I think it's a case-by-case
3 remedy, depending on what caused the Gingles test to be
4 met and then what remedy might address that.

5 Q (By Mr. Dunn) What other factors other than greater
6 than 50 percent are you aware that courts look at?

7 MR. MILLSTEIN: Objection, calls for a
8 legal conclusion.

9 MR. STOKESBARY: Same objection.

10 MR. HUGHES: Objection to form, and object
11 that it calls for a legal conclusion.

12 A I think the question contains an assumption that the
13 50 percent plus one, or something like that, is always a
14 requirement. I'm not sure that it always is, and I'm
15 not --

16 Again, whatever the remedy is for a Gingles or a
17 Section 2 violation is case by case and dependent on what
18 caused the violation.

19 Q (By Mr. Dunn) Do you ever look at what candidates
20 the minority citizens there prefer and whether or not they
21 can be successful at electing them?

22 MR. MILLSTEIN: Objection, calls for a
23 legal conclusion.

24 MR. STOKESBARY: Same objection.

25 MR. HUGHES: Same objection.

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1 A I think I recall that, you know, that that can be
2 one of the factors that you consider.

3 Q (By Mr. Dunn) Did you look at that with respect to
4 the 15th Legislative District?

5 A Did I look at what?

6 Q At whether or not Latino citizens would be able to
7 elect their candidate of choice under the new map.

8 MR. HUGHES: Object to form.

9 MR. MILLSTEIN: Object to form.

10 MR. STOKESBARY: Same objection.

11 A I'm not sure I understand exactly what you're
12 asking.

13 Q (By Mr. Dunn) When -- When you gave consideration to
14 whether you were going to support this map, and in
15 particular the 15th Legislative District, did you look at
16 whether or not Latino citizens would be able to elect
17 their preferred candidate in that district?

18 MR. HUGHES: Object to form.

19 MR. MILLSTEIN: Join.

20 MR. STOKESBARY: Same objection.

21 A I mean, there -- You said Latino vote. It's
22 majority -- If the majority of its eligible voters are
23 Hispanic, that's a pretty good indication that a group can
24 elect legislators of its choice.

25 Q (By Mr. Dunn) Did you look at election results?

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1 MR. STOKESBARY: Objection as to form.

2 MR. MILLSTEIN: Object as to form.

3 A Did I look at election results for what?

4 Q (By Mr. Dunn) On how the new -- newly drawn 15th
5 Legislative District would have performed in past
6 elections.

7 MR. STOKESBARY: Objection as to form.

8 MR. HUGHES: Object to form.

9 MR. MILLSTEIN: Object to form.

10 A Yeah, I saw analysis of, you know, of how those
11 precincts had performed in the past.

12 Q (By Mr. Dunn) Did the district perform for Latino or
13 preferred candidates in past elections?

14 MR. MILLSTEIN: Objection, calls for a
15 legal conclusion.

16 MR. STOKESBARY: Join the objection, and
17 objection as to form.

18 A I'm not sure --

19 MR. HUGHES: I'm going to object on
20 speculation grounds.

21 A Yeah, I'm not sure if this is exactly what you're
22 getting at; but like, for example, some of the new area of
23 the 15th had some old precincts from the 13th Legislative
24 District, and that Legislative District, one of its
25 representatives is a man by the name of Alex Ybarra,

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1 Y-B-A-R-R-A. He's a Hispanic State Representative, and it
2 looked to me like he had performed pretty well in those
3 precincts.

4 Q (By Mr. Dunn) Well, did you look at -- Have you ever
5 heard of the term reconstituted elections?

6 A I honestly can't say that I have.

7 Q Did you ever when you were considering map proposals
8 look at this district and what its election results would
9 be in an election that was held prior?

10 A Yes.

11 Q Did you have a set of elections that you regularly
12 looked at?

13 A Yes.

14 Q What were those?

15 A They were a couple. There was the 2020 state
16 treasurer's race, and then there were various averages,
17 most prominently probably the average of the results of
18 presidential, governor, attorney general, secretary of
19 state and U.S. Senate elections from 2016 to 2020.

20 Q And in how many races? Was there a total number of
21 races, or did it vary? Was it --

22 A What do you mean?

23 Q Well, it looked to me like there was about eight
24 races there that you listed off. Is that about what you
25 looked at when you looked at the performance of the 15th

1 Legislative District?

2 A In the average that I just described?

3 Q Yes.

4 A Oh, I should be clear with that. The primary
5 average number that I was looking at -- I guess I can list
6 them -- was an average of the results of the 2016
7 presidential election, the 2016 governor election, the
8 2016 secretary of state election, the 2016 attorney
9 general election, the 2018 U.S. Senate race, and the 2020
10 presidential, governor, attorney general and secretary of
11 state races.

12 Q Okay. Did you look at those with respect to the
13 15th Legislative District before you voted for it?

14 A I don't remember.

15 Q Did you look at any past election results for the
16 15th Legislative District before you voted for the plan?

17 A Yes.

18 Q What is it that you recall from that?

19 A The -- I recall seeing the -- what the -- how the
20 precincts voted in the 2020 state treasurer's race.

21 Q Did the district vote for the Republican candidate
22 or the Democratic candidate?

23 A Well, it was, of course, a -- Oh, in that -- for
24 that 2020 state treasurer's race, I think it ended up
25 being for Duane Davidson, the Republican, by maybe six,

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1 six and a half points.

2 Q Did you look at any of the other races to see
3 whether the Democrat or Republican prevailed in the 15th
4 Legislative District as it was newly drawn?

5 A Before I voted for it?

6 Q Yes, sir.

7 A I can't remember.

8 Q Do you have any information about who it is that
9 Latino citizens in the 15th Legislative District support
10 in the general election between Democrats and Republicans?

11 MR. STOKESBARY: Objection as to form.

12 MR. MILLSTEIN: Object to form.

13 A You mean -- You mean now?

14 Q (By Mr. Dunn) Yes.

15 A Well, you've probably seen the same opinion polls
16 that I have that have been released publicly suggesting
17 that Hispanic voters are increasingly flocking and
18 supporting the Republican Party.

19 Q So it's your opinion today that Hispanic voters are
20 supporting the Republican Party in the 15th Legislative
21 District?

22 A I haven't done polling there or seen polling there
23 or anything like that.

24 Q Prior to your vote on the -- to approve the 15th
25 Legislative District, what information did you have about

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1 what kind of candidates Latino citizens in that district
2 supported?

3 A We had election results generally. We had the
4 information from the Barreto report.

5 And again, I -- You know, I also took a look at
6 the -- Because some of the precincts from the 13th
7 Legislative District ended up in the 15th, too, I looked
8 at some of the election results from the 13th Legislative
9 District.

10 Q And what was your opinion based on reviewing all
11 that information about what kind of candidates Latino
12 citizens preferred in the 15th Legislative District?

13 A With the caveat that I would never be presumptuous
14 enough to pretend to tell a racial group or even consider
15 what a racial group, how they should vote or who they
16 should vote for, it looked to me like there was pretty
17 broad differences race by race.

18 In particular I mentioned the 13th a couple of
19 times, but I thought it was illuminating because it
20 involved a Hispanic man running for a State Representative
21 who also was a Republican and seemed to perform better
22 than his counterparts on the ticket.

23 Q Other than that -- Is that the Mr. Ybarra example
24 you mentioned earlier?

25 A That's right.

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1 Q Other than the Mr. Ybarra example you provided, is
2 there any other reason you thought that Latino preferred
3 or Latino citizens in the 15th Legislative District
4 preferred Republican candidates?

5 A Well, we had the -- You know, just before our
6 November 15th deadline there was an election in the City
7 of Yakima on whether to adopt a -- maybe it was a city
8 charter or amendment or something, you know, outlawing an
9 income tax in the district, a traditionally Republican
10 position, and it passed by 75, 80 percent of the vote,
11 something like that. And, of course, it's a pretty
12 heavily Hispanic city.

13 Q Did you look at any data on what the turnout was in
14 that election?

15 A I can't recall that I did.

16 Q What was it about a vote for a tax issue that made
17 you think that would tell you something about what the
18 citizens would support on a partisan basis?

19 A Differences on taxes are one of the primary
20 differences in our state between Republicans and
21 Democrats.

22 Q Other than the tax election and the Ybarra situation
23 you described, anything else that gives you the opinion
24 prior to your vote that Latino citizens in Yakima
25 supported Republican candidates as a majority?

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1 A Again, you know, there have been various public
2 opinion polls released in the last several years
3 suggesting that Hispanics are increasingly supporting
4 Republicans.

5 Q So at the time you voted was it your opinion that
6 the majority of citizens in the 15th Legislative District
7 would support Republican candidates?

8 A No. That's why we have elections.

9 Q Was it your opinion at the time you voted --

10 MR. HUGHES: Object to form.

11 Q (By Mr. Dunn) Was it your opinion at the time that
12 you voted that a majority of citizens in the 15th
13 Legislative District supported Democratic candidates?

14 MR. HUGHES: Object to form.

15 MR. STOKESBARY: Same objection.

16 MR. MILLSTEIN: Same objection.

17 A No. That's why we have elections. And we don't
18 register by party in our state, either.

19 Q (By Mr. Dunn) Now, you saw that it was Dr. Barreto's
20 opinion based on data analysis that the preferred
21 candidates for Latinos in the 15th Legislative District
22 were Democrats.

23 Do you recall that opinion generally?

24 A I recall an in-depth discussion of the 2012
25 U.S. Senate race and the 2020 governor's race suggesting

1 as much.

2 Q And why did you discount that opinion?

3 A Over the course of the last decade those are
4 probably the two biggest margin defeats for Republican
5 candidates in the statewide races, and so it's really hard
6 to tease out whether those discrepancies were because
7 those were just not even competitive, close elections, or
8 whether they had something to do with the kind of
9 candidates who Hispanic voters might want to support.

10 Q Do you know whether or not Dr. Barreto looked at
11 different -- additional elections than those two?

12 A His report suggested as much, but I didn't see
13 analysis of them; and I assumed that those two were chosen
14 for a reason.

15 Q So why not hire your own analysis to go and look at
16 that issue and determine whether or not those elections
17 were not representative?

18 MR. HUGHES: Objection, asked and answered.

19 Q (By Mr. Dunn) Is it because you didn't have time?

20 MR. MILLSTEIN: Objection, asked and
21 answered.

22 MR. STOKESBARY: Same objection.

23 A Dr. Barreto's report came out about two and a half
24 weeks before our deadline, and an analysis like that in
25 all fairness should have been -- You know, to do it right

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1 or to try to go -- for me to go find somebody to perform
2 an analysis like that, it struck me that I probably
3 wouldn't have time to be able to do that before our vote.

4 Q (By Mr. Dunn) Do you require whether -- Do you
5 recall whether Mr. Maguire accepted Dr. Barreto's analysis
6 as accurate?

7 A It's -- He had a lot of different kind of analysis
8 in there. You can see from the memorandum that he put out
9 that he certainly disagreed with several of the
10 conclusions.

11 Q Was it your opinion after you voted for the 15th
12 Legislative District that the 15th Legislative District
13 would perform for Republican candidates?

14 A I didn't know. That's why we have elections.

15 Q Was it your goal in negotiating over the 15th
16 Legislative District to give it the best shot of electing
17 Republican candidates?

18 MR. MILLSTEIN: Objection to form.

19 MR. STOKESBARY: Same objection.

20 A No.

21 Q (By Mr. Dunn) You were proposed districts by other
22 members of the Commission that were greater than --

23 MR. HUGHES: Object to form.

24 Q (By Mr. Dunn) You were proposed districts by other
25 members of the Commission that were greater than 50

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1 percent Latino citizen voting age population Latino and
2 that performed for Democratic candidates; would you agree?

3 MR. STOKESBARY: Objection, lack of
4 foundation.

5 MR. MILLSTEIN: Same objection.

6 A There were proposals for a 15th Legislative District
7 that based on past elections when you looked at the
8 precincts there would -- under those election results
9 would have supported Democrats.

10 Q (By Mr. Dunn) And were also greater than 50 percent
11 citizen voting age population Latino; is that true?

12 A I think so, although I honestly can't remember
13 sitting here if I looked specifically into that.

14 Q Why did you not support those proposals?

15 MR. HUGHES: Objection, assumes facts not
16 in evidence.

17 MR. MILLSTEIN: Same objection.

18 A Yeah, we were --

19 MR. STOKESBARY: Same objection.

20 A Yeah, we were negotiating over 49 different
21 Legislative Districts, and we had several requirements in
22 our state statute that we had to look at and try to comply
23 with to draw particular districts.

24 And I don't think any district that any of us
25 proposed in, you know, our September legislative proposals

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1 were the actual districts that were adopted. It was all,
2 you know, a process of negotiation and bipartisan
3 agreement.

4 Q (By Mr. Dunn) We had an objection, so I'm going to
5 go back and do that again.

6 Did you support the proposals that you received that
7 were greater than 50 percent citizen voting age population
8 Latino and performed in past elections for Democratic
9 candidates?

10 MR. HUGHES: Objection, compound.

11 MR. STOKESBARY: Objection, compound.

12 A You used the word supported there, and I'm not sure
13 that that's -- It makes the question kind of funky because
14 it's -- I don't think anybody, you know, supported any
15 particular -- one particular district or something like
16 that.

17 It was all a negotiation, and so we were -- Based on
18 our proposals and then based on, you know, the status quo
19 maps as they existed, we were trying to see if we could
20 reach an agreement on lines that would have equal
21 population and that could comply with the statute and
22 comply with law, things like that.

23 Q (By Mr. Dunn) Did you ever tell another commissioner
24 that you would support a map for the 15th Legislative
25 District that was greater than 50 percent CVAP Latino and

1 performed for Democratic candidates in past elections?

2 A Yes.

3 Q Why isn't one included in the map?

4 MR. STOKESBARY: Objection as to form.

5 A Well, because the -- Because to do that, you know,
6 to maintain fair partisan balance for the state overall,
7 to have an overall map that fairly reflects the votes of
8 the people of Washington, if you're taking any district
9 from one that supports -- that historically has supported
10 one party and then have it be a district that based on
11 recent elections would support another party, you need to
12 rebalance other districts to have an overall fair map for
13 the state; and during negotiations we weren't able to
14 reach an agreement on what kind of a rebalancing like that
15 would look like.

16 Q I'm sorry, I didn't follow that. What do you mean
17 by maintain partisan balance?

18 A Well, you know, maybe partisan balance, that's
19 probably not the right term.

20 Try to have a map that fairly reflects the overall
21 electorate in the state, one where if -- in general, you
22 know, if one party receives 55 percent of the legislative
23 votes overall in the state, that in most elections they
24 would end up with about 55 percent of the legislators,
25 something like that.

1 Q Was that a goal of yours?

2 A Yeah, I think it was really important to have maps
3 that fairly allowed most people to turn their votes in to
4 legislators they supported.

5 Q Why was it your goal to maintain a partisan balance?

6 A Again, if I can go ahead and just -- Forgive me for
7 using the term partisan balance, and I'm not sure exactly
8 what term I would want to use in its place; but in general
9 what I'm trying it get at is the idea that the percentage
10 of votes you get overall, one party gets overall in
11 legislative elections should in the main run of cases
12 translate into that percentage of legislators in the
13 Legislature.

14 Q So if you permitted a Democratic district to be a
15 district that would likely elect a Democrat in the 15th
16 Legislative District area, in your view there needed to be
17 a different district that had been electing a Democrat
18 that would be turned into a Republican district; is that
19 fair?

20 MR. HUGHES: Objection, misstates the prior
21 testimony.

22 MR. MILLSTEIN: Same objection.

23 A I think the way I'd say it is that if you took any
24 district in the state and you drew it in a way that, you
25 know, really changed its recent partisan election results,

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1 you could end up -- You'd have the risk of running into a
2 situation where one party could perform well overall in
3 legislative elections but not see their votes turned into
4 that percentage of legislators.

5 Q (By Mr. Dunn) So this -- this partisan issue,
6 whatever we're going to call it, where did it come from?
7 I mean, does it -- is it provided for by law?

8 MR. HUGHES: Objection, calls for a legal
9 conclusion.

10 MR. MILLSTEIN: Same objection.

11 MR. STOKESBARY: Same objection.

12 A I don't recall -- Yeah, I just -- I don't remember
13 right now exactly what our statute provides, but it calls
14 for competitive -- to try to increase electoral
15 competition.

16 But in general, you know, you've probably read the
17 same stories I have in the states that really do nasty
18 partisan gerrymandering where one party can get a majority
19 of the votes for the Legislature but end up with a
20 significant minority of legislators, and I thought that
21 seems unfair and unjust.

22 Q (By Mr. Dunn) All right. But do you know whether or
23 not the state law says anything about partisanship?

24 MR. MILLSTEIN: Objection, calls for a
25 legal conclusion.

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1 A It calls for the -- Among the many considerations
2 that the Commission is supposed to take into account is
3 electoral competition, and I think that fairly includes
4 partisanship.

5 Q (By Mr. Dunn) Does the statute say anything at all
6 specifically using the word partisanship that you can
7 recall?

8 MR. MILLSTEIN: Objection, calls for a
9 legal conclusion.

10 A While I have read it, I'm afraid I can't -- I
11 haven't memorized the statute itself, and I would
12 certainly turn to that to answer a question like that.

13 Q (By Mr. Dunn) But it's not your recollection that
14 the statute prohibits consideration of partisanship?

15 MR. MILLSTEIN: Objection, legal
16 conclusion.

17 A I don't think that it does.

18 Q (By Mr. Dunn) Why is it that partisanship, if it
19 did, was a higher priority for you than compliance with
20 the Voting Rights Act?

21 MR. STOKESBARY: Objection, misstates prior
22 testimony.

23 MR. MILLSTEIN: Same objection.

24 MR. HUGHES: Same objection.

25 A That's certainly not at all what I testified, and I

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1 don't believe that.

2 Q (By Mr. Dunn) So you believe that compliance with
3 the Voting Rights Act should come ahead of whatever
4 partisan balance there is in the map?

5 MR. STOKESBARY: Objection, misstates prior
6 testimony.

7 MR. MILLSTEIN: And objection, calls for a
8 legal conclusion.

9 A No. You can take into account both. Every district
10 we drew had to comply with Section 2, and you can do that
11 while also caring about electoral competition.

12 Q (By Mr. Dunn) And it's your view that the adoption
13 --

14 MR. HUGHES: Objection to form.

15 Q (By Mr. Dunn) -- the adoption of the 15th
16 Legislative District complies with Section 2?

17 MR. MILLSTEIN: Objection to the extent it
18 calls for a legal conclusion.

19 MR. STOKESBARY: Objection to the extent it
20 calls for a legal conclusion. Objection, asked and
21 answered.

22 MR. MILLSTEIN: And same objection.

23 A I do believe that it complies.

24 Q (By Mr. Dunn) All right. The final version of the
25 15th Legislative District that ended up in the adopted

1 plan, who drew it?

2 MR. STOKESBARY: Objection as to form.

3 A Who drew the final version of the plan? It was a
4 combination of -- Are you asking who specifically drew it
5 on the computer in Edge that we were using to draw maps?

6 Q (By Mr. Dunn) Where did the, you know, the outlines
7 come from originally? Was it based on somebody's original
8 idea? Was it, you know, this proposal with tweaks, or --
9 You know, where did it come from originally?

10 MR. MILLSTEIN: Objection to form.

11 A Yeah, I can't remember specifically. We were
12 negotiating about a lot of things in the last couple
13 weeks, and I can't remember who first proposed that
14 particular configuration.

15 Q (By Mr. Dunn) Was there any part of the district
16 that was drawn by you or your staffer?

17 A In Edge, whether the final version of the map is
18 what you're asking?

19 Q Yes.

20 A The final version of the maps were drawn by a
21 combination -- by not even a combination -- by both
22 Anton Grose and Osta Davis sitting in front of a computer
23 and drawing them.

24 Q And that was after the Commission had voted on the
25 map; is that right?

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1 A That was after we took our vote on November 15th,
2 that's right.

3 Q So did they have a map in front of them that they
4 could follow along in the software, or how did they know
5 where to put the lines?

6 A Well, we had a framework for drawing particular
7 Legislative Districts, and we drew so many maps last year
8 that you could actually turn a framework like that into
9 particular districts because for those kind of frameworks
10 there's for the most part really just one way to draw a
11 particular district that meets those -- the requirements
12 that we voted on.

13 Q And what were the requirements with respect to the
14 15th Legislative District that you voted on?

15 A That it would be 50.1 percent Hispanic eligible
16 voters, and that it -- Using the 2020 state treasurer's
17 race that it would end up at the -- the result where it
18 ultimately ended up at. I can't remember the specific
19 number.

20 Q The 2020 state treasurer's race would be what again?

21 A Whatever specific number that it was -- I can't
22 remember the specific number, but there was a specific
23 number where it was going to -- it was going to land at.

24 Q A specific number Republican or Democrat, or a
25 specific number how?

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1 A For both.

2 Q And can you recall whether or not the number was
3 greater for the Republican than the Democrat?

4 A I think it was more for the Republican.

5 Q Was this written down, this metric, in any place?

6 A I think it was.

7 Q Do you know where?

8 A I think in emails between me and Commissioner Sims.

9 Q Emails that occurred on November 15th or prior to
10 that?

11 A I think maybe before that.

12 Q Was it the case that the line, that the agreement on
13 the -- on the parameters for the 15th Legislative District
14 was reached before November 15th, at least between you and
15 Ms. Sims?

16 A Yeah, I mean, with -- This is all with the caveat
17 that it was only me and Commissioner Sims negotiating, so
18 we -- You know, we didn't have votes of the other
19 commissioners or anything like that, so this was all going
20 to be a risk; but as between me and Commissioner Sims I
21 think we came to an agreement on what the 15th would be
22 like a few days before November 15th.

23 Q And did that agreement involve any parameters other
24 than the 50.1 percent and the 2020 state treasurer race
25 being greater Republican than Democrat?

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1 A Yes.

2 Q What else?

3 A Well, we all -- both still cared a lot about trying
4 to keep communities of interest together, things likes
5 cities and counties, not splitting those, school
6 districts, kind of, you know, communities of interest like
7 that.

8 So there was a particular configuration that it was
9 going to have.

10 Q Anything else that was part of that agreement?

11 A Maybe -- To answer it fully, kind of related to
12 this, the 14th Legislative District included all the
13 Yakama Tribal -- the traditional Yakama Tribal lands. And
14 it's hard to kind of separate those two. The
15 configurations for both of those are intertwined.

16 So that's probably fairly responsive to that
17 question.

18 Q So what is it about the Yakama Tribe that was part
19 of the agreement, if any?

20 A That -- So its lands, its traditional hunting and
21 fishing lands in the previous version of the map were
22 separated between two Legislative Districts; and the Tribe
23 requested that they be united into one Legislative
24 District, and we were able to meet that request.

25 Q Did the Tribe have a request as far as you know as

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1 to whether it was in the 14th or 15th, or just that it
2 wanted to be kept whole?

3 A I don't think I heard specifically that they were --
4 preferred one of those districts over the other.

5 Q Anything else that was agreed upon as between you
6 and Ms. Sims with respect to the 15th Legislative
7 District?

8 A No. I mean, the configuration and then the metrics
9 that we talked about.

10 Q Okay. Well, when you say configuration then were
11 there actual lines that you and she agreed on?

12 A Yes.

13 Q How would I go find those?

14 A I think they're in email exchanges between me and
15 her.

16 Q A couple of days you think before November 15th?

17 A It's all -- It was all happening really fast, and
18 it's all kind of fuzzy, but somewhere in there, yes.

19 Q The lines that you agreed on, were they drawn by you
20 or her or either of your staffs?

21 A They were drawn by one of our staffs.

22 Q So at some point between when you had this agreement
23 and when the plan was adopted right before midnight on
24 November 15th, did you make it public, the agreement?

25 A You know, it's hard to say exactly. We tried our

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1 best at that, at the meeting we had on November 15th.

2 It was challenging because we were racing against a
3 midnight deadline, and Commissioner Sims and I had only
4 shortly there before agreed between just the two of us on
5 the framework that ultimately ended up turning into the
6 maps. And so we were in the position of trying to
7 describe a full map of 49 Legislative Districts in the
8 middle of a chaotic public meeting.

9 And so to answer your question, we tried our best to
10 do so.

11 Q So you recall at one of the public meetings that you
12 or Ms. Sims laid out this agreement?

13 A We tried our best at the meeting on the 15th to try
14 to describe what would eventually turn to the maps and --
15 Well, it was late at night that day, and it was a fumbling
16 attempt. I'm not going to pretend it's perfect.

17 Q And the record is what it is. You know, I just want
18 to ask you do you remember at any point going through any
19 of these parameters in the public meeting and saying, "We
20 agreed to this with respect to the 15th Legislative
21 District"?

22 A I genuinely can't recall.

23 Q Okay. From the point in time you and Ms. Sims
24 reached this agreement to when the map was adopted, was
25 the only public meeting the one that was held on

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1 November 15, or was there another one?

2 A When you say this agreement, what do you mean?

3 Q The agreement that you and Ms. Sims reached that
4 you've described about the 15th Legislative District.

5 A The 15th. I think the only public meeting we had
6 thereafter was on the 15th.

7 Q All right. Now, going back to you mentioned
8 Mr. Grose, and who else sat down at the computer and made
9 the final district lines for the 15th?

10 A Osta Davis.

11 Q Osta Davis. Other than those bullet point metrics
12 you just described did they have anything else available
13 to them?

14 A We had the history of our negotiations, mine and
15 Commissioner Sims' negotiations heading up to that.

16 Q How was that provided to them?

17 A They were included on all the communications that we
18 had exchanging various proposals.

19 Q So was it a way of saying they had their memory of
20 that? It wasn't like they had materials laying in front
21 of them?

22 A No, I think each time that we would send over a
23 proposal on something we would include, you know, the Edge
24 file or, you know, the link to pull up the map itself, and
25 then also whatever metrics we were talking about.

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1 Q Where were they when the two of them were working
2 together to draw this map?

3 A Federal Way.

4 Q And in what building, if you know?

5 A A hotel there.

6 Q What was the name of the hotel?

7 A Maybe it was the Hampton Inn.

8 Q Were you at the hotel?

9 A Yes.

10 Q Who else was at the hotel in relation to the
11 Redistricting Commission?

12 A Me, Commissioner Fain, Commissioner Sims,
13 Commissioner Walkinshaw, Commissioner Augustine, Lisa
14 McLean, Anton Grose, Paul Campos, Osta Davis, Ali O'Neil.

15 I have a recollection that there were others, but I
16 can't recall specifically who else was there on the
17 Commission.

18 Q Would it be fair to say it sounds like all the
19 Commission and its key important staff were there; is that
20 right?

21 MR. MILLSTEIN: Objection to form.

22 A You know, I mean, most of the staff were there. We
23 were -- We still had separate areas where we could meet
24 because we knew we had to comply with the Public Meetings
25 Act.

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1 So we couldn't all just, you know, get together in a
2 room, but we had various rooms rented and a big conference
3 room and things like that.

4 Q (By Mr. Dunn) Were you staying at the hotel?

5 A No.

6 Q What day was this meeting between Osta Davis and
7 Mr. Grose where they took the metrics and drew the map for
8 the 15th Legislative District?

9 A The final version?

10 Q Yes.

11 A November 16th.

12 Q So was it the case that the events ended at midnight
13 on November 15th, and then work continued into the early
14 morning of November 16th?

15 MR. HUGHES: Objection, vague.

16 MR. MILLSTEIN: Same objection.

17 MR. STOKESBARY: Same objection.

18 A What do you mean by events?

19 Q (By Mr. Dunn) I'm sorry?

20 A What do you mean by events?

21 Q Well, is it the case that there continued to be
22 redistricting work after midnight November 15th at this
23 hotel?

24 A Yes. There was turning the framework into the
25 actual maps themselves that were produced the next day.

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1 Q About what time on November 16th was Mr. Grose and
2 Osta Davis working on drawing the 15th Legislative
3 District?

4 A Midnight until about 6:00 or 7:00 a.m. And then we
5 had all had been awake for maybe 30 hours at that point,
6 so everybody took naps. And then I think we resumed work
7 at maybe 1:00 or 2:00 in the afternoon and completed it
8 maybe around 4:00 or 5:00 in the afternoon.

9 Q And all that happened there at the hotel?

10 A Yes.

11 Q By that time that you napped did you get a room in
12 the hotel, or did you go back to your house?

13 A I didn't nap. I stayed awake. I helped -- Believe
14 it or not, I had a King County Redistricting Commission
15 meeting later that night, and I also had to meet with some
16 other -- I had some other meetings that day, so I found
17 myself awake for probably 40 straight hours.

18 But I think Anton slept at the hotel.

19 Q What were the other meetings you had that day?

20 A I had to testify in front of a State Senate
21 Transportation Committee. And I had work meetings. And
22 then I spoke to the House Republican Caucus.

23 Q The work meetings were related to your work for the
24 trucking company?

25 A Yes.

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1 Q What was the meeting with the House Republican
2 Caucus about?

3 A The caucus was having a retreat that day, and they
4 had previously invited me to come attend.

5 Q Was there any discussion at the retreat about the
6 maps?

7 A Yes.

8 Q Did you describe how the maps would look?

9 A Not really.

10 Q Did you describe any of the metrics about the maps
11 that had been agreed on?

12 A I don't think so.

13 Q Now, going back to the drawing -- I may have taken
14 this down wrong, so correct me -- but from midnight to
15 around 6:00 or 7:00 a.m. and then after 1:00 or 2:00
16 o'clock when the map drawing was happening, was that all
17 just on the 15th Legislative District, or that was drawing
18 on other districts as well?

19 A Oh, no, that was the entire -- the entire -- both of
20 the maps, the legislative and congressional maps and all
21 the districts therein.

22 Q Would you describe a majority of the work being
23 related to the 15th Legislative District or just a small
24 piece?

25 A I'd describe it as 1/49th.

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1 Q Now, was anybody with Mr. Grose and Ms. Davis doing
2 this work?

3 A Yes.

4 Q Who?

5 A Me and Commissioner Sims.

6 Q Anybody else?

7 A There were people filtering in and out over the
8 course of that time.

9 Q Where were the other commissioners, if you know?

10 A They were in various places. There was a really big
11 conference room that we had, so at some points they were
12 over on the other side of the room where we couldn't
13 really hear them.

14 Q So the other commissioners at least for part of the
15 time were in the room, but they were far enough away you
16 couldn't hear them; is that right?

17 A That's right.

18 Q Did the other commissioners know what you and
19 Ms. Davis and Mr. Grose were doing?

20 A I assume so, but I don't know what they knew.

21 Q Did you at any point ask the other commissioners for
22 input while the 15th Legislative District was coming
23 together?

24 A No.

25 Q Now, during this time, this drawing from midnight to

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1 6:00, 7:00 a.m. and then whatever, after 1:00 or 2:00 p.m.
2 on the 16th, was any of that on the Zoom camera or the
3 public meeting?

4 A No, I don't believe so.

5 Q Was -- Was there a public meeting held of the
6 Commission on, you know, after 12:01 a.m. on
7 November 16th?

8 MR. HUGHES: Objection to the extent it
9 calls for a legal conclusion.

10 MR. MILLSTEIN: Join the objection.

11 MR. STOKESBARY: Join.

12 A I don't recall -- I do know -- Forgive me. It was
13 probably the fuzziest my brain has been in the last
14 decade.

15 I don't recall exactly when we held a public meeting
16 in conjunction with a press conference. I don't think it
17 was on the 16th. It may have been on the 17th or the
18 18th. I just -- I don't remember.

19 Q (By Mr. Dunn) Now, you -- You did have some meetings
20 that you recall -- generally, at least -- on November the
21 15th, public meetings?

22 A We had one public meeting on the 15th.

23 Q And that was by Zoom each of you participated; is
24 that right?

25 A That's right.

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1 Q Do you recall during the Zoom meeting anybody making
2 the public aware that you were all together there at a
3 hotel?

4 A I don't remember. I think so, but I don't remember.

5 Q Was there any reason you didn't just call for an
6 actual public meeting at the hotel?

7 MR. MILLSTEIN: Objection to the extent it
8 calls for a legal conclusion.

9 MR. HUGHES: And argumentative.

10 MR. MILLSTEIN: And the same objection
11 there.

12 A We had an actual public meeting at the hotel.

13 Q (By Mr. Dunn) Well, fair enough. Let me ask it this
14 way.

15 Was there a reason you didn't just notice an
16 in-person meeting at the hotel instead of putting it on
17 Zoom?

18 A There were still emergency orders from the Governor
19 prohibiting large group gatherings.

20 Q I see. Okay. So was it -- It was your belief you
21 weren't permitted to have an in-person Commission meeting
22 where the public could show up and watch its activities?

23 A I don't remember if it was legally allowed or not.
24 I know the Governor had some specific orders related to
25 state agencies related to those, and I can't remember if

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1 this was the time when there was just a prohibition more
2 generally on groups of greater sizes than some number. I
3 can't remember exactly what the legal requirements were at
4 the time.

5 Q When the -- Had all of the Commission's meetings
6 been by Zoom?

7 A All of the public meetings I think -- Yeah, I think
8 all of them were remote.

9 Q Now, on November 15th you mentioned there was one
10 meeting, but that meeting recessed at times; is that your
11 recollection?

12 A Yes.

13 Q And why were there recesses?

14 A We were trying to turn the frameworks -- Like I was
15 trying to turn the framework that I had agreed to with
16 Commissioner Sims into the maps themselves and proposals
17 that we could put in front of our fellow commissioners and
18 the public and try to persuade them to vote for it, and so
19 we were really racing to try to do that during that time.

20 Q Did the Commission ever have any meetings where a
21 map drawer, you know, shared with the public the map
22 drawing software in realtime and made -- made drawings and
23 actually like made or worked on a map?

24 A I don't recall anything like that.

25 Q Do you recall why that wasn't done, if it wasn't?

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1 MR. STOKESBARY: Objection as to form.

2 MR. MILLSTEIN: Same objection.

3 A I'm not sure it's something that we considered
4 doing.

5 Q (By Mr. Dunn) Do you recall whether there were any
6 meetings where people laid out actual specific fully drawn
7 maps and proposals and talked about their merits?

8 A Yeah, I think we had a public meeting after we all
9 released our proposed maps to talk about them. And, of
10 course, the public was able to pull those up and look at
11 them.

12 Q And that was back in September?

13 A I think we released our maps in September, and I
14 can't remember when our next public meeting was after
15 that.

16 Q Now, other than the meeting where each of you laid
17 out your public proposals that you had made, was there
18 another meeting where actual proposals were laid out at a
19 meeting and discussed?

20 MR. MILLSTEIN: Objection to form.

21 A I don't -- I don't recall meeting like that, but I
22 would look at the meetings themselves.

23 Q (By Mr. Dunn) What was your reason -- I'm sorry, I
24 didn't mean to cut you off.

25 What was the reason on November 15th that these

1 discussions that you were having with Ms. Sims weren't
2 done in the open meeting?

3 A We had -- So we had fewer than a majority of the
4 voting commissioners having discussions, and -- You know,
5 under our Public Meetings Act you could have
6 communications with fewer than the majority of a voting
7 body; but then once you get more than a majority of the
8 voting body, then it has to happen in a public meeting.

9 Q Well, that may be why you could have the meeting
10 outside of the public, but I'm asking why -- Just because
11 you could didn't mean you had to.

12 Why didn't you just have the discussion in public?

13 A You know, I seriously thought about suggest --

14 MR. HUGHES: Objection.

15 A Yeah, I seriously thought about suggesting that we
16 have all of our even individual meetings done on, you know
17 in the public and on Zoom and everything like that.

18 And I can't remember if I specifically suggested it
19 or if it was something that I thought about but then
20 didn't suggest, but I think I would have been amenable to
21 that if others would have been.

22 Q (By Mr. Dunn) Do you recall anybody else raising
23 that issue with you?

24 A I don't.

25 Q Why is it that everybody met at the hotel that day?

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1 A I think it was Commissioner Augustine's suggestion
2 that -- and she's a mediator by trade, and I think that
3 she thought it would be useful after a, you know, full
4 year of being only remote to see people in person and see
5 if we could reach an agreement before our deadline.

6 Q How was that suggestion made to you? Was it
7 emailed, or you had a phone conversation with her?

8 A I can't remember. One of those two, I think.

9 Q Was there a discussion at the public -- at any point
10 at a public meeting about this idea we should all be
11 together in the same hotel on the last day?

12 A I don't -- I don't remember.

13 MR. DUNN: All right. I think we've gone
14 another hour here, and it also seems like this might be a
15 good time to break for lunch if that's acceptable to
16 folks.

17 MR. MILLSTEIN: That works. Chad, just --
18 We can go off the record. I just wanted to talk to you
19 about kind of the rest of the afternoon.

20 MR. DUNN: Okay.

21 THE VIDEOGRAPHER: Going off record, this
22 is the end of Media 2. The time is 12:23.

23 (Discussion off the record.)

24 (Break 12:23 p.m. to 1:00 p.m.)

25 THE VIDEOGRAPHER: Back on the record, here

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1 begins Media 3. The time is 1:00 p.m.

2 Q (By Mr. Dunn) All right, Mr. Graves, coming back
3 from lunch here, just to get you time-wise, we were
4 talking about November 16th when Ms. Davis and Mr. Grose
5 were finalizing the map.

6 You had mentioned before our break a gentleman by
7 the name of Mr. Ybarra. You remember that generally?

8 A Yes.

9 Q All right. Who is Mr. Ybarra?

10 A He's a State Representative.

11 Q From which district?

12 A The 13th Legislative District.

13 Q And where is that in relation to the 15th?

14 A Situated north of it.

15 Q Contiguous with it?

16 A For part of it. It's actually a very long, narrow
17 district.

18 Q Did you have any contact with Mr. Ybarra during the
19 redistricting process?

20 A Yes.

21 Q How so?

22 A I talked with almost every member of the House
23 Republican Caucus during the process.

24 Q Did Mr. Ybarra give you any of his opinions or
25 requests with respect to redistricting?

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1 A Yes.

2 Q Which? What do you recall of that?

3 A We faced a challenge as a Commission, a particular
4 math challenge. In our state there's a natural divide,
5 the Cascades, right in the middle of the state, and most
6 Commissions have tried to have most of the districts be on
7 one side, wholly on one side or the other of those because
8 there's only a few passes that cross over, and it's hard
9 to represent both.

10 But if you add up all the population in the counties
11 east of the Cascades and then you divide by 157,800, the
12 amount that each Legislative District had to have, you get
13 a remainder of about 60,000, which means that no matter
14 who you do and no matter who is drawing it, one district
15 or more are going to have to represent both the west and
16 the east sides of the mountain in some way -- and my
17 proposal initially had the 13th doing that.

18 And it's a challenge no matter what that district is
19 going to look like, so I talked with him primarily about
20 that.

21 Q Do you happen to remember any requests of his of
22 specific areas he wanted in or out of his district?

23 A Yes.

24 Q Which areas or area?

25 A There's a city called Soap Lake, and he had

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1 represented them in the previous map and said that he had,
2 you know, felt a good connection to the people there and
3 was hoping, if possible, to continue to have that city be
4 in his district.

5 Q Is that the only area you recall that he brought up?

6 A No, because we also talked about the prospect of his
7 district or others crossing over the Cascades.

8 Q Is there any other specific area or community you
9 can recall discussing with him?

10 A I think maybe we talked about Moses Lake, too.

11 Q And what was his position with regard to Moses Lake?

12 A I think he said he would prefer to continue
13 representing Moses Lake in the new district.

14 Q On those two areas you just mentioned, where are
15 they in the adopted map? Did they stay in Mr. Ybarra's
16 district?

17 A Yes, I believe so.

18 Q Is there any request that Mr. Ybarra made of you
19 that you didn't accommodate that you can recall?

20 A I don't recall, although again, because of the way
21 we ultimately drew the 15th that had effects for --
22 Whenever you draw one particular district one way it has
23 effects on all the other districts that are around there,
24 so there was quite a bit of changes made to most of the
25 districts in the eastern side of the state.

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1 I can't remember exactly if everything that we had
2 talked about made it into the new 13th.

3 Q Before lunch you mentioned that there was a website
4 that the Commission operated where members of the public
5 could upload their ideas about redistricting; is that
6 right?

7 A Yes, we had a website where people could comment and
8 show the maps.

9 Q You said you tried to look at --
10 I'm sorry, I didn't mean to cut you off.

11 A Oh, I just said show maps and things like that,
12 comment on proposed maps.

13 Q You said you tried to look at that; that you saw a
14 lot of it, but not all of it. Did I have that about
15 right?

16 A I think that's right. I tried to spend a good
17 amount of time in there and seeing what people were
18 saying, especially -- We had a feature where you could
19 click on a proposed map and drop a little pin that had
20 a -- you could put a comment on it. You know, something
21 like, "Hey, in this proposed map my City of Bremerton is
22 over here, and it should be over there."

23 I tried to read as many of those as I could; but we
24 received a lot of comments, so I'm not sure I read them
25 all.

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1 Q Is there any part of the 15th Legislative District
2 as drawn in the final map that you can recall came from
3 public input? Any particular line location?

4 A Maybe it's -- You say a particular line. I don't
5 recall, you know, cut this line on this particular street
6 or something like that.

7 Q Well, any particular, you know, city or place that
8 was in or out based on some public comment you received?

9 A I think we certainly heard people say that they
10 wanted the City of Yakima -- You know, it's a Yakima
11 city-based district, and that we heard from plenty of
12 people who, you know, wanted it to be a district where the
13 majority of eligible voters were Hispanic.

14 And then we may have heard some testimony, too, on
15 City of Othello in particular, but I can't -- I can't
16 recall it specifically right now.

17 Q And on those items that you just listed did the map
18 reflect that public request?

19 A So there were several items. So it's still -- It's
20 a largely Yakima-based district. A majority of its
21 eligible voters are Hispanic.

22 I think -- Oh, gosh, now I'm going to get into
23 trouble without looking at the actual map. I think the
24 City of Othello remained in it, but I would check the map
25 on that to confirm for myself.

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1 Q Are there any particular lines in place or locations
2 in or out of the district, the 15th District, as a result
3 of another member of the Commission's request?

4 A I mean, Commissioner Sims was most certainly
5 interested in the district, and we had -- We talked quite
6 a bit about how it would -- you know, what it would end up
7 looking like and what it would be.

8 Q Can you recall any specific location or boundary
9 that Ms. Sims directed in or out of the 15th Legislative
10 District?

11 A She released the first version of her map and then
12 released a second one, I think, in October, a proposed
13 version of a map; but I don't recall as I'm sitting here
14 right now, you know, specific cities or counties or things
15 like that.

16 Q Well, going back to the metrics that you and
17 Commissioner Sims agreed on that we talked about before
18 lunch, is it your testimony that those metrics were so
19 precise that it naturally resulted in only one possible
20 district boundary?

21 A I think so. I mean, I'm open to -- You know, we
22 drew a lot of these maps, me and Anton; and when you would
23 draw them you had particular metrics. For the most part
24 you'd have to draw those in a particular way.

25 I'm open to the notion that, you know, if you

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1 replace one precinct in the northeast side with a precinct
2 in the southeast side that happens to have pretty similar
3 characteristics you might be able to make little changes
4 that way; but I'd say for the most part if you have the
5 metrics that we were talking about there's really only one
6 real way to draw a district like that.

7 Q And so it's your belief that if you went and hired a
8 map drawer who was unfamiliar with the process, gave him
9 these metrics and said, "Draw a map," they're going to
10 come up with something pretty close to what's in the
11 adopted plan?

12 A Actually, --

13 MR. HUGHES: Objection, calls for
14 speculation.

15 MR. MILLSTEIN: Same objection.

16 A Yeah, I mean --

17 MR. STOKESBARY: Same objection.

18 A -- it would have to -- Because this also -- You
19 know, part of it was -- here was Commissioner Sims and I
20 were exchanging proposals over the course of time heading
21 up to the November 15th deadline, so that kind of played a
22 role, again because maybe there are ways that you can draw
23 different configurations for particular districts that
24 might meet those criteria, but --

25 You know, we'd exchange maps, and you kind of start

1 narrowing down toward where they would end up; so some of
2 that history would come into play, I think.

3 Q (By Mr. Dunn) So who would tell Mr. Grose or
4 Ms. Sims or -- excuse me -- Ms. Davis whether to take the
5 line from one proposal you had thrown out or take the line
6 from a proposal Ms. Sims had thrown out?

7 A Do you mean like the --

8 MR. HUGHES: Objection to form.

9 A Sorry. Do you mean with like the draft maps that we
10 were exchanging back and forth, the proposals we were
11 exchanging back and forth?

12 Q (By Mr. Dunn) Right. When Mr. Grose or Ms. Davis
13 sat down to take your metrics and turn it into a final
14 plan for the 15th, you know, who would tell them whether
15 to use a line from a proposal that you had thrown out or
16 use a line that Ms. Sims had thrown out?

17 A You mean for the final map?

18 Q Yes.

19 A When it came to the 15th, again, I think I said
20 earlier, you know, a couple days, maybe a week before the
21 15th we had negotiated over that pretty heavily and
22 exchanged proposals, and I think we landed on what
23 ultimately became the 15th. So it would be one of the
24 proposals that was in there.

25 Q So you think that the map that they worked from was

1 one that Ms. Sims had sent to you or you had sent to
2 Ms. Sims?

3 A The final version of the 15th, you're saying?

4 Q Yes.

5 A I can't remember if it was one that I sent her or
6 vice versa.

7 Q Do you remember which file Ms. Davis or Mr. Grose
8 started with when they went down to draw the final map? A
9 plan of yours, a plan of hers, or did they start with no
10 plan at all; or do you know?

11 A They started with a fresh, no-lines map.

12 Q Now, we've talked about the 15th. There was some
13 consideration given to what number to put on the district
14 in the Yakima Valley that's primarily in Yakima; is that
15 right?

16 A There are two districts primarily in Yakima.

17 Q Why was the 15th assigned to the district that was
18 more than 50 percent Latino eligible voters?

19 A In general when it came to numbering districts we
20 kept things pretty similar to how they had been in past
21 maps; and so the district in Yakima that was eastward
22 oriented was previously the 15th, so we used our general
23 rule of keeping the districts, the numbers the same.

24 Q Do you recall making any proposals that had the
25 majority Latino area labeled as the 14th District?

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1 A No. Again, we were -- I don't think we ever -- I'm
2 not sure we even specifically discussed map numbering. It
3 may just have been a general understanding that we were
4 going to keep the same numbers as the previous map.

5 Q You don't recall any proposal you made had 14th over
6 the area that was predominantly Latino in the Yakima
7 Valley?

8 A Oh, the westward facing district, you're asking?

9 Q I'm asking about the area where the predominantly
10 Latino citizens live.

11 MR. MILLSTEIN: Objection, vague.

12 MR. STOKESBARY: Objection as to form.
13 Objection, vague.

14 A I mean, Latino citizens live throughout the Yakima
15 Valley.

16 Q (By Mr. Dunn) Did you ever have occasion to look at
17 the racial makeup of the citizens that live in the Yakima
18 Valley?

19 MR. HUGHES: And also I'm going to object
20 to form.

21 MR. STOKESBARY: Join with the objections.

22 MR. MILLSTEIN: Same.

23 A Yeah. I mean, we talked about, you know, the racial
24 makeup of the 15th, for example.

25 Q (By Mr. Dunn) And how would you look that up? I

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1 mean, how did you look into that?

2 A Though -- It was hard because -- Well, okay. So the
3 racial makeup numbers came from the census, the 2020
4 census. And that was kind of hard, too, because -- Well,
5 that's not racial, but the citizenship question wasn't on
6 the census, and so we were relying on data from the 2019
7 American Community Survey.

8 Q (By Mr. Dunn) How is it that you looked at the
9 racial makeup of the population in the Yakima Valley, if
10 you ever did?

11 MR. HUGHES: Object to form.

12 MR. MILLSTEIN: Object to form.

13 MR. STOKESBARY: Object to form.

14 A So you can -- Yeah, you can see in the Edge software
15 if you're drawing a particular district, you can see a
16 number of data points associated with any district that
17 you're drawing, and one of those data points that comes
18 from the census is the racial makeup.

19 Q (By Mr. Dunn) So as you were making changes to the
20 district, you could see what the racial makeup of that
21 district changed to; do I have that right?

22 MR. HUGHES: Object to form.

23 MR. MILLSTEIN: Object to form.

24 MR. STOKESBARY: Object to form.

25 A Yeah, as you're -- As you're drawing proposals in

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1 Edge using the census data, one of the data points you
2 could look at when drawing a district is the racial
3 makeup.

4 Q (By Mr. Dunn) So when you were looking at the Yakima
5 Valley did you ever look at racial data on individual
6 precincts or census blocks or census block groups?

7 MR. HUGHES: Object to form.

8 MR. STOKESBARY: Object to form.

9 MR. MILLSTEIN: Object to form.

10 A Maybe at the margins that we were looking to draw,
11 the 15th itself to be a majority eligible voter Hispanic
12 district.

13 MR. HUGHES: Chad, do you mind if I really
14 very briefly state the basis for my form objection here,
15 just so I can stop making it?

16 MR. DUNN: I don't mind if you make your
17 form objection.

18 I've lost Mr. Hughes. Maybe it's me that's frozen.
19 I don't know.

20 MR. MILLSTEIN: No, you're fine. He is
21 frozen.

22 MR. DUNN: Oh.

23 MR. MILLSTEIN: Are you with us, Andrew?

24 MR. HUGHES: Can I explain to you -- I just
25 want to -- Hello? I can hear you. Can you hear me?

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1 MR. MILLSTEIN: Yes, now.

2 MR. HUGHES: Oh, my God. Okay. Now you
3 can hear me? So sorry.

4 Just -- and I don't want to keep making the same
5 objection; but just the basis of my objection, just so you
6 know, is we've been really careful in these depositions to
7 distinguish between racial and ethnic, so that's why when
8 you --

9 I just want to be clear in your questions when you
10 say racial, are you including Hispanic as sort of a racial
11 category or something else?

12 MR. DUNN: I'm talking about race and
13 ethnicity together often as one term, race.

14 MR. HUGHES: Okay.

15 Q (By Mr. Dunn) Mr. Graves, do you need to change any
16 of your answers with that clarification?

17 A I think -- I mean, I've been trying -- maybe I
18 haven't done it the whole time. I've been trying to when
19 we're talking about 15th talk about Hispanic voters. I
20 think I've been consistent in that, so I don't think I
21 need to change answers; but maybe as we keep going through
22 maybe I'll think of something that jogs my memory of
23 something that was a distinction between those two things
24 that matter.

25 Q Yeah, sure. And let me know, and I'm going to use

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1 race to mean race and ethnicity. That's how I have meant
2 it, and that's how I mean it going forward.

3 So going back to the issue with the 15th Legislative
4 District, did you ever look at the racial makeup of
5 individual precincts, census blocks or block groups?

6 A Yes.

7 Q How would you do that?

8 A It wasn't very often, but it was, you know, when we
9 were really drilling down to the final version of the 15th
10 we were looking at, you know, on the edges what some of
11 the racial makeup might look like to get us to the point
12 where you would have a district where a majority of
13 eligible voters were Hispanic.

14 Q So in the area of Yakima that was the majority of
15 the eligible voters were Hispanic, did you ever propose a
16 map that had District No. 14 on it for that area?

17 A I don't remember.

18 Q Can you recall if another member of the Commission
19 put together a proposed map with 14 on it in that area of
20 the city?

21 A I don't remember. It wasn't something that we
22 talked about.

23 Q And I think you've said that. I just want to make
24 sure it's perfectly clear. Can you recall any discussion
25 with any member of the Commission about 15 versus 14th for

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1 this district around Yakima that's majority Latino?

2 A I have a vague recollection of maybe talking with
3 Commissioner Fain about -- in the context of like a
4 broader -- I think -- I do remember we had one discussion
5 where we kind of jokingly said, you know, "We're allowed
6 to renumber all these things; and wouldn't it be funny to
7 kind of do all of that just so all the, you know,
8 candidates have to change their yard signs that have the
9 number of the district on it."

10 And it may have come up then, but I don't -- I don't
11 recall other conversations about renumbering districts.

12 Q Do you recall what difference it would make between
13 being the 14th or 15th, if any, other than the yard signs
14 issue?

15 A It would probably -- It might make a difference --
16 We elect our senators to four-year terms; and so 23 of
17 them are up on presidential years, and half of them are up
18 on midterm years. It might have affected that, I suppose.

19 Q Did you have a preference as to when that area of
20 the state would vote?

21 A They all --

22 MR. MILLSTEIN: Objection, form.

23 MR. STOKESBARY: Same objection.

24 A They all vote every -- Yeah, they all vote every two
25 years for the Legislature.

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1 Q (By Mr. Dunn) I'm sorry, Mr. Graves, I didn't hear
2 what you said.

3 A Oh, sorry. They all vote -- You know, every
4 district votes every two years for the Legislature.

5 Q And so did it make any difference to you what the
6 number was one way or the other?

7 A Not that I recall. I don't think so.

8 Q Do you recall what the precise citizen voting age
9 population of the 15th Legislative District is Latino in
10 the final map?

11 A No.

12 MR. HUGHES: Objection, vague.

13 A No.

14 Q (By Mr. Dunn) I think the records and the expert
15 reports in the case show that it's 50.02 percent citizen
16 voting age population. Is this news to you that that's
17 the number?

18 MR. HUGHES: Objection, misstates the
19 record.

20 MR. STOKESBARY: Same objection.

21 MR. MILLSTEIN: Objection to form.

22 Same objection.

23 A I think that's the percentage by Hispanic. You
24 asked about Latino voters.

25 Q (By Mr. Dunn) Okay. So are you treating Latino and

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1 Hispanic voters differently?

2 A Yes.

3 Q How so?

4 A Hispanic is an ethnicity, and Latino is a race.

5 Q And so do you think that the measurements of those
6 two races are different, at least with respect to looking
7 at census figures?

8 A Yes.

9 Q How so?

10 A One is an ethnicity, and one is a race.

11 Q And so when we say what is the Hispanic citizen
12 voting age population of the 15th Legislative District and
13 we say what is the Latino citizen voting age population of
14 the same district, in your view those numbers are
15 different?

16 A I would be surprised if those numbers would be the
17 exact same for any district.

18 Q And which of those numbers did you use in terms of
19 the metric that you agreed on at 51 percent?

20 A Hispanic.

21 Q Is it your view that the Hispanic -- that there's a
22 higher number of Hispanic citizens in this area of the
23 state than there are Latino citizens in that area of the
24 state?

25 A You're talking about the Yakima Valley generally?

1 Q Yes.

2 A I -- I don't know.

3 Q In the software that you were using what did it say
4 on there, Hispanic or Latino, when you were looking at the
5 racial figures?

6 A It could give you numbers for both.

7 Q And could you select one or the other?

8 A I don't think it was a selection. I think what you
9 would select is the race on or off button to show you the
10 racial composition of any particular district you drew.

11 Q Did you ever notice a relationship between the two
12 numbers, like one was regularly larger than the other?

13 A You're talking about Hispanic versus Latino?

14 Q Yes.

15 A In the 15th?

16 Q Yes.

17 A I don't -- I don't recall looking at that
18 distinction.

19 Q Why did you decide to use the metric that you used
20 instead of the other?

21 A It's the one that Commissioner Sims and I had talked
22 about and agreed on.

23 Q Did you have any discussion with her of why you
24 would use one rather than the other?

25 A Briefly, if I recall.

1 Q What do you recall about that discussion?

2 A I think I just raised the issue that, you know, one
3 is an ethnicity, and one is a race; and they could be, you
4 know, different. And we should probably agree on one if
5 it's going to be a metric that we're going to need to
6 reach agreement on.

7 Q So was it her proposal that you use Hispanic?

8 A I think so.

9 Q Who told you that the Hispanic versus Latino are
10 different, or where did you get that information in terms
11 of census figures?

12 A I'm generally aware of the difference between race
13 and ethnicity.

14 Q Okay. You don't recall receiving that from sort of
15 any of the briefings, for example, you got or some
16 demographic expert?

17 A No.

18 Q Did you ever look at the 15th map using the Latino
19 data instead of Hispanic?

20 A I don't recall if I did so.

21 Q But your recollection is you had this one discussion
22 with Ms. Sims. You agreed to use Hispanic from that point
23 forward, and that's what you used?

24 A That's how I remember the conversation happening.

25 Q All right. Did you have any discussion with anybody

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1 else in the Commission over whether or not to use Hispanic
2 or Latino?

3 A Not that I can recall sitting here right now, no.

4 Q Now, you've mentioned several times that the census,
5 the dicennial census doesn't ask for citizenship.

6 Do you recall generally saying that?

7 A Yes.

8 Q And you testified instead that the Commission used
9 the American Community Survey for citizenship data; did I
10 get that right?

11 A Yes, that's right.

12 Q Is it your recollection that the American Community
13 Survey keeps both data for Latino and Hispanic?

14 A I don't -- I don't remember if it -- if it does
15 because once we got the census data we were able to rely
16 on the census data for race and ethnicity. So I can't --
17 I just can't recall if the American Community Survey also
18 has that distinction in there.

19 Q And can you tell us why you would prefer one metric
20 over another?

21 A Why Hispanic over Latino, you mean?

22 Q Yes.

23 A My primary concern when talking with Commissioner
24 Sims about it was more to reach an agreement on one or the
25 other. You can make -- You know, there were arguments for

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1 using one or the other, and I don't think I had a strong
2 preference one way or the other. What I really wanted was
3 that we could reach an agreement so we could have commons
4 terms we could be talking about.

5 Q And so your best recollection is it was Ms. Sims
6 that wanted to use Hispanic, and so you went along with
7 it; is that fair to say?

8 A I -- I think -- I think so. But we were talking
9 about a lot of things. And I think so, but I -- It's hard
10 for me to say with absolute certainty that that was
11 exactly how that conversation went.

12 Q Do you recall that the final map as adopted for the
13 15th is 50.02 citizen voting age population Hispanic or
14 Latino? Do you recall that number at all?

15 A The number that I had in mind was 50.1. Maybe that
16 was a round up. The number I had in mind was 50.1; but,
17 you know, the numbers that you're talking about, the
18 difference between those two is so small that I would
19 believe 50.02. I just didn't have it in mind.

20 Q All right. Just to be clear, it's your testimony
21 that this is the first that you can remember somebody
22 telling you the district is 50.02 anything?

23 MR. MILLSTEIN: Objection, misstates prior
24 testimony.

25 A As I recall, we were using a single -- you know,

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1 most of the things that I saw were single decimal point
2 numbers. I don't know if it was a round up or --

3 MR. HUGHES: Objection to form.

4 A Sorry. I don't know it was a round up or something,
5 but the number that I had in mind coming here today was
6 50.1.

7 Q (By Mr. Dunn) I appreciate that. It's a little bit
8 different answer to a different question.

9 I'm asking prior to today have you heard 50.02
10 describe any characteristic of the 15th Legislative
11 District?

12 A Yeah, like I -- Like I just said, you know, the
13 numbers that I was familiar with and looking at before
14 today were to the single digit after a decimal point.

15 Q So this is the first you're hearing 50.02 with
16 respect to the 15th District?

17 A I -- I think so. I think it's the first time I've
18 heard down to two decimal points.

19 Q When is it that the plan was, you know, finally
20 complete? We talked about when they were working on it at
21 the computer, but when did they finish the legislative
22 plan?

23 A I think around 4:00 in the afternoon on
24 November 16th of last year.

25 Q So at or around 4:00 o'clock when they finished the

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1 legislative map, prior to that had any of the other
2 members of the Commission seen the legislative map in
3 progress other than Ms. Sims?

4 A I don't know.

5 Q Do you recall any moment of asking the other
6 commissioners, "Come take a look at this," or, "What do
7 you think about that?" Or sharing some portion of the map
8 in realtime?

9 A No.

10 Q All right. So your recollection is at or about
11 4:00 o'clock on November 16th when the map was finished it
12 was some point thereafter that that map was shared with
13 commissioners other than you and Ms. Sims at any point?

14 A Yeah, I think -- I think that's right, and it was
15 also simultaneously shared with -- shared with the public
16 at that time.

17 Q Was it -- Was it shared with the public on
18 November 16th, or was it at a different time or day?

19 A I think it was the 16th, but I told you before I was
20 up for about 40 hours then. So if you told me it was a
21 different time, I might believe you.

22 Q Well, when it was -- Whenever it was shared with the
23 public, was that also the same moment it was shared with
24 the rest of the members of the Commission, or was it
25 shared with them in advance of the public display of it?

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1 A I don't remember specifically.

2 And I -- I -- I -- The answer there, too, is I --
3 Because I recall getting an email from either
4 Ms. Augustine or Ms. McLean with, you know, links to the
5 final version. I can't recall if that came before or
6 after it was published.

7 And then I -- Of course, I don't know what emails or
8 in what sequence the other commissioners received emails
9 like that, if they did.

10 Q Were you at the hotel when the legislative map was
11 completed?

12 A No.

13 Q And so is it the case you learned the map was
14 completed from Ms. Davis or Mr. Grose?

15 A I talked with Mr. Grose about it, yes.

16 Q And so when the map was finished at 4:00 o'clock did
17 Mr. Grose call you and say, "We just completed it," or how
18 did that come about?

19 A I can't remember if he called or texted but said,
20 "We've -- we've finished our work."

21 Q And so is it your testimony that when you first saw
22 the map is also when the rest of the commissioners first
23 saw the map?

24 A I don't know when they all first saw the map.

25 Q But the first time you saw the completed map was on

1 the public portal, the public link?

2 A No.

3 Q How did you see the final map?

4 A I received an email with the link to it.

5 Q Who sent you the email?

6 MR. STOKESBARY: Objection, asked and
7 answered.

8 A I think it was either Ms. McLean or Ms. Augustine,
9 and I think I might have also received it separately from
10 Mr. Grose.

11 Q (By Mr. Dunn) And so did you look at the map and
12 then authorize them to move forward with it, or they were
13 already moving forward with it when they shared it with
14 you?

15 A What do you mean by authorized to move forward?

16 Q Well, did you -- Did they wait on your response in
17 some way before they otherwise made it public and called
18 it the final map?

19 A No. Commissioner Augustine chose to publish it
20 without an approval or a vote from the rest of the
21 commissioners.

22 Q So Ms. Davis and Mr. Grose finished the map. As far
23 as you understand it's given to Ms. Augustine. She --
24 It's given to you, and it's made public. And you didn't
25 play a role in any of that decision making; is that true?

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1 A We had -- We had talked ahead of time about
2 finishing it and then the prospect of publishing it.

3 Q In what format did you receive the map? Was it like
4 a package file? Was it on Edge? Was it Dave's
5 Redistricting? Was it some other way?

6 A I don't remember the exact format. We had been
7 using Edge and then also Dave's Redistricting, which is a
8 publicly available map drawing website. We would use that
9 sometimes because it's a little faster and in some ways a
10 little more user friendly.

11 So I can't remember if the first final version that
12 I got was on an Edge link or a Dave's Redistricting link.

13 Q Do you remember which software Ms. Davis and
14 Mr. Grose were using to make the legislative map there on
15 the 16th?

16 A I think it was Edge, if I recall correctly.

17 Q Were you standing with them at any point in time
18 when they were making the legislative map?

19 A Yes.

20 Q Were you standing with them at any point in time
21 they were drawing the 15th Legislative District?

22 A Yes.

23 Q The -- What metrics would they have as they were
24 drawing the maps? In other words, which data would they
25 look at? What can you recall?

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1 A It was a number of things. So like with the 15th,
2 for example, you know, it was going to be a majority
3 Hispanic eligible voter district, and it was going to have
4 the configuration that Commissioner Sims and I had kind of
5 talked through a couple days, maybe a week beforehand.

6 Q And so did that mean you had racial data available
7 as the lines were being drawn?

8 A Yes, I believe so.

9 Q Did you have election data available as the lines
10 were being drawn?

11 A Like recent election results by precinct?

12 Q Yes, sir.

13 A Yes, we did.

14 Q Do you remember which elections? Is it the ones you
15 listed earlier or just one or several, or --

16 A You're asking when we were drawing the legislative
17 map, --

18 Q Yes, sir.

19 A -- if that came before the map?

20 The primary recent election results we were using
21 for that were the results from the 2020 state treasurer's
22 race.

23 Q Okay. And when you would notice a majority Latino
24 precinct being moved in or out of the 15th would you
25 notice what that did to the 2020 treasurer election

1 results?

2 MR. MILLSTEIN: Objection to form.

3 A No, not at that time because again we had, you know,
4 exchanged proposals on it, and so we -- You know, we knew
5 what the 15th was going to look like. So it wasn't --

6 You know, there weren't choices being made when
7 drawing that one because the configuration of the 15th
8 we -- Commissioner Sims and I had already agreed on.

9 Q (By Mr. Dunn) Do you have a belief of what would
10 happen on the 15th Legislative District when you took a
11 majority Latino precinct out in terms of the election
12 results, whether it would become more or less Democratic?

13 A It would certainly depend on the precinct.

14 Q Now, in the 15th Legislative District that made it
15 into the final plan, do you know whether any precincts
16 were split?

17 A In the 15th?

18 Q Yes.

19 A I -- I don't think so, but I don't -- I don't recall
20 specifically.

21 Q Do you recall whether there was precinct splits
22 anywhere in the legislative plan?

23 A There were a few.

24 Q How was it you would decide when to make a precinct
25 split?

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1 A It was largely based on population. That's one of
2 the really firm criteria that we have. And we had
3 districts that deviated really insubstantially from the
4 ideal number, and so there would be times when that was
5 kind of the primary reason when you had to split a
6 precinct, to get the population number to be as close to
7 exact as you could.

8 Q On the congressional map you had to get, you know,
9 perfect deviation; is that your understanding?

10 A No.

11 Q On the legislative map is it your understanding that
12 you had some flexibility in terms of equalizing the
13 district?

14 A Population?

15 Q Yes.

16 MR. STOKESBARY: Objection to the --

17 A My understanding was that --

18 MR. STOKESBARY: -- extent this calls for a
19 legal conclusion.

20 MR. MILLSTEIN: Same objection.

21 A My understanding was that there wasn't a firm, you
22 know, percentage deviation that was acceptable, but that
23 in general we tried to make it a really small deviation.

24 Q (By Mr. Dunn) When you went and split a census
25 block, though, it's your best recollection that that was

1 done to equalize the total population in each of the
2 districts?

3 MR. STOKESBARY: Objection as to form.

4 A That's how I recall, yeah, the few times that we --
5 that we did it it was for that purpose.

6 Q (By Mr. Dunn) How would you decide within a precinct
7 which, you know, people to put in one district and the
8 other when you split it?

9 A Mostly geography. You know, if you've got a
10 district that, you know, on the east side -- You know, a
11 precinct where you're going to split it, and the east side
12 is one district, and the west side is one district, you'd,
13 you know, split it so that the west side would be in the
14 west side district, and the east side would be in the east
15 side district.

16 Q Do you know what data you have available to you
17 when splitting a precinct, about the individual citizens
18 that you're moving about inside that precinct?

19 MR. MILLSTEIN: Objection to form.

20 A You know, I actually don't know. You know, it
21 happened so infrequently that I don't know whether you --
22 whether the census data or anything else would allow you
23 to drill down to the sub-precinct level.

24 Q (By Mr. Dunn) Is there any other place that you can
25 tell me to go to have a better understanding of where the

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1 lines were that you thought you agreed to between you and
2 Ms. Sims?

3 A For the 15th District?

4 Q Yes.

5 A Well, the final map.

6 Q Anything prior to that, prior to the vote?

7 A Yeah. Yes, like I've said, we were exchanging
8 proposals, and we settled on what the configurations and
9 line of the 15th were going to be a couple of days, maybe
10 a week before the 15th.

11 Q All right. And you ultimately gave a press
12 conference about the final map; is that right?

13 A Yes. We held a press conference a few days after
14 the 15th.

15 Q And you answered questions from the media about the
16 map and the process that it was adopted, you and the other
17 commissioners; is that -- Is that fair to say?

18 A We sure did.

19 Q All right. Did the Commission do any other business
20 after that?

21 A Yes.

22 Q What was left to do?

23 A Issue a report to the Legislature, get a resolution
24 to the Legislature. There are activities required to wind
25 down a government agency, so we had one, maybe two public

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1 meetings after that where we were doing the work of
2 closing down a government agency.

3 Q You ultimately -- the Commission did -- made filings
4 with the Washington Supreme Court; is that right?

5 A I can't remember if it was the Commission who did
6 it, if it was the state as a party, if it was our Chair,
7 Sarah Augustine. I can't remember the exact party that
8 submitted documents to the State Supreme Court.

9 Q All right. There was an affidavit that
10 Ms. Augustine filed with the Washington Supreme Court.
11 Do you remember that generally?

12 A Yes, I do.

13 Q Did you participate at all in drafting that
14 affidavit?

15 A No.

16 Q Did you see it in advance of its filing?

17 A No.

18 Q Did you prepare any affidavit for the Washington
19 Supreme Court?

20 A No.

21 Q Was there ever a draft that you didn't finally
22 execute?

23 A No.

24 Q Without revealing any attorney-client information
25 are you able to tell me why Ms. McLean filed an affidavit

1 and no one else did?

2 A Ms. McLean did not file an affidavit.

3 MR. STOKESBARY: Yeah, objection as to
4 form.

5 MR. HUGHES: Same objection.

6 MR. MILLSTEIN: Same objection.

7 Q (By Mr. Dunn) Are you able to tell me why you didn't
8 file an affidavit without disclosing any attorney-client
9 communication?

10 A Sorry. It wasn't clear to me if that answer was
11 clear because there were objections there, but Ms. McLean
12 did not file an affidavit.

13 And then to answer your question, I wasn't called
14 to, and we -- At that press conference in particular all
15 four commissioners said that although we regretted having
16 the final maps done past the deadline, we -- it was our
17 hope and intention the Supreme Court would consider those
18 as the maps.

19 Q At the point in time of the press conference it was
20 your belief that, you know, the map hadn't been timely
21 adopted, but the hope was the Supreme Court would adopt
22 it.

23 Is that a fair description of your position?

24 A Yes.

25 Q All right. Now, at some point in time -- we talked

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1 about it earlier a little bit -- but at some point in time
2 there was an Open Meetings Act case that was filed against
3 the Commission; is that true?

4 A Yes, that's right.

5 Q And about how long after the adoption of the map did
6 that occur? I mean, was it a series of weeks? Months?

7 A A few weeks, maybe.

8 Q And you were deposed as part of that proceeding?

9 A Yes, I was.

10 Q Is it your understanding that you were -- that the
11 other members of the Commission were also deposed?

12 A I believe they were.

13 Q And then the case was ultimately resolved by
14 settlement; is that fair to say?

15 A Yes, that's right.

16 Q What do you recall about the terms of the
17 settlement?

18 A I recall that they're publicly available.

19 Q Can you recall any specific requirement of the
20 settlement?

21 A Sure. We agreed to an agreement on fines and
22 attorney's fees that would be paid. We agreed on
23 requirements for the Commission to adopt policies and
24 processes related to the Public Meetings Act and the
25 Public Records Act.

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1 Q Was it your view that the final adoption of the map
2 did not comply with the Open Meetings Act?

3 MR. MILLSTEIN: Objection, calls for a
4 legal conclusion.

5 MR. STOKESBARY: Join the objection.

6 MR. HUGHES: So object to form, and
7 misstates the evidence -- misstates the record, pardon
8 meed.

9 MR. STOKESBARY: Join those objections.

10 MR. MILLSTEIN: Join those as well.

11 A I believe that it complied with our state Open
12 Public Meetings Act, the adoption of the map.

13 Q (By Mr. Dunn) All right. Now, backing up to again,
14 to the earlier part of the Commission's work, did you do
15 anything to investigate the 2011 process?

16 A Yes.

17 Q What did you do?

18 A Looked for news reports from that time. The old
19 website that was for that Commission was, I think,
20 archived and available, so I looked at that.

21 Q There is a memo that the executive director in 2011
22 prepared about best practices. Do you recall ever seeing
23 this?

24 A I don't know if I ever saw it.

25 Q It sounds like it wasn't a document that you

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1 regularly used or consulted.

2 A No, it was not.

3 Q And I'm not trying to be cute, but are you just
4 learning about this today, or is it something you
5 generally knew about, but you don't think you ever looked
6 at?

7 A I think that Commissioner Augustine, who was our
8 Chair, she talked to me about it. You know, she said that
9 there was a -- that she had looked at a memo from Lura
10 Powell, who was the last Chair. That's L-U-R-A, Powell.
11 And, you know, that it was, you know, advice from the past
12 Chair to the next Chair.

13 Q But it sounds like you never laid eyes on it, the
14 best you can recall?

15 A I don't think that I did.

16 Q Did -- When you say you looked at the website, I
17 mean, was it the case that you sat and watched each of the
18 archived videos of the 2011 process?

19 A No.

20 Q Do you recall watching any of the videos of the 2011
21 process?

22 A No, I don't recall that.

23 Q And this is probably clear, but just to make sure it
24 is. Did you watch the final meeting where they adopted
25 the map?

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1 A No, I did not.

2 Q All right. Was there any -- You know, again, this
3 is my only time to talk to you. So is there any member of
4 the Commission that, you know, you think is dishonest or
5 handled you unprofessionally or you're going to testify,
6 you know, was untoward in their conduct with you?

7 MR. MILLSTEIN: Objection, form.

8 A I have great respect for everybody who was on that
9 Commission.

10 Q (By Mr. Dunn) At any time did you have contact with
11 an Adam Kincaid?

12 A Yes.

13 Q Who is Mr. Kincaid?

14 A He works for a group called the National Republican
15 Redistricting Trust.

16 Q And how is it you came into his contact?

17 A I don't remember if he emailed me when I was
18 appointed or if maybe one of Republican members of our
19 delegation gave me his contact information. I don't
20 remember exactly how we connected.

21 Q So did you ultimately talk with him, speak with him?

22 A I had coffee with him in, I think, June of last
23 year.

24 Q In Washington or someplace else?

25 A The other Washington.

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1 Q In Washington, D.C. you and he met for coffee?

2 MR. HUGHES: Objection, vague.

3 A That's the funniest vague objection there is.

4 Yes, in Washington, D.C.

5 Q (By Mr. Dunn) All right. Was it the case you
6 traveled to D.C. for this meeting, or were there other
7 meetings you had scheduled?

8 A I had other meetings scheduled.

9 Q Were they all in relation to redistricting?

10 A No.

11 Q What other meetings did you have other than the one
12 with Mr. Kincaid in D.C. about redistricting?

13 A I had meetings with, you know, people with the
14 American Trucking Association.

15 Q In relation to your employment?

16 A That's right.

17 Q So the only meeting you had then was with
18 Mr. Kincaid as it related to redistricting?

19 A No.

20 Q Who else did you meet there in D.C. about
21 redistricting?

22 A I met with Congress members Jaime Herrera Beutler
23 and Dan Newhouse and Cathy McMorris Rodgers.

24 Q Any others?

25 A Each one of them had a staff member with them.

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1 Q And that's all?

2 A Yes.

3 Q Okay. Now, is it fair to describe all those
4 meetings in relation to the congressional map, or was
5 there any discussion or consideration of the legislative
6 map in those meetings?

7 A The legislative maps probably came up. All three of
8 the members of Congress serve in the Legislature as well
9 and, of course, have great interest in what the
10 legislative maps look like in their districts. So it
11 probably came up, but the primary focus was on the
12 congressional maps.

13 Q Was there any discussion there about the 15th
14 Legislative District or the Yakima area district?

15 A Not that I recall, no.

16 Q Did you -- Was that meeting with Mr. Kincaid early
17 on in your Redistricting Commission work?

18 A I think it was maybe June.

19 Q Did you have any other meetings or discussions with
20 Mr. Kincaid?

21 A Yes.

22 Q Were they all in relation to the congressional map?

23 A No.

24 Q Did you have any discussions with Mr. Kincaid as it
25 relates to the 15th Legislative District area?

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1 A No.

2 Q Did you have any discussion with Mr. Kincaid about
3 the Voting Rights Act and its requirements?

4 A Not specifically, no.

5 Q Did you ever discuss with Mr. Kincaid experts or
6 demographers that might be available to assist you in your
7 work?

8 A I think so. In fact, now that I think about it,
9 Mr. Brunell that I talked about earlier, I might have -- I
10 might have first heard of him from Mr. Kincaid.

11 Q Do you recall whether other names were proposed to
12 you?

13 A I don't remember.

14 Q Did you ever send drafts of maps or proposals to
15 Mr. Kincaid or somebody working at his direction?

16 A No.

17 Q Did you have any conversation with Mr. Kincaid after
18 the map was finalized?

19 A Yes.

20 Q When was that?

21 A In maybe around March of this year.

22 Q And what was that -- What was that discussion about?

23 A We were facing the prospect of a default judgment in
24 this particular case, and I really didn't want that to
25 happen. I wanted to try to defend the maps as we drew

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1 them.

2 And so I was talking with a lot of people about the
3 prospect of getting an intervenor or maybe a plaintiff of
4 some kind. I wasn't sure exactly what it would look like,
5 but he was one of the people who I talked to about the
6 prospect of making sure we wouldn't have a default
7 judgment on such an important issue.

8 Q Did he recommend to you counsel?

9 A No, I don't think so.

10 Q Is Mr. Kincaid a lawyer, as far as you know?

11 A I don't know if he is.

12 Q You didn't view the relationship you had with
13 Mr. Kincaid as an attorney-client relationship?

14 A No. That's why I produced my communications to you
15 with him.

16 Q The -- You mentioned something about a default
17 judgment. What default judgment were you worried about?

18 A The Secretary of State was the primary defendant in
19 this case; and he told this Court that he was the wrong
20 defendant, but he was not going to move to dismiss and
21 also would not defend the maps.

22 And the Attorney General's Office then took the
23 position that it did not have an obligation at that time
24 to defend the maps. And so there was a very real prospect
25 of a default judgment on this very important issue, which

1 I thought would have been a disaster.

2 Q Again, without talking, you know, about any
3 attorney-client privileged communications, I mean, this
4 potential of a default judgment, was that an idea you
5 developed on your own?

6 A Yes.

7 Q Okay. And so what did you do to head that off or
8 deal with that issue?

9 A I was faced with the prospect of having to raise
10 private funds to defend a public map, so I was trying to
11 do that. I thought it was outrageous, but I also know
12 it's the kind of outrage that's not going to make news or
13 get anybody worked up.

14 So I tried diligently to do whatever I could to
15 forestall that possibility and to see if the maps
16 themselves could be defended.

17 Q You mentioned that you didn't know whether that
18 would take place as an intervention or an additional
19 party. What did you mean by that?

20 A Procedurally it was really funky because again, this
21 lawsuit only named the Speaker of the House, the State
22 House, and the Senate Majority Leader and the Secretary of
23 State as defendants, and so there wasn't a particular
24 defendant in the case who was -- like you normally have in
25 a case who was oppositional to the plaintiff.

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1 And so I didn't know procedurally whether to stave
2 off a default judgment you would need to have an
3 intervenor or -- You know, you saw the Davis Wright memo,
4 whether there would be the prospect of an Equal Protection
5 claim that might be at odds with it. Whatever it was
6 going to be it was all pretty murky, and I was just trying
7 it see if we could defend the maps.

8 Q What action did you take in that regard?

9 A Talked to lawyers to see if anybody wanted to do it
10 for free, and talked to people who might want to help
11 finance it, and tried to do everything I could to make
12 sure that the maps could be defended.

13 Q Were you ultimately able to locate lawyers and/or
14 financing?

15 A No.

16 Q How is it that filing an Equal Protection claim
17 would help defend the map?

18 A It would at least forestall a default judgment. You
19 know, that was my first and most immediate concern because
20 it was so time sensitive. There was a hearing, I think,
21 that was scheduled on this, and it seemed like a very
22 important hearing.

23 So I thought that again, because I'm well aware
24 enough that you don't have a lot of people who want to
25 stump up private money to do the public act of defending

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1 the act of the state. I thought there might be people who
2 might be interested in filing some kind of other claim
3 that might have forestalled that. It wasn't my goal.

4 My immediate goal was to stave off a default
5 judgment, and my secondary goal was to defend the maps.
6 But I thought that if anybody was going to file an Equal
7 Protection claim like that it would at least meet that
8 immediate goal of avoiding a default judgment.

9 Q The Equal Protection claim was filed in a different
10 case, though; is that your recollection?

11 A I think so, although by that point I had -- I had
12 stopped, you know, communicating with the lawyers who were
13 involved with all of that.

14 Q Do you know why the Equal Protection claim was filed
15 in a different case rather than in this one?

16 A I genuinely don't.

17 Q Who was it, the lawyers you were talking to?

18 A Rob Maguire.

19 Q Any others?

20 A A man by the name of Jason Torchinsky.

21 Q Any others?

22 A Drew Stokesbary.

23 Q How did you know Mr. Torchinsky? Excuse me.

24 A I think maybe Mr. Kincaid gave me his name.

25 Q How did you know Mr. Stokesbary?

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1 A He and I served in the State House of
2 Representatives together.

3 Q How did you know he would have interest in the
4 litigation?

5 A I -- I didn't, but he's one of the Republican
6 lawyers that I know who might have been interested in
7 taking something like this on.

8 Q Is it fair to say that you put these three men
9 together as a team, or did that come together without your
10 participation?

11 A No. No, that was -- Whatever they ended up deciding
12 on the particulars, I wasn't involved with that. I just
13 tried to light the fire as it were to get things moving.

14 Q And do you think you did that?

15 A Not as well as I would have liked. You know, my --
16 Again, my primary -- my main immediate term goal was to
17 have a really clear party that was defending the maps, and
18 I'm not sure I achieved that.

19 Q And other than -- Well, other than Mr. Maguire's
20 letter report that we talked about extensively earlier
21 today, has Mr. Maguire done any other legal work for you?

22 MR. STOKESBARY: Objection to the extent it
23 calls for privileged communications.

24 MR. MILLSTEIN: I'll make the same
25 objection. No problem with answering has he done legal

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1 work; but if you're going to get into the subject of legal
2 work, I'll instruct the witness not to answer to the
3 extent it calls for attorney-client privileged
4 communications.

5 A Okay. Yes, I've worked with Mr. Maguire on other
6 matters.

7 Q (By Mr. Dunn) And have any of those matters occurred
8 after the report that you shared publicly?

9 A No.

10 Q And again, going no further into the topic, are any
11 of those other matters at all related to redistricting?

12 A The other matters that came before all this?

13 Q Yes.

14 A No.

15 Q Okay. How about for Mr. Torchinsky, have you ever
16 had an attorney-client relationship with him?

17 A No.

18 Q And how about Mr. Stokesbary?

19 A No.

20 Q All right. There's been a number of cases filed in
21 the 15th Legislative District area under the Voting Rights
22 Act pertaining to local political subdivisions.

23 Are you aware of this?

24 A Are you talking about like the Yakima County and
25 Yakima City cases?

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1 Q Yes.

2 MR. HUGHES: Object to form.

3 A Yes.

4 Q (By Mr. Dunn) Have you looked into any of the
5 litigation files as it pertains to Voting Rights Act cases
6 in that area of the state?

7 MR. HUGHES: Object to form.

8 A What do you mean by -- What do you mean by
9 litigation files?

10 MR. MILLSTEIN: Objection. Same objection.
11 Sorry.

12 Q (By Mr. Dunn) Sure, that's fine. Have you looked at
13 any of the pleadings filed in any of those Voting Rights
14 Act cases?

15 MR. HUGHES: Object to form.

16 A I can't recall having done so.

17 Q (By Mr. Dunn) Have you looked at any of the expert
18 reports that were exchanged or filed?

19 A No, I can't recall doing that.

20 Q Have you looked at any of the testimony?

21 A No, I have not.

22 Q When is it that you can recall first becoming aware
23 that those cases had been filed and proceeded with?

24 A I think it's as they were -- as they were happening
25 I was -- I read the newspaper. I was aware that they

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1 were -- there was litigation in Yakima.

2 Q The -- Do you recall -- So it sounds like you were
3 sort of monitoring as they were developing. Is that fair,
4 or is that too strong to stay?

5 A That's probably too strong. I read, just read the
6 news, so I probably saw headlines and maybe read a story
7 here or there.

8 Q At any point in your Redistricting Commission work
9 was there -- were these cases raised to you or mentioned
10 to you?

11 A I think there was reference to, I think, the county
12 case in the Barreto report.

13 Q Was there any other mention of these cases in the
14 course of the Redistricting Commission's work that you
15 recall?

16 A I seem to recall a brief conversation I had with
17 Commissioner Augustine about those cases. She lives in
18 Yakima.

19 Q What do you recall about that discussion?

20 A Not much.

21 Q Do you recall her telling you how those cases
22 resulted, what the Court did?

23 A No.

24 Q Did you ever read the Court's opinion or orders?

25 A No, I don't think that I did.

1 Q I'm sorry, it might have been on my end, but your
2 answer cut out.

3 A No, I don't think that I did.

4 Q Okay. Did you not view what the Federal Court had
5 said about the application of Section 2 of the Voting
6 Rights Act to these voters in this area as something you
7 needed to know before you adopted a map?

8 MR. STOKESBARY: Objection as to form.

9 MR. MILLSTEIN: Objection to the form.

10 MR. HUGHES: Object to form, and
11 argumentative.

12 MR. STOKESBARY: Join the argumentative
13 objection.

14 MR. MILLSTEIN: Same.

15 A What we needed to know was how Section 2 might apply
16 to a Legislative District in the 15th, in the area of
17 Yakima.

18 Q (By Mr. Dunn) It sounds like then it's your opinion
19 that those decisions and what those courts found weren't
20 relevant to your work.

21 A No, I wouldn't put it -- I wouldn't put it that way.

22 Q But you didn't go and determine what the courts did
23 and why?

24 A I just thought that it would be far more relevant to
25 have a discussion that was more timely that was, you know,

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1 based on the 2020 census data and that was more
2 specifically keyed to a larger geographic and population
3 area like we had to do for the Legislative Districts.

4 Q Going back to your -- the Equal Protection claim,
5 was it your view then that the Equal Protection claim was
6 filed to prevent a default judgment?

7 A I don't know exactly the motivations for why it was
8 filed.

9 Q Ultimately it sprang out from the discussions you
10 had with Mr. Stokesbary, Torchinsky and Maguire; is that
11 right?

12 MR. HUGHES: Objection, lacks foundation.

13 MR. MILLSTEIN: Same objection.

14 A I don't know if --

15 MR. STOKESBARY: Join the objection.

16 A I don't know if --

17 MR. STOKESBARY: And object as to form.

18 A Yeah, I don't know -- I don't know if sprang out is
19 right. And again, once it -- once it seemed like it was
20 going to be, you know, a challenge to the maps, but from
21 the Equal Protection side I sort of backed out of those
22 conversations.

23 Q (By Mr. Dunn) Did you ever ask at any point for the
24 State Attorney General's Office to represent you?

25 MR. HUGHES: Object to the extent it calls

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1 for -- Sorry. Object to the extent it calls for
2 attorney-client privileged information in your
3 communications.

4 Aaron, I'll let you instruct the witness.

5 MR. MILLSTEIN: Yeah, I am going to object
6 to the extent you are calling for attorney-client
7 privileged communications.

8 A I'll take that objection -- I'll take that
9 instruction.

10 MR. MILLSTEIN: Yeah, and I'll instruct you
11 not to answer on that point.

12 MR. DUNN: All right. I think we've gone
13 another hour here, so I'm going to need another restroom
14 break, if that works for others. We can come back in five
15 minutes or so.

16 THE WITNESS: Okay.

17 THE VIDEOGRAPHER: Going off the record,
18 the time is 2:01.

19 (Break 2:01 p.m. to 2:07 p.m.)

20 (Discussion off the record.)

21 THE VIDEOGRAPHER: Back on the record, the
22 time is 2:07.

23 Q (By Mr. Dunn) Mr. Graves, I understand you have
24 something you want to clarify after the break here.

25 A Yeah. It dawned on me during our break that you had

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1 asked about post November 15th communications with
2 Mr. Maguire that I had. I was answering those saying no
3 in terms of the other matters that I was thinking about;
4 but I did talk with him in about March of this year
5 about -- about this lawsuit, and those direct
6 communications were in the context of an attorney-client
7 relationship.

8 Q Okay. I appreciate that. So you had conversations
9 around March of 2022 about the lawsuit you're here being
10 deposed in with Mr. Maguire?

11 A That's right.

12 Q And you viewed him as your lawyer in that
13 discussion?

14 A Yes, that's right.

15 Q All right. I've emailed to counsel and the court
16 reporter Exhibits 1 through 5, and I'm going to start
17 actually with Exhibit 5.

18 MR. MILLSTEIN: Chad, --

19 MR. DUNN: Uh-hmm.

20 MR. MILLSTEIN: -- I don't believe I've
21 received this.

22 MR. STOKESBARY: Neither have I.

23 MR. HUGHES: And I have not, either.

24 MR. MILLSTEIN: Do you want to put it in
25 the chat, by chance?

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1 MR. DUNN: Sure, I'm happy to do that. I'm
2 happy to do that.

3 MR. MILLSTEIN: Whatever is easiest. But I
4 do appreciate the attempt to email it to us in advance.

5 MR. DUNN: Okay. It should be in the chat,
6 Exhibit 5, which is the one I'm starting with.

7 THE WITNESS: I can see it.

8 (Graves Exhibit No. 5 introduced.)

9 Q (By Mr. Dunn) All right, Mr. Graves, you should have
10 there on your screen what I've previously marked as
11 Exhibit 5. It's title is Search of Personal
12 Device/Account Declaration.

13 Do you see that, sir?

14 A Yes, I do.

15 Q Okay. This is a declaration signed -- I'm not sure
16 -- Can you see my cursor?

17 A Wait a minute. I have it open on this computer.
18 Here, let me see if I can close it. Oh, there it is. I
19 don't see your cursor.

20 Q Okay. Well, at the beginning of it it shows that,
21 "I, Paul Graves, declare."

22 Do you see that?

23 A I do see that.

24 Q Okay. This is a declaration you signed. It's dated
25 December 19, 2021; is that true?

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1 A No.

2 Q What is the date where it shows executed at the
3 bottom?

4 A That a four. That's the 14th.

5 Q Ah, beg your pardon. So December 14th, 2021?

6 A No, no, beg my pardon. That's bad handwriting.

7 Q Okay. But this is -- This is a declaration you
8 signed when you were asked to respond to an Open Records
9 request; is that fair?

10 A Yeah, I made this declaration in the context of a
11 Public Records request.

12 Q And that Public Records request had been served by
13 the UCLA Voting Rights Project; is that your recollection?

14 A There were a lot of them. I don't remember --

15 Q Okay.

16 A -- exactly when or by whom.

17 Q Fair enough. At some point, though, you went in
18 response to these Open Records requests and collected the
19 materials that you had were responsive; is that true?

20 A That's right. That's right.

21 Q Were there any materials that you deleted or had
22 destroyed at that point in time?

23 A No.

24 Q Were there any materials that you deleted or
25 destroyed after receiving the request?

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1 A No.

2 Q How is it that you went about collecting the
3 materials to produce?

4 A I put it in my, you know, declaration. I ran
5 searches. I started off by authorizing our legislative
6 technical staff to make my Outlook, my Redistricting
7 Outlook email folder and calendar publicly available. And
8 then I went and looked through other communications I
9 might have had that were responsive.

10 Q Did you provide the access to the legislative staff
11 to do the searches for you?

12 A No, I think I conducted them myself, although they
13 may have done it for the -- for the Redistricting Outlook
14 account.

15 Q But in terms of -- Well, did you at any point in
16 time provide to the legislative staff your cellphone or
17 cellphones?

18 A No, I did not provide them that.

19 Q In response to the Open Records request did you only
20 obtain information that you had, or did you also look with
21 your more direct staff, like Mr. Grose or others?

22 A I don't remember if I talked with them about it, but
23 I think they received -- and the Commission, of course,
24 was covered by all of that; but the Commission itself
25 received those requests.

1 I can't remember if I talked specifically with
2 Mr. Grose or Mr. Ridley about the Public Records Act
3 requests.

4 Q Did you search your electronic devices?

5 A Yes.

6 Q Which electronic devices?

7 A My cellphone and my personal computer.

8 Q Did you have more than one cellphone?

9 A I had a state-issued cellphone and then my own
10 personal cellphone.

11 Q I saw at some point in the documents that you
12 bought a -- you had to buy a new phone over the course of
13 your work at the Commission. Do you recall that?

14 A Did I?

15 Q Your phone went out? Oh, perhaps I'm
16 misunderstanding a communication, but that's what I
17 recall.

18 A Oh. On November 14th of all times, my -- I wasn't
19 able to make actual phone calls on my personal phone. I
20 was having to make calls using the FaceTime audio calls.

21 Q Okay. But you weren't able -- You didn't have to
22 buy a new phone at any point that you recall?

23 A No, I don't think so. I don't think I did.

24 Q So at the point in time you were responding to the
25 Open Records requests did you still have that phone, the

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1 one you had to use FaceTime on?

2 A Yes.

3 Q Was that your state phone or the personal phone?

4 A It was my personal phone.

5 Q At the time you were responding to Open Records
6 requests did you still have the state phone?

7 A Yes.

8 Q How would you decide over the course of your
9 redistricting work which to use, you know, for which topic
10 or persons?

11 A I ended up using my state-issued phone really
12 little, and I just knew that any document or any
13 communications I had on my personal cellphone I was going
14 to make sure to retain those and that they would be public
15 records.

16 Q What platform -- You mentioned Outlook already,
17 which I presume you use that for email; is that right?

18 A Email and calendaring.

19 Q What was the Outlook email address that you were
20 using?

21 A I think it was Paul.Graves@Redistricting.Wa.gov.

22 Q Did you use any of your other emails for
23 redistricting-related discussions?

24 A Yes.

25 Q Which ones were those?

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1 A I had just a few on my personal Gmail account.

2 Q What is that account?

3 A Gravespl982@Gmail.com.

4 Q Did you have any other email addresses available to
5 you during your redistricting work?

6 A Yes, I did.

7 Q What is that?

8 A I had my work email.

9 Q And this is in relation to the trucking company?

10 A That's one of them, yeah.

11 Q What is that email address?

12 A Paul.Graves@OakH.com.

13 Q What other work email address do you have, if any?

14 A I have an email address that's
15 Paul@EnterpriseWashington.org.

16 Q Any other email addresses available to you during
17 your redistricting work?

18 A I have an old Hotmail account, P_Graves@Hotmail.com,
19 and it's full of junk email.

20 Q Okay.

21 A But I searched it. I've looked, and I've confirmed
22 that I communicated nothing of substance on any issue on
23 that email.

24 Q All right. So it sounds like based on that
25 testimony you went through all these emails; and in

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1 response to this Open Records request you found what you
2 could, and you provided it to be produced?

3 A Yes, that was the process that I used.

4 Q Who is it that you provided your materials to?

5 A I can't remember if it was Ms. McLean or if it was
6 somebody at the legislative technical staff.

7 Q Now, with regard to your phones, were you the person
8 who obtained any messages on the phones and produced
9 those?

10 A Yes, I did.

11 Q And how -- You know, generally describe that
12 process. I mean, did you use an app, or how did you do
13 it?

14 A We tried to figure out if there were easier ways to
15 download it or something like that, and ultimately the
16 legislative technical staff said that the best thing we
17 could do would be take screenshots.

18 Q So is that what you did?

19 A Yes, I did.

20 Q Did you use the standard texting app that comes on
21 the phone, or did you have a different messaging software
22 that you used for redistricting-related work?

23 A No, when it came to texting I just used my Apple --
24 my Apple texting software.

25 Q You mentioned that you had to make video calls.

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1 What was the video app when your phone wouldn't make a
2 telephone call?

3 A FaceTime audio.

4 Q Did you use FaceTime's messaging feature for
5 redistricting-related communications?

6 A Does it have one? I -- No.

7 Q So it sounds like the only software you used on your
8 phone for messaging-related communications was the Apple
9 actual texting app that comes with the phone.

10 A You know, I have the -- my emails also on that
11 phone, too. And I probably sent some, you know, on my
12 phone rather than on the computer sometimes.

13 Q So emails and the texting app, and that's it for
14 written messages? Do I have that right?

15 A Yeah, and some -- I wrote some -- I don't write many
16 notes, but I had a couple that I took pictures of and
17 produced, too.

18 Q All right. Now I'm going to show you what I'll put
19 in the chat as Exhibit 1.

20 (Graves Exhibit No. 1 introduced.)

21 Q All right. You should see on the screen a federal
22 subpoena addressed to you with the style of this case on
23 it. Can you see that, sir?

24 A I do. I see the exhibit.

25 Q It's dated April 21st, 2022?

1 A Yes.

2 Q Do you recall receiving this subpoena?

3 A Yes, I do.

4 Q This also asks for a number of documents and
5 records. Would you agree?

6 A Yeah. This is a subpoena for documents and records.

7 Q Yes. All right. And did you when you received this
8 subpoena also go and try to collect the material that it
9 would ask for?

10 A I think in response to this subpoena I through my
11 attorney said that I'm not a party to this case and that
12 I'd be producing the documents that I had previously
13 produced in response to my Public Records Act requests;
14 and if you -- If any of the parties wanted more documents,
15 you could certainly ask for those.

16 Q And I appreciate that. I don't want to -- I don't
17 want to ask you or find out what you and your lawyer
18 talked about, so let me try to restate your answer so it
19 doesn't have that information in it.

20 But it sounds like to me your answer is you
21 turned -- you produced in response to this subpoena what
22 you had produced in response to the Open Records request;
23 is that right?

24 A That's right. And I'm not talking about any
25 communications I had directly with my counsel here. As I

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1 understand it, I think he maybe sent you a letter with
2 that, just clarifying that that's what I would be
3 producing and that if you wanted more, you could -- or if
4 there was something in particular that maybe was covered
5 by this but wasn't covered by those earlier requests, you
6 could certainly ask for it.

7 Q All right. So other than turn over what you'd
8 already produced in response to the Open Records request,
9 you didn't do -- at least it sounds like initially when
10 you got the subpoena -- any more searching of your devices
11 or harvesting of information.

12 A In April when I received this, no.

13 Q Did there come a point in time where you did go back
14 and look for additional materials?

15 A Yes, when the plaintiffs here asked for more
16 information.

17 Q And were you able to find additional materials?

18 A Yeah. I mean, I produced -- You know, the
19 plaintiffs here asked for some specific communications,
20 and I produced those.

21 Q Do you have any recollection of generally what kind
22 of communications those were?

23 A I think that you asked for communications with
24 Mr. Stokesbary and maybe with Mr. Grose maybe I recall in
25 response to this one later on.

1 Q And did you view none of those as having been
2 originally responsive to the Open Records request?

3 A Some of them had different time periods, things like
4 that. It sounded like -- and I'm not sure because I -- In
5 the original Public Records Act request I, you know,
6 turned over basically everything that I had.

7 But it sounds like there may have been some hiccups
8 along the way with what was actually produced. I
9 wasn't -- I didn't see what that all was, so I went back
10 to make sure -- Because I think with like Mr. Grose's
11 texts maybe in particular, that those might have fumbled
12 somewhere along the way. So I went and, you know, double
13 screen shotted those and produced those again.

14 Q So it's your recollection that you had provided to
15 the lawyer responding to this Open Records request the
16 texts of Mr. Grose. They just somehow didn't get in the
17 production?

18 A The way my production took place, I sent them over
19 to -- again, I think it was a legislative tech, and I
20 can't remember if there was like an FTP side or something
21 that I uploaded them to; but however I did, I think it
22 went through leg tech and through the Commission that were
23 then produced in response.

24 Q Do you think you uploaded the Grose texts
25 incorrectly?

1 A I may -- I may have. I'm not the most
2 technologically savvy person in the world.

3 Q We noted in the document production that you and
4 Mr. Grose's texts stop on the same day. Did you and he
5 discuss what day to stop producing texts at?

6 A What do you mean, stop producing texts?

7 Q After a certain day.

8 A He and I -- I mean, when we were done here we talked
9 occasionally, but we haven't really talked much since
10 then.

11 Q The day that both the sets of texts stop is March
12 the 3rd. Does that have any kind of significance to you,
13 March the 3rd?

14 A Of this year?

15 Q Yes.

16 A Well, that was certainly around the time when I was
17 trying to see if we could stop a default judgment, and I
18 may have been texting with him. That probably was the
19 last time I would have had cause to talk with him about
20 redistricting matters.

21 Q So your best recollection is you wouldn't have texts
22 with Mr. Grose after around March of this year?

23 A I did -- On the 15th of November of this year I did
24 text him and said, "Hey, it's the one-year anniversary of
25 all of this, and thanks for your hard work."

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1 Q Do you think you had any other texts with him from
2 March 3rd until now other than the one you just mentioned?

3 A I don't -- I don't think so.

4 Q Now I'm going to show you what I've marked as
5 Exhibit 2, and I'll put it in the chat.

6 (Graves Exhibit No. 2 introduced.)

7 Q And I'll just try to, you know, for your benefit and
8 everybody else's try to move a little quicker on these
9 things just to -- But I just want to make sure. You
10 should have in front of you the response that the lawyers
11 provided to the first subpoena, the April 21 subpoena. I
12 can show you the date here.

13 So this is in May, less than a month after the
14 subpoena was served. Do you see that, sir?

15 A I see the date of May 5th on the document.

16 Q And my only question is did you look at this draft
17 response to the subpoena before it went out?

18 A I can't recall if I did.

19 Q All right. And I'll show you what I marked as
20 Exhibit 3. I'll put it in the chat.

21 (Graves Exhibit No. 3 introduced.)

22 Q All right. I'm showing you on the screen a second
23 subpoena that was served in December, December 9th.

24 Do you see this? I'm sorry.

25 A Yeah.

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1 Q It was sent -- The performance day was December 9th,
2 but it was sent on November 23rd.

3 A It looks like these are still fillable forms.

4 Q Did you when you received --

5 Do you recall receiving this?

6 A No. It looks like it's still got forms that you can
7 kind of type things in.

8 Q You don't recall the subpoena at all and the
9 request? Here's the request.

10 A I'm sorry. You asked if I saw this document before.
11 I don't think I've seen one that has a fillable form.

12 Q Okay. On this page where there's no fillable areas
13 do you recall seeing this document? I'm on page 4.

14 A Could you scroll down?

15 Q Sure.

16 A Could you scroll down for a while?

17 Q Tell me when to stop.

18 A Okay. It looks like instructions here. Okay.

19 This list looks -- looks familiar to me. I
20 didn't -- We kind of just scrolled through most of the
21 document, so I'm not -- You know, I didn't look at every
22 single word, but this list in particular here looks --
23 looks familiar to me.

24 Q All right. Did this -- Did this subpoena trigger
25 you locating any additional documents that hadn't been

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1 produced in the Open Records case or the earlier subpoena?

2 A Yes.

3 Q And have you provided all those to your counsel?

4 A Yes.

5 Q And do you think at this point that you have any
6 more records related to your redistricting work that
7 aren't attorney-client privileged that you haven't turned
8 over?

9 A There might be. There were -- My only hesitation
10 here is there were various dates in particular on some
11 things. I can't remember like, for example, if there
12 were -- in the Public Records Act requests if there were
13 things from January or February of 2021, something like
14 that.

15 So that's my only hesitation in answering that with
16 a full-throated yes is there may have been some time
17 related -- you know, some date-related requests that might
18 not have captured everything I was able to release with
19 respect to redistricting.

20 Q So but at least with respect to the time stated in
21 the subpoena, it's your belief today you've turned over
22 everything responsive?

23 A In this subpoena right here?

24 Q Yes.

25 A I -- I think so. I haven't seen the actual

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1 production itself; but yeah, I responded to this subpoena
2 by searching for and providing to my counsel documents.

3 Q Okay. Well, I'll put in here Exhibit 4, which I put
4 in the chat.

5 (Graves Exhibit no. 4 introduced.)

6 Q You should have Exhibit 4 on the screen, which is
7 the response to this latest subpoena. Let me know if you
8 need me to stop. I was going to take you down to the
9 date. Do you see this is dated December 7th of this year?
10 Did you see this response to the subpoena before it
11 went out?

12 A Yeah. We just -- We scrolled through it pretty --
13 pretty fast, but the -- I'm assuming that it's the
14 response that you were provided, then I saw this response
15 before it was sent.

16 Q All right. I'm going to show you what I've marked
17 as Exhibit 6 to your deposition. I've placed it in the
18 chat.

19 (Graves Exhibit No. 6 introduced.)

20 Q All right. I'd like to show you this email, and to
21 be fair I'll start at the bottom and give you a chance to
22 read the whole thing. Okay?

23 A Okay. Sounds good.

24 Q Let me know when to scroll.

25 A You can scroll up. Okay. Yes.

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1 Q All right. You've testified earlier about some
2 communications you had around March of this year where you
3 were concerned about a default judgment, and you were
4 reaching out to some lawyers.

5 Is that what Exhibit 6 is related to, or are these
6 communications related to something else?

7 A Yes, this communication here was related to that
8 issue.

9 Q All right. So it looks like based on this
10 communication that it was the case that Mr. Kincaid might
11 have been the one that gave you the names of some folks to
12 talk to with respect to this effort?

13 A From this communication? No.

14 MR. HUGHES: Object to form.

15 Q (By Mr. Dunn) All right. Well, it was a bad
16 question, so let me ask it this way.

17 If you look at the last sentence of the very first
18 email in the chain you reference the Fair Lines America
19 Foundation, which I believe can serve as a financing
20 vehicle for this work.

21 Do you see that?

22 A I do.

23 Q So was it your understanding that Mr. Kincaid had a
24 connection with Fair Lines America that could help fund
25 the litigation work here?

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1 A I thought that there was a prospect that that might
2 be the case.

3 Q Okay. And in or around the sending of this email on
4 March 4, 2022 at 7:09 a.m. did you have any conversations
5 with any of the people on the email?

6 A Yes.

7 Q Who is it that you talked to?

8 A I talked to Mr. Maguire.

9 Q Did you talk to anyone else on there?

10 A I think I talked to Mr. Kincaid.

11 Q And what did Mr. Kincaid tell you? What did you and
12 he talk about that day?

13 A I laid out the situation, that we were facing a
14 default judgment in a Section 2 Voting Rights Act case,
15 and that we were having problems getting the state to
16 defend the map that it adopted, and that I was trying to
17 look for ways to stop a default judgment and then maybe,
18 if possible, to defend the map itself.

19 Q So why were you connecting Adam with your personal
20 lawyers?

21 A I don't know if I'd call Mr. Maguire my personal
22 lawyer.

23 Q You wouldn't describe Rob Maguire as your personal
24 counsel?

25 A Well, he was representing me, but I -- When I think

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1 of personal counsel I think of a family matter, family law
2 matter or something like that.

3 Q Oh, excuse me. Why were you connecting Mr. Kincaid
4 with your personal attorney?

5 A I don't -- I guess maybe we'll use different terms
6 there. I was connecting Mr. Kincaid with Mr. Maguire -- I
7 mean, that's the easiest way to do it -- because it was --
8 Everything was moving really quickly, and it wasn't clear
9 to me who might serve as a lawyer or as a party, or what
10 that party might look like, or who might pay for all of
11 this.

12 Q Well, was it your understanding then that
13 Mr. Kincaid or Fair Lines or somebody was going to provide
14 funding for representation for you or representation for
15 someone else?

16 A I really wasn't sure at that point. Again, it was
17 all really unclear at this point. It was all happening
18 very quickly.

19 We had an upcoming hearing deadline where there was
20 the prospect of a default judgment, and I really wanted to
21 stop that from happening; but there were a lot of thorny
22 procedural issues to work through.

23 Q Were you having any discussion with Mr. Ybarra
24 around this time period?

25 A No.

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1 Q Other than the email exchange that you see here did
2 you ever get any followup from this from any source?

3 A Followup from this email?

4 Q Yes. Anybody call you and tell you what happened or
5 what they were planning here?

6 A I think so.

7 Q What do you recall about that?

8 A I don't remember who it might have been in
9 conversation with, but I remember learning that one of the
10 lawyers who were involved here were planning on filing an
11 Equal Protection case.

12 Q Was it your view that there was a meritorious Equal
13 Protection claim?

14 MR. MILLSTEIN: Objection to the extent it
15 calls for a legal conclusion.

16 MR. STOKESBARY: Join the objection.

17 A I thought that there were serious risks of -- that a
18 court might find an Equal Protection violation.

19 Q (By Mr. Dunn) Did you at any point participate in a
20 call with one or a collection of these lawyers and sort of
21 lay out what you thought could be the legal issues?

22 A Yes.

23 Q When did that occur, around this email exchange?

24 A I think it was around that time, that's right.

25 Q What is it that you told them?

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1 A Is it okay if I exclude any conversations directly
2 with Mr. Maguire?

3 Q If they're just you and Mr. Maguire, but if they're
4 you and Mr. Maguire and these others, then no.

5 A Yeah, I don't -- I don't think I had -- I can't
6 recall a phone conversation where Mr. Maguire was on with
7 any of the others who might have been included here.

8 I think I did have a call with Mr. Kincaid and maybe
9 some people from the Republican State Leadership Council
10 where I kind of talked through what was -- what was going
11 on and to see if there was anything we could do.

12 Q Do you recall who at the State Leadership Council
13 participated?

14 A No, I'm sorry. I don't remember names from that
15 call.

16 Q Do you know why it is that these folks would be
17 interested in bringing an Equal Protection claim against
18 the map?

19 A I mean, it's -- It was a viable, you know, claim
20 that you could make. I -- I didn't want that to happen.
21 My goal was to defend the maps, but I knew that there was
22 the prospect of a claim like that.

23 Q Well, was this -- Were these persons dissatisfied
24 with the Republican performance of the map?

25 MR. STOKESBARY: Objection to form.

1 Objection, calls for speculation.

2 A Yeah, I don't -- I don't -- Not that I know of.

3 Q (By Mr. Dunn) Did anybody express to you why the
4 National Republican interests would be interested in
5 challenging the Washington state legislative map?

6 A No.

7 Q Now, you said that you had a call at least at one
8 point and, you know, gave them the background information.

9 What information did you give them about the map
10 that might facilitate a challenge to it?

11 MR. STOKESBARY: Objection as to form.

12 A I can't remember if I flagged it as an issue. I
13 mean, obviously it was -- It was out there. You saw the
14 Davis Wright Tremaine memo that suggested there was the
15 prospect of an Equal Protection violation.

16 So it was an issue that was out there. I can't
17 remember if I brought that up specifically. I mean, my
18 main goal there was to stop the prospect of a default
19 judgment and, if possible, to see if we could get
20 somebody -- anybody -- to defend the maps themselves.

21 Q (By Mr. Dunn) Did you at any point in time describe
22 to these folks like what had happened at the Commission
23 or, you know, communications you had in negotiating with
24 the map or the particular lines in the 15th Legislative
25 District?

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1 A No.

2 Q Did you ever have a conversation with an Adam Foltz?

3 A No.

4 Q Do you know who that is?

5 A I don't know who that is.

6 Q Was there any reason that you didn't intervene in
7 the case?

8 MR. STOKESBARY: Objection as to form, and
9 objection to the extent it calls for a legal conclusion.

10 MR. HUGHES: I'm also going to object to
11 the extent it intrudes on attorney-client privilege.

12 MR. STOKESBARY: I join --

13 MR. MILLSTEIN: And that's what my
14 objection was going to be.

15 MR. STOKESBARY: I join those objections as
16 well.

17 Q (By Mr. Dunn) If you can't answer without revealing
18 attorney-client communications, just tell me that.

19 A There was the prospect that if I did that I would
20 end up representing myself or needing to raise private
21 funds or find a pro bono lawyer to represent me in that
22 case, and that would be a tough prospect to face.

23 Q I'm going to show you what's marked as Exhibit 7,
24 and I'll also place it in the chat.

25 (Graves Exhibit No. 7 introduced.)

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1 Q I want to show you on the screen what appear to be
2 some slides from -- This is what Dr. Barreto created in
3 October 19, 2021. Do you see that, sir?

4 A I see the first line here, yes.

5 Q And you remember we talked about it. We talked
6 about this earlier in your testimony about these slides
7 and their release.

8 Do you recall that generally?

9 A It looks like this is the presentation, the slide
10 deck that I saw.

11 Q And that's all I wanted to confirm. I'm happy to
12 show you any more pages or slides of it. I just want to
13 make sure this is the one you looked at.

14 A Yeah. I'll just note for the record, you know, we
15 haven't looked at every single one or in detail; but these
16 are familiar slides to me, and it looks like the report
17 that I saw.

18 Q Okay. All right. I placed in the chat Exhibit 7
19 [sic]. I placed it on your screen here.

20 (Graves Exhibit No. 8 introduced.)

21 Q All right. You should have in front of you a
22 memorandum dated November 21, 2021 from Ali O'Neil to the
23 Senate Majority Leader, Andy Billig. Do you see that?

24 A I see it here on the screen, yes.

25 Q Have you ever seen this before now?

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1 A We're looking at the first page, but at least from
2 the first page here I've seen a document like this.

3 Q Here, I'll go through it. You let me know if I'm
4 going too fast.

5 THE REPORTER: Also, this would be
6 Exhibit 8.

7 MR. DUNN: Of course it would. Of course I
8 would have messed it up already before I even got to 10.
9 I'll renumber this as Exhibit 8.

10 Q I won't ask you anything about it specifically
11 without showing you the part.

12 A Okay.

13 Q So all I want to confirm --

14 A Yeah, it looks -- It looks familiar and like a
15 document I've seen before.

16 Q Okay. Ms. O'Neil describes this in the document and
17 separately in testimony as a timeline of notes that she
18 took down and recorded.

19 Do you understand that generally?

20 A I think that --

21 MR. HUGHES: Object to form.

22 A Again, I don't know what her -- Sorry. I don't know
23 what her specific goal was, but that's how I read it when
24 I read it.

25 Q (By Mr. Dunn) Okay. Have you at any point in

1 time -- Understanding you haven't done it here today, but
2 have you at any point in time gone through this document
3 sort of line by line?

4 A I've read all of it.

5 Q Okay. Did you do that about the time it came out or
6 some other time?

7 A I think it was around the time that it was released
8 publicly.

9 Q And have you ever prepared a similar document, a
10 document on your own?

11 A No, not a timeline like this. No.

12 Q Have you asked Mr. Grose to do so?

13 A No.

14 Q Have you asked anybody else that worked at the
15 Commission to prepare such a timeline?

16 A No, I have not.

17 Q In your review of this -- I understand you haven't
18 looked at it today. If you don't remember, you don't
19 remember; but is there anything that you recall from your
20 review of it that you just go, "That's not true. I knew
21 that that was wrong the first time I read it."

22 A I haven't read it in about a year. I think my
23 general impression reading it was -- I mean, I met
24 Ms. O'Neil, you know, a week before November 15th, and she
25 wasn't involved -- I didn't talk to her almost at all

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1 during this process, so, you know -- And she wasn't
2 somebody who I interacted much with.

3 Q Now, I appreciate that; and as I mentioned, though,
4 this is my one time to talk to you. So if it's going to
5 be your testimony at trial, "I think Ms. O'Neil is wrong
6 about her timeline," this is my one chance to find out.

7 So is that -- Do you think that's your opinion?

8 A Again, it's been a year since I read it. If you
9 want we can go through it if you'd like, and I can say
10 what I agree and disagree with; but it's been a while
11 since I've looked at it.

12 Q I'll tell you what. Let's take a break. You can
13 have it there and go through it. Take any notes that you
14 want, and let me know when you want to come back from the
15 break.

16 THE WITNESS: Okay.

17 MR. MILLSTEIN: Do you want to come back in
18 five minutes?

19 MR. DUNN: Whatever time you need.

20 MR. MILLSTEIN: Okay. As long as you're
21 around. I just didn't want people to disappear for 15
22 minutes.

23 MR. DUNN: Yeah.

24 MR. MILLSTEIN: Okay.

25 THE VIDEOGRAPHER: Okay. Are we going off

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1 record?

2 MR. DUNN: Sure.

3 THE VIDEOGRAPHER: Going off record, end of
4 Media 3. The time is 2:43.

5 (Break 2:43 p.m. to 2:52 p.m.)

6 THE VIDEOGRAPHER: Back on the record, here
7 begins Media 4. The time is 2:52.

8 Q (By Mr. Dunn) All right, Mr. Graves, have you had a
9 chance to look at Exhibit 8?

10 A Yes, I have.

11 Q All right. Is there anything in it in your review
12 that sticks out to you as something your testimony is it's
13 false or not accurate?

14 A Much of the testimony in here is from Ms. O'Neil's
15 point of view, and so I don't know what she was hearing or
16 what she -- or who she was talking to.

17 The biggest thing that jumped out to me was the
18 suggestion that the agreement that Commissioner Sims and I
19 had reached was only or strictly related to political
20 metrics, and I wouldn't characterize it that way.

21 Q Anything else that stuck out to you as being false
22 or incorrect?

23 A I mean, I don't remember a lot of this stuff, and it
24 seemed like there were at least suggestions in here that
25 more than two voting commissioners were together at one

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1 particular time before our meeting on the 15th; and I
2 don't -- I can't speak for other commissioners, but I
3 tried to be really careful that day and throughout the
4 process to only talk with more than two voting
5 commissioners if we were in a public meeting.

6 Q Anything else that you saw that you recall
7 incorrectly?

8 A And I don't really remember Ms. O'Neil being that
9 present when Ms. Davis and Mr. Grose were drawing the
10 legislative map in the morning of the 16th, but I was also
11 kind of hunched over at the computer with Commissioner
12 Sims at that time, so it's possible. But I just don't --
13 I don't remember her being around much during that time.

14 Q Anything else that you question in here?

15 A Those are the big -- those are the big things that
16 stand out to me.

17 Q Okay. Just for our record, because I mauled it up
18 at the beginning, Exhibit 8 that we've been discussing is
19 a memorandum from Ali O'Neil to the Senate Majority Leader
20 Andy Billig dated November 21, 2021.

21 Have I described that accurately, Mr. Graves?

22 A That's what the, you know, the header of the
23 document --

24 Q All right.

25 A -- describes that.

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1 Q All right. I'll show you now what's marked as --

2 Oh, wait. Hold on. I have to clear my chat.

3 All right. I'll show you what's marked as

4 Exhibit 9. I placed it in the chat.

5 (Graves Exhibit No. 9 introduced.)

6 Q All right. Sir, you should have in front of you
7 what I've marked as Exhibit 9. It's an email chain dated
8 roughly November 11, 2021. Can you see that?

9 A Yeah. Yes, I can.

10 Q Is it helpful if I do this?

11 A Yes, that helps a lot.

12 Q Okay. Sorry about that. All right. I'm going to
13 let you review here at the bottom. Tell me when to scroll
14 down.

15 A Can you -- Okay. Is this the -- This is the
16 initial -- Yeah, this is not a re -- Okay. You can scroll
17 down. You can scroll down.

18 Okay. Yes.

19 Q All right. You've read the first email at the
20 bottom, the one that's at 10:48 a.m. And there's one
21 other on here that's at 11:01 a.m.; is that right?

22 A That's what it looks like, yeah.

23 Q Take a look at that one. Let me know when you're
24 finished.

25 A Yes, I've read it.

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1 Q Okay. Is this email -- and this being the very
2 first email in the chain at the bottom -- do you think
3 this is kind of the email exchange about the agreement
4 that you testified about earlier today?

5 A It looks like it's related to that, or I guess the
6 way to put it, this was certainly part of our negotiations
7 that led to the agreement.

8 Q Okay. And ultimately it results in Mr. Grose
9 sending you and Ms. Sims a new map proposal in an EZIP
10 file.

11 Do you see that?

12 A Yes, I do see that.

13 Q Osta I assume is Osta Davis. Who is D-O-M?

14 A Dominique Meyers.

15 Q Okay. Who is that?

16 A She works for the House Democratic Caucus.

17 Q And do you know why she was included on this?

18 ***DESIGNATED CONFIDENTIAL TESTIMONY***

19 A She was involved in a lot of this stuff. Ms. Davis
20 contracted a rare form of cancer over the course of the
21 year and so had to be out for some time, and so Ms. Meyers
22 occasionally filled in for her.

23 Q Do you think that's what was happening around
24 November 11th, 2021?

25 A I think at that point we were just regularly

1 including both Ms. Meyers and Ms. Davis on communications
2 just in case something came up, we wouldn't lose the
3 thread.

4 ***END OF CONFIDENTIAL TESTIMONY***

5 Q I see. So is it your belief that there were
6 additional exchanged emails between you and Ms. Sims after
7 this exchange, continuing to work on the agreement that
8 resulted in the legislative map in the 15th Legislative
9 District?

10 A I believe there were.

11 Q And do you think that there's, you know, an email
12 exchange that says, "All right. We agree" sort of thing?

13 A No, I don't think so.

14 Q I mean, you know, as a lawyer you, of course,
15 learned, you know, offer, acceptance, provisions of a
16 contract. I'm not suggesting here that you were talking
17 about contracts, but was there an offer that somebody
18 responded to that said, "Okay, I can agree to that with
19 this modification," or, "I can agree to that," or was it
20 just --

21 A For our final --

22 Q Yeah. Sorry.

23 A For the final --

24 Q My apologies. Go ahead.

25 A No. Sorry. Are you asking for the final agreement

1 on the legislative map as a whole?

2 Q Yes.

3 A Yes, the -- We negotiated and reached at least a
4 rough agreement on a lot of the parts of the map; and in
5 the final few days we had some contentious final things we
6 needed to negotiate, and we reached agreement on those
7 things.

8 Q And it's your recollection that somewhere there's an
9 email that lays out those metrics that you described for
10 us in your earlier testimony that was part of your
11 agreement?

12 A Some of them, yes, I think so, although I don't know
13 if all of the final stuff was in -- contained neatly in
14 one email. It was a chaotic time.

15 Q Okay. You think that some of the parameters or
16 metrics, I think was the term you used, some of the
17 metrics you agreed on you might have agreed on orally
18 outside of the email communications?

19 A Maybe, yes.

20 Q Okay. At one point here, going to the first email
21 in the chain, in the second paragraph you talk about this
22 is a huge shift, and you see that you're referring to the
23 14th here?

24 A Yeah.

25 Q Does this refresh your recollection that there was a

1 point in time where the majority Hispanic CVAP, to use the
2 term here in the email, area around Yakima was being
3 included in a district numbered 14?

4 A Yeah, it does. I genuinely didn't really remember
5 this particular email or the fact that I had the 14th in
6 here; but, you know, the email suggests that much.

7 Q All right. And is it still the case, though, that
8 you can't recall there being any reason that it changed
9 from 14 to 15 in the final plan?

10 A I genuinely don't. Again, you know, I -- We didn't
11 talk about numbers -- sorry, the numbering of districts
12 very much, if at all, so I -- No, I don't think we had a
13 discussion along those lines.

14 Q All right. In the beginning of the second paragraph
15 you have, "As we've discussed, this is a huge shift, with
16 many resulting challenges," and it goes on.

17 Do you see that, sir?

18 A I do.

19 Q What is the "this" referring to? This is -- That is
20 a huge shift. What is that?

21 A The word that?

22 Q Yeah. What is it referring to that is huge?

23 A Oh, it was -- For most of the map -- As a practical
24 matter when you're negotiating you kind of start with the
25 lines as they currently are, and then you make

1 modifications around them to get them to meet the
2 population requirements.

3 And so when we all proposed, you know,
4 legislative -- or proposed maps, things like that, you --
5 You know, you try not to move too many things too crazy
6 around to upset the way -- you know, the people who
7 currently make up those districts; but with the way we
8 were talking about a district in Yakima, it required
9 substantial line and population changes to just about
10 every district in eastern Washington. That was a real --
11 a real big shift.

12 Q Okay. And that shift that you were describing in
13 this email, did that largely maintain in the final adopted
14 map?

15 A There were substantial population changes in eastern
16 Washington as a result of the 15th that we adopted.

17 Q And so here you say, "My biggest question to you
18 then: What do you think a fair exchange is for this
19 14th?" Do you see that?

20 A I do.

21 Q And you also say here in the last paragraph, "Again,
22 looking forward to talking at 1:00, and I will be
23 especially interested to hear from you what you think a
24 fair price is for this 14th." Do you see that?

25 A I do.

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1 Q Okay. What did you mean by those statements?

2 A So there's the substantial population changes, all
3 of which affected almost exclusively Republican
4 legislators, the brunt of which would fall on me.

5 And then the district itself as we were talking
6 about it was going to be a district that if you use the
7 2020 treasurer's race was solidly Republican and turning
8 it closer into a swing district, and making a big shift
9 like that was a big challenge.

10 Q And was that big shift ultimately reflected in the
11 final map?

12 A I think it's fair to say the 15th is a big shift
13 from where it was.

14 Q What price was paid for that shift?

15 A Nothing.

16 MR. STOKESBARY: Objection as to form.

17 A Nothing.

18 Q (By Mr. Dunn) Did you at your discussion
19 at 1:00 o'clock, did Ms. Sims propose a price to pay?

20 A I can't recall if it was this conversation in
21 particular, but her position was, "I'm not going to
22 exchange anything for a district like that."

23 Q Did she -- Do you recall her saying why?

24 A You know, she -- We had disputes, of course, about
25 what Section 2 or the Equal Protection clause allowed or

1 required, and her view was that Section 2 required
2 something like the 15th that we drew. And so I think she
3 took the position that if the law required it, it wasn't
4 something to be negotiated about.

5 Q And so is it your view that the district as it
6 exists in Yakima, the 15th Legislative District, is drawn
7 that way to comply with Ms. Sims' view of what the VRA
8 required?

9 MR. MILLSTEIN: Objection to form.

10 MR. STOKESBARY: Join the objection.

11 A With the, you know, caveat that she can explain her
12 views on how she views the 15th, as I understood it I
13 think she believed that the 15th District that we drew
14 complied with federal law.

15 Q (By Mr. Dunn) All right. Other than the 15th/14th
16 Districts there in Yakima, was there any other part of the
17 state legislative map that was as much of a sticking
18 point?

19 A Oh, yes.

20 Q And which areas were those?

21 A Toward the end we were -- you know, the final kind
22 of real sticking points that we ran into were the 42nd
23 District, the 10th District, 26th, 47th, the 44th, the
24 28th, if I recall all those correctly.

25 Q Do you recall having a conversation with

1 Commissioner Walkinshaw about his opinions about what the
2 Voting Rights Act required with respect to the 14th or
3 15th?

4 A Yes.

5 Q When did that occur, if you recall?

6 A I think the morning of the 15th.

7 Q What do you recall about that discussion?

8 A We talked generally about the process itself, and I
9 tried to be -- you know, tried to steer away from any
10 particulars of the map that Commissioner Sims and I were
11 negotiating because I didn't want to run into a serial
12 meeting.

13 But we talked generally about coming into the
14 process and whether he was interested in continuing and
15 seeing if we could reach an agreement by the end of that
16 day.

17 Q Did you have any discussion with him about the
18 specific -- what he viewed the Voting Rights Act required
19 about specific metrics for the 15th District?

20 A Yes.

21 Q What do you recall he was saying was required?

22 A If I recall correctly, I think his position was
23 somewhat similar to Commissioner Sims, that he thought
24 that Section 2 required a majority Hispanic district by
25 eligible voters and that it had to perform a certain way

1 under recent election results.

2 Q And which way did he say it needed to perform?

3 A He said -- His position that morning was that it had
4 to be a district that performed well for Democrats.

5 Q Do you recall there being any discussion with
6 Commissioner Walkinshaw about how, if the district were
7 made 50 percent majority citizen voting age population
8 Latino or Hispanic, that that would help defeat a later
9 lawsuit?

10 A Sorry, defeat what did you say? How did that
11 question end?

12 Q Defeat a lawsuit that might be filed against the
13 plan.

14 A No, we genuinely -- I mean, we kind of -- at least I
15 kind of knew that lawsuits were likely, maybe even
16 inevitable; but I, at least -- and I got the sense from my
17 fellow commissioners, too, that we really trying our best
18 to -- whatever the lawsuits would be, to take into account
19 the information that we had about what federal law
20 required and to see if we could reach an agreement that
21 met those requirements.

22 Q Do you recall a discussion with anyone about if we
23 make it just barely 50 percent citizen voting age
24 population Latino or Hispanic, but it still performs for
25 Republicans, that will help us defeat a lawsuit later, or

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1 help us win a lawsuit?

2 A No, we didn't talk much about the prospect of
3 lawsuits.

4 Q You don't recall that strategy ever being discussed?

5 A No. We didn't talk much about a lawsuit.

6 MR. HUGHES: Object to form.

7 A Yeah, sorry. We didn't talk much about lawsuits.
8 We talked about compliance.

9 MR. DUNN: All right. I know we took some
10 time off the record, but I didn't leave the screen. So I
11 need to go and take a quick restroom break. But I'm
12 pretty close to wrapped up. I'm going to look at a few
13 exhibits, and I'll be back in a sec.

14 MR. HUGHES: Chad, before we go off the
15 record, can I just put something on the record real quick?

16 MR. DUNN: Sure.

17 MR. HUGHES: So we've been pretty careful
18 throughout these depositions to not -- and know this is no
19 criticism of you, Commissioner Graves -- but to not say
20 why Ms. Davis had to take leave.

21 THE WITNESS: Oh.

22 MR. HUGHES: So I just want to put on the
23 record that it's my view, at least -- and I'll represent
24 the State of Washington's view -- that that answer should
25 be designated as confidential. I know we don't have a

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1 protective order in place, but does that --

2 Does that work for you to designate it --

3 MR. MILLSTEIN: No objection from me.

4 MR. STOKESBARY: No objection from me.

5 MR. DUNN: No objection from me.

6 MR. MILLSTEIN: Andrew, you're cutting out.

7 THE REPORTER: You're cutting out. I can't
8 hear you.

9 (Internet audio difficulties.)

10 MR. HUGHES: Confidential, and we can deal
11 with that later on?

12 THE REPORTER: Could you repeat that?

13 MR. MILLSTEIN: I think he said we'll deal
14 with it later on.

15 MR. HUGHES: Okay. I think what I said
16 was -- Am I back now?

17 MR. MILLSTEIN: Yes, you are.

18 MR. HUGHES: So I think we've all agreed
19 now on the record we can designate that answer as
20 confidential, and we can deal with that later on if
21 there's any issue here with filing parts of this
22 transcript.

23 MR. DUNN: I agree --

24 MR. HUGHES: Does that work for folks?

25 MR. DUNN: I agree we can endeavor to make

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1 it confidential. I don't disagree with that at all. I'm
2 not hedging, but I just -- You know, somebody might
3 inadvertently file this thing later and have it in it; but
4 I agree the goal is to remember to redact the thing, and I
5 agree with that.

6 MR. MILLSTEIN: Is there any way -- I'm
7 assuming no party would be -- There's no way we could
8 reach an agreement of just revising illness or something
9 to that effect at this point; but if you want to do the
10 confidentiality, that's fine. I think that's the cleanest
11 way, frankly, so we'll just go that route.

12 MR. STOKESBARY: Just -- I keep trying to
13 get in for the record, but everybody is talking over
14 everybody. For the record intervenors and cross-claimants
15 do not object to that and would totally support that
16 effort.

17 MR. MILLSTEIN: Okay.

18 MR. HUGHES: All right. Thanks, guys.

19 MR. DUNN: I'm be back at 20 after the
20 hour.

21 THE VIDEOGRAPHER: Going off record, the
22 time is 3:11.

23 (Break 3:11 p.m. to 3:19 p.m.)

24 THE VIDEOGRAPHER: Back on the record, the
25 time is 3:19.

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1 Q (By Mr. Dunn) All right, Mr. Graves, I just have a
2 few more exhibits, and we'll wrap up for everybody's
3 planning purposes I'd guess in about 30 minutes from now.

4 I'm going to show you what I've marked as
5 Exhibit 10, which I put in the chat and I'm now sharing on
6 the screen.

7 (Graves Exhibit No. 10 introduced.)

8 Q I'm going to thumb through this. Can you see it,
9 Mr. Graves, where it's got the Attorney General's seal of
10 Washington?

11 A I can see that seal, yes, but I can't see the bottom
12 part of that. Oh, there it goes. Okay. Yes.

13 Q I'm just going to thumb through this, and I'll tell
14 you while I go through it my question is going to be does
15 this look like the slide show presentation you were given
16 by the Washington Attorney General's Office at the sort of
17 beginning of the Redistricting Commission's work about the
18 Voting Rights Act?

19 A The name Brian Sutherland that I saw on the second
20 slide, that rang the bell for me that that was who
21 provided us the overview here. And I apologize that I
22 haven't looked at this particular document in a while.
23 This looks generally familiar and may be a document that
24 we -- that we took a look and talked through.

25 (Pause in proceedings to review document.)

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1 Q All right. I believe I've shown you the whole
2 thing. Do you agree?

3 A Do I agree with what?

4 Q That I've shown you the whole thing.

5 A It looks like it, yeah.

6 Q Yep. Okay. Does this look like the presentation
7 that you were given as a member of the Redistricting
8 Commission back when it started to organize its work?

9 A I think so. You know, we scrolled through it pretty
10 quickly there, but it looks -- it looks like the document
11 that we talked through.

12 Q Okay. All right. Now I'm going to show you what
13 has been marked as Exhibit 11, which is in the chat.

14 (Graves Exhibit No. 11 introduced.)

15 Q You should have it on your screen, a Davis Wright
16 and Tremaine memorandum dated November 4, 2021.

17 Do you see that?

18 A Not yet. There it is. Yes, I see that.

19 Q Okay. Is this the memorandum that we talked about
20 in your earlier testimony was the product of Mr. Maguire's
21 work?

22 A The heading makes me think that it is, but I could
23 be -- Take a look through it.

24 Yes, this is -- Based on the introduction here this
25 looks like the Davis Wright memo.

1 Q All right. And this is the only memo that you
2 recall them producing as it relates to the work you asked
3 them to do?

4 A Yeah. Again, we only looked at the introduction
5 there, but assuming it's the one that was released
6 publicly, then yes, it was the only one.

7 Q All right. And then one last exhibit here,
8 Exhibit 12. It's in the chat.

9 (Graves Exhibit No. 12 introduced.)

10 Q All right. You should have on your screen an email
11 dated October 12, 2021 from Mr. Grose to you with a
12 subject lane 2019 ACS Demo, D-E-M-O, comparisons.

13 Do you see that, sir?

14 A I do see the email, yes.

15 Q All right. Do you recall this email?

16 A Can you scroll down a little bit?

17 Yes, I remember an email like this.

18 Q I'll go down to the end so you can read the whole
19 thing.

20 A Yes, I see that.

21 Q Do you -- Do you know, you know, what it is that
22 Mr. Grose was communicating to you here, generally?

23 A Yes.

24 Q What is that?

25 A Again, we mentioned in the past that we had census

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1 numbers from the 2020 census, and then we also had data
2 from the American Community Survey that was conducted in
3 2019. And they had taken slightly different approaches
4 when it came to a respondent's race, and he was
5 highlighting some of the differences between those data.

6 Q Do you recall having a discussion with him or anyone
7 about White Hispanics?

8 A I think he and I talked about that, talked about
9 that issue, yes.

10 Q What are White Hispanics as the term is used, or at
11 least as you use the term?

12 A I use the term to describe somebody who by race is
13 White but who by ethnicity is Hispanic.

14 Q And what, you know, sort of relevance did that have
15 to your redistricting work, if any?

16 A Well, it's a -- It's an interesting issue because
17 they are different things, race and ethnicity. They're
18 often treated similarly in various contexts, but for the
19 work that we were trying to do we needed to be really
20 specific on the difference and what it might mean.

21 Q Did anybody tell you that? And again, if you have
22 to reveal legal advice, tell me that; but did you get that
23 opinion from anyplace that can recall?

24 A What opinion?

25 Q The opinion that you needed to treat White Hispanic

1 people differently from people identified as Latino.

2 A Oh, I wouldn't -- I wouldn't say that I was of the
3 opinion that we needed to treat them differently. I was
4 of the opinion that we needed to be very precise when we
5 used all these terms.

6 Q Okay. Well, you just used the phrase treat
7 differently. Who is it you were talking about treating
8 differently?

9 A If I did I'm sorry, that was -- That was a mistake.
10 I was trying to convey that I thought it was important to
11 understand and to use precisely the terms that we were
12 talking about.

13 Q Okay. When you see here in this next to the last
14 paragraph Mr. Grose writes, "Which in turn means minority
15 counts are very off," do you see that?

16 A I do see that.

17 Q Do you know what he means by off, as in minorities
18 were overcounted or undercounted, or do you have any
19 notion of what he's communicating there?

20 A He was suggesting that the American Community Survey
21 undercounted racial minorities.

22 Q All right. Just to fill in a couple things here I
23 think that I might have forgotten. Again, going to the
24 March of 2022 discussion that you were having with
25 Mr. Stokesbary and the other, Torchinsky and the other

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1 attorneys, have you -- have you stayed involved in that
2 litigation since March of 2022?

3 A No, I have not.

4 Q Are you briefed about the status of it or
5 participate in preparation for that case at all?

6 A No.

7 Q Okay. We talked about testimony that has come
8 before the Legislature. I mean, excuse me, between --
9 before the Redistricting Commission. You know, we talked
10 but you looked at some of the -- and maybe testimony is
11 too strong a word -- but comments that people put on the
12 redistricting website.

13 Did you take any actual testimony from people?

14 A A substantial amount, yes.

15 Q And this was done through your public meetings?

16 A Yes, that's right.

17 Q Did you ask people to come and/or sort of drive out
18 and come to meetings and give testimony about any
19 particular subject?

20 A I tried to encourage wherever I could members of the
21 public to come testify at our public hearings.

22 Q Did you encourage people to come and say anything in
23 particular?

24 A Not specifically that I recall. Oh, yes, maybe --
25 Oh, actually, so I -- One of my top priorities was to try

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1 to increase the number of competitive districts, districts
2 that would be -- you might think of as swing districts. I
3 put them out publicly; and I may have talked to a couple
4 of people that were considering testifying that I thought
5 it was a really worthwhile goal, and it would be helpful
6 to hear from members of the public who agreed.

7 Q All right. Anything else that you might have
8 encouraged somebody to agree to in their testimony at the
9 panel?

10 A Not specifically that I recall.

11 Q Do you know if any of the other members of the
12 Commission encouraged individuals to come and give
13 testimony to the committee about one subject or another?

14 A I don't know.

15 Q The 15th Legislative District as drawn by your
16 Commission and ultimately is in effect and is being used
17 in election. Would you agree?

18 A The map that we -- that we approved was used in the
19 election last month.

20 Q And did you have any involvement in that election?

21 MR. MILLSTEIN: Objection, vague.

22 MR. HUGHES: Join the objection.

23 MR. STOKESBARY: Join the objections.

24 A I voted.

25 Q (By Mr. Dunn) Well, did you give money to any

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1 candidate in that election?

2 MR. STOKESBARY: Objection as to form.

3 A Yes.

4 Q (By Mr. Dunn) Who did you give money to?

5 A I think I gave money to Jim Ferrell, who was running
6 for the King County Prosecutor's Office.

7 Q Did you give anybody -- any money to any candidate
8 running for election for the 15th District?

9 A No.

10 Q Did you campaign for anybody running for the 15th
11 District?

12 MR. STOKESBARY: Objection as to form.

13 A All three seats that were up were uncontested, and
14 no, I did not.

15 Q (By Mr. Dunn) Did you have anything to do with any
16 of the candidates who decided to seek election there?

17 MR. MILLSTEIN: Objection to form.

18 MR. HUGHES: Join that objection.

19 MR. STOKESBARY: Join the objection.

20 A It might be responsive, one of the then incumbent
21 State Representatives as a result of the 15th was drawn
22 out of that district. He had represented the 15th, and
23 his house was outside the lines after we drew it. So I
24 talked with him about that I was sorry about that.

25 I don't know if that answers -- if that's

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1 responsive, but that's the -- I think the one person in
2 that district I talked to.

3 Q (By Mr. Dunn) Did you help recruit any of the
4 candidates to run in the 15th Legislative District?

5 A No.

6 Q Did you help recruit any of the candidates to run in
7 the 14th Legislative District?

8 A No.

9 MR. DUNN: All right, sir. I think I've
10 covered the topics I came here for today. I appreciate
11 your patience with me and for sticking with us through the
12 materials.

13 And I'm sure the other lawyers are going to have
14 some questions, and I may have some followup questions
15 after that; but for now I'll pass the witness and
16 otherwise reserve for trial.

17 MR. HUGHES: All right. That means it's my
18 turn.

19 E X A M I N A T I O N

20 BY MR. HUGHES:

21 Q Commissioner Graves, I'm Andrew Hughes. I'm an
22 Assistant Attorney General for the State of Washington
23 representing the state here.

24 Do you need or want a break before I launch into it?

25 A No. Let's go.

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1 Q Okay. And as we've seen throughout the course of
2 this deposition, my internet is a little bit on the fritz.

3 So wave your arms frantically if I disappear. Okay?

4 A Will do.

5 Q Excellent.

6 So do you prefer Commissioner Graves, Paul,
7 something different, Mr. Graves?

8 A Call me anything you'd like.

9 Q Okay. I'm going to call you Mr. Graves then.

10 Mr. Graves, when do you recall the issue of a
11 majority Hispanic district in the Yakima Valley first
12 arising for you?

13 A Maybe in August or September of 2021.

14 Q Did something happen in August or September of 2021
15 that tipped you off that this was going to be an issue?

16 A We received the census data in August of 2021, far
17 later than it was supposed to come in. And I think I may
18 have talked with Mr. Grose maybe not about the data, but
19 about a lot of things, and I think it may have been
20 something that came up.

21 Q What do you recall about that conversation?

22 A Not much. You know, we talked about, you know, the
23 fact that, you know, that there were I think discussions
24 similar like in the 2011 Commission about the districts in
25 Yakima and that might be an issue that comes up again; and

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1 but it really was -- It was in the context of a lot of
2 other conversations about the rest of the map.

3 Q Okay. And I am still here, even though I'm off
4 video.

5 What about the release of the census data made you
6 think that you might have to draw a majority Hispanic
7 district in the Yakima Valley?

8 A I wouldn't say that it prompted that thought in
9 particular. It was just that when we had the actual
10 census data that included racial information, it was just
11 one of the topics that we knew we were going to have to
12 work through.

13 Q Okay. So what about -- Let me ask a better
14 question.

15 What about the release of the census data in
16 August of 2021 made you think that this was an issue you
17 were going to have to work through?

18 A I think it was when we started drawing potential
19 districts pretty quickly after receiving that data. And
20 again, they were pretty brief conversations in the context
21 of others, but I think we kind of talked about, you know,
22 there may be ways to draw a district in Yakima that has
23 various racial characteristics.

24 Q Okay. Say more about that. What about drawing a
25 district -- starting to draw districts in Yakima gave you

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1 the idea that the Voting Rights Act Section 2 might be
2 implicated?

3 A I knew that it was, you know, a law that we had to
4 comply with. And, you know, I knew that there had been
5 previous lawsuits related to Yakima County and the City of
6 Yakima on that topic, and probably all that combined into
7 here's the thought that it might be an issue we would have
8 to work through.

9 Q Where you said -- So let me -- Let me back up a
10 little bit.

11 (Internet audio difficulties.)

12 (Court reporter request to repeat.)

13 Q You said you were aware of a VRA case involving the
14 City of Yakima.

15 (Court reporter request to repeat.)

16 Q Commissioner Graves, Mr. Graves, you said you were
17 aware of a VRA case involving the City of Yakima; correct?

18 A Yes. I was aware that there was a Voting Rights Act
19 case that had involved the City of Yakima.

20 Q And what did you know about that case?

21 A Not a lot, just that there were -- It was, I think,
22 a Section 2 case.

23 Q Do you know how it was resolved?

24 A I don't know in particular.

25 Q And I think you at least implied this earlier, you

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1 knew about that case at about the time that it was in
2 ongoing litigation?

3 A I think so. You know, again, just reading the
4 paper, and I think I just had a vague -- you know, a vague
5 awareness that there were -- there was a case coming on.

6 Q And you said earlier you were aware of a Washington
7 Voting Rights Act case involving Yakima County; is that
8 right?

9 A I can't remember if that -- Maybe I didn't know if
10 that one was under the Washington Voting Rights Act or the
11 federal Voting Rights Act, but I was aware that there was
12 a -- in general a Voting Rights Act case in Yakima County.

13 Q And what did you know about that case?

14 A Pretty similar to what I knew about the city case.
15 Not too much, but just that there were allegations related
16 to Voting Rights Act issues.

17 Q Okay. And do you know how that was resolved?

18 A I'm afraid I don't know in particular.

19 Q And you said you were aware of a VRA case involving
20 the City of Pasco; did I remember that correctly?

21 A I don't know that I was aware of that.

22 Q Okay. But you were aware of the two Yakima cases,
23 and my question is did your knowledge of these cases
24 affect your thinking of whether Section 2 of the VRA might
25 be implicated by your work on the Commission?

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1 MR. MILLSTEIN: Objection to the extent it
2 calls for a legal conclusion.

3 A Not -- not much. I was far more focused on the
4 reports and legal analysis that we got related to the 2020
5 numbers and to the legislative maps that we were trying to
6 draw.

7 Q (By Mr. Hughes) I guess I'm trying to understand
8 this sort of August/September time period when you first
9 became cognizant of the notion that the VRA might be
10 implicated with respect to Yakima, the Yakima Valley area.

11 At that point did your knowledge of these two Yakima
12 cases influence your decision at all, your thinking at
13 all?

14 A I don't -- I don't think so.

15 Q You said earlier that you believed there was a good
16 faith argument that LD 15 had to be majority Hispanic by
17 CVAP; correct?

18 A Yes, I thought that there was a good faith argument
19 to that effect.

20 Q And what did you understand to be the basis for that
21 argument?

22 A I understood that there was an argument that
23 Section 2 of the Voting Rights Act, the totality of the
24 circumstances test that it sets forth could have been
25 implicated, and that one remedy to addressing that

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1 circumstance might be a district that would be majority --
2 where the majority of eligible voters would be Hispanic.

3 Q And to just be a little more substance on it, what
4 evidence did you understand to be the basis for the
5 argument that Section 2 of the Voting Rights Act might
6 be --

7 (Internet audio difficulties.)

8 Q -- Hispanic District in the Yakima Valley?

9 THE REPORTER: I'm sorry. You're going
10 to -- I can repeat what I heard, but I didn't hear the end
11 of your question.

12 MR. MILLSTEIN: Andrew, not to jump in, but
13 you may want to just dial in so that your audio doesn't
14 cut in and out.

15 MR. HUGHES: That is a great idea. Could
16 we go off record for a second?

17 MR. STOKESBARY: Yeah, that's fine.

18 THE VIDEOGRAPHER: Okay. Going off record,
19 the time is 3:40.

20 (Discussion off the record.)

21 THE VIDEOGRAPHER: Back on the record, the
22 time is 3:42.

23 Q (By Mr. Hughes) All right, Mr. Graves, before we
24 went off the record I was asking you about this argument
25 that LD 15 was required to be a majority Hispanic district

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1 under Section 2 of the Voting Rights Act, and what I
2 wanted to know is what evidence did you understand to be
3 the basis for the belief among your fellow commissioners,
4 some of your fellow commissioners, that LD 15 was required
5 by Section 2 of the Voting Rights Act to be a majority
6 Hispanic CVAP district?

7 A I understood the primary evidence to be the report
8 from Matt Barreto.

9 Q Anything else?

10 A Not that I could think of right now.

11 Q Okay. So even if you didn't share this belief, did
12 you believe there was reasonable grounds to believe that
13 the VRA required a majority Hispanic CVAP district in the
14 Yakima Valley?

15 MR. MILLSTEIN: And objection to the extent
16 it calls for a legal conclusion.

17 A I certainly thought there was a good faith argument
18 to that effect. I wasn't persuaded by it, but I understood
19 my fellow commissioners to hold that view in good faith.

20 Q (By Mr. Hughes) Okay. And I'm going to ask you a
21 hypothetical question here, and I will pre object that I
22 am calling for a legal conclusion; but I do want to know
23 your understanding of the law.

24 So assuming that the Gingles factors were satisfied
25 with respect to Legislative District 15, was it your

1 understanding that creating a majority Hispanic district
2 would suffice to comply with Section 2 of the VRA?

3 MR. MILLSTEIN: I'm just going to go ahead
4 and get the objection in real quick. Objection, calls for
5 a legal conclusion, and speculation.

6 MR. STOKESBARY: Join the objections.

7 A Even that was murky to me. As I say, law is not
8 only challenging to work through, the remedies are
9 challenging to figure out; and the law itself is also
10 changing as interpreted by courts.

11 So I think it's fair to say that my views at the
12 time were that there was a substantial risk no matter what
13 we did, but that doing what we did, drawing the districts
14 the way we did, would satisfy federal law.

15 Q (By Mr. Hughes) Was it your belief at the time that
16 if Section 2 of the Voting Rights Act were implicated, you
17 would need to draw a district that leaned Democratic?

18 A I did not believe that the law required that.

19 Q And what was your understanding of the law on this
20 point based on?

21 A I don't think Section 2 has a provision saying one
22 party or the other will win.

23 Q You were asked if you were to test the video
24 pretty -- pretty stridently, you were asked about
25 Washington law relating to partisan balance or

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1 proportionality in redistricting.

2 Do you recall that?

3 A Yes.

4 Q And I think we got hung up because you used the
5 phrase that I think you might have ended up regretting. I
6 forget what the phrase was, but I understood you to be
7 talking about partisan balance or proportionality; is that
8 fair?

9 A Was that partisan balance and proportionality? Is
10 that -- You broke up a little bit there.

11 Q All right. I believe Mr. Dunn pressed you on this,
12 and you didn't recall whether Washington law specifically
13 covered partisan balance or proportionality; is that
14 correct?

15 A Yeah. Well, I have since also remembered that there
16 is the -- one of the -- one of the provisions in the law
17 is that maps can't be drawn to favor or disfavor any
18 particular party or candidate or elected official. That
19 probably is also fairly implicated in that whole line of
20 thinking.

21 Q Okay. And you have -- You've beaten me to the punch
22 because I wanted to show you RCW --

23 (Audio drop.)

24 (Court reporter request to repeat.)

25 Q -- 44.05.090.

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1 MR. HUGHES: Can you still hear? I just
2 got a notice that my Zoom quit unexpectedly.

3 MR. MILLSTEIN: We can still hear you; but
4 your screen is stuck saying it started to share the
5 screen, but there's nothing to share.

6 MR. HUGHES: All right. Let's try this
7 again.

8 (Document displayed.)

9 A I can see this.

10 Q (By Mr. Hughes) All right. I'll use that for the
11 exhibits.

12 A And I lost it.

13 MR. HUGHES: Okay. I'm going to send a
14 link in the chat is what I'm going to do, see if this
15 works.

16 Q (By Mr. Hughes) All right. Can everyone pull up
17 this link?

18 A I've pulled it up.

19 Q Okay. Is this the law that you were just referring
20 to?

21 A This -- Just so we -- Because what I'm looking at is
22 the Legislature's -- State Legislature's website, and it's
23 Revised Code of Washington 44.05.090, and the title of it
24 is Redistricting Plan.

25 Yes, this is one of the provisions that is provided

1 for for our Redistricting Commission.

2 Q And do you mind reading for me Subsection 5 of this
3 rule? Of this statute, pardon.

4 A Oh, yes. "The Commission shall exercise its powers
5 to provide fair and effective representation and to
6 encourage electoral competition. The Commission's plan
7 shall not be drawn purposefully to favor or discriminate
8 against any political party or group."

9 Q And was this an important statute for you in
10 construing your work as a redistricting commissioner?

11 A Every statute that related to redistricting was
12 important to me.

13 Q Does this refresh your recollection as to Washington
14 law relating to partisan balance or proportionality in
15 redistricting?

16 A It does.

17 Q Do you recall in your deposition this morning there
18 was some discussion about in the summer of 2021 the
19 Commission was considering hiring a VRA consultant?

20 A I don't remember if it was summer or fall, but it
21 was somewhere in there.

22 Q Okay. Can you remind me why the Commission did not
23 hire a VRA consultant at that point in time?

24 A We faced the challenge of reaching a majority
25 agreement on who such a person might be.

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1 Q Did the Commission elect not to hire a VRA
2 consultant because they didn't care about complying with
3 the Voting Rights Act?

4 A No. I think we all cared a lot.

5 MR. STOKESBARY: Sorry. Late here, but
6 objection as to form.

7 Q (By Mr. Hughes) And the Senate Democratic Caucus
8 ultimately hired Matt Barreto as a VRA consultant;
9 correct?

10 A I understand that to be the case, but I don't know
11 specifically what the payment arrangements were there.

12 Q Fair. And you and Commissioner Fain ultimately
13 hired election lawyers at Davis Wright Tremaine to serve
14 as VRA consultants; correct?

15 A That's a -- yeah, a fair characterization.

16 Q So is it fair to say at the end of the day that all
17 the commissioners -- Oh, and let me back up.

18 Dr. Barreto's report was shared with the other three
19 commissioners aside from Commissioner Walkinshaw, as far
20 as you know?

21 A Yes, it was shared publicly.

22 Q And the Davis Wright memo was shared with the two
23 Democratic commissioners, as far as you know?

24 A Yes.

25 Q So ultimately all the commissioners had the benefit

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1 of two VRA consultants before they agreed on maps?

2 MR. STOKESBARY: Objection as to form.

3 A Yes. We all saw or at least had the ability to see
4 both of those documents before voting on maps.

5 Q (By Mr. Hughes) And about that memo you received
6 from Davis Wright Tremaine, what was the impetus for
7 requesting their legal advice?

8 A The report from Mr. Barreto, I wanted to get a legal
9 opinion on its implications.

10 Q What was your goal in requesting the advice?

11 MR. MILLSTEIN: Objection, vague.

12 A To get a legal opinion on what federal law allowed
13 or required.

14 Q (By Mr. Hughes) Was there a particular outcome or
15 opinion you were hoping for?

16 A No.

17 Q You weren't hoping that they would say you could
18 keep the 15th Republican?

19 A No.

20 Q Was -- In your view was Mr. Maguire your attorney?
21 And let me -- Let me say what I mean by that. There was
22 three attorneys who were on the memo, and it would
23 streamline questioning if I could just ask you about
24 Mr. Maguire; and we assume the other two guys, great guys
25 though they are, were not the folks you were actually

1 dealing with?

2 A I'll use that assumption, too.

3 Q Okay. How did you select Mr. Maguire?

4 MR. STOKESBARY: Objection, asked and
5 answered.

6 A I had known him for some time, and he had been -- I
7 think had provided some advice or analysis to the 2011
8 Commission.

9 Q (By Mr. Hughes) To the Commission or to the
10 Republican commissioners in 2011?

11 A I don't know the -- that specifically.

12 Q Was it significant to you that Mr. Maguire had prior
13 affiliations with the Republican party?

14 A No. I was more concerned with, you know, his
15 experience with Voting Rights Act issues.

16 Q Do you know if he ever litigated the Voting Rights
17 Act?

18 A I don't know if he has.

19 Q Did you believe that Mr. Maguire would reach a
20 different conclusion on VRA compliance than Dr. Barreto?

21 A I can't remember sitting here right now if there was
22 a particular conclusion in Mr. Barreto's report. I just
23 can't remember if there was like a legal, the Commission
24 must do this in the report; but I think it's fair to say
25 that the Davis Wright memoranda takes a different view of

1 what the law allowed or required in Yakima.

2 Q And say more about that. What was your
3 understanding of the conclusions of the Davis Wright memo?

4 A It came to the conclusion that considering race in
5 the Yakima Valley could be a violation of the 14th
6 Amendment to the U.S. Constitution.

7 Q Did it conclude that Section 2 of the Voting Rights
8 Act did not require the creation of a majority-minority
9 district in the Yakima area?

10 A I believe it came to that conclusion as well.

11 Q So I'm going to refer to those two conclusions as
12 the conclusions. I know there are others, but for our
13 purposes that's what I mean. Understood?

14 A Okay. Yeah, I can use that convention, too.

15 Q Did you agree with those conclusions?

16 MR. STOKESBARY: Objection to the extent it
17 calls for a legal conclusion.

18 MR. MILLSTEIN: And same objection.

19 A What I took away from the combination of that memo
20 and the Barreto report was that there was substantial
21 disagreement over what the law allowed or required, that
22 we weren't going to get a definitive answer to it before
23 our November 15th deadline, and that we had to do our best
24 in the circumstances of uncertainty to so if we could
25 reach agreement.

1 Q (By Mr. Hughes) After you received the advice from
2 Mr. Maguire did you draft -- did you draft new maps?

3 A After that Commissioner Sims and I were negotiating
4 various versions of maps, yes.

5 Q I realized when I asked the question it was a vague
6 question. After you received the advice from Mr. Maguire
7 did you draft new public maps, similar to how
8 Commissioners Walkinshaw and Sims drafted new maps in
9 light of the Barreto analysis?

10 A Oh. No, I did not.

11 Q Following the receipt of the Maguire memo, the Davis
12 Wright memo, did you continue to draft maps to share with
13 Commissioner Sims that had a majority Hispanic CVAP
14 district in the Yakima Valley area?

15 A I can't remember the timing in particular about when
16 we were emailing back and forth with 15th or 14th
17 districts that would be majority Hispanic by eligible
18 voters. I can't remember the timing exactly, but we were
19 in that general timeframe certainly having discussions
20 about that prospect.

21 Q Well, you ultimately voted on a map that was
22 majority Hispanic by CVAP; correct?

23 A Yes. For the 15th, yes.

24 Q And that was not an accident, I assume.

25 A No. That was part of the agreement that

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1 Commissioner Sims and I reached.

2 Q So you would not have voted for that map if you --
3 Strike that.

4 Is it fair to assume you would not have voted for
5 that map if you believed it violated the 14th Amendment?

6 MR. MILLSTEIN: Objection to form.

7 MR. STOKESBARY: Objection to form.

8 Objection to the extent it calls for a legal conclusion.

9 A Yeah, I -- I don't think I would have voted for a
10 map that I believe violated the law.

11 MR. HUGHES: Okay. I'm going to try and
12 drop something in the chat, and hopefully we can muddle
13 through, even though my screen is not working. Give me
14 just a minute. It says it's uploading. Okay.

15 Q (By Mr. Hughes) All right. While this is uploading
16 I am --

17 (Audio drop, Reporter request to repeat.)

18 Q I said while this is uploading, I'm going to try to
19 ask questions. Okay. So we're truly going no exhibits in
20 this deposition.

21 Do you recall, Mr. Graves, a meeting with
22 Commissioner Walkinshaw and Ali O'Neil in which VRA
23 compliance was discussed?

24 A Yes.

25 Q Do you recall telling Commissioner Walkinshaw that

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1 you wanted to make the Yakima Valley district majority
2 Hispanic?

3 A I don't remember -- remember if I -- if I said that.

4 Q Do you recall telling him that you wanted to make
5 the Yakima Valley district lean Republican?

6 A I don't remember the specifics, I'm afraid to say.

7 Q Okay. Do you recall saying that you wanted to be
8 able to protect against the lawsuit?

9 A I don't remember saying that. And again, I don't
10 remember many conversations about the topic of lawsuits,
11 but it certainly could be possible that, you know, that
12 topic might have come up.

13 Q Did you want to protect the Commission against a
14 lawsuit?

15 A The primary goal was to comply with the law. I
16 thought if we -- if we did that, then we'd have a good
17 chance at not getting involved in protracted lawsuits.

18 Q Well, with that answer I can skip several questions.
19 Do you recall what data you were using -- Well, let
20 me back up.

21 We were just talking about the 2019 American
22 Community Survey; correct, you and Mr. Dunn?

23 A Yes, we talked about that.

24 Q And do you recall that's the data that you were
25 using to measure Hispanic citizen voting age population?

1 A The citizen part I think we were because the census
2 data did not have citizenship information on it, but I
3 think at the end of the day we were using the 2020 census
4 data for racial and ethnic information.

5 Q But for the citizen part you were using you recall
6 the 2019 ACS survey data?

7 A Yes.

8 Q And did you have an understanding that the 2019 ACS
9 data undercounted the Hispanic citizen voting age
10 population in 2021 when you were doing this redistricting
11 work?

12 A I believe the -- Yeah, the 2019 American Community
13 Survey's data, when compared with the actual 2020 census
14 data, it involved an undercount of minority communities.

15 Q So if you were proposing a district then that was
16 say 51 percent Hispanic by CVAP according to the 2019 ACS
17 data you were using, did you understand at the time that
18 the actual Hispanic CVAP was likely higher?

19 A Oh, yes.

20 Q So when you say there was an agreement to a
21 50.1 percent Hispanic CVAP in the final maps, you
22 understood that the actual district was going to be
23 considerably more Hispanic by citizen voting age
24 population; is that correct?

25 A You were kind of cutting in and out. I think I

1 heard everything, but --

2 Q Should I --

3 A -- could you reask it again?

4 Q Of course. Did you understand then -- Earlier you
5 mentioned agreeing to a 50.1 percent Hispanic CVAP
6 district. Did you understand at the time that it was
7 likely to be considerably more Hispanic by CVAP, the
8 actual district you were agreeing to?

9 A Yes.

10 Q Are you aware, Commissioner Graves/Mr. Graves, that
11 the plaintiffs in the Soto Palmer lawsuit allege that you
12 intentionally discriminated against Hispanics in drawing
13 Legislative District 15?

14 A I'm aware of that allegation.

15 Q What's your response to that allegation?

16 MR. MILLSTEIN: And I'll just object to the
17 extent it calls for a legal conclusion.

18 A Disappointing but not surprising. The cynic in me
19 knows that you have to make those allegations.

20 The person in me who tried my level best to comply
21 with the law, and especially to treat minority communities
22 well throughout this process, of course is hurt by that.

23 It's the nature of being a Republican that you
24 simply get called a racist all the time for mere
25 disagreement. So it's not the first time, and it probably

1 won't be the last.

2 But they're hurtful, and I think wrong allegations.

3 Q (By Mr. Hughes) So let me ask directly, and I don't
4 mean to put salt in any wounds; but did you intentionally
5 discriminate against Hispanic voters in drawing your maps?

6 A No.

7 Q There's a purported expert in this case named
8 Dr. Henry Flores. In paragraph 46 of his expert report,
9 which I understand you haven't seen, but he says -- and
10 here I'm quoting -- "The evidence clearly demonstrates
11 that Graves's intent ultimately reflected in the final map
12 was to draw a majority Latino CVAP district in the Yakima
13 Valley, but with a progressively decreasing likelihood for
14 Latinos there to elect their candidate of choice --
15 candidates of choice."

16 Do you have a response to this allegation?

17 A I never met or heard of that person. I'm not in the
18 habit myself of declaring the intent of other people who
19 I've never met or talked to.

20 I also think it's backward, actually. My
21 expectation is that the Hispanic population in the 15th
22 will increase as a proportion of the population over the
23 course of the decade. And again, he uses majority, I
24 think, Latino there, and we were talking about majority
25 Hispanic, so I quibble with that.

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1 But more generally, there are plenty of people in
2 this world who feel free to declare the intent of people
3 they've never met or talked to. I'm not one of them, and
4 I think fewer people should do that.

5 Q So you disagree with Dr. Flores' statement here?

6 A Yeah, I do.

7 Q Have you read any of the recent pleadings in this
8 case?

9 A No.

10 Q So then you have not read -- It's an unwieldy title,
11 but you have not read Plaintiffs' Reply in Support of
12 Motion to Bifurcate and Transfer, Strike, and/or Dismiss
13 Intervenors' Crossclaim filed on November 25th; correct?

14 A I have not. And good grief, what are you guys
15 litigating?

16 Q You don't want to know, my friend.

17 Are you aware that plaintiffs' counsel publicly
18 accuses you of, quote, "coordinating the funding and
19 filing of the racial gerrymandering legal challenge
20 against the plan he drew"?

21 A No, I wasn't aware of that.

22 Q Are you aware that plaintiffs' counsel publicly
23 alleges that, quote, "After plaintiffs filed this lawsuit
24 Commissioner Graves went to work to stand up a competing
25 legal challenge with the aim of undermining Latino voting

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1 strength even further"?

2 A No, I wasn't aware of that.

3 Q Do you have any response to these allegations?

4 A It's absolutely wrong. My goal was to avoid a
5 default judgment and to defend the maps. I still want to
6 defend the maps. I think they deserve to be defended.

7 I think that that's all absolutely wrong, not true
8 at all. I was in the position of having to try to
9 privately finance and defend the maps. I had to do that,
10 but that's a false allegation. It's pretty scurrilous.

11 Q And no one from plaintiffs' counsel ever spoke with
12 you before making this allegation, I assume.

13 A I think the first time I've talked with anybody from
14 plaintiffs' counsel is today.

15 Q Are you surprised to learn that the only citation
16 for this allegation is the email you were asked about
17 earlier today involving Maguire and Adam -- I forget his
18 name -- Kincaid?

19 A People misconstrue evidence all the time, especially
20 if they don't talk to witnesses, especially if they have
21 maligned intent.

22 So it's not surprising, but it's really
23 disappointing, and wrong.

24 Q You say it's wrong. I'll ask the question, anyway,
25 just to get the record clear.

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1 Did you coordinate with anyone in challenging the
2 adopted legislative maps as a racial gerrymander?

3 A No. My goal was to defend the maps.

4 Q You don't believe the maps are a racial gerrymander,
5 do you?

6 A No, I don't think so.

7 MR. STOKESBARY: Sorry. Objection to the
8 extent that calls for a legal conclusion.

9 MR. HUGHES: No further questions. I
10 apologize for the cat, but no further questions.

11 MR. STOKESBARY: All right. I -- Oh,
12 sorry. I jumped over Kate.

13 Did you have any questions, Kate?

14 MS. WORTHINGTON: Sorry. My mic wasn't
15 communicating well. Nope, none from me.

16 MR. STOKESBARY: Okay. Thank you.

17 Paul, or Mr. Graves, before I get started Andrew
18 asked you this before he got started, but it's been a
19 little while.

20 Do you want to take a break?

21 THE WITNESS: Yeah. Can we take five
22 minutes?

23 MR. STOKESBARY: Sure.

24 THE VIDEOGRAPHER: Going off record, the
25 time is 4:08.

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1 (Break 4:08 p.m. to 4:14 p.m.)

2 THE VIDEOGRAPHER: Back on the record, the
3 time is 4:14.

4 E X A M I N A T I O N

5 BY MR. STOKESBARY:

6 Q All right. Thank you for bearing with us,
7 Mr. Graves. I introduced myself at the beginning, but for
8 the record I'm Drew Stokesbary with the law firm
9 Chalmers and Adams. I represent a collection of three
10 individuals in this case who are Intervenor-Defendants,
11 two of whom are also cross Plaintiffs.

12 From time to time I'm going to be looking kind of
13 off camera. That's not intentional, no disrespect to you.
14 I have my camera on a very small screen; and it would be
15 too small for me to read some of my notes and see your
16 face at the same time, so that is why I will be looking
17 off to the side.

18 One other question -- this came up earlier in the
19 deposition -- but you indicated on the record that we have
20 known each other for a number of years; is that correct?

21 A You and I, yes, we have.

22 Q But have we discussed this deposition before today?

23 A No.

24 Q Have I informed you about any questions that I plan
25 to ask you today?

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1 A No. We've been really clear that we're not
2 discussing this.

3 Q Have we coordinated your answers in any way?

4 A No.

5 Q Okay. One other thing to clarify. This has come up
6 in most of the other depositions, but I don't think it has
7 come up yet today; but I'm going to be using the terms
8 Hispanic and Latino interchangeably. I understand that
9 they mean different things. Some people might identify as
10 one or the other or prefer one description or the other,
11 but I'm simply using it to mean Hispanic or Latino of any
12 race as defined by the Census Bureau.

13 So one thing that you testified for -- at various
14 points earlier today was about the final contours of the
15 15th District in the map that was enacted by the
16 Commission.

17 Do you remember some of the things that you talked
18 about today?

19 A I think so.

20 Q So in particular what is your recollection of the
21 final Hispanic CVAP percentage of the 15th District?

22 A Again, I recalled it at 50.1 percent.

23 Q So ignoring the significance of decimals, roughly a
24 slight majority?

25 A Yes.

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1 Q And what is your recollection of the average
2 Republican performance in that district?

3 A I don't know about average, but using the 2020 state
4 treasurer results by precinct in that district, I think it
5 was the Republican candidate for that office would have
6 won all the precincts there. It was about 53 percent of
7 the vote.

8 Q So could you elaborate briefly on how that
9 particular pair of metrics, a slight Hispanic CVAP
10 majority and a slight Republican lean came to be? Was it
11 a negotiated compromise? Something else?

12 A It was a negotiated compromise between me and
13 Commissioner Sims primarily in the first instance.

14 Q But to effect that compromise you felt that the
15 district had to contain at least a 50 percent Hispanic
16 CVAP proportion?

17 A I wasn't convinced that it was required by the law,
18 but I understood that to get at least Commissioner Sims'
19 vote it was something that was necessary.

20 Q Okay. Moving on. Another topic that came up was
21 Dr. Matt Barreto. I apologize if I'm pronouncing that
22 name wrong. I've not had the chance to meet him. And at
23 various points there were questions about his analysis,
24 his presentation, and his report.

25 So I just want to confirm. So there was a slide

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1 deck that was admitted as I think the first Exhibit 7, and
2 you indicated that you had seen it before.

3 Is that the only quote, unquote, "report" that you
4 had seen from Dr. Barreto?

5 A I think so, yes.

6 Q So there wasn't some other document, like a
7 narrative in text form that you saw, just PowerPoint
8 slides?

9 A There was a news report where I first learned of it
10 that was, I think, in the publication Crosscut; and I
11 think it had maybe some quotes in there, maybe some
12 further explication, but not an additional report or
13 document.

14 Q Okay. So around the time you sort of saw his
15 presentation you saw the news stories about it, what was
16 your impression of Dr. Barreto?

17 A I didn't have much of an impression. I -- I hadn't
18 heard much about him or anything like that. And really
19 the first thing I saw related to all this was the news
20 story and the report.

21 Q So apologies, my question might not have been worded
22 well. Once you saw the analysis and the news stories what
23 kind of impression began to be developed in your mind at
24 that point?

25 A Well, I knew at that point that he had done work I

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1 think exclusively for Democrats; and to the extent
2 partisanship was involved here, he might be somebody who
3 would be inclined to lead things and to draw conclusions
4 that might favor Democrats.

5 Q So then did it appear to you that he was pursuing a
6 district with a particular partisan design?

7 A That's one of the ways that I read the report, yes.

8 Q It's okay if you don't recall this, and it's -- I'm
9 not going to bring up the exhibit again; but do you recall
10 when you saw it for the first time that those PowerPoint
11 slides contained two different sort of proposed or
12 hypothetical districts that Dr. Barreto argued would
13 comply with the Voting Rights Act?

14 A I think I saw those maps there in that presentation
15 on the day I saw the news report.

16 Q Do you recall whether you had any impressions or
17 opinions about those two proposals, how they were drawn?

18 A My first impression was they crossed and split up
19 many cities and counties; that they weren't what you would
20 call geographically compact, or -- And they didn't seem to
21 reach toward the ideal of keeping communities of interest
22 together.

23 Q So earlier Andrew Hughes representing the State had
24 you read an RCW that listed some various state law
25 requirements. In your -- In your opinion did the two

1 proposals put forth in that analysis comply with all of
2 the state law requirements, or did they violate some of
3 the state law requirements?

4 MR. MILLSTEIN: I'll just object to the
5 extent it calls for a legal conclusion.

6 MR. HUGHES: Same objection.

7 A I had concerns about their compliance with some
8 aspects of our state law.

9 Q (By Mr. Stokesbary) Okay. Another topic that came
10 up briefly earlier today is the Yakama Indian Nation and
11 some of their consultations or the Commission's
12 consultation with the Yakama Indian Nation.

13 Do you kind of remember this topic coming up earlier
14 today?

15 A I do.

16 Q So I apologize. I don't want to mischaracterize
17 what you saw, but my notes -- or what you said, but my
18 notes say that during the redistricting process you don't
19 remember hearing whether they preferred to be in the 14th
20 or 15th Legislative District; do I have that right?

21 A Yeah, I don't -- I don't remember if they had a
22 preference for one of those districts or the other. As I
23 recall it, their primary concern was having not just their
24 Reservation lands but their traditional tribal and
25 hunting -- fishing and hunting lands be united in one

1 district.

2 Q And it's okay if you don't know this because as you
3 mentioned, your job sorted of wrapped up and the
4 Commission ended; but are you aware sort of at this point
5 in time whether the Yakama Indian Nation would prefer to
6 remain in the 14th District or would prefer to be redrawn
7 into a different Hispanic majority district?

8 MR. HUGHES: Objection, lack of foundation,
9 calls for speculation.

10 MR. MILLSTEIN: Same objections.

11 A I'm aware of a letter issued by the Yakama Tribe
12 itself objecting to the lawsuits here and stating the
13 Tribal Government's position that the districts drawn in
14 Yakima are acceptable and preferable to the Yakama Nation.

15 Q (By Mr. Stokesbary) Okay. Moving on, another topic
16 that came up, you mentioned that you ran for the State
17 Legislature in 2016 and 2018; correct?

18 A Yes.

19 Q So fair to say that you have some experience working
20 on political campaigns?

21 A Yes.

22 Q All right. So here is a question -- and if you need
23 me to rephrase it, just let me know. It's clear to me.
24 It might not be clear to everybody.

25 Do the Legislative District level performance of

1 candidates in statewide races matter?

2 MR. HUGHES: Objection, vague.

3 MR. MILLSTEIN: Same objection.

4 A Yeah, actually I'm not sure that I understand the
5 question.

6 Q (By Mr. Stokesbary) So suppose -- So I'll try it a
7 different way.

8 Suppose a candidate is running for governor, a
9 statewide office. Does it matter if he gets 48 percent or
10 52 percent in Legislative District X?

11 MR. HUGHES: Objection, vague.

12 A Oh, I think I see what -- I think I see what you're
13 getting at. For statewide offices you just count total
14 votes, so it's not broken down. It's not like you get
15 some kind of bonus for winning a certain number of
16 Legislative Districts, or something like that.

17 Q (By Mr. Stokesbary) So that probably is how I should
18 have asked it. So what really matters ultimately in
19 statewide races is which candidate receives the highest
20 number of votes across the state?

21 A Yes.

22 Q And whether they come out slightly ahead or slightly
23 behind in a particular Legislative District, assuming the
24 same total votes, that does not impact outcomes at all?

25 A That's right. And that's one of the reasons why if

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1 you're trying to look at a base level of partisanship, you
2 might use a statewide race rather than individual
3 legislative or congressional races.

4 Q Another question kind of based on your own
5 experience running for office. Do candidates on the same
6 ballot in the same election that have the same party
7 preference, do they always receive the same percentage of
8 the vote in a given district?

9 A No.

10 Q Are there -- Are there reasons why that does not
11 happen?

12 A Oh, yes.

13 Q In your experience what are some of those reasons?

14 A Candidate quality really matters, especially here in
15 Washington where we don't register by party. We've got a
16 fierce history independence. I think we still have a good
17 number of voters who are willing to work through their
18 ballot to vote for the candidate they think is the best
19 and not simply vote a party line ticket.

20 So I think candidate quality is probably the top
21 reason why you might have different performance from
22 people who are on the same ticket for the same party.

23 Q And what about rather than comparing different
24 candidates in the same election, now I'm going to talk
25 about the same candidate in different elections.

1 If the same candidate runs for the same office in
2 multiple elections, does their vote percentage typically
3 remain constant, or does it typically fluctuate?

4 MR. MILLSTEIN: Objection to form.

5 A It can regularly fluctuate.

6 Q (By Mr. Stokesbary) Okay. That's it for that part
7 of my questions.

8 Another -- Another topic that came up briefly, you
9 were asked if you knew Representative Alex Ybarra and
10 about your communications with him; and one question in
11 particular was whether Representative Ybarra had made
12 requests from you about communities that would or would
13 not be included in his district.

14 Do you remember that question and your answer?

15 A I do.

16 Q So you mentioned a few and said you weren't sure if
17 others existed. Do you happen to recall whether
18 Representative Ybarra ever specifically asked for the
19 communities of Mattawa or Schwana to be included in his
20 district?

21 A I don't recall that.

22 Q Okay. Moving on. So all Legislative Districts in
23 Washington state are numbered one through 49; correct?

24 A That's right.

25 Q Is there any significance to whether a given

1 district has an odd or even number assigned to it?

2 A The primary reason that might come into play is when
3 the Senator from that district, when the Senator elections
4 from that district happen.

5 Q But whether that -- Whether the district is numbered
6 odd or even per se, does that influence when the Senate
7 elections are held in that district?

8 A Well, yeah -- No, sorry. Let me correct that. No.
9 No.

10 Whether a district is even or odd does not determine
11 whether the Senator candidates in those districts happen
12 in presidential years or midterm years.

13 Q And are legislative elections held at least every
14 two years in every Legislative District regardless of
15 whether it is numbered odd or even?

16 A Yes. There are legislative elections in every
17 district every two years.

18 Q Okay. So drilling down away from all Legislative
19 Districts, talking now just about the 14th and 15th
20 Districts specifically, the labeling of those districts
21 also came up today. And if my notes are correct you said
22 something that the No. 15 was assigned to what became the
23 15th District because that contained most of the former
24 15th District. Is that -- Do I have that right?

25 A I think that's right. I think it was in the

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1 previous map the 14th District was Yakima and areas west,
2 and the 15th was Yakima and areas east; and so because the
3 new 15th is Yakima and areas east, it carried that number.

4 Q Okay. So in your discussions with other
5 commissioners about how to label those districts, did you
6 ever argue or suggest the 15th District should be labeled
7 the 15th District rather than the 14th District for
8 race-based reasons?

9 A No.

10 Q Did you have any race-based considerations in the
11 back of your mind that maybe you didn't articulate for
12 labeling the 15th District as the 15th rather than the
13 14th?

14 A No.

15 Q Did you ever hear any other commissioners or
16 staffers for the Commission mention race-based
17 considerations when labeling the 15th District as the 15th
18 rather than the 14th?

19 A No, not that I recall.

20 Q Do you have any reason to believe that any of the
21 other commissioners or staffers might have had a race-
22 based reason for labeling the 15th District as the 15th
23 rather than the 14th?

24 A No, I don't -- I don't think so.

25 Q Okay. I'm going to move on from the odd/even issue.

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1 Another topic that came up, you mentioned that when
2 you were preparing to begin your work as the commissioner
3 you reviewed some of the redistricting statutes. Andrew
4 even had you read one of those earlier.

5 So would it be fair to say that state law required
6 the Commission's maps to follow certain redistricting
7 principles?

8 MR. MILLSTEIN: Objection to the extent it
9 calls for a legal conclusion.

10 A The statute that authorizes the Commission contains
11 a list of criteria that the Commission is supposed to
12 consider when drawing districts.

13 Q (By Mr. Stokesbary) Beyond the subsection that
14 Mr. Hughes had you read a few minutes ago, do you happen
15 to remember what any of those other principles are?

16 A I may not be able to list all of them exactly for
17 you -- I probably could have a year ago -- but they
18 include things like equal population by district,
19 contiguous, compact, keeping communities of interest
20 unified. There may be a couple others.

21 Q So regardless of whether or not it's articulated in
22 state law, did you consider incumbent protection to be a
23 traditional redistricting principle?

24 MR. MILLSTEIN: Objection, vague.

25 A I think it's something that map drawers across the

1 country I think regularly take into account.

2 Q (By Mr. Stokesbary) Was the -- Was the residency of
3 incumbent legislators a factor that you took into
4 consideration?

5 A In some circumstances it was.

6 Q In your negotiations and discussions with other
7 commissioners did it appear to you that that was a factor
8 that other commissioners were taking into consideration?

9 A I think all the commissioners had in mind who the
10 incumbents were and where they were located.

11 Q So once the Commission adopted its final map, do you
12 happen to know how many sitting legislators were drawn out
13 of their districts in that final map?

14 A I think I still remember.

15 Q Can you share that number with us?

16 A I think it was four.

17 Q Do you happen to recall whether that included
18 legislators who already indicated they would not be
19 running for reelection or not?

20 A I believe two of the four who were moved into
21 different districts, I know one of the four, and I think
22 one of the other ones had already indicated that they were
23 not planning to run for reelection.

24 Q Okay. So another topic that came up briefly was the
25 2011 Redistricting Commission. You mentioned that you

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1 reviewed a little bit of their materials, maybe not
2 certain things, and that the late great Senator and former
3 Redistricting Commissioner Slade Gorton was one of your
4 mentors.

5 So based on whatever materials you reviewed or
6 whatever conversations with other folks you had, do you
7 know whether the 2011 redistricting commissioners
8 negotiated behind the scenes through the use of dyads or
9 some similar arrangement?

10 A I'm not sure I'd use the phrase behind the scenes,
11 but as I understood it they negotiated using a dyad
12 approach.

13 Q Do you know whether the 2011 Commission reached its
14 final agreement kind of at the last minute, or did they
15 finish somewhat early?

16 A They had a December 31st deadline; and if I recall
17 correctly, I think they showed what became the final maps
18 to the public maybe the day before, maybe two days before
19 the 31st.

20 Q So would you characterize that as fairly last
21 minute?

22 A It's all a little uncomfortably close.

23 Q Do you know whether any of the 2011 commissioners
24 considered the residency of incumbents when they were
25 negotiating the 2011 map?

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1 A I don't know.

2 Q Okay. So I'm guessing you don't know this, and
3 that's okay; but do you know how many incumbent
4 legislators in 2011 got drawn out of their districts?

5 A I don't know.

6 Q Okay. So going back briefly to this notion of last
7 minute agreements, another issue that came up was kind of
8 the hectic negotiations that took place on November 15th
9 and some work that continued on to November 16th.

10 In your opinion what were some of the reasons why
11 the Commission's work was completed at such a late hour?

12 A We faced a number of challenges as a Commission. We
13 were supposed to receive the census data that we had to
14 use, we were supposed to receive it in April, and we did
15 not receive it until August.

16 We were operating in the middle of a pandemic where
17 we could mostly meet remotely rather than in person.

18 The previous commissions had a December 31st
19 deadline to complete their work, and we had a
20 November 15th deadline. So August to September and
21 October, early November was the short amount of time that
22 we had to negotiate through all these issues.

23 I think all of those played a role in what ended up
24 being a very last minute vote and work.

25 Q Okay. I've got kind of two sets of questions left.

1 They involve screen sharing. I've tried to do this during
2 another deposition the other day, and my computer was not
3 equipped to do it. I think I fixed it. I will try again.
4 So bear with me.

5 (Map displayed.)

6 Q Okay. Can you see this?

7 A Yes, I can see this.

8 Q Okay. So I'm going to represent to you that this is
9 a map of the current Legislative District map as approved
10 by the Commission that is currently in effect for 2022
11 elections and beyond, and that it is being displayed here
12 through the Dave's Redistricting App platform.

13 You mentioned Dave's earlier, that you used it a
14 little bit, so I think you're familiar with the platform;
15 is that right?

16 A Yes, I am.

17 Q Okay. So I want to ask you a question or two about
18 Hispanic CVAP numbers. My understanding was that Hispanic
19 CVAP numbers are only available through the American
20 Community Survey. Is that your understanding as well?

21 A CVAP stands for Citizens of Voting Age Population,
22 and the citizens part of that was not available with the
23 census data, only the -- It was only available through the
24 2019 American Community Survey data.

25 Q And do you happen to recall at the time the

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1 Commission was approving its final map the most recent
2 version of the American Community Survey data that the
3 Commission had available to it?

4 A You mean the year of those data?

5 Q Yes. Yes.

6 A That, I think -- I believe that was completed in
7 2019.

8 Q Okay. So I'm going to represent to you that since
9 that time the American Community Survey 2020 results have
10 been released by the Census Bureau, and I'll further
11 represent that those numbers have been loaded into Dave's.

12 So I'm going to click on the 15th District down
13 here. I'm going to try to click on it. Yep. Okay. So
14 do you see at the bottom right of the screen it says
15 citizen VAP 2020, so those are the -- That's what I
16 represented to you a second ago that has been loaded into
17 Dave's, the 2020 ACS number.

18 Could you read the Hispanic percentage for the
19 record, please?

20 A 51.5 percent.

21 Q Okay.

22 MR. STOKESBARY: I think, Jeanne, do we
23 screenshot this and then move on? That's all I have for
24 this particular --

25 THE REPORTER: Yes. Did you want it --

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1 Oops.

2 MR. STOKESBARY: -- site.

3 THE REPORTER: Did you want it marked as an
4 exhibit?

5 MR. STOKESBARY: You know, I suppose not.
6 I just -- I kind of wanted that number read into the
7 record, so I guess we don't need to make it an exhibit
8 formally. So --

9 THE REPORTER: I took a screenshot, and I
10 can include it with the transcript.

11 (Graves Screenshot No. 1 taken.)

12 MR. STOKESBARY: Okay. I'm going to stop
13 sharing.

14 Q (By Mr. Stokesbary) So I'm going to share my screen
15 in a second; but earlier you mentioned that none of the
16 legislative races in the 15th District were contested in
17 2020. Now if I can find my cursor I'm going to share the
18 screen one last time.

19 (Document displayed.)

20 Q And I'll represent to you here that these are the
21 legislative results from the November, 2022 general
22 election in the 15th Legislative District.

23 Could you read the percentage of the vote that the
24 State Senate candidate who prefers the Republican Party
25 received in the general election in the 15th Legislative

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1 District?

2 A I will, but before I do so I think I got that one
3 wrong. I could have -- I could have sworn that all three
4 races here were uncontested, but the percentage there is
5 67.68 percent.

6 Q And could you read what percentage of the vote the
7 State Senate candidate who prefers the Democratic Party
8 received in the general election?

9 A 32.09 percent.

10 Q Okay. I'll leave this up for just a second longer,
11 but --

12 (Graves Screenshot No. 2 taken.)

13 Q We've already established that you have some
14 campaign experience. You noted a second ago that the
15 Hispanic CVAP number, Hispanic CVAP percentage in the
16 15th District based on the 2020 American Community Survey
17 is 51.5 percent Hispanic.

18 So based on your experience and based on these data
19 points what conclusions do you think should be drawn to
20 explain the partisan breakdown of the Senate race, given
21 the Hispanic CVAP percentage?

22 MR. MILLSTEIN: Objection, calls for
23 speculation.

24 MR. HUGHES: Join, and lack of foundation.

25 A You know, it seems pretty clear that the Republican

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1 candidate won and won pretty substantially.

2 I would hesitate to draw much more on the record
3 here conclusions between the racial makeup of the district
4 and the vote results here. There's a lot that can go into
5 that, you know, including voter turnout, voter
6 registration, things like that.

7 So I'd probably be reluctant to give much more of an
8 opinion on that.

9 MR. STOKESBARY: Okay. I'm going to stop
10 sharing. And that is all the questions I have for you
11 today. So thank you very much for sitting here for so
12 long.

13 Thank you very much for your past and in various
14 ways your service to the state through the State
15 Legislature and through the Redistricting Commission, very
16 much appreciated.

17 MR. DUNN: Okay. Mr. Graves, I think it's
18 back to me; right? Anybody else have any questions? No.

19 E X A M I N A T I O N

20 BY MR. DUNN:

21 Q All right. I just have a few questions for you,
22 Mr. Graves. It shouldn't take more than five or ten
23 minutes, I don't think.

24 So I'm going to show you -- I'm going to talk to you
25 about Exhibit 13 and 14. I'm going to start with 14

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1 first. I placed it in the chat, and you should now have
2 it on your screen, an email from -- at the top, anyway,
3 from April Sims to Brady Walkinshaw and Ali O'Neil dated
4 November 12, 2021.

5 (Graves Exhibit No. 14 introduced.)

6 Q Do you see that, sir?

7 A I do see that.

8 Q All right. I'm going to start at the first part of
9 it. All the way here at the bottom there's a bunch of
10 blank space. I'll let you read the first email. Let me
11 know when you're finished and I need to scroll.

12 A Can you scroll down? Can you scroll down again?
13 Can you scroll down a little bit more?

14 Okay. Yes, I've seen all that.

15 Q All right. Have you had an opportunity to read the
16 whole email?

17 A Yes, I have.

18 Q This is Ms. Sims sending you on November 12th, 2021
19 a plan to consider through a link at Dave's Redistricting;
20 is that fair?

21 A That's what it looks like, yeah.

22 Q And November 12th is the time period that you and
23 she were reaching an agreement that you gave testimony
24 about earlier in the -- earlier in the day?

25 A Yeah, we were certainly negotiating during this

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1 time.

2 Q And you note here that she says in the first bullet
3 point that the 15th Legislative District that she proposed
4 to you in this email is 49.2 percent ACS 2019 CVAP
5 majority Latino or Hispanic. Do you see that?

6 A I don't see the Latino or Hispanic part, but I see
7 the other stuff.

8 Q Well, you understand that the proposal she made to
9 you is 49.2 percent CVAP Hispanic or Latino? You looked
10 at the plan ultimately?

11 A Yeah, and I think at this point we were -- We had
12 agreed to use the Hispanic number.

13 Q All right. Now, and she goes on to add that, you
14 know, using the 2020 CVAP it probably is over 50 percent
15 Hispanic CVAP.

16 Do you see that in the third line? I'm
17 paraphrasing.

18 A Yes, I do.

19 Q All right. So is it clear here that she made a
20 proposal to you that at least based on the 2019 numbers it
21 was less than 50 percent Hispanic CVAP on November the
22 12th; would you agree?

23 A I think that's right.

24 Q All right. Now, the last sentence here in this
25 first bullet says, "The performance in the 15th sits at

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1 45.7 Pellicciotti -- Pellicciotti" -- I'm sorry I mangled
2 that name. Do you know how to pronounce that?

3 A I do.

4 Q How is that?

5 A Pellicciotti.

6 Q Pellicciotti. Excuse me.

7 So what is the -- Is that one of the races that you
8 were looking at, the Attorney General race?

9 A No.

10 MR. STOKESBARY: Objection as to form.

11 MR. HUGHES: Form.

12 Q (By Mr. Dunn) I'll rephrase.

13 MR. MILLSTEIN: Form objection.

14 Q (By Mr. Dunn) What does the 45.7 percent refer to
15 there?

16 A It refers to the -- of the precincts that were
17 included in that district, the performance of Mike
18 Pellicciotti in the 2020 election.

19 Q Which election?

20 A The election for state treasurer.

21 Q And Pellicciotti was a Republican or a Democrat?

22 A Mike Pellicciotti is a Democrat.

23 Q So this district that Ms. Sims proposed was
24 performing for Republicans and less than 50 percent
25 Hispanic CVAP; would you agree?

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1 A That's what it looks like, yes.

2 Q I put it here in the chat Exhibit 13.

3 (Graves Exhibit No. 13 introduced.)

4 Q All right. You should have an email on your screen
5 from Brady Walkinshaw to April Sims on November 13, 2021
6 at 12:25 p.m. Eastern time.

7 Do you see that at the top, sir?

8 A I do see that.

9 Q All right. I'll start at the bottom again, give you
10 a chance to read the email all the way here to the end
11 with the blank space. Here's the first email in the
12 chain.

13 A Can you scroll down?

14 Okay. Yes, I see that.

15 Q Okay. And here's the next email that said Saturday,
16 November 13th at 8:48 a.m. from you to Ms. Sims, copying
17 others.

18 A Yes, I see that.

19 Q And then the next email at 8:50 and 36 seconds a.m.
20 on November 13th from Mr. Grose to you, Ms. Sims, and
21 copying others.

22 A I see that.

23 Q And then the top three emails.

24 A Yes, I see them.

25 Q All right. You've had a chance to review this

1 exhibit?

2 A Yes.

3 Q All right. On the November 13th, 2021 at 8:48 a.m.
4 email you email Ms. Sims, and it's copying Mr. Grose,
5 Ms. Osta and Ms. Meyers; and you correct the email below
6 that you had sent, and you say that you make the CVAP in
7 the District 15th -- you make it the 15th rather than the
8 14th for ease of incumbents. Do you see that?

9 A I do.

10 Q So does this email refresh your recollection that it
11 was you who made the decision to change the district from
12 the 15th -- from the 14th to the 15th in the negotiations?

13 A Yeah, it does a little bit. Again, I -- I don't
14 remember that being the issue, the ease of incumbents
15 issue, but I -- This is an email that I wrote.

16 And again, I don't think it registered beyond the
17 fact that it was somewhat arbitrary being the 15th to the
18 14th.

19 Q Do you recall what you meant by ease of incumbents
20 there?

21 A If I recall correctly, I think there were -- No,
22 honestly as I sit here I genuinely don't recall exactly
23 what that's referring to. I'm sorry.

24 Q Can you recall in terms of the final map the 15th
25 and the 14th District what happened with the incumbents?

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1 I mean, whether they were drawn in or out of their
2 district or changed district numbers or anything of that
3 sort?

4 A One of the incumbents was drawn out of his district.

5 Q Which incumbent was drawn out of which district?

6 A State Representative Jeremie Dufault -- I think it's
7 J-E-R-E-M-I-E, and it's D-U-F-A-U-L-T -- he had been a
8 State Representative from the 15th District; and he was
9 moved I think into the 13th, but it might have been the
10 14th.

11 Q Do you know why that was done?

12 A Out of necessity to --

13 MR. STOKESBARY: Objection as to form.

14 A Sorry. Out of necessity to draw a district in the
15 way that conformed to the agreement I reached with
16 Commissioner Sims.

17 Q (By Mr. Dunn) So it's your recollection that you
18 couldn't have drawn the district you agreed to with
19 Ms. Sims and left that incumbent in the district?

20 A If I could have I would have.

21 Q Do you know whether Ms. Sims had any requests with
22 respect to that particular incumbent?

23 A No.

24 Q All right. And going back to this, I'm not trying
25 to pick at you here, but as I mentioned this is my only

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1 time to talk to you, so --

2 In this discussion has anything refreshed your
3 recollection on what you meant here by ease of incumbents?

4 A No, it genuinely doesn't because again, we ended up
5 drawing one person out of a district.

6 Again, I'm really sorry. I genuinely don't remember
7 what I was talking about a year ago in that email.

8 Q In the next clause in that same sentence, and it
9 says, "And it's not just below 2019 CVAP you proposed, but
10 instead it's at just over 50 percent CVAP."

11 Is that what you wrote?

12 A Yes.

13 Q All right. And so you responded to the district
14 that Ms. Sims had proposed that was at 49.2 percent CVAP
15 with your own proposal that was 50 percent CVAP; is that
16 fair to say?

17 A Yes.

18 Q Now, earlier when Mr. Stokesbary was asking you
19 questions he asked you a question along the lines of is
20 the reason that the 15th Legislative District ended up
21 over 50 percent CVAP Hispanic or Latino is because
22 Ms. Sims required it. That's not accurate, based on these
23 emails; would you agree?

24 MR. STOKESBARY: Objection, misstates the
25 record.

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1 A No, I wouldn't agree with that.

2 Q (By Mr. Dunn) At least with respect to these emails
3 it's clear that you made a proposal of 50 percent CVAP
4 Hispanic when you could have accepted an offer of 49.2
5 percent Hispanic CVAP?

6 MR. STOKESBARY: Objection, misstates the
7 record.

8 Q (By Mr. Dunn) Is that a fact?

9 MR. MILLSTEIN: Same objection.

10 A No, because if I -- Because we were also having
11 conversations during this time; and if I recall correctly,
12 right about this time, if I remember correctly,
13 Commissioner Sims raised that as an issue and suggested
14 that we draw the district to be over 50 percent eligible
15 voters by Hispanics.

16 Q (By Mr. Dunn) Well, let me ask it this way. Why is
17 it you responded to a 49.2 percent Hispanic CVAP district
18 with one that's, quote, "just over 50 percent CVAP,"
19 closed quotes?

20 A If I recall correctly, it's because in the
21 intervention between those sets of emails
22 Commissioner Sims and I had talked about it; and if I
23 recall correctly, I think she expressed her desire for it
24 to be above 50 percent.

25 Q Do you recall Ms. Sims making a call to you

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1 essentially rescinding her earlier offer?

2 A I -- It's -- We didn't do that kind of -- those kind
3 of formalities. We were moving pretty quickly, and I
4 think we developed a really good trusting relationship.
5 So I don't think it's --

6 We weren't doing, you know, decisions and those kind
7 of formalities you might do if you were negotiating a
8 contract, for example.

9 Q Well, let me ask it this way. Do you recall her
10 calling you to the extent and saying, "Never mind on my
11 offer," or, you know, "Forget about that map because I
12 need it over 50 percent CVAP"?

13 A No, I don't recall that specifically.

14 MR. DUNN: All right, Mr. Graves, I
15 appreciate your patience with us all today. Thank you for
16 answering my questions. Reserve the rest for trial.

17 Anybody else?

18 MR. MILLSTEIN: No questions from me.

19 MR. STOKESBARY: No questions from me,
20 either.

21 THE VIDEOGRAPHER: Are we concluded,
22 counsel?

23 MR. DUNN: Yes.

24 THE VIDEOGRAPHER: Deposition concluded,
25 going off the record. This is the end of Media 4. The

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1 time is 4:55.

2 (Discussion re reviewing transcript.)

3 (Deposition concluded at 4:55 p.m.)

4 (Signature reserved.)

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1 C E R T I F I C A T E

2 STATE OF WASHINGTON)
) SS
 3 County of King)

4 I, the undersigned Washington Certified Court
 Reporter, pursuant to RCW 5.28.010 authorized to
 5 administer oaths and affirmations in and for the State of
 Washington, do hereby certify:

6 That the annexed and foregoing deposition of the
 witness named herein was taken stenographically before me
 7 and reduced to typewritten form under my direction.

I further certify that the witness examined will be
 8 given an opportunity to review and sign their deposition
 after the same is transcribed, unless indicated in the
 9 record that the parties and witness waived the signing.


I further certify that all objections made at the
 10 time of said examination to my qualifications or the
 manner of taking the deposition or to the conduct of any
 11 party have been noted by me upon the deposition.

I further certify that I am not a relative or an
 12 employee or attorney or counsel of any of the parties to
 said action, or a relative or employee of any such
 13 attorney or counsel, and that I am not financially
 interested in the said action or the outcome thereof.

I further certify that the witness before examination
 14 was by me duly sworn to testify the truth, the whole
 15 truth, and nothing but the truth.

I further certify that the deposition, as
 16 transcribed, is a full, true and correct transcript of the
 testimony, including questions and answers and all
 17 objections, motions and exceptions of counsel made and
 taken at the time of the foregoing examination and was
 18 prepared pursuant to Washington Administrative Code
 308-14-135, the transcript preparation format guideline.

19
 20 IN WITNESS WHEREOF, I have hereunto set my hand this
 3rd day of January, 2023.

21 

22 Jeanne M. Gersten, RDR, CCR
 Registered Diplomat Reporter
 23 Washington CCR No. 2711
 License effective until April 2, 2023
 24 Residing at Seattle, Washington
 25



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1 CHANGE/SIGNATURE SHEET

2 I, the undersigned, PAUL GRAVES, hereby certify
 3 that I have read the foregoing deposition and that, to the
 4 best of my knowledge, said deposition is true and
 accurate, with the exception of the following corrections
 listed below:

5	PAGE	LINE	CHANGE	REASON
6				
7				
8				
9				
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13				
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15				
16				
17				
18				

Signature

Date

20 Witness: Paul Graves
 Soto Palmer, et al. v. Hobbs, et al.
 21 USDC Western District of Washington at Tacoma
 Cause No. 3:22-cv-05035-RSL
 22 Date: December 14, 2022

23 Reported by: Jeanne M. Gersten, RDR, CCR No. 2711
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