

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON AT SEATTLE
3

4 SUSAN SOTO PALMER, et al.,) C22-5035-RSL
5)
6 Plaintiffs,)
7)

8 v.) Seattle, WA
9)

10 STEVEN HOBBS, in his) June 7, 2023
11 official capacity as)
12 Secretary of State of) 8:30 a.m.
13 Washington, et al.,)
14) TRIAL - Day 4

15 Defendants,)
16)
17 and)
18)

19 JOSE TREVINIO, et al.,)
20)
21 Intervenor-Defendants,)
22)

23 .)
24 BENANCIO GARCIA III,) C22-5152-RSL-DGE-
25) LJCV
26)

27 Plaintiff,)
28)
29 v.)
30)

31 STEVEN HOBBS, in his)
32 official capacity as)
33 Secretary of State of)
34 Washington, et al.,)
35)

36 Defendants.)
37)
38)

39 VERBATIM REPORT OF PROCEEDINGS
40 BEFORE THE HONORABLE ROBERT S. LASNIK
41 HONORABLE DAVID G. ESTUDILLO
42 UNITED STATES DISTRICT JUDGES
43 WESTERN DISTRICT OF WASHINGTON
44 HONORABLE LAWRENCE J.C. VANDYKE
45 UNITED STATES NINTH CIRCUIT JUDGE

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1 THE CLERK: We are resuming our bench trial in the
2 matters of Garcia v. Hobbs, et al., Cause No. C22-5152,
3 assigned to Judges Lasnik, Estudillo and VanDyke; and Soto
4 Palmer, et al., v. Hobbs, et al., Cause No. C22-5035,
5 assigned to Judge Lasnik.

6 THE COURT: Okay. Thank you. And, Mr. Dunn, you
7 want to call your next witness, please?

8 MR. DUNN: Thank you, Your Honor. The plaintiffs
9 call Paul Graves.

10 THE COURT: Mr. Graves, come on up into the well of
11 the courtroom.

12 PAUL GRAVES

13 Having been sworn under oath, testified as follows:

14 THE CLERK: If you could please state your first and
15 last names, and spell your last name for the record.

16 THE WITNESS: My name is Paul Graves, and Graves is
17 G-R-A-V-E-S.

18 DIRECT EXAMINATION

19 BY MR. DUNN:

20 Q Good morning, Commissioner. I'm Chad Dunn. I think we
21 met virtually at your deposition. Can you introduce yourself
22 to the court, where you were born?

23 A My name is Paul Graves. I live in Newcastle now. I was
24 born and raised in Maple Valley, 25 minutes southeast of
25 Seattle. I'm a lawyer, by trade, by background. And among

1 other things, from 2017 to 2019, I served as a state
2 representative from the Fifth Legislative District, East King
3 County, Issaquah, Maple Valley, and Snoqualmie. And in 2021,
4 I served as one of the voting commissioners on our State's
5 bipartisan Redistricting Commission.

6 Q Obviously we're here to talk about your service on the
7 Commission. And you deserve thanks for having been through
8 it, so I want to offer that to you.

9 I'd like you to give us a bit of your educational
10 background, if you could.

11 A I went to Western Washington University, for my
12 undergraduate degree. Got both a master's in philosophy, and
13 my law degree, at Duke University, in North Carolina.

14 Q After you got out of Duke, you passed the bar here in
15 Washington?

16 A That's right.

17 Q You began to practice law, doing litigation work; is that
18 true?

19 A No.

20 Q Tell us about your law practice.

21 A I spent a year, after I graduated from law school, as a
22 law clerk for a judge on the Washington State Supreme Court.

23 Q Then how did your legal career go?

24 A Then I worked at the Perkins Coie law firm, doing civil
25 litigation.

1 Q Now, I think you told me, at your deposition, you don't
2 consider yourself an expert in the Voting Rights Act; is that
3 fair to say?

4 A It's for the court to decide who is the expert in what
5 areas of law.

6 Q Are you suggesting now that you might be?

7 A No. I just -- I'm not sure that I'm qualified to answer a
8 question like that.

9 Q Tell us how it is that you came about being appointed to
10 the Redistricting Commission.

11 A I was appointed by the Republican leader of the State
12 House of Representatives.

13 Q That person's name?

14 A JT Wilcox.

15 Q You mentioned, at your deposition, that you had visited,
16 at some point before his passing, Mr. Slade Gorton. Do you
17 recall that?

18 A Yes, that's right.

19 Q He was one of the Republican commissioners in the
20 2011-cycle; is that true?

21 A Yes, that's right. He was.

22 Q And one of the things that he told you is that the Yakima
23 Valley, and in particular Latino districts in that area, was
24 an issue in 2011; isn't that true?

25 A No.

1 Q I want to show you your deposition.

2 (Video clip played.)

3 Q So you recall that in 2011, the Yakima Valley district was
4 the subject of discussion?

5 A Yes. I just didn't talk to Senator Gorton about it.

6 Q In particular, about the representation of Latino citizens
7 in the area?

8 A I was aware, in general, that it was an issue that came up
9 in the Commission, before ours.

10 Q After you were appointed, I assume you did some work to
11 prepare for your work; is that true?

12 A Yes.

13 Q One of the things that you did is you met with a
14 Mr. Kincaid, or you spoke with him, at least. Is that true?

15 A I met with him. I was appointed in January of 2021, and I
16 met with him for maybe an hour in Washington, D.C., in June
17 of that year.

18 Q I have here, on your screen, Exhibit 502, that's been
19 preadmitted. This is an e-mail at the bottom. I'll give you
20 a second, let us know after you have a minute to become
21 familiar with it.

22 A Oh, look at that. Yes.

23 Q So in about January, or January 25, 2021, to be precise,
24 you e-mail Adam Kincaid, you make him aware you had been
25 appointed one of the four commissioners here in Washington,

1 and asked for an opportunity to speak; is that true?

2 A Yes. And this is helpful, because I met with him in
3 person in Washington, D.C., but I think we spoke on the
4 phone, pretty briefly, when I first got appointed.

5 Q Mr. Kincaid works for an organization called the National
6 Republican Redistricting Trust; is that true?

7 A I think so.

8 Q Part of what that organization does is fund litigation
9 matters related to redistricting around the country; is that
10 true?

11 A I'm not entirely sure everything that that organization
12 does.

13 Q What is the -- what was the subject matter of your
14 discussions with Mr. Kincaid, in January?

15 A In January, it was mostly, like, a brief introductory
16 meeting. I was aware that this was a Republican-side
17 organization, that was focused on things that were
18 redistricting related. And I was appointed by a Republican
19 state representative to our Commission, so I thought it would
20 be useful to introduce myself.

21 Q You're aware that Mr. Kincaid, one of his lawyers is
22 Mr. Torchinsky?

23 A I'm not sure I'm aware of that.

24 Q Now, you did ultimately go and also meet with him. That
25 was about June of 2021?

1 A Yes. I had coffee with him.

2 Q What was the subject matter of that meeting?

3 A It was still pretty similar things. You might recall, we
4 didn't get our data from the Census Bureau until August 2021.
5 So we were conducting public hearings at the time, and
6 talking through those things. But we didn't have the raw
7 material that we needed to start drawing maps. So mostly
8 talked about what the Trust did, a little bit, and some of
9 the resources that it might have, that maybe could be useful
10 when we got our data and started actually drawing maps.

11 Q In addition to introducing yourself to Mr. Kincaid, you
12 also began to understand, at least generally, the Voting
13 Rights Act, and its requirements. Is that fair to say?

14 A Talking with Mr. Kincaid about them?

15 Q Did you talk to Mr. Kincaid about them?

16 A Not that I recall.

17 Q But separately, as you prepared to do your work, after
18 your appointment, and through the early part of 2021, you
19 became familiar with the Voting Rights Act requirements?

20 A Yes, I did.

21 Q You told me, at your deposition, that you read the *Abbott*
22 case, and a few other things you found on Google Scholar; is
23 that correct?

24 A I did a little poking around.

25 Q You also received a presentation from the Washington

1 Attorney General's office; is that true?

2 A Yes, we did.

3 Q And I'm showing what's been marked and admitted is Page 8
4 of Exhibit 139. This is one of the slides that you were
5 shared there. Do you recall this, generally?

6 A I'd say, generally. I don't think I have that slide deck
7 memorized. But this looks like something that we saw.

8 Q But you have a functional enough understanding of the
9 Voting Rights Act, you understand if these three
10 preconditions are met, in many circumstances, that's going to
11 require a VRA-compliant district?

12 A Well, you go through these three. Then there's, of
13 course, the totality of the circumstances test, afterwards.
14 Then you say VRA-compliant district. But it's important for
15 me, probably maybe too much, to be really precise here, but
16 every district has to comply with the Voting Rights Act. But
17 to answer your question directly, if these preconditions are
18 met, and then you also meet the totality of the circumstances
19 test, then Section 2 can provide some requirements for a
20 district like that.

21 Q What do you recall those requirements are?

22 A Even that is still unclear to me. It was not entirely
23 clear to me then. I think there can be a lot of different
24 remedies, or different potential maps that could be drawn, if
25 the *Gingles* preconditions are met, the totality of the

1 circumstances test can be met. But it's still not -- there's
2 not just sort of -- you get through all of that, and here is
3 the exact district that you have to draw. Because at the
4 very least, the courts have said that, even if you meet all
5 these things, mapmakers still have discretion to draw a
6 district that allows minorities to choose the candidate of
7 their choice in their elections.

8 Q Now, you also became familiar with the actual text of
9 Section 2(b) of the Voting Rights Act, did you not?

10 A I've read it, yes.

11 Q And I'm going to show you -- this is marked and admitted
12 as Exhibit 179, Page 6. This is the statute, Section 2(b),
13 that governs what we call "the results test," in the Voting
14 Rights Act. You're generally familiar with that; is that
15 right?

16 A Yes, I am.

17 Q You understood, at the beginning of the process, what this
18 statute does is ensures, in certain circumstances, that
19 racial minorities have an opportunity to elect candidates of
20 their choice?

21 A I wouldn't say it exactly the way you said it. I'd use
22 the exact terms of the sentence there.

23 Q In the situation where members have less opportunity than
24 other members of the electorate, to participate in the
25 political process, and to elect representatives of their

1 choice?

2 A Again, I'm sure it's probably a little too specific here,
3 but I do feel the weight of sitting in federal court in front
4 of three federal judges, and I would, myself, quote the
5 entire sentence, rather than just the second half of it.

6 THE COURT: And we're familiar with it, so we don't
7 need to discuss it any further.

8 Q We'll move on to the additional work that you did. At
9 some point in time, there began a discussion about hiring an
10 advisor, under the Commission, to do racially polarized
11 analysis. Do you recall that?

12 A We had some discussions, among some of the commissioners,
13 about the prospect of trying to see if the Commission could
14 retain somebody to do an analysis like that.

15 Q Commissioner Sims suggested that Dr. Barreto, formerly at
16 the University of Washington, be hired. Do you recall that
17 suggestion?

18 A I can't remember if it was Commissioner Sims or
19 Commissioner Augustine, that first told me about that
20 prospect. I have, in the vague recesses of my mind, it might
21 have been a discussion that I had with Commissioner
22 Augustine.

23 Q It was your understanding, nevertheless, that Dr. Barreto
24 was being put forward, by at least the Democratic side of the
25 commissioners?

1 A Yeah. I'd say it's fair to say I understood it to be that
2 way.

3 Q You suggested Dr. Burnell; is that true?

4 A I mentioned to Commissioner Augustine, him, as a
5 possibility.

6 Q And you know that Dr. Burnell has testified in a number of
7 these cases around the country?

8 A I don't think I did much research on his CV, to be honest.

9 Q You think you got his name from Mr. Kincaid; is that true?

10 A I seem to recall that. That's right.

11 Q And you actually spoke with Dr. Burnell at that point in
12 time, to talk to him about serving in this capacity. Is that
13 also true?

14 A I think we had a brief conversation about his availability
15 to do something like that.

16 Q After you had that initial conversation with Dr. Burnell,
17 did you ever speak to him again, in relation to redistricting
18 in Washington?

19 A No.

20 Q Now, this discussion about potentially hiring an expert,
21 that wasn't held in public, those were private conversations;
22 is that true?

23 A I can't remember if we had a discussion like that at a
24 public meeting, or not.

25 Q One of the things, though, is that you ultimately

1 concluded that you couldn't find either a bipartisan, or a
2 nonpartisan person to hire, and so that would be too hard to
3 find. Is that fair to say?

4 A It seemed to me that it would be the people who make a
5 living at doing these kind of analyses, if you want to make a
6 living at it, the sense that I get is that you tend to work
7 for predominantly one party or the other, in these kind of
8 cases. And ours being a bipartisan Commission, it seemed
9 like it would be pretty hard to get a trusted, nonpartisan
10 person, who had the expertise of doing these kind of
11 analyses.

12 Q Anybody make you aware of various experts around the
13 country, that had been appointed by special masters, by
14 courts to draw maps, and to do RPV analysis for the courts?

15 A No, I don't think so.

16 Q Now, in about September, I think the record reflects
17 September 21st, all the commissioners sent out their first
18 public proposals. Is that what you recall?

19 A I don't remember if it was September 21st, exactly. But I
20 remember September of that year.

21 Q That's the only public meeting where you recall each of
22 the commissioners laying out public proposals, the one that
23 happened in September, whenever it did?

24 A Well, we were talking about different parts of the maps,
25 at public meetings. That was the primary one, where we each

1 proposed the maps that we proposed, that month.

2 Q It's fair to say you don't recall another meeting where a
3 plan was put out to the public, in full?

4 A I think we might have had a public meeting shortly after,
5 it was in, I think October of that year, when both
6 Commissioner Sims and Commissioner Walkinshaw put out new
7 versions of their own proposed maps.

8 (Video clip played.)

9 Q In terms of your understanding of how the process was
10 supposed to work, did you understand that the negotiations
11 about the individual lines in the map, should happen in
12 private?

13 A I'm sorry. Before we get to that, were you going to ask
14 me a question about that excerpt?

15 Q I don't think so. But if you have something you'd like to
16 say about it, go ahead.

17 A I'd certainly look to the meetings. And I don't think
18 that what I just testified is different than what I said
19 there, just for the record. But the question you just
20 asked --

21 Q Was it your understanding, that the way this process was
22 supposed to work is that all the negotiations about the map
23 would happen in private?

24 A No.

25 Q Can you explain why there weren't additional meetings

1 where full plans were laid out and discussed?

2 A Well, practically, to do this, it's almost unbelievably
3 complex to try to draw maps like this. The amount of time
4 itself that's required to take the current versions of our
5 maps, and turn them into new maps that meet all the statutory
6 criteria, takes a lot of time, and is -- how do I put it?
7 Doing a full map proposal is, in some sense, not that
8 helpful. Because to talk about it candidly, honestly, for
9 the legislative map, you'd have to talk in depth about 49
10 different districts, and the changes from one district to the
11 next.

12 We got our data that we had to use for these maps, in
13 August of that year. We had a November 15th deadline, to get
14 things done. And so for the sake of time, more than anything
15 else, and based on the precedent of our past Commissions, we
16 chose to negotiate in what we called "diads," with these
17 one-on-one meetings, with the goal of having maps that could
18 be available for all the commissioners to review and discuss;
19 and hopefully if we could get there, to vote on.

20 Q So it was too hard to have the debate in public?

21 A That's not what I said.

22 THE COURT: He answered the question. You may not
23 like the answer, but he answered.

24 Q Going back to the 2011 process, did you watch the final
25 days of those debates?

1 A No.

2 Q Now, it's in the record, but ultimately the Redistricting
3 Commission settled an Open Meetings Act and open records
4 case, and paid some fines and fees; is that fair?

5 A That's all correct.

6 Q Now, you also told me, at your deposition, that before the
7 Barreto report was released -- and I can let you know that
8 that's Exhibit 179, it happened October 19, 2021 -- before
9 that was released, you don't recall any commissioner raising
10 a VRA district issue with you? Do you remember saying that
11 at your deposition?

12 A I don't recall that specifically.

13 (Video clip played.)

14 Q Let me show you Exhibit 171. This is an e-mail admitted
15 into evidence, begins with an e-mail from you. Take a minute
16 to familiarize yourself with it, and let us know when you're
17 ready, please.

18 A Okay.

19 Q You see on Monday, October 4th, Commissioner Sims'
20 response to you. It says that she wants to add a
21 VRA-compliant district to the discussion. That's back on
22 October 4th. Do you see that?

23 A Yes.

24 Q I want to ask you a little bit more about your e-mail here
25 at the bottom. You have a list of what you term are initial

1 negotiating topics; is that right?

2 A I do. And isn't it crazy, that was October 4th, with a
3 November 15th deadline. And we were doing initial
4 negotiating topics. I'm amazed we got it done.

5 Q If you go down -- any other arguments you want to make?

6 A Sorry?

7 Q Any other arguments you want to make?

8 A I was trying to make an observation of -- I didn't mean to
9 be arguing. I'm sorry if it came across that way.

10 Q If you look at paragraph No. 3, subparagraph D. Do you
11 see that?

12 A Yes.

13 Q What do you mean by, "Status of white Hispanics"?

14 A We had to try to decide, when we were looking at various
15 racial data, which exact ones to use. And there's a whole
16 host of them. And Hispanics are an interesting one, because
17 Hispanics are an ethnicity, not a race. So you can have
18 white Hispanics and black Hispanics, and -- but it's an
19 interesting question, and certainly was at the time, of how
20 we were going to address those. And my primary goal there
21 was trying to raise the issue, so we could discuss it, and
22 hopefully reach an agreement on how we were going to treat
23 white Hispanics, for the purpose of majority-minority
24 districts.

25 Q What were on the menu of options of how to treat them?

1 A You could treat them as white, for the purposes of race.
2 You could treat them as Hispanics, and include them among the
3 whole group of Hispanics across racial classifications. But
4 that was an important distinction, and I thought was
5 important bringing it up.

6 Q What was the Commission's final decision on how to deal
7 with white Hispanics?

8 A If I recall correctly -- well, I don't know if it's that
9 the Commission had a whole final agreement on it. But me and
10 Commissioner Sims, in particular, I think we agreed to
11 include white Hispanics, when we were talking about, in
12 general, racial numbers, when it came to particular
13 districts.

14 Q All right. I would like to now move on and show you the
15 Dr. Barreto report. This is admitted as 179. This is the
16 public version that was initially released on October 19th.
17 Do you recall this, generally, sir?

18 A Yeah, I recall it generally. This presentation.

19 Q After you looked at this presentation, one of your initial
20 reactions, you told me at your deposition, was that you
21 didn't feel like just analyzing two elections was compelling
22 to you. Is that fair to say?

23 A I don't know if I'd say "compelling," but I had really
24 serious concerns with it.

25 Q And then ultimately, though, you were shared a fuller

1 version of this report.

2 I'll show you what's been marked as Exhibit 214, and
3 admitted. This is an e-mail on November 1st, sent to Comment
4 and redistricting at WA.gov. The testimony here has been
5 that each of the commissioners received an e-mail to that
6 e-mail address. Is that your recollection?

7 A That got sent to -- this presentation here looks like it
8 got sent to the general comments, redistricting e-mail, which
9 I had access to, but also was receiving thousands of comments
10 from the public. So I'm actually not entirely certain that I
11 received this e-mail, or that I saw this e-mail.

12 Q You see here at the top where it says, "Attachments," and
13 it's called "WAVRA presentation, full"?

14 A Yes, I see that.

15 Q The e-mail below includes specific recipients, including
16 Sarah Augustine, who was on the Commission, the chair, and
17 Lisa McLean, who was the executive director. Is that fair?

18 A Yes. Commissioner Augustine was our chair, and Lisa
19 McLean the executive director.

20 Q Is it your testimony, you never saw the full analysis?

21 A Sitting here, I'm not entirely sure that I did.

22 Q Well, it's attached here -- I'm going to show you what's
23 marked and admitted as Exhibit 178. We went through this
24 with the court yesterday, I won't do it again. But I want to
25 show you, in Dr. Barreto's full analysis, he started with

1 elections in 2012, and worked his way all the way to 2020.

2 And you see that now?

3 A I see what's on the screen here now, yes.

4 Q But in looking at that, it doesn't refresh your
5 recollection that you had seen it at the time?

6 A No, it doesn't.

7 Q Nevertheless, you are aware Dr. Barreto concluded that the
8 Latino citizens in the Yakima Valley, at high numbers,
9 supported Democratic candidates?

10 A I recall, in the 2012 and 2020 U.S. Senate and Governor
11 elections, that was the case. But those were also the two
12 biggest landslide elections of our state, in the last decade.

13 Q It's been stated here that one of the metrics that was
14 used, when the maps were drawn, was a race with a candidate
15 named Pellicciotti; is that your recollection?

16 A It's pronounced Pellicciotti.

17 Q Beg your pardon, Pellicciotti. Is that one of the races
18 that you used as a metric, when drawing the maps?

19 A Are you talking related to Dr. Barreto's analysis, or that
20 we were using when we were considering partisan baselines?

21 Q That you were using when you were drawing the maps.

22 A The 2020 State Treasurer's race, was one of the races we
23 were considering.

24 Q Your staff member, Mr. Grose, was here earlier this week
25 and went through Dave's Redistricting. And you understand

1 that you can see -- if you put the Pellicciotti election
2 results on there, move around the map, and change each of the
3 geography bipartisanship. Are you familiar with that?

4 A You mean, like do a color coding, stronger red is more
5 Republican, stronger blue is more Democratic?

6 Q Exactly.

7 A Yes.

8 Q When you did that with Pellicciotti, what you could see is
9 the predominantly Latino areas supported the Democratic
10 candidate?

11 A I'm not sure I went through that full analysis myself.

12 Q Now, you ultimately hired Davis Wright Tremain to do a
13 legal memoranda; is that true?

14 A That's right.

15 Q When did you first reach out to them?

16 A Shortly after Dr. Barreto's report was released, publicly.

17 Q What is "shortly," a day, two, three weeks?

18 A Well, a couple of days, I think.

19 Q I want to show you what's been admitted as Exhibit 185.

20 This is a text between you and Commissioner Fain, and
21 it's dated October 21st. Do you see that, sir?

22 A Yes, I see that.

23 Q And in the middle of the page, you start off by saying,
24 "Sarah just called and yelled at me for being pigheaded.

25 She'll probably say the same to you." Is that what you said?

1 A What I texted?

2 Q Yes, sir.

3 A Yes. I think that's me texting that.

4 Q Mr. Fain asked you a question. When you say "Mostly" --
5 "Pigheaded about what?" And you say, "Mostly excluding her
6 from the process, but also not hiring Rob Maguire sooner, or
7 recognizing that the Dems, and Brady in particular, just want
8 this to go to court." Is that what you said?

9 A Yes.

10 Q Do you think it was October 21st that you started to hire
11 Mr. Maguire, or do you think it was sooner than that?

12 A I honestly don't remember.

13 Q But at least within two days of Dr. Barreto's public
14 report being made, you were beginning to work with
15 Mr. Maguire?

16 A I think that's right. I was trying to see if we could do
17 a legal analysis of the Barreto report.

18 Q You also had a discussion with Mr. Grose about
19 Dr. Barreto's report, by e-mail?

20 A I seem to recall that, yes.

21 Q But you didn't call Dr. Burnell, who you had already
22 spoken with. Why not?

23 A I had only talked to him for maybe five minutes, about his
24 potential availability. But I just thought that, with a few
25 weeks to go before our maps were due, the important thing for

1 me was to see what the legal upshot of this report was, and
2 what it would -- what the law would allow or require us to
3 do.

4 Q And when the letter comes out from Davis Wright Tremaine,
5 it makes clear that it's not doing any factual analysis, it's
6 making its legal opinion known; is that fair?

7 A I haven't read it in a while. I can't remember that.

8 Q You told me, at your deposition, that -- you sort of said
9 this today -- you didn't feel like you had enough time to get
10 somebody else to do the factual analysis, at this point?

11 A I think that I sort of assumed that I probably wouldn't be
12 able to, and that I would need to -- again, the most
13 prominent focus I had was to see if we could get maps done.
14 And that required a legal analysis of that report, and what
15 it would mean for what we had to do, or were allowed to do,
16 with the districts in the Yakima Valley.

17 Q It wasn't an issue of money. The Commission could pay for
18 a review, if it wanted to?

19 A You're asking me about a legal review?

20 Q A factual review, similar to Dr. Barreto's.

21 A I don't recall our budget line-by-line. I don't remember
22 if we had a line item -- I'm sorry, I just don't recall off
23 the top of my head.

24 Q Maybe I'll ask it this way. Is it your testimony that
25 Washington Redistricting Commission couldn't afford to pay

1 for its own expert, like Dr. Barreto?

2 A No, I don't think that's right.

3 Q Now, in addition to arranging for the Davis Wright
4 Tremaine memo, you also -- well, excuse me, I've got on the
5 screen what's been marked and admitted as Exhibit 188.

6 A Okay. Yes, I see that.

7 Q Is it fair to say this is an e-mail discussion between you
8 and Commissioner Grose, and includes others, sort of
9 responding to the Dr. Barreto report?

10 A He was not a commissioner. But this is discussing that
11 report.

12 Q Your staffer, Mr. Grose, I beg your pardon.

13 A That's right.

14 Q One of the responses you make on, October 22nd at
15 8:48 a.m. is that, "We will litigate this issue, if
16 necessary, in court, not in newspapers and press releases."
17 Is that what you said?

18 A Yes.

19 Q Now, you also began to work to influence the public
20 testimony that came in to the Commission about the Yakima
21 Valley. Is that fair?

22 A I was trying to see if we could get people in the Yakima
23 Valley to testify about their maps.

24 Q I've shown you what's been marked and admitted as
25 Exhibit 210. And here you have a series of text messages

1 with Mr. -- and I'm going to pronounce this wrong -- but
2 Jeremie Dufault?

3 A Dufault.

4 Q Let me know when you've had a minute.

5 Who is Mr. Dufault?

6 A He was a state representative from the 15th Legislative
7 District.

8 Q A Republican?

9 A Yes. He's a Republican.

10 Q What is it that you and he are discussing here?

11 A He saw the Barreto report as well. He's a lawyer, as
12 well, and understood a lot of the upshot. And so he was
13 trying to rally people in Yakima, to make the argument that
14 the proposed districts there -- well, as you can see, had all
15 these problems with them. And he sent it to me to get my
16 input on it.

17 Q And you respond to his draft e-mail out to the grassroots,
18 "People could also say how bad it would be to lose their
19 current legislators." Is that what you said?

20 A Yeah. If I recall the proposed maps, they would have
21 districted out a couple of current legislators out of their
22 districts.

23 Q Those legislators were Republicans?

24 A I think all the legislators involved there were
25 Republicans.

1 Q I'd also like to show you what's been admitted as
2 Exhibit 215. This is a series of text messages -- it's
3 incorrectly marked as 235, actually I think it's 225 and 235.
4 But nevertheless, these are text messages between you and
5 April Sims, somewhere around November 1st. Do you see that,
6 sir?

7 A Yeah. This is shortly before November 1st, if I'm reading
8 the text messages correctly.

9 Q And one of the things you tell Commissioner Sims is that:
10 I feel confident the answers will be, as they almost always
11 are, with, quote, totality of the circumstances, close quote,
12 legal tests, like Section 2 of the VRA -- it depends. I
13 think we'll have to negotiate, with that uncertainty hanging
14 over us. Is that what you said?

15 A Yes.

16 Q You're, at this point, taking the position that, we can't
17 get the answer, we'll have to be uncertain, so we'll
18 negotiate over the Voting Rights Act?

19 A No, absolutely not.

20 Q Now, your lawyer memo gets released on November the 4th.
21 First, here in Exhibit 234, November 4th is the date of the
22 retention agreement with Davis Wright Tremaine. Do you see
23 that?

24 A Yes. It appears to be the first page of the actual
25 retention agreement.

1 Q And also that same day, the memoranda, the legal memoranda
2 we discussed was released?

3 A I don't see the date on here. Yes, there it is. Yes.

4 Q And then you a few days later you check back in, with
5 Exhibit 258, and you receive a report back. This is the
6 message that went out here at the bottom. Take a minute to
7 read, if you'd like.

8 A Okay. Yes, I see that.

9 Q So the message went out, "Urgent call to action, stop
10 Seattle liberals from stealing local elections," and other
11 commentary that's in the exhibit. And you get a report,
12 e-mail on November 9th, "Paul, hope a bunch of comments came
13 in from the enclosed. I'm sure you're having a fun week.
14 Thank you for what you're doing." Is that what he said, sir?

15 A No, I did not say that.

16 Q That's what Mr. Dufault said?

17 A Yes, that's right.

18 Q Did a number of public messages come in, as a result of
19 this effort?

20 A I don't remember the exact number. Certainly a number
21 came in.

22 Q Now, going back to the negotiations. It's been stated
23 here that you principally dealt with Commissioner Sims, in
24 negotiating the legislative map. Is that your recollection
25 as well?

1 A Yes. That's the process we employed, to try to negotiate
2 draft versions of the maps.

3 Q I want to show you what's been marked and admitted as
4 Exhibit 277. Take a minute, sir, and I'll take you to the
5 second page, when you let me know.

6 A Can you go to the next page?

7 Q There you are.

8 A Okay. I see all that.

9 Q This is an e-mail exchange that you had with Commissioner
10 Sims, and you include some staff. Is that true?

11 A Yes, that's right.

12 Q You say here, in the first, what I'll call the long
13 paragraph of the November 11, 10:48, a.m. e-mail, the first
14 bullet. "The 14th here is ever so slightly more Republican
15 here than your last proposal, but is still firmly swing, as
16 it is majority Hispanic CVAP." Do you see that?

17 A Yes, I see that.

18 Q In the next bullet, in the last line you say, "The biggest
19 question to you, then, what do you think the fair exchange is
20 for this 14th?" Is that what you said?

21 A Yes, I see that there.

22 Q On the second page, you again say, "Again, looking forward
23 to talking at one, and I will be especially interested to
24 hear from you what you think a fair price is for the 14th."

25 Do you see that?

1 A I do see that, yeah.

2 Q So is it fair to say, you're telling Commissioner Sims:
3 I'll give you a district that is over 50 percent Latino CVAP,
4 lean-Republican, but kind of swing, but you've got to give me
5 something else?

6 A No.

7 Q What did you mean by "fair price"?

8 A The Hispanic CVAP part of that is something we were
9 negotiating toward, that it would be a district where a
10 majority of the eligible voters would be Hispanic. The fair
11 price there refers to the partisan nature of the district.
12 The current district there was solidly Republican, so if
13 you're going to take any of the 49 districts, and you're
14 going to move them from being solidly supporting one party,
15 to a swing district, or favoring another party, then it
16 requires a balance somewhere else on the map. That was the
17 price I was trying to figure out for Commissioner Sims, if
18 you wanted this to be, just from a pure partisan basis, if
19 you wanted it to be a swing district, or a lean Democratic
20 district, where else are we going to rebalance the map?
21 What's the price on other parts of the map, to make sure that
22 the whole map itself would be fairly balanced.

23 Q Is it fair to say you were settled or agreed to, at this
24 point, to make the district 50 percent Latino CVAP?

25 A I think so. And my only hesitation is this e-mail is

1 November 11th. This was four days before our map was due.
2 We were working 20 hours a day. I should note, too, that I
3 -- we had a baby in July of 2021, and he was a very bad
4 sleeper. So my only hesitation is it was right around this
5 time, when we really -- Commissioner Sims and I reached that
6 agreement, that it would be a majority CVAP district. But I
7 just can't recall if it was firmly settled by this point, or
8 a day or two after.

9 Q And I guess I'm less interested in the timing and more
10 interested, I want to focus on -- it sounds like there was an
11 agreement, at some point in time, between you and
12 Commissioner Sims, that this district would be greater than
13 50 percent CVAP?

14 A Yes. I think that's right.

15 Q And what was up in the air in the negotiations, at least
16 still on November 11th, was whether it was Republican, 50/50,
17 or leaning democrat; is that fair to say?

18 A Yes. You can draw a district there that has a number of
19 it different partisan profiles, based on recent elections.

20 Q It's also fair to say that if Commissioner Sims had
21 responded -- well, actually, before I get to that, let me ask
22 you here about the third bullet here at the bottom that
23 begins with, "My proposal here for the 14th is Republican
24 improvement in 47, 24, and 28." Do you see that, sir?

25 A Yes, I see that.

1 Q Generally, what part of the state are those districts in?

2 A The 47th is in Southeast King County. The 24th is the
3 three counties that make up the peninsula. And the 28th is
4 in central Pierce County, around Joint Base Lewis McChord.

5 Q The benchmark map, the map that had been in use the prior
6 decade, what kind of districts were those? Did they lean
7 Democratic, swing districts, Republican?

8 A The 47th had been, and the 28th, had both been classic
9 swing districts over the course of that decade. And the 24th
10 was a rural district that had long been Democratic, that was
11 trending more Republican.

12 Q So the idea here was if Commissioner Sims would make one
13 or several of those districts more Republican, then you could
14 agree to the 50.1 CVAP. But also maybe the district leans a
15 little more Democratic out in the 15th?

16 A Well, the majority CVAP was already -- we would have
17 already agreed to that. We were strictly negotiating about
18 the partisan profile of the district.

19 Q Got it. So if an arrangement could have been made in
20 these 47, 24 and 28, to shift them a bit more Republican, one
21 or several, then you would agree the 14th, as you're calling
22 it here, could be 50.1 Latino CVAP and lean Democratic?

23 A Yeah. I was certainly open to changing partisan profiles.
24 My main goal was to try to have more competitive districts.
25 I was trying to draw more districts to get more competitive.

1 So I was certainly open to trying to have this district and
2 then these others, too, be really competitive districts.

3 Q And there wasn't any barrier, in terms of -- strike that.
4 It was possible to draw this, what you're calling the "14th"
5 here in the Yakima Valley, 50.1 Latino CVAP and lean
6 Democratic?

7 A Sorry. What was your question?

8 Q It's possible -- it was possible, when you were having
9 these negotiations, that the 14th in the Yakima Valley could
10 have been drawn 50.1 Latino CVAP, and lean Democratic?

11 A My only hesitation is the 50.1 to lean Democratic. I
12 can't remember if you could hit that exact number and also
13 make it lean Democratic. It might have changed the racial
14 makeup of the district. But you could certainly draw a
15 district there that would lean Democratic, have a whole host
16 of other problems with communities of interest, and breaking
17 up cities and counties, and things like that. But you could
18 certainly, if you wanted to, draw a district like that.

19 Q If you weren't married to hitting 50.1 exactly, you could
20 get greater than 50 percent Latino CVAP and lean Democratic
21 in the district?

22 A I think you could.

23 Q And you think you would, you would have agreed to do that
24 with Commissioner Sims, if you could have gotten this price
25 for these other three districts; is that fair to say?

1 A If we could have -- we're talking here, this is the purely
2 partisan aspect of this. You know, I don't read the
3 Section 2 of the Voting Rights Act to say one party gets to
4 win, or another. So I consider this to be purely in the
5 range of our negotiations with the rest of the districts.
6 And I was more than open, with this district, and all the
7 others in the state, to make more districts competitive. But
8 to do that, and have a fair map, if you're going to have
9 greater performance for one party in district, one district,
10 it needs to be offset by greater partisan performance for
11 another party in a different district.

12 Q Thank you for that answer. I'm asking a bit more precise
13 question.

14 A Okay.

15 Q You would have agreed, and given -- agreed with
16 Commissioner Sims, to draw a 50.1 or more Latino CVAP
17 district, in the Yakima Valley, that leaned Democratic, if
18 you could have gotten accommodation, more Republican in 47,
19 24, and/or 28?

20 A Those are the exact negotiations we were having across the
21 entire map. Hey, can we get more partisan performance here,
22 in exchange for more partisan performance there? That was
23 kind of the meat and potatoes of our negotiation.

24 Q Was that a, "yes"?

25 THE COURT: It was an answer. He was trying to make

1 things more competitive. Not every question can be answered
2 yes or no, as the head of (unintelligible) tried to make that
3 point in his congressional testimony, and was not allowed to.
4 But in this courtroom, you are allowed to not just answer yes
5 or no.

6 THE WITNESS: I appreciate that, Your Honor.

7 Q On Exhibit 277, and your discussion about the 14th,
8 there's no language in here about communities of interest, is
9 there?

10 A Can you go to the next -- I just want to make sure. Can
11 you go to the next slide? Actually, if you go back. Sorry.

12 Yeah. I think the answer there is, yes, because of the
13 second bullet point there talking about many resulting
14 challenges in Central and Eastern Washington.

15 Q In the next paragraph, you talk about the community of
16 Marysville. Do you see that, in the last line?

17 A Yes. Marysville, yes.

18 Q That's with respect to District 38; is that true?

19 A Yes. I think that's right. I just want to make sure that
20 -- because it was -- I can't remember if the idea was to
21 unite Marysville and the Tulalip, in the 38th, or 40th, which
22 was next to it, unite it in one district, then another one
23 would get more competitive.

24 Q I'm going to shift gears now and talk about the numbering
25 issue. You understand there was an issue with regard to

1 numbering the district that was primarily in the Yakima
2 Valley, the 50 percent CVAP district, whether it was 14 or
3 15?

4 A Yes. I recall we had some e-mails about that.

5 Q At your deposition, we discussed this. You said the
6 general rule is you were keeping the districts the same. Did
7 I understand that right?

8 A We tried, in general, to take the past map and keep those
9 numbers roughly the same, for the districts in those areas.

10 Q You also told me, at your deposition, that you didn't
11 recall having any discussion about whether it was 14 or 15.
12 Do you remember that?

13 A I couldn't really remember that. But we had some e-mail
14 exchanges about it.

15 Q Let me show you what's marked as Exhibit 304. It's on
16 your screen. And I'm focused on the e-mail at 8:48 a.m. that
17 you sent.

18 A 8:48, yes, I see that.

19 Q Here, you had sent over a map, and you were making some
20 quick corrections to it. You said, "We made the CVAP
21 district the 15th rather than the 14th, for ease of
22 incumbent." Do you see that?

23 A I do.

24 Q After you proposed this, from that point forward, the plan
25 drafts exchanged were labeled District 15. Is that your

1 recollection?

2 A The majority CVAP district, yes.

3 Q In the final plan, the district is 15?

4 A Yes. The district that is Hispanic, by eligible voters,
5 is the 15th.

6 Q Who were you the incumbents that triggered you to make
7 this change?

8 A It's so funny, when we talked about this at my deposition,
9 I genuinely didn't remember this stuff, probably because I
10 had baby brain, and didn't know what was going on. But I
11 thought about it since then. And so you've got the 14th and
12 15th, they are both districts in Yakima.

13 THE COURT REPORTER: Can you slow down, please?

14 THE WITNESS: I sure will. Sorry about that.

15 A So you've got six total legislators there, one senator for
16 each district, two representatives for each district. And as
17 we were first doing it, because you could draw it in a number
18 of different ways, the district that we were drawing, as the
19 majority Hispanic district, had the incumbents from the 14th
20 in it. It had more of the majority of the population there.

21 But then as we were continuing our negotiations, the
22 geography of the map moved to the east, where the districts
23 -- sorry, the legislators in the 15th were. So it made more
24 sense to, where the majority of the population was and where
25 the current incumbents were, to name that the 15th, for the

1 15th District legislators who were currently in that district
2 as we were negotiating it.

3 Q Okay. I think my question was, who were the incumbents
4 that you were referring to in this e-mail?

5 A Oh, Curtis King, Gina Mosbrucker, Chris Corey, Jim
6 Honeyford, Jeremie Dufault and Bruce Chandler.

7 Q Are those all Republicans?

8 A Yes, they are.

9 Q Now, transitioning to the night and morning of the
10 adoption and finalization of the map. I think you testified
11 that you all were under intense pressure to get a deal. Is
12 that your recollection?

13 A Did I say "intense pressure to get a deal"? Oh, we were
14 certainly under intense pressure, and I wanted to get a deal
15 done. But it's funny, there was intense pressure, both to
16 get a deal done, then some intense pressure not to get a deal
17 done. So apologies for whatever statement that was.

18 Q I'd like to show you Exhibit 355. And these are dated
19 that Monday. And at the top it says, "Now Brady is saying"
20 -- I'm assuming that's Brady Walkinshaw -- "that he's a no,
21 and April is asking for about ten things that we obviously
22 can't do for her, to be the one yes vote. Pretty lame on
23 their part. We'll see."

24 Is that what you said?

25 A Yes, that's right.

1 Q Towards the bottom right, after, "How's it going? I think
2 we'll get there. I think Joe has a lot of good contacts who
3 can make Brady's life very hard, who want a deal." Who is
4 the "Joe" in that?

5 A Commissioner Joe Fain.

6 Q What contacts did he have?

7 A The primary one that I was aware of is, he has a very,
8 very -- he has a close relationship with Congressman Adam
9 Smith. And I was not negotiating the congressional map, and
10 wasn't that closely involved there, but talking with
11 Commissioner Fain, it sounded like Congressman Smith was
12 really interested in a deal getting done, and a map getting
13 approved.

14 Q Commissioner Walkinshaw was the primary advocate for a
15 Latino-performing district in the Yakima Valley. Would you
16 agree?

17 A No.

18 Q Ultimately Commissioner Walkinshaw votes for the plan?

19 A Yes, he did.

20 Q And after it's finalized, it's sent to the Supreme Court.
21 Nobody shows it to him before it gets to the court. Isn't
22 that true?

23 A I don't know what he saw or didn't see.

24 Q You didn't have anything to do with that, if it happened?

25 A To do with what?

1 Q Commissioner Walkinshaw not seeing the map, before the
2 Supreme Court got it?

3 A I don't know if he saw it or didn't.

4 Q After the adoption, you had a press conference. Do you
5 recall that?

6 A I think it was two days after the 15th, we had a press
7 conference.

8 Q One of the things you said at that press conference, is
9 that the framework that had been agreed to was sufficiently
10 detailed that, without discretion, it could be turned into a
11 map. Do you remember saying that to the public?

12 A That sounds about right.

13 Q But you were there in the room from midnight until
14 6:00 a.m.ish, as individual decisions were made on the map.
15 Is it your testimony there was no discretion being made, at
16 that point in time?

17 A I really don't think there was, which sounds I'm sure
18 funny, because you're drawing maps in these 49 districts.
19 But this was -- we had a history here of a few months of
20 sending maps back and forth. And various proposals. And as
21 you -- as we were negotiating those with Commissioner Sims,
22 they were becoming more and more firm. And plenty of the
23 districts were getting kind of locked in. So then when it
24 came down to the really key districts we were negotiating at
25 the end, with the metrics that we were using, there really

1 was only one way to draw those. Then the rest of them are
2 already kind of locked in. So it maybe seemed kind of funny
3 to say it that way. But by that point, considering the whole
4 history of our negotiations, from our point of view, it
5 wasn't discretionary, it was turning the framework we agreed
6 to into the maps.

7 Q You didn't need to be there, then?

8 A Well, I thought it was important for me to be there.

9 Q Now, you testified that the framework agreement, with
10 regard to the 15th Legislative District, is that it would be
11 50.1 CVAP, and more for the Republicans. Is that accurate?

12 A I think the agreement we had was that it would be that
13 50.1 Hispanic CVAP number, using the 2019 American Community
14 Survey data. And if you used the 2020 State Treasurer's
15 race, it would be a district that Wade Davidson would have
16 won by, like, maybe 53 percent. I don't remember the exact
17 number. There was a particular number in there.

18 Q The 53 percent you just mentioned was the Pellicciotti
19 race, again?

20 A Pellicciotti, yes.

21 Q You may not remember, and that's fair, but the metric in
22 the adopted 15 is 46.6 Democrat and 56.3 Republican?

23 A I believe you told me that. I don't remember off the top
24 of my head.

25 Q Going back to the framework, also as part of the

1 framework, you agreed that the Yakima Reservation would be in
2 the 14th, in other words, not in the CVAP district?

3 A It wasn't just the Yakima reservation, it was the Yakima
4 reservation, plus the Yakima's traditional hunting and
5 fishing lands.

6 Q Okay. Fair enough. But the agreement was the Yakima
7 Reservation would be in the 14th?

8 A Yes. It's entirely included in the 14th.

9 Q And you testified that you don't think the Yakima
10 preferred whether they would be in the 14th or 15th?

11 A I don't recall hearing from them on whether one of those
12 numbers mattered to them more than -- yeah, the biggest thing
13 that I heard from the Yakima Nation, was that they preferred
14 to have both their reservation and their traditional hunting
15 and fishing lands, be contained within one Legislative
16 District.

17 Q And in the final plan, the 15th is, in fact, 50.1 percent
18 CVAP?

19 A If you use that 2019 number, which was the number we were
20 using, I think that's right around where it landed.

21 Q At your deposition, when I told you that it's actually
22 50.02, you told me that was the first time you had heard
23 that?

24 A Yeah. I don't recall, for those, or for any numbers we
25 were using, going to the second digit beyond the decimal

1 point.

2 Q Are you aware that the records in this case reflect that,
3 after midnight, when this non-discretionary map drawing was
4 happening, that district further included white citizens and
5 Latino citizens removed from it. Is that news to you?

6 A Can you say that again?

7 Q After midnight, when the final plan was being put
8 together, the district went from 51 -- the CVAP in the
9 district was decreased. White citizens were moved into the
10 15th, Latino citizens were moved out of it, before it was
11 finalized?

12 MS. FRANKLIN: Objection. Assumes facts not in
13 evidence.

14 THE COURT: The objection is sustained.

15 Q Is it your testimony that you played no role in the number
16 ending up being 50.02?

17 A Played no role? I was one of the two prime negotiators of
18 that district.

19 THE COURT: Let's move on, counsel.

20 Q After the plan passed and this litigation was filed, and
21 you began to do some work lighting the fire, I think you say,
22 for some of the parties to be in the case. Is that true?

23 A I was trying to make sure the maps would have a
24 full-throated legal defense in front of this court.

25 Q And you went back to Mr. Kincaid, and he offered to give

1 you some assistance; is that true?

2 A I don't remember if he offered to give assistance. But he
3 was certainly somebody I was talking to, when I was trying to
4 make sure we had a legal defense for the maps.

5 Q Mr. Kincaid probably connected you with Mr. Torchinsky?

6 A I think that's probably right.

7 Q And you understood these parties came into the case, at
8 least Mr. Garcia brought his case, and intervenors entered
9 the case, and part of the argument is that the map you
10 adopted is illegal?

11 A I understand they're making that allegation.

12 Q But you don't believe your map is illegal?

13 A No. I think it complies with both the Fourteenth
14 Amendment and Section 2 of the Voting Rights Act.

15 Q At any point in time, did Mr. Kincaid tell you that he was
16 organizing a national strategy to draw just barely 50 percent
17 CVAP maps, so that *Shaw* claims can be brought to challenge
18 the Voting Rights Act?

19 MS. FRANKLIN: Objection, hearsay.

20 THE COURT: I'm not interested in that. Let's move
21 on.

22 MR. DUNN: I pass the witness.

23 THE COURT: Okay. We obviously should have done an
24 educational training on pronunciation of towns, like
25 Marysville; and politicians, like Insurance Commissioner

1 Kreidler, et cetera, et cetera. Thank goodness we don't have
2 anything from Sequim or Puyallup to hear about.

3 Okay. Mr. Stokesbary, this is your witness.

4 CROSS EXAMINATION

5 BY MR. STOKESBARY:

6 Q Let the record reflect, even another local counsel has
7 mispronounced the beautiful master-planned community of
8 Tehaleh, on the southeast Pierce County plateau.

9 THE COURT: Wow, that's tough. And Mr. Fain can give
10 up the idea of ever running statewide, after all the: I
11 don't know this, and I don't know where that is, in the map
12 yesterday.

13 MR. STOKESBARY: Well, good afternoon, or sorry, I'm
14 not going to make that mistake again. Good morning, Your
15 Honors.

16 THE COURT: Do you have that written down?

17 MR. STOKESBARY: I don't. Dad brain.

18 Q Mr. Graves, as you know, you've been called to testify on
19 two cases being heard together, Soto Palmer v. Hobbs, and
20 Garcia v. Hobbs. I know we know each other, we'll get to
21 that in a second. But I'm Drew Stokesbary, I represent the
22 intervenor-defendants in Soto Palmer v. Hobbs. I also
23 represent the plaintiff, Mr. Garcia, in Garcia v. Hobbs. But
24 as I said, fair to say we know each other?

25 A Yes.

1 Q Do we know each other fairly well?

2 A I would say, yes.

3 Q But have we communicated about your testimony here today?

4 A No, we've been really clear not to do that.

5 Q You mentioned you're a lawyer, formerly a commercial
6 litigator at Perkins Coie. Did you do pro bono work as well?

7 A I did.

8 Q What kind of pro bono work have you done?

9 A Spent a lot of time representing foster kids in trial
10 courts through our King County court-appointed special
11 advocate program. And I, myself, have been a foster parent
12 as well.

13 Q At some point you decided to run for the state
14 legislature, correct?

15 A That's right. I ran for state representative in 2016.

16 Q Why did you decide to run for the state House?

17 A It sounded fun, and challenging, and interesting, and I
18 thought I could make a difference.

19 Q Did you have any mentors who inspired you to run, or whose
20 example you tried to emulate when you got elected?

21 A I did. We're fortunate enough here to have some very,
22 very good people that we can rely and lean on for doing this
23 very funny thing, running for office for the first time.

24 Q Anybody in particular?

25 A Slade Gorton was somebody who was really instrumental. He

1 was a U.S. Senator here, former attorney general, and state
2 legislator here in the state. He was one of the
3 commissioners on this Commission in 2011, and he was a hero,
4 a mentor, and a friend.

5 Q You mentioned, during your deposition, that dearly
6 departed Senator Gorton was the reason you became a
7 commissioner as well. Do you remember sharing that story?

8 A I do. When this position, the possibility of doing it
9 came up, I thought that it could be challenging, and
10 meaningful, and interesting, in a lot of ways. And one of
11 those was that, well, Slade Gorton did it, seems like it
12 would be a good idea to do something like that.

13 Q Well, thank you for your service on the Commission.

14 Sort of going into how the Commission actually
15 functioned, and what that was like, can you describe, in some
16 really general terms, how the negotiation process worked, how
17 the negotiations unfolded?

18 A Yes. We've got four voting commissioners, and you have to
19 have three votes for a map. But the maps are -- two of them,
20 they're all really complicated. And they take a lot of time
21 and negotiation to get done. So following the practice of,
22 at least the last Commission, we worked on what we call
23 "diads," where you have one commissioner appointed by a
24 Republican, one appointed by a Democrat, negotiate first a
25 legislative map, then the congressional map, with the goal of

1 then having those maps come forward and be debated and voted
2 on.

3 Q You said earlier that Commissioners Walkinshaw and Fain
4 were primarily tasked with negotiating the congressional map,
5 while you and Commissioner Sims negotiated the legislative
6 map?

7 A Yes, that's right.

8 Q What was it like working with Commissioner Sims?

9 A Challenging, and lovely, and hard. She's -- I have
10 tremendous respect for her, for her integrity. She's a
11 really tough, shrewd negotiator. And through the process, we
12 developed a really close, special relationship. And I have a
13 lot of fondness and respect for her.

14 Q What was your own approach, in the negotiation process? I
15 mean, what was your, sort of, strategy?

16 A Our state statute gives us the criteria that we're
17 supposed to consider when drawing the maps, and they're not
18 exclusive, and they don't give you an exact recipe to get
19 there. So it leaves some room for the commissioners to focus
20 on the things that are important to them. And my top
21 priority was trying to draw more competitive districts, for a
22 whole host of reasons. Our state and our legislature would
23 be better if there were more districts where the elections
24 were really competitive.

25 Q So as you were negotiating the map, exchanging proposals,

1 looking at various configurations, if the electoral
2 competitiveness is a goal, I assume you were looking at
3 political composition metrics, for various districts?

4 A Yes. You kind of have to, because you can't just use the
5 last year's legislative results, because it might have been
6 nobody from one party running in that race. It might have
7 been candidates of different quality. So what you end up
8 doing is taking what you think is a fair competitive
9 statewide race, or an average of statewide races, because
10 everybody has to compete for every vote in every district
11 there, and then you can apply that number to particular
12 precincts. Then as you're building out your district, by
13 precincts, you get, through the magic of technology, you get
14 the number of what that district would have performed at in
15 that statewide election, or average of elections, last time.

16 Q In addition to analyzing the partisan composition of
17 districts, were you also tracking the racial composition of
18 various configurations of the districts?

19 A Yes, some of them. As we were drawing, we had two
20 softwares that we were using, one is called Edge, and one is
21 called Dave's Redistricting; which is publicly accessible.
22 But in both of them you could have, for any district you were
23 drawing, you could have different data for what that district
24 would look like. And one of those was the racial makeup of
25 that district.

1 Q So we heard there's a November 15th deadline to complete
2 negotiations, adopt the final map. What would have happened
3 if the Commission had not approved a plan by November 15th?

4 A Under our State Constitution, if the Commission can't
5 agree to a map by the deadline, then the State Supreme Court
6 is tasked with drawing the maps by the next -- sometime in
7 April.

8 Q How did you feel about that possibility?

9 A I didn't want it to happen, not because I don't -- I
10 clerked at our State Supreme Court, I love it. But mostly
11 because all the other Commissions that have -- not mostly, I
12 wanted to get it done, because this process is important to
13 the people of our state, and it matters to me. But also none
14 of the past Commissions had failed to adopt a map, and I
15 didn't want to be the first one that failed to do so.

16 Q You said it was something you wanted to avoid. Fair to
17 say you would have a strong incentive to reach a deal with
18 Democratic commissioners?

19 A I felt a strong internal motivation to see if we could
20 reach agreement, on maps.

21 Q Were you willing to negotiate certain concessions, with
22 Democratic commissioners, in order to avoid handing the
23 map-drawing process over to the court?

24 A Yes. I think it's fair to say. I certainly recognized if
25 a map was going to be done, it would have to be done where

1 concessions were made, from commissioners of both parties.

2 Q Before I ask you about what some of those concessions
3 were, I want to revisit another topic that came up a minute
4 ago, a slide deck presented by Dr. Matt Baretto. You kind of
5 generally remember this?

6 A I do, yes.

7 Q Do you know who hired Dr. Barreto to produce the slide
8 deck?

9 A I think it was the state Senate Democratic Caucus. But
10 I'm not entirely sure of the payment arrangements, or what
11 that relationship looked like.

12 Q But certainly, at the time, that was your best guess, that
13 was your best belief?

14 A I think I remember either hearing or seeing it in an
15 e-mail.

16 Q Obviously, the Democratic Caucus is now not only, in your
17 mind, at least hiring Dr. Barreto, but they've also appointed
18 one of the four commissioners that you're tasked to negotiate
19 maps with?

20 A Yes. The leader of the State Senate Democrats appointed
21 Commissioner Walkinshaw.

22 Q Did you know who Dr. Barreto was, before you saw his slide
23 deck?

24 A I don't think so.

25 Q After you saw the slide deck, did you do any -- spend any

1 time looking into his background?

2 A I did.

3 Q Did you draw any conclusions, after looking into his
4 background?

5 A It looked to me like he worked primarily, maybe even
6 exclusively, for Democratic organizations, for the Democratic
7 National Committee, the Hilary Clinton campaign. So all I
8 saw was exclusively -- and it may be exclusively for
9 Democrats.

10 Q Given who you thought hired Dr. Barreto, what you learned
11 about him through your research, did it appear to you that he
12 was acting more like a scholar or advocate?

13 A The way I looked at it was -- and it's maybe my background
14 in litigation -- I viewed it the way you view an expert
15 witness in litigation. If you see an expert witness, and
16 they've only done plaintiffs' side work, or only defendants'
17 side work, I tend to just, gut-level, think they've got a
18 slant that direction, and they'll want to draw conclusions
19 for one side or the other.

20 So I viewed it the same way. I viewed it that there was a
21 lot of data that you could use, and look at, and think about,
22 and that somebody who had worked exclusively or primarily for
23 Democrats, would be inclined to draw conclusions that would
24 favor the Democratic party.

25 Q You think he was advocating for a particular partisan

1 outcome?

2 A That's certainly how I read the report.

3 Q Did you worry that because of that, he might be having an
4 overly expansive reading of what the VRA required?

5 A I definitely thought that. Again, I don't, for as murky
6 and complicated as Section 2 of the Voting Rights Act is, I
7 firmly believe it does not contain any requirement that one
8 party just gets to win. I think it's about the ability of
9 racial minorities to be involved in their elections in a fair
10 way, and not a partisan rule.

11 Q So sort of given these concerns about lack of objectivity,
12 of the report, we heard also that you and Commissioner Fain
13 hired the law firm of Davis Wright Tremaine to answer some
14 questions about what the VRA required. Is that generally
15 right?

16 A I'd say my primary goal was to, with that report, to get a
17 legal opinion on what Section 2 and the Fourteenth Amendment
18 would allow, or require, when it came to a district in the
19 Yakima Valley.

20 Q Is it also fair to say, maybe you wanted some more legal
21 analysis, in particular, because there really wasn't any
22 contained in the Dr. Barreto slide deck?

23 A He certainly quoted Section 2 itself, and I think had some
24 discussion of the *Gingles* factors. But, again, at that time
25 with just a few weeks to go, to negotiate the entirety of the

1 maps, I was primarily concerned, at the end of the day, what
2 exactly does the law allow or require the Commission to do
3 here?

4 Q Did you read the memo that Davis Wright Tremaine lawyers
5 ultimately produced?

6 A Yes, I did.

7 Q Did you find it persuasive?

8 A I don't know if "persuasive" is the right word. My main
9 impression when I got -- when I took -- considered the
10 Barreto report, and the Davis Wright Tremaine memo, is there
11 is a lot of uncertainty here, a lot of vagueness about both
12 what the law allows or requires, what data we need to be
13 looking at, and how it would actually apply to a particular
14 district.

15 And so then I think I put it -- we talked through one of
16 those texts. I texted with Commissioner Sims. And the
17 conclusion I came to is, we're going to have a substantial
18 amount of uncertainty on the legal side, no matter what, and
19 we're going to have to, if we can get maps done, we're going
20 to have to negotiate with that uncertainty, as a reality.

21 Q So up on the screen is a copy of that memo. It's been
22 introduced as Plaintiffs' Exhibit 225. I think it was up in
23 front of you a minute ago. I want you to read that first
24 underlined sentence.

25 A You want me to read it?

1 Q Could you read that out loud for us?

2 A Sure. "Section 2 does not require the creation of a
3 majority-minority district advocated by the assessment."

4 Q And "assessment" there is referring to Dr. Barreto's slide
5 deck, you're clear on that?

6 A Yes.

7 Q So after reading the memo, and this underlined sentence,
8 did you find yourself in agreement with this conclusion, that
9 Section 2 of the VRA does not require creation of a
10 majority-minority district, as advocated by Dr. Barreto?

11 A I thought that there was a good-faith argument to that
12 effect. But I also think the law here is uncertain as a
13 black letter matter, and also uncertain as a matter of
14 application.

15 Q Okay. So the Senate Democratic Caucus hired Dr. Barreto,
16 you and Commissioner Fain hired Davis Wright Tremaine. But
17 you also testified the Commission, itself -- and we've heard
18 other testimony on this fact -- never hired an outside
19 consultant to analyze whether the VRA required any particular
20 configuration of a district in the Yakima Valley?

21 A The Commission did not retain an outside expert to do
22 that.

23 Q You think the Commission could have done that, if they had
24 wanted?

25 A I think we had the ability to. The challenge again was

1 trying to find an expert like that, who would be credible and
2 trustworthy to both Republicans and Democrats.

3 Q Are you aware -- would there have been a budget for this
4 sort of thing, had that person been found?

5 A Like I said, I don't remember our budget, line-by-line.
6 But the fact that Commissioner Augustine was talking about it
7 and advocating for it, makes me think that there probably was
8 room in the bucket to hire somebody like that.

9 Q All right. So I want to focus now on sort of the last
10 couple weeks, leading up to the November 15th deadline.

11 I was going to ask you if it made LD 15, negotiating
12 LD 15, into one of the most pressing issues facing the
13 committee. But you used a similar phrase in your deposition,
14 that I missed, that Mr. Dunn caught, so I'll skip over that
15 question.

16 But was negotiating the final boundaries of the Yakima
17 Valley districts one of the top issues that remained to be
18 resolved in the closing weeks?

19 A I would say it's fair to say this is one of the districts
20 that was a primary topic of our negotiation.

21 Q Part of deciding on the configuration, also meant trying
22 to understand what the VRA required?

23 A Yes.

24 Q So you have the Dr. Barreto report. You had the memo from
25 Davis Wright Tremaine. I'm assuming you had some excellent

1 advice from some top-notch attorneys general. Did you have a
2 clear understanding of what the VRA required, in the Yakima
3 Valley?

4 A I'm not sure the VRA itself has a clear understanding of
5 exactly what it requires in the Yakima Valley. But that was
6 my clear understanding, was that it's uncertain, and there's
7 not one particular district that you have to draw. And there
8 were certainly legal risks, both from Section 2 of the Voting
9 Rights Act, and from the Fourteenth Amendment.

10 Q So other than the Dr. Barreto report, and the memo from
11 Davis Wright Tremaine, did you or your staff consider any
12 analysis regarding the size or compactness of the Latino
13 community, in the Yakima Valley region?

14 A I think the primary data I saw on that, was some of the
15 information in Dr. Barreto's report.

16 Q Other than the Dr. Barreto report, and the Davis Wright
17 Tremaine memo, did you or your staff perform any analysis
18 regarding the political cohesion of Latino voters in the
19 Yakima Valley region?

20 A Gosh, it was happening fast. But I have -- I recall, in
21 the recesses of my mind, from a few years ago, a brief
22 conversation with Anton Grose, who was one of my staffers,
23 who had, I think, taken a look at some precincts in the 13th
24 District, which is just north of the 15th, because there,
25 there's a Republican Hispanic representative named Alex

1 Ybarra, and the -- in districts that were more heavily
2 Hispanic, it looked like he performed better, than other
3 Republicans in precincts like that.

4 Q But short of the extent to which the 13th Legislative
5 District cut through the Yakima Valley, nothing beyond that?

6 A I think I saw what was in the Dr. Barreto report.

7 Q Okay. And other than the Dr. Barreto report, and the
8 Davis Wright Tremaine memo, did you or your staff perform any
9 analysis regarding whether non-Hispanic white voters in the
10 Yakima Valley region, voted as a block?

11 A No. I think it was a pretty similar -- again, I saw what
12 was in the Dr. Barreto report, was the primary information I
13 saw on that.

14 Q Then last question like this. Other than the Dr. Barreto
15 report, and the Davis Wright Tremaine memo, did you or your
16 staff perform any analysis, which candidates were preferred
17 by Latino voters in the Yakima Valley?

18 A I'd say those are the primary pieces of information that I
19 was looking at, for that question.

20 Q Okay. I want to ask you a couple questions about the
21 final configuration of LD 15, as it was approved by the
22 Commission. To start, I'm going to show you a copy of the
23 one and only map that you publicly proposed, which has
24 already been introduced as Plaintiffs' Exhibit 158. I'm sure
25 you saw a lot of maps, but does that look generally familiar

1 to you?

2 A That 13th District, certainly does.

3 Q I'm sure I have a client that thanks you for not making
4 him drive from Lincoln County to North Bend and back every
5 day.

6 If we could zoom in on sort of the, quote-unquote,
7 five-county area here in South Central Washington. Can you
8 describe for the court, where is Yakima in this map?

9 A It's middle, vertically, and two-thirds the way to the
10 left, is the City of Yakima.

11 THE COURT: Do the witnesses still have the ability
12 to circle things on there?

13 Q But in this proposal, Yakima is split between the 14th and
14 15th Legislative District?

15 A The City of Yakima itself, yes.

16 Q That is roughly where the City of Yakima was, in the
17 previous round of redistricting?

18 A Yes. Yeah. In the map before, Yakima was split between
19 those two districts.

20 Q What about Pasco and the Tri-Cities, where were they
21 located on your proposal?

22 A You can see they're over there, where the 8th and 16th and
23 9th all meet up.

24 Q Is that where they were, under the then-existing map at
25 the time?

1 A I think that's right. Yes.

2 Q This one is going to be a little hard, because it's not
3 labeled on this map. But I can point you out, and I'm sure
4 Judge Estudillo would be very willing to help point you out.
5 Do you know where Othello is located on this map?

6 A I think right along 395 there.

7 Q It's a little bit northwest of 395. It's at the
8 intersection of 26 and 17, just southeast of Potholes
9 Reservoir?

10 A Yes.

11 Q Which district is that in?

12 A The 9th.

13 Q Neither Yakima, nor Pasco, nor Othello, were -- no two of
14 those were in a single Legislative District, much less all
15 three, in your proposal?

16 A Right, that's correct.

17 Q So now I'm going to pull up the final map that was enacted
18 by the Commission, with respect to Legislative District 15.
19 This is Intervenor's Exhibit 1043. And you can see Yakima
20 and Othello. And I know Pasco is not labeled on this
21 version, but I assume you understand where it is. Do you see
22 Yakima, or parts of Yakima, Pasco, and Othello, are now all
23 contained in a single district?

24 A Yes.

25 Q Are you aware that Yakima and Pasco had never been drawn

1 into the same Legislative District before, in the state's
2 history?

3 A I don't think I was aware of that.

4 Q Do you know how far apart the two cities are?

5 A I could guess.

6 Q What would your guess be?

7 A Ninety miles.

8 Q Do you know if they have their own newspapers, Yakima and
9 the Tri-Cities?

10 A I actually don't.

11 Q Are you familiar with the Yakima Herald?

12 A I know that one, yes.

13 Q Are you familiar with the Tri-Cities Herald?

14 A Yes, I'm aware of that.

15 Q Do you know whether they have their own chambers of
16 commerce?

17 A I don't know, specifically.

18 Q Are you familiar with the Hanford Nuclear Site?

19 A Yes, I'm aware of that.

20 Q Where is that at?

21 A In Hanford.

22 Q And you mentioned that you served in the legislature from
23 2017 to 2019, correct?

24 A That's right.

25 Q And I assume you worked closely with state legislators

1 from both the Tri-Cities and from Yakima?

2 A Yes, I did.

3 Q Do you remember the legislators from the Tri-Cities
4 talking a lot about Hanford nuclear-related issues, before
5 the legislature?

6 A Oh, yes. We had a big bill on workers' compensation
7 insurance, for workers at the Hanford Nuclear Site, and the
8 legislators representing that area were very involved in
9 that.

10 Q Do you remember the legislators from the 14th and 15th
11 District, that represented Yakima at the time, having any
12 particular concern about Hanford nuclear issues?

13 A I don't recall.

14 Q So you mentioned at the beginning of testimony that you
15 grew up in Maple Valley, you live in Newcastle now, you went
16 to Western Washington, undergraduate. So other than the
17 three years at Duke University, have you lived in Washington
18 your entire life?

19 A Yes, I have.

20 Q Have you ever heard of anybody describe Yakima and Pasco
21 as being part of the same community?

22 A I think I actually heard public testimony to that effect,
23 when we were hearing public testimony on the congressional
24 maps, because there was -- our current 4th and 5th, which is
25 Central and Eastern Washington, they're divided by a vertical

1 line. But there were proposals to make them horizontal, that
2 would put Yakima, Tri-Cities and Walla Walla, all into one
3 congressional district. And I think I recall testimony
4 suggesting that those communities, along Highway 82, were
5 something of a community of interest for the purposes of a
6 congressional map.

7 Q For the purposes of a congressional map?

8 A That's how I remember that testimony. But I would go back
9 to that particular hearing, to remember it exactly.

10 Q Do you happen to recall the exact size of the
11 congressional districts, that were mandated after the 2020
12 decennial census?

13 A 770,152, give or take.

14 Q What was the approximate size mandated for legislative
15 districts?

16 A 157,200.

17 Q So about a fifth. All right.

18 So honing back in on the process of reaching consensus
19 on LD 15, and the rest of the Legislative District map, were
20 there certain key metrics -- you already mentioned partisan
21 performance and racial composition as something that you
22 looked at, generally, but were there any particular key
23 metrics you looked at, with respect to LD 15, as you were
24 trading proposals and negotiating, over the last few weeks?

25 A The two predominant ones we were discussing were the

1 racial composition of the district, and its partisan
2 performance. But we were certainly also talking about
3 communities of interest. And if you draw that district in
4 various ways, it's not only that district that gets impacted,
5 it's all of Central and Eastern Washington. So we were
6 talking about those issues as well.

7 Q Did you ever look at racial data, on a precinct or
8 census-block level, during this process, in LD 15?

9 A I think so. It wouldn't have been -- we usually didn't
10 get that granular, for that purpose. But there might have
11 been times when we were drawing a district, and trying to
12 include some precincts, or some others, and I might have seen
13 some of the data from precincts when we were doing that
14 around the Edge's exercise.

15 Q I know in your testimony earlier, you pointed out there is
16 a number of ways you could calculate or measure minority
17 population; one of them, I'm sure you're familiar with, is
18 this notion of Hispanic citizen voting age population, or
19 Hispanic CVAP?

20 A Yes.

21 Q So if I say that in a question, you know what I mean?

22 A I assume you mean that's a majority of eligible voters,
23 citizens of voting age population, are Hispanic.

24 Q Was that particular measurement, the Hispanic CVAP, you
25 know, probably the most predominant way you examined racial

1 composition, at this stage in the negotiations, with respect
2 to the 15th District?

3 A "Predominant" is probably the right word there. My only
4 hesitation here is we were, of course, also looking at the
5 percentage of eligible voters of other races, as well,
6 because there's the Hispanic vote, then there's the
7 percentage of vote of other races. And we were looking at
8 those, too. But it's probably fair to say the Hispanic CVAP
9 number was the primary one we were focusing on.

10 Q So during the last week, or so, of negotiations, did you
11 ever talk to Commissioner Walkinshaw about the configuration
12 of Yakima Valley legislative districts?

13 A I don't think so, other than our really clunky final
14 public meeting, on the night of the 15th.

15 Q Maybe I narrowed the timeframe too much. What about in
16 the last several weeks. Did you ever talk with Commissioner
17 Walkinshaw about the configuration of Yakima Valley
18 legislative districts?

19 A During those last couple weeks, I was predominantly
20 talking with Commissioner Sims, because that's who I was
21 negotiating with. And also because there was the Public
22 Meetings Act, and I didn't want to have a serial meeting. So
23 I wasn't talking to Commissioner Walkinshaw that much. We
24 had one meeting, the morning of the 15th, that primarily
25 focused on this process, and whether he wanted to see if we

1 could get a map done that day. And I can't remember if we
2 talked specifically about the configuration of the 15th,
3 during that meeting.

4 Q I guess, at any point, did you ever discuss, with
5 Commissioner Walkinshaw, how the Voting Rights Act applied in
6 the Yakima Valley?

7 A Yes.

8 Q Do you recall what he said the VRA required?

9 A I think if I recall correctly, he took the position that
10 it was -- that it required a particular -- a district with
11 particular characteristics, to be drawn. That those
12 characteristics be both that it be a Hispanic CVAP district,
13 and that it -- if you use recent partisan-performance, it
14 would be a district that was Democratic.

15 Q When you say you thought he believed it required a
16 Hispanic CVAP district, specifically a majority Hispanic CVAP
17 district?

18 A Yes, where a majority of eligible voters were Hispanic.

19 Q Did you think that you would then need to draw a major
20 Hispanic CVAP district in the 15th LD, if you wanted to
21 secure his vote for the final plan?

22 A I think I had that in mind. It was less based on that
23 meeting, and it was more in his public statements, the things
24 that he said in that Crosscut article, then his next map that
25 he put out, and his -- some of his public statements, made me

1 think that would probably be a go, no-go decision point for
2 him.

3 Q And I think you sort of addressed this earlier, but
4 agreeing to a majority CVAP district in the 15th District, is
5 something you were willing to do, as long as there was the
6 appropriate adjustments, in your mind, for overall partisan
7 performance of all the legislative districts?

8 A No. Because the Hispanic CVAP, this is -- I need to be
9 really clear here, there are two primary characteristics
10 here. There's the majority-minority part, and then there's
11 the partisan-performance part. So you just asked
12 specifically about --

13 Q I apologize if my question was unclear. I want to focus
14 in on the majority Hispanic CVAP part. You said that was one
15 of the conditions you felt that would be required to get his
16 vote, at least in your mind?

17 A I was going to say I think that fairly describes how I was
18 viewing the situation.

19 Q Is that characteristic of the district, something that you
20 were willing to agree to yourself, as long as you had the
21 other partisan performance things that were important to you?

22 A They were two separate things, in my mind. But I didn't
23 view reaching agreement on a majority Hispanic CVAP district
24 as something that was part of those partisan calculations. I
25 think this is kind of responsive, but after I got elected to

1 the legislature in 2016, a very good friend of mine by the
2 name of David Perez, who is a lawyer at Perkins Coie, asked
3 me to go to lunch. And he's done a lot of legal work in the
4 Yakima Valley, representing Hispanic voters. And we had a
5 long lunch talking through the challenges they faced there.
6 And I was really struck by that, that he was trying to
7 convince me to vote for what became the State Voting Rights
8 Act. And I ended up being one of the few Republicans to do
9 that.

10 And I genuinely cared about making sure the Hispanics in
11 the Yakima Valley were treated well. So separate and apart
12 from partisan calculations, it wasn't a reluctant agreement
13 on my part, to make the district majority CVAP, by Hispanics.

14 Q I see what you're saying. You were happy to agree to a
15 majority Hispanic CVAP district?

16 A It wasn't like I was dragged there. I thought it would be
17 a really good thing.

18 Q Okay. Now, what I was trying to ask you about
19 Commissioner Walkinshaw, you were trying to answer about
20 Commissioner Sims, and that's what I was going to get to
21 next. So I assume you did have a lot of conversations with
22 Commissioner Sims about the iteration of the Yakima Valley
23 districts?

24 A We certainly had a lot of negotiations.

25 Q And I conclude those had a lot to do with how the Voting

1 Rights Act applied to the Yakima Valley?

2 A Yes, they did.

3 Q Do you recall what she said about what she thought the
4 Voting Rights Act required in the Yakima Valley?

5 A I think she started most of those conversations by saying,
6 she is not a lawyer, but that her view was that the
7 Section 2, from her point of view, required it to be a
8 district that was majority Hispanic eligible voters. And
9 that, again, based on past partisan performance, would be a
10 Democratic district.

11 Q So you also -- so you probably then also felt that in
12 order to get Commissioner Sims's vote for a final plan, it
13 had to include a majority Hispanic CVAP?

14 A Yes. I thought that was the case.

15 Q Okay. So this came up a little bit in your testimony
16 earlier, the court has heard a lot about it, but the deal
17 that was struck, that the Commission approved, shortly before
18 midnight on November 15th, there wasn't a physical map in
19 front of you, but instead you agreed on a framework, is the
20 word that has been used?

21 A Yeah. We had, in the context of our negotiations, we had
22 maps, and then we also had particular data that we were
23 focusing on and negotiating on. And what we finally agreed
24 to is what I have always called a framework of those data
25 that you could translate into the maps.

1 Q So for the final plan that the Commission adopted, I think
2 you said that you recalled the final Hispanic CVAP number
3 being 50-point-something, a slim majority?

4 A I recall that, yes.

5 Q Did you believe that a Hispanic CVAP district was required
6 by the Voting Rights Act?

7 A Me personally?

8 Q Yeah.

9 A I was entirely uncertain about that. I think that the law
10 was entirely unclear on that particular question, so I -- the
11 most certain answer I can give you is that I was uncertain
12 about the answer to that question.

13 Q With respect to this, quote-unquote, framework that was
14 adopted, was the final Hispanic CVAP for Legislative District
15 one of the components of this framework?

16 A Yes, it was.

17 Q But there was other districts that were included in the
18 framework, it wasn't just -- it wasn't that everything had
19 been agreed to, except the 15th. There were other districts
20 included in the framework agreement?

21 A That's right. In fact, if I recall correctly, the final
22 agreement that we were talking about, were all districts that
23 were here on the west side.

24 Q Did this framework stipulate the political composition of
25 those other districts?

1 A Yes, based on recent election results.

2 Q Did the framework stipulate the racial composition of any
3 other district, besides the 15th?

4 A No, I don't think so. And my only pause there is that we
5 had talked about -- because there are other districts that
6 are majority-minority, by either CVAP or voting age
7 population, or others, and we had talked about those. But I
8 don't think any of those made it into -- as key part of that
9 framework. They still had those characteristics.

10 Q They were agreed to, but they weren't part of the sort of
11 final agreement that it took to get an actual final agreement
12 in time for November 15th?

13 A That's right.

14 Q When you voted on this framework, shortly before midnight
15 on the 15th, did you know what you were approving?

16 A Yes.

17 Q Even though you didn't have a map in front of you at the
18 time?

19 A Yes.

20 Q Did you examine the final plan, once it was assembled into
21 map form?

22 A Yes, I did.

23 Q And was that map in line with what you thought you had
24 agreed to, via the framework?

25 A Yes, it was.

1 Q Were you aware -- well, I assume the answer to this is,
2 yes, given your previous answer. But you were aware, then,
3 that the 15th District, as adopted by the Commission,
4 included a slight majority Hispanic CVAP in the 15th
5 District?

6 A Yes, I was aware of that.

7 Q Do you think the Commission would have ultimately reached
8 the final deal, if there was not a majority Hispanic CVAP
9 district in the Yakima Valley?

10 A Very hard for me to see three of the voting commissioners
11 voting for a map that did not have a majority Hispanic CVAP
12 district in the Yakima Valley.

13 Q Once you had reached final agreement on the 15th
14 Legislative District, did you or your staff ever assess that
15 district, for compliance with the Voting Rights Act?

16 A After we had approved the maps?

17 Q Um-hum. Or in that period of time when you had, I think
18 it was, a very brief period of time, but that brief period of
19 time when you sort of had an agreement, in principle, but had
20 not yet formally approved it via a Commission vote?

21 A No, I don't think -- we did not do like a -- we did not
22 take that map and ask anybody -- that district, sorry, that
23 we finally agreed on and ask anybody to analyze it in those
24 few hours.

25 Q Did you think it was necessary to draw the 15th District

1 in the manner in which it was finally drawn, in order to
2 avoid violating the Voting Rights Act?

3 A I think the Voting Rights Act gives you discretion. There
4 are different ways to comply with it. But I think the way we
5 drew it is one of those ways that you can draw it, where it's
6 compliant with Section 2.

7 Q Were you aware that a court might invalidate the 15th
8 District, or some district in the Yakima Valley, if it wasn't
9 drawn in the way it was finally drawn?

10 THE COURT: He's a lawyer. He knows anything can
11 happen in court.

12 Q Hopefully what happens in federal court is predictable.

13 A But here we are.

14 Q Here we are, nonetheless. So, Mr. Graves, a few more
15 questions that kind of connect your work on the Commission in
16 2021 to the present day. We talked about the racial
17 composition of LD 15. We didn't talk so much about the
18 partisan composition. But I think a minute ago, Mr. Dunn
19 said that according to, at least some metric, it was about a
20 47/53 district, 47 percent Democrat, 53 percent Republican,
21 was that your sense of the political composition?

22 A If you look at the results of the 2020 State Treasurer's
23 race.

24 Q Now, I don't think this has come up yet, but when you're
25 not volunteering your time as a redistricting commissioner,

1 when you're not anxiously awaiting publication of the next
2 Robert Carroll biography, what do you do?

3 A I'm a lawyer. I work in-house for a trucking company.

4 Q Is that your only job?

5 A No. I also am president of a group called Enterprise,
6 Washington.

7 Q So in that role, are you involved with legislative
8 campaigns around the state?

9 A Yes. We do some work in legislative campaigns.

10 Q Funding, strategy, things like that?

11 A We predominantly run what are called "independent
12 expenditures" on behalf of candidates who support the
13 business community.

14 Q People will call you for political or campaign advice?

15 A I occasionally get that.

16 Q So given that other role you have, and given the partisan
17 lean of the district you negotiated, did you expect it to be
18 competitive in subsequent elections?

19 A I thought there was a real chance of that. Previously it
20 had been Republican by maybe 15 points, or something like
21 that, then went down to six. And, of course, these things
22 can change over the course of a decade. So I thought there
23 was a chance that the district could get competitive.

24 Q Given your knowledge and experience with legislative
25 campaigns, your understanding of the competitiveness of

1 elections, were you surprised when no Democrat filed to run
2 for office, in either House seat in the 15th District?

3 A I was pretty surprised by that.

4 Q And there was one contested race for State Senate, you're
5 aware of that, between Republican Nikki Torres and Democrat
6 Lindsey Keesling?

7 A Yes.

8 Q You are aware that Nikki Torres received about 68 percent
9 of the vote?

10 A Just shy of that, yeah.

11 Q Given the partisan composition you helped negotiate, did
12 you expect Republican candidates in the district to receive
13 over 65 percent of the vote in the district?

14 A No. That's a tremendous deviation from what we saw. But
15 I've been really proud of Senator Torres, in running that
16 race, and serving as she has.

17 MR. STOKESBARY: No further questions, Your Honor.

18 THE COURT: Mr. Graves, you were at Perkins Coie, and
19 you mentioned talking to Mr. Perez. Were you there when
20 Perkins Coie was doing the *Montes* case?

21 THE WITNESS: Do you know when that was? I don't
22 remember.

23 THE COURT: 2012, I think.

24 THE WITNESS: I think I was there. I should be
25 clear, I never did any election cases at Perkins.

1 THE COURT: But Kevin Hamilton and Abha Khanna, they
2 were your colleagues at that time?

3 THE WITNESS: Yes, they were. But as you can tell,
4 I'm a Republican, and they were representing the Democrats.

5 THE COURT: Was Rob McKenna still there?

6 THE WITNESS: No. He left before then. But he's
7 also a good friend.

8 THE COURT: Was David Levy your Dean at Duke Law
9 School, or did he arrive after you graduated?

10 THE WITNESS: He showed up the year that I got there.
11 A lovely man.

12 THE COURT: Great guy. And while we're talking
13 history. David Levy's father was the Attorney General of the
14 United States for President Gerald Ford; Edward Levy. And
15 the reason that John Paul Stevens got on the U.S. Supreme
16 Court, fellow Chicago guy, wonderful family, and David Levy
17 was Chief Judge of the Eastern District of California when I
18 was Chief Judge here in the Western District of Washington,
19 and we worked together on many things. I wish he would have
20 gotten to the U.S. Supreme Court. He was a great person and
21 great U.S. Attorney, and then a great district judge.

22 THE WITNESS: He had to bide his time away in the
23 salt mines in Durham, North Carolina.

24 THE COURT: Yes, he did. And then Slade Gorton, oh,
25 my gosh, for those of you from Southern California and

1 elsewhere, great person, lived into his 90s, still worked
2 full time in a big Seattle law firm. 1980, he ran for U.S.
3 Senate, he had been Attorney General, against Warren
4 Magneson, who was just a giant out here. And nobody gave
5 Slade a chance; but he won. And there's a whole other story
6 about why he lost in 1986, that I will tell my fellow judges
7 later, because it involves one of our colleagues. But Slade
8 was a great, great person.

9 Okay. Ms. Franklin, do you have a couple of minutes of
10 questions?

11 MS. FRANKLIN: I have more than a couple minutes.
12 I'm wondering if this would be a good time to take a break.

13 JUDGE ESTUDILLO: I have one question. You had
14 mentioned Commissioner Augustine was advocating for hiring a
15 VRA expert for the Commission. I think you said something to
16 that effect.

17 THE WITNESS: Yes.

18 JUDGE ESTUDILLO: Did you, as a Commission together,
19 in a meeting, ever discuss actually doing that, like making a
20 formal vote, or exchanging names on who to hire, by chance?

21 THE WITNESS: I think there was -- I can't recall
22 exactly. I think there was a meeting, I think pretty early
23 on, where we kind of talked about that prospect. Then after
24 that, when we talked about it, it was Commissioner Augustine
25 talking to me, and I think she probably talked to some of the

1 others, in that text where I said she called us pigheaded.
2 She primarily said we were pigheaded because we couldn't get
3 our heads together and try to find a way to agree on somebody
4 like that.

5 JUDGE ESTUDILLO: There was no names ever thrown
6 about, hey, I think this person is a possibility, or was it
7 just the ultimate conclusion, I don't think we can agree?

8 THE WITNESS: There was Dr. Barreto, then
9 Mr. Burnell. But, again, it seemed to me that -- it just
10 seemed to me that it would be very hard for us to find
11 somebody who we could all agree on, and trust, because they
12 all -- not all, I'm sure some may be nonpartisan -- but it
13 seemed like the people we would be looking at were mostly
14 partisans.

15 THE COURT: Okay. We're adjourned until 10:30.

16 (Recess.)
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1 CROSS EXAMINATION

2 BY MS. FRANKLIN:

3 Q Good morning, Commissioner Graves. My name is Erica
4 Franklin, I represent the State of Washington in both cases.
5 And before I begin, I just want to ask you a couple of
6 questions that we've been asking of all of the commissioners.
7 First, the Attorney General's office does not represent you
8 or the Commission for purposes of this trial. Is that your
9 understanding?

10 A That is my understanding.

11 Q And second, neither I nor anyone else at the Attorney
12 General's office has prepared you for the testimony that
13 you're providing today, correct?

14 A That's correct.

15 Q Were you paid for your service on the Washington State
16 Redistricting Commission?

17 A We were afforded the possibility of a per diem. And I
18 ended up taking seven days' worth of per diem.

19 Q Was it possible to take more than that, for the rest of
20 the time that you served on the Commission?

21 A Yes, it was.

22 Q And why didn't you take those additional days?

23 A I'm really blessed to be able to have good jobs, and this
24 seemed like a real public service thing, that felt just sort
25 of wrong to take more per diem to do this. I saw it as a

1 form of my public service. And so I didn't feel the need to
2 take more per diem than that.

3 Q And I understand you also worked on King County's
4 Redistricting Commission?

5 A I did.

6 Q When was that?

7 A This was overlapping with this state Commission. The King
8 County Council also does a pretty similar redistricting
9 process, but instead of a November 15th deadline to approve
10 maps, it had a December 31st deadline to approve maps.

11 Q So you were busy?

12 A Like I said, I also welcomed our son, John, that year, in
13 July. It was a very busy time.

14 Q It sounds like it. I'd like to spend a few minutes
15 talking about the criteria that you used in drawing and
16 evaluating maps. So you mentioned earlier today that you
17 were familiar with the statutory and constitutional
18 requirements for redistricting, right?

19 A Yes. I read and studied all of those.

20 Q To the best of your recollection, what were those
21 requirements?

22 A Wow.

23 Q It's okay if you don't remember.

24 A It's the lawyer in me that wants to go to the statute
25 itself. But it included things like having equal population

1 by districts, that they be compact and contiguous, that they
2 neither favor nor disfavor any political party, or incumbent,
3 or candidate for office. And that they encourage electoral
4 competition. There might be more, but as far as the statute
5 itself we were operating under, those were what I can
6 remember right now, for the list of requirements.

7 Q What about minimizing city/county splits?

8 A Yes, that also is one of them.

9 Q Keeping communities of interest together?

10 A Yes. If I didn't say that, that is one of the big ones.

11 Q Keeping precincts together?

12 A Yes. That's one of them.

13 Q And you mentioned you wanted to take a look at the
14 provisions. So let's take a look at preadmitted Exhibit 510.

15 So is this the Constitutional provision you were
16 referring to?

17 A Yes. What I was talking about there is the statute
18 itself, under this provision of the Constitution. But this
19 is the Constitutional part of the law that governs the
20 Commission.

21 Q Let's turn to the statute. So that's preadmitted Exhibit
22 509, and scroll down to 44 RCW 44.05.090, which begins on
23 Page 3.

24 A I see the beginning of that.

25 Q So is this the statute that you consulted?

1 A Yes.

2 Q Did you attempt to apply these statutory and
3 Constitutional requirements, to your own work?

4 A Absolutely, yes.

5 Q In what ways?

6 A It was for each one of those. So like, for example, with
7 roughly equal population per district, that one is the
8 easiest and most straightforward to apply, because you take
9 the census number for total people in the state, divide by 49
10 for the LDs, and we didn't have a set criteria for exactly
11 how much it could deviate, but our biggest deviation was
12 one-tenth of a percentage point, or something like that, from
13 the ideal perfect population.

14 Then the other ones were not as exact, but you consider
15 things like, are we splitting cities or counties here? Are
16 we splitting school districts? Are we dividing communities
17 of interest, based on the testimony we received? Things like
18 that.

19 Q And a few minutes ago, you also mentioned competitiveness
20 as one of the criteria. What did that mean to you?

21 A It means trying to have districts that, if they perform
22 similarly to how recent past elections have performed,
23 they're likely to be competitive. Say maybe within five
24 points one way or the other. But the general idea there,
25 from my point of view, would be to have districts where, in

1 any given year, candidates from either party might have a
2 chance of winning.

3 Q This was a priority for you, throughout the process?

4 A It was one of my top priorities, was trying to encourage
5 electoral competition.

6 Q Was it also important to you to keep communities of
7 interest together?

8 A Yes, it absolutely was.

9 Q Were there particular communities of interest that were
10 particularly important to you?

11 A There were lots of them.

12 Q What about tribes?

13 A I certainly considered tribes to be both, one of those
14 communities of interest, and then little separate sovereign
15 governments that we -- as a Commission, we adopted a policy,
16 tribal consultation policy, so we could hear directly from
17 the tribal representatives, as well. And we tried, and
18 succeeded, in every request we received from a tribe, to
19 honor their wishes.

20 Q And was the racial or ethnic breakdown of a given
21 district, also a factor you look at in evaluating proposed
22 maps, at least with respect to LD 15?

23 A Yes, it was.

24 Q Was it your only consideration?

25 A No.

1 Q Was it your predominant consideration?

2 A Me, personally?

3 Q That's what I'm asking, yes.

4 A I don't know if I can say "tie," but it was -- but the
5 race and the partisan breakdown of the district were, in my
6 mind kind, of my two top predominant considerations, when
7 drawing that district.

8 Q So they were kind of on par with one another, you would
9 say?

10 A I think they were.

11 Q Would you have agreed to a district that was majority
12 Hispanic CVAP in LD 15, that violated the statutory
13 requirements around competitiveness and some of the other
14 statutory requirements we were just talking about?

15 A No, I would not have voted for a map that had any district
16 that I thought violated the law.

17 Q And you didn't do that here, correct?

18 A No, I don't believe we did.

19 Q Was complying -- now, I'd like to switch gears and spend a
20 couple minutes talking about your understanding of the
21 federal VRA, during the time that you served as a
22 commissioner, and throughout. I'm talking about your service
23 on the Washington State Redistricting Commission.

24 Was complying with the VRA important to you as a
25 commissioner?

1 A Yes, it was.

2 Q And you mentioned early on this morning, I think, that you
3 had done some legal poking around, after you were appointed,
4 just to get the lay of the land. Did that include looking at
5 Department of Justice guidance on the VRA?

6 A Yes. The Department of Justice has some publicly
7 available information on Section 2 of the VRA, and how it
8 interacts with drawing maps.

9 Q You reviewed that?

10 A Yes, I did.

11 Q Did you also read some court cases on the VRA?

12 A I read a couple of them.

13 Q Were you aware of previous cases involving allegations of
14 racially polarized voting in the Yakima Valley?

15 A You're asking about, like, the city and county lawsuits?

16 Q Yeah, of Yakima. Were you aware of those?

17 A I was generally aware there were lawsuits going on there.

18 Q And did those cases suggest to you, at the time, that
19 racially polarized voting in Yakima might be something that
20 you would need to think about, in the 2021 redistricting
21 cycle?

22 A Maybe. I follow those cases mostly through reading about
23 them in the newspaper. And, of course, they're really
24 different than drawing a Legislative District there. So the
25 biggest upshot I had from being aware of those, there was the

1 possibility of litigation, that also we better spend some
2 time thinking about Section 2, and what it might mean in the
3 Yakima Valley.

4 Q Okay. And so other commissioners have testified that they
5 believe that the VRA required a majority Hispanic CVAP in the
6 Yakima Valley. Do you believe that your colleagues held this
7 view in good faith?

8 A I do. I think that depends. This law is really
9 complicated and hard to apply, but I have a lot of respect
10 for all the commissioners I worked with, and I think they
11 held those views in good faith.

12 Q Do you think there was a good-faith basis for holding
13 those views?

14 A I think there was.

15 Q Can you say more about that?

16 A Sure. Again, this law here, and both the Fourteenth
17 Amendment side, and the Section 2 side, it's not like the
18 equal population, you can't just put in a number and see if
19 you get the number right. There are multifactor tests. You
20 can use a whole different set of -- whole bunch of data to
21 try to figure out how you might apply that somewhat uncertain
22 law, to any particular district or map. And I saw the law as
23 hard to get a really firm yes or no answer on. But I also
24 think that my fellow commissioners, who thought there was a
25 requirement to draw a majority Hispanic CVAP district, I

1 think they held that view in good faith, because there is a
2 good-faith argument that it does require such a district.

3 Q Okay. And did you believe that the VRA clearly required a
4 district -- the district in the Yakima Valley to be majority
5 Hispanic CVAP?

6 A I would not use the word "clearly."

7 Q And did you believe that the VRA required the district, in
8 the Yakima Valley, to favor one political party or another?

9 A No. I think Section 2 of the Voting Rights Act does not
10 contain a requirement that one party or the other
11 automatically wins.

12 Q And I'd like to turn now to admitted Exhibit 508. And
13 just so you're clear, at your deposition, you weren't allowed
14 to testify about advice that the Commission received from the
15 Attorney General's office, but the court has since determined
16 that the privilege was waived for this document, so we can
17 talk about it.

18 A Okay. Thanks.

19 Q Are you familiar with this e-mail?

20 A We don't have the whole thing here on the screen, but the
21 beginning of it looks familiar to me.

22 Q And the body of the e-mail begins, "Commissioner Graves
23 asked a number of questions regarding the Voting Rights Act."
24 Do you see that?

25 A Yes, I do see that.

1 Q Did you pose questions about the VRA, to the Washington
2 Attorney General's office?

3 A Yes, I did.

4 Q And you posed the questions -- did you pose the questions
5 listed in this e-mail?

6 A Assuming this is the one -- assuming it's the actual one,
7 then, yes, I was the one who posed the questions that you see
8 here.

9 Q Why did you pose these questions?

10 A We had a report that was released publicly, suggesting
11 that Section 2 of the Voting Rights Act required certain
12 characteristics of a Legislative District, in Yakima. And I
13 wanted to get as clear an understanding as I could, of what
14 Section 2 actually required.

15 Q And let's look specifically at Question 3A, and the answer
16 below it. So that's on Page 5 of the PDF.

17 So I'm going to give you a moment to look at that.

18 A Yes, I see that.

19 Q Did the AGO's answer to this question, inform your
20 thinking on what the VRA required, and didn't require, in the
21 Yakima Valley?

22 A Yes, they did.

23 Q In what way?

24 A This is a long e-mail, and there's --

25 Q I'm asking about this one specific question.

1 A My takeaway from that was that what I mentioned a second
2 ago, that there's not a requirement in the VRA that one party
3 or the other gets to automatically win. The focus here is on
4 the *Gingles* factors, the totality of the circumstances test,
5 but there was still broad discretion when it came to issues
6 of pure partisanship that the Commission had discretion to
7 negotiate over.

8 Q Did this e-mail inform your thinking as to whether the VRA
9 required a district to lean Republican or Democrat?

10 A In the sense that I thought it allowed us broad scope to
11 negotiate, based on partisanship.

12 Q So you testified earlier that you requested legal analysis
13 from the firm Davis Wright Tremaine. What conclusions did
14 you draw from the Davis Wright memorandum?

15 A That there were also good-faith arguments that,
16 considering race as a predominant factor in drawing a
17 district in the Yakima Valley, might violate the Fourteenth
18 Amendment's Protection clause.

19 Q How did that factor into your decisionmaking?

20 A I keep saying that this is -- we were left with
21 uncertainty. That we were left with -- without a clear, here
22 is exactly the district that you have to draw, or this is
23 exactly what the characteristics have to be. And I think I
24 also drew the conclusion that there was substantial legal
25 risk, no matter how you draw a district like that, because

1 you can get challenged from either the Fourteenth Amendment,
2 or from Section 2 of the Voting Rights Act, no matter how you
3 draw a district like that.

4 Q I'd like to switch gears. And I have one or two questions
5 on the numbering of what ultimately became LD 15.

6 So you testified earlier about kind of what went into
7 that decision. Was race or ethnicity, the race or ethnicity
8 of voters, a factor at all in the decision, in your decision
9 to shift it from LD 14 to LD 15?

10 A No. Like I testified earlier, that was primarily about --
11 as we were negotiating and coming up with the geography that
12 became the 15th District, when it became clear that the
13 majority of the incumbents were in the 15th rather than the
14 14th, that we number them accordingly.

15 Q And let's fast-forward to the agreement that you reached
16 with Commissioner Sims, shortly before the November 15th
17 deadline. And, again, I'm just speaking here about LD 15.
18 So what were the elements of the agreement you reached with
19 her?

20 A Three things. There was the actual geography itself. We
21 had been exchanging several actual maps themselves, and we
22 reached agreement on the geography that became the 15th.

23 There was the fact that it would be a majority Hispanic
24 district, by eligible voters, and that it would be a district
25 where, if you use the 2020 State Treasurer's race candidate,

1 Wade Davidson would have taken a little more than 53 percent
2 in those precincts.

3 Q Just to clarify, when you said geography was part of that,
4 keeping communities of interest together?

5 A Yes, absolutely.

6 Q And also keeping the Yakima tribal lands together?

7 A Yes. That is, of course, where the 14th -- that became
8 the 14th District where the Yakima tribal lands were all
9 included. But honoring the requests of the Yakima tribe to
10 have all of its lands in one district, was part of that
11 agreement.

12 Q So in other words, the racial ethnic breakdown in the
13 district, was not the only element of your agreement,
14 correct?

15 A That's correct.

16 Q So now let's fast-forward a little bit more and talk about
17 the final map approved by the Commission. Did you believe
18 that the plan that the Commission ultimately recommended to
19 the legislature, followed the goals that were laid out in the
20 redistricting statute that we were just looking at a few
21 minutes ago?

22 A Yes, I believe they do.

23 Q And at the time of your vote, did you believe that the
24 plan that you voted for, complied with the VRA?

25 A Yes, I did.

1 Q And Mr. Stokesbary, earlier today, asked you about various
2 concessions that you were willing to make to reach a
3 compromise. Were you willing to make concessions that
4 violated the law?

5 A Absolutely not.

6 Q And in the final plan, you've testified that LD 15 was a
7 majority Hispanic CVAP district, based on 2019 ACS data; is
8 that right?

9 A Yes, that's correct.

10 Q Did you expect that majority to grow or shrink over time?

11 A With, of course, the caveat that I can't exactly predict
12 the future, I expected that district would become more
13 Hispanic over the course of time, given population growth and
14 trends there.

15 Q Did you also understand that the 2019 ACS data to be
16 undercounting Hispanic voters?

17 A That, I think was correct.

18 Q So that meant the actual CVAP was higher than it appeared,
19 from the 2019 ACS data, correct?

20 A Yes. I assumed that. I assume you have all walked
21 through the difference between the American Community Survey
22 and the actual census data we got. But, yes, based on that,
23 I expected the actual number itself would be higher than what
24 we agreed to, using the ACS data.

25 Q Did you believe that the Commission's final map was an

1 illegal racial gerrymander?

2 A No, I don't believe that.

3 Q I now have a couple questions for you about the procedural
4 aspect of the redistricting process. I think you've touched
5 on this previously, but how did you communicate with your
6 fellow commissioners throughout the process?

7 A Phone, and e-mail, and by Zoom. This is all during the
8 pandemic, so we were mostly meeting by Zoom. But then toward
9 the end, we had in-person meetings.

10 Q Were you always talking to everyone?

11 A No. I tried to confine most of my discussions to
12 Commissioner Sims, because we've got our Public Meetings Act,
13 and you can't have more than a majority of the voting people
14 in any body have a meeting without it being a public meeting.

15 Q Would you agree that the commissioners were working right
16 up until the November 15th midnight deadline to approve its
17 maps?

18 A Yes.

19 Q Why do you think it took until the 11th hour, literally,
20 to reach an agreement in this case?

21 A That seems to be the trend with these Commissions. And I
22 think it's probably true, whenever you have partisan
23 negotiations, that have a firm deadline, because both sides
24 -- I'm also thinking here in terms of my experience with the
25 state operating budget, when I served in the legislature,

1 there was split control. And so you -- both sides have the
2 things they're really firm about. They have their special
3 interests that really care about those things. And nobody
4 really wants to compromise at first, and so nobody does.
5 It's the prospect of a really firm deadline that can make
6 those kind of compromises necessary, to get something done.
7 So I think it was that looming deadline that made us get
8 there, along with the fact that we received our data late,
9 and we had a deadline that was six weeks earlier than the
10 past Commissions, and we were operating by Zoom. I think all
11 of that combined into a real time crunch.

12 Q Okay. And earlier today, Mr. Dunn asked you a number of
13 questions about an individual named Adam Kincaid. Did you,
14 in your conversations with Mr. Kincaid, did you think you
15 were doing anything wrong in speaking with Mr. Kincaid about
16 your work on the Redistricting Commission?

17 A No. I thought that it was -- his group was doing
18 redistricting work across the country, and it would be useful
19 to have a relationship, and talk about what they were doing
20 and how our Commission worked.

21 Q Another name that's come up in this litigation is Ali
22 O'Neil. Were you familiar with Ms. O'Neil?

23 A I know she was a staffer for Commissioner Walkinshaw, but
24 I didn't really have much interaction with her during the
25 process.

1 Q Okay. Let's take a look at admitted Exhibit 277. We've
2 already looked at this one today, but I have a couple
3 questions for you about it.

4 I also wanted to ask about the line, "My biggest
5 question to you, then, what do you think is a fair exchange
6 for the 15th?"

7 So you testified that this referred to the need to
8 rebalance things, to account for a decrease in Republican
9 performance in LD 15. Is that a fair characterization?

10 A Yes. So the map that was the ten years before ours, one
11 thing it did really well was translate overall legislative
12 votes, into overall legislative seats. Like for the most
13 part, if one party got 55 percent of all the legislative
14 votes in the state, they tended to get about 55 percent of
15 the actual seats, which is important to me. I mean, you've
16 seen the nasty racial gerrymandering in other states, where
17 you can get a minority of votes and still get a majority.

18 So the map we were working from did that well. And so any
19 partisan deviation from that, to keep that principle intact,
20 would, in my view, require rebalancing somewhere else in the
21 state.

22 Q Just broadly speaking, throughout these negotiations, was
23 it generally your practice to ask for something in exchange,
24 if you gave the other side something that they wanted?

25 A Oh, yes, these were straightforward one-on-one

1 negotiations, over a straightforward thing. So that's
2 exactly what they involved, was exchanges of one thing for
3 another.

4 Q Was that kind of negotiation also something that took
5 place in the state legislature, in your experience?

6 A Oh, absolutely.

7 Q Would you say, at least from your experience, that that's
8 standard practice in bipartisan negotiations?

9 A It's true in politics. It's true in business. It's true
10 in a marriage. If you want to get something, you've got to
11 give something, for the most part. At least in my
12 experience.

13 THE COURT: Judge Estudillo and I like being district
14 judges, we don't have to negotiate, like the circuit judges
15 do, to get that second vote.

16 Q Let's take a look at admitted Exhibit 207. So this is a
17 text between you and Commissioner Fain. This is always
18 confusing for me. Your text -- this is from Commissioner
19 Fain's phone. Yours are the ones in the blue, on the right,
20 and his are gray. Toward the bottom you wrote, "We will need
21 to draw a dem leading Latino district in Yakima, that doesn't
22 include any Yakima." Do you remember what you meant by that?

23 A Oh, yeah. You can see there, I'm including a screenshot
24 there of -- during, I don't remember the exact -- it was
25 right after election day in 2021, Yakima City -- I think it

1 might have been the county. I think it was the city -- it is
2 city. They had a proposal, on the ballot, to ban a state
3 income tax. And a state income tax is one of the real
4 partisan divisions in our state. Plenty of Republicans
5 oppose it, and plenty of Democrats support it. So the result
6 of that election was, as you see, almost 80 percent of the
7 voters voted to ban an income tax in their city; which is a
8 traditionally Republican position.

9 And so I was trying to make a cheeky comment to
10 Commissioner Fain, that, look, even the City of Yakima
11 itself, when it comes to fiscal issues, leans towards the
12 Republican position.

13 Q Can we infer, from this position, that you believed that
14 the VRA required you to draw a district in the Yakima Valley
15 that leaned Democratic?

16 A No, quite the contrary. What I was saying was -- so we're
17 looking at all kinds of data, past election results, for the
18 *Gingles* test, and for everything else. But one of the real
19 factors that you've seen, in public opinion polling, and
20 elsewhere, is that Hispanics, over the last, I'll call it
21 five, ten years, have been trending more Republican in their
22 votes.

23 And that's what I was trying to get at here, was that
24 Hispanic majority city, in the Yakima Valley, nevertheless,
25 voted overwhelmingly to ban an income tax in its state, and

1 this is further proof of the idea that election data from
2 2012, are not nearly as probative as the way that Hispanic
3 city is currently voting.

4 Q Are you aware that plaintiffs in Soto Palmer allege that
5 the Commission intentionally discriminated against Hispanic
6 voters, in drawing LD 15?

7 A I'm aware of that allegation.

8 Q What is your response to that allegation?

9 A It's not only wrong, it's pretty insulting. I told you my
10 story earlier, of my experience talking with people about
11 Hispanics in the Yakima Valley. It's one of the reasons why
12 I was not dragged kicking and screaming to turn the 15th into
13 a district that was majority Hispanic. I thought it would be
14 a really useful thing for Hispanic voters there, to be able
15 to choose somebody who they wanted as their representative.

16 And the fact that in the very first election we've had
17 under that map, the Hispanic candidate received two-thirds of
18 the vote, made me pretty proud, and stood to me as pretty
19 strong evidence that not only did we not intend -- I
20 certainly did not intend to discriminate against Hispanics,
21 but this district could actually be a really helpful, useful
22 one for Hispanics in the Yakima Valley.

23 Q And are you aware that plaintiffs in Soto Palmer also
24 alleged that you were instrumental in the filing of the
25 Garcia lawsuit?

1 A I'm aware of that allegation as well.

2 Q What's your response to that one?

3 A It's absolutely false. And I said this at my deposition,
4 and it has been blatantly misconstrued in filings before this
5 court. My goal was to defend these maps. In March of 2022,
6 after these had been approved, a lawsuit was filed, and a
7 motion for preliminary injunction was on the docket. At the
8 time the state, the Attorney General's office, took the
9 position that it did not have to defend the maps, but I
10 wanted the maps defended. I think they're worth defending.
11 And I think they're actually compliant, and at the very
12 least, they are a good-faith application of the law. And so
13 my entire goal, in trying to get lawyers involved in this
14 case, who were outside the Attorney General's office, was to
15 make sure that these maps are defended.

16 And I'm glad that I did, because your office, to be
17 candid, is not defending these maps entirely, and you should
18 be. And I'm glad that at least somebody is. And so I'm
19 really glad that -- I didn't want a Fourteenth Amendment
20 lawsuit. I didn't want any of these lawsuits. But if there
21 were going to be lawsuits, I wanted a good-faith, fair
22 defense of the maps that we drew, because I think they comply
23 with the law.

24 Q And plaintiffs have also argued that as you were
25 negotiating the final shape of LD 15, you made, quote,

1 surgical tweaks which decreased Latino voter turnout and
2 performance in the district, despite knowing that the VRA
3 required a majority Hispanic CVAP district, with a true
4 opportunity to elect. Is that true?

5 A I didn't quite follow that whole thing. But we absolutely
6 drew a district that's majority Hispanic, by eligible voters,
7 one, that in its very first election elected a Hispanic woman
8 two-to-one, to the State Senate, and one that -- I mean, that
9 allegation begs the biggest question in this whole case,
10 which is, does Section 2 just require one party to win? I
11 don't think it does. And I don't think it did then. And you
12 have to assume that.

13 You have to assume that Section 2 says that one party
14 automatically gets to win, and assume that I actually believe
15 that, which I don't, to say that I intentionally violated it.
16 I don't think it requires that. I think Section 2 absolutely
17 allows a district like this, based on recent election
18 results, would vote for Republicans, but it's also where a
19 majority of voters that are Hispanic, I think Section 2
20 allows a district like that, and that's one of the reasons I
21 voted for it.

22 Q I want to ask you about plaintiffs' allegation that you
23 made surgical tweaks in the decreasing Latino turnout and
24 performance. What is your response to that allegation?

25 A That's just not true at all. I don't even know how we

1 would decrease turnout, through a map. I mean, turnout is
2 the function of parties and candidates, volunteers, and the
3 voters themselves, choosing to vote. And for surgical
4 tweaks, we were certainly negotiating over the geography
5 itself, of the 15th. But, again, the main focus there was to
6 get a district we could vote for, that I thought would comply
7 with both Section 2, and the Fourteenth Amendment, and that I
8 thought would give Hispanic voters, in the Yakima Valley a
9 real chance to vote for a candidate they could be proud of.

10 MS. FRANKLIN: Your Honor, can I have just a moment
11 to confer? No further questions. Thank you.

12 THE COURT: That really was a moment. Usually it
13 takes a lot longer. All right.

14 REDIRECT EXAMINATION

15 BY MR. DUNN:

16 Q I think you said this, but it sounds like then you agree
17 that Latino citizens in the Yakima Valley should be able to
18 form a majority and elect a candidate of their choice?

19 A You said "Latino"?

20 Q Yes. Latino or Hispanic?

21 A Well, they're different.

22 Q How so?

23 A What's your question?

24 Q My question is, I thought you just said this to the
25 state's lawyer, but you agree that Latino and Hispanic

1 citizens in the Yakima Valley, should be able to form a
2 majority and elect a candidate of choice?

3 A Latinos and Hispanics are different.

4 Q How so?

5 A One is a race, and one is an ethnicity.

6 Q Do you think that has some legal significance?

7 A Not necessarily. But as I mentioned, for the purpose of
8 having a common language for Commissioner Sims and I to talk
9 about, we were focusing on Hispanics.

10 Q So do you think Hispanic citizens in the Yakima Valley,
11 should be able to form a majority and elect candidates of
12 choice?

13 A Yes. That's why I voted for a district where a majority
14 of the eligible voters are Hispanic.

15 Q It's your view that Nikki Torres is that candidate?

16 A She just won two-to-one against a white woman candidate.
17 That's pretty powerful evidence, to me. It only makes a
18 difference if you think that Democrats have to win. And I
19 don't think that.

20 MR. DUNN: No further questions.

21 THE COURT: Anything else, Mr. Stokesbary?

22 MR. STOKESBARY: No, Your Honor.

23 THE COURT: All right, Mr. Graves. Thanks so much.
24 I appreciate your coming in here and testifying with the
25 passion that you have for this.

1 THE WITNESS: I spent a lot of my time and effort on
2 this, and I'm very passionate about it.

3 MR. HOLT: Your Honor, if I may raise a quick
4 procedural matter. I just want to note for the record that
5 Dr. Barreto was sitting in the courtroom, up until 10:55 a.m.
6 He was admitted as an expert, but he's also very much a fact
7 witness in this case. Ninth Circuit case law is clear, under
8 *United States v. Seschillie*, which is 310 F.3d, 1208, that
9 dual experts, admitted both as fact witnesses and as experts,
10 should still remain sequestered as witnesses, if -- it's kind
11 of a sliding scale, depending on the importance of their
12 factual testimony, which in this case is very important. And
13 I want to note on the record, he did walk out a few minutes
14 ago, despite the fact it was represented to us yesterday --

15 THE COURT: If you had a problem with it, you should
16 have raised it the first thing when he was obviously sitting
17 there. And I'm not sure we would have ruled your way, but I
18 certainly think bringing it up after he's departed, doesn't
19 help anything here at all.

20 MR. HOLT: I was scrambling to do some quick research
21 on the fly, about dual witnesses, in the Ninth Circuit. And
22 I barely received an answer. I just wanted to note, for the
23 record, that additionally, we were told yesterday,
24 Dr. Barreto was going to be unavailable this morning for
25 testimony.

1 MR. DUNN: That is not accurate.

2 THE COURT: None of us is concerned with that right
3 now. And I don't know if your research was from Chat GP,
4 whatever, but let's not worry about that now. Okay?

5 MR. HOLT: Understood, Your Honor.

6 THE COURT: Next witness.

7 MR. MULJI: Plaintiffs call Ali O'Neil.

8 THE COURT: Is she in the courtroom yet?

9 MR. MULJI: She should be in just a second.

10 ALLISON O'ONEIL

11 Having been sworn under oath, testified as follows:

12 THE CLERK: Have a seat.

13 MR. MULJI: I just provided Ms. O'Neil with printed
14 copies of admitted Exhibit 388. I am going to be asking a
15 number of questions about it. I have copies for the court as
16 well, if you'd like them, and request permission to approach
17 the bench.

18 THE COURT: What exhibit?

19 MR. MULJI: This is Exhibit 388. These are
20 contemporaneous notes.

21 THE COURT: If you have copies, just give them to
22 Victoria. Sure. But Victoria has got to get the witness set
23 up here.

24 THE CLERK: State your first and last names, and
25 spell your last name for the record.

1 THE WITNESS: Sure. Allison O'Neil. O, capital
2 N-E-I-L.

3 MR. MULJI: I'll note for the record, Your Honor,
4 that exhibit wasn't paginated, so I just went ahead and added
5 page numbers to that PDF.

6 DIRECT EXAMINATION

7 BY MR. MULJI:

8 Q Okay.

9 Ms. O'Neil, you just stated your name for the record.
10 Could you please introduce yourself to the court?

11 A Sure. Allison O'Neil. I go by "Ali." And I worked as
12 the Senate Democratic Caucus redistricting director for the
13 2021 redistricting cycle.

14 Q Can you give us a bit of your educational background?

15 A Sure. I have a bachelor's in English literature, from
16 Cornell University. You said educational background, right?
17 Yeah, that's it.

18 Q And what about some -- give us a brief sense of your
19 professional background, please.

20 A Sure. I've worked in politics, in political campaigns,
21 mostly in Washington State, since 2016. And worked both as a
22 consultant involved in those campaigns, and also managing
23 those campaigns.

24 And in 2021, was hired by the Senate Democratic Caucus to
25 assist with the redistricting.

1 Q How are you currently employed?

2 A I work for a law firm based in Seattle.

3 Q So at some point, you left the Senate Democratic Caucus?

4 A That's correct, in April of 2022.

5 Q Can you describe for us what your role was in the 2021
6 redistricting process?

7 A Sure. As redistricting director, my primary role was to
8 staff and assist Commissioner Brady Pinero Walkinshaw. And
9 that meant managing, coordinating his calendar, setting up
10 meetings for him, sitting in on those meetings, briefing him
11 for those meetings, keeping track of the results of those
12 meetings. Also do research on previous redistricting
13 processes, on redistricting principles throughout the
14 country, and how we could apply those in the Washington
15 process, in 2021.

16 I also coordinated and managed the internal SDC team,
17 which was made up of other SDC staffers that were assigned to
18 assist in redistricting, coordinated information, passing
19 along between Commissioner Walkinshaw, other commissioners,
20 members of the public, members of the Senate Democratic
21 Caucus, to the legislature, the Senate majority leader.

22 Also assisted in the drawing and proposing of maps and
23 researching those maps, and the data along with those maps,
24 and presenting that information to the public. Sat in on
25 Redistricting Commission meetings, and kept notes, kept track

1 of public testimony. And maintained flow of information, as
2 I said, to the members of the Senate Democratic Caucus,
3 throughout the process.

4 Q What was your title?

5 A Redistricting director.

6 Q For the Senate Democratic Caucus?

7 A Yes.

8 Q How did you come into that role?

9 A I received a call from Commissioner Walkinshaw, in
10 November or December of 2020, I think it was. He called me
11 and said that he was submitting his name for the appointment
12 from the Senate Democratic Caucus, and he was going to get a
13 staffer, and he would like me to apply to be that staffer.

14 Q You just said this, and I think Commissioner Walkinshaw
15 testified to this, was it Monday now, that there was a sort
16 of small SDC -- and when I say "SDC," I mean Senate
17 Democratic Caucus -- team assisting him. Who were the
18 members of that team?

19 A Primarily Adam Hall and Matt Bridges, current staff for
20 the SDC. Also at times involved Paulette Avalos, Chief of
21 Staff, and Aaron Wasser, Communications Director.

22 Q What was Adam Hall's role?

23 A Adam Hall, to my knowledge, was kind of a policy advisor.
24 For what I used him for, he was well versed in election law
25 and redistricting law, and helped connect us with resources

1 and other experts around the kind of legal and policy aspect
2 of redistricting.

3 Q Was he the one who helped connect you to Dr. Barreto?

4 A That's right, yes.

5 Q And what was -- I think you said Matt Bridges?

6 A Matt Bridges, yeah.

7 Q What was his role?

8 A He was more the data mapping point person, helped us put
9 together all the proposals, kind of analyzed the population
10 shifts that had happened in the last ten years, did the bulk
11 of the mapping for us.

12 Q So the three of you were sort of -- were you the core
13 redistricting team for Commissioner Walkinshaw -- Team
14 Walkinshaw, so to speak?

15 A That's correct, yes.

16 Q I'd like to show you admitted Exhibit 203.

17 Have you seen this document before?

18 A Yes, I have.

19 Q This is an e-mail from you to Commissioner Walkinshaw, on
20 October 27th at 11:29 a.m.; is that right?

21 A Yes, that is correct.

22 Q Just to orient us in time, that was right around the start
23 of the final two weeks or so of negotiations; is that right?

24 A That's right.

25 Q Can you give the court a sense of what was the purpose of

1 this e-mail?

2 A Sure. The purpose was to kind of solidify, in writing to
3 Commissioner Walkinshaw, some key priorities going into the
4 final rounds of negotiations. These are priorities that came
5 from recommendations from our team, our staff team. Also
6 priorities that we had previously discussed with Commissioner
7 Walkinshaw. And we wanted to kind of lay out, in order of
8 priority, for him, as he goes into conversations with other
9 commissioners.

10 Q And what was the first priority that you laid out for him?

11 A The first priority was a VRA-compliant performing
12 district, that was the 14th Legislative District.

13 Q You used the word "dem performing" here?

14 A Democratic performing, which also, based on our analysis,
15 what meant performing for Latino voters in that district.

16 Q And just to be clear, do you mean to say that -- you meant
17 to say that the district needed to perform to elect Latino
18 candidates of choice, and you understood that to be the
19 Democratic candidates?

20 A Yes. Based on our analysis of the racially polarized
21 voting in that area, performing for Latino voters, allowing
22 them to elect candidates of their choice, would also mean a
23 Democratic-performing district.

24 Q What made you believe that Commissioner Walkinshaw would
25 understand this shorthand?

1 A We discussed it at length, in several meetings, going over
2 the analysis we had received -- and, yep, in many meetings,
3 that's what we discussed.

4 Q And you said here it should be nonnegotiable?

5 A Yes.

6 Q What did you mean by that?

7 A I meant that, as our interpretation, that it was a
8 requirement of the Federal Voting Rights Act to have a
9 district that performed for Latino voters in the Yakima
10 Valley, that shouldn't be an item of negotiation or exchange
11 with other commissioners, that that should be something that
12 the Commission should prioritize, to comply with federal
13 redistricting law.

14 Q You say that the list, in the first line of your e-mail,
15 or actually the second line, was, quote, based on what we've
16 heard repeatedly in public comment; is that right?

17 A Yes.

18 Q What did you mean by that?

19 A So as I mentioned, as part of my role, I sat in on and
20 listened to all of the public comment meetings that the
21 Commission had. I kept track of all that information, and
22 pulled out a lot of the items that were, if not all, of the
23 items that were repeatedly mentioned by many people. So that
24 was a huge part of the maps that we proposed, throughout the
25 process. Then also what we presented, you know, talked about

1 with Commissioner Walkinshaw, and presented from a staff
2 perspective, should be priorities going into the final round
3 of negotiations, to be able to draw a map that kept
4 communities of interest together, and as much as possible
5 kept in mind what we heard from the public, as their desires
6 for their maps.

7 Q What did you hear from the public about the Yakima Valley
8 districts?

9 A We heard, many times, from many members of the public,
10 that it was important to have a district that complied with
11 the Federal Voting Rights Act, and allowed Latino voters to
12 have a voice in their elections, and elect candidates of
13 their choice.

14 Q How did you sort through public comments?

15 A I listened to the meetings that took place, and would take
16 my own notes. The Commission staff also created a
17 spreadsheet, that then I went through and copied into my own
18 spreadsheet, and split it up based on region, and district,
19 and topic area, and went through and analyzed it that way.

20 I also went through it and monitored the public comment in
21 the e-mail inbox. And read every single one of those e-mails
22 that came through, and would keep track of that, and keep
23 count of how many comments we got on certain -- the topics we
24 were getting repeated comments on.

25 Q I want to fast-forward now to November 15th, the final --

1 your understanding is that's the final day of the
2 Commission's deadline to adopt a plan, a legislative plan; is
3 that right?

4 A Yes.

5 Q Where were you on November 15th?

6 A I was in Federal Way.

7 Q What events, if any, took place on the morning of that day
8 pertaining to the Yakima Valley districts?

9 A There was a meeting, in-person meeting at one of the
10 hotels in Federal Way, between Commissioner Walkinshaw --
11 primarily between Commissioner Walkinshaw and Commissioner
12 Graves, with some staff present. And I believe also
13 Commissioner Augustine was present at that meeting as well.

14 Q Do you recall about what time that meeting occurred?

15 A I think it was around 10:30 or 11 o'clock, potentially
16 10 o'clock in the morning.

17 Q Anyone else in attendance at that meeting?

18 A Commissioner Walkinshaw, Commissioner Graves, Commissioner
19 Augustine, then staff, so it would have been myself, Anton
20 Grose and Osta Davis. I think that was it.

21 Q I see you flipping to a page of your notes to verify this.
22 Were you taking notes during this meeting?

23 A Yes, I was.

24 Q Are those the notes you're referencing now?

25 A Yes. So bottom --

1 Q Go ahead.

2 A I was going to say, bottom of Page 4, under the header,
3 Monday, November 15th, is what I'm referencing.

4 Q Why were you taking notes during this meeting?

5 A It was my habit and my role to take notes at every meeting
6 that I sat in on with Commissioner Walkinshaw.

7 Q Now, I want to ask you about what happened during this
8 meeting between Commissioner Walkinshaw and Commissioner
9 Graves, in just a moment. But, first, I want to ask, were
10 there any conversations about the plan for this meeting,
11 going into it? You said you would often talk to Commissioner
12 Walkinshaw about -- in preparation for meetings that he was
13 going to have. What was the preparation like for this
14 meeting?

15 A So we certainly discussed it, he and I together, and I
16 discussed it with members of the SDC team. I can't recall
17 exactly if he discussed it directly with the full team. And
18 I believe we also discussed it with Commissioner Sims, and
19 Osta Davis, and Dominique Meyers, as well, the evening
20 before, kind of what the objective and purpose of that
21 meeting was going to be.

22 Q What was your understanding of the objectives for this
23 meeting?

24 A My understanding was that Commissioner Walkinshaw would go
25 into that meeting, as a last chance for him to state his

1 priority of having a VRA-compliant, federal VRA-compliant
2 district in the Yakima Valley. That was the 14th Legislative
3 District. And he was going to restate that that was a
4 priority of his, and also, though, that if that could not be
5 achieved the way that we had thought a compliant district
6 should be drawn in that area, then we were going to say to
7 Commissioner Graves, to the Republican commissioners, that
8 they could draw -- that it was up to them to draw a district
9 that they saw fit, in that area of the map.

10 Q I think you said your primary goal was to sort of give
11 Commissioner Graves an indication that VRA compliance was
12 important. Was it your goal also to explain sort of why?

13 A Yes.

14 Q Did Commissioner Walkinshaw end up doing it at this
15 meeting?

16 A Yes, I believe so.

17 MR. HUGHES: Objection, Your Honor. Hearsay.

18 THE COURT: What he said is hearsay, but whether or
19 not he did it is not. So the objection is overruled, but ask
20 another question.

21 MR. MULJI: Sure.

22 Q What ultimately occurred at this meeting?

23 A So Commissioner Walkinshaw again stated, as he had done
24 many times publicly --

25 MR. HUGHES: Objection, Your Honor.

1 THE COURT: Yeah, I mean, why do you care about
2 hearsay here?

3 MR. HUGHES: I just don't think that Ms. O'Neil, with
4 all due respect, is in the best position to talk about what
5 happened in the meeting.

6 THE COURT: We had Commissioner Walkinshaw, who
7 already told us what he did.

8 MR. HUGHES: Commissioner Graves was just on the
9 stand, Your Honor, they could have asked him about it.

10 THE COURT: I'm not sure it's helpful to have
11 somebody else tell us what she heard these people say.

12 MR. MULJI: I will note, Commissioner Walkinshaw
13 didn't have a memory of this meeting, and a lot of folks
14 didn't have the complete memories of what happened. And here
15 she's speaking of testimony based on recorded recollections
16 that she took down contemporaneously during --

17 THE COURT: You could have used them with
18 Commissioner Walkinshaw, and say, "Does this refresh your
19 recollection, and here are notes that were taken at that
20 time," and see if it did. But I don't see that the hearsay
21 rule is overcome, by this process. So I'm going to sustain.

22 MR. MULJI: If I may, Your Honor, we're not offering
23 this testimony for the truth of the matter asserted. We're
24 offering it to demonstrate present-sense, then existing, the
25 commissioners' then existing states of mind about their

1 intentions about this district. It's not hearsay.

2 THE COURT: You're still talking about someone's
3 version of what was said there.

4 MR. HUGHES: It only goes to present sense
5 impression, if it's true. And based on plaintiffs' trial
6 brief, what they're really interested about in this exchange,
7 is what Commissioner Graves allegedly said. He was just on
8 the stand. There's been no testimony whatsoever about his
9 recollection of this meeting.

10 THE COURT: I'm certainly not going to allow it in
11 regard to Commissioner Graves. So that's my ruling.

12 MR. MULJI: Okay.

13 Q You stated earlier that you had certain goals, or Team
14 Walkinshaw had certain goals going into this meeting. Were
15 those goals achieved?

16 A Not exactly, no. No.

17 Q Why not?

18 A Our goal, one of our goals was to hand over drawing of
19 that district to the Republican commissioners, specifically
20 to Commissioner Graves, as he'd been primarily drawing the
21 state legislative map. And one of those goals was to get him
22 to draw a district that -- the district that we thought that
23 they wanted, which would be not VRA-compliant, in our view,
24 and would then give community members, people who had stated
25 they had interest in doing so, the best opportunity to then

1 challenge the map on the grounds of the VRA.

2 Q Was it your team's goal to insist on a district that was
3 just slightly 50 percent, but did not perform for Latino
4 candidates of choice?

5 A Could you say that one more time?

6 Q Was it your goal to push for a district that was just over
7 50 percent, but did not elect candidates of choice for the
8 Latino community?

9 A No. That was not our goal, no.

10 Q Was it your goal, going into this meeting, to get a
11 district that you believed was truly VRA-compliant, a true
12 Latino opportunity district?

13 A That was our first goal. But it became very clear, very
14 quickly, that was not going to happen.

15 Q As often happens in negotiations, you have a Plan B. What
16 was your next best objective?

17 A Our next best objective was to, again, offer to the
18 Republicans the opportunity to draw this district the way
19 they wanted, which we assumed would be a nonperforming,
20 noncompliant district.

21 Q When you say "nonperforming, noncompliant," what do you
22 mean by that?

23 A Something that would not elect Latino candidates of
24 choice, and therefore not be Democratic performing. Because
25 we knew, and heard, that the Republican commissioners did not

1 want to draw a district that was Democratic performing, and,
2 therefore, allowing Latino voters to elect a candidate of
3 their choice.

4 MR. HUGHES: Objection, Your Honor. Hearsay.

5 THE COURT: Objection sustained.

6 Q Ms. O'Neil --

7 JUDGE VANDYKE: Can I ask a question? Because I'm a
8 little confused, factually. So I understand what you're
9 saying, that was the thought process going into this meeting.
10 But if the plan had gone the way you hoped, those maps would
11 have only become the maps if three or four commissioners had
12 voted for them. So did you plan to -- was the plan that the
13 Republicans would draw the maps, then the commissioners,
14 Democratic commissioners, would vote for maps that they knew
15 were not VRA-compliant?

16 THE WITNESS: Yes.

17 Q I'd like to show you admitted Exhibit 352. Do you
18 recognize this document?

19 A Yes.

20 Q This is a Teams chat with, it says, four participants.
21 Who were those?

22 A It appears to be Paulette Avalos, Matt Bridges, and I
23 can't see the other name, but my recollection is that it
24 would have been Adam Hall.

25 Q The first fully visible text message from this document is

1 from 10:38 a.m. I will represent to you this is from the
2 15th. Does that look right to you, based on what you see
3 here?

4 A Yes, I think that does look right. Um-hum.

5 Q I want to ask you about -- let me ask you this. Why were
6 you texting these three people at this time?

7 A Throughout the day, throughout the weekend, in fact, I was
8 in pretty constant communication with this team, via
9 Microsoft Teams. I think that was the primary way -- we
10 exchanged some e-mails at times. But throughout the day I
11 was in constant communication with them, updating them on the
12 proceedings and the negotiations. And they were prepared to
13 help with the mapping, once the negotiations got to a point
14 where that would be relevant.

15 Q I want to scroll down to the last page of this exhibit.
16 You received a message at 11:15 a.m. from, it appears to be
17 Adam Hall; is that right?

18 A Yes.

19 Q And you responded to him at 11:17?

20 A Yes.

21 Q Can you explain this exchange?

22 MR. HUGHES: Objection, Your Honor. Hearsay.

23 THE COURT: I'll allow the explanation for what the
24 context is here. Go ahead.

25 A So Adam Hall stated that the 15th District should either

1 perform for Latino voters in that area, or it should be under
2 50 percent Hispanic CVAP, citizen voting age population. And
3 if they, meaning Republicans, Republican commissioners insist
4 on higher than a 50 percent Hispanic CVAP, then we needed to
5 ask them why they were insisting on that number.

6 Q What was your response?

7 A My response was, they told us --

8 MR. HUGHES: Your Honor, hearsay. Objection.

9 THE COURT: I'll allow this in. Go ahead. This
10 isn't with a commissioner, it's between staff, right?

11 MR. MULJI: That's right.

12 MR. HUGHES: What I object to is, "They told us."
13 "They" being presumably the Republican commissioners. So
14 that's the hearsay statement being relayed in this message.

15 THE COURT: Still, this is just her opinion, if you
16 will, of the situation. We're not going to consider what
17 somebody says, you know, necessarily for the truth of the
18 matter asserted here.

19 MR. HUGHES: Understood. Thank you.

20 Q For clarity, who is "they" that you're referring to?

21 A The Republican commissioners in that meeting.

22 Q And I'd like to show you exhibit -- admitted Exhibit 346.
23 This is a continuation of your exchange with the Senate
24 Democratic Caucus team, I believe, about 40 to 45 minutes
25 later, starting at 11:57 a.m. Do you see that?

1 A Yes.

2 Q Can you explain -- you have an exchange here with Adam
3 Hall?

4 A That's correct.

5 Q Can you explain this exchange?

6 A Sure. So it starts with him asking -- well, he comments
7 on the -- doing this would lock in a map that everyone hated
8 and had issues with. And then, he, after that, asks: Is the
9 15th District -- that we are now talking about, because we
10 weren't talking about labeling it the 14th anymore -- Is the
11 15th District that they're proposing, majority Hispanic CVAP
12 and underperforming -- as in underperforming for Latino
13 voters in that region -- or are they, meaning the
14 Republicans, not talking about that, meaning the performance
15 of the district. Did you want me to keep going?

16 Q Please do.

17 THE COURT: The rest of that is hearsay, and it will
18 not be considered by us. But we see it in the exhibit.

19 MR. MULJI: I'll move on from this, Your Honor.

20 THE COURT: Thanks.

21 Q At some point, on the 15th, and I think the timing has
22 been a little bit uncertain thus far, the commissioners
23 reached an agreement, which I think has been referred to as
24 "the framework." At what -- do you remember at what time the
25 commissioners came to an agreement on the framework?

1 A My recollection that it was around 8:45 p.m., the night of
2 the 15th.

3 Q So sometime later, after this meeting with Commissioner
4 Graves?

5 A Yes.

6 Q Briefly, what was happening that you observed between this
7 meeting in the morning and 8:45 p.m.?

8 A A number of different things happened. Immediately after
9 this meeting, I debriefed it with Commissioner Walkinshaw. I
10 believe we also met with and spoke with Commissioner Sims,
11 Dominique Meyers, and Osta Davis. Then Commissioner
12 Walkinshaw and I left that hotel and went back to the other
13 hotel across the parking lot, where we had been staying, also
14 in Federal Way, and Commissioner Walkinshaw had some work to
15 do for his day job, some meetings to take. And I believe --
16 I'm referring to my notes -- but I believe our understanding
17 was that Commissioner Sims and Commissioner Graves were still
18 negotiating details of the legislative district map. But I
19 was not in those discussions, or didn't know -- don't know
20 the details of the extent of those meetings.

21 So we are separate for a couple of hours. Then returned
22 to that other hotel, across the parking lot, and met with, in
23 the same room with Commissioner Sims, Dominique Meyers, and
24 Osta Davis. And that's when kind of the negotiations started
25 picking up between all four of the commissioners, in

1 different groups, and different settings.

2 Still primarily I believe Commissioner Sims and
3 Commissioner Graves were exchanging numbers, and I call them
4 "proposals," but exchanging -- negotiating around the
5 legislative district map. And we were hearing about those
6 discussions directly from Commissioner Sims, in the room that
7 we were all in.

8 And sometimes the commissioners were texting one another,
9 or one of them would leave and exit the room, and go meet
10 with another commissioner somewhere else in the hotel. Then
11 they would come back. And there were lots of different ideas
12 and negotiations happening, in a lot of different forums.

13 And then at one point we were very pessimistic that any
14 deal would be reached, any agreement would be reached. And
15 then we kind of -- the commissioners kind of got back into
16 it, into more productive exchanging of ideas.

17 Around 7 o'clock, or maybe at 7 o'clock exactly, or -- at
18 7 o'clock the Commission public meeting began, and the
19 commissioners went on the meeting briefly to convene the
20 meeting. And then almost immediately went into caucus. And
21 so then the -- we were back into our kind of group
22 discussions with just the Democratic commissioners.

23 Yeah, there was a lot of back-and-forth of individual
24 numbers, and offers. And at 8:45, an agreement was reached.

25 Q What was the nature -- you said there were proposals being

1 traded back and forth that you heard about from Commissioner
2 Sims; is that right?

3 A That's right.

4 Q What was the nature of the proposals being traded, in the
5 hours that you observed?

6 THE COURT: Just in general.

7 A Thank you for that clarification. Generally speaking, it
8 was which districts are going to be negotiated specifically,
9 and then which of those districts would move politically, by
10 how many points.

11 Q You describe these in your notes, I think, as partisanship
12 metrics?

13 A That's right.

14 Q As far as you know, were any map proposals, electoral
15 lines on a map, being traded at this time?

16 A Not from what I recall, no.

17 Q Was there any discussion about how specific district
18 boundaries should be drawn?

19 A For the most part, no, there were a few geographic
20 considerations mentioned at various points. Some had kind of
21 previously been agreed upon, so were understood. But for the
22 most part, no.

23 Q Do you recall --

24 MR. HUGHES: Your Honor, hearsay. I understand you
25 can take it for what it's worth, but it appears to me the

1 witness is testifying about things that she heard, and is now
2 relaying secondhand.

3 THE COURT: We can separate it up here, don't worry.

4 Q Was there any discussion, during these hours after the
5 meeting with Commissioners Walkinshaw and Graves, about the
6 Hispanic CVAP levels of the districts in the Yakima Valley,
7 at this point?

8 A I'm sorry, can you restate it again? At what point?

9 Q Was there any discussion, during these hours preceding
10 the --

11 THE COURT: Don't put it -- you're asking way too
12 many questions that have too much in front of it.

13 So in the evening, now, it's mostly happening between
14 Commissioner Sims and Commissioner Graves, right? You talk
15 about the Legislative District, the House Senate Legislative
16 District.

17 THE WITNESS: That's right.

18 THE COURT: And Commissioner Walkinshaw and
19 Commissioner Fain are doing their Congressional District.

20 THE WITNESS: Sort of. That had kind of had been
21 paused. But they had been doing that. And then they picked
22 it up again, after the legislative map agreement was
23 finalized.

24 THE COURT: Okay. Yeah.

25 Q I guess my question is, how did the 14th and 15th figure

1 into these discussions.

2 MR. HUGHES: Objection.

3 THE COURT: Just in general, again. This was an
4 important sticking point, and people are going back and
5 forth. At one point you don't think they're going to agree,
6 then suddenly they're agreeing, right?

7 THE WITNESS: Yep. Yep. That's right.

8 THE COURT: That's it.

9 Q I want to turn to the framework, the agreement itself.
10 What form did the framework take?

11 A Sorry. You mean the final agreement around 8:45 p.m.?

12 Q We'll call the final agreement the framework, for the
13 purposes of this, since that's how we've been referring to
14 it. My question is what form did that agreement take?

15 A It was agreement upon, an agreement upon the partisanship
16 numbers in, I think it's four, five districts, which I have
17 listed in my notes here. And then the rest of the districts
18 above a certain metric, the Democratic commissioners would
19 draw, and other districts below a certain metric, the
20 Republican districts would draw.

21 MR. HUGHES: Can I ask her to set aside her notes?
22 And she is reading notes on an exhibit that is currently not
23 at issue.

24 THE COURT: That's all right.

25 MR. HUGHES: Thank you.

1 THE COURT: We're almost done, right?

2 MR. MULJI: We're close, Your Honor.

3 Q How did you learn what the framework, what the specifics
4 of the framework were at this time?

5 A I was told them by Commissioner Sims.

6 Q Did you record those as you heard them?

7 A Yes. I would have written them down in my notebook, and
8 also relayed them to the SDC team, who was responsible for
9 helping with the actual mapping of the agreement.

10 Q Why were you relaying them to that team, at the time?

11 A Matt Bridges was waiting at the ready, to draw a map that
12 fit that agreement.

13 THE COURT: SDC is Senate Democratic Caucus?

14 THE WITNESS: Yes. Excuse me.

15 MR. MULJI: Thank you, Your Honor.

16 Q And you recorded it?

17 THE COURT: She may have recorded it, but we're not
18 going to hear what her version was. That's not where we're
19 going.

20 MR. MULJI: Just for the record, that's on Page 9 of
21 Exhibit 388.

22 Q How did the 14th and 15th districts figure into the
23 framework, as you understood it?

24 A They would have -- that district would have fallen under
25 the category of districts that the Republicans were going to

1 draw, because they were under a certain partisanship metric.

2 Q You noted some geographic considerations were part of the
3 framework, as far as you understood it?

4 A That's correct.

5 Q Were there any geographic considerations related to the
6 14th or 15th districts, as far as you recall?

7 A Other than uniting of the Yakima Nation reservation, no.
8 So just the uniting of the Yakima Reservation in one
9 district.

10 Q Was that discussed, as part of the framework?

11 A I believe so. I mean, that's an example of something that
12 had been discussed many times throughout the process. And so
13 that was a priority that I believe all commissioners had
14 previously agreed to. So it may not have been specified to
15 me right at 8:45, but that was part of the framework.

16 Q Once the framework was reached, what happened after that?

17 A Once that was reached, Osta Davis and Dominique Meyers
18 went off to work on a Democratic version of the map, of a map
19 that fit that agreement. So they went off to map, in a
20 different part of the hotel. I went down to work with
21 Commissioners Walkinshaw and Fain on the congressional maps,
22 along with Commissioner Fain's staffer. Then I also believe
23 that the staff for Commissioner Graves went to work on the
24 Republican version of a proposal, that fit that agreement.

25 Q At some point that evening, you received a proposal from

1 -- did you receive proposals from the respective commissioner
2 teams that were working on the legislative maps?

3 A Yes.

4 Q Do you recall what time you received the Republican
5 proposal?

6 A I believe it was around 10:30.

7 Q And what did you do with that proposal, after you received
8 it?

9 A I would have shared it with Commissioner Walkinshaw and
10 the Senate Democratic Caucus team, where we analyzed it and
11 looked at the lines, and what they did to the population
12 shifts, and whether they met our view of the important
13 criteria of redistricting. And then I believe I compiled an
14 e-mail, with some notes, and concerns, and questions about
15 that proposal, and then sent that to Commissioner Sims' team,
16 as well as sharing it with Commissioner Walkinshaw.

17 Q Now, you also received, at some point that evening, a
18 proposal from the Democratic side, related to the legislative
19 maps. When was that?

20 A I believe that was around 11:20 p.m., a little bit later.

21 Q And did you do the same thing with the Democratic
22 proposal?

23 A Yes.

24 Q What was that?

25 A Shared it with my staff team, shared it with Commissioner

1 Walkinshaw, reviewed the details of the lines, took notes on
2 questions, comments, concerns, things like that.

3 Q I'd like to take a look at that map with you. And before
4 I do that, I want to show you admitted Exhibit 340. Do you
5 recognize this document?

6 A I do.

7 Q Is this the e-mail, sharing with you the final Democratic
8 proposal?

9 A It does appear to be that, yes.

10 Q And I want to actually pull up the map.

11 MR. MULJI: Is there a way for me to take the mouse?
12 I'm going to turn on -- for the record, I'm turning on the
13 district numbers.

14 Q And do you see the 15th District here?

15 A I do.

16 Q Okay. Does this resemble the geographic configuration of
17 District 15 that had been considered for the last -- let me
18 ask this: Scratch that, actually.

19 So I'm going to actually ask you about a couple of
20 characteristics of this district. I'm going to turn on the
21 2019 citizen voting age population numbers. At the time, did
22 you have access to any other citizen age population data,
23 other than the ACS data?

24 A No.

25 Q You would have been looking at citizen voting age 2019?

1 A Yes.

2 Q I'm hovering over the 15th District. Can you tell me here
3 in this Democratic proposal, what the citizen voting age
4 population is for Hispanic voters?

5 MR. HUGHES: Can I object on foundation grounds?
6 This came from the House Democratic Caucus, they were the
7 ones negotiating this map. So having Ms. O'Neil read this
8 into the record, when she didn't work on it, doesn't seem
9 like it's something that's appropriate.

10 THE COURT: It's okay. Overruled. Go ahead.

11 Q For clarity, you reviewed this map when it came through to
12 you, correct?

13 A Yes.

14 Q Can you tell us what the Hispanic citizen voting age
15 population is, for the 15th District, in this map?

16 A It appears to be 49.2 percent.

17 Q I want to go back to the Republican proposal now. Can we
18 show Exhibit 339, please?

19 Ms. O'Neil, is this the e-mail where you received the
20 Republican proposal?

21 A Yes.

22 Q And I'll represent to you now, I'm going to go back to the
23 map that is indicated here in the Dave's URL link there. I'd
24 like to do the same thing. I want you to tell me what is the
25 citizen voting age population, Hispanic citizen voting age

1 population for District 15, in this Republican map?

2 A It appears to be 50.0 percent.

3 Q I want to go to the statistics page of this map. Now, I
4 think -- can you tell me what is listed as the Hispanic
5 citizen voting age population number, for District 15, in the
6 statistics? I think it gives you a more accurate number to
7 the hundredth percentile.

8 A 50.04 percent.

9 Q This is the Republican proposal?

10 A I believe so, yeah.

11 Q Okay. So there were two legislative district map
12 proposals floating around by 11:30 p.m. What happened after
13 that?

14 A Immediately after that, we were looking at the proposals,
15 going through our -- making notes, figuring out what things
16 we had concerns with on the staff side.

17 Also I was working on finishing up aspects of the
18 congressional district map proposals, and finishing those
19 negotiations with Commissioner Fain and his team. And then
20 there was kind of a rush to put together a public vote,
21 before the midnight deadline. And then after that deadline
22 passed, we all moved into the kind of event room of the
23 hotel, where we began overlaying the two maps together, the
24 two proposals together, and reconciling them, and producing a
25 final map for the commissioners' consideration.

1 Q What were you doing, just before midnight?

2 A Just before midnight, I was sitting in the lobby of that
3 hotel with Commissioner Walkinshaw and Commissioner Sims.
4 And I remember Dom, Dominique Meyers, being there as well. I
5 believe, again, I was working on the final aspects of the
6 congressional district plan, or speaking with our team about
7 that, and that's when the idea about putting together the
8 final vote, before the deadline, came about.

9 Q What was -- what did you observe about the final vote, if
10 anything?

11 A Um, it was a pretty chaotic atmosphere and environment,
12 and it was brought up -- the idea to vote on the agreement,
13 without the map, was brought up very quickly, with not very
14 much time to discuss it. You know, I was messaging with our
15 SDC team, kind of asking what we should do, what their
16 recommendation was. I was asking -- I brought up my concerns
17 with the idea, and asking what would happen if somebody were
18 to submit a map saying the commissioners had voted on it,
19 when that was actually not the map that they thought they
20 agreed to. I was told that there would be plenty of time for
21 the commissioners to review the map. But I still had my
22 concerns about the vote.

23 And, yeah, then it was my understanding that the
24 commissioners kind of made a decision, with minutes or
25 seconds to go before midnight, as to whether or not they were

1 going to vote, and how they were going to vote on this
2 agreement.

3 Q Were you in touch with --

4 THE COURT: Let's take our lunch break now, so we can
5 get out before Amazonia floods in. So we'll start up at
6 five minutes after one. Okay?

7 You can come back, right, Ms. O'Neil?

8 THE WITNESS: Yes. I will.

9 (Recess.)

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1 AFTERNOON SESSION

2 THE COURT: Okay. Thank you. Please be seated.
3 We're missing a witness. Come on up. Take the stand. And,
4 of course, you're still under oath.

5 Chief Judge Estudillo said every time I abuse one of the
6 lawyers, his leg feels better. This is part of the therapy.
7 Don't take it personally.

8 JUDGE ESTUDILLO: Can we just start off one more
9 time, just as before?

10 THE COURT: Go ahead, counsel.

11 Q Ms. O'Neil, welcome back. Did you have a good lunch?

12 A Yes, I did. Thanks.

13 Q Great. Before the lunch break, you told us what you
14 observed in the lead-up to the vote. I'm not going to rehash
15 that. I just have a limited number of questions about sort
16 of the aftermath. We've heard testimony that, in the sort of
17 wee hours of November 16th, Mr. Grose, Mr. Anton Grose and
18 Osta Davis were completing the legislative maps. Did you
19 observe that process with your own eyes?

20 A Yes.

21 Q Where were you?

22 A I was in the event space room in the first floor of the
23 Federal Way hotel.

24 Q Who else was there with you?

25 A I'm sorry, at what moments?

1 Q Well, I guess right after midnight, and for the ensuing
2 however long the mapping was occurring?

3 A So soon after midnight, I went into the event room with
4 Dominique Meyers, Osta Davis, Anton Grose. Paul Campos was
5 there as well. And I can't remember the exact moment, but
6 soon after that, each of the four partisan commissioners were
7 there, as well as the chair of the Commission, in that same
8 room. And I think some or a handful of the nonpartisan staff
9 of the Commission were there as well.

10 Q Did you ever have any discussion whether it was okay for
11 everybody to be in the same room, after midnight?

12 A I raised a question about that, as to whether or not,
13 yeah, that was appropriate to do.

14 Q To whom?

15 A Just generally, I think, I don't think I directed it at
16 any specific person, but raised it generally in front of
17 several people, in earshot.

18 Q Did anybody respond to your concerns?

19 A Yes, someone responded -- did respond, and I -- and they
20 said to me that they -- the Commission technically didn't
21 exist anymore, and therefore the OPMA didn't apply anymore.

22 THE COURT: Open Meetings Act?

23 THE WITNESS: What's that?

24 THE COURT: You said the OPMA.

25 THE WITNESS: Yes, the Open Public Meetings Act.

1 Q Who said that?

2 THE COURT: It doesn't matter who said it.

3 Q Now, you said that you were personally observing the
4 legislative map drawing, as it was occurring; is that right?

5 A Yes.

6 Q Was that at all times during that period, or did you take
7 a break, walk out?

8 A I believe I was there for all of that time. I may have
9 gone to the bathroom once or twice, but I was there watching
10 pretty closely, aside from the time when I was directly
11 finishing the congressional district maps.

12 Q And what did you observe about how the maps were being
13 drawn at that time?

14 A So they had shifted over to using one laptop and using the
15 Dave's Redistricting App software. One of the two proposals,
16 the two final proposals was kind of overlaid on top of the
17 other. And then the lines were being reconciled. And, you
18 know, precincts were being added and moved to account for
19 population deviation. Then we were checking the partisanship
20 numbers of those new districts, against the agreement that
21 had been reached earlier that evening.

22 Q Did you observe any substantive decisions about how the
23 lines would look?

24 A Yes.

25 Q How were those resolved?

1 A Um, there would be some things moved around and changed by
2 staff, and then some discussion amongst the staff. And then
3 at several points, a decision would be made that we needed to
4 bring it to one of the commissioners. And one of the --
5 usually one from, a Democratic commissioner and Republican
6 commissioner would come over, look directly -- sit in front
7 of the laptop, look directly at it. Staff would present kind
8 of the two options, or here's the question we're trying to
9 resolve. Then the commissioners would discuss and decide,
10 and give staff direction as to what the final decision was.

11 Q When did this process, as you observed it, conclude that
12 morning?

13 A I left the hotel around 7:30 in the morning on
14 November 16th. So it was shortly before that, that that
15 process concluded.

16 Q Okay. That was the last time you saw the Legislative
17 District plan?

18 A That's correct.

19 Q You didn't see it at all on the day of the 16th?

20 A Not until that evening, around 8:30, 9 o'clock at night.

21 Q Which was when?

22 A Um --

23 Q What was happening at 8 o'clock or 9 o'clock that you
24 observed, that you saw the maps at that point?

25 A Yeah, so there was an e-mail sent by the executive

1 director, Lisa McLean, two e-mails. One, I think with a
2 transmittal letter, transmitting the maps to the State
3 Supreme Court. Then another that included the actual map
4 plans, both the congressional and legislative map plans.

5 Q When you left the hotel on the morning -- early morning of
6 the 16th, did you leave with Commissioner Walkinshaw?

7 A Yes.

8 Q To your knowledge, did Commissioner Walkinshaw see the
9 Legislative District plan, before it was transmitted to the
10 Supreme Court?

11 A To my knowledge, not until after we left the hotel.

12 (A phone alarm sounded.)

13 MR. MULJI: That was a great alarm bell, because I
14 think those are all the questions I have, Your Honor.

15 THE COURT: Don't turn it off.

16 Okay. Thank you. Okay. Mr. Holt, do you have any
17 questions?

18 MR. HUGHES: May we go out of order?

19 THE COURT: Yes. Mr. Hughes?

20 CROSS EXAMINATION

21 BY MR. HUGHES:

22 Q Good afternoon, Ms. O'Neil. I know we met briefly out in
23 the hall, but I'm Andrew Hughes on behalf of the state.

24 I think you testified that an agreement was reached on
25 legislative districts around 8:45 p.m.; is that right?

1 A That's right.

2 Q Everyone, but you, has testified so far that no deal was
3 reached on legislative districts, until right around
4 midnight. Do you know what accounts for that difference?

5 A I don't know.

6 Q Mr. Mulji showed you competing Republican and Democratic
7 proposals from after 8:45 p.m.; is that right?

8 A That's right.

9 Q Ms. O'Neil, Commissioner Walkinshaw voted for the plan,
10 correct?

11 A That's right.

12 Q You prepared a dissent for him; isn't that right?

13 A Can you clarify what you mean by "dissent"?

14 Q You prepared a dissenting statement for if he voted no.
15 Do I remember that correctly?

16 A That evening?

17 Q I don't know offhand. Did you prepare him, to give a
18 statement, in the event that he voted against the plan?

19 A We had discussed it earlier in the evening. That was in
20 the same room with Commissioner Sims and Walkinshaw. And
21 that was when we were very pessimistic if any deal would be
22 reached. But I don't recall a specific dissent for if he
23 didn't vote on the maps at that moment.

24 Q Ultimately Commissioner Walkinshaw joined the other
25 commissioners in recommending the maps to the Supreme Court?

1 A I think so, yes.

2 Q At a November 18th press conference, he didn't oppose the
3 map, correct?

4 A I don't think so, no.

5 Q Had you suggested he do so, at this press conference?

6 A Yes. Based on our discussions previously, yes.

7 Q Is it fair to say that Senate Democratic staffers were
8 upset about the maps that were adopted by the Commission?

9 A Yes.

10 Q Did you feel like you had been frozen out of negotiations,
11 in the final days?

12 A Myself, personally?

13 Q Team Walkinshaw, as you call them.

14 A Um, that might be a fair assessment. I felt that, yeah,
15 the things that were being discussed, were not being
16 accurately brought up in negotiations and carried through in
17 negotiations, yeah.

18 Q Were you upset that the maps, as I believe you just
19 testified, were possibly transmitted to the Supreme Court,
20 without Commissioner Walkinshaw -- without Team Walkinshaw's
21 blessing?

22 A Yeah.

23 Q And, frankly, you were mad you didn't get the maps you
24 wanted, right?

25 A Sure.

1 Q So you were mad?

2 A Yeah, I was upset at the way the process went down, in the
3 final days, sure.

4 Q You would not have voted for the plan that the
5 commissioners adopted, I take it?

6 A No, I would not have. But I did not have that option.

7 Q Commissioner Walkinshaw did vote for it?

8 A Yes, he did.

9 Q Thank you.

10 MR. HUGHES: No further questions.

11 THE COURT: Okay. Mr. Holt, do you have any
12 questions for Ms. O'Neil?

13 MR. HOLT: Briefly, Your Honor.

14 THE COURT: What law firm do you work for now?

15 THE WITNESS: HKM employment attorneys.

16 CROSS EXAMINATION

17 BY MR. HOLT:

18 Q Good afternoon, Ms. O'Neil.

19 MR. HOLT: I just want to say, I'm glad I could be of
20 service in helping your leg feel better, Judge Estudillo.

21 JUDGE ESTUDILLO: Keep at it, by the way.

22 MR. HOLT: I'll do my best.

23 Q Ms. O'Neil, in the final hours of negotiation, did
24 Commissioner Walkinshaw cease to be a member of Team
25 Walkinshaw, in your view?

1 A In the final -- no, I don't think so.

2 Q Okay. Now, you were handed, and we looked at Exhibit 388.
3 Do you have that in front of you?

4 A I do, yes.

5 Q Can we pull that up, please? I just want to make sure we
6 understand what we're looking at here. On the right column
7 you have time-stamped e-mails and text messages that you were
8 able to collect and organize, chronologically, surrounding
9 the redistricting process; is that correct?

10 A That's right.

11 Q The left side says, "Recollections, reactions,
12 impressions"; is that correct?

13 A That's right.

14 Q Would you agree that the comments on the left side are not
15 present-sense impressions that you were writing down as the
16 events happened, but simply your reflections as you reviewed
17 the items that you mention in the right column?

18 MR. MULJI: Objection, Your Honor.

19 THE COURT: You don't have to say yes or no, but tell
20 us what it means to you when you see that.

21 THE WITNESS: Sure.

22 A Those were my understanding of the events as they were
23 unfolding. I compiled notes that I took in the moment, based
24 on what I was seeing, and hearing, and thinking, in the
25 moment, and put everything into one document. So that was

1 just the purpose of this document, was to put it all in one
2 place.

3 THE COURT: When you say you took notes, or whatever,
4 was that handwritten, on your phone, or dictating?

5 THE WITNESS: It was handwritten, in a notebook. And
6 I also consider the messages that I sent almost every few
7 minutes, to my team, as a form of those notes.

8 THE COURT: Got it.

9 Q Understood.

10 And following the transmission of the map, did you
11 continue to work for the Senate Democratic Caucus?

12 A Yes.

13 Q And would you agree that in the days and weeks following
14 the transmission of the map, you were asked by Senator Billig
15 to record your remembrance of the events, surrounding the
16 passage of the map, in a memorandum?

17 A I was asked what were the events of that evening.

18 Q And you compiled that in a memorandum, correct?

19 A That's correct.

20 Q Could we pull up what has been admitted as Exhibit 389?
21 Does this look like the memorandum that you prepared for
22 Senator Billig?

23 A It does, yeah.

24 Q Are you aware that, upon being presented with this
25 memorandum, Commissioner Sims stated that she does not view

1 this is an accurate timeline of the events that happened
2 surrounding the passage of the map?

3 MR. MULJI: Objection, hearsay.

4 THE COURT: Overruled. You may answer.

5 A I was not aware of that.

6 Q At Commissioner Sims' deposition, Mr. Herrera asked her
7 specifically about this document, and it says:

8 "Do you recall a memo that Ali -- that Ali O'Neil wrote
9 to Senator Billig about the final days of negotiations?"

10 Commissioner Sims says, "I do."

11 She was asked, "Do you think that document, that
12 memorandum fairly reflects what happened in the final days of
13 negotiations?"

14 To which Commissioner Sims replied, "I do not."

15 And then she was then asked, "Okay, and why not?"

16 To which Commissioner Sims replied, "I mean, I'd have
17 to go through the memo line-by-line.

18 "Sure.

19 "It's been a long time since I've reviewed it. I will
20 say that Ali's position, both her physical position, and her
21 position on the council of the Commission, didn't -- I would
22 say that her experience that evening was different than my
23 experience.

24 "Okay.

25 "Both because her physical position in the room was

1 different than mine, and her position of authority on the
2 Commission was different than mine. So her recollection of
3 events doesn't match mine."

4 Were you aware that statement had been made regarding
5 this memo?

6 THE COURT: That's not a proper use of a deposition,
7 to do it that way. But just, in general, did you know that
8 Commissioner Sims didn't think that was completely accurate?

9 THE WITNESS: No.

10 MR. HOLT: Nothing further.

11 THE COURT: Okay. Great. Thanks very much
12 Ms. O'Neil. You're excused.

13 All right. I think that takes us now to Gabriel Portugal.

14 MR. MORFIN: Yes, Your Honor. Eduardo Morfin, also
15 known by Eddie Morfin, for plaintiff Soto Palmer. And we
16 call Gabriel Portugal to the stand, please.

17 THE COURT: Mr. Portugal, please come into the open
18 well of the courtroom here.

19 GABRIAL PORTUGAL

20 Having been sworn under oath, testified as follows:

21 THE COURT: One house rule we have in the courtroom,
22 which I should have let you know, is we don't allow any
23 Cougar ties or jackets.

24 MR. MORFIN: I'm representing for the northwest with
25 the Seahawks colors today.

1 THE COURT: I'll overlook it this one time.

2 THE CLERK: If you could please state your first and
3 last names, and spell your last name, for the record.

4 THE WITNESS: Sure. My full name is Gabriel
5 Portugal, G-A-B-R-I-A-L, Portugal, P-O-R-T-U-G-A-L.

6 DIRECT EXAMINATION

7 BY MR. MORFIN:

8 MR. MORFIN: As a preliminary matter, I'd like to ask
9 the court for leeway, because Mr. Portugal has let us know
10 that he has been suffering from a bout of vertigo. So I'd
11 just like to ask a little bit of leeway, in case he needs to
12 take a small break.

13 THE COURT: Mr. Portugal, let us know if you need a
14 break, or water, or anything. You have a pitcher of water
15 there.

16 THE WITNESS: Thank you.

17 Q Would you please state your full name, again, for us,
18 please?

19 A Yes. Gabriel Portugal.

20 Q And, Mr. Portugal, outside of this litigation, do we know
21 each other?

22 A Yes, we do.

23 Q And we'll talk more about it later. But did I represent
24 you on a case?

25 A Yes, you did. Yes, you do.

1 Q How did we meet, if you remember?

2 A I believe you were a Washington State commissioner for the
3 Washington State Commission of Hispanic affairs.

4 Q And I won't ask you to say when. It was quite a while
5 ago. Mr. Portugal, what is your occupation, currently?

6 A I'm a retired educator.

7 Q And before retiring as an educator, what were your
8 professions?

9 A I was a schoolteacher slash principal.

10 Q How long did you do that for?

11 A For 32 years.

12 Q And did you do that in Washington?

13 A Mostly; like six and a half years, in Idaho.

14 Q Then after that, did you work as an educator here in
15 Washington?

16 A Yes, for the past 25 years or so.

17 Q Where did you work as an educator in Washington State?

18 A In various places throughout the state. Obviously Pasco
19 first, and then Toppenish, Moses Lake. I think that's it.

20 Q So currently, where do you reside?

21 A Franklin County, City of Pasco.

22 Q How long have you lived there?

23 A '92, on and off. I was in Pasco, and left, and came back
24 in '92. So about 30 years, or so.

25 Q So more or less in those 30 years, what kinds of

1 organizations have you involved yourself in, in the
2 community?

3 A Volunteer organizations. That is, I've been an advisory
4 -- member of the advisory committee to the Chief of Police in
5 Pasco, since '94, '96, when we established that advisory role
6 under Chief Dennis Austin. And I served as volunteer for
7 three different police chiefs.

8 Q Can you tell us about some more of your community
9 involvement? I know you mentioned I was a commissioner for
10 the Commission on Hispanic Affairs, but were you one?

11 A Yes. Thank you. I'm just thinking about 30 or 40 years
12 of things that I had done. It's quite a lot. So, yes, I was
13 a commissioner. I served two terms under Governor Locke, and
14 Governor Christine Gregoire. So we were only allowed to
15 serve for two terms. I completed both of my terms.

16 I was also a chairman for the Tri-Cities Community Health
17 Center. Everybody knows La Clinica, in Spanish. I also
18 served for the City of Pasco in various capacities, not only
19 as an advisory committee for the chief, but also as a
20 planning commission. Also the downtown Pasco development
21 authority, which is a quasi-judicial organization that looks
22 at downtown revitalization, and looks for economic
23 development.

24 I also -- I'm one of the founders of the HLL0. That's
25 Hispanic Latino Legislative Organization, known as LCA,

1 Latino Civic Alliance.

2 Then I also -- I'm one of the founders of COPA,
3 Colima/Pasco, collaboration in friendship association. We
4 have the state of Colima in Mexico, and the City of Pasco,
5 which was drafted, and signed an agreement by the Governor of
6 Colima, and the Mayor of Pasco, and big things are coming to
7 Pasco because of that.

8 And we're planning a trip to Colima to take about 27
9 tribal members from the confederation -- the Colville
10 Confederation of Tribes. And they are going to perform
11 Native American dances in Colima. First time ever. And I'm
12 proud to say that it is from Washington State, the first time
13 ever performing in Colima. And so we expect to have some
14 reciprocity, maybe have some dancers that are Hispanic, to
15 come to Washington State.

16 Q That sounds wonderful. I understand you're also part of
17 LULAC; is that correct?

18 A Yes. I'm one of the founders of LULAC, in the Tri-Cities.
19 We started -- we founded a council in 2015. I was a member.
20 And by 2016, I became the president.

21 Q What was one of the things that spurred on your
22 involvement in LULAC, if you could tell us about that?

23 A Sure. LULAC, every council in Washington State chooses to
24 do what they want to do, as far as the volunteers that get
25 together to figure out what are the areas that the community

1 needs help, and looking at the struggling of the Latino
2 community. There's lots of areas to get involved. So we
3 choose different areas. We have done civil rights forums,
4 DECA workshops, to support the students, we do -- pre-COVID
5 and post-COVID, we're looking at the effects. And obviously
6 with food relief, we have -- every year we organize and find
7 different schools in Richland, Pasco and Kennewick, free food
8 distribution. And we also do rentals.

9 Q I'm sure I should have clarified my question, but I wanted
10 to know one of the things that happened in your community, if
11 you remember, that spurred-on your involvement in LULAC.

12 What made you want to be a part of LULAC?

13 A Well, there was an incident that was also, as part of the
14 police advisory committee, to the police, the chief of
15 police, the killing of Antonio Zambrano Montes, a man that
16 was shot rather tragically, really concerning to all of us
17 the way he was killed. And even the Franklin County Coroner,
18 when he saw the body, he was looking at .45-caliber bullets
19 that hit Antonio. And some say seven, some say eight times;
20 and it's debatable. But the coroner was really in distress.
21 So he asked for an inquest. And immediately there was a
22 refusal by the authorities, like the judges, the county
23 prosecutor, the police chief, obviously, because they felt
24 that the officers acted according to policy.

25 Q So does LULAC also work on issues regarding voting -- just

1 kind of moving away from the shooting, sorry about that --
2 but does LULAC work on issues regarding voting?

3 A Yes, we do. So we have organized candidate forums, so
4 that our folks, the Latino folks are informed as to the area
5 of knowledge about a candidate's -- what they stand for,
6 who's running, and this or that. Or if there are
7 initiatives, whatever -- we hope that candidate forums,
8 candidates come and explain their platforms and positions,
9 and we hope that our community learns from that.

10 Q Now, does LULAC advocate or support a political party?

11 A No. Every council in Washington State has the freedom to
12 choose how they want to do advocacy. And some councils may
13 choose to support a candidate. We, from the get-go in 2016,
14 when I became chair, it was like, we're not going to get
15 behind any candidate, any, you know, related to any ideology
16 for political. If you want to vote Republican, if you want
17 to vote Democrat, if you want to vote independent, we just
18 care that you do choose whatever you want.

19 Q So with your roles on the Commission on Hispanic Affairs
20 and the Latino Civil Alliance, have you had occasion, through
21 these organizations, or otherwise, to speak to legislators?

22 A Yes. So from the first meeting, the HLL0 back in the old
23 days, we gathered in Olympia once a year. And we bus Latinos
24 from throughout the state. And they meet in Olympia. And
25 usually we have guest speakers that are elected officials.

1 And they take turns to welcome us and make us feel like we're
2 number one. This is your government. And this is a really
3 fantastic experience for our community.

4 Q You said that was during a Latino Legislative Day?

5 A Yes, um-hum.

6 Q In your experiences, and in your opinion, based on those
7 times that you've been speaking with elected officials, were
8 they responsive to the needs of the Latino community in
9 Central and Eastern Washington?

10 A Well, it's way different when you come to Olympia and
11 everybody shows the best, who they want to be.

12 Then when you are in your area, whether that be
13 Wenatchee -- this is the pattern that we hear from all the
14 eastern side -- Wenatchee, Yakima, Othello, Moses Lake,
15 Pasco, Sunnyside, Granger, all the way to Yakima, and even
16 Ellensburg. So the concern is that the legislators do not
17 listen to the Latino concerns.

18 Q To be fair, do some elected officials say one thing, then
19 do another?

20 A Exactly.

21 Q So I hate to do this, but I'd like to talk about one of
22 your colleagues, or someone you may know. Do you happen to
23 know Senator Nikki Torres?

24 A Yes, I do.

25 Q Do you work in any capacity alongside Nikki Torres?

1 A Well, we collaborate. She was on the Tri-Cities Hispanic
2 Chamber of Commerce. And then she completed her term. And I
3 was a board member. Then after she completed her term, I
4 became the chair for the Tri-Cities Hispanic Chamber, which I
5 also didn't mention. So that's also volunteer work.

6 Q How long have you known Nikki, or Senator Torres? Excuse
7 me. Excuse me, Your Honors.

8 THE COURT: No, that's okay.

9 A For us, it was Nikki back then.

10 THE COURT: You can definitely say "Nikki."

11 A How many years?

12 Q More or less, if you can tell us.

13 A Maybe 15, 12. I can't really.

14 Q So in your opinion, and if you want to give it, does
15 Senator Torres represent the interests of the Latino
16 community in Legislative District 15?

17 A Well, I'm not from that district, but I can give you what
18 I kind of think about this.

19 Nikki Torres ran for city council in Pasco, and we
20 supported her. Many of us got behind and voted for her. And
21 she was elected. Then she quit, like really early. And,
22 because she was --

23 Q I'm sorry, I just wanted a minor point of clarification.
24 Did she run on a platform, a political party?

25 A Not for city council, as mostly it's nonpartisan.

1 Q Okay.

2 A Then when she is -- well, she kind of resigned. Then she
3 went ahead and ran for Senate. And in this case, we found
4 that she was running as a Republican. And right there, we
5 were kind of, like, disappointed, and thought that something
6 happened. And she has a right to change, and we respect
7 that.

8 Q So why were you disappointed, if you could speak to us
9 about that?

10 A Well, I know it's kind of like generalizing. But
11 typically what Latinos -- although we're not a monolith, a
12 voting block, to say, we all vote Democrats, we have some
13 that vote Republican. But a great number of, I would say the
14 majority vote for Democrats, because they think that they
15 best represent the Latino concerns. And so a majority of
16 Latinos vote. Not everybody, but a majority.

17 Q Did you have occasion to speak with or interact with the
18 prior legislator in that District LD 15? I think it was
19 Senator Honeyford?

20 A Yeah. I do have an experience that is quite -- a little
21 -- I try -- basically the president of Mexico, Vincente Fox,
22 was going to visit Washington State, and chose to stop in
23 Yakima. And we met at a farm, near Yakima. And there we had
24 50, 70, a lot of people, waiting for him, President Fox to
25 arrive.

1 And then when he arrived, there was some speakers that
2 were going to share, you know, what they observed, or
3 whatever they saw of the Yakima area.

4 And there was rows of folks sitting and waiting. And I
5 sat two -- I sat in the next row behind Senator Honeyford,
6 and a couple of his friends. But they were so close that I
7 could hear, mostly, what they were saying. At a time when
8 late, our late Tomas Villanueva, rest in peace, he was a
9 unionizing man, organizer for the labor movement for the
10 farmworkers, and he was the next speaker. And then Senator
11 Honeyford said, "Oh, yeah, there he goes again, that SOB."
12 Should I say the word, Your Honor?

13 THE COURT: Whatever he said, you say.

14 A He said, "There goes the son of a bitch." And then he
15 mumbled something about unions. And I couldn't quite, and
16 I'm not clear on that.

17 But immediately I felt like, I wanted to say to Senator
18 Honeyford, you know, you know, this is -- you're out of line,
19 sir. This is not a civilized term to use. But then I
20 thought, I don't want to make a spectacle here. I don't want
21 to make a big thing out of it. So I stayed quiet.

22 I also learned that Senator Honeyford is not friendly to a
23 lot of our farmworkers.

24 Q So I want to know, is that one of the reasons, or part of
25 the reason why you believe that -- or actually, is that one

1 of the reasons for your disappointment in Senator Torres
2 running as a Republican in that district?

3 A Most definitely, yes.

4 Q So I'm going to move on to a different topic, and I'd
5 actually like to speak about Legislative District 15, still.
6 But in your opinion, and based on your interaction in the
7 community, and based on you knowing this community as much as
8 you do, from having lived there, do you think that Yakima and
9 Pasco have similar interests, or similar ties, or similar
10 values?

11 A I think so. I remember -- I try to compare Phoenix and
12 Glendale. I lived in Glendale back in '71. And Glendale and
13 Phoenix were two different places. And now they're blended
14 into one. And I see Yakima and Tri-Cities, not as fast as
15 Glendale and Phoenix, but I see that eventually they're going
16 to be close. If you look at the lay of how Yakima, and the
17 Latinos depend so much on the economic conditions of working
18 for the farms in the areas of, you know, the hops, the apples
19 and lots of others -- dairies. And if you go from Yakima and
20 you move to the east side, and you can see that this is
21 happening as well, as far as dairies, apple orchards.

22 And when you come from the Tri-Cities, as soon as you
23 drive on 82, you start seeing a lot of -- because I've seen
24 that for many years, where I saw five, ten mobile homes. Now
25 there are like 40 mobile homes right next to a farm. And

1 there are just a lot of Latino families that live there, and
2 work there, and provided that there are some that are -- that
3 have to stay the whole year, and other ones that are
4 seasonal.

5 But these communities continue to grow. So there's a lot
6 of similarities, as far as labor, and the types of jobs that
7 both areas do.

8 There's similarities also in the religious aspects.
9 There's a great number of Catholics in that -- there's two
10 diocese that are divided by the Columbia River. One is the
11 Spokane diocese, the other is the Yakima. But basically
12 they're all Catholics; great numbers. I played for my
13 church, I directed a choir for Spanish music for the masses,
14 for like 18 years, until I thought that was enough for
15 torturing the people with my music, and I took a break.

16 And we used to have 700, up to 800 people in every mass.
17 And you're talking about three masses every Sunday. So it is
18 a lot of folks in Yakima. I also, when I lived in -- because
19 I live in Yakima, and I also work in Toppenish. So when I
20 lived in Yakima, I also joined the San Jose, it's another
21 church. And the late Baho Herrera (phonetic), is a real good
22 friend, he was director of the choir. So I got to see the
23 masses packed with a lot of folks. And seeing those big
24 numbers, yes, we have a lot of things in common.

25 Q And I'm born and raised in Yakima, so I'm going to try not

1 to mispronounce any of the cities. But if I do mispronounce
2 them, it's going to be because I'm nervous.

3 So as you drive down 82 and you go from Yakima, to then
4 Wapato, then you go to Toppenish, and then you go -- you pass
5 Zillah. Then you go on to Granger. And what comes after
6 Granger? I think it's Grandview, then Sunnyside, and
7 Process. And as you go up to Pasco, and then you go up
8 Taylor Flats Road, and up 395, what is going to tie those
9 areas all together? Do you find that those areas are similar
10 enough?

11 A Yes, I do. Like I said, the labor that we provide, the
12 Latino communities provide to all the farms, it's what keeps
13 us -- it's what connects us.

14 Q Did I miss Sunnyside? I apologize.

15 JUDGE ESTUDILLO: You reversed it. You went from
16 Granger to Grandview.

17 MR. MORFIN: I apologize, Your Honors.

18 Q I do want to ask you very directly, then. Do you think
19 that Yakima and Pasco should be in a Legislative District
20 together?

21 A I think that would be good. That would be great. With
22 all respect to the Redistricting Commission, if they would
23 have done a better job to make sure that we're not split in
24 the community, that we bring it -- maybe over here. But in
25 the future, if we look at the two big areas, which is Yakima

1 and the Tri-Cities, that would be ideal for representation.

2 We do have lots of folks that work in the farms, but we
3 also want somebody to represent us in Olympia.

4 Q So considering the history that you're familiar with, and
5 you actually lived it, so I appreciate -- let me take a
6 second, I appreciate you for all of the work that you've done
7 in the community.

8 But considering the history that you're familiar with
9 in the Yakima Valley and Central and Eastern Washington, when
10 considering the size of the Latino population, and
11 considering the amount of Latino representation there, in
12 terms of Latino-preferred candidates, do you think that
13 there's a fair amount of Latino representation in Central and
14 Eastern Washington?

15 A Not in that area. That's exactly what we need. And
16 that's why we keep asking for ways to promote folks to get
17 involved, and inform themselves, and run for office.

18 Q How does it make you feel -- and we're going to get back
19 to that in a second -- but how does it make you feel to know
20 that we are fighting so hard here in court, on either side,
21 for there to be a district in Central and Eastern Washington,
22 where Latinos are able to choose a candidate?

23 A Well, it makes me feel that we have a long ways to go.

24 Q So does representation matter?

25 A Yes, it does.

1 Q And specifically I'm going to laser focus this question
2 in. So it's nice to have a Hispanic-surname candidate on the
3 ballot, but I'm talking about specifically candidates that
4 advocate and care about the values of the Latino community,
5 no matter their surname. Does that type of representation
6 matter to you?

7 A It does. But if I can just add some observations to that,
8 is that when -- and I've been involved in the community
9 issues forever, for -- I'm only 70 years old, I'm not that
10 old, but I've been serving. And what we need to look -- make
11 sure that there is really clear language, that I speak
12 Spanish, (speaking Spanish) it's not a prerequisite to me,
13 for me to understand the struggles of the Latino community.
14 So a candidate that is Latino does not necessarily mean that
15 he or she is going to represent us. A candidate that is
16 non-Latino, whether that's African, white, Asian, whatever,
17 it doesn't mean anything. What the true meaning is, is where
18 they stand, as far as their actions, their words, and how
19 they relate to the struggles of the Latino community. And
20 that's what I look for.

21 Q So based on your experiences, and specifically speaking to
22 Eastern and Central Washington, are things getting better
23 politically for Latinos in Central and Eastern Washington?

24 A Yes, they are. And without forgetting that advocacy is
25 what is driving those changes. Small steps. I always say

1 (speaking Spanish) small steps take you far.

2 Q Can you interpret that for the court reporter?

3 A I just did. I just did.

4 Q Sorry about that.

5 A With my teachers, I have to be very careful, so they can
6 understand both. Small steps take you far (speaking
7 Spanish). So what we've been doing is doing advocacy to make
8 changes, and this requires a lot of learning from our
9 communities, especially with a legal system, with the
10 electoral process, it's not as simple.

11 So the learning, and also that's -- that's the internal.
12 The external will be sometimes they have fear, because they
13 work at an area where they're not supposed to be talking
14 about politics, especially about some -- either political
15 party. And they know that their job may be in jeopardy if
16 they get too vocal, or start talking about, you know,
17 political issues or candidates.

18 So Latinos tend to shy away, in sort of like a
19 self-preservation.

20 Q Does change seem to take great effort?

21 A Say that again.

22 Q In your opinion, based on all that you've done, does
23 change take great effort?

24 A Yes. Yes. I just --

25 Q And is it slow?

1 A Yeah. It does require a process of understanding,
2 learning to navigate through the systems.

3 Q And specifically I think that you could speak on that,
4 because I'd like to ask you about the effort that you've
5 specifically been involved in, in the past.

6 A Myself or in LULAC?

7 Q You, and any capacity you'd like to talk to us about.

8 A Well, yeah. I'll try to figure out ways to bring
9 opportunities for our community to be exposed to information,
10 whether that be having forums, like the candidate forums,
11 civil rights forums that we organize to inform of their
12 rights, constitutional rights, that sometimes people tend to
13 forget when you have county, state, and then there is a
14 constitutional piece that -- and that's what we try to get
15 our community to be exposed to that knowledge.

16 Q I'm going to ask you something that I'm sure you're going
17 to get a lot of questions about, maybe. Have some of your
18 past efforts also included litigation?

19 A Yes.

20 Q Can you talk to us about some of those experiences?

21 A Well, I'm really fuzzy with the numbers. But about 17,
22 20 years ago, I filed a lawsuit against the Franklin County,
23 on the redistricting, to looking for making our area more
24 accessible for Latinos to be elected as commissioners.

25 And we went through the process. We won the first round

1 at the local level, but then it was moved out to Spokane, and
2 we lost at the appeal.

3 Q Have you been involved in -- actually, you mentioned I
4 represented you on a case.

5 A Yes.

6 Q Can you talk to us a little bit about that?

7 A Yes. So the other lawsuit is the -- again, with the
8 Franklin County District, for the second time. And I'm
9 really thankful to Washington State for passing the WVRA, the
10 Washington Voting Rights Act, that is really giving us the
11 rationale to say we are in the right, to ask for what we're
12 asking, and it is to have access for Latinos to be elected.
13 And that will be changing the at-large system to a
14 district-base, for the first time in 2024. We have the
15 settlement last year, '22 on May 9th, it was settled. So we,
16 in 2024, for the first time, we're going to look into
17 electing commissioners, district based.

18 Q So, in your opinion, did that case turn out better?

19 A Yes. Yes. Yes.

20 Q So some may say -- maybe they'll say that you're a little
21 litigious, that you like to sue a lot. What do you say to
22 that?

23 A Well, I think that there is times where the systems,
24 either the election systems, the legal systems, don't give
25 you another alternative, and you have to file a lawsuit. But

1 we should try before, you know, in conversations like with
2 the City of Pasco, in 2017, also had an at-large system.

3 But we were in conversations with the city and their
4 officials, and with the guidance of the U.S. Department of
5 Justice, that provided a moderator for us to meet and work
6 things out, we were able to negotiate at-large. And in the
7 end, they ended up with one at-large, and six district based,
8 which it was the best we could do in 2017. The WVRA was not
9 in existence yet.

10 Q So that sounds like you were able to -- and, I don't want
11 to mischaracterize it, but then that one was a little bit
12 more outside of the court, that it got resolved, that last
13 case that you were talking about?

14 A Yeah. We did before. We didn't have to go to court, the
15 city negotiated.

16 Q What is the significance of Latinos in the Yakima Valley
17 having an ability, in Legislative District 15, to vote for
18 their preferred candidate? Why is that important to you?

19 A Well, I think that because when I look at the Latino
20 community, I don't see differences between Yakima and the
21 Tri-Cities. We're all kind of in the same boat. I think we
22 need representation in Olympia. And so someone that can take
23 the issues that really affects the farmworkers, even the farm
24 owners too, because what's good for the farmworkers is good
25 for the farm owners.

1 Q That's a good point. What do you think will happen, if
2 Legislative District 15 and the Yakima Valley, doesn't allow
3 Latinos to elect their candidate of choice?

4 A Then we will have to look at other recourse of actions, to
5 see how we can help.

6 Q So I'd like to switch topics, and I'm going to ask you
7 specifically about registering to vote. Have you heard of
8 same-day voter registration?

9 A Yes, I have.

10 Q Did you have any issues registering to vote, or do you?

11 A Not at all.

12 Q Did you receive your ballot by mail?

13 A Yes, I do. Every year.

14 Q Do you have any problems with that?

15 A No.

16 Q Do you get your ballot materials in English and Spanish?

17 A Both. It's being translated. It was not easy to get to
18 that point.

19 Q Can you speak on that?

20 A Yes. So a few years back, we were trying to have things
21 in Spanish, and we were -- the commissioners rejected us.
22 And then we brought some assistance, from a lawyer from DC,
23 and they helped us to navigate through that. Because, again,
24 you need some experts. And, finally, because of the number,
25 the percentage of Latinos, right now we have a high

1 percentage, it's like 54, officially, because in reality,
2 we're like 60 or 65. But we qualify to have funds to pay for
3 a bilingual outreach. And these persons started making some
4 changes, and having things in Spanish. And pretty soon the
5 whole state was looking into, there are some areas where we
6 need to have the ballot in both Spanish and English. And
7 it's been a few years now that we get it in both languages.

8 Q That's great. Thank you for that.

9 So when you get your ballot, do you have to request it,
10 or does it just happen automatically, do you just get your
11 ballot?

12 A If you are a voter registered in our county, in Franklin,
13 you get your ballot automatically every year.

14 Q How do you return it?

15 A You just -- it's so wonderful, because it's been two or
16 three years that now you don't have to buy a stamp. It's
17 just, boom, you're done.

18 Q Would you say that the voting in Washington is pretty easy
19 for you?

20 A Very easy for me, yes.

21 Q Do you think that other members in the Latino community
22 find it as easy as you do? And why or why not?

23 A Well, if you ask me, because I'm -- in my role as being
24 involved in community issues, and advocacy for the community
25 for the past 40 years, and being the state director for

1 LULAC, the Legal United Latin American Citizens, trying to
2 keep up with all the different candidates, so to me it's
3 easy.

4 But if you ask me about the rest of our community, I can
5 say, no, it's not easy. It goes back to knowing the
6 language. Even English-speaking folks, they find it hard to
7 read through the ambiguity of the initiatives, and reading
8 through the candidates, unless you have a friend that says:
9 Yeah, vote for that one. It's really not easy to navigate.

10 So Latinos that lack the language, lack the knowledge, and
11 again have the extra fear of, maybe I should not be involved
12 in this. So, yeah, they shy away. And it's really
13 difficult, more difficult, because they're not utilizing time
14 to learn that.

15 Q I appreciate your insight.

16 I'm going to switch topics now, again. I understand
17 that you know a certain judge, Judge Salvador Mendoza,
18 Junior?

19 A Yes. Yes.

20 Q Do you remember him running in an election? And it's okay
21 if you don't remember. But do you remember him?

22 A Yeah. Well, I met a young Salvador Mendoza, when he was a
23 lawyer. And I interviewed him for one of my Spanish radio
24 programs that I have, to inform the community. And he came.
25 And I learned a lot, and became really, you know, really

1 friends -- not real close, but we know each other. And then
2 he did run for judge, and unfortunately, he lost.

3 But then later he was appointed.

4 Q Do you remember who ran against him?

5 A The name escapes me, but I know it was not a Latino, it
6 was a non-Latino.

7 Q So, well, I won't mention his name.

8 But so it was someone who was white?

9 A Yes, from the -- yes, Anglo-Saxon. I'm not sure if that's
10 a good term.

11 Q Do you think things will slowly improve, in terms of
12 Latino political representation, over time, in Central and
13 Eastern Washington?

14 A I think with advocacy and being able to continue
15 organizing, and not give up, because it's a lot of things
16 that we still have, in a lot of areas that are affecting our
17 community, to get to the point where we can have some great
18 representation. So, yes, they can -- they will continue, but
19 we need to -- we cannot let the foot off the gas, whatever
20 the idiom is.

21 Q You don't want to take your foot off the gas pedal?

22 A There you go.

23 Q So you are retired?

24 A Yes.

25 Q And you're battling a bout of vertigo, we mentioned that

1 to the court earlier. So why are you here in Seattle, and
2 why do you continue to do this work, in your retirement?

3 A I think I asked myself that question before, and the way I
4 can answer it is how I heard a friend once said to me, you
5 know, he said, if I don't do it, who will.

6 Q Who was that friend?

7 A A Ninth District Judge Sal Mendoza.

8 Q Thank you for your time, Mr. Portugal. Pass the witness.

9 THE COURT: Mr. Portugal, how old are you?

10 THE WITNESS: I'm 70.

11 THE COURT: I'm 72. Down the hall is Judge Zilly,
12 who is 88, and still hearing cases. Down in Tacoma, with
13 Judge Estudillo, is Judge Bryan, who is 88; and still hearing
14 cases. On Judge VanDyke's court is Judge Cliff Wallace, who
15 is 94, and still hearing cases. You're not old, you're just
16 hitting your prime.

17 THE WITNESS: But if I can give you a little bit of
18 information on that, you know, there's models of cars, and if
19 you run a car on a nice road, nice paved road, that car is
20 going to last a long time. But if you ride that nice car in
21 a rough road, with lots of bumps and potholes, and all kinds
22 of stuff, that car is not going to last that long. And
23 sometimes some of us go through those roads.

24 THE COURT: Good point. Good point.

25 Okay. Let's see. The next questioner is Mr. Drew

1 Stokesbary. He's a state representative. Still in the
2 legislature.

3 THE WITNESS: It's an honor.

4 CROSS EXAMINATION

5 BY MR. STOKESBARY:

6 Q Good to see you this afternoon, Mr. Portugal. I can roll
7 my Rs, but I'm not sure I can say the G correctly. So I
8 apologize, in advance, if I mispronounce your name. So I'll
9 do my best.

10 Thank you for being here. And as a son of two WSU
11 graduates, I have no problem with your tie, sir.

12 I want to ask a couple quick follow-up questions. The
13 first is, you mentioned some extensive involvement with
14 LULAC, but I'm not sure I totally understand how that
15 organization is structured. So I just -- my understanding is
16 it's a national organization, but with local chapters; is
17 that right?

18 A Yes. It's the oldest Hispanic organization in the U.S.
19 It started in 1929, in Texas, where there were Latinos
20 suffering from discrimination, and, you know, racist acts of
21 violence against them. And they banded three different
22 organizations to form LULAC, in 1929.

23 Q Do you know how many chapters, how many LULAC chapters
24 there are here in Washington State?

25 A In Washington State, we have 11. The last time -- and I'm

1 still waiting for -- every year every council renews their
2 charter. And COVID really took a toll on all of us, and
3 volunteers, energy, and stuff. So we're waiting. But 11 the
4 last time we -- that I counted. Tacoma, Seattle, Lakewood,
5 Yakima, Vancouver, two in Tri-Cities, and I probably forgot a
6 couple.

7 Q That's impressive. More than I can remember.

8 But what I was going to ask, and you sort of answered,
9 there's a separate Yakima chapter, then two separate
10 Tri-Cities chapters?

11 A Yes.

12 Q Now, Mr. Portugal, the court told you something personal
13 about me, that I'm a state representative, when I'm not here.
14 I'm going to ask you a personal question. Are you married?

15 A Yes, I do. I have. I am. My wife will be on my case.

16 THE COURT: I do. I have. I am. Yes would have
17 done it.

18 A 42 years married.

19 Q I'm reminded of an old joke: I don't have a girlfriend, I
20 just know a girl that would get really mad at me if she heard
21 me say that.

22 But, Mr. Portugal, do you and your wife agree on every
23 issue?

24 A No.

25 Q Are there times you can't convince her that you're right?

1 A Yes.

2 Q But you're still married?

3 A Yes.

4 Q Of course you still love and support each other?

5 A Yes.

6 Q Because two people don't agree on every issue, doesn't
7 mean they can't agree on many issues?

8 A Exactly.

9 Q You testified you've known, now Senator Nikki Torres --
10 I've really only known her in her capacity as senator, so
11 I'll call her senator -- for a long time. Aside from the
12 fact that she has now run for the state legislature as a
13 Republican, has she done anything specifically to disappoint
14 you, in your mind?

15 A Well, there was a vote, and I still am trying to get that
16 information, where it was something related for farmworkers
17 and someone called: Hey, she voted against it. So I didn't
18 go into the details, because she's a good friend. And I kind
19 of feel a little kind of uneasy, because she's also on a few
20 boards, member of a few boards in the Tri-Cities, and we do
21 some things. So I try to not speak about what she's doing.
22 I may not agree.

23 Q Okay. Understood.

24 You mentioned that, I think you testified, kind of
25 acknowledge that, of course, not all Hispanic voters in

1 Central Washington are Democrats. There's plenty of
2 Republican Hispanic voters as well, right?

3 A Yes.

4 Q So I just want to confirm that it is not your testimony
5 that Hispanic voters, who are Republican, or Hispanic
6 individuals who are Republican, don't care about, or don't
7 want to help the Hispanic community?

8 MR. MORFIN: Objection, Your Honor. I think it
9 misstates the testimony.

10 THE COURT: Don't worry about the beginning of the
11 question, just the proposition. Would you say that a Latino
12 voter, who was Republican, could still care about the Latino
13 community?

14 THE WITNESS: Um, I think that trying to explain what
15 someone that identifies, or that -- identifies with the
16 struggles of the Latino community, does not necessarily have
17 to be Hispanic, it can be white, it can be Hispanic. So
18 there are Hispanics that don't care about our community.
19 There are Anglos that don't care. Any group.

20 Q But that's not a function of whether or not they are
21 Republican, is it?

22 A Well, the Republicans tend to be more anti-immigrants,
23 anti-unions, anti-Latinos.

24 Q One other question for you, just to clarify a couple
25 questions that you answered earlier about Pasco and Yakima.

1 The way I interpreted what you said, is that Pasco and Yakima
2 are on track to become more of a united community, but
3 perhaps they're not one community here today. Is that your
4 understanding? Or is that how you would explain it?

5 A Well, I think that we share a lot of commonalties in areas
6 of labor, like I mentioned, and religion. And so those two
7 areas are very strong.

8 Also, I imagine housing, too, because mostly of our folks
9 are living in conditions that, you know, is really very
10 difficult. And in Yakima and also in the Tri-Cities, because
11 many, many different reasons, but it has to do with improving
12 the conditions, for them to be working and earning salaries,
13 that can afford them a better way of life. And we believe
14 that if we joined efforts between Yakima and Tri-Cities, a
15 state representative such as yourself, but in our area, could
16 advocate for us.

17 Q Totally understand, sir. And I do just need to clarify,
18 for the record, I'm a state representative; I would have a
19 state senator that would be very upset if he heard I got a
20 promotion. That's all the questions I have for you, sir.
21 Thanks for being here.

22 THE COURT: Thanks, Mr. Stokesbary. Ms. Sepe.

23 MS. SEPE: No questions.

24 MR. MORFIN: One question, if I may. And I typically
25 don't redirect.

1 REDIRECT EXAMINATION

2 BY MR. MORFIN:

3 Q Mr. Portugal, are there cities in between Yakima and
4 Pasco?

5 A Yes.

6 Q I think we touched on a lot of them earlier. So from your
7 experience, from driving through there and knowing the
8 community, are there large Latino populations in those
9 cities, between Yakima and Pasco, and can you speak to that?

10 A Yes. I think that if you look at the numbers, Granger has
11 over 90 percent Latinos. And so that's really high. And if
12 you look at Wapato, you look at Toppenish, Sunnyside, all
13 those, they have big numbers of Latinos.

14 So that's why I see this commonality of not only Yakima,
15 but all those towns have a lot of working folks that provide
16 labor for the farms and the dairies.

17 Q Thank you, Mr. Portugal. We really appreciate your time
18 here today.

19 MR. MORFIN: I'll pass the witness.

20 THE COURT: Thank you, Mr. Portugal. Do you have any
21 questions for us?

22 THE WITNESS: No. No. Thank you. I really
23 appreciate the opportunity to come and share some of my
24 perspectives. Gracias.

25 THE COURT: Later on if you could tell me how to say

1 "Sit down, that's a terrible question," in Spanish, I'd
2 appreciate it.

3 THE WITNESS: (Speaking Spanish).

4 THE COURT: Let's see, Dr. John Alford.

5 MR. HUGHES: Do you want a witness now, or do you
6 want a break?

7 THE COURT: Let's start the witness.

8 JOHN ALFORD

9 Having been sworn under oath, testified as follows:

10 THE CLERK: If could you please state your first and
11 last names, and spell your last name for the record.

12 THE WITNESS: It's John Alford, Alford is
13 A-L-F-O-R-D.

14 DIRECT EXAMINATION

15 BY MR. HUGHES:

16 Q Professor Alford, good afternoon. You're a professor at
17 Rice University in Houston, Texas; is that correct?

18 A Correct.

19 Q What is your area of specialization?

20 A Most of my career, including my dissertation, has been
21 involved in study of U.S. elections and voting behavior,
22 particularly congressional elections.

23 More recently my work is in the area of the genetics and
24 physiology of political ideology.

25 Q Can I ask you to keep your voice up, while testifying?

1 You've testified in a bunch of VRA cases, as a *Gingles*
2 expert, correct?

3 A I have.

4 Q Including *Montes v. Yakima*; is that right?

5 A That's correct.

6 Q Professor Alford, you typically testify on behalf of
7 parties defending maps in VRA cases; is that right?

8 A I work largely for entities, including drawing districts
9 for entities, government entities, and typically in a VRA
10 suit, they are the defendants rather than the plaintiffs.

11 Q It's true, isn't it, that you're currently serving as an
12 expert witness, retained by Holtzman Vogel, in another
13 pending VRA case, right?

14 A That's correct.

15 Q But here, your report concludes that the three *Gingles*
16 factors are likely met, correct?

17 A The *Gingles* factors, yes.

18 Q What led you to conclude that?

19 A The analysis of elections in this case.

20 Q We heard, I think, Dr. Collingwood say earlier, first day
21 of trial, the data, are the data, are the data. Is that
22 roughly the answer?

23 A I would go a little further. In my experience, the
24 analysis, is the analysis, is the analysis. So in this case,
25 I agree both with the data, which is an important start, not

1 always the case; and I happen to agree with the analysis.

2 Q I'm showing you what's been preadmitted as Exhibit 601.
3 This is your expert report in this matter?

4 A Yes.

5 Q And I want to walk very quickly through your top-line
6 conclusions. I will note that this has already been admitted
7 in the record, so we don't need to go in much detail. I want
8 to be sure the court has a good understanding of what we're
9 talking about here.

10 So let's look at Page 4 of your report, because this
11 right here summarizes your conclusions with respect to the
12 first *Gingles* prong.

13 A Yes.

14 Q Very briefly, what did you conclude?

15 A The first *Gingles* prong is met here. It's apparently
16 fairly easy to draw a demonstration district, or actual
17 district that is CVAP-majority Hispanic, which is the
18 bright-line test. The districts, whether the alternative
19 districts or the adopted districts, appear to me to be
20 visually quite regular, better, by far, than most
21 demonstration districts, in terms of their visual appearance.

22 Q When you said "Better than most demonstration districts"
23 you've been doing this over 30 years?

24 A Yes.

25 Q Is it your testimony that the districts we're talking

1 about in this case, are more compact and contiguous than most
2 of the demonstration districts you've seen in the VRA cases
3 you've done?

4 A Yes. Certainly more than most demonstration districts.

5 Q For the *Gingles* second and third factors, did you
6 replicate Dr. Collingwood's ecological inference analysis?

7 A I replicated, in the sense of running the same analysis,
8 with the same data, and then I did what I would consider a
9 different form of replication, using an alternative set of
10 voter data, reproduced those results again.

11 Q And based on that analysis, did you find that Hispanic
12 voters have voted cohesively in the Yakima area?

13 A Yes. In these elections, you see moderate cohesion in the
14 70 to 80 percent range.

15 Q On *Gingles* 3, did you find the white voters vote
16 cohesively to block Latino-preferred candidates, at least in
17 the -- at least in partisan elections?

18 A Yes. In partisan elections, again, moderately cohesive,
19 around 80 percent level, Anglo voters vote Republican, which
20 are not the candidates preferred by Hispanic voters.

21 Q And did you find that white opposition to Latino-preferred
22 candidates was actually elevated when the Latino-preferred
23 candidate was Hispanic?

24 A Yes. So I think it's important to look at the role of a
25 candidate's party. I think it's also important to look at

1 the role of a candidate's race or ethnicity. Here, there is
2 a significant effect for both.

3 Q And why does that matter to you?

4 A Where the pattern of voting difference can be -- cannot be
5 demonstrated to be anything beyond partisanship, my own view
6 is that's important information for the court to take into
7 account. I think, for example, with regard to totality of
8 the circumstance, that that's a very important issue. So I
9 think that's a useful analysis here. There is a significant
10 increase in the cohesion of Hispanic voters, when the
11 Democratic candidate is Hispanic; there's a significant drop
12 in the willingness to cross over among Anglo voters, when the
13 Democratic candidate is Hispanic. That's an unusual pattern,
14 in my experience, and shows that there is a real ethnic
15 effect on voting in this area.

16 Q Now, Dr. Alford, we've been talking about partisan
17 elections. In nonpartisan elections, did you find the same
18 pattern of racially polarized voting held true?

19 A No.

20 Q What did you find?

21 A With regard to *Gingles* 2, Hispanic voters -- it's a
22 limited set of --

23 Q Two elections?

24 A Four elections.

25 Q My apologies. Four elections.

1 A In those elections, Hispanic voters continue to show
2 moderately cohesive voting, for Hispanic candidates. So
3 *Gingles* 2 looks quite similar. But the behavior of Anglo
4 voters is much less clear. The pattern is quite different
5 than what you see in the general elections. So it's a
6 different -- appears to be different.

7 Q Is this difference amongst how white voters vote, in
8 nonpartisan elections, does that undermine your conclusions
9 on the third *Gingles* factor?

10 A No.

11 Q Why not?

12 A Well, it's -- remember, my view is that most of the effect
13 here is partisan. But that there is -- remains an effect of
14 ethnicity, as well. You see that effect, both that partisan
15 effect, and the effect of ethnicity, in these nonpartisan
16 elections, to a lesser extent. In part because partisanship
17 is on the ballot here, although it may be in the air, as we
18 know with recent elections.

19 Secondly, the elections at hand are partisan elections.
20 And so I think the pattern in partisan elections, at least
21 for the threshold *Gingles* factors, outweighs what we see here
22 in the limited set of nonpartisan elections.

23 MR. HUGHES: That's all I have, Your Honors. Thank
24 you so much, Professor Alford.

25 THE COURT: Mr. Acker?

1 MR. ACKER: Your Honor, plaintiffs switched the order
2 of who was going to go here, when they sent this in to the
3 court yesterday. They made the point that the aligned party
4 should stay together. We agree with that. I believe
5 plaintiffs and state are more aligned on the *Gingles* factors,
6 now, at this point. So we think it makes a little more sense
7 for plaintiffs to go second.

8 THE COURT: Mr. Gaber, are you ready?

9 MR. GABER: I have no questions at this time. I may
10 have, if he had gone first.

11 THE COURT: Go ahead, counsel.

12 MR. ACKER: Yes, all right.

13 CROSS EXAMINATION

14 BY MR. ACKER:

15 Q Good afternoon, Dr. Alford.

16 A Good afternoon.

17 Q I'm tempted to say "good morning."

18 But I will also be using the document camera. So I
19 would like to go through the same report, which is
20 preadmitted Exhibit 601. But before we get there,
21 Dr. Alford, just some general questions on your conclusions.

22 Did you make findings in this report on all three
23 *Gingles* factors?

24 A I don't consider my report to be findings, I guess. I did
25 analysis on the *Gingles* 2 and 3. I mentioned that I was not

1 looking any further at *Gingles* 1, because I think it's simply
2 met, on its face.

3 Q Okay. Would you say, then, for *Gingles* 1, that you accept
4 Collingwood -- Dr. Collingwood's data?

5 A To the extent that I was relying on his data, yes, I
6 accept his data.

7 Q Okay. Would you say you also accept his conclusion, on
8 the compactness of the district in question?

9 A I actually don't remember his conclusion on -- my
10 conclusion is based on just observing the district itself.

11 Q But you find the district to be compact?

12 A Again, without sort of extensive analysis, it looks to me,
13 in appearance, it would be among the more compact
14 demonstration districts I've seen, yes.

15 Q By appearance, do you mean the shape of the district?

16 A So not just the shape, but the physical pattern of the
17 parts of the district. So the shape involves several things.
18 It involves the regularity of external boundaries, and the
19 degree to which -- where those boundaries are irregular, they
20 follow irregular features. So, for example, you normally
21 might see a straight-line boundary along a county border.
22 You might see a squiggly boundary, if it follows a river, for
23 example, or a stream.

24 So you're looking at how irregular -- this is sometimes
25 called the notion about whether districts interlock. So when

1 you see a really irregular district, it's impossible to take
2 the districts that surround it, away from it, without tearing
3 it apart, because it's sort of like a really bad cancer, it
4 spreads out its little tentacles all over the place.

5 This is a district that doesn't appear to have tentacles.
6 It has no narrow connectors, which is another feature very
7 common in irregular demonstration districts. So it doesn't
8 rely on a 20-mile irrigation canal to connect one part of the
9 district to another, which the district I live in, in
10 Houston, relies on.

11 So, again, it does not have the features that are normally
12 associated with -- the visual features that are normally
13 associated with demonstration districts.

14 Q Okay. So you're referring to the compactness of the
15 district itself, as opposed to the compactness of the Latino
16 community within it?

17 A Exactly. I have not looked at the population locations
18 within the district, just the physical appearance of the
19 district.

20 Q Okay. Thank you.

21 Let's move on to *Gingles* 2 and 3, which I'll generally
22 do together here.

23 Did you make a conclusion about *Gingles* 3, in your
24 expert report?

25 A I think I stated my conclusions about *Gingles* 2 and 3, in

1 the report.

2 Q What was your conclusion?

3 A My conclusion is that the -- basically the level of
4 cohesion demonstrated in *Gingles* 2, for Hispanics, and the
5 level of cohesion for Anglos, in the opposite direction,
6 demonstrated in *Gingles* 3, setting aside the issue of
7 partisanship versus racial polarization -- I don't like to
8 characterize it as racial polarization -- meets the *Gingles*
9 threshold for groups voting in different directions.

10 Q Why do you say that you want to set apart the issue of
11 partisan polarization versus racial polarization?

12 A I just think it's important, both with regard to the
13 precision of how the court treats the evidence, and with
14 regard to how the public understands the findings of the
15 court, to distinguish polarization that's -- that is, racial
16 polarization is generally thought to be an indication that
17 people are voting in some way, on the basis of race.

18 And I think where you have evidence only that they're
19 voting on the basis of partisanship, I think whatever you
20 want to make of that difference -- and here, there is a
21 substantial difference in the partisan preferences of
22 Hispanics and non-Hispanics -- that, I think, is a perfectly
23 reasonable thing to factor into the threshold test. But I
24 think it should be treated as what it is. So in a case where
25 there's no evidence at all, as there often isn't, of any

1 racial or ethnic voting, I think labeling that threshold
2 pattern as racial polarization, I think is inappropriate, and
3 I think should be -- that issue should be examined in the
4 totality of the circumstances in Senate Factor 2.

5 Q I'm on Page 13 of your report. And you mention here the
6 quote, "The general pattern of partisan, rather than ethnic
7 polarization." And this is in regards to -- I'm going to
8 flip over to Page 12, Table 4.

9 Can you describe what you mean here by the general
10 pattern of partisan rather than ethnic polarization?

11 A So if you basically look at these contests, you can see
12 that in these contests, you have a party signal, these are
13 partisan elections. So candidates are running as Democrats
14 and Republicans. And what you can see here is that, without
15 variation, the clear preference of Hispanic voters is for
16 Democratic candidates; and the clear preference of Anglo
17 voters, is for Republican candidates.

18 That is true, whether those candidates are Anglos or
19 Hispanics. So the dominant pattern here, that very clear
20 difference of opinion, is a partisan pattern. When you then
21 look at, is there a distinction, then, beyond that partisan
22 pattern, that reflects another signal that voters have, which
23 is the race or ethnicity of candidates, here you see that
24 there is, right? So we can take those two things apart, and
25 say, is there -- is some of this voting a response to the

1 ethnicity of candidates, or is it simply so dominated by
2 modern polarized partisanship, that it is just mere
3 partisanship?

4 This is, I think, predominantly partisan, but it is not
5 mere partisanship.

6 Q Okay. Thank you.

7 So when you are referring to the partisanship, are you
8 referring to the partisanship of the voters?

9 A No.

10 Q What are you referring to in terms of partisanship?

11 A We have no measure here of the partisanship of voters.
12 But there is a partisan signal, with a candidate. So in
13 partisan elections, the ballot itself indicates the
14 partisanship of the candidates, or the partisan preference of
15 the candidates.

16 And so what we're seeing here, again, is a very strong
17 degree of regularity in how voters respond to whether the
18 candidate is the Democrat or the Republican, and a real, but
19 less extensive response to the other signal that we're
20 looking at here, which is the ethnicity or race; in this
21 case, ethnicity of the candidates.

22 Q Thank you. I'm going to move now to Table 6, which was
23 discussed a little earlier. What is Table 6, Dr. Alford?

24 A This is -- looks like a summary of Collingwood's results
25 for the non-party contested elections.

1 Q And why did you include this table in your report?

2 A Another way, beyond looking at the contrast between, say,
3 for example, Hispanic Democratic candidates, and non-Hispanic
4 Democratic candidates, another way to look at this effective
5 ethnicity of candidates versus party of candidates, is to
6 look at elections in which there is not a party signal on the
7 ballot. Historically, that also would have meant there might
8 not be much of a party signal.

9 I think we're all aware that in many of these elections,
10 there is -- modern American elections -- even though they are
11 legally nonpartisan, there is still a lot of partisan
12 information. But there isn't a partisan signal on the
13 ballot.

14 Q Why is that probative for your *Gingles* analyses?

15 A It gives you, again, if the indication that there was some
16 strong partisan effect, and a more modest ethnic effect, then
17 you should continue to see some ethnic voting in the
18 nonpartisan elections. You often can get a better idea of
19 both, what that is, and how it is centered in those
20 elections, by looking at nonpartisan elections.

21 Q And what were your conclusions on this table, for both
22 Hispanic voters and white voters?

23 A So for Hispanic voters, the level of preference for the
24 Hispanic candidate is in the same range as it was when we had
25 a party signal.

1 So, again, for Hispanic voters, they're both more
2 supportive of Hispanic Democrats, than they are of Anglo
3 Democrats; but also in a contest without a party signal,
4 remain highly supportive of Hispanic candidates.

5 Q Is it less or more, though, cohesive, in your view?

6 A It's slightly less cohesive, but it is --

7 Q What would be your threshold for what's more cohesive or
8 what's less cohesive, as a percentage number? Would
9 75 percent be correct for that?

10 A I think 75 percent is a non-arbitrary dividing line
11 between things that are more cohesive than not, and things
12 that are less cohesive than not. So I think if you're going
13 to draw a dividing line, I think 75 percent is a place to
14 start thinking about whether you have substantial cohesion,
15 or whether you have something much more modest.

16 Q I'm sorry, I guess I interrupted you. Could you finish
17 your thought about the cohesion of white voters, based on
18 this table?

19 A The white voters don't show, again, the pattern here.
20 You'll notice it's much more irregular. So you're not seeing
21 the series of elections in which the level of white voting is
22 quite stable across elections. It varies substantially. I
23 don't think -- the highest it reaches is 65 percent. Several
24 elections, there's essentially no evidence of cohesion at
25 all. So it's here I would say the nonpartisan election

1 suggests that Anglo crossover voting is much more varied in
2 the nonpartisan context, than it is where there's a party
3 signal for the candidates.

4 Q Again, why include the non-party races, for white voters,
5 in here?

6 A Again, I think it helps you to see whether the -- both the
7 cohesion among minority voters, *Gingles* 2, whether that is
8 just partisanship, or some sign of a clear preference for
9 candidates of a particular race or ethnicity.

10 Similarly, I think for *Gingles* 3, it gives you a sense of
11 how much of the Anglo reaction to candidates, preferred by
12 minorities, are a function of the party of those candidates,
13 versus the ethnicity of those candidates.

14 Q Okay. Thank you. I'd like to move to the conclusion
15 paragraph of your report, which I have up here on the screen.
16 Could you read, starting in the first full sentence here, and
17 read to the end, please?

18 A "For *Gingles* 3, the picture is more mixed. In partisan,
19 contested elections, non-Hispanic white voters demonstrate
20 cohesive opposition to Democratic candidates, and their
21 opposition is modestly elevated, when those Democratic
22 candidates are also Hispanic. However, in contests without a
23 party cue, non-Hispanic white voters do not exhibit cohesive
24 opposition to Hispanic candidates, and those contests do not
25 exhibit ethnically polarized voting."

1 Q Thank you. So your conclusion for *Gingles* 3, in the
2 report, is, it's mixed?

3 A It is more mixed than the picture for *Gingles* 2, yes.

4 Q And have you changed your opinion on that, between when
5 you submitted this report, and your testimony today?

6 A No.

7 Q Okay. Thank you.

8 Last line of questions. Have you followed the 2022
9 Senate election in the Legislative District 15?

10 A No.

11 Q Okay. So you're not aware of the outcome at all?

12 A I'm aware of the outcome, yes. I thought you meant
13 followed it, as in, I could tell you the election history.
14 No.

15 Q No need for that. This particular election has been
16 rehashed a few times. So I'll just represent that now
17 Senator Nikki Torres won, with a little over 67 percent of
18 the vote.

19 So my question is, do you think, based on the numbers
20 we've seen in these tables, that a Republican could win 68,
21 almost 68 percent of the vote in Legislative District 15, if
22 Hispanics were voting cohesively?

23 A Well, I mean, obviously the election presents an
24 interesting challenge, as I've suggested here. You have two
25 forces operating here. You have a partisan voting pattern,

1 which I think is more polarized, and is responsible for the
2 bulk of what we see, and the polarization of the general
3 elections.

4 Then you have, also along with that, a degree of ethnic
5 voting. So you can see that Hispanic voters are cohesive in
6 supporting Democratic Hispanic candidates, more so than Anglo
7 Democratic candidates. And then in the nonpartisan
8 elections, they're providing substantial cohesive support for
9 the Hispanic candidate, without any party signal.

10 So an election in which the Hispanic candidate is the
11 Republican, I would suspect would diminish the degree of
12 concentration of Hispanic support for the Democratic
13 candidate. The crossover there, what we see is the same
14 pattern we see in the general elections, when the Democrat is
15 an Hispanic, and elevated Hispanic support. It wouldn't
16 surprise me if you had some elevated Hispanic support for a
17 Republican Hispanic candidate.

18 All that depends on, obviously, not just on the election
19 result, but on actually doing an EI analysis of the election,
20 which I haven't done.

21 Q Okay. Thank you, Dr. Alford. Before I sit down, I just
22 want to clarify one thing.

23 In this matter, counsel from Holtzman Vogel has not
24 spoken to you at all about this particular lawsuit, correct?

25 A That's correct.

1 Q Thank you very much. No further questions.

2 THE COURT: And, yes, Mr. Gaber?

3 CROSS EXAMINATION

4 BY MR. GABER:

5 Q Good afternoon, Dr. Alford. How are you?

6 A Very good. Good to see you again.

7 Q We've met before, right?

8 A And we'll meet again.

9 Q We're not usually in this same sort of situation. So this
10 is a nice change.

11 I just have a few questions for you. And I'd like to
12 pull up your report, which I think is Exhibit 601. And if we
13 could turn to Page 14, which I believe will come up on the
14 screen in front of you, in just a moment.

15 Now, Dr. Alford, this is -- Table 5 here, this is the
16 table where you show the difference in the support that white
17 voters give to candidates, depending on the race of the
18 Democratic candidate; is that right?

19 A Yes.

20 Q And the contests for the Legislative District 15 would be
21 partisan contests, right? That's how those elections will
22 go?

23 A That's correct.

24 Q And the table shows that when the Democratic candidate is
25 Hispanic, or has a Spanish surname, that white voters give

1 just 15.98 percent, on average, of their votes to that
2 Hispanic Democratic candidate, right?

3 A That's correct.

4 Q Now, there's been testimony in this case that sort of the
5 Commission, using -- they had a metric that was the 2020
6 treasurer's race, and I'll represent to you, if you don't
7 know, that that I believe featured two white candidates, so a
8 white Democrat, and white Republican. Does that sound right
9 to you?

10 A I have no recollection of that contest.

11 Q Assume that to be true. I think the judge would have told
12 me if that was wrong. And that the result of that race was
13 53 percent for the white Republican, and 47 percent, roughly,
14 for the white Democrat.

15 Now, there's also been testimony, from some analysis,
16 showing the turnout among Hispanic voters in the area is
17 lower than turnout among white voters; and particularly so,
18 in midterm elections. Does that seem right, as a general
19 proposition of political science?

20 MR. HUGHES: Objection. That misstates what the
21 evidence has been at this point.

22 THE COURT: Go ahead, rephrase the question.

23 Q Assume for me turnout is lower, among Hispanic voters in
24 the area. If you have a district that starts out at 53/47 in
25 favor of the white Republican candidates, or the Republican

1 candidate, and if the nominee of the Democratic Party in that
2 district for that seat is Hispanic, is that 16 percent white
3 vote in favor of a Hispanic Democrat, going to make it all
4 the more difficult for that candidate to win election?

5 A Again, there's a partial offset, right? So you're getting
6 a boost in Hispanic enthusiasm for the candidate, because the
7 candidate is Hispanic. You're getting a decline in the
8 willingness to cross over. So there's some offset there.
9 But it's hard to say, in particular, by saying, across a set
10 of elections; I would suspect that you would see that the
11 Republican number would tend to be higher, rather than lower,
12 certainly than the number for an Anglo/Anglo contest.

13 Q Thank you, Dr. Alford.

14 MR. GABER: I have no further questions.

15 MR. HUGHES: Just a couple more.

16 REDIRECT EXAMINATION

17 BY MR. HUGHES:

18 Q I believe I still have two minutes left on my ten-minute
19 clock.

20 Professor Alford, did you conduct an analysis of the
21 Torres/Keesling race?

22 A No.

23 Q If you were to choose between trusting your sort of gut
24 response from the stand, and a report prepared by
25 Dr. Collingwood, which would you trust?

1 A Well, I will say both, in this case. And in previous
2 cases, I've come to be fairly confident of Dr. Collingwood's
3 analytical abilities. So I would always trust an analysis
4 over a gut response. And Dr. Collingwood's analysis, in my
5 experience, his analysis is trustworthy.

6 Q Professor Alford, is it your understanding, as a political
7 scientist, that *Gingles* 2 and 3 asked whether whites and
8 minorities voted differently, and not why?

9 A I'm not sure that's really a political science question.

10 Q In this case, I'll withdraw the question.

11 MR. HUGHES: No further questions. Thank you.

12 THE COURT: Okay. Any questions for Dr. Alford up
13 here? No. Thank you very much, Doctor. You were here all
14 day, too?

15 THE WITNESS: Oh, it's been fascinating.

16 THE COURT: I appreciate that. Yeah. Okay. Well,
17 we've finished the witnesses for today; is that right? Yeah?

18 MR. GABER: That is, Your Honor. And hopefully that
19 doesn't make Judge Estudillo's leg feel worse.

20 JUDGE VANDYKE: Yell at them about it.

21 JUDGE ESTUDILLO: The rationale, of course, is I'm
22 coming from Tacoma every day. And I'm being made to come on
23 Friday. If we could get witnesses done, so we don't have to
24 come on Friday, by chance, that's much better for me.

25 MR. GABER: So the issue that we have is Ms. McLean,

1 who was the executive director of the Commission, is in
2 Alaska. And she won't be back until Friday. So we did have,
3 I think, probably two more witnesses. We could confer, but I
4 think Adam Hall and Osta Davis. And then we issued a
5 subpoena to Mr. Campos. I think the position is, that's not
6 necessary. If that's the case, we don't need to hear
7 duplicative testimony. So that would leave those two
8 witnesses, and Ms. McLean. And if we have a short
9 rebuttal -- I'm not sure we will.

10 MR. HUGHES: We are not calling Mr. Hall at this
11 point.

12 MR. STOKESBARY: We don't need to call Mr. Campos or
13 Mr. Hall. We don't object if they are called, but we don't
14 need duplicative testimony.

15 THE COURT: It's really the executive director.

16 MR. GABER: Ms. McLean and Osta Davis.

17 THE COURT: Maybe what we should do is not be in
18 session tomorrow, and then do it all on Friday.

19 MR. GABER: I think that's a good idea.

20 THE COURT: We still need to be out by 3 o'clock on
21 Friday.

22 JUDGE VANDYKE: Hard deadline.

23 MR. STOKESBARY: One other possibility. Ms. McLean
24 has already been subject to deposition; I think we're fine
25 agreeing to just designate those depositions, in lieu of

1 testimony. That works for us.

2 MR. HUGHES: As is the state.

3 MR. GABER: Could we take just a five-minute break?

4 THE COURT: Take 15 minutes, and we'll come back at
5 3 o'clock.

6 Another possibility would be to do Ms. McLean from Alaska
7 via Zoom, which we could do, and then finish it all tomorrow.

8 MR. GABER: I don't know what she's doing in Alaska.
9 But we could chat with her lawyer.

10 THE COURT: Just take 15 minutes, talk to each other,
11 see what the possibilities are. A little after 3 o'clock.
12 Just let Victoria know we're ready to talk about the
13 scheduling, and we'll come back out.

14 MR. STOKESBARY: Can I ask you one other question,
15 because I think it's relevant for our deliberations? Has the
16 court decided how much time to allot in closing statements,
17 to the parties here?

18 THE COURT: That's another thing is, I think we need
19 to discuss -- my preference would be to do written closings,
20 rather than oral closings, because I think they'll be better
21 organized. But some of my fellow judges might talk me out of
22 that. And if we did oral closings, I don't see why anyone
23 would need more than a half an hour for their closing
24 argument. Okay?

25 Let me ask, do you want oral closings or written?

1 MR. STOKESBARY: I've been so focused on organizing
2 questions for witnesses, I'm not sure I know our preference
3 yet.

4 THE COURT: Talk to each other on the break, on that
5 one, too. Let us know. Great.

6 (Recess.)

7 JUDGE VANDYKE: Be seated. We voted and we've
8 demoted Judge Lasnik -- no, we haven't. He's still going to
9 take over, because I have no idea what I'm doing as a trial
10 court judge. There's not even a gavel up here.

11 THE COURT: Since we're not doing anything important
12 -- so what did you all agree on?

13 MR. GABER: I think you're going to be happy, Your
14 Honors. We had wanted to call Ms. McLean, because of the
15 issues of the VRA consultant, that she had testimony about,
16 and the court had questions about. There's an additional
17 exhibit that plaintiffs are adding, with the parties'
18 stipulation, which will be Plaintiffs' Exhibit 532. We'll
19 get that to the court; and then one we would draw the courts'
20 attention to, is Exhibit 182.

21 In addition to that, the parties agreed that if the court
22 would allow us to have a couple more days to add additional
23 deposition designations for Ms. McLean, that would cover
24 everything we intended to cover with her.

25 In addition, with respect to Ms. Davis, the parties

1 likewise believe with a couple more days to add additional
2 deposition designations, that likewise would make it
3 unnecessary to call her live; which means that there would be
4 no more testimony for the court to hear.

5 THE COURT: You think this is going to make us happy?

6 JUDGE VANDYKE: I finally get a promotion. It
7 worked, though.

8 THE COURT: Okay.

9 MR. GABER: The suggestion on close -- with respect
10 to closing, what we would suggest -- I would suggest proposed
11 findings perhaps due in 30 to 45 days, if that works, in lieu
12 of closing. Or do you want to --

13 MR. HOLT: My concern is, I just want to allow time
14 for the *Merrill* decision to come out, within the next
15 15 days, and allow us time to include that in any post-trial
16 briefing, so as not to file two additional briefs.

17 THE COURT: That's reasonable. Let's think about up
18 here whether we want it, say, by July 9th or 13th, or
19 something like that. But I agree that we should wait for
20 that U.S. Supreme Court decision. And then some of you are
21 probably going to order transcripts of the trial. I'm a
22 little concerned that my fellow judges didn't get to hear the
23 expert that I got to hear on Friday. So maybe we can get
24 that testimony to them, too, since a lot of people have made
25 reference to that. That would be helpful.

1 Then in the closing arguments, whenever we tell you -- I
2 mean, in writing -- we'd like citations to the exhibit
3 number, or if you have a transcript, to the witness and the
4 testimony.

5 Definitely we want to give you enough time to do it the
6 right way, but we also have the time pressure of, if we are
7 going to change those maps, we don't want to make the
8 Secretary of State have to operate under too much duress.

9 So we will do it in -- sometime in that middle of July
10 area. Okay?

11 MR. GABER: One more. The court had admitted, at the
12 beginning of the trial, the exhibits that were stipulated to.
13 I would now move the admission of plaintiffs' exhibits that
14 were not stipulated to, subject to the court ruling on the
15 objections.

16 THE COURT: Why don't we just admit everything that
17 everyone proposed. We're going to obviously not go by
18 something that is triple hearsay, or, you know, just
19 somebody's angry letter. But it's not worth spending a great
20 deal of time haggling about this or that. But the deposition
21 designations, too. Add whatever you want, and we'll look at
22 it, and take it from there.

23 LB, can you think of anything else?

24 THE LAW CLERK: (Shakes head.)

25 THE COURT: Judge VanDyke, anything else? Judge

1 Estudillo?

2 JUDGE ESTUDILLO: The only thing I was thinking is,
3 one of the comments or statements in the motion for summary
4 judgment, the order on the motion for summary judgment
5 referenced the legislative process, including both the
6 commissioners, as well as then the legislature, that somehow
7 modified or added some changes to the -- what was proposed by
8 the commissioners. And I'm hoping the Garcia plaintiffs can
9 kind of address how that all comes into play, when the
10 legislature actually makes a modification. Because I think
11 the state makes a point, hey, there's clearly, at least from
12 the state's perspective, no intent that the legislature was
13 considering race whatsoever, when they made those
14 modifications. And your trial brief kind of glossed over
15 that, kind of. At least I didn't really see much addressing
16 that point. So I'm trying to figure out, in my mind, to what
17 extent do you weigh what the legislature did, after the
18 commissioners brought their maps.

19 MR. STOKESBARY: Would you like me to respond to that
20 now, Your Honor?

21 JUDGE ESTUDILLO: I hope you put it in writing, so I
22 can see it.

23 MR. STOKESBARY: I can answer questions now, if
24 you're interested.

25 JUDGE ESTUDILLO: I don't know if I have all my

1 thoughts, to be honest. But that's something that's clicking
2 in my mind, that I saw, or at least didn't see; and I, quite
3 frankly, didn't hear much testimony about.

4 THE COURT: Well, go ahead and tell us what you want
5 to tell us for now, Mr. Stokesbary.

6 MR. STOKESBARY: I would make a couple points, Your
7 Honor. I think we heard a little bit of testimony about how
8 the process works, insofar as state law, which is that the
9 State Constitution and state statute provide that the
10 Commission must pass maps by November 15th. At that point
11 that map then gets transmitted to the legislature, which has
12 30 days, beginning at the point at which it next meets. As
13 you may know, the regular session of the legislature begins
14 on the first Monday of every January. So in the year 2021,
15 that would have been -- we didn't have a special session, so
16 -- or in 2022. So that was -- the regular session began the
17 second week of January. So there was a 30-day window, from
18 that period.

19 The statute and constitution then says the legislature has
20 30 days to amend the plan, by a vote of two-thirds of the
21 members of both chambers. At that point the plan, as it may
22 or may not have been amended, becomes the final redistricting
23 plan. So if no amendments are made by the legislature, then
24 what the Commission has passed becomes the final plan. If
25 amendments are made by the legislature, the plan, as amended

1 by the legislature, becomes the final plan.

2 State statute also stipulates not only must two-thirds of
3 both chambers vote in favor of the amendments, but the
4 amendments can only move the population of any given district
5 by 2 percent, or less.

6 So our argument, Your Honor, would be that it doesn't make
7 a lot of sense, given those limitations, to put much weight
8 into the legislature's intent, because they're so limited on
9 what they can do. They're limited by time. It has to be not
10 just a majority vote, but a super-majority vote, which is a
11 very rare threshold, very few things require two-thirds vote,
12 under Washington law, and limited by this 2 percent movement.

13 So you could have an egregious situation where the
14 Commission has blatantly violated the Fourteenth Amendment,
15 the legislature could say, well, we agree that this map is
16 unconstitutional, but until a court decides that, we need to
17 make sure our good friends, and the Secretary of State, can
18 administer the election. There's one or two precincts that
19 are split in a weird way, so we're going to fix those
20 precinct splits, while we let the court challenges sort
21 themselves out.

22 If you consider legislative intent, the fact that the
23 legislature now passed this map with no ill intent, would
24 arguably then bless the Commission's ill intent. So we think
25 you shouldn't really look at the legislature's intent, when

1 their ability to amend the map is so narrow. Because
2 otherwise it risks the situation where the legislature could
3 retroactively ratify ill intent by the Commission.

4 So we think what matters here is the Commission's intent.

5 THE COURT: We'll do the rest of that in writing.
6 Then, Mr. Hughes?

7 MR. HUGHES: I don't have a response to that. I want
8 to point out, I think the same argument about the
9 legislature's intent would apply equally to the Soto Palmer
10 claims as well.

11 JUDGE ESTUDILLO: Slightly different, of course,
12 because we're not on the Soto Palmer case.

13 MR. HUGHES: Oh, my goodness, what a fool am I.

14 THE COURT: I would also like each party, in their
15 closing arguments, to suggest what the remedy is, if the
16 court does find a violation, either under the Voting Rights
17 Act or the Constitution. So please address that in there,
18 too. Are you going to ask the court to fix the maps? Are
19 you going to ask us to send it somewhere? And just address
20 remedy, too.

21 Mr. Stokesbary.

22 MR. STOKESBARY: Thanks, Your Honor. I just wanted
23 to make one quick follow-up, my co-counsel reminded me of.
24 We admitted several exhibits that we think will serve as
25 authority for our various arguments, for legislative versus

1 Commission intent. We'll obviously call those out in our
2 post-trial briefs.

3 THE COURT: We're not going to set page limits, but I
4 would be disappointed if they were longer than the trial
5 briefs; let's put it that way. Let's try to keep them in the
6 30-page neighborhood. If you're going to be above 40, please
7 seek permission, like a motion to file an overlength brief.
8 I'm not setting the limit, but I'm urging you, all, to -- and
9 we're not going to do -- Judge VanDyke is used to opening,
10 and then response, and then reply. Circuit court. No, we're
11 just going to have one brief from each side, due at the same
12 date, which we will let you know.

13 So thank you for doing this. It will allow Judge
14 Estudillo to get back to his trials, which he has many of.
15 It will allow Judge VanDyke to get back to his family.

16 JUDGE VANDYKE: Whatever it is we do.

17 THE COURT: I was just thinking of your family. And
18 you, all out there are -- I think the weather is supposed to
19 start to change Friday, right? So stay one more day, and
20 then head back to the smoke on the East Coast, or the cooler
21 weather in Los Angeles. How about that? Yeah.

22 So thank you all for the courtesies you've shown each
23 other, in presenting this case. I've been very, very
24 impressed with the professionalism that you're showing each
25 other. And this team approach of musical chairs with the

1 plaintiffs' lawyers, has been quite a challenge to follow.
2 But you all did that in a way that also made a lot of sense.
3 And it was a very wonderful experience for all of us up here,
4 to see that. So thank you all. And we are adjourned.

5 JUDGE ESTUDILLO: Judge VanDyke is supposed to close
6 us out, remember?

7 JUDGE VANDYKE: I don't have a gavel, but we'll
8 pretend. So I second his motion. I concur.

9 (Adjourned.)

10 C E R T I F I C A T E

11

12

13 I certify that the foregoing is a correct transcript from
14 the record of proceedings in the above-entitled matter.

15

16

17

18 /s/ Debbie Zurn

19 DEBBIE ZURN
20 COURT REPORTER

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