

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 6, 2023  
11 official capacity as )  
12 Secretary of State of ) 8:30 a.m.  
13 Washington, et al., )

14 Defendants, ) TRIAL - Day 3  
15 )  
16 )

17 and )  
18 )

19 JOSE TREVINO, et al., )  
20 )

21 Intervenor-Defendants, )  
22 )  
23 )

24 . )  
25 BENANCIO GARCIA III, ) C22-5152-RSL-DGE-  
LJCV  
Plaintiff, )  
v. )  
STEVEN HOBBS, in his )  
official capacity as )  
Secretary of State of )  
Washington, et al., )  
Defendants. )  
)

26  
27 VERBATIM REPORT OF PROCEEDINGS  
28 BEFORE THE HONORABLE ROBERT S. LASNIK  
29 HONORABLE DAVID G. ESTUDILLO  
30 UNITED STATES DISTRICT JUDGES  
31 WESTERN DISTRICT OF WASHINGTON  
32 HONORABLE LAWRENCE J.C. VANDYKE  
33 UNITED STATES NINTH CIRCUIT JUDGE  
34  
35

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

6 THE COURT: Okay. We see that yesterday we had Chief  
7 Judge Estudillo needing a cane. Today we have our courtroom  
8 deputy, Victoria's wrist is in a sling.

9 JUDGE ESTUDILLO: We're falling apart.

10 THE COURT: I don't know what's going to happen next.  
11 But I'd be very careful if I was the court reporter and the  
12 law clerks, and the fellow judges.

13 And there's no truth to the rumor that Victoria tried to  
14 stop Judge VanDyke when he tipped over, and that's how it  
15 happened.

16 Okay. We're ready. Thank you for giving us another sheet  
17 of potential witnesses, including one, if we do get further  
18 along than we feared.

19 And is Commissioner Fain in the courtroom? Let's get him  
20 in. Yeah, bring him on in. If you're starting the day, just  
21 have your witness ready to go.

22 MR. HOLT: Just a brief administrative matter, if I  
23 may. Just a clarification on the deposition designations.  
24 Your Honor, on Friday, had made the statement that if the  
25 witness comes live, designations are out. I just -- for

1 example, we have a witness on Friday, that all parties have  
2 consented to designations, and one party has now decided to  
3 call that witness live.

4 THE COURT: You can still use the deposition  
5 designations for that one. Yeah, sure. Okay.

6 Commissioner Fain, do you want to come forward, please?

7 JOSEPH FAIN

8 Having been sworn under oath, testified as follows:

9 MS. WAKNIN: Good morning, Your Honors.

10 THE COURT: Good morning, Ms. Waknin. We'll just ask  
11 for Victoria to ask for the name.

12 THE CLERK: Please state your first and last name,  
13 and spell your last name.

14 THE WITNESS: Joseph Fain. F, as in Frank, A-I-N.

15 DIRECT EXAMINATION

16 BY MS. WAKNIN:

17 Q I know you just stated your name for the record, but do  
18 you mind stating it again for me?

19 A Joe Fain.

20 Q How are you currently employed?

21 A I'm the CEO of the Bellevue Chamber of Commerce.

22 Q And it's my understanding that you were a redistricting  
23 commissioner for the 2021 Washington Redistricting  
24 Commission; is that correct?

25 A That's correct.

1 Q Who appointed you?

2 A The Senate Republican Caucus leader, John Braun.

3 Q I want to talk a little bit about your background. It's  
4 my understanding you have an MBA?

5 A That's correct.

6 Q And you also have a law degree?

7 A That's correct.

8 Q Were you also a state senator, for the State of  
9 Washington?

10 A That's correct.

11 Q And during what time period were you a state senator?

12 A 2011 to 2018.

13 Q And what area did you represent?

14 A South King County, Auburn and Kent, Covington, Black  
15 Diamond.

16 Q How long were you a senator, roughly?

17 A Eight years.

18 Q Did you run for reelection?

19 A I did.

20 Q Did you -- when you stopped being a state senator, was it  
21 because you lost reelection?

22 A It was.

23 Q Who first contacted you about being on the Washington  
24 Redistricting Commission?

25 A I believe it was Leader Braun.

1 Q And, roughly, what time period was that?

2 A I don't recall exactly, possibly midsummer of -- would  
3 have been 2020.

4 Q Mr. Fain, would you say that as your time as a state  
5 senator, you were roughly familiar with the State of  
6 Washington?

7 A Yes.

8 Q And you were familiar with, maybe, some of the bigger  
9 legal events that were going on in the State of Washington?

10 A In some cases, yes.

11 Q Is it the case that you were aware of the various lawsuits  
12 that were happening in the Yakima Valley, during your time as  
13 a state senator, about Latino voting rights?

14 A I was aware there was a lawsuit, yes.

15 Q Okay. And were you aware that those lawsuits were  
16 successful?

17 A I was aware --

18 MR. STOKESBARY: Objection, Your Honor.

19 Mischaracterizes --

20 THE COURT: Yeah, it's a little bit vague. There was  
21 one with the City of Yakima, one with the County of Yakima,  
22 one with Wapato. Did you hear about those?

23 THE WITNESS: I was aware of the City of Yakima's  
24 suit, being successful.

25 THE COURT: Right. Okay.



1 Q Is that the *Montes* suit, you're thinking about?

2 THE COURT: That is the *Montes* one.

3 Q As a result of these lawsuits, did you know that there was  
4 a need to have a voting-rights analysis in the region?

5 A No.

6 Q So you just knew of a successful Voting Rights Act lawsuit  
7 in the Yakima Valley, but you didn't know of any need to  
8 then, as a redistricting commissioner, conduct an analysis  
9 about whether or not there were the special conditions  
10 happening in the Yakima Valley, when you were doing  
11 redistricting?

12 A It was an issue that I was aware of, and that we wanted to  
13 take into consideration during our deliberations.

14 Q Okay. Do you recall getting a presentation by Brian  
15 Sutherland, from the Attorney General's office, on the Voting  
16 Rights Act?

17 A I do.

18 MS. WAKNIN: I'm going to play for the court  
19 Exhibit 55, which is the June 21, 2021, Washington  
20 Redistricting Commission meeting. And I'm going to be  
21 playing from clip 3912 to 3958.

22 (Video clip played.)

23 Q Mr. Fain, what prompted that question that you asked  
24 Deputy Attorney General Brian Sutherland?

25 A Desire for clarification on his presentation.

1 Q When you were asking that question, did you have a  
2 particular area in mind?

3 A A particular area, meaning?

4 Q Geographic area.

5 A Geographic area. I don't remember if there had been,  
6 previously discussed, a geographic area, in this  
7 presentation. Generally speaking, I was aware, based on  
8 conversations with other commissioners, that VRA and race was  
9 going to be an issue that was important to them, in  
10 negotiations. So I wanted to be educated about it.

11 Q While you were doing your work, did you understand, or --  
12 did you understand that the focus of the Voting Rights Act  
13 was about the ability of a minority group to have an equal  
14 opportunity to elect candidates of their choice?

15 A Generally speaking, I believe.

16 Q And given the importance you placed on the Voting Rights  
17 Act, you said it was extremely important in this clip. What  
18 steps did you take to ensure compliance with the Voting  
19 Rights Act?

20 A I had requested, I believe, if I -- it's possible I  
21 requested this particular briefing. There may have been  
22 other follow-up conversations, to solicit more information  
23 about it. I did not yet know whether or not it was something  
24 that -- how it would apply, or in what way. But this was  
25 part of my preliminary work of just getting educated as a

1 commissioner.

2 THE COURT: Ms. Wakin, could you lower that  
3 microphone closer to your mouth?

4 MS. WAKNIN: Does that work?

5 THE COURT: It does work.

6 Q After your preliminary information gathering, what steps  
7 did you take, then, to assure compliance with the Voting  
8 Rights Act for the legislative district maps?

9 A I don't know of any specific step.

10 Q Any general steps you took?

11 A In the negotiations, it was very clear that there was a  
12 desire from the Democratic commissioners to have a  
13 majority-minority district in that region, and in the --  
14 there was also a desire to unify the Yakima Reservation into  
15 one district. I believe my initial map that I offered did  
16 unify the Yakima Reservation, as was requested by the  
17 reservation, as well as the Democratic commissioners.

18 And I think I had made several offers that involved maps  
19 that matched the Democratic commissioners' requests for those  
20 regions, throughout the negotiating process.

21 Q Mr. Fain, my question to you was, what steps did you take  
22 to ensure Voting Rights Act compliance, throughout the  
23 process, not what did you offer in negotiations.

24 A Well, I would say that an offer in a negotiation is a  
25 pretty concrete step towards achieving that -- those issues.

1 Q The court has already heard that the Commission did not  
2 hire, itself, a Voting Rights Act consultant to analyze  
3 racially polarized voting, or the *Gingles* factors in the  
4 region. Can you tell the court why that is?

5 A I was concerned that there would not be an apolitical or  
6 agreed-to analysis that would further the -- or selection of  
7 a consultant that would further the work of the Commission,  
8 and that it would be an open-ended legal question that really  
9 would not serve the interests of finding a final map.

10 Q Mr. Fain, how many commissioners did it take to hire a  
11 consultant, out of the voting commissioners?

12 A I believe three.

13 Q And so we know that Ms. Sims and Mr. Walkinshaw had  
14 testified before this court that they wanted a consultant.  
15 So which one of you or Mr. Graves, didn't want the  
16 consultant?

17 A I did not believe that we would find a consultant that we  
18 agreed on. If that were the case, then it's very different  
19 than a consultant in general, but having someone that you can  
20 agree on, and the inability to agree on one, was my concern.

21 THE COURT: Mr. Fain, there was a question yesterday  
22 about whether the Commission had a budget that would have  
23 sustained hiring an expert. Do you know the answer to that?

24 THE WITNESS: I do not.

25 Q Mr. Fain, was it the case that Ms. McLean, the executive

1 director of the Commission, had provided multiple names to  
2 the commissioners for Voting Rights Act consultants?

3 A That may be the case. I don't recall at this time.

4 Q So if the Commission couldn't -- if I'm understanding you  
5 couldn't, in your thought, get a consultant that was a  
6 neutral arbiter, someone anybody could agree upon, what steps  
7 did you take to assure compliance with the Voting Rights Act,  
8 if it was important to you?

9 A Again, offering of the districts that matched the  
10 configurations that were being requested for by community VRA  
11 advocates, as well as the Democratic commissioners. There  
12 was -- I was -- I had a set of priorities that I cared about  
13 in this process, and they were not incompatible with those  
14 requests.

15 Q And so, if -- I'm sorry -- if I'm understanding correctly,  
16 the maps that you provided, that the Democratic commissioners  
17 would vote for, or work in what their ideas were, so a  
18 majority Hispanic CVAP district -- and by "CVAP," I mean  
19 citizen voting age population, and a district that would then  
20 elect, in statewide elections, Democratic candidates,  
21 usually, that is what you're talking about when you're saying  
22 those offers were the steps you took to comply with the  
23 Voting Rights Act; is that correct?

24 A There were several offers. One of them would have, at  
25 least one of them would have met the criteria you just laid

1 out.

2 Q And so that offer was a step that you concretely took to  
3 comply with the Voting Rights Act; correct?

4 A What was necessary for compliance was still a question,  
5 and whether or not there was any steps necessary for  
6 compliance was still an open question. But the racial makeup  
7 of the districts in question, or the Yakima Valley, was  
8 something that -- was one of many factors that I considered  
9 when I was looking at the drawing of those district  
10 boundaries.

11 Q Mr. Fain, why offer a Voting Rights Act compliant map, if  
12 you didn't believe it was required?

13 A I was very interested in getting an agreement, that  
14 furthered the priorities that I had, namely the statutory  
15 compliance on population size, and an increased sense of  
16 competitiveness.

17 Q Did you release a public legislative district map  
18 proposal?

19 A I did.

20 Q And what did you do, if anything, to check for Voting  
21 Rights Act compliance on that public proposal that you put  
22 out?

23 A I don't recall. My priority, in the initial map that I  
24 laid out, was the -- keeping school districts contained  
25 within legislative districts. And that was the lens that I

1 used to draw that initial map.

2 Q Mr. Fain, you're a lawyer, correct?

3 A That's correct.

4 Q And you understand that federal law is supreme over state  
5 law?

6 A I do.

7 Q And so you didn't do anything to check for Federal Voting  
8 Rights Act compliance, on that first map you put out? Is  
9 that what I'm understanding you to say?

10 A I don't recall what the CVAP number of the districts that  
11 I drew in that map were.

12 Q Did you look if Latinos in the Yakima Valley could elect  
13 candidates of choice, in your map?

14 A I don't know what analysis I had at that point in the  
15 process, to be able to determine that.

16 Q Did you not have that analysis, because you didn't hire a  
17 Voting Rights Act consultant who could tell you that  
18 analysis?

19 A I'm not certain that I had that data available, when I was  
20 drawing the map.

21 Q You saw Dr. Barreto's analysis on elections in the Yakima  
22 Valley region; is that correct?

23 A I did.

24 Q And Dr. Barreto's analysis showed racially polarized  
25 voting in the Yakima Valley area; is that right?

1 A Through the lens in which he presented the data.

2 Q Do you mind clarifying for me what do you mean by "the  
3 lens in which he presented the data"?

4 A The geographic boundaries that he used to determine what  
5 the Legislative Districts would look like, were drawn in such  
6 a way to fit that data point.

7 Q I'm just confused. I don't really understand your answer.  
8 Do you mind explaining to me what you mean by the geographic  
9 areas he used fit his data point?

10 A For instance, the City of Yakima, which had been the  
11 subject of the previous Voting Rights Act suit at the state  
12 level, or excuse me, the municipal level, that, if my memory  
13 serves, that jurisdiction of Yakima was not actually included  
14 in the legislative districts that were drawn as,  
15 quote-unquote, VRA-compliant CVAP districts.

16 And so it's -- the population of voters that you choose to  
17 analyze, matters significantly, I would imagine, when  
18 determining whether something is -- whether that voting  
19 preference exists.

20 MS. WAKNIN: Ms. Alejandro, can you pull up 178?

21 Q This is Dr. Barreto's analysis that you saw, and this has  
22 been previously admitted.

23 MR. STOKESBARY: Objection, Your Honor. 178 is  
24 stamped "draft," and there's no evidence that Senator Fain  
25 has ever seen this version.



1 THE COURT: Well, obviously we need some foundation  
2 about whether he has seen it, or did see it. But go ahead.

3 MS. WAKNIN: I'm going to pull up 179, which is the  
4 public proposal.

5 Q Mr. Fain, did you see Dr. Barreto -- you stated you saw  
6 Dr. Barreto's analysis; is that correct?

7 A I believe I read about it in possibly a Crosscut article.

8 Q Does this document look familiar to you?

9 MS. WAKNIN: And, Ms. Alejandro, do you mind paging  
10 through it for him?

11 Q Have you seen this before?

12 A I'm not certain that I've seen the PowerPoint presentation  
13 before, I'm not sure if that was linked to the article that I  
14 read.

15 I know that the Commission received a lot of public input  
16 during the process, and I tried to review as much of that as  
17 I could.

18 MS. WAKNIN: Ms. Alejandro, do you mind pulling up  
19 Exhibit 214 for me? This is previously admitted Exhibit 214.

20 Q Is this an e-mail between Lisa McLean and Comment -- let  
21 me reask that question. When you get an e-mail to Comment,  
22 were you receiving those e-mails, Mr. Fain?

23 A I believe so.

24 Q And is this an e-mail between Lisa McLean and Comment,  
25 meaning you would have gotten that e-mail.

1 A It appears to be.

2 Q Does this include Dr. Barreto's full Voting Rights Act  
3 presentation?

4 A The attachment states that it includes that PDF.

5 Q So did you read Dr. Barreto's full presentation?

6 A Again, I don't recall if I did or not.

7 Q I'll move on.

8 After reading or seeing Dr. Barreto's analysis, did you  
9 hire any sort of expert to analyze the existence of racially  
10 polarized voting, in the region?

11 A There was an analysis that was done at some point, but I  
12 was -- I did not hire anyone, no.

13 Q Okay. And what analysis are you talking about?

14 A The legal analysis that was conducted. It might have been  
15 at the conclusion of the map-drawing process, I actually  
16 don't recall what time.

17 THE COURT: You're talking about the Davis Wright  
18 Tremaine --

19 THE WITNESS: That's correct, sir.

20 Q In that memo, Davis Wright and Tremaine didn't actually  
21 claim to do any analysis on voting patterns, or data, or  
22 population analysis, in their legal analysis, so I'm again  
23 just asking you, did you hire any sort of Voting Rights Act  
24 or racially polarized voting expert, to do any analysis after  
25 the Dr. Barreto analysis came out?

1 A No.

2 Q So all you had in front of you, was Dr. Barreto's analysis  
3 finding racially polarized voting in the Yakima Valley  
4 region?

5 THE COURT: He's answered that question already,  
6 counsel.

7 MS. WAKNIN: I'll move on.

8 Q Mr. Fain, you stated that you actually drew maps that had  
9 majority Hispanic CVAP, and would elect Democratic candidates  
10 in statewide elections which are Latino candidates of choice;  
11 is that correct?

12 A I would want to refresh myself with the numbers for the  
13 map that was offered, late in the process, I believe to  
14 Commissioner Sims.

15 I believe it looked like one of the maps that might have  
16 been on the Barreto slide, as it went through quickly. But I  
17 don't recall specifically.

18 Q Okay. I'm just asking, generally, did you offer those  
19 types of maps?

20 A Yes, I believe I did.

21 Q What did you want, in exchange for a map like that?

22 A Throughout the process, my priority was that Democratic  
23 voting districts got less -- Democratic and Republican voting  
24 districts, got less Republican.

25 Q So sitting here today, what would you have needed from the

1 Democratic commissioners, to agree to a legislative map that  
2 actually had a Hispanic CVAP of over 50 percent, and would  
3 allow Latinos to elect candidates of choice in the region?

4 A I can't speculate about what I would specifically require.  
5 The map that I offered had certain conditions. So that  
6 probably might be the best evidence of my intent at the time.

7 Q Do you remember those conditions?

8 A Again, it would have been to make legislative districts  
9 throughout the state, more competitive.

10 Q What legislative districts, during the negotiation  
11 process, were you focused in on making less competitive -- I  
12 mean, more competitive. Apologies.

13 A No problem.

14 There were regions of the state which Legislative District  
15 would be the numbers sometimes immaterial, but it would -- I  
16 believe south Snohomish County was one of them, South King  
17 County, there was discussion about North Pierce, East King,  
18 the Peninsula, the Yakima Valley is an area that was  
19 discussed, because of the potentially competitive nature of  
20 the elections there.

21 There was looking at Spokane and the 3rd and the 6th.  
22 Southeast Tacoma. I did quite a bit of looking at different  
23 parts of the state to see where districts that weren't  
24 competitive could be made to be so.

25 Q Were some of those districts, Districts 44, 22 and 28?

1 A Yes.

2 Q Who represents District 44?

3 A At the time, it was Senator Hobbs. And at the time, I  
4 don't recall 28, if it was the new senator that was elected  
5 there. And then I believe it was Senator Erikson, if you  
6 said 42.

7 Q And was the reason why the Yakima Valley was something  
8 that you all considered a competitive area, because Latinos  
9 were a large enough population in the area, and they were  
10 voting consistently for Democrats, which made the area now  
11 more competitive?

12 A That wasn't a conclusion I drew at the time. I was just  
13 looking at the numbers.

14 Q And so how was the district, then, more competitive, or  
15 that area more competitive then when you were looking at the  
16 numbers?

17 A What factors led to it being more competitive wasn't  
18 something that I was looking at. I was merely looking at  
19 what the boundaries needed to be, to effect competitiveness.

20 Q In the last week of negotiations, would it be fair to say  
21 you were primarily negotiating the congressional map?

22 A That's correct.

23 Q But you were still speaking with Commissioner Graves, who  
24 was the primary negotiator on the legislative map; is that  
25 right?

1 A That's correct.

2 Q Is it fair to say you guys were kind of working together,  
3 lockstep, on what you wanted for both the congressional map  
4 and the Legislative District maps?

5 A I don't know if I'd say lockstep. We weren't always  
6 aligned. But there were interests that we both had, around  
7 competitiveness, that we shared.

8 MS. WAKNIN: Ms. Alejandro, can you pull up  
9 Exhibit 243? This has been previously admitted.

10 Q So this is a text message between you and Commissioner  
11 Graves. And you and Graves say, "I asked Paul and Anton to  
12 join forces, so we aren't at cross purposes"; is that  
13 correct?

14 A It appears so.

15 Q It's fair to say you were working together at this point  
16 in the last week of negotiation?

17 A As previously stated.

18 Q And up here, Commissioner Graves asked if you have notes  
19 on the price for the 14th, and if you could tell him. What  
20 were the notes that you had on the price for the Democrats'  
21 14th?

22 A I don't recall what -- (a), I didn't have any notes. I  
23 think he was being general, in his statement there. That may  
24 have been in reference to a previous conversation with  
25 Commissioner Sims that I had, and what they were -- or maybe

1 -- I'm sorry, maybe that is actually asking for feedback from  
2 me on what I would be interested in, for their 14th District.

3 Q What would you have been interested in, for their 14th  
4 District?

5 A I don't know how I responded to this. But as I said  
6 previously, making competitive districts more competitive  
7 throughout the state, would have been something that I would  
8 have been interested in, in exchange for making another  
9 district that was more Democratic, or in a more Democratic  
10 direction.

11 Q On the last day of negotiations, were the commissioners  
12 still trying to negotiate the districts in the Yakima Valley  
13 area?

14 A I don't recall what -- I believe so. I don't recall all  
15 of the details and what the timing was, as we came into the  
16 last day.

17 Q On the last day -- maybe I'll ask it this way, then -- on  
18 the last day of negotiations, did you have a deal on what the  
19 legislative districts in the Yakima Valley would look like?

20 A At the conclusion of the process -- are you referring to  
21 the last day, as in like going into the last day, or at the  
22 termination of the last day?

23 Q Going into the last day. Thank you.

24 THE COURT: We're talking about the day that lasted  
25 36 hours.

1 THE WITNESS: Yes. I have some PTSD on that one.

2 A I don't recall, going into the day, if there was an  
3 agreement on that. It may have been something -- I believe  
4 it was still something that was an active discussion.

5 Q And did you have conversations with Commissioner Graves on  
6 what he wanted District 14 and 15 to look like?

7 A To look like, or to -- and in what circumstance? Because  
8 that's, I guess --

9 Q Sure. So when I say "look like," I mean, political  
10 performance and population. But I'm interested on what you  
11 said, in what circumstance. So why don't you start with  
12 that.

13 A Yeah. So, again, I can't speak to what Commissioner  
14 Graves wanted, but I can say that I was relatively agnostic  
15 as to the manner in which the legislative districts were  
16 drawn, such that we were able to make more districts more  
17 competitive. So I was open to any configuration of those  
18 districts.

19 Q And did you have a conversation with Commissioner Graves,  
20 going into the last day or on the last day, in the morning,  
21 or at any point -- sorry, apologies -- in the morning, on  
22 what Commissioner Graves wanted the 14th and 15th to look  
23 like, in terms of demographics and performance?

24 A We may have. I don't remember. We had many conversations  
25 that day. I don't remember any specific one.



1 Q Is it fair to say that the last day, or leading up to the  
2 last vote, was a pretty chaotic time?

3 A Yes.

4 Q And where were all of you, all the commissioners?

5 A At a hotel in Federal Way, off 320th.

6 Q You were all at the hotel in Federal Way?

7 A On the very last day, I believe so.

8 Q And was there a live Zoom going on at that time, for your  
9 Commission meeting that was supposed to occur?

10 A There were several Zoom meetings that occurred throughout  
11 that day, but not a continuous one.

12 Q During those live Zoom meetings that were supposed to be  
13 occurring, at any point did any discussions about what -- the  
14 legislative district map, happen in public?

15 A I'd have to go back and look. I think there were  
16 discussions about different factors that were being  
17 considered during the process.

18 Q Did you have those discussions on the live Zoom, in  
19 public?

20 A Some of those conversations about what areas were being  
21 discussed was, I believe, on the Zoom. I don't know at which  
22 meeting or at what time.

23 Q The court has already heard testimony that the  
24 commissioners had come up with a framework for the  
25 Legislative District map. Is that your understanding?

1 A That is correct.

2 Q What was that framework for the Legislative District map?

3 A It was a combination of relative political performances,  
4 in certain areas. But I don't remember any specifics at this  
5 time, other than the map that emerged, after the drafting  
6 process, matched my previous expectations about the framework  
7 agreement.

8 Q Did you write the framework down?

9 A I don't believe so.

10 Q And so --

11 A I personally did not write the framework down.

12 Q Did you tell the public the framework that you all agreed  
13 upon?

14 A In the -- at what point?

15 Q On that last day there's a Zoom going on, right?

16 A Um-hum.

17 Q Around 8:00 a.m., you have to actually hop on the Zoom to  
18 be able to vote; isn't that correct?

19 A That's correct.

20 Q At any point, before you're about to vote on the  
21 Legislative District plan, did you tell the public what that  
22 framework that you all agreed upon was?

23 A I don't believe so.

24 Q Why not?

25 A I believe that the framework agreement was reached at the

1 last few moments of negotiation, and there was not adequate  
2 time to be able to draft and document that, in time to be  
3 able to present it publicly, by the midnight deadline.

4 Q Commissioner Fain, you said the framework with the  
5 commissioners was an oral agreement?

6 A I believe so.

7 Q There was just no time on the Zoom that you had running  
8 for five hours, where you could hop on, once you agreed on  
9 the framework, and tell the public exactly what you voted on?

10 MR. HUGHES: Objection. Asked and answered.

11 THE COURT: Asked and answered. You may not like his  
12 answer, but he's given it.

13 MS. WAKNIN: I'll move on.

14 Q Were you jockeying with Commissioner Graves, to be the  
15 last ones to draw the final maps, instead of the other two  
16 commissioners, in those last days?

17 A I believed it was important that we were not in a position  
18 to be forced into something that we hadn't agreed to, by  
19 having something drawn that didn't match our understanding of  
20 the framework.

21 MS. WAKNIN: Ms. Alejandro, can you pull up  
22 Exhibit 361? Thank you.

23 Q This is a text message between you and Commissioner  
24 Graves. And you say, "Just a reminder, very important. We  
25 need to be the ones that draw the final map, before sending

1 it to Commission staff, if we get a deal." Is that correct?

2 A Yes, that appears to be what I said.

3 Q Why?

4 A Again, the ability to move things in and out, that might  
5 be contrary to our agreement, in principle; I didn't want to  
6 risk something like that happening, because a staffer that we  
7 were not involved with was drawing that final map.

8 Q Okay.

9 A It was not my belief that that ended up happening. I  
10 believe the final map was drawn by our -- collectively by the  
11 two commissioners, then officially by the -- our nonpartisan  
12 staff.

13 MS. WAKNIN: Thank you, Mr. Fain. I pass the  
14 witness.

15 THE COURT: Okay. Thanks very much. Mr. Stokesbary.

16 MR. STOKESBARY: Good afternoon, Your Honors.

17 CROSS EXAMINATION

18 BY MR. STOKESBARY:

19 Q And good afternoon. I'm not really sure what to call you.  
20 Do you want me to call you Senator Fain, Mr. Fain? I feel  
21 uncomfortable calling you "Joe" in open court. But I'm not  
22 sure --

23 THE COURT: We're still stuck on "good afternoon."  
24 Are you on DC time?

25 MR. STOKESBARY: Good catch, Your Honor.

1 Q In all seriousness, how would you like me to address you?

2 A While I've never been called "Mr. Fain," I'll take it for  
3 the purposes here today.

4 Q Mr. Fain, do we know each other?

5 A We do.

6 Q But have we ever communicated about your testimony here  
7 today?

8 A We have not.

9 Q All right. So as you may or may not know, I am here in my  
10 capacity as an attorney for the intervenor-defendants, in one  
11 of these cases, Soto Palmer v. Hobbs, and attorney for the  
12 plaintiff in another case that we're hearing, Garcia v.  
13 Hobbs.

14 You mentioned, at the beginning, earlier, that you  
15 served in the State Senate before becoming a commissioner.  
16 What did you do before you served in the State Senate?

17 A I was Chief of Staff for a King County Council member.

18 Q What King County Council member was that?

19 A Pete von Reichbauer.

20 Q Seems like Federal Way is always the center of the known  
21 universe.

22 I want to talk about your work on the Redistricting  
23 Commission. You kind of got into this a little bit already.  
24 But the summary I have in my head, I just want to understand  
25 if this is a good summary, is the commissioners, so you and

1 your staff, would sort of draw proposals, you would share  
2 those proposals with your colleagues. They'd assess them.  
3 They'd send you counterproposals. You'd assess those, and so  
4 on and so forth, as you kind of iterated down to a final map?

5 A Generally correct.

6 Q Okay. So when you were kind of exchanging these map  
7 proposals, were you and your staff examining demographic  
8 data, demographic information as part of this process?

9 A At times, yes.

10 Q Did this include the racial composition of various  
11 districts?

12 A It did.

13 Q So with regard to racial considerations, I want to ask you  
14 a couple particular questions. All these are going to be  
15 about districts that you might have drawn or considered or  
16 reviewed in the Yakima Valley region.

17 Did you, or your staff, ever perform any analysis of  
18 the size or distribution of the Latino community in the  
19 Yakima Valley region?

20 A Regionally, or through the actual district-drawing  
21 process?

22 Q Either one.

23 A Through the drawing process, the CVAP Latino and other  
24 various demographic data was available to us through the  
25 drawing software.

1 Q So did that sort of involve understanding where Hispanic  
2 communities were? Or what did that entail?

3 A It merely presented a number, after a map was drawn.

4 Q Okay. So you sort of knew where high concentration of  
5 Hispanic residents were, but not much more beyond that?

6 A There was a great deal of other data that was available  
7 through the map-drawing process.

8 Q Okay.

9 Did you, or your staff, ever perform an analysis  
10 regarding the political cohesion of voters in -- of Latino  
11 voters in the Yakima Valley region?

12 A I don't believe that redistricting staff did.

13 Q So you never saw an analysis like that?

14 A Earlier today.

15 Q Other than -- yes, setting aside the report from  
16 Dr. Baretto, which I'll get to in a second, you never saw an  
17 analysis like that?

18 A I don't believe so.

19 Q Okay. What did -- did you perform any analysis regarding  
20 whether non-Hispanic white voters in the Yakima Valley region  
21 voted as a block?

22 A Again, outside the previously mentioned report, I don't  
23 believe so.

24 Q Did you or your staff ever perform any analysis to  
25 consider which candidates were preferred by Latino voters in

1 the Yakima Valley region?

2 A Again, I don't believe so.

3 Q Okay. So kind of getting back to this negotiation  
4 process, and talking more about interactions with other  
5 commissioners, less about what you were doing behind the  
6 scenes. You kind of touched on this already, but can you  
7 sort of summarize what your approach to the negotiation  
8 process was? I mean, what was your strategy?

9 A I was very interested in making as many districts in the  
10 state more politically competitive, across party lines.

11 Q So knowing that you were going to need votes from your  
12 Democratic colleagues to pass the map, what was your strategy  
13 for attracting their support for a map that you could also  
14 support?

15 A I had hoped that they would generally want to see  
16 competitiveness increase. That did not end up being the  
17 case. But taking districts that were more, say, Republican,  
18 and moving them into a more competitive -- a more competitive  
19 status, I thought would be one way of encouraging support for  
20 that goal.

21 Q Is that sort of a way of saying that you would try -- you  
22 would trade things that you knew they wanted, for things that  
23 you'd be willing to live without?

24 A Sounds like a negotiation.

25 Q Yeah. Yes, it does.



1           So during this negotiation, was there a deadline to get  
2 all the work done?

3   A   Yes.

4   Q   And the deadline was November 15th, right?

5   A   I actually don't recall what the date was, but I'll take  
6 your word for it.

7   Q   I don't have PTSD.

8   A   You might have voted in favor of the bill to make that  
9 deadline earlier; so, thanks for that.

10   Q   As I mentioned earlier, Mr. Fain, I'm here in my capacity  
11 as a lawyer for my clients in this case only.

12           So do you remember what would have happened had the  
13 Commission not voted to approve a map by the November 15th  
14 deadline?

15   A   The Supreme Court would gain jurisdiction.

16   Q   Is that something that you wanted to avoid?

17   A   It is.

18   Q   So fair to say, that especially when things came down to  
19 the wire, you had a strong incentive to negotiate in order to  
20 avoid that outcome?

21   A   I would agree with that.

22   Q   Were there certain last-minute compromises that you made  
23 in those last days, or last day, that maybe you would not  
24 have made in September or October?

25   A   I can't specifically think of anything. I don't have a

1 good answer for that. I'm sorry.

2 Q Were there some compromises you made -- let's make it  
3 simpler. Were there some compromises you made, at the end,  
4 in order to get a deal done?

5 A Yes.

6 Q Okay. I'm going to circle back to those compromises,  
7 earlier. I want to ask one quick follow-up question about  
8 this idea of the framework that was kind of passed right  
9 before the midnight deadline. We understand that the  
10 Commission voted on a framework, then over the next day it  
11 sort of drew a map that aligned with that framework. Is that  
12 how you understand it?

13 A That is correct.

14 Q Once you finally saw this framework reduced to map form, I  
15 assume you sort of looked at it carefully, and played around  
16 with it?

17 A I looked at it, yes.

18 Q Did it mirror what you believed you had voted for, when  
19 you took that vote?

20 A Yes.

21 Q You don't think it deviated from what you had approved,  
22 via your voice vote and oral agreement?

23 A I don't believe so.

24 Q So, Mr. Fain, you mentioned a minute ago, the report from  
25 Dr. Barreto. So I wanted to ask you a few questions about

1 that as well.

2 You were shown a PowerPoint presentation earlier, and I  
3 think you said you weren't totally sure if you had seen that  
4 presentation itself, or not?

5 A That's correct.

6 Q Do you remember seeing anything, besides a presentation,  
7 and the news article you mentioned, maybe like a written  
8 report or Excel files?

9 A I don't know if I recall any Excel files, but I believe  
10 the written report was linked in the Crosscut article. If  
11 not, I believe I saw the -- some written report at some  
12 point.

13 Q You think the written report was the slide deck you saw a  
14 minute ago, or was it something different?

15 A I thought there was something different that was linked to  
16 in the Crosscut. But, again, that was several years ago, so  
17 I don't entirely recall.

18 Q Do you remember about when you first saw the slide deck,  
19 or the report, or --

20 A Whenever that article came out, I think.

21 Q Okay. And I think you might have already answered this,  
22 but I already forgot your answer. Do you remember how it  
23 first came to your attention? You saw it in a Crosscut  
24 article?

25 A May have first seen it in a Crosscut article. Or I may

1 have seen it with the Comment e-mail that was referred to  
2 earlier. I actually don't know.

3 Q Do you recall ever receiving it, through more formal  
4 channels? Were you ever invited to a meeting with  
5 Dr. Barreto, let's say?

6 A Well, I just read that e-mail that said he was open for  
7 meeting with folks. I don't know if I was specifically  
8 invited to a meeting.

9 Q But you don't remember ever being at a meeting where he  
10 presented it?

11 A Unless he would have presented it during a Commission  
12 meeting, which I don't recall. But he was not invited to  
13 give a formal presentation during a Commission meeting, to my  
14 recollection. So, no.

15 Q I was going to ask you a few questions about what you  
16 remember about the contents of the slide deck. But since  
17 you're not sure you saw the slide deck, it seems like that  
18 would be a waste of time. So let me skip over those  
19 questions.

20 Before this presentation or report came to your  
21 attention, did you know who Dr. Barreto was?

22 A I don't believe so.

23 Q So you didn't have any sort of preconceived notion of who  
24 he was?

25 After reviewing whatever it was you reviewed, whether

1 it was news reports, or a presentation, or report, did you  
2 form any opinion of Dr. Barreto, one way or the other?

3 A I suppose, yes, in some regards.

4 Q Can you kind of share what the opinion was that you  
5 formed?

6 A Well, he appeared to be someone whose profession was built  
7 around litigating VRA claims, and speaking publicly about VRA  
8 claims.

9 Q Do you know who hired Dr. Barreto?

10 A I don't.

11 Q But you felt kind of, after looking at his background --  
12 do you think that he was advocating for a particular outcome?

13 A Yes.

14 Q Do you think it was a particular partisan outcome?

15 A Yes.

16 Q What was that partisan outcome that you thought he was  
17 advocating for?

18 A It appeared to be to push districts in a more Democratic  
19 direction.

20 Q Did you have concerns about the objectivity of his  
21 analysis?

22 A I did.

23 Q Okay. So you said you can't remember when this happened.  
24 I believe that that report and those news stories sort of  
25 came out in October.

1 Other than what you saw coming out of Dr. Barreto, I  
2 believe you said a minute ago that there was not really  
3 anything the Commission itself did to conduct its own VRA  
4 analysis; is that right?

5 A Correct.

6 Q But you said you thought the Commission could have hired  
7 somebody if they wanted.

8 A The Commission had the power to hire someone.

9 Q Okay. So I want you to sort of think through where you  
10 were at in October, not to trigger your PTSD, but you've sort  
11 of seen this, these Barreto materials, and I'm assuming that  
12 there's heightened discussion around how to draw LD 15, in  
13 light of this information. You have questions about his  
14 objectivity, and whether he sort of was advocating for a  
15 certain outcome. You and Commissioner Graves, at that point,  
16 retained the law firm of Davis Wright Tremaine, to answer  
17 some questions about what the Voting Rights Act is required.  
18 Does that sound familiar?

19 A I believe Commissioner Graves reached out to them.

20 Q Do you remember seeing the legal -- a legal memo -- in  
21 fact, I think you were asked about it a minute ago?

22 A I do.

23 Q Did you read the memo at all?

24 A I did.

25 Q Did you find it persuasive?

1 A Yes. I found it persuasive, as another data point and  
2 another point of view in that discussion.

3 Q I'm going to have you just read one or two sentences from  
4 the memo, it's Exhibit 225. It should show up on your screen  
5 in just a moment.

6 MR. STOKESBARY: Your Honor, my nine-year-old son  
7 would love to get out of school to help us with our  
8 technology.

9 THE COURT: I'd write a note for him.

10 Q So, Mr. Fain, if you can just skim that first sentence. I  
11 just want to make sure we're kind of -- you understand what  
12 it's talking about. Dr. Matt Barreto's assessment of voting  
13 patterns in Central/Eastern Washington, you understand that's  
14 referring to the slide deck that you were asked about a few  
15 minutes ago?

16 A That's correct.

17 Q So then going down to the very first underlined sentence,  
18 in summary, can you read that sentence for us?

19 A "Section 2 does not require the creation of a  
20 majority-minority district, advocated by the assessment."

21 Q Section 2 here is referring to what?

22 A The VRA.

23 Q And the assessment just means that Dr. Barreto's slide  
24 deck report?

25 A Sorry. I'm having to refresh myself. But, yeah, I

1 believe that is what is being referenced here.

2 Q So did you -- you found that summary, that bottom-line,  
3 persuasive?

4 A In that persuasive means persuasive, but not dispositive.  
5 Yes.

6 Q Okay. Fair enough. Okay. So let's talk a little bit  
7 more about kind of how those negotiations, over Yakima Valley  
8 districts and Legislative District 15 unfolded. This memo is  
9 dated November 4th, so it seems like you probably would have  
10 seen it just a week or two before the final deadline. You  
11 wanted to avoid sending the maps to the Supreme Court. I  
12 assume this means that negotiating LD 15, kind of became one  
13 of the most pressing issues for the Commission?

14 A The negotiation over the Yakima Valley was one of the  
15 significant issues that the Commission addressed.

16 Q Okay. One thing that I kind of want to get at is  
17 understanding how the final shape of that LD 15 came to be.  
18 So to start, I'm going to show you a copy of the map that you  
19 released publicly, in September, which is Exhibit 157.

20 All right. I confess, I've never used one of these.

21 All right. Mr. Fain, does that map look familiar at all?

22 A I will say yes. There's many maps during that process.

23 Q I'm sure. But does this look like the map that you  
24 released publicly?

25 A I will take your word for it.



1 Q Is this the only map that you released publicly?

2 A I believe, yes.

3 Q So I know it's going to be a little hard to see, and maybe  
4 I can zoom in a little bit. But can you describe where  
5 Yakima is located, which legislative district, on this map?

6 A Yakima proper seems to be in the 15th District, in this  
7 map.

8 Q What about the City of Pasco?

9 A Where did I put Pasco? I don't know. I can't see the  
10 city designations right here.

11 Q Well, it looks to me like it's in the 9th District. Does  
12 that look right to you?

13 A Again, I will take your word for it. I was looking for a  
14 city designation. I didn't remember if it was in the 8th or  
15 9th, when I had done this map.

16 Q Okay.

17 MR. STOKESBARY: I apologize, Your Honor, the lack of  
18 the exhibits is disrupting the plan I was going to take here.

19 THE COURT: Okay. Always be flexible.

20 MR. STOKESBARY: Yes.

21 THE COURT: We'll go off the record for a second,  
22 while you clear that up. Would you like us to take a  
23 ten-minute break, or so?

24 MR. STOKESBARY: We have all of the exhibits on an  
25 iPad, and it seems like that iPad is the problem.

1 THE COURT: Let's say we'll start up again at ten of  
2 10:00, give everybody a little break.

3 (Recess.)

4 THE COURT: Thank you. Please be seated. How are we  
5 doing?

6 MR. STOKESBARY: Much better, Your Honor. Thank you  
7 for your indulgence. We diagnosed the tech issue. We didn't  
8 have time to unplug it and plug it back in, but we figured  
9 out a workaround.

10 Q Mr. Fain, this is the same map I was showing you before we  
11 left, but hopefully a little higher resolution. I  
12 conveniently zoomed it in to show the parts of Central  
13 Washington that are at the heart of this case. So just to  
14 take a half a step backwards to, I think the last question.  
15 Do you see where Yakima is, in this map proposal of yours?

16 A I do. In the 15th.

17 Q And is that about where Yakima was in the previous --  
18 under the previous set of maps, before these new maps?

19 A I don't recall. I believe it was in the 15th, but I don't  
20 know the boundary, specifically.

21 Q What about the Tri-Cities. Do you see where the  
22 Tri-Cities are, in this version?

23 A Yeah. Are they split between -- that's what I'm trying to  
24 -- that's the 9th District up in the upper right, correct?

25 Q Yes. It is slightly off camera, but that's the 9th.

1 Can you kind of see what the districts are, where the  
2 Tri-Cities are located?

3 A Yes.

4 Q Can you tell us which ones those are?

5 A Am I in the right spot there, 8, 9, 16?

6 Q That's what it looks like to me. And this one is going to  
7 be a little bit harder. But do you happen to know where  
8 Othello is, on the map? I'm going to give you a hint, and  
9 zoom in as much as we can.

10 A I thought it was further north.

11 Q It's right in the middle of that map, at the intersection  
12 of Highway 17 and Highway 26.

13 A So is that in the 9th, then?

14 Q Yeah. So I want to go now and compare this to the enacted  
15 map, which is Exhibit 1043. This one does have some more  
16 cities labeled, so hopefully it will make this exercise a  
17 little easier.

18 Okay. So, Mr. Fain, this is the version of LD 15 that  
19 was enacted by the Commission. Where is Yakima located now?

20 A Well, what district number am I looking at right there?

21 Q This is the 15th District.

22 A Oh, yes. So it is in -- I don't know where the exact  
23 boundary line is there. But it appears to be divided between  
24 various districts.

25 Q But part of Yakima is in the 15th, in this version?

1 A That's correct.

2 Q Then what about Pasco down there on the north bank of the  
3 Columbia River, is Pasco also in the 15th District here?

4 A Is that the intersection just north of Highway 12?

5 Q I think so. Then Othello, I'm not sure why Google decided  
6 to label Othello, but not Pasco. Is it also in the 15th  
7 District here?

8 A It is, yes.

9 Q I'm trying to understand how Yakima, Pasco and Othello,  
10 which weren't part of your original proposal, got combined  
11 into a map. Do you happen to know whether Yakima and Pasco  
12 had ever shared a Legislative District before?

13 A No.

14 THE COURT: No, you don't know?

15 THE WITNESS: No, I don't know.

16 Q I'm going to show you one or two historical maps, then I  
17 think we can assume after that -- but I'm going to show you  
18 the map that existed from 2012 until the Commission's work in  
19 2021. And this is Intervenor Exhibit 1061. It's a  
20 publication of the Washington State Legislature that lists  
21 who served in which districts, when. And also has historical  
22 legislative district maps.

23 THE COURT: There is a way to turn that.

24 Q Okay. So, Mr. Fain, I know they're not quite labeled, but  
25 does it look to you like Yakima and the Tri-Cities are in the

1 same Legislative District, in the map that previously  
2 existed?

3 A It does not.

4 Q If we go back another ten years, and as you can see, these  
5 were the maps that existed from 2002 to 2011, does it look  
6 like the City of Yakima and the Tri-Cities are in the same  
7 Legislative District here?

8 A It does not.

9 Q Let's go one more. Okay. Here's the map from 1991 to  
10 2001. This actually has Yakima labeled, and you can deduce  
11 where the Tri-Cities are. Do any of the Tri-Cities and  
12 Yakima share a district here?

13 A No.

14 Q Would it surprise you if I just told you that at no point  
15 in the state's history has Yakima, and any of the Tri-Cities,  
16 been contained in the same Legislative District?

17 A I will take your word for it.

18 Q So if they weren't historically part of the same district,  
19 let's talk about other reasons why they maybe would or  
20 wouldn't be included in the 2021 Commission map.

21 Do you know how far apart the two cities are?

22 A I do not.

23 Q Do you know how long it takes to drive between the two?

24 A I do not.

25 Q Do you know if they have their own newspapers?

1 A I do not.

2 Q You're a chamber CEO. Do you happen to know if there are  
3 separate chambers of commerce in Yakima and the Tri-Cities?

4 A There are.

5 Q Do you know what the biggest industries in Yakima are?

6 A I could venture a guess, but I don't want to proclaim to  
7 be an expert on those.

8 Q Based on whatever you knew at the time you were enacting  
9 the maps, what would you have guessed Yakima's top industries  
10 were?

11 A Yakima, the city proper, or the surrounding area?

12 Q People who live in Yakima. Where do you think people who  
13 live in Yakima generally work?

14 A It's a very large warehousing and distribution space. I'm  
15 sure there's a lot of folks that are in that industry, and  
16 agricultural transport.

17 Q What kind of agriculture products?

18 A Plenty of orchards and apple exports in that area.

19 Q What about in Pasco? Any idea what some of their biggest  
20 industries or employers are?

21 A The federal government, I would imagine.

22 Q I was actually going to ask you about that next. What is  
23 the Hanford Nuclear site?

24 A It's a nuclear site at Hanford.

25 THE COURT: For those of you who don't know, the very

1 first federal judge in the Western District of Washington,  
2 actually in Washington State, was Cornelius Hanford, who the  
3 Hanford Nuclear Reservation is named after. And all three of  
4 us have told our law clerks, under no circumstances should  
5 any nuclear facilities be named after us, in any way, shape  
6 or form. But Cornelius Hanford is the Hanford Nuclear  
7 Reservation. And he resigned as a federal judge, because he  
8 was about to be impeached for consorting with known  
9 prostitutes in the Seattle area. That should have been a  
10 warning to not name the nuclear reservation after him, too.

11 Go ahead, counsel.

12 MR. STOKESBARY: Thank you for that lesson, Your  
13 Honor.

14 Q Mr. Fain, is it fair to say that the Hanford Nuclear site  
15 is located in the Tri-Cities area?

16 A Yes.

17 Q Not Yakima?

18 A Yes.

19 Q You served in the legislature, presumably with senators  
20 from the Tri-Cities?

21 A Correct.

22 Q Based on your experience and knowledge, do you think that  
23 Hanford's safety issues are important to voters in the  
24 Tri-Cities?

25 A Yes.

1 Q And important to their legislators?

2 A Yes.

3 Q By comparison, do you know any heightened importance  
4 Hanford has in Yakima?

5 THE COURT: Depends on which way the wind is blowing.

6 THE WITNESS: I was just going to make that joke.

7 Q I'll ask it this way. I assume you also served with the  
8 senators who represented the Yakima area?

9 A Correct.

10 Q Did they ever come to you asking for help getting Hanford  
11 issues enacted into law?

12 A Not that I recall.

13 Q So kind of going back to these negotiations, still trying  
14 to understand how cities that were never combined in the  
15 district before, that don't seem to have a lot in common, got  
16 put in the same district. So I want to talk about how the  
17 proposals regarding legislative districts were kind of being  
18 traded about and what you were looking at. Were there any  
19 key metrics that you were looking at, when assessing  
20 potential LD 15 maps?

21 A Competitiveness.

22 Q Were there any other key metrics?

23 A Race was a factor that was involved in the analysis.

24 Q When you were considering various configurations of LD 15,  
25 did you or your staff ever assess those configurations for



1 compliance with the Voting Rights Act?

2 A I think I've answered that today, that there was no formal  
3 assessment done by Commission staff.

4 Q And you, personally, never saw or considered an analysis  
5 like that, other than the Dr. Barreto report?

6 A There was the other report, the analysis that was done,  
7 legal analysis that was done subsequent.

8 Q So you mentioned another factor you considered was race.  
9 As you probably experienced, and again not to trigger your  
10 PTSD, but there's a few ways to measure the minority  
11 population in an area. Are you familiar with the  
12 measurement, Hispanic citizen voting age population?

13 A I am.

14 Q So if I say Hispanic CVAP, you understand what I mean?

15 A I do.

16 Q Was the Hispanic CVAP measurement, kind of one of these,  
17 quote-unquote, top-line metrics you would look at when  
18 trading potential LD 15 configurations?

19 A That statistic was known to me through the various  
20 iterations of maps, in most cases.

21 Q We talked a minute ago about sort of your negotiation  
22 process in trying to give Democratic commissioners things  
23 they wanted, in order to secure their votes. Did you think  
24 that the Hispanic CVAP was a metric that was important to  
25 Democratic commissioners, as you were developing your own

1 proposals and counterproposals?

2 A It was my belief that it was, yes.

3 Q Did you believe that you would ultimately need to have a  
4 majority Hispanic CVAP population in LD 15, in order to get  
5 votes from your Democratic colleagues?

6 A I didn't know what was going to be necessary to get votes  
7 for the complete map. I was -- spent most of my time trying  
8 to figure out what the true levels of priority issues were,  
9 for the folks involved in the process.

10 Q Was increasing the Hispanic CVAP percentage in LD 15,  
11 something that you were willing to give, in order to secure  
12 support for a final compromise map?

13 A Certainly.

14 Q Do you recall what the final Hispanic CVAP percentage was,  
15 for LD 15, the version that was enacted?

16 A I believe it was 52 percent.

17 Q So very slight majority?

18 THE COURT: 52 percent, he said.

19 MR. STOKESBARY: Thank you, Your Honor.

20 Q Um, did you believe that this majority was required, by  
21 the Voting Rights Act?

22 A No.

23 Q Earlier you talked that you sort of worked closely with  
24 Commissioner Walkinshaw, albeit on the congressional maps,  
25 but presumably you developed some kind of rapport with him.

1 Did he ever express a belief to you that he felt it was  
2 important to have a majority Latino CVAP district?

3 A Yes.

4 Q Do you think, in light of that, he would have approved a  
5 version of LD 15 that did not contain a majority CVAP  
6 district?

7 A I believe he may have, yeah.

8 Q What about Commissioner Sims?

9 A I believe she -- with which question are you asking?

10 Q It's ambiguous, so I'll just move on. Maybe a better  
11 question to ask is, why did the final version of LD 15  
12 contain a slight majority? Why was it 52 percent Hispanic  
13 CVAP, instead of 48 percent Hispanic CVAP?

14 A That's where the negotiations landed us.

15 Q Did you think it was necessary to draw LD 15 in that  
16 manner, with that Hispanic CVAP percentage, in order to avoid  
17 violating the VRA?

18 A No.

19 Q Did you think that a court might invalidate Legislative  
20 District 15, if it was not drawn that way?

21 THE COURT: What's different about that question,  
22 than the one you just asked about the Voting Rights Act?  
23 Same answer, right? You weren't worried about that.

24 THE WITNESS: To be totally clear on that, the  
25 ability for the maps to be upheld for the long-term, is

1 something that is in mind. And since this was an issue,  
2 certainly what a court might do with it, was on my mind. But  
3 I did not believe that it was required.

4 THE COURT: Got it.

5 MR. STOKESBARY: Your Honor, I think the answer might  
6 be, and we're all entitled to our own opinions, but the court  
7 is right, because they're last. And so just because somebody  
8 thinks something, doesn't mean a court might necessarily  
9 agree. So I think the difference between the questions, the  
10 first was what did he personally believe the law required --

11 THE COURT: He clarified it. Yeah.

12 Q A couple more questions, and then I'll be done.

13 I kind of want to connect the map that was approved in  
14 November, bring it up to the present day. So we talked about  
15 the racial composition a little bit. You mentioned just now  
16 it was 52 percent Hispanic CVAP, but you also said political  
17 composition was another metric that you cared about. Do you  
18 remember, for the final version of LD 15, the partisan lean  
19 that you calculated the district to have?

20 A I know that it -- the Republican performance in the  
21 district decreased. But I believe it was still a very slight  
22 Republican advantage.

23 Q Could you ballpark, when you say "slight," are you talking  
24 about 50.01? Are you talking 55?

25 A Under 53, I believe. Definitely under 53. I thought it

1 was much lower than that.

2 Q Okay. I would like to pull up one last exhibit. It is  
3 Exhibit 1055. This is the results of the 2022 State Senate  
4 election in Legislative District 15. Do you see there,  
5 Mr. Fain, that Nikki Torres, who prefers the Republican  
6 Party, won 67.7 percent in the final election?

7 A I do.

8 Q So based on the partisan composition that you thought the  
9 district would have, did you expect the Republican candidate  
10 to receive over 65 percent of the vote?

11 A I didn't have an expectation of what performance was,  
12 because I believed that there were a number of swing  
13 districts in the region -- excuse me, number of swing voters  
14 in the region.

15 Q Okay.

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

17 THE COURT: Thanks, Mr. Stokesbary. Mr. Hughes?

18 MR. HUGHES: May I have just a moment, Your Honor?

19 THE COURT: Sure.

20 MR. HUGHES: Thank you.

21 CROSS EXAMINATION

22 BY MR. HUGHES:

23 Q Good morning, Mr. Fain. Give me just a minute to get  
24 myself situated.

25 Mr. Fain, I'm Andrew Hughes. I'm with the Washington

1 Attorney General's office. I'm going to ask you just a few  
2 questions on behalf of the state.

3 And I'll start, like I do with every other  
4 commissioner, making clear that the Attorney General's office  
5 does not represent you or the Commission, for purposes of  
6 this trial; is that your understanding?

7 A That is correct.

8 Q And you or I, and no one from my office, has prepared you  
9 for the testimony you're providing today?

10 A That's correct.

11 Q You mentioned previously you were a state senator. I just  
12 wanted to ask you, why did you choose to go into politics?

13 A I enjoyed solving lots of different complex issues, with  
14 lots of different, diverse people.

15 Q Did you feel like public service was -- if I may be  
16 forgiven -- it's a purple language, a calling, a noble  
17 calling for you?

18 A Yes.

19 Q And at the time you became a redistricting commissioner,  
20 you had a full-time job, correct?

21 A That's correct.

22 Q Why then did you choose to take on the volunteer position  
23 of becoming a redistricting commissioner?

24 A In hindsight, or at the time?

25 I believe that the redistricting process is extremely

1 important. And I think that, in recent years, over the  
2 course of the many states, that it has proven to isolate  
3 like-minded people, rather than to force important  
4 conversation.

5 Q Did you view being a redistricting commissioner, as a  
6 public service that you felt like you could do?

7 A I did.

8 Q So when you became a commissioner, did you review  
9 Washington statutes governing the Commission's work?

10 A I did.

11 Q Did you review the Washington constitutional provision  
12 governing the Commission's work?

13 A I did.

14 Q To the best of your recollection, what did the statute and  
15 the constitutional provision provide, as far as what you were  
16 required to do, in creating districts?

17 A It has been a long time since I've read it. But the  
18 various items in the statute would have included proportional  
19 number of voters matching the number of voters in --  
20 residents in each district, excuse me, equalizing those  
21 populations, keeping communities of interest together, and  
22 fostering competitiveness.

23 Q How about keeping cities together. Was that one of the  
24 things that you were looking at?

25 A Yes.

1 Q And I'd like to just put those up on the screen, just to  
2 make sure that we're talking about the same things.

3 Are you guys seeing the document camera? What a time  
4 to be alive, you guys.

5 I'm going to start with Exhibit 509, which has been  
6 admitted. I'm going to zoom out. Does this look like the  
7 statute that you were looking at, Mr. Fain?

8 A It does.

9 Q And I'm going to go specifically to 44.05. And  
10 unfortunately -- 44.05.090 -- unfortunately, the way it's  
11 printed, it flips over the page. So I'm going to flip this  
12 over. Is this, right here, roughly the factors that you were  
13 looking at in how to draw a map?

14 A Yes. Those were factors, statutory factors.

15 Q I don't want to read those all into the record, the court  
16 has those. Again, just to be sure we're all talking about  
17 the same thing, is this the constitutional provision,  
18 Exhibit 510, is this the constitutional provision you were  
19 looking at?

20 A Yes, it is.

21 Q And, again, right here in Section 43.5, those are the  
22 requirements that were guiding the work that you were doing?

23 A Yes.

24 Q Okay. Now, there was a dispute, wasn't there -- you  
25 mentioned competitiveness a number of times. There was a



1 dispute, wasn't there, about what competitiveness meant,  
2 amongst the commissioners?

3 A Yes.

4 Q Can you tell me a little bit about that dispute?

5 A If I recall, Commissioner Walkinshaw had mentioned he  
6 thought competitiveness could be solved by evidence of a  
7 competitive -- any competitive election, like a Democratic  
8 primary in a largely Democratic district.

9 I viewed it -- I did not discount that that may be a  
10 factor, but I felt that the more pressing definition of  
11 competitiveness would have been cross-party competitiveness.

12 Q So just to crystallize that a little bit, when you were  
13 thinking of competitiveness, you meant sort of cross-partisan  
14 competitiveness. Other commissioners may have meant just  
15 that there will be elections, that the voters will have a  
16 choice?

17 A Yeah. I think my position would have been competitive  
18 elections, and even if -- cross-party competitive elections  
19 in the general, would be my strong preference. For highly  
20 partisan districts, I would far prefer to see fierce  
21 interparty competitive elections in the general, again.

22 Q And just for those -- for who may be visiting us from  
23 out-of-state, Washington is a Top 2 primary state; is that  
24 correct?

25 A That's correct.

1 Q We have occurrences, like in your former district, where  
2 you have two Democrats running against each other in a  
3 general election?

4 A That's correct.

5 Q So let me move on from that.

6 Was it your view, thinking through competitiveness,  
7 that any map should at least give either party a chance of  
8 achieving majority control in the state legislature?

9 A It was.

10 Q And if a map didn't do that, would you reject it?

11 A I would be less likely to look upon it favorably.

12 Q Okay. In addition to competitiveness, what were some of  
13 your other goals, as a redistricting commissioner?

14 A My initial map prioritized the communities of interests of  
15 school districts. And so I issued a legislative map that  
16 tried to maintain the sanctity of school district boundaries,  
17 viewing that school district boundaries were a better  
18 reflection of a community of interest, in some cases, even  
19 more perhaps than a city boundary might be, given how  
20 families, neighborhoods, and communities tend to sort  
21 themselves along those school district boundaries.

22 Q You have answered my next question, and that certainly  
23 jibes with my experience as a parent of a school child.

24 You mentioned that you released maps. That was about  
25 September of 2021?

1 A Correct.

2 Q I'm going to try not to ask you about too many dates, I  
3 promise.

4 A I really appreciate that.

5 Q You released a press release, along with your map; is that  
6 right?

7 A Yes.

8 Q Yes. And I'm showing you what's been admitted as  
9 Exhibit 607. Is this the press release that you --

10 A Yes, it is.

11 Q I'm sorry. Yes?

12 A Yes.

13 Q Did you write this?

14 A I wrote or edited significant portions of it, I believe.

15 Q To the extent you didn't write this, it was written on  
16 your behalf, at your direction?

17 A That's correct.

18 Q Perfect. Why did you choose to release this?

19 A As a narrative for why my map was drawn the way it was,  
20 and provide some context for folks that may not immediately  
21 realize that was the guiding principle, in the drafting of  
22 it.

23 Q I want to spend a little bit of time with this document.

24 I'd like to highlight -- could you read to me that  
25 sentence I just marked right there?

1 A "Fain's map of 49 legislative districts, focuses on  
2 keeping communities together and fostering competitive  
3 elections."

4 Q We have a court reporter. I know it might be tedious to  
5 read, but if you could slow down.

6 This talks about your emphasis on keeping communities  
7 of interest together, and fostering competitive elections,  
8 correct?

9 A That's correct.

10 Q And moving down. You talk about a core component is a  
11 respect for school district boundaries. We already talked  
12 about this. Anything more to say on this, before we move on?

13 A No.

14 Q And talking about competition, so you say, "It is crucial  
15 to the Democratic process that our maps reflect that." What  
16 is "that"?

17 A I'm going to read this, briefly.

18 Reflect the importance of voters having an actual choice  
19 in their general election ballot.

20 Q And then you go on to say, "I estimate my plan does this,  
21 by increasing the number of swing districts by well over  
22 one-third, to 15, from 11."

23 To the best of your recollection, is that an accurate  
24 statement about your initial proposed map?

25 A I believe that it is.

1 Q In the next paragraph you say, "Fain's plan." I assume  
2 that's you, Fain, not a brother. "Fain's plan also makes  
3 several changes to keep other communities of interest  
4 intact."

5 What other changes did you make to keep communities of  
6 interest intact?

7 A I believe the Yakima Reservation was one of the  
8 communities that I -- I believe all four commissioners put  
9 that entirely into a district, and as referenced there, with  
10 regard to CVAP, as one of the data points being used.

11 Q Was creating more minority-majority, or majority-minority  
12 districts important to you?

13 A I believe that it would be important to do so, as part of  
14 the negotiation to getting to a final map. And it was  
15 something that I thought would be beneficial in offering  
16 such, that we would also be -- we would also get more  
17 competitive elections in the process.

18 Q And this press release reflects your initial map; is that  
19 right?

20 A That's correct.

21 Q We've heard testimony from others that the initial maps  
22 can often be read as sort of a commissioner's statement of  
23 priorities, here is my initial negotiating position. Is that  
24 a fair characterization of your initial map, as well?

25 A I believe so.

1 Q So as an initial position, increasing the number of  
2 majority-minority districts, was something that you were  
3 concerned about?

4 A Yes, it was -- yes.

5 Q Okay. And then lastly, you wrote, if I can find it, I  
6 think you already talked about this, but just additionally,  
7 "Fain's plan reflects the interest of each of the tribal  
8 governments, that communicated with the Commission."

9 How did your plan, again, briefly, reflect the  
10 interests of the tribal governments, with which you  
11 communicated?

12 A I recall hearing, specifically from both Colville and the  
13 Yakima Nation, that they had some specific desires that they  
14 wanted. And in this particular case, the Yakima wished to be  
15 consolidated, and the Colville did not.

16 Q The Colville, in fact, wished to be kept separate; is that  
17 right?

18 A That's correct.

19 Q Why was it important to you to listen to input from native  
20 tribes in Washington?

21 A Significant community of interest, long held by both  
22 culture and treaty rights, and have always wanted to maintain  
23 good government-to-government relations with them. And  
24 coming from a legislative district that represents the  
25 Muckleshoot Tribe, I've worked with tribal communities for a

1 number of years.

2 Q Mr. Fain, did your core priorities change, over time?

3 A No.

4 Q Okay.

5 I'd like to show you another document that I believe  
6 you wrote. This is admitted Exhibit 302. Can you take a  
7 look at that, and just briefly identify that?

8 A Yes. I wrote that.

9 Q What is it?

10 A It is a memo that analyzes how I viewed what calculus I  
11 used for determining what a competitive district was, and  
12 what calculus I used determining the overall competitiveness  
13 of the state, vis-a-vis how those districts performed, not as  
14 a district compared to its previous self, but as a district  
15 performance compared to the previous district that held its  
16 same competitiveness ranking.

17 Q And the date of this memo is November 13, 2021?

18 A That's correct.

19 Q I said I wouldn't ask you about dates, so I'll instead  
20 tell you. This is basically three days before the deadline,  
21 the November 15th deadline.

22 A That's correct.

23 Q Thirteen, 14, 15.

24 Okay. So you start by saying, "I think it is helpful  
25 for each of you" -- the other commissioners -- "to see how I

1 view these negotiations, and our legal obligations under the  
2 Constitution and state law." Why?

3 A I believe that it's -- having done negotiations for a very  
4 long time, I've always found that you're much more likely to  
5 get yes, if people know exactly what you care about, and  
6 exactly how you view, and analyze, and account for what you  
7 care about.

8 Q You felt it was important to, at this point in the  
9 negotiations, for the commissioners to have a very -- the  
10 other commissioners to have a very clear understanding of  
11 what your priorities were?

12 A I had previously attempted to communicate to them, this  
13 analysis, which is a little complicated. And I hadn't had as  
14 much luck as I hoped. So I thought putting it into written  
15 form would be advantageous.

16 Q Fair. You say, again, right at the top. "My goal is to  
17 increase the overall competitiveness of our legislative  
18 elections, and if unable to achieve this, to at least  
19 preserve the existing level of competition." Did I read that  
20 right?

21 A Yes.

22 Q Three days prior to the deadline, increasing  
23 competitiveness remained your overall goal?

24 A Yes.

25 Q Didn't change?



1 A Correct.

2 Q Then you talk about your methodology. And unfortunately,  
3 I'm going ask you to read that, and then ask you to explain  
4 what that means. So if you could read that paragraph into  
5 the record, I'd appreciate it.

6 A "By ranking all districts, from most Democratic to most  
7 Republican, under the current agreed-to metric of the 2020  
8 treasurer's race, we arrive at 12 districts that perform  
9 between 45 percent and 55 percent."

10 Q Can I pause you right there? Why the treasurer's race?

11 A I believe the -- one of the reasons why that was an  
12 attractive race, is because it is not a highly publicized  
13 position. It was a competition between a relatively unknown  
14 Democrat, and relatively unknown Republican, and might serve  
15 as the basis for providing a snapshot into the partisan  
16 leaning of a particular district.

17 Q I'm not sure there's been testimony on this in trial. Was  
18 the treasurer's race -- was the treasurer's race, a race that  
19 was often used as a heuristic for understanding the  
20 competitiveness or the partisan lean of a district?

21 A Yes. It was one of the metrics.

22 Q For the reasons you just said, with all due respect to  
23 Treasurer Pellicciotti and Former Treasurer Davidson, it's  
24 not a popular race?

25 A I'm sure there's a number of people in this room that

1 didn't know those two names.

2 Q I think after discovery in this case, we all know those  
3 names.

4 So I interrupted you. Could you pick up at, "I have  
5 regularly compared."

6 A "I have regularly compared all proposed maps, from each  
7 commissioner, against this baseline. Some districts may  
8 become much more or much less Democratic, in each proposal,  
9 but this visualization emphasizes the relative  
10 competitiveness of the overall map, rather than just  
11 comparing a single district's current and proposed partisan  
12 performance."

13 Q So could you just, very briefly, summarize -- not that you  
14 didn't do a brief job of it there -- what you mean by this?

15 A It would not be appropriate to look at where, let's say,  
16 for example, the 44th District was, competitively, and say  
17 its performance increased or decreased from a partisan  
18 standpoint, and therefore you have somehow achieved your  
19 competitiveness goal.

20 What matters is, from a statewide perspective, how many  
21 districts fall into various tranches of competitiveness. And  
22 is your future map holistically more or less competitive than  
23 your previous map?

24 Q Is it fair to say that you were looking at competitiveness  
25 across the whole map, rather than district-by-district?

1 A That is correct.

2 Q So when you reviewed a proposal, would you care whether,  
3 for example, LD 15 tilted Democratic or Republican, or would  
4 you care whether the whole map tilted Republican or  
5 Democratic?

6 A The whole map.

7 Q I've heard you use this term in your deposition, and it  
8 took me back to 11th grade economics. You used the term  
9 "indifference curve."

10 A I did, yes. That's embarrassing.

11 Q Can you explain what you mean by that?

12 A At any given point, I feel exactly the same with regards  
13 to my level of support for a map, given different variables.  
14 And those variables, in this particular instance, would have  
15 been the individual partisan performance of a given district;  
16 whereas, the indifference curve represented the overall  
17 competitiveness of the map.

18 Q And I will not embarrass myself by trying to remember how  
19 to draw an indifference curve. But if I see Mr. Vance, I'll  
20 be sure to ask for a refresher.

21 There's a section here -- well, I guess it starts here,  
22 where you talk about the Walkinshaw 11/13 proposal. And  
23 there's a lot of text here. But can you just sort of walk me  
24 through, at a high level, what's going on here?

25 A Yeah. It actually might be as helpful to have the chart

1 on the visual, as you go along. I think that provides the  
2 metric. You can see the draft Democratic performance, in all  
3 of the identified swing districts. And, again, that's a  
4 chart of -- ranked by the order of competitiveness. So it's  
5 not how a certain district performed in the past versus in  
6 the proposed map.

7 So you can see the current Pellicciotti performance in  
8 green, which is the right bar, and the draft Pellicciotti  
9 performance, from Walkinshaw, November 13th, on the left in  
10 blue. You can see in each of those, in each of the  
11 districts, there is a marked shift that is occurring in  
12 pretty much just one direction, taking several districts out  
13 of being considered competitive, both on the upper scale, in  
14 the case of the first two on the map, on lines 23 and 24, as  
15 well as on the Republican side of the scale, in line 34,  
16 where the current performance was above 45, but the new  
17 performance was at 43.5.

18 Q Is the upshot of this analysis, then, that Commissioner  
19 Walkinshaw's 11/13 proposal, undermined your goal of  
20 electoral competitiveness?

21 A It did not move it in the direction I hoped, yes.

22 Q I take it, then, you did not support Commissioner  
23 Walkinshaw's 11/13 proposal?

24 A I was critical of it.

25 Q In criticizing this proposal, was your aim to dilute

1 Hispanic voter power?

2 A Certainly not.

3 Q Certainly not, you said?

4 A Um-hum.

5 Q Okay. Just one last thing I want to ask you about here.

6 So you say, after discussing Commissioner Walkinshaw's  
7 proposal, "I have also remained very flexible to Democratic  
8 priorities, including offering several maps that create a  
9 majority-minority citizens of voting age population district  
10 in the Yakima area, as you have proposed. I only ask that  
11 through the many significant changes that you have each  
12 proposed to our state's legislative districts, that we  
13 maintain an overall balance of competition."

14 Did I read that right?

15 A That is correct.

16 Q Is this true, that you were proposing maps that the  
17 Democratic commissioners preferred, as long as it preserved  
18 overall competitiveness?

19 A That I was proposing maps that matched their configuration  
20 and goals for the Yakima Valley area, that also met my goals  
21 for greater competition throughout the map.

22 Q You answered the question I should have asked. I  
23 appreciate that.

24 When you proposed maps, broadly speaking, did you have  
25 racial or ethnic targets in mind?

1 A I didn't have specific targets in mind.

2 Q When you voted on a final map, did you have racial or  
3 ethnic targets in mind?

4 A No specific targets in mind.

5 Q Did you ever conclude you wouldn't vote for a map, unless  
6 it was X-percent Hispanic?

7 A No, I didn't.

8 Q X-percent white?

9 A No.

10 Q Black?

11 A No.

12 Q Native American?

13 A No.

14 Q Not to leave anyone out, but I'll move on.

15 Let's move on. Speaking of moving on, Commissioner  
16 Fain, you ultimately voted for a plan that the Commission  
17 recommended to the legislature, correct?

18 A Correct.

19 Q You testified that you couldn't remember everything about  
20 that plan, I think on your first examination. But did the  
21 plan you voted on include a final map?

22 A The map was not drafted at the time of the vote, but the  
23 map was drafted subsequently, in the hours after.

24 Q Okay. Did the plan you voted on include particular  
25 geographic boundaries?

1 A Again, we're referring to prior to the deadline?

2 Q Let me ask it this way. When you voted on a map, did you  
3 understand you were voting on a particular -- I started the  
4 question on the wrong foot. When you voted on the plan -- we  
5 heard it called a framework?

6 A Yes.

7 Q When you voted on the framework, did you understand that  
8 it included particular geographic boundaries?

9 A No.

10 Q So when you voted on the framework, did you understand  
11 that it included particular partisan metrics?

12 A Yes.

13 Q When you voted on the map, did you understand -- when you  
14 voted on the framework, did you understand that it included  
15 particular racial or ethnic metrics?

16 A I don't recall at the time.

17 Q Okay. So what you voted on was essentially a partisan  
18 framework that may or may not have included some racial  
19 targets, you don't remember, and that may or may not have  
20 included some particular geographic boundaries. Is that  
21 about right?

22 A Yes.

23 Q Did you believe that the plan the Commission ultimately  
24 recommended to the legislature, followed the goals laid out  
25 in the statute?

1 A I'm sorry, laid out?

2 Q In the statute we talked about earlier.

3 A In the statute. Not as well as I would have liked, but,  
4 yes.

5 Q Not perfect, but good enough?

6 A Yes.

7 Q And how did that map follow the goals of the statute?

8 A The communities of interest were taken into account. City  
9 boundaries were taken into account. The districts were very,  
10 very close, population-wise, in the final drafted map.

11 There was at least an attempt on competitiveness, not  
12 nearly as successful as I would have hoped to be at the  
13 beginning of the process. So, yes, I believe it took into  
14 account those issues.

15 Q Ultimately, it was a negotiated process, though, right?

16 A Yes.

17 Q In the final map, do you recall whether LD 15 leans  
18 Republican?

19 A I believe it does.

20 Q Do you recall about how --

21 A Very slightly.

22 Q Very slightly. Was it your understanding that Republicans  
23 would necessarily win LD 15?

24 A No.

25 Q Why not?



1 A Because it was a very slight advantage. And certainly  
2 candidates in other districts that have very slight  
3 advantages, in the other direction, don't always succeed.

4 Q Again, part of your goal, in the whole process, was to  
5 make districts that could be won by either side, correct?

6 A That's correct.

7 Q In your view, LD 15 was one of those districts?

8 A That is correct.

9 Q Was it your understanding that trends -- was it your  
10 understanding that trends in LD 15, be they demographic  
11 trends, be they partisan trends, would lead to LD 15 becoming  
12 increasingly competitive, or perhaps tilting Democratic?

13 A I had been presented with that argument. I didn't know if  
14 I was completely persuaded by it.

15 Q Do you feel like it was a good-faith argument?

16 A Yes, certainly.

17 Q Commissioner Fain, do you believe that the plan that you  
18 voted for, complied with the Voting Rights Act?

19 A I do.

20 Q Why is that?

21 A I didn't believe we had an obligation to meet any specific  
22 racial targets, in those areas.

23 Q Was it your belief that the Voting Rights Act required  
24 creation of a leaning-Democratic district?

25 A It did not.

1 Q Was that consistent with advice -- let me back up. So it  
2 may be helpful for you to know that things that in  
3 depositions you couldn't testify about, you now can testify  
4 about, because AGO advice was admitted as an exhibit here.  
5 And you can look at it, if you want. But did you receive  
6 advice from the Attorney General's office that, in your view,  
7 lent support to the idea that the VRA did not require a  
8 leaning-Democratic district?

9 A I'd have to review that document again.

10 Q Okay.

11 Mr. Fain, do you believe the plan that you voted for,  
12 racially gerrymandered Hispanic voters?

13 A No, I do not.

14 Q Why not?

15 A I believe, for a number of reasons. One, the results of  
16 the most recent election, validate that Hispanic candidates  
17 perform extremely well. That each of the commissioners --  
18 there was no commissioner that had, at least from the  
19 conversations I had with them, anything but a good-faith  
20 desire to achieve the goals of the other commissioners, when  
21 they weren't in conflict with the things that were trying to  
22 be accomplished by the commissioners themselves, like  
23 competitiveness. That the final map included a 52 percent  
24 CVAP district. So I thought those were all components that  
25 led me to believe that there was no violation.

1 Q I want to talk about the VRA now, a little bit more. And  
2 you mentioned, I think, that at the time you became a  
3 commissioner, you were aware of at least one lawsuit applying  
4 the VRA in the City of Yakima?

5 A That's correct.

6 Q What do you remember about that lawsuit?

7 A I remember that the suit was -- I'm going to get it  
8 backwards, I always do -- going from districts to at-large  
9 versus at-large to districts. And I believe it was going  
10 from at-large elections to district elections, in order to  
11 empower a Latino or Hispanic voting community, that was more  
12 concentrated in one part of the city.

13 Q Mr. Fain, you've heard the term "racially polarized  
14 voting" before, I assume?

15 A I have.

16 Q Is it your recollection that the *Montes v. City of Yakima*  
17 case, found racially polarized voting in Yakima?

18 A Yes.

19 Q So coming into the process, then, did you understand there  
20 was a possibility that Section 2 of the VRA, might apply to  
21 the maps that you drew in the Yakima area?

22 A Yes.

23 Q "Yes," you said?

24 A Yes.

25 Q You were asked some questions by Ms. Waknin about the

1 Commission's decisions about hiring a VRA consultant. Do you  
2 recall that?

3 A I do.

4 Q You weren't supportive of the suggestion to hire a VRA  
5 consultant?

6 A I didn't think it would be helpful to the process.

7 Q You didn't think it would be helpful to the process?

8 A Not because information about the VRA isn't helpful, which  
9 is why I had requested the briefing from the Attorney  
10 General, and subsequent things, but because I doubted our  
11 ability to find an unbiased consultant, on either direction,  
12 that would be able to provide guidance that would be  
13 non-polarizing.

14 Q Was the concern, then, that you effectively would end up  
15 with dueling consultants?

16 A That was exactly the concern.

17 Q And that would --

18 A Do nobody any good, except the plaintiffs.

19 Q So fair to say, then, that you were not opposed to hiring  
20 a consultant because you didn't believe VRA compliance was  
21 important, right?

22 A That is very true.

23 Q Okay. You were asked about the Davis Wright Tremaine  
24 memo. Mr. Stokesbary asked you about this. Do you recall  
25 that?

1 A I do.

2 Q Do you recall, what was the goal in seeking advice from  
3 Davis Wright Tremaine?

4 A This was -- there were a lot of different opinions about  
5 the applicability of the VRA, and most of those voices were  
6 coming from one direction.

7 Q What does that mean, "one direction"?

8 A Meaning that the advocates for a larger percentage of  
9 CVAP, or drawing the district in a way that specifically was  
10 comporting to particular racial goals, that there was a lot  
11 of commentary from that direction.

12 And it was just, you know, in many cases it was some  
13 noise, because it's just a lot of external things. It would  
14 be nice to get another data point in there. But, again, just  
15 as I didn't view the Barreto analysis as dispositive, I  
16 didn't view the subsequent legal opinion as dispositive. It  
17 was just another data point.

18 Q It was another data point in your effort to ensure that  
19 the work you were doing complied with the Voting Rights Act,  
20 correct?

21 A Correct.

22 Q With the Fourteenth Amendment as well; is that right?

23 A Yes.

24 Q I want to move on and ask you about district numbering.  
25 In the version of the map the Commission adopted, why was

1 Legislative District 15 numbered Legislative District 15, if  
2 you know?

3 A I don't know.

4 Q Do you recall any conversations about the importance of  
5 numbering the district 14 versus 15, or 15 versus 14?

6 A The only consideration that I recall, would have been to  
7 what cycle it was on, and how soon the next election in that  
8 district might have been. There was conversation on those  
9 items.

10 Q What do you recall about the importance? Do you recall  
11 why that issue was raised? Was there some importance  
12 attached to that?

13 A I don't recall.

14 Q Okay. Do you recall any conversations about how numbering  
15 the district 14 versus 15, might affect Latino turnout for  
16 electoral performance?

17 A No. My recollection was mostly about whether or not it  
18 would be the next seat, that the seat would be immediately up  
19 for election, rather than not.

20 Q Okay. I want to show you what's been admitted as  
21 Exhibit 307. This is an e-mail you received?

22 A Um-hum.

23 Q And it appears to be from Paul Campos, concerning a map  
24 proposed by Commissioner Walkinshaw on November 13th.

25 A Um-hum.

1 Q And we already talked about that November 13th proposal,  
2 correct?

3 A Correct.

4 Q Paul Campos was your staffer?

5 A Correct.

6 Q Technically, he worked for the legislature, but he staffed  
7 for you?

8 A That's correct.

9 Q There's a chart here. Does this chart show incumbents who  
10 are districted out of their districts, in Commissioner  
11 Walkinshaw's proposal?

12 A I have to read it quickly. Is that what the red lettering  
13 means? Because it would have switched the district numbers.  
14 Sorry, I'm having to remember what this document is.

15 Q Totally.

16 A Yes. Thank you.

17 Q And it shows that districts, that representatives in the  
18 15th and 14th districts were all districted out, by  
19 Commissioner Walkinshaw's plan?

20 A That's correct.

21 Q Mr. Campos writes, "The 14th and 15th seems to be a  
22 labeling issue." Do you see that?

23 A I do.

24 Q And he says, "If we switch the names, most of those  
25 incumbents would be back in their existing district no." I

1 assume that means number?

2 A Correct.

3 Q So does this explain to you why the districts were  
4 numbered the way that they were?

5 A I think it's one of the components.

6 Q By districts, I mean the final districts.

7 A Yes. Not districting out current incumbents.

8 Q Perfect. I want to show you an exhibit that plaintiffs  
9 have cited in their trial brief, and it's Exhibit 135. And I  
10 want to focus on these two texts. This is a text exchange, I  
11 gather, between you and April Sims. This would be  
12 Commissioner Sims, and this would be commissioner, you. Can  
13 you just read that, and then I've got a question for you.

14 A Commissioner Sims or myself?

15 Q I want you to read the exchange, not out loud, you don't  
16 have to. I just want you to read it.

17 A Yes, done.

18 Q So there's no discussion here of Latino voting turnout; is  
19 that correct?

20 A No.

21 Q As far as you know, this conversation is not about the  
22 importance of numbering a district one way or the other, for  
23 the purposes of maximizing or minimizing Latino voting  
24 turnout, is it?

25 A Doesn't appear to be, no.



1 Q I've got one more exhibit, and then I'll be just about  
2 done.

3 So I want to look at a portion of what you looked at  
4 with Mr. Stokesbary. And this is from Exhibit 1061. Do you  
5 recall looking at this?

6 A Yes.

7 Q I think we've established that Pasco is here, right?

8 A Yes.

9 Q Okay. So this is the 2012 map; is that right?

10 A Correct.

11 Q And in this map, you can see the Tri-Cities are split; is  
12 that right?

13 A Correct.

14 Q In fact, the City of Pasco is split between Districts 9  
15 and 16; is that right?

16 A That's correct.

17 Q And in this map, half of Pasco shares a district with --  
18 well, it's Benton County, Walla Walla County, and Columbia  
19 County, right?

20 A It appears to, yeah.

21 Q Are you aware of any special connections between Pasco,  
22 and, for example, beautiful Walla Walla, Washington?

23 A I guess I don't know. I don't quite know how to answer  
24 that question.

25 Q So are you aware of any sort of particular commonalties?

1 A No.

2 Q So let me ask it this way. Pasco, you mentioned, is  
3 largely based on -- is based on federal employment. Do you  
4 know if that's true with respect to Walla Walla?

5 A They have a very large professional workforce, given the  
6 proximity to that area. But I don't know about any other  
7 specific -- I'm still trying to get what you're asking.

8 Sorry.

9 Q Don't worry.

10 The second half of Pasco, it shares a district with  
11 Spokane County, Whitman County, Adams County -- it's in  
12 Franklin County -- Garfield County and Asotin County; is that  
13 right?

14 A Appears to be.

15 Q So six counties?

16 A Correct.

17 Q In the 2012 map?

18 A Correct.

19 Q Are you aware of any commonalities, any communities of  
20 interest, community of interest linkages between, for  
21 example, Pasco and Clarkston, down here in Asotin County?

22 A Again, none that are jumping to mind, other than when you  
23 draw a circle that has to have so many people inside of it,  
24 sometimes you draw people in.

25 Q Are you aware of any commonalties between Pasco and

1 Pullman here, in Whitman County?

2 A Pullman and Pasco? There's -- the Washington State  
3 University has energy professionals and studies. So there is  
4 some cross polling there. And then, of course, the issues  
5 with regard to the Snake River, and Snake River dams. There  
6 are issues that have united a lot of the communities out  
7 there.

8 Q Are you aware of any commonalities between Pasco and  
9 Spokane County?

10 A Again, I can't speak to any right now that are unique, I  
11 suppose.

12 Q Got to draw a map. Got to draw a circle. Got to have  
13 people in it?

14 A Yes.

15 Q 157,000 is the target?

16 A Yes.

17 Q Just a final topic, Mr. Fain. Are you aware that  
18 plaintiffs in the Soto Palmer case, allege that the  
19 Commission intentionally discriminated against Hispanic  
20 voters, in drawing LD 15?

21 A Correct.

22 Q You are aware of that?

23 A Yes.

24 Q What is your response to the allegation that you  
25 intentionally discriminated against Hispanic voters?

1 A It is very false.

2 Q Why is it very false?

3 A Based on the testimony today with regards to the many  
4 offers of districts that comported to what advocates  
5 requested, the fact that I tried to prioritize greater CVAP  
6 districts, in the things that I presented, in listening to  
7 the community in achieving those goals, and being very  
8 transparent about what my objectives were, through the  
9 redistricting process, and what -- and things that I was  
10 willing to do, which of course were most definitely  
11 increasing minority-majority districts, and the like.

12 Q You, yourself, have testified you believe the district  
13 that you ultimately voted on, complied with the VRA?

14 A That's right.

15 MR. HUGHES: No other questions. Thank you,  
16 Mr. Fain.

17 THE COURT: Counsel, do you have anything more?

18 MS. WAKNIN: I have short redirect, Your Honor.

19 THE COURT: Okay. Go ahead.

20 REDIRECT EXAMINATION

21 BY MS. WAKNIN:

22 Q It's still good morning, Mr. Fain. I just have a few  
23 questions for you.

24 Mr. Fain, do you recall Mr. Hughes -- Mr. Fain, do you  
25 recall Mr. Hughes asking you about competitive districts?

1 A I do.

2 Q And it's the case that competitive districts were one of  
3 your stated public goals; is that correct?

4 A That's correct.

5 Q And you actually -- Mr. Hughes talked to you about  
6 exhibit, I believe it's 302. It was a memo that you  
7 released.

8 A That's correct.

9 Q And it talked about competitive districts, right?

10 A Correct.

11 Q I'm going to show you Exhibit 235.

12 MS. WAKNIN: Ms. Alejandro, can you please pull it  
13 up?

14 Q This is a text message between you and Paul Graves. And  
15 I'm just going to show that you sent a text that said, "I  
16 told him to keep the same, using the treasurer's numbers, but  
17 not make it 50/50. So I'm good with that."

18 Do you see that text message you sent?

19 A I do.

20 Q And so is it fair to say that, in public, you talked about  
21 competitive districts, but in private text messages, with  
22 Commissioner Graves, you were focused on re-creating  
23 Republican districts?

24 A No, it is not.

25 MS. WAKNIN: I pass the witness.

1 THE COURT: Do you have anything, Mr. Stokesbary?

2 RECROSS EXAMINATION

3 BY MR. STOKESBARY:

4 Q Good to see you again, Mr. Fain. A couple quick  
5 questions. I just want to clarify something that I think  
6 every one of us has asked a little bit about, but would you  
7 say the racial composition of LD 15 was an important  
8 component that you considered, when trying to reach a deal?

9 A Yes.

10 Q Was the racial composition of any other of the state's 49  
11 districts, something that you considered in the same way when  
12 trying to reach a deal?

13 A I believe that that metric was viewed with regard to a  
14 number of districts. I believe some of the original -- the  
15 2012 maps had a certain number of districts that had  
16 minority-majority population, although it might not have been  
17 CVAP. So there was attention to how many districts in the  
18 subsequent drafts had the same.

19 Q So you might have known how many -- you might have known  
20 the racial composition of other districts, but did the exact  
21 number -- was that relevant to how those other districts were  
22 formed?

23 A I would say that whether or not a district was  
24 majority-minority, was a data point in -- the number of  
25 districts that were majority-minority, was a data point that

1 was considered for many districts. It is correct to say that  
2 it was more widely discussed with regards to the Yakima  
3 Valley area.

4 Q So in LD 15, the racial composition was top of mind; is  
5 that fair to say?

6 A It was a very important component of that negotiation.

7 Q Were there any other districts where it was as important  
8 of a component?

9 A No.

10 Q So you mentioned a minute ago, when Mr. Hughes walked you  
11 through just one of the old maps, not five of the old maps,  
12 you correctly pointed out that when you draw a circle that  
13 has to include X number of people, you're, by definition,  
14 going to include people that don't necessarily have some  
15 innate connection.

16 But is it fair to say, though, that there was only one  
17 of the 49 districts where you drew a circle around people  
18 that were -- you drew a circle around a district, where  
19 racial composition was top of mind?

20 THE COURT: That's a really complicated question.

21 MR. STOKESBARY: I'll withdraw that last question,  
22 and just rely on your other answers.

23 Q One other quick question. You used the phrase  
24 "majority-minority district." The plaintiffs' exhibit they  
25 had you read, 302, it referenced an offer to include a

1 majority-minority district. Do you remember that?

2 A I'm sorry, I don't recall which exhibit that was.

3 Q It was the memo to your commissioner colleagues.

4 A Yes. Yes. I had included that.

5 Q Do you remember you referencing majority-minority, in that  
6 context --

7 A I think I refer to CVAP. And I was more than happy to  
8 achieve whatever goals my Democratic counterparts wanted, in  
9 that regard, so long as it fostered competitiveness  
10 throughout the map, as a whole.

11 Q Okay. We're pulling it up, and we can have you read it if  
12 you need.

13 THE COURT: Mr. Stokesbary, let's give Mr. Fain a  
14 break. Come on. We're just treading the same mileage over  
15 and over.

16 MR. STOKESBARY: Okay.

17 Q So two really quick questions. When you said  
18 majority-minority, you meant majority Hispanic CVAP?

19 A When I previously, in my remarks, said majority-minority,  
20 I wasn't referring to any given race, I was just referring to  
21 that the majority of a particular legislative district might  
22 be of non-white descent, because that was a statistic that  
23 was used as a commentary on the maps, as they evolved.

24 With regards to this area, we usually would use the CVAP  
25 number to determine -- and that would be of Hispanic descent.



1 Q So if you were going to offer the other commissioners to  
2 agree to a certain number of majority-minority maps, sort of  
3 by definition, doesn't having a majority of a minority  
4 community, require a racial minimum target?

5 A Again, my goal was in the fostering of competitiveness.  
6 And I let the other commissioners come to me and express --  
7 if that was a data point that was important to me, that would  
8 allow us to get to an agreement, then I would -- or, if that  
9 was a data point that was important to them, that would allow  
10 us to get to agreement, then I would make that a data point  
11 that was important to me.

12 Q Okay.

13 MR. STOKESBARY: No further questions. Thanks, Your  
14 Honor.

15 THE COURT: Flee, Mr. Fain, as quickly as you can.  
16 Leave. Leave. We're done. The door prize I gave Mr. Fain,  
17 was a law review article I wrote about my former boss, Norm  
18 Maleng.

19 You have Dr. Owens next, and that's going to be  
20 Mr. Torchinsky?

21 MARK OWENS

22 Having been sworn under oath, testified as follows:

23 MR. TORCHINSKY: I'm hoping, for flow purposes, I can  
24 get through his direct examination before lunch break. And  
25 if I conclude that, that might be an appropriate time for

1 lunch, where I assume everyone is going to want to cross  
2 examine Dr. Owens.

3 THE COURT: Let Victoria get him positioned here.

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

6 THE WITNESS: Mark Owens, O-W-E-N-S.

7 DIRECT EXAMINATION

8 BY MR. TORCHINSKY:

9 Q Dr. Owens, what's your current occupation?

10 A I'm a political science professor.

11 Q Who's your current employer?

12 A The University of Texas, at Tyler.

13 Q Where did you obtain your undergraduate and graduate  
14 degrees?

15 A My undergraduate degree is in political science, at the  
16 University of Florida. My next graduate degree is a master  
17 of government, from John's Hopkins University; and Ph.D. in  
18 political science from the University of Georgia.

19 Q How long have you been at UT Tyler?

20 A Eight years.

21 Q What kind of classes do you teach?

22 A I teach classes about research methods, to graduate  
23 students and undergraduate students. I also teach classes in  
24 elections, state politics, and Congress.

25 THE COURT: Did I hear your last name is Owen or

1 Owens?

2 THE WITNESS: Owens, with an S.

3 Q I understand you have recently been recruited away from UT  
4 Tyler?

5 A In August, I will start at the Citadel.

6 Q What will your position be at the Citadel?

7 A Assistant professor and assistant director of their  
8 Symposium on Southern Politics.

9 Q What is the Symposium on Southern Politics?

10 A It's a meeting every two years of academics, talking about  
11 their research on -- particularly, like, state populations,  
12 demographics, elections, and/or the history of state politics  
13 in the regions.

14 Q What sort of articles or books have you published?

15 A Most recently I published a book on Texas politics,  
16 looking at the election and public opinion, how it changed in  
17 the state from 2018 to 2020. I also have ten other articles  
18 that focus some on public opinion. This has been based on  
19 surveys of how people looked at their public health, also how  
20 people look at voting in their elections, and also the  
21 historical use of congressional procedure, in Congress.

22 Q In your book, did you focus on the Hispanic population in  
23 Texas?

24 A I did.

25 Q Why?

1 A This is one of the most fast-changing parts of Texas  
2 politics, the increasing turnout of Latino voters in the  
3 state. And also our interest in finding out the types of  
4 candidates that they prefer, how this varies, based off the  
5 characteristics of candidates, and as well how those  
6 candidates engage people within the regions of the state.

7 Q Great. Have you testified or prepared reports in other  
8 voting cases?

9 A I prepared reports. This would be my first time  
10 testifying.

11 Q And in how many cases?

12 A I've prepared reports for two cases in the State of  
13 Florida. First would be Black Voters Matter v. Byrd, and  
14 also a report in Common Cause v. Byrd.

15 Q Would that be one federal case and one state case?

16 A That's correct.

17 Q Where else?

18 A In the county of Galveston, my report has been used  
19 actually in three cases, in that case. But that's in a  
20 federal court.

21 Q So basically you've done more than a couple cases at this  
22 point?

23 A Yes, sir.

24 Q Thank you.

25 I want to ask you, are you generally familiar with the

1 three *Gingles* factors?

2 A Yes.

3 Q Did you examine all three *Gingles* factors in this matter?

4 A I have, through multiple reports.

5 Q I want to talk about the application of those various  
6 factors, to this case. And I want to first start with --

7 MR. HERRERA: Objection, Your Honor. Dr. Owens did  
8 not examine *Gingles* 3, in this case.

9 THE COURT: In his expert report?

10 MR. HERRERA: In his expert reports, Your Honor. And  
11 that was not disclosed to us.

12 THE COURT: Go ahead. We'll take it as it comes.

13 MR. TORCHINSKY: I take issue with that  
14 characterization of Dr. Owens' report.

15 THE COURT: Keep going.

16 Q If we could pull up Dr. Owens' initial report, which is  
17 labeled Exhibit 1001.

18 I want to go to Figure 3 from your initial report in  
19 this case. So *Gingles* 1 refers to the minority community  
20 within a district; is that correct?

21 A Yes.

22 Q And are you aware that *Gingles* 1 has two components, both  
23 numerosity and compactness?

24 A Correct, both.

25 Q Did you consider both?

1 A Yes. In this case, I'm looking at a map of the citizen  
2 voting age population of Hispanics. This is from the  
3 American Community Survey's five-year estimates.

4 Q What do you understand, when you look at this map, about  
5 the distribution of the Hispanic community in the Yakima  
6 area?

7 A First, as I take a look at how the scale of green, the  
8 darker the green or sharper shade, the higher the  
9 concentration of Hispanic citizen voting age population in  
10 this area. Those darker parts of the green tend to be around  
11 the perimeter here of District 15. They also are largely in  
12 the more densely populated areas of those cities.

13 Q Let's go through a couple of questions. Is it possible to  
14 draw a majority Hispanic CVAP in Legislative District 15?

15 A It is.

16 Q So that goes to the numerosity question.

17 With respect to compactness, can you describe, based on  
18 this map, where the Hispanic populations are within enacted  
19 District 15?

20 A In this case, the larger concentrations are not  
21 necessarily, in this case, adjacent or continuous together.  
22 They are on opposite sides. I see in the City of Yakima, as  
23 well as in, like, the City of Pasco.

24 Q Is there another one also from Mattawa, over to Othello,  
25 up in the north?

1 A Yes, I see that.

2 Q How far is it from Yakima to Othello, by road?

3 A Approximately 80 miles.

4 Q How far is it from Yakima to the Tri-Cities?

5 A 83 miles.

6 Q And have you examined the plaintiffs' proposed maps?

7 A Yes, I have.

8 Q And these were --

9 MR. HERRERA: Objection, Your Honor. Dr. Owens never  
10 disclosed his examination of plaintiffs' maps in this case.  
11 None of his three reports.

12 THE COURT: Yeah, he's here. We're going to hear  
13 from him. The objection is overruled.

14 MR. HERRERA: That does not allow plaintiffs a fair  
15 chance to examine, before trial, his opinions on plaintiffs'  
16 proposed maps.

17 THE COURT: Well, you're a trial lawyer, do it on  
18 your feet. When you're a prosecuting attorney, you get no  
19 discovery from the defense, you've just got to be ready to do  
20 it. And that's what you're going to have to do today. Go  
21 ahead, counsel.

22 Q In the plaintiffs' proposed maps that you reviewed, did  
23 they also combine Yakima and Pasco?

24 A Yes.

25 Q In some of their maps, did they combine Yakima with

1 Othello?

2 A Yes.

3 Q In your view, what would be the reason to combine Othello,  
4 Yakima and Pasco, into one district?

5 A To increase the Hispanic voting age population, the number  
6 of Hispanic voting age citizens.

7 Q Do you see any explanation, other than race, to have  
8 combined these three distant areas?

9 MS. FRANKLIN: Objection, foundation.

10 THE COURT: What was the objection?

11 MS. FRANKLIN: Foundation, Your Honor.

12 THE COURT: Well, overruled. You can answer.

13 A So it's not immediately clear to me, since we're  
14 identifying or connecting different, disparate cities.

15 Q There's no rivers that connect these cities, are there?  
16 All three of them?

17 A No.

18 Q There's no --

19 THE COURT: Have you been out there?

20 THE WITNESS: I have not.

21 THE COURT: So your knowledge about the area is  
22 limited to what you hear from other people about things like  
23 that?

24 THE WITNESS: And where we can look at the data.

25 THE COURT: Data doesn't control all areas of people



1 who have interests of -- community of interests, or anything  
2 like that. Would you agree?

3 THE WITNESS: I would not know that.

4 Q Are Yakima and Pasco in the same metropolitan statistical  
5 areas?

6 A No.

7 Q Are Yakima and Othello in the same metropolitan  
8 statistical areas?

9 A No.

10 Q In your view, are the minority populations in this area  
11 reasonably compact?

12 A Not within the district.

13 Q And are the Hispanic populations, at the far edges of the  
14 district, in enacted LD 15?

15 A Yes, they are.

16 Q In the plaintiffs' proposed maps you examined, are they  
17 also in the edges of the districts, on all of their proposed  
18 maps?

19 MR. HERRERA: Objection, Your Honor. This was not a  
20 disclosed opinion, again, on plaintiffs' maps. And under  
21 Rule 26, this opinion should be excluded from the record.

22 THE COURT: I'll sustain the objection to this  
23 question, because I don't think it's really pertinent.

24 Q Let's go to talk about *Gingles* 2 and 3, generally. What  
25 kind of data did you use for your reports?

1 A These election results from the precincts, as well as the  
2 citizen voting age population estimates provided by the  
3 American Community Survey.

4 Q Let's talk about that. The election results came from  
5 where?

6 A The Secretary of State.

7 Q The Washington --

8 A The Washington Secretary of State has a file on that.

9 Q And the American Community Survey, who provides that?

10 A The U.S. Census Bureau.

11 Q How does the Census Bureau get the data?

12 A They conduct surveys to limited portions of -- across the  
13 country, right, to try and get a representative sample of  
14 each community, which they can use then across five years, in  
15 particular, to release estimates of what the demographic, as  
16 well as work-related statistics for other groups in a  
17 community, as close to the census-block-group level.

18 Q In that ACS five-year survey, do they provide citizen  
19 voting age population?

20 A They do.

21 Q That citizen voting age population, the Census Bureau  
22 releases a margin of error around those estimates?

23 A They do.

24 Q In general, as a social scientist, what kind of  
25 statistical methods are available to you to infer facts that

1 you can't observe directly?

2 A Most common approach that we've used here is called  
3 ecological inference. There are a number of methods we can  
4 use in this case. But it's really, in our mind, to take the  
5 data we know that's available, where people live, and where  
6 candidates receive votes, and try and solve the problem that  
7 the ballot provides.

8 I'm not able to understand how any individual votes, but  
9 we're able to see, in this case, if there's a high  
10 concentration of one group and high concentration of one type  
11 of candidate that gets those votes, then that -- we have an  
12 understanding and ability to predict the likelihood that  
13 individuals with those characteristics are also casting  
14 ballots for the similar kind of candidate.

15 Q Now, I assume there are different ways to do this kind of  
16 inference; is that correct?

17 A Yes.

18 Q What are the three most common methods?

19 A One in particular could be the Goodman's Regression, which  
20 was referred to by another expert. I think, in this case, we  
21 also see ecological inference or King's EI, and the  
22 ecological inference row by columns.

23 Q And in the commonly available R package, which is  
24 statistical software, I understand there is a package  
25 available called eiCompare?

1 A There is.

2 Q And what does eiCompare do, and what does it include?

3 A EiCompare allows you to provide the different data that  
4 we've also discussed, or package things that -- I guess, in  
5 this case, the precinct level, the block-group levels. But  
6 also to compare all three of those metrics together. So it  
7 includes all --

8 Q So when you load the data into the eiCompare method, it  
9 actually produces all three kinds of different regressions,  
10 as its output?

11 A Yes. That's what I see from the reading, and how it's  
12 explained in its reports.

13 Q You chose to use Goodman's Regression; is that correct?

14 A Yes. I use a file, in particular, which shows how the  
15 formulas are estimated. So I didn't use the statistical  
16 package.

17 Q So why did you choose to use Goodman's Regression?

18 A It's perhaps the straightforward and simplest test about  
19 the linear best fit or estimate of the votes, given where  
20 people live.

21 Q What are some of the criticisms of Goodman's Regression?

22 A The clearest one is that when the assumptions that the  
23 model has, which are typical with the linear regression,  
24 which might be a normal distribution curve, or that there is  
25 essentially perhaps polarized groups, or votes that -- in any

1 kind of wonky situation of a data, that is very hard to  
2 analyze, the estimates of that group can be below zero or  
3 could above one or 100.

4 Q That's not a logical conclusion; is that correct?

5 A Right. That is, it cannot be more than 100 percent  
6 committed to a candidate.

7 Q When you ran your Goodman's Regression in this case, did  
8 you find any of those, I think what you called "wonky"  
9 variables?

10 A No.

11 Q No. And King's EI, does that correct for that?

12 A It does. So one of the important, in this case, seen as  
13 an update in social science, but it changes the assumptions  
14 where they're using a new distribution, which is going to --  
15 essentially no longer the normal distribution that they have,  
16 in order to make sure no result will exceed zero or one.

17 Q But because you didn't have any results that exceeded zero  
18 or one, when you ran Goodman's Regression, you didn't feel  
19 the need to use King's EI; is that correct?

20 A Correct.

21 Q Do you know what regression method was used, by political  
22 scientist Bernie Grofman, that became the basis for the  
23 Supreme Court's *Gingles* test?

24 A Ecological inference.

25 Q But was it King's EI, was it rows by columns, was it

1 Goodman's Regression?

2 A It was Goodman's Regression.

3 Q Do you -- are you familiar with the MGG Lab and MIT  
4 Professor Moon Duchin?

5 A Yes.

6 Q Are you aware that Goodman's Regression was used by her,  
7 in her analysis of Yakima County?

8 A Yes.

9 Q Is it fair to say that Goodman's Regression is widely used  
10 in current academic literature?

11 A Yes. It's one of the tools that we have. It can either  
12 now be used as a comparison for new and emerging methods.  
13 But it's also one of the ways we can use to understand,  
14 right, the -- essentially the underlying data that we're  
15 trying to analyze, and whether it is well behaved, and you  
16 have expectations. In this case, I would say when you have  
17 racially polarized, the correlation is actually quite  
18 consistent, and so you wouldn't or are unlikely to get these  
19 opportunities.

20 Q In King's EI, you said that kind of compresses the curve.  
21 Is that why you declined to use King's EI in this case?

22 A Yes.

23 Q Rows by columns. What was that designed for?

24 A Multi-candidate races.

25 Q And in general elections in Washington State, in light of

1 the top-two primary method, are there multi-candidate general  
2 elections in Washington State?

3 A No, not in the state level.

4 Q Is that why you declined to use rows by columns?

5 A Yes. I didn't see the need to use it.

6 Q When you looked at the data that was available to you, how  
7 did you determine who was a potentially eligible voter?

8 A In this case, it would be based off of the citizen voting  
9 age population, and those estimates provided by the Census  
10 Bureau as the eligible groups.

11 Q How did you determine the race of the individuals who  
12 voted?

13 A Again, they provide them in column one, which you can see  
14 the Hispanic number, then you see non-Hispanic white, you can  
15 also see non-Hispanic black. So I was able to -- in this  
16 case, the regression includes the percentage of the Hispanic  
17 citizen voting age population, relative to all citizen voting  
18 age population.

19 Q Okay.

20 A The non-Hispanic white population. And then in this case  
21 also the others, which can combine to the third group.

22 Q So you used the ACS data to determine who was -- the race  
23 of the individuals?

24 A Yes.

25 Q That were in particular precincts, census blocks?

1 A Yes. In this case, to be more specific, the data reported  
2 at the census-block-group level, through software, in this  
3 case Maptitude, we're able to disaggregate this to the  
4 census-block level, in order to match with the precinct  
5 election variables at the same level. Then you can aggregate  
6 it back to the districts.

7 Q Okay. Let's talk a little bit about a method called BISG.  
8 What is BISG?

9 A Bayesian Informed -- so in this case, a way to -- that's a  
10 way to do the surname analysis. So the important part here  
11 was that you can have a list of voters, and if you know  
12 something about them, but you don't know their ethnicity, or  
13 their race, you come to an estimate of that.

14 Q In Washington State, Washington does not keep race or  
15 ethnicity on their voter rolls.

16 A No, they do not.

17 Q Is it true there are some states that do?

18 A Yes.

19 Q BISG was created by who?

20 A Professor Kosuke Imai.

21 Q Is he a professor at Harvard University?

22 A Yes.

23 Q Has he done estimates on, or any examination of any  
24 undercounts or overcounts that BISG produces?

25 A Yes.



1 Q What has he determined, with respect to Hispanic voters,  
2 can happen with BISG?

3 A One of his studies in this case looks at six different  
4 southern states, this could be particularly Georgia and  
5 Florida, which do identify the race and ethnicity of the  
6 registered voters. Then looks in the case about how could  
7 you identify those surname analyses using the 2010 census  
8 list, and sees in this case that there's an undercount or  
9 number of false negatives in 20 percent of the list.

10 Q Did Dr. Imai publish that research in December of 2022?

11 A Yes.

12 Q It was published at science.org; is that correct?

13 A Yes.

14 Q So your analysis, when you were using the ACS data, and  
15 the election results, you considered -- does that include  
16 considerations of turnout differentials?

17 A It does, in this case, because you're able to look at  
18 where votes are cast. In this case now at the  
19 census-block-group level, or census-block level.

20 As it's related -- so if you have low votes cast, then, in  
21 particular, you're not attributing more votes to a  
22 particular, in this case, citizen group, or how that might be  
23 defined by the American Community Survey.

24 Q So I want to actually walk you through, let's call it, a  
25 toy example of how this might work, just to illustrate for

1 the court, how your method and let's say the methods of  
2 others might work out in the actual analysis.

3 So let's pretend we had four districts. And let's  
4 pretend that the Census Bureau tells -- and these could be  
5 precincts, these could be block groups, these could be census  
6 blocks. The unit is irrelevant, for my illustration here.

7 Let's pretend there were 250 citizens of voting age  
8 population in each one. And let's pretend that the ACS data  
9 tells us, in this one there's 200 Hispanics, and 50 whites.  
10 And because we're talking about Yakima, I'll just use those  
11 two categories.

12 In this one, let's pretend that the ACS data tells us  
13 there's 150 Hispanics, and 100 whites. And let's pretend in  
14 this one, the ACS data told us 50 Hispanics, and 200 whites.  
15 And let's pretend in this one, the ACS data told us there  
16 were 125 Hispanics, and 125 whites.

17 Now, I want to ask you, Dr. Owens, in your familiarity  
18 with the census data, how often do we find, at least at the  
19 block level, racially sort of homogenous versus racially  
20 heterogenous census blocks?

21 A More census blocks are going to be racially homogenous.

22 Q In a typical census block, it's very likely that 90  
23 percent or more of people in that particular census block  
24 might be of a particular race?

25 A Yes, that could be.

1 Q So you're more likely to find, if I'm understanding that,  
2 you're much more likely to find census blocks that are more  
3 like this upper quadrant, with 200 Hispanics, and 50 whites,  
4 than census blocks with 125 Hispanics, and 125 whites?

5 A Yes. Depends on where you are. In each area, it's going  
6 to be contextually different. But across the state, if  
7 people are living in communities, like, school districts  
8 you're going to have census blocks, which might -- yeah, have  
9 a lot more similarities to the upper left-hand corner that  
10 we're looking at.

11 Q Census blocks, in the real world, are very small units of  
12 analysis, correct?

13 A They are.

14 Q So there may be 25 people in a census block, or 100 people  
15 in a census block, sometimes a couple hundred people in the  
16 census block?

17 A More in the dense populations.

18 Q Let's continue my hypothetical, and say there are 100  
19 votes cast in each one. In this upper block, when your  
20 analysis looks at this precinct, tell me how you would  
21 determine how many of those 100 voters were Hispanic, and how  
22 many of those 100 voters were white.

23 A So in most cases, we're looking at the number of those  
24 voters. If it's Hispanic, and you know the turnout was of  
25 100, you think in this case, what's 200 out of 250?

1 Q Would that be 80?

2 A 80 percent.

3 Q So your analysis would tell you that 80 Hispanics had  
4 voted there?

5 A Yes.

6 Q And your analysis would tell you if 80 were Hispanic, and  
7 100 votes, how many were white?

8 A Twenty.

9 Q Now, if you were to use BISG, BISG would do what? How  
10 would BISG determine Hispanics versus whites?

11 A It would include whatever names are on the list, in that  
12 census block, and then match it to the list of Spanish  
13 surnames, or in this case we're talking about Hispanic,  
14 Spanish surnames, and give you an estimate of what that would  
15 be. And perhaps identifying here, based on the research,  
16 that it would be an undercount.

17 Q In other words, BISG here might determine that there were  
18 64 Hispanics, correct, if it had the 20 percent undercount in  
19 this particular census block?

20 A Yes.

21 Q And if you only have whites and Hispanics in that census  
22 block, what would that mean for the white population in that  
23 particular census block?

24 A It means it would estimate 36 votes.

25 Q And so let's go next to a district, or precinct, or

1 whatever unit of analysis, in the upper right-hand quadrant  
2 that has 150 Hispanics, and 100 whites. Your method of using  
3 the ACS data would tell you how many of those voters were  
4 Hispanic?

5 A In this case, it looks like the two-thirds.

6 Q Would that be -- 150 of 250, would that be 60 percent?

7 A Yes.

8 Q That would be how many Hispanics?

9 A Sixty. Then 40.

10 Q That would mean how many white voters?

11 A Forty.

12 Q Again, if you use BISG, and went back to the 100, and you  
13 had the 20 percent undercount in here -- sorry, and you had  
14 the 20 percent undercount of Hispanics, how many Hispanics  
15 would it tell you voted in the census block, in the upper  
16 right?

17 A In this case, I'm seeing a minus 12 -- 48.

18 Q So 48. And where would those 12 voters go to meet up the  
19 total of 100?

20 A Often in this case, BISG overestimates the white  
21 population, they would be on the same side of whites, you  
22 would look at having 52.

23 Q In this case, BISG might tell us that a precinct that you  
24 found to be majority Hispanic, might be majority white,  
25 because of the BISG undercount?

1 A Correct.

2 Q Is that why you chose to use the ACS data, which comes  
3 from the census?

4 A Yes. I think in this case, that way you're applying the  
5 same estimation across all of our precincts.

6 Q So BISG is, itself, an estimate, that then is based on --  
7 in some degree, based on the ACS data. So it's layering two  
8 levels of estimation?

9 A Yes. And one of the things -- because it's adding in  
10 assumptions, right, and another stage of analysis.

11 Q Okay. So is this --

12 MR. TORCHINSKY: And I could complete the model for  
13 the court, if you'd like me to, but the same pattern kind of  
14 applies in each block.

15 THE COURT: We'd rather you didn't.

16 MR. TORCHINSKY: Okay. Excellent.

17 Q Again, you would find many more districts that are more  
18 like the upper left quadrant here, where 80 percent, plus of  
19 a particular unit of analysis, would be of a homogenous race?

20 A Yes.

21 Q Okay. So is this how you assessed turnout, in your  
22 electoral models, using this basic -- obviously you did it a  
23 little more complex -- but using this basic method?

24 A Yes. When we're thinking about especially what is the  
25 preference of those voters.

1 Q And when you were making this assessment, did you generate  
2 some kind of confidence interval around your estimates?

3 A Yes.

4 Q And in political science, do you generally report your  
5 confidence intervals?

6 A Yes.

7 Q Why are confidence intervals important?

8 A One is to say that we are doing our best to make a guess  
9 on what we don't know. And so it's important to put a range  
10 on where we think that guess is likely to fall, knowing where  
11 the potential error exists, because of what we cannot  
12 observe.

13 Q When you were choosing the elections you examined in your  
14 report, I notice you didn't do any elections before 2018.  
15 Why is that?

16 A There was a substantial change in how Washington votes.

17 Q What was that change?

18 A Moving to the all-mail election.

19 Q And when you were looking at the 2018 and 2020 statewide  
20 elections, did you select some of them, or how did you choose  
21 which ones you looked at?

22 A I looked to include each statewide election, especially  
23 those, because they were provided by the Secretary of State  
24 in the file.

25 Q And by not picking and choosing, you were actually looking

1 at -- what did that tell you about the sort of universe of  
2 voters you were looking at?

3 A One is to think that there are chances where even though  
4 they are casting their ballot, the physical ballot, and there  
5 are multiple offices on that ballot, there can be  
6 differentiations movement and who they supported. But really  
7 because it jumped to me that is, it looked at all the  
8 elections, they represent different contexts. Some which  
9 were partisan, some that were not, some co-partisan, were  
10 running against each other.

11 Q Were you trying to discern whether the votes of Hispanic  
12 voters were based on party or based on race?

13 A The reason for looking at it, I'd say across multiple  
14 elections, is we're able to see the consistency of that.

15 Q Okay. And so what do general elections with -- again,  
16 just to confirm for the court, Washington State in general  
17 elections only has two candidates; is that correct?

18 A Yes.

19 Q That's because they emerge from a jumbo primary?

20 A Yes.

21 Q It's possible that two candidates with the same party  
22 preference, can show up in a general?

23 A Yes.

24 Q More often than not, it ends up being one Republican and  
25 one Democrat, in the general?



1 A It does.

2 Q What do general elections, with two non-minority  
3 candidates, when party affiliation is listed as a preference,  
4 and there's one Republican and one Democrat, tell you, in  
5 general, as a political scientist?

6 A If there's one Republican and one Democrat, we're getting  
7 the understanding of the partisan preference of this group of  
8 voters.

9 Q What do elections, with one minority and one non-minority  
10 candidate tell you, when party affiliation is shown in a  
11 general election, generally, as a political scientist?

12 A If the introduction of race creates any deviation from the  
13 partisan preference, you tend to see an election where race  
14 might not be a factor.

15 Q And in Washington, I think you said it's possible there  
16 are two candidates, in the same general election, with the  
17 same party affiliation?

18 A Yes.

19 Q What would that tell you?

20 A It gives us a real-world example, if party could be  
21 controlled for, and you just see that based off of the  
22 candidates, what they're advocating for, if any group of  
23 voter tends to continue to coalesce around one candidate.

24 Q In Washington, are there some statewide races that are  
25 listed without a party affiliation, on the general election

1 ballots?

2 A Yes.

3 Q In those races, and again, the non-judicial races, do  
4 major parties often endorse in those races?

5 A I believe so. They did in the election that I analyzed.

6 Q Okay. So first of all, why did -- let's put up Table 1,  
7 from your initial report.

8 So I'd like you to look here at the first column under  
9 race and ethnicity. Is that the race of the Democratic  
10 candidate?

11 A Yes, it is.

12 Q And the second column, is that the race of the Republican  
13 candidate?

14 A Yes, exactly, following the dashes.

15 Q Would the exception to that be the 2020 lieutenant  
16 governor race, where it lists two whites?

17 A Yes. This would also be indicating that there are two  
18 Democratic candidates in that race.

19 Q I'd like to focus just on what you found in this chart, in  
20 enacted Senate District 15. And the court has the rest of  
21 the report.

22 So what happens when there's only white and Democratic  
23 ballots -- sorry, when there are only white Democratic and  
24 Republican candidates on the ballot, what happens to -- what  
25 do you see in the preference of Hispanic voters, based on

1 your analysis in those classes of elections?

2 A In enacted Legislative District 15, the Hispanic  
3 preference for the Democratic candidates, so the white  
4 Democratic candidate, when running against a white  
5 Republican, ranges between 69 percent and 76 percent.

6 Q Okay. That's great.

7 Okay. So what happens to Hispanic voters, when there  
8 are two Democrats on the ballot, like the lieutenant governor  
9 race in 2020?

10 A What we see here, Hispanic preference for one of the  
11 Democratic candidates falls to 49 percent. To me this  
12 represents something where Hispanic areas, with high  
13 concentrations of Hispanic voters, are voting for either one  
14 of the Democratic candidates.

15 Q Okay.

16 A Not cohesive. We cannot know their preference.

17 Q Have you reviewed Dr. Collingwood's reports in this case?

18 A Yes.

19 Q And is it true, he did not include the 2020 lieutenant  
20 governor race, in the list of races he analyzed?

21 A No, I did not see it.

22 Q So what happens when there's a Hispanic Republican on the  
23 general election ballot, like in the 2020 Superintendent of  
24 Public Instruction race?

25 A In this case, also in enacted Legislative District 15, and

1 across all of the other districts that I analyzed, the  
2 Hispanic voters were less supportive of the Democratic  
3 candidate.

4 Q And in that race, again, the Republican candidate had a  
5 Hispanic surname?

6 A Yes.

7 Q And it's technically a nonpartisan race. Why did you  
8 include it on your list of partisan races?

9 A Because both political parties made endorsements of the  
10 candidates who qualified for the general election.

11 Q And is that one of the races that Dr. Collingwood looked  
12 at?

13 A Yes, it was.

14 Q And is it true that he found that race was not racially  
15 polarized?

16 A Yes.

17 Q And, again, it was the Hispanic candidate that was  
18 endorsed by the Republican Party; is that correct?

19 A Yes.

20 Q Did the Hispanic -- did the Democratic Party ever have a  
21 Hispanic candidate advance to any of the elections, that you  
22 analyzed, in 2018 or 2020?

23 A No.

24 Q Okay. Based on this, do you believe that race is the  
25 determining factor of Hispanic votes in Senate -- in

1 Legislative District 15?

2 A No. I see, in this case, that where you have party to  
3 look at, party is driving most of the preferences of Hispanic  
4 candidates, when they're presented with --

5 Q And just to clarify, your prior statement, you're talking  
6 about elections where there are two white candidates as the  
7 choice?

8 A Yes.

9 Q And you started to say something about, when there's a  
10 Hispanic candidate.

11 A In this case, when there's a Hispanic candidate, you see a  
12 deviation from that pattern.

13 Q What does that tell you?

14 A Some is that voters are considering multiple factors of a  
15 candidate. So one could be partisan. I know in this case,  
16 it's one where we're seeing, there's a sort of nonpartisan  
17 election, even it's not going to get as much attention as the  
18 Governor's race. But individuals know, on their ballot, not  
19 only like the name of the individual, and information about  
20 generally who the Republican candidate might be, or the  
21 Democratic candidate, as they introduce themselves.

22 Q Let's switch to your Table 2, from your same report. So  
23 in this chart, you're looking at judicial races; is that  
24 correct?

25 A Yes.

1 Q Why did you choose to look at judicial races?

2 A Judicial races give us the context, where partisanship is  
3 not indicated, yet a voter could still see -- so if we look  
4 at the groups of voters, if they tend to be coalesced around  
5 the same candidate, either for reasons of issues, or their  
6 ability to identify the candidate in a certain way.

7 Q What did you find, when you looked at judicial races in  
8 enacted Senate District 15?

9 A I saw in this case that Hispanic voters were supportive of  
10 a candidate, often the same candidate, in this case, if it  
11 was -- and I use NAIA, Native American Indian American --  
12 with representative, with Judge Montoya Lewis. Additionally,  
13 if a black candidate is running against a white candidate,  
14 then the Hispanic cohesion in support of that candidate is a  
15 little bit lower.

16 But when Judge Gonzalez was running, as well, against an  
17 Asian opponent, the opportunity here was, the coalition of  
18 the group of voters tended to also be the same, and reflect  
19 the same kind of cohesion that we see among white Democrats,  
20 when they're running against white Republicans.

21 Q In this particular chart, it looks like, in your enacted  
22 15, it looked like -- looks like the Hispanic voter  
23 preference was the highest for the candidate with the  
24 Hispanic last name?

25 A Yes, it was.

1 Q Let's look at your discussion of turnout, in your initial  
2 report. How did you arrive at these numbers, specifically,  
3 for enacted District 15, your real-world application of the  
4 toy analysis that I showed the court?

5 A Yes. One of the opportunities here was, I'm in  
6 consideration whether there would be lower participation in  
7 any midterm election, trying to estimate how many votes were  
8 cast in an area, instead of -- as a dependent variable --  
9 instead of looking at how many votes were cast, for a  
10 particular Democratic candidate.

11 And we're able to see here and estimate how likely each  
12 group was to participate. This is, again, out of all  
13 eligible voters of the citizen voting age population.

14 Q It appears Hispanic turnout went up from 2018 to 2020; is  
15 that correct?

16 A The Hispanic --

17 Q From 2018 to 2020, in Senate District 15?

18 A No. I see in this case, in the enacted district, from  
19 2018 to 2020, Hispanic turnout did increase in those groups.  
20 It was lower in 2018, higher in 2020, for Hispanic  
21 individuals.

22 Q It was about 10 percent in 2018, is that what this chart  
23 shows?

24 A Yes.

25 Q And 36 percent in 2020?

1 A Yes.

2 MR. TORCHINSKY: To show the court, that is this  
3 number, and this number. They're not exactly lined up  
4 neatly.

5 Q Why do you think that increased, in your experience as a  
6 political scientist who looks at elections?

7 A One is to understand, in this case, for me, was the  
8 introduction of another election reform, the opportunity here  
9 for same-day registration.

10 Q When did that go into effect?

11 A In 2019. But now, essentially, in full effect in the 2020  
12 election.

13 Q And the 2020 election was only the second election, after  
14 the all-mail balloting was introduced in the state; is that  
15 correct as well?

16 A Yes.

17 Q What else is different between elections held in 2018 and  
18 elections held in 2020?

19 A You also see an increase in voter participation among the  
20 non-Hispanic whites.

21 Q Why? What elections were on the ballot in 2020 versus  
22 2018?

23 A Not only the presidential elections, but all of the  
24 statewide elections for state offices in Washington. In  
25 2018, there was -- in my analysis, I included a view, not



1 only of the judicial race, but also the U.S. Senate race.

2 Q And is it -- and in Washington State, in light of the  
3 same-day registration, somebody who is eligible to vote is  
4 always eligible to turn out; is that correct?

5 A Yes.

6 Q There's no pre-registration requirement anymore; is that  
7 correct?

8 A Correct.

9 Q And so what does that tell you, in a district where  
10 Hispanics are a majority of the citizen voting age  
11 population, and if every one of them turned out, and they all  
12 voted the same way, that candidate would win, right?

13 MR. HERRERA: Objection, Your Honor, leading. I  
14 don't know if the witness is testifying, or the attorney.

15 THE COURT: It's a hypothetical question. Go ahead,  
16 you can answer. Objection overruled.

17 A This is one of the things that we're looking to, is now it  
18 is more convenient to vote in the State of Washington, than  
19 it had been before. Individuals that were not turning out to  
20 vote before, right, can now vote, number one, register to  
21 vote, by mail, as much as eight days before the election, or  
22 go register and vote in person, within the last week of the  
23 election.

24 Q Okay. So in your conclusion, at least in your initial  
25 report, just to summarize for the court, it is possible to

1 draw majority Hispanic districts around District 15, right?  
2 The enacted map has it, and the plaintiffs' hypotheticals  
3 have it?

4 A They both do.

5 MR. HERRERA: Objection, Your Honor, again, on  
6 commenting on plaintiffs' proposed maps.

7 THE COURT: Overruled. The answer was yes, they both  
8 do.

9 Q And in your view of those maps, where would the Hispanic  
10 populations in each of those maps be located?

11 A Each are in the more highly populated cities, that are at  
12 the perimeter of the district.

13 Q In the -- in your examination of the Hispanic vote, what's  
14 driving Hispanic vote, in your analysis? Is it race?

15 A I believe it most often is going to be the partisanship of  
16 the candidates.

17 Q Okay. And the Hispanic voting age population in the  
18 enacted district, again, if the Hispanic population turned  
19 out and voted cohesively, they would have an opportunity to  
20 elect a candidate of choice; is that correct?

21 A Yes.

22 Q Did you have an occasion to file supplemental reports in  
23 this case?

24 A I did.

25 Q Why did you file supplemental reports?

1 A Following the November '22 election, we were able to  
2 analyze and look at the results of not only the precinct  
3 election results, of how people voted in the Legislative  
4 District 15, and were able to analyze that really to see how  
5 the district performed.

6 Q Okay. And did you file more than one supplemental report  
7 in this case?

8 A Yes. Two.

9 Q Why did you file the second supplemental?

10 A One in response to another expert in this case.  
11 Dr. Collingwood wrote a -- he wrote his own supplemental  
12 response, then I responded to that.

13 Q Let's turn to your December 2022 report. Who are the  
14 candidates in the 2022 Senate District or Legislative  
15 District 15 elections?

16 A The Democratic candidate was Lindsay Keesling, and the  
17 Republican candidate is Nikki Torres.

18 Q Just to be clear, that was the only contested race in  
19 Legislative District 15, correct? The two House races were  
20 uncontested?

21 A Correct.

22 Q You only looked at the contested race?

23 A Yes.

24 Q Again, just to clarify, the Republican candidate was also  
25 the Hispanic candidate?

1 A It was. Yes, she is.

2 Q What was the final result, in that general election?

3 A The Republican candidate, Nikki Torres, won the election,  
4 with almost 68 percent of the vote.

5 Q She was also the Hispanic candidate?

6 A Yes.

7 Q The Democratic candidate received what percent of the  
8 vote?

9 A 32 percent.

10 Q And she was the non-Hispanic candidate?

11 A Yes.

12 Q Did you have an opportunity to examine the Hispanic vote,  
13 in that race?

14 A Yes. So in this case, I looked at the votes that were  
15 cast within, now the new Legislative District 15, and, again,  
16 using the information from the citizen voting age population  
17 of the American Community Survey estimate, how each group --  
18 whether they cohesively supported one candidate, over the  
19 other. So the first I did was just present --

20 Q Hold on. Hold on. Hold on. Slow down. Let me ask some  
21 questions.

22 MR. TORCHINSKY: First, I want to display, for the  
23 court, Table 1 from Dr. Owens' supplemental report.

24 Q So you were talking about your estimates. What did your  
25 estimate show for each of the two candidates, if you can kind

1 of point out for the court on the chart.

2 A Showing both the opportunities that -- they're the  
3 reflection of each other, right? So the non-Hispanic white  
4 candidate, Lindsay Keesling, received an estimated 52 percent  
5 support. So 52 percent of the Hispanic voters, in  
6 Legislative District 15, supported her.

7 Q What percentage represented Nikki Torres?

8 A 48 percent.

9 Q What did that tell you about the Hispanic vote, in 2022?

10 A They were split, and not cohesive.

11 Q What was your confidence interval?

12 A The estimate, which would show 52 percent support for  
13 Lindsay Keesling, could range somewhere from 47.5 percent and  
14 55.9 percent.

15 Q Did you arrive at these estimates, using essentially a  
16 real-world application of the toy example that I showed the  
17 court?

18 A Yes. This is the same version at which I did a --  
19 replicated my analysis from my first report, with the new  
20 election information.

21 Q You used Goodman's Regression, again, to do that?

22 A Yes.

23 Q And did it produce, when you were doing your analysis, any  
24 of the unreasonable results that would have caused you to  
25 consider King's EI or rows by columns?

1 A No.

2 Q So do you believe that it produced reliable results?

3 A Yes.

4 Q What do you take, from your results, in comparing the 2022  
5 Senate District election with, say, the 2020 Superintendent  
6 of Public Instruction election, where you also had a Hispanic  
7 Republican candidate? Do you find a consistency or  
8 inconsistency there?

9 A In this case, I find those two are consistent. The  
10 context of candidates running is close to identical, although  
11 one had a white -- a non-Hispanic white male, and the other a  
12 non-Hispanic white female. But keep in consideration our  
13 look at race and party, these are opportunities where you  
14 thought if the Hispanic Republican were to run in the area,  
15 in this case she received almost as many votes as the  
16 Democratic candidate, kind of consistent with what we saw  
17 from this Superintendent of Public Instruction race.

18 Q Okay. And so your conclusion about 2022, where there was  
19 a Hispanic Republican, is, from what you've just said,  
20 consistent with what you found when you looked at the 2020  
21 election, where there was also a Hispanic Republican on the  
22 ballot?

23 A Yes. And in this case, it's a deviation from what you  
24 might see, if a white Republican ran against a white  
25 Democrat.

1 Q In this election, was there a clear candidate of choice  
2 for Hispanic voters?

3 A No.

4 Q Let's talk briefly about the U.S. Senate race, in  
5 Legislative District 15. Was that the only other statewide  
6 election run in 2022?

7 A Yes.

8 Q Did you look at this race?

9 A I did. And so I add, in this case, a comment just below  
10 that -- this is to give an estimation towards that previous  
11 question where, you know, how would Lindsay Keesling do  
12 relative to U.S. Senator Patty Murray?

13 Q And let's just go through who the candidates were, in the  
14 Senate election in 2022, in the general. You said it was  
15 Senator Patty Murray, and she is a white Democrat; is that  
16 correct?

17 A Yes.

18 Q The Republican, or other candidate in that race was who?

19 A Right now I don't recall.

20 Q Would I be correct if I said it was a woman named Tiffany  
21 Smiley?

22 A Yes, it is.

23 Q Was she a white Republican?

24 A She is.

25 Q And so your estimates of 2022, in this district, show that

1 essentially when you have a white Democrat, versus a white  
2 Republican, the Hispanic voter preference goes back to the  
3 same pattern that you found in '18 and '20?

4 A It does. There was an 8 percent difference in how  
5 essentially we could see the cohesion of Hispanic voters, in  
6 that same election. One of the things, if it were to be  
7 60 percent of Hispanics were cohesively behind Patty Murray,  
8 that's lower than we saw in 2018 or 2020.

9 Q Just to be clear, if we said that Keesling ran 8 percent  
10 behind, does that mean your estimated support among Hispanic  
11 voters, for the white Democrat, was about 60 percent in the  
12 U.S. Senate race?

13 A Yes.

14 Q And, again, that would be consistent with what you found  
15 in the '18 and '20 elections?

16 A Yes. Without race as a consideration for any of the  
17 voters, or race and ethnicity, voters would tend to choose  
18 party.

19 Q Okay.

20 Let's -- let me just -- give me one second.

21 THE COURT: Let me ask you, counsel, are you going to  
22 finish your direct by noon?

23 MR. TORCHINSKY: If I had 20 minutes, I could  
24 probably finish my direct.

25 THE COURT: You don't. So I think what we'll do is



1 we'll take our break now, and then start up at 1 o'clock, and  
2 we'll finish up with Dr. Owens this afternoon.

3 MR. TORCHINSKY: Just to be clear, I think it would  
4 be the court's preference if none of us talk to Dr. Owens  
5 during the lunch break.

6 THE COURT: I don't care. Unless you don't want to  
7 talk to anyone, Doctor. Yeah. Nobody is going to accost him  
8 or anything like that. Don't worry about that. Okay. So  
9 we'll reconvene at 1 o'clock. We are adjourned.

10 (Recess.)

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1 AFTERNOON SESSION

2 THE COURT: All right. Mr. Torchinsky, you may  
3 finish up your direct of Dr. Owens.

4 Q Dr. Owens, before we go too much further, I want to just  
5 go back to one thing that you said earlier. Washington  
6 State. What was it that made you choose the 2018 elections,  
7 going forward? I'd like you to clarify that.

8 A One was that it was still a set of election reforms, but  
9 the election reform which was done, is the ability for youth  
10 pre-registration, as well as the ability for automatic voter  
11 registration, through other state agencies. So prior to the  
12 lunch break, that was my part, to incorrectly say all mail-in  
13 ballots. That was done beforehand.

14 Q Did that happen in about 2011, the all mail-in ballots?

15 A Yes.

16 Q Are you familiar with Dr. Collingwood's response to your  
17 supplemental report?

18 A Yes.

19 Q Did you have a chance to review it?

20 A I did.

21 Q So looking at Dr. Collingwood's analysis, he used BISG to  
22 estimate Hispanic voters; is that correct?

23 A Yes. His supplemental report, same method as the first  
24 report.

25 Q So let's talk about some of the limitation of CVAP, and

1 BISG. So CVAP comes from the ACS, you said?

2 A Yes.

3 Q And that has an estimated error range, that comes from the  
4 Census Bureau?

5 A It does.

6 Q And BISG, that also has an estimated error rate that comes  
7 with it?

8 A Sure.

9 Q Has Dr. Imai established the error rate for that, or how  
10 do you figure out what the error rate is for BISG?

11 A I think in this case, I wouldn't comment, in that I didn't  
12 run the analysis.

13 Q But you would say that Dr. Collingwood's assessment of  
14 who's a Hispanic voter, is an estimate, correct?

15 A Yes.

16 Q Dr. Collingwood doesn't report any confidence intervals  
17 around his estimates of Hispanic turnout, does he?

18 A Not that I saw.

19 Q Okay. And I also want to clarify, in Dr. Collingwood's  
20 report, he says he uses a software package called eiCompare.  
21 What is eiCompare?

22 A EiCompare was one statistical method that allows you to  
23 compare multiple methods of ecological inference.

24 Q What are included in eiCompare?

25 A That would be King's EI, so ecological inference from

1 2001, the more updated version of the rows versus columns by  
2 King and his associates. And then what was referred to in  
3 this report, the Goodman's Regression.

4 Q And how -- who created the eiCompare package that puts  
5 those three together?

6 A It should be a variety of authors. But a couple of them  
7 that I can recall right now, would be Dr. Loren Collingwood,  
8 Dr. Matthew Barreto, Dr. Oskooii.

9 Q To be clear, social scientists share these on a platform  
10 called GitHub?

11 A Yes.

12 Q If you are a social scientist and you want to find a  
13 package that has all the commands to run a Goodman's  
14 Regression, you could run that in eiCompare?

15 A I think theoretically, yes.

16 Q And you could also run a King's EI as well, right?

17 A Yes.

18 Q And you could run a rows by columns as well, using that  
19 package that Dr. Barreto and Dr. Collingwood contributed to?

20 A Yes.

21 Q Okay. So let's talk about BISG a little bit. So that's  
22 examining surnames; is that correct?

23 A Yes.

24 Q So what happens if a person whose last name is Johnson,  
25 marries someone whose last name is Diaz? How would BISG --

1 and they change their last name -- how would BISG likely  
2 predict that person?

3 A Well, the way I understand it is that first it would  
4 identify the person based off of their current existing  
5 surname. From that, say in this case the example is the  
6 registered voter list. So Johnson, who married Diaz, would  
7 be identified as Diaz. The Bayesian Improved is a weighting  
8 that exists from the citizen voting age population, or using  
9 the American Community Survey estimates, as well.

10 Q Okay. And then the same thing would happen whose last  
11 name was Diaz, married someone whose last name was Smith,  
12 would it seemingly happen in reverse? That person might  
13 be -- who actually would be Hispanic -- might be identified  
14 as not Hispanic?

15 A Yeah. That would be the difficult part of not matching on  
16 the original list. And then there would be an improvement.  
17 So the way that improvement, as I would understand it, too,  
18 is likely to work out, is if a lot of Diazes married Smiths  
19 in that community, then there would be a reason to make that  
20 adjustment.

21 Q Excellent. And is it true that Pew reports that  
22 intermarriage rates for Hispanics are 26 percent, nationwide?

23 A Yes.

24 Q Is there any better rate that you know of available,  
25 looking specifically at Yakima?

1 A No.

2 Q Let's talk a little bit about Dr. Collingwood's EI and  
3 rows by columns results, in his rebuttal report. Can we put  
4 that on the screen? Let's go down to this picture. Okay.

5 So let's talk about what -- for the court, could you  
6 explain for the court what the two different tables are that  
7 are next to each other on Page 4 of Dr. Collingwood's  
8 rebuttal report?

9 A On the left side it says EI, or I-T-E-R, for iteration.  
10 This is the original King's ecological inference. Then on  
11 the right side would be the EI row by columns, which was sort  
12 of the King's later, sort of, I think 2008 improvement, but  
13 would be used in the multi-candidate races, or the ability to  
14 study multiple race and ethnic groups.

15 Q Okay. And what do the blue and green bars on this page  
16 represent?

17 A A green bar represents the estimated preference among  
18 white candidates. And then the blue bar estimates -- is the  
19 estimate for support for the Latino -- of Latino voters for  
20 that candidate. So there will be both, if we're looking at  
21 them also top to bottom, each of these rows -- sorry, they're  
22 bars -- are presented twice, because of the different  
23 candidate names on the left side.

24 Q And there are some symbols on here that look like H's or  
25 TIE fighters. Can you explain what those symbols mean?

1 A That's the -- sort of the credible interval, that's around  
2 the estimate. This would be the closest thing to that  
3 standard error for many other frequency or types of  
4 statistics, this is part of the Bayesian approach we have.

5 Q You presented essentially the same kind of data in your  
6 chart; if I recall, you had a number, and in parentheses you  
7 had a lower and higher number, separated by a comma, when you  
8 did your chart?

9 A I did. This is graphical form, and mine is textual.

10 Q Let's talk about what was found here for Torres and  
11 Keesling. Just to remind the court, you found a range for  
12 Torres Hispanic support of somewhere between 44.1 and 52.5;  
13 is that correct?

14 A Yes.

15 Q On this chart, what is the range that Dr. Collingwood  
16 finds, using rows by columns?

17 A In this case, it shows that Latino voters in rows by  
18 columns supported Lindsay Keesling. The first number would  
19 be at 60 percent. But it could range from what would appear  
20 a little above the middle, so just over 50 percent -- so  
21 essentially 57 percent to -- now I'm still coming back to  
22 these little lines; 55 percent to 65 percent.

23 Q What did Dr. Collingwood find, using rows by column, for  
24 Ms. Torres?

25 A Either right at 40 percent, so those go to somewhere

1 between 45 percent at the top end, or 35 percent at the base.

2 Q And so the top end of his range, and the bottom end of  
3 your range actually overlap; is that right?

4 A Yes. This was another part that I wrote, I think in the  
5 -- my additional response, is that they're not statistically  
6 different.

7 Q And we also have to keep in mind that the BISG may also  
8 underestimate the number of Hispanic voters?

9 A Yes. Based off of the surname. Then it's focused on the  
10 voters, where I'm focused on the eligible population.

11 Q Excellent. Okay.

12 And in the other column, on the left-hand side here,  
13 what range does -- what range for Ms. Torres and  
14 Ms. Keesling, does Dr. Collingwood report here?

15 A I'm trying to follow --

16 Q In the EI, I-T-E-R chart, on the left-hand side, what  
17 percent of Hispanic support does Dr. Collingwood find for  
18 Ms. Torres?

19 A He finds, in this case, 68 percent, now point 1, for  
20 Keesling, in support among Latino voters. And then for  
21 Torres, it says that 31.9 percent of Latino voters may have  
22 supported her.

23 Q And the Torres range that he reports, is about what?

24 A The range would be -- it might appear, then, between 30  
25 and 35.



1 Q Okay. And your report finds, again, somewhere between 41  
2 -- sorry, between 44 and 52?

3 A Correct.

4 Q And so the upper end of his range, and the lower end of  
5 your range, are -- would you describe them as far apart, or  
6 relatively close?

7 A In this case, they were -- the ranges can still be close.  
8 But they're far apart. They're statistically different.

9 Q They are statistically different, but not using rows by  
10 columns?

11 A Right.

12 Q Does anything in Dr. Collingwood's report, or in his  
13 criticism of your analysis, lead you to doubt your  
14 conclusions?

15 A No.

16 Q Okay. So let's just -- give me just one moment.

17 Before we get to kind of a summary, I just want to go  
18 through one last criticism Dr. Collingwood presented of you.  
19 And I think you did review Dr. Collingwood's transcript from  
20 Friday; is that correct?

21 A Yes.

22 Q And he represented to the court that you did not consider  
23 turnout in any way whatsoever, in any of your reports in this  
24 case.

25 Do you think that that statement is an accurate

1 reflection of how you conducted your analysis?

2 A No.

3 Q Why not?

4 A One, in particular, we talked about looking at where votes  
5 are cast, and where people live, is one way that the model  
6 accounts for the turnout. We used the precinct election  
7 returns.

8 Also, I showed, throughout parts -- especially even in the  
9 supplemental reports, estimates about the Latino turnout, and  
10 the not-Hispanic white turnout in the areas.

11 Q You did, in fact, include turnout in your model?

12 A Yes.

13 Q So I just want to go back to *Gingles* 2 and 3, together.  
14 So *Gingles* 2, essentially, I think we talked about, provides  
15 that Hispanics have to essentially, or the minority community  
16 you are examining, have to vote as a block. Do you find, in  
17 Senate District 15, that Hispanics vote as a block?

18 A Not in all elections. In this case, we see that they --  
19 there are times when the Hispanic voters are voting as a  
20 block, cohesive in the Democratic candidate, when they're  
21 running against a white Republican. But we've seen  
22 deviations from this, in not only Legislative District 15,  
23 from its most recent election, and we see it in other races,  
24 the nonpartisan elections as well as our -- the school  
25 superintendent.

1 Q And so is it your conclusion that the candidate drives  
2 more of the Hispanic vote than race?

3 A Yes.

4 Q And in looking at all of this, when Hispanics and -- do  
5 you find, in all cases, that whites and Hispanics vote  
6 differently in Legislative District 15?

7 A I do. In this case, when the characteristics of the  
8 candidates vary, we see differences here among not only the  
9 Hispanic voters, but non-Hispanic white voters.

10 Q When the preferences of Hispanic voters were split, like  
11 in the legislative race in 2022, when now Senator Torres won,  
12 did white voters -- were they able to defeat the preferences  
13 of Hispanic candidates?

14 A The important part here, when we think of this election,  
15 without a clear preference of Hispanic voters, then they're  
16 not defeating their preferred candidate.

17 Q And how about in the 2020 superintendent race, where there  
18 was a Hispanic Republican and a white Democrat, looking only  
19 at the result, not looking at the statewide total results,  
20 but within Legislative District 15, did the Republican  
21 Hispanic win a majority of the votes in that district?

22 A She did.

23 Q Okay.

24 MR. TORCHINSKY: I pass the witness. But I would  
25 like to reserve a chance for rebuttal.

1 THE COURT: Okay. Mr. Herrera?

2 MR. HERRERA: Yes, Your Honor.

3 CROSS EXAMINATION

4 BY MR. HERRERA:

5 Q Good afternoon, Dr. Owens.

6 A Good afternoon.

7 Q My name is Ernest Herrera, for the Soto Palmer plaintiffs.  
8 And you and I virtually met in your deposition, right?

9 A We did.

10 Q That was back in December?

11 A Yes, sir.

12 Q Now, I want to show you a page from one of your reports,  
13 and ask you a couple of questions about it. So first I'm  
14 going to use the document camera here, and I'm going to show  
15 you the bottom of Page 6. Do you see at the bottom of  
16 Page 6? It says, "Table 1. Ecological-regression estimates  
17 of the percent of Hispanic voters voting Democratic, under  
18 the enacted and previous Senate maps."

19 A Yes.

20 Q Okay. I'm going to go to the next page, Page 7, and you  
21 can see that at the bottom -- I'm going to the top, which is  
22 the table. And do you see the elections that you analyzed  
23 there?

24 A Yes, I do.

25 Q And it was just the 2020 elections, right, in this report?

1 A That's correct.

2 Q And do you know which report this was? Do you recall?

3 A This is the first report that I submitted.

4 Q Okay. And to be fair, you withdrew this report, right?

5 A Yes.

6 Q Now, in that report, why did you only choose to analyze  
7 the 2020 elections?

8 A One was --

9 MR. TORCHINSKY: Objection, Your Honor. Why are we  
10 discussing a report the expert has withdrawn?

11 THE COURT: Because at one time he submitted it, so  
12 it's relevant for cross examination.

13 MR. TORCHINSKY: Okay.

14 THE COURT: Go ahead.

15 Q Dr. Owens, I'll ask the question, again. And you don't  
16 need to tell me, and I'm not asking anyone to look at your  
17 results, your point estimates from this report, but why did  
18 you -- my question is, why did you choose only the 2020  
19 elections to analyze, in this report?

20 A Yeah. In this report, one, it's because it was -- as I  
21 was going through the process of blending the data, the  
22 election data, and the demographic data, this was -- quite  
23 easily, I was able to do. At the same time, there were  
24 differences in sort of precincts in this case, that come from  
25 the 2018 data, which I was able to resolve, and then that's

1     why I added those details as well, to give a full version of  
2     these votes.

3     Q    Okay.  And that's why you later added the 2018 elections,  
4     right?

5     A    Yes.

6     Q    Now, I think you've talked a little bit about -- thank you  
7     for that clarification.

8                 Now, I want to ask you -- you talked a little bit  
9     earlier about your selection of -- the fact that you were not  
10    selecting elections from before 2018, right?

11    A    Yeah.

12    Q    And you also mentioned, just now with counsel for  
13    intervenors, that you made a correction, right?

14                 THE COURT:  About when voting by mail started?

15    Q    Right.  So, Dr. Owens, what was the correction you were  
16    making?

17    A    In this case, it was identified, because there was a  
18    change in the Washington State's voting law about when  
19    individuals could register to vote, how they would vote.  
20    This was before this changed to same-day registration.  And  
21    it gives you a sense here, why these are changes that not  
22    only affect who could turn out to vote, but that, in my mind,  
23    is still showing us a critical change of how election  
24    procedures work in the state.

25    Q    Okay.  Now, I think before lunch, you said that you didn't

1 choose pre-2018 elections, in part because all-mail voting  
2 was not available before then, right?

3 A And in this case, that was why I wanted to correct.

4 Q And how did you learn about this fact, so that you could  
5 make the correction?

6 A Yeah. One, in particular, is I was thinking about,  
7 reflecting on the testimony that I just gave, and directly in  
8 this case, recognizing, in my mind, the right course of  
9 action. I wanted to make sure that we talked about these.  
10 So if I recall the wrong election reform, we'll discuss that.

11 Q Could we go to Page 13 of Exhibit 1001?

12 Now, Dr. Owens, I'm going to show you your report from  
13 November, your first full report. Before I move on, where is  
14 it -- how did you learn about the correct date during lunch,  
15 of when all-mail voting went into effect?

16 A In this case, I also had a conversation with the  
17 attorneys, just to double-check what my date was, and when  
18 all-mail voting began, using local information, talked about  
19 the fact that that started in 2011.

20 Q Okay. And I want to look at and show you your report,  
21 Page 13. And under this table here, in the second sentence,  
22 do you -- go ahead and review that.

23 A Yes.

24 Q It says here --

25 A I reviewed it.

1 Q -- in the second sentence --

2 A It says that there was the implementation of all-mail  
3 voting in 2012.

4 Q So you already knew about when it went into effect, before  
5 today, right?

6 A I did. Yes.

7 Q So why did you testify that way this morning?

8 THE COURT: He made a mistake. And then he thought  
9 about it, checked with the lawyers, and rectified it. That's  
10 what we want witnesses to do.

11 Q Sure. Dr. Owens, are there any other reasons you want to  
12 add right now, to your previous reasons about why you didn't  
13 select elections before 2018, to analyze?

14 A No. I think in this case, the 2020 election with same-day  
15 registration, was a major change. And the other thing that  
16 we use, in using 2018, it's important to have a reflection  
17 about midterm voting patterns.

18 Q And you also mentioned same-day voting, right?

19 A Yes.

20 Q And I'm sorry, you mentioned same-day voter registration,  
21 right?

22 A That's correct.

23 Q Okay. And would it be fair to say that that was a factor  
24 in the change of turnout in 2020?

25 A Yes.



1 Q How does one, in Washington State, go about same-day  
2 registration for an election?

3 MR. TORCHINSKY: Objection, Your Honor. He's not an  
4 expert in Washington's voter registration procedures.

5 THE COURT: That's not pertinent to his opinion.

6 MR. HERRERA: I think, Your Honor, if he's saying  
7 that it affects his choice of elections, as well as the  
8 potential turnout, I think that he should be able to speak to  
9 it, if he knows.

10 THE COURT: Yeah. I mean, you could ask him does he  
11 have any understanding of how you do it, and if he says, no,  
12 we'll move on.

13 Q Dr. Owens, do you know how one goes about same-day voter  
14 registration in Washington State?

15 A Generally. I know the time parameters, and things like  
16 that.

17 Q Do you know where one goes to register to same-day vote?

18 A Not directly. I expect it's to a county courthouse. That  
19 is where it would occur in the states I've lived.

20 Q And you live in Tyler, Texas?

21 A I do. I've also lived in Tallahassee, Florida and  
22 Arlington, Virginia.

23 Q Okay. Now, once you're same-day registered, how do you  
24 actually cast that vote, after same-day registering?

25 A My expectation is that, in particular, that election

1 officers will guide that person. But they can have a ballot  
2 and submit that --

3 Q Okay.

4 A -- at the location.

5 Q How many people took advantage of same-day voter  
6 registration, in 2020, in Washington State?

7 A I don't know, exactly.

8 Q How many people took advantage of same-day voter  
9 registration, in 2020, in Yakima County?

10 A I don't know the direct number.

11 Q Okay. Do you know the number in Benton County?

12 A No.

13 Q What about Franklin County?

14 A No.

15 Q Dr. Owens, where did you receive -- you answered this a  
16 little bit earlier, I'm sorry. What was the topic of your  
17 dissertation at the University of Georgia?

18 A The Effects of Bicameralism on U.S. Appropriations.

19 Q Is it fair to say that your dissertation was not about --  
20 would it be fair to say that your dissertation was about how  
21 the U.S. Senate makes rules?

22 A No. My dissertation is about how the rules of the U.S.  
23 Senate affect policymaking.

24 Q Did that dissertation involve any use of ecological  
25 inference and racial voting patterns?

1 A No. I studied dollars.

2 Q Now, can we look at Exhibit 1001, at Page 21?

3 Dr. Owens, this will be your CV, from your main report.

4 A Great.

5 MR. TORCHINSKY: Excuse me, Your Honor. I was under  
6 the impression that all of the experts were already  
7 qualified.

8 THE COURT: Yeah, he's qualified.

9 MR. TORCHINSKY: Thank you, Your Honor.

10 THE COURT: Go ahead.

11 Q Now, I want to start -- can we go back one, please?

12 So I want to look at the section, articles and  
13 peer-review chapters. Let's start with Item 10 there, which  
14 says -- the title is, "Organizing Staff in the U.S. Senate.  
15 The Priority of Individualism Resource Allocation."

16 Dr. Owens, did that article involve any use of ecological  
17 inference and racial voting patterns?

18 A No.

19 Q Now, let's look at the next one, which is "Differences in  
20 Beliefs About COVID-19, By Gun Ownership." Did that article  
21 involve any use of ecological inference and racial voting  
22 patterns?

23 A No.

24 Q Let's look at the next one, "An Examination of Racial  
25 Ethnic Differences in Mental Health, During COVID-19 Pandemic

1 in the U.S. South." So I see that's racial and ethnic. Did  
2 that article involve any use of ecological inference and  
3 racial voting patterns?

4 A No. This is an analysis of a survey, public health  
5 survey.

6 Q Could we go to the next page, please? And go through 1  
7 through 7.

8 THE COURT: We're not going through all 7, are we?

9 MR. HERRERA: I'll speed it up.

10 Q You can take a moment to examine this, Dr. Owens. But do  
11 any of these articles involve the use of ecological  
12 inference, and analysis of racial voting patterns?

13 A No, they do not.

14 Q Okay. Could we go to the next page? Well, I'll just ask  
15 you, in the courses that you teach at, I believe -- that you  
16 were teaching at UT Tyler, until now, did any of those  
17 courses' syllabi involve teaching ecological inference and  
18 racial voting pattern study?

19 A No. At the start of an undergraduate or start of a  
20 master's program, we teach students in the research methods  
21 of how -- the problems, and what we're trying to use to solve  
22 them. But typically ecological inference is something that  
23 you learn in a Ph.D. program, or after you've had training in  
24 the statistics that underlie the problem.

25 Q And you haven't taught those other courses that go into

1 those, like, ecological inference methodologies, right?

2 A Correct. We don't have a Ph.D. program at UT Tyler.

3 Q I see.

4 Now, I want to ask you a couple of questions about the  
5 methodology in your report. And I know you already talked  
6 about this, this morning. But just broadly speaking, in  
7 preparing your main report, did you read or rely on Dr. Gary  
8 King's work on ecological inference?

9 A One of the things -- yes, when talking about how we set up  
10 the problem, thinking through the logic of what we're trying  
11 to resolve, with the unknown information.

12 Q And could we go to Page 6 of Dr. Owens' report. And  
13 before I actually show it to you, I'm just going to ask you a  
14 couple more questions.

15 What kind of regression does Dr. King recommend experts  
16 to use when conducting ecological inference?

17 A His ecological inference program.

18 Q Did you use a software program R, to run your analysis in  
19 this case?

20 A Yes.

21 Q And did you use the function called LM, for linear model?

22 A Yes, sir.

23 Q Okay. Is this function LM, the same function that  
24 Dr. King recommends for use in R?

25 A As of right now, I don't see the direct page.

1 Q Okay. Could we go to Page 6?

2 Now, I want to look at this middle paragraph here, that  
3 begins with "ecological inference." Do you see that?

4 A Yes.

5 Q In the middle there it says -- I'm sorry, let's focus on  
6 the last sentence. Can you read that?

7 A Of the paragraph?

8 So, moreover, this is the same type of statistical  
9 analysis cited by Dr. Matthew Barreto in paragraph 152 of  
10 what I received as the complaint.

11 Q That's right, it's our amended complaint. When you say  
12 "this is the same type of statistical analysis," you're  
13 saying that Dr. Barreto ran -- the one that's referred to  
14 here is Dr. Barreto running King's EI, right?

15 A I've learned that since. I think directly, all that I  
16 knew was that I saw in the complaint, Dr. Matthew Barreto's  
17 ecological inference. The idea here is that we're using the  
18 same logic types of data, to answer the same question. I  
19 didn't see his report, and so I don't know exactly what  
20 happened. But I thought one of the things in introducing why  
21 did I choose this method, it's to match a method that's  
22 already been reflected in the complaints of the case.

23 Q And so you're saying that you were trying to match what  
24 Dr. Barreto used in his analysis, right?

25 A Yeah. In this case, with a direct comparable estimate.

1 Q Okay. So are you saying that you did use King's EI in  
2 your --

3 A No, I'm not.

4 Q Can you clarify that for me, then? If you're saying  
5 you're trying to use the same analysis that Dr. Barreto used,  
6 but you didn't use King's EI, then can you explain that?

7 A Yeah. Ecological inference, I see it in the same part of  
8 ecological regression, are utilizing Bayesian techniques to,  
9 in their logic, to solve the problem of estimating people's  
10 vote choice, without knowing how they cast their ballot.

11 But I think there's not a detail of -- in the complaint,  
12 or not that I could recall, of direct point to King's EI in  
13 that short statement about -- and I'd say it's about whatever  
14 was presented. But go ahead.

15 Q Could we go to Page 122 of Dr. Owens' deposition?

16 MR. TORCHINSKY: Excuse me, Your Honor. I don't  
17 believe that the deposition has been admitted as an exhibit.

18 THE COURT: You're using it for impeachment purposes?

19 MR. HERRERA: That's right.

20 THE COURT: It's okay. Go ahead.

21 Q And, Dr. Owens, I'd like you to look at your answer here,  
22 from Page 122, 7 through 10. And I asked you, "Okay. And  
23 did you conduct the same type of ecological inference that  
24 Gary King discusses, in that book that you cite to?" Your  
25 answer was, "Yes."

1 Do you see that?

2 A Yes.

3 Q Okay. And would it be fair to say that your answer today  
4 is different?

5 A If you're asking me that if we use the specific same  
6 formula, I think in this case the answer is, no. But when we  
7 talk about conducting the same type of ecological inference,  
8 then my broad part is, yes, that we're looking at taking any  
9 kind of regression, to the point of understanding how someone  
10 voted, not knowing who -- all we know is where the votes were  
11 cast, and where people live. We're both trying to solve the  
12 ecological fallacy. So using those methods, as we determined  
13 and discussed a little bit before, there are three that are  
14 directly available here.

15 Q All right. And could we go to -- let's go back to  
16 Dr. Owens' report, on Page 6. And could we go to the  
17 footnote 3? I'm sorry, let's not zoom into that.

18 In the middle paragraph you have, again, we've looked  
19 at this one earlier, the first sentence says, "Ecological  
20 inference is a statistical procedure used in the natural  
21 sciences, business and social sciences to estimate accurate  
22 measures of probability," right?

23 A Yes.

24 Q And there's a footnote there, right? Could we go to the  
25 footnote?



1 And the footnote is to ecological inference new  
2 methodological strategies, right? And that's Gary King, Ori  
3 Rosen, and Martin A. Tanner, right?

4 A That would be their book, right.

5 Q Could we go back to Mr. Owens' deposition, Page 122? And  
6 before you told me, Dr. Owens, that you conducted the same  
7 ecological inference that Gary King discusses in his book, I  
8 pointed you to that footnote to Page 6 of your report you  
9 were talking about, right?

10 A Yes.

11 Q Are you sure you weren't confused, back at that time,  
12 about which analysis you were running for your cohesion  
13 analysis?

14 A I know exactly the kind of analysis that I ran, by using  
15 the R script that I provided to you. I think if you're  
16 asking here if I confused it still, I directly told you there  
17 were a couple ways to do this. And I cited in that footnote  
18 the reason why we do the work. The work is also done by, if  
19 we look down to footnote 4, in each case by those like  
20 Professor Grofman.

21 Q Dr. Owens, have you ever conducted an actual EI or  
22 ecological inference analysis, with one of the many publicly  
23 available EI software packages, such as EI, eiPack, or  
24 eiCompare?

25 A No, I haven't.

1 Q Now, I want to move on from this, Dr. Owens. So let's go  
2 to -- well, I'm going to ask you, Dr. Owens -- Dr. Owens, is  
3 it your understanding that *Gingles* prong 3 or *Gingles* 3,  
4 involves the analysis of the non-Latino white-block voting,  
5 in the context such as this case here?

6 A Yes. I think you can analyze that -- we saw it not only  
7 in the first report, so by the time I introduced that. And  
8 yeah, please go ahead.

9 Q Now, in your deposition, you told me that you did not  
10 intend to express an opinion on whether prong 3 of *Gingles* is  
11 present in this case, right?

12 A I think in the -- yes, I told you that.

13 Q In your deposition, you also told me that you did not have  
14 an opinion on *Gingles* 3, right?

15 A Correct.

16 Q In your February report, and today, you opine on  
17 white-block voting with regard to the LD State Senate  
18 election, right?

19 A I did, yes. So that was -- that was two months after we  
20 had the deposition.

21 Q And you are not attempting to opine today on *Gingles* 3,  
22 with regard to elections that you analyzed in your initial  
23 report, are you?

24 A I did not provide that analysis, no. 2022 is the example  
25 that I think best serves this district; and because it is

1 related to the voters, and how they are today.

2 Q So would it be fair to say that your analysis of  
3 white-block voting is only based on an estimate of  
4 white-voting behavior in one election?

5 A The one case we have available, and I think -- yes, the  
6 other extension that I did was also, you know, prior to when  
7 we talked in December, was looking at just Hispanic cohesion  
8 related to the U.S. Senate race. So to give you a complete  
9 answer, we also testified about that this morning.

10 Q I'll ask the question again. Your analysis of white-block  
11 voting is only based on an estimate of white-voting behavior  
12 in one election, right?

13 A It was, yes.

14 Q Dr. Owens, in your report you said that, "In a study of  
15 racially polarized voting, I find estimates of Hispanic voter  
16 preference for candidates from the Democratic Party differed  
17 by 30 percent or more from SD 13 to SD 14 or SD 15," right?

18 A Yes.

19 Q And to be clear, when you say "SD," you're talking about a  
20 Legislative District, right?

21 A Yes. In my first part, getting kind of limited knowledge  
22 of Washington, but I put the SD to mention Senate District.  
23 So we knew there would be legislative districts as well.

24 Q So you're okay if I say "LD"?

25 A I'd love it, yeah, that's great.

1 Q You also say, in your report, that you analyzed a  
2 five-county area, right?

3 A Yes.

4 Q What were those counties?

5 A Adams, Benton, Franklin, Yakima, and in this case, right  
6 now, as I recall, one more.

7 Q And one more, okay.

8 Now, can we go to the Dave's map, please?

9 Dr. Owens, I'm going to represent to you that I clicked  
10 on a link for Dave's Redistricting earlier, because it takes  
11 time to load these maps. But this link I clicked on comes  
12 from Plaintiffs' Exhibit -- now I lost the exhibit. One  
13 second, Dr. Owens. I'm sorry.

14 Apologies for the court and for counsel. That's  
15 Exhibit 523, which is admitted. And it's a compilation  
16 exhibit. And it shows the map that was in effect before the  
17 2021 redistricting. So here you see -- do you see it says  
18 "Washington 2020 state legislatures"?

19 A I see that, yeah.

20 MR. TORCHINSKY: Objection, Your Honor, I'm not quite  
21 sure what this is being presented for. It's a  
22 non-governmental website. It might have been linked in an  
23 exhibit, but I'm not 100 percent sure exactly what this is  
24 purporting to represent.

25 THE COURT: The objection is overruled. Go ahead.

1 This is cross examination. You have to give the lawyer a  
2 little leeway.

3 Q Dr. Owens, do you -- can you identify, in this map, where  
4 the previous Legislative District 13 or SD 13 is?

5 A I'd say right now I don't see the number. But I see your  
6 mouse clicker. If this is with Kittitas and Grant County,  
7 which was the fifth, that I didn't mention, and Lincoln.

8 Q Grant is the one you forgot earlier, right?

9 A Yes. I just wanted to mention that.

10 THE COURT: That's what he said. Yeah. And it was  
11 not based on hand signals from counsel.

12 MR. HERRERA: I understood it from Dr. Owens, thank  
13 you.

14 Q So would it be fair to say Lincoln and Kittitas Counties  
15 are not part of the five counties you listed?

16 A No, they're not. But it -- in this case, that district  
17 includes Grant. And the purpose of my analysis was to look  
18 at any district that at that time also touched into a part of  
19 those five county areas. And I did a district-by-district  
20 analysis.

21 Q And I have a similar question about previous Legislative  
22 District 14. And you can see the number there, it's kind of  
23 an olive green color district, down there.

24 Which counties does District 14 include, in the  
25 previous legislative map?

1 A So Klickitat, Skamania and Yakima.

2 Q And are Skamania and Klickitat among the five counties you  
3 mentioned earlier?

4 A No, they'd be outside. But, again, connected with Yakima,  
5 as part of the five counties that were named. District 14 is  
6 connected to those five counties.

7 Q Do you know if -- now, for the enacted maps, and this is  
8 not what I'm showing you here, but I'm asking you about the  
9 enacted maps. Did you analyze anything outside of the  
10 five-county area?

11 A Without the table in front of me, or this map, I think, I  
12 don't know, looking at the fact of still keeping LD 13, 14  
13 and 15, those would extend a little bit outside of those five  
14 counties, but also be connected to them.

15 Q So would you be surprised if one of those three districts  
16 in the enacted map, has parts of Kittitas and Klickitat  
17 Counties?

18 A No. We talked about this in December.

19 Q Okay.

20 Dr. Owens, did you describe, anywhere in your report,  
21 what the distribution of Latino voters were, in the previous  
22 version of LD 13?

23 A LD 13, I don't immediately recall from the report.

24 Q Did the fact that Latino voters are outside of the  
25 five-county area in previous LD 13, make you weight that part

1 of your analysis any differently or any less?

2 A No. I did not down-weight any one in the report.

3 Q Now, let's look at Table 1 in your report. So this will  
4 be Exhibit 1001. And Table 1 is on Page 9.

5 And would it be fair to say -- we looked at these  
6 earlier, with intervenor's counsel. But this is, these are  
7 your point estimates for Hispanic voting for Democratic  
8 candidates in select elections, right?

9 A Yes.

10 Q Now, let's start with the 2020, insurance commissioner  
11 election. In enacted LD 15, Latinos voted at 79 percent for  
12 Kreidler, right?

13 THE COURT: Kreidler.

14 A Yes. The estimate is there, with the margin of error  
15 showing 75.7 to 82.3.

16 Q Now, with that margin of error, you would say that Latinos  
17 voted cohesively for Kreidler in the 2020 insurance  
18 commissioner election, right?

19 A Yes.

20 Q Would you also say that Latinos, in the previous LD 15,  
21 also voted cohesively for Kreidler, in that same contest?

22 A Yes. The margin is a little higher.

23 Q Now, in enacted LD 14, did Latinos vote cohesively for  
24 Kreidler, as shown in Table 21?

25 A Yes.

1 MR. HERRERA: And don't worry, Your Honor, I'm not  
2 going to go through all of these.

3 THE COURT: No. But pronounce poor Mike Kreidler's  
4 name right.

5 MR. HERRERA: You have two Texans here.

6 THE COURT: Dr. Owens may not realize the great faux  
7 pas he made, leaving out Grant County. Judge Estudillo,  
8 before he became a federal judge, was a Grant County Superior  
9 Court Judge. So do not forget that county.

10 JUDGE ESTUDILLO: I picked up on that. As soon as  
11 you said I missed one, I knew which one.

12 THE COURT: And I said: Grant County, where the hell  
13 is that?

14 Q Now, in enacted LD 14, did Latinos vote cohesively for  
15 Kreidler in 2020, as shown in Table 1?

16 A In 13?

17 Q In enacted LD 14.

18 A In 14. Yes, they did.

19 Q And same thing for previous LD 14.

20 A That's correct.

21 Q Okay. Now, to save everyone time from going through all  
22 of these, and you can take a second to examine these, but  
23 looking at the versions of LD 15 and the versions of LD 14,  
24 can you -- how can you not say that Latinos vote cohesively  
25 in the Yakima Valley, when Latinos vote cohesively in nine



1 out of 11 elections?

2 A One, in particular, when I made that -- in writing it, is  
3 calling to the votes that you see for SD 13, one as previous  
4 and enacted, and also calling into the votes there with the  
5 lieutenant governor. I think in this case it's a range, the  
6 context of the election between the Superintendent of Public  
7 Instruction, like you said, nine out of ten, but the two  
8 alternatives, as well as a different -- it shows me that the  
9 Hispanics are not holding the same partisan preference,  
10 across all of these geographic areas. There is variation  
11 that the model is showing when we look at it  
12 district-by-district.

13 Q Now, you said that Latinos are not holding the same  
14 partisan preference. Are they voting cohesively, though?

15 A In some parts of the district, yes. In some parts of the  
16 Yakima Valley, that's true.

17 Q So basically the parts of the Yakima Valley that don't  
18 include Lincoln and Kittitas County, right?

19 A Yes, as we talked about before.

20 Q And most of Grant County, right?

21 A Um-hum. Yes. And so I can take that -- we include that  
22 because of Grant County.

23 Q Okay. You keep bringing up the partisan caveat, I think.  
24 And so now I kind of want to walk through some of these,  
25 again. So in the 2020 Commissioner of Public Lands, would

1 you say that Latinos voted cohesively for Franz in the  
2 enacted LD 15?

3 A Yes.

4 Q Latinos also voted cohesively for Franz, in that same  
5 contest, in the previous LD 15, right?

6 A Yes.

7 Q Okay. Now, for State Auditor 2020, would you say that  
8 Latinos voted cohesively for McCarthy in enacted LD 15,  
9 previous LD 15, enacted LD 14 and previous LD 14?

10 A They did.

11 Q And on the State Treasurer 2020 race, would you say  
12 Latinos voted cohesively for Pellicciotti in enacted LD 15,  
13 previous LD 15, enacted LD 14, and previous LD 14?

14 A Yes.

15 Q Now, on to State Attorney General 2020. Would you say  
16 Latinos voted cohesively for Mr. Hughes' boss, Mr. Ferguson,  
17 in enacted LD 15, previous LD 15, enacted LD 14, Land  
18 previous LD 14?

19 A Yes. The main reason why, is these margins of error all  
20 overlap up and down the ballot, in each of their groups.

21 Q So there for Ferguson, on the four sections I just  
22 mentioned, those are all cohesive, right?

23 A Yes, they're higher and higher.

24 Q Now, on to Secretary of State 2020 race. Would you say  
25 that Latinos cohesively voted for Tarleton in enacted LD 15,

1 previous LD 15, enacted LD 14, and previous LD 14?

2 A In this case, largely, yes.

3 Q Is that, "yes"?

4 A Correct.

5 Q And for governor 2020, would you say that Latinos voted  
6 cohesively for Governor Inslee in enacted LD 15, previous  
7 LD 15, enacted LD 14 and previous LD 14?

8 A Yes. Just all the numbers, again, overlapping with the  
9 previous elections.

10 Q And now on to the President 2020 race. Would you say that  
11 Latinos voted cohesively for President Biden in enacted  
12 LD 15, previous LD 15, enacted LD 14 and previous LD 14?

13 A Correct.

14 Q And now on to the 2018 U.S. Senate race, would you say  
15 that Latinos voted cohesively for Cantwell in enacted LD 15,  
16 previous LD 15, enacted LD 14 and previous LD 14?

17 A Yes, I still do. And the only variation that you continue  
18 to see there is just the Senate support is -- again, it's a  
19 little bit smaller, but continues to be overlapping margins  
20 of error. And that means to me it's not statistically  
21 different.

22 Q When you say "overlapping," overlapping with what?

23 A The highest area of this margin of error, and the lowest  
24 of the others.

25 Q Right. But what other margin does that -- are you saying

1 it overlaps with the previous, the other elections we looked  
2 at?

3 A Yes. I'm trying to read that. In this case, each column,  
4 top down, and as well when we think about how much it changed  
5 from the past, I'm reading them rows, left to right.

6 Q So that's pretty good, right? That seems cohesive to me.

7 A It's consistent, yes.

8 Q But are Latinos cohesive?

9 A Yes. I think that's also -- I know we were talking about  
10 consistent, but what I said this morning, when we have a  
11 white Democrat running against a white Republican, Latino  
12 voters have shown that they're cohesive behind the Democratic  
13 candidate.

14 Q There's one more on this list we didn't go over. There's  
15 a couple we didn't go over. But there's one on this list  
16 that I skipped. So you don't think that Latinos cohesively  
17 voted for Reykdal, 2020, Superintendent of Public Instruction  
18 contest, right?

19 A I don't think that the Hispanic voters were cohesive  
20 behind the Democratic candidate.

21 Q However, Latinos voted cohesively for Reykdal's opponent,  
22 right?

23 A Yes. In this case, you see 65 percent. So that's less  
24 cohesion, but we could say moderately cohesive.

25 Q So in ten out of the eleven elections you analyzed,

1 Latinos voted cohesively in LD 14 and LD 15?

2 A Yes.

3 Q But for that election for Reykdal's opponent, you don't  
4 count that toward cohesive Latino voting in your analysis,  
5 right?

6 A No. Because right now, what we're talking about here is  
7 -- the title of the table is voting, yeah, for the Democratic  
8 candidate. And it also deviates from the pattern.

9 Q Okay. Do you agree that your Latino-vote-cohesion results  
10 are substantially similar to those found by Dr. Collingwood?

11 A Yes. I think in some cases, they are quite similar. They  
12 have overlapping margins of error.

13 Q Now, in your deposition in December, you told me that you  
14 did not do a study of Dr. Collingwood's full analysis, right?

15 A Correct.

16 Q Okay. You also told me, in your deposition, that you did  
17 not intend to conduct a study of Collingwood's report, and  
18 that such a request had not been made yet, right?

19 A Can you be more clear about what the study would be?  
20 Yeah, I mean, additional study. I think still generally I  
21 would say it's okay, but if there's a particular specific  
22 spot.

23 Q I think I just -- well, can we go to Page 106 of the  
24 deposition?

25 And do you see on, starting on line 10, I said, "Okay.

1 Do you intend to conduct a study of Dr. Collingwood's  
2 report?" And you said, "No. That request has not been  
3 made." Was that your testimony?

4 A Yeah, it was.

5 Q Dr. Owens, your opinion in this case is about the cause of  
6 RPV, right?

7 A Yes.

8 Q You don't disagree that Latinos vote cohesively, right?

9 A No. I think I really want to identify the contextual  
10 factors of when they do and when they do not.

11 Q And would it be fair to say that one of your opinions in  
12 this case is that partisanship, or party, is the dominant  
13 factor driving individual Hispanic vote choice?

14 A It is.

15 Q Now, besides the Latino-vote-cohesion analysis that we  
16 were looking at, in Table 1 and that is elsewhere in your  
17 reports, you have reported no other evidence to show that  
18 party is the dominant factor driving individual Hispanic vote  
19 choice, right?

20 A No, I'm not. As long as we say it also showed the same  
21 study in the supplemental reports. Because after the  
22 election, that would be the closest, yeah. There's no other  
23 additional study of partisanship, or other political  
24 participation, other than voting.

25 Q So you just looked at the -- you're adding on, the

1 analysis you did in your February report, and your December  
2 reports, right?

3 A And I want to ask, adding how? I think I'm commenting  
4 mostly on --

5 Q You just gave a caveat to the question I asked you. My  
6 question was, besides the Latino-vote-cohesion analysis that  
7 you conducted, you have reported no other evidence to show  
8 that party is the dominant factor driving individual Hispanic  
9 vote choice, right? And I'm not going to make you repeat  
10 your answer, but part of your answer was that you mentioned a  
11 later analysis of, I believe, the 2022 election?

12 A Yeah. When I found no cohesion.

13 Q That analysis was your ecological-regression analysis,  
14 again, right?

15 A It was. And that's what I also tried to say, same methods  
16 being used, and only looking at voting.

17 Q In that supplement, you didn't present any other evidence  
18 to show that party is the dominant factor driving individual  
19 Hispanic vote choice, right?

20 A Correct. A very short report.

21 Q Now, you have some expertise in political polling, right?

22 A I do.

23 Q However, you did not conduct any kind of opinion poll of  
24 Hispanic voters in the five-county Yakima area, in order to  
25 see if party or partisanship was the dominant factor driving

1 their individual vote choice, right?

2 A I did not.

3 Q You also did not examine any other evidence, such as  
4 interviews or testimony of Latino voters in the area, that  
5 you analyzed in Washington State, in order to determine if  
6 party is the dominant factor driving their individual vote  
7 choice, right?

8 A No.

9 Q Would it be fair to say that you derived your opinion that  
10 partisanship is the dominant factor driving individual  
11 Hispanic vote choice, only from your ecological-regression  
12 results?

13 A Yes. And it's the consistency of those trends across the  
14 elections.

15 Q Dr. Owens, are you familiar with the -- well, we'll try a  
16 hypothetical, perhaps, and let's see if that works. Let's  
17 say that 80 percent of Latinos who voted in the Yakima Valley  
18 for a certain state house candidate; however, you found that  
19 this state house candidate wore eyeglasses, while her  
20 opponent did not. Now let's say you saw Latinos, in that  
21 same area, vote at a rate of 80 percent, or higher, for  
22 candidates in nine other elections, but in each of those  
23 elections, the candidates with varying ethnicities or races  
24 also wore glasses, and their opponents did not. And those  
25 were the candidates chosen, the ones with glasses.



1           So now you have ten elections where the candidate who  
2 wore eyeglasses got 80 percent of the Latino vote, versus a  
3 glasses-less candidate. Would you say Latinos voted  
4 cohesively in that set of ten elections?

5     A   No, because I don't think we have a political science  
6 theory-driven reason to say why glasses assist people in  
7 selecting a candidate.

8     Q   Okay. So in that hypothetical, you would need an  
9 independent study of Latinos' motivation to vote for  
10 candidates, to see if a candidate is wearing glasses or not,  
11 motivated Latinos to vote that way?

12    A   And some of our knowledge of how we've seen election  
13 trends go. So similar as before, we analyzed, people vote  
14 differently based on these groups. So those trends exist  
15 across time. But similar to your hypothetical, I recall some  
16 study about how people who have left hair parts are likely to  
17 become president. And I don't think America is actually  
18 likely to hold that.

19    Q   Dr. Owen, are you familiar with the concept of a mediator  
20 in statistics?

21    A   Yes.

22    Q   Okay. And do you see partisanship as a mediator in the  
23 Yakima Valley, between the variables of race and vote choice?

24    A   In this case, no, not directly. Maybe more or less it's,  
25 in this case, the Hispanic part, which is identifying some

1 voters to swing to the other group. So we see in this case  
2 that we're -- our last example, in looking at the Democratic  
3 candidates, where there might be 35 percent of Latino  
4 candidates who vote for the Democratic person, no matter  
5 what. When you add a different dimension, they might swing  
6 and support another candidate.

7 Q What's that different dimension?

8 A This would be the -- from our two elections that we're  
9 able to see, the race of the candidate, Hispanic female  
10 Republican on the ticket.

11 Q So the -- but the general trend is -- aren't you saying  
12 that the general trend is, it's party that's driving their  
13 choice?

14 A Correct.

15 Q Now, in doing your ecological-regression analysis, you did  
16 not have a list of the names of actual voters in the election  
17 data that you used for your cohesion analysis, right?

18 A No list.

19 Q You did not run a surname analysis on any list of voters  
20 in the elections that you analyzed, right?

21 A Because I had no lists.

22 Q And you never entertained conducting a surname analysis in  
23 this case, right?

24 A No, because I had the citizen voting age population  
25 estimates.

1 Q And would it be fair to say that you have never run a BISG  
2 analysis before?

3 A That's true.

4 Q Now, CVAP -- and I think the court had kind of a question  
5 to clarify on this, so maybe you can help us out. CVAP  
6 includes people who did not vote, right?

7 A It does.

8 Q And CVAP is generally used to look at who is eligible to  
9 vote, right?

10 A That's right.

11 Q But just because someone is part of CVAP, doesn't mean  
12 they're all eligible, right?

13 A You're asking this case. A step towards registration in a  
14 state that has same-day registration, the hurdle to  
15 participate is now lower. So we are at a difference of  
16 defining who can participate in the election right now.  
17 Because if you're eligible to participate, you have until,  
18 you know, in this case you're not limited to the 30-day  
19 threshold that other states have.

20 Q But CVAP includes those who did not register to vote,  
21 right?

22 A That's right.

23 Q However, voter files include those who voted, right?

24 A Correct. And would have an unknown knowledge of those  
25 that were eligible and not registered.

1 Q Okay. Now --

2 THE COURT: Counsel, you have five more minutes, just  
3 to let you know.

4 Q CVAP requires you to use some kind of process to figure  
5 out what the CVAP is, in each precinct, right?

6 A The numbers. In this case, the estimates are provided.

7 Q And so you have to actually push down that CVAP data,  
8 first into blocks, then back up into precincts, right?

9 A Correct, yes. In the case when there's -- whenever you  
10 would have a census-block group that might be in, especially  
11 like two different districts, or we're seeing now district  
12 lines move back and forth, that step is used so I can compare  
13 the previous districts to the enacted districts with the same  
14 data.

15 Q Okay. And the lines of census blocks and the lines of  
16 precincts don't always match, right?

17 A Correct.

18 Q And I think in your deposition, you told me that you do  
19 the process of estimating the breakdown of the data for each  
20 of your election analyses, and that in doing that, it carries  
21 the voting history that those individuals may have, right?  
22 Or can you clarify it?

23 A No. It carries the voting history of the geographic  
24 community. So I never know the voting history of the  
25 individual, as much as I know where those votes were cast,

1 and -- because what we're trying to do is merge together  
2 different geographic levels, right? So the census-block  
3 group is typically much smaller than an actual precinct.

4 Q Okay. The biggest here -- for the courts' sake -- the  
5 biggest here is -- which one of those three is the biggest,  
6 precinct, census block, census-block group?

7 A It would depend on the rural or urban area, but most often  
8 I'll say the precinct, then the census block, then the  
9 census-block groups. That really would vary county by  
10 county.

11 Q Sorry, which one is the smallest of those?

12 A The census block.

13 Q The next biggest -- I guess, it depends, you said.

14 A They're all puzzle pieces that we're trying to fit  
15 together.

16 Q Now, Dr. Owens, you said that BISG is an improvement to  
17 using surname analysis alone, right?

18 A Yes. I think I directly explained -- that was part in a  
19 footnote. I think it's important that we talk about this.  
20 There is an improvement made. It utilizes the citizen voting  
21 age population to make that improvement.

22 Q Okay. And I have one more thing to ask you about.

23 Page 19, of Exhibit 1001.

24 Now, this is from your first full report. Do you see  
25 that last sentence there, before your signature, that says,

1 "To the extent possible, we can also say that SD 15 was  
2 created to intentionally include as many Hispanic Democratic  
3 voters from Benton County as possible"?

4 A That's what it says, yes.

5 Q Okay. How did you determine, in coming to this  
6 conclusion, what the intent was to do this?

7 A One of the parts -- above this statement, I also include  
8 maps. And we're looking directly into the fact of where the  
9 enacted district sort of moves into certain parts of the  
10 county, reaches in and grabs those precincts that may have  
11 higher citizen voting age populations that are Hispanics.  
12 And as I'm showing in this case, with the racially polarized  
13 voting, more likely to be selecting a -- preferring a  
14 Democratic candidate, than other areas where we see Hispanic  
15 candidates now actually being moved into parts of, like, this  
16 Legislative District 13.

17 Q Okay. So besides the distribution of people that you  
18 looked at, there's no other evidence for intent you're  
19 presenting, right?

20 A Correct. I believe the data are showing us distributions  
21 of where people live and how they vote, and that that's  
22 pointing to -- how they are selected or included into a  
23 district, is important knowledge. But this is all  
24 information that can be known before the districts are drawn.

25 Q Okay.

1 MR. HERRERA: I pass the witness.

2 THE COURT: Thank you. All right. Attorney General  
3 Erica Franklin.

4 CROSS EXAMINATION

5 BY MS. FRANKLIN:

6 Q Good afternoon, Dr. Owens. My name is Erica Franklin, and  
7 I represent the State of Washington in both matters. And I  
8 believe I met you virtually during your deposition.

9 A Good to see you again.

10 Q Good to see you, too.

11 Dr. Owens, is it your opinion that LD 15, as enacted,  
12 is non-compact?

13 A As a district? I think I did not identify an opinion  
14 about that. I think it's that the Hispanic communities  
15 within LD 15 are not compact.

16 Q In reaching that conclusion, did you compare the shape of  
17 enacted LD 15 to the shape of other comparable districts in  
18 the state?

19 A No, I didn't make those comparisons. Again, not about the  
20 district.

21 Q In your deposition, you said that you believed that vote  
22 dilution, under Section 2 of the VRA, only occurs when voters  
23 select candidates on the basis of the candidate's race or  
24 ethnicity. Is that still your understanding?

25 A I think that's one of the ways that we're able to look at

1 the group; there are ways in which you could say, you know,  
2 vote dilution would also occur if voters are removed from a  
3 district.

4 Q Did that understanding influence the conclusions that you  
5 drew in your reports?

6 A The conclusions that I am drawing, as well as looking at  
7 the variation of the race of the candidate as a signal, as  
8 well as the party, looking at those nonpartisan elections,  
9 and those -- it's not that the opinion is influencing the  
10 analysis, but it was one that I came to.

11 Q And you testified earlier that you read the reports of  
12 Dr. Collingwood. Did you also read the reports of -- the  
13 report of Dr. Alford in this litigation?

14 A No.

15 Q So, Dr. Collingwood, as I'm sure you're aware, has opined  
16 in his report that white voters, voting as a block, tend to  
17 overwhelm the preferences of Hispanic voters in LD 15. Other  
18 than the 2022 SD 15, LD 15 election, do you have any basis to  
19 challenge that conclusion?

20 A I think in that part -- no, other than what we looked at  
21 across a couple of the elections, there were varying degrees  
22 of white crossover voting. So, again, election-by-election,  
23 there were some movements. But largely the cohesion among  
24 non-Hispanic white voters, tend to support the Republican  
25 candidate. And that would be -- on the opposite side of what



1 we said, most elections, the Hispanic candidates, when it's a  
2 white Republican and a white Democrat, are selecting the  
3 white Democrat.

4 Q Generally speaking, when non-Hispanic white voters vote,  
5 did their votes overwhelm the preferences of Hispanic voters,  
6 generally speaking?

7 A I didn't use that as part of my analysis, in the first  
8 report.

9 Q But do you have any reason to believe that that's not the  
10 case?

11 A No.

12 Q Okay. Now, let's turn to the last page of your original  
13 report. We were just looking at it, admitted Exhibit 1001,  
14 and we're on Page 19 of the PDF.

15 So I have a couple other questions about the sentence  
16 we were just looking at a few minutes ago. The last sentence  
17 you wrote, "To the extent possible, we can also say that SD  
18 15 was created to intentionally include as many Hispanic  
19 Democratic voters from Benton County as possible."

20 So in reaching that conclusion, did you speak to any of  
21 the commissioners?

22 A No.

23 Q Did you speak to anyone else involved in the redistricting  
24 process?

25 A No. I was separate.

1 Q Did you review any e-mails between commissioners or  
2 commissioners and their staff?

3 A No. I never saw those.

4 Q What about text messages?

5 A None.

6 Q Did you review any other forms of communication between  
7 commissioners, or commissioners and their staff?

8 A No.

9 Q Did you do any research to determine what criteria the  
10 commissioners might have been using, to draw district lines?

11 A No.

12 Q And did you familiarize yourself with the characteristics  
13 of the region that might explain why certain geographical  
14 areas were pulled in?

15 A Not more than I think, trying to look at satellite images  
16 to try to determine what was in those communities that were  
17 included, right, at the extremities of the district.

18 Q That was everything you did? That was all you did, in  
19 effect?

20 A Yes.

21 Q And you also testified earlier today that you were unaware  
22 of any reason, other than race, to connect the various areas  
23 that were included in the enacted LD 15. Do you remember  
24 that?

25 A Yes.

1 Q So in reaching that conclusion, did you speak to any of  
2 the commissioners?

3 A No.

4 Q Did you speak to anyone else involved in the process?

5 A No.

6 Q Did you review any e-mails between commissioners or staff?

7 A I did not.

8 Q Text messages?

9 A None.

10 Q Any other form of communications?

11 A None.

12 Q So, finally, I have a few questions for you about the  
13 November 2022 election in LD 15, discussed in your  
14 supplemental reports. And you -- just to clarify, you  
15 testified that this was the only election that you used to  
16 analyze white-block voting, right?

17 A The white-block voting, correct.

18 Q When you are trying to analyze voting trends, would you  
19 agree that not all elections are created equal?

20 A Yes. Most of the difference is the midterms and the  
21 presidentials. Large context, but, yes, go ahead.

22 Q Are there also elections that are just too atypical to  
23 draw any conclusions from them?

24 A Perhaps, yes.

25 Q So if, for example, there's a strong Latino candidate who

1 has only token opposition against it, this shoestring  
2 campaign, that election might not tell you too much about  
3 what voters would prefer in a fair fight. Would you agree?

4 A It is contextually different. But what we still have  
5 ahead of us is knowing the partisanship of the candidates.

6 Q Sure. So at the time of this supplemental, when you  
7 drafted the supplemental reports, were you aware that Senator  
8 Torres had previous experience in an elected office, before  
9 she ran for that position?

10 A I would think; at the time, I can't recall. I do know  
11 that she has had that.

12 Q At the time, did you know that Lindsay Keesling did not  
13 have any prior experience in elective office?

14 A We discussed that. She had not.

15 Q And at the time you submitted your first supplemental  
16 report, were you aware that Lindsay Keesling was a write-in  
17 candidate during the August 2022 primary election?

18 A Of the primary? No. When I wrote the report, yeah, we  
19 talked about that.

20 Q So you didn't take her write-in status into account, in  
21 preparing that report, right?

22 A No, because she qualified for the election.

23 Q And at the time you submitted your supplemental reports,  
24 were you aware of how much -- or let's take your first  
25 supplemental report. Were you aware of how much Lindsay

1 Keesling and Nikki Torres had spent in that race?

2 A No.

3 Q Okay. Let's take a look. Can you please pull up the  
4 information about these candidates from the website? This is  
5 not an exhibit, but information that appears publicly on the  
6 website for the Washington Public Disclosure Commission.

7 If we scroll down to the bar graph to campaign  
8 expenditures. Let's take a moment to do that.

9 Can you tell me what Nikki Torres's total expenditures  
10 were. I think if you keep scrolling, there's a table.

11 A \$94,000.

12 Q What about Lindsay Keesling's?

13 A Over \$4,000.

14 Q So Senator Torres outspent Ms. Keesling by over 20 to 1,  
15 right?

16 A She spent more.

17 Q So would you agree that Lindsay Keesling was at a  
18 significant disadvantage in the November 2022 race?

19 A In this factor of measure, yes.

20 Q How did that factor into your analysis?

21 A It did not.

22 Q So when an experienced, well-funded candidate trounces a  
23 write-in candidate, by outspending them more than 20 to 1, do  
24 you really think that really tells you much about what  
25 certain classes of voters prefer, more broadly?

1 A Yeah. It gives you a sense about exposure, does not give  
2 you as much extent about what the existing political  
3 advantage may have been. Or sometimes we have a lot of  
4 studies in political science that also point to me to ask  
5 questions towards what was the source of those contributions.  
6 I think it might have been above. But someone who is  
7 self-funded as a candidate, also does not do well. So we  
8 don't normally think, just by rule, whoever spends more, is  
9 more likely to win.

10 Q So, in other words, there are other number of factors at  
11 play?

12 A Yes.

13 Q And I just have one more question for you. You testified  
14 that you included the year 2018 in your analysis, because you  
15 wanted to understand midterm voting patterns; is that right?

16 A Yes, I did want to.

17 Q Did you think that one election cycle is sufficient to  
18 understand midterm voting patterns?

19 A I think in the context that the State of Washington is in  
20 now, with its new voting reforms, that's essentially the  
21 closest comparison that we have now, 2018, to look at the  
22 2022 election.

23 MS. FRANKLIN: Thank you. No further questions.

24 THE COURT: Thanks very much, counsel. Okay. Did  
25 you have anything else?

1 MR. TORCHINSKY: Nothing further, Your Honor.

2 THE COURT: Okay. Great. Thank you. All right.

3 Dr. Owens, you are excused. Thank you very much for coming  
4 in. And we will take our mid-afternoon break now.

5 But before I let everyone go, please let me ask  
6 Ms. Tiffany Cartwright to stand up, and just kind of give a  
7 little wave here. I said "stand up." Tiffany has been voted  
8 out of committee to take the position -- with Judge  
9 Estudillo, down in Tacoma -- the position of Judge Ben  
10 Settle. And we are just waiting for the Senate to vote. And  
11 as Tiffany knows more than anyone, that's a difficult process  
12 to go through. But thank you very much for coming here. And  
13 this is Judge VanDyke from the Ninth Circuit. And maybe you  
14 want to come back and just sort of say Hi for a second. So  
15 meet me at the corner there, okay? Okay. Great. Thanks,  
16 Tiffany.

17 We'll be back at 2:50. 2:50. We'll take about a  
18 20-minute break. Thanks.

19 (Recess.)

20 THE COURT: All right. Mr. Dunn, you're going to  
21 call the next witness.

22 MR. DUNN: Yes, Your Honor, plaintiffs call Dr. Matt  
23 Barreto.

24

25

1 MATTHEW BARRETO

2 Having been sworn under oath, testified as follows:

3 MR. TORCHINSKY: One administrative matter, with  
4 respect to Dr. Barreto. I think there has been a little bit  
5 of disagreement whether Dr. Barreto is an expert witness in  
6 this case, or a fact witness in this case. Is that something  
7 the court would like to address now, or after his testimony?

8 THE COURT: Well, are you going to go into his  
9 opinions?

10 MR. DUNN: Yes, Your Honor.

11 THE COURT: So he's both. He has a fact element and  
12 he has an expertise. And so we're ready to go. Go ahead.

13 MR. DUNN: Just for the record, under 26(a)(2)(B),  
14 he's been designated as a non-retained expert.

15 DIRECT EXAMINATION

16 BY MR. DUNN:

17 Q Please tell us your name.

18 A My name is Matt A. Barreto.

19 Q Dr. Barreto -- that's what it is, is that right?

20 A Yes.

21 Q I'm going to throw you a sidewinder straight out of the  
22 gate. What happened 46 years ago today?

23 A I was born -- 47.

24 THE COURT: 47 years ago.

25 Q Where were you born?



1 A What was that?

2 Q Where were you born?

3 A San Juan, Puerto Rico.

4 Q Where did you grow up?

5 A My family then moved to Kansas City, Missouri. I grew up,  
6 then, on the Kansas-side, in Topeka, Kansas.

7 Q Is that where you would say you spent most of your  
8 formative years?

9 A My childhood, yeah. I was there from ages 2 to 18, before  
10 I went to college.

11 THE COURT: We're all trying to do the math up here,  
12 we're a little slow. That would be 1976?

13 THE WITNESS: 1976. June 6, 1976.

14 THE COURT: Also known as D-Day. Also known as the  
15 start of the Israeli 6-day war. And the day Robert Kennedy  
16 died after being shot.

17 THE WITNESS: And the bicentennial. A lot of good  
18 stuff.

19 THE COURT: You're definitely an expert.

20 Q Would you give us the benefit of your educational  
21 background?

22 A I went to college in the state of New Mexico, at a small  
23 school called Eastern New Mexico University. And then I went  
24 to graduate school in California, at UC Irvine, Orange  
25 County. Completed my Ph.D. there in 2005.

1 Q Who did you study under at UC Irvine?

2 A Dr. Bernard Grofman, who I worked closely with on issues  
3 related to understanding voting patterns.

4 Q What connection, if any, does he have to voting rights  
5 jurisprudence?

6 A He's still somewhat active today. Sometimes he gets  
7 called upon by courts to be an expert map drawer, when  
8 there's an impasse. But he has been a longtime Section 2  
9 expert, on racially polarized voting. And he was the lead  
10 testifying expert in the *Thornburg v. Gingles* case, in North  
11 Carolina, in the 1980s. And we heard a lot about that in  
12 graduate school.

13 Q Under his direction, did you study racially polarized  
14 voting?

15 A Yes, that's correct.

16 Q Did you decide to pursue that as part of your academic  
17 career?

18 A I would say it was sort of a collaboration, or mutual  
19 decision. I was long interested in Hispanic and Latino  
20 voting patterns, and I had been collecting precinct-level  
21 data for my research, and I didn't realize at first that this  
22 was the exact same type of data that Dr. Grofman had been  
23 using in voting rights cases, until I gave my initial  
24 presentation to him, I think in my second year. Then he  
25 pulled me aside and said, you know -- explained what was

1 going on with the same type of data. And, yes, that  
2 eventually became my principal area of study of my  
3 dissertation. And he and I published a few academic articles  
4 on racially polarized voting together.

5 Q After being awarded your Ph.D., where did you head?

6 A Here, to the University of Washington in Seattle. I lived  
7 here for about ten years.

8 Q And what kind of courses did you teach here?

9 A I primarily taught courses on racial and ethnic voting  
10 patterns, elections, statistical methods, to graduate  
11 students, research methods, and I eventually also taught a  
12 class on the Voting Rights Act in terms of the social science  
13 research that is involved in voting rights policy.

14 Q When you were teaching at the University of Washington,  
15 did you have much exposure to the eastern part of the state?

16 A Yes. It was something -- actually, my undergraduate  
17 Latino politics class, given that an overwhelming number of  
18 the students were in-state students from Washington, and many  
19 of my Latino students were from Central and Eastern  
20 Washington, we had an exercise every year where they picked a  
21 city, studied it, learned about it, and we investigated the  
22 representation, typically at the city council or school board  
23 level, in Central and Eastern Washington.

24 And then oftentimes went to places in Central and Eastern  
25 Washington, such as Sunnyside or Toppenish, Yakima, to attend

1 Latino summits, or to present research. There was another  
2 professor at the time at Whitman, named Paul  
3 (unintelligible), who was doing very similar research, and he  
4 and I collaborated for many years.

5 Q The court's heard quite a bit already in this case, and  
6 I'll do my best to skip over some things, and I'm sure I'll  
7 slip at times and be told as such. But there have been some  
8 lawsuits in Eastern Washington; we don't need to hear about  
9 those necessarily. But did you participate in terms of  
10 providing expert testimony in any of those?

11 A Yes, I have. In *Montes v. Yakima*, I was a hired  
12 consultant. In Yakima County Commission, Washington Voting  
13 Rights Act claim, more recently, I provided some consulting.  
14 In Franklin County, Washington Voting Rights Act, state  
15 Voting Rights Act claim, I wrote an expert report. So I have  
16 been involved in studying voting patterns, both as a  
17 professor, but also as an expert, in that part of the state.

18 Q And in those cases, were the analyses you performed  
19 ultimately accepted by the court?

20 A Yes.

21 Q You have testified in a number of cases around the  
22 country, is that fair to say?

23 A That's correct.

24 Q Without going through them, approximately how many?

25 A I'd say I've probably been involved in about 50 voting

1 rights matters, and well over half of those have gone to  
2 trial, and provided deposition or court testimony.

3 Q Have you been accepted as an expert in state and federal  
4 court?

5 A I have.

6 Q Have you ever been struck as an expert?

7 A I have, once.

8 Q Tell us the circumstance of that.

9 A That was in state court, in the state of Pennsylvania, or  
10 they call it the "commonwealth court" in Pennsylvania. It  
11 was a voter identification lawsuit. And the district court  
12 judge struck all of the experts on the plaintiffs' side, said  
13 they were not reliable. The court then -- or the plaintiffs  
14 then appealed it, and it was sent back to the district court,  
15 and I guess he was asked to reconsider. And ultimately the  
16 plaintiffs were victorious, and they did rely on our  
17 testimony.

18 Q About how many people are there in the United States that  
19 testify regularly, you see, on the matter of racially  
20 polarized voting?

21 A Maybe about 20.

22 Q Since you've been at the University of Washington, and up  
23 and through your current practice, have you had the  
24 opportunity to train others who are now experts?

25 A Yes. Both undergraduate and graduate students. As I

1 said, I taught classes specifically about the methodology  
2 involved, and oftentimes would bring my Ph.D. students, when  
3 they have the expertise, in as research assistants.

4 Q Approximately how many of your former students have now  
5 testified in court, as far as you know?

6 A I would say probably seven or eight are, themselves, now  
7 authoring expert reports, taking -- or giving depositions,  
8 testifying in trial.

9 Q Now, one last question on your qualifications. About how  
10 many scholarly articles do you have?

11 A Maybe about 80.

12 Q What percentage of those do you think focus on racially  
13 polarized voting analysis?

14 A I would say well over half focus on the voting patterns of  
15 racial and ethnic minorities. And I'd say at least two dozen  
16 probably use precinct-level data to do what we consider  
17 ecological inference, or racially polarized voting.

18 Q Those items are each peer-reviewed?

19 A That's correct.

20 Q If you testify in court, or in one of those papers, or  
21 otherwise at a conference where a record is taken, and you're  
22 not faithfully following the methods and the data, what's  
23 going to happen to you?

24 A Well, if you submit that to an academic journal, it goes  
25 under peer review, and you will be vigorously questioned

1 about your methodology; even if you think you're following  
2 the best practices, you'll still be vigorously questioned.  
3 And ultimately you have a chance to revise, address the  
4 comments, and resubmit it. But a very high percentage of  
5 articles that are submitted, are rejected. Most of the  
6 leading journals today have somewhere around 10 percent  
7 publication rate.

8 Q After leaving the University of Washington, where did you  
9 head?

10 A To where I am now, the University of California in Los  
11 Angeles.

12 Q What's your position there?

13 A I'm appointed as a Professor in Political Science, and  
14 Chicano, Chicana and Central American studies, in the  
15 division of social sciences, in the college of liberal arts  
16 and sciences. I also have a zero percent appointment as a  
17 Professor of Public Policy, which is in the Luskin School of  
18 Public Affairs.

19 Q The court has heard some argument about the UCLA VRA  
20 project. Can you tell us what that is?

21 A That's a research project I started in the Luskin School  
22 of Public Affairs, which is a part of a larger research  
23 institute that I direct, called the Latino Policy and  
24 Politics Institute. We had been doing research on voter  
25 participation and voting rights, from the first day.

1 Eventually I wanted to make the research program a bit more  
2 robust, and so we organized that as a research program.

3 Q Is there also a clinical legal program, as part of that,  
4 legal-education program?

5 A That's right. Separate from the sort of social science  
6 research, there is an educational and legal clinic of the  
7 VRP.

8 Q Am I the director of that?

9 A Yes.

10 Q Are we friends?

11 A Yes. Good friends.

12 Q Do I have any idea how to run an R analysis on RPV?

13 A I would say no, not at all.

14 Q Have I ever spent a minute trying to encourage you to push  
15 a button, change a digit, or make your analysis different  
16 than what the math comes out to?

17 A No. I do remember trying to explain it to you once, and  
18 it didn't go well.

19 Q Okay. All right. You also do some politics, is that fair  
20 to say?

21 A Political consulting.

22 Q Tell us what you do there.

23 A About 15 years ago, when I was here at the University of  
24 Washington, I started offering political consulting services,  
25 with another professor; his name is Gary Segura. He and I



1 were both political science professors here at UW, and doing  
2 a lot of research on Latino voting patterns. And we started  
3 to work with Latino advocacy groups, who wanted to raise the  
4 voice of Latino voters. And they felt they had been getting  
5 ignored in nationwide surveys.

6 So Dr. Segura and I started a firm. And we started  
7 offering political consulting and political surveys on  
8 Hispanics in the United States.

9 Q Are you a Democrat?

10 A I am. I'm a registered Democrat in Los Angeles County.

11 Q Does that affect your academics at all?

12 A No, not at all. Our academics -- and we're required, as  
13 professors, all of us, regardless of our own politics, to  
14 follow a rigorous methodology, to publish our papers in  
15 peer-reviewed journals, and not have our political personal  
16 viewpoints impact our scholarship.

17 Q On your survey and polling work, who are some of your  
18 clients?

19 A Well, we continue to work with some of the same  
20 organizations that we started with 15 years ago, such as  
21 organizations like LULAC, Mi Familia Vota, Unidos U.S., the  
22 Latino Victory Fund, a different Latino community  
23 organization that want to have a larger role in Washington,  
24 D.C. and have their policy issues get more attention.

25 Q Do you also do some work for the White House?

1 A I do.

2 Q And other elected officials around the country?

3 A That's correct.

4 Q I'd like to focus your attention on 2011. I didn't  
5 misspeak; this lawsuit is, of course, about 2021. But do you  
6 have any experience in redistricting here in the State of  
7 Washington in 2011?

8 A Well, two things come to mind about 2011. The first,  
9 outside the State of Washington, is that myself and one of my  
10 then research assistants, Loren Collingwood, were hired by  
11 the State of California to be consultants for the State of  
12 California, in their first-ever citizen Redistricting  
13 Commission.

14 So we ran a lot of voting-rights analysis, and provided  
15 the State of California, in 2011, with feedback.

16 It was also the year that Washington was getting its  
17 additional congressional seat. And I remember there was a  
18 lot of attention around that. And, yes, I had the occasion  
19 to speak with and advise members of the State Commission back  
20 in 2011. There was a lot of interest in that 10th  
21 Congressional District in Washington, perhaps being  
22 majority-minority, as the minority population was also  
23 revealed in the 2010 census to have grown substantially here  
24 in Washington.

25 Q Do you remember any discussion about the Yakima Valley

1 area and Legislative District, in 2011?

2 A Yes. I spoke with a number of people involved, either  
3 directly on the Commission, or in attending meetings and  
4 advocating on behalf of the community. I remember speaking  
5 with Tim Ceis and Dean Foster, multiple times. And I  
6 remember speaking with George Cheung, who was a political  
7 consultant activist here in Washington State, in that time.  
8 And discussing the incredible population growth that had  
9 occurred in the Yakima Valley region, and that there was a  
10 very good opportunity to create a Hispanic-performing  
11 district, in 2011.

12 Q In your opinion, were the conditions in place, under the  
13 *Gingles* test, for a district in 2011?

14 A In my opinion, there is no question. I recall drawing  
15 maps with Mr. George Cheung, looking at this region and  
16 knowing at the time the population was already of sufficient  
17 size, and never had any representation. And, unfortunately,  
18 there wasn't the political appetite in 2011, to draw that  
19 legislative district.

20 Q Let's fast-forward to the 2021 redistricting, which is the  
21 subject of this case. You've not been retained as an expert  
22 by any of the parties to this lawsuit; is that fair?

23 A That's correct. I was a consultant, earlier, to the State  
24 of Washington. I don't think it was these folks. It was  
25 actually the Senate Democrats. But none of the parties, no.

1 Q Tell us how your retention in 2021 came about.

2 A I originally received an e-mail from Lisa McLean, I  
3 believe it was July 31st of 2021, and asked to set up a phone  
4 call. We had a phone call a few days later, I believe,  
5 Monday or Tuesday of that week; so 1st or 2nd of August. And  
6 discussed the need for a voting-rights analysis to be done,  
7 and advise the Commission. We had a very good call. I felt  
8 that they would be reaching back out to me and offering me a  
9 position.

10 I was, at this time, fielding a lot of calls. Every state  
11 was redistricting. And I was doing a lot of other  
12 consulting, and -- but ultimately I didn't hear back from  
13 Ms. McLean.

14 Q Did you ever come to learn why?

15 A When I was ultimately hired, I was hired by a different,  
16 but related, entity, the Washington Senate Democrats, who  
17 represented a commissioner. And I asked that question, I  
18 said, "Oh, I thought I may be working for the Commission  
19 overall." And they were explaining the structure. And they  
20 suggested there was not political support from the  
21 Commission, as a whole, to have a voting-rights analysis.  
22 And so Commissioner Walkinshaw took it upon himself to  
23 initiate that process.

24 Q Did you understand the scope of your work, to focus on the  
25 legislative plan?

1 A That's correct.

2 Q Before we get into what you did and the opinions you came  
3 to, a little bit of background. The electoral situation in  
4 the State of Washington is such that there's a Legislative  
5 District, there's a Senate District, and within that, there's  
6 two House members elected?

7 A Yes.

8 Q What effect, if any, does that have on voting rights?

9 A Well, at-large nested districts, I've seen this in a lot  
10 of states, some counties have it as well for multimember  
11 districts, as we call them. Essentially those are diluted.  
12 It makes it harder, if there are two representatives  
13 representing a large area. From the perspective of local  
14 representation, we might think that it's better to have two  
15 subdistricts, such as many states do. Not all states have  
16 House districts nested as multimember districts within a  
17 Senate seat. Many have their own House boundaries. And so  
18 just as a starting point, it's a bit more difficult to gain  
19 representation, when you have to be nested within a larger  
20 district.

21 Q All right. So when you -- after you were retained and  
22 paperwork was straightened out, what did you get to work  
23 doing?

24 A I immediately wanted to get data for the entire State of  
25 Washington pulled together. This included census demographic

1 data on the racial and ethnic composition of different  
2 regions of the state. Then election returns. Election  
3 results at the precinct level. So I began to compile those  
4 myself. But then I also asked the staff members of the  
5 commissioner I was working for, if someone had already  
6 compiled those.

7 Q Now, these data sets that you work from, are those, you  
8 know, something that's manufactured, or are they easily  
9 verifiable? Tell us where they come from, and how much  
10 confidence we can have in them.

11 A These are all publicly available data sets. It's  
12 something that, with enough time and energy, almost any Ph.D.  
13 or demographer can put together. They come from places like  
14 U.S. Census. They come from either state secretaries of  
15 state websites, or county auditor or county registrar  
16 websites. These are election results and demographic data,  
17 at the precinct level.

18 Oftentimes, we draw on the voter file itself, which is  
19 also a public document. And many analysts already have these  
20 data sets put together, if they're going to continue working  
21 on states for a long time.

22 And that was the reason I asked if anyone on the staff had  
23 already compiled this type of data, because I believed it  
24 probably existed already.

25 Q Once you have the data, I assume you apply it to some

1 scientific methods?

2 A That's right. So the first step is getting the data, and  
3 getting it, what we would say, either merged or joined  
4 together. So you have the racial and ethnic data, and the  
5 election data in one data set.

6 Once that's done, you're ready to start doing two things.  
7 First, deciding which parts of the state might be the most  
8 important for inquiry. And so you're taking a holistic view,  
9 then zoning in on different regions.

10 Then secondly, once you've sort of decided which parts of  
11 the state probably deserve a voting-rights analysis, you're  
12 then going to apply well-accepted social science methodology,  
13 to understand voting patterns.

14 Q So did you start by looking at the entire state?

15 A Yes.

16 Q Was your attention ultimately drawn to one area?

17 A It was. I did look at the entire state. I recall looking  
18 at racial and ethnic demographics in this case. The first  
19 part of a voting rights test, for me, is what I refer to  
20 *Gingles* 1. This is whether or not the minority group is of  
21 sufficient size, and geographically compact enough to form a  
22 district. So we sort or start there. Your group is too  
23 small, sadly, doesn't matter how much discrimination or  
24 polarized voting there is, you have to be able to meet that  
25 first *Gingles* standard.

1       So we look at the whole state, to see if there's pockets.  
2       And in this case, the most obvious and largest concentration  
3       was for the Latino community in Central and Eastern  
4       Washington.

5       Q   Since the *Gingles* case, until now, social scientists have  
6       come up with a few methods that they use. What are those  
7       names?

8       A   Well, in the *Gingles* case itself, back in the 1980s,  
9       Dr. Grofman, my advisor, was using ecological regression. I  
10      believe the actual decision cites it well, and says this is,  
11      at the time, an appropriate starting point for understanding  
12      the correlation of voting patterns.

13      Since then, since the 1980s, we've had some significant  
14      developments. Part of those have been mathematical or  
15      statistical. But the other half has been computing. We have  
16      a lot better computing power, that we can do much more  
17      sophisticated types of models.

18      So in the 1980s, a professor at Harvard, Gary King,  
19      developed ecological inference. It started looking at  
20      ecological regression. But that's a very sort of basic type  
21      of analysis. Ecological inference is a much more  
22      sophisticated analysis.

23      And he rolled that out with a computer program in 1997, I  
24      believe is the first year it came out. And since then, there  
25      have been subsequent developments, including a second version



1 of ecological inference, that's called by its initials RxC3,  
2 that Dr. King was also a co-author of.

3 And there have been further refinements since then,  
4 including a software package that is fairly popularly used  
5 now, developed by Dr. Collingwood and myself, called  
6 eiCompare.

7 Q Before we talk about eiCompare, we've heard the name  
8 Professor Grofman. Where does he fit in this?

9 A Grofman, he was my dissertation advisor. He was the  
10 expert in *Gingles*. He, himself, used to rely on ecological  
11 regression. But after Dr. King's analysis came out,  
12 Dr. Grofman switched. And by the time I was working with  
13 him, in the early 2000s, he and I were both running  
14 ecological inference together.

15 Q What is eiCompare?

16 A EiCompare is a software suite, I believe we're now in our  
17 third version of it, that builds on the two different strands  
18 of ecological inference that courts have used over the years.  
19 And those are King's Iterative, EI, and EI RxC, or rows by  
20 columns. So there's two, I wouldn't say competing, I'd say  
21 complementary, most experts use both of them and say they  
22 produce very consistent results.

23 At the time that Dr. Collingwood and I developed the  
24 software, there was at least one or two other experts that  
25 argued that they were very different from each other, even

1     though Dr. King was an author of both of them. And so  
2     Dr. Collingwood and I developed this software package, to run  
3     both of them at the same time, produce results at the same  
4     time, compare them, and to demonstrate that this should not  
5     be subject to the specific method, you should be using the  
6     most contemporary accurate methods. But you can use both EI  
7     and RxC.

8             And rather than trying to hide behind one, or the other,  
9     my practice, using eiCompare, is to always report both and to  
10    look at both.

11    Q     That's available publicly, it includes various instruction  
12    manuals online. Anybody can access that and use it?

13    A     That's correct. It's available publicly. In fact, after  
14    Dr. Collingwood and I wrote the first version of eiCompare,  
15    we got a fairly competitive research grant here at the  
16    University of Washington. At the time, neither of us were at  
17    the University of Washington. I think Dr. Collingwood was at  
18    the University of California, Riverside. And I was at UCLA.  
19    And it was during the start of COVID. So we ended up -- we  
20    were going to come up here and be up here for the entire  
21    summer, but ended up doing the class on Zoom.

22             There is a program called Data Science for Social Good,  
23    DSSG, funded at UW, and they pick two programs, out of dozens  
24    that professors apply for, from across the country. Then  
25    they pick Ph.D. students from across the country to come to

1 UW and help develop the program.

2 So Dr. Collingwood and I were very fortunate that we  
3 received this grant. We had a team of, I think, seven data  
4 scientists, for the entire summer. And the result was the  
5 creation of a website that housed the entire eiCompare  
6 software. There are tutorials. There are vignettes that  
7 explain how to use it. And we get a lot of incoming e-mail  
8 from folks -- mostly Dr. Collingwood, who was the principal  
9 author -- and we try to help people use it, use the software,  
10 and make it freely available.

11 Q After you apply the data sets to these methods, you  
12 ultimately came out with a report, some might call it a slide  
13 show that you provided to your client; is that fair to say?

14 A For the Commission, yes. Other times I might author an  
15 expert report that looks like a Word document. In this case,  
16 they wanted a presentation; they wanted me to walk through  
17 the results.

18 Q All right. I'm going to walk through some of these slides  
19 a little bit, at first, then we'll kind of thumb through them  
20 quickly. But this is Plaintiffs' Exhibit 179. It's been  
21 admitted. This is one of the first slides in your packet.  
22 What is it you're trying to describe here?

23 A I always start any of my presentations by giving what I  
24 call a landscape analysis or a population environment. And  
25 so here, I was just sort of setting the table, to say what

1 has happened in the State of Washington over the last ten  
2 years, now that the Commission is about to embark on its  
3 redistricting. And this just shows that the entire state had  
4 very large growth, 900 -- almost a million people, 980,000.  
5 A 14 percent growth rate. But it shows that Latino growth  
6 was the fastest growing at 300,000; 40 percent growth.  
7 300,000 new Latinos in the last decade, is roughly the  
8 equivalent of two entire Senate Districts. So that was just  
9 sort of setting the table.

10 Q What are you showing on this next slide?

11 A Well, here is -- this gives you a little bit of a view  
12 of -- I mentioned earlier that I considered the whole state.  
13 This is what we call a racial heat map. It sort of shows  
14 pockets of population diversity. And here, the places that  
15 are marked in the darkest green are super-majority Latino,  
16 80, 90, 100 percent. And the places in the darkest red are  
17 lowest density, zero, 10, 15 percent. And it shows the  
18 entire state. And these are census-block groups, very small  
19 units of aggregation.

20 And so I chose to hone in on this set of counties in this  
21 region, in Central and Eastern Washington, where there are  
22 many majority Latino counties, as a whole, if not census  
23 blocks.

24 Q Now, you also included in here part of the Section 2 of  
25 the Voting Rights Act. And you highlighted a section. Why

1 was that?

2 A Again, I never know the level of expertise of my audience,  
3 when I'm briefing, even if they are redistricting  
4 commissioners. These are jobs that come around every ten  
5 years. And oftentimes they're brand-new people. So I always  
6 start with just showing the text of the Voting Rights Act,  
7 Section 2(b), and reminding them that what's at stake and  
8 what constitutes -- in my interpretation, and informs my work  
9 as a political scientist -- a violation, is this section  
10 here, that when members of the electorate have less  
11 opportunity to elect representatives of their choice. So  
12 that was a common theme that we talked about.

13 Q All right. When we get into the data analysis, this is  
14 the first slide called, "Measuring racially polarized  
15 voting." Is it fair to say, in these follow-up slides,  
16 you're going to put data in it, but you're explaining, first,  
17 the layout?

18 A This is an XY scatterplot, I've labeled there. It tells  
19 us what percentage of voters in a precinct are Latino. The Y  
20 axis going up and down on the left-hand side, shows the  
21 percent of the vote won by the candidate. I found this to be  
22 a fairly straightforward way, before we get into the more  
23 rigorous statistical analysis, of just showing the data.  
24 Rather than just putting a percentage point in a table,  
25 72 percent, I always like to start by actually showing

1 everyone what is the array of the data.

2 And as you click through the slides, you can see this is  
3 just a chart showing the percent vote for Maria Cantwell in  
4 this 2012 Senate election. And if you continue to click,  
5 each one of those dots is a precinct.

6 Now, the red dots are the percentage of the vote won by  
7 Baumgartner, who was her opponent. And you can start to see  
8 a pattern emerge. This is what I'm looking for, as a social  
9 scientist, is there a pattern? Sure enough, you can see  
10 there's a very clear pattern; as you move to the right side  
11 of the screen, to the most heavily Latino precincts, you see  
12 that blue line, which is the regression prediction line,  
13 moves up. You see concentration. We call that cohesion. In  
14 that upper core tile, almost all of those dots are somewhere  
15 around the 75 percent vote mark. We see the opposite for the  
16 red dots down at the bottom, for Baumgartner. This is just a  
17 visualization of whether or not there are different voting  
18 patterns, by race.

19 Q All right. And you also include, in here, an additional  
20 race in 2020; is that right?

21 A In this chart -- I believe this is from my public slide  
22 deck. We did 2012 and we did 2020. This is the Governor's  
23 election in 2020. You see the exact same pattern, an array  
24 of dots, on the left side of the screen, where there are no  
25 Latinos at all. The red dots predominate at the top, and

1 suggest that Culp was a candidate of choice.

2 On the right side of the screen, where there are heavily  
3 Latino precincts, the blue dots predominate, and you can see  
4 Mr. Inslee was the preferred candidate.

5 But I ran this analysis, as the little box says to the  
6 right, for every single election between 2012, '14, '16, '18,  
7 '20. For brevity, I believe they just chose these two.

8 Q We also have, in the record, the full version of your  
9 report, which is Exhibit 178.

10 And in here, do you do the other elections that you  
11 describe in the box, in the public version?

12 A Yes. You can see, for example, here's an additional  
13 election in 2012. I think if you click through, you'll see  
14 here is the Governor's election in 2012. Here's the  
15 presidential election in 2012, back to the Governor's  
16 election in '16, the presidential election in '16, Senate  
17 election in '16. I believe this is the House race in 2018.  
18 Senate election in 2018. Additional statewide races,  
19 Attorney General's race in 2020.

20 Q So you included, in your original analysis that you had  
21 done, before the Commission adopted its plan, you had run the  
22 Attorney General's race in 2020?

23 A We had run all of these races. And they look very  
24 repetitive, because the patterns are extremely similar.  
25 There's very strong consistency. So I think that

1 Commissioner Walkinshaw, and his team, decided just to  
2 present a slice from 2012, a slice from '20, then that little  
3 chart I had that said there was consistency.

4 Q Just to finish off the full analysis, what does the next  
5 election shown on the next slide?

6 A The presidential, I believe.

7 Q I think you have it here.

8 A This is the Governor's race. But then the next one is the  
9 presidential, Biden/Trump.

10 Q Based on this, were you able to conclude whether or not  
11 the Latino community in the Yakima Valley was politically  
12 cohesive?

13 A Yes.

14 Q What types of candidates did they prefer?

15 A Well, we found, across all of the elections, that there  
16 was a very similar rate of cohesion, somewhere around the  
17 70 percent range, of Latinos voting together for candidates  
18 of their choice. In these elections that I analyzed, those  
19 were candidates running as Democrats.

20 Q And were you able to also determine the types of  
21 candidates that the white majority was supporting?

22 A Yes. As you can see here, on the left side of the screen,  
23 in every single chart, in every single election we ran, there  
24 was 70 to 75 percent cohesion among whites, for Republican  
25 candidates. So these two groups were voting in opposite



1 directions, in this region of the state.

2 Q Now, it's been argued here that the Voting Rights Act only  
3 works -- is argued to only work for Democrats. Is that your  
4 understanding?

5 A No, not at all.

6 Q Can you think of an example in the country where the  
7 Voting Rights Act is protecting a Republican district?

8 A From my perspective, the most important thing is that the  
9 voters themselves, if they're a protected class, or racial or  
10 ethnic minority, and can form a majority, they should be able  
11 to vote for whoever is their candidate of choice. And I have  
12 worked on analysis, and familiar with analysis, in places  
13 like South Florida, where there are majority Latino  
14 districts, with large Cuban-American populations, a community  
15 that faced extensive historic discrimination in South  
16 Florida. And created historic districts, where those voters  
17 continue to today vote for Republican, Cuban-American  
18 Republican candidates of their choice. And those are  
19 rightfully protected by the Voting Rights Act.

20 Q With respect to the analysis you did in the 15th  
21 Legislative District, were you looking through some  
22 particular political lens, or did you go into it with a  
23 design to get these results?

24 A Never. That's why I showed these very basic scatterplots.  
25 This is the data. This is not just the end result of some

1 statistical analysis I put in a table. I want to always show  
2 them the data, so that we can see, is it actually the case  
3 that these highest density Latino precincts are different  
4 from the highest density white precincts.

5 Q If somebody observed this public report when it came out,  
6 would they have the ability to sort of peer-review on the  
7 spot, if they had the technical skills, could they test what  
8 you've done and see if you're making this up?

9 A There's no question. It's all publicly available data.  
10 Our software is on our website. Anyone could replicate this,  
11 if they wanted to.

12 Q All right. Now, going back to Exhibit 178, Page 22.  
13 We're now looking at a couple of maps that you included in  
14 your public presentation. What were those, generally?

15 A I know I did an analysis of all of the maps that were  
16 being considered. So at one point I did an analysis of the  
17 different commissioner maps that were alive at the point.  
18 And then the second task was knowing that there was racially  
19 polarized voting in this region, that was diluting the  
20 Hispanic community's vote, is it possible to draw a  
21 performing district, that meets the *Gingles* criteria and  
22 allows Hispanic voters to elect their candidate of choice?

23 So we created a couple different versions of that.

24 Q Is the difference between the versions, whether or not the  
25 Yakima Reservation is included in the VRA district, or left

1 in an adjacent district?

2 A That's correct. There's two versions. This one here I  
3 call the Yakima Columbia River Valley, because it follows  
4 some of those patterns. It mostly excludes the Yakima  
5 Reservation. The second version is one that is inclusive,  
6 wholly inclusive of the Yakima Reservation, and also performs  
7 for Hispanic candidates of choice.

8 Q Did you note that the Commission, the plan it ultimately  
9 drew for this area of the state, resembles the map we have on  
10 the screen?

11 A Yes.

12 Q What did you note was different from what the Commission  
13 adopted, from what you had drawn?

14 A There is a substantial difference in the Latino citizen  
15 voting age population, CVAP. You can see in the district I  
16 had proposed to Senate Democrats, this version of the map  
17 holds the Latino CVAP at 60 percent, which gives them strong  
18 voting strength. The map that was ultimately passed, while  
19 it has many of the same shapes and regions, removed about  
20 10 percent of the Latino citizen voting age population, and  
21 created a map that was just barely over 50 percent Latino  
22 CVAP.

23 Q In the district that the Commission ultimately adopted in  
24 this area, is it your opinion it will perform for the  
25 Latino-preferred candidate?

1 A The adopted map does not perform for Latino candidates of  
2 choice.

3 Q We've heard a Latino candidate, and we've heard a  
4 Latino-preferred candidate. Does that mean anything to you?  
5 Is there a difference there?

6 A Yes, there is. In both the social science literature, and  
7 my understanding of the Voting Rights Act of 1965, and the  
8 court decisions on it, the language always says  
9 "representatives of their choice," implying the choice of the  
10 voters, not the candidates' race, but who the voters want to  
11 choose to represent them.

12 And so we call those candidates of choice. We say  
13 candidates of their choice, to make it clear that we're  
14 talking about the voters who comprise the district in the  
15 protected class should be electing their candidates of  
16 choice.

17 Q Do you see, on occasion, that Latino candidates will be  
18 elected to -- somebody with a Latino surname -- but they're  
19 not the candidate of choice for Latino citizens in the  
20 district?

21 A Yes, there's a number of those examples across the  
22 country.

23 Q All right. Now, the courts saw earlier today Exhibit 214,  
24 which is an e-mail to the commissioners. Your public report  
25 was shared with all of the Washington commissioners, and they

1 were invited to reach out to you if they wanted a briefing.

2 I just want to know, did any of the commissioners reach  
3 out to you, or did you have a briefing with any of them?

4 A I did.

5 Q Which ones?

6 A With Commissioner Walkinshaw and Commissioner Sims.

7 Q Did you hear from Commissioner Fain or Commissioner Graves  
8 at all?

9 A I did not.

10 Q Did you see sort of a counter-analysis that's based on  
11 social-science accepted methods of the *Gingles* preconditions,  
12 from any other source, during the debates?

13 A No, never. There was no other analysis of data.

14 Q Now, at some point in time, you got a subpoena in this  
15 case. Is that fair to say?

16 A Yes.

17 Q And did that come from the defendants?

18 A Yes. I don't know if it came from the state, or the  
19 intervenors, but it came from the defendants.

20 Q One of the things you were asked to produce in that  
21 subpoena, months ago, was materials that you had on Nikki  
22 Torres. Do you remember that request?

23 A Yes.

24 Q Did you have some materials on Nikki Torres?

25 A Yes, I did, and I produced them.

1 MS. SEPE: Objection, Your Honor. So Dr. Baretto is  
2 a non-retained expert, and is testifying to the things that  
3 he had knowledge of during redistricting and his consulting.  
4 But this goes beyond his participation as a witness in this  
5 suit.

6 THE COURT: Okay. Thank you. The objection is  
7 overruled. Go ahead.

8 Q Why did you have some materials on Nikki Torres?

9 A Well, this was the first -- she was a candidate, and  
10 ultimately elected to the position in the 15th Legislative  
11 District. This was the first election, after the adopted map  
12 had been passed. And I was following it very closely,  
13 because it was a map that I had a lot of knowledge of, and I  
14 was curious to see what happened with that first election in  
15 the Yakima Valley region. And I did an interview with a  
16 newspaper out there, who covered -- wrote a very long article  
17 about the election, and the challenges over the map.

18 And I had a very lengthy interview with a reporter from  
19 Yakima, explaining why Torres was not a candidate of choice.  
20 And I, in fact, pointed the reporter, and explained to them,  
21 how to look for precinct data, how could you discern this.  
22 And then I, myself, conducted an analysis of that election.

23 Q I'm going to show you what's been marked, but not yet  
24 admitted, as Exhibit 417.

25 MR. TORCHINSKY: Objection, Your Honor. They purport

1 to present Dr. Barreto as an expert. This document is not  
2 something that was contained in any kind of signed expert  
3 report, and doesn't appear to be essentially agreed to by the  
4 parties. And I'm wondering if the court is even going to  
5 allow him to testify to this.

6 THE COURT: Do you have any reason to doubt its  
7 accuracy?

8 MR. TORCHINSKY: We didn't have a chance to get it  
9 and analyze it, Your Honor.

10 MR. DUNN: It was produced in January.

11 THE COURT: Have you had it since January?

12 MR. TORCHINSKY: I don't believe it was produced to  
13 us, Your Honor. I believe it might have been produced to the  
14 state.

15 THE COURT: Well, as I indicated with Mr. Herrera's  
16 objections, we want to hear as much as we can to make this  
17 decision. And rather than use a procedural rule to stop the  
18 flow of the facts, I'm going to allow everything in, and we  
19 can argue about it later. If we find that it was a violation  
20 of the discovery rules, we can just not consider it, which we  
21 do all the time. But while the expert witness is here, I  
22 want to hear from him as much as we can. So go ahead,  
23 counsel.

24 Q What is shown in Exhibit 417?

25 A This is something I was specifically asked for, in the

1 subpoena. There was a line specifically asking me to produce  
2 any analysis of the Nikki Torres race. And this is what I  
3 had done. I had given an interview November 13th of 2022, to  
4 the Yakima Herald, in which I discussed these exact results.  
5 And I presume that's why they asked me for a copy of it.

6 So this is the ecological inference analysis, using our  
7 eiCompare software package. You can see there are two types  
8 of ecological inference done here, they're indicated by the  
9 green dot and the purple dot. At the very bottom there's a  
10 legend. One says "iterative EI," one "says RxC." So these  
11 are the exact plots that come out of Dr. Collingwood and I's  
12 eiCompare package.

13 At the top of the screen it's showing how Latino voters  
14 voted in this election. And the red line, in the middle, is  
15 50 percent. What it shows is that for both types of  
16 ecological inference models, the iterative, or the RxC,  
17 Keesling was the preferred candidate, between 60 and  
18 65 percent, and Torres was not the preferred candidate,  
19 receiving between 35 and 40 percent.

20 The bottom part of the chart shows non-Latino voters.  
21 Everyone else in the district. And it shows that  
22 overwhelmingly Torres was the preferred candidate of  
23 non-Latino voters, garnering around 80 percent; and Keesling  
24 garnering only around 20 percent. So this is evidence, as I  
25 spoke with the reporter, that Keesling was the



1 Hispanic-preferred candidate, not Torres. And Torres was the  
2 white-preferred candidate in that particular election.

3 Q Now, you recall in your past work, and as a professor,  
4 that the Voting Rights Act, the *Gingles* test, talks about  
5 special circumstances in some elections, in the *Gingles* 2  
6 and 3. Do you know what I'm talking about?

7 A Yes.

8 Q Do you view this election as being one of those special  
9 circumstances?

10 A Well, there are some special circumstances surrounding  
11 this election. Even those circumstances notwithstanding,  
12 Torres is not the Hispanic-preferred candidate. But  
13 typically, in a competitive environment, we would have  
14 expected to see probably a well-known or well-financed  
15 Hispanic Democrat and Hispanic Republican running. We often  
16 see that in places like California and Texas, where there are  
17 real opportunity districts. We didn't see that. We saw a  
18 relatively unknown, less-funded Democrat enter.

19 We also saw no candidates enter in the state house  
20 legislative districts. They were completely unchallenged,  
21 which is typically emblematic of non-competitive seats.

22 Q In other words, people don't run for something they know  
23 they can't win?

24 A Correct. These politicians do a lot of analysis before  
25 they decide to jump into a race. And oftentimes when you see

1 uncontested races, or unfunded candidates, it's because those  
2 elections are not winnable for that side.

3 Q We've heard a bit about BISG. First, can you tell us what  
4 that acronym stands for?

5 A BISG is --

6 MR. TORCHINSKY: Objection, Your Honor. Nothing in  
7 any of Dr. Barreto's reports or materials submitted in this  
8 case, refer to or discuss BISG at all.

9 THE COURT: Objection overruled. Go ahead.

10 A BISG stands for Bayesian Improved Surname Geocoding; BISG  
11 for short. And it is a technique that I commonly use when  
12 preparing voter files for ecological inference analysis.

13 Q Where did it come from?

14 A It came from the health sciences, originally. Public  
15 health scholars and practitioners want to get as much  
16 information on the race and ethnicity of patients, as  
17 possible, because we know in those fields that there are a  
18 lot of racially, and ethically, and genetically, markers,  
19 that are related to disease and other health factors.

20 And so those scholars, probably about 20 years ago now,  
21 pioneered this effort to use the last name, the surname of a  
22 person, as well as their neighborhood, where they live, to  
23 provide reliable understandings of their race and ethnicity.  
24 It has been tested, validated, and proven, and eventually  
25 grew out of the health sciences and started to come into

1 sociology, political science, and economics; and today it's  
2 widely used.

3 Q Have you published a number of publications on the method?

4 A I have published and peer-reviewed journal articles on  
5 BISG.

6 Q What is the question it's trying to answer, this new  
7 method?

8 A It's trying to answer what is the race and ethnicity of  
9 people who actually cast a vote, the actual voters.

10 Q Why does that matter? Why voters rather than CVAP?

11 A Not all those people are even registered, in the first  
12 place, or may have cast a ballot. And so oftentimes the CVAP  
13 data, if there is differential turnout, is a mismatch for the  
14 actual voters on election day, who chose Torres or Keesling,  
15 or any of the others.

16 And so as political scientists, we really want to know the  
17 race and ethnicity of the people casting those ballots, so we  
18 can correlate that with their vote choice, not the people who  
19 happen to live there. So BISG helps us get a much more  
20 precise estimate of rating of voters.

21 Q Here in Washington, is the race of each voter recorded on  
22 the voter file?

23 A It is not. Just their name and address. But race is not  
24 recorded, outside too many of the old Section 5, southern  
25 states.

1 Q Are there some states with race in the voter file?

2 A Yes, there are.

3 Q Has that been used to validate BISG?

4 A Yes. In fact, one of the first political science  
5 validation efforts, looked at the State of Florida, and found  
6 that when you use BISG to predict the race and ethnicity,  
7 then look at the true answer on the voter file, when you  
8 aggregate those down to precincts, you say, I think there's  
9 152 Hispanics in this precinct. Then look at the actual  
10 answer, that it's accurate at about the 95 percent range, in  
11 some states, and in some instances higher. But it's an  
12 extremely accurate method, and has been validated in Section  
13 5 states, including in some other work that Dr. Collingwood  
14 has done on his own, and we've done in partnership, in places  
15 like Georgia, North Carolina and other places.

16 Q It's been stated here that BISG may underestimate  
17 Hispanics by, I think I heard, 20 percent. Is there some  
18 publication about that? Is that information you've heard  
19 before?

20 A I don't believe that's accurate at all, no.

21 Q What is the circumstance when a person with the last name  
22 Johnson marries a person with the last name Diaz, and Diaz  
23 changes their name to Johnson? Doesn't that sort of mess up  
24 the BISG process?

25 A The BISG process is not meant to hone in on any one single

1 individual, and tell us about one person. We're not trying  
2 to find out how one person voted. We're trying to find  
3 aggregate patterns in the data, across racial groups. So  
4 there could be one individual person, who may have not  
5 identified on the census as Hispanic, or Latino, but because  
6 they have the surname Diaz, might have a higher probability.  
7 But there might be another person, in the same area, whose  
8 name was Diaz, originally, and married someone named Johnson,  
9 so they lost their surname.

10 So the most common outcome, at the aggregate level, is  
11 that those can cancel each other out. And this has been  
12 validated in multiple states, where race is on the voter  
13 file. And when you sum those down into precincts or cities,  
14 those aggregate numbers match extremely closely to a  
15 self-reported race.

16 THE COURT: But you need large numbers of people for  
17 this to work. For instance, if you were saying, is there  
18 discrimination in the number of Ninth Circuit appellate  
19 judges, who are Latino, and you didn't know that Kim Wardlaw  
20 and Connie Callahan were Latina, you would miss two out of  
21 30, or something like that, and it could have a huge impact?

22 THE WITNESS: That's exactly correct. And that is  
23 the conclusion of the political science article that's  
24 published, where they validated in Florida. Florida has ten  
25 million, or so, voters. They found that even in these

1 precincts, there is about 1,500 voters. So when you  
2 aggregate it, you're allowed to make one mistake in each  
3 direction, because they, on average, cancel out and match.  
4 If you were running it on six people, or so, if you make one  
5 mistake, that's a 16 percent error. So luckily with voter  
6 files, we're often dealing with thousands, if not hundreds of  
7 thousands of names.

8 MR. TORCHINSKY: One administrative matter. I  
9 believe Dr. Barreto is not available tomorrow morning, and a  
10 couple of us are going to have cross examination; would it  
11 possible to ask the court's indulgence to go later tonight,  
12 to complete his testimony this evening?

13 THE COURT: I think we should have it done in  
14 45 minutes.

15 Q At the point in time that you were collecting the data,  
16 running your analysis, making your report, providing your  
17 information to the Commission, as far as you know, did I have  
18 any knowledge of any of that?

19 A No, not at all.

20 Q Participate at all in any of the analysis you described  
21 here today?

22 A No, none.

23 Q I think you testified, at the beginning of this, that you  
24 have testified, or given expert opinions, in 50 or so cases,  
25 and published a number of -- dozens of articles on this.

1 Do you view, based on your experience as a social  
2 scientist, this question of whether or not there's racially  
3 polarized voting in the Yakima Valley, a close one at all?

4 A No, not at all. There have been multiple lawsuits, state  
5 and federal, already decided, and found that there is,  
6 indeed, racially polarized voting in this region. And I  
7 believe that my analysis, and perhaps others', verifies that  
8 even further.

9 Q And on the matter of *Gingles* 1, whether or not the Latino  
10 community is sufficiently geographically compact to be a  
11 majority in a single-member district, do you find that a  
12 close question in the Yakima Valley?

13 A No, not even close. I mean, you saw from the  
14 red-and-green-colored map, there is an extremely large and  
15 extremely geographically compact Latino community in this  
16 region.

17 Q Thank you, Dr. Barreto.

18 MR. DUNN: I pass the witness.

19 THE COURT: Okay. Mr. Torchinsky.

20 CROSS EXAMINATION

21 BY MR. TORCHINSKY:

22 Q Dr. Barreto, I'd like to ask you a little bit about your  
23 background. When you mention Latino Decisions' clients, you  
24 mention a number of non-profit organizations. Did Latino  
25 Decisions include the National Democratic Campaign Committee,

1 among its clients?

2 A Yes.

3 Q Did it have the Democratic National --

4 THE COURT REPORTER: Excuse me, could you slow down,  
5 please?

6 THE COURT: Just think of every liberal thing that  
7 you can think of to write down.

8 Q Did it include Hilary Clinton's Presidential campaign, in  
9 2016, among its clients?

10 A Yes.

11 Q Did Latino Decisions continue to do work for the  
12 Democratic National Committee, until you left?

13 A Yes.

14 Q And did you subsequently come to found a new firm called  
15 BSP Research?

16 A That's correct.

17 Q What's BSP Research do?

18 A BSP Research is a political consulting firm that provides  
19 analysis of voter opinions, across the board, not just of  
20 Hispanic voters, but other groups as well; I would say  
21 primarily of Hispanic voters, though, for some of the same  
22 clients, Latino advocacy groups, Democratic party committees,  
23 some businesses, stuff like that.

24 Q Would you agree that BSP Research received in excess of  
25 \$500,000 from Democratic candidates, or from aligned



1 entities, according to FEC public records, in the 2020 cycle?

2 A I don't know, off the top of my head. But I could check  
3 with my accountant.

4 Q How about in the 2022 cycle, would that number approach a  
5 million dollars, in the 2022 cycle?

6 A I don't know, off the top of my head. But we did do a lot  
7 of work for the DCCC in the '22 cycle. As you know, it was a  
8 very contested election midterm.

9 Q Between 2015 and now, would it be fair -- would you  
10 dispute it if I told you that FEC's public records indicated  
11 your firm received in excess of \$2.4 million from  
12 Democratic-aligned entities, since 2015, according to Federal  
13 Election Commission reports?

14 A If you say so, I have no reason to dispute that.

15 Q A couple questions for you about your engagement with the  
16 Senate Democratic Caucus. Was there a written contract for  
17 that work?

18 A I think so. I think I probably had to DocuSign something.

19 Q Was that on behalf of BSP Research?

20 A No. That would have been on behalf of myself, as an  
21 individual, or professor.

22 Q When you were communicating with your client there, were  
23 you using your BSP Research e-mail address?

24 A I might have been, because that's a private e-mail that I  
25 use for almost all my communication.

1 Q Why do you use a private e-mail?

2 A Because it's my e-mail. And we can -- there are rules  
3 over UCLA e-mails, on what we're supposed to do with them,  
4 primarily communicate with students, talk about grades, and  
5 things like that. So I don't -- I try not to conduct any of  
6 my non-UCLA business, on my UCLA e-mail.

7 Q Okay. Now, I understand that. The presentation that you  
8 just displayed, that labels you as a UCLA professor, so  
9 explain to me how your private business that was paid by the  
10 Senate Democratic Caucus, wound up with your UCLA label, when  
11 you did your October 2021 presentation. Can you explain how  
12 that happened?

13 A Sure. That's just my title. I am a professor at UCLA.  
14 This was not a political polling consulting project. And so  
15 this was not run through my political polling consulting  
16 firm; it was just, I did it myself, as an individual.

17 Q Using your -- and you did the communication using your BSP  
18 Research e-mail address, correct?

19 A Yes.

20 Q Did you use anybody at UCLA, to assist you in your 2021,  
21 2022 analysis?

22 A Yes. I paid a research assistant.

23 Q A UCLA person?

24 A One of my Ph.D. students, yes. As I stated before, I  
25 often try to bring my Ph.D. students into my research

1 projects. They usually like it, because I get to pay them  
2 extra, beyond what their meager Ph.D. funds give them.

3 Q Tell me who Adam Hall is.

4 A He is a staff person -- I presume he still is -- he was a  
5 staff person for the Senate Democrats; one of the people I  
6 think I made initial contact with.

7 Q Would you have ever had occasion to say something to him,  
8 like, "Stand the line hard for the best possible Dem  
9 -performing map that exists."

10 A Probably.

11 Q Would you have had occasion to tell him that you need --  
12 that you want to exclude large pockets of heavily Republican  
13 areas from certain districts and certain maps?

14 A Certainly, if they voted against Latino candidates of  
15 choice, we would have wanted to create a VRA-compliant  
16 district. So absolutely.

17 Q In your view, then, does it mean that a VRA-compliant  
18 district is one that actually backs Democrats?

19 A It depends on who those Latinos are choosing. As I  
20 discussed earlier, if we were in South Florida, I probably  
21 would have been giving the person the opposite advice.

22 Q So the elections that you looked at, from 2012 through  
23 2020, in the presentation that's Exhibit 178, and marked  
24 "draft," every single general election you looked at in that  
25 case, was a white Democrat versus a white Republican; is that

1 correct?

2 A I'd have to look at the full list to know. But it sounds  
3 correct.

4 Q Did you look at the 2018 -- did you look at the Lieutenant  
5 Governor's race that included two Democrats?

6 A I don't recall if I did. But anyone could certainly  
7 analyze that.

8 Q Did you look at the Superintendent of Public Instruction  
9 race that included a Hispanic Republican candidate?

10 A I don't recall. We just went through the list with  
11 Mr. Dunn. That's the list I looked at.

12 Q Neither one of those two were included there; is that  
13 correct?

14 THE COURT: That's true.

15 Q Thank you.

16 A Thank you.

17 Q And is it your understanding that the Soto Palmer  
18 plaintiffs here, are seeking a district with higher Latino  
19 CVAP?

20 A I have no idea what they're seeking. I haven't  
21 communicated with the plaintiffs at all.

22 Q It's being run by a project that you're the director of;  
23 is that correct?

24 A No.

25 Q So, I'm sorry, I thought you said you were a director of

1 the UCLA Voting Rights Act.

2 A I'm the faculty director of the social science division of  
3 the Voting Rights Project. The project is being run, as  
4 Mr. Dunn explained earlier, by himself, who's the legal  
5 director. I have absolutely no input, or even access to what  
6 they do.

7 Q You don't know what the Soto Palmer plaintiffs are asking  
8 this court to impose?

9 A I do not.

10 Q Okay. I'd like to go to the document camera.

11 So do you recognize the e-mail address on what I'm  
12 showing you?

13 MR. TORCHINSKY: This is being used for impeachment,  
14 Your Honor. This was produced as Barreto 005 in the Bates  
15 numbers.

16 THE COURT: Go ahead.

17 Q Do you recognize this correspondence?

18 A It appears to be an e-mail between myself and Mr. Hall, in  
19 November of 2021.

20 Q Okay. And let's read the e-mail, in the middle of the  
21 page here. You're saying -- you're telling Mr. Hall, what,  
22 precisely in this e-mail?

23 A Well, I'm explaining to him the importance of the Voting  
24 Rights Act. I think there's a key phrase in the middle that  
25 says, "Does the map actually remedy the Section 2 violation?"

1 So here, I'm explaining to him, that if there's a violation,  
2 and the violation is that Latino votes are being diluted,  
3 that you have to create an opportunity district, as we  
4 reviewed earlier the Section 2(b) language. There has to be  
5 an opportunity to elect candidates of choice.

6 So as I say here, at the very conclusion of the middle  
7 paragraph, that, "The court is going to want to create the  
8 first Latino legislative district that works. If the court  
9 has to weigh in, they're going to say, let's fix this, not  
10 sorta fix it."

11 So I constantly was reminding Mr. Hall, and his  
12 colleagues, that there needed to be a district that Latinos  
13 had a genuine opportunity to elect a candidate of their  
14 choice, and that that was the most important criteria, in my  
15 opinion, of Section 2.

16 Q That comes with a targeted citizen voting age population,  
17 it sounds like you're saying, of about 57 percent?

18 A As you saw on my map, I had a map of 60, I thought, that  
19 was actually where you would get the most opportunity to  
20 elect. In this, I think there was some debate of whether or  
21 not a 51 percent citizen voting age population district would  
22 work. And as I sit here, I'm telling you, no, you need to  
23 push that up. There's very low registration, very low  
24 turnout of Latinos in the region. So even if you're  
25 52 percent of the citizens, you maybe are only 48 percent of

1 the registrants, and with low turnout, you might only be  
2 44 percent of the voters, on election day.

3 We had many discussions about that disconnect. So I was  
4 encouraging him to say, look, if you're trying to propose a  
5 district, get a district that's actually Section 2 compliant.

6 Q And looking down in what's highlighted in red here, which  
7 I don't believe was in your original, I added that  
8 highlighting for the purposes of showing you this, you're  
9 saying that, "The best Dem-performing map has the highest  
10 Latino CVAP that you could possibly get," right? Is that  
11 what you mean by "the more the better" after the phrase,  
12 "over 50 percent Latino CVAP"?

13 A Let me read it and see if that's right.

14 As I say above, those other numbers we referred to are  
15 CVAP numbers. The higher the CVAP, because of the historic  
16 registration and turnout deficiencies, or discrimination and  
17 dilution that has taken place in this region, you need to  
18 have higher CVAP in order to have a district where the  
19 majority of the voters, the actual voters are Latino. So I  
20 was encouraging him, if you're going to get a voting rights  
21 district, there has to be remedy.

22 Q In your presentation -- and could we pull up Exhibit 179?  
23 In your October 19, 2021 presentation, on this page you say,  
24 "abridgement of the right of any citizen to vote on account  
25 of race, color, or membership in a language minority group."

1 What do you take from the phrase "on account of"? Is that  
2 discussing correlation versus causation, or what does the  
3 phrase "on account of" mean to you?

4 A I'm not attempting to make a legal interpretation of this,  
5 I'm just sharing, with my clients, what Section 2 is. My  
6 very political science understanding of it is that there are  
7 racial and ethnic minorities, who have faced discrimination,  
8 at the time of the Voting Rights Act initial passage. It  
9 applies to anyone, including white Americans, that any group  
10 who finds themselves as a minority, can use Section 2 of the  
11 Voting Rights Act, if they feel that their vote is being  
12 diluted and can't choose a representative.

13 Q But because they're a member of a particular minority  
14 group, not because of affiliation with a particular political  
15 party; is that correct?

16 A That's incorrect.

17 Q That's incorrect?

18 A That's incorrect.

19 Q Is there anything about protecting political parties, in  
20 your paraphrasing of Section 2 here?

21 A It's the choice of the voters, regardless of whether they  
22 vote for Republican, Democrat, green, nonpartisan. Whatever  
23 the voters want as their representative, Section 2 says, you  
24 have a right to be able to have an opportunity to elect  
25 candidates of your choice, and you cannot be put into a



1 dilutive system where your population is biggish, but not big  
2 enough to ever win an election.

3 Q Let's talk next about *Gingles* 1. Are you aware that  
4 *Gingles* 1 has two components, both numerosity and  
5 compactness?

6 A Yes.

7 Q The compactness there, do you understand that to be the  
8 compactness of the minority population, or compactness of the  
9 district?

10 A I believe if you put the language up, we can look at it  
11 together. But I believe that the minority community is  
12 geographically compact, and large enough in size.

13 Q You said you provided expert consultation in the *Montes v.*  
14 *Yakima* case, that you cite here?

15 THE COURT: That's right. That's what he said.

16 Q I was asking him to confirm that.

17 THE COURT: We just heard it.

18 Q Who were you a consultant for, for the plaintiffs, the  
19 defendants?

20 THE COURT: For the plaintiffs.

21 A ACLU.

22 Q Are you aware, in that case, that the plaintiffs  
23 demonstrated that three-quarters of the City's population  
24 lived in about one-third of the City's land area, bounded by  
25 a major road?

1 A I don't recall the specific facts, but I know that the  
2 community was -- that it was quite possible to draw three  
3 districts.

4 Q Now, when you presented your *Gingles* 1 analysis, you  
5 didn't mention the compactness of the minority population in  
6 your district.

7 MR. TORCHINSKY: Can we go to the Yakima Columbia  
8 River -- go about three more, about eight more pages. Go  
9 back right there.

10 Q So in this map that you see on the screen here, can you  
11 tell me where the concentrations of minority of Hispanic  
12 citizen voting population are?

13 A Do you mean, like, which cities?

14 Q Yes, which cities?

15 A Well, there are large Hispanic populations following the  
16 river, which is where most of the actual population is.  
17 There's also just lots of rural farmland, in between, where  
18 nobody lives. But Yakima down to Wapato, Toppenish, Granger,  
19 Sunnyside, all of those areas have large Latino populations,  
20 including some of the portions of Franklin County, as well,  
21 that are included.

22 Q And so when you go down to -- how far apart -- does Pasco  
23 have a large Latino population?

24 A Yes.

25 Q How far apart are Yakima and Pasco?

1 A I don't know off the top of my head.

2 Q If I told you it was 83 miles by road, does that sound  
3 about right to you?

4 A Seems reasonable.

5 Q And how about, is there a Hispanic population  
6 concentration in Mattawa?

7 A Yes, there is.

8 Q How far apart are Mattawa and Yakima?

9 A They would appear to be about two-thirds as far as Yakima  
10 and Pasco.

11 Q Perhaps 60 miles, by road?

12 A Maybe. Maybe closer to 50.

13 Q Are those -- is 83 miles apart, geographically compact  
14 minority population, in your opinion?

15 A Yes. In Eastern Washington, there are districts that have  
16 -- portions of the district that are 180 miles apart, from  
17 each other. These are very rural areas. It's not like  
18 drawing a district in downtown Seattle. It's not unusual to  
19 have districts that are larger in size, in more rural areas.

20 Q I'm not asking you about the size of the district, I'm  
21 asking you if -- how -- is 83 miles, geographically close,  
22 for two minority populations?

23 THE COURT: He answered the question already.

24 Q When you drew this map, this little finger over on the  
25 western side, south of Yakima, how narrow does that gap get,

1 when you are going from kind of Union Gap down to Wapato?

2 A I don't know, off the top of my head. There's not a lot  
3 of population on either side of it.

4 Q But you narrowed it down to a very thin connector; is that  
5 correct?

6 A This is the map I drew. We can debate whether it's thin  
7 or not thin, but we'd have to zoom in to look at the mileage.

8 Q How about down near Pasco, any idea how narrow that  
9 district gets over there?

10 A Which district?

11 Q Down near Pasco. It's labeled "Kennewick" on the map, but  
12 Pasco is north of the river there.

13 A Right.

14 Q Any idea how narrow that finger gets, as it gets towards  
15 Pasco?

16 A I can't tell, off the top of my head.

17 Q Does it visually look wide, or does it look like it  
18 narrows?

19 A These districts have 157,000 people, so you have to  
20 continue drawing them, until they have 157,000 people in  
21 them. If we were allowed to draw a district with 75,000  
22 people, then it would have probably been half the size. But  
23 it has to get to 157,000 people. So, in my opinion, this is  
24 not unusual for Eastern Washington. There are many districts  
25 much larger than this.

1 Q Your goal, in drawing this map, was to hit a 60 percent  
2 Hispanic citizen voting age population; is that correct?

3 A That was not the goal, no.

4 Q What was the goal?

5 A The goal was to draw a community of interest that  
6 connected large Hispanic communities, in this part of the  
7 state, to have roughly 157,000 people, so it was within  
8 deviation. And then after that was done, to examine the  
9 demographics, and the performance of the district, to  
10 determine if it would create an opportunity to elect.

11 Q Do Yakima and Pasco share television stations?

12 A I don't recall.

13 Q Do they share newspapers?

14 A I believe they each have their own newspaper.

15 Q Do people commute from Yakima to Pasco, generally?

16 A Which people?

17 Q Does anybody? I mean, do you -- your community survey  
18 provides commuter flows.

19 A Yes, some people do commute.

20 Q From Yakima to Pasco?

21 A Yes.

22 Q How about from Pasco to Yakima?

23 A Yes.

24 Q Regularly?

25 A I mean, people that work and live in those places,

1 probably do it regularly.

2 THE COURT: Including judges. Judge Estudillo just  
3 reminded me.

4 Q Let's go to the next page. So this is your Yakima  
5 Reservation district. Again, looking at the north central  
6 part of that district, there's like a finger that reaches up  
7 into Yakima. Why is that finger there in that map?

8 A That's where Yakima City is, the city limits, and has a  
9 fairly substantial population. And so it was included in  
10 this map.

11 Q When you go all the way to the east, up to Othello, why  
12 does that sort of bizarre finger shape stick up there?

13 A I don't see anything bizarre. I don't know what you're  
14 talking about.

15 Q The shape around Othello, where it kind of looks like a  
16 little saw at the bottom. It's kind of a little protrusion  
17 in the eastern part of the district. Do you not see that?

18 A Well, as I said, you have to have 157,000 people in the  
19 district, so you need to keep drawing and adding census  
20 blocks, until you get to 157,000. Much of this area, as I  
21 think you're probably familiar with, has very, very little  
22 people in it.

23 Q But you're reaching --

24 A Hanford here in the middle, and lots of vacant land,  
25 uninhabited land. So you have to keep drawing, until you get

1 to 157,000 people. And Othello, looks like Royal City as  
2 well, Mattawa, these are some areas that are at least towns  
3 that have population that you could draw into the district.

4 Q You're reaching these fingers out purposely to grab  
5 Hispanic population; is that correct?

6 A No.

7 Q So why did you grab Yakima and Othello, and put them  
8 together in a single map?

9 A As I said, we studied the area. We looked at whether  
10 there was common communities. These were communities that  
11 had a lot in common with each other, and could be joined  
12 together in a political district.

13 Q What do Hispanics in Othello have in common with Hispanics  
14 in Yakima, beyond race?

15 A Well, if you're familiar with the region, the entire  
16 Central and Eastern Washington area, the larger Yakima Valley  
17 has a lot in common, of a rural agricultural area. There are  
18 very similar jobs, industries. There's a large immigrant  
19 population. There's a large Spanish-speaking population,  
20 first-generation population, in many of these areas. They  
21 have an incredible amount in common, this entire region. And  
22 so they're a common community of interest. As I said, we  
23 have to draw until we get to 157,000, for one person, one  
24 vote.

25 Q Did you do any spatial analysis, or examination, of the

1 distribution of the Hispanic population in Yakima Valley?

2 A What do you mean by that?

3 Q Did you examine how far apart the various pockets of  
4 Hispanic population are?

5 A No.

6 Q Give me just one moment.

7 I do want to just ask you one more thing. You  
8 indicated that -- and I want to go back to the document  
9 camera -- you indicated that BISG has been validated, I think  
10 you said at the 95 percent rate?

11 A Somewhere in that range. There's a lot of publications  
12 about its accuracy, by different racial and ethnic groups.

13 Q Are you familiar with Professor Kosuke Imai?

14 A Yes.

15 Q Who is he?

16 A He's the professor who developed the package in R, that  
17 goes by the letters WRU, "who are you," and is the one that  
18 wrote an article in the Journal of Political Analysis, first  
19 validating BISG for voter-file analysis in the State of  
20 Florida.

21 Q Are you familiar with a December 10, 2022, publication of  
22 his, at science.org, entitled "Addressing Census Data  
23 Problems in Race Imputation"?

24 A I probably read it at some point, but don't have that one  
25 memorized.



1 Q This is the publication. So you see this has Dr. Imai's  
2 name at the top there, as one of the authors?

3 A I see that.

4 Q I want to show you Table 2 from that document. Under  
5 "Hispanic" -- and I'll give you a minute to read what the  
6 chart says. But he's talking about overall classification  
7 error rates; is that correct?

8 A I have no idea, without reading the whole article, what  
9 this table is. My normal practice, as a social scientist,  
10 would be to read the article, read the text before the table,  
11 after the table. I need to look at the data, then could  
12 probably tell you a lot about it.

13 Q In just reading his document here, do you see where it  
14 says, "Hispanic false negative total, 23.3 percent"?

15 A I see that number in the table.

16 Q You see, up at the top, where it says, "Overall error  
17 rate, 16.9 percent"?

18 A Yes.

19 Q That's a far cry from 95 percent; isn't it?

20 A You're completely misinterpreting this table.

21 Q I thought you said you haven't read the table.

22 A That's not what this table is comparing to, the 95 percent  
23 confidence rate that he refers to in his political analysis  
24 article with Khanna, where he has validation tables showing  
25 when you aggregate it down, it's extremely accurate. And if

1 you call him right now, and bring him in here, that's what  
2 he'll tell you, I guarantee it.

3 Q In an article you haven't read, you're prepared to say  
4 that the table was false?

5 THE COURT: No, it's not false, just misinterpreted  
6 by a lawyer, who is not a political scientist.

7 MR. TORCHINSKY: No further questions.

8 THE COURT: Ms. Sepe, you have 15 minutes, so use it  
9 wisely.

10 THE COURT: Please, everyone, take note that Mr. Dunn  
11 didn't have written questions out ahead of time, didn't  
12 depend on jumping around. He just had a conversation with  
13 the witness. And we got a lot done in a short period of  
14 time. So don't get wedded to your tech, and lose track of  
15 what it means to be a trial lawyer.

16 MS. SEPE: Certainly, Your Honor.

17 CROSS EXAMINATION

18 BY MS. SEPE:

19 Q Good afternoon, Dr. Barreto. My name is Cristina Sepe. I  
20 represent the State of Washington in these two cases. I want  
21 to pull up the subpoena you had referenced earlier. You  
22 stated you weren't sure if it came from a defendant -- which  
23 defendant. I just wanted to pull it up to ask, does this  
24 look like the subpoena that you were served?

25 A It could be. I honestly don't remember, it was so long

1 ago. I don't know.

2 Q I just wanted to scroll down and clarify, this one  
3 actually came from the intervenor-defendants, rather than --

4 THE COURT: Yes, it certainly did.

5 Q And to make the record clear, if you go down to  
6 Attachment A, under "document requests," there is, in fact, a  
7 document request for the documents referencing Ms. Keesling  
8 and Ms. Torres?

9 A Yes. I vividly remember that, because they called them by  
10 name. They're in Item 10. I wasn't sure if it came from  
11 their office, or them. But I know I was asked to produce  
12 that. I always take that seriously. That's why I sent that  
13 data over.

14 Q Got it.

15 So you had talked about some of the materials that you  
16 looked at, in creating your analysis for the Senate  
17 Democratic Caucus. And I just wanted to confirm that as part  
18 of that analysis, you weren't a part of conversations amongst  
19 the commissioners, negotiating the maps?

20 A I was never in a conversation with the four commissioners,  
21 only with Commissioners Walkinshaw and Sims.

22 Q Similarly, you weren't on text messages or e-mails between  
23 commissioners and their staffers who were working with them?

24 A With which commissioners?

25 Q All of the commissioners. Apologies.

1 A We would sometimes get a text message that said, "We're  
2 going to have a meeting at 8:00 a.m.," or something like  
3 that. So I don't want to misstate that. But I was not in  
4 any negotiations. I was only providing advice to  
5 Commissioner Walkinshaw, and his team.

6 Q Thank you for putting a finer point. I had wanted to  
7 clarify that it was about map negotiations, and you just so  
8 clarified.

9 I had a question. So earlier in this trial, this  
10 document that has been preadmitted as Plaintiffs'  
11 Exhibit 131, came up. And you weren't a recipient of it, but  
12 you are referenced. And I just wanted to confirm, this  
13 hyperlink in Subsection 2, is your website?

14 A Yes. MattBaretto.com is my website. And I do have a lot  
15 of my work archived there. And this looks like some of my  
16 older work on the State of Washington, when I used to be a  
17 professor here.

18 Q And so if you click on the link, this is the PDF that  
19 comes up. Do you remember why you created these slides?

20 A I don't, off the top of my head. I know it could have  
21 been related to the *Montes* case. It could have been related  
22 to early drafts of the state WVRA that I was an advisor on.  
23 I don't remember, specifically.

24 Q Do you recall any of your conclusions that you reached  
25 from this presentation?

1 A I don't know if it's a summary, or if there's data. If  
2 you continue to scroll down, it looks like right now I'm sort  
3 of summarizing the Voting Rights Act, and how -- there is a  
4 very similar chart that we saw before. I'm guessing it will  
5 eventually be populated with data. There we go. So that's  
6 an election from the Yakima County Commission, in 2008. So I  
7 was analyzing data all the way back in 2008. You see a very  
8 clear pattern, a linear pattern there of racially polarized  
9 voting, in some of those older elections.

10 Q So your conclusions then are similar to your conclusions  
11 now, about the Yakima Valley area?

12 A Yes. I mean, these charts show, quite clearly, a very  
13 clear linear pattern in percent Latino and support for  
14 candidates.

15 Q After you created your slide presentation for the Senate  
16 Democratic Caucus, do you remember presenting your findings  
17 in your presentation?

18 A Yes. There were multiple presentations.

19 Q Specifically, you recall presenting to Commissioner  
20 Walkinshaw and Commissioner Sims?

21 A Yes, definitely.

22 Q Along with their staffers?

23 A Their staffers. And they also asked me, at one point, to  
24 do a community presentation, for the groups here in the  
25 Yakima region, who were advocating for inclusion in the map.

1 Q Just to clarify, for a timeline. Does it sound about  
2 right that you presented it to Commissioner Sims and  
3 Walkinshaw around mid-October of 2021?

4 A That would be right. I believe the report was -- the  
5 first draft, I believe, was October 12th. Then the public  
6 draft was October 19th. So somewhere in that range, is when  
7 those first presentations were being done.

8 Q You spoke about a second presentation to community  
9 members, as well. Was that closer to when the map should  
10 have been voted on by the commissioners?

11 A Yes. It might have been right on the eve of the map.

12 Q Okay. So I'm going to turn to Exhibit 178, which has been  
13 preadmitted. And I understand that we're referring to this  
14 as the full report that you may have provided to the Senate  
15 Democratic Caucus, it's about 40 slides. Does that sound  
16 correct, as to what you had submitted to the SDC?

17 A That sounds right.

18 Q I'm going to scroll down to Slide 35. I see here that  
19 there's a cross-out, what looks to be perhaps "15" crossed  
20 out, and then "14" added. Why did you cross that out?

21 A In my opinion, it was extremely important, because of  
22 turnout discrepancies in this area, there's a been a long  
23 abandoned and discriminated-against Hispanic community, very  
24 low turnout, that, however, there's fairly good turnout among  
25 Latino voters in presidential election years, when there's a

1 lot of excitement, and buzz, and other big elections are up.  
2 And so it was my opinion that for the Hispanic community to  
3 have a real opportunity to elect, that this seat needed to be  
4 14, which would occur in presidential-year cycles, as opposed  
5 to 15. So I made a visual strike-through, to say we  
6 shouldn't be talking about this as LD 15, we should be  
7 talking about it as LD 14.

8 Q Is it correct that you didn't provide turnout data, with  
9 the presentation that you submitted to the Senate Democratic  
10 Caucus?

11 A I definitely provided turnout data. We talked about  
12 turnout all the time.

13 Q It wasn't included as part of this slide analysis that you  
14 presented?

15 A I don't recall. I mean, you just jumped to Slide 35. But  
16 I don't recall, specifically. I think there's actually a  
17 chart later, there's an X, Y plot, that does look at turnout  
18 in here. So the answer is, yes.

19 Q And previously when you were speaking with Mr. Dunn, you  
20 had explained that this one mostly excludes the Yakima  
21 Nation, but wanted to confirm that there were portions of the  
22 Yakima Nation that were included in this proposed map?

23 A I think along the river, Toppenish and Wapato, and areas  
24 there, are right on the edges of the reservation. But this  
25 map mostly excludes the Yakima Reservation.

1 Q And as I understand this slide analysis, you go on to  
2 provide three other alternate maps. Here's one, the second,  
3 and then the third, where the Yakima Nation would be unified  
4 in a single district. Is that correct?

5 A Yes.

6 Q In creating or recommending these alternative maps, you  
7 were looking at whether or not the districts would comply  
8 with the Voting Rights Act; is that correct?

9 A That's correct.

10 Q But you weren't looking at whether or not there would be  
11 compliance with state laws?

12 A I always consider full compliance with all federal and  
13 state laws, when I outline maps and recommend maps. You  
14 should not advocate maps that violate any of the laws. And  
15 so typically, in sort of order of descending, we usually  
16 start with the Federal Voting Rights Act, to make sure we're  
17 following federal law, then looking at state map  
18 redistricting guidelines, whether it's about communities of  
19 interest and other things like that.

20 Q Thank you. You're about to lead into my next question.  
21 What do you recall about state requirements?

22 A Requirements about communities of interest, keeping --  
23 most states talk about trying to keep as many communities  
24 whole, as possible, attempting to reduce splits, and there is  
25 a contiguity requirement, in Washington. There's



1 requirements about, if you cross rivers, there needs to be a  
2 bridge, things like that. I remember having some of these  
3 discussions. And so those were all taken into account, when  
4 we thought about different ways to draw a VRA-compliant map.

5 Q The next slide here. So you have the four alternative  
6 maps, and you have a table summarizing some information about  
7 those maps. In that third column, there's one that says,  
8 "Latino CVAP '19," and one called "Latino CVAP now." Then do  
9 you agree, generally, the Latino CVAP now column, is  
10 generally between 2 and 3 percent higher than the 2019 CVAP?

11 A Somewhere in that range, yeah.

12 Q What does the "CVAP now" column reflect?

13 A It would have been the estimated Latino CVAP in 2021, at  
14 the time that I was evaluating the maps. The most recent  
15 publicly available CVAP data was from 2019. So two years  
16 old.

17 And so using some linear forecasts that I've used in many  
18 other cases, we can estimate, if the population is growing or  
19 stable, what that CVAP would look like in 2021. So it's an  
20 effort to reflect the -- at the time that I created this  
21 table.

22 MS. SEPE: No further questions. Thank you so much,  
23 Dr. Barreto.

24 THE COURT: Mr. Dunn?

25 MR. DUNN: Two small things. First, I need to move

1 admission of 417, that's the Torres plots that Dr. Barreto  
2 said he created with his own hand.

3 THE COURT: 417 is admitted.

4 (Exhibit 417 was admitted.)

5 REDIRECT EXAMINATION

6 BY MR. DUNN:

7 Q In the conferences that you go to, and reviewing the  
8 literature, some of which you've been shown today, do you  
9 recognize the name Mark Owens?

10 A I know Dr. Owens is a professor in Texas.

11 Q And is he somebody, in your field, that's regularly  
12 published on racially polarized voting analysis?

13 A No. I only know him through one or two other voting  
14 rights cases.

15 Q Thank you.

16 THE COURT: Anything else? Great. Thank you very  
17 much for coming in. I'm glad we got you done today. And  
18 we'll start up again at 8:30 tomorrow. And we are adjourned.

19 (Adjourned.)

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