

Exhibit G

February 21, 2014

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and)	
MATEO ARTEAGA,)	
)	
Plaintiffs,)	
)	NO. 2:12-CV-3108 TOR
vs.)	
)	
)	
CITY OF YAKIMA, MICAH)	
CAWLEY, in his official)	
capacity as Mayor of)	
Yakima, and MAUREEN)	
ADKISON, SARA BRISTOL,)	
KATHY COFFEY, RICK ENSEY,)	
DAVE ETTL, and BILL LOVER,)	
In their official capacity)	
as members of the Yakima)	
City Council,)	
)	
Defendants,)	

DEPOSITION UPON ORAL EXAMINATION OF

MATEO ARTEAGA

2:00 P.M.
FEBRUARY 21, 2014
6 SOUTH SECOND STREET
YAKIMA, WASHINGTON

REPORTED BY: JORI L. MOORE, CCR NO. 1993, RPR

1 program?

2 A. Less than a year.

3 Q. What did you do next?

4 A. I went to work for Central Washington
5 University.

6 Q. What year did you start at Central?

7 A. February 1st of '99.

8 Q. Are you still there?

9 A. Yes.

10 Q. When you were hired in '99 what was your
11 position you were hired as?

12 A. The director of the EOC program, Educational
13 Opportunities Center.

14 Q. EOC?

15 A. Yes.

16 Q. Not EEOC?

17 A. No. A lot of people confuse that but no.

18 Q. So what is the purpose of the EOC?

19 A. To serve 1,000 adults and get them to apply
20 and also secure financial aid for them to go to
21 college.

22 Q. The EOC would work with the community to try
23 to get 1,00 adults to what?

24 A. To either go to school and in some cases if
25 they were limited English I would have them take ESL

1 classes. Of course if they didn't have a GED I'd
2 assist them to get into the GED program and then after
3 they got that then we'd put them into college or a
4 trade school, whatever their needs were.

5 Q. As the director of the EOC were you actually
6 interacting with these adults or you were supervising
7 other employees?

8 A. I was the supervisor but my personal
9 philosophy I wanted to see two individuals every day.
10 I was in close contact with people who were serving.

11 Q. How long were you director for?

12 A. I still am.

13 Q. Have you held any other positions within
14 Central Washington?

15 A. I think in '01 I was assigned two different
16 programs, high school equivalency program, HEP for
17 short, and then college assisted migrant program, CAMP.

18 Q. So let's talk about the high school
19 equivalency program, is that something you're still
20 part of?

21 A. No.

22 Q. So you first became involved in that in 2001?

23 A. Yes.

24 Q. And was that an initiative that Central
25 Washington started or what was the story behind that?

Exhibit H

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO ARTEAGA, PLAINTIFFS

v. CIVIL ACTION NO. 12-cv-3108-TOR

CITY OF YAKIMA, WASHINGTON, *et al.* DEFENDANTS

SUPPLEMENTAL DECLARATION OF WILLIAM S. COOPER

WILLIAM S. COOPER, acting in accordance with 28 U.S.C. §1746, the Federal Rules of Civil Procedure 26(a)(2)(B), and Rules 702 and 703 of the Federal Rules of Evidence, does hereby declare and say:

1. My name is Williams S. Cooper. I serve as a demographic and redistricting expert for the Plaintiffs. I filed a declaration in this case on February 1, 2013. I submit this supplemental declaration in response to the March 22, 2013 report of Dr. Peter Morrison (the “Morrison Report”) and to his supplemental April 6, 2013 report (the “Morrison Supplemental Report”).

2. In this supplemental declaration, I address Dr. Morrison’s claim that the Latino citizen voting age (LCVAP) majority districts in *Illustrative Plans 1* and *2* do not satisfy the *Gingles 1* precondition that the minority population must be “sufficiently large and geographically compact to constitute a majority in a single-member district.” I also address Dr. Morrison’s opinion that the creation of a

Figure 15 Yakima City Council Hypothetical Plan D Summary

District	Population	Citizens	Deviation	% Deviation	18+_Pop	18+ Hisp.	% 18+ Hisp.	% Latino CVAP	% Latino Registered (of all registered)
1	16622	10866	-303	-2.71%	10262	7435	72.45%	55.25%	55.65%
2	14403	11155	-14	-0.13%	9837	4778	48.57%	30.13%	32.54%
3	11601	11142	-27	-0.24%	8947	1652	18.46%	14.45%	12.49%
4	11783	10779	-390	-3.49%	8676	2866	33.03%	28.38%	21.38%
5	12372	11087	-82	-0.73%	8811	3005	34.11%	20.35%	20.31%
6	11821	11412	243	2.17%	9568	937	9.79%	5.89%	6.91%
7	12465	11580	411	3.68%	9186	1164	12.67%	12.13%	7.94%

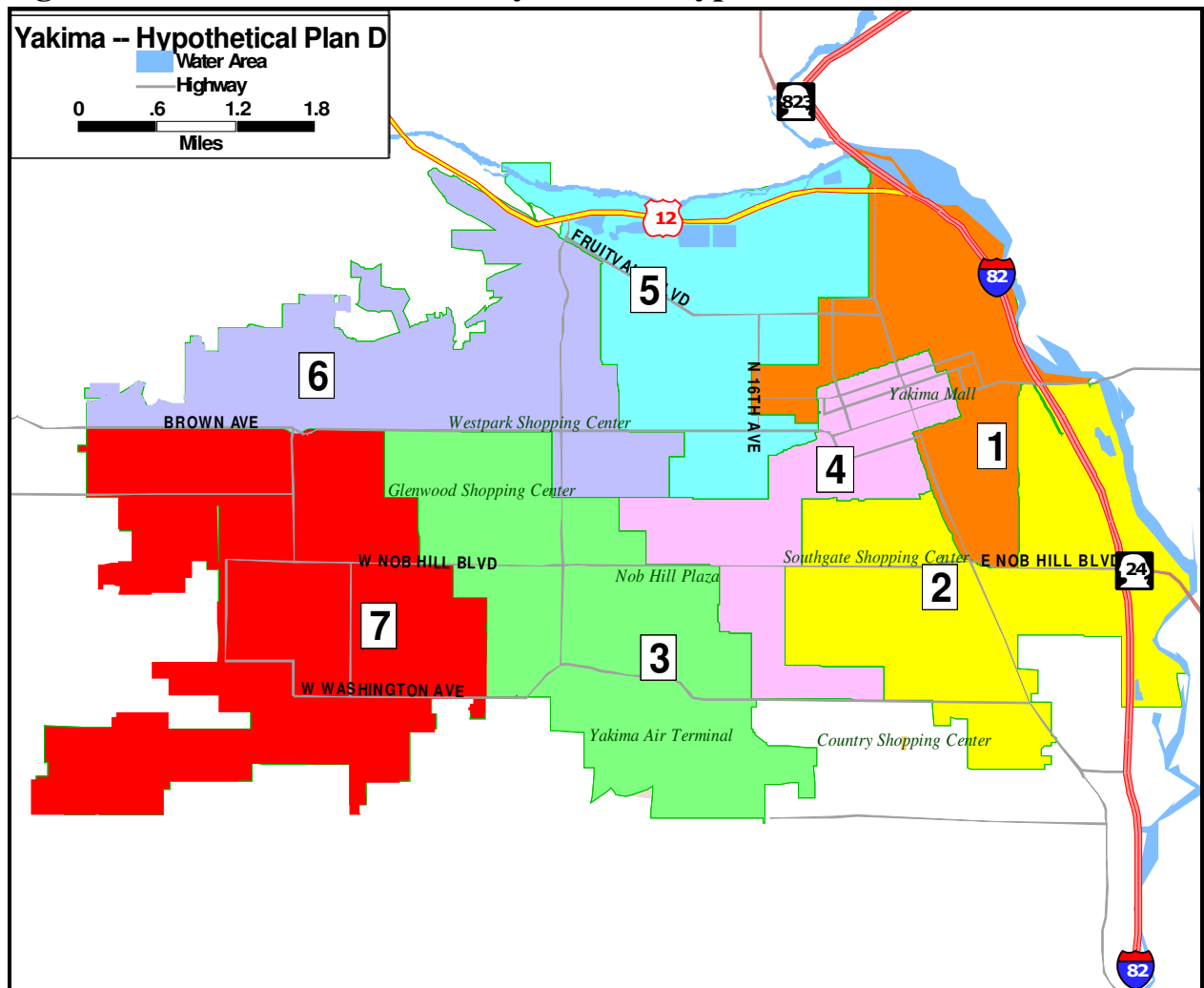
Figure 16 Yakima City Council Hypothetical Plan D

Figure 17 Yakima City Council Hypothetical Plan E Summary

District	Population	CVAP	Deviation	% Deviation	18+_Pop	18+ Hisp.	% 18+ Hisp.	% Latino CVAP	% Latino Registered (of all registered)
1	21265	7577	-204	-2.62%	13082	9193	70.27%	51.16%	53.91%
2	14972	7574	-207	-2.66%	10304	4902	47.57%	30.81%	32.01%
3	10671	7897	116	1.49%	8218	1481	18.02%	15.97%	12.34%
4	11812	7951	170	2.19%	8792	2687	30.56%	24.53%	20.01%
5	10718	7665	-116	-1.50%	8236	1685	20.46%	14.54%	13.00%
6	10751	7935	154	1.98%	8659	865	9.99%	2.59%	6.34%
7	10878	7635	-146	-1.88%	7996	1024	12.81%	13.26%	7.80%

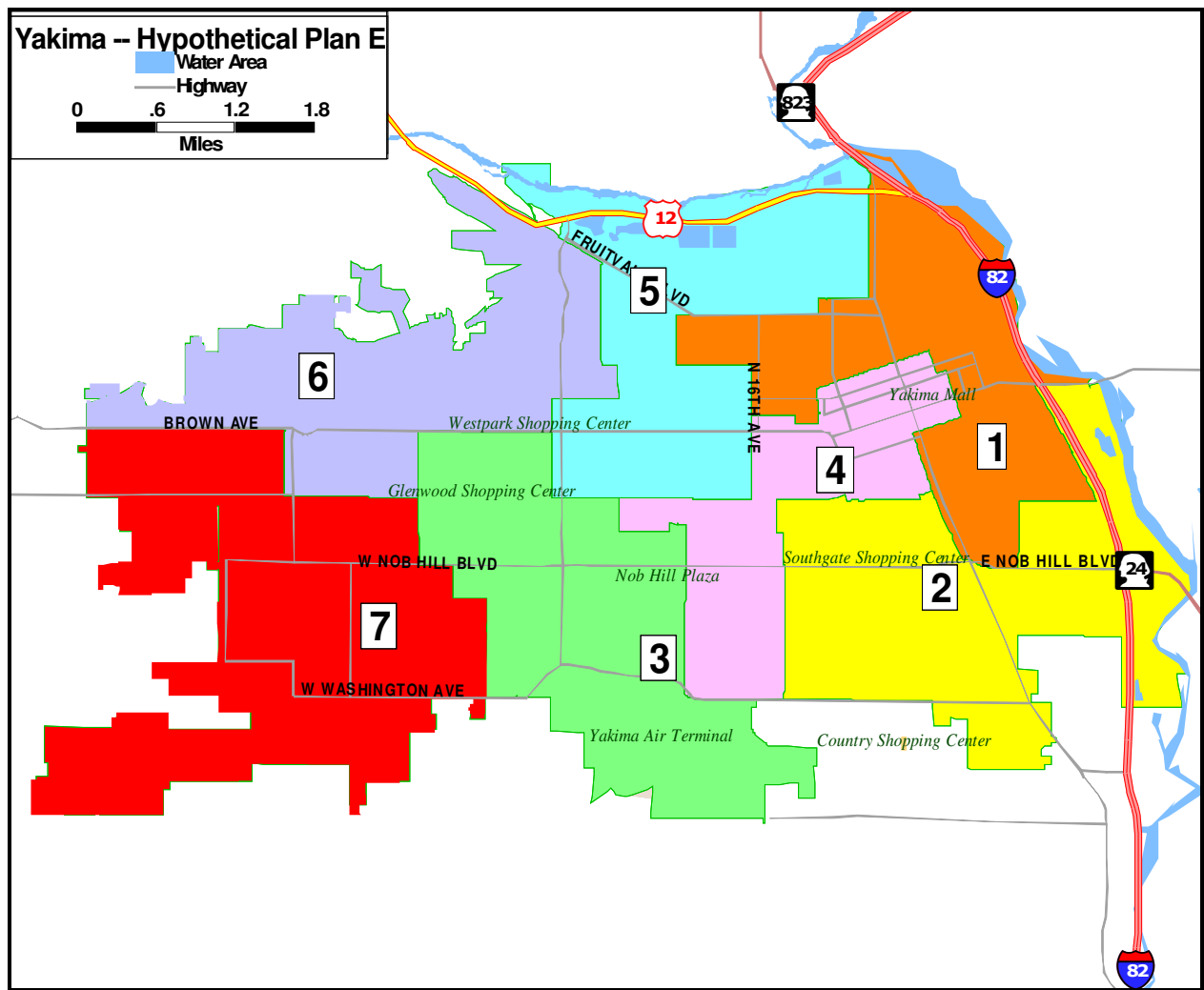
Figure 18 Yakima City Council Hypothetical Plan E

Exhibit I

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO)	
ARTEAGA,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
CITY OF YAKIMA, MICAH)	No. CV-12-3108-TOR
CAWLEY, in his official)	
capacity as Mayor of)	
Yakima, and MAUREEN)	
ADKISON, SARA BRISTOL,)	
KATHY COFFEY, RICK ENSEY,)	
DAVE ETTL, and BILL)	
LOVER, in their official)	
capacity as members of)	
the Yakima City Council,)	
)	
Defendants.)	

DEPOSITION UPON ORAL EXAMINATION OF
WILLIAM S. COOPER

Taken at Floyd, Pflueger & Ringer
200 W. Thomas Street
Seattle, Washington

DATE TAKEN: May 8, 2013
REPORTED BY: Mary A. Whitney, CCR - WCRL #2728

1 instruct the witness to answer the question that's
2 being asked.

3 A. So what is your question again?

4 Q. Well --.

5 A. I mean, I'll just say yes, I understand
6 electoral imbalance and leave it at that. I won't try
7 to explain it.

8 Q. Is it something that you had a concern about
9 in drafting plans 1, 2, A, B, and C?

10 MS. KHANNA: Objection; vague, with an
11 undefined term.

12 Q. Go ahead and answer.

13 A. Yes, I -- I was concerned about that.

14 Q. And what do you do, if anything, to address
15 those concerns?

16 A. I created two districts where Latinos would
17 have a shot at electing somebody to city council
18 because there was an electoral imbalance.

19 Q. What about the other five districts?
20 Were you concerned about electoral imbalance as it
21 relates to the voters in those other five districts?

22 A. I didn't look at that question carefully.

23 Q. All right.

24 Let's go to paragraph -- let's see. We're
25 moving along here.

Exhibit J

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO
ARTEAGA,

Plaintiffs,

vs.

CITY OF YAKIMA, MICAH
CAWLEY, in his official capacity as
Mayor of Yakima, and MAUREEN
ADKISON, SARA BRISTOL, KATHY
COFFEY, RICK ENSEY, DAVE ETTL,
and BILL LOVER, in their official
capacity as members of the Yakima City
Council,

Defendants.

NO. CV-12-3108-TOR

EXPERT REPORT OF PETER
MORRISON, Ph.D.

1. I have been retained as an expert by the city of Yakima, Washington. I am an applied demographer and am retired from The RAND Corporation, where I was Senior Demographer and the founding director of RAND's Population Research Center. I have provided testimony in litigation pertaining to the Voting Rights Act and districting plans and have constructed and/or evaluated numerous proposed local redistricting plans. I have made invited presentations on demographic aspects of redistricting to members and/or staff of the U. S. House of Representatives Subcommittee on the Census, the County Counsels' Association of California, the League of California Cities, the National League of Cities, and the Population Association of America. I have served on the U.S. Census Bureau Advisory Committee on Population Statistics, 1989-1995; and as an invited participant on the Bureau's Working Group on 2010 Race and Ethnicity. I have been elected as President of the Southern Demographic Association and to the Board of Directors of the Population Association of America, which are the two leading associations of professional demographers; and have taught students at the RAND Graduate School.

36. The Census Bureau publishes detailed caveats pertaining to its published ACS estimates.¹⁴ The Bureau openly acknowledges that there are mistakes in how the ACS data are reported or coded. When critical decisions hinge on ACS data, analysts are obliged to heed the Bureau's advice: "Item nonresponse measures allow data users to judge the completeness of the data on which the survey estimates are based." (See footnote 7 above.)

37. In order to find that Cooper's demonstration District 1 has a Latino majority among the district's CVAP, one would have to ignore that advice and overlook the following sources of bias and other flaws whereby (in the Census Bureau's words): "Final [ACS] estimates can be adversely impacted":

- A. The uncertain odds (56 to 44 by my preliminary calculations) that the district actually is majority Hispanic, given the margin of error associated with "50.25%".
- B. The fact that 182 Latinos did not answer the citizenship question, thereby requiring the Census Bureau to impute a response. If any 22 to 24 of those 182 voting age Latinos were assigned citizenship status erroneously, this incremental error would threaten to invalidate the conclusion of majority found in (i).
- C. The possibility that demonstration District 1 may not be the "usual place of residence" for every single one of the 2,217.91 Latino voting-age citizens whom the ACS counts as "current residents" of demonstration District 1, based on the ACS "current residence" rule.

UNEQUALLY WEIGHTED VOTES IN DIFFERENT DISTRICTS

38. Plaintiffs' expert Cooper has crafted two illustrative plans, each with a majority-Latino CVAP demonstration District 1 (Cooper Exhibits C-1 and D-1).¹⁵ Mr. Cooper's single-minded purpose in devising each demonstration District 1 was to aggregate the most heavily Latino contiguous areas of the City so as to boost Latinos' *share* among whatever *number* of voting-age citizens that district happened to encompass. The result was a large Latino share (50.25%) at the expense of a small number (just 4,414 of the City's 54,234 voting-age citizens).

¹⁴ See US. Census Bureau, *A Compass for Understanding and Using American Community Survey Data: What Researchers Need to Know* (Washington, DC: U.S. Government Printing Office, 2009), *op. cit.*

¹⁵ *Declaration of William S. Cooper* dated February 1, 2013, with accompanying Exhibits, in *Montes et al. v. City of Yakima, et al.*

39. In the City of Yakima, a district drawn for the sole purpose of making Latinos the majority of CVAP would invariably cause the votes of eligible voters in that one district to carry far more weight than a vote in another district. That is because any Latino majority-CVAP district encompassing $1/7^{\text{th}}$ (14.3%) of the City's *total* population can encompass at most 8.4% of the City's *voting-age citizen* population. That 8.4% of eligible voters would necessarily exercise 14.3% of the power in electing City Council members—in effect, “one person, 1.7 votes.” Conversely, the remaining 91.6% of the eligible voters across the City would exercise only 85.7% of the power in electing City Council members—i.e., “1 person, 0.94 votes.”

40. Mr. Cooper's two demonstration districts exemplify this dilemma. As seen in Table 2, either plan would have the effect of conferring 14.3% of the power to elect City Council members on a mere 8.1% to 8.4% of the City's eligible voters—those residing in demonstration District 1, which he devised solely to maximize Latino eligible voters. In effect, District 1 bestows a political premium: a vote that counts for at least 170% (i.e., 14.3 divided by 8.4) of what a vote should count. By contrast, a vote cast by each individual eligible voter in proposed Districts 6 or 7 would necessarily be underweighted. In each of those districts, either plan would have the effect of conferring 14.3% of the power to elect City Council members on about 17.4% of the City's eligible voters in proposed District 7. That is a political penalty: a vote that counts for just 82% (i.e., 14.3 divided by 17.4) of what a vote should count.

41. Dividing the above political penalty (82%) by the above political premium (170%) reveals that either illustrative plan would severely penalize the voters in several districts. Under Cooper's Illustrative Plan 1, the voters in Districts 6 and 7 would exercise only 48% of the political power that the voters in demonstration District 1 exercise (i.e., 82 divided by 170). Under Illustrative Plan 2, the voters in Districts 3, 6, and 7 would exercise only 49% of the political power that the voters in demonstration District 1 exercise (85 divided by 172).

42. It is unnecessary to tolerate this degree of imbalance. However, Mr. Cooper does so by giving exclusive emphasis to Latino ethnicity in drawing each District 1.

Table 2

Derivation of Underweighted Votes in Cooper Plans 1 & 2											
Plan 1:					Plan 2:						
1.	Of 21,837 HVAP, only 11,754 are HCVAP, which is:				53.83%	1.	Of 21,837 HVAP, only 11,754 are HCVAP, which is:				53.83%
	2,217.91						2,279.36				
	2,258.08						2,172.07				
	2,144.56						2,171.92				
	2,018.64						2,063.73				
	1,099.23						1,055.32				
	677.69						673.72				
	1,338.07						1,338.07				
	11,754.18 (Total, D1-D7)						11,754.19 (Total, D1-D7)				
2.	Total CVAP (according to Cooper's data):					2.	Total CVAP (according to Cooper's data):				
	Hispanic	Non-Hisp	Total CVAP	% of Total CVAP			Hispanic	Non-Hisp	Total CVAP	% of Total CVAP	
	2,217.91	2,196.17	4,414.08	8.14%			2,279.36	2,267.27	4,546.63	8.38%	
	2,258.08	2,975.21	5,233.29	9.65%			2,172.07	2,925.44	5,097.51	9.40%	
	2,144.56	6,913.74	9,058.30	16.70%			2,171.92	7,011.18	9,183.10	16.93%	
	2,018.64	5,581.12	7,599.76	14.01%			2,063.73	5,645.58	7,709.31	14.21%	
	1,099.23	7,857.10	8,956.33	16.51%			1,055.32	7,975.04	9,030.36	16.65%	
	677.69	8,833.46	9,511.15	17.54%			673.72	8,532.28	9,206.00	16.97%	
	1,338.07	8,122.84	9,460.91	17.44%			1,338.07	8,122.84	9,460.91	17.44%	
	11,754.18	42,479.64	54,233.82	100.00%			11,754.19	42,479.63	54,233.82	100.00%	
	Total (ACS 2009-11)→		54,537	<—ACS 2009-11			Total (ACS 2009-11)→		54,537	<—ACS 2009-11	
	Hispanic (ACS 2009-11)→		11,802	<—ACS 2009-11			Hispanic (ACS 2009-11)→		11,802	<—ACS 2009-11	
3.	Ideal CVAP (1/7):		7,747.69	<—Cooper's		3.	Ideal CVAP (1/7):		7,747.69	<—Cooper's	
			7,791	<—ACS 2009-11					7,791	<—ACS 2009-11	
4.	Deviation from ideal CVAP (Cooper's 7,747.69)					4.	Deviation from ideal CVAP (Cooper's 7,747.69)				
	District	CVAP	% of Ideal				District	CVAP	% of Ideal		
	1	4,414.08	57.0%				1	4,546.63	58.7%		
	2	5,233.29	67.5%				2	5,097.51	65.8%		
	3	9,058.30	116.9%				3	9,183.10	118.5%		
	4	7,599.76	98.1%				4	7,709.31	99.5%		
	5	8,956.33	115.6%				5	9,030.36	116.6%		
	6	9,511.15	122.8%				6	9,206.00	118.8%		
	7	9,460.91	122.1%				7	9,460.91	122.1%		
5.	Ratio of D1 to D7:		47%			5.	Ratio of D1 to D7:		48%		
	Ratio of D7 to D1:		214%				Ratio of D7 to D1:		208%		
	Ratio of D6 to D1:		215%				Ratio of D6 to D1:		202%		
Sources: Cooper's Exhibits C-1 and D-1, with supplemental data furnished in letter from Ben Stafford to John Safarli dtd. 2/21/2013.											

43. The effects of this imbalance would fall unequally on Latinos in one district and non-Latinos in all other districts. Furthermore, Mr. Cooper's data make it clear that those eligible voters who would be most severely disadvantaged include the majority of the City's American Indian, Asian, and African American eligible voters.

44. In summary, Plaintiffs' attempt to meet the first *Gingles* precondition relies on potentially flawed data of unknown confidence. Even if these technical issues with underlying data could be resolved, the unavoidable electoral imbalance that would result poses two questions: (1) Is it constitutional to undersize the citizen population in one (Latino) district while oversizing the citizen population in another district? In other words, should only 4,414 or 4,547 citizens in demonstration District 1 get to elect a member to the Yakima City Council member, while 9,461 or 9,511 citizens in a neighboring district get to elect another city council member? (2) Would this electoral imbalance cause the unlawful dilution of votes cast by one or more protected groups (e.g., American Indians or Asians) whose numbers are disproportionately concentrated outside demonstration District 1?

Exhibit K

Deposition of John Alford, 2/19/2014

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES and MATEO
ARTEAGA,

Plaintiffs,

vs.

No. 12-CV-3108 TOR

CITY OF YAKIMA, MICAH CAWLEY,
in his official capacity as
Mayor of Yakima, and MAUREEN
ADKINSON, SARA BRISTOL, KATHY
COFFEY, RICK ENSEY, DAVE ETTL,
and BILL LOVER, in their
official capacity as members
of the Yakima City Council,

Defendants.

DEPOSITION UPON ORAL EXAMINATION

OF

JOHN RICHARD ALFORD, PH.D.

9:00 a.m.
February 19, 2014

1201 Third Avenue 4800
Seattle, Washington 98101-3099

JACQUELINE L. BELLOWS
CCR 2297

Deposition of John Alford, 2/19/2014

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INDEX OF EXAMINATION

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Examination

By Ms. Khanna ----- 4

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4	Supplemental Report of Richard L. Engstrom, Ph.D.	4	181
5	Supplemental Report of John Alford, Ph.D.	4	6
6	The 2000 Census and the New Redistricting, 2-18-14, http://www.schoollawsection.org/redistricting.html	31	31
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APPEARANCES

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Seattle, Washington 98119-4296

Also Present: RICHARD L. ENGSTROM, Ph.D.

Court Reporter: JACQUELINE L. BELLOWES
VAN PELT, CORBETT, BELLOWES
401 Second Avenue South 700
Seattle, WA 98104

Page 4

[Deposition Exhibits No. 1 - 5 marked.]

JOHN ALFORD, PH.D., having been first duly sworn
by the Court Reporter, appeared
and testified as follows:

EXAMINATION

BY MS. KHANNA:

Q Good morning, Dr. Alford.
A Good morning.
Q Could you please state your full name and your address for the reporter.
A Yes. John Richard Alford, 15907 Erin Creek Court, Houston, Texas.
Q I take it you've been deposed before?
A I have.
Q How many times?
A I don't know. More than, more than people should be deposed. More than 30, I would say.
Q When was the last time you were deposed?
A Let's see. Maybe three or four months ago, I'm thinking. Probably in the fall sometime.
Q So you're familiar with all the ground rules. I'm just going to let you know that of course if there's any time I

Page 5

ask a question that you don't understand, please let me know and I will do my best to clarify it.

A All right.

Q You ever you need a break, just let me know. We'll find a few minutes to go off the record.

A Thank you.

Q Have you been retained as an expert witness for the defendants in this case?

A Yes, I have.

Q And you've prepared an initial report in this case; is that right?

A That's correct.

Q And that's been premarked Exhibit 1 for you there. That's -- you don't have to look at it right now. I'm sorry. Exhibit 2.

A Actually, it's rare. But I didn't actually provide -- or produce Dr. Engstrom's report.

Q I'm sorry.

A Sometime we trade.

Q Exhibit 2.

A Exhibit 2, yes.

[Brief off-record discussion.]

Q (By Ms. Khanna) You also prepared a supplemental report; is that right?

A That is correct.

2 (Pages 2 to 5)

Van Pelt, Corbett, Bellows

206682-9339 * www.vanpeltdepo.com * 1-888-4WA-depo

Deposition of John Alford, 2/19/2014

Page 6	Page 8
<p>1 Q I believe that's been premarked Exhibit 5.</p> <p>2 A Yes.</p> <p>3 Q Your resume is attached to your supplemental report; is that</p> <p>4 right?</p> <p>5 A Yes, it is.</p> <p>6 Q Is that accurate and up-to-date as far as you know?</p> <p>7 A Let me see. We all check publications first. That's near</p> <p>8 and dear to our hearts. Yes. This is -- sorry. It is</p> <p>9 up-to-date on what matters to me, the publications. Let's</p> <p>10 see about -- I think this is correct. I am working for the</p> <p>11 Houston Independent School District, helping them</p> <p>12 redistrict. They have been -- they've added some territory,</p> <p>13 and so they're redistricting. But there's not a lawsuit</p> <p>14 involved.</p> <p>15 Q Anything else?</p> <p>16 A I've been retained in a lawsuit related to San Jacinto</p> <p>17 College in Houston. But there's been no depositions or</p> <p>18 reports.</p> <p>19 Q Okay. Any other updates?</p> <p>20 A I think that's it.</p> <p>21 Q Can you briefly describe your educational background</p> <p>22 starting with your bachelor's degree.</p> <p>23 A My bachelor's degree is a bachelor of science in political</p> <p>24 science. I have a master's of public administration. Both</p> <p>25 of those degrees are from the University of Houston. I have</p>	<p>1 beginning to know more about the sort of brain physiology</p> <p>2 that underlies ideology.</p> <p>3 Q Interesting. So you've testified before as an expert</p> <p>4 witness in redistricting cases; is that right?</p> <p>5 A I have.</p> <p>6 Q And have you specifically testified in Section 2 challenges</p> <p>7 brought against an at-large election system?</p> <p>8 A Yes. I'd say that's -- I've testified in some other things</p> <p>9 related to statistics and once in a Section 5 case. But the</p> <p>10 bulk of what I do is related to Section 2 cases and</p> <p>11 specifically to Gingles 2 and 3.</p> <p>12 Q So in approximately what percentage of those cases have you</p> <p>13 testified on behalf of government entities opposing a</p> <p>14 challenge to their at-large system?</p> <p>15 A I don't know about the percentage. But certainly the bulk</p> <p>16 of my work is for government entities. I have testified</p> <p>17 against government entities. But I primarily work for</p> <p>18 school districts, cities, states. So I work for the -- I've</p> <p>19 worked for the democratic -- a group of democratic</p> <p>20 congressmen in Florida and Texas and some other state. But</p> <p>21 the majority of the work I do, I do for government entities.</p> <p>22 Q Have you ever testified on behalf of parties opposing an</p> <p>23 at-large system?</p> <p>24 A I don't recall a specific case. Like Dr. Engstrom, I go</p> <p>25 back a ways. I'm not entirely sure. But I don't recall a</p>
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<p>1 a master's and Ph.D. in political science from the</p> <p>2 University of Iowa.</p> <p>3 Q You're currently an associate professor at Rice; is that</p> <p>4 right?</p> <p>5 A I am.</p> <p>6 Q What do you teach?</p> <p>7 A I teach voting behavior, general behavior, introductory</p> <p>8 American politics. And I teach the -- a course on the</p> <p>9 biology of political behavior.</p> <p>10 Q What do you mean by the "biology of political behavior"?</p> <p>11 A It focuses mainly on the brain physiology as it's related to</p> <p>12 both ideology and sort of voter interest, turnout, things</p> <p>13 like that, and also focuses on genetics of political</p> <p>14 ideology and political participation.</p> <p>15 Q So does your research suggest that there's a genetic reason</p> <p>16 why people vote the way they do?</p> <p>17 A There's a very strong genetic inheritance of ideology, not</p> <p>18 of party ID but of ideology, related to well understood</p> <p>19 brain physiology. The size of your amygdala as well as</p> <p>20 amygdal activity predicts conservatism. Activity in the</p> <p>21 insula can predict liberalism or conservatism depending on</p> <p>22 the activity.</p> <p>23 We don't have any idea what the actual genomic pattern</p> <p>24 is. But we do know that most of the politics you get from</p> <p>25 your parents you get from genetic inheritance. We're</p>	<p>1 specific case.</p> <p>2 Q Approximately what percentage of your annual income results</p> <p>3 from your work as an expert witness?</p> <p>4 A It varies substantially depending on where we are in the</p> <p>5 census cycle. So currently it's probably half of my income.</p> <p>6 But, you know, averaged over a decade, it's, you know,</p> <p>7 probably a third to a half, something in that range.</p> <p>8 Q When were you first contacted by defendants in this case?</p> <p>9 A I'm not certain. But I think it would -- if I had to guess</p> <p>10 or place it in a time period, I would think probably</p> <p>11 something like late summer of 2012.</p> <p>12 Q Who contacted you?</p> <p>13 A I believe it was John Safarli.</p> <p>14 Q Did you understand there you were to examine and testify</p> <p>15 about certain subjects?</p> <p>16 A The initial contact was to just to have a discussion about</p> <p>17 the kinds of -- particularly the kinds of data analysis</p> <p>18 involved in a Section 2 case. And there was some -- also</p> <p>19 some discussion about other people who might be people that</p> <p>20 would be experts that could work in the case. It evolved</p> <p>21 into a discussion about my doing this work. So that was</p> <p>22 sort of the initial contact, though I think it was really</p> <p>23 just kind of to get some information.</p> <p>24 Q Were you eventually made aware of the subjects that you were</p> <p>25 about to testify or that you are --</p>

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<p>1 A Yes --</p> <p>2 Q -- expected testify?</p> <p>3 A Yes.</p> <p>4 Q And what were those subjects?</p> <p>5 A Essentially the Gingles 2 and 3 as well as, you know,</p> <p>6 there's -- you can't completely divorce that from some parts</p> <p>7 of the Gingles 1. And of course it all ends up being kind</p> <p>8 of totality of the circumstances. But not -- I was not</p> <p>9 hired to be a senate factors expert and not to be a</p> <p>10 demographer. So those are kind of the things that I was, in</p> <p>11 the early contacts, saying I'm fine with doing 2 and 3. But</p> <p>12 you really should get somebody else to do senate and</p> <p>13 somebody else to do the demography for Gingles 1.</p> <p>14 Q So did counsel provide certain facts about this case?</p> <p>15 A My recollection of the early discussion was the location,</p> <p>16 that it was Yakima. I think they may, obviously at some</p> <p>17 time early on, probably sent the filings in the case. I</p> <p>18 always go online and see what I can read in the papers and</p> <p>19 online. So I've looked at that. That's my recollection</p> <p>20 that's -- those are the things that I was provided with or</p> <p>21 looked at.</p> <p>22 Q Do you recall what you read in the papers?</p> <p>23 A I think my recollection is -- and I'm not sure if it was</p> <p>24 actually in a paper or in, you know, kind of a website</p> <p>25 something. But it was basically just a description of the</p>	<p>1 the attorneys. Those are the things that I recall.</p> <p>2 Q What expert reports did you receive or did you review?</p> <p>3 A Oh, so I had mine. I received Dr. Engstrom's initial</p> <p>4 report, supplemental report. And then I guess in-between</p> <p>5 the reply report, I received -- those are the reports I paid</p> <p>6 the most attention to. I also received, I believe, the</p> <p>7 initial report from the plaintiffs' demographer who's --</p> <p>8 Q Is that Bill Cooper?</p> <p>9 A Bill Cooper. In the report -- I guess -- yeah, the report</p> <p>10 from Dr. Morrison, so the section or the -- sorry the</p> <p>11 Gingles 1 reports. I got a copy of Dr. Thernstrom's report.</p> <p>12 Q How about Dr. Fraga's report?</p> <p>13 A He'd probably be mad at me. But I don't recall</p> <p>14 specifically. I think I probably did because it would be --</p> <p>15 make sense that I would see all the reports. But I don't</p> <p>16 specifically recall seeing that.</p> <p>17 Q You know Dr. Fraga, I take it?</p> <p>18 A Yes.</p> <p>19 Q How do you know him?</p> <p>20 A Well, I know him through conventions and so forth. We're</p> <p>21 not close personal friends. But we've seen each other off</p> <p>22 and on for many years. I know his students. So I mean</p> <p>23 that's, you know -- I don't think he's ever bought me a</p> <p>24 drink. But he's a good guy.</p> <p>25 Q Do you recall seeing a supplemental report from Bill Cooper</p>
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<p>1 fact the lawsuit had been filed, who was involved. I think</p> <p>2 Mr. Avila was mentioned. It was -- you know, it sort of</p> <p>3 descriptive -- it probably mentioned the plaintiffs. I'm</p> <p>4 just -- it wasn't -- not a great deal of detail but just</p> <p>5 kind of a -- it looked like kind of a press-release thing.</p> <p>6 So that's why I'm not sure it was in a paper versus a blog.</p> <p>7 It sort of read like a press release.</p> <p>8 Q But your understanding, from reading them, was that the case</p> <p>9 had already been filed at that time?</p> <p>10 A If I'm in the right time frame of where I'm reading it, that</p> <p>11 would have been -- yes, that would have been my</p> <p>12 recollection.</p> <p>13 Q So did counsel provide any assumptions that you relied upon</p> <p>14 in forming your opinions?</p> <p>15 A No.</p> <p>16 Q Any assumptions about the desirability of maintaining the</p> <p>17 at-large system?</p> <p>18 A No. They -- there was discussion about that, but they</p> <p>19 didn't provide any assumptions about it.</p> <p>20 Q Can you describe all the materials that you have been</p> <p>21 furnished with from counsel since you first were retained?</p> <p>22 You mentioned the pleadings.</p> <p>23 A So a copy of pleadings, a copy of the expert reports filed</p> <p>24 in the case, the -- sort of the data that underlies the</p> <p>25 analysis came from Peter Morrison but was provided through</p>	<p>1 or just the initial report?</p> <p>2 A I don't recall. If there was a supplemental report, I would</p> <p>3 think that I would have seen it or it would have been sent</p> <p>4 to me. But I don't recall specifically.</p> <p>5 Q You mentioned that you've received certain data provided by</p> <p>6 Peter Morrison. Have you ever had any direct conversations</p> <p>7 with Dr. Morrison about this case?</p> <p>8 A Yes. In the, in the sort of early on, prior to actually</p> <p>9 doing data analysis, I think not long after he was retained,</p> <p>10 maybe, somewhere in that time period, we chatted. And I</p> <p>11 sort of outlined the basically what it is that I'm looking</p> <p>12 for and how my analysis works, sort what I need for</p> <p>13 independent and dependent variables and that I prefer the</p> <p>14 data in Excel spreadsheets, things like that.</p> <p>15 Q Any other conversations that you're aware of, that you</p> <p>16 remember?</p> <p>17 A We may have talked again sometime after that. I'm sort of</p> <p>18 trying to work backwards. Most of the -- so the data I'm</p> <p>19 actually getting comes through the attorneys. I don't</p> <p>20 believe I've spoken to him in some time. Certainly I don't</p> <p>21 think I've spoken to him in the last year.</p> <p>22 Q Have you ever had any contact or communications with any of</p> <p>23 the defendants in this case? Just so you know, the</p> <p>24 defendants are the named members of the city council.</p> <p>25 A Oh, yes. So sometime not too long after I was contacted by</p>

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<p>1 the attorneys, they asked if I could come up to Seattle, 2 talk to them about kind of a methodology class on ecological 3 regression and ecological inference. And at that time we 4 drove to Yakima and met with the city attorney and I think 5 some -- I think a couple of the council members. But I 6 don't -- this was in -- this would have been early fall of 7 2012. 8 Q You don't recall which council members you might have met 9 with? 10 A I believe Mr. Ettl was there. I don't recall specifically 11 the city attorney. I think a couple of other council 12 members. But I don't, I don't remember names. 13 Q Do you remember if they were men or women? 14 A One was, one was a woman. The other, I'm just not sure. 15 Q Any other city employees that you communicated with in this 16 case? 17 A Not that I've communicated with. While we're there, there 18 may have been somebody in, maybe like a planning kind of 19 person or something, 'cause there were maps of the -- here's 20 the city boundary kind of thing. That's -- I don't have any 21 specific recollection. 22 Q The maps were provided by this person? 23 A Well, that I don't know. I mean there was a big map of the 24 city that showed, you know, what the city boundaries were 25 and so forth. And sometimes, when you're talking about map</p>	<p>1 A Yes. 2 Q Do you oversee his analysis? 3 A I'm -- so I'm telling him what to do; and I'm looking at 4 the, the results. I don't necessarily stand over his 5 shoulder as he types into the computer. But . . . 6 Q Was there any written communications between you and 7 Dr. Stevenson with respect to this case? Emails? 8 A He's -- his office is next door to mine. I don't -- I don't 9 recall any specific written communications. It's possible 10 that I've -- that I may have forwarded, you know, an email 11 that contained data sets. But like that's -- I've spoken to 12 him on the phone whenever something isn't ready on time or 13 something. And so I don't recall specifically a written 14 communication. 15 Q How does he provide you with the results of the ER and EI 16 analysis? 17 A Just produced in a table. So I can -- he can give me a 18 printed copy of the table, or he can give me the actual data 19 set. 20 Q Did he ever send this via email if you know? 21 A That's possible, although we use a shared Dropbox. So, as I 22 get data, I can put the data in the Dropbox and, as he gets 23 results, they come back into to Dropbox. But it's -- I mean 24 it's possible. I would be happy to go back and check and 25 see 'cause there could have been something where he just</p>
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<p>1 things, sometimes the city planner or somebody, maybe 2 somebody would be there to talk about what they had in terms 3 of map data. But I'm saying that generically 'cause I do 4 this a lot. So I don't want to tell you I didn't meet with 5 that -- that person wasn't there. But I can't say 6 specifically they were. 7 Q No. I understand. 8 A Not anybody I had any follow-up contact with that I recall. 9 Q Was Dr. Morrison at that meeting? 10 A No. 11 Q Did anyone assist you in your work in this case? 12 A Yes. 13 Q Who was that? 14 A A colleague of mine at Rice University, Dr. Randy Stevenson. 15 Q What did Dr. Stevenson do? 16 A He actually performs the EI analysis and the ER analysis. 17 So I tell him: Here's the data set. Here are the -- this 18 is the independent, this is the dependent variable. Then he 19 does the actual -- he's a -- one of our two methodologists. 20 And so he programs in R. And that was the language that is 21 used for running this analysis. And so he does the actual 22 programming, basically sets it up so that it brings in the 23 data set, does the analysis, and puts the results into a 24 table. Then he provides me with the table. 25 Q So you see results of his analysis?</p>	<p>1 emailed me something rather than putting in the Dropbox. 2 But our normal procedure is just to use the shared Dropbox. 3 Q Have you handed to your attorneys the backup documents for 4 those analyses that Dr. Stevenson performed? 5 A Yes. 6 Q All of them? 7 A Yes. 8 Q How are you being compensated in this case? 9 A I'm paid \$400 an hour. 10 Q Is \$400 an hour your usual rate for cases like this? 11 A If I'm testifying in a case, it's usually -- it actually 12 varies. Sometimes it's 250. Sometimes three. Sometimes 13 four. It depends on how busy I am, how -- if a case is 14 local, where it really doesn't -- I don't have to worry 15 about travel and so forth, I often have a lower rate. If 16 I'm really feeling pressed for time and it's my way of 17 seeing if maybe I could convince myself not to do 18 something -- it's sort of, unless it's worth my time, I 19 don't do it. So I'd say it varies. 20 In the state of Texas I was paid -- I'm being paid \$400 21 an hour by the State of Texas. I think I'm paid maybe \$250 22 in the Grand Prairie ISD case. That's the range. 23 Q So is \$400 the maximum of the range? 24 A I don't think I've ever -- I don't think I've ever charged 25 more than \$400 an hour.</p>

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<p>1 Q And you mentioned that you're charging that rate in the</p> <p>2 State of Texas. That's in the Texas redistricting case?</p> <p>3 A Yes. So there were at least three -- this is sort of</p> <p>4 bundled up broadly as Perez v. Perry. So there's a Section</p> <p>5 5 case and two Section 2 cases, a 2011 case and a two</p> <p>6 thousand and -- I say 2011 case. A 2011 redistricting plan</p> <p>7 was challenged under section 2 and the court in San Antonio.</p> <p>8 And I worked for the state. And that case is still going</p> <p>9 on.</p> <p>10 The 2013 adopted by the legislature is challenged. And</p> <p>11 it's been rolled into that proceeding in San Antonio. And</p> <p>12 then the 2011 plan was also the subject of the three-judge</p> <p>13 panel hearing for preclearance in Washington, D.C.</p> <p>14 Q You are representing the entire state of Texas in that case</p> <p>15 or the state government?</p> <p>16 A I'm working for the -- I was hired by the attorney general.</p> <p>17 So to the extent that he represents the whole state . . .</p> <p>18 Q Right. So other than the Texas redistricting case in which</p> <p>19 you're representing the State of Texas or testifying on</p> <p>20 behalf of the State of Texas -- sorry -- are there any other</p> <p>21 cases recently in which you've charged \$400 an hour?</p> <p>22 A Yes. But I'm, I'm not sure I would get the -- I'm thinking</p> <p>23 I did some work that did not involve testimony for Lone Star</p> <p>24 College, I think. I was paid \$400 an hour. And something</p> <p>25 else. The Harris County case I was paid \$400 an hour.</p>	<p>1 last year. So when, maybe eight or nine, the first eight or</p> <p>2 nine months of work. I haven't sent an invoice in since.</p> <p>3 But I kind of try not to go more than a year without sending</p> <p>4 an invoice. In theory, I should do this every month. But I</p> <p>5 never do it. It just is not -- I'm busy doing other things,</p> <p>6 and that always gets pushed to the back. But I do try to</p> <p>7 use -- so the deposition is always a good marker. So, you</p> <p>8 know, I have every intention of going to back to Houston and</p> <p>9 submitting an invoice, you know, the end, the end of</p> <p>10 February.</p> <p>11 Q Have you been paid for your work in this case, for the</p> <p>12 invoices that you did submit?</p> <p>13 A Yes.</p> <p>14 Q What entity cuts the check for that?</p> <p>15 A I have no idea.</p> <p>16 Q Do you know who's ultimately responsible for paying your</p> <p>17 bills?</p> <p>18 A I assume that the, that the city is ultimately paying the</p> <p>19 bills. But I'd say in about, maybe in three quarters of the</p> <p>20 cases I work in, I bill the attorneys; and then I'm paid out</p> <p>21 of -- the attorneys bill the city, county, state, whatever.</p> <p>22 The state pays them. When the state pays them, they pay me.</p> <p>23 So there's normally -- more often than not, it's that sort</p> <p>24 of a pass -- what I think of as a pass-through billing.</p> <p>25 But occasionally, in the case of Harris County, for</p>
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<p>1 Q When was that?</p> <p>2 A That's the -- it was filed in 2011. It was tried not so</p> <p>3 long ago. Last year sometime.</p> <p>4 Then, moving back from there, San Antonio, that might</p> <p>5 have been. I just don't recall. Like I say, it's -- I</p> <p>6 don't know exactly what the mixture is. But I've</p> <p>7 certainly -- more than one case, that's been my rate. And</p> <p>8 then other cases, it's 250, 300, somewhere in there.</p> <p>9 Q Is there a reason why for this case you're charging the kind</p> <p>10 of maximum end of your scale?</p> <p>11 A It clearly is not in my neighborhood. It's a stunningly</p> <p>12 nice place to come to. But it's, you know, my teaching</p> <p>13 schedule and things, so it's not particularly convenient.</p> <p>14 And it came at a time when I had a very large time</p> <p>15 commitment to the State of Texas. The State of Texas was</p> <p>16 paying me \$400 an hour. And I was not going to take time</p> <p>17 away from \$400 an hour to make \$200 an hour.</p> <p>18 Q Sure. Is payment of your fees in any way contingent upon</p> <p>19 the outcome of this case?</p> <p>20 A I have never worked on a case where my payment was</p> <p>21 contingent on anything other than sending a bill.</p> <p>22 Q Who do you submit your bills to?</p> <p>23 A To the law firms. So to . . .</p> <p>24 Q How often do you submit an invoice?</p> <p>25 A I sent in an invoice April, May, something like that, of</p>	<p>1 example, the county wanted to be -- I don't know actually if</p> <p>2 the county wanted to be billed directly or if the attorneys</p> <p>3 just didn't want the newspaper story to show my fees bundled</p> <p>4 up with their fees. When you are working for public</p> <p>5 entities, they just like not to have it all bundled</p> <p>6 together. So I've -- I have worked in cases where I was</p> <p>7 paid directly by the entity. But I'd say, more often than</p> <p>8 not, I'm paid -- the check actually comes from the law firm.</p> <p>9 Q But you're not familiar with which one in this case?</p> <p>10 A I'm not certain here.</p> <p>11 Q How much time have you spent performing your work in this</p> <p>12 case, approximately?</p> <p>13 A I honestly don't know. I really don't. So I'm keep -- you</p> <p>14 know, I'm working, as we see, on a number of -- on a number</p> <p>15 of cases. And I just -- I don't know what that total would</p> <p>16 be.</p> <p>17 Q Do you have a -- how much have you invoiced counsel for to</p> <p>18 date? Do you know?</p> <p>19 A I don't know.</p> <p>20 Q Have you completed your work in this case?</p> <p>21 A No.</p> <p>22 Q What other work do you intend to perform?</p> <p>23 A I intend to be deposed; certainly testify at trial; and,</p> <p>24 just based on the discussions, attending Dr. Engstrom's</p> <p>25 deposition, there's certainly analytical things that I would</p>

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<p>1 do, just to be more -- just to try to run down exactly where</p> <p>2 differences in our sort of supplemental analysis are coming</p> <p>3 from.</p> <p>4 Q So you expect to do additional analysis?</p> <p>5 A Not -- I'm not thinking -- I'm not saying new -- I'm not --</p> <p>6 at this stage I wouldn't necessarily do something new</p> <p>7 unless, you know, elections took place or something. But I</p> <p>8 do typically, once it's -- it's never -- it's not -- I don't</p> <p>9 actually communicate directly with Dr. Engstrom. It would</p> <p>10 be great if I could.</p> <p>11 So truly at the deposition stage, where I can get a</p> <p>12 sense of what might underlie, I always like to try to</p> <p>13 resolve those differences before you go into court because I</p> <p>14 don't think it serves anybody to have confusion about what</p> <p>15 the empirical differences are. So that's the kind thing</p> <p>16 that I would intend to follow up on and see if I can figure</p> <p>17 out just what piece -- 'cause his deposition eliminates some</p> <p>18 of the possibilities. I didn't know for sure if his</p> <p>19 analysis used -- so you can run EI, kind of a candidate</p> <p>20 against the field and then do that as three or four separate</p> <p>21 runs; or you can do that as a run with everybody in at once.</p> <p>22 And those produce often very different results. So I have a</p> <p>23 better idea now of what is not likely to be the cause of the</p> <p>24 difference. So I'm going to try to track that down.</p> <p>25 Q And the differences that you're referring to are the</p>	<p>1 deposition?</p> <p>2 A I read my report, my supplemental report; and I reread</p> <p>3 Dr. Engstrom's report and supplement and reply.</p> <p>4 Q And so your first report was dated March 22, 2013; is that</p> <p>5 right?</p> <p>6 A That's correct.</p> <p>7 Q You also prepared a supplemental report that's January of</p> <p>8 this year; is that right?</p> <p>9 A Correct.</p> <p>10 Q Do you believe that you devoted all the time necessary to</p> <p>11 ensure the accuracy and trustworthiness of your reports?</p> <p>12 A Yes.</p> <p>13 Q Do you have confidence in the reports you've written?</p> <p>14 A Yes, I do.</p> <p>15 Q Do you believe that they comport with your professional</p> <p>16 standards?</p> <p>17 A Yes.</p> <p>18 Q Is there anything you'd want to do, as you sit here today,</p> <p>19 to change anything in those reports?</p> <p>20 A Again, having -- I don't know, having not done any of the</p> <p>21 digging around to figure out where the differences come</p> <p>22 from, I couldn't say. But that would be -- part of the</p> <p>23 motivation of doing that is to try to understand, you know,</p> <p>24 is there something in the -- is there a difference in the</p> <p>25 two data sets that accounts for this? Is there different</p>
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<p>1 differences in the supplemental reports; is that right?</p> <p>2 A Yes. I don't -- there was nothing in the initial reports</p> <p>3 that -- where there were numbers that I thought were any</p> <p>4 different than what you would normally see in the variation</p> <p>5 from one EI to another. I actually -- I hadn't really</p> <p>6 focused that much on the size of the differences in the, in</p> <p>7 the supplemental reports. And he mentioned that he still</p> <p>8 was -- you know, thought that those were larger than you'd</p> <p>9 expect.</p> <p>10 And so -- but looking back at standard errors, they</p> <p>11 certainly are further out than -- I mean there are unstable</p> <p>12 estimates. But they are further out than we saw in the</p> <p>13 earlier analysis. I just would like to have a better feel</p> <p>14 for where that comes from. I still don't think they're</p> <p>15 substantively different.</p> <p>16 I think in the -- I think we both have a preference for</p> <p>17 talking about what the whole analysis shows us rather than a</p> <p>18 particular individual piece. If I took his results and</p> <p>19 substituted them for mine, it wouldn't change my substantive</p> <p>20 conclusion. But I still, I would be more comfortable if I</p> <p>21 had a better idea of where those variations are coming from.</p> <p>22 Q Did you expect to write another report in this case?</p> <p>23 A Unless I'm -- if I was asked to write another report, I</p> <p>24 certainly would. But I haven't been asked to.</p> <p>25 Q All right. What did you do to prepare for today's</p>	<p>1 analytical assumption? And certainly if the result of my</p> <p>2 digging around is to find that there are those kinds of</p> <p>3 differences, then I would want to correct that.</p> <p>4 Q Again, those differences that you're mentioned that you may</p> <p>5 have or may not correct, depending upon the further</p> <p>6 analysis, is in the supplemental report?</p> <p>7 A That's correct.</p> <p>8 Q You've addressed various criticisms of Dr. Engstrom's</p> <p>9 conclusions. Are all of your criticisms of Dr. Engstrom's</p> <p>10 conclusions contained in your two reports in this case?</p> <p>11 A I'm not certain.</p> <p>12 Q You think there are -- is there something else that you</p> <p>13 believe is worth mentioning with respect to Dr. Engstrom's</p> <p>14 reports that would constitute a criticism or a critique?</p> <p>15 A I think less as a criticism or critique and more in the</p> <p>16 sense of -- I'm not sure that in the context of the report</p> <p>17 that anywhere there's a complete discussion of our, our</p> <p>18 differences about the value of both ecological regression</p> <p>19 and also importantly extreme or homogeneous precinct</p> <p>20 analysis. So I mean, if I put those in my report, it's</p> <p>21 because I think they're important. I'm not sure that the</p> <p>22 sort of -- I wasn't --</p> <p>23 I guess I wasn't sure exactly why he was not, although</p> <p>24 I certainly know that over time he's moved away, as others</p> <p>25 have, from sort of relying on old methods and then relying</p>

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<p>1 on both methods and then just saying, Look, this is the most 2 efficient analysis; so let's just present it. I don't 3 believe that's the ideal way to do this. And so I think 4 it's clear to me, after hearing his deposition, sort of what 5 his feeling is about that. 6 And certainly my, my different feeling about that is 7 not completely described in the report. And certainly 8 that's the kind of thing that I think is -- you know, would 9 be important in trial. 10 Q Okay. Let's explore some of that in a minute. 11 Other than your feelings about the value of the 12 ecological regression analysis and the homogeneous precinct 13 analysis, are there any other criticisms or critiques of 14 Dr. Engstrom's analysis that were not included in your 15 reports? 16 A Not that I can think of. 17 Q Let's talk a little bit about the current election system in 18 Yakima. How are people elected to the Yakima City Council? 19 A They are elected in -- through a -- I mean there's an 20 initial election that's usually labeled as the primary. 21 It's -- I think it's sometimes called the two and -- the two 22 or more or something. And in that system, if you have -- 23 basically there, if there more than two candidates, then you 24 have the primary to narrow the field to two. Then those two 25 candidates are the candidates that face each other in the</p>	<p>1 representation but is close to it. If you limit -- what's 2 called the limited-vote system, is that same system without 3 the full seven votes. So in a limited vote system, you can, 4 by vary what the limit is you can varying how 5 semi-proportional the system is. 6 So that's -- that is in contrast to a numbered post 7 system in which you, whether separated by staggered terms or 8 by simply place on the ballot, you essentially hold 9 elections that are independent, freestanding elections for 10 each of the numbered posts or places on the city council. 11 So there, each is a standard-alone election rather than 12 pulling the vote together. 13 Q Do city council elections in Yakima entail a residency 14 requirement? 15 A I know that there are both. So in that primary phase, there 16 are, there are districts, geographical districts. Then 17 there are posts that are truly at large. But I'm not 18 actually aware of whether that -- whether there's a 19 residential -- there's often not. In some places there are; 20 in some places there aren't -- residential requirements when 21 you have geographical nomination processes. So I'm not 22 actually -- at the moment I don't recall. I'm sure I knew 23 at some time. But I don't recall whether there is in this 24 case or not. 25 Q But there are districts as far as you know?</p>
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<p>1 general election. 2 Q How many seats are on the city council? 3 A I think there are seven. 4 Q Would you characterize the system as a numbered post or a 5 number place system? 6 A Yes. 7 Q What does that -- what do those terms mean? Well, actually, 8 let me back up. 9 Are those terms synonymous, "numbered post" and a 10 "numbered place system"? 11 A In my mind, they are, yes. 12 Q What does it mean? 13 A It's -- this is a variation from -- so what you might think 14 of as kind of a wide-open at large in which people are not 15 actually competing for individual posts but are simply 16 competing for a seat -- 17 So, for example, if you put all seven seats up in a 18 single election, everyone who was a candidate for the 19 council would just be listed on the ballot. People would be 20 given some number of votes, possibly seven, possibly less. 21 And then you would just simply total up the votes. And you 22 would go down the list until you had the top seven 23 candidates. And that would be the election. 24 This is called a semi-proportional system because it 25 produces something that's not quite proportional</p>	<p>1 A Yes. 2 Q You mentioned that some positions on the city council are 3 elected from those districts, or at least from the primary 4 in those districts? 5 A My recollection is it's four of the seven. But I -- again, 6 I could be thinking of another mixed system. But I believe 7 that it's four of the seven. 8 Q Do you know whether those four -- the candidates from those 9 four positions need to reside in one of those four 10 districts? 11 A I'm not certain. 12 Q Do city council elections in Yakima have a majority vote 13 requirement? 14 A They do not. 15 Q What does that term mean to you? 16 A A majority vote would mean that there was a -- that, if 17 someone failed to achieve 50 percent plus one, there would 18 be a runoff election until someone got 50 percent plus one. 19 I mean, effectively, the sort of -- this kind of hybrid 20 system in which you bring two candidates out of the primary 21 produces the, I would say, sort of the rough functional 22 equivalent of that. 23 So virtually all of the time the winning member has 24 received a majority of the vote. So it isn't, strictly 25 speaking, a majority vote requirement. But it is a system</p>

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<p>1 that strongly favors majority vote results.</p> <p>2 Q That's because there are only two candidates for each</p> <p>3 position in the general election?</p> <p>4 A Two candidates whose names would be printed on the ballot.</p> <p>5 Q Are you familiar with the term "single-shot voting"?</p> <p>6 A Yes.</p> <p>7 Q What does that mean?</p> <p>8 A "Single-shot voting" would be a situation in which you</p> <p>9 utilize less than your full set of votes or, as you are</p> <p>10 allowed to do in another semi proportional system, the</p> <p>11 cumulative vote system, you would plump for a candidate.</p> <p>12 This means concentrating votes on a preferred candidate so</p> <p>13 as not to effectively undercut your vote by distributing</p> <p>14 votes across other candidates.</p> <p>15 Q Are Yakima city council elections characterized by -- or</p> <p>16 does it allow for single-shot voting?</p> <p>17 A If you have only one vote to cast, I guess it depends on how</p> <p>18 you think about that. In some sense it requires single-shot</p> <p>19 voting. But it doesn't -- but it provides no benefits since</p> <p>20 there is just -- so it is not a system that provides a value</p> <p>21 to casting a single vote. It's just simply the norm.</p> <p>22 Q Are city council members elected to staggered terms?</p> <p>23 A That's my understanding, the terms are staggered.</p> <p>24 Q And city council elections in Yakima are nonpartisan; is</p> <p>25 that right?</p>	<p>1 the School of Law Section to write something up that would</p> <p>2 provide kind of a background, a broad background, on the</p> <p>3 kind of challenges that would be -- districts would be</p> <p>4 facing. Because this comes up -- for most -- in most</p> <p>5 jurisdictions, this comes up once every 10 years. It's both</p> <p>6 often largely forgotten, in the sense that it's a decade</p> <p>7 ago. And also new things crop up in between.</p> <p>8 If you are following this in on a year-by-year basis,</p> <p>9 there's not really any surprises. But the idea was</p> <p>10 basically kind of highlight what had come up since the 1990</p> <p>11 process that would be of interest to lawyers representing</p> <p>12 school districts.</p> <p>13 Q So I'm going to ask you to turn to page 5 of this document.</p> <p>14 A [Complies.]</p> <p>15 Q You see a section there with the heading "At-Large</p> <p>16 Elections"?</p> <p>17 A Yes.</p> <p>18 Q If you wouldn't mind taking a minute just to review that</p> <p>19 section. It goes onto the next page. And I'll ask you some</p> <p>20 questions about it.</p> <p>21 A [Complies.]</p> <p>22 Q Do you see on page 5 in the first paragraph, under "At-Large</p> <p>23 Elections," the third sentence says: "At-large election</p> <p>24 system has been under attack for more than 30 years due to</p> <p>25 their ability to reduce minority representation when the</p>
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<p>1 A That's my understanding, yes.</p> <p>2 Q If you turn to page 9 of your CV, which is, I think,</p> <p>3 attached to your supplemental report, Exhibit 5, do you see</p> <p>4 the second entry on page 9 is a publication entitled "The</p> <p>5 2000 Census and the New Redistricting"?</p> <p>6 A Yes.</p> <p>7 Q And that's for the Texas State Bar Association, School Law</p> <p>8 Section Newsletter?</p> <p>9 A Yes.</p> <p>10 Q Is that right? I'm going to hand you what will be marked</p> <p>11 Exhibit 6.</p> <p>12 [Deposition Exhibit No 6 marked.]</p> <p>13 Q (By Ms. Khanna) Is this the document referred to in that</p> <p>14 entry of your CV?</p> <p>15 A I believe it is. I haven't seen it in 14 years. But I'd be</p> <p>16 happy to look over it.</p> <p>17 Q Sure.</p> <p>18 A [Complies.]</p> <p>19 Q You're welcome to look at the whole thing if you think</p> <p>20 that's necessary right now. I'm not going to ask you</p> <p>21 questions about it.</p> <p>22 A Enough of it to -- this is what I recall being the -- this</p> <p>23 looks like what I remember as this publication, yes.</p> <p>24 Q What was this publication generally about? Do you recall?</p> <p>25 A It was -- I've been asked by the person who was the head of</p>	<p>1 majority routinely votes as a block to defeat minority</p> <p>2 candidates." Do you see that?</p> <p>3 A Yes.</p> <p>4 Q So you would agree that at-large systems "reduce minority</p> <p>5 representation when the majority routinely votes as a block</p> <p>6 to defeat minority candidates"?</p> <p>7 A They have the ability to do that.</p> <p>8 Q In your work as an expert witness, have you ever testified</p> <p>9 in a case where you've concluded that the majority routinely</p> <p>10 votes as a block to defeat minority candidates in an</p> <p>11 at-large election system?</p> <p>12 A I don't recall specifically. But I think that would --</p> <p>13 given that I mostly work for entities, that would be an</p> <p>14 unusual situation.</p> <p>15 Q So you don't recall any instance where you've testified as</p> <p>16 much?</p> <p>17 A Not -- I'm not saying I haven't. But I don't -- it's hard</p> <p>18 to imagine why -- if, I mean, I'm hired to do this analysis.</p> <p>19 I do the analysis, and that's the conclusion, it's hard to</p> <p>20 imagine why we'd be going to trial and I would be</p> <p>21 testifying. But I guess, you know, if they're just</p> <p>22 suicidal, I suppose it would be possible to do that kind of</p> <p>23 thing.</p> <p>24 You know, that's, to me, that's the purpose -- that's</p> <p>25 why I'm sort of advising: Get ahead of this, hire an</p>

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<p>1 expert, have them look at it. You know, if what they find</p> <p>2 out is either that you're liable under Gingles 1, 2, and 3,</p> <p>3 get busy and fix it.</p> <p>4 Q Later, on page 5, in the second paragraph under at-large</p> <p>5 elections, I'm looking at the last sentence in that second</p> <p>6 paragraph. It says: "Any school district in which the</p> <p>7 ethnic and racial minority population constitutes 10 percent</p> <p>8 or more of the adult population needs to make a very careful</p> <p>9 consideration of the impact of census information on the</p> <p>10 legal viability of its at-large election system."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q So how did you determine that number, "10 percent or more."</p> <p>14 A So at this point I'm assuming that basically all you know is</p> <p>15 what you'll get from that first -- so the first census</p> <p>16 broadside with the P.L. 171 data will give you an overview</p> <p>17 number for the whole school district. So school districts</p> <p>18 are one of the things that are -- reports are cumulated by.</p> <p>19 So if you want to know whether you need to look further, if</p> <p>20 you're at 10 percent -- and I'm assuming that in Texas, most</p> <p>21 of the school districts are seven member.</p> <p>22 But even in a five-member district, in a five-member</p> <p>23 district if 10 percent of the adult population is minority</p> <p>24 and they happen to be sufficiently concentrated that they</p> <p>25 would be in a single one-in-five district, that's -- you're</p>	<p>1 Q That's not the citizen-voting-age population?</p> <p>2 A It's -- well, of course it's certainly this -- that is now</p> <p>3 the citizen-eligible population and that would be -- but</p> <p>4 again I would -- even -- I mean this is a little bit early</p> <p>5 in that sequence but not so early that, at least in Texas</p> <p>6 where you're in the Fifth Circuit, that was the -- you know,</p> <p>7 by the end that was the rule in the Fifth Circuit. But that</p> <p>8 census number, that citizen number, is not available when</p> <p>9 the census is available.</p> <p>10 So it wouldn't do any good to tell the district that,</p> <p>11 when the census report comes out, take a look at your CVAP</p> <p>12 number 'cause you won't have a CVAP number until a special</p> <p>13 report's produced. And even then, that -- you're going to</p> <p>14 have to hire a demographer to get that CVAP number. It's</p> <p>15 not a simple matter.</p> <p>16 So that would be one of the things that you would look</p> <p>17 at down the road. But again, even today where the CVAP is</p> <p>18 clear -- is the clear standard, I would say this is still</p> <p>19 what a school district should do: They should look at that</p> <p>20 adult number. And if it's there, then you better find out</p> <p>21 where you're -- it can go further, including things like</p> <p>22 finding out where the citizen number is.</p> <p>23 Q Would you advise differently for a city than a school</p> <p>24 district?</p> <p>25 A I wouldn't -- in just thinking about this, I wouldn't think</p>
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<p>1 technically at 50 percent of a one-in-five district. So the</p> <p>2 idea of that is that that's -- if -- in just the raw data,</p> <p>3 if you're at that stage, then you need to look. Find out if</p> <p>4 it's concentrated. Find out if it's not. Look further into</p> <p>5 the population data.</p> <p>6 The intention there was basically to -- so if your</p> <p>7 adult population is below 10 percent, then no matter how</p> <p>8 concentrated, assuming that you're dealing with a</p> <p>9 five-member-or-more school board, then you can't -- but</p> <p>10 Gingles 1 can't be met. It's physically impossible. This</p> <p>11 is really kind of a don't stop looking at it unless what it</p> <p>12 tells you is you couldn't possibly be liable. Then you know</p> <p>13 it's not liable.</p> <p>14 I still wouldn't say that that means you ought not to</p> <p>15 think about -- you know, I think everybody should -- every</p> <p>16 10 years should think about how they do their business and</p> <p>17 do they want to change it. But if you want to know, if you</p> <p>18 want to get ahead of an issue where you might face an</p> <p>19 expensive lawsuit, then I'd say that's your first -- that's</p> <p>20 a free piece of information. That's your first threshold.</p> <p>21 Then you need to -- from there you need to move on and look</p> <p>22 more carefully.</p> <p>23 Q And when you're referring to the "adult population" in that</p> <p>24 sentence, what's that refer to?</p> <p>25 A That's 18 and over. So vote-eligible population.</p>	<p>1 that this would be any different for a city than a school</p> <p>2 district. I mean there may be some -- there is certainly</p> <p>3 more variation in size of council. So if you're the City of</p> <p>4 Houston, you have, you know, 12, 14, 15 council members. So</p> <p>5 the number of single-member districts obviously, that number</p> <p>6 is related, as we talked about, to the size of council, you</p> <p>7 know, taking into account the -- take the percentage of your</p> <p>8 population in an ideal district, divide it in half, and</p> <p>9 that's your threshold number.</p> <p>10 Q Do you know whether the Latino population in the city of</p> <p>11 Yakima constitutes 10 percent or more of the adult</p> <p>12 population?</p> <p>13 A I think it's -- is it about 40 percent of the total</p> <p>14 population? So I would think that it must be somewhere in</p> <p>15 the, in the 30's for adults. So yes. I mean this is -- the</p> <p>16 Yakima School District would be squarely in the sort of</p> <p>17 district that I would recommend look seriously at this.</p> <p>18 Q You said "Yakima School District." Do you mean the City of</p> <p>19 Yakima?</p> <p>20 A I'm sorry. Both the City of Yakima and the school district</p> <p>21 would be in the range of entities that would want to pay</p> <p>22 attention to their census data and in that -- in falling</p> <p>23 into this category, yes.</p> <p>24 Q Do you know if the Latino citizen voting-age population in</p> <p>25 the City of Yakima is above 10 percent?</p>

10 (Pages 34 to 37)

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<p>1 A My recollection is it's just a little bit over 20. So</p> <p>2 again, that would clearly put it in the range where you'd</p> <p>3 want to look beyond that figure as well.</p> <p>4 Q Do you have any information, do you know whether or not the</p> <p>5 City of Yakima looked into the situation of whether it</p> <p>6 should create single-member districts after the census came</p> <p>7 out?</p> <p>8 A I don't recall. They -- I wasn't contacted about that</p> <p>9 issue. There's no reason why I would be. I don't do that</p> <p>10 kind of work in Washington state. So I don't recall. They</p> <p>11 may have; they may not have. I just don't recall.</p> <p>12 Q But any analysis that you provided came only after the</p> <p>13 lawsuit was filed in this case; is that right?</p> <p>14 A Yeah, that's my recollection. I don't recall being</p> <p>15 contacted by them. Again, I can't imagine why they would</p> <p>16 contact me.</p> <p>17 Q That meeting that you mentioned where there were several</p> <p>18 city council members present, that was after the case had</p> <p>19 been filed; is that right?</p> <p>20 A That's my recollection, yes.</p> <p>21 Q In the section of the -- of Exhibit 6, you also note,</p> <p>22 "alternative courses of action to be considered if it</p> <p>23 appears that a majority-minority district can be created;"</p> <p>24 is that right?</p> <p>25 A Yes.</p>	<p>1 in-between category of what are sometimes called</p> <p>2 semi-proportional systems.</p> <p>3 The most widely discussed are limited-vote systems and</p> <p>4 cumulative-vote systems. In a cumulative-vote system,</p> <p>5 you -- whether you stagger terms or elect everyone at once,</p> <p>6 you have a certain number of seats up. People have a number</p> <p>7 of votes equal to the number of seats.</p> <p>8 So if there were four seats up, each person would have</p> <p>9 four votes to cast. They can cast those votes in a</p> <p>10 traditional form of -- you know, for the four candidates</p> <p>11 they most prefer. But they also can cast -- they could</p> <p>12 chose two candidates and cast two votes each for them. They</p> <p>13 could cast all four votes for one candidate.</p> <p>14 So the mechanism for expressing in sort intensity of</p> <p>15 preference, it effectively deals with the issue of</p> <p>16 single-shot voting. That's basically -- it's kind of single</p> <p>17 shots on steroids or something 'cause it lets you actually</p> <p>18 plump for a candidate. It produces an election threshold</p> <p>19 that's substantially below majority. Again it's -- and</p> <p>20 that's the sense that it's semi-proportional is the</p> <p>21 threshold of exclusion is substantially below 50 percent.</p> <p>22 It's -- this is -- I'm not sure that this would be my</p> <p>23 advice outside of Texas, 'cause I don't know if it's legal</p> <p>24 outside of Texas. So it's -- it is an option for school</p> <p>25 boards of certain sizes in Texas. And it was a new --</p>
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<p>1 Q One of those alternatives is simply to shift from an</p> <p>2 at-large to a single-member districting system?</p> <p>3 A Correct.</p> <p>4 Q And the second alternative, I believe is -- you say on</p> <p>5 page 6: "The district might consider moving to cumulative</p> <p>6 election system. This allows the retention of the at-large</p> <p>7 system but also provides an increased opportunity for</p> <p>8 minorities to elect candidates of choice by cumulating their</p> <p>9 votes for those candidates."</p> <p>10 A Correct.</p> <p>11 Q Can you describe a cumulative election system. I know you</p> <p>12 mentioned the phrase earlier.</p> <p>13 A So again, this was one of a series of elections that are</p> <p>14 often referred to as semi-proportional systems. So you</p> <p>15 think about proportional election systems, a true</p> <p>16 proportional system, the kind that would elect a parliament</p> <p>17 in Europe, for example, where you actually have a list, a</p> <p>18 party list; and you vote and then allocate -- according to</p> <p>19 the proportion of the votes for the party list, you allocate</p> <p>20 candidates. It's called truly proportional.</p> <p>21 In theory, I suppose you could have truly proportional</p> <p>22 elections. But because the language of the Voting Rights</p> <p>23 Act says this is not contemplated to require proportional</p> <p>24 election systems, the Court's not going to order a</p> <p>25 proportional election system. But there is this kind of</p>	<p>1 something that would not have been an option coming after</p> <p>2 the 1990 census but would be an option after 2000. So the</p> <p>3 reason for highlighting it was there was a large school</p> <p>4 district with experience with it, at least at this point</p> <p>5 very early experience, which is Amarillo, and it was now</p> <p>6 available as an option for school districts.</p> <p>7 Q So the features that you just described about the cumulative</p> <p>8 election system, how do those provide an increased</p> <p>9 opportunity for minorities to elect candidates of choice?</p> <p>10 A If minorities are sufficiently cohesive, politically</p> <p>11 cohesive, and -- so the two things that will need to happen,</p> <p>12 one is that you'll need political cohesion, not voter</p> <p>13 cohesion but political cohesion. So you'll need make a</p> <p>14 strategic decision to restrict the range of candidates.</p> <p>15 So if there are four seats up on the school board and</p> <p>16 you have four strong Latino candidates, four strong</p> <p>17 African-American candidates, you're going to have to reduce</p> <p>18 that number. If all four candidates run and people plump</p> <p>19 their vote across all four, you're not going to change the</p> <p>20 threshold of exclusion.</p> <p>21 So you need some political cohesion in which people get</p> <p>22 together and say, Look, we've gotta -- we can win a seat; we</p> <p>23 can't win all the seats. If we're together, we can win a</p> <p>24 seat. So let's make a decision here maybe to choose who</p> <p>25 runs this time versus next time or whatever. But you need</p>

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<p>1 some political aggregation at the level of candidates. If</p> <p>2 you don't achieve that at the level of candidates, then</p> <p>3 you've got to have some mechanism of communication among</p> <p>4 voters.</p> <p>5 So voters can't just independently effect this.</p> <p>6 They're going to have to actually communicate in that</p> <p>7 regard. Voters are going to have to agree on a candidate.</p> <p>8 Then they need to cumulate their votes. So this has to be a</p> <p>9 choice of foregoing having an influence on selecting the</p> <p>10 other members of the school board. Often it means foregoing</p> <p>11 selecting, you know, six of the seven members of the school</p> <p>12 board in order to focus on selecting a single member of the</p> <p>13 school board.</p> <p>14 If the minority population is sufficient in size and</p> <p>15 they vote cohesively for the minority candidate and</p> <p>16 intensely -- so cohesively, meaning that everybody -- the</p> <p>17 majority, you know -- again, this will depend on the actual</p> <p>18 numbers here. But if you're at the edge of a threshold of</p> <p>19 exclusion, you're going to need substantial cohesion, maybe</p> <p>20 90 percent cohesion. And beyond the 90 percent cohesion,</p> <p>21 you're going to also have to have substantial cumulation.</p> <p>22 So the fact that 90 percent of minorities vote for the</p> <p>23 minority candidate is not going to ensure election. They're</p> <p>24 also going to have to cumulate substantially.</p> <p>25 So at the threshold of exclusion your assumption is</p>	<p>1 the data doesn't show the -- a particular solid Gingles 1</p> <p>2 pattern of population size or concentration.</p> <p>3 Q What is the Gingles 1 precondition? What's your</p> <p>4 understanding of it?</p> <p>5 A That you -- plaintiffs need to demonstrate that they can</p> <p>6 draw at last a single district in which minority population</p> <p>7 would constitute 50 percent plus one of the citizen</p> <p>8 voting-age population.</p> <p>9 Q You mentioned "in this case the data doesn't show a solid</p> <p>10 Gingles 1 pattern of population size or concentration."</p> <p>11 What are you referring to?</p> <p>12 A For example, you can meet that sort of minimal threshold</p> <p>13 test and still not have the -- when you think about sort of</p> <p>14 what it takes to get over the first Gingles threshold and</p> <p>15 then you think about how that connects to Gingles 2, 3, and</p> <p>16 totality of the circumstances, it's simply meeting that</p> <p>17 minimum number. Well, first of all, you're -- because of</p> <p>18 the vagaries of the census data, you're never really</p> <p>19 entirely sure where you are in terms of meeting that citizen</p> <p>20 threshold.</p> <p>21 But the idea behind the Gingles 1 threshold is to</p> <p>22 establish that the harm in terms of minority representation</p> <p>23 is being produced by the at-large system relative to the</p> <p>24 benchmark of a single-member district system. So what</p> <p>25 you're really trying to do in all of this is demonstrate</p>
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<p>1 that all minorities vote for the minority candidate and</p> <p>2 cumulate all their votes for the minority candidate. If</p> <p>3 they do that, then the threshold of exclusion says -- tells</p> <p>4 you basically, at this point, if that takes place, then --</p> <p>5 nothing that the rest of the voters do, no pattern of</p> <p>6 cumulation, no pattern of strategy, can cause your candidate</p> <p>7 to fail to be elected.</p> <p>8 It provides -- without drawing districts, within the</p> <p>9 context of at-large elections, it provides a threshold at</p> <p>10 which you can guarantee minority representation. And</p> <p>11 mathematically that threshold is below 50 percent.</p> <p>12 Q And as far as you know, Yakima does not use a cumulative</p> <p>13 election system in its city council elections?</p> <p>14 A They do not use cumulative. Very few places use cumulative</p> <p>15 elections.</p> <p>16 Q So you mentioned earlier that you expected to testify about</p> <p>17 the Gingles factors with emphasis on Prongs 2 and 3; is that</p> <p>18 right?</p> <p>19 A That's correct.</p> <p>20 Q Do you provide any analysis of the Gingles 1 prong?</p> <p>21 A Unless I'm mistaken, I think there's -- in the initial</p> <p>22 report -- I'm not sure about the supplemental report. But</p> <p>23 in the initial report there's some discussion of the fact</p> <p>24 that we're in a less than ideal situation here for Gingles,</p> <p>25 particularly for Prong 2 analysis, because the -- basically</p>	<p>1 that in a -- in an actual single-member district, you would</p> <p>2 have a situation where minority voters would be able to</p> <p>3 routinely elect candidates of choice, using that as kind of</p> <p>4 the baseline to show that the same is not true in the</p> <p>5 at-large system. And that establishes that the at-large</p> <p>6 system is the -- is a potential cause of that because this</p> <p>7 would have occurred had elections taken place in a</p> <p>8 single-member district system and not did not occur or would</p> <p>9 not occur in an at-large system.</p> <p>10 Q So is it your understanding that, in order to satisfy the</p> <p>11 Gingles 1 threshold, plaintiffs need to demonstrate that</p> <p>12 minorities would routinely elect candidates of choice in the</p> <p>13 single-member district?</p> <p>14 A No. That's the -- that's sort of the -- as a threshold</p> <p>15 matter, the Court has a specific test for the threshold</p> <p>16 matter. That's the CVAP number. And then sort of the</p> <p>17 broader issue of whether or not you have in fact established</p> <p>18 that, you know, but for the at-large system,</p> <p>19 minority-preferred candidates would be elected, that's the</p> <p>20 broader totality-of-the circumstances question. That's what</p> <p>21 the -- what all this cumulates into.</p> <p>22 And so you have both the threshold test, which is</p> <p>23 simply when the case doesn't proceed. And then you have</p> <p>24 what the judge actually is forced to decide, which is in</p> <p>25 this broader picture, essentially, you know, is there a</p>

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<p>1 remedy. If there's no remedy, there's no tort. So at-large 2 systems are not on their face illegal. And absent an 3 appropriate application of the Gingles test, you would -- 4 you could just essentially -- I think you could make the 5 argument that at-large systems relative to single-member 6 systems are virtually always less easy to elect candidates 7 in if your interest -- whether party, ethnic, whatever -- 8 constitutes less than a majority of the votes. You could 9 argue that at-large systems will always be more difficult to 10 elect in than single-member system or in a baseline 11 certainly, you know, no easier to elect than single member. 12 So if that were your only test, would -- is -- would 13 minorities have an easier time electing candidates in a 14 single-member district system, then I would just say 15 at-large elections would be on their face illegal. And we 16 wouldn't have to go through, go through all of that. 17 So that's -- it's a test designed by the courts to both 18 include a threshold level. So I think of this sort of as 19 similar to what I was writing in this report: Let's look at 20 this and see if there's any possibility that it could be 21 the -- that there could be a remedy here and that the first 22 threshold for that is, if you can't get to a CVAP majority, 23 then by definition you can't -- you haven't -- you can't 24 solve that problem because you'll create a submajority 25 single-member district and the submajority single-member</p>	<p>1 available at the block level. They're only available at the 2 block group level. So it's a nontrivial task. 3 I don't know whether it was done accurate or not. But 4 my recollection is shows that you can create either one or 5 two majority CVAP districts. 6 Q Do you have any -- so did you review those demonstration 7 districts that Mr. Cooper drew? 8 A Just in the sense of looking at them on a map and seeing 9 what those numbers were, not in the sense of actually, you 10 know, going to them on a GIS program and seeing whether I 11 could do the same thing. So . . . 12 Q Do you agree with Mr. Cooper's assessment of the Latino 13 citizen voting-age population in Yakima? 14 A Again, I'm aware of it. But I have no reason to agree or 15 disagree with that assessment in terms of the, you know, 16 drawing of a CVAP majority. I haven't tried to do it. And 17 I haven't tried to verify what he did. 18 Q So you've not performed any analysis that would cause you to 19 disagree with any of Mr. Cooper's conclusions about the 20 Latino citizen voting-age population in Yakima? 21 A I'm not sure I would go quite that far. But I mean I 22 haven't done anything that looks specifically at citizen 23 voting-age population. You would assume, if you'd met the 24 citizen voting-age population test, that you would also have 25 concentrated areas of Hispanic vote. In the elections, you</p>
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<p>1 district is a much more hospitable but nonetheless 2 ultimately similar situation in that a unified majority vote 3 can block you as routinely in that single-member district as 4 they could in the at large. 5 So it's -- the first question is, do you have, just as 6 a threshold matter, can you proceed with a case. But that 7 certainly doesn't answer the question of whether in fact 8 you're -- and don't think it means -- I mean at the 9 threshold test, it doesn't mean that that's no longer an 10 issue in the broader case. The broader case is the -- is 11 bringing together Gingles 1, 2, 3, and the Senate factors. 12 So . . . 13 [Mr. Hamilton joins the deposition.] 14 Q (By Ms. Khanna) So when it comes to that threshold test, 15 that Gingles 1 test, have you reviewed Mr. Cooper's reports 16 in this case? 17 A Not in the sense of -- that I can say whether, you know, 18 that's accurate -- again, the -- ideally the application of 19 CVAP would be transparent. It's -- congress can make it 20 transparent, but they've chosen not to. So the CVAP numbers 21 are less reliable than they were in 2000 when they were part 22 of the large form of the census. They're now not a part of 23 the long form, and they're part of an ongoing survey. 24 The task of moving that number down to a potential 25 district is complicated because those figures are not</p>	<p>1 don't. 2 There are a number of things that might explain that. 3 One of the things that might explain it is that in fact the 4 citizen voting-age population is not concentrated at the 5 levels -- this is a -- this is a measure that has 6 substantial error in it. It's not a full-count census 7 number. So we can't give it the same confidence we could 8 give to the adult population, for example, which is a 9 full-count number. 10 So there are -- the fact that we don't have that voting 11 concentration, there are other things, you know, differences 12 in turnout levels and interest and so forth that might 13 account for those differences. So I don't know that it's 14 the citizen number. But I question whether there -- whether 15 we actually have a, in the broadest sense, a Gingles 1 16 district that sets up a clean comparison to the at-large 17 system. I don't know if that origin is in the -- is in that 18 citizen population number or in something else. 19 Q So you say you question whether we actually have a Gingles 1 20 district. But you've not done any analysis to determine 21 whether there is a Gingles 1 district demonstrated in 22 Mr. Cooper's report? 23 A In terms of just the -- in the sense, in the sense that 24 there's a -- one of the simplest ways to think about the 25 Gingles analysis is that, I mean, it ultimately suggests</p>

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<p>1 that you could sort of draw a circle around some voters and</p> <p>2 get a different election outcome. There's no circle you can</p> <p>3 draw in Yakima and get a different election outcome.</p> <p>4 Q Does Gingles 1 require that, that you draw a circle and get</p> <p>5 a different outcome?</p> <p>6 A Not as a threshold, no.</p> <p>7 Q So the threshold matter is just whether or not there's a</p> <p>8 majority of Latino citizen voting-age population?</p> <p>9 A It's in the fact that you can't actually draw a district.</p> <p>10 Again, I'm not saying that demonstrates there's something</p> <p>11 wrong with the threshold test. But we know that in the case</p> <p>12 of the current census data as opposed to the data that the</p> <p>13 courts relied on in 2000, that there is more question about</p> <p>14 those CVAP numbers. There are a sequence of other things</p> <p>15 that could be responsible for that.</p> <p>16 But I don't have -- I don't have the information to</p> <p>17 rule out the possibility that there is a problem with that</p> <p>18 CVAP number. I don't have any specific analysis nor do I</p> <p>19 expect to do any analysis on the actual demographics. I</p> <p>20 draw districts, but I was not hired to do that here. And I</p> <p>21 did -- I specifically asked not to be hired to do that here.</p> <p>22 So that's -- again, I don't know what the -- there's</p> <p>23 nothing in my analysis that would buttress the claim that</p> <p>24 there is a CVAP majority district. And there is at least</p> <p>25 the potential that that might be a part or -- some -- may</p>	<p>1 have -- right? It's putatively accurate. By legal</p> <p>2 assertion it's accurate. This number isn't by legal</p> <p>3 assertion accurate. So we're left with a number we know has</p> <p>4 a lot of error in it. And the test that would let us set</p> <p>5 that aside as essentially not -- as a given, it would have</p> <p>6 to be true if we had the vote district we don't have. So</p> <p>7 that leaves open the possibility that it is not actually a</p> <p>8 CVAP majority.</p> <p>9 Q You mentioned just now, without a CVAP majority, you</p> <p>10 couldn't have a registered voter majority; is that right?</p> <p>11 A Yes.</p> <p>12 Q If there is a district drawn with a registered voter</p> <p>13 majority, would you think that therefore there's a CVAP</p> <p>14 majority?</p> <p>15 A It's -- again it is possible that you could, in some</p> <p>16 convoluted district sense, you could get away with that.</p> <p>17 But I think in general, if you have a registered vote</p> <p>18 majority, that you should -- I would think -- I'll say this:</p> <p>19 I think a registered vote majority is probably a better</p> <p>20 indicator of having a majority district than is the CVAP</p> <p>21 number. And I understand that the court has not delineated</p> <p>22 that as a bright-line test. And I have certainly -- I can't</p> <p>23 remember if it's in this case.</p> <p>24 But you certainly do see cases where, when you move to</p> <p>25 drawing the district on the registered vote, the CVAP drops</p>
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<p>1 play some role in the fact that there is not an actual --</p> <p>2 any geography in which these candidates would be elected.</p> <p>3 But that's -- I can't make that causal connection.</p> <p>4 Q Just to clarify, your questioning of the reason why there</p> <p>5 may not be a CVAP-majority district is based on the fact</p> <p>6 that you've not seen the Latino voter turnout that would</p> <p>7 convince you that there are sufficient amount of actual</p> <p>8 Latino voters; is that right?</p> <p>9 A I think we're kind of talking about type 2, type 1 error</p> <p>10 kind of thing. Right? If I could take the -- if I could do</p> <p>11 kind of reconstituted elections so I can just really quickly</p> <p>12 circle the three most Latino precincts -- they account for</p> <p>13 roughly enough to draw a district. Again, you could do</p> <p>14 better; you could do worse -- and Latino candidates are</p> <p>15 winning, then you've settled the issue.</p> <p>16 Then I could confirm that in fact you must have a CVAP</p> <p>17 majority because, if you don't have a CVAP majority, you</p> <p>18 couldn't have a registered vote majority; you couldn't have</p> <p>19 it turned out. It potentially could settle that issue. So</p> <p>20 this evidence could say, absolutely, you can do that.</p> <p>21 In this case it doesn't say that. And so we're left</p> <p>22 without the ability to say -- based on what comes after</p> <p>23 that, we're left with the inability to say that that's the</p> <p>24 case. If the CVAP number was a solid, full-count census,</p> <p>25 there wouldn't be anything to decide anyway because it would</p>	<p>1 So that the districts that have the highest registered vote</p> <p>2 are not the districts that have the highest CVAP, which</p> <p>3 tells you that there is not -- it is not as a matter of fact</p> <p>4 that, if you have that voter majority, you're going to have</p> <p>5 a CVAP majority. Otherwise the CVAP numbers would rise as</p> <p>6 we drew increasing -- it is, I'd say, more often than not</p> <p>7 the case that, if you first draw a district on CVAP majority</p> <p>8 and then draw a district on registered vote majority, at</p> <p>9 least as often as not the CVAP number will move down rather</p> <p>10 than up. And that's counter intuitive.</p> <p>11 So the reason I don't just focus on that registered</p> <p>12 vote but go through to an actual district that would elect,</p> <p>13 is, at that point you've run straight through to the end of</p> <p>14 what totality of circumstances is about. And at that point</p> <p>15 it doesn't matter what. There's -- again, affirming a CVAP</p> <p>16 majority is a threshold matter. And that's not what I'm --</p> <p>17 I'm not talking about the threshold matter. I'm talking</p> <p>18 about where does it get us when the judge has to actually</p> <p>19 decide what to do here.</p> <p>20 Q So I'm talking about just Gingles 1 as a threshold matter</p> <p>21 for right now.</p> <p>22 A All right.</p> <p>23 Q Is it your understanding that a Gingles 1 determination is</p> <p>24 contingent in any way upon voter turnout, just the Gingles 1</p> <p>25 determination?</p>

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<p>1 A The threshold determination is not contingent on voter 2 turnout. 3 Q You mentioned that the CVAP numbers are less reliable these 4 days than they were in 2000; is that right? 5 A Yes. 6 Q And the way of determining CVAP right now is the use of the 7 ACS data? 8 A That's correct? 9 Q Are you familiar with any other way of determining the CVAP 10 population? 11 A There are -- so demographers have other techniques for doing 12 that so they can look at -- they can look at parts of the 13 census that deal with things like national origin. You can 14 then look at things like naturalization numbers. Right? So 15 there are -- demographers do all kinds of things to build 16 models. There are other ways of doing it. 17 I can't think of -- I'm not aware of a clear 18 alternative currently to basically working with the ACS 19 numbers and trying to make some sense out of them. Being 20 appropriately cautious, I'm not aware of a clear and better 21 alternative presently. 22 Q Have you used ACS data in your work, ever? 23 A Yes. 24 Q So you rely on it? 25 A To the extent that -- I rely on it to the extent that it has</p>	<p>1 where you're drawing a school district out of units that are 2 not even reported, then you're not talking about what's 3 accurate about the ACS. You're talking about what's 4 inaccurate about you recomputing the ACS number on a 5 geography. Right? You're not using the ACS number. You're 6 using your own calculation about how you might redistribute 7 the ACS number. At that level, I don't think there's -- 8 there is a lower limit at which the ACS, by the very nature 9 of its collection, is simply not at all useful in estimating 10 a precise number. 11 I think we're -- where you're very close to 50 percent 12 and the population is low and you're splitting what are 13 already highly unreliable block groups, I think you could be 14 in a situation where it is not possible to know with any 15 certainty what the ACS threshold is. 16 Q What's your definition of "very close to 50 percent"? 17 A Well, certainly if you're -- if that -- if the confidence 18 interval around the 50 percent includes numbers that are 19 below 50 percent, then by definition you haven't met the 20 social-science standard for demonstrating that there is not 21 in fact a submajority population. So . . . 22 Q You mentioned "social-science standard." Do you know about 23 the legal standard? 24 A I have no idea what the legal standard is for a 25 demonstration with ACS.</p>
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<p>1 reliability. So again I would not present an ACS number 2 without a confidence interval, just like we do confidence 3 intervals for other things. Those are often quite wide. 4 That's important to know. But . . . 5 Q Is it your understanding that we can never know whether or 6 not plaintiffs have met the Gingles 1 threshold based on ACS 7 data as it exists? 8 A Well, I think that depends on -- so you're getting -- I 9 assume there's some -- you're beginning to get some evolving 10 court standard. I assume that probably, by the time we're 11 done with the decade and it no longer matters, some appeals 12 court somewhere will say, Look, we're just going to give 13 presumptive validity to some -- to something. Or maybe not. 14 I don't -- I would assume there are -- there are 15 certainly -- I'll say this: There are probably lots of 16 cases where you are so far out of the range of what might be 17 possible in the ACS data that it's not just an issue of 18 contention. In relatively small -- remember that the ACS 19 data is not terrible for what it's intended to do. Right? 20 So it's not even released for small jurisdictions. But in 21 large jurisdictions, in a county with two million people, 22 you know, it's a reasonably accurate number. When you're 23 talking about a school district, it's a less accurate 24 number. 25 When you're talking about 1/7 of a school district,</p>	<p>1 Q Is there -- you've mention that there's a percentage at 2 which the ACS -- the kind of estimates of the ACS data 3 doesn't even matter because you're high enough when it comes 4 to Gingles 1. Is there a percentage at which you would feel 5 comfortable saying that, even if there are flaws in the ACS 6 data, there's most likely a CVAP majority in this district? 7 A I think that would depend upon, again, the size of the 8 jurisdiction, the size of the district. That may be 9 relatively -- a number relatively close to 50 percent in a 10 large district in which the ACS numbers are quite stable. 11 It may be -- there may not be any number that is possible in 12 other situations. So it's going to be -- it's going to be 13 locally fact intensive. 14 Q Just to clarify, have you offered any opinion in this case 15 as to whether plaintiffs have met -- established that 16 threshold Gingles 1 factor? 17 A I'm just checking to make sure that I haven't said something 18 in the language that would suggest something different. But 19 as I read this quickly, I think my language is consistent 20 with my notion that -- my issue there is with the broader 21 issue not with the threshold test, 'cause I really 22 haven't -- other than knowing what's -- what it's like to 23 deal with ACS data at this level, I haven't specifically 24 looked again or tried to redo this. 25 So I guess I have an opinion about how reliable any</p>

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<p>1 point estimate is in this situation with ACS data. But I've</p> <p>2 not reached an expert conclusion that would be -- it's just</p> <p>3 a hard thing to phrase. I guess I'm no more certain that it</p> <p>4 hasn't been met than I am that it has been met. I guess</p> <p>5 that's what I would say.</p> <p>6 Q So you've offered no expert conclusion in your report about</p> <p>7 whether or not plaintiffs have established the Gingles 1</p> <p>8 threshold in this case?</p> <p>9 A That, I think, is a fair statement.</p> <p>10 Q Do you intend to offer an opinion in this case about whether</p> <p>11 or not plaintiffs have established the Gingles 1 threshold</p> <p>12 precondition in this case?</p> <p>13 A Again, beyond the kind of discussion we've had, no.</p> <p>14 MS. KHANNA: We've been going almost an hour and a</p> <p>15 half. May we take a quick break?</p> <p>16 THE WITNESS: Sure.</p> <p>17 MS. KHANNA: Five minutes or so.</p> <p>18 MR. FRANCIS: Perfect timing.</p> <p>19 [A brief recess was taken.]</p> <p>20 Q (By Ms. Khanna) Dr. Alford, you have not done a</p> <p>21 reconstituted election analysis in this case, have you?</p> <p>22 A I discussed in my initial report that you basically can take</p> <p>23 the sort of the top-performing precincts, and they don't</p> <p>24 produce majority votes. I mean in essence that obviates the</p> <p>25 need to do a reconstituted election analysis. This is a --</p>	<p>1 page 4.</p> <p>2 Q Uh-huh. So in the bottom of page 3, you're talking about:</p> <p>3 "In both versions of District 1 in Mr. Cooper's report,</p> <p>4 precincts 101 and 104 are mostly contained in District 1;"</p> <p>5 is that right?</p> <p>6 A Right.</p> <p>7 Q Then you assess those precincts?</p> <p>8 A Right.</p> <p>9 Q Did you assess District 1 in Mr. Cooper's illustrative</p> <p>10 District 1? Do you know?</p> <p>11 A So what I am doing here is looking at the geography of his</p> <p>12 District 1 and the geography of his two district 2s and just</p> <p>13 talking about where -- roughly where that would be in regard</p> <p>14 to precincts and then just looking at the Hispanic turnout</p> <p>15 in the elections for those approximate areas of geography.</p> <p>16 Q So you've -- the approximate areas of geography of the</p> <p>17 precincts that are located in -- well, you called it both</p> <p>18 versions of Mr. Cooper's District 1?</p> <p>19 A Yes.</p> <p>20 Q Are you familiar with whether Mr. Cooper in fact drew more</p> <p>21 than two versions of District 1?</p> <p>22 A I don't recall.</p> <p>23 Q And you certainly didn't provide any analysis of any other</p> <p>24 District 1 demonstration districts that Mr. Cooper provided</p> <p>25 other than the two that you referred to here?</p>
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<p>1 this isn't the sense in which reconstituted election</p> <p>2 analysis is normally used in these cases. And it isn't a</p> <p>3 formal reconstituted election analysis. But it answers the</p> <p>4 question what you would see in a reconstituted election</p> <p>5 analysis.</p> <p>6 You don't need to do that to know what the result would</p> <p>7 be. It couldn't be any -- it couldn't be any different than</p> <p>8 what you see by looking at the most Hispanic precincts.</p> <p>9 Q But you've not done reconstituted election analysis in this</p> <p>10 case?</p> <p>11 A I mean I would call that -- that is a reconstituted election</p> <p>12 analysis, not in the formal sense that you usually see</p> <p>13 presented. But it's -- that's what a reconstituted election</p> <p>14 analysis does. That's the conclusion it lets you reach.</p> <p>15 Q Have you done a reconstituted election analysis based on any</p> <p>16 of Mr. Cooper's demonstration districts?</p> <p>17 A I think that's what this analysis in the report is based on.</p> <p>18 That's my recollection.</p> <p>19 Q So you used Mr. Cooper's demonstration districts in your</p> <p>20 report?</p> <p>21 A I think so, yes. I could be wrong. I could be thinking</p> <p>22 about a completely different case. But I thought I was</p> <p>23 thinking about this.</p> <p>24 Q Let me know where you see if you have.</p> <p>25 A Yes, I will. So this would be the bottom of page 3, top of</p>	<p>1 A Right. So this is -- again, this is all what was -- what is</p> <p>2 indicated here is all that I've done. And it's not a</p> <p>3 classic reconstituted election analysis. But -- and I</p> <p>4 didn't want to mislead you as to what -- this is what I'm</p> <p>5 referring to when I say I've looked at where those districts</p> <p>6 would be. It's looking at -- it is reconstituting the</p> <p>7 elections in the sense that it's looking at turnout in</p> <p>8 actual elections as opposed to looking at something like</p> <p>9 just voter registration. And that's the extent of what I've</p> <p>10 done.</p> <p>11 Q All right. I'm going to talk a little bit about the</p> <p>12 methodologies now. In his analysis, Dr. Engstrom utilized a</p> <p>13 method called ecological inference or EI; is that correct?</p> <p>14 A That's correct.</p> <p>15 Q And in your initial report, you also performed an EI</p> <p>16 analysis?</p> <p>17 A That's correct.</p> <p>18 Q You also used two other techniques, right? The homogeneous</p> <p>19 precinct analysis and the ecological regression analysis?</p> <p>20 A That's correct.</p> <p>21 Q Can you describe the homogeneous precinct analysis for me or</p> <p>22 define it, rather.</p> <p>23 A Okay. Homogeneous precinct analysis is a method of bounds.</p> <p>24 And it takes information about -- basically segments the</p> <p>25 results of an election into precincts that, because of their</p>

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<p>1 location -- it's sometimes called extreme precinct analysis</p> <p>2 because the point of the precinct being homogeneous is that</p> <p>3 that, by definition, makes it extreme. It is toward the</p> <p>4 lowest level in terms of proportion of minority or toward</p> <p>5 the highest level in proportion of minority. So at the</p> <p>6 extremes of the population distribution, the precincts</p> <p>7 become increasingly homogeneous. The normal standard is</p> <p>8 90 percent nonminority at the nonminority end for a</p> <p>9 homogeneous precinct and 90 percent minority for a</p> <p>10 homogeneous minority precinct.</p> <p>11 There are two reasons for looking at those precincts.</p> <p>12 The first and probably the most obvious is that it is simply</p> <p>13 a bounds analysis on voting. So it is the first of the</p> <p>14 bounds analysis methods to be utilized. It was utilized</p> <p>15 before ecological regression. And it is -- in that sense it</p> <p>16 is a pure bounds analysis.</p> <p>17 It obviously leaves out information that falls between</p> <p>18 90 percent and 10 percent. And so it is -- it lacks</p> <p>19 efficiency in the sense that it ignores that information.</p> <p>20 And so the initial attempt to provide a sort of a full data</p> <p>21 picture is the move to ecological or Goodman's regression.</p> <p>22 In that process, the bounds logic that was -- underlies</p> <p>23 homogeneous precinct analysis was dropped. And so you then</p> <p>24 got, you know, here's all -- here's the full information</p> <p>25 deterministic model but it throws away the bounds</p>	<p>1 It is a method of -- it's a method of probabilistic</p> <p>2 simulated estimation. But it does efficiently use bounds</p> <p>3 information. And by its nature, it doesn't preclude the</p> <p>4 possibility that -- it's agnostic about the linearity of the</p> <p>5 relationship.</p> <p>6 Q So I think you just walked me through the three various</p> <p>7 methods. I was asking about the homogeneous precinct</p> <p>8 analysis. And I think you moved on to ER and EI and</p> <p>9 describing that as well. And that's certainly something I</p> <p>10 will want to come back to.</p> <p>11 But focusing on the homogeneous precinct analysis, this</p> <p>12 method is not appropriate for analyzing Hispanic voting</p> <p>13 behavior in the city of Yakima; is that right?</p> <p>14 A It is completely appropriate for analyzing Hispanic voting</p> <p>15 behavior. There's nothing wrong with the method. The fact</p> <p>16 is that there -- that Hispanic voters are insufficiently</p> <p>17 concentrated in Yakima to allow a homogeneous precinct</p> <p>18 analysis for Hispanics.</p> <p>19 Q So you could not perform a homogeneous precinct analysis to</p> <p>20 measure Hispanic voting behavior in Yakima?</p> <p>21 A You cannot -- there are no precincts that are -- in no one's</p> <p>22 definition -- if you -- basically, if you're willing to</p> <p>23 expand the line, as some people do, to 80, maybe even to 70,</p> <p>24 in Yakima at that point all of the precincts would be</p> <p>25 extreme Anglo precincts and you wouldn't have accomplished</p>
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<p>1 information.</p> <p>2 That's why you typically saw both homogeneous precinct</p> <p>3 analysis and ecological regression presented together</p> <p>4 because then you've got the advantage of the bounds</p> <p>5 analysis, you've got the advantage of the full. And in</p> <p>6 theory, you like to see them all mixed together.</p> <p>7 So with EI, what you do is recognize that the bounds</p> <p>8 analysis is not limited simply to the extremes of the</p> <p>9 distribution, that there's bounds information throughout the</p> <p>10 distribution, typically less bounds information in the</p> <p>11 middle of the distribution. But, depending on the actual</p> <p>12 election parameters, there often is -- so the EI attempts to</p> <p>13 harvest all the bounds information, not just the part that's</p> <p>14 obvious to the eye, and combine that with a full information</p> <p>15 model.</p> <p>16 In the process, it gives up being a deterministic</p> <p>17 model. It's not a closed-form solution. It's a -- it is</p> <p>18 a -- it's what is sometimes called a brute-force method in</p> <p>19 which you simply stimulate over and over again a, a series</p> <p>20 of parameters and try by kind of process of -- basically of</p> <p>21 cumulating so many trials that you have -- you begin to</p> <p>22 converge on something that is more likely than not to be the</p> <p>23 region in which the result might be. But it is nothing more</p> <p>24 than that.</p> <p>25 So it does not provide a single deterministic answer.</p>	<p>1 anything in trying to get concentrated Hispanic population.</p> <p>2 So there is no concentrated Hispanic voter population in</p> <p>3 Yakima. So you can't do a homogeneous precinct analysis.</p> <p>4 Q So you didn't do a homogeneous precinct analysis of the</p> <p>5 Latino population's voter cohesion in Yakima; is that right?</p> <p>6 I think you've already said that.</p> <p>7 A I did say there were zero cases. So there was nothing to</p> <p>8 report.</p> <p>9 Q So if you look at page 3 of your report, which I believe is</p> <p>10 marked Exhibit 2, in the last paragraph on page 3, about</p> <p>11 four lines up, you noticed that: "This is unusual and</p> <p>12 problematic." And I believe what you're referring to here</p> <p>13 is the lack of homogeneous Hispanic precincts in Yakima; is</p> <p>14 that right?</p> <p>15 A Correct.</p> <p>16 Q In what way is it unusual to not have a homogeneous Hispanic</p> <p>17 precincts?</p> <p>18 A It's, I would say certainly less unusual than is the case</p> <p>19 for African-American precincts. So it's more common as you</p> <p>20 move into focusing on Hispanic voters rather than</p> <p>21 African-American voters. It's more common as you move out</p> <p>22 of areas where there's -- where the Hispanic population's</p> <p>23 very large. And when you look at the state of Texas, it's</p> <p>24 chock full of extreme Hispanic precincts. But when you move</p> <p>25 into an area where the Hispanic population is less dense,</p>

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<p>1 it's less common. And certainly the sort of issues of</p> <p>2 citizenship we're talked about also figure into that</p> <p>3 concentration. So that -- the citizenship issues tend to</p> <p>4 increase the proportion of African-American homogeneous</p> <p>5 precincts and decrease the proportion of Hispanic</p> <p>6 homogeneous precincts.</p> <p>7 So I would say it's not completely unexpected. But</p> <p>8 it's -- in a, in a lawsuit of this sort it remains unusual</p> <p>9 in the sense that the logic of Gingles 1 should yield an</p> <p>10 area of sufficient concentration of Hispanic eligible</p> <p>11 population that it would produce something that would allow</p> <p>12 at least one precinct, maybe, where you could do</p> <p>13 homogeneous.</p> <p>14 The logic of the entire Gingles test is essentially</p> <p>15 predicated on, on the presence of concentrated, concentrated</p> <p>16 minority voters. And the fact that you don't have any</p> <p>17 concentrated, you actually have nothing but concentrated</p> <p>18 Anglo voters, even when you go down to the precinct level,</p> <p>19 suggests that -- both suggests, as I said earlier, that</p> <p>20 you're -- that there really isn't a Gingles 1 district in</p> <p>21 the totality sense but also, importantly, creates real</p> <p>22 limits for accurately estimating Hispanic cohesion.</p> <p>23 Gingles 2 here is compromised by the failure to meet</p> <p>24 anything but the bare -- possibly the bare threshold test</p> <p>25 for Gingles 1.</p>	<p>1 case, found that plaintiffs had prevailed on all three</p> <p>2 Gingles factors. Do you recall that?</p> <p>3 A Again, I don't -- I know the Court found for the plaintiffs</p> <p>4 in one case and for the defendants in the other. I don't</p> <p>5 recall what the -- I think, if I had to hazard a guess, I</p> <p>6 would guess that it was for the plaintiffs in Farmers Branch</p> <p>7 and the defendants in one of the Irving cases. But I don't</p> <p>8 know for certain.</p> <p>9 Q Do you remember testifying in other cases in which there</p> <p>10 have been no homogeneous Hispanic precincts and the</p> <p>11 plaintiffs have still prevailed on the Gingles test? Is</p> <p>12 that right?</p> <p>13 A Yes, yes.</p> <p>14 Q So on page 3, you also note that: "It is problematic" --</p> <p>15 and by "it," I think you're referring to the lack of</p> <p>16 homogeneous Hispanic precincts. "It is problematic because</p> <p>17 it reduces our ability to accurately assess the cohesion of</p> <p>18 Hispanic voters." Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Is Hispanic -- sorry -- homogeneous precinct analysis</p> <p>21 necessary in order to accurately assess the cohesion of</p> <p>22 Hispanic voters?</p> <p>23 A Not necessary but it basically drives most of the accuracy</p> <p>24 of all of the other methods, particularly of EI because EI</p> <p>25 is also a bounds analysis. So it is -- its importance for</p>
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<p>1 Q In your work as an expert witness, have you encountered</p> <p>2 other cities in where there are no homogeneous Hispanic</p> <p>3 precincts?</p> <p>4 A Yes.</p> <p>5 Q And you've been retained as an expert witness in cases</p> <p>6 involving such cities in which the Court found that the</p> <p>7 plaintiffs had prevailed on all three Gingles factors; is</p> <p>8 that right?</p> <p>9 A Yes.</p> <p>10 Q For instance, in Farmers Branch case in 2011, there were no</p> <p>11 homogeneous Hispanic precincts in that city, were there?</p> <p>12 A I'll have to say that there were a series of cases in</p> <p>13 roughly the same geography: Farmers Branch, Irving ISD, the</p> <p>14 City of Irving -- I don't remember if there was a Farmers</p> <p>15 Branch ISD -- which took place roughly around the same time</p> <p>16 and similar sets of factors.</p> <p>17 I can no longer honestly distinguish. I mean it's in</p> <p>18 the trial record. I'm not disputing any of that. But I</p> <p>19 couldn't honestly tell you if that was Farmers Branch or</p> <p>20 Irving or Irving ISD at this stage.</p> <p>21 Q Would it surprise you if I told you that in the Farmers</p> <p>22 Branch case that you found that there were no Hispanic</p> <p>23 homogeneous precincts?</p> <p>24 A That wouldn't surprise me.</p> <p>25 Q And the Court in that case, in Fabela v. Farmers Branch</p>	<p>1 ER is driven by the fact that regression lines respond to,</p> <p>2 to extreme values, basically on the square rather than in</p> <p>3 response simply to their location. So it tends to drive ER</p> <p>4 more than an interior precinct.</p> <p>5 And then it's -- it does -- it has a similar effect in</p> <p>6 EI analysis, not because EI is particularly responsive to</p> <p>7 the extremes but because EI pays particular attention to</p> <p>8 meaningful bounds information. And so the lack of that --</p> <p>9 in the ER, the fact that the line is being anchored at one</p> <p>10 end and is unanchored in the other, this is a missing --</p> <p>11 it's basically an out-of-sample projection issue.</p> <p>12 With EI, the problem is that the most probative bounds</p> <p>13 analysis is missing.</p> <p>14 Q Do you believe that, with no homogeneously Hispanic</p> <p>15 precincts, we cannot know which if any candidate in a given</p> <p>16 election was the one whom Latinos favored?</p> <p>17 A I think we can -- we can derive estimates, statistically</p> <p>18 reliable estimates, of preferred candidates without having</p> <p>19 extreme precincts. You can't know -- no, we cannot know.</p> <p>20 But we can, we provide statistical estimates.</p> <p>21 Q So there are other ways other than a homogeneous precinct</p> <p>22 analysis to assess Hispanic cohesion?</p> <p>23 A Are there ways to estimate Hispanic cohesion? There's only</p> <p>24 one way to know Hispanic cohesion. And that's by, by a</p> <p>25 bounds analysis that takes advantage of extreme precincts.</p>

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<p>1 So the point that is we're engaged in a process in which we</p> <p>2 both try to know things and to estimate things. We</p> <p>3 certainly can estimate those.</p> <p>4 And if we estimate with sufficient reliability, then,</p> <p>5 as social scientists, we can say that's our -- this is our</p> <p>6 best guess. It's reliable within the range, the -- for</p> <p>7 example, candidate of choice, if we estimate 90 percent and</p> <p>8 our lower bound is 70 percent, then we can -- at 95 percent,</p> <p>9 we can reject the hypothesis that the -- some other</p> <p>10 candidate is the candidate of choice.</p> <p>11 So that's our social science method for what we do when</p> <p>12 we are estimating something but we don't actually know. But</p> <p>13 again, 5 percent of the time, we could be wrong. But that's</p> <p>14 our standard for doing that. And so yes, we can continue to</p> <p>15 estimate things. I have no -- I do that. I have no issue</p> <p>16 with that.</p> <p>17 But I think it's important to note that that is not the</p> <p>18 same thing as knowing that, which is the advantage of a pure</p> <p>19 bounds analysis in which we're in an area in which -- in</p> <p>20 which the bounds information makes it impossible for any</p> <p>21 other conclusion to be reached.</p> <p>22 [Mr. Hamilton departs the deposition.]</p> <p>23 Q (By Ms. Khanna) Is it your opinion that a homogeneous</p> <p>24 precinct analysis is critical to an analysis of racially</p> <p>25 polarized voting?</p>	<p>1 part of it is built into these specific facts which are ones</p> <p>2 in which an already restricted analysis, because it's</p> <p>3 ecological and the data is cumulated to geographic areas</p> <p>4 when we want to know about individuals. And part of it is</p> <p>5 imposed by the lack of concentration here which ought to be</p> <p>6 reduced by the Gingles 1 threshold and which is both an</p> <p>7 analytical issue because we always would like to have a</p> <p>8 better range of data.</p> <p>9 It's also, for the Gingles test, it's more than a</p> <p>10 analytical issue because it is the very heart of what the</p> <p>11 Gingles test seeks to answer. So the single most important</p> <p>12 answer we can derive from Gingles is here in a range of data</p> <p>13 that is, that is nonexistent.</p> <p>14 Q You mentioned the words "extremely important," I believe, in</p> <p>15 that explanation just now in characterizing the homogeneous</p> <p>16 precinct analysis. Is it extremely important to perform a</p> <p>17 homogeneous precinct analysis of the homogeneous non-Latino</p> <p>18 precincts in any racially polarized voting analysis?</p> <p>19 A It can be useful in the sense that it provides -- I'll say</p> <p>20 because I have not been involved in a case in which they</p> <p>21 were not multiple extreme, in cases like this, more than</p> <p>22 half the precincts are extreme precincts.</p> <p>23 In that case there is, there is little additional</p> <p>24 leverage added by the extreme precinct analysis. So it is</p> <p>25 heavily reflected in the both the ER and the EI. Your</p>
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<p>1 Let me clarify here: "Homogeneous precinct analysis,"</p> <p>2 I mean that whether it comes to Latino homogeneous precincts</p> <p>3 or non-Latino homogeneous precincts. Is it critical in any</p> <p>4 analysis of racially polarized voting?</p> <p>5 A I guess it would depend on what you mean by "critical." I</p> <p>6 think it's extremely important. I think as a threshold</p> <p>7 matter, we, we ought not to be in this. We ought not to be</p> <p>8 trying to do something if we basically don't even have any</p> <p>9 majority-Hispanic precincts to work with because I think</p> <p>10 that's sort of part of the analytical idea here of</p> <p>11 stair-stepping the methods.</p> <p>12 I mean I think it's -- I think it is a -- it raises</p> <p>13 important, very important analytical issues. But I think</p> <p>14 ultimately the question of what the -- I mean it's the judge</p> <p>15 who has to make a decision about what is sufficient under</p> <p>16 the, under the Gingles scaffolding. And so I think -- I</p> <p>17 have no problem with doing the best we can do. But I think</p> <p>18 it's very important not to suggest that we can do better --</p> <p>19 there are no statistical methods that can do better than the</p> <p>20 information your data provides. There are techniques that</p> <p>21 can do a lot worse. But there are none that do any better.</p> <p>22 And the limitation here is not a technical limitation.</p> <p>23 The limitation here is a data limitation. Part of that</p> <p>24 limitation is automatically built into ecological data sets.</p> <p>25 And that's what all this is an attempt to deal with. And</p>	<p>1 bound's estimates there. Your confidence intervals are</p> <p>2 tight. It doesn't tell you anything that the others</p> <p>3 wouldn't tell you. I can't -- I suppose in theory there</p> <p>4 might be some situation where it would differ slightly but</p> <p>5 not substantively. So I don't think that's a particularly</p> <p>6 important issue.</p> <p>7 It's important to remember that there are two ends to</p> <p>8 the homogeneous precinct analysis and only the, only the</p> <p>9 upper end is, is pivotal in these cases. The lower end is</p> <p>10 not pivotal. It really doesn't matter what Anglos in</p> <p>11 extreme precincts do. It's really not the issue here. It's</p> <p>12 what Anglos in the entire jurisdiction do. It is what</p> <p>13 Hispanics in the concentrated area do that's pivotal. So</p> <p>14 they're not on the same footing.</p> <p>15 Q So you also mentioned the ecological regression analysis of</p> <p>16 ER; is that right?</p> <p>17 A Yes.</p> <p>18 Q I believe you've already defined the ER, at least as far as</p> <p>19 I understand it. Look at page 5 of your initial report.</p> <p>20 A [Complies.]</p> <p>21 Q You have a section describing the ecological regression</p> <p>22 analysis. And you state at the first sentence in the second</p> <p>23 paragraph. You say: "Applied to voting-rights cases, the</p> <p>24 logic of regression analysis is to determine to what degree</p> <p>25 if any the vote for a candidate increases in a linear</p>

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<p>1 fashion as the concentration of voters of a given ethnicity</p> <p>2 in the precinct increases." Do you see that there?</p> <p>3 A Yes.</p> <p>4 Q So is it fair to say that ER is based on a linear assumption</p> <p>5 or a linearity assumption?</p> <p>6 A It -- in the form it's typically used, it is based on a</p> <p>7 linearity assumption. There's nothing -- you know, there's</p> <p>8 nothing magical about that assumption. You can do ER</p> <p>9 without a linearity assumption. You just, you know -- I</p> <p>10 mean regression in its simplest bivariate form, regression</p> <p>11 makes a linear assumption. But people do nonlinear</p> <p>12 regressions all the time. There's no -- there's nothing</p> <p>13 that stops you from doing that. If you think there's</p> <p>14 substantial nonlinearity, you can estimate the model with a</p> <p>15 nonlinear assumption. So add a square term, and you'll get</p> <p>16 an inflection point. Add a cube, and you get two inflection</p> <p>17 points.</p> <p>18 Q But you did not perform a nonlinear regression analysis in</p> <p>19 this case?</p> <p>20 A No.</p> <p>21 Q Is it your understanding that a linear relationship between</p> <p>22 the concentration of minority voters and votes for their</p> <p>23 minority candidate is required to establish racially</p> <p>24 polarized voting under the Gingles test?</p> <p>25 A No.</p>	<p>1 aren't linear. In this case the EI models are very close to</p> <p>2 being linear and without any cost in doing so.</p> <p>3 So there's nothing -- the linear assumption is not in</p> <p>4 itself limiting if the basic underlying data pattern is not</p> <p>5 nonlinear. And here it's not nonlinear. It's a theoretical</p> <p>6 gain. And I've certainly -- I've got no problem with that.</p> <p>7 I like EI. But it's not magic. As we see here, it doesn't</p> <p>8 do any magic. Right? Cover up all the EI results, we've</p> <p>9 got exactly the same case.</p> <p>10 Q Are you aware that some experts in the field have called for</p> <p>11 the total abandonment of ER?</p> <p>12 A I'm aware that some experts will not use EI. I'm aware that</p> <p>13 some experts don't like ER. I'm aware that, you know,</p> <p>14 experts disagree about things. I can say this: I find -- I</p> <p>15 think methodology badly explained has no place in a court.</p> <p>16 That's true of good methods and bad.</p> <p>17 Properly explained, it is -- if you think about the</p> <p>18 logic of EI, which is to be efficient by not throwing away</p> <p>19 information, that logic would suggest that, if you have</p> <p>20 three techniques that do slightly different things and</p> <p>21 produce results when you'd explain what the differences are,</p> <p>22 you know -- if you want to understand what linear</p> <p>23 relationship might have looked like and there are reasons</p> <p>24 for that, when you are making big out-of-sample projections,</p> <p>25 as long as you understand what the limitations are, I can't</p>
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<p>1 Q Has there been any criticism of the linearity assumption of</p> <p>2 ER that you're aware of?</p> <p>3 A There -- so there are two broad reasons for preferring an EI</p> <p>4 analysis. One is that you don't need to go through a</p> <p>5 linearity assumptions because it's agnostic. It's -- I</p> <p>6 would say I've never seen an analysis of voting results in</p> <p>7 which the EI analysis has been demonstrated to be</p> <p>8 substantively affected by the linearity assumption 'cause it</p> <p>9 just isn't -- when we have a scatter plot, we know if we</p> <p>10 meet the linearity assumption by looking at the scatter</p> <p>11 plot. So there are no nonlinear patterns in the scatter</p> <p>12 plot. So it's certainly -- having a technique that's</p> <p>13 agnostic means that's one less thing you have to worry</p> <p>14 about. That's not to say that any particular ER result is</p> <p>15 suffering from that.</p> <p>16 And here you've got -- because we produced both results</p> <p>17 side by side, if there was a substantial linearity issue,</p> <p>18 you would know that because the ER result would be</p> <p>19 substantially different and substantially less stable than</p> <p>20 the EI result. So the gain for the EI result would be a</p> <p>21 grain in efficiency and therefore in smaller confidence</p> <p>22 intervals. And we don't see that here, nor do we see it in</p> <p>23 the scatter plot.</p> <p>24 So it's a theoretical issue. EI deals with that by</p> <p>25 being agnostic. But that's not to say that these EI models</p>	<p>1 see what the disutility is of having additional information,</p> <p>2 particularly if the most easily understood and therefore the</p> <p>3 most properly utilized to make decisions is the oldest</p> <p>4 technique. Homogeneous precinct analysis, everyone is</p> <p>5 capable of understanding homogeneous precinct analysis and</p> <p>6 therefore using it correctly.</p> <p>7 Ecological regression is a little harder to understand</p> <p>8 but is certain easier -- and I say this, I guess because it</p> <p>9 seems to me -- maybe I'm wrong. But it seems to me that it</p> <p>10 is easier to intuit what ecological regression is doing,</p> <p>11 given a little bit of time spent with scatter plots. I</p> <p>12 think -- I have not had the experience of a judge</p> <p>13 intuitively understanding EI. I think it can still be done.</p> <p>14 Dr. Engstrom, I think, does a splendid job of it.</p> <p>15 You can explain what is going on so that the judge is</p> <p>16 not openly misusing EI. But I still think the intuitive</p> <p>17 understanding is lower and there's a tendency to believe it</p> <p>18 does things that it doesn't. I'm in the camp of people who</p> <p>19 believe that you just put all the information out there and</p> <p>20 then be very careful about saying what it does and doesn't</p> <p>21 say.</p> <p>22 I think particularly where the result is the same</p> <p>23 across all those methods, then everybody gets to pick what</p> <p>24 they want to intuitively understand and we don't have a</p> <p>25 substantive difference.</p>

20 (Pages 74 to 77)

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<p>1 Q Isn't it true that the ER methodology can yield estimates 2 below zero and above 100? 3 A It's -- it can yield estimates below zero and above 100, but 4 it can't make you use them. It can't make you do anything 5 other than just say, Well, if that estimate if the best 6 point given the linear assumption is at 114, what could that 7 mean? And the answer means, well, 100 must be -- 100 must 8 be like all of the people voting must be what it's trying to 9 tell me. Right? It's just getting a little over 10 enthusiastic up there. 11 As a substantive matter, it doesn't yield -- if the 12 actual estimate was 100 and it yielded 114, who's getting 13 deceived by that? If the actual estimate is 100 and it's 14 yielding 20, that's a problem. These under- and 15 overestimates that are caused at the tilt of the line are -- 16 openly suggest to you that you might want to look more 17 closely at the possibility that you have a kind of S-shaped 18 curve. Not inappropriate. 19 They exaggerate the degree to which you have polarized 20 voting. What's wrong with that? Honestly, if you think the 21 best estimate is zero and 100 and the real estimates are 22 negative 12 and 114, you're just that much less likely to 23 make the mistake of thinking there's no polarization. 24 So I don't think that -- it's brought up all the time. 25 It's not harmful. I don't think it's -- explained properly,</p>	<p>1 MR. FRANCIS: Oh, you do? Okay. 2 A Exhibit 3, the reply report. Did you say page 3? If I was 3 on the right page, we'd be on the same page. 4 Q (By Ms. Khanna) If you could, review that footnote. 5 A Okay. The footnote? 6 Q Yes. Here Dr. Engstrom points out that the backup documents 7 for your regression analysis in the 2011 vote on 8 Proposition 1 reveal an estimate of 115.6; is that right? 9 A That's correct. 10 Q And on the -- and is he correct? Is he correct that your 11 backup documents did in fact reveal -- 12 A I'm not looking at my backup documents, but I have no reason 13 to dispute that. 14 Q On Table 1 of your initial report, which is Exhibit 2 -- 15 that's on page 10. Here you've indicated that: "The ER 16 estimate for the 2011 vote on Proposition 1 is 100 percent." 17 A Yes. 18 Q So the number reflected in your report is not the number 19 reflected in your backup documents? 20 A That's correct. 21 Q You mentioned earlier that, explained properly, the fact 22 that an ER estimate exceeds 100 is actually not problematic 23 for you. 24 A That's correct. 25 Q Did you explain it properly in your report, why you would --</p>
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<p>1 I don't think there's anything particularly misleading about 2 it. It's not mysterious. It's not subject to -- it's 3 likely to be on the other end, one or the other. If you 4 look at the scatter plot, it's no longer even an issue. 5 Right? Because the scatter plot -- here's a good example of 6 having extreme precinct analysis. 7 Homogeneous precinct analysis will never suggest 114 8 percent, never suggest negative 12 percent. It's a 9 technical issue that in application is simply not -- is not 10 problematic. It is, for people who have a strong aesthetic 11 taste for elegance, it is inelegant. And people, 12 statisticians, mathematicians, do not like inelegant 13 solutions. But as an expert who's testified in court, I've 14 become accustomed to inelegant solutions. So I don't find 15 them -- properly explained, I don't find them aesthetically 16 distasteful. 17 Q On page 8 of his reply report, Exhibit 3, Dr. Engstrom has a 18 footnote where he mentions that the backup documents for 19 your regression analysis in the 2011 vote on Proposition 1 20 revealed an estimate of 115.6. You can go to Exhibit 3, 21 page 8. I'm not sure if you're on the right -- we're on the 22 same page as I am. Exhibit 3, his reply report. 23 MR. FRANCIS: Reply report? I don't think we have 24 a reply report. 25 THE WITNESS: I do.</p>	<p>1 the number from your backup documents would be changed when 2 reported in your report? 3 A It's not at all uncommon to simply, to simply report the -- 4 and all that reflects is that sort of physically all that 5 can mean is that the estimate -- the highest possible 6 estimate for cohesion's 100 percent. So to limit that 7 report at zero over 100 percent is not unusual. 8 It doesn't -- I mean if anything, it reduces the 9 likelihood that they'll be misinterpreted because that's -- 10 really all that is telling you is that your estimate there 11 is -- that the highest possible value that could be within 12 that estimate is the 100 percent estimate. So I don't think 13 it's -- I don't see how that could be -- reporting, in this 14 particular case, reporting for this election that the 15 estimate of Hispanic cohesion is its highest possible value 16 and higher than the estimates for any of the other 17 techniques could only suggest that you have high Hispanic 18 cohesion. 19 Again maybe that's -- I don't know. That's what, 20 that's what Professor Engstrom's reporting of 98.2 is 21 supposed to indicate. I don't see that that's -- is any 22 way -- can be misinterpreted in any way. 23 Q In your opinion, is an ER analysis critical to the racial 24 polarized voting analysis? 25 A No.</p>

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<p>1 Q Is it important to include an ER analysis in a proper</p> <p>2 racially polarized voting analysis?</p> <p>3 A Again, I think where there -- where you have information, I</p> <p>4 think it's useful to include it. Where it can be done in a</p> <p>5 way that's not deceptive, it's important to include it. I</p> <p>6 don't think it's appropriate to use it selectively.</p> <p>7 So I think, if you sort of go through your analysis and</p> <p>8 you kind of like your ER results better than your EI and you</p> <p>9 sort of report one or other, I think if you're going to do</p> <p>10 the analysis, report it. They can be viewed -- in the same</p> <p>11 sense that you can view the pattern across elections, you</p> <p>12 can view the pattern across the techniques. That's a nice</p> <p>13 thing to be able to do. It tells you -- gives you some</p> <p>14 additional information about stability.</p> <p>15 I don't think it is critical because I don't think --</p> <p>16 well, it gives you what I think can be -- the reason that --</p> <p>17 if it's possible to calculate an extreme precinct analysis</p> <p>18 for a minority population, I think it would be -- I think it</p> <p>19 would be important to include it, maybe even critical to</p> <p>20 include it. It's -- ER and EI don't tell you, for the most</p> <p>21 part, things that are really different. If they tell you</p> <p>22 something really different, the EI is probably the more</p> <p>23 reliable. It's the more efficient estimate.</p> <p>24 So, you know, you could drop the ER; and, as long as</p> <p>25 people understood the EI, you would be all right. The risk</p>	<p>1 So I think it is extremely useful. But I don't think</p> <p>2 it's critical because, once I've seen the EI numbers, I</p> <p>3 personally don't have to see the ER numbers. But I still</p> <p>4 think that they can be useful to the Court.</p> <p>5 Q So you also report the R-squared for the various elections</p> <p>6 analyzed in your initial report here; is that right?</p> <p>7 A Yes.</p> <p>8 Q And that R-squared number is itself a product of the ER</p> <p>9 analysis; is that right?</p> <p>10 A It's -- it is one of the things that's reported in the ER</p> <p>11 analysis. You don't have to do -- I mean it is just the</p> <p>12 square -- because these are bivariate references, it's just</p> <p>13 the square of the correlation. So it's -- it could be a</p> <p>14 product of a correlation analysis. It's -- it doesn't tell</p> <p>15 you anything more than a bivariate correlation tells you.</p> <p>16 Q What does the R-squared measure?</p> <p>17 A The R-squared is the coefficient of determination. So it</p> <p>18 measures essentially the proportion of error in guessing</p> <p>19 that the dependent variable based on its mean. So the</p> <p>20 proportion by which you reduce that error by using</p> <p>21 conditional means rather than the grand mean, that's all it</p> <p>22 tells you.</p> <p>23 It tells us the square of the correlation coefficient.</p> <p>24 It also tells you about the tendency of the two measures to</p> <p>25 move together. So again, correlation, a very widely used</p>
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<p>1 is that you may have a judge that just simply doesn't buy</p> <p>2 the -- I mean some people don't like simulations. They</p> <p>3 don't like the fact that when you redo this, you get a</p> <p>4 different answer. They just -- or they say, Wait a minute,</p> <p>5 this is all just -- you know, I don't understand it; and it</p> <p>6 sounds to me like these are kind of made up.</p> <p>7 I've had an experience with hypotheticals. You give a</p> <p>8 hypothetical. And then someone says, Well, that's just made</p> <p>9 up. I think that's a misunderstanding of the value of EI.</p> <p>10 So having ER there, I think, backstops that because if you</p> <p>11 want to say, you know, I'm going to make all that go away</p> <p>12 because it wasn't -- so I can imagine a judge saying, This</p> <p>13 was not relied on in, you know, Thornburg v. Gingles. This</p> <p>14 is a made-up technique. It produces different results every</p> <p>15 time even when the plaintiff's expert uses it.</p> <p>16 Well, if the ER result's in there, you're -- all you're</p> <p>17 doing is backing into the -- in this case, exactly as it</p> <p>18 should be, you're buying yourself, you know, 1 percent point</p> <p>19 better here and 3 worse down here. And so it backstops</p> <p>20 that. I think it's a very useful way of suggesting that the</p> <p>21 added efficiency of EI does not come at the cost of giving</p> <p>22 up a lot of what's really -- of the intuitive value of ER.</p> <p>23 I think having the actual estimate there is better than just</p> <p>24 saying, well, of course we would get similar results if we</p> <p>25 do ER, because that's a hypothetical and here it's factual.</p>	<p>1 social science measure, it has it's own issues. The</p> <p>2 R-squared is actual a better measure.</p> <p>3 Although they're functionally connected to each other,</p> <p>4 the R-squared measure is less deceptive than the correlation</p> <p>5 measure because the R-squared measure is linear and the</p> <p>6 correlation measure is not. And I don't mean -- they're</p> <p>7 both linear in their estimation. But one is linear in its</p> <p>8 variation across values. And so the R-squared is a linear</p> <p>9 measure, a linearly distributed measure of correlation; that</p> <p>10 is, the degree to which variation in the two variables go</p> <p>11 together.</p> <p>12 It strikes me to be at the very heart of what these</p> <p>13 cases are about. It does voting behavior varying as we move</p> <p>14 across different kinds of constituency compositions. That's</p> <p>15 what we're -- if that's going on, then we can -- we'll try</p> <p>16 to make the inference about what that means about individual</p> <p>17 voters. But if there's no correlation between the</p> <p>18 proportion Hispanic in a precinct and the proportion that</p> <p>19 vote for the Hispanic candidate, I think everybody agrees</p> <p>20 that that's an indication of a lack of Hispanic cohesion.</p> <p>21 Q Is it fair to say that the R-squared is not a measure of</p> <p>22 polarization?</p> <p>23 A It's fair to say that, although I think you have to be a</p> <p>24 little bit careful because you can say that about everything</p> <p>25 else here. So the EI estimate for -- the EI produces two</p>

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<p>1 estimates; right? Those two, neither of those estimates is</p> <p>2 a measure of polarization. The confidence spans are not</p> <p>3 measures of polarization. We don't have a -- there isn't</p> <p>4 any single statistic we can point to here that's a measure</p> <p>5 of polarization.</p> <p>6 Q Would you agree that the R-squared is not a measure of the</p> <p>7 slope of the line reflecting the relationship between Latino</p> <p>8 concentration and votes for the Latino candidate?</p> <p>9 A If it was a measure of the slope of the line, there would be</p> <p>10 no reason to report it. Okay? So the point is the</p> <p>11 R-squared does add information. But it's not a substitute</p> <p>12 for the other things in the analysis any more than any of</p> <p>13 those other single numbers are. But it does tell us</p> <p>14 something that none of those other single numbers does. So</p> <p>15 it's a useful addition.</p> <p>16 It is bounded by the slope. The line of the slope of</p> <p>17 zero by definition, a flat line by definition, no matter how</p> <p>18 concentrated the points, by definition has an R-squared of</p> <p>19 zero. So when you have no relationship between two</p> <p>20 variables, whether that relationship is linear or nonlinear,</p> <p>21 by definition it has an R-squared of zero. So it does -- as</p> <p>22 we approach zero, there is no ambiguity about what it is</p> <p>23 telling us. You can't have a slope of anything but zero if</p> <p>24 your R-squared is zero.</p> <p>25 It's true you can also, very quickly, move into --</p>	<p>1 the confidence intervals. The weaker the R-squared, the --</p> <p>2 so you can look at the confidence intervals. They won't</p> <p>3 tell you anything that you're not picking up also in the</p> <p>4 R-squared. But the R-squared has an intuitive</p> <p>5 interpretation that people who are not statistical</p> <p>6 professionals can understand.</p> <p>7 It's a quick, single-number indicator for tightly</p> <p>8 clustered the points that are around either -- in this case,</p> <p>9 because of the linear assumption, around linear. If it was</p> <p>10 a nonlinear regression, we can easily modify that. And the</p> <p>11 R-squared will then not be the square of the correlation but</p> <p>12 will in fact reflect the accuracy of the S-shaped curve or</p> <p>13 whatever. No need in this case to do that.</p> <p>14 So it's -- it is not in itself a measure of</p> <p>15 polarization. But it is not irrelevant to a measure of</p> <p>16 polarization. And again, if -- the more pieces of</p> <p>17 information we put out there, the less chance that we'll</p> <p>18 deceive ourselves by looking at one or the other.</p> <p>19 I will admit that that -- that opens the possibility</p> <p>20 that, you know, a judge will become fixated on a single</p> <p>21 figure. But I think if you start down the path of saying,</p> <p>22 as a colleague of mine once said, That's something we just</p> <p>23 don't want to know, I think that's not really ideal. I</p> <p>24 think you should put as much out there as you can and hope</p> <p>25 that the abundance of evidence keeps you from being too</p>
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<p>1 think about that. All right? So if R-squared is zero, what</p> <p>2 does that mean? There is no explanatory power, and the</p> <p>3 slope is zero. If the R-squared is bigger than zero or,</p> <p>4 say, the R-squared is 0.5 -- right? -- or the R-squared is</p> <p>5 0.01, is the slope bound once the R-squared gets to 0.01?</p> <p>6 And the answer is the slope isn't bound. At that point the</p> <p>7 R-squared is telling us something really important: That</p> <p>8 these points are all over the map. And the slope is now</p> <p>9 telling us something very deceptive: That there is a very</p> <p>10 strong linear relationship.</p> <p>11 So that's the way of saying, when you report one thing</p> <p>12 and not the other, you're not going to know what the whole</p> <p>13 picture is. You report them both, you know what the whole</p> <p>14 picture is. And there certainly R-squared values that tell</p> <p>15 us something -- again, here, are two slubs. They're exactly</p> <p>16 the same. If you interpret them to be the same thing when</p> <p>17 they have wildly different R-squareds -- all right. An</p> <p>18 R-squared of 1 on a slope 0.5 tells you that the points are</p> <p>19 falling very tight. They're a very powerful prediction</p> <p>20 between the independent and dependent variable. If the</p> <p>21 R-squared is 0.01 on a slope of 0.5, you had better not rely</p> <p>22 on that slope 'cause the fact is you don't know much about</p> <p>23 it.</p> <p>24 Now, you don't need that R-squared. Just go to the</p> <p>25 confidence intervals. The biggest R-squared, the tighter</p>	<p>1 focused on a single element.</p> <p>2 But that may also be an aesthetic judgment. I don't</p> <p>3 know.</p> <p>4 Q Would you agree that it's entirely possible to have very</p> <p>5 high R-squared in a regression in which there is no</p> <p>6 indication of polarization at all?</p> <p>7 A No.</p> <p>8 Q You would not agree with that?</p> <p>9 A No. It's definitional that, if the slope is zero, the</p> <p>10 R-squared is zero. That's the definition. Let me think.</p> <p>11 It's the improvement over the grand mean. And when the</p> <p>12 slope is zero, the grand mean is what the point of the --</p> <p>13 the regression line is forced to go through the grand mean</p> <p>14 by mathematical definition. If the slope is zero and it</p> <p>15 goes through the grand mean, then the line is the grand</p> <p>16 mean, and there's zero improvement.</p> <p>17 So at that level -- that's not -- that's just -- that's</p> <p>18 definitional. It can't be the case that you could have</p> <p>19 absolutely no polarization and a big R-squared. Now, you</p> <p>20 can have very little polarization and a big R-squared, which</p> <p>21 is why you should not report R-squareds without reporting</p> <p>22 the regressions that they're based on. That just seems to</p> <p>23 me no -- I don't think I've ever seen anybody actually do</p> <p>24 that. But that would be a bad idea.</p> <p>25 There certainly are, as we discussed -- it's conveying</p>

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<p>1 information about the tightness of the cluster. And that,</p> <p>2 in and of itself doesn't tell you anything about the slope</p> <p>3 except that, when the slope is zero, the R-squared will be</p> <p>4 zero. So the complete absence of polarization is defined by</p> <p>5 a slope of zero and an R-squared of zero.</p> <p>6 Then, R-squareds very close to zero and slopes that can</p> <p>7 be virtually anywhere also define, basically, the complete</p> <p>8 absence of polarization. So the number that can get you in</p> <p>9 trouble is the slope that looks like polarization</p> <p>10 accompanied by an extremely low R-squared. It makes you</p> <p>11 think you've got something there that you don't have.</p> <p>12 Q I asked a question of whether you agreed or disagreed with a</p> <p>13 certain statement.</p> <p>14 MS. KHANNA: I'm going to ask you to read back the</p> <p>15 question or the statement that I asked that you agreed</p> <p>16 with.</p> <p>17 [Requested material read.]</p> <p>18 Q (By Ms. Khanna) And your response is you disagree with that</p> <p>19 statement?</p> <p>20 A No.</p> <p>21 Q I'm sorry. You do disagree? Or you don't disagree with the</p> <p>22 statement?</p> <p>23 A Oh, sorry. That was really not helpful at all. So there</p> <p>24 are -- there -- again, we're sort of, which side are we</p> <p>25 coming at? So there are a wide of range of situations in</p>	<p>1 Q (By Ms. Khanna) Let's look at the cover page of Exhibit 7.</p> <p>2 Do you see the case caption?</p> <p>3 A Yeah. For some reason I was jumping over here: Dallas. I</p> <p>4 was thinking Reyes v. Dallas. I don't remember Reyes v --</p> <p>5 so this is Reyes v. Farmers Branch.</p> <p>6 Q Do you recall that you were an expert witness in this case?</p> <p>7 A I'm a little puzzled. I thought earlier you were talking</p> <p>8 about -- you referred to this as Fabela?</p> <p>9 Q It's my understanding that there were two Farmers Branch</p> <p>10 cases. My understanding is also that you were an expert</p> <p>11 witness in both Farmers Branch cases.</p> <p>12 We can move ahead to the next page. And I think maybe</p> <p>13 that will clarify some things.</p> <p>14 A My name appears here. So I must have been an expert.</p> <p>15 Q Is there a chance that you appeared in this case in any</p> <p>16 other capacity, other than as an expert?</p> <p>17 A No.</p> <p>18 Q This is the trial transcript or a portion of the trial</p> <p>19 transcript from that Farmers Branch case that's on the</p> <p>20 caption. If you could, turn to page 20 of the transcript.</p> <p>21 I think it's page 6 of the document. And I'm going to ask</p> <p>22 you to read the paragraph on page 20, beginning with</p> <p>23 line 16. Can you read that out loud.</p> <p>24 A "And in bivariate regression, the R-Squared is simply the</p> <p>25 R-Squared. It is not a measure of the slope of the line.</p>
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<p>1 which as a -- in which the data would indicate the lack of</p> <p>2 polarization, over which you might have a wide range of</p> <p>3 R-squareds. R-squared in and of itself is not a sufficient</p> <p>4 indication of either polarization or the lack of</p> <p>5 polarization, although, at its extremes, it does tell you</p> <p>6 the lack of polarization.</p> <p>7 So certainly there are cases -- there are lots of cases</p> <p>8 in which there is nothing that I would consider to be</p> <p>9 polarization but in which the R-squared may take on high</p> <p>10 values without that being in any way incompatible with the</p> <p>11 fact that there's no legally significant polarization.</p> <p>12 Q So just to clarify, you don't disagree with the statement</p> <p>13 that it is possible to have a high R-squared in a regression</p> <p>14 in which there is no indication of polarization at all?</p> <p>15 A Yes. So right. A large R-squared could be misinterpreted</p> <p>16 in a way that would benefit the plaintiffs. It could not be</p> <p>17 misinterpreted in a way that would benefit the defense. So</p> <p>18 I'm comfortable with that.</p> <p>19 Q But you could get a much lower R-squared even where there is</p> <p>20 clear and strong polarization. Would you agree with that?</p> <p>21 A No.</p> <p>22 Q You disagree with that statement?</p> <p>23 A Yes.</p> <p>24 Q I'm going to show what's going to marked Exhibit 7.</p> <p>25 [Deposition Exhibit No. 7.]</p>	<p>1 It is not a measure of polarization. But as Professor</p> <p>2 Groffman points out, it is widely mistaken for a measure of</p> <p>3 polarization or for something that would indicate slope, but</p> <p>4 it simply doesn't. But it is completely compatible with --</p> <p>5 to have a very high R-Squared in a regression in which there</p> <p>6 is no indication of polarization at all."</p> <p>7 Q Do you agree with the statements that you made there?</p> <p>8 A Yes.</p> <p>9 Q I'm also going to ask you to read on page 21 of transcript,</p> <p>10 which is the same page of the document. If you could, start</p> <p>11 at line 12. And I'm going to ask that you read through</p> <p>12 page 22, line 7. Read that out loud, please.</p> <p>13 MR. FRANCIS: What lines now?</p> <p>14 MS. KHANNA: We'll start with line 12.</p> <p>15 MR. FRANCIS: On page 21.</p> <p>16 A All right. I'm going to take a moment because I want to see</p> <p>17 what the context was to the start of that. So I'm just</p> <p>18 going to read it to myself a little bit.</p> <p>19 Q Sure. Please do.</p> <p>20 A In fact, I might actually like to see what the question --</p> <p>21 well, that's not much of a question.</p> <p>22 "As long as those line up nicely in a line, that will</p> <p>23 produce a line which has a very high degree of fit. So it</p> <p>24 could have an R-squared, for example, of one, a perfect fit.</p> <p>25 It doesn't indicate polarization. If you have an election</p>

24 (Pages 90 to 93)

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<p>1 result in which the completely Anglo precinct is voting 90</p> <p>2 percent for the Hispanic candidate, then the most Hispanic</p> <p>3 candidate is voting" -- that doesn't make any sense. It</p> <p>4 should be the Hispanic precinct "is voting 100 percent for</p> <p>5 the candidate, you have essentially the absence of</p> <p>6 polarization. But you could easily get an R-squared of one.</p> <p>7 "You could also have a result in which you move from</p> <p>8 the least Hispanic precinct, where there were no Hispanic</p> <p>9 voters, you got no vote for the Anglo candidate, in the most</p> <p>10 Hispanic precinct you got perfect Hispanic vote for the</p> <p>11 candidate, and just because in between there is some</p> <p>12 variation across those points, you could easily get a much</p> <p>13 lower R-squared for that result, even though that result</p> <p>14 indicates a clear and strong polarization.</p> <p>15 "Again, the slope tells you about polarization. The</p> <p>16 goodness of fit tells you something about how confident you</p> <p>17 might be in that estimation of polarization, but it does not</p> <p>18 independently tell you anything about polarization."</p> <p>19 Q Keep reading.</p> <p>20 A Oh, sorry.</p> <p>21 "You could also have a result in which you move from in</p> <p>22 the least Hispanic precinct, where there were no Hispanic</p> <p>23 voters and you got no vote for the Anglo candidate; in the</p> <p>24 most Hispanic precinct, you got perfect Hispanic vote for</p> <p>25 the candidate. And just because in-between there is some</p>	<p>1 said here is almost exactly what we've discussed. It is not</p> <p>2 an independent indicator of polarization. It is a valuable</p> <p>3 addition to what we know about polarization precisely</p> <p>4 because, as I indicated here, it tells us about that</p> <p>5 variability. So it tells us something that we -- that goes</p> <p>6 along with what we learned in the confidence intervals.</p> <p>7 And I think in all the discussions that we've had, what</p> <p>8 you've indicated is that there are situations in which a</p> <p>9 naive interpretation of the R-squared might lead you to</p> <p>10 believe that the plaintiffs have a stronger case than they</p> <p>11 really have. Since I'm not presenting data for the</p> <p>12 plaintiffs, I don't -- I'm not concerned about that.</p> <p>13 I think I can explain how it adds information. And if</p> <p>14 there's a mistake that benefits the plaintiffs, then I've</p> <p>15 failed to do it accurately. I wouldn't want to be in a</p> <p>16 situation where that worked the other direction and it</p> <p>17 wasn't adequately explained.</p> <p>18 It's not -- it's not a complicated correlation, not</p> <p>19 complicated or unusual methodology. It's explained clearly</p> <p>20 in courts all the time. I think it was explained clearly</p> <p>21 here. I would hope so.</p> <p>22 I have no -- again I see no reason to suppress that</p> <p>23 information unless you just don't like what it tells you.</p> <p>24 If you don't like what it tells you, maybe you don't want to</p> <p>25 have it there.</p>
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<p>1 variation across those points, you could easily get a much</p> <p>2 lower R-squared for that result, even though that result</p> <p>3 indicates clear and strong polarization."</p> <p>4 "Again, the slope tells you about polarization. The</p> <p>5 goodness of fit tells you something about how confident you</p> <p>6 might be in that estimation of polarization, but it does not</p> <p>7 independently tell you anything about polarization."</p> <p>8 Q Next paragraph.</p> <p>9 A "Again, the slope tells you about polarization. The</p> <p>10 goodness of fit tells you something about how confident you</p> <p>11 might be in that estimation of polarization, but it does not</p> <p>12 independently tell you anything about polarization."</p> <p>13 Q So I had asked you earlier whether you easily get a much</p> <p>14 lower R-squared even where there is clear and strong</p> <p>15 polarization. And you said the answer is no.</p> <p>16 A I guess I didn't think that was exactly what you asked. I'm</p> <p>17 sorry.</p> <p>18 Q So having read this, would you agree now that you could</p> <p>19 easily get a much lower R-squared even though the result</p> <p>20 indicates a clear and strong polarization?</p> <p>21 A Yes.</p> <p>22 Q And in fact the R-squared does not independently tell us</p> <p>23 anything about polarization, as I believe you already</p> <p>24 testified?</p> <p>25 A Again, it's, it's -- as I think is -- I think everything I</p>	<p>1 Q So you mentioned that a naive interpretation could ben --</p> <p>2 could indicate that plaintiffs have a stronger case than</p> <p>3 they actually have; is that right?</p> <p>4 A Certainly.</p> <p>5 Q A naive interpretation could also indicate that plaintiffs</p> <p>6 have a weaker case than they actually have; is that right?</p> <p>7 A Again, so far here and in your questions, you've given me a</p> <p>8 series of examples that all go the same direction in which</p> <p>9 the naive interpretation could suggest that the plaintiffs</p> <p>10 have a stronger case than they really have. You haven't</p> <p>11 given me any example that suggests the opposite.</p> <p>12 Q So you did not say on the top of page 22 that "you could</p> <p>13 easily get a much lower R-squared for that result, even</p> <p>14 though that result indicates clear and strong polarization"?</p> <p>15 A Again, so that's much lower in -- that's in comparison to</p> <p>16 the -- to basically a perfect R-squared. So the fact that</p> <p>17 the R-squared is lower and that you still have polarization</p> <p>18 doesn't indicate that that's going to mislead you about</p> <p>19 what's going on in the case. You're not going to get an</p> <p>20 R-squared that says there is no polarization. You're not</p> <p>21 getting an R-squared of zero. That's not physically</p> <p>22 possible.</p> <p>23 Q So in a case where plaintiffs have shown or the case happens</p> <p>24 to be the case where there indicate a clear and strong</p> <p>25 polarization, a low R-squared is possible; is that right?</p>

25 (Pages 94 to 97)

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<p>1 A I would have to -- what do you mean by "a low R-squared is possible?"</p> <p>2</p> <p>3 Q My question exactly. What do you mean by "a much lower R-squared" when you talk about it in your testimony in this exhibit?</p> <p>4</p> <p>5</p> <p>6 A I mean that you could have an R-squared of one. Or you might have an R-squared of 0.8 or R-squared of 0.5 -- right? -- things that people would look at and say, That's a substantively lower R-squared. And they would tell you something about the scatter of points around the line. They would tell you that you were less confident in that estimate. They wouldn't necessarily say you shouldn't look at the estimate at all.</p> <p>7</p> <p>8 But I wouldn't think that -- I mean certainly an R-squared of 0.5 is much lower than an R-squared of 1. You're explaining half the variance. And at that point, the variation in the proportion of minorities is explaining half the variation in the outcome of the election. That seems to me to be an indicator that it's an important explanation, potential explanation for that variation.</p> <p>9</p> <p>10 So I don't think -- again, that doesn't -- all of this discussion is a discussion of using the R-squared in conjunction with the slope estimates. I just don't think that this is -- I don't think we've discussed a single instance in which having those two figures available would</p>	<p>1 you've reported the same, substantive information. So yeah, you can leave them out. They're -- I think they back up other information. But yeah, you could leave them out for efficiency reasons. You can leave them out because you think you've already said that in another way.</p> <p>2</p> <p>3 We've certainly done it here. I'm perfectly happy to drop them completely. You can't mistake the scatter plots as anything other than they are. We've got confidence intervals that tell us basically the same thing: They're very wide. Every time the R-squared is low, the confidence interval is very big. Every time the R-squared is tight, the confidence intervals are tighter. I'm --</p> <p>4</p> <p>5 There could be lots of reason for not reporting the R-squared.</p> <p>6</p> <p>7 Q Let's talk a little bit about ecological inference or EI. Would you agree that EI is an improvement on standard ecological regression?</p> <p>8</p> <p>9 A It improves on standard ecological regression in two instances: It improves in the instance that you have bounds information that is discarded in ER and that is sufficiently determinative that it helps shapes your estimation. It improves in that -- because it's agnostic about functional form, you don't have the -- without looking at scatter plots, you could, in theory, mistakenly underestimate a relationship or overestimate a relationship so -- because</p>
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<p>1 lead you to a conclusion that was inappropriate or a conclusion in which you were --</p> <p>2</p> <p>3 I don't think the R-squared subtracts information. I think it adds information. I think it's valuable. It's historically relied on. I see no reason not to report it unless you just don't like those values. I'll stand by the fact that in this case the R-squareds that you would like not to talk about are R-squareds that undermine your case for polarization.</p> <p>4</p> <p>5 I'm not relying on R-squareds to make my case in the sense of something that isn't in the data. I'm not leaving out the EI results or the extreme precinct results or anything else. It's all in there. I talk about all of it. But the fact is those lower R-squareds tell you something about the scatter, and the scatter is part of the data set.</p> <p>6</p> <p>7 Q You mentioned that you see no reason not to report it unless you don't like those values; is that right?</p> <p>8</p> <p>9 A I will withdraw that. There could -- obviously there could be lots of other reasons that you might not report a particular figure. You might not think that the, that the nature of the estimation, that it was appropriate. I just think that R-squareds are useful to report.</p> <p>10</p> <p>11 So reporting R-squareds, I think where you have confidence intervals or scatter plots, I don't think -- if you've got a confidence interval, you've got a scatter plot,</p>	<p>1 you're using the wrong functional form.</p> <p>2</p> <p>3 So functional form is a standard assumption. And in the fact it's agnostic, this makes it's a -- it's a newer technology. It's developed to address shortcomings, potential shortcomings in ER. So I've got -- I have no problem with it. I have only -- if someone just showed me two numbers, one from ER and one from EI and I had -- couldn't look at the underlying data but just had to pick a number, I would pick the EI.</p> <p>4</p> <p>5 Q So you would agree that EI does a better job of estimating particular properties that we're interested in in a racially polarization voting analysis?</p> <p>6</p> <p>7 A It potentially does better a job. In fact, as we can see here, it doesn't actually -- for the most part, it doesn't actually do a better job in the sense that it would have to produce estimates that were different from ER to do a better job. So we're -- despite its being used now for a considerable part of time, a certain amount of time in the social sciences, there remain only a few, rather unusual examples in which you can clearly demonstrate that EI is doing a better job. I don't recall, in a voting rights case, an example where the EI estimates give you a different substantive conclusion than the ER. But certainly there, the potential is there.</p> <p>8</p> <p>9 Q So in your initial report you decided to employ EI and</p>

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<p>1 homogeneous precinct analysis and ER. And you also reported</p> <p>2 the R-squared and the scatter plots; is that right?</p> <p>3 A Yes.</p> <p>4 Q Why did you employ all of these methods?</p> <p>5 A Just so everything is out there and then we can -- I think</p> <p>6 it's nice to know that they don't tell you anything</p> <p>7 different. Then you don't have to -- again we don't have</p> <p>8 to -- we don't spend an inordinate amount of time trying to</p> <p>9 make EI, for example, intuitive because, take your pick.</p> <p>10 You won't be wrong. It's all there.</p> <p>11 Q Have there been other cases in which you have provided</p> <p>12 analyses using all three methods along with reporting the</p> <p>13 R-squared and scatter plots?</p> <p>14 A I certainly -- some combination of those, I don't really</p> <p>15 know whether all of them in a single case. My reports</p> <p>16 are -- you know, if the other side is providing things and,</p> <p>17 you know, I run them and they work, I don't necessarily</p> <p>18 produce everything. So I don't know whether some</p> <p>19 combination of those. I usually try to put in scatter plots</p> <p>20 if there aren't so many data points that they don't make</p> <p>21 sense, which happens with scatter plots.</p> <p>22 I usually report -- when I report ER results, it's</p> <p>23 usually the full, the full panel. So I think I would</p> <p>24 normally have some -- either the R-squared or confidence</p> <p>25 intervals in there.</p>	<p>1 familiar?</p> <p>2 A It sounds very familiar because I can tell you I've heard it</p> <p>3 more than once since I said it under oath in court. I'm not</p> <p>4 sure why it keeps coming up. But I suspect the reason may</p> <p>5 be in this room. Yes, I said that. And with regard to his</p> <p>6 current estimations, I continue to stand by that. He</p> <p>7 does -- he is one the experts I prefer to have on the other</p> <p>8 side because he does a very good job. I would prefer to</p> <p>9 have the dispute be about how we understand what this means</p> <p>10 in the context of a case and not a kind of false dispute</p> <p>11 about what the appropriate data set is or whatever. So he</p> <p>12 makes my job easier by doing his job well.</p> <p>13 Q When you made that comment in the case, Dr. Engstrom in that</p> <p>14 case had used exclusively EI; is that right?</p> <p>15 A That's correct. Actually, is that correct? I'm really not</p> <p>16 the best person to answer that question. I just hesitate</p> <p>17 'cause I know in the past he has used both ER and EI. And I</p> <p>18 don't really know where the Texas -- the Texas case may have</p> <p>19 fallen at the beginning of sort of his exclusive use of EI.</p> <p>20 And maybe I'm just thinking about one of those earlier cases</p> <p>21 where he reported both.</p> <p>22 But in either case, I certainly stand by what I said</p> <p>23 about both about the quality of the data as he tends to try</p> <p>24 to find the data that's the best connected to voting</p> <p>25 behavior as opposed to some experts, I was very surprised</p>
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<p>1 Q Do you think it was necessary to use all of these methods in</p> <p>2 your initial report?</p> <p>3 A No, I don't think it's necessary. I think it can be useful.</p> <p>4 And it would be necessary if they produced very different</p> <p>5 results and we need to understand why. It's not</p> <p>6 necessary -- you know, not just not necessary in the sense</p> <p>7 that you could black out any single panel in these results</p> <p>8 and I would have the same substantive conclusion. But you</p> <p>9 could black all of this out, and I could testify just from</p> <p>10 Professor Engstrom's tables and I would still have the same</p> <p>11 substantive conclusion. I think it's not -- there certainly</p> <p>12 are cases where this could be important. But this is not</p> <p>13 one of those cases.</p> <p>14 Q You've encountered Dr. Engstrom's work before; is that</p> <p>15 right?</p> <p>16 A Many times.</p> <p>17 Q You've both been testifying experts on opposite sides; is</p> <p>18 that right?</p> <p>19 A Yes, we have.</p> <p>20 Q You've reviewed his expert analysis based on EI prior to</p> <p>21 this case; is that right?</p> <p>22 A Yes, I have.</p> <p>23 Q Do you recall testifying in the Davis v. Perry case that</p> <p>24 "Dr. Engstrom's analysis uses the best combination of modern</p> <p>25 statistical techniques and quality data"? Does that sound</p>	<p>1 recently to find, have a strong preference for using census</p> <p>2 demographics instead of turned-out vote. And I just find</p> <p>3 that to be -- I mean I'm just stunned that anybody would say</p> <p>4 that.</p> <p>5 So once again, since saying that, my appreciation for</p> <p>6 Dr. Engstrom is if anything higher both because he -- but</p> <p>7 that's just a simple common-sense thing; right? That makes</p> <p>8 sense to do. So he does it. If you're only going to report</p> <p>9 one result, it should be EI.</p> <p>10 Q You wouldn't be surprised if you learned that Dr. Engstrom</p> <p>11 exclusively used EI in the case in which you made that</p> <p>12 testimony?</p> <p>13 A I would not.</p> <p>14 Q I take it your opinion of Dr. Engstrom's methodology hasn't</p> <p>15 changed since you made those statements?</p> <p>16 A It has changed. I think more of him --</p> <p>17 Q Even better.</p> <p>18 A -- since then.</p> <p>19 Q So in the context of EI, what is the point estimate?</p> <p>20 A Well, that's an easier question to answer in the context of</p> <p>21 ER. And that's one of the problems with EI: What exactly</p> <p>22 is the point estimate? Because it is not a -- because EI is</p> <p>23 agnostic about linearity, it isn't exactly what you might</p> <p>24 think it is. In effect, it is a kind of a weighted average</p> <p>25 of -- See, ER makes a single estimate for all the precincts.</p>

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<p>1 Right? It throws the precincts together, and it draws a 2 single best estimate. That is both its grace and its error. 3 EI doesn't. EI makes a separate estimate for every 4 precinct. So it makes a bounds analysis and makes a 5 separate estimate for every precinct. So the fact that you 6 come out with a single number when in fact it's not 7 estimating a single number, it's estimating as many numbers 8 as there are precincts, tells you that it isn't exactly what 9 it is in ER. 10 So it is -- I think it's best understood as being a 11 kind of functional equivalent of maybe the mean proportion 12 vote among that group, whether it's Hispanic -- in this case 13 Hispanic voters or non-Hispanic voters, a kind of 14 across-the-precinct a kind of roughly -- it isn't actually a 15 mean. So I should say a measure of central tendency of the 16 proportion of voters in that category casting their vote for 17 the -- for their preferred candidate. 18 Q In Exhibit 1, Dr. Engstrom's report, initial report, on 19 page 7 -- are you at page 7? 20 A Yeah. 21 Q The last sentence before the "Results" heading, "The point 22 estimate is the best estimate in that it is the value most 23 likely to be the true value and estimates within the range 24 of the confidence interval are likely to be the true value 25 the further they are from the point estimate."</p>	<p>1 that is more probable than a point between that maxima 2 and -- it's unusual. And I hesitate 'cause I don't want to 3 suggest that I think this is a -- some substantive 4 mischaracterization. It's not. 5 It's just that the distribution is mathematically more 6 complicated here. And so we can't say -- because it doesn't 7 make assumptions like that, there are some things we -- some 8 nontrivial things that we can't be absolutely certain of. 9 But as a general matter -- again bearing in mind what it's 10 the estimate of; right? Remember, it's an estimate of the 11 central tendency of the estimates across the precincts. 12 So it's important to remember that it's not actually 13 estimating, not attempting to estimate exactly the same 14 thing that regression is attempting to estimate. That they 15 usually hit it the same is quite nice. But bearing in mind 16 what it is that it's estimating and bearing in mind that the 17 probability distribution potentially is more, is more 18 irregular, I would say that this remains -- as a substantive 19 matter, remains correct. 20 It's the way I would explain the confidence interval 21 and the point estimate in EI analysis. And I don't think 22 there's anything deceptive about it. But it doesn't mean 23 there isn't sort of potentially something else going on in 24 there. 25 Certainly, when we talk about estimates outside the</p>
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<p>1 Would you agree with Dr. Engstrom's characterization of 2 the point estimate here? 3 A I mean there's nothing -- I think the implication of this is 4 correct that the -- that the -- that that point estimate is 5 the estimate around which the confidence interval centers 6 and therefore it occurs at the peak of the density 7 distribution. There are two sorts of technical issues. 8 While this is sort of substantively true, it is possible 9 that there are flat, flat areas in the probability 10 distribution as you move away from the point. There may 11 even be flat areas at the point. 12 It's not -- in a technical sense, it -- there certainly 13 is not likely to be a point. It is a probability 14 distribution that's downward sloping in general. So you're 15 certainly not going to find a point that's more likely to be 16 the point. But it's just a little more -- by definition the 17 confidence interval in ER is approximately normal 18 distribution. So you don't have any problems characterizing 19 either its central tendency or its downward slope or the 20 nature of its extremes because they're just -- right? It's 21 just that classic curve we all form in our head. 22 In maximum likelihood estimate models, you're -- I mean 23 there are local minima and local maxima. We're assuming 24 we're at a local maximum. But it doesn't prohibit the 25 possibility that there are -- that there is another point</p>	<p>1 range of the confidence interval, they are much less likely 2 to be true than the estimates inside the confidence 3 interval. And, as a general matter, across a series of 4 analyses, we would expect the values further away from 5 central tendency to be the less likes. It's just that it's 6 not mandated in a maximum likelihood estimation. 7 Q You certainly didn't provide any disagreement or critique of 8 this definition provided by Dr. Engstrom in either of your 9 reports; is that right? 10 A Yes. And again, if I thought this was, you know, misstating 11 or misleading or something, I would have said something 12 about it. I just don't want to suggest that this -- if you 13 are asking me is it absolutely the case that there couldn't 14 be any other variation across that estimation interval, 15 there possibly could be. But I -- 16 But you don't see it here because we're not relying on 17 a single election or a single estimate. We have a whole 18 series of estimates, and we have a whole series of 19 elections. So whether there's a technical possibility is 20 not substantively important. You wouldn't go wrong if you 21 just relied on that as the way to think about both the point 22 estimate and the confidence interval. 23 MS. KHANNA: So it is approaching the noon hour. 24 I think we should go off for a lunch break. 25 MR. FRANCIS: That would be great.</p>

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<p>1 [LaRond Baker leaves the deposition.]</p> <p>2 [Lunch recess.]</p> <p>3 [William Stafford joins the deposition.]</p> <p>4 Q (By Ms. Khanna) All right. So we had talked about, before</p> <p>5 the lunch break, the differences between ER and EI and the</p> <p>6 various methods of calculating racially polarized voting</p> <p>7 analysis. Even though you use methods other than EI in your</p> <p>8 analysis, your initial report concludes that the results</p> <p>9 from each of the three analytical methods are substantively</p> <p>10 very similar; is that right?</p> <p>11 A That's correct.</p> <p>12 Q And the analysis results, in terms of the actual estimates,</p> <p>13 are substantively very similar between your estimates and</p> <p>14 Dr. Engstrom's estimates; is that right?</p> <p>15 A Yes.</p> <p>16 Q If you turn to page 7 of your initial report, which is</p> <p>17 Exhibit 2 . . .</p> <p>18 A [Complies.]</p> <p>19 Q And if you look at the first paragraph under Section D, you</p> <p>20 note that, for the seven election contests analyzed in your</p> <p>21 initial report, the average estimate of non-Hispanic support</p> <p>22 for the Hispanic candidate or for Proposition 1 ranges from</p> <p>23 32.5 to 34.8 depending on which method you used. Is that</p> <p>24 right?</p> <p>25 A Correct.</p>	<p>1 a distinct difference between these terms?</p> <p>2 A We're talking about the same number. There are no -- there</p> <p>3 is no bright-line test here. So I just think it's -- it's</p> <p>4 certainly notable. There are certainly lots of cases where</p> <p>5 we don't see crossover at these levels. But I don't know</p> <p>6 exactly how, in terms of just sort of an adjective sense,</p> <p>7 what's appropriate level other than just noting, I think,</p> <p>8 that it is what it is. It is -- at zero, you have complete</p> <p>9 polarization. At 50 percent, you have no -- complete lack</p> <p>10 of polarization, lack of cohesion. So this is, you know,</p> <p>11 somewhere in that mix. It's closer to 50 than zero.</p> <p>12 Q But there's no cutoff points between a moderate crossover</p> <p>13 vote and a substantial crossover vote or any kind of</p> <p>14 categories like that?</p> <p>15 A Not -- I mean I think all those could be applied to votes at</p> <p>16 that level, depending on whether you're going to think --</p> <p>17 say, if you're coming from one side, it might look one way.</p> <p>18 And coming up from zero, it might look the other. It's in</p> <p>19 the middle of somewhere between no polarization and</p> <p>20 polarization. And I think that's -- again I think usually</p> <p>21 we look at that in the broader context. So I don't think</p> <p>22 the adjectives matter a whole lot.</p> <p>23 Q You further note on page 7 that "The measure of Hispanic</p> <p>24 cohesion in the seven election contests in your initial</p> <p>25 report are substantively very similar to Dr. Engstrom's</p>
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<p>1 Q Your EI estimate is 33.3?</p> <p>2 A Yes.</p> <p>3 Q And Dr. Engstrom's is 32.9?</p> <p>4 A Correct.</p> <p>5 Q And there's no cause for alarm that your EI estimate does</p> <p>6 not exactly match Dr. Engstrom's EI estimate in the context</p> <p>7 of EI, is there?</p> <p>8 A There might be a cause for alarm if they did exactly match.</p> <p>9 That's less likely than that they will be slightly</p> <p>10 different. It's, yeah, exactly what you'd expect.</p> <p>11 Q You'd expect to find these non substantive differences in --</p> <p>12 between EI estimates?</p> <p>13 A Absolutely.</p> <p>14 Q So how would you characterize this level of crossover votes?</p> <p>15 A I would say that is -- it's moderate, substantial. It</p> <p>16 certainly is not -- it's not majority support for Hispanic</p> <p>17 candidates. But it's a very substantial level of support.</p> <p>18 It indicates that the Anglo community is divided in</p> <p>19 elections in which there are Hispanic candidates. Well, a</p> <p>20 third of the -- on average a third -- and we know that it</p> <p>21 varies from contest to contest -- are crossing over to</p> <p>22 support the Latino candidate. So it's substantial but</p> <p>23 certainly submajority support for the minority candidate.</p> <p>24 Q So in your description just now I think you used the terms</p> <p>25 "moderate," "substantial," and "very substantial." Is there</p>	<p>1 estimates for Hispanic cohesion;" is that right?</p> <p>2 A That's correct.</p> <p>3 Q And you note that the average estimate of Hispanic support</p> <p>4 for the Hispanic candidates or for Proposition 1 ranges from</p> <p>5 70.9 percent to 75 percent depending on which method you</p> <p>6 use; is that right?</p> <p>7 A That's correct.</p> <p>8 Q And how would you characterize this level of cohesion?</p> <p>9 A Moderate. I don't know how -- again, it's less than</p> <p>10 100 percent and more than the, you know, 50-50 split. So</p> <p>11 there's -- as for Anglos, there's crossover here. So we're</p> <p>12 seeing slightly more Anglo crossover than Hispanic</p> <p>13 crossover. But we're not in different ranges. These are</p> <p>14 two groups, both of which can be characterized as having</p> <p>15 whatever all those words were -- modest, moderate,</p> <p>16 substantial -- crossover. So I think they're in similar</p> <p>17 ranges and probably could be characterized about the same</p> <p>18 way.</p> <p>19 Q If you turn to page 10 of the same document, I'm looking at</p> <p>20 your Table 1.</p> <p>21 A Yes.</p> <p>22 Q Would you agree that in each of the seven elections analyzed</p> <p>23 here the estimate of the Latino vote for the Latino</p> <p>24 candidate is above a majority?</p> <p>25 A Let's see. Yes, the point estimate is above majority in</p>

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<p>1 every case.</p> <p>2 Q No matter what method is used?</p> <p>3 A Yes. No matter what method is used.</p> <p>4 Q And three of these elections were decisive elections in the</p> <p>5 City of Yakima; is that right?</p> <p>6 A By "decisive" you mean the generals as opposed to the</p> <p>7 primaries, yes.</p> <p>8 Q Well, I'm specifically referring to the Place 5 general, the</p> <p>9 Place 7 general, and Proposition 1, which was a primary but</p> <p>10 wasn't that decisive for that proposition; is that right?</p> <p>11 A Yes.</p> <p>12 Q Would you agree that in each of these decisive elections,</p> <p>13 the estimate of the Latino vote for the Latino candidates</p> <p>14 exceeds 80 percent?</p> <p>15 A In each of these three elections, the estimate does exceed</p> <p>16 80 percent regardless of method, I believe. Yes.</p> <p>17 Q And among the seven elections analyzed here, not a single</p> <p>18 estimate of the non-Latino crossover vote exceeds 50</p> <p>19 percent; is that right?</p> <p>20 A That's correct.</p> <p>21 Q And using the EI method, none of the confidence intervals</p> <p>22 around the non-Latino crossover vote exceeds 50 percent; is</p> <p>23 that correct?</p> <p>24 A Could you -- I'm sorry. Could you repeat that one. Did we</p> <p>25 switch back to the -- are we still on the -- are we still on</p>	<p>1 Q Would you agree that Mr. Soria was the Latino candidate of</p> <p>2 choice?</p> <p>3 A Again more clearly in the general but yes. The Latino</p> <p>4 candidate of choice would be where I would -- what I would</p> <p>5 say based on that analysis.</p> <p>6 Q And the majority of non-Latino voters voted against him?</p> <p>7 A Yes.</p> <p>8 Q And he was defeated; right?</p> <p>9 A Yes.</p> <p>10 Q You said in both those instances, you said "more clearly in</p> <p>11 the general." Are both of these candidates, were they the</p> <p>12 Latino candidate of choice in the primary as well?</p> <p>13 A Based on these estimates, they are. And again, the</p> <p>14 estimates don't tell us for sure that they were the</p> <p>15 candidate of choice. This -- we don't have anything that</p> <p>16 tells us that for sure because we don't have any homogeneous</p> <p>17 precinct analysis.</p> <p>18 So we can say something for sure about the Anglo</p> <p>19 candidate of choice but not, particularly in those -- in</p> <p>20 the -- where that is closer to 50 percent in the primaries.</p> <p>21 We can say what our best estimate is. But we can't say with</p> <p>22 certainty. But based on these estimates, the estimates show</p> <p>23 that the candidate of choice is -- in 2009 is Rodriguez and</p> <p>24 in two thousand -- I'm sorry. In Place 5, Rodriguez, in</p> <p>25 Place 7, Soria.</p>
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<p>1 the Anglo crossover? Or are we back to the . . .</p> <p>2 Q I'm still talking about the Anglo -- or the non-Latino</p> <p>3 crossover vote. Using the EI method, none of the confidence</p> <p>4 intervals around the non-Latino crossover vote exceeds</p> <p>5 50 percent; is that right?</p> <p>6 A Where do we have the confidence intervals?</p> <p>7 Q I think the -- yeah. I don't believe the confidence</p> <p>8 intervals are reported in Table 1 but rather in the back of</p> <p>9 the documents for your analysis. But actually, if I could</p> <p>10 turn you to Dr. Engstrom's table in his initial report . . .</p> <p>11 A That's on page?</p> <p>12 Q It's on page 15.</p> <p>13 A That looks to be correct, yes.</p> <p>14 Q Would you agree that Ms. Rodriguez was the Latino candidate</p> <p>15 of choice?</p> <p>16 A That's more clearly in the general than in the primary. In</p> <p>17 terms of these estimates, yes, you're looking there for</p> <p>18 majority support. And that's what we see here. So I would</p> <p>19 say this analysis suggests that Ms. Rodriguez is the Latino</p> <p>20 candidate of choice.</p> <p>21 Q And a majority of non-Latino voters voted against her; is</p> <p>22 that right?</p> <p>23 A That's correct.</p> <p>24 Q And she was defeated?</p> <p>25 A Yes.</p>	<p>1 Q In both the primary and general elections?</p> <p>2 A Yes.</p> <p>3 Q In the District 2, 2011, primary, Mr. Montes was the Latino</p> <p>4 candidate of choice, was he not?</p> <p>5 A Yes.</p> <p>6 Q And a majority of non-Hispanic voters voted against him?</p> <p>7 A Yes.</p> <p>8 Q In fact, an overwhelming majority?</p> <p>9 A Yes.</p> <p>10 Q And he was defeated?</p> <p>11 A And he was defeated. I would just say, again, if you look</p> <p>12 at the confidence intervals, I'd say the confidence interval</p> <p>13 around Montes is between -- we're confident Montes got</p> <p>14 something between 17 and 83 percent of the vote. So whereas</p> <p>15 before we talked about -- we talked about the confidence</p> <p>16 intervals when they didn't cross the line. Now we're not</p> <p>17 talking about them because they all cross the line.</p> <p>18 So here there's -- we are in -- those primary contests</p> <p>19 where we are talking about the point estimate, they're</p> <p>20 accompanied by extremely large confidence intervals that</p> <p>21 include not just a few places but large swaths of territory</p> <p>22 in which they are not the candidate of choice. So that's --</p> <p>23 I mean that's an appropriate caution. We really --</p> <p>24 And again, if you look at the confidence intervals, you</p> <p>25 can see that, for example, Rodriguez, in the primary, the</p>

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<p>1 confidence intervals are 18 to 82. In the general it's 72</p> <p>2 to 99. So there are -- we're not 95 percent confident that</p> <p>3 we're above 50 percent. That's candidate of choice. That's</p> <p>4 not true in the primary. We're just not that confident.</p> <p>5 So . . .</p> <p>6 Q But would you agree that your best estimates, based on your</p> <p>7 analysis and Dr. Engstrom's analysis, is that Mr. Montes was</p> <p>8 the Latino candidate of choice?</p> <p>9 A But it's all our best estimate. Our point estimate would</p> <p>10 put him as candidate of choice. I would say that in the</p> <p>11 case of both Ms. Rodriguez, Soria, and Montes, our best</p> <p>12 estimate is not a good estimate at all. This is important.</p> <p>13 It is the best estimate, but it is not a good estimate. And</p> <p>14 it's not something we are confident of.</p> <p>15 Q In the vote on Proposition 1, would you agree that Latinos</p> <p>16 were cohesively in favor of this proposition?</p> <p>17 A Yes.</p> <p>18 Q And a majority of non-Latinos voted against the proposition?</p> <p>19 A Yes.</p> <p>20 Q And the proposition was defeated?</p> <p>21 A Yes.</p> <p>22 Q Are you familiar with what Proposition 1 was about?</p> <p>23 A I don't recall the exact text of Proposition 1. My</p> <p>24 recollection is it was about moving away from the at-large</p> <p>25 election system.</p>	<p>1 Q Even though Justice Gonzalez won statewide, he received a</p> <p>2 minority of the votes cast in the city of Yakima; is that</p> <p>3 right?</p> <p>4 A That's my recollection, yes.</p> <p>5 Q If you turn back to page 8 of your initial report . . .</p> <p>6 A [Complies.]</p> <p>7 Q You mentioned in the first full paragraph that, "In general</p> <p>8 terms the results in Table 1 suggest a mixed pattern." Do</p> <p>9 you see that?</p> <p>10 A Yes.</p> <p>11 Q Then the paragraph following that sentence proceeds to talk</p> <p>12 about the R-squared figure; is that right?</p> <p>13 A Yes.</p> <p>14 Q So you're basing your conclusion that there is a mixed</p> <p>15 pattern on the R-squared figures?</p> <p>16 A I'm illustrating it with R-squared figures. But I think</p> <p>17 it's -- the mixed pattern is more than the R-squared. The</p> <p>18 mixed pattern is illustrated by the actual -- the</p> <p>19 coefficients in the table. It's illustrated by the scatter</p> <p>20 plots. It is a mixed pattern. That's -- we just talked</p> <p>21 about the pattern. It was mixed.</p> <p>22 So I mean R squareds illustrate that. But you could</p> <p>23 illustrate it exactly the same way with the discussion we</p> <p>24 just had about both the level of the point estimates and the</p> <p>25 confidence intervals. It's mixed. It looks different in</p>
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<p>1 Q And you would agree that cohesiveness is measured not only</p> <p>2 with respect to electing certain candidates but also</p> <p>3 supporting certain referenda or issues?</p> <p>4 A Yes. Political cohesion can apply both to candidates and to</p> <p>5 issues.</p> <p>6 Q In the Supreme Court election in 2012, would you agree that</p> <p>7 Justice Gonzalez was the Latino candidate of choice within</p> <p>8 the city of Yakima?</p> <p>9 A Again, the point estimate suggests that. But the confidence</p> <p>10 interval does cross 50 percent.</p> <p>11 Q But the best estimate that you have, based on your analysis,</p> <p>12 is that Justice Gonzalez was the Latino candidate of choice</p> <p>13 in the city of Yakima?</p> <p>14 A Right. So it's the best estimate but, again, not as good an</p> <p>15 estimate as we would like. If you're going to apply a</p> <p>16 social science standard, in a social science standard where</p> <p>17 we reject the null hypothesis that Judge Gonzalez -- or that</p> <p>18 Mr. Gonzalez was not the candidate of choice, we wouldn't</p> <p>19 reject that null hypothesis. But if you wanted to look at</p> <p>20 that from the other direction, what's our best estimate, our</p> <p>21 best estimate is that in the mid 60 percent range would be</p> <p>22 the candidate of choice.</p> <p>23 Q And a majority of non-Latinos in Yakima voted against him;</p> <p>24 is that right?</p> <p>25 A Yes.</p>	<p>1 the general and the primary. So it's a mixed pattern.</p> <p>2 Q So earlier you testified that you wouldn't want anyone or</p> <p>3 any court to fixate on R-squared figures; is that right?</p> <p>4 A Yes.</p> <p>5 Q So you don't intend for anyone to fixate on the R-squared</p> <p>6 figures here as the basis for the what you're calling mixed</p> <p>7 pattern; is that right?</p> <p>8 A That's right.</p> <p>9 Q So your initial report also provides scatter plots of the</p> <p>10 seven elections analyzed; is that right?</p> <p>11 A That's correct.</p> <p>12 Q Do these scatter plots provide visual depictions of your ER</p> <p>13 analysis?</p> <p>14 A No.</p> <p>15 Q They don't? Can you describe to me what they are.</p> <p>16 A They are scatter plots. Okay? There's no ER analysis in</p> <p>17 the plots at all. They can be used to illustrate ER</p> <p>18 analysis because you could -- another thing you could plot</p> <p>19 here is the recession line. There's not regression line</p> <p>20 plot in here. It's not a byproduct of ER. It's not a part</p> <p>21 of the ER package. It's just a scatter plot. It's just --</p> <p>22 I've actually done these. In my dissertation I did my</p> <p>23 scatter plots on an IBM Selectric typewriter by just typing</p> <p>24 asterisks where the data points are supposed to be after</p> <p>25 outlining in pencil. So it's not a technique that requires</p>

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<p>1 a computer. It makes no -- there are no -- there's no</p> <p>2 analysis of the data involved at all. It is simply -- my</p> <p>3 daughters we're doing this in fifth grade.</p> <p>4 It's just a plot in two space of the raw data. We</p> <p>5 just -- each point is a vote result. And its location</p> <p>6 simply indicates what percentage of the individuals who</p> <p>7 received ballots had Hispanic surnames and what percentage</p> <p>8 of the votes actually cast at that polling event were cast</p> <p>9 for, in the case of the first plot, for Rodriguez.</p> <p>10 There's -- it's no more a technique of analysis than</p> <p>11 presenting a printout of the data set would be a technique</p> <p>12 of analysis. It simply reports the data points for the</p> <p>13 analysis.</p> <p>14 Q So there's no new analysis provided by the scatter plots?</p> <p>15 A Scatter plot does not provide -- it provides a visual</p> <p>16 representation of the data. It doesn't provide analysis.</p> <p>17 Q On page 11 of your report -- and again this is Exhibit 2,</p> <p>18 your initial report. In the second paragraph, you start</p> <p>19 that paragraph by saying that, "The only scatter plot that</p> <p>20 comes anywhere close to a classic pattern of polarization is</p> <p>21 Figure 6 for the 2011 District 2 primary." Do you see that?</p> <p>22 A Yes.</p> <p>23 Q Okay. I'm going to flip us to page 15. Here is Figure 5</p> <p>24 for the 2011 District 2 primary and then Figure 6 for the</p> <p>25 2011 Proposition 1.</p>	<p>1 Hispanic cohesion was 52.8 percent; is that right?</p> <p>2 A That's correct.</p> <p>3 Q And Dr. Engstrom's was 53.5?</p> <p>4 A That sounds right.</p> <p>5 Q Is it your understanding that plaintiffs must establish that</p> <p>6 race is the cause of any differences in voting preference?</p> <p>7 MR. FRANCIS: Objection to the form of the</p> <p>8 question. Calls for a legal conclusion.</p> <p>9 Go ahead and answer.</p> <p>10 A There's certain case law. You certainly see judges either</p> <p>11 in -- I think maybe the most explicit statement may actually</p> <p>12 not be in a majority opinion. It may be in a concurring</p> <p>13 or -- but so there's language in cases that suggest that for</p> <p>14 many judges the issue here is basically what the pattern,</p> <p>15 is, independent of cause. So I think that's -- and again I</p> <p>16 don't know that's a legal matter. I don't know if that's --</p> <p>17 if that's actually a controlling decision at some point in</p> <p>18 time. But, you know, I don't think that's -- I mean</p> <p>19 that's --</p> <p>20 In my view, that's not what the Voting Rights Act is</p> <p>21 about. In my view, I think it's an area in which there</p> <p>22 could be evolution in legal thinking, you know. That's for</p> <p>23 judges to -- that's for judges to decide.</p> <p>24 Q (By Ms. Khanna) You said that in your view that's not what</p> <p>25 the Voting Rights Act is about. What are you referring to?</p>
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<p>1 A Correct.</p> <p>2 Q Which figure did you intend to refer to on page 11 when you</p> <p>3 were talking about "the classic pattern of polarization"?</p> <p>4 Do you see the discrepancy?</p> <p>5 A Oh, I see. Yeah, 'cause of the -- I assumed that I was</p> <p>6 discussing -- sorry -- the Figure 5. So I think that should</p> <p>7 be Figure 5.</p> <p>8 Q So Figure 5 is the classic pattern of polarization that you</p> <p>9 describe on page 11?</p> <p>10 A Yes.</p> <p>11 Q What does that mean, "a classic pattern of polarization"?</p> <p>12 A It's a pattern in which you basically have points at one end</p> <p>13 of the data spectrum that are low. They move up as you move</p> <p>14 across the spectrum. They are, at any given level of</p> <p>15 Hispanic proportion of vote, the resulting Hispanic shares</p> <p>16 of vote for a candidate are confined to a range that's</p> <p>17 similar to the range that the vote percentages are in.</p> <p>18 Q Anything else?</p> <p>19 A I think that's probably it.</p> <p>20 Q The 2011 District 2 primary, that was the Montes election;</p> <p>21 is that right?</p> <p>22 A Yes.</p> <p>23 Q Or rather the election that included Mr. Montes?</p> <p>24 A Yes.</p> <p>25 Q That is -- that is the election where your EI estimate for</p>	<p>1 A The -- in my view, the Voting Rights Act is a very important</p> <p>2 piece of legislation, established to basically override</p> <p>3 local decisions where, where voting -- initially things like</p> <p>4 voting qualification but ultimately in these kinds of cases</p> <p>5 where voters are divided by race or ethnicity, they express</p> <p>6 that strongly enough in candidate preference that minorities</p> <p>7 no longer have the choice of their preferred candidate being</p> <p>8 a member of the minority.</p> <p>9 So I think where some people would argue that you --</p> <p>10 you know, as long as the candidate of choice is being</p> <p>11 elected, there's no problem. I don't think that's -- the</p> <p>12 Voting Rights Act was not intended to make it safe for</p> <p>13 blacks to elect whites in the South. It was intended to</p> <p>14 allow blacks to be elected if that was the candidate of</p> <p>15 choice for back voters.</p> <p>16 Where that, where that is not a function of either the</p> <p>17 race of the candidate or the race of the voter, I just don't</p> <p>18 think that's -- I mean the Voting Rights Act is intended to</p> <p>19 address an issue. It's been extremely successful. And we</p> <p>20 know that because of the number of minority candidates</p> <p>21 elected. So I think it's not unrelated to the race and</p> <p>22 ethnicity of the candidates and elected officials.</p> <p>23 But I think it's also predicated on, on the presumption</p> <p>24 that the -- what lies behind it is a racial animus. And</p> <p>25 that's something that requires extraordinary remedy. Where,</p>

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<p>1 where that is not the case, I just think it's a tenuous -- I</p> <p>2 think -- it's difficult for me to imagine that the Voting</p> <p>3 Rights Act would have been as -- written as strongly or as</p> <p>4 successful had the situation not been one of -- where there</p> <p>5 was substantial racial animus involved. I think it's --</p> <p>6 And I think there's legitimate questions about what</p> <p>7 happens -- if there is nothing left but partisanship and</p> <p>8 that partisan breakdown is different by race, I think it</p> <p>9 raises real questions and not just about the application of</p> <p>10 the Voting Right Act but about the viability of that act,</p> <p>11 given that it then becomes a partisan plaything, basically.</p> <p>12 That's always been -- that's always an issue in American</p> <p>13 politics. But I think it's --</p> <p>14 So I mean that's -- my view is that the -- in my view,</p> <p>15 the policy grounding of the Voting Rights Act owes a great</p> <p>16 deal to the fact that it's intended to deal with actual</p> <p>17 racial or ethnic voting as opposed to simply something that</p> <p>18 courts would admit -- would admit had been demonstrated to</p> <p>19 not be related to race or ethnicity. But simply to</p> <p>20 coincidentally have racial or ethnic implications that, to</p> <p>21 me, is not what the Voting Rights Act was written for. And</p> <p>22 I personally don't believe that that's -- that that really</p> <p>23 is -- leaves you much future for the Voting Rights Act if</p> <p>24 you start applying it that way.</p> <p>25 Q So your understanding of the Voting Rights Act is that it is</p>	<p>1 understood the benefit of the doubt should go in these</p> <p>2 cases?</p> <p>3 A I don't know as I'm not really sure that -- at least my</p> <p>4 reading of this is that this has not been addressed in any</p> <p>5 kind of clear decision. There's nothing like a kind of</p> <p>6 Gingles test that says We've solved this or decided who's</p> <p>7 got the burden of proof. Or I assume that's kind of up in</p> <p>8 the air. That seems to me to be precisely the sort of thing</p> <p>9 that the legal system over time does a pretty good job of</p> <p>10 working out in its kind of competitive --</p> <p>11 So I don't, myself, have a strong preference about</p> <p>12 that. I think however you work that out, I don't -- to me</p> <p>13 that seems to be an area where you could make a lot of</p> <p>14 different decisions none of which would threaten people's</p> <p>15 underlying support for the Voting Rights Act. And then, the</p> <p>16 most important to me is preserving the Voting Rights Act.</p> <p>17 So I'd be happy whenever that ends up. And I don't</p> <p>18 have a -- I haven't thought a great deal about it. So I</p> <p>19 don't really know where that might be.</p> <p>20 Q How you would establish certainty about what the underlying</p> <p>21 cause of differences in voter preferences are?</p> <p>22 A You wouldn't. We haven't established certainty about</p> <p>23 anything here. It wouldn't be something you could establish</p> <p>24 with certainty. But I mean I've seen data analysis that</p> <p>25 that's overwhelmingly -- and it's virtually impossible to</p>
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<p>1 about the extent to which race is the cause for differences</p> <p>2 in voter preference?</p> <p>3 A And I guess there's a middle ground in there; right? I</p> <p>4 think if you -- you know, if you're uncertain as to what the</p> <p>5 cause is, you can argue about where the -- where should the</p> <p>6 benefit of the doubt go. I think if you know with some</p> <p>7 certainty that that is not what's driving the voting</p> <p>8 behavior, then, in my view, that ought not to be -- that's</p> <p>9 a -- I think you entered there into -- you know, you're deep</p> <p>10 in the political thicket. And I think those are, those are</p> <p>11 choices that voters may or may not remedy.</p> <p>12 But I'm personally uncomfortable with that becoming the</p> <p>13 purview, essentially the main or the only purview of the</p> <p>14 Voting Rights Act. It seems to me that undermines the</p> <p>15 availability of the act for situations where it's -- where</p> <p>16 you have genuine racial sentiment being expressed in voting.</p> <p>17 And that's, you know -- if you want to protect the Voting</p> <p>18 Rights Act; apply it where it's meant to be applied. If you</p> <p>19 make it so broad that it becomes the primary mechanism by</p> <p>20 which partisan gerrymanders are adjudicated, I think you're</p> <p>21 undercutting the Voting Rights Act.</p> <p>22 Q So you mentioned that where there's some uncertainty about</p> <p>23 the cause for voter -- for differences in voter preference,</p> <p>24 there's some argument about where should the benefit of the</p> <p>25 doubt go. What do you understand -- where do you</p>	<p>1 explain any other way.</p> <p>2 I mean when I -- when you switch the ethnicity of the</p> <p>3 candidates and it doesn't change the voting behavior at all,</p> <p>4 not at all, not at a 10th of a percentage point, it's really</p> <p>5 hard to say that the reason this candidate's getting</p> <p>6 90 percent of the vote and this candidate's getting 10</p> <p>7 percent is motivated in any degree, much less that that</p> <p>8 explains the 90 as opposed to the 10.</p> <p>9 I'd say, when it's 90-10 in favor of the Anglo</p> <p>10 candidate when they're running against a Hispanic and it's</p> <p>11 90 percent in favor of the Hispanic candidate when they're</p> <p>12 running against an Anglo, I just don't see -- but again you</p> <p>13 can't say with certainty what's going on there. But</p> <p>14 certainly there's -- that to me is a very strong -- I don't</p> <p>15 know what the logic would be in which that represents a vote</p> <p>16 that's primarily driven by voting on the basis of race or</p> <p>17 ethnicity. It's just --</p> <p>18 And I think it also demonstrates something which is in</p> <p>19 the early, in the early Voting Rights Act legislation or --</p> <p>20 sorry -- in the application of the Voting Rights Act, we had</p> <p>21 clear metrics for the success of the Voting Rights Act. So</p> <p>22 there are several landmark books about the success of the</p> <p>23 Voting Rights Act. And the metric there is to just look at</p> <p>24 the increase in the presence of blacks, Hispanics, Asians,</p> <p>25 whatever the group is, in -- elected to city council,</p>

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<p>1 elected to state office, elected to the U.S. Congress, 2 elected to the president, whatever. 3 I'd say you can judge whether this made a difference by 4 looking at whether it created the possibility for minorities 5 to be elected. And it did. This is a huge -- it's a huge 6 success. 7 If, if you've got elections in which you get this 90-10 8 pattern regardless of the ethnicity of the candidate, then 9 it becomes really difficult to say how you would -- in what 10 sense is it successful? I mean I just think -- I just think 11 it's just not clear to me. So again, I don't that -- I 12 don't -- in-between that, I don't know what to tell you. 13 But I know there are a lot of elections taking place 14 the United States in which partisanship is driving the 15 election to exclusion of race and ethnicity. And I think 16 that's -- my personal view, although I have no evidence of 17 it, is that that's to a large degree attributable to the 18 success of the Voting Rights Act. So I think you have to 19 think seriously about whether that ought to be a pattern 20 that the Voting Rights Act acknowledges as success or 21 progress or something as opposed to enshrining it as certain 22 evidence of illegal, racially polarized voting. 23 I think that's -- maybe it's just a poor choice of 24 terminology. But I think when you have partisan polarized 25 voting that's used to prove liability for a jurisdiction</p>	<p>1 racial animus? I'm just talking about the Gingles test, the 2 three Gingles preconditions. 3 A My recollection of the origins of the Gingles test, which 4 are shrouded in distant memory, I would say that the Gingles 5 test was, was developed in that context. I'm not sure that 6 the test itself, having not envisioned -- it's hard to 7 envision that it would be applied in the way that it's being 8 applied. So I don't think it necessarily has built into it 9 something that would necessarily make that distinction. But 10 I think it's certainly not -- it's also not incompatible 11 with that distinction. 12 One of the things that's happened is that the meaning 13 of -- or the importance candidate of choice has shifted from 14 the time of the Gingles decision to today. So we have a -- 15 candidate of choice was a small subcategory, and it's now 16 become a central part of the whole Gingles analysis, which 17 it wasn't initially. So -- to the extent that, that at the 18 time of Gingles people didn't envision the current context 19 of candidate of choice. 20 At the time of the writing of Gingles, I don't think 21 any of the judges envisioned a situation in which the 22 candidate of choice of 90 percent of blacks would be the 23 Anglo and 90 percent of Anglos would be the black and that 24 would be racial polarized voting and we got to do something 25 about it. All right? Just -- they correctly apprised [sic]</p>
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<p>1 and, by implication, its voters as voting in a racially 2 polarized fashion when you have no evidence that it's 3 racially polarized at all other than in its effect, I think 4 that's just -- I can't think of why people put in that 5 position would not feel that there was some -- that we had 6 moved somehow beyond the appropriate focus of the 7 application of the Voting Rights Act. 8 Q Do you have any certainty in this case about what is driving 9 any differences in voting behavior? 10 A I have no certainty about what's actually driving behavior 11 in this case. It -- the fact that it varies to the degree 12 it does when you hold candidates constant or when you hold 13 elections constant, that level of variability suggests to me 14 that there must be other factors because they're 15 producing -- we're not change -- the one thing we're not 16 changing here is the ethnicity of the candidates. 17 And so the voters are responding to that very strongly, 18 it seems, in some contexts and not very strongly in other 19 contexts, strongly for some candidates, not for others. So 20 that variability would indicate that there are other things 21 going on. So beyond that, I don't think we know with any 22 certainty what those things are. 23 Q You mentioned that the Voting Rights Act was primarily 24 targeted to address substantial racial animus. Is it your 25 understanding that the Gingles test involves a question of</p>	<p>1 the situation in the South. That was not going to happen. 2 They even note right there: There are cases where white 3 voters actually vote against the Democratic candidate when 4 the Democratic candidate is black. They actually lay out 5 that of one of the tests is that race actually overpowered 6 partisanship. 7 So I think with our sort of more modern application of 8 candidate of choice in which we pretend to be completely 9 agnostic about the race and ethnicity of candidates, we now 10 have this out-of-context Gingles test. Then, if there was 11 something in the Gingles test to prohibit that, as you're 12 suggesting, it wouldn't be -- we wouldn't be where we are. 13 So I think as a technical matter, there's nothing in those 14 three threshold prongs that would distinguish this once you 15 accept that it is appropriate to use candidate of choice and 16 not use the ethnicity of candidates. 17 Q So just to clarify, the Gingles test itself, as far as you 18 understand it, does not require any proof of racial animus? 19 A That's correct. 20 Q On page 17 of your initial report, you provide your 21 conclusions about whether Gingles 2 has been satisfied; is 22 that right? 23 A Yes. 24 Q You say on page 17 that: "Hispanic voters are not 25 consistently cohesive as evident in both the highly variable</p>

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<p>1 levels of cohesion among Hispanics and the low level of</p> <p>2 participation among registered Hispanic voters." Do you see</p> <p>3 that?</p> <p>4 A Yes.</p> <p>5 Q Now, you and Dr. Engstrom, again, agree on the actual</p> <p>6 estimates of Latinos voting for a Latino candidate or</p> <p>7 Proposition 1; is that right?</p> <p>8 A That's correct.</p> <p>9 Q So there's no substantial difference between your two</p> <p>10 estimates?</p> <p>11 A That's correct.</p> <p>12 Q So where you disagree is on the legal significance of those</p> <p>13 estimates; is that right?</p> <p>14 A It may be broader. I'm not sure. I think we may disagree</p> <p>15 about sort of what the underlying behavior indicates. I may</p> <p>16 be -- I think Dr. Engstrom is more persuaded by the general</p> <p>17 fact that these estimates for Hispanic voting are all about</p> <p>18 50 percent. So they all indicate the same candidate of</p> <p>19 choice. He's less, I think, less disturbed by very large</p> <p>20 confidence intervals than I am. So I think we may both</p> <p>21 disagree about what it really means on the ground. And then</p> <p>22 certainly we disagree about its legal significance.</p> <p>23 Q But the differences in your conclusions don't depend on any</p> <p>24 differences in your analysis; is that right?</p> <p>25 A That's correct 'cause we both have similar points and we</p>	<p>1 The more directly -- the more directly ethnic prompt is</p> <p>2 the candidate running in the primary. And it produces what</p> <p>3 looks essentially like complete indifference among Hispanic</p> <p>4 voters to the ethnicity of the candidate. Half the voters,</p> <p>5 essentially half the voters are casting votes for a</p> <p>6 non-Hispanic candidate when there's a Hispanic candidate on</p> <p>7 the ballot. That -- if there was -- if there was political</p> <p>8 cohesion, that's just not a result you'd expect to see.</p> <p>9 I mean there may be some other differences that explain</p> <p>10 how you get that as you move from one election to another.</p> <p>11 But it's up and down. But the fact that it is down as often</p> <p>12 as it is I think raises a real question about -- again both</p> <p>13 about what might be motivating this and about whether that's</p> <p>14 really cohesive voting. I just don't think it's very</p> <p>15 cohesive voting.</p> <p>16 And the very variability of it, I think, is -- right.</p> <p>17 It's a second moment of distribution. It's an important</p> <p>18 one. There's -- across a whole series of dimensions here,</p> <p>19 there's a lot more variability in the scatter plots.</p> <p>20 There's variability going across election types. There's</p> <p>21 just more variability than I would expect to see if voters</p> <p>22 were behaving in a cohesive way across what is really a</p> <p>23 fairly small time span.</p> <p>24 Q Based on your analysis in your initial report, are Latinos</p> <p>25 cohesive in some elections?</p>
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<p>1 also both had -- it would be different if I felt this way</p> <p>2 because I had big confidence intervals and he didn't feel</p> <p>3 this way because he had really narrow confidence intervals</p> <p>4 That would be an analytical difference.</p> <p>5 But that's not -- here we are -- again I would write</p> <p>6 this conclusion if I had only seen his analysis. I think he</p> <p>7 would write his conclusion if he'd only seen my analysis.</p> <p>8 And that to me is the real test, that we're talking about</p> <p>9 how to interpret this and not about the mechanics of how to</p> <p>10 produce it.</p> <p>11 Q So in that sentence that I just read at page 17, what do you</p> <p>12 mean by "not consistently cohesive"?</p> <p>13 A I think -- so there are elections in there where you see a</p> <p>14 pattern that looks like cohesive voting. Then you see the</p> <p>15 estimates you point out for the proposition, that Hispanics</p> <p>16 seem to be politically united on that proposition, at least</p> <p>17 with regard to cohesion. So you see indications that</p> <p>18 cohesion is there.</p> <p>19 And I think that's difficult to square with, you know,</p> <p>20 with a contemporaneous election in which, you know, 47 --</p> <p>21 our estimate is 47 percent of Hispanics are voting for</p> <p>22 non-Hispanic candidates. I think that's -- in one of those</p> <p>23 cases there, the prompt is explicitly racial. In the other</p> <p>24 the prompt is a policy choice that may have implications for</p> <p>25 the ethnic representation.</p>	<p>1 A There, there is evidence of cohesive behavior in some</p> <p>2 elections and noncohesive behavior in others. So if we're</p> <p>3 sort of backing away and saying, Do we have cohesion here?</p> <p>4 My conclusion is we're -- we haven't established cohesion,</p> <p>5 because I don't think a pattern in which you basically swing</p> <p>6 back and forth between cohesion and lack of cohesion is</p> <p>7 cohesion.</p> <p>8 Q So which elections would you say demonstrate some cohesion?</p> <p>9 A I think, again looking simply at the point estimates, you</p> <p>10 certainly have point estimates that are consistent with</p> <p>11 cohesion in the Place 5, 2009, general election, Rodriguez.</p> <p>12 If we then look -- if you want to look over to the side of</p> <p>13 the R-squared -- but I won't ask you to, but it's there --</p> <p>14 and then we look at the plot so we don't have to look at the</p> <p>15 analysis at all, and as soon as you look at the plot, you --</p> <p>16 I mean this, this is just not very cohesive voting. These</p> <p>17 are -- these points are all over the place.</p> <p>18 In a, in a district that's 10 percent Hispanic, you've</p> <p>19 got Rodriguez getting in the mid 20s. You've got Rodriguez</p> <p>20 getting, you know, 50 percent of the vote. So that's -- and</p> <p>21 again, these are just different precincts within the city.</p> <p>22 Q I'm sorry. I'm sorry. What plot were you looking at when</p> <p>23 you were just describing?</p> <p>24 A I'm looking at the -- oh, sorry. I'm looking at the</p> <p>25 Rodriguez primary. I'm sorry.</p>

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<p>1 So we go to obviously it's bigger scatter in the</p> <p>2 primary. But when we go to figure 2, which is the general</p> <p>3 election, again you can see -- I mean if I gave you that</p> <p>4 plot and asked you is the proportion of Hispanics driving</p> <p>5 the support for Rodriguez, it's -- I don't see how you could</p> <p>6 conclude that from looking at that plot. That the voters</p> <p>7 are behaving cohesively? Unless they're -- so now it's in</p> <p>8 some elections they're cohesive, and in some precincts they</p> <p>9 are -- may be a little more cohesive than others.</p> <p>10 It's not even consistent within the election that show</p> <p>11 point estimates that might be consistent with cohesion.</p> <p>12 This is not what cohesion looks like. That's what I would</p> <p>13 say.</p> <p>14 Q So your testimony is that the Rodriguez general election in</p> <p>15 2009 is not an example of Hispanic cohesion?</p> <p>16 A Based on the point estimate, that's a point estimate that</p> <p>17 you would expect to see as an indication of Hispanic</p> <p>18 cohesion. I think if we look at the actual data points, you</p> <p>19 can see that that's -- that there is substantial variability</p> <p>20 in the precinct-level results that suggests that that</p> <p>21 may not be -- that may not indicate as much cohesion as that</p> <p>22 single number indicates.</p> <p>23 So I would -- again, going back to this table, if you</p> <p>24 looked only at the R-squared, you'd suggest there wasn't</p> <p>25 much cohesion. If you look at the slope estimate, it looks</p>	<p>1 characterize as low levels of Hispanic participation; is</p> <p>2 that right?</p> <p>3 A Yes.</p> <p>4 Q In other words, that's low turnout?</p> <p>5 A Low turnout, yes.</p> <p>6 Q Is it your understanding that the level of turnout among</p> <p>7 minority population is relevant to a Gingles 2 analysis?</p> <p>8 A Yes.</p> <p>9 Q What is that understanding based on?</p> <p>10 A It's based on my understanding of what political cohesion</p> <p>11 means.</p> <p>12 Q So in your understanding, political cohesion means turning</p> <p>13 out to the polls in a certain number?</p> <p>14 A Not in a certain number. But political cohesion means --</p> <p>15 But political cohesion as opposed to just a measure of voter</p> <p>16 cohesion. Voter cohesion is the voters that show up at the</p> <p>17 polls. But political cohesion is a broader consideration</p> <p>18 that, again, in the context of the Gingles decision --</p> <p>19 right? -- we're trying to decide if, absent the challenged</p> <p>20 system, Hispanics would be electing candidates of choice.</p> <p>21 And at these levels of variable cohesion and low level</p> <p>22 of turnout, absent the challenged system, Hispanics would</p> <p>23 not be electing candidates of choice. So it's important in</p> <p>24 understanding what's leading -- what's leading to the</p> <p>25 result, the ultimate result we get, which is the tendency of</p>
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<p>1 like there might be some more cohesion. If you look at the</p> <p>2 plot, it sort provides, you know, more information again</p> <p>3 about sort of what that pattern looks like.</p> <p>4 And so I think you take that as a whole. And while</p> <p>5 certainly there's more evidence -- in at least one of the</p> <p>6 multiple indicators there's what's look like sort of</p> <p>7 traditional cohesion -- there are a substantial number of</p> <p>8 indicators here that even in that election are not</p> <p>9 consistent with what we would expect to see in a -- in</p> <p>10 demonstrating, in clearly demonstrating, a cohesive vote.</p> <p>11 Q So is it your testimony that, when analyzing an EI point</p> <p>12 estimate to assess cohesion, you must always look at a</p> <p>13 scatter plot or R-squared or some other measure in order to</p> <p>14 determine whether in fact there is cohesion?</p> <p>15 A No.</p> <p>16 Q What do you mean, on page 17 when you refer to "the highly</p> <p>17 variable levels of cohesion among Hispanics"?</p> <p>18 A We just discussed that the estimates here vary between</p> <p>19 things in the low 50s and things in the, you know, 90s, that</p> <p>20 the confidence intervals vary between relatively tight and</p> <p>21 all-over-the-map confidence intervals. That's sort of what</p> <p>22 the highly variable, as near as I can remember, what I would</p> <p>23 have been referring to. That's what I would think that</p> <p>24 refers to.</p> <p>25 Q You base your Gingles 2 conclusion in part on what you</p>	<p>1 Hispanic candidates not to be elected. It's important to</p> <p>2 understand if that's a feature of the challenged election</p> <p>3 system or if that's -- but if Hispanics run multiple</p> <p>4 candidates and split their votes, that's a lack of political</p> <p>5 cohesion. There may still be cohesive voting but you've got</p> <p>6 multiple candidates; votes split. If you lose because the</p> <p>7 vote splits, that's not an aspect of the challenged system.</p> <p>8 So this is -- you know, we're not talking about</p> <p>9 barriers to registration here. These are registered voters.</p> <p>10 These are elections that are open to people to participate</p> <p>11 in. And so, you know, again my -- the -- my part of the</p> <p>12 analysis to, you know, work through all of this. But</p> <p>13 it's --</p> <p>14 What it seems to me is that at least, at least a</p> <p>15 substantial part of what's going on here is that you have a</p> <p>16 combination of a lot of variability in the response of</p> <p>17 Hispanic voters to Hispanic candidates. And you have low</p> <p>18 levels of turnout given the level of voter registration and</p> <p>19 that, when you put those two together, it's hard to see how</p> <p>20 you win elections. I mean there are elections here where</p> <p>21 the Hispanic candidate would have won, that Rodriguez would</p> <p>22 have been elected if you had a higher level of Hispanic</p> <p>23 turnout. And the certainly -- even the level of cohesion</p> <p>24 that you had.</p> <p>25 So it's not that, that this couldn't happen. This</p>

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<p>1 could happen. And I think it's -- I just think it's</p> <p>2 relevant to looking to political as opposed to voter</p> <p>3 cohesion.</p> <p>4 Q So is it your testimony that a low Hispanic voter turnout</p> <p>5 can be fatal to the Gingles 2 and 3 -- establishing the</p> <p>6 Gingles 2 and 3 preconditions?</p> <p>7 A Yeah. I would say it's certainly not always fatal because</p> <p>8 that -- you know, if you can tie that low voter turnout to</p> <p>9 the challenged system, then, you know, that would be</p> <p>10 probably there's a circular argument there. Because that's</p> <p>11 the point; right? Is it a function of the challenged</p> <p>12 system?</p> <p>13 If the low turnout's a function of the challenged</p> <p>14 system, then it's, you know, you're -- it's right back in</p> <p>15 play. But if it's not a function of the challenged system,</p> <p>16 than, yes, certainly. If the failure of Hispanic candidates</p> <p>17 to succeed under the challenged system is the result of very</p> <p>18 low turnout, then that's the answer to the question the</p> <p>19 Gingles test seeks to find. And the answer is it's not the</p> <p>20 challenged system and therefore the challenged system is not</p> <p>21 on its face illegal.</p> <p>22 Q We talked earlier about extent to which there are certain</p> <p>23 degrees of cohesion, such as moderate or weak or</p> <p>24 substantial. Is that right?</p> <p>25 A Yes.</p>	<p>1 And quite frankly, I don't know what those bright -- it</p> <p>2 doesn't make sense to me in the way that, if you're not a</p> <p>3 majority of it, you can't meet the majority of the district,</p> <p>4 you just can't solve the problem by districting. Maybe you</p> <p>5 can do it by alternative election systems or something. But</p> <p>6 you can't by districting. So it's in the logic of Gingles 1</p> <p>7 that it would be a threshold test. It's, not to me, in the</p> <p>8 logic of 2 and 3. To me, that's -- I mean I can see where</p> <p>9 you could so badly fail Gingles 2 that it could have</p> <p>10 threshold application because it would be a waste of time to</p> <p>11 go any further.</p> <p>12 But, you know, I certainly wouldn't argue with the</p> <p>13 court that basically kind of wanted to take a pass and just</p> <p>14 say, Well, you know, I don't know; but let's go ahead.</p> <p>15 Q So there is no bright-line rule on how much Latino support a</p> <p>16 Latino candidate must have in order to demonstrate cohesion</p> <p>17 under Gingles 2?</p> <p>18 A To the extent that's the kind of thing courts talk about, it</p> <p>19 seems to me that they inherently bundle it up with a bunch</p> <p>20 of other things which suggests that it couldn't be a</p> <p>21 bright-line test in the sense that it interacts with the</p> <p>22 other things in a way that sort of suggests totality of</p> <p>23 circumstances.</p> <p>24 Q So just to clarify, it's your understanding that the Gingles</p> <p>25 test is applied in a way that incorporates the totality of</p>
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<p>1 Q And I believe you testified that there no formal models or</p> <p>2 categories that fall -- that these adjectives fall within.</p> <p>3 A Yeah. I don't think -- I don't know. I guess at the</p> <p>4 opposite ends where everybody would agree that this is,</p> <p>5 like, total lack of or the total presence of. In between,</p> <p>6 it's something in between. I think that's where -- I mean,</p> <p>7 you know, I'm conflicted, I guess, about this process, in</p> <p>8 part because I think -- I mean I think in this kind of case,</p> <p>9 I think judges are in an unusual position because I think,</p> <p>10 if you think about sort of --</p> <p>11 One of the problems with a threshold test is that, with</p> <p>12 a threshold test, you stop. All right? And so I could see</p> <p>13 where you would argue that you may not -- you may not</p> <p>14 necessarily have demonstrated that you certainly pass the</p> <p>15 threshold. But there's enough question about it that you</p> <p>16 would want to go ahead.</p> <p>17 And given that you have totality of the circumstances,</p> <p>18 which ensures you against making fatal flaws, I just think</p> <p>19 it's -- you know, I can see where there is a difference.</p> <p>20 The Gingles 1 threshold seems to me to be much more clearly</p> <p>21 a threshold test, in part, of course, because there's a</p> <p>22 bright-line test. Right? If there were -- if Gingles 2 and</p> <p>23 3 were truly threshold tests that everybody would be</p> <p>24 comfortable applying as a threshold test, you'd have to have</p> <p>25 bright-line tests.</p>	<p>1 circumstances?</p> <p>2 A It incorporates some of the logic of the totality of</p> <p>3 circumstances in a way that 2 or 3 are applied and then --</p> <p>4 and in combination with the fact that there is no</p> <p>5 bright-line test, I think that makes them, as a matter of</p> <p>6 application, substantially different than the Gingles 1</p> <p>7 threshold test.</p> <p>8 Q Back to page 17 of your initial report, you also state your</p> <p>9 conclusion about whether Gingles 3 has been satisfied; is</p> <p>10 that right?</p> <p>11 A Yes.</p> <p>12 Q And you say: "Anglo crossover in support of Hispanic</p> <p>13 candidates in the low 30 to low 40 percent range is</p> <p>14 substantial, much less variable, and is not consistent with</p> <p>15 polarized Anglo block voting."</p> <p>16 A Yes.</p> <p>17 Q And again you and Dr. Engstrom agree on the actual numbers</p> <p>18 of non-Hispanic crossover vote; is that right? The actual</p> <p>19 estimates?</p> <p>20 A Yes.</p> <p>21 Q There's no substantial difference between your estimates?</p> <p>22 A No.</p> <p>23 Q Where you disagree is on the significance or the</p> <p>24 interpretation of those estimates?</p> <p>25 A Yes. And here we also disagree on the numbers less than we</p>

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<p>1 disagree on Hispanic cohesion because there isn't anything 2 to disagree -- there isn't anything to alter what weight we 3 might give to confidence intervals because the confidence 4 intervals are narrow. So it really doesn't -- you know, he 5 could give them no credence at all and I could bet my life 6 on 'em and we'd still end up in the same position. So 7 there's just less there to be --</p> <p>8 We also have a method of bounds analysis here that just 9 simply -- right? We know some things. We know some factual 10 things about Anglo crossover voting. We're not guessing 11 that 30 or 40 percent of Anglos cross over. We know. We 12 know for a fact that something more than third of Anglos are 13 routinely, in every election, crossing over and supporting 14 Hispanic candidates. That's the only thing we know with any 15 certainty in this polarization analysis.</p> <p>16 That's isn't a method -- that isn't about analysis. 17 That is factually has to be true. And so that's an 18 important fact. It's not something where we're estimating. 19 It's something we're calculating on the basis of actual vote 20 returns.</p> <p>21 So I think it's both that that level is high. And it 22 is that it is pretty much, pretty much unresponsive to these 23 different election conditions that are causing substantial 24 variability in how -- in our estimates of how Hispanics cast 25 votes. Here there's very little variability. And that</p>	<p>1 percent range and the Court found that the Gingles 3 test 2 had been satisfied?</p> <p>3 A Yes.</p> <p>4 Q And those are cases in which you've been personally 5 involved?</p> <p>6 A Yes.</p> <p>7 Q Which cases? Do you remember the names?</p> <p>8 A I'm guessing that that's true in the -- that galaxy of north 9 Dallas county kinds of cases. So Irving, Irving ISD, 10 Farmers Branch, although I don't, neither collectively or 11 individually, recall exactly where all the numbers were. 12 That it wouldn't surprise me if you were in that range in 13 those cases.</p> <p>14 You had some crossover at this level in the Texas case. 15 And, of course -- and you tell me that there's a judicial 16 decision in the Texas case. I quit trying to understand 17 what all that means. But I mean I would say that I've seen 18 that in cases I've been involved in. It certainly wouldn't 19 surprise me to see it in other cases. I mean that's . . .</p> <p>20 Q So on what do you base your opinion that the level of 21 non-Hispanic crossover voting seen here is not sufficient to 22 satisfy Gingles 3? Or is it your opinion that the level of 23 crossover voting seen here is not sufficient to satisfy 24 Gingles 3?</p> <p>25 A In my view, the level of crossover voting here is -- I guess</p>
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<p>1 suggests that a substantial proportion of the electorate in 2 Yakima routinely casts votes for Hispanic candidates.</p> <p>3 Q So I believe you just said that, in every election, the 4 range is in the low 30 to low 40 percent. But in fact, in 5 one of the elections analyzed, the non-Hispanic crossover 6 vote was around 13 percent; isn't that right?</p> <p>7 A So we have 13 percent crossover for an Hispanic candidate? 8 I don't recall that. So Montes in the primary?</p> <p>9 Q So is that right, that in one of the elections, the 10 non-Hispanic crossover vote was at 13 percent?</p> <p>11 A That's correct.</p> <p>12 Q Not in the low 30 to 40 percent range that you mentioned?</p> <p>13 A Correct.</p> <p>14 Q Are you aware of any bright-line rule regarding the level of 15 non-Hispanic crossover voting that is sufficient to satisfy 16 Gingles 3?</p> <p>17 A Again, if the majority of Anglos always casts their vote for 18 the Hispanic candidate -- I'm sorry. That's not true. I 19 would hope that if the result always showed exactly a 50-50 20 distribution, that somebody would recognize that was a lack 21 of cohesion. But I'm not -- I don't think anybody's ever 22 enunciated that. And I'm not aware that there is any other 23 bright-line test.</p> <p>24 Q Are you aware of any cases in which the level of the 25 non-Hispanic crossover vote was in the low 30 to low 40</p>	<p>1 it depends on what you mean by "satisfy Gingles 3." I mean 2 I don't think it demonstrates absolutely that you don't meet 3 Gingles 3 as a threshold matter. I don't think it 4 demonstrates that you necessarily do meet Gingles 3 as a 5 threshold matter.</p> <p>6 I mean I think it just -- it's a piece of a series of 7 things here that, that suggest that you've got an awful lot 8 of explanations for what happens in Yakima that aren't -- 9 that don't depend on the kind of scenario that is envisioned 10 in a demonstration of Gingles and totality of the 11 circumstances.</p> <p>12 Certainly, in my view, this is not Anglo block voting. 13 I mean I know that there are people who would argue. And 14 I've heard people argue persuasively to some judges and to 15 some other people that, if 51 percent of Anglos cast their 16 vote for the Anglo candidate and 49 percent cast their vote 17 for the Latino candidate, that's completely consistent and 18 evident evidence of polarized Anglo block voting. I just 19 think that's sophistry. I don't think how that can possibly 20 be polarized. I don't see how you could describe that as 21 block voting.</p> <p>22 It's -- again it may, in a very narrow set of 23 circumstances, if you're going to balance in such a way as 24 to produce a very narrow loss for an Hispanic candidate, but 25 it just -- if that's all we mean by polarized block voting,</p>

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<p>1 then at least two of those words are misplaced, "polarized"</p> <p>2 and "block," and it should just be called "voting."</p> <p>3 To me that -- and again, these have become legal terms</p> <p>4 of art. You know, that's up to the judges. I could be</p> <p>5 completely wrong. But that to me doesn't seem like</p> <p>6 polarization. It doesn't seem like block voting.</p> <p>7 Q The situation you just described, where 51 percent of Anglos</p> <p>8 are voting for the Anglo candidate and 49 percent are voting</p> <p>9 for the minority candidate, that's not the situation we have</p> <p>10 here, is it?</p> <p>11 A No.</p> <p>12 Q Do you have an opinion on whether the level of Hispanic</p> <p>13 cohesion in this case is sufficient to satisfy Gingles 2?</p> <p>14 A I don't think this evidence clearly indicates that we've</p> <p>15 satis -- that this pattern satisfies Gingles 2. I think</p> <p>16 it's maybe more about -- my concern is I don't think we</p> <p>17 really know much about, very certain about pattern of</p> <p>18 Hispanic voting in Yakima. So I would not be inclined to</p> <p>19 say that we've -- that this evidence establishes that</p> <p>20 Hispanics vote cohesively for Hispanic candidates.</p> <p>21 I just think it's not, it's not completely incompatible</p> <p>22 with that possibility. But it's, it's just not very -- we</p> <p>23 have very little sound information about what Hispanic</p> <p>24 voters in Yakima are doing in these elections. I just don't</p> <p>25 think that we've enough to say that we've established that</p>	<p>1 A Yes.</p> <p>2 Q "Instructive" as to what?</p> <p>3 A You see in, my view, some of the same issues here in terms</p> <p>4 of variability. So you're seeing Hispanic candidates that</p> <p>5 are -- there are Hispanic candidates on the board, sometimes</p> <p>6 running unopposed, sometimes opposed. So I mean I think</p> <p>7 that basically we see apparently something different with,</p> <p>8 with the school board compared to the city council, even</p> <p>9 though they're coterminous in terms of voters. And again</p> <p>10 if, if this pattern is clearly indicative of a political</p> <p>11 division on the basis of ethnicity, then you'd expect it to</p> <p>12 apply in more than one -- in more than one level.</p> <p>13 Q So is this still part of your Gingles 2 and 3 analysis?</p> <p>14 A I would think so, yes.</p> <p>15 Q You weren't responding to any school board analysis provided</p> <p>16 by Dr. Engstrom when you included in this your report, were</p> <p>17 you?</p> <p>18 A I think I recall from his deposition that I think I</p> <p>19 mentioned that he had not looked at -- that he was</p> <p>20 responding to this when he looked at school board. So that</p> <p>21 would make sense, that there wasn't necessarily a school</p> <p>22 board component at that time.</p> <p>23 Q Were you specifically asked to look into the Yakima school</p> <p>24 board elections?</p> <p>25 A Let's see if I can remember how the -- how did the school</p>
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<p>1 by social science standards or just by just looking at the</p> <p>2 analysis on the ground. I think there's lots of</p> <p>3 uncertainty. And that seems to me to be inconsistent with</p> <p>4 an argument that we have established an evidentiary</p> <p>5 standard, that we have demonstrated that Hispanic voters</p> <p>6 cohesively support Hispanic candidates.</p> <p>7 Q Do you think the evidence demonstrates that Gingles 2 has</p> <p>8 not been satisfied in this case?</p> <p>9 A No. That -- it's -- the fact that we don't know much about</p> <p>10 it can't demonstrate that it hasn't been satisfied. We</p> <p>11 really don't know much about the voting behavior of</p> <p>12 Hispanics in this -- based on this analysis. That's what</p> <p>13 our, our -- you know, we have a series of things that are</p> <p>14 kind of built in that are -- you know, can tell us about how</p> <p>15 certain can we be about what we've got here. Our confidence</p> <p>16 intervals are a good example of that. And they're, they're</p> <p>17 just telling us that we don't know very much. So . . .</p> <p>18 MS. KHANNA: We're about to move on to a new</p> <p>19 topic. I don't know if you want to take a quick break.</p> <p>20 MR. FRANCIS: Yes.</p> <p>21 [A brief recess was taken.]</p> <p>22 Q (By Ms. Khanna) I'm on page 16 of your initial report,</p> <p>23 Exhibit 2. You discussed the Yakima School Board elections.</p> <p>24 And you note that "The Yakima School Board elections are</p> <p>25 instructive." Is that right?</p>	<p>1 board come -- I mean I've been involved in several recent</p> <p>2 school board cases in which we've looked at city elections.</p> <p>3 So it's not usual because they're -- I don't like to mix</p> <p>4 partisan and nonpartisan elections, and they are usually the</p> <p>5 source of the other nonpartisan elections. And they're</p> <p>6 often on the same ballot which can be nice. They're on</p> <p>7 similar election cycles. So I mean I normally do look to</p> <p>8 see if there are other similarly situated, similar types of</p> <p>9 elections.</p> <p>10 But I just don't recall how, in this particular case,</p> <p>11 how that came about. I don't know, you know, if someone</p> <p>12 said -- I mean this may have been something that could have</p> <p>13 come from almost any place. But I don't -- I have no</p> <p>14 recollection of where, where that came from.</p> <p>15 Q You don't recall whose idea it was to look at Yakima School</p> <p>16 Board elections as well?</p> <p>17 A I -- no. I probably would have looked at them. So it's --</p> <p>18 I would have at least looked at school board elections at</p> <p>19 some point in my -- in sort of my broader look at the case.</p> <p>20 But I can't say that I had started that before someone else</p> <p>21 suggested it. So I just don't know.</p> <p>22 Q Where did you get the information regarding Yakima School</p> <p>23 Board elections?</p> <p>24 A I believe that I asked to have Peter Morrison provide the</p> <p>25 school board election information, compile that information,</p>

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<p>1 'cause I wasn't doing -- I wasn't building the election data</p> <p>2 sets, he was. And that's my recollection is that, that he</p> <p>3 produced the school board election history and data set.</p> <p>4 That's my recollection.</p> <p>5 Q You note also that "The Yakima School Board Elections are</p> <p>6 nonpartisan elections and cover a very similar geography."</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Can you explain how the boundaries of the Yakima School</p> <p>10 Board district relate to the boundaries of the City of</p> <p>11 Yakima?</p> <p>12 A I don't recall the specifics. I remember looking at a map</p> <p>13 in the sort of the -- it struck me that the central part of</p> <p>14 both districts overlap. But I don't remember what the,</p> <p>15 either the proportion connection is or what the exact -- I</p> <p>16 just don't remember what the exact differences are.</p> <p>17 Q Did you analyze the differences in the respective electorate</p> <p>18 between city council elections and school board elections?</p> <p>19 A I don't recall doing anything that looked specifically at</p> <p>20 the kind of in-and-out difference. I don't recall doing</p> <p>21 that.</p> <p>22 Q Did you perform a racially polarized voting analysis of the</p> <p>23 school board elections?</p> <p>24 A I mean there certainly isn't one recorded here. This</p> <p>25 discussion seems to be a discussion about the general</p>	<p>1 A I don't think so. I think if we had results, we'd report</p> <p>2 the results. I guess my recollection is that we don't have</p> <p>3 actual results here. I distinctly remember analyzing school</p> <p>4 board elections. But I don't know if that's because we</p> <p>5 analyzed school board elections for the supplement or not.</p> <p>6 Q You say that you assume that you conducted a visual</p> <p>7 examination of precinct vote totals. Is that right?</p> <p>8 A Yes.</p> <p>9 Q Do you recall that you did that?</p> <p>10 A No, I don't.</p> <p>11 Q Would you have known, in such an examination, which</p> <p>12 precincts are more Latino or what the percentage of Latinos</p> <p>13 in each precinct was?</p> <p>14 A There are the precincts that are -- that fall at the center</p> <p>15 of the demonstration districts. But it -- I mean it could</p> <p>16 also be just looking at our precinct list and not seeing</p> <p>17 much variation across precincts. Either one of those would</p> <p>18 be -- would lead you to the same conclusion.</p> <p>19 Q I'd to hand you what will be marked as Exhibit 8.</p> <p>20 [Deposition Exhibit No. 8 marked.]</p> <p>21 Q (By Ms. Khanna) If you turn to page 23 of 8, Exhibit 8 --</p> <p>22 actually, let me backtrack. Exhibit 8 is the expert report</p> <p>23 of Dr. Peter Morrison; is that right?</p> <p>24 A That's correct.</p> <p>25 Q And if you turn to page 23, Dr. Morrison provides a table of</p>
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<p>1 pattern in the elections. But certainly there's -- I mean</p> <p>2 I've looked. At least at the precinct level, there's at</p> <p>3 least a visual examination of precinct-level results. So</p> <p>4 I've seen at least a spreadsheet of the precinct-level</p> <p>5 results at this point because I also look at precincts, you</p> <p>6 know, the location of precincts related to where they're</p> <p>7 located in the city election 'cause otherwise I wouldn't</p> <p>8 know, you know, whether there was -- it says "without much</p> <p>9 apparent support from Hispanic or non-Hispanic voters."</p> <p>10 You could have come to that conclusion by just noting</p> <p>11 that there's almost no variation across, across precincts</p> <p>12 knowing that precincts vary to some degree. But I would</p> <p>13 have had to have at least seen precinct-level election</p> <p>14 results, I think, to conclude that. So I don't know if</p> <p>15 there was anything beyond that. I wouldn't, I wouldn't</p> <p>16 think there was a full analysis because there's not any</p> <p>17 analysis report here.</p> <p>18 Q You don't recall doing racially polarized voting analysis of</p> <p>19 the school board elections?</p> <p>20 A I want to -- I mean so we do this but in a supplement where</p> <p>21 we're explicitly analyzing school board elections. I just</p> <p>22 don't know. I mean there may be. I just don't recall.</p> <p>23 Q Is it possible that you performed a racially polarized</p> <p>24 voting analysis of these school board elections in your</p> <p>25 initial report and didn't report the results?</p>	<p>1 Yakima School Board elections. Have you seen this table</p> <p>2 before?</p> <p>3 A I don't know. I wouldn't be surprised. It looks like a</p> <p>4 table in Yakima School Board elections. I think this may</p> <p>5 have been something that was provided to me that</p> <p>6 Dr. Morrison produced. I can't be certain. But I've</p> <p>7 certainly -- I've been looking at it. I don't immediately</p> <p>8 believe I've never seen it before. So . . .</p> <p>9 Q And you testified earlier that you have reviewed</p> <p>10 Dr. Morrison's report; is that right?</p> <p>11 A Yes, I did see Dr. Morrison's report.</p> <p>12 Q This table, of course, is included in Dr. Morrison's report.</p> <p>13 A So if I looked at all the pages, I would have seen it. But</p> <p>14 I actually, again, don't recall sort of what level I</p> <p>15 actually looked through Dr. Morrison's report. Large parts</p> <p>16 of what he's doing are not my part of the case.</p> <p>17 Q But your recollection is that Dr. Morrison is the one who</p> <p>18 provided you the data about the Yakima School Board election</p> <p>19 history and both totals; is that right?</p> <p>20 A That's my recollection. It's not impossible that I, you</p> <p>21 know, went to -- you know, just -- 'cause I'm on county</p> <p>22 websites all the time, pulling down election returns. If</p> <p>23 there is such a thing in Yakima county, I might have looked</p> <p>24 at that. I just don't recall. But if I had to guess, I</p> <p>25 would guess it would have come from Dr. Morrison since he</p>

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<p>1 was more involved in this -- in that aspect of it for the</p> <p>2 city elections as well, putting together the database</p> <p>3 itself. That would be my best guess at the time.</p> <p>4 Q So in your -- I'll ask you to keep this chart out, just</p> <p>5 handy. In your report, you note that there are three</p> <p>6 contested elections with Hispanic candidates. Is that</p> <p>7 right? I'm looking at the beginning of page 16 of your</p> <p>8 report.</p> <p>9 A Yes.</p> <p>10 Q What is date range for determining those three elections?</p> <p>11 A I don't recall.</p> <p>12 Q Is the date range the same as the date range in the chart on</p> <p>13 page 23 of Dr. Morrison's report?</p> <p>14 A If they're in that date range, that would -- then it would</p> <p>15 be. But again, I don't -- this -- what I reference here is</p> <p>16 something about over the last decade or most of the last</p> <p>17 decade. So it's suggesting that you're looking at something</p> <p>18 like a decade, which would seem to be compatible with this.</p> <p>19 But I really don't know exactly what the -- I don't specify</p> <p>20 the dates here. So I don't know.</p> <p>21 Q So in one of those three contested elections in which an</p> <p>22 Hispanic candidate ran as a candidate, in one of those</p> <p>23 elections the Hispanic candidate wins; is that right?</p> <p>24 A That's what I said.</p> <p>25 Q That was Vickie Ybarra?</p>	<p>1 Q What is that opinion based on?</p> <p>2 A Again I would think it's based on looking at precinct-level</p> <p>3 returns. But I don't recall.</p> <p>4 Q You do not state in your report what that opinion is based</p> <p>5 on?</p> <p>6 A No.</p> <p>7 Q What would you have read in precinct-level reports that</p> <p>8 would cause you to make a statement like that?</p> <p>9 A Either that that's -- basically that Saenz was not carrying</p> <p>10 large -- showing strong performance in the Hispanic</p> <p>11 precincts in the area, the districts referenced in the</p> <p>12 earlier report or that there simply wasn't much variability</p> <p>13 and Saenz is basically not, not showing any strong</p> <p>14 precincts.</p> <p>15 Q You certainly don't mention that you analyzed the extent to</p> <p>16 which Saenz was receiving support in the Hispanic precincts?</p> <p>17 A Again this -- there isn't any indication here of exactly</p> <p>18 what I was looking at. So I don't -- just -- I couldn't say</p> <p>19 specifically what that was. But based on the sentence and I</p> <p>20 just -- I don't have a specific recollection of what exactly</p> <p>21 I was looking at there.</p> <p>22 Q Are you aware of any evidence to back up this statement that</p> <p>23 "The Hispanic candidate loses without much apparent support</p> <p>24 from either Hispanics or non-Hispanics"?</p> <p>25 A Well, I looked at something. And what I looked at didn't</p>
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<p>1 A It's -- I said Ybarra. So I know that's the right last</p> <p>2 name.</p> <p>3 Q That was 2003; is that right?</p> <p>4 A I don't know.</p> <p>5 Q If you look at Dr. Morrison's chart, does it reflect that</p> <p>6 Ybarra won in 2003?</p> <p>7 A It shows Ybarra in Position 4, No. 7, Position 4, Ybarra and</p> <p>8 opponent Camerer and Ybarra winning.</p> <p>9 Q Was that in 2003?</p> <p>10 A That's 2003.</p> <p>11 Q Are you aware of whether any Hispanic candidate has won a</p> <p>12 contested election to the Yakima School Board since then?</p> <p>13 A No, I'm not.</p> <p>14 Q Are you aware of whether any Hispanic candidate had won a</p> <p>15 contested election to the Yakima School Board prior to</p> <p>16 Ms. Ybarra?</p> <p>17 A No. I mean I think Dr. Engstrom said something about that</p> <p>18 there hadn't been a contested victory in the last 10 years.</p> <p>19 So I guess maybe I know something about that. I think I've</p> <p>20 heard something of that, but I haven't looked specifically</p> <p>21 at that.</p> <p>22 Q You go on to say that "In another election Saenz, the</p> <p>23 Hispanic candidate, loses without much apparent support from</p> <p>24 either Hispanics or non-Hispanics; is that right?</p> <p>25 A Yes.</p>	<p>1 show apparent support. The fact that it says "apparent</p> <p>2 support" makes it seem like I was looking at something like</p> <p>3 a set of precinct totals. But I don't remember</p> <p>4 specifically. That was my conclusion from, from looking at</p> <p>5 something. I just don't recall what it was.</p> <p>6 Q Would you have made that determination based on Mr. Saenz's</p> <p>7 vote totals received?</p> <p>8 A You could conclude that from, from vote totals. But I mean</p> <p>9 it would have to be very -- I mean when somebody gets 100</p> <p>10 votes out of 10,000, they couldn't be getting much vote</p> <p>11 support from anybody. So I don't think it was simply the</p> <p>12 vote totals.</p> <p>13 Q Did you perform any analysis to determine whether Saenz was</p> <p>14 the candidate of choice among Latinos?</p> <p>15 A I don't believe so. I think I'm referring to Saenz here as</p> <p>16 an Hispanic candidate, not as a candidate of choice.</p> <p>17 Q Do you know whether Saenz received a majority of Latino</p> <p>18 votes?</p> <p>19 A No idea.</p> <p>20 Q Do you know whether a majority of non-Latinos voted against</p> <p>21 him?</p> <p>22 A No idea.</p> <p>23 Q But you have --</p> <p>24 A I'm sorry. I've been looking at his vote totals. I can't</p> <p>25 see how he would have gotten those vote totals if he had</p>

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<p>1 gotten a majority of the non-Hispanic vote. So I don't</p> <p>2 think he got a majority of the non-Hispanic vote just based</p> <p>3 on the vote totals. But I don't know whether he was -- I</p> <p>4 mean, he may have been even less preferred by Hispanics than</p> <p>5 he was by non-Hispanics. I don't know.</p> <p>6 Q But you assume, by looking at the vote totals, that a</p> <p>7 majority of non-Latinos voted against him; is that right?</p> <p>8 A That's what it looks like to me.</p> <p>9 Q You do know that he has been identified as having a Latino</p> <p>10 surname; is that right?</p> <p>11 A That's correct.</p> <p>12 Q And he was defeated; is that right?</p> <p>13 A That's correct.</p> <p>14 Q You say in your report that "In the third contest, the</p> <p>15 results appear to me more similar to the Soria 2009 general</p> <p>16 election."</p> <p>17 A Yes.</p> <p>18 Q What is that opinion based on?</p> <p>19 A Again, it would have been looking at something similar. But</p> <p>20 I don't know exactly what that was.</p> <p>21 Q Are you aware of any evidence that would back up that</p> <p>22 statement or what that evidence would be?</p> <p>23 A I don't know. I'd have to look back at the election</p> <p>24 results. I think that's -- you know, something in the</p> <p>25 election results suggests that. But I don't know.</p>	<p>1 standard errors. So it's, it's an election in which the</p> <p>2 point estimates are not inconsistent with Hispanic cohesion.</p> <p>3 The scatter plots and the standard error suggest some</p> <p>4 caution. So . . .</p> <p>5 Q So the question is, does your EI estimate of the Soria 2009</p> <p>6 general election demonstrate Hispanic cohesion?</p> <p>7 A The point estimate?</p> <p>8 Q Yes.</p> <p>9 A Taken alone, the point estimate would suggest Hispanic</p> <p>10 cohesion.</p> <p>11 Q In Soria general -- 2009 general election, the non-Hispanic</p> <p>12 crossover vote was in the low 30 percent range; is that</p> <p>13 right?</p> <p>14 A That is correct.</p> <p>15 Q And in that election, Mr. Soria was the Latino candidate of</p> <p>16 choice?</p> <p>17 A Our -- again we can't say that. By the social science</p> <p>18 standard, we can't reject the possibility that he was not.</p> <p>19 But the point estimate suggests that he was the Hispanic</p> <p>20 candidate of choice, yes.</p> <p>21 Q And in the school board election to which you compare the</p> <p>22 Soria 2009 general election, Mr. Navarro was the Latino</p> <p>23 candidate; is that right?</p> <p>24 A Correct.</p> <p>25 Q And Mr. Navarro was defeated?</p>
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<p>1 Q When you talk about "election results," are you referring</p> <p>2 to -- what are you referring to?</p> <p>3 A Again just the vote by precinct.</p> <p>4 Q What do you mean when you say "It is similar to the Soria</p> <p>5 2009 general election"?</p> <p>6 A I assume it's similar to the -- I don't know what that means</p> <p>7 other than just that. But it's -- I think what I'm</p> <p>8 identifying here is that you've got, you know, sort of a</p> <p>9 mixed election pattern and something I saw there looked to</p> <p>10 me like the Soria contest. But I don't know specifically</p> <p>11 what that was.</p> <p>12 Q So I'm sorry. Just to clarify your previous statement, are</p> <p>13 you saying that the Soria 2009 general election reflects a</p> <p>14 mixed election pattern?</p> <p>15 A No. That the -- that Ybarra winning the election; Saenz you</p> <p>16 know, losing the election without a lot of variation; and</p> <p>17 then that the -- that Soria maybe is somewhere in between,</p> <p>18 losing. All right? So it's not the Ybarra election. But</p> <p>19 apparently something in there looked to me like it might</p> <p>20 indicate there was a little more variation across precincts.</p> <p>21 Just that's, that's what I -- that's all I see here.</p> <p>22 Q Did your EI estimate of the Soria 2009 general election</p> <p>23 demonstrate Hispanic cohesion?</p> <p>24 A Again subject to all the things we've talked about, that a</p> <p>25 point estimate is -- looks like cohesion. You have huge</p>	<p>1 A Yes.</p> <p>2 Q In the last sentence on page 16, you concluded that "The</p> <p>3 school board contests do not demonstrate consistent</p> <p>4 polarized voting in Yakima." It's on page 16.</p> <p>5 A Oh, I'm sorry.</p> <p>6 MR. FRANCIS: Which exhibit?</p> <p>7 MS. KHANNA: The initial report.</p> <p>8 MR. FRANCIS: Thank you.</p> <p>9 A Yes.</p> <p>10 Q (By Ms. Khanna) But you do not actually perform a racially</p> <p>11 polarized voting analysis?</p> <p>12 A No.</p> <p>13 Q Is it your practice to opine on the level of polarization</p> <p>14 without actually conducting a racially polarized voting</p> <p>15 analysis?</p> <p>16 A I am just looking at the issue of consistent polarized</p> <p>17 voting. And my impression was that these school board</p> <p>18 elections are highly variable and so are consistent with the</p> <p>19 city elections which are highly variable. So that's -- I</p> <p>20 have no problem doing that without doing an entire polarized</p> <p>21 voting analysis.</p> <p>22 Q So you're -- it is your practice to draw a conclusion on the</p> <p>23 extent to which elections are polarized without doing a</p> <p>24 racially polarized voting analysis?</p> <p>25 A I'm not drawing conclusions about the extent to which the</p>

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<p>1 school board elections are polarized, just whether they're</p> <p>2 consistently polarized. So I'm talking about -- I'm</p> <p>3 addressing here the issue of the lack of consistency in the</p> <p>4 city elections. And the look at the -- this look at the</p> <p>5 school board elections suggested that they may similarly</p> <p>6 be -- not show a consistent pattern of polarized elections.</p> <p>7 Q They "may" show a pattern? Is that what you just said?</p> <p>8 A That they do not show a consistent pattern of polarized</p> <p>9 elections. That is, their -- the city elections are</p> <p>10 consistent with the lack of consistency in polarized</p> <p>11 elections in the city.</p> <p>12 Did I get that right? The school board elections? I</p> <p>13 probably got that wrong.</p> <p>14 The lack of consistency in polarization in this brief</p> <p>15 look at the school board elections is not inconsistent with</p> <p>16 the same pattern in the city election.</p> <p>17 Q So you're saying that the school board elections demonstrate</p> <p>18 a lack of consistency in polarization; is that right?</p> <p>19 A That's based on the three things I mentioned here. That's</p> <p>20 my impression of those elections is that they don't look</p> <p>21 like elections taking place in a consistently polarized --</p> <p>22 with a set of consistently polarized voters, yes.</p> <p>23 Q So are you saying that there are some school board elections</p> <p>24 that are polarized and some school board elections that are</p> <p>25 not polarized?</p>	<p>1 unusual. So assuming we're looking at roughly the same</p> <p>2 turnout patterns, that looks to me like an election in which</p> <p>3 Ybarra is getting -- and again, completely consistent with</p> <p>4 the other results we've seen here, Ybarra's getting a lot of</p> <p>5 crossover voting.</p> <p>6 And like there -- I don't know that Ybarra got the</p> <p>7 majority of Anglo votes, although it seems likely that</p> <p>8 that's true. But even if that's not true, again, I don't</p> <p>9 prescribe [sic] to the theory that, that somebody who gets</p> <p>10 48 percent of the Anglo votes is the victim of Anglo</p> <p>11 polarized block voting or polarized block voting.</p> <p>12 So I think that's -- the Ybarra election is</p> <p>13 inconsistent with polarized voting. And the inconsistency</p> <p>14 in the pattern between the Ybarra, the Saenz, and then</p> <p>15 Navarro elections are -- that's also inconsistent with</p> <p>16 consistent polarized voting.</p> <p>17 Q Do you know that the Ybarra election was not racially</p> <p>18 polarized?</p> <p>19 A I guess I don't know that. But I can't see how any pattern</p> <p>20 of results -- any pattern of vote distribution -- again, if</p> <p>21 you're willing to define racially polarized voting as voting</p> <p>22 in which the majority -- if the candidate of choice of</p> <p>23 Hispanics is not Ybarra and the candidate of choice of</p> <p>24 Anglos is Ybarra and you're willing to call that racially</p> <p>25 polarized voting. Even then I don't see how you could get</p>
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<p>1 A My impression is that there's a lot of variability in the</p> <p>2 results. Ybarra wins. So it's hard to see how that's the</p> <p>3 result of racial polarization. So we have one election at</p> <p>4 least of the three I looked at that -- that is not -- could</p> <p>5 not be racially polarized voting. And there's inconsist --</p> <p>6 if that pattern was -- sort of if the voting pattern was</p> <p>7 consistent, we should see something -- we should see more</p> <p>8 similarity across these elections.</p> <p>9 They look like these elections are being decided on</p> <p>10 different kinds of issues than just the ethnicity of the</p> <p>11 candidate, 'cause we held that constant here and we got very</p> <p>12 different results. Consistent polarized elections produce</p> <p>13 consistent election results.</p> <p>14 Q So is it your understanding that the Ybarra election could</p> <p>15 not have been racially polarized?</p> <p>16 A Maybe it's a failure of imagination on my part. And I</p> <p>17 apologize if it is. But I have a hard time thinking of a</p> <p>18 scenario in which a group that's 10 percent of the voters,</p> <p>19 so 10 percent minority, 90 percent majority, if the majority</p> <p>20 is voting in a racially polarized fashion, I don't -- I</p> <p>21 can't see how you could win that election.</p> <p>22 I mean this is right there. Ybarra's getting 5500</p> <p>23 votes. I don't think they can possibly have come from -- it</p> <p>24 can't possibly have come from Hispanics, given the turn --</p> <p>25 unless the turnout pattern was just something very, very</p>	<p>1 to the point of polarization given those vote totals. I</p> <p>2 just don't.</p> <p>3 Again, I don't -- I can't say for certain that</p> <p>4 that's -- that that is not a racially polarized election.</p> <p>5 But I'm going on basis of the -- of these numbers. And</p> <p>6 based on these numbers, I don't -- I can't see how that's</p> <p>7 consistent with a racially polarized vote.</p> <p>8 Q You can't say for certain because you didn't perform any</p> <p>9 analysis of the -- a racially polarized voting analysis of</p> <p>10 the Ybarra election?</p> <p>11 A I'm not suggesting that because I have a racially -- I'm not</p> <p>12 relying on a racially polarized voting analysis to make that</p> <p>13 argument. I'm relying on the inconsistency of the outcome</p> <p>14 pattern with what I think of as a racially polarized vote.</p> <p>15 Q You did not perform an EI analysis of the Ybarra election?</p> <p>16 A Yeah. I'm not -- that's not what I'm referring to here.</p> <p>17 I'm just referring to the pattern that's evident in the</p> <p>18 election result.</p> <p>19 Q You did not perform an ER analysis or a homogeneous precinct</p> <p>20 analysis or any other kind of racially polarized --</p> <p>21 A I don't recall that any of that analysis was done for these</p> <p>22 cases. But I know there was school board analysis. So I</p> <p>23 can't say for certain that there wasn't, that that wasn't in</p> <p>24 with the school board analysis. But I don't recall looking</p> <p>25 at it. And it's not the basis for what I'm saying.</p>

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<p>1 Q Do you have an opinion on whether the Saenz and Navarro 2 elections were racially polarized? 3 A Well, my impression was that the Saenz election involved 4 Saenz's loss without much apparent support from either 5 Hispanics or non-Hispanics. So I seem to see something 6 that's fairly flat there. Again that would suggest that the 7 voting was not racially polarized. So again, that's -- I'm 8 just -- all I can say is what I said. That's my, that's my 9 impression. 10 Q Do you know that the Saenz election was or was not racially 11 polarized? 12 A I don't know. 13 Q Do you know if the Navarro election was or was not racially 14 polarized? 15 A I don't know. 16 Q You didn't perform any ER, EI, or homogeneous precinct 17 analysis to determine whether or not any of those elections 18 was racially polarized? 19 A Again I don't -- that's not the basis for what I'm saying 20 here. But I don't know whether that was performed or not. 21 Q So you analyzed the most recent school board election in 22 your supplemental report; is that right? 23 A I think that's correct. 24 Q So you can turn now to Exhibit 5, which is your supplemental 25 report.</p>	<p>1 confidence interval we've seen for the support for a 2 Hispanic candidate. 3 Q How did you make that determination to characterize this as 4 a "modest Hispanic cohesion"? 5 A It's, it's below 90 percent. So, you know, we're sort of 6 back in that same category again: Something more than a 7 quarter, maybe closer to a third, of voters are crossing 8 over. I think sort of what's -- that's kind of what I would 9 characterize as "moderate," something along those lines in 10 terms of cohesion. 11 Q So you just said "moderate." And your report says "modest." 12 Is there a difference between "modest" and "moderate" 13 cohesion? 14 A I don't think so. 15 Q Ms. Villanueva received just over 35 percent of non-Latino 16 votes; is that right? 17 A That's correct. 18 Q And she was defeated? 19 A Yes, I believe so. 20 Q You note on page 1 that "The pattern of support for 21 Villanueva is also scattered with the Hispanic proportion of 22 the actual voters being well below 10 percent in three of 23 the four precincts that Villanueva carried." 24 A Yes. 25 Q By this you mean that the Latino turnout was not very high</p>
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<p>1 A [Complies.] All right. 2 Q And the first heading in Exhibit 5, your supplemental 3 report, is "The Yakima School Board 2013 General Election," 4 is that right? 5 A That's correct. 6 Q In fact here you did perform a racially polarized voting 7 analysis of this particular school board election; is that 8 right? 9 A That's correct. 10 Q Who was the Latino candidate of choice in that election 11 according to your analysis? 12 A It looks like the candidate of choice is Villanueva or 13 Villanueva. I'm not sure how that's pronounced. 14 Q You report that she received over 70.1 percent of Latino 15 votes; is that right? 16 A I think it's exactly 70.1 percent. 17 Q And you characterize this -- on page 1 of your report, you 18 characterize this as "real if modest Hispanic cohesion." Do 19 you see that? 20 A Yes. 21 Q What percentage of Latino voters has to vote for the Latino 22 candidate for you to consider it real Hispanic cohesion? 23 A I think what we're looking at here is the -- what I'm 24 referencing by "real" is the fact that the confidence 25 interval is relatively narrow. This is by far the narrowest</p>	<p>1 in three of the four precincts that Villanueva carried? 2 A Yes. 3 Q Is there anything else you mean by that? 4 A It's -- again, it's -- but it's a bounds analysis. So if 5 she is carrying precincts in which the proportion of 6 Hispanic voters is below 10 percent, then she's getting a 7 lot of support in those precincts from Anglo candidates. So 8 in those precincts her victory is attributable to the Anglo 9 vote, not to the Hispanic vote. 10 Again, in -- if we were following along a kind of 11 pattern of where, as we move across types of districts, like 12 if the proportion of voters is below 10 percent, these are 13 extreme Anglo precincts; and she's carrying them. And when 14 you have racially polarized voting, minority candidates 15 don't usually carry extreme Anglo precincts. That's a 16 bounds analysis; right? That's -- if the voting is 17 polarized you -- in extreme Anglo precincts, minority 18 candidates don't get very much vote. They certainly don't 19 carry the precinct. 20 Q The majority of non-Latinos voted against Ms. Villanueva? 21 A That's what our estimate shows. 22 Q In fact 65 percent -- 23 A Again, remember that's a -- it's a rough measure of central 24 tendency across precincts. And our analysis allows us to 25 have different things happening in different precincts.</p>

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<p>1 This tells us that, that there are precincts in which that</p> <p>2 average characterization can't be true as a matter of</p> <p>3 bounds. But there were precincts where substantially larger</p> <p>4 proportion of Anglos are voting for her because otherwise</p> <p>5 she couldn't have gotten those election results.</p> <p>6 Again, the same variability we see in the scatter plots</p> <p>7 we see here. And it tells us that that's -- again whatever</p> <p>8 those -- whatever you think about the numbers being</p> <p>9 moderate, modest, whatever they are, the important thing is</p> <p>10 that they -- that there is variations around that from</p> <p>11 precinct to precinct that just isn't consistent with an</p> <p>12 electorate that's racially polarized.</p> <p>13 Q But among all the voters who cast votes in this election, a</p> <p>14 majority of non-Latinos voted against Ms. Villanueva; is</p> <p>15 that right?</p> <p>16 A That's what the average would suggest, yes.</p> <p>17 Q Are you familiar with the circumstances surrounding this</p> <p>18 election?</p> <p>19 A I heard about them in Professor Engstrom's report and heard</p> <p>20 about them in Professor Engstrom's deposition. And I think</p> <p>21 we saw a newspaper article about them. So I'm familiar</p> <p>22 with -- to that extent, I'm familiar, yes.</p> <p>23 Q What is your understanding of the circumstances surrounding</p> <p>24 that election?</p> <p>25 A My understanding is that Professor Engstrom's understanding</p>	<p>1 doesn't give me great confidence in, in that particular</p> <p>2 candidate, I guess. But I'm not sure exactly how that -- it</p> <p>3 obviously didn't affect what I did in this analysis. And I</p> <p>4 stand by what this, what this it says. So I guess it's not</p> <p>5 changing my world view completely. But, again, I know only</p> <p>6 very little about that. And if I knew more about it, maybe</p> <p>7 it would change my view.</p> <p>8 Q Would the voters have to have known about whether a</p> <p>9 candidate had determined she was no longer running for the</p> <p>10 office in order to determine -- or in order to understand</p> <p>11 which of these candidates has a Latino surname?</p> <p>12 A No.</p> <p>13 Q Does the -- your understanding about the circumstances</p> <p>14 surrounding this election affect in any way your perspective</p> <p>15 on the totality of the circumstances in this case?</p> <p>16 A What I know at this point probably not, just because I'm</p> <p>17 just more -- I don't know how widely -- when did this</p> <p>18 happen, how widely known was it among actual voters. That</p> <p>19 would be important whether this -- whether there was a</p> <p>20 pattern -- I mean one of the things that voters might infer</p> <p>21 from a pattern of actions like that is that the person was</p> <p>22 not a serious candidate.</p> <p>23 I don't know whether this was part of a pattern. I</p> <p>24 mean it would just -- the circumstances under which someone</p> <p>25 does that, there are situations in which saying, you know,</p>
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<p>1 is that the Anglo that won that contest actually decided at</p> <p>2 some point that they didn't want to be -- or announced</p> <p>3 something to the effect that they didn't want to be --</p> <p>4 didn't want to be on the school board, that they weren't</p> <p>5 formally withdrawn and that they subsequently won the</p> <p>6 election. That's -- in a nutshell, that's what I recall.</p> <p>7 Q Does that understanding affect in any way your conclusion</p> <p>8 about racially polarized voting as it pertains to this</p> <p>9 particular election?</p> <p>10 A It doesn't change anything in the analysis. Variability's</p> <p>11 variability. It certainly -- I mean if I was doing a sort</p> <p>12 of serious candidate analysis, it's not something that I</p> <p>13 think is, you know -- particularly -- highlights</p> <p>14 particularly the seriousness of a candidacy. So it isn't --</p> <p>15 I mean that's -- a person who withdraws is -- risks -- of</p> <p>16 course, I know there's some dispute about this.</p> <p>17 I'll just say, if, as represented, that's the facts of</p> <p>18 the case and if that was known, so people knew that this</p> <p>19 person didn't want to be on the school board, you know, I</p> <p>20 don't know. Maybe the voters are punishing somebody for not</p> <p>21 wanting to be on the school board, putting them on the</p> <p>22 school board.</p> <p>23 But I don't think it changes -- it doesn't change what</p> <p>24 the analysis is. It doesn't change how we talk about the</p> <p>25 variability. But it certainly is not -- it certainly</p>	<p>1 if nominated, I will not run; if elected, I will not serve</p> <p>2 is actually a call to action. So I just don't know enough</p> <p>3 about it.</p> <p>4 It's -- it doesn't strike me as particularly, if I was</p> <p>5 running a campaign and I heard this as a rumor, I don't</p> <p>6 think I'd be a particularly happy person. But I just, I</p> <p>7 just don't know enough to say for sure. And with regard to</p> <p>8 my impression on totality of circumstances, it's -- in my</p> <p>9 view, I'm really talking about totality of the circumstances</p> <p>10 as they apply to, you know, to polarization and cohesion and</p> <p>11 the viability of a remedy district.</p> <p>12 I mean there's other -- the senate factor stuff, I'm</p> <p>13 not doing. So if it has to do with that, I really don't</p> <p>14 know how that might apply under those circumstances.</p> <p>15 Q On page 3 of your supplemental report, you state that the</p> <p>16 result from your "EI analysis for the 2013 city council</p> <p>17 primaries are substantively very similar to those reported</p> <p>18 by Dr. Engstrom;" is that right?</p> <p>19 A Yes.</p> <p>20 Q What is the basis for that conclusion?</p> <p>21 A We -- there's certainly more variation here than we saw</p> <p>22 before. And I guess, you know, absent a sort of chance to</p> <p>23 dig through that, there are sort of different ways you could</p> <p>24 characterize that. And so I thought really hard about, you</p> <p>25 know, if I was just looking at this, what would I -- you</p>

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1 know, what would I really see here?

2 So I see Reynaga is above 50 percent. So if we accept
3 the point estimate, he's candidate of choice. The
4 confidence interval is -- includes things outside the
5 choice. So this is not unlike something that we --
6 something that we saw before in regard to that election.

7 Jevons, I have as a not the candidate of choice. He's
8 not getting a majority vote. And professor Engstrom has
9 Jevons not getting the majority vote. We obviously will
10 differ about the support for Folsom-Hill. But again, these
11 are all three-way contests; and they're all somewhat
12 unstable. And I just -- I ask myself whether this was
13 substantively different. And I'd still think, in those
14 basic parameters, it's not more or less unstable than what
15 we saw in elections before.

16 They -- I think there is more -- I'm fairly confident
17 that our differences here reflect more than just the normal
18 difference in EI estimation. But three-way EI estimation is
19 much more sensitive to -- this is -- you're operating in
20 additional dimensions. And the likelihood of finding a
21 local minima is much higher in multiple dimensions. So it
22 doesn't -- it wouldn't surprise me that the results would be
23 more -- slightly more different across our two analyses.

24 I'm not confident yet that there isn't a sort of
25 functional explanation for this. That's why I would like to

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1 go back and see if we figure it out. But even if we can't
2 figure that out, I still don't think they're -- that they're
3 substantively different. And I just don't want to suggest
4 that there's something there that really undermines where we
5 are already with this, which I think is where we want to be.

6 Because these are not -- neither of these patterns is
7 particularly unexpected, I -- I mean the other thing I say I
8 always look at these things. And I guess I probably should
9 apologize for this. I probably shouldn't do this. But, you
10 know, Jevons is much closer to being the candidate of choice
11 in my analysis than in Dr. Engstrom's analysis.

12 So I guess, if it was the other way around, if he had
13 an Hispanic candidate close to being the candidate of choice
14 and I had it way down in third place or something, then
15 that's why it looks like maybe we're kind of going in
16 opposite directions there. So I think it's -- again, I
17 don't think he would come to a different conclusion based on
18 these had he gotten these numbers and I had gotten his
19 numbers. I think we'd both still be where we are and
20 rightly so.

21 Q So based on your conclusion that the results from your and
22 Dr. Engstrom's EI analysis are substantively very similar,
23 would you be amenable to testify based on Dr. Engstrom's
24 results?

25 A Sure.

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1 But I'm also going to check and find out who's right.
2 I'll say, again, there -- it's very possible that we
3 don't -- that no one's right here. These are precisely the
4 kinds of areas where -- I mean you're doing maximum
5 likelihood estimates. It's not unusual for people to run a
6 simulation a million times. These are -- these can get in a
7 local minima and be very difficult to dislodge without
8 substantially expanding the range of possible starting
9 points.

10 And so it's not at all uncommon in the literature to
11 see these tested very hard by lots of repetition. And so I
12 think probably one of the first things I would do is
13 basically take this and run it 100,000 times and find out
14 what the -- 'cause just I'm not sure exactly what the real
15 variation. It's much larger here than it would be for the
16 others; right? So if we run this -- if we run this 50 times
17 with 100 cases, we're going to get much bigger variation
18 than we would for the other kinds of estimates.

19 But I'm just not confident that this is within -- these
20 differences are within that range. If they are, then I
21 don't think we have anything -- because there is no right
22 answer. There is, there is no wrong answer; right? If
23 we're within that range of variation, then we're just
24 talking about basically being at different points that
25 represent reasonably stable probabilistic estimates of

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1 what's going on.

2 I think this -- the difference here in this somewhat
3 more difficult estimation area highlights again that we're
4 dealing with behavior that is not sharp, crisply defined.
5 And the data does not give us much leverage over that
6 not-crisply-defined behavior.

7 That's, I think, exactly why we have such different
8 estimates. I don't think those differences -- if we're
9 doing this right -- and I think we probably are -- we
10 couldn't get differences that big. If we had a 90-10 split
11 in the voters and you had even a reasonable distribution
12 across the range of precincts, it just wouldn't be possible
13 to come up with, with bounds estimates that could be this
14 far, this far off, even with a probabilistic technique.

15 So I think it's just another example of the fact that
16 we don't know for certain which of those estimates is
17 correct at this point. And at least I think there's a good
18 chance that it's simply because we don't have enough
19 information to know.

20 Q I'm going to ask you to look at Dr. Engstrom's S1 in
21 Exhibit 4, which is his supplemental report.

22 A [Complies.]

23 Q So while Dr. Engstrom reports a point estimate of 67.4 for
24 the Latino vote for Reynaga, you report a point estimate of
25 53.3 percent; is that right?

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<p>1 A That's correct.</p> <p>2 Q Would you classify those as -- those levels of cohesion</p> <p>3 differently?</p> <p>4 A Well, I mean my estimate is inside his confidence interval.</p> <p>5 His estimate is just slightly above my confidence interval.</p> <p>6 And again, given that we're doing probabilistic estimation</p> <p>7 and both of us are using relatively small numbers of</p> <p>8 simulation runs, you know, we can't be confident that those</p> <p>9 are -- these are not statistically significantly different</p> <p>10 numbers. They seem like they're substantively the same.</p> <p>11 Like they might be really different, but the most</p> <p>12 important thing to remember is that statistically we're not</p> <p>13 confident there's any difference at all. We're not</p> <p>14 confident that either of these is the right estimate. And</p> <p>15 we have no confidence at a normal 95 percent confidence</p> <p>16 level that we're actually talking about two different</p> <p>17 numbers. So they should be treated the same. So I treated</p> <p>18 them the same.</p> <p>19 Q So sitting here today, you cannot account for the</p> <p>20 differences between your estimates and Dr. Engstrom's</p> <p>21 estimate; is that right?</p> <p>22 A Again, I think I have some ideas about what might. I know</p> <p>23 more about what doesn't account for them. As I indicated</p> <p>24 earlier, I thought we actually -- one of us might be doing</p> <p>25 sequential candidate-against-the-field estimates and the</p>	<p>1 A You know, I may be mistaken. I thought what he said was</p> <p>2 that he first performed a candidate against the field and</p> <p>3 then followed that up by performing a true three way. And</p> <p>4 maybe I misunderstood. But he only followed up in the</p> <p>5 Jevons because of the fact that he didn't get a clear</p> <p>6 indication of who was the candidate of choice.</p> <p>7 If that's -- if -- okay. Now suppose I'm wrong about</p> <p>8 that. So suppose that the Reynaga, I'm doing the full three</p> <p>9 candidates and he's doing Reynaga against the field, then</p> <p>10 there's nothing inconsistent with these results at all; and</p> <p>11 the results are certainly much more consistent for the</p> <p>12 Position 7. So if Position 7 -- if his result from --</p> <p>13 It's difficult to say 'cause it says, you know, his</p> <p>14 primary versus two candidates, which is -- could be a</p> <p>15 statement of fact that there was a primary with two other</p> <p>16 candidates. Or it could be a statements of the analytical</p> <p>17 technique that this is just a single bivariate EI, Jevons</p> <p>18 against the field. But if it is in fact not just -- that is</p> <p>19 actually a full three way, it's very close to the estimate</p> <p>20 that I get for Jevons. And the Reynaga could be further</p> <p>21 away.</p> <p>22 So his -- if he ran -- essentially ran a consistent --</p> <p>23 if these two results reflected the same analytical approach,</p> <p>24 they might be closer to these results.</p> <p>25 Q Did you perform a three-way estimate for either of these</p>
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<p>1 other doing true all-the-candidates-at-once estimates. And</p> <p>2 my understanding now from Professor Engstrom's deposition is</p> <p>3 that he was doing all at once, not sequential against the</p> <p>4 field, not that there's anything wrong with either of those</p> <p>5 techniques.</p> <p>6 But just, if we're in the same techniques, we would</p> <p>7 probably expect to be fairly close. On the other hand,</p> <p>8 we're not -- we don't have any numbers that are</p> <p>9 significantly different. So again, I, more than anything</p> <p>10 else, just out of curiosity, would like to know if we're</p> <p>11 looking at things that reflect just the instability of the</p> <p>12 technique or that somewhere we're operating out of different</p> <p>13 data assumptions.</p> <p>14 But I don't know -- at this point I don't know what the</p> <p>15 differences come from. But there's no -- there's nothing in</p> <p>16 the statistical information that suggests they need to come</p> <p>17 from estimating different true parameters. So there's a --</p> <p>18 there are a range of true parameters that would produce</p> <p>19 exactly these two estimates and not be different from each</p> <p>20 other with regard to the true parameter. And so I'm fine</p> <p>21 with it. But I will be curious to know what else might be</p> <p>22 generating that instability.</p> <p>23 Q Is it your understanding that Dr. Engstrom performed a</p> <p>24 three-way EI estimation for both the Reynaga election and</p> <p>25 the Jevons election?</p>	<p>1 elections?</p> <p>2 A Both of them are three way.</p> <p>3 Q Both of them are three way?</p> <p>4 A Just 'cause we're using a lot of terminology here, I'm not</p> <p>5 sure exactly how to -- the way I usually think of this is to</p> <p>6 do a sort of sequential analyses in which you -- in which</p> <p>7 you turn this into bivariate. So we're usually interested</p> <p>8 in -- in this case where we have two Anglo candidates and we</p> <p>9 have one Hispanic candidate. So putting the two Anglo</p> <p>10 candidates together and saying, Okay, here's the total votes</p> <p>11 for the Anglos candidates, here's the total vote for the</p> <p>12 Hispanic candidate, we do that all the time. There's not a</p> <p>13 problem with doing that. It just generates a different</p> <p>14 estimate because you're not trying to simultaneously model</p> <p>15 very specifically what's happening in the three individual</p> <p>16 candidacies.</p> <p>17 Other -- you can do that -- you could do that and still</p> <p>18 produce an individual estimate for each of the candidates.</p> <p>19 And your first estimate would be Hispanic candidate against</p> <p>20 the Anglo field. Then your second would be, say, Ettl</p> <p>21 against the challenger field and so forth. So that would be</p> <p>22 sequential bivariate EI.</p> <p>23 You also can, in an RxC analysis, you can just -- you</p> <p>24 can expand the matrix so that it's not just a matrix of</p> <p>25 values for the candidate but it is a, you know, is a race by</p>

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<p>1 candidate. So you now have multidimensional matrix. And</p> <p>2 you can now estimate independently the ideal position of</p> <p>3 splits for all the candidates in a single simultaneous</p> <p>4 estimation. That's what -- that's what this reflects.</p> <p>5 There's no bivariate estimation here at all. In both</p> <p>6 cases, it's a complete single RxC three-way analysis. And I</p> <p>7 thought from the -- I thought initially that these both</p> <p>8 reflected bivariate. Then I thought, after the deposition,</p> <p>9 they both reflected full information, three at once. If</p> <p>10 they're actually two different things, then I'm in another</p> <p>11 position. So hopefully we can -- I don't know. Hopefully</p> <p>12 we can work that out in some way that we all understand.</p> <p>13 Q Just so I understand, the analysis that you performed was</p> <p>14 not -- for instance in the Reynaga election, it was not the</p> <p>15 Latino candidate against the non-Latino candidates?</p> <p>16 A No. This -- you can -- Dr. Engstrom, Professor Engstrom is</p> <p>17 always rightly telling us not to throw away information if</p> <p>18 we don't have to throw away information. We gain modest,</p> <p>19 very modestly, we gain bounds information by doing all these</p> <p>20 at once rather than artificially treating the Ettl, Noel</p> <p>21 support simultaneously.</p> <p>22 If we have substantive reasons for doing that, we gain</p> <p>23 a little bit more. For example, if Reynaga was the</p> <p>24 incumbent and Noel and Ettl were a couple of minor</p> <p>25 challengers, you gain very little independent information.</p>	<p>1 than one way to do that. And some of the programming, at</p> <p>2 least one of the methods doesn't produce very -- produces</p> <p>3 good results only under a narrow set of circumstances. So</p> <p>4 there's --</p> <p>5 I don't know, given how much earlier the initial report</p> <p>6 is from the supplemental report, that may reflect the</p> <p>7 two-way rather than the three-way analysis. These are -- in</p> <p>8 the supplement are both three-way analyses.</p> <p>9 Q Is there a reason you would do a two-way analysis for your</p> <p>10 initial report and a three-way analysis for your</p> <p>11 supplemental reports?</p> <p>12 A Again, if the initial report came after we'd resolved the</p> <p>13 estimation issues, it would have been -- we would have used</p> <p>14 whatever -- if it was -- obviously in primary election, you</p> <p>15 would be -- so you potentially could use three way in some</p> <p>16 of the primaries, but you certainly wouldn't need to use it</p> <p>17 in the generals.</p> <p>18 So if we had the -- if we'd resolved those issues, we</p> <p>19 might have used three way in the primary, two way in the</p> <p>20 generals. I can see -- I haven't thought really carefully</p> <p>21 about it. And I'd probably want to look at both sets of</p> <p>22 results. But I can imagine an argument in which, in order</p> <p>23 to have consistency across all of them, you might run all of</p> <p>24 them.</p> <p>25 I think particularly when you have -- you know, when</p>
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<p>1 But when you put together Noel and Ettl, who are</p> <p>2 essentially running against each other -- right? Noel is</p> <p>3 someone else who is challenging the incumbent -- then you do</p> <p>4 sacrifice some bounds information.</p> <p>5 So while there's a lot more computational horsepower</p> <p>6 required here, particularly -- if we're going to do a large</p> <p>7 set of runs, this may take 10 or 12 hours. But it produces</p> <p>8 an answer that is somewhat more efficient than the candidate</p> <p>9 against the field.</p> <p>10 Q For the ease of reference, I'm going to call the situation</p> <p>11 in which you would analyze the Latino candidate against the</p> <p>12 non-Latino candidates as a two-way analysis.</p> <p>13 A That would be correct.</p> <p>14 Q And a situation in which you'd analyze each candidate</p> <p>15 individually as a three-way analysis.</p> <p>16 A Very good.</p> <p>17 Q Is that fair?</p> <p>18 A Yes.</p> <p>19 Q In your initial report, in your analyses of the primary</p> <p>20 elections in your initial report, do you recall whether you</p> <p>21 performed a two-way analysis or a three-way analysis?</p> <p>22 A If I -- I would -- I can find out for sure. But my</p> <p>23 impression is that those are two-way analyses. We've had</p> <p>24 some issues. There are some methodological issues with</p> <p>25 getting the RxC analysis to run correctly. There's more</p>	<p>1 you have the same candidate in the primary that emerges into</p> <p>2 the general, there's an argument for consistency to estimate</p> <p>3 them both as two way rather than having the methodology</p> <p>4 shift between. But, I just think, given the timing of this,</p> <p>5 I think this was in the period in which we had not worked</p> <p>6 out a consistent method for getting RxC estimates that we</p> <p>7 thought were as solid as a more traditional two-way.</p> <p>8 Q If Dr. Engstrom had performed a two-way analysis in all of</p> <p>9 the elections in the initial report and you had performed a</p> <p>10 three-way analysis in the primary elections in the initial</p> <p>11 report, would the results have been as similar as they were?</p> <p>12 A I would, I would think not. I would think, given that the</p> <p>13 characteristics of those weren't all that different than</p> <p>14 these, I would think that that could have produced more</p> <p>15 difference. But it wouldn't necessarily produce more</p> <p>16 difference. So, again, I think that similarity is</p> <p>17 consistent with us both using the same analytical technique.</p> <p>18 I would love to be able to get to the bottoms of what's</p> <p>19 here, because, again, I think it may explain part of the</p> <p>20 difference here. But again, that's intellectual curiosity.</p> <p>21 I stand by the fact that, as much as that illustrates that</p> <p>22 there are assumptions being made here that alter these</p> <p>23 numbers in substantial ways as numbers, they don't alter in</p> <p>24 substantial ways in terms of how they affect the</p> <p>25 conclusions.</p>

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<p>1 Q But it's your impression that in the initial report you 2 would have used a two-way analysis for all the elections? 3 A Again, I don't want to tell you more than I actually 4 remember. But that's my impression from -- given the period 5 of time, is that those probably would all have been -- would 6 all have been Hispanic candidate against the field would 7 have been two bivariate estimates rather than true 8 multivariate EL. 9 Q You mentioned certain estimation issues in the RxC 10 calculations; is that right? 11 A Yes. 12 Q And the RxC is basically another term for the three way? 13 A The three way. Sorry. Yes, it is. 14 Q So what were those estimation issues? 15 A In the literature there are several different techniques 16 proposed for doing the -- doing that estimation. And I've 17 read that. But I confess to not being completely in command 18 of what the mathematical algorithmic differences are. But 19 there's more than one proposed method for doing analysis 20 that expands beyond this kind of analysis. And there -- in 21 the -- and across that range of techniques, there are issues 22 about whether you get, you know, consistent results or 23 results that converge in the same, in the same way. 24 And so I don't know the technical details of that. I 25 just know that there was -- and, again, this is why I have,</p>	<p>1 you. So it doesn't produce an answer unless it's 2 converging. You've set the standard for what convergence is 3 and how tightly it has to be to cross the threshold. But 4 there's a default threshold. And these estimates were not 5 converging. They were just blowing up and producing no 6 results. 7 Implemented slightly differently, they were converging. 8 Then that makes you wonder what's the -- is there a 9 programming error? You know, what's the issue? That my 10 recollection is that that analysis was then repeated by a 11 completely different set of statistical programmers. And 12 there were similar issues. And so then there's a lot of -- 13 there's lot of back and forth that fairly recently has been 14 resolved. 15 And again, thankfully, I don't think we have anything 16 here that really depends on -- but, you know, statistical 17 programmers don't like stuff to do things it's not supposed 18 to do. Estimates should be consistent. And, you know, for 19 whatever reason, they weren't. And so my understanding is 20 that's been resolved. But we'll see. 21 Q How did you perform your three-way analysis in this 22 supplemental report? 23 A This three-way analysis is based on the -- this new and 24 improved implementation that everybody agrees is actually 25 working. It's a variant of one of the earlier techniques in</p>
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<p>1 you know, a professional statistician programmer deal with 2 these issues because he was very unsatisfied with those -- 3 with our very early implementation of RxC. And there was a 4 lot of -- a great deal of work that's been put into coming 5 up with a program that will consistently implement RxC NR, 6 which is a different R than the RxC, and produce stable 7 estimates that everybody's happy with. 8 Q How did you determine those estimation issues with the 9 three-way analysis to be issues enough to not use the 10 three-way analysis? 11 A The first time it just blew up. Okay. So that's -- social 12 scientists, you know we just love drama. So that's probably 13 a little more dramatic. The computer did not actually 14 explode. But the estimates, when the estimates blow up, 15 they, rather than getting closer and closer to something, 16 they -- as you continue to run them in larger and larger -- 17 So you're running a 100 or you're running 1,000. As you 18 increase the number of repetitions, the estimates stop 19 converging and start actually diverging, which means 20 they'll -- what it means by "blowing up" is that once they 21 start diverging, if that turns out to be not a local minima, 22 then they never converge again. 23 So you never resolve the estimation problem. So you 24 come to the end of a thousand runs, and it tells you that 25 the -- it is not converging and won't produce an answer for</p>	<p>1 terms of the programming. But that's pretty much the level 2 of detail at which I understand what's actually going on 3 here, other than that there's agreement that it is a more 4 consistent estimation technique. 5 Q So does somebody else run the analysis for you? 6 A Yes. 7 Q And that's Dr. Stevenson? 8 A Yes. 9 Q And it was his analysis from which you derived the point 10 estimate? 11 A Yes. 12 Q Are there backup documents to reflect Dr. Stevenson's 13 analysis in any of these elections? 14 A What, what he has at this stage is he has an R program that 15 goes out. So you point it to a data set, and you tell it 16 what the variable columns the data is represented by. Then 17 it brings it in, does the analysis, converges, and then 18 produces the table. So the table is the result of the 19 analysis. You can query for, you know, for lots of other 20 information. But what was done for this for this report 21 just simply to point it at the data and have it produce a 22 table. 23 Q Are there backup documents reflecting the script that was 24 used in order to -- 25 A The R?</p>

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<p>1 Q -- get these results?</p> <p>2 A To the R program?</p> <p>3 Q Yeah.</p> <p>4 A Yes.</p> <p>5 Q Have you turned over those document to your counsel?</p> <p>6 A I thought that was in the -- there was the most recent</p> <p>7 request was for -- I thought that was part of that. If it</p> <p>8 wasn't, I mean we can certainly produce it. There's nothing</p> <p>9 magic -- well, there's a lot of magic about it. But there's</p> <p>10 nothing that wouldn't, you know -- would prevent turning all</p> <p>11 that over. It's just an R script.</p> <p>12 Q Okay. You mentioned earlier that you're curious to find</p> <p>13 what accounts for this difference. Is that right?</p> <p>14 A Yeah.</p> <p>15 Q Were you curious at the time that you wrote this report, the</p> <p>16 supplemental report?</p> <p>17 A I certainly thought about -- I thought I knew what the</p> <p>18 difference was. I just thought that, you know, 'cause I</p> <p>19 knew that this was true three way, that that had been</p> <p>20 resolved. And so I thought, Well, that's probably the</p> <p>21 difference. I didn't think that the -- that there was a</p> <p>22 substantive difference. I still don't think that these are</p> <p>23 outside the range of what could actually be true estimates,</p> <p>24 given potential true values.</p> <p>25 So, you know, I guess I was curious. But I thought I</p>	<p>1 Q Can you tell me where in your initial report you conclude</p> <p>2 that "there is weak or nonexistent minority cohesion"?</p> <p>3 A In the sense it follows. It says specifically: "The vote</p> <p>4 in the primaries was," et cetera, et cetera, et cetera.</p> <p>5 Q So when you're discussing the pattern of "weak to</p> <p>6 nonexistent minority cohesion," you're discussing those</p> <p>7 three primaries that you list right afterwards?</p> <p>8 A So certainly the -- I mean there are several things being</p> <p>9 summarized in the "weak to nonexistent." The nonexistent, I</p> <p>10 think, most clearly refers to -- in terms of specifics to</p> <p>11 other primaries where we see results like these. And then</p> <p>12 it also generally refers to the fact that there is</p> <p>13 instability -- enough instability in the results across</p> <p>14 different kinds of elections that cohesion is not just a</p> <p>15 pattern in a single election. Cohesion produces stability</p> <p>16 across elections.</p> <p>17 This continues to show instability across elections.</p> <p>18 And the broader conclusion, I think, from that instability</p> <p>19 is that, if this is being -- if this pattern is being</p> <p>20 produced by ethnic voting, then the power of ethnic voting</p> <p>21 is weak in the sense that it appears and vanishes depending</p> <p>22 on the election we look at. I wouldn't say that that means</p> <p>23 that in every election we looked at, that number that we see</p> <p>24 as a point estimate would be weak but just that the very</p> <p>25 fact that it then disappears and then reappears suggests</p>
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<p>1 knew -- I thought I knew that it was a difference in the two</p> <p>2 way/three way. And that was enough that, given the other</p> <p>3 things I have to do, that satisfied my curiosity.</p> <p>4 MR. FRANCIS: When you have a chance for a break,</p> <p>5 I have to make a phone call.</p> <p>6 MS. KHANNA: We can take a quick break right now.</p> <p>7 [A brief recess was taken.]</p> <p>8 Q (By Ms. Khanna) How many simulations did you use in</p> <p>9 performing your EI analysis in your supplemental report?</p> <p>10 A My recollection is that this is 1,000 simulations. I think</p> <p>11 that was true in the original report as well. And so the</p> <p>12 first thing I'll do in going back over this is run that up.</p> <p>13 So we'll run it down and repeat it. Right? So we'll do 100</p> <p>14 simulations 100 times or 100 simulations 1,000 times. Then</p> <p>15 we'll go up to do 1,000 100 times and then, you know, a</p> <p>16 million 10 times.</p> <p>17 MR. FRANCIS: What do you have? A supercomputer?</p> <p>18 A We have until May.</p> <p>19 Q (By Ms. Khanna) Well. I'm going to point you to your</p> <p>20 conclusion on page 3 of your supplemental report. You note</p> <p>21 on page 3 that your EI analysis in the supplemental report</p> <p>22 "continues the pattern of weak to nonexistent minority</p> <p>23 cohesion that was evident in the initial reports." Do you</p> <p>24 see that?</p> <p>25 A Yes.</p>	<p>1 that whatever's driving it must not be a very consistent</p> <p>2 force in voter's minds, otherwise we wouldn't see the</p> <p>3 inconsistency we see across all these elections.</p> <p>4 Q So there's no number which you would determine in a given</p> <p>5 election shows weak minority cohesion?</p> <p>6 A Again, you know, there certainly -- well, there are</p> <p>7 certainly numbers like -- these two elections certainly show</p> <p>8 something you could call weak or nonexistent or any of those</p> <p>9 kinds of things. But again, there's not a bright line for</p> <p>10 that. And I'm just trying to characterize generally what</p> <p>11 we're seeing in these elections that strikes me as broadly</p> <p>12 inconsistent with cohesive vote.</p> <p>13 Q Is there a difference between weak cohesion and nonexistent</p> <p>14 cohesion?</p> <p>15 A I guess technically, nonexistent -- again, we're sort of</p> <p>16 back in this sort of random -- voting patterns that are</p> <p>17 indistinguishable from random -- and many of these are --</p> <p>18 collectively would probably suggest nonexistent. Patterns</p> <p>19 that sometimes are distinguishable from random, maybe</p> <p>20 collect that up and you get to weak.</p> <p>21 Q Is there a point in your initial report that you recall</p> <p>22 using the term "weak cohesion"?</p> <p>23 A I don't think I recall using that term.</p> <p>24 Q Is there any point in your initial report you recall using</p> <p>25 the term "nonexistent minority cohesion"?</p>

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<p>1 A I think my conclusion was that we didn't demonstrate 2 minority cohesion. So I guess that would mean in that sense 3 that it's cohesion in the -- as a reflection of the broad 4 pattern, you could say it doesn't exist. It said it doesn't 5 show it. 6 So language here is different. But I don't mean it to 7 indicate that we know anything different than what we knew 8 before. I don't think it's inconsistent with what I said 9 before. So I'm not using the exact, same adjectives. But I 10 don't intend them to mean anything other than what I 11 concluded in my initial report, which is that we just don't 12 have evidence here of cohesion. 13 Q And earlier you stated that there's no evidence that there 14 is a lack of cohesion as well? 15 A I'm not intending -- this doesn't change my feeling of what 16 I think the pattern is here. But it is expressed 17 differently. And I stand by both of those expressions. 18 However you want to say this, I don't think we have a set of 19 elections here that are consistent with vote cohesion, 20 specifically with regard to Gingles 2. 21 Q So you list -- after this statement in your supplemental 22 report, you list those three primaries: The Rodriguez 23 primary, the Soria primary, and the Montes primary. Are 24 these elections on which you're basing your conclusion that 25 there is a pattern of "weak to nonexistent minority</p>	<p>1 stable pattern of cohesion here or that we -- the other 2 possibility we discussed earlier which is we just don't have 3 enough information to be able to say for certain whether 4 there is or isn't a stable, a stable pattern, which is 5 another way of saying we don't have any evidence of a stable 6 pattern of cohesion. 7 Q We talked earlier about the extent to which you had reviewed 8 Mr. Cooper's illustrative districts. Do you recall that? 9 A Yes. 10 Q And I believe you told me that you had reviewed Mr. Cooper's 11 initial report in this case. 12 A I hope I'm correct on that. So I saw, I saw a set of 13 districts, a set of maps and the sort of the usual 14 discussion about the demographic characteristics of the 15 maps. My impression is that was the initial report. It 16 seems like that would be the sort of starting point for what 17 went on here. The timing for that seems sensible since I 18 talk about his putative districts in my report. So that's 19 my best recollection. 20 Q And your initial report talks about two demonstration 21 districts in Mr. Cooper's report; is that right? 22 A It talks about two, two versions in -- of two districts; 23 right. 24 Q Do you recall at any time seeing another report by 25 Mr. Cooper in which he presents additional versions of</p>
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<p>1 cohesion"? 2 A I mean I go on to discuss all this other. So what I'm 3 saying here is specifically these two election results 4 are -- that I get are completely consistent with all the 5 primary results. There's nothing really surprising about 6 them. They don't surprise me. They look like the other 7 primaries. They're within the standard deviations for the 8 other primaries. So we really don't see -- there's nothing 9 new here. 10 And so, you know, I talked about that fact. I talk 11 about the proportion of voters. I talk about the precinct 12 distribution. 13 Q There were four other elections analyzed in the initial 14 reports -- is that right? -- other than the three that you 15 list on page 3 of your supplemental report? 16 A Yes. There were three other candidate elections and the 17 ballot -- the proposition ballot, yes. 18 Q Do those elections fit with the pattern of 19 weak-to-nonexistent minority cohesion? 20 A The fact that they don't look like these is the larger 21 evidence of weak-to-nonexistent cohesion, yes. The fact 22 that they're so different, although again not different in 23 the sense that they're statistically significant but just 24 different in the sense of where their point estimates are, 25 is, I think, the clearest indication that we don't have a</p>	<p>1 demonstration districts? 2 A I just don't recall specifically. I may well have seen 3 that. But I don't recall it specifically. 4 Q We also talked earlier about the extent to which you 5 performed a reconstituted election analysis. And I believe 6 that you testified that you did not perform a formal 7 reconstituted elections analysis but the functional 8 equivalent based on looking at the heaviest Latino 9 precincts. Is that right? 10 A If I said "the functional equivalent," it's not the 11 functional equivalent. It's, by basically making very 12 conservative assumptions, not trying to cover the entire 13 geography but just cover the contained precincts that are 14 most Hispanic, you basically just give away a lot. Right? 15 So the kind of reconstructed district I'm composing is far 16 too small to be a legal district. So I'm making some very 17 conservative assumptions that led me not -- let me avoid 18 having to make a lot of complicated decisions about how to 19 allocate election returns across a geography that is not 20 made of whole precincts. These are not whole-precinct 21 districts. 22 But again, they're very conservative assumptions. And 23 if those very conservative assumptions don't produce 24 districts that are controlled by minority voters, the 25 expanding, making the district larger is not going to -- I</p>

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<p>1 don't think is necessarily going to make things better. I</p> <p>2 think it tends to make things weaker.</p> <p>3 So again, it's a quick way of looking and seeing</p> <p>4 whether the general pattern that we see across the election</p> <p>5 results strongly suggests that there is not an effective</p> <p>6 Gingles 1 district, whether that holds up when we focus in a</p> <p>7 little bit more on the specific regions of Yakima that, that</p> <p>8 the districts are being drawn in.</p> <p>9 Q When you said "an effective Gingles 1 district," do you mean</p> <p>10 a district in which the Latino candidate of choice would win</p> <p>11 the election?</p> <p>12 A That's -- again, since we have a lot of elections here that</p> <p>13 don't show polarization, it's really a little unclear about</p> <p>14 what that would mean across a range of elections. But -- so</p> <p>15 I'm looking for a demonstration that you could create a</p> <p>16 district in which Anglos could not vote as a block to</p> <p>17 usually defeat the candidate of choice. I'm not seeing that</p> <p>18 district.</p> <p>19 MS. KHANNA: Could you read back the question to</p> <p>20 me.</p> <p>21 [Requested material read.]</p> <p>22 A So again, we have to make some kind of assumption about how</p> <p>23 that pattern would be generated. We would have to be able</p> <p>24 to be certain about the Latino candidate of choice which in</p> <p>25 many of these elections we can't be. But if we assume that</p>	<p>1 elections, if we equalize turnout, Anglos can't -- won't</p> <p>2 veto the choice under the current circumstance, anyway,</p> <p>3 which is just another way of saying they're polar -- not</p> <p>4 polarized. So -- but if they were --</p> <p>5 The idea of the remedy is you create a district in</p> <p>6 which in the face of the polarization you've in theory</p> <p>7 proved in the case, that would not take place, that the</p> <p>8 polarization was effective in suppressing minority vote only</p> <p>9 because the at-large system created an election-totaling</p> <p>10 dynamic that would have been different in one or more</p> <p>11 single-member districts.</p> <p>12 Q When you say the term "effective Gingles 1 district," you do</p> <p>13 not mean a Gingles 1 threshold district; is that correct?</p> <p>14 A Definitely not. A Gingles 1 threshold district, could --</p> <p>15 all kinds of things might happen in a Gingles 1 threshold</p> <p>16 district. So I think, yes. The threshold matter is a very</p> <p>17 minimal test. It doesn't presume any of the other things</p> <p>18 that happen after it.</p> <p>19 And so as a remedy district, what you ultimately would</p> <p>20 want to see in, again, this kind of totality of the</p> <p>21 circumstances is Here's a district we can point to and say</p> <p>22 this -- you know, you know, do your damndest, but Anglos are</p> <p>23 not going to stop Hispanics from electing a candidate unless</p> <p>24 Hispanics just choose not to support the Hispanic candidate.</p> <p>25 Again, there's no requirement that they do that. But if it</p>
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<p>1 we were going to -- we drew a district. We assumed that</p> <p>2 within that district, that subgeography of the city would be</p> <p>3 composed of Latinos that were voting cohesively for a Latino</p> <p>4 candidate, then the question would be whether in that</p> <p>5 district the Anglo voters could block that choice if they</p> <p>6 voted cohesively.</p> <p>7 And that's really -- that seems to me to be something</p> <p>8 you don't -- the pattern of election results doesn't suggest</p> <p>9 that you clearly are doing that, even at the level of a</p> <p>10 subset of precincts.</p> <p>11 Q When you say the term "effective Gingles 1 district," you</p> <p>12 mean a Gingles -- or mean a district which incorporates the</p> <p>13 Gingles 2 and 3 factors as well?</p> <p>14 A Yes. Then, others -- you know, some people use "effective"</p> <p>15 and "performing" and all those other kinds of things. All</p> <p>16 I'm trying to suggest here is that the -- that if we assumed</p> <p>17 that we had cohesion and polarization and then we created a</p> <p>18 district in the area that we're talking about drawing</p> <p>19 districts, it's not clear to me that that will in fact</p> <p>20 basically in that circumstance allow Hispanic voters to</p> <p>21 elect candidates of choice in a way that would not be</p> <p>22 subject to a veto by Anglo voters.</p> <p>23 I'm not sure the Anglo voters would veto it because I'm</p> <p>24 not sure -- you know, when 40 percent of the Anglos are</p> <p>25 crossing over, they -- if -- right. In some of these</p>	<p>1 happens that their preferred candidate is also someone who</p> <p>2 is Hispanic and has a Hispanic surname, it's not going to</p> <p>3 guarantee their defeat.</p> <p>4 Q I just want to determine, when you speak of an "effective</p> <p>5 Gingles 1 district," you're saying something entirely</p> <p>6 different than a Gingles threshold district; is that</p> <p>7 correct?</p> <p>8 A That is correct. And so one of the things that might be</p> <p>9 true is that, because we don't see that effective district,</p> <p>10 it might be the case that we don't actually have a genuine</p> <p>11 CVAP threshold district -- but that's not what I'm</p> <p>12 suggesting here -- but simply that in the broader sense the</p> <p>13 remedy, as opposed to the threshold, is not clear from the</p> <p>14 election pattern.</p> <p>15 Q So in a reconstituted election analysis or in the analysis</p> <p>16 that you performed which was not a formal reconstituted</p> <p>17 election analysis you're using vote totals from at-large</p> <p>18 elections to infer a result in a reconstituted district; is</p> <p>19 that right?</p> <p>20 A That's correct.</p> <p>21 Q And you can think of reasons why the voter turnout might be</p> <p>22 different in an at-large election system than it would be in</p> <p>23 a districting system or in a district in which the minority</p> <p>24 represents a majority of the citizen voting-age population,</p> <p>25 can you not?</p>

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<p>1 A Yes.</p> <p>2 Q What could some of those differences be -- some of those</p> <p>3 reasons be, rather?</p> <p>4 A Sometimes single-member elections are not as high profile as</p> <p>5 at large. So you often see in cities with mixed systems</p> <p>6 that the, you know, in a two-and-five system, for example,</p> <p>7 that the two districts generate a lot more interest than the</p> <p>8 individual districts. You see that even with candidates</p> <p>9 where you often see strong candidacies emerging in the</p> <p>10 at-large seat and no opposition or weak opposition in the</p> <p>11 single-member seats. So you can think of things like that</p> <p>12 that might alter the turnout.</p> <p>13 You could -- you might suppose that, for example,</p> <p>14 minority turnout would go up if you built a minority</p> <p>15 district. The fact that you -- the district was constructed</p> <p>16 to be a majority minority district might encourage minority</p> <p>17 turnout.</p> <p>18 You could suppose that different kinds of candidates --</p> <p>19 you know, we talked about it a little bit. But it may be</p> <p>20 that the candidates that emerged in this case and in, you</p> <p>21 know, at large, although we already have in at least</p> <p>22 partially in this, a kind of regional primary or</p> <p>23 demographically restricted primary. But you could imagine</p> <p>24 it might attract different kinds of candidates.</p> <p>25 The type of campaigns you're capable of running might</p>	<p>1 So I mean you already have a substantial context of --</p> <p>2 that does -- it sets much of the context for political</p> <p>3 participation as already set by a series of contexts that</p> <p>4 aren't amenable to the lawsuit. They're already preset. So</p> <p>5 you're making a change only at one level in an entire</p> <p>6 pyramid in which voters are embedded. And for whatever</p> <p>7 reason, empirically it doesn't typically make a big</p> <p>8 difference in registration or in turnout.</p> <p>9 Q Are you basing that -- your studies of empirical evidence,</p> <p>10 is that based on your analysis of Yakima?</p> <p>11 A No. I'm just saying based -- the Hispanic turnout is</p> <p>12 substantially below Anglo turnout across the United States.</p> <p>13 It is substantially below African-American turnout across</p> <p>14 the United States. It's -- and that is true in areas where</p> <p>15 there are -- in which the entire election contest is</p> <p>16 single-member districts and in which there are successful</p> <p>17 Hispanic representatives at all those levels. So it --</p> <p>18 I mean the academic solution that actually looks at</p> <p>19 this change doesn't have -- doesn't show a clear conclusion</p> <p>20 in terms of increased turnout. So that's my impression of</p> <p>21 everything I've seen and the people I've talked to who are</p> <p>22 trying very hard to increase Hispanic turnout is a</p> <p>23 recognition that this is not -- you know, whatever, whatever</p> <p>24 success there's been in increasing African-American turnout</p> <p>25 is -- the same pattern is not clear with regard to increased</p>
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<p>1 vary. It's probably cheaper to run, maybe, in a</p> <p>2 single-member district than at large. Maybe people have</p> <p>3 different expectations about the nature of representation.</p> <p>4 There's -- I can think about all kinds of things.</p> <p>5 It's -- I don't happen to actually -- there's no</p> <p>6 evidence that any of that happens. I guess that's the</p> <p>7 important thing. There's, there is simply no evidence that,</p> <p>8 that Hispanic turnout increases when you draw single-member</p> <p>9 districts. That's just an empirical matter that lots of</p> <p>10 people have looked for, and there is just not any convincing</p> <p>11 evidence.</p> <p>12 It doesn't -- quite frankly, it doesn't really surprise</p> <p>13 me very much because we're almost always talking about</p> <p>14 drawing those districts at levels that voters really -- it's</p> <p>15 not really what motivates -- people don't really register to</p> <p>16 vote to vote in school board and city elections for the most</p> <p>17 part. They mostly register to vote in presidential,</p> <p>18 governor, senator, big kinds of elections. People get</p> <p>19 excited about -- you know, become voters more often because</p> <p>20 of larger campaign settings.</p> <p>21 So if you're going in a minority House of</p> <p>22 Representatives district, for example, you're already in</p> <p>23 a -- or you're motivated to register and to vote because</p> <p>24 you're already in a single-member district. Our entire</p> <p>25 House of Representatives is single-member districts.</p>	<p>1 Hispanic turnout.</p> <p>2 Q Have you testified in cases in which a challenge to an</p> <p>3 at-large election system succeeded and the election system</p> <p>4 changed to a districting election?</p> <p>5 A Yes.</p> <p>6 Q Have you testified in cases with that situation in which the</p> <p>7 minority group at issue were Latinos?</p> <p>8 A Yes.</p> <p>9 Q And the remedy imposed was to create at least one Latino</p> <p>10 citizen voting-age majority district?</p> <p>11 A I'm not sure that's true. It's not at all uncommon for the</p> <p>12 remedy district not to be the demonstration district.</p> <p>13 Usually demonstration districts are really not the district</p> <p>14 you want to draw as a remedy district. And so it's -- again</p> <p>15 I don't know any specific cases. But it wouldn't surprise</p> <p>16 me if the remedy districts were not CVAP-majority districts.</p> <p>17 Q Have you testified in any cases where the remedy district in</p> <p>18 fact produced a win for the Latino candidate of choice?</p> <p>19 A I don't know specifically. But I think that's true. I</p> <p>20 think in at least some -- in at least some of those areas,</p> <p>21 there were wins in single-member districts. There are other</p> <p>22 cases where there are not wins in single-member districts.</p> <p>23 So . . .</p> <p>24 Q But in at least some cases, there were wins in single-member</p> <p>25 districts where there was no win for the Latino candidate in</p>

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<p>1 the at-large election system?</p> <p>2 A Yes.</p> <p>3 Q Is it true that one effect of an at-large system can be to</p> <p>4 depress minority turnout?</p> <p>5 A I -- if that were -- there's certainly discussion of that.</p> <p>6 But as a -- I mean that's a dynamic hypothesis. If it were</p> <p>7 true that at-large systems depressed turnout, then there</p> <p>8 would be clear evidence that the move to single-member</p> <p>9 systems would produce increases in turnout. I've not seen</p> <p>10 analysis that demonstrates that for Latino districts.</p> <p>11 Q So is it your testimony that it's not true that one effect</p> <p>12 of an at-large system can be to depress minority turnout?</p> <p>13 A I mean it can be. I'm just saying but -- that's in the</p> <p>14 realm of all the things that can be. I haven't seen a</p> <p>15 demonstration that -- in which you actually -- this is not</p> <p>16 a -- this is a dynamic, not a cross-sectional hypothesis.</p> <p>17 The cross-sectional analysis is not going to answer that</p> <p>18 question. It's just going to give you, you know, a kind of</p> <p>19 correlational picture. It's a dynamic question.</p> <p>20 So you'd need to see a series of districts in which,</p> <p>21 without regard to the characteristics of the districts, you</p> <p>22 switch them from single member to at large or, more likely</p> <p>23 a series of districts where, without regard to the</p> <p>24 characteristics of the district, you switch them from at</p> <p>25 large to single member. That's the really the only way you</p>	<p>1 lot of notes. You're welcome to look at 'em. You'll see</p> <p>2 why I don't really take notes: 'cause I can't make any</p> <p>3 sense out of them later. So I'm not a big note taker. So I</p> <p>4 don't have a set of notes that accompany the work in the</p> <p>5 case.</p> <p>6 Q Do you have a case file on this case?</p> <p>7 A I have, I have the, you know, computer folder where I keep</p> <p>8 all the stuff that you guys provide and the things that were</p> <p>9 sent to me and the stuff that I send on to the attorneys.</p> <p>10 That's it.</p> <p>11 Q As far as you know, the substance or the contents of that</p> <p>12 computer folder has been turned over by you to counsel; is</p> <p>13 that right?</p> <p>14 A Yes. Everything in there would be something that either</p> <p>15 came from them to me or that went from me to them. So</p> <p>16 that's -- there's nothing in there that isn't a part of that</p> <p>17 back and forth.</p> <p>18 Q Is there anything else you've been asked to do in this case</p> <p>19 that I've not covered today?</p> <p>20 A I can't think of anything. Most of what we've talked about</p> <p>21 doing is -- you know, it's not something we haven't talked</p> <p>22 about. It's because of what we talked about. So it mostly</p> <p>23 has to do with, you know, working through the details on</p> <p>24 that EI analysis.</p> <p>25 Q In the supplemental report?</p>
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<p>1 can answer the dynamic question.</p> <p>2 And, to my knowledge, there's not an analysis that sort</p> <p>3 of meets the basic -- those basic requirements and shows an</p> <p>4 increase in turnout with the move to single member or a</p> <p>5 decrease in turnout with a move to at large for Hispanic</p> <p>6 voters.</p> <p>7 Q Have you seen the notice of deposition and subpoena</p> <p>8 requiring your testimony in this case?</p> <p>9 A No.</p> <p>10 Q You've not been provided that by your counsel?</p> <p>11 A If it was sent me, it was sent to me after -- it may be</p> <p>12 sitting at my house. I don't know. But it's after I came</p> <p>13 to Seattle if it was.</p> <p>14 Q Did you provide any documents to counsel in response to the</p> <p>15 subpoena?</p> <p>16 A I don't think there was anything that they didn't already</p> <p>17 have. So obviously, they have all the emails back and</p> <p>18 forth. They have the data I relied on. There was that one</p> <p>19 issue that came up about the supplemental. They forwarded</p> <p>20 that to me. And I sent back the supplemental. That's all</p> <p>21 I'm aware of.</p> <p>22 Q Do you have any notes of any kind in this case?</p> <p>23 A I think I doodled on a pad while we were sitting here.</p> <p>24 That's been -- I write my reports into, into the word</p> <p>25 processor. I don't typically -- I don't typically take a</p>	<p>1 A In the -- I mean I guess, you know, what you indicated makes</p> <p>2 me want to make sure that it doesn't in fact extend back to</p> <p>3 the earlier report, although I don't think it does. But I</p> <p>4 mean at least it potentially could, I suppose. I've been</p> <p>5 asked to testify at time of trial but not any -- no other</p> <p>6 specific, additional analysis. I can't think of anything.</p> <p>7 Q There's nothing else that you intend to testify about that</p> <p>8 we've not covered today?</p> <p>9 MR. FRANCIS: Object to the form of the question;</p> <p>10 overly broad.</p> <p>11 A I will say -- I will answer any question a judge asks me.</p> <p>12 And I won't try to play games because, you know, a federal</p> <p>13 judge wants to hear something, you've got to let them hear</p> <p>14 it. So I don't intend, you know, to develop a line of</p> <p>15 testimony that's independent of what we've talked about.</p> <p>16 I think this is -- for me, this is the heart of the</p> <p>17 case. And I think we talked about it as well as the two of</p> <p>18 us have talked about it. I think a judge could make a fair</p> <p>19 decision. So I'm not anticipating anything else. But</p> <p>20 again, if a federal judge asks me a question, I'll answer</p> <p>21 it, unless you want to object and try to get between us.</p> <p>22 Q I actually hope you would answer the judge's questions.</p> <p>23 MS. KHANNA: I have no further questions for you</p> <p>24 today.</p> <p>25 MR. FRANCIS: Thank you.</p>

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[Signature reserved.]
 [Deposition concludes at 4:33 p.m.]

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CERTIFICATE
 STATE OF WASHINGTON)
) SS

COUNTY OF YAKIMA)

I, Jacqueline L. Bellows, Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the foregoing deposition was taken before me at the time and place therein set forth and thereafter transcribed under my direction, the transcript prepared pursuant to the guidelines set out in Washington Administrative Code 308-14-135.

That the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That the deposition as transcribed is a full, true, and correct record to the best of my ability of the testimony of the witness and of all questions, objections, motions, stipulations, and exceptions of counsel made at the time of examination.

That I am in no way related to any party to this matter nor to any of counsel nor do I have any interest in the matter.

Witness my hand and CCR seal this 28th day of March 2014.

 Jacqueline L. Bellows, CCR No. 2297
 in and for the State of Washington,
 residing at Arlington. My certification
 expires April 26, 2014.

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Exhibit L

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES, et al.,)	
)	
Plaintiffs,)	
)	No. 2:12-cv-03108-TOR
vs.)	
)	
CITY OF YAKIMA, et al.,)	
)	
Defendants.)	

Deposition Upon Oral Examination of
RICHARD L. ENGSTROM, Ph.D.

Taken at Floyd, Pflueger & Ringer
200 W. Thomas Street
Seattle, Washington

DATE TAKEN: February 18, 2014

REPORTED BY: Mary A. Whitney, CCR - WCRL #2728

Richard L. Engstrom, Ph.D.

February 18, 2014

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<p>1</p> <p>2 APPEARANCES</p> <p>3</p> <p>4</p> <p>5 FOR THE PLAINTIFFS: ABHA KHANNA, ESQ.</p> <p>6 BEN STAFFORD, ESQ.</p> <p>7 Perkins Coie</p> <p>8 1201 Third Avenue</p> <p>9 Suite 4800</p> <p>10 Seattle, WA 98101</p> <p>11 (206) 359-8508</p> <p>12 akhanna@perkinscoie.com</p> <p>13</p> <p>14 FOR THE DEFENDANTS: FRANCIS S. FLOYD, ESQ.</p> <p>15 JOHN A. SAFARLI, ESQ.</p> <p>16 Floyd, Pflueger & Ringer</p> <p>17 200 W. Thomas Street</p> <p>18 Suite 500</p> <p>19 Seattle, WA 98119</p> <p>20 (206) 441-4455</p> <p>21 ffloyd@floyd-ringer.com</p> <p>22</p> <p>23</p> <p>24 (Cont'd)</p> <p>25</p>	<p>1</p> <p>2 DEPOSITION OF RICHARD L. ENGSTROM, Ph.D.</p> <p>3</p> <p>4</p> <p>5 EXAMINATION INDEX</p> <p>6 EXAMINATION BY PAGE</p> <p>7 Mr. Floyd 5</p> <p>8</p> <p>9</p> <p>10 EXAMINATION INDEX</p> <p>11 EXHIBITS FOR IDENTIFICATION PAGE</p> <p>12 No. 1 - Report of Richard L.</p> <p>13 Engstrom, Ph.D. 7</p> <p>14 No. 2 - Reply Report of Richard L.</p> <p>15 Engstrom, Ph.D. 7</p> <p>16 No. 3 - Supplemental Report of</p> <p>17 Richard L. Engstrom, Ph.D. 7</p> <p>18 No. 4 - Letter, Engstrom to Khanna,</p> <p>19 3/17/13, w/Attachments 14</p> <p>20 No. 5 - Supplemental Report</p> <p>21 of John Alford, Ph.D. 95</p> <p>22</p> <p>23 -o0o-</p> <p>24</p> <p>25</p>
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<p>1</p> <p>2 APPEARANCES - (Cont'd)</p> <p>3</p> <p>4</p> <p>5 ALSO PRESENT: JOHN ALFORD, Ph.D.</p> <p>6</p> <p>7</p> <p>8 -o0o-</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 SEATTLE, WASHINGTON; TUESDAY, FEBRUARY 18, 2014</p> <p>2 9:04 AM</p> <p>3 -o0o-</p> <p>4 RICHARD L. ENGSTROM, Ph.D.,</p> <p>5 having been first duly sworn on oath,</p> <p>6 was examined and testified as follows:</p> <p>7</p> <p>8 EXAMINATION</p> <p>9 BY MR. FLOYD:</p> <p>10 Q. Would you state your full name for the</p> <p>11 record, please.</p> <p>12 A. My name is Richard L. Engstrom; Richard</p> <p>13 E-n-g-s-t-r-o-m.</p> <p>14 Q. And Dr. Engstrom, what is your current</p> <p>15 address?</p> <p>16 A. 23 Banbury Lane -- one word, B-a-n-b-u-r-y --</p> <p>17 Chapel Hill, North Carolina, 27517.</p> <p>18 Q. And Dr. Engstrom, you were retained in this</p> <p>19 matter; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And do you recall the date that you were</p> <p>22 first retained by the plaintiffs?</p> <p>23 A. I do not.</p> <p>24 Q. Do you have any idea when that might have</p> <p>25 been?</p>

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February 18, 2014

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<p>1 A. No, not off the top of my head.</p> <p>2 Q. Have you produced all of your materials that</p> <p>3 you had in your file?</p> <p>4 A. I have brought my files and presented them to</p> <p>5 the attorneys.</p> <p>6 Q. To the plaintiffs' attorneys?</p> <p>7 A. Yes.</p> <p>8 Q. And have you brought all of your materials?</p> <p>9 A. Yes.</p> <p>10 Q. All right.</p> <p>11 A. Well, some have been submitted ahead of time,</p> <p>12 files and things, I think, backup documents.</p> <p>13 Q. Was there anything that you are aware of that</p> <p>14 was withheld from your file that has not been</p> <p>15 produced?</p> <p>16 A. I don't know what is being produced and</p> <p>17 what is not.</p> <p>18 Q. All right. Then let's go through what is in</p> <p>19 your file, generally.</p> <p>20 A. Yes.</p> <p>21 Q. You have prepared three reports; is that</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 MR. FLOYD: Let's go ahead and mark these</p> <p>25 in order.</p>	<p>1 A. February 1, 2013.</p> <p>2 Q. And do you have a CV that is attached to your</p> <p>3 initial report?</p> <p>4 A. Yes.</p> <p>5 Q. And is that CV current?</p> <p>6 A. As of January 2013.</p> <p>7 Q. Is there anything you would like to add or</p> <p>8 delete from your CV that is page 18 of Exhibit-1?</p> <p>9 A. I'm an academic. We never delete anything.</p> <p>10 Q. All right. Sometimes they change things,</p> <p>11 though.</p> <p>12 A. Right.</p> <p>13 Q. Is there anything you need to change or add?</p> <p>14 A. I'm sorry, let me look at this.</p> <p>15 Q. All right.</p> <p>16 A. (Reviewing documentation.) The last two</p> <p>17 entries under "Titled Book Reviews" have now appeared.</p> <p>18 They're listed here as forthcoming.</p> <p>19 Q. And that is on what page?</p> <p>20 A. Page 38.</p> <p>21 Q. Is there a list of the cases that you've been</p> <p>22 involved in in your CV?</p> <p>23 A. No.</p> <p>24 Q. Have you prepared a list of the cases that</p> <p>25 you've been involved in?</p>
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<p>1 (Exhibit Nos. 1 - 3 marked</p> <p>2 for identification.)</p> <p>3 A. Maybe I should clarify. When I said "files,"</p> <p>4 I meant documents and physical files.</p> <p>5 Q. (By Mr. Floyd) All right.</p> <p>6 A. The computer stuff was electronic files,</p> <p>7 which I understand you have been presented with</p> <p>8 before.</p> <p>9 Q. Let's talk about that in just a second.</p> <p>10 We talked about your reports, correct?</p> <p>11 A. You asked me if I did three.</p> <p>12 Q. Right.</p> <p>13 A. Yes.</p> <p>14 Q. And Exhibit-1 would be your first, initial</p> <p>15 report, correct?</p> <p>16 A. That appears to be the case.</p> <p>17 MS. KHANNA: Do you have a copy of the</p> <p>18 exhibits?</p> <p>19 MR. FLOYD: I do.</p> <p>20 (Discussion off the record.)</p> <p>21 Q. (By Mr. Floyd) Exhibit-1 is your initial</p> <p>22 report, correct?</p> <p>23 A. It says, "Report of Richard L. Engstrom,"</p> <p>24 yes.</p> <p>25 Q. And what is the date of your initial report?</p>	<p>1 A. There is a list of the cases I've been</p> <p>2 involved with since a certain date and time --</p> <p>3 "involved with" meaning testified by deposition and/or</p> <p>4 trial?</p> <p>5 Q. Right.</p> <p>6 A. -- and that's in my first report, I believe.</p> <p>7 And I can check on that, as well.</p> <p>8 Q. Can you find that for me, please.</p> <p>9 A. And let me note there is -- well, let's see.</p> <p>10 In the summer of 2014, there is another -- there is a</p> <p>11 conference paper that was not listed on here.</p> <p>12 Q. All right.</p> <p>13 A. Or 2013.</p> <p>14 Q. So you're finishing up the updating of your</p> <p>15 CV, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Have you finished your updated CV, then?</p> <p>18 A. Yes.</p> <p>19 Q. All right. If you would look at page 19,</p> <p>20 please, the section of your CV titled "Formal</p> <p>21 Education."</p> <p>22 A. Yes.</p> <p>23 Q. You received an A.B. from Hope College;</p> <p>24 is that correct?</p> <p>25 A. Yes.</p>

3 (Pages 6 to 9)

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Richard L. Engstrom, Ph.D.

February 18, 2014

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<p>1 Q. Was that in political science?</p> <p>2 A. It was.</p> <p>3 Q. And what was your master's in?</p> <p>4 A. Political science.</p> <p>5 Q. And how about your Ph.D.?</p> <p>6 A. Political science.</p> <p>7 Q. And you indicated that somewhere in Exhibit-1</p> <p>8 there is a list of the cases that you've worked on;</p> <p>9 is that correct?</p> <p>10 A. I believe so.</p> <p>11 Q. Can you find that for me, please.</p> <p>12 A. Yes. Paragraph 3.</p> <p>13 Q. And these are the cases that you've worked on</p> <p>14 since 2008?</p> <p>15 A. Yes, and let me --.</p> <p>16 On my supplemental report, footnote 1,</p> <p>17 there is a statement about a deposition I gave that</p> <p>18 I don't believe is on --.</p> <p>19 Q. All right.</p> <p>20 A. I think that's since that first report,</p> <p>21 so that could be added to paragraph 3.</p> <p>22 Q. So, paragraph 3 of Exhibit-1, in footnote 1</p> <p>23 of Exhibit-3 would be a complete list of all of cases</p> <p>24 that you either have given a deposition in or</p> <p>25 testified in since 2008; is that correct?</p>	<p>1 School District. A case involving Fayette County,</p> <p>2 Georgia. A recently filed case involving Terrebonne</p> <p>3 Parish, Louisiana.</p> <p>4 Q. Have you -- go ahead, I'm sorry.</p> <p>5 A. Now, there is -- let's see. There is an</p> <p>6 active case, as far as I know, that I have worked with</p> <p>7 that I assume is still active, and that is -- that</p> <p>8 concerns Baton Rouge City Court in Baton Rouge,</p> <p>9 Louisiana.</p> <p>10 Q. Have you ever worked on a case in the state</p> <p>11 of Washington other than this case?</p> <p>12 A. No.</p> <p>13 Q. Have you ever worked on any case in Oregon?</p> <p>14 A. No.</p> <p>15 Q. Have you ever worked on any case in Idaho?</p> <p>16 A. I don't believe so, no.</p> <p>17 Q. Have you ever worked on any case in Alaska?</p> <p>18 A. Yes. There was a case involving Alaska</p> <p>19 natives that either did not go -- I don't think</p> <p>20 it went to trial.</p> <p>21 Q. And when was that case?</p> <p>22 A. It was a state -- redistricting legislative</p> <p>23 districts, and there was not the last go-around, so it</p> <p>24 was the previous one or -- maybe even after 1990.</p> <p>25 I'm not sure.</p>
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<p>1 A. I don't know about a footnote. We're on the</p> <p>2 initial report?</p> <p>3 Q. I'm talking about the supplemental report you</p> <p>4 just referenced.</p> <p>5 A. Oh, the supplemental report. Footnote 1 is</p> <p>6 after paragraph 1, and, yes, it is a case that I was</p> <p>7 deposed in since I prepared the first report.</p> <p>8 Q. And how many cases, current active cases,</p> <p>9 are you involved in, with the exception of this one?</p> <p>10 A. Well, let's see how many. You'll have to</p> <p>11 give me a second to try and remember.</p> <p>12 Q. Okay.</p> <p>13 A. Well, these are the ones that come to mind,</p> <p>14 and I'm not sure at the moment whether this is</p> <p>15 exhaustive, but I have five.</p> <p>16 Q. And what are those cases?</p> <p>17 A. The Texas redistricting on remand to the</p> <p>18 court in San Antonio, congressional and legislative</p> <p>19 district in Texas. I am not sure what the title is at</p> <p>20 this point, but it's the statewide redistricting case</p> <p>21 that's been remanded since the Supreme Court decision</p> <p>22 this summer. It's the Section 2 case. It's not the</p> <p>23 Section 5 case.</p> <p>24 Q. All right.</p> <p>25 A. Grand Prairie, Texas, Irving Independent</p>	<p>1 Q. All right.</p> <p>2 A. It was certainly soon after the census,</p> <p>3 I believe, but I don't remember which census.</p> <p>4 Q. Have you ever worked with any of the</p> <p>5 attorneys representing the plaintiffs in this</p> <p>6 particular case?</p> <p>7 A. Not to my knowledge, no.</p> <p>8 Q. Okay.</p> <p>9 A. Well -- these two?</p> <p>10 Q. No.</p> <p>11 A. No.</p> <p>12 Q. Any of the lawyers that are involved in this</p> <p>13 case.</p> <p>14 A. Well, I saw Laughlin McDonald's name on one</p> <p>15 of the filings.</p> <p>16 Q. Right.</p> <p>17 A. I have worked with Laughlin McDonald.</p> <p>18 Q. On how many cases?</p> <p>19 A. Oh, only a few. I don't know, two or three,</p> <p>20 maybe. And I don't know -- I'd have to see the other</p> <p>21 names on the filings. I'm not sure -- I remember</p> <p>22 Laughlin's name and I have worked with him.</p> <p>23 Q. Who initially contacted you?</p> <p>24 A. My best guess, I think, is Noah Purcell.</p> <p>25 At least I worked with him early. I'm not sure he was</p>

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<p>1 the first person I had contact with, but he was the 2 attorney earlier on in the case. 3 Q. All right. 4 (Exhibit No. 4 marked 5 for identification.) 6 Q. (By Mr. Floyd) I'm handing you what have 7 been marked as Exhibit No. 4. Are these redacted 8 invoices? 9 A. (Reviewing documentation.) 10 Q. I'm sorry. Hold on. 11 MR. FLOYD: I think there are three 12 copies. 13 A. Three copies of each one? 14 Q. Yes. 15 A. Okay. 16 MS. KHANNA: So, Exhibit-4, which one 17 is that? 18 MR. FLOYD: The initial one, I think. 19 Let's take a look and see what we have here. John got 20 me kind of confused, so let's see what we have. 21 (Discussion off the record.) 22 Q. (By Mr. Floyd) Exhibit-4 is ACLU 42272, and 23 that appears to be -- 24 A. I'm sorry? 25 Q. It's Exhibit-4.</p>	<p>1 A. Not anything --. 2 If I may, for the record, this does say it 3 was for work performed on Fayette County, Georgia, 4 which I mentioned earlier. I suspect that's 5 my mistake. I believe the bill was paid anyway. 6 Q. Yes, I was going to ask you about that. 7 A. But I do believe this was actually a bill for 8 this case. 9 Q. And this shows 52.6 hours; is that correct? 10 A. Yes, it does. 11 Q. And what was your hourly rate? 12 A. \$300. 13 Q. And it's been \$300 for all of your invoices, 14 then? 15 A. Everything in preparation, yes, the 16 preparation of reports, that's correct. 17 Q. Did anyone else assist you in doing any 18 of the work in this case? 19 A. Only Bill Cooper providing me with Spanish 20 surname matching in the elections. I don't believe 21 anybody else played any role at all. 22 Q. And have you worked with Bill Cooper on other 23 cases? 24 A. I must have. 25 Q. Why do you say that?</p>
Page 15	Page 17
<p>1 A. Okay. 2 Q. If you look in the lower right-hand corner, 3 there is an ACLU number down there. 4 A. Okay. 5 Q. Do you see that? 6 A. 42272. 7 Q. Right. 8 A. Okay. 9 Q. Is Exhibit No. 4 your first invoice, as far 10 as you know? 11 A. I don't know for sure. 12 Q. It states in Exhibit-4 that this is your 13 billing from August of 2012 through March 15, 2013. 14 Is that what it indicates in the first sentence? 15 A. That's what it says, yes. 16 Q. Would this invoice indicate, then, that you 17 probably started work on this case sometime in August 18 of 2012? 19 A. It would be perhaps the first time I worked 20 any billable hours, yes. 21 Q. And do you know if you worked on the case in 22 any nonbillable sense prior to August of 2012? 23 A. Only to discuss availability, that sort of 24 thing. 25 Q. All right.</p>	<p>1 A. I remember having lunch with him during a 2 case once. 3 Q. All right. 4 A. I can't recall which one it was and -- but, 5 you know, it's possible that that lunch occurred 6 under -- in some other context. 7 Oh, yes. I believe Bill Cooper worked 8 on the Fayette County, Georgia case, and I forget 9 exactly what he -- let's see. I forget exactly what 10 he did, but --. 11 Q. How many voting rights cases have you worked 12 on? 13 A. I don't know. 14 Q. Ballpark, how many? 15 A. Well, I used to say I had been deposed or 16 testified in over 70 cases. 17 Q. Okay. 18 A. It would be a higher number now. I began 19 doing this in the early 1970s, so I have no idea. 20 Q. All right. And how many times have you 21 testified in court regarding a voting rights matter? 22 A. It's the same answer. I mean, I testified in 23 the early '70s and -- you know, and I have a list of 24 those since 2008, I believe it was. 25 Q. Right.</p>

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<p>1 A. Beyond that, I don't know how many 2 I testified in. In court, you mean or -- 3 Q. Yes, in court. 4 A. I don't remember. 5 Q. What did you do to prepare for your 6 deposition today? 7 A. Reread the reports in the case. 8 Q. Which reports did you read? 9 A. All five. 10 Q. "All five" would be your three reports? 11 A. Yes, and Dr. Alford's two reports. 12 Q. And you never prepared a reply to 13 Dr. Alford's supplemental report; is that correct? 14 A. No. 15 Q. Is that correct? 16 A. A reply to the supplemental report? 17 Q. Yes. 18 A. No. 19 Q. Did you read any other reports of any experts 20 in this case? 21 A. In preparation for this deposition? 22 Q. Yes. 23 A. No. 24 Q. Did you ever read any depositions in this 25 case prior to preparation for the deposition?</p>	<p>1 pages as discussed in your reports? Regarding 2 Dr. Morrison. 3 A. No. 4 Q. Did you review any other expert reports, 5 other than what you've referenced, in this particular 6 case? 7 A. No. 8 Q. Did you talk to any other experts in this 9 case? 10 A. About the case? 11 Q. Yes, about the case. 12 A. I don't believe so, no. 13 Q. Did you ever talk to Bill Cooper about the 14 case? 15 A. No. Not directly. 16 Q. What about indirectly? 17 A. No, I don't -- well, I mean, there might have 18 been a question about what was Bill doing for me and 19 things, but it would have gone through the attorney 20 if there was. 21 Q. What was your understanding of Bill Cooper's 22 role in this case? 23 A. I believe he was handling prong 1, and he was 24 doing Spanish surname matching for election sign-in or 25 turnout data. I think that was it.</p>
Page 19	Page 21
<p>1 A. Well --. 2 Q. Did you ever read any depositions at any 3 time? Maybe that's -- 4 A. Well, let me clarify. I think there were 5 a couple pages from Morrison's report that -- 6 I certainly didn't review the whole report. I may 7 have looked at the portion briefly on racially 8 polarized voting, and possibly -- I know I did look at 9 the table involving school board elections. 10 Q. Did you read anything from Dr. Morrison's 11 deposition? 12 A. No. 13 Q. You read portions of Dr. Morrison's report, 14 correct? 15 A. A very limited number of pages, yes. 16 Q. Did you have the entire report to read? 17 A. I did not have it available to me in hard 18 copy in my files. I'm sure there's an electronic 19 document somewhere. 20 Q. And why did you read portions of 21 Dr. Morrison's report? 22 A. Because he had some portions on racially 23 polarized voting and school board elections, 24 and I discuss both of those in my reports. 25 Q. Did you consider anything other than those</p>	<p>1 Q. And what did you understand your role to be? 2 A. To do a racially polarized voting analysis, 3 to discuss the enhancing factors of the type of 4 at-large system in Yakima and -- I forget if there was 5 a third subject in the first report. There might have 6 been a third subject. I don't recall at the moment. 7 Q. Were you asked -- 8 A. The first report. 9 Q. I'm sorry, were you finished? 10 A. I was dealing with the first report. 11 Q. Were you asked to identify or discuss any 12 of the Senate factors? 13 A. Yes, the enhancing factors are Senate 14 factors. 15 Q. Which Senate factors? 16 A. I don't remember the number. 17 Q. And what is your understanding of "enhancing 18 factors"? What do you mean by that? 19 A. Enhancing factors are features of a system, 20 an at-large election system, that eliminate or 21 minimize the ability of a minority group to cast 22 single-shot votes. 23 Q. And in this particular case, did you find 24 that there were enhancing factors? 25 A. Yes.</p>

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<p>1 Q. And what were they?</p> <p>2 A. The place system, which separates all of the</p> <p>3 seven elections into separate elections rather than</p> <p>4 electing all seven at one time. In other words,</p> <p>5 voters do not have seven votes to cast for seven</p> <p>6 candidates in the top seven when they're divided up by</p> <p>7 place.</p> <p>8 Q. You called that the "place system"?</p> <p>9 A. "Place" or "post."</p> <p>10 Q. Place, p-l-a-c-e system.</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. Sometimes called the "post system."</p> <p>14 Q. And that is because the elections are not all</p> <p>15 held at the same time you're saying?</p> <p>16 A. No, no, that's "staggering." A place system,</p> <p>17 they can all be held at the same time, but there are</p> <p>18 still seven individual elections. It's the staggering</p> <p>19 that moves them to different dates on the calendar.</p> <p>20 Q. All right.</p> <p>21 A. I also noted the role of the top two</p> <p>22 primaries and the general election as, in effect,</p> <p>23 creating a majority vote rule. I say "in effect"</p> <p>24 because write-in votes are counted, so, as I</p> <p>25 understand it, it's theoretically possible for enough</p>	<p>1 A. Well, that means that in every one of those</p> <p>2 individual elections, the majority in the community</p> <p>3 has the opportunity to control the outcome of those</p> <p>4 elections.</p> <p>5 Q. And is the electoral system in Yakima unique</p> <p>6 to Yakima?</p> <p>7 A. No.</p> <p>8 Q. How many other jurisdictions would you</p> <p>9 estimate have similar types of electoral systems?</p> <p>10 A. I don't --</p> <p>11 MS. KHANNA: Objection; calls for</p> <p>12 speculation.</p> <p>13 Q. Do you know?</p> <p>14 A. Do I know the number?</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 Q. Do you have any idea if this is a minority</p> <p>18 type of position -- or a minority system?</p> <p>19 MS. KHANNA: Object to the form of the</p> <p>20 question.</p> <p>21 MR. FLOYD: That was a bad question.</p> <p>22 MS. KHANNA: Could you --</p> <p>23 MR. FLOYD: I'll rephrase.</p> <p>24 Q. Have you done any analysis of how Yakima's</p> <p>25 system compares to other systems in the United States?</p>
Page 23	Page 25
<p>1 write-ins to be cast and counted that a candidate</p> <p>2 might win with a plurality as opposed to a majority,</p> <p>3 or, you know, a write-in presumably could cast</p> <p>4 a majority. But nothing like that happened in these</p> <p>5 elections, so, in effect, they operate as majority</p> <p>6 vote rules.</p> <p>7 The two-party -- the two-candidate</p> <p>8 primary -- I may be expressing it wrong, but when</p> <p>9 there is more than three candidates, there is a</p> <p>10 primary election, and then the top two go to the</p> <p>11 general election and they are the only ones whose</p> <p>12 names are on the ballot.</p> <p>13 In the general election, if there are only</p> <p>14 two candidates for a position, then they wait until</p> <p>15 the general election, and again, their names are the</p> <p>16 only two names on the ballot.</p> <p>17 Q. And how is that an enhancing factor?</p> <p>18 A. Well, that means that voters basically are</p> <p>19 going to vote -- empirically, voters are likely to</p> <p>20 vote for candidates with names on the ballot, and what</p> <p>21 that means is a two-person contest, so you have to get</p> <p>22 a majority -- not just a simple plurality but</p> <p>23 a majority of the votes -- in order to win the seat.</p> <p>24 Q. And my question is, how is that an enhancing</p> <p>25 factor?</p>	<p>1 A. Across the United States at every level of</p> <p>2 local government, I do not.</p> <p>3 Q. Are you going to render any opinion at</p> <p>4 trial with respect to how Yakima's system compares to</p> <p>5 any other systems in the United States?</p> <p>6 A. Any other systems in the United States?</p> <p>7 Q. Yes.</p> <p>8 A. There are other systems. I mean, I can --</p> <p>9 I haven't been asked to compare beyond what my report</p> <p>10 contains.</p> <p>11 Q. And your report doesn't address this issue,</p> <p>12 correct?</p> <p>13 A. No, it -- well, it addresses pure at large,</p> <p>14 as opposed to at large with enhancing factors, so --</p> <p>15 I mean, that's a comparison there.</p> <p>16 Q. All right. Where in --</p> <p>17 A. I do not intend to talk about numbers of</p> <p>18 how many, where, in what states or anything like that.</p> <p>19 Q. Where in your report do you talk about</p> <p>20 enhancing factors?</p> <p>21 A. I would say in the section that indicates the</p> <p>22 Yakima city Council election system.</p> <p>23 Q. What page are you reading from?</p> <p>24 A. 3, 4, 5.</p> <p>25 Q. And do you specifically use the words</p>

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<p>1 "enhancing factors" there?</p> <p>2 A. Yes.</p> <p>3 Q. Where is that?</p> <p>4 A. (Reviewing document.)</p> <p>5 Q. If I might help, if you look at paragraph 10</p> <p>6 on page 5, it talks about "enhancing the potential</p> <p>7 dilutive effect" --</p> <p>8 A. Okay.</p> <p>9 Q. -- but it doesn't talk about enhancing</p> <p>10 factors, correct?</p> <p>11 A. Well, let me read it.</p> <p>12 Q. Okay.</p> <p>13 A. "... a system widely recognized as</p> <p>14 enhancing." That's correct --.</p> <p>15 MS. KHANNA: I'm going to object</p> <p>16 the document speaks for itself.</p> <p>17 A. Well, not on -- I don't see it again in that</p> <p>18 section, but I believe it's in my introduction.</p> <p>19 MS. KHANNA: Is there a question on his</p> <p>20 report?</p> <p>21 MR. FLOYD: I think he's still looking</p> <p>22 through his report, his initial report, to see if</p> <p>23 there is any reference to "enhancing factors."</p> <p>24 MS. KHANNA: And again, the objection is</p> <p>25 that the document speaks for itself.</p>	<p>1 Q. More than one?</p> <p>2 A. Well, there would have been a penultimate</p> <p>3 draft that was submitted to the attorneys, and</p> <p>4 my recollection is that Ms. -- Ms. Khanna is an</p> <p>5 excellent editor, but I believe that's all that</p> <p>6 happened between the penultimate and the ultimate, the</p> <p>7 final draft.</p> <p>8 Q. What type of editing did she do?</p> <p>9 A. Grammar. Maybe some spelling. I mean,</p> <p>10 I would have hoped I would have used spell check at</p> <p>11 that stage, but she's a former English teacher and</p> <p>12 she's very good at editing.</p> <p>13 Q. All right. If you look at your conclusion on</p> <p>14 page 13 of Exhibit-1, you have your conclusions</p> <p>15 referenced in paragraphs 32 and 33, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And in the first sentence it says</p> <p>18 "... indicate that voting in these elections has been</p> <p>19 polarized between Latinos and non-Latinos," correct?"</p> <p>20 MS. KHANNA: Can you tell me where you</p> <p>21 are.</p> <p>22 MR. FLOYD: I'm at the first sentence of</p> <p>23 paragraph 32 on page 13 of Exhibit No. 1.</p> <p>24 A. "The results of the analyses of voting in the</p> <p>25 city council elections in Yakima indicate that voting</p>
Page 27	Page 29
<p>1 MR. FLOYD: And I'm asking him to look for</p> <p>2 it.</p> <p>3 Q. Then we'll look at Exhibit-2.</p> <p>4 A. (Reviewing documentation.)</p> <p>5 Q. Looking at Exhibit-1 --</p> <p>6 A. Okay.</p> <p>7 Q. -- it's true that you don't discuss the term</p> <p>8 "enhancing factors" in your initial report, correct?</p> <p>9 A. Well, I wouldn't say that, because I talk</p> <p>10 about this being an enhancing feature.</p> <p>11 Q. All right.</p> <p>12 A. I mean, I'm just scanning, basically, and I</p> <p>13 don't see -- let's see, in 3 there is also -- in</p> <p>14 footnote 3, I use the expression enhancing factors,</p> <p>15 which is the title of an article I wrote. It's</p> <p>16 footnote 3 in paragraph 10.</p> <p>17 Q. All right.</p> <p>18 A. There was -- I believe in the Fabela case it</p> <p>19 also refers to "enhancing factors." I would have to</p> <p>20 look at that again, though, to be certain.</p> <p>21 Q. I can review the document later, but let's</p> <p>22 talk about --</p> <p>23 A. Okay.</p> <p>24 Q. How many drafts of Exhibit-1 did you prepare?</p> <p>25 A. I don't know.</p>	<p>1 in those elections has been polarized between Latinos</p> <p>2 and non-Latinos."</p> <p>3 Q. Yes.</p> <p>4 A. Correct.</p> <p>5 Q. And nowhere in your conclusion do you utilize</p> <p>6 the words "racially polarized voting"; is that</p> <p>7 correct?</p> <p>8 A. Well, I would have to read the rest of it.</p> <p>9 Q. Yes. Read the rest, please, if you would.</p> <p>10 MS. KHANNA: And I object again that the</p> <p>11 document speaks for itself.</p> <p>12 MR. FLOYD: Well, the document can't</p> <p>13 speak. That's why I'm asking him to read it.</p> <p>14 A. (Reviewing document.) I don't see myself</p> <p>15 using it, but when I talk about "polarization between</p> <p>16 Latinos and non-Latinos," that means racial.</p> <p>17 Q. So let's look at Exhibit-2, right here.</p> <p>18 A. Okay.</p> <p>19 Q. Exhibit-2 is your reply, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And in Exhibit-2, in paragraph 2 on the first</p> <p>22 page, you talk about racially polarized voting</p> <p>23 at least four times in the first and second</p> <p>24 paragraphs, correct?</p> <p>25 A. (Reviewing document.)</p>

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<p>1 MS. KHANNA: And again, objection, the 2 document speaks for itself. 3 A. Well, I can pick out three, but let me --. 4 Q. I've got four -- 5 A. Four. 6 Q. Okay. 7 A. You're right. 8 Q. Did any attorney, after you prepared your 9 first report, your initial report, and your 10 supplemental report ask you to add the adjective 11 "racial" before the word "polarized"? 12 MS. KHANNA: I'm going to object and 13 instruct the witness not to answer to the extent it 14 reveals any communications between counsel and you -- 15 and the witness -- with respect to -- other than 16 communications regarding compensation or facts, data 17 and assumptions that you considered or relied upon 18 with respect to your report. 19 MR. FLOYD: So you're instructing him not 20 to answer this question? 21 MS. KHANNA: I'm instructing the witness 22 not to answer to the extent it goes beyond the topics 23 I just mentioned. 24 Q. So are you going to answer the question or 25 not?</p>	<p>1 Q. Well, do you have anything more to add on 2 enhancing factors other than what's referenced in your 3 report? 4 A. More to add? 5 Q. Yes. 6 A. Beyond the report? 7 Q. Yes. 8 A. No. 9 Q. All right. What is "polarized voting"? 10 How would you define "polarized voting"? 11 A. It's a consistent relationship between the 12 race of the voter and the way in which the voter 13 votes, or, expressed differently, the minority group 14 of voters and the other voters vote differently. 15 Q. You've inserted the word "race" in your 16 definition of "polarized voting," correct? 17 A. I insert the word "race" -- 18 MS. KHANNA: Object to the form of the 19 question as vague and ambiguous. 20 A. In my definition -- 21 THE WITNESS: I'm sorry. 22 MS. KHANNA: I'm going to object to the 23 form of the question as vague and ambiguous. I'm not 24 sure what he's referring to when referring to the word 25 "race."</p>
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<p>1 A. I'm not sure what the legal -- 2 Q. Right. I'm not either. 3 A. I mean --. 4 Q. My question is, were you advised by any 5 attorney -- 6 A. I know your question. 7 Q. -- to add the word "racial" -- 8 A. Uh-huh. 9 Q. -- as an adjective for "polarization" after 10 you had written your first report and prior to 11 finalization of your reply report? 12 MS. KHANNA: I'm going to instruct you not 13 to answer. 14 MR. FLOYD: All right. That's fine. 15 We'll bring it up with the judge later. 16 Q. Now, let's go back to Exhibit-1. 17 A. Yes. 18 Q. You were talking about what you were asked to 19 do, correct? 20 A. Yes. 21 Q. And you said that you were asked to "analyze 22 enhancing factors," correct? Have we finished the 23 discussion of "enhancing factors"? 24 MS. KHANNA: I'm going to object to the 25 form of the question as overly broad and ambiguous.</p>	<p>1 MR. FLOYD: All right. 2 Q. Let's do this. I'm going to have the court 3 reporter read back your answer -- okay -- 4 A. Uh-huh. 5 Q. -- and you tell me if you inserted the word 6 "race's" in your definition of "polarized voting." 7 Okay? 8 A. (Nods affirmatively.) 9 MR. FLOYD: Let's go ahead and read it 10 back. 11 (The question was read 12 back as requested.) 13 Q. So you did insert the word "race," correct, 14 in your definition of "polarized voting"? 15 A. Actually, that's what the Supreme Court has 16 for a definition. 17 Q. In what case? 18 A. Thornburg vs. Gingles. 19 Q. And is your definition of "polarized voting" 20 synonymous with "racially polarized voting"? 21 A. It depends on the groups at issue. 22 Q. And how could it differ? 23 A. Well, you could talk about polarized voting 24 between gays and straights, between men and women, 25 between Catholics and Protestants, but we are dealing</p>

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<p>1 with a context in which it's minorities and other</p> <p>2 voters, and those are protected minorities and that is</p> <p>3 typically considered racially polarized voting.</p> <p>4 Q. And in this particular case, is there any</p> <p>5 difference between "racially polarized voting" and</p> <p>6 merely "polarized voting"?</p> <p>7 A. Well, racially polarized voting would refer</p> <p>8 to minority groups protected by the Voting Rights Act.</p> <p>9 There are other minority groups that aren't protected</p> <p>10 by the Voting Rights Act.</p> <p>11 Q. Can voting be polarized for reasons other</p> <p>12 than race?</p> <p>13 MS. KHANNA: Object to the form of the</p> <p>14 question; lack of foundation, assumes facts not in</p> <p>15 evidence.</p> <p>16 A. Well, "racially polarized voting" as defined</p> <p>17 by the Supreme Court is a descriptive issue, not a</p> <p>18 causal issue.</p> <p>19 Q. And you did no causal analysis in this</p> <p>20 particular case, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Now, let's talk about potential causal</p> <p>23 factors. All right? Would you agree that ideology</p> <p>24 could be a polarizing factor in an election?</p> <p>25 MS. KHANNA: Object to the form of the</p>	<p>1 Q. Okay.</p> <p>2 A. It's a descriptive question.</p> <p>3 Q. Have you finished your analysis in this case?</p> <p>4 A. Yes.</p> <p>5 Q. And do your reports contain all of your</p> <p>6 opinions, Exhibit Nos. 1, 2 and 3?</p> <p>7 A. All of my opinions, yes.</p> <p>8 Q. Is there anything you would like to change,</p> <p>9 add or delete from Exhibit Nos. 1, 2 and 3?</p> <p>10 A. No.</p> <p>11 Q. Do you know Dr. Fraga?</p> <p>12 A. Luis Fraga?</p> <p>13 Q. Yes.</p> <p>14 A. Yes, I do.</p> <p>15 Q. And how long have you known Dr. Fraga?</p> <p>16 A. I don't remember the first time we may have</p> <p>17 met. It would go back a ways. We're both political</p> <p>18 scientists. We go to the same conventions. We do</p> <p>19 some work in the same field. So I know him. It's not</p> <p>20 a recent acquaintance.</p> <p>21 Q. Have you ever talked with Dr. Fraga about</p> <p>22 this particular case?</p> <p>23 A. Only the fact that we were both working it.</p> <p>24 We did not talk in any way about the substance of the</p> <p>25 case.</p>
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<p>1 question. Also calls for speculation.</p> <p>2 MR. FLOYD: Calls for what?</p> <p>3 MS. KHANNA: Speculation.</p> <p>4 Q. Are you saying that you don't know if --</p> <p>5 well, I'll back up. I want to lay a foundation.</p> <p>6 Are you saying that you don't know if</p> <p>7 ideology could be a polarizing factor in election</p> <p>8 results?</p> <p>9 A. I didn't say a word in response to your</p> <p>10 question.</p> <p>11 Q. All right. Well, let me ask you this as a</p> <p>12 foundation question, because apparently counsel wants</p> <p>13 me to lay this foundation.</p> <p>14 Do you believe that ideology could be</p> <p>15 a causal factor for polarization in an election?</p> <p>16 A. Ideology could cause differences in candidate</p> <p>17 preferences, yes.</p> <p>18 Q. Could partisan issues cause polarization in</p> <p>19 election results?</p> <p>20 A. It could create differences, sure.</p> <p>21 Q. Did you do anything to eliminate ideology or</p> <p>22 partisanship from potential causes of the polarization</p> <p>23 that you found in the elections in Yakima?</p> <p>24 A. I didn't do any causal analysis. It's not</p> <p>25 required under the law.</p>	<p>1 Q. Have you ever reviewed Dr. Fraga's reports</p> <p>2 in this particular case?</p> <p>3 A. No.</p> <p>4 Q. Are you familiar with Dr. Contreras?</p> <p>5 A. Maybe if you add a first name. I'm not sure</p> <p>6 I --</p> <p>7 Q. Oh, of course. How could I forget that?</p> <p>8 Dr. Frances -- Frances with an E -- Contreras.</p> <p>9 A. I'm not aware that I am. You'd have to</p> <p>10 provide more background and maybe I could -- but given</p> <p>11 the name, I can't say that I am.</p> <p>12 Q. Are you familiar with Dr. Thernstrom?</p> <p>13 A. Mr. or Mrs.?</p> <p>14 Q. Mr.</p> <p>15 A. Yes.</p> <p>16 Q. And have you worked either with him or</p> <p>17 against him in other cases?</p> <p>18 A. Well, Mr. or --</p> <p>19 Q. Mr. --</p> <p>20 A. Have I worked with her or against her?</p> <p>21 Q. With him or against him, in any cases.</p> <p>22 A. Okay. Are you talking about Abigail or</p> <p>23 are you talking about -- I forget the first name of</p> <p>24 her husband. You said it's a her and then you keep</p> <p>25 saying him.</p>

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<p>1 Q. Dr. Stephan Thernstrom.</p> <p>2 A. All right. Have I worked with or against?</p> <p>3 Q. Dr. Stephan Thernstrom.</p> <p>4 A. Yes.</p> <p>5 Q. On how many cases?</p> <p>6 A. I can only recall one.</p> <p>7 Q. Was it with or against him?</p> <p>8 A. No, it would have been against him.</p> <p>9 Q. And the Dr. Stephan Thernstrom that you know,</p> <p>10 where does he live? Does he live near Washington,</p> <p>11 D.C.?</p> <p>12 A. I do not know.</p> <p>13 Q. Have you reviewed any of Dr. Thernstrom's</p> <p>14 reports in this particular case?</p> <p>15 A. No.</p> <p>16 Q. Can you tell me generally what you did</p> <p>17 in this case.</p> <p>18 A. Well, I wrote three reports. The first deals</p> <p>19 with racially polarized voting and enhancing factors</p> <p>20 and at-large election systems.</p> <p>21 Q. All right.</p> <p>22 A. The second one was a response or reply to</p> <p>23 Dr. Alford's report, first report. It dealt with</p> <p>24 a number of things in response to his first report.</p> <p>25 And then my third report deals with the</p>	<p>1 Q. Tell me generally what you did. Did you put</p> <p>2 data into the software?</p> <p>3 A. No --</p> <p>4 Q. Did you enter data in the software?</p> <p>5 A. No, I didn't enter data into the software.</p> <p>6 I told the software where to go to get the data.</p> <p>7 Q. And the software then obtained the data?</p> <p>8 A. Correct.</p> <p>9 Q. And then what did the software do?</p> <p>10 A. It performs this EI analysis.</p> <p>11 Q. And does that then result in some sort of</p> <p>12 conclusion?</p> <p>13 A. It results in estimates of group support for</p> <p>14 candidates or propositions, or whatever you're</p> <p>15 analyzing, and provides confidence intervals -- or</p> <p>16 will provide confidence intervals.</p> <p>17 Q. Does it yield a point estimate?</p> <p>18 A. Yes.</p> <p>19 Q. And what is a "point estimate"?</p> <p>20 A. A point estimate is what is considered the</p> <p>21 best estimate of that behavior, of that level of</p> <p>22 support.</p> <p>23 Q. And does the EI software also yield a</p> <p>24 confidence interval for each point estimate?</p> <p>25 A. Yes.</p>
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<p>1 2013 elections, the most recent elections, as far as I</p> <p>2 know, in Yakima.</p> <p>3 Q. And how did you analyze the issue of</p> <p>4 polarized or racially polarized voting in Yakima?</p> <p>5 Did you use any procedures to analyze that?</p> <p>6 A. Yes. I used ecological inference.</p> <p>7 Q. And what is "ecological inference"?</p> <p>8 A. Ecological inference is a statistical routine</p> <p>9 often simply referred to as "EI." It's a statistical</p> <p>10 routine for taking what is called aggregate-level</p> <p>11 data, meaning data about groups, in this application</p> <p>12 about precincts, and assessing the extent to which</p> <p>13 different groups supported different candidates or</p> <p>14 ballot positions.</p> <p>15 Q. And did you utilize some type of EI software?</p> <p>16 A. Gary King's.</p> <p>17 Q. And was there a particular version of</p> <p>18 Gary King's EI software that you utilized?</p> <p>19 A. Version (aR), and that is a capital R.</p> <p>20 Q. And is that a free software that is available</p> <p>21 in the public domain?</p> <p>22 A. Yes.</p> <p>23 Q. And how long have you used that particular</p> <p>24 version of Gary King's EI software?</p> <p>25 A. Pretty soon after it came out, I believe.</p>	<p>1 Q. And what is the confidence interval?</p> <p>2 A. It is a 95 percent -- well, I rely on a</p> <p>3 95 percent confidence interval, and the confidence</p> <p>4 interval is an interval that says that we can be</p> <p>5 95 percent confident, statistically, that the true</p> <p>6 value, meaning the real world true value, falls within</p> <p>7 that range.</p> <p>8 The confidence interval -- it's still --</p> <p>9 the point estimate is what the statistical analysis</p> <p>10 considers the best estimate, and the range can go --</p> <p>11 it goes up above it and goes below it, but the further</p> <p>12 you go from the point estimate the less likely that</p> <p>13 value is to be -- is the true value.</p> <p>14 Q. And how do you quantify the diminished value</p> <p>15 for -- well, let's back up.</p> <p>16 The confidence interval is, you said,</p> <p>17 95 percent confidence that the true point is somewhere</p> <p>18 within the parameters of the high and low of the</p> <p>19 confidence interval, correct?</p> <p>20 A. Very good. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. You said it better than me.</p> <p>23 Q. All right. And you said that the point</p> <p>24 estimate is the most likely?</p> <p>25 A. The statistical routine says that is most --</p>

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<p>1 out of this -- within this range, that is most likely 2 to be the true value in the real world. 3 Q. And you said that as you move away from the 4 point estimate it becomes less likely? Is that what 5 you're saying? 6 A. That's correct. 7 Q. All right. 8 A. Every value within that point estimate is not 9 equally likely to be the true value. 10 Q. But any point within the confidence interval 11 will be at least 95 percent, correct? 12 A. No. I didn't say that something would be 13 95 percent. I believe what I said is that the 14 statistical routine provides the 95 percent confidence 15 interval, and that we can be confident, statistically, 16 that the true value is somewhere within that 17 interval -- we can be 95 percent confident that the 18 true value is inside that interval. 19 Q. All right. 20 A. It doesn't mean any value in the interval is 21 equal to -- or is equally likely to all other values 22 in the interval. 23 Q. All right. I think I understand what you're 24 saying. 25 A. Okay.</p>	<p>1 Q. And what is an "ecological regression 2 analysis"? 3 A. Ecological regression analysis is a standard 4 procedure in the social sciences, certainly, and maybe 5 other disciplines. It was for a while a standard 6 used -- used in a standard way in racially polarized 7 voting analysis. 8 It is also a different routine than EI. 9 It is a routine that is based on, statistically, a 10 straight line that is drawn through the data points, 11 in effect, and before King's procedure was developed, 12 it was the procedure widely relied upon. It was a 13 procedure that was relied upon in Thornburg vs. 14 Gingles. It was the source of the estimates there, 15 and the court relied on those estimates. 16 King's routine is designed to be, and is, 17 an improvement. King himself developed a routine in 18 response to the racially polarized analyses that were 19 being done in litigation, and I suppose also in the 20 literature at the time. 21 He was motivated to create his procedure 22 while in court listening to another expert talk about 23 how the estimates were above 100 percent support for a 24 group for a candidate, or even below zero, and he was 25 dissatisfied with that, thought that had lots of</p>
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<p>1 Q. Not totally, but I understand it enough to 2 move on to another question. 3 A. You may do it better than me. 4 Q. I'm going to save that for trial. 5 A. Oh, okay. 6 Q. I'm going to show off at trial. I don't want 7 to do it now. 8 MR. ALFORD: It will be on the final exam. 9 MR. FLOYD: Right. 10 Q. Did you do any other type of analysis, other 11 than ecological inference? 12 A. Well, in my report -- I believe in the reply 13 report -- I did an examination of school board 14 elections. When I say "examination," I'm not -- 15 I don't mean to say that that entailed an EI analysis. 16 This was simply in response to the defendants' experts 17 comments on school board elections. 18 They also did not provide in their 19 response to me any ecological -- any estimates of 20 what the point estimates would be. In other words, 21 there was no EI analysis of the school board 22 elections. It was just the outcome of the elections. 23 Q. Have you ever done an ecological regression 24 analysis? 25 A. Yes.</p>	<p>1 problems with it, and so he developed his routine. 2 Q. Understood. What is a "homogenous precinct 3 analysis"? 4 A. A homogenous precinct analysis is an analysis 5 where the investigator looks at only the precincts 6 that are defined as homogenous. I would say the 7 standard definition is 90 percent or more, or -- 8 greater than 90 percent. 9 That just looks at the two extreme sets of 10 precincts in terms of racial composition within 11 them -- I'm sorry, when I said "90 percent," I meant 12 presence of one group or the other group, or a third 13 group, whatever kind of analysis is being done. 14 What that entails is simply looking at the 15 votes cast in the homogenous precincts, those that are 16 a homogenous minority of one type or another, or 17 perhaps combined, and the other is the other voters, 18 and you compare those two things. 19 People report them as -- or sometimes 20 estimates of a citywide value, they should be reported 21 simply as -- they're not estimates of anything, 22 they're really just the results of calculating the 23 votes in the two sets, extreme sets, of precincts, 24 but they are sometimes used to infer to a jurisdiction 25 overall.</p>

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<p style="text-align: right;">Page 46</p> <p>1 Q. Have you ever utilized the homogenous 2 precinct analysis? 3 A. Yes. 4 Q. And did you use it in this particular case? 5 A. No. 6 Q. Why not? 7 A. It's archaic. We don't need to do that. 8 Q. Was it possible to utilize the homogenous 9 precinct analysis in this case? 10 A. Could I program a computer to give me the 11 results of a homogenous precinct analysis? 12 Q. Right. 13 A. Certainly. 14 Q. Let me ask you this. Are you aware of the 15 fact if there were any homogenous Hispanic precincts 16 in this particular case? 17 A. It's my memory that there were none, based on 18 that definition. 19 Q. What was the most homogenous Hispanic 20 precinct that you're aware of in this particular case 21 in terms of a percentage? 22 A. Well, there were none that would be 23 considered homogenous, so I can't say which was the 24 lowest among the homogenous. 25 Q. Were you aware if there was any precinct,</p>	<p style="text-align: right;">Page 48</p> <p>1 MS. KHANNA: Object to the form of the 2 question as overly broad and vague. 3 Q. Go ahead and answer the question. 4 A. Well, I'm not sure what you mean by 5 "significant," but I will say that, yes, it's -- it 6 creates a real world constraint on the efficiency of 7 our estimates. Other things being equal, it would be 8 preferable for analytic purposes to have a greater 9 range of observation. 10 Q. What do you mean by that? 11 A. Well, what you're telling the computer is if 12 you have a greater range, then there are precincts in 13 which there are more Latinos, and so that influences 14 the estimate on voting behavior, or could. 15 Now, with regression, it doesn't matter. 16 I mean, regression gives you the same line, unless you 17 have more points. Then if the points are different, 18 it may have a different result. 19 But it is a real world constraint. It's 20 not a mistake in application or anything. It simply 21 reflects, in this instance, the presence of Latinos 22 across all of the precincts in the city of Yakima. 23 Q. Does it have anything to do with the 24 concentration of Latinos in the boundaries of the city 25 of Yakima?</p>
<p style="text-align: right;">Page 47</p> <p>1 Hispanic precinct, in this case that was above 2 50 percent, that was a majority Hispanic precinct? 3 A. My memory is there was not. 4 Q. Do you know what the highest percentage that 5 there was for any precinct for Hispanic composition 6 in this case? 7 A. Hispanic composition being a percentage of 8 voter sign-in or turnout? We use both expressions 9 sometimes. 10 Q. Both. 11 A. Okay. Now, where were we? 12 Q. We're looking at the highest -- 13 A. Oh, I'm sorry. 14 Q. -- Hispanic composition of those two. 15 A. Right. It would differ by election. 16 It wouldn't differ by the same election -- same ballot 17 one year, but it would differ from year -- from one 18 election day to another election day, to another 19 election day. 20 Q. Right. 21 A. I think sometimes it was in the 30 percentage 22 point range. I think one time it may have been 40. 23 That's what my memory is saying right now. 24 Q. Would that be significant to you as part of 25 your analysis in this case?</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Well, it has something to do with the 2 concentration and how the precinct lines are drawn. 3 Q. What are "scatter plots"? 4 A. Scatter plots are graphs that show the 5 placement of a precinct. Generally, they're 6 two-dimensional, and the independent variable or the X 7 axis would be the percent of the minority presence, or 8 -- yes, the Y axis would be the vertical axis. 9 Q. Right. 10 A. Then on that you plot the percent of the vote 11 for a particular candidate. It could be the percent 12 of the vote for several candidates, if you wanted to 13 do it that way. But it simply compares the presence, 14 measured in some form, of the group in the precinct 15 and -- across each of the precincts and the kind of 16 vote that was cast in that particular precinct. 17 Those become -- those are like -- it can 18 be different figures, but you can envision dots on a 19 graph. 20 Q. On a graph, right, something that you would 21 prepare in a statistics class, beginning statistics 22 class, and you graph something on an X and a Y axis? 23 A. You could. 24 Q. Could you use the Excel program to prepare 25 scatter plots?</p>

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<p>1 A. You can use many programs to prepare scatter 2 plots. 3 Q. You don't even need a program, you could just 4 do it -- 5 A. Well -- 6 Q. You don't even need a program, you can just 7 do it with the data, correct? 8 A. Well, you can eyeball it, you know, get a 9 ruler out and do it, I suppose, but you can also have 10 a statistical software create them for you. 11 Q. Have you ever utilized scatter plots in any 12 cases? 13 A. Yes. 14 Q. All right. What is "voter crossover"? 15 A. Well, I think it might be best to keep it in 16 the context of racially polarized voting. 17 Q. Sure, if you would like to. 18 A. Okay. Crossover generally refers to voters 19 who are not in the minority group voting and how they 20 vote, so it's -- generally, it's when -- the other 21 voters, it's the level of the vote they give from 22 their group to a particular -- well, to a minority 23 candidate. That's where "crossover" comes. 24 Q. And how does voter crossover relate to voter 25 polarization?</p>	<p>1 vote. 2 A. Are you talking about -- 3 MS. KHANNA: I'm going to object to the 4 form of the question. I think it mischaracterizes the 5 previous testimony as what "crossover" was. 6 MR. FLOYD: I'm not characterizing any 7 testimony. I'm asking him a hypothetical. 8 A. Well, you're talking about the crossover of 9 the minority votes -- 10 Q. No, I'm talking about -- 11 A. -- so you're talking about 49 percent support 12 for a white candidate -- 13 Q. 49 percent -- 14 A. -- or a non-Latino candidate. 15 Q. 51 percent for the non-Latino candidate, and 16 then 49 percent of the non-Latinos support the Latino 17 candidate -- 18 A. Okay. 19 Q. -- so you've got 49 percent crossover and 20 you've got 51 percent for the non-Latino candidate. 21 A. By non-Latino voters? 22 Q. Yes. 23 A. Okay. 24 Q. Would that be "polarization," in your 25 opinion?</p>
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<p>1 A. It's basically prong 3 of Gingles, and 2 it's -- you know, is it strong enough to defeat the -- 3 is it strong enough or, you know -- or insufficient to 4 defeat the candidate of choice of the minority voters. 5 Q. So, if it is a majority -- well, let me give 6 you an example. Let's assume that it's 51 percent 7 non-Latino vote for a candidate, but there is 8 49 percent crossover. Would that still be voter 9 polarization, in your opinion? 10 A. It would be a difference in candidate 11 preferences. I tend not to talk about polarization as 12 an election-specific thing. It's a characteristic of 13 a group of elections. 14 Q. Let's assume we had a group of elections that 15 were that way; 51 percent for the majority with a 49 16 percent crossover for the minority. 17 A. Yes. 18 Q. Would that, in your opinion, be polarization? 19 A. Well, I think maybe you're -- okay. I think 20 you inverted what was majority and -- 21 Q. I misspoke, then. Let me rephrase it. 22 A. Okay. 23 Q. So, 51 percent for the majority -- 24 A. Okay. 25 Q. -- and 49 percent crossover for the Latino</p>	<p>1 A. Well, again, polarization in the context 2 we're talking about is not election-specific. It's a 3 function of what you find in all of the elections 4 you've analyzed. 5 Q. And what I'm asking is, is 51 percent, in 6 your opinion, voter polarization? 7 A. It would -- 8 MS. KHANNA: I'm going to object; asked 9 and answered. 10 Q. Go ahead and answer. 11 A. Well, it would be the beginning of 12 polarization, but certainly not very -- it's not 13 intense polarization. 14 Q. And how do you measure or how do you quantify 15 the intensity of the polarization? Would that be 16 something called "cohesion"? 17 A. Well, you can talk about "cohesion" in this 18 context as support of minority candidates, and then 19 "crossover" as support of -- Latino support for 20 candidates would be cohesion, non-Latino support for 21 those same candidates would then be crossover. 22 Q. Crossover. All right. 23 A. And then your question was -- oh, quantify? 24 Q. Yes. 25 A. I'm not aware that there is a widely accepted</p>

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<p>1 quantitative cutoff for how many elections have to be</p> <p>2 at what level of strength or anything like that.</p> <p>3 Q. So you are not aware of any threshold, any</p> <p>4 minimum threshold, that you would be willing to</p> <p>5 testify to for polarization?</p> <p>6 A. We're only aware of one classification</p> <p>7 scheme, and I would not be willing to testify based on</p> <p>8 that scheme.</p> <p>9 Q. What do you mean by that?</p> <p>10 A. Well, there's a political scientist who has a</p> <p>11 set of classifications, and I think at some point it's</p> <p>12 moderate, at some point it's strong, that kind of</p> <p>13 thing. It hasn't been accepted by the courts.</p> <p>14 You throw away data when you do that</p> <p>15 regarding the classifications. You're saying --</p> <p>16 you may have .02 percent difference in -- let's say in</p> <p>17 the difference in the two groups, but he may say</p> <p>18 that -- let's see.</p> <p>19 Let's say that you may have a .02 percent</p> <p>20 difference, say, in minority cohesion and he may say</p> <p>21 the lower one is moderate and the higher one is</p> <p>22 strong. You're throwing away information about the</p> <p>23 levels you've discovered.</p> <p>24 So I'm not aware of any quantitative</p> <p>25 scheme. You know, other factors enter in -- well, in</p>	<p>1 A. Very strong in general elections, very strong</p> <p>2 in all two-choice elections and less strong in</p> <p>3 primaries where there are more candidates. Latino</p> <p>4 voters may feel like they can't -- Latinos can't win</p> <p>5 and they're less likely, therefore, to cast a vote for</p> <p>6 them, until they're in the general election, and then</p> <p>7 that creates a lot of interest and possibility of</p> <p>8 winning.</p> <p>9 Q. Is that your explanation for the differences</p> <p>10 in the apparent polarity between the primary and the</p> <p>11 general elections? Or do you have any additional</p> <p>12 explanations for that?</p> <p>13 A. No. I can see why that might happen, and</p> <p>14 it could be that there are more candidates to choose</p> <p>15 from, which could distribute the vote over more.</p> <p>16 It may also be that when you continue to lose</p> <p>17 elections under an election system, people,</p> <p>18 minorities, have less motivation to participate in</p> <p>19 those elections.</p> <p>20 But that motivation may increase when</p> <p>21 a Latino candidate has made it to the general election</p> <p>22 and is facing one white candidate. All I know is what</p> <p>23 I've discovered in the -- that's not an empirical</p> <p>24 explanation, that's just a possible explanation.</p> <p>25 Q. Right.</p>
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<p>1 terms of the elections you analyze, I'm not aware of</p> <p>2 any particular scheme.</p> <p>3 I am aware of the fact that not every</p> <p>4 Latino candidate has to be supported by Latino voters</p> <p>5 to find racial polarized voting in a community. There</p> <p>6 is no requirement that Latinos vote for every single</p> <p>7 candidate who puts their name on the ballot.</p> <p>8 Q. That would be 100 percent, though, correct?</p> <p>9 A. 100 percent of what?</p> <p>10 Q. Well, you're saying it doesn't have to be</p> <p>11 that every single Latino voter voted for a Latino</p> <p>12 candidate in order to have polarization, correct?</p> <p>13 A. Correct -- every single -- I'm sorry, every</p> <p>14 single Latino candidate got 100 percent of the Latino</p> <p>15 vote?</p> <p>16 Q. No, that's not what I said.</p> <p>17 A. Okay.</p> <p>18 Q. Let's back up. I'm getting confused.</p> <p>19 A. I'm sorry.</p> <p>20 Q. Let me ask this. You talked about moderate</p> <p>21 polarization, correct?</p> <p>22 A. I said somebody has a classification scheme</p> <p>23 that says this would be moderate.</p> <p>24 Q. How would you characterize the polarization</p> <p>25 in this particular case?</p>	<p>1 A. But what I do discover is there is quite a</p> <p>2 difference in voting behavior among Latinos between</p> <p>3 primaries and general elections.</p> <p>4 Q. And you also analyzed the election of</p> <p>5 Mr. Jevons, correct, who was a Latino?</p> <p>6 A. Correct.</p> <p>7 Q. Was there polarity with respect to his</p> <p>8 election?</p> <p>9 A. To clarify, the election that Mr. Jevons was</p> <p>10 in?</p> <p>11 Q. Yes.</p> <p>12 A. He didn't get elected.</p> <p>13 Q. I'm sorry, the election involving</p> <p>14 Mr. Jevons --</p> <p>15 A. I am aware of that election in which he was a</p> <p>16 candidate.</p> <p>17 Q. And was there racially polarized voting in</p> <p>18 that election?</p> <p>19 A. To the extent I do believe that Latinos were</p> <p>20 in support of -- I forget the surname, but</p> <p>21 Folsom-Hill, maybe, something like that --</p> <p>22 my recollection is that they didn't support Jevons,</p> <p>23 that they had a preference for a white candidate in</p> <p>24 that election.</p> <p>25 Q. And how was that racial polarization, if they</p>

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<p>1 voted for a white candidate?</p> <p>2 A. Well, I mean, if you -- some people like to</p> <p>3 analyze white-on-white elections. I don't do that.</p> <p>4 I'm just saying that in that context, Latinos did not</p> <p>5 support the Latino candidate.</p> <p>6 Q. When you do your analysis of voter</p> <p>7 polarization, do you look at all of the elections</p> <p>8 and then make one determination as to whether there is</p> <p>9 racially polarized voting, or do you look at specific</p> <p>10 elections and say: This one is racially polarized,</p> <p>11 the next one is not racially polarized, this one has</p> <p>12 strong racial polarization and this other election is</p> <p>13 mild? Do you do that, or do you --</p> <p>14 A. I do not do that.</p> <p>15 Q. Why not?</p> <p>16 A. I looked at the results.</p> <p>17 Q. So, do you accumulate all the elections</p> <p>18 and then make a decision on polarization, for all of</p> <p>19 the elections, or do you make a determination as to</p> <p>20 each specific election?</p> <p>21 A. Well, as I say, I don't make a determination</p> <p>22 of each specific election.</p> <p>23 Q. All right.</p> <p>24 A. I'm not interested in trees, I'm interested</p> <p>25 in the forest.</p>	<p>1 Q. And is there any particular threshold,</p> <p>2 minimum threshold, in terms of how many votes would</p> <p>3 have to be received in order to be designated the</p> <p>4 Latino preferred candidate, or is it just merely the</p> <p>5 person who gets the most?</p> <p>6 A. Well, that is a threshold.</p> <p>7 Q. The threshold is whoever gets the most,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Can you articulate any benefits</p> <p>11 from the current electoral system in Yakima?</p> <p>12 MS. KHANNA: I'm going to object it calls</p> <p>13 for speculation.</p> <p>14 A. It's nothing I've examined.</p> <p>15 Q. Well, you're familiar with the system,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you gave opinions about whether this</p> <p>19 particular system produced enhancing factors, correct?</p> <p>20 A. Not produced them, entailed them.</p> <p>21 Q. Entailed them.</p> <p>22 Can you think of any benefits that would</p> <p>23 result from this particular system of electoral</p> <p>24 process in the city of Yakima?</p> <p>25 A. Empirically, I can say the only thing I've</p>
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<p>1 Q. That's what I thought. And how many trees</p> <p>2 are in this forest?</p> <p>3 MS. KHANNA: Object to the form of the</p> <p>4 question; broad and ambiguous.</p> <p>5 A. I believe there were seven elections analyzed</p> <p>6 in the first report, and then two more in the second</p> <p>7 report.</p> <p>8 Q. Did you do any analysis of the level of</p> <p>9 Hispanic participation in any of the elections?</p> <p>10 A. Well, I'm aware of the level of Hispanic</p> <p>11 sign-in; in other words, people receiving ballots.</p> <p>12 Q. Did you notice any variation in the amount of</p> <p>13 Hispanic participation in the various elections</p> <p>14 that you analyzed?</p> <p>15 A. I don't recall looking at that.</p> <p>16 Q. Is that something you believe would be</p> <p>17 significant in this case?</p> <p>18 MS. KHANNA: Object to the form of the</p> <p>19 question; undefined term, "significant."</p> <p>20 A. Certainly nothing that is necessary to do.</p> <p>21 Q. How do you determine the Latino preferred</p> <p>22 candidate?</p> <p>23 A. Well, the Latino preferred candidate would be</p> <p>24 the candidate that gets the most votes from Latinos in</p> <p>25 an election.</p>	<p>1 studied is -- would result in a disadvantage of the</p> <p>2 system, the opposite of a benefit. I haven't examined</p> <p>3 what people may see as benefits or think are benefits</p> <p>4 or what I would think are benefits. You know --.</p> <p>5 Q. So is it your position that this particular</p> <p>6 electoral system in Yakima only yields negative</p> <p>7 benefits --</p> <p>8 A. I said that --</p> <p>9 Q. -- there is no positive?</p> <p>10 A. The only thing I've studied is the impact</p> <p>11 on the ability of minorities to elect people from</p> <p>12 within their own group if they're their preferences.</p> <p>13 I haven't looked at the other things.</p> <p>14 Q. How do you define "polarization"?</p> <p>15 A. I did already.</p> <p>16 Q. How do you define it in terms that are not</p> <p>17 racially -- can you think of polarization that doesn't</p> <p>18 involve race?</p> <p>19 A. We've been through that, and I said yes,</p> <p>20 there can be other things.</p> <p>21 Q. Right.</p> <p>22 A. It may be Catholics and Protestants.</p> <p>23 It might be men and women, you know, gay and straight</p> <p>24 Q. Republicans and Democrats?</p> <p>25 A. It could be.</p>

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<p>1 Q. Could it be on gender, woman and man?</p> <p>2 A. I did say that; yes.</p> <p>3 Q. Would you agree that crossover is an</p> <p>4 indication of lack of polarization?</p> <p>5 A. Not in and of itself, no.</p> <p>6 Q. Can it be an indication of lack of</p> <p>7 polarization?</p> <p>8 A. Well, it would depend on what the crossover</p> <p>9 values were.</p> <p>10 Q. And can you give me what your thresholds</p> <p>11 would be for those values?</p> <p>12 A. For a lack of polarization?</p> <p>13 Q. Yes.</p> <p>14 A. I'd say --</p> <p>15 Q. How much crossover would you have to have for</p> <p>16 you to say there is no polarization?</p> <p>17 A. I would have to say that both groups support</p> <p>18 the same candidate, had the same preference.</p> <p>19 Q. Equally?</p> <p>20 A. No. In other words, the Supreme Court talks</p> <p>21 about the separate electorates test, which is,</p> <p>22 you know, who would win among one group and who would</p> <p>23 win among the other group.</p> <p>24 If the same person wins in both groups,</p> <p>25 they have the same candidate preference, and no one is</p>	<p>1 A. No, that's -- no crossover is not a</p> <p>2 definitional requirement of there being a racially</p> <p>3 polarized election.</p> <p>4 Q. And that --</p> <p>5 A. Hold it. I'm sorry, say it again.</p> <p>6 MR. FLOYD: Could you read it back,</p> <p>7 please.</p> <p>8 (The question was read</p> <p>9 back as requested.)</p> <p>10 A. I answered that. I'm not going to agree with</p> <p>11 that. There's nothing that says you don't have</p> <p>12 polarized voting only when there is no crossover.</p> <p>13 Q. And that's based upon what definition?</p> <p>14 A. The Supreme Court's.</p> <p>15 Q. Do you have a definition of "polarization"</p> <p>16 other than your understanding of what you believe to</p> <p>17 be Supreme Court decisions, past Supreme Court</p> <p>18 decisions, on this issue?</p> <p>19 A. Okay, ask it again.</p> <p>20 Q. Do you have a social science definition of</p> <p>21 "polarization" that's separate and independent of what</p> <p>22 your understanding of the Supreme Court's definition</p> <p>23 is?</p> <p>24 A. That's a different question.</p> <p>25 Q. That's a different question?</p>
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<p>1 going to be diluting the other person's -- other</p> <p>2 group's vote if that's the way elections occur.</p> <p>3 Q. So if everyone votes for the same candidate,</p> <p>4 there is no polarization, correct?</p> <p>5 A. If everyone votes for the same candidate?</p> <p>6 Q. Right.</p> <p>7 A. No, there would not be.</p> <p>8 Q. Would there be polarization?</p> <p>9 A. There would not be, actually.</p> <p>10 Q. All right.</p> <p>11 A. If that was characteristic of all of the</p> <p>12 elections, then no, there would not be.</p> <p>13 Q. What if 50 percent of the people voted</p> <p>14 for one candidate and 50 percent voted for the other?</p> <p>15 Would there be polarization in that situation?</p> <p>16 A. They have the same preference.</p> <p>17 Q. Would you agree with the statement that if</p> <p>18 there is a truly polarized election, there is no</p> <p>19 crossover?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. Well, what do you mean by "truly polarized"?</p> <p>23 Q. I mean completely polarized.</p> <p>24 A. Okay. There would be no --</p> <p>25 Q. Crossover?</p>	<p>1 A. Well --.</p> <p>2 Q. I have the option of changing my questions.</p> <p>3 A. Okay. I asked you to repeat it.</p> <p>4 Q. Sure.</p> <p>5 A. No, I don't, but, of course, in the context</p> <p>6 of litigation, what matters is what the Supreme Court</p> <p>7 has said the concept refers to.</p> <p>8 Q. Well, my question is, you don't have a social</p> <p>9 science definition of "polarization" independent of</p> <p>10 your understanding of the Supreme Court's definition;</p> <p>11 is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. All right.</p> <p>14 MS. KHANNA: We've been going about an</p> <p>15 hour and a half. Do you want to take a break?</p> <p>16 MR. FLOYD: Sure.</p> <p>17 (Brief recess taken.)</p> <p>18 (The question was read</p> <p>19 back as requested.)</p> <p>20 Q. (By Mr. Floyd) Dr. Engstrom, would you look</p> <p>21 at Exhibit-1, page 12, paragraph 29, the third line</p> <p>22 from the bottom. It talks about the percentage of all</p> <p>23 of the ballots returned by Latino voters in Yakima</p> <p>24 ranging from 2.9 to 10.4 in these elections. Is that</p> <p>25 correct?</p>

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<p>1 A. That's what it says, yes.</p> <p>2 Q. What do those numbers represent? Is this the</p> <p>3 turnout?</p> <p>4 A. It is the turnout in the sense of people</p> <p>5 receiving ballots. It is not election- -- it is not</p> <p>6 office-specific, however. My preference is to use</p> <p>7 sign-in for it if you've got a ballot whatever way.</p> <p>8 "Turnout" is sometimes referred to as</p> <p>9 election day turnout. "Turnout" can also be referred</p> <p>10 to the turnout for a particular office on the ballot.</p> <p>11 And this would be -- this is, as I say, of all of the</p> <p>12 ballots returned.</p> <p>13 Q. And 2.9 to 10.4 is a percentage, correct?</p> <p>14 A. Correct.</p> <p>15 Q. A percentage of what? Of the total ballots</p> <p>16 that were handed out?</p> <p>17 A. No, among those returning ballots.</p> <p>18 Q. So this would be the participation level by</p> <p>19 the Latinos in the election, correct?</p> <p>20 A. Turning out to vote on that day.</p> <p>21 Q. All right.</p> <p>22 A. Not necessarily voting in a particular</p> <p>23 city council election.</p> <p>24 Q. And the parameters, then, the low would be</p> <p>25 2.9 percent, up to 10.4 percent, correct?</p>	<p>1 Q. Right.</p> <p>2 A. It refers to the extent to which a group of</p> <p>3 voters tend to support the same candidates.</p> <p>4 Q. Did you do any analysis of voter cohesion,</p> <p>5 either Latino or non-Latino, in this particular case</p> <p>6 in any election?</p> <p>7 A. Well, you would infer it from the tables.</p> <p>8 Q. What do you mean by that?</p> <p>9 A. Well, the tables provide the estimates,</p> <p>10 and the estimates would give you what would function</p> <p>11 as cohesion scores and crossover scores for each</p> <p>12 particular election.</p> <p>13 Q. Are you talking about the tables that are</p> <p>14 contained on pages 15 and 16 of your first report?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. And so you could look at those across the</p> <p>18 elections and determine whether -- what cohesion was</p> <p>19 like.</p> <p>20 Q. Well, let's start with Rodriguez. Tell me</p> <p>21 about how you would interpret cohesion as it relates</p> <p>22 to Rodriguez's primary election.</p> <p>23 A. Well, it would -- I mean, the voters --</p> <p>24 she was the candidate of choice of Latino voters in</p> <p>25 both elections.</p>
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<p>1 A. Right. That's citywide.</p> <p>2 Q. Understood.</p> <p>3 A. That's not per precinct, that's citywide.</p> <p>4 Q. And how does that compare with the non-Latino</p> <p>5 participation?</p> <p>6 A. Well, if you divide -- if you subtract 2.9</p> <p>7 and 10.4 from 100, you'll have the percentage of the</p> <p>8 non-Latino participation.</p> <p>9 Q. So what you're saying is, if this data is</p> <p>10 correct -- well, the next phrase says, "The highest</p> <p>11 percentage of Latinos among those returning ballots in</p> <p>12 any of the precincts range from 18.6 to 41.9 across</p> <p>13 the elections," correct?</p> <p>14 A. Correct.</p> <p>15 Q. So that would be the participation within</p> <p>16 precincts, not the entire election?</p> <p>17 A. Correct. Those are precinct-specific</p> <p>18 numbers.</p> <p>19 Q. And as to any of these precincts, do you know</p> <p>20 if there was a majority of Latino registered voters?</p> <p>21 A. I don't know.</p> <p>22 Q. What is "voter cohesion"?</p> <p>23 A. I thought we discussed that.</p> <p>24 Q. Just one more time.</p> <p>25 A. Okay. What is voter cohesion?</p>	<p>1 Q. Why do you say that?</p> <p>2 A. Because it was over a majority. In the</p> <p>3 primary it's lower, and in the general it is much</p> <p>4 higher, as I testified earlier, and you can see in the</p> <p>5 decisive election she is estimated to have received</p> <p>6 over 90 percent of the Latino votes.</p> <p>7 Q. So what is your analysis of cohesion, then,</p> <p>8 with respect to the primary election first, and then</p> <p>9 with respect to the primary compared to the general,</p> <p>10 as it relates to Rodriguez?</p> <p>11 MS. KHANNA: I'm going to object to the</p> <p>12 form of the question. He's already testified about</p> <p>13 the extent to which any individual elections --</p> <p>14 he formed a conclusion as to any individual elections.</p> <p>15 MR. FLOYD: That was, I believe, on</p> <p>16 polarity. We're talking about cohesion now.</p> <p>17 A. I thought you were talking in the context of</p> <p>18 cohesion.</p> <p>19 Q. I am, yes. I was just commenting to her</p> <p>20 objection.</p> <p>21 A. Oh, okay.</p> <p>22 Q. So let's talk about --</p> <p>23 A. I understand.</p> <p>24 Q. Tell me about --</p> <p>25 A. It's the same thing. You will notice in</p>

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<p>1 my individual election analysis, I don't use the</p> <p>2 expression "cohesion." Cohesion is left at the end</p> <p>3 for looking at Latinos and how their voting behavior</p> <p>4 has been in these elections, plural.</p> <p>5 Q. I'm sorry, plural?</p> <p>6 A. Plural.</p> <p>7 Q. Okay.</p> <p>8 A. Elections plural.</p> <p>9 Q. So cohesion would then be a function of --</p> <p>10 A. Prong 2 is not an election-specific thing,</p> <p>11 it's the elections generally.</p> <p>12 Q. All right. So is cohesion something that you</p> <p>13 believe should be a significant point of analysis for</p> <p>14 prong 2?</p> <p>15 A. Well, prong 2 specifically says cohesion.</p> <p>16 Q. And did you do a cohesion analysis?</p> <p>17 A. Well, the scores for each election are there.</p> <p>18 In my opinion, yes, the Latinos in Yakima are</p> <p>19 politically cohesive.</p> <p>20 Q. And is that because the point estimates are</p> <p>21 above 50 percent?</p> <p>22 A. Well, followed by point estimates above</p> <p>23 90 percent. When we go from primaries to generals,</p> <p>24 and when there are fewer candidates, then it becomes</p> <p>25 one Latino versus non-Latino, there you see very acute</p>	<p>1 statistical routine says are the best estimates.</p> <p>2 I did note in my report that the confidence intervals</p> <p>3 are wider for Latinos than non-Latinos, and that is no</p> <p>4 doubt primarily a function of there aren't heavily</p> <p>5 Latino precincts.</p> <p>6 So the machine is basically saying,</p> <p>7 you know, we're not -- this is not particularly what's</p> <p>8 called in statistics an efficient estimate.</p> <p>9 Q. Did you do an analysis of the more heavily</p> <p>10 Latino precincts to see if there was cohesion within</p> <p>11 those subset of precincts?</p> <p>12 A. There are no heavily cohesive -- excuse me,</p> <p>13 there are no heavily Latino precincts.</p> <p>14 Q. All right. What is "ethnic voting"?</p> <p>15 A. Whatever anybody wants to identify as</p> <p>16 ethnicity.</p> <p>17 Q. Pardon me?</p> <p>18 A. Different -- groups that are different</p> <p>19 in terms of ethnicity.</p> <p>20 Q. That vote for ethnic reasons, or just that</p> <p>21 they vote for a particular candidate?</p> <p>22 A. What was your question again, then?</p> <p>23 (The question was read</p> <p>24 back as requested.)</p> <p>25 A. Ethnic voting is voting along identity lines</p>
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<p>1 polarization, over 90 percent.</p> <p>2 You see it repeated in the other 2009</p> <p>3 election, for the one involving Soria, and then again,</p> <p>4 we see the primary is -- it's a candidate of choice.</p> <p>5 But, you know, the primary cohesion scores are</p> <p>6 similar. In these scores for the primary, the support</p> <p>7 level within the group for the Latino candidate is</p> <p>8 consistently lower in primaries than general</p> <p>9 elections.</p> <p>10 Q. You mentioned "cohesion scores," and that's</p> <p>11 what I wanted to ask you about. What are you</p> <p>12 referencing as "cohesion scores"?</p> <p>13 A. Well, "cohesion" refers to the level of</p> <p>14 support provided to the same candidates.</p> <p>15 Q. All right.</p> <p>16 A. Now, these are the scores that go into a</p> <p>17 determination of whether a group is politically</p> <p>18 cohesive in that jurisdiction.</p> <p>19 Q. And what scores specifically are you looking</p> <p>20 at? 52.9, 92.8? Are those the point estimates?</p> <p>21 A. Well, those are the point estimates for the</p> <p>22 first two elections in the table.</p> <p>23 Q. Are you also looking at confidence intervals</p> <p>24 in determining whether there is cohesiveness?</p> <p>25 A. No. I'm going to rely on the -- what the</p>	<p>1 in terms of that you're voting for, generally,</p> <p>2 candidates from within your own group.</p> <p>3 Q. Within their own ethnicity?</p> <p>4 A. Well, that would be the group, yes.</p> <p>5 Q. Okay.</p> <p>6 A. You're talking about ethnicity, so however it</p> <p>7 gets defined.</p> <p>8 Q. Could ethnic voting be voting behavior that</p> <p>9 is not based upon ethnicity?</p> <p>10 A. If groups are divided ethnically, then</p> <p>11 whatever anybody might suggest to be some intervening</p> <p>12 causal variable in turn relates to ethnicity.</p> <p>13 Q. Why would it necessarily be related to</p> <p>14 ethnicity?</p> <p>15 A. Well, if that's what somebody thinks is a</p> <p>16 causal factor, the intervening variable, take one step</p> <p>17 back and the intervening variable is, in turn, itself</p> <p>18 related to groups.</p> <p>19 Q. But there could be other intervening</p> <p>20 variables other than ethnicity, correct?</p> <p>21 A. Not if they relate to the racial -- to the</p> <p>22 group divisions in voting -- excuse me.</p> <p>23 THE WITNESS: Repeat the question.</p> <p>24 A. I can't ask her to, I'm sorry.</p> <p>25 Q. No, you can go ahead and ask her.</p>

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<p>1 A. Okay. I'll respect your turf better. 2 (The question was read 3 back as requested.) 4 A. Well, what I'm saying is, is if these other 5 variables relate to the ethnic differences in the 6 voting, then these other variables in turn relate to 7 ethnicity. 8 Q. It seems like circular reasoning, but I don't 9 understand -- 10 A. Well, it's actually more of -- considered a 11 causal sequence if you put it in causal terms. 12 Q. Okay. 13 A. I mean, what you're saying is there may be 14 intervening variables that relate to these voting 15 patterns. 16 Q. Yes. 17 A. Okay. If those intervening variables are, 18 themselves -- I mean, they have to be related to 19 ethnicity if they're related to the ethnic differences 20 in voting behavior, so they in turn are related to 21 ethnicity. 22 Q. But they wouldn't necessarily be caused by 23 ethnicity, correct? 24 A. No, related to. 25 Q. Okay.</p>	<p>1 Q. Well, then how do you determine what level 2 of support constitutes cohesive voting and what level 3 of support does not constitute cohesive voting? 4 A. As I said, I'm not aware of any quantitative 5 scheme to tell you that. You can look at it and you 6 can take context into account; for example, 7 52.9 percent in the primary followed by 92.8 percent 8 in the general election. 9 What that meant was that in the decisive 10 election, polarized voting was over 90 percent -- 11 excuse me, support for the Latino candidate among 12 Latino voters was over 90 percent. All right? 13 I think that's quite important. That's 14 when you get down to -- you eliminate additional 15 candidates -- none of these generals have any more 16 than two candidates on the ballot. All right? 17 So when you -- there may be lower support 18 earlier. I said it could be there are simply more 19 choices. It could be that Latino voters have, 20 you know, been trying to elect people in this 21 community unsuccessfully and have decided that, 22 you know, this is not going to -- it's not going to 23 happen. 24 So, you could start to vote for a 25 candidate that isn't your sincere preference, but</p>
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<p>1 A. I mean, in some cases they may be caused by, 2 but they relate to. 3 Q. Okay. 4 A. I can't preclude a causal connection. 5 Q. All right. I think I understand now. 6 Now, I want to finish up on your cohesion 7 analysis. When did you do your cohesion analysis? 8 A. Prior to writing the first report. 9 Q. Right, but when with respect to your 10 analytical methodology did you do the cohesion 11 analysis? 12 A. Well, the EI routine provides estimates of 13 each group. 14 Q. Provides what? 15 A. Estimates of each group's support for the 16 candidate, each group you're looking at. 17 Q. Okay. 18 A. So, you know, those are the levels of 19 support. Now, you can look across the levels of 20 support and ask yourself whether they're -- this group 21 is politically cohesive or not. 22 Q. So are you saying that once you determine 23 that there is a candidate of choice, then you believe 24 that there is cohesive voting? 25 A. No.</p>	<p>1 rather a candidate that you prefer over the other 2 available candidates. 3 Q. Well, I don't understand, because Rodriguez 4 and Soria both ran in the primary election, correct? 5 A. Correct. 6 Q. They were Latinos that were on the ballot in 7 both the primary and the general election, correct? 8 A. Uh-huh. 9 Q. So, if Rodriguez was the candidate of choice 10 of the Latinos, why would they vote any different in 11 the primary as opposed to the general election if all 12 of their opponents are non-Latino? 13 MS. KHANNA: I'm going to object it calls 14 for speculation. 15 You can answer. 16 A. It's motivation. It could be motivation. 17 The difference between sincere and strategic voting. 18 All right? When they get into the general election -- 19 this is the end, this is the decisive election, and 20 there are only two candidates -- then they may have 21 more motivation to cast sincere ballots. 22 Q. And would motivation be a factor in 23 determining whether there was voter cohesion? 24 A. Well, what it shows is high levels of support 25 in the context in which they might be more motivated</p>

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<p>1 to vote. It's not uncommon in American politics for 2 people to look at a field of candidates and say: 3 Yeah, but that person can't win, so I'm going to cast 4 my vote for either the one I -- the next one I prefer 5 or the one that is least offensive to me. That's 6 called strategic voting. 7 Q. And do you have any evidence that there was 8 strategic voting going on in Yakima? 9 A. No. I just say it's a context in which it 10 could occur. 11 Q. Okay. 12 A. But I am much more impressed in this analysis 13 with the general election levels of support. I mean, 14 I think that's very significant, and that is the 15 decisive election. When it came to that last election 16 and who they voted for, it is quite significant. 17 You'll also notice Proposition 1 occurred 18 in the primary, but it was still a two-choice 19 election, yes or no, and that is also up above 20 90 percent. 21 Q. What about Gonzalez? 22 A. Gonzalez? I don't recall how many 23 candidates. 24 Q. Only two. 25 A. Okay.</p>	<p>1 cohesive voting group in Yakima? 2 A. I believe we have. 3 Q. And where it goes on here, "... and that the 4 non-Latino majority has routinely voted sufficiently 5 as a bloc to defeat those choices," is that also your 6 opinion? 7 A. Yes. 8 Q. And when you say "routinely," what do you 9 mean by that? 10 A. Well, did any of these Latino candidates win 11 in Yakima, or did they get their preference in terms 12 of Proposition 1? 13 Q. Okay. So they -- 14 A. So --. 15 Q. You say that the -- 16 A. None of the city council candidates won, 17 because Hollis did not win in Yakima. He did win the 18 seat, but it's statewide, I believe, or involves more 19 than Yakima. And even the primary. So I would say 20 it's -- one, two, three four -- five to five, in 21 effect. 22 Q. You say "sufficiently as a bloc," b-l-o-c, 23 correct? 24 A. Yes. 25 Q. What do you mean by "bloc? How do you define</p>
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<p>1 Q. I'm holding up two fingers. I'm coaching 2 you. There are only two. 3 A. Then it could have been two. 4 Q. Okay. 5 A. And they supported him at over a 60 percent 6 level. You know, in U.S. elections, that would 7 normally be -- if somebody wins with over 60 percent, 8 it's generally considered a landslide. 9 Q. All right. Let's talk about Dr. Alford's 10 reports -- well, let me finish with your report first. 11 A. All right. 12 Q. If you look at page 13 of your report, 13 paragraph 33, you indicate -- 14 A. Hold it. Page 13? 15 Q. I'm sorry, page 13. 16 A. And the paragraph? 17 Q. Paragraph 33 there at the bottom. 18 A. 33, okay. 19 Q. You indicate here, "Based on the analysis 20 reported above, I conclude that Latinos have 21 constituted a cohesive voting group in Yakima ...". 22 That was your conclusion, correct? 23 A. Correct. 24 Q. And have we talked about all the bases for 25 your conclusion that the Latinos constituted a</p>	<p>1 "bloc"? 2 A. Just voting together to result in a defeat of 3 the other --. 4 Q. Sufficient to win the election is what you're 5 saying? 6 A. Basically, yes. 7 Q. All right. So that would be a majority, 8 then? 9 A. Sufficiently to win the election? 10 Q. Right. It would be a majority if there were 11 only two candidates. They voted in a, quote, bloc, 12 unquote, sufficiently to win the election. Is that 13 what you're saying? 14 A. Yes. 15 Q. And you didn't do any cohesive analysis of 16 the non-Latino vote, correct? 17 A. Well, there's the levels of support for the 18 non-Latino candidates, and as you can see, they have 19 not supported a non-Latino candidate. 20 Q. What about crossover? Would that be 21 something you would want to look at, to see if there 22 was support among the non-Latino voters for the Latino 23 candidate? 24 A. And when I said the level of support for the 25 non-Latino candidates -- non-Latino voters for the</p>

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<p>1 Latino candidates, that's exactly what would end up</p> <p>2 going into a sufficiently -- that they vetoed the</p> <p>3 choices of the Latino voters.</p> <p>4 Q. "Veto" meaning that the Latino choice lost,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. All right.</p> <p>8 A. Every time.</p> <p>9 Q. Does the level of participation by Latinos</p> <p>10 have any effect on whether the non-Latino majority</p> <p>11 could block the preferred choices of the Latino</p> <p>12 community?</p> <p>13 A. It wouldn't make a difference in the</p> <p>14 candidate preference, but, sure. If -- could you</p> <p>15 repeat the question, I'm sorry.</p> <p>16 Q. I'll have her read it back. I don't know</p> <p>17 that I can do again.</p> <p>18 (The question was read</p> <p>19 back as requested.)</p> <p>20 A. Yes, it can.</p> <p>21 Q. Could you explain that.</p> <p>22 A. Well, it depends on turnout, if they don't</p> <p>23 participate. But as I've said, they may not</p> <p>24 participate because they view the system as diluted.</p> <p>25 Q. You don't know why they wouldn't participate,</p>	<p>1 decisive elections they are over 90 percent.</p> <p>2 Q. And you also analyzed "non-Latino crossover"?</p> <p>3 A. Yes.</p> <p>4 Q. And how is your analysis of non-Latino</p> <p>5 crossover substantively similar to Dr. Alford's?</p> <p>6 A. I'm saying -- well, I didn't say it was</p> <p>7 substantially similar. I said Dr. Alford said that.</p> <p>8 Q. So you disagree with his characterization?</p> <p>9 A. Oh, excuse me. We are on the second report.</p> <p>10 Q. That's right.</p> <p>11 A. Oh, I'm sorry. No, I don't. I think our</p> <p>12 estimates are quite similar. I apologize.</p> <p>13 Q. And are your conclusions, based upon the</p> <p>14 data, similar or substantively similar to</p> <p>15 Dr. Alford's?</p> <p>16 A. No.</p> <p>17 Q. I take it you have no criticism of</p> <p>18 Dr. Alford's methodology, it's just his conclusions</p> <p>19 based upon interpretation of the data, correct?</p> <p>20 A. Well, I will criticize his methodology when</p> <p>21 he relies on homogenous precincts and ecological</p> <p>22 regression as opposed to inference. He talks about</p> <p>23 R-squareds as if they're a measure of racially</p> <p>24 polarized voting, I believe, and they are not a</p> <p>25 measure.</p>
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<p>1 right?</p> <p>2 A. I think that's one reason why they might not.</p> <p>3 Q. Did you do anything to determine what,</p> <p>4 if any, reason the Latinos didn't turn out for any</p> <p>5 of the elections?</p> <p>6 A. I didn't do any console analysis, no.</p> <p>7 Q. All right. Could you look at page 2 of your</p> <p>8 second report, your reply report, Exhibit No. 2,</p> <p>9 please.</p> <p>10 A. (Witness complies.) I'm there.</p> <p>11 Q. All right. In paragraph 6, you talk about,</p> <p>12 "The most important thing that Dr. Alford states about</p> <p>13 my RPV analysis is that his estimates and my estimates</p> <p>14 of Latino voter cohesion and non-Latino crossover</p> <p>15 voting are substantially very similar." Did I read</p> <p>16 that correctly?</p> <p>17 A. Yes, you did.</p> <p>18 Q. All right. What was your estimate of</p> <p>19 Latino voter cohesion? I want to make sure we're</p> <p>20 comparing --</p> <p>21 A. My estimate of it?</p> <p>22 Q. Yes.</p> <p>23 A. I don't have a particular number estimate.</p> <p>24 I look over the elections and I find that in all the</p> <p>25 elections they supported Latino candidates, and in</p>	<p>1 Q. What are "R-squareds"?</p> <p>2 A. R-squareds, they're in a column in his table,</p> <p>3 page 10 of his report.</p> <p>4 Q. But what are "R-squareds"?</p> <p>5 A. R-squareds are statistics coming out of</p> <p>6 regression based on a linear assumption in terms of</p> <p>7 group voting behavior, and that statistic, in effect,</p> <p>8 says how much of the variation around the mean --</p> <p>9 support for a candidate across all precincts, how much</p> <p>10 of the variation can be accounted for by the</p> <p>11 regression line.</p> <p>12 Q. All right. How many simulations did you</p> <p>13 utilize for the EI analysis?</p> <p>14 A. One hundred.</p> <p>15 Q. Could you look at Exhibit-3, which is your</p> <p>16 supplemental report.</p> <p>17 A. Yes.</p> <p>18 Q. Do you have that?</p> <p>19 A. Yes.</p> <p>20 Q. This was your analysis of the Reynaga and</p> <p>21 Jevons elections, correct?</p> <p>22 A. The elections in which they were candidates.</p> <p>23 Q. Yes.</p> <p>24 A. That's correct.</p> <p>25 Q. What were your conclusions with respect to</p>

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<p style="text-align: right;">Page 86</p> <p>1 the Jevons election?</p> <p>2 A. That Jevons was not the candidate of choice</p> <p>3 of Latino voters.</p> <p>4 Q. And why was that?</p> <p>5 A. Because Latinos cast more votes for</p> <p>6 Folsom-Hill.</p> <p>7 Q. And Folsom-Hill was a white female?</p> <p>8 A. Well, I --.</p> <p>9 Q. Or do you know?</p> <p>10 A. I believe that's the case, but I have never</p> <p>11 met her, so --.</p> <p>12 Q. Okay.</p> <p>13 A. I think it's been represented to me that</p> <p>14 she's a white female.</p> <p>15 Q. And then you also, on page 4, had some</p> <p>16 comments about school board elections; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And I noticed in your documents that you had</p> <p>20 looked at some Facebook pages and some newspaper</p> <p>21 articles with respect to school board elections?</p> <p>22 A. Facebook pages?</p> <p>23 Q. I think so.</p> <p>24 MS. KHANNA: I'm going to object.</p> <p>25 There are no Facebook pages --.</p>	<p style="text-align: right;">Page 88</p> <p>1 based upon the newspaper articles at trial or not?</p> <p>2 A. The newspaper articles basically document the</p> <p>3 descriptive information that was provided, that she</p> <p>4 said that she wasn't a candidate anymore, that she,</p> <p>5 in fact, was withdrawing, that she hadn't filled out</p> <p>6 some of the paperwork required of a candidate during</p> <p>7 the campaign and at some point she withdrew. So they</p> <p>8 just document the descriptive information provided.</p> <p>9 Q. Did you do anything to verify if what was</p> <p>10 indicated in the newspaper article was true or not?</p> <p>11 A. No. There were more than one newspaper</p> <p>12 article, so I took them at face value.</p> <p>13 Q. So does multiple newspaper articles make it</p> <p>14 more credible than just a single one? I mean, you</p> <p>15 could have checked with the Yakima County elections</p> <p>16 department to see if she had actually withdrawn,</p> <p>17 correct?</p> <p>18 A. Well, she didn't apparently actually</p> <p>19 withdraw, because her name was on the ballot.</p> <p>20 Q. Right. And do you know what Price's position</p> <p>21 is with respect to the allegations in the newspaper</p> <p>22 article, whether she claims they're true or not?</p> <p>23 A. I'm not aware that she claims they were</p> <p>24 untrue. I am aware that she said, Okay, I'll take</p> <p>25 my seat.</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. FLOYD: All right. Well, maybe I'm</p> <p>2 mistaken.</p> <p>3 Q. Did you look at some newspaper articles?</p> <p>4 A. Yes.</p> <p>5 Q. And why did you do that?</p> <p>6 A. Because of this issue about the opponent to</p> <p>7 Villaneuva having actually said she was no longer</p> <p>8 running for the office and didn't file her required</p> <p>9 papers in terms of apparently candidate spending,</p> <p>10 whatever they were, and so she had withdrawn but her</p> <p>11 name remained on the ballot.</p> <p>12 We had a situation where a white,</p> <p>13 I believe, woman won over a Latino who had been on the</p> <p>14 school board -- I believe who was appointed -- and was</p> <p>15 running as an appointed incumbent, and that the white</p> <p>16 female who said that she was no longer a candidate,</p> <p>17 didn't campaign and didn't fill out the papers still</p> <p>18 won.</p> <p>19 Q. And did you obtain these newspaper articles</p> <p>20 or were they given to you?</p> <p>21 A. They were provided to me.</p> <p>22 Q. Did you do any further research with respect</p> <p>23 to that election or the causes of the results?</p> <p>24 A. No, I did no causal analysis of the election.</p> <p>25 Q. But are you going to offer a causal opinion</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. All right.</p> <p>2 A. That's not a quote.</p> <p>3 Q. Are you going to rely --</p> <p>4 A. I mean, it's --.</p> <p>5 Q. Do you intend to rely upon these school board</p> <p>6 elections at all in your opinions?</p> <p>7 A. Only in response to what your experts have</p> <p>8 said.</p> <p>9 Q. Okay.</p> <p>10 A. I don't think we need to go to any of the</p> <p>11 exogenous elections. We don't need to in this case.</p> <p>12 We know about the voting behavior for the</p> <p>13 city council. But this is in response to what they</p> <p>14 were saying about the school board elections.</p> <p>15 Q. And "exogenous elections," can you define</p> <p>16 that for me. What does that mean?</p> <p>17 A. Those are elections to an office not at issue</p> <p>18 in the litigation.</p> <p>19 Q. And that would include areas that are outside</p> <p>20 the boundaries of the city of Yakima?</p> <p>21 A. Not in my analyses it wouldn't. The school</p> <p>22 board might.</p> <p>23 Q. That's what I'm saying.</p> <p>24 A. I mean -- okay. Yeah, the school board,</p> <p>25 I understand, is not exactly coterminous with</p>

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<p>1 the city, so it would involve more than the city. 2 Maybe a little less than the city, too. I'm not sure 3 exactly where the non- -- where they are not 4 identical. 5 Q. But it would certainly involve a different 6 electorate for the school board than for the 7 city council; you would concede that? 8 A. To some extent, yes. 9 Q. Did you analyze the differences between 10 the composition of the respective electorates for 11 school board and city council positions at the 12 precinct level? 13 A. No. 14 Q. And Mr. Cooper did not do that, either, 15 correct? 16 A. I have no idea whether he did. 17 Q. He didn't give you that data, though? 18 A. No. 19 Q. Do you normally rely on -- 20 A. I don't believe so. No. 21 Q. Do you normally rely on newspaper articles? 22 A. Sure, at times. 23 Q. And why do you rely upon newspaper articles? 24 A. Well, it depends what the information is. 25 If it's descriptive information, I'm more likely to</p>	<p>1 Q. All right. 2 A. I don't know the basis of somebody saying 3 their vote was racially motivated. 4 Q. The fact that one person said that and then 5 gave an explanation that it felt like it was an 6 affirmative action vote, that doesn't affect your 7 opinion, then? 8 A. None of that reflects my -- influenced 9 my opinion. My opinion was -- simply relies on the 10 descriptive characteristics of Ms. Rice, and I don't 11 do any kind of analysis except note what happened in 12 the school board election in response to what the 13 defendants' experts had been saying about the 14 school board elections. 15 Q. And the defendants' experts have never said 16 that there was any racial motivation in the school 17 board elections, correct? 18 A. I don't know if they did or not. I'm just 19 saying that this was another instance of a Latino 20 being appointed to the school board and then being 21 defeated in the subsequent election. 22 Q. Well, I'm just trying to sort out why you 23 would be looking at newspaper articles, and it sounds 24 like you didn't rely upon the newspaper articles for 25 any of your opinions; is that correct?</p>
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<p>1 rely on them than if it is a causal inference within a 2 newspaper article. 3 Q. All right. 4 A. This is simply descriptive information. 5 If it's not valid information, I'm sure that, 6 you know, you will bring that up. 7 Q. I notice here that you have underlined on a 8 certain document what looks like a comment, perhaps, 9 to some article -- 10 MS. KHANNA: I'm sorry, is this an 11 exhibit? 12 MR. FLOYD: Yes. I'll make it an exhibit 13 if you want. 14 Q. You underlined something that says, 15 "My decision to vote for Rice was racially motivated, 16 not because I didn't want to elect an Hispanic, but 17 because looking at all of the rest of the positions 18 and who was running, it almost felt like an 19 affirmative action vote." Why did you underline that, 20 "racially motivated"? 21 By the way, maybe you didn't underline it. 22 Did someone else underline that? 23 A. I suspect I did, because it was a very 24 interesting statement, but I don't rely on these 25 statements. These are just comments.</p>	<p>1 A. Well, for the descriptive information. 2 Q. Only for the descriptive information? 3 A. As I recall, the attorneys told me that this 4 woman had withdrawn, hadn't filed proper papers for a 5 candidate, and I think I said, "Can you send me 6 documentation on it." 7 Q. All right. But you don't normally rely upon 8 newspaper articles for any other reason, other than 9 for the content that you've read, correct? 10 A. Other than the content of --? 11 Q. Other than for factual matters. 12 A. Oh, it would depend on what the investigation 13 is about. 14 Q. Have you ever relied upon newspaper articles 15 for any other purpose? I'm trying to find out if 16 that, in your opinion, is a legitimate source for a 17 reputable social scientist to rely upon. 18 MS. KHANNA: Object to the form of the 19 question; argumentative. And also vague and ambiguous 20 in terms of "rely upon" for what? 21 MR. FLOYD: For any reason. 22 A. Social scientists rely on newspaper articles. 23 I've relied on newspaper articles in scholarly writing 24 certainly. Again, as I said, I think it depends what 25 information you're getting. Descriptive information,</p>

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<p>1 I think, is more reliable, but when it comes to causal 2 inferences and things -- yeah. 3 Q. Okay. That's all I wanted to get. 4 A. Okay. 5 Q. I think I may be -- well, let's talk about 6 Dr. Alford's reports. 7 In your supplemental report and in your 8 reply, did you deal with all of your criticisms of 9 Dr. Alford's reports? 10 A. Well, I certainly did in the reply report up 11 to that point. 12 Q. Okay. 13 A. I mean in terms of empirical matters. 14 Q. Yes. 15 A. Now, my supplemental report, I believe, 16 preceded his, and so I didn't write any -- or there's 17 no critique of what he did in the supplemental report. 18 Q. And do you have any additional criticisms to 19 offer of any of Dr. Alford's reports at this time? 20 A. I think I would -- do we have his -- where is 21 his --? 22 MR. FLOYD: We'll mark the supplemental 23 report of Dr. Alford as the next exhibit. 24 (Exhibit No. 5 marked 25 for identification.)</p>	<p>1 Q. All right. 2 A. I think they are -- would not be considered 3 "substantively very similar" to those that I report. 4 Q. Any other criticisms? 5 MS. KHANNA: I need to object as overly 6 broad. 7 Q. Well, take your time and read the entire 8 report. 9 A. Okay. 10 Q. If you want to. I don't want to have any 11 surprises at trial, so if you need to read the entire 12 report right now, please do it, because I want to know 13 if there are any additional criticisms. 14 A. Okay. 15 Q. I don't want to have any games played by 16 saying: Well, I didn't read it that carefully, so if 17 you would just read it right now, I'd appreciate it. 18 MR. FLOYD: And while he's reading it, 19 let's go ahead and take a break. 20 MS. KHANNA: Are we off the record? 21 MR. FLOYD: We're off the record. 22 (Brief recess taken.) 23 Q. (By Mr. Floyd) Dr. Engstrom, you've had 24 a chance to look at Exhibit No. 5, correct? 25 A. Correct.</p>
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<p>1 Q. (By Mr. Floyd) Do you have Exhibit-5 in 2 front of you? 3 A. I'm sorry? 4 Q. Do you have Exhibit-5 in front of you? 5 A. Yes, I do. 6 Q. All right. If you would look at Exhibit-5, 7 tell me if you have any additional criticisms of 8 Dr. Alford's opinions. 9 A. Well, I -- 10 MS. KHANNA: Object to the question as 11 overly broad. 12 Q. Go ahead and answer. 13 A. I don't think I agree with him on the results 14 of the EI analysis being -- or two EI analyses being 15 "substantively very similar ..." -- excuse me, his 16 analysis being "substantively very similar to those 17 reported by Dr. Engstrom." 18 Q. Where are you reading? 19 A. Page 3, the first sentence under the table. 20 Q. All right. Explain why you disagree with 21 that comment. 22 A. Because I think there are important 23 differences in the estimates. The Latino support for 24 Reynaga, certainly, and the Latino support for 25 Folsom-Hill.</p>	<p>1 Q. And you've had a chance to carefully review 2 Exhibit No. 5? 3 A. Yes. 4 Q. And can you tell me if there are any 5 additional criticisms of Exhibit No. 5 that you have 6 at this time. 7 A. Yes. On page 1, I believe, Mr. Alford -- 8 excuse me, Dr. Alford refers to a support level of 9 70 percent, Latino support for Villaneuva as "modest 10 Hispanic cohesion" in that election. I don't think 11 70 percent support is a modest level of support for 12 a candidate from the group. 13 Q. All right. 14 A. I would also say that on page 3 he refers to 15 these results of his in this report, "continue the 16 pattern of weak to nonexistent minority cohesion." 17 Well, I don't think there is a pattern of "weak to 18 nonexistent minority cohesion," which he says was 19 evident in the initial reports in this case. That 20 covered earlier elections. I would take issue with 21 that, the way he expresses that. 22 Q. All right. 23 A. Then on page 4 he concludes by saying that 24 "so geographically" -- Latinos are "so few in number 25 and so geographically disbursed and their</p>

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<p>1 participation rates are so low, in effect, that their</p> <p>2 lack of election success cannot be simply attributed</p> <p>3 to the at-large election system that is employed."</p> <p>4 First of all, I think that would require</p> <p>5 seeing what would happen if the election system were</p> <p>6 changed and there were -- there was at least a</p> <p>7 district with a Latino majority of citizen voting age</p> <p>8 population.</p> <p>9 I would also note that the at-large --</p> <p>10 that I believe the at-large system in Yakima is</p> <p>11 diluted, and that, in turn, can have a chilling effect</p> <p>12 on participation levels, so I don't think we can</p> <p>13 simply conclude as he does.</p> <p>14 The test really does require an</p> <p>15 illustrative prong 1 district, and the assessment of</p> <p>16 that is not turnout in an election system that is in</p> <p>17 itself diluted but what happens when you create a</p> <p>18 restructure of the competition so that there's a</p> <p>19 reasonable opportunity to elect candidates of their</p> <p>20 choice.</p> <p>21 Q. Any other criticisms or disagreements?</p> <p>22 A. I think that's it.</p> <p>23 Q. All right. Now, when you --</p> <p>24 A. I could go on to the vitae.</p> <p>25 Q. Pardon me? What was that?</p>	<p>1 program with three candidates, and that confirmed that</p> <p>2 Folsom-Hill, I believe, was the candidate of choice of</p> <p>3 Latino voters.</p> <p>4 Q. So you did all candidates for Jevons and you</p> <p>5 did a single run for Reynaga, correct?</p> <p>6 A. Well, not a single run.</p> <p>7 Q. But you ran --</p> <p>8 A. I mean, they both are a single run of the</p> <p>9 program.</p> <p>10 Q. Right.</p> <p>11 A. In the first election, there was Reynaga</p> <p>12 versus the other candidates.</p> <p>13 Q. Okay.</p> <p>14 A. All right? And then in the -- and that</p> <p>15 concluded to me that Reynaga was the choice.</p> <p>16 You can't divide two other candidates and get more</p> <p>17 than 67.4 percent of the vote. There's not enough of</p> <p>18 them left.</p> <p>19 And in Jevons, then, because of that</p> <p>20 initial bivariate -- excuse me, two-candidate run,</p> <p>21 I did all three, and those results in the table are</p> <p>22 from all three. Also, the results of all three are in</p> <p>23 the text when I talk about the Folsom-Hill -- I'm</p> <p>24 sorry, I forgot, but the thing where I identify the</p> <p>25 estimate as 49.7 percent.</p>
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<p>1 MR. ALFORD: Don't go there.</p> <p>2 MS. KHANNA: He could go on to the vitae.</p> <p>3 MR. FLOYD: Oh, okay.</p> <p>4 Q. Let me ask you a couple of concluding</p> <p>5 questions.</p> <p>6 A. Okay.</p> <p>7 Q. When you did your analysis for the Reynaga</p> <p>8 and Jevons elections, did you run a single E1 for each</p> <p>9 candidate or did you run an E1 for all of the</p> <p>10 candidates?</p> <p>11 A. Let me see. I believe in these -- the</p> <p>12 Reynaga estimate was 67.4 percent, so I did not feel a</p> <p>13 need to in any way further identify who might have</p> <p>14 been the Latino candidate of choice. So that is,</p> <p>15 I believe, a bivariant -- excuse me, that's just</p> <p>16 Reynaga versus the others.</p> <p>17 Q. Okay.</p> <p>18 A. All right? Now, in Jevons, that's a function</p> <p>19 of including all three candidates in one equation,</p> <p>20 because I did not conclude -- I could not tell that</p> <p>21 Jevons was the candidate of choice for Latino voters</p> <p>22 at 39.3 percent.</p> <p>23 It's mathematically possible some other</p> <p>24 candidate got more votes. In fact, my analysis</p> <p>25 indicates that, so I put the other two in and ran the</p>	<p>1 Q. And then did you use the default for your</p> <p>2 random number, C?</p> <p>3 A. Yes.</p> <p>4 Q. And do you know what the number was,</p> <p>5 if you're going to replicate it?</p> <p>6 A. 100.</p> <p>7 Q. The default?</p> <p>8 A. Yeah, the default.</p> <p>9 Q. What default number did you use for your C?</p> <p>10 A. For my what?</p> <p>11 Q. For your random C. What did you use --</p> <p>12 A. My random C simulation?</p> <p>13 Q. Right.</p> <p>14 A. 100.</p> <p>15 Q. 100?</p> <p>16 A. (Nods affirmatively.)</p> <p>17 Q. And did you use that same number on all of</p> <p>18 the runs, one hundred?</p> <p>19 A. I believe the entire --</p> <p>20 MS. KHANNA: Object to the form of the</p> <p>21 question. It's a little unclear what we're referring</p> <p>22 to as 100.</p> <p>23 Q. Go ahead.</p> <p>24 A. All these election analyses are based on the</p> <p>25 default option of 100 simulations.</p>

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Richard L. Engstrom, Ph.D.

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<p style="text-align: right;">Page 102</p> <p>1 Q. Understood. Actually, this is not an</p> <p>2 important point, so I'll move on and see if I have</p> <p>3 anything else.</p> <p>4 Have you ever been to Yakima?</p> <p>5 A. No.</p> <p>6 Q. And are you going to be available for trial</p> <p>7 in May?</p> <p>8 A. As far as I know.</p> <p>9 Q. Do you plan on doing anything else between</p> <p>10 now and trial?</p> <p>11 A. No. I haven't been asked to.</p> <p>12 Q. All right. Thank you.</p> <p>13 MR. FLOYD: Nothing further.</p> <p>14 (Discussion off the record.)</p> <p>15 MR. FLOYD: Dr. Engstrom, thank you very</p> <p>16 much. We're going to order it, and you are entitled</p> <p>17 to read this to make sure it's been accurately</p> <p>18 transcribed, so --</p> <p>19 THE WITNESS: Read and sign.</p> <p>20 MR. FLOYD: Read and sign?</p> <p>21 THE WITNESS: Yes.</p> <p>22 MR. FLOYD: All right. Thank you very</p> <p>23 much.</p> <p>24 (Discussion off the record.)</p> <p>25</p>	<p style="text-align: right;">Page 104</p> <p>1</p> <p>2 SIGNATURE</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury under</p> <p>6 the laws of the State of Washington that I have read</p> <p>7 my within deposition, and the same is true and</p> <p>8 accurate, save and except for changes and/or</p> <p>9 corrections, if any, as indicated by me on the</p> <p>10 CHANGE SHEET flyleaf page hereof.</p> <p>11</p> <p>12</p> <p>13 Signed in, Washington,</p> <p>14 on the day of, 2014.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 RICHARD L. ENGSTROM, Ph.D.</p> <p>20 TAKEN: February 18, 2014</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Mary A. Whitney, CCR - WCRL #2728</p> <p>25</p>
<p style="text-align: right;">Page 103</p> <p>1 (Deposition adjourned at</p> <p>2 11:42 AM.)</p> <p>3 (Signature reserved.)</p> <p>4 -o0o-</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 105</p> <p>1</p> <p>2 CERTIFICATE</p> <p>3</p> <p>4 STATE OF WASHINGTON)</p> <p>5) ss.</p> <p>6 COUNTY OF KING)</p> <p>7</p> <p>8 I, the undersigned Washington Certified Court</p> <p>9 Reporter, hereby certify that the foregoing deposition</p> <p>10 upon oral examination of RICHARD L. ENGSTROM, Ph.D.</p> <p>11 was taken stenographically before me on February 18,</p> <p>12 2014, and thereafter transcribed under my direction;</p> <p>13</p> <p>14 That the witness was duly sworn by me pursuant</p> <p>15 to RCW 5.28.010 to testify truthfully; that the</p> <p>16 transcript of the deposition is a full, true and</p> <p>17 correct transcript to the best of my ability; and that</p> <p>18 I am neither attorney for, nor a relative or employee</p> <p>19 of, any of the parties to the action or any attorney</p> <p>20 or counsel employed by the parties hereto, nor</p> <p>21 financially interested in its outcome;</p> <p>22 I further certify that in accordance with</p> <p>23 CR 30(e), the witness was given the opportunity to</p> <p>24 examine, read, and sign the deposition within 30 days</p> <p>25 upon its completion and submission unless waiver of</p> <p>signature was indicated in the record</p> <p>IN WITNESS WHEREOF, I have hereunto set my</p> <p>hand this 25th day of February, 2014.</p> <p>/s/ Mary A. Whitney</p> <p>-----</p> <p>Mary A. Whitney, CCR - WCRL #2728</p>

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February 18, 2014

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PAGE / LINE CORRECTION/REASON

RICHARD L. ENGSTROM, Ph.D.

TAKEN: February 18, 2014

Re: Montes, et al. vs. City of Yakima

USD/Eastern/WA | No. 2:12-cv-03108-TOR

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