

Exhibit H

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<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF WASHINGTON</p> <hr/> <p>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.)</p> <hr/> <p style="text-align: center;">DEPOSITION UPON ORAL EXAMINATION OF WILLIAM S. COOPER</p> <hr/> <p>Taken at Floyd, Pflueger & Ringer 200 W. Thomas Street Seattle, Washington</p> <p>DATE TAKEN: May 8, 2013 REPORTED BY: Mary A. Whitney, CCR - WCRL #2728</p>	<p style="text-align: center;">APPEARANCES - (Cont'd)</p> <p>ALSO PRESENT: PETER A. MORRISON, Ph.D.</p> <p style="text-align: center;">-o0o-</p>																
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<p style="text-align: center;">APPEARANCES</p> <p>FOR THE PLAINTIFFS: ABHA KHANNA, ESQ. KEVIN J. HAMILTON, ESQ. WILLIAM (BEN) STAFFORD, ESQ. Perkins Coie 1201 Third Avenue #4800 Seattle, WA 98101 (206) 359-8312 akhanna@perkinscoie.com khamilton@perkinscoie.com wstafford@perkinscoie.com</p> <p>FOR THE DEFENDANTS: FRANCIS S. FLOYD, ESQ. JOHN A. SAFARLI, ESQ. Floyd, Pflueger & Ringer 200 W. Thomas Street #500 Suite 500 Seattle, WA 98119 (206) 441-4455 ffloyd@floyd-ringer.com</p> <p>(Cont'd)</p>	<p style="text-align: center;">DEPOSITION OF WILLIAM S. COOPER</p> <p style="text-align: center;">EXAMINATION INDEX</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">EXAMINATION BY</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>Mr. Floyd</td> <td style="text-align: right;">6</td> </tr> <tr> <td>Ms. Khanna</td> <td style="text-align: right;">148</td> </tr> <tr> <td>Mr. Floyd</td> <td style="text-align: right;">149</td> </tr> </tbody> </table> <p style="text-align: center;">EXHIBIT INDEX</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">EXHIBITS FOR IDENTIFICATION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>No. 1 - Declaration of William S. Cooper</td> <td style="text-align: right;">34</td> </tr> <tr> <td>No. 2 - Expert Report of Peter A. Morrison, Ph.D.</td> <td style="text-align: right;">34</td> </tr> <tr> <td>No. 3 - Supplemental Expert Report of Peter A. Morrison, Ph.D.</td> <td style="text-align: right;">34</td> </tr> </tbody> </table> <p>(Cont'd)</p>	EXAMINATION BY	PAGE	Mr. Floyd	6	Ms. Khanna	148	Mr. Floyd	149	EXHIBITS FOR IDENTIFICATION	PAGE	No. 1 - Declaration of William S. Cooper	34	No. 2 - Expert Report of Peter A. Morrison, Ph.D.	34	No. 3 - Supplemental Expert Report of Peter A. Morrison, Ph.D.	34
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<p>1 2 EXHIBIT INDEX - (Cont'd) 3 4 5 EXHIBIT INDEX 6 EXHIBITS FOR IDENTIFICATION PAGE 7 No. 4 - Supplemental Declaration of 8 William S. Cooper 34 9 No. 5 - A Compass for Understanding 10 and Using American Community 11 Survey Data 113 12 13 14 -o0o- 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 It's depressing. 2 Q. Don't say that. 3 You've had your deposition taken before; 4 is that correct, Mr. Cooper? 5 A. I have had my deposition taken. 6 Q. How many times? 7 A. I'm not sure. I'm guessing 12 to 15, 8 perhaps. Almost all of them have been related to 9 voting rights Section 2 cases. 10 Q. Do you understand the ground rules for a 11 deposition? 12 A. Yes. 13 Q. Do you want me to go over them again or 14 do you pretty much understand them? 15 A. I have an implicit understanding. I don't 16 know if I've ever really read the ground rules, 17 but --. 18 Q. Well, I don't think there are any published 19 ground rules. 20 A. Yes. 21 Q. Essentially, if you don't understand 22 a question, ask me to clarify. I'm sure you will. 23 A. Yes. 24 Q. We won't talk over each other, because the 25 court reporter only has two hands. She can't take</p>
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<p>1 SEATTLE, WASHINGTON; WEDNESDAY, MAY 8, 2013 2 10:00 A.M. 3 -o0o- 4 WILLIAM S. COOPER, witness herein, having been 5 first duly sworn on oath, 6 was examined and testified 7 as follows: 8 9 EXAMINATION 10 BY MR. FLOYD: 11 Q. Mr. Cooper, would you please state your full 12 name for the record and your current professional 13 address. 14 A. My name is William Sexton Cooper, and 15 my address is 525 Garden Lane, Bristol, Virginia. 16 24201. 17 Q. And is that your professional and your 18 residence address? 19 A. Right. 20 Q. You work out of your home, then? 21 A. Right. 22 Q. Are you married? 23 A. No, I'm not. 24 Q. And what is your age? 25 A. I am 58. Finished. Over the hill.</p>	<p>1 down two people at the same time. Understood? 2 A. Yes. 3 Q. You can take a break anytime you want as 4 long as there is no question pending. Understood? 5 A. Yes. 6 Q. And your lawyers can't coach you with the 7 answers. Do you understand that? 8 A. I understand that. 9 Q. You probably won't need any coaching, right? 10 A. I probably will, but I know they can't coach 11 me. 12 Q. All right. If you ask for coaching, then 13 I'll let them coach you. Otherwise, you can't be 14 coached. Okay? 15 A. Okay. 16 Q. All right. When was the last time you had 17 your deposition taken? 18 A. The last time would have been in June of 19 2012. 20 Q. Where was that? 21 A. That was in Atlanta, Georgia. It was a 22 Section 2 lawsuit involving Fayette County, Georgia. 23 Q. And what do you do for a living? 24 A. I am a consultant on demographic issues, but 25 primarily relating to mapping demographics.</p>

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<p>1 Q. Does your business have a name?</p> <p>2 A. Geoplan, but most people just know the</p> <p>3 business as Bill Cooper.</p> <p>4 Q. And how long have you been a consultant doing</p> <p>5 that type of work?</p> <p>6 A. About 17 years. Prior to that, I was an</p> <p>7 employee of the ACLU of Virginia.</p> <p>8 Q. How long did you work for the ACLU?</p> <p>9 A. About ten years.</p> <p>10 Q. And what do you do at the ACLU in Virginia?</p> <p>11 A. I was a research associate. Almost all of</p> <p>12 my work was exclusively relating to voting rights</p> <p>13 cases, not just in Virginia, but all over the country.</p> <p>14 I was based out of ACLU of Virginia's office</p> <p>15 and paid by the ACLU of Virginia, but they were</p> <p>16 getting some reimbursements from the national office.</p> <p>17 The ACLU project, voting rights project,</p> <p>18 is based in Atlanta, Georgia. It's soon to be based</p> <p>19 in New York City, but as of the remainder of the month</p> <p>20 it's based in Atlanta, where it's been for 40 years.</p> <p>21 Q. Did you work in conjunction with the Atlanta</p> <p>22 office of the ACLU with respect to voting rights</p> <p>23 issues?</p> <p>24 A. Yes.</p> <p>25 Q. And did you do that for the entire</p>	<p>1 A. '87, 1987. Maybe late '86.</p> <p>2 Q. Can you spell the -- was it Delmar World</p> <p>3 Ministries --</p> <p>4 A. Delmarva -- as in the Delmarva Peninsula --</p> <p>5 Rural Ministries.</p> <p>6 Q. And what did you do there?</p> <p>7 A. I worked on outreach to migrant farm worker</p> <p>8 camps, and also headed up a statewide effort to expand</p> <p>9 the school breakfast program in localities in</p> <p>10 Virginia.</p> <p>11 I provided some assistance on food stamp</p> <p>12 regulations, which can be very cumbersome and</p> <p>13 difficult for people to understand when they're</p> <p>14 migrant farm workers. So I would work on changes in</p> <p>15 food stamp regulations in Virginia, Maryland, and</p> <p>16 Delaware for the organization.</p> <p>17 Q. Was that organization --</p> <p>18 A. The bulk of my work is really -- I spent</p> <p>19 a lot of time on the school breakfast program. That</p> <p>20 became a major effort.</p> <p>21 Q. Was that organization affiliated at all with</p> <p>22 the United Farm Workers?</p> <p>23 A. No.</p> <p>24 Q. And were you an employee of that</p> <p>25 organization?</p>
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<p>1 ten years while you worked with the Virginia ACLU</p> <p>2 office?</p> <p>3 A. Yes. Yes.</p> <p>4 Q. So, if my math is correct, then, you've been</p> <p>5 doing voting rights issues on your own as a consultant</p> <p>6 for 17 years, and kind of doing the same thing,</p> <p>7 is that true, at the ACLU for another ten years?</p> <p>8 A. That's right. And I was also -- I was also</p> <p>9 based out of that office for two or three years prior</p> <p>10 to that as an employee for an organization called</p> <p>11 Delmarva Rural Ministries --</p> <p>12 Q. Excuse me?</p> <p>13 A. Delmarva Rural Ministries.</p> <p>14 -- a migrant farmer health and nutrition</p> <p>15 organization with offices in Virginia, Maryland, and</p> <p>16 Delaware.</p> <p>17 Q. And was that --</p> <p>18 A. That's kind of how I got into the voting</p> <p>19 stuff. I was hanging out in that office, and the</p> <p>20 ACLU Virginia began to file lawsuits relating to</p> <p>21 Section 2 in pretty much a grand fashion around</p> <p>22 1986-87.</p> <p>23 Q. And that was my next question. When did you</p> <p>24 first get involved with voting rights issues and</p> <p>25 voting rights cases?</p>	<p>1 A. Yes. Of Delmarva Rural Ministries?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. Did you have a title?</p> <p>5 A. It escapes me. I must have had one.</p> <p>6 Right off the top of my head, I can't think of what</p> <p>7 it was.</p> <p>8 Q. When you were at the ACLU in Virginia,</p> <p>9 did you have a title?</p> <p>10 A. Nothing beyond just staff member, research</p> <p>11 associate. Nothing fancy.</p> <p>12 Q. And was there someone at the ACLU in</p> <p>13 Virginia that mentored you with respect to voter</p> <p>14 rights cases, or did you just kind of pick it up on</p> <p>15 your own and learn as you go? How did that happen?</p> <p>16 A. For the most part, I learned as I went along.</p> <p>17 The executive director at the time had been involved</p> <p>18 in organizing and filing a Section 2 lawsuit in</p> <p>19 a couple of counties in Virginia in '84-85, so</p> <p>20 there were people in the office who were familiar with</p> <p>21 the issue.</p> <p>22 Then, of course, I would confer with the staff</p> <p>23 attorneys and people in the national voting rights</p> <p>24 office in Atlanta, Georgia, as well.</p> <p>25 Q. And did you have a specific role with the</p>

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1 Virginia ACLU? Were you kind of their mapping expert,
 2 so to speak, or --?
 3 A. Yes. Back in those days, in the early -- in
 4 the mid-'80s, that really predated, to a certain
 5 extent, GIS technology, insofar as it related to
 6 voting maps, so at the time I was working with paper
 7 maps and the Lotus 123 spreadsheet with macros, and
 8 that kind of made it a little bit easier to shift
 9 census blocks around to determine if you had a
 10 minority/majority difference or not. Lots of color
 11 and stuff.
 12 Q. So no geomapping, then?
 13 A. Well, it existed, but it was -- it wasn't
 14 really used very much with voting cases. That really
 15 didn't happen until after the release of the 1990
 16 census.
 17 Q. And how many -- well, let me back up.
 18 When I say "voting cases," I don't necessarily
 19 mean cases that are in litigation, I mean any type of
 20 a voting issue that you would have been involved in;
 21 so if it were a consent to create a stipulation or
 22 you were just investigating, you know, an issue in a
 23 county.
 24 A. Uh-huh.
 25 Q. I'd call that a "voting case" in the most

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1 general and generic sense. Do you understand that?
 2 A. Yes. I'm specifically referring to
 3 developing voting plans, and the bulk of the plans
 4 I've developed have not been part of voting cases
 5 per se.
 6 Q. Right.
 7 A. So that was predominantly what I did.
 8 On request from someone somewhere, I would develop an
 9 election plan, and then, with more feedback, develop
 10 another draft, and on and on and on. I mean,
 11 sometimes I would just do one plan and never hear back
 12 from whoever requested it, and other times they would
 13 last for literally decades.
 14 Q. And that plan may or may not eventually end
 15 up in litigation?
 16 A. It may -- yes, right.
 17 Q. Right.
 18 A. And sometimes it was just for a local chapter
 19 of an NAACP in, you know, Virginia or North Carolina,
 20 or someplace, and they would present that plan to the
 21 governing body, and the governing body, that country,
 22 might make a change to reflect something that was in
 23 the plan that I developed, and that was the end of it.
 24 It settled amicably. Really, that's the way most of
 25 things have ended up. Either amicable settlement or

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1 nothing ever came of it.
 2 Q. Or they go on forever.
 3 A. Or they go on forever.
 4 Q. Right.
 5 A. Yes.
 6 Q. How many voting plans do you think you've
 7 prepared?
 8 A. Well, it would be thousands, but I believe
 9 that I have developed local election plans in about
 10 600 jurisdictions -- probably more than that -- over
 11 the 25-year period.
 12 Q. And how many --
 13 A. In some of those counties, it would be one
 14 and done, you know, just do a draft plan for a local
 15 NAACP and they never get back to me or whatever, and
 16 then others would be the -- like the Montana State
 17 legislative plan, which -- I worked on that --
 18 that was a lawsuit, and that spanned the 1990 and 2000
 19 Census, and, you know, lots and lots of drafts were
 20 done in that case.
 21 And then there have been local counties where
 22 I've done dozens of drafts, for whatever reason, for
 23 purposes of a Section 2 lawsuit, or in some cases if
 24 I'm employed by the county, you know.
 25 The politicians always have lots of ideas, and

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1 you have to -- I think I had to do 40 or 50 plans in
 2 Sussex County, Virginia, after the 2010 Census.
 3 It was a very contentious process, a racially divided
 4 county, and they could just never agree. Finally they
 5 did -- finally -- fortunately.
 6 Q. When you talk about "plans," you're talking
 7 about there might be a number of variations of a plan
 8 for a particular jurisdiction, correct?
 9 A. That's right. Not unlike the Yakima County
 10 case, where I've done quite a few plans.
 11 Q. Well, we're going to get to that, but while
 12 you mention it, how many plans have you done for
 13 Yakima County?
 14 A. Well, there are only seven, I guess.
 15 Q. There are seven there?
 16 A. You can say iterations of -- I mean, who
 17 knows? But there are only seven that are formal
 18 plans.
 19 Q. Right. And those are contained in your
 20 two reports, correct?
 21 A. Right.
 22 Q. Are there any other plans that you have
 23 prepared that you intend to rely upon at trial
 24 that you haven't disclosed?
 25 A. Not to my knowledge. I guess we had

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1 the option to produce another one if need be, but
 2 right now we're just settling on the seven, as I
 3 understand it.
 4 Q. And we have the option to move to exclude
 5 it --
 6 A. That's true.
 7 Q. -- but we'll see what happens. Okay. So
 8 let's see what happens.
 9 Let's go back to your employment history.
 10 Did you work for anyone else as a consultant while
 11 you were working at the ACLU, or did you work
 12 exclusively for the ACLU?
 13 A. Well, while I was at the ACLU, I did work as
 14 a consultant through the ACLU, so they would get
 15 reimbursed for other organizations, such as the
 16 Lawyers Committee for Civil Rights, who does a lot of
 17 voting matters -- it's based in Washington, D.C. --
 18 and some private attorneys in Georgia and Mississippi
 19 and Florida, North Carolina.
 20 Those were in many instances not ACLU cases,
 21 but they relied on the ACLU Virginia to do the mapping
 22 component.
 23 Q. Would you bill those private attorneys or
 24 those entities separately, or would the ACLU offer
 25 your services?

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1 A. The ACLU would bill them.
 2 Q. All right. And then why would you leave
 3 the ACLU and start your own consulting business?
 4 A. Probably because by the late '90s, just about
 5 all of the redistricting, potential redistricting,
 6 litigation and issues surrounding redistricting had
 7 been settled. Over the course of a decade, I think
 8 the ACLU of Virginia filed about 20 cases under
 9 Section 2, so there was really not that much more to
 10 do in Virginia.
 11 So I continued to work for the ACLU national
 12 office just privately, as a private consultant, but I
 13 moved my office to -- initially, just to a house I had
 14 in Richmond, and then the past five years or so I've
 15 been down in Bristol, Virginia, which is my hometown.
 16 It's in the southwest part of the state.
 17 Q. So you left the ACLU as an employee in the
 18 late '90s?
 19 A. Yes. In the fall of '97, I believe,
 20 '97-98 -- '97.
 21 Q. And then when you went out on your own,
 22 did you continue to work on ACLU cases?
 23 A. Yes. Yes. And I also worked on ACLU
 24 Virginia cases, even as recently as 2011, but just as
 25 a private consultant.

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1 Q. There is a Sussex County case right now in
 2 Virginia. Are you aware of that case?
 3 A. No.
 4 Q. Don't quote me on that. I might be mistaken.
 5 A. Interesting. Involving redistricting?
 6 Q. I'm sorry, I can't testify.
 7 A. Oh, okay.
 8 Q. I get to ask the questions.
 9 A. No, that's -- okay. All right. I can look
 10 it up.
 11 Q. I may be mistaken, so don't quote me on that.
 12 A. Okay.
 13 Q. Let me ask you, what percentage of your
 14 work would you say, as a consultant, involves ACLU
 15 cases?
 16 A. Section 2 cases?
 17 Q. Section 2 and Section 5 cases.
 18 A. Well, it varies from year to year, certainly.
 19 This year it may be 30 percent.
 20 Q. And what about in previous years? Has it
 21 been about the same or has it fluctuated?
 22 A. Well, some years it would have been more,
 23 particularly in and around the 2000-to-2007 period.
 24 Q. And what percentage of your work would be
 25 working for the plaintiffs, so to speak?

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1 A. What do you mean?
 2 Q. For the proponent of a redistricting,
 3 as opposed to a governmental entity.
 4 A. Oh, probably close to 90 percent, I'm
 5 guessing.
 6 Q. Okay.
 7 A. But that's just a ballpark estimate.
 8 That may be a little high at this point, but --
 9 because a lot of localities are still engaged in
 10 redistricting, and I've worked for four or five,
 11 so --.
 12 Q. You have worked for municipalities, then, to
 13 defend their redistricting plans?
 14 A. Well, to develop them.
 15 Q. To develop them. All right.
 16 A. And I've also, in some instances, defended
 17 redistricting plans. Not in this decade, though.
 18 Q. When was the last time you defended
 19 a redistricting plan --
 20 A. A locality --
 21 Q. -- on behalf of a locality or a municipality?
 22 A. Sometime in the late '90s, I think.
 23 Q. Do you remember the name of the case?
 24 A. It was Newton County, Mississippi, I believe.
 25 And also --

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<p>1 Q. And who did you represent? Or not represent, 2 who you worked for. 3 A. The county board of supervisors. 4 Q. Which county? 5 A. Newton County. 6 Q. Newton County board of supervisors? 7 A. Newton County and -- well, there's another 8 one. I will think of it. Off the top of my head, 9 for some reason I'm not thinking of it, but there was 10 another Mississippi county where I worked for the 11 board of supervisors. 12 Q. Why were you working for the board of 13 supervisors in Mississippi, in Newton County, 14 Mississippi? 15 A. Well, they settled the Section 2 lawsuit and 16 developed a plan, and someone then filed a lawsuit 17 against them for the look of that plan, that 18 they didn't like it. 19 I mean, I did not spend a lot of time on 20 either one of those cases, the two I'm thinking about, 21 but in the end I suggested in Newton County that they 22 make some changes to make the district a little more 23 compact and the lawsuits settled. 24 I don't even think I had to actually 25 testify in court. Well, maybe I did. I know I was at</p>	<p>1 2000 Census. 2 Then there was a lawsuit filed against 3 Sussex County, Virginia at some point in 2003 or 2004, 4 but that settled, and I had been involved in the plan 5 drawing for Sussex County after the 2000 Census. 6 Q. Did you draw the original plan for 7 Sussex County, or were you involved in that? 8 A. I came in to that sort of late in the game, 9 but I think -- I was sort of working off of plans that 10 had been developed by another consultant, but I did 11 draw the final plan that was submitted to the 12 Department of Justice, and pretty clear, and then a 13 white plaintiff filed a lawsuit against the county 14 over that plan. And it settled. It didn't really 15 ever go to trial. 16 I don't think the lines -- the district lines 17 didn't change, and I can't remember exactly how it was 18 settled, but the end result was nothing really ever 19 happened. But that would have been around 2003 or 20 2004. 21 Q. And how many active cases do you have today? 22 A. I think about seven or eight. 23 Q. Seven or eight? 24 A. I believe, right. 25 Q. And with the exception of this particular</p>
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<p>1 -- I was in Newton County at court when it was 2 settled. I just can't remember if I actually 3 testified that day or just submitted an affidavit or a 4 declaration. 5 Q. And the last time, then, that you had 6 defended a redistricting plan on behalf of a 7 municipality or a governmental entity is about 8 ten years ago; is that correct? 9 A. Well, let me -- first of all, let me recall 10 now. Webster County, Mississippi -- Webster County, 11 Mississippi -- was the other county that I was 12 involved in, where a lawsuit was filed against the 13 county after a Section 2 lawsuit had been filed by 14 minority plaintiffs and the court had ordered a 15 new plan. 16 Q. Had you been involved in drafting 17 the original plan? Were you defending your plan, 18 then? 19 A. No I was not defending my plan. It had been 20 drawn by someone else, and I'm not sure who. 21 Q. All right. 22 A. And then subsequently, after the 2000 23 election, Webster County asked me to develop a plan 24 for the 2010 era, so I went down and talked to the 25 supervisors and we developed a new plan based on the</p>	<p>1 case, have you ever worked in the state of Washington? 2 A. Yes, I have. 3 Q. Tell me about that. 4 A. It was an interesting experience. I spent 5 part of the seasons of '77 and '78 working in the 6 Welch's grape juice plant in Grandview, Washington. 7 Q. Concord grapes? 8 A. Welch's; yes. 9 Q. Welch's Concord grapes. 10 A. Yeah -- yeah, yes. 11 Q. And they have a processing plant in 12 Grandview? 13 A. Yes. 14 Q. So what did you do? 15 A. I could eat all the grapes I wanted. 16 I was just back there with -- well, the first 17 year I was mashing up grapes in this kind of like an 18 accordion-like device -- it was really weird -- 19 and then the following year I had a better job. 20 I was, like, putting some kind of substance 21 into these great big tanks so that they would process 22 the grape juice, I guess, to preserve it or something. 23 But that was a much more pleasant job. 24 Q. That was before you started working with the 25 ACLU, then?</p>

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<p>1 A. Oh, yes.</p> <p>2 Q. Okay.</p> <p>3 A. Yes.</p> <p>4 Q. Let's go back to your education. Tell me</p> <p>5 about your education -- well, let's start with this.</p> <p>6 Where were you born and raised?</p> <p>7 A. Born and raised in -- I was born in Bristol,</p> <p>8 Tennessee, raised in Bristol, Virginia. There was --</p> <p>9 it's a town that is split right down the middle by</p> <p>10 Tennessee and Virginia.</p> <p>11 Q. So there's a Bristol, Tennessee and a</p> <p>12 Bristol, Virginia, then.</p> <p>13 A. Yes.</p> <p>14 Q. And you were born in Bristol, Tennessee?</p> <p>15 A. I was born in Tennessee, because the hospital</p> <p>16 is in Tennessee.</p> <p>17 Q. You moved across the --</p> <p>18 A. My family is from Bristol, Virginia.</p> <p>19 Q. All right.</p> <p>20 A. There's a big rivalry there between the</p> <p>21 Virginia and Tennessee sides of town.</p> <p>22 Q. And you went to college?</p> <p>23 A. I did.</p> <p>24 Q. Where did you graduate from college?</p> <p>25 A. I graduated from a small college in Davidson,</p>	<p>1 A. Believe me, I'm no architect. They just for</p> <p>2 some reason had that as part of the department of</p> <p>3 architecture.</p> <p>4 Q. And were you there for two years?</p> <p>5 A. I was there for about a year and a half and</p> <p>6 decided it really wasn't my cup of tea.</p> <p>7 Q. Was it a master's program?</p> <p>8 A. A master's program.</p> <p>9 Q. And a master's in urban planning, then?</p> <p>10 A. Right.</p> <p>11 Q. And why did you drop out?</p> <p>12 A. I don't know. I just -- in the end, I was</p> <p>13 just sort of uncomfortable with having to work for a</p> <p>14 single government -- it just wasn't a good fit for me.</p> <p>15 I guess I'm too much of a free spirit in</p> <p>16 my own little way or something, so in the end</p> <p>17 I decided I would just as soon deliver pizzas, which</p> <p>18 is what I was doing subsequent to leaving.</p> <p>19 Q. So you left.</p> <p>20 A. (Nods affirmatively.)</p> <p>21 Q. When were you at Virginia Tech? Was it '80</p> <p>22 to '81?</p> <p>23 A. I think it was, like, '81 to '82.</p> <p>24 Q. And what did you do from the time you</p> <p>25 graduated from Davidson College until you enrolled at</p>
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<p>1 North Carolina.</p> <p>2 Q. When did you graduate?</p> <p>3 A. 1975.</p> <p>4 Q. And what was your degree in?</p> <p>5 A. Economics.</p> <p>6 Q. Did you have any distinctions or honors with</p> <p>7 your degree?</p> <p>8 A. I guess I was cum laude, you know, if you</p> <p>9 have a B-plus average or something. That would be the</p> <p>10 extent of my honors.</p> <p>11 Q. And did you apply at all for graduate school</p> <p>12 anywhere?</p> <p>13 A. I did attend graduate school at Virginia Tech</p> <p>14 in 1979 -- or rather 1981.</p> <p>15 Q. 1981?</p> <p>16 A. Yeah. '81 and '82 in the department of urban</p> <p>17 and regional planning.</p> <p>18 Q. In what department?</p> <p>19 A. Department of urban and regional planning.</p> <p>20 Q. And what school was that a part of?</p> <p>21 A. Virginia Tech.</p> <p>22 Q. Was there a college or --</p> <p>23 A. Well, it's part of the college of</p> <p>24 architecture.</p> <p>25 Q. Okay.</p>	<p>1 Virginia Tech?</p> <p>2 A. I worked construction in Virginia for a</p> <p>3 period of time. Spent about a year traveling around</p> <p>4 out West, worked in Glacier National Park. I worked</p> <p>5 at a fast-food restaurant in Albuquerque, New Mexico,</p> <p>6 and I worked the harvests here.</p> <p>7 Q. In Grandview?</p> <p>8 A. In Grandview, right.</p> <p>9 Q. Okay.</p> <p>10 A. Right. So I did that. That eats up a couple</p> <p>11 of years there.</p> <p>12 I then took a lengthy journey through Latin</p> <p>13 America in 1979 -- I'm sorry, '78, and did it again in</p> <p>14 1980, you know, one of those \$5-a-day deals.</p> <p>15 Q. Do you speak Spanish?</p> <p>16 A. Not -- I mean, I get along, but I -- I know</p> <p>17 enough Spanish to know that I don't speak it, although</p> <p>18 it's gotten much better in the past couple of years.</p> <p>19 I've discovered that there are some great news</p> <p>20 channels on the Internet coming out of places like</p> <p>21 Monterey, Mexico and Buenos Aries, so my Spanish --</p> <p>22 from an understanding level, just understanding spoken</p> <p>23 Spanish -- is probably better than it's ever been.</p> <p>24 I mean, I can just leave it on for a couple of</p> <p>25 hours -- well, more than a couple hours; like all day</p>

7 (Pages 25 to 28)

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<p>1 sometimes -- and so now it's -- I mean -- well, that's 2 getting off in another direction. 3 Q. Let me ask you. Have you ever worked as an 4 economist? 5 A. No. 6 Q. And you've never worked as an urban planner, 7 correct? 8 A. No. 9 Q. All right. 10 Now, what did you do from the time you left 11 Virginia Tech until you started at the ACLU? 12 A. I delivered pizzas, and then -- 13 Q. How long did you deliver pizzas? 14 A. That was at least three years. 15 -- and then at some point, around 1985 or so, 16 I began working for Delmarva Rural Ministries out of 17 the ACLU office. 18 However, I was not specifically employed by 19 the ACLU Virginia for any particular project, and 20 I didn't really start the voting stuff until 1987 or 21 so. 22 Q. During what time periods did you deliver 23 pizzas? 24 A. '82 to '85. I was also studying accounting 25 for some of that time period.</p>	<p>1 a number of Section 2 cases, because there is a -- 2 Q. Component? 3 A. -- component of demographics -- of 4 redistricting that involves demographics, of course. 5 Q. I understand, and I'll get to your 6 actual experience. We've kind of talked about your 7 experience, but just to clarify, you don't hold 8 yourself out to be a demographer, correct? 9 A. No, but I work with demographic information 10 all of the time, so I consider myself a redistricting 11 expert who works with demographic information. 12 Q. And that you believe is your specialty area, 13 is redistricting, correct? 14 A. For this case; right. 15 Q. With respect to this case, have you consulted 16 with any other experts? 17 A. No. 18 Q. You haven't talked to any statisticians about 19 your methodology or Dr. Morrison's methodology, 20 correct? 21 A. No. 22 Q. And have you talked to any other experts who 23 have been retained by the plaintiff in this particular 24 case? 25 A. No, not about -- not about this case.</p>
Page 30	Page 32
<p>1 Q. On your own? 2 A. Yeah -- well, I enrolled at Virginia 3 Commonwealth University in Richmond. 4 Q. What background do you have, if any, in 5 statistics? 6 A. I had some statistical classes at 7 Virginia Tech -- a couple, I think -- and one at 8 Davidson College in my senior year. 9 Q. Do you recall the names of those classes? 10 A. The one at Davidson would have been 11 Introduction to Statistics, so the -- 12 Q. How did you do in that class? Do you 13 remember? 14 A. Oh, I made a B-plus or an A. I'm not a 15 scholar, but then again this is not scholarly work 16 I'm doing here. This is just straight-up nuts-and- 17 bolts redistricting. 18 Q. You don't profess to be an expert in 19 statistics, correct? 20 A. No, I do not. 21 Q. Do you claim to be a demographer? 22 A. I do demographic work. I would not put forth 23 my name as a professional demographer in the true 24 understanding of the word, but I have been accepted as 25 an expert in redistricting and demographics in</p>	<p>1 I've met Dr. Engstrom, but I've not discussed it at 2 all. 3 Q. In a social context only? You haven't -- 4 A. Well, I haven't even met him -- I haven't met 5 him or talked to him since 2009. 6 Q. So you haven't had occasion to talk to -- 7 well, maybe I should lay a foundation. Were you 8 involved in this case in 2009? 9 A. No. That was just the last time I saw 10 Dr. Engstrom. 11 Q. So you haven't had any occasion to have 12 any contact with Dr. Engstrom about this case, 13 correct? 14 A. That's correct. 15 Q. And do you know Dr. Morrison? 16 A. I know him by name. We've been on the 17 opposite side in a couple of other cases, but not in 18 quite such an up-front manner. But I know he was an 19 expert in a Maryland congressional case, and also in a 20 Section 2 case involving the Wind River reservation in 21 Wyoming. 22 Q. And the Maryland case, what was the name of 23 it? 24 A. Fletcher vs. Lamone, I believe. That was a 25 2011 case.</p>

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<p>1 Q. And then what was the Montana case you 2 indicated?</p> <p>3 A. It was the Wind River reservation in Wyoming.</p> <p>4 Q. Wyoming.</p> <p>5 A. The Shoshonne Tribe.</p> <p>6 Q. Do you remember the name of it?</p> <p>7 A. I can't think of the name right now. I don't 8 know why, but -- well, it's actually on -- I have a 9 list of cases I've worked on, so it would be there.</p> <p>10 Q. All right.</p> <p>11 A. That case was filed in about 2004, I think, 12 and there was a trial in 2007, and the judge came down 13 with an opinion in our favor in 2010, I believe.</p> <p>14 Q. Did you prepare a report in that case?</p> <p>15 A. I did.</p> <p>16 Q. And did Dr. Morrison also prepare a report?</p> <p>17 A. He did, although I don't think it directly 18 related to redistricting, but I could be wrong about 19 that. I think he was focused more on other issues.</p> <p>20 Q. What other issues?</p> <p>21 A. I think it had something to do with surveying 22 methodology and -- it was not related to -- but I'm 23 not going to -- I'll let Dr. Morrison tell you about 24 that.</p> <p>25 Q. All right. I'm just asking about your</p>	<p>1 designated, your supplemental report, as Exhibit No. 2 4, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Great. So I'll try and refer to them by 5 number or by their title.</p> <p>6 A. Okay. That's fine.</p> <p>7 Q. So if you could look at Exhibit No. 1, which 8 is your original report, you gave us a list of cases 9 as part of Exhibit A, correct?</p> <p>10 A. Correct.</p> <p>11 Q. And that starts on page 3 of Exhibit A; 12 is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. All right. And does that help you recall -- 15 well, there is a Maryland case listed here, Crane vs. 16 Worcester County in 1994. Is that the case --</p> <p>17 A. No, the Maryland case is Fletcher v. Lamone. 18 It's listed on page 5, the cases where I filed a 19 declaration or was deposed but did not testify in 20 court.</p> <p>21 Q. All right. Thank you.</p> <p>22 A. Then the Wyoming case is one where I did 23 testify, very briefly, and that is Large v. Fremont in 24 2007.</p> <p>25 Q. Thank you.</p>
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<p>1 memory.</p> <p>2 A. Yeah.</p> <p>3 Q. What about the Maryland case? Did you 4 prepare a report in that case?</p> <p>5 A. I prepared a very brief declaration in that 6 case.</p> <p>7 Q. And do you recall if Dr. Morrison prepared 8 any type of written document in that case?</p> <p>9 A. He prepared a report in that case.</p> <p>10 Q. I'm going to mark your first report as 11 Exhibit-1 in this case.</p> <p>12 (Discussion off the record.) 13 (Exhibit Nos. 1 - 4 marked 14 for identification.)</p> <p>15 MR. FLOYD: Back on the record.</p> <p>16 Q. Mr. Cooper, we have marked your original 17 report as Exhibit-1; is that correct?</p> <p>18 A. That is correct.</p> <p>19 Q. We've also marked as Exhibit No. 2 20 the initial report of Dr. Morrison, correct?</p> <p>21 A. I believe so.</p> <p>22 Q. And then we have marked the supplemental 23 report of Dr. Morrison as Exhibit-3, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And then we've marked your reply, or as it's</p>	<p>1 While we're looking at Exhibit A, on page 1, 2 paragraph 3, you reference the Sussex County case 3 where you worked for the governmental entity in 2011, 4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. You also list here Bolivar County, 7 Mississippi; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Is that another case where you worked for a 10 governmental entity?</p> <p>11 A. That is correct.</p> <p>12 Q. Okay.</p> <p>13 A. I am presently working for Tunica County, 14 Mississippi and Claiborne County, Mississippi in the 15 same capacity. They're developing redistricting plans 16 now.</p> <p>17 Q. Is there any pending litigation against those 18 two counties in Mississippi?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. All right. And then on page 2 of Exhibit A 21 you talk about the fact that you testified in two 22 redistricting lawsuits in New York and New Mexico, 23 correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And tell me about those two cases, just</p>

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<p>1 briefly.</p> <p>2 A. Well, the New York case -- worse than this</p> <p>3 one -- it was filed in June of 2011, and there has</p> <p>4 been a lot of -- there was a trial in August of 2011</p> <p>5 to attempt to get the court to enjoin the election.</p> <p>6 The judge ruled against us, and then the case</p> <p>7 went to the 2nd Circuit, and the 2nd Circuit decided</p> <p>8 that the judge -- I think as I understand it, the</p> <p>9 judge was correct in not enjoining the election, but</p> <p>10 it's been remanded back for a full trial under</p> <p>11 Section 2 because the argument is that there is an</p> <p>12 opportunity for a new majority/minority district in</p> <p>13 the city of Albany. That would be a fifth</p> <p>14 majority/minority district for the Albany County</p> <p>15 legislature.</p> <p>16 Q. When you say that the New York case is "worse</p> <p>17 than this one," what do you mean by that?</p> <p>18 A. In terms of time and legal filings. It's a</p> <p>19 little further along, but it's -- I've spent a lot of</p> <p>20 time on it, and I haven't filed as many</p> <p>21 declarations -- I haven't filed as many pages of</p> <p>22 declarations maybe as I have in this case, but I've</p> <p>23 filed more declarations, and I've done probably even</p> <p>24 more stuff that is not directly related to a</p> <p>25 declaration.</p>	<p>1 could be held under a new plan in the fall of 2011.</p> <p>2 The argument there, the reason for the rush,</p> <p>3 was that the City of Albuquerque has experienced</p> <p>4 dramatic population change since 2000. The west side</p> <p>5 of Albuquerque has gone from 30- or 40,000 people to</p> <p>6 80- or 90,000, and the people on the west side -- the</p> <p>7 west side being the other side of the Rio Grande --</p> <p>8 they were underrepresented in the city council,</p> <p>9 and they wanted to see a change in the redistricting</p> <p>10 plan as soon as possible so their votes would count.</p> <p>11 But, you know, the case didn't go to trial</p> <p>12 until late July, mid-July of 2011 -- it was in state</p> <p>13 court, not federal court -- and the judge decided that</p> <p>14 because of the time constraints and the cost involved</p> <p>15 in trying to reschedule another election a few months</p> <p>16 later, after the redistricting, that the election</p> <p>17 could go forward.</p> <p>18 So elections were held in 2011, and a new plan</p> <p>19 has been developed in Albuquerque since that time --</p> <p>20 I've not been involved in that process -- and I just</p> <p>21 noticed a month or two ago that a lawsuit has been</p> <p>22 filed against the city now under Section 2 of the</p> <p>23 Voter Rights Act. But I'm not involved in that.</p> <p>24 The ACLU of New Mexico filed that lawsuit over</p> <p>25 the objections of the ACLU national voting rights</p>
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<p>1 Q. So you're still actively involved in that</p> <p>2 case, correct?</p> <p>3 A. I am.</p> <p>4 Q. Is that Pope vs. County of Albany?</p> <p>5 A. Right.</p> <p>6 Q. Then --</p> <p>7 A. And I was also involved in a similar case in</p> <p>8 Albany County involving a similar issue, going from</p> <p>9 three to four -- instead of three majority/minority</p> <p>10 districts, going from three to four -- in 2003,</p> <p>11 and the court ultimately ruled in our favor in that</p> <p>12 case.</p> <p>13 Q. And then the New Mexico case, can you tell me</p> <p>14 about that one, the one you're involved in.</p> <p>15 A. Which case?</p> <p>16 Q. The New Mexico case. It's referenced on</p> <p>17 page 2 of appendix A.</p> <p>18 A. That's a little different. That is a case</p> <p>19 that was brought by the ACLU of New Mexico. It was a</p> <p>20 one-person/one-vote issue and unrelated to Section 2</p> <p>21 and unrelated to minority voting rights, really.</p> <p>22 The issue was that the City of Albuquerque had</p> <p>23 set up a redistricting commission in late 2010 with</p> <p>24 the understanding at the time that they would produce</p> <p>25 a plan by February or March of 2011 so that elections</p>	<p>1 project, because the Atlanta national voting rights</p> <p>2 project believed that the case law was not very good</p> <p>3 in terms of forcing the city to district that quickly,</p> <p>4 even though there was such a population imbalance.</p> <p>5 Well, they were right.</p> <p>6 Q. Okay.</p> <p>7 A. Well, from a legal standpoint they were</p> <p>8 right.</p> <p>9 Q. And this was a one-person/one-vote case?</p> <p>10 A. Yes. I mean, in the sense that the district</p> <p>11 -- there was just one district, and there was a piece</p> <p>12 of another district in the area west of the Rio</p> <p>13 Grande, but the population had exploded over there</p> <p>14 since the year 2000.</p> <p>15 The resulting deviation under the 2010 Census</p> <p>16 was -- well, the district was, like, 40 or 50 percent</p> <p>17 overpopulated -- the one district was -- and the</p> <p>18 second one that included part of the area west of the</p> <p>19 Rio Grande was also overpopulated.</p> <p>20 Q. Explain to me what the issues are in</p> <p>21 one-person/one-vote case.</p> <p>22 A. Well --.</p> <p>23 Q. You talked about "deviation." Deviation from</p> <p>24 what? Deviation comparing --</p> <p>25 A. To an ideal district size based on the total</p>

10 (Pages 37 to 40)

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<p>1 population of the city, and that was under the 2010 2 Census. 3 Q. Okay. 4 A. Under the 2000 Census, it was well 5 apportioned, you know, within the general rule of 6 thumb of plus or minus five percent. The big change 7 that happened, I guess, during the housing boom of the 8 mid-2000s, and so many new developments were created 9 on the other side of the city that by the time the 10 2010 Census rolled around, they felt like they were 11 not being fairly represented on the city council. 12 I mean, there was only one -- there was 13 really only one council member actually living west of 14 the Rio Grande. Everybody else lived on the east 15 side. 16 Q. You mentioned the "general rule of plus or 17 minus five percent"; is that correct? 18 A. That's a rule of thumb, yes. 19 Q. Explain to me what you mean by that. 20 A. Well, it's just common redistricting practice 21 that you attempt to create districts that are within 22 plus or minus five percent of the ideal population 23 size, assuming that all districts in a plan are 24 perfect. 25 Q. In order to satisfy the 14th Amendment equal</p>	<p>1 Q. Okay. 2 A. All persons, everybody. 3 Q. Have you done any type of analysis, other 4 than population, with respect to deviation and the 5 14th Amendment -- 6 MS. KHANNA: Objection; vague. 7 Q. Go ahead and answer. I didn't get to finish 8 my question, but did you understand what I was saying 9 or not? I can rephrase it. 10 A. Well, rephrase it. 11 Q. Sure, I'll rephrase it. 12 With the exception of looking at deviation 13 with respect to population, have you looked at 14 any other deviations of other groupings of voters, 15 such as electorate, registered voters? 16 A. Well, in my supplemental report, I look at a 17 portion of the base that would be comprised of the 18 estimated citizen age -- citizen voting age 19 population, partly in response to Dr. Morrison's work. 20 Q. And those were plans D and E? 21 A. Right. 22 Q. And with the exception of plans D and E, 23 did you do any type of a deviation analysis, other 24 than based upon population, for plans 1, 2, and A 25 through C?</p>
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<p>1 protection, one-person/one-vote; is that correct? 2 A. Well, that's true. Of course, there is 3 leeway for various and sundry reasons, so there are 4 places that have higher -- deviations that are higher 5 than ten percent. 6 Q. Did you check your plans in this 7 particular case, the seven plans that you prepared, 8 for that type of deviation to make sure that they 9 complied with the 14th Amendment equal protection, 10 one-person/one-vote clause? 11 A. Yes. I try to keep it within plus or minus 12 five percent. But it is possible to get slightly 13 beyond that and still, I think, make a good legal 14 argument that you're within compliance. I mean, the 15 City of Yakima itself has a deviation of 11 percent in 16 the plan that is currently in place. 17 Q. And the deviation is a comparison of what two 18 numbers? 19 A. The district that has the smallest population 20 size and the district that has the largest population 21 size. Currently, there is one district in Yakima that 22 is about 6-1/2 percent underpopulated. 23 Q. And that would be a comparison of population; 24 citizens or electorate? 25 A. Population, total population.</p>	<p>1 A. No. Those use total population as an 2 apportionment base. 3 Q. Let's go back to Exhibit-1. 4 You state that you were also involved in 5 a project with regard to prison-based gerrymandering, 6 correct? 7 A. I've done consulting work for Prison Policy 8 Institute, an organization based in Massachusetts 9 which is attempting to get the Census Bureau to change 10 how they identify the prison population and count the 11 prison population so that they would be counted in 12 their home districts, where they feel like they 13 belong, as opposed to where they are currently 14 residing, which is in a state or federal penal 15 institution, sometimes very far from their home, 16 either in the state or out of state. 17 Q. What is "gerrymandering"? 18 A. That's a funny term. It could be most 19 anything under the sun. 20 Q. What is your understanding of 21 "gerrymandering"? 22 A. It's a loaded term, and I don't -- I have no 23 real definition for it. I mean, I can't give you a 24 good definition. You just kind of know it when you 25 see it, I suppose.</p>

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<p>1 However, one person's gerrymander is another 2 person's perfect plan. For example, Dr. Morrison 3 and I worked on a plan -- worked on a case in 4 Maryland, and we were on opposite sides in the 5 case, but I -- I mean, it was a partisan gerrymander, 6 in my opinion, based on the way the plan was drawn, 7 but that's not what the case was about. 8 Q. And a "partisan gerrymander" is what? 9 A. Well, the Democrats just drew some crazy 10 lines in that state. I mean, let's be honest. It 11 just didn't need to look that crazy. 12 Q. And is that also -- well, let's talk about 13 compactness. Are there any standards that relate 14 to "compactness," other than you know it when you see 15 it? 16 A. You pretty much know it when you see it. 17 I mean, there are compactness measures that are 18 really problematic in a lot of ways. Some courts have 19 attempted to rely on them, I suppose. Jurisdictions 20 almost never do when they're producing a plan. 21 I mean, often you will see a city with 22 population numbers of the various districts and their 23 adopted redistricting plan, perhaps some information 24 on race and registered voters, and maybe they'll 25 produce the deviation numbers, but they almost</p>	<p>1 evaluating compactness scores? 2 A. I'm familiar with some of the compactness 3 measures, but I don't think -- that's the problem, is 4 there is no bright-line rule with respect to 5 compactness scores. 6 Q. Do you have any general rules of thumb that 7 you utilize for compactness scores? 8 A. No. 9 Q. How many plans that you have drafted have 10 involved Latino minorities? 11 A. Well, of course -- the plans I developed in 12 association with a redistricting consultant in Miami, 13 for the Miami-Dade County Council, of course, involved 14 Latinos. The Albany County, New York, case, involves 15 Latinos. 16 I was a consultant for a lawsuit filed by 17 Latinos in Bethlehem, Pennsylvania versus the 18 Bethlehem Area School District. That was a lawsuit 19 that was filed in around 2007 or so, and it eventually 20 settled and didn't actually go to trial. 21 I don't even think I ever filed a declaration, 22 but I might have. I might have. I can't remember. 23 Is it on that list? 24 Q. It's not listed, no. 25 A. All right. But they actually adopted</p>
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<p>1 never -- I can't even think of one instance where 2 there has been a separate column showing 3 compactness scores. But it does come up in some 4 cases. 5 Q. On any of the eight plans that you have 6 prepared in this particular case, did you run any 7 compactness scores? 8 A. No, because in my experience, these districts 9 are all compact. There's no issue there. They're 10 regularly shaped and there's not -- just not an issue 11 of compactness. 12 Q. Have you ever testified with respect to 13 compactness scores of any of the districts you've been 14 involved in? 15 A. Only by way of the expert report in 16 the Fayette County, Georgia case. I think that's the 17 only time that I have ever reported compactness 18 scores. 19 I mean, compactness is sometimes an issue, 20 or the shape of a district may be an issue, 21 but I don't think I've ever, in any other case, been 22 involved in a situation where it was necessary to use 23 quantitative measures, because those measures are 24 deeply problematic, really. 25 Q. Are you familiar with the criteria for</p>	<p>1 my plan -- well, I had a lot of input from them, but 2 I was the one who put the final touches on that plan, 3 and that would have been back in 2009, I suppose. 4 Q. Would you say that you have worked on more 5 African-American cases as opposed to Latinos, or about 6 the same? 7 A. Oh, yes. Yes, many, many more 8 African-American cases. 9 Q. Okay. 10 A. Many, many more. 11 Q. What percentage would you say are 12 African American versus Latino and other minorities? 13 MS. KHANNA: Objection. The question is 14 vague. 15 Q. Go ahead and answer. 16 A. I would say it's probably -- in terms of time 17 spent, probably 70 percent African-American, maybe -- 18 well, maybe 20 percent Native American, and -- 19 ten percent Latino may be a little high, but I'm 20 starting to spend a lot of time on Latino cases. 21 I mean, there were Latinos involved -- like in 22 the Albuquerque case, I had to be cognizant of where 23 Latinos lived because that -- there is a factor -- 24 even in a one-person/one-vote developing a plan that 25 would be acceptable to the court or to the population</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 at large. So, I mean, that was one thing that was 2 background --.</p> <p>3 Q. So what you're saying is if you're addressing 4 an issue regarding one minority, you can't 5 disadvantage another minority, correct?</p> <p>6 MS. KHANNA: Objection; mischaracterizes 7 the testimony.</p> <p>8 Q. Go ahead and answer.</p> <p>9 A. Well, I don't know what you mean, exactly, 10 by "disadvantage." It certainly would not be an 11 optimal solution if you were disadvantaging anyone, 12 I suppose.</p> <p>13 Q. Right. What have you done to prepare for the 14 dep today?</p> <p>15 A. Other than a brief interview yesterday with 16 Perkins Coie, I haven't done anything. I reread the 17 report.</p> <p>18 Q. You reread your report?</p> <p>19 A. Right.</p> <p>20 Q. Both reports?</p> <p>21 A. Right.</p> <p>22 Q. Have you reread Dr. Morrison's reports?</p> <p>23 A. I looked at them very quickly yesterday and 24 -- I mean, I've read those reports, but --.</p> <p>25 Q. Did you bring anything with you today -- a</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Who knows? I think it probably just -- 2 I think what happened is it just just inadvertently, 3 went into sleep -- I must have left it in sleep mode, 4 and so I cannot access it with LogMeIn.</p> <p>5 Q. There's no one you can call at home to turn 6 on your computer, then?</p> <p>7 A. My brother is the only one with a key, and he 8 is celebrating his 25th wedding anniversary in the 9 Dominican Republic this very week.</p> <p>10 Q. He's not willing to fly back and turn your 11 computer on, then.</p> <p>12 A. I don't think so.</p> <p>13 Q. Did you try and log on to your computer 14 yesterday and you found out there was a problem? 15 Is that what happened?</p> <p>16 A. Well, I did, because you had a question 17 yesterday about a number of citizens in hypothetical 18 plan B, yes.</p> <p>19 Q. Right.</p> <p>20 A. Or hypothetical plan A --.</p> <p>21 Q. A and B, I think.</p> <p>22 A. A -- yes, whatever.</p> <p>23 Q. Maybe you provided A and we were looking for 24 B.</p> <p>25 A. I believe it was hypothetical plan A, most</p>
<p style="text-align: right;">Page 50</p> <p>1 computer or anything -- so you could do calculations 2 if I asked you to do it?</p> <p>3 A. I have a computer.</p> <p>4 Q. And do you have your data downloaded for this 5 particular case on your computer?</p> <p>6 A. You know, a lot of it -- some of it is not 7 available for calculations like that, because 8 my computer died last night -- I can't access it; 9 it's usually accessible remotely -- so some of my data 10 is not with me.</p> <p>11 Q. What do you mean by your computer died?</p> <p>12 A. Well, either the power went off or it went 13 into sleep mode or something, because I cannot access 14 it using software called LogMeIn, where I could access 15 and run the redistricting software from here, for 16 example.</p> <p>17 Q. So you're saying that your computer at home 18 can't be accessed by you remotely at this time; is 19 that correct?</p> <p>20 A. That is correct.</p> <p>21 Q. Hopefully the data on your computer at home 22 hasn't been destroyed, though, right?</p> <p>23 A. Oh, I've got it backed up.</p> <p>24 Q. All right. So when you say it died, it's not 25 like it's gone or anything --</p>	<p style="text-align: right;">Page 52</p> <p>1 definitely, because that is the plan where --.</p> <p>2 Q. And you haven't been able to do that 3 because you haven't been able to access your computer, 4 correct?</p> <p>5 A. Well, what do you mean by "haven't been able" 6 to do that?</p> <p>7 Q. You haven't been able to produce the actual 8 numbers.</p> <p>9 A. Well, actually, I have, because they can be 10 calculated algebraically, so I did -- I did actually 11 do a calculation on hypothetical plan A, district 1. 12 But Dr. Morrison can do that himself probably a lot 13 faster than I can. He's better at math.</p> <p>14 Q. What was result of your mathematical 15 calculation? Do you recall?</p> <p>16 A. Oh, it's -- I didn't memorize it. It's 17 probably -- well, maybe if we go into -- go to lunch 18 or something, I'll find it and give it to you.</p> <p>19 Q. That's great. Make a note of it, okay? 20 I'll make a note of it and --</p> <p>21 A. But I should make the distinction that you 22 asked for non-Hispanic CVAP and LCVAP for method 2, 23 and there's really no calculation for non-Hispanic 24 CVAP under method 2.</p> <p>25 What you would be getting is CVAP and LCVAP,</p>

13 (Pages 49 to 52)

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<p>1 which is what method 2 calculates, and non-Hispanic 2 CVAP is -- I'm sorry, "CVAP," C-V-A-P, it's an acronym 3 for "citizen voting age population," and "NHVAP" is 4 "non-Hispanic voting age population." 5 Q. And "LCVAP" is another term -- 6 A. Right. 7 Q. -- and that means "Latino citizen voting 8 population"? 9 A. Yeah. 10 (Brief recess taken.) 11 MR. FLOYD: All right. Let's go back on 12 the record. 13 Q. Mr. Cooper, can you tell me when you were 14 first contacted regarding this particular case. 15 A. It would have been in late May or early June 16 of 2012. 17 Q. And do you recall who contacted you? 18 A. I believe it was John Sherman, an attorney in 19 the ACLU's national voting rights project in Atlanta. 20 Q. And had you worked with Mr. Sherman on other 21 cases? 22 A. No. I've spoken with him. He was actually a 23 fellow there for two years -- fellowship kind of 24 activity -- and he's no longer there, so I have not -- 25 I've not directly worked with him on any specific</p>	<p>1 A. FairPlan2020. I also have a notice I call 2 "FairData2000" that I developed, and it now looks like 3 I developed it in 2000 because when I developed it -- 4 I hardly ever update it anymore, but that was done 5 with Norfolk State University. 6 Q. All right. 7 When Mr. Sherman contacted you, what, 8 if anything, did he tell you he wanted you to do? 9 A. Honestly, he asked me to do a couple of draft 10 plans, I guess, just to analyze what the potential 11 might be in the city of Yakima for Latino majority 12 districts. 13 Q. Do you recall the results of those draft 14 plans? 15 A. Yes. 16 MS. KHANNA: Objection. I'm going to 17 object. Any information about draft plans is 18 protected under rule 26(b)(4). 19 Q. Did you utilize any information in that 20 draft plan in any of the plans that you ultimately 21 prepared? 22 A. What was -- 23 Q. Did you utilize any of the information in 24 those draft plans in any of the plans that are 25 contained in Exhibit Nos. 1 and 4?</p>
Page 54	Page 56
<p>1 litigation. 2 Q. But you had worked with that office before 3 on a -- 4 A. Oh, yes. 5 Q. -- number of occasions? 6 A. As I expressed earlier in this deposition. 7 Q. Right. Do you still get cases from the ACLU? 8 Are they still a source of referral for you? 9 A. Yes. 10 Q. And what percentage of your cases do you 11 think are referred to you by the ACLU, or one of their 12 related entities? 13 A. Oh, 30 percent. 14 Q. How do you get your other cases? 15 A. Word of mouth. 16 Q. Referral? 17 A. Referral. 18 Q. Do you advertise at all? 19 A. No. 20 Q. Do you have a website? 21 A. I do have a website, yeah. I have a website, 22 but I don't really solicit business there. And I 23 hardly ever use it. It's just a webpage where I post 24 information occasionally, rarely, like once a year. 25 Q. What is that website?</p>	<p>1 A. Well, the census stays the same, so, yes. 2 Q. Did you arrive at any conclusion with 3 respect to whether a Gingles I district could be 4 formed? 5 A. As a result of those early discussions? 6 Q. Yes. 7 A. It was my belief at the time that Gingles I 8 could be met, yes. I don't know -- I don't think we 9 ever really reached that point of can it or can't it 10 in our e-mail correspondence. I never talked to him 11 directly over the phone. 12 Q. What happened next? 13 MS. KHANNA: Object to the form of the 14 question. It's vague. 15 Q. Go ahead and answer. Tell me the next thing 16 you did with respect to the case. 17 A. The next thing I did was -- well, I was 18 hired, I think, in August to work on the case by the 19 ACLU of Washington, and at that time -- I guess the 20 next major activity was matching Spanish surnames to 21 the voter turnout list. That would have been in the 22 fall. 23 Q. The fall of 2012? 24 A. 2012. 25 Q. Had the lawsuit been filed yet, or do</p>

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<p>1 you know?</p> <p>2 A. Yes.</p> <p>3 Q. When you say you were retained by the ACLU of</p> <p>4 Washington, was that Washington state?</p> <p>5 A. Yes.</p> <p>6 Q. And did you have an agreement with them</p> <p>7 in terms of how you would be compensated?</p> <p>8 A. Yes.</p> <p>9 Q. And what was that agreement? Was it \$100 an</p> <p>10 hour?</p> <p>11 A. Yes.</p> <p>12 Q. Have you submitted invoices to them for</p> <p>13 payment?</p> <p>14 A. I have.</p> <p>15 Q. And have they paid them?</p> <p>16 A. Yes, they have.</p> <p>17 Q. Can you tell me, ballpark, what you've</p> <p>18 charged to date.</p> <p>19 A. I think I have billed for around 80 hours.</p> <p>20 Through February, anyway.</p> <p>21 Q. So if my math is correct, that would be</p> <p>22 \$8,000?</p> <p>23 A. That would be correct.</p> <p>24 Q. You indicated that in the fall of 2012,</p> <p>25 you were matching Spanish surnames. With what?</p>	<p>1 A. You mean another occasion in this case?</p> <p>2 Q. In this particular case, yes. I'm sorry.</p> <p>3 A. Well, yes, in the sense that I matched</p> <p>4 the City of Yakima's registered voter list to the</p> <p>5 Spanish surname list provided by the department of</p> <p>6 elections.</p> <p>7 Q. And that was the voter registration list for</p> <p>8 what year?</p> <p>9 A. For -- I had an initial run in September of</p> <p>10 2011 and then a subsequent run of registered voters</p> <p>11 as of January 2012 -- I'm sorry, an initial run as of</p> <p>12 September 2012 and then a follow-up of January of</p> <p>13 2013.</p> <p>14 Q. And have you produced the raw data for those</p> <p>15 lists, meaning what the numbers were?</p> <p>16 A. I believe so.</p> <p>17 Q. I don't imagine you could recall what the raw</p> <p>18 data was for that. Do you remember how many people</p> <p>19 came off the Spanish surname list?</p> <p>20 A. You mean how many unique Spanish surnames</p> <p>21 there are?</p> <p>22 Q. No, how many hits you had from the voter</p> <p>23 registration list.</p> <p>24 MS. KHANNA: I'm going to object to the</p> <p>25 form of the question as overly broad.</p>
Page 58	Page 60
<p>1 A. Voter turnout lists prepared by -- or</p> <p>2 provided by the Yakima County Department of Elections.</p> <p>3 Q. And tell me how you did that. What did you</p> <p>4 do?</p> <p>5 A. Well, I took the Spanish surname list --</p> <p>6 it was developed by the Department of Justice in</p> <p>7 conjunction with the Census Bureau back in the late</p> <p>8 '90s -- that had been provided to Yakima County</p> <p>9 Division of Elections as a list of 12,000-and-some-odd</p> <p>10 surnames that are deemed Spanish surnames</p> <p>11 and matched those to the last names of persons who had</p> <p>12 voted in several different elections, which the expert</p> <p>13 in this case, Dr. Richard Engstrom, is going to</p> <p>14 testify about.</p> <p>15 Q. So you actually did the matching, then, with</p> <p>16 the list?</p> <p>17 A. Yes.</p> <p>18 Q. And how did you do that? Do you have a</p> <p>19 computer program that runs it or do you go down and do</p> <p>20 it manually, or --?</p> <p>21 A. Well, I used Microsoft Access and Microsoft</p> <p>22 Excel to do the matching process.</p> <p>23 Q. And did you ever do any other Spanish surname</p> <p>24 matching, other than that matching? Did you ever do</p> <p>25 it on another occasion?</p>	<p>1 Go ahead and answer. Is that what you're</p> <p>2 doing, you're looking for how many hits you get</p> <p>3 off the voter registration list and comparing it with</p> <p>4 the Department of Justice's Spanish surname list?</p> <p>5 A. Well, yes. I mean, we have a -- in the</p> <p>6 information provided to Dr. Morrison, you have a total</p> <p>7 number of registered voters in the city of Yakima and</p> <p>8 a total number of Latino registered voters, so that</p> <p>9 would give you the hits.</p> <p>10 Q. And what I'm trying to determine is this.</p> <p>11 Is that list, the list of Latino registered voters, a</p> <p>12 list that was the result exclusively of your comparing</p> <p>13 the Justice Department's Spanish surname list with</p> <p>14 the list of registered voters for January of 2013?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. Although I did make a point of including</p> <p>18 a few hyphenated names that don't show up as Latino</p> <p>19 surnames, even though in most instances they are</p> <p>20 names like Gomez-Gonzales that are clearly Latino.</p> <p>21 Q. And let's talk about that. That's what I</p> <p>22 wanted to ask about.</p> <p>23 You said that you also added some names to</p> <p>24 the Spanish surname list that were in addition to</p> <p>25 those names that were hits from the Department of</p>

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<p>1 Justice list, correct?</p> <p>2 A. Well, not really, because Gomez and Gonzales</p> <p>3 are Spanish surnames, so it's just -- for one reason</p> <p>4 or another that household has decided to hyphenate</p> <p>5 their last name -- American-style, you might say --</p> <p>6 and because they're both Spanish surnames, they</p> <p>7 should, in my opinion, be considered Spanish</p> <p>8 surnames.</p> <p>9 Q. And you only included names that were</p> <p>10 hyphenated, two hyphenated Spanish surnames; is that</p> <p>11 correct?</p> <p>12 A. No. I would have also included ones that</p> <p>13 would have been Spanish and Anglo.</p> <p>14 Q. So as long as there was a Spanish name</p> <p>15 component to the hyphenated word, you included it in</p> <p>16 the list, correct?</p> <p>17 A. Right.</p> <p>18 Q. Did you include any other names as part of</p> <p>19 your Spanish surname list?</p> <p>20 A. No.</p> <p>21 Q. Did you --</p> <p>22 A. Well, not -- not for the registered voter</p> <p>23 match that I did for January 2013 for use with</p> <p>24 my illustrative plans.</p> <p>25 For the work that I did for Dr. Engstrom,</p>	<p>1 you did in the case. What did you do next?</p> <p>2 A. Well, I matched them, matched the names,</p> <p>3 and then I --</p> <p>4 Q. I'm sorry, let's back up. You matched the</p> <p>5 names against what list? Was that against the</p> <p>6 September 2012 voter registration list or the January</p> <p>7 of 2013?</p> <p>8 A. Well, for the work I did with Dr. Engstrom,</p> <p>9 it was -- there was a match for each individual</p> <p>10 election based on the individuals who turned out in</p> <p>11 that election, and those turnout lists were provided</p> <p>12 by the Yakima County Division of Elections.</p> <p>13 So each year each election was a little bit</p> <p>14 different, and I matched each election to the DOJ,</p> <p>15 Department of Justice, Spanish surname list, as</p> <p>16 I described.</p> <p>17 Q. And then you gave that data to Dr. Engstrom?</p> <p>18 A. Right. I would then -- well, the --</p> <p>19 Q. You gave it to the lawyers --</p> <p>20 A. The next step was to -- once that was done,</p> <p>21 then I had a precinct identifier, so I had a count of</p> <p>22 the number of registered voters in each precinct,</p> <p>23 and then I had the number of Latino registered voters</p> <p>24 in each precinct.</p> <p>25 That was in an Excel spreadsheet -- well, not</p>
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<p>1 which involved a countywide list prepared by the</p> <p>2 Yakima County Department of Elections, for one</p> <p>3 election -- I think it was for November of 2011 --</p> <p>4 they provided us a list of all Spanish surname voters,</p> <p>5 including -- or all Latino voters, including some</p> <p>6 Latino voters who did not have Spanish surnames,</p> <p>7 by virtue of the fact that they had married someone</p> <p>8 with an Anglo name or who already had an Anglo name,</p> <p>9 like Bill Richardson, for example; obviously Latino</p> <p>10 but an English name.</p> <p>11 Q. And as I understand it, somebody</p> <p>12 compared prior affidavits regarding voter registration</p> <p>13 with current names and did a sort to include those,</p> <p>14 correct?</p> <p>15 A. Somebody in the Yakima County Department of</p> <p>16 Licensing. It's not a very large number of people,</p> <p>17 either. I think for the voter turnout, it was maybe</p> <p>18 150 or 200 people countywide that fell under that</p> <p>19 category.</p> <p>20 Q. And you never relied upon that</p> <p>21 Yakima County list for any of the eight plans that you</p> <p>22 have proposed today, correct?</p> <p>23 A. I did not.</p> <p>24 Q. So I think we left off with you matching</p> <p>25 Spanish surnames in terms of the progression of what</p>	<p>1 Latino registered voters for turnout --</p> <p>2 Q. Right.</p> <p>3 A. -- Anglos who turned out and Latinos who</p> <p>4 turned out in a given election, and that spreadsheet</p> <p>5 was provided to Dr. Engstrom.</p> <p>6 Q. And then when did you first start working on</p> <p>7 your reports?</p> <p>8 A. Well, the -- I mean, the reports themselves,</p> <p>9 the January -- the February 1st report, I guess</p> <p>10 I started it around -- sometime in mid-January,</p> <p>11 and the supplemental report that was filed just</p> <p>12 a couple weeks ago, I started it immediately upon</p> <p>13 receipt of Dr. Morrison's reply brief or reply</p> <p>14 report -- well, not reply report, his report for this</p> <p>15 case.</p> <p>16 Q. Have you prepared any other plans that you</p> <p>17 haven't disclosed today that you intend to use at the</p> <p>18 time of trial?</p> <p>19 A. No.</p> <p>20 Q. Let me ask you about -- there is an issue</p> <p>21 regarding your methodology and Dr. Morrison's</p> <p>22 methodology, correct?</p> <p>23 A. Well, I don't know whether there is or not.</p> <p>24 I mean, I --.</p> <p>25 Q. Well, there is a disagreement, as I</p>

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1 understand it, between you and Dr. Morrison with
 2 respect to the proper methodology to be utilized
 3 with respect to allocating on a block level, correct?
 4 A. A moderate disagreement.
 5 Q. Okay. Can you explain to me --
 6 A. Or maybe not.
 7 Q. Explain to me your understanding of the
 8 disagreement.
 9 A. Well, my understanding is that Dr. Morrison
 10 believes that the Hispanic voting age population at
 11 the block group level should be allocated to the block
 12 level, based on Hispanic VAP at the block level,
 13 and then the next step would be to allocate all
 14 persons of voting age to the block level, and then
 15 calculate a percentage of that to determine the
 16 Latino citizen voting age population.
 17 Q. And how does that differ from your
 18 methodology?
 19 A. Well, I allocate the Latino voting age
 20 population to the block level based on Latino
 21 populations of voting ages in that block, and then
 22 I allocate the non-Hispanic population of voting
 23 ages who are citizens to the block level based
 24 on the non-Hispanic voting age in a particular census
 25 block.

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1 Q. And what is the critical difference between
 2 your two methodologies?
 3 A. It's very minor, but it can make a
 4 difference, I guess, when you're hovering right around
 5 50 percent, and his methodology, I think, would tend
 6 to understate the Latino citizenship in a situation
 7 where a number of block groups are split along ethnic
 8 lines.
 9 Q. And, conversely, would you agree that your
 10 methodology might overstate Latinos, also?
 11 MS. KHANNA: Objection; mischaracterizes
 12 testimony.
 13 Q. As compared with Dr. Morrison's methodology,
 14 your methodology would overstate Latino --
 15 A. No.
 16 Q. Okay. So --
 17 A. I mean, there's always a sampling error
 18 out there, but it would not -- mine would not
 19 overestimate, no.
 20 Q. What do you mean by "sampling error"?
 21 A. Well, it's a sample service, so there is a
 22 margin of error.
 23 Q. Did you calculate any margins of error for
 24 any of your eight plans?
 25 A. No.

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1 Q. Why not?
 2 A. Because, as I understand it, the American
 3 Community Survey citizen voting age population
 4 estimates by race and ethnicity are the only thing
 5 going -- it's what the courts use -- and so I don't --
 6 I mean, I just take the best point estimate and live
 7 with it, acknowledging that there could be, and is, a
 8 margin of error.
 9 Q. Would you know how to calculate the margin of
 10 error for your point survey?
 11 A. Not off the top of my head, no.
 12 Q. Well, I mean, could you do it if someone
 13 asked to you do it?
 14 A. I probably could if someone asked me to,
 15 but I have no intention to do so because I'm just
 16 taking the point estimates as given.
 17 Q. Right. And you've calculated point estimates
 18 without any margin of error, correct?
 19 A. No, I know there's a margin of error.
 20 Q. But you just don't know what it is, correct?
 21 A. I have not tried to determine that. That's
 22 right.
 23 Q. All right.
 24 Let's talk about your methodology. How did
 25 you learn how to do your methodology?

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1 A. My methodology has been developed based on an
 2 examination of small area jurisdictions where there
 3 does appear to be a disparity between allocating just
 4 the non-Hispanic voting age citizen population at the
 5 block level without also allocating the Hispanic --
 6 I'm sorry, my methodology basically allocates both
 7 Hispanic and non-Hispanic citizen voting age
 8 populations to the block level, because there is an
 9 apparent bias where lots of block groups are split.
 10 If you were working at the state level
 11 on a redistricting plan -- which I've done -- it's
 12 simpler and easier just to allocate one component,
 13 and then allocate the citizen voting age populations
 14 present, because there's not very many block groups to
 15 split and so you're not going to see that bias
 16 introduced.
 17 Q. Explain to me what you mean by bias that's
 18 introduced when block groups are split.
 19 A. Well, it can just lead to a final percentage
 20 of the Latino citizen voting age population that
 21 appears to be lower than it really is, because you are
 22 counting individuals as citizens who are not Latino in
 23 that district who really should not be counted because
 24 they live outside the district, in another part of the
 25 block group that's not in the district.

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<p>1 I mean, it's explained in my report, 2 and I'm not doing a very good job of explaining it, 3 but if you read my supplemental report, I think it's 4 very clear that there is an issue with Dr. Morrison's 5 method when block groups are split. 6 Q. Well, let me back up. 7 You said that the bias would diminish the 8 number of Latinos; is that correct? 9 A. It would tend to underreport the estimated 10 Latino citizen voting age population percentage. 11 Q. Okay. 12 A. And that's in situations where a fair 13 percentage of the population in a given district is in 14 areas -- is in block groups that are split. If there 15 are no split block groups, then there is essentially 16 no difference in the two methods. 17 Q. Let's talk about that. You indicated 18 the bias would underestimate Latino CVAP; is that 19 correct? 20 A. In this case, yes. 21 Q. In this case. Could the bias also 22 overestimate Latino CVAP? 23 A. I don't think so. 24 Q. Why not? 25 A. Because I'm also allocating the non-Hispanic</p>	<p>1 Q. Method 2 being Dr. Morrison's method? 2 A. Right -- right. 3 Q. Okay. 4 A. And I maintain that my method would not 5 overestimate or underestimate. It's just the best 6 method for areas's that have a lot of split block 7 groups. If there are very few, in percentage terms, 8 split block groups, then the two methods are 9 essentially the same. 10 Q. All right. 11 Let me ask you about your method. Is this 12 kind of a self-taught method, a method you figured out 13 yourself? 14 A. I think we could say that, but I want to be 15 real clear. It doesn't really matter which method you 16 use in Yakima. Under method 1 or method 2, it is very 17 simple to create a district that meets Gingles column 18 1, as I've shown in hypothetical plans B and C. 19 Q. I understand your position, and we'll get to 20 that later, but I want to just focus now on how you 21 came up with your method, and as I understand it, you 22 kind of figured it out and taught it to yourself, 23 correct? 24 A. That is correct. 25 Q. Your method has never been peer-reviewed</p>
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<p>1 white CVAP, and I'm -- excuse me, the non-Hispanic 2 CVAP to the block level. So I don't think so, but -- 3 as far as I know, it would not. 4 Q. But you're not sure. 5 A. Well, the -- 6 Q. And the reason I'm asking is, is there's 7 bias. You've conceded there is bias, correct? 8 A. Well -- 9 MS. KHANNA: Object to the form of the 10 question as vague. 11 Q. Go ahead and answer. 12 A. Yeah, I concede that there is -- there 13 appears to be a bias of a percentage point or two, 14 and -- in Yakima, in the area we're talking about, 15 because of the high number of block groups that are 16 split. 17 Q. My question is, why do you believe 18 that that bias could only operate to underestimate 19 CVAP? Why will you not concede that it's possible it 20 could also overestimate CVAP -- 21 A. Well -- 22 Q. -- if there is bias? 23 A. Well, method 1 -- I'm sorry, method 2 could 24 overestimate -- method 2 could overestimate Latino 25 CVAP. That's right.</p>	<p>1 by anyone; you haven't asked a statistician, for 2 example, to review your method to make sure that it is 3 statistically correct? 4 A. I have not. 5 Q. It's also your position, though, that you 6 don't believe it makes any difference, that even if 7 your method is flawed, you still believe that you can 8 get to a Gingles I district using Dr. Morrison's 9 method; is that correct? 10 A. Absolutely. There's no contest in Yakima. 11 You can get a Gingles I district. That's just clear 12 and evident. 13 Q. Okay. 14 A. I mean, we've gotten off on this tangent on 15 method 1 and method 2 and, you know, 50.02 or 16 whatever, but it's clear that you can get a Latino 17 majority citizen voting age population in Yakima. 18 There's just no contest there. 19 Q. But you do concede that if it's a close call, 20 then it might make a difference with respect to 21 whether you use your method or Dr. Morrison's method; 22 that's when this bias is introduced, correct? 23 A. That's when Dr. Morrison's -- well, it could 24 be a close call and there would be no difference at 25 all in the estimates if no block groups are split, but</p>

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<p>1 where there are split block groups, it could make a 2 tiny difference. It's a 1.5 to 2.5 differential, 3 percentage difference, in that area of Yakima based on 4 what I've seen so far.</p> <p>5 Q. And have you done all of the parameters 6 to determine if the upper limit is 2.5, using the two 7 methods in Yakima?</p> <p>8 A. No, I -- it's possible that there could be a 9 wider differential. I sort of doubt it, but there 10 could be.</p> <p>11 Q. But you haven't done any specific research 12 to determine what the extreme parameters, high and 13 low, would be, correct?</p> <p>14 A. No, not beyond the illustrative plans, and 15 that's sort of the range within the illustrative 16 plans.</p> <p>17 Q. In your supplemental report, or your reply 18 report, Exhibit-4 -- 19 Do you have that in front of you?</p> <p>20 A. I do.</p> <p>21 Q. -- could you turn to page 14, please, and 22 look at paragraph 32.</p> <p>23 A. Paragraph 32?</p> <p>24 Q. Yes. Do you have that in front of you?</p> <p>25 A. I do.</p>	<p>1 So it does happen that localities have got 2 plans that are above that ten percent threshold, 3 but it's generally understood among practitioners 4 and the courts at the local level that a reasonable 5 range is up to around ten percent.</p> <p>6 Q. Okay.</p> <p>7 A. But you can go higher.</p> <p>8 Q. Didn't you earlier say it was five percent?</p> <p>9 A. It's five percent per district, so it's plus 10 or minus five percent per district, and then you take 11 the low and high and you get ten. You can have one 12 that's minus five and one that's plus five, and you'll 13 have a ten percent overall deviation.</p> <p>14 Q. All right.</p> <p>15 A. But there are places that have districts, 16 like Yakima, that are minus six percent in one 17 instance and then other districts that are around four 18 and a half or so, and you'll end with an 11 percent 19 deviation.</p> <p>20 Q. And did you check all of your hypothetical 21 plans, 1, 2, and A through E, for that deviation 22 criteria?</p> <p>23 A. Yes.</p> <p>24 Q. What were the parameters that you recall? 25 How far was the deviation?</p>
Page 74	Page 76
<p>1 Q. And this is the paragraph where you indicate 2 that hypothetical plan A "complies with key 3 traditional redistricting criteria, including 4 one-person/one-vote, compactness, respect for 5 communities of interest, and the nondilution of 6 minority voting strength, correct?</p> <p>7 A. Right.</p> <p>8 Q. All right. I would like go back and have you 9 tell me what you did with each one of those specific 10 criteria to make sure that they complied with 11 traditional redistricting criteria.</p> <p>12 A. Okay.</p> <p>13 Q. Let's talk about one-person/one-vote. Okay?</p> <p>14 A. Right. Well, that's just a straight up 15 analysis of the deviation from ideal population size 16 of each of the seven districts, and the plan comes in 17 under ten percent, so on its face it's meeting 18 one-person/one-vote.</p> <p>19 Q. Where is the standard of ten percent? 20 Where did you come up with that?</p> <p>21 A. Well, it's a rule of thumb. It's not cast in 22 stone, as evidenced by the fact that the City of 23 Yakima itself has a plan that's 11 percent overall 24 deviation, and there's one district that's more than 25 six percent underpopulated.</p>	<p>1 A. I think the deviation ranged between five and 2 nine percent. I'd have to go back and look at each of 3 the individual exhibits, but the overall deviation is 4 under ten percent in all plans.</p> <p>5 Q. And you believe that if your plans do not 6 exceed a ten percent deviation, that they then, 7 ipso facto, would not violate the one-person/one- 8 vote 14th Amendment equal protection clause, 9 correct?</p> <p>10 A. Not necessarily ipso facto. I guess there 11 might be some situations where one could question that 12 based on other factors, like prison population, but at 13 first blush they certainly do.</p> <p>14 Q. Did you do anything else, other than to look 15 at deviation, to determine if your plans complied with 16 the one-person/one-vote criteria or the 17 14th Amendment?</p> <p>18 A. Well, yes. In response to Dr. Morrison's 19 report, I prepared hypothetical plans D and A. 20 They're preposterous, they're unconstitutional, but I 21 did it anyway just to make a point.</p> <p>22 Q. You believe that plans D and E would be 23 unconstitutional?</p> <p>24 A. I'm not a lawyer, but I'm not aware of 25 anyplace in America where the citizen voting age</p>

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<p>1 population or citizen population is used for an</p> <p>2 apportionment base.</p> <p>3 Q. And what in Dr. Morrison's report led you to</p> <p>4 believe that he thought that those two criteria should</p> <p>5 be utilized for an apportionment base?</p> <p>6 A. He has a lengthy discussion about voting</p> <p>7 power, and the fact that because there are more</p> <p>8 non-citizens in districts 1 and 2, that the voting</p> <p>9 power for the rest of the city, residents in other</p> <p>10 parts of the city, would be diminished.</p> <p>11 I drew hypothetical plan D and plan E to</p> <p>12 demonstrate that if you operated under his sense of</p> <p>13 how the world should work, that you can still create</p> <p>14 an LCVAP majority district in Yakima.</p> <p>15 Q. So your belief is that his concern about</p> <p>16 electoral representation would not be a legitimate</p> <p>17 concern with respect to the 14th Amendment</p> <p>18 one-person/one-vote requirement, correct?</p> <p>19 MS. KHANNA: Objection; mischaracterizes</p> <p>20 testimony.</p> <p>21 Q. Go ahead and answer.</p> <p>22 A. Well, I believe that total population should</p> <p>23 be the apportionment base. I mean, that's my</p> <p>24 understanding. I've never seen a place in America</p> <p>25 that used anything other than that.</p>	<p>1 A. To a certain extent, yes.</p> <p>2 Q. Why?</p> <p>3 A. It's just always best -- if you can follow a</p> <p>4 precinct line, it's always best to try to follow one.</p> <p>5 Q. You talked about the bias that can occur</p> <p>6 when you split up a block group, correct?</p> <p>7 A. Well, only as it relates to calculating the</p> <p>8 LCVAP. Other than that, there's no bias introduced</p> <p>9 for -- just for the straight up 2010 population.</p> <p>10 Block groups are routinely split, but normally I would</p> <p>11 not focus very much on split block groups if I were</p> <p>12 drawing a voting plan.</p> <p>13 Q. Did you look to see how many block groups you</p> <p>14 split in each of your plans?</p> <p>15 A. No.</p> <p>16 Q. Was that a concern of yours?</p> <p>17 A. I mean, the only time I really looked at</p> <p>18 block group data from that perspective, in terms of</p> <p>19 splits, really was in response to Dr. Morrison's</p> <p>20 report.</p> <p>21 Q. What is the lowest level of data for</p> <p>22 citizenship that is available?</p> <p>23 A. The American Community Survey block group</p> <p>24 level, the citizenship special tabulation.</p> <p>25 Q. So that would be the ACS block group,</p>
Page 78	Page 80
<p>1 That's not to say that the Supreme Court</p> <p>2 couldn't rule otherwise, but as it now stands,</p> <p>3 that's what you do, that's what the City of Yakima</p> <p>4 has done, and I see no reason to explore it any</p> <p>5 further.</p> <p>6 Q. All right.</p> <p>7 We talked about compactness, correct, earlier?</p> <p>8 A. Right.</p> <p>9 Q. Do you have anything else to add on</p> <p>10 compactness other than what you have discussed so</p> <p>11 far?</p> <p>12 A. No. I mean, I -- you can visually look at</p> <p>13 these districts and see that they are reasonably</p> <p>14 shaped, and in many instances -- well, in almost all</p> <p>15 instances, follow primary road and precinct lines.</p> <p>16 They're not oddly shaped.</p> <p>17 I've looked at thousands and thousands of</p> <p>18 districts around America, and these districts are not</p> <p>19 at all problematic from a standpoint of the shell case</p> <p>20 and compactness. In fact, districts 1 and 2, just</p> <p>21 in terms of land area covered, are much more</p> <p>22 compact than the other districts in the plans I've</p> <p>23 developed.</p> <p>24 Q. Did you try to avoid splitting precincts when</p> <p>25 you were drawing your lines?</p>	<p>1 correct?</p> <p>2 A. Right. What I used for this report.</p> <p>3 Q. And below that you would have census</p> <p>4 blocks which would comprise the ACS block groups,</p> <p>5 correct?</p> <p>6 A. They are -- they become a part of the block</p> <p>7 groups, right.</p> <p>8 Q. And the blocks, census blocks, which are part</p> <p>9 of the ACS block groups, do not contain citizenship</p> <p>10 data, correct?</p> <p>11 A. No, they don't. That's why we have to go</p> <p>12 through this methodology that allocates and</p> <p>13 distributes the block group-level data.</p> <p>14 Q. So, in order to split a block group and</p> <p>15 apportion citizenship, you have to use either your</p> <p>16 method, Dr. Morrison's method, or some other method,</p> <p>17 correct?</p> <p>18 A. That's correct. There's some -- there are</p> <p>19 some instances where some states, I think, just base</p> <p>20 it on land area, so there are other ways to do it.</p> <p>21 Q. There are other ways to do it.</p> <p>22 A. Yeah.</p> <p>23 Q. What are the other ways of apportioning</p> <p>24 citizenship within census blocks as part of a block</p> <p>25 group? Other than the two methods you've talked about</p>

20 (Pages 77 to 80)

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<p>1 today, your method and Dr. Morrison's method, 2 what other methods are there? 3 A. Well, one would be to rely on land area, just 4 kind of arbitrarily split based on land area. 5 You could apply -- determine a citywide percentage of 6 Latinos who are citizens, and then apply that to the 7 voting age population. So that would be another way 8 to do it. 9 Q. Have you ever done either of those two? 10 A. I have. 11 Q. And why didn't you look at those as 12 alternatives in this particular case? 13 A. Because they're not as -- in my opinion, 14 they would be more likely to render results that are 15 less acceptable because they're not based on the area 16 at issue. I mean, if you look at -- if you apply a 17 citywide rate, you're including Latinos who don't 18 really live in districts 1 and 2. 19 Then if you just base it on land area, you're 20 using a methodology that really doesn't take into 21 account where people live, so I consider that to be 22 inferior to both methods 1 and 2. 23 Q. Are there any other methods you are familiar 24 with, other than the four you've discussed? 25 A. Well, you could do a sample -- you could do a</p>	<p>1 Q. But other than the fact that you believe it's 2 the authority, I'm talking about why it would be any 3 more or less accurate to conduct a survey. 4 A. Well, I mean, if properly done, it could be 5 more accurate, I suppose. I'm not saying you couldn't 6 do it, but it would be extremely expensive. I mean, 7 it's extremely expensive to do something like that, 8 but it could be done. 9 Q. Are you familiar with articles, journal 10 articles, that discuss underreporting of citizenship 11 by any ethnic minority? 12 A. No. 13 Q. Are you familiar -- 14 A. I'm aware, I think, in Dr. Morrison's report 15 he may have referenced a journal article on that 16 issue, but -- 17 Q. I'm talking about underreporting. 18 A. That's what I'm saying. 19 Q. All right. Are you familiar with any 20 articles that deal with overreporting of citizenship 21 by Latinos? 22 A. Oh, I'm sorry, you said underreporting. 23 Q. Yes. 24 A. Yeah -- 25 Q. Now I'm talking about overreporting.</p>
<p>Page 82</p> <p>1 survey. You could actually hire a survey outfit to go 2 and survey people in a particular area that is 3 designated as a potential illustrative district 4 to determine the percentage of persons in that 5 district who are citizens, and the percentage who are 6 Latino citizens, for that matter. 7 Q. You're familiar -- 8 A. But that's -- 9 Q. I'm sorry, I didn't mean to cut you off. 10 A. No, go ahead. 11 Q. You are familiar with cases where there have 12 been surveys that have been conducted by plaintiffs, 13 correct? 14 A. I believe the Farmers Branch case in the 15 2000s used that technique. I could be wrong about 16 that, though, but I think that's the case. 17 Q. Would you agree that that would be a more 18 accurate methodology than any of the other four you've 19 discussed? 20 A. Not necessarily. It probably would be highly 21 criticized by the defendants in the case as not being 22 as accurate as the Census Bureau's work. 23 Q. Why is that? 24 A. Because the Census Bureau is the authority on 25 all things population-based.</p>	<p>Page 84</p> <p>1 A. Underreporting. I'm not familiar with any 2 articles that have been written on that subject, but 3 it's possible. 4 Q. Are you familiar with any articles that have 5 been written with respect to overreporting of 6 citizenship by Latinos? 7 A. I think Dr. Morrison may have referenced 8 something along those lines in his report. 9 Q. Prior to seeing those articles in 10 Dr. Morrison's report, were you familiar with any 11 articles with respect to overreporting of citizenship 12 by Latinos? 13 A. It's possible that I've seen something like 14 that, but I can't specifically point out a journal 15 article. I don't tend to read too many journal 16 articles on those issues. 17 Q. Have you ever published a peer-reviewed 18 journal article? 19 A. No. I'm a redistricting expert, not a 20 scholar, so I don't -- I've never been turned down 21 for a peer-viewed article because I've never submitted 22 one. 23 Q. That makes two of us, then. 24 A. Yes. 25 Q. Have you ever considered the fact that</p>

21 (Pages 81 to 84)

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<p>1 Latinos may overreport citizenship? 2 A. That's a possibility. 3 Q. And can you think of situations why they 4 might be inclined to overreport citizenship? 5 MS. KHANNA: Objection; calls for 6 speculation. 7 Q. Go ahead and answer. 8 A. Well, it's just total speculation. I have no 9 way of knowing one way or the other, you know, 10 what would be the case for Latinos in Yakima in terms 11 of misreporting their citizenship status. 12 Q. If they were not legally in the United States 13 and they were asked if they're citizens, do you think 14 they would be inclined to say that they're citizens or 15 that they were not citizens? 16 MS. KHANNA: Objection; calls for 17 speculation. 18 Q. If somebody from the government came up and 19 started asking them questions. 20 A. I don't really think they would be inclined 21 to say they're citizens. They'd say they're legal 22 residents. 23 Q. Okay. 24 A. I mean, that's so hypothetical, so 25 speculative, that it's meaningless, the question.</p>	<p>1 EXAMINATION - (Cont'd) 2 BY MR. FLOYD: 3 Q. Mr. Cooper, would you look at Exhibit-2, 4 please. 5 A. (Witness complies.) 6 Q. Do you have a copy of Exhibit No. 2 in front 7 of you? 8 A. I do. 9 Q. And that is Dr. Morrison's report, correct? 10 A. Right. 11 Q. What I would like to do is walk through 12 Dr. Morrison's report with you a page and paragraph at 13 a time and ask if you agree or disagree with some of 14 the comments that are made there. All right? 15 A. Okay. 16 Q. And maybe ask you to explain your 17 disagreements. Okay? 18 A. Okay. 19 Q. All right. Let's start with page 6, 20 paragraph 15. Could you find that, please. 21 A. (Witness complies.) 22 Q. First of all, would you agree that there are 23 technical limitations with the ACS data? 24 A. Well, there are technical limitations with 25 all data, whether it's based on either a complete</p>
Page 86	Page 88
<p>1 Q. What is the difference between being a 2 "legal resident" and being a "citizen"? 3 A. Well, you cannot vote. Unless you live in 4 Takoma Park, Maryland. 5 Q. Where? 6 A. Takoma Park, Maryland, where legal residents, 7 I believe, are eligible to vote. 8 Q. In Maryland? 9 A. In Takoma Park, Maryland. 10 Q. What about in Arizona? 11 A. I don't know. 12 Q. It's getting close to 12:00. Do you want to 13 take a break? How are you doing? Would you like to 14 continue a little bit longer? 15 A. I'm fine. 16 Q. Maybe half an hour and take a break and come 17 back? 18 A. Well, either way -- 19 MS. KHANNA: Let's take our lunch break 20 now. 21 MR. FLOYD: Let's take a lunch break. 22 (Discussion off the record.) 23 (Lunch recess taken.) 24 -o0o- 25</p>	<p>1 survey or a sample survey. 2 Q. Have you done any research regarding the 3 margins of error for the ACS data? 4 A. No, I have not. 5 Q. Have you done any research regarding 6 ACS practices regarding imputation of counts? 7 A. No. 8 Q. Were you aware of the fact that based upon 9 privacy concerns, there are times where the ACS will 10 report zero for a count when the actual count is 11 larger, because if they did report a number, it might 12 allow someone to identify individuals and violate 13 their privacy rights? 14 A. Yes, I was aware of that. 15 Q. And when were you made aware of that? 16 A. Well, that's not just the case with ACS, 17 but also with other Census Bureau sample surveys, like 18 the 2000 long form sample survey. 19 Q. And did you do anything in this particular 20 case to accommodate for that? 21 A. No. 22 Q. We talked about this earlier, but it's true 23 that the only citizenship data from the ACS is at the 24 block group, correct? 25 A. That's correct -- well, it's also at the</p>

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<p>1 tract level. 2 Q. The higher level, yes. 3 A. Correct. 4 Q. But the lowest level, I should have said, is 5 at the block group for ACS, correct? 6 A. Right. 7 Q. All right. 8 Could you read paragraph 15 and tell me if you 9 agree with what is stated in paragraph 15 of 10 Dr. Morrison's report. Just read it to yourself. 11 A. (Witness complies.) Okay. 12 Q. Have you read paragraph 15 of Dr. Morrison's 13 initial report? 14 A. Yes. 15 Q. And do you agree with what is stated in 16 paragraph 15? 17 A. Well, basically. I mean, it's apparently 18 accurate. I'm not so sure whether one needs to focus 19 all that much on caution, because this is all we have 20 that is available to estimate citizenship, 21 but Dr. Morrison is correct that this is a statistical 22 estimate, not a census, and there are no guarantees, 23 and there are margins of error. 24 Q. Let's look at page 7, paragraph 18 of 25 Dr. Morrison's report. This is where Dr. Morrison</p>	<p>1 the country have these inconsistencies, where 2 voting-age citizens actually exceed the count of the 3 voting-age population. 4 Q. And what, if anything, did you do in 5 your analysis to accommodate for those 6 inconsistencies? 7 A. I don't think you can really account for it. 8 You just have to take the ACS as given, understand 9 it's the best available estimate, and move on from 10 there, as courts and state legislators do when they 11 use the ACS data. 12 Q. So your answer, then, would be you did 13 nothing to accommodate for those inconsistencies in 14 the ACS data; s that correct? 15 A. No. I'm not about to try to interpose my 16 understanding of the ACS on top of what the 17 Census Bureau has already done in reporting their 18 point estimates. 19 Q. Do you understand Dr. Morrison's criticisms 20 of your methodology? I mean, you've explained that, 21 correct? 22 MS. KHANNA: Object to the form of the 23 question as ambiguous. 24 Q. Go ahead and answer. 25 A. Well, I just have to disagree. This has</p>
Page 90	Page 92
<p>1 is initially just talking about inconsistencies 2 between your methodology and his methodology, 3 correct? 4 A. Uh-huh. 5 Q. Let me ask you this. Are you saying that it 6 is impossible to have illogical conclusions using your 7 method? 8 MS. KHANNA: Object to the form of the 9 question as ambiguous. 10 Q. Go ahead and answer. 11 A. This has nothing to do with my method versus 12 his method. Paragraph 18 is not on point. 13 Q. Well, he talks here about "troubling 14 inconsistencies that raise doubts about the overall 15 validity of his allocation procedure." Do you see 16 that? 17 A. Yes. 18 Q. Isn't that a reference to your methodology 19 versus his methodology? 20 A. It may be, but it would apply to his 21 methodology, as well. 22 Q. Okay. 23 A. And these so-called "troubling 24 inconsistencies" are, as I've indicated in my report, 25 quite common. Thirty percent of all block groups in</p>	<p>1 nothing to do --. 2 Q. Forget paragraph 18 for a moment. Okay? 3 A. Uh-huh. 4 Q. In reading Dr. Morrison's initial report and 5 his supplemental report, do you understand that he 6 does have criticisms of your methodology? 7 A. I understand he has criticisms. I strongly 8 disagree with his criticisms. 9 Q. Do you believe that there is any basis 10 whatsoever to criticize your methodology? 11 A. Well, you can raise -- you can raise these 12 issues, like this point that the -- that he's made in 13 paragraph 18, that in some cases there are census 14 block groups where the estimated number of voting-age 15 Latino citizens under the 2007-2011 ACS -- now quoting 16 Dr. Morrison -- "notably exceeds the Census complete 17 count of voting-age Latino persons." That is true. 18 However, that is not true of any block group 19 that is in illustrative district 1 under illustrative 20 plans 1 and 2 or hypothetical plans A, B, and C. 21 Q. Okay. 22 A. So it's really not an issue. 23 Q. And do you -- 24 A. And again, as I also explain in my reply, 25 supplemental reply, the actual number of block groups</p>

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<p>1 and, percentage of block groups, in Yakima which 2 reflect this inconsistency is well below the 3 nationwide average. 4 The nationwide average, just looking at block 5 groups where the citizen voting-age population exceeds 6 the 2010 voting-age population, that is over 7 30 percent, and in Yakima it's -- I think the figure 8 is, like, 13 percent. 9 Q. So it's -- 10 A. It's in my report. I'd have to double-check 11 that. 12 Q. So 30 percent is the national average and 13 13 percent is approximately -- 14 A. I think it's more like 33 or 34 percent, the 15 national average, and that's without even taking into 16 account because -- I didn't need to take that extra 17 step because the margin is so wide just on this point 18 alone. 19 I didn't even look at additional block groups 20 nationwide where the citizen voting-age population 21 under the 2010 Census is higher than the citizen -- 22 than the estimated citizen voting-age population in 23 the ACS, but where these -- where the Latinos in those 24 block groups have a higher citizenship rate in the 25 ACS, higher citizen numbers than in the 2010 Census.</p>	<p>1 proceeding to the next step. This step would involve 2 identifying additional block groups nationwide where 3 LCVAP exceeds 2010 Latino VAP." 4 So, in other words, it's a 20 -- it's almost a 5 20-percentage-point margin without even going to the 6 next step, which would take the nationwide average 7 above 32.4 percent for sure. 8 Q. And where did you come up with a nationwide 9 average? 10 A. I did a special analysis. As I explained 11 in the report, I looked at every single nationwide -- 12 I looked at every single block group in the country -- 13 there are 217,217, and that's not a typo, it's just 14 how it worked out; it's odd to have that kind of 15 symmetry -- and that's what I found, that the 2007-11 16 ACS estimates for citizens was higher than the 17 voting-age population for those particular block 18 groups under the 2010 Census. 19 Q. And you did that work for this particular 20 case? 21 A. Yes, I did. 22 Q. All right. 23 A. I used a data set that I purchased from 24 Caliper Corporation, a well-recognized software and 25 demographic data provider based in Newton,</p>
<p>Page 94</p> <p>1 In other words, that 33 percent figure that 2 I'm using for the nationwide block groups that has 3 this inconsistency would actually be higher. It has 4 to be. But there was no need, for purposes of my 5 analysis to do that because Yakima was only at the 6 13 percent rate -- I mean, I can look it up in 7 my report and -- 8 Q. Why don't you check just to make sure you're 9 accurate. 10 A. Yes. 11 Q. What page are you looking at in your report? 12 A. Well, let me see. I'll find it. 13 Q. Is that in your supplemental report? 14 A. Yes, it's in the supplemental report. 15 Nationwide, it's 32.4 percent -- this is 16 footnote 24 -- 17 Q. On what page? 18 A. -- for all block groups -- 19 Q. Excuse me, on what page? 20 A. Page 34. 21 Q. Okay. 22 A. My statement was, "Because the nationwide 23 32.4% total for block groups for CVAP minus VAP excess 24 is much greater than the 13.4% total for Yakima block 25 groups with excess CVAP or LCVAP, there is no point in</p>	<p>Page 96</p> <p>1 Massachusetts. 2 Q. Now, it seems, at least today, that you 3 are confident with respect to plans 1 and 2, 4 correct? 5 A. I'm confident with plans 1 and 2. 6 I'm confident with hypothetical plan 1. I believe 7 that hypothetical plans B and C unnecessarily pack 8 Latinos into one district at the expense of creating 9 a fair opportunity in a second district, because 10 hypothetical plans B and C would not have Latino voter 11 majorities. 12 But if need be, just for the purposes of 13 Gingles I, setting aside whatever remedial plans might 14 come up, hypothetical plans B and C would work, 15 because clearly you've got a majority Latino CVAP in 16 both of those plans that's -- one of them is 56.X 17 percent and the other is 57.75, roughly. 18 Q. So you think that B and C, plans B and C, 19 unnecessarily or unlawfully pack; is that correct? 20 A. I'm not going to say unlawfully, because 21 I don't think the courts or lawyers like for me to 22 start talking about the law, but in my experience 23 given that those districts with -- district 1 under 24 those two plans would have a Latino VAP of -- well, 25 let me find the percentage here.</p>

24 (Pages 93 to 96)

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<p>1 Q. And where are you looking now?</p> <p>2 A. I will be looking at --</p> <p>3 Q. The supplemental report?</p> <p>4 A. Supplemental report.</p> <p>5 Q. Page and paragraph, please.</p> <p>6 A. Page 25.</p> <p>7 Q. Thank you.</p> <p>8 A. Excuse me, supplemental report -- well, we'll</p> <p>9 just look at hypothetical plan C, because that's the</p> <p>10 one that has the highest percentage.</p> <p>11 The Latino --</p> <p>12 Q. What page are you on again?</p> <p>13 A. Page 25.</p> <p>14 Q. Thank you.</p> <p>15 A. In paragraph 17, figure 13, you can see that</p> <p>16 the Latino CVAP in that district would be 57.74</p> <p>17 percent, registered voters would be 59.74 percent --</p> <p>18 so almost 60 -- and the Latino Hispanic voting-age</p> <p>19 population would be 75.85 percent, which, under most</p> <p>20 circumstances, would be deemed to be far higher than</p> <p>21 is necessary to create a reasonable district for</p> <p>22 Latinos to have an opportunity to elect a candidate of</p> <p>23 choice.</p> <p>24 And that's particularly the case since I know</p> <p>25 for a fact, based on my other work, that we can create</p>	<p>1 for trial, then?</p> <p>2 MS. KHANNA: Objection; mischaracterizes</p> <p>3 the testimony.</p> <p>4 A. No.</p> <p>5 Q. Meaning you hadn't prepared those reports</p> <p>6 before you had seen Dr. Morrison's report, correct?</p> <p>7 A. No, I had not.</p> <p>8 Q. Thank you.</p> <p>9 With respect to plans A and plans 1 and 2,</p> <p>10 can you tell me what the actual Latino counts are to</p> <p>11 make the majority? Dr. Morrison indicated 22 and 24</p> <p>12 people for, I believe, plans 1 and 2; is that correct?</p> <p>13 Do you agree with that?</p> <p>14 MS. KHANNA: Object to the form of the</p> <p>15 question as ambiguous.</p> <p>16 Q. Go ahead and answer.</p> <p>17 A. Please rephrase the question.</p> <p>18 Q. Okay.</p> <p>19 A. I'm not sure what you mean exactly.</p> <p>20 Q. Are you familiar with the actual count of</p> <p>21 people that would be necessary to make the majority</p> <p>22 under your plan 1?</p> <p>23 A. Well --</p> <p>24 MS. KHANNA: Object to the form of the</p> <p>25 question as ambiguous.</p>
<p>Page 98</p> <p>1 two districts with Latino registered voters in excess</p> <p>2 of 50 percent, as shown in illustrative plans 1 and 2</p> <p>3 and hypothetical plan A.</p> <p>4 Q. And between hypothetical plan A and</p> <p>5 plans 1 and 2, do you have a preferred plan of those</p> <p>6 three?</p> <p>7 A. Not really. I mean, hypothetical plan A was</p> <p>8 just something that I did in response to</p> <p>9 Dr. Morrison's report. I guess my preference would be</p> <p>10 illustrative plan 1 illustrative plan 2, because those</p> <p>11 are the ones I developed to begin with.</p> <p>12 However, hypothetical plan A would work,</p> <p>13 and it meets Dr. Morrison's concern, because it's</p> <p>14 Latino majority VAP, CVAP, under either method 1 or</p> <p>15 method 2.</p> <p>16 Q. And can you tell me why you prepared plans A,</p> <p>17 B, C, D, and E.</p> <p>18 A. All of those plans were prepared in response</p> <p>19 to Dr. Morrison's report, because I wanted to disabuse</p> <p>20 him of the notion that for some reason you could not</p> <p>21 get a district that would comply with Gingles I.</p> <p>22 Q. And were those prepared after you had seen</p> <p>23 Dr. Morrison's report?</p> <p>24 A. Right.</p> <p>25 Q. You were keeping those in your back pocket</p>	<p>Page 100</p> <p>1 Q. How many people would it take to create .25</p> <p>2 of a percent under your plan 1?</p> <p>3 A. I mean, your question still doesn't mean</p> <p>4 anything. I don't know what you mean. Clarify it</p> <p>5 further if you could.</p> <p>6 Q. As to plan 1, how far over 50 percent was</p> <p>7 plan 1?</p> <p>8 A. In terms of voting-age population, voter</p> <p>9 registration, Latino citizenship, the total</p> <p>10 population? What are we talking about?</p> <p>11 Q. Well, it was .25 for CVAP, correct?</p> <p>12 A. An estimate, yes. That's right.</p> <p>13 Q. How many people would that have translated</p> <p>14 to?</p> <p>15 A. I believe that Dr. Morrison calculated it for</p> <p>16 us. I don't think I have any reason to question his</p> <p>17 arithmetic there. It's 22 people, I think, maybe,</p> <p>18 something like that.</p> <p>19 Q. And for plan 2 it was 24 people?</p> <p>20 A. Again, those are estimates based on a sample.</p> <p>21 That's right.</p> <p>22 Q. And you have no reason to disagree with his</p> <p>23 numbers, correct?</p> <p>24 A. No, and, you know, over 50 percent is over</p> <p>25 50 percent. I think that's been settled in case law</p>

25 (Pages 97 to 100)

Page 101	Page 103
<p>1 with Bartlett, and a lot of states out there are 2 accepting districts and classifying them as Latino 3 if they're just slightly over 50 percent, like 4 California and Texas, as I mentioned before. 5 Q. Did you yourself do a number for your plan A, 6 a CVAP number, as to how many people were actually 7 over 50 percent for plan A? Did you do that 8 arithmetic? 9 A. I haven't done that arithmetic, but it's 10 going to be maybe a little bit less. It might only -- 11 I mean, because if it's 50.0 -- well, it depends on 12 which method you use. If you use the method that 13 I believe is the correct one, method 1, then -- 14 Q. That's your method, right? 15 A. Right. 16 -- then the number is going to be higher. 17 I mean, I didn't do that calculation, and 18 I think that's totally extraneous and unnecessary 19 in this case, because I met the 50 percent threshold, 20 and I think that's all the courts are going to 21 require. 22 However, if they do require more, we have 23 plans B and C. See, we're going to -- we are 24 undeniably going to meet Gingles I. It's just 25 a question of how you do it, if you understand what</p>	<p>1 higher. So that's just an example. 2 Q. While we're talking about your methodology 3 and Dr. Morrison's methodology, have you ever been 4 involved in a case where someone has raised these 5 issues regarding your methodology? 6 A. No. 7 Q. Could you look at Exhibit-2, page 9, 8 paragraph 22. 9 A. Paragraph 22? 10 Q. Yes. 11 A. Yes. 12 Q. Could you read paragraph 22 and tell me 13 if you agree with paragraph 22. 14 A. (Witness complies.) I agree with that. 15 Q. Were you aware of the fact that the ACS data 16 imputed missing data and didn't always utilize the 17 actual count prior to Dr. Morrison's raising that 18 issue in his report? 19 A. Yes. 20 Q. Could you read paragraph 23 of Exhibit-2 and 21 tell me if you agree with that. 22 Actually, why don't you read paragraphs 22, 23 23, 24, 25, and 26 and tell me if you agree with 24 all of those paragraphs. 25 MS. KHANNA: Objection; compound question.</p>
Page 102	Page 104
<p>1 I mean. 2 Q. I understand your position. I'm just trying 3 to get an answer to my question. Okay? 4 A. Yes. 5 Q. If you were to look at plan A, utilizing 6 Dr. Morrison's methodology, can you tell me how many 7 people -- 8 A. Not off the top of my head. I could 9 if I went back and calculated it out, but --. 10 Q. But it would be less than 22, correct? 11 A. It would be, yes. 12 Q. All right. 13 A. Probably -- yeah, it would be. 14 Q. Then if we go to plans B through E, have you 15 done the arithmetic for plans B through E on an actual 16 number of people, CVAP, you would need for those plans 17 to exceed 50 percent? 18 A. No, because I consider it unnecessary, 19 but it would be a higher number because those 20 percentages are higher. 21 Q. Okay. 22 A. And I might add that I did not attempt to 23 create a hypothetical plan, plan A, that maximized 24 that differential. Maybe I could have done one 25 that was 50.5, 51, or, for all I know, maybe even</p>	<p>1 MR. FLOYD: All right. 2 Q. Let's go back. Can you read paragraph 22, 3 please, and tell me if you agree with that. 4 A. I disagree. 5 Q. Why do you disagree with paragraph 23? 6 A. I have no reason to think those numbers are 7 accurate. 8 Q. What numbers? 9 A. "182 of the foreign-born persons residing 10 within ..." -- he has numbers here that I have not 11 double-checked, and so I have no reason to believe, 12 necessarily, that "182 of the foreign-born persons 13 residing within the city of Yakima" had their 14 citizenship values imputed. And again, it doesn't 15 matter. 16 Q. Well, I'm not asking -- 17 A. I mean, it's understood that that's going to 18 happen. 19 Q. What do you mean by that? 20 A. Well, it's understood that the ACS imputes 21 values, it's understood this is a survey estimate, and 22 in spite of that, it is the best thing we have, and 23 therefore the courts and many state legislatures where 24 there's a significant Latino population and many 25 cities and counties where there is a significant</p>

26 (Pages 101 to 104)

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<p>1 Latino population rely on the ACS and the ACS block 2 group level data. 3 That's what they report. That's how they 4 determine whether it will be acceptable to get 5 Section 5 preclearance. If they just -- it's taken as 6 a given. They don't bring in statisticians to cast 7 doubt on the final point estimate even though it's 8 understood that it is a point estimate and that 9 there is a large margin of error. 10 Q. And that's your understanding of the law, 11 correct? 12 A. Well, there's no law. It's just my 13 understanding of what's happened. 14 Q. Well, you've indicated what the courts do -- 15 A. Well, there's not a bright-line rule. I just 16 know that the courts appear to be accepting the ACS as 17 the way to count whether or not a district is 18 potentially a Latino-majority district, and if it's 19 50 percent plus one, then it's a Latino citizen 20 voting-age population. 21 I mean, if you look at my report, you'll see 22 that -- although this is not litigated -- there is a 23 district in California that is 50.002 LCVAP -- 24 in other words, one person above 50 -- and they're 25 calling it Latino.</p>	<p>1 both indicators. 2 Q. All right. Let's go back to paragraph 23 of 3 Dr. Morrison's report. Do you have any reason to 4 disagree with the numbers that he indicates in 5 paragraph 23? 6 A. Yeah. I do. I just don't think it is 7 an accurate reflection of the "foreign-born persons 8 residing within the city of Yakima." He has just 9 sort of pulled these numbers out of the air, if you 10 will. 11 Q. And what is the basis for you to disagree 12 with these numbers? 13 A. Because I just don't think it's accurate. 14 Q. Because you don't know the source of his 15 numbers, correct? 16 A. That's right. I mean, I think there is some 17 mystery as to that source. 18 Q. All right. Let's look at paragraph 24 of 19 Exhibit-2. 20 A. Yes. 21 Q. Can you read paragraph 24 and tell me if you 22 agree with paragraph 24. 23 A. (Witness complies.) I agree. I'm not going 24 to second-guess Dr. Morrison on this. I think he 25 probably has stated how the Census Bureau handles it,</p>
Page 106	Page 108
<p>1 Q. Did you rely exclusively on ACS data in 2 preparing your plans? 3 A. No. I have done extensive analysis taking 4 into account the registered voter data, which I think 5 is really a more accurate and more realtime assessment 6 of Latino voters -- or potential voters in the Latino 7 population in the city of Yakima, because it's 8 from the month of January 2013 rather than the ACS 9 data, which has got a midpoint that actually predates 10 the census by a year, July of 2009. 11 Q. Did you utilize ACS data in any of your 12 plans? 13 A. Well, I reported it. 14 Q. Pardon me? 15 A. I reported it in all my plans. 16 Q. So you used ACS data sometimes, and sometimes 17 you didn't use ACS data, you used registered voter 18 data, correct? 19 A. Well, no -- 20 MS. KHANNA: Objection; mischaracterizes 21 testimony. 22 Q. Go ahead and answer. 23 A. No, I used both. 24 Q. You used both. 25 A. In every instance, I -- I always looked at</p>	<p>1 but I don't know that for a fact. I'm sort of 2 deferring it to him because I assume he's studied this 3 very closely. 4 Q. You've never worked for the Census Bureau, 5 correct? 6 A. With the Census Bureau? 7 Q. You've never worked for the Census Bureau? 8 A. No -- no. 9 Q. And you haven't consulted with anybody 10 involved with the Census Bureau in this case, correct? 11 A. No, because, again -- and I keep stressing 12 this -- we are taking the ACS data as a given. It is 13 the gold standard. There's no other citizenship 14 estimate out there that we can reliably use. 15 There's no reason to delve into this kind of 16 minutia to try to make a point that you can't meet 17 Gingles I when we make Gingles I by such a wide margin 18 in hypothetical C and D. 19 I mean, if you want to get -- at the limited 20 stage, get into this and say, "You've got to create a 21 52 percent district," or something, LCVAP, instead of 22 50, then maybe you can -- maybe that's something worth 23 considering. 24 But not in this case. I mean, you've picked 25 the wrong city. I hope you realize that. On</p>

27 (Pages 105 to 108)

<p style="text-align: right;">Page 109</p> <p>1 Gingles I, there is just no way that you can with a 2 straight face argue that you cannot meet Gingles I. 3 Q. I didn't pick any city. 4 A. Well, I'm using that as an -- you know. 5 Q. Yes. Just so it's clear, I didn't pick 6 the -- 7 A. You didn't pick this? 8 Q. No. 9 A. I didn't know whether you were --. 10 Q. I'm asking simple questions -- and if you 11 want to go ahead and explain, that's okay -- 12 A. Right. 13 Q. -- but my question was if you agreed 14 or disagreed with paragraph 24, and you said you would 15 agree. 16 A. I would generally agree with that. I mean, 17 if it's talking about assigning data where there's 18 missing data, sure. 19 Q. Let's look at paragraph 25. Could you read 20 paragraph 25. And we've got 50-some paragraphs to go, 21 so if we could go through -- 22 A. Okay. 23 Q. Would you look at paragraph 25, please, and 24 tell me if you agree with paragraph 25. 25 A. Well, I don't know. I don't know the answer</p>	<p style="text-align: right;">Page 111</p> <p>1 it's just discussing the methodology. 2 Q. All right. 3 A. And it's not going to have an impact on 4 Gingles I in the final analysis, so I'm not worried 5 about it and I'm not going to spend a lot of time 6 going back and double-checking whether he's right in 7 paragraphs 25 through 28. 8 But it sounds probable that it is basically 9 reflecting what standard Census Bureau practice is 10 with its survey methodologies. 11 Q. You don't have any specific basis to 12 disagree because you haven't done that research, 13 correct? 14 A. I've looked through some ACS materials, and 15 so I'm able to at some point -- like in paragraph -- 16 well, in paragraph 22 or one of the other paragraphs, 17 I mean, I have background enough to know that some 18 data is imputed and that there are missing values. 19 So for that reason I can generally agree with 20 what he's saying, but I just don't know about 21 the two-month residence rule. I mean, for all I know 22 it's three months and he just has the time wrong. 23 Q. Could you look at paragraph 29 and tell me if 24 you agree or disagree with that paragraph. 25 A. I don't agree with -- well, I mean, it's --</p>
<p style="text-align: right;">Page 110</p> <p>1 to that, exactly. 2 Q. Do you have any reason to disagree with 3 paragraph 25? 4 A. No. I mean, unlike paragraph 23, which 5 I absolutely disagree with, 25 could be true. 6 It might not be true. 7 Q. Let's look at paragraph 26. Can you look at 8 paragraph 26 and tell me if you agree or disagree with 9 paragraph 26. 10 A. (Witness complies.) Yes, because he's 11 basically just quoting a Census Bureau document. 12 Q. Can you look at paragraph 27 and tell me 13 if you agree with paragraph 27. 14 A. I think I could basically agree with that. 15 Q. Can you read paragraph 28, please, 16 and tell me if you agree or disagree with 17 paragraph 28. 18 A. I'm not going to disagree with it, because I 19 assume that Dr. Morrison knows what he's talking about 20 when he says there's a "two-month residence rule." 21 I mean, I don't know. 22 Q. You don't have any reason to disagree with 23 him in that regard, correct? 24 A. Yeah. There's really just no reason to 25 disagree with a lot of what he's saying here because</p>	<p style="text-align: right;">Page 112</p> <p>1 I kind of agree with it -- kind of agree with it -- 2 however, he's talking about an historical aspect 3 of the Yakima Valley economy and we're talking 4 about just about the city of Yakima. 5 He's sort of implying or suggesting that there 6 are a lot of migrant farm workers who live in the city 7 of Yakima. I have no reason to believe that. 8 Q. Do you have any reason to disagree with that? 9 A. Yeah. I do. 10 Q. What's the basis? 11 A. Well, for one thing, the ACS shows that about 12 80 percent of Latino households in the city of Yakima 13 have lived in the same house for five years, which is 14 on a par with the non-Hispanic white population. 15 So, yes, there are no doubt some people that 16 are working in the agricultural industry, but there's 17 no reason to think that there are very many people 18 who are migrant farm workers living in the city of 19 Yakima. 20 There may be some seasonal workers and there 21 may be some people who are employed in agriculture, 22 but I don't have any reason to think that there's a 23 significant migrant farm population in Yakima, in the 24 city. 25 Q. Have you ever been to Yakima?</p>

28 (Pages 109 to 112)

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<p>1 A. I have.</p> <p>2 Q. When?</p> <p>3 A. The last time I was there would have been in</p> <p>4 1978.</p> <p>5 Q. When you were working in Grandview?</p> <p>6 A. Yes.</p> <p>7 Q. But you haven't been there since you were</p> <p>8 retained in this case, correct?</p> <p>9 A. No.</p> <p>10 MR. FLOYD: Could we mark this, please, as</p> <p>11 the next exhibit.</p> <p>12 (Exhibit No. 5 marked</p> <p>13 for identification.)</p> <p>14 Q. (By Mr. Floyd) Handing you what has been</p> <p>15 marked as Exhibit-5, have you ever seen this document</p> <p>16 before?</p> <p>17 A. You know, I'm not sure. I peruse some of</p> <p>18 these ACS documents from time to time. This was</p> <p>19 published in 2009, so I honestly don't know if I have</p> <p>20 looked through it or not.</p> <p>21 Q. Can you look at appendix A-9, please.</p> <p>22 A. Appendix what?</p> <p>23 Q. A-9.</p> <p>24 A. A-9?</p> <p>25 Q. Yes. It's the second paragraph on the left</p>	<p>1 going to agree with Dr. Morrison's paragraph 29 is</p> <p>2 it's really suggesting, in a way, that the city of</p> <p>3 Yakima is made up of just a large community of</p> <p>4 agricultural workers who don't really live there, and</p> <p>5 that's just not the case.</p> <p>6 Q. All right.</p> <p>7 A. I mean, it would be true if you were</p> <p>8 generally talking about the Yakima Valley, and he</p> <p>9 does talk about the Yakima Valley there, but he's</p> <p>10 not talking about the city of Yakima, and I have</p> <p>11 no reason to think he knows anything at all about</p> <p>12 the city of Yakima. I don't know if he's ever been</p> <p>13 there.</p> <p>14 Q. Can you look at paragraph 30 of</p> <p>15 Dr. Morrison's report.</p> <p>16 A. Yes.</p> <p>17 Q. Can you read that and tell me if you agree</p> <p>18 with paragraph 30 in light of the paragraph you just</p> <p>19 read in Exhibit-5.</p> <p>20 A. Well, it's true. Migrant workers may move</p> <p>21 with the crop season and do not live in any one</p> <p>22 location for the entire year. Where are the migrant</p> <p>23 workers in Yakima?</p> <p>24 Q. Can you look at paragraph 31 and tell me</p> <p>25 if you agree or disagree with paragraph 31.</p>
<p>Page 114</p> <p>1 side.</p> <p>2 A. (Reviewing document.)</p> <p>3 Q. It's this one right here.</p> <p>4 A. Yes.</p> <p>5 Q. Could you read the paragraph and tell me if</p> <p>6 that paragraph indicates that what Dr. Morrison stated</p> <p>7 in paragraph 29 is a correct statement.</p> <p>8 MS. KHANNA: Object to the form of the</p> <p>9 question as ambiguous.</p> <p>10 A. Well, I mean --.</p> <p>11 Q. Do you see where it says "two months"?</p> <p>12 A. Pardon?</p> <p>13 Q. Do you see where it says, "The population</p> <p>14 that lives there for more than two months"? You</p> <p>15 thought it might be three months or some other time</p> <p>16 period?</p> <p>17 A. Well, I mean, I just didn't disagree. I</p> <p>18 don't have any -- if it says two months, that's fine.</p> <p>19 It wouldn't change my opinion if it was one month or</p> <p>20 ten months. The ACS is the ACS. That's what we have</p> <p>21 to use.</p> <p>22 Q. My question was, does that help you agree or</p> <p>23 disagree with paragraph 29 of Dr. Morrison's report?</p> <p>24 And also paragraph 32.</p> <p>25 A. Well, as I say, the reason why I'm not</p>	<p>Page 116</p> <p>1 A. Would I disagree with paragraph 31?</p> <p>2 Q. Yes. Do you agree or disagree with</p> <p>3 paragraph 31?</p> <p>4 A. Well -- no. I mean, they have different</p> <p>5 residence rules. I can accept that.</p> <p>6 Q. Paragraph 32 of Dr. Morrison's report. Would</p> <p>7 you tell me if you agree or disagree with that</p> <p>8 paragraph.</p> <p>9 A. (Reviewing document.)</p> <p>10 MS. KHANNA: Objection. It's a compound</p> <p>11 question given the multiple statements in</p> <p>12 paragraph 32.</p> <p>13 Q. Go ahead and answer the question.</p> <p>14 A. I have to disagree.</p> <p>15 Q. What do you disagree with?</p> <p>16 A. I just don't believe his numbers. I think</p> <p>17 they're wrong.</p> <p>18 Q. What numbers?</p> <p>19 A. "33 foreign-born Latinos."</p> <p>20 Q. Is there anything else you disagree with in</p> <p>21 paragraph 32?</p> <p>22 A. Yes. He's not accounting for the possibility</p> <p>23 that there is a margin of error to the upside, so I</p> <p>24 can't agree with 32 at all. It's just -- I mean, it's</p> <p>25 interesting and speculative. Nothing much more than</p>

29 (Pages 113 to 116)

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<p>1 that. Because there is a margin of error and you 2 have plus or minus. 3 If I drew a district that was 49.5 percent 4 with a plus or minus margin of error of two percent 5 and tried to argue Gingles I on that, you guys would 6 hang me and say no way, even though within the margin 7 of error it would be over. 8 Q. All right. Let's look at paragraph 33 -- 9 well, let me go back. Is there anything else on 32 10 you disagree with? 11 A. No. I just -- I think the numbers are 12 probably bogus and we'll just leave it at that. 13 He's never mentioned the possibility of a margin of 14 error going to the upside as a possibility. 15 Q. What about paragraph 33? Can you look at 16 paragraph 33 and tell me if you agree or disagree with 17 paragraph 33? 18 MS. KHANNA: Objection. It's a compound 19 question. 20 MR. HAMILTON: Counsel, I need to talk 21 with Abha about our objections to this line of 22 questions. 23 MR. FLOYD: Sure. 24 MR. HAMILTON: I don't want to object on 25 the record.</p>	<p>1 and then tell me if you disagree with anything in 2 paragraph 33. 3 A. Well, I have reason to believe that 4 sentence 1 of paragraph 33 is incorrect. 5 Q. All right. And what is the basis for that 6 statement? 7 A. I believe he was using the wrong geography. 8 Q. What do you believe he was using? 9 A. I think he was using an area outside of the 10 city. 11 Q. All right. Is there anything else in 12 paragraph 33 you disagree with? 13 A. Well, because of that, I disagree with 14 sentence 2. Because I think he was using the wrong 15 geography, I disagree with sentence 3. And because of 16 that issue with geography, I disagree with sentence 4. 17 I also disagree with sentence 5. I mean, the 18 whole thing is, in my opinion, incorrect because 19 I think he's using the wrong geography. 20 Q. And because you believe he's using the wrong 21 geography, you think that No. 33 is incorrect? 22 A. Yes. 23 Q. And with the exception of No. 33 being 24 incorrect, do you agree or disagree with the rest 25 of the content --</p>
<p>Page 118</p> <p>1 MR. FLOYD: Okay. If you want to take 2 a break and discuss it, that's fine. 3 MR. HAMILTON: This will just take 4 a couple seconds. 5 (Discussion off the record.) 6 (Brief recess taken.) 7 (The record was read 8 back as requested.) 9 Q. (By Mr. Floyd) Can you look at paragraph 33, 10 please, and tell me if there is anything in there that 11 you disagree with. 12 A. Well, I don't know whether he -- I wasn't 13 there. I don't know if he tabulated the ACS data or 14 not. The first sentence, no. I don't disagree or 15 agree. I don't know what he did. 16 Q. Can you look at footnote 11 on that same 17 page -- I didn't mean to interrupt. Were you 18 finished? 19 A. Go ahead. 20 MR. HAMILTON: Well, hold on. Do you want 21 him to answer the rest of your question? Because he 22 only answered as to the first sentence. 23 Q. I thought you had answered as to the whole 24 sentence. Let me rephrase. 25 Can you read paragraph 33, please, completely,</p>	<p>Page 120</p> <p>1 A. No, because the rest of it is all 2 speculation, really. 3 Q. Can you look at footnote 11 on page 12. 4 Have you ever read that article? 5 A. No. 6 Q. Turn to page 13, please, paragraph 34. 7 Can you tell me if there is anything in paragraph 34 8 you disagree with. 9 A. I disagree with sentence 1. I vehemently 10 disagree with sentence 2. Assuming 22 is accurate, 11 then there is a 22-person differential, as in 12 sentence 3. 13 I also disagree with -- I mean, I disagree 14 with sentence 24, also -- I mean, the final sentence 15 in paragraph 34. 16 Q. With respect to paragraph 35, can you tell me 17 what you disagree with, if anything, in that 18 paragraph. 19 A. Well, I disagree with the first sentence 20 because a demonstration district does not hinge on 21 just 22 to 24 persons. I've already produced a plan, 22 hypothetical plan C, as well as B, which have margins 23 of over 500 persons. 24 So, setting aside whether 22 or 24 is correct 25 -- it doesn't really matter -- it's not correct</p>

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<p>1 because he's using the wrong geography. But even if 2 he were, it would still not be accurate. 3 Q. You indicated 500 persons; is that correct? 4 A. Right. 5 Q. When did you come up with that number? 6 You couldn't give me a number earlier in the 7 deposition. 8 MS. KHANNA: Object to the question as 9 compound. 10 Q. Go ahead. 11 A. I must not have understood the question, 12 because I -- it's clearly laid out in the documents 13 I've presented to you, and it's also in my -- it's in 14 my supplemental report. 15 Q. Where in your supplemental report? 16 A. (Reviewing document.) 17 Q. Page and paragraph, please, when you find it. 18 A. Okay. 19 I may have said hypothetical plans B and D 20 a moment or two ago, and what I meant were 21 hypothetical plans B and C. And I'm specifically 22 going to refer to paragraph 52, which is referencing 23 hypothetical plan B, where I state, "There are 2,313 24 Latino citizens of voting age and 1,808 non-Hispanic 25 citizens of voting age in District 1.</p>	<p>1 A. Okay. Well, as I stated, I disagree with the 2 statement that a "demonstration LCVAP district hinges 3 on just 23 to 24 persons," which it clearly does not 4 based on hypothetical plans B and C in my supplemental 5 report. 6 And again, because he's using the wrong 7 geography, I believe point A of paragraph 35 is 8 incorrect. 9 Q. And would that be consistent; with respect to 10 using the wrong geography, do you disagree with A 11 through E? 12 A. Right. 13 Q. And with the exception of geography, 14 would you have any other disagreements, the fact that 15 he's using, in your opinion, the wrong geography? 16 A. Well, I have no way of knowing what -- 17 because I don't know what the numbers are for the 18 appropriate geography, I can't opine. 19 Q. All right. 20 A. But I would say that in the final analysis, 21 at point B, he gets to the statement that "41 Latinos 22 for whom citizenship is in serious doubt is nearly 23 double the estimated 24-person majority supporting 24 plaintiffs' case for having satisfied the first 25 Gingles precondition."</p>
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<p>1 "This represents a Latino citizen voting age 2 advantage of more than 500 persons, a margin that 3 I believe would undoubtedly satisfy Gingles I even 4 under the inappropriately strict standards articulated 5 by Dr. Morrison." 6 Q. That was hypothetical plan B, correct? 7 A. That's hypothetical plan B to create 57.74 8 percent in VAP district. 9 Q. But you did not do an actual voting age 10 Latino citizen advantage for plan A, correct? 11 You didn't give a specific number for plan A? 12 A. Not in the report, but you could get that 13 from the materials that I've provided you as of last 14 week. 15 Q. But you didn't -- 16 A. I didn't include that in the report, no. 17 Q. All right. 18 A. And actually, hypothetical plan D would be 19 slightly higher in terms of the margin. 20 Q. Let's go back to paragraph 35 -- 21 A. Hypothetical plan C, excuse me. 22 Q. Let's go back to Exhibit No. 2, paragraph 35, 23 and I interrupted you and you were telling me what you 24 disagreed with in paragraph 35. Can you continue, 25 please.</p>	<p>1 Well, what if it were? That's still 450-some- 2 odd Latinos short of the 500 Latinos you would need to 3 cast some serious doubt in order to create a problem 4 with hypothetical plan B. 5 Q. Paragraph 36 of Exhibit-2. Can you read 6 that, please, and tell me if there is anything you 7 disagree with. 8 A. No. He's quoting the Census Bureau 9 documents, so I can accept that. Again, I believe 10 that the ACS data estimates are the best we have for 11 citizenship, and that's what the courts have been 12 accepting over the past few years. 13 Q. Can you read paragraph 37 and tell me 14 if there is anything about paragraph 37 you disagree 15 with. 16 A. I disagree with paragraph 37. I disagree 17 with the first sentence. I don't know what in the 18 world he means, "The uncertain odds (56 to 44 by 19 my preliminary calculations) ...". I don't even 20 know -- I mean, those are preliminary calculations. 21 They're not even final calculations. So I would have 22 to disagree with that. 23 I disagree with the statement, "If any 22 to 24 34 of those 182 voting age Latinos were assigned 25 citizenship status erroneously ..." well, I won't read</p>

<p style="text-align: right;">Page 125</p> <p>1 the whole sentence. It's the final sentence in 2 paragraph B of paragraph 37. 3 Again, he's using the wrong geography. 4 I believe so. It really doesn't really matter. The 5 numbers don't -- aren't correct. 6 Q. Can you look at paragraph 38. Can you read 7 paragraph 38 and tell me what, if anything, you 8 disagree with. 9 A. Well, let me disagree with -- I mean, 10 paragraph C of paragraph 37, I hadn't finished that. 11 Q. I'm sorry, you were not done. 12 A. "The possibility that demonstration 13 District 1 may not be the 'usual place of residence' 14 for every single one of the 2,217.91 Latino voting-age 15 citizens whom the ACS counts as 'current residents' of 16 demonstration District 1." 17 Well, there's that possibility. There's also 18 the possibility that it's not the "usual place of 19 residence" for X number of non-Hispanic voting-age 20 citizens. So that doesn't mean anything. It's a 21 possibility, speculation, and it's only one side 22 of the equation. 23 Q. Have you finished with all of the bases for 24 your disagreement with paragraph 37? 25 A. I'm just pointing out the most obvious</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. And would that be the extent to which you 2 considered the one-person/one-vote issue? 3 A. Yes, and I went even a step farther and took 4 the extreme example of looking at just citizen 5 population and citizen voting-age population, and 6 showed that even if you do not include noncitizens in 7 the count, whether they be of all ages or voting age, 8 that you can create a Latino majority VAP/CVAP 9 district with room to spare, over 50 percent. 10 Q. Would you agree that you attempted to 11 aggregate the most heavily Latino contiguous areas so 12 you could boost the Latino share among whatever number 13 of voting-age citizens that proposed district happened 14 to encompass? 15 A. Well, it's a Section 2 lawsuit, so I did have 16 to create an LCVAP majority district, but --. I'm not 17 sure what he means by that, exactly, except that I can 18 say with certainty that my single-minded purpose was 19 not just to look at Latino share of the population. 20 There are other factors involved in drawing a voting 21 plan. 22 Q. But that was your primary purpose, because 23 this is a Section 2 Gingles -- 24 A. It was a factor -- it was a factor, right. 25 Q. The primary factor, too, wasn't it?</p>
<p style="text-align: right;">Page 126</p> <p>1 things. 2 Q. All right. Let's go to paragraph 38. 3 Can you read paragraph 38 and tell me what you 4 disagree with. 5 A. Well, I actually disagree with paragraph 38, 6 because -- I've produced three illustrative plans. 7 I consider hypothetical plan A to be an illustrative 8 plan. And then just solely for the purpose of meeting 9 Gingles I, I produced hypothetical plans B and C. 10 In my development of those plans, I looked at 11 other factors, not just LCVAP, so I disagree with that 12 statement. I had to take into account one-person/one- 13 vote. I had to take into account precinct lines. 14 I had to take into account the general compactness 15 of the district. And so I did not just have a single- 16 minded purpose to create an LCVAP district and then 17 stop. 18 Q. And how did you take into consideration the 19 one-person/one-vote issue? 20 A. Every single plan is under ten percent 21 overall deviation, which is better than the city's 22 11 percent deviation, and no single district is more 23 than five percent from the ideal population size, in 24 contrast with district 2 in the city's current, plan 25 which is minus 6.5.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Well, only to the extent that one does have 2 to show that you can create an LCVAP majority 3 district. But you cannot -- you can't do that at 4 the expense of other traditional redistricting 5 concerns -- like one-person/one-vote, like 6 compactness, like taking into account communities of 7 interest -- so there are other factors that I was 8 taking into consideration. 9 Q. Let's talk about -- have you ever heard of 10 "electoral equality"? 11 A. Well, that's a broad term. I've heard of it. 12 Q. And what is your understanding of electoral 13 equality? 14 A. Well, I mean, it's so broad it could mean 15 most anything under the sun. Are you speaking about 16 something that's showing up in the journals now that 17 I should know about specifically? 18 Q. Do you have any understanding of the term 19 electoral equality? 20 A. Well, it can mean -- but what -- I mean, 21 what is your definition? I don't know -- I mean, 22 my definition is "electoral equality" means fairness 23 in the election system. 24 Q. And did you do anything to address electoral 25 equality in any of your plans?</p>

32 (Pages 125 to 128)

<p style="text-align: right;">Page 129</p> <p>1 A. Well, I did do something in response to 2 Dr. Morrison's report to show that if for some reason 3 the Supreme Court were to decide that we shouldn't 4 count total population for redistricting purposes, 5 that we should only rely on citizens or voting-age 6 citizens, then in the city of Yakima it would still be 7 possible to create a Latino citizen voting-age 8 majority district. 9 Q. So is it your answer that you prepared plans 10 D and E to address any concerns regarding electoral 11 equality? 12 A. As expressed by Dr. Morrison, right. 13 Q. But you didn't do anything with respect to 14 plans 1, 2, A, B, and C concerning electoral equality, 15 correct? 16 A. Sure, I did. I mean, is it -- shouldn't 17 there be some electoral equality from the standpoint 18 of a city that's almost 45 percent -- or over 19 40 percent Latino with no history of Latinos ever 20 represented -- being represented on the city council? 21 Isn't that electoral equality? Is that a factor 22 involved in electoral equality? 23 Q. Are you familiar with the term of 24 "representative equality"? 25 A. No.</p>	<p style="text-align: right;">Page 131</p> <p>1 reason it's perceived that Latinos would be getting an 2 unfair voting power because there are not as many 3 citizens in the Latino population, then you could 4 apportion the City based on citizen population or 5 citizen voting-age population and eliminate any issues 6 relating to electoral equality as defined by 7 Dr. Morrison. 8 Q. Did you ever analyze any of your plans, 1, 9 2, A, B, or C, to determine if your plans caused votes 10 in different districts to carry grossly unequal 11 weight? 12 A. No, because I don't believe they do carry 13 unequal weight, because if -- if you're a legal 14 resident of the city of Yakima, you deserve an equal 15 -- you deserve to have equal representation, and many 16 of the children of noncitizens who are of voting age 17 are citizens, so --. 18 I mean, I think -- and I agree with the City 19 of Yakima -- that you'd use the total population as 20 the apportionment base, but if it were required by the 21 courts not to use total population as the 22 apportionment base, then you can still get a Latino 23 citizen voting-age population, if you want, in the 24 district -- I mean, in the City. 25 Q. Did you consider the equality of CVAP in</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. Let me ask you this. You're apparently also 2 not familiar with the term of electoral equality as it 3 relates to the due-process clause of the 4 14th Amendment, correct? 5 MS. KHANNA: Objection; calls for a legal 6 conclusion. 7 Q. Go ahead and answer the question. 8 A. No. I'm not a lawyer. That's -- I don't 9 delve into those issues. 10 Q. And I understand you didn't do anything to 11 address electoral equality in terms of the equal- 12 protection clause of the 14th Amendment in any of your 13 plans, correct? 14 MS. KHANNA: Objection; calls for a legal 15 conclusion. 16 Q. Go ahead and answer. 17 A. Well, again, I produced illustrative plans D 18 and E. You can't get any better than that. I mean, 19 I only focused on the citizen voting-age population 20 and the citizen population. 21 I believe you can get better than that because 22 I think -- I personally think they're 23 unconstitutional. Even though I'm not a lawyer, 24 I think you'd have to use total population. 25 But if that's your concern, that for some</p>	<p style="text-align: right;">Page 132</p> <p>1 plans 1, 2, A, B, or C? 2 A. I considered total population as the 3 apportionment base, so if you're using total 4 population as the apportionment base, then the fact 5 that there may be more citizens in one district than 6 another really cannot be dealt with. 7 Q. Do you think it's unfair that a city such as 8 the city of Yakima, which is apparently 9 40 percent-plus Latino, has no elected city 10 councilperson? 11 MS. KHANNA: Objection to the form of the 12 question. 13 A. Were you going to ask me another question? 14 Q. No. Go ahead and answer. 15 A. What was your question? 16 MR. FLOYD: Would you read it back, 17 please. 18 (The question was read 19 back as requested.) 20 A. I don't exactly understand that question. 21 Could you rephrase it. 22 Q. What do you not understand about 23 my question? 24 A. Well, there are -- I mean, City of Yakima has 25 no elected representative, what do you mean by that?</p>

<p style="text-align: right;">Page 133</p> <p>1 Q. No, I said that they have no elected 2 Latino -- 3 A. Oh, okay. You're saying that there are no 4 Latino representatives on the city council. 5 Q. Yes. Do you think that's unfair? 6 A. It would, to me, not be -- I can't -- you 7 can't just look at it in the abstract and say whether 8 it's fair or unfair. You have to take into 9 consideration a lot of other factors. 10 However, on the surface, it doesn't 11 seem exactly fair. I mean, it's odd that there would 12 be that many Latinos in the city and no history of a 13 Latino ever being elected to city council. 14 Q. Do you know how you would determine if there 15 was a potential problem with electoral equality in a 16 redistricting plan? 17 MS. KHANNA: Objection; lack of 18 foundation. 19 Q. Go ahead and answer. 20 A. Well, one of the best ways -- I mean, one 21 way -- one way would be to do as I've done in 22 illustrative plans D and E. Another way would be to 23 draw kind of elongated districts, maybe, that would 24 pick up more of the citizen population in the city of 25 Yakima, in the east end of the city, but then</p> <p style="text-align: right;">Page 134</p> <p>1 you would dilute the Latino vote, so you can't do 2 that. That would run counter to Section 2. 3 Now I've forgotten what your question is, 4 but -- 5 Q. Would there be a threshold for you to have 6 concerns about electoral equality, a certain 7 threshold? 8 A. Well, I don't know what you mean by a 9 threshold" -- I don't know what you mean by a 10 "threshold in electoral equality." 11 I think in illustrative plans 1 and 2 and 12 hypothetical plan A, I have produced plans that are 13 constitutional and fully reflect the demographics of 14 the city so that Latinos would have a shot at electing 15 one, possibly two persons to the city council. 16 It doesn't mean they would, but they'd 17 at least have a fair shot, and I -- so I think I have 18 taken into account electoral equality. 19 Q. Are you familiar with the term "voting 20 power"? 21 A. Yes. 22 Q. What is voting power? 23 A. Well, voting power is the strength of 24 your vote. Right now it appears that Latinos have 25 no voting strength at all because they've never</p>	<p style="text-align: right;">Page 135</p> <p>1 managed to get anybody on the city council. 2 Thus, they're unable to garner crossover 3 voting or amass such a large turnout that they could, 4 maybe through single-shot voting or something, get 5 somebody on the council. 6 Q. Did you do anything in any of your plans to 7 analyze the effect, if any, of your plans on the 8 voting power for the Latinos and the non-Latino groups 9 in Yakima? 10 A. I did look at the demographics for my plans, 11 and I can say that I think they're fair to other 12 minorities in the city; Native Americans, 13 African Americans. So to that extent I did, but I did 14 not attempt to equalize the voting power in the same 15 fashion that Dr. Morrison has done in his tabular 16 presentation. 17 Instead of doing that form of analysis, I just 18 showed that if that were a requirement, we could meet 19 the requirement and still have an LCVAP majority 20 district and meet Gingles I. 21 Q. With respect to plans 1, 2, A, B, and C, 22 did you have any concern about the relative size of 23 the citizen population in various other districts, 24 other than your one or two minority districts? 25 A. I think it's probably pretty evenly</p> <p style="text-align: right;">Page 136</p> <p>1 distributed, but I didn't look at it very closely, so 2 I don't -- the citizen voting-age population, 3 for example, in 6 and 7 is probably pretty close, 4 isn't it? I mean, it's not something that I looked 5 into deeply in the other districts. 6 However, again, if this ever reached the 7 remedy stage, presumably the city would have an 8 opportunity to produce a plan that might configure 9 districts 4, 5, 6, and 7 in a totally different 10 fashion, and presumably the plaintiffs couldn't say 11 much about that. 12 Q. Let's talk about electoral imbalance. 13 Do you know what "electoral imbalance" is? 14 A. Well, I understand your point. I understand 15 what you're saying. 16 Q. What am I saying? 17 A. I'm just -- 18 Q. What am I saying? I don't know what I'm 19 saying. 20 A. Well, you're saying that because there are 21 a lot of noncitizens in districts 1 and 2, then people 22 in the other parts of the city are not given an 23 opportunity to have their votes count as much as those 24 who are citizens in districts 1 and 2. 25 MS. KHANNA: I'm just going to</p>
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34 (Pages 133 to 136)

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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.

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1 I'm finished with Dr. Morrison's first report.
 2 Can you go to his supplemental report, please.
 3 A. Yes.
 4 Q. That's Exhibit-3.
 5 A. Yes.
 6 Q. Do you have that in front of you?
 7 A. I do.
 8 Q. Now, before I ask you about the report,
 9 have you done anything to test your methodology to
 10 see if it can lead to nonsensical CVAP calculations?
 11 A. I haven't found it to lead to nonsensical
 12 CVAP calculations, but I have not done a series of
 13 hypotheticals to test it out to the nth degree. So
 14 far it's held up.
 15 Q. But you're not willing to testify today that
 16 it is impossible for your methodology to lead to
 17 nonsensical CVAP calculations, correct?
 18 A. I won't say it's impossible, because I have
 19 not thoroughly vetted it in that regard,
 20 but my experience so far shows that it doesn't.
 21 Q. Let's go to your supplemental declaration,
 22 paragraph 5. It's Exhibit-4.
 23 A. The supplemental declaration?
 24 Q. Yes; yours.
 25 A. Right. Okay. Paragraph 5?

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1 Q. Paragraph 5.
 2 A. (Reviewing document.)
 3 Q. Do you see in paragraph 5 where you indicate
 4 that there are certain objectives, and you list
 5 "Following precinct boundaries; taking into account,
 6 municipal boundaries; comply with
 7 one-person/one-votes; and, of course, avoiding the
 8 dilution of minority voting strength"? Do you see
 9 that?
 10 A. Right.
 11 Q. And you indicated that you tried to comply
 12 with all of those; is that correct?
 13 A. In drafting the plans in my report.
 14 Q. Yes, you did, correct?
 15 A. Yes.
 16 Q. So let me go back and ask you. Did you try
 17 to follow the precinct boundaries?
 18 A. I tried to. I didn't always follow them.
 19 I mean, it's -- precinct lines are not sacrosanct.
 20 You can split precincts in fact, the City of Yakima
 21 modified a dozen or more after there redistricting in
 22 2011. It's not unusual to change precinct lines.
 23 Sometimes precincts end up with population and you
 24 have to split it, for example.
 25 So I followed it to the extent that I could.

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1 Perhaps I could improve on it with another draft
 2 alternative illustrative plan. I don't know.
 3 Q. How would you determine if there was
 4 noncompliance with one-person/one-vote?
 5 A. Well, we've kind of been over this over and
 6 over again, but if the ideal district size of a
 7 district is -- if you are over five percent or under
 8 five percent of the ideal district size of a district,
 9 then that sort of raises a red flag where there could
 10 be an issue with one-person/one-vote.
 11 Q. And would you compare, then -- you said
 12 you would compare percentages, correct?
 13 A. Right. If you created a plan that had
 14 a 25 percent deviation, that would be a problem,
 15 but all of my plans are under ten percent, so there's
 16 no immediate red flag there based -- concerning
 17 one-person/one-vote.
 18 Q. Would you look at paragraph 33 of your
 19 supplemental report.
 20 A. Yes.
 21 Q. Your reference to "illegal apportionment
 22 schemes" in the middle of that, can you tell me what
 23 specific thing you are referencing.
 24 A. Well, I believe that if you based -- if you
 25 looked at voting power and insisted on using a citizen

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<p>1 voting-age population or a citizen population as the 2 apportionment base, then that is arguably an illegal 3 apportionment scheme. 4 Q. Well, what -- 5 A. And if you instead said, "Okay, we've got to 6 make citizens the same number in all seven districts 7 in Yakima," then that, too, would be an illegal 8 apportionment scheme because it would run afoul of 9 Section 2, because I believe that the minority 10 community in Yakima is sufficiently diverse and 11 geographical it can in fact create a single-majority 12 Latino district. 13 Q. When you say "voting power," what do you mean 14 by that? How do determine voting power? 15 A. Well, again, we're getting back to the points 16 raised by Dr. Morrison, that there are more 17 noncitizens in districts 1 and 2 under some of 18 my illustrative plans compared to the remaining five 19 districts in the city. 20 One could argue that the citizens in 21 districts 1 and 2 have more voting power than other 22 citizens in the rest of the city, because -- so that 23 would be true, but those citizens are also 24 representing people who are legal residents and 25 children who are citizens in districts 1 and 2, so</p>	<p>1 Elections Division added some Latino names that were 2 either hyphenated or had an affidavit with a previous 3 Spanish surname? 4 A. Because I have a list of those names that 5 I used for the November 2011 election for the precinct 6 numbers that I provided to Dr. Engstrom. 7 Q. You did not rely on upon the Yakima County 8 Elections Division classifications in any of your 9 seven plans; is that correct? 10 A. No. In -- 11 MS. KHANNA: Objection; asked and 12 answered. 13 Q. Pardon me? 14 A. Well, in my illustrative plans I did not -- 15 no, I did not, because I didn't have a way to match 16 them up to the 2013 extract that was just the city of 17 Yakima registered voters. 18 What I got from the county was a list of 19 voters who participated in the election of November 20 2011, so there were obviously many more voters who 21 were registered, perhaps -- I'm not going to say 22 obviously, but there must have been more registered 23 voters with Anglo surname who are Latino but who 24 did not turn out to vote in November of 2011. 25 None of that group is counted in my count</p>
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<p>1 I really think you have to go beyond just talking 2 about citizen voting power. 3 These are people who live in Yakima, reside in 4 Yakima, who want to live in Yakima, and want to be 5 represented in the political process at some level, 6 even if they're not citizens. 7 Q. And how do you know that? 8 A. Because this lawsuit was filed. 9 Q. Look at page 17, please, of your supplemental 10 report. 11 A. (Witness complies.) 12 Q. I'm looking at footnote 7 at the bottom. 13 It relates to Spanish surnames again. 14 A. Yes. 15 Q. I want to make sure I understand how you used 16 the Spanish surname list from the Department of 17 Justice. 18 A. Uh-huh. 19 Q. Did you only use the Spanish surname list 20 from the Department of Justice in your plans, all of 21 your plans, or did you add some names with some other 22 manner? 23 A. I only used the Department of Justice surname 24 list. 25 Q. And how do you know that the Yakima County</p>	<p>1 of registered Latino voters, so to that extent 2 my count is an undercount. 3 Q. Well, let me just ask you. You said your 4 illustrative groups. Were those just Nos. 1 and 2, or 5 was 1, 2, A -- 6 A. No, I -- I did it for the whole city. 7 Q. So 1 and 2 plus A through E? 8 A. All of those plans utilized the 2013, 9 January 2013, registered voter list that I matched by 10 surname, but I did not go further and obtain a list of 11 all registered voters in the city of Yakima who have 12 Anglo surnames that the County of Yakima has 13 designated as a Latino, so to that extent the 14 numbers I'm reporting for registered Latinos 15 by percentage in the various districts is 16 underreported. 17 Q. Could you look at page 18 of your 18 supplemental report. 19 You geocoded the registered voters, correct? 20 A. Right. 21 Q. And were there voters who couldn't be 22 geocoded? 23 A. I believe there were a couple dozen out of 24 the many thousands who I could not geocode. 25 Q. And what happened to those names?</p>

36 (Pages 141 to 144)

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<p>1 A. I just left them out of the analysis.</p> <p>2 Q. Let's go on to paragraph 50 of your</p> <p>3 supplemental report. Did you write this paragraph?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Did you write all of the text in both of your</p> <p>6 reports?</p> <p>7 A. Yes. I had some -- there were some stylistic</p> <p>8 suggestions made, but beyond that, this is entirely</p> <p>9 my product.</p> <p>10 Q. Then with respect to paragraph 50 of your</p> <p>11 supplemental report, there is reference to a Texas</p> <p>12 plan and another plan in California; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And were you involved in either of those</p> <p>15 cases?</p> <p>16 A. Well, I was not involved in the Texas</p> <p>17 redistricting at all, either in the case or just for</p> <p>18 legislative redistricting. I did do some work for the</p> <p>19 prison policy initiative looking at districts in</p> <p>20 California, legislative redistricting. But that was</p> <p>21 very deep background and I was not involved in</p> <p>22 litigation, at all, in California.</p> <p>23 Q. Then how did you come up with these numbers</p> <p>24 that you have in paragraph 50 with respect to the</p> <p>25 50 percent LCVAP percentages?</p>	<p>1 exceeded 50% of registered Latino voters"; is that</p> <p>2 correct?</p> <p>3 A. Which paragraph?</p> <p>4 Q. It's paragraph 56, the last sentence.</p> <p>5 A. That's right, and that again came from the</p> <p>6 opinion.</p> <p>7 Q. From the opinion. Okay.</p> <p>8 Let's go on to paragraphs 85 and 87.</p> <p>9 Actually, let's go to 87, paragraph 87.</p> <p>10 A. (Witness complies.)</p> <p>11 Q. It says, "The socioeconomic status of</p> <p>12 Yakima's American-Indian community is more closely</p> <p>13 aligned with Latinos than non-Hispanic whites."</p> <p>14 A. Yes.</p> <p>15 Q. What is the basis for that statement?</p> <p>16 A. My examination of the American Community</p> <p>17 Survey data, as shown in Exhibit G and Exhibit H,</p> <p>18 which has the Latino socioeconomic data.</p> <p>19 Q. What specifically are you looking at?</p> <p>20 A. Well, I'm looking across the board.</p> <p>21 There are about 20 variables there, you know, poverty,</p> <p>22 median income, education -- I mean, in all -- almost</p> <p>23 across the board, both the Indian population and</p> <p>24 non-Hispanic, white population, Indians lag behind</p> <p>25 non-Hispanic whites, and the same for Latinos, lagging</p>
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<p>1 A. I just got them right off the Internet, as</p> <p>2 the footnotes explain in footnotes 11 and 12.</p> <p>3 Q. All right.</p> <p>4 Going to paragraph 55 of your supplemental</p> <p>5 report, you indicate, "According to the expert for the</p> <p>6 defendants in the Farmers Branch case ..."; is that</p> <p>7 correct?</p> <p>8 A. Right.</p> <p>9 Q. Did you talk to him or her?</p> <p>10 A. I just read the opinion.</p> <p>11 Q. And who was the expert?</p> <p>12 A. The plaintiff's expert was named, I believe,</p> <p>13 David Ely. The last name is Ely, E-l-y.</p> <p>14 Q. And that was based upon just reading the</p> <p>15 opinion?</p> <p>16 A. Right.</p> <p>17 Q. You didn't speak with any of the experts for</p> <p>18 Farmers Branch, correct?</p> <p>19 A. No. As I've already indicated, I have spoken</p> <p>20 with no experts, at all, in the development of this</p> <p>21 case.</p> <p>22 Q. It goes on here, "According to the expert for</p> <p>23 the plaintiffs ..." -- and I'm reading the last</p> <p>24 sentence of 56, paragraph 56 -- "... only one of the</p> <p>25 demonstrative districts in the Farmers Branch case</p>	<p>1 behind non-Hispanic whites. Only half of the Latinos</p> <p>2 have finished college -- I mean have finished</p> <p>3 high school.</p> <p>4 MR. FLOYD: Why don't we take a break?</p> <p>5 It's 2:30, so why we take a ten-minute break and I'll</p> <p>6 see if I can wrap this up.</p> <p>7 (Brief recess taken.)</p> <p>8 MR. FLOYD: I have no further questions at</p> <p>9 this time.</p> <p>10 MS. KHANNA: I will have a few other</p> <p>11 questions, but let's go off the record for a moment.</p> <p>12 (Discussion off the record.)</p> <p>13 MR. FLOYD: Back on the record.</p> <p>14 No further questions at this time.</p> <p>15 -o0o-</p> <p>16 EXAMINATION</p> <p>17 BY MS. KHANNA:</p> <p>18 Q. Mr. Cooper, the word "electoral equality" was</p> <p>19 used by counsel in asking his questions. Do you know</p> <p>20 what this word means -- this term means?</p> <p>21 A. Well, as expressed to me, it was a very vague</p> <p>22 term and I don't know -- I don't really know exactly</p> <p>23 what he meant by that.</p> <p>24 Q. Is it a term you have heard used in your</p> <p>25 field?</p>

37 (Pages 145 to 148)

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1 A. No. No, it's not a standard term that would
 2 be used in redistricting, at all.
 3 Q. Is it a term that you have referred to in
 4 writing either of your reports?
 5 A. No.
 6 Q. Is it a term that Dr. Morrison referred to in
 7 his reports?
 8 A. No. He used "electoral imbalance," but not
 9 "electoral equality."
 10 MS. KHANNA: No further questions.
 11 -o0o-
 12 FURTHER EXAMINATION
 13 BY MR. FLOYD:
 14 Q. Are you familiar with the term "electoral
 15 imbalance"?
 16 A. Is that a real question?
 17 Q. That's a real question and I expect a real
 18 answer.
 19 A. Yes -- well, it's a term that I became
 20 aware of in Dr. Morrison's -- from Dr. Morrison's
 21 report.
 22 Q. Prior to Dr. Morrison's report, though, you
 23 had never encountered the term "electoral imbalance,"
 24 correct?
 25 A. I don't -- I can't say that. I don't know,

Page 150

1 really. I do know -- I have seen somewhere along the
 2 line discussions of citizen and noncitizen population,
 3 voting strengths of the respective groups, but I don't
 4 really remember if it specifically used the term
 5 "electoral imbalance."
 6 Q. Certainly, if the first time you had
 7 encountered it in this case was in Dr. Morrison's
 8 report, you didn't consider "electoral imbalance"
 9 in your first and second hypothetical plans,
 10 correct?
 11 MS. KHANNA: Objection; asked and
 12 answered.
 13 Q. Go ahead and answer.
 14 A. First and second hypothetical plans?
 15 Q. Yes.
 16 A. Plans A and B.
 17 Q. Plans 1 and 2, rather.
 18 A. Oh, plans 1 and 2. No, I did not -- didn't
 19 do anything beyond just visually note the
 20 citizen voting-age population in illustrative plans 1
 21 and 2.
 22 Q. And after you saw Dr. Morrison's supplemental
 23 report, you then drafted plans D and E to address the
 24 issue that he had raised regarding electoral
 25 imbalance, correct?

Page 151

1 A. Correct.
 2 MS. KHANNA: Objection; asked and
 3 answered.
 4 Q. All right. Thank you.
 5 MR. FLOYD: Nothing further. We're done.
 6 THE WITNESS: We're done?
 7 MR. FLOYD: We're done. Thank you.
 8 THE WITNESS: That wasn't too bad.
 9 (Discussion off the record.)
 10 (Deposition adjourned at
 11 2:52 p.m.)
 12 (Signature reserved.)
 13 -o0o-

Page 152

1
 2 SIGNATURE
 3
 4
 5 I declare under penalty of perjury under
 6 the laws of the State of Washington that I have read
 7 my within deposition, and the same is true and
 8 accurate, save and except for changes and/or
 9 corrections, if any, as indicated by me on the
 10 CHANGE SHEET flyleaf page hereof.
 11
 12
 13 Signed in, Washington,
 14 on the day of, 2013.
 15
 16
 17
 18
 19
 20 WILLIAM S. COOPER
 21 TAKEN: May 8, 2013
 22
 23
 24 Mary A. Whitney, CCR - WCRL #2728
 25

Page 153

1 CERTIFICATE
2
3 STATE OF WASHINGTON)
4) ss.
5 COUNTY OF KING)
6 I, the undersigned Washington Certified Court
7 Reporter, hereby certify that the foregoing deposition
8 upon oral examination of WILLIAM S. COOPER was taken
9 stenographically before me on May 8, 2013, and
10 thereafter transcribed under my direction;
11 That the witness, before examination, was
12 first duly sworn by me pursuant to RCW 5.28.010 to
13 testify truthfully; that the transcript of the
14 deposition is a full, true, and correct transcript to
15 the best of my ability; and that I am neither attorney
16 for, nor relative or employee of any of the parties to
17 the action, or any attorney or counsel employed by the
18 parties hereto, nor financially interested in its
19 outcome.
20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 15th day of May, 2013.
22
23 /s/ Mary A. Whitney

24 Mary A. Whitney, CCR - WCRL #2728
25

Page 154

1
2 DATE: May 15, 2013
3
4 ABHA KHANNA, ESQ.
Perkins Coie
5 1201 Third Avenue
Suite 4800
6 Seattle, WA 98101
7
8 NOTICE OF READINESS FOR SIGNATURE
9
10 CASE NAME: Montes vs. Yakima
VENUE: USD/EasternWA
11 CAUSE NO.: CV-12-3108-TOR
WITNESS: William S. Cooper
12 TAKEN: May 8, 2013
13
14 Enclosed is the deposition transcript of
William S. Cooper.
15
16 Please arrange for the witness to review the
transcript, record any changes on the
17 Change Sheet, and sign, (1), the Change Sheet
and, (2), the Original Signature Page.
18 Please return the Change Sheet and the
Original Signature Page to this office within
30 days so they may be filed with the original
transcript.
19
20 /s/ Mary A. Whitney

21 Mary A. Whitney, CCR
22
23
24 cc: Francis S. Floyd, Esq.
File
Enclosure - (Envelope)
25

Page 155

1
2 DATE FILED: May 15, 2013
3
4 FRANCIS S. FLOYD, ESQ.
Floyd, Pflueger & Ringer
5 200 W. Thomas Street
Suite 500
6 Seattle, WA 98119
7
8 NOTICE RE FILING OF ORIGINAL DEPOSITION
9
10 CASE NAME: Montes vs. Yakima
VENUE: USDC/EasternWA
11 CAUSE NO.: CV-12-3108-TOR
WITNESS: William S. Cooper
12 TAKEN: May 8, 2013
13
14 Enclosed is the original sealed deposition
transcript of William S. Cooper.
15
16 The original signature page and changes,
if any, received by this office will be
forwarded to all counsel.
17
18
19 /s/ Mary A. Whitney

20 Mary A. Whitney, CCR
21
22
23
24 cc: Abha Khanna, Esq.
File
25

Page 156

1 CHANGE SHEET
2
3 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS
SHEET, INDICATING PAGE, LINE, AND CORRECTION/REASON
4

5
6 PAGE / LINE CORRECTION/REASON
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21 WILLIAM S. COOPER
22
23
24 TAKEN: May 8, 2013
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Page 157

1 IN THE UNITED STATES DISTRICT COURT
 2 IN AND FOR THE EASTERN DISTRICT OF WASHINGTON
 3 _____
 4
 5 ROGELIO MONTES and MATEO)
 ARTEAGA,)
 6)
 Plaintiffs,)
 7)
 vs.)
 8)
 CITY OF YAKIMA, MICAH) No. CV-12-3108-TOR
 CAWLEY, in his official)
 9 capacity as Mayor of Yakima,)
 and MAUREEN ADKISON, SARA)
 10 BRISTOL, KATHY COFFEY, RICK)
 ENSEY, DAVE Ettl, and BILL)
 11 LOVER, in their official)
 capacity as members of the)
 12 Yakima City Council,)
)
 13 Defendants.)

 14
 15 Original Signature Page and Change Sheet to the
 16 Deposition Upon Oral Examination of
 17 WILLIAM S. COOPER
 18 _____
 19
 20 May 8, 2013
 21 Floyd, Pflueger & Ringer
 22 200 W. Thomas Street | Suite 500
 23 Seattle, Washington
 24
 25 REPORTED BY: Mary A. Whitney, CCR - WCRL #2728

Page 159

1
 2 APPEARANCE(s): (For Filing Purposes)
 3
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 (206) 441-4455
 ffloyd@floyd-ringer.com
 8
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 11 -o0o-
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Page 158

1
 2 Date filed: _____, 2013
 3
 4 FRANCIS S. FLOYD, ESQ.
 Floyd, Pflueger & Ringer
 5 200 W. Thomas Street
 Suite 500
 6 Seattle, WA 98119
 7
 8 NOTICE RE CHANGES TO ORIGINAL DEPOSITION
 9
 10 CASE NAME: Montes vs. City of Yakima
 VENUE: USDC/EasternWA
 11 CAUSE NO.: CV-12-3108-TOR
 WITNESS: William S. Cooper
 12 TAKEN: May 8, 2013
 13
 14
 15 Enclosed is a copy of the Signature Page and
 Change Sheet, if any, to the above-referenced
 original deposition transcript.
 16
 17
 18
 19 /s/ Mary A. Whitney

 Mary A. Whitney, CCR
 20
 21
 22
 23
 24 cc: Abha Khanna, Esq.
 File
 25

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