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**Reporter's Verbatim Report of Proceedings, Tuesday, October 20,
2009, Volume XXIV [Pages 5258-5410] 07-2-02323-2**

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR KING COUNTY

3 _____

4 MATHEW and STEPHANIE McCLEARY,)
 on their own behalf and on)
 5 behalf of KELSEY and CARTER)
 McCLEARY, their two children in) SUPREME COURT OF WA
 6 Washington's public schools;) No. 84362-7
 ROBERT and PATTY VENEMA, on their)
 7 own behalf and on behalf of HALIE)
 and ROBBIE VENEMA, their two)
 8 children in Washington's)
 public schools; and NETWORK)
 9 FOR EXCELLENCE IN WASHINGTON)
 SCHOOLS ("NEWS"), a state-wide)
 10 coalition of community groups,)
 public school districts, and)
 11 education organizations,)
)
 12 Petitioners,) KING COUNTY CAUSE
) No. 07-2-02323-2 SEA
 13 vs.)
)
 14 STATE OF WASHINGTON,)
)
 15 Respondent.)

16 _____

17 REPORTER'S VERBATIM REPORT OF PROCEEDINGS

18 --oOo--

19 TUESDAY, OCTOBER 20, 2009
20 VOLUME XXIV

21 --oOo--

22 Heard before the Honorable John P. Erlick, at King
23 County Courthouse, 516 Third Avenue, Room W-1060,
24 Seattle, Washington.

25 --oOo--

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A P P E A R A N C E S :

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THOMAS F. AHEARNE, CHRISTOPHER G. EMCH, and
EDMUND W. ROBB, Attorneys at Law, appearing on behalf
of the Petitioners;

WILLIAM G. CLARK and CARRIE L. BASHAW, Assistant
Attorney Generals, appearing on behalf of the
Respondent.

--oOo--

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1 SEATTLE, WASHINGTON
2 TUESDAY, OCTOBER 20, 2009
3 MORNING SESSION - 9:00 A.M.

4 --oOo--

5 THE COURT: Good morning. Let's go on the
6 record, if we can. This is McCleary versus State of
7 Washington. This is King County cause number
8 07-2-02323-2, Seattle. And we are remain in the
9 respondent's case in chief.

10 So at this time I will turn it over to
11 Mr. Clark.

12 MR. CLARK: Your Honor, I think we have a
13 number of evidentiary matters today pertinent to
14 deposition testimony, and at least one matter that
15 Mr. Emch and I were just discussing. It was brought to
16 my attention this morning that relates to a couple of
17 exhibits that were not used with witnesses that the
18 Petitioners want to -- actually want to substitute into
19 the record and introduce into evidence.

20 THE COURT: All right. Very good.

21 Mr. Emch?

22 MR. EMCH: That's correct, Your Honor.

23 We're working through some deposition
24 transcript designations and some outstanding issues of
25 depositions today.

1 THE COURT: Okay. So there's not going to be
2 any testimony from the state.

3 MR. CLARK: No.

4 THE COURT: All right. But you want to offer
5 this evidence in your case in chief.

6 MR. CLARK: Yeah. I think before resting, it
7 would be better to just get all this stuff on the
8 record and then we'll rest.

9 THE COURT: All right.

10 MR. CLARK: And Bill will unrest and rest,
11 and then we'll go forward.

12 THE COURT: All right. Very good.

13 Mr. Clark.

14 MR. CLARK: Perhaps we could start, Mr. Emch
15 and I were talking about matters pertinent to the
16 expert witnesses, Dr. Armor and Dr. Hanushek.

17 THE COURT: Right.

18 MR. CLARK: And there's one that we worked
19 with Dr. Armor, I believe we've worked out a
20 substitution of some excerpted portions of the four
21 exhibits that were in his testimony.

22 It was a while ago, but there was an
23 issue, for example, about whether the NAEP chart he had
24 in his collection --

25 THE COURT: I recall.

1 MR. CLARK: -- should be in there or not.
2 Your Honor mentioned that one as one that, in Your
3 Honor's opinion, could come out or should come out.

4 THE COURT: Right.

5 MR. CLARK: And that is out, and there were
6 some others.

7 I think we've steered our way clear to
8 agree to redacted exhibits that we would like to
9 substitute for Dr. Armor. And then there is a slight
10 matter about Dr. Hanushek that remains contested that
11 we need to work out.

12 THE COURT: All right. With regard to the
13 NAEP scores, my recollection was that his testimony was
14 that he had not relied upon it in forming his opinion,
15 and that was the reason for the exclusion.

16 So, why don't you give me the substitute
17 numbers.

18 Theresa, how do you want to handle
19 this? Do you just want to do a straight across
20 substitution?

21 THE CLERK: A straight substitution is fine
22 as long as they haven't been admitted.

23 THE COURT: Pardon?

24 THE CLERK: As long as they haven't been
25 admitted. I don't think any --

1 MR. CLARK: They were reserved.

2 THE COURT: I did reserve. Okay. All right.

3 THE CLERK: Okay. That's fine.

4 MR. CLARK: So I'll give you the numbers
5 while Mr. Emch is just comparing them to the set we
6 gave him last week on these.

7 THE COURT: Okay.

8 MR. CLARK: They are Exhibits 1530, 1531,
9 1532, and 1533.

10 THE COURT: All right. Okay. And I do show
11 all of those -- all of those were reserved; is that
12 correct, Theresa?

13 THE CLERK: Three of them were.

14 THE COURT: None of them were admitted, were
15 they? I don't show them admitted.

16 THE CLERK: I have 1530 through 32 was
17 reserved, and 1533 I didn't have as offered.

18 THE COURT: Okay. All right.

19 THE CLERK: But none of them were admitted,
20 no.

21 THE COURT: Okay.

22 MR. EMCH: Your Honor, one of the substituted
23 exhibits look okay pursuant to the compromise counsel
24 and I worked out.

25 THE COURT: All right. Very good.

1 MR. CLARK: Should I also then offer 1533
2 since we don't have a record of it?

3 THE COURT: Yes.

4 MR. CLARK: We would offer 1533.

5 THE COURT: All right.

6 MR. CLARK: And we've redacted that one as
7 well. And I have a set to provide to the court. Oh,
8 that's what happened to that set. And I have one to
9 give to the court as well.

10 THE COURT: All right.

11 (An off-the-record discussion was had between
12 Mr. Clark and Mr. Emch.)

13 THE COURT: At this time, substitute 1530,
14 1531, 1532, and 1533 are all offered.

15 Mr. Emch?

16 MR. EMCH: That's correct, Your Honor.
17 Petitioners have no objection to substituted 1530,
18 1531, 1532, and 1533.

19 THE COURT: All right. Those are all
20 admitted then.

21 EXHIBITS ADMITTED

22 THE COURT: And, Theresa, I'm going to put
23 these aside for now.

24 THE CLERK: Okay. I can put them in
25 afterwards.

1 THE COURT: Wonderful. Thank you.

2 All right, counsel.

3 MR. CLARK: Next, Your Honor, we have an
4 issue about two slides in Dr. Hanushek's Exhibit 1536.

5 THE COURT: Okay.

6 MR. CLARK: And Mr. Emch has proposed we
7 remove two pages relative to SAT scores.

8 THE COURT: All right.

9 MR. CLARK: And I'll let him bring his
10 motion, I guess, or remarks -- we haven't agreed on
11 it -- then I'll respond to it.

12 THE COURT: Okay.

13 MR. EMCH: Well, Your Honor, just to recap,
14 we had objected to Dr. Hanushek's exhibit. This was
15 something that came in after his deposition and we had
16 an untimeliness and prejudice objection, and we had
17 some discussion about that.

18 We continue to believe the entire thing
19 should be excluded but I'm trying to work out a
20 compromise with counsel. I had proposed taking out --
21 this is Trial Exhibit 1536, page six and seven.

22 THE COURT: Okay.

23 MR. EMCH: These are two charts. And, Your
24 Honor, I could give you the volume number.

25 THE COURT: I have it right in front of me,

1 counsel.

2 MR. EMCH: Okay. And so pages six and
3 seven -- I'm sorry, seven and eight rather, Your Honor,
4 refer to the SAT scores. And at trial, I had asked
5 Dr. Hanushek to look at those two pages, and I asked
6 whether SAT scores had been discussed in the
7 deposition. I'll read the question, Your Honor.

8 "Question: Dr. Hanushek, let's look at
9 page seven and eight, the SAT scores. SAT scores
10 weren't discussed in your deposition. You didn't bring
11 them up at all, did you, sir? Answer: I don't think I
12 introduced that topic."

13 And then looking at the deposition
14 transcript, I'd specifically asked him -- he had made a
15 broad disclosure about nationwide assessments, and I'd
16 asked at the end of my -- "Question: What nationwide
17 assessments are you referring to there? Answer: I'm
18 referring to the NAEP scores."

19 THE COURT: Yes.

20 MR. EMCH: This was on page 141 of his
21 deposition transcript.

22 And then I went on to ask questions
23 about that, and I concluded with, on page 145, "Any
24 other opinions with respect to sentence eight there on
25 that paragraph? Answer: No."

1 And so the combination between his trial
2 testimony saying no, I didn't discuss SAT scores in my
3 deposition and then looking at the deposition
4 transcript where I asked him specifically what
5 nationwide assessments they're referring to and he only
6 identified NAEP.

7 I think similar to the approach we took
8 with Dr. Armor, that these two pages, at a minimum,
9 should be excluded.

10 THE COURT: Well, with Dr. Armor, they were
11 specifically excluded because he had admitted on the
12 stand -- or acknowledged on the stand that he didn't
13 rely upon those NAEP scores at all in his analysis,
14 and, therefore, they essentially were hearsay. I think
15 that would probably be the proper characterization.

16 In other words, it didn't come in under
17 the 702 bootstrap.

18 Well, let me ask you this and then I'll
19 hear from Mr. Clark. And I don't remember, obviously,
20 off the top of my head, without looking at my notes,
21 did Dr. Hanushek rely on the SAT scores in his
22 testimony at the time of trial?

23 MR. EMCH: He referenced the SAT scores and
24 described these two slides, but I don't know if he
25 specifically said I relied on these. But these two

1 slides were briefly referenced in the testimony.

2 THE COURT: So it's a different objection
3 then with Dr. Armor, and the objection here is more of
4 a -- I guess it would be a disclosure or discovery
5 violation.

6 All right. Thank you.

7 Mr. Clark.

8 MR. CLARK: Your Honor, I don't have a lot to
9 say about this, in part, because this matter was first
10 brought to our attention about 11 o'clock last night in
11 an e-mail, and so I, really, was scrambling this
12 morning, when I came in and found it, to get on top of
13 things.

14 The one thing I wasn't able to review in
15 any great detail was the trial transcript that we've
16 been getting on testimony. I can tell you, I was here
17 during Dr. Hanushek's deposition, and the entire
18 PowerPoint, including these two pages, was presented as
19 graphic depictions of what he was relying on in
20 expressing his opinion. And the opinion we're talking
21 about here that was disclosed is that related to WASL
22 results compared to national assessments.

23 And so, without belaboring that, here's
24 my reaction. The questioning in the deposition starts
25 out with, "let's look at the next sentence back on an

1 exhibit that discloses Dr. Hanushek's opinion -- or one
2 of his opinions." And Mr. Emch, in the e-mail, quoted
3 it, "Finally, Dr. Hanushek will testify as to how the
4 Washington Assessment of Student Learning, WASL,
5 Assessment Program compares to our nationwide
6 assessments of student achievement and whether there's
7 a correlation of test scores in student funding." He
8 then asked Dr. Hanushek, "What nationwide assessments
9 are you referring to there?" And he confirms, "I'm
10 referring to the NAEP scores." Then four pages later,
11 Mr. Emch asked, "Are there other opinions with respect
12 to sentence eight there on that paragraph that
13 Dr. Hanushek is going to express?" And he says, "No."

14 The SAT scores, Your Honor, aren't
15 really an opinion, they're a fact.

16 And I don't know if you have the two
17 charts in front of you or not, I can --

18 THE COURT: I do.

19 MR. CLARK: Describe them. What they do is
20 they depict Washington standing with regard to the SAT
21 reading at mathematic scores.

22 The fact of Washington student
23 performance not only was testified to by Dr. Hanushek,
24 but it was testified to by other witnesses. I seem to
25 recall Dr. Melmer later in the case wrapped them into

1 his testimony about Washington performance.

2 So, again, it's a fact versus an
3 opinion, and that's one distinction I wanted to point
4 out in the questioning that was asked. And the
5 testimony that Mr. Emch quotes from trial, it does
6 confirm that SAT scores weren't discussed in your
7 deposition and it says, "You, the witness, didn't bring
8 them up." Dr. Hanushek confirms, "I didn't introduce
9 that topic." But, again, Dr. Hanushek isn't asking the
10 questions in the deposition. I did --

11 THE COURT: Well, Mr. Emch, specifically
12 asked, are there other national test scores -- or I
13 can't recall the exact language, but, assessments that
14 you're relying on, and he didn't disclose --

15 MR. CLARK: He didn't say -- I'm sorry to
16 interrupt, Your Honor.

17 THE COURT: Go ahead.

18 MR. CLARK: What I want to say was, no, he
19 wasn't -- the question was asked, are there any other
20 opinions. He wasn't asked if there were any other
21 assessments.

22 But, be that as it may, okay? That's,
23 you know, I'm not urging that as a sole basis. The
24 real basis that I'm concerned about this is that I
25 checked my notes. I didn't get a chance to look at the

1 transcript of your ruling taking these documents --
2 reserving the ruling, rather, on these documents. And
3 the touchstone that I heard in your remarks and I wrote
4 down was that they had to show some prejudice. And
5 Dr. Hanushek was cross-examined on this point for more
6 than the question and answer that Mr. Emch drew my
7 attention to.

8 Again, I wasn't able to confirm this,
9 but I'd be willing to bet a medium wager that he did
10 more in the cross-examination at trial than asked of
11 Dr. Hanushek on this topic -- or this specific
12 assessment was discussed in his deposition.

13 These are very straight-forward graphs
14 of SAT scores, and I believe he had the opportunity and
15 took the opportunity to cross-examine the witness at
16 trial, so I don't think there's any prejudice here.

17 And, again, if this wasn't objected to
18 on any other grounds other than nondisclosure and in
19 the remarks that Your Honor made, during the course of
20 the trial about nondisclosure, you reminded us that
21 exclusion of evidence is an extreme remedy and last
22 resort and that prejudice is a critical factor in the
23 determination. And I just don't see where there's been
24 any prejudice, given the opportunity to cross-examine
25 the witness at trial about these documents regardless

1 of what was said in the deposition. And I, frankly,
2 didn't have time this morning to do a thorough review
3 of that either.

4 So, we would argue that, pursuant to
5 your ruling that took this matter under advisement,
6 that reserved ruling on the documents, that if
7 prejudice is the key to this thing, there hasn't been a
8 demonstration of it, and, in fact, there wasn't any
9 prejudice.

10 MR. EMCH: Your Honor, can I briefly
11 respond? This, I think, issue is symptomatic of a
12 larger concern we had, which was Dr. Hanushek, for
13 example, was a witness under wraps with the state two
14 years ago, and if we'd actually disclosed these things
15 in advance of the deposition, we would have had an
16 opportunity to go through them and we wouldn't be here
17 today on these issues.

18 In contrast to Dr. Costrell, who was one
19 of the first experts, he actually disclosed his
20 PowerPoint, similar to these types of documents, which
21 I carefully went through each slide. And then,
22 following that, the subsequent experts, you know,
23 didn't have such material, they didn't give it to me
24 and so we didn't have that opportunity.

25 So I think that's the ongoing

1 frustration. I don't mean to belabor this point, but,
2 I don't think the SAT scores were referenced either in
3 the deposition or in disclosure, and that would be my
4 position on it.

5 MR. CLARK: All I can say in one sentence to
6 that is, they knew Dr. Hanushek was an expert in this
7 case within months after they filed their complaint
8 because we supplied an affidavit from him on summary
9 judgment. So, there's been no tardy disclosure of
10 Dr. Hanushek or his opinions in this case at all, Your
11 Honor. And, again, the key is prejudice.

12 THE COURT: All right. Well, with regard to
13 Exhibit 1536 slides Bates 7 and 8, I'm not inclined to
14 exclude them, if for nothing more than -- I don't think
15 that they can be very prejudicial because they appear
16 to the court to simply be illustrative of the broader
17 opinions of not just Dr. Hanushek but of Dr. Melmer and
18 other witnesses, one of whose points was that one must
19 take Washington's WASL results, and in particular the
20 math results, with a certain perspective. And that
21 perspective is that low results does not necessarily
22 mean -- and, again, I'm stating their position, not
23 necessarily the court's conclusions. Their position
24 being that low results does not necessarily mean that
25 the students are not learning math, and that was what

1 Dr. Hanushek testified to, but more, Dr. Melmer
2 testified to saying that there was this -- I forget the
3 word. I want to say dis-sync or something. Out of
4 alignment. It was out of alignment in that the NAEP
5 scores, and I think he particularly relied upon the
6 NAEP scores, but I think the SAT scores are consistent
7 with the NAEP scores, which is that Washington scores
8 are fairly highly on national scores, including math,
9 even though students are performing poorly on the
10 WASL.

11 And there's a whole bunch of
12 explanations that were provided that WASL's not
13 reflective of what the students are being taught or the
14 students aren't being taught what's on the WASL but,
15 either way, there's a dis-synchronization between the
16 WASL and what's being taught, but what's being taught
17 is showing up on the national scores as reasonable
18 performance.

19 Now, that, of course, begs the broader
20 issue of what the petitioners' claims are here, that no
21 matter how well Washington students are performing or
22 not performing, is the state meeting its constitutional
23 mandate with regard to Basic Education. I regard those
24 as two very different issues. They're related but
25 they're also different issues. We'll discuss that

1 tomorrow.

2 The motion to exclude 1536, 7, and 8 are
3 denied. And 1536 -- I suppose that that means you're
4 offering 1536?

5 MR. CLARK: We're offering.

6 THE COURT: Other than that, any objections?

7 MR. EMCH: No additional objections beyond
8 that, Your Honor.

9 THE COURT: Okay. 1536 is admitted.

10 EXHIBIT ADMITTED

11 MR. EMCH: Your Honor, we're taking a few
12 things out of order so Mr. Clark can be done with his
13 piece.

14 THE COURT: Certainly.

15 MR. EMCH: Petitioners have one -- well, we
16 have several documents to offer today, but, in
17 particular, we wanted to offer Trial Exhibit 613,
18 that's 613, which would be in petitioners' trial
19 exhibit volume 44.

20 THE COURT: All right. Let me just see if
21 there's an objection, and then I'll look at it if there
22 is.

23 MR. CLARK: Well --

24 (An off-the-record discussion was had between
25 counsel.)

1 MR. EMCH: Your Honor, I need to provide a
2 little bit more background.

3 So 613 is an interrogatory response from
4 the state, and in response to the petitioners'
5 interrogatory request for production, and it was
6 certified by Mr. Clark.

7 And, in that response, it referenced
8 some documents that were produced by the state, with
9 Bates numbers WA00000462 through WA00000467.
10 Washington 462 through 467.

11 THE COURT: Yes.

12 MR. EMCH: I'm looking on page two of Trial
13 Exhibit 613, at line 15. And so, petitioners would
14 like to offer this interrogatory and RFP response by
15 the state into evidence along with the corresponding
16 documents that are incorporated by reference. They are
17 462 through 467.

18 When we were putting together the trial
19 exhibits, the petitioners -- we had thought we had
20 attached this Trial Exhibit 614, the documents that
21 were referenced in 613, the document range I just
22 mentioned, inadvertently we made a mistake and we
23 included the wrong document. And so what I discussed
24 with Mr. Clark this morning, if we could, was we
25 printed out these documents, which are produced by the

1 state and begin with the same Bates numbers, 462
2 through 467. The footer at the bottom says ROBB5 and
3 the first one RFP. That was put on by the state
4 indicating this was responsive to a document identified
5 and incorporated by reference in this exhibit.

6 So we just wanted to add -- either add
7 this to the walk or substitute for this for 614. These
8 documents that were referenced. I've been informed
9 there's actually two -- I'm sorry, Your Honor. The
10 same issue, also documents referenced in that Exhibit
11 613 would be WA719 through 720. And --

12 THE COURT: That's in the supplemental answer
13 on the next page?

14 MR. EMCH: Correct.

15 THE COURT: Page three?

16 MR. EMCH: Uh-huh.

17 THE COURT: So if I understand what you want
18 to do, is you want to offer -- you want to substitute
19 WA462 through 467, inclusive, and 719 and 720 for
20 Exhibit 614 and then offer 613 and 614.

21 MR. EMCH: Correct, Your Honor.

22 THE COURT: Okay.

23 Mr. Clark.

24 MR. CLARK: Okay, Your Honor. Again, I
25 learned about this only a few minutes before we got

1 underway this morning.

2 So, my understanding is these documents,
3 neither the -- neither 613 nor the incorrect 614, nor
4 the correct 614 were offered or discussed with any
5 witnesses in the case. Standing alone, they are
6 unauthenticated. They are hearsay. And they -- I
7 think we also had a relevance objection as well, Your
8 Honor.

9 And there are a number of documents in
10 this case, Your Honor, that could be offered but don't
11 have sponsoring witnesses. And I was under the
12 impression that we were not encouraged to go and locate
13 those and then just basically offer to dump them into
14 the record and make them part as standalone documents.
15 And, if my impression was correct, then that's what
16 these documents constitute.

17 I understand this is an interrogatory
18 answer and that we produced a disk which apparently --
19 which is the last page of Exhibit 613, and, according
20 to what the interrogatory answer says, the documents
21 were provided on the disk.

22 614 consists, though, of two documents.
23 One is the supplemental production with the date of
24 Exhibit 613 on it, and this was produced, I think, in
25 response to earlier interrogatories as to which 613 is

1 a supplemental response. So, I'm not even, you know,
2 sure that this is being offered in connection with the
3 correct exhibit.

4 What these documents are are lists of
5 K-12 finance studies that were conducted by the State
6 of Washington. They aren't the studies themselves.
7 They're just a grid displaying information of it --
8 information about them. And, again, we would object on
9 the grounds that there's really no sponsoring witnesses
10 for these documents, and, therefore, there's really no
11 predicate for their admission, and if we're going to be
12 allowed to offer documents without a sponsoring
13 witness, then we would have canvassed ours to see if
14 there were ones we particularly wanted to get in.

15 These could have been the subject matter
16 of examination with any state witness that took the
17 stand, either from OFM, which I think produced the
18 document on behalf of the state, to OSPI and others,
19 and they just didn't bring it up. And I suspect that
20 they want to, for purposes of having these particular
21 grids in the record, and then discover, you know, of
22 late, that they had designated as 614 the wrong
23 attachment.

24 So, we have objections for the record to
25 make to them, Your Honor, that perhaps could have been

1 resolved if I had more time, but I didn't, so I
2 apologize for that. And we object to the admission of
3 these documents, both 613 and the corrected 614.

4 THE COURT: Could I have your specific
5 objections, please, for the record? One is no
6 sponsoring witness.

7 MR. CLARK: It had no sponsoring witness,
8 therefore, Your Honor, there's no foundation laid for
9 its authenticity. There's no foundation laid either
10 for its admissibility, and had there been a witness who
11 identified them, then fine, and I acknowledge there are
12 interrogatory answers with two attachments that, from
13 the text of it, appear to relate to.

14 But, again, I think it's unfair at this
15 point to assemble any documents for special admission
16 when a witness hasn't testified on it. We certainly
17 did not avail ourselves of the same opportunity. And I
18 don't know if that's an evidentiary objection or a
19 nondisclosure one, but I wanted to put it on the record
20 as well.

21 MR. EMCH: Your Honor, could I briefly
22 respond?

23 THE COURT: Yes.

24 MR. EMCH: First of all, in the Joint
25 Statement of Evidence with respect to 613 and 614,

1 there was no specific foundational or hearsay
2 objections listed, so I believe that would limit
3 Mr. Clark to a relevance objection.

4 With respect to his desire for a
5 sponsoring witness, Mr. Clark himself signed the
6 certification, and so I suppose if we needed one,
7 Mr. Clark could take the stand and verify that this is
8 his certification.

9 THE COURT: Is he the only one who signed
10 it? There must have been someone from the state who
11 signed it.

12 MR. CLARK: Ultimately, there was, Your
13 Honor.

14 THE COURT: Yes.

15 MR. CLARK: I certified that these are
16 answers on 26G. I didn't --

17 THE COURT: Right.

18 MR. CLARK: -- say anything about the
19 document.

20 THE COURT: No. No. No. There had to be
21 somebody from the state who authenticated these and
22 said that they're true and correct answers to
23 interrogatories and responses of documents.

24 MR. EMCH: Your Honor, I'm not seeing that in
25 front of my, but that would make some sense.

1 THE COURT: Well, there should be because --
2 but, honestly, Mr. Clark should not be -- he can sign
3 them under 26G but he has no personal knowledge of the
4 documents themselves, so there -- was there somebody
5 from the state who signed these?

6 MS. BASHAW: I believe we have a verification
7 page there for all of these. There was some discussion
8 amongst the parties about catching up as we got closer
9 to trial. So I know the subject matter was raised, and
10 I believed that we all exchanged verification pages.

11 But, Your Honor's correct. Even --
12 well --

13 THE COURT: I mean, assuming that an
14 authorized representative of the state produced these,
15 aren't they admissions in response to -- I mean, these
16 are state documents.

17 MR. CLARK: They're not admissions, Your
18 Honor. They're an interrogatory response asking us to
19 produce documents. And I believe the standard
20 verification for a witness says that they've read the
21 foregoing, and presumably that means examined, the
22 contents and certify that they are true and correct to
23 the best of their knowledge --

24 THE COURT: Right.

25 MR. CLARK: -- and information and belief.

1 as documents that come into substantive evidence, but
2 there's no testimony about them, including any
3 explanatory testimony or qualifying testimony that we
4 might have elicited from any witness including a
5 state's witness.

6 The other point I'd like to make, Your
7 Honor, is that 613, just the interrogatory answers and
8 document with the disk photocopied and attached to it,
9 is one issue. 614 is quite another. These documents
10 weren't offered as exhibits, and I understand counsel's
11 explanation is that it was a mistake. There's another
12 document that's offered as 614 and they want to
13 substitute this.

14 So, these were not even part of the
15 record before. We had no idea these were even going be
16 in the case.

17 THE COURT: All right. Would you give that
18 to the clerk, please, so I can --

19 MR. CLARK: Yes. And you can look at current
20 614 and see that they're entirely different documents.

21 MR. EMCH: Your Honor, I don't believe you
22 have both matrices there.

23 THE COURT: I'm sorry?

24 MR. EMCH: I don't believe counsel provided
25 you with both matrices. There's two of them. One

1 is --

2 THE COURT: I do have both matrices. Thank
3 you.

4 MR. CLARK: Do you need the old 614s to --

5 THE COURT: No. I have that. Thank you.

6 MR. EMCH: I would just point out that, as
7 Mr. Clark noted, these aren't the actual studies
8 themselves. This is just a list of information
9 provided by the state in response to an interrogatory
10 and RFP. So in terms of prejudice, there's no
11 prejudice by including this list which was specifically
12 referenced in the interrogatory response.

13 MR. CLARK: I'll --

14 THE COURT: Did you -- wait. What was the
15 response to 613 in either 904 or Joint Statement?

16 MR. EMCH: Your Honor, there's no objection
17 listed in either -- for either 613 or 614.

18 THE COURT: Under 904 or Joint Statement?

19 MR. EMCH: I'm looking at the Joint Statement
20 of Evidence. I believe the same is for Evidence Rule
21 904 disclosures.

22 MR. CLARK: Our log indicates that a
23 relevance objection was posed to both on the trial list
24 and the Joint Statement of Evidence.

25 THE COURT: It doesn't matter whether it was

1 or wasn't. I think relevance is reserved.

2 MR. CLARK: There's one other point I'd like
3 to make and it goes directly to prejudice, Your Honor.

4 They rested their case, and it was
5 subject to the proviso that deposition testimony and
6 exhibits would be resolved. This is not an issue about
7 deposition testimony.

8 THE COURT: I liberally allow -- well, I
9 guess there is some prejudice in that respect. If
10 they'd offered this during their case in chief --

11 MR. CLARK: We could have brought in a
12 witness to explain it, Your Honor.

13 THE COURT: This is an interesting document,
14 though.

15 Well, I'm not sure what the relevance of
16 this document is other than to show that there's been a
17 gazillion studies which, to me, is cumulative of what
18 the testimony's been. I'm well aware of the large
19 number of studies that have been conducted on the
20 finance issue as well as the other issues.

21 Mr. Emch.

22 MR. EMCH: Well, Your Honor, that would be
23 the relevance. It would be the long history of the
24 state's inaction with respect to these finance issues,
25 and that's reflected in these two documents, 462

1 through 467, and Bates numbers WA719 through 720,
2 which, again, we believe could just be attached to --
3 either substituted for Trial Exhibit 614 or attached to
4 existing Trial Exhibit 613.

5 THE COURT: All right. This cuts both ways,
6 by the way, because this argument is for the state to
7 say, yet another cost study or whatever.

8 But, you know, I'm sure there's some
9 cases out there or something out there that I can't get
10 my hands on right now that talks about use of
11 discovery, and in particular interrogatories, as
12 substantive evidence, and I need to look at those
13 cases.

14 That said, I am a little bit concerned
15 about this coming up at this stage, Mr. Emch, only for
16 the reason that the state could -- I mean, I'm honestly
17 not sure what weight to give this evidence or what the
18 relevance, other than to say there's a whole bunch of
19 studies, and, of course, we probably were looking at a
20 half-day testimony of some state witness explaining
21 what each of these studies was, and I'm not inclined to
22 admit these right now, but if you would like to look at
23 the case law, or I will, if we have an opportunity to
24 look at the case law with respect to the admissibility
25 of discovery responses, I'd be happy to consider it.

1 But, just on the relevance issue as well
2 as the prejudice issue, I would be slightly inclined
3 not to admit 613 and 614.

4 Okay. The next matter. I guess we
5 probably ought to take a recess. I realize that we
6 just got on the record, but we probably ought to stick
7 with our normal recesses, particularly since we had
8 morning matters.

9 How much more do you have? Is it a bit?

10 MS. BASHAW: Yes, Your Honor.

11 MR. CLARK: I'm done, Your Honor, but I
12 suspect that --

13 MR. EMCH: Your Honor, I believe we have
14 something in the nature of 21 deposition transcripts to
15 submit --

16 THE COURT: Okay.

17 MR. EMCH: -- so it will be some time I would
18 imagine.

19 THE COURT: All right. Let me just ask this
20 logistically. We've got the depositions that are going
21 to be offered, and then -- are there any other
22 freestanding exhibits? The state have any?
23 Petitioners have any?

24 MS. BASHAW: Your Honor, we just have some
25 things that were, according to our notes, that we

1 believed had been admitted that aren't showing up on
2 the admission logs, so some housekeeping --

3 THE COURT: All right.

4 MS. BASHAW: -- issues relating to previous
5 exhibits.

6 THE COURT: All right. So there's some
7 exhibits. I don't want to do these now. I just want
8 to sort of understand what we have. We have some state
9 exhibits that want to offer, and then, Mr. Emch,
10 Mr. Robb?

11 MR. EMCH: We do have some additional
12 exhibits to go through and some substitutions of some
13 individual kid report cards that have redacted.

14 THE COURT: Okay.

15 MR. EMCH: Some housekeeping.

16 THE COURT: That's just housekeeping. That's
17 just for purposes of protective orders.

18 All right. And then the 21
19 depositions. And then what else do we have?

20 MS. BASHAW: Then we have to officially --

21 THE COURT: And you're going to rest.

22 MS. BASHAW: -- rest. Yes.

23 THE COURT: And is the state calling any
24 rebuttal witnesses?

25 MR. CLARK: You mean the petitioners?

1 THE COURT: The petitioners?

2 MR. ROBB: No, Your Honor, we're not.

3 THE COURT: Thank you.

4 MR. EMCH: In light of our 12 minutes, we
5 will not be calling any witnesses.

6 THE COURT: All right. Well, the way that
7 you and Mr. Ahearne talked, Mr. Emch, you could
8 probably get quite a bit of testimony in there.

9 MR. EMCH: Okay. Well, we'll have Mr. Robb
10 talk instead.

11 THE COURT: You're fast talkers.

12 MS. BASHAW: With Dr. Melmer, Mr. Ahearne,
13 and Mr. Emch, we'd get through.

14 THE COURT: That's right. Dr. Melmer was
15 quite a fast talker.

16 All right. Let's take a morning recess
17 at this time, and then we'll continue with the offer of
18 evidence.

19 MS. BASHAW: Great.

20 THE COURT: All right. Court will be at
21 recess.

22 (Whereupon a recess was taken.)

23 THE COURT: Please be seated.

24 Ms. Bashaw.

25 MS. BASHAW: Yes. Your Honor, just some

1 housekeeping things first.

2 Back when the parties were offering
3 former Superintendent Terry Bergeson's deposition
4 designations, our records, and I think petitioners'
5 records show, as well, that exhibits -- Trial Exhibits
6 5 and 6 were offered and admitted. But the log from
7 the court does not identify them as being admitted.

8 THE COURT: All right. There's no objection
9 to 5 or 6?

10 MR. EMCH: That's correct, Your Honor.

11 Your Honor, if I could just say one
12 thing. I understand you have one-speaker-at-a-time
13 rule. Ms. Bashaw is going to go through several
14 exhibits. Mr. Robb and I have sort of divided up the
15 witnesses, and so we'll just have the relevant
16 person --

17 THE COURT: That's fine.

18 MR. EMCH: Okay.

19 THE COURT: That's fine. All right.

20 5 and 6 or admitted.

21 EXHIBITS ADMITTED

22 MS. BASHAW: Thank you.

23 The next one, I believe, is Trial
24 Exhibit -- actually we could do 539. There was a
25 reference during Dr. Melmer's testimony to Trial

1 Exhibit 539 by Mr. Emch, but I believe both sides
2 forgot to offer it, and I don't think there's an
3 objection, so we would ask that 539 be offered and
4 admitted.

5 THE COURT: 539 is offered.

6 MR. EMCH: No objection, Your Honor.

7 THE COURT: 539 is admitted.

8 EXHIBIT ADMITTED

9 MS. BASHAW: The next one is Trial Exhibits
10 1041 and 1042. These are the Collective Bargaining
11 Agreements for the Edmonds School District. Our
12 records show that they were offered and admitted but
13 they're not showing up in the court's papers.

14 THE COURT: I have them as admitted.

15 Would you double check that, 1041 and
16 1042?

17 THE CLERK: I don't have them as admitted,
18 Your Honor.

19 THE COURT: All right.

20 MR. EMCH: Petitioners also show them as
21 admitted, too.

22 THE COURT: All right. So, no objection?

23 MR. EMCH: No objection, Your Honor.

24 THE COURT: 1041 and 1042 are admitted.

25 EXHIBITS ADMITTED

1 MS. BASHAW: The next one is 1407. That was
2 an excerpt from the OFM databook that is multiple
3 hundreds of pages. I think there was a reservation
4 ruling on that so that Mr. Emch would go and look at
5 the link.

6 THE COURT: Yes.

7 MS. BASHAW: We did provide him with that
8 information, and so we would still suggest that we not
9 clutter up the court record. 1407 is the excerpt
10 relating to K-12 education, and we would offer it again
11 at this time.

12 MR. EMCH: No objection to 1407, Your Honor.

13 THE COURT: 1407 as admitted.

14 EXHIBIT ADMITTED

15 MS. BASHAW: Let's see. 1562.

16 MR. ROBB: Which one, Carrie?

17 MR. BASHAW: 1562. This was minutes that
18 Ms. Mary Jean Ryan spoke about from the Board of
19 Education.

20 The like exhibits, 1566, which were also
21 Board of Education minutes, and this related to the cut
22 score testimony that Ms. Ryan had provided, 1566 was
23 offered and admitted. There was no objection to it.
24 1562 is essentially the same thing but for a different
25 set of minutes, so we would re-offer 1562.

1 THE COURT: Do you officer 1562?

2 THE CLERK: I show 1566 as admitted on
3 September 22nd, and 1562 as reserved the same day.

4 THE COURT: Oh, 1562 was reserved?

5 THE CLERK: Yes.

6 THE COURT: 1562 is offered.

7 MR. EMCH: Your Honor, we have an objection
8 based on a failure to disclose. I'm trying to recall
9 what the reservation was on that particular document.

10 MR. ROBB: And 1566 is the one you're
11 comparing it to?

12 MS. BASHAW: Yeah. 1566 was the same thing.
13 I mean, it's different minutes, a different date, but
14 essentially was all part of the same testimony, and you
15 didn't object to 1566.

16 MR. EMCH: No objection to 1562, Your Honor.

17 THE COURT: 1562 as admitted.

18 EXHIBIT ADMITTED

19 MS. BASHAW: The last one was Exhibit 278.

20 Our records show this was testimony with
21 Mr. Aos, and this was an e-mail exchange, and our
22 records show that it was offered and admitted but it's
23 not showing up in the court record.

24 THE COURT: Any objection to 278?

25 MR. EMCH: Your Honor, we're taking a took.

1 We don't see that it was offered or admitted, so we're
2 taking a look at the document right now.

3 THE COURT: Okay. I don't have it as
4 offered.

5 MS. BASHAW: Okay. It looks like our records
6 were incorrect. I apologize, Your Honor.

7 MR. EMCH: So are you drawing?

8 MS. BASHAW: Yeah, we'll withdraw it.

9 THE COURT: 278 is withdrawn. Okay.

10 MS. BASHAW: And I think that takes care of
11 our housekeeping.

12 I don't know if the petitioners had
13 housekeeping before we get into deposition
14 designations.

15 MR. EMCH: We do have some housekeeping we
16 could handle.

17 First, Your Honor, are some exhibits
18 that were the McCleary and Venema children, their
19 transcripts. We've done some redactions. I've
20 provided a copy to counsel, so we'll get those.

21 So, Your Honor, if we could --

22 THE COURT: This is a substitute?

23 MR. EMCH: It's a substitution, Your Honor.

24 So we would move to substitute Trial
25 Exhibits 1008, 1009, and 1010 with the same document

1 put in redacted form to take off personally-identifying
2 information and the like.

3 THE COURT: All right. Was 1008 and 1009
4 previously admitted?

5 THE CLERK: Yes, Your Honor.

6 THE COURT: But not 1010, correct?

7 THE CLERK: 1010 was also admitted.

8 THE COURT: 1010 was admitted.

9 THE CLERK: Yes.

10 THE COURT: So these were previously
11 admitted.

12 THE CLERK: And it was noted subject to
13 protective order.

14 THE COURT: Okay. So you're just
15 substituting.

16 MR. EMCH: Correct, yes.

17 THE COURT: All right. Any objection to
18 substitution?

19 MS. BASHAW: No objection.

20 THE COURT: All right. 1008, 1009, and 1010
21 are substituted.

22 MR. EMCH: Your Honor, should I give you a
23 copy as well?

24 THE COURT: Yes, please.

25 THE CLERK: I'll substitute those for you,

1 Your Honor, during lunch.

2 THE COURT: Great. Thank you.

3 MR. EMCH: I believe Mr. Robb has a few more,
4 so I'll hand it over to him.

5 THE COURT: All right. Mr. Robb.

6 MR. ROBB: Just a couple things, Your Honor.

7 One was, we wanted to address the tabs
8 that have been put in the binders of pictures. I know
9 that there have been tabs but into them to separate
10 them out. We wanted to put that on the record, and
11 also to find out where the breaks are so that we can
12 conform our copies back at our office to what's
13 actually in the court record here now.

14 THE COURT: These are the pictures of
15 schools; is that correct?

16 MR. ROBB: Yes, Your Honor.

17 THE COURT: All right.

18 MS. BASHAW: Your Honor, we have provided
19 petitioners, several times, the breakdown of which
20 district pertains to which set of photographs. We're
21 happy to give them another one, but we have provided
22 that before.

23 THE COURT: All right. I'd suggest counsel
24 discuss this over the recess. And if there's still an
25 issue, bring it to the court. All right?

1 MR. ROBB: And then we had the issue of EALRs
2 that we were going through admitting. We have a few
3 more that -- I think a couple of them were addressed in
4 the Bergeson discussion, but we just had a few more to
5 offer there.

6 THE COURT: All right.

7 MR. ROBB: First, we also showed that 7 had
8 been admitted already as well.

9 THE COURT: Theresa, do you have 7 admitted?

10 THE CLERK: No.

11 THE COURT: I don't either.

12 MR. ROBB: We would offer 7.

13 THE COURT: Offer 7. Any objection to 7?

14 MS. BASHAW: One second. No objection.

15 THE COURT: 7 is admitted.

16 EXHIBIT ADMITTED

17 MR. ROBB: And we're also going to offer
18 Exhibits 8 through 13, which are the remainder of the
19 EALRs at the time of Dr. Bergeson's testimony.

20 THE COURT: Okay. 8 through 13. And then I
21 have 11 --

22 THE CLERK: 11 also already --

23 THE COURT: 11 is already admitted.

24 MR. ROBB: Okay.

25 THE COURT: So 7, 8, 9, 10, 12, and 13.

1 MS. BASHAW: I guess at this point I would
2 object. They're not -- I mean, I have to go back and
3 figure this out. They are not part of the pleadings
4 with Dr. Bergeson's deposition, that petitioners
5 identified as exhibits that they wanted. So now this
6 is a new thing that's been brought up as far as I can
7 tell.

8 MR. ROBB: No, this isn't new. We were
9 bringing this up in the testimony. We decided to wait
10 until later to do it. There's no objection to the
11 documents in the Joint Statement of Evidence or the ER
12 904.

13 MS. BASHAW: Well --

14 MR. ROBB: And so we've got some of the
15 individual EALRs admitted. We'd just like to fill out
16 the record and have them all.

17 MS. BASHAW: You're talking now about Trial
18 Exhibits --

19 MR. ROBB: That's right.

20 MS. BASHAW: 8 -- okay.

21 MR. ROBB: Trial exhibits.

22 MS. BASHAW: The pleadings of each side
23 wanted with Dr. Bergeson's deposition identified the
24 specific exhibits from her deposition that they wanted
25 in. And so these trial exhibits relate to her

1 deposition and those are not in petitioners' list on
2 her pleadings.

3 THE COURT: All right. So petitioners
4 provided the state with a list of the exhibits that
5 were deposition exhibits to Dr. Bergeson's deposition.

6 MS. BASHAW: Correct.

7 THE COURT: And were 6 and 7 on there?

8 MS. BASHAW: 6 -- 4 through 7 were ones that
9 we had offered. They had offered two in this range
10 of -- I'm sorry, what was your range you wanted?

11 MR. ROBB: Exhibits 8, 9, 10, 12, and 13.

12 MS. BASHAW: Yeah. And none of those trial
13 exhibit numbers are on their designation pleadings for
14 here deposition. That's already been done.

15 MR. ROBB: In the interest of time during the
16 trial we had discussed that we were going to do the
17 EALRs later. These are part of the EALRs. We've
18 admitted some of them including 11 that are not on
19 that. This is independent of the Bergeson deposition,
20 and just simply to fill out the record because we've
21 got some of them in. We just want to get them all in.

22 MS. BASHAW: Well, what I recall is that you
23 with Dr. Billings, after you were done with her
24 testimony, you were trying to admit a range of EALR
25 exhibits, like, around 140 to 148.

1 MR. ROBB: We're getting there next.

2 MS. BASHAW: Okay. You did not reserve when
3 you rested these particular documents that you're
4 referring to as to Dr. Bergeson.

5 MR. ROBB: We actually did --

6 MS. BASHAW: You did with Dr. Billings.

7 MR. ROBB: We actually did identify the fact
8 that we have EALRs that we wanted to put on the
9 record -- to get admitted as well, and that was one of
10 the things that we -- we can dig up that exchange if
11 you'd like, but that's one of the things that we
12 mentioned that we were going to be offering as part of
13 our case in chief, and in the interest of conserving
14 trial time for witness testimony, we put it off until
15 now.

16 There are no objections to these
17 documents in the Joint Statement of Evidence or in the
18 ER 904.

19 MS. BASHAW: Well, again, what I understood
20 was there was an outstanding issue relating to the ones
21 that they're trying to get in through Dr. Billings --

22 THE COURT: All right. Well --

23 MS. BASHAW: -- or during Dr. Billings.

24 THE COURT: -- there has been lots of
25 testimony throughout the trial with regard to the

1 EALRs. Obviously, they're very relevant, and given the
2 lack of an objection in either 904 or in the Joint
3 Statement, the court will admit 8, 9, 10, 12, and 13.

4 EXHIBITS ADMITTED

5 MR. ROBB: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 MR. ROBB: And continuing in the same vane,
8 the range of EALRs starting at Exhibit 144 that we were
9 discussing during Dr. Billing's testimony, we offered
10 some of them and some of them had been admitted. We'd
11 like to get the rest of them in the record at this
12 time.

13 There are no objections to Exhibits 147,
14 149, 150, 151, and 152. We would move for those to be
15 admitted. And we can discuss the remaining ones.

16 THE COURT: All right, counsel, is it 147,
17 149, 150, 151, and 152?

18 MR. ROBB: Yes, Your Honor.

19 THE COURT: All right. Counsel?

20 MS. BASHAW: Your Honor, we have been able to
21 trace those back to the ones that were with
22 Dr. Bergeson, so we're able to authenticate those. And
23 so we won't object to those, but we are objecting to a
24 couple of others.

25 THE COURT: All right. So, 147, 149, 150,

1 151, and 152 are all admitted.

2 EXHIBITS ADMITTED

3 MR. ROBB: And then with regard to the
4 remaining two EALRs, Exhibit 145, the educational
5 technology --

6 THE COURT: All right.

7 MR. ROBB: -- and 148, which is the EALR
8 components for social studies, we're going to offer
9 these exhibits as a draft.

10 I understand, from discussions in the
11 case with counsel, that that's acceptable to them.
12 These EALRs are the ones that were, at the time the
13 superintendent depositions that were taken, were on the
14 OSPI website, and we offer them as drafts to round out
15 what was in the record this time.

16 MS. BASHAW: And I, frankly, don't quite
17 understand what the purpose is of admitting something
18 that's a draft and is not relevant.

19 I mean, it's not a current, existing
20 document. They had no witness to try and -- I mean,
21 similar to the discussion we had earlier this morning
22 to Trial Exhibits 613 and 614, petitioners are just
23 offering this.

24 Dr. Billings did not testify about
25 them. She had no foundation or knowledge about them.

1 My client tells me that they are not current
2 documents. And I think it would be misleading in their
3 current form to be in the record.

4 THE COURT: Are they identified on their
5 website as drafts?

6 MS. BASHAW: No. I don't know when they
7 pulled them off, but our client tells us that they're
8 not existing documents that OSPI relies on for those
9 EALRs.

10 MR. ROBB: These are the EALRs that were
11 pulled off. They were in the April time frame when the
12 superintendent depositions were being taken.

13 144, which is already admitted, is the
14 description of the EALRs that the Web printout from the
15 time that all of these were taken off the website, and
16 144 was used during the superintendent depositions.

17 We're just providing the remaining
18 documents.

19 MS. BASHAW: Well, if you can show me which
20 superintendent's deposition that was used for. I mean,
21 I'm assuming then that when we get to that
22 superintendent's deposition, whichever version of that
23 dep exhibit that is a trial exhibit, you will be
24 offering those. But, standalone without any context to
25 testimony, there's not foundation for them and they're

1 just simply not accurate and reliable documents.

2 THE COURT: What was the objection to 145 and
3 148?

4 MR. ROBB: Lack of foundation, ER 602, ER 701
5 and hearsay is what's listed.

6 MS. BASHAW: I don't know where -- I mean,
7 they say they got them off the website. That's now
8 them testifying, which isn't appropriate either. So,
9 that's kind of what I was left with.

10 And, like I said, we tried to do some
11 homework with our client to know whether or not to
12 raise an objection, and that's what our client told us,
13 is that they do not rely on these.

14 THE COURT: All right. Well, without any
15 testimony to support 145 or 148 and with an objection
16 on authenticity and on hearsay, they really do lack
17 foundation. They were just pulled off the website.
18 The current state of the law is something pulled off a
19 website without authentication is not admissible.
20 These would not be admitted.

21 145, 148 are not admitted.

22 Mr. Robb?

23 MR. ROBB: Just trying to make sure my
24 record's right.

25 So, 147, 149, 150, 151, and 152 are

1 admitted; is that correct?

2 THE COURT: That's correct.

3 MR. ROBB: Okay.

4 That might conclude the housekeeping
5 matters that we have, Your Honor.

6 THE COURT: Okay.

7 MR. EMCH: Your Honor, one other housekeeping
8 matter for petitioners.

9 We were talking earlier about Exhibit
10 613 and 614.

11 THE COURT: Yes.

12 MR. EMCH: Could we just mark that for
13 identification so it's included in the binders, even if
14 it's not admitted, just so we have the reference to it?

15 THE COURT: Well --

16 THE CLERK: It was substituted.

17 THE COURT: It was substituted?

18 THE CLERK: 614.

19 THE COURT: Was substituted?

20 THE CLERK: Yes.

21 THE COURT: Well, it's in the record.

22 MR. EMCH: Okay. Thank you.

23 And, I guess, we formally offered it and
24 you made a ruling on it.

25 THE COURT: Yes, I have not admitted it.

1 MR. EMCH: Okay. Thank you.

2 THE COURT: All right. No other housekeeping
3 from petitioners?

4 MR. ROBB: I don't believe so, Your Honor.

5 MR. EMCH: I don't believe so.

6 THE COURT: Okay.

7 MS. BASHAW: Good.

8 THE COURT: So, Ms. Bashaw, back to you.

9 MS. BASHAW: Thank you. We're going to try
10 and go in alphabetical order.

11 So the respondents are offering the
12 deposition testimony of Louella L. Adams, who is from
13 the State Auditor's Office, along with several
14 exhibits.

15 THE COURT: All right. And, now, are those
16 exhibits trial exhibits?

17 MS. BASHAW: Yes, Your Honor. So these will
18 be trial exhibits. And the methodology that we've
19 discussed is that respondents would offer their list of
20 Trial Exhibits, petitioners will respond, then they'll
21 offer their list of petitioner trial exhibits and then
22 we will respond.

23 THE COURT: So are you waiting to offer the
24 trial exhibits then, or do you want to offer the trial
25 exhibit now?

1 MS. BASHAW: We're offering them now.

2 THE COURT: All right. And what are the
3 exhibits.

4 MS. BASHAW: So with Ms. Adams' deposition,
5 respondents offer 1062, 30, 111, 112, 113, 114, 115,
6 and 116.

7 THE COURT: Okay.

8 MR. EMCH: No objections to those documents,
9 Your Honor.

10 THE COURT: All right. 1062 is admitted, 30
11 is admitted, 111 is admitted, 112 is admitted, 113 is
12 admitted, 114 is admitted, 115 admitted, and 116 is
13 admitted.

14 EXHIBITS ADMITTED

15 MS. BASHAW: Did I say 1062?

16 THE COURT: 1062, yes.

17 MR. EMCH: And on the same pleading with
18 respect to the same witness, Your Honor, petitioners
19 are offering Trial Exhibit 117, 117.

20 THE COURT: All right. 117 is offered.

21 MS. BASHAW: And no objection.

22 THE COURT: 117 is admitted.

23 EXHIBIT ADMITTED

24 MR. EMCH: Again, Your Honor, with all these
25 deposition transcripts, we have a matrix on the front

1 which shows the relevant portions designated by both
2 parties.

3 THE COURT: And I also saw it highlighted on
4 that, so, thank you.

5 MS. BASHAW: I will say, as I'm thinking of
6 it, Your Honor, we had double checked the court's link
7 to see what all had been admitted, because we're trying
8 to remember which ones of these were already done --

9 THE COURT: Right.

10 MS. BASHAW: -- in the pleadings for these
11 depositions are not yet showing up as pleadings
12 admitted in the court file.

13 THE COURT: Okay.

14 THE CLERK: The deposition designations?

15 MS. BASHAW: In the pleadings.

16 THE CLERK: Marci has them.

17 MS. BASHAW: Okay.

18 THE CLERK: We're not filing them until after
19 the judge rules.

20 MS. BASHAW: Okay.

21 I believe the next one on the list is
22 Glenn Anderson. Do you guys want to go with that?

23 MR. EMCH: It's like bingo.

24 THE COURT: Is this Glenn Anderson?

25 MS. BASHAW: Yes.

1 THE COURT: All right. And trial exhibits
2 associated with Mr. Anderson?

3 MR. ROBB: Do you have any, Carrie?

4 MS. BASHAW: We don't have any.

5 MR. ROBB: Oh, okay.

6 MS. BASHAW: Sorry.

7 THE COURT: You have no trial exhibits.

8 MS. BASHAW: Correct.

9 THE COURT: All right.

10 MR. ROBB: So we have a few, Your Honor.

11 THE COURT: All right.

12 MR. ROBB: Starting with Exhibit 199.

13 THE COURT: Okay.

14 MR. ROBB: Petitioners would offer Exhibit
15 199.

16 THE COURT: 199 is offered.

17 MS. BASHAW: Respondents would object.

18 This is -- there's been no witness to
19 authenticate this. This appears to be a document
20 created by counsel for the Office of Program Research.
21 It would call for legal conclusions. It's hearsay.
22 And Ms. Fraser's interpretation of the law is not
23 relevant to the matters before the court.

24 MR. ROBB: Well, as for identifying the
25 document, Your Honor, it was identified in the

1 deposition testimony that we're submitting here today.

2 Representative Anderson has identified
3 the document as one that was presented during the
4 hearings of the Basic Education Finance Task Force to
5 him. He was asked questions about what his
6 understanding of -- that he gained in his role as a
7 Basic Education Finance Task Force member. The
8 document's not offered for the truth of matters
9 asserted therein but simply to understand what
10 representative Anderson took from the document and, in
11 his understanding, what was relevant, and the testimony
12 in the deposition transcript reflects this as such.

13 MS. BASHAW: Well, I don't think we object to
14 the testimony, so the testimony is in. That doesn't
15 make the document appropriate for admission. So the
16 testimony and whatever they may have wanted to get from
17 that would be in the record. This would be cumulative
18 and, still, it would be not relevant and calls for very
19 various legal conclusions.

20 THE COURT: Well, I would have two comments
21 about the substance of 199.

22 First of all, I would agree with
23 Ms. Bashaw that the court interprets whatever the legal
24 obligations are. The law is decided by the courts, not
25 by whoever counsel to -- the Office of Program

1 Research. Secondly, if it's being offered for the
2 truth of the matter asserted, it would be hearsay.

3 Notwithstanding those observations, it
4 strikes me, to the extent that this was provided to or
5 shown to a legislator, it is relevant for that
6 purpose.

7 So the court would admit it for that
8 limited purpose, which is that this was information
9 provided to a legislator, and it is admitted for that
10 purpose.

11 EXHIBIT ADMITTED

12 MR. ROBB: Thank you, Your Honor.

13 Petitioners would also offer Exhibit
14 200.

15 MS. BASHAW: State has no objection to 200.

16 THE COURT: 200 is admitted.

17 EXHIBIT ADMITTED

18 MR. ROBB: Petitioners would also offer Trial
19 Exhibit 201.

20 MS. BASHAW: We do have a hearsay and
21 relevancy objection to 201.

22 I believe that Mr. Anderson testified at
23 length in his deposition about his various opinions and
24 that evidence is in the record. But the document
25 itself is hearsay and, as hearsay, it wouldn't be

1 relevant.

2 MR. ROBB: Your Honor, we believe that the
3 document, which was posted on the legislative webpage
4 and is a statement drafted by Representative Glenn
5 Anderson. What's contained on that webpage is both a
6 public record and business record and that the --
7 pardon me, that it would qualify for those hearsay
8 exceptions.

9 THE COURT: The objection is probably not so
10 much necessarily the document as hearsay but the
11 content of the document is hearsay?

12 MS. BASHAW: That's right, Your Honor. I
13 mean, you know, Mr. Anderson doesn't have personal
14 knowledge himself, so whatever it is that he's
15 repeating in here is based on things that people told
16 him, and we've sort of gone through that line of
17 objection before in the case.

18 Again, his opinions are expressed in his
19 deposition, so there's not -- I mean, it would be
20 cumulative from that standpoint. But, as a document
21 itself, the information then would be hearsay, and
22 it --

23 MR. ROBB: Well --

24 THE COURT: Well, yes. I think that the
25 document itself -- first of all, I don't think the

1 document itself is hearsay because I think it would
2 come in for 30B6 as well as being authenticated by the
3 proponent, Representative Anderson.

4 As far as the content goes, you know,
5 the title of the document says Opinion, and I think it
6 can only be read in that context.

7 MR. ROBB: Well --

8 THE COURT: Go ahead.

9 MR. ROBB: May I?

10 THE COURT: You may.

11 MR. ROBB: One of our purposes in offering
12 the document, Your Honor, is to show the public
13 statements that this elected official who's been on
14 several education committees and who participated in,
15 most recently, the Basic Education Finance Task Force,
16 these are the statements that he's making publicly to
17 his constituents and we believe that's relevant.

18 THE COURT: Well, to the extent that that --
19 I mean, I'm not going to find the contents hearsay
20 because it's opinion evidence. It's his opinion. And
21 he may state some facts in here, but I wouldn't know
22 what weight to give as asserted by a legislator and
23 who's writing an opinion piece.

24 So, I will admit it for that purpose. I
25 will admit it as the opinion of a member of the

1 Legislature.

2 201 is admitted.

3 EXHIBIT ADMITTED

4 MR. ROBB: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. ROBB: Petitioner would next offer Trial
7 Exhibit 202.

8 THE COURT: It looks to me like the same
9 analysis would apply.

10 MS. BASHAW: Correct, Your Honor. Same
11 objection, reply, and --

12 THE COURT: Except this one is identified as
13 a Statement rather than an Opinion.

14 MS. BASHAW: I wonder what the difference is.

15 THE COURT: 202 is admitted.

16 EXHIBIT ADMITTED

17 MR. ROBB: Petitioners would next offer Trial
18 Exhibit 203, Your Honor.

19 MS. BASHAW: And my notes -- I'm not sure
20 what that is, but my notes indicate no objection to
21 203.

22 THE COURT: It's the Washington Learns
23 interim report.

24 MS. BASHAW: Oh, yeah. No objection, Your
25 Honor.

1 THE COURT: 203 as admitted.

2 EXHIBIT ADMITTED

3 MR. ROBB: Okay. Back in familiar territory
4 with Trial Exhibit 204, which petitioners would also
5 offer.

6 THE COURT: Another opinion from
7 Representative Anderson.

8 MS. BASHAW: And the same objection, Your
9 Honor.

10 THE COURT: The objection is overruled.

11 204 is admitted.

12 EXHIBIT ADMITTED

13 MR. ROBB: And the final exhibit with this
14 deposition, Your Honor, is Trial Exhibit 208, which
15 petitioners would offer as well.

16 MS. BASHAW: The state's objections to 208
17 are similar, except that this now is some sort of
18 Seattle PI created document. So it lacks
19 authenticity. But it also would be hearsay, and
20 whatever it is that Mr. Anderson is, as a guest
21 columnist, purportedly saying in here is based on what
22 other people have told him, and I believe it's being
23 offered for the truth of the matters asserted, and we
24 would object.

25 THE COURT: Mr. Robb, was this discussed in

1 his deposition?

2 MR. ROBB: Yes. Yes, Your Honor.

3 THE COURT: Did he identify it?

4 MR. ROBB: Yes, Your Honor.

5 THE COURT: All right.

6 MR. ROBB: And we would offer it for the same
7 purpose as the previous exhibits we've been discussing.

8 THE COURT: Well, if it's been identified as
9 a piece that Mr. Anderson wrote in the PI as a guest
10 columnist, then the court will regard it as an opinion
11 piece. It is a statement of true facts.

12 The court will admit 208 for that
13 purpose.

14 EXHIBIT ADMITTED

15 MR. ROBB: Thank you, Your Honor.

16 And I believe that takes care of
17 Representative Anderson.

18 Did I hear anything else?

19 MS. BASHAW: No.

20 MR. ROBB: As we finish these, should we hand
21 them up -- the deposition transcripts up?

22 THE COURT: Please.

23 MR. ROBB: Your Honor, I might need that
24 back. Re-shift.

25 MR. EMCH: Your Honor, I believe that was

1 petitioners. I think Ms. Bashaw has the court copy.

2 MS. BASHAW: No.

3 MR. ROBB: Okay. I was right the first
4 time. My apologies, Your Honor.

5 MR. EMCH: That was my mistake.

6 THE COURT: This is the one that's marked up.

7 MR. EMCH: Yes. That's yours to keep.

8 THE COURT: Thank you. All right.

9 MS. BASHAW: The next one on my alphabet list
10 is Ms. Bria from Battle Ground.

11 MR. EMCH: Okay. So, Your Honor, petitioners
12 are offering Ms. Bria's deposition transcript, and
13 Ms. Bria is the Superintendent of Battle Ground School
14 District.

15 THE COURT: All right. And are there trial
16 exhibits associated with Ms. Bria's testimony?

17 MR. EMCH: Yes, Your Honor.

18 So petitioners would offer, let's see,
19 Trial Exhibit 171.

20 MS. BASHAW: And the state is objecting to
21 Exhibit 171. These were just -- there was no
22 foundation laid for these particular photographs. They
23 were photographs that were simply handed to me during
24 the deposition by the superintendent. Other than
25 having them marked, I did not lay any foundation with

1 this witness. There's no testimony as to the time
2 frame of these particular photographs, what they
3 specifically relate to. Counsel for the petitioners
4 also did not ask any questions about these particular
5 photographs.

6 And so we would object both on
7 authenticity, lack of foundation, and relevance.

8 THE COURT: Thank you, counsel.

9 MR. EMCH: Your Honor, these were photographs
10 that were collected in response to the state's own
11 subpoena. The state noted the deposition of
12 Superintendent Bria and then marked these as an
13 exhibit. And they're self-explanatory, and they're
14 referred to as photos of school's needed repairs.

15 The condition of the schools is relevant
16 to the issues in this case, and they were -- they were
17 identified and marked as an exhibit in the deposition.

18 THE COURT: Well, what was there
19 identification in Ms. Bria's deposition?

20 MS. BASHAW: That was it. That was the
21 extent of it.

22 THE COURT: Tell me, did she -- do we know
23 that these are Battle Ground schools?

24 MR. EMCH: Yes. That was my understanding,
25 Your Honor.

1 THE COURT: Well --

2 MR. EMCH: I can read you the relevant
3 portion of the transcript.

4 THE COURT: Please. Do I have the
5 transcript? No -- yes, I do. I'm sorry.

6 MR. EMCH: My apologies. I could --

7 Okay. So, starting on page 124, line 22
8 of Ms. Bria's deposition transcript: "Question:
9 Okay. I also notice that there's a CD of photos with a
10 note on it that says, 'Photos of school's needed
11 repairs'. Do you see that? Answer: Yes. Question:
12 And is this CD of photos -- CD of photos a CD copy of
13 the various individual photos that you brought here to
14 the deposition today? Answer: That is. Question:
15 Okay. So in your hand are these various photographs,
16 correct? Answer: That is correct." And goes on to
17 say in line 11, "Question: Are these intended to be
18 photos that you're going to give me today? Answer:
19 Yes, but I wasn't sure whether you're going to ask me
20 any questions or point out anything."

21 And then it goes on and the exhibit was
22 marked.

23 MS. BASHAW: Your Honor, I think we need to
24 finish the "goes on".

25 "And I might. You haven't really looked

1 through them, but these are copies for me to be able to
2 have? Answer: Yes."

3 That's the extent of the testimony.

4 MR. EMCH: It goes on to say, "So the photos
5 we were just referring to have now been marked as
6 Exhibit 316; is that correct? Answer: That's
7 correct."

8 The context, Your Honor, is that, it was
9 a response to the subpoena. We were there, and
10 Ms. Bashaw was questioning Ms. Bria about the
11 subpoenaed response of the school district in response
12 to the state's subpoena for records.

13 THE COURT: And the state's subpoena was for
14 what?

15 MR. EMCH: Well, it was a third-party
16 subpoena. It was for a variety of materials and
17 information from the schools regarding the issues in
18 the case. Battle Ground schools. It was specifically
19 directed to Battle Ground School District.

20 MS. BASHAW: But I still didn't elicit any
21 testimony about who took them, when they were taken,
22 what specifically they were of.

23 THE COURT: Well, I think that goes to the
24 weight, not the admissibility. These are photos that
25 were produced in response to a subpoena of Battle

1 Ground records. I think that there are some foundation
2 questions, such as when they were taken and what we're
3 looking at, but I think that I can give them the weight
4 that they're due.

5 I will admit 171.

6 EXHIBIT ADMITTED

7 MR. EMCH: Okay. I think it's going to be a
8 little smoother sailing after that first one for
9 Ms. Bria's transcript.

10 So petitioners also offer Trial Exhibit
11 172.

12 THE COURT: 172 is offered.

13 MS. BASHAW: No objection.

14 THE COURT: 172 is admitted.

15 EXHIBIT ADMITTED

16 MR. EMCH: Petitioners also offer 173 and
17 174.

18 MS. BASHAW: And no objection.

19 THE COURT: 173 is admitted. 174 is
20 admitted.

21 EXHIBITS ADMITTED

22 MS. BASHAW: And respondents have a few.

23 Respondents would offer 186, 188 --

24 (An off-the record discussion was had between
25 Ms. Bashaw and Mr. Emch.)

1 MS. BASHAW: Oh. I'm sorry. Let me start
2 over.

3 Respondents would offer 1186.

4 THE COURT: Okay.

5 MS. BASHAW: 1188, 1190, 1190 -- 1189, 1191,
6 1195, 1196, and 1197.

7 THE COURT: All right.

8 1186, any objection?

9 MR. EMCH: No objection to any of those
10 listed by Ms. Bashaw, Your Honor.

11 THE COURT: 1186 is admitted. 1188 is
12 admitted. 1190 is admitted. 1189 is admitted. 1191
13 is admitted. 1195 is admitted. 1196 is admitted. And
14 1197 is admitted.

15 EXHIBITS ADMITTED

16 MS. BASHAW: Next on my list is Alan Burke.

17 MR. ROBB: All right. So petitioners have a
18 number of exhibits to offer with Alan Burke.

19 The first --

20 MS. BASHAW: Are you going to say who he is?

21 MR. ROBB: Sure. As soon as I refresh my
22 recollection.

23 He's the Assistant Superintendent of
24 Public Instruction for Curriculum.

25 MS. BASHAW: Essentially, yes.

1 MR. ROBB: For learning and teaching at the
2 State's Superintendent for Learning and Teaching.

3 THE COURT: All right. And his deposition is
4 being offered?

5 MR. ROBB: His deposition is being offered
6 along with several of the exhibits.

7 Petitioners would first offer Trial
8 Exhibit 246.

9 MS. BASHAW: No objection.

10 THE COURT: 246 is admitted.

11 EXHIBIT ADMITTED

12 MR. ROBB: Petitioners would offer Trial
13 Exhibit 247.

14 MS. BASHAW: No objection.

15 THE COURT: 247 is admitted.

16 EXHIBIT ADMITTED

17 MR. ROBB: And petitioners would also offer
18 Trial Exhibits 249, 250, and 251.

19 MS. BASHAW: I think you were doing 248,
20 weren't you?

21 MR. ROBB: Yes. If I didn't already say
22 that, 248, 249, 250, and 251.

23 Thank you.

24 MS. BASHAW: And no objections to those.

25 THE COURT: 248, 249, 250, and 251 are all

1 admitted.

2 EXHIBITS ADMITTED

3 MR. ROBB: Petitioners would next offer Trial
4 Exhibit 252.

5 MS. BASHAW: And respondents do object to 252
6 and we perhaps can discuss the next one, which is 253,
7 which are essentially the same objections.

8 This witness was not familiar with these
9 documents, had never seen them before. They are
10 hearsay. He could not authenticate them. And we would
11 object on those grounds. There's lack of foundation.

12 THE COURT: Okay. All right.

13 Mr. Robb.

14 MR. ROBB: Well, the documents -- both
15 documents 252 and 253 are not being offered for the
16 truth of the matter asserted, and then -- but they were
17 offered in order to ask the witness about his own
18 experiences, about his own -- in light of the
19 statements that were in there. In addition, they fill
20 out the testimony that was in the deposition as well.

21 So we would offer them just for that
22 limited purpose.

23 MS. BASHAW: Respondents have also moved to
24 strike that testimony. If counsel had wanted to just
25 ask him general questions about the subject matter, he

1 could have phrased his questions in that way. But,
2 instead, what counsel did was to leave language out of
3 these documents that this witness had never seen
4 before. And, for that purpose, the testimony wasn't
5 appropriate, and it's certainly not appropriate to try
6 and admit them as evidence in the case.

7 THE COURT: Well, these exhibits are the type
8 of exhibits that typically come in, if you will, in the
9 back door through experts and by laying the foundation
10 that it's included in some learned treatise or
11 something that's expected -- or that's respected in the
12 community.

13 In this instance, my understanding is we
14 have a lay witness, Mr. Burke, and he, I assume, wasn't
15 familiar with these documents in 252 and 253 before he
16 was examined on them.

17 So, without looking at the deposition,
18 my surmising would be that there were statements taken
19 out of this and then asked, do you agree with the
20 author's assertion of X, Y, and Z. I'll deal with the
21 motion to strike separately, but it doesn't make these
22 documents admissible.

23 MR. ROBB: Okay. Well, I would say that the
24 testimony in the deposition did establish that
25 Mr. Burke was -- you know, had the experience and the

1 expertise on the issues that are addressed in this as
2 someone who had not only received his doctorate in
3 issues of middle school and the engagement of middle
4 school students, but who also has authored the kind of
5 state's study on middle school students dealing with
6 these exact kinds of issues.

7 THE COURT: But he wasn't being offered as an
8 expert, was he?

9 MR. ROBB: No, he was not, Your Honor.

10 THE COURT: All right. Well, that rule
11 generally applies to experts. It's usually used,
12 actually, for impeachment purposes also, not to support
13 the testimony. I think for the same reason that I
14 excluded the state's charts -- I forget whose --
15 actually, maybe it was petitioners' charts. I can't
16 recall. But it was the fact that the expert couldn't
17 say that he had used them and relied upon them.

18 Here, we don't even have an expert, nor
19 do we have a witness saying that he relied upon them.
20 So they would not be admissible.

21 MR. ROBB: Okay.

22 THE COURT: That would be hearsay.

23 MR. ROBB: And the motion to strike, Your
24 Honor, we'll deal with that separately?

25 THE COURT: I'll deal with that -- well, I

1 assume it's in the deposition --

2 MR. ROBB: It was not raised as a motion to
3 strike during the deposition.

4 THE COURT: No. But I assume that Ms. Bashaw
5 put it in the --

6 MR. ROBB: Yes, Your Honor.

7 THE WITNESS: -- the transcript itself saying
8 that the state objects to it because it's hearsay.

9 MS. BASHAW: Right.

10 THE COURT: It's based on hearsay.

11 MS. BASHAW: That is identified on the
12 pleading, and it should be on the actual page where
13 that testimony occurs.

14 THE COURT: 252 is not admitted. 253 is not
15 admitted.

16 MS. BASHAW: And the respondents don't have
17 any exhibits for Mr. Burke.

18 THE COURT: Are those all the exhibits
19 from --

20 MR. ROBB: Yes, Your Honor, those are all the
21 exhibits with this deposition.

22 MS. BASHAW: And just to double check, you
23 are including -- we think it's appropriate that the
24 correction sheet be with the actual transcript.

25 MR. ROBB: Yes, that's included here.

1 MS. BASHAW: Okay. Thank you.

2 THE COURT: Okay. Moving right along.

3 MS. BASHAW: Next one.

4 THE COURT: Do I have -- I'm missing
5 depositions, so --

6 THE CLERK: Here you go.

7 THE COURT: There you go. My organized clerk
8 has provided these. Great. Thank you.

9 MS. BASHAW: Bedtime reading, Your Honor.

10 THE COURT: Yeah, it's stacking up on me.

11 MS. BASHAW: Mr. Burnham, I think was your
12 witness.

13 MR. EMCH: Okay. And Mr. Burnham is being
14 offered by petitioners, Your Honor. And he is the
15 OSPI -- strike that. He's the State Board of
16 Education's Administrator. He deals with the Form
17 1472. So, rough description.

18 So for Mr. Burnham, petitioners offer
19 Trial Exhibit 1080. It looks like that actually might
20 be admitted already.

21 MS. BASHAW: It is.

22 THE COURT: 1080 is in.

23 MR. EMCH: Okay. Petitioners also offer
24 Trial Exhibit 327.

25 MS. BASHAW: And no objection.

1 THE COURT: 327 is admitted.

2 EXHIBIT ADMITTED

3 THE COURT: Ms. Bashaw?

4 MS. BASHAW: Respondents offer Trial Exhibits
5 317, 324, and 328.

6 MR. EMCH: Petitioners have no objection to
7 those three exhibits, Your Honor.

8 THE COURT: 317 was previously admitted. 324
9 and 328 are admitted.

10 EXHIBITS ADMITTED

11 MR. EMCH: And I will hand the deposition
12 transcript to Theresa -- thank you -- the clerk.

13 THE COURT: All right. Next.

14 MR. ROBB: I believe we're up to Dr. Francis
15 Contreras.

16 MS. BASHAW: I have Cole next, but, we can go
17 to Contreras. That's fine. Okay.

18 MR. ROBB: Contreras.

19 MS. BASHAW: That's fine.

20 MR. ROBB: Okay. Dr. Contreras was the
21 author of the Latino Achievement Study and was the 30B6
22 witness offered by the state to testify about the
23 Achievement Gap Study for Latino students.

24 Along with her deposition transcript,
25 which the petitioners are offering, we would also offer

1 Trial Exhibit 296, 297, and 298.

2 MS. BASHAW: And the state has no objection
3 to those.

4 THE COURT: 296, 297, 298 are admitted.

5 EXHIBITS ADMITTED

6 THE COURT: Any offer from the state on that
7 witness?

8 MS. BASHAW: No, Your Honor.

9 THE COURT: Okay.

10 MR. ROBB: I'll hand you the deposition
11 transcript of Dr. Francis Contreras.

12 THE COURT: Thank you, counsel.

13 The next witness?

14 MR. EMCH: So the next, Your Honor, is
15 Richard Cole. He's the Superintendent of the Sunnyside
16 School District in eastern Washington.

17 And the petitioners offer Trial Exhibit
18 1141.

19 MS. BASHAW: No objection.

20 MR. EMCH: Petitioner's offer Trial Exhibit
21 162 and 163.

22 MS. BASHAW: No objection.

23 MR. EMCH: Petitioner offer Trial Exhibit
24 164.

25 MS. BASHAW: No objection.

1 MR. EMCH: And petitioners also offer Trial
2 Exhibit 693.

3 MS. BASHAW: I don't remember that one. What
4 is that?

5 MR. EMCH: This is I think --

6 (An off-the-record discussion was had between
7 Ms. Bashaw and Mr. Emch.)

8 MS. BASHAW: No objection.

9 THE COURT: 1141, 162, 163, 164, and 693 are
10 all admitted.

11 EXHIBITS ADMITTED

12 THE COURT: Any offer from the state?

13 MS. BASHAW: Yes, Your Honor.

14 We would offer Exhibits 162 and 163.

15 THE COURT: 163 was just -- those were both
16 just admitted.

17 MS. BASHAW: Sorry. We would offer 1142.

18 MR. EMCH: No objection, Your Honor.

19 THE COURT: 1142 is admitted.

20 EXHIBIT ADMITTED

21 MS. BASHAW: 1143.

22 MR. EMCH: Your Honor, we did have an
23 objection on this. It was a document that, on the
24 index, had listed 63 pages and it was only a portion of
25 the document. And that may be the way it was produced

1 by the school district in response to the state's
2 subpoena, so --

3 MS. BASHAW: If I might just interject.

4 MR. EMCH: Sure.

5 MS. BASHAW: It actually is complete. When
6 the school district copied it, you'll notice on the
7 left-hand side, the numbers didn't -- they condensed so
8 that they could fit two pages on one page, and so the
9 larger numbers appear to show up on the left-hand side
10 of the page. It is a difficult document to read, but
11 that's how it was copied and provided to the state.

12 So, you'll see 163 -- or actually 164 on
13 Bate stamp number 1143.00006.

14 MR. EMCH: So page 64? Okay.

15 I'm seeing what counsel is saying. That
16 makes a little more sense. It still appears to be an
17 incomplete document. I don't want to belabor it.
18 Maybe we can just note that it's -- that it appears --

19 THE COURT: It does appear to be incomplete.

20 MR. EMCH: It does, Your Honor. I see a page
21 64, but I don't see a page 63 or a page 60 or 61. I
22 mean, then the next page I see is 56. So it doesn't --
23 seems to be also out of sequence.

24 MS. BASHAW: Yeah. Again, the district did
25 the copying. When I went through it last night, I saw

1 all the pages. They were not in any sort of
2 consecutive order.

3 I don't relish the idea that the court
4 actually has to try and read this, but it's pertinent
5 to the testimony that was provided.

6 MR. EMCH: We don't have an objection of how
7 the document was produced, so I guess we brought it to
8 your attention and you can --

9 THE COURT: All right. I will struggle with
10 trying to figure out, if it's all there and needs to be
11 read.

12 1143 is admitted.

13 EXHIBIT ADMITTED

14 MS. BASHAW: 1144.

15 MR. EMCH: No objection to 1144, Your Honor.

16 THE COURT: 1144 is admitted.

17 EXHIBIT ADMITTED

18 MS. BASHAW: 1147.

19 MR. EMCH: No objection, Your Honor.

20 THE COURT: 1147 is admitted.

21 EXHIBIT ADMITTED

22 MS. BASHAW: 1148.

23 MR. EMCH: No objection, Your Honor.

24 THE COURT: 1148 is admitted.

25 EXHIBIT ADMITTED

1 MS. BASHAW: And 1149.

2 THE COURT: 1149 is admitted.

3 MR. EMCH: Your Honor, actually --

4 THE COURT: I'm sorry.

5 MR. EMCH: That's okay. We have the system
6 going pretty well here, though.

7 1149, we had objected to it as an
8 incomplete document. I believe this was -- this was --
9 I believe is one of the studies and surveys and we had
10 instead substituted the entire document, which was
11 Trial Exhibit 693, which is --

12 THE COURT: 693 is in.

13 MR. EMCH: Which is already in, so --

14 MS. BASHAW: The issue is that his deposition
15 was around Deposition Exhibit 620, which is Trial
16 Exhibit 1149.

17 So to the extent that the testimony has
18 to track which exhibit that he was relying on, I don't
19 think it has to be in. We don't object to the whole
20 thing being there, which counsel's provided under 69B.

21 THE COURT: So, Mr. Cole was examined on
22 1149.

23 MS. BASHAW: Correct, Your Honor.

24 MR. EMCH: And that's fine with petitioners,
25 Your Honor. As well as we have the full document in,

1 which we have 693, that's okay.

2 THE COURT: 1149 is admitted.

3 EXHIBIT ADMITTED

4 MR. EMCH: So I will hand to the clerk the
5 deposition transcript of Dr. Cole from the Sunnyside
6 School District.

7 MS. BASHAW: Your Honor, the respondents
8 would offer the deposition designations for Ann Daley,
9 who was staff -- was a staff member to the Washington
10 Learns Task Force, so I guess, for lack of a better
11 word, and respondents would offer Exhibits 361 and 362.

12 THE COURT: 361 and 362 are offered.

13 MR. EMCH: No objection, Your Honor.

14 THE COURT: 361 and 362 are admitted.

15 EXHIBITS ADMITTED

16 MR. EMCH: And, let's see, petitioners -- our
17 description, generally, is that she's the Washington
18 Learns Executive Director. That's the general title we
19 have for this witness.

20 We would also offer Trial Exhibits 363
21 and 366.

22 MS. BASHAW: No objection.

23 THE COURT: 363 is admitted. 366 is
24 admitted.

25 EXHIBITS ADMITTED

1 MS. BASHAW: The next witness that
2 respondents will be offering deposition designations is
3 for Howard DeLeeuw, D-E-L-E-E-U-W. Mr. DeLeeuw was
4 staff to OSPI in the Bilingual Program.

5 MR. ROBB: He's, I believe, the Director of
6 Migrant and Bilingual Education Program at the State
7 Office of Superintendent of Public Instruction.

8 MS. BASHAW: Thank you, Mr. Robb.

9 MR. ROBB: You're welcome.

10 MS. BASHAW: And respondents would offer
11 Trial Exhibits 1358.

12 THE COURT: 1358 is offered.

13 MR. ROBB: No objection, Your Honor.

14 THE COURT: 1358 is admitted.

15 EXHIBIT ADMITTED

16 MS. BASHAW: 557.

17 MR. ROBB: No objection.

18 THE COURT: 557 is admitted.

19 EXHIBIT ADMITTED

20 MS. BASHAW: 561, 562, and 564.

21 MR. ROBB: Petitioners have no objection to
22 those exhibits.

23 THE COURT: 561 is admitted. 562 is
24 admitted. 564 is admitted.

25 EXHIBITS ADMITTED

1 MS. BASHAW: 1644, 1645, 1646, 1647, 1648,
2 1649, and 1650.

3 MR. ROBB: Petitioners have no objections to
4 any of those documents.

5 THE COURT: 1644 through 1650 are all
6 admitted, and that includes 1650.

7 EXHIBITS ADMITTED

8 MS. BASHAW: Yes, Your Honor.

9 MR. ROBB: Petitioners would offer with this
10 deposition Trial Exhibit 556, Trial Exhibit 557 --

11 THE COURT: That's already been admitted,
12 counsel.

13 MR. ROBB: Ah. So maybe we should start with
14 556.

15 THE COURT: Okay.

16 MS. BASHAW: No objection.

17 THE COURT: All right. 556 is admitted.

18 EXHIBIT ADMITTED

19 MR. ROBB: Is 558 in?

20 MS. BASHAW: No.

21 THE COURT: No.

22 MR. ROBB: So petitioners would offer 558.

23 THE COURT: 558 is offered.

24 THE CLERK: Excuse me, Your Honor.

25 THE COURT: Yes.

1 THE CLERK: I don't have 557 as admitted.

2 THE COURT: I just admitted it.

3 THE CLERK: I haven't put it in yet.

4 THE COURT: I admitted it on respondent's
5 offer.

6 So we're at 558?

7 MR. ROBB: 558?

8 THE COURT: Yes.

9 MS. BASHAW: And no objection.

10 THE COURT: Exhibit 558 is admitted.

11 EXHIBIT ADMITTED

12 MR. ROBB: 559 as well.

13 MS. BASHAW: No objection.

14 THE COURT: 559 is admitted.

15 EXHIBIT ADMITTED

16 MR. ROBB: And, finally, petitioners would
17 offer Trial Exhibit 560.

18 THE COURT: 560 is offered.

19 MS. BASHAW: No objection.

20 MR. ROBB: Well no, that's not --

21 THE COURT: Actually, I have 560 --

22 MS. BASHAW: It's been admitted.

23 THE COURT: It's previously admitted.

24 (An off-the-record discussion was had between
25 Mr. Emch and Mr. Robb.)

1 MR. ROBB: Can I just ask for clarification
2 of 561, 62, 563, and 564? Have all been admitted?

3 THE COURT: 561 was admitted. 562 was
4 admitted. 564 was admitted. 563 has not been offered.

5 THE CLERK: There's no 563, Your Honor.

6 THE COURT: There is no 563.

7 THE CLERK: It's not used.

8 THE COURT: Okay. I think it was designated
9 as a possible duplicate.

10 MR. ROBB: Ah. Your Honor, that appears that
11 it was a duplicate, 562.

12 MS. BASHAW: 563.

13 MR. ROBB: Oh, 563. I'm sorry.

14 MS. BASHAW: So 562 is admitted, correct?

15 THE COURT: 562 is admitted under your
16 offer. That's correct.

17 Anything else on that witness, Mr. Robb?

18 MR. ROBB: No, Your Honor.

19 THE COURT: All right. We are at the noon
20 hour. So we're making good progress, I think.

21 MS. BASHAW: We are.

22 THE COURT: And if we can work out anything
23 over the lunch, perhaps you could talk about some
24 exhibits that are agreed and you can just say that,
25 perhaps, you offer the following exhibits that have

1 been agreed and then you can concur in that, and vice
2 versa. It might save us a little bit of time, but this
3 is going pretty smoothly.

4 All right. Counsel, if you could be
5 back here at 1:30. We'll resume at that time.

6 MS. BASHAW: Thank you, Your Honor.

7 THE COURT: Court will be at recess.

8 MR. ROBB: Thank you, Your Honor.

9 (Whereupon the noon recess was taken.)

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1 SEATTLE, WASHINGTON

2 TUESDAY, OCTOBER 20, 2009

3 AFTERNOON SESSION - 1:30 P.M.

4 --oOo--

5 THE COURT: Good afternoon. Please be
6 seated. We're back in on the record in McCleary versus
7 State of Washington.

8 And, counsel.

9 MR. EMCH: Your Honor, we're continuing on
10 with the submission of deposition transcripts and
11 testimony.

12 THE COURT: Very good.

13 MR. EMCH: We're up to Mr. Randy Dorn, who is
14 the current Superintendent of Public Instruction.
15 Petitioner's offer this transcript and the following
16 exhibits. First, petitioners offer Trial Exhibits 464
17 and 465. Those are agreed exhibits.

18 THE COURT: Okay. Is that correct?

19 MS. BASHAW: Yes, Your Honor.

20 THE COURT: All right. Those are admitted.

21 EXHIBITS ADMITTED

22 MR. EMCH: And next petitioners offer Trial
23 Exhibit 466.

24 We did have an objection to that and
25 Ms. Bashaw informs me that the state is withdrawing the

1 objection and so that is also an agreed exhibit.

2 MS. BASHAW: That's correct, Your Honor.

3 THE COURT: All right. 466 is admitted.

4 EXHIBIT ADMITTED

5 MR. EMCH: 467. Trial Exhibit 467 is an
6 agreed document as well -- exhibit.

7 THE COURT: Ms. Bashaw?

8 MS. BASHAW: Yes, Your Honor, it's agreed to.

9 THE COURT: Okay.

10 MR. EMCH: Petitioners offer 474.

11 MS. BASHAW: We do have an objection to 474.

12 THE COURT: All right.

13 MS. BASHAW: No authenticity. It's hearsay.
14 Relevance objection. It's basically a newspaper
15 article from the Seattle Times.

16 MR. EMCH: And --

17 THE COURT: All right. Overruled, as stated
18 before on the record. 467 is admitted.

19 EXHIBIT ADMITTED

20 MR. EMCH: Volume 33, Your Honor.

21 THE COURT: Okay.

22 MR. EMCH: And, Your Honor, petitioners would
23 submit that this is a self-authenticating document, is
24 a newspaper article. And it's something that's
25 publicly available. There's a website source

1 information provided here at the bottom. The document
2 relates to facts that were confirmed by the witness,
3 and he testified regarding the subject matter, and we
4 would offer it for admission.

5 THE COURT: Well, the objection was
6 authentication and hearsay?

7 MS. BASHAW: Correct, Your Honor.

8 THE COURT: The facts, as stated in here, are
9 hearsay because whoever -- somebody has to state them
10 or provide those facts. They're unavailable for cross-
11 examination, so that is the definition of hearsay.

12 MR. EMCH: Your Honor, if petitioners can
13 clarify. We're not offering it for the truth of the
14 matter asserted but for completeness of the record.
15 Referencing the exhibit that the witness was shown,
16 does that help?

17 THE COURT: Not really. I mean, sometimes it
18 does. Because, you know, for example, if this were to
19 say, In the year 2000, all students will begin working
20 towards a certificate of mastery, you could ask
21 Superintendent Dorn, Is it true that in 2000 all
22 students will begin working toward a certificate of
23 mastery, as it states in the article.

24 What's stated in the article is
25 basically irrelevant, so it doesn't have any

1 relevance. It's sometimes good to have it there in
2 terms of completeness, but, quite honestly, I think
3 it's just better not to admit it because it is not
4 substantive evidence.

5 474 is not admitted.

6 MR. EMCH: Your Honor, petitioners next offer
7 Trial Exhibit 478.

8 This is also something from the Seattle
9 Times; however, the distinction here is that this
10 document was actually written by Randy Dorn and he
11 expressed some thoughts about legislators who have
12 written similar things before in this morning's
13 session.

14 MS. BASHAW: We would have the same
15 objections, authenticity. It's hearsay.

16 Again, Mr. Dorn's testimony is in the
17 record. We're not moving to strike his testimony. So
18 whatever he may have been asked, that information would
19 be in the deposition.

20 The document itself is hearsay. And
21 given that the Seattle Times published it, he's not a
22 records custodian for the Seattle Times, he couldn't
23 authenticate it.

24 THE COURT: Well, Superintendent Dorn could
25 authenticate whether or not this was the piece that he

1 wrote. And assuming that he did, if he didn't, then
2 there is authentication issue, but assuming that he did
3 authenticate this is the piece he wrote, and it is an
4 opinion piece, and he's available for cross-examination
5 on the content of 478, the analysis with regard to 478
6 is entirely different than 474.

7 So 478 is admissible and will be
8 admitted.

9 EXHIBIT ADMITTED

10 MR. EMCH: Your Honor, petitioners next offer
11 Trial Exhibit 479, which is an agreed exhibit.

12 MS. BASHAW: That's correct.

13 THE COURT: 479 is admitted.

14 EXHIBIT ADMITTED

15 MR. EMCH: Petitioner's also offer Trial
16 Exhibit 480.

17 MS. BASHAW: And respondents would have the
18 same objections that they have to the 474. And this
19 was not something that was written by Superintendent
20 Dorn, and he couldn't authenticate it, and it would be
21 hearsay. It comes from some -- I'm not even sure what
22 newspaper article it comes from.

23 THE COURT: Good question. Where it from?
24 The Richland School District.

25 MR. EMCH: Correct, Your Honor. The next

1 page indicates Richland School District.

2 I would submit this is also a self-
3 authenticating document, and for the completeness of
4 the record, petitioners would not offer it for the
5 truth of the matter asserted but offer it for admission
6 into evidence.

7 THE COURT: If it's not being offered for the
8 truth, what's it being offered for?

9 MR. EMCH: Well, it's being offered as a
10 document that was shown to the superintendent and
11 assisted the flow of the testimony, and I believe the
12 record would be better served by having it in.

13 THE COURT: Exhibit 480 is hearsay and not
14 authenticated and questionably relevant. It is not
15 admitted.

16 MR. EMCH: Your Honor, for some of these
17 exhibits, there's also corresponding objections and
18 responses for testimony, and, so, those offers and
19 objections, I understand, will be dealt with at a later
20 time.

21 Sticking with the Trial Exhibits,
22 petitioners offer Trial Exhibit 482, and that's an
23 agreed exhibit.

24 THE COURT: 482 is admitted.

25 EXHIBIT ADMITTED

1 MS. BASHAW: Yes, that's correct.

2 MR. EMCH: Trial Exhibit 483 is the next
3 document petitioners are offering.

4 And, Your Honor, this was something that
5 was written by Superintendent Dorn.

6 MS. BASHAW: We would maintain the same
7 objections. I'm not sure that the testimony in his
8 deposition actually established that he wrote this
9 whole thing.

10 If you look down at the very bottom,
11 there's a reference, "Randy Dorn is serving his first
12 term as State Superintendent of Public Instruction."
13 That would suggest that somebody else wrote that and
14 not Mr. Dorn. If he had written it, he would have
15 said, I'm serving my first term as State Superintendent
16 of Public Instruction.

17 So it's not clear to me which part of
18 this exhibit it is that Mr. Dorn wrote.

19 THE COURT: Well, I think that's typically at
20 the end of any article, it states who the author of the
21 article is. The authors at the top. If you look at
22 the top of the article, it says, "Promises Made in K-12
23 Education System Are Promises Broken" and underneath
24 that, "Randy Dorn," so inferring that Superintendent
25 Dorn was the author.

1 For the reasons previously stated, the
2 court will allow Exhibit 483 and that will be
3 admitted.

4 EXHIBIT ADMITTED

5 MR. EMCH: Petitioners also offer Trial
6 Exhibit 484, Your Honor, which is an agreed exhibit.

7 MS. BASHAW: That's correct.

8 THE COURT: 484 is admitted.

9 EXHIBIT ADMITTED

10 MR. EMCH: Next, Your Honor, petitioners also
11 offer Trial Exhibits 493 through 501, inclusive.

12 And I believe counsel's withdrawing the
13 objections for those?

14 MS. BASHAW: That's correct.

15 MR. EMCH: So, Your Honor, it would be 493,
16 494, 495, 496, 497, 498, 499, 500, and 501.

17 Petitioners would offer to move to admit
18 those trial exhibits.

19 THE COURT: 493 through 501, inclusive, are
20 admitted.

21 EXHIBIT ADMITTED

22 MR. EMCH: Okay.

23 MS. BASHAW: Respondent's have some.

24 MR. EMCH: Yeah, I think that's it for the
25 petitioners' offers on the trial exhibits for this

1 deposition.

2 THE COURT: All right. And then the
3 respondents?

4 MS. BASHAW: Yes, Your Honor.

5 I don't believe there's any objections
6 to these. Respondents are offering 468, 470, 486, and
7 591.

8 THE COURT: Any objections to those?

9 MR. EMCH: No objections, Your Honor.

10 THE COURT: 468, 470, 486, and 591 are all
11 admitted.

12 EXHIBITS ADMITTED

13 MR. EMCH: I will hand the transcript to the
14 clerk. Thank you.

15 MR. ROBB: Okay, Your Honor, we're up to the
16 deposition testimony of Ross Hunter, who is the
17 Representative and a member of the Basic Education
18 Finance Task Force.

19 Petitioners would offer this deposition
20 transcript along with the Trial Exhibits 581, 582, 207,
21 and 583. Those are all agreed exhibits.

22 MS. BASHAW: That's correct, Your Honor.

23 THE COURT: 581, 582, 207, 583 are all
24 admitted.

25 EXHIBITS ADMITTED

1 MR. ROBB: Petitioners would also offer Trial
2 Exhibit 585.

3 THE COURT: 585 is offered.

4 MS. BASHAW: I had a hearsay objection to
5 585. It's being offered for the truth of the matter
6 asserted. This is an e-mail exchange, and so we would
7 object on hearsay and relevance grounds.

8 THE COURT: Okay. Isn't this hearsay,
9 counsel?

10 MR. ROBB: Well, Your Honor, I don't believe
11 it was offered for the truth of the matter asserted,
12 but rather to ask a few questions of Representative
13 Hunter his -- and his understanding of this, which is
14 part of the work of the Basic Education Finance Task
15 Force. This is back and forth between some of the
16 members of that. And, so, it really is not offered for
17 the truth of every statement in here but simply to ask
18 about some of the conclusions that Representative
19 Hunter had gained through his work on the Task Force
20 and the information that they were -- members thereto
21 were exchanging. So we would offer it for that limited
22 purpose.

23 MS. BASHAW: Representative Hunter can
24 explain that in his testimony in his deposition, but
25 that doesn't negate the hearsay element of the document

1 itself.

2 THE COURT: Well, I do think that
3 Representative Hunter can talk about the contents of
4 this, but I think the actual e-mail exchange would
5 constitute hearsay. So 585 is not admitted.

6 MR. ROBB: Petitioner's would also offer
7 Trial Exhibit 587.

8 THE COURT: 587 is offered.

9 MS. BASHAW: I believe --

10 THE COURT: 587? What is 587?

11 MR. ROBB: 587 is a sticker that was worn by
12 Representative -- the deposition testimony explains.
13 The sticker that was worn by Representative Hunter on
14 the Floor of the Legislature and as part of his work on
15 education reform.

16 THE COURT: Okay.

17 MS. BASHAW: Petitioners actually, in their
18 explanation of this, we're offering it only for
19 illustrative purposes, not for admission. So I guess
20 I'm a little confused.

21 MR. ROBB: Well, we would ask that it be
22 admitted to complete the record for the deposition.

23 It is illustrative. We would also offer
24 it to be admitted because I believe we've admitted some
25 illustrative exhibits at trial already and we would

1 offer it here in order to complete the record of the
2 transcript that's being -- the deposition testimony.

3 THE COURT: I will admit 587 for illustrative
4 purposes only.

5 EXHIBIT ADMITTED

6 MR. ROBB: Thank you, Your Honor.

7 MS. BASHAW: And perhaps I have a difficult
8 understanding of illustrative purposes. But my
9 understanding is that those kinds of exhibits are
10 simply for the trier of fact but they do not become
11 part of the permanent record, and then presuming we go
12 up on appeal that they go up on appeal.

13 THE COURT: Well, my understanding of
14 illustrative exhibits is that they may or may not be
15 admitted. I think it's discretionary with the court as
16 to whether to admit it and send it back to the jury
17 room or have the trier of fact.

18 It's the weight that is given. It
19 doesn't have substantive weight. So, for example, if
20 someone does a chart in the courtroom or a diagram,
21 it's up to the court whether to admit it or not, but
22 it's not being admitted for substantive purposes, but
23 rather for illustration only. Let me double check
24 that, because I know this has come up before many
25 times, and I know that the court can decide whether it

1 goes back or not. But let me double check that.

2 (Reviewing.)

3 "The foundation required for
4 illustrative material is simply a showing of general
5 relevance and reasonable accuracy. Less onerous in the
6 foundation requirements for other kinds of evidence.
7 The disadvantage of labeling material as illustrative
8 is that the court, in its discretion, may refuse to
9 allow it to go to the jury room even if it has been
10 admitted as an exhibit." One case said it should never
11 go to the jury room, but that was a criminal case.

12 Yes, I think that it can be admitted for
13 illustrative purposes. In other words, it's just
14 illustrating or demonstrating what the actual sticker
15 looked like that Representative Hunter was wearing.

16 MS. BASHAW: All right, Your Honor. Thank
17 you.

18 THE COURT: You're welcome.

19 MR. ROBB: Petitioners would next offer
20 Exhibit 189. That's an agreed exhibit.

21 MS. BASHAW: That's correct.

22 THE COURT: 189 is admitted.

23 EXHIBIT ADMITTED

24 MR. ROBB: Petitioners would also offer Trial
25 Exhibit 594.

1 MS. BASHAW: And we have the same objections
2 to 594 that we had to the last e-mail exchange.

3 THE COURT: Okay.

4 MS. BASHAW: 585.

5 THE COURT: Okay. I'll look at it.

6 All right. Again, what is the hearsay
7 exception on this?

8 MR. ROBB: Your Honor, again, this is now
9 part of the work that Representative Hunter was part of
10 during the Washington Learns effort. And, as with the
11 prior exhibit, this was used in order to ask questions
12 about that work in his --

13 THE COURT: So the exception is --

14 MR. ROBB: A business records exception, Your
15 Honor. It's also a public document.

16 MS. BASHAW: Yeah, it's not -- it's not clear
17 to me that that's what was actually going on. I mean,
18 these appear to be Representative Hunter's out-of-court
19 suggestions about various things.

20 THE COURT: How would it not be a -- why
21 wouldn't it be a business record if these e-mails are
22 maintained by the Legislature in the ordinary course of
23 its business?

24 MS. BASHAW: Yeah, and I'm not clear about
25 that, Your Honor. It doesn't have our Bates stamp

1 number on it, so I guess, from that standpoint -- I
2 mean, I couldn't necessarily authenticate it. I mean,
3 we did have documents that exchanged and they would get
4 identifying references on them, but they were exchanged
5 in discovery. This one doesn't have that.

6 THE COURT: All right.

7 MR. ROBB: If I may? It actually has the
8 public records request designation on it. This is a
9 document that was produced through the public records
10 process and --

11 THE COURT: PRR.

12 MR. ROBB: Yes, Your Honor.

13 THE COURT: Okay. Well --

14 MR. ROBB: It was identified by
15 Representative Hunter in his deposition and there was
16 an opportunity to ask some questions about it.

17 MS. BASHAW: Well, and I don't know who put
18 that PRR on there. As counsel is now testifying that
19 your office did a public records request and you got
20 records and you put an identifier on it?

21 MR. ROBB: I do know that we did do a public
22 records request.

23 MS. BASHAW: Yeah.

24 MR. ROBB: I'm not sure if that's our
25 designation or not, but --

1 THE COURT: Well, I'm satisfied this would be
2 subject to a public records request and, apparently, to
3 OFM.

4 The court will admit 594.

5 EXHIBIT ADMITTED

6 MR. ROBB: Petitioners would next offer Trial
7 Exhibit 596.

8 MS. BASHAW: We have an objection to 596.
9 Again, this doesn't even appear to be relevant
10 comparing one person's recommendations over another.
11 There's not a a Bate stamp on here.

12 THE COURT: Who prepared this?

13 MR. ROBB: Representative Hunter testified
14 that he believed Jennifer Priddy or Julie Salvi
15 prepared the document as part of the work for the
16 Washington Learns process.

17 THE COURT: I think they have to authenticate
18 it.

19 MS. BASHAW: Pardon?

20 THE COURT: Then they would have to
21 authenticate it.

22 MS. BASHAW: Correct, Your Honor.

23 THE COURT: 596 is not admitted.

24 MR. ROBB: Okay. Petitioners would offer
25 Trial Exhibit 366. I believe that is an agreed

1 exhibit.

2 MS. BASHAW: That's correct.

3 THE COURT: 366 is admitted.

4 EXHIBIT ADMITTED

5 MR. ROBB: Petitioners would offer Trial
6 Exhibit 602.

7 THE COURT: 602 is offered.

8 MS. BASHAW: We would have the same hearsay
9 and relevance objections to 602. It appears to be
10 something that the legislative district prepared. This
11 is not directly the Legislature but the 48th
12 Legislative District. It was only addressed in
13 representative -- well, actually, there's not even a
14 deposition exhibit number on here, so it doesn't even
15 appear that it was --

16 MR. ROBB: Now, for the record, it was
17 Deposition Exhibit 3022, and Representative Hunter
18 identified it as a pamphlet that he and some of his
19 legislative colleagues prepared and sent out to
20 constituents.

21 MS. BASHAW: So I guess under Representative
22 Hunter section could be left in, but the rest should be
23 redacted. Senator Tom was not asked to verify whether
24 he wrote his particular section. The rest of it -- I
25 mean, it's not relevant. I mean, it's other issues.

1 MR. ROBB: Yes. We're offering this simply
2 for the portion that Representative Hunter -- his
3 comments and --

4 THE COURT: The court will admit it for
5 limited purposes of Representative Hunter's statements
6 in Exhibit 602.

7 EXHIBIT ADMITTED

8 MR. ROBB: Petitioners would next offer Trial
9 Exhibit 604.

10 MS. BASHAW: We had the same authenticity,
11 relevancy, hearsay arguments that we've had for other
12 documents.

13 This is not a business record. Some
14 group called Crosscut, whoever that might be. This was
15 not written by Representative Hunter, so we would
16 object on those grounds.

17 THE COURT: 604 appears to be a hearsay
18 document, unauthenticated.

19 MR. ROBB: And, Your Honor, we were offering
20 it not for the truth of everything in this document,
21 but for the fact that it reports Representative Hunter
22 as his comments on the performance audit that was done
23 of the 10 largest school districts in the state, and he
24 was asked to -- whether he still held the opinion in
25 the article. He said he did, and he explained it in

1 his deposition.

2 And so that's the limited purpose that
3 we were offering this exhibit for.

4 MS. BASHAW: Again, the testimony can, you
5 know -- I don't think we move to strike the testimony,
6 so the testimony is in the record, but the document
7 itself is hearsay.

8 THE COURT: The document's hearsay and
9 Representative Hunter can be asked about his statement
10 in the document, and I assume that his statement is
11 freestanding and that the document and the statement
12 was referred to in his deposition. I think that covers
13 his statement in this article.

14 604 is not admitted.

15 MR. ROBB: Petitioner would next offer 605.

16 THE COURT: 605 is offered.

17 MS. BASHAW: And we're withdrawing our
18 objection to Exhibit 605.

19 THE COURT: 605 is admitted.

20 EXHIBIT ADMITTED

21 MR. ROBB: Petitioners next offer Trial
22 Exhibit 606.

23 THE COURT: 606 is offered.

24 MS. BASHAW: Your Honor, 606, we are going to
25 maintain our objection about 606. It's hearsay. It's

1 similar to what we just went through with the Richland
2 School District, something that apparently was printed
3 off their website. This looks like it was printed off
4 somebody else's website.

5 605, I believe Representative Hunter was
6 asked about his review and approval of this report as a
7 particular board member, but I don't think he had the
8 same ability to authenticate and speak to 606.

9 MR. ROBB: Representative Hunter is a board
10 member of this Bellevue Schools Foundation. This is a
11 business record of Bellevue Schools Foundation, and he
12 spoke about the contents of this document.

13 THE COURT: Did he authenticate it as a
14 business record of the Bellevue Schools Foundation.

15 MR. ROBB: You know, I believe he did. I
16 don't believe there's an objection to the authenticity
17 of the document. The only objection that was raised
18 was to the relevance of it.

19 THE COURT: But he testified about it?

20 MR. ROBB: He did testify about it, yes, Your
21 Honor.

22 THE COURT: And the only objection raised was
23 relevance?

24 MR. ROBB: Yes, Your Honor.

25 THE COURT: 606 is admitted.

1 EXHIBIT ADMITTED

2 MR. ROBB: That was the final exhibit that
3 petitioners will offer with this deposition testimony.

4 THE COURT: All right.

5 MS. BASHAW: Respondents are offering
6 exhibits 599, 600, and 601.

7 I don't think there was an objection to
8 those.

9 MR. EMCH: Petitioners don't have any
10 objection to those documents, Your Honor.

11 THE COURT: 599, 600, 601 are all admitted.

12 EXHIBITS ADMITTED

13 MR. ROBB: With that, I will hand up the
14 deposition testimony of Representative Hunter.

15 THE COURT: Thank you.

16 MR. ROBB: Okay. Petitioners next offer the
17 excerpt from the deposition testimony of Senator
18 Jarrett, who was also a member of the Basic Education
19 Finance Task Force.

20 And with the deposition testimony, would
21 offer Trial Exhibit Number 193.

22 MS. BASHAW: No --

23 MR. ROBB: I'm sorry.

24 MS. BASHAW: No objection to 193.

25 THE COURT: 193 is admitted.

1 EXHIBIT ADMITTED

2 MR. ROBB: Then there are a few other agreed
3 exhibits. Trial Exhibit 186, Trial Exhibit 187, and
4 Trial Exhibit 194.

5 MS. BASHAW: I looked at those, and
6 apologize. I think we did intend to raise a relevance
7 objection to 186 and 187.

8 These are the bills that did not pass in
9 the Legislature this past session, and I don't think
10 they have any relevance. I mean, we have plenty of
11 testimony about them being introduced. But, as
12 proposed legislation that did not pass, I don't think
13 it's relevant to the matters before the court.

14 MR. ROBB: Your Honor, we would offer these
15 trial exhibits. Legislation is part of the legislative
16 history from 2261. There's been a lot of time about
17 what was happening with the Legislature over this
18 period, and I believe they are relevant to the matters
19 at hand.

20 THE COURT: The court finds that Exhibits
21 186, 187, and 194, with regard to past proposed
22 legislation may be relevant for purposes of legislative
23 history.

24 The court will admit 186, 187, and 194.

25 EXHIBITS ADMITTED

1 MR. ROBB: Petitioner would next offer Trial
2 Exhibit 195.

3 MS. BASHAW: And respondent's have a hearsay
4 objection to 195.

5 I think we can probably address 196 and
6 198. They're all the same. They're from
7 FredJarrett.com so they are not business records and
8 are hearsay opinions.

9 THE COURT: All right. 195 has been
10 offered. And I think I stated earlier that I regard
11 these as opinion pieces, not assertions of fact. So
12 they're hearsay as to facts, but they're not hearsay as
13 to opinions because they're not being offered for the
14 truth of the matter asserted other than the fact that
15 Senator Jarrett said this.

16 I think that that's not in dispute. He
17 was available to be questioned, so I will allow 195 to
18 be admitted.

19 EXHIBIT ADMITTED

20 MR. ROBB: Thank you, Your Honor.

21 And we would -- petitioners would next
22 offer Trial Exhibit 185. I believe that's an agreed
23 exhibit.

24 THE COURT: 185 is admitted.

25 MS. BASHAW: That's correct.

1 THE COURT: There's no objection?

2 MS. BASHAW: Agreed.

3 EXHIBIT ADMITTED

4 THE COURT: All right.

5 MR. ROBB: Petitioners would next offer 196
6 and 198.

7 MS. BASHAW: Again, we would have the same
8 objections. FredJarrett.com does not get passed the
9 hearsay exception. Mr. Jarrett's opinions are not
10 relevant, and we would object on those bases.

11 THE COURT: For the reasons previously stated
12 by the court, the court admits 196 and 198.

13 EXHIBITS ADMITTED

14 MS. BASHAW: And respondents did not have any
15 exhibits for this deposition.

16 THE COURT: All right.

17 MR. ROBB: With that, I will hand up the
18 excerpt from the testimony of Fred Jarrett.

19 THE COURT: All right. Thank you.

20 Mr. Emch?

21 MR. EMCH: Your Honor, next up is the
22 deposition testimony of Deborah LeBeau who's the
23 Superintendent of the Clover Park School District.

24 The good news, Your Honor, I don't think
25 we have any objections to any of the exhibits. I think

1 they're all agreed.

2 THE COURT: All right.

3 MR. EMCH: So I will go through petitioners
4 offers.

5 Petitioners are offering Trial Exhibits
6 168, 169, and 170. And those are agreed exhibits.

7 MS. BASHAW: Mr. Emch's characterization of
8 the state's position is accurate, Your Honor.

9 THE COURT: All right. 168, 169, and 170 are
10 admitted.

11 EXHIBITS ADMITTED

12 MS. BASHAW: The respondents, I think would
13 be next. And we are offering 1170, 1171, 1172, 1176,
14 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185.

15 THE COURT: Any objections?

16 RIGHT1: No objections, Your Honor.

17 THE COURT: The following exhibits are
18 admitted: 1170, 1171, 1172, 1176, 1177, 1178, 1179,
19 1180, 1181, 1182, 1183, 1184, and 1185.

20 EXHIBITS ADMITTED

21 MS. BASHAW: Correct.

22 MR. EMCH: I'll hand up to the clerk the
23 deposition transcript of Deborah LeBeau.

24 So next up, Your Honor, is the
25 deposition testimony of Bryon Moore, who is -- who was

1 the state's designee for the Joint Task Force on School
2 Construction Funding.

3 The good news is, on this one I believe
4 we also have agreed exhibits.

5 THE COURT: All right.

6 MR. EMCH: There's some objections reflected
7 on the pleadings. Ms. Bashaw informed me that the
8 state's withdrawing those objections.

9 MS. BASHAW: Right.

10 MR. EMCH: Okay. So listing off the trial
11 exhibits that petitioners are offering, it's Trial
12 Exhibit 260, 265, 264. And that's it for petitioners.

13 THE COURT: Any objections?

14 MS. BASHAW: No objection.

15 THE COURT: 260, 265, and 264 are admitted.

16 EXHIBITS ADMITTED

17 MS. BASHAW: And the respondents would offer
18 267.

19 MR. EMCH: No objection, Your Honor.

20 THE COURT: 267 as admitted.

21 EXHIBIT ADMITTED

22 MR. EMCH: And I'll provide the clerk with
23 the deposition transcript of Mr. Moore.

24 Okay. Next up, Your Honor, is the
25 deposition testimony of Steve Rasmussen who's the

1 Superintendent of Issaquah School District.

2 MS. BASHAW: The state agrees -- or has no
3 objection to the exhibits that petitioners are
4 offering.

5 MR. EMCH: And so petitioners would offer
6 Trial Exhibits 121, 122, 118, 119, 123, 1098. That's
7 1098.

8 And that is all that the petitioners are
9 offering on this.

10 THE COURT: All right. The exhibits that are
11 offered are: 121, 122, 118, 119, 123, and 1098.

12 And there are no objections?

13 MS. BASHAW: That's correct.

14 THE COURT: Those are admitted.

15 EXHIBITS ADMITTED

16 MS. BASHAW: The respondents would offer 118,
17 119, 120, 121, 122, 10 -- do you want them -- I have
18 few more. Do you want me stop there and do them
19 first?

20 THE COURT: Just go ahead and give us the
21 whole list.

22 MS. BASHAW: 1078, 1079, 1080. I think
23 that's already been admitted, I apologize. So going
24 through, 1079, 1081, 1082, 1083, 1092, 1093, 1094,
25 1642, 1643, 1095, 1096, and 1097. It looks like I

1 might have missed one, 1077.

2 THE COURT: Are there any objections to any
3 of those?

4 MR. EMCH: No objections to any of these
5 documents, Your Honor.

6 THE COURT: Okay. The court admits the
7 following exhibits: 118 was previously admitted. 119
8 was previously admitted. 120 is admitted. 121, 122,
9 1078, 1079, 1077, 1081, 1082, 1083, 1092, 1093, 1094,
10 1642, 1643, 1095, 1096, and 1097.

11 EXHIBITS ADMITTED

12 MR. EMCH: Okay. I will hand up the
13 deposition transcript of Mr. Rasmussen.

14 MR. ROBB: Your Honor, we have exhibits
15 related to the deposition testimony of Sam Reed. That
16 deposition was previously submitted. We hadn't
17 officially offered the exhibits on the record, although
18 I think there was a relevance objection that the state
19 had offered to these exhibits. I believe they
20 submitted a pleading related to that. We responded.
21 We just haven't gone through the formal process of
22 offering them on the record and getting rulings based
23 on the exhibits themselves.

24 THE COURT: I think we should probably do
25 that.

1 MR. ROBB: Yes.

2 MS. BASHAW: Do you have pleadings? Because
3 I don't. I thought this had already been dealt with,
4 so I haven't look at that.

5 MR. ROBB: Do you want to save this to the
6 end?

7 THE COURT: What we'll do is go through the
8 others. If we do need to take a recess, you can
9 discuss that during recess.

10 MR. ROBB: Okay.

11 MS. BASHAW: Thank you, Your Honor.

12 So next up would be Rob Regan,
13 R-E-G-A-N. Mr. Regan was a 30B6 witness for the
14 Washington Education Association. He is Managing
15 Director of the WEA.

16 And as part of his deposition testimony,
17 respondents offer Exhibits 1350, 1352, 1354, and 1355.

18 THE COURT: Are there any objections first?

19 MR. EMCH: Your Honor, as to the first
20 documents, no objection. It's 1350, 1352, and 1354.

21 With respect to 1355, we just wanted to
22 note for the record that that trial exhibit is an
23 unsigned letter that the respondent attained from a
24 1983 court file. So we could admit it as such as an
25 unsigned letter, and it's also over 25 years old, so it

1 would be considered an ancient document.

2 THE COURT: So you are not objecting to it
3 other than noting that it's unsigned.

4 MR. EMCH: Correct.

5 THE COURT: And the other exhibits you have
6 no objection to.

7 MR. EMCH: Correct, Your Honor.

8 THE COURT: All right. 1350, 1352, 1354, and
9 1355 are all admitted.

10 EXHIBITS ADMITTED

11 MS. BASHAW: The one thing we do need to do,
12 as it relates to 1352, it's actually a CD. What we
13 have in the court's file and Your Honor's file is a
14 place holder page and so we need to actually give you
15 the CD, which is what 1352 is.

16 THE COURT: All right. That's 1352?

17 MS. BASHAW: Correct.

18 All right. We'll give the court the
19 pretty one. The clerk, the most important file.

20 MS. BASHAW: And here is his transcript.

21 MR. EMCH: So next up, Your Honor, is the
22 deposition testimony of Rose Search. She's the
23 Superintendent of the Royal School District in eastern
24 Washington.

25 And I believe we only have agreed

1 exhibits on this list --

2 THE COURT: All right.

3 MR. EMCH: -- on the pleadings, so
4 petitioners offer Trial Exhibit 141, 142 -- and that
5 appears to be it. These are agreed exhibits.

6 THE COURT: Any objections to Exhibit 141 and
7 142?

8 MS. BASHAW: No, Your Honor.

9 THE COURT: 141, 142 are admitted.

10 EXHIBITS ADMITTED

11 MS. BASHAW: Respondents would offer exhibits
12 1099, 1102, 1104, 1105, 1106, 1108, and 1109.

13 THE COURT: No objections, Mr. Emch?

14 MR. EMCH: No objections, Your Honor.

15 THE COURT: 1099, 1102, 1104, 1105, 1106,
16 1108, 1109 are admitted.

17 EXHIBITS ADMITTED

18 MR. EMCH: I'm passing to the clerk the
19 deposition testimony of Ms. Search.

20 THE COURT: Thank you.

21 MR. EMCH: Next up, Your Honor, is the
22 deposition testimony of Thomas Seigel, S-E-I-G-E-L.
23 He's the Superintendent of the Bethel School District.
24 And I believe these are largely agreed exhibits, so
25 I'll go through them.

1 Petitioners offer Trial Exhibits 176,
2 177, and 178. I think that's it for exhibits that
3 petitioners are offering by themselves.

4 THE COURT: All right. And any objections?

5 MS. BASHAW: No objection.

6 THE COURT: 176, 177, 178 are admitted.

7 EXHIBITS ADMITTED

8 MS. BASHAW: Respondents would offer Exhibit
9 175, 1198, 1199, 1200, 1201, 1202, 1205, 1209. And
10 I'll stop there because I think there might be an
11 objection to the other one.

12 THE COURT: All right. Any objections?

13 MR. EMCH: No objections through 1209, Your
14 Honor.

15 THE COURT: 175, 1198, 1199, 1200, 1201,
16 1202, 1205, and 1209 are admitted.

17 EXHIBITS ADMITTED

18 MS. BASHAW: Respondents would offer 1210,
19 1211, and 1212.

20 MR. EMCH: Your Honor, petitioners did have
21 an objection to 1210.

22 We could admit authenticity as a draft,
23 but not a final document. This is in volume 7. Black
24 7. And --

25 MS. BASHAW: And that's fine with respondents

1 as a draft document.

2 MR. EMCH: Thus, as to authenticity.

3 We also have an objection as for --
4 objection to admission for lack of foundation and
5 hearsay.

6 This is a document that I don't believe
7 the superintendent could authenticate or have any
8 personal knowledge about, so it would be hearsay.

9 MS. BASHAW: Well, as petitioners identified
10 with the Battle Ground School District and the
11 photographs that were provided under the 30B6 Notice,
12 this document was provided by the Bethel School
13 District under the same 30B6 Notice for its district,
14 so they authenticated it in response to the subpoena,
15 just as the court found with the photographs.

16 So I think that that objection at this
17 point would not be pertinent, given the court has let
18 in other documents that were not specifically
19 authenticated by the witness in the deposition.

20 MR. EMCH: Your Honor, this was a document
21 that the superintendent couldn't identify. He
22 didn't -- he said he didn't prepare it, and he can only
23 hazard a guess about what it may be or where it came
24 from.

25 THE COURT: Well, I think these are different

1 from the photographs, Ms. Bashaw. I think that the
2 witness was referring -- and, as I said, I had to make
3 a certain inference, but I think it was a reasonable
4 inference based upon the photographs and that they
5 report to be what they represented.

6 This is a document which contains a lot
7 of substantive information, and I have no idea who made
8 the statements in 1210.

9 MS. BASHAW: The 30B6 Notice asked each
10 district to provide documents that they believe
11 supported any belief or assertions that they were being
12 underfunded, just to put it in a nutshell.

13 THE COURT: Right.

14 MS. BASHAW: It was much more complicated
15 than that. And this is what this district provided
16 under that 30B6 Notice.

17 THE COURT: But you have a witness who says,
18 specifically, I don't have any familiarity with this
19 document. I don't know if this is a school district
20 document or a union document, a BEA document, who
21 prepared it, and where the information came from.

22 MS. BASHAW: We have the same with Ms. Bria's
23 testimony as well. She didn't -- there were no
24 questions about who took those pictures, when they were
25 taken, what they specifically were taken of.

1 So I think it does fall on the same
2 group.

3 THE COURT: Except that they're not making a
4 factual assertion in and of themselves.

5 MS. BASHAW: Well, but they are. To the
6 extent that they are identifying "deferred maintenance"
7 or whatever the phraseology is, they're purporting it
8 to be facts of something.

9 THE COURT: Well, I think that the difference
10 is that I can look at the photographs and give whatever
11 weight I choose by looking at those photographs without
12 the necessity of testimony saying, well, this is a
13 concrete surface which is cracking. Whereas this is
14 stating specific assertions of fact that there's no way
15 to cross-examine an unknown author. I think there is a
16 distinction.

17 1210 is not admitted.

18 MS. BASHAW: We had 1211 and 1212. I'm not
19 sure whether we finished that.

20 MR. EMCH: No objection to 1211 or 1212.

21 THE COURT: 1211 is admitted. 1212 is
22 admitted.

23 EXHIBITS ADMITTED

24 MR. EMCH: I'll hand the clerk the deposition
25 transcript of Dr. Seigel.

1 MR. ROBB: Next up, Your Honor, we have the
2 deposition testimony of George Sneller, who is the
3 Director of Nutrition Services at the Office of
4 Superintendent of Public Instruction.

5 And along with this deposition
6 testimony, the petitioners had offered Trial Exhibit
7 240.

8 THE COURT: That's the only exhibit being
9 offered?

10 MR. ROBB: Oh, we have more. I'm not sure
11 that --

12 MS. BASHAW: Why don't you go through the
13 list and then --

14 MR. ROBB: Okay.

15 We'd also offer Trial Exhibit 241, Trial
16 Exhibit 242, Trial Exhibit 243, and Trial Exhibit 245.

17 THE COURT: 240, 241, 242, 243, and 245 are
18 offered.

19 MS. BASHAW: And the state has no objection
20 to 240, 241, 242, 243.

21 We do object to 245 in that the witness
22 himself could not authenticate it. And this is a
23 document that's purported to be created before his time
24 with the agency.

25 THE COURT: 240, 241, 242, 243 are admitted.

1 EXHIBIT ADMITTED

2 THE COURT: And so the objection is what,
3 Ms. Bashaw?

4 MS. BASHAW: 245. The witness was
5 specifically asked whether or not this was a document
6 that he was familiar with and he said no, didn't know
7 anything about it.

8 THE COURT: So it's an authentication
9 objection?

10 MS. BASHAW: Yes, Your Honor.

11 THE COURT: All right.

12 Mr. Robb?

13 MS. BASHAW: I guess it's more of lack of
14 foundation and relevance objection, Your Honor, to the
15 extent that this witness couldn't talk about the
16 document. I'm not sure what the relevance is. It
17 purports to be created by OSPI, but we don't have any
18 particular witness that could confirm that, nor was any
19 particular witness able to be examined about it.

20 THE COURT: All right. So it's
21 authentication, lack of foundation, and relevance.

22 MR. ROBB: A couple of responses, Your
23 Honor.

24 First, I don't -- there was no objection
25 to authenticity raised in the Joint Statement of

1 Evidence or ER 904. Second, it's a business record of
2 OSPI that was produced during -- in the course of
3 discovery. It has the Bate stamp number on it coming
4 from OSPI.

5 The objection, I believe, is really that
6 the witness was not at OSPI at the time this was
7 created, however, he's a current director, and the
8 document was used in order to elicit questions or
9 responses concerning the program described in here,
10 which the witness testified is a continuing program,
11 and the document simply provided a means to get into
12 the substance and ask questions that are pertinent to
13 the nutritional issues.

14 MS. BASHAW: We continue with the relevance
15 objection. I mean, it appears that this document was
16 created back in 2000, so it's almost a 10-year-old
17 document, and what relevance -- whatever information is
18 in here to the current time frame, I think, is suspect.

19 THE COURT: Well, in this case we delve back
20 into issues, I think, going back to the '60s, so I'll
21 give it the weight that it's due.

22 245 is admitted. The objection's
23 overruled.

24 EXHIBIT ADMITTED

25 MR. EMCH: Thank you.

1 MR. ROBB: Thank you, Your Honor. I believe
2 those are the only exhibits offered with Mr. Sneller's
3 testimony, so I will hand that up to the court.

4 THE COURT: Next deposition?

5 MR. ROBB: The next deposition is that of
6 Senator Rodney Tom, who was another member of the Joint
7 Task Force on Basic Education Finance.

8 I don't believe there are any objections
9 to the exhibits offered in this deposition, so I will
10 offer them for the record.

11 Petitioners offer Trial Exhibit 183,
12 184, 186, 187, 188, 189, 191, and 192.

13 THE COURT: Any objections to any of those?

14 MS. BASHAW: I think we did have an objection
15 to 188, and it's hearsay. But it's --

16 MR. ROBB: I don't see that in the pleading
17 here.

18 MS. BASHAW: It's written in a previous
19 pleading. It's subject to hearsay, but, I believe Your
20 Honor can rule on it as he has for very similar types
21 of articles being created by legislators for providing
22 their various opinions.

23 THE COURT: So 188 is the only objection on
24 that list?

25 MS. BASHAW: Correct, Your Honor.

1 exhibits. To petitioners will offer Exhibit 102 and
2 Trial Exhibit 103.

3 THE COURT: All right. Those are no
4 objection?

5 MS. BASHAW: No objection, Your Honor.

6 THE COURT: 102, 103 are admitted.

7 EXHIBITS ADMITTED

8 MR. ROBB: Petitioner would offer Trial
9 Exhibit 104.

10 MS. BASHAW: And we're withdrawing our
11 objection to 104.

12 THE COURT: 104 is admitted.

13 EXHIBIT ADMITTED

14 MR. ROBB: Petitioners would offer Trial
15 Exhibit 105.

16 THE COURT: 105 is offered.

17 MS. BASHAW: And we're withdrawing the
18 objection to 105.

19 THE COURT: 105 is admitted.

20 EXHIBIT ADMITTED

21 MR. ROBB: Okay. And the rest appears to be
22 agreed exhibits, as well.

23 Petitioners offer Trial Exhibit 106,
24 107, 108, and 109.

25 THE COURT: Any objections to those exhibits?

1 MS. BASHAW: No, your Honor.

2 THE COURT: 106, 107, 108, 109 are admitted.

3 EXHIBITS ADMITTED

4 MR. ROBB: With that I will hand up the
5 testimony of Bryan Wilson.

6 THE COURT: And respondent has no offer on
7 Mr. Wilson?

8 MS. BASHAW: That's correct.

9 MR. ROBB: And the final deposition
10 transcript that we will be dealing with today is the
11 deposition of Janice Ellie Yoshiwara who's a 30B6
12 representative for the Washington State Board for
13 Community and Technical Colleges.

14 Along with her deposition testimony, the
15 petitioners would offer Trial Exhibits 96, 97, 98, 99,
16 100, and 101.

17 THE COURT: Are there any objections to
18 those?

19 MS. BASHAW: No objection.

20 THE COURT: Exhibits 96, 97 98, 99, 100, and
21 101 are admitted.

22 EXHIBITS ADMITTED

23 THE COURT: And from the respondent?

24 MS. BASHAW: Those cover our exhibits as
25 well, Your Honor.

1 THE COURT: All right. Very good.

2 MR. ROBB: So I'll hand up the testimony of
3 Janice Yoshiwara.

4 THE COURT: All right. We still have
5 Secretary Reed.

6 MR. ROBB: Yes, Your Honor, we do.

7 THE COURT: What other issues do we need to
8 address this afternoon besides Secretary Reed?

9 MR. ROBB: I believe that's it.

10 THE COURT: Okay.

11 MR. EMCH: I believe that's right, Your
12 Honor.

13 THE COURT: All right. So rather than taking
14 a recess, if we can -- or do you need time to go
15 through that?

16 MR. ROBB: Your Honor, we're prepared to
17 proceed right now.

18 THE COURT: Okay. Ms. Bashaw?

19 MS. BASHAW: And I would just like to be able
20 to look at the pleadings. So do you have the pleadings
21 so I can see what we said?

22 MR. ROBB: Okay. In that case we might have
23 to take a recess because I don't have the pleadings
24 right here with me.

25 MS. BASHAW: Okay. Perhaps the court might

1 have its copy of the pleadings? If it's already been
2 presented, again --

3 THE COURT: Which pleading are we referring
4 to?

5 MR. ROBB: When we submitted the testimony of
6 Sam Reed, the state submitted a pleading that generally
7 objected to the relevance of the documents. They
8 objected to the relevance of Secretary Reed's testimony
9 and the exhibits that we offered.

10 I could give you my understanding of
11 their objection, but --

12 THE COURT: Was it a general objection, or
13 were there specific objections?

14 MS. BASHAW: It was the same thing we've been
15 doing, Your Honor, with their pleadings --

16 MR. ROBB: No.

17 MS. BASHAW: -- cover page.

18 MR. ROBB: Actually, it wasn't. It was
19 before we established the protocol. Because we offered
20 the entire deposition.

21 THE COURT: Right.

22 MR. ROBB: This was a written deposition -- a
23 deposition on written questions that we did in lieu of
24 a live deposition after negotiation with the Attorney
25 General's Office, both with Ms. Bashaw and also with

1 MR. ROBB: All right. I'm sorry about that,
2 Your Honor.

3 THE COURT: All right. There's only one
4 objection. I think it's Exhibit M. It is a general
5 objection --

6 MR. ROBB: Yes, Your Honor.

7 THE COURT: -- to everything, but there is a
8 specific objection to M.

9 Counsel, let me refer you to state's
10 objections.

11 So what we need to do is we need to
12 convert M to an exhibit in --

13 MR. ROBB: And all those exhibits are in the
14 binders here as well.

15 THE COURT: Right. That's what I'm stating.
16 We need to -- so M, I need an Exhibit Number M.

17 MR. ROBB: Ah. Pardon me. Exhibit 673 is M.

18 THE COURT: Okay 673 is M.

19 And this looks like a news article, an
20 editorial in the Olympian. I don't see its author. It
21 might be just a news editorial.

22 MR. ROBB: Yes, Your Honor, I believe that is
23 a news editorial of the Olympian which was given to
24 Secretary Reed who was asked, based on this article,
25 about his opinions -- or about the importance of the

1 Heritage Center and provided his responses.

2 And, if I may, we used this news
3 article, based on the format for the deposition
4 testimony, in order to also not impose too much on
5 Secretary Reed's time and so that was the purpose in
6 using it, and we would ask that it be included in the
7 record simply for completion.

8 MS. BASHAW: And I think like an oral
9 deposition, his answers would be in the record, but the
10 exhibit itself is hearsay. We don't have any
11 authentication related to it -- Secretary Reed.
12 There's no evidence that he wrote this.

13 So, similar to all the other newspaper
14 articles that have been attempted to be offered, we
15 would object on hearsay grounds.

16 MR. ROBB: The difference that we would note
17 is that, given the format for this, the news article --
18 short news article was incorporated into the question
19 simply in order to avoid imposing on Secretary Reed's
20 time.

21 THE COURT: So the question, basically, makes
22 no sense without the article.

23 MR. ROBB: Yes, that's right, Your Honor.

24 THE COURT: Well, given the format, I
25 understand the concern of petitioners' counsel.

1 If I admit it, then I can only admit it
2 for completion purposes and not for the truth of the
3 matter asserted.

4 So, the court can't consider anything in
5 Exhibit 673 for the truth of the matter. But, if the
6 question posed to Secretary Reed is something to the
7 effect of, if you read this article, do you have an
8 opinion about what this article states -- the problem
9 with that is, that in itself assumes facts not in
10 evidence, which is that the Heritage Center is going to
11 close.

12 MR. ROBB: It's actually going to be
13 constructed.

14 THE COURT: I'm sorry. It's actually going
15 to be constructed. I read the article very quickly.

16 MS. BASHAW: We agreed to the format, Your
17 Honor, but we didn't get prior approval and veto power,
18 if you will, to the particular questions, as far as I'm
19 aware.

20 MR. ROBB: Actually, Your Honor, I believe
21 that the procedures for the written deposition allow
22 counsel to register objections in the pleading itself
23 and depose additional questions that they may have --
24 might have for this witness.

25 THE COURT: Well, as stated, I'm not going to

1 admit it for its substantive purposes. I will admit it
2 only as foundational for purposes of Secretary Reed
3 responding to whatever the article says.

4 Let's see. Excuse me for just a moment.

5 (Pause in proceedings.)

6 THE COURT: So question 54 is a July 2nd,
7 editorial from the Olympian.

8 "'Don't Let the Dream of Heritage Center
9 Fade Away,' have you seen this editorial before? Do
10 you agree with it? I have seen the editorial and I
11 agree with it."

12 So, to the extent that Secretary Reed is
13 offering his opinion about whether or not the Heritage
14 Center should be built, as opposed to closed, I think
15 the article has to be admitted. But, again, not for
16 the truth of the matter asserted. For example,
17 statements made such as how much it's going to cost,
18 when it's going to be completed, then, first of all,
19 that's not relevant to the court's analysis in this
20 case.

21 But for purposes of the deposition upon
22 written questions, I will admit 673 referenced as
23 Exhibit M to Secretary Reed's deposition.

24 All right. Anything else, counsel?

25 MR. ROBB: Well, along with that, Your Honor,

1 we would offer the rest of the exhibits, which are
2 Exhibits 661 through 675, inclusive.

3 THE COURT: 6 --

4 MR. ROBB: 661 through 675, inclusive.

5 THE COURT: All right. And the only
6 objection to those were a general objection to
7 consideration of Secretary Reed's deposition?

8 MS. BASHAW: Yes. We have a general
9 relevance objection to these exhibits.

10 THE COURT: All right. Well, it's a little
11 hard to determine the relevance without reading the
12 secretary's deposition, which I admit I have not yet
13 done. But I think the gist of it is whether people
14 need to be educated in order to read the voters'
15 pamphlet, which I just spent my last weekend doing for
16 our upcoming election.

17 MR. ROBB: You're a step ahead of me, Your
18 Honor. I've received mine.

19 THE COURT: You haven't gotten yours?

20 MR. ROBB: I have received mine. I have not
21 had time to read it.

22 MS. BASHAW: Just to give the court a flavor
23 of some of this and some questions simply aren't
24 relevant, "Is Exhibit A a voters' pamphlet?"

25 THE COURT: Correct.

1 MS. BASHAW: "Yes. This is a voters'
2 pamphlet. How is it that Exhibit A -- how is it that
3 voters' pamphlet, Exhibit A, is similar to voters'
4 pamphlets sent to voters in other counties for the
5 August 19th, 2008 primary?" Well, I don't see the
6 relevancy of that.

7 "How is it that voters' pamphlet, A, is
8 different from the voters' pamphlet sent to voters in
9 other counties across the state for the August 19
10 primary? The cover page for the voters' pamphlet
11 refers to Washington's new top two primary. What is
12 Washington's new top two primary?" I don't see any
13 relevance there.

14 So, there wasn't a link, if you will, to
15 this -- to the matters in this case in the deposition
16 questions.

17 THE COURT: Actually, it did come through
18 through other witnesses, and other witnesses testified,
19 and I can't tell you who, but I remember their
20 testimony. And the testimony just was, in order to be
21 informed and to participate in our democracy, it's
22 necessary to be able to be sufficiently educated to
23 read things like voters' pamphlets.

24 MR. ROBB: Yes, Your Honor. And similar
25 questions are asked of Secretary Reed after the

1 foundation to the document is laid, and we have to go
2 through those steps before we can actually get to the
3 substantive questions.

4 It's a little awkward, I'll admit, but
5 that's the format we agreed to use in this case.

6 THE COURT: This is very interesting.

7 Initiatives to the People, 1914 through
8 2009.

9 MR. ROBB: It's an interesting list, starting
10 with the prohibition of going through --

11 THE COURT: The first one is Statewide
12 Prohibition.

13 Did it pass?

14 MR. ROBB: I can't remember off the top of my
15 head, but I don't think so.

16 THE COURT: You weren't around?

17 MR. ROBB: No, Your Honor.

18 THE COURT: If I recall -- we shouldn't do
19 this on the record. But, if I recall, there was a -- I
20 think women got the right to vote in 1910, if I recall,
21 and a big concern was that if women got the right to
22 vote, prohibition would pass, because most of the anti-
23 temperance movement was with women.

24 MR. ROBB: That's right.

25 THE COURT: And that was a big issue in the

1 late 1800s when women were denied the right to vote.
2 In fact, I think that occurred in -- that was a huge
3 issue in the State Constitution in 1889.

4 There were several attempts, but the
5 courts actually struck it down. An early attempt was
6 by the state -- I'm sorry, not by the state, but by the
7 Territorial Legislature, and it allowed women to vote
8 and sit on juries. And the convicted defendant
9 appealed saying that the Legislature didn't have
10 authority, that was the basis of his conviction. He
11 was convicted by an unlawful jury that included women
12 and he got it reversed. And the law that allowed women
13 to vote was struck down by the Supreme Court of the
14 territory, and it was another 20-plus years and then
15 that got struck down, and I think it was 1910.

16 Anyway, we're getting a little bit off
17 --

18 MS. BASHAW: I do notice a --

19 THE COURT: -- base.

20 MS. BASHAW: -- reference to Initiative 48,
21 school attendance, 1924.

22 THE COURT: There you go. That's relevant to
23 this case. As well as limitation of taxation.

24 MS. BASHAW: Right.

25 THE COURT: All right. I will admit 661

1 through 675, inclusive.

2 EXHIBITS ADMITTED

3 MR. ROBB: Thank you, Your Honor.

4 THE COURT: You're welcome, Mr. Robb.

5 Counsel, anything else?

6 MS. BASHAW: With that, Your Honor, the
7 respondent rests.

8 THE COURT: All right. Respondent rest.

9 Is there any rebuttal from the
10 petitioners?

11 MR. EMCH: No, the petitioners rest as well.

12 THE COURT: All right. The case is closed.

13 I think we have all exhibits. We have
14 all deposition testimony, so we'll now proceed to
15 closing arguments.

16 Why don't we -- since we're at three
17 o'clock, why don't we start closings right now.

18 MS. BASHAW: Sounds good, Your Honor.

19 THE COURT: Ms. Emch, would you or Mr. Robb
20 like to --

21 MR. ROBB: I'll go. I might hear about that
22 when I get back.

23 MS. BASHAW: The A team may be a little
24 upset.

25 THE COURT: All right, counsel.

1 So, we'll adjourn this matter until
2 9:00 a.m. tomorrow morning. I think I've got plenty to
3 keep me busy until then. And I hope everybody has a
4 good evening.

5 If you need to contact us about
6 anything, just let us know, otherwise we'll see you
7 tomorrow morning.

8 MS. BASHAW: Thank you, Your Honor.

9 MR. ROBB: Thank you, Your Honor.

10 THE COURT: Court will be at recess.

11 (Whereupon proceedings adjourned.)

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1 REPORTER'S CERTIFICATE

2

3 STATE OF WASHINGTON)
4 COUNTY OF KING) SS:

5

6 I, CYNTHIA A. KENNEDY, an official reporter of
7 the State of Washington, was appointed an official
8 court reporter in the Superior Court of the State of
9 Washington, County of King, on April 17, 2006, do
10 hereby certify that the foregoing proceedings were
11 reported by me in stenotype at the time and place
12 herein set forth and were thereafter transcribed by
13 computer-aided transcription under my supervision and
14 that the same is a true and correct transcription of my
15 stenotype notes so taken.

16 I further certify that I am not employed by,
17 related to, nor of counsel for any of the parties named
18 herein, nor otherwise interested in the outcome of this
19 action.

20

21 Dated: _____

22

23

24

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