

NASSAU COUNTY
TEMPORARY DISTRICTING
ADVISORY COMMISSION

MEETING IX
WORK SESSION

FRANCIS X. MORONEY
CHAIR

Nassau County Legislature
1550 Franklin Avenue
Mineola, New York

November 10, 2022

6:08 p.m.

TAKEN BY: KAREN LORENZO, OFFICIAL COURT REPORTER

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

COMMISSIONERS:

FRANCIS X. MORONEY, CHAIRMAN

PETER BEE

JOHN J. REINHARDT

MAUREEN FITZGERALD (excused)

CHRISTOPHER DEVANE

ERIC MALLETT

DAVID MEJIAS, VICE CHAIR

JARED KASSCHAU,

ANDRENA WYATT

JAMES MAGIN, JR.

MICHAEL PERNICK

EXECUTIVE DIRECTORS:

ELISABETTA COSCHIGNANO

RACHEL WHITMORE

BOARD ATTORNEYS:

VINCENT MESSINA, ESQ.

PETER CLINES, ESQ.

CLERK:

MICHAEL PULITZER

A L S O A P P E A R E D :

DR. MEGAN GALL, PRINCIPAL (VIA TEAMS)

Blockwell Consulting

DAVID SCHAEFER, VICE PRESIDENT

Skyline Consulting

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2 CHAIRMAN MORONEY: We had a
3 discussion ahead of time and Dr. Gall
4 who's the demographer for the
5 commissioners appointed by the minority
6 will give her presentation to us at her
7 will.

8 Dr. Gall, we can't see you, but we
9 can hear you, I'm sure -- Oh, yes.
10 Michael. Do you want to call the roll?

11 CLERK PULITZER: Thank you,
12 Chairman. The office of roll call.
13 Commissioner Peter Bee?

14 COMMISSIONER BEE: Present.

15 CLERK PULITZER: Commissioner John
16 Reinhardt?

17 COMMISSIONER REINHARDT: Here.

18 CLERK PULITZER: Commissioner
19 Maureen Fitzgerald?

20 CHAIRMAN MORONEY: Excused.

21 CLERK PULITZER: Thank you.
22 Commissioner Christopher Devane?

23 COMMISSIONER DEVANE: Here.

24 CLERK PULITZER: Commissioner Eric
25 Malette?

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COMMISSIONER MALLETTE: Here.

CLERK PULITZER: Commissioner David
Mejias?

COMMISSIONER MEJIAS: Here.

CLERK PULITZER: Commissioner Jared
Kasschau?

COMMISSIONER KASSCHAU: Here.

CLERK PULITZER: Commissioner
Andrena Wyatt?

COMMISSIONER WYATT: Here.

CLERK PULITZER: Commissioner James
Magin, Jr.?

COMMISSIONER MAGIN: Present.

CLERK PULITZER: Commissioner
Michael Pernick?

COMMISSIONER PERNICK: Here.

CLERK PULITZER: Chairman Frank
Moroney?

CHAIRMAN MORONEY: Present.

CLERK PULITZER: We have a quorum,
sir.

CHAIRMAN MORONEY: Dr. Gall, we're
at your command whenever you wish to
start.

1
2 DR. GALL: Wonderful. Thank you so
3 much.

4 My name is Dr. Megan Gall. I'm the
5 principal at Blockwell Consulting. I've
6 prepared an analysis of the Nassau County
7 Legislative Districts.

8 I want to thank you for the
9 opportunity to be with you tonight and to
10 share these results.

11 Just a quick note on my credentials,
12 I have a Ph.D in Political Science. I
13 have a Masters of Science in Geographic
14 Information Science which is hi-tech map
15 making. I'm a certified GIS professional
16 from the GIS Certification Institute. I
17 hold a research associate appointment
18 with the University of California,
19 Berkeley. I have worked in voting rights
20 since 2014, and I opened Blackwell
21 Consulting in 2021.

22 My past clients or current clients
23 have included Strumwasser & Woocher,
24 which was the counsel for the California
25 Citizens Redistricting Commission. I was

1
2 the sole statistician for that project.
3 I have also been an expert for the U.S.
4 Department of Justice National non-profit
5 law firms, private law firms, state level
6 secretaries of state and numerous level
7 jurisdictions including cities, counties
8 and special jurisdictions of all sizes
9 like yours.

10 I had a set of instructions for my
11 analysis. First, I was to perform a
12 non-partisan analysis in all respects. I
13 was asked to analyze if any patterns of
14 racially polarized voting in Nassau
15 County. I was asked to confirm that
16 compliant alternative districting
17 configurations are possible and if so, to
18 draw a compliant plan based on the law
19 and districting criteria. I was asked to
20 analyze any proposed districting plans
21 for compliance with federal and state
22 law, and finally I was asked to provide a
23 complete written report with my findings
24 and conclusions.

25 Summary of findings and then we'll

1
2 go through these in more detail:

3 - the Nassau County elections show
4 patterns of racially polarized voting.
5 Black and Latino voters generally vote
6 cohesively in support of the same
7 candidates. White voters generally vote
8 as a block in such a way that typically
9 defeats the minority-preferred candidate.

10 - Second, it is possible to draw a
11 map that complies with all federal and
12 state legal requirements and also
13 contains five majority/minority districts
14 in which the combined Black and Latino
15 voting age population, which is 18+, is
16 above 50% and the citizen voting age
17 population is also above 50%. Without
18 these majority/minority districts, Black
19 and Latino voters will usually be unable
20 to elect candidates of their choice.

21 Let's move into the analysis.
22 First, a little bit about the
23 demographics of Nassau County as a whole.
24 Between 2010 and 2020 there has been
25 population growth of over 56,000 people.

1
2 That has been accompanied with a rather
3 dramatic decline in the White population.
4 You can see in the chart here that the
5 White population dropped nearly 100,000
6 people, which is a drop of nearly 10%
7 from 2010 to 2020. That drop was
8 accompanied by significant growth in the
9 Asian and Latino populations.

10 Asian population, specifically, grew
11 over 61,000 people and the Latino
12 population also grew over 61,000 people.
13 The Asian growth rate over the past 10
14 years was 61%, and the Latino growth rate
15 was 31%, and we see these reflected in
16 these numbers. I'll also mention that
17 the Black population grew by nearly
18 6,000, and although they still represent
19 about the same amount of percentage in
20 the county, about 10.55%, the growth rate
21 was 4%.

22 I have a couple of maps showing the
23 demographics of the County. There's
24 three maps and they're all set up in the
25 same way. They just give us an idea of

1
2 where the populations are located.

3 Shading is darker in areas with higher
4 percentages of the population and shading
5 is lighter in areas with lower
6 percentages of the population.

7 In all three maps the scale is the
8 same so that comparisons are easy to the
9 eye. Anything in the darker greens is
10 going to be a population of 50% or
11 higher.

12 On this slide we can see the
13 geographic dispersion of the Black voting
14 age population (indicating). On the
15 right-hand side, we have a map of the
16 full county for context and on the
17 left-hand side, I tried to zoom into the
18 areas where the Black voting age
19 population percentages are high.

20 We have a couple of pockets, one in
21 New Castle in Westbury. Another pocket
22 just south of that in Hempstead,
23 Uniondale, Roosevelt, Freeport, Baldwin,
24 Baldwin Harbor and Lakeview. And then in
25 the west of the County we have another

1
2 pocket that is made up of South Floral
3 Park, Elmont, North Valley Stream, Valley
4 Stream and South Valley Stream.

5 Next is the Latino voting age
6 population and you'll notice that the
7 pockets are similar to the Black
8 residential patterns. Latino populations
9 are a little bit more dispersed and you
10 can see that as I flip back and forth
11 between them. There are pockets of
12 Latino voting age population again in New
13 Castle in Westbury extending into
14 Hicksville a little bit. Another one in
15 the Hempstead, Uniondale, Roosevelt,
16 Freeport, Baldwin area and then, again,
17 on the west side of the County, Elmont,
18 North Valley Stream and Valley Stream
19 area.

20 Finally, a map showing
21 concentrations of Asian voting age
22 population. Again, we have two pockets
23 here, sort of, on the east and the west
24 side. On the east side we pockets in
25 Syosset, Jericho and Hicksville around

1
2 that area and a pocket on the western
3 side that includes, among others,
4 Herricks, Lake Success, North New Hyde
5 Park and Garden City Park. And that just
6 gives a little foundation on the
7 demographics of the County.

8 Next I want to talk about racially
9 polarized voting. Racially polarized
10 voting is a phenomenon that exists when
11 we have racial and ethnic groups voting
12 as distinct groups with distinct
13 candidate preferences. We use a
14 statistic called ecological inference to
15 measure the degree of racially polarized
16 voting.

17 Ecological inference you may have
18 heard referenced as EI. Ecological
19 inference is the predominant measure for
20 racially polarized voting. It has been
21 for decades and is accepted by the courts
22 universally. The other thing to note is
23 that results reflect estimates of the
24 group voting behavior. We can only
25 derive estimates.

1
2 Measuring racially polarized voting
3 is part of the analysis of the Gingles
4 preconditions, which is part of the legal
5 framework for assessing voting rights
6 violations. This framework was
7 established in Thornburg v. Gingles in
8 1986, and we use the racially polarized
9 voting and the ecological inference to
10 answer a series of questions:

11 - Is voting racially polarized, and
12 if so, who are the candidates of choice?

13 - Are the minority voters'
14 candidates of choice usually defeated?

15 And then as part of this exercise,
16 we also do a performance analysis. A
17 Performance Analysis lets us look at past
18 elections under new districts to see if
19 they perform for the minority preferred
20 candidates.

21 I analyzed two contests in Nassau
22 County, the 2017 and 2021 County Clerk
23 Contests. These are considered the most
24 probative elections for analysis for a
25 couple of reasons. They are recent.

1
2 They are endogenous elections, meaning
3 the geography for the election is the
4 same as the jurisdiction under
5 consideration. So it's the full county
6 and we have minority candidates on the
7 ballot.

8 So for these two contests, racially
9 polarized voting was present. In the
10 2021 contest between Brown and O'Connell,
11 the candidate of choice for Latino and
12 Black voters was Brown and they supported
13 Brown between 84 and 95% support. Black
14 and Latino voters were voting as a
15 coalition. The candidate of choice for
16 White voters was O'Connell. White voters
17 supported him (sic) between 66 and 70%.
18 The White voting bloc was sufficient to
19 defeat the minority's preferred candidate
20 in Brown.

21 Results are similar in the 2017
22 contest between Bennett and O'Connell.
23 Again, racially polarized voting was
24 present. The candidate of choice for
25 Latino and Black voters was Bennett.

1
2 Support ranged from 88 to 96% support.
3 Black and Latino voters were voting in
4 coalition.

5 The candidate of choice for the
6 White voters was O'Connell and White
7 support for O'Connell was between 59 and
8 62%. The White voting bloc, again, was
9 sufficient to defeat the minority's
10 preferred candidates.

11 We'll move into redistricting. I
12 want to go through the redistricting
13 criteria that guided the map making
14 process. First of all, with equal
15 population. Equal population has roots
16 in the U.S. Constitution around 'one
17 person, one vote'. Nassau County also
18 has local requirements in the municipal
19 Home Rule Law that we'll get into more
20 specifically. For this exercise we used
21 the prison-adjusted total population
22 based on the 2020 Decennial Census
23 published by the New York State
24 Legislative Task Force on Demographic
25 Research and Apportionment.

1
2 Second, we wanted to maintain
3 compactness, as compact as possible,
4 while otherwise complying. We wanted to
5 keep districts contiguous, avoid
6 connecting districts by water. Nassau
7 County has a lot of water features to
8 work with. That is a traditional
9 redistricting principle and something
10 that we do as a matter of course.

11 We also wanted to preserve political
12 subdivisions. This is a traditional
13 redistricting principle and also required
14 by the local Municipal Home Rule Law,
15 and, again, I'll get into that more
16 specifically also.

17 I also wanted to preserve
18 communities of interest. This is
19 desirable and I was able to incorporate
20 communities of interest as they were
21 relayed to me and largely based on public
22 testimony.

23 Finally, we looked to the Voting
24 Rights Act to help us determine if
25 majority/minority districts are in order

1
2 and for this proposed plan, we have five
3 districts that are majority/minority
4 districts. This is based on overall
5 minority population, residential
6 patterns, racially polarized voting
7 patterns and in full compliance of all of
8 the other requirements.

9 The districts perform by which I
10 mean they allow minority voters the
11 opportunity to elect their candidates of
12 choice.

13 Factors I did not consider include
14 election results, party affiliation,
15 party advantage or any other partisan
16 measure. I did not consider boundaries
17 for cores of the 2013 Legislative Plan
18 and I did not consider addresses of
19 incumbent county legislators.

20 Quick orientation to the map, and
21 we're going to go through each of the
22 districts, but this is an overview. The
23 district boundaries are in black lines.
24 The districts are numbered, and smaller
25 subdivisions are shown in the gray lines.

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2 The proposed -- I'm going to go through
3 some of the statistics on the proposed
4 plan. First, equal population.

5 The New York Municipal Home Rule Law
6 states that "the difference in population
7 between the most and the least populace
8 district shall not exceed 5% of the mean
9 population of all districts." Shorthand,
10 that means we have a 5% population
11 deviation. Again, populations are based
12 on the present adjusted data sets.

13 The first thing we do is derive an
14 ideal population and to do that we take
15 the total population of the county and
16 divide it by the number of districts, in
17 this case 19, to get our ideal district
18 population, which is 73,522 people. The
19 proposed plan has a population range of
20 72,006 people to 75,231 people and this
21 is an overall population range of 4.39%.
22 Four point three nine percent is squarely
23 within the New York Municipal Home Rule
24 Law.

25 We also created a very compact plan

1
2 and measure compactness here. The Reock
3 and Polsby-Popper tests are common
4 compactness tests. Both measures run
5 from zero to one. The higher numbers
6 indicate more compact districts.

7 One thing to note about compactness
8 measures is that some courts have given
9 some weight to some measures, but there
10 is no consistent measure and no
11 definitive test for compactness. The
12 proposed plan, however, does improve
13 substantially in overall plan compactness
14 and individual district compactness as
15 compared to the 2013 Legislative Plan.

16 For the proposed plan we also wanted
17 to preserve political subdivisions. The
18 Municipal Home Rule Law states that to
19 the extent practical, "no villages,
20 cities or towns except those having more
21 than 40% of a full ratio for each
22 district shall be divided." The proposed
23 plan complies fully with the Municipal
24 Home Rule Law and keeps all political
25 subdivisions that are subject to the law

1
2 in a single district.

3 I'm going to go through the
4 districts one by one, but I wanted to
5 give a quick rundown -- the slides are
6 all going to look the same -- quick
7 rundown of what we're looking at. The
8 map shows the district boundaries in bold
9 black lines and Google Maps underneath it
10 for reference. Areas shaded in red, and
11 you can see one on the corner here
12 (indicating) not in this district, in a
13 side district, those areas are subject to
14 the Municipal Home Rule Law. We have a
15 table showing the total population,
16 adjusted voting age population and
17 estimated citizen voting age population
18 for each district. We have details on
19 the overall district population and
20 deviation, details on compactness, and
21 then I'm going to point out any special
22 features or considerations as we walk
23 through each of the districts.

24 **District 1** includes either full or
25 portions of Elmont, North Valley Stream

1
2 and Valley Stream. District 1 has a very
3 high compactness score. This is a
4 majority/minority district with 65%
5 combined voting age population and 59%
6 combined citizen voting age population.
7 In the performance analysis minority
8 preferred candidates won by 33 to 39%,
9 and as previously mentioned, there are no
10 areas subject to the Municipal Home Rule
11 Law in District 1.

12 **District 2** includes New Castle,
13 Westbury, South Salisbury, Uniondale and
14 portions of East Meadow. There was
15 public testimony about keeping New Castle
16 and Westbury together as a community of
17 interest and we have done that here.
18 This is also a majority/minority
19 district. The combined voting age
20 population is 64%. The combined citizen
21 voting age population is 57%. The
22 Performance Analysis, the minority
23 preferred candidate wins by 24 to 37% and
24 Westbury is subject to the Municipal Home
25 Rule Law and is kept whole in District 2.

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2 **District 3** includes Hempstead and a
3 portion of West Hempstead. We heard
4 testimony to unify the Village of
5 Hempstead, which is the largest Village
6 in the United States and this plan
7 accomplishes that goal. This is also a
8 very compact district. It's also a
9 majority/minority district where the
10 combined voting age population is 79.88%
11 to 80% and the combined citizen voting
12 age population is about 72%. In the
13 Performance Analysis, minority preferred
14 candidates won by 26 to 36% in District 3.

15 **District 4** includes all of
16 Roosevelt, Rockville Centre, South
17 Hempstead and Lakeview and portions of
18 West Hempstead, Malvern Park Oaks,
19 Baldwin and Freeport. This is also a
20 majority/minority district. The combined
21 voting age population is about 60% and
22 the combined citizen voting age
23 population is about 53%. In a
24 Performance Analysis the preferred
25 minority preferred candidates won by 16

1
2 to 30%. Rockville is the only area
3 subject to the Municipal Home Rule Law.
4 It is shown in red and it is kept whole
5 in District 4.

6 **District 5** unifies the cores of
7 Baldwin and Freeport with portions of
8 Merrick. This is the fifth
9 majority/minority district. The combined
10 voting age population is 63% and the
11 combined citizen voting age population is
12 about 55%. In Performance Analysis the
13 minority preferred candidate won by 17 to
14 30%. There are no areas subject to the
15 Municipal Home Rule Law in District 5.

16 **District 6** includes New Hyde Park,
17 North New Hyde Park, Garden City Park,
18 Herricks, Lake Success, Searingtown,
19 Manhasset Hills, University Gardens,
20 Saddle Rock, Saddle Rock Estates, Harbor
21 Hills, Thomaston, Great Neck Plaza, Great
22 Neck Estates and Russell Gardens. This
23 is an Asian influence district and while
24 we have no legal obligation here to
25 create an Asian influence district, where

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2 the population and redistricting
3 principles naturally took us allow for an
4 Asian influence district, and when these
5 things align it is important to do so.
6 In this district the Asian voting age
7 population is just over 40% and the
8 citizen voting age population is around
9 35%.

10 CHAIRMAN MORONEY: Dr. Gall, I don't
11 mean to interrupt you, but could you
12 please define Asian for us, what Asian
13 nationalities are in that district?

14 DR. GALL: Yes, sir. This is Asian
15 as defined by the Census Bureau, which is
16 quite a lengthy list of all folks they
17 define as Asian. I don't have that in
18 front of me, but if helpful, I can submit
19 later.

20 CHAIRMAN MORONEY: Yes. Please do.

21 DR. GALL: Sure. I'll make a note.
22 Okay. There are several areas subject to
23 the Municipal Home Rule Law and instead
24 of reading them again, they're on the
25 screen for your viewing.

1
2 **District 7** includes, among others,
3 Glen Cove, Sea Cliff, Glenwood Landing,
4 Old Brookville, Glen Head, Cove Neck,
5 Lattington and like I said, several
6 others. There are several areas subject
7 to the Municipal Home Rule Law. I have
8 them listed on the screen and I will
9 forgo reading them to you again.

10 CHAIRMAN MORONEY: This is Frank
11 Moroney again. I apologize for
12 interrupting you. If you could also,
13 when you give us that list of the
14 definition of Asian, if you could include
15 by sending us copies of the
16 participation -- I'm sorry. The
17 presentation so that we can have that in
18 front of us.

19 COMMISSIONER MEJIAS: I think we
20 should submit the entire PowerPoint deck
21 into the record. So we'll make sure that
22 that happens.

23 CHAIRMAN MORONEY: Okay. Thank you.

24 DR. GALL: Okay. Moving on.

25 **District 8** includes all of Plainview

1
2 and Bethpage and half of Hicksville. We
3 heard testimony suggesting these areas
4 are a community of interest with a
5 request to reduce the splits of
6 Hicksville, specifically and we were able
7 to do that. Farmingdale is the only area
8 subject to the Municipal Home Rule Law
9 and it is kept complete in District 8.

10 **District 9** includes Manhasset, Sands
11 Point, Manorhaven, Port Washington North,
12 Baxter Estates, Plandome Manor, Flower
13 Hill, Plandome, Plandome Heights, Munsey
14 Park, Roslyn Estates, Roslyn, Roslyn
15 Harbor, Kensington, Great Neck and Kings
16 Point. There are several areas subject
17 to the Municipal Home Rule Law in
18 District 9. They are all kept whole.

19 COMMISSIONER BEE: Doctor, this is
20 Peter Bee. I'm Chair of the Republican
21 delegation. I just wonder if you could
22 clarify the term -- You said several
23 times something does or does not -- is or
24 is not subject to the Municipal Home Rule
25 Law. What do you mean by "subject to"?

1
2 I was under the impression that the
3 crafting of any district was subject to
4 the Municipal Home Rule Law.

5 DR. GALL: More specifically, that
6 is correct. I am speaking about the
7 splits specifically. This piece of the
8 Municipal Home Rule Law that says "to the
9 extent practicable, no villages, cities
10 or towns except those having more than
11 40% shall be divided." So I'm
12 specifically referencing that in these
13 slides.

14 COMMISSIONER BEE: So when you say
15 it's not subject to that law, what you're
16 saying is is that you haven't violated
17 that provision of the law in crafting the
18 district.

19 DR. GALL: That's correct.

20 COMMISSIONER BEE: Thank you.

21 DR. GALL: I think I left off on 10.

22 **District 10** includes Franklin Square,
23 Malvern, North Lynbrook, Lynbrook, Bay
24 Park and East Rockaway. Also has
25 portions of Oceanside and Franklin

1
2 Square. There are three areas subject to
3 the Municipal Home Rule Law that we did
4 not want to split and we kept those area
5 whole in District 10.

6 **District 11** includes Bellerose
7 Terrace, Bellerose, Floral Park, South
8 Floral Park, Stuart Manor, Garden City
9 South and Garden City. It also has
10 portions of Franklin Square and Elmont.
11 Several areas are subject to the
12 Municipal Home Rule Law regarding
13 splitting, and those are kept whole in
14 District 11.

15 **District 12** includes Carle Place,
16 Mineola, Williston Park, East Williston,
17 Albertson, Roslyn Heights, Old Westbury,
18 East Hills, Brookville, Muttontown, East
19 Norwich and Greenville and including
20 portions of Searingtown. Again, several
21 areas that we did not want to split and
22 we kept those areas whole.

23 **District 13** includes portions of
24 Levittown, East Meadow and Salisbury.
25 This is a very compact district with no

1
2 areas subject to the Municipal Home Rule
3 Law.

4 **District 14** includes North Bellmore,
5 North Merrick and Bellmore. It has
6 portions of Merrick and Wantagh in it.
7 There no portions subject to the
8 Municipal Home Rule Law regarding
9 splitting.

10 **District 15** includes Jericho,
11 Syosset and Woodbury entirely in one
12 district per public testimony. The
13 district also has portions of Hicksville,
14 and there are no areas subject to the
15 Municipal Home Rule Law regarding splits,
16 but the key here for us was keeping
17 Jericho, Syosset and Woodbury in a single
18 district.

19 **District 16** unifies the Five Towns
20 area as was also noted in public
21 testimony. This includes Lawrence,
22 Inwood, Cedarhurst, Hewlett Neck,
23 Woodsburgh, Woodmere, Hewlett, Hewlett
24 Bay Park and Hewlett Harbor. Several of
25 those areas are subject to the Municipal

1
2 Home Rule Law regarding splits and those
3 are kept whole in this district.

4 **District 17** keeps the Barrier Island
5 in one district and this includes
6 Atlantic Beach, Long Beach, Lido Beach
7 and Point Lookout. Atlantic Beach and
8 Island Park are subject to the Municipal
9 Home Rule Law and they are kept whole in
10 District 17.

11 **District 18** includes Massapequa,
12 Seaford and North Wantagh, portions of
13 Levittown and North Massapequa. There no
14 areas subject to the Municipal Home Rule
15 Law regarding splits.

16 And finally, **District 19** includes
17 Plainedge, South Farmingdale, Massapequa
18 Park and East Massapequa. The Municipal
19 Home Rule Law applies to Massapequa Park.

20 CHAIRMAN MORONEY: Doctor, this is
21 Frank Moroney again. I've got a question
22 for you. In between District 10 and
23 District 5 which is right above District
24 17, there appears to be a piece of land
25 that's detached from, I'm gathering,

District 17; is that correct?

DR. GALL: Can you orient me? I have my map in front of me. Can you orient me one more time?

CHAIRMAN MORONEY: Sure. It's between the southern portion of District 10 and the southern portion of District 5 north of District 17.

DR. GALL: Okay.

CHAIRMAN MORONEY: There is a, what's called a finger for discussion purposes that's detached from District 17. Is that intended to be in District 17 or not?

DR. GALL: It is attached via roadways and it is intended to be in District 17.

CHAIRMAN MORONEY: What is the roadway?

DR. GALL: The roadway is the Austin Boulevard.

CHAIRMAN MORONEY: Which boulevard, I'm sorry?

DR. GALL: Austin. It might also be

1
2 called Industrial Place. No. It's
3 Austin Boulevard. It runs north from
4 Long Beach --

5 CHAIRMAN MORONEY: Okay. One other
6 question about the map as a whole. Can
7 you direct me to the districts that under
8 the Municipal Home Rule Law where you've
9 maintained the core of existing big
10 districts, if you could, please.

11 DR. GALL: I did not consider
12 district cores in drawing the maps.

13 CHAIRMAN MORONEY: So the map in
14 total, then, is in violation of that
15 section of the Municipal Home Rule Law?

16 DR. GALL: I understood that to be a
17 consideration, not a requirement.

18 CHAIRMAN MORONEY: What you took it
19 to be or not, the fact remains that it
20 was ignored by you, correct?

21 DR. GALL: I did not consider
22 district cores in my drawing.

23 That is the end of the presentation.
24 I would be happy to take any additional
25 questions.

1
2 CHAIRMAN MORONEY: Are there any
3 questions over here (indicating)? Any
4 questions over here?

5 COMMISSIONER BEE: Yes, I have a
6 question. It really is a follow-up to
7 yours and maybe I've got the wrong
8 quotation in front of me, but my review
9 of the Municipal Home Rule Law was that
10 it lists six criteria in order of
11 importance and the fifth criteria is that
12 you must consider "cores of existing
13 district, cities, villages and towns
14 should be maintained." So I just --
15 Doctor, did you have a chance to review
16 those criteria?

17 COMMISSIONER MEJIAS: Excuse me.
18 Can we keep the voices down in the
19 audience, please. Commissioner Bee was
20 speaking. Please, if we can keep the
21 commotion down. It's very difficult to
22 hear Dr. Gall.

23 Commissioner?

24 COMMISSIONER BEE: I believe I
25 finished the question which was, my

1
2 recollection is that the Municipal Home
3 Rule Law does require consideration of
4 the "cores of existing districts and
5 requires that they be maintained."

6 Obviously, it's the fifth consideration,
7 but it is one of the six considerations
8 required.

9 COMMISSIONER PERNICK: I'd like to
10 ask if you could to quote the entire
11 consideration. It's only a few words out
12 of the second sentence of a three-
13 sentence description, so if you could.

14 COMMISSIONER BEE: If you have it
15 handy, that would be great.

16 COMMISSIONER PERNICK: Sure. Do you
17 want me to read it for you?

18 COMMISSIONER BEE: Please.

19 COMMISSIONER PERNICK: So the
20 consideration, item number 5, it says,
21 "District shall not be drawn to
22 discourage competition or for the purpose
23 of favoring or disfavoring incumbents or
24 other particular candidates or political
25 parties. The maintenance of cores of

1
2 existing districts of pre-existent
3 political subdivisions including cities,
4 villages and towns and communities of
5 interest shall also be considered to the
6 extent practicable. No villages, cities
7 or towns except those having more than
8 40% of a full ratio for each district
9 shall be divided."

10 COMMISSIONER BEE: And I'm not, at
11 the moment, battling whether she should
12 or should not have considered the cores
13 of existing districts. I'm just asking
14 whether she did. I think she said before
15 she did not, but I just want to make sure
16 I understood that correctly.

17 COMMISSIONER PERNICK: Well, the
18 existing map is illegal.

19 COMMISSIONER BEE: Well, I was just
20 asking the doctor the question did she
21 consider the existing districts?

22 COMMISSIONER PERNICK: The legal
23 existing districts; that's the question?

24 COMMISSIONER BEE: No. My question
25 is, did she consider the existing

1
2 legislative districts and any
3 consideration given to maintaining them
4 in her work?

5 COMMISSIONER MEJIAS: I just want to
6 be clear of the question for the record.
7 What are you defining as the core of a
8 district? The law is very clear that the
9 core district should not include a
10 consideration of incumbency of particular
11 candidates.

12 COMMISSIONER BEE: Doctor, hopefully
13 you heard the quote of the law given by
14 my fellow commissioner, and I wondered
15 whether you did or did not take that into
16 consideration when you drew the proposed
17 districts?

18 DR. GALL: I did not take district
19 cores of the 2013 Legislative Map into
20 consideration. My analysis of the 2013
21 Legislative Map was that it was in
22 violation of the Voting Rights Act.

23 CHAIRMAN MORONEY: And who advised
24 you of that?

25 DR. GALL: That was based on my own

1
2 analysis.

3 CHAIRMAN MORONEY: I'm sorry. I
4 didn't hear that.

5 DR. GALL: That was based on my own
6 analysis.

7 CHAIRMAN MORONEY: So no one told
8 you that it was in violation of the ERA,
9 correct?

10 DR. GALL: That's correct.

11 CHAIRMAN MORONEY: Now, let me ask
12 you another question if I could. Did you
13 take into account incumbency?

14 DR. GALL: I did not take into
15 account incumbencies.

16 CHAIRMAN MORONEY: What were the
17 other items, Mr. Pernick, that you said?
18 Can you go one by one?

19 COMMISSIONER PERNICK: Sure.
20 "Districts shall not be drawn to
21 discourage competition or for the purpose
22 of favoring -- Let me take a break. Are
23 you asking me to read you subsection E?

24 CHAIRMAN MORONEY: I don't have it
25 in front of me.

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COMMISSIONER PERNICK: Would you like me to hand it to you or would you like me to read it?

CHAIRMAN MORONEY: Sure. I'm happy to do that. I don't mean to send work in your direction.

Did you take into account whether or not anyone will be discouraged from competition over the purpose of favoring or disfavoring any incumbent?

DR. GALL: I did not.

CHAIRMAN MORONEY: Did you deal with any particular candidates or political parties?

DR. GALL: I did not.

CHAIRMAN MORONEY: You didn't consider any of those items so far, right?

DR. GALL: I did not.

CHAIRMAN MORONEY: Okay. So you then, therefore, have something in your possession as to who those people were and what those candidates are or were and what their names are?

1
2 DR. GALL: I don't follow the
3 question. Could you rephrase?

4 CHAIRMAN MORONEY: Okay. I'll go
5 back and ask.

6 COMMISSIONER PERNICK: I'm sorry. I
7 don't understand either. She just said
8 that she didn't consider it, that she
9 didn't consider incumbents.

10 CHAIRMAN MORONEY: Then I
11 misunderstood it because I asked the
12 question I asked was did she take it into
13 consideration? Let me ask it again
14 because we want to make sure the record
15 is clear.

16 Did you take into consideration
17 whether or not the map you were drawing
18 would favor or disfavor any incumbent?

19 DR. GALL: I did not take incumbency
20 into account in any way, shape or form.

21 COMMISSIONER PERNICK: Dr. Gall,
22 could you go back to the slide where you
23 list the factors that are not considered?
24 I think that that addresses all of his
25 questions directly.

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CHAIRMAN MORONEY: All of these other items that are not on that list you did take into account?

DR. GALL: These are the factors I took into consideration.

CHAIRMAN MOLONEY: Okay. Thank you.

COMMISSIONER REINHARDT: Could we bring back District 5 for a second with regard -- you say there's no Municipal Home Rule Law subject areas in here, correct?

DR. GALL: That's my understanding. Yes.

COMMISSIONER REINHARDT: I believe there's a village, actually, in there.

CHAIRMAN MORONEY: They're asking if there's a southern area village?

COMMISSIONER REINHARDT: We got the answer. It's not subject to. It exceeds the population (indiscernible).

CHAIRMAN MORONEY: Okay. If there's nothing else, would you remain at least online if we need to refer back to some things you might have taken into

1
2 consideration? I know you have another
3 engagement. If you have to go, that's
4 fine. Just let us know, okay?

5 DR. GALL: Okay. Thank you for your
6 time today.

7 COMMISSIONER PERNICK: Maybe what we
8 could do because I know Dr. Gall did have
9 something else, if we need to get her
10 back, we can text her or call her and try
11 to get her back.

12 CHAIRMAN MORONEY: I'm okay with
13 that.

14 COMMISSIONER PERNICK: Does that
15 work for you?

16 CHAIRMAN MORONEY: That's fine. We
17 don't want to get anyone's schedule out
18 of whack.

19 Okay. We're going to put up a
20 different map at this particular point.
21 We're putting up on the screens in front
22 of you the map that's been presented by
23 the Republican commissioners and we'll be
24 hearing testimony from David Schaefer who
25 is a principal in Skyline Consulting.

1
2 MR. SCHAEFER: I'm David Schaefer.

3 I'm the Vice President of Skyline
4 Consulting. This is my fourth
5 redistricting cycle. I started in 1990
6 and have worked in, primarily, New York
7 State redistricting projects including
8 statewide, numerous counties and towns.
9 I've testified and been an expert in
10 federal and state courts, and in this
11 redistricting cycle I worked for the
12 State legislative lines as well as a
13 thousand counties and towns.

14 As was stated before, under the
15 Census 2020 populations, Nassau County's
16 districts need to be adjusted to comply
17 with one person, one vote and state and
18 federal law. A year ago in October, new
19 changes to the Municipal Rule Law now
20 require smaller population deviations
21 than previously required and also now
22 require villages to remain whole and
23 require a reduction in political
24 considerations when drawing districts.

25 My process in this first draft is

1
2 to, without input from commissioners in
3 any significant way, create a map that
4 follows the Municipal Home Rule Law, the
5 state and federal laws and produces this
6 map to be used as a starting point for
7 their final plan, that being any
8 subjective information from both the
9 testimony been given to me, changes being
10 made based on this starting point.

11 We adhere to every consideration of
12 the Municipal Home Rule Law except
13 possibly number F, which was "A District
14 shall be formed as to promote the orderly
15 and efficient administration of
16 elections." My practice is to leave that
17 one off until the end when the Board of
18 Elections can be consulted to see if any
19 proposed changes that are likely to pass
20 might cause them any pain.

21 As stated before, Municipal Home
22 Rule Law, I think it's Section 34, deals
23 with these rules and these are what I
24 followed to create our proposal:

25 - equal population with no more than

5% total deviation;

- districts do not have the intent or result of diminishing racial or language minorities. The language minorities part of that is new from the Municipal Rule Law;

- districts are compact and contiguous;

- shall not be drawn to discourage competition favor or disfavoring incumbents, candidates or parties;

- the cores of existing districts, cities, villages and towns should be maintained; and as I said before,

- to promote the efficient administration of elections.

The primary reason for redistricting is to comply with 'one person, one vote'. Our plan complies with that and has a 1.8% total deviation from the ideal population. No district is more than 1% above the ideal population or 1% below the ideal population.

As far as Voting Rights Act and

1
2 racial minority language groups, the
3 Voting Rights Act is a federal law that
4 requires us to take a look and see
5 whether a historical production of
6 minority communities' rights prevent them
7 from electing the candidates of their
8 choice. Without having done an
9 ecological regression or an ecological
10 inference, I drew these maps presuming
11 that if someone wanted to bring suit
12 under Section 2 that they would have no
13 basis because I did create districts that
14 this federal law would require.

15 In the existing districts ten years
16 ago, one of the districts had a majority
17 voting age Black population, and through
18 changes of demographics and other
19 population shifts, none of the districts
20 have a majority voting age Black
21 population above 50%.

22 So we did create a district, I think
23 it's District 1, that is above 50% and I
24 believe that that inoculates us from a
25 challenge under the Federal Voting Rights

1
2 Act.

3 In the past, coalition districts of
4 Black and Hispanic populations -- I found
5 it difficult in my experience in New York
6 State. The data is either unclear or it
7 shows that Hispanic and African-American
8 voting populations don't always have
9 common political interests. I think that
10 there's not a lot of data in the last ten
11 years, although I'm not a statistician,
12 that show any elections or Black voting
13 patterns which had a, say, Hispanic-
14 preferred candidate or an
15 African-American-preferred candidate to
16 see whether or not the two populations in
17 a primary election, for example, would be
18 politically polarized. I think the
19 elections earlier were with general
20 elections that we saw.

21 Compacting contiguous: All of the
22 districts in our plan are compact. All
23 are contiguous. In fact, in our plan all
24 of the districts and the plan as a whole
25 is more compact than the existing

1
2 boundaries. We used about nine
3 algorithms which are based in the
4 software I used to draw the maps, and in
5 every measure they were better than the
6 existing boundaries.

7 A new rule on the Municipal Home
8 Rule Law states that "districts shall not
9 be drawn to discourage competition or
10 favor or disfavoring incumbents,
11 candidates or parties."

12 Every change we make in
13 redistricting has a positive or negative
14 affect on all of those things. So my
15 practice is to draw the districts and
16 come in blind without any political data
17 at all and that prevents me from
18 unconsciously creating districts that
19 intentionally help or hurt a candidate,
20 but after we completed our plan, we
21 overlaid the home addresses of the
22 incumbent members to see if any members
23 were paired. Pairing of incumbents is an
24 obvious and very measurable way to
25 determine whether an incumbent is going

1
2 to be helped or harmed. If two
3 incumbents have to run against each other
4 in the same district, obviously, one of
5 them will lose and one of them will win.
6 I don't use enrollment or past election
7 results to predict future outcomes of
8 elections to do that, but the home
9 address of an incumbent is a fact. It's
10 a non-disputable fact, and in our plan
11 after drawing I found I paired three
12 members in one district and two member in
13 another. While I didn't undo those, I
14 submitted the plan to the Commission, I
15 feel that those pairings could be undone
16 if the Commission decides without
17 affecting any of the more important
18 conditions of the Municipal Home Rule
19 Law.

20 The Municipal Home Rule Law does
21 state that smaller villages, villages
22 under 40% of the size of a whole district
23 should not be split where practicable.
24 Our plan doesn't split any villages
25 except for the three that are allowed

1
2 under the Municipal Home Rule Law.

3 Preservation of cores of districts:

4 This Home Rule Law requires us to
5 recognize to cores of districts as well
6 in that same paragraph. Our plan
7 preserves 91% of the cores of existing
8 districts. Very few citizens of Nassau
9 County will have to vote for a new member
10 based on the drawing that we've done.
11 Sixty-five villages remain whole under
12 that section.

13 In summation, I guess, our plan
14 follows every one of the conditions on
15 the Municipal Rule Law. We inoculate
16 ourselves against a federal Voting Rights
17 Act that's challenged by creating an
18 African-American majority district, and
19 we also create three, what I would call
20 majority/minority districts in addition
21 to that African-American majority
22 district.

23 I feel this plan, although it's
24 flawed in some ways, it closely achieves
25 the goals of the Municipal Rule Law

1
2 changes as well as federal, state and
3 county law.

4 CHAIRMAN MORONEY: Are there any
5 questions?

6 COMMISSIONER PERNICK: Thank you --
7 It's Mr. Schaefer?

8 MR. SCHAEFER: Yes.

9 COMMISSIONER PERNICK: Thank you for
10 your overview and presentation today.

11 What software did you use to draw
12 the map, Maptitude?

13 MR. SCHAEFER: Maptitude.

14 COMMISSIONER PERNICK: Did you use
15 any other software or just Maptitude?

16 MR. SCHAEFER: Well, different
17 presentations. First, I used Excel as
18 well.

19 COMMISSIONER PERNICK: Okay.
20 Anything other than Maptitude and Excel?

21 MR. SCHAEFER: I'm sure there were,
22 but nothing substansive.

23 COMMISSIONER PERNICK: Okay. What
24 information did you have uploaded into
25 Maptitude that you used for the drawing

1
2 of the map?

3 MR. SCHAEFER: Just the census data.

4 COMMISSIONER PERNICK: And you used
5 total population from the 2020 Census?

6 MR. SCHAEFER: The adjusted
7 population, prison-adjusted population.

8 COMMISSIONER PERNICK: Did you, at
9 any point in time, look at that at VAP or
10 CVAP?

11 MR. SCHAEFER: VAP as voting age
12 population as reported by the Census
13 Bureau. I have citizen voting age
14 population available to me. I didn't use
15 it for a couple of reasons. Two primary
16 reasons are the citizen voting age
17 population usually released at the
18 decennial census, that process wasn't
19 done this year. So the data that CVAP I
20 would have used was very old, three,
21 four, maybe older --

22 COMMISSIONER PERNICK: For 2020,
23 '19____.

24 MR. SCHAEFER: Yes, but the survey
25 would have been done prior to that.

1
2 Second there's a process which I
3 would love to talk to statisticians at
4 length about called differential privacy.
5 The census to preserve the privacy of
6 people that responded to census, they, at
7 small geographic levels, kind of shuffled
8 all of the data together and then
9 reassigned it. The idea from the Census
10 Bureau was if one person lived on a
11 census bloc and answered the census a
12 certain way, anybody could look at the
13 answers to that census bloc and know
14 specifically what that person did. In
15 the past what they would do with that
16 person is they just put his answers in
17 with an adjoining bloc of a larger
18 population and then randomly distribute
19 his answers into his bloc. This time
20 they took all of the blocs in the entire
21 country and did an analysis of,
22 statistical analysis, and then reassigned
23 population to census blocs.

24 At larger geographies, it is
25 probably accurate. Again, I'm not a

1
2 statistician. I would love to talk to a
3 statistician at length about that. At
4 small geographies, the margins of error
5 are very high. So I don't think it's
6 appropriate to use the census CVAP
7 numbers to decide the exact percentage of
8 a district with such high margins of
9 error.

10 COMMISSIONER PERNICK: Did you look
11 at partisan data at any point in time?

12 MR. SCHAEFER: Just the incumbents
13 address after I completed the plan.

14 COMMISSIONER PERNICK: Did you have
15 any sort of partisan scores uploaded into
16 Maptitude?

17 MR. SCHAEFER: No.

18 COMMISSIONER PERNICK: Did you
19 report out -- I assume your clients are
20 the Republican commissioners; is that
21 correct?

22 MR. SCHAEFER: Yes.

23 COMMISSIONER PERNICK: Did you
24 report out to the Republican
25 commissioners any sort of partisan scores

1
2 for the districts?

3 MR. SCHAEFER: Not all.

4 COMMISSIONER PERNICK: What
5 information other than the census data
6 did you use as your basis for drawing
7 this map?

8 MR. SCHAEFER: Almost 100% I used
9 the Municipal Rule Law and the existing
10 legislative boundaries.

11 COMMISSIONER PERNICK: Anything else
12 other than Municipal Home Rule Law and
13 existing legislative boundaries?

14 MR. SCHAEFER: Forty years of
15 experience, but that's all.

16 COMMISSIONER PERNICK: There were no
17 other considerations or inputs into --

18 MR. SCHAEFER: Not at this stage.
19 My practice in this business is to
20 produce a first draft map that is going
21 to be flawed because I don't use public
22 testimony or subjective information. I
23 just got to a plan that would comply with
24 all the laws.

25 COMMISSIONER PERNICK: So you

1
2 anticipate changing this map once you
3 have an opportunity to be presented with
4 public testimony. Am I understanding
5 that correctly?

6 MR. SCHAEFER: Yes.

7 COMMISSIONER PERNICK: Are there any
8 other inputs that you plan to take into
9 account when you update this map other
10 than public testimony?

11 MR. SCHAEFER: Whatever the
12 commissioners request, I will put in the
13 next version of the map.

14 COMMISSIONER PERNICK: So this map
15 is flawed. It's not a map that you
16 believe should be adopted by this
17 Commission?

18 MR. SCHAEFER: Well, it's a legal
19 map and it adheres to all the rules of
20 the law. I think that the Commission may
21 find it flawed.

22 COMMISSIONER PERNICK: It takes --
23 Any steps to preserve communities of
24 interest?

25 MR. SCHAEFER: Other than villages

1
2 and the existing cores of existing
3 districts? Nothing suggested that it has
4 been in recent testimony.

5 COMMISSIONER PERNICK: Why do you
6 think the Commission would find this map
7 to be flawed?

8 MR. SCHAEFER: Because I asked the
9 members because I may have in making
10 villages whole made them whole in the
11 wrong district. If two villages were out
12 of order and I could have put it in one
13 versus the other -- There are a lot of
14 villages, mainly, that make it very
15 difficult to, unlike ten years ago, for
16 example, the census blocs, it's the
17 smallest piece of geography. The
18 northern part of Oyster Bay has a big
19 wall of villages that if you have to not
20 split them, which I didn't, choosing to
21 put one village in one district versus
22 another to get to equal population, that
23 may have been a wrong choice, and that's
24 something that I think the existence of
25 the Commission is here to correct.

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COMMISSIONER PERNICK: Okay. And
this is version 5 of the map?

MR. SCHAEFER: No. It's just called
Plan 5.

COMMISSIONER PERNICK: Why is that?

MR. SCHAEFER: Over my experience
I've gone to public hearings and
testimony and I've started randomly
naming my maps.

COMMISSIONER PERNICK: So there's
plans 1 through 4 that you have
somewhere?

MR. SCHAEFFER: No, and it's so that
and on some occasions and some public
hearings in my past, we would name a map
something innocuous that some members of
the public or some members of the
Commission would find to be revealing of
something that wasn't true, so I started
using random names.

COMMISSIONER PERNICK: Okay. Did
you draw the 2013 map?

MR. SCHAEFER: I did.

COMMISSIONER PERNICK: And were

1
2 there different criteria that you
3 considered in the 2013 map beyond what we
4 discussed just now?

5 MR. SCHAEFER: Yes. The changes to
6 the Municipal Rule Law were just enacted
7 a year ago.

8 COMMISSIONER PERNICK: Did you
9 consider any partisan data when you
10 prepared the 2013 map?

11 MR. SCHAEFER: I don't remember the
12 2013 cycle. I mean, I may have. I don't
13 know.

14 COMMISSIONER PERNICK: You don't
15 know if you consider --

16 MR. SCHAEFER: I have notes, but I
17 didn't -- I had to ask for the report
18 from 10 years ago just to remember what
19 happened. I've literally done, probably,
20 40 or 50 redistricting maps in the last
21 two cycles and I don't remember the
22 specific process ten years ago.

23 COMMISSIONER PERNICK: Who was your
24 client ten years ago?

25 MR. SCHAEFER: The first time it was

1
2 the County Attorney. The second time I
3 think it was this Commission.

4 COMMISSIONER PERNICK: Was your
5 client the County Legislature at any
6 point in time?

7 MR. SCHAEFER: I'd have to check. I
8 don't remember the contract.

9 COMMISSIONER PERNICK: Was the map
10 that was ultimately adopted one that was
11 prepared by you?

12 MR. SCHAEFER: Yes.

13 COMMISSIONER PERNICK: Do you know if
14 anybody else adjusted your map after you
15 submitted it to whoever you submitted it
16 to?

17 MR. SCHAEFER: I don't think it was.
18 I looked at it and it looked the same.

19 COMMISSIONER PERNICK: Did you
20 conduct a racially polarized voting
21 analysis? I think you said you didn't;
22 is that right?

23 MR. SCHAEFER: No. I'm not a
24 statistician. I would hire somebody to
25 do that part.

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COMMISSIONER PERNICK: Why didn't
you hire somebody to do that for you?
I'm sorry. Let me restate the question.
Did you hire somebody?

MR. SCHAEFER: No. I've worked with
those people, but I've never personally
hired one.

COMMISSIONER PERNICK: And why
didn't you hire one?

MR. SCHAEFER: Because I think
that -- I work under the presumption that
if I draw the -- In this cycle, the
non-Hispanic/Black voting age district
had above 50%. There'd be no reason to
sue under the Voting Rights Act.

COMMISSIONER PERNICK: Why is that?

MR. SCHAEFER: Because in the
Gingles preconditions the, I think it's
the first one, it says, "the minority
group must be able to demonstrate that it
is sufficiently large and geographically
compact to constitute the majority as a
single member district."

In my experience in New York State,

1
2 African-Americans are a minority group
3 that does have politically cohesive
4 voting and it's mathematically possible
5 to create a majority district.

6 So the first Gingles precondition
7 could not be met under a Section 2
8 challenge under this plan.

9 COMMISSIONER PERNICK: And that's
10 because you believe that you shouldn't
11 aggregate Black and Latino voters for the
12 purpose of drawing a map for Nassau
13 County; is that correct?

14 MR. SCHAEFER: I have no evidence
15 that you should do that, no.

16 COMMISSIONER PERNICK: Are you aware
17 that the second circuit has held that
18 coalition districts can be drawn and
19 should be drawn under Section 2 of the
20 Voting Rights Act when you can aggregate
21 when you show that there's cohesion?

22 MR. SCHAEFER: When you show there's
23 cohesion. I know that there are cases
24 where, and, again, around the state that
25 there are -- There's not always cohesion

1
2 between African-American and Hispanic
3 candidates.

4 COMMISSIONER PERNICK: But to be
5 clear, you've done no inquiry into
6 whether there's cohesion in Nassau County
7 right now.

8 MR. SCHAEFER: No.

9 COMMISSIONER PERNICK: Okay.

10 MR. SCHAEFER: I do know that
11 there's cohesion among -- I strongly
12 believe there's cohesion among
13 African-Americans.

14 COMMISSIONER PERNICK: Now if there
15 was cohesion between Black and Latino
16 voters in Nassau County, how would that
17 change your obligations under the Voting
18 Rights Act?

19 MR. SCHAEFER: We would have to
20 decide, or the Commission would have to
21 decide whether or not the
22 non-Hispanic/Black district that can be
23 created, should be created or if all the
24 districts should be coalition districts.
25 So you'd have to decide whether the

1
2 African-American majority district should
3 be eliminated and replaced by four
4 Hispanic coalition districts with the
5 African-American.

6 COMMISSIONER PERNICK: Why four?

7 MR. SCHAEFER: Well, that's that's
8 what there are in our plan and actually
9 in the other plan as well.

10 COMMISSIONER PERNICK: That's not
11 correct.

12 MR. SCHAEFER: Under the voting age
13 population. I didn't look at CVAP. It
14 may be under CVAP, but under regular
15 census voting age population, there is
16 only four involved. I could be wrong,
17 but as --

18 COMMISSIONER PERNICK: The other
19 plan -- we can go through the numbers --
20 the other plan does have five.

21 MR. SCHAEFER: The Excel that I
22 received only had four that were above
23 50%. Again, I got it yesterday, so I
24 don't know.

25 COMMISSIONER PERNICK: Did you look

1
2 at the Shapefile?

3 MR. SCHAEFER: Only for maybe an
4 hour. I printed it out.

5 COMMISSIONER PERNICK: And when you
6 say it only has four, is that coalition
7 or --

8 MR. SCHAEFER: No. That's the
9 absence of non-Hispanic/White people.

10 COMMISSIONER PERNICK: So was there
11 anything -- This goes to the point that
12 everybody here only had a day to look at
13 these maps. I think we all need more
14 time. I might want to take more time to
15 understand the maps and I think that I
16 would invite my colleagues to do the same
17 with our map.

18 I want to circle back to this
19 coalition just for a point. So let's
20 say, and I understand you haven't done
21 any cohesion, any RPV, but let's say that
22 there was evidence, which I'll tell you
23 there is, but let's say that there was
24 evidence that Black and Latino voters
25 voted in cohesion. Is it fair to say

1
2 that that would create an obligation to
3 draw Black, Latino majority/minority
4 districts where the circumstances are
5 warranted?

6 CHAIRMAN MORONEY: Excuse me. I
7 don't think that hypothetical questions
8 should be asked under the circumstances
9 and why we're here. Ask questions about
10 the map? That's okay, but to create a
11 hypothetical situation is just not -- is
12 just putting extra stuff on the record.

13 COMMISSIONER MEJIAS: Why not?

14 CHAIRMAN MORONEY: Because it's
15 hypothetical. It's not real.

16 COMMISSIONER MEJIAS: This entire
17 thing is hypothetical. These maps are
18 not adopted. This is a hypothetical map,
19 isn't it?

20 CHAIRMAN MORONEY: Perhaps I'm
21 taking this more serious than others, but
22 what I do understand is that a
23 hypothetical creates another hypothetical
24 which builds upon another hypothetical
25 and we don't need to go in circles.

1
2 Let's just stick with the facts and what
3 we know and what's in front of us.

4 COMMISSIONER MEJIAS: I think
5 hypotheticals create the basis for what
6 the actual analysis is of the thought
7 process behind it. That's my opinion.
8 An expert can be asked a hypothetical
9 because they're an expert. We do it all
10 the time in court.

11 CHAIRMAN MORONEY: Well, we're not
12 in court and I think --

13 COMMISSIONER MEJIAS: We will be.

14 CHAIRMAN MORONEY: God bless you.
15 Good luck. Mr. Pernick was very, very
16 pointed in his questions that weren't
17 hypothetical, so let's keep going.

18 COMMISSIONER PERNICK: I'll move on.
19 I want to be clear, let me ask, did you
20 make any effort to draw any
21 majority/minority Black/Latino coalition
22 districts?

23 MR. SCHAEFER: I didn't make an
24 effort to do it. No. I made an effort
25 to see if I could create -- Because

1
2 District 1 in 2013 was majority, that's
3 the effort I made as far as race goes.
4 Everything else -- After it was over, we
5 created four and nearly a fifth minority
6 district, and, again, today I'm defining
7 it as absence of non-Hispanic/White
8 population. So we have four.

9 COMMISSIONER PERNICK: Are you aware
10 that there have been significant calls
11 from the public for five
12 majority/minority coalition districts?

13 MR. SCHAEFER: I've heard that
14 recently.

15 COMMISSIONER PERNICK: But you made
16 no effort to evaluate whether that's been
17 possible to achieve?

18 MR. SCHAEFER: I didn't, because
19 after I heard it's -- Substantially, this
20 plan does create five. The fifth one
21 right now is 49.5%.

22 COMMISSIONER PERNICK: Forty-nine
23 point five percent White --

24 MR. SCHAEFER: Majority/minority.
25 If there were a fifth one in this Plan 5,

1
2 I could create a fifth district by just
3 moving around some census blocs and it
4 would be a majority district.

5 COMMISSIONER PERNICK: How do you
6 define the majority/minority in that
7 sense?

8 MR. SCHAEFER: Right now it's just
9 by population, voting age population.

10 COMMISSIONER PERNICK: So you're
11 saying that you have five districts that
12 are majority/minority voting age
13 population?

14 MR. SCHAEFER: Almost five. Yes.
15 Just past the line.

16 COMMISSIONER PERNICK: I don't
17 understand the almost.

18 MR. SCHAEFER: The fifth district is
19 right now 49.5% majority/minority, 49.5.
20 Moving one census bloc would make it
21 50.5.

22 COMMISSIONER PERNICK: And when you
23 say majority/minority in this case, am I
24 understanding properly that you are
25 looking at Black, Latino, Asian, Pacific

1
2 Islander and other and you're aggregating
3 all of those groups for the purpose of
4 defining majority/minority?

5 MR. SCHAEFER: For the purpose of
6 this, yes.

7 COMMISSIONER PERNICK: Is that the
8 proper definition of majority/minority
9 district --

10 MR. SCHAEFER: No, because --

11 (Whereupon, there was
12 crosstalk.)

13 COMMISSIONER PERNICK: Is that the
14 proper definition of majority/minority
15 districts, to aggregate Black --

16 MR. SCHAEFER: No --

17 COMMISSIONER: Please let him finish
18 the question.

19 COMMISSIONER PERNICK: Is that the
20 proper definition of majority/minority
21 districts to aggregate black, Latino,
22 Asian, Pacific Islander, Native American
23 and other into one category? Is that the
24 right way to define majority/minority
25 district?

1
2 MR. SCHAEFER: It wouldn't be, under
3 the federal law, but under the Municipal
4 Home Rule Law I think that recognizing
5 neighborhoods or areas of different
6 language and racial minority groups is
7 something to be considered.

8 I think if this were a federal
9 voting rights case, then you would have
10 to do all those things. I think, in my
11 opinion, drawing this map the only
12 district that potentially was subject to
13 the Voting Rights Act was the
14 African-American district.

15 COMMISSIONER PERNICK: And you've
16 done no assessment of whether any of the,
17 I guess, five districts that you're
18 referring to that have substantial
19 minority populations, have you done any
20 assessment of whether they would perform
21 for candidates preferred by voters of
22 color?

23 MR. SCHAEFER: No.

24 COMMISSIONER PERNICK: Are you
25 familiar with the New York Voting Rights

1
2 Act?

3 MR. SCHAEFER: The John Lewis one?

4 COMMISSIONER PERNICK: That's right.
5 The John Lewis Voting Rights Act of New
6 York. Do you believe the John Lewis
7 Voting Rights Act of New York will apply
8 to these maps at some point in the
9 future?

10 MR. SCHAEFER: I think that I would
11 wait to see what happens when it's first
12 applied. I think -- I don't know how
13 they'll apply the law to the current
14 plan. I think part of law -- For
15 example, the Attorney General has some
16 jurisdiction over some parts of the law
17 if she chooses. So if she doesn't choose
18 to comply with pre-clearance, then it
19 wouldn't apply.

20 So I think that there's a lot in the
21 John Lewis Law that I don't understand
22 yet, and I'm hoping it becomes clear when
23 it fits in a little bit more.

24 COMMISSIONER PERNICK: So I
25 understand that you're referencing the

1
2 pre-clearance provisions of the law.
3 That's not what I'm specifically
4 referring to. There's a section of the
5 law, 17-206.2 which is a prohibition
6 against vote dilution, and I quote, "No
7 Board of Elections or political
8 subdivision shall use any method of
9 election having the effect of impairing
10 the ability of members of a protected
11 class to allow candidates of their choice
12 or influence the outcome of elections as
13 a result of the dilution," and then it
14 goes on to provide details in standards
15 for evaluating that violation.

16 Are you familiar with that section
17 of the New York Voting Rights Act?

18 MR. SCHAEFER: I'm familiar. I've
19 read it, yes.

20 COMMISSIONER PERNICK: So you're
21 familiar with that section?

22 MR. SCHAEFER: Yes.

23 COMMISSIONER PERNICK: And do you
24 believe that that section will apply to
25 Nassau County's Legislative districts?

1
2 MR. SCHAEFER: If protected classes
3 are in a partisan, then they would. I
4 don't know what's going to happen when
5 the John Lewis Law is applied.

6 COMMISSIONER PERNICK: Well, I just
7 want to clarify. So you said the
8 protected classes are included. I'm
9 going refer back to Section 17-204.5
10 which defines protected class, I'll
11 quote, "Protected Class means a class of
12 eligible voters who are members of a
13 race, color or language minority group."

14 So you're familiar with that
15 phraseology? It tracks the Federal VRA
16 in Federal Case Law?

17 MR. SCHAEFER: It tracks it but
18 it's -- In my discussions, these are --
19 Language minority is not well defined.
20 We're wondering what's going to happen
21 when two language minorities are in the
22 same area with each other to see which
23 one would get precedence or maybe not
24 precedence, maybe both of them could be
25 done.

1
2 I think the changes with the John
3 Lewis Law and the Municipal Home Rule Law
4 make a lot more gray area and -- because
5 it adds a lot more things that are --
6 have to be looked at in redistricting.
7 As a person who's done this for a while,
8 Section 2 has been pretty easy. You
9 clear the three Gingles preconditions and
10 then go to federal court. It's easy to
11 measure at least one of the Gingles
12 preconditions without a statistician as
13 far as racially Black voting and majority
14 voting against the candidates. That's
15 usually discussed and proven in court in
16 every case.

17 COMMISSIONER PERNICK: I just want
18 to cut to the heart of the issue here.
19 Is it fair to say that you've taken no
20 steps to ensure that this map complies
21 with the John Lewis Voting Rights Act?

22 MR. SCHAEFER: I think it probably
23 does, but I've taken no affirmative
24 steps.

25 COMMISSIONER PERNICK: Okay. I just

1
2 want to circle back for a moment. You
3 said that there was a fifth district that
4 wasn't majority/minority, but if you
5 combine all of the different census
6 subgroups, it's almost be a
7 majority/minority. Could you just tell
8 me what district is that?

9 MR. SCHAEFER: It's 1, 2, 3, 5 and
10 6. Six it would be.

11 COMMISSIONER PERNICK: That's the
12 district, I believe, with
13 Malvern/Lynbrook in it?

14 MR. SCHAEFER: Yes. Well, on it it
15 says Lynbrook in the center of it.

16 COMMISSIONER PERNICK: Yes. I'm
17 referring to District 6 that is a
18 majority/minority district almost,
19 according to Mr. Schaefer, and that's
20 District 6 which has Malvern/Lynbrook is
21 the 5th District that you're saying might
22 give minority voters an opportunity to
23 elect a candidate of their choice?

24 MR. SCHAEFER: (Inaudible.)

25 COMMISSIONER PERNICK: Okay. Do you

1
2 have any reason to believe that that
3 district would perform for a candidate
4 preferred by voters of color?

5 MR. SCHAEFER: No.

6 COMMISSIONER PERNICK: Did you use
7 the current map as a starting point for
8 drawing this map?

9 MR. SCHAEFER: I did.

10 COMMISSIONER PERNICK: You tried to
11 preserve the current map as much as
12 possible, right?

13 MR. SCHAEFER: Yes. In this draft,
14 I did and it's also required by the same
15 section of the MHRL that requires that
16 villages stay whole, and favoring
17 district incumbents shouldn't be done.

18 COMMISSIONER PERNICK: If the
19 current map was adjudicated to be
20 unlawful under the Voting Rights Act or
21 under another provision of state law,
22 would you still have to use that map as a
23 starting point for the drawing of this
24 map?

25 MR. SCHAEFER: It's not unlawful. I

1
2 presume and the courts presume in my
3 experience that every map is presumed to
4 be legal.

5 COMMISSIONER PERNICK: That's not my
6 question. If this map were deemed
7 illegal, if there was substantial
8 evidence that this map were illegal,
9 would you use the map as a starting
10 point? Would that --

11 MR. SCHAEFER: It's not illegal.
12 That would be --

13 COMMISSIONER PERNICK: That's not my
14 question. I understand that it's your
15 position that it's not illegal.

16 MR. SCHAEFER: -- five miles an hour
17 I would be guilty, but -- If this was
18 illegal, it would be illegal. I don't
19 understand the question.

20 COMMISSIONER PERNICK: The question
21 is if the current map were illegal, would
22 it be methodologically appropriate to use
23 that map as a starting point for drawing
24 a new map for Nassau County?

25 MR. SCHAEFER: Well, if the

1
2 Municipal Home Rule Law says cores of
3 legal districts have to be used, then
4 yes, but it doesn't say that. It says
5 cores of existing districts.

6 COMMISSIONER PERNICK: So to make
7 sure that I understand, it's your
8 position that even if this map were
9 deemed illegal, you would still think it
10 appropriate to use that under the
11 Municipal Home Rule Law; is that correct?

12 COMMISSIONER BEE: Respectfully, I
13 think he's answered the question which is
14 he followed the Municipal Home Rule Law
15 which says to use the existing districts.
16 If the statute said something else, he'd
17 do something else, but the statute says
18 to do this, this is what he did.

19 COMMISSIONER PERNICK: Is it
20 methodologically sound to base a map that
21 you're drawing for a client on an illegal
22 starting point?

23 COMMISSIONER BEE: Again, I think
24 he's answered that question.

25 COMMISSIONER MEJIAS: No he hasn't.

1
2 That's a question on methodology. So I
3 want to hear the answer to this question.

4 Methodologically. This is not
5 hypothetical. This is methodology. I
6 want to hear the answer to the question
7 about Mr. Schaefer's methodology.

8 So Mr. Pernick, can you --

9 COMMISSIONER BEE: But he's giving
10 you the methodology that he used. The
11 methodology that he used was to start
12 with --

13 COMMISSIONER MEJIAS: No. The
14 question isn't what methodology did you
15 use. The question is a particular
16 methodology appropriate?

17 CHAIRMAN MORONEY: And you're asking
18 him to ask something in futuro and
19 that's --

20 COMMISSIONER MEJIAS: That's not
21 hypothetical. It is a current --

22 CHAIRMAN MORONEY: Please don't
23 interrupt me.

24 COMMISSIONER MEJIAS: You're trying
25 to put answers in your expert's mouth.

1
2 It's his methodology. This is his map.

3 CHAIRMAN MORONEY: The person who's
4 trying to put words into his mouth is
5 sitting you your left, not your right.

6 COMMISSIONER MEJIAS: I'm asking --
7 The question is is it methodologically
8 sound to do X, Y and Z? So please,
9 answer the question.

10 COMMISSIONER BEE: Can I simply ask,
11 though, that we take turns asking
12 questions and answering questions and not
13 just shout over each other.

14 COMMISSIONER MEJIAS: Well, take
15 your own advice.

16 COMMISSIONER PERNICK: I'm not
17 trying to trip you up. It's a simple
18 question. From a methodological
19 perspective, is it appropriate to use an
20 unlawful map as a starting point for
21 drawing a new map for a jurisdiction?

22 MR. SCHAEFER: I would say two
23 things. The starting point of a map is
24 irrelevant as a person who's done this
25 for four decades. The map that is passed

1
2 and the map that was passed ten years ago
3 is legal as soon as the legislature
4 passes it, and until somebody finds that
5 it's not legal, it's not legal.

6 So starting with a blank map,
7 methodologically, but not legally in New
8 York, is just as good as what some people
9 do. For example, they produce every
10 permutation of map that can be drawn in a
11 geography with that starting point not
12 existing.

13 Here's a hundred trillion different
14 maps and this is the best one that the
15 algorithm picks. All of the starting
16 points, whether it's a blank piece of
17 paper; whether it's the existing
18 districts; whether it's, you know,
19 drawing circles and squares first, none
20 of them are a good or bad starting point
21 because there's commission that might
22 decide the people's will is going to be
23 enforced by the map that's passed by the
24 legislature.

25 COMMISSIONER PERNICK: So

1
2 Mr. Schaefer, I want to circle back to
3 something you said a moment ago and
4 unpack it a little bit. You have drawn a
5 distinction between preserving the cores
6 and preserving the legal cores. Am I
7 quoting you correctly?

8 MR. SCHAEFER: I think you did that.
9 You told me to start with an illegal map.
10 I'm saying the law doesn't say legal core
11 at all. I didn't make a distinction.
12 I'm saying that phrase doesn't exist in
13 the law.

14 COMMISSIONER PERNICK: So because
15 the law doesn't say legal cores, am I
16 understanding you correctly that you do
17 not -- that you would follow the current
18 district regardless of whether or not you
19 believed the current districts were
20 lawful?

21 MR. SCHAEFER: I believe that every
22 map in the country is lawful that people
23 have been elected on.

24 COMMISSIONER PERNICK: You said
25 before that when you drew the current map

1
2 you considered other criteria, like
3 partisanship, right?

4 MR. SCHAEFER: No. I never said
5 that.

6 COMMISSIONER PERNICK: You
7 considered other criteria?

8 MR. SCHAEFER: I never said that.

9 COMMISSIONER PERNICK: When you drew
10 the current map in 2013 you didn't say
11 that you considered other criteria beyond
12 what you considered in this map?

13 MR. SCHAEFER: Oh. I thought you
14 were talking about this map. I don't
15 remember what happened in 2013.

16 COMMISSIONER PERNICK: You do know
17 if you considered other criteria beyond
18 what you reported for this map, correct?

19 MR. SCHAEFER: I can't tell you what
20 I did ten years ago.

21 COMMISSIONER PERNICK: Are you aware
22 that members of the Democratic delegation
23 have submitted a couple of short
24 preliminary reports into the record?

25 MR. SCHAEFER: I haven't seen

1
2 anything.

3 COMMISSIONER PERNICK: Are you aware
4 that members of the Democratic delegation
5 have submitted a couple of preliminary
6 reports into the record? Are you aware
7 of that?

8 MR. SCHAEFER: I don't think so. I
9 don't think I'm aware of any specific
10 documents, no.

11 COMMISSIONER PERNICK: So you're not
12 aware of the fact that we submitted two
13 preliminary reports into the record
14 before the Commission?

15 MR. SCHAEFER: I know the
16 Commission's been meeting for several
17 weeks, but I'm presuming that pieces of
18 paper were moved during that time.

19 COMMISSIONER PERNICK: Are you
20 familiar with a report issued by Dr. Gall
21 concerning VRA's compliance of the
22 current map?

23 MR. SCHAEFER: I saw that today for
24 the first time.

25 COMMISSIONER PERNICK: So you have

1
2 reviewed Dr. Gall's preliminary report.

3 MR. SCHAEFER: I read it, yes.

4 COMMISSIONER PERNICK: Are you
5 familiar with the preliminary report
6 issued by Dr. Daniel Magleby concerning
7 compliance with partisan gerrymandering
8 rules, the new rules under the Municipal
9 Home Rule Law?

10 MR. SCHAEFER: I saw that for the
11 first time today. I haven't read the
12 whole thing.

13 COMMISSIONER PERNICK: It's only two
14 pages long. You didn't read the whole
15 thing?

16 MR. SCHAEFER: I just saw it before
17 this meeting.

18 COMMISSIONER PERNICK: But you're
19 aware that both of those reports exist?

20 MR. SCHAEFER: Yes. Now I am.

21 COMMISSIONER PERNICK: And do you
22 have any reason to dispute what's in
23 either of those reports?

24 MR. SCHAEFER: I believe that they
25 believe their conclusions. I don't

1
2 necessarily believe it. I think --

3 COMMISSIONER PERNICK: Let me start
4 with Dr. Gall. Do have any reasons to
5 dispute any of the conclusions in
6 Dr. Gall's preliminary report that you
7 reviewed earlier today?

8 MR. SCHAEFER: Without having a lot
9 of time to do it, I would say that the
10 fact that the elections that she referred
11 to were general elections and
12 traditionally when I want to see if
13 there's racially polarized voting between
14 two different minority groups, if voting
15 for the Democrat versus the Republican is
16 what makes two racial groups cohesive,
17 then I disagree with that. I would like
18 to see, and I'm not aware of any
19 primaries in this county in recent
20 history, where there might have been a,
21 possibly, Hispanic-preferred candidate
22 and Black-Preferred candidate.

23 So the fact that I saw general
24 elections being used to find racially
25 polarized voter would make me ask how do

1
2 you know that wasn't partisan polarized
3 and not racially polarized?

4 COMMISSIONER PERNICK: Other than
5 quibbling with which contest she used, do
6 you have any other issues with --

7 MR. SCHAEFER: Well, that was the
8 main issue. That's very important for
9 polarization.

10 COMMISSIONER PERNICK: Are there any
11 other issues other than that one issue
12 that you've identified with her report?

13 MR. SCHAEFER: Well, I don't --
14 without knowing anything more about it, I
15 think that use of citizen age voting in
16 each population, just as a practitioner,
17 I think I disagree with in this cycle
18 until better data, and, again, for the
19 two reasons I mentioned before, the
20 differential privacy plus the lack of
21 recent data.

22 I don't criticize her abilities or
23 her conclusions. I just think that the
24 input data is probably data I wouldn't
25 trust to come up with the conclusion.

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COMMISSIONER PERNICK: Are you familiar with the chopper method?

MR. SCHAEFER: No.

COMMISSIONER PERNICK: You never heard of the chopper method for estimating CVAP?

MR. SCHAEFER: No.

COMMISSIONER PERNICK: It's used by DOJ and widely accepted by courts, you never heard of it?

MR. SCHAEFER: Well I haven't heard of it, but I think that in the case of smaller areas of geography the census, itself, has said that the data is not reliable.

COMMISSIONER PERNICK: You mentioned that your issue with the RPV analysis is that there might be political polarization in Nassau County rather than racial polarization; is that correct?

MR. SCHAEFER: That's something that would have to be determined.

COMMISSIONER PERNICK: Okay. And that would have to be determined because

1
2 it's relative to the analysis of whether
3 there's racial vote dilution; is that
4 correct?

5 MR. SCHAEFER: Racially polarized
6 voting.

7 COMMISSIONER PERNICK: Yes, but I'm
8 talking specifically about whether
9 there's partisan polarization. That's
10 relevant to you because you believe it's
11 critical to understanding whether RPV is
12 satisfied.

13 CHAIRMAN MORONEY: Objection. You
14 believe? How do you know he believes it?
15 Ask another question.

16 COMMISSIONER PERNICK: All right.
17 Why do we care about political
18 polarization for the RPV question?

19 MR. SCHAEFER: I think the whole
20 point of representation is not to make
21 sure there's an equal balance of
22 Democrats and Republicans in the
23 legislature. It's to make sure that the
24 voices of all the people, whether they're
25 Black or Hispanic or White or Indian or

1
2 Chinese have an equal ability to access
3 or to use their civil rights.

4 So in the case of concentrated
5 groups in small geographies that tend to
6 vote for one party or another, that
7 doesn't necessarily prove that there's
8 racial polarization. It just may prove
9 that there's partisan polarization. And
10 that is something that doesn't help the
11 civil rights of any of the minority
12 groups we're talking about.

13 COMMISSIONER PERNICK: And if you --
14 If a court finds that there's partisan
15 polarization, is it your belief that
16 there wouldn't be racially polarized
17 voting, that that defeats an argument of
18 racially polarized voting.

19 MR. SCHAEFER: I wouldn't say it
20 causes it. The court can find whatever
21 it finds. If they find that there's
22 partisan polarization, there's nothing in
23 the law that says you can't create a
24 Democrat district or a Republican
25 district except for the part of the

1
2 Municipal Home Rule Law that now says you
3 can't, but as far as racial polarization,
4 that has nothing to do with who people --
5 what the makeup of the 19-seat
6 legislature will ultimately be.

7 COMMISSIONER PERNICK: I want to
8 quote for you a line from the John R.
9 Lewis Voting Rights Act, again, from
10 Section 17-206, which provides the cause
11 of action against racial vote dilution.
12 This is one of the subsections under sub
13 2(C) --

14 MR. SCHAEFER: And I would just say
15 too that the John Lewis Act isn't the
16 Voting Rights Act.

17 COMMISSIONER PERNICK: It's the
18 Voting Rights Act of New York, correct?

19 MR. SCHAEFER: Yes, but creating --
20 redeem required to create
21 majority/minority districts of
22 politically cohesive minority groups and
23 then -- I don't know how that's going to
24 play out when it's finally implemented.
25 So I wouldn't speculate because I'm

1
2 wondering, too, what -- For example,
3 Hispanic populations in New York come
4 from South America, Central America,
5 Spain, all over the place. They're
6 potentially different races, White or
7 Black. I would like to see how the John
8 Lewis Act, which is different than the
9 Federal Voting Rights Act, says that just
10 because two people speak Spanish, if one
11 group is from Spain and one is from
12 Mexico, should that group be given a
13 district even if they have politically
14 polarized ideas? I'm interested if
15 that's an academic thing.

16 COMMISSIONER PERNICK: It's not.
17 It's a very, very black and white in the
18 law. I'll read it to you.

19 MR. SCHAEFER: I'm not talking about
20 the law. I'm talking about I'm
21 interested to see how the civil rights of
22 people, just because they speak Spanish,
23 are going to be incorporated in this,
24 because in the federal law, which I've
25 been in the Section 2 case before, I

1
2 understand a history of racial
3 discrimination against, especially
4 in -- different parts of the state are
5 different, but here African-Americans. I
6 understand that Section 5 of the Federal
7 Law gave us three counties and,
8 therefore, the whole state coverage under
9 Section 5 of the Federal Voting Rights
10 Act, and I completely agree that that
11 discrimination over hundreds of years had
12 to be solved. I think the John Lewis
13 State Law is different in that respect
14 because we don't have a long history like
15 we do for the African-Americans.

16 Racial discrimination against
17 Hispanics, racial discrimination against
18 people from Mexico, Spain, Central
19 America, South America. It's a different
20 concept and I'm interested -- I'm telling
21 you now I can't answer your speculative
22 questions. I'm interested to see how
23 this plays out because in ten years when
24 I draw again for people, I would like to
25 know how I can measure that compared to

1
2 the federal law that's existed for so
3 long.

4 COMMISSIONER PERNICK: What I was
5 trying to quote for you before, there's a
6 line from the John R. Lewis Law that
7 squarely addresses the question that
8 you're raising, and I quote, "Evidence
9 that subgroups within a protected class
10 have different voting patterns shall not
11 be considered."

12 What that's saying is that you can't
13 consider what you're doing and pitting
14 different minority groups against each
15 other to decide not to draw anybody a
16 district. That's what that language is
17 saying, is it not?

18 MR. SCHAEFER: But I don't consider
19 subgroups. There are no subgroups, as
20 far as I know, of African-Americans.
21 What is the subgroup of the Hispanics?
22 It's -- You're either -- I don't know.
23 It's not a well-defined thing, and,
24 again, I'm having the academic discussion
25 because I don't know the answers.

1
2 COMMISSIONER MEJIAS: Wasn't your
3 whole point that there are subgroups of
4 Hispanics? Didn't you just say that
5 someone from Spain and someone from
6 Mexico -- aren't you saying that there
7 are subgroups?

8 MR. SCHAEFER: No. Those are just
9 different groups, is what I'm saying, not
10 subgroups of some other larger group.
11 I'm saying that there are two different
12 groups. I think the only thing that
13 makes them common is that they speak
14 Spanish. My wife speaks Spanish. But I
15 don't know why they're different and I
16 can't wait to find out when these things
17 are fully implemented.

18 COMMISSIONER MEJIAS: I'm sorry. So
19 you're saying that there's this diaspora
20 of Latinos in Nassau County that have
21 different voting patterns or different
22 cultures?

23 MR. SCHAEFER: They probably do and
24 I don't know why they deserve a County
25 Legislative District under the John Lewis

1
2 Law and I want to find that out and I
3 want the Commission to do that.

4 COMMISSIONER BEE: Could we, fellow
5 commission members, focus on your
6 questions as to the map he has put forth
7 rather than speculate what he did in 2013
8 or might do in 2033? Can we just focus
9 on the map he's proposed and whether or
10 not you think it meets the current
11 federal and state requirements.

12 COMMISSIONER MEJIAS: I'm sorry. I
13 did digress. I apologize, Commissioner.
14 As the only Latino up here and the only
15 one that's ever been elected to the
16 County Legislature and that was a long
17 time ago. We haven't had a single
18 Hispanic member since. Considering the
19 fact that there are a quarter million
20 Hispanics in Nassau County and there
21 hasn't been a county legislator elected
22 to the legislature since 2007, I'm
23 interested in that.

24 COMMISSIONER PERNICK: I just want
25 to point out one other line from the John

1
2 R. Lewis bill that I was trying to quote
3 for you to see if you're aware of it.

4 I'm quoting, "Evidence that voting
5 patterns and election outcomes could be
6 explained by factors other than racially
7 polarized voting including, but not
8 limited to partisanship, shall not be
9 considered."

10 Are familiar with that line from the
11 John R. Lewis law?

12 MR. SCHAEFER: No, but I trust that
13 it's there.

14 COMMISSIONER PERNICK: Okay. Am I
15 understanding correctly that previously,
16 when you were talking about cohesion, you
17 were saying well, there might not be
18 cohesion because it might be better
19 explained by partisan voting outcomes; is
20 that correct?

21 MR. SCHAEFER: That's true.

22 COMMISSIONER PERNICK: And under
23 what I just quoted, you can't consider
24 that under the New York Voting Rights
25 Act. Are you aware of that? Maybe now

1
2 you are.

3 MR. SCHAEFER: I am now.

4 COMMISSIONER PERNICK: I'd like to
5 introduce into the record a new version
6 of Professor Magleby's assessment. It's
7 very short. Just two pages. If I could
8 ask to pass it down and give one to the
9 clerk (handing).

10 COMMISSIONER MEJIAS: Just for the
11 record, we had said earlier we were going
12 to provide a copy of Dr. Gall's deck from
13 her PowerPoint presentation. I don't
14 know if we want to give this to the
15 clerk, Mr. Chairman (handing).

16 COMMISSIONER PERNICK: Mr. Chairman,
17 should I give an extra copy to hand to
18 the clerk? Is that acceptable?

19 So this is almost the same as the
20 version that you reviewed earlier today.
21 If you want to take a moment and
22 familiarize yourself with it, I just have
23 one or two questions about it (handing).

24 MR. SCHAEFER: Well, I'm not going
25 to read this now, but ask whatever

1
2 questions you want to ask.

3 I don't have time to analyze this.
4 I wouldn't presume to read two pages and
5 look at these graphs.

6 COMMISSIONER PERNICK: Dr. Magleby
7 concluded that your map is an extreme
8 partisan gerrymander. Does that
9 conclusion surprise you?

10 MR. SCHAEFER: What's a gerrymander?
11 How is it defined?

12 COMMISSIONER PERNICK: Dr. Magleby
13 ran a computer simulation of 10,000 maps,
14 randomly simulated maps, measured the
15 outcome using aids, contests, endogenous
16 contests from the last three cycles and
17 based on those outcomes, your map was an
18 extreme outlier, biased in favor of
19 Republicans by significant margins in
20 every instance.

21 Does that conclusion surprise you?

22 COMMISSIONER BEE: Are you referring
23 to the 2013 map or the map that's just
24 proposed?

25 COMMISSIONER PERNICK: No. This

1
2 map.

3 CHAIRMAN MORONEY: Could I ask you
4 to drill down a little bit on that? When
5 did he determine that it became illegal?
6 Was it 2013, 2014, 2015, 2016 or whenever
7 this was done, 2022? When did he make
8 the determination it was illegal?

9 COMMISSIONER PERNICK: This memo
10 that I just handed you is with respect to
11 the current -- to this proposed map. So
12 about two hours ago.

13 CHAIRMAN MORONEY: So this is in
14 relation to --

15 COMMISSIONER PERNICK: To what we're
16 looking at on the screen right now.

17 CHAIRMAN MORONEY: But the base of
18 this is that the 2013 map is illegal. So
19 he's a building another layer based upon
20 the fact that he believes. I don't. He
21 believes that 2013 was illegal in 2013.

22 COMMISSIONER PERNICK: That's not
23 what the report discusses. I'm happy to
24 talk to you about that further, but if I
25 may ask the witness questions --

1
2 CHAIRMAN MORONEY: I need to
3 understand the question too. We,
4 frankly, don't believe that it's illegal,
5 period. That said, it makes no sense for
6 elections to go on for ten years,
7 including one that ended a couple of days
8 ago, on a map that was illegal. It
9 doesn't make any sense. You can't
10 retroactively, you can't ascribe to it
11 something that wasn't that wasn't in
12 existence.

13 The reason we're doing this process
14 is to correct a map that is imperfect.
15 That's the purpose why we're here. We're
16 not here to go back and look at what
17 happened ten years ago and then say,
18 well, ten years ago if we had what we had
19 now that wouldn't have been any good. So
20 let's put the context of that together.

21 COMMISSIONER PERNICK: Chairman
22 Moroney, I appreciate your question and I
23 do apologize that I introduced this into
24 the record without giving my usual spiel
25 before doing so. So let me do that now

1
2 to give you some context.

3 What Dr. Magleby did is he took this
4 map which we received yesterday at around
5 2:30 in the afternoon or 3 o'clock in the
6 afternoon --

7 COMMISSIONER MEJIAS: Which was the
8 current Republican Commission's proposed
9 map.

10 COMMISSIONER PERNICK: Correct. The
11 current proposed map that we're looking
12 at right now, the map proposed by the
13 Republicans, and he ran that map through
14 the ensemble methodology which is the
15 methodology for evaluating partisan bias
16 that's been accepted in the Harkenrider
17 case by the New York Court of Appeals and
18 accepted in other courts around the
19 country. It's the gold standard for
20 evaluating whether a map is a partisan
21 gerrymander. Here's how it works:

22 You generate a simulation, an
23 ensemble of simulated maps, large numbers
24 of simulated maps. In this case, he did
25 10,000 simulated maps and he concluded

1
2 that this proposal that we received
3 yesterday afternoon is more extreme, in
4 favor of Republicans than the
5 overwhelming majority of the random
6 simulated maps. And by the way, all of
7 the random simulated maps in the
8 simulations, he coded them to comply with
9 the Municipal Home Rule Law, coded them
10 to ensure minority representation,
11 checked all of those boxes and make sure
12 that they're more compact as well. He
13 checked all those boxes and generated
14 that simulated set of 10,000 random maps
15 and he concluded that this proposal that
16 we're reviewing, the Republican proposal,
17 is more extreme than the overwhelming
18 majority of them. It's straight forward
19 and that's the same methodology that's
20 been accepted by the New York Court of
21 Appeals and other courts.

22 So my question for the witness, do
23 you have any reason to dispute that
24 finding?

25 MR. SCHAEFER: Yes. I disagree with

1
2 this methodology. I think there are
3 probably trillions of maps that could be
4 drawn. He chose 10,000. That's the
5 first place that we'd start. Second,
6 none of these maps were ever viewed or
7 seen by a human. None of them took into
8 account testimony. None of them took
9 into account the fact that the existing
10 map started at a baseline of legal and
11 perfect. It started -- If I'm sure if he
12 did this analysis on the existing
13 boundaries which are legal, he would have
14 come up with the same conclusion.

15 So that is what I would say his
16 starting point is is that his proposal
17 would say that the existing boundaries
18 are egregious and, therefore, my map,
19 which barely touches them except to
20 comply with the law is equally egregious.

21 COMMISSIONER PERNICK: So it sounds
22 like your issue is with the methodology.

23 MR. SCHAEFER: I think that the
24 methodology ignores the principles of why
25 we redistrict.

1
2 COMMISSIONER PERNICK: So you
3 disagree with the New York Court of
4 Appeals decision to rely on this
5 methodology in --

6 CHAIRMAN MORONEY: Come on. Come
7 on. You're not in court. There's no
8 jury here.

9 MR. SCHAEFER: I think anything that
10 takes the humanity out of redistricting
11 is a disservice to the public who needs a
12 legislature.

13 COMMISSIONER PERNICK: All right.
14 Let's talk about the actual map. Are you
15 able to zoom in on this a little bit so
16 we can see the districts more clearly?

17 MR. SCHAEFER: No.

18 COMMISSIONER PERNICK: Seriously?

19 MR. SCHAEFER: I provided maps to
20 the Commission. This is what is on the
21 screen.

22 COMMISSIONER PERNICK: We can't zoom
23 in? We can't make anything out of this
24 map. I thought this was supposed to be a
25 working session. We can't zoom in?

1
2 COMMISSIONER BEE: I don't have a
3 button on my desk for a zoom button. Do
4 you? If you do, zoom in.

5 CHAIRMAN MORONEY: By the way, it's
6 the same size as what we got. So I don't
7 know -- Do you have two standards or one?

8 COMMISSIONER PERNICK: Our expert
9 was prepared to Zoom in and answer any
10 questions you had about any part of the
11 map.

12 CHAIRMAN MORONEY: Ask away.

13 COMMISSIONER PERNICK: And she went
14 through every district very clearly. We
15 didn't have any orientation of any of the
16 districts. I'd like to understand the
17 configuration --

18 MR. SCHAEFER: They're about the
19 same as they are now.

20 CHAIRMAN MORONEY: We're talking
21 about this since August 31 and you don't
22 know what's on the map? You've been
23 crying out loud meeting, after meeting,
24 after meeting -- Don't interrupt me.
25 Meeting, after meeting, after meeting

1
2 about this being illegal. You have gone
3 down and probably looked at every house
4 in this map one more time. You're now
5 saying it's illegal again.

6 The changes were made. You had as
7 much time to look at our map as we had to
8 look at your map. We had the same
9 opportunities and you're now saying you
10 don't know what's on the map? You've got
11 to be kidding me. It's absurd.

12 COMMISSIONER MEJIAS: You're 100%
13 right, Chairman. How can we be doing
14 this for all these months and spend
15 hundreds of hours working on this with
16 hundreds of people have come down and
17 commented and we can't tell, so maybe you
18 can help me out. Maybe we're just
19 stupid.

20 So when we're looking at -- What
21 road divides the 11th and 18th District,
22 north and south?

23 CHAIRMAN MORONEY: I don't know.
24 Ask Dr. Gall. She didn't give us roads
25 all the way.

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COMMISSIONER MEJIAS: Yes, she did.
She zoomed in on each specific district
and went through them, told you what
towns were in them and answered your
question about Austin Avenue and the
other Industrial Avenue and what roads.
So we're asking your expert the same
question you asked our expert. What road
divides the 11th and 18th District? What
road the 18th and the 16th District? How
about that one?

MR. SCHAEFER: It appears to me that
they're just boundaries.

COMMISSIONER MEJIAS: The water
boundaries?

MR. SCHAEFER: The village
boundaries divide those districts.

COMMISSIONER MEJIAS: Okay. So what
village boundary is on the eastern
border, bordering Suffolk County, between
the 18th and 16th District? What village
is that?

MR. SCHAEFER: I'm not prepared with
the detail for that.

1
2 COMMISSIONER MEJIAS: Would it
3 surprise you to know that there is not a
4 village there? Okay. Let's move on.

5 So between the 16th and the 17th
6 District, what is the village boundary
7 there?

8 MR. SCHAEFER: Well, where I could
9 split census designated places I did to
10 get to equal population.

11 MR. MEJIAS: Okay. So what's the
12 village -- So there's no village
13 boundary, right, or city?

14 MR. SCHAEFER: You can presume that
15 all but three of the villages are
16 included in this map.

17 COMMISSIONER MEJIAS: So that
18 particular boundary divides the
19 Plainview/Old Bethpage community, which
20 is -- POB is one community. So you have
21 Old Bethpage in 17 and Plainview in 16.
22 There's no village there.

23 My point is we can't tell from this
24 map what's what.

25 COMMISSIONER PERNICK: So this was

1
2 supposed to be a working session. It's
3 very difficult to have a working session
4 without being able to zoom in, but I'm
5 going to do my best and try and ask you
6 some questions and I'll orient as best I
7 can so that members of the public who are
8 watching know what I'm talking about.

9 **So District 1:** District 1 splits
10 the Village of Hempstead in half; is that
11 correct?

12 MR. SCHAEFER: It does. You don't
13 need --

14 COMMISSIONER PERNICK: Sure it does.
15 It splits the Village of Hempstead in
16 half. Did you make any effort to keep
17 the Village of Hempstead in a single
18 district?

19 MR. SCHAEFER: No.

20 COMMISSIONER PERNICK: Why not?

21 MR. SCHAEFER: Because I wanted to
22 keep the other villages whole and where I
23 was able to split places or villages, I
24 used that to get to equal population,
25 which is the primary goal of our

1
2 redistricting.

3 COMMISSIONER PERNICK: So is it
4 possible to achieve equal population and
5 keeping other jurisdictions whole while
6 also keeping the Village of Hempstead in
7 a single district; is that possible?

8 MR. SCHAEFER: Everything's
9 possible.

10 COMMISSIONER PERNICK: Did you try?

11 MR. SCHAEFER: No.

12 COMMISSIONER PERNICK: Okay. You
13 split Uniondale into three districts; is
14 that right?

15 MR. SCHAEFER: I'll take your word
16 for it.

17 COMMISSIONER PERNICK: That's
18 correct. You split Uniondale into three
19 districts. Why did you split Uniondale
20 into three districts?

21 MR. SCHAEFER: Everything I did I
22 did for equal population.

23 COMMISSIONER PERNICK: Okay. Is it
24 possible to achieve equal population
25 while also keeping Uniondale in one

1
2 district?

3 MR. SCHAEFER: Specific to that
4 question, yes. You may not be able to
5 achieve the Municipal Rule Law --

6 COMMISSIONER PERNICK: Is it
7 possible to comply with the Municipal
8 Home Rule Law guidelines and comply with
9 equal population and also keep Uniondale
10 in a single district?

11 MR. SCHAEFER: The map I came up
12 with to comply with the Municipal Home
13 Rule Law is this one and it can be
14 modified and changed. I think that if
15 you want to adhere to all of the sections
16 of the Municipal Home Rule Law that this
17 map is close to what you would have to
18 do.

19 COMMISSIONER PERNICK: So you didn't
20 make any effort to try and keep Uniondale
21 in a single district; is that correct?

22 MR. SCHAEFER: Not in this first
23 draft, no.

24 COMMISSIONER PERNICK: And you don't
25 know whether it's possible to keep

1
2 Uniondale in a single district while also
3 complying with all the other
4 requirements. You haven't evaluated
5 that.

6 MR. SCHAEFER: Well, they wouldn't
7 be as compliant, no.

8 COMMISSIONER PERNICK: How do you
9 know that? Did you try?

10 MR. SCHAEFER: No, because I think
11 if District 1 is a non-Hispanic, Black
12 majority district, that population of
13 District 1 spreads Hempstead Village and,
14 therefore, adding any other population
15 that isn't more than 50% non-Hispanic,
16 black in the rest of the village, we
17 dilute that population. I wouldn't be
18 able to create --

19 COMMISSIONER PERNICK: I'm not
20 talking about adding Uniondale into
21 District 1. I'm asking you a more
22 general question. Did you make any
23 effort to keep Uniondale whole in a
24 single district?

25 MR. SCHAEFER: Not as a specific

1
2 goal, no.

3 COMMISSIONER PERNICK: You split
4 Freeport into four districts; is that
5 right?

6 MR. SCHAEFER: I'll take your word
7 for it.

8 COMMISSIONER PERNICK: You split
9 Freeport into four districts. Why did
10 you split Freeport into four districts?

11 MR. SCHAEFER: To get to equal
12 population.

13 COMMISSIONER PERNICK: Is it
14 possible to achieve equal population
15 without splitting Freeport into four
16 districts?

17 MR. SCHAEFER: With that criteria,
18 yes.

19 COMMISSIONER PERNICK: But you
20 didn't try.

21 MR. SCHAEFER: I tried to make, you
22 know, equally compact, equally populated
23 districts that complied with all of the
24 laws. I think this is as close as I
25 could get in this draft.

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COMMISSIONER PERNICK: So you made zero effort, it sounds like --

MR. SCHAEFER: I wouldn't say zero effort.

COMMISSIONER PERNICK: Did you make any effort, did you make any specific effort to reduce the number of splits of Freeport, yes or no?

MR. SCHAEFER: No. Not after I found out -- No, because I didn't have to.

COMMISSIONER PERNICK: It's really unfortunate that you're not able to zoom in. I have a zoomed-in version in my computer because we do have the data that we've been able to analyze.

I'm going to zoom into a specific portion. We're still talking about District 1, the border between District 1 and Freeport. You're not going to be able to see this because for some reason you don't have access to the roads in your own map, so I'll walk you through what it is that I'm looking at right now.

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Let's say you're in Freeport.
You're driving south along North Long
Beach Avenue. You're starting at Mount
Joy Avenue. As you drive south, left and
right side of the block, of the street,
that's District 1. Then the first block
you hit is Moore, and as soon as you hit
Moore Avenue the right side of the street
is District 5. The left side of the
street is District 1. Then you hit Evans
Avenue, the very next block. At Evans,
the right side is District 5 -- Sorry.
At Evans, both the left and right side
are both District 5. You continue
driving down Evans a block, you hit
Seaman Avenue. On Seaman, for some
reason District 1 curves around. The
left side of the street's in District 1.
The right side of the street's in
District 5. You go to the very next
block, you hit Maxson Avenue, and after
you hit Maxson Avenue both the left and
the right side of the street are back in
District 1, and then you finally hit Lena

1
2 Avenue. So this is, like, all over the
3 course of six blocks, and once you hit
4 Lena Avenue the left and the right side
5 are both in District 5.

6 So every single block that you drive
7 is switching from one side of the street
8 being both, the other side of the street
9 back and forth, back and forth. How do
10 you justify that?

11 MR. SCHAEFER: These districts are
12 legal. They're equally populated --

13 COMMISSIONER PERNICK: No, no, no.
14 Now I'm not asking generally. We want to
15 talk about this specific map. That's a
16 very specific point. How can you justify
17 that?

18 CHAIRMAN MORONEY: Can you allow him
19 to finish before you start interrupting
20 him? He started an answer and you shout
21 right at him. Let him answer it.

22 COMMISSIONER PERNICK: Go ahead.
23 How do you justify the specific six-block
24 area along North Long Beach Avenue that
25 I'm referring to, along the border of

1
2 District 1 and District 5. How do you
3 justify that bizarre zigzag pattern?

4 MR. SCHAEFER: All of these
5 districts are within 1% of the ideal
6 population. All of them are equally
7 populated. All of them adhere to the
8 Municipal Home Rule Law and that is --
9 The way you do that is to draw districts
10 at the census bloc level and there's a
11 boundary on every street, usually,
12 between districts, and where there's a
13 boundary, everywhere in Nassau County and
14 New York City and Upstate, there are
15 lines that aren't perfectly straight or
16 perfectly circular districts, and because
17 we're not drawing rectangles, that's
18 always going to happen.

19 COMMISSIONER PERNICK: Did you make
20 any effort to draw the boundary between
21 District 1 and District 5 along a single
22 road rather than zigzagging back and
23 forth every single block along different
24 roads? Did you make any effort --

25 MR. SCHAEFER: I drew districts to

1
2 comply with equal population, not to
3 adhere to specific street names.

4 COMMISSIONER PERNICK: And did you
5 evaluate whether it's possible to comply
6 with equal population while also drawing
7 districts that don't have such irregular
8 boundaries specifically along the border
9 between District 1 and District 5?

10 MR. SCHAEFER: I tried to comply
11 with all of the Municipal Home Rule Law
12 and federal and state laws.

13 COMMISSIONER PERNICK: So it sounds
14 like you made no effort to clean up that
15 boundary.

16 (Whereupon, there was
17 crosstalk.)

18 COMMISSIONER PERNICK: Let me finish
19 the question please.

20 You made no effort to clean up that
21 boundary. You made no effort to see
22 whether it's possible to clean up the
23 boundary while also complying with the
24 other requirements.

25 MR. SCHAEFER: If you make condition

1
2 A of the Municipal Home Rule Law that all
3 boundaries have to be continuously on a
4 single street until that street ends,
5 then I would have done that, but it's not
6 part of the Municipal Home Rule Law so
7 that's not a consideration when I'm --
8 I'm drawing shapes. I'm not drawing
9 lines.

10 COMMISSIONER PERNICK: **District 2:**
11 It's pretty irregularly shaped, isn't it.
12 Let me ask a different question.
13 District 2, it crosses into all three
14 towns in Nassau County, correct?

15 MR. SCHAEFER: Yes.

16 COMMISSIONER PERNICK: Why did you
17 draw a district that crosses into all
18 three towns in Nassau County?

19 MR. SCHAEFER: Because it preserves
20 90%, probably, of the existing core of
21 District 2.

22 COMMISSIONER PERNICK: So you
23 prioritize preserving the core of
24 District 2 over --

25 MR. SCHAEFER: Equal population via

1
2 prioritizing.

3 COMMISSIONER PERNICK: Excuse me.
4 Let me finish the question. I asked you
5 why did you draw a district that crosses
6 into three different towns and you said
7 because it preserves District 2. Did I
8 understand you correctly?

9 MR. SCHAEFER: No. You didn't.

10 COMMISSIONER PERNICK: So why did
11 you draw District 2 crossing into three
12 different towns?

13 MR. SCHAEFER: In my process of
14 drawing all of the districts, I started
15 with the existing boundaries and then
16 made the villages whole to get and then
17 made equal populated districts. And
18 that's the evolution of District 2.

19 COMMISSIONER PERNICK: So District
20 2, the reason that District 2 is in three
21 different towns is because you based it
22 on the current version of District 2; is
23 that correct?

24 MR. SCHAEFER: Which is required by
25 law, yes.

1
2 COMMISSIONER PERNICK: It's a simple
3 yes or no question. The reason District
4 2 --

5 (Whereupon, there was
6 crosstalk.)

7 COMMISSIONER PERNICK: -- is in
8 three different towns is because you
9 based on the current district; is that
10 correct?

11 COMMISSIONER BEE: If I may, you
12 can't force the map maker into answering
13 the question with a yes or no if he
14 believes something more than that is
15 necessary.

16 The purpose here is not
17 cross-examination to say what did you not
18 do? What did you not consider? We've
19 proffered a proposed draft map which the
20 map maker has indicated was only a draft
21 and is now subject to further
22 considerations that we might have about
23 communities of interest that he did not
24 take into account, and I think we're
25 trying to turn this into a trial is not

1
2 the appropriate form.

3 COMMISSIONER MEJIAS: No, but it's a
4 yes or no question. If I ask you if your
5 mic is on or off, telling me it's plugged
6 in is not an answer. It's a yes or no
7 question.

8 COMMISSIONER PERNICK: I'll ask it a
9 different way.

10 MR. SCHAEFER: If you want me to
11 answer yes or no, I will answer yes or no
12 but it won't be as informative.

13 COMMISSIONER PERNICK: I'll ask it a
14 different way. So when you drew District
15 2, you prioritized preserving the core
16 over respecting town boundaries; is that
17 correct?

18 MR. SCHAEFER: No. I think when I
19 was drawing I probably didn't -- I made
20 village boundaries because villages are a
21 new part of the law and the village
22 shapes and sizes in Nassau County were
23 problematic. So I probably -- as I look
24 at the map now, but the portion that's in
25 Oyster Bay it's, I'm guessing, is

1
2 possible to take out of Oyster Bay.
3 Preserving the town boundaries was a
4 consideration, but in this case I crossed
5 the town line that hopefully we'll be
6 able to correct.

7 CHAIRMAN MORONEY: I'm just going
8 give an answer to the question that
9 Mr. Schaefer asked for himself. That
10 little triangle that you see going into,
11 crossing the line into Oyster Bay, that
12 was actually put there at the request of
13 former Legislator Bob Troiano. That is a
14 portion of homes and houses that are
15 connected right to New Castle. And that
16 was his request ten years ago. He was
17 sitting, roughly, where you were sitting
18 and I was there Mr. McKenna is standing,
19 and he asked if we could change that and
20 put that back in and we did. That was
21 one of the reasons why no one ever
22 challenged this map is because these
23 people from the Democratic Party, the
24 Republican Party would put things
25 together and they came together. That's

1
2 exactly why that is there. That's a
3 piece of New Castle that crosses the town
4 line.

5 It's the same thing that happened if
6 you look up north where you see the town
7 line that cuts District 16 apart. That
8 is the same sort of situation of the
9 roads. A lot of these things that we
10 hear -- Mr. Mejias gave testimony in Glen
11 Cove and talked at length about blocs and
12 sections of blocs ten years ago, talking
13 about the water system and everything
14 else to keep that together.

15 This how this thing came about. It
16 didn't come about because somebody walked
17 into a room, lit a cigar and said how can
18 we screw those people?

19 What happened was it was it was a
20 genuine hearing. The changes were done
21 genuinely and that one in particular by
22 Bob Troiano was something he praised
23 everybody for doing it.

24 Keep in mind that this map that's
25 now been declared illegal from, I don't

1
2 know, time of memorial by Magleby and
3 yourself was a creation of the aggregate
4 of testimony that took place over a
5 series of months that I participated in,
6 that Mr. Mejias participated in and lots
7 of other people participated in it and
8 then nobody challenged the thing after it
9 was over. Nobody.

10 Now you can finish your questions.

11 COMMISSIONER PERNICK: So
12 Mr. Schaefer, we just got I think some
13 interesting community of interest
14 testimony from our chair. Did you take
15 that community of interest testimony into
16 account when you drew District 2 into
17 three different towns?

18 MR. SCHAEFER: As I said before, I
19 didn't take any of that into account at
20 this stage of the process.

21 COMMISSIONER PERNICK: I appreciate
22 our chair's contribution to the record
23 with respect to that triangle that juts
24 into Oyster Bay. My questions right now
25 are not about that testimony. It's about

1
2 what you considered in preparing this
3 map.

4 In drawing District 2, did you
5 prioritize preserving the core of
6 District 2 over respecting town
7 boundaries?

8 MR. SCHAEFER: I don't think I
9 preserved one over the other. I think
10 that preserving town boundaries is a
11 goal. I think that preserving the
12 existing districts is a goal. In my head
13 I don't say, at least not until the end,
14 this is more important than that, so when
15 I'm drawing, that's not what my thought
16 process is.

17 COMMISSIONER PERNICK: When you drew
18 District 2, did you give any
19 consideration to preserving town
20 boundaries?

21 MR. SCHAEFER: No. As I just said,
22 when I'm drawing I'm considering getting
23 to equal population. After I'm done
24 drawing, I can evaluate did I split any
25 villages? Did I break any town

1
2 boundaries? Is there anything that I
3 did -- You know, it's not that every
4 census bloc that I select on my map I
5 refer back to the MHRL to say okay does
6 this do this, this do this? I draw the
7 first iteration of my map. I look to see
8 what needs to be changed. I do it again
9 and again, and then get to this point.

10 If you have a flood in crossing that
11 boundary, I'd be happy to fix it because
12 I knew and know every time I do this that
13 there's going to be parts of the map that
14 the commissions that I work for don't
15 like and we can correct those things.

16 So if town boundary's important to
17 you and the Commission, we can take it
18 out of Oyster Bay.

19 COMMISSIONER PERNICK: I see that
20 that you split up Westbury and New
21 Castle. They were together in the same
22 district previously and you split them
23 up; is that correct?

24 MR. SCHAEFER: I'll take your word
25 for it.

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COMMISSIONER PERNICK: Why did you split up Westbury and New Castle?

MR. SCHAEFER: For equal population and to preserve the cores of districts.

COMMISSIONER PERNICK: Are you aware that we received significant public testimony --

MR. SCHAEFER: No. I told you that public testimony has not been part of the process up to this point.

COMMISSIONER PERNICK: Okay. What's your timeline for modifying this map, based on public testimony? There was a lot of public testimony.

MR. SCHAEFER: My timeline is your timeline. When you need to have a final plan, I will have a final plan.

COMMISSIONER PERNICK: Have you been given a timeline yet?

MR. SCHAEFER: They told me to come here today and then we'll find out what happens after today.

COMMISSIONER PERNICK: You split the Lakeview community up, didn't you? You

1
2 can take my word for it. You split the
3 Lakeview community up. We got a lot of
4 testimony to keep Lakeview together. Why
5 did you split Lakeview up?

6 MR. SCHAEFER: Equal population.

7 COMMISSIONER PERNICK: Is it
8 possible to keep Lakeview together while
9 also achieving equal population?

10 MR. SCHAEFER: Everything is
11 possible in these maps.

12 COMMISSIONER PERNICK: Did you make
13 any effort to keep Lakeview together
14 while also achieving equal population?

15 MR. SHAEFER: My answer's going to
16 be the same for every specific area.

17 COMMISSIONER PERNICK: Well I'll ask
18 you for every specific area if you made
19 any effort to keep those areas whole
20 while also achieving equal population?
21 Did you make any effort to keep Lakeview
22 whole while also complying with equal
23 population and the other requirements
24 under the Municipal Home Rule Law?

25 MR. SCHAEFER: I can tell you that

1
2 the give and take of creating equally
3 populated districts, preserving the
4 villages, creating the minority districts
5 that were created, the African-American
6 district created this map. Specific
7 districts? I didn't spend, except for
8 District 1, where after one of my early
9 iterations I found out was close enough
10 to 50% that I could probably get it over
11 50%. Except for District 1, I don't
12 think I spent any time on any one
13 specific district to make any one
14 specific district more compact, more
15 straight lines, more anything. I didn't
16 split the villages because the law says
17 not to. Once I got to a point where I
18 was within 1% deviation for all the
19 districts, I named it Plan 5 and I
20 brought it here.

21 COMMISSIONER PERNICK: So you made
22 no effort to keep Lakeview whole while
23 also complying with the other
24 considerations --

25 MR. SCHAEFER: I made a lot of

1
2 efforts to come up with Plan 5.

3 COMMISSIONER PERNICK: I'm talking
4 specifically about Lakeview. You made no
5 effort to keep Lakeview whole while also
6 complying --

7 MR. SCHAEFER: So they said that
8 Lakeview is part of Nassau County. I
9 spent a lot of time drawing this map.
10 So, yes. I spent a lot of effort in
11 keeping all of the villages whole, to
12 keeping all of the districts compact,
13 contiguous, preserve their cores and
14 after considering everything that the law
15 required, this is the plan that I've come
16 up with.

17 COMMISSIONER PERNICK: I'm going to
18 move onto **District 3**.

19 COMMISSIONER BEE: Could I just ask
20 a question of Mr. Mejias as the chairman
21 of your delegation.

22 COMMISSIONER MEJIAS: Yes.

23 COMMISSIONER BEE: How many times
24 are we going to ask the same questions
25 and just get argumentative with the

1
2 witness?

3 COMMISSIONER MEJIAS: You see, you
4 keep asking the same question when it
5 doesn't get answered. So when you're
6 asked a question about Lakeview,
7 Mr. Schaefer, specifically about Lakeview
8 and you say a general I did a general map
9 that I think is legal for everything,
10 that's not a question. Because if we
11 were in a court of law, I would move to
12 strike your answers not responsive, the
13 judge would uphold my objection and
14 direct you to answer the question, and if
15 you kept answering questions in a
16 non-responsive manner, he or she would
17 sanction you.

18 CHAIRMAN MORONEY: There'll be no
19 badgering witnesses. Stop the badgering.

20 COMMISSIONER MEJIAS: I didn't
21 badger him.

22 CHAIRMAN MORONEY: You are yelling
23 at people. Stop it.

24 COMMISSIONER MEJIAS: No, no, no.
25 Well --

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CHAIRMAN MORONEY: Talk nice.

What's so hard about that?

COMMISSIONER MEJIAS: We are trying and we're asking the same question over and over very nicely and Mr. Schaefer won't answer the question. I'm whispering now so that you can pay attention.

Mr. Schaefer, specifically to Lakeview, answer the question and then we won't have to ask it five times. I understand that you don't want to answer the question and why, but unfortunately you have to.

(Whereupon, there was crosstalk.)

CHAIRMAN MORONEY: If I was a judge, I would strike that from the record.

COMMISSIONER MEJIAS: Okay. Well, maybe you would, but you're not to judge even though you're ruling on your own objections like a judge. That's fine.

Mr. Schaefer, I would ask you to just answer the question. It's not that

1
2 hard. So what? You didn't consider
3 keeping Lakeview together. Just say it.
4 Answer the question. Everyone wants
5 Lakeview together. We ask you when the
6 final map is going to be done? I don't
7 know, you tell me. No one told you that
8 November 21 we're voting on these maps?
9 Did anyone tell you that, Mr. Schaefer?

10 MR. SCHAEFER: I was aware that it
11 was in November.

12 COMMISSIONER MEJIAS: Okay. So at
13 some point in November you're going to
14 consider public comment?

15 MR. SCHAEFER: If asked by the
16 Commission, yes.

17 COMMISSIONER MEJIAS: Okay. If the
18 Commission doesn't ask you, are you going
19 to consider the public comment when
20 submitting your final map?

21 CHAIRMAN MORONEY: Don't answer
22 that.

23 COMMISSIONER MEJIAS: Why not?

24 CHAIRMAN MORONEY: Because what he
25 says to the Commission is none of your

business.

COMMISSIONER MEJIAS: Why not? It's public record. But the people are paying him.

CHAIRMAN MORONEY: You're asking him to talk about strategy, then you're off base.

COMMISSIONER MEJIAS: He's not your lawyer. There's no privilege here. I'm sorry. We can ask him questions. This is a public forum and I want to know when his final map is going to be done? You said some time in November. So let's say it's before December 1. November 21 is when we're voting on this. So we're voting on it on November 21. This is not a hypothetical.

COMMISSIONER BEE: Well, what it is is each of the two sides, your delegation and our delegation have separately engaged map makers. The purpose of tonight is for us to have presented what our map maker has reported to us. We have presented that. The purpose of

1
2 tonight is not to cross-examine or be on
3 trial or say what he did or didn't
4 consider. We're here to say here's the
5 map that our map maker has presented in
6 draft form to us in which he has told us
7 he's now waiting for further instructions
8 from our delegation as to what else he
9 should do.

10 So that's where we are.

11 COMMISSIONER MEJIAS: It's a work
12 session.

13 COMMISSIONER BEE: It's a work
14 session in which -- If you have a
15 suggestion that you'd like to make, if
16 you'd like to say move this line from
17 this corner to that corner, change this,
18 change that, those are your suggestions,
19 we'll be happy to hear them. But you
20 just continue to question him as to what
21 did he not consider in drafting this
22 document.

23 This document is the document that
24 he's produced. This is what he's put
25 forth as a draft and he's now waiting for

1
2 further input from the Republican
3 delegation, and we haven't given him that
4 further input yet.

5 COMMISSIONER MEJIAS: Well, this is
6 a work session and a work session means
7 we can ask questions. The reason we all
8 voted unanimously to provide each other
9 with each other's maps the day before is
10 so that our consultants could analyze it
11 and we could come here and ask questions.
12 Those questions deserve answers. The
13 public wants to know what these answers
14 are.

15 You can't give a non-answer and then
16 say don't keep asking the same question.
17 I'm just wondering when are you going to
18 have a final report done?

19 COMMISSIONER BEE: You've asked that
20 question a number of times.

21 COMMISSIONER MEJIAS: And he hasn't
22 answered it.

23 COMMISSIONER BEE: He's not the one
24 who will be answering it.

25 COMMISSIONER MEJIAS: He said

1
2 sometime in November, actually. He did
3 answer it.

4 COMMISSIONER BEE: He'll produce his
5 final when this delegation tells him to
6 produce his final which we haven't done
7 yet. That's the answer.

8 Now, again, he is not here to be
9 badgered in what we view as badgering.
10 He's here to present what he's produced.
11 He has presented it, and we're not going
12 to let this go on forever. At some point
13 in the game we going to say that's
14 enough. We think you've been badgering
15 and trying to cross-examine him rather
16 than to just ask him questions or make
17 suggestions to him about what might
18 further be done in a further iteration.

19 So let's go forward from there.

20 COMMISSIONER MEJIAS: And we're not
21 going to let Mr. Schaefer filibuster and
22 not answer questions and answer questions
23 with not answers. There is some
24 accountability here to the people of
25 Nassau County who are spending a million

dollars to have these two maps made.

Answer the questions. That's all we're asking.

COMMISSIONER PERNICK: Let's move onto **District 3**. District 3, it looks like it connects -- It splits up Elmont, North Valley Stream, Valley Stream and then connects down into Inwood. Am I seeing that correctly?

MR. SCHAEFER: Yes.

COMMISSIONER PERNICK: Why are you connecting Elmont and Valley Stream to Inwood?

MR. SCHAEFER: To get to equal population.

COMMISSIONER PERNICK: Are there any other considerations other than achieving equal population that motivated your decision to connect Valley Stream and Elmont to Inwood?

MR. SCHAEFER: To preserve the cores of villages, close existing districts, to keep the villages whole and to get to the population.

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2 COMMISSIONER PERNICK: So the three
3 reasons for connecting Valley Stream and
4 Elmont down to Inwood that I've heard you
5 say is:

6 1. Equal population
7 2. Preserving cores
8 3. Respecting village boundaries;
9 is that correct?

10 MR. SCHAEFER: As I was drawing,
11 yes.

12 COMMISSIONER PERNICK: Are there any
13 other considerations that you factored in
14 when connecting Valley Stream and Elmont
15 down to Inwood?

16 MR. SCHAEFER: Not while drawing,
17 no.

18 COMMISSIONER PERNICK: Would it have
19 been a more compact district if you kept
20 Elmont and Valley Stream whole rather
21 than having an appendage going down to
22 Inwood?

23 MR. SCHAEFER: I don't know. It's a
24 mathematical formula. I'd have to --

25 COMMISSIONER PERNICK: So sitting

1
2 here right now, you cannot tell us
3 whether it's possible, whether it would
4 be more compact, if you kept Elmont and
5 Valley Stream whole and didn't connect
6 down into Inwood. Really? You can't
7 tell us that?

8 MR. SCHAEFER: There are nine
9 algorithms I use and, honestly, I don't
10 know even how to do the algorithms on pen
11 and paper. I use my computer to do those
12 algorithms.

13 COMMISSIONER PERNICK: How many
14 years have you been doing this?

15 MR. SCHAEFER: In 1990 was my first
16 cycle.

17 COMMISSIONER PERNICK: And you can't
18 eyeball a map and say yeah, that will
19 probably be more compact?

20 MR. SCHAEFER: Yes. That's the
21 tenth way of measuring compactness. So
22 in one of the measures of compactness,
23 maybe it would be, maybe it wouldn't be.
24 I'd have to see them side by side. The
25 other nine may show a different --

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COMMISSIONER PERNICK: Does the Valley Stream/Elmont portion of the district connect to the Inwood portion of the district by land?

MR. SCHAEFER: I can't tell from this.

COMMISSIONER PERNICK: You don't know the answer to that question?

MR. SCHAEFER: Not right now, no.

COMMISSIONER PERNICK: I have zoomed in on my own computer and I'll tell you that the only way to get from the Valley Stream/Elmont portion of the district to Inwood is to cross a creek and then to cross a golf course. There's no road that connects them. Are you aware of that?

MR. SCHAEFER: I am now.

COMMISSIONER PERNICK: Does that concern you that there's no road that connects the Valley Stream/Elmont portions of the district to Inwood?

MR. SCHAEFER: Concern me?

COMMISSIONER PERNICK: Does it

1
2 concern you as professional --

3 MR. SCHAEFER: It does not concern
4 me.

5 COMMISSIONER PERNICK: It doesn't
6 concern you that there's no road that
7 connects them; that the only way to get
8 from one part of the district to the
9 other is to cross a creek and to cross a
10 golf course?

11 MR. SCHAEFER: There's a
12 congressional district in Hawaii that's
13 dozens of miles of road -- without
14 roads -- to get to the next island.

15 I don't necessarily, in every case,
16 consider water or a golf course as making
17 a district not contiguous. I think all
18 these districts are contiguous.

19 COMMISSIONER PERNICK: Are there any
20 islands in Elmont, Valley Stream or
21 Inwood?

22 COMMISSIONER BEE: Excuse me, if I
23 may. I note that we're already 20
24 minutes past the ending time for this
25 evening. Do you have any estimate as to

1
2 how much more you would like to continue
3 to question what is not a witness but a
4 presenter of a map?

5 COMMISSIONER PERNICK: Well, I was
6 hoping this would be a work session.
7 It's not.

8 COMMISSIONER BEE: Well that's
9 unfortunate that you don't see it that
10 way.

11 COMMISSIONER PERNICK: It's not that
12 I don't see it. A work session is where
13 you can work together to make changes in
14 real time, to zoom in, to roll up our
15 sleeves. That is not what you were
16 prepared to do today, which is
17 unfortunate.

18 COMMISSIONER BEE: Do you have a
19 proposal to make a change in what he's
20 presented?

21 COMMISSIONER PERNICK: I've been
22 listing so many issues with what he's
23 presented, so many legal defects, and I
24 hope he takes it into account as he
25 redoes the map.

1
2 If you're concerned about time, let
3 me continue with my questions.

4 COMMISSIONER MEJIAS: Let me just
5 remind you we were asking whether or not
6 there were any islands in Valley Stream
7 and Elmont since you made the comparison
8 to Hawaii.

9 Can we get an answer to that
10 question, Mr. Schaefer? I mean, there
11 might be some water holes on the golf
12 course.

13 MR. SCHAEFER: All of the districts
14 in this plan are contiguous by law and by
15 my practice.

16 CHAIRMAN MORONEY: For the record,
17 golf courses apparently are okay to do
18 that because in North Hempstead the
19 Democrats drew a map that -- They have to
20 go through a golf course in order to get
21 to one side or the other side.

22 So we can nitpick all we want. Just
23 get -- The big picture here is to set
24 back from this and take a look and let's
25 look at our goal. Our goal is to come up

1
2 with a map that is legitimate, that is a
3 benefit to the people of Nassau County,
4 the people who live in Nassau County.

5 We have different approaches to
6 this, obviously, because your map
7 presentation and our map presentation are
8 miles apart. How that's going to change,
9 whether in bits and pieces or in large
10 chunks, I can't tell you that yet, but it
11 would be more productive, I believe,
12 rather than drill down into something
13 that you already know the answer to to
14 make sure that Mr. Schaefer will give the
15 same answer that you know it had to be.
16 You have it in front of you. You have
17 the larger size.

18 He's explained to you what his
19 theory was. He's explained to you about
20 majority/minority districts. He's
21 explained to you about keeping villages
22 whole and ironically the same villages
23 that Dr. Gall chopped up are the same
24 ones that Mr. Schaefer chopped up.

25 It seems like we're going nowhere.

1
2 We're going in circles. If you can just
3 drill down as to what your goal is. I
4 mean, I know your goal is to go to
5 court. Mr. Mejias has already said that.

6 COMMISSIONER MEJIAS: No. I said
7 that's your goal. You're pretty much
8 guaranteeing it.

9 (Whereupon, an unidentified
10 audience member began to
11 speak.)

12 CHAIRMAN MORONEY: You're out of
13 order. You're out of order.

14 COMMISSIONER MEJIAS: This session
15 is not to hear -- We are not hearing
16 public comment at this session, so I
17 would respectfully ask that the public
18 please keep their voices down.

19 By the way, just for the record,
20 Mr. Chairman, you referenced Legislator
21 Troiano earlier. The vote on the current
22 map was taken on March 5, 2013, and at
23 that time on the map itself, Legislator
24 Troiano voted, "I am proud to cast a
25 loud, emphatic and resounding no." So

1
2 for the record, Mr. Troiano voted
3 against.

4 CHAIRMAN MORONEY: I recall that as
5 well, but then nobody went to court.

6 COMMISSIONER PERNICK: Let's move
7 onto **District 4**. Are you aware that
8 District 4 crosses over water to grab up
9 some land in Baldwin?

10 MR. SCHAEFER: Yes.

11 COMMISSIONER PERNICK: Are you aware
12 that there's no road that connects that
13 part of District 4 to Baldwin?

14 MR. SCHAEFER: I'll take your word
15 for it.

16 COMMISSIONER PERNICK: Why does
17 District 4 cross into Baldwin?

18 MR. SCHAEFER: For population that's
19 contiguous.

20 COMMISSIONER PERNICK: Was it
21 possible to guarantee equal population
22 without crossing over water into Baldwin?

23 MR. SCHAEFER: Just for equal
24 population? Yes.

25 COMMISSIONER PERNICK: Did you make

1
2 any effort to keep District 4 without
3 crossing over into Baldwin?

4 MR. SCHAEFER: Specifically, I
5 didn't make any effort to put it in or
6 take it out or both, no.

7 COMMISSIONER PERNICK: The section
8 of Baldwin that you include has two
9 people. Are you aware of that?

10 MR. SCHAEFER: Nope.

11 COMMISSIONER PERNICK: So it was
12 critical to add those two people for
13 equal population purposes; is that what
14 you're saying?

15 MR. SCHAEFER: That's what I'm
16 saying.

17 COMMISSIONER PERNICK: It also
18 crosses into Freeport. Are you aware of
19 that?

20 MR. SCHAEFER: Yes.

21 COMMISSIONER PERNICK: And it jumps
22 over the water without any road or land
23 connecting it. It jumps over the water
24 to smash up some land in Freeport,
25 correct?

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MR. SCHAEFER: Yes.

COMMISSIONER PERNICK: Why?

MR. SCHAEFER: Equal population.

COMMISSIONER PERNICK: Is it possible to satisfy the equal population requirement without jumping over the water to snatch up a tiny bit of land in Freeport?

MR. SCHAEFER: Yes, and we can fix that.

COMMISSIONER PERNICK: You haven't made any effort to fix that yet?

MR. SCHAEFER: I haven't been asked to.

COMMISSIONER PERNICK: Well, you're being asked to.

COMMISSIONER BEE: Actually, the Democratic delegation can speak with their map maker. We'll speak to our map maker. Right now we are interested in your comments, your suggestions, but at the end of the day, our map maker will respond to our delegation just as your map maker will respond to your

1
2 delegation.

3 I appreciate that you're asking the
4 Republican delegation to direct their map
5 maker to do something, but please don't
6 try to direct our map maker.

7 COMMISSIONER MEJIAS: We're just
8 making suggestions.

9 COMMISSIONER PERNICK: Let's turn to
10 **District 9.** Am I seeing this district
11 correctly in that it connects Mineola and
12 New Hyde Park with the Plandome/Manhasset
13 area up in the northern part of the Town
14 of North Hempstead by looping east and
15 picking up slivers of Albertson,
16 Searingtown, Roslyn Heights? Is that
17 what it's doing?

18 MR. SCHAEFER: Yes.

19 COMMISSIONER PERNICK: What was your
20 basis for drawing such an irregular
21 district?

22 MR. SCHAEFER: Preserving its core.

23 COMMISSIONER PERNICK: Any other
24 basis other than preserving the core?

25 MR. SCHAEFER: Keeping the village

1
2 whole. Keeping the population close to
3 zero.

4 COMMISSIONER PERNICK: Anything
5 else?

6 MR. SCHAEFER: Not that I recall.

7 COMMISSIONER PERNICK: Are you aware
8 of any communities of interest that
9 justify this bizarre configuration?

10 MR. SCHAEFER: I don't think it's
11 bizarre. It's the same district or very
12 close to the same district that exists
13 now.

14 CHAIRMAN MORONEY: If I may, I think
15 if your researcher goes back and checks
16 the record of the hearing, he or she will
17 find out that the Kings Point to
18 Manhasset district was created with a
19 strong request by the people who lived on
20 the Great Neck Peninsula. And if you
21 look across to the other side to District
22 11 which follows, you'll see that that
23 district which is currently represented
24 by Delia DeRiggi-Whitton has a long
25 history of a coalition to preserve

1
2 Hempstead Harbor and it happens to be in
3 the 11th District where Glen Cove is.

4 Mr. Mejias actually testified.

5 So if you take those two districts
6 and you need population to participate in
7 District 9, you're going to have to
8 create one of those little districts. I
9 brings to mind that there's something
10 similar to that in the map created by
11 Dr. Gall, and that is your district
12 number 10, ironically, where it's a long
13 narrow district with some odd changes to
14 it.

15 It happens because whether we like
16 it or not, whether we think it's great or
17 not, the requirements of districting are
18 restrictive. You have to do certain
19 things. You have to have equal
20 population.

21 Mimi Johnson who spoke at length at
22 a couple of hearings, two hearings,
23 didn't like the idea that she was across
24 the street from the district that she
25 wanted to be in. She didn't want to

1
2 be -- She wanted to be in a different
3 district. That's my recollection. If
4 I'm off, I'm not off by much.

5 The line's got to go somewhere.
6 They don't draw themselves. The
7 population is set by census. The State
8 of New York narrowed the ability to have
9 a greater latitude in doing this when
10 they enacted that law last year called
11 the Municipal Home Rule Law -- further
12 and in particular, when you have to
13 recognize the villages.

14 It's a cascade of small moves and
15 small maneuvers. It's not that simple to
16 do but you have to keep in mind that
17 these lines were not drawn pell-mell in
18 the back room. They were drawn after
19 discussion with people whether they voted
20 in favor of it or not. They got things
21 they asked for. They asked for changes.
22 That was the public who asked for
23 changes, not commissioners. If you keep
24 it in line with that notion that the
25 purpose of districting is to make sure

1
2 that everybody is equal.

3 COMMISSIONER PERNICK: Mr. Schaefer,
4 we just got some communities of interest
5 testimony from our Chairman about why
6 District 9 was drawn in the way it was
7 ten years ago. Did that community of
8 interest information play any role in
9 your decision to draw District 9 the way
10 you did?

11 MR. SCHAEFER: Not in this plan, no.

12 COMMISSIONER PERNICK: Okay. Thank
13 you. That was my only question. I'm
14 trying to understand your basis for
15 drawing District 9. We had some helpful
16 and interesting community of interest
17 testimony from the chairman. That
18 testimony was not relevant so that's
19 helpful with that.

20 MR. SCHAEFER: One thing I can say
21 having time to look at that other map,
22 there's something like 30 incorporated
23 villages. I just did a quick count. The
24 only territory that isn't a complete
25 village in Hempstead creates that line.

1
2 If you're going to preserve villages, if
3 it's practicable to preserve villages in
4 North Hempstead, this district keeps some
5 of the villages whole, takes some of the
6 census designated places which are able
7 to be split, but because there are fewer
8 building blocks in North Hempstead
9 because of the large number of
10 incorporated villages that border each
11 other, there's fewer choices and so to
12 create this plan, to create District 10
13 and 11 automatically creates District 9.

14 COMMISSIONER PERNICK: I want to
15 turn to **District 14**. This district
16 connects Garden City and Stuart Manor
17 which is in the Town of Hempstead up to
18 Carle Place in Westbury in the Town of
19 North Hempstead and then cuts through the
20 middle of Hicksville to capture part of
21 Bethpage. Does that sound about right to
22 you?

23 MR. SCHAEFER: Yes.

24 COMMISSIONER PERNICK: So this
25 district, again, is the second district

1
2 that crosses into all three towns,
3 correct?

4 MR. SCHAEFER: Yes. It did in the
5 original plan as well.

6 COMMISSIONER PERNICK: Why did you
7 draw a district that cuts across all
8 three towns?

9 MR. SCHAEFER: Because that's what
10 the core of the existing district was.

11 COMMISSIONER PERNICK: So with
12 respect to drawing of District 14, you
13 prioritized preservation of cores over
14 preserving town boundaries; is that
15 correct?

16 MR. SCHAEFER: No. I did them
17 equally.

18 COMMISSIONER PERNICK: In what way
19 did you respect the redistricting
20 principle of preserving the town
21 boundaries --

22 MR. SCHAEFER: I didn't add a town
23 boundary crossing.

24 COMMISSIONER PERNICK: Okay.
25 this --

1
2 MR. SCHAEFER: The same numbers are
3 as they were before. There's not more.

4 COMMISSIONER PERNICK: How many
5 towns do we have in Nassau County?

6 MR. SCHAEFER: Three towns, two
7 cities.

8 COMMISSIONER PERNICK: How many
9 towns does this district touch? All
10 three?

11 MR. SCHAEFER: No more than it did
12 before.

13 CHAIRMAN MORONEY: Can I give you
14 another little bit of information? Where
15 it crosses the town's line --

16 COMMISSIONER PERNICK: Mr. Chairman,
17 if I may, this is not relevant --

18 CHAIRMAN MORONEY: I'm going to get
19 this in whether you like it or not. That
20 line that crossed the border between
21 North Hempstead and Oyster Bay was
22 breached in the year 2000 by the
23 Democrats when they controlled it then.
24 That's how that breach took place.

25 COMMISSIONER PERNICK: And that was

1
2 a bad thing; is that what you're saying?

3 CHAIRMAN MORONEY: No. I'm just
4 stating a fact.

5 COMMISSIONER PERNICK: Okay. Well,
6 you seemed pretty angry when you were
7 saying it. Perhaps you can direct your
8 map maker to try and fix that breach.

9 CHAIRMAN MORONEY: I am not angry.
10 I'm firm.

11 COMMISSIONER PERNICK: Are you
12 familiar with the Five Towns?

13 MR. SCHAEFER: Yes.

14 COMMISSIONER PERNICK: What are the
15 Five Towns?

16 MR. SCHAEFER: I wouldn't name them
17 and get them wrong, so you can name them
18 for me.

19 COMMISSIONER PERNICK: It's all
20 right. Where in Nassau County are the
21 Five Towns located?

22 MR. SCHAEFER: In the southwest.

23 COMMISSIONER PERNICK: Do you
24 understand the Five Towns to be a
25 community of interest?

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MR. SCHAEFER: I do. I don't know
if the Commission does.

COMMISSIONER PERNICK: How many
districts did you draw on the Five Towns?

MR. SCHAEFER: I don't know. Maybe
two?

COMMISSIONER PERNICK: Four. You
split the Five Towns into four different
districts. Are you aware of that?

MR. SCHAEFER: If you say so.

COMMISSIONER PERNICK: Did you make
any attempt to unify the Five Towns in
less than four districts?

MR. SCHAEFER: I got no direction to
do that, no.

COMMISSIONER PERNICK: So --

MR. SCHAEFER: They weren't before,
so I didn't do it now.

CHAIRMAN MORONEY: Just one
correction. It was 2003, not 2000.

COMMISSIONER PERNICK: You split
Hicksville into how many districts?

MR. SCHAEFER: I don't know.

COMMISSIONER PERNICK: You split

1
2 Hicksville into four districts. Are you
3 aware of that?

4 MR. SCHAEFER: I don't know.

5 COMMISSIONER PERNICK: Five? I
6 miscounted. Five districts. Do you know
7 how many districts Hicksville was split
8 into in the 2013 plan?

9 MR. SCHAEFER: No.

10 COMMISSIONER PERNICK: Three. So
11 you increased the number of splits of
12 Hicksville from three to five. You made
13 it worse, right?

14 MR. SCHAEFER: I wouldn't say worse.
15 Hicksville is a designated place. It's
16 not part of the guidelines I put on
17 myself to draw this plan.

18 COMMISSIONER PERNICK: So you made
19 no effort to try and reduce the number
20 splits of Hicksville; is that correct?

21 MR. SCHAEFER: Well, Hicksville
22 didn't become an incorporated village, so
23 it's not required to remain whole or
24 split.

25 COMMISSIONER PERNICK: That's a

1
2 helpful explanation, but I just want to
3 make sure I understand. You did not make
4 any effort to reduce the number of
5 splits --

6 MR. SCHAEFER: No. I did not.

7 COMMISSIONER PERNICK: Of
8 Hicksville, correct?

9 MR. SCHAEFER: Nope.

10 COMMISSIONER PERNICK: Did you make
11 any effort to reduce the number of splits
12 at East Meadow, which you split three
13 times?

14 MR. SCHAEFER: No.

15 COMMISSIONER PERNICK: Did you make
16 any effort to keep Syosset and Woodbury
17 together?

18 MR. SCHAEFER: No.

19 COMMISSIONER PERNICK: Did you make
20 any effort to keep Plainview and Old
21 Bethpage together?

22 MR. SCHAEFER: No.

23 COMMISSIONER PERNICK: The
24 Roslyn/East Hills community split into
25 five districts, 9, 10, 11, 16, 18. Did

1
2 you make any effort to keep that
3 community in fewer than five districts?

4 MR. SCHAEFER: No.

5 COMMISSIONER MEJIAS: Mr. Schaefer,
6 you said you did the map ten years ago,
7 correct?

8 MR. SCHAEFER: In 2012 and 2013, the
9 one that's passed now? Yes.

10 COMMISSIONER MEJIAS: And there have
11 been changes in the law since then,
12 correct?

13 MR. SCHAEFER: In the state law,
14 yes.

15 COMMISSIONER MEJIAS: And you've
16 done maps for other municipalities,
17 correct?

18 MR. SCHAEFER: Yes.

19 COMMISSIONER MEJIAS: Like,
20 Brookhaven?

21 MR. SCHAEFER: Yes.

22 COMMISSIONER MEJIAS: Who hired you
23 there?

24 MR. SCHAEFER: The Town Board.

25 COMMISSIONER MEJIAS: And it was a

1
2 Republican Town Board, correct?

3 MR. SCHAEFER: I don't know.

4 COMMISSIONER MEJIAS: You don't know
5 if the Board you worked for was
6 Republican or Democrat in the Town of
7 Brookhaven?

8 MR. SCHAEFER: I didn't ask them.

9 COMMISSIONER MEJIAS: Were you ever
10 hired by the New York State Senate
11 Republicans?

12 MR. SCHAEFER: Yes.

13 COMMISSIONER MEJIAS: And in the
14 Town of Hempstead, you were hired by the
15 Town of Hempstead as well, correct?

16 MR. SCHAEFER: Ten years ago.

17 COMMISSIONER MEJIAS: And that was a
18 Republican Town Board then as well.

19 MR. SCHAEFER: Okay.

20 COMMISSIONER MEJIAS: You're aware
21 of that, correct?

22 MR. SCHAEFER: When I get a
23 contract, I'm happy to get it, and if
24 they were Democrat, I would have taken
25 the contract.

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COMMISSIONER MEJIAS: Have you ever taken a contract with a Democrat?

MR. SCHAEFER: Lots of times.

COMMISSIONER MEJIAS: Who?

MR. SCHAEFER: Ten years ago, I think, in -- I don't have my notes, so if I get it wrong -- Sullivan County I think. A lot of bipartisan commissions. I did legal work for NAACP in Albany. I can't remember if Dutchess is Democrat or Republican -- Ulster County. I do maps and people hire me to do maps.

COMMISSIONER MEJIAS: One Dutchess county attorney was Republican, then how would you correct it?

MR. SCHAEFER: The cycle? That was a nonpartisan commission, the cycle. That was an absolutely nonpartisan --

COMMISSIONER MEJIAS: And the last time?

MR. SCHAEFER: It may have been the county attorney.

COMMISSIONER MEJIAS: And you said you'd worked for Democrats in Sullivan

1
2 County ten years ago?

3 MR. SCHAEFER: I think it was
4 Sullivan County if I'm recalling it
5 correctly.

6 COMMISSIONER MEJIAS: But you don't
7 know if Brookhaven was Republican.

8 MR. SCHAEFER: I didn't know -- If
9 you're telling me it's Republican now, I
10 got the contract. Like I said, I do maps
11 and draw maps.

12 COMMISSIONER MEJIAS: You only do
13 math and draw maps?

14 MR. SCHAEFER: No. For
15 redistricting that's what I do. I don't
16 do any subjective work. I don't decide
17 where the lines go. I let my clients do
18 that.

19 COMMISSIONER MEJIAS: You do have
20 other businesses, correct? You have a
21 consulting business?

22 MR. SCHAEFER: Yes. I do
23 statistical work for various politicians
24 of both parties.

25 COMMISSIONER MEJIAS: At Skyline

1
2 political?

3 MR. SCHAEFER: Yes.

4 COMMISSIONER MEJIAS: And you do
5 polling, correct?

6 COMMISSIONER BEE: Mr. Schaefer, as
7 far as I'm concerned, speaking for the
8 Republican delegation, I think the
9 questions are going beyond what we
10 brought you here to do. So I'm going to
11 direct you not to answer.

12 COMMISSIONER MEJIAS: Well, you can
13 direct him not to answer and you can
14 decide not to answer and you can put that
15 on the record, but you do own a group
16 that does polling, correct? You own a
17 political consulting firm, don't you?

18 MR. SCHAEFER: I was directed not to
19 answer.

20 COMMISSIONER MEJIAS: So you're
21 being directed not to answer the
22 questions about -- Do you own
23 Skylinepolitical.com?

24 COMMISSIONER BEE: Don't respond.

25 (Whereupon, there was no

verbal response.)

COMMISSIONER MEJIAS: What is the name of the company that you own that has a contract with the Republican delegation and the Commission?

MR. SCHAEFER: What is the question?

COMMISSIONER MEJIAS: You have a contract, correct, to do this, yes or no?

MR. SCHAEFER: Yes.

COMMISSIONER MEJIAS: And is that contract with you personally or with your company?

MR. SCHAEFER: My corporation, yes.

COMMISSIONER MEJIAS: And what corporation is that?

MR. SCHAEFER: Skyline Demographic Consultants.

COMMISSIONER MEJIAS: And you also own Skyline Political Consultants, don't you?

COMMISSIONER BEE: Don't respond.

(Whereupon, there was no verbal response.)

CHAIRMAN MORONEY: Keep it inside

1
2 this map and -- Look, Dave, we've been
3 around a long time.

4 COMMISSIONER MEJIAS: Speak for
5 yourself. I'm still a lawyer.

6 CHAIRMAN MORONEY: Well, maybe I've
7 been around longer than you. Maybe
8 that's what makes me kinder than you.

9 COMMISSIONER MEJIAS: Maybe.

10 CHAIRMAN MORONEY: I think if we
11 just stop trying to score points against
12 the witness. If you want to score
13 points, score points for what you're here
14 for which is to draw a map. It's
15 insolent to think that you can go off
16 where you're going right now and think
17 that somehow or other that that's cool
18 and okay to do because you don't like
19 what he's saying.

20 COMMISSIONER MEJIAS: I would
21 welcome if --

22 CHAIRMAN MORONEY: Enough. Enough.
23 Enough. Keep it within the bounds of why
24 we're here. Enough is enough.

25 COMMISSIONER MEJIAS: The reason

1
2 that we're here --

3 CHAIRMAN MORONEY: You're not here
4 to figure out how he makes his money
5 outside of what we're doing here, and
6 that's what you're asking. It's none of
7 your business.

8 COMMISSIONER MEJIAS: Someone's
9 motivation and impetus relates to their
10 bias. I would welcome the Republican
11 commissioners to ask any question that
12 we're asking including all of my pointed
13 questions that you may not like of our
14 consultants. We'll bring them back.
15 Dr. Gall has never worked for a partisan
16 organization before the Democrats hired
17 her. Same thing with Mr. Magleby.

18 Our goal here is to create a
19 nonpartisan, independent map that
20 complies with the law, and to the extent
21 that there are biases in the process, the
22 people deserve to know what those biases
23 are and who has those biases, the
24 Democratic side, the Republican side, our
25 consultants, your consultants? The

1
2 people paying the million dollars deserve
3 to know whether or not we're truly doing
4 this in a nonpartisan manner, because
5 that's what the law tells us we have to
6 do.

7 So in following the law, I want to
8 know if there's a particular bias.

9 CHAIRMAN MORONEY: I'm asking you to
10 ask questions in the same tone in which
11 we asked questions of Dr. Gall and you're
12 not. You're way over the line and you
13 know it and you just don't care because
14 you want to sue us so bad that you'll say
15 anything to do it, and that's what's
16 going on here. Leave the man alone.

17 COMMISSIONER KASSCHAU: It's quite
18 opposite, Mr. Chairman.

19 CHAIRMAN MORONEY: I would disagree
20 with that. You must be listening to
21 different people than I'm listening to.

22 COMMISSIONER KASSCHAU: Now you're
23 being unkind to me. As a former county
24 attorney, as a member of this Commission
25 who sat through countless hours before

1
2 the public where the public gave
3 testimony of what was important to them,
4 it is clear to me after hearing what
5 Mr. Schaefer said that none of that was
6 considered in drawing this map. Instead,
7 you've based this current map on the map
8 drawn in 2013, and that map, as we've
9 pointed out, we've had our experts do
10 analysis, is illegal and you are
11 jeopardizing the county with a potential
12 lawsuit for not taking that under
13 consideration, and it's scary to me.

14 COMMISSIONER BEE: We are aware that
15 you hold that opinion and I think you
16 have made your opinion clear. So
17 repeating the same questions to get the
18 same answer to have your opinion restated
19 twenty times is pointless.

20 This gentleman reports to the
21 Republican delegation. We've made him
22 available to answer questions about the
23 contours of the map that he has presented
24 to you. You asked questions which you
25 think have shown deficiencies. All

1
2 right. That's your opinion; that's your
3 inferences; that's your conclusions, but
4 we're not very near the end of making him
5 available to you for further badgering.

6 (Whereupon, there was an
7 interruption from an audience
8 member.)

9 COMMISSIONER MEJIAS: Mr. McKenna,
10 that is completely out of order. Please
11 sit down. I don't want to ask that you
12 be escorted from the chamber. You are
13 out of order.

14 (Whereupon, audience
15 interruption continues.)

16 COMMISSIONER MEJIAS: You are out of
17 order, Mr. McKenna. That's enough. We
18 are here -- We are not here for you to
19 attack any particular commissioner.
20 Stop.

21 I'm going to ask the Chairman to
22 have you escorted from the chamber if you
23 do not stop. You're out of order. Thank
24 you.

25 I apologize to Commissioner Bee for

1
2 anybody who said anything to him that's
3 out of order from the public.

4 CHAIRMAN MORONEY: One more outburst
5 and I will not allow you to stay. You're
6 going to go. Enough is enough. This
7 wouldn't be the first place you've been
8 thrown out of. Let it be the last.

9 (Whereupon, audience member
10 continues to speak.)

11 COMMISSIONER MEJIAS: Mr. Chairman,
12 I'm going to ask you to please have
13 Mr. McKenna escorted from the chamber
14 because he is disrupting these
15 proceedings at the tax payers' expense.

16 We have two officers here in the
17 chamber. Mr. McKenna continues to be out
18 of order. I will ask you respectfully,
19 Mr. Chairman, to have him removed from
20 the chamber.

21 CHAIRMAN MORONEY: Would the police
22 officers, please escort him out of the
23 room.

24 (Whereupon, the audience
25 member continues to rant.)

1
2 COMMISSIONER MEJIAS: Just a
3 reminder to the public that all
4 commissioners on both sides here are
5 doing this voluntarily on their own time
6 and are not paid. As much as we bicker
7 and fight with each other, I do have a
8 tremendous amount of respect for all the
9 commissioners who sit here today and
10 given their time to the public. Thank
11 you all for being here.

12 CHAIRMAN MORONEY: I would join in
13 that.

14 COMMISSIONER BEE: Thank you very
15 much.

16 MR. MEJIAS: Mr. Schaefer, have you
17 ever been asked by any organization,
18 partisan or nonpartisan, to draw a map
19 that favored one particular party or
20 another?

21 MR. SCHAEFER: Not specifically, no.

22 COMMISSIONER MEJIAS: Have you been
23 asked to draw a map that has a majority
24 of Republican or Democratic legislators
25 or districts?

1
2 MR. SCHAEFER: No.

3 COMMISSIONER MEJIAS: Have you ever
4 been asked to take partisanship into
5 account when you're drawing a map?

6 MR. SCHAEFER: Yes.

7 COMMISSIONER MEJIAS: Mr. Chairman,
8 I believe that's all the questions we
9 have for Mr. Schaefer. I believe that's
10 all he could probably take anyway.

11 CHAIRMAN MORONEY: Are there any
12 questions on this side?

13 (Whereupon, there was no
14 response.)

15 COMMISSIONER MEJIAS: Thank you,
16 Mr. Schaefer.

17 CHAIRMAN MORONEY: Before I move to
18 adjourn, I would remind people that we're
19 having a hearing on the 16th day of
20 November in this very chamber, and we're
21 having probably our final meeting as a
22 group on the 21st day of November as
23 well.

24 (Whereupon, there was an
25 interruption from the

audience.)

COMMISSIONER MEJIAS: I have a procedural question. If the maps from either side are revised, are we bringing our people back? Is there going to be witness testimony? Is there going to be any explanation to the public at the next hearing about what changes to the maps were made and why?

CHAIRMAN MORONEY: That's a good question. I don't have an answer for you yet, but we will work together like we have up to now on this issue.

COMMISSIONER MEJIAS: I'm going to ask if we do make some changes to our maps, even if we don't, I'm going to have Mr. Magleby and Ms. Gall available on the 16th for the public hearing, and I want to ask that you have Mr. Schaefer available as well.

CHAIRMAN MORONEY: Not a problem.

COMMISSIONER MEJIAS: Thank you.

CHAIRMAN MORONEY: Motion to adjourn.

COMMISSIONER: Second.

CHAIRMAN MORONEY: All in favor?

(Whereupon, all
commissioners joined the motion
by saying, "aye.")

CHAIRMAN MORONEY: Get home safe
everybody.

(Whereupon, the above matter
concluded, 8:50 p.m.)

° ° ° °

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF NASSAU)

I, KAREN LORENZO, a Notary Public for and
within the State of New York, do hereby
certify:

That the above is a correct transcription
of my stenographic notes.

I further certify that I am not related
to any of the parties to this action by blood
or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 10th day of November, 2022.

Karen Lorenzo
KAREN LORENZO

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1 ^[26] - 20:24, 21:2, 21:11, 45:23, 57:12, 67:2, 75:9, 110:9, 113:11, 113:13, 113:21, 115:20, 116:7, 116:11, 116:18, 116:19, 116:25, 118:2, 118:21, 119:9, 131:8, 131:11, 136:15, 141:6 1% ^[4] - 44:22, 44:23, 118:5, 131:18 1.8% ^[1] - 44:21 10 ^[11] - 1:18, 9:13, 27:21, 27:22, 28:5, 30:22, 31:8, 58:18, 154:12, 157:12, 163:25 10% ^[1] - 9:6 10,000 ^[4] - 99:13, 102:25, 103:14, 104:4 10.55% ^[1] - 9:20 100% ^[2] - 54:8, 107:12 100,000 ^[1] - 9:5 10th ^[1] - 180:17 11 ^[5] - 28:6, 28:14, 153:22, 157:13, 163:25 11th ^[3] - 107:21, 108:10, 154:3 12 ^[1] - 28:15 13 ^[1] - 28:23 14 ^[3] - 29:4, 157:15, 158:12 15 ^[1] - 29:10 1550 ^[1] - 1:14 16 ^[5] - 22:25, 29:19, 109:21, 125:7, 163:25 16th ^[5] - 108:11, 108:22, 109:5, 177:19, 178:19 17 ^[10] - 23:13, 30:4, 30:10, 30:24, 31:2, 31:9, 31:14, 31:15, 31:18, 109:21 17-204.5 ^[1] - 73:9 17-206 ^[1] - 91:10 17-206.2 ^[1] - 72:5 17th ^[1] - 109:5 18 ^[3] - 8:15, 30:11, 163:25 18th ^[4] - 107:21, 108:10, 108:11, 108:22 19 ^[2] - 18:17, 30:16 19-seat ^[1] - 91:5 1986 ^[1] - 13:8 1990 ^[2] - 42:5, 142:15 19____ ^[1] - 51:23	2(C ^[1] - 91:13 20 ^[1] - 144:23 2000 ^[2] - 159:22, 161:21 2003 ^[1] - 161:21 2007 ^[1] - 96:22 2010 ^[2] - 8:24, 9:7 2012 ^[1] - 164:8 2013 ^[21] - 17:17, 19:15, 36:19, 36:20, 57:23, 58:3, 58:10, 58:12, 67:2, 83:10, 83:15, 96:7, 99:23, 100:6, 100:18, 100:21, 148:22, 162:8, 164:8, 173:8 2014 ^[2] - 6:20, 100:6 2015 ^[1] - 100:6 2016 ^[1] - 100:6 2017 ^[2] - 13:22, 14:21 2020 ^[6] - 8:24, 9:7, 15:22, 42:15, 51:5, 51:22 2021 ^[3] - 6:21, 13:22, 14:10 2022 ^[3] - 1:18, 100:7, 180:17 2033 ^[1] - 96:8 21 ^[3] - 135:8, 136:15, 136:17 21st ^[1] - 177:22 24 ^[1] - 21:23 26 ^[1] - 22:14 2:30 ^[1] - 102:5	5	8 ^[2] - 25:25, 26:9 80% ^[1] - 22:11 84 ^[1] - 14:13 88 ^[1] - 15:2 8:50 ^[1] - 179:10
			9
	3	5 ^[23] - 23:6, 23:15, 30:23, 31:8, 34:20, 40:9, 57:3, 57:5, 67:25, 75:9, 93:6, 93:9, 116:10, 116:13, 116:15, 116:21, 117:5, 118:2, 118:21, 119:9, 131:19, 132:2, 148:22 5% ^[3] - 18:8, 18:10, 44:2 50 ^[1] - 58:20 50% ^[10] - 8:16, 8:17, 10:10, 45:21, 45:23, 60:15, 63:23, 113:15, 131:10, 131:11 50.5 ^[1] - 68:21 53% ^[1] - 22:23 55% ^[1] - 23:12 56,000 ^[1] - 8:25 57% ^[1] - 21:21 59 ^[1] - 15:7 59% ^[1] - 21:5 5th ^[1] - 75:21	9 ^[9] - 26:10, 26:18, 152:10, 154:7, 156:6, 156:9, 156:15, 157:13, 163:25 90% ^[1] - 120:20 91% ^[1] - 49:7 95% ^[1] - 14:13 96% ^[1] - 15:2
			A
		6	abilities ^[1] - 87:22 ability ^[3] - 72:10, 90:2, 155:8 able ^[13] - 16:19, 26:6, 60:21, 105:15, 110:4, 110:23, 112:4, 113:18, 115:14, 115:17, 115:22, 124:6, 157:6 absence ^[2] - 64:9, 67:7 absolutely ^[1] - 166:19 absurd ^[1] - 107:11 academic ^[2] - 92:15, 94:24 acceptable ^[1] - 98:18 accepted ^[5] - 12:21, 88:10, 102:16, 102:18, 103:20 access ^[2] - 90:2, 115:23 accompanied ^[2] - 9:2, 9:8 accomplishes ^[1] - 22:7 according ^[1] - 75:19 account ^[13] - 37:13, 37:15, 38:8, 39:20, 40:4, 55:9, 104:8, 104:9, 122:24, 126:16, 126:19, 145:24, 177:5 accountability ^[1] - 139:24 accurate ^[1] - 52:25
	3	6 ^[4] - 23:16, 75:10, 75:17, 75:20 6,000 ^[1] - 9:18 60% ^[1] - 22:21 61% ^[1] - 9:14 61,000 ^[2] - 9:11, 9:12 62% ^[1] - 15:8 63% ^[1] - 23:10 64% ^[1] - 21:20 65% ^[1] - 21:4 66 ^[1] - 14:17 6:08 ^[1] - 1:19	
	3 ^[8] - 22:2, 22:14, 75:9, 102:5, 132:18, 140:6, 141:8 30 ^[1] - 156:22 30% ^[2] - 23:2, 23:14 31 ^[1] - 106:21 31% ^[1] - 9:15 33 ^[1] - 21:8 34 ^[1] - 43:22 35% ^[1] - 24:9 36% ^[1] - 22:14 37% ^[1] - 21:23 39% ^[1] - 21:8	7	
		7 ^[1] - 25:2	

achieve [5] - 67:17, 111:4, 111:24, 112:5, 114:14
achieves [1] - 49:24
achieving [4] - 130:9, 130:14, 130:20, 140:18
Act [24] - 16:24, 36:22, 44:25, 45:3, 46:2, 49:17, 60:16, 61:20, 62:18, 70:13, 71:2, 71:5, 71:7, 72:17, 74:21, 76:20, 91:9, 91:15, 91:16, 91:18, 92:8, 92:9, 93:10, 97:25
action [2] - 91:11, 180:13
actual [2] - 66:6, 105:14
add [2] - 150:12, 158:22
adding [2] - 113:14, 113:20
addition [1] - 49:20
additional [1] - 32:24
address [2] - 48:9, 53:13
addresses [4] - 17:18, 39:24, 47:21, 94:7
adds [1] - 74:5
adhere [4] - 43:11, 112:15, 118:7, 119:3
adheres [1] - 55:19
adjoining [1] - 52:17
adjourn [2] - 177:18, 178:25
adjudicated [1] - 76:19
adjusted [7] - 15:21, 18:12, 20:16, 42:16, 51:6, 51:7, 59:14
administration [2] - 43:15, 44:17
adopted [3] - 55:16, 59:10, 65:18
advantage [1] - 17:15
advice [1] - 80:15
advised [1] - 36:23
ADVISORY [1] - 1:4
affect [1] - 47:14
affecting [1] - 48:17
affiliation [1] - 17:14
African [14] - 46:7, 46:15, 49:18, 49:21, 61:2, 62:2, 62:13, 63:2, 63:5, 70:14, 93:5, 93:15, 94:20, 131:5
African-American [8] - 46:7, 49:18, 49:21, 62:2, 63:2, 63:5, 70:14, 131:5
African-American-pref
erred [1] - 46:15
African-Americans [5] - 61:2, 62:13, 93:5, 93:15, 94:20
afternoon [3] - 102:5, 102:6, 103:3

age [32] - 8:15, 8:16, 10:14, 10:18, 11:5, 11:12, 11:21, 20:16, 20:17, 21:5, 21:6, 21:19, 21:21, 22:10, 22:12, 22:21, 22:22, 23:10, 23:11, 24:6, 24:8, 45:17, 45:20, 51:11, 51:13, 51:16, 60:14, 63:12, 63:15, 68:9, 68:12, 87:15
aggregate [5] - 61:11, 61:20, 69:15, 69:21, 126:3
aggregating [1] - 69:2
ago [22] - 42:18, 45:16, 56:15, 58:7, 58:18, 58:22, 58:24, 81:2, 82:3, 83:20, 96:17, 100:12, 101:8, 101:17, 101:18, 124:16, 125:12, 156:7, 164:6, 165:16, 166:6, 167:2
agree [1] - 93:10
ahead [2] - 4:3, 117:22
aids [1] - 99:15
Albany [1] - 166:10
Albertson [2] - 28:17, 152:15
algorithm [1] - 81:15
algorithms [4] - 47:3, 142:9, 142:10, 142:12
align [1] - 24:5
allow [5] - 17:10, 24:3, 72:11, 117:18, 175:5
allowed [1] - 48:25
almost [6] - 54:8, 68:14, 68:17, 75:6, 75:18, 98:19
alone [1] - 172:16
alternative [1] - 7:16
America [4] - 92:4, 93:19
American [10] - 46:7, 46:15, 49:18, 49:21, 62:2, 63:2, 63:5, 69:22, 70:14, 131:5
Americans [5] - 61:2, 62:13, 93:5, 93:15, 94:20
amount [2] - 9:19, 176:8
analysis [19] - 6:6, 7:11, 7:12, 8:21, 13:3, 13:16, 13:24, 21:7, 36:20, 37:2, 37:6, 52:21, 52:22, 59:21, 66:6, 88:18, 89:2, 104:12, 173:10
Analysis [5] - 13:17, 21:22, 22:13, 22:24, 23:12
analyze [5] - 7:13, 7:20,

99:3, 115:17, 138:10
analyzed [1] - 13:21
ANDRENA [1] - 2:13
Andrena [1] - 5:10
angry [2] - 160:6, 160:9
answer [38] - 13:10, 40:20, 79:3, 79:6, 80:9, 93:21, 106:9, 117:20, 117:21, 123:6, 123:11, 124:8, 133:14, 134:7, 134:11, 134:13, 134:25, 135:4, 135:21, 138:15, 139:3, 139:7, 139:22, 140:3, 143:9, 146:9, 147:13, 147:15, 168:11, 168:13, 168:14, 168:19, 168:21, 173:18, 173:22, 178:12
answer's [1] - 130:15
answered [6] - 52:11, 78:13, 78:24, 108:5, 133:5, 138:22
answering [4] - 80:12, 122:12, 133:15, 138:24
answers [9] - 52:13, 52:16, 52:19, 79:25, 94:25, 133:12, 138:12, 138:13, 139:23
anticipate [1] - 55:2
anyway [1] - 177:10
apart [2] - 125:7, 147:8
apologize [4] - 25:11, 96:13, 101:23, 174:25
Appeals [3] - 102:17, 103:21, 105:4
appendage [1] - 141:21
applied [2] - 71:12, 73:5
applies [1] - 30:19
apply [4] - 71:7, 71:13, 71:19, 72:24
appointed [1] - 4:5
appointment [1] - 6:17
Apportionment [1] - 15:25
appreciate [3] - 101:22, 126:21, 152:3
approaches [1] - 147:5
appropriate [6] - 53:6, 77:22, 78:10, 79:16, 80:19, 123:2
area [14] - 11:16, 11:19, 12:2, 23:2, 26:7, 28:4, 29:20, 40:18, 73:22, 74:4, 117:24, 130:16, 130:18, 152:13
areas [23] - 10:3, 10:5, 10:18, 20:10, 20:13, 21:10, 23:14, 24:22, 25:6, 26:3, 26:16, 28:2, 28:11, 28:21, 28:22, 29:2, 29:14, 29:25, 30:14, 40:11, 70:5,

88:14, 130:19
argument [1] - 90:17
argumentative [1] - 132:25
ascribe [1] - 101:10
Asian [15] - 9:9, 9:10, 9:13, 11:21, 23:23, 23:25, 24:4, 24:6, 24:12, 24:14, 24:17, 25:14, 68:25, 69:22
assessing [1] - 13:5
assessment [3] - 70:16, 70:20, 98:6
associate [1] - 6:17
assume [1] - 53:19
Atlantic [2] - 30:6, 30:7
attached [1] - 31:16
attack [1] - 174:19
attempt [1] - 161:13
attention [1] - 134:9
attorney [3] - 166:15, 166:23, 172:24
Attorney [2] - 59:2, 71:15
ATTORNEYS [1] - 2:21
audience [7] - 33:19, 148:10, 174:7, 174:14, 175:9, 175:24, 178:2
August [1] - 106:21
Austin [3] - 31:21, 32:3, 108:6
austin [1] - 31:25
automatically [1] - 157:13
available [5] - 51:14, 173:22, 174:5, 178:18, 178:21
Avenue [13] - 1:14, 108:6, 108:7, 116:4, 116:5, 116:9, 116:12, 116:17, 116:22, 116:23, 117:2, 117:4, 117:24
avoid [1] - 16:5
aware [23] - 61:16, 67:9, 83:21, 84:3, 84:6, 84:9, 84:12, 85:19, 86:18, 97:3, 97:25, 129:6, 135:10, 143:17, 149:7, 149:11, 150:9, 150:18, 153:7, 161:10, 162:3, 165:20, 173:14

B

bad [3] - 81:20, 160:2, 172:14
badger [1] - 133:21
badgered [1] - 139:9
badgering [5] - 133:19, 139:9, 139:14, 174:5
balance [1] - 89:21

Baldwin [11] - 10:23,
10:24, 11:16, 22:19,
23:7, 149:9, 149:13,
149:17, 149:22, 150:3,
150:8
ballot [1] - 14:7
barely [1] - 104:19
Barrier [1] - 30:4
base [3] - 78:20, 100:17,
136:8
based [16] - 7:18, 15:22,
16:21, 17:4, 18:11,
36:25, 37:5, 43:10, 47:3,
49:10, 99:17, 100:19,
121:21, 122:9, 129:14,
173:7
baseline [1] - 104:10
basis [6] - 45:13, 54:6,
66:5, 152:20, 152:24,
156:14
battling [1] - 35:11
Baxter [1] - 26:12
Bay [9] - 27:23, 29:24,
56:18, 123:25, 124:2,
124:11, 126:24, 128:18,
159:21
Beach [7] - 30:6, 30:7,
32:4, 116:4, 117:24
became [1] - 100:5
become [1] - 162:22
becomes [1] - 71:22
Bee [4] - 4:13, 26:20,
33:19, 174:25
BEE [37] - 2:5, 4:14, 26:19,
27:14, 27:20, 33:5,
33:24, 34:14, 34:18,
35:10, 35:19, 35:24,
36:12, 78:12, 78:23,
79:9, 80:10, 96:4, 99:22,
106:2, 122:11, 132:19,
132:23, 136:19, 137:13,
138:19, 138:23, 139:4,
144:22, 145:8, 145:18,
151:18, 168:6, 168:24,
169:22, 173:14, 176:14
began [1] - 148:10
behavior [1] - 12:24
behind [1] - 66:7
belief [1] - 90:15
believes [4] - 89:14,
100:20, 100:21, 122:14
Bellerose [2] - 28:6, 28:7
Bellmore [2] - 29:4, 29:5
below [1] - 44:23
benefit [1] - 147:3
Bennett [2] - 14:22, 14:25
Berkeley [1] - 6:19
best [3] - 81:14, 110:5,
110:6
Bethpage [5] - 26:2,

109:19, 109:21, 157:21,
163:21
better [3] - 47:5, 87:18,
97:18
between [21] - 8:24, 11:11,
14:10, 14:13, 14:17,
14:22, 15:7, 18:7, 30:22,
31:7, 62:2, 62:15, 82:5,
86:13, 108:21, 109:5,
115:20, 118:12, 118:20,
119:9, 159:20
beyond [4] - 58:3, 83:11,
83:17, 168:9
bias [3] - 102:15, 171:10,
172:8
biased [1] - 99:18
biases [3] - 171:21,
171:22, 171:23
bicker [1] - 176:6
big [3] - 32:9, 56:18,
146:23
bill [1] - 97:2
bipartisan [1] - 166:9
bit [9] - 8:22, 11:9, 11:14,
71:23, 82:4, 100:4,
105:15, 151:8, 159:14
bits [1] - 147:9
bizarre [3] - 118:3, 153:9,
153:11
black [7] - 8:5, 15:3,
17:23, 20:9, 69:21,
92:17, 113:16
Black [24] - 8:14, 8:18,
9:17, 10:13, 10:18, 11:7,
14:12, 14:13, 14:25,
45:17, 45:20, 46:4,
46:12, 61:11, 62:15,
64:24, 65:3, 68:25,
69:15, 74:13, 86:22,
89:25, 92:7, 113:11
Black-Preferred [1] -
86:22
Black/Latino [1] - 66:21
Blackwell [1] - 6:20
blank [2] - 81:6, 81:16
bless [1] - 66:14
blind [1] - 47:16
bloc [9] - 14:18, 15:8,
52:11, 52:13, 52:17,
52:19, 68:20, 118:10,
128:4
block [9] - 8:8, 116:6,
116:7, 116:12, 116:16,
116:22, 117:6, 117:23,
118:23
blocks [2] - 117:3, 157:8
Blockwell [2] - 3:5, 6:5
blocs [6] - 52:20, 52:23,
56:16, 68:3, 125:11,
125:12

blood [1] - 180:13
Board [6] - 43:17, 72:7,
164:24, 165:2, 165:5,
165:18
BOARD [1] - 2:21
Bob [2] - 124:13, 125:22
bold [1] - 20:8
border [6] - 108:21,
115:20, 117:25, 119:8,
157:10, 159:20
bordering [1] - 108:21
Boulevard [2] - 31:22,
32:3
boulevard [1] - 31:23
boundaries [25] - 17:16,
17:23, 20:8, 47:2, 47:6,
54:10, 54:13, 104:13,
104:17, 108:14, 108:16,
108:18, 119:8, 120:3,
121:15, 123:16, 123:20,
124:3, 127:7, 127:10,
127:20, 128:2, 141:8,
158:14, 158:21
boundary [12] - 108:20,
109:6, 109:13, 109:18,
118:11, 118:13, 118:20,
119:15, 119:21, 119:23,
128:11, 158:23
boundary's [1] - 128:16
bounds [1] - 170:23
boxes [2] - 103:11, 103:13
breach [2] - 159:24, 160:8
breached [1] - 159:22
break [2] - 37:22, 127:25
bring [3] - 40:9, 45:11,
171:14
bringing [1] - 178:5
brings [1] - 154:9
Brookhaven [3] - 164:20,
165:7, 167:7
Brookville [2] - 25:4,
28:18
brought [2] - 131:20,
168:10
Brown [4] - 14:10, 14:12,
14:13, 14:20
building [2] - 100:19,
157:8
builds [1] - 65:24
Bureau [3] - 24:15, 51:13,
52:10
business [4] - 54:19,
136:2, 167:21, 171:7
businesses [1] - 167:20
button [2] - 106:3
BY [1] - 1:22

C

California [2] - 6:18, 6:24
candidate [16] - 8:9,
12:13, 14:11, 14:15,
14:19, 14:24, 15:5,
21:23, 23:13, 46:14,
46:15, 47:19, 75:23,
76:3, 86:21, 86:22
candidates [22] - 8:7,
8:20, 13:12, 13:14,
13:20, 14:6, 15:10,
17:11, 21:8, 22:14,
22:25, 34:24, 36:11,
38:14, 38:24, 44:12,
45:7, 47:11, 62:3, 70:21,
72:11, 74:14
cannot [1] - 142:2
capture [1] - 157:20
care [2] - 89:17, 172:13
Carle [2] - 28:15, 157:18
cascade [1] - 155:14
Case [1] - 73:16
case [11] - 18:17, 68:23,
70:9, 74:16, 88:13, 90:4,
92:25, 102:17, 102:24,
124:4, 144:15
cases [1] - 61:23
cast [1] - 148:24
Castle [8] - 10:21, 11:13,
21:12, 21:15, 124:15,
125:3, 128:21, 129:3
category [1] - 69:23
causes [1] - 90:20
Cedarhurst [1] - 29:22
Census [6] - 15:22, 24:15,
42:15, 51:5, 51:12, 52:9
census [21] - 51:3, 51:18,
52:5, 52:6, 52:11, 52:13,
52:23, 53:6, 54:5, 56:16,
63:15, 68:3, 68:20, 75:5,
88:14, 109:9, 118:10,
128:4, 155:7, 157:6
center [1] - 75:15
Central [2] - 92:4, 93:18
Centre [1] - 22:16
certain [2] - 52:12, 154:18
Certification [1] - 6:16
certified [1] - 6:15
certify [2] - 180:9, 180:12
chair [1] - 126:14
CHAIR [2] - 1:11, 2:11
Chair [1] - 26:20
chair's [1] - 126:22
chairman [5] - 98:16,
101:21, 132:20, 156:17,
159:16
Chairman [11] - 4:12,
5:18, 98:15, 107:13,

148:20, 156:5, 172:18,
174:21, 175:11, 175:19,
177:7
CHAIRMAN [90] - 2:4, 4:2,
4:20, 5:20, 5:23, 24:10,
24:20, 25:10, 25:23,
30:20, 31:6, 31:11,
31:19, 31:23, 32:5,
32:13, 32:18, 33:2,
36:23, 37:3, 37:7, 37:11,
37:16, 37:24, 38:5,
38:13, 38:17, 38:21,
39:4, 39:10, 40:2, 40:7,
40:17, 40:22, 41:12,
41:16, 50:4, 65:6, 65:14,
65:20, 66:11, 66:14,
79:17, 79:22, 80:3,
89:13, 100:3, 100:13,
100:17, 101:2, 105:6,
106:5, 106:12, 106:20,
107:23, 117:18, 124:7,
133:18, 133:22, 134:2,
134:18, 135:21, 135:24,
136:6, 146:16, 148:12,
149:4, 153:14, 159:13,
159:18, 160:3, 160:9,
161:20, 169:25, 170:6,
170:10, 170:22, 171:3,
172:9, 172:19, 175:4,
175:21, 176:12, 177:11,
177:17, 178:11, 178:22,
178:24, 179:3, 179:7
challenge [2] - 45:25, 61:8
challenged [3] - 49:17,
124:22, 126:8
chamber [6] - 174:12,
174:22, 175:13, 175:17,
175:20, 177:20
chance [1] - 33:15
change [7] - 47:12, 62:17,
124:19, 137:17, 137:18,
145:19, 147:8
changed [2] - 112:14,
128:8
changes [16] - 42:19,
43:9, 43:19, 45:18, 50:2,
58:5, 74:2, 107:6,
125:20, 145:13, 154:13,
155:21, 155:23, 164:11,
178:9, 178:16
changing [1] - 55:2
chart [1] - 9:4
check [1] - 59:7
checked [2] - 103:11,
103:13
checks [1] - 153:15
Chinese [1] - 90:2
choice [12] - 8:20, 13:12,
13:14, 14:11, 14:15,
14:24, 15:5, 17:12, 45:8,

56:23, 72:11, 75:23
choices [1] - 157:11
choose [1] - 71:17
chooses [1] - 71:17
choosing [1] - 56:20
chopped [2] - 147:23,
147:24
chopper [2] - 88:3, 88:6
chose [1] - 104:4
CHRISTOPHER [1] - 2:8
Christopher [1] - 4:22
chunks [1] - 147:10
cigar [1] - 125:17
circle [3] - 64:18, 75:2,
82:2
circles [3] - 65:25, 81:19,
148:2
circuit [1] - 61:17
circular [1] - 118:16
circumstances [2] - 65:4,
65:8
cities [8] - 7:7, 19:20,
27:9, 33:13, 35:3, 35:6,
44:14, 159:7
citizen [11] - 8:16, 20:17,
21:6, 21:20, 22:11,
22:22, 23:11, 24:8,
51:13, 51:16, 87:15
Citizens [1] - 6:25
citizens [1] - 49:8
City [6] - 12:5, 23:17, 28:8,
28:9, 118:14, 157:16
city [1] - 109:13
civil [3] - 90:3, 90:11,
92:21
clarify [2] - 26:22, 73:7
class [4] - 72:11, 73:10,
73:11, 94:9
Class [1] - 73:11
classes [2] - 73:2, 73:8
clean [3] - 119:14, 119:20,
119:22
clear [9] - 36:6, 36:8,
39:15, 62:5, 66:19,
71:22, 74:9, 173:4,
173:16
clearance [2] - 71:18, 72:2
clearly [2] - 105:16,
106:14
clerk [3] - 98:9, 98:15,
98:18
Clerk [1] - 13:22
CLERK [13] - 2:24, 4:11,
4:15, 4:18, 4:21, 4:24,
5:3, 5:6, 5:9, 5:12, 5:15,
5:18, 5:21
client [3] - 58:24, 59:5,
78:21
clients [4] - 6:22, 53:19,
167:17

Cliff [1] - 25:3
CLINES [1] - 2:23
close [6] - 112:17, 114:24,
131:9, 140:23, 153:2,
153:12
closely [1] - 49:24
coalition [11] - 14:15,
15:4, 46:3, 61:18, 62:24,
63:4, 64:6, 64:19, 66:21,
67:12, 153:25
coded [2] - 103:8, 103:9
cohesion [11] - 61:21,
61:23, 61:25, 62:6,
62:11, 62:12, 62:15,
64:21, 64:25, 97:16,
97:18
cohesive [3] - 61:3, 86:16,
91:22
cohesively [1] - 8:6
colleagues [1] - 64:16
color [3] - 70:22, 73:13,
76:4
combine [1] - 75:5
combined [11] - 8:14,
21:5, 21:6, 21:19, 21:20,
22:10, 22:11, 22:20,
22:22, 23:9, 23:11
command [1] - 5:24
comment [3] - 135:14,
135:19, 148:16
commented [1] - 107:17
comments [1] - 151:22
commission [3] - 81:21,
96:5, 166:18
Commission [20] - 6:25,
48:14, 48:16, 55:17,
55:20, 56:6, 56:25,
57:19, 59:3, 62:20,
84:14, 96:3, 105:20,
128:17, 135:16, 135:18,
135:25, 161:3, 169:6,
172:24
COMMISSION [1] - 1:4
Commission's [2] - 84:16,
102:8
Commissioner [4] - 4:13,
33:19, 96:13, 174:25
COMMISSIONER [398] -
4:14, 4:17, 4:23, 5:2,
5:5, 5:8, 5:11, 5:14,
5:17, 25:19, 26:19,
27:14, 27:20, 33:5,
33:17, 33:24, 34:9,
34:14, 34:16, 34:18,
34:19, 35:10, 35:17,
35:19, 35:22, 35:24,
36:5, 36:12, 37:19, 38:2,
39:6, 39:21, 40:8, 40:15,
40:19, 41:7, 41:14, 50:6,
50:9, 50:14, 50:19,

50:23, 51:4, 51:8, 51:22,
53:10, 53:14, 53:18,
53:23, 54:4, 54:11,
54:16, 54:25, 55:7,
55:14, 55:22, 56:5, 57:2,
57:6, 57:11, 57:22,
57:25, 58:8, 58:14,
58:23, 59:4, 59:9, 59:19,
60:2, 60:9, 60:17, 61:9,
61:16, 62:4, 62:9, 62:14,
63:6, 63:10, 63:18,
63:25, 64:5, 64:10,
65:13, 65:16, 66:4,
66:13, 66:18, 67:9,
67:15, 67:22, 68:5,
68:10, 68:16, 68:22,
69:7, 69:13, 69:17,
69:19, 70:15, 70:24,
71:4, 71:24, 72:20,
72:23, 73:6, 74:17,
74:25, 75:11, 75:16,
75:25, 76:6, 76:10,
76:18, 77:5, 77:13,
77:20, 78:6, 78:12,
78:19, 78:23, 78:25,
79:9, 79:13, 79:20,
79:24, 80:6, 80:10,
80:14, 80:16, 81:25,
82:14, 82:24, 83:6, 83:9,
83:16, 83:21, 84:3,
84:11, 84:19, 84:25,
85:4, 85:13, 85:18,
85:21, 86:3, 87:4, 87:10,
88:2, 88:5, 88:9, 88:17,
88:24, 89:7, 89:16,
90:13, 91:7, 91:17,
92:16, 94:4, 95:2, 95:18,
96:4, 96:12, 96:24,
97:14, 97:22, 98:4,
98:10, 98:16, 99:6,
99:12, 99:22, 99:25,
100:9, 100:15, 100:22,
101:21, 102:7, 102:10,
104:21, 105:2, 105:13,
105:18, 105:22, 106:2,
106:8, 106:13, 107:12,
108:2, 108:15, 108:19,
109:2, 109:17, 109:25,
110:14, 110:20, 111:3,
111:10, 111:12, 111:17,
111:23, 112:6, 112:19,
112:24, 113:8, 113:19,
114:3, 114:8, 114:13,
114:19, 115:2, 115:6,
115:13, 117:13, 117:22,
118:19, 119:4, 119:13,
119:18, 120:10, 120:16,
120:22, 121:3, 121:10,
121:19, 122:2, 122:7,
122:11, 123:3, 123:8,
123:13, 126:11, 126:21,

127:17, 128:19, 129:2,
129:6, 129:12, 129:19,
129:24, 130:7, 130:12,
130:17, 131:21, 132:3,
132:17, 132:19, 132:22,
132:23, 133:3, 133:20,
133:24, 134:4, 134:20,
135:12, 135:17, 135:23,
136:3, 136:9, 136:19,
137:11, 137:13, 138:5,
138:19, 138:21, 138:23,
138:25, 139:4, 139:20,
140:5, 140:12, 140:17,
141:2, 141:12, 141:18,
141:25, 142:13, 142:17,
143:2, 143:8, 143:11,
143:20, 143:25, 144:5,
144:19, 144:22, 145:5,
145:8, 145:11, 145:18,
145:21, 146:4, 148:6,
148:14, 149:6, 149:11,
149:16, 149:20, 149:25,
150:7, 150:11, 150:17,
150:21, 151:3, 151:5,
151:12, 151:16, 151:18,
152:7, 152:9, 152:19,
152:23, 153:4, 153:7,
156:3, 156:12, 157:14,
157:24, 158:6, 158:11,
158:18, 158:24, 159:4,
159:8, 159:16, 159:25,
160:5, 160:11, 160:14,
160:19, 160:23, 161:4,
161:8, 161:12, 161:17,
161:22, 161:25, 162:5,
162:10, 162:18, 162:25,
163:7, 163:10, 163:15,
163:19, 163:23, 164:5,
164:10, 164:15, 164:19,
164:22, 164:25, 165:4,
165:9, 165:13, 165:17,
165:20, 166:2, 166:5,
166:14, 166:20, 166:24,
167:6, 167:12, 167:19,
167:25, 168:4, 168:6,
168:12, 168:20, 168:24,
169:3, 169:8, 169:11,
169:15, 169:19, 169:22,
170:4, 170:9, 170:20,
170:25, 171:8, 172:17,
172:22, 173:14, 174:9,
174:16, 175:11, 176:2,
176:14, 176:22, 177:3,
177:7, 177:15, 178:3,
178:15, 178:23, 179:2
commissioner^[12] - 4:15,
4:18, 4:22, 4:24, 5:3,
5:6, 5:9, 5:12, 5:15,
33:23, 36:14, 174:19
COMMISSIONERS^[1] -
2:3

commissioners^[11] - 4:5,
41:23, 43:2, 53:20,
53:25, 55:12, 155:23,
171:11, 176:4, 176:9,
179:5
COMMISSIONR^[1] -
59:13
commissions^[2] - 128:14,
166:9
common^[3] - 19:3, 46:9,
95:13
commotion^[1] - 33:21
communities^[7] - 16:18,
16:20, 35:4, 55:23,
122:23, 153:8, 156:4
communities'^[1] - 45:6
community^[13] - 21:16,
26:4, 109:19, 109:20,
126:13, 126:15, 129:25,
130:3, 156:7, 156:16,
160:25, 163:24, 164:3
compact^[16] - 16:3,
18:25, 19:6, 22:8, 28:25,
44:8, 46:22, 46:25,
60:23, 103:12, 114:22,
131:14, 132:12, 141:19,
142:4, 142:19
Compacting^[1] - 46:21
compactness^[11] - 16:3,
19:2, 19:4, 19:7, 19:11,
19:13, 19:14, 20:20,
21:3, 142:21, 142:22
company^[2] - 169:4,
169:13
compared^[2] - 19:15,
93:25
comparison^[1] - 146:7
comparisons^[1] - 10:8
competition^[5] - 34:22,
37:21, 38:10, 44:11,
47:9
complete^[3] - 7:23, 26:9,
156:24
completed^[2] - 47:20,
53:13
completely^[2] - 93:10,
174:10
compliance^[4] - 7:21,
17:7, 84:21, 85:7
compliant^[3] - 7:16, 7:18,
113:7
complied^[1] - 114:23
complies^[5] - 8:11, 19:23,
44:20, 74:20, 171:20
comply^[12] - 42:16, 44:19,
54:23, 71:18, 103:8,
104:20, 112:7, 112:8,
112:12, 119:2, 119:5,
119:10
complying^[6] - 16:4,

113:3, 119:23, 130:22,
131:23, 132:6
computer^[4] - 99:13,
115:16, 142:11, 143:12
concentrated^[1] - 90:4
concentrations^[1] - 11:21
concept^[1] - 93:20
concern^[5] - 143:21,
143:24, 144:2, 144:3,
144:6
concerned^[2] - 146:2,
168:7
concerning^[2] - 84:21,
85:6
concluded^[4] - 99:7,
102:25, 103:15, 179:10
conclusion^[4] - 87:25,
99:9, 99:21, 104:14
conclusions^[5] - 7:24,
85:25, 86:5, 87:23,
174:3
condition^[1] - 119:25
conditions^[2] - 48:18,
49:14
conduct^[1] - 59:20
configuration^[2] - 106:17,
153:9
configurations^[1] - 7:17
confirm^[1] - 7:15
congressional^[1] -
144:12
connect^[3] - 140:20,
142:5, 143:4
connected^[1] - 124:15
connecting^[5] - 16:6,
140:13, 141:3, 141:14,
150:23
connects^[8] - 140:7,
140:9, 143:17, 143:22,
144:7, 149:12, 152:11,
157:16
consider^[23] - 17:13,
17:16, 17:18, 32:11,
32:21, 33:12, 35:21,
35:25, 38:18, 39:8, 39:9,
58:9, 58:15, 94:13,
94:18, 97:23, 122:18,
135:2, 135:14, 135:19,
137:4, 137:21, 144:16
consideration^[19] - 14:5,
32:17, 34:3, 34:6, 34:11,
34:20, 36:3, 36:10,
36:16, 36:20, 39:13,
39:16, 40:6, 41:2, 43:11,
120:7, 124:4, 127:19,
173:13
considerations^[8] -
20:22, 34:7, 42:24,
54:17, 122:22, 131:24,
140:18, 141:13

considered^[15] - 13:23,
35:5, 35:12, 39:23, 58:3,
70:7, 83:2, 83:7, 83:11,
83:12, 83:17, 94:11,
97:9, 127:2, 173:6
considering^[3] - 96:18,
127:22, 132:14
consistent^[1] - 19:10
constitute^[1] - 60:23
Constitution^[1] - 15:16
consultants^[4] - 138:10,
171:14, 171:25
Consultants^[2] - 169:18,
169:20
consulted^[1] - 43:18
Consulting^[6] - 3:5, 3:8,
6:5, 6:21, 41:25, 42:4
consulting^[2] - 167:21,
168:17
contains^[1] - 8:13
contest^[3] - 14:10, 14:22,
87:5
contests^[4] - 13:21, 14:8,
99:15, 99:16
Contests^[1] - 13:23
context^[3] - 10:16,
101:20, 102:2
contiguous^[9] - 16:5,
44:9, 46:21, 46:23,
132:13, 144:17, 144:18,
146:14, 149:19
continue^[4] - 116:15,
137:20, 145:2, 146:3
continues^[4] - 174:15,
175:10, 175:17, 175:25
continuously^[1] - 120:3
contours^[1] - 173:23
contract^[8] - 59:8,
165:23, 165:25, 166:3,
167:10, 169:5, 169:9,
169:12
contribution^[1] - 126:22
controlled^[1] - 159:23
cool^[1] - 170:17
copies^[1] - 25:15
copy^[2] - 98:12, 98:17
core^[11] - 32:9, 36:7,
36:9, 82:10, 120:20,
120:23, 123:15, 127:5,
152:22, 152:24, 158:10
cores^[24] - 17:17, 23:6,
32:12, 32:22, 33:12,
34:4, 34:25, 35:12,
36:19, 44:13, 49:3, 49:5,
49:7, 56:2, 78:2, 78:5,
82:5, 82:6, 82:15, 129:5,
132:13, 140:22, 141:7,
158:13
corner^[3] - 20:11, 137:17
corporation^[2] - 169:14,

169:16
correct [46] - 27:6, 27:19, 31:2, 32:20, 37:9, 37:10, 40:12, 53:21, 56:25, 61:13, 63:11, 78:11, 83:18, 88:21, 89:4, 91:18, 97:20, 101:14, 110:11, 111:18, 112:21, 120:14, 121:23, 122:10, 123:17, 124:6, 128:15, 128:23, 141:9, 150:25, 158:3, 158:15, 162:20, 163:8, 164:7, 164:12, 164:17, 165:2, 165:15, 165:21, 166:16, 167:20, 168:5, 168:16, 169:9, 180:10
Correct [1] - 102:10
correction [1] - 161:21
correctly [9] - 35:16, 55:5, 82:7, 82:16, 97:15, 121:8, 140:10, 152:11, 167:5
COSCHIGNANO [1] - 2:18
counsel [1] - 6:24
count [1] - 156:23
counties [4] - 7:7, 42:8, 42:13, 93:7
countless [1] - 172:25
country [3] - 52:21, 82:22, 102:19
county [12] - 9:20, 10:16, 14:5, 17:19, 18:15, 50:3, 86:19, 96:21, 166:15, 166:23, 172:23, 173:11
COUNTY [2] - 1:2, 180:5
County [40] - 1:13, 6:6, 7:15, 8:3, 8:23, 9:23, 10:25, 11:17, 12:7, 13:22, 15:17, 16:7, 49:9, 59:2, 59:5, 61:13, 62:6, 62:16, 77:24, 88:20, 95:20, 95:24, 96:16, 96:20, 108:21, 118:13, 120:14, 120:18, 123:22, 132:8, 139:25, 147:3, 147:4, 159:5, 160:20, 166:8, 166:12, 167:2, 167:4
County's [2] - 42:15, 72:25
couple [8] - 9:22, 10:20, 13:25, 51:15, 83:23, 84:5, 101:7, 154:22
course [7] - 16:10, 117:3, 143:16, 144:10, 144:16, 146:12, 146:20
courses [1] - 146:17
Court [3] - 102:17, 103:20, 105:3

court [10] - 66:10, 66:12, 74:10, 74:15, 90:14, 90:20, 105:7, 133:11, 148:5, 149:5
COURT [1] - 1:22
courts [7] - 12:21, 19:8, 42:10, 77:2, 88:10, 102:18, 103:21
Cove [4] - 25:3, 25:4, 125:11, 154:3
coverage [1] - 93:8
crafting [2] - 27:3, 27:17
create [20] - 23:25, 43:3, 43:24, 45:13, 45:22, 49:19, 61:5, 65:2, 65:10, 66:5, 66:25, 67:20, 68:2, 90:23, 91:20, 113:18, 154:8, 157:12, 171:18
created [8] - 18:25, 62:23, 67:5, 131:5, 131:6, 153:18, 154:10
creates [3] - 65:23, 156:25, 157:13
creating [5] - 47:18, 49:17, 91:19, 131:2, 131:4
creation [1] - 126:3
credentials [1] - 6:11
creek [2] - 143:15, 144:9
criteria [11] - 7:19, 15:13, 33:10, 33:11, 33:16, 58:2, 83:2, 83:7, 83:11, 83:17, 114:17
critical [2] - 89:11, 150:12
criticize [1] - 87:22
cross [8] - 122:17, 137:2, 139:15, 143:15, 143:16, 144:9, 149:17
cross-examination [1] - 122:17
cross-examine [2] - 137:2, 139:15
crossed [2] - 124:4, 159:20
crosses [8] - 120:13, 120:17, 121:5, 125:3, 149:8, 150:18, 158:2, 159:15
crossing [6] - 121:11, 124:11, 128:10, 149:22, 150:3, 158:23
crosstalk [4] - 69:12, 119:17, 122:6, 134:17
crying [1] - 106:23
cultures [1] - 95:22
current [20] - 6:22, 71:13, 76:7, 76:11, 76:19, 77:21, 79:21, 82:17, 82:19, 82:25, 83:10, 84:22, 96:10, 100:11, 102:8, 102:11, 121:22,

122:9, 148:21, 173:7
curves [1] - 116:18
cut [1] - 74:18
cuts [3] - 125:7, 157:19, 158:7
CVAP [6] - 51:10, 51:19, 53:6, 63:13, 63:14, 88:7
cycle [8] - 42:5, 42:11, 58:12, 60:13, 87:17, 142:16, 166:17, 166:18
cycles [2] - 58:21, 99:16

D

Daniel [1] - 85:6
darker [2] - 10:3, 10:9
data [16] - 18:12, 46:6, 46:10, 47:16, 51:3, 51:19, 52:8, 53:11, 54:5, 58:9, 87:18, 87:21, 87:24, 88:15, 115:16
Dave [1] - 170:2
David [3] - 5:3, 41:24, 42:2
DAVID [2] - 2:11, 3:7
days [1] - 101:7
deal [1] - 38:13
deals [1] - 43:22
decades [2] - 12:21, 80:25
December [1] - 136:15
decennial [1] - 51:18
Decennial [1] - 15:22
decide [8] - 53:7, 62:20, 62:21, 62:25, 81:22, 94:15, 167:16, 168:14
decides [1] - 48:16
decision [3] - 105:4, 140:20, 156:9
deck [2] - 25:20, 98:12
declared [1] - 125:25
decline [1] - 9:3
deemed [2] - 77:6, 78:9
defeat [2] - 14:19, 15:9
defeated [1] - 13:14
defeats [2] - 8:9, 90:17
defects [1] - 145:23
deficiencies [1] - 173:25
define [4] - 24:12, 24:17, 68:6, 69:24
defined [4] - 24:15, 73:19, 94:23, 99:11
defines [1] - 73:10
defining [3] - 36:7, 67:6, 69:4
definition [4] - 25:14, 69:8, 69:14, 69:20
definitive [1] - 19:11
degree [1] - 12:15
delegation [16] - 26:21, 83:22, 84:4, 132:21,

136:20, 136:21, 137:8, 138:3, 139:5, 151:19, 151:24, 152:2, 152:4, 168:8, 169:5, 173:21
Delia [1] - 153:24
Democrat [6] - 86:15, 90:24, 165:6, 165:24, 166:3, 166:11
Democratic [6] - 83:22, 84:4, 124:23, 151:19, 171:24, 176:24
Democrats [5] - 89:22, 146:19, 159:23, 166:25, 171:16
demographer [1] - 4:4
Demographic [2] - 15:24, 169:17
demographics [4] - 8:23, 9:23, 12:7, 45:18
demonstrate [1] - 60:21
Department [1] - 7:4
DeRiggi [1] - 153:24
DeRiggi-Whitton [1] - 153:24
derive [2] - 12:25, 18:13
description [1] - 34:13
deserve [4] - 95:24, 138:12, 171:22, 172:2
designated [3] - 109:9, 157:6, 162:15
desirable [1] - 16:19
desk [1] - 106:3
detached [2] - 30:25, 31:13
detail [2] - 8:2, 108:25
details [3] - 20:18, 20:20, 72:14
determination [1] - 100:8
determine [3] - 16:24, 47:25, 100:5
determined [2] - 88:23, 88:25
DEVANE [2] - 2:8, 4:23
Devane [1] - 4:22
deviation [5] - 18:11, 20:20, 44:2, 44:21, 131:18
deviations [1] - 42:20
diaspora [1] - 95:19
difference [1] - 18:6
different [34] - 41:20, 50:16, 58:2, 70:5, 75:5, 81:13, 86:14, 92:6, 92:8, 93:4, 93:5, 93:13, 93:19, 94:10, 94:14, 95:9, 95:11, 95:15, 95:21, 118:23, 120:12, 121:6, 121:12, 121:21, 122:8, 123:9, 123:14, 126:17, 142:25, 147:5, 155:2,

161:9, 172:21
differential [2] - 52:4, 87:20
difficult [4] - 33:21, 46:5, 56:15, 110:3
digress [1] - 96:13
dilute [1] - 113:17
dilution [4] - 72:6, 72:13, 89:3, 91:11
diminishing [1] - 44:4
direct [7] - 32:7, 133:14, 152:4, 152:6, 160:7, 168:11, 168:13
directed [2] - 168:18, 168:21
direction [2] - 38:7, 161:15
directly [1] - 39:25
DIRECTORS [1] - 2:17
disagree [5] - 86:17, 87:17, 103:25, 105:3, 172:19
discourage [4] - 34:22, 37:21, 44:10, 47:9
discouraged [1] - 38:9
discrimination [4] - 93:3, 93:11, 93:16, 93:17
discussed [2] - 58:4, 74:15
discusses [1] - 100:23
discussion [4] - 4:3, 31:12, 94:24, 155:19
discussions [1] - 73:18
disfavor [1] - 39:18
disfavoring [4] - 34:23, 38:11, 44:11, 47:10
dispersed [1] - 11:9
dispersion [1] - 10:13
disputable [1] - 48:10
dispute [3] - 85:22, 86:5, 103:23
disrupting [1] - 175:14
disservice [1] - 105:11
distinct [2] - 12:12
distinction [2] - 82:5, 82:11
distribute [1] - 52:18
district [126] - 17:23, 18:8, 18:17, 19:14, 19:22, 20:2, 20:8, 20:12, 20:13, 20:18, 20:19, 21:2, 21:4, 21:19, 22:8, 22:9, 22:20, 23:9, 23:23, 23:25, 24:4, 24:6, 24:13, 25:2, 25:25, 26:10, 27:3, 27:18, 28:6, 28:15, 28:25, 29:4, 29:12, 29:13, 29:18, 29:19, 30:3, 30:4, 30:5, 30:11, 32:12, 32:22, 33:13, 35:8, 36:8, 36:9,

36:18, 44:22, 45:22, 48:4, 48:12, 48:22, 49:18, 49:22, 53:8, 56:11, 56:21, 60:14, 60:24, 61:5, 62:22, 63:2, 67:6, 68:2, 68:4, 68:18, 69:9, 69:25, 70:12, 70:14, 75:3, 75:8, 75:12, 75:18, 76:3, 76:17, 82:18, 90:24, 90:25, 92:13, 94:16, 106:14, 108:3, 110:18, 111:7, 112:2, 112:10, 112:21, 113:2, 113:12, 113:24, 120:10, 120:13, 120:17, 121:5, 122:9, 128:22, 131:6, 131:13, 131:14, 140:6, 141:19, 143:4, 143:5, 143:14, 143:23, 144:8, 144:12, 144:17, 152:10, 152:21, 153:11, 153:12, 153:18, 153:23, 154:11, 154:13, 154:24, 155:3, 157:4, 157:15, 157:25, 158:7, 158:10, 159:9
District [102] - 20:24, 21:11, 21:12, 21:25, 22:2, 22:14, 22:15, 23:5, 23:6, 23:15, 23:16, 26:9, 26:18, 27:22, 28:5, 28:14, 28:23, 29:10, 30:10, 30:16, 30:22, 30:23, 31:2, 31:7, 31:8, 31:9, 31:13, 31:14, 31:18, 34:21, 40:9, 43:13, 45:23, 67:2, 75:17, 75:20, 75:21, 95:25, 107:21, 108:10, 108:11, 108:22, 109:6, 110:9, 113:11, 113:13, 113:21, 115:20, 116:7, 116:10, 116:11, 116:13, 116:15, 116:18, 116:19, 116:21, 116:25, 117:5, 118:2, 118:21, 119:9, 120:21, 120:24, 121:7, 121:11, 121:18, 121:19, 121:20, 121:22, 122:3, 123:14, 125:7, 126:16, 127:4, 127:6, 127:18, 131:8, 131:11, 132:18, 140:6, 149:7, 149:8, 149:13, 149:17, 150:2, 152:10, 153:21, 154:3, 154:7, 156:6, 156:9, 156:15, 157:12, 157:13, 157:15, 158:12
DISTRICTING [1] - 1:3
districting [5] - 7:16, 7:19, 7:20, 154:17, 155:25

districts [107] - 8:13, 8:18, 13:18, 16:5, 16:6, 16:25, 17:3, 17:4, 17:9, 17:22, 17:24, 18:9, 18:16, 19:6, 20:4, 20:23, 32:7, 32:10, 34:4, 35:2, 35:13, 35:21, 35:23, 36:2, 36:17, 42:16, 42:24, 44:3, 44:8, 44:13, 45:13, 45:15, 45:16, 45:19, 46:3, 46:22, 46:24, 47:8, 47:15, 47:18, 49:3, 49:5, 49:8, 49:20, 54:2, 56:3, 61:18, 62:24, 63:4, 65:4, 66:22, 67:12, 68:11, 69:15, 69:21, 70:17, 72:25, 78:3, 78:5, 78:15, 81:18, 82:19, 91:21, 105:16, 106:16, 108:18, 111:13, 111:19, 111:20, 114:4, 114:9, 114:10, 114:16, 114:23, 117:11, 118:5, 118:9, 118:12, 118:16, 118:25, 119:7, 121:14, 121:17, 127:12, 129:5, 131:3, 131:4, 131:7, 131:19, 132:12, 140:23, 144:18, 146:13, 147:20, 154:5, 154:8, 161:5, 161:10, 161:14, 161:23, 162:2, 162:6, 162:7, 163:25, 164:3, 176:25
Districts [2] - 6:7, 37:20
divide [2] - 18:16, 108:18
divided [3] - 19:22, 27:11, 35:9
divides [3] - 107:21, 108:10, 109:18
Doctor [1] - 33:15
doctor [4] - 26:19, 30:20, 35:20, 36:12
document [3] - 137:22, 137:23
documents [1] - 84:10
DOJ [1] - 88:10
dollars [2] - 140:2, 172:2
done [24] - 21:17, 45:8, 49:10, 51:19, 51:25, 58:19, 62:5, 64:20, 70:16, 70:19, 73:25, 74:7, 76:17, 80:24, 100:7, 120:5, 125:20, 127:23, 135:6, 136:13, 138:18, 139:6, 139:18, 164:16
down [16] - 33:18, 33:21, 98:8, 100:4, 107:3, 107:16, 116:16, 140:9, 141:4, 141:15, 141:21,

142:6, 147:12, 148:3, 148:18, 174:11
dozens [1] - 144:13
DR [29] - 3:4, 6:2, 24:14, 24:21, 25:24, 27:5, 27:19, 27:21, 31:3, 31:10, 31:16, 31:21, 31:25, 32:11, 32:16, 32:21, 36:18, 36:25, 37:5, 37:10, 37:14, 38:12, 38:16, 38:20, 39:2, 39:19, 40:5, 40:13, 41:5
Dr [19] - 4:3, 4:8, 6:4, 24:10, 33:22, 41:8, 84:20, 85:2, 85:6, 86:4, 86:6, 98:12, 99:12, 102:3, 107:24, 147:23, 154:11, 171:15, 172:11
dr [3] - 5:23, 39:21, 99:6
draft [9] - 42:25, 54:20, 76:13, 112:23, 114:25, 122:19, 122:20, 137:6, 137:25
drafting [1] - 137:21
dramatic [1] - 9:3
draw [27] - 7:18, 8:10, 47:4, 47:15, 50:11, 57:23, 60:13, 65:3, 66:20, 93:24, 94:15, 118:9, 118:20, 120:17, 121:5, 121:11, 128:6, 155:6, 156:9, 158:7, 161:5, 162:17, 167:11, 167:13, 170:14, 176:18, 176:23
drawing [34] - 32:12, 32:22, 39:17, 42:24, 48:11, 49:10, 50:25, 54:6, 61:12, 70:11, 76:8, 76:23, 77:23, 78:21, 80:21, 81:19, 118:17, 119:6, 120:8, 121:14, 123:19, 127:4, 127:15, 127:22, 127:24, 132:9, 141:10, 141:16, 152:20, 156:15, 158:12, 173:6, 177:5
drawn [13] - 34:21, 37:20, 44:10, 47:9, 61:18, 61:19, 81:10, 82:4, 104:4, 155:17, 155:18, 156:6, 173:8
drew [9] - 36:16, 45:10, 82:25, 83:9, 118:25, 123:14, 126:16, 127:17, 146:19
drill [3] - 100:4, 147:12, 148:3
drive [2] - 116:5, 117:6

driving [2] - 116:3, 116:16
drop [2] - 9:6, 9:7
dropped [1] - 9:5
during [1] - 84:18
Dutchess [2] - 166:11, 166:14

E

early [1] - 131:8
East [8] - 21:14, 27:24, 28:16, 28:18, 28:24, 30:18, 163:12
east [3] - 11:23, 11:24, 152:14
eastern [1] - 108:20
easy [3] - 10:8, 74:8, 74:10
ecological [6] - 12:14, 12:17, 12:18, 13:9, 45:9
effect [1] - 72:9
efficient [2] - 43:15, 44:16
effort [32] - 66:20, 66:24, 67:3, 67:16, 110:16, 112:20, 113:23, 115:3, 115:5, 115:7, 115:8, 118:20, 118:24, 119:14, 119:20, 119:21, 130:13, 130:19, 130:21, 131:22, 132:5, 132:10, 150:2, 150:5, 151:13, 162:19, 163:4, 163:11, 163:16, 163:20, 164:2
efforts [1] - 132:2
egregious [2] - 104:18, 104:20
EI [1] - 12:18
either [6] - 20:24, 39:7, 46:6, 85:23, 94:22, 178:5
elect [3] - 8:20, 17:11, 75:23
elected [3] - 82:23, 96:15, 96:21
electing [1] - 45:7
election [6] - 14:3, 17:14, 46:17, 48:6, 72:9, 97:5
elections [15] - 8:3, 13:18, 13:24, 14:2, 43:16, 44:17, 46:12, 46:19, 46:20, 48:8, 72:12, 86:10, 86:11, 86:24, 101:6
Elections [2] - 43:18, 72:7
eligible [1] - 73:12
eliminated [1] - 63:3
ELISABETTA [1] - 2:18
Elmont [13] - 11:3, 11:17, 20:25, 28:10, 140:7, 140:13, 140:21, 141:4,

141:14, 141:20, 142:4, 144:20, 146:7
emphatic [1] - 148:25
enacted [2] - 58:6, 155:10
end [5] - 32:23, 43:17, 127:13, 151:23, 174:4
ended [1] - 101:7
ending [1] - 144:24
endogenous [2] - 14:2, 99:15
ends [1] - 120:4
enforced [1] - 81:23
engaged [1] - 136:22
engagement [1] - 41:3
enrollment [1] - 48:6
ensemble [2] - 102:14, 102:23
ensure [2] - 74:20, 103:10
entire [4] - 25:20, 34:10, 52:20, 65:16
entirely [1] - 29:11
Equal [1] - 141:6
equal [35] - 15:14, 15:15, 18:4, 43:25, 56:22, 89:21, 90:2, 109:10, 110:24, 111:4, 111:22, 111:24, 112:9, 114:11, 114:14, 119:2, 119:6, 120:25, 121:17, 127:23, 129:4, 130:6, 130:9, 130:14, 130:20, 130:22, 140:15, 140:19, 149:21, 149:23, 150:13, 151:4, 151:6, 154:19, 156:2
equally [7] - 104:20, 114:22, 117:12, 118:6, 131:2, 158:17
ERA [1] - 37:8
ERIC [1] - 2:9
Eric [1] - 4:24
error [2] - 53:4, 53:9
escort [1] - 175:22
escorted [3] - 174:12, 174:22, 175:13
especially [1] - 93:3
ESQ [2] - 2:22, 2:23
established [1] - 13:7
Estates [4] - 23:20, 23:22, 26:12, 26:14
estimate [1] - 144:25
estimated [1] - 20:17
estimates [2] - 12:23, 12:25
estimating [1] - 88:7
ethnic [1] - 12:11
evaluate [3] - 67:16, 119:5, 127:24
evaluated [1] - 113:4
evaluating [3] - 72:15, 102:15, 102:20

Evans [4] - 116:11, 116:12, 116:14, 116:16
evening [1] - 144:25
everywhere [1] - 118:13
evidence [4] - 61:14, 64:22, 64:24, 77:8
Evidence [2] - 94:8, 97:4
evolution [1] - 121:18
exact [1] - 53:7
exactly [1] - 125:2
examination [1] - 122:17
examine [2] - 137:2, 139:15
example [5] - 46:17, 56:16, 71:15, 81:9, 92:2
exceed [1] - 18:8
exceeds [1] - 40:20
Excel [3] - 50:17, 50:20, 63:21
except [9] - 19:20, 27:10, 35:7, 43:12, 48:25, 90:25, 104:19, 131:7, 131:11
excuse [4] - 33:17, 65:6, 121:3, 144:22
excused [2] - 2:7, 4:20
EXECUTIVE [1] - 2:17
exercise [2] - 13:15, 15:20
exist [2] - 82:12, 85:19
existed [1] - 94:2
existence [2] - 56:24, 101:12
existent [1] - 35:2
existing [30] - 32:9, 33:12, 34:4, 35:2, 35:13, 35:18, 35:21, 35:23, 35:25, 44:13, 45:15, 46:25, 47:6, 49:7, 54:9, 54:13, 56:2, 78:5, 78:15, 81:12, 81:17, 104:9, 104:12, 104:17, 120:20, 121:15, 127:12, 140:23, 158:10
exists [2] - 12:10, 153:12
expense [1] - 175:15
experience [5] - 46:5, 54:15, 57:7, 60:25, 77:3
expert [7] - 7:3, 42:9, 66:8, 66:9, 106:8, 108:8, 108:9
expert's [1] - 79:25
experts [1] - 173:9
explained [5] - 97:6, 97:19, 147:18, 147:19, 147:21
explanation [2] - 163:2, 178:8
extending [1] - 11:13
extent [4] - 19:19, 27:9, 35:6, 171:20
extra [2] - 65:12, 98:17

extreme [4] - 99:7, 99:18, 103:3, 103:17
eye [1] - 10:9
eyeball [1] - 142:18

F

fact [11] - 32:19, 46:23, 48:9, 48:10, 84:12, 86:10, 86:23, 96:19, 100:20, 104:9, 160:4
factored [1] - 141:13
factors [4] - 17:13, 39:23, 40:5, 97:6
facts [1] - 66:2
fair [2] - 64:25, 74:19
familiar [10] - 70:25, 72:16, 72:18, 72:21, 73:14, 84:20, 85:5, 88:3, 97:10, 160:12
familiarize [1] - 98:22
far [7] - 38:18, 44:25, 67:3, 74:13, 91:3, 94:20, 168:7
Farmingdale [2] - 26:7, 30:17
favor [7] - 39:18, 44:11, 47:10, 99:18, 103:4, 155:20, 179:3
favorable [1] - 176:19
favoring [4] - 34:23, 37:22, 38:10, 76:16
features [2] - 16:7, 20:22
Federal [6] - 45:25, 73:15, 73:16, 92:9, 93:6, 93:9
federal [16] - 7:21, 8:11, 42:10, 42:18, 43:5, 45:3, 45:14, 49:16, 50:2, 70:3, 70:8, 74:10, 92:24, 94:2, 96:11, 119:12
fellow [2] - 36:14, 96:4
few [2] - 34:11, 49:8
fewer [3] - 157:7, 157:11, 164:3
fifth [9] - 23:8, 33:11, 34:6, 67:5, 67:20, 67:25, 68:2, 68:18, 75:3
fight [1] - 176:7
figure [1] - 171:4
filibuster [1] - 139:21
final [10] - 43:7, 129:17, 129:18, 135:6, 135:20, 136:13, 138:18, 139:5, 139:6, 177:21
finally [6] - 7:22, 11:20, 16:23, 30:16, 91:24, 116:25
findings [2] - 7:23, 7:25
fine [3] - 41:4, 41:16,

134:23
finger [1] - 31:12
finish [5] - 69:17, 117:19, 119:18, 121:4, 126:10
finished [1] - 33:25
firm [2] - 160:10, 168:17
firms [2] - 7:5
first [21] - 7:11, 8:22, 15:14, 18:4, 18:13, 42:25, 50:17, 54:20, 58:25, 60:20, 61:6, 71:11, 81:19, 84:24, 85:11, 104:5, 112:22, 116:7, 128:7, 142:15, 175:7
fits [1] - 71:23
Fitzgerald [1] - 4:19
FITZGERALD [1] - 2:7
five [16] - 8:13, 17:2, 49:11, 63:20, 67:11, 67:20, 67:23, 68:11, 68:14, 70:17, 77:16, 134:12, 162:6, 162:12, 163:25, 164:3
Five [9] - 29:19, 160:12, 160:15, 160:21, 160:24, 161:5, 161:9, 161:13, 162:5
fix [4] - 128:11, 151:10, 151:13, 160:8
flawed [5] - 49:24, 54:21, 55:15, 55:21, 56:7
flip [1] - 11:10
flood [1] - 128:10
Floral [3] - 11:2, 28:7, 28:8
Flower [1] - 26:12
focus [2] - 96:5, 96:8
folks [1] - 24:16
follow [3] - 33:6, 39:2, 82:17
follow-up [1] - 33:6
followed [2] - 43:24, 78:14
following [1] - 172:7
follows [3] - 43:4, 49:14, 153:22
Force [1] - 15:24
force [1] - 122:12
forever [1] - 139:12
forgo [1] - 25:9
form [3] - 39:20, 123:2, 137:6
formed [1] - 43:14
former [2] - 124:13, 172:23
formula [1] - 141:24
forth [6] - 11:10, 96:6, 117:9, 118:23, 137:25
forty [2] - 54:14, 67:22
forty-nine [1] - 67:22
forum [1] - 136:12

forward [2] - 103:18, 139:19
foundation [1] - 12:6
four [18] - 18:22, 51:21, 63:3, 63:6, 63:16, 63:22, 64:6, 67:5, 67:8, 80:25, 114:4, 114:9, 114:10, 114:15, 161:8, 161:9, 161:14, 162:2
fourth [1] - 42:4
framework [2] - 13:5, 13:6
FRANCIS [2] - 1:10, 2:4
Frank [3] - 5:18, 25:10, 30:21
Franklin [4] - 1:14, 27:22, 27:25, 28:10
frankly [1] - 101:4
Freeport [14] - 10:23, 11:16, 22:19, 23:7, 114:4, 114:9, 114:10, 114:15, 115:9, 115:21, 116:2, 150:18, 150:24, 151:9
front [8] - 24:18, 25:18, 31:4, 33:8, 37:25, 41:21, 66:3, 147:16
full [6] - 10:16, 14:5, 17:7, 19:21, 20:24, 35:8
fully [2] - 19:23, 95:17
future [2] - 48:7, 71:9
futuro [1] - 79:18

G

gall [1] - 39:21
GALL [29] - 3:4, 6:2, 24:14, 24:21, 25:24, 27:5, 27:19, 27:21, 31:3, 31:10, 31:16, 31:21, 31:25, 32:11, 32:16, 32:21, 36:18, 36:25, 37:5, 37:10, 37:14, 38:12, 38:16, 38:20, 39:2, 39:19, 40:5, 40:13, 41:5
Gall [15] - 4:3, 4:8, 5:23, 6:4, 24:10, 33:22, 41:8, 84:20, 86:4, 107:24, 147:23, 154:11, 171:15, 172:11, 178:18
Gall's [3] - 85:2, 86:6, 98:12
game [1] - 139:13
Garden [5] - 12:5, 23:17, 28:8, 28:9, 157:16
Gardens [2] - 23:19, 23:22
gathering [1] - 30:25
general [6] - 46:19, 86:11, 86:23, 113:22, 133:8

General [1] - 71:15
generally [3] - 8:5, 8:7, 117:14
generate [1] - 102:22
generated [1] - 103:13
gentleman [1] - 173:20
genuine [1] - 125:20
genuinely [1] - 125:21
geographic [2] - 10:13, 52:7
Geographic [1] - 6:13
geographically [1] - 60:22
geographies [3] - 52:24, 53:4, 90:5
geography [4] - 14:3, 56:17, 81:11, 88:14
gerrymander [3] - 99:8, 99:10, 102:21
gerrymandering [1] - 85:7
Gingles [6] - 13:3, 13:7, 60:19, 61:6, 74:9, 74:11
GIS [2] - 6:15, 6:16
given [8] - 19:8, 36:3, 36:13, 43:9, 92:12, 129:20, 138:3, 176:10
Glen [4] - 25:3, 25:4, 125:10, 154:3
Glenwood [1] - 25:3
goal [11] - 22:7, 110:25, 114:2, 127:11, 127:12, 146:25, 148:3, 148:4, 148:7, 171:18
goals [1] - 49:25
god [1] - 66:14
gold [1] - 102:19
golf [6] - 143:16, 144:10, 144:16, 146:11, 146:17, 146:20
Google [1] - 20:9
grab [1] - 149:8
graphs [1] - 99:5
gray [2] - 17:25, 74:4
Great [4] - 23:21, 26:15, 153:20
great [2] - 34:15, 154:16
greater [1] - 155:9
greens [1] - 10:9
Greenville [1] - 28:19
grew [3] - 9:10, 9:12, 9:17
group [9] - 12:24, 60:21, 61:2, 73:13, 92:11, 92:12, 95:10, 168:15, 177:22
groups [13] - 12:11, 12:12, 45:2, 69:3, 70:6, 86:14, 86:16, 90:5, 90:12, 91:22, 94:14, 95:9, 95:12
growth [5] - 8:25, 9:8, 9:13, 9:14, 9:20

guarantee [1] - 149:21
guaranteeing [1] - 148:8
guess [2] - 49:13, 70:17
guessing [1] - 123:25
guided [1] - 15:13
guidelines [2] - 112:8, 162:16
guilty [1] - 77:17

H

half [3] - 26:2, 110:10, 110:16
hand [5] - 10:15, 10:17, 38:3, 98:17, 180:17
handed [1] - 100:10
handing [3] - 98:9, 98:15, 98:23
handy [1] - 34:15
happy [6] - 32:24, 38:5, 100:23, 128:11, 137:19, 165:23
Harbor [5] - 10:24, 23:20, 26:15, 29:24, 154:2
hard [2] - 134:3, 135:2
Harkenrider [1] - 102:16
harmed [1] - 48:2
Hawaii [2] - 144:12, 146:8
head [1] - 127:12
Head [1] - 25:4
hear [8] - 4:9, 33:22, 37:4, 79:3, 79:6, 125:10, 137:19, 148:15
heard [10] - 12:18, 22:3, 26:3, 36:13, 67:13, 67:19, 88:6, 88:11, 88:12, 141:4
hearing [8] - 41:24, 125:20, 148:15, 153:16, 173:4, 177:19, 178:9, 178:19
hearings [4] - 57:8, 57:16, 154:22
heart [1] - 74:18
Heights [3] - 26:13, 28:17, 152:16
held [1] - 61:17
help [4] - 16:24, 47:19, 90:10, 107:18
helped [1] - 48:2
helpful [4] - 24:18, 156:15, 156:19, 163:2
Hempstead [23] - 10:22, 11:15, 22:2, 22:3, 22:5, 22:17, 22:18, 110:10, 110:15, 110:17, 111:6, 113:13, 146:18, 152:14, 154:2, 156:25, 157:4, 157:8, 157:17, 157:19,

159:21, 165:14, 165:15
hereby [1] - 180:8
hereunto [1] - 180:16
Herricks [2] - 12:4, 23:18
Hewlett [4] - 29:22, 29:23, 29:24
hi [1] - 6:14
hi-tech [1] - 6:14
Hicksville [14] - 11:14, 11:25, 26:2, 26:6, 29:13, 157:20, 161:23, 162:2, 162:7, 162:12, 162:15, 162:20, 162:21, 163:8
high [4] - 10:19, 21:3, 53:5, 53:8
higher [3] - 10:3, 10:11, 19:5
Hill [1] - 26:13
Hills [4] - 23:19, 23:21, 28:18, 163:24
himself [1] - 124:9
hire [5] - 59:24, 60:3, 60:5, 60:10, 166:13
hired [5] - 60:8, 164:22, 165:10, 165:14, 171:16
Hispanic [11] - 46:4, 46:7, 46:13, 62:2, 63:4, 86:21, 89:25, 92:3, 96:18, 113:11, 113:15
Hispanic-preferred [1] - 86:21
Hispanic/Black [2] - 60:14, 62:22
Hispanic/White [2] - 64:9, 67:7
Hispanics [4] - 93:17, 94:21, 95:4, 96:20
historical [1] - 45:5
history [4] - 86:20, 93:2, 93:14, 153:25
hit [8] - 116:8, 116:11, 116:16, 116:22, 116:23, 116:25, 117:3
hold [2] - 6:17, 173:15
holes [1] - 146:11
Home [58] - 15:19, 16:14, 18:5, 18:23, 19:18, 19:24, 20:14, 21:10, 21:24, 23:3, 23:15, 24:23, 25:7, 26:8, 26:17, 26:24, 27:4, 27:8, 28:3, 28:12, 29:2, 29:8, 29:15, 30:2, 30:9, 30:14, 30:19, 32:8, 32:15, 33:9, 34:2, 40:11, 43:4, 43:12, 43:21, 47:7, 48:18, 48:20, 49:2, 49:4, 54:12, 70:4, 74:3, 78:2, 78:11, 78:14, 85:9, 91:2, 103:9, 112:8, 112:12, 112:16,

118:8, 119:11, 120:2, 120:6, 130:24, 155:11
home [3] - 47:21, 48:8, 179:7
homes [1] - 124:14
honestly [1] - 142:9
hope [1] - 145:24
hopefully [2] - 36:12, 124:5
hoping [2] - 71:22, 145:6
hour [2] - 64:4, 77:16
hours [3] - 100:12, 107:15, 172:25
house [1] - 107:3
houses [1] - 124:14
human [1] - 104:7
humanity [1] - 105:10
hundred [1] - 81:13
hundreds [3] - 93:11, 107:15, 107:16
hurt [1] - 47:19
Hyde [4] - 12:4, 23:16, 23:17, 152:12
hypothetical [13] - 65:7, 65:11, 65:15, 65:17, 65:18, 65:23, 65:24, 66:8, 66:17, 79:5, 79:21, 136:18
hypotheticals [1] - 66:5

I

idea [3] - 9:25, 52:9, 154:23
ideal [6] - 18:14, 18:17, 44:21, 44:23, 44:24, 118:5
ideas [1] - 92:14
identified [1] - 87:12
ignored [1] - 32:20
ignores [1] - 104:24
illegal [21] - 35:18, 77:7, 77:8, 77:11, 77:15, 77:18, 77:21, 78:9, 78:21, 82:9, 100:5, 100:8, 100:18, 100:21, 101:4, 101:8, 107:2, 107:5, 125:25, 173:10
impairing [1] - 72:9
imperfect [1] - 101:14
impetus [1] - 171:9
implemented [2] - 91:24, 95:17
importance [1] - 33:11
important [6] - 24:5, 48:17, 87:8, 127:14, 128:16, 173:3
impression [1] - 27:2
improve [1] - 19:12

IN [1] - 180:16
inaudible [1] - 75:24
include [4] - 17:13, 25:14, 36:9, 150:8
included [3] - 6:23, 73:8, 109:16
includes [19] - 12:3, 20:24, 21:12, 22:2, 22:15, 23:16, 25:2, 25:25, 26:10, 27:22, 28:6, 28:15, 28:23, 29:4, 29:10, 29:21, 30:5, 30:11, 30:16
including [7] - 7:7, 28:19, 35:3, 42:7, 97:7, 101:7, 171:12
incorporate [1] - 16:19
incorporated [4] - 92:23, 156:22, 157:10, 162:22
increased [1] - 162:11
incumbencies [1] - 37:15
incumbency [3] - 36:10, 37:13, 39:19
incumbent [6] - 17:19, 38:11, 39:18, 47:22, 47:25, 48:9
incumbents [8] - 34:23, 39:9, 44:12, 47:10, 47:23, 48:3, 53:12, 76:17
independent [1] - 171:19
Indian [1] - 89:25
indicate [1] - 19:6
indicated [1] - 122:20
indicating [2] - 20:12, 33:3
indicating) [1] - 10:14
indiscernible) [1] - 40:21
individual [1] - 19:14
Industrial [2] - 32:2, 108:7
inference [5] - 12:14, 12:17, 12:19, 13:9, 45:10
inferences [1] - 174:3
influence [4] - 23:23, 23:25, 24:4, 72:12
Information [1] - 6:14
information [6] - 43:8, 50:24, 54:5, 54:22, 156:8, 159:14
informative [1] - 123:12
innocuous [1] - 57:17
inoculate [1] - 49:15
inoculates [1] - 45:24
input [4] - 43:2, 87:24, 138:2, 138:4
inputs [2] - 54:17, 55:8
inquiry [1] - 62:5
inside [1] - 169:25
insolent [1] - 170:15

instance [1] - 99:20
instead [1] - 24:23
Instead [1] - 173:6
Institute [1] - 6:16
instructions [2] - 7:10, 137:7
intended [2] - 31:14, 31:17
intent [1] - 44:3
intentionally [1] - 47:19
interest [14] - 16:18, 16:20, 21:17, 26:4, 35:5, 55:24, 122:23, 126:13, 126:15, 153:8, 156:4, 156:8, 156:16, 160:25
interested [7] - 92:14, 92:21, 93:20, 93:22, 96:23, 151:21, 180:15
interesting [2] - 126:13, 156:16
interests [1] - 46:9
interrupt [3] - 24:11, 79:23, 106:24
interrupting [2] - 25:12, 117:19
interruption [3] - 174:7, 174:15, 177:25
introduce [1] - 98:5
introduced [1] - 101:23
invite [1] - 64:16
involved [1] - 63:16
Inwood [12] - 29:22, 140:9, 140:14, 140:21, 141:4, 141:15, 141:22, 142:6, 143:4, 143:15, 143:23, 144:21
ironically [2] - 147:22, 154:12
irregular [2] - 119:7, 152:20
irregularly [1] - 120:11
irrelevant [1] - 80:24
Island [2] - 30:4, 30:8
island [1] - 144:14
Islander [2] - 69:2, 69:22
islands [2] - 144:20, 146:6
issue [6] - 74:18, 87:8, 87:11, 88:18, 104:22, 178:14
issued [2] - 84:20, 85:6
issues [3] - 87:6, 87:11, 145:22
item [1] - 34:20
items [3] - 37:17, 38:18, 40:3
iteration [2] - 128:7, 139:18
iterations [1] - 131:9
itself [2] - 88:15, 148:23
IX [1] - 1:6

J

James ^[1] - 5:12
JAMES ^[1] - 2:14
Jared ^[1] - 5:6
JARED ^[1] - 2:12
jeopardizing ^[1] - 173:11
Jericho ^[3] - 11:25, 29:10, 29:17
JOHN ^[1] - 2:6
John ^[16] - 4:15, 71:3, 71:5, 71:6, 71:21, 73:5, 74:2, 74:21, 91:8, 91:15, 92:7, 93:12, 94:6, 95:25, 96:25, 97:11
Johnson ^[1] - 154:21
join ^[1] - 176:12
joined ^[1] - 179:5
Joy ^[1] - 116:5
Jr ^[1] - 5:13
JR ^[1] - 2:14
judge ^[4] - 133:13, 134:18, 134:21, 134:23
jumping ^[1] - 151:7
jumps ^[2] - 150:21, 150:23
jurisdiction ^[3] - 14:4, 71:16, 80:21
jurisdictions ^[3] - 7:7, 7:8, 111:5
jury ^[1] - 105:8
Justice ^[1] - 7:4
justify ^[5] - 117:10, 117:16, 117:23, 118:3, 153:9
juts ^[1] - 126:23

K

Karen ^[1] - 180:19
KAREN ^[3] - 1:22, 180:7, 180:20
Kasschau ^[1] - 5:7
KASSCHAU ^[4] - 2:12, 5:8, 172:17, 172:22
keep ^[31] - 16:5, 33:18, 33:20, 66:17, 110:16, 110:22, 112:9, 112:20, 112:25, 113:23, 125:14, 125:24, 130:4, 130:8, 130:13, 130:19, 130:21, 131:22, 132:5, 133:4, 138:16, 140:24, 148:18, 150:2, 155:16, 155:23, 163:16, 163:20, 164:2, 169:25, 170:23
keeping ^[11] - 21:15, 29:16, 111:5, 111:6, 111:25, 132:11, 132:12,

135:3, 147:21, 152:25, 153:2
keeps ^[3] - 19:24, 30:4, 157:4
Kensington ^[1] - 26:15
kept ^[12] - 21:25, 23:4, 26:9, 26:18, 28:4, 28:13, 28:22, 30:3, 30:9, 133:15, 141:19, 142:4
key ^[1] - 29:16
kidding ^[1] - 107:11
kind ^[1] - 52:7
kinder ^[1] - 170:8
Kings ^[2] - 26:15, 153:17
knowing ^[1] - 87:14

L

lack ^[1] - 87:20
Lake ^[2] - 12:4, 23:18
Lakeview ^[18] - 10:24, 22:17, 129:25, 130:3, 130:4, 130:5, 130:8, 130:13, 130:21, 131:22, 132:4, 132:5, 132:8, 133:6, 133:7, 134:11, 135:3, 135:5
land ^[6] - 30:24, 143:5, 149:9, 150:22, 150:24, 151:8
Landing ^[1] - 25:3
language ^[7] - 44:5, 45:2, 70:6, 73:13, 73:21, 94:16
Language ^[1] - 73:19
large ^[4] - 60:22, 102:23, 147:9, 157:9
largely ^[1] - 16:21
larger ^[4] - 52:17, 52:24, 95:10, 147:17
largest ^[1] - 22:5
last ^[6] - 46:10, 58:20, 99:16, 155:10, 166:20, 175:8
Latino ^[19] - 8:5, 8:14, 8:19, 9:9, 9:11, 9:14, 11:5, 11:12, 14:11, 14:14, 14:25, 15:3, 61:11, 62:15, 64:24, 65:3, 68:25, 69:21, 96:14
latino ^[1] - 11:8
Latinos ^[1] - 95:20
latitude ^[1] - 155:9
Lattington ^[1] - 25:5
Law ^[73] - 15:19, 16:14, 18:5, 18:24, 19:18, 19:24, 20:14, 21:11, 21:25, 23:3, 23:15,

24:23, 25:7, 26:8, 26:17, 26:25, 27:4, 27:8, 28:3, 28:12, 29:3, 29:8, 29:15, 30:2, 30:9, 30:15, 30:19, 32:8, 32:15, 33:9, 34:3, 40:11, 42:19, 43:4, 43:12, 43:22, 44:7, 47:8, 48:19, 48:20, 49:2, 49:4, 49:15, 49:25, 54:9, 54:12, 58:6, 70:4, 71:21, 73:5, 73:16, 74:3, 78:2, 78:11, 78:14, 85:9, 91:2, 93:7, 93:13, 94:6, 96:2, 103:9, 112:5, 112:8, 112:13, 112:16, 118:8, 119:11, 120:2, 120:6, 130:24, 155:11
law ^[43] - 7:5, 7:18, 7:22, 19:25, 27:15, 27:17, 36:8, 36:13, 42:18, 45:3, 45:14, 50:3, 55:20, 70:3, 71:13, 71:14, 71:16, 72:2, 72:5, 76:21, 82:10, 82:13, 82:15, 90:23, 92:18, 92:20, 92:24, 94:2, 97:11, 104:20, 121:25, 123:21, 131:16, 132:14, 133:11, 146:14, 155:10, 164:11, 164:13, 171:20, 172:5, 172:7
lawful ^[2] - 82:20, 82:22
Lawrence ^[1] - 29:21
laws ^[4] - 43:5, 54:24, 114:24, 119:12
lawsuit ^[1] - 173:12
lawyer ^[2] - 136:10, 170:5
layer ^[1] - 100:19
least ^[4] - 18:7, 40:23, 74:11, 127:13
leave ^[2] - 43:16, 172:16
left ^[9] - 10:17, 27:21, 80:5, 116:5, 116:10, 116:14, 116:19, 116:23, 117:4
left-hand ^[1] - 10:17
legal ^[19] - 8:12, 13:4, 23:24, 35:22, 55:18, 77:4, 78:3, 81:3, 81:5, 82:6, 82:10, 82:15, 104:10, 104:13, 117:12, 133:9, 145:23, 166:10
legally ^[1] - 81:7
Legislative ^[8] - 6:7, 15:24, 17:17, 19:15, 36:19, 36:21, 72:25, 95:25
legislative ^[4] - 36:2, 42:12, 54:10, 54:13
Legislator ^[3] - 124:13, 148:20, 148:23

legislator ^[1] - 96:21
legislators ^[2] - 17:19, 176:24
legislature ^[6] - 81:3, 81:24, 89:23, 91:6, 96:22, 105:12
Legislature ^[3] - 1:13, 59:5, 96:16
legitimate ^[1] - 147:2
Lena ^[2] - 116:25, 117:4
length ^[4] - 52:4, 53:3, 125:11, 154:21
lengthy ^[1] - 24:16
less ^[1] - 161:14
level ^[3] - 7:5, 7:6, 118:10
levels ^[1] - 52:7
Levittown ^[2] - 28:24, 30:13
Lewis ^[15] - 71:3, 71:5, 71:6, 71:21, 73:5, 74:3, 74:21, 91:9, 91:15, 92:8, 93:12, 94:6, 95:25, 97:2, 97:11
Lido ^[1] - 30:6
lighter ^[1] - 10:5
likely ^[1] - 43:19
limited ^[1] - 97:8
line ^[15] - 68:15, 91:8, 94:6, 96:25, 97:10, 124:5, 124:11, 125:4, 125:7, 137:16, 155:24, 156:25, 159:15, 159:20, 172:12
line's ^[1] - 155:5
lines ^[9] - 17:23, 17:25, 20:9, 42:12, 118:15, 120:9, 131:15, 155:17, 167:17
list ^[4] - 24:16, 25:13, 39:23, 40:3
listed ^[1] - 25:8
listening ^[2] - 172:20, 172:21
listing ^[1] - 145:22
lists ^[1] - 33:10
lit ^[1] - 125:17
literally ^[1] - 58:19
live ^[1] - 147:4
lived ^[2] - 52:10, 153:19
local ^[2] - 15:18, 16:14
located ^[2] - 10:2, 160:21
Look ^[1] - 170:2
look ^[20] - 13:17, 20:6, 45:4, 51:9, 52:12, 53:10, 63:13, 63:25, 64:12, 99:5, 101:16, 107:7, 107:8, 123:23, 125:6, 128:7, 146:24, 146:25, 153:21, 156:21
looked ^[5] - 16:23, 59:18,

74:6, 107:3
looking [6] - 20:7, 68:25, 100:16, 102:11, 107:20, 115:25
Lookout [1] - 30:7
looks [1] - 140:6
looping [1] - 152:14
LORENZO [3] - 1:22, 180:7, 180:20
Lorenzo [1] - 180:19
lose [1] - 48:5
loud [2] - 106:23, 148:25
love [2] - 52:3, 53:2
lower [1] - 10:5
luck [1] - 66:15
Lynbrook [3] - 27:23, 75:15

M

MAGIN [2] - 2:14, 5:14
Magin [1] - 5:13
Magleby [7] - 85:6, 99:6, 99:12, 102:3, 126:2, 171:17, 178:18
Magleby's [1] - 98:6
main [1] - 87:8
maintain [1] - 16:2
maintained [4] - 32:9, 33:14, 34:5, 44:15
maintaining [1] - 36:3
maintenance [1] - 34:25
majority [14] - 45:16, 45:20, 49:18, 49:21, 60:23, 61:5, 63:2, 67:2, 68:4, 74:13, 103:5, 103:18, 113:12, 176:23
majority/minority [28] - 8:13, 8:18, 16:25, 17:3, 21:4, 21:18, 22:9, 22:20, 23:9, 49:20, 65:3, 66:21, 67:12, 67:24, 68:6, 68:12, 68:19, 68:23, 69:4, 69:8, 69:14, 69:20, 69:24, 75:4, 75:7, 75:18, 91:21, 147:20
maker [11] - 122:12, 122:20, 136:24, 137:5, 151:20, 151:21, 151:23, 151:25, 152:5, 152:6, 160:8
makers [1] - 136:22
makeup [1] - 91:5
Malette [1] - 4:25
MALLETTE [2] - 2:9, 5:2
Malvern [2] - 22:18, 27:23
Malvern/Lynbrook [2] - 75:13, 75:20
man [1] - 172:16

maneuvers [1] - 155:15
Manhasset [3] - 23:19, 26:10, 153:18
manner [2] - 133:16, 172:4
Manor [3] - 26:12, 28:8, 157:16
Manorhaven [1] - 26:11
map [156] - 6:14, 8:11, 10:15, 11:20, 15:13, 17:20, 20:8, 31:4, 32:6, 32:13, 35:18, 39:17, 41:20, 41:22, 43:3, 43:6, 50:12, 51:2, 54:7, 54:20, 55:2, 55:9, 55:13, 55:14, 55:15, 55:19, 56:6, 57:3, 57:16, 57:23, 58:3, 58:10, 59:9, 59:14, 61:12, 64:17, 65:10, 65:18, 70:11, 74:20, 76:7, 76:8, 76:11, 76:19, 76:22, 76:24, 77:3, 77:6, 77:8, 77:9, 77:21, 77:23, 77:24, 78:8, 78:20, 80:2, 80:20, 80:21, 80:23, 80:25, 81:2, 81:6, 81:10, 81:23, 82:9, 82:22, 82:25, 83:10, 83:12, 83:14, 83:18, 84:22, 96:6, 96:9, 99:7, 99:17, 99:23, 100:2, 100:11, 100:18, 101:8, 101:14, 102:4, 102:9, 102:11, 102:12, 102:13, 102:20, 104:10, 104:18, 105:14, 105:24, 106:11, 106:22, 107:4, 107:7, 107:8, 107:10, 109:16, 109:24, 112:11, 112:17, 115:24, 117:15, 122:12, 122:19, 122:20, 123:24, 124:22, 125:24, 127:3, 128:4, 128:7, 128:13, 129:13, 131:6, 132:9, 133:8, 135:6, 135:20, 136:13, 136:22, 136:24, 137:5, 142:18, 145:4, 145:25, 146:19, 147:2, 147:6, 147:7, 148:22, 148:23, 151:20, 151:23, 151:25, 152:4, 152:6, 154:10, 156:21, 160:8, 164:6, 170:2, 170:14, 171:19, 173:6, 173:7, 173:8, 173:23, 176:18, 176:23, 177:5
Map [2] - 36:19, 36:21
Maps [1] - 20:9
maps [37] - 9:22, 9:24, 10:7, 32:12, 45:10, 47:4, 57:10, 58:20, 64:13,

64:15, 65:17, 71:8, 81:14, 99:13, 99:14, 102:23, 102:24, 102:25, 103:6, 103:7, 103:14, 104:3, 104:6, 105:19, 130:11, 135:8, 138:9, 140:2, 164:16, 166:12, 166:13, 167:10, 167:11, 167:13, 178:4, 178:9, 178:17
Maptitude [5] - 50:12, 50:15, 50:20, 50:25, 53:16
maptitude [1] - 50:13
March [1] - 148:22
margins [3] - 53:4, 53:8, 99:19
marriage [1] - 180:14
Massapequa [5] - 30:11, 30:13, 30:17, 30:18, 30:19
Masters [1] - 6:13
math [1] - 167:13
mathematical [1] - 141:24
mathematically [1] - 61:4
matter [3] - 16:10, 179:9, 180:15
MAUREEN [1] - 2:7
Maureen [1] - 4:19
Maxson [2] - 116:22, 116:23
McKenna [4] - 124:18, 174:9, 174:17, 175:13
mcKenna [1] - 175:17
Meadow [3] - 21:14, 28:24, 163:12
mean [8] - 17:10, 18:8, 24:11, 26:25, 38:6, 58:12, 146:10, 148:4
meaning [1] - 14:2
means [3] - 18:10, 73:11, 138:6
measurable [1] - 47:24
measure [8] - 12:15, 12:19, 17:16, 19:2, 19:10, 47:5, 74:11, 93:25
measured [1] - 99:14
measures [4] - 19:4, 19:8, 19:9, 142:22
measuring [2] - 13:2, 142:21
meeting [9] - 84:16, 85:17, 106:23, 106:24, 106:25, 177:21
MEETING [1] - 1:6
meets [1] - 96:10
MEGAN [1] - 3:4
Megan [1] - 6:4
MEJIAS [93] - 2:11, 5:5,

25:19, 33:17, 36:5, 65:13, 65:16, 66:4, 66:13, 78:25, 79:13, 79:20, 79:24, 80:6, 80:14, 95:2, 95:18, 96:12, 98:10, 102:7, 107:12, 108:2, 108:15, 108:19, 109:2, 109:11, 109:17, 123:3, 132:22, 133:3, 133:20, 133:24, 134:4, 134:20, 135:12, 135:17, 135:23, 136:3, 136:9, 137:11, 138:5, 138:21, 138:25, 139:20, 146:4, 148:6, 148:14, 152:7, 164:5, 164:10, 164:15, 164:19, 164:22, 164:25, 165:4, 165:9, 165:13, 165:17, 165:20, 166:2, 166:5, 166:14, 166:20, 166:24, 167:6, 167:12, 167:19, 167:25, 168:4, 168:12, 168:20, 169:3, 169:8, 169:11, 169:15, 169:19, 170:4, 170:9, 170:20, 170:25, 171:8, 174:9, 174:16, 175:11, 176:2, 176:16, 176:22, 177:3, 177:7, 177:15, 178:3, 178:15, 178:23
Mejias [6] - 5:4, 125:10, 126:6, 132:20, 148:5, 154:4
mell [1] - 155:17
member [9] - 48:12, 49:9, 60:24, 96:18, 148:10, 172:24, 174:8, 175:9, 175:25
members [12] - 47:22, 48:12, 56:9, 57:17, 57:18, 72:10, 73:12, 83:22, 84:4, 96:5, 110:7
memo [1] - 100:9
memorial [1] - 126:2
mention [1] - 9:16
mentioned [3] - 21:9, 87:19, 88:17
Merrick [3] - 23:8, 29:5, 29:6
MESSINA [1] - 2:22
met [1] - 61:7
method [3] - 72:8, 88:3, 88:6
methodological [1] - 80:18
methodologically [4] - 77:22, 78:20, 80:7, 81:7
Methodologically [1] - 79:4

methodology [15] - 79:2, 79:5, 79:7, 79:10, 79:11, 79:14, 79:16, 80:2, 102:14, 102:15, 103:19, 104:2, 104:22, 104:24, 105:5
Mexico [3] - 92:12, 93:18, 95:6
MHRL [2] - 76:15, 128:5
mic [1] - 123:5
Michael [2] - 4:10, 5:16
MICHAEL [2] - 2:15, 2:25
middle [1] - 157:20
might [14] - 31:25, 40:25, 43:20, 64:14, 75:21, 81:21, 86:20, 88:19, 96:8, 97:17, 97:18, 122:22, 139:17, 146:11
miles [3] - 77:16, 144:13, 147:8
million [3] - 96:19, 139:25, 172:2
Mimi [1] - 154:21
mind [3] - 125:24, 154:9, 155:16
Mineola [3] - 1:15, 28:16, 152:11
minorities [3] - 44:5, 44:6, 73:21
minority [28] - 4:5, 8:9, 13:13, 13:19, 14:6, 17:5, 17:10, 21:7, 21:22, 22:13, 22:25, 23:13, 45:2, 45:6, 60:20, 61:2, 67:5, 70:6, 70:19, 73:13, 73:19, 75:22, 86:14, 90:11, 91:22, 94:14, 103:10, 131:4
minority's [2] - 14:19, 15:9
minority-preferred [1] - 8:9
minutes [1] - 144:24
miscounted [1] - 162:6
misunderstood [1] - 39:11
modified [1] - 112:14
modifying [1] - 129:13
MOLONEY [1] - 40:7
moment [4] - 35:11, 75:2, 82:3, 98:21
money [1] - 171:4
months [2] - 107:14, 126:5
Moore [2] - 116:8, 116:9
MORONEY [90] - 1:10, 2:4, 4:2, 4:20, 5:20, 5:23, 24:10, 24:20, 25:10, 25:23, 30:20, 31:6, 31:11, 31:19, 31:23, 32:5, 32:13, 32:18, 33:2, 36:23, 37:3, 37:7, 37:11, 37:16,

37:24, 38:5, 38:13, 38:17, 38:21, 39:4, 39:10, 40:2, 40:17, 40:22, 41:12, 41:16, 50:4, 65:6, 65:14, 65:20, 66:11, 66:14, 79:17, 79:22, 80:3, 89:13, 100:3, 100:13, 100:17, 101:2, 105:6, 106:5, 106:12, 106:20, 107:23, 117:18, 124:7, 133:18, 133:22, 134:2, 134:18, 135:21, 135:24, 136:6, 146:16, 148:12, 149:4, 153:14, 159:13, 159:18, 160:3, 160:9, 161:20, 169:25, 170:6, 170:10, 170:22, 171:3, 172:9, 172:19, 175:4, 175:21, 176:12, 177:11, 177:17, 178:11, 178:22, 178:24, 179:3, 179:7
Moroney [4] - 5:19, 25:11, 30:21, 101:22
most [2] - 13:23, 18:7
motion [2] - 178:24, 179:5
motivated [1] - 140:19
motivation [1] - 171:9
Mount [1] - 116:4
mouth [2] - 79:25, 80:4
move [10] - 8:21, 15:11, 66:18, 109:4, 132:18, 133:11, 137:16, 140:5, 149:6, 177:17
moved [1] - 84:18
moves [1] - 155:14
moving [3] - 25:24, 68:3, 68:20
MR [262] - 42:2, 50:8, 50:13, 50:16, 50:21, 51:3, 51:6, 51:11, 51:24, 53:12, 53:17, 53:22, 54:3, 54:8, 54:14, 54:18, 55:6, 55:11, 55:18, 55:25, 56:8, 57:4, 57:7, 57:14, 57:24, 58:5, 58:11, 58:16, 58:25, 59:7, 59:12, 59:17, 59:23, 60:6, 60:11, 60:18, 61:14, 61:22, 62:8, 62:10, 62:19, 63:7, 63:12, 63:21, 64:3, 64:8, 66:23, 67:13, 67:18, 67:24, 68:8, 68:14, 68:18, 69:5, 69:10, 69:16, 70:2, 70:23, 71:3, 71:10, 72:18, 72:22, 73:2, 73:17, 74:22, 75:9, 75:14, 75:24, 76:5, 76:9, 76:13, 76:25, 77:11,

77:16, 77:25, 80:22, 82:8, 82:21, 83:4, 83:8, 83:13, 83:19, 83:25, 84:8, 84:15, 84:23, 85:3, 85:10, 85:16, 85:20, 85:24, 86:8, 87:7, 87:13, 88:4, 88:8, 88:12, 88:22, 89:5, 89:19, 90:19, 91:14, 91:19, 92:19, 94:18, 95:8, 95:23, 97:12, 97:21, 98:3, 98:24, 99:10, 103:25, 104:23, 105:9, 105:17, 105:19, 106:18, 108:13, 108:17, 108:24, 109:8, 109:11, 109:14, 110:12, 110:19, 110:21, 111:8, 111:11, 111:15, 111:21, 112:3, 112:11, 112:22, 113:6, 113:10, 113:25, 114:6, 114:11, 114:17, 114:21, 115:4, 115:10, 117:11, 118:4, 118:25, 119:10, 119:25, 120:15, 120:19, 120:25, 121:9, 121:13, 121:24, 123:10, 123:18, 127:8, 127:21, 128:24, 129:4, 129:9, 129:16, 129:21, 130:6, 130:10, 130:15, 130:25, 131:25, 132:7, 135:10, 135:15, 140:11, 140:15, 140:22, 141:10, 141:16, 141:23, 142:8, 142:15, 142:20, 143:6, 143:10, 143:19, 143:24, 144:3, 144:11, 146:13, 149:10, 149:14, 149:18, 149:23, 150:4, 150:10, 150:15, 150:20, 151:2, 151:4, 151:10, 151:14, 152:18, 152:22, 152:25, 153:6, 153:10, 156:11, 156:20, 157:23, 158:4, 158:9, 158:16, 158:22, 159:2, 159:6, 159:11, 160:13, 160:16, 160:22, 161:2, 161:6, 161:11, 161:15, 161:18, 161:24, 162:4, 162:9, 162:14, 162:21, 163:6, 163:9, 163:14, 163:18, 163:22, 164:4, 164:8, 164:13, 164:18, 164:21, 164:24, 165:3, 165:8, 165:12, 165:16, 165:19, 165:22, 166:4, 166:6, 166:17, 166:22, 167:3, 167:8, 167:14, 167:22, 168:3, 168:18, 169:7, 169:10, 169:14, 169:17, 176:16, 176:21,

177:2, 177:6
municipal [1] - 15:18
Municipal [63] - 16:14, 18:5, 18:23, 19:18, 19:23, 20:14, 21:10, 21:24, 23:3, 23:15, 24:23, 25:7, 26:8, 26:17, 26:24, 27:4, 27:8, 28:3, 28:12, 29:2, 29:8, 29:15, 29:25, 30:8, 30:14, 30:18, 32:8, 32:15, 33:9, 34:2, 40:10, 42:19, 43:4, 43:12, 43:21, 44:7, 47:7, 48:18, 48:20, 49:2, 49:15, 49:25, 54:9, 54:12, 58:6, 70:3, 74:3, 78:2, 78:11, 78:14, 85:8, 91:2, 103:9, 112:5, 112:7, 112:12, 112:16, 118:8, 119:11, 120:2, 120:6, 130:24, 155:11
municipalities [1] - 164:16
Munsey [1] - 26:13
must [3] - 33:12, 60:21, 172:20
Muttontown [1] - 28:18

N

NAACP [1] - 166:10
name [5] - 6:4, 57:16, 160:16, 160:17, 169:4
named [1] - 131:19
names [3] - 38:25, 57:21, 119:3
naming [1] - 57:10
narrow [1] - 154:13
narrowed [1] - 155:8
NASSAU [2] - 1:2, 180:5
Nassau [28] - 1:13, 6:6, 7:14, 8:3, 8:23, 13:21, 15:17, 16:6, 42:15, 49:8, 61:12, 62:6, 62:16, 72:25, 77:24, 88:20, 95:20, 96:20, 118:13, 120:14, 120:18, 123:22, 132:8, 139:25, 147:3, 147:4, 159:5, 160:20
National [1] - 7:4
nationalities [1] - 24:13
Native [1] - 69:22
naturally [1] - 24:3
near [1] - 174:4
nearly [4] - 9:5, 9:6, 9:17, 67:5
necessarily [3] - 86:2, 90:7, 144:15
necessary [1] - 122:15
Neck [6] - 23:21, 23:22,

25:4, 26:15, 29:22,
153:20
need [9] - 40:24, 41:9,
42:16, 64:13, 65:25,
101:2, 110:13, 129:17,
154:6
needs [2] - 105:11, 128:8
negative [1] - 47:13
neighborhoods [1] - 70:5
never [6] - 60:7, 83:4,
83:8, 88:5, 88:11,
171:15
new [10] - 13:18, 42:18,
44:6, 47:7, 49:9, 77:24,
80:21, 85:8, 98:5,
123:21
New [34] - 1:15, 10:21,
11:12, 12:4, 15:23, 18:5,
18:23, 21:12, 21:15,
23:16, 23:17, 42:6, 46:5,
60:25, 70:25, 71:5, 71:7,
72:17, 81:7, 91:18, 92:3,
97:24, 102:17, 103:20,
105:3, 118:14, 124:15,
125:3, 128:20, 129:3,
152:12, 155:8, 165:10,
180:8
NEW [1] - 180:4
Next [1] - 11:5
next [6] - 12:8, 55:13,
116:12, 116:21, 144:14,
178:8
nice [1] - 134:2
nicely [1] - 134:6
nine [5] - 18:22, 47:2,
67:22, 142:8, 142:25
nitpick [1] - 146:22
nobody [3] - 126:8, 126:9,
149:5
non [11] - 7:4, 7:12, 48:10,
60:14, 62:22, 64:9, 67:7,
113:11, 113:15, 133:16,
138:15
non-answer [1] - 138:15
non-disputable [1] - 48:10
non-Hispanic [2] - 113:11,
113:15
non-Hispanic/Black [2] -
60:14, 62:22
non-Hispanic/White [2] -
64:9, 67:7
non-partisan [1] - 7:12
non-profit [1] - 7:4
non-responsive [1] -
133:16
none [8] - 45:19, 81:19,
104:6, 104:7, 104:8,
135:25, 171:6, 173:5
nonpartisan [5] - 166:18,
166:19, 171:19, 172:4,

176:18
north [4] - 31:9, 32:3,
107:22, 125:6
North [20] - 11:3, 11:18,
12:4, 20:25, 23:17,
26:11, 27:23, 29:4, 29:5,
30:12, 30:13, 116:3,
117:24, 140:8, 146:18,
152:14, 157:4, 157:8,
157:19, 159:21
northern [2] - 56:18,
152:13
Norwich [1] - 28:19
Notary [1] - 180:7
note [5] - 6:11, 12:22,
19:7, 24:21, 144:23
noted [1] - 29:20
notes [3] - 58:16, 166:7,
180:11
nothing [5] - 40:23, 50:22,
56:3, 90:22, 91:4
notice [1] - 11:6
notion [1] - 155:24
November [11] - 1:18,
135:8, 135:11, 135:13,
136:14, 136:15, 136:17,
139:2, 177:20, 177:22,
180:17
nowhere [1] - 147:25
number [11] - 18:16,
34:20, 43:13, 115:8,
138:20, 154:12, 157:9,
162:11, 162:19, 163:4,
163:11
numbered [1] - 17:24
numbers [6] - 9:16, 19:5,
53:7, 63:19, 102:23,
159:2
numerous [2] - 7:6, 42:8

O

o'clock [1] - 102:5
O'Connell [5] - 14:10,
14:16, 14:22, 15:6, 15:7
Oaks [1] - 22:18
objection [2] - 89:13,
133:13
objections [1] - 134:23
obligation [2] - 23:24,
65:2
obligations [1] - 62:17
obvious [1] - 47:24
obviously [3] - 34:6, 48:4,
147:6
occasions [1] - 57:15
Oceanside [1] - 27:25
October [1] - 42:18
odd [1] - 154:13

OF [2] - 180:4, 180:5
office [1] - 4:12
officers [2] - 175:16,
175:22
OFFICIAL [1] - 1:22
old [1] - 51:20
Old [4] - 25:4, 28:17,
109:21, 163:20
older [1] - 51:21
once [3] - 55:2, 117:3,
131:17
one [76] - 10:20, 11:14,
15:17, 19:5, 19:7, 20:4,
20:11, 29:11, 30:5, 31:5,
32:5, 34:7, 37:7, 37:18,
42:17, 43:17, 44:19,
45:16, 48:4, 48:5, 48:12,
49:14, 52:10, 56:12,
56:21, 59:10, 60:8,
60:10, 60:20, 67:20,
67:25, 68:20, 69:23,
71:3, 73:23, 74:11,
81:14, 87:11, 90:6,
91:12, 92:10, 92:11,
96:15, 96:25, 98:8,
98:23, 101:7, 106:7,
107:4, 108:12, 109:20,
111:25, 112:13, 117:7,
124:21, 125:21, 127:9,
131:8, 131:12, 131:13,
135:7, 138:23, 142:22,
144:8, 146:21, 154:8,
161:20, 164:9, 166:14,
175:4, 176:19
One [1] - 156:20
ones [1] - 147:24
online [1] - 40:24
opened [1] - 6:20
opinion [6] - 66:7, 70:11,
173:15, 173:16, 173:18,
174:2
opportunities [1] - 107:9
opportunity [4] - 6:9,
17:11, 55:3, 75:22
opposite [1] - 172:18
order [12] - 16:25, 33:10,
56:12, 146:20, 148:13,
174:10, 174:13, 174:17,
174:23, 175:3, 175:18
orderly [1] - 43:14
organization [2] - 171:16,
176:17
orient [3] - 31:3, 31:5,
110:6
orientation [2] - 17:20,
106:15
original [1] - 158:5
otherwise [1] - 16:4
ourselves [1] - 49:16
outburst [1] - 175:4

outcome [3] - 72:12,
99:15, 180:15
outcomes [4] - 48:7, 97:5,
97:19, 99:17
outlier [1] - 99:18
outside [1] - 171:5
overall [4] - 17:4, 18:21,
19:13, 20:19
overlaid [1] - 47:21
overview [2] - 17:22,
50:10
overwhelming [2] - 103:5,
103:17
own [12] - 36:25, 37:5,
80:15, 115:24, 134:22,
143:12, 168:15, 168:16,
168:22, 169:4, 169:20,
176:5
Oyster [7] - 56:18, 123:25,
124:2, 124:11, 126:24,
128:18, 159:21

P

p.m [2] - 1:19, 179:10
Pacific [2] - 68:25, 69:22
pages [3] - 85:14, 98:7,
99:4
paid [1] - 176:6
pain [1] - 43:20
paired [2] - 47:23, 48:11
pairing [1] - 47:23
pairings [1] - 48:15
paper [3] - 81:17, 84:18,
142:11
paragraph [1] - 49:6
Park [17] - 11:3, 12:5,
22:18, 23:16, 23:17,
26:14, 27:24, 28:7, 28:8,
28:16, 29:24, 30:8,
30:18, 30:19, 152:12
part [18] - 13:3, 13:4,
13:15, 44:6, 56:18,
59:25, 71:14, 90:25,
106:10, 120:6, 123:21,
129:10, 132:8, 144:8,
149:13, 152:13, 157:20,
162:16
participate [1] - 154:6
participated [3] - 126:5,
126:6, 126:7
participation [1] - 25:16
particular [11] - 34:24,
36:10, 38:14, 41:20,
79:15, 109:18, 125:21,
155:12, 172:8, 174:19,
176:19
parties [6] - 34:25, 38:15,
44:12, 47:11, 167:24,

180:13 partisan [19] - 7:12, 17:15, 53:11, 53:15, 53:25, 58:9, 73:3, 85:7, 87:2, 89:9, 90:9, 90:14, 90:22, 97:19, 99:8, 102:15, 102:20, 171:15, 176:18 partisanship [3] - 83:3, 97:8, 177:4 parts [3] - 71:16, 93:4, 128:13 party [4] - 17:14, 17:15, 90:6, 176:19 Party [2] - 124:23, 124:24 pass [2] - 43:19, 98:8 passed [4] - 80:25, 81:2, 81:23, 164:9 passes [1] - 81:4 past [9] - 6:22, 9:13, 13:17, 46:3, 48:6, 52:15, 57:16, 68:15, 144:24 pattern [1] - 118:3 patterns [9] - 7:13, 8:4, 11:8, 17:6, 17:7, 46:13, 94:10, 95:21, 97:5 pay [1] - 134:8 payers' [1] - 175:15 paying [2] - 136:4, 172:2 pell [1] - 155:17 pell-mell [1] - 155:17 pen [1] - 142:10 Peninsula [1] - 153:20 people [38] - 8:25, 9:6, 9:11, 9:12, 18:18, 18:20, 38:23, 52:6, 60:7, 64:9, 81:8, 82:22, 89:24, 91:4, 92:10, 92:22, 93:18, 93:24, 107:16, 124:23, 125:18, 126:7, 133:23, 136:4, 139:24, 147:3, 147:4, 150:9, 150:12, 153:19, 155:19, 166:13, 171:22, 172:2, 172:21, 177:18, 178:6 people's [1] - 81:22 per [1] - 29:12 percent [2] - 18:22, 67:23 percentage [2] - 9:19, 53:7 percentages [3] - 10:4, 10:6, 10:19 perfect [1] - 104:11 perfectly [2] - 118:15, 118:16 perform [5] - 7:11, 13:19, 17:9, 70:20, 76:3 performance [2] - 13:16, 21:7 Performance [5] - 13:17, 21:22, 22:13, 22:24,	23:12 perhaps [2] - 65:20, 160:7 period [1] - 101:5 permutation [1] - 81:10 PERNICK [261] - 2:15, 5:17, 34:9, 34:16, 34:19, 35:17, 35:22, 37:19, 38:2, 39:6, 39:21, 41:7, 41:14, 50:6, 50:9, 50:14, 50:19, 50:23, 51:4, 51:8, 51:22, 53:10, 53:14, 53:18, 53:23, 54:4, 54:11, 54:16, 54:25, 55:7, 55:14, 55:22, 56:5, 57:2, 57:6, 57:11, 57:22, 57:25, 58:8, 58:14, 58:23, 59:4, 59:9, 59:13, 59:19, 60:2, 60:9, 60:17, 61:9, 61:16, 62:4, 62:9, 62:14, 63:6, 63:10, 63:18, 63:25, 64:5, 64:10, 66:18, 67:9, 67:15, 67:22, 68:5, 68:10, 68:16, 68:22, 69:7, 69:13, 69:19, 70:15, 70:24, 71:4, 71:24, 72:20, 72:23, 73:6, 74:17, 74:25, 75:11, 75:16, 75:25, 76:6, 76:10, 76:18, 77:5, 77:13, 77:20, 78:6, 78:19, 80:16, 81:25, 82:14, 82:24, 83:6, 83:9, 83:16, 83:21, 84:3, 84:11, 84:19, 84:25, 85:4, 85:13, 85:18, 85:21, 86:3, 87:4, 87:10, 88:2, 88:5, 88:9, 88:17, 88:24, 89:7, 89:16, 90:13, 91:7, 91:17, 92:16, 94:4, 96:24, 97:14, 97:22, 98:4, 98:16, 99:6, 99:12, 99:25, 100:9, 100:15, 100:22, 101:21, 102:10, 104:21, 105:2, 105:13, 105:18, 105:22, 106:8, 106:13, 109:25, 110:14, 110:20, 111:3, 111:10, 111:12, 111:17, 111:23, 112:6, 112:19, 112:24, 113:8, 113:19, 114:3, 114:8, 114:13, 114:19, 115:2, 115:6, 115:13, 117:13, 117:22, 118:19, 119:4, 119:13, 119:18, 120:10, 120:16, 120:22, 121:3, 121:10, 121:19, 122:2, 122:7, 123:8, 123:13, 126:11, 126:21, 127:17, 128:19, 129:2,	129:6, 129:12, 129:19, 129:24, 130:7, 130:12, 130:17, 131:21, 132:3, 132:17, 140:5, 140:12, 140:17, 141:2, 141:12, 141:18, 141:25, 142:13, 142:17, 143:2, 143:8, 143:11, 143:20, 143:25, 144:5, 144:19, 145:5, 145:11, 145:21, 149:6, 149:11, 149:16, 149:20, 149:25, 150:7, 150:11, 150:17, 150:21, 151:3, 151:5, 151:12, 151:16, 152:9, 152:19, 152:23, 153:4, 153:7, 156:3, 156:12, 157:14, 157:24, 158:6, 158:11, 158:18, 158:24, 159:4, 159:8, 159:16, 159:25, 160:5, 160:11, 160:14, 160:19, 160:23, 161:4, 161:8, 161:12, 161:17, 161:22, 161:25, 162:5, 162:10, 162:18, 162:25, 163:7, 163:10, 163:15, 163:19, 163:23 pernick [1] - 66:15 Pernick [3] - 5:16, 37:17, 79:8 person [9] - 15:17, 42:17, 44:19, 52:10, 52:14, 52:16, 74:7, 80:3, 80:24 personally [2] - 60:7, 169:12 perspective [1] - 80:19 Peter [2] - 4:13, 26:20 PETER [2] - 2:5, 2:23 Ph.D [1] - 6:12 phenomenon [1] - 12:10 phrase [1] - 82:12 phraseology [1] - 73:15 picking [1] - 152:15 picks [1] - 81:15 picture [1] - 146:23 piece [5] - 27:7, 30:24, 56:17, 81:16, 125:3 pieces [2] - 84:17, 147:9 pitting [1] - 94:13 Place [3] - 28:15, 32:2, 157:18 place [6] - 92:5, 104:5, 126:4, 159:24, 162:15, 175:7 places [3] - 109:9, 110:23, 157:6 Plainedge [1] - 30:17 Plainview [3] - 25:25, 109:21, 163:20 Plainview/Old [1] - 109:19	Plan [6] - 17:17, 19:15, 57:5, 67:25, 131:19, 132:2 plan [41] - 7:18, 17:2, 18:4, 18:19, 18:25, 19:12, 19:13, 19:16, 19:23, 22:6, 43:7, 44:20, 46:22, 46:23, 46:24, 47:20, 48:10, 48:14, 48:24, 49:6, 49:13, 49:23, 53:13, 54:23, 55:8, 61:8, 63:8, 63:9, 63:19, 63:20, 67:20, 71:14, 129:18, 132:15, 146:14, 156:11, 157:12, 158:5, 162:8, 162:17 Plandome [3] - 26:12, 26:13 Plandome/Manhasset [1] - 152:12 plans [2] - 7:20, 57:12 play [2] - 91:24, 156:8 plays [1] - 93:23 Plaza [1] - 23:21 plugged [1] - 123:5 plus [1] - 87:20 POB [1] - 109:20 pocket [3] - 10:21, 11:2, 12:2 pockets [5] - 10:20, 11:7, 11:11, 11:22, 11:24 Point [4] - 26:11, 26:16, 30:7, 153:17 point [32] - 18:22, 20:21, 41:20, 43:6, 43:10, 51:9, 53:11, 59:6, 64:11, 64:19, 67:23, 71:8, 76:7, 76:23, 77:10, 77:23, 78:22, 80:20, 80:23, 81:11, 81:20, 89:20, 95:3, 96:25, 104:16, 109:23, 117:16, 128:9, 129:11, 131:17, 135:13, 139:12 pointed [3] - 66:16, 171:12, 173:9 pointless [1] - 173:19 points [4] - 81:16, 170:11, 170:13 polarization [10] - 87:9, 88:20, 88:21, 89:9, 89:18, 90:8, 90:9, 90:15, 90:22, 91:3 polarized [23] - 7:14, 8:4, 12:9, 12:15, 12:20, 13:2, 13:8, 13:11, 14:9, 14:23, 17:6, 46:18, 59:20, 86:13, 86:25, 87:2, 87:3, 89:5, 90:16, 90:18, 92:14, 97:7
--	---	--	--

police [1] - 175:21
political [14] - 16:11, 19:17, 19:24, 34:24, 35:3, 38:14, 42:23, 46:9, 47:16, 72:7, 88:19, 89:17, 168:2, 168:17
Political [2] - 6:12, 169:20
politically [4] - 46:18, 61:3, 91:22, 92:13
politicians [1] - 167:23
polling [2] - 168:5, 168:16
Polsby [1] - 19:3
Polsby-Popper [1] - 19:3
Popper [1] - 19:3
populace [1] - 18:7
populated [5] - 114:22, 117:12, 118:7, 121:17, 131:3
population [107] - 8:15, 8:17, 8:25, 9:3, 9:5, 9:10, 9:12, 9:17, 10:4, 10:6, 10:10, 10:14, 10:19, 11:6, 11:12, 11:22, 15:15, 15:21, 17:5, 18:4, 18:6, 18:9, 18:10, 18:14, 18:15, 18:18, 18:19, 18:21, 20:15, 20:16, 20:17, 20:19, 21:5, 21:6, 21:20, 21:21, 22:10, 22:12, 22:21, 22:23, 23:10, 23:11, 24:2, 24:7, 24:8, 40:21, 42:20, 43:25, 44:22, 44:23, 44:24, 45:17, 45:19, 45:21, 51:5, 51:7, 51:12, 51:14, 51:17, 52:18, 52:23, 56:22, 63:13, 63:15, 67:8, 68:9, 68:13, 87:16, 109:10, 110:24, 111:4, 111:22, 111:24, 112:9, 113:12, 113:14, 113:17, 114:12, 114:14, 118:6, 119:2, 119:6, 120:25, 127:23, 129:4, 130:6, 130:9, 130:14, 130:20, 130:23, 140:16, 140:19, 140:25, 141:6, 149:18, 149:21, 149:24, 150:13, 151:4, 151:6, 153:2, 154:6, 154:20, 155:7
populations [10] - 9:9, 10:2, 11:8, 18:11, 42:15, 46:4, 46:8, 46:16, 70:19, 92:3
Port [1] - 26:11
portion [9] - 22:3, 31:7, 31:8, 115:19, 123:24, 124:14, 143:3, 143:4, 143:14

portions [13] - 20:25, 21:14, 22:17, 23:7, 27:25, 28:10, 28:20, 28:23, 29:6, 29:7, 29:13, 30:12, 143:23
position [2] - 77:15, 78:8
positive [1] - 47:13
possession [1] - 38:23
possible [21] - 7:17, 8:10, 16:3, 61:4, 67:17, 76:12, 111:4, 111:7, 111:9, 111:24, 112:7, 112:25, 114:14, 119:5, 119:22, 124:2, 130:8, 130:11, 142:3, 149:21, 151:6
possibly [2] - 43:13, 86:21
potential [1] - 173:11
potentially [2] - 70:12, 92:6
PowerPoint [2] - 25:20, 98:13
practicable [4] - 27:9, 35:6, 48:23, 157:3
practical [1] - 19:19
practice [4] - 43:16, 47:15, 54:19, 146:15
practitioner [1] - 87:16
praised [1] - 125:22
pre [3] - 35:2, 71:18, 72:2
pre-clearance [2] - 71:18, 72:2
pre-existent [1] - 35:2
precedence [2] - 73:23, 73:24
precondition [1] - 61:6
preconditions [4] - 13:4, 60:19, 74:9, 74:12
predict [1] - 48:7
predominant [1] - 12:19
preferences [1] - 12:13
Preferred [1] - 86:22
preferred [15] - 8:9, 13:19, 14:19, 15:10, 21:8, 21:23, 22:13, 22:24, 22:25, 23:13, 46:14, 46:15, 70:21, 76:4, 86:21
preliminary [6] - 83:24, 84:5, 84:13, 85:2, 85:5, 86:6
prepared [6] - 6:6, 58:10, 59:11, 106:9, 108:24, 145:16
preparing [1] - 127:2
present [7] - 4:14, 5:14, 5:20, 14:9, 14:24, 18:12, 139:10
presentation [7] - 4:6, 25:17, 32:23, 50:10, 98:13, 147:7

presentations [1] - 50:17
presented [9] - 41:22, 55:3, 136:23, 136:25, 137:5, 139:11, 145:20, 145:23, 173:23
presenter [1] - 145:4
Preservation [1] - 49:3
preservation [1] - 158:13
preserve [12] - 16:11, 16:17, 19:17, 52:5, 55:23, 76:11, 129:5, 132:13, 140:22, 153:25, 157:2, 157:3
preserved [1] - 127:9
preserves [3] - 49:7, 120:19, 121:7
preserving [15] - 82:5, 82:6, 120:23, 123:15, 124:3, 127:5, 127:10, 127:11, 127:19, 131:3, 141:7, 152:22, 152:24, 158:14, 158:20
President [1] - 42:3
PRESIDENT [1] - 3:7
presume [4] - 77:2, 99:4, 109:14
presumed [1] - 77:3
presuming [2] - 45:10, 84:17
presumption [1] - 60:12
pretty [4] - 74:8, 120:11, 148:7, 160:6
prevent [1] - 45:6
prevents [1] - 47:17
previously [4] - 21:9, 42:21, 97:15, 128:22
primaries [1] - 86:19
primarily [1] - 42:6
primary [4] - 44:18, 46:17, 51:15, 110:25
PRINCIPAL [1] - 3:4
principal [2] - 6:5, 41:25
principle [3] - 16:9, 16:13, 158:20
principles [2] - 24:3, 104:24
printed [1] - 64:4
prioritize [2] - 120:23, 127:5
prioritized [2] - 123:15, 158:13
prioritizing [1] - 121:2
prison [2] - 15:21, 51:7
prison-adjusted [2] - 15:21, 51:7
privacy [3] - 52:4, 52:5, 87:20
private [1] - 7:5
privilege [1] - 136:10
probative [1] - 13:24

problem [1] - 178:22
problematic [1] - 123:23
procedural [1] - 178:4
proceedings [1] - 175:15
process [12] - 15:14, 42:25, 51:18, 52:2, 58:22, 66:7, 101:13, 121:13, 126:20, 127:16, 129:11, 171:21
produce [4] - 54:20, 81:9, 139:4, 139:6
produced [2] - 137:24, 139:10
produces [1] - 43:5
production [1] - 45:5
productive [1] - 147:11
professional [2] - 6:15, 144:2
Professor [1] - 98:6
proffered [1] - 122:19
profit [1] - 7:4
prohibition [1] - 72:5
project [1] - 7:2
projects [1] - 42:7
promote [2] - 43:14, 44:16
proper [3] - 69:8, 69:14, 69:20
properly [1] - 68:24
proposal [6] - 43:24, 103:2, 103:15, 103:16, 104:16, 145:19
proposed [17] - 7:20, 17:2, 18:2, 18:3, 18:19, 19:12, 19:16, 19:22, 36:16, 43:19, 96:9, 99:24, 100:11, 102:8, 102:11, 102:12, 122:19
protected [5] - 72:10, 73:2, 73:8, 73:10, 94:9
Protected [1] - 73:11
proud [1] - 148:24
prove [2] - 90:7, 90:8
proven [1] - 74:15
provide [4] - 7:22, 72:14, 98:12, 138:8
provided [1] - 105:19
provides [1] - 91:10
provision [2] - 27:17, 76:21
provisions [1] - 72:2
Public [1] - 180:7
public [32] - 16:21, 21:15, 29:12, 29:20, 54:21, 55:4, 55:10, 57:8, 57:15, 57:18, 67:11, 105:11, 110:7, 129:7, 129:10, 129:14, 129:15, 135:14, 135:19, 136:4, 136:12, 138:13, 148:16, 148:17, 155:22, 173:2, 175:3,

176:3, 176:10, 178:8,
178:19
published [1] - 15:23
PULITZER [13] - 2:25,
4:11, 4:15, 4:18, 4:21,
4:24, 5:3, 5:6, 5:9, 5:12,
5:15, 5:18, 5:21
purpose [11] - 34:22,
37:21, 38:10, 61:12,
69:3, 69:5, 101:15,
122:16, 136:22, 136:25,
155:25
purposes [2] - 31:13,
150:13
put [16] - 41:19, 52:16,
55:12, 56:12, 56:21,
79:25, 80:4, 96:6,
101:20, 124:12, 124:20,
124:24, 137:24, 150:5,
162:16, 168:14
putting [2] - 41:21, 65:12

Q

quarter [1] - 96:19
questions [41] - 13:10,
32:25, 33:3, 33:4, 39:25,
50:5, 65:7, 65:9, 66:16,
80:12, 93:22, 96:6,
98:23, 99:2, 100:25,
106:10, 110:6, 126:10,
126:24, 132:24, 133:15,
136:11, 138:7, 138:11,
138:12, 139:16, 139:22,
140:3, 146:3, 168:9,
168:22, 171:13, 172:10,
172:11, 173:17, 173:22,
173:24, 177:8, 177:12
quibbling [1] - 87:5
quick [5] - 6:11, 17:20,
20:5, 20:6, 156:23
quite [2] - 24:16, 172:17
quorum [1] - 5:21
quotation [1] - 33:8
quote [8] - 34:10, 36:13,
72:6, 73:11, 91:8, 94:5,
94:8, 97:2
quoted [1] - 97:23
quoting [2] - 82:7, 97:4

R

race [2] - 67:3, 73:13
races [1] - 92:6
RACHEL [1] - 2:19
racial [13] - 12:11, 44:4,
45:2, 70:6, 86:16, 88:21,
89:3, 90:8, 91:3, 91:11,

93:2, 93:16, 93:17
racially [19] - 7:14, 8:4,
12:8, 12:15, 12:20, 13:2,
13:8, 13:11, 14:8, 14:23,
17:6, 59:20, 74:13,
86:13, 86:24, 87:3,
90:16, 90:18, 97:6
Racially [2] - 12:9, 89:5
raising [1] - 94:8
ran [2] - 99:13, 102:13
random [4] - 57:21, 103:5,
103:7, 103:14
randomly [3] - 52:18,
57:9, 99:14
range [2] - 18:19, 18:21
ranged [1] - 15:2
rant [1] - 175:25
rate [3] - 9:13, 9:14, 9:20
rather [7] - 9:2, 88:20,
96:7, 118:22, 139:15,
141:20, 147:12
ratio [2] - 19:21, 35:8
read [10] - 34:17, 37:23,
38:4, 72:19, 85:3, 85:11,
85:14, 92:18, 98:25,
99:4
reading [2] - 24:24, 25:9
real [2] - 65:15, 145:14
really [3] - 33:6, 115:13,
142:6
reason [12] - 44:18, 60:15,
76:2, 85:22, 101:13,
103:23, 115:22, 116:18,
121:20, 122:3, 138:7,
170:25
reasons [7] - 13:25, 51:15,
51:16, 86:4, 87:19,
124:21, 141:3
reassigned [2] - 52:9,
52:22
recalling [1] - 167:4
received [4] - 63:22,
102:4, 103:2, 129:7
recent [4] - 13:25, 56:4,
86:19, 87:21
recently [1] - 67:14
recognize [2] - 49:5,
155:13
recognizing [1] - 70:4
recollection [2] - 34:2,
155:3
record [18] - 25:21, 36:6,
39:14, 65:12, 83:24,
84:6, 84:13, 98:5, 98:11,
101:24, 126:22, 134:19,
136:4, 146:16, 148:19,
149:2, 153:16, 168:15
rectangles [1] - 118:17
red [2] - 20:10, 23:4
redeem [1] - 91:20

redistrict [1] - 104:25
Redistricting [1] - 6:25
redistricting [16] - 15:11,
15:12, 16:9, 16:13, 24:2,
42:5, 42:7, 42:11, 44:18,
47:13, 58:20, 74:6,
105:10, 111:2, 158:19,
167:15
redoes [1] - 145:25
reduce [5] - 26:5, 115:8,
162:19, 163:4, 163:11
reduction [1] - 42:23
refer [3] - 40:24, 73:9,
128:5
reference [1] - 20:10
referenced [2] - 12:18,
148:20
referencing [2] - 27:12,
71:25
referred [1] - 86:10
referring [5] - 70:18, 72:4,
75:17, 99:22, 117:25
reflect [1] - 12:23
reflected [1] - 9:15
regard [1] - 40:10
regarding [5] - 28:12,
29:8, 29:15, 30:2, 30:15
regardless [1] - 82:18
regression [1] - 45:9
regular [1] - 63:14
Reinhardt [1] - 4:16
REINHARDT [5] - 2:6,
4:17, 40:8, 40:15, 40:19
related [1] - 180:12
relates [1] - 171:9
relation [1] - 100:14
relative [1] - 89:2
relayed [1] - 16:21
released [1] - 51:17
relevant [3] - 89:10,
156:18, 159:17
reliable [1] - 88:16
rely [1] - 105:4
remain [4] - 40:23, 42:22,
49:11, 162:23
remains [1] - 32:19
remember [6] - 58:11,
58:18, 58:21, 59:8,
83:15, 166:11
remind [2] - 146:5, 177:18
reminder [1] - 176:3
removed [1] - 175:19
Reock [1] - 19:2
repeating [1] - 173:17
rephrase [1] - 39:3
replaced [1] - 63:3
report [11] - 7:23, 53:19,
53:24, 58:17, 84:20,
85:2, 85:5, 86:6, 87:12,

100:23, 138:18
reported [3] - 51:12,
83:18, 136:24
REPORTER [1] - 1:22
reports [6] - 83:24, 84:6,
84:13, 85:19, 85:23,
173:20
represent [1] - 9:18
representation [2] - 89:20,
103:10
represented [1] - 153:23
Republican [24] - 26:20,
41:23, 53:20, 53:24,
86:15, 90:24, 102:8,
103:16, 124:24, 138:2,
152:4, 165:2, 165:6,
165:18, 166:12, 166:15,
167:7, 167:9, 168:8,
169:5, 171:10, 171:24,
173:21, 176:24
Republicans [5] - 89:22,
99:19, 102:13, 103:4,
165:11
request [5] - 26:5, 55:12,
124:12, 124:16, 153:19
require [5] - 34:3, 42:20,
42:22, 42:23, 45:14
required [8] - 16:13, 34:8,
42:21, 76:14, 91:20,
121:24, 132:15, 162:23
requirement [2] - 32:17,
151:7
requirements [8] - 8:12,
15:18, 17:8, 96:11,
113:4, 119:24, 130:23,
154:17
requires [4] - 34:5, 45:4,
49:4, 76:15
research [1] - 6:17
Research [1] - 15:25
researcher [1] - 153:15
residential [2] - 11:8, 17:5
resounding [1] - 148:25
respect [6] - 93:13,
100:10, 126:23, 158:12,
158:19, 176:8
respectfully [3] - 78:12,
148:17, 175:18
respecting [3] - 123:16,
127:6, 141:8
respects [1] - 7:12
respond [4] - 151:24,
151:25, 168:24, 169:22
responded [1] - 52:6
response [3] - 169:2,
169:24, 177:14
responsive [2] - 133:12,
133:16
rest [1] - 113:16
restate [1] - 60:4

restated [1] - 173:18
restrictive [1] - 154:18
result [2] - 44:4, 72:13
results [5] - 6:10, 12:23, 14:21, 17:14, 48:7
retroactively [1] - 101:10
revealing [1] - 57:19
review [2] - 33:8, 33:15
reviewed [3] - 85:2, 86:7, 98:20
reviewing [1] - 103:16
revised [1] - 178:5
right-hand [1] - 10:15
Rights [22] - 16:24, 36:22, 44:25, 45:3, 45:25, 49:16, 60:16, 61:20, 62:18, 70:13, 70:25, 71:5, 71:7, 72:17, 74:21, 76:20, 91:9, 91:16, 91:18, 92:9, 93:9, 97:24
rights [7] - 6:19, 13:5, 45:6, 70:9, 90:3, 90:11, 92:21
road [10] - 107:21, 108:9, 108:11, 118:22, 143:16, 143:21, 144:6, 144:13, 149:12, 150:22
roads [6] - 107:24, 108:7, 115:23, 118:24, 125:9, 144:14
roadway [2] - 31:20, 31:21
roadways [1] - 31:17
Rock [2] - 23:20
Rockaway [1] - 27:24
Rockville [2] - 22:16, 23:2
role [1] - 156:8
roll [3] - 4:10, 4:12, 145:14
room [3] - 125:17, 155:18, 175:23
Roosevelt [3] - 10:23, 11:15, 22:16
roots [1] - 15:15
Roslyn [5] - 26:14, 28:17, 152:16
Roslyn/East [1] - 163:24
roughly [1] - 124:17
RPV [4] - 64:21, 88:18, 89:11, 89:18
rule [1] - 47:7
Rule [65] - 15:19, 16:14, 18:5, 18:23, 19:18, 19:24, 20:14, 21:10, 21:25, 23:3, 23:15, 24:23, 25:7, 26:8, 26:17, 26:24, 27:4, 27:8, 28:3, 28:12, 29:2, 29:8, 29:15, 30:2, 30:9, 30:14, 30:19, 32:8, 32:15, 33:9, 34:3, 40:11, 42:19, 43:4, 43:12, 43:22, 44:7, 47:8,

48:18, 48:20, 49:2, 49:4, 49:15, 49:25, 54:9, 54:12, 58:6, 70:4, 74:3, 78:2, 78:11, 78:14, 85:9, 91:2, 103:9, 112:5, 112:8, 112:13, 112:16, 118:8, 119:11, 120:2, 120:6, 130:24, 155:11
rules [4] - 43:23, 55:19, 85:8
ruling [1] - 134:22
run [2] - 19:4, 48:3
rundown [2] - 20:5, 20:7
runs [1] - 32:3
Russell [1] - 23:22

S

Saddle [2] - 23:20
safe [1] - 179:7
Salisbury [2] - 21:13, 28:24
sanction [1] - 133:17
Sands [1] - 26:10
sat [1] - 172:25
satisfied [1] - 89:12
satisfy [1] - 151:6
saw [5] - 46:20, 84:23, 85:10, 85:16, 86:23
scale [1] - 10:7
scary [1] - 173:13
Schaefer [23] - 41:24, 42:2, 50:7, 75:19, 82:2, 124:9, 126:12, 133:7, 134:6, 134:10, 135:9, 139:21, 146:10, 147:14, 147:24, 156:3, 164:5, 168:6, 173:5, 176:16, 177:9, 177:16, 178:20
schaefer [1] - 134:24
SCHAEFFER [260] - 3:7, 42:2, 50:8, 50:13, 50:16, 50:21, 51:3, 51:6, 51:11, 51:24, 53:12, 53:17, 53:22, 54:3, 54:8, 54:14, 54:18, 55:6, 55:11, 55:18, 55:25, 56:8, 57:4, 57:7, 57:24, 58:5, 58:11, 58:16, 58:25, 59:7, 59:12, 59:17, 59:23, 60:6, 60:11, 60:18, 61:14, 61:22, 62:8, 62:10, 62:19, 63:7, 63:12, 63:21, 64:3, 64:8, 66:23, 67:13, 67:18, 67:24, 68:8, 68:14, 68:18, 69:5, 69:10, 69:16, 70:2, 70:23, 71:3, 71:10, 72:18, 72:22,

73:2, 73:17, 74:22, 75:9, 75:14, 75:24, 76:5, 76:9, 76:13, 76:25, 77:11, 77:16, 77:25, 80:22, 82:8, 82:21, 83:4, 83:8, 83:13, 83:19, 83:25, 84:8, 84:15, 84:23, 85:3, 85:10, 85:16, 85:20, 85:24, 86:8, 87:7, 87:13, 88:4, 88:8, 88:12, 88:22, 89:5, 89:19, 90:19, 91:14, 91:19, 92:19, 94:18, 95:8, 95:23, 97:12, 97:21, 98:3, 98:24, 99:10, 103:25, 104:23, 105:9, 105:17, 105:19, 106:18, 108:13, 108:17, 108:24, 109:8, 109:14, 110:12, 110:19, 110:21, 111:8, 111:11, 111:15, 111:21, 112:3, 112:11, 112:22, 113:6, 113:10, 113:25, 114:6, 114:11, 114:17, 114:21, 115:4, 115:10, 117:11, 118:4, 118:25, 119:10, 119:25, 120:15, 120:19, 120:25, 121:9, 121:13, 121:24, 123:10, 123:18, 126:18, 127:8, 127:21, 128:24, 129:4, 129:9, 129:16, 129:21, 130:6, 130:10, 130:25, 131:25, 132:7, 135:10, 135:15, 140:11, 140:15, 140:22, 141:10, 141:16, 141:23, 142:8, 142:15, 142:20, 143:6, 143:10, 143:19, 143:24, 144:3, 144:11, 146:13, 149:10, 149:14, 149:18, 149:23, 150:4, 150:10, 150:15, 150:20, 151:2, 151:4, 151:10, 151:14, 152:18, 152:22, 152:25, 153:6, 153:10, 156:11, 156:20, 157:23, 158:4, 158:9, 158:16, 158:22, 159:2, 159:6, 159:11, 160:13, 160:16, 160:22, 161:2, 161:6, 161:11, 161:15, 161:18, 161:24, 162:4, 162:9, 162:14, 162:21, 163:6, 163:9, 163:14, 163:18, 163:22, 164:4, 164:8, 164:13, 164:18, 164:21, 164:24, 165:3, 165:8, 165:12, 165:16, 165:19, 165:22, 166:4, 166:6, 166:17, 166:22, 167:3, 167:8, 167:14, 167:22,

168:3, 168:18, 169:7, 169:10, 169:14, 169:17, 176:21, 177:2, 177:6
Schaefer's [1] - 79:7
SCHAEFFER [1] - 57:14
schedule [1] - 41:17
Science [3] - 6:12, 6:13, 6:14
score [4] - 21:3, 170:11, 170:12, 170:13
scores [2] - 53:15, 53:25
screen [4] - 24:25, 25:8, 100:16, 105:21
screens [1] - 41:21
screw [1] - 125:18
Sea [1] - 25:3
Seaford [1] - 30:12
Seaman [2] - 116:17
Searingtown [3] - 23:18, 28:20, 152:16
second [9] - 16:2, 34:12, 40:9, 52:2, 59:2, 61:17, 104:5, 157:25, 179:2
Second [1] - 8:10
secretaries [1] - 7:6
section [8] - 32:15, 49:12, 72:4, 72:16, 72:21, 72:24, 76:15, 150:7
Section [10] - 43:22, 45:12, 61:7, 61:19, 73:9, 74:8, 91:10, 92:25, 93:6, 93:9
sections [2] - 112:15, 125:12
see [32] - 4:8, 9:4, 9:15, 10:12, 11:10, 13:18, 20:11, 43:18, 45:4, 46:16, 47:22, 66:25, 71:11, 73:22, 86:12, 86:18, 92:7, 92:21, 93:22, 97:3, 105:16, 115:22, 119:21, 124:10, 125:6, 128:7, 128:19, 133:3, 142:24, 145:9, 145:12, 153:22
seeing [2] - 140:10, 152:10
select [1] - 128:4
Senate [1] - 165:10
send [1] - 38:6
sending [1] - 25:15
sense [3] - 68:7, 101:5, 101:9
sentence [2] - 34:12, 34:13
separately [1] - 136:21
series [2] - 13:10, 126:5
serious [1] - 65:21
seriously [1] - 105:18
SESSION [1] - 1:7

session [11] - 105:25, 110:2, 110:3, 137:12, 137:14, 138:6, 145:6, 145:12, 148:14, 148:16	60:24, 96:17, 110:17, 111:7, 112:10, 112:21, 113:2, 113:24, 117:6, 118:21, 118:23, 120:4	93:18, 95:5	starting [15] - 43:6, 43:10, 76:7, 76:23, 77:9, 77:23, 78:22, 80:20, 80:23, 81:6, 81:11, 81:15, 81:20, 104:16, 116:4
set [6] - 7:10, 9:24, 103:14, 146:23, 155:7, 180:16	sit [2] - 174:11, 176:9	Spanish [4] - 92:10, 92:22, 95:14	state [16] - 7:5, 7:6, 7:21, 8:12, 42:10, 42:17, 43:5, 48:21, 50:2, 61:24, 76:21, 93:4, 93:8, 96:11, 119:12, 164:13
sets [1] - 18:12	sitting [4] - 80:5, 124:17, 141:25	speaking [3] - 27:6, 33:20, 168:7	STATE [1] - 180:4
Several [2] - 28:11, 29:24	situation [2] - 65:11, 125:8	speaks [1] - 95:14	State [9] - 15:23, 42:7, 42:12, 46:6, 60:25, 93:13, 155:7, 165:10, 180:8
several [7] - 24:22, 25:5, 25:6, 26:16, 26:22, 28:20, 84:16	six [5] - 33:10, 34:7, 75:10, 117:3, 117:23	special [2] - 7:8, 20:21	states [3] - 18:6, 19:18, 47:8
shaded [1] - 20:10	six-block [1] - 117:23	specific [16] - 58:22, 84:9, 108:3, 112:3, 113:25, 115:7, 115:18, 117:15, 117:16, 117:23, 119:3, 130:16, 130:18, 131:6, 131:13, 131:14	States [1] - 22:6
shading [2] - 10:3, 10:4	sixty [1] - 49:11	specifically [16] - 9:10, 15:20, 16:16, 26:6, 27:5, 27:7, 27:12, 52:14, 72:3, 89:8, 119:8, 132:4, 133:7, 134:10, 150:4, 176:21	statewide [1] - 42:8
SHAEFER [1] - 130:15	sixty-five [1] - 49:11	speculate [2] - 91:25, 96:7	stating [1] - 160:4
shall [13] - 18:8, 19:22, 27:11, 34:21, 35:5, 35:9, 37:20, 43:14, 44:10, 47:8, 72:8, 94:10, 97:8	size [3] - 48:22, 106:6, 147:17	speculative [1] - 93:21	statistic [1] - 12:14
shape [1] - 39:20	sizes [2] - 7:8, 123:22	spend [2] - 107:14, 131:7	statistical [2] - 52:22, 167:23
shaped [1] - 120:11	Skyline [6] - 3:8, 41:25, 42:3, 167:25, 169:17, 169:20	spending [1] - 139:25	statistician [6] - 7:2, 46:11, 53:2, 53:3, 59:24, 74:12
Shapefile [1] - 64:2	Skylinepolitical.com [1] - 168:23	spent [3] - 131:12, 132:9, 132:10	statisticians [1] - 52:3
shapes [2] - 120:8, 123:22	sleeves [1] - 145:15	spiel [1] - 101:24	statistics [1] - 18:3
share [1] - 6:10	slide [2] - 10:12, 39:22	split [29] - 28:4, 28:21, 48:23, 48:24, 56:20, 109:9, 110:23, 111:13, 111:18, 111:19, 114:3, 114:8, 114:10, 127:24, 128:20, 128:22, 129:3, 129:24, 130:2, 130:5, 131:16, 157:7, 161:9, 161:22, 161:25, 162:7, 162:24, 163:12, 163:24	statute [2] - 78:16, 78:17
shifts [1] - 45:19	slides [2] - 20:5, 27:13	splits [13] - 26:5, 27:7, 29:15, 30:2, 30:15, 110:9, 110:15, 115:8, 140:7, 162:11, 162:20, 163:5, 163:11	stay [2] - 76:16, 175:5
short [2] - 83:23, 98:7	slivers [1] - 152:15	splitting [3] - 28:13, 29:9, 114:15	stenographic [1] - 180:11
shorthand [1] - 18:9	small [5] - 52:7, 53:4, 90:5, 155:14, 155:15	spreads [1] - 113:13	steps [3] - 55:23, 74:20, 74:24
shout [2] - 80:13, 117:20	smaller [4] - 17:24, 42:20, 48:21, 88:14	Square [3] - 27:22, 28:2, 28:10	stick [1] - 66:2
show [5] - 8:3, 46:12, 61:21, 61:22, 142:25	smallest [1] - 56:17	squar [2] - 18:22, 94:7	still [5] - 9:18, 76:22, 78:9, 115:19, 170:5
showing [3] - 9:22, 11:20, 20:15	smash [1] - 150:24	squares [1] - 81:19	stop [4] - 133:19, 133:23, 170:11, 174:23
shown [3] - 17:25, 23:4, 173:25	snatch [1] - 151:8	SS [1] - 180:4	Stop [1] - 174:20
shows [2] - 20:8, 46:7	software [3] - 47:4, 50:11, 50:15	stage [2] - 54:18, 126:20	straight [3] - 103:18, 118:15, 131:15
shuffled [1] - 52:7	sole [1] - 7:2	standing [1] - 124:18	strategy [1] - 136:7
sic [1] - 14:17	solved [1] - 93:12	start [6] - 5:25, 79:11, 82:9, 86:3, 104:5, 117:19	Stream [17] - 11:3, 11:4, 11:18, 20:25, 21:2, 140:8, 140:13, 140:20, 141:3, 141:14, 141:20, 142:5, 144:20, 146:6
side [27] - 10:15, 10:17, 11:17, 11:24, 12:3, 20:13, 116:6, 116:9, 116:10, 116:13, 116:14, 116:19, 116:20, 116:24, 117:4, 117:7, 117:8, 142:24, 146:21, 153:21, 171:24, 177:12, 178:5	someone [3] - 45:11, 95:5	started [7] - 42:5, 57:9, 57:20, 104:10, 104:11, 117:20, 121:14	Stream/Elmont [3] - 143:3, 143:14, 143:22
sides [2] - 136:20, 176:4	sometime [1] - 139:2		street [11] - 116:6, 116:9, 116:11, 116:24, 117:7, 117:8, 118:11, 119:3, 120:4, 154:24
significant [5] - 9:8, 43:3, 67:10, 99:19, 129:7	somewhere [2] - 57:13, 155:5		street's [2] - 116:19, 116:20
similar [3] - 11:7, 14:21, 154:10	soon [2] - 81:3, 116:8		strike [2] - 133:12, 134:19
simple [3] - 80:17, 122:2, 155:15	sorry [8] - 25:16, 31:24, 37:3, 39:6, 60:4, 95:18, 96:12, 136:11		strong [1] - 153:19
simply [1] - 80:10	Sorry [1] - 116:13		strongly [1] - 62:11
simulated [7] - 99:14, 102:23, 102:24, 102:25, 103:6, 103:7, 103:14	sort [4] - 11:23, 53:15, 53:25, 125:8		Strumwasser [1] - 6:23
simulation [2] - 99:13, 102:22	sound [3] - 78:20, 80:8, 157:21		Stuart [2] - 28:8, 157:16
simulations [1] - 103:8	sounds [3] - 104:21, 115:3, 119:13		
single [14] - 20:2, 29:17,	south [4] - 10:22, 107:22, 116:3, 116:5		
	South [9] - 11:2, 11:4, 21:13, 22:16, 28:7, 28:9, 30:17, 92:4, 93:19		
	southern [3] - 31:7, 31:8, 40:18		
	southwest [1] - 160:22		
	Spain [4] - 92:5, 92:11,		

stuff ^[1] - 65:12
stupid ^[1] - 107:19
sub ^[1] - 91:12
subdivision ^[1] - 72:8
subdivisions ^[5] - 16:12, 17:25, 19:17, 19:25, 35:3
subgroup ^[1] - 94:21
subgroups ^[7] - 75:6, 94:9, 94:19, 95:3, 95:7, 95:10
subject ^[26] - 19:25, 20:13, 21:10, 21:24, 23:3, 23:14, 24:22, 25:6, 26:8, 26:16, 26:24, 26:25, 27:3, 27:15, 28:2, 28:11, 29:2, 29:7, 29:14, 29:25, 30:8, 30:14, 40:11, 40:20, 70:12, 122:21
subjective ^[3] - 43:8, 54:22, 167:16
submit ^[2] - 24:18, 25:20
submitted ^[6] - 48:14, 59:15, 83:23, 84:5, 84:12
submitting ^[1] - 135:20
subsection ^[1] - 37:23
subsections ^[1] - 91:12
substantive ^[1] - 50:22
substantial ^[2] - 70:18, 77:7
substantially ^[1] - 19:13
Substantially ^[1] - 67:19
Success ^[2] - 12:4, 23:18
sue ^[2] - 60:16, 172:14
sufficient ^[2] - 14:18, 15:9
sufficiently ^[1] - 60:22
Suffolk ^[1] - 108:21
suggested ^[1] - 56:3
suggesting ^[1] - 26:3
suggestion ^[1] - 137:15
suggestions ^[4] - 137:18, 139:17, 151:22, 152:8
suit ^[1] - 45:11
Sullivan ^[3] - 166:8, 166:25, 167:4
Summary ^[1] - 7:25
summation ^[1] - 49:13
support ^[5] - 8:6, 14:13, 15:2, 15:7
supported ^[2] - 14:12, 14:17
supposed ^[2] - 105:24, 110:2
surprise ^[3] - 99:9, 99:21, 109:3
survey ^[1] - 51:24
switching ^[1] - 117:7
Syosset ^[4] - 11:25, 29:11, 29:17, 163:16

system ^[1] - 125:13

T

table ^[1] - 20:15
TAKEN ^[1] - 1:22
Task ^[1] - 15:24
tax ^[1] - 175:15
tech ^[1] - 6:14
TEMPORARY ^[1] - 1:3
ten ^[17] - 45:15, 46:10, 56:15, 58:22, 58:24, 81:2, 83:20, 93:23, 101:6, 101:17, 101:18, 124:16, 125:12, 156:7, 164:6, 165:16, 167:2
Ten ^[1] - 166:6
tend ^[1] - 90:5
tenth ^[1] - 142:21
term ^[1] - 26:22
Terrace ^[1] - 28:7
territory ^[1] - 156:24
test ^[1] - 19:11
testified ^[2] - 42:9, 154:4
testimony ^[29] - 16:22, 21:15, 22:4, 26:3, 29:12, 29:21, 41:24, 43:9, 54:22, 55:4, 55:10, 56:4, 57:9, 104:8, 125:10, 126:4, 126:14, 126:15, 126:25, 129:8, 129:10, 129:14, 129:15, 130:4, 156:5, 156:17, 156:18, 173:3, 178:7
tests ^[2] - 19:3, 19:4
text ^[1] - 41:10
themselves ^[1] - 155:6
theory ^[1] - 147:19
there'd ^[1] - 60:15
there'll ^[1] - 133:18
therefore ^[4] - 38:22, 93:8, 104:18, 113:14
Thomaston ^[1] - 23:21
Thornburg ^[1] - 13:7
thousand ^[1] - 42:13
three ^[31] - 9:24, 10:7, 18:22, 28:2, 34:12, 48:11, 48:25, 49:19, 51:20, 74:9, 93:7, 99:16, 109:15, 111:13, 111:18, 111:20, 120:13, 120:18, 121:6, 121:11, 121:20, 122:8, 126:17, 141:2, 158:2, 158:8, 159:6, 159:10, 162:10, 162:12, 163:12
thrown ^[1] - 175:8
timeline ^[4] - 129:13, 129:16, 129:17, 129:20

tiny ^[1] - 151:8
today ^[11] - 41:6, 50:10, 67:6, 84:23, 85:11, 86:7, 98:20, 129:22, 129:23, 145:16, 176:9
together ^[16] - 21:16, 52:8, 101:20, 124:25, 125:14, 128:21, 130:4, 130:8, 130:13, 135:3, 135:5, 145:13, 163:17, 163:21, 178:13
tone ^[1] - 172:10
tonight ^[3] - 6:9, 136:23, 137:2
took ^[9] - 24:3, 32:18, 40:6, 52:20, 102:3, 104:7, 104:8, 126:4, 159:24
total ^[7] - 15:21, 18:15, 20:15, 32:14, 44:2, 44:21, 51:5
touch ^[1] - 159:9
touches ^[1] - 104:19
Town ^[9] - 152:13, 157:17, 157:18, 164:24, 165:2, 165:6, 165:14, 165:15, 165:18
town ^[13] - 123:16, 124:3, 124:5, 125:3, 125:6, 127:6, 127:10, 127:19, 127:25, 128:16, 158:14, 158:20, 158:22
town's ^[1] - 159:15
Towns ^[8] - 29:19, 160:12, 160:15, 160:21, 160:24, 161:5, 161:9, 161:13
towns ^[21] - 19:20, 27:10, 33:13, 35:4, 35:7, 42:8, 42:13, 44:14, 108:5, 120:14, 120:18, 121:6, 121:12, 121:21, 122:8, 126:17, 158:2, 158:8, 159:5, 159:6, 159:9
tracks ^[2] - 73:15, 73:17
traditional ^[2] - 16:8, 16:12
traditionally ^[1] - 86:12
transcription ^[1] - 180:10
tremendous ^[1] - 176:8
trial ^[2] - 122:25, 137:3
triangle ^[2] - 124:10, 126:23
tried ^[4] - 10:17, 76:10, 114:21, 119:10
trillion ^[1] - 81:13
trillions ^[1] - 104:3
trip ^[1] - 80:17
Troiano ^[5] - 124:13, 125:22, 148:21, 148:24, 149:2

true ^[2] - 57:20, 97:21
truly ^[1] - 172:3
trust ^[2] - 87:25, 97:12
try ^[9] - 41:10, 110:5, 111:10, 112:20, 113:9, 114:20, 152:6, 160:8, 162:19
trying ^[10] - 79:24, 80:4, 80:17, 94:5, 97:2, 122:25, 134:4, 139:15, 156:14, 170:11
turn ^[3] - 122:25, 152:9, 157:15
turns ^[1] - 80:11
twenty ^[1] - 173:19
two ^[32] - 11:22, 13:21, 14:8, 46:16, 48:2, 48:12, 51:15, 56:11, 58:21, 73:21, 80:22, 84:12, 85:13, 86:14, 86:16, 87:19, 92:10, 95:11, 98:7, 98:23, 99:4, 100:12, 106:7, 136:20, 140:2, 150:8, 150:12, 154:5, 154:22, 159:6, 161:7, 175:16
typically ^[1] - 8:8

U

U.S ^[2] - 7:3, 15:16
Ulster ^[1] - 166:12
ultimately ^[2] - 59:10, 91:6
unable ^[1] - 8:19
unanimously ^[1] - 138:8
unclear ^[1] - 46:6
unconsciously ^[1] - 47:18
under ^[33] - 13:18, 14:4, 27:2, 32:7, 42:14, 45:12, 45:25, 48:22, 49:2, 49:11, 60:12, 60:16, 61:7, 61:8, 61:19, 62:17, 63:12, 63:14, 65:8, 70:2, 70:3, 76:20, 76:21, 78:10, 85:8, 91:12, 93:8, 95:25, 97:22, 97:24, 130:24, 173:12
underneath ^[1] - 20:9
understood ^[2] - 32:16, 35:16
undo ^[1] - 48:13
undone ^[1] - 48:15
unfortunate ^[3] - 115:14, 145:9, 145:17
unfortunately ^[1] - 134:14
unidentified ^[1] - 148:9
unifies ^[2] - 23:6, 29:19
unify ^[2] - 22:4, 161:13
Uniondale ^[12] - 10:23,

11:15, 21:13, 111:13,
111:18, 111:19, 111:25,
112:9, 112:20, 113:2,
113:20, 113:23
United [1] - 22:6
universally [1] - 12:22
University [2] - 6:18,
23:19
unkind [1] - 172:23
unlawful [3] - 76:20,
76:25, 80:20
unlike [1] - 56:15
unpack [1] - 82:4
up [35] - 9:24, 11:2, 33:6,
41:19, 41:21, 80:17,
87:25, 96:14, 104:14,
112:11, 119:14, 119:20,
119:22, 125:6, 128:20,
128:23, 129:3, 129:11,
129:25, 130:3, 130:5,
132:2, 132:16, 140:7,
145:14, 146:25, 147:23,
147:24, 149:8, 150:24,
151:8, 152:13, 152:15,
157:17, 178:14
update [1] - 55:9
uphold [1] - 133:13
uploaded [2] - 50:24,
53:15
Upstate [1] - 118:14
usual [1] - 101:24

V

Valley [20] - 11:3, 11:4,
11:18, 20:25, 21:2,
140:8, 140:13, 140:20,
141:3, 141:14, 141:20,
142:5, 143:3, 143:13,
143:22, 144:20, 146:6
VAP [2] - 51:9, 51:11
various [1] - 167:23
verbal [2] - 169:2, 169:24
version [6] - 55:13, 57:3,
98:5, 98:20, 115:15,
121:22
versus [3] - 56:13, 56:21,
86:15
via [2] - 31:16, 120:25
VICE [2] - 2:11, 3:7
Vice [1] - 42:3
view [1] - 139:9
viewed [1] - 104:6
viewing [1] - 24:25
village [18] - 40:16, 40:18,
56:21, 108:17, 108:20,
108:22, 109:4, 109:6,
109:12, 109:22, 113:16,
123:20, 123:21, 141:8,

152:25, 156:25, 162:22
Village [7] - 22:4, 22:5,
110:10, 110:15, 110:17,
111:6, 113:13
villages [36] - 19:19, 27:9,
33:13, 35:4, 35:6, 42:22,
44:14, 48:21, 48:24,
49:11, 55:25, 56:10,
56:11, 56:14, 56:19,
76:16, 109:15, 110:22,
110:23, 121:16, 123:20,
127:25, 131:4, 131:16,
132:11, 140:23, 140:24,
147:21, 147:22, 155:13,
156:23, 157:2, 157:3,
157:5, 157:10
VINCENT [1] - 2:22
violated [1] - 27:16
violation [4] - 32:14,
36:22, 37:8, 72:15
violations [1] - 13:6
voices [3] - 33:18, 89:24,
148:18
voluntarily [1] - 176:5
vote [9] - 8:5, 8:7, 42:17,
49:9, 72:6, 89:3, 90:6,
91:11, 148:21
vote' [2] - 15:17, 44:19
voted [5] - 64:25, 138:8,
148:24, 149:2, 155:19
voter [1] - 86:25
voters [18] - 8:5, 8:7, 8:19,
14:12, 14:14, 14:16,
14:25, 15:3, 15:6, 17:10,
61:11, 62:16, 64:24,
70:21, 73:12, 75:22,
76:4
voters' [1] - 13:13
Voting [22] - 16:23, 36:22,
44:25, 45:3, 45:25,
49:16, 60:16, 61:20,
62:17, 70:13, 70:25,
71:5, 71:7, 72:17, 74:21,
76:20, 91:9, 91:16,
91:18, 92:9, 93:9, 97:24
voting [72] - 6:19, 7:14,
8:4, 8:15, 8:16, 10:13,
10:18, 11:5, 11:12,
11:21, 12:9, 12:10,
12:11, 12:16, 12:20,
12:24, 13:2, 13:5, 13:9,
13:11, 14:9, 14:14,
14:18, 14:23, 15:3, 15:8,
17:6, 20:16, 20:17, 21:5,
21:6, 21:19, 21:21,
22:10, 22:11, 22:21,
22:22, 23:10, 23:11,
24:6, 24:8, 45:17, 45:20,
46:8, 46:12, 51:11,
51:13, 51:16, 59:20,

60:14, 61:4, 63:12,
63:15, 68:9, 68:12, 70:9,
74:13, 74:14, 86:13,
86:14, 87:15, 89:6,
90:17, 90:18, 94:10,
95:21, 97:4, 97:7, 97:19,
135:8, 136:16, 136:17
VRA [1] - 73:15
VRA's [1] - 84:21

W

wait [2] - 71:11, 95:16
waiting [2] - 137:7, 137:25
walk [2] - 20:22, 115:24
walked [1] - 125:16
wall [1] - 56:19
Wantagh [2] - 29:6, 30:12
wants [2] - 135:4, 138:13
warranted [1] - 65:5
Washington [1] - 26:11
watching [1] - 110:8
water [11] - 16:6, 16:7,
108:15, 125:13, 144:16,
146:11, 149:8, 149:22,
150:22, 150:23, 151:8
ways [1] - 49:24
weeks [1] - 84:17
weight [1] - 19:9
welcome [2] - 170:21,
171:10
well-defined [1] - 94:23
west [3] - 10:25, 11:17,
11:23
West [2] - 22:3, 22:18
Westbury [9] - 10:21,
11:13, 21:13, 21:16,
21:24, 28:17, 128:20,
129:3, 157:18
western [1] - 12:2
whack [1] - 41:18
WHEREOF [1] - 180:16
whispering [1] - 134:8
white [3] - 8:7, 14:16,
92:17
White [10] - 9:3, 9:5,
14:16, 14:18, 15:6, 15:8,
67:23, 89:25, 92:6
WHITMORE [1] - 2:19
Whitton [1] - 153:24
whole [38] - 8:23, 21:25,
23:4, 26:18, 28:5, 28:13,
28:22, 30:3, 30:9, 32:6,
42:22, 46:24, 48:22,
49:11, 56:10, 76:16,
85:12, 85:14, 89:19,
93:8, 95:3, 110:22,
111:5, 113:23, 121:16,
130:19, 130:22, 131:22,

132:5, 132:11, 140:24,
141:20, 142:5, 147:22,
153:2, 157:5, 162:23
widely [1] - 88:10
wife [1] - 95:14
Williston [2] - 28:16
win [1] - 48:5
wins [1] - 21:23
wish [1] - 5:24
WITNESS [1] - 180:16
witness [6] - 100:25,
103:22, 133:2, 145:3,
170:12, 178:7
witnesses [1] - 133:19
won [4] - 21:8, 22:14,
22:25, 23:13
wonder [1] - 26:21
wondered [1] - 36:14
wonderful [1] - 6:2
wondering [3] - 73:20,
92:2, 138:17
Woocher [1] - 6:23
Woodbury [3] - 29:11,
29:17, 163:16
Woodmere [1] - 29:23
Woodsburgh [1] - 29:23
word [5] - 111:15, 114:6,
128:24, 130:2, 149:14
words [2] - 34:11, 80:4
WORK [1] - 1:7
works [1] - 102:21
worse [2] - 162:13, 162:14
written [1] - 7:23
Wyatt [1] - 5:10
WYATT [2] - 2:13, 5:11

Y

year [5] - 42:18, 51:19,
58:7, 155:10, 159:22
years [23] - 9:14, 45:15,
46:11, 54:14, 56:15,
58:18, 58:22, 58:24,
81:2, 83:20, 93:11,
93:23, 101:6, 101:17,
101:18, 124:16, 125:12,
142:14, 156:7, 164:6,
165:16, 166:6, 167:2
yelling [1] - 133:22
yesterday [3] - 63:23,
102:4, 103:3
YORK [1] - 180:4
York [22] - 1:15, 15:23,
18:5, 18:23, 42:6, 46:5,
60:25, 70:25, 71:6, 71:7,
72:17, 81:8, 91:18, 92:3,
97:24, 102:17, 103:20,
105:3, 118:14, 155:8,
165:10, 180:8

yourself ^[3] - 98:22, 126:3,
170:5

Z

zero ^[4] - 19:5, 115:3,
115:4, 153:3
zigzag ^[1] - 118:3
zigzagging ^[1] - 118:22
Zoom ^[1] - 106:9
zoom ^[10] - 10:17, 105:15,
105:22, 105:25, 106:3,
106:4, 110:4, 115:14,
115:18, 145:14
zoomed ^[3] - 108:3,
115:15, 143:11
zoomed-in ^[1] - 115:15

“

“aye.” ^[1] - 179:6

O

° ^[4] - 179:12