

EXHIBIT J

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4
5 WASHINGTON STATE REPUBLICAN)
PARTY, et al.,)

6 Plaintiffs,)

NO. CV05-0927-JCC

7 WASHINGTON STATE DEMOCRATIC)
8 CENTRAL COMMITTEE, et al.,)

9 Plaintiff Intervenors,)

10 LIBERTARIAN PARTY OF)
WASHINGTON STATE, et al.,)

11 Plaintiff Intervenors,)

12 vs.)

13 STATE OF WASHINGTON, et al.,)

14 Defendant Intervenors,)

15 WASHINGTON STATE GRANGE,)
16 et al.,)

Defendant Intervenors)

17
18 DEPOSITION UPON ORAL EXAMINATION OF PAUL BERENDT
19

20
21 Friday, August 6, 2010
22 Olympia, Washington
23
24
25

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1 BE IT REMEMBERED that on Friday, August 6, 2010,
2 at 10:09 a.m. at 1125 Washington Street SE, Olympia,
3 Washington, before DIXIE J. CATTELL, Notary Public in and
4 for the State Washington, appeared PAUL BERENDT, the
5 witness herein;

6 WHEREUPON, the following proceedings were had,
7 to wit:

8

9 PAUL BERENDT, having been first duly sworn by
10 the Notary, testified as follows:

11

12 EXAMINATION

13 BY MR. PHARRIS:

14 Q Mr. Berendt, can you state your name for the record,
15 please, and spell your last name?

16 A Yes, my name is Paul Berendt, and my last name is spelled
17 B-E-R-E-N-D-T.

18 Q Mr. Berendt, have you had your deposition taken before?

19 A I have.

20 Q Okay. So just for brief explanation, the purpose of this
21 is to exchange information about the case, what the claims
22 are on both sides for possible use in the trial and in
23 other proceedings. The reporter will make a transcript,
24 and if anyone orders it, it will be furnished to you first
25 to correct, you know, misquotes, obvious errors, things

1 like that.

2 If you don't understand a question, please ask for
3 clarification. If you don't know the answer, it's
4 perfectly okay to say that or to say what part of the
5 answer you can give and what part you can't.

6 Your answers need to be spoken aloud so the court
7 reporter can hear them and they can go on the record, so
8 gestures and body language aren't enough, and I'll try to
9 remember to tell you that and follow the same rule myself.

10 The attorneys may object just to make a record, but
11 unless they instruct you not to answer, the procedure will
12 be go ahead and answer the question anyway, and we'll work
13 out the issue with the objection later if we need to.

14 And the only other thing is if you need to take a
15 break, please let me know and the bathroom is right around
16 the corner down the hall, and we can let you know where
17 that is.

18 A Okay.

19 Q Mr. Berendt, are you a resident of the state of Washington?

20 A I am.

21 Q Okay. What city and county do you live in?

22 A I live in Olympia and Thurston County.

23 Q How long have you lived in Washington?

24 A My entire life.

25 Q Okay. Do you regularly vote in state elections?

1 A I -- yes, I do.

2 Q Okay. You say you've been a resident your entire life.

3 Have you been pretty much voting your entire adult life?

4 A I registered when I was 17 and a half anticipating my 18th
5 year, and I've -- I can't think of an election I've missed
6 in voting.

7 Q What's your educational background, Mr. Berendt?

8 A Well, I have a -- I graduated from Cusick High School in
9 Northeastern Washington and attended Eastern Washington
10 University for a time and graduated from the Evergreen
11 State College with a degree in the liberal arts.

12 Q Okay. What's your work history? What jobs have you held
13 and sort of --

14 A Well, I've worked since I was a teenager. I worked on
15 farms when I was a kid, and then I worked for Safeway from
16 the time that I was a junior in high school until I left
17 Eastern Washington University in 1979.

18 In 1980 -- late '79 through '82 I worked for the
19 Washington State Democratic Party first as an intern and
20 then as a -- kind of an entry-level staff person. And
21 after that, I came to Olympia. I worked for the House of
22 Representatives for over four years, took a break to work
23 on campaigns. I managed a statewide election campaign.
24 And then I worked for the Senate for over four years, the
25 State Senate. I had -- was elected the State Democratic

1 Party chair in 1995 and served in that capacity through
2 January of 2006.

3 And I have for the last four -- four-plus years I've
4 worked for a consulting firm, Strategies 360, which is a
5 Northwest firm.

6 Q Okay. Would you describe briefly what your consulting firm
7 does, what type of work?

8 A Well, Strategies 360 does primarily state/federal advocacy.
9 It consults utilities, cities in the State of Washington,
10 many private businesses. The -- it's primarily what I
11 would say government relations, crisis management,
12 communications. We do some political activity if a client
13 is interested in a political activity, but I think one of
14 the misperceptions about our firm is that it is not
15 primarily a political action -- or a political consulting
16 firm.

17 Q Okay. So, does your firm do any actual, like, management
18 of political campaigns?

19 A Well, it has consulted on some campaigns, but that's not
20 its primary focus.

21 Q For instance, this is an election year. Do you have any
22 campaigns you're consulting on right now?

23 A Well, there is -- the firm is consulting on Initiative
24 1105.

25 Q Okay.

1 A The Yes, Yes on 1105.

2 Q Okay. So when you say consulting, that could be a broad
3 term. What sorts of things are you consulting? What sort
4 of -- what types of services are you providing to the
5 campaign?

6 A Well, the firm consulted on the signature-gathering effort
7 and helped to provide consultation on how to go about that
8 effort. It has consulted on polling, you know, that is
9 being conducted. It has produced, oh, flyers and
10 informational material for the campaign and it has --
11 there's been a communications component.

12 Q Okay. During this election cycle, are you consulting with
13 any candidates?

14 A I am not. And the firm isn't either.

15 Q Have you in the past in other campaigns?

16 A I have.

17 Q Okay. Does your firm do any lobbying?

18 A Yes.

19 Q What types of --

20 A Well, it's a big firm and we have six offices, one in
21 Washington, D.C. and throughout the Northwest offices. And
22 the things that I've personally been involved in have
23 been -- included, I've lobbied for Jefferson County on the
24 abandonment of a road that they have, and for Tetra Tech in
25 Jefferson County to try to get a sewage treatment plant

1 located in Jefferson County.

2 Oh, it's been quite a variety of things that -- we
3 have people who are registered -- I'm registered as a
4 lobbyist for Apple computers, for instance. They have --
5 although I've frankly done very little lobbying, but I'm
6 registered to represent them. They have an interest in
7 education software programs in the State of Washington.

8 We -- some of my colleagues do energy work. I think
9 the firm probably is primarily known as kind of -- well, is
10 heavily known as an energy expert in the region, as
11 examples.

12 Q You say it's a fairly large firm. About how many employees
13 does it have?

14 A I believe between 30 and 35 employees.

15 Q And you work out of Olympia here?

16 A I work primarily out of Seattle, but I typically work in
17 Olympia out of my home on Fridays.

18 Q How many employees are there in the Seattle office?

19 A Over 15. Around 15.

20 Q All right. I believe you testified a few minutes ago that
21 you were the chairman of the -- or chair of the Washington
22 State Democratic Party; is that correct?

23 A That is correct.

24 Q And I believe you said that the years were 1995 to 2006 --

25 A That is correct.

1 Q -- is that correct?

2 Have you held any other positions as a party officer?

3 A Well, I had -- I have been a Precinct Committee Officer for
4 several years. Prior to being the party chair, I was the
5 State Committee Man from Pend Oreille County. When my
6 father passed way, he had been a State Committee Man, and
7 the party elected me to take his place. Those are the ones
8 that come to mind.

9 Q Do you currently hold any office in the state Democratic
10 Party?

11 A I'm a Precinct Committee Officer.

12 Q Mr. Berendt, did you review any materials to prepare for
13 this deposition?

14 A Well, I read the charter. I have -- I examined several
15 documents pertaining to the US Supreme Court case, just
16 to -- out of -- out of great interest, actually.

17 Q By documents, for instance, would that include the Supreme
18 Court decision in the case? Did you read that?

19 A I didn't read it in its entirety, although I did review a
20 couple of things.

21 Q So when you said documents related to it, what did you
22 read --

23 A Oh, my goodness.

24 Q -- or glance at?

25 A Well, I -- there were -- oh, gosh. Forgive me for not

1 being a lawyer, so I'm not even sure how to term a number
2 of these documents, but it seemed to me that I reviewed
3 depositions that had been taken and some of the court
4 filings that had been made by the party.

5 Q All right. So, Mr. Berendt, you probably do remember this.
6 There was a previous case involving the Democratic and
7 Republican and Libertarian parties and the State and the
8 Grange involving the Blanket Primary; is that correct? Do
9 you remember that case?

10 A Yes, um-hmm.

11 Q And there were depositions taken in that case. Is that
12 what you're referring to?

13 A That was -- yes, I believe that is what I was referring to,
14 yes. I'm sorry, I -- we've been involved in several cases,
15 and so all of these kind of gel -- meld together, and so
16 it's been a few years since I looked at the documents I
17 had, and so I just kind of -- when I was home, I reviewed
18 my files and reviewed the documents that were there and --

19 Q That's fine.

20 A Yeah.

21 Q I can tell you that they meld together for the rest of us
22 too, so it's not surprising.

23 Mr. Berendt, with respect to the time that you were
24 the chair, and if you have knowledge, even the time since
25 then, does the Democratic State Party have an official

1 platform?

2 A Oh, of course. Yes, it does.

3 Q Okay. Yes, it does. And how is that developed?

4 A Well, it's -- it is -- in a presidential year precinct
5 caucuses would be held throughout the state. The -- there
6 would be perhaps resolutions passed from the precinct
7 caucus on to the county or the legislative district. They
8 would have a platform development process. And they would
9 then adopt their local stands, and those documents and
10 materials would be forwarded to the state. And each of
11 the -- each of the legislative districts in the state elect
12 a platform committee member to the state platform committee
13 as outlined in our rules. And then the state platform
14 committee would meet consisting of these representatives
15 from throughout the state who bring their materials and
16 they would meld this all together for a common document.

17 I think I should say that the platforms are developed
18 through -- through rules established by the Democratic
19 Party, and so there's a formal process to the development
20 of the platform.

21 Q Okay. And how often is a new platform adopted?

22 A Every two years.

23 Q Two years. And am I correct that's in connection with the
24 state convention?

25 A It is. It is -- it is adopted at the state convention;

1 that is correct.

2 Q Is there also a national Democratic platform?

3 A There is, and that's adopted during the presidential year,
4 and it's only adopted once every four years.

5 Q Okay. And then local parties, do they have platforms also?

6 A Yes, they do.

7 Q Okay. How are those developed?

8 A It's a part of the same process in that precinct caucuses
9 are held during presidential election years. From those
10 precinct caucuses delegates are elected and resolutions are
11 passed, and each precinct delegate goes to the county
12 convention or the legislative district caucus and brings
13 that -- the messages that they've heard at that local level
14 to that body, and they adopt -- they meld this material
15 together and they adopt it.

16 It too is -- those two are guided by rules
17 established by the local parties for the development of
18 their platform.

19 Q Mr. Berendt, to your knowledge, does the party require its
20 offices to subscribe to or agree with the state platform?

21 A Could you repeat that question, please?

22 Q To your knowledge, does the Washington State Democratic
23 Party require its officers, such as the chairman, other
24 officers, to subscribe to or agree with the state platform?

25 A Well, I don't know what you mean by subscribe, but the

1 platform -- the officers of the party as members of the
2 party agree to support the principles of the Democratic
3 Party. And so there is a belief that -- that they would
4 largely subscribe to the elements of the platform.

5 Q When you say largely, does that mean there conceivably
6 could be a plank in the platform that a particular officer
7 doesn't happen to agree with?

8 A You know, I couldn't speak to anyone but myself. At the
9 time I was the chair, I worked very diligently to support
10 all of the planks of the Democratic platform. When the
11 press would call me, I supported those planks.

12 An example is that the party in a Spokane convention
13 several years ago passed a resolution in support of
14 legalizing marijuana, and while this was something that
15 was -- some people may have not personally agreed with, I
16 was happy to advocate for that position.

17 Q Does the party require candidates seeking the party's
18 support for public office to support the platform?

19 A Well, as members of the Democratic Party, they have an
20 obligation to support the goals and the principles of the
21 Democratic Party. And insofar as they've agreed to, you
22 know, be members of the party, they have an obligation to
23 support the goals and principles of the Democratic Party.

24 Q Okay. That's a rather general statement. Let's take an
25 example of the one you gave in the former platform in which

1 there was a resolution. I believe you testified to support
2 the legalization of marijuana. To your memory, in that
3 year or during the time that that was the state platform,
4 did you require all candidates in Washington as a condition
5 to maintaining their status as candidates of the party to
6 support that -- that point?

7 A I supported it. I didn't make any edicts about it one way
8 or the other, and frankly it wasn't an issue, so had it
9 become an issue, I may have educated members to the party's
10 position on the issue. One thing I did as party chair is I
11 always mailed our platforms to all candidates, at least for
12 the Legislature and federal office and -- and I asked them
13 to read it and become familiar with it and support it.

14 Q You mentioned a couple of times that the candidates -- and
15 I think you said this would reflect the officers too --
16 are, you know, are pretty much -- are expected -- I don't
17 want to put words in your mouth -- you correct me if I'm
18 wrong, but that they're expected to follow the principles
19 of the Democratic Party. Do those principles -- are those
20 principles incorporated in the platform, or are there other
21 places that you would derive those principles?

22 A Well, we have a charter that speaks to open participation
23 which I view to participation and inclusion. We have an
24 affirmative action plan. So I would say that it would
25 adhere to several documents and not just the platform.

1 Q Okay. You indicated that you were chair of the party from
2 '95 to 2006, so I'm guessing that you were familiar with
3 the election system that was in place up to 2004 which was
4 usually called the Blanket Primary; is that correct?

5 A I am.

6 Q How did that work? And I don't mean to tie you down to
7 legal niceties, but could you just generally for the record
8 describe how the Blanket Primary operated?

9 A Well, essentially candidates ran, you know, as a Democrat
10 or as a Republican or as, you know, some other party. And
11 there would be the Democratic column, the Republican -- the
12 ballot layout was different from county to county to
13 county, so I shouldn't really describe it in terms of
14 columns, but there were a list of Democratic candidates and
15 a list of Republican candidates, and then there were some
16 third-party candidates often. And as -- a voter could vote
17 for a Democratic candidate for President; they could vote
18 for a Republican candidate for Governor; they could vote
19 for a Democratic candidate for Congress; and they could
20 vote for a Republican candidate for coroner, so there
21 was --

22 Q Just to interrupt for a minute. You're talking about the
23 primary ballot at this point?

24 A Yes, um-hmm.

25 Q Okay, right.

1 A And -- yeah, that's right. And, I'm sorry, yes, in the
2 primary they could do that. So there was -- there was a
3 huge amount of ticket splitting. There was a large amount
4 of people trying to manipulate the opposition party's
5 nominating process. There were -- there were people who
6 weren't Democrats who had a voice in choosing who the
7 Democratic nominees -- and there were people who were
8 Democrats who had a voice in choosing who the Republican
9 nominees were.

10 Q So just to follow along a little, I gather the way the
11 system worked, as you've described it, voters could vote
12 for a Democrat for one office, a Republican for another
13 office, but in terms of which nominees moved on to the
14 general election, am I correct it was the Democrat with the
15 most votes went on as the Democratic candidate and the
16 Republican with the most votes went on --

17 A The person who was running on the Democratic Party ticket
18 who received the most votes was -- was viewed by the state
19 as being the Democratic nominee, and they moved on to the
20 general election ballot, and so on with the Republican --

21 Q So the general election ballot in those days would show
22 typically a Democrat and a Republican and possibly some
23 third-party candidates, possibly an independent or two?

24 A If people ran under those tickets for all those offices,
25 yes.

1 Q Right. But it would never show two Democrats or two
2 Republicans in the general election ballot?

3 A No.

4 Q Okay. Did the Democratic Party during those years and when
5 you were -- I'm speaking of the years when you were the
6 chair and had familiarity with it -- have any nomination
7 process besides simply accepting the results of the Blanket
8 Primary as to who the Democratic nominees were?

9 A We had not adopted rules for a formal nomination process
10 prior to 2004, to my knowledge -- to my knowledge.

11 Q Okay. Do you ever remember any occasion in which the party
12 nominated a candidate who had not been nominated through
13 the Blanket Primary?

14 A No, I hadn't. I'm sorry. Could you please repeat that
15 question?

16 Q Do you recall any occasion in which the party nominated a
17 candidate other than the person who was nominated through
18 the primary?

19 A I can't think of any occasion where they nominated anyone.
20 There were certainly occasions where people who were
21 nominated through that process were repelled by the party
22 because the party didn't like them running on the
23 Democratic Party name.

24 Q Do you remember any specific examples?

25 A Well, gosh, early in my chairmanship there was a candidate

1 who ran for Congress in the Fourth Congressional District
2 who -- I forget his name, and I'm sorry I can't remember
3 it, but the party was very upset about this individual
4 having been nominated, and -- and that was the case.

5 There was -- gosh, in the 45th District I think there
6 was a case. Forgive me for not remembering the names --

7 Q That's fine.

8 A -- but there were examples of people -- of the party being
9 upset about individuals choosing to run on the Democratic
10 Party label and being, you know, being nominated and being
11 an embarrassment to our party, frankly.

12 Q Now, again -- and correct me if I've got the years wrong,
13 but as I understand it, the Blanket Primary was declared
14 unconstitutional and from 2004 through 2007, which would be
15 the last part of your tenure as chair, the State used a
16 primary that was typically called the Montana Primary. Do
17 you recall that one?

18 A I could be wrong about this, but I thought that in 2004 we
19 had one -- one final Blanket Primary.

20 Q I don't remember, and for this purpose the year doesn't
21 matter.

22 A So I actually think we had a Blanket Primary in 2004, but
23 subsequent to that, I think that it was -- that we had
24 alternative primary systems, but my recollection was that
25 in 2004 we had one final Blanket Primary because the court

1 ruling related to the California challenge to the Blanket
2 Primary system came down so late that it would have created
3 a burden on the state to have a -- to change the system and
4 that the parties agreed to allow one more to take place.

5 Q I'm not sure what the dates are, Mr. Berendt, and I'm not
6 going to follow on. It doesn't make any difference for my
7 purpose what the actual change was. What I'm just trying
8 to determine was whether during your time as chair you
9 worked with the newer kind of primary as well as the old
10 Blanket Primary.

11 A I did, yes.

12 Q How did that work in contrast to the Blanket Primary?

13 A Well --

14 MR. AHEARNE: Actually, could I interrupt for a
15 second? When you say the newer type, are you referring to
16 what some people call the Montana Primary?

17 MR. PHARRIS: I was hoping to have him describe,
18 yeah.

19 Q (By Mr. Pharris) Yes.

20 MR. MCDONALD: I think Tom meant it was only new
21 here. It's not a new concept. It's well-tested elsewhere.

22 MR. PHARRIS: I used "newer" because the witness
23 had used that term.

24 A Well, it was different. I guess I should have said
25 different, a different primary.

1 Q (By Mr. Pharris) There's nothing new under the sun, we
2 know.

3 MR. MCDONALD: We don't have sun here.

4 A I have to -- I have to confess we had so many different
5 kind of primaries in rapid-fire succession that I'm having
6 difficulty remembering all of the components of the Montana
7 Primary, but -- I just need to think about this for a
8 moment, if I can. I just -- I'm trying to remember the
9 components of it. It was essentially an open primary in
10 which I believe independents were allowed to vote in -- in
11 each party's nominating process. That was my recollection
12 of it.

13 Q Would it be fair to say --

14 A Under the party rules, under party rules.

15 Q Under party rules?

16 A Under the acceptance of the party. The party did adopt the
17 rule to allow that to occur. And that was just one
18 election, I think, and that was 2006.

19 Q Is it consistent with your memory that in that type of
20 primary a candidate was limited to voting for candidates on
21 one party's ticket or slate of candidates, so you either
22 picked a Democratic ballot or a Republican ballot?

23 A Yeah, I wish to correct something. It wasn't 2006 that the
24 Montana Primary was in effect, and I'm -- so, you know, I
25 just want to correct that, as I remember back. But, yes,

1 we did have a Montana Primary for one election.

2 Q And am I correct that in that election, in contrast to the
3 Blanket Primary, a candidate (sic) had to stick to voting
4 for candidates only of one party --

5 A That is correct.

6 Q -- at the primary?

7 A Yes, um-hmm.

8 MR. MCDONALD: Did you mean a candidate had to
9 vote or a voter had to vote?

10 MR. PHARRIS: Excuse me. A voter. A voter,
11 right.

12 A Yes, a voter would have to choose only one party's ballot
13 and vote it, that's correct.

14 Q Then, obviously, then the candidate for each office --

15 A I think that it's very important -- the State of Washington
16 didn't ever use the term "Montana Primary," and so the
17 State of Washington called this a Pick-A-Party Primary.
18 And I think using the state euphemisms is confusing, is one
19 of the reasons I'm confused. I'm sorry.

20 Q That's fine.

21 A Because I think the Montana system actually had components
22 that were different from the system we ultimately used in
23 the state of Washington, but it was similar.

24 Q That's entirely -- entirely possible, and it was simply
25 described by many people as a Montana Primary, and I just

1 used that for shorthand --

2 A Sure.

3 Q -- but you're correct to try to point out differences in
4 detail.

5 Then I see you left your job as the state chair in
6 2006.

7 A In January of 2006.

8 Q January of 2006. So you were probably aware at that time
9 that Initiative 872 had been passed adopting a Top Two
10 Primary, but it had not yet been implemented in 2006?

11 A I was aware of that.

12 Q Can you describe, if you do remember, the differences --
13 how does the Top Two Primary work?

14 A Well, the Top Two Primary essentially has a number of
15 things that are foreign to any primary, as far as I'm
16 concerned. It requires for anyone running for office to,
17 you know, use a descriptor of -- to choose a party, but
18 they can use inconsistent descriptors, so we're having
19 people, you know, call themselves all kinds of things, but
20 they're claiming party affiliation through those -- through
21 those self-descriptors. Once they're on the ballot,
22 essentially the top two vote-getters -- the top two
23 vote-getters in a particular office, regardless of how many
24 are running, will move forward to the general election
25 ballot. It has not -- one of the controversial elements of

1 this is that in a very democratic district where you
2 have -- you might have six Democrats running and maybe you
3 would only have two Republicans running, yet the vast
4 majority of people in that district are Democrats, you
5 could have two Republicans moving forward, and people would
6 not be given the opportunity to vote for a Democrat in
7 the -- that was nominated through the Top Two system in the
8 general election even. And the reverse would be true in a
9 Republican district.

10 Q So, to summarize, am I correct in saying that unlike either
11 the Blanket Primary or the Pick-A-Party Primary, under the
12 Top Two Primary, the two candidates who advance to the
13 general election could be potentially any party
14 preference --

15 MR. MCDONALD: Go ahead. I'm going to object,
16 but finish the question.

17 MR. GROVER: And I'm going to object to that
18 question --

19 MR. MCDONALD: Orrin, let him finish the
20 question. I --

21 MR. GROVER: I'm sorry.

22 Q (By Mr. Pharris) Let me rephrase that.

23 MR. GROVER: That would be great.

24 Q (By Mr. Pharris) Am I correct then that unlike -- under
25 the Top Two system, the top two vote-getters among all the

1 candidates in the primary advance to the general election,
2 is that correct, for a particular office?

3 A The top two vote-getters would move forward, yes.

4 Q Okay. And as I understand it, each candidate can select a
5 preference for a party or not as the candidate may choose,
6 and that preference appears on the ballot; is that true?

7 A Yes. They -- they -- they choose a self-describing
8 preference.

9 Q Right. So given that system, unlike the Blanket Primary or
10 the Pick-A-Party Primary, there isn't any party that can
11 assume that it will have a candidate in any way affiliated
12 with that party on the general election ballot; is that
13 true?

14 A That's true.

15 Q To your knowledge, under the Top Two Primary, does the
16 Democratic Party have a system other than the use of the
17 primary for nominating candidates for public office?

18 A Several years ago, I was still the chair, the party adopted
19 nominating rules as a part of all of this primary election
20 reform that was going on to maintain our nomination rights
21 and -- so, yes, I believe it was in 2004 we adopted rules,
22 and I believe those rules have been modified subsequent to
23 my departure as chair.

24 Q Okay. If you recall them, what was the process that was
25 set up in those rules for nominating candidates?

1 A Well, essentially, the Precinct Committee Officers who are
2 the representatives of the parties in each of the precincts
3 had -- had a -- essentially nominated the party's nominees
4 within the jurisdiction of the race, so -- so this year,
5 for instance, here in Thurston County, the Precinct
6 Committee Officers countywide would meet and nominate
7 individuals running -- seeking the nomination for county
8 office, countywide office. The Precinct Committee Officers
9 were -- would meet at the legislative district level to
10 nominate people running for the legislature. I should say
11 that there was a different -- there was a different process
12 under -- and these are governed under the rules of the
13 party for the nomination of federal -- some federal
14 offices.

15 Q Such as US Senator and member of Congress?

16 A And Congress, that's correct. And those -- those were --
17 some of those nominating processes were -- powers were
18 granted to the State Committee. We had one nomination at
19 the state Democratic convention in the Third Congressional
20 District this year based on -- on the party rules.

21 Q This is an election year, and you indicated, I think,
22 earlier that you are a Precinct Committee Officer. So did
23 you participate this year in that nominating process at the
24 county level?

25 A I did.

1 Q Okay. And at the legislative district level?

2 A I was unable to make that meeting, and so I did not
3 personally attend that meeting and participate in it, but I
4 did attend the county nominating process and participated
5 in all of -- the nomination of each of the candidates for
6 countywide office.

7 Q Were you a delegate to the state convention this year?

8 A I was.

9 Q Okay. So you would have also participated in whatever
10 action the state took on it?

11 A I did participate in that, yes.

12 Q Okay. Does the party, to your knowledge, ever nominate
13 candidates -- and I'm using the word "nominate" here. We
14 can talk in a minute about other terms -- nominate
15 candidates for nonpartisan offices such as judgeships or
16 Superintendent of Public Instruction?

17 A We do not, to my knowledge, you know -- certainly I'm
18 speaking from the time I was the chair -- nominate
19 candidates for those offices. We do -- it's not unheard of
20 that we would endorse candidates of which there is a
21 difference.

22 Q Okay. What is the difference?

23 A Well, an endorsement process is essentially examining that
24 candidate, you know, say, a candidate for the courts on
25 whether they're qualified or whether they're, you know,

1 what their judicial philosophy is. And endorse would be
2 giving them the Good Housekeeping seal of approval.

3 In a nominating process, we would be more interested
4 in making sure that, you know, a candidate supports the
5 goals and the principles of the Democratic Party and is
6 willing to be known as a Democrat. Certainly for --
7 certainly for a judicial endorsement there would not be a
8 requirement of a candidate to make a declaration of their
9 party affiliation, which would be a requirement for a
10 candidate for partisan office.

11 Q Following up on that a little bit, you indicated that the
12 party has a practice now of nominating candidates for
13 partisan political office; is that correct?

14 A That is correct.

15 Q Do they always limit and only nominate one candidate for a
16 particular office, or do they ever nominate more than one?

17 A I -- that's subject to what the rules would require, and I
18 would have to reread the rules, and I'm sorry that I'm not
19 familiar with this particular phrase, but I believe that
20 the rules require that only one candidate be nominated. I
21 could be mistaken.

22 Q No, that's fine. Do you have any memory of an occasion
23 that you know about where the party nominated more than
24 one?

25 A I do not have a memory of that.

1 Q If I change the word to endorsement, do you have any
2 knowledge whether the party has endorsed more than one
3 candidate for an office?

4 A On rare occasion I think that I have seen multiple
5 endorsements in one race.

6 Q Do you have a memory of any particular race you could --

7 A I don't. I'm sorry.

8 Q Do you know of any cases in which --

9 A It's called a dual endorsement, and it's not uncommon
10 actually, but I -- within party affairs it's fairly common
11 to have a dual endorsement, but -- but that's separate.
12 That would be much different from a nomination.

13 Q Going back to the nomination process you described, and you
14 mentioned the county meetings and the legislative district
15 meetings at the state convention, does this process all
16 occur typically before the primary is conducted?

17 A Yes.

18 Q The endorsement and nomination process?

19 A Yes.

20 Q If a candidate who has been nominated by the Democratic
21 Party for an office is one of the top two vote-getters and,
22 therefore, goes on to the general election, to your
23 knowledge, is that party then automatically still the
24 nominee through the general election?

25 A Could you please repeat that question?

1 Q Let's say that the party has nominated Candidate A for an
2 office and Candidate A indeed gets, say, the most votes in
3 the primary and, therefore, is going to be in the general
4 election. Does Candidate A automatically continue to be
5 the party's nominee having been nominated by the party
6 earlier in the year?

7 A Yes, the nomination would remain intact.

8 Q What if the party nominated Candidate A but Candidate A did
9 not make it into the top two and, therefore, not into the
10 general election, but another person who expressed a
11 preference for the Democratic Party did advance? Does the
12 party reconsider and nominate that candidate or maybe take
13 some other action at that point?

14 A Again, these -- these things are governed by our rules,
15 but -- but a nomination is a nomination and it remains
16 intact.

17 Q And I want to make clear I'm not trying to trip you up
18 about whether the party follows the rules.

19 A I understand.

20 Q I'm just trying to get what your own memory of the
21 situation is.

22 A To my -- to my knowledge and to my recollection, I'm not
23 aware of anyone who receives a subsequent nomination. I
24 could be mistaken about this. And -- and my knowledge on
25 this is primarily driven by what's going on here in

1 Thurston -- in Thurston County. And, frankly, the party's
2 nominees have almost -- have universally been -- we haven't
3 been confronted with this problem. I would have to review
4 the rules to see if that -- if a second nomination were
5 possible, but I'm not sure what the rules say on that.

6 Q Okay. Are you familiar with any case in which both
7 candidates advancing to the general election have expressed
8 a preference for the Democratic Party, and, if so, and if
9 you know, what does -- how -- what does the party do during
10 the general election campaign with respect to supporting
11 one or the other candidate?

12 A Well, the nomination certainly carries weight and the
13 candidate who's been nominated is allowed to, you know,
14 broadcast that nomination. And different jurisdictions of
15 the party offer resources to the candidates, and their own
16 rules would govern how they wanted to allocate their rules
17 based the nomination process, so I would say that the rules
18 of the local party from jurisdiction to jurisdiction would
19 cover how that would be handled, and it might be handled in
20 different ways in different jurisdictions.

21 Q What about the situation where two candidates advance and
22 neither one has expressed a preference for the Democratic
23 Party? In your memory, does the party ever endorse or
24 nominate one of those non-Democrats who advance to the
25 general election?

1 A I'm not aware of the party ever endorsing a non-Democrat
2 for a partisan office.

3 Q With respect to the years in which you've been active in
4 the Democratic Party, do you have any memory of a situation
5 in which a candidate in this state falsely claimed to be
6 the nominee of the Democratic Party? I used the word
7 "nominee."

8 A Yeah, I'm not aware of anyone falsely claiming to be the
9 nominee of the Democratic Party. I am -- I would say that
10 there are people who run as Democrats who haven't been
11 nominated because of self- -- self-labeling.

12 Q Right. Now, you say they run. Do you have any knowledge
13 of candidates who run as Democrats as you described them --
14 and I'm going to take that to mean express a preference for
15 the Democratic Party when they file. Do you have any
16 knowledge of people who, when they do that, do it falsely
17 so that the party feels a need to take action against them?

18 MR. MCDONALD: I'm going to object to that as
19 compound.

20 Q (By Mr. Pharris) Okay. Do you have any knowledge of
21 people who have, in your opinion, falsely claimed a
22 preference for the Democratic Party when filing for an
23 office?

24 MR. GROVER: I'm going to object to the form of
25 the question also. This is Orrin Grover. The problem is

1 that the question is asking in terms of falsely claiming a
2 preference as opposed to an association with the party.
3 They may have a preference, but that's not really relevant.

4 MR. PHARRIS: I think that's exactly relevant
5 because that's what the statute requires them to state. So
6 that's what I'm interested in, is whether they've falsely
7 claimed a preference. You know, you might ask him the
8 other question if you want to.

9 MR. GROVER: Okay.

10 A Could you repeat the question?

11 Q (By Mr. Pharris) What I want to know, if you have any
12 knowledge of the situation in which a candidate falsely
13 claimed to have a preference for the Democratic Party when
14 filing for office.

15 A Oh, I think that the candidates run as a matter of
16 convenience as Democrats or Republicans or, you know, other
17 parties all the time. There are people who are serving in
18 the Legislature right now who have run, you know -- you
19 know, there are people who switch parties because of the
20 nature of the political climate. You know, we had -- there
21 was a candidate -- a member of the legislature right now,
22 Tom Campbell, who had run as a Democrat. 1994 came along
23 and he ran as a Republican. And -- and I -- I think that
24 that was a matter of convenience. It wasn't a matter of
25 philosophical affiliation; it was a matter of convenience.

1 Q Does the party ever take steps to inform the public when it
2 believes a candidate isn't really a Democrat who claims to
3 be?

4 A Well, the party does its best, but the label that the State
5 promotes is very hard to overcome because, remember, that
6 label is on every ballot that is mailed with very -- with
7 no other information, so the party makes a valiant effort
8 to notify people of their strengths or weaknesses as a
9 Democrat.

10 But the fact of the matter is, is that there is a
11 voters pamphlet statement that is mailed to every household
12 in the state of Washington, and there is a ballot that is
13 mailed to every registered voter that have these labels on
14 them, and it is very, very, very difficult for the party to
15 refute that.

16 You know, in initiatives, when -- when an initiative
17 is put to the ballot, the Secretary of State allows for an
18 initiative to publish a statement about that initiative.
19 The Secretary of State in the State of Washington then
20 allows the opposition to state an opposing view about the
21 statement. They get to read the statement that has been
22 made and publish an opposing view about that -- that
23 initiative, and then the proponents of the initiative get
24 the opportunity to rebut the rebuttal. So it's the
25 philosophy of the State in some cases to give an ample

1 amount of free speech to take a position on these
2 initiatives. But when it comes to candidates, they
3 refuse -- they've refused to allow this. A candidate --

4 Q By "they," you're referring to the State?

5 A The State of Washington, that's right.

6 Q Okay. Let me follow up a little bit on that. You used the
7 word "label" several times in that answer. What do you
8 mean by that term, "label"?

9 A Well, our name is very important. The Democratic Party's
10 name is very important. The Republican Party's name is
11 very important to the Republican Party. We spend millions
12 of dollars nationwide and locally to brand ourselves, to
13 educate people on what it is we stand for and -- and -- and
14 it's -- it's a powerful resource to us in moving forward
15 our agenda, our platform and our values.

16 And so when I say the label, you know, when someone
17 has, you know, is essentially riding on the goodwill of the
18 parties that have, you know, spent considerable time and
19 resources in putting forth our brand, they essentially are
20 stealing -- they're labeling themselves. They're -- yet
21 they may not adhere to the principles or the goals of the
22 Democratic Party.

23 Q So I gather when you talk about "they label themselves,"
24 you're talking about, for instance, a candidate who, upon
25 filing, states "I prefer the Democratic Party"? As you

1 would describe, that candidate --

2 A It's a powerful label.

3 Q So the candidate is adopting the label, you're saying?

4 A That's right.

5 Q And you mentioned earlier "promote." In what sense does
6 the state promote the use of that label? You mentioned
7 voters pamphlet and perhaps ballot, but are there any other
8 ways in which, to your knowledge, the State promotes
9 candidates using those labels?

10 A Well, the Secretary of State's Web site uses these --
11 promotes these labels. Local -- local county Web sites
12 promote these labels. The Secretary of State's voters
13 pamphlet promotes these labels. Every ballot in the State
14 of Washington promotes these labels. It goes on and on.
15 And so -- gosh, TVW, which is a State-supported entity has
16 a video voters guide in which these labels are promoted,
17 just to give a few other examples.

18 Q I can understand that you would say that the candidate may
19 state a preference, and that in itself might be promoting a
20 label. Can you describe any other ways in which the
21 State -- and I'm going to exclude TVW -- promotes the
22 label? Just the use of the word "promote." Are there any
23 other examples you can give of promotion?

24 A Well, TVW is subsidized by the State. You can -- you can
25 exclude it if you like, but --

1 Q I just wanted to exclude it from the question for the
2 moment. You're perfectly free to answer --

3 A Sure.

4 Q -- with respect to TVW.

5 A I think I gave you several examples: the voters pamphlet
6 statements, the Secretary of State's Web sites. This is
7 not the State, but county election office Web sites. The
8 State subsidizes -- I think the State some years
9 subsidizes, some years does not -- the primary voter guide
10 that -- that -- that has these labels in it. The State --
11 so, you know, there are several examples of the State's
12 promotion of these labels.

13 Q Okay. Mr. Berendt, in your experience, depending on the
14 roles you've had at different times, has the Democratic
15 Party's role in elections changed since the adoption of the
16 Top Two Primary?

17 A Could you -- you're asking if the role of the Democratic
18 Party has changed?

19 Q Yeah, let's say -- and I'll refer to the State --
20 Washington State Democratic Party, not national or
21 something else. Has it changed -- has the way the party,
22 its activities in connection with the election, have those
23 changed since the adoption of the Top Two Primary?

24 A Well, I think that -- you know, political parties are
25 living, breathing organizations; they're constantly

1 changing, so, you know, I've been -- I've not been the
2 chair for four and a half years, and I'm always amazed at
3 how quickly things change. But, yes, political parties
4 adopt to the changes that are necessary in order for them
5 to be effective.

6 Q In your opinion or to your knowledge, does the State's
7 implementation of the Top Two Primary result in voter
8 confusion as to which candidates are nominated by the
9 Democratic Party?

10 A Yes. Absolutely.

11 Q And I'm talking about specifically the way the State
12 implemented the Top Two Primary. How does that -- what
13 causes that confusion?

14 A Well, you know, just this week there was a reporter that
15 came to interview someone in the office that I work in, and
16 she -- this was a reporter for Channel 13, and it was
17 broadcast just last night. And she said to me, she said,
18 "What is this deal about the preference? What is that?"
19 This was a reporter. And she was confused by what it
20 meant. And she said, "How did that -- how did that come
21 about?" And I told her that there had been an initiative
22 that had been passed by the people and that this was a part
23 of the initiative. She said, "Well, they should change
24 that because that's confusing." So there's an example of
25 just yesterday of a reporter for Channel 13 that was

1 confused by the label, the mandate of the way the label
2 take places in partisan elections.

3 So I think -- I think there are a lot of people who
4 are confused when they see this label and they say -- there
5 is Republican and then there's GOP and then there's, you
6 know, variations on the word Republican or there's
7 Democrat, Prefers Democratic Party; there's Liberal;
8 there's, you know, Progressive; there's Independent
9 Democrat. This is confusing to voters because there's a
10 lack of consistency, and it actually doesn't enhance
11 understanding. I think it reduces it.

12 Q Do you know of a way in which the State could change the
13 way the Top Two is implemented without changing the Top Two
14 itself, but change its implementation that would reduce
15 these problems you've described with confusion?

16 A I'm sure there are, but I haven't given it a lot of
17 thought.

18 Q You indicated that you'd reviewed some materials in
19 connection with the Supreme Court opinion in this case, and
20 I assume, therefore, you've done some thinking about the
21 case. In your personal opinion, is the Top Two Primary
22 unconstitutional?

23 A Yes.

24 Q Why do you think that?

25 A Because I believe that it waters down the Party's freedom

1 of speech and association.

2 Q Do you -- and you indicated that you at least glanced at
3 the Supreme Court opinions in this case. Do you think the
4 majority got it wrong?

5 A Well, I -- my understanding of the Supreme Court decision
6 was that they didn't rule on the constitutionality of the
7 Top Two Primary, and they remanded a number of the issues
8 of the case back to the -- back to the lower court. So,
9 I'm not sure that they have ruled on the guts of the case
10 just yet. I was -- I was disappointed in the ruling
11 because I felt that it was very clear that it was
12 unconstitutional.

13 MR. PHARRIS: I need to take a break. Can we --
14 for a minute -- go off the record?

15 MR. MCDONALD: Yeah, that's fine.

16 (Recessed at 11:14 a.m.)

17 (Reconvened at 11:24 a.m.)

18 MR. PHARRIS: We'll go back on the record.

19 I have no more questions, so Mr. Ahearne?

20 MR. MCDONALD: That was anti-climactic to make
21 us wait that long.

22 MR. AHEARNE: I've got several questions just to
23 follow up on what Mr. Pharris asked you.

24 * * *

25 * * *

1 EXAMINATION

2 BY MR. AHEARNE:

3 Q First, with respect -- and I'll try to go basically in the
4 order of his questions because that's the order of my
5 notes. You were chair of the state party from '95 to '06,
6 correct?

7 A January of '95 to January of '06, correct.

8 Q You had an 11-year tenure then?

9 A Correct.

10 Q Has there been any other Washington State Party chair that
11 served as chair longer than you?

12 A Yes, there was. Karen Marciaro served longer. I'm not
13 sure whether it was 12 or 13 years.

14 Q You also mentioned that you were a -- you are now a
15 Precinct Committee Officer?

16 A I am.

17 Q When were you selected as a Precinct Committee Officer?

18 A I've been a Precinct Committee Officer for -- since prior
19 to being the State Party Chair in '95, so I think that I
20 was first elected Precinct Committee Officer in 1992, and
21 so I've served for 18 years in that capacity, and I was a
22 Precinct Committee Officer before that, but there was a --
23 I moved into a new precinct, and there was a -- there was a
24 time that I was not Precinct Committee Officer because
25 someone else wanted -- wanted the position.

1 Q And with respect to your currently being a Precinct
2 Committee Officer, how were you selected?

3 A Well, I -- the vote for Precinct Committee Officer took
4 place in the primary or, excuse me, in the -- I just want
5 to make sure that I'm remembering this correctly. We've
6 had this August primary for -- when did the August
7 primary -- I was selected in the primary election in 2008.
8 Is that -- is that sufficient?

9 Q Okay. And -- but you were an elected PCO as opposed to an
10 appointed PCO?

11 A That is correct.

12 Q And could you summarize what your role and responsibility
13 is as an elected PCO?

14 A I -- well, I have -- there are statutory requirements that
15 are -- and constitutional requirements, actually, for the
16 filling of vacancies, so periodically a vacancy will occur
17 in partisan office and as Precinct Committee Officer, I
18 will vote on who should receive the replacement.

19 I have obligations -- under the rules of the
20 Democratic Party we have regular meetings. The party can't
21 remove me from office for not attending meetings, so I miss
22 a few meetings every now and then, but -- and I -- as the
23 agent of the Democratic Party in my precinct, I try to keep
24 tabs on what people within my precinct are thinking, and so
25 I try to doorbell at least once an election cycle the

1 entire precinct. It's a fairly large precinct, and that's
2 kind of difficult, but. . .

3 Q Anything else that is your role as a Precinct Committee
4 Officer?

5 A I would say that those are the primary roles, but there is
6 a -- I think that is -- are the main things.

7 Q And do you have as a Precinct Committee Officer any role in
8 selecting Democratic Party's nominee for any public office?

9 A Oh, I'm sorry. Yes, I do. And -- yes, per our party's
10 rules, I have a role in selecting the nominees for the
11 Democratic Party within Thurston County and within the 22nd
12 Legislative District.

13 Q Could you just briefly describe what that role is?

14 A Well, we -- the Party has adopted rules -- due to these
15 primary systems, changes that have taken place in the
16 primary system -- let me just step back. This has changed
17 from election cycle to election cycle because of the change
18 in the types of elections that we've had. And so this has
19 been an evolving role or responsibility, but --

20 Q If it helps, let me limit my question to you.

21 A Sure.

22 Q Currently. Under the current the Top Two system
23 established by Initiative 872, what is your role as a
24 Precinct Committee Officer in selecting the State
25 Democratic Party's nominees?

1 A Okay. Well, the State Committee adopted rules granting the
2 selection of nominees to local jurisdictions, and they
3 adopted rules granting this authority to the Precinct
4 Committee Officers within those jurisdictions.

5 Q And if I can interrupt, when you say jurisdictions, you
6 mean the local political party organization?

7 A Yes. That would be either the County or the Legislative
8 District.

9 Q Political party organization?

10 A That is correct. I as a Precinct Committee Officer am
11 affiliated with both the 22nd Legislative District
12 Democratic organization and the Thurston County Democratic
13 organization. They often meet on the same -- they usually
14 meet at the same -- on the same day at adjacent times back
15 to back in our county. It's handled differently in other
16 counties and legislative districts.

17 Q And so what is your role as a Precinct Committee Officer in
18 selecting the Party's nominees?

19 A Well, as -- as the Precinct Committee Officer, I have
20 oftentimes talked to people who are known Democrats, people
21 who attended their precinct caucus in the precinct, got
22 their opinion on who should be the Party's nominee, and
23 gone to the meetings -- there's an official call that goes
24 out for the nomination meetings -- listen to the candidates
25 make their presentations at those forums. You know, I try

1 to do a vetting process of those candidates. And then I
2 will vote on who the nominee should be. And those votes
3 are tallied and the nominee is selected.

4 Q You'd mentioned that you can't be removed from your
5 position as Precinct Committee Officer for missing
6 meetings, correct?

7 A Correct.

8 Q What can you be removed for?

9 A Well, the -- that -- that is outlined, I think, in the
10 statutes of the State of Washington, and those criteria
11 would be the same criteria of any other elected official.

12 Q Does the Democratic Party itself have any rules or practice
13 with respect to removing Precinct Committee Officers from
14 their position?

15 A I am aware of organizations that have implemented such
16 rules, but -- but I am not aware of anyone who has been
17 removed.

18 Q Just so I'm clear, when you say you're aware of
19 organizations that have adopted those rules --

20 A Democratic Party organizations.

21 Q You mean the local organizations?

22 A Correct.

23 Q But, to your knowledge, the state organization has not
24 adopted such rules?

25 A The state party had not adopted rules when I was chair.

1 Q And as a Precinct Committee Officer today, are you aware of
2 the state party having adopted any such rules?

3 A I'm sorry. I should clarify -- I should clarify that we
4 have a charter in the Democratic Party that requires us to
5 adhere to the principles, you know, in order to be a party
6 member in good standing -- well, let me rephrase that.
7 It -- it sets forth the criteria for being a Democrat, and
8 that criteria essentially is to be willing to make a public
9 declaration and in support of the principles of the
10 Democratic Party, the goals and the principles of the
11 Democratic Party. So there is a guideline, there is a rule
12 and -- on being a Democrat.

13 Now, you know, the PCO's are, you know, like -- like
14 anyone else running. There are people who can self-declare
15 as a Democrat and run for PCO, and it's not a closed
16 primary that chooses those individuals. So anybody can
17 run.

18 I'm aware of an instance a few years ago where we had
19 a wonderful Democrat right here in Thurston County who
20 lived in a condo, and she got into a disagreement with a
21 member of her condominium association, and this other
22 person who had no Democratic background or credentials
23 whatsoever ran against her for Precinct Committee Officer,
24 and she was reelected in that case, the good Democrat.
25 But -- but in that case that individual ran against her

1 with no real Democratic history, you know, or it was -- it
2 was a spiteful thing because you knew how important that
3 office of Precinct Committee Officer was to her.

4 So -- I'm sorry, I probably am rambling on, but I --
5 I'd just leave it at that, whatever --

6 MR. MCDONALD: Tom, before you go on -- and both
7 of you have asked questions like this -- if at some point
8 you want, I probably would enter a stipulation with you as
9 to what procedures we do or don't have in connection with
10 some of these things. In connection with the particular
11 question you're asking, everybody has the ability to
12 challenge the registered voter status of an elected
13 official, and that would disqualify somebody from being a
14 PCO if their voter registration has changed. Aside from
15 that, I'm not aware of any procedure, and I am aware that
16 we have routinely advised people who have raised the
17 questions you have that we have no ability to remove an
18 elected official of the state of Washington if they have
19 otherwise met the requirements.

20 The 10 percent question that has come up creates the
21 issue of whether they've met the requirements, but I think
22 if you need a stipulation along those lines with respect to
23 our procedures, I'll be happy to facilitate.

24 MR. AHEARNE: Okay.

25 Q (By Mr. Ahearne) Moving on to the next line of

1 questioning, Mr. Pharris asked you about the platforms, and
2 you talked about the state and then the local platform. Do
3 you recall that generally?

4 A Yes.

5 Q By local platform, do you mean the county party platform as
6 well as the legislative district party platform?

7 A Yes.

8 Q And are the local and -- strike that.

9 Are the county and legislative district platforms the
10 same as the state party platform?

11 A Essentially there is a melding process that goes on. I
12 could not guarantee that they always carry the same
13 language, no. But by and large, they're very similar.
14 There may be instances where individual planks would be
15 conflicting with each other.

16 Q And at least during your time as party chair, was there
17 some process to review the county platforms and the
18 legislative platforms, the legislative district platforms,
19 to make sure that they were consistent with the state
20 platform or even consistent with each other?

21 A Well, there's an effort to do that, but I can't guarantee
22 that they always are.

23 Q Could you briefly describe what the effort that you
24 described?

25 A Well, local platforms are adopted first and then the state

1 platform is adopted later. At the time I was the chair we
2 made an extraordinary effort to -- to collect all of the
3 platforms, put them into a binder, give them to all of the
4 platform committee members to examine, and they typically
5 broke down into subcommittees by issue area. So health
6 care might -- as an example, all of the -- there would be
7 an examination of all of the languages of all of the
8 platforms by the -- under the issue of health care, and
9 there'd be an effort to synthesize the various statements
10 into one overriding statement.

11 Q If I could --

12 A There are different jurisdictions, and naturally they would
13 have different language from each one, but -- but there was
14 a real effort and then -- and each of the local
15 representations -- each of the local areas would have a
16 representative there who could at least speak to the
17 reasoning behind how that language was synthesized. They
18 would be able to testify to how important that was to a
19 local -- to the local jurisdiction. Maybe language gets in
20 because someone just got it in. Maybe language was
21 included because there was a passionate feeling about this.
22 You know, there are differing levels of support for these
23 things.

24 Q And when you're talking about synthesizing, are you talking
25 about synthesizing the ideas or the planks in the local

1 platforms to become a state platform, or are you talking
2 about changing those local platforms so they're all the
3 same?

4 A Oh, no. It would be synthesizing them up to have a
5 synthesized state platform. There wouldn't be an
6 instruction to modify a local platform. But once the state
7 platform was adopted, we would make an effort to publicize
8 the state platform back to the local jurisdictions.

9 Q Okay. Now, do other states have Democratic state party
10 platforms?

11 A I think it's pretty standard across the country. However,
12 I really couldn't testify to their procedures or what they
13 do.

14 Q And based on your 11 years as chair of the Washington State
15 Democratic Party, do you know if the state party platforms
16 in other states are the same as Washington's, or are they
17 different or what?

18 A I've never read another state party platform, so I couldn't
19 really say.

20 Q Okay. To your knowledge, is there any process at the
21 national party level to review various state party
22 platforms and ensure that they're consistent with each
23 other?

24 A Well, I'm not aware of an effort to, at the national party,
25 to read -- to mandate consistency between the states, no.

1 Q Are you aware of any effort by the national party to just
2 monitor whether the various state party platforms are
3 consistent?

4 A Well, there's -- once every four years there is a -- there
5 is a process to develop a national party platform. I
6 believe that our state in 2008 had three representatives on
7 that committee. And those -- when I was chair and we were
8 preparing to go to national convention, I made sure that
9 the representatives we had on the national platform
10 committee had copies of our platform, and I requested that
11 they study it thoroughly to accurately represent our views
12 on the national platform, but I -- and one other element
13 which is, you know, as far as issues, the Democratic
14 National Committee has a Resolutions Committee, but it's
15 not -- I don't think it's a permanent platform committee,
16 to look at issues and whatnot. But I'm not aware of them
17 mandating consistency, but, again, they publish the
18 national party platform. That's sent to all of the
19 individuals who attend the Democratic National Convention
20 as the final action. And they send that to elected
21 officials and party leaders, and -- and they ask people to
22 support the national platform.

23 Q So I can make sure I understand this then correctly, at
24 least based on your 11 years as the state party chair, the
25 national party platform was distributed to the various

1 state parties, correct?

2 A Correct.

3 Q And there was an effort to, when that national party
4 platform was being drafted, to have representatives from
5 the various states have their say in drafting that national
6 party platform, correct?

7 A Correct.

8 Q But based on your experience as the party chair those 11
9 years you're not aware of any process where the national
10 party looked at each of the state party platforms to try to
11 monitor whether the various state party platforms were
12 consistent with each other; is that correct?

13 A That's correct.

14 Q Moving on to another line of questions that Mr. Pharris had
15 asked you. You'd said something about officers of the
16 party being members of the party. And so here's my
17 question: What does it mean to you to be a member of the
18 Democratic Party?

19 A Well, there's a basic -- there's a basic requirement of
20 membership, which is that you're willing to make a public
21 declaration that you support the goals and principles of
22 the Democratic Party.

23 Q And when you say support the goals and principles, does
24 that mean support the party platform, or are you referring
25 to something else?

1 A I think it refers to several things, including the party
2 platform.

3 Q Well, let me ask it this way. When you say support the
4 goals and principles of the party, what are those goals and
5 principles?

6 A Well, there would be our stands in favor of affirmative
7 action inclusion of the party. There would be the charter
8 of the state and national Democratic Party and our
9 platform. Those would be the three things that I would
10 say.

11 Q I sort of counted four here: The affirmative action
12 stance, the national charter, the state charter, and then
13 the --

14 A That's right. Well, I guess you could say four. The two
15 charter documents, that's right.

16 Q And then when you're referring to the party platform, are
17 you referring only to the state party platform or the
18 national and/or the county and/or the legislative district?
19 Which platform are you referring to?

20 A Well, it would be the platform of every jurisdiction you
21 reside within, you know. I mean, I'm from Thurston County.
22 It would be the Thurston County platform, the State of
23 Washington platform, the United States platform, and our
24 charter and affirmative action plans.

25 Q So if a voter wants to determine what the message or the

1 views of the Democratic Party are, where would that voter
2 turn to determine that message or the views of the
3 Democratic Party?

4 A Well, you can go to the state Democratic Web site and view
5 all of these documents that I've mentioned, for instance.

6 Q And just so we're clear, the documents you mentioned are
7 the national charter, the state charter, the party
8 platform, the national, state, the applicable legislative
9 district, the applicable county?

10 A All of those things could be accessed through the state
11 party Web site and links.

12 Q So by looking at the state party Web site is how a voter
13 would determine what the views or message of the Democratic
14 Party is?

15 A It's the simplest way for someone to do that right now.

16 Q Are there other ways?

17 A Well, you could attend the regular meetings of the
18 Democratic Party and learn -- learn about it, but I think
19 it's always best to have it in writing and so seeing --
20 seeing those documents would probably be the most
21 comprehensive way.

22 Q Okay. In part of your testimony, you also made reference
23 to a party member in good standing. Can you tell me what
24 you mean by "good standing"? Are there party members in
25 bad standing?

1 A Oh, you know, I'm sorry. Maybe that was a poor choice of
2 words. But you're either a member or -- you know, you
3 either choose to be a member or you don't. You know, I
4 mean, it's just -- I think it's kind of cut-and-dried.

5 Q And if I understood your testimony correctly, you're a
6 member if you publicly declare you support the goals and
7 principles of the Democratic Party; is that correct?

8 A Yes.

9 Q And then you had also in part of your testimony talked
10 about largely agreeing with the party platform. Could you
11 give me a little more substance to what you mean by largely
12 agree? Is that like 80 percent of the platform planks or
13 just --

14 A Oh. Well, I guess I would just say this, that there are a
15 number of -- you know, there may be differences between the
16 local platform and the state platform and the national
17 platform, you know, that -- that as long as someone is
18 making an effort to review those three documents and, you
19 know, come to some point of support, you know, of them,
20 that that would suffice as largely agreeing with it.

21 Q And are there some platform planks or goals or principles
22 that are more important than others?

23 A Well, that's subject to debate, I guess. I think you
24 pretty much have to take it on face value.

25 Q When you say take it on face value, what do you mean?

1 A These documents.

2 Q When you say it's subject to debate, do you mean subject to
3 debate within the party itself as to which planks are more
4 important than other planks?

5 A Yes, um-hmm.

6 Q You also in your testimony made reference to the party
7 being upset about people that were running on the
8 Democratic Party name or with the Democratic Party label.
9 Do you recall that generally?

10 A Um-hmm.

11 Q What do you mean by "running on the Democratic Party name"
12 or "with the Democratic Party label"?

13 A Well, there are -- there are people who -- who -- well, I'm
14 sorry, I have to ask you to rephrase. I don't -- I don't
15 recall which testimony you were talking about when you said
16 that they were upset with people running -- let me just --
17 let me just rephrase this. I hope this answers your
18 question.

19 Each election there are people who come out of
20 nowhere and very little is known about them and they run.
21 And oftentimes, you know, there will be a vetting process
22 and, you know, the party will be very comfortable with
23 them, but -- but other times candidates won't submit to
24 any, you know, questions or answer any questions about
25 their stands on issues, for instance. And -- and the party

1 because it has, you know, devoted so many resources to
2 developing its brand and its, you know, its image, they
3 want to support people that they know are going to enhance
4 the party and support its values. So, you know, I don't
5 know if that answers your question, but. . . .

6 Q Okay. It gives me a clearer understanding of what you
7 meant by that. Now, when you just said support the party's
8 values, are you referring to something in particular?

9 A Goals and principles. I'm talking about goals and
10 principles.

11 Q And that's the same thing we talked about earlier, those
12 documents, like the party platform, the charters?

13 A That's right. Absolutely.

14 Q In that same line of questioning you said something about
15 sometimes people were upset about a candidate being an
16 embarrassment to the Democratic Party. What -- what does
17 it mean to be an embarrassment to the Democratic Party?

18 A Well -- gosh, we have a -- we have a candidate who --
19 there's a candidate running this year who was in Clallam
20 County who was running for prosecuting attorney and he
21 moved to Eastern Washington and he is running for Congress,
22 and he's been very controversial, has not -- not come to
23 any Democratic Party meetings requesting to -- in which
24 party members can examine his values or statements. He's
25 making controversial statements in the local press that are

1 not consistent with our platform or our values, and -- but
2 there's nothing precluding -- there's nothing that allows
3 us to keep him from using the Democratic Party name on
4 state documents, as an example, so -- now, that's just an
5 instance of something that has happened this year.

6 Q And when you say -- you were referring to making statements
7 that aren't consistent with the party's platform or values,
8 is that something that's an embarrassment to the Democratic
9 Party?

10 A Yes.

11 Q When you refer to using the Democratic Party's name, are
12 you referring to saying "I prefer the Democratic Party"?

13 A Yes.

14 Q Anything else with respect to using the Democratic Party's
15 name on state documents?

16 A No.

17 Q Going back to the party platform, does the party have any
18 process for monitoring whether elected officials adhere to
19 the party platform?

20 A We don't have a -- I would say that there's not a formal
21 process of -- of adhering to it; however, the party does
22 have legislative committees and issue committees, and it
23 comes to their attention from time to time that -- that the
24 candidates or, you know, elected officials aren't and they
25 try to act if they think it's necessary.

1 Q And what kind of acts does the party take?

2 A Maybe pass a resolution for or against an issue and educate
3 sitting elected officials to that.

4 Q Just to make sure I understand, when you say educate the
5 sitting elected officials, do you mean --

6 A Pass a -- excuse me. Sorry. Pass a resolution and mail it
7 to the elected official, a written resolution.

8 Q And would the resolution say something say like, Hey,
9 Mr. Elected or Ms. Elected Official, our plank says X, but
10 you're doing not X?

11 A Well, no. I think it would say something more like in our
12 party platform we have been steadfast in our opposition to
13 the war in Iraq and there's going to be a vote next month
14 on the war in Iraq, on going to war in Iraq, and we want to
15 reaffirm our opposition to the war in Iraq and hope that
16 you will vote against it, as an example.

17 Q Okay. And now I understand better. And at least in your
18 11 years as chair, as the state Democratic Party chair, was
19 there any process for requiring elected officials to adhere
20 to the party platform?

21 MR. MCDONALD: I'm going to object to the form
22 of the question. In what context? For example, with
23 respect to a legislator, I'm not sure that anybody has the
24 ability to require a legislator to vote in a particular way
25 as a matter of state law. Did you have a different kind of

1 context in mind?

2 MR. AHEARNE: If there are various contexts in
3 which the answer would be different, I'd ask the witness to
4 explain in this context my answer is this and in that
5 context my answer is that.

6 A Well, I would say that -- that we didn't require one act or
7 another in a formal requirement and -- and, you know, it
8 should be emphasized that once someone has been elected,
9 the party has no power to require -- require them to vote
10 one way or the other.

11 Q (By Mr. Ahearne) In your 11 years as party chairman, was
12 there any instance where the State party took any action
13 against any elected official who did not adhere to the
14 party platform?

15 A Well, there were -- there were certainly instances where
16 the party opposed individuals at election time who had been
17 elected as Democrats and were -- you know, consistently
18 took positions opposed to the party. I'll just leave it at
19 that.

20 Q You had also -- then going on, when you were talking about
21 the Top Two system established by Initiative 872, you made
22 some comment about having foreign aspects to other kinds of
23 systems. Could you explain to me what's foreign about the
24 Top Two system that's established by Initiative 872 that
25 you were referring to?

1 A Well, I think it's very foreign in the primary sense that
2 the label, the self-described label, is foreign to any
3 election system that I'm aware of any place.

4 Q Just so I'm clear, the self-described label you're
5 referring to is the "I prefer" or "prefers the blank
6 party"?

7 A Yes, that is correct.

8 Q And that aspect --

9 A The requirement that -- that -- of a candidate
10 self-labeling in the Top Two, I think, is very foreign.

11 Q So I understand correctly --

12 A I'm not aware of any other election -- perhaps there is --
13 I'm not aware of any other election jurisdiction in the
14 world that uses such a system. Perhaps there is that I'm
15 not aware of.

16 Q When you say "such a system," you mean a system where a
17 candidate can make the statement to the voters "I prefer
18 the blank party"?

19 A That is correct.

20 Q Also in part of your testimony you referred to statements
21 on the ballot. Do you believe that voters read the ballot?

22 A I absolutely believe they read the ballot.

23 Q You also referred to statements by the candidates --

24 A You couldn't -- you couldn't vote it if you didn't read it.

25 And we go to great lengths to provide mechanisms for

1 disabled people to understand what is on the ballot.

2 Q Actually, we go through great lengths to make sure that
3 voters in general understand what's on the ballot, not just
4 disabled people.

5 A And when -- and when the ballots are poorly designed, which
6 there have been examples of, it's a big problem and there
7 are a lot of poorly designed ballots. I actually believe
8 that this self-describing -- this self-describing label is
9 an example of poor ballot design as required by the State
10 of Washington.

11 Q And what do you mean by poor ballot design?

12 A Well, it's required to be placed on the ballot by the State
13 of Washington, this -- this -- this label.

14 Q And when you say "this label," you're referring to the
15 parenthetical statement "refers blank party"?

16 A I am.

17 Q And why is that poor ballot design?

18 A Because it -- it -- it allows candidates to put information
19 about themselves that -- on the ballot that may not be
20 true.

21 Q You referred to statements by candidates in the voters
22 pamphlet as well. Do you recall that generally?

23 A Yes.

24 Q Do you believe voters read the voters pamphlets?

25 A I do.

1 Q You referred to statements in the Secretary of State's Web
2 site. Do you recall that generally?

3 A I do.

4 Q Do you believe that voters read the Secretary of State's
5 Web site?

6 A People who are -- use their computers regularly, I believe
7 they do. I don't have statistics on the number of people
8 who visit the Secretary of State's Web site, but I'd be
9 surprised if it weren't several hundred thousand each year.

10 Q You referred to generally the political party's brand and
11 what they stand for. How would a voter determine what a
12 political party stands for?

13 A Well, they could go to the state or national Democratic
14 Party Web site or the local Democratic Party Web site and
15 read the platform and the -- and the documents pertaining
16 to the party that are on those sites.

17 Q You refer to the Democratic Party's brand. What is that
18 brand?

19 A Well, it's every-changing because the party is a living and
20 changing organization, and so I -- you know, that is kind
21 of a broad term, but I would say the party's brand is -- is
22 its platform, its values as stated in its affirmative
23 action plan in its charter, and its candidates, frankly,
24 and its elected officials. That -- in the public's view
25 that is -- they are -- they are the Democratic Party brand.

1 Obama -- Obama's leadership currently is a big part of
2 that.

3 Q When you refer to its candidates and elected officials, did
4 you mean the candidates and elected officials that had been
5 nominated by the party?

6 A Well, that is a -- that is a good question, because it
7 is -- it is -- the party has a desire to put forth one
8 vision of what the Democratic Party is, but this is
9 oftentimes watered down by foreign, you know, intervention,
10 candidates running that have not really been endorsed or
11 nominated by our party and people who are pressing, you
12 know, what a Democrat is that are not, you know, as
13 candidates, that are not adhering to the agreed-upon
14 principles and goals of the Democratic Party.

15 Q And when you refer to the agreed-upon principles and goals
16 of the Democratic Party, is that any different than the
17 platforms and the charter that you were describing earlier?

18 A Well -- I'm sorry. Say that again. I'm sorry.

19 MR. AHEARNE: Could you reread his prior answer,
20 please?

21 THE COURT REPORTER: "Well, that is a -- that is
22 a good question, because it is -- it is -- the party" --

23 MR. AHEARNE: Near the end, please. I'm sorry.

24 THE COURT REPORTER: ". . .and people who are
25 pressing, you know, what a Democrat is that are not, you

1 know, as candidates, that are not adhering to the
2 agreed-upon principles and goals of the Democratic Party."

3 Q (By Mr. Ahearne) When you referred to the agreed-upon
4 principles and goals of the Democratic Party, what were you
5 referring to?

6 A I'm talking about the members of the Democratic Party who
7 have come together and -- and adopted a platform and
8 charter and affirmative action plan that states our values
9 and goals and principles.

10 Q When you were referring to the agreed-upon principles and
11 goals, you were referring to the party platforms, party
12 charters, and the affirmative action plan?

13 A Correct.

14 Q Near the end of Mr. Pharris's questioning you made some
15 comment about how the Supreme Court ruling had not gotten
16 to the guts of the case. Do you recall that generally?

17 A Yes.

18 Q What do you mean by "the guts of the case"?

19 A Well, I believe that the ruling stated that -- the guts of
20 the case would be the constitutionality of the Top Two
21 Primary system.

22 Q When Mr. Pharris had asked you about whether you believed
23 Initiative 872 was unconstitutional, you said you thought
24 it was unconstitutional because it waters down the party's
25 freedom of speech and association. Do you recall that

1 generally?

2 A Yes.

3 Q How does Initiative 872 water down the Party's freedom of
4 speech and association?

5 A It allows people who are not -- it allows people who -- to
6 hijack the Democratic Party name who are running for office
7 and state that they are -- are Democrats who have not been
8 nominated by the party or -- or who adhere to the party's
9 principles or goals.

10 Q And in that answer, when you're referring to hijacking the
11 party name or stating you're a Democrat, are you referring
12 to anything other than the parenthetical "prefers blank
13 party," closed paren?

14 A Well, I would also add that -- that our -- the Top Two
15 system -- the Top Two system is a system that can forward
16 two names of individuals that are not representative of a
17 district as a whole in the nominating process. You could
18 have a very Democratic district where you have six people
19 running as Democrats and two running as Republicans, and
20 the two Republicans would not -- would move forward to the
21 general election. And it would mean that that district was
22 not -- had candidates that were not representative
23 necessarily of the central values of that jurisdiction,
24 and -- and so by not guaranteeing that a party's nominees
25 move forward, it -- it certainly, you know, reduces, you

1 know, our ability to speak to issues in the general
2 election.

3 MR. AHEARNE: And move to strike as
4 nonresponsive and ask that you please reread the question.

5 In fairness, Paul, Mr. Berendt, I think you sort of
6 got off track in your answer to the question.

7 THE WITNESS: That's okay.

8 THE COURT REPORTER: Question: And in that
9 answer, when you're referring to hijacking the party name
10 or stating you're a Democrat, are you referring to anything
11 other than the parenthetical "prefers blank party," closed
12 paren?

13 MR. WHITE: This is John White. I'm going to
14 object to the form of the question.

15 Q (By Mr. Pharris) You can go ahead and answer.

16 A Well, certainly the label -- the "prefers" label waters
17 down our freedom of association rights. I believe that --
18 that there are many issues that are left unresolved. The
19 Democratic -- the Democratic Party has a role envisioned in
20 our state constitution that is -- is through the, you know,
21 through the role of the Precinct Committee Officers, for
22 instance, that -- that is envisioned, and, you know, I
23 don't think that the Top Two Primary, you know, has fully
24 addressed these issues in its current configuration. But
25 that is perhaps another example.

1 Q Can you think of any other examples?

2 A I'm not -- I'm not a legal expert, but -- but I would say
3 that the use of the label, and, you know, constitutional
4 issues related to the role of the party have been -- have
5 been left unresolved.

6 Q Just so I'm clear, when you say use of the label, the use
7 of the label you're referring to is that, parens, refers
8 blank party, closed parens?

9 A Yes, that's correct.

10 MR. PHARRIS: Can I interrupt at this point just
11 to indicate that I have to leave, so -- I have to get to a
12 funeral. Mr. Even is still here, so I'll leave him to
13 represent the State's interest.

14 MR. AHEARNE: I've only got one line of
15 questioning left, so. . .

16 MR. MCDONALD: I was hoping it was only one
17 question instead of one line. Go ahead.

18 Q (By Mr. Ahearne) Do you believe there's confusion among
19 party members in connection with the Top Two Primary as
20 implemented by the State?

21 A Yes.

22 Q What is that confusion?

23 A Well, there are people who, you know, make a public
24 declaration that they're a Democrat and support the goals
25 and the principles of the Democratic Party who believe that

1 that label on the ballot means something.

2 Q If I can interrupt for a second to make sure I understood.

3 When you say make a public declaration that they're a

4 Democrat --

5 A Yes.

6 Q -- and support the goals and --

7 A That's right.

8 Q Where is that public declaration being made?

9 A Well, there are hundreds of thousands of people who make a
10 public declaration when they attend a precinct caucus.

11 Q And are you referring to the statement, the preference
12 label that you were referring to earlier, the parens --

13 A They sign a pledge. They sign a pledge at that point.

14 Q I just want to make sure that in your answer here --

15 A Yeah.

16 Q -- are you referring to when a person says "I prefer the
17 blank party" under Initiative 872, is that one of these
18 public declarations that you're referring to?

19 A Yes. I -- it doesn't actually say, "I prefer the blank
20 party." It says I -- yeah, I don't think that's exactly
21 what it says.

22 Q When -- I just want to make sure I understand your position
23 correctly. Is it your position that when a person running
24 for public office says as part of Initiative 872, "I prefer
25 the Democratic Party," I am making a public declaration

1 that I am a Democrat?

2 A Well, no, because of this. They're not -- they're not
3 declaring their support of the principles and goals of the
4 Democratic Party. They may be saying that they prefer --
5 they don't even say that they support it. They say they
6 prefer it.

7 Q So if I understand your testimony correctly, the statement
8 "I prefer the Democratic Party" is saying nothing more than
9 "I prefer the Democratic Party." That doesn't mean I'm a
10 Democrat or that I even support the goals and principles of
11 the Democratic Party?

12 A That's --

13 MR. MCDONALD: I'm going to object to the form
14 of the question.

15 Go ahead.

16 MR. GROVER: This is Orrin Grover. I join in
17 the objection, and I would ask that the court reporter read
18 back the previous question and the question that's on
19 table.

20 MR. AHEARNE: I don't think you have a right to
21 ask for other questions to be reread other than the
22 question that's on the table.

23 MR. GROVER: Since I -- yes, you do. Trust me.

24 MR. AHEARNE: Okay, I'll let this go forward,
25 but I know you don't, but I don't want to keep us here

1 longer than we're already here.

2 MR. GROVER: Well, the two questions are
3 inter-related and the previous question misstated the
4 witness's testimony, and we're getting into an area that's
5 confusing because of the way that you're asking the
6 question.

7 MR. AHEARNE: Well, let's go back to the prior
8 question, the prior answer, and then the pending question.
9 And this is now going to take a lot of time, but okay,
10 Mr. --

11 MR. GROVER: Grover.

12 MR. AHEARNE: -- Grover. Sorry. I'll confess
13 that I forgot that your first name is Orrin, not your last
14 name.

15 MR. GROVER: It's no problem.

16 THE COURT REPORTER: Question: "When -- I just
17 want to make sure I understand your position correctly. Is
18 it your position that when a person running for public
19 office says as part of Initiative 872, 'I prefer the
20 Democratic Party,' I am making a public declaration that I
21 am a Democrat?"

22 Answer: "Well, no, because of this. They're not --
23 they're not declaring their support of the principles and
24 goals of the Democratic Party. They may be saying that
25 they prefer -- they don't even say that they support it.

1 They say they prefer it."

2 Question: "So if I understand your testimony
3 correctly, the statement "I prefer the Democratic Party" is
4 saying nothing more than "I prefer the Democratic Party."
5 That doesn't mean I'm a Democrat or that I even support the
6 goals and principles of the Democratic Party?"

7 MR. WHITE: Having heard the question read back
8 again, I'm also going to join in the objection to the form
9 of the question.

10 A I think there's tremendous confusion to voters.

11 MR. AHEARNE: That's a nonresponsive answer, but
12 I'll go ahead under this line.

13 Q (By Mr. Ahearne) When a candidate states under Initiative
14 872 that they prefer the Democratic Party, is it your
15 testimony that that is a statement that they are a member
16 of the Democratic Party?

17 MR. MCDONALD: Object to the form --

18 MR. GROVER: Well, I --

19 MR. MCDONALD: Let me finish my objection, and
20 you can have yours. Let me object to the form of the
21 question.

22 Go ahead, Orrin.

23 MR. GROVER: I also object to the form of the
24 question. It's not proper to ask him what his testimony
25 is. That's what Dixie's there for. If you want to know

1 what his testimony is, you ask Dixie to read it back. If
2 you want to know what he has to say about something, then
3 ask him a question, but don't ask him what his testimony is
4 or what his testimony was.

5 MR. MCDONALD: That's not the basis of my form
6 objection.

7 MR. EVEN: And I'm going to object to the
8 speaking objection.

9 MR. WHITE: This is John White. I also object
10 to the form of the question.

11 MR. AHEARNE: Could you reread the question,
12 please?

13 THE COURT REPORTER: I'm having trouble finding
14 it with all the colloquy.

15 MR. AHEARNE: Which is one of the purposes for
16 everyone entering that colloquy.

17 Okay. Are we ready to start again?

18 THE COURT REPORTER: Yes.

19 Q (By Mr. Ahearne) My question is: As a long-time chairman
20 of the State Democratic Party, to you does the statement "I
21 prefer the Democratic Party" under Initiative 872 mean that
22 I am a member of the Democratic Party?

23 MR. WHITE: This is John White. I'm going to
24 object to the form of the question.

25 MR. GROVER: This is Orrin Grover. Same

1 objection. I'm sorry, Same as John's objection; object to
2 the form of the question.

3 MR. MCDONALD: Go ahead.

4 A Okay. Anybody can say -- any candidate can say that they
5 are a member of the Democratic Party through this
6 preferred -- let me say this. Any candidate can imply that
7 they're a member of the Democratic Party through this
8 preferred -- preferred-to-be-known-as statement. The
9 confusion that arises out of this to voters is that voters
10 believe that these candidates are members of the Democratic
11 Party and that -- that -- that these -- this statement
12 implies an association that in some cases may be true. It
13 may be that the candidate is a Democrat because they've
14 been active in Democratic Party affairs. But in other
15 cases, there are people who might have no association to
16 the Democratic Party or its values or its principles.

17 And so the statement is confusing because you have
18 some individuals who are running as Democrats, perhaps for
19 high office, who have been on the ballot for years and
20 people say, "Oh, Jim McDermott prefers the Democratic
21 Party." "Oh, well, yeah." And the next person down -- the
22 next office down you have someone who's saying "I prefer
23 the Democratic Party" who no one has ever heard of or might
24 not support any of the Party's principles. So it has
25 created a lot of confusion.

1 Q So I'm clear, when you say that the Top Two system
2 established by Initiative 872 creates confusion, that's the
3 type of confusion you're referring to?

4 A That is an example of the confusion that it refers to, yes.

5 Q And could you tell me what other kinds of confusion you
6 were referring to?

7 A Well, I believe that that is -- well, I believe that many,
8 many, many, many voters still do not understand that --
9 that because of the label being on the ballot that many,
10 many, many voters do not understand that there won't be one
11 Democrat and one Republican that moves forward to the
12 general election ballot or that minor parties, you know,
13 are guaranteed a spot in the general election ballot.
14 That's another form of confusion, because they just --
15 they're confused.

16 Q What's the basis for your believing there's that confusion?

17 A Conversations I have with people that think that -- that
18 there will be -- be one Democrat and one Republican on the
19 general election ballot. These are not activists who pay
20 attention closely, but they're citizens talking to family
21 members who are not that heavily involved in politics.

22 Q And these conversations you've had with family members and
23 other people, approximately how many people are these that
24 you're referring to?

25 A Well, I've had at least six conversations to that effect in

1 the last couple of years.

2 Q Do you believe that the confusion among party members that
3 you referred to in connection with the Top Two Primary as
4 implemented by the State is different from any confusion
5 that general voters have?

6 A Do I believe that the confusion among party members is
7 different than --

8 Q Let me just break it into three parts. If I'm saying your
9 testimony -- well, to stop Mr. Grover's objection, do you
10 believe there's confusion among party members in connection
11 with the Top Two primary as implemented by the State?

12 A Yes.

13 Q Do you believe there's confusion among voters in connection
14 with the Top Two Primary system as implemented by the
15 State?

16 A Yes.

17 Q Is the confusion you're referring to among party members
18 and the confusion among voters the same type of confusion,
19 different types of confusion?

20 A Oh, I think it's the same confusion in most cases, but --

21 Q Can you think of examples where the type of confusion would
22 be different between party members as opposed to general
23 voters?

24 A No, I think confusion reigns among both groups and it's
25 probably the same -- same issues.

1 MR. AHEARNE: That's all I have.

2 MR. MCDONALD: Orrin? John?

3 MR. GROVER: I have no questions. This is
4 Orrin.

5 MR. EVEN: And John?

6 MR. WHITE: I'm looking.

7 EXAMINATION

8 BY MR. WHITE:

9 Q Actually, I do have one question, Mr. Berendt. Is the
10 Democratic Party name part of its brand?

11 A Yes.

12 MR. WHITE: No further questions.

13 MR. EVEN: Dave?

14 MR. MCDONALD: Yeah.

15 EXAMINATION

16 BY MR. MCDONALD:

17 Q Paul, just to generally get you back to the subject matter,
18 and I'm not intending to restate any testimony, but there
19 was an area of your testimony in connection with the
20 nomination process where you referred to your participation
21 in meetings and conversations with people in your precinct
22 and vetting of the candidates. Do you recall the subject
23 matter?

24 A Yes, um-hmm.

25 Q In your experience as a chair of the party, in determining

1 whether or not to nominate a candidate, is it common for
2 organizations or members to ask candidates where they stand
3 with respect to issues that may be on the platform?

4 A Yes, it is.

5 Q And is it common for the vote of the organization or the
6 member with respect to whether or not to nominate that
7 candidate to be dependent upon the answer that comes back
8 with respect to how strongly or weakly or if at all they
9 support those issues?

10 A Yes.

11 Q In your experience as chair, do the people in organizations
12 who nominate candidates after those interviews expect them
13 to perform in accordance with the statements they have
14 made?

15 A Yes.

16 Q And in your experience as a chair, if a candidate does not
17 thereafter perform in accordance with those expectations
18 that have been created, will it be a factor that will be
19 considered in any subsequent nomination proceeding with
20 respect to that candidate?

21 A Absolutely.

22 MR. MCDONALD: I have no further questions.

23 MR. EVEN: And I have nothing further, so --

24 MR. AHEARNE: Actually, I have a follow-up on
25 Mr. White's question.

1 EXAMINATION

2 BY MR. AHEARNE:

3 Q When Mr. White asked you if the Democratic Party name is
4 part of its brand, and you said yes. Do you recall that?

5 A Yes.

6 Q How is the name part of the party's brand? Is it just the
7 word Democrat that you're referring to?

8 A Well -- you know, branding is -- you know what a brand is.

9 Q Why don't you explain what you meant when you said --

10 A I don't know if you know what a brand is, but -- no, you
11 asked -- let me explain this. Okay?

12 Q Let me ask a question that will help you.

13 A Yeah.

14 Q When you say brand, what do you mean?

15 A Well, a brand is -- one way of describing a brand is not
16 what -- what people say about themselves, but it's what
17 other people say about them to each other, is one way of
18 describing a brand.

19 Q And if I can follow up, when you've been using the term
20 "brand" throughout your testimony, is that the definition
21 of brand that you've been using?

22 A Well, it's one way to describe brand. There's several
23 other ways too.

24 Q Well, are there other ways to describe brand that you
25 commonly refer to?

1 A Well, a brand -- a brand is an image, is what people think
2 of a product, is what something stands for. But it is also
3 this other thing, which is what other people say to each
4 other about a brand, so -- so -- so the Democratic name is
5 certainly a part of the party's brand. It's the central
6 thought that a brand is -- a brand image is developed
7 around. And so, you know, in the Democratic Party, you
8 know, we work very hard to move people, you know, into our
9 column and get them to be Democrats, and the brand is
10 essential to appealing to formerly independent voters or
11 even people of other parties to move into that -- into that
12 column. And if it's watered down or if it's -- you know,
13 if that brand is harmed, it's harmful to our party.

14 Q And what I'm trying to get at is this understanding of what
15 you mean when you say brand. One way to think of it is
16 it's like the name Ford. You've got a brand name. Ford
17 gives you something to identify as opposed to Chevy, or I
18 guess they now call it Chevrolet.

19 Are you talking about Democrat as being that name
20 that distinguishes it from Republican, for example, or are
21 you talking about something different, I mean, this
22 nebulous concept of principles and values? I'm trying to
23 get at what you mean by brand.

24 A Well, I think this is kind of an esoteric discussion,
25 frankly, or -- I'm sorry -- perhaps esoteric testimony, but

1 the brand is -- certainly the Democrat -- the word Democrat
2 or Democratic is central to our brand, which is the image
3 that we portray to the public. It would be just a short
4 and concise thing to say.

5 Q In your years as chair of the State Democratic Party, did
6 the party do anything to prevent people from using that
7 word Democrat or Democratic?

8 A Yes.

9 Q What?

10 A Well, the -- you know, as an example, the LaRouche group
11 hijacks the Democratic -- the word Democrat or Democratic
12 all the time. And we're constantly educating groups and
13 individuals that -- that people who are soliciting
14 locations at airports or -- or, you know, at public events
15 were not affiliated with the State Democratic Party, that
16 we didn't have any problem with them, you know, having
17 their own freedom of speech, but they weren't a part of the
18 Democratic Party.

19 Q And what were the LaRouche people saying that caused the
20 concern for you? I'll confess I don't know. Were they
21 saying "We are Democrats" or what?

22 A Well, they were saying the Queen of England is the biggest
23 drug dealer in the world. They were saying that Jimmy
24 Carter was like Hitler. They were saying -- they are
25 saying -- they say things that major Democratic elected

1 officials are conducting genocide.

2 Q My question was to how were the LaRouche people saying or
3 using the word Democrat that was offending you?

4 A Well, they would apply for permits at public facilities
5 saying that they're a Democratic Party organization to
6 promote their hateful messaging.

7 Q And I'm not trying to focus on the hateful messaging or
8 dispute that or anything like that. I'm trying to figure
9 out what were the LaRouche people saying with respect to
10 the word Democrat that was offensive to you. And so far
11 you've identified they would say on permit applications
12 that they were affiliated with the Democratic Party; is
13 that it?

14 A Yes.

15 Q Anything else?

16 A Well, that was probably, you know, one of the most
17 egregious things, yes.

18 Q Sitting here today, can you think of any less egregious
19 things that they were saying to affiliate with the
20 Democratic Party?

21 A I think that the examples I've given are egregious enough.

22 Q I want to make sure I'm clear.

23 A Yeah.

24 Q I'm not talking about egregiousness as in the kinds of
25 statements they were making about other people. What I'm

1 trying to get an understanding of is what were the LaRouche
2 people saying with respect to their affiliation with the
3 Democratic Party. And so far I've only heard you say the
4 LaRouche people put on permit applications "We are
5 affiliated with the Democratic Party."

6 A Well, they also had candidates that ran as -- using the
7 Democratic label also.

8 Q Was this during the Blanket Primary, the Montana Primary,
9 the Top Two Primary?

10 A It's during the current primary, the 2010 primary that
11 there's an example of the LaRouche candidate using the
12 Democratic Party label.

13 Q And what is that example?

14 A I believe in the 32nd District there's a LaRouche candidate
15 running.

16 Q Do you recall his name or --

17 A I don't.

18 Q Do you recall if it's a him or a her?

19 A I just want to make sure I get my facts straight, so I -- I
20 seem to have read this, but I -- I would prefer to withdraw
21 that testimony. But I believe that is true, but I --

22 Q Okay.

23 A -- I just want to make sure I'm not testifying to something
24 that's not correct. But there have been examples of
25 LaRouche candidates running for public office using the

1 Democratic name that we, you know, have to -- we work very
2 hard to -- to refute, but -- but no matter how hard we
3 work, because that Democratic name is there, there are a
4 lot of people who are confused and end up voting for them.

5 Q And the testimony you just gave, is that solely under the
6 Top Two system, or did you have similar types of problems
7 under the Montana system or the Prior Blanket system?

8 A Oh, it's been a problem under all of the systems.

9 MR. AHEARNE: That's all I have.

10 MR. MCDONALD: Nothing further -- sorry. John?
11 Orrin?

12 MR. WHITE: John White. No further questions.

13 MR. GROVER: No, no further questions.

14 MR. MCDONALD: I have nothing further.

15 MR. EVEN: And I have nothing further.

16 MR. MCDONALD: Thank you, Paul.

17 THE WITNESS: Well, thank you.

18 (Concluded at 12:46 p.m.)

19 (Signature reserved)

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C E R T I F I C A T E

I, DIXIE J. CATTELL, a duly authorized Notary Public in and for the State of Washington, residing at Olympia, do hereby certify:

That the foregoing deposition of PAUL BERENDT was taken before me and completed on the 6th day of August, 2010, and thereafter transcribed by me by means of computer-aided transcription; that the deposition is a full, true and complete transcript of the testimony of said witness;

That the witness, before examination, was, by me, duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the witness reserved signature;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the deposition of PAUL BERENDT and promptly serving the same upon MR. JAMES PHARRIS.

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this _____ day of _____, 2010.

Dixie J. Cattell, CSR#2346
Notary Public in and for the State
of Washington, residing at Olympia.