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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**HORIZON CHRISTIAN SCHOOL,  
et al.,**

**Plaintiffs,**

**v.**

**KATE BROWN, GOVERNOR OF THE  
STATE OF OREGON, in her official  
capacity only,**

**Defendant.**

Civil No. 3:20-cv-01345-MO

**SECOND DECLARATION OF JOHN  
KAEMPf IN SUPPORT OF  
PLAINTIFFS' EMERGENCY MOTION  
FOR PRELIMINARY INJUNCTION**

1. I, John Kaempf, testify as follows: I am over 18 years of age and of sound mind, and I have personal knowledge of all matters herein. I am an attorney, and I represent the Plaintiffs in this case.

2. Attached to this declaration as **Exhibit H** is a true and accurate copy of the deposition of Lindsey Capps in this case, taken October 26, 2020.

3. Attached to this declaration as **Exhibit I** is a true and accurate copy of the

deposition of Jody Christensen in this case, taken October 30, 2020.

4. Attached to this declaration as **Exhibit J** is a true and accurate copy of the deposition of Leah Horner in this case, taken October 28, 2020.

5. Attached as **Exhibit K** is a true and complete copy of a speech given by United States Supreme Court Associate Justice Samuel Alito on November 12, 2020.

6. Attached as **Exhibit L** is a true copy of an August 30, 2020 press release from Defendant about allowing Black Lives Matter protests this year.

7. Attached as **Exhibit M** is a true copy of an October 23, 2020 news release from the United States Department of Health and Human Services.

8. Attached Exhibits L and M have been annotated with highlighting or underlining to emphasize certain portions of text. Deposition transcripts are redacted for personal identifiers of the deponents pursuant to FRAP 25(a)(5).

9. Marc Abrams, Defendant's lead attorney, served as Chair of the Multnomah Education Service District Board and Vice Chair of the Portland School Board, has been president of AFSCME Local 1085 for over a decade, has served as Treasurer of AFSCME Council 75, and still serves on its political action committee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 16, 2020.

/s/ John Kaempf  
JOHN KAEMPF

Deposition of:  
**Lindsey Capps**

October 26, 2020

Horizon Christian School; et al.  
vs.  
Kate Brown, Governor of the State of Oregon

Case No.: 3:20-cv-01345



**Lindsey Capps****1 (Pages 1 to 4)**

<p style="text-align: right;"><b>Page 1</b></p> <p style="text-align: center;">UNITED STATES DISTRICT COURT DISTRICT OF OREGON PORTLAND DIVISION</p> <p>HORIZON CHRISTIAN SCHOOL, an Oregon nonprofit corporation; LIFE CHRISTIAN SCHOOL, an assumed business name; JOHN MONTANG, an individual; LYNN MONTANG, an individual; SARAH RODRIGUEZ, an individual; REGINA MICHELINE, an individual; JASON NISSEN, an individual; TRACIE NISSEN, an individual; DAN ALDER, an individual; DOMINIQUE BAYNES, an individual; ALEXANDER JONES, an individual; ASHLEY CODONAU, an individual; JARROD LEVESQUE, an individual; and ROBIN LEVESQUE, an individual, Plaintiffs,</p> <p>V. Case No. 3:20-cv-01345 KATE BROWN, GOVERNOR OF THE STATE OF OREGON, in her official capacity only, Defendant.</p> <p style="text-align: center;">DEPOSITION OF LINDSEY CAPPS Taken in behalf of the Plaintiffs October 26, 2020</p>	<p style="text-align: right;"><b>Page 3</b></p> <p style="text-align: center;">APPEARANCES</p> <p>1 2 3 Appearing on behalf of the Plaintiff: 4 KAEMPF LAW FIRM PC 5 BY MR. JOHN KAEMPF (Appearing Remotely) 6 121 SW Morrison Street, Suite 1100 7 Portland, Oregon 97204 8 503-224-5006 9 John@kaempflawfirm.com 10 11 Appearing on behalf of the Defendant: 12 THE OREGON DEPARTMENT OF JUSTICE 13 BY MR. MARC ABRAMS (Appearing Remotely) 14 100 SW Market Street 15 Portland, Oregon 97201 16 971-673-1880 17 Marc.abrams@state.or.us 18 19 20 ALSO PRESENT REMOTELY: 21 Kareem Haikal, videographer 22 23 24 25</p>				
<p style="text-align: right;"><b>Page 2</b></p> <p>1 BE IT REMEMBERED THAT, the deposition of Lindsey 2 Capps was taken before Mary Jacks, Court Reporter and 3 Notary Public, on October 26, 2020, 1:00 p.m. at 1235 4 SE Morrison, Suite 200, Portland, Oregon. 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;"><b>Page 4</b></p> <p style="text-align: center;">EXAMINATION INDEX</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 70%;">EXAMINATION BY:</td> <td style="width: 30%;">PAGE NO.</td> </tr> <tr> <td>Mr. Kaempf</td> <td style="text-align: center;">6</td> </tr> </table> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	EXAMINATION BY:	PAGE NO.	Mr. Kaempf	6
EXAMINATION BY:	PAGE NO.				
Mr. Kaempf	6				

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October 26, 2020

Exhibit H, Page 2 of 46  
to Second Declaration of John Kaempf

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Lindsey Capps

2 (Pages 5 to 8)

Page 5	Page 7
<p>1 PORTLAND, OREGON; MONDAY, OCTOBER 9, 2020</p> <p>2 1:00 P.M.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Here begins the</p> <p>5 videotaped deposition of Horizon Church School, et</p> <p>6 al., V Kate Brown, Governor of the State of Oregon;</p> <p>7 case number USDC case 3:20-cv-01345.</p> <p>8 Will the counsel please state appearances</p> <p>9 for the record?</p> <p>10 MR. KAEMPF: This is John Kaempf, attorney</p> <p>11 for plaintiff.</p> <p>12 MR. ABRAMS: This is Marc Abrams,</p> <p>13 assistant attorney in charge of the Civil Litigation</p> <p>14 Section, Department of Justice, for defendant.</p> <p>15 THE VIDEOGRAPHER: The stenographer will</p> <p>16 now swear in the witness.</p> <p>17 THE COURT REPORTER: Please raise your</p> <p>18 right hand.</p> <p>19 Do you solemnly swear or affirm that the</p> <p>20 testimony you're about to give will be the truth, the</p> <p>21 whole truth and nothing but the truth?</p> <p>22 And you're on mute, Mr. Capps.</p> <p>23 THE WITNESS: I do.</p> <p>24 THE COURT REPORTER: Thank you.</p> <p>25 //</p>	<p>1 you. And I'll -- if you answer a question, I'm going</p> <p>2 to assume that you understood it. So if at any time</p> <p>3 I ask you a question you do not understand, you can</p> <p>4 ask me to restate it. Okay?</p> <p>5 A. Okay.</p> <p>6 Q. If at any time today you need to take a break</p> <p>7 for the bathroom or otherwise, please just let us</p> <p>8 know. The only exception will be if there's a</p> <p>9 question out there that you haven't answered yet,</p> <p>10 then we'll wait. Otherwise, let us know. Okay?</p> <p>11 A. Understood.</p> <p>12 Q. Have you ever given a deposition before?</p> <p>13 A. No.</p> <p>14 Q. Do you understand that you are under oath and</p> <p>15 this is just as serious as if you were testifying in</p> <p>16 front of the judge in a courtroom?</p> <p>17 A. Yes.</p> <p>18 Q. And do you also understand that if just</p> <p>19 hypothetically you were to say something that is</p> <p>20 false, I can use the written transcript of your</p> <p>21 testimony and documents to contradict what you might</p> <p>22 say?</p> <p>23 A. Could you repeat the last statement?</p> <p>24 Q. The court reporter can read it back.</p> <p>25 (The court reporter read back as requested.)</p>
Page 6	Page 8
<p>1 LINDSEY CAPPS,</p> <p>2 having first been duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4</p> <p>5 EXAMINATION</p> <p>6 BY MR. KAEMPF:</p> <p>7 Q. Mr. Capps, can you hear me okay?</p> <p>8 A. Yes.</p> <p>9 Q. Don't tell me anything that you and Mr. Abrams</p> <p>10 may have said by way of substance. Can you give me</p> <p>11 the gist of --</p> <p>12 THE COURT REPORTER: Seems like we're</p> <p>13 having some audio difficulty. I got that sentence</p> <p>14 pretty choppy. I'm sorry. There's a lot of echo and</p> <p>15 a lot of in and out and choppiness.</p> <p>16 MR. KAEMPF: Okay. This is John Kaempf.</p> <p>17 Now is this better?</p> <p>18 THE COURT REPORTER: Yes, that sounds a</p> <p>19 little better.</p> <p>20 BY MR. KAEMPF:</p> <p>21 Q. Okay. Mr. Capps, this is John Kaempf, can you</p> <p>22 hear me?</p> <p>23 A. Yes.</p> <p>24 Q. I'm going to give you a few ground rules for</p> <p>25 the deposition today that will make things easier for</p>	<p>1 THE WITNESS: Yes, understood.</p> <p>2 BY MR. KAEMPF:</p> <p>3 Q. Do you understand that my interests are adverse</p> <p>4 to yours and the State of Oregon's?</p> <p>5 A. Yes.</p> <p>6 Q. And what is your date of birth?</p> <p>7 A. My date of birth is [REDACTED] 1975.</p> <p>8 Q. What is your current residential address?</p> <p>9 A. [REDACTED], Portland, Oregon</p> <p>10 [REDACTED]</p> <p>11 Q. And who do you live with?</p> <p>12 A. My family.</p> <p>13 THE COURT REPORTER: Can I get the street</p> <p>14 name? I'm sorry. Can I get the street name?</p> <p>15 THE WITNESS: I'm sorry. The sound is a</p> <p>16 little difficult.</p> <p>17 THE COURT REPORTER: I know.</p> <p>18 THE WITNESS: Can you repeat that, Mary?</p> <p>19 THE COURT REPORTER: Can I get the street</p> <p>20 name?</p> <p>21 THE WITNESS: [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 THE COURT REPORTER: Thank you.</p> <p>24 BY MR. KAEMPF:</p> <p>25 Q. Do you mind if I call you Lindsey today?</p>

**Lindsey Capps****3 (Pages 9 to 12)**

<b>Page 9</b>	<b>Page 11</b>
<p>1 A. Please do.</p> <p>2 Q. Are you authorized by Governor Brown to give</p> <p>3 sworn testimony?</p> <p>4 A. Yes.</p> <p>5 Q. During the pandemic about how often have you</p> <p>6 communicated to Governor Brown?</p> <p>7 MR. ABRAMS: John, define more</p> <p>8 specifically, please.</p> <p>9 MR. KAEMPF: Can the court reporter</p> <p>10 restate the question?</p> <p>11 (Whereupon, the court reporter read back</p> <p>12 as requested.)</p> <p>13 BY MR. KAEMPF:</p> <p>14 Q. Lindsey, do you understand the question?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So how often about?</p> <p>17 A. I'm not sure I can --</p> <p>18 MR. ABRAMS: The witness can answer.</p> <p>19 BY MR. KAEMPF:</p> <p>20 Q. Is it daily, weekly, monthly?</p> <p>21 A. Given the timeframe, it's hard to put it in</p> <p>22 those parameters.</p> <p>23 Q. I would say from -- how about this -- March of</p> <p>24 this year through October of this year?</p> <p>25 A. Weekly to biweekly.</p>	<p>1 BY MR. KAEMPF:</p> <p>2 Q. Are religious schools, Lindsey?</p> <p>3 A. Any school in the State of Oregon, whether they</p> <p>4 be the public, private or religious school, are</p> <p>5 required to meet metrics for the resumption of</p> <p>6 in-person instruction per guidance issued by the</p> <p>7 Oregon Health Authority and the Oregon Department of</p> <p>8 Education.</p> <p>9 Q. If a religious school meets that guidance, can</p> <p>10 it reopen full-time with in-person classes?</p> <p>11 MR. ABRAMS: Objection to the extent it</p> <p>12 calls for a legal conclusion.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: Any eligible school under</p> <p>15 the order would be able to open if they meet state</p> <p>16 guidelines including metrics.</p> <p>17 BY MR. KAEMPF:</p> <p>18 Q. Do religious schools count as any eligible</p> <p>19 school within the orders?</p> <p>20 MR. ABRAMS: Objection, asked and</p> <p>21 answered.</p> <p>22 Go ahead.</p> <p>23 THE WITNESS: Private schools, including</p> <p>24 religious schools, would fall under that guidance.</p> <p>25 BY MR. KAEMPF:</p>
<b>Page 10</b>	<b>Page 12</b>
<p>1 Q. And through what methods do you communicate</p> <p>2 with Governor Brown?</p> <p>3 A. Generally in meetings.</p> <p>4 Q. Are those meetings ever recorded in any way?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. So are they in-person meetings?</p> <p>7 A. Generally by Zoom or by phone.</p> <p>8 Q. Right now are religious schools in Oregon</p> <p>9 allowed to reopen full-time for in-person classes?</p> <p>10 MR. ABRAMS: I'm going to object. Assumes</p> <p>11 facts not in evidence.</p> <p>12 You can answer.</p> <p>13 THE WITNESS: Public and private schools,</p> <p>14 including parochial schools, are under state guidance</p> <p>15 by executive order, and they must comply with</p> <p>16 guidance issued by the Oregon Health Authority and</p> <p>17 the Oregon Department of Education.</p> <p>18 BY MR. KAEMPF:</p> <p>19 Q. I'm going to try again because I didn't hear an</p> <p>20 answer direct. So my question is, right now are</p> <p>21 religious schools in Oregon allowed to reopen</p> <p>22 full-time with in-person classes?</p> <p>23 MR. ABRAMS: Objection, asked and</p> <p>24 answered.</p> <p>25 Go ahead.</p>	<p>1 Q. What are the standards for a religious K</p> <p>2 through 12 school to reopen for in-person classes?</p> <p>3 MR. ABRAMS: Objection, mischaracterizes</p> <p>4 the previous testimony, assumes facts not in</p> <p>5 evidence.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: There are only standards</p> <p>8 that apply to public and private schools.</p> <p>9 BY MR. KAEMPF:</p> <p>10 Q. The same?</p> <p>11 A. Yes.</p> <p>12 Q. And with reference to executive order numbers,</p> <p>13 what are those standards?</p> <p>14 A. The current executive order is Executive Order</p> <p>15 20-29 and it's specified within the order.</p> <p>16 Q. Who among the Governor's staff drafted</p> <p>17 Executive Order 20-29?</p> <p>18 A. The -- it was under the direction of the</p> <p>19 general counsel.</p> <p>20 Q. Who is that?</p> <p>21 A. Dustin Buehler.</p> <p>22 Q. Was anyone else involved, to your knowledge, in</p> <p>23 drafting EO 20-29?</p> <p>24 A. There were additional staff, including myself.</p> <p>25 Q. Okay. Can you name all such people?</p>

**Lindsey Capps****4 (Pages 13 to 16)**

<b>Page 13</b>	<b>Page 15</b>
<p>1 A. I would recall that that would be Deputy 2 General Counsel Sarah Weston, those were the 3 individuals directly involved in drafting, as I 4 recall. 5 Q. Am I correct that the state, including your 6 area of responsibility, cannot treat private schools 7 any differently than public schools? 8 MR. ABRAMS: Objection to the extent it 9 calls for legal conclusion, and asked and answered. 10 You can answer again. 11 THE WITNESS: There are things that apply 12 to all schools both public and private. 13 BY MR. KAEMPF: 14 Q. Are you aware of any religious or private 15 school in Oregon that has been a spreader of the 16 COVID-19 virus? 17 A. To clarify your question, did you say a 18 spreader of the virus? 19 Q. Yes, within Oregon, any religious or private 20 school? 21 A. Not to my knowledge. 22 Q. Are you aware of any student at any religious 23 or private school in Oregon who has contracted 24 COVID-19? 25 A. Not that I'm aware of.</p>	<p>1 the last question back? 2 (The court reporter read back as 3 requested.) 4 THE WITNESS: The basis of the community 5 metrics for schools in resuming in-person instruction 6 is grounded in the extent of community spread of the 7 COVID-19 virus. 8 BY MR. KAEMPF: 9 Q. So isn't it true that Governor Brown is not 10 allowing religious schools to reopen full-time for 11 in-person classes regardless of whether their 12 students are healthy or sick? 13 A. I think there are two parts to your question. 14 Q. Okay. Then answer them both. 15 A. So the Governor has applied a standard for all 16 schools whether public or private. 17 Q. What is your authority for that statement? 18 A. I'm sorry. I did not hear you. 19 Q. What is your authority for that statement? 20 A. Mary, I apologize. I can't hear his question. 21 Q. What is your authority for that statement? 22 THE COURT REPORTER: He said "authority." 23 THE WITNESS: All I can state is that I'm 24 a staff member of the office of the Governor. 25 BY MR. KAEMPF:</p>
<b>Page 14</b>	<b>Page 16</b>
<p>1 Q. Are you aware of any student at any religious 2 or private school in Oregon who has died from 3 COVID-19? 4 A. Not to my knowledge. 5 Q. Are you aware of any student at any religious 6 school anywhere in the United States who has died 7 from COVID-19? 8 A. Not to my knowledge. 9 Q. Okay. Given that, Lindsey, why are religious 10 schools in Oregon not allowed to fully -- 11 MR. ABRAMS: John -- 12 MR. KAEMPF: -- reopen for in-person 13 classes? 14 MR. ABRAMS: John, let's -- deposition, 15 please. 16 MR. KAEMPF: I'm sorry. You cut out. 17 What was that? 18 MR. ABRAMS: I'm asking you to refer to 19 the deponent as Mr. Capps. 20 MR. KAEMPF: Oh, he said that I could call 21 him Lindsey. I apologize. Did I hear that wrong? 22 MR. ABRAMS: Well, he may have but I want 23 to keep this a formal deposition. I would like it 24 for the record. Thank you. 25 MR. KAEMPF: Oh, okay. So can you read</p>	<p>1 Q. Do you have a specific legal authority for your 2 last statement that all schools are treated equally? 3 MR. ABRAMS: Object on the grounds it 4 calls for a legal conclusion. I direct the witness 5 not to answer. 6 MR. KAEMPF: You're instructing him not to 7 answer? 8 MR. ABRAMS: John, he's not a lawyer. 9 He's not playing one on TV. You asked him what his 10 authority is and then you added the word "legal" and 11 then comes the objection. 12 BY MR. KAEMPF: 13 Q. Is there a specific executive order that 14 supports your last statement, Mr. Capps? 15 A. Executive Order 20-29. 16 Q. Can any future period of no restrictions on 17 Oregon K through 12 schools be foreseen? 18 MR. ABRAMS: Objection, calls for 19 speculation. 20 BY MR. KAEMPF: 21 Q. Please answer. 22 A. Could you restate the question? 23 Q. Please read it back. 24 THE COURT REPORTER: Could you please 25 repeat it?</p>



Lindsey Capps

5 (Pages 17 to 20)

Page 17	Page 19
<p>1 BY MR. KAEMPF:</p> <p>2 Q. I said can any future period of no restrictions</p> <p>3 on Oregon's K-12 schools be foreseen?</p> <p>4 A. To the extent that we can see the control of</p> <p>5 the virus in the future?</p> <p>6 Q. Yes. Can you see any future period where there</p> <p>7 will be no restrictions on Oregon's K through 12</p> <p>8 schools?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And when will those restrictions happen?</p> <p>11 A. We remain under an executive order given the</p> <p>12 pandemic emergency.</p> <p>13 Q. How long are the Governor's pandemic executive</p> <p>14 orders preventing religious schools from reopening</p> <p>15 full-time with in-person classes scheduled to last?</p> <p>16 A. Can you restate the question, Mary?</p> <p>17 MR. KAEMPF: Is it okay to read it back?</p> <p>18 (Whereupon, the court reporter read back</p> <p>19 as requested.)</p> <p>20 THE WITNESS: Restate it again that the</p> <p>21 executive order applies to all public and private</p> <p>22 schools and that executive order at this moment in</p> <p>23 time is indefinite.</p> <p>24 BY MR. KAEMPF:</p> <p>25 Q. Have you ever had the discussion, written or</p>	<p>1 A. The answer is no.</p> <p>2 Q. What documents did you review to refresh your</p> <p>3 recollection in preparation for your deposition?</p> <p>4 MR. ABRAMS: Objection, assumes facts not</p> <p>5 in evidence. Objection to the extent it calls for</p> <p>6 consultation with counsel to be disclosed.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: I did not review any</p> <p>9 documents in preparation.</p> <p>10 BY MR. KAEMPF:</p> <p>11 Q. Have you discussed your deposition with</p> <p>12 Governor Brown?</p> <p>13 A. I have not.</p> <p>14 Q. Have you discussed it with any other person who</p> <p>15 is not a lawyer on the Governor's staff?</p> <p>16 A. As a matter of scheduling I have mentioned it</p> <p>17 to a few other individuals where I had a meeting.</p> <p>18 Q. Who?</p> <p>19 A. Because of the deposition.</p> <p>20 Q. What people?</p> <p>21 A. I mentioned it to my scheduler, my deputy</p> <p>22 policy advisor, and informed my supervisors.</p> <p>23 Q. What are the names of your deputy policy</p> <p>24 advisor and your supervisors that you just mentioned?</p> <p>25 A. Alyssa Chatterjee, and the Governor Chief of</p>
Page 18	Page 20
<p>1 verbal, with Governor Brown about reopening or not</p> <p>2 reopening religious schools during the pandemic?</p> <p>3 A. No.</p> <p>4 Q. Is it your testimony that Executive Order 20-29</p> <p>5 treats public schools and religious schools the same</p> <p>6 or differently?</p> <p>7 MR. ABRAMS: Object to the extent it calls</p> <p>8 for a legal conclusion.</p> <p>9 You can answer.</p> <p>10 THE WITNESS: The same.</p> <p>11 BY MR. KAEMPF:</p> <p>12 Q. Okay. As you sit there right now, Mr. Capps,</p> <p>13 is there anything in particular that you're worried</p> <p>14 that I'll ask you about?</p> <p>15 A. No.</p> <p>16 MR. ABRAMS: Objection, vague.</p> <p>17 BY MR. KAEMPF:</p> <p>18 Q. It's actually quite specific. As you sit there</p> <p>19 right now --</p> <p>20 MR. ABRAMS: This --</p> <p>21 MR. KAEMPF: -- is there anything that you</p> <p>22 are worried that I will ask you about?</p> <p>23 MR. ABRAMS: Same objection.</p> <p>24 BY MR. KAEMPF:</p> <p>25 Q. Please answer.</p>	<p>1 Staff Nik Blosser.</p> <p>2 Q. Other than lawyers, have you discussed this</p> <p>3 deposition with anyone else?</p> <p>4 A. No.</p> <p>5 Q. And, Mr. Capps, this is a standard question I</p> <p>6 ask everyone so please don't take it personally, have</p> <p>7 you ever been convicted of a crime?</p> <p>8 A. No.</p> <p>9 Q. As an adult have you ever resided anywhere</p> <p>10 other than Oregon?</p> <p>11 A. Yes.</p> <p>12 Q. Where?</p> <p>13 A. I resided in the District of Columbia and the</p> <p>14 State of California.</p> <p>15 Q. And as to D.C. and California, about what years</p> <p>16 were you living there?</p> <p>17 A. I lived in the State of California from 1995 to</p> <p>18 1999, and the District of Columbia from 2000 to 2005.</p> <p>19 Q. Are you married?</p> <p>20 A. Yes.</p> <p>21 Q. What is your wife's name?</p> <p>22 A. My wife's name is [REDACTED]</p> <p>23 Q. Does she live with you at the address you gave</p> <p>24 me earlier?</p> <p>25 A. Yes.</p>



**Lindsey Capps****6 (Pages 21 to 24)**

<b>Page 21</b>	<b>Page 23</b>
<p>1 Q. Do you have any children?</p> <p>2 A. Yes.</p> <p>3 Q. What is your wife's cell phone number?</p> <p>4 MR. ABRAMS: I'm going to object on</p> <p>5 grounds of relevance. John, you don't need it.</p> <p>6 MR. KAEMPF: No. Why? Does she --</p> <p>7 MR. ABRAMS: Why does she --</p> <p>8 MR. KAEMPF: Maybe she has -- maybe she</p> <p>9 has something to add.</p> <p>10 MR. ABRAMS: That is -- I'm directing him</p> <p>11 not to answer.</p> <p>12 MR. KAEMPF: Okay. We'll take that up</p> <p>13 with the judge later.</p> <p>14 BY MR. KAEMPF:</p> <p>15 Q. Mr. Capps, are you aware of the fact that my</p> <p>16 client, the plaintiffs, the parties that brought this</p> <p>17 lawsuit, that if they prevail federal law allows the</p> <p>18 court to require the State of Oregon to pay my law</p> <p>19 firm's attorney fees?</p> <p>20 MR. ABRAMS: Objection to the extent it</p> <p>21 calls for legal conclusion.</p> <p>22 MR. KAEMPF: I'm not asking for any legal</p> <p>23 conclusions today, ever. He's just a fact witness</p> <p>24 and I want to know.</p> <p>25 Are you aware of that or not, Mr. Capps?</p>	<p>1 recover statutory attorney fees if they prevail?</p> <p>2 A. I was not aware.</p> <p>3 Q. What is your job title?</p> <p>4 A. Senior education policy advisor.</p> <p>5 Q. What does that involve?</p> <p>6 A. I advise the Governor on K-12 policy.</p> <p>7 Q. How long have you held this position?</p> <p>8 A. I've worked for the Governor since March of</p> <p>9 2015.</p> <p>10 Q. Who do you report to in the Governor's office?</p> <p>11 A. I report to Deputy Chief of Staff Berri Leslie</p> <p>12 and Chief of Staff Nik Blosser.</p> <p>13 Q. Anyone else?</p> <p>14 A. No.</p> <p>15 Q. Do you have control over Colt Gill at the</p> <p>16 Department of Education?</p> <p>17 A. No.</p> <p>18 Q. Do you know what his title is?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what is that? And also, if you know</p> <p>21 his duties, please let me know.</p> <p>22 A. Colt Gill's title is Director, Oregon</p> <p>23 Department of Education and Deputy Superintendent of</p> <p>24 Public Instruction.</p> <p>25 Q. Do you have any knowledge or specialized</p>
<b>Page 22</b>	<b>Page 24</b>
<p>1 MR. ABRAMS: Mr. --</p> <p>2 THE COURT REPORTER: I can't hear you.</p> <p>3 MR KAEMPF: I can't hear Marc at all.</p> <p>4 MR. ABRAMS: Mr. Kaempff, what you asked</p> <p>5 him about was the application of 43 USC 1983. I'm</p> <p>6 not directing him not to answer, but I would</p> <p>7 appreciate it if you stopped commenting on my</p> <p>8 objections.</p> <p>9 MR. KAEMPF: You're just cluttering the</p> <p>10 record and wasting time.</p> <p>11 MR. ABRAMS: That is another comment on my</p> <p>12 objections. Stop it, sir.</p> <p>13 MR. KAEMPF: I wish you would stop it. We</p> <p>14 would get done faster.</p> <p>15 MR. ABRAMS: Mr. Kaempff, I'm going to</p> <p>16 defend my client. I will make objection I deem</p> <p>17 proper. Stop commenting on them.</p> <p>18 MR. KAEMPF: I'll do my job and you do</p> <p>19 yours.</p> <p>20 MR. ABRAMS: And that's exactly what I'm</p> <p>21 doing so move on.</p> <p>22 BY MR. KAEMPF:</p> <p>23 Q. Mr. Capps, are you aware that in the first</p> <p>24 amended complaint that's filed in this case that</p> <p>25 there is an allegation that my client is allowed to</p>	<p>1 training in infectious diseases?</p> <p>2 A. Could you read the question? I heard</p> <p>3 infectious diseases but there was something before</p> <p>4 that.</p> <p>5 Q. Please read it back.</p> <p>6 (Court reporter read back as requested.)</p> <p>7 A. Thank you, Mary.</p> <p>8 To answer your question, I do not.</p> <p>9 Q. Are you aware of whether or not Colt Gill has</p> <p>10 any such training or experience?</p> <p>11 A. I'm not aware.</p> <p>12 Q. Who is Leah Horner?</p> <p>13 A. Leah Horner is a colleague in the Governor's</p> <p>14 office.</p> <p>15 Q. What is her title?</p> <p>16 A. She is the Jobs and Economy Advisor and the</p> <p>17 Regional Solutions Director.</p> <p>18 Q. Does she report to you?</p> <p>19 A. Leah does not.</p> <p>20 Q. Who does she report to?</p> <p>21 A. I believe she reports to Deputy Chief of Staff</p> <p>22 Gina Zejdlik.</p> <p>23 Q. To your knowledge, has Leah Horner been</p> <p>24 informed as to the general progress and decision</p> <p>25 making dealing with schools reopening during the</p>

**Lindsey Capps****7 (Pages 25 to 28)**

<b>Page 25</b>	<b>Page 27</b>
<p>1 pandemic?</p> <p>2 A. Yes.</p> <p>3 Q. And --</p> <p>4 A. That's a hard question, but I would say</p> <p>5 generally yes.</p> <p>6 Q. And how do you know that?</p> <p>7 A. I have directly consulted with her.</p> <p>8 Q. Have you ever discussed with Leah Horner the</p> <p>9 issue of parochial or private schools not being</p> <p>10 allowed to reopen fully?</p> <p>11 A. No.</p> <p>12 Q. Do you know if Leah Horner was involved in the</p> <p>13 creation or any changes dollars to the guidance</p> <p>14 issued about the pandemic?</p> <p>15 MR. ABRAMS: Objection, vague.</p> <p>16 You can answer.</p> <p>17 THE WITNESS: To the ready school safe</p> <p>18 learners guidance --</p> <p>19 BY MR. KAEMPF:</p> <p>20 Q. Yes.</p> <p>21 A. She was not.</p> <p>22 Q. Okay. And do you know if Jody Christensen was</p> <p>23 involved in that in any way?</p> <p>24 A. She was not.</p> <p>25 Q. Are you aware that Hermiston Christian School</p>	<p>1 meet the standards?</p> <p>2 MR. ABRAMS: I would like the witness to</p> <p>3 be able to finish the last answer, please.</p> <p>4 THE WITNESS: In response to your</p> <p>5 question, a school or school district could reopen so</p> <p>6 long as they meet the exceptions provided in the ODE</p> <p>7 guidance. In such --</p> <p>8 BY MR. KAEMPF:</p> <p>9 Q. Are you aware of the names of any such schools</p> <p>10 that have been allowed to reopen?</p> <p>11 A. Can you repeat the question?</p> <p>12 (The court reporter read back as</p> <p>13 requested.)</p> <p>14 A. No.</p> <p>15 Q. In terms of the pandemic where can I find the</p> <p>16 definition of an essential business?</p> <p>17 A. I believe that that would be found under the</p> <p>18 relevant executive order. I'm --</p> <p>19 Q. Do you know the number?</p> <p>20 A. Not off the top of my head.</p> <p>21 Q. Do you know the number?</p> <p>22 A. No.</p> <p>23 Q. Do you know -- and I know you're not a lawyer,</p> <p>24 but just from your understanding in your job, do you</p> <p>25 know when defining what is an essential business, was</p>
<b>Page 26</b>	<b>Page 28</b>
<p>1 has filed a similar lawsuit against the Governor and</p> <p>2 others?</p> <p>3 A. I'm not aware.</p> <p>4 Q. Okay. Now I'll represent to you that the</p> <p>5 complaint in that case, the lawsuit, that it contends</p> <p>6 that a public school was allowed to open in a county</p> <p>7 that did not meet the reopening standards. Are you</p> <p>8 aware of any school being allowed to do that?</p> <p>9 A. Can you repeat the question?</p> <p>10 Q. Sure. Please read it back.</p> <p>11 (The court reporter read back as</p> <p>12 requested.)</p> <p>13 A. There are certain exceptions if you are</p> <p>14 referring to the overarching statewide metrics</p> <p>15 that --</p> <p>16 Q. Yes, I would like to know any and all --</p> <p>17 A. -- schools.</p> <p>18 THE COURT REPORTER: Again, I can't --</p> <p>19 MR. KAEMPF: -- please let us know --</p> <p>20 sorry.</p> <p>21 THE COURT REPORTER: I had three people</p> <p>22 talking there.</p> <p>23 BY MR. KAEMPF:</p> <p>24 Q. Any and all public schools that you're aware of</p> <p>25 that were allowed to reopen in a county that did not</p>	<p>1 any statute or other preexisting written legal</p> <p>2 authority consulted?</p> <p>3 A. I don't know.</p> <p>4 Q. Have you ever reviewed Executive Order 20-07?</p> <p>5 A. I don't recall.</p> <p>6 Q. The title of it is 25 person gathering ban,</p> <p>7 does that ring a bell?</p> <p>8 A. The gathering ban rings a bell.</p> <p>9 Q. Okay. And had that Executive Order 20-07 says</p> <p>10 in part that it, quote, "does not apply to essential</p> <p>11 businesses and services," end quote.</p> <p>12 And it excludes -- from the 25 person gathering</p> <p>13 ban it says, "public school essential functions."</p> <p>14 Are you aware of that?</p> <p>15 A. I am aware that the executive orders issues for</p> <p>16 the schools have by design been very specific to</p> <p>17 public schools and private schools and that the</p> <p>18 authorities provided in governing those entities are</p> <p>19 through the school's executive order.</p> <p>20 Q. Now, it exempts -- it lists essential</p> <p>21 businesses. It says, "public school essential</p> <p>22 functions."</p> <p>23 Are you aware of that?</p> <p>24 A. I'll take your word for it.</p> <p>25 Q. Do you know why religious schools are not</p>

Lindsey Capps

8 (Pages 29 to 32)

Page 29	Page 31
<p>1 included as an essential function or essential 2 business?</p> <p>3 A. The intent of the executive order for schools, 4 whether public or private, was to provide clear 5 executive authority and guidance for ensuring their 6 compliance with health and safety and to help with 7 the addressing of our response to COVID-19.</p> <p>8 Q. Okay. That doesn't answer my question so I'm 9 going to ask it again.</p> <p>10 My question is Executive Order 20-07 said that 11 it does not apply to essential businesses and it 12 includes in that public school essential functions.</p> <p>13 Are you aware of that?</p> <p>14 A. I'm not aware.</p> <p>15 Q. Do you know why EO 20-07 does not include 16 religious or private schools as being essential 17 businesses or performing essential functions?</p> <p>18 A. I don't know why in the context of that order 19 or not.</p> <p>20 Q. Did there come a time when the state this year 21 received five million face coverings? I think they 22 were called KN95.</p> <p>23 A. Yes.</p> <p>24 Q. And isn't it true that the state made a 25 decision specifically to not give those masks to</p>	<p>1 Q. Okay. And I understand that. But was it 2 possible to also give some of those masks to private 3 or religious schools?</p> <p>4 MR. ABRAMS: Objection, calls for 5 speculation, lack of foundation.</p> <p>6 You're getting --</p> <p>7 MR. KAEMPF: It's not speculation.</p> <p>8 There were five million masks, and my 9 question, Mr. Capps, is whether or not there were 10 enough to also give them to private schools?</p> <p>11 MR. ABRAMS: Do not argue with my 12 objection.</p> <p>13 BY MR. KAEMPF:</p> <p>14 Q. Go ahead. Please answer the question.</p> <p>15 A. I am not fully aware of the terms of the 16 distribution as it was determined by the Oregon 17 Department of Education and the Federal Emergency 18 Management Agency.</p> <p>19 Q. Were you ever a part of any discussion that the 20 State of Oregon would include private or religious 21 schools in the funding currently being made available 22 to public schools?</p> <p>23 A. Can you specify the funding?</p> <p>24 Q. Yeah, just overall school funding.</p> <p>25 MR. ABRAMS: Objection to the extent it</p>
Page 30	Page 32
<p>1 private schools?</p> <p>2 A. The decision was made to make sure that our 3 public schools received the supplies that they needed 4 given the size of the system across the state.</p> <p>5 Q. That did not answer my question so I'll ask it 6 again.</p> <p>7 Isn't it true that private schools were 8 specifically excluded as entities that would not get 9 any of the five million face coverings?</p> <p>10 A. Yes.</p> <p>11 Q. Why?</p> <p>12 A. The demand within our public school systems 13 that are publicly funded for those PPE, essential 14 PPE, I understand was the reasoning for that by the 15 department.</p> <p>16 Q. What was the reasoning?</p> <p>17 A. I believe I answered the question that I -- as 18 I said, the department made a determination that the 19 five million masks would be necessary to ensure that 20 all districts' students and staff had adequate PPE.</p> <p>21 Q. So is it your contention that there were not 22 enough masks for private schools?</p> <p>23 A. My understanding from the department is that 24 they believed that they needed to provide public 25 schools given the needs there.</p>	<p>1 calls for a legal conclusion.</p> <p>2 You can answer.</p> <p>3 MR. KAEMPF: It's not a legal conclusion 4 ever.</p> <p>5 Did you know about that?</p> <p>6 MR. ABRAMS: Mr. Kaempf, for the last -- 7 for the last time unless you want this deposition 8 ended, stop commenting on my objections.</p> <p>9 MR. KAEMPF: Mr. Abrams, for the last 10 time, please stop cluttering the record.</p> <p>11 MR. ABRAMS: I'm allowed to make 12 objections. You're not being professional. We're 13 moving on.</p> <p>14 MR. KAEMPF: I'm not asking for a legal 15 conclusion.</p> <p>16 Please answer my last question.</p> <p>17 MR. ABRAMS: -- and that's my objection.</p> <p>18 MR. KAEMPF: Please answer.</p> <p>19 THE WITNESS: I need clarification on the 20 term education funding.</p> <p>21 BY MR. KAEMPF:</p> <p>22 Q. Just any money that would go to K to 12 23 schools. Was there ever discussion that the State of 24 Oregon would include private or religious schools in 25 that funding during the pandemic?</p>

Lindsey Capps

9 (Pages 33 to 36)

Page 33	Page 35
<p>1 A. That was a general question?</p> <p>2 Q. Do you understand?</p> <p>3 A. I need specificity on what funding in</p> <p>4 particular.</p> <p>5 Q. K to 12 school funding during the pandemic.</p> <p>6 A. So we have a K-12 school fund and that serves</p> <p>7 our public schools or our school districts in</p> <p>8 education service districts and charter schools.</p> <p>9 That does not fund private schools. Those are</p> <p>10 another funding source.</p> <p>11 Q. But the question is -- I know that, but was</p> <p>12 there ever a discussion that the state would also</p> <p>13 include private or religious schools in that funding</p> <p>14 you just mentioned?</p> <p>15 A. That particular funding, no.</p> <p>16 Q. Why not?</p> <p>17 A. By -- by statute that -- all those funds only</p> <p>18 are appropriated or allocated to our public schools.</p> <p>19 Q. What statute?</p> <p>20 A. I don't -- I don't recall it off the top of my</p> <p>21 head.</p> <p>22 Q. For purposes of the pandemic, are Oregon state</p> <p>23 government workers like you considered essential?</p> <p>24 A. I don't -- I don't know.</p> <p>25 Q. Are public school teachers considered</p>	<p>1 A. I don't have an answer to that.</p> <p>2 Q. Have any school leaders put any pressure on you</p> <p>3 to do anything during the pandemic?</p> <p>4 MR. ABRAMS: Objection, vague.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: And I need -- sorry. The</p> <p>7 sound is -- just repeat the question. I apologize.</p> <p>8 BY MR. KAEMPF:</p> <p>9 Q. Have any school leaders put any pressure on you</p> <p>10 to do anything related to the pandemic?</p> <p>11 MR. ABRAMS: Same objection.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: There have been a number of</p> <p>14 school leaders who have perspectives about what the</p> <p>15 best approach is to the pandemic along with a whole</p> <p>16 host of other folks who are stakeholders in the</p> <p>17 education system.</p> <p>18 BY MR. KAEMPF:</p> <p>19 Q. Please give me all of the names of the people</p> <p>20 you just mentioned.</p> <p>21 A. At the moment?</p> <p>22 Q. From the beginning of the pandemic through</p> <p>23 today.</p> <p>24 A. I have not felt any pressure from any specific</p> <p>25 individual. I will say that many people have a</p>
Page 34	Page 36
<p>1 essential?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. I don't know.</p> <p>5 Q. Were you personally involved in determining</p> <p>6 what is an essential business during the pandemic?</p> <p>7 A. No.</p> <p>8 Q. Who was?</p> <p>9 A. I don't know.</p> <p>10 Q. Who ultimately makes the decision about whether</p> <p>11 a particular school or other business entity was</p> <p>12 deemed essential or not?</p> <p>13 A. I believe that's a matter of federal</p> <p>14 definition.</p> <p>15 Q. I want to know who within the Oregon government</p> <p>16 makes that decision.</p> <p>17 A. I don't know.</p> <p>18 Q. Are religious schools deemed essential</p> <p>19 businesses?</p> <p>20 A. Not to my knowledge.</p> <p>21 Q. Who would know?</p> <p>22 A. I don't know.</p> <p>23 Q. Who do you consider to be the most influential</p> <p>24 person in education in Oregon outside of the</p> <p>25 Governor?</p>	<p>1 perspective on it.</p> <p>2 Q. Sure. Who are those people that have given you</p> <p>3 their perspective regarding, you know, school leaders</p> <p>4 and the pandemic?</p> <p>5 A. We are certainly in communication with the</p> <p>6 Confederation of Oregon School Administrators.</p> <p>7 Q. Who is their leader?</p> <p>8 A. Their organizational leaders?</p> <p>9 Q. Yes.</p> <p>10 A. Well, as an organization their executive</p> <p>11 director is Craig Hawkins.</p> <p>12 Q. Anyone else that you've dealt with about the</p> <p>13 pandemic from that group?</p> <p>14 A. Sure. Their deputy director for policy, Morgan</p> <p>15 Allen.</p> <p>16 Q. Who?</p> <p>17 A. Their deputy director for policy Morgan Allen.</p> <p>18 Q. Anyone else from that group that you've dealt</p> <p>19 with during the pandemic?</p> <p>20 A. We have met with superintendents periodically.</p> <p>21 Q. What are their names?</p> <p>22 A. I'd like to give a conclusive answer here, if</p> <p>23 you would like me to go through those.</p> <p>24 Q. Just the ones you can remember now in your</p> <p>25 head.</p>

Lindsey Capps

10 (Pages 37 to 40)

Page 37	Page 39
<p>1 A. Let's see. Superintendents that we have talked 2 with. 3 Q. During the pandemic? 4 A. During the pandemic, Superintendent Katrise 5 Perera, Superintendent Guadalupe Guerrero, 6 Superintendent John Browning, Superintendent Mike 7 Scott, Superintendent Matt Utterback, Superintendent 8 Christy Perry. 9 Q. Please tell me the names of all other school 10 leaders that, to use your words, have given you their 11 perspective about schools during the pandemic. 12 A. Could you repeat that again? 13 Q. Please read it back. 14 (The court reporter read back as 15 requested.) 16 A. I would be happy to answer that question. My 17 fear is that I will forget someone. 18 Q. Just whoever you can remember now is fine. 19 A. Okay. I'll keep going. 20 Q. Okay. Go ahead. 21 A. Superintendent Darin Drill, Superintendent 22 Maryalice Russell, Education Service District 23 Superintendent Mark Mulvihill, Superintendent Mark 24 Witty, Superintendent Tim Sweeney. 25 Q. Anyone else?</p>	<p>1 speak, who do you think they would go to? 2 A. I'm not sure. 3 Q. Do you have a team of any sort that's been 4 working together during the COVID-19 pandemic 5 concerning the school closing and reopening issue? 6 A. Can you be more specific? 7 Q. I thought that was pretty specific. I'll try 8 again. 9 Do you have a team in the Governor's office 10 that has been working together during the pandemic 11 concerning the school closure and reopening issue? 12 A. There are certainly individual staff members 13 that have been involved. 14 Q. Sure. And I'll just call that a team just for 15 shorthand today. You don't have to agree with that 16 but just so I understand you. Who are those staff 17 members? 18 A. So, beginning with the general counsel's 19 office, Sarah Weston, Dustin Buehler, Alyssa 20 Chatterjee, Gina Sejdlik, Nik Blosser, Linda Roman. 21 Q. Did any of those people you just mentioned have 22 any special medical education or expertise? 23 A. Not that I'm aware of. 24 Q. Are the people you just mentioned that I'm 25 calling the team members for shorthand, are they all</p>
Page 38	Page 40
<p>1 A. Yes, there's others. I'm just trying to -- 2 Q. Go ahead. 3 A. Superintendent Sara Johnson, Superintendent 4 Mark Redmond, Superintendent Alisha McBride. 5 Q. Anyone else? 6 A. Superintendent Tenneal Wetherell, 7 Superintendent Heidi Sipe, I would have to look 8 further at my calendar of records to fulfill that. 9 I'm sorry. My -- 10 Q. Do you have any documents in front of you right 11 now that you are referring to during the deposition? 12 A. No. 13 Q. All those superintendents that you just listed, 14 during the pandemic did any of them in any way ever 15 express a concern about private or religious schools 16 reopening? 17 A. No. 18 Q. Did any of those superintendents you just 19 mentioned ever express a concern about students 20 transferring from public schools to private or 21 religious schools? 22 A. Not that I'm aware of. 23 Q. If someone who was lobbying or, you know, 24 trying to get something done through the Governor's 25 office, if they wanted to go over your head, so to</p>	<p>1 appointees of Governor Brown? 2 A. Yes. 3 Q. Were any of them directly elected by the 4 citizens of Oregon? 5 A. No. 6 Q. Were any of them confirmed by the Oregon 7 senate? 8 A. No. 9 Q. This team as I'm calling it, do you have 10 meetings on any kind of regular basis regarding the 11 pandemic and the school reopening issue? 12 MR. ABRAMS: Objection, mischaracterizes 13 the previous testimony. 14 BY MR. KAEMPF: 15 Q. Please go ahead. 16 A. Yes. 17 Q. How often? 18 A. Regularly. 19 Q. How would you define regularly? 20 A. Weekly, sometimes daily. 21 Q. Sure. When did that approximately weekly or 22 daily group meeting start? 23 A. Well, meetings generally around the pandemic 24 began in early March. 25 Q. And is that meeting schedule -- I know you gave</p>



Lindsey Capps

11 (Pages 41 to 44)

Page 41	Page 43
<p>1 an approximation -- does that intend to continue for</p> <p>2 the foreseeable future, from what you know?</p> <p>3 A. Yes.</p> <p>4 Q. Are minutes ever kept of those meetings?</p> <p>5 A. No.</p> <p>6 Q. Has Governor Brown ever personally attended any</p> <p>7 of those meetings whether physically, in-person, or</p> <p>8 in these times by Zoom or some other remote device?</p> <p>9 A. Has the Governor attended meetings on the</p> <p>10 pandemic? Yes.</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. About how many times would you estimate she's</p> <p>14 attended those pandemic meetings with the group we're</p> <p>15 talking about?</p> <p>16 A. It would be hard for me to quantify.</p> <p>17 Q. You can give me your best estimate. Was it</p> <p>18 once a week, once a month? What would you say?</p> <p>19 A. I would say regularly.</p> <p>20 Q. And how do you define regularly?</p> <p>21 A. Daily.</p> <p>22 Q. And does this group or team that we're talking</p> <p>23 about, has it helped to develop guidelines regarding</p> <p>24 the pandemic and school reopening?</p> <p>25 A. Well, to clarify, I think your question before</p>	<p>1 Q. Go ahead. Are you done?</p> <p>2 A. Yes.</p> <p>3 Q. Mr. Capps, at any time during the COVID-19</p> <p>4 pandemic, have you or others in the Governor's</p> <p>5 office, to your knowledge, been concerned about mass</p> <p>6 exodus of students from public schools to private or</p> <p>7 religious schools?</p> <p>8 A. No, there's been general concern among school</p> <p>9 districts about enrollment during this time and the</p> <p>10 concerns that students would be attending public</p> <p>11 virtual charter schools. That has been an issue,</p> <p>12 general --</p> <p>13 Q. What was the nature of those concerns?</p> <p>14 A. The viability of small rural districts if</p> <p>15 enough students were to transfer out of district's</p> <p>16 public virtual charter schools.</p> <p>17 Q. What specific school districts?</p> <p>18 A. Oh, I don't know.</p> <p>19 Q. Can you give me the names of anyone</p> <p>20 representing any of those school districts you just</p> <p>21 mentioned that were concerned about their viability?</p> <p>22 A. I don't.</p> <p>23 Q. Have you ever had a concern about a large</p> <p>24 amount of students leaving Oregon's public schools</p> <p>25 for private or religious schools?</p>
Page 42	Page 44
<p>1 was is she involved in pandemic conversations. Were</p> <p>2 you referring to school specific conversations?</p> <p>3 Q. Yes. Yes, this group or team we're talking</p> <p>4 about, I was wondering if Governor Brown ever</p> <p>5 attended the meetings specific to the pandemic and</p> <p>6 school re-openings or closings.</p> <p>7 A. So to my previous answer, I'd say the Governor</p> <p>8 is periodically involved.</p> <p>9 Q. Okay. How would you define periodically?</p> <p>10 A. As needed, and probably on a weekly basis.</p> <p>11 Q. Has this team that we're talking about</p> <p>12 developed guidelines relating to the pandemic and</p> <p>13 school reopening?</p> <p>14 A. The specific guidelines for school reopening</p> <p>15 are metrics that have been developed by the Oregon</p> <p>16 Department of Education in collaboration with Oregon</p> <p>17 Health Authority.</p> <p>18 Q. Did this team that we're talking about that</p> <p>19 meets regarding the pandemic and schools, did it have</p> <p>20 any input into those guidelines?</p> <p>21 A. The staff and the Governor's office review the</p> <p>22 guidelines, yes.</p> <p>23 Q. Okay. And what staff members?</p> <p>24 A. Myself, the Governor's Deputy Chief of Staff,</p> <p>25 the Governor's Chief of Staff, my --</p>	<p>1 A. Me personally?</p> <p>2 Q. Yes.</p> <p>3 A. No.</p> <p>4 Q. Are you aware of anyone else on the Governor's</p> <p>5 staff who has had that concern?</p> <p>6 A. No.</p> <p>7 Q. Who is Nik Blosser?</p> <p>8 A. Nik Blosser is the Governor's Chief of Staff.</p> <p>9 Q. Now, I'll represent to you there's a March 31,</p> <p>10 2020 text message written by Nik Blosser labelled as</p> <p>11 004171. Have you ever seen that?</p> <p>12 A. I don't know the text to which you are</p> <p>13 referring.</p> <p>14 Q. This text has a link in it to a March 31, 2020</p> <p>15 Wall Street Journal editorial board opinion, which</p> <p>16 would be the very same day as the text.</p> <p>17 Does that ring a bell?</p> <p>18 A. I don't recall.</p> <p>19 Q. That Wall Street Journal article in</p> <p>20 Mr. Blosser's March 31 text is entitled, quote,</p> <p>21 "Oregon's Corona Virus education lockdown," end</p> <p>22 quote.</p> <p>23 Does that ring a bell?</p> <p>24 A. It does not.</p> <p>25 Q. Have you ever read that article?</p>

Lindsey Capps

12 (Pages 45 to 48)

Page 45	Page 47
<p>1 A. No.</p> <p>2 Q. Do you know, were you or anyone else that you</p> <p>3 are aware of on the Governor's staff or the Oregon</p> <p>4 Department of Education interviewed for that Wall</p> <p>5 Street Journal editorial?</p> <p>6 A. No.</p> <p>7 Q. Are you aware that the article discusses</p> <p>8 teachers unions pressuring Governor Brown to keep</p> <p>9 charter schools closed?</p> <p>10 MR. ABRAMS: Objection, lack of</p> <p>11 foundation.</p> <p>12 Go ahead.</p> <p>13 THE WITNESS: I'm aware of that article.</p> <p>14 I was unsure that was the article you were</p> <p>15 referencing.</p> <p>16 BY MR. KAEMPF:</p> <p>17 Q. Yes.</p> <p>18 A. Okay. Now I understand.</p> <p>19 Q. Yes. And from your knowledge, did teachers</p> <p>20 unions in fact pressure Governor Brown to keep</p> <p>21 charter schools closed?</p> <p>22 A. No.</p> <p>23 Q. Do you know who was the source in the</p> <p>24 Governor's office for the Wall Street Journal</p> <p>25 editorial?</p>	<p>1 Is that true?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Does that statement concern you?</p> <p>4 A. I think every student has a choice as to where</p> <p>5 they attend school.</p> <p>6 Q. Are you aware of the fact that the same Wall</p> <p>7 Street Journal editorial board opinion states that</p> <p>8 Oregon's, quote, "teachers unions were alarmed by</p> <p>9 this mass exodus from public schools," end quote?</p> <p>10 MR. ABRAMS: Objection lack of foundation.</p> <p>11 Go ahead.</p> <p>12 THE WITNESS: Can you repeat the question?</p> <p>13 I just want to make sure I hear it.</p> <p>14 BY MR. KAEMPF:</p> <p>15 Q. Sure. Are you aware of the fact that the Wall</p> <p>16 Street Journal editorial board opinion that we're</p> <p>17 talking about from March 31st of this year, it also</p> <p>18 states that Oregon's, quote, "teachers unions were</p> <p>19 alarmed by this mass exodus from the public schools,"</p> <p>20 end quote?</p> <p>21 MR. ABRAMS: Objection, misstates the</p> <p>22 previous testimony, article lacks foundation.</p> <p>23 THE WITNESS: There's been a general</p> <p>24 concern among school districts about virtual charter</p> <p>25 schools and --</p>
Page 46	Page 48
<p>1 A. No.</p> <p>2 Q. Do you know why Nik Blosser included a link to</p> <p>3 that Wall Street Journal article in his March 31st</p> <p>4 text message?</p> <p>5 MR. ABRAMS: Objection, calls for</p> <p>6 speculation.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. KAEMPF:</p> <p>9 Q. Have you ever discussed that Wall Street</p> <p>10 Journal article with Nik Blosser or anyone else on</p> <p>11 Governor Brown's staff?</p> <p>12 A. No.</p> <p>13 Q. That article I'll represent to you states,</p> <p>14 among other things, that, quote, "Oregon has</p> <p>15 cancelled public school classes amid the pandemic but</p> <p>16 political self-interests never sleeps," end quote.</p> <p>17 Have you ever heard that statement?</p> <p>18 A. Is this referenced in the article?</p> <p>19 Q. Yes, the Wall Street Journal article.</p> <p>20 A. I don't -- I don't recall that.</p> <p>21 Q. The article also states that, "the Oregon</p> <p>22 Education Association and its labor allies are now</p> <p>23 blocking hundreds of children from continuing their</p> <p>24 education at virtual public charter schools," end</p> <p>25 quote.</p>	<p>1 BY MR. KAEMPF:</p> <p>2 Q. Beyond the general concern, isn't it true that</p> <p>3 one or more school districts have been concerned</p> <p>4 about a mass exodus from the public schools if</p> <p>5 private or religious schools are allowed to reopen?</p> <p>6 A. I don't recall ever hearing that from a</p> <p>7 specific district around private schools.</p> <p>8 Q. Did you ever hear that in any context related</p> <p>9 to the pandemic?</p> <p>10 A. Not that I recall.</p> <p>11 Q. Now isn't it true that on July 9 of 2020, after</p> <p>12 the Wall Street Journal opinion article that we've</p> <p>13 talked about was published, that Leah Horner, an</p> <p>14 economic policy advisor to the governor, used the</p> <p>15 identical concern and raised the identical concern</p> <p>16 about a quote, "mass exodus from public schools," end</p> <p>17 quote?</p> <p>18 A. Are you asking am I aware?</p> <p>19 Q. Yes. Are you aware that after that Wall Street</p> <p>20 Journal article came out Leah Horner also stated a</p> <p>21 concern about a mass exodus from public schools if</p> <p>22 parochial schools are allowed to reopen?</p> <p>23 MR. ABRAMS: Objection, lack of</p> <p>24 foundation.</p> <p>25 Go ahead.</p>



Lindsey Capps

13 (Pages 49 to 52)

Page 49	Page 51
<p>1 THE WITNESS: I was not aware of any</p> <p>2 comments on her part.</p> <p>3 BY MR. KAEMPF:</p> <p>4 Q. Have you seen the declaration of Yamhill County</p> <p>5 Commissioner Mary Starrett in this case?</p> <p>6 A. I have seen communication from the</p> <p>7 commissioner. I'm not sure of which one you are</p> <p>8 stating.</p> <p>9 Q. Have you seen the declaration of Mary Starrett</p> <p>10 in this lawsuit?</p> <p>11 A. I'm not sure.</p> <p>12 Q. I'll represent to you that she testified that</p> <p>13 on July 29, 2020, Leah Horner did state a concern</p> <p>14 about a mass exodus from public schools if parochial</p> <p>15 schools are allowed to reopen.</p> <p>16 Do you know if that is true or not, that</p> <p>17 Ms. Horner made that statement?</p> <p>18 A. I don't know if that's true.</p> <p>19 Q. Have you ever talked to Leah Horner about that</p> <p>20 issue?</p> <p>21 A. I have not.</p> <p>22 Q. Do you know who has, if anyone?</p> <p>23 A. No.</p> <p>24 Q. To your knowledge, is Governor Brown concerned</p> <p>25 about a mass exodus from public schools if private or</p>	<p>1 A. I do not.</p> <p>2 Q. You ever heard anything about that March 24</p> <p>3 power point presentation?</p> <p>4 A. I don't know the presentation to which you are</p> <p>5 speaking.</p> <p>6 Q. Back to the Wall Street opinion piece, it also</p> <p>7 states, quote, "even during a national crisis, unions</p> <p>8 would rather deprive students of an education than</p> <p>9 see their charter school competitors succeed," end</p> <p>10 quote.</p> <p>11 Do you agree?</p> <p>12 A. I believe you are asking me do I agree with the</p> <p>13 opinion of the Wall Street Journal?</p> <p>14 Q. That specific statement, do you agree, yes or</p> <p>15 no?</p> <p>16 A. I think it's a simple statement, overly</p> <p>17 simplistic.</p> <p>18 Q. Do you agree with it or disagree with it?</p> <p>19 A. I don't know how to answer either way.</p> <p>20 Q. Are you aware of whether this Wall Street</p> <p>21 Journal editorial board opinion sparked the concern</p> <p>22 among any members of the Governor's staff?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. To this day, does that Wall Street Journal</p> <p>25 opinion concern you?</p>
Page 50	Page 52
<p>1 religious schools are allowed to reopen for in-person</p> <p>2 classes?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Now getting back to the Wall Street Journal</p> <p>5 editorial we've been talking about, it also states in</p> <p>6 reference to teachers unions that, quote, "under</p> <p>7 pressure from the unions, the Oregon Department of</p> <p>8 Education stopped allowing transfers on March 27,"</p> <p>9 end quote.</p> <p>10 Is that true?</p> <p>11 MR. ABRAMS: Objection, compound. Is it</p> <p>12 true the teachers union did that or that it stopped?</p> <p>13 BY MR. KAEMPF:</p> <p>14 Q. What I want to know is, first, did you ever get</p> <p>15 pressure from the teachers unions to stop allowing</p> <p>16 transfers out of public schools?</p> <p>17 A. No.</p> <p>18 Q. Did the Oregon Department of Education ever</p> <p>19 stop allowing transfers out of public schools to</p> <p>20 charter or private schools?</p> <p>21 A. No, there's still a process in place.</p> <p>22 Q. The Wall Street Journal editorial we're talking</p> <p>23 about references an Oregon Department of Education</p> <p>24 March 24, power point presentation. Do you know what</p> <p>25 that is?</p>	<p>1 A. I think the overriding concern for me is to</p> <p>2 continue to serve students as effectively and safely</p> <p>3 as we can during this pandemic.</p> <p>4 Q. I'm talking about the Wall Street Journal</p> <p>5 article. Does it concern you as you sit here today?</p> <p>6 A. I can't speak to that.</p> <p>7 Q. To your knowledge, did that Wall Street Journal</p> <p>8 article concern Governor Brown?</p> <p>9 A. No, not that I'm aware of.</p> <p>10 Q. Did you ever discuss it with her?</p> <p>11 A. No.</p> <p>12 Q. In a text message dated April 1 of 2020,</p> <p>13 labelled 004171, Nik Blosser immediately after</p> <p>14 providing the link to this Wall Street Journal</p> <p>15 article we've been talking about, he wrote, quote,</p> <p>16 "Sent you and GKP some quick talking points for the</p> <p>17 1:30 call," end quote?</p> <p>18 Do you recall that?</p> <p>19 A. Without further context, I don't.</p> <p>20 MR. ABRAMS: I'm going -- we haven't</p> <p>21 established who the text was to, Mr. Kaempf.</p> <p>22 MR. KAEMPF: That was my next question.</p> <p>23 BY MR. KAEMPF:</p> <p>24 Q. This text message that's labeled 004171 from</p> <p>25 April 1st of 2020 is written by Nike Blosser. Do you</p>

Lindsey Capps

14 (Pages 53 to 56)

Page 53	Page 55
<p>1 recall receiving a text to that effect about needing</p> <p>2 to have a 1:30 call and quick talking points about</p> <p>3 the Wall Street Journal article?</p> <p>4 A. I don't recall the interaction.</p> <p>5 Q. Do you ever recall a 1:30 call on April 1st of</p> <p>6 2020, the day after that Wall Street Journal opinion</p> <p>7 article?</p> <p>8 A. I don't but we've never discussed that topic.</p> <p>9 Q. In an April 2nd, 2020 text message, also</p> <p>10 labeled as 004171, Nik Blosser wrote, and I can't</p> <p>11 tell who he wrote it to, it says, quote, "please give</p> <p>12 me a call when you can, urgent," end quote.</p> <p>13 Do you recall getting that text message?</p> <p>14 A. No.</p> <p>15 Q. In that same text message Nik Blosser provides</p> <p>16 a link to a breitbart.com article dated April 2 of</p> <p>17 2020, the same day as the text message. And it's</p> <p>18 entitled, quote, "teachers unions pressure on states</p> <p>19 to clamp down on virtual charter schools during</p> <p>20 pandemic," end quote.</p> <p>21 Do you recall ever seeing that breitbart.com</p> <p>22 article about teachers unions pressure?</p> <p>23 A. Generally in the public square.</p> <p>24 Q. Okay. And do you know why it was urgent that</p> <p>25 there be a meeting about that breitbart.com article?</p>	<p>1 why is that false?</p> <p>2 Q. Why is it false?</p> <p>3 MR. ABRAMS: Asked and answered.</p> <p>4 Go ahead.</p> <p>5 THE WITNESS: It's not --</p> <p>6 BY MR. KAEMPF:</p> <p>7 Q. Is any part of it false, and if so, what?</p> <p>8 A. Can you restate the statement?</p> <p>9 Q. Sure. Read it back.</p> <p>10 (The court reporter read back as</p> <p>11 requested.)</p> <p>12 BY MR. KAEMPF:</p> <p>13 Q. The article states in part, among other things,</p> <p>14 quote, "Oregon Connections Academy, a K-12 online</p> <p>15 public school, posts on the enrollment page of its</p> <p>16 website that due to Governor Kate Brown's Executive</p> <p>17 Order 20-08 that as of March 27, no Oregon public</p> <p>18 school students may withdraw or enroll in any schools</p> <p>19 during the school closure due to the Corona Virus</p> <p>20 pandemic, end quote.</p> <p>21 Is that true?</p> <p>22 A. Not to my knowledge, and because there's no</p> <p>23 prohibition, there certainly is a cap on number of</p> <p>24 students that can transfer to virtual charter</p> <p>25 schools.</p>
Page 54	Page 56
<p>1 MR. ABRAMS: Objection, lack of</p> <p>2 foundation.</p> <p>3 Go ahead.</p> <p>4 THE WITNESS: There was never a meeting</p> <p>5 about that article.</p> <p>6 BY MR. KAEMPF:</p> <p>7 Q. Okay. Do you recall that you were one of the</p> <p>8 recipients of that April 2, 2020 text message from</p> <p>9 Nik Blosser?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you ever read the Breitbart article?</p> <p>12 A. I'm not sure.</p> <p>13 Q. Are you aware that among other things it says,</p> <p>14 quote, "Oregon Connections Academy, a K-12 online</p> <p>15 public school, posts on the enrollment page of its</p> <p>16 website that due to Governor Kate Brown's Executive</p> <p>17 Order 20-08, as of March 27, no Oregon public school</p> <p>18 students may withdraw or enroll in any schools during</p> <p>19 the school closure due to the Corona Virus pandemic,"</p> <p>20 end quote?</p> <p>21 A. I don't recall that specifically.</p> <p>22 Q. Is that statement true?</p> <p>23 A. I don't believe it is.</p> <p>24 Q. Why is it false?</p> <p>25 A. I didn't hear the last part of that. Is that</p>	<p>1 Q. What is that cap?</p> <p>2 A. I don't remember what -- the specific statutory</p> <p>3 language or rules on that.</p> <p>4 Q. Who would know the answer to what that cap</p> <p>5 level is?</p> <p>6 A. Oregon Department of Education.</p> <p>7 Q. Is there a specific person within the ODE?</p> <p>8 A. Certainly the ODE Chief of Staff Cindy Hunt.</p> <p>9 There are probably others.</p> <p>10 Q. The Breitbart article also references a</p> <p>11 March 26, 2020 Willamette Week article.</p> <p>12 Have you ever seen that Willamette Week</p> <p>13 article?</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. Among other things that Willamette Week</p> <p>16 article says, quote, "The Department of Education</p> <p>17 closed the state's online charter schools under</p> <p>18 Governor Kate Brown's order to close public schools</p> <p>19 to halt the spread of COVID-19," end quote.</p> <p>20 Is that true?</p> <p>21 A. So I think -- yes, I think the specific thing</p> <p>22 that you are referencing here without any materials</p> <p>23 in front of me to respond to this, is that there was</p> <p>24 an interpretation that the original executive order</p> <p>25 had closed virtual charter schools. I'm not --</p>

Lindsey Capps

15 (Pages 57 to 60)

Page 57	Page 59
<p>1 Q. Currently are virtual charter schools closed or 2 not?</p> <p>3 A. No.</p> <p>4 Q. How long has that been the case?</p> <p>5 A. For a long period of time. I can't quantify 6 off the top of my head.</p> <p>7 Q. The Willamette Week article -- or excuse me. 8 The Breitbart article we're talking about it says in 9 part, quote, "Executive Order 20-08 closed all public 10 charter schools," end quote.</p> <p>11 Is it true that that executive order did that?</p> <p>12 A. No, not to my knowledge.</p> <p>13 Q. Currently your testimony is that public charter 14 schools are reopened; is that true?</p> <p>15 A. That's correct. There was an interpretation in 16 the executive order that was at issue here, which is 17 what you are asking about.</p> <p>18 Q. Okay. And what was the interpretation?</p> <p>19 A. That the closure of charter schools -- public 20 charter schools impacted virtual charter schools.</p> <p>21 Q. Did you get any pressure from any school or 22 teachers organization to allow charter schools to 23 reopen at a greater level?</p> <p>24 A. Not that I recall.</p> <p>25 Q. The Breitbart article also mentions that the</p>	<p>1 order did not explicitly call for the closure of 2 online charters, state education officials believe 3 that is the intent of the Governor's order," end 4 quote.</p> <p>5 Is that true?</p> <p>6 A. I believe that was correct.</p> <p>7 Q. Why was that the Governor's intent?</p> <p>8 A. Can you restate the question? What intent?</p> <p>9 Q. It said again, Mark Seagull said that he, 10 quote, "confirms that although Governor Brown's order 11 did not explicitly call for the closure of online 12 charters, state education officials believe that is 13 the intent of the Governor's order," end quote.</p> <p>14 Was that the Governor's intent?</p> <p>15 A. The executive order was intended to close 16 physical buildings of public schools. The definition 17 of public school includes public charter school and 18 so it included virtual charter schools by the 19 Department's reading of the statute.</p> <p>20 Q. To your understanding, was it the intent of the 21 Governor's order to also close online charter 22 schools?</p> <p>23 A. I do not believe it was the intent of the 24 Governor's order to close online charter schools.</p> <p>25 Q. Then what was the intent of that order?</p>
Page 58	Page 60
<p>1 March 24 power point presentation I asked you about, 2 that it statements that all public charter schools 3 had to close and this definition concludes virtual 4 public charter schools.</p> <p>5 Was that true at the time?</p> <p>6 A. I believe that was the interpretation that some 7 schools took.</p> <p>8 Q. And based on what? Was there a specific 9 executive order?</p> <p>10 A. Well, the initial executive orders that were 11 issued closed physical public schools so it was 12 impacted both brick and mortar public schools and 13 charter schools as I a recall.</p> <p>14 Q. And when you are talking about this 15 interpretation relating to charter schools what 16 specific executive order or orders are you talking 17 about?</p> <p>18 A. It was I think Executive Order 20-08, the 19 definition of public school, I think the --</p> <p>20 Q. Breitbart --</p> <p>21 A. If I recall, it took steps to rectify that 22 policy.</p> <p>23 Q. The Breitbart article also states, quote, "Mark 24 Seagull, a spokesman for the Oregon Department of 25 Education, confirms that although Governor Brown's</p>	<p>1 A. It was to close in-person instruction within 2 brick and motor schools.</p> <p>3 Q. Has that intent since been clarified in another 4 executive order?</p> <p>5 A. Yes.</p> <p>6 Q. What one?</p> <p>7 A. I believe it was the subsequent order. I don't 8 have the number off the top of my head.</p> <p>9 Q. Did you get any pressure from any individuals 10 whose names you can give me from any teacher 11 organization or school organization to clarify the 12 intent that online charter schools would be allowed 13 to reopen?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Are you aware that the Breitbart article we've 16 been talking about cites parts of the Wall Street 17 Journal article that we've been talking about?</p> <p>18 A. I'm not aware.</p> <p>19 Q. Have you ever heard that in the Breitbart 20 article it quotes the Wall Street Journal article 21 we're talking about stating that, quote, "Oregon 22 Education Association and the labor allies have 23 blocked children from learning online," end quote.</p> <p>24 Have you ever heard that?</p> <p>25 A. I've heard that general assertion.</p>

Lindsey Capps

16 (Pages 61 to 64)

Page 61	Page 63
<p>1 Q. From whom?</p> <p>2 A. It is something that has been talked about</p> <p>3 casually among policymakers.</p> <p>4 Q. What are their names?</p> <p>5 A. I don't know specifically.</p> <p>6 Q. Do you know what department they worked in?</p> <p>7 A. No, I don't recall.</p> <p>8 Q. To make this simple, Mr. Capps, isn't it true</p> <p>9 that you and others on the Governor's staff were</p> <p>10 concerned that the Wall Street Journal or the</p> <p>11 Breitbart articles were making Governor Brown look</p> <p>12 bad?</p> <p>13 A. No.</p> <p>14 Q. Were any steps taken, to your knowledge, to</p> <p>15 respond to either or both of those articles?</p> <p>16 A. Not that I recall.</p> <p>17 Q. The Breitbart article also states, quote,</p> <p>18 "while all Oregon public school children may now</p> <p>19 learn online the Governor's order bans traditional</p> <p>20 public school students from transferring permanently</p> <p>21 to online charter school should their parents</p> <p>22 determine that education option works best for them,"</p> <p>23 end quote.</p> <p>24 Have you ever heard that statement?</p> <p>25 A. Not that I recall.</p>	<p>1 Is that true?</p> <p>2 A. I don't know what the term financially whole</p> <p>3 means in the context of that organization.</p> <p>4 Q. I'm just asking you, are teachers being kept,</p> <p>5 you know, financially whole or fully paid, however</p> <p>6 you want to say it, during the pandemic referring to</p> <p>7 public school teachers?</p> <p>8 A. I need clarification on the question.</p> <p>9 Q. To your understanding, are public school</p> <p>10 teachers being fully paid during the pandemic?</p> <p>11 A. That is a school district determination? Um --</p> <p>12 Q. I'm not asking if it's a school district</p> <p>13 determination. I just want to know, do you know, yes</p> <p>14 or no, whether or not public school teachers are</p> <p>15 being fully paid during the pandemic?</p> <p>16 A. Yes.</p> <p>17 Q. Does that concern you?</p> <p>18 A. Does it concern me that public school teachers</p> <p>19 are being paid for serving in their positions during</p> <p>20 the pandemic?</p> <p>21 Q. Yes. Does it concern you that they are being</p> <p>22 fully paid during the pandemic?</p> <p>23 A. It doesn't concern me if they're doing their</p> <p>24 responsibilities and duties.</p> <p>25 Q. But the question is does it concern you that</p>
Page 62	Page 64
<p>1 Q. Do you know if it's true or not?</p> <p>2 A. I'm sorry. Can you repeat that? I couldn't</p> <p>3 hear that.</p> <p>4 Q. Do you know if that statement is true or not?</p> <p>5 A. Can you repeat the statement?</p> <p>6 Q. The statement is that while all Oregon public</p> <p>7 school children may now learn online, the Governor's</p> <p>8 order bans traditional public school students from</p> <p>9 transferring permanently to online charter schools</p> <p>10 should their parents determine that education option</p> <p>11 works best for them.</p> <p>12 Is that true?</p> <p>13 A. There's no -- there's no ban on students being</p> <p>14 able to transfer to an online charter school.</p> <p>15 Q. The Breitbart article also states that, quote,</p> <p>16 "Oregon teachers union makes no mention of delivering</p> <p>17 instruction to students and its three key</p> <p>18 priorities," end quote, during the pandemic.</p> <p>19 Have you ever seen that statement?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Is it true?</p> <p>22 A. I don't know.</p> <p>23 Q. The same Breitbart article also says that a</p> <p>24 priority of the teachers union is, quote, "ensuring</p> <p>25 teachers are kept financially whole," end quote.</p>	<p>1 public school teachers are being fully paid during</p> <p>2 the pandemic?</p> <p>3 A. It does not concern me that teachers are being</p> <p>4 paid for performing their job responsibilities.</p> <p>5 Q. Do you know if teachers at schools like my</p> <p>6 clients, Horizon Christian School or a like Christian</p> <p>7 school are being fully paid during the pandemic?</p> <p>8 A. I do not know.</p> <p>9 Q. Do you care?</p> <p>10 A. I'm sorry. I didn't hear the last part.</p> <p>11 Q. Do you care?</p> <p>12 A. I think people should be compensated for the</p> <p>13 work that they do.</p> <p>14 Q. Okay. And simply put, Mr. Capps, do you care</p> <p>15 about the plight of Oregon's religious schools during</p> <p>16 the pandemic?</p> <p>17 A. I would say that I care that educational</p> <p>18 institutions, whether public or private, are able to</p> <p>19 provide services to their students. That's --</p> <p>20 Q. Can you tell me -- can you tell me anything</p> <p>21 you've done to help private or religious schools</p> <p>22 during the pandemic?</p> <p>23 A. I have certainly worked with the Oregon</p> <p>24 Federation of Independent Schools to provide</p> <p>25 information and gather feedback. They are a part of</p>

Lindsey Capps

17 (Pages 65 to 68)

Page 65	Page 67
<p>1 our Healthy School Reopening Council. And so in</p> <p>2 terms of providing information and having their</p> <p>3 perspectives heard, we are doing our best to support</p> <p>4 them as is the Department of Education.</p> <p>5 Q. Besides the AFIS, have you worked with any</p> <p>6 private or religious school organizations or leaders</p> <p>7 during the pandemic?</p> <p>8 A. The Department of Education has regularly</p> <p>9 convened private school leaders.</p> <p>10 Q. What are their names?</p> <p>11 A. Oh, I don't know who was on their list of their</p> <p>12 regular meetings but it's representative of private</p> <p>13 and religious schools.</p> <p>14 Q. Can you give me the name of any representative</p> <p>15 of any private or religious school that you are aware</p> <p>16 that the Governor's office helped during the</p> <p>17 pandemic?</p> <p>18 A. I don't recall at the moment.</p> <p>19 Q. Are you aware that many religious schools in</p> <p>20 Oregon are on the brink of permanent closure because</p> <p>21 of the Governor's executive orders?</p> <p>22 MR. ABRAMS: Objection, assumes facts not</p> <p>23 in evidence.</p> <p>24 BY MR. KAEMPF:</p> <p>25 Q. Please answer.</p>	<p>1 specifics.</p> <p>2 BY MR. KAEMPF:</p> <p>3 Q. Do you care whether or not my school clients</p> <p>4 permanently close?</p> <p>5 A. I care that there are opportunities provided</p> <p>6 for all students to learn and grow regardless of</p> <p>7 whether those are a public or private school.</p> <p>8 Q. Okay. I didn't ask about opportunities</p> <p>9 provided. My question is, do you care whether or not</p> <p>10 my school clients permanently close because of</p> <p>11 Governor Brown's executive orders?</p> <p>12 A. I would answer that by saying I would not like</p> <p>13 to see any school close.</p> <p>14 Q. Why?</p> <p>15 A. Schools are essential to our kids.</p> <p>16 Q. Can you give me specific actions that you or</p> <p>17 anyone else on the Governor's staff have taken to</p> <p>18 help private or religious schools stay afloat during</p> <p>19 the pandemic?</p> <p>20 A. Other than providing information and allowing</p> <p>21 for feedback, no.</p> <p>22 Q. Are you aware of anyone on the Governor's staff</p> <p>23 ever expressed a concern about putting religious</p> <p>24 schools or private schools out of business because of</p> <p>25 executive orders during the pandemic?</p>
Page 66	Page 68
<p>1 A. I understand the general impact to any private</p> <p>2 school during the pandemic to their services and the</p> <p>3 opportunity to receive commission.</p> <p>4 Q. I'm not asking about general impact, Mr. Capps.</p> <p>5 My question is are you aware that many religious</p> <p>6 schools in Oregon are on the brink of permanent</p> <p>7 closure because of the Governor's pandemic executive</p> <p>8 orders?</p> <p>9 MR. ABRAMS: Same objection, assumes facts</p> <p>10 not in evidence.</p> <p>11 THE WITNESS: Not specific to the</p> <p>12 executive order, no.</p> <p>13 BY MR. KAEMPF:</p> <p>14 Q. Are you aware that two of the plaintiffs in</p> <p>15 this case, Horizon Christian School and Life</p> <p>16 Christian School are on the brink of financial</p> <p>17 collapse and permanent closure due to the Governor's</p> <p>18 executive orders?</p> <p>19 MR. ABRAMS: Same objection. Counsel is</p> <p>20 testifying. Do you have something?</p> <p>21 MR. KAEMPF: No, that's my question.</p> <p>22 Are you aware of that?</p> <p>23 MR. ABRAMS: Same objection.</p> <p>24 MR. KAEMPF: Go ahead and answer.</p> <p>25 THE WITNESS: I'm not aware of the</p>	<p>1 A. Not that I recall.</p> <p>2 Q. Have you ever had a discussion written or</p> <p>3 verbal with Governor Brown about reopening or not</p> <p>4 reopening religious or private schools during the</p> <p>5 pandemic?</p> <p>6 A. No, not that I recall.</p> <p>7 Q. The Breitbart article I asked you about today</p> <p>8 it states that, quote, "The United States Education</p> <p>9 Secretary Betsy DeVos weighed in on the report that</p> <p>10 the Oregon teachers unions attempt to rein in charter</p> <p>11 schools."</p> <p>12 Have you ever seen that statement regarding</p> <p>13 Secretary DeVos?</p> <p>14 A. Are you speaking to within the Breitbart</p> <p>15 article?</p> <p>16 Q. Either Breitbart article or anywhere that</p> <p>17 Secretary DeVos made that statement?</p> <p>18 A. Not that specific statement.</p> <p>19 Q. The Breitbart article also includes a Tweet</p> <p>20 from Education Secretary DeVos, and it has a link to</p> <p>21 the Wall Street Journal editorial board opinion that</p> <p>22 we've discussed today.</p> <p>23 In her Tweet, Secretary DeVos states, quote,</p> <p>24 "surely this must be an April Fool's Day joke or just</p> <p>25 hashtag fake news, right," question mark, end quote.</p>



Lindsey Capps

18 (Pages 69 to 72)

Page 69	Page 71
<p>1 Have you ever seen that Tweet?</p> <p>2 A. I don't -- I don't recall. I know that</p> <p>3 Secretary DeVos is a strong advocate of private</p> <p>4 schools.</p> <p>5 Q. Have you ever been made aware of the Tweet by</p> <p>6 someone mentioning it to you and showing it to you or</p> <p>7 talking about it?</p> <p>8 A. Yeah, possibly. I don't recall.</p> <p>9 Q. The Tweet by Secretary DeVos also says, quote,</p> <p>10 "no one would deny kids access to education right now</p> <p>11 because the unions asked them to, right," question</p> <p>12 mark, end quote.</p> <p>13 Have you ever heard of that statement?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did any Oregon union representative ever ask</p> <p>16 you or anyone else at the Governor's office that</p> <p>17 you're aware of to deny kids access to charter</p> <p>18 schools?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Are you -- did you or anyone else on the</p> <p>21 Governor's staff ever intentionally deny children</p> <p>22 access to in-person classes at any religious or</p> <p>23 private school?</p> <p>24 A. Not that I'm aware.</p> <p>25 MR. ABRAMS: We've been going a while.</p>	<p>1 any written or oral discussions between any members</p> <p>2 of the Governor's staff?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you recall any concern by anybody on the</p> <p>5 Governor's staff about Secretary DeVos's Tweet?</p> <p>6 A. No.</p> <p>7 Q. Do you know the names of any sources within the</p> <p>8 Governor's office or the Department of Education for</p> <p>9 either the Wall Street Journal article or the</p> <p>10 Breitbart article?</p> <p>11 A. No.</p> <p>12 Q. The Breitbart article also states, quote,</p> <p>13 "Breitbart News reached out to Mark Seagull at ODE</p> <p>14 who responded, among other things, that under</p> <p>15 guidance established by the department of March 26,</p> <p>16 2020, virtual public charter school enrollment was</p> <p>17 paused beginning March 27, 2020 through the remainder</p> <p>18 of the extended closure."</p> <p>19 Is that an accurate statement of the policy?</p> <p>20 A. Are you referencing the policy of the</p> <p>21 department and their guidance?</p> <p>22 Q. Yes. Is that an accurate summary of the policy</p> <p>23 at that time?</p> <p>24 A. On what date?</p> <p>25 Q. April 2, 2020.</p>
Page 70	Page 72
<p>1 Let's take a quick break.</p> <p>2 (Brief recess.)</p> <p>3 BY MR. KAEMPF:</p> <p>4 Q. Mr. Capps, are you clear headed and able to</p> <p>5 testify?</p> <p>6 A. Yes.</p> <p>7 Q. Concerning this April Tweet from Secretary</p> <p>8 DeVos we've been talking about, do you recall --</p> <p>9 THE COURT REPORTER: I think I got about</p> <p>10 every other word on that one.</p> <p>11 MR. KAEMPF: Can you repeat that?</p> <p>12 THE COURT REPORTER: Yes, I think I got</p> <p>13 about every other word on that question, Mr. Kaempf.</p> <p>14 There's an echo.</p> <p>15 MR. KAEMPF: Can you hear me now?</p> <p>16 THE COURT REPORTER: A little better.</p> <p>17 BY MR. KAEMPF:</p> <p>18 Q. Concerning the April 2020 Tweet from Secretary</p> <p>19 DeVos I was asking you about before the break, do you</p> <p>20 recall about when you first became aware of it?</p> <p>21 A. I don't recall that Tweet.</p> <p>22 Q. Did you recall it before I asked you about it</p> <p>23 today?</p> <p>24 A. I'm not sure I can answer that question.</p> <p>25 Q. Do you recall that Tweet being the subject of</p>	<p>1 A. As I said previously, I think there was an</p> <p>2 attempt to further clarify the guidance. It was not</p> <p>3 the intent of the Governor's executive order.</p> <p>4 Q. What was the intent?</p> <p>5 A. Of the executive order?</p> <p>6 Q. Yes.</p> <p>7 A. As I --</p> <p>8 Q. So I want to know what is the intent.</p> <p>9 A. Of the Governor's executive order on schools?</p> <p>10 Q. Yeah.</p> <p>11 A. To provide a framework for managing the</p> <p>12 emergency given health risks posed to students and</p> <p>13 staff in our schools.</p> <p>14 Q. Mark Seagull is also quoted in the Breitbart</p> <p>15 article as saying, quote, "the primary reason for</p> <p>16 this closure is to ensure students are able to access</p> <p>17 the support they need locally without creating</p> <p>18 further school funding disruptions that would be</p> <p>19 created by the transfer of students from one school</p> <p>20 to another," end quote.</p> <p>21 Is that true?</p> <p>22 A. I don't have context to see that statement to</p> <p>23 respond.</p> <p>24 Q. Well, the context is a quote from Mark Seagull.</p> <p>25 What is his position at ODE?</p>

Lindsey Capps

19 (Pages 73 to 76)

Page 73	Page 75
<p>1 A. Mark is the communications director.</p> <p>2 Q. Okay. And the context is a statement from him</p> <p>3 in an April 2, 2020 breitbart.com article. Okay?</p> <p>4 And, again, he's quoted as saying, quote, "The</p> <p>5 primary reason for this closure is to ensure that</p> <p>6 students are able to access the support they need</p> <p>7 locally without creating further school funding</p> <p>8 disruptions that would be created by the transfer of</p> <p>9 students from one school to another," end quote.</p> <p>10 From what you understand, is that true?</p> <p>11 A. My recollection at the time is that there was</p> <p>12 an issue with the manner in which the executive order</p> <p>13 was interpreted related to virtual charter schools.</p> <p>14 Q. Is it your understanding that the primary</p> <p>15 reason for the closure was to ensure that students</p> <p>16 were able to access the support they needed locally</p> <p>17 without creating further school funding disruptions</p> <p>18 that would be created by the transfer of students</p> <p>19 from one school to another?</p> <p>20 A. I think there was a concern. That was not the</p> <p>21 intent of the Governor's executive order.</p> <p>22 Q. Then what was the intent?</p> <p>23 A. Again, the intent of the executive order was to</p> <p>24 clarify the framework for agencies to provide</p> <p>25 guidance to ensure the safety of students and staff</p>	<p>1 getting less money because of the pandemic, who did</p> <p>2 you discuss that with at the ODE?</p> <p>3 A. Certain issues around the ability for schools</p> <p>4 to operate under existing resources was a</p> <p>5 conversation -- general conversation with Colt Gill,</p> <p>6 the director of the department.</p> <p>7 Q. Anyone else?</p> <p>8 A. Certainly associations representing K-12</p> <p>9 superintendents and others had a general concern</p> <p>10 about that, so that had to do with the availability</p> <p>11 of emergency relief.</p> <p>12 Q. Please name the associations and their</p> <p>13 representatives that you had these types of</p> <p>14 discussions with this year?</p> <p>15 A. The Confederation of Oregon School</p> <p>16 Administrators.</p> <p>17 Q. What's the name of the lead representative?</p> <p>18 A. Craig Hawkins is the executive director.</p> <p>19 Q. Any other organizations?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Isn't it true that the Governor is concerned</p> <p>22 about public schools losing a significant amount of</p> <p>23 money if students are allowed to freely transfer away</p> <p>24 from public schools?</p> <p>25 MR. ABRAMS: Asked and answered.</p>
Page 74	Page 76
<p>1 and the public.</p> <p>2 Q. At any time during the pandemic this year have</p> <p>3 you ever addressed any concerns about school funding</p> <p>4 disruptions?</p> <p>5 A. Can you clarify your question?</p> <p>6 Q. At any time during the pandemic this year have</p> <p>7 you addressed any concerns from anybody about public</p> <p>8 school funding disruptions?</p> <p>9 A. There's certainly been policy of the department</p> <p>10 promulgated around enrollment and how they</p> <p>11 miscounted.</p> <p>12 Q. That's not my question. My specific question</p> <p>13 is during the pandemic this year have you dealt with</p> <p>14 any concerns from anyone about public school funding</p> <p>15 disruptions?</p> <p>16 A. I'm not sure how to answer that question.</p> <p>17 Q. Yes or no.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Then who did you discuss that with?</p> <p>20 A. I don't recall. I think it was a matter the</p> <p>21 certain agency brought forward.</p> <p>22 Q. What agency?</p> <p>23 A. The Oregon Department of Education.</p> <p>24 Q. Did you discuss -- we can call it school</p> <p>25 funding disruptions or, you know, public schools</p>	<p>1 Go ahead.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. KAEMPF:</p> <p>4 Q. Are you saying that is not true?</p> <p>5 MR. ABRAMS: Asked and answered.</p> <p>6 THE WITNESS: It's not true.</p> <p>7 BY MR. KAEMPF:</p> <p>8 Q. Okay. In writing or any form has Governor</p> <p>9 Brown ever expressed to you that she is concerned</p> <p>10 that the pandemic is going to cause public schools to</p> <p>11 lose money?</p> <p>12 A. Certainly there were financial impacts of the</p> <p>13 pandemic that are a general concern.</p> <p>14 Q. That's not my question. My question is did</p> <p>15 Governor Brown ever express any sentiment like that</p> <p>16 to you?</p> <p>17 A. No.</p> <p>18 Q. Did anyone else within the Governor's office</p> <p>19 express a concern like that?</p> <p>20 A. No.</p> <p>21 Q. Have you ever had that concern?</p> <p>22 A. The line of questioning is whether I have</p> <p>23 concern about the sustainability of public schools?</p> <p>24 Q. About public schools losing funding because of</p> <p>25 transfer or unenrollment during the pandemic.</p>



Lindsey Capps

20 (Pages 77 to 80)

Page 77	Page 79
<p>1 A. Not in the Governor's office, no.</p> <p>2 Q. How about any other part of the Oregon</p> <p>3 government?</p> <p>4 A. Certainly it's a topic that I've spoken with</p> <p>5 the Oregon Department of Education and Colt Gill</p> <p>6 about.</p> <p>7 Q. Anyone else?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Has Governor Brown in any form, verbal or in</p> <p>10 writing, ever expressed a concern to you about public</p> <p>11 schools losing a lot of students to private or</p> <p>12 religious schools because of the pandemic?</p> <p>13 A. No. I think I've answered that before.</p> <p>14 Q. The Breitbart article we talked -- we were</p> <p>15 talking about. Excuse me. It mentions, quote, "the</p> <p>16 pressure by teachers unions and advocates of brick</p> <p>17 and mortar options during the pandemic," end quote.</p> <p>18 During this pandemic have you ever gotten</p> <p>19 pressure from teachers unions concerning students</p> <p>20 unenrolling or leaving public schools?</p> <p>21 MR. ABRAMS: Asked and answered.</p> <p>22 Go ahead.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. KAEMPF:</p> <p>25 Q. The Breitbart article also quotes Secretary</p>	<p>1 The Breitbart articles quotes Secretary DeVos</p> <p>2 and her quote, "recently announced new rules</p> <p>3 clarifying that distance learning opportunities</p> <p>4 should be offered to all students during the school</p> <p>5 closures," end quote.</p> <p>6 So my question is has Oregon followed that</p> <p>7 policy?</p> <p>8 A. To provide distance learning opportunities to</p> <p>9 all students?</p> <p>10 Q. Yes.</p> <p>11 A. So that is a local district matter of</p> <p>12 implementation. We've certainly provided emergency</p> <p>13 relief funds to school districts with CARES Act funds</p> <p>14 to --</p> <p>15 Q. That's not the question again.</p> <p>16 A. Sorry.</p> <p>17 Q. I believe --</p> <p>18 MR. ABRAMS: Just a minute.</p> <p>19 BY MR. KAEMPF:</p> <p>20 Q. -- you are the chief education officer; right?</p> <p>21 A. That is not correct.</p> <p>22 Q. Okay. I'm sorry. What is your title again?</p> <p>23 A. I'm the Senior Education Policy Advisor in the</p> <p>24 Office of the Governor.</p> <p>25 Q. Okay. I got it. So for shorthand is it fair</p>
Page 78	Page 80
<p>1 DeVos as stating, quote, "Recently announced new</p> <p>2 rules verifying that distance learning opportunities</p> <p>3 should be offered to all students during the</p> <p>4 closure," end quote.</p> <p>5 Is that true?</p> <p>6 A. That is the policy as I understood it of the</p> <p>7 U.S. Department of Education.</p> <p>8 Q. Has your office followed that policy?</p> <p>9 A. Well, there's a second policy, which what the</p> <p>10 congress passed under the CARES Act.</p> <p>11 Q. But I'm going to the part that Secretary DeVos</p> <p>12 mentions, and in the Breitbart article where it says</p> <p>13 she, quote, "recently announced new rules clarifying</p> <p>14 that distance learning opportunities should be</p> <p>15 offered to all students during the school closures,"</p> <p>16 end quote.</p> <p>17 Did Oregon follow that policy?</p> <p>18 A. To the question of whether Oregon followed the</p> <p>19 policy of providing private schools with relief, it</p> <p>20 did not. It provided emergency relief to public</p> <p>21 schools.</p> <p>22 Q. That wasn't the question.</p> <p>23 A. Under the CARES Act.</p> <p>24 Q. That wasn't the question. I didn't talk about</p> <p>25 private schools.</p>	<p>1 to say you work for the Governor?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. So within the context of your work for</p> <p>4 the Governor has that policy that Secretary DeVos</p> <p>5 announced of the learning opportunities being --</p> <p>6 should be offered to all students during the</p> <p>7 pandemic, has that been followed?</p> <p>8 A. So, what's important is that the CARES Act</p> <p>9 provided resources to the Department of Education in</p> <p>10 Oregon that allocated to all school districts on a</p> <p>11 formula basis. The opportunity for online learning</p> <p>12 was funded as one of the many allowable uses.</p> <p>13 The governor furthermore provided through the</p> <p>14 Governor's Education Emergency Relief Fund dollars,</p> <p>15 grants to all districts for comprehensive distance</p> <p>16 learning of which access to online learning was an</p> <p>17 allowable use.</p> <p>18 Q. Okay. And that wasn't my question, though? My</p> <p>19 question was that when Secretary DeVos in the</p> <p>20 Breitbart recently, quote, "recently announced new</p> <p>21 rules clarifying that distance learning opportunities</p> <p>22 should be offered to all students during the school</p> <p>23 closures," end quote.</p> <p>24 Has that policy been followed in Oregon through</p> <p>25 the Governor's office?</p>

Lindsey Capps

21 (Pages 81 to 84)

Page 81	Page 83
<p>1 A. To the extent that we are able to make good on</p> <p>2 that policy through resources provided to school</p> <p>3 districts but within the context that they have local</p> <p>4 decision-making authority we have attempted to follow</p> <p>5 through with that policy. We do not --</p> <p>6 Q. So you don't know?</p> <p>7 A. Excuse me.</p> <p>8 Q. Do you not know what --</p> <p>9 A. -- relationship with private schools to provide</p> <p>10 that funding.</p> <p>11 Q. Why do you keep bringing up private schools,</p> <p>12 sir? I'm not asking about that.</p> <p>13 A. My apologies. I thought that was inferred in</p> <p>14 your question.</p> <p>15 Q. So I'll ask it again. The Breitbart article</p> <p>16 states that Education Secretary DeVos, quote,</p> <p>17 "recently announced new rules clarifying that</p> <p>18 distance learning opportunities should be offered to</p> <p>19 all students during the school closures," end quote.</p> <p>20 Within the Governor's office, has that policy</p> <p>21 been implemented in Oregon?</p> <p>22 A. What rules are you referencing?</p> <p>23 Q. Secretary DeVos as quoted in the Breitbart</p> <p>24 article we've been talking about a lot today where it</p> <p>25 says she, quote, "recently announced new rules</p>	<p>1 determining that --</p> <p>2 Q. Well, I'm not talking about any specific rule.</p> <p>3 A. -- to be able to respond to your question.</p> <p>4 Q. I'm not talking about a rule number or any of</p> <p>5 that. Just the words of this policy as quoted in the</p> <p>6 article and it says the rules clarify that, quote,</p> <p>7 "distance learning opportunities should be offered to</p> <p>8 all students during the school closures," end quote.</p> <p>9 Regardless of the number or whatever, through</p> <p>10 the governor's office, has that policy been</p> <p>11 implemented in Oregon?</p> <p>12 A. We have followed through in the use of our</p> <p>13 federal resources to expand comprehensive distance</p> <p>14 learning and it is our intent to support online</p> <p>15 learning for all students who need it during the</p> <p>16 pandemic. We continue to work at that.</p> <p>17 Q. Okay. That's not responsive. I'm just looking</p> <p>18 for a yes or no so I'll try again.</p> <p>19 The Breitbart article states that Education</p> <p>20 Secretary DeVos, quote, recently announced new rules</p> <p>21 clarifying that distance learning opportunities</p> <p>22 should be offered to all students during the school</p> <p>23 closures," end quote?</p> <p>24 Has that policy or rule been followed in Oregon</p> <p>25 through the Governor's office.</p>
Page 82	Page 84
<p>1 clarifying that distance learning opportunities</p> <p>2 should be offered to all students during the school</p> <p>3 closures," end quote.</p> <p>4 Has that rule or policy been followed in</p> <p>5 Oregon, to your knowledge?</p> <p>6 A. I guess I'm speaking to the rule as defined in</p> <p>7 the Federal Register, some other source other than</p> <p>8 Breitbart so I understand --</p> <p>9 Q. No, I'm --</p> <p>10 A. -- the --</p> <p>11 Q. I'm quoting Education Secretary DeVos,</p> <p>12 regardless of what number it is or where it's listed.</p> <p>13 Just as is mentioned there when it says that she</p> <p>14 "announced new rules clarified that distance learning</p> <p>15 opportunities should be offered to all students</p> <p>16 during the school closures," end quote.</p> <p>17 Has that policy been followed in Oregon as far</p> <p>18 as you know through the Governor's office?</p> <p>19 MR. ABRAMS: I'm going to object as</p> <p>20 unclear based on double hearsay.</p> <p>21 BY MR. KAEMPF:</p> <p>22 Q. Go ahead. Please answer.</p> <p>23 A. So there are two parts to your question. The</p> <p>24 first is what DeVos is saying. The other is a rule.</p> <p>25 And I guess my question is what rule are you</p>	<p>1 A. I believe it has to the extent that it can</p> <p>2 affect decision making.</p> <p>3 Q. In the Breitbart article, Secretary DeVos is</p> <p>4 also quoted as saying, quote, "it was extremely</p> <p>5 disappointing to hear that some school districts were</p> <p>6 using information from the Department of Education as</p> <p>7 an excuse not to educate kids," end quote.</p> <p>8 Is that true as to Oregon?</p> <p>9 A. No.</p> <p>10 Q. Why is that not true?</p> <p>11 A. Because we've made attempts to prioritize</p> <p>12 comprehensive distance learning with resources but we</p> <p>13 have one of the most comprehensive guidance documents</p> <p>14 to support districts in providing distance learning</p> <p>15 that is --</p> <p>16 Q. Can you give me examples of that? Like</p> <p>17 executive order numbers or the names of people</p> <p>18 implementing such policy?</p> <p>19 A. I would refer you to the Ready Schools, Safe</p> <p>20 Learners guidance. It has a specific reference and</p> <p>21 section around comprehensive distance learning and</p> <p>22 how to implement that.</p> <p>23 Q. Anything else?</p> <p>24 A. I didn't hear the last part. I'm sorry.</p> <p>25 Q. Anything else?</p>

Lindsey Capps

22 (Pages 85 to 88)

Page 85	Page 87
<p>1 A. And certainly the resourcing of districts for 2 that purpose.</p> <p>3 Q. Isn't it true, Mr. Capps, that public schools 4 could suffer a significant reduction in funding if 5 students disenroll from them to attend private or 6 religious schools?</p> <p>7 MR. ABRAMS: Objection, calls for 8 speculation.</p> <p>9 Can you answer.</p> <p>10 THE WITNESS: Our --</p> <p>11 MR. KAEMPF: No speculation.</p> <p>12 BY MR. KAEMPF:</p> <p>13 Q. From what you know in your position as a 14 special advisor to the Governor dealing with 15 education, is it true that public schools could 16 suffer a significant reduction in funding if students 17 disenroll from them to attend private or religious 18 schools?</p> <p>19 MR. ABRAMS: Same objection.</p> <p>20 BY MR. KAEMPF:</p> <p>21 Q. Please answer.</p> <p>22 A. So our state funding formula is based on 23 average daily membership or enrollment. So there 24 could be implications for students leaving the 25 district for any other school district or school.</p>	<p>1 large departure of students from public schools would 2 affect the finances of public schools?</p> <p>3 A. Yes.</p> <p>4 Q. And what was that analysis?</p> <p>5 A. I don't recall that. There was -- all I could 6 tell you is there was analysis done.</p> <p>7 Q. Who did it?</p> <p>8 A. Oregon Department of Education.</p> <p>9 Q. Was there a man or woman that led that 10 analysis?</p> <p>11 A. I don't know specific staff person within the 12 department but I -- it was somebody that I know that 13 leadership was looking at.</p> <p>14 Q. Okay. Can you give me any name attached to 15 that analysis we're talking about?</p> <p>16 A. ODE Director Colt Gill.</p> <p>17 Q. Anyone else?</p> <p>18 A. Not that I recall.</p> <p>19 Q. Did the Governor's office ever decide that 20 student transfers to religious schools were to be 21 stopped or capped?</p> <p>22 A. I didn't hear the last word. Could you just 23 restate the question?</p> <p>24 Q. Sure. Did anyone in the Governor's office or 25 anywhere in Oregon's government, to your knowledge,</p>
Page 86	Page 88
<p>1 Q. That doesn't answer my question so I'll ask it 2 again.</p> <p>3 Isn't it true that public schools could suffer 4 significant reduction in funding if students 5 disenroll from them to attend private or religious 6 schools?</p> <p>7 A. I don't know the answer to that.</p> <p>8 Q. Isn't it true that a concern about public 9 schools losing their funding is a big reason why 10 Governor Brown has not allowed religious or private 11 schools to reopen full time with in-person classes?</p> <p>12 MR. ABRAMS: Objection, misstates the 13 previous testimony.</p> <p>14 THE WITNESS: No.</p> <p>15 BY MR. KAEMPF:</p> <p>16 Q. New question. Please answer.</p> <p>17 MR. ABRAMS: He answered.</p> <p>18 THE WITNESS: No.</p> <p>19 BY MR. KAEMPF:</p> <p>20 Q. Have you ever discussed with anyone the concept 21 of students leaving public schools to go to private 22 or religious schools?</p> <p>23 A. No.</p> <p>24 Q. Was there ever a financial analysis done within 25 any department of the Oregon government to see how a</p>	<p>1 ever decide that student transfers from public 2 schools to religious schools were to be stopped or 3 capped at some level?</p> <p>4 A. Not to religious schools.</p> <p>5 Q. To private schools?</p> <p>6 A. Not to private schools that I'm aware of.</p> <p>7 There is --</p> <p>8 Q. Okay. Was there any kind of school where there 9 was an effort to stop or cap student transfers from 10 public schools to that other type of school?</p> <p>11 A. No. I will state again there is a cap in the 12 statute for virtual charter schools that are public.</p> <p>13 Q. And what is that capacity?</p> <p>14 A. Again, I don't recall that off the top of my 15 head.</p> <p>16 Q. Do you know why that cap exists?</p> <p>17 A. I do not.</p> <p>18 Q. Is it because of the concern about the state 19 losing money?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you know who was involved in any discussion, 22 if there was one, about limiting the transfer out of 23 public schools during the pandemic to any other type 24 of school?</p> <p>25 A. Can you repeat the first part of your question?</p>

Lindsey Capps

23 (Pages 89 to 92)

Page 89	Page 91
<p>1 I just didn't hear it.</p> <p>2 Q. Do you know who was involved if there were any</p> <p>3 discussions about limiting transferring from public</p> <p>4 schools to any other type of school, what the names</p> <p>5 of those people would be?</p> <p>6 A. I don't recall. I know that this was -- as I</p> <p>7 testified previously, this was a concern for some</p> <p>8 small rural districts and I heard that from the</p> <p>9 Confederation of Oregon School Administrators.</p> <p>10 Q. Okay. And who -- if you didn't tell me before,</p> <p>11 who is the loader of the confederation you just</p> <p>12 mentioned?</p> <p>13 A. Craig Hawkins is the executive director.</p> <p>14 Q. And did anybody else ever discuss with you that</p> <p>15 issue about limiting the transfers out of public</p> <p>16 schools to any other kind of school during the</p> <p>17 pandemic?</p> <p>18 A. No.</p> <p>19 Q. Did you ever become the subject or become aware</p> <p>20 of any public school districts or their associations</p> <p>21 who want to limit transfers out of public schools?</p> <p>22 A. Can you restate the question?</p> <p>23 Q. The reporter can read it back.</p> <p>24 (The court reporter read back as</p> <p>25 requested.)</p>	<p>1 Sattenspiel, the CARES director for Oregon School</p> <p>2 Boards Association, Oregon Education Association John</p> <p>3 Larson, President, Trent Lewis, assistant executive</p> <p>4 director, Jim Fotter, Executive Director, Oregon</p> <p>5 School Employees Association Susan Miller, Field</p> <p>6 Director, Bob Estabrook is the director.</p> <p>7 Q. Are there any other school organizations or</p> <p>8 associations that lobbied you relating to the</p> <p>9 pandemic?</p> <p>10 A. Certainly Stand For Children, the Chalkboard</p> <p>11 Project, number of stakeholders that are -- that are</p> <p>12 making contact with us.</p> <p>13 Q. Were you ever the subject of any lobbying</p> <p>14 relating to the pandemic from any organization</p> <p>15 representing religious or private schools?</p> <p>16 A. As I stated earlier, I've had conversations</p> <p>17 with Mark Seagull with the Independent Schools</p> <p>18 Federation.</p> <p>19 Q. Anyone else?</p> <p>20 A. No lobbying, no.</p> <p>21 Q. Is -- if there's another word that's like that,</p> <p>22 I'd like to include that, you know, trying to</p> <p>23 influence policy. I recall that lobbying. But</p> <p>24 anything else like that where you received attempts</p> <p>25 at -- I'm not trying to be improper. I'm just</p>
Page 90	Page 92
<p>1 A. No.</p> <p>2 Q. I may have said it wrong. So let me just make</p> <p>3 it clear.</p> <p>4 Were you ever aware of any lobbying by any</p> <p>5 public school district or any public school</p> <p>6 association to limit transfers out of public schools?</p> <p>7 A. I don't recall.</p> <p>8 Q. Do you know who acted on behalf of the public</p> <p>9 schools during the pandemic concerning any lobbying</p> <p>10 about executive orders?</p> <p>11 A. Specific to schools or generally?</p> <p>12 Q. Schools.</p> <p>13 A. There have been a number of interested parties</p> <p>14 that were consulted, like various Oregon school</p> <p>15 districts, various school board associations, Oregon</p> <p>16 Education Association and the Oregon School Employees</p> <p>17 Association.</p> <p>18 Q. Please tell me the names of all the</p> <p>19 representatives you can recall of the organizations</p> <p>20 you just named that did any lobbying this year</p> <p>21 relating to the pandemic?</p> <p>22 A. So by organization, I mentioned Craig Hawkins,</p> <p>23 Confederation of Oregon School Administrators, Morgan</p> <p>24 Allen, also with COSA, Jim Green, Executive Director</p> <p>25 of the Oregon School Boards Association, Lori</p>	<p>1 saying, you know, an attempt to affect policy. Did</p> <p>2 you get that from any representative of any private</p> <p>3 or religious school organization during the pandemic?</p> <p>4 A. We certainly had meetings with members of the</p> <p>5 Federation beyond Mark. We've talked with the</p> <p>6 Catholic Archdiocese for private schools. And,</p> <p>7 again, there's been a regular meeting that the Oregon</p> <p>8 Department of Education has convened with their</p> <p>9 private school representatives.</p> <p>10 Q. Please tell me the names of everyone you or</p> <p>11 your representatives had with members of the</p> <p>12 archdiocese in Portland.</p> <p>13 A. So that would be the Superintendent</p> <p>14 Ray-Timoney.</p> <p>15 Q. Anyone else?</p> <p>16 A. Not with the archdiocese of Portland.</p> <p>17 Q. Anyone with the diocese of Baker?</p> <p>18 A. I think I may have sent communication to</p> <p>19 Mr. Golden in Baker but I've not talked with him.</p> <p>20 Q. Who's Mr. Golden?</p> <p>21 A. He's the superintendent of that archdiocese.</p> <p>22 Q. Okay. Anyone else that was a representative of</p> <p>23 religious or private school organization?</p> <p>24 A. Not that I can recall off the top of my head.</p> <p>25 I can't remember.</p>

Lindsey Capps

24 (Pages 93 to 96)

Page 93	Page 95
<p>1 Q. Now I'm going to switch to public employee</p> <p>2 labor unions. Are you aware of any lobbying or other</p> <p>3 efforts to influence policy by public employee labor</p> <p>4 unions relating to the pandemic?</p> <p>5 A. Certainly I named two of those organizations in</p> <p>6 my prior answer or prior answers so the Oregon</p> <p>7 Education Association and the Oregon School Employees</p> <p>8 Association.</p> <p>9 Q. Anyone else?</p> <p>10 A. I think those are -- have been the primary</p> <p>11 labor organizations.</p> <p>12 Q. Did any labor union lobby or otherwise try to</p> <p>13 influence policy to shut down or limit transfers out</p> <p>14 of public schools?</p> <p>15 A. No.</p> <p>16 Q. Isn't it true that representatives of Oregon's</p> <p>17 public teachers unions have pressured you and others</p> <p>18 within the Governor's office to keep religious and</p> <p>19 private schools closed during the pandemic?</p> <p>20 A. Is your question is it true that they have</p> <p>21 attempted to keep schools closed?</p> <p>22 Q. The question is isn't it true that</p> <p>23 representatives of public teachers union have</p> <p>24 pressured you and others in the Governor's office to</p> <p>25 keep religious and other private schools closed</p>	<p>1 A. Because I have not been given that information</p> <p>2 nor --</p> <p>3 Q. Have you thought to request it?</p> <p>4 THE COURT REPORTER: What was the</p> <p>5 question?</p> <p>6 What was the question?</p> <p>7 BY MR. KAEMPF:</p> <p>8 Q. Have you ever thought to request it?</p> <p>9 A. I'm sorry. Can you clarify what the question</p> <p>10 is? I apologize.</p> <p>11 Q. Have you ever thought to request information</p> <p>12 about how much money is taken away from a public</p> <p>13 school district when a single student is unenrolled?</p> <p>14 A. No.</p> <p>15 Q. Have you ever discussed with anyone a concern</p> <p>16 about students leaving public schools to go to</p> <p>17 private or religious schools because of the pandemic?</p> <p>18 A. No.</p> <p>19 Q. Isn't it true that public schools could suffer</p> <p>20 a significant reduction in funding if students</p> <p>21 disenrolled from that school to attend private or</p> <p>22 religious schools?</p> <p>23 A. I don't know the answer to that.</p> <p>24 Q. Isn't it true that this concern is a big reason</p> <p>25 why Governor Brown has not allowed religious or</p>
Page 94	Page 96
<p>1 during the pandemic?</p> <p>2 A. No.</p> <p>3 Q. Did any representative of any public teachers</p> <p>4 union ever lobby you to try to keep transfers to</p> <p>5 religious schools down?</p> <p>6 A. No.</p> <p>7 Q. Did the Governor's office ever decide that</p> <p>8 student transfers to religious schools were to be</p> <p>9 stopped or capped?</p> <p>10 A. No.</p> <p>11 Q. As you sit here today is your policy -- your</p> <p>12 job as advisor to the Governor, do you have any</p> <p>13 concern either way about whether students will leave</p> <p>14 Oregon's public schools to private or religious</p> <p>15 schools?</p> <p>16 A. No.</p> <p>17 Q. Are you aware of any documents that the</p> <p>18 plaintiff in this case requested from the Governor's</p> <p>19 office that were withheld?</p> <p>20 A. No.</p> <p>21 Q. What is the amount of money that's taken away</p> <p>22 from a public school district when even a single</p> <p>23 student is unenrolled?</p> <p>24 A. I don't have that information.</p> <p>25 Q. And why don't you know that?</p>	<p>1 private schools to reopen full-time with in-person</p> <p>2 classes?</p> <p>3 MR. ABRAMS: Asked and answered, assumes</p> <p>4 facts not in evidence.</p> <p>5 BY MR. KAEMPF:</p> <p>6 Q. Please answer.</p> <p>7 A. No.</p> <p>8 Q. Was there ever a financial analysis done by</p> <p>9 anyone in Oregon state government this year to see</p> <p>10 how much financial damage could be caused to the</p> <p>11 state due to students transferring out of public</p> <p>12 schools because of the pandemic?</p> <p>13 A. I think you've asked this question in another</p> <p>14 form earlier. There was some analysis done of impact</p> <p>15 of student transfers from public schools to public</p> <p>16 virtual charter schools.</p> <p>17 Q. Okay. And who did that analysis?</p> <p>18 A. Again, the Oregon Department of Education.</p> <p>19 Colt Gill I think is the individual.</p> <p>20 Q. And do you recall anyone else being attached to</p> <p>21 that analysis besides Colt Gill?</p> <p>22 A. Yeah, I don't recall. I don't --</p> <p>23 Q. And, sorry if I already asked this, but what is</p> <p>24 Colt Gill's title?</p> <p>25 A. He's the director of the Oregon Department of</p>



Lindsey Capps

25 (Pages 97 to 100)

Page 97	Page 99
<p>1 Education and the Deputy Superintendent of Public</p> <p>2 Instruction.</p> <p>3 Q. Were you involved in the effort to produce</p> <p>4 documents plaintiffs requested in this case?</p> <p>5 A. No.</p> <p>6 Q. Who was --</p> <p>7 A. -- answer that.</p> <p>8 MR. ABRAMS: John, we're not answering</p> <p>9 those questions.</p> <p>10 MR. KAEMPF: I don't want to know about</p> <p>11 any communications with lawyers. I just want to know</p> <p>12 if you know the names of people within the Oregon</p> <p>13 government that were involved in producing documents</p> <p>14 at the plaintiff's request.</p> <p>15 MR. ABRAMS: Mr. Kaempf, that work would</p> <p>16 have been done as part of the attorney/client</p> <p>17 privilege and attorney work product and the question</p> <p>18 will not be answered.</p> <p>19 BY MR. KAEMPF:</p> <p>20 Q. Mr. Capps, were you involved in removing or</p> <p>21 redacting any part of any document that was produced</p> <p>22 in this case?</p> <p>23 MR. ABRAMS: Again, do not answer the</p> <p>24 question.</p> <p>25 You know, Mr. Kaempf, you seem to be</p>	<p>1 A. I don't remember those off the top of my head.</p> <p>2 Q. Is 20-29 one of them?</p> <p>3 A. That sounds correct.</p> <p>4 Q. To your knowledge right now what is the</p> <p>5 governing executive order concerning whether a</p> <p>6 private or religious school can reopen for in-person</p> <p>7 classes?</p> <p>8 A. Well, the executive orders that have been</p> <p>9 issued including the current executive order provide</p> <p>10 a framework for both public and private schools to</p> <p>11 receive guidance from where --</p> <p>12 Q. What --</p> <p>13 A. Like I said, I don't remember off the top of my</p> <p>14 head.</p> <p>15 Q. When you were involved in drafting and revising</p> <p>16 these school-related executive orders concerning the</p> <p>17 pandemic did your software allow those documents to</p> <p>18 track changes?</p> <p>19 A. I believe so.</p> <p>20 Q. And do you know whether or not those track</p> <p>21 changes were produced to the plaintiff?</p> <p>22 MR. ABRAMS: Again, you are asking him for</p> <p>23 work product and I'm directing him not to answer.</p> <p>24 BY MR. KAEMPF:</p> <p>25 Q. Were any recommendations by the Governor's</p>
Page 98	Page 100
<p>1 implying that production was not made honestly,</p> <p>2 fairly, and if you have any reasons for that, direct</p> <p>3 it to me outside the deposition. But you know the</p> <p>4 number of hoops we jumped through and this is</p> <p>5 completely inappropriate and we will not answer such</p> <p>6 questions.</p> <p>7 MR. KAEMPF: So, are you instructing him</p> <p>8 not to answer, just so we have a record for the</p> <p>9 court?</p> <p>10 MR. ABRAMS: Yes, I am instructing him not</p> <p>11 to answer.</p> <p>12 BY MR. KAEMPF:</p> <p>13 Q. Were you involved in drafting or revising any</p> <p>14 pandemic-related executive orders concerning schools?</p> <p>15 A. Yes.</p> <p>16 Q. Which ones?</p> <p>17 A. Executive orders.</p> <p>18 Q. Okay. And how many are there related to</p> <p>19 schools and the pandemic?</p> <p>20 A. There's a few.</p> <p>21 Q. Can you give me your best estimate as to a</p> <p>22 number?</p> <p>23 A. I believe we've have four, I'm sorry, three</p> <p>24 executive orders.</p> <p>25 Q. Okay. What are the numbers of those EOs?</p>	<p>1 staff concerning religious or private schools</p> <p>2 reopening ever projected by Governor Brown?</p> <p>3 A. No.</p> <p>4 Q. Did you ever observe any member of the</p> <p>5 Governor's staff do or say anything that indicated</p> <p>6 that they were against religious or private schools</p> <p>7 reopening for in-person classes?</p> <p>8 A. No.</p> <p>9 Q. Are you aware of anyone being disciplined for</p> <p>10 doing anything like that?</p> <p>11 A. No.</p> <p>12 Q. Okay. Now, Mr. Capps, these next few questions</p> <p>13 refer to your time during this pandemic. As</p> <p>14 questions of closing or reopening schools, who played</p> <p>15 the important roles in deciding the state's direction</p> <p>16 on that question?</p> <p>17 MR. ABRAMS: Objection, vague.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: The process was -- included</p> <p>20 both the Governor's office and the Oregon Department</p> <p>21 of Education in consultation.</p> <p>22 BY MR. KAEMPF:</p> <p>23 Q. What are the names of the individuals involved?</p> <p>24 A. I think I named them previously. If it relates</p> <p>25 to the executive orders, general counsel, deputy</p>

Lindsey Capps

26 (Pages 101 to 104)

Page 101	Page 103
<p>1 general counsel, myself, the Oregon Department of</p> <p>2 Education Colt Gill, the Governor's Chief of Staff</p> <p>3 and Deputy Chief of Staff.</p> <p>4 Q. Is that Nik Blosser?</p> <p>5 A. Yes. Yes.</p> <p>6 Q. And who is the chief counsel and who is the</p> <p>7 deputy counsel?</p> <p>8 A. Deputy -- did you say deputy counsel?</p> <p>9 Q. Whatever you just said. You said there was a</p> <p>10 chief counsel and I thought I heard something about,</p> <p>11 like, an assistant?</p> <p>12 MR. ABRAMS: Asked and answered.</p> <p>13 Go ahead.</p> <p>14 BY MR. KAEMPF:</p> <p>15 Q. What did you say?</p> <p>16 A. I think I said deputy chief of staff, Gina</p> <p>17 Zejdlik, in our general counsel's office, just to be</p> <p>18 clear, our general counsel Dustin Buehler and our</p> <p>19 deputy counsel Sarah Weston.</p> <p>20 Q. Did anybody else play an important role in your</p> <p>21 viewpoint in deciding the direction the Governor</p> <p>22 would go relating to schools and the pandemic?</p> <p>23 A. Those were the key staff.</p> <p>24 Q. Okay. Isn't it true -- I'm not impugning</p> <p>25 Governor Brown on this point, but isn't it true that</p>	<p>1 And the question is, from your knowledge</p> <p>2 of this job you've had for several years now, is</p> <p>3 there any limit on what the Governor can put in an</p> <p>4 executive order relating to the pandemic and school</p> <p>5 closures or reopening.</p> <p>6 MR. ABRAMS: And to be clear, the</p> <p>7 objection is calls for legal conclusion, not</p> <p>8 speculation.</p> <p>9 BY MR. KAEMPF:</p> <p>10 Q. Not a legal conclusion. Just asking what would</p> <p>11 go in the executive orders. Is there any limit on</p> <p>12 what Governor Brown can put in it?</p> <p>13 MR. ABRAMS: It does call for legal</p> <p>14 conclusion. That's the objection. Stop commenting</p> <p>15 on my objection.</p> <p>16 BY MR. KAEMPF:</p> <p>17 Q. Please answer the question.</p> <p>18 Is there any limit on what Governor Brown can</p> <p>19 put in the executive orders relating to the pandemic</p> <p>20 and schools reopening or closing?</p> <p>21 A. I'm not an attorney so I'm not able to answer</p> <p>22 that question.</p> <p>23 Q. Are aware of any limit?</p> <p>24 A. Again, I'm not an attorney.</p> <p>25 Q. Isn't it true that Governor Brown can withdraw</p>
Page 102	Page 104
<p>1 these executive orders are imposed by her solely at</p> <p>2 her whim?</p> <p>3 MR. ABRAMS: Objection, argumentative.</p> <p>4 MR. KAEMPF: I don't -- I'm not being</p> <p>5 argumentative. I tried to make that clear.</p> <p>6 BY MR. KAEMPF:</p> <p>7 Q. Isn't it true, Mr. Capps, that these executive</p> <p>8 orders relating to the pandemic and school closures</p> <p>9 are imposed solely at her whim?</p> <p>10 MR. ABRAMS: Same objections,</p> <p>11 notwithstanding your attempts to --</p> <p>12 BY MR. KAEMPF:</p> <p>13 Q. Go ahead. You can answer.</p> <p>14 A. The Governor's executive authority is exercised</p> <p>15 in the case of schools for purposes of addressing the</p> <p>16 public health emergency and insuring health and</p> <p>17 safety of our students and staff and public.</p> <p>18 Q. But is there any limit on what she can do in</p> <p>19 these school-related pandemic executive orders?</p> <p>20 MR. ABRAMS: Objection, calls for a legal</p> <p>21 conclusion.</p> <p>22 You can answer.</p> <p>23 MR. KAEMPF: I'm not asking for</p> <p>24 speculation. I'm asking about his job as a special</p> <p>25 advisor to the Governor.</p>	<p>1 these executive orders related to the pandemic and</p> <p>2 schools at any time?</p> <p>3 A. That is certainly possible.</p> <p>4 Q. As we sit here today, Mr. Capps, is there a</p> <p>5 stay-at-home order in place?</p> <p>6 A. No.</p> <p>7 Q. When did that start and when did that end</p> <p>8 relating to the pandemic?</p> <p>9 A. I don't recall the specific dates. It was in</p> <p>10 the spring.</p> <p>11 Q. Of 2020?</p> <p>12 A. That's correct.</p> <p>13 Q. Now with regard to large school districts and</p> <p>14 the pandemic this year, which school and union</p> <p>15 leaders have you had the most communications with?</p> <p>16 A. I'm not sure I could answer that off the top of</p> <p>17 my head.</p> <p>18 Q. Can you think of any names of people</p> <p>19 representing the large school districts that you've</p> <p>20 had significant communications with this year?</p> <p>21 A. I think I provided in a prior answer the names</p> <p>22 of superintendents that we have met with.</p> <p>23 Q. How about union leaders?</p> <p>24 A. Just -- really just the state association.</p> <p>25 We've certainly had meetings with the state</p>



Lindsey Capps

27 (Pages 105 to 108)

Page 105	Page 107
<p>1 association and all local association leaders were</p> <p>2 present.</p> <p>3 Q. Concerning large school districts and union</p> <p>4 leaders, can you give me the names of people you've</p> <p>5 dealt with this year about the pandemic?</p> <p>6 A. I have not personally met with any leaders of</p> <p>7 large school district unions unless they were part of</p> <p>8 a larger meeting at the ODE.</p> <p>9 Q. Then who did meet with any union leaders from</p> <p>10 large school districts?</p> <p>11 A. I'm not sure if anyone.</p> <p>12 Q. You said they were part of a meeting; is that</p> <p>13 right?</p> <p>14 A. We've had meetings in which they were hosted by</p> <p>15 the leadership of the association in which local</p> <p>16 association leaders were present.</p> <p>17 Q. Can you give me the name of any union leader</p> <p>18 representing a large school district that attended</p> <p>19 any such meeting?</p> <p>20 A. I don't -- I recall those meetings that were</p> <p>21 convened by John Larson, the president of the</p> <p>22 association.</p> <p>23 Q. Anyone else?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. With regard to small school districts, which</p>	<p>1 A. With regard to teachers unions, us that the</p> <p>2 question?</p> <p>3 Q. Yes.</p> <p>4 A. Probably with the Oregon Education Association.</p> <p>5 Q. And who is the leader of that?</p> <p>6 A. President John Larson.</p> <p>7 Q. And anyone else from the OEA that you've had</p> <p>8 dealings with significantly this year about the</p> <p>9 pandemic?</p> <p>10 A. Yes, I mentioned in a prior answer Trent Lewis,</p> <p>11 assistant executive director.</p> <p>12 Q. Okay. And I'm sorry. What were those names</p> <p>13 again? It was little unclear?</p> <p>14 A. Jim Fotter, F-O-T-T-E-R.</p> <p>15 Q. Anyone else?</p> <p>16 A. Interest have been other staff that have</p> <p>17 attended meetings.</p> <p>18 Q. Can you think of the names of anybody else</p> <p>19 associated with teachers unions that you've dealt</p> <p>20 with this year about the pandemic?</p> <p>21 A. Let's see. I think the head of their center</p> <p>22 for great public schools, Susan Crumpton. I have to</p> <p>23 recall other names.</p> <p>24 Q. Who would you consider to be the most</p> <p>25 influential union representative in Oregon's public</p>
Page 106	Page 108
<p>1 school and union leaders did you have the most</p> <p>2 communications with regarding the pandemic?</p> <p>3 A. Small districts, I certainly heard from the</p> <p>4 Superintendent Mark Witty in Baker. I had a meeting</p> <p>5 with him out here which included others. I talked</p> <p>6 with the EST superintendents.</p> <p>7 Q. Anyone else?</p> <p>8 A. Not that I recall off the top of my head.</p> <p>9 Q. With regard to private or religious schools</p> <p>10 which leaders have you had the most communications</p> <p>11 with about the pandemic?</p> <p>12 A. Probably Mark Seagull with the Federation of</p> <p>13 Independent Schools.</p> <p>14 Q. Any religious school leaders?</p> <p>15 A. Well, as I said earlier, I've had conversations</p> <p>16 with the Catholic archdiocese of Portland.</p> <p>17 Q. And you already told me that person's name;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Anyone else?</p> <p>21 A. Yeah, I can't think of any other religious</p> <p>22 leaders.</p> <p>23 Q. With regards to teachers unions, which leaders</p> <p>24 have you had the most communications with about the</p> <p>25 pandemic?</p>	<p>1 schools regarding Governor Brown?</p> <p>2 A. I think that's a subjective judgment.</p> <p>3 Q. And that's what I want. Another way to put it</p> <p>4 is who gets the best seat at the table, so to speak,</p> <p>5 with the government on behalf of Oregon's public</p> <p>6 schools?</p> <p>7 A. I think the Governor reaches out to all</p> <p>8 organizations.</p> <p>9 Q. Who would you say is the main person that</p> <p>10 represents Oregon public schools unions in terms of</p> <p>11 their influence with Governor Brown, from your</p> <p>12 observations?</p> <p>13 A. I'm not sure I could answer that.</p> <p>14 Q. Can you think of anybody associated -- what</p> <p>15 would you say -- which union is the most influential</p> <p>16 union on the Governor from what you've observed?</p> <p>17 A. I can't -- I can't say that I know.</p> <p>18 Q. Did any public school representative ever</p> <p>19 pressure you or any other aid that you're aware of to</p> <p>20 keep religious schools closed?</p> <p>21 A. No. And I'm not aware of anyone else in the</p> <p>22 Governor's office that's been.</p> <p>23 Q. Do you speak to representatives of teachers</p> <p>24 unions and school unions on your cell phone?</p> <p>25 A. I missed the first part of that. Do I</p>

Lindsey Capps

28 (Pages 109 to 112)

Page 109	Page 111
<p>1 communicate with them?</p> <p>2 Q. Yeah, on your cell phone.</p> <p>3 A. Sure. Sure, I have.</p> <p>4 Q. What is your work cell phone number?</p> <p>5 A. My work cell phone number is 503 [REDACTED]</p> <p>6 Q. And who is the provider for that telephone?</p> <p>7 A. I believe it's AT&amp;T.</p> <p>8 Q. And do you have a personal cell phone?</p> <p>9 A. Do I have a personal cell phone?</p> <p>10 Q. Yes.</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever discussed issues relating to</p> <p>13 schools and the pandemic ever on your personal cell</p> <p>14 phone?</p> <p>15 A. No.</p> <p>16 Q. Does your work cell phone number have a contact</p> <p>17 database within it?</p> <p>18 A. I didn't hear the last part of it. I'm sorry.</p> <p>19 The sound --</p> <p>20 Q. Does your work cell phone number have a contact</p> <p>21 database?</p> <p>22 A. Like an address book.</p> <p>23 Q. Yes, names, phone numbers, list of contacts.</p> <p>24 I'm sorry. I didn't hear an answer.</p> <p>25 A. I said yes.</p>	<p>1 A. Yes.</p> <p>2 Q. Have you ever discussed the pandemic and the</p> <p>3 State of Oregon's policy about it on any of your</p> <p>4 private e-mails?</p> <p>5 A. No.</p> <p>6 Q. Do you have any texts or e-mails on your</p> <p>7 personal phone or personal computer that discuss</p> <p>8 anything related to the pandemic and the State of</p> <p>9 Oregon's policy?</p> <p>10 A. No.</p> <p>11 Q. Have you ever cc'd or blind cc'd your</p> <p>12 government e-mail account on e-mails you sent from</p> <p>13 your private e-mail server relating to the pandemic</p> <p>14 and Oregon state policy?</p> <p>15 A. I don't know what a private e-mail server is.</p> <p>16 Q. Private e-mail address, like a G Mail,</p> <p>17 something that is not your work address?</p> <p>18 A. I don't use my personal e-mail for state</p> <p>19 purposes.</p> <p>20 Q. Have you ever purposefully used your private</p> <p>21 computers or phones to avoid public disclosure laws?</p> <p>22 A. No.</p> <p>23 Q. Would you agree that Executive Order 20-29 is</p> <p>24 the most current one concerning K-12 schools and</p> <p>25 possibly reopening?</p>
Page 110	Page 112
<p>1 Q. Oh, okay. And do you have many of the same</p> <p>2 contacts on both your work phone and your personal</p> <p>3 cell phone?</p> <p>4 MR. ABRAMS: Objection, vague.</p> <p>5 THE WITNESS: No.</p> <p>6 Assistant executive director</p> <p>7 Q. No. Are any of the contacts on your work cell</p> <p>8 phone also on your personal cell phone?</p> <p>9 A. There may be a few, sure.</p> <p>10 Q. Okay. Have you ever texted with any union or</p> <p>11 public school leader during the pandemic from your</p> <p>12 work cell phone?</p> <p>13 A. Yes.</p> <p>14 Q. And can you recall the names of people you</p> <p>15 texted with from that phone about that issue?</p> <p>16 A. Off the top of my head, I don't -- I don't</p> <p>17 recall.</p> <p>18 Q. Okay. Please preserve your phone, by the way.</p> <p>19 Have you ever e-mailed any representative of</p> <p>20 any teachers union or public school union about the</p> <p>21 pandemic?</p> <p>22 A. Yes.</p> <p>23 Q. And was that from your work e-mail address?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have a personal e-mail address?</p>	<p>1 A. As I said before, I'm not recalling all the</p> <p>2 numbers but that would be my assumption.</p> <p>3 Q. Were you involved in making any edits or</p> <p>4 changes to the late July version of the school</p> <p>5 reopening guidance?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. Okay. Did you take the lead in drafting and</p> <p>8 publishing the July 2020 guidance?</p> <p>9 A. No, but it was the work of the Department of</p> <p>10 Education.</p> <p>11 Q. And what person within the ODE took the lead on</p> <p>12 that -- that July guidance?</p> <p>13 A. It would be Director Colt Gill and his team.</p> <p>14 Q. Anyone else?</p> <p>15 A. Others within the Oregon Department of</p> <p>16 Education.</p> <p>17 Q. Do you know their names?</p> <p>18 A. No, I'd have to ask the department.</p> <p>19 Q. To your knowledge, who would you say are the</p> <p>20 top three people involved in helping to refine this</p> <p>21 newest version of the guidelines?</p> <p>22 A. Again, knowing that there are many folks with</p> <p>23 the department that were involved I think that</p> <p>24 critical folks in the revisions were certainly Colt</p> <p>25 Gill, Dr. Sidelinger at OHA. Those are -- those are</p>

Lindsey Capps

29 (Pages 113 to 116)

Page 113	Page 115
<p>1 the top two.</p> <p>2 Q. Who had more authority over revising that July</p> <p>3 2020 guidance? You or Colt Gill?</p> <p>4 A. Colt Gill with our office providing review.</p> <p>5 Q. Can you name all members of the team or group</p> <p>6 involved in writing and rewriting the July 2020</p> <p>7 guidance?</p> <p>8 A. Again, it was an ODE team. I can generally</p> <p>9 speak to those who have been involved throughout the</p> <p>10 process. It's been revised a number of times.</p> <p>11 Q. By whom?</p> <p>12 A. Well, there's a team at ODE that has included</p> <p>13 Director Gill, Shadiin Garcia, Scott Nine, assistant</p> <p>14 superintendant, Jennifer Patterson, assistant</p> <p>15 superintendent, Candace Pelt, assistant</p> <p>16 superintendent, probably other staff. Those would</p> <p>17 have been the --</p> <p>18 Q. Can you think of the names of anyone else where</p> <p>19 drafts of the July 2020 guidance would be sent to</p> <p>20 them for review or suggestions?</p> <p>21 A. Within ODE?</p> <p>22 Q. Within any part of the Oregon state government.</p> <p>23 A. There are probably folks within our office who</p> <p>24 took a look at it again.</p> <p>25 Q. What are their names?</p>	<p>1 them. Do you know, who are those partners?</p> <p>2 A. So the guidance writing is largely undertaken</p> <p>3 by the department. They consult with a number of</p> <p>4 different folks within the development of the</p> <p>5 guidance and sharing guidance iterations including</p> <p>6 superintendents. Certainly in the process of showing</p> <p>7 all superintendents, you know, through presentations,</p> <p>8 changes that they are considering, but there's also</p> <p>9 other meetings the department I'm sure has had with</p> <p>10 the various --</p> <p>11 Q. Can you give me the names of those people who</p> <p>12 you're indicating would be part of the group of</p> <p>13 partners in the guidance process?</p> <p>14 A. I don't know what that refers to. I'm just</p> <p>15 giving you my best guess.</p> <p>16 Q. Okay. People that had significant input in the</p> <p>17 guidance process, whether you think of them as</p> <p>18 partners or not, can you give me the names of those</p> <p>19 people?</p> <p>20 A. I don't think -- the question of significant</p> <p>21 influence, I think it's been a process in which the</p> <p>22 department has taken it and drafted the guidance.</p> <p>23 Q. I just want to know the names of people outside</p> <p>24 the government that would have had for starters</p> <p>25 significant input into the July 2020 guidance</p>
Page 114	Page 116
<p>1 A. Nik Blosser, chief of staff, Alyssa Chatterjee,</p> <p>2 my deputy.</p> <p>3 Q. How about you?</p> <p>4 A. Oh, sure. Yes.</p> <p>5 Q. I saw that in a one week or so period two</p> <p>6 versions of the July guidance were produced; is that</p> <p>7 accurate?</p> <p>8 A. I'm not sure.</p> <p>9 Q. Do you recall anything that you were seeking to</p> <p>10 update or fix about the July 2020 guidance?</p> <p>11 A. There's a number of updates that have been made</p> <p>12 to the guidance and one of the things that ODE does</p> <p>13 is it actually color codes to the guidance so the two</p> <p>14 iterations tracks those changes and those --</p> <p>15 Q. Okay. And if I was to request that, to your</p> <p>16 knowledge if I was to draft or put color, you know,</p> <p>17 differences and the different drafts, you know,</p> <p>18 whatever it is, is that something I could obtain?</p> <p>19 A. You know, what I was referencing was the</p> <p>20 department posted it publically so it can be seen by</p> <p>21 anybody. If there are other specific drafts, I</p> <p>22 imagine that's part of your discovery process.</p> <p>23 Q. I saw in the documents that there's a mention</p> <p>24 of, quote, partners, end quote, in the guidance</p> <p>25 process and not making any major changes without</p>	<p>1 process.</p> <p>2 A. That might be a good question for the</p> <p>3 Department of Education.</p> <p>4 Q. Okay. What about people within -- so you don't</p> <p>5 know any?</p> <p>6 A. I'm not sure in terms of a comprehensive list</p> <p>7 who was involved, who that would be. That would be</p> <p>8 the department to --</p> <p>9 Q. Can you think of anyone that would be on such a</p> <p>10 list?</p> <p>11 A. Well, certainly consultation with your</p> <p>12 attendance, with educators to get a professional</p> <p>13 perspective and expertise.</p> <p>14 Q. What are their names?</p> <p>15 A. Well, a good example of this is they have an</p> <p>16 advisory committee convened around the guidance</p> <p>17 documents throughout the spring and summer. That's a</p> <p>18 pretty extensive list of representatives.</p> <p>19 Q. What are the names that you can recall now of</p> <p>20 the people that would be on that group or committee?</p> <p>21 A. I couldn't recall the entire list.</p> <p>22 Q. Well, any part of it testify that you can</p> <p>23 recall, as much as you can. You're not going to be</p> <p>24 in trouble if you don't remember the entire list, but</p> <p>25 what can you think of.</p>

Lindsey Capps

30 (Pages 117 to 120)

Page 117	Page 119
<p>1 A. Are you asking specific to the June guidance or</p> <p>2 are you asking just as part of the ongoing guidance</p> <p>3 process.</p> <p>4 Q. I would say the July guidance and going</p> <p>5 forward?</p> <p>6 A. So the July guidance was reviewed with the</p> <p>7 Governor's reopening council members, over 40</p> <p>8 members.</p> <p>9 Q. Who attended that council?</p> <p>10 A. Who was at council.</p> <p>11 Q. Who headed that? Who was the leader or</p> <p>12 chairman or chairwoman?</p> <p>13 A. It's convened by the Governor.</p> <p>14 Q. Okay. Do you recall the name of -- after the</p> <p>15 Governor, who would be the top one or two people on</p> <p>16 that committee or group you just mentioned?</p> <p>17 A. It's a committee. There are --</p> <p>18 Q. Please tell me the names of all the people you</p> <p>19 can recall right now.</p> <p>20 A. So Senator Lynn Findley, Representative Alonso</p> <p>21 Leon, Representative Moore-Green, Senator Roblan. I</p> <p>22 talked to Olga Cunia (phonetic), DL Richardson, Dr.</p> <p>23 Katrise Perera, Heidi Sipe, Tenneal Wetherell, Carmen</p> <p>24 Gillman. There's several public health folks, Bob</p> <p>25 Dannenhoffer, Murial Brown, Juan Wareggy (phonetic),</p>	<p>1 process, have any of the Governor's actions relating</p> <p>2 to the pandemic gone through the formal</p> <p>3 administrative rule making process?</p> <p>4 A. As I understand the question, no.</p> <p>5 Q. Has the Governor signed and enacted into law</p> <p>6 any legislation relating to the pandemic?</p> <p>7 A. Nothing related to schools.</p> <p>8 Q. Anything at all, has the governor enacted any</p> <p>9 legislation into law relating to the COVID-19</p> <p>10 pandemic?</p> <p>11 A. Not that I'm aware. Not that she hasn't.</p> <p>12 Q. I'm sorry, Mr. Capps. What was the last thing</p> <p>13 you said?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Did you or anyone else on the governor's staff</p> <p>16 ever meet with any representatives of the big box</p> <p>17 stores like Walmart or Costco or Home Depot about</p> <p>18 allowing them to reopen during the pandemic?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Do you know are the big box stores as I have</p> <p>21 just described them, are they deemed, quote,</p> <p>22 "essential businesses," end quote, for purposes of</p> <p>23 the pandemic in Oregon?</p> <p>24 A. That's not in my policy portfolio so I don't</p> <p>25 know.</p>
Page 118	Page 120
<p>1 let's see, Kathleen Jonathan, trying to remember the</p> <p>2 entire list here. Could I provide you this list in</p> <p>3 writing.</p> <p>4 Q. Sure. That would be great. Thank you.</p> <p>5 MR. KAEMPF: And, Counsel, I would request</p> <p>6 that for the record.</p> <p>7 BY MR. KAEMPF:</p> <p>8 Q. Mr. Capps, are you familiar with the</p> <p>9 administrative rule making process?</p> <p>10 A. Yes.</p> <p>11 Q. Has any of the governor's pandemic executive</p> <p>12 orders -- or excuse me -- her pandemic actions gone</p> <p>13 through the formal administrative rule making</p> <p>14 process?</p> <p>15 A. Her executive orders?</p> <p>16 Q. I'll ask it a little differently. My</p> <p>17 apologies.</p> <p>18 Have any of the Governor's actions relating to</p> <p>19 the pandemic gone through the formal administrative</p> <p>20 rule making process?</p> <p>21 A. I'm not -- I'm not sure how you mean that.</p> <p>22 Q. I just mean you said you were familiar with the</p> <p>23 formal administrative rule making process including</p> <p>24 things like public comment and all of that. As you</p> <p>25 understand the formal administrative rule making</p>	<p>1 Q. Who would know?</p> <p>2 A. I'm not sure in our office.</p> <p>3 Q. How about in any Oregon government agency?</p> <p>4 A. It's a good question. I don't know the answer.</p> <p>5 Q. Did you ever meet with any representatives of</p> <p>6 the restaurant industry about reopening during the</p> <p>7 pandemic?</p> <p>8 A. No.</p> <p>9 Q. And are restaurants allowed to reopen for</p> <p>10 in-person dining during the pandemic?</p> <p>11 A. I don't know the answer to that.</p> <p>12 Q. Who would?</p> <p>13 A. I'm not sure who in our office would be the</p> <p>14 person on that.</p> <p>15 Q. How about any government agency who might know</p> <p>16 from your understanding the answer to that question</p> <p>17 about the restaurant industry?</p> <p>18 A. I'm not sure. I don't.</p> <p>19 Q. Did you or anyone on the Governor's staff that</p> <p>20 you're aware of ever meet with any representative of</p> <p>21 the health club industry about reopening during the</p> <p>22 pandemic?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Are health clubs and gyms allowed to reopen</p> <p>25 during the pandemic in Oregon?</p>

Lindsey Capps

31 (Pages 121 to 124)

Page 121	Page 123
<p>1 A. I'm not aware of the current status.</p> <p>2 Q. Who would know?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Did you ever meet with any representative of</p> <p>5 the Oregon daycare industry about reopening daycares</p> <p>6 in-person during the pandemic?</p> <p>7 A. I don't recall any meetings with -- with the</p> <p>8 daycare industry.</p> <p>9 Q. Are daycares in Oregon allowed to reopen</p> <p>10 in-person during the pandemic?</p> <p>11 A. Yes.</p> <p>12 Q. Why?</p> <p>13 A. They are under an emergency childcare order.</p> <p>14 Q. And what emergency childcare order is that?</p> <p>15 Does it have a number?</p> <p>16 A. It has a number. I don't remember off the top</p> <p>17 of my head.</p> <p>18 Q. But my question is why is it that the daycare</p> <p>19 industry is allowed to reopen for in-person daycare</p> <p>20 but yet private and religious schools are not?</p> <p>21 A. Yeah. So, again, the limitation is on all</p> <p>22 schools whether they're public or private in part</p> <p>23 because of the scale of those facilities. So with</p> <p>24 regard to childcare, they certainly provide an</p> <p>25 essential service and they've been under an emergency</p>	<p>1 A. Or general counsel's office.</p> <p>2 Q. And the lead person again is who?</p> <p>3 A. Dustin Buehler, general counsel.</p> <p>4 Q. Are you aware of the size of the classrooms of</p> <p>5 my client's Horizon Christian School or Life</p> <p>6 Christian School?</p> <p>7 A. That sentence was a little -- came across -- am</p> <p>8 I aware of --</p> <p>9 Q. Yes. Are you aware of the class size of my</p> <p>10 client's Horizon Christian School or Life Christian</p> <p>11 School, the physical size of the classrooms?</p> <p>12 A. No, I'm not.</p> <p>13 Q. Are you aware of the physical size of the</p> <p>14 Catholic elementary schools in Portland like St. John</p> <p>15 Fisher or St. Pious or St. Thomas Moore?</p> <p>16 A. No, I'm not, not a specific number, no.</p> <p>17 Q. Did you ever consider the size of classrooms at</p> <p>18 private or religious schools in determining whether</p> <p>19 they could reopen for in-person classes during the</p> <p>20 pandemic.</p> <p>21 A. I think the conversation is between the Oregon</p> <p>22 Health Authority and the Oregon Department of</p> <p>23 Education centered on physical distancing within a</p> <p>24 facility but nothing that differentiated between</p> <p>25 public, private or any other type of school?</p>
Page 122	Page 124
<p>1 reopening for that purpose.</p> <p>2 Q. And do you recall the number of that emergency</p> <p>3 reopening order of daycares?</p> <p>4 A. I don't recall that.</p> <p>5 Q. You talked about just now relating to the size</p> <p>6 of daycare facilities. What do you mean by that?</p> <p>7 A. Well, we call them childcare but those</p> <p>8 facilities are oftentimes family-based childcare.</p> <p>9 They're not on the same scale as schools that have</p> <p>10 several hundred students.</p> <p>11 Q. So, in your understanding, how many kids in</p> <p>12 childcare can be in one room during the pandemic in</p> <p>13 Oregon?</p> <p>14 A. That's not my particular area. That's handled</p> <p>15 by other staff people.</p> <p>16 Q. Who would know about that?</p> <p>17 A. Alyssa Chatterjee in our office.</p> <p>18 Q. Anyone else?</p> <p>19 A. I'm sure there are others who have some</p> <p>20 knowledge of that but she's the lead on that issue.</p> <p>21 Q. Who are the others you think may have some</p> <p>22 knowledge?</p> <p>23 A. Well, certainly worked with our legal counsel</p> <p>24 on that issue.</p> <p>25 Q. And who is that legal counsel?</p>	<p>1 Q. And who from OHA and ODE would have had that</p> <p>2 conversation as you've called it?</p> <p>3 A. ODE Director, Colt Gill, Dr. Dean Sidelinger.</p> <p>4 I'm sure other members of their staff.</p> <p>5 Q. Did you ever meet with representatives of</p> <p>6 Oregon's colleges or universities about reopening</p> <p>7 during the pandemic?</p> <p>8 A. Yes.</p> <p>9 Q. Who and when?</p> <p>10 A. I don't remember the specific dates off the top</p> <p>11 of my head. There was a work group that was convened</p> <p>12 in the early spring that was brought together by the</p> <p>13 Higher Education Coordinating Commission for purposes</p> <p>14 of developing a framework for addressing COVID-19.</p> <p>15 Q. Who were the names of those people?</p> <p>16 A. I don't remember off the top of my head. These</p> <p>17 were representatives of the universities and</p> <p>18 community colleges.</p> <p>19 Q. Can you remember the name of any one of those</p> <p>20 people you just referenced?</p> <p>21 A. Ben Cannon, Executive Director of HECC.</p> <p>22 Q. What is the HECC?</p> <p>23 A. Higher Education Coordinating Commission, it's</p> <p>24 a state agency.</p> <p>25 Q. Anyone else?</p>



Lindsey Capps

32 (Pages 125 to 128)

Page 125	Page 127
<p>1 A. As I said, there were other people in that</p> <p>2 meeting. I don't recall folks off the top of my</p> <p>3 head.</p> <p>4 Q. Are Oregon's colleges and universities allowed</p> <p>5 to reopen for in-person classes?</p> <p>6 A. They are allowed to resume in-person</p> <p>7 instruction.</p> <p>8 Q. Why?</p> <p>9 A. The question is -- centers on how those</p> <p>10 learning centers differ from the K 12 schools. The</p> <p>11 nature of course offerings and whether they're</p> <p>12 offered and the ability for social distancing to be</p> <p>13 maintained in small groups.</p> <p>14 Q. So is it your testimony you believe that</p> <p>15 colleges and university are safer concerning the</p> <p>16 spread of the COVID-19 than Oregon's K through 12</p> <p>17 schools?</p> <p>18 A. I'm not sure I can make a judgment as to</p> <p>19 whether they're safer.</p> <p>20 Q. Isn't it true that some of the classrooms in</p> <p>21 Oregon's colleges and universities are the same size</p> <p>22 as many classrooms at private and religious schools?</p> <p>23 MR. ABRAMS: Objection, assumes facts not</p> <p>24 in evidence.</p> <p>25 Go ahead.</p>	<p>1 exception. There are certainly schools that are</p> <p>2 operating limited K-3 instruction and there are</p> <p>3 schools providing limited in-person instruction.</p> <p>4 Q. Please name all public schools that have</p> <p>5 received an exemption or a waiver during the</p> <p>6 pandemic?</p> <p>7 A. I cannot.</p> <p>8 Q. Can you name even one?</p> <p>9 A. Yes, we have a couple of school districts,</p> <p>10 Santiam Canyon, McKenzie School District, Phoenix</p> <p>11 Talent School District that have received exceptions.</p> <p>12 Q. Okay. Any others?</p> <p>13 A. That's all I can remember off the top of my</p> <p>14 head.</p> <p>15 Q. Why do those public school districts you just</p> <p>16 mentioned been given waivers or exemptions during the</p> <p>17 pandemic?</p> <p>18 A. In the case of those specific districts it was</p> <p>19 due to wildfire impacts.</p> <p>20 Q. Any other reason?</p> <p>21 A. That was the main rationale.</p> <p>22 Q. Okay. Has any religious school in Oregon been</p> <p>23 given a waiver or exemption?</p> <p>24 A. I'm not aware of that. Not to say that has not</p> <p>25 happened.</p>
Page 126	Page 128
<p>1 THE WITNESS: They generally follow</p> <p>2 similar social distancing per square foot</p> <p>3 requirements. They're not as specific to the</p> <p>4 classroom.</p> <p>5 BY MR. KAEMPF:</p> <p>6 Q. Why are colleges and universities allowed to</p> <p>7 reopen for in-person classes but yet private and</p> <p>8 religious schools are not?</p> <p>9 A. Again, I think the order as it was issued by</p> <p>10 the governor was intending to address all schools,</p> <p>11 public and private, within the state and certainly</p> <p>12 within specific counties. There are similar</p> <p>13 limitations on in-person instruction and higher</p> <p>14 education but not on explicit closures.</p> <p>15 Q. Are there exemptions or waivers to allow</p> <p>16 schools to reopen during the pandemic?</p> <p>17 A. Yes.</p> <p>18 Q. Are you aware of any religious or private</p> <p>19 school that has received any such waiver or</p> <p>20 exemption?</p> <p>21 A. I am not aware, not that that has not happened.</p> <p>22 Q. Has any public school been given a waiver or</p> <p>23 exemption?</p> <p>24 A. I think there are a number of school districts</p> <p>25 that have fallen under the rural and remote school</p>	<p>1 Q. Has any private school whether it's religious</p> <p>2 or not been given a waiver or exemption?</p> <p>3 A. Well, I think the key thing here is the</p> <p>4 exceptions that I named for K-3 are limited</p> <p>5 in-person. Those do not require a waiver if the</p> <p>6 requirements are met. Those schools whether private</p> <p>7 or public can receive that.</p> <p>8 Q. And the K-3 schools that you were talking</p> <p>9 about, what are their names?</p> <p>10 A. I'm just saying that there's a kindergarten</p> <p>11 through grade three exception depending on your</p> <p>12 county metrics that allow --</p> <p>13 Q. Are you aware of any religious schools that are</p> <p>14 subject to that K-3 exemption?</p> <p>15 A. No, I'm not.</p> <p>16 Q. Switching topics, Mr. Capps, isn't it true that</p> <p>17 for several months since about May Governor Brown has</p> <p>18 allowed protests to occur relating to the unfortunate</p> <p>19 death of George Floyd?</p> <p>20 MR. ABRAMS: Object to the use of the word</p> <p>21 "allow" as it's characterizing the facts in the</p> <p>22 record.</p> <p>23 BY MR. KAEMPF:</p> <p>24 Q. Please answer the question?</p> <p>25 A. Can you repeat the question for me?</p>

Lindsey Capps

33 (Pages 129 to 132)

Page 129	Page 131
<p>1 Q. Yes. Isn't it true that since about May</p> <p>2 Governor Brown has permitted protests to occur</p> <p>3 relating to the unfortunate death of George Floyd?</p> <p>4 A. I believe lawful protests have occurred in the</p> <p>5 State of Oregon.</p> <p>6 Q. Has Governor Brown ever prohibited protests</p> <p>7 relating to George Floyd?</p> <p>8 A. She has not and I'm not sure that's within our</p> <p>9 authority.</p> <p>10 Q. Has Governor Brown ever required social</p> <p>11 distancing or the use of face coverings relating to</p> <p>12 the George Floyd protest that began in May of this</p> <p>13 year?</p> <p>14 A. I'm not -- I don't believe she has. I'm not</p> <p>15 sure that's within her authority.</p> <p>16 Q. Okay. Well, let's assume that it is. Do you</p> <p>17 know why Governor Brown has not required the</p> <p>18 protests, most significantly in downtown Portland</p> <p>19 relating to George Floyd this year, do you know why</p> <p>20 she hasn't required the use of masks or social</p> <p>21 distancing during those protests.</p> <p>22 MR. ABRAMS: We're not going to make</p> <p>23 assumptions about this, Counsel, unless you have</p> <p>24 something to show.</p> <p>25 BY MR. KAEMPF:</p>	<p>1 distance?</p> <p>2 MR. ABRAMS: Object on the grounds it</p> <p>3 assumes a fact in the law and evidence.</p> <p>4 BY MR. KAEMPF:</p> <p>5 Q. Okay. So please answer the question as best</p> <p>6 you understand it, Mr. Capps.</p> <p>7 A. I don't know.</p> <p>8 Q. You don't know whether or not Governor Brown</p> <p>9 has required face coverings or social distancing</p> <p>10 during the Black Lives Matter protests --</p> <p>11 MR. ABRAMS: Asked and answered.</p> <p>12 BY MR. KAEMPF:</p> <p>13 Q. -- is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know, is Governor Brown, to your</p> <p>16 knowledge -- may seem like a weird question but I</p> <p>17 promise it has potential relevance here.</p> <p>18 Has Governor Brown gone out in public and</p> <p>19 received a haircut during the pandemic? Going to a</p> <p>20 salon, you know, something like that?</p> <p>21 A. I don't know an answer to that.</p> <p>22 Q. If an individual or a school of any type</p> <p>23 violates one of Governor Brown's pandemic executive</p> <p>24 orders what ca the state do to enforce --</p> <p>25 MR. ABRAMS: Objection to the extent it</p>
Page 130	Page 132
<p>1 Q. So please answer the question.</p> <p>2 MR. ABRAMS: No, I'm going to direct him</p> <p>3 not to answer because it's based on a fundamental</p> <p>4 misapplication of law.</p> <p>5 MR. KAEMPF: Wait. Fundamental</p> <p>6 misapplication of law?</p> <p>7 MR. ABRAMS: You have made -- you put a</p> <p>8 false statement into your question and it comes --</p> <p>9 MR. KAEMPF: I'll just try and ask it</p> <p>10 again. That's fine.</p> <p>11 BY MR. KAEMPF:</p> <p>12 Q. I'm just asking not as a lawyer, no, just your</p> <p>13 understanding in your job working on Governor's</p> <p>14 staff. First, has Governor Brown ever required in</p> <p>15 the George Floyd related protests that the people</p> <p>16 participating in that social distance or wear face</p> <p>17 coverings?</p> <p>18 A. I don't know the answer to that.</p> <p>19 Q. Are you aware of the Black Lives Matter</p> <p>20 protests that have been occurring this year in</p> <p>21 downtown Portland?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know, did Governor Brown require</p> <p>24 people participating in the Black Lives Matter</p> <p>25 protests to wear face coverings or to socially</p>	<p>1 calls for legal conclusion.</p> <p>2 You can answer if you know.</p> <p>3 BY MR. KAEMPF:</p> <p>4 Q. For example, Mr. Capps, are there fines or</p> <p>5 other penalties if you violate Governor Brown's</p> <p>6 pandemic executive orders?</p> <p>7 A. For public schools there's the potential of</p> <p>8 losing state funding. Certainly any school, public</p> <p>9 or private, if it violates the guidance is subject to</p> <p>10 OSHA enforcement.</p> <p>11 Q. Any there any monetary fines that are possible</p> <p>12 if you violate any pandemic executive order in</p> <p>13 Oregon?</p> <p>14 A. No. Other than what I just stated in terms of</p> <p>15 withholding state school fund dollars.</p> <p>16 Q. Is imprisonment of any length a possibility if</p> <p>17 you violate one of Governor Brown's pandemic</p> <p>18 executive orders?</p> <p>19 MR. ABRAMS: Same objection to the extent</p> <p>20 it calls for a legal conclusion.</p> <p>21 You can answer.</p> <p>22 THE WITNESS: That is not state sanction.</p> <p>23 BY MR. KAEMPF:</p> <p>24 Q. Are you aware of anyone actually being fined or</p> <p>25 otherwise subject to penalty for violating any of</p>



Lindsey Capps

34 (Pages 133 to 136)

Page 133	Page 135
<p>1 Governor Brown's pandemic executive orders?</p> <p>2 A. No.</p> <p>3 Q. Has Governor Brown issued any specific guidance</p> <p>4 on what people are to be charged with if they violate</p> <p>5 one of her pandemic executive orders?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. I know you're not a lawyer but I just want to</p> <p>8 understand what you do know in your capacity as an</p> <p>9 advisor to Governor Brown.</p> <p>10 Did you ever search for any field authority</p> <p>11 allowing you to regulate private or religious</p> <p>12 schools?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And what did you find as a result of</p> <p>15 that search?</p> <p>16 A. The specific effort was to define public</p> <p>17 schools for purposes of the executive order.</p> <p>18 Q. And what authority did you find to define</p> <p>19 public schools?</p> <p>20 A. To define public schools or private schools?</p> <p>21 Q. Well, either one.</p> <p>22 A. We made reference to a statute, I do not</p> <p>23 remember off the top of my head, in the orders.</p> <p>24 Q. What did it define?</p> <p>25 A. Generally speaking it defined a K through 12</p>	<p>1 Q. And other than the definition of private</p> <p>2 schools did you obtain any legal authority about the</p> <p>3 Governor's legal authority, if any, to regulate</p> <p>4 private schools?</p> <p>5 A. I think under the emergency powers is the basis</p> <p>6 for that.</p> <p>7 Q. What are the emergency powers?</p> <p>8 A. The Governor's emergency powers.</p> <p>9 Q. Do you have a cite for that, you know, a</p> <p>10 statute or something?</p> <p>11 A. It's in the order.</p> <p>12 Q. 20-29?</p> <p>13 A. Yes.</p> <p>14 Q. At any time, to your knowledge, has anyone in</p> <p>15 the Governor's staff, including you, expressed a</p> <p>16 concern about putting religious schools out of</p> <p>17 business because of her pandemic executive orders?</p> <p>18 MR. ABRAMS: Asked and answered.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. KAEMPF:</p> <p>22 Q. Did you say no?</p> <p>23 A. Yes.</p> <p>24 MR. ABRAMS: Yes, he said no.</p> <p>25 MR. KAEMPF: Yeah, my fault on the double</p>
Page 134	Page 136
<p>1 school that operates similar to a public school.</p> <p>2 That's a general paraphrase. It's listed in the --</p> <p>3 Q. Is that what you found concerning looking for</p> <p>4 authority to regulate private or religious schools?</p> <p>5 A. No, as I said just to define private schools.</p> <p>6 Q. Okay. And you don't recall the name of that</p> <p>7 statute or other written authority?</p> <p>8 A. Not off the top of my head.</p> <p>9 Q. Okay. Did you keep that somewhere like notes</p> <p>10 or whatever on your computer or hardcopy of whatever</p> <p>11 you found concerning your search for authority to</p> <p>12 regulate private or religious schools?</p> <p>13 A. It was a statute. It's in the order itself.</p> <p>14 Q. Okay. And when you say the order, which one?</p> <p>15 A. The existing executive order.</p> <p>16 Q. What number?</p> <p>17 A. What is it, 20-29, I'm worried about putting on</p> <p>18 the record the wrong number.</p> <p>19 Q. And was the legal authority you found about</p> <p>20 regulating private or religious school to your</p> <p>21 understanding put into EO 20-29?</p> <p>22 A. Well, again, just to clarify I looked for the</p> <p>23 definition of private school. Our general counsel</p> <p>24 has provided the executive authority which is in the</p> <p>25 order itself.</p>	<p>1 negative.</p> <p>2 BY MR. KAEMPF:</p> <p>3 Q. Have you ever had to correct or discipline any</p> <p>4 staff member for showing a negative attitude toward</p> <p>5 religious or private scales?</p> <p>6 A. No.</p> <p>7 Q. Have you ever heard of anybody on the</p> <p>8 Governor's staff ever doing that whether they were</p> <p>9 disciplined or not?</p> <p>10 A. No.</p> <p>11 Q. Do you believe in your capacity working for the</p> <p>12 Governor that you have an obligation to support all</p> <p>13 students in Oregon?</p> <p>14 A. Yes, absolutely.</p> <p>15 Q. Have you ever studied the history of Oregon to</p> <p>16 determine whether during the Spanish flu of a century</p> <p>17 ago the governor ever ordered schools closed?</p> <p>18 A. No, I did not.</p> <p>19 Q. To your knowledge, has anyone else on the</p> <p>20 Governor's staff ever done that research?</p> <p>21 A. Not that I'm aware of.</p> <p>22 Q. Okay. Isn't it true that Governor Brown's</p> <p>23 control being exercised during the pandemic over</p> <p>24 schools is literally unprecedented.</p> <p>25 MR. ABRAMS: Objection, calls for legal</p>

Lindsey Capps

35 (Pages 137 to 140)

Page 137	Page 139
<p>1 opinion.</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. KAEMPF:</p> <p>4 Q. Nothing legal. Just the facts. Isn't it true</p> <p>5 that Governor Brown, the control she's exercising</p> <p>6 over Oregonians, including its school through the</p> <p>7 pandemic executive orders, is unprecedented in the</p> <p>8 history of Oregon?</p> <p>9 MR. ABRAMS: Objection, vague, calls for a</p> <p>10 legal conclusion.</p> <p>11 THE WITNESS: I found the state</p> <p>12 emergency -- emergencies in which she's responding in</p> <p>13 themselves are unprecedented.</p> <p>14 BY MR. KAEMPF:</p> <p>15 Q. Are you aware of any other Oregon governor,</p> <p>16 including during the Spanish flu, taking action like</p> <p>17 Governor Brown is taking now in regard to schools?</p> <p>18 MR. ABRAMS: Objection, vague.</p> <p>19 THE WITNESS: Not aware.</p> <p>20 BY MR. KAEMPF:</p> <p>21 Q. From what you've personally observed, Mr.</p> <p>22 Capps, isn't it true that Governor Brown enjoys</p> <p>23 exercising her unilateral power over religious and</p> <p>24 private schools in Oregon?</p> <p>25 MR. ABRAMS: Objection.</p>	<p>1 school administrators or the governor of Oregon?</p> <p>2 A. The relationship to schools in this emergency</p> <p>3 is best determined with public health because the</p> <p>4 orders that have been put into effect in the guidance</p> <p>5 are about health and safety of our kids and certainly</p> <p>6 within our communities.</p> <p>7 Q. Okay. So is it fair to say that you think that</p> <p>8 Oregon's government is better suited to decide</p> <p>9 whether religious schools can be safely run than the</p> <p>10 people who run those religious schools?</p> <p>11 A. I would say that a prevailing value in</p> <p>12 providing guidance to schools whether they be public</p> <p>13 or private is ensuring the public health and public</p> <p>14 health expertise is critical in that.</p> <p>15 Q. Okay. But that doesn't answer my question.</p> <p>16 Who is in a better position to decide whether</p> <p>17 religious schools can be run safely, the parents and</p> <p>18 the students and religious school administrators or</p> <p>19 the governor of Oregon?</p> <p>20 A. I think the guidance provides that provided</p> <p>21 school districts and all schools, public or private,</p> <p>22 gives schools the tools to make good decisions in</p> <p>23 operating their facilities in serving educational</p> <p>24 needs of their kids.</p> <p>25 Q. But, again, you didn't answer my question so</p>
Page 138	Page 140
<p>1 BY MR. KAEMPF:</p> <p>2 Q. Please answer.</p> <p>3 A. I cannot speak to that.</p> <p>4 Q. Either way?</p> <p>5 A. Not something that I can measure.</p> <p>6 Q. Which schools are part of the Governor's</p> <p>7 political base?</p> <p>8 MR. ABRAMS: Objection.</p> <p>9 BY MR. KAEMPF:</p> <p>10 Q. What kinds of schools are part of the</p> <p>11 Governor's political base from your understanding?</p> <p>12 MR. ABRAMS: Same objection.</p> <p>13 BY MR. KAEMPF:</p> <p>14 Q. Please answer.</p> <p>15 A. We have a responsibility for all students in</p> <p>16 Oregon.</p> <p>17 Q. Are there certain types of schools that are</p> <p>18 part of the Governor's political base from your</p> <p>19 observation?</p> <p>20 MR. ABRAMS: Same objection.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. KAEMPF:</p> <p>23 Q. Who do you think is in a better position to</p> <p>24 decide whether religious schools can be safely run</p> <p>25 during the pandemic? The students and the religious</p>	<p>1 I'll ask I think a third time.</p> <p>2 From your viewpoint, who is in a better</p> <p>3 position to decide whether religious schools in</p> <p>4 Oregon can be safely run during the pandemic, the</p> <p>5 parents of the students and religious school</p> <p>6 administrators, or Oregon's governor?</p> <p>7 A. It's a partnership between the state and local</p> <p>8 jurisdictions, whether they be public or private</p> <p>9 schools, based on the best public health data.</p> <p>10 Metrics are provided to help us across communities</p> <p>11 control the spread of COVID-19 of which schools can</p> <p>12 be contributors and therefore that guidance has been</p> <p>13 provided to support decision making at the school</p> <p>14 level and that's why we require operational</p> <p>15 blueprints put together by schools.</p> <p>16 Q. You didn't answer my question so I'm going to</p> <p>17 ask it I think a fourth time. Who is in a better</p> <p>18 position to decide whether religious schools can be</p> <p>19 safely run during the pandemic, the parents of the</p> <p>20 students and religious school administrators or the</p> <p>21 governor of Oregon?</p> <p>22 A. I don't believe that can be a binary question</p> <p>23 as you stated it.</p> <p>24 Q. How long are the Governor's pandemic executive</p> <p>25 orders prohibiting religious schools from reopening</p>

Lindsey Capps

36 (Pages 141 to 144)

Page 141	Page 143
<p>1 full time but with in-person classes scheduled to</p> <p>2 last?</p> <p>3 MR. ABRAMS: Objection, asked and</p> <p>4 answered, assumes facts not in evidence. Objection,</p> <p>5 mischaracterize previous testimony.</p> <p>6 BY MR. KAEMPF:</p> <p>7 Q. Please answer the question.</p> <p>8 A. The Governor's executive authority and guidance</p> <p>9 are in effect so long as the impact of COVID-19</p> <p>10 continues to impede the health and safety of our</p> <p>11 communities, most especially our children, our</p> <p>12 students, our staff and schools.</p> <p>13 Q. But as of this time, is there any specific end</p> <p>14 date like, okay, religious schools can be reopen for</p> <p>15 in-person classes no later than December 1st or</p> <p>16 January 1, 2021? Is there any specific end line, you</p> <p>17 know, where these restrictions are going to end for</p> <p>18 religious schools?</p> <p>19 MR. ABRAMS: Asked and answered.</p> <p>20 THE WITNESS: There is not, and the</p> <p>21 metrics themselves are predicated on reduction and</p> <p>22 community spread, and at this point are the greatest</p> <p>23 determinant of whether schools can reopen in person.</p> <p>24 BY MR. KAEMPF:</p> <p>25 Q. Are any of the meetings this team you have --</p>	<p>1 THE WITNESS: My --</p> <p>2 BY MR. KAEMPF:</p> <p>3 Q. I'm asking if you are aware of members of the</p> <p>4 public attending any of these meetings relating to</p> <p>5 the pandemic and school reopening?</p> <p>6 A. No, I would say that the advisory committees</p> <p>7 are public.</p> <p>8 Q. Are any minutes of any of these meetings that I</p> <p>9 was talking about informally as the team or the</p> <p>10 public advisory committee kept?</p> <p>11 A. No meeting minutes from these.</p> <p>12 Q. Were you personally involved in the decision</p> <p>13 not to allow religious or other private schools to</p> <p>14 reopen full-time for in-person classes?</p> <p>15 A. I was involved in helping to draft the</p> <p>16 executive order regarding both public and private</p> <p>17 schools.</p> <p>18 Q. And what number is that executive order?</p> <p>19 A. There are several. The most recent executive</p> <p>20 order was 20-29.</p> <p>21 Q. Who else was involved in drafting 20-29?</p> <p>22 A. I think I responded to that.</p> <p>23 MR. ABRAMS: Several times.</p> <p>24 MR. KAEMPF: Okay. I'm sorry. If I</p> <p>25 already asked you.</p>
Page 142	Page 144
<p>1 I'm calling it informally about reopening schools,</p> <p>2 are they -- any of those meetings open to the public?</p> <p>3 A. Are you referring to internal governor staff</p> <p>4 meetings?</p> <p>5 Q. Any meeting that's related to the pandemic and</p> <p>6 school reopening or closings. Are any of those</p> <p>7 meetings open to the public?</p> <p>8 A. No.</p> <p>9 Q. Why not?</p> <p>10 A. The staff meets within the confines of the</p> <p>11 Governor's office. The council advises the Governor.</p> <p>12 Q. Okay. What if a member of the public said they</p> <p>13 wanted to attend and give their input, would that be</p> <p>14 allowed?</p> <p>15 A. I would say that we have a process by which we</p> <p>16 collect a great deal of public input to us through</p> <p>17 communications from our constituents, the Department</p> <p>18 of Education, and we look at that corresponding</p> <p>19 information.</p> <p>20 Q. But my question is when you have these meetings</p> <p>21 relating to the pandemic and reopening schools, are</p> <p>22 members of the public in attendance?</p> <p>23 MR. ABRAMS: I'm going to object to the</p> <p>24 extent it calls for a legal conclusion but he can</p> <p>25 answer.</p>	<p>1 BY MR. KAEMPF:</p> <p>2 Q. Okay. In your job, Mr. Capps, what do you care</p> <p>3 about more, public schools or religious schools?</p> <p>4 MR. ABRAMS: Objection, argumentative,</p> <p>5 irrelevant.</p> <p>6 MR. KAEMPF: I'm not arguing at all. I'm</p> <p>7 being as calm as --</p> <p>8 MR. ABRAMS: Yes, you are. It's a</p> <p>9 got-you.</p> <p>10 MR. KAEMPF: I'm not arguing with you,</p> <p>11 Mr. Capps. I'm just asking.</p> <p>12 MR. ABRAMS: Take it to a jury. Not here,</p> <p>13 John.</p> <p>14 MR. KAEMPF: Year, either instruct him not</p> <p>15 to answer or be quiet.</p> <p>16 MR. ABRAMS: I will make my objections</p> <p>17 when you ask utterly and totally improper opinion.</p> <p>18 I'm going to make my record. Don't tell me to be</p> <p>19 quiet. I'm not a potted plant.</p> <p>20 BY MR. KAEMPF:</p> <p>21 Q. Your counsel has not instructed you to not</p> <p>22 answer the question so my question to you, Mr. Capps,</p> <p>23 in your day-to-day job you do for the Governor, what</p> <p>24 do you care more about, public schools or religious</p> <p>25 schools?</p>

Lindsey Capps

37 (Pages 145 to 148)

Page 145	Page 147
<p>1 A. I care most about students regardless of where 2 they attend school.</p> <p>3 Q. Do you care more about public schools or more 4 about religious schools?</p> <p>5 A. My job is more geared toward the public schools 6 which we fund through the state and we have authority 7 over in terms of program administration.</p> <p>8 Q. Is it fair to say that a big focus of your job 9 is making sure that public schools are adequately 10 funded according to you?</p> <p>11 A. A big part of my job is to ensure that public 12 schools are well funded?</p> <p>13 Q. Yes. Is that true?</p> <p>14 A. That's a parts of my job. We definitely deal 15 with the budget for public education.</p> <p>16 Q. Do you ever address concerns about funding 17 religious or private schools?</p> <p>18 A. There is no public finding for private schools 19 so it's not a matter that is in my portfolio.</p> <p>20 Q. As you sit here today, let's say within the 21 last month, have you ever worried about the damaging 22 effect of lock downs on religious or private schools 23 in Oregon?</p> <p>24 A. I'm certainly aware of the concerns that many 25 private schools have as they are supported by tuition</p>	<p>1 particular school or business can reopen?</p> <p>2 A. That's a consultation between the Governor's 3 office and Oregon Health Authority based on public 4 health guidance.</p> <p>5 Q. Can you give me the name of the person that has 6 that ultimate authority?</p> <p>7 A. It's for all -- for those of us as policy staff 8 who report to -- ultimately report to our chief of 9 staff.</p> <p>10 Q. And can you give me specific names?</p> <p>11 A. Our chief of staff is Nik Blosser.</p> <p>12 Q. Anyone else?</p> <p>13 A. Yes, the ultimate person you report to on that 14 would be the chief of staff.</p> <p>15 Q. And the person with the ultimate authority to 16 decide whether a certain religious or private school 17 is allowed to reopen, who is that?</p> <p>18 A. The Governor has the decision on any executive 19 authority.</p> <p>20 Q. If I requested it, do you know, is there a 21 record of your long distance calls made at or through 22 work during the pandemic?</p> <p>23 A. I'm sure there is.</p> <p>24 Q. Does your office have more control or authority 25 over public schools than private or religious</p>
Page 146	Page 148
<p>1 dollars from parents and I understand the pandemic 2 has impact and if that --</p> <p>3 Q. My question is whether --</p> <p>4 MR. ABRAMS: Let him finish.</p> <p>5 BY MR. KAEMPF:</p> <p>6 Q. -- about that?</p> <p>7 A. To the extent --</p> <p>8 Q. Have you ever personally been concerned about 9 that?</p> <p>10 A. I am certainly concerned before lost learning 11 opportunities for students regardless of whether 12 they're public or private school.</p> <p>13 Q. Are you concerned about lost learning 14 opportunities for students in religious or private 15 schools due to Governor Brown's pandemic executive 16 orders?</p> <p>17 A. I'm concerned that the pandemic continues to 18 create conditions in which students in public and 19 private schools are not able to attend school safely.</p> <p>20 Q. Just a moment. Did you ever observe any member 21 of the Governor's staff or any Oregon state 22 government employee indicating that they were against 23 religious schools reopening for in-person classes?</p> <p>24 A. No.</p> <p>25 Q. Who ultimately makes the decision whether a</p>	<p>1 schools?</p> <p>2 MR. ABRAMS: Objection, vague, objection 3 to the extent it calls for a legal conclusion.</p> <p>4 You can answer.</p> <p>5 BY MR. KAEMPF:</p> <p>6 Q. Go ahead.</p> <p>7 A. The Oregon Department of Education by statute 8 has far more authority over our public school system 9 and very limited involvement with private schools.</p> <p>10 Q. Okay. Has Leah Horner played any role dealing 11 with closing or reopening schools during the 12 pandemic?</p> <p>13 A. She's not been involved in the Ready Schools 14 Safe Learner's guidance.</p> <p>15 Q. What are her job duties?</p> <p>16 A. She's our regional solutions director and jobs 17 and economy advisor.</p> <p>18 Q. Mr. Capps, there was an exchange of text 19 messages in late July 2020 between Colt Gill and 20 another unidentified person.</p> <p>21 MR. KAEMPF: Counsel, these are numbered 22 as 039148, 039184, 039188, 039189, and 039200.</p> <p>23 MR. ABRAMS: Okay. We don't have those, 24 just so you know. We don't, as it turns out, have 25 access to them electronically.</p>

Lindsey Capps

38 (Pages 149 to 152)

Page 149	Page 151
<p>1 BY MR. KAEMPF:</p> <p>2 Q. In those text messages I just identified as</p> <p>3 being from late July and I gave your lawyer the Bates</p> <p>4 numbers, as lawyers call it, about those text</p> <p>5 messages written by Colt Gill. And he said among</p> <p>6 other things, quote, "we have parents in tears</p> <p>7 thinking about hybrid and more distance learning,</p> <p>8 heavy sigh," end quote.</p> <p>9 Do you recall that text?</p> <p>10 A. Can you repeat the text? I just couldn't hear</p> <p>11 the last part of it.</p> <p>12 Q. Sure. The text from Colt Gill in late July</p> <p>13 2020, I think it's to you but I'm not sure, and he</p> <p>14 says, quote, "we have parents in tears thinking about</p> <p>15 hybrid and more distance learning, heavy sigh," end</p> <p>16 quote.</p> <p>17 Do you recall that text?</p> <p>18 A. I do recall that text.</p> <p>19 Q. Do you know what Colt Gill meant by "heavy</p> <p>20 sigh"?</p> <p>21 MR. ABRAMS: Objection, calls for</p> <p>22 speculation.</p> <p>23 You can answer.</p> <p>24 THE WITNESS: I think it's --</p> <p>25 BY MR. KAEMPF:</p>	<p>1 quote, "I did not plan on providing any to private</p> <p>2 schools but Mark Seagull asked. What are your</p> <p>3 thoughts on this," end quote.</p> <p>4 Do you recall receiving that text?</p> <p>5 A. From Colt or from Mark Seagull?</p> <p>6 Q. I believe it was from Colt where he quotes Mark</p> <p>7 Seagull where he's saying he's not going to provide</p> <p>8 those masks specifically to any private schools. Do</p> <p>9 you recall getting that text?</p> <p>10 A. It sounds like it was in the same chain.</p> <p>11 Q. Uh-huh, so do you recall getting that --</p> <p>12 A. Yes.</p> <p>13 Q. -- specifically?</p> <p>14 Do you know why Colt Gill did not want to</p> <p>15 provide these face coverings specifically not to</p> <p>16 private schools?</p> <p>17 A. I think I spoke to this earlier in my testimony</p> <p>18 and through other direct conversation it's clear that</p> <p>19 there were concerns about the ability of that supply</p> <p>20 that was being provided to Oregon through a</p> <p>21 partnership with FEMA, that they may not be</p> <p>22 sufficient to meet all of the public needs of schools</p> <p>23 across the state.</p> <p>24 Q. So is it fair to say that your office wanted to</p> <p>25 make sure that the public schools were taken care</p>
Page 150	Page 152
<p>1 Q. How did you take that when he wrote "heavy</p> <p>2 sigh" to you?</p> <p>3 A. I think it's self-evidence but my</p> <p>4 interpretation of that is this is a very hard</p> <p>5 transition for parents and students to begin distance</p> <p>6 learning.</p> <p>7 Q. But referring to parents in tears and saying</p> <p>8 "heavy sigh," did you take it perhaps to be</p> <p>9 sarcastic?</p> <p>10 A. No.</p> <p>11 Q. Why not?</p> <p>12 A. Because I know Colt fairly well and he is a</p> <p>13 very sincere individual.</p> <p>14 Q. On July 23rd, 2020, Colt Gill writes in a text</p> <p>15 message labeled 039184, quote, "I think you are aware</p> <p>16 that we were able to land five million non-medical</p> <p>17 KN95 face coverings," end quote.</p> <p>18 Then he writes, quote, "I plan on distributing</p> <p>19 these to school districts with a quota based on</p> <p>20 enrollment waiting for poverty," end quote.</p> <p>21 Do you recall that text?</p> <p>22 A. I do.</p> <p>23 Q. Was it to you?</p> <p>24 A. I recall receiving it.</p> <p>25 Q. Okay. And shortly after that Colt Gill writes,</p>	<p>1 ever of those masks but specifically not the private</p> <p>2 schools?</p> <p>3 A. It's certainly the position of the department</p> <p>4 to make that decision.</p> <p>5 Q. Then it quotes in the text message we're</p> <p>6 talking about he says, quote, "Mark Seagull asked</p> <p>7 what are your thoughts on this," end quote.</p> <p>8 Who is Mark Seagull again?</p> <p>9 A. Mark Seagull is the communications director for</p> <p>10 the Oregon Department of Education.</p> <p>11 Q. And did you give your thoughts on this relating</p> <p>12 to those masks not being given to private schools?</p> <p>13 A. I was briefed about that and indicated that</p> <p>14 that was the position of the department that from my</p> <p>15 perspective that was okay.</p> <p>16 Q. Why was it okay to exclude private schools from</p> <p>17 getting these masks?</p> <p>18 A. The question was about how to make sure that</p> <p>19 public schools received tax payer funded masks and</p> <p>20 the amount of supply we were able to provide.</p> <p>21 Q. So isn't it true then that you made sure that</p> <p>22 the public schools were going to get those masks</p> <p>23 first and specifically that private schools were not</p> <p>24 going to get any of those masks?</p> <p>25 A. That is the outcome of the decision but if</p>



Lindsey Capps

39 (Pages 153 to 156)

Page 153	Page 155
<p>1 there were additional supply added, there was no</p> <p>2 reason why they could not also be distributed to the</p> <p>3 private schools. It was about the supply that was</p> <p>4 available.</p> <p>5 Q. Were they ever, in fact, distributed to private</p> <p>6 schools?</p> <p>7 A. I didn't hear the last part.</p> <p>8 Q. Were they ever, in fact, distributed to private</p> <p>9 schools, these masks?</p> <p>10 A. I think you have to ask the department if there</p> <p>11 was any action on that.</p> <p>12 Q. Do you know either way?</p> <p>13 A. I don't know.</p> <p>14 MR. ABRAMS: It's five o'clock.</p> <p>15 MR. KAEMPF: Has the state reviewed --</p> <p>16 MR. ABRAMS: John. John.</p> <p>17 MR. KAEMPF: Excuse me?</p> <p>18 MR. ABRAMS: John, it's five o'clock.</p> <p>19 MR. KAEMPF: Can we go off the record,</p> <p>20 please?</p> <p>21 MR. ABRAMS: Sure.</p> <p>22 (Brief discussion off the record.)</p> <p>23 BY MR. KAEMPF:</p> <p>24 Q. Mr. Capps, are you ready to continue?</p> <p>25 A. Yes.</p>	<p>1 additional PPE to private schools.</p> <p>2 Q. Have you ever heard anybody on your staff</p> <p>3 exhibit a negative attitude toward religious or</p> <p>4 private schools?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now, on July 26, 2020, Colt Gill wrote a</p> <p>7 text message and the Bates number, as lawyers call</p> <p>8 it, is 039189. And Colt writes, quote, "wracking my</p> <p>9 brain. Have you any suggestions to Bob's concerns</p> <p>10 about private schools? I'm not sure his solution</p> <p>11 lands it. I could use a thought partner on that</p> <p>12 one." The number there being 039189.</p> <p>13 Who is the Bob that Colt Gill is talking about</p> <p>14 in this message when he's referencing Bob's solution?</p> <p>15 A. I'm not sure about having the communication.</p> <p>16 Q. Okay. And, again, that's a text from July 26,</p> <p>17 2020, which I will represent to you is three days</p> <p>18 before, according to Ms. Mary Starrett, Leah Horner</p> <p>19 expressed a concern about a mass exodus from public</p> <p>20 schools to private schools. Okay? Three days</p> <p>21 earlier and Colt Gill in his text message again</p> <p>22 talking about wracking my brain and Bob's solution.</p> <p>23 Does that refresh your recollection at all</p> <p>24 about who Bob is?</p> <p>25 A. I can only -- yeah, I don't -- there's not</p>
Page 154	Page 156
<p>1 Q. Okay. And Mr. Abrams has been kind enough and</p> <p>2 you have, too, to give me about another 30 minutes</p> <p>3 here to finish and I'll do my best to be brief and</p> <p>4 move this along. Okay?</p> <p>5 The masks that we were just talking about that</p> <p>6 specifically were not distributed to private schools,</p> <p>7 were they provided to the state for free?</p> <p>8 A. They were provided through FEMA so they were a</p> <p>9 federal aid package.</p> <p>10 Q. Did FEMA charge the State of Oregon for them or</p> <p>11 did they just provide them to the State of Oregon?</p> <p>12 A. They provided them is my understanding.</p> <p>13 Q. Okay. So is it fair to say then that you made</p> <p>14 sure that private schools did not receive any</p> <p>15 FEMA-provided face coverings during this year's</p> <p>16 pandemic?</p> <p>17 A. We made a decision to prioritize or at least</p> <p>18 the department made a decision to prioritize public</p> <p>19 schools.</p> <p>20 Q. Isn't it true that after prioritizing public</p> <p>21 schools the fact is that no religious or private</p> <p>22 school in Oregon received any of the FEMA-provided</p> <p>23 face coverings this year?</p> <p>24 A. At that time, yes. I don't know if subsequent</p> <p>25 action has been made by the department to provide</p>	<p>1 enough information provided there.</p> <p>2 Q. Does it refresh your recollection that it is</p> <p>3 Douglas County public health officer Dr. Bob</p> <p>4 Dannenhoffer?</p> <p>5 A. Bob Dannenhoffer is the Douglas County public</p> <p>6 health officer.</p> <p>7 Q. And does it refresh your recollection that he's</p> <p>8 the person that Colt Gill is referring to in the</p> <p>9 July 26 text message when he's talking about wracking</p> <p>10 my brain and Bob's solution?</p> <p>11 A. Yeah, I don't know. I don't recall.</p> <p>12 Q. Do you -- have you dealt with Dr. Bob</p> <p>13 Dannenhoffer throughout the course of the pandemic?</p> <p>14 A. Dr. Dannenhoffer is a member of the Healthy</p> <p>15 Schools Reopening Council.</p> <p>16 Q. And does he represent Douglas County?</p> <p>17 A. He is the Douglas County public health officer.</p> <p>18 Q. At any time do you recall Bob Dannenhoffer's</p> <p>19 solution to anything related to the pandemic?</p> <p>20 A. Not specifically.</p> <p>21 Q. In the same July 26, 2020 text message from</p> <p>22 Colt Gill he says that Bob Dannenhoffer wrote an</p> <p>23 e-mail chain discussing changes to metrics to allow</p> <p>24 an exception for rural schools.</p> <p>25 Does that refresh your recollection?</p>



**Lindsey Capps****40 (Pages 157 to 160)**

<b>Page 157</b>	<b>Page 159</b>
<p>1 A. Yeah.</p> <p>2 Q. And did you then make an exception for the</p> <p>3 rural schools that Bob Dannenhoffer was representing?</p> <p>4 A. I think there was some public health</p> <p>5 consultation through OHA to talk about the metrics.</p> <p>6 They meet regularly with public health officials. I</p> <p>7 assume Bob is part of those meetings. Bob shared</p> <p>8 some thought about the metrics and the process and</p> <p>9 shared those communications in writing.</p> <p>10 Q. Then the text message from July 26 in document</p> <p>11 034364, and it reflects that Bob Dannenhoffer</p> <p>12 believes, quote, "the rules for private schools and</p> <p>13 public schools should not favor one over the other.</p> <p>14 This proposal very much favors private schools," end</p> <p>15 quote.</p> <p>16 Do you recall Bob expressing that sentiment?</p> <p>17 A. My general experience with Bob is that he is</p> <p>18 very concerned about the public health capacity of</p> <p>19 counties, most especially rural counties, to address</p> <p>20 school outbreaks should they happen. That would be</p> <p>21 my general experience of him. He's one of many</p> <p>22 health experts across the state that have informed</p> <p>23 the metrics but he's not the final decider of the</p> <p>24 metrics.</p> <p>25 Q. My question is in his July 25th text message</p>	<p>1 A. I don't recall the solution.</p> <p>2 Q. Why is Colt Gill needing to ask you about this,</p> <p>3 including Bob's proposed solution?</p> <p>4 A. I don't know. I think he was expressing</p> <p>5 himself. He was working through a process with OHA</p> <p>6 and other public health folks.</p> <p>7 Q. Did this July 25th text message exchange have</p> <p>8 anything to do with the then upcoming guidance and</p> <p>9 the changes that would be made to how small public</p> <p>10 schools were going to be considered for exceptions?</p> <p>11 A. I don't know. Certainly the conversation at</p> <p>12 that time was focused on our overall metrics and</p> <p>13 certainly what specific exceptions were necessary but</p> <p>14 most especially for our small rural remote schools.</p> <p>15 Q. Have you ever seen any documents relating to</p> <p>16 Bob's concerns or solutions relating to public or</p> <p>17 private school reopening?</p> <p>18 A. I missed the full name. Was it Bob you said?</p> <p>19 Q. The Bob we've been discussing, Dr. Bob</p> <p>20 Dannenhoffer.</p> <p>21 A. Yeah, he -- he is saying subsidy and others as</p> <p>22 part of the decision making process.</p> <p>23 Q. If I was to request that from you, is it</p> <p>24 possible you could physically produce the documents</p> <p>25 if your lawyer allowed it?</p>
<b>Page 158</b>	<b>Page 160</b>
<p>1 that I've referenced, Bob says, "I think the rules</p> <p>2 for private schools and public schools should not</p> <p>3 favor one over the other. This proposal very much</p> <p>4 favors private schools," end quote.</p> <p>5 Do you recall seeing that text message?</p> <p>6 A. I recall having communication along those</p> <p>7 lines, sure.</p> <p>8 Q. And did Bob ever explain to you how that</p> <p>9 proposal being discussed on July 25th favored -- very</p> <p>10 much favored private schools, he says?</p> <p>11 A. I think he expressed something in writing. I</p> <p>12 never talked to him directly about it.</p> <p>13 Q. Did you make the changes that Bob wanted on</p> <p>14 this issue where he's contending that this proposal</p> <p>15 very much favors private schools?</p> <p>16 A. I did not make any specific changes. He was</p> <p>17 one of many public health folks that informed on this</p> <p>18 so I --</p> <p>19 Q. Did Bob get what he wanted concerning this</p> <p>20 change being proposed on July 25th?</p> <p>21 A. I don't know. Many folks were involved in</p> <p>22 informing that. Ultimately it was OHA's decision.</p> <p>23 Q. Do you recall in the context of the July 25th</p> <p>24 text message exchange that Bob's solution was -- that</p> <p>25 solution being used?</p>	<p>1 A. I'm looking at my lawyers.</p> <p>2 MR. ABRAMS: John, what is it you're</p> <p>3 specifically asking for here?</p> <p>4 MR. KAEMPF: Communications between</p> <p>5 Mr. Capps and anyone else in the State of Oregon</p> <p>6 government and Bob Dannenhoffer relating to the</p> <p>7 pandemic.</p> <p>8 MR. ABRAMS: Okay. Between Mr. Capps and</p> <p>9 Dr. Dannenhoffer and Mr. Capps in the State of</p> <p>10 Oregon. Put it an e-mail. Okay?</p> <p>11 MR. KAEMPF: No, that's fine. I just</p> <p>12 wanted to make sure you're okay. We'll deal with it</p> <p>13 later, about any governmental employee communications</p> <p>14 with Dr. Bob Dannenhoffer. I'm trying to move</p> <p>15 quickly. Okay?</p> <p>16 BY MR. KAEMPF:</p> <p>17 Q. Okay. To your knowledge, is what Bob wanted</p> <p>18 fixed or the solution, was that implemented in an</p> <p>19 executive order?</p> <p>20 A. Not an executive order. I think he was working</p> <p>21 to help inform along with the public health experts</p> <p>22 and senior health officers at ODE and OHA what the</p> <p>23 metrics looked like in ensuring his expertise and</p> <p>24 perspective.</p> <p>25 Q. In plain speak from your understanding, did Bob</p>

Lindsey Capps

41 (Pages 161 to 164)

Page 161	Page 163
<p>1 get what he wanted on that issue?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. In the July 26, 2020 text message, also</p> <p>4 marked as 039189, Colt Gill wrote, quote, "I think I</p> <p>5 have fixed the remote/rural issue," end quote.</p> <p>6 Do you know what that refers to?</p> <p>7 A. My assumption would be that he was referring to</p> <p>8 finishing work around that exception.</p> <p>9 Q. To allow remote or rural schools to reopen?</p> <p>10 A. It was an -- the exception was defined and</p> <p>11 continues to be defined in the community metrics for</p> <p>12 resumption of in-person instruction.</p> <p>13 Q. In that same text message Colt Gill writes,</p> <p>14 quote, "this statement is beginning to circulate</p> <p>15 heavily to both private and public school</p> <p>16 groups/rural and urban. Oregon has its priority</p> <p>17 wrong. We should close bars and restaurants and open</p> <p>18 schools," end quote.</p> <p>19 That's on 039. Do you recall that text</p> <p>20 message?</p> <p>21 A. It sounds in character.</p> <p>22 Q. What did you say? Sorry.</p> <p>23 A. It sounds in character with a message that I</p> <p>24 might receive from the director of ODE.</p> <p>25 Q. So it sounds like something that Colt Gill</p>	<p>1 both private and public schools with information</p> <p>2 about pending changes and guidance for potential</p> <p>3 metrics.</p> <p>4 Q. Would Colt Gill be the best person to ask about</p> <p>5 any such private schools or religious school meetings</p> <p>6 regarding the pandemic?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Isn't it true that on July 9, 2020, just</p> <p>9 three days after these text messages that I'm talking</p> <p>10 about written by Colt Gill that Leah Horner told a</p> <p>11 group of county commissioners in response to a</p> <p>12 question about why parochial schools are safe to open</p> <p>13 but not allowed to do that that Ms. Horner said that</p> <p>14 they're not being allowed to reopen because the</p> <p>15 Governor fears a mass exodus from public schools?</p> <p>16 A. Can you repeat the first part of your question.</p> <p>17 Q. The court reporter can read it back.</p> <p>18 (Court reporter read back as requested.)</p> <p>19 A. I'm not aware of her comments or wasn't then.</p> <p>20 Q. Are you aware that Yamhill County commissioner</p> <p>21 Mary Starrett said on July 29 that what Ms. Leah</p> <p>22 Horner said to her in response to her question about</p> <p>23 why parochial schools not being allowed to reopen?</p> <p>24 A. I think I was informed of that through this</p> <p>25 process. I wasn't aware there was communication with</p>
Page 162	Page 164
<p>1 would say to you; you are not surprised?</p> <p>2 A. No, not surprised.</p> <p>3 Q. What action did you take, if any, in response</p> <p>4 to that statement, circulating heavily within private</p> <p>5 and small school groups?</p> <p>6 A. I did not take any action on that. There was a</p> <p>7 process of engaging with superintendents around the</p> <p>8 small rural and remote exception. Their</p> <p>9 recommendations were brought back to OHA in terms of</p> <p>10 their determination around metrics.</p> <p>11 Q. Also on July 26 Colt Gill wrote in a text</p> <p>12 message, quote, "I think I fixed the remote/rural</p> <p>13 issue. Now trying to schedule superintendent and</p> <p>14 private school meetings. Is interest a three o'clock</p> <p>15 meeting on Monday that I'm a part of," end quote.</p> <p>16 That's 039189. Do you recall that text</p> <p>17 message?</p> <p>18 A. I get many. It sounds like something he would</p> <p>19 send me.</p> <p>20 Q. Do you recall having any meeting with Colt Gill</p> <p>21 and any representatives of private schools on or</p> <p>22 around July 26, 2020?</p> <p>23 A. Again, the department has been the entity that</p> <p>24 has been working with private schools. The</p> <p>25 department is fairly experienced in providing leaders</p>	<p>1 the commissioner.</p> <p>2 Q. And who informed you of that?</p> <p>3 A. I believe it was some communication that I may</p> <p>4 have seen at some point.</p> <p>5 Q. Is that communication you could locate if</p> <p>6 requested?</p> <p>7 A. I could.</p> <p>8 Q. Okay. Did you suggest or order that anything</p> <p>9 be done about what Ms. Starrett claims Ms. Horner</p> <p>10 said?</p> <p>11 A. I didn't hear the last part of your question.</p> <p>12 Q. Sure. Did you suggest or order anything be</p> <p>13 done concerning what Ms. Horner said about the mass</p> <p>14 exodus from public schools, at least according to</p> <p>15 Ms. Starrett?</p> <p>16 A. No.</p> <p>17 Q. Did you ever talk to Leah about Ms. Starrett's</p> <p>18 contention that she made that mass exodus from public</p> <p>19 schools statement?</p> <p>20 A. I did not speak to her.</p> <p>21 Q. To your knowledge, has Leah Horner admitted</p> <p>22 that those words came out of her mouth on July 29?</p> <p>23 A. No.</p> <p>24 Q. Are you pleased or displeased that Ms. Horner</p> <p>25 may have said that?</p>

Lindsey Capps

42 (Pages 165 to 168)

Page 165	Page 167
<p>1 A. I would just say that it's not the place of a 2 state to articulate a position toward public or 3 private school. Our emergency authority applies to 4 both.</p> <p>5 Q. Was Leah Horner disciplined in any way for 6 supposedly making that statement?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. Does Leah Horner or Jody Christensen provide 9 any kind of report after their meetings like the one 10 Ms. Horner had with the county commissioners on 11 July 29?</p> <p>12 A. I don't know.</p> <p>13 Q. Is that something you could check for?</p> <p>14 A. Not that I could check for.</p> <p>15 Q. Did you and Leah Horner ever directly discuss 16 in any way this mass exodus statement that 17 Ms. Starrett said she made?</p> <p>18 A. I'm -- again, the questions are a little fuzzy 19 over here. Can you repeat your question? Sorry.</p> <p>20 Q. Sure. Did you and Leah Horner ever have a 21 direct discussion of any kind about this mass exodus 22 statement?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Are you aware of you or anyone else removing 25 references to the mass exodus from any of the</p>	<p>1 each other during online meetings from the documents. 2 Do you also use the chat of Zoom, any other platform, 3 to receive or send personal messages?</p> <p>4 A. There are opportunities to do that and I'm sure 5 I've done it on one occasion or more.</p> <p>6 Q. Are records or -- of all or some of these 7 meetings retained in Excel or another type of 8 spreadsheet showing who attended?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Who is your office IT person?</p> <p>11 A. I believe they're with the Department of 12 Administrative Services.</p> <p>13 Q. In an August 5th text message Colt Gill 14 apparently texted you. You tell me if he did or did 15 not. It's labeled 03900. And he characterizes rural 16 areas as, quote, "frontier counties," end quote.</p> <p>17 Do you know why he called rural counties 18 frontier counties?</p> <p>19 A. The general term frontier county is somewhat 20 defined. Within the school metrics context we would 21 be talking about low population density counties 22 with --</p> <p>23 Q. Is that any kind of put down?</p> <p>24 A. No.</p> <p>25 Q. In July 2020 text messages we're talking about</p>
Page 166	Page 168
<p>1 documents that were produced to me?</p> <p>2 A. No.</p> <p>3 Q. Does your group, meaning the group dealing with 4 the pandemic and school closures, do you use any Zoom 5 or any other online meeting vendor?</p> <p>6 A. Yes, we use Zoom.</p> <p>7 Q. And do you know if the July 29 meeting with the 8 county commissioners was conducted through Zoom?</p> <p>9 A. I don't know.</p> <p>10 Q. Is it possible?</p> <p>11 A. I'm sure it's possible.</p> <p>12 MR. ABRAMS: Calls for speculation.</p> <p>13 BY MR. KAEMPF:</p> <p>14 Q. Is it possible that that Zoom meeting on 15 July 29 was recorded in some way?</p> <p>16 A. I don't know.</p> <p>17 Q. Have you ever directed anyone to Zoom record 18 any meeting related to the pandemic?</p> <p>19 A. No.</p> <p>20 Q. Who at your office would you go to if you 21 wanted a meeting recorded with other officials or 22 members of the public?</p> <p>23 A. I'm not sure. It's not an issue that's come up 24 in my day-to-day work.</p> <p>25 Q. I noticed that people on the staff are texting</p>	<p>1 Colt Gill also wrote that, quote, "it is looking like 2 a three-tiered approach for counties with more than 3 30K, counting for less than 30K, and one for frontier 4 counties, which I'm working hard not to call 5 frontier," end quote.</p> <p>6 Is that the same point that frontier counties 7 you're saying means a low rural population?</p> <p>8 A. Yeah, it's -- it's remote with small 9 population, less people per square mile so --</p> <p>10 Q. As the pandemic crept along has Leah Horner 11 been generally informed as to the progress and 12 decision making in dealing with closing or reopening 13 schools?</p> <p>14 A. She's not necessarily been involved in the 15 decision making around the guidance or the metrics 16 but she certainly understands when guidance has been 17 released and --</p> <p>18 Q. Do you ever assign her tasks related to the 19 pandemic and school closures?</p> <p>20 A. No.</p> <p>21 Q. What role has Jody Christensen played in 22 dealing with the pandemic and closing schools?</p> <p>23 A. I'm sorry. I missed the first part of your 24 sentence.</p> <p>25 Q. What role has Jody Christensen played during</p>

Lindsey Capps

43 (Pages 169 to 172)

Page 169	Page 171
<p>1 the pandemic and school reopening?</p> <p>2 A. None.</p> <p>3 Q. The document marked 004628 is called COSA,</p> <p>4 Coalition of Oregon School Administrators, and it</p> <p>5 references April 24, 2020 meeting and it's going to</p> <p>6 be called a, quote, "off-the-record meeting," end</p> <p>7 quote.</p> <p>8 Are you aware of that?</p> <p>9 A. April 24 meeting of COSA?</p> <p>10 Q. Yes. Why was that called off the record?</p> <p>11 A. That's a term that they called their own</p> <p>12 meetings for many years. Director Gill was invited</p> <p>13 to present to their meeting. It's a meeting of their</p> <p>14 broader superintendents. It's a place where they</p> <p>15 share information.</p> <p>16 Q. So your testimony is that the Coalition of</p> <p>17 Oregon School Administrators asks that their meetings</p> <p>18 be, quote, "off the record," end quote?</p> <p>19 A. They didn't ask for those meetings to be called</p> <p>20 off the record. That has been the name of those</p> <p>21 meetings for many, many years.</p> <p>22 Q. Do you know why they are called off the record?</p> <p>23 A. I would surmise that they -- it's an</p> <p>24 opportunity for superintendents to talk with each</p> <p>25 other about issues they are facing. I cannot speak</p>	<p>1 text messages -- about the pandemic?</p> <p>2 A. Yes.</p> <p>3 Q. And who is Alonso Leon?</p> <p>4 A. Is that Representative Teresa Alonso Leon?</p> <p>5 Q. Yes, my fault. Teresa Alonso Leon, have you</p> <p>6 ever communicated with Teresa in writing about the</p> <p>7 pandemic?</p> <p>8 A. Yes, she's also a member of the Healthy Schools</p> <p>9 reopening council?</p> <p>10 Q. Who is Elvyss Argueta, spelled E-L-V-Y-S-S,</p> <p>11 A-R-G-U-E-T-A?</p> <p>12 A. I believe Elvyss is a staff member with the</p> <p>13 Oregon Education Association.</p> <p>14 Q. Have you communicated in writing with Elvyss</p> <p>15 about the pandemic?</p> <p>16 A. Elvyss is involved in our office around the</p> <p>17 census.</p> <p>18 Q. Have you ever communicated with Elvyss about</p> <p>19 the pandemic?</p> <p>20 A. No.</p> <p>21 Q. Who is Fawn Barrie, B-A-R-R-I-E?</p> <p>22 A. I didn't hear the first part of that.</p> <p>23 Q. Fawn, F-A-W-N, Barrie, B-A-R-R-I-E?</p> <p>24 A. I don't know.</p> <p>25 Q. I'll represent that she's the representative of</p>
Page 170	Page 172
<p>1 to why that term is, in fact, being used by the</p> <p>2 association.</p> <p>3 Q. Okay. Mr. Capps, this last part will go really</p> <p>4 quickly. I want you to be accurate. I'll tell you</p> <p>5 it's a list quickly and then we'll be done. Okay?</p> <p>6 And I just wanted to let you know that you are under</p> <p>7 oath, correct, sir?</p> <p>8 A. I understand.</p> <p>9 Q. Understand that it's subject to penalty of</p> <p>10 felony?</p> <p>11 A. I understand.</p> <p>12 Q. Okay. I just want to represent to you that</p> <p>13 I've seen interesting communications that have been</p> <p>14 located. I wanted to ask you who is Rylee Ahnan,</p> <p>15 R-Y-L-E-E, A-H-N-A-N?</p> <p>16 A. I don't know.</p> <p>17 Q. Have you ever communicated with Rylee about the</p> <p>18 pandemic on the --</p> <p>19 A. I don't know. I don't recall.</p> <p>20 Q. Who is Morgan Allen?</p> <p>21 A. As I've stated earlier, Morgan is the deputy</p> <p>22 director of the Confederation of Oregon School</p> <p>23 Administrators.</p> <p>24 Q. Okay. And have you communicated with Morgan at</p> <p>25 all in writing about -- that includes e-mails and</p>	<p>1 Oregon Health and Fitness Alliance. And do you</p> <p>2 recall communicating in writing with Fawn about the</p> <p>3 pandemic?</p> <p>4 A. I don't -- I don't recall.</p> <p>5 Q. Who is Ben Barcenas, B-A-R-C-E-N-A-S?</p> <p>6 A. I don't know.</p> <p>7 Q. I'll represent to you that he represents the</p> <p>8 Northwest Religious Liberty Association. Does that</p> <p>9 refresh your recollection? Have you communicated</p> <p>10 with Ben in writing?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Have you ever communicated with state</p> <p>13 Representative Daniel Bonham about the pandemic in</p> <p>14 writing?</p> <p>15 A. Not that I'm aware of. I'd have to look back.</p> <p>16 Q. How about Representative Margaret Doherty?</p> <p>17 A. I don't -- I don't recall.</p> <p>18 Q. How about Cheri, C-H-E-R-I, Helt, H-E-L-T?</p> <p>19 A. It's possible. I don't recall.</p> <p>20 Q. Do you recall communicating with any other</p> <p>21 member of the Oregon State House in writing about the</p> <p>22 pandemic?</p> <p>23 A. It's highly possible.</p> <p>24 Q. Okay. And have you communicated with members</p> <p>25 of both parties in Oregon Health about the pandemic</p>


**Lindsey Capps****44 (Pages 173 to 176)**

Page 173	Page 175
<p>1 or just democrats?</p> <p>2 A. Both parties.</p> <p>3 Q. And have you communicated with members of both</p> <p>4 parties of the Oregon State Senate about the pandemic</p> <p>5 or just democrats?</p> <p>6 A. Both parties in the Oregon State Senate.</p> <p>7 Q. Have you communicated with Sara Gelser,</p> <p>8 G-E-L-S-E-R, and Lisa Gezelter, G-E-Z-E-L-T-E-R?</p> <p>9 A. I have certainly communicated with Senator Sara</p> <p>10 Gelser, among other legislators. I don't know if the</p> <p>11 communication is also with staff. The policy</p> <p>12 research office was related to this.</p> <p>13 Q. Have you communicated with Senator Mark Hass</p> <p>14 about the pandemic?</p> <p>15 A. I don't recall.</p> <p>16 Q. How about Senator Dallas Heard?</p> <p>17 A. I don't recall.</p> <p>18 Q. How about Gardon, G-A-R-D-O-N, Jaramillo,</p> <p>19 J-A-R-A-M-I-L-L-O?</p> <p>20 A. I'm not recognizing the name at the moment.</p> <p>21 Q. Do you recall communicating with any other</p> <p>22 Oregon state senator about the pandemic in writing?</p> <p>23 A. Off the top of my head, I don't know.</p> <p>24 Q. Close to done. Have you communicated with</p> <p>25 Benjamin Bowman of the Coalition of Oregon School</p>	<p>1 Service Districts?</p> <p>2 A. Yes, with Ozzie Rose, yes.</p> <p>3 Q. And how about have you communicated in writing</p> <p>4 about the pandemic with Glen Poland of the Portland</p> <p>5 Association of Teachers?</p> <p>6 A. No.</p> <p>7 Q. Hue about Steven Buckley of the PERS board?</p> <p>8 A. No.</p> <p>9 Q. How about Steve Demarest of the PERS board?</p> <p>10 A. No.</p> <p>11 Q. How about Susan Owen of the Portland</p> <p>12 Association of Teachers?</p> <p>13 A. No, not that I'm aware of.</p> <p>14 Q. How about Mark Roy of the Multnomah Education</p> <p>15 Service District?</p> <p>16 A. Maybe as a cc on an e-mail but not directly</p> <p>17 communicating.</p> <p>18 Q. How about Nicole Crane of the Association of</p> <p>19 Oregon Counties, and again, in writing concerning the</p> <p>20 pandemic?</p> <p>21 A. Not that I recall.</p> <p>22 Q. How about Amanda Dalton at the same</p> <p>23 organization?</p> <p>24 A. Not that I recall.</p> <p>25 Q. How about Michael Cully of the League of Oregon</p>
Page 174	Page 176
<p>1 Administrators in writing about the pandemic?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. How about the same question as to Craig</p> <p>4 Hawkins?</p> <p>5 A. Yes, as I previously testified, I've</p> <p>6 communicated with Craig Hawkins.</p> <p>7 Q. Have you communicated with Kathy Bruske,</p> <p>8 B-R-U-S-K-E, Portland Public Schools about the</p> <p>9 pandemic?</p> <p>10 A. I don't immediately recognize the name.</p> <p>11 Q. How about Angelo Bilkes, B-I-L-K-E-S, of the</p> <p>12 Portland Public Schools?</p> <p>13 A. I'd have to refer to my communication.</p> <p>14 Q. Have you communicated about the pandemic in</p> <p>15 writing with Dave Hunt of the American Federation of</p> <p>16 Teachers Board?</p> <p>17 A. Yes.</p> <p>18 Q. I'm sorry. Did you answer?</p> <p>19 A. I said yes, I have had communication --</p> <p>20 Q. Have you had communication in writing about the</p> <p>21 pandemic with Lisa Wong of the same group?</p> <p>22 A. She may have been copied on an e-mail but I</p> <p>23 don't recall communicating with her.</p> <p>24 Q. Did you ever communicate in writing about the</p> <p>25 pandemic with the Oregon Association of Education</p>	<p>1 Cities?</p> <p>2 A. Not on the pandemic.</p> <p>3 Q. How about Mark Gharst, G-H-A-R-S-T, of the</p> <p>4 League of Oregon?</p> <p>5 A. Not that I recall.</p> <p>6 Q. How about James Green of the Oregon School</p> <p>7 Boards Association?</p> <p>8 A. Yes, as I previously noted, I've had</p> <p>9 communication with Jim Green of the Oregon School</p> <p>10 Boards Association.</p> <p>11 Q. Okay. In writing about the pandemic; correct?</p> <p>12 A. Correct.</p> <p>13 Q. How about Chris Parda, P-A-R-D-A, of the same</p> <p>14 group?</p> <p>15 A. Yes, but he's --</p> <p>16 Q. Appreciate your time. I'm almost done. The</p> <p>17 names of all the public school district</p> <p>18 representatives you've communicated with in any</p> <p>19 fashion about the pandemic.</p> <p>20 A. You want me to list that now?</p> <p>21 Q. If you could -- if there's anyone else you can</p> <p>22 think of or have you already told me the name of</p> <p>23 everybody?</p> <p>24 A. I believe I've been -- everyone that I can</p> <p>25 recall.</p>



Lindsey Capps

45 (Pages 177 to 179)

Page 177	Page 179
<p>1 Q. Okay. Thank you. And have you told me all the</p> <p>2 religious or private school representatives you</p> <p>3 communicated within in any way about the pandemic?</p> <p>4 A. Yeah, I've named those that I can recall by</p> <p>5 name.</p> <p>6 Q. All right. And then the last thing is are you</p> <p>7 aware that last week the Oregon Health Authority</p> <p>8 found that -- on the website Oregon saw a nearly 70</p> <p>9 percent increase in the number of opioid overdose</p> <p>10 deaths during April and May of 2020 compared to the</p> <p>11 same time last year?</p> <p>12 A. I was not aware.</p> <p>13 Q. Lastly, Mr. Capps, have you ever considered in</p> <p>14 your job the most emotional effect on students and</p> <p>15 teachers at private or religious schools of the</p> <p>16 pandemic shutdown?</p> <p>17 A. I'm very cognizant of the</p> <p>18 social/emotional/mental health and other needs of</p> <p>19 students and their physical safety during the</p> <p>20 pandemic for all students whether they're served in</p> <p>21 the public or private school.</p> <p>22 Q. Okay.</p> <p>23 MR. ABRAMS: John, we were supposed to be</p> <p>24 done with the list.</p> <p>25 MR. KAEMPF: I was just going to say are</p>	<p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, Mary Jacks, a professional court reporter, do</p> <p>4 hereby certify:</p> <p>5 That the foregoing proceedings were taken before</p> <p>6 me at the time and place herein set forth; that any</p> <p>7 witnesses in the foregoing proceedings, prior to</p> <p>8 testifying were placed under oath; that a verbatim</p> <p>9 record of the proceedings was made by me using</p> <p>10 machine shorthand which was thereafter transcribed</p> <p>11 under my direction; further, that the foregoing is an</p> <p>12 accurate transcription thereof.</p> <p>13 I further certify that I am neither financially</p> <p>14 interested in the action nor a relative or employee</p> <p>15 of any attorney of any of the parties.</p> <p>16 IN WITNESS HEREOF, I have hereunto subscribed my</p> <p>17 name this 2nd day of November, 2020.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22  Mary Jacks</p> <p>23 Oregon Commission No. 979035</p> <p>24 Expires 10/01/2022</p> <p>25</p>
Page 178	
<p>1 we -- subject to keep it technically open to the</p> <p>2 extent there were instructions not to answer. But</p> <p>3 subject to that, I am finished. Marc, thank you, and</p> <p>4 Mr. Capps, for the additional time today.</p> <p>5 MR. ABRAMS: If he orders, I want to read</p> <p>6 and sign.</p> <p>7 THE COURT REPORTER: And you want to order</p> <p>8 a copy, as well, I assume?</p> <p>9 MR. ABRAMS: I will take a copy if he</p> <p>10 orders.</p> <p>11 THE COURT REPORTER: He did.</p> <p>12 MR. ABRAMS: Yeah, we'll order.</p> <p>13 (Whereupon, the deposition was concluded</p> <p>14 at 5:30 p.m.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	



Deposition of:  
**Jody Christensen**

October 30, 2020

Horizon Christian School; et al.  
vs.  
Kate Brown, Governor of the State of Oregon

Case No.: 3:20-cv-01345



**Jody Christensen****1 (Pages 1 to 4)**

<b>Page 1</b>	<b>Page 3</b>
<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON PORTLAND DIVISION</p> <p>HORIZON CHRISTIAN SCHOOL, an Oregon nonprofit corporation; LIFE CHRISTIAN SCHOOL, an assumed business name; JOHN MONTANG, an individual; LYNN MONTANG, an individual; SARAH RODRIGUEZ, an individual; REGINA MICHELINE, an individual; JASON NISSEN, an individual; TRACIE NISSEN, an individual; DAN ALDER, an individual; DOMINIQUE BAYNES, an individual; ALEXANDER JONES, an individual; ASHLEY CADONAU, an individual; JARROD LEVESQUE an individual; and ROBIN LEVESQUE, an individual, Plaintiffs, v. No. 3:20-cv-01345 KATE BROWN, GOVERNOR OF THE STATE OF OREGON, in her official capacity only, Defendant.</p> <p>ZOOM VIDEOCONFERENCE DEPOSITION OF JODY CHRISTENSEN Taken on behalf of Plaintiffs October 30, 2020</p>	<p>1 APPEARANCES</p> <p>2</p> <p>3 Appearing on behalf of the Plaintiffs:</p> <p>4 KAEMPF LAW FIRM PC</p> <p>5 BY MR. JOHN KAEMPF (Appearing Remotely)</p> <p>6 121 SW Morrison Street, Suite 1100</p> <p>7 Portland, OR 97204</p> <p>8 503.224.5006</p> <p>9 john@kaempflawfirm.com</p> <p>10</p> <p>11 Appearing on behalf of the Defendant:</p> <p>12 THE OREGON DEPARTMENT OF JUSTICE</p> <p>13 BY MR. MARC ABRAMS (Appearing Remotely)</p> <p>14 100 SW Market Street</p> <p>15 Portland, OR 97201</p> <p>16 971.673.1880</p> <p>17 marc.abrams@state.or.us</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT REMOTELY:</p> <p>21 Kareem Haikal, videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<b>Page 2</b>	<b>Page 4</b>
<p>1 BE IT REMEMBERED THAT, pursuant to the</p> <p>2 Oregon Rules of Civil Procedure, the Zoom</p> <p>3 videoconference deposition of JODY CHRISTENSEN was</p> <p>4 taken before Rosemary Tanzer, a Registered</p> <p>5 Professional Reporter and a Certified Shorthand</p> <p>6 Reporter for Oregon and Washington, on Friday,</p> <p>7 October 30, 2020, commencing at the hour of 9:09</p> <p>8 a.m., in Portland, Oregon.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXAMINATION INDEX</p> <p>2 EXAMINATION BY: PAGE NO.</p> <p>3 MR. KAEMPF 5</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

**Jody Christensen****2 (Pages 5 to 8)**

Page 5	Page 7
<p>1 THE VIDEOGRAPHER: Here begins the</p> <p>2 videotaped deposition of Jody Christensen in the</p> <p>3 matter of Horizon Christian School et al v. Kate</p> <p>4 Brown, Governor of the State of Oregon, case number</p> <p>5 320CV01345.</p> <p>6 Will the counsel please state their</p> <p>7 appearances for the record.</p> <p>8 MR. KAEMPF: This is John Kaempf attorney</p> <p>9 for Plaintiff.</p> <p>10 MR. ABRAMS: Marc Abrams, assistant</p> <p>11 attorney in charge of civil litigation division,</p> <p>12 Oregon Department of Justice, on behalf of defendant.</p> <p>13 THE VIDEOGRAPHER: Stenographer will swear</p> <p>14 in the witness.</p> <p>15</p> <p>16 JODY CHRISTENSEN,</p> <p>17 Having first been sworn by the Certified Shorthand</p> <p>18 Reporter to tell the truth, testified under oath as</p> <p>19 follows:</p> <p>20</p> <p>21 EXAMINATION</p> <p>22 BY MR. KAEMPF:</p> <p>23 Q Ms. Christensen, this is John Kaempf, the</p> <p>24 attorney for the Plaintiff. Can you hear me okay?</p> <p>25 A Yes.</p>	<p>1 testifying before a judge in a courtroom?</p> <p>2 A Yes.</p> <p>3 Q Do you understand that if, hypothetically, you</p> <p>4 were to testify something -- to something that is</p> <p>5 false, I can use the written transcript of your</p> <p>6 testimony and documents to contradict what you say?</p> <p>7 A Yes, I understand.</p> <p>8 Q And do you understand that my interests are</p> <p>9 adverse to yours in this deposition today?</p> <p>10 A Yes.</p> <p>11 Q And do I understand that Mr. Abrams is</p> <p>12 representing you?</p> <p>13 A Yes.</p> <p>14 Q Ms. Christensen, as you sit here right now, in</p> <p>15 your own mind, is there anything that you're worried</p> <p>16 about that I'm going to ask you about today?</p> <p>17 A No.</p> <p>18 Q Did you review any documents to refresh your</p> <p>19 recollection in preparation for your deposition?</p> <p>20 A No.</p> <p>21 Q Have you discussed your deposition with Governor</p> <p>22 Brown?</p> <p>23 A No.</p> <p>24 Q Last week, or earlier this week I should say, I</p> <p>25 took the deposition of Lindsey Capps. Have you</p>
Page 6	Page 8
<p>1 Q I'm going to give you a few guidelines for the</p> <p>2 deposition that I think will make it easier for</p> <p>3 everyone today, and they're fairly straightforward.</p> <p>4 If at any time I ask a question, you don't understand</p> <p>5 it, please feel free to tell me that and I'll ask it</p> <p>6 again until you do. Okay?</p> <p>7 A Okay.</p> <p>8 Q So if you answer a question, then I will assume</p> <p>9 that you understood it; is that fair?</p> <p>10 A Yes.</p> <p>11 Q If any time today you need to take a break, to</p> <p>12 use the bathroom, make a phone call, whatever, you</p> <p>13 have every right to do that. Just let us know. The</p> <p>14 only exception is if there is a question pending,</p> <p>15 I'll ask that you answer the question and then we can</p> <p>16 take a break. Okay?</p> <p>17 A Yes.</p> <p>18 Q Are you clearheaded and able to testify today?</p> <p>19 A Yes.</p> <p>20 Q If that ever changes, will you let us know?</p> <p>21 A Yes.</p> <p>22 Q Have you ever given a deposition before?</p> <p>23 A No.</p> <p>24 Q And do you understand that you're under oath and</p> <p>25 your testimony is just as serious as if you were</p>	<p>1 discussed that with him?</p> <p>2 A No.</p> <p>3 Q And earlier this week I also took the deposition</p> <p>4 of Leah Horner. Have you discussed that with</p> <p>5 Ms. Horner?</p> <p>6 A No.</p> <p>7 Q Don't tell me about any communications with your</p> <p>8 lawyer, but have you discussed the fact that you're</p> <p>9 giving a deposition today with anyone else besides</p> <p>10 your lawyer?</p> <p>11 A My husband.</p> <p>12 Q What is your husband's name.</p> <p>13 (Reporter requests clarification.)</p> <p>14 Q I'm sorry. What was that?</p> <p>15 A [REDACTED]</p> <p>16 Q Moving forward, what is your job title?</p> <p>17 A I'm a regional solutions coordinator in the</p> <p>18 governor's office.</p> <p>19 Q If you could flush that out a bit for me. What</p> <p>20 kind of job duties does that involve?</p> <p>21 A I'm responsible for working with the communities</p> <p>22 of Marion, Polk and Yamhill County in economic and</p> <p>23 community development projects and help streamline</p> <p>24 processes with state agencies and to build</p> <p>25 partnerships.</p>

Jody Christensen

3 (Pages 9 to 12)

Page 9	Page 11
<p>1 Q How long have you held that position?</p> <p>2 A I've been in this position since January 2019.</p> <p>3 Q Who do you report to in the governor's office?</p> <p>4 A My director is Leah Horner.</p> <p>5 Q Do you report to anyone else?</p> <p>6 A I'm sorry. Could you repeat that?</p> <p>7 Q Do you report to anyone else?</p> <p>8 A No.</p> <p>9 Q Does anyone report to you?</p> <p>10 A No.</p> <p>11 Q Are you in a position where you ever receive</p> <p>12 directions from Lindsey Capps concerning your job?</p> <p>13 A No.</p> <p>14 Q Are you ever in a position to receive direction</p> <p>15 from Colt Gill?</p> <p>16 A No.</p> <p>17 Q Please tell me, from your understanding, what</p> <p>18 Leah Horner has done concerning her role dealing with</p> <p>19 the opening and closing of schools during the</p> <p>20 pandemic?</p> <p>21 A Could you repeat the question?</p> <p>22 MR. KAEMPF: Sure. If the court reporter</p> <p>23 could read it back, please.</p> <p>24 (Record read.)</p> <p>25 A I don't know.</p>	<p>1 A Yes.</p> <p>2 Q What is that number, please?</p> <p>3 A (503) [REDACTED]</p> <p>4 Q Have you had that same work number the entire</p> <p>5 time that you've worked on the governor's staff?</p> <p>6 A Yes.</p> <p>7 Q Have you had any other work cell phone numbers</p> <p>8 during your time working with Governor Brown?</p> <p>9 A No.</p> <p>10 Q Do you know the service provider for your work</p> <p>11 cell phone number?</p> <p>12 A I don't know.</p> <p>13 Q Have you ever attended a religious or private</p> <p>14 school?</p> <p>15 A Yes.</p> <p>16 Q Which ones and when and where, please?</p> <p>17 A I attended St. John Vianney school in Spokane,</p> <p>18 Washington. I attended Gonzaga prep school in</p> <p>19 Spokane, Washington.</p> <p>20 Q Any others?</p> <p>21 A No.</p> <p>22 Q Did you graduate from any of those religious or</p> <p>23 private schools that you just mentioned?</p> <p>24 A From both.</p> <p>25 Q Did you like attending those schools?</p>
Page 10	Page 12
<p>1 Q BY MR. KAEMPF: But yet you report to her; is</p> <p>2 that right?</p> <p>3 A Yes.</p> <p>4 Q A little background information,</p> <p>5 Ms. Christensen. What is your date of birth?</p> <p>6 A [REDACTED] 1961.</p> <p>7 Q What is your current home address?</p> <p>8 A [REDACTED], McMinnville,</p> <p>9 Oregon [REDACTED].</p> <p>10 Q And who lives at your home with you, if anyone?</p> <p>11 A My husband and my son.</p> <p>12 Q What's your son's name?</p> <p>13 A My son's name is [REDACTED]</p> <p>14 Q How old is he?</p> <p>15 A He's [REDACTED]</p> <p>16 Q And do you have any other children?</p> <p>17 A Yes.</p> <p>18 Q What are their names and ages, please?</p> <p>19 A [REDACTED] and she is [REDACTED], and [REDACTED]</p> <p>20 [REDACTED], he's [REDACTED].</p> <p>21 Q Where do they live?</p> <p>22 A My son, [REDACTED]</p> <p>23 [REDACTED]. And my daughter, [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 Q Do you have a work cell phone number?</p>	<p>1 A Yes.</p> <p>2 Q And how many total years, then, did you go to a</p> <p>3 private or religious school?</p> <p>4 A 12.</p> <p>5 Q I'm sorry. What was that?</p> <p>6 A 12.</p> <p>7 Q So you had 12 years, and was that a Catholic</p> <p>8 school?</p> <p>9 A Roman Catholic.</p> <p>10 Q Okay. In Spokane?</p> <p>11 A Yes.</p> <p>12 Q And during the 12 years you went to Catholic</p> <p>13 school in Spokane, I know you weren't an adult yet,</p> <p>14 but did you come to have any knowledge about the</p> <p>15 concerns of how Catholic schools are run?</p> <p>16 MR. ABRAMS: Objection.</p> <p>17 (Reporter requests clarification.)</p> <p>18 MR. ABRAMS: Okay, we were trying to do it</p> <p>19 without muting due to the echo.</p> <p>20 Objection. Vagueness.</p> <p>21 Q BY MR. KAEMPF: So please answer if you can,</p> <p>22 Ms. Christensen.</p> <p>23 (Reporter requests clarification.)</p> <p>24 A I'm sorry. Could you repeat the question?</p> <p>25 Q BY MR. KAEMPF: Sure. When you attended 12</p>

Jody Christensen

4 (Pages 13 to 16)

Page 13	Page 15
<p>1 years of Catholic school in Spokane, even though you</p> <p>2 were not an adult, did you ever come to learn</p> <p>3 anything about the concerns of Catholic schools in</p> <p>4 terms of how they operate and funding?</p> <p>5 A I don't recall.</p> <p>6 Q And what years did you graduate from the schools</p> <p>7 you mentioned?</p> <p>8 A I graduated from high school in 1980.</p> <p>9 Q And was that from Gonzaga prep?</p> <p>10 A Gonzaga prep, yes.</p> <p>11 Q What year did you graduate from grade school?</p> <p>12 And please tell me again what that school was.</p> <p>13 A St. John Vianney.</p> <p>14 Q And also in Spokane?</p> <p>15 A Yes.</p> <p>16 Q Did you enjoy your experience, 12 years of</p> <p>17 Catholic school?</p> <p>18 A Yes.</p> <p>19 Q Do you think it prepared you adequately for</p> <p>20 college, if you did go to college?</p> <p>21 A Yes.</p> <p>22 Q And did you graduate from college?</p> <p>23 A Yes.</p> <p>24 Q What school and when?</p> <p>25 A I went to Lewis and Clark College in Portland,</p>	<p>1 they all went to school there.</p> <p>2 Q And are your other children not autistic?</p> <p>3 MR. ABRAMS: John, I'm going to object.</p> <p>4 This is irrelevant. Can we please respect</p> <p>5 Ms. Christensen's privacy and personal life.</p> <p>6 Q BY MR. KAEMPF: Ms. Christensen, I will respect</p> <p>7 you all day and treat you with kindness. I'm just</p> <p>8 trying to get a feel for your personal experience,</p> <p>9 yourself, and with your children, in terms of</p> <p>10 Oregon's private and religious educational system.</p> <p>11 That's all.</p> <p>12 A My other two children have not been diagnosed</p> <p>13 with autism.</p> <p>14 Q So to summarize, then, is it true then that all</p> <p>15 of your kids have attended private religious schools</p> <p>16 in Oregon. Right?</p> <p>17 A Yes.</p> <p>18 Q And in your capacity as a parent of your</p> <p>19 children, when they were attending religious schools</p> <p>20 in Oregon, did you come to learn anything about the</p> <p>21 financial or funding concerns of those religious</p> <p>22 schools in Oregon?</p> <p>23 A I was a part of the parent association at the</p> <p>24 schools.</p> <p>25 Q And at all of those schools?</p>
Page 14	Page 16
<p>1 Oregon. And I went from 1980 to 1984.</p> <p>2 Q And what did you get your degree in from Lewis</p> <p>3 and Clark?</p> <p>4 A Communications, a bachelor of arts.</p> <p>5 Q And have you obtained any postgraduate degree?</p> <p>6 A No.</p> <p>7 Q Have any of your children ever attended a</p> <p>8 private or religious school?</p> <p>9 A Yes.</p> <p>10 Q Can you please tell me the name of the child and</p> <p>11 the school and the year, if you know, that they</p> <p>12 graduated.</p> <p>13 A My son, [REDACTED], attended St. James</p> <p>14 in McMinnville, Oregon for kindergarten through third</p> <p>15 grade. My son, [REDACTED], attended Western</p> <p>16 Mennonite school from eighth grade to graduation,</p> <p>17 12th grade. My daughter attended Western Mennonite</p> <p>18 school from grade six through grade 12, graduated.</p> <p>19 My son, [REDACTED], attended Western Mennonite</p> <p>20 school from grades six through 12 and graduated.</p> <p>21 Q Why did you send your children to private</p> <p>22 religious schools in Oregon?</p> <p>23 A Because my older son is autistic, and we were</p> <p>24 looking for a smaller classroom size for him. I</p> <p>25 didn't want to separate him from his siblings, so</p>	<p>1 A Yes.</p> <p>2 Q Okay. And when you -- I guess you call that</p> <p>3 PTA. Right?</p> <p>4 A I don't know.</p> <p>5 Q Did you say that Parent Teachers Association or</p> <p>6 was it something else?</p> <p>7 A I don't recall what they were called.</p> <p>8 Q Okay. But was it an organization where parents</p> <p>9 interact with teachers at your children's school?</p> <p>10 A No. It was primarily fundraising activities.</p> <p>11 Q Okay. Who else served on the committees with</p> <p>12 you to raise funds at the schools your children</p> <p>13 attended in Oregon?</p> <p>14 A Other parents.</p> <p>15 Q Do you recall their names?</p> <p>16 A I do not.</p> <p>17 Q Do you recall, those fundraising committees that</p> <p>18 you were on at your children's religious schools, did</p> <p>19 they keep minutes of the meetings?</p> <p>20 A I don't recall.</p> <p>21 Q And what was the time range when your children</p> <p>22 were attending those schools?</p> <p>23 A I'm sorry. Could you repeat that question.</p> <p>24 Q What was the time range when your children were</p> <p>25 attending those religious schools you mentioned?</p>



Jody Christensen

5 (Pages 17 to 20)

Page 17	Page 19
<p>1 A At St. James it was kindergarten through third 2 grade for my oldest son. And sixth through 12th 3 grade for my two younger children at Western 4 Mennonite. And eighth through 12th grade for my 5 oldest son at Western Mennonite. 6 Q What years, just that range of time, what years 7 would that have been when your children were 8 attending those schools? 9 A I would have to -- I don't recall. 10 Q Can you give me an approximation, like, oh, that 11 was in the '90s or that was in the 2000s. 12 A It would be in the '90s for my oldest son and in 13 the '90s and 2000s for -- my oldest son graduated 14 from Western Mennonite in, I believe it was, 2010. 15 My daughter graduated in 2012 and my youngest son 16 graduated in, I believe it was, 2013. 17 Q For your children that do not live in your home, 18 they're all over the age of 18; is that right? 19 A All my children are over the age of 18. 20 Q Okay, all of them. And the ones that do not 21 live in your home currently, where do they live? 22 A My oldest son, [REDACTED], lives in 23 [REDACTED] Oregon. My daughter, [REDACTED] 24 [REDACTED], lives in [REDACTED] Washington. 25 Q Okay. Ms. Christensen, this is a standard</p>	<p>1 Q Okay. Then I'll speak up a bit. 2 Since the pandemic began, have you had any 3 communications with Dr. Bob Dannenhoffer? 4 A I don't recall. 5 Q Ms. Christensen, right now do you know if 6 religious schools in Oregon are allowed to reopen 7 full-time with in-person classes? 8 A I don't know. 9 Q Who would know? 10 A I don't know. 11 Q Do you know who set the standards for religious 12 schools in Oregon reopening during the pandemic? 13 A I don't know. 14 Q Do you know if, during the pandemic in Oregon, 15 public schools are allowed to provide in-person 16 instruction? 17 A I don't know. 18 Q Ms. Christensen, are you aware of any religious 19 or private school in Oregon that's been a spreader of 20 COVID 19? 21 A I don't know. 22 Q Are you aware of any student at any religious 23 school in Oregon who has contracted COVID 19? 24 A I don't know. 25 Q Are you aware of any student at any religious</p>
Page 18	Page 20
<p>1 question I ask in all my depositions, so please don't 2 take it personally. That is, have you ever been 3 convicted of a crime? 4 A No. 5 Q Okay. Are you a member of the governor's 6 Coronavirus advisory council? 7 A No. 8 Q Do you know who is a member of that council? 9 A No, I do not. 10 Q Do you know if anyone representing a religious 11 or private school is on that council? 12 A I don't know. 13 Q Since the pandemic began, have you had any 14 communications with Bob Estabrook of the Oregon 15 School Employees Association? 16 A I don't recall. 17 Q Since the pandemic began, have you had any 18 communications with Bob Tackett of the Northwest 19 Oregon Labor Council AFL-CIO? 20 A I don't recall. 21 Q If you could speak up a bit, I would appreciate 22 it. 23 A I don't recall. 24 Q Can you hear me clearly? 25 A It's a little low.</p>	<p>1 school in Oregon who has died from COVID 19? 2 A I don't know. 3 Q Are you aware of any student at any religious or 4 private school in the country who has died from COVID 5 19? 6 A I don't know. 7 Q Do you know why religious schools in Oregon are 8 not allowed to reopen for in-person classes right 9 now? 10 MR. ABRAMS: Objection. Mischaracterizes 11 the previous testimony. Go ahead. 12 Q BY MR. KAEMPF: Let me ask it this way then, 13 Ms. Christensen. Is the governor not allowing 14 religious schools to reopen for in-person classes 15 right now? 16 A Could you please ask the question again. 17 MR. KAEMPF: Sure. The court reporter can 18 read it back, please. 19 (Record read.) 20 A I don't know. 21 Q BY MR. KAEMPF: Do you know if there is any 22 future period of no restrictions on Oregon's K-to-12 23 schools reopening? 24 A I don't know. 25 Q Do you know how long Governor Brown's pandemic</p>

Jody Christensen

6 (Pages 21 to 24)

Page 21	Page 23
<p>1 executive orders concerning religious and private</p> <p>2 schools are scheduled to last?</p> <p>3 A I don't know.</p> <p>4 Q At the beginning of the pandemic this year, to</p> <p>5 your knowledge, and relating to closing schools,</p> <p>6 isn't it true that the initial policy was to flatten</p> <p>7 the curve?</p> <p>8 A Could you repeat the question.</p> <p>9 MR. KAEMPF: Yeah, the court reporter will</p> <p>10 read it back, please.</p> <p>11 (Record read.)</p> <p>12 A Yes.</p> <p>13 Q BY MR. KAEMPF: Is it still the policy to</p> <p>14 flatten the curve?</p> <p>15 A I don't know.</p> <p>16 Q What is the current policy, then, relating to</p> <p>17 the Coronavirus and whether schools are allowed to</p> <p>18 open or reopen?</p> <p>19 A I don't know.</p> <p>20 Q Isn't it true, Ms. Christensen, that the current</p> <p>21 policy now is to wait for a vaccine?</p> <p>22 A I don't know.</p> <p>23 Q Do you recall a May 23rd, 2020 email that Leah</p> <p>24 Horner wrote to you in response to a question about</p> <p>25 faith-based gatherings use.</p>	<p>1 A I work in the governor's office as a regional</p> <p>2 solution's coordinator. I report to Leah Horner.</p> <p>3 Q As a regional solutions coordinator, have you</p> <p>4 done anything to help religious or private schools</p> <p>5 during the pandemic?</p> <p>6 A That's not my job.</p> <p>7 Q What is your job?</p> <p>8 A My job is to create -- during the Coronavirus</p> <p>9 response phase, I am responsible for communication</p> <p>10 with our partners, city and county and others, in</p> <p>11 helping manage information coming out of the Oregon</p> <p>12 Health Authority around guidance and other</p> <p>13 information related to the response.</p> <p>14 Q As part of your job and during the Coronavirus,</p> <p>15 have you done anything to help any religious or</p> <p>16 private school?</p> <p>17 A That's not my role.</p> <p>18 Q That's fine. I just want to know whether it's</p> <p>19 your role or not.</p> <p>20 Have you done anything, during the</p> <p>21 pandemic, to help any religious or private school?</p> <p>22 A I don't recall.</p> <p>23 Q Are you aware of anyone, who works on Governor</p> <p>24 Brown's staff, who, during the pandemic, has done</p> <p>25 something specific to help religious or private</p>
Page 22	Page 24
<p>1 And Counsel, I'm referring to 047369.</p> <p>2 And Ms. Horner wrote that, [as read:] It's</p> <p>3 up to each church to put protocols in place. So are</p> <p>4 the parishioners. We're hearing that some go above</p> <p>5 25 for that reason.</p> <p>6 Do you recall that email discussion with</p> <p>7 Ms. Horner?</p> <p>8 A No, I do not recall it.</p> <p>9 Q Do you know, is that the current Oregon policy</p> <p>10 regarding churches?</p> <p>11 A I don't know.</p> <p>12 Q Please tell me all actions that you've taken</p> <p>13 during the pandemic to help religious or private</p> <p>14 schools.</p> <p>15 MR. ABRAMS: Her personally or the</p> <p>16 governor's office?</p> <p>17 MR. KAEMPF: Her, in her role, as the</p> <p>18 advisor to the governor.</p> <p>19 A I am not an advisor to the governor.</p> <p>20 Q BY MR. KAEMPF: And I'm sorry. You were a --</p> <p>21 who do you advise, then?</p> <p>22 A I have no advisory role to the governor.</p> <p>23 Q I'm sorry if I got it wrong at the beginning.</p> <p>24 What is -- tell me who you work for and</p> <p>25 what your job duties are.</p>	<p>1 schools?</p> <p>2 A I don't know.</p> <p>3 Q Can you tell me the name of any religious or</p> <p>4 private school that you've interacted with during the</p> <p>5 pandemic?</p> <p>6 A I don't recall.</p> <p>7 Q I have a guidance document that was produced.</p> <p>8 And Counsel, it's marked as 004859. And it's</p> <p>9 entitled, quote, "Specific guidance for faith-based</p> <p>10 organizations," end quote.</p> <p>11 Have you ever seen that document?</p> <p>12 MR. ABRAMS: I'm going to object to any</p> <p>13 questioning referencing a document that has not been</p> <p>14 put before the deponent. Go ahead.</p> <p>15 Q BY MR. KAEMPF: Can you answer the question.</p> <p>16 A I don't recall.</p> <p>17 Q I'll represent to you that that guidance says</p> <p>18 that the State will want to check with faith-based</p> <p>19 groups to ensure appropriate language.</p> <p>20 And have you ever done any checking with</p> <p>21 faith-based groups about the Coronavirus by the</p> <p>22 Coronavirus guidance?</p> <p>23 A I don't recall.</p> <p>24 Q Can you name any faith-based group or religious</p> <p>25 school that you communicated with about the</p>

Jody Christensen

7 (Pages 25 to 28)

Page 25	Page 27
<p>1 Coronavirus guidance?</p> <p>2 A I don't recall any.</p> <p>3 Q During the pandemic, have you communicated in</p> <p>4 any way with any representative of any religious or</p> <p>5 private school?</p> <p>6 A I don't recall.</p> <p>7 Q I'll represent to you, Ms. Christensen, that two</p> <p>8 of my clients, Horizon Christian School and Life</p> <p>9 Christian School, are -- currently they're at risk of</p> <p>10 permanently closing due to Governor Brown's pandemic</p> <p>11 executive orders. Has that general concern ever come</p> <p>12 to your attention?</p> <p>13 MR. ABRAMS: I'm going to object as assumes</p> <p>14 facts not in evidence. Counsel is testifying. Go</p> <p>15 ahead.</p> <p>16 Q BY MR. KAEMPF: Please answer.</p> <p>17 A Could you repeat the question.</p> <p>18 MR. KAEMPF: If the court reporter could</p> <p>19 read it back, please.</p> <p>20 (Record read.)</p> <p>21 A I don't recall.</p> <p>22 Q BY MR. KAEMPF: Has any private or religious</p> <p>23 school in Oregon brought that kind of concern to you</p> <p>24 during the pandemic?</p> <p>25 A I don't recall.</p>	<p>1 student transfers during the pandemic?</p> <p>2 A No.</p> <p>3 Q Have you ever read the State of Oregon policy</p> <p>4 about school transfers?</p> <p>5 A No.</p> <p>6 Q Are you aware of charter or virtual schools</p> <p>7 being treated differently during the pandemic than</p> <p>8 public schools?</p> <p>9 A No.</p> <p>10 Q During the pandemic, to your knowledge are</p> <p>11 religious schools treated differently than public</p> <p>12 schools?</p> <p>13 A No.</p> <p>14 Q Have you had any role in changing the</p> <p>15 designation of small schools during the pandemic?</p> <p>16 A No.</p> <p>17 Q Did you have any role in the late July version</p> <p>18 of the guidance for schools?</p> <p>19 A No.</p> <p>20 Q Do you know who was?</p> <p>21 A I don't know.</p> <p>22 Q In your work this year, have you witnessed or</p> <p>23 heard of any discrimination toward religious schools?</p> <p>24 A No.</p> <p>25 Q In your work this year, have you witnessed or</p>
Page 26	Page 28
<p>1 Q Was there ever a discussion that you were aware</p> <p>2 of that the State would include private or religious</p> <p>3 schools in the funding being made available to</p> <p>4 schools during the pandemic?</p> <p>5 A I don't know.</p> <p>6 Q Have you been a part of the creation of any of</p> <p>7 the governor's pandemic executive orders?</p> <p>8 A No.</p> <p>9 Q Were you ever asked to edit them or review</p> <p>10 drafts?</p> <p>11 A No.</p> <p>12 Q Do you have any role concerning the pandemic and</p> <p>13 Oregon schools?</p> <p>14 A No.</p> <p>15 Q What is your role for the governor, or the</p> <p>16 government of Oregon I should say, during the</p> <p>17 pandemic?</p> <p>18 A I am -- I work in the governor's office. And</p> <p>19 mid-March we were -- the coordinators were asked to</p> <p>20 stand up, coronavirus economic recovery teams,</p> <p>21 bringing together local stakeholders and elected</p> <p>22 officials in weekly meetings to disseminate</p> <p>23 information and to help build a network of response</p> <p>24 for the virus, Coronavirus response.</p> <p>25 Q Did you ever have any role in putting a cap on</p>	<p>1 heard any discrimination against private schools?</p> <p>2 A No.</p> <p>3 Q In your work this year, have you witnessed or</p> <p>4 heard of any discrimination toward virtual schools?</p> <p>5 A No.</p> <p>6 Q In your work this year, have you witnessed or</p> <p>7 heard of any discrimination against charter schools?</p> <p>8 A No.</p> <p>9 Q I understand that you work regularly with</p> <p>10 representatives of Yamhill County. Correct?</p> <p>11 A Yes.</p> <p>12 Q Do you work with any other counties?</p> <p>13 A I work in [verbatim] Yamhill, Marion and Polk</p> <p>14 Counties.</p> <p>15 Q Any others?</p> <p>16 A I, on occasion, interface with other counties.</p> <p>17 Q Which ones?</p> <p>18 A Lane County.</p> <p>19 Q Any others?</p> <p>20 A I don't recall.</p> <p>21 Q Have you played any role in a pandemic budgeting</p> <p>22 or spending?</p> <p>23 A No.</p> <p>24 Q I want to move to ask you about a particular</p> <p>25 conference call with county commissioners. And</p>

Jody Christensen

8 (Pages 29 to 32)

Page 29	Page 31
<p>1 before that I want to ask: My understanding, and</p> <p>2 tell me if I'm correct or not, is that there are</p> <p>3 weekly conference calls with county commissioners; is</p> <p>4 that right?</p> <p>5 A Yes. They're not consistent, but yes.</p> <p>6 Q Do I understand that when they occur, they</p> <p>7 happen on Wednesdays?</p> <p>8 A Yes.</p> <p>9 Q I want to ask you about a specific call that I</p> <p>10 believe happened either July 29th of this year or,</p> <p>11 I'll represent to you that Ms. Horner testified, that</p> <p>12 it happened on August 5th. And that was a conference</p> <p>13 call with county commissioners where there were some</p> <p>14 statements and questions by Yamhill County</p> <p>15 Commissioner Mary Starrett. Do you know whether that</p> <p>16 conference call happened either on July 29th or</p> <p>17 Wednesday, August 5th?</p> <p>18 A I believe it was August 5th.</p> <p>19 Q Sure. Do you have a calendar at work,</p> <p>20 electronic or otherwise, where you could confirm that</p> <p>21 date?</p> <p>22 A Yes.</p> <p>23 Q And is it electronic?</p> <p>24 A Yes.</p> <p>25 Q Okay. And I'll go with your date of Wednesday,</p>	<p>1 phone.</p> <p>2 Q Anyone else you can think of?</p> <p>3 A There may have been a representative from the</p> <p>4 Association of Oregon Counties, but I don't recall.</p> <p>5 Q Does the representative of the Association of</p> <p>6 Oregon Counties sometimes attend the weekly county</p> <p>7 commissioner conference call during the pandemic?</p> <p>8 A Yes.</p> <p>9 Q When they attend, who is that person?</p> <p>10 A It may have been Megan Sherard (phonetic).</p> <p>11 Q Anyone else?</p> <p>12 A Or Gina Nikkel.</p> <p>13 Q Anyone else?</p> <p>14 A No.</p> <p>15 Q Now back to this August 5th, 2020 weekly</p> <p>16 conference call with the county commissioners, do you</p> <p>17 recall that Yamhill County Commissioner Mary</p> <p>18 Starrett, during that conference call, asked a</p> <p>19 question to the effect of, wondering why parochial</p> <p>20 schools were not being allowed to safely reopen</p> <p>21 during the pandemic?</p> <p>22 A I don't recall.</p> <p>23 Q Do you recall Ms. Starrett asking any questions,</p> <p>24 during the August 5th weekly conference call, with</p> <p>25 the county commissioners?</p>
Page 30	Page 32
<p>1 August 5th, which again is also what Ms. Horner said.</p> <p>2 During that August 5th, 2020 conference</p> <p>3 call with Yamhill County commissioners, just to be</p> <p>4 clear, was that a phone call or was it a Zoom with</p> <p>5 video?</p> <p>6 A It was a Zoom with video.</p> <p>7 Q In your own mind, can you see Ms. Starrett, in</p> <p>8 particular, on the Zoom video during the August 5th</p> <p>9 conference call?</p> <p>10 A No.</p> <p>11 Q Did you hear her voice that day?</p> <p>12 A Yes.</p> <p>13 Q Do you recall seeing any county commissioner on</p> <p>14 the Zoom video during that August 5th conference</p> <p>15 call?</p> <p>16 A Yes.</p> <p>17 Q Who?</p> <p>18 A I don't recall.</p> <p>19 Q Do you remember what county they represented?</p> <p>20 A The Marion and Polk County.</p> <p>21 Q Do you know their names?</p> <p>22 A It would have been Commissioner Craig Pope and</p> <p>23 Commissioner Colm Willis.</p> <p>24 Q Anyone else?</p> <p>25 A Commission Starrett would have been on the</p>	<p>1 A Yes.</p> <p>2 Q Okay. What question did she ask or questions?</p> <p>3 A I don't recall.</p> <p>4 Q But yet you know she asked some question.</p> <p>5 A I believe she asked a question or questions.</p> <p>6 Q And do you have any idea, as you sit here today,</p> <p>7 what the nature was of those questions or question?</p> <p>8 A I don't recall the wording. I do recall it was</p> <p>9 about schools.</p> <p>10 Q What did she say about schools or ask about,</p> <p>11 even if you don't recall the exact words.</p> <p>12 A I don't recall.</p> <p>13 Q Do you recall this August 5 conference call that</p> <p>14 we're talking about, did you participate in that by</p> <p>15 yourself or was Leah Horner also participating in</p> <p>16 that call?</p> <p>17 A Leah was on that call.</p> <p>18 Q And you were too; is that right?</p> <p>19 A Yes.</p> <p>20 Q Was anyone else from the governor's office?</p> <p>21 A No.</p> <p>22 Q Can you give me the name of any other county</p> <p>23 commissioner besides Mary Starrett who participated</p> <p>24 in the August 5th call?</p> <p>25 A It may have included Commissioner Craig Polk and</p>

Jody Christensen

9 (Pages 33 to 36)

Page 33	Page 35
<p>1 Commissioner Colm Willis.</p> <p>2 Q And isn't it true that on March 22nd of this</p> <p>3 year, Mary Starrett sent you an email about a local</p> <p>4 business in Yamhill County wanting to get designated</p> <p>5 as an essential business. And Counsel, I'm</p> <p>6 referencing the document labeled as 021320.</p> <p>7 Do you recall that communication with</p> <p>8 Ms. Starrett on March 22nd of this year about the</p> <p>9 Yamhill County business wanting to be designated as</p> <p>10 essential?</p> <p>11 A I do not recall it.</p> <p>12 Q Do you recall that you then forwarded</p> <p>13 Ms. Starrett's March 22nd email to Leah Horner on</p> <p>14 March 23, the next day?</p> <p>15 A I do not recall.</p> <p>16 MR. KAEMPF: Counsel, that is document</p> <p>17 021320.</p> <p>18 Q BY MR. KAEMPF: You have no memory of doing</p> <p>19 that?</p> <p>20 A No.</p> <p>21 Q And isn't it true that on March 23rd, the same</p> <p>22 day, Ms. Horner then emailed back to you and said</p> <p>23 quote, [as read:] Jody, can you please tell her,</p> <p>24 meaning Mary Starrett, that we are not designating</p> <p>25 essential businesses, and that the forthcoming EO</p>	<p>1 Q Do you recall at that meeting Commissioner</p> <p>2 Starrett raising a concern about private and</p> <p>3 religious schools not being allowed to reopen?</p> <p>4 A I do not recall it.</p> <p>5 Q Do you recall Mary Starrett raising any concerns</p> <p>6 at that March 9, 2020 meeting?</p> <p>7 A I do not recall it.</p> <p>8 Q Was Commissioner Starrett already on your radar,</p> <p>9 so to speak, in terms of her concerns about the</p> <p>10 pandemic and closing before the August 5th weekly</p> <p>11 conference call that we talked about?</p> <p>12 A I don't know.</p> <p>13 Q During the August 5th weekly conference call</p> <p>14 that you said was conducted by Zoom, Ms. Starrett did</p> <p>15 speak. Correct?</p> <p>16 A Correct.</p> <p>17 Q And she is a Yamhill County commissioner.</p> <p>18 Right?</p> <p>19 A Yes.</p> <p>20 Q And that's your district or division -- one of</p> <p>21 the divisions you cover. Right?</p> <p>22 A The region I cover is Yamhill, Marion and Polk</p> <p>23 Counties, yes.</p> <p>24 Q So you are fully aware of who she was before and</p> <p>25 during that August 5th weekly conference call.</p>
Page 34	Page 36
<p>1 will clarify, end quote.</p> <p>2 And that's document number 021320.</p> <p>3 Do you recall that?</p> <p>4 A I do not recall it.</p> <p>5 Q Do you recall then conveying that or any other</p> <p>6 message to Mary Starrett in response to the email</p> <p>7 we're talking about?</p> <p>8 A I do not recall.</p> <p>9 Q Isn't it true on May 12th of this year, you sent</p> <p>10 an email directly to Mary Starrett in response to her</p> <p>11 question. And you said [as read:] Attached are the</p> <p>12 OHA faith-based organizations guidelines. That's</p> <p>13 document number 026484.</p> <p>14 Do you recall sending the OHA faith-based</p> <p>15 organization guidelines to Commissioner Starrett by</p> <p>16 email?</p> <p>17 What did you say?</p> <p>18 A I do not recall.</p> <p>19 Q Do you recall that on March 9 of this year, you</p> <p>20 met with Commissioner Starrett, and other members of</p> <p>21 the association of Oregon Counties, to present an</p> <p>22 update from the governor's office? And I'm</p> <p>23 referencing document 0231360.</p> <p>24 Do you recall that meeting in March?</p> <p>25 A I do not recall it.</p>	<p>1 Right?</p> <p>2 A Yes. She's a commissioner in Yamhill County.</p> <p>3 Q Sure. And is it fair to say that she is</p> <p>4 important to you in your job in terms of who she</p> <p>5 represents?</p> <p>6 A Yes.</p> <p>7 Q When Mary Starrett speaks, included on the</p> <p>8 August 5th conference call, do you listen intently?</p> <p>9 A During the meeting, yes.</p> <p>10 Q Do you recall generally that during the</p> <p>11 August 5th meeting, you listened to Mary Starrett</p> <p>12 intently?</p> <p>13 A During the meeting, yes.</p> <p>14 Q Have you ever attended one of the weekly county</p> <p>15 commissioner conference calls during the pandemic in</p> <p>16 place of Leah Horner?</p> <p>17 A No.</p> <p>18 Q Do you know if any of the weekly conference</p> <p>19 calls with county commissioners this year have been</p> <p>20 recorded in any way?</p> <p>21 A I don't know.</p> <p>22 Q Who would know?</p> <p>23 A Leah.</p> <p>24 Q Have you ever watched or listened to any</p> <p>25 recording of any meeting with county commissioners</p>



Jody Christensen

10 (Pages 37 to 40)

Page 37	Page 39
<p>1 from this year?</p> <p>2 A A point of clarification. What meetings?</p> <p>3 Q Any of the county commissioner meetings that</p> <p>4 have occurred in 2020, have you ever listened or</p> <p>5 watched any recording of any of those meetings?</p> <p>6 A Yes.</p> <p>7 Q Which meeting did you either listen or watch a</p> <p>8 recording of?</p> <p>9 A I don't recall specific meetings, but I often</p> <p>10 watch public meetings from county commissioners on</p> <p>11 Facebook Live.</p> <p>12 Q Okay. Was Mary Starrett a part of any of those</p> <p>13 meetings that you watched on Facebook Live?</p> <p>14 A Yes.</p> <p>15 Q Which ones?</p> <p>16 A I don't recall.</p> <p>17 Q And if I was to request recordings of those from</p> <p>18 you, is that something that you could obtain?</p> <p>19 A No.</p> <p>20 Q Why not?</p> <p>21 A I don't have access to those recordings.</p> <p>22 Q Do you know who does?</p> <p>23 A Yes. The county would.</p> <p>24 Q I'm sorry. What was that?</p> <p>25 A The county would be recording their public</p>	<p>1 I think they already were, but I'll deal with</p> <p>2 Mr. Abrams on that. Is that something that you can</p> <p>3 produce copies of?</p> <p>4 A Yes.</p> <p>5 Q Do you have notes, handwritten or electronic, of</p> <p>6 any other weekly county commissioner meetings during</p> <p>7 the pandemic this year?</p> <p>8 A Yes.</p> <p>9 Q Did you bring your handwritten notes with you</p> <p>10 today?</p> <p>11 A No.</p> <p>12 Q Was Leah Horner part of the August 5th</p> <p>13 conference call by Zoom with the county</p> <p>14 commissioners?</p> <p>15 A Yes.</p> <p>16 Q Was anyone else on behalf of the government</p> <p>17 besides the county commissioners?</p> <p>18 A I participated in the meetings.</p> <p>19 Q So do I understand, from the governor's side</p> <p>20 then, it would be Leah Horner and you that</p> <p>21 participated; is that right?</p> <p>22 A Yes.</p> <p>23 Q Are you aware that Mary Starrett, Yamhill County</p> <p>24 Commissioner, has provided a sworn declaration in</p> <p>25 this case?</p>
Page 38	Page 40
<p>1 meetings.</p> <p>2 Q When you say the county --</p> <p>3 A The county would have access to that.</p> <p>4 Q When you say "the county," what do you mean?</p> <p>5 A Each county that reports live on Facebook, I</p> <p>6 believe they keep recordings of those live Facebook</p> <p>7 meetings.</p> <p>8 Q Do you know if any county had a live Facebook</p> <p>9 meeting relating to the August 5th, 2020 weekly</p> <p>10 meeting with the county commissioners?</p> <p>11 A I don't know.</p> <p>12 Q Okay. Have you ever watched any recording or</p> <p>13 listened to any recording involving the August 5th</p> <p>14 county commissioner meeting we've been talking about</p> <p>15 where Mary Starrett spoke?</p> <p>16 A No.</p> <p>17 Q Did you keep any kind of notes, handwritten or</p> <p>18 electronic, relating to what happened during the</p> <p>19 August 5th weekly conference call with county</p> <p>20 commissioners?</p> <p>21 A Yes.</p> <p>22 Q And where are those notes? Are they handwritten</p> <p>23 or are they electronic?</p> <p>24 A Handwritten.</p> <p>25 Q And is that something that, if requested -- and</p>	<p>1 A No.</p> <p>2 Q Have you ever seen it?</p> <p>3 A No.</p> <p>4 Q Okay. Have you ever discussed with Leah Horner,</p> <p>5 outside the presence of any lawyer, just the two of</p> <p>6 you talking or e-mailing or texting or whatever, Mary</p> <p>7 Starrett giving any statement or testimony in this</p> <p>8 case?</p> <p>9 A No.</p> <p>10 Q Are you aware of whether Ms. Horner was in any</p> <p>11 way disciplined or reprimanded concerning what she</p> <p>12 may have said to Ms. Starrett during the August 5th</p> <p>13 conference call?</p> <p>14 A I don't know.</p> <p>15 Q Do you know, specific from yourself, does</p> <p>16 Ms. Horner write minutes or keep any type of notes of</p> <p>17 weekly county commissioner meetings?</p> <p>18 A I don't know.</p> <p>19 Q Okay. Going back to the August 5th Wednesday</p> <p>20 conference call with county commissioners on Zoom</p> <p>21 that you said was attended by you and Leah Horner, at</p> <p>22 any time during that conference meeting, did Yamhill</p> <p>23 County commissioner, Mary Starrett, ever ask why</p> <p>24 parochial schools are not being allowed to reopen</p> <p>25 safely or words to that effect?</p>

Jody Christensen

11 (Pages 41 to 44)

Page 41	Page 43
<p>1 A I don't recall.</p> <p>2 Q So you have no recollection of that issue, is</p> <p>3 that what I heard?</p> <p>4 A I don't recall.</p> <p>5 Q The response to anything Ms. Starrett may have</p> <p>6 said during the August 5th county commissioner weekly</p> <p>7 meeting, do you recall Leah Horner expressing a</p> <p>8 concern or making a statement about a mass exodus</p> <p>9 from public schools?</p> <p>10 A Yes.</p> <p>11 Q Concerning a mass exodus from public schools, do</p> <p>12 you recall what question or statement prompted Leah</p> <p>13 Horner to say that?</p> <p>14 A I don't recall.</p> <p>15 Q But you do recall that Ms. Horner referenced a</p> <p>16 mass exodus from public schools. Correct?</p> <p>17 A Yes.</p> <p>18 Q Please tell me precisely, as best you can, what</p> <p>19 you recall Leah Horner saying about a mass exodus</p> <p>20 from public schools during the August 5th, 2020</p> <p>21 weekly conference call with county commissioners.</p> <p>22 A I don't recall.</p> <p>23 Q Okay. Just help me with this. You don't</p> <p>24 recall, but yet you do recall that she referred to a</p> <p>25 mass exodus from public schools; is that right?</p>	<p>1 A I don't recall.</p> <p>2 Q During any of your interactions with county</p> <p>3 commissioners, have you ever heard any of them</p> <p>4 express a concern about a large amount of students</p> <p>5 leaving public schools for religious or private</p> <p>6 schools?</p> <p>7 A I don't recall.</p> <p>8 Q Ms. Christensen, I know you've told us you don't</p> <p>9 recall the question or statement that prompted</p> <p>10 Ms. Horner to make this statement about a mass</p> <p>11 exodus. Can you tell me, do you have any idea what</p> <p>12 the context was at all from anyone that prompted</p> <p>13 Ms. Horner to use the term "mass exodus"?</p> <p>14 MR. ABRAMS: Object to the extent it calls</p> <p>15 for speculation.</p> <p>16 Q BY MR. KAEMPF: I'm not asking for speculation.</p> <p>17 I'm asking, Ms. Christensen, what you remember of</p> <p>18 participating in the August 5th weekly conference</p> <p>19 call with county commissioners. Can you think of</p> <p>20 anything at all what you remember that prompted</p> <p>21 Ms. Horner to use the phrase "mass exodus"?</p> <p>22 A I don't recall.</p> <p>23 Q Do you recall anyone else during that August 5th</p> <p>24 weekly meeting using the phrase "mass exodus" aside</p> <p>25 from Ms. Horner?</p>
Page 42	Page 44
<p>1 A I remember the phrase "mass exodus." I don't</p> <p>2 recall the specifics.</p> <p>3 Q Did the phrase "mass exodus," was it stated by</p> <p>4 Leah Horner?</p> <p>5 A Yes.</p> <p>6 Q And did she make that statement or use that</p> <p>7 phrase in response to a question from someone?</p> <p>8 A I don't recall.</p> <p>9 Q Have you seen the written sworn declaration that</p> <p>10 Ms. Horner filed in this case?</p> <p>11 A No.</p> <p>12 Q Have you ever had any direct communications with</p> <p>13 Mary Starrett about the pandemic and schools?</p> <p>14 A Yes, about the pandemic.</p> <p>15 Q And what did you discuss with Mary Starrett</p> <p>16 related to the pandemic?</p> <p>17 A I don't recall specifics.</p> <p>18 Q Have you ever expressed to anyone a concern</p> <p>19 about a large amount of students leaving Oregon's</p> <p>20 public schools during the pandemic?</p> <p>21 A No.</p> <p>22 Q During any of your weekly conference calls, have</p> <p>23 you ever heard any county commissioner express a</p> <p>24 concern about a significant amount of students</p> <p>25 disenrolling from public schools?</p>	<p>1 A No.</p> <p>2 Q Even if you don't recall the specifics, isn't it</p> <p>3 true that you do recall that Mary Starrett did attend</p> <p>4 and speak during the August 5th weekly meeting?</p> <p>5 A Yes.</p> <p>6 Q Do you recall anything specific that Mary</p> <p>7 Starrett said that day?</p> <p>8 A No.</p> <p>9 Q Did you play any part in gathering the documents</p> <p>10 Plaintiffs requested in this case?</p> <p>11 A I sent a text, a photo of a text.</p> <p>12 Q Which text?</p> <p>13 MR. ABRAMS: And, you know, at this point,</p> <p>14 John, I'm going to interpose the same objection I've</p> <p>15 done before. Anything she did, she did at the</p> <p>16 direction of Counsel. It's attorney-work product,</p> <p>17 therefore protected. And I'm directing her not to</p> <p>18 answer.</p> <p>19 Q BY MR. KAEMPF: And I don't want to know,</p> <p>20 Ms. Christensen, about any discussions with your</p> <p>21 lawyer, Mr. Abrams. The law takes that privilege.</p> <p>22 What I do want to know is, you talked about taking a</p> <p>23 picture of a text. And I just want to know what text</p> <p>24 you're referring to.</p> <p>25 MR. ABRAMS: I'll let you answer to that</p>

Jody Christensen

12 (Pages 45 to 48)

Page 45	Page 47
<p>1 extent.</p> <p>2 A It was a text from Commissioner Casey Kulla.</p> <p>3 Q How do you spell the last name?</p> <p>4 A K-U-L-L-A.</p> <p>5 Q And what county is Casey Kulla a commissioner for?</p> <p>6 A Yamhill County.</p> <p>7 Q Along with Ms. Starrett?</p> <p>8 A Yes.</p> <p>9 Q And as best you can recall, no one is going to</p> <p>10 hold you to the exact words, but what was the</p> <p>11 substance of that Casey Kulla text message that you</p> <p>12 took a picture of?</p> <p>13 A He was asking for clarification.</p> <p>14 Q And just to confirm, is Casey a man?</p> <p>15 A Yes.</p> <p>16 Q Okay. What clarification was Casey asking to</p> <p>17 have addressed?</p> <p>18 A It was a quote.</p> <p>19 Q What quote?</p> <p>20 A I don't remember the specifics.</p> <p>21 Q But you remember that there was a text message.</p> <p>22 Was it from Casey Kulla or from you to Casey Kulla?</p> <p>23 A From Commissioner Kulla to me.</p> <p>24 Q And are you saying that that was a text message</p> <p>25</p>	<p>1 A The quote was related to the August 5th meeting.</p> <p>2 Q When you say the quote, do you have any idea,</p> <p>3 like, who the quote was from or what the quote was</p> <p>4 about?</p> <p>5 A I don't know the specifics.</p> <p>6 Q Do you know anything at all about this quote</p> <p>7 where it was important enough that you took a picture</p> <p>8 of it?</p> <p>9 A It was related to the August 5th meeting.</p> <p>10 Q Other than relating to the August 5th meeting,</p> <p>11 can you think of any details, any specifics about</p> <p>12 that text message that you took a picture of?</p> <p>13 A I don't recall.</p> <p>14 Q Did you -- do you recall Commissioner Kulla also</p> <p>15 attending the August 5th weekly meeting of county</p> <p>16 commissioners?</p> <p>17 A No.</p> <p>18 Q Have you ever had a discussion, verbally or in</p> <p>19 writing of any kind, with Commissioner Kulla about</p> <p>20 what happened during the August 5th meeting of county</p> <p>21 commissioners?</p> <p>22 A I don't recall.</p> <p>23 Q Do you know why he sent you a text message with</p> <p>24 a quote in it that I believe you said relates to the</p> <p>25 August 5th weekly conference call?</p>
Page 46	Page 48
<p>1 that he wrote to you and it had a quote in it?</p> <p>2 A Yes.</p> <p>3 Q Was the quote from a third person? In other</p> <p>4 words, it wasn't Casey saying something, but he was</p> <p>5 sending you a quote from someone else?</p> <p>6 A I don't know.</p> <p>7 Q What was the quote about?</p> <p>8 A I don't recall the specifics.</p> <p>9 Q Why did you take a picture of that text message?</p> <p>10 A It was related to information gathering.</p> <p>11 Q Information gathering about what?</p> <p>12 A About the meeting.</p> <p>13 Q And what do you mean by "the meeting"?</p> <p>14 A August 5th.</p> <p>15 Q Why was it that you -- Commissioner Kulla was</p> <p>16 addressing information gathering about the August 5th</p> <p>17 county commissioner conference call?</p> <p>18 A I believe the question you asked was, why did I</p> <p>19 take a photograph and send it to council.</p> <p>20 Q Yes, sure. Why did you do that?</p> <p>21 A Because it was related to the meeting on</p> <p>22 August 5th.</p> <p>23 Q And how did the text that you took a picture of</p> <p>24 relate to the August 5th meeting we've been talking</p> <p>25 about?</p>	<p>1 A Could you repeat the first part of the question.</p> <p>2 MR. KAEMPF: I'll ask the court reporter to</p> <p>3 read it back, please.</p> <p>4 (Record read.)</p> <p>5 A I do not.</p> <p>6 Q BY MR. KAEMPF: Have you communicated with</p> <p>7 Commissioner Kulla in writing beyond that text</p> <p>8 message you mentioned during the pandemic?</p> <p>9 A No.</p> <p>10 Q So is the text message you just mentioned the</p> <p>11 only written communication between Commissioner Kulla</p> <p>12 and you during the pandemic?</p> <p>13 A No.</p> <p>14 Q Please tell me about all other communications,</p> <p>15 such as emails and text messages, letters, between</p> <p>16 you and Commissioner Kulla during the pandemic.</p> <p>17 A As with all of the commissioners, I'm</p> <p>18 communicating on a regular basis around the</p> <p>19 Coronavirus response and working to connect</p> <p>20 information through the elected officials.</p> <p>21 Q If I can ask you, do you know why you took a</p> <p>22 picture of the text message rather than just,</p> <p>23 perhaps, handing your phone over to be produced?</p> <p>24 A I did not hear the last part of the question.</p> <p>25 Q I'll say it again. Can everybody hear me?</p>

Jody Christensen

13 (Pages 49 to 52)

Page 49	Page 51
<p>1 A Yes.</p> <p>2 Q I'm asking why you took the step of taking a</p> <p>3 picture of Commissioner Kulla's text message rather</p> <p>4 than just turning your phone over, having the text</p> <p>5 message produced that way.</p> <p>6 A I emailed the text message, so a photograph was</p> <p>7 the way that I did that.</p> <p>8 Q And who did you email that text message from</p> <p>9 Commissioner Kulla to?</p> <p>10 A I don't recall his name. He's one of the</p> <p>11 attorneys in our office.</p> <p>12 Q Okay. I don't want to hear about any</p> <p>13 communications with the lawyers in your office</p> <p>14 because that's privileged. But what I want to know</p> <p>15 is, this email that you sent to one of your lawyers,</p> <p>16 I just want to know the physical reality here, did it</p> <p>17 have, attached to that email or as part of it, a</p> <p>18 photo of Commissioner Kulla's text messages that</p> <p>19 we've been talking about?</p> <p>20 A Yes.</p> <p>21 Q Okay. And is that particular email, including</p> <p>22 the photo that's attached to it or a part of it, is</p> <p>23 that something that's still in your sent items in</p> <p>24 your email program?</p> <p>25 A I don't know.</p>	<p>1 A I don't recall.</p> <p>2 Q How is it that you know that it related to the</p> <p>3 August 5th weekly county commissioner meeting?</p> <p>4 A I don't remember the specifics.</p> <p>5 Q Even just generally. You testified that it</p> <p>6 related to the August 5th county commissioner</p> <p>7 meeting, which is a fairly specific recollection. So</p> <p>8 I just want to know, what is it about that text</p> <p>9 message that you took the time to take a picture of</p> <p>10 that helps you remember that it related to the August</p> <p>11 5th county commissioner meeting?</p> <p>12 A The context of the text.</p> <p>13 Q And I'm sorry. What is the context of the text?</p> <p>14 A I don't recall the specifics.</p> <p>15 Q Okay. Even generally I'm asking -- because</p> <p>16 you've testified that you recall that this text</p> <p>17 message from Commissioner Kulla, that you took the</p> <p>18 time to take a photograph of and email to your</p> <p>19 lawyer. Again, I don't want to know about what --</p> <p>20 communications with your lawyer. But what I do want</p> <p>21 to know is, what is it about that text message from</p> <p>22 Commissioner Kulla that caused you to testify today</p> <p>23 that relates to the August 5th meeting?</p> <p>24 A I don't remember the specifics of the text, but</p> <p>25 the context related to the August 5th meeting.</p>
Page 50	Page 52
<p>1 Q Please keep it if it is. So thank you.</p> <p>2 And just so I'm clear, getting back to</p> <p>3 Commissioner Kulla, can you think of any other</p> <p>4 written communications of any kind with him other</p> <p>5 than this text message that you've told us about?</p> <p>6 A Yes. I communicate with all of the elected</p> <p>7 officials on a regular basis regarding the</p> <p>8 Coronavirus response.</p> <p>9 Q Have you ever heard, during this year's</p> <p>10 pandemic, any other Oregon-elected official raise a</p> <p>11 concern about a mass exodus from public schools or,</p> <p>12 you know, was it similar to that? Like, hey, I'm</p> <p>13 worried about a lot of students leaving the public</p> <p>14 schools. Anyone else?</p> <p>15 A I don't know.</p> <p>16 Q Do you recall Commissioner Kulla ever raising</p> <p>17 any concern like that?</p> <p>18 A I don't recall.</p> <p>19 Q From what you have observed, do Commissioner</p> <p>20 Kulla and Commissioner Starrett get along?</p> <p>21 A I don't know.</p> <p>22 Q Did this text message that you took a photo of</p> <p>23 from Commissioner Kulla, do you recall about when it</p> <p>24 was written or perhaps you know the exact date of</p> <p>25 when it was written?</p>	<p>1 Q What was that context that led you to believe</p> <p>2 that?</p> <p>3 A I don't recall.</p> <p>4 Q Do you recall -- I'm sorry. I've asked this</p> <p>5 before but I need to get clear. Do you recall the</p> <p>6 exact or approximate date of Commissioner Kulla's</p> <p>7 text message that we're talking about?</p> <p>8 A No.</p> <p>9 Q Was it before or after the August 5th conference</p> <p>10 call we've been talking about?</p> <p>11 A I believe it was after.</p> <p>12 Q And approximately how soon after August 5th was</p> <p>13 that text message that you took a photo of written?</p> <p>14 A I don't recall.</p> <p>15 Q What did you use to take a photograph of that</p> <p>16 text message?</p> <p>17 A My phone.</p> <p>18 Q And help me with the technology part of this.</p> <p>19 I'm not being sarcastic or anything. If this text</p> <p>20 message is on your phone, please educate me about how</p> <p>21 your phone can take a picture of the text message.</p> <p>22 A There is a button on my cell phone that I can --</p> <p>23 when the text is up, I can snap a photograph.</p> <p>24 Q Okay. What kind of phone do you have?</p> <p>25 A I have an Apple.</p>

Jody Christensen

14 (Pages 53 to 56)

Page 53	Page 55
<p>1 Q An iPhone?</p> <p>2 A Yes.</p> <p>3 Q Is that the work-provided one you told me about</p> <p>4 earlier today?</p> <p>5 A Yes.</p> <p>6 Q Okay. And don't tell me about any</p> <p>7 communications with any of your lawyers, of course.</p> <p>8 But what I do want to know is, do you recall the date</p> <p>9 that you sent this email that had a photograph of</p> <p>10 Commissioner Kulla's text message relating to the</p> <p>11 August 5th meeting attached to the email?</p> <p>12 A I don't recall.</p> <p>13 Q Do you have any estimate at all given that the</p> <p>14 meeting was on August 5th?</p> <p>15 A I don't recall.</p> <p>16 Q When was the last time that you looked at that</p> <p>17 text message that is on your phone and you took a</p> <p>18 picture of it?</p> <p>19 A When I sent it.</p> <p>20 Q Okay. And do you have any idea at all when you</p> <p>21 sent it?</p> <p>22 A I don't know.</p> <p>23 Q This text message that we're talking about from</p> <p>24 Commissioner Kulla, did you ever respond to it?</p> <p>25 A I don't recall.</p>	<p>1 this text message from Yamhill County Commissioner</p> <p>2 Kulla that you took a photograph of and emailed to</p> <p>3 your lawyer.</p> <p>4 And my question is, do you recall, did it</p> <p>5 have anything to do with Mary Starrett in particular?</p> <p>6 A I don't know.</p> <p>7 Q You testified that it did relate to the August</p> <p>8 5th county commissioner conference call; is that</p> <p>9 right?</p> <p>10 A I don't know.</p> <p>11 Q Did it relate to that call? Because I thought</p> <p>12 that's what you said earlier.</p> <p>13 A Yes, I believe it did relate.</p> <p>14 Q And what is it about the text message that you</p> <p>15 took a photograph of that makes you recall that it,</p> <p>16 of all things, it specifically relates to the August</p> <p>17 5th county commissioner weekly meeting?</p> <p>18 A It was the context of the text, but I don't</p> <p>19 remember the specifics.</p> <p>20 Q Do you remember anything generally, if you don't</p> <p>21 remember the specifics?</p> <p>22 A No.</p> <p>23 Q And just so we're clear, your testimony</p> <p>24 is -- okay. I should put it this way.</p> <p>25 Did it, to your recollection, in any way</p>
Page 54	Page 56
<p>1 Q This quote that was within Commissioner Kulla's</p> <p>2 text message to you, from what you could tell, did he</p> <p>3 send it to you directly or was it, perhaps, from what</p> <p>4 you could tell, forwarded from someone else?</p> <p>5 A I don't know.</p> <p>6 Q Is that text message from Commissioner Kulla</p> <p>7 still on your phone?</p> <p>8 A Yes.</p> <p>9 MR. ABRAMS: John, is this a good time to</p> <p>10 take a midmorning break?</p> <p>11 MR. KAEMPF: Sure. And how much time would</p> <p>12 you like, Marc.</p> <p>13 MR. ABRAMS: Let's do ten minutes.</p> <p>14 MR. KAEMPF: You've got it.</p> <p>15 (Break in proceedings.)</p> <p>16 Q BY MR. KAEMPF: Okay, Ms. Christensen, we took a</p> <p>17 break there. Are you still clearheaded and able to</p> <p>18 testify?</p> <p>19 A Yes.</p> <p>20 Q Are you on any medication today?</p> <p>21 A No.</p> <p>22 Q Okay. And if that ever changes today, just let</p> <p>23 us know and we'll take a break. Okay?</p> <p>24 A I understand.</p> <p>25 Q I want to get back to where we left off with</p>	<p>1 relate to Mary Starrett?</p> <p>2 A I don't know.</p> <p>3 Q Did it in any way relate to Leah Horner?</p> <p>4 A I don't recall.</p> <p>5 Q Did it in any way relate to this mass exodus</p> <p>6 statement that you've testified Ms. Horner made at</p> <p>7 the August 5th weekly meeting?</p> <p>8 A The context related to the August 5th meeting.</p> <p>9 Q Okay. And when you say "the context," can you</p> <p>10 give me any dates? What context, what was stated?</p> <p>11 A I don't remember the specifics.</p> <p>12 Q Is there anything about this text message we've</p> <p>13 talked about that you took a photograph of that</p> <p>14 concerns you?</p> <p>15 A No.</p> <p>16 Q Can you tell me anything at all that it is</p> <p>17 about?</p> <p>18 A I don't remember the specifics.</p> <p>19 Q Now, moving away from that, at any time this</p> <p>20 year have you ever heard or seen Governor Brown</p> <p>21 express a concern about a significant amount of</p> <p>22 students leaving public schools because of the</p> <p>23 pandemic?</p> <p>24 A No.</p> <p>25 Q Have you ever heard or seen Lindsey Capps make</p>



Jody Christensen

15 (Pages 57 to 60)

Page 57	Page 59
<p>1 any statement like that?</p> <p>2 A No.</p> <p>3 Q Have you ever heard Leah Horner make any</p> <p>4 statement or write any statement like that?</p> <p>5 A The term "mass exodus" was used during the</p> <p>6 August 5th meeting.</p> <p>7 Q Was any other phrase like that ever used by Leah</p> <p>8 Horner this year?</p> <p>9 A No.</p> <p>10 Q Okay. And did you ever hear any other person</p> <p>11 who works for the Oregon government express any</p> <p>12 concern, whether it was mass exodus or just saying</p> <p>13 worried, about a large amount of kids leaving public</p> <p>14 schools because of the pandemic?</p> <p>15 A No.</p> <p>16 Q Okay. So did Commissioner Kulla ever express a</p> <p>17 concern like that?</p> <p>18 A I don't recall.</p> <p>19 Q Do you recall any county commissioner ever</p> <p>20 expressing that concern in any conference call you</p> <p>21 attended this year?</p> <p>22 A I don't recall.</p> <p>23 Q All right. Do you recall any Oregon politician</p> <p>24 expressing any concern like that in any kind of</p> <p>25 writing, like an email or a text message?</p>	<p>1 A I don't recall.</p> <p>2 Q Are you aware of the State of Oregon's receipt</p> <p>3 of any face coverings this year from FEMA, the</p> <p>4 Federal Emergency Management Agency?</p> <p>5 A I don't know.</p> <p>6 Q Is that the first you've heard of it?</p> <p>7 A The State of Oregon has received face coverings.</p> <p>8 Q Who from?</p> <p>9 A I'm sorry. Could you repeat that?</p> <p>10 Q Do you know who the State of Oregon received</p> <p>11 face coverings from?</p> <p>12 A I do not.</p> <p>13 Q Concerning those face coverings, do you recall</p> <p>14 that they are identified as KN-95?</p> <p>15 A I know some masks are identified as KN-95s.</p> <p>16 Q Have any of the KN-95 face coverings that the</p> <p>17 State of Oregon received this year been distributed</p> <p>18 to any private or religious schools?</p> <p>19 A I don't know.</p> <p>20 Q Who would know?</p> <p>21 A I don't know.</p> <p>22 Q Are you aware of any effort by the State of</p> <p>23 Oregon to specifically exclude private schools from</p> <p>24 receiving those face coverings?</p> <p>25 A No.</p>
Page 58	Page 60
<p>1 A I don't recall.</p> <p>2 Q In these meetings that you've had this year at</p> <p>3 work, do you ever use Zoom or a similar software?</p> <p>4 A In the meetings that I have participated since</p> <p>5 the COVID response work, I've been in primarily on</p> <p>6 Zoom. Some have been conference calls.</p> <p>7 Q Do you know if any of those conference calls</p> <p>8 have been recorded in any way, whether it was through</p> <p>9 the Zoom or otherwise?</p> <p>10 A I have participated in Zoom calls that have been</p> <p>11 recorded.</p> <p>12 Q Which ones were recorded?</p> <p>13 A I don't recall.</p> <p>14 Q How could you find that out?</p> <p>15 A I would have to go back through my calendar and</p> <p>16 identify all of the meetings that I've been invited</p> <p>17 to and participated in to see if any of them have</p> <p>18 been recorded.</p> <p>19 Q Who is your work IT person?</p> <p>20 A I don't know.</p> <p>21 Q Have you ever personally been concerned about a</p> <p>22 large amount of students leaving public schools</p> <p>23 during the pandemic?</p> <p>24 A No.</p> <p>25 Q Have you ever heard of the gear, G-E-E-R, fund?</p>	<p>1 Q Do you know if the face coverings we talked</p> <p>2 about, KN-95, were they free, or did the State of</p> <p>3 Oregon pay for them?</p> <p>4 A I don't know.</p> <p>5 Q All right. Are you aware of anyone in Oregon's</p> <p>6 government at any time this year expressing a concern</p> <p>7 about a large amount of students leaving public</p> <p>8 schools?</p> <p>9 A I am not aware.</p> <p>10 Q Do you know whether that topic has ever been the</p> <p>11 subject of any written report within the Oregon</p> <p>12 government?</p> <p>13 A I am not aware.</p> <p>14 Q Have you ever helped to create or ever read a</p> <p>15 report showing the possible financial effects of</p> <p>16 students leaving public schools for private schools</p> <p>17 during the pandemic?</p> <p>18 A No.</p> <p>19 Q Before this August 5th meeting we're talking</p> <p>20 about, where you testified Ms. Horner used the phrase</p> <p>21 "mass exodus," had you ever heard that phrase come up</p> <p>22 before in any county commissioner meeting?</p> <p>23 A No.</p> <p>24 Q Had you ever seen that phrase in writing before</p> <p>25 the August 5th meeting related to the pandemic?</p>

Jody Christensen

16 (Pages 61 to 64)

Page 61	Page 63
<p>1 A No.</p> <p>2 Q Have you ever used the phrase "mass exodus" in</p> <p>3 relation to the pandemic?</p> <p>4 A No.</p> <p>5 Q Are you aware of anyone else in Oregon's</p> <p>6 government who's used that term this year, relating</p> <p>7 to the pandemic?</p> <p>8 A No.</p> <p>9 Q In these meetings that you've attended with the</p> <p>10 county commissioners, am I right that they are</p> <p>11 usually weekly and usually on Wednesday?</p> <p>12 A Which meetings are you referring to?</p> <p>13 Q With county commissioners.</p> <p>14 A I have several meetings with county</p> <p>15 commissioners.</p> <p>16 Q Okay. Please tell me about all the kinds of</p> <p>17 meetings that you've had during the pandemic with</p> <p>18 county commissioners.</p> <p>19 A I have met with Marion County commissioners</p> <p>20 regarding public health, with Latinx leaders in the</p> <p>21 county. I have met with county commissioners around</p> <p>22 childcare initiatives. I have met with county</p> <p>23 commissioners about broadband expansion. I have been</p> <p>24 invited to participate and listen in on county</p> <p>25 commissioner meetings, as well as weekly meetings</p>	<p>1 state school funds if students were disenrolling from</p> <p>2 such a school, end quote.</p> <p>3 Do you recall Ms. Horner that day making a</p> <p>4 reference to another call about the potential loss to</p> <p>5 an educational institution?</p> <p>6 A I don't recall that.</p> <p>7 Q When -- if you can kind of take me into the</p> <p>8 physical reality, we have the August 5th meeting and</p> <p>9 you said Ms. Horner made the mass exodus statement.</p> <p>10 Were the two of you physically in the same room?</p> <p>11 A No. We are not allowed to meet in person.</p> <p>12 Q During that August 5th call we've talked about,</p> <p>13 where were you physically and where was Ms. Horner?</p> <p>14 A I was in my home. I do not know where Leah was.</p> <p>15 Q Were you both attending remotely by Zoom?</p> <p>16 A Yes.</p> <p>17 Q During that August 5th meeting, do you recall</p> <p>18 Ms. Horner saying anything about a concern that had</p> <p>19 been raised in another call?</p> <p>20 A I do not recall.</p> <p>21 Q Have you ever seen Ms. Horner's declaration?</p> <p>22 A I have not.</p> <p>23 Q Have the two of you ever discussed, outside the</p> <p>24 presence of lawyers, what happened at the August 5th</p> <p>25 conference call?</p>
Page 62	Page 64
<p>1 with county chairs.</p> <p>2 Q In any of those meetings you just described this</p> <p>3 year, have you ever heard a concern expressed by any</p> <p>4 teachers union representative about the loss of</p> <p>5 students from public schools?</p> <p>6 A No.</p> <p>7 Q In any of those meetings you just described this</p> <p>8 year, have you ever heard of anybody representing any</p> <p>9 public school district who's expressed a concern</p> <p>10 about the loss of students from their district?</p> <p>11 A No.</p> <p>12 Q In any of those meetings, have you heard anyone</p> <p>13 express a concern about how the pandemic is affecting</p> <p>14 religious or private schools?</p> <p>15 A No.</p> <p>16 Q Do you know how much money a school district</p> <p>17 receives for every enrolled student in a public</p> <p>18 school?</p> <p>19 A No.</p> <p>20 Q Now, in the declaration that Ms. Horner filed in</p> <p>21 this case that's, you know, written testimony, she</p> <p>22 says that when she made the mass exodus statement she</p> <p>23 says, quote, [as read:] I had been discussing a</p> <p>24 concern that had been raised in another call about</p> <p>25 the potential loss to an educational institution of</p>	<p>1 A I don't recall.</p> <p>2 Q Do you know what other educational institution</p> <p>3 Ms. Horner was referring to in her declaration when</p> <p>4 she says that she was addressing a concern that had</p> <p>5 been raised in another call about the potential loss</p> <p>6 to an educational institution? Do you recall any of</p> <p>7 that?</p> <p>8 A No.</p> <p>9 Q Do you recall the word "parochial" or "religious</p> <p>10 school" coming out of Ms. Starrett's mouth that day</p> <p>11 during the August 5th call?</p> <p>12 A I don't recall.</p> <p>13 Q Do you recall anything else that Ms. Starrett or</p> <p>14 Ms. Horner said during the August 5th weekly meeting</p> <p>15 we've been talking about?</p> <p>16 A I don't recall.</p> <p>17 Q Do you recall at any time this year</p> <p>18 Mary Starrett or any other county commissioner asking</p> <p>19 for private or religious schools to be exempted from</p> <p>20 following Department of Education guidance?</p> <p>21 A I don't recall.</p> <p>22 Q Do you recall during the August 5th conference</p> <p>23 call we're talking about, Ms. Horner stating anything</p> <p>24 about the loss of state school funds?</p> <p>25 A I don't recall.</p>

Jody Christensen

17 (Pages 65 to 68)

Page 65	Page 67
<p>1 Q As you sit here today, do you have any concern</p> <p>2 about public schools losing funding due to the</p> <p>3 pandemic?</p> <p>4 A I am concerned about schools.</p> <p>5 Q And tell me what that concern is. And I'm</p> <p>6 specifically focused on the funding of public</p> <p>7 schools.</p> <p>8 A I'm concerned about every student having the</p> <p>9 ability to have in-person education in the middle of</p> <p>10 a global pandemic.</p> <p>11 Q Do you have any concerns about religious or</p> <p>12 private schools in Oregon being allowed to have</p> <p>13 in-person education during the pandemic?</p> <p>14 A I'm concerned about every student having access</p> <p>15 to in-person education during the pandemic.</p> <p>16 Q So am I hearing you correct, then, that that's</p> <p>17 something that you want to have happen?</p> <p>18 A Our goal is to have safety protocols in place so</p> <p>19 that every student can have in-person instruction.</p> <p>20 Safety is --</p> <p>21 Q Do you know whether parochial or religious</p> <p>22 schools have offered to reopen safely for in-person</p> <p>23 classes?</p> <p>24 A I'm sorry. I missed the first part of your</p> <p>25 question.</p>	<p>1 Q About how many county commissioner meetings have</p> <p>2 you had during the pandemic?</p> <p>3 A I would average between two to ten meetings per</p> <p>4 week with individual commissioners or in meeting</p> <p>5 settings.</p> <p>6 Q Was the loss of students from public schools</p> <p>7 ever on your agenda for any of those meetings?</p> <p>8 A No.</p> <p>9 Q Did anyone representing any religious or private</p> <p>10 school ever attend any of those meetings?</p> <p>11 A I don't know.</p> <p>12 Q During any of those meetings this year, did any</p> <p>13 Oregon elected official express any concern about the</p> <p>14 loss of students from public schools?</p> <p>15 A I don't recall.</p> <p>16 Q Are minutes kept of those meetings?</p> <p>17 A Some may have included minutes.</p> <p>18 Q Okay. And where would those minutes be kept?</p> <p>19 A They would be kept with the host of the meeting.</p> <p>20 Q Who would the host be?</p> <p>21 A It could be a variety of entities. It could be</p> <p>22 a commission meeting. It could be a meeting</p> <p>23 facilitated by a commissioner. It could be with</p> <p>24 any -- anyone who was hosting the meeting.</p> <p>25 Q Is your office sometimes the host of the</p>
Page 66	Page 68
<p>1 Q Do you know whether parochial or religious</p> <p>2 schools in Oregon have offered to reopen safely for</p> <p>3 in-person classes?</p> <p>4 A I don't know.</p> <p>5 Q In paragraph three of Ms. Horner's declaration</p> <p>6 concerning the August 5th conference call, she says,</p> <p>7 quote, [as read:] I was just trying to educate the</p> <p>8 officials on the conference call as to what these</p> <p>9 decisions look like on a broader scale, end quote.</p> <p>10 Do you recall any such discussion?</p> <p>11 A I don't recall.</p> <p>12 Q Are you aware of any actions by anyone in the</p> <p>13 Oregon government this year that were intended to</p> <p>14 reduce the amount of students leaving public schools</p> <p>15 for other schools?</p> <p>16 A I don't know.</p> <p>17 Q Are you aware of anyone in Oregon's government</p> <p>18 this year making any statement or taking any action</p> <p>19 against the interest of private or religious schools?</p> <p>20 A I don't know of any.</p> <p>21 Q From what you've done in your job this year,</p> <p>22 isn't it true that one of the purposes of Governor</p> <p>23 Brown's executive orders during the pandemic is to</p> <p>24 protect public schools from losing a lot of students?</p> <p>25 A I don't know.</p>	<p>1 meeting?</p> <p>2 A Yes.</p> <p>3 Q Who else hosts those meetings?</p> <p>4 A Meetings that I would be invited to with</p> <p>5 commissioners are often hosted by the commissioners.</p> <p>6 Q Okay. Can you name specific commissioners who</p> <p>7 held meetings this year?</p> <p>8 A Commissioner Casey Kulla, Commissioner</p> <p>9 Mary Starrett, Commissioner Craig Pope, Commissioner</p> <p>10 Lyle Mordhorst, Commissioner Kevin Cameron,</p> <p>11 Commissioner Colm Willis.</p> <p>12 Q Have you ever had any kind of discussion,</p> <p>13 written or verbal, with Governor Brown about</p> <p>14 reopening or not reopening religious or private</p> <p>15 schools during the pandemic?</p> <p>16 A No.</p> <p>17 Q Do you have any medical education or training?</p> <p>18 A No.</p> <p>19 Q Do you have any experience dealing with an</p> <p>20 outbreak of a contagious disease?</p> <p>21 A No.</p> <p>22 Q Do you know if Governor Brown does?</p> <p>23 A I don't know.</p> <p>24 Q Have you heard anything about a related lawsuit</p> <p>25 filed recently by Hermiston Christian school?</p>

Jody Christensen

18 (Pages 69 to 72)

Page 69	Page 71
<p>1 A I don't recall.</p> <p>2 Q I'll represent to you that the complaint in that</p> <p>3 lawsuit contends that a public school was allowed to</p> <p>4 open in a county that did not meet the standards.</p> <p>5 And I'm wondering, do you know what public</p> <p>6 school that is?</p> <p>7 A I do not know.</p> <p>8 Q Do you know if during the pandemic in Oregon</p> <p>9 there has ever been a definition provided for what is</p> <p>10 an essential business?</p> <p>11 A I don't recall.</p> <p>12 Q Do you know whether or not public schools under</p> <p>13 Oregon law currently are considered to offer</p> <p>14 essential functions?</p> <p>15 A I don't know.</p> <p>16 Q Do you know whether the standards reopening</p> <p>17 public schools are the same as for private and</p> <p>18 religious schools?</p> <p>19 A I don't know.</p> <p>20 Q In all these meetings you've attended this year,</p> <p>21 was there ever a discussion that the State would</p> <p>22 improve -- include private schools and the funding</p> <p>23 being made available to public schools?</p> <p>24 A I don't recall.</p> <p>25 Q Do you know if your position in Oregon's</p>	<p>1 A I don't recall.</p> <p>2 Q Do you recall being made aware this year of a</p> <p>3 Wall Street Journal editorial board opinion, op-ed,</p> <p>4 that's entitled "Oregon's Coronavirus Education</p> <p>5 Lockdown"?</p> <p>6 A I -- no.</p> <p>7 Q Do you recall any such article ever being the</p> <p>8 subject of discussion within the governor and her</p> <p>9 staff?</p> <p>10 A I don't recall.</p> <p>11 Q Do you recall a Breitbart.com article this year</p> <p>12 that addresses specifically the State of Oregon and</p> <p>13 Coronavirus Lockdown? Have you ever seen that?</p> <p>14 A No.</p> <p>15 Q Do you recall that ever being a topic of</p> <p>16 discussion at work this year?</p> <p>17 A I do not recall.</p> <p>18 Q As you sit here today, do you know whether or</p> <p>19 not Governor Brown is concerned about a large amount</p> <p>20 of students leaving public schools to other schools?</p> <p>21 A No.</p> <p>22 Q Have you ever been made aware of a tweet this</p> <p>23 year from United States education sector -- Secretary</p> <p>24 DeVos relating to the Oregon and its schools?</p> <p>25 A I'm sorry. The first part of the question,</p>
Page 70	Page 72
<p>1 government is considered essential during the</p> <p>2 pandemic?</p> <p>3 A I don't know.</p> <p>4 Q From your observations and work in the job these</p> <p>5 last several years, who do you perceive to be the</p> <p>6 most influential person concerning education in</p> <p>7 Oregon outside the government?</p> <p>8 A I don't know.</p> <p>9 Q Have you been a member of any team, formal or</p> <p>10 informal, that's been working together this year</p> <p>11 relating to the pandemic and reopening schools?</p> <p>12 A Could you repeat the question?</p> <p>13 Q Sure.</p> <p>14 MR. KAEMPF: If the court reporter can read</p> <p>15 it back, please.</p> <p>16 (Record read.)</p> <p>17 A No.</p> <p>18 Q Are you aware of whether or not any such team</p> <p>19 exists?</p> <p>20 A I don't know.</p> <p>21 Q Who is Nik Blosser?</p> <p>22 A Nik Blosser is the chief officer for the</p> <p>23 governor.</p> <p>24 Q Have you ever received any text message or email</p> <p>25 from him this year?</p>	<p>1 could you repeat that?</p> <p>2 MR. KAEMPF: Sure.</p> <p>3 Did the court reporter -- did you hear me?</p> <p>4 THE REPORTER: Yes, I did.</p> <p>5 MR. KAEMPF: If you could read it back,</p> <p>6 please.</p> <p>7 (Record read.)</p> <p>8 A No.</p> <p>9 Q Do you recall that ever being the subject of</p> <p>10 discussion at work?</p> <p>11 A I don't recall.</p> <p>12 Q From what you know in your experience in your</p> <p>13 job, if many students leave a public school, do they</p> <p>14 suffer a significant reduction in funding?</p> <p>15 A I don't know.</p> <p>16 Q Have you ever discussed with anyone this year</p> <p>17 the concept of students leaving the public schools to</p> <p>18 go to private or religious schools?</p> <p>19 A No, I don't recall.</p> <p>20 Q Do you know if a financial analysis of that</p> <p>21 issue was ever done by the Oregon government this</p> <p>22 year?</p> <p>23 A I don't know.</p> <p>24 Q Are you aware of whether or not Governor Brown</p> <p>25 has decided that transfers to religious or private</p>

Jody Christensen

19 (Pages 73 to 76)

Page 73	Page 75
<p>1 schools would be stopped or capped?</p> <p>2 A I don't know.</p> <p>3 Q Are you aware of any lobbying by public school</p> <p>4 districts related to transfers out of their schools</p> <p>5 during the pandemic?</p> <p>6 A I don't know.</p> <p>7 Q Were you aware of any lobbying relating to</p> <p>8 transfers out of public schools during the pandemic</p> <p>9 by anyone representing a teachers union?</p> <p>10 A I don't know.</p> <p>11 Q Do you know the amount of money that a public</p> <p>12 school district loses when a single student</p> <p>13 unenrolls?</p> <p>14 A I don't know.</p> <p>15 Q All right. Don't tell me about any</p> <p>16 communications with Mr. Abrams or any other lawyer</p> <p>17 representing you in this matter, but I want to make</p> <p>18 sure that I got all of this.</p> <p>19 What efforts did you take to produce</p> <p>20 documents we requested?</p> <p>21 MR. ABRAMS: I'm going to object on the</p> <p>22 grounds that any such efforts were at the direction</p> <p>23 of counsel and, therefore, attorney work product and</p> <p>24 direct her not to answer.</p> <p>25 Q BY MR. KAEMPF: Ms. Christensen, do you know why</p>	<p>1 A I don't know.</p> <p>2 Q How about the pandemic and the guidance relating</p> <p>3 to reopening schools?</p> <p>4 (Reporter requests clarification.)</p> <p>5 MR. ABRAMS: I think he said "reopening."</p> <p>6 A Could you repeat the last question?</p> <p>7 Q BY MR. KAEMPF: Sure.</p> <p>8 Are you aware of the track changes function</p> <p>9 being used in relation to the drafting of any</p> <p>10 guidance this year relating to reopening or closing</p> <p>11 schools?</p> <p>12 A I never saw track changes on any guidance</p> <p>13 documents.</p> <p>14 Q Did you redact all or part of any of the</p> <p>15 documents you helped to produce?</p> <p>16 A I did not produce guidance documents.</p> <p>17 Q Any document at all.</p> <p>18 MR. ABRAMS: And, again, anything she did</p> <p>19 for production is post the filing of complaint, is</p> <p>20 attorney work product, and I'm directing her not to</p> <p>21 answer.</p> <p>22 Q BY MR. KAEMPF: Did you ever direct any part of</p> <p>23 this text message from Commissioner Kulla that you</p> <p>24 took a picture of, did you ever redact any part of</p> <p>25 that?</p>
Page 74	Page 76
<p>1 this text message that you took a photo of that</p> <p>2 Mr. Kulla sent to you, that you've testified is</p> <p>3 related to the August 5th county commissioner</p> <p>4 meeting, do you know why that was not produced to the</p> <p>5 Plaintiff?</p> <p>6 MR. ABRAMS: Objection. Assumes facts not</p> <p>7 in evidence. Counsel is testifying.</p> <p>8 You can answer.</p> <p>9 A I don't know.</p> <p>10 Q BY MR. KAEMPF: In your work in the governor's</p> <p>11 office, when documents are being drafted, is it</p> <p>12 typical that the document will have a track changes</p> <p>13 function activated so you can collectively track</p> <p>14 changes?</p> <p>15 MR. ABRAMS: Objection. Vague as to</p> <p>16 "typical."</p> <p>17 Q BY MR. KAEMPF: Go ahead.</p> <p>18 A Could you repeat the question?</p> <p>19 Q In your job, is the track changes function often</p> <p>20 used when documents are in the process of being</p> <p>21 drafted?</p> <p>22 A On occasion.</p> <p>23 Q Do you know if that ever was the case with</p> <p>24 regard to documents relating to the pandemic in</p> <p>25 schools?</p>	<p>1 MR. ABRAMS: Same direction. Do not</p> <p>2 answer.</p> <p>3 And I would also point out, Counsel, that</p> <p>4 you've alleged it wasn't produced. So it's</p> <p>5 inconsistent to both say it's not produced and it's</p> <p>6 been redacted.</p> <p>7 MR. KAEMPF: I just meant -- I was trying</p> <p>8 to get at perhaps -- and I don't know this, that's</p> <p>9 why I'm asking the question -- that perhaps it was</p> <p>10 redacted before it was emailed to the lawyer, as she</p> <p>11 testified earlier about the email.</p> <p>12 MR. ABRAMS: Understood. But my direction</p> <p>13 stands. Thank you.</p> <p>14 Q BY MR. KAEMPF: In the photograph of the text</p> <p>15 message from Commissioner Kulla you testified about</p> <p>16 earlier today, that you emailed to a lawyer, did you</p> <p>17 email the entire text message, or was that photograph</p> <p>18 only part of the text message?</p> <p>19 A I emailed the entire text message.</p> <p>20 Q Okay. Concerning large school districts in</p> <p>21 Oregon, are there particular school or union leaders</p> <p>22 that you've had more communications with?</p> <p>23 A I don't recall.</p> <p>24 Q Concerning small school districts in Oregon</p> <p>25 during the pandemic, are there particular school or</p>



Jody Christensen

20 (Pages 77 to 80)

Page 77	Page 79
<p>1 union leaders that you've had more communications</p> <p>2 with?</p> <p>3 A I don't recall.</p> <p>4 Q Can you name a representative of any private or</p> <p>5 religious school in Oregon that you've communicated</p> <p>6 with this year during the pandemic?</p> <p>7 A I don't recall.</p> <p>8 Q From your work, who would you consider to be the</p> <p>9 most influential union representative in Oregon's</p> <p>10 public schools?</p> <p>11 A I don't know.</p> <p>12 Q Have you ever had any public school</p> <p>13 representatives ever pressure you or, to your</p> <p>14 knowledge, anyone else in the Oregon government, to</p> <p>15 keep religious or private schools closed?</p> <p>16 A I don't know.</p> <p>17 Q Does your work cell phone have a contact feature</p> <p>18 where you have people's phone numbers and email</p> <p>19 addresses, et cetera?</p> <p>20 A Yes.</p> <p>21 Q And can you estimate about how many contacts you</p> <p>22 have in that phone?</p> <p>23 A A guess would be 400.</p> <p>24 Q Are any of those people any kind of school</p> <p>25 representative or leader?</p>	<p>1 administrative rule-making process?</p> <p>2 A I don't know.</p> <p>3 Q Do you know if Governor Brown, this year, has</p> <p>4 signed into law any legislation related to the</p> <p>5 pandemic?</p> <p>6 A I don't know.</p> <p>7 Q Have you or anyone else to your knowledge on the</p> <p>8 governor's staff ever met with any representatives of</p> <p>9 the big-box stores this year concerning the pandemic;</p> <p>10 you know, like Walmart or Home Depot or Target?</p> <p>11 A I don't know.</p> <p>12 Q Do you know currently if under Governor Brown's</p> <p>13 executive orders those kinds of big-box stores are</p> <p>14 allowed to remain open?</p> <p>15 A Yes.</p> <p>16 Q Okay. Are they?</p> <p>17 A Yes.</p> <p>18 Q Which ones?</p> <p>19 A It would depend on the county. Not all counties</p> <p>20 are in Phase 2, and I would have to reference the</p> <p>21 guidance.</p> <p>22 Q But in those counties that are in Phase 2, what</p> <p>23 kinds of big-box stores, I'm saying for shorthand,</p> <p>24 have been allowed to reopen or remain open?</p> <p>25 A Retail and grocery stores under Phase 2 guidance</p>
Page 78	Page 80
<p>1 A I don't know.</p> <p>2 Q Have you ever used a personal email address for</p> <p>3 work during the pandemic?</p> <p>4 A No.</p> <p>5 Q Have you ever purposely used a private computer</p> <p>6 or a private phone to avoid public disclosure?</p> <p>7 A No.</p> <p>8 Q Were you involved in any way with drafting or</p> <p>9 revising the July version of the school reopening</p> <p>10 guidance?</p> <p>11 A No.</p> <p>12 Q Do you know who was involved in that effort?</p> <p>13 A I don't know.</p> <p>14 Q I'll represent to you that the documents</p> <p>15 reference -- they refer to partners in the guidance</p> <p>16 process and not making any major changes without</p> <p>17 them.</p> <p>18 Do you know who those partners are in that</p> <p>19 context?</p> <p>20 A I do not.</p> <p>21 Q Are you familiar at all with Oregon's</p> <p>22 administrative rule-making process?</p> <p>23 A I don't know.</p> <p>24 Q Do you know if any of the governor's pandemic</p> <p>25 executive orders have gone through the formal</p>	<p>1 can -- are open.</p> <p>2 Q And do you know, are those deemed essential</p> <p>3 within the meaning of the pandemic executive orders?</p> <p>4 A I don't know.</p> <p>5 Q Do you know, are private or religious schools</p> <p>6 deemed essential during the pandemic?</p> <p>7 A I don't know.</p> <p>8 Q Have you ever met with any representatives of</p> <p>9 the restaurant industry about their reopening during</p> <p>10 the pandemic?</p> <p>11 A I don't recall.</p> <p>12 Q Have you ever communicated with any</p> <p>13 representative of the restaurant industry about</p> <p>14 reopening during the pandemic?</p> <p>15 A I don't recall.</p> <p>16 Q Have you met or communicated with any</p> <p>17 representatives of the health club industry about</p> <p>18 health clubs remaining open during the pandemic?</p> <p>19 A I recall emails related to fitness businesses.</p> <p>20 Q Emails with whom?</p> <p>21 A Fitness owners, fitness business owners.</p> <p>22 Q Can you recall the names of any of those fitness</p> <p>23 business owners?</p> <p>24 A I do not recall.</p> <p>25 Q From your understanding, are fitness businesses</p>

Jody Christensen

21 (Pages 81 to 84)

Page 81	Page 83
<p>1 or gyms allowed to remain open during the pandemic?</p> <p>2 A Under Phase 2 guidance, yes.</p> <p>3 Q Why?</p> <p>4 A I do not know.</p> <p>5 Q Who makes that decision, to your knowledge?</p> <p>6 A The Oregon Health Authority and the medical</p> <p>7 advisory panel.</p> <p>8 Q Do you know if the current gathering limits</p> <p>9 apply to normal business operations?</p> <p>10 A I don't understand the question.</p> <p>11 Q Actually, let me ask a different question.</p> <p>12 Do you know if private or religious schools</p> <p>13 are deemed essential during the pandemic?</p> <p>14 A I don't know.</p> <p>15 Q During the pandemic, have you ever met with any</p> <p>16 representative of any Oregon college or university</p> <p>17 about reopening?</p> <p>18 A No.</p> <p>19 Q Do you know if there's a process for exemptions</p> <p>20 or waivers allowing a specific school to reopen</p> <p>21 during the pandemic?</p> <p>22 A I don't know.</p> <p>23 Q Do you know whether any public school has been</p> <p>24 granted any such waiver or exemption in Oregon during</p> <p>25 the pandemic?</p>	<p>1 A I don't know.</p> <p>2 Q Do you know if an individual or a school</p> <p>3 violates one of Governor Brown's pandemic executive</p> <p>4 orders, do you know whether they can be subject to</p> <p>5 fines or penalties?</p> <p>6 A I don't know.</p> <p>7 Q Do you know whether they can face possible</p> <p>8 imprisonment?</p> <p>9 A I don't know.</p> <p>10 Q Are you aware of any person or any entity that's</p> <p>11 been fined or otherwise punished this year for</p> <p>12 violating a pandemic executive order?</p> <p>13 A Yes.</p> <p>14 Q Have you ever, in your job, researched the</p> <p>15 governor's legal authority to regulate private or</p> <p>16 religious schools?</p> <p>17 A No.</p> <p>18 Q Have you ever heard anyone, in Oregon's</p> <p>19 government, during the pandemic, raise any kind of</p> <p>20 concern about the economic harm to private or</p> <p>21 religious schools of the governor's executive orders?</p> <p>22 A I don't know.</p> <p>23 Q In the course of your job, or in your personal</p> <p>24 life, have you ever studied the history of Oregon</p> <p>25 relating to prior pandemics, like the Spanish Flu a</p>
Page 82	Page 84
<p>1 A I don't know.</p> <p>2 Q Do you know if any private or religious school</p> <p>3 in Oregon has been given any such waiver or</p> <p>4 exemption?</p> <p>5 A I don't know.</p> <p>6 Q Do you know whether or not Governor Brown has</p> <p>7 allowed the continuing protest to take place in</p> <p>8 downtown Portland relating to the unfortunate death</p> <p>9 of George Floyd?</p> <p>10 A Could you repeat the question?</p> <p>11 Q Sure.</p> <p>12 MR. KAEMPF: If the court reporter can read</p> <p>13 it back, please.</p> <p>14 (Record read.)</p> <p>15 A I don't know.</p> <p>16 Q Do you know whether Governor Brown has allowed</p> <p>17 protests to go on in downtown Portland related to the</p> <p>18 Black Lives Matter movement?</p> <p>19 A I don't know.</p> <p>20 Q Do you know if Governor Brown has attended any</p> <p>21 of the George Floyd or Black Lives Matter protests</p> <p>22 this year?</p> <p>23 A I don't know.</p> <p>24 Q Do you know if during those protests any kind of</p> <p>25 social distancing or face coverings are required?</p>	<p>1 century ago?</p> <p>2 A No.</p> <p>3 Q Are you aware of whether or not before the</p> <p>4 COVID-19 pandemic an Oregon governor has ever taken</p> <p>5 actions like Governor Brown has this year?</p> <p>6 A I don't know.</p> <p>7 Q Isn't it true that her actions this year in</p> <p>8 closing schools and other entities is unprecedented?</p> <p>9 MR. ABRAMS: Objection. Vague.</p> <p>10 You can answer.</p> <p>11 A Could you repeat the question?</p> <p>12 MR. KAEMPF: Sure. If the court reporter</p> <p>13 could read it back, please.</p> <p>14 (Record read.)</p> <p>15 MR. ABRAMS: Same objection.</p> <p>16 A I don't know.</p> <p>17 Q BY MR. KAEMPF: Now, you've -- I heard you,</p> <p>18 you've put -- is it three kids or more that you've</p> <p>19 put through -- I guess through high school at least;</p> <p>20 is that right?</p> <p>21 A I have three children.</p> <p>22 Q Okay. All right.</p> <p>23 And did they all graduate high school?</p> <p>24 A Yes.</p> <p>25 Q Okay. From your experience, going through the</p>

Jody Christensen

22 (Pages 85 to 88)

Page 85	Page 87
<p>1 schools that you've told us about and then putting</p> <p>2 your kids through school, who do you think is in a</p> <p>3 better position to decide whether religious schools</p> <p>4 can be safely run during the pandemic, the parents</p> <p>5 and the school administrators or the governor?</p> <p>6 A I think the best position is to rely on the</p> <p>7 Oregon Health Authority and the medical advisory</p> <p>8 panel informed by the CDC.</p> <p>9 Q Okay. But my question is, who do you think is</p> <p>10 in a better position to make that decision, the</p> <p>11 parents of the kids who attend religious schools and</p> <p>12 the people who run them or Governor Kate Brown?</p> <p>13 MR. ABRAMS: Objection. Asked and</p> <p>14 answered. Argumentative.</p> <p>15 You can answer.</p> <p>16 A I don't know.</p> <p>17 Q BY MR. KAEMPF: Do you know how long</p> <p>18 Governor Brown's pandemic executive orders</p> <p>19 prohibiting religious schools from reopening in</p> <p>20 person full time are scheduled to last?</p> <p>21 MR. ABRAMS: Objection. Mischaracterizes</p> <p>22 the facts on the record.</p> <p>23 Q BY MR. KAEMPF: Do you know?</p> <p>24 A The current executive emergency order goes until</p> <p>25 January 2nd, 2021.</p>	<p>1 Q Do you know who that is?</p> <p>2 A I don't know.</p> <p>3 Q Do you recall Dr. Dannenhoffer raising a concern</p> <p>4 about the proposed rules favoring private schools too</p> <p>5 much?</p> <p>6 A I don't know.</p> <p>7 Q Have you ever seen anyone in Oregon government</p> <p>8 use the phrase "frontier counties" in reference to</p> <p>9 the more rural counties in Oregon?</p> <p>10 A Yes.</p> <p>11 Q Who used that phrase?</p> <p>12 A That phrase is often used for rural Oregon.</p> <p>13 Q By whom?</p> <p>14 A Professionals that I've worked -- that I work</p> <p>15 with.</p> <p>16 Q Who are those professionals that you work with</p> <p>17 that use the phrase "frontier counties"?</p> <p>18 A My colleagues.</p> <p>19 Q Okay. And what are their names?</p> <p>20 A Courtney Warner Crowell is a coordinator, a</p> <p>21 regional solutions coordinator, Nate Stice, and</p> <p>22 Annette Liebe. All three are regional solutions</p> <p>23 coordinators who have frontier counties.</p> <p>24 Q And that's the term they use?</p> <p>25 A That is a term that is often used, yes.</p>
Page 86	Page 88
<p>1 Q When you say "the current emergency executive</p> <p>2 order," which one are you referring to?</p> <p>3 A The one that was announced this week.</p> <p>4 Q Okay. And do you know the number that's</p> <p>5 associated with it?</p> <p>6 A I do not.</p> <p>7 Q And when you say "the one that was announced</p> <p>8 this week," what does it address specifically?</p> <p>9 A The state of emergency related to COVID.</p> <p>10 Q Does it address schools, even in part?</p> <p>11 A I don't know.</p> <p>12 Q Okay. Have you been personally involved in any</p> <p>13 way this year in the decision whether to allow</p> <p>14 religious or private schools to reopen for in-person</p> <p>15 classes?</p> <p>16 A No.</p> <p>17 Q Who was, to your knowledge?</p> <p>18 A Oregon Health Authority, Department of</p> <p>19 Education, the medical advisory panel.</p> <p>20 Q Okay. Anyone else?</p> <p>21 A I don't know.</p> <p>22 Q Okay. This year, relating to the pandemic, have</p> <p>23 you had occasion to communicate with, in any way, or</p> <p>24 work with Dr. Bob Dannenhoffer?</p> <p>25 A I don't recall.</p>	<p>1 Q Okay. During the pandemic, have you had any</p> <p>2 communications with any representative of Oregon's</p> <p>3 colleges or universities?</p> <p>4 A I do not recall.</p> <p>5 Q Do you know if there is any way for an</p> <p>6 individual or an entity to challenge or appeal a</p> <p>7 pandemic reopening decision?</p> <p>8 A I don't know.</p> <p>9 Q Have you ever seen anyone in Oregon's government</p> <p>10 this year exhibit a negative attitude or a negative</p> <p>11 opinion toward religious or private schools?</p> <p>12 A No.</p> <p>13 Q Have you been working mostly remotely from home</p> <p>14 or physically at work during the pandemic?</p> <p>15 A In mid-March when we were -- when the</p> <p>16 coordinators were deployed for coronavirus response,</p> <p>17 we were then moved to telecommuting.</p> <p>18 Q Okay. So have you been telecommuting,</p> <p>19 teleworking since March? Is that fair to say?</p> <p>20 A That is accurate.</p> <p>21 Q And has some kind of software kept an electronic</p> <p>22 log of long-distance calls that you've made during</p> <p>23 the pandemic?</p> <p>24 A I don't know. I have a cell phone.</p> <p>25 Q Do you know if there's any kind of log kept for</p>

Jody Christensen

23 (Pages 89 to 92)

Page 89	Page 91
<p>1 calls from your, you know, work landline?</p> <p>2 A I do not have a work landline.</p> <p>3 Q So what phone do you use when you're in your</p> <p>4 job?</p> <p>5 A I use my cell phone.</p> <p>6 Q Okay. And that's the one you told me about</p> <p>7 earlier?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 I'll represent to you that on July 26th of</p> <p>11 this year, Colt Gill wrote a text message where he</p> <p>12 said, quote, [as read:] Wracking my brain. Do you</p> <p>13 have any suggestions to meet Bob's concerns about</p> <p>14 private schools? I'm not sure his solution lands it.</p> <p>15 I could use a thought partner on that one. End</p> <p>16 quote.</p> <p>17 And it's document 039189.</p> <p>18 So have you ever seen that text message</p> <p>19 before from Colt Gill about wracking his brain and</p> <p>20 needing a thought partner?</p> <p>21 A No.</p> <p>22 Q All right. When you have these Zoom meetings</p> <p>23 with -- you've told me about several different types</p> <p>24 but the one included the county commissioners -- do</p> <p>25 you ever use the chat function of Zoom to</p>	<p>1 Q The weekly county commissioner meetings that</p> <p>2 have occurred during the pandemic.</p> <p>3 A Could you be more specific?</p> <p>4 Q Yeah.</p> <p>5 Have you ever prepared any kind of written</p> <p>6 summary or minutes, by hand or electronically, of any</p> <p>7 weekly county commissioner meeting you attended this</p> <p>8 year?</p> <p>9 A I do not prepare minutes or notes from the</p> <p>10 weekly chair meetings that we have with county</p> <p>11 commissioners. I do prepare summary notes from other</p> <p>12 meetings that (audio distortion).</p> <p>13 Q Like what? What are those meetings called?</p> <p>14 A Coronavirus Economic Recovery team is a</p> <p>15 weekly -- was a weekly meeting and now is a biweekly</p> <p>16 meeting. Those are the stakeholders that gather for</p> <p>17 30 to 45 minutes to discuss coronavirus response.</p> <p>18 I also host a weekly meeting with Marion</p> <p>19 County Commissioner Kevin Cameron and the Marion</p> <p>20 County Public Health and the Latinx leaders, and I do</p> <p>21 not have notes for that.</p> <p>22 I also convene a Wildfire Recovery team</p> <p>23 meeting, which includes county commissioners, and I</p> <p>24 create a memo.</p> <p>25 Q Have you created any memo or any kind of written</p>
Page 90	Page 92
<p>1 communicate?</p> <p>2 A Yes.</p> <p>3 Q Okay. And to your understanding, would those</p> <p>4 chat messages sent and received during Zoom meetings</p> <p>5 still exist on your computer?</p> <p>6 A I don't save chat.</p> <p>7 Q Do you use -- during the pandemic, have you been</p> <p>8 using a laptop or a PC?</p> <p>9 A A laptop.</p> <p>10 Q Okay. And was that provided to you by the</p> <p>11 government of Oregon?</p> <p>12 A Provided by the governor's office, yes.</p> <p>13 Q Sure. And what is the make and model?</p> <p>14 A It is a (audio distortion).</p> <p>15 Q And I'm sorry, all that cut out. So if you</p> <p>16 could say that again, please.</p> <p>17 A It's an HP. I do not know the model number.</p> <p>18 Q How long have you had it?</p> <p>19 A Since I started this position in January of</p> <p>20 2019.</p> <p>21 Q After these weekly meetings with county</p> <p>22 commissioners you've talked about, have you ever</p> <p>23 personally, whether in handwriting or electronically,</p> <p>24 prepared minutes or a summary of those meetings?</p> <p>25 A Which meetings are you referring to?</p>	<p>1 document relating to what occurred during the August</p> <p>2 5th county commissioner meeting when Ms. Horner made</p> <p>3 this mass exodus statement?</p> <p>4 A No, no memo.</p> <p>5 Q Any kind of writing, even if it's not a formal</p> <p>6 memo? Like, did you ever email anyone about that</p> <p>7 meeting or any kind of summary?</p> <p>8 A I don't recall.</p> <p>9 Q Are you aware of anyone else who may have</p> <p>10 prepared minutes or any kind of written summary of</p> <p>11 that August 5th meeting we've been talking about</p> <p>12 today?</p> <p>13 A I don't know.</p> <p>14 Q I want to ask you about some people that you may</p> <p>15 have communicated with during the pandemic,</p> <p>16 Ms. Christensen.</p> <p>17 And we're getting fairly close to being</p> <p>18 done, and if you want to take a break, let us know,</p> <p>19 or do you want to keep going?</p> <p>20 A Let's go ahead and keep going.</p> <p>21 Q Okay. Great.</p> <p>22 During the pandemic, have you ever</p> <p>23 communicated with Rylee, R-Y-L-E-E, Ahnen, A-H-N-E-N?</p> <p>24 A I don't recall.</p> <p>25 Q Have you ever communicated with Morgan Allen?</p>

Jody Christensen

24 (Pages 93 to 96)

Page 93	Page 95
<p>1 A Could you repeat the first name?</p> <p>2 Q Morgan, M-O-R-G-A-N, Allen.</p> <p>3 A I don't recall.</p> <p>4 Q During the pandemic, have you communicated with</p> <p>5 Edie Alstop (phonetic)?</p> <p>6 A I don't recall.</p> <p>7 Q Have you communicated, during the pandemic, with</p> <p>8 Teresa Alonso Leon?</p> <p>9 A Yes.</p> <p>10 Q And who is that person?</p> <p>11 A Representative Alonso Leon is the co-convenor of</p> <p>12 the Wildfire Economic Recovery team for the</p> <p>13 Mid-Valley.</p> <p>14 Q Have you ever communicated with Representative</p> <p>15 Leon about any reopening issues related to the</p> <p>16 pandemic?</p> <p>17 A I don't recall.</p> <p>18 Q Did you ever communicate with Fawn Barrie of the</p> <p>19 Oregon Health &amp; Fitness Alliance?</p> <p>20 A I don't recall.</p> <p>21 Q Did you ever communicate with Ben Barcenas,</p> <p>22 B-A-R-C-E-N-A-S, of the Northwest Religious Liberty</p> <p>23 Association?</p> <p>24 A I don't recall.</p> <p>25 Q Can you recall communicating in any way with</p>	<p>1 contacted you about the Delphian School -- you told</p> <p>2 me you don't remember their name -- I want to know,</p> <p>3 do you remember what they wanted to discuss related</p> <p>4 to the Delphian School?</p> <p>5 A Yes. The context --</p> <p>6 Q And what was that?</p> <p>7 A The context was about the Delphian School as</p> <p>8 a -- it's a boarding school.</p> <p>9 Q Any other context?</p> <p>10 A I don't recall.</p> <p>11 Q Okay. Do you recall viewing anything relating</p> <p>12 to the Delphian School in response to that inquiry</p> <p>13 from that Yamhill County commissioner?</p> <p>14 A I forwarded the email to Leah.</p> <p>15 Q Leah Horner?</p> <p>16 A Yes.</p> <p>17 Q And do you know if Leah Horner did anything in</p> <p>18 response to you forwarding that email to her?</p> <p>19 A I don't know.</p> <p>20 Q As part of your job duties, do you feel like</p> <p>21 it's your job to stick up for religious and private</p> <p>22 schools in Yamhill County?</p> <p>23 A I don't know.</p> <p>24 Q Can you think of any way where you've advocated</p> <p>25 something for a private or religious school during</p>
Page 94	Page 96
<p>1 anyone representing a religious or private school</p> <p>2 during the pandemic?</p> <p>3 A I don't recall.</p> <p>4 Q Okay. Can you think of anyone representing a</p> <p>5 religious or a private school in Yamhill County that</p> <p>6 has reached out to you or you've reached out to</p> <p>7 during the pandemic about their concerns?</p> <p>8 A I recall an email from a Yamhill County</p> <p>9 commissioner regarding the Delphian School.</p> <p>10 Q What is the name of that Yamhill County</p> <p>11 commissioner?</p> <p>12 A I don't recall.</p> <p>13 Q But you know that -- specifically that it is a</p> <p>14 Yamhill County commissioner.</p> <p>15 A Yes. The Delphian School is in Yamhill County.</p> <p>16 Q What city?</p> <p>17 A I don't believe it's in a city.</p> <p>18 Q Okay. Where is it in Yamhill County?</p> <p>19 A It's outside of Sheridan.</p> <p>20 Q Have you ever communicated with any</p> <p>21 representative of the Delphian School during the</p> <p>22 pandemic?</p> <p>23 (Reporter requests clarification.)</p> <p>24 A I don't recall.</p> <p>25 Q Okay. And when this Yamhill County commissioner</p>	<p>1 the pandemic?</p> <p>2 A It's not my job.</p> <p>3 Q So have you done that? Yes or no.</p> <p>4 A No.</p> <p>5 Q During the pandemic, have you communicated with</p> <p>6 Margaret -- State Representative Margaret Doherty of</p> <p>7 the House Interim Committee on Education?</p> <p>8 A No.</p> <p>9 Q How about Representative Cheri, C-H-E-R-I, Helt,</p> <p>10 H-E-L-T?</p> <p>11 A I don't recall.</p> <p>12 Q Do you recall communicating with any other</p> <p>13 Oregon state house member during the pandemic?</p> <p>14 A Yes.</p> <p>15 Q Who?</p> <p>16 A Representative Ron Noble, Representative Evans,</p> <p>17 Senator Boquist, Senator Boles, Representative</p> <p>18 Greenmore (sic), Senator Girod, Senator Courtney,</p> <p>19 Senator Thatcher.</p> <p>20 I don't recall others.</p> <p>21 Q Okay. And if you can, please go person by</p> <p>22 person and tell me what you discussed with those</p> <p>23 people during the pandemic.</p> <p>24 A I don't recall specifics.</p> <p>25 Q Do you recall anything at all that you discussed</p>

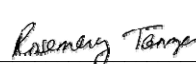



**Jody Christensen****25 (Pages 97 to 100)**

<b>Page 97</b>	<b>Page 99</b>
<p>1 with any of those elected officials?</p> <p>2 A With Representative Greenmore, wildfire</p> <p>3 response.</p> <p>4 With Representative Evans, public charge,</p> <p>5 the public charge rule.</p> <p>6 With Representative Noble, wildfire</p> <p>7 response and corona response.</p> <p>8 Representative -- or Senator Boquist,</p> <p>9 corona response.</p> <p>10 Senator Boles, corona response.</p> <p>11 Representative Alonso Leon, corona response</p> <p>12 and wildfire.</p> <p>13 Q During the pandemic, have you had any</p> <p>14 communications with Senator Michael Dembrow?</p> <p>15 A I don't recall.</p> <p>16 Q How about with Senator Sara Gelser,</p> <p>17 G-E-L-S-E-R-M (sic)?</p> <p>18 A I don't recall.</p> <p>19 Q How about Senator Lisa Gezelter,</p> <p>20 G-E-Z-E-L-T-E-R?</p> <p>21 A I don't recall.</p> <p>22 Q How about Senator Mark Hass?</p> <p>23 A I don't recall.</p> <p>24 Q How about Senator Dallas Heard?</p> <p>25 A I don't recall.</p>	<p>1 A I don't recall.</p> <p>2 Q During the pandemic, have you had any</p> <p>3 communications with Dave Hunt of the American</p> <p>4 Federation of Teachers of Oregon?</p> <p>5 A I don't recall.</p> <p>6 Q How about with -- have you had any</p> <p>7 communications during the pandemic with Lisa Wong of</p> <p>8 the American Federation of Teachers of Oregon?</p> <p>9 A I don't recall.</p> <p>10 Q During the pandemic, have you had any</p> <p>11 communications with Robert Rose of the Oregon</p> <p>12 Association of Education Service District?</p> <p>13 A I don't recall.</p> <p>14 Q During the pandemic, have you had any</p> <p>15 communications with Gwen Sullivan of the Portland</p> <p>16 Association of Teachers?</p> <p>17 A I don't recall.</p> <p>18 Q Have you had any communications, during the</p> <p>19 pandemic, with Stephen Buckley of Oregon's PERS</p> <p>20 Board?</p> <p>21 A I don't recall.</p> <p>22 Q Have you had any communications with Steve</p> <p>23 Demarest, D-E-M-A-R-E-S-T, during the pandemic, of</p> <p>24 the Oregon PERS Board?</p> <p>25 A I don't recall.</p>
<b>Page 98</b>	<b>Page 100</b>
<p>1 Q Are you aware of anyone in Oregon government</p> <p>2 named Jardon, J-A-R-D-O-N, Jaramillo,</p> <p>3 J-A-R-A-M-I-L-L-O?</p> <p>4 A I don't know.</p> <p>5 Q Can you think of any other member of the Oregon</p> <p>6 House or Senate that you've communicated with during</p> <p>7 the pandemic?</p> <p>8 A I don't recall.</p> <p>9 Q During the pandemic, have you ever communicated</p> <p>10 with Benjamin Bowman of the Coalition of Oregon</p> <p>11 School Administrators?</p> <p>12 A I don't recall.</p> <p>13 Q During the pandemic, have you communicated with</p> <p>14 Parasa, P-A-R-A-S-A, Chanramy C-H-A-N-R-A-M-Y, of the</p> <p>15 Coalition of Oregon School Administrators?</p> <p>16 A I don't recall.</p> <p>17 Q How about Craig Hawkins of the same</p> <p>18 organization?</p> <p>19 A I don't recall.</p> <p>20 Q And have you had any communications during the</p> <p>21 pandemic with Kathy Bruske, B-R-U-S-K-E, of the</p> <p>22 Portland Public Schools?</p> <p>23 A I don't recall.</p> <p>24 Q How about with Angela Dilkes, D-I-L-K-E-S, of</p> <p>25 the Portland Public Schools?</p>	<p>1 Q During the pandemic, have you had any</p> <p>2 communications with Suzanne Cohen of the Portland</p> <p>3 Association of Teachers?</p> <p>4 A I don't recall.</p> <p>5 Q During the pandemic, have you had any</p> <p>6 communications with Laura Conroy of the Multnomah</p> <p>7 Education Service District?</p> <p>8 A I don't recall.</p> <p>9 Q During the pandemic, have you had any</p> <p>10 communications with Nicole Crane of the Association</p> <p>11 of Oregon Counties?</p> <p>12 A Can you repeat that, please.</p> <p>13 Q Yes.</p> <p>14 MR. KAEMPF: If the court reporter can read</p> <p>15 it back, please.</p> <p>16 (Record read.)</p> <p>17 A I don't recall.</p> <p>18 Q And during the pandemic, have you had any</p> <p>19 communications with Amanda Dalton of the Association</p> <p>20 of Oregon Counties?</p> <p>21 A I don't recall.</p> <p>22 Q During the pandemic, have you had any</p> <p>23 communications with Michael Cully of the League of</p> <p>24 Oregon Cities?</p> <p>25 A Yes.</p>

Jody Christensen

26 (Pages 101 to 104)

Page 101	Page 103
<p>1 Q Okay. What kind of communications did you have</p> <p>2 with Michael Cully?</p> <p>3 A With Mike Cully, I have had correspondence with</p> <p>4 him and conversations about coronavirus response.</p> <p>5 Q And, specifically, what did you discuss or write</p> <p>6 about?</p> <p>7 A Can you repeat the last part of that?</p> <p>8 Q Sure.</p> <p>9 Specifically, what did you discuss verbally</p> <p>10 or write about with Michael Cully?</p> <p>11 A I don't recall specifics.</p> <p>12 Q Do you recall anything in general?</p> <p>13 A No.</p> <p>14 Q Did you exchange any emails or text messages</p> <p>15 this year with Michael Cully?</p> <p>16 A Yes.</p> <p>17 Q And can you give me dates, approximate or exact,</p> <p>18 when those written communications occurred?</p> <p>19 A Yes.</p> <p>20 Q When was that?</p> <p>21 A I would have to go back through all of my emails</p> <p>22 and texts.</p> <p>23 Q Okay. But do you believe those would be on your</p> <p>24 computer or a server?</p> <p>25 A Yes.</p>	<p>1 school district representatives that you've</p> <p>2 communicated with about reopening or closing schools</p> <p>3 during the pandemic.</p> <p>4 A I don't recall any.</p> <p>5 Q And so not -- you can't recall even one; is that</p> <p>6 right?</p> <p>7 A Yes.</p> <p>8 Q Can you name any religious or private school</p> <p>9 representative you've communicated with this year</p> <p>10 about their concerns relating to the pandemic?</p> <p>11 A No.</p> <p>12 Q And, Ms. Christensen, that's all that I have,</p> <p>13 and I thank for your time and patience.</p> <p>14 MR. KAEMPF: Okay. Can everybody hear me</p> <p>15 there?</p> <p>16 MR. ABRAMS: Yeah.</p> <p>17 MR. KAEMPF: Okay. Then I think that we</p> <p>18 are done, and thank you, Ms. Christensen.</p> <p>19 MR. ABRAMS: Okay. We can go off the</p> <p>20 record.</p> <p>21 THE VIDEOGRAPHER: Off the record.</p> <p>22</p> <p>23 (DEPOSITION ADJOURNED AT 11:56 A.M.)</p> <p>24</p> <p>25</p>
Page 102	Page 104
<p>1 Q Okay. And can you recall anything at all what</p> <p>2 you discussed with Michael Cully this year?</p> <p>3 A Yes.</p> <p>4 Q Okay. Tell me about that, please.</p> <p>5 A We had a conversation about diversity equity and</p> <p>6 inclusion in local government and training for that.</p> <p>7 Q Anything else?</p> <p>8 A I don't remember any other specifics.</p> <p>9 Q Okay. This year during the pandemic, have you</p> <p>10 had any communications with Mark Gharst, G-H-A-R-S-T,</p> <p>11 of the League of Oregon Cities?</p> <p>12 A I don't recall.</p> <p>13 Q All right. And have you had any communications</p> <p>14 this year with Jenna Jones of the League of Oregon</p> <p>15 Cities?</p> <p>16 A I don't recall.</p> <p>17 Q Have you had any communications during the</p> <p>18 pandemic with James Green of the Oregon School Board</p> <p>19 Association?</p> <p>20 A I don't recall.</p> <p>21 Q Have you had any communications with Chris</p> <p>22 Parta, P-A-R-T-A, of the Oregon School Board</p> <p>23 Association, during the pandemic?</p> <p>24 A I don't recall.</p> <p>25 Q Please provide me with the names of all public</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 I, Rosemary Tanzer, a Registered</p> <p>4 Professional Reporter, and a Certified Shorthand</p> <p>5 Reporter for Oregon and Washington Certified Court</p> <p>6 Reporter, hereby certify that said witness personally</p> <p>7 appeared before me via Zoom at the time and place set</p> <p>8 forth in the caption hereof; that at said time and</p> <p>9 place I reported in stenotype all testimony adduced</p> <p>10 and other oral proceedings had in the foregoing</p> <p>11 matter; that thereafter my notes were transcribed</p> <p>12 through computer-aided transcription, under my</p> <p>13 direction; and that the foregoing pages constitute a</p> <p>14 full, true and accurate record of all such testimony</p> <p>15 adduced and oral proceedings had, and of the whole</p> <p>16 thereof.</p> <p>17 Witness my hand at Portland, Oregon, this</p> <p>18 2nd day of November, 2020.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <div data-bbox="1120 1659 1461 1869">   <p>Rosemary Tanzer OREGON CSR NO. 94-0299 Expires September 30, 2023</p> </div>

Deposition of:  
**Leah Horner**

October 28, 2020

Horizon Christian School; et al.  
vs.  
Kate Brown, Governor of the State of Oregon

Case No.: 3:20-cv-01345



**Leah Horner****1 (Pages 1 to 4)**

<b>Page 1</b>	<b>Page 3</b>
<p>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON PORTLAND DIVISION</p> <p>HORIZON CHRISTIAN SCHOOL, an Oregon nonprofit corporation; LIFE CHRISTIAN SCHOOL, an assumed business name; JOHN MONTANG, an individual; LYNN MONTANG, an individual; SARAH RODRIGUEZ, an individual; REGINA MICHELINE, an individual; JASON NISSEN, an individual; TRACIE NISSEN, an individual; DAN ALDER, an individual; DOMINIQUE BAYNES, an individual; ALEXANDER JONES, an individual; ASHLEY CADONAU, an individual; JARROD LEVESQUE, an individual; and ROBIN LEVESQUE, an individual, Plaintiffs, v. No. 3:20-cv-01345 KATE BROWN, GOVERNOR OF THE STATE OF OREGON, in her official capacity only, Defendant.</p> <p>ZOOM VIDEOCONFERENCE DEPOSITION OF LEAH HORNER Taken on behalf of Plaintiffs October 28, 2020</p>	<p>1 APPEARANCES</p> <p>2</p> <p>3 Appearing on behalf of the Plaintiffs:</p> <p>4 KAEMPF LAW FIRM PC</p> <p>5 BY MR. JOHN KAEMPF (Appearing Remotely)</p> <p>6 121 SW Morrison Street, Suite 1100</p> <p>7 Portland, OR 97204</p> <p>8 503.224.5006</p> <p>9 john@kaempflawfirm.com</p> <p>10</p> <p>11 Appearing on behalf of the Defendant:</p> <p>12 THE OREGON DEPARTMENT OF JUSTICE</p> <p>13 BY MR. MARC ABRAMS (Appearing Remotely)</p> <p>14 100 SW Market Street</p> <p>15 Portland, OR 97201</p> <p>16 971.673.1880</p> <p>17 marc.abrams@state.or.us</p> <p>18</p> <p>19</p> <p>20 ALSO PRESENT REMOTELY:</p> <p>21 Kareem Haikal, videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<b>Page 2</b>	<b>Page 4</b>
<p>1 BE IT REMEMBERED THAT, pursuant to the</p> <p>2 Oregon Rules of Civil Procedure, the Zoom</p> <p>3 videoconference deposition of LEAH HORNER was taken</p> <p>4 before Rosemary Tanzer, a Registered Professional</p> <p>5 Reporter and a Certified Shorthand Reporter for</p> <p>6 Oregon and Washington, on Wednesday, October 28,</p> <p>7 2020, commencing at the hour of 9:00 a.m., in</p> <p>8 Portland, Oregon.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXAMINATION INDEX</p> <p>2 EXAMINATION BY: PAGE NO.</p> <p>3 MR. KAEMPF 5</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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Exhibit J, Page 2 of 49  
to Second Declaration of John Kaempf

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**Leah Horner****2 (Pages 5 to 8)**

<b>Page 5</b>	<b>Page 7</b>
<p>1 THE VIDEOGRAPHER: Here begins the</p> <p>2 videotaped deposition of Leah Horner in the matter of</p> <p>3 Horizon Christian school v. Kate Brown, the governor</p> <p>4 of the state of Oregon, case number 320CV01345.</p> <p>5 Will the counsel please state your</p> <p>6 appearances for the record.</p> <p>7 MR. KAEMPF: Yes, this is John Kaempf for</p> <p>8 the plaintiffs.</p> <p>9 MR. ABRAMS: Marc Abrams, assistant</p> <p>10 attorney in charge, civil litigation section, Oregon</p> <p>11 Department of Justice, on behalf of the defendant.</p> <p>12 THE VIDEOGRAPHER: The stenographer will</p> <p>13 now swear in the witness.</p> <p>14</p> <p>15 LEAH HORNER,</p> <p>16 Having first been sworn by the Certified Shorthand</p> <p>17 Reporter to tell the truth, testified under oath as</p> <p>18 follows:</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MR. KAEMPF:</p> <p>22 Q Ms. Horner, this is John Kaempf. Can you hear</p> <p>23 me okay?</p> <p>24 A I can, Mr. Kaempf. Thank you.</p> <p>25 Q I want to give you a few general instructions to</p>	<p>1 and your testimony is just as serious as if you were</p> <p>2 testifying before a judge in a courtroom?</p> <p>3 A Yes.</p> <p>4 Q And do you understand that if you were -- I'm</p> <p>5 not saying that you will, but if you were to testify</p> <p>6 to something that you know is false, that later in</p> <p>7 the case I could use the transcript of your testimony</p> <p>8 and documents to contradict what you say?</p> <p>9 A Yes.</p> <p>10 Q As you sit here today, Ms. Horner, and we're</p> <p>11 getting ready for the deposition, let's say yesterday</p> <p>12 and today, is there anything you're thinking about in</p> <p>13 your own mind that you're worried that I will ask you</p> <p>14 about?</p> <p>15 A No.</p> <p>16 Q Did you review any documents to refresh your</p> <p>17 recollection in preparation for your deposition?</p> <p>18 A Yes.</p> <p>19 Q What?</p> <p>20 A I reviewed the date of the conversation that I</p> <p>21 had with Commissioner Starrett.</p> <p>22 Q And is that the July 29, 2020 conference call</p> <p>23 with county commissioners that included Yamhill</p> <p>24 County Commissioner, Mary Starrett?</p> <p>25 A Yes, but my notes from recollection indicate</p>
<b>Page 6</b>	<b>Page 8</b>
<p>1 make the process easier today, I hope. Do you</p> <p>2 understand my interests are adverse to yours?</p> <p>3 A Yes.</p> <p>4 Q And do you understand that a court reporter is</p> <p>5 taking down everything that is said today?</p> <p>6 A Yes.</p> <p>7 Q If at any time today I ask a question you don't</p> <p>8 understand, just let me know. Otherwise if you</p> <p>9 answer, I will assume you understood my question; is</p> <p>10 that fair?</p> <p>11 A Yes.</p> <p>12 Q If at any time you need to take a break,</p> <p>13 bathroom, personal, whatever, just let us know. The</p> <p>14 only exception if there is a question pending, I</p> <p>15 would ask that you answer it first and then we can</p> <p>16 take a break. Okay?</p> <p>17 A Yes.</p> <p>18 Q Are you clearheaded and able to testify clearly</p> <p>19 today?</p> <p>20 A Yes.</p> <p>21 Q Are you on any medications?</p> <p>22 A No.</p> <p>23 Q Have you ever given a deposition before?</p> <p>24 A No.</p> <p>25 Q Do you understand that you're under oath today,</p>	<p>1 that it may have been August 5th.</p> <p>2 Q And what notes are you referring to?</p> <p>3 A So when I meet with county commissioners, I take</p> <p>4 high-level notes so that I can return back to answer</p> <p>5 any questions they may have asked me during that</p> <p>6 call.</p> <p>7 Q Do those high-level notes exist somewhere?</p> <p>8 A Yes.</p> <p>9 Q Do you have them with you today?</p> <p>10 A I do not.</p> <p>11 Q If I request them, then is it possible they</p> <p>12 could be -- or have already requested them, that they</p> <p>13 could be turned over to me?</p> <p>14 A Yes.</p> <p>15 Q So you're not going to be in trouble. We're</p> <p>16 just asking for your best recollection. But this</p> <p>17 Mary Starrett, maybe it was the subject of her</p> <p>18 declaration in this case and your declaration. In</p> <p>19 your mind, was it on July 29 or August 5th of this</p> <p>20 year?</p> <p>21 A My best recollection was that it was on August</p> <p>22 5th.</p> <p>23 Q Okay. Have you discussed your giving a</p> <p>24 deposition with Governor Brown?</p> <p>25 A Yes.</p>



Leah Horner

3 (Pages 9 to 12)

Page 9	Page 11
<p>1 Q When did you have that discussion?</p> <p>2 A Yesterday.</p> <p>3 Q What was said by the two of you about your</p> <p>4 deposition?</p> <p>5 A I was asked if I was going to be at a meeting</p> <p>6 today, and the answer was no because I was going to</p> <p>7 be in a deposition. And the governor asked what the</p> <p>8 deposition was for. And that was the end of the</p> <p>9 conversation.</p> <p>10 Q What did you say when she asked what the</p> <p>11 deposition was for?</p> <p>12 A I indicated that the deposition was around</p> <p>13 school reopening and churches.</p> <p>14 Q Did Governor Brown express to you any concern</p> <p>15 about what you might say or be asked about in your</p> <p>16 deposition?</p> <p>17 A No.</p> <p>18 Q Did you discuss anything else with Governor</p> <p>19 Brown about your deposition?</p> <p>20 A No.</p> <p>21 Q Are you authorized by Governor Brown to testify</p> <p>22 today on her behalf?</p> <p>23 MR. ABRAMS: Objection to the extent that</p> <p>24 it calls for a legal conclusion.</p> <p>25 Q BY MR. KAEMPF: It does not. Go ahead.</p>	<p>1 of Governor Brown?</p> <p>2 MR. ABRAMS: I'm going to object on the</p> <p>3 grounds that it calls for a legal conclusion. And</p> <p>4 you did not ask for her as a representative. You</p> <p>5 asked for her as a fact witness.</p> <p>6 Q BY MR. KAEMPF: Do you have authority today,</p> <p>7 Ms. Horner, to your understanding, to testify on</p> <p>8 behalf of Governor Brown?</p> <p>9 MR. ABRAMS: Same objection.</p> <p>10 Q BY MR. KAEMPF: Please answer.</p> <p>11 MR. ABRAMS: You can answer.</p> <p>12 A I'm here today to testify as a member of</p> <p>13 Governor Brown's staff.</p> <p>14 Q BY MR. KAEMPF: Isn't it true that Governor</p> <p>15 Brown knows that you're giving a deposition in this</p> <p>16 case today?</p> <p>17 A Yes.</p> <p>18 Q And did she ever say, look, you are not</p> <p>19 authorized to testify on my behalf?</p> <p>20 A No.</p> <p>21 Q What is your job title?</p> <p>22 A I am the jobs and economy policy advisor for</p> <p>23 Governor Brown and the director of regional</p> <p>24 solutions.</p> <p>25 Q How long have you held that position?</p>
Page 10	Page 12
<p>1 MR. ABRAMS: John, we're not going to get</p> <p>2 into this again. I want you to stop commenting on my</p> <p>3 objections. I make them for the record. You move on</p> <p>4 and ask a question. Do not do that again.</p> <p>5 MR. KAEMPF: Marc, you do your job and I'll</p> <p>6 do mine. So let's --</p> <p>7 MR. ABRAMS: And yes, I'm asking you to do</p> <p>8 your job. When you comment on my objections, you are</p> <p>9 not doing your job, you're behaving improperly.</p> <p>10 We've had this conversation six times already. I'm</p> <p>11 going to ask you again -- stop.</p> <p>12 MR. KAEMPF: I know that you are in some</p> <p>13 legal trouble. I ask that you not take your temper</p> <p>14 out on me.</p> <p>15 MR. ABRAMS: I am not in any legal trouble.</p> <p>16 Don't create a forced record. This has nothing to do</p> <p>17 with anything but the fact that you made an improper</p> <p>18 comment on my objection. Stop doing it.</p> <p>19 MR. KAEMPF: Why don't you stop.</p> <p>20 MR. ABRAMS: No, John. I'm going to</p> <p>21 protect my record. I'm going to protect my client,</p> <p>22 and you're going to behave appropriately or we're</p> <p>23 going to end the deposition.</p> <p>24 Q BY MR. KAEMPF: Are you authorized today,</p> <p>25 Ms. Horner, to give testimony as the representative</p>	<p>1 A I have held this position for 13 months.</p> <p>2 Q Please explain to me exactly what the jobs and</p> <p>3 economy policy advisor is and does.</p> <p>4 A My job is focused on working with the business</p> <p>5 community and making sure that we understand the</p> <p>6 economic and business impacts of the state that are</p> <p>7 out there are pre-COVID in general and post-COVID as</p> <p>8 a result of COVID.</p> <p>9 Q Is one of your job duties to consider the effect</p> <p>10 of the pandemic on schools?</p> <p>11 A No.</p> <p>12 Q What was that?</p> <p>13 A No, it is not.</p> <p>14 Q Okay. Who do you report to in the governor's</p> <p>15 office?</p> <p>16 A I report to our deputy chief of staff, Gina</p> <p>17 Zejdlik.</p> <p>18 Q Does anyone report to you?</p> <p>19 A Yes.</p> <p>20 Q Who?</p> <p>21 A As the director of regional solutions, I have</p> <p>22 eight team members throughout the state who are</p> <p>23 direct reports to me.</p> <p>24 Q Give me their names.</p> <p>25 A Courtney Warner Crowell, Nate Stice, Annette</p>

Leah Horner

4 (Pages 13 to 16)

Page 13	Page 15
<p>1 Liebe, Alex Campbell, Jennifer Purcell, Jody 2 Christensen, Raihana Ansary, and Sarah Means. 3 Q In your position, have you received any 4 direction from Lindsey Capps or Colt Gill regarding 5 closing or reopening schools during the pandemic? 6 MR. ABRAMS: Objection. Vague. Assumes 7 facts not in evidence. 8 Q BY MR. KAEMPF: Please answer. 9 A No. And let me just clarify. I have not 10 received direction from them. I've received 11 information from them. 12 Q And what role has Jody Christensen played, if 13 any, dealing with closing and opening schools during 14 the pandemic? 15 A Jody serves as an information conduit for policy 16 decisions that are coming from our office in general 17 that would include communicating school reopening 18 modifications to people that live within the region 19 that she represents. 20 Q Please give me your date of birth and home 21 address. 22 A My date of birth is [REDACTED], 1977. And my home 23 address is [REDACTED] Tualatin, 24 Oregon, [REDACTED]. 25 Q Who lives with you at your home?</p>	<p>1 Q How long about have you had that work cell phone 2 number? 3 A For the last 13 months. 4 Q So it's fair to say then that you've used that 5 work cell phone during the pandemic. Right? 6 A Yes. 7 Q Have you ever attended a religious or private 8 school? 9 A Yes. 10 Q Which one and when? 11 A I attended both for much of my elementary school 12 career. 13 Q Can you give me the names of the schools and 14 where they're located and when you attended them? 15 A I attended a Jewish state school in southern 16 California, and it was called Morasha. I'm not sure 17 if it's still operates. 18 Q What city? 19 A It was in Lake Forest, California. 20 Q When did you attend that school? 21 A I attended that school from about third grade to 22 seventh grade. 23 Q And did you attend any other private or 24 religious school ever? 25 A Yes.</p>
Page 14	Page 16
<p>1 A My husband, my son, and I have two step kids 2 that live there part-time. 3 Q Who is your husband's full name? 4 A His full name is [REDACTED] Horner. 5 Q What is his personal cell phone number? 6 MR. ABRAMS: No. We're not answering that. 7 MR. KAEMPF: Are you instructing her not to 8 answer? 9 MR. ABRAMS: Same as yesterday, John, yes, 10 I'm instructing her not to answer. 11 MR. KAEMPF: We'll take that up with the 12 court later. 13 Q BY MR. KAEMPF: Where does your husband work? 14 A He works at [REDACTED]. 15 Q What location? 16 A [REDACTED]. 17 Q Do you know the street it's on? 18 A It's on [REDACTED]. 19 Q Okay. Do you have a work cell phone? 20 A Yes. 21 Q What is your work cell phone number? 22 A (503) [REDACTED]. 23 Q Who is the service provider for your work cell 24 phone? 25 A I do not know.</p>	<p>1 Q Which one, where and when, please? 2 A I -- in my younger years through elementary 3 school I bounced around from schools quite a bit, and 4 I attended a handful of private schools but I will 5 tell you that I do not recall the names or dates of 6 most of them because they were prior to third grade. 7 Q Other than the Jewish school that you mentioned 8 before, have you ever attended any other religious or 9 private school? 10 A Yes, prior to third grade I have attended other 11 private schools. They were not religious. 12 Q And your testimony is you cannot recall the 13 names of those private schools? 14 A I believe one of them was called The Farm 15 School, which, again, was in Orange County, 16 California. 17 Q Can you recall the name of any other private 18 school you attended? 19 A I do not. 20 Q Did you graduate from high school? 21 A I did, yes. 22 Q What school, when and where? 23 A I graduated from Waiakea High School in 1995, 24 and that is in Hilo, Hawaii. 25 Q Did you graduate from college?</p>

Leah Horner

5 (Pages 17 to 20)

Page 17	Page 19
<p>1 A I did.</p> <p>2 Q What college and what year, please?</p> <p>3 A I graduated from the University of Hawaii at</p> <p>4 Hilo. And I -- I am not sure of the year.</p> <p>5 Q What degree did you get?</p> <p>6 A I have an undergraduate degree in political</p> <p>7 science.</p> <p>8 Q Did you obtain any postgraduate degree?</p> <p>9 A Yes.</p> <p>10 Q In what and from what school and when, please?</p> <p>11 A I have a master's from the University of Houston</p> <p>12 at Victoria in economic development and</p> <p>13 entrepreneurship. And I do not recall the year that</p> <p>14 I graduated from that either.</p> <p>15 Q Do you have any other postgraduate degree?</p> <p>16 A I do not.</p> <p>17 Q Do you have any other formal schooling?</p> <p>18 A No.</p> <p>19 Q Do you have school-aged children or</p> <p>20 stepchildren?</p> <p>21 A Yes.</p> <p>22 Q What are their names and ages, and please let me</p> <p>23 know where they currently attend school.</p> <p>24 A My son, [REDACTED] is seven years old, and he</p> <p>25 attends second grade at [REDACTED] Elementary in Tualatin.</p>	<p>1 A Can I ask a clarifying question?</p> <p>2 Q Sure.</p> <p>3 A Are you referring to governor staff or council</p> <p>4 members or both?</p> <p>5 Q Both.</p> <p>6 A I'm sorry. Did you say both?</p> <p>7 Q Both.</p> <p>8 A Okay. Sorry. I cochaired this with Christian</p> <p>9 Gaston, who is the governor's workforce and labor</p> <p>10 policy advisor. And Shannon Singleton, the</p> <p>11 governor's housing policy advisor, was also an</p> <p>12 attendee and participant.</p> <p>13 The membership, if I am recalling</p> <p>14 correctly, was a number of business and labor</p> <p>15 representatives as well as a number of state agency</p> <p>16 directors. Did you want me to try to recall who?</p> <p>17 Q Have you given me all the names that you can</p> <p>18 recall who were, at any time, members of that</p> <p>19 council?</p> <p>20 A Okay. Duncan Wyse, Sandy McDonough, Jason</p> <p>21 Brandt, Graham Trainor, Reyna Lopez.</p> <p>22 Q Anyone else?</p> <p>23 A Jenny Dresler, Gary George, Senator Roblan,</p> <p>24 Representative Holvey. And then agency directors</p> <p>25 were Chris Cummings, George Naughton, Kate Nass, Mark</p>
Page 18	Page 20
<p>1 My stepdaughter, [REDACTED], is 14 and she attends</p> <p>2 ninth grade at [REDACTED] School in Beaverton.</p> <p>3 And my stepson, [REDACTED] is 17 and attends 11th</p> <p>4 grade at [REDACTED] High School.</p> <p>5 Q So is it true then that all of your children and</p> <p>6 stepchildren currently attend public schools?</p> <p>7 A Yes.</p> <p>8 Q Have any of your children or stepchildren ever</p> <p>9 attended a private or religious school?</p> <p>10 A No.</p> <p>11 Q Ms. Horner, this is a standard question I have</p> <p>12 to ask in all of my cases, so please don't take it</p> <p>13 personally: Have you ever been convicted of a crime?</p> <p>14 A No.</p> <p>15 Q Are you the cochair of the Coronavirus Advisory</p> <p>16 Council?</p> <p>17 A Yes.</p> <p>18 Q How long have you held that position?</p> <p>19 A I believe we set up the Coronavirus advisory --</p> <p>20 Economic Advisory Council, I want to say at the end</p> <p>21 of March or early April, and that council sunseted</p> <p>22 over the summer.</p> <p>23 Q Is the council closed down now, therefore?</p> <p>24 A Yes.</p> <p>25 Q Who else was on that council when it was active?</p>	<p>1 McMullen, Kay Erickson. I believe those are all that</p> <p>2 I can recall.</p> <p>3 Q Since the pandemic began this year, have you had</p> <p>4 any communication with Bob Estabrook of the Oregon</p> <p>5 School Employees Association?</p> <p>6 A No.</p> <p>7 Q Do you know who he is?</p> <p>8 A Yes.</p> <p>9 Q Have you worked with him before?</p> <p>10 A No.</p> <p>11 Q How do you know who he is?</p> <p>12 A Prior to working in the governor's office, I</p> <p>13 worked at the Department of Human Services as their</p> <p>14 legislative director. And we were working on</p> <p>15 legislation that did impact schools at the time, and</p> <p>16 this was in the 2019 session. And Bob Estabrook was</p> <p>17 around the table negotiating that legislation.</p> <p>18 Q During the pandemic, have you had any</p> <p>19 communications with Bob Tackett of the Northwest</p> <p>20 Oregon Labor Council ASL-CIO?</p> <p>21 A Not that I recall.</p> <p>22 Q Do you know who he is?</p> <p>23 A No.</p> <p>24 Q During the pandemic, have you had any</p> <p>25 communications with Dr. Bob Dannenhoffer?</p>

Leah Horner

6 (Pages 21 to 24)

Page 21	Page 23
<p>1 A Not that I recall.</p> <p>2 Q Do you know who that is?</p> <p>3 A Yes.</p> <p>4 Q Ms. Horner, right now are religious schools in</p> <p>5 Oregon allowed to reopen full time with in-person</p> <p>6 classes?</p> <p>7 A Not that I am aware of.</p> <p>8 Q Why not?</p> <p>9 A Honestly this is not my policy area related to</p> <p>10 schools, and so I am -- I don't have a good answer</p> <p>11 for that.</p> <p>12 Q Do you know what the standards are or where they</p> <p>13 can be found concerning religious schools reopening</p> <p>14 during the pandemic?</p> <p>15 A I do not.</p> <p>16 Q Do you know who would have set those standards?</p> <p>17 A No.</p> <p>18 Q Right now are any public schools allowed to</p> <p>19 reopen for in-person classes?</p> <p>20 A Yes.</p> <p>21 Q Which ones?</p> <p>22 A I do not know.</p> <p>23 Q How do you know that any public schools are</p> <p>24 open -- reopened?</p> <p>25 A I am aware that there are public schools open,</p>	<p>1 again -- was, are you aware of any student at any</p> <p>2 private or religious school anywhere in the United</p> <p>3 States who has died from COVID 19?</p> <p>4 A No.</p> <p>5 Q Are you aware of any student at any private or</p> <p>6 religious school in the United States who has</p> <p>7 contracted COVID 19?</p> <p>8 A No.</p> <p>9 Q So based on what you've said, isn't it true that</p> <p>10 Governor Brown is not allowing religious schools to</p> <p>11 reopen full time for in-person classes regardless of</p> <p>12 whether or not their students are healthy or sick?</p> <p>13 A I am unaware of that distinction.</p> <p>14 Q Isn't it true that Governor Brown is not</p> <p>15 allowing religious schools to reopen for in-person</p> <p>16 classes regardless of whether or not any students are</p> <p>17 infected with COVID 19?</p> <p>18 MR. ABRAMS: Objection. Mischaracterizes</p> <p>19 the previous testimony and argumentative.</p> <p>20 Q BY MR. KAEMPF: I mean to be polite to you,</p> <p>21 Ms. Horner, and not argumentative. So please answer.</p> <p>22 A Again, I'm unaware of the distinction.</p> <p>23 Q My question is: As we sit here today, isn't it</p> <p>24 true that under Governor Brown's executive orders,</p> <p>25 religious schools are not allowed to reopen for</p>
Page 22	Page 24
<p>1 because I meet with counties every week and they have</p> <p>2 told me that they have select schools that are</p> <p>3 operating under the Department of Education</p> <p>4 guidelines.</p> <p>5 Q But as you sit here today, you can't think of</p> <p>6 the name of any specific school; is that right?</p> <p>7 A That's correct.</p> <p>8 Q Are you aware of any religious or private</p> <p>9 schools in Oregon that have been a spreader of the</p> <p>10 COVID 19 virus?</p> <p>11 A No.</p> <p>12 Q Are you aware of any student at any religious or</p> <p>13 private school in Oregon who has contracted COVID 19?</p> <p>14 A No.</p> <p>15 Q Are you aware of any student at any religious or</p> <p>16 private school in Oregon who died from COVID 19?</p> <p>17 A No.</p> <p>18 Q Are you aware of any student at any religious or</p> <p>19 private school anywhere in the United States who has</p> <p>20 died from COVID 19?</p> <p>21 A Could you repeat that question.</p> <p>22 Q If the reporter would read it back. Thank you.</p> <p>23 (Record read.)</p> <p>24 A No.</p> <p>25 Q And I believe the question was -- so I'll ask it</p>	<p>1 in-person classes even if none of those students have</p> <p>2 the COVID 19 virus?</p> <p>3 A I believe that is the case for all schools,</p> <p>4 again, referencing my previous not understanding the</p> <p>5 distinction between private, religious and public</p> <p>6 schools. They're all -- my understanding is that</p> <p>7 they are all categorized the same.</p> <p>8 Q Can any future period of no restrictions on</p> <p>9 Oregon K-to-12 schools be foreseen?</p> <p>10 A Could you repeat that.</p> <p>11 MR. KAEMPF: Yes. The court reporter can</p> <p>12 read it back, please.</p> <p>13 MR. ABRAMS: I'm going to object on the</p> <p>14 grounds it calls for speculation.</p> <p>15 Q BY MR. KAEMPF: Ms. Horner, can any future</p> <p>16 period of no restrictions on Oregon K-to-12 schools</p> <p>17 be foreseen by you?</p> <p>18 MR. ABRAMS: Same objection.</p> <p>19 Q BY MR. KAEMPF: Please answer.</p> <p>20 A I'm not sure.</p> <p>21 Q How long, to your understanding, are the</p> <p>22 governor's pandemic executive orders preventing</p> <p>23 religious and private schools from reopening full</p> <p>24 time with in-person classes scheduled to last?</p> <p>25 MR. ABRAMS: Object to the extent it calls</p>

Leah Horner

7 (Pages 25 to 28)

Page 25	Page 27
<p>1 for a legal conclusion. You can answer.</p> <p>2 Q BY MR. KAEMPF: Ms. Horner, all day I'm not</p> <p>3 asking you for legal conclusions. I know you're not</p> <p>4 a lawyer. I just want to know what you know from</p> <p>5 your job as an advisor to Governor Brown. Okay?</p> <p>6 A Yes. So I'm sorry. Can you repeat that</p> <p>7 question?</p> <p>8 Q How long are Governor Brown's pandemic executive</p> <p>9 orders prohibiting religious and private schools from</p> <p>10 reopening with in-person classes scheduled to last?</p> <p>11 A I am unaware of any expiration date, I suppose,</p> <p>12 on all of the guidance that is out there.</p> <p>13 Q On May 23rd, 2020 you wrote an email to Jody</p> <p>14 Christensen in response to a, quote, [as read:]</p> <p>15 question about faith-based gatherings youth. It</p> <p>16 said: [as read:] It's up to each church to put</p> <p>17 protocols in place for the parishioners. We are</p> <p>18 hearing that some go above 25 for that reason, end</p> <p>19 quote. And that document has been marked as 047369.</p> <p>20 Do you remember discussing that issue with</p> <p>21 Jody Christensen?</p> <p>22 A Yes.</p> <p>23 Q Is that currently the public policy or the rule</p> <p>24 in Oregon?</p> <p>25 A No.</p>	<p>1 A Schools in general are not in my portfolio, and</p> <p>2 so I can't say that I have done anything to assist</p> <p>3 schools in general, whether it be public or private.</p> <p>4 Q Can you tell me the name of anyone on the</p> <p>5 governor's staff who, during the pandemic, has done</p> <p>6 anything to help religious or private schools.</p> <p>7 A I believe my colleague, Lindsey Capps, is in</p> <p>8 direct communication with public and private schools.</p> <p>9 Q Anyone else?</p> <p>10 A I am unaware if there are others in the office.</p> <p>11 Q Have you communicated with any representative of</p> <p>12 any religious or private school during the pandemic</p> <p>13 about their concerns?</p> <p>14 A I do not recall.</p> <p>15 Q Now, in a June 4, 2020 email, a woman that -- I</p> <p>16 believe a woman, or maybe it's a man, S-O-P-H-O-R-N,</p> <p>17 however you say that.</p> <p>18 A Sophorn.</p> <p>19 Q C-H-E-A-N-G. How do you say the first name?</p> <p>20 A Sophorn.</p> <p>21 Q So in a June 4, 2020 email, Sophorn wrote -- and</p> <p>22 I understand -- Sophorn, is that a male or a female?</p> <p>23 A It's a woman.</p> <p>24 Q I understand that she's Governor Brown's</p> <p>25 diversity, equity and inclusion director; is that</p>
Page 26	Page 28
<p>1 Q Why not?</p> <p>2 A I think since the pandemic has continued, we</p> <p>3 continue to reassess the guidance associated with all</p> <p>4 sectors, and a modification to the gathering limit</p> <p>5 for faith-based organizations has been modified since</p> <p>6 that point.</p> <p>7 Q And as modified, what is that policy currently?</p> <p>8 A For phase one counties, the limit is 50.</p> <p>9 Q Did that apply to religious schools?</p> <p>10 A No.</p> <p>11 Q Why not?</p> <p>12 A The way that the guidance has been -- has been</p> <p>13 produced is based on a, for lack of a better term,</p> <p>14 sector-by-sector parameters. And the school guidance</p> <p>15 is done separately through the Department of</p> <p>16 Education. The guidance that I just referenced was</p> <p>17 around gathering limits, and that is done separately</p> <p>18 through the Oregon Health Authority.</p> <p>19 Q Currently is there anything a private or</p> <p>20 religious school in Oregon can do to reopen for</p> <p>21 in-person classes?</p> <p>22 A I am not aware.</p> <p>23 Q Can you tell me, please, all actions you've</p> <p>24 taken during the pandemic to help religious or</p> <p>25 private schools.</p>	<p>1 right?</p> <p>2 A Yes.</p> <p>3 Q And in a June 4, 2020 email, she writes that</p> <p>4 Maria Waters, quote, [as read:] has been the point</p> <p>5 person as the faith liaison. So we will defer to her</p> <p>6 if she has any additional questions we should</p> <p>7 consider, end quote. And that's labeled as 048203.</p> <p>8 Is it true that Maria Waters is considered</p> <p>9 the faith liaison?</p> <p>10 A Maria Waters is the faith liaison for the Oregon</p> <p>11 Health Authority.</p> <p>12 Q Have you worked with her during the pandemic?</p> <p>13 A Yes.</p> <p>14 Q And have you and Maria ever discussed anything</p> <p>15 related to religious school and the pandemic?</p> <p>16 A Not that I recall.</p> <p>17 Q Do you know what Maria's views or directions are</p> <p>18 concerning whether or not religious schools can</p> <p>19 reopen during the pandemic?</p> <p>20 A I am unaware.</p> <p>21 Q On June 4, 2020 email, Jackie Yerby, Y-E-R-B-Y,</p> <p>22 she wrote to you that she was, quote, [as read:]</p> <p>23 Checking in about faith community FAQ. Could you let</p> <p>24 me and Sophorn know what's going on with that? It</p> <p>25 sounds like you are getting a bunch of questions from</p>



Leah Horner

8 (Pages 29 to 32)

Page 29	Page 31
<p>1 faith leaders about the guidance because they are</p> <p>2 confused.</p> <p>3 Do you generally recall that June 4 email?</p> <p>4 A Yes.</p> <p>5 Q And it's marked as 048203 and 048204. Who is</p> <p>6 Jackie Yerby?</p> <p>7 A Jackie Yerby at the time was the governor's</p> <p>8 deputy health policy advisor.</p> <p>9 Q And does she no longer hold that position?</p> <p>10 A Her position has been modified a bit, but I am</p> <p>11 not quite positive what it is at this point. She</p> <p>12 still works in our office, however.</p> <p>13 Q And in response to Jackie Yerby's June 4th</p> <p>14 concerns about the faith community, what did you do?</p> <p>15 A I don't recall.</p> <p>16 Q In the same June 4, 2020 emails, Jackie wrote to</p> <p>17 you that, quote, [as read:] When guidance comes out</p> <p>18 specifically addressing faith communities would be</p> <p>19 appreciated, end quote, and that's at 048205.</p> <p>20 Do you recall that email?</p> <p>21 A Not specifically.</p> <p>22 Q Did you ever, in any guidance, specifically</p> <p>23 address faith communities as Jackie Yerby requested</p> <p>24 on June 3rd?</p> <p>25 A No.</p>	<p>1 schools, as you sit here today there is not any such</p> <p>2 guidance. Correct?</p> <p>3 A That is my understanding.</p> <p>4 Q Do you know if at any time anyone at the</p> <p>5 governor's office, including the governor, ever</p> <p>6 issued any pandemic guidelines relating to</p> <p>7 faith-based K-to-12 schools?</p> <p>8 A To my knowledge, there has not been any guidance</p> <p>9 along those lines that have been published.</p> <p>10 Q Why not?</p> <p>11 A I do not know.</p> <p>12 Q Now a guidance document issued this year marked</p> <p>13 as 004859 is entitled, quote, [as read:] Specific</p> <p>14 guidance for faith-based organizations, end quote.</p> <p>15 It says that the, quote, [as read:] State</p> <p>16 will want to check with faith-based groups to ensure</p> <p>17 appropriate language, end quote. It's marked as</p> <p>18 004859.</p> <p>19 Have you ever heard of that specific</p> <p>20 guidance for faith-based organizations?</p> <p>21 A Yes.</p> <p>22 Q And when did you first hear about that and why?</p> <p>23 A I do not recall when I heard about it.</p> <p>24 Q And this year during the pandemic, have you</p> <p>25 checked in with faith-based groups to ensure</p>
Page 30	Page 32
<p>1 Q Why not?</p> <p>2 A The guidance that Jackie is referring to is</p> <p>3 around the gathering limit guidance. And the</p> <p>4 gathering limit guidance does not specifically</p> <p>5 identify faith-based communities as a defined sector</p> <p>6 in there.</p> <p>7 Q Also on June 4 of this year, Jackie Yerby</p> <p>8 emailed you and said in part, quote, [as read:] Is</p> <p>9 there guidance available to faith-based K-12 schools</p> <p>10 as to reopening plans, and also guidelines for safe</p> <p>11 practices when they reopen, end quote. And that is</p> <p>12 marked as 048208.</p> <p>13 Do you recall generally that June 4 email</p> <p>14 from Mrs. Yerby?</p> <p>15 A I do not.</p> <p>16 Q Did you -- do you know, as you sit here today,</p> <p>17 is there any guidance that is available for</p> <p>18 faith-based K-to-12 schools about safe practices and</p> <p>19 reopening?</p> <p>20 A I believe that there is general guidance for all</p> <p>21 schools. I do not -- I do not know if there is</p> <p>22 specific guidance for faith-based schools.</p> <p>23 Q So is it fair to say then that while Jackie</p> <p>24 Yerby wrote to you on June 4th and asked whether</p> <p>25 there was guidance available for faith-based K-to-12</p>	<p>1 appropriate language about the guidance?</p> <p>2 A No.</p> <p>3 Q Why not?</p> <p>4 A That's not within my portfolio.</p> <p>5 Q Whose portfolio is that in?</p> <p>6 A I would say, checking in with faith-based</p> <p>7 leaders in our office, is the portfolio of Sophorn</p> <p>8 Cheang and Jackie Yerby.</p> <p>9 Q During the pandemic have you communicated in any</p> <p>10 way with any leader or representative of any private</p> <p>11 or religious school?</p> <p>12 A I do not recall.</p> <p>13 Q Is there something that you could look at, like</p> <p>14 your calendar, to help you recall?</p> <p>15 A I think -- let me clarify. I have not been in</p> <p>16 direct communication with any faith-based leader.</p> <p>17 That is not to say that I may not have been copied on</p> <p>18 emails that have gone back and forth, but I, myself,</p> <p>19 have not had any direct communication.</p> <p>20 Q So during the pandemic, have you personally</p> <p>21 implemented any suggestion or request from any</p> <p>22 representative of any private or religious school?</p> <p>23 A No.</p> <p>24 Q On June 7 of 2020, three days after the emails</p> <p>25 we were discussing before from Jackie Yerby, she</p>

Leah Horner

9 (Pages 33 to 36)

Page 33	Page 35
<p>1 wrote to you with her concerns. And she said, quote,</p> <p>2 [as read:] Under phase two, faith-based organizations</p> <p>3 have to have up to 250 people at one time, end quote.</p> <p>4 That's marked as 048336.</p> <p>5 Is that true?</p> <p>6 A I don't recall.</p> <p>7 Q Do you know currently if faith-based</p> <p>8 organizations can have meetings of up to 250 people?</p> <p>9 A Currently in the phase-two counties, they are</p> <p>10 allowed to do that outdoors.</p> <p>11 Q Can religious schools do that?</p> <p>12 A I am not aware.</p> <p>13 Q Now, on March 18 of this year, a woman named</p> <p>14 Jessica Thompson, the executive director of the</p> <p>15 Portland Montessori School, wrote to you and said,</p> <p>16 quote, [as read:] Dear Leah, I wanted to reach out</p> <p>17 and participate in any dialogue you had around how</p> <p>18 the situation is/will impact nonprofit independent</p> <p>19 schools, especially small schools. As are many small</p> <p>20 businesses in America, we are facing economic</p> <p>21 disaster. We were encouraged to reach out to you</p> <p>22 with our story, as the government explores funding</p> <p>23 and stimulus for small business -- for small</p> <p>24 businesses, end quote. And that's marked as 019476.</p> <p>25 Do you generally recall that email from</p>	<p>1 to public schools?</p> <p>2 A No.</p> <p>3 Q Were you a part of the creation of the</p> <p>4 governor's pandemic executive orders, any of them?</p> <p>5 A Yes.</p> <p>6 Q Which ones, by number, please?</p> <p>7 A I unfortunately do not have the numbers</p> <p>8 memorized.</p> <p>9 Q How about this -- the subject is fine.</p> <p>10 A I was a participant in the executive orders at</p> <p>11 the beginning of the pandemic that moved towards the</p> <p>12 state shutdown. And I have been included in</p> <p>13 conversations as that iteration of the executive</p> <p>14 orders have been modified over the last eight months.</p> <p>15 Q Did you ever deal with an executive order</p> <p>16 addressing K-to-12 schools?</p> <p>17 A No.</p> <p>18 Q Do you currently have any role to play</p> <p>19 concerning the pandemic in K-to-12 schools?</p> <p>20 A The only role that I have in the pandemic and</p> <p>21 K-through-12 schools is through my communications</p> <p>22 with local elected officials on updating them on any</p> <p>23 modifications to guidance or matrix that have been</p> <p>24 made and decided by others.</p> <p>25 Q When the pandemic first arrived in Oregon this</p>
Page 34	Page 36
<p>1 Jessica Thompson?</p> <p>2 A Could you tell me the date of that email again?</p> <p>3 Q Yes. March 18 of this year.</p> <p>4 A Thank you.</p> <p>5 Q Did you do anything in response to</p> <p>6 Ms. Thompson's concern about economic disaster for</p> <p>7 independent and small schools?</p> <p>8 A I do not recall.</p> <p>9 Q Are you aware that it's alleged in the verified</p> <p>10 complaint, the lawsuit in this case, that two of my</p> <p>11 clients, Horizon Christian School and Life Christian</p> <p>12 School, are also facing economic disaster?</p> <p>13 A I was unaware of that specifically.</p> <p>14 Q During the pandemic, have you done anything to</p> <p>15 help religious or private schools, like my clients',</p> <p>16 avoid economic disaster?</p> <p>17 A No. I worked on general business supports but</p> <p>18 not anything as specific as you've just identified.</p> <p>19 Q Are you aware of anyone in Oregon's government</p> <p>20 who has done anything to help private or religious</p> <p>21 schools avoid economic disaster during the pandemic?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q Was there ever a discussion this year that</p> <p>24 you're aware of that the State of Oregon would</p> <p>25 include private schools in the funding made available</p>	<p>1 year, was the initial goal to flatten the curve?</p> <p>2 A Yes.</p> <p>3 Q Is that still the goal or, to your</p> <p>4 understanding, has the curve been flattened?</p> <p>5 MR. ABRAMS: Objection. Compound.</p> <p>6 Q BY MR. KAEMPF: Is the goal currently still to</p> <p>7 flatten the curve?</p> <p>8 A I don't know.</p> <p>9 Q When was the curve flattened, if ever?</p> <p>10 A I'm unaware how we would have quantified the</p> <p>11 flattening of the curve.</p> <p>12 Q To your understanding, is Oregon's goal now a</p> <p>13 complete eradication of the Coronavirus?</p> <p>14 A I don't know.</p> <p>15 Q Are you on the governor's Coronavirus Economic</p> <p>16 Advisory Council that you said earlier?</p> <p>17 A I was the cochair of that council when it was</p> <p>18 operational.</p> <p>19 Q And I know I already asked you about that.</p> <p>20 Have you ever played any role in putting a</p> <p>21 cap on K-through-12 student transfers during the</p> <p>22 pandemic?</p> <p>23 A No.</p> <p>24 Q Do you know if currently there is such a cap?</p> <p>25 A I do not know.</p>

Leah Horner

10 (Pages 37 to 40)

Page 37	Page 39
<p>1 Q Do you know, are charter or virtual schools</p> <p>2 treated differently than brick and mortar public</p> <p>3 schools?</p> <p>4 A I do not know.</p> <p>5 Q Do you know if religious schools are treated</p> <p>6 differently than public schools relating to the</p> <p>7 pandemic?</p> <p>8 A I do not believe so.</p> <p>9 Q Have you had any role in changing the</p> <p>10 designation of small schools that are allowed to</p> <p>11 reopen?</p> <p>12 A I attended one meeting when they started the</p> <p>13 conversation on modification of the small-school</p> <p>14 metric. Other than that, I have not been involved in</p> <p>15 that at all.</p> <p>16 Q Were you involved in drafting or revising the</p> <p>17 late July 2020 version of the guidance?</p> <p>18 A No.</p> <p>19 Q Do you know who was?</p> <p>20 A No.</p> <p>21 Q This year during the pandemic, have you ever</p> <p>22 witnessed at work, read or heard any kind of</p> <p>23 discrimination directed at private or religious</p> <p>24 schools?</p> <p>25 A No.</p>	<p>1 few questions, but during the summer did you</p> <p>2 participate in at least one conference call with</p> <p>3 county commissioners that included Yamhill County</p> <p>4 Commissioner, Mary Starrett?</p> <p>5 A Yes.</p> <p>6 Q I'll represent to you that Ms. Starrett has</p> <p>7 testified that one of those conference calls was on</p> <p>8 July 29th of this year. Do you contend it was that</p> <p>9 date or another date?</p> <p>10 A I will say that I meet with Yamhill County along</p> <p>11 with Marion County and Polk County. Through the</p> <p>12 summer I met with them every Wednesday afternoon for</p> <p>13 30 minutes. The issue of school reopening and</p> <p>14 private schools came up at more than one meeting.</p> <p>15 And I do have recollection that it came up on both</p> <p>16 the 29th and the week after. The direct question</p> <p>17 that you have, I'm not clear on which date that that</p> <p>18 conversation was had, but it was one of those two</p> <p>19 dates.</p> <p>20 Q Okay. I'll represent to you that on</p> <p>21 Mary Starrett's Facebook page, she posted, on</p> <p>22 July 29th, that that very day you had made this</p> <p>23 comment about a mass exodus from public schools that</p> <p>24 I'll ask you more about.</p> <p>25 Does that refresh your recollection, that</p>
Page 38	Page 40
<p>1 Q How about charter schools?</p> <p>2 A No.</p> <p>3 Q What counties do you work with on a regular</p> <p>4 basis?</p> <p>5 A I meet with all 36 counties every week.</p> <p>6 Q Have you played any part in budgeting and</p> <p>7 spending related to anything during the pandemic?</p> <p>8 MR. ABRAMS: Objection. Vague. You can</p> <p>9 answer.</p> <p>10 A Yes.</p> <p>11 Q BY MR. KAEMPF: And can you name the people</p> <p>12 involved in that.</p> <p>13 A So when I say yes to budgeting and spending in</p> <p>14 the pandemic, Business Oregon is a state agency</p> <p>15 within my portfolio, and they have been allocated</p> <p>16 resources from the Coronavirus Relief Fund to spend</p> <p>17 on business relief and support. And so I work very</p> <p>18 closely with them on their budgeting and spending</p> <p>19 along those lines. So it's really more from that</p> <p>20 agency perspective.</p> <p>21 Q Have you been involved in any budgeting or</p> <p>22 spending decisions during the pandemic related to</p> <p>23 schools?</p> <p>24 A No.</p> <p>25 Q We may differ on the date concerning the next</p>	<p>1 it may have been July 29th?</p> <p>2 A Sure.</p> <p>3 Q Okay. Was that July 29 meeting, or any other</p> <p>4 county commissioner meeting this year, ever recorded</p> <p>5 in any way?</p> <p>6 A No.</p> <p>7 Q Who made the decision about whether to record a</p> <p>8 meeting that you would have with county</p> <p>9 commissioners?</p> <p>10 A It would probably be me.</p> <p>11 Q All right. And why did you not record the</p> <p>12 July 29 meeting?</p> <p>13 A So I would check in with, as I indicated, all</p> <p>14 counties every week. And we do it as an informal</p> <p>15 check-in so that they are aware of what's happening</p> <p>16 from the governor's office perspective, and I get to</p> <p>17 hear what's happening from their county perspectives.</p> <p>18 These are informal check-in calls, and we</p> <p>19 have never had a conversation about recording them.</p> <p>20 Q Do you have any notes, written or electronic, of</p> <p>21 the July 29 meeting that was attended by</p> <p>22 Mary Starrett and other county commissioners?</p> <p>23 A Yes.</p> <p>24 Q Did you bring those notes with you today?</p> <p>25 A No.</p>

Leah Horner

11 (Pages 41 to 44)

Page 41	Page 43
<p>1 Q So if I -- I think I've already requested them,</p> <p>2 but I'll talk to Mr. Abrams. So, therefore, that's</p> <p>3 something you could produce to me.</p> <p>4 A Yes.</p> <p>5 Q Okay. Were any formal minutes ever created of</p> <p>6 the July 29 county commissioner meeting?</p> <p>7 A No.</p> <p>8 Q Please tell me Jody Christensen's title and job</p> <p>9 duties.</p> <p>10 A Jody Christensen is the regional solution's</p> <p>11 coordinator for the Mid-Valley, and her job duties</p> <p>12 are focused mainly on coordinating and working with</p> <p>13 local elective officials, and working on economic</p> <p>14 priorities of that region.</p> <p>15 Q Has Ms. Christensen had any role relating to</p> <p>16 schools and the pandemic?</p> <p>17 A No.</p> <p>18 Q Do you know if she was involved with the</p> <p>19 creation and changes to the guidance that was issued</p> <p>20 in July?</p> <p>21 A No.</p> <p>22 Q Are you aware that in this case, Ms. Horner,</p> <p>23 that Mary Starrett filed a declaration about the</p> <p>24 July 29 county commissioner meeting?</p> <p>25 A Yes.</p>	<p>1 A I'm unaware if she did.</p> <p>2 Q Did -- have you and Jody Christensen, outside</p> <p>3 the presence of lawyers, ever discussed</p> <p>4 Mary Starrett's declaration in this case?</p> <p>5 A Jody and I have discussed the issue at hand. I</p> <p>6 don't know that we've discussed her specific</p> <p>7 declaration.</p> <p>8 Q Okay. Outside the presence of lawyers, did you</p> <p>9 and Jody ever discuss, whatever the date was, whether</p> <p>10 or not at the meeting you both attended you said</p> <p>11 anything like that there was a concern about a mass</p> <p>12 exodus from public schools?</p> <p>13 A Yes.</p> <p>14 Q And what was Jody's recollection? Did she</p> <p>15 recall that you did say that?</p> <p>16 A She and I both recalled that I used that</p> <p>17 statement but not in that context.</p> <p>18 Q Okay. And we'll get back to that later.</p> <p>19 Do you know, I may have just asked this,</p> <p>20 but do you know if Jody kept any minutes or notes of</p> <p>21 the meeting where the mass exodus statement was made?</p> <p>22 A I do not know.</p> <p>23 MR. KAEMPF: And Mark, just so to make it</p> <p>24 easier for both of us and Ms. Horner, I'll talk about</p> <p>25 the mass exodus statement for shorthand. I</p>
Page 42	Page 44
<p>1 MR. ABRAMS: John, just for a second, just</p> <p>2 so we have a clear record, I am looking at</p> <p>3 Mary Starrett's Facebook page, and it shows her mass</p> <p>4 exodus comment being on August 5th, not on July 29th.</p> <p>5 MR. KAEMPF: Well, I -- then that's a</p> <p>6 change. Because the way I found out about it was</p> <p>7 that it said her Facebook post on July 29, and then</p> <p>8 that's how we -- why we put that in her declaration.</p> <p>9 So I certainly --</p> <p>10 MR. ABRAMS: I just -- yeah. No, I just</p> <p>11 want a clear record because I'm looking at her</p> <p>12 Facebook page right now.</p> <p>13 MR. KAEMPF: But that's a change, and</p> <p>14 that's fine. We'll get back to that later regardless</p> <p>15 of whether it was July 29 or August 5. We'll get</p> <p>16 back to that.</p> <p>17 Q BY MR. KAEMPF: Okay. Does -- did</p> <p>18 Jody Christensen attend the meeting with</p> <p>19 Mary Starrett that I'm going to ask you about, where</p> <p>20 supposedly there was this statement about a mass</p> <p>21 exodus from public schools?</p> <p>22 A Yes.</p> <p>23 Q Do you know if Jody Christensen took any notes</p> <p>24 or issued any kind of a report about that meeting,</p> <p>25 whatever date it occurred on?</p>	<p>1 understand that Ms. Horner may say, that's not what I</p> <p>2 meant or whatever. I'm just saying that especially</p> <p>3 because there may be a conflict as to the precise</p> <p>4 date of this county commissioner meeting, so --</p> <p>5 MR. ABRAMS: And that's fine.</p> <p>6 MR. KAEMPF: -- I'll just say -- okay.</p> <p>7 So I'll say for shorthand the mass exodus</p> <p>8 statement, and Ms. Horner can tell me all she wants</p> <p>9 later about, you know, what she meant and all of</p> <p>10 that. Okay?</p> <p>11 Q BY MR. KAEMPF: Now before the mass exodus</p> <p>12 statement meeting, I see you had met with</p> <p>13 Mary Starrett and other county commissioners on</p> <p>14 March 9 of 2020 to present an update from the</p> <p>15 governor's office. Correct?</p> <p>16 MR. KAEMPF: And, Counsel, I'm looking at a</p> <p>17 document labeled 023-1360 the 31.</p> <p>18 THE WITNESS: I don't recall that meeting.</p> <p>19 Q BY MR. KAEMPF: Okay. At any time before the</p> <p>20 mass exodus meeting, do you recall Mary Starrett, or</p> <p>21 anyone else, ever raising a concern about why private</p> <p>22 and religious schools were not being allowed to</p> <p>23 reopen for in-person classes?</p> <p>24 A Yes.</p> <p>25 Q Okay. During the mass exodus meeting -- I'll</p>

Leah Horner

12 (Pages 45 to 48)

Page 45	Page 47
<p>1 ask you simply then. What date do you think that</p> <p>2 occurred?</p> <p>3 A I believe it occurred on August 4th or 5th.</p> <p>4 Whatever day that -- we meet on Wednesdays, so</p> <p>5 whatever date that was.</p> <p>6 Q Sure. I'll represent to you that August 5, 2020</p> <p>7 was a Wednesday.</p> <p>8 A All right.</p> <p>9 Q So do you think it was August 5th?</p> <p>10 A I do.</p> <p>11 Q Okay. You may be right. Hold on.</p> <p>12 During what you're saying is the August 5th</p> <p>13 conference call with county commissioners, did</p> <p>14 Mary Starrett, a Yamhill County commissioner, ask you</p> <p>15 why parochial schools were not being allowed to</p> <p>16 reopen?</p> <p>17 A I don't recall that specifically, but she has</p> <p>18 asked those -- she did ask a question along those</p> <p>19 lines.</p> <p>20 Q Okay. And as best you can recall, what</p> <p>21 questions did she ask along that line?</p> <p>22 A I believe she had asked if private, religious</p> <p>23 schools would have the opportunity to operate under</p> <p>24 different guidance than the K-12 public school</p> <p>25 system.</p>	<p>1 different. But I just want to confirm, isn't it</p> <p>2 true, then, that during this meeting you say was on</p> <p>3 August 5th that Mary Starrett and others attended,</p> <p>4 you did -- the words, quote [as read:] mass exodus</p> <p>5 from public schools did come out of your mouth, end</p> <p>6 quote.</p> <p>7 A Yes.</p> <p>8 Q Do you recall what Mary Starrett said in</p> <p>9 response to you saying there would be a mass exodus</p> <p>10 from public schools?</p> <p>11 A I do not recall.</p> <p>12 Q Before today, have you read Mary Starrett's</p> <p>13 declaration?</p> <p>14 A I do not recall.</p> <p>15 Q Okay. Paragraph two of the declaration you</p> <p>16 filed in this case says that you have read it,</p> <p>17 Mrs. Starrett's declaration.</p> <p>18 Does that refresh your recollection?</p> <p>19 A Yes, it does to some degree. That's why I</p> <p>20 indicated I did not recall because I feel I probably</p> <p>21 did read it at some point, but I don't have it fresh</p> <p>22 in my mind.</p> <p>23 Q Okay. How did you feel when you read it given</p> <p>24 that it's fairly short and specifically talks about</p> <p>25 you?</p>
Page 46	Page 48
<p>1 Q And what did you say in response to that</p> <p>2 question?</p> <p>3 A I believe my response was no, that all schools</p> <p>4 would be falling under one statewide Department of</p> <p>5 Education guidance.</p> <p>6 Q Did you say in response to that question from</p> <p>7 Mary Starrett that there was a concern about a mass</p> <p>8 exodus from public schools if private or religious</p> <p>9 schools were allowed to reopen?</p> <p>10 A I did use the term there would -- there could be</p> <p>11 a mass exodus from public schools. But it was not in</p> <p>12 the context directly correlated to private or</p> <p>13 religious schools. It was also in the context of</p> <p>14 school disenrollment for children moving to online</p> <p>15 schools, virtual schools, charter schools, and it was</p> <p>16 in correlation to the fact that disenrollment from</p> <p>17 public schools modifies the school funding</p> <p>18 methodology.</p> <p>19 And in previous conversations that I had</p> <p>20 had that week with other county commissioners, they</p> <p>21 were unaware of what that disenrollment from public</p> <p>22 school does to their school -- their share of the</p> <p>23 state school fund, and so I was sharing that as a</p> <p>24 point of information.</p> <p>25 Q And I understand you're saying that context is</p>	<p>1 A Again, I don't -- I honestly don't recall</p> <p>2 reading it.</p> <p>3 Q Okay. I don't want to know about conversations</p> <p>4 with your lawyer, the governor's lawyers, that's</p> <p>5 legally none of my business. But what I do want to</p> <p>6 know is, did you talk about Mary Starrett's</p> <p>7 declaration with anyone on the governor's staff ever?</p> <p>8 MR. ABRAMS: And just to be clear, you're</p> <p>9 including Justin Buhler and Sarah Westin. Right,</p> <p>10 John?</p> <p>11 Q. BY MR. KAEMPF: If it involved lawyers, I don't want</p> <p>12 to know that. But I want to know of people who are not</p> <p>13 lawyers that you worked with, for example, Jody</p> <p>14 Christensen, people like that, did you ever with such</p> <p>15 people, nonlawyers, discuss Mary Starrett's declaration</p> <p>16 in this case?</p> <p>17 A Yes.</p> <p>18 Q Who did you discuss that with?</p> <p>19 A I discussed that with Jody Christensen.</p> <p>20 Q And was that in writing or verbally or both?</p> <p>21 A Verbally. It was verbally.</p> <p>22 Q And what was Jody's reaction? What did she say</p> <p>23 when you discussed that?</p> <p>24 A I think Jody and I were trying to recall the</p> <p>25 conversation, and we both recollected very similar</p>



Leah Horner

13 (Pages 49 to 52)

Page 49	Page 51
<p>1 statements that were had on that call.</p> <p>2 Q Did Jody say to you, in so many words, that yes,</p> <p>3 she recalled that you did use the phrase "mass</p> <p>4 exodus" from public schools?</p> <p>5 A I don't know if Jody used that phrase, but I</p> <p>6 recall using that phrase. And so I offered that up</p> <p>7 as part of the conversation with Jody.</p> <p>8 Q Because you do recall that.</p> <p>9 A Yes.</p> <p>10 Q Have you in any way been disciplined or</p> <p>11 reprimanded by anyone in the governor's office</p> <p>12 because of what -- your statement about the mass</p> <p>13 exodus from public schools?</p> <p>14 A No.</p> <p>15 Q Since the mass exodus meeting that Mary Starrett</p> <p>16 attended, have you had any kind of communication with</p> <p>17 her?</p> <p>18 A Yes.</p> <p>19 Q Have you ever expressed a concern to anyone</p> <p>20 during the pandemic about a large amount of students</p> <p>21 leaving public schools?</p> <p>22 A Yes.</p> <p>23 Q Okay. Who did you say that to?</p> <p>24 A That was a topic of conversation that came up on</p> <p>25 all of the county calls that I had over that similar</p>	<p>1 Q Have you ever expressed a concern to anyone</p> <p>2 about a large amount of students leaving Oregon's</p> <p>3 public schools during the pandemic?</p> <p>4 A No.</p> <p>5 Q You signed a sworn declaration in this case.</p> <p>6 Correct?</p> <p>7 A Yes.</p> <p>8 Q Did you read it before you signed it?</p> <p>9 A Yes.</p> <p>10 Q Is it accurate?</p> <p>11 A Yes.</p> <p>12 Q In paragraph two of your declaration in this</p> <p>13 case, which states that you reviewed Commissioner</p> <p>14 Mary Starrett's declaration, and you say that it</p> <p>15 references, quote, [as read:] a single comment of</p> <p>16 mine, end quote.</p> <p>17 What is that single comment of yours?</p> <p>18 A I believe the single comment was in reference to</p> <p>19 the mass exodus comment that was made on that call.</p> <p>20 Q What prompted you to make that mass exodus</p> <p>21 comment?</p> <p>22 A The prompt from that comment was other</p> <p>23 conversations that I had had with county</p> <p>24 commissioners who were unaware of the impacts on</p> <p>25 disenrollment from public schools to the state school</p>
Page 50	Page 52
<p>1 period of time.</p> <p>2 Q And who was concerned about a large amount of</p> <p>3 students leaving public schools during the pandemic?</p> <p>4 A I'm sorry. Could you repeat the first part of</p> <p>5 that sentence?</p> <p>6 Q Sure.</p> <p>7 Who was concerned about a large amount of</p> <p>8 students leaving public schools during the pandemic?</p> <p>9 A County commissioners.</p> <p>10 Q Can you give me the names of any besides Mary</p> <p>11 Starrett?</p> <p>12 A Yes. Commissioner Anderes from Union County.</p> <p>13 Q Any others?</p> <p>14 A I'm trying to recollect. I believe -- well, I</p> <p>15 don't want to speculate.</p> <p>16 There were -- I'll give you a little bit</p> <p>17 more context.</p> <p>18 During the pandemic, county commissioners</p> <p>19 have taken on a public health role that they are not</p> <p>20 accustomed to. And through that, their role in</p> <p>21 working with their school districts and the</p> <p>22 Department of Education is a role that they are also</p> <p>23 unfamiliar with because schools do not normally fall</p> <p>24 under the jurisdiction of a county commissioner's</p> <p>25 role.</p>	<p>1 fund share that their counties would receive.</p> <p>2 Q Please tell me the names of all such county</p> <p>3 commissioners that you just referenced.</p> <p>4 A So I'm trying to recall. Commissioner Anderes</p> <p>5 from Union County was one. This was a topic that</p> <p>6 came up on the call with the commissioners from the</p> <p>7 Eastern Oregon counties that I had previously had. I</p> <p>8 do not recall all of the county commissioners that</p> <p>9 were on the call on -- on that day.</p> <p>10 Q Paragraph three of your declaration states,</p> <p>11 quote, [as read:] Miss Starrett takes what I said</p> <p>12 out of context and/or misapprehends what I said, end</p> <p>13 quote.</p> <p>14 Is that accurate?</p> <p>15 A Yes.</p> <p>16 Q How, according to you, did Mrs. Starrett</p> <p>17 misapprehend what you said?</p> <p>18 A In my recollection of her statements, she</p> <p>19 correlated the mass exodus comment to only private,</p> <p>20 religious schools which was not the case. I was</p> <p>21 talking in the context of all students disenrolling</p> <p>22 from K-12 public schools regardless of where they</p> <p>23 were going or the impact to religious private</p> <p>24 schools.</p> <p>25 Q Okay. And paragraph three of your declaration,</p>

Leah Horner

14 (Pages 53 to 56)

Page 53	Page 55
<p>1 when you say that Ms. Starrett, quote, [as read:]</p> <p>2 takes what I said out of context, end quote, what is</p> <p>3 it that you said?</p> <p>4 A My recollection of what was said was two parts.</p> <p>5 The first part was in reference to the</p> <p>6 question that Commissioner Starrett had asked about</p> <p>7 whether or not private, religious schools would be</p> <p>8 able to operate under guidance different than K-12</p> <p>9 public schools. The answer to that was no.</p> <p>10 And then I pivoted as a follow-up statement</p> <p>11 talking about the potential of mass exodus from</p> <p>12 public schools and the impact that that would have to</p> <p>13 the state school fund share. And in reading</p> <p>14 Ms. Starrett's -- or Commissioner Starrett's</p> <p>15 comments, I believe that she conflated those two</p> <p>16 independent thoughts as one correlated statement.</p> <p>17 Q You say that she took your comments out of</p> <p>18 context. So please tell me what was the proper</p> <p>19 context.</p> <p>20 A I think the proper context was that if we have</p> <p>21 students leaving K-12 public schools, there will be</p> <p>22 an impact to the state school fund share that school</p> <p>23 districts receive, and that that could be a</p> <p>24 longer-term issue for schools to be able to operate.</p> <p>25 Q Now, paragraph three of your declaration, as I</p>	<p>1 used in any of the text messages or emails within the</p> <p>2 governor's office related to the pandemic?</p> <p>3 A Not that I'm aware of.</p> <p>4 Q Do you know if anyone redacted or removed the</p> <p>5 phrase "mass exodus" from all the 50-some thousand</p> <p>6 documents we got?</p> <p>7 A No.</p> <p>8 Q In paragraph four of your declaration it states,</p> <p>9 quote, [as read:] I am not the person who makes</p> <p>10 policy determinations in the area of education for</p> <p>11 the state of Oregon. Those people are the governor</p> <p>12 and Lindsey Capps, end quote.</p> <p>13 Is that true?</p> <p>14 A Yes.</p> <p>15 Q Have you ever heard or written anything stated</p> <p>16 by Governor Brown or Lindsey Capps expressing a</p> <p>17 concern about a mass exodus from public schools</p> <p>18 during the pandemic?</p> <p>19 A No.</p> <p>20 Q Have you ever heard or seen anything in writing</p> <p>21 from the governor or Lindsey Capps that they were</p> <p>22 worried about a large amount of students leaving</p> <p>23 public schools due to the pandemic or words to that</p> <p>24 effect?</p> <p>25 A No.</p>
Page 54	Page 56
<p>1 mentioned, says that Ms. Starrett misapprehended what</p> <p>2 you said. So what I would like to know is, what did</p> <p>3 you mean to convey?</p> <p>4 A I meant to convey two statements; the first</p> <p>5 being that private schools, religious or not, would</p> <p>6 not be under different guidance than K-12 public</p> <p>7 schools.</p> <p>8 And the second piece that I wished to</p> <p>9 convey was that if there was disenrollment from K. 12</p> <p>10 public schools, it impacts the state's school fund</p> <p>11 share that school districts receive.</p> <p>12 Q During this conference call we're talking about</p> <p>13 that you say happened on Wednesday, August 5th, do</p> <p>14 you recall anyone else using the phrase "mass exodus"</p> <p>15 besides you?</p> <p>16 A I do not recall anybody else using that term.</p> <p>17 Q And going back to that meeting, do you know why</p> <p>18 you used the somewhat unique phrase "mass exodus" in</p> <p>19 response to Ms. Starrett's question?</p> <p>20 A I do not recall why that phrase was used.</p> <p>21 Q Did you ever see the phrase "mass exodus"</p> <p>22 relating to public schools in the pandemic before you</p> <p>23 made that statement to Ms. Starrett?</p> <p>24 A No.</p> <p>25 Q Are you aware of the phrase "mass exodus" being</p>	<p>1 Q Okay. During the pandemic, have you been</p> <p>2 involved in any group that use Zoom or similar online</p> <p>3 meeting services?</p> <p>4 A Yes.</p> <p>5 Q And do you know if any of those Zoom or</p> <p>6 Zoom-like meetings have been recorded during the</p> <p>7 pandemic?</p> <p>8 A Very few of the Zoom and Zoom-like meetings are</p> <p>9 recorded.</p> <p>10 Q But some are?</p> <p>11 A I believe some are.</p> <p>12 Q Okay. In any of the Zoom meetings you've had</p> <p>13 this year, was there ever a discussion about the</p> <p>14 amount of students leaving public schools?</p> <p>15 A No, other than the one with Ms. Starrett.</p> <p>16 Q In any of the Zoom meetings that you attended,</p> <p>17 was there ever a concern raised about religious or</p> <p>18 private schools?</p> <p>19 A I have heard that concern in Zoom meetings that</p> <p>20 I have had with other county commissioners.</p> <p>21 Q What are their names?</p> <p>22 A I don't recall.</p> <p>23 Q But you know their role is a county</p> <p>24 commissioner.</p> <p>25 A Yes.</p>

Leah Horner

15 (Pages 57 to 60)

Page 57	Page 59
<p>1 Q And do you know if -- go ahead.</p> <p>2 A The question -- the question of how the</p> <p>3 Department of Education would be handling school</p> <p>4 guidance going back into the classroom, the question</p> <p>5 came up from a number -- a handful of county</p> <p>6 commissioners, similar to Commissioner Starrett's</p> <p>7 question about whether or not we would be bifurcating</p> <p>8 private and public school guidance.</p> <p>9 I don't recall off the top of my head which</p> <p>10 commissioners have asked that, but that was a</p> <p>11 question that we got early on as we knew children</p> <p>12 were going to -- either be going to distance learning</p> <p>13 or attempting in-person schooling.</p> <p>14 Q And in response to that bifurcation concern,</p> <p>15 what did you say?</p> <p>16 A The answer to that all along has been no, we are</p> <p>17 not separating out the guidance, the school guidance.</p> <p>18 Q Why not?</p> <p>19 A That is an education policy that I would have to</p> <p>20 defer to my colleague Lindsey Capps on.</p> <p>21 Q Before the conference call that Mary Starrett</p> <p>22 was on where you made the mass exodus statement, had</p> <p>23 you ever heard anyone in Oregon's government express</p> <p>24 any kind of concern about a significant number of</p> <p>25 students leaving public schools during the pandemic?</p>	<p>1 A Based on my understanding of the education</p> <p>2 guidance, yes.</p> <p>3 Q But if that is true, Ms. Horner, please explain</p> <p>4 to me why on July 23rd of 2020, Colt Gill sent you a</p> <p>5 text message stating, quote, [as read:] I think you</p> <p>6 are aware that we were able to land five million</p> <p>7 nonmedical face coverings, end quote. And, quote,</p> <p>8 [as read:] I did not plan on providing any to private</p> <p>9 schools, end quote.</p> <p>10 MR. ABRAMS: Objection. Calls for</p> <p>11 speculation.</p> <p>12 You can answer.</p> <p>13 Q BY MR. KAEMPF: Do you recall that Colt Gill</p> <p>14 sent you that text message?</p> <p>15 A I honestly do not recall that text message.</p> <p>16 Q Do you recall ever having a discussion with</p> <p>17 Colt Gill about the five million nonmedical KN-95</p> <p>18 face coverings that the state received?</p> <p>19 A No.</p> <p>20 Q Do you recall Colt Gill in any manner ever</p> <p>21 telling you that he did not plan on providing any of</p> <p>22 them to private schools?</p> <p>23 A I do not.</p> <p>24 Q And I'll represent to you that in that text</p> <p>25 message, Mr. Gill also asked, quote, [as read:] What</p>
Page 58	Page 60
<p>1 A No.</p> <p>2 Q Now, going back to your declaration in paragraph</p> <p>3 four in reference to the mass exodus from public</p> <p>4 schools comment, you say, quote, [as read:] Even if I</p> <p>5 had said what Ms. Starrett reported, it would reflect</p> <p>6 only my own observations, end quote.</p> <p>7 Is that true?</p> <p>8 A Yes.</p> <p>9 Q What were your own observations related to the</p> <p>10 mass exodus from public schools?</p> <p>11 A My own observations related to mass exodus from</p> <p>12 public schools was that I believe that it is an issue</p> <p>13 that honestly was not being discussed and would have</p> <p>14 had -- would have ramifications with negative</p> <p>15 outcomes if elected officials were unaware that there</p> <p>16 would be, again, negative outcomes related to</p> <p>17 disenrollment.</p> <p>18 Q What do you mean by "negative outcomes"?</p> <p>19 A The negative outcome related to that would</p> <p>20 be -- could potentially be a significant decrease in</p> <p>21 a school's -- state school's fund share.</p> <p>22 Q Now, in your declaration you also state that,</p> <p>23 quote, [as read:] all schools are being treated</p> <p>24 equally, end quote.</p> <p>25 Is that true?</p>	<p>1 are your thoughts on this, end quote, and that's</p> <p>2 marked as 039323.</p> <p>3 Do you recall that and did you give him</p> <p>4 your thoughts on that issue?</p> <p>5 A I honestly don't recall.</p> <p>6 Q Aside from text messages, do you have any</p> <p>7 knowledge about whether private schools have been</p> <p>8 specifically excluded from getting the KN-95 -- the</p> <p>9 five million nonmedical face coverings?</p> <p>10 A I don't have any recollection of that.</p> <p>11 Q What is the JER fund?</p> <p>12 A The JER fund is a fund that the Department of</p> <p>13 Education has, but I do not know enough about it to</p> <p>14 even begin to explain what it is.</p> <p>15 Q Isn't it true that in May of this year, you</p> <p>16 stated that private faith-based schools should be</p> <p>17 excluded from the JER fund? And that's document</p> <p>18 00966.</p> <p>19 A I don't recall.</p> <p>20 Q Well, I'll represent to you that that's a</p> <p>21 statement in the documents that you made.</p> <p>22 Do you recall ever making that statement,</p> <p>23 that specifically that private, faith-based schools</p> <p>24 should be excluded from the JER fund?</p> <p>25 A I do not.</p>

Leah Horner

16 (Pages 61 to 64)

Page 61	Page 63
<p>1 Q Do you know what that policy implemented?</p> <p>2 A I'm assuming that if I made a statement about</p> <p>3 it, it was something to do with broadband, but,</p> <p>4 otherwise, I do not recall.</p> <p>5 Q Isn't it true that Governor Brown, in fact, is</p> <p>6 not treating private and religious schools the same</p> <p>7 as public schools?</p> <p>8 A No.</p> <p>9 Q Why is that not true? Tell me how they're being</p> <p>10 treated equally, according to you.</p> <p>11 MR. ABRAMS: Objection to the extent it</p> <p>12 calls for a legal conclusion.</p> <p>13 You can answer.</p> <p>14 Q BY MR. KAEMPF: Go ahead.</p> <p>15 A Well, the education decisions are not in my</p> <p>16 policy areas. From my understanding, the guidance</p> <p>17 that has been worked on is the same for all schools</p> <p>18 across the board.</p> <p>19 Q Isn't it true that in July of this year, you</p> <p>20 considered allowing religious schools to reopen for</p> <p>21 in-person instruction if they could do that in</p> <p>22 compliance with the health and safety requirements?</p> <p>23 I'm referring --</p> <p>24 MR. ABRAMS: Objection -- objection. "You"</p> <p>25 in that is vague.</p>	<p>1 Q Have either Governor Brown or Lindsey Capps ever</p> <p>2 expressed that type of concern to you?</p> <p>3 A When this question came up with the</p> <p>4 commissioners, I asked Lindsey about it, and he</p> <p>5 explained to me what it does to the state school</p> <p>6 fund. So I would say that we had a discussion about</p> <p>7 it and what the implication would be.</p> <p>8 Q Please give me all details you recall about that</p> <p>9 discussion, including the implications.</p> <p>10 A So I reached out to Lindsey, and I do not recall</p> <p>11 if it was verbal or in writing, and asked him what</p> <p>12 happens if there is a disenrollment from the K-12</p> <p>13 system. And he --</p> <p>14 Q Go ahead.</p> <p>15 A And he indicated to me that the state school</p> <p>16 fund is based on number of students enrolled, and</p> <p>17 that if kids were disenrolling to either go to a</p> <p>18 virtual school, a charter school, a private school,</p> <p>19 that when we did get back -- kids back in school,</p> <p>20 that there would -- there had the potential to be a</p> <p>21 disproportionate impact on the school funds for the</p> <p>22 districts based on disenrollment numbers.</p> <p>23 Q And was that --</p> <p>24 A That was the only conversation we've had about</p> <p>25 this.</p>
Page 62	Page 64
<p>1 Q BY MR. KAEMPF: I'm looking at document 012563.</p> <p>2 And so my question to you, Ms. Horner, is,</p> <p>3 isn't it true that in July of this year, you</p> <p>4 considered allowing religious schools to reopen and</p> <p>5 provide in-person instruction if they could do that</p> <p>6 in compliance with the health and safety</p> <p>7 requirements?</p> <p>8 MR. ABRAMS: Prior objection.</p> <p>9 Q BY MR. KAEMPF: Go ahead.</p> <p>10 A I don't recall that.</p> <p>11 Q Was that policy implemented or not?</p> <p>12 A I don't know.</p> <p>13 Q During the pandemic --</p> <p>14 MR. ABRAMS: (simultaneous talk) -- and</p> <p>15 could we take a midmorning break, please?</p> <p>16 MR. KAEMPF: Sure. Okay.</p> <p>17 MR. ABRAMS: Ten minutes.</p> <p>18 (Break in proceedings.)</p> <p>19 Q BY MR. KAEMPF: Are you still clearheaded and</p> <p>20 able to testify?</p> <p>21 A Yes.</p> <p>22 Q During the pandemic, have you ever expressed a</p> <p>23 concern to Governor Brown or Lindsey Capps about a</p> <p>24 large amount of students leaving public schools?</p> <p>25 A No.</p>	<p>1 Q And about when did that conversation occur?</p> <p>2 A I do not recall specifically.</p> <p>3 Q And how about generally?</p> <p>4 A Generally, I would say mid summer.</p> <p>5 Q And when you said "disproportionate impact,"</p> <p>6 you're talking about money. Correct?</p> <p>7 A Correct.</p> <p>8 Q Was that general subject that you discussed that</p> <p>9 you just mentioned with Lindsey Capps, was that</p> <p>10 general subject ever the subject of any kind of</p> <p>11 written report or summary?</p> <p>12 A Not that I recall.</p> <p>13 Q Have you ever created or read a report that</p> <p>14 shows the possible financial effects of students</p> <p>15 leaving public schools during the pandemic?</p> <p>16 A I have not.</p> <p>17 Q Do you know if one exists?</p> <p>18 A I do not.</p> <p>19 Q Before the mass exodus meeting that we're</p> <p>20 talking about with Mary Starrett that you believe was</p> <p>21 August 5th, had you ever discussed students</p> <p>22 disenrolling from public schools before that date?</p> <p>23 A I believe the conversation came up with the</p> <p>24 Eastern Oregon commissioners prior to that</p> <p>25 conversation with Commissioner Starrett.</p>

Leah Horner

17 (Pages 65 to 68)

Page 65	Page 67
<p>1 Q How much prior? And please give me the names, 2 if you know, of the Eastern Oregon commissioners. 3 A I meet with them on Thursdays. So I believe it 4 was the Thursday prior to the Wednesday meeting with 5 Commissioner Starrett. 6 Q And what is the name of the Eastern Oregon 7 county commissioner who raised a concern like that 8 before Ms. Starrett raised a concern? 9 A Commissioner Anderes from Union County. 10 Q And as best you can recall, what did 11 Commissioner Anderes say in that regard? 12 A He mentioned the impact to the state school fund 13 based on disenrollment of kids from K-12. 14 Q What kind of impact? 15 A He mentioned the reduction in the state school 16 fund share that schools would receive. 17 Q In sort of layperson's speak, was he concerned 18 that his district would receive less money if a lot 19 of students disenrolled? 20 A Yes. 21 Q Can you spell his first and last name, please? 22 A His first name is Paul, P-A-U-L. And his last 23 name is Anderes, A-N-D-E-R-E-S. 24 Q Before the mass exodus meeting with 25 Mary Starrett, had you ever heard or seen in writing</p>	<p>1 Q What are their names? 2 A The one that I recall is Commissioner Anderes. 3 Q Anyone else? 4 A Not that I recall. 5 Q Any other elected official that ever expressed 6 any concern like that? 7 A I believe in general terms other county 8 commissioners, although I don't recall who, indicated 9 that there were students disenrolling from public 10 school to go to virtual charter schools. 11 Q If you don't know their names, do you recall the 12 county they represented concerning those people you 13 just mentioned? 14 A I don't. 15 Q And do you know about when that concern was 16 raised? 17 A It was around that same period of time, end of 18 July. 19 Q Okay. In any of the meetings you've attended or 20 participated in during the pandemic, had you ever 21 heard a concern or seen a concern expressed by any 22 teacher union about students disenrolling from public 23 schools? 24 A I don't recall hearing anything specifically. 25 Q In any meeting you've attended or participated</p>
Page 66	Page 68
<p>1 that phrase related to the pandemic in Oregon? 2 A No. 3 Q After the mass exodus conference call, did any 4 elected official in Oregon raise a similar concern 5 about a large amount of students -- of leaving public 6 schools during the pandemic? 7 A Not that I recall. 8 Q Have you ever used the phrase "mass exodus" 9 about public schools and the pandemic ever with 10 anyone else other than this time with Mary Starrett? 11 A Not that I recall. 12 Q Are you aware of anyone else in Oregon's 13 government using that term "mass exodus" at any time 14 relating to the pandemic and public schools? 15 A No. 16 Q Are you aware of anyone in Oregon's government, 17 other than you, that has used a phrase like "mass 18 exodus" or, you know, just something like a lot of 19 students leaving public schools during the pandemic? 20 A I believe heading into the school reopening 21 plan, that there was concern that students would be 22 leaving public school. 23 Q Who expressed that concern and when? 24 A I have heard -- I heard that concern from county 25 commissioners.</p>	<p>1 in during the pandemic, have you heard or seen any 2 concern from any public school district about 3 students disenrolling from public schools? 4 A Not that I recall. 5 Q Did you verbally or in writing pass along the 6 concern that you mentioned a few minutes ago, that 7 Eastern Oregon -- maybe you said Union County -- 8 commissioner about funding or disenrollment, did you 9 pass that along to anybody at the governor's office? 10 A Yes. That's what triggered the conversation 11 that I mentioned previously with Lindsey Capps about 12 what this impact would have. 13 Q And do you know concerning that conversation 14 with the Eastern Oregon county commissioner and then 15 the related conversation with Lindsey Capps, was that 16 ever memorialized in any kind of memo or a summary? 17 A No. 18 Q Other than Lindsey Capps, have you ever passed 19 along a concern from any elected public official 20 during the pandemic about students disenrolling from 21 public schools? 22 A I do not recall. 23 Q How much money does a public school receive for 24 every enrolled student? 25 A I do not know.</p>



Leah Horner

18 (Pages 69 to 72)

Page 69	Page 71
<p>1 Q Now, going back to your declaration in this</p> <p>2 case, in paragraph three concerning Mary Starrett's,</p> <p>3 you know, mass exodus, that testimony, you say,</p> <p>4 quote, [as read:] I had been discussing a concern</p> <p>5 that had been raised in another call about the</p> <p>6 potential loss to an educational institution of state</p> <p>7 school funds if students were disenrolling from such</p> <p>8 a call, end quote.</p> <p>9 Is that accurate?</p> <p>10 A Yes.</p> <p>11 Q Who was that other call with?</p> <p>12 A It was with the Eastern Oregon county</p> <p>13 commissioners.</p> <p>14 Q Do you remember their names?</p> <p>15 A I know that Commissioner Anderes was on the</p> <p>16 call.</p> <p>17 Q Were others on the call and you just can't</p> <p>18 remember their names?</p> <p>19 A Yes, and I apologize. I have a core set of</p> <p>20 commissioners that I speak with every week, and</p> <p>21 sometimes they're unable to attend. And I cannot</p> <p>22 recall which ones actually called in that day.</p> <p>23 Q As referenced in paragraph three of your</p> <p>24 declaration, when was that, quote, other call, end</p> <p>25 quote?</p>	<p>1 call the week before the mass exodus call?</p> <p>2 A I cannot.</p> <p>3 Q A specific thing from paragraph three of your</p> <p>4 declaration, again, talking about the mass exodus</p> <p>5 statement, you reference that you had been discussing</p> <p>6 another call. You told me about that. And then you</p> <p>7 state, quote, [as read:] In a separate part of the</p> <p>8 conversation, we were discussing whether private</p> <p>9 schools would be exempted from following Department</p> <p>10 of Education guidance, end quote.</p> <p>11 And so my specific question is, when you</p> <p>12 say "a separate part of the conversation," you mean</p> <p>13 the one with Mary Starrett or the one you had the</p> <p>14 week before?</p> <p>15 A The one with Mary Starrett.</p> <p>16 Q Okay. So you and Mary Starrett -- then please</p> <p>17 tell me, according to you, what was your separate</p> <p>18 conversation with her as referenced in paragraph</p> <p>19 three of your declaration in this case?</p> <p>20 A It was a separate statement on the same call</p> <p>21 where she had asked if private schools would be able</p> <p>22 to operate under separate guidance.</p> <p>23 Q And did Ms. Starrett ever raise any other</p> <p>24 questions at that conference call that we're talking</p> <p>25 about that included the mass exodus statement by you?</p>
Page 70	Page 72
<p>1 A So I meet with Eastern Oregon counties</p> <p>2 every -- actually, I meet with them every Wednesday.</p> <p>3 So it would have been the week prior.</p> <p>4 Q And paragraph three of your declaration when</p> <p>5 you're talking about that other call, and it says,</p> <p>6 quote, [as read:] A potential loss to an educational</p> <p>7 institution of state school funds if students were</p> <p>8 disenrolling from such a school, end quote, and my</p> <p>9 question is what educational institution does that</p> <p>10 refer to?</p> <p>11 A I believe that would be the school.</p> <p>12 Q What school?</p> <p>13 A Whichever school a child disenrolled from.</p> <p>14 Q And this other call, as it's referred to, that</p> <p>15 you're saying was the week before the Mary Starrett</p> <p>16 mass exodus one that we've talked about, do you know</p> <p>17 if it was recorded in any way?</p> <p>18 A It was not.</p> <p>19 Q Do you know if there are minutes of that week</p> <p>20 prior meeting with county commissioners or any kind</p> <p>21 of written summary of it?</p> <p>22 A There is not.</p> <p>23 Q Besides the commissioner you mentioned a few</p> <p>24 minutes ago, can you recall the name of any other</p> <p>25 commissioner, or the county they represented, in that</p>	<p>1 A I do not recall.</p> <p>2 Q Did Ms. Starrett, or any other county</p> <p>3 commissioner on the meeting you say was August 5th,</p> <p>4 ask you whether private schools or religious schools</p> <p>5 could be exempted from following Department of</p> <p>6 Education guidance?</p> <p>7 A Yes.</p> <p>8 Q What did you say in response?</p> <p>9 A My response was that we -- to the best of my</p> <p>10 knowledge at that time, we were not issuing separate</p> <p>11 guidance for different types of schools.</p> <p>12 Q And during that meeting -- who asked that</p> <p>13 question, Ms. Starrett or someone else?</p> <p>14 A It was Ms. Starrett.</p> <p>15 Q So did Ms. Starrett ask a separate question to</p> <p>16 the effect of, why can't parochial schools be allowed</p> <p>17 to reopen?</p> <p>18 A I don't recall that specific question at that</p> <p>19 meeting.</p> <p>20 Q How about anything to the effect of religious</p> <p>21 schools or private schools being allowed to reopen?</p> <p>22 A I believe she did ask something along those</p> <p>23 lines.</p> <p>24 Q That's what I would call one question, and I</p> <p>25 could call question number two, she specifically</p>

Leah Horner

19 (Pages 73 to 76)

Page 73	Page 75
<p>1 asked about following Department of Education</p> <p>2 guidance; is that right?</p> <p>3 A I don't know.</p> <p>4 Q How did you know whether or not private schools</p> <p>5 could be exempted from following Department of</p> <p>6 Education guidance?</p> <p>7 A Part of my role in communicating with county</p> <p>8 commissioners is making sure that I have the most</p> <p>9 up-to-date information on all guidance across the</p> <p>10 board to communicate with them. And I had been</p> <p>11 following the development of the Department of</p> <p>12 Education guidance which was how I knew that.</p> <p>13 Q Okay. And through what methods to you keep most</p> <p>14 up to date on that information?</p> <p>15 A Through communication with Lindsey Capps.</p> <p>16 Q Any other method?</p> <p>17 A I will sometimes reach out to Colt Gill.</p> <p>18 Q And what is Colt's title?</p> <p>19 A Colt is the superintendent of the Department of</p> <p>20 Education.</p> <p>21 Q Do you know the name of anyone who researched</p> <p>22 the question of whether private or religious schools</p> <p>23 could be exempted from following Department of</p> <p>24 Education guidance?</p> <p>25 A I do not.</p>	<p>1 we get our economy and business back to normal at the</p> <p>2 end of the pandemic. I don't know that that is</p> <p>3 skewed specifically because of that.</p> <p>4 Q Okay. So let me ask it again because I heard</p> <p>5 part of that, but I don't -- I'm not arguing with</p> <p>6 you, ma'am, but I just wanted to make sure it's</p> <p>7 answered directly.</p> <p>8 Isn't it true that you are now, and have</p> <p>9 been all year, concerned about public schools losing</p> <p>10 funding due to the pandemic?</p> <p>11 A I think I'm concerned in general about getting</p> <p>12 our economy and -- back and running once the pandemic</p> <p>13 is over, and schools are a part of that equation.</p> <p>14 Q Have you ever been specifically concerned about</p> <p>15 public schools losing funding during the pandemic,</p> <p>16 separate from the general economy?</p> <p>17 A I think I've been concerned about it in so much</p> <p>18 as to be able to relay the impacts to the elected</p> <p>19 officials that I communicate with.</p> <p>20 Q Can you give me the names of those elected</p> <p>21 officials that you have communicated with about any</p> <p>22 potential loss of public school funding during the</p> <p>23 pandemic?</p> <p>24 A Yes. So it would be the county commissioners</p> <p>25 who are on my weekly calls. Along with Commissioner</p>
Page 74	Page 76
<p>1 Q In paragraph three of your declaration in this</p> <p>2 case concerning the mass exodus conference call, as</p> <p>3 we're calling it for shorthand, you stated that if,</p> <p>4 quote, [as read:] Students enroll -- disenroll from a</p> <p>5 public school, that school could lose some of its</p> <p>6 state school funds, end quote.</p> <p>7 Is that right?</p> <p>8 A Yes.</p> <p>9 Q Was that on your mind at the time of that</p> <p>10 conference call that you're saying was on August 5th?</p> <p>11 A Yes.</p> <p>12 Q Why?</p> <p>13 A Because I had had that conversation previously</p> <p>14 with county commissioners.</p> <p>15 Q And that's what you already told me about today?</p> <p>16 A Yes.</p> <p>17 Q Was that on your mind because of anything that</p> <p>18 Lindsey Capps or Governor Brown had told you before</p> <p>19 that conference call you're saying was on August 5th?</p> <p>20 A No.</p> <p>21 Q Isn't it true that one reason you made that</p> <p>22 statement is that you were, and you still are,</p> <p>23 concerned about public schools losing funding due to</p> <p>24 the pandemic?</p> <p>25 A I think that I'm concerned in general about how</p>	<p>1 Starrett from Polk County, I have Commissioner Pope</p> <p>2 from Marion County, I have Commissioner Willis. It</p> <p>3 would be the Eastern Oregon county commissioners,</p> <p>4 again, that I've mentioned that I know Commissioner</p> <p>5 Anderes was on, and I don't recall who else was on</p> <p>6 during those conversations at a minimum. There's a</p> <p>7 lot of other county commissioners that I talk to.</p> <p>8 Q This year, have you communicated with any of</p> <p>9 those county commissioners you just mentioned by</p> <p>10 email or text message?</p> <p>11 A Yes.</p> <p>12 Q Stated differently, have you or anybody else in</p> <p>13 the governor's office, that you're aware of, been</p> <p>14 concerned about a large amount of students leaving</p> <p>15 Oregon's public schools during the pandemic?</p> <p>16 A This particular component is really outside of</p> <p>17 my policy area. And, again, while I've been able to</p> <p>18 communicate the impacts to county commissioners,</p> <p>19 that, as a point of concern, is not one that has</p> <p>20 fallen within my portfolio.</p> <p>21 Q Then whose portfolio would that fall in?</p> <p>22 A Lindsey Capps.</p> <p>23 Q Anyone else?</p> <p>24 A Not that I'm aware of.</p> <p>25 Q As you sit here today, from your dealings with</p>

Leah Horner

20 (Pages 77 to 80)

Page 77	Page 79
<p>1 Governor Brown, do you know if she has any concerns</p> <p>2 about public schools losing funding during the</p> <p>3 pandemic?</p> <p>4 A I have not had that conversation with her.</p> <p>5 Q Whether it was in writing or a conversation, do</p> <p>6 you know what her concerns are, if any, about public</p> <p>7 school funding during the pandemic?</p> <p>8 A I do not know.</p> <p>9 Q Can you tell me the name of anyone that you</p> <p>10 haven't mentioned yet today, who is an elected</p> <p>11 official in Oregon, who has ever raised a concern</p> <p>12 about public schools losing funding during the</p> <p>13 pandemic?</p> <p>14 A There is not anybody else that I recall that has</p> <p>15 brought that up specifically to me.</p> <p>16 Q Can you recall the name of anyone representing</p> <p>17 an Oregon religious or private school raising</p> <p>18 concerns about the pandemic on their school?</p> <p>19 A No.</p> <p>20 Q In paragraph three of your declaration in this</p> <p>21 case, you state that, quote, [as read:] I was just</p> <p>22 trying to educate the officials on the conference</p> <p>23 call as to what these decisions look like on a</p> <p>24 broader scale, end quote. This is that mass exodus</p> <p>25 call.</p>	<p>1 the government of Oregon during the pandemic that</p> <p>2 were intended to reduce the amount of students</p> <p>3 leaving public schools?</p> <p>4 A Not that I'm aware of.</p> <p>5 Q Are you aware of anyone in the government of</p> <p>6 Oregon who has made statements or taken actions</p> <p>7 against the interests of private or religious schools</p> <p>8 during the pandemic?</p> <p>9 A Not that I'm aware of.</p> <p>10 Q Isn't it true that one of the purposes of</p> <p>11 Governor Brown's executive orders during the pandemic</p> <p>12 is to protect public schools from losing a lot of</p> <p>13 students?</p> <p>14 A No.</p> <p>15 Q Why do you say that?</p> <p>16 A Well, I am not as familiar with the education</p> <p>17 executive orders because that's outside of my</p> <p>18 portfolio. In my understanding of what is in them,</p> <p>19 they are not in any way drafted in order to protect</p> <p>20 one type of educational institution over another.</p> <p>21 Q In any of these county commissioner meetings</p> <p>22 you've talked about you've been having this year, was</p> <p>23 public school funding ever on your agenda?</p> <p>24 A Not that I recall.</p> <p>25 Q All right. And do you know, other than what</p>
Page 78	Page 80
<p>1 So tell me, what do you mean that you were</p> <p>2 trying to educate them about what these decisions</p> <p>3 looks like on a broader scale?</p> <p>4 A So part of my role in having weekly</p> <p>5 communications with county commissioners is to inform</p> <p>6 and educate all of the issues as I'm aware of related</p> <p>7 to the pandemic. And this was one topic that had</p> <p>8 come up with other commissioners, and I often repeat</p> <p>9 the topics that are of concern from other</p> <p>10 commissioners to other groups of commissioners. And</p> <p>11 I had talked to Lindsey Capps about the impacts to</p> <p>12 the state school fund and communicated that</p> <p>13 information back to them.</p> <p>14 Q When you say this is a topic that had come up,</p> <p>15 what do you mean by this?</p> <p>16 A The disenrollment of students from K-12 public</p> <p>17 school system was the topic that came up.</p> <p>18 Q And when you say "impact," what do you mean?</p> <p>19 A The impact would be the reduction to the state</p> <p>20 school fund that a school would receive.</p> <p>21 Q So in other words, public schools would get less</p> <p>22 money if students disenrolled because of the</p> <p>23 pandemic?</p> <p>24 A That's correct.</p> <p>25 Q Are you aware of any actions taken by anyone in</p>	<p>1 you've told me about from Ms. Starrett, in any of the</p> <p>2 county commissioner weekly meetings this year related</p> <p>3 to the pandemic, did private or religious schools</p> <p>4 ever come up?</p> <p>5 A Not that I am directly recalling.</p> <p>6 Q Are there any minutes or other summaries of any</p> <p>7 of this year's weekly county commissioner meetings?</p> <p>8 A No.</p> <p>9 Q Were any of them recorded in any way to your</p> <p>10 knowledge?</p> <p>11 A No.</p> <p>12 Q Do you have the technology to record those</p> <p>13 meetings if you want to?</p> <p>14 A Yes.</p> <p>15 Q What are -- who decides whether they are</p> <p>16 recorded or not?</p> <p>17 A I do.</p> <p>18 Q And your testimony is that none of the weekly</p> <p>19 county commissioner meetings this year were recorded.</p> <p>20 Is that right?</p> <p>21 A Yes.</p> <p>22 Q Why not?</p> <p>23 A These weekly county commissioner calls are</p> <p>24 designed to be more of an informal touch base to make</p> <p>25 sure that they understand what is forthcoming from</p>

Leah Horner

21 (Pages 81 to 84)

Page 81	Page 83
<p>1 the governor's office and for us to have a better</p> <p>2 understanding of what is happening in their counties.</p> <p>3 They are not formal meetings that would</p> <p>4 require minutes. It is an opportunity for us to have</p> <p>5 open dialogue and question and answers.</p> <p>6 Q So, in other words, for example, they are not as</p> <p>7 formal as you testifying in front of a Senate or a</p> <p>8 House committee?</p> <p>9 A That is correct.</p> <p>10 Q Is it fair to say that during the mass exodus</p> <p>11 meeting we've been talking about, that because of</p> <p>12 that informality your guard was down?</p> <p>13 MR. ABRAMS: Objection. Vague.</p> <p>14 You can answer.</p> <p>15 Q BY MR. KAEMPF: Go ahead.</p> <p>16 A I wouldn't say that my guard is down, but I</p> <p>17 would say that I have a much more cordial and</p> <p>18 informal relationship during those calls.</p> <p>19 Q Do you have an electronic calendar?</p> <p>20 A I do.</p> <p>21 Q Would that show the dates of all of these weekly</p> <p>22 county commissioner meetings this year?</p> <p>23 A It should.</p> <p>24 Q And have you had discussions with anybody or a</p> <p>25 meeting about -- that involved, at least in part,</p>	<p>1 A I do not know.</p> <p>2 Q Are you in a position generally to control Colt</p> <p>3 Gill at the Oregon Department of Education?</p> <p>4 A No.</p> <p>5 Q And to your understanding, what are his job</p> <p>6 duties?</p> <p>7 A My understanding is that Colt Gill is the</p> <p>8 superintendent of the Department of Education.</p> <p>9 Q How is that involved, to your understanding?</p> <p>10 A To my understanding, it involves working with</p> <p>11 all of the state school districts. Beyond that, I</p> <p>12 honestly am not totally sure.</p> <p>13 Q Do you have any specialized training in</p> <p>14 infectious diseases or any other area of medicine?</p> <p>15 A No.</p> <p>16 Q Does Lindsey Capps?</p> <p>17 A I am unaware if he does or not.</p> <p>18 Q Does Governor Brown?</p> <p>19 A I am unaware if she does or not.</p> <p>20 Q Does Colt Gill?</p> <p>21 A I'm unaware if he does or not.</p> <p>22 Q Does Jody Christensen?</p> <p>23 A I am unaware if she does or not.</p> <p>24 Q Have you had any prior experience deal with an</p> <p>25 outbreak of a contagious disease?</p>
Page 82	Page 84
<p>1 public school funding, would that be reflected on</p> <p>2 your calendar?</p> <p>3 A Yes.</p> <p>4 Q And would your calendar also reflect if you had</p> <p>5 any kinds of meetings with representatives of</p> <p>6 religious or private schools?</p> <p>7 A Yes.</p> <p>8 Q Have you ever had a discussion, written or</p> <p>9 verbal, with Governor Brown about reopening or not</p> <p>10 reopening religious or private schools during the</p> <p>11 pandemic?</p> <p>12 A No.</p> <p>13 Q Have you ever had a discussion with Lindsey</p> <p>14 Capps, whether verbally or in writing, about</p> <p>15 reopening or not reopening religious or private</p> <p>16 schools during the pandemic?</p> <p>17 A Not that I recall.</p> <p>18 Q Have you ever had that discussion with anyone in</p> <p>19 Oregon's government?</p> <p>20 A Not that I recall.</p> <p>21 Q Are you familiar with Executive Order 20-29?</p> <p>22 A I am familiar with it, but I could not tell you</p> <p>23 what was in it.</p> <p>24 Q Do you know if it treats public schools and</p> <p>25 religious schools the same or differently?</p>	<p>1 A No.</p> <p>2 Q Does Governor Brown?</p> <p>3 A I'm unaware if she does -- if she has.</p> <p>4 Q Have you heard about the recent related lawsuit</p> <p>5 that was filed by Hermiston Christian School?</p> <p>6 A No.</p> <p>7 Q I'll represent to you that the complaint in that</p> <p>8 case, the lawsuit that's filed with the court, that</p> <p>9 it contends that a public school was allowed to</p> <p>10 reopen in a county that did not meet the standards.</p> <p>11 Do you know what school that is?</p> <p>12 A I do not.</p> <p>13 Q Is that the first you've heard of that?</p> <p>14 A Yes.</p> <p>15 Q During the pandemic, from the governor's office,</p> <p>16 do I understand that some businesses have been</p> <p>17 deemed, quote, essentially businesses, end quote?</p> <p>18 A No.</p> <p>19 Q Is that a term that's used these days in Oregon</p> <p>20 related to the pandemic?</p> <p>21 A It is not.</p> <p>22 Q Okay. Have you ever seen Executive Order</p> <p>23 20-07 that talks about the 25-person gathering ban?</p> <p>24 A I have seen it.</p> <p>25 Q Okay. And it states, in part, that that</p>

Leah Horner

22 (Pages 85 to 88)

Page 85	Page 87
<p>1 executive order, quote, [as read:] does not apply to</p> <p>2 essentially businesses and services, end quote.</p> <p>3 So can you tell me based on what you just</p> <p>4 said, then, what's an essential business?</p> <p>5 A I would have to go back and look at that, but we</p> <p>6 were very careful in not defining essential</p> <p>7 businesses in the state of Oregon.</p> <p>8 Q Are you aware that in Executive Order 20-20 it</p> <p>9 refers to a public school as having, quote, essential</p> <p>10 functions, end quote?</p> <p>11 A I was not aware of that.</p> <p>12 Q Isn't it true that Governor Brown is treating</p> <p>13 public schools as, quote, essential, end quote, but</p> <p>14 religious and private schools as not?</p> <p>15 MR. ABRAMS: Objection. Misstates the</p> <p>16 previous testimony.</p> <p>17 You can answer.</p> <p>18 A I believe all schools are being treated the</p> <p>19 same.</p> <p>20 Q BY MR. KAEMPF: Was there ever a discussion that</p> <p>21 you're aware of that the state of Oregon would</p> <p>22 include private or religious schools in the funding</p> <p>23 being made available to public schools?</p> <p>24 A I was -- I'm not aware of any of those</p> <p>25 conversations.</p>	<p>1 versus keeping things open.</p> <p>2 Q Did public schools have anything to do with,</p> <p>3 according to you, not defining essential business?</p> <p>4 A Schools were not part of the conversation in</p> <p>5 defining essential business at all.</p> <p>6 Q What was?</p> <p>7 A Essential business was focused around business</p> <p>8 sectors.</p> <p>9 Q Like what?</p> <p>10 A Like construction, like manufacturing, like</p> <p>11 restaurants, like retail.</p> <p>12 Q Anything else that you can think of?</p> <p>13 A I think those were -- those were the ones that</p> <p>14 come to mind.</p> <p>15 Q In your capacity as an economic policy advisor</p> <p>16 to Governor Brown, do you think religious or private</p> <p>17 schools are essential businesses?</p> <p>18 A I think that that is outside of my policy</p> <p>19 portfolio.</p> <p>20 Q Whose policy portfolio is it inside?</p> <p>21 A So I would say that the school component is</p> <p>22 inside Lindsey Capps' portfolio.</p> <p>23 Q Anyone else?</p> <p>24 A The religious institution component would be</p> <p>25 inside Sophorn Cheang's portfolio.</p>
Page 86	Page 88
<p>1 Q Do you know whether Oregon state government</p> <p>2 workers like you are considered essential during the</p> <p>3 pandemic?</p> <p>4 MR. ABRAMS: Objection. Misstates the</p> <p>5 previous testimony.</p> <p>6 You can answer.</p> <p>7 A I don't know that we have been designated</p> <p>8 essential.</p> <p>9 Q BY MR. KAEMPF: Did you have any involvement</p> <p>10 with any definition of essential business in Oregon</p> <p>11 concerning the pandemic?</p> <p>12 MR. ABRAMS: Objection. Misstates the</p> <p>13 previous testimony.</p> <p>14 You can answer.</p> <p>15 A Yes.</p> <p>16 Q BY MR. KAEMPF: Okay. What was your input into</p> <p>17 defining what is an essential business?</p> <p>18 A To clarify, we decided not to define essential</p> <p>19 business. I was part of that discussion.</p> <p>20 Q Why not?</p> <p>21 A The conversations around defining essential</p> <p>22 business, and ultimately deciding not to define</p> <p>23 essential business, was due to the potential impact</p> <p>24 that it would have on the broader economy and the</p> <p>25 difficulties associated with shutting things down</p>	<p>1 Q How long have you been working for Governor</p> <p>2 Brown again?</p> <p>3 A Thirteen months.</p> <p>4 Q Okay. In those 13 months, have you observed</p> <p>5 that public schools are part of her political base?</p> <p>6 MR. ABRAMS: Objection. Vague.</p> <p>7 Go ahead.</p> <p>8 A I'm unaware, as that's outside of my policy</p> <p>9 portfolio.</p> <p>10 Q BY MR. KAEMPF: Are you aware of whether public</p> <p>11 teachers unions are part of Governor Brown's</p> <p>12 political base?</p> <p>13 MR. ABRAMS: Same objection.</p> <p>14 A Again, I'm unaware, as that's outside of my</p> <p>15 policy portfolio.</p> <p>16 Q BY MR. KAEMPF: Are you aware of whether private</p> <p>17 or religious schools are part of Governor Brown's</p> <p>18 political base?</p> <p>19 MR. ABRAMS: Same objection.</p> <p>20 A And I'm also unaware.</p> <p>21 Q BY MR. KAEMPF: Outside of Oregon's government,</p> <p>22 can you tell me from what you've observed who you</p> <p>23 think is the most influential person on education</p> <p>24 policy?</p> <p>25 A Outside of my policy portfolio, I do not have a</p>



Leah Horner

23 (Pages 89 to 92)

Page 89	Page 91
<p>1 good handle on who that would be.</p> <p>2 Q Who would?</p> <p>3 A I'm sorry. Could you repeat that?</p> <p>4 Q Who would know that?</p> <p>5 A Oh, Lindsey Capps. Sorry.</p> <p>6 Q Whether it's formal or informal, has the</p> <p>7 governor's office had a team that's been working</p> <p>8 together during the pandemic concerning the school</p> <p>9 reopening and closing issue?</p> <p>10 A I believe yes.</p> <p>11 Q And who would you say is on that team, as I'm</p> <p>12 using it somewhat informally?</p> <p>13 A Unfortunately, that's outside of my policy</p> <p>14 portfolio, and I don't know who is on that.</p> <p>15 Q Can you name even one person on that team?</p> <p>16 A So I believe the governor has a school's</p> <p>17 reopening council, and the one person I do know who</p> <p>18 is on it is Commissioner Mark Bennett because he is</p> <p>19 on my county commissioner calls.</p> <p>20 Q What county does Mark Bennett represent?</p> <p>21 A Baker County.</p> <p>22 Q Can you think of any others that are on that,</p> <p>23 you know, pandemic school reopening team, as I'm</p> <p>24 calling it informally?</p> <p>25 A Yes. Commissioner Minty Morris from Klamath</p>	<p>1 attended any of these team meetings we're talking</p> <p>2 about, about the pandemic and schools?</p> <p>3 And by that personal, I mean because of</p> <p>4 current events, did she attend live by Zoom or</p> <p>5 actually was she physically in the same room as</p> <p>6 others in the meeting?</p> <p>7 A I have not attended any, so I am not sure.</p> <p>8 Q Has Governor Brown or Lindsey Capps ever</p> <p>9 participated in any way in any of your weekly county</p> <p>10 commissioner meetings this year?</p> <p>11 A No.</p> <p>12 Q Has Jody Christensen attended all of them?</p> <p>13 A Jody Christensen has attended all of them that</p> <p>14 are directly related to the counties that she works</p> <p>15 with in her official capacity.</p> <p>16 Q Is Jody Christensen on the same par as you in</p> <p>17 terms of authority, or is she, with respect, a</p> <p>18 subordinate?</p> <p>19 A With respect, she's a subordinate.</p> <p>20 Q Do you know how long Ms. Christensen has worked</p> <p>21 for the governor?</p> <p>22 A I could speculate, but I won't. I'm not sure.</p> <p>23 She was on board prior to my being on the job.</p> <p>24 Q And I may have asked you this before and if I</p> <p>25 did, I apologize. But do you know if any of the</p>
Page 90	Page 92
<p>1 County is also on that, and she is also on my county</p> <p>2 calls.</p> <p>3 Q Okay. And do you have a formal roster of the</p> <p>4 people that are on your county calls?</p> <p>5 A I have a list of those who are invited. That</p> <p>6 does not mean that they all attend, but yes.</p> <p>7 Q Okay. Do you know if any of the members of this</p> <p>8 informal team, as we're calling it, about the</p> <p>9 pandemic and schools reopening or closing, do you</p> <p>10 know if any of them have any specialized medical</p> <p>11 education?</p> <p>12 A I do not know.</p> <p>13 Q Are these people on this team, are they all</p> <p>14 appointees of the governor?</p> <p>15 A I do not know that for sure.</p> <p>16 Q Do you know if any of them were directly elected</p> <p>17 by Oregon's citizens?</p> <p>18 A So the county commissioners that I mentioned are</p> <p>19 directly elected by Oregon citizens.</p> <p>20 Q Anyone else?</p> <p>21 A Not that I'm aware of.</p> <p>22 Q Do you know if any of the members of this team</p> <p>23 were confirmed by the Oregon Senate?</p> <p>24 A I do not know.</p> <p>25 Q To your knowledge, has Governor Brown personally</p>	<p>1 weekly county commissioner meeting this year have</p> <p>2 been recorded in any way?</p> <p>3 A Not that I am aware of.</p> <p>4 Q Okay. And I recall you said earlier that you</p> <p>5 would be the person to decide whether those meeting</p> <p>6 are recorded or not?</p> <p>7 A Yes.</p> <p>8 Q Who is Nik, N-I-K, Blosser, B-L-O-S-S-E-R?</p> <p>9 A He is the governor's chief of staff.</p> <p>10 Q Now, I'll represent to you in a March 31, 2020</p> <p>11 text message written by Nik Blosser --</p> <p>12 MR. KAEMPF: And, Counsel, that is marked</p> <p>13 as 004171.</p> <p>14 Q. BY MR. KAEMPF: -- Nik Blosser, in that text</p> <p>15 message, had a link to a March 31st, 2020 Wall Street</p> <p>16 Journal editorial board opinion. So the very same</p> <p>17 day as the text message. And that Wall Street</p> <p>18 Journal opinion is entitled, quote, [as read:]</p> <p>19 Oregon's Coronavirus Education Lockdown, end quote.</p> <p>20 Have you ever read that article?</p> <p>21 A I don't recall.</p> <p>22 Q Do you recall any knowledge that, you know, it</p> <p>23 came up, hey, look, there's this Wall Street Journal</p> <p>24 piece about Oregon's coronavirus lockdown. Does that</p> <p>25 ring a bell?</p>

Leah Horner

24 (Pages 93 to 96)

Page 93	Page 95
<p>1 A I don't recall it.</p> <p>2 Q Have you ever seen that article?</p> <p>3 A I'm sure if Nik texted it to me I probably read</p> <p>4 it, but I do not recall what was in it.</p> <p>5 Q All right. Do you know if anyone in your office</p> <p>6 or the Oregon Department of Education was interviewed</p> <p>7 for that article?</p> <p>8 A I do not know.</p> <p>9 Q Do you have any idea who was the source in the</p> <p>10 governor's office for that Wall Street Journal op-ed</p> <p>11 piece?</p> <p>12 A No.</p> <p>13 Q Do you know why Nik Blosser included a link to</p> <p>14 that Wall Street Journal article in his March 31,</p> <p>15 2020 text message?</p> <p>16 MR. ABRAMS: Objection. Calls for</p> <p>17 speculation.</p> <p>18 Q BY MR. KAEMPF: Just from your understanding,</p> <p>19 Ms. Horner. You got that text message, and in it is</p> <p>20 a link to that Wall Street Journal article. What's</p> <p>21 your understanding of why there was a link to that</p> <p>22 article?</p> <p>23 A I do not know.</p> <p>24 Q The article, I'll represent to you, it states,</p> <p>25 among other things, that quote, [as read:] Oregon has</p>	<p>1 text message written by Nik Blosser with a link to</p> <p>2 the Wall Street Journal op-ed piece that we're</p> <p>3 talking about. Okay?</p> <p>4 Q. BY MR. KAEMPF: Now, my question to you,</p> <p>5 Ms. Horner, is that among other things the article</p> <p>6 states, quote, [as read:] Oregon has canceled public</p> <p>7 school classes amidst pandemic, but political</p> <p>8 self-interest never sleeps. The Oregon Education</p> <p>9 Association and its labor allies are now blocking</p> <p>10 hundreds of children from continuing their education</p> <p>11 at virtual public charter schools, end quote.</p> <p>12 And my question is, is that true?</p> <p>13 MR. ABRAMS: Objection. Hearsay.</p> <p>14 Objection. The document is not in front of the</p> <p>15 witness.</p> <p>16 You can answer.</p> <p>17 A I don't know.</p> <p>18 Q BY MR. KAEMPF: Before the deposition today, did</p> <p>19 that statement ever come to your attention?</p> <p>20 A I don't recall the text message, but I'm</p> <p>21 assuming that I would have read it. So it would have</p> <p>22 come to my attention at that point. But prior to</p> <p>23 this, in no other instance am I aware of that.</p> <p>24 Q Concerning this Wall Street Journal op-ed that</p> <p>25 Mr. Blosser, the governor's chief of staff linked to</p>
Page 94	Page 96
<p>1 canceled public school classes amidst the pandemic,</p> <p>2 but political self-interest never sleeps. The Oregon</p> <p>3 Education Association and its labor allies are now</p> <p>4 blocking hundreds of children from continuing their</p> <p>5 education at virtual public charter schools, end</p> <p>6 quote.</p> <p>7 Have you ever read or heard that statement</p> <p>8 before?</p> <p>9 MR. ABRAMS: And I'm going to object on the</p> <p>10 record to the extent that we're being -- asking the</p> <p>11 witness to comment on the document that counsel has</p> <p>12 not put in front of her.</p> <p>13 MR. KAEMPF: But you -- I think you have</p> <p>14 the ability to have any documents, and I gave you the</p> <p>15 number.</p> <p>16 MR. ABRAMS: Yeah, you gave me the number</p> <p>17 contemporaneously with starting to ask the questions.</p> <p>18 I am not where I have access to our</p> <p>19 database. It's your responsibility as the deposing</p> <p>20 counsel to make documents available, not mine.</p> <p>21 MR. KAEMPF: No, I disagree.</p> <p>22 MR. ABRAMS: Well, that's unique in my 38</p> <p>23 years of practice.</p> <p>24 MR. KAEMPF: It's fine, but I said the</p> <p>25 document was marked as 004171. It's a March 31, 2020</p>	<p>1 in his text message, do you recall that Wall Street</p> <p>2 Journal, that article being the topic of discussion</p> <p>3 in the governor's office?</p> <p>4 A I do not.</p> <p>5 Q Okay. The Wall Street Journal article we're</p> <p>6 talking about, it also states that Oregon's, quote,</p> <p>7 [as read:] teachers unions were alarmed by this mass</p> <p>8 exodus from the public schools, end quote.</p> <p>9 Is that true?</p> <p>10 MR. ABRAMS: Objection. Hearsay.</p> <p>11 Objection. The document is not in front of her.</p> <p>12 Objection. Vague.</p> <p>13 Go ahead.</p> <p>14 A I'm unaware.</p> <p>15 Q BY MR. KAEMPF: Okay. And I'm asking you</p> <p>16 because this article is from March of 2020, and so</p> <p>17 that would be five months before you're saying there</p> <p>18 was this August 5th meeting with the county</p> <p>19 commissioners where you also used the phrase, "a mass</p> <p>20 exodus" from public schools.</p> <p>21 So my question to you is, were you aware --</p> <p>22 does it refresh your recollection that you were aware</p> <p>23 of this Wall Street Journal article expressing the</p> <p>24 concern of teachers unions about a mass exodus from</p> <p>25 public schools before you used that same phrase in</p>

Leah Horner

25 (Pages 97 to 100)

Page 97	Page 99
<p>1 what you say is the August 5th meeting with Mary 2 Starrett and others? 3 MR. ABRAMS: Objection. The document is 4 not in front of her. Objection. Misstates the 5 testimony. 6 Go ahead. 7 A I do not recall the article and find it merely a 8 coincidence that the same term was utilized in that 9 article and in my comments. 10 Q BY MR. KAEMPF: So is it your testimony today 11 under oath that, yes or no, did you read the Wall 12 Street Journal op-ed piece linked in Nik Blosser's 13 email of March 31, 2020 that uses the phrase "mass 14 exodus from public schools"? 15 Yes or no, do you recall reading before 16 your August 5th conference call that included 17 Commissioner Mary Starrett? 18 A I don't recall reading the article. 19 Q As you sit here today, isn't it true that 20 Governor Brown is concerned about a mass exodus from 21 public schools during the pandemic? 22 MR. ABRAMS: Objection. Asks for 23 speculation. Asked and answered. 24 Go ahead. 25 Q BY MR. KAEMPF: Please answer. I'm asking from</p>	<p>1 Go ahead. 2 A I'm not familiar with that. 3 Q BY MR. KAEMPF: Either way? 4 A Either way. I'm not familiar with transfers 5 either. 6 Q The Wall Street Journal op-ed piece also 7 references an Oregon Department of Education March 24 8 PowerPoint presentation. Do you know what that is? 9 A I do not. 10 Q To your knowledge, have you ever seen anything 11 like that? 12 A I have seen previous Department of Education 13 PowerPoints, but I could not indicate if that was the 14 right one or not. 15 Q Have you ever seen any ODE PowerPoint 16 presentation related to the pandemic? 17 A Yes. 18 Q And if I was to ask you, through Mr. Abrams, is 19 that something you could get a copy of? 20 A The PowerPoint that you're referencing? 21 Probably. 22 Q Okay. And are you -- was it just one ODE 23 PowerPoint presentation relating to the pandemic, or 24 do you think there was more than one? 25 A My recollection is that I've seen a couple of</p>
Page 98	Page 100
<p>1 what you know, Ms. Horner, what you've heard or read. 2 A I have not had a conversation with the governor 3 about that and nor is this my policy area so I do not 4 know. 5 Q And putting aside the words "mass exodus," just 6 other words, general words, like a lot of students 7 leaving public schools, you know, a significant 8 amount of students leaving public schools, isn't it 9 true that that is a concern of Governor Brown's 10 during the pandemic and you're aware of that? 11 MR. ABRAMS: Asked and answered. Calls for 12 speculation. 13 Go ahead. 14 A I'm not aware of that. 15 Q BY MR. KAEMPF: The Wall Street Journal op-ed 16 piece that we're talking about that is Chief of Staff 17 Nik Blosser's March 31, 2020 text message, it also 18 states in reference to, quote, [as read:] the 19 teachers union, end quote, that, quote, [as read:] 20 under pressure from the unions, the Oregon Department 21 of Education stopped allowing transfers on 22 March 27th, end quote. 23 Is that true? 24 MR. ABRAMS: Objection. The document is 25 not in front of her. Objection. Hearsay.</p>	<p>1 ODE PowerPoints related to the pandemic. My 2 recollection, though, is that they are not from 3 March; I feel like they're later in the year. 4 Q Okay. And when you say a couple, do you mean 5 literally two? 6 A I wouldn't say -- I would say I have seen 7 approximately two, but there may have been more than 8 that. 9 Q Okay. All right. 10 And what do you recall being the content of 11 those PowerPoint presentations, generally? 12 A The content of the Department of Education 13 PowerPoints that I have seen were focused on how the 14 agency was looking at their reopening matrix 15 guidance, and the contents that they were looking at 16 related to that. 17 Q The Wall Street Journal op-ed piece we've been 18 talking about, I'll represent to you that it states, 19 quote, [as read:] Even during a national crisis, 20 unions would rather deprive students of an education 21 than see their charter school competitors succeed, 22 end quote. 23 Is that true? 24 MR. ABRAMS: Objection. Calls for 25 speculation. Objection. The document is not in</p>

Leah Horner

26 (Pages 101 to 104)

Page 101	Page 103
<p>1 front of her.</p> <p>2 Go ahead.</p> <p>3 A I don't know.</p> <p>4 MR. ABRAMS: I'm shocked the Wall Street</p> <p>5 Journal doesn't like unions.</p> <p>6 Q BY MR. KAEMPF: Regardless of where this</p> <p>7 printed, I just want to know if you know, Ms. Horner,</p> <p>8 that during this pandemic, public school teacher</p> <p>9 unions would rather deprive students of an education</p> <p>10 rather than see charter school competitors succeed.</p> <p>11 MR. ABRAMS: Objection. Argumentative.</p> <p>12 And for the record, charter schools are</p> <p>13 public schools and are unionized.</p> <p>14 MR. KAEMPF: And Ms. Horner, I've tried to</p> <p>15 treat you with respect all day, so I certainly don't</p> <p>16 mean to argue with you.</p> <p>17 A I am not familiar with that statement.</p> <p>18 Q. BY MR. KAEMPF: Are you aware of any efforts</p> <p>19 that, during the pandemic this year, within the</p> <p>20 governor's office, to prevent or limit students</p> <p>21 transferring to charter schools?</p> <p>22 A I'm not familiar with that at all.</p> <p>23 Q Are you aware of any efforts within the</p> <p>24 governor's office to prevent or limit students</p> <p>25 transferring from public schools to private or</p>	<p>1 speculation.</p> <p>2 MR. KAEMPF: I don't want speculation. She</p> <p>3 works for the governor.</p> <p>4 Q. BY MR. KAEMPF: I just want to know, because you</p> <p>5 received that text message, isn't it true that the</p> <p>6 prompt for having that quick-talking point,</p> <p>7 1:30 call, was this Wall Street Journal op-ed piece?</p> <p>8 MR. ABRAMS: Again, calls for speculation.</p> <p>9 Q BY MR. KAEMPF: I just want to know what you</p> <p>10 know, Ms. Horner.</p> <p>11 A I don't -- I don't recall the article, nor do I</p> <p>12 recall the April 1st, 1:30 meeting. But I cannot</p> <p>13 imagine that the two are related.</p> <p>14 Q Why do you say that?</p> <p>15 A Because education is not in my portfolio, and I</p> <p>16 normally would not attend education meetings nor</p> <p>17 would I be a participant in the talking points</p> <p>18 related for that.</p> <p>19 Q Okay. And do you recall any meeting of any kind</p> <p>20 ever about this Wall Street Journal op-ed piece that</p> <p>21 we're talking about?</p> <p>22 A I do not.</p> <p>23 Q Do you recall if any -- or do you know if any of</p> <p>24 those quick talking points are, as referred, in</p> <p>25 Nik Blosser's April 1, 2020 text message?</p>
Page 102	Page 104
<p>1 religious schools?</p> <p>2 A No, I'm not aware of that.</p> <p>3 Q Do you recall ever discussing this Wall Street</p> <p>4 Journal op-ed piece with anyone within the governor's</p> <p>5 office?</p> <p>6 A I don't recall.</p> <p>7 Q In another text message, a different one, this</p> <p>8 one is dated April 1 of 2020 --</p> <p>9 MR. KAEMPF: And, Counsel, this is marked</p> <p>10 as 004171.</p> <p>11 Q. BY MR. KAEMPF: -- Chief of Staff Nik Blosser</p> <p>12 immediately, after providing the link to the</p> <p>13 March 31, 2020 Wall Street Journal op-ed piece, he</p> <p>14 writes, quote, [as read:] sent you and GKB, I assume</p> <p>15 that means the governor, some quick talking points</p> <p>16 for the 1:30 call.</p> <p>17 Do you remember what any of those quick</p> <p>18 talking points were?</p> <p>19 A I do not.</p> <p>20 Q Is it fair to say, then, just looking at the</p> <p>21 chronology, then, Nik Blosser sent out a text message</p> <p>22 with a link to this Wall Street Journal op-ed, and</p> <p>23 then the governor's office set up a 1:30 call that</p> <p>24 very same day?</p> <p>25 MR. ABRAMS: Objection. Calls for</p>	<p>1 A I do not.</p> <p>2 Q Now, the next day, April 2 of 2020, in a text</p> <p>3 message, Nik Blosser writes, quote, [as read:] please</p> <p>4 give me a call when you can. Urgent, end quote.</p> <p>5 And that's labeled as 004171.</p> <p>6 And, Ms. Horner, I'll remind you that</p> <p>7 immediately after that statement in that text message</p> <p>8 of April 2, this time Nik Blosser has a link to a</p> <p>9 Breitbart.com article of April 2 the very same day.</p> <p>10 Do you recall getting that text message?</p> <p>11 MR. ABRAMS: Objection. Lack of</p> <p>12 foundation. The document, which is not in front of</p> <p>13 the witness, does it reflect her phone number?</p> <p>14 (Simultaneous talk.)</p> <p>15 MR. KAEMPF: I believe she's one of the</p> <p>16 recipients.</p> <p>17 MR. ABRAMS: But you're testifying. Ask</p> <p>18 her about the phone number.</p> <p>19 MR. KAEMPF: Well, no, I'm asking -- I want</p> <p>20 to -- I want to ask her --</p> <p>21 Q. BY MR. KAEMPF: I'm just trying to ask</p> <p>22 Ms. Horner if she recalls getting that text message</p> <p>23 from Nik Blosser on or around April 26 of this year</p> <p>24 relating to having a link to a Breitbart.com article.</p> <p>25 A I do not.</p>

Leah Horner

27 (Pages 105 to 108)

Page 105	Page 107
<p>1 Q Okay. I'll represent to you that the article</p> <p>2 that Mr. Blosser linked on on April 2 in the text</p> <p>3 message from Breitbart is entitled, quote, [as read:]</p> <p>4 Teachers unions pressure states to clamp down on</p> <p>5 virtual charter schools during pandemic, end quote.</p> <p>6 Have you ever seen that Breitbart article?</p> <p>7 A Not that I recall.</p> <p>8 Q Do you know why Nik Blosser was saying that it</p> <p>9 was, quote, urgent, end quote, that you meet to</p> <p>10 discuss that Breitbart article?</p> <p>11 MR. ABRAMS: Mischaracterizes the previous</p> <p>12 testimony because it has not been established that</p> <p>13 she was a recipient of the text.</p> <p>14 Q. BY MR. KAEMPF: And just to clarify that,</p> <p>15 Ms. Horner, do you recall ever getting a text message</p> <p>16 like that?</p> <p>17 A I do not.</p> <p>18 Q Okay. Do you recall ever having a discussion of</p> <p>19 any kind, written or verbal, with Nik Blosser about</p> <p>20 either the Wall Street Journal op-ed piece we've been</p> <p>21 talking about or this Breitbart.com article?</p> <p>22 A I do not.</p> <p>23 Q Have you ever read either of those articles?</p> <p>24 A Not that I recall.</p> <p>25 Q I'll represent to you that the Breitbart article</p>	<p>1 charters, state education officials believe that is</p> <p>2 the intent of the governor's order, end quote.</p> <p>3 Are you aware of that?</p> <p>4 A I'm not aware of that quote.</p> <p>5 Q Are you aware of that policy regardless of where</p> <p>6 it's quoted?</p> <p>7 A I was aware that there was a question around the</p> <p>8 definition of that, but I was not involved in any of</p> <p>9 those policy conversations around that.</p> <p>10 Q Do you know if Governor Brown ever discouraged</p> <p>11 or flat-out blocked transfers to charter schools</p> <p>12 during the pandemic?</p> <p>13 A I do not know.</p> <p>14 Q Do you know whether the Oregon Education</p> <p>15 Association and its labor allies have ever blocked</p> <p>16 children from learning online?</p> <p>17 MR. ABRAMS: Objection. Argumentative.</p> <p>18 Q. BY MR. KAEMPF: And, ma'am, I certainly -- I do not</p> <p>19 mean to be argumentative. I've tried to be polite to you</p> <p>20 all day. Okay.</p> <p>21 MR. ABRAMS: Counsel, being polite to her</p> <p>22 is not the definition of an argumentative objection.</p> <p>23 It is the (simultaneous talk).</p> <p>24 MR. KAEMPF: I just want the record -- I</p> <p>25 just want the record to reflect that all day I have</p>
Page 106	Page 108
<p>1 in part says, quote, [as read:] Oregon Connections</p> <p>2 Academy, a K-12 online public school, posts on the</p> <p>3 enrollment page of its website that due to Governor</p> <p>4 Kate Brown's Executive Order 20-08, as of March 27,</p> <p>5 no Oregon public school students may withdraw or</p> <p>6 enroll in any schools during the school closure due</p> <p>7 to the coronavirus pandemic, end quote.</p> <p>8 Is that your recollection that that's the</p> <p>9 governor's policy?</p> <p>10 A I have no recollection of not only the article</p> <p>11 but even that as a policy topic that I've ever had a</p> <p>12 discussion about.</p> <p>13 Q Okay. Have you ever read a Willamette Week</p> <p>14 article dated March 26th of 2020 discussing the</p> <p>15 pandemic and the Oregon Department of Education?</p> <p>16 A I do not recall that.</p> <p>17 Q Are you aware of that Willamette Week article</p> <p>18 ever being the subject of discussion within the --</p> <p>19 Governor Brown's office?</p> <p>20 A Not that I recall.</p> <p>21 Q Okay. That Breitbart article we're talking</p> <p>22 about, it states, quote, [as read:] Marc Siegel, the</p> <p>23 spokesman for the Oregon Department of Education,</p> <p>24 confirmed that although Governor Brown's order did</p> <p>25 not explicitly call for the closure of online</p>	<p>1 treated her with respect, speaking in a normal tone</p> <p>2 of voice.</p> <p>3 MR. ABRAMS: That's not the objection.</p> <p>4 Q. BY MR. KAEMPF: Are you aware of anyone on the</p> <p>5 governor's staff, including yourself, who are</p> <p>6 concerned that either the Wall Street Journal op-ed</p> <p>7 piece or the Breitbart.com articles were making</p> <p>8 Governor Brown look bad?</p> <p>9 A I'm not aware of that.</p> <p>10 Q As you sit here today, do you know whether</p> <p>11 you've read either or both of those articles?</p> <p>12 MR. ABRAMS: Asked and answered repeatedly.</p> <p>13 A I don't recall reading either of those articles.</p> <p>14 Q BY MR. KAEMPF: I'll represent to you that the</p> <p>15 Breitbart article also states that, quote, [as read:]</p> <p>16 While all Oregon public school children may now learn</p> <p>17 online, the governor's order bans traditional public</p> <p>18 school students from transferring permanently to</p> <p>19 online charter schools should their parents determine</p> <p>20 that education works best for them, end quote.</p> <p>21 Is that true?</p> <p>22 A I don't know.</p> <p>23 Q Do you know what the three key priorities are of</p> <p>24 Oregon's teachers union during the pandemic?</p> <p>25 MR. ABRAMS: Objection. Lacks foundation.</p>



Leah Horner

28 (Pages 109 to 112)

Page 109	Page 111
<p>1 Calls for speculation. 2 You can answer. 3 A I am unaware of what those three are. 4 Q The Breitbart article also states that, quote, 5 [as read:] The Oregon teachers union makes no mention 6 of delivering instruction to students in its three 7 key priorities during the coronavirus crisis. 8 Is that true? 9 MR. ABRAMS: Again, lack of foundation. 10 The witness hasn't been given the document. Assumes 11 facts not in evidence. 12 Go ahead. 13 A I don't know. 14 Q. BY MR. KAEMPF: Do you know why the Oregon 15 teachers union takes that position? 16 MR. ABRAMS: Objection. Assumes facts not 17 in evidence. 18 A I don't work with the teachers union, so I don't 19 know. 20 Q. BY MR. KAEMPF: The Breitbart article also says 21 that a priority of the teachers union is, quote, [as 22 read:] ensuring teachers are kept financially whole, 23 end quote. 24 Based on your work this year, is that true? 25 A I don't know. I don't work with the teachers</p>	<p>1 Q Do you know what happened with those face 2 coverings that were provided to Oregon by FEMA? 3 A I do not. 4 Q Are you aware of any effort to specifically 5 exclude private schools from getting any of those 6 five million FEMA-provided face coverings? 7 A I'm not familiar with that. 8 Q Have you been contacted by any private or 9 religious school in Oregon related to the school 10 having serious financial problems or even possibly 11 closing because of the pandemic? 12 A Not that I recall. 13 Q Are you aware that that is a concern of two of 14 my clients, Horizon Christian School and Life 15 Christian School? 16 A No. 17 Q Are you aware of anyone on the governor's staff 18 being concerned about religious or private schools 19 going out of business because of her executive 20 orders? 21 A I think that the governor's staff is very 22 concerned about all businesses potentially going out 23 of business as a result of the pandemic. 24 Q Are you aware of them, specifically referring, 25 though, to a concern about religious or private</p>
Page 110	Page 112
<p>1 union, and it's outside of my policy portfolio. 2 Q Do you know if it's a priority of Governor 3 Brown's to make sure that private and religious 4 school teachers are kept financially whole? 5 A That is not a topic that I'm familiar with. 6 Q Ms. Horner, are you concerned at all about the 7 plight of Oregon's religious or private schools 8 during the pandemic? 9 A I'm concerned with the plight of all of our 10 schools and teachers. 11 Q Can you tell me anything specific to private or 12 religious schools in Oregon that you've done to help 13 them during the pandemic? 14 A That is not -- the school piece is not within my 15 portfolio, so there is nothing that I can point to 16 specifically. 17 Q I'll represent to you that earlier this week, I 18 took Lindsey Capps' deposition. And among other 19 things, he told me that FEMA, the Federal Emergency 20 Management Agency, gave five million KN-95 face 21 coverings to the state of Oregon. Do you know 22 anything about that? 23 A I do -- I am familiar with FEMA giving the state 24 of Oregon face coverings. I don't know that I'm 25 familiar with that particular five million.</p>	<p>1 schools, going out of business because of her 2 executive orders during the pandemic? 3 A I'm not aware of that. 4 Q Have you ever had a discussion, written or 5 verbal, with Governor Brown about reopening or not 6 reopening religious or private schools during the 7 pandemic? 8 A No. 9 Q The Breitbart article I was asking you about 10 earlier also states that, quote, [as read:] U.S. 11 Education Secretary Betsy DeVos weighed in on the 12 report of the Oregon teachers union's attempt to 13 reign in charter schools, end quote. 14 Have you ever heard about that statement 15 from Secretary DeVos? 16 A Not that I recall. 17 Q The Breitbart article also references a tweet 18 from Education Secretary DeVos that contains a link 19 to the Wall Street Journal op-ed piece I've asked you 20 about today. And I'll represent to you that in her 21 tweet, Secretary DeVos states, quote, [as read:] 22 Surely this must be an April Fool's Day joke or 23 hashtag fake news. Right? End quote. 24 Have you ever heard of that before? 25 MR. ABRAMS: And objection again. We have</p>

Leah Horner

29 (Pages 113 to 116)

Page 113	Page 115
<p>1 a document not put in front of the witness.</p> <p>2 Go ahead.</p> <p>3 A I have not heard of that, nor do I follow</p> <p>4 Secretary DeVos on Twitter.</p> <p>5 Q BY MR. KAEMPF: Even if you don't follow her,</p> <p>6 would that tweet that's in the Breitbart article,</p> <p>7 where she's specifically referencing Oregon's</p> <p>8 teachers unions, in any way did that tweet ever come</p> <p>9 to your attention before today?</p> <p>10 A No.</p> <p>11 Q Do you recall it being the subject of discussion</p> <p>12 within the governor's office?</p> <p>13 A I do not recall it being a topic of discussion.</p> <p>14 Q Do you know if anyone from the Department of</p> <p>15 Education in Oregon responded to Secretary DeVos'</p> <p>16 tweet I just mentioned?</p> <p>17 A I do not know.</p> <p>18 Q Have you ever discussed that tweet with anyone</p> <p>19 on the governor's staff?</p> <p>20 A No.</p> <p>21 Q Do you know if anyone within the governor's</p> <p>22 office or the Oregon Department of Education was a</p> <p>23 source for either the Breitbart or the Wall Street</p> <p>24 Journal op-ed piece we've talked about?</p> <p>25 A I'm unaware if anybody was.</p>	<p>1 A So I'm not familiar with how the school funding</p> <p>2 disruptions work, but that does sound in alignment</p> <p>3 with the previous comments that we've discussed.</p> <p>4 Q Kind of lay terms, if someone transfers out of a</p> <p>5 public school to another school, does school funding</p> <p>6 disruption mean that the public school then loses</p> <p>7 state money?</p> <p>8 A I believe so.</p> <p>9 Q Have you ever received any pressure during the</p> <p>10 pandemic from any teachers union representative</p> <p>11 relating to students leaving public schools?</p> <p>12 A Not that I recall.</p> <p>13 Q Have you ever met or communicated with any</p> <p>14 advocates of brick-and-mortar public schools during</p> <p>15 the pandemic?</p> <p>16 A Can you repeat that question?</p> <p>17 Q Sure.</p> <p>18 MR. KAEMPF: If the reporter can read it</p> <p>19 back, please.</p> <p>20 (Record read.)</p> <p>21 A Yes.</p> <p>22 Q BY MR. KAEMPF: Are you aware personally of the</p> <p>23 governor's office, or the Oregon Department of</p> <p>24 Education, following any guidelines issued by United</p> <p>25 States Education Secretary Betsy DeVos?</p>
Page 114	Page 116
<p>1 Q Who is Marc Siegel of the Oregon Department of</p> <p>2 Education?</p> <p>3 A I think you mentioned previously that he was</p> <p>4 their communications person, but I don't know who</p> <p>5 that is.</p> <p>6 Q You don't. And if you don't know, that's fine.</p> <p>7 In the Breitbart article, it says that</p> <p>8 Breitbart reached out to, quote, [as read:] Mark</p> <p>9 Siegel at Oregon Department of Education who</p> <p>10 responded, among other things, that, quote, [as</p> <p>11 read:] under guidance established by the Department</p> <p>12 on March 26, 2020, virtual public charter school</p> <p>13 enrollment was paused beginning March 27, 2020</p> <p>14 through the remainder of the extended closure.</p> <p>15 Are you aware of that?</p> <p>16 A I don't recall that.</p> <p>17 Q And the Breitbart article also goes on to say,</p> <p>18 quote, [as read:] The primary reason for this closure</p> <p>19 is to ensure students are able to access the support</p> <p>20 they need locally without creating further school</p> <p>21 funding disruptions that would be created by the</p> <p>22 transfer of students from one school to another, end</p> <p>23 quote.</p> <p>24 Is that a true statement, the school</p> <p>25 funding disruptions?</p>	<p>1 A I'm unaware of that.</p> <p>2 Q The Breitbart article also quotes Secretary</p> <p>3 DeVos as saying that, quote, [as read:] It was</p> <p>4 extremely disappointing to hear that some school</p> <p>5 districts were using information from the Department</p> <p>6 of Education as an excuse not to educate kids, end</p> <p>7 quote.</p> <p>8 From your knowledge, is that true as to</p> <p>9 Oregon?</p> <p>10 A I don't have any knowledge on that.</p> <p>11 Q Isn't it true --</p> <p>12 MR. ABRAMS: You know, Mr. Kaempf, it's</p> <p>13 noon. How much more do you have?</p> <p>14 MR. KAEMPF: Let's go off the record.</p> <p>15 MR. ABRAMS: Sure.</p> <p>16 (Break in proceedings.)</p> <p>17 Q BY MR. KAEMPF: Are you still clearheaded and</p> <p>18 able to testify?</p> <p>19 A Yes.</p> <p>20 Q Isn't it true that public schools could suffer a</p> <p>21 significant reduction in funding if students</p> <p>22 disenrolled from them to attend private or religious</p> <p>23 schools?</p> <p>24 A Yes, there is that potential.</p> <p>25 Q Isn't it true that this concern is a significant</p>

Leah Horner

30 (Pages 117 to 120)

Page 117	Page 119
<p>1 reason why Governor Brown has not allowed religious</p> <p>2 schools to reopen full time with in-person classes?</p> <p>3 MR. ABRAMS: Objection. Calls for</p> <p>4 speculation. You can answer.</p> <p>5 A I'm unaware if that's part of the decision.</p> <p>6 Q BY MR. KAEMPF: Have you ever discussed with</p> <p>7 anyone the concept of students leaving public schools</p> <p>8 to go to private or religious schools during the</p> <p>9 pandemic?</p> <p>10 A No.</p> <p>11 Q Do you know if, within Oregon government, there</p> <p>12 was ever a financial analysis done to see how a lot</p> <p>13 of students leaving public schools would pencil out</p> <p>14 financially?</p> <p>15 A I do not know if that was done.</p> <p>16 Q Do you know if the governor's office ever</p> <p>17 decided that student transfers to religious or</p> <p>18 private schools were to be stopped or canceled?</p> <p>19 A I'm unaware of that.</p> <p>20 Q Don't tell me about any discussions with</p> <p>21 Mr. Abrams, your lawyer. But I just want to know,</p> <p>22 were you involved in gathering any of the documents</p> <p>23 Plaintiffs requested?</p> <p>24 A Not that I'm aware of.</p> <p>25 Q Are you aware of anyone in the governor's office</p>	<p>1 Q Are you aware of the governor, or anyone else in</p> <p>2 her office, ever deciding that they should try to</p> <p>3 discourage or block transfers to religious or private</p> <p>4 schools?</p> <p>5 MR. ABRAMS: Asked and answered. Go ahead.</p> <p>6 A I'm not aware of that.</p> <p>7 Q BY MR. KAEMPF: Are you aware of any kind of</p> <p>8 financial or detailed analysis that's been done this</p> <p>9 year relating to the pandemic and public schools</p> <p>10 losing money?</p> <p>11 A No.</p> <p>12 Q Do you know the dollar figure for any Oregon</p> <p>13 county when a single student is enrolled in a public</p> <p>14 school -- unenrolled?</p> <p>15 MR. ABRAMS: Asked and answered. Go ahead.</p> <p>16 A I do not.</p> <p>17 Q BY MR. KAEMPF: In any of the documents that</p> <p>18 you've worked on related to the pandemic, does the</p> <p>19 document have a track changes function?</p> <p>20 A Yes.</p> <p>21 Q And can you tell me some documents you've worked</p> <p>22 on relating to the pandemic that have a track changes</p> <p>23 function?</p> <p>24 A The majority of the documents that I've worked</p> <p>25 on related to the pandemic that have track changes on</p>
Page 118	Page 120
<p>1 omitting or redacting any documents that were</p> <p>2 requested?</p> <p>3 MR. ABRAMS: Again, Mr. Kaempf, as I did</p> <p>4 with Mr. Capps' deposition, any such directive would</p> <p>5 be done at counsel as privilege, and I am directing</p> <p>6 the witness not to answer.</p> <p>7 MR. KAEMPF: Interesting. Okay.</p> <p>8 Q BY MR. KAEMPF: Are you aware of any Oregon</p> <p>9 public school district, or any association</p> <p>10 representing them, lobbying to shut down transfers</p> <p>11 from public school?</p> <p>12 A I'm not aware of that.</p> <p>13 Q Are you aware of any labor unions in Oregon</p> <p>14 acting on behalf of teachers lobbying to shut down</p> <p>15 transfers out of public schools?</p> <p>16 A I'm not aware of that.</p> <p>17 Q Is it true that representatives of public</p> <p>18 teachers unions have pressured you and others in the</p> <p>19 governor's office to keep religious and private</p> <p>20 schools closed during the pandemic?</p> <p>21 A I have not been lobbied on that. I don't know</p> <p>22 if others have.</p> <p>23 Q Are you aware of any teachers or school unions</p> <p>24 lobbying to keep transfers to religious schools down?</p> <p>25 A I'm not aware of that.</p>	<p>1 it are guidance related to sector operations.</p> <p>2 Q Do any of those involve schools and the</p> <p>3 pandemic, even in part.</p> <p>4 A Even in part, I would say that there is -- there</p> <p>5 is guidance related to face coverings that has a</p> <p>6 correlation to the higher education coordinating</p> <p>7 commission and higher education institutions that</p> <p>8 does have a correlation.</p> <p>9 Q Are you aware of any specific recommendations</p> <p>10 made by anyone on the governor's staff concerning</p> <p>11 religious or private schools reopening during the</p> <p>12 pandemic that Governor Brown rejected?</p> <p>13 A No.</p> <p>14 Q Did you ever observe anyone on the governor's</p> <p>15 staff do or say anything that indicated that they</p> <p>16 were biased against religious or private schools?</p> <p>17 A No.</p> <p>18 Q Were you involved in the drafting and revising</p> <p>19 of the July 2020 guidance related to the pandemic?</p> <p>20 A Could you be more specific on which guidance?</p> <p>21 Q Yeah. Concerning closing or reopening schools.</p> <p>22 A I had been in a -- those were the PowerPoints</p> <p>23 that I mentioned previously that I had seen from the</p> <p>24 Department of Education. I was not in a</p> <p>25 decision-making role, but I did see those documents</p>

**Leah Horner****31 (Pages 121 to 124)**

<b>Page 121</b>	<b>Page 123</b>
<p>1 that led to the July 2020 reopening matrix.</p> <p>2 Q Who was in the decision-making position relating</p> <p>3 to the July 2020 guidance that we're talking about?</p> <p>4 A So I believe it was Lindsey Capps, along with</p> <p>5 our deputy chief of staff, Gina Zejdlik, and our</p> <p>6 chief of staff, Nik Blosser. But again, this is</p> <p>7 outside of my policy area, so I'm not -- it may have</p> <p>8 been others.</p> <p>9 Q Okay. Isn't it true, Ms. Horner, that these</p> <p>10 executive orders related to the pandemic are solely</p> <p>11 up to Governor Brown's discretion?</p> <p>12 MR. ABRAMS: Objection to the extent it</p> <p>13 calls for a legal conclusion. You can answer.</p> <p>14 A I believe so.</p> <p>15 Q BY MR. KAEMPF: And isn't it also true that</p> <p>16 Governor Brown can withdraw the pandemic executive</p> <p>17 order whenever she wants?</p> <p>18 MR. ABRAMS: Same objection. Go ahead.</p> <p>19 A I believe so.</p> <p>20 Q BY MR. KAEMPF: Isn't it true that a withdrawn</p> <p>21 executive order could be reimposed by Governor Brown</p> <p>22 whenever she wants?</p> <p>23 MR. ABRAMS: Objection. Calls for a legal</p> <p>24 conclusion. Calls for speculation. Go ahead.</p> <p>25 A I believe so.</p>	<p>1 pressure you to keep religious schools closed?</p> <p>2 A No.</p> <p>3 Q Are you aware of any public school</p> <p>4 representative ever pressuring Governor Brown or</p> <p>5 anyone else within her office to keep religious or</p> <p>6 private schools closed?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q What is your work e-mail address?</p> <p>9 A It's Leah L-E-A-H dot Horner H-O-R-N-E-R</p> <p>10 @Oregon.gov.</p> <p>11 Q Have you ever used a personal e-mail address to</p> <p>12 discuss issues related to the pandemic?</p> <p>13 A No.</p> <p>14 Q Do you have any text or e-mails on a personal</p> <p>15 cell phone or personal computer that relate to the</p> <p>16 pandemic and any state of Oregon policy?</p> <p>17 A Not that I recall.</p> <p>18 Q Have you ever purposely used your private</p> <p>19 computers or private phones or devices to avoid</p> <p>20 public disclosure?</p> <p>21 A No.</p> <p>22 Q Do you know the number of the most current</p> <p>23 executive order relating to K-to-12 schools?</p> <p>24 A I do not.</p> <p>25 Q Again, is it correct that you did not take an</p>
<b>Page 122</b>	<b>Page 124</b>
<p>1 Q BY MR. KAEMPF: Currently is there a</p> <p>2 stay-at-home order in place in Oregon?</p> <p>3 A No.</p> <p>4 Q Concerning Oregon's large school districts,</p> <p>5 which school and union leaders have you had the most</p> <p>6 communication with during the pandemic?</p> <p>7 A I have not had any communication with school or</p> <p>8 union leaders that I am aware of.</p> <p>9 Q So the same question would go to small school</p> <p>10 districts. Have you had any communications with the</p> <p>11 school union leaders during the pandemic?</p> <p>12 A Not that I'm aware of.</p> <p>13 Q Have you had any communications during the</p> <p>14 pandemic with leaders or representatives of private</p> <p>15 or religious schools?</p> <p>16 A Not that I'm aware of.</p> <p>17 Q Have you had any communications relating to the</p> <p>18 pandemic with anyone representing teachers unions?</p> <p>19 A Not that I'm aware.</p> <p>20 Q Okay. Who would you consider to be the most</p> <p>21 influential union representative in Oregon regarding</p> <p>22 public schools?</p> <p>23 A That's not my policy area, so I'm unaware of</p> <p>24 where the influence is.</p> <p>25 Q Did any public school representative ever</p>	<p>1 active part, or maybe you did, in drafting or</p> <p>2 revising the July 2020 school guidance?</p> <p>3 A That is correct. I did not take an active part.</p> <p>4 Q Do you know who did take an active part in</p> <p>5 drafting and revising the July 2020 guidance relating</p> <p>6 to schools?</p> <p>7 A I believe it was Colt Gill along with Lindsey</p> <p>8 Capps.</p> <p>9 Q In the documents that have been produced, I've</p> <p>10 seen use of the word "partners" talking about the</p> <p>11 guidance process, and not making any major changes</p> <p>12 without consulting the partners. Do you know what is</p> <p>13 meant by "partners" in that context?</p> <p>14 A I do not.</p> <p>15 Q Are you familiar, generally, with the</p> <p>16 administrative rule-making process?</p> <p>17 A I am generally familiar with that process.</p> <p>18 Q Have any of the governor's pandemic executive</p> <p>19 orders gone through the formal administrative</p> <p>20 rule-making process?</p> <p>21 MR. ABRAMS: Objection to the extent it</p> <p>22 calls for a legal conclusion. You can answer.</p> <p>23 A Can you repeat that question.</p> <p>24 Q BY MR. KAEMPF: Sure. Have any of the</p> <p>25 governor's actions related to the pandemic gone</p>

Leah Horner

32 (Pages 125 to 128)

Page 125	Page 127
<p>1 through the formal administrative rule-making</p> <p>2 process?</p> <p>3 A Yes.</p> <p>4 Q And what did that concern?</p> <p>5 A Oh, I'm sorry. It was -- the Oregon OSHA is in</p> <p>6 the process of a formal rule-making process right now</p> <p>7 around the enforcement of the guidance.</p> <p>8 Q By that you mean the July 2020 school guidance</p> <p>9 we've been talking about?</p> <p>10 A No. I'm sorry. This is guidance in general</p> <p>11 related to business sectors and worker safety.</p> <p>12 Q Concerning the pandemic this year, are you aware</p> <p>13 of any of Governor Brown's, besides that, actions</p> <p>14 going through the formal administrative rule-making</p> <p>15 process?</p> <p>16 A That is the only one I'm aware of.</p> <p>17 Q Are you aware of the governor signing and</p> <p>18 enacting into law any legislation relating to the</p> <p>19 pandemic?</p> <p>20 A Yes.</p> <p>21 Q What did she sign into law at legislation?</p> <p>22 A So I do not have a comprehensive list, but I</p> <p>23 know that the governor did sign into law pieces of</p> <p>24 legislation that passed during this special session</p> <p>25 related to the pandemic.</p>	<p>1 Deborah Herron. And the representative from Target,</p> <p>2 I am misremembering if she's a direct representative</p> <p>3 or an association representative, but that was Kaloma</p> <p>4 Sparks (phonetic).</p> <p>5 Q So I understand that it's two women respectively</p> <p>6 representing Target and Walmart?</p> <p>7 A Yes.</p> <p>8 Q Okay. When did those meetings with those two</p> <p>9 women occur?</p> <p>10 A So for me, I worked on guidance related to</p> <p>11 retail and had meetings with different-sized</p> <p>12 retailers. I would say this was probably in April</p> <p>13 and May that we had conversations.</p> <p>14 Q And what did those two women representing</p> <p>15 Walmart and Target want?</p> <p>16 A So at the time I was seeking their feedback on</p> <p>17 how retail guidance would be operational for</p> <p>18 their -- for their operations.</p> <p>19 Q As a result of those meetings with the</p> <p>20 representatives of Target and Walmart, did Governor</p> <p>21 Brown allow those schools -- excuse me, those stores</p> <p>22 to reopen during the pandemic?</p> <p>23 A So retail was never closed under the pandemic.</p> <p>24 They have had different iterations of guidance on how</p> <p>25 they should operate. But the retailers, themselves,</p>
Page 126	Page 128
<p>1 Q Do you know if any of those pandemic laws signed</p> <p>2 by the governor related to private or religious</p> <p>3 schools in any way?</p> <p>4 A I am unaware of that.</p> <p>5 Q Do you know if they related to public schools in</p> <p>6 any way?</p> <p>7 A I'm unaware of that as well.</p> <p>8 Q Related to the pandemic this year, Ms. Horner,</p> <p>9 are you aware, either you or anyone else on the</p> <p>10 governor's staff, ever met with representatives of</p> <p>11 big-box stores like Walmart or Home Depot?</p> <p>12 A Yes.</p> <p>13 Q Who did?</p> <p>14 A I have met with them. And I believe the</p> <p>15 governor has had meetings with them as well.</p> <p>16 Q Please tell me the names of those people and the</p> <p>17 businesses they represent.</p> <p>18 A So I don't recall all of them, but the one that</p> <p>19 comes to mind is that we did meet with a</p> <p>20 representative -- or I did. I met with a</p> <p>21 representative of Target. And I have had</p> <p>22 conversations with representatives from Walmart.</p> <p>23 Q And what are the names of those people, if you</p> <p>24 know?</p> <p>25 A The representative from Walmart, her name is</p>	<p>1 were never told to cease operations.</p> <p>2 Q If retailers were never closed, then please tell</p> <p>3 me what the representatives of Target and Walmart</p> <p>4 want?</p> <p>5 A So I was asking for their feedback as we were to</p> <p>6 modify our guidance going from no guidance to</p> <p>7 modified guidance to ensure their compliance with</p> <p>8 things such as -- and adaptation of the -- or the</p> <p>9 adoption of the face covering guidance, and how that</p> <p>10 would work within their store and how they would be</p> <p>11 able to enforce both the face coverings with their</p> <p>12 employees as well as the general public.</p> <p>13 Q So was the gist of it that I'm hearing, that</p> <p>14 stores like Target and Walmart would be allowed to</p> <p>15 remain open if people used face coverings?</p> <p>16 A There is much more to the requirements that they</p> <p>17 are required to adhere to, but that is one of the</p> <p>18 components.</p> <p>19 Q When did that ever become the subject of a</p> <p>20 specific executive order?</p> <p>21 A Retail is identified in the executive order, but</p> <p>22 it is not a specific executive order.</p> <p>23 Q When you say "retail identified in the executive</p> <p>24 order," do you know which one you're referring to?</p> <p>25 A They have been identified in a couple of the</p>



Leah Horner

33 (Pages 129 to 132)

Page 129	Page 131
<p>1 iterations of the stay-home order, which has morphed</p> <p>2 both in name and number over the last eight months.</p> <p>3 Q So the bottom line is that in Oregon, businesses</p> <p>4 like Walmart and Target are allowed to remain open.</p> <p>5 A Yes.</p> <p>6 Q If that's true, why aren't the private or</p> <p>7 religious schools, that are also willing to use face</p> <p>8 coverings and other safety measures, allowed to</p> <p>9 reopen?</p> <p>10 A I think that as we have looked at the health and</p> <p>11 safety issues related to the pandemic, we have been</p> <p>12 able to identify key sectors that need to remain open</p> <p>13 regardless of the phasing. And it is not an</p> <p>14 either/or. It is a health and safety component of</p> <p>15 how the executive orders and the guidance have rolled</p> <p>16 off.</p> <p>17 Q And concerning the health and safety component,</p> <p>18 do you think that private and religious schools in</p> <p>19 Oregon are able to safely reopen?</p> <p>20 A I unfortunately do not have the epidemiological</p> <p>21 background to be able to answer that.</p> <p>22 Q Who within the government of Oregon does?</p> <p>23 A I would say our chief epidemiologist.</p> <p>24 Q Who is that?</p> <p>25 A That is Dr. Dean Sidelinger.</p>	<p>1 throughout the entirety of the pandemic.</p> <p>2 Q Why have you talked with Jason quite frequently?</p> <p>3 A I talked to Jason frequently because restaurants</p> <p>4 and lodging fall within my business and economic</p> <p>5 development portfolio. And we talk through the</p> <p>6 guidance related to restaurants and lodging on a</p> <p>7 fairly frequent basis. And I get a number of</p> <p>8 complaints from his business owners and operators.</p> <p>9 Q Do you consider any schools to be within your</p> <p>10 portfolio?</p> <p>11 A I do not.</p> <p>12 Q If that's true, and I'm being sincere, then</p> <p>13 truly what is the point -- help me understand -- of</p> <p>14 these weekly meetings with the county commissioners?</p> <p>15 A Absolutely. So the county commissioners in the</p> <p>16 pandemic asked me to meet with them on a frequent</p> <p>17 basis. Because what was happening is, as the</p> <p>18 governor was rolling out either guidance or executive</p> <p>19 orders, they were hearing about it as they were</p> <p>20 posting it. And as leaders in their communities,</p> <p>21 they asked for the courtesy of a heads-up as</p> <p>22 decisions were being made that would impact their</p> <p>23 constituencies. So those meetings are formulated to</p> <p>24 talk through a variety of issues and be an open</p> <p>25 platform for them to both ask questions and for us to</p>
Page 130	Page 132
<p>1 Q So you met with these representatives of Target</p> <p>2 and Walmart, and they were allowed to remain open</p> <p>3 with face coverings. Correct?</p> <p>4 A And other modifications to their operations,</p> <p>5 yes.</p> <p>6 Q Did you ever, or anyone else in the governor's</p> <p>7 office you're aware of, take a meeting or a call from</p> <p>8 any representative of a religious or private school</p> <p>9 about, like, Walmart and Target, also wanting to</p> <p>10 safely reopen?</p> <p>11 A Because that's outside of my policy portfolio,</p> <p>12 I'm unaware if those meetings took place.</p> <p>13 Q If they did take place, who do you think they</p> <p>14 would have taken place with within the governor's</p> <p>15 office?</p> <p>16 A I would have assumed they would take place with</p> <p>17 Lindsey Capps.</p> <p>18 Q Have you ever met with any representative of the</p> <p>19 restaurant industry during the pandemic?</p> <p>20 A Yes.</p> <p>21 Q Who?</p> <p>22 A I have met with Jason Brandt from the Oregon</p> <p>23 Restaurant and Lodging Association.</p> <p>24 Q When did you meet with Jason?</p> <p>25 A I talked to Jason quite frequently and have</p>	<p>1 hear feedback on how the guidance is or is not</p> <p>2 working for their community.</p> <p>3 Q In response to these frequent communications</p> <p>4 you've mentioned with Jason on behalf of the</p> <p>5 restaurants, what currently is Governor Brown's</p> <p>6 policy about restaurants being open?</p> <p>7 A Restaurants in phase-one counties can currently</p> <p>8 operate with a maximum of 100 people indoors and 250</p> <p>9 people outdoors. No. I'm sorry. That's incorrect.</p> <p>10 100 people indoors and 100 people outdoors with a</p> <p>11 close time of 10:00 P.M.</p> <p>12 Restaurants in phase-two counties can</p> <p>13 operate also with a number of 100 indoors and 250</p> <p>14 outdoors also with the close of 10:00 p.m. But</p> <p>15 phase-two restaurants have the ability to operate</p> <p>16 with plexiglass and barriers in order to increase</p> <p>17 their capacity.</p> <p>18 Q As I understand it then, in both phase-one and</p> <p>19 phase-two counties right now, restaurants can have up</p> <p>20 to 100 people inside for dining?</p> <p>21 A Yes.</p> <p>22 Q Okay. Can private or religious schools have 100</p> <p>23 people inside for a meeting?</p> <p>24 A So my understanding is that the school guidance</p> <p>25 is operating under the Department of Education, and I</p>

Leah Horner

34 (Pages 133 to 136)

Page 133	Page 135
<p>1 am not familiar with what their capacity limits are.</p> <p>2 Q Do you know why restaurants are allowed to</p> <p>3 reopen for up to 100 people inside but private and</p> <p>4 religious schools are not?</p> <p>5 MR. ABRAMS: Objection. Mischaracterizes</p> <p>6 the previous testimony and assumes facts not in</p> <p>7 evidence.</p> <p>8 A I do not.</p> <p>9 (Reporter requests clarification.)</p> <p>10 A I'm sorry. I do not.</p> <p>11 Q BY MR. KAEMPF: Other than Jason that you</p> <p>12 mentioned, have you ever met with any other</p> <p>13 representative of the restaurant industry or spoken</p> <p>14 with anyone from that industry during the pandemic?</p> <p>15 A Yes.</p> <p>16 Q Who?</p> <p>17 A I have talked with a number of restaurant</p> <p>18 owners, mostly from the independent restaurant</p> <p>19 coalition, who may or may not be members of ORLA.</p> <p>20 And I have also talked to the ORLA lobbyist as well.</p> <p>21 Q What are their names?</p> <p>22 A I am not recollecting the restaurant owners'</p> <p>23 names. I know I have talked to the owner of Le</p> <p>24 Pichon (phonetic). I have talked to the owner of</p> <p>25 Andina. I have talked to the owner of -- I'm</p>	<p>1 did give them was the ability to utilize plexiglass</p> <p>2 in phase-two.</p> <p>3 Q Did they ask to be allowed to have at least 100</p> <p>4 people for in-person dining?</p> <p>5 A They have continually asked for more than that.</p> <p>6 Q Did they ever ask for just that amount of 100?</p> <p>7 A Never.</p> <p>8 Q But the governor did decide to allow them to</p> <p>9 have 100 people for indoor dining; is that right?</p> <p>10 A Yes.</p> <p>11 Q When 100 people are allowed inside a restaurant</p> <p>12 for indoor dining, do they have to wear a mask?</p> <p>13 A They have to wear a mask the entire time they</p> <p>14 are in there except when they are actually eating or</p> <p>15 drinking.</p> <p>16 Q Do you know why private and religious schools in</p> <p>17 Oregon cannot reopen in the same way, 100 people in a</p> <p>18 room, wearing face coverings and et cetera?</p> <p>19 MR. ABRAMS: Objection. Assumes facts not</p> <p>20 in evidence and misstates the previous testimony. Go</p> <p>21 ahead.</p> <p>22 A I do not know.</p> <p>23 Q BY MR. KAEMPF: Have you met with or spoke with</p> <p>24 anyone else in the restaurant industry about the</p> <p>25 pandemic?</p>
Page 134	Page 136
<p>1 blanking on the names of the other restaurants. I</p> <p>2 apologize.</p> <p>3 Q Is it possible, if you looked at your electronic</p> <p>4 calendar, you could determine additional names of</p> <p>5 people that you met or spoke with from the restaurant</p> <p>6 industry?</p> <p>7 A Yes.</p> <p>8 Q Is it fair to say, generally speaking, that</p> <p>9 you've given the restaurant industry in Oregon what</p> <p>10 it wanted?</p> <p>11 A Absolutely --</p> <p>12 MR. ABRAMS: Objection. Vague.</p> <p>13 Q BY MR. KAEMPF: Go ahead. Did you say</p> <p>14 absolutely?</p> <p>15 A Absolutely not.</p> <p>16 Q What did you not give them that they wanted?</p> <p>17 A The restaurant industry is currently asking for</p> <p>18 a later close time than 10:00 p.m., and they are also</p> <p>19 currently asking for an increased capacity of more</p> <p>20 than 100 people indoors. They are also asking for a</p> <p>21 different definition of outdoor operations so they</p> <p>22 can expand their footprint outside.</p> <p>23 Q During the pandemic, what did the restaurant</p> <p>24 industry ask for that you did give them?</p> <p>25 A I believe the thing that they asked for that we</p>	<p>1 A Yes.</p> <p>2 Q Who?</p> <p>3 A Again, I'm not recalling names, but I did recall</p> <p>4 that I spoke with Deschutes Brewery.</p> <p>5 Q Anyone else?</p> <p>6 A I've also spoken with representative Cheri Helt,</p> <p>7 who is a restaurant owner in Bend.</p> <p>8 Q Anyone else?</p> <p>9 A Not that I recall.</p> <p>10 Q Have you ever communicated in writing, such as</p> <p>11 e-mails or text or on the phone, with any</p> <p>12 representative of the health club industry in Oregon?</p> <p>13 A Yes.</p> <p>14 Q Who?</p> <p>15 A So similar to the retail and restaurant</p> <p>16 conversation, I had organized a group of gyms and</p> <p>17 health club operators in probably April and May to</p> <p>18 help craft the gym and fitness guidance, which</p> <p>19 included a number of gym operators throughout the</p> <p>20 state. And I would also note that all of these</p> <p>21 groups that I'm referencing, the membership of them</p> <p>22 are posted online so that all of that information is</p> <p>23 public.</p> <p>24 Q And my question is -- I would like the names.</p> <p>25 Please tell me the names of everyone representing the</p>

Leah Horner

35 (Pages 137 to 140)

Page 137	Page 139
<p>1 health club industry you can recall communicating</p> <p>2 with, verbally or in writing, about the pandemic.</p> <p>3 A And I do not recall who they are without looking</p> <p>4 at that list specifically.</p> <p>5 Q When you say "that list," what do you mean?</p> <p>6 A The list of health club and gym operators of the</p> <p>7 group that I mentioned was posted online of</p> <p>8 participants in those conversations.</p> <p>9 Q So if I was to formally request that, that's</p> <p>10 something that you could obtain and produce?</p> <p>11 A Yes.</p> <p>12 Q Okay. Can you recall the name of anyone</p> <p>13 specifically that you dealt with from the health club</p> <p>14 industry about the pandemic?</p> <p>15 A No.</p> <p>16 Q Did you ever meet with any representatives of</p> <p>17 the childcare industry or have communications with</p> <p>18 them during the pandemic?</p> <p>19 A The childcare industry, I have had individual</p> <p>20 constituent outreach from the childcare industry, but</p> <p>21 none that I can recall specifically. As I received</p> <p>22 those, I would forward those on to my colleague,</p> <p>23 Alyssa Chatterjee, whose policy portfolio that is in.</p> <p>24 Q Child care?</p> <p>25 A Yes.</p>	<p>1 testimony you gave earlier today?</p> <p>2 A No.</p> <p>3 Q At any time have you discussed with Lindsey</p> <p>4 Capps what happened in his deposition?</p> <p>5 A No.</p> <p>6 Q Okay. We left off, and I was asking you, I</p> <p>7 think, if you had any contact with anyone in the</p> <p>8 health club industry about the pandemic. And were</p> <p>9 you able to name anybody from that industry?</p> <p>10 A I was not.</p> <p>11 Q Okay. But do you believe you've had written</p> <p>12 communications with anyone in the health club</p> <p>13 industry about the pandemic?</p> <p>14 A Yes.</p> <p>15 Q A male or female?</p> <p>16 A Both.</p> <p>17 Q And what concerns did those people raise, even</p> <p>18 if you don't remember their names?</p> <p>19 A So early on in our guidance development around</p> <p>20 health clubs and gym operations, there was concerns</p> <p>21 about capacity limits. There was concerns about</p> <p>22 requirements of face coverings. I think those were</p> <p>23 really the main ones, along with the general</p> <p>24 conversations around sanitization and general</p> <p>25 operations.</p>
Page 138	Page 140
<p>1 MR. ABRAMS: Mr. Kaempff, it's seeming like</p> <p>2 we're not close to wrapping up. So let's take a</p> <p>3 lunch break.</p> <p>4 MR. KAEMPF: That's fine. Do you want the</p> <p>5 full hour or half an hour or what would you like?</p> <p>6 MR. ABRAMS: Let's try and get back here at</p> <p>7 1:30 or a little less.</p> <p>8 MR. KAEMPF: Okay, 1:30. Thanks.</p> <p>9 (Break in proceedings.)</p> <p>10 MR. KAEMPF: Let's go on the record. Thank</p> <p>11 you.</p> <p>12 THE VIDEOGRAPHER: Back on the record.</p> <p>13 Q BY MR. KAEMPF: Okay, Ms. Horner, this is John</p> <p>14 Kaempff, the Plaintiff's attorney again. We just had</p> <p>15 a lunch break. Do you feel like -- still clearheaded</p> <p>16 and able to continue your testimony?</p> <p>17 A Yes.</p> <p>18 Q I don't think there will be a whole lot more,</p> <p>19 and I appreciate you being here today.</p> <p>20 As you thought about things over the lunch</p> <p>21 break -- I don't want to know about any</p> <p>22 communications with Mr. Abrams because that's</p> <p>23 privileged. But just in your own mind did you think</p> <p>24 of anything, like, oh, I would like to correct what I</p> <p>25 said or I left something out about any of the</p>	<p>1 Q Did those representatives of the health club</p> <p>2 industry that you mentioned, did they get what they</p> <p>3 were asking for concerning being allowed to reopen?</p> <p>4 A No.</p> <p>5 Q Okay. What did they not get that they wanted?</p> <p>6 A They are also required to adhere to the</p> <p>7 100 percent max capacity limits similar to</p> <p>8 restaurants. Many of the health clubs that operate</p> <p>9 right now are significant in size and could</p> <p>10 accommodate many more than 100, so I get continual</p> <p>11 requests to up that limit. I also get continual</p> <p>12 requests from the health club industry to not require</p> <p>13 face coverings indoors while people are exercising.</p> <p>14 Q So do I understand you correctly then that</p> <p>15 currently in Oregon, health clubs are allowed to</p> <p>16 reopen with the members using the club in-person?</p> <p>17 A Yes.</p> <p>18 Q And they are allowed to have up to 100 people in</p> <p>19 the health club at a time?</p> <p>20 A Yes.</p> <p>21 Q If that's the case, do you know why private and</p> <p>22 religious schools are not allowed to do the same</p> <p>23 thing?</p> <p>24 A I do not.</p> <p>25 Q Who would?</p>

Leah Horner

36 (Pages 141 to 144)

Page 141	Page 143
<p>1 A I'm not sure who would have the answer to that.</p> <p>2 Q And I think you told me before that you did not</p> <p>3 personally meet or speak to representatives of the</p> <p>4 childcare industry; is that right?</p> <p>5 A I believe what I indicated was that I have had</p> <p>6 individual constituent concerns of childcare</p> <p>7 operators reach out to me that I then forward on to</p> <p>8 my colleague, Alyssa Chatterjee, who is the one who</p> <p>9 is able to respond to the childcare questions, in</p> <p>10 particular.</p> <p>11 Q And do you know if the childcare facilities are</p> <p>12 allowed to reopen in-person?</p> <p>13 A I believe they are under restrictions.</p> <p>14 Q What restrictions?</p> <p>15 A Given that that is not my policy area, I am not</p> <p>16 able to talk specifically about what that is. I just</p> <p>17 don't know.</p> <p>18 Q Do you know why childcare facilities are allowed</p> <p>19 to reopen for in-person children but religious and</p> <p>20 private schools are not?</p> <p>21 A I do not.</p> <p>22 Q During the pandemic, have you communicated with</p> <p>23 any representative of Oregon's colleges or</p> <p>24 universities?</p> <p>25 A Yes.</p>	<p>1 Q Why are the noncontact sports at colleges and</p> <p>2 universities allowed during the pandemic?</p> <p>3 A Noncontact sports are allowed under -- during</p> <p>4 the pandemic as a form of exercise that we have</p> <p>5 worked on protocols with the Oregon Health Authority</p> <p>6 around, to ensure that as athletics are being played,</p> <p>7 that they're being done safely.</p> <p>8 Q So making sure that college and university</p> <p>9 students get proper exercise is important to you?</p> <p>10 Hello?</p> <p>11 A Yes, I'm sorry. The importance of physical</p> <p>12 activity for people was a conversation that we have</p> <p>13 continued to have with the Oregon Health Authority,</p> <p>14 and that was a piece of guidance that we thought was</p> <p>15 important.</p> <p>16 Q Did you also say that some college and</p> <p>17 university contact sports are even allowed?</p> <p>18 A Yes.</p> <p>19 Q Which ones and under what conditions?</p> <p>20 A We have negotiated and agreed on Pac 12 college</p> <p>21 football to be played by the University of Oregon and</p> <p>22 Oregon State University.</p> <p>23 Q Why?</p> <p>24 A I do not know.</p> <p>25 Q Does it have anything to do with the fact that</p>
Page 142	Page 144
<p>1 Q Who did you communicate with?</p> <p>2 A I have communicated with Hans Bernard, who</p> <p>3 represents the University of Oregon. And I have</p> <p>4 communicated with Katie Fast, who represents Oregon</p> <p>5 State University. And I have communicated with Kevin</p> <p>6 Neely, who represents Portland State University. And</p> <p>7 I have communicated with Scott Leykam, who represents</p> <p>8 the University of Portland.</p> <p>9 Q Have any of those communications been in</p> <p>10 writing, like text messages or emails?</p> <p>11 A Yes.</p> <p>12 Q And generally, what were the concerns of those</p> <p>13 people acting on behalf of those colleges and</p> <p>14 universities you mentioned?</p> <p>15 A The main issue that I have worked with those</p> <p>16 colleges and universities on is athletics.</p> <p>17 Q And what do you mean by that, specifically?</p> <p>18 A Guidelines allowing for collegiate sports to</p> <p>19 operate in the state of Oregon.</p> <p>20 Q And are collegiate sports allowed to operate in</p> <p>21 Oregon?</p> <p>22 A Noncontact collegiate sports are allowed to</p> <p>23 operate in the state of Oregon. And some contact</p> <p>24 sports under revised protocols are allowed for</p> <p>25 certain universities.</p>	<p>1 the football programs at Oregon universities generate</p> <p>2 a lot of money for the state?</p> <p>3 A I don't believe that is why.</p> <p>4 Q Do you know any reason why?</p> <p>5 A At this point I do not.</p> <p>6 Q Can you explain to me why noncontact sports are</p> <p>7 allowed by the governor at Oregon's colleges and</p> <p>8 universities but religious and private schools are</p> <p>9 not allowed to reopen for in-person classes?</p> <p>10 A I cannot explain that.</p> <p>11 Q Are there any available exemptions or waivers</p> <p>12 that allow schools to reopen during the pandemic?</p> <p>13 MR. ABRAMS: Asked and answered. Go ahead.</p> <p>14 A I believe that there are small school</p> <p>15 exemptions, but I do not have the details on what</p> <p>16 those are.</p> <p>17 Q BY MR. KAEMPF: Can you name any specific small</p> <p>18 school that's been granted an exemption or waiver to</p> <p>19 reopen?</p> <p>20 MR. ABRAMS: Asked and answered. Go ahead.</p> <p>21 A I cannot.</p> <p>22 Q BY MR. KAEMPF: Who decides to grant those</p> <p>23 exemptions or waivers?</p> <p>24 A I am not -- I believe it's a collection of</p> <p>25 people but I am not sure who.</p>

Leah Horner

37 (Pages 145 to 148)

Page 145	Page 147
<p>1 Q Okay. And who do you think might be in that</p> <p>2 collection?</p> <p>3 A I believe it's Lindsey Capps along with our</p> <p>4 deputy chief of staff, Gina Zejdlik, along with the</p> <p>5 reopening school council that we previously</p> <p>6 discussed.</p> <p>7 Q Are you aware of any private or religious</p> <p>8 schools in Oregon being granted an exemption or</p> <p>9 waiver to reopen during the pandemic?</p> <p>10 MR. ABRAMS: Asked and answered. Go ahead.</p> <p>11 A I'm not aware.</p> <p>12 Q BY MR. KAEMPF: Now, Ms. Horner, are you</p> <p>13 aware -- tell me, to your understanding, has Governor</p> <p>14 Brown, since May of this year, allowed protests to</p> <p>15 occur in downtown Portland related to the unfortunate</p> <p>16 death of George Floyd?</p> <p>17 MR. ABRAMS: Objection. Mischaracterizes</p> <p>18 the situation and assumes facts not in evidence.</p> <p>19 Q BY MR. KAEMPF: Please answer.</p> <p>20 A Yes.</p> <p>21 Q What has Governor Brown done regarding what I</p> <p>22 would call the George Floyd protest that began in May</p> <p>23 of this year?</p> <p>24 A The governor has not stopped people's right to</p> <p>25 protest on the streets of Portland over the summer.</p>	<p>1 requirements that are in there as a general</p> <p>2 principle.</p> <p>3 Q But in fact, from what you know, did people use</p> <p>4 all available safety measures during the George Floyd</p> <p>5 protests, including masks and social distancing?</p> <p>6 A I have not been to a protest so I do not know.</p> <p>7 Q Even if you didn't go to it, you know, have you</p> <p>8 learned that either way from the internet or news or</p> <p>9 whatever?</p> <p>10 A I have not.</p> <p>11 Q Okay. Do you know if Governor Brown has ever</p> <p>12 actively participated in any of those protests this</p> <p>13 year?</p> <p>14 A I do not know.</p> <p>15 Q Do you know if Governor Brown has received a</p> <p>16 haircut during the pandemic?</p> <p>17 A I do not know.</p> <p>18 Q If an individual or a school, for example,</p> <p>19 violates one of Governor Brown's pandemic executive</p> <p>20 orders, do you know what can be done to enforce the</p> <p>21 order?</p> <p>22 MR. ABRAMS: Object to the extent it calls</p> <p>23 for a legal conclusion. Go ahead.</p> <p>24 A I am not sure what the enforcement mechanism is</p> <p>25 for schools.</p>
Page 146	Page 148
<p>1 Q Has Governor Brown, as part of the George Floyd</p> <p>2 Black Lives Matter -- I think it's generally referred</p> <p>3 to, correct me if I'm wrong -- the protest that began</p> <p>4 in May, to your knowledge has Governor Brown required</p> <p>5 that the people participating in those protests wear</p> <p>6 masks?</p> <p>7 A I do not know.</p> <p>8 Q Do you know if Governor Brown has required the</p> <p>9 people participating in those protests to socially</p> <p>10 distance?</p> <p>11 A I do not know.</p> <p>12 Q From your knowledge of being on the governor's</p> <p>13 staff, does Governor Brown support those George Floyd</p> <p>14 BLM protests?</p> <p>15 A The governor supports all forms of protests,</p> <p>16 including the ones that are protesting Carlton</p> <p>17 policies.</p> <p>18 Q Are you aware of any actions that were taken to</p> <p>19 prevent the spread of the Coronavirus during the</p> <p>20 George Floyd BLM protest this year?</p> <p>21 A I believe that the governor's guidance and</p> <p>22 policies that have been issued related to protecting</p> <p>23 all Oregonians from the spread of Coronavirus has</p> <p>24 been published for the general public, and the</p> <p>25 general public has been asked to adhere to all of the</p>	<p>1 Q BY MR. KAEMPF: Are you aware, can anyone who</p> <p>2 violates the pandemic executive orders be fined?</p> <p>3 MR. ABRAMS: Same objection. Go ahead.</p> <p>4 A I believe under the governor's executive</p> <p>5 authority, that fines are allowable for</p> <p>6 noncompliance.</p> <p>7 Q BY MR. KAEMPF: Are you aware of any person or</p> <p>8 entity that has actually been fined for violating a</p> <p>9 pandemic executive order in Oregon?</p> <p>10 A I'm aware of businesses who have been fined for</p> <p>11 willfully violating the executive orders.</p> <p>12 Q Please name all businesses that willfully</p> <p>13 violated executive orders related to the pandemic and</p> <p>14 were fined?</p> <p>15 A I do not know them by name.</p> <p>16 Q What do you know them by?</p> <p>17 A So there was a hair salon in Salem that has been</p> <p>18 fined and there is a coffee shop in Bend that has</p> <p>19 been fined and there is a pharmacy in Lakeview that</p> <p>20 has been fined.</p> <p>21 Q As to all three of those entities, can you give</p> <p>22 me any more identifying information such as, oh, you</p> <p>23 know, I remember the owners' first or last name or</p> <p>24 anything like that?</p> <p>25 A No. There is a list that is published by OSHA</p>



Leah Horner

38 (Pages 149 to 152)

Page 149	Page 151
<p>1 that has all of the contact information for those</p> <p>2 businesses on it.</p> <p>3 Q And if I was to request that formally in this</p> <p>4 case, is that list something that you could obtain</p> <p>5 and produce?</p> <p>6 A Yes.</p> <p>7 Q Do you know if Governor Brown has issued any</p> <p>8 guidance on what people are to be charged with if</p> <p>9 they violate any of her pandemic executive orders?</p> <p>10 A I don't believe so.</p> <p>11 Q You said a few minutes ago that Governor Brown</p> <p>12 supports the right of people who protest; is that</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q And do you know what the legal authority is for</p> <p>16 that right to protest?</p> <p>17 A I do not.</p> <p>18 Q Are you aware of the First Amendment right to</p> <p>19 freely exercise religion?</p> <p>20 A Yes.</p> <p>21 Q Has that come up in your job?</p> <p>22 A No.</p> <p>23 Q And you just know that, I'll guess, from your</p> <p>24 schooling?</p> <p>25 A Yes.</p>	<p>1 or businesses shut down?</p> <p>2 A I do not know.</p> <p>3 Q Did you ever make an effort to research that</p> <p>4 history, to search for precedent, for the powers that</p> <p>5 Governor Brown might have during the current</p> <p>6 pandemic?</p> <p>7 A That does not quite fall in my policy area, so</p> <p>8 that is not something that I have researched.</p> <p>9 Q Do you know who might have researched that?</p> <p>10 MR. ABRAMS: Objection. Assumes facts not</p> <p>11 in evidence. Go ahead.</p> <p>12 A I do not know.</p> <p>13 Q BY MR. KAEMPF: Isn't it true, Ms. Horner, that</p> <p>14 the control Governor Brown is exercising over</p> <p>15 Oregonians, including its private and religious</p> <p>16 schools, is unprecedented?</p> <p>17 MR. ABRAMS: Objection. Vague. Objection,</p> <p>18 assumes facts not in evidence. And objection,</p> <p>19 argumentative.</p> <p>20 A I don't know.</p> <p>21 Q BY MR. KAEMPF: Are you aware of any precedent</p> <p>22 where a governor in Oregon has acted like this?</p> <p>23 MR. ABRAMS: Objection. Vague. Objection,</p> <p>24 calls for a legal conclusion.</p> <p>25 A I don't know.</p>
Page 150	Page 152
<p>1 Q Okay. Are you aware -- did you ever search</p> <p>2 specifically for legal authority that allows you or</p> <p>3 the governor to regulate private or religious</p> <p>4 schools?</p> <p>5 A No.</p> <p>6 Q Are you aware of anyone in the governor's</p> <p>7 office, or any part of Oregon's government, ever</p> <p>8 sharing any concerns about religious schools going</p> <p>9 out of business due to the pandemic and the</p> <p>10 governor's executive orders?</p> <p>11 MR. ABRAMS: Asked and answered but go</p> <p>12 ahead.</p> <p>13 A I'm not aware.</p> <p>14 Q BY MR. KAEMPF: Have you ever studied the</p> <p>15 history of Oregon relating to its response to a prior</p> <p>16 pandemic?</p> <p>17 A No.</p> <p>18 Q Are you aware of the Spanish Flu that happened</p> <p>19 about 100 years ago?</p> <p>20 A Yes.</p> <p>21 Q What do you know about that?</p> <p>22 A I am only aware that that was the last pandemic</p> <p>23 that occurred.</p> <p>24 Q Do you know if during that Spanish Flu pandemic,</p> <p>25 Oregon's governor at that time ever ordered schools</p>	<p>1 Q BY MR. KAEMPF: From what you've personally</p> <p>2 observed, has Governor Brown enjoyed exercising her</p> <p>3 power through the pandemic executive orders?</p> <p>4 MR. ABRAMS: Objection. Vague.</p> <p>5 A Governor Brown has taken the pandemic incredibly</p> <p>6 seriously and tried to maintain the health and safety</p> <p>7 for all Oregonians under her authority.</p> <p>8 Q BY MR. KAEMPF: From what you have observed, has</p> <p>9 she enjoyed exercising her power through executive</p> <p>10 orders in the pandemic?</p> <p>11 MR. ABRAMS: Same objection.</p> <p>12 A No.</p> <p>13 Q BY MR. KAEMPF: Now, you indicated you have</p> <p>14 school-aged children and stepchildren; is that right?</p> <p>15 A Yes.</p> <p>16 Q Based on your experience as a parent and in your</p> <p>17 job, who do you think is in a better position to</p> <p>18 decide whether religious and private schools can</p> <p>19 safely reopen during the pandemic, the schools and</p> <p>20 their parents or the government of Oregon?</p> <p>21 MR. ABRAMS: Objection, compound.</p> <p>22 Objection, vague. Go ahead.</p> <p>23 A I don't know.</p> <p>24 Q BY MR. KAEMPF: Please tell me how long the</p> <p>25 governor's pandemic executive orders prohibiting</p>

Leah Horner

39 (Pages 153 to 156)

Page 153	Page 155
<p>1 religious schools from reopening full time in person</p> <p>2 are scheduled to last.</p> <p>3 MR. ABRAMS: Objection, asked and answered.</p> <p>4 Objection, vague. Objection, mischaracterizes the</p> <p>5 previous testimony.</p> <p>6 A I don't believe that there is a current</p> <p>7 executive order specifically prohibiting private and</p> <p>8 religious schools from operating. And all executive</p> <p>9 orders are reviewed on a periodic basis.</p> <p>10 Q BY MR. KAEMPF: From what you understand, is</p> <p>11 there any end in sight to the shutdown of in-person</p> <p>12 classes at Oregon's private and religious schools?</p> <p>13 MR. ABRAMS: Objection. Mischaracterizes</p> <p>14 the previous testimony.</p> <p>15 A My understanding is that we will be in our</p> <p>16 current state or a state similar until there is a</p> <p>17 vaccine.</p> <p>18 Q BY MR. KAEMPF: Do you know when a vaccine might</p> <p>19 be issued?</p> <p>20 A I do not.</p> <p>21 Q So is it possible then, from what you're saying</p> <p>22 related to the vaccine, that Oregon's private and</p> <p>23 religious schools could be prevented from having</p> <p>24 in-person classes for years?</p> <p>25 A Could you repeat that.</p>	<p>1 A I don't know.</p> <p>2 Q But now you're testifying that these private and</p> <p>3 religious school lockdowns are going to continue</p> <p>4 until we have a vaccine. Right?</p> <p>5 MR. ABRAMS: You just mischaracterized the</p> <p>6 testimony again. You keep limiting what she doesn't</p> <p>7 say. She said all public and private. Please stop</p> <p>8 mischaracterizing what she's testifying.</p> <p>9 MR. KAEMPF: I'm not -- I'll say again.</p> <p>10 MR. ABRAMS: Yes, you are.</p> <p>11 MR. KAEMPF: No.</p> <p>12 Q BY MR. KAEMPF: You said that schools are going</p> <p>13 to remain closed until there is a vaccine; is that</p> <p>14 right?</p> <p>15 A I don't think that's -- I think that we will</p> <p>16 remain under some sort of restriction, as a state,</p> <p>17 until there is a vaccine. That does not necessarily</p> <p>18 mean that all schools will remain closed.</p> <p>19 Q So the policy then currently is, generally</p> <p>20 speaking, that we want to wait for a vaccine for the</p> <p>21 Coronavirus; is that right?</p> <p>22 A I think the policy, as reflected in a number of</p> <p>23 reopening and public documents that the governor has</p> <p>24 published, indicates that we will be in some sort of</p> <p>25 restricted guidance until there is a vaccine, which</p>
Page 154	Page 156
<p>1 MR. KAEMPF: Could the reporter read it</p> <p>2 back, please.</p> <p>3 (Record read.)</p> <p>4 MR. ABRAMS: Objection, mischaracterizes</p> <p>5 the previous testimony. And objection,</p> <p>6 argumentative.</p> <p>7 A I think all schools will be under some sort of</p> <p>8 restriction until there is a vaccine.</p> <p>9 Q BY MR. KAEMPF: Could that delay, waiting for a</p> <p>10 vaccine, continue for years?</p> <p>11 MR. ABRAMS: Objection. Calls for</p> <p>12 speculation. Go ahead.</p> <p>13 A I don't know.</p> <p>14 Q BY MR. KAEMPF: Is it true, originally, that the</p> <p>15 governor's policy related to the pandemic was, as</p> <p>16 they say, to flatten the curve?</p> <p>17 MR. ABRAMS: Asked and answered.</p> <p>18 A Yes.</p> <p>19 Q BY MR. KAEMPF: When did the flatten the curve</p> <p>20 policy end?</p> <p>21 MR. ABRAMS: Objection. Mischaracterizes</p> <p>22 the previous testimony.</p> <p>23 A I don't know that there is a definitive timeline</p> <p>24 that the curve was actually flattened under.</p> <p>25 Q BY MR. KAEMPF: An approximation is fine.</p>	<p>1 will get us to phase-three of reopening. And that is</p> <p>2 really the pivot point of reopening all of the</p> <p>3 economy, including getting schools and businesses</p> <p>4 back to business as usual.</p> <p>5 Q When did the policy move from flattening the</p> <p>6 curve to getting a vaccine?</p> <p>7 MR. ABRAMS: Objection. Mischaracterizes</p> <p>8 the previous testimony. Go ahead.</p> <p>9 A I don't know that it was a policy change. But I</p> <p>10 will say that at the same time I was having those</p> <p>11 guidance conversations with sectors about what</p> <p>12 reopening guidance would look like for them is when</p> <p>13 we started talking about phases one, two and three</p> <p>14 for the state of Oregon, which was probably around</p> <p>15 April and May.</p> <p>16 Q As you sit here today, can you point to any</p> <p>17 specific date when there will be no restrictions at</p> <p>18 all on schools in Oregon related to the pandemic?</p> <p>19 MR. ABRAMS: Objection. Calls for</p> <p>20 speculation.</p> <p>21 A I cannot.</p> <p>22 Q BY MR. KAEMPF: From what you know, could</p> <p>23 this -- these restrictions related to the pandemic in</p> <p>24 Oregon schools continue for, let's say, two or three</p> <p>25 more years?</p>

Leah Horner

40 (Pages 157 to 160)

Page 157	Page 159
<p>1 MR. ABRAMS: Objection. Calls for 2 speculation. 3 A I don't know. 4 Q BY MR. KAEMPF: During the pandemic, have you 5 mostly been working remotely from home or physically 6 at your office? 7 A I have been remotely working from home. 8 Q And whether it's remote or at your office, does 9 your employer keep an electronic log of your calls? 10 A Not that I'm aware of. 11 Q Like is it -- is there a way, possibly, to 12 obtain copies of your long-distance phone calls 13 during the pandemic made from work? 14 A I'm not sure how my phone works, but I do have a 15 call log in there that I suppose anybody could 16 access. 17 Q Do you have voice mail at work? 18 A I do have voice mail on my cell phone and I only 19 use a cell phone. 20 Q So you don't have a work number that's separate 21 from the cell phone? 22 A I do not. Well, I do have a separate telephone 23 number, but I have never used it. 24 Q So your cell phone number is the one that you 25 use for all of your work communications; is that</p>	<p>1 A Mr. Kaempf, you referenced both May 26 and 2 July 26 in that reference. Do you know which date it 3 was? 4 Q That's my fault. I'm sorry. It's July 26. 5 A Okay. I don't recall that and I don't know who 6 Bob is. 7 Q Okay. That's three days -- okay. Excuse me. 8 Do you have any recollection of any text 9 message like that from Colt Gill talking about 10 wracking my brain and this Bob person having concerns 11 about private schools? 12 A I do not. 13 Q Do you know who Dr. Bob Dannenhoffer is? 14 A I have heard his name but I have never spoken to 15 him. 16 Q Okay. Are you aware that he is a Douglas County 17 public health officer? 18 A Yes. 19 Q But you don't recall dealing with him; is that 20 right? 21 A I do not. 22 Q Are you aware of directly or indirectly of 23 Dr. Dannenhoffer being concerned that one of the 24 proposals from July of this year very much favored 25 private schools?</p>
Page 158	Page 160
<p>1 right? 2 A That's correct. 3 Q And I think you told me earlier, but just to be 4 clear, what is that, that provided cell phone number? 5 A (503) [REDACTED]. 6 Q Have you texted to people in your job capacity 7 about the pandemic from that phone? 8 A Yes. 9 Q Do you have voice mails on that phone that have 10 not been deleted that relate to the pandemic? 11 A Yes. 12 Q Now, I want to switch gears a bit, and I'm going 13 to ask you about a text message that was written by 14 Colt Gill, someone you mentioned earlier today. It 15 was written on July 26, 2020. 16 And Counsel, this is document 039189. 17 And I want to ask you about this, 18 Ms. Horner. In that May 26 text message, Colt 19 writes, quote, [as read:] Racking my brain. Do you 20 have any suggestions to meet Bob's concerns about 21 private schools? I'm not sure his solution lands it. 22 Could use a thought partner on that one." 23 Do you recall getting this "racking my 24 brain" text message from Colt Gill referencing this 25 Bob person?</p>	<p>1 MR. ABRAMS: Objection. Argumentative. 2 Mischaracterizes previous testimony. 3 A I'm not familiar with that nor do I recall. 4 Q BY MR. KAEMPF: Also on July 26 of 2020, this 5 would be, I guess, eight -- or ten days, excuse me, 6 before you claim it was the August 5th mass exodus 7 discussion we talked about with Mary Starrett and the 8 other county commissioners. So by way of reference, 9 July 26 would be ten days before that. Colt Gill 10 wrote a text message saying, quote, [as read:] I 11 think I fixed the remote/rural issue. Now trying to 12 schedule SUPT, which I think means superintendent, 13 and private school meetings. Is there a 3:00 meeting 14 Monday that I'm a part of? 15 And Counsel, that's document 039189. 16 Do you recall that text message from Colt 17 Gill talking about the superintendent and private 18 school meetings? 19 A I do not. 20 Q Do you recall that there was a meeting that was 21 then going to be set up related to that 3:00? 22 A I do not recall that specific meeting. 23 Q If you were to look at your work calendar, could 24 you check on that? 25 A Yes.</p>

Leah Horner

## 41 (Pages 161 to 164)

Page 161	Page 163
<p>1 Q Are you aware of any meeting happening with</p> <p>2 private school representatives within a week after</p> <p>3 that July 26, 2020 text message from Colt Gill that I</p> <p>4 just mentioned?</p> <p>5 A I'm not aware.</p> <p>6 Q Are you aware of any Zoom or similar recorded</p> <p>7 meeting that had occurred that you attended with</p> <p>8 anybody related to the pandemic?</p> <p>9 A Yes.</p> <p>10 Q Tell me all the ones you're aware of.</p> <p>11 A All the Zoom meetings that I've been involved in</p> <p>12 related to the pandemic?</p> <p>13 Q Yes.</p> <p>14 A There's -- I think every meeting over the last</p> <p>15 eight months has been related to the pandemic, and my</p> <p>16 calendar is public record. I would be happy to share</p> <p>17 that.</p> <p>18 Q Okay. Do you know if any of those meetings</p> <p>19 you're talking about through Zoom, or a similar</p> <p>20 software, were any of them recorded?</p> <p>21 A I do not know if they are recorded or not.</p> <p>22 Q Who would know?</p> <p>23 A I don't know.</p> <p>24 Q During any of these Zoom meetings relating to</p> <p>25 the pandemic this year, did you ever use the chat</p>	<p>1 maybe you, but I'm not sure.</p> <p>2 And Counsel, it's labeled as 039200.</p> <p>3 Colt Gill, in this text message to Lindsey</p> <p>4 Capps, he characterized rural areas as, quote,</p> <p>5 frontier counties, end quote.</p> <p>6 Have you seen Colt Gill use that phrase?</p> <p>7 A Yes.</p> <p>8 Q You have?</p> <p>9 A Yes.</p> <p>10 Q And tell me the context that you've seen or</p> <p>11 heard Colt Gill refer to frontier counties.</p> <p>12 A As we were talking -- as the request came in to</p> <p>13 make exemptions for rural counties, when we began our</p> <p>14 conversation, they were referred to as frontier</p> <p>15 counties, which they quickly asked us to stop</p> <p>16 referring to them as.</p> <p>17 Q First of all, why were they called frontier</p> <p>18 counties?</p> <p>19 A I do not know.</p> <p>20 Q Was that Colt's term or someone else?</p> <p>21 A I do not know where that came from.</p> <p>22 Q Did you ever use the term "frontier counties"?</p> <p>23 A I don't believe so.</p> <p>24 Q Do you know what it means?</p> <p>25 A No.</p>
Page 162	Page 164
<p>1 function to send or receive messages?</p> <p>2 A Yes.</p> <p>3 Q And is that something you would be able to</p> <p>4 access, that you would be able to get your chat, the</p> <p>5 messages that you sent and received during Zoom</p> <p>6 meetings?</p> <p>7 A For public meetings that I have been in charge</p> <p>8 of related to the pandemic, if there have been robust</p> <p>9 chats with questions, I do have those. I will say</p> <p>10 that there are not a lot of those, but I do have</p> <p>11 those records from chats that I have led public</p> <p>12 meetings on.</p> <p>13 Q And do you know if records of these Zoom</p> <p>14 pandemic-related meetings, are they kept in, perhaps,</p> <p>15 in an Excel spreadsheet form?</p> <p>16 A I don't believe so.</p> <p>17 Q Who is your office IT person?</p> <p>18 A The IT office for the governor's office is run</p> <p>19 through the Department of Administrative Services.</p> <p>20 Q Who would be the point person that would be --</p> <p>21 you would call the IT person who you would call or</p> <p>22 contact if you needed IT help with your job?</p> <p>23 A I do not know.</p> <p>24 Q Now, I'm switching gears to an August 5th, 2020</p> <p>25 text message that Colt Gill sent to Lindsey Capps and</p>	<p>1 Q And you said that they asked you to stop using</p> <p>2 the phrase "frontier county;" is that right?</p> <p>3 A Yes.</p> <p>4 Q Who is "they"?</p> <p>5 A The counties.</p> <p>6 Q What counties?</p> <p>7 A The rural counties in eastern Oregon that were</p> <p>8 having those conversations.</p> <p>9 Q And can you name those counties specifically,</p> <p>10 please?</p> <p>11 A Umatilla County, Baker County, Union County,</p> <p>12 Malheur County are the ones that come to mind.</p> <p>13 Q And can you give me the names of any</p> <p>14 representative of any of those counties who, in so</p> <p>15 many words, said please stop calling us frontier</p> <p>16 counties?</p> <p>17 A I don't recall who actually asked that</p> <p>18 specifically.</p> <p>19 Q But someone did; is that right?</p> <p>20 A Yes.</p> <p>21 Q And so did the government of Oregon stop using</p> <p>22 that term "frontier counties" related to the</p> <p>23 pandemic?</p> <p>24 MR. ABRAMS: Objection. Mischaracterizes</p> <p>25 the previous testimony. Go ahead.</p>

Leah Horner

42 (Pages 165 to 168)

Page 165	Page 167
<p>1 A Could you repeat the question?</p> <p>2 MR. KAEMPF: Sure. The reporter can read</p> <p>3 it back.</p> <p>4 (Record read.)</p> <p>5 MR. ABRAMS: Same objection.</p> <p>6 A I don't know.</p> <p>7 Q BY MR. KAEMPF: As you look at the phrase,</p> <p>8 "frontier counties," do you take it as kind of a</p> <p>9 derogatory, kind of a putdown of small counties?</p> <p>10 A No.</p> <p>11 Q Now, in a different text message, also on</p> <p>12 July 26 of 2020, Colt Gill wrote, and you may have</p> <p>13 been on this text message. I can't tell. But he</p> <p>14 wrote, quote, [as read:] It is looking like a</p> <p>15 three-tier approach with counties with more than 30K,</p> <p>16 counties less than 30K, and one for frontier</p> <p>17 counties, which I'm working hard not to call</p> <p>18 frontier.</p> <p>19 And Counsel that's marked 039200.</p> <p>20 Are you familiar with this three-tiered</p> <p>21 approach?</p> <p>22 A Not specifically.</p> <p>23 Q Generally?</p> <p>24 A No.</p> <p>25 Q Now I saw in the document a reference to a</p>	<p>1 communications with Morgan Allen (phonetic)?</p> <p>2 A No.</p> <p>3 Q How about Edie Alstop (phonetic)?</p> <p>4 A Not that I'm aware of.</p> <p>5 Q How about Teresa Alfonso León?</p> <p>6 A Yes.</p> <p>7 Q And what is Teresa's title?</p> <p>8 A She's a state legislator.</p> <p>9 Q And is she in the House or the Senate of Oregon?</p> <p>10 A The House.</p> <p>11 Q And is she a democrat or a republican?</p> <p>12 A She's a democrat.</p> <p>13 Q And you have had communications with Ms. Leon,</p> <p>14 is that right, about the pandemic?</p> <p>15 A Yes.</p> <p>16 Q And do you recall generally or specifically what</p> <p>17 you communicated about with her?</p> <p>18 A Yes. I've had conversations with her about the</p> <p>19 mistreatment of people of color during the pandemic</p> <p>20 response.</p> <p>21 Q And to your understanding from talking with her,</p> <p>22 what was the claimed mistreatment?</p> <p>23 A She has been very concerned that people of color</p> <p>24 are not getting access to the tests that they need.</p> <p>25 They are not getting quarantine time off, and that</p>
Page 166	Page 168
<p>1 meeting with the Coalition of Oregon School</p> <p>2 Administrators, COSA, or C-O-S-A.</p> <p>3 And Counsel, I'm referring to document</p> <p>4 004628. And it refers to an April 24, 2020 meeting,</p> <p>5 and that it is called, quote, COSA off the record</p> <p>6 meeting, end quote.</p> <p>7 Are you familiar with that meeting?</p> <p>8 A No.</p> <p>9 Q Do you know why it's called "off the record"?</p> <p>10 A No.</p> <p>11 Q Ms. Horner, we're getting fairly close to the</p> <p>12 end. A few more minutes, just to give you the</p> <p>13 heads-up, there.</p> <p>14 And so I'll represent to you there has been</p> <p>15 some investigation in this case and documents</p> <p>16 produced and I have seen some communications. And I</p> <p>17 want to ask you about some of them while you're</p> <p>18 obviously still under oath.</p> <p>19 Have you had any dealings with a person</p> <p>20 named Rylee, R-Y-L-E-E, Ahhan, A-H-H-A-N, during the</p> <p>21 pandemic?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q Do you know who that person is?</p> <p>24 A I do not.</p> <p>25 Q During the pandemic, have you had any</p>	<p>1 farm workers are not being treated fairly by</p> <p>2 employers.</p> <p>3 Q Is that true?</p> <p>4 A I don't know.</p> <p>5 Q During the pandemic, have you had any</p> <p>6 communications with Elvyss, E-L-V-Y-S-S, Argueta,</p> <p>7 A-R-G-U-E-T-A?</p> <p>8 A Not that I'm aware of.</p> <p>9 Q Do you know who that person is?</p> <p>10 A I do not.</p> <p>11 Q How about Fawn Barrie, B-A-R-R-I-E?</p> <p>12 A Yes.</p> <p>13 Q And who is Fawn?</p> <p>14 A Fawn is a lobbyist.</p> <p>15 Q And is it true that Fawn represents the Oregon</p> <p>16 Health and Fitness Alliance?</p> <p>17 A Yes.</p> <p>18 Q So, generally speaking -- Ms. Barrie is a</p> <p>19 female, I'm guessing.</p> <p>20 A Yes.</p> <p>21 Q And then Ms. Barrie, is she a lobbyist on behalf</p> <p>22 of the health clubs?</p> <p>23 A Yes.</p> <p>24 Q Do you remember what kind of things Ms. Barrie</p> <p>25 asked for relating to the pandemic on behalf of</p>



Leah Horner

43 (Pages 169 to 172)

Page 169	Page 171
<p>1 health clubs?</p> <p>2 A She has been one of the individuals who has</p> <p>3 requested an increase in the capacity for health club</p> <p>4 operations.</p> <p>5 Q What did she ask for?</p> <p>6 A She has asked for the capacity limits to be</p> <p>7 based on square footage, not have a hard cap of 100.</p> <p>8 Q So currently for health clubs, is there a hard</p> <p>9 cap of 100? Is that what you said earlier?</p> <p>10 A Yes.</p> <p>11 Q So at least for now, and, of course, you were</p> <p>12 polite and all that, but you rejected her request</p> <p>13 for -- to do it based on square footage.</p> <p>14 A That's correct.</p> <p>15 Q Do you know if in Oregon college and university</p> <p>16 classrooms, are there limits on size or square</p> <p>17 footage concerning those classrooms being allowed to</p> <p>18 reopen for in-person classes?</p> <p>19 A I'm not familiar enough with their guidance.</p> <p>20 Q During the pandemic, have you had any dealings</p> <p>21 with Ben Barcenas, B-A-R-C-E-N-A-S?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q I'll represent to you that he represents the</p> <p>24 Northwest Religious Liberty Association. Does that</p> <p>25 ring a bell?</p>	<p>1 pressure -- I don't mean in a negative way. I just</p> <p>2 mean the concern that Representative Doherty</p> <p>3 expressed on behalf of bowling alleys. That that</p> <p>4 resolved to her satisfaction.</p> <p>5 A I believe so.</p> <p>6 Q What about Ms. Cheri, C-H-E-R-I, Helt, H-E-L-T,</p> <p>7 have you had any communications with her during the</p> <p>8 pandemic?</p> <p>9 A Yes.</p> <p>10 Q What's her title?</p> <p>11 A She's a state representative.</p> <p>12 Q And tell me about all pandemic-related</p> <p>13 communications, oral or written, that you've had with</p> <p>14 Representative Helt.</p> <p>15 A I have had communications with Representative</p> <p>16 Helt about restaurant operations, as she is a</p> <p>17 restaurant owner. I referred earlier to a</p> <p>18 conversation I had with Deschutes Brewery. She</p> <p>19 facilitated that conversation about them wanting to</p> <p>20 increase their indoor capacity. And I also had</p> <p>21 communications with Representative Helt about people</p> <p>22 with expired driver's license who are trying to rent</p> <p>23 cars, but rental companies will not rent to them with</p> <p>24 expired licenses.</p> <p>25 Q Were any changes made with regard to</p>
Page 170	Page 172
<p>1 A No.</p> <p>2 Q Have you dealt, during the pandemic, with state</p> <p>3 representative Daniel Bonham?</p> <p>4 A I honestly do not recall.</p> <p>5 Q How about state representative Margaret Doherty</p> <p>6 of the House Interim Committee on Education?</p> <p>7 A Yes.</p> <p>8 Q What kind of communications have you had with</p> <p>9 Ms. Doherty about the pandemic?</p> <p>10 A Representative Doherty has inquired about</p> <p>11 bowling operations as well as live theater operations</p> <p>12 in phase-one counties.</p> <p>13 Q Okay. Did you say bowling, like bowling pins?</p> <p>14 A Yes.</p> <p>15 Q And live theater?</p> <p>16 A That's correct.</p> <p>17 Q And in response to Representative Doherty's</p> <p>18 concerns about bowling and live theater, to your</p> <p>19 knowledge, what was done?</p> <p>20 A So there was guidance posted last week that</p> <p>21 allowed for bowling alleys to operate under a limited</p> <p>22 capacity in phase-one counties. But there has not</p> <p>23 been anything done about her request for live</p> <p>24 theaters.</p> <p>25 Q Okay. So at least as to the bowling alleys, the</p>	<p>1 Representative Helt's concern being that rental car</p> <p>2 issue you just mentioned?</p> <p>3 A The rental car issue was a case-by-case basis.</p> <p>4 And when I inquired with the rental car agencies</p> <p>5 about their operations, some were denying rentals</p> <p>6 based on expired licenses and others were not. So I</p> <p>7 don't know that I would call that resolution, but</p> <p>8 that there was some followup on that.</p> <p>9 Q Are you aware of the restaurant or restaurants</p> <p>10 that Representative Helt owns?</p> <p>11 A I am not.</p> <p>12 Q But did I hear you say correctly, though, that</p> <p>13 she does own a restaurant?</p> <p>14 A Yes, that's correct, in Bend.</p> <p>15 Q During the pandemic, have you communicated with</p> <p>16 any other Oregon State House members?</p> <p>17 A Yes.</p> <p>18 Q Okay. And can you tell me all their names?</p> <p>19 A I believe I have sent communications to probably</p> <p>20 all of the State House members in some regard.</p> <p>21 Q Does the same answer apply to the Oregon State</p> <p>22 Senate?</p> <p>23 A Yes.</p> <p>24 Q So have you communicated with both House and</p> <p>25 Senate members of both parties related to this</p>

Leah Horner

44 (Pages 173 to 176)

Page 173	Page 175
<p>1 pandemic?</p> <p>2 A Yes.</p> <p>3 Q Is Senator Michael -- is it Dembrow,</p> <p>4 D-E-M-B-R-O-W, do you recall specifically having</p> <p>5 communications with him about the pandemic?</p> <p>6 A Yes.</p> <p>7 Q Okay. And my understanding is he's on the</p> <p>8 Senate Interim Committee on education; is that right?</p> <p>9 A I'm not sure.</p> <p>10 Q And then do you know, is -- the members of that</p> <p>11 committee, does it include, to your knowledge,</p> <p>12 Senator Gelser, G-E-L-S-E-R?</p> <p>13 A Senator Gelser, I'm not sure which committee</p> <p>14 she's serving on at this point in time.</p> <p>15 Q Does it include Scenario -- I guess it's</p> <p>16 Gezelter, G-E-Z-E-L-T-E-R?</p> <p>17 A I am not familiar with that name as a senator.</p> <p>18 Q How about Senator Mark Hass, H-A-S-S?</p> <p>19 A He is a senator but I'm not sure if he is on</p> <p>20 that committee.</p> <p>21 Q Do you recall any specific written or oral</p> <p>22 communications of Senator Hass during the pandemic?</p> <p>23 A I don't recall any communication with Senator</p> <p>24 Hass.</p> <p>25 Q Do you recall any pandemic-related</p>	<p>1 about.</p> <p>2 Q And I would ask you then to focus on a House</p> <p>3 member that you can recall specific pandemic unique</p> <p>4 related concerns that they had similar to what you</p> <p>5 told me before about bowling alleys and live theater.</p> <p>6 Like Representative X wanted to make sure that the Z</p> <p>7 businesses are reopened, that kind of a thing.</p> <p>8 A So I've had a lot of conversations with Senate</p> <p>9 and House members who are in phase-one counties about</p> <p>10 bowling alleys, ice skating rinks, movie theaters and</p> <p>11 live theaters. That includes Representative Neron.</p> <p>12 That includes Senator Thatcher. I have -- I'm trying</p> <p>13 to think. I've had conversations with Representative</p> <p>14 Nosse about eviction moratoriums. I've had</p> <p>15 conversations with representative Mark Owens about</p> <p>16 athletics.</p> <p>17 Q Would some of those communications you just</p> <p>18 mentioned with House members, would they be in</p> <p>19 writing, like emails and text messages?</p> <p>20 A Yes, yes.</p> <p>21 Q Have you had any dealings with Benjamin Bowman</p> <p>22 of the Coalition of Oregon School Administrators</p> <p>23 during the pandemic?</p> <p>24 A Not that I recall.</p> <p>25 Q Have you had any dealings with Angela Dilkes,</p>
Page 174	Page 176
<p>1 communications with Senator Jaramillo,</p> <p>2 J-A-R-A-M-I-L-L-O?</p> <p>3 A There is not a senator with that name that I'm</p> <p>4 aware of.</p> <p>5 Q Then that's probably completely my fault. I</p> <p>6 apologize.</p> <p>7 Do you recall any specific communications</p> <p>8 with a name of a specific Oregon State Senator that</p> <p>9 you had related to the pandemic?</p> <p>10 A Can you repeat that question, please.</p> <p>11 Q Yeah. That was not my best question of the day.</p> <p>12 I will try again.</p> <p>13 Is there a specific senator that jumps out</p> <p>14 in your mind right now that you recall bringing up</p> <p>15 something unique related to the pandemic. Like you</p> <p>16 talked about Senator Helt owning a restaurant in</p> <p>17 Bend, and you talked about the other person, talking</p> <p>18 about the bowling alleys and live theaters. Anyone</p> <p>19 else like that in terms of either the Senate or the</p> <p>20 House that you remember talking to concerning the</p> <p>21 pandemic?</p> <p>22 A I probably had more conversations with House</p> <p>23 members than I have with Senate members about the</p> <p>24 pandemic. But there is a variety of topics that I</p> <p>25 have talked to legislators specific to the pandemic</p>	<p>1 D-I-L-K-E-S, of the Portland Public Schools?</p> <p>2 A I have had communications with Angie Dilkes,</p> <p>3 yes.</p> <p>4 Q Related to the pandemic?</p> <p>5 A Tangentially.</p> <p>6 Q Sure. And you're laughing, and I understand.</p> <p>7 And what's funny about that to you, if you can</p> <p>8 clarify?</p> <p>9 A So I did not recall that she represents Portland</p> <p>10 Public Schools. I have had conversations with her</p> <p>11 about DMV operations. She represented a company that</p> <p>12 was doing electronic titles for vehicles, and we were</p> <p>13 trying -- she had communicated with me early in the</p> <p>14 pandemic around moving more operations electronically</p> <p>15 for her clients. So I just found it humorous,</p> <p>16 because those were two, to me, diametrically opposed</p> <p>17 conversations. But I have not had any conversations</p> <p>18 with her related to schools.</p> <p>19 Q Okay. Do you know -- you called her Angie</p> <p>20 Dilkes. Do you know, does she have some kind of</p> <p>21 position with the Portland Public Schools?</p> <p>22 A I do not know.</p> <p>23 Q Now this name -- it's a person I believe -- tell</p> <p>24 me if I'm wrong -- is associated with the Coalition</p> <p>25 of Oregon School Administrators, Parasa, P-A-R-A-S-A,</p>

Leah Horner

45 (Pages 177 to 180)

Page 177	Page 179
<p>1 Chanramy I believe, C-H-A-N-R-A-M-Y. Does that name</p> <p>2 ring a bell?</p> <p>3 A It does not.</p> <p>4 Q How about with the same organization, Craig</p> <p>5 Hawkins?</p> <p>6 A I'm not familiar with that name.</p> <p>7 Q Okay. Have you, during the pandemic, dealt with</p> <p>8 Dave Hunt of the American Federation of Teachers</p> <p>9 board?</p> <p>10 A I have dealt with Dave Hunt, but not in that</p> <p>11 capacity.</p> <p>12 Q During the pandemic, in what capacity have you</p> <p>13 dealt with Dave Hunt?</p> <p>14 A Dave Hunt previously represented BBPDX, which is</p> <p>15 a, for lack of a better descriptor, small business</p> <p>16 chamber for Portland businesses. And I had</p> <p>17 communications with him about small business</p> <p>18 investments that were coming out of the Coronavirus</p> <p>19 relief fund as part of the pandemic response that the</p> <p>20 state had.</p> <p>21 Q Specifically, what were those communications</p> <p>22 about with Dave Hunt?</p> <p>23 A Specifically they were about the amounts of</p> <p>24 money that would be available to small businesses and</p> <p>25 the parameters around that funding.</p>	<p>1 pandemic with Gwen Sullivan of the -- excuse me.</p> <p>2 Does the name Gwen Sullivan ring a bell in</p> <p>3 terms of somebody who works on behalf of an</p> <p>4 educational institute in Oregon?</p> <p>5 A It does not, but I'm also not familiar with</p> <p>6 those stakeholders.</p> <p>7 Q Okay. That's fine. Have you dealt, during the</p> <p>8 pandemic, with Stephen Buckley of the PERS board?</p> <p>9 A No.</p> <p>10 Q How about Steve Demarest, D-E-M-A-R-E-S-T, of</p> <p>11 the PERS board.</p> <p>12 A Not that I'm aware.</p> <p>13 Q Do you recall during the pandemic, communicating</p> <p>14 with Suzanne Cohen of the Portland Association of</p> <p>15 Teachers?</p> <p>16 A No.</p> <p>17 Q How about Laura Conroy of the Multnomah</p> <p>18 Education Service District?</p> <p>19 A Not that I'm aware of.</p> <p>20 Q How about Nicole Crane of the Association of</p> <p>21 Oregon Counties?</p> <p>22 A I am not sure. I work a lot with the</p> <p>23 Association of Oregon Counties. I have not had</p> <p>24 direct communication with Nicole, but I feel like she</p> <p>25 may have been on some of my emails.</p>
Page 178	Page 180
<p>1 Q During the entire pandemic, have you ever made</p> <p>2 any efforts to consider the amount of funding</p> <p>3 available to Oregon's private or religious schools?</p> <p>4 A I have not.</p> <p>5 Q And have you ever dealt with, during the</p> <p>6 pandemic, Lisa Wong (phonetic), of the American</p> <p>7 Federation of Teachers, Oregon?</p> <p>8 A No.</p> <p>9 Q And those issues that you just mentioned that</p> <p>10 Dave Hunt raised, did you, in essence, do what he</p> <p>11 wanted or not?</p> <p>12 A So I took Dave's recommendations into</p> <p>13 consideration. I don't know that they all landed the</p> <p>14 way that he had requested.</p> <p>15 Q Are some of the communications you had with Dave</p> <p>16 Hunt this year about the pandemic in writing?</p> <p>17 A Yes.</p> <p>18 Q Okay. And is that something you could obtain if</p> <p>19 we requested it?</p> <p>20 A Yes.</p> <p>21 Q Okay. Have you, during the pandemic, had any</p> <p>22 communications with Robert Brose (phonetic) of the</p> <p>23 Oregon Association of Education Service District?</p> <p>24 A Not that I'm aware of.</p> <p>25 Q Do you recall any communications during the</p>	<p>1 Q Please tell me the names of people you do recall</p> <p>2 communicating with at the Association of Oregon</p> <p>3 Counties during the pandemic.</p> <p>4 A Gina Nikkel and Andy Smith.</p> <p>5 Q How about Amanda Dalton?</p> <p>6 A I have had communication with Amanda Dalton.</p> <p>7 Q About the pandemic?</p> <p>8 A Yes.</p> <p>9 Q Is that something you can obtain?</p> <p>10 A Yes.</p> <p>11 Q And also I take it that you had written</p> <p>12 communications with the prior person that you</p> <p>13 mentioned before, Amanda, at the Association of</p> <p>14 Oregon Counties?</p> <p>15 A So just to clarify, those weekly calls that I</p> <p>16 have with county commissioners, the Association of</p> <p>17 Oregon Counties has staff sit in on those, but they</p> <p>18 are off video. And I don't track which staff members</p> <p>19 attend which meetings. That name is familiar,</p> <p>20 because I feel like she has attended some of those</p> <p>21 meetings in the past.</p> <p>22 Q Okay. And you say that name, do you mean Amanda</p> <p>23 Dalton?</p> <p>24 A No, I mean Nicole Crane. Amanda Dalton</p> <p>25 represents the grocers, and I have talked to her</p>

Leah Horner

46 (Pages 181 to 184)

Page 181	Page 183
<p>1 about the pandemic as related to the grocers.</p> <p>2 Q All right. I know you're not saying it's</p> <p>3 definitive, but perhaps Nicole Crane might have</p> <p>4 attended some of those weekly county commissioner</p> <p>5 pandemic meetings?</p> <p>6 A That's correct.</p> <p>7 Q During the pandemic, have you ever dealt with</p> <p>8 Michael Cully of the League of Oregon Cities?</p> <p>9 A Yes.</p> <p>10 Q Tell me about what you've communicated with</p> <p>11 Michael Cully about concerning the pandemic.</p> <p>12 A Mike Cully is executive director of the League</p> <p>13 of Oregon Cities, and he holds weekly calls with the</p> <p>14 League of Oregon City members. And I am a weekly</p> <p>15 presenter on that call every Friday at 10:00 a.m.</p> <p>16 Q Is that call ever recorded in any fashion?</p> <p>17 A I believe that call is recorded.</p> <p>18 Q Who would I contact within the Oregon government</p> <p>19 or the governor's office about how to obtain those</p> <p>20 recordings?</p> <p>21 A Those are held by the League of Oregon Cities,</p> <p>22 and I would contact Mike Cully for those recordings.</p> <p>23 Q Do you know if those recordings are audio or</p> <p>24 video or both?</p> <p>25 A I believe they're just audio.</p>	<p>1 Q Sure. Even if it was a discussion, as you say,</p> <p>2 were the things that he wanted or requested</p> <p>3 implemented in any way?</p> <p>4 A The only thing that I can think of is that he</p> <p>5 did request for bowling alleys in phase-one counties</p> <p>6 to be opened, and that has occurred.</p> <p>7 Q So is that two people I've heard today that have</p> <p>8 specifically raised concerns to you about bowling</p> <p>9 alleys? Other than the two that you talked about,</p> <p>10 can you think of anyone else during the pandemic in</p> <p>11 Oregon who has raised the concern that you have</p> <p>12 become aware of related to bowling alleys?</p> <p>13 A Yes.</p> <p>14 Q Who?</p> <p>15 A I don't want to overstate it, but I think I have</p> <p>16 talked to every bowling alley operator in phase-one</p> <p>17 counties over the last six months.</p> <p>18 Q And I don't mean to come across sarcastic. This</p> <p>19 is a sincere question. Do you know why bowling</p> <p>20 alleys have brought so much attention to you about</p> <p>21 staying open?</p> <p>22 A It is not unique to bowling alleys. There are a</p> <p>23 lot of phase-one operations that have not been</p> <p>24 allowed to operate. And I will say that I hear from</p> <p>25 most of them on a very regular basis.</p>
Page 182	Page 184
<p>1 Q In all of these meetings that you've been having</p> <p>2 this year with various organizations during the</p> <p>3 pandemic, are you aware of anyone else, besides the</p> <p>4 League of Oregon Cities, that records those meetings</p> <p>5 in any way?</p> <p>6 A I am not.</p> <p>7 Q Okay. Have you ever dealt with Mark Gharst,</p> <p>8 G-H-A-R-S-T at the League of Oregon Cities?</p> <p>9 A Yes.</p> <p>10 Q Have you had communications with Mark about the</p> <p>11 pandemic?</p> <p>12 A Yes.</p> <p>13 Q And are some of those in writing, like emails</p> <p>14 and text?</p> <p>15 A Yes.</p> <p>16 Q And is that something you could obtain?</p> <p>17 A Yes.</p> <p>18 Q And when we were talking earlier about Michael</p> <p>19 Cully, whatever concerns he expressed, whatever the</p> <p>20 term is, would you say he got what he wanted? Or</p> <p>21 what happened as a result?</p> <p>22 A The working relationship that Mike Cully and I</p> <p>23 have is more of a discussion, not necessarily him</p> <p>24 requesting things related to guidance or the</p> <p>25 pandemic.</p>	<p>1 Q Okay. When you say there are a lot and you hear</p> <p>2 from most of them on a regular basis, besides bowling</p> <p>3 alleys, please tell me the nature of those</p> <p>4 businesses.</p> <p>5 A Sure. There is ice skating. There is go kart</p> <p>6 racing. There is indoor golf arenas. There are</p> <p>7 arcades. There is the zoo. There is Oaks Park. I'm</p> <p>8 sure there are more, but that's just a flavor of the</p> <p>9 type of inquiries.</p> <p>10 Q Sure. And of those entities you just listed,</p> <p>11 which ones are allowed to reopen?</p> <p>12 A Ice skating and the zoo, aside from bowling,</p> <p>13 which I've already mentioned, are the only ones who</p> <p>14 have been allowed to open.</p> <p>15 Q And do you know why ice skating rinks, bowling</p> <p>16 alleys and zoos are allowed to reopen but the private</p> <p>17 and religious schools are not?</p> <p>18 A I do not know why one over the -- I do not know</p> <p>19 the recreational component versus having all schools</p> <p>20 open.</p> <p>21 Q And concerning Mark Gharst, G-H-A-R-S-T, from</p> <p>22 the League of Oregon Cities, can you think of any of</p> <p>23 his specific requests or concerns about the pandemic?</p> <p>24 A Mark has been focused on the Coronavirus relief</p> <p>25 fund and the allocations that have been going to</p>

Leah Horner

47 (Pages 185 to 188)

Page 185	Page 187
<p>1 local governments.</p> <p>2 Q What kind of local government, like schools or</p> <p>3 what?</p> <p>4 A Mark represents the League of Oregon Cities, so</p> <p>5 he is concerned with city allocations from those</p> <p>6 funds.</p> <p>7 Q And was Mark concerned about anything else</p> <p>8 related to the pandemic?</p> <p>9 A Not that I'm aware of.</p> <p>10 Q Does Jenna Jones also represent the League of</p> <p>11 Oregon Cities?</p> <p>12 A I'm not familiar with Jenna Jones.</p> <p>13 Q That's fine. Now, have you dealt, during the</p> <p>14 pandemic, with James Green of the Oregon School Board</p> <p>15 Association?</p> <p>16 A Not that I'm aware of.</p> <p>17 Q Have you dealt with Chris Parta, P-A-R-T-A, of</p> <p>18 the Oregon School Board Association?</p> <p>19 A Not that I'm aware of.</p> <p>20 Q Other than the people you told me about earlier</p> <p>21 today, can you name anyone else, and I don't know</p> <p>22 that I asked you this, who can represent the public</p> <p>23 school district that you've communicated with about</p> <p>24 the pandemic?</p> <p>25 A No.</p>	<p>1 A Yes.</p> <p>2 Q Ms. Horner, in your job -- and I understand you</p> <p>3 focus on economic policy. Right?</p> <p>4 A Yes.</p> <p>5 Q And are you specific to the mid-valley or is it</p> <p>6 a bigger region?</p> <p>7 A My job operates statewide.</p> <p>8 Q Okay. As part of that job, have you ever</p> <p>9 considered the social cost of the pandemic, like</p> <p>10 there has been talk of increased drug overdoses,</p> <p>11 suicide, depression, that kind of a thing?</p> <p>12 A Yes. I get asked about that quite a bit. And I</p> <p>13 work closely and usually hand over those types of</p> <p>14 inquiries to my colleagues, who focus on the social</p> <p>15 aspects of those policies.</p> <p>16 Q Please name your colleagues who focus on the</p> <p>17 social aspects of those policies.</p> <p>18 A So Jackie Yerby is one and Linda Ramon is the</p> <p>19 other.</p> <p>20 Q So does Maria Waters deal with that?</p> <p>21 A Not that I am aware of.</p> <p>22 Q I saw that recently on the last week, the Oregon</p> <p>23 Health Authority put on its website that there has</p> <p>24 been a 70 percent increase in the number of fentanyl</p> <p>25 overdoses during the April and May 2020 period</p>
Page 186	Page 188
<p>1 Q How about private or religious schools? Have</p> <p>2 you had any verbal or written communication of any</p> <p>3 kind with any representative of any private or</p> <p>4 religious school during the pandemic?</p> <p>5 A Not that I can recall.</p> <p>6 Q Do you recall having any communications with any</p> <p>7 representative of any church, synagogue, mosque,</p> <p>8 during the pandemic?</p> <p>9 A I do not recall having any direct communication</p> <p>10 with any of those individuals.</p> <p>11 Q How about indoor, like Jody Christensen doing</p> <p>12 that on your behalf with any of those kinds of church</p> <p>13 or religious group?</p> <p>14 A Yes. I've had a lot of indirect questions about</p> <p>15 faith-based gathering limitations.</p> <p>16 Q When you say they're indirect, who do they go to</p> <p>17 directly?</p> <p>18 A They generally go to the individuals that we</p> <p>19 discussed previously, Sephora Cheang, Jackie Yerby</p> <p>20 and Maria Waters.</p> <p>21 Q And with Sephora and Jackie and Maria, have you</p> <p>22 emailed and texted with all of them during the</p> <p>23 pandemic?</p> <p>24 A Yes.</p> <p>25 Q Is that something that you can get upon request?</p>	<p>1 compared to the same period a year ago. Have you</p> <p>2 ever been made aware of that general concern?</p> <p>3 A I believe I saw that on the news, but that's not</p> <p>4 my policy area.</p> <p>5 Q And in your job, have you ever considered that</p> <p>6 keeping Oregon schools closed down may be</p> <p>7 contributing to these kinds of drug and mental health</p> <p>8 problems?</p> <p>9 A That is outside of the policy implications that</p> <p>10 I focus on.</p> <p>11 Q All right. And is there anything, as you sit</p> <p>12 here now, about the entire day of testimony that you</p> <p>13 would like to correct or amend? It's popping out,</p> <p>14 like, oh, yeah, I forgot something.</p> <p>15 A No.</p> <p>16 Q Okay. And I thank you very much for your time</p> <p>17 and patience today. And I'll formally leave the</p> <p>18 deposition open to the extent there were instructions</p> <p>19 not to answer. Thank you.</p> <p>20 A Thank you.</p> <p>21</p> <p>22 (DEPOSITION ADJOURNED AT 2:45 P.M.)</p> <p>23</p> <p>24</p> <p>25</p>



Leah Horner

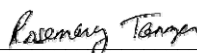
48 (Page 189)

Page 189

## 1 CERTIFICATE

2  
3 I, Rosemary Tanzer, a Registered  
4 Professional Reporter, and a Certified Shorthand  
5 Reporter for Oregon and Washington Certified Court  
6 Reporter, hereby certify that said witness personally  
7 appeared before me via Zoom at the time and place set  
8 forth in the caption hereof; that at said time and  
9 place I reported in stenotype all testimony adduced  
10 and other oral proceedings had in the foregoing  
11 matter; that thereafter my notes were transcribed  
12 through computer-aided transcription, under my  
13 direction; and that the foregoing pages constitute a  
14 full, true and accurate record of all such testimony  
15 adduced and oral proceedings had, and of the whole  
16 thereof.

17 Witness my hand at Portland, Oregon, this  
18 1st day of November, 2020.

19  
20  
21   
22 Rosemary Tanzer  
23 OREGON CSR NO. 94-0299  
24 Expires September 30, 2023  
25



Justice Samuel Alito's November 12, 2020 Address to the Federalist Society

"I am very pleased to have this opportunity to speak to all of you who are attending the Federalist Society's Annual Lawyers Convention via the internet.

I've given the Convention's keynote speech several times before, but today is quite different. On all those occasions, I spoke to a live audience at the big convention dinner. By the time I got up to speak, there had been a cocktail hour. Everybody had had the chance to enjoy a glass of wine, or two, with dinner, and people were in a good mood. Those are optimal circumstances for a speaker. They tend to make the audience a lot more forgiving in its assessment of the speech.

Today, I'm talking to a camera and that feels really strange. And I wondered if anything could be done to alleviate that. If any of you watched any regular season baseball games this year, you will have seen that there were no real people in attendance. But in an effort to make the atmosphere seem a bit more normal, teams placed cardboard cutouts of fans in the seats and piped in recorded cheers. I thought for a moment about asking the organizers of the convention to do something like that, but that would only make the setting more surreal. However, if any of you would like to enjoy a beverage in the comfort of your homes, I hope you will feel free to do so. And on the other hand, if any of you feel the urge to throw rotten tomatoes, go right ahead. You will only mess up your own screen.

If you have watched some of the events of this year's convention, I hope you found them informative and thought-provoking. As in the past, they have featured speakers with a variety of views on important topics. Some of those watching tonight may be new to Federalist Society events and may have heard a lot of misinformation about the Society. So, let me say a word at the outset about what the Society is, what it is not, and why I have been a member for many years.

Let me start with what it is not. It is not an advocacy group. Unlike other bar groups, it does not take a position on any issue. It doesn't propose legislation, or lobby, or testify before Congress, or file briefs in the Supreme Court or any other court. It holds events like this convention at which issues are debated and discussed openly and civilly. Anybody can join the Society and anybody can attend

events like this convention. Most members of the Society are conservative in the sense that they want to conserve our Constitution and the rule of law, but members disagree about many important things.

The Society started in law schools in the 1980s and now has 200 law school chapters, and the best law school deans have expressed appreciation of the Society's contribution to free and open debate. My colleague Elena Kagan is a prime example. When she was the Dean of Harvard Law School, she spoke at a Federalist Society event and began with these words, "I love the Federalist Society." After some applause, she repeated, "I love the Federalist Society" pause, "but you are not my people."

That is a true expression of the freedom of speech that our constitution guarantees and that we need to preserve. We should all welcome rational civil speech on important subjects, even if we do not agree with what the speaker has to say. Unfortunately, tolerance for opposing views is now in short supply in many law schools and in the broader academic community. When I speak with recent law school graduates, what I hear over and over is that they face harassment and retaliation if they say anything that departs from the law school orthodoxy. Under these circumstances, Federalist Society law school events are more important than ever. I will have more to say about freedom of speech later, but at this point, I want to express appreciation to the many judges and lawyers who stood up to an attempt to hobble the debate that the Federalist Society fosters.

A move was afoot to bar federal judges from membership in the Society. And if that had succeeded, the next logical step would have been to forbid them from speaking at law school events and other events sponsored by the Society. Four Court of Appeals Judges, Amul Thapar, Andy Oldham, Bill Pryor and Greg Katsas prepared a letter that devastated the arguments of those who wanted to ban membership. The letter was signed by more than 200 judges, including judges appointed by every president going back to President Ford. And at least for now, the proposal is on hold. We should all express our thanks to these defenders of free speech.

The topic of this year's convention is *the rule of law and the current crisis*, and I take it that the title is intended primarily to refer to the COVID-19 crisis that has transformed life for the past eight months. The pandemic has obviously taken a heavy human toll, thousands dead, many more hospitalized, millions unemployed, the dreams of many small business owners bashed. But what has it meant for the rule of law?

I'm now going to say something that I hope will not be twisted or misunderstood, but I have spent more than 20 years in Washington, so I'm not overly optimistic. In any event, here goes.

The pandemic has resulted in previously *unimaginable* restrictions on individual *liberty*. Now notice what I am not saying or even implying. I'm not diminishing the severity of the virus's threat to public health. And putting aside what I will say shortly about a few Supreme Court cases, I'm not saying anything about the legality of COVID restrictions, nor am I saying anything about whether any of these restrictions represent good public policy. I'm a judge not a policymaker. All that I'm saying is this, and I think it is an indisputable statement of fact, we have *never* before seen restrictions as severe, extensive, and *prolonged* as those experienced for most of 2020. Think of all the live events that would otherwise be protected by the right to freedom of speech, live speeches, conferences, lectures, meetings. Think of *worship* services. Church is closed on Easter Sunday, synagogues closed for Passover on Yom Kippur. Think about access to the courts or the constitutional right to a speedy trial. Trials in federal courts have virtually disappeared in many places. Who could have imagined that?

The COVID crisis has served as a sort of *constitutional stress test*, and in doing so, it has highlighted *disturbing* trends that were already present before the virus struck. One of these is the dominance of lawmaking by executive fiat rather than legislation. The vision of early 20th century progressives and the new dealers of the 1930s was the policy-making would shift from narrow-minded elected legislators to an elite group of appointed experts. In a word, the policy-making would become more scientific. That dream has been realized to a large extent. Every year administrative agencies acting under broad delegations of authority churn out huge volumes of regulations that dwarf the statutes enacted by the

people's elected representatives. And what have we seen in the pandemic? Sweeping restrictions, imposed for the most part, under statutes that confirm enormous executive discretion. We had a COVID-related case from Nevada[*Calvary Chapel*] , so I will take the Nevada law as an example.

Under that law, if the governor finds that there is quote a natural technological or man-made emergency or disaster of major proportions, the governor can perform and exercise such functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population. To say that this provision confers broad discretion would be an understatement. Now again, let me be clear, I'm not disputing that broad wording may be appropriate in statutes designed to address a wide range of emergencies, the nature of which may be hard to anticipate. And I'm not passing judgment on this particular statute.

I want to make two different points. First, what we see in this statute and in what was done under it, is a particularly developed example of where the law in general has been going for some time. In the direction of government by executive officials who were thought to implement policies based on expertise, and in the purest form, scientific expertise. Second, laws giving an official so much discretion can of, course, be abused. And whatever one may think about the COVID restrictions, we surely don't want them to become a recurring feature after the pandemic has passed.

All sorts of things can be called an emergency or disaster of major proportions. Simply slapping on that label cannot provide the ground for aggregating our most fundamental rights. And whenever *fundamental* rights are restricted, the Supreme Court and other *courts cannot close their eyes*. So what have the courts done in this crisis?

When the constitutionality of COVID restrictions has been challenged in court, the leading authority cited in their defense is a 1905 Supreme Court decision called *Jacobson vs. Massachusetts*. The case concerned an outbreak of smallpox in Cambridge, and the court upheld the constitutionality of an ordinance that required vaccinations to prevent the disease from spreading. Now, I'm all in favor of preventing dangerous things from issuing out of Cambridge and infecting the rest



of the country and the world. It would be good if what originates in Cambridge stayed in Cambridge. But to return to the serious point, it's important to keep *Jacobson* in perspective. Its primary holding rejected a substantive due process challenge to a local measure that targeted a problem of limited scope. It did not involve sweeping restrictions imposed across the country for an extended period, and it does *not* mean that whenever there is an emergency, executive officials have *unlimited* unreviewable discretion.

Just as the COVID restrictions have highlighted the movement toward rule by experts, litigation about those restrictions has pointed up emerging trends in the assessment of individual rights. This is *especially* evident with respect to *religious liberty*. It pains me to say this, but in certain quarters religious liberty is fast becoming a disfavored right, and that marks a surprising turn of events.

Consider where things stood in the 1990s. And to me at least that does not seem like the Jurassic age. When a Supreme Court decision called *Employment Division vs. Smith* cut back sharply on the protection provided by the free exercise clause of the First Amendment, Congress was quick to respond. It passed the Religious Freedom Restoration Act (“RFRA”) to ensure broad protection for religious liberty. The law had almost universal support. In the House, the vote was unanimous. In the Senate, it was merely 97 to 3, and the bill was enthusiastically signed by President Clinton. Today that wide support has vanished. When states have considered or gone ahead and adopted their own versions of RFRA, they have been threatened with punishing economic boycotts. Some of our cases illustrate this same trend.

Take the protracted campaign against the Little Sisters of the Poor in order of Catholic nuns. The Little Sisters are women who have dedicated their lives to caring for the elderly poor regardless of religion. They run homes that have won high praise. Here are some of the testimonials filed in our court by residents of their homes.

Carl Bergquist – The Little Sisters “do everything to make us happy. I feel I'm part of the family and that's a

great feeling. They will keep you alive 10 years longer than any place else because they love you.”

Carol Hassel – “In a nutshell, I would say this about the Little Sisters, a little bit of heaven fell from the sky one day landed in my apartment.”

Despite this inspiring work, the Little Sisters have been under unrelenting attack for the better part of a decade. Why? Because they refuse to allow their health insurance plan to provide contraceptives to their employees. For that, they were targeted by the prior administration, if they did not knuckle under and violate a tenant of their faith, they face crippling fines, fines that would likely have forced them to shut down their homes. The current administration tried to prevent that by adopting a new rule, but the states of Pennsylvania and New Jersey, supported by 17 other states, challenged that new rule. Last spring the Little Sisters won their most recent battle in the Supreme Court. I should add by a vote of 7-2, but the case was sent back to the Court of Appeals and the Little Sisters’ legal fight goes on and on.

Here's another example from our cases. The state of Washington adopted a rule requiring every pharmacy to carry every form of contraceptive approved by the Food and Drug Administration, including so-called morning-after pills, which destroy an embryo after fertilization. A pharmacy called Ralph's was owned by a Christian family opposed to abortion, they refused to carry abortifacients. If a woman came to the store with the prescription for such a drug, the pharmacy referred her to a nearby store that was happy to provide it. And there were 30 such stores within five miles of Ralph's, but to the state of Washington, that was not good enough. Ralph’s had to provide the drugs itself or get out of the state.

One more example, consider what a member of the Colorado Human Rights Commission said to Jack Phillips, the owner of the now notorious Masterpiece Cakeshop when he refused to create a cake celebrating a same-sex wedding. She said that freedom of religion had been used “to justify all kinds of discrimination throughout history. Whether it be slavery, whether it be the Holocaust, we can list hundreds of situations where freedom of religion has been used to justify

discrimination.” You can easily see the point that for many today, religious liberty is not a cherished freedom. It's often just an excuse for bigotry and it can't be tolerated, even when there is no evidence that anybody has been harmed. And the cases I just mentioned illustrate the point. As far as I'm aware, not one employee of the Little Sisters has come forward and demanded contraceptives under the Little Sisters' plan. There was no risk that Ralph's referral practice would have deprived any woman of the drug she sought, and no reason to think that Jack Phillips's stand would deprive any same-sex couple of a wedding cake. The couple that came to his shop was given a free cake by another bakery, and celebrity chefs have jumped to the couple's defense. A great many Americans disagree, sometimes quite strongly, with the religious beliefs of the Little Sisters, the owners of Ralph's, and Jack Phillips. And of course, they have a perfect right to do so. That is not the question. The question we face is whether our society will be inclusive enough to tolerate people with unpopular religious beliefs.

Over the years I have sat on cases involving the rights of many religious minorities, Muslim police officers whose religion required them to have beards, a Native American who wanted to keep a bear for religious services, a Jewish prisoner who tried to organize a Torah study group. the Little Sisters, Ralph's, and Jack Phillips deserve no less protection.

A Harvard Law School professor provided a different vision of a future America. He candidly wrote “The culture wars are over, they lost, we won. The question now is how to deal with the losers in the culture wars. My own judgment is that taking a hard line (‘you lost, live with it’) is better than trying to accommodate the losers...(And taking a hard line seemed to work reasonably well in Germany and Japan after 1945.)”

Is our country going to follow that course? To quote a popular Nobel Laureate, “It's not dark yet, but it's getting there.” So let's look at what we've seen during the pandemic.

*Over the summer, the Supreme Court received two applications to stay COVID restrictions that blatantly discriminated against houses of worship, one from California [South Bay] and one from Nevada. [Calvary Chapel]. In both cases, the*

court allowed the discrimination to stand. The only justification given was that we should defer to the judgment of the governors, because they have the responsibility to safeguard the public health. Consider what that deference meant in the Nevada case. After initially closing the State's casinos for a time, the governor opened them up and allowed them to admit 50% of their normal occupancy. And since many *casinos are enormous*, that is a lot of people. And not only did the governor open up the casinos, he made a point of inviting people from all over the country to visit the state. So if you go to Nevada, you can gamble, drink, and attend all sorts of shows. But here's what you *can't* do. If you want to worship and you're the 51st person in line, sorry you are out of luck. Houses of worship are limited to 50 attendees. The size of the building doesn't matter, *nor does it matter if you wear a mask and keep more than six feet away from everybody else*. And it doesn't matter if the building is carefully sanitized before and after a service. The State's message is this "Forget about worship and head for the slot machines or maybe a Cirque du Soleil show."

Now deciding whether to allow this disparate treatment should *not* have been a very tough call. Take a quick look at the Constitution. You will see the free exercise clause of the First Amendment which protects *religious liberty*. You will not find a craps clause or a blackjack clause or a slot machine Clause. Nevada was unable to provide any plausible justification for treating casinos more favorably than houses of worship. But the court nevertheless deferred to the Governor's judgment, which just so happened to favor the State's biggest industry and its many voters and employees.

If what I have said so far does not convince you that religious liberty is in danger of becoming a second-class right, consider a case that came shortly after the Nevada case. The FDA has long had a rule providing that a woman who wants a medication abortion must go to a clinic to pick up the drug. The idea is that it's important for the woman to receive instruction about the drug at that time. The rule was first adopted in 2000, and it has been kept on the books ever since.

A few weeks ago, however, a Federal District Judge in Maryland[ *In American College of Obstetricians*] issued an order prohibiting the FDA from enforcing this drug any place in the country. Enforcement, he found, would interfere with the

right of women to get abortions. Why? Because some women, fearful of contracting COVID if they left their homes, would hesitate about making the trip to a clinic. Now when the judge made this decision, the Governor of Maryland, presumably advised by public health experts, had apparently concluded that Marylanders could safely engage in all sorts of activities outside the home, such as *visiting an indoor exercise facility*, a hair and nail salon, and the state's casinos. If deference was appropriate in the California and Nevada cases, then surely we should have deferred to the Federal Food and Drug Administration on an issue of drug safety. But no, in this instance, the right in question was the abortion right, not the right to religious liberty and the abortion right prevailed.

The right to the free exercise of *religion* is not the only once cherished freedom that is falling in the estimation of some segments of the population. Support for freedom of *speech* is also in danger and COVID rules have restricted speech in unprecedented ways. As I mentioned, the attendance at speeches, lectures, conferences, conventions, rallies, and other similar events has been banned or limited. And some of these restrictions are alleged to have included discrimination based on the viewpoint of the speaker. Even before the pandemic, there was growing hostility to the expression of unfashionable views, and that too is a surprising development.

Here's a marker. In 1972, the comedian George Carlin began to perform a routine called the seven words you can't say on TV. Today you can see shows on your TV screen in which the dialogue appears at times to consist almost entirely of those words. Carlin's list seems like a quaint relic. But it would be easy to put together a new list called things you can't say if you're a student or a professor at a college or university or an employee of many big corporations, and there wouldn't be just seven items on that list. 70 times 7 would be closer to the mark.

I won't go down the list, but I'll mention one that I've discussed in a published opinion. You can't say that marriage is a union between one man and one woman. Until very recently, that's what the vast majority of Americans thought. Now it's considered bigotry. But this would happen after our decision in *Obergefell*. It should not have come as a surprise. Yes, the opinion of the Court included words meant to calm the fears of those who cling to traditional views on marriage. But I



could see, and so did the other Justices in dissent, where the decision would lead. I wrote the following: “I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.” That is just what is coming to pass. One of the great challenges for the Supreme Court going forward will be to protect freedom of speech. Although that freedom is falling out of favor in some circles, we need to do whatever we can to prevent it from becoming a second-tier constitutional right.

Of course, the ultimate second-tier constitutional right in the minds of some is the Second Amendment right to keep and bear arms. From 2010, when we decided *McDonald vs. Chicago*, until last term, the Supreme Court denied every single petition asking us to review a lower court decision that rejected a Second Amendment claim. Last year we finally took another Second Amendment case, and what happened after that is interesting.

The case involved a New York City ordinance. The City makes it very inconvenient for a law-abiding resident to get a license to keep a gun in the home for self-defense. But, the Second Amendment protects that right, and if a person is going to have a gun in the home, there's broad agreement that the gun owner should know how to handle it safely, and that the best way to acquire and maintain that skill is to go to a range every now and then.

The New York City ordinance, however, made that hard. It prohibited a lawful gun owner from going to any range outside city limits and there were only seven ranges in the entire city. And all of these, but one, were largely restricted to members and their guests. There were other ranges that lay just outside the city, so why couldn't a city resident go to one of those ranges? The City really had no plausible explanation. But that didn't stop it from vigorously defending its rule. Nor did it stop the District Court or the Second Circuit from upholding it. Once we granted review, however, the City suddenly saw things differently. It quickly repealed the ordinance, and it said that on reconsideration doing that did not make the city any less safe. In the place of the old ordinance, it adopted a new vaguer one that still did not give gun owners what they wanted, but the City nevertheless asked us to

dismiss the case before it was even briefed or argued. And when we refuse to do that, the City was obviously miffed.

Five United States Senators who filed a brief in support of the City went further. They wrote that the Supreme Court is a sick institution, and if the Court did not mend its ways, well, it might have to be “restructured.” After receiving this warning, the court did exactly what the City and the Senators wanted. It held that the case was moot and it said nothing about the Second Amendment. Three of us protested but to no avail. Now, let me be clear again. I'm not suggesting that the Court's decision was influenced by the Senators' threat. But I am concerned that the outcome might be viewed that way by the Senators and others with thoughts of bullying the Court.

This little episode, I'm afraid may provide a foretaste of what the Supreme Court will face in the future, and therefore, I don't think it can simply be brushed aside. The Senators' brief was extraordinary. I could say something about standards of professional conduct, but the brief involved something even more important. It was an affront to the Constitution and the rule of law.

Let's go back to some basics. The Supreme Court was created by the Constitution not by Congress. Under the Constitution, we exercise the judicial power of the United States. Congress has no right to interfere with that work anymore than we have the right to legislate. Our obligation is to decide cases based on the law—period. And it is therefore wrong for anybody, including members of Congress, to try to influence our decisions by anything other than legal argumentation.

That sort of thing has often happened in countries governed by power, not law. A Supreme Court Justice from one such place recounted what happened when his court was considering a case that was very important to those in power. He looked out the window and saw a tank pull up and point its gun toward the court. The message was clear, decide the right way or the courthouse might be shall we say “restructured.”

That was a crude threat. But all threats and inducements are intolerable. Judges dedicated to the rule of *law* have a clear *duty*. They cannot compromise principle or rationalize any departure from what they are obligated to do. And I am confident that the Supreme Court will not do that in the years ahead.

When we look back at the history of the American Judiciary, we can see many judges who were fearless in their dedication to principle. And one who is especially dear to the Federalist Society springs immediately to mind. I'm referring to Justice Antonin Scalia. Nino was one of the law professors who helped the Society get started. And during his long judicial career, his thinking influenced generations of young lawyers. He left his mark in many ways. Perhaps above all else, he is renowned for his advocacy of two theories of interpretation: Originalism, the idea that the constitution should be interpreted in accordance with its public meaning at the time of adoption, and Textualism, which is essentially originalism applied to statutes.

To see the extent of his influence, consider these two statements by Justice Kagan, "we're all originalists now" and "we're all textualists now." What do they mean? These statements do not mean that all jurists are in complete agreement about how the Constitution and statutes should be interpreted. But what they mean is that a lot of the debate about constitutional and statutory interpretation now takes place within the framework of or at least using the language of those two theories. And going forward, a lot of the debate among Justice Scalia's admirers will probe his understanding of these theories.

I will not go deeply into that subject now. But I will say that we have seen the emergence of what I believe are erroneous and elaborations of Justice Scalia's theories, and I look forward to a friendly and fruitful debate about where his thinking leads.

As I discussed tonight, the COVID crisis has highlighted constitutional fault lines, and I've criticized some of what the Supreme Court has done. But, I don't want to leave you with a distorted picture. During my 15 years on the Court, a lot of good

work has been done to protect freedom of speech, *religious liberty*, and the structure of government created by the Constitution.

All of this is important, but in the end there is only so much that the judiciary can do to preserve our Constitution and the liberty it was adopted to protect. As Learned Hand famously wrote “Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can do much to help it.”

For all Americans, standing up for our Constitution and our freedom is work that lies ahead. It will not be easy work. But when we meet next year, I hope we will be able to say that progress was made. At that time, I trust we will be back together in the flesh. Until then, I wish you all the best. Thank you.”  
(Emphasis added).

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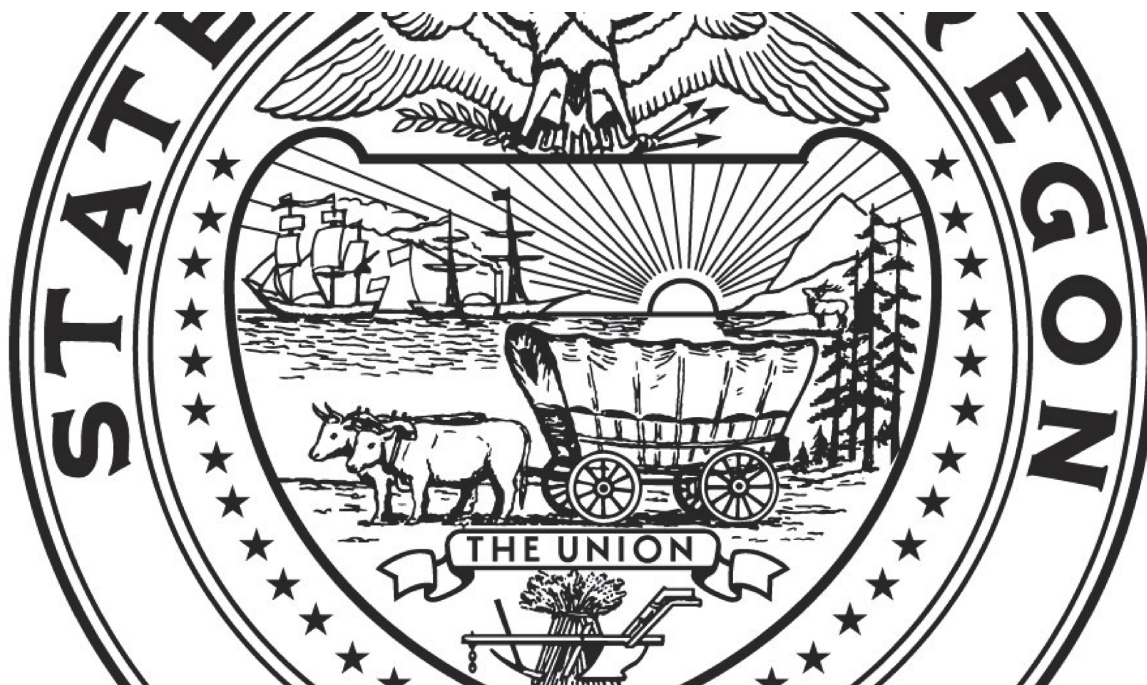
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## Governor Kate Brown Issues Statement on Portland Protests, Condemning Gun Violence

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BY GOVERNOR KATE BROWN PRESS OFFICE ON **AUGUST 30, 2020**

PRESS RELEASES

SALEM — Governor Kate Brown issued the following statement today:

"For the last several years, and escalating in recent months, President Trump has encouraged division and stoked violence. It happened in Charlottesville. It happened in Kenosha. And now, unfortunately, it is happening in Portland, Oregon.

"But despite the President's jeers and tweets, **this is a matter of life and death**. Whether it's his completely incompetent response to the pandemic, where nearly 200,000 have died, or his outright encouragement of violence in our streets: it should be clear to everyone by now that no one is truly safe with Donald Trump as President.

"Throughout this pandemic, whether it was demonstrations protesting my COVID-19 executive orders, or large crowds marching for the **cause of Black Lives Matter** to call for police reform, **I have supported the rights of all Oregonians to peacefully protest**.

"For months this summer, we have seen powerful images of Oregonians uniting for **the cause of racial justice**, calling for justice for Black men and women who have been killed by police violence. We remember them, we say their names. George Floyd. Breonna Taylor. Ahmaud Arbery. Philando Castile. Alton Sterling. And **far too many other Black lives taken by racist violence**.

<https://www.myoregon.gov/2020/08/30/governor-kate-brown-issues-statement-on-portland-protests-condemning-gun-violence/>

1/2



11/15/2020

## Governor Kate Brown Issues Statement on Portland Protests, Condemning Gun Violence - My Oregon News

"For weeks, we have also seen small groups of demonstrators from all ends of the political spectrum who are intent on committing acts of vandalism and violence. Tragically, yesterday a life was lost in downtown Portland. We do not yet know the full circumstances of this person's death. Regardless, a life has been lost, and our hearts go out to this person's family. We will find those who were responsible, and they will be held accountable."

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**ABOUT AUTHOR**


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GOVERNOR KATE BROWN PRESS OFFICE



The Communications Office of Governor Kate Brown.

Comments are closed.

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## HHS Delivers 125 Million Masks to Support Safe School Reopening

Today, the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Education provided an update on the school mask initiative in support of the President's safe reopening of schools. Launched in September by HHS's Office of the Assistant Secretary for Preparedness and Response (ASPR), the initiative is on track to distribute 125 million cloth masks to states and U.S. territories for distribution to schools by November 2020. These masks support students, teachers, and staff in public and private schools, with an emphasis on low-income or other high-needs students and schools providing in-person instruction.

"The President continues to support extraordinary measures to safely reopen America's schools," said Dr. Robert Kadlec, HHS Assistant Secretary for Preparedness and Response. "The school mask program exemplifies the Administration's on-going commitment to support states and territories as they limit the spread of COVID-19, while also ensuring that children, teachers, and school staff have essential resources that will keep them safe throughout the school year."

To ensure masks are being sent to areas of most need, distribution plans were based on reporting from the [National School Lunch Program](#). The 125 million masks were split evenly among adult and youth sizes.

As of this week, we have deployed over 110 million cloth masks to states and territories for distribution to areas of need. The distribution of adult-sized masks is complete; the child-sized masks are being distributed as soon as they are manufactured. Several states and U.S. territories have received full or partial shipments of youth-sized masks. The remaining youth-sized masks will be distributed by November.

Schools are an essential part of the community infrastructure. They empower children with the knowledge and skills needed for a fulfilling future. They provide safe supportive learning environments for students; employ teachers and other staff; and enable parents, guardians, and caregivers to go to work.

"As the Assistant Secretary for Elementary and Secondary Education I have had the opportunity to visit schools across America—both in person and in virtual form," said U.S. Assistant Secretary for Elementary and Secondary Education Frank Brogan. "I continue to be impressed with the many strategies employed in all of these schools dedicated to ensuring a safe return of their students, faculty and staff, including the appropriate use of masks. I encourage state and local education agencies to not only utilize the masks provided by this program but to also utilize the nearly \$13 billion in resources provided by the CARES Act which can be used to purchase personal protective equipment. These unspent resources could help to ensure kids and teachers can safely return to the classroom."

For more information on the President's school mask program, visit the [ASPR website](#). For more information about how the cloth masks are being distributed, [view](#) the state-by-state distribution plan.

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Assistant Secretary for Preparedness and Response (ASPR), 200 Independence Ave., SW, Washington, DC 20201

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1/2

11/15/2020

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2/2

**CERTIFICATE OF SERVICE**

I certify that on November 16, 2020, I served the foregoing  
**SECOND DECLARATION OF JOHN KAEMPF IN SUPPORT OF PLAINTIFFS’  
EMERGENCY MOTION FOR PRELIMINARY INJUNCTION** as follows:

Marc Abrams

marc.abrams@doj.state.or.us

OREGON DEPARTMENT OF JUSTICE  
Attorney for Defendant

KAEMPF LAW FIRM PC

/s/ John Kaempf

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